TITLE: FEDERAL REGISTER.

REEL NO: 5 OF 8

VOLUME: 54

ISSUES: 189-206
PAGES: 40369-43794

DATE: OCTOBER 2 - OCTOBER 26, 1989

PUBLICATION NO: 2575.00

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10-2-89
Vol. 54 No. 189

federal register

Monday
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VOL
54
ISS
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10-2-89
Vol. 54 No. 189
Pages 40369-40626

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Monday
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 685]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 685 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 285,000 cartons during the period October 1 through October 7, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 685 (7 CFR part 910) is effective for the period October 1 through October 7, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on September 26, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 12 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.985 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.985 Lemon Regulation 685.

The quantity of lemons grown in California and Arizona which may be handled during the period October 1, 1989 through October 7, 1989, is established at 285,000 cartons.

Dated: September 27, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-23176 Filed 9-28-89; 8:45 am]
BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1989 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Public Law 101-82, the Disaster Assistance Act of 1989 (the 1989 Act), provides assistance to eligible producers for losses of 1989 crop production due to damaging weather or

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related conditions in 1988 or 1989. This final rule revises 7 CFR part 1477 to set forth the regulations which are necessary to establish the criteria to be used in making assistance available to eligible producers for 1989 crop losses.

EFFECTIVE DATE: This final rule shall become effective on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC. Telephone: (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "major" since the program will have an annual effect on the economy exceeding $100 million. A final regulatory impact analysis is available from the above named individual.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the federal assistance program to which this rule applies are: Title—Cotton—10.052; Feed Grain—10.055; Wheat—10.058; Rice—10.065; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1989 Act provides that disaster payments for prevented planting and low yield losses will be made available to producers of 1989 crops of wheat, feed grains, upland and extra long staple cotton, and rice (target price commodities); peanuts; sugar; tobacco; soybeans; sunflowers; and nonprogram crops. With respect to producers of target price commodities who are enrolled in the 1989 acreage reduction programs, in order to be eligible to receive such a payment, the loss of production of the crop must be greater than 40 percent of the farm's expected production determined on the basis of yields established as prescribed in the 1989 Act. However, if a producer on the farm had crop insurance on the disaster affected crop under the Federal Crop Insurance Act, the crop loss requirement for that producer is 35 percent. With respect to producers of target price commodities which are not enrolled in the 1989 acreage reduction programs, the loss requirement is 50 percent. Producers of peanuts, sugar beets, sugar cane, and tobacco must have incurred a production loss of 40 percent on the farm, or 35 percent if a producer had crop insurance on the commodity for which disaster benefits are requested. Producers of soybeans and sunflowers must have incurred a 45 percent loss and producers of nonprogram crops must have incurred a loss of 50 percent in order to be eligible to receive such payment.

The 1989 Act also provides that any person who has qualifying gross revenues in excess of $2,000,000 annually shall not be eligible to receive any disaster payment. The 1989 Act provides that qualifying gross revenue means, if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from such operations. With respect to persons who receive less than a majority of their annual income from such operations, the gross revenue from all sources will be considered. For purposes of determining a "person", 7 CFR part 1477 provides that the provisions of 7 CFR part 1497 shall be used. The provisions of § 1497.8 refer only to farming operations. However, this gross revenue determination requires the review of an entity's non-farm income. Accordingly, for purposes of determining whether two or more entities shall be considered to be one "person", the income from all entities, whether or not an individual entity is engaged in farming, shall be used.

The 1989 Act also provides with respect to any loss of production on a farm which is in an amount equal to 40 percent, or 35 percent for producers with crop insurance, or less that such producers on the farm who received 1989 crop advance deficiency payments will not be required to refund that portion of such advance which would otherwise be required to be refunded if market prices increase to a level which would require repayment in accordance with section 107C of the Agricultural Act of 1949, as amended (the 1949 Act). The amount of production which shall be subject to forgiveness shall be the lesser of the amount of disaster loss or 35 to 40 percent, as applicable, of expected production.

The 1989 Act also provides that producers who did not request advance deficiency payment with respect to crops for which such advances were made available may now request an advance payment. Accordingly, 7 CFR part 1477 provides that such a request must be made by November 1, 1989.

The 1989 Act established the basic payment rates which will be used in making disaster payments. The actual payment rates will be 65 percent of the basic rate established for each crop.

For producers who are participating in the 1989 acreage reduction programs for target price commodities, the basic payment rate is the target price of the commodity. For producers of target price commodities who are not enrolled in these programs, the basic payment rate is the basic county loan rate established for the commodity. With respect to peanuts, the basic payment rate is the national price support rate determined for quota peanuts or additional peanuts, as applicable. For sugar beets and sugarcane, the basic payment rate will be set at a level which is fair and reasonable in relation to the level of price support established for the 1989 crops. With respect to kinds of tobacco for which price support loans are made available, the basic payment rate is the national average loan rate. For other kinds of tobacco, soybeans, sunflowers, and all other crops for which payments are authorized to be made by the 1989 Act, Commodity Credit Corporation (CCC) or the State Agricultural Stabilization and Conservation (ASC) committee, on behalf of CCC, shall establish the basic payment rate as the simple average price received by producers of the commodity during the marketing years for the immediately preceding five crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest.

The 1989 Act also provides that the Secretary shall consider as separate crops and develop separate payment rates, insofar as is practicable, for different varieties of the same commodity for which there is a significant difference in economic value. Accordingly, 7 CFR part 1477 provides that basic payment rates will be established for separate varieties of the same commodity taking into account market factors to the extent reliable data is available.

For purposes of determining the total quantity of 1989 nonprogram crops that producers on a farm are able to harvest, the 1989 Act provides that the Secretary shall exclude as least 70 percent of: (1) Commodities that cannot be sold in normal commercial channels of trade and; (2) dockage, including husks and shells, if such dockage is excluded in determining the yields used to establish the eligibility of producers on a farm to receive a disaster payment. Accordingly, 7 CFR part 1477 provides that 70 percent of such quantities will be excluded from actual production when making loss of production determinations.

The disaster payment acreage for producers of 1989 target price crops who are participating in the 1989 acreage reduction programs is the sum of the acreage planted for harvest and the acreage prevented from being planted to such crop because of a natural disaster as determined by the Secretary but not to exceed the permitted acreage established for the farm for the commodity. With respect to producers of the target price commodities who are not participating in the 1989 acreage reduction programs, the disaster payment acreage is the sum of the acreage planted for harvest and the acreage that producers were prevented from planting to such crop because of a natural disaster as determined by the Secretary. Such prevented planting shall not exceed the greater of: (1) The 1988 planted and approved prevented planted acreage of the crop minus the 1989 actual planted acreage of the crop or (2) a quantity equal to the average of the 1986, 1987, and 1988 acreage planted and approved prevented planted acreage of the crop minus the 1989 actual planted acreage of the crop. The amount of payments made available, with respect to producers of target price commodities who are not participating in the 1989 acreage reduction programs, is reduced by a factor equivalent to the acreage reduction percentage which was established for the 1989 crop.

Disaster payment acreage provisions of the 1989 Act which are applicable to peanuts, sugar beets, sugarcane, tobacco, soybeans, sunflowers, and nonprogram crops are similar to the provisions used to establish such acreages for producers of the 1989 target price commodities who are not participating in the 1989 acreage reduction programs. Variations, however, exist with respect to peanuts and tobacco to take into account increased 1989 marketing quotas which were established for these crops in accordance with the Agricultural Adjustment Act of 1938, as amended. Deficiencies in production of peanuts on a farm which are classified as quota will be based on the relationship between farm poundage quota and the sum of the excepted production of quota and additional peanuts. Such deficiencies in production of quota peanuts shall also take into consideration the quantity of poundage quota transferred from the farm for the 1989 crop year. The amount of undermarkertings attributable to a farm for the 1989 crop of burley or flue-cured tobacco or quota peanuts shall be reduced by the quantity for which a disaster payment is made to producers on the farm. In the case of peanuts, this reduction may exceed the actual undermarketings which would result in "negative undermarketings." Any negative undermarketings would be deducted when determining the subsequent year's effective farm poundage quota.

For all crops, adjustments in disaster payment acreages are made in order to take into account crop rotation practices.

In determining whether the producers on a farm have suffered a loss, the 1989 farm program payment yield will be used for producers of the target price commodities. With respect to the determination of losses on a farm by producers of tobacco, sugarcane and sugar beets, the county average yield is to be used. For peanuts, the program yield is required to be used. For soybeans and sunflowers, the 1989 Act specifies that the yield to be used shall be the State, area, or county yield adjusted for adverse weather conditions during the previous three crops years, as determined by the Secretary.

Nonprogram crop yields are based upon proven yields established from data provided by the producer for the immediately preceding three crop years. For any year data is not provided the county average yield, as determined by CCC, shall be substituted. Accordingly, 7 CFR part 1477 provides that these yields, to the extent possible, will be based on statistics of the National Agricultural Statistics Service (NASS) or other sources which CCC determines to be appropriate.

The Secretary has determined not to exercise the discretionary authority to make additional disaster payments for reductions in quality of 1989 crops as a result of damaging weather or related condition in 1988 or 1989. Accordingly, 7 CFR part 1477 does not set forth regulations with respect to this provision.

The 1989 Act provides that the quantity on which participating producers of the target price commodities would otherwise have earned deficiency payments shall be reduced by the quantity on which a disaster payment has been received. The 1989 Act also provides that if the Secretary determines that any producer participating in a 1989 program must refund any portion of the advance deficiency payment, because of the total deficiency payment being less than the amount advanced, such refund shall not be required prior to July 31, 1990. Accordingly, 7 CFR part 1477 sets forth this provision.

Producers participating in the 1989 acreage reduction programs may devote all or a portion of the permitted acreage to conserving uses or receive disaster payments in lieu of the payment which they would have received if the producers were, in fact, prevented from planting such acreage or the acreage failed because of damaging weather or related condition in 1988 or 1989. Accordingly, 7 CFR part 1477 provides that producers must make such an election, in writing, by November 1, 1989.

The 1989 Act provides that producers who have obtained crop insurance for the 1989 crop of a commodity, under the Federal Crop Insurance Act, as amended, shall have their disaster payment reduced by the amount which the sum of the net crop insurance benefits (gross indemnity less premium paid) and the computed disaster payment exceeds the disaster payment acreage times the disaster yield times the basic payment rate for the commodity.

The 1989 Act also provides that producers who receive benefits under this Act must agree to obtain multiple peril crop insurance, under the Federal Crop Insurance Act, as amended, for the 1990 crop of the commodity for which a 1989 disaster payment is made except when:

(1) The producer's loss of production is less than 65 percent;

(2) Crop insurance for the commodity is not available;

(3) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located;

(4) The amount of the producer's annual premium is greater than 25

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percent of the amount of payment received under the 1989 Act; or

(5) The producer can establish, on appeal to the county ASC committee, that the purchase of crop insurance would impose an undue financial hardship.

Accordingly, 7 CFR part 1477 sets forth the regulation which implements these provisions.

The 1989 Act provides that for each "person" the sum of all 1989 disaster payments made with respect to target price crops, peanuts, sugar beets, sugar cane, tobacco, soybeans, sunflowers and nonprogram crops shall not exceed $100,000. Additionally, the sum of such payments and the benefits received in accordance with title VI of the 1949 Act which relate to 1989 livestock feed losses may not exceed $100,000. The 1989 Act also provides that no crop disaster payments are to be made to the extent that livestock emergency benefits have been made available for such loss of crop production. Accordingly, 7 CFR part 1477 sets forth these provisions.

Producers may elect whether to receive benefits, up to the $100,000 limit under the annual crop provisions of the 1989 Act or, in the form of livestock emergency benefits, up to the annual $50,000 limit in accordance with title VI of the 1949 Act. For the purpose of applying the maximum payment limitation provisions of the 1989 Act, "person" determinations are to be made to the extent possible in accordance with the maximum payment limitation provisions of the Food Security Act of 1985. For purposes of determining a "person", 7 CFR part 1477 provides that the provisions of 7 CFR part 1497 shall be used. However, in the same manner noted previously concerning the gross revenue determination which is made with respect to a "person", an individual or entity's interest in all entities will be taken into consideration whether or not such entities are engaged in farming.

The 1989 Act also provides that is producers on a farm receive disaster payments, the amount of the payment will be reduced by the value of any replacement crop which is produced on the acreage for which the disaster payment is made. The value of the replacement crop will be based on average market prices and the actual production of the replacement crop. Therefore, 25 percent of the production of the replacement crop will be deducted from the actual production of the replacement crop and the remaining quantity will be multiplied by the market value of the crop. This amount will be deducted from the disaster payment which otherwise would be made to the producer.

The 1989 Act also specifies that the historical cropping patterns of producers will be taken into consideration. Accordingly, 7 CFR part 1477 provides that producers who normally double-crop the first and second crop on the farm will not have the value of a crop which is normally the second crop planted on the farm deducted from any disaster payment which is made with respect to the crop normally planted as the first crop on the farm.

The 1989 Act also provides that the Secretary may permit eligible producers who have crop insurance on the 1989 crop or, in certain instances had crop insurance on the 1988 crop, to substitute the crop insurance yield for a commodity for the program yield established under the 1989 Act. Due to the differences between CCC programs and crop insurance programs with respect to: historical base periods for yield determinations; farm constitutions; the manner in which various croppig practices effect yield determinations and other related issues, it has been determined that this option will not be made available since it would unnecessarily complicate the disaster payment program without resulting in a substantial enhancement of the program and would substantially increase the cost of the program.

List of Subjects in 7 CFR Part 1477

Disaster payment 1989 crops.

Final Rule

Accordingly, 7 CFR Part 1477 is revised to read as follows:

PART 1477—DISASTER PAYMENT PROGRAM FOR 1989 CROPS

Sec.

1477.1 General statement.
1477.2 Administration.
1477.3 Definitions.
1477.4 Availability of disaster payments.
1477.5 Disaster benefits.
1477.6 Establishment of different payment rates and yields for the same nonprogram crop.
1477.7 Filing application for payment.
1477.8 Report of acreage, production disposition, and indemnity payments.
1477.9 Payment limitations.
1477.10 Special provisions for burley and flue-cured tobacco, and peanuts.
1477.11 Misrepresentation, scheme and device, and fraud.
1477.12 Refunds to CCC.
1477.13 Cumulative liability.
1477.14 Appeals.
1477.15 Liens.
1477.16 Other regulations.
1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Title I of the Disaster Assistance Act of 1989 (Pub. L. 101–82); 15 U.S.C. 714b and 714c.

§ 1477.1 General statement.

This part sets forth the regulations for the Disaster Payment Program for the 1989 crop year as provided by the Disaster Assistance Act of 1989 (Public Law 101–82). The purpose of the program is to make disaster payments to eligible producers on a farm that has suffered a loss of production of 1989 crops due to damaging weather or related condition in 1988 or 1989.

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees.

(b) State and county ASC committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State ASC committee shall take any action required by this part which has not been taken by a county ASC committee. The State ASC committee shall also:

(1) Correct or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices under this Part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the Farmers Home Administration (FmHA). Any reference in this Part to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county ASC committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county ASC committee.

§ 1477.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this title or in the regulations applicable to the production adjustment programs for feed grains, rice, upland and extra long staple cotton, wheat, and related programs set forth in part 1413 of this title.

(a) *Target Price Commodities* means a crop of wheat, feed grains (corn, grain sorghum, barley, and oats), upland and extra long staple (ELS) cotton, or rice.

(b) *Actual production* means the quantity of the crop actually harvested or which could have been harvested as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator) Agricultural Stabilization and Conservation Service (ASCS).

(c) *Nonprogram crop* means a crop produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, which is not a crop of a 1989 target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans or sunflowers.

(d) *Disaster payment yield* means:

(1) For 1989 target price commodities with respect to farms participating and not participating in the 1989 program, the 1989 farm program payment yield determined in accordance with part 1413 of this title;

(2) For peanuts, the 1989 farm yield determined in accordance with part 729 of this title;

(3) For sugarcane, sugar beets, and all kinds of tobacco the average of the county average yield for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest;

(4) For soybeans and sunflowers, the average of the county average yield for the years 1986 through 1988 as determined by NASS, adjusted for adverse weather conditions, in accordance with instructions issued by the Deputy Administrator;

(5) For honey, the average of the county average yield per hive for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest, in accordance with instruction issued by the Deputy Administrator; and

(6) For nonprogram crops (including honey), the average of actual yields for the years 1986 through 1988, in accordance with instructions issued by the Deputy Administrator, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. For any year which a producer is not able to provide adequate production evidence, the county average yield for the crop shall be substituted in determining the payment yield. Such county average yield shall be the average of the county average yields for the years 1984 through 1988 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest.

(e) *Expected production* means:

(1) For target price commodities on farms participating in the 1989 acreage reduction programs, the disaster payment yield times the smaller of:

(i) The 1989 permitted acreage for the crop; or

(ii) The sum of the 1989 actual planted acreage and the 1989 prevented planted acreage of the crop as approved by the county committee.

(2) For target price commodities on farms not participating in the 1989 acreage reduction programs and for peanuts, sugarcane, sugar beets, soybeans, sunflowers, tobacco other than burley tobacco, and nonprogram crops, except as provided in paragraphs (e) (3) through (5) of this section, the disaster payment yield times the sum of:

(i) The 1989 planted acreage of the crop, and

(ii) The 1989 prevented planted acreage credited for disaster payment purposes not to exceed the larger of:

(A) The 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop, or

(B) The average of the 1986, 1987, and 1988 planted and approved prevented planted acreage of the crop minus the 1989 planted acreage of the crop.

(3) For quota kinds of tobacco other than burley and flue-cured, the expected production as determined according to paragraph (e)(2) of this section shall not exceed the result of multiplying the 1989 effective farm acreage allotment times the disaster payment yield.

(4) For burley tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The disaster payment yield times an acreage determined by dividing the amount in paragraph (e)(4)(i) of this section by the farm yield established for the farm according to 7 CFR part 726 of this title;

(iii) The disaster payment yield times the sum of the acreage of burley tobacco:

(A) That was planted on the farm in 1989, including any approved failed acreage;

(B) For which prevented planted acreage credit is approved by the county ASC committee with respect to the 1989 crop; and

(C) Determined by dividing the quantity of any un-marketed tobacco on hand from the 1988 crop by the disaster payment yield, or

(5) For flue-cured tobacco, the smaller of:

(i) The 1989 effective farm marketing quota, including the effective quota resulting from a transfer of quota after June 30 under the natural disaster provisions of part 725 of this title; or

(ii) The sum of:

(A) The quantity determined under the provisions of paragraph (e)(2) of this section,

(B) The quantity of any un-marketed tobacco on hand from the 1988 crop, and

(C) The amount by which the farm's 1989 basic quota exceeds the 1988 basic quota.

(6) With respect to crops planted in a rotation, the most recent corresponding years in the rotation shall be substituted for the 1986, 1987, and 1988 crop for purposes of determining the prevented planted acreage credit.

(f) *Eligible disaster* means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or related condition, including but not limited to insect infestation, plant disease, or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or during harvest which occurred in 1988 or 1989 as determined by CCC.

(g) *Eligible Producer* means, with respect to a crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced.

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(h) *Person* shall be defined as in 7 CFR part 1497 of this title and all rules with respect to combining persons found in that part shall be applicable. However, the determinations made in accordance with § 1497.8 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(i) *Repeat crop* means a subsequent crop of the same commodity planted on the same acreage as the first crop.

(j) *Double-cropped* means a subsequent crop of a different commodity planted on the same acreage as the first crop. For a crop to be considered double cropped on a farm, there must have been a history of the second crop being planted following the first crop either in:

(1) The immediately preceding year, or

(2) In three or more of the immediately preceding five years.

(k) *Replacement crop* means a subsequent crop of a different commodity planted on the same acreage after the failure or prevented planting of first crop, except for repeat crops or double-cropped crops.

(l) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

§ 1477.4 Availability of disaster payments.

(a) Disaster payments will be made available to eligible producers of 1989 target price commodities, peanuts, tobacco, sugarcane, sugar beets, soybeans, sunflowers, and nonprogram crops who suffered losses because of an eligible disaster in 1988 or 1989 in accordance with the Disaster Assistance Act of 1989.

(b) A person, as defined in § 1477.3, who has qualifying gross revenues in excess of 2.0 million dollars shall not be eligible to receive disaster benefits under this part.

(c) Eligible producers with losses of production in excess of 65 percent of expected production must agree to obtain crop insurance under the Federal Crop Insurance Act for the 1990 crop of the commodity, unless one of the following exists:

(1) Crop insurance is not available with respect to the commodity with respect to which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate for insurance on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

§ 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting and low yield losses on 1989 crops are authorized to be made to producers who file a CCC–441, Application for 1989 Disaster Benefits, if:

(1) The farm operator submits an Application for Disaster Credit (Form ASCS–574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a report of production and disposition (Form ASCS–658) in accordance with § 1477.8; and

(3) The county committee determines that because of an eligible disaster condition, producers on a farm were:

(i) Prevented from planting an eligible commodity, or

(ii) Able to harvest less than:

(A) With respect to target price commodities on farms enrolled in the 1989 Acreage Reduction Program for such crop, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent of the expected production;

(B) With respect to target price commodities on farms not enrolled in the 1989 Acreage Reduction Program for such crop, 50 percent of the expected production;

(C) With respect to peanuts, sugar beets, sugarcane, and tobacco, 60 percent of the expected production or in the case of producers with crop insurance on such a crop, 65 percent;

(D) With respect to soybeans and sunflowers, 55 percent of the expected production; and

(E) With respect to nonprogram crops, 50 percent of the expected production.

(b)(1) The loss of production that shall be used in making a disaster payment shall be that quantity of production in excess of the following percentages of expected production on a farm that producers were unable to harvest due to a reduced yield or were prevented from planting due to an eligible disaster condition.

(i) 40 percent or 35 percent for producers with crop insurance for target price commodities with respect to farms enrolled in the 1989 Acreage Reduction Programs;

(ii) 50 percent for target price commodities with respect to farms not enrolled in the 1989 Acreage Reduction Programs;

(iii) 40 percent or 35 percent for producers with crop insurance for peanuts, sugar beets, sugarcane, and tobacco;

(iv) 45 percent for soybeans and sunflowers; and

(v) 50 percent for nonprogram crops.

(2) The loss of production for peanuts shall be prorated between quota peanuts and additional peanuts. The loss of production of quota peanuts shall be determined by multiplying the total loss of production for peanuts times a factor determined by dividing the effective farm poundage quota, prior to any fall transfer, by the expected production for the farm. The loss of production for additional peanuts shall be determined by subtracting the loss of quota production from the total loss of production.

(3) If a peanut quota is transferred from a farm under the fall transfer provisions in part 729 of this title, the loss of production of quota peanuts determined in paragraph (b)(2) of this section shall be reduced to the extent of such quantity transferred. If the transferred quota exceeds the loss of production of quota peanuts, no further reductions are required after the loss of production of quota peanuts has been completely voided.

(4) For the purposes of determining the total quantity of nonprogram crops that producers on a farm are able to harvest, 70 percent of the following quantities shall be excluded:

(i) Commodities which the county committee determines cannot be sold in normal commercial channels of trade; and

(ii) Dockage, including husks and shells, if such dockage is excluded in determining yields in accordance with § 1477.3(d) (4)–(6), excluding soybean disaster payment yields.

(c) Disaster payment rates shall be 65 percent of:

(1) The established target price for the 1989 target price commodities for producers on farms participating in the 1989 acreage reduction programs;

(2) The basic county loan rate for the 1989 target price commodities for producers on farms not participating in the 1989 acreage reduction programs;

(3) The National price support level for quota and additional peanuts and quota kinds of tobacco;

(4) The applicable 1989 crop support price for sugar beets and sugarcane, determined by regions; and

(5) The simple average price received by producers for the marketing years for the immediately preceding five crops of the commodity, excluding the highest and lowest average prices in such period for all other eligible crops.

(d)(1) Disaster payments shall be made in an amount determined by multiplying the amount of eligible loss, as determined in paragraph (b) of this section, by the disaster payment rate, as determined in paragraph (c) of this section.

(2) With respect to eligible producers of target price commodities who are not participants in the 1989 acreage reduction programs, such computed disaster payment amount shall be reduced by an amount determined by multiplying the acreage reduction factor which was applicable for the 1989 crop of such commodities times the amount determined according to paragraph (d)(1) of this section.

(3) With respect to payments made to producers on a farm on which a replacement crop, as defined in § 1477.3, was planted after the planting and failure of a crop which would normally be harvested by such producers or the producers were prevented from planting and for which disaster benefits have been requested, the amount of the computed disaster payment shall be reduced by an amount determined by multiplying:

(i) The actual production of the second crop by;

(ii) 75 percent; by

(iii) The market value of the second crop, as determined by CCC.

(e) Producers of target price commodities participating in the 1989 acreage reduction programs shall not be required to refund advance deficiency payment made to such producers with respect to that portion of losses up to 40 percent of expected production or, in the case of producers who had crop insurance on the commodity, up to 35 percent of expected production.

(f) Effective only for the 1989 crops of wheat, feed grains, upland cotton, and rice, if CCC determines that any portion of the advance deficiency payment made to producers for the crop under part 1413 of this title must be refunded, refund shall not be required prior to July 31, 1990, for that portion of the crop for which a disaster payment is made under this part.

(g) Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

Separate payment rates and yields for the same nonprogram crop shall be established, in accordance with instructions issued by the Deputy Administrator, when there is supporting NASS data or other sources approved by CCC available to justify establishing such rates and yields.

§ 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the producer's farm is located for administrative purposes.

(b) An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with § 1477.5(a). Applications for payment must be filed no later than April 2, 1990.

(c) Eligible producers who did not request an advance deficiency payment for the 1989 crops of wheat, feed grains, upland cotton, or rice may request such payments by making such a request in the county office by November 1, 1989.

(d) Any eligible producer who elected to devote all or a portion of a farm's permitted wheat, feed grain, upland cotton or rice acreage to conservation or other uses in accordance with part 1413 of this title may request that disaster payments be made available under this part with respect to such acreage in lieu of any payment made available under part 1413 of this title if a written request is received from the producer in the county ASCS office by November 1, 1989. Approval of prevented planting or failed acreage requests will remain the responsibility of the county ASC committee.

§ 1477.8 Report of acreage, production disposition, and indemnity payments.

(a)(1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in 1989 on an acreage for which an application for a disaster payment is filed. Such production reports must be filed no later than April 27, 1990.

(2) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include, but is not limited to, such items as the original or a copy of commercial receipts, peanut and tobacco marketing cards, gin records, CCC loan documents, settlement sheets, warehouse, ledger sheets, elevator receipts or load summaries.

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county ASC committee determines to be necessary in order to verify the information provided by the producer.

(b) Eligible producers who have purchased crop insurance with respect to a crop for which a disaster payment is made must present evidence of the net amount of indemnity payment received (gross indemnity less premium paid) or to be received for each such crop in accordance with instructions issued by the Deputy Administrator.

§ 1477.9 Payment limitations.

(a) Disaster payments made to eligible producers shall be reduced as provided in this section. For the purpose of making such payment reductions, the term "producer" shall be considered to mean the term "person" as defined in § 1477.3. Payments for each eligible producer for each eligible commodity shall be reduced by the amount by which the sum of the disaster payment and the net amount of crop insurance indemnity payments (gross indemnity less premium) exceeds 100 percent of the expected production times the applicable basic payment rate established according to § 1477.5.

(b) No person shall receive payments attributable to lost production under this part to the extent that such person receives benefits on such lost production under the livestock emergency provisions of title VI of the Agricultural Act of 1949.

(c) No person shall receive payments under this part, when combined with any benefits received under the livestock emergency provisions of title VI of the Agricultural Act of 1949, in excess of $100,000. Persons subject to the provisions of the preceding sentence may elect the provisions under which such payments or benefits shall be received by making application for benefits under this part at the county ASCS office by April 2, 1990.

(d) For the purpose of determining the payment limitation imposed by this section, disaster payments shall be attributed to each eligible producer in accordance with § 1477.5(f). The reduction of any eligible producer's disaster payment share shall not increase the disaster payment share of any other producer.

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§ 1477.10 Special provisions for burley and flue-cured tobacco, and peanuts.

(a)(1) For burley and flue-cured tobacco, the undermarketings from the 1989 crop that may be considered when determining the 1990 effective farm marketing quota shall be the 1989 actual undermarketing less the quantity of the loss of production for which a 1989 disaster payment is made for the respective kind of tobacco.

(2) If quota is leased and transferred from the farm under natural disaster provisions of parts 725 or 726 of this title, any disaster payment that was determined before such lease and transfer was approved shall be re-computed according to § 1477.5 of this part. The farm marketing quota that is in effect after such lease and transfer shall be used when re-computing the disaster payment. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b).

(b)(1) For peanuts, the undermarketings from the 1989 crop that may be claimed when determining future poundage quotas shall be the 1989 actual undermarketings less the quantity of the loss of production for which a 1989 disaster payment is made on the basis of the national support level for quota peanuts. This reduction could exceed the actual undermarketings which would result in "negative undermarketings." Any negative undermarketings shall be taken into consideration when determining the subsequent year's effective farm poundage quota.

(2) If quota is transferred from the farm under the fall transfer provisions of part 729 of this title, any disaster payment that was determined before such transfer was approved shall be re-computed according to the provisions in § 1477.5 of this part. The amount of any overpayment that results from the re-computation shall be refunded with interest as provided in § 1477.12(b) of this part.

§ 1477.11 Misrepresentation, scheme and device, and fraud.

(a) If CCC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to CCC. The amount to be refunded to CCC shall include any interest and other amount determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which CCC under this part otherwise would not make, all amounts paid by CCC to any such producer shall be refunded to CCC together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by CCC.

(c) If the county ASC committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 1477.12 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to CCC, together with interest.

(b) Interest shall be charged with respect to any refund which is determined to be due CCC at the rate of interest which CCC is required to pay for its borrowings from the United States Treasury as of the date of the disbursement by CCC of the moneys to be refunded. Interest shall accrue from the date of such disbursement by CCC. Upon the sending of the notification of the debt by CCC to the producer, the account shall bear late payment charges to be assessed in accordance with the provisions of, and subject to the rates prescribed in, part 1403 of this title. If, for any reason, no late payment charges may be assessed with respect to such account under the provisions of part 1403 of this title, additional charges on the account will accrue at the rate equal to the current rate for CCC borrowings from the United States Treasury plus three percent per annum.

(c) Producers must refund to CCC any excess payments made by CCC.

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be re-computed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such re-computation shall be remitted to CCC.

§ 1477.13 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to CCC shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provisions of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1477.14 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this title.

§ 1477.15 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 1477.16 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) 7 CFR part 12, Highly Erodible Land and Wetland Conservation.

(b) 7 CFR part 13, Setoffs and Withholdings.

(c) 7 CFR part 707, Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

(d) 7 CFR part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.

(e) 7 CFR part 724, Fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco.

(f) 7 CFR part 725, Flue-cured tobacco.

(g) 7 CFR part 726, Burley tobacco.

(h) 7 CFR part 729, Peanuts.

(i) 7 CFR part 780, Appeal Regulations;

(j) 7 CFR part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(k) 7 CFR part 796, Denial of Program Eligibility for Controlled Substance Violation;

(l) 7 CFR part 1403, Interest on Delinquent Debts;

(m) 7 CFR part 1413, Feed grain, Rice, Upland and Extra Long Staple Cotton, and Wheat;

(n) 7 CFR part 1470, Commodity Certificates, In-Kind Payments, and Other Forms of Payments; and

(o) 7 CFR part 1497, Payment Limitation.

§ 1477.17 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC on September 26, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-23157 Filed 9-29-89; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule prescribes the entrance fee that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds). The interim rule implements provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 authorizing entrance fees for participants in conversion transactions. The entrance fee is being prescribed under an interim rule, with an immediate effective date, in order to permit institutions interested in participating in certain branch sales, thrift resolutions, and other permitted "conversion transactions" to begin evaluating the potential costs of those transactions (pending a joint decision on exit fees by the FDIC and the Secretary of the Treasury); however, the public is invited to comment on the fee structure set forth in the interim rule, and a final regulation will be issued following the expiration of the public comment period. Changes to the fee structure set forth in the interim rule may be made as a result of the comments received.

EFFECTIVE DATE: The interim rule is effective immediately upon publication in the **Federal Register**. Comments must be submitted by December 1, 1989.

Comments: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8.30 a.m. and 5:00 p.m. on business days. (FAX number: (202) 347-2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: (for information on legal issues) Alan J. Kaplan, Counsel, Legal Division, (202) 898-3734, or Valerie J. Best, Attorney, Legal Division, (202) 898-3812; (for information on supervisory issues) Garfield Gimber, Examination Specialist, Division of Bank Supervision, (202) 898-6913; (for information on economic issues) John O'Keefe, Financial Economist, Division of Research and Statistics, (202) 898-3945; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this interim rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the interim rule would not have a significant impact on a substantial number of small entities.

Reason for Interim Rule

The entrance fee is being prescribed by means of an interim rule in order to respond to an urgent situation. As stated in the first section of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, two of the principal purposes of that Act are "[t]o establish a new corporation, to be known as the Resolution Trust Corporation, to contain, manage, and resolve failed savings associations" and "[t]o provide funds from public and private sources to deal expeditiously with failed depository institutions." Thus, the expeditious resolution of failed savings associations (thrift institutions) is a fundamental objective of that Act. Funding has been made available for these resolutions and it is imperative that the FDIC, as manager of the Resolution Trust Corporation, the agency charged with managing and resolving thrift failures, proceed expeditiously to arrange and complete resolutions, some of which will necessarily involve conversion transactions and therefore require the payment of entrance fees. The longer these defaulting institutions go unresolved, the greater the cost to the American taxpayers. Therefore, it is in the public interest to expedite, not delay, these thrift resolutions. Similarly, although perhaps not as urgent a matter as resolving failed thrifts, numerous transactions are pending which involve the sale of savings association branches to banks. These transactions, many of which are awaiting or have already received regulatory approval, cannot be completed until any applicable fees called for by the new legislation have been set.

For these reasons, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received.

Background and Discussion

Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRRE Act" or "FIRREA") adds a new subsection 5(d) to the Federal Deposit Insurance Act ("FDIC Act") that, among other things, authorizes the FDIC to assess insurance fees in two situations. First, FIRREA provides that any institution that becomes insured by the FDIC, and any noninsured branch of a foreign bank that becomes insured by the FDIC, shall pay the FDIC "any fee which the [FDIC] may by regulation prescribe, * * *" This entrance fee is to be prescribed "after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund [("BIF")] and the Savings Association Insurance Fund [("SAIF")] as required by section 7 of the Federal Deposit Insurance Act." The entrance fee is to be paid into the appropriate fund (*i.e.*, into BIF if the depository institution becomes a "BIF member" and into SAIF if the depository

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institution becomes a "SAIF member"). Generally speaking, any savings association (*e.g.*, a savings and loan) other than a Federal savings bank chartered under section 5(o) of the Home Owners Loan Act is a member of SAIF, and any bank is a member of BIF. Savings associations that were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") on August 8, 1989, the day before the date of enactment of FIRREA, and thereby became "automatically" insured by the FDIC by operation of law, do not have to pay an entrance fee as a result of their transfer from FSLIC to SAIF.

Second, FIRREA requires the FDIC to prescribe, by regulation, procedures for assessing entrance and exit fees for insured depository institutions that participate in "conversion transactions." Generally speaking, a conversion transaction is defined to include a change of status (by charter conversion or otherwise) from a SAIF member to a BIF member or vice versa; the merger or consolidation of a SAIF member with a BIF member; the assumption of deposit liabilities of a SAIF member by a BIF member, or vice versa; and the transfer of assets in consideration of such a deposit assumption. Under FIRREA, there is a five-year moratorium on conversion transactions, with limited exceptions for (1) Conversion transactions that affect an insubstantial portion of the total deposits of each participating institution, and (2) certain conversions involving institutions in default or in danger of default. The FDIC must approve any such excepted conversion.

The first exception is intended to exempt from the moratorium, subject to FDIC approval, branch sales and other transfers of deposits between depository institutions that are members of different insurance funds (SAIF or BIF) and which are regarded as insubstantial when measured against the total deposits of each participating institution. For example, this exception would cover the sale of a branch or branches of an insured savings and loan association (a SAIF member), to an insured bank (a BIF member), where the volume of deposits being transferred meets the insubstantiality test prescribed in the statute.

The second exception covers conversions that occur as part of an acquisition of an insured depository institution in default or in danger of default, if the FDIC determines that the estimated financial benefits to the fund the institution is leaving (or the Resolution Trust Corporation ("RTC"), if the institution is a savings association) equal or exceed the FDIC's estimate of loss of assessment income to that fund during the years remaining in the moratorium period, and (in the case of a savings association) if the RTC concurs in the FDIC's determination. This exception is intended to permit conversion transactions to occur as a means of resolving savings association (thrift institution) and bank failures, notwithstanding the moratorium, if the requisite findings can be made.

Paragraph 5(d)(2)(E) of the FDI Act, as added by the FIRRE Act, requires, among other things, that each insured depository institution participating in a conversion transaction pay an entrance fee in an amount to be determined by the FDIC. The fee is to be in the "approximate amount which the [FDIC] calculates as necessary to prevent dilution" of the fund (BIF or SAIF) of which the resulting or acquiring depository institution is a member (in other words, the fund being entered), and is to be paid to that fund. Thus, for example, where a thrift failure is resolved by an insured bank (BIF member) acquiring assets from and assuming deposit liabilities of the failed savings association (SAIF member), the entrance fee would be set at the approximate amount which the FDIC calculates is necessary to prevent dilution of BIF. Similarly, where an insured bank assumes deposit liabilities from an insured savings association through the sale of branches (and assuming the FDIC has approved this conversion transaction), the entrance fee would be the approximate amount necessary to offset the dilution of BIF that would result from the transfer of those deposits from SAIF insurance to BIF insurance.

The FDIC is also authorized to prescribe procedures for charging exit fees to insured depository institutions that participate in conversion transactions. For transactions in which the resulting or acquiring institution is a BIF member, any such exit fee is to be paid into SAIF (or to the Financing Corporation, if the Secretary of the Treasury so orders after determining that the Financing Corporation has exhausted all other sources of funding for interest payments on its obligations). For "SAIF-to-BIF" conversion transactions consummated before January 1, 1997, the FDIC and the Secretary of the Treasury jointly determine the amount of any exit fee; for those consummated after that date, the FDIC alone determines the amount.

FIRREA expressly provides that the conversion of a SAIF member savings association to a bank charter is not considered to be a "conversion transaction" if the bank elects to remain a SAIF member and thereby continues to pay assessments to SAIF. In such situations, no entrance or exit fees would be required unless and until, following expiration of the moratorium, the bank switches from SAIF to BIF insurance.

Also the merger of a SAIF member savings association into a BIF member bank is permitted, notwithstanding the moratorium, if the bank is a subsidiary of a bank holding company that controls the savings association. The Board of Governors of the Federal Reserve System, as well as the appropriate Federal banking agency (as defined in the Federal Deposit Insurance Act), would have to approve the transaction. The resulting or acquiring bank would have to continue to pay assessments to SAIF on that portion of its deposits that are attributable to the former savings associations, under a formula prescribed in FIRREA which includes a seven percent adjustment for growth. The payment of assessments to SAIF could be discontinued if, after the five-year moratorium period expires, the FDIC approves an application by the bank to treat the merger transaction as a conversion transaction and the bank pays any entrance and exit fees prescribed by the FDIC.

By means of this interim rule, the FDIC is not attempting to prescribe all the fees authorized or called for by FIRREA. Rather, at this time the FDIC is only setting entrance fees for "SAIF-to-BIF" conversion transactions. Pending a decision on exit fees, this action will enable potential participants in thrift resolutions arranged by the RTC, branch sales, and other permitted conversion transactions to begin evaluating the costs of those transactions. As required by FIRREA, the amount of any exit fee must be jointly determined by the FDIC and the Secretary of the Treasury. The FDIC is working with the Treasury Department to determine the amount of any exit fee to be imposed for conversion transactions. A decision is expected soon and most likely will be the subject of another interim rule in the very near future. "BIF-to-SAIF" conversions are expected to be rare and therefore are not being addressed at this time; however, the FDIC expects to address fees for BIF-to-SAIF conversions expeditiously. In addition, entrance fees for "uninsured institutions" (*de novo* depository institutions or operating noninsured institutions seeking FDIC insurance) are not being addressed at this time, but may be the subject of a rulemaking proceeding at a future date.

For purposes of the interim rule, the FDIC has determined to set the entrance fee for SAIF-to-BIF conversions at the product of the "reserve ratio" of the fund being entered (*i.e.*, BIF) multiplied by the "deposit base" being transferred from SAIF to BIF insurance. The reserve ratio is defined as the ratio of the net worth of the fund to the value of the aggregate estimated insured deposits held in all members of that fund. In computing the entrance fee for a particular conversion transaction, the reserve ratio used would be the most recent publicly available reserve ratio (as of the date of transfer) computed by the FDIC on the basis of its most recent audited year-end financial statements. The most recent publicly available reserve ratio may be obtained by contacting the FDIC's Office of Corporate Communications. (As of this writing, the BIF reserve ratio for purposes of computing the entrance fee would be .80 percent, and is based on the FDIC's audited year-end 1988 financial statements. This ratio would be used for purposes of calculating the entrance fee until a new figure has been announced based on the FDIC's audited year-end 1989 financial statements.)

The deposit base against which the reserve ratio is to be applied would depend upon the type of transaction involved. For "non-resolution" conversion transactions, such as branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, the appropriate deposit base would be the total dollar amount of the deposits being transferred from SAIF to BIF insurance, measured as of the date of transfer. However, in "resolution" cases (*i.e.*, where the conversion transaction is one which is being arranged by the RTC to dispose of or otherwise deal with an insured savings association in default or in danger of default (including any insured savings association in conservatorship)); a certain amount of deposit "run-off" can be expected to occur following the transaction, and so the dilutive effect of the transaction on BIF may be prevented by charging an entrance fee only against those deposits likely to be retained by the acquiring bank. Thus, the interim rule permits the use of an estimated "retained deposit base" in determining the appropriate entrance fee for transactions arranged. The dollar amount of the retained deposit base would be estimated by the FDIC on a case-by-case basis at the time RTC prepares the "bid package" for the particular thrift resolution in question, and the initial estimate would be announced to prospective bidders at the time proposals for acquisition are solicited; however, the FDIC may adjust its estimate of the retained deposit base as necessary over the course of the bidding process.

The rationale for using an estimated retained deposit base in computing the entrance fee for RTC-arranged conversion transactions is more fully explained as follows:

The assumption of all or a portion of a SAIF member's deposit liabilities by a BIF member results in greater potential liabilities for BIF. The extent to which potential BIF liabilities increase is dependent upon the proportion of transferred deposits that remain in the BIF institution following the transaction. The proportion of transferred accounts remaining with the acquirer will be dependent upon such factors as the degree of change in customer service, convenience, and the rate of interest paid on accounts. For example, "brokered" deposits, which typically pay interest rates that are significantly higher than the prevailing rates available in a depository institution's normal market area, are not likely to remain with the acquirer if rates are reduced. Depositors not satisfied with the new institution for one reason or another may redeposit funds with other BIF members, SAIF members, or neither.

Taking these factors into consideration, entrance fees should be charged against the level of deposits expected to remain at the acquiring bank following the transaction. Therefore, the deposit base against which entrance fees should be charged should consist of those deposit accounts which the FDIC estimates to have a high probability of remaining with the acquirer following the transaction. This necessarily requires estimating the retained deposit base on a case-by-case basis for each failed institution, since each may have a different impact on customer relationships. The estimated retained deposit base would be specified by the FDIC in the solicitation and evaluation of bids for failed institutions.

On the other hand, in the case of branch sales involving the assumption of deposit liabilities of an operating thrift by an insured bank, the participating institutions can and do negotiate as to which deposits are to be transferred. As a result, there is an expectation that deposits contracted for are likely to remain in the acquiring bank or, if not, the purchase price can be adjusted to reflect the value of the deposits being acquired. Thus, using total deposits assumed (and not just estimated retained deposits) as the deposit base for purposes of computing the entrance fee makes sense for non-resolution conversion transactions.

Regardless of the kind of transaction involved, the transfer of deposits from SAIF to BIF necessarily increases potential BIF liabilities without a commensurate increase in insurance reserves (*ie.*, dilutes the entered insurance fund). As directed by FIRREA, the FDIC is to determine the approximate amount by which BIF reserves need to increase to prevent dilution of the insurance fund in conversion transactions. If, for example, the ratio of insurance reserves to insured deposits is .80 percent, dilution would be prevented by charging a fee equal to .80 percent of transferred deposits.

FIRREA requires that the entrance fee for any SAIF-to-BIF conversion transaction to be paid into BIF. Under the interim rule, the resulting or acquiring institution would be liable for payment of the entrance fee; however, in a two-party transaction, the two institutions may agree to divide the payment and may arrange among themselves who is to pay what share. So long as the entire fee is paid, the FDIC will accept payment from either party; if, however, some or all of the fee is not paid, the FDIC will look to the resulting or acquiring institution for payment. In other words, the FDIC will seek to enforce the obligation of the resulting or acquiring institution to pay the entire amount of the entrance fee, leaving that institution to enforce any contractual or other arrangements it may have made with any other participating institution.

All fees are due and payable on the resulting or acquiring institution's first regular semiannual assessment date (*i.e.*, the date on which it is required under section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c), to pay its regular semiannual assessment to the FDIC) following the expiration of 30 days from the date the deposits are transferred from SAIF to BIF insurance. (Ordinarily, an institution's semiannual assessments are payable on or before January 31 and July 31 of each year.) However, the interim rule permits the resulting or acquiring institution, at its option, and with the consent of the FDIC, to pay the entrance fee in equal annual installments over a period of not more than five years, interest-free, with the first installment due on the date described in the preceding sentence.

Setting the entrance fee for conversion transactions at this time by means of an interim rule will provide a measure of

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certainty for those banks that seek to acquire troubled savings associations from the RTC or those that seek to acquire branches of operating thrifts. Since potential acquirers and investors need to know with some degree of precision what the costs of acquisition will be, the FDIC has determined that if, following the public comment period, the final regulation prescribes an entrance fee that would be greater than the entrance fee prescribed in the interim rule, a bank that participated in a conversion transaction during the period the interim rule was in effect will not have to pay the higher amount; if the entrance fee prescribed in the final regulation is less than the fee prescribed in the interim rule, the difference will be refunded to the bank or, if the fee is being paid in installments, the amount of each installment will be adjusted accordingly. Thus, banks that participate in transactions in reliance on the interim rule will not suffer any subsequent increase in the entrance fee, nor will they miss out on any subsequent decrease, that results from consideration of public comment on this issue.

Request for Public Comment

The FDIC is issuing this interim rule in response to the urgent need to permit certain conversion transactions to go forward without delay. However, the FDIC desires, and is hereby requesting, comment on all aspects of the interim rule. In addition, the FDIC invites comment on the following specific issues:

1. Entrance fees are intended to prevent dilution of the insurance fund being entered. The measure of insurance fund adequacy used in this interim rule is the ratio of fund reserves to insured deposits. In practice, however, failing bank resolutions have often had the effect of protecting all depositors, including those with deposits beyond the insured deposit limits (presently $100,000). Some might argue, therefore, that because the FDIC can achieve 100 percent deposit insurance coverage, the appropriate fund adequacy measure should be the ratio of reserves to total deposits. Total deposits include all domestic and foreign deposits regardless of the amount held in the account. Therefore, should the appropriate entrance fee be based on the ratio of reserves to total deposits?

2. The interim rule uses the concept of an estimated "retained deposit base" against which entrance fees will be charged in connection with RTC-arranged conversion transactions. The retained deposit base would include only those transferred deposits that are thought likely to remain in the acquiring bank for some period beyond the date of transfer. Is this an appropriate way to measure the dilutive effect of the transaction on BIF? What other methods could be used to accomplish the same goal?

3. In estimating the retained deposit base, the FDIC is ultimately concerned with the potential increase in FDIC liabilities associated with a conversion transaction. What factors should the FDIC consider in evaluating the likelihood of transferred deposits remaining with the acquiring BIF member Bank? How might this regulation affect the types of bids submitted by potential acquirers of failed institutions?

4. The entrance fee is to be based on the most recent publicly available reserve-to-insured-deposit ratio computed by the FDIC on the basis of its most recent audited year-end financial statements. Thus, for purposes of the interim rule, the reserve ratio will be recomputed only once a year. Should the reserve ratio be computed more frequently for this purpose based on unaudited data or, given the potential fluctuations in the reserve ratio over time, would an annual average reserve ratio be more appropriate?

5. The interim rule permits institutions to pay the entrance fee over a five-year period, interest-free. Should immediate payment be required? If payment over time is permitted, how long should the payment period be? Should interest be charged? If so, at what rate?

List of Subjects in 12 CFR Part 312

Assessments, Bank deposit insurance, Banks, banking, Savings and loan associations, Savings associations.

For the reasons set out in the preamble, a new part 312 is added to title 12, chapter III, subchapter A of the Code of Federal Regulations as follows:

PART 312—ASSESSMENT OF FEES UPON ENTRANCE TO OR EXIT FROM THE BANK INSURANCE FUND OR THE SAVINGS ASSOCIATION INSURANCE FUND

Sec.

312.1 Definitions.
312.2 Bank Insurance Fund reserve ratio.
312.3 [Reserved]
312.4 Entrance fees assessed in connection with conversion transactions.

Authority: Pub. L. No. 101–73, sec. 206(a)(7), 103 Stat. 183, 196–201 (1989) (to be codified at 12 U.S.C. 1815(d)); 12 U.S.C. 1819.

§ 312.1 Definitions.

For purposes of this part:

(a) The term "Bank Insurance Fund" shall mean the fund established by section 11(a)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(a)(5). The term "Savings Association Insurance Fund" shall mean the fund established by section 11(a)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1121(a)(6).

(b) The terms "Bank Insurance Fund member" and "Savings Association Insurance Fund member" shall have the meanings given them in sections 7(*l*) (4) and (5) of the Federal Deposit Insurance Act, 12 U.S.C. 1617(*l*) (4), (5), respectively.

(c) The term "Bank Insurance Fund reserve ratio" shall have the meaning given it is section 7(*l*)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(*l*)(6).

(d) The term "conversion transaction" shall have the meaning given it in section 5(d)(2)(B) of the Federal Deposit Insurance Act, 12 U.S.C. 1615(d)(2)(B).

(e) The terms "default" and "in danger of default" shall have the meanings given them in section 3(x) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(x).

§ 312.2 Bank Insurance Fund reserve ratio.

The Bank Insurance Fund reserve ratio to be used in computing the entrance fee under this part with respect to any particular conversion transaction shall be the most recent Bank Insurance Fund reserve ratio calculated on the basis of the audited financial statements of the Federal Deposit Insurance Corporation and made publicly available prior to the date on which deposit liabilities are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member in connection with that conversion transaction.[1]

§ 312.3 [Reserved]

§ 312.4 Entrance fees assessed in connection with conversion transactions.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member shall pay an entrance fee to the Bank Insurance Fund.

[1] The Federal Deposit Insurance Corporation prepares statements of financial condition as of December 31st of each year. These financial statements are audited by the United States General Accounting Office. The Bank Insurance Fund reserve ratio is derived, in part, from these audited financial statements. The most recent reserve ratio may be obtained by contacting the Office of Corporate Communications, Federal Deposit Insurance Corporation, Washington, DC 20429.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund reserve ratio.

(c) Notwithstanding § 312.4(b), the entrance fee to be assessed against an insured depository institution participating in a conversion transaction (1) occurring in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, or (2) otherwise arranged by the Federal Deposit Insurance Corporation in its capacity as exclusive manager of the Resolution Trust Corporation, shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund reserve ratio. As used in this paragraph, the term "retained deposit base" generally refers to those deposits which the Federal Deposit Insurance Corporation, in its discretion, estimates to have a high probability of remaining with the acquiring depository institution for a reasonable period of time following the acquisition. The kinds of deposits that constitute the retained deposit base and the estimated dollar amount of the retained deposit base transferred shall be determined on a case-by-case basis by the Federal Deposit Insurance Corporation at the time offers to acquire an insured depository institution (or any part thereof) are solicited by the Resolution Trust Corporation. In making this estimate, the Federal Deposit Insurance Corporation will take into account such factors as the number and volume of deposit accounts exceeding the $100,000 insurance limit, whether interest rates paid on the deposits to be transferred significantly exceed the rates then prevailing in the relevant market area, the volume of brokered deposits and public deposits in the institution being acquired, and other relevant factors.

(d) The resulting or acquiring depository institution shall be liable for the payment of the entrance fee required by this § 312.4.

(e)(1) The entrance fee required by this section shall be paid on the same day that the resulting or acquiring depository institution is required (pursuant to section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c)) to pay its first semiannual assessment following the date the deposit liabilities are transferred. If, however, the resulting or acquiring depository institution's first semiannual assessment is due within 30 days from the date such deposit liabilities are transferred, then the entrance fee required by this section shall be paid on the same day that the second semiannual assessment following the date the deposit liabilities are transferred is required to be paid.

(2) Notwithstanding § 312.4(e)(1), a resulting or acquiring depository institution may, at its option, and with the consent of the Federal Deposit Insurance Corporation, pay the entrance fee in equal annual installments, interest-free, over a period of not more than five years. The first such installment shall be paid on the semiannual assessment date described in § 312.4(e)(1).

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of September, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–23118 Filed 9–29–89; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ASW–63; Amdt. 39–6339]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A–1, and 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment amends an airworthiness directive (AD) which established a mandatory fatigue retirement life limit on certain main rotor masts and trunnions used on Bell Model 204B, 205A, 205A–1, and 212 helicopters. This amendment is needed to correct the main rotor mast part numbers specified in the AD which inadvertently included a part not intended to be included.

DATES: *Effective Dote:* October 31, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Rotorcraft Certification Office, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5177.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–6112, (54 FR 1338; January 13, 1989) AD 89–02–07, which established a mandatory fatigue retirement life on certain main rotor masts and trunnions used on Bell Model 204B, 205A, 205A–1, and 212 helicopters. After issuing Amendment 39–6112, the FAA determined that the main rotor mast part numbers specified in the AD incorrectly included the main rotor mast, part number (P/N) 204–011–450–001. This action inadvertently resulted in extending the fatigue retirement life of this main rotor mast from 6,000 hours' time in service to 15,000 hours' time in service. There was no fatigue substantiation to warrant this life extension. Therefore, the FAA is amending Amendment 39–6112, to correct the main rotor mast part numbers affected by the AD by adding dash number 007 and 105 to the mast part number, thereby excluding dash number 001 on Bell Model 204B, 205A, 205A–1, and 212 helicopters.

Since this amendment provides a correction only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in

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the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6112 (54 FR 1338; January 13, 1989), AD 89-02-07, by revising the paragraph after the compliance statement and paragraph (a) as follows:

Bell Helicopter Textron, Inc. (BHTI): Applies to Bell Model 204B, 205A, 205A-1, and 212 helicopters certificated in any category. [Airworthiness Docket No. 87-ASW-63]

* * * * *

To prevent possible fatigue failure of main rotor masts, P/N 204-011-450-007, -105 and main rotor trunnion, P/N 204-011-105-001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for main rotor masts, P/N 204-011-450-007 and -105 and main rotor trunnion, P/N 204-011-105-001, and record the time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

* * * * *

This amendment becomes effective October 31, 1989.

This amendment amends Amendment 39-6112, (54 FR 1338; January 13, 1989), AD 89-02-07.

Issued in Fort Worth, Texas, on September 19, 1989.

James D. Ericksen,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-23132 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-43; Amdt. 39-6341]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Final rule.

SUMMARY: This action amends an airworthiness directive (AD) which requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and removal of the hub assembly from service. This amendment is needed to clarify the strap pack rejection criteria and simplify the recording requirements.

EFFECTIVE DATE: October 27, 1989.

Compliance: As indicated in the body of this amended AD.

ADDRESSES: The applicable service information notices may be obtained from MDHC Technical Publications, Building 543/D214, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797; telephone (602) 891-6484, or may be examined in the Office of the Assistant Chief Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-6051 (54 FR 105; January 4, 1989), AD 89-02-01, which currently requires repetitive inspections of main rotor blade retention strap (strap pack) laminates for cracks and failures; recording of the locations of the observed cracks, fractures, or corrosion on strap laminates; and removal of a hub assembly from service in accordance with more stringent rejection criteria on MDHC Model 369D, E, F, and FF helicopters. After issuing Amendment 39-6051, the FAA received a report that there is confusion in meeting the recording requirements of paragraph (g). In addition, the strap pack rejection criteria, as referred to in both paragraphs (f) and (g), can be simplified. Therefore, the FAA is amending Amendment 39-6051 by revising paragraph (f) to state only the strap pack rejection criteria and by revising paragraph (g) to include only reecording directions.

Since this amendment provides a clarification only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportaiton, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6051 (54 FR 105; January 4, 1989), AD 89-02-01, by revising paragraphs (f) and (g) to read as follows:

McDonnell Douglas Helicopter Company (Hughes Helicopter, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, with main rotor hub retention straps having part number (P/N) 369D21210-BSC or -501 installed, (Docket No. 88-ASW-43)

Compliance is required as indicated, unless already accomplished.

* * * * *

(f) Replace the hub assembly, P/N 369D21200, with a serviceable assembly prior to further flight if, as a result of the inspection required by paragraph (a), (b), (c), (d), or (e) above, a strap pack, P/N 369D21210-BSC or -501, is rejected (using the rejection criteria in the applicable SIN under CAUTION following paragraph e of Part I—Inspection Procedures).

g. For strap packs which contain observed damage but are not rejected by the criteria of paragraph (f)—

(1) Record in the maintenance record (Ref. § 43.9) the locations of observed cracks, fractures, or corrosion in each strap laminate in a manner which includes—

(i) Blade color;

(ii) Strap part numbers and serial number;

(iii) Laminate number (top being number one);

(iv) Leg location (lead or lag); and

(v) Tongue location (The tongue location is not the same as the outboard end).

Note: Strap packs containing cracks in outboard end locations are rejected by the criteria of paragraph (f).

(2) Record for each strap pack—

(i) The number of laminate failures;

(ii) The number of laminates cracked in the same leg; and

(iii) The number of gaps.

* * * * *

This amendment becomes effective October 27, 1989.

This amendment amends Amendment 39-6051 (54 FR 105; January 4, 1989). AD 89-02-01.

Issued in Fort Worth, Texas on September 19, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-23136 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0330]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amended the food additive regulations to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione grafted onto ethylene polymers, intended to contact food. This action is in response to a petition filed by Keller and Heckman.

DATES: Effective October 2, 1989; written objections and requests for a hearing by November 1, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 2, 1987 (52 FR 42043), FDA announced that a food additive petition (FAP 7B4043) had been filed by Keller and Heckman, 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione for grafting onto ethylene polymers complying with 21 CFR 177.1520(c), item 2.2, intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe for food-contact use. Therefore, the agency is amending § 177.1520 by adding a new copolymer in paragraph (a)(5) and adding a new entry in the table in paragraph (c) to provide for the safe use of 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1, 3-dione grafted onto ethylene polymers intended to contact food. Under § 177.1520(a)(5), the ethylene polymers must comply with item 2.2 of § 177.1520(c).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before November 1, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to the presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1520 is amended by adding new paragraph (a)(5) and by adding a new entry 5 in the table in paragraph (c) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(5) Polyethylene graft copolymers consist of polyethylene complying with item 2.2 of paragraph (c) of this section which subsequently has 3a,4,7,7a-tetrahydromethyl-4,7-methanoisobenzofuran-1,3-dione grafted

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onto it at a level not to exceed 1.7 percent by weight of the finished copolymer.

(c) Specifications:

Olefin polymers	Density	Melting point (MP) or softening point (SP) (Degrees Centigrade)	Maximum extractable fraction (expressed as percent by weight of polymer) in N-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
5. Polyethylene copolymer described in paragraph (a)(5) of this section and having a melt index not to exceed 2, for use, either alone or in blends with other olefin polymers, subject to the limitation that when contacting foods of types III, IV-A, V, VI-C, VII-A, VIII, and IX identified in § 176.170(c) of this chapter, Table 1, the thickness of the film (in mils) containing the polyethylene graft copolymer times the concentration of the polyethylene graft copolymer shall not exceed a value of 2.	Not less than 0.94		0.45 pct at 15 °C	1.8 pct at 25 °C.

* * * * *

Dated: September 15, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-23138 Filed 9-29-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 455

[Docket No. 89N-0325]

Antibiotic Drugs; Aztreonam Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of aztreonam, aztreonam injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 1, 1989; written comments, notices of participation, and request for hearing by November 1, 1989; data, information, and analyses to justify a hearing by December 1, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of aztreonam, aztreonam injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 455 (21 CFR part 455) by adding new § 455.4, redesignating § 455.204 as § 455.204a, and adding new §§ 455.204 and 455.204b to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective November 1, 1989. However, interested persons may, on or before November 1, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 1, 1989, a written notice of participation and request for hearing, and (2) on or before December 1, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 455 is amended as follows:

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 455.4 is added to subpart A to read as follows:

§ 455.4 Aztreonam.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam is a practically odorless, white to slightly off-white fine powder. It is sparingly soluble in water of pH 2, and is very soluble at pH values above 4. Its solubility is slight to very slight in polar organic solvents such as methanol and ethanol and it is insoluble in nonpolar solvents such as hexane and heptane. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms of aztreonam per milligram on an "as is" basis.

(ii) Its moisture content is not more than 2.0 percent.

(iii) Its residue on ignition is not more than 0.1 percent.

(iv) Its heavy metals content is not more than 30 parts per million.

(v) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requirements for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, residue on ignition, heavy metals, and identify.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research; 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 455.4a(b)(1).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(4) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(5) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc prepared as described in paragraph (b)(1) of that section, except prepare a solution containing 3 milligrams of aztreonam per milliliter of methanol and use 0.5 milliliter of the solution as the sample.

§ 455.204a [Redesignated from § 455.204]

3. Section 455.204 is redesignated as § 455.204a and new §§ 455.204 and 455.204b are added to subpart C to read as follows:

§ 455.204 Aztreonam injectable dosage forms.

§ 455.204b Aztreonam injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam injection is a frozen aqueous iso-osmotic solution of aztreonam and arginine. Each milliliter contains aztreonam equivalent to either 10 milligrams, 20 milligrams, or 40 milligrams. Its aztreonam content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of aztreonam that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 4.5 and not more than 7.5. It passes the identity test. The aztreonam used conforms to the standards prescribed by § 455.4(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The aztreonam used in making the batch for potency, moisture, residue on ignition, heavy metals, and identity.

(B) The batch for aztreonam potency, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The aztreonam used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Potency.* Proceed as directed in § 436.361 of this chapter, except in addition to the column described in paragraph (a)(4) of that section, use a 5- to 50-centimeter saturator column having an inside diameter of 2 to 4.6 millimeters and packed with approximately 37 micrometer silica, and use the resolution test solution to determine resolution in lieu of the working standard solution. Perform the assay at ambient temperature, using an ultraviolet detection system operating a wavelength of 206 nanometers, and a column packed with Chromegabond Diol (dihydroxypropane chemically bonded to porous silica), 5 to 10 micrometers or equivalent. Mobile phase, working standard solution, sample solution, resolution test solution, system suitability requirements, and calculations as follows:

(i) *Mobile phase.* Acetonitrile: 0.01*M* pH 2.0 ammonium phosphate (75:25). Transfer 1.15 grams of ammonium phosphate monobasic to a 1-liter volumetric flask. Add about 800 milliliters of distilled water and sonicate to aid dissolution. Adjust the solution to pH 2.0 with *o*-phosphoric acid, 85 percent. Dilute the solution to volume with distilled water and mix well. Transfer about 250 milliliters of this solution and 750 milliliters of acetonitrile to a suitable-sized container and mix well. Filter the mobile phase through a suitable glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(ii) *Preparation of working standard, sample, and resolution test solutions*—(A) *Working standard solution.* Transfer approximately 25 milligrams each of the aztreonam working standard and the arginine working standard, accurately weighed, to a 25-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase (primary working standard solution). Further dilute with

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mobile phase to obtain a solution containing 0.2 milligram of aztreonam per milliliter.

(B) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient mobile phase to obtain a solution containing 0.2 milligram of aztreonam per milliliter (estimated).

(C) *Resolution test solution.* Dissolve 10 milligrams of open ring aztreonam, 2-[[(2-amino-4-thiazolyl)[(1-carboxy-1-methylethoxy)imino]acetyl]amino]-3-(sulfoamino)-butanoic acid, in 10.0 milliliters of primary standard solution. Further dilute 5 milliliters of this solution to 25.0 milliliters with mobile phase.

(iii) *System suitability requirements*—(A) *Tailing factor.* The tailing factor (T) of the aztreonam peak is satisfactory if it is not more than 2 at 5 percent of peak height.

(B) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates.

(C) *Resolution.* The resolution (R) between the aztreonam peak and open ring aztreonam is satisfactory if it is not less than 2.0.

(D) *Coefficient of variation.* The coefficient of variation (S_R in percent) of 5 replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.361(b) of this chapter. Alternative chromatographic conditions are acceptable, provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(B) of this section should not be changed.

(iv) *Calculations:* Calculate the milligrams of aztreonam per milliliter of sample as follows:

$$\text{Milligrams of aztreonam per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the aztreonam peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the aztreonam peak in the chromatogram of the working standard;

P_s = Aztreonam activity in the aztreonam working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 50 milligrams of aztreonam per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high-performance liquid chromatogram of the sample is determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the aztreonam working standard.

Dated: September 19, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-23139 Filed 9-29-89; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Exchange-Visitor Program; Citizenship of Responsible Officers and Sponsors

AGENCY: United States Information Agency.

ACTION: Final rule; amendment.

SUMMARY: On August 11, 1989 at 54 FR 32964, (corrected at 54 FR 34503, August 21, 1989) the United States Information Agency adopted a final rule wherein the longstanding requirement of United States citizenship of sponsors and responsible officers of exchange-visitor programs is further defined.

The final rule became effective August 11, 1989, whereby the Agency required every designated organization to submit documentation that it is in compliance with this rule. Failure to come into compliance within 90 days of receipt of such request will result in withdrawal of the designation. Applications for new designations for organizations not meeting the requirements will not be approved.

Designated sponsors have asked for guidance regarding the documentation to be provided. This amendment sets forth such guidance.

EFFECTIVE DATES: October 2, 1989.

ADDRESS: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–8629.

SUPPLEMENTARY INFORMATION: In response to the inquiries from designated sponsors of exchange visitor programs regarding required documentation, the Agency has determined that sponsors may certify that they comply with the regulation rather than submitting full documentation at this time. However, in making such certification the sponsor must agree to supply supporting documentation when and as requested. Further, the sponsor must agree that failure to substantiate the representation of citizenship made in the certification will result in the immediate withdrawal of its designation and will require that the organization account for and return all IAP–66 forms transferred to it. It should be noted that false certification may subject the certifying official to criminal penalties found in 18 U.S.C. 1001. The definitions are amended to include the required certifying language.

Findings and Conclusions

This decision does not significantly affect the quality of the human environment and is not a major or regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a 'major rule' as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this regulation § 502.6(a)(3) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and have been assigned OMB Control Numbers.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for 22 CFR part 514 continues to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, 75 Stat. 527, 634, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451–2460); Pub. L. 97–241, 96 Stat. 1 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101 (a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Sponsor" to read as follows:

§ 514.1 Definitions.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (See § 514.14). The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States Citizens. Responsible Officers must certify their citizenship to the Agency using the following language:

I hereby certify that I am the responsible (or alternate responsible officer, specify) for exchange visitor program number _____, and that I am a citizen of the United States. I understand that the United States Information Agency may request supporting documentation as to my citizenship at any time and that I must supply such documentation when and as requested. (Name of organization) agrees that my inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

(Name)

(Title)

This ____ day of _____, 19 ____.

Subscribed and sworn to before me this ____ day of _____, 19 ____.

Notary Public

Sponsor means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor. Sponsors must certify their citizenship to the Agency using the following language:

I hereby certify that I am an officer of (Name of Organization) with the title of _____; that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of Organization); and that a true copy certified by (A Corporate Officer) of such authorization is attached. I further certify that (Name of Organization) is a citizen of the United States as that term is defined at 22 CFR 514.1 which states:

" 'Citizen of the United States' means: (a) An individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is a United States citizen, or (c) a corporation or association created or organized under the laws of the United States, of which the chief executive officer, president, chairman of the board of directors, and 75 per centum of the members of the board and its other managing officers are United States citizens and in which at least 75 per centum of the stock or voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions."

I understand that the United States Information Agency may request supporting documentation at any time and that (Name of Organization) must supply such documentation when and as requested. (Name of Organization) consents to a visit (or visits) by the United States Information Agency to examine such documents as it deems necessary to verify the representation made in this certification. (Name of Organization) agrees that inability to substantiate the representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001 which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

(Name)

(Title)

This ____ day of _____, 19____.

Subscribed and sworn to before me this ____ day of _____, 19____.

Notary Public

Dated: September 19, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-23148 Filed 9-29-89; 8:45 am]

BILLING CODE 8230-01-M

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DEPARTMENT OF EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Suspension of rule.

SUMMARY: In the **Federal Register** of April 5, 1988 (53 FR 11208–11222), the Secretary issued final regulations governing institutional eligibility under the Higher Education Act of 1965, as amended (HEA). These regulations were codified in 34 CFR part 600.

Section 600.3(d) of the regulations was scheduled to go into effect on July 1, 1988. However, in the **Federal Register** of July 7, 1988, 53 FR 25489, the Secretary voluntarily suspended the effective date of § 600.3(d) until July 1, 1989, and on July 18, 1988, Public Law 100–369 also suspended the effective date of § 600.3(d) until July 1, 1989.

Under § 600.3(d) of the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended, an institution of higher education or a vocational school is legally authorized only to provide its educational programs in clock hours if it must measure those programs in clock hours in its application to receive a State license. In April of 1989, the Department of Education's Office of Postsecondary Education (OPE) notified all the recognized accrediting agencies that the Secretary was going to implement § 600.3(d) on July 1, 1989, and in May of 1989, OPE similarly notified State agencies of that date.

On July 28, 1989, OPE notified postsecondary educational institutions of: (1) The specific procedural steps that they must follow to comply with the requirements of § 600.3(d); and (2) the related student financial assistance rules that they must apply in the awarding of student financial assistance for the 1989–90 award year. So that institutions may put these procedures into effect before the implementation of § 600.3(d), the Secretary suspends paragraph (d) of § 600.3 of the Institutional Eligibility regulations until October 1, 1989.

Waiver of rulemaking. Section 600.3(d) is currently in effect. However, the Department of Education did not provide specific instructions to institutions concerning the requirements of § 600.3(d), with regard to institutional eligibility and the awarding of student financial assistance for the 1989–90 award year, until July 28, 1989. Thus, many institutions may not be in compliance with that provision. The Secretary wishes to suspend § 600.3(d) until October 1, 1989 to permit institutions sufficient time to comply with the July 28, 1989 instructions. Therefore, the Secretary finds, in accordance with 5 U.S.C. 553(b)(B), that solicitation of public comments on this change would be impracticable and contrary to the public interest.

EFFECTIVE DATE: This suspension of § 600.3(d) takes effect 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. Thus, when the suspension is effective, § 600.3(d) will apply as of October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia G. Re, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW. (Regional Office Building 3, Room 3030), Washington, DC 20202. Telephone number (202) 732–4906.

Dated: September 27, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–23225 Filed 9–28–89; 9:55 am]

BILLING CODE 4000–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AE09

Evaluation of Studies Relating to Health Effects of Dioxin and Radiation Exposure

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulation on scientific and medical study evaluations to establish criteria for determining when a significant statistical association exists between exposure to dioxin or ionizing radiation and specific diseases. This change is necessary because of a recent court decision. This change will require reassessment of the importance of particular scientific and medical studies on the health effects of exposure to dioxin or ionizing radiation.

EFFECTIVE DATE: This change is effective November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 30099–30101 of the **Federal Register** of July 18, 1989, VA published proposed amendments to 38 CFR 1.17. Interested persons were invited to submit comments, suggestions or objections by August 17, 1989. Comments were received from nineteen individuals and organizations. Commenters included the senior Senator from New York, the junior Senator from South Dakota, the American Legion, the Veterans of Foreign Wars of the United States, the Disabled American Veterans, the National Veterans Legal Services Project, Inc., representing the Vietnam Veterans of America, the National Vietnam Veterans Coalition, the Oklahoma Agent Orange Foundation, the State of Minnesota Department of Veterans Affairs and ten members of the general public.

In addition, a special session of the Veterans' Advisory Committee on Environmental Hazards was convened on September 8, 1989. The Committee received an oral presentation by four individuals representing the views of the American Legion. (The Committee has received oral presentations from a number of individuals and organizations in the past and will continue to do so so long as adequate advance notice is provided for scheduling purposes.) The Committee also reviewed all of the comments received and offered their views on them. The Committee made a number of recommendations, some in response to the oral presentation made at this meeting by representatives of the American Legion and others in response to the written comments that were reviewed. The comments are summarized below together with VA's response and any indicated amendatory action.

Five commenters from Des Moines, Iowa, requested an extension of the time limit for submitting comments on the proposed changes asserting that the established 30-day period was insufficient. Thirty days is a typical length of time for a comment period in the rulemaking process, especially where rules governing veterans' benfits are concerned. In addition, a significant number of comments were received within the comment period. Further, VA desires to move as swiftly as possible to establish new study evaluation criteria, review the scientific literature and determine whether there currently exists sound scientific and medical evidence that demonstrates a significant statistical association between dioxin or radiation exposure and any diseases.

We decline, therefore, to extend the comment period.

Many commenters addressed issues that were clearly outside the scope of this rulemaking proceeding. Such issues included the composition, membership and alleged bias of the Veterans' Advisory Committee on Environmental Hazards, various comments concerning 38 CFR 1.17(b) and 3.311a for which no changes were proposed, the frequency of VA's publication of study evaluations, consideration of defoliants other than those containing dioxin, objection to the decision not to appeal the court ruling which prompted this rulemaking, assertion that all veterans exposed to Agent Orange should receive some payment from VA and comments concerning claims of specific individuals. Some of these comments could be addressed through administrative procedures while others would require legislative action, but all are outside the scope of the original proposal. Consequently, these will not be addressed in this rulemaking proceeding.

Three veterans' organizations and one individual suggested that the proposed criteria for defining the term "significant statistical association" were too strict or that VA should adopt the criteria already developed by the Environmental Protection Agency (EPA) or the International Agency for Research on Cancer (IARC) as indicative of such an association. The criteria set forth by the EPA (Guidelines for Carcinogen Risk Assessment, (51 FR 33992–34003 (1986)) and the IARC (IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Supplement 4 (1982) and Supplement 7 (1987)) are designed to assess the carcinogenic potential of a particular agent. This process of risk assessment attempts to determine the likelihood that exposure to a specific agent will result in the future development of a certain adverse health effect. The identification of a possible adverse health consequence through the use of either or both human and animal models is the goal of the risk assessment matrix. Its purpose is to serve as the basis for the elimination or lessening of the possible adverse health effect. VA, on the other hand, is attempting to determine the likelihood that a presently existing disease is associated with a prior exposure to a specific agent. In doing so, it is concerned with more than a mere possibility that an effect is associated with a past exposure. Rather, it must determine whether it is at least as likely as not that a significant statistical association exists. Consequently, it would not be appropriate to rely upon an approach designed to identify merely possible risks; a different standard must be employed to accomplish VA's task. As described below, VA has looked to the models cited in its attempt to draft a scientifically valid and acceptable standard and utilized them where appropriate.

Further, certain of these commenters suggest VA should adopt the standard articulated by IARC that, in the absence of adequate human data, if studies show evidence of a particular agent's carcinogenicity in animal species, it is prudent to regard such agents "as if they presented a carcinogenic risk to humans." The Advisory Committee had previously considered the applicability of animal data to human experience and did so extensively at its September 8, 1989, meeting. The Committee has noted the widespread variations in observed effects in animals both within the same species and among different species. Other factors such as the dose of exposure and the methods and durations of exposure employed in animal models also play a role in judging the true applicability of animal results. For these reasons, VA does not believe it would be appropriate to adopt the IARC model, especially those portions which would apply "in the absence of adequate human data." As will be discussed later, however, the Committee has articulated what it considers to be a proper role for animal data to play in VA's attempt to determine the human's response to exposure.

The proposed criteria have been criticized as being too strict because their language is similar to that employed by IARC for determining a causual association.[1] VA's advisory committee commented, however, that the criteria set forth are those which are generally accepted by the scientific community in evaluating any study. That is, the Committee advised that there are certain minimal standards which must be met for any scientific study to be considered valid. These standards are the same whether a study purports to establish a causual association or a statistical association. Furthermore, VA notes that a complete reading of the cited IARC monograph page shows that much more is generally needed to infer causal association. The additional factors listed were the existence of several concordant studies which show an association, a showing of strong association, a dose-response relationship, and a reduction of cancer incidence with a reduction in exposure. None of these additional criteria are required for a finding of significant statistical association under VA's proposed rule. Additionally, it should be noted that the application of these criteria, when met, must result in the finding of a significant statistical association. Moreover, the benefit of the doubt rule will be applied by the Secretary to the evaluation of the weight of the scientific evidence. Thus, if there is an approximate balance of positive and negative evidence regarding the association between dioxin and an illness or condition, the benefit of the doubt will be given to the conclusion that the association exists. Studies that do not satisfy these threshold criteria may still contribute to the body of scientific and medical evidence which, in the Secretary's judgment (under proposed paragraph (e)), may warrant a finding of significant statistical association. When read together, VA does not believe that proposed paragraphs (d) and (e) constitute a standard which is too strict.

One commenter suggested that VA was introducing a "null hypothesis" whereby "it is assumed that the relationship does not exist unless there is enough scientific evidence to satisfy a rigorous standard that it does exist." To the extent that this comment suggests that a significant statistical association should be assumed to exist regardless of whether there are any studies which adequately support such a relationship, VA disagrees. First, and foremost, VA does not start with any presumption concerning a disease's association with exposure. Rather, it begins from a neutral position and then seeks to determine the existence of valid positive and valid negative studies. The relative weights of the valid positive and valid negative studies, with the application of the reasonable doubt doctrine, will determine the eventual conclusion. Thus, the regulation does not establish an overly rigorous standard but properly requires that a significant statistical association be established consistent with Public Law 98–542.

Two veterans' organizations asserted that VA should review the results of dioxin studies involving laboratory animals and not confine itself to reviewing studies on the adverse health effects of dioxin exposure in humans. The issue of the value of animal studies

[1] The IARC monograph states: "Three criteria must be met before a causual association can be inferred between exposure and cancer in humans:

1. Three is no identified bias which could explain the association.
2. The possibility of confounding has been considered and ruled out as explaining the association.
3. The association is unlikely to be due to chance."

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was also raised by one of the organizations in support of an objection to the proposed change to paragraph (a). That commenter suggested that limiting the studies reviewed to those involving only herbicide exposure would be too restrictive and would be an additional basis for not reviewing studies on laboratory animals. At the same time, an individual commenter supported this change to paragraph (a) indicating that exposure to the herbicide, and not just one of its components or contaminants, was the key issue.

Valid epidemiologic studies constitute that most direct and convincing evidence regarding exposure to some agent and association with adverse human health effects. Animal and mechanistic studies provide less direct evidence in determining the likelihood that a presently existing disease is associated with past exposure to a specific agent, but may provide supportive and supplemental information in evaluation of the weight of evidence of association with adverse humen health effects.

To assure that relevant scientific information on any specific issue is considered, we are adding a new paragraph (e) to the proposed rule setting forth the additional types of studies which may contain supportive or supplemental information and which may be considered in assessing the relative weight to be accorded the various valid studies being reviewed. The types of evidence to be considered under new paragraph (e) would include case series (reports of individual cases unrelated to a specific scientific study), correlational studies (studies showing that a temporal or other association between two events is present), studies with insufficient power, animal studies and mechanistic studies (studies of the cellular or molecular response to an exposure).

In response to the comments concerning the revision to paragraph (a), VA notes that the purpose of the proposal was simply to track more closely the statutory charge in Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act. Section 5 of that law, which sets forth the requirement for and content of regulations, clearly speaks in terms of "guidelines governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin * * *." Thus the language of the regulation is faithful to the language of the law. For purposes of grammatical accuracy, however, we are substituting the words "and/or exposure to" for the word "or" immediately following the parenthetical "(dioxin)" in paragraph (a). The change is not intended to restrict the scope of studies to be reviewed and evaluated concerning the issue of adverse health effects related to exposure to herbicides containing dioxin.

Two veterans' organizations and one legislator expressed support for proposed paragraph (e) (redesignated as (f)), but one suggested it could be strengthened by permitting consideration of animal studies. Because the formulation of that paragraph is such as to permit consideration of *any* relevant scientific and medical evidence, we perceive no benefit in referencing one particular type of evidence. Further, as noted above with respect to new paragraph (e), animal studies as well as other relevant studies may be considered in conjunction with valid scientific studies as defined in paragraph (d).

One veterans' organization and one legislator suggested with regard to proposed paragraph (d)(2)(ii) that study biases should not be assumed in the absence of specific evidence of their presence or that they should be permitted to exist if they are satisfactorily accounted for. Neither the presence nor the absence of a bias is assumed. Further, the proposed language only requires that a study be reasonably free of biases and that if biases are found to exist, the investigator acknowledge them and explain how they were taken into account in arriving at the study's conclusions. Reviewers should not be prohibited from suggesting that a particular study methodology may have introduced a bias not accounted for by the investigator. However, we agree that where bias is identified, it should not invalidate a study if it can be shown that the bias did not affect the study's conclusions. To accommodate this suggestion we have amended paragraph (d)(2)(ii), with the concurrence of the Advisory Committee, to read as follows: "Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and".

Two veterans' organizations sought clarification of the terms "positive" and "negative" with reference to the scientific studies being reviewed. One of those commenters suggested that studies which contain misleading statements or which depart from established scientific standards should be eliminated from consideration even before they are designated as "positive" or "negative". The terms "positive" and "negative" with regard to studies are well-understood by scientific investigators and represent general characterizations of studies depending on their findings or lack of findings. A study is "positive" if it finds a correlation the study was designed to detect. A study is "negative" if it did not find a correlation the study was designed to detect. The screening factors suggested by the commenter could be considered in assessing the validity of a study, but not whether the study should be considered at all.

One State veterans' organization conceded that the study evaluation process was ultimately subjective in nature and did not lend itself to complete objectivity but suggested that the process might be more open if additional factors were considered during the study evaluation process and some terms were clarified. The commenter suggested four terms for clarification. Three of those terms (peer review, replicability and the veteran population of interest) are contained in paragraph (b) of the rule which is not a subject of this rulemaking proceeding. The fourth term (relative weights of studies) is a term which cannot be quantified but which relies heavily on the subjective consideration of experienced scientific investigators.

Several of the additional factors suggested for consideration during the process of evaluating epidemiological findings were already included in proposed paragraph (d), i.e., statistical significance, study design and bias. Other suggested factors such as dose-response relationships, the consistency and reproducibility of results, the strength and specificity of the association and its biological significance, that relate to the determination of causality in epidemiology, are not required or determinative for finding significant statistical association, but may be considered in evaluating the relative weights of studies.

One veterans' organization and one legislator addressed the requirement in proposed paragraph (d)(3) that positive studies be statistically significant at a probability level of .05 or less. They indicated that this requirement should not "pre-eliminate" studies, should apply equally to negative studies and, in any event, should probably be raised to .10 or less. While this requirement could prevent a study from being considered as a valid positive study for purposes of paragraph (d), it would not preclude or "pre-eliminate" it from consideration under paragraph (e) or (f) together with other scientific and medical evidence on the same subject. This requirement is not applicable to negative studies because it requires that there be a one-in-twenty chance or less that an apparent positive association is due to chance alone. It is not, therefore, calculated with respect to negative findings. Finally, our Advisory Committee has advised that .05 is the most accepted probability value with or without a prior hypothesis. For these reasons we find no basis for changing the proposal.

One individual commeter suggested that "significant statistical association" was a straightforward mathematical calculation. We believe the commenter was confusing that term with the term "statistical significance" which is a mathematical calculation and which is considered under paragraph (d)(3).

One veterans' organization suggested a mathematical formula for weighting positive and negative studies and suggested its inclusion in paragraph (d)(4). We agree that the statistical power of negative studies should be used in balancing them with positive studies, but use of the mathematical equation proposed is only applicable when two or more studies are identical, or nearly so, with at least one being positive and one being negative. Such an equation would be useful for evaluating laboratory studies, but epidemiological studies unfortunately lack such uniformity.

One veterans' organization suggested that proposed paragraph (c) be amended by adding the phrase "it is at least as likely as not that" before the phrase "a significant statistical association exists * * *" We cannot agree. The language suggested for addition is the key language used in applying the reasonable doubt doctrine. As reflected in proposed paragraph (c), that doctrine is applied in determining the existence of a significant statistical association under the provisions of proposed paragraph (d)(1), and that is where that reasonable doubt language should and does appear.

The same commenter suggested that some high risk subgroups might be unethically excluded from consideration in a study's conclusions because such things as the possibility of synergistic disease-provoking mechanisms or impairment of the immune system might be viewed as confounding factors for which the investigator had to "correct." We do not agree. The proposed rule does not require correction for possible confounders but rather a satisfactory accounting for known confounders. Under this more liberal construction a valid study is permitted to include confounding factors if they are noted and satisfactorily explained in relation to the study's conclusions.

The interest expressed by both individual and organizational commenters is appreciated. Except as noted herein, the amendments to 38 CFR 1.17 are adopted as proposed.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110)

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, claims.

Approved: September 27, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 1—[AMENDED]

38 CFR Part 1, GENERAL, is amended by revising § 1.17 to read as follows:

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the "Notices" section of the Federal Register.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d)(1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, §§ 3.311a or 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a "significant statistical association" shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Has adequately described the study design and methods of data collection, verification and analysis;

(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and

(iii) Has satisfactorily accounted for known confounding factors.

(3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d)(2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroups analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an

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association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a "significant statistical association" may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.

(Authority: 38 U.S.C. 210(c); Pub. L. 99-542)

[FR Doc. 89-23175 Filed 9-29-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 89-1143]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This order amends § 1.115(d) to reflect when replies to an opposition to an application for review may be filed. Further the Order reorganized § 1.115(f) and also split that provision into two subsections in order to separate those requirements governing the initial filings relative to an application for review from those requirements governing briefs and reply briefs that may be requested after the Commission grants review of a Review Board final decision. This amendment provides better clarification and organization of existing rules.

EFFECTIVE DATE: October 2, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joe McBride, Office of General Counsel, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The Managing Director adopted on September 13, 1989, and released on September 22, 1989, an Order amending § 1.115 (d) and (f) of the Commission's rules. 47 CFR 1.115 (d) and (f). This amendment provides better clarification and organization of existing rules.

Order

Adopted: September 13, 1989.
Released: September 22, 1989.

By the Managing Director:

1. In *Ronald F. Trinchitella*,[1] the Commission recently clarified that § 1.115(f)'s prohibition on the filing of replies in response to oppositions to applications for review except when requested by the Commission only applies to replies to oppositions to applications for review of final decisions of the Review Board. The Commission noted that the decision adopting the language in question expressly indicated that the prohibition only applied "to Review Board final decisions."[2] The Commission also noted that § 1.115(d) authorizes the filing of reply pleadings.[3] This *Order* amends § 1.115 (d) and (f) to reflect more clearly the Commission's intent when it promulgated those provisions.

2. Section 1.115(d) is being amended to reflect when replies may be filed. Section 1.115(f), as modified, will only contain the technical requirements for applications for review and related pleadings, such as page length, service of copies, and where to file them. Furthermore, § 1.115(f) is being slightly restructured to distinguish between the requirements governing the initial filings relative to an application for review and the subsequent requirements governing briefs and reply briefs that may be requested after the Commission grants review of a Review Board final decision.

3. Accordingly, *It is ordered*, That § 1.115 (d) and (f) of the Commission's rules are amended, as provided in the appendix, pursuant to the authority contained in § 0.231(d) of the Commission's rules.

4. A notice and comment proceeding is not required in this instance because § 1.115 (d) and (f) are rules of agency procedure and practice. See 5 U.S.C. 553(b)(A).

5. This amendment will be effective upon publication in the **Federal Register**. See 5 U.S.C. 553(d).

Alan R. McKie,
Acting Managing Director.

Rule change

47 CFR part 1 is amended as follows:

[1] *Ronald F. Trinchitella*, FCC 89-270, released August 16, 1989 at n.4.

[2] *Id.* (quoting *Amendments to parts 0 and 1 of the Commission's Rules with respect to Adjudicatory Re-Regulation Proposals*, 58 FCC 2d 895, 876 (1976)).

[3] *Id.*

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.115 (d) and (f) are revised to read as follows.

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(d) Except as provided in paragraph (e) of this section, the application for review and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules. Oppositions to the application shall be filed within 15 days after the application for review is filed. When permitted, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition. Replies to oppositions to applications for review of final decisions of the Review Board may be filed only if the Commission requests a reply; except as provided in § 1.115(e)(3), replies to oppositions to all other applications for review are permissible.

* * * * *

(f)(1) Applications for review, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-spaced typewritten pages. Applications for review of final decisions of the Review Board and oppositions thereto shall not exceed 10 double-spaced typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see § 1.115(d)), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see § 1.115(d)), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

(2) If the Commission grants review of a Review Board final decision and requests that briefs be filed, the parties may file briefs and reply briefs, which shall not exceed 25 double-spaced typewritten pages. Briefs shall be filed within 30 days after release of the order granting review. Reply briefs shall be filed within 10 days after the last day for filing briefs.

* * * * *

[FR Doc. 89-23198 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-317; RM-6328]

Radio Broadcasting Services; Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 297A to Lenwood, California, as that community's second local broadcast service, in response to a petition for rule making filed on behalf of Gary Albarez. See 53 FR 26612, July 14, 1988. Coordinates utilized for Channel 297A at Lenwood are 34-52-30 and 117-06-48. With this action, the proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications on Channel 297A at Lenwood, California, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation proceeding. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-317, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, for Lenwood, by adding Channel 297A.

Federal Communications Commission
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23199 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-602; RM-6502]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service, in response to a petition for rule making filed by Robert D. and Marjorie M. Zellmer. See 54 FR 4862, January 31, 1989. Coordinates used for Channel 281A at Buena Vista are 38-50-30 and 106-07-54. With this action, the proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications on Channel 281A at Buena Vista, Colorado, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530, regarding the allotment proceeding. Questions related to the application filing window process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-602, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado, by adding Buena Vista, Channel 281A.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23200 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-77; RM-5213, RM-5946]

Radio Broadcasting Services; Baldwin and Watertown, FL, and St. Marys, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Baldwin, Florida, Channel 271A to Watertown, Florida, and Channel 227C2 to St. Marys, Georgia. This document also modifies the license of FM Station WLKC, St. Marys, Georgia, to specify operation on Channel 227C2. Finally, this document dismisses a counterproposal filed by Marlene V. Borman for Channel 227A at Orange Park, Florida. The reference coordinates for Channel 289A at Baldwin, Florida, are 30-19-18 and 82-00-54; for Channel 271A at Watertown, Florida, are 30-11-47 and 82-40-48; and for Channel 227C2 at St. Marys, Georgia, are 30-43-43 and 81-46-53. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989; The window period for filing applications for the Channel 289A allotment at Baldwin, Florida, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-77, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The

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complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida by adding Channel 289A at Baldwin.

3. Section 73.202(b), the Table of FM Allotments, is amended under Florida by removing Channel 289A and adding Channel 271A at Watertown.

4. Section 73.202(b), the Table of FM Allotments, is amended under Georgia by removing Channel 228A and adding Channel 227C2 at St. Marys.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23201 Filed 9–29–89; 8:45 am]

BILLING CODE 6712–01

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of Pacific cod in the Western Regulatory Area of the Gulf of Alaska (Western Regulatory Area) has been reached. The Secretary of Commerce (Secretary) is prohibiting fishing for and retention of Pacific cod by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on September 23, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, ADT, on September 23, 1989, until midnight, Alaska standard time, December 31, 1989. Public comments will be accepted through October 8, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907–586–7230.

SUPPLEMENTARY INFORMATION:

The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP appear in 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1989 TAC specified for Pacific cod in the Western Regulatory Area is 13,500 mt (54 FR 6524, February 13, 1989). The Regional Director reports that U.S. vessels have landed 13,591 mt of Pacific cod through September 9, 1989, in the Western Area. Therefore, pursuant to 50 CFR 672.20(c)(2)(i), the Secretary is prohibiting further fishing for and retention of Pacific cod effective 12:00 noon, ADT, September 23, 1989. Any Pacific cod caught in the Western Regulatory Area after that date must be treated as prohibited species and discarded at sea.

Overharvesting of Pacific cod will result unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice and may be submitted to the Regional Director at the address above until October 8, 1989. If written comments are received that oppose or protest this action, the Secretary will reconsider the necessity of this action, and as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice either of continued effectiveness of this notice, responding to comments received, or modifying or rescinding this notice.

Classification

This action is taken under 50 CFR 672.22 and 50 CFR 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: September 25, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23115 Filed 9–27–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–27249; File No. S7–28–89]

RIN 3235–AD79

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission proposes to amend its net capital rule under the Securities Exchange Act. The proposal would raise the absolute minimum net capital required of certain registered broker-dealers. Broker-dealers that hold customer funds or securities would be required to maintain at least $250,000 in net capital. Those firms that clear customer transactions but do not hold customer funds or securities would need to maintain at least $100,000. Broker-dealers that introduce customer accounts would be required to maintain $50,000 or $100,000, depending on whether they occasionally or routinely receive customer funds and securities. In addition, market makers would be required to maintain greater net capital in proportion to the number of securities in which they make markets. The minimum net capital requirement of certain mutual fund brokers and dealers would also be increased to $25,000. A residual $5,000 minimum requirement would apply to those broker-dealers who do not receive customer funds or securities. This latter class also would include so-called direct participation firms. The raising of minimum capital levels for firms would be implemented over a period of four years. Additionally, deductions for equity securities positions ("haircuts") would be standardized under the proposal. Finally, some changes would be made to the computation of aggregate indebtedness.

DATE: Comments must be received on or before December 18, 1989.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. S7–28–89. Copies of the submission and of all written comments will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272–2904, Michael P. Jamroz, (202) 272–2372, or David I. A. Abramovitz (202) 272–2398, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTAL INFORMATION:

I. Introduction

The primary purpose of the net capital rule (Securities Exchange Act Rule 15c3–1; 17 CFR 240.15c3–1) is to protect customers and creditors of registered broker-dealers from monetary losses and delays that can occur when a registered broker-dealer fails. The rule requires registered broker-dealers to maintain sufficient liquid assets to enable firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding. In doing so, the rule enhances investor confidence in the financial integrity of securities firms. Similarly, the rule promotes transactions between broker-dealers, lenders, and creditors, on one hand, and the counterparty broker-dealers on the other, because those entities are more likely to consider a broker-dealer credit-worthy if it must comply with a liquidity-based capital adequacy standard. Presently, the net capital rule generally requires a registered broker-dealer's net capital to exceed the greater of $25,000 or 6⅔ percent of its aggregate indebtedness ("aggregate indebtedness method" or "basic method") if the broker-dealer does not elect the alternative method.[1] If it elects the alternative method under paragraph (f), the broker-dealer's net capital must exceed the greater of $100,000 or 2 percent of its aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers contained in Securities Exchange Act Rule 15c3–3.[2]

If the broker-dealer does not carry customer accounts and limits its business to certain specified activities, it need maintain only $5,000, rather than the $25,000 which would otherwise be required under the aggregate indebtedness method.[3] If the broker-dealer makes markets in securities, it must maintain the greater of its requirement under the aggregate indebtedness method or $2,500 for each security priced over $5 in which it makes a market plus $500 for each security priced at $5 or less in which it makes a market.[4] Unless required to do so because of the level of its aggregate indebtedness, regardless of how many securities in which it makes a market, a market maker is not currently required to maintain net capital greater than $100,000 to support its market making activities.

If the broker-dealer elects the alternative method, as opposed to the basic method as noted above, its minimum net capital will be $100,000 rather than $25,000, but it will generally incur smaller haircuts on the market value of its equity securities positions than those broker-dealers that elect the aggregate indebtedness method.[5]

[1] *See* Securities Exchange Act Rule 15c3–1(a); 17 CFR 240.15c3–1(a).

[2] *See* Securities Exchange Act Rule 15c3–3a; 17 CFR 240.15c3–3a.

[3] *See* Securities Exchange Act Rule 15c3–1(a)(2); 17 CFR 240.15c3–1(a)(2).

[4] *See* Securities Exchange Act Rule 15c3–1(a)(4); 17 CFR 240.15c3–1(a)(4).

[5] Securities Exchange Act Rule 15c3–1(c)(2)(vi)(J) sets forth the deduction for equity securities positions and other securities positions that are not otherwise specifically provided for in Rule 15c3–1. That deduction is "30 percent of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, there shall be a percentage deduction on such excess equal to 15 percent of the market value of such excess." Securities Exchange Act Rule 15c3–1(f)(3)(ii) sets forth the deduction incurred by broker-dealers that elect the alternative method for securities that would otherwise incur a deduction under subparagraph (c)(2)(vi)(J). Subparagraph (f)(3)(ii) requires the electing broker-dealer to deduct 15 percent of the market value of long positions and 30 percent of the market value of short positions but only to the extent those short positions exceed 25 percent of the long positions.

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II. Minimum Net Capital

While the idea of a net capital standard dates back to at least 1934, federal requirements as to a minimum amount of net capital were first introduced in 1965. In that year, principally in response to the Report of the Special Study of Securities Markets ("Special Study"),[8] the Commission's net capital rule was amended to require firms to maintain certain minimum capital amounts.[7]

The Special Study recommended minimum capital requirements as an essential qualification for broker-dealers entering the securities business. It based its recommendation on several factors: First, firms handling customer funds and securities should have sufficient capital so that they are not dependent upon customer assets to make up the principal working capital of the firm. Second, firms should have adequate capital, resources, and equipment so that the securities markets function smoothly and efficiently and market participants have the resulting confidence to carry out business responsibly. Finally, if the liability of a broker-dealer to its customers from violations of state and federal law is to be a deterrent to improper conduct, a firm should be required to maintain a reasonable financial stake in its business.

The Commission is mindful of the argument that increased minimum capital requirements restrict free entry to the broker-dealer business. However, while capital barriers were not initially imposed after the enactment of the Securities Exchange Act, both Congress and the Commission later recognized the need to restrict under-capitalized firms from entry into the securities business. In the 1971 Committee Staff Study for a Special Subcommittee of the House Committee on Interstate and Foreign Commerce, Congress suggested that attention be directed to the need to increase the minimum net capital requirements of broker-dealers, "particularly those just entering the securities industry." [8] In 1971, the Commission issued its Study of Unsafe and Unsound Practices ("Practices Study") [9] in response to the paperwork crisis of the late 1960's, in which many firms experienced debilitating back-office failures due to the then heavy volume of securities transactions. In the Practices Study, the Commission specifically addressed the issue of ease of entry. Appendix F to the Practices Study contained a description of actions taken by the Commission against certain broker-dealers. In that Appendix, the Commission noted that the principals of many of those firms, which were able to remain in business for periods ranging from only eight months to three years and eight months, had little or no background in the securities industry. The previous activities of some included such unlikely fields as advertising, insurance, automobile financing, personnel relations, engineering, and selling soft drinks.[10]

The Commission was concerned then, as it is today, that undercapitalized new entrants to the business would cause harm to customers and potentially be a financial drain on the insurance-type fund maintained by the Securities Investor Protection Corporation ("SIPC"). SIPC, through the Commission, may draw up to $1 billion on the U.S. Treasury.[11] The Practices Study concluded that:

> [t]o permit unprepared, irresponsible parties to enter the broker-dealer business without the restraining influence of adequate entry standards would be tantamount to the subsidization of incompetent and irresponsible individuals by SIPC and the United States Treasury.[12]

In response, the Commission adopted the current $25,000 net capital minimum requirement for broker-dealers transacting a general securities business.[13] The absolute minimum capital requirements of $5,000, $25,000 and $100,000 have remained since the Uniform Net Capital Rule was adopted over fourteen years ago.[14] Both the relative value of the dollar and the nature of the securities industry have changed markedly since that time. Indeed, the dollar is now worth less than 50 percent of its 1976 value, making these minimum requirements less than half of what they were in absolute terms.[15] The complexity of markets and the activities that broker-dealers are engaged in also have dramatically increased in the last decade. Proprietary trading by both institutions and by the broker-dealers themselves has greatly expanded. The penny stock markets have become much more active.

Broker-dealers have also expanded the variety of their activities. The last fifteen years have seen firms engaging in not only a greater volume of transactions but in transactions involving more complex products, such as interest rate swaps, foreign currencies, mortgages, mortgage-backed securities, and over-the-counter ("OTC") options. The holdings of customer funds and securities also have increased greatly over the years; the Commission estimates that this figure has risen perhaps as much as ten-fold since the early 1970s. Finally, while the Commission notes that on a statistical basis price volatility has been relatively low in the last year, during the period from October 1988 through April 1989 there were 73 separate days in which the Standard and Poor's 500 Stock Index experienced intra-day price movements of more than two percent.

The business of buying and selling securities, moreover, is one in which success, both to the firms and to the investing public, is strongly dependent upon confidence, continuity, and commitment. The Commission is concerned over the potential effects of broker-dealer firm failures on their counterparties, clearing agencies, and

[8] *See* Report of Special Study of Securities Markets of the Securities and Exchange Commission, 88th Cong., 1st Sess., H.R. No. 95, April 3, 1963.

[7] *See* note 14, *infra*.

[9] Review of SEC Records of the Demise of Selected Broker-Dealers, Staff Study for the Special Subcommittee on Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, 92nd Cong., 1st Sess., pg. 33 (July 1971).

[9] Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations of the Securities and Exchange Commission, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971).

[10] *See* Practices Study at p. 164.

[11] Under the Securities Investor Protection Act of 1970 ("SIPA"), SIPC maintains a fund consisting primarily of assessments received from its member broker-dealers. From that fund SIPC makes advances to customers, as defined in SIPA, of failed broker-dealers. In the event the SIPC fund should prove inadequate, SIPC may, through the Commission, borrow up to $1 billion from the U.S. Government. *See* Securities Investor Protection Act of 1970, Sec. 4(h).

[12] *Id.*

[13] Securities Exchange Act Release No. 9633, June 14, 1972, (37 FR 11970, June 16, 1972).

[14] The absolute minimum of $25,000 under the basic method was adopted in 1972 (*See* footnote 12). The $100,000 absolute minimum under the alternative method was adopted in 1975 (Securities Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795, (July 26, 1975)). The $5,000 minimum currently applicable to most broker-dealers that do not hold customer funds and securities was adopted in 1965. At that time, the $5,000 minimum was applicable to all broker-dealers except those that limited their activities to transactions in shares of registered investment companies and federally insured savings and loan associations. (*See* Securities Exchange Act Release No. 7611, May 28, 1965, 30 FR 7276, June 2, 1965.)

[15] The Consumer Price Index (CPI) in February 1976 was an adjusted 55.8 (based on a 1982–84 base year) and 121.6 in February 1989. This is an increase of 117.9 percent. *See* Department of Labor, Bureau of Labor Statistics, CPI. The Commission requests comment on whether the minimum net capital requirements should be regularly adjusted to take into account the effect of inflation. In this connection, should capital levels in the future automatically be adjusted or indexed to the rate of inflation? Commentators favoring indexing of minimum capital requirements should also indicate what measure they believe should be used by the Commission to index capital requirements and how often they believe adjustments based on the rate of inflation should be made.

the financial system in general. Given the increasingly large customer and proprietary positions maintained by even relatively small broker-dealers, the potential exists for a single firm failure to trigger substantial exposure to a number of broker-dealers and banks. The risks of such a chain reaction underline the importance of minimum capital requirements set at levels which may substantially reduce the likelihood of such failures.

Thus, increasing the minimum capital requirements would ensure that those who do wish to establish a broker-dealer entity do so with that amount of capital necessary to maintain adequately a solvent venture. The increased minimum capital requirement would encourage potential entrants to exhibit a serious commitment to a business whose customer and capital nature demands such a commitment. Most importantly, as discussed earlier, raising minimum capital requirements would protect the investing public and the SIPC fund by requiring a greater pool of liquid assets from which customer claims may be satisfied.

The Commission's most serious concern is with the current amount of capital required of clearing firms. As discussed more fully below, firms with capital of only $25,000 can clear for a number of other securities firms and can hold customer funds and securities amounting to millions of dollars. When such firms experience financial difficulty, there are significant costs imposed on customers and on regulators (which ultimately are borne by the securities industry or by taxpayers) even if the firms do not ultimately have to be liquidated under SIPA. Customers can be frozen in their positions for weeks or months and administrative costs to monitor troubled firms and/or to administer liquidations can be high. The Commission believes that the potential costs to investors, to the SIPC fund, and to the self-regulatory organizations, in the event firms self-liquidate with a very limited cash cushion are inappropriately high when weighed against the potential costs to broker-dealers of increased minimum net capital requirements.

Furthermore, the Commission's proposal to raise the minimum capital requirements of broker-dealers has drawn preliminary support from some of the self-regulatory organizations responsible for monitoring the activities of those firms and from one industry association. The National Association of Securities Dealers' ("NASD's") Capital and Margin Committee and the NASD's Advisory Council have expressed their belief that adopting higher minimum capital standards is a matter of some urgency.[16] Furthermore, both the Securities Industry Association ("SIA") [17] and the New York Stock Exchange ("NYSE") [18] had previously endorsed the reconsideration and the increasing of the minimum net capital requirements.

A. *Clearing Firms*—For purposes of Rule 15c3–1, a clearing firm is a broker-dealer that takes orders from customers, processes their trades and maintains custody of customer funds and securities. Clearing firms are frequently engaged in other lines of business such as securities lending, proprietary trading, and futures trading. A firm may also process trades and maintain custody of funds and securities of investors who give their orders to introducing firms. The clearing firm's duties, as outlined in the clearing agreement, include the proper disposition of the customer monies and securities after trade date, the holding of customer securities and funds as appropriate, and the handling of the paperwork associated with carrying customer accounts. These services involve such high fixed costs that, if they were incurred by the typical introducing firm, it would be prohibitively expensive for such a firm to enter the securities business. Such costs include the computer costs necessary to generate various customer statements and account records, as well as the personnel costs of maintaining back-office operations such as cashiering and margin departments. For its services, the clearing firm usually charges the introducing broker-dealer a fee based on a percentage of the retail securities commission revenue received by the introducing firm.

If a broker-dealer carrying customer funds and securities fails, there is potential for significant harm to be suffered by its customers. Furthermore, the risks that clearing firms, particularly those with small amounts of capital, pose to customer accounts can be greatly exacerbated by the fact that there are no limits on the amount of customer funds and securities that can be held.

SIPC's experience with liquidations demonstrates this latter point. In many cases, the SIPC trustee has had to use SIPC advances [19] at least in part to pay off customers' claims of securities and cash in amounts many times in excess of the firm's required net capital. For example, in one case, in which the firm's required net capital before it failed was only $119,000, the SIPC trustee paid out to customers from SIPC advances over $6,000,000 and from the debtor's estate over $25,000,000 in customer funds and securities. In another case, in which the firm's required net capital was less than $120,000, the SIPC trustee paid out to customers almost $14,000,000 in cash and securities; more than half this amount was paid out of SIPC advances.

These SIPC liquidations reflect common risk exposures of many operating clearing firms. At the request of the Commission staff, the NASD randomly sampled NASD clearing firms having capital of less than $130,000. Of the 84 firms in this sample, 21 were found to be holding more than $1 million in securities. The Commission believes that SIPC liquidation experience and the random sampling demonstrate that a significant percentage of broker-dealers that clear and carry funds and securities and that do not maintain significant excess net capital control substantial customer assets that are potentially at risk.

In order to evaluate the risks entailed in maintaining those low minimum capital requirements, the Commission also has evaluated instances of liquidations which did not require intervention by SIPC. While there were only eight SIPC liquidations in 1987 and 1988,[20] there were more than twice as many self-liquidations under the auspices of the NASD Washington headquarters staff. In 1987 and 1988, there were 18 such self-liquidations in which the NASD oversaw the distribution of over $250,000,000 in customer property involving relatively undercapitalized firms. These cases provide examples of potential exposure to the SIPC fund. Of the many cases of firm self-liquidation that the NASD has had to supervise because of lack of substantial net capital, two are

[16] *See* Letter from John E. Pinto, Executive Vice President, Compliance, NASD, to Michael Macchiaroli, Assistant Director, Division of Market Regulation, SEC, dated May 31, 1989.

[17] *See* Comment letter to John Wheeler, Secretary, SEC, from Michael Minikes, Chairman, Capital Committee, SIA, dated July 26, 1985, concerning Concept Release, File No. S7–3–85, p. 8.

[18] *See* Comment letter to John Wheeler, Secretary, SEC, dated July 31, 1985, from James Buck, Secretary, NYSE, concerning Concept Release, File No. S7–3–85, pp. 3–4.

[19] Under Section 9 of SIPA, SIPC makes advances to customers of a broker-dealer that is the subject of a SIPC proceeding. SIPC makes those advances from the SIPC fund. The SIPC fund had been established through assessment of SIPC member broker-dealers. (*See* Section 4 of SIPA).

[20] In this regard, the number of SIPC customer protection proceedings commenced in 1987 and 1988 is the lowest for any two-year period in SIPC's history. And the SIPC fund is at its highest level ever. *See* SIPC Annual Report 1988, P3.

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particularly noteworthy. One firm held $70 million of customer securities, although it had only $61,000 of net capital. The other firm held $8 million of customer securities and only $42,000 of net capital. Fortunately, because the NASD was aware of the problems suffered by the above firms before they failed, the NASD was able to have the firms move customer accounts to other clearing firms and thereby avoid SIPC liquidations.

When the NASD monitors a firm self-liquidation, it commits from two to 25 of its staff personnel to the process of supervising the firm. In addition to the NASD personnel, employees of the firm being liquidated are retained in order to do the work associated with transferring the accounts. Those employees, along with the costs associated with maintaining the premises, and transferring and shipping securities, must be paid from whatever capital remains in the broker-dealer. Self-liquidations may take from three weeks to several months, depending on the condition of the records of the broker-dealer and whether the NASD is readily able to locate other broker-dealers willing to take the customer accounts.

Self-liquidation costs to the self-regulatory authorities are difficult to measure since most of the incremental expenses other than employees' compensation time is mainly for per diem expenses of employees on travel status and for telecommunication expenses. On average, however, the NASD has advised the Commission staff that even the smallest liquidation requires two to three NASD employees on premises for a minimum of two weeks. The largest recent liquidation required a staff of about 25 NASD employees for about 10 weeks on premises, with fewer people thereafter. The recorded average cost for the NASD including salaries is about $2,000 per week per employee.

Beyond administrative costs, customers are usually unable to access their accounts when their broker-dealer is placed in a SIPC liquidation or a self-liquidation. Although every attempt is made to transfer accounts to a solvent broker as rapidly as possible, that goal is not always achievable, either because of the type of accounts, the poor condition of the broker-dealer's records, or the lack of adequate margin in customer accounts.

While requiring additional amounts of net capital to be maintained will not prevent firms from failing or otherwise leaving the securities business, the additional capital provides a fund from which the expenses associated with the liquidation can be paid. If that fund is not adequate, either the NASD or SIPC must fund the administration of the liquidation. If the remaining capital in the firm is low and the NASD supervises the liquidation, the NASD will not have the means to pay the employees of the broker-dealer to perform the clerical tasks associated with the distribution of property to customers. Accordingly, the NASD would have to use its own employees to perform these tasks and would incur substantial additional expenses. If the amount of remaining capital is small and the amount of customer property to be distributed is very large, SIPC would likely have to administer the liquidation. The initiation of a SIPC proceeding would result in increased administrative expenses.

More importantly, customers are adversely impacted from a SIPC liquidation because their funds and securities remain frozen until their property can be transferred to another broker-dealer or returned to them. Finally, to the extent their claims exceed their pro rata share of customer property, customers must rely on SIPC advances. Section 4 of SIPA limits SIPC advances to satisfy the claims of each customer up to a maximum of $500,000 for cash and securities, with a limit of $100,000 for cash claims.

Failures of clearing firms also present risk to the system as a whole by putting a financial strain on clearing agencies. Clearing agencies or corporations act as the central location for matching security transactions of members. This facilitates determination of minimum quantities of particular securities to be received or delivered. Generally, the clearing corporation nets each broker-dealer's settling purchases and sales in each security to arrive at a daily net settlement obligation for each broker-dealer. Broker-dealers then settle those net obligations with the clearing corporation. The clearing corporation guarantees the settlement obligations of each broker-dealer's counter trading party.

Losses to clearing firms from market disruptions such as the October market break can have the serious effect of causing losses to the related clearing corporations. While a single clearing firm failure probably would not put the entire system at risk, a combination of such failures could conceivably bring down a clearing system. If a clearing agency itself were to fail, the risk of a precipitous disaster to other financial service entities would be enormous.

Based on these observations, the Commission preliminarily has concluded that broker-dealers who are responsible for customer funds and securities impose substantial actual and potential risks on customers, other broker-dealers and the financial system and therefore should have a required minimum net capital higher than other classes of broker-dealers covered under the Rule. The amount of capital these customer firms maintain demonstrates their level of commitment to the business. Accordingly, the Commission believes that the minimum level of net capital for this class of broker-dealers should be raised to $250,000.

Because of the increased assurance of stability which would be provided by the proposed minimum capital level, the Commission proposes that the haircut associated with positions in firm commitment underwritings, or the contractual commitment haircut, be relaxed for a portion of a firm's increased capital requirement.[21] The proposed amendment would not require a broker-dealer who meets the $250,000 minimum to apply the contractual commitment haircut charge in certain circumstances in which that haircut would be $150,000 or less.

In addition, because the Commission believes that capital requirements should be based largely on the risks created by firms in their securities activities, the Commission believes that it is appropriate to distinguish between those firms that hold funds and securities for other persons and those that do not hold funds or securities yet carry customer accounts. Because firms that do not hold funds and securities impose a lower level of risk, the Commission believes that lower minimum requirements for such firms are justified. The Commission therefore proposes for comment a minimum capital requirement of $100,000 for firms that are exempt from Rule 15c3–3 by virtue of paragraph (k)(2)(i). Firms that fall within the paragraph (k)(2)(i) exemption must effectuate all customer securities transactions through a Special Bank Account for the Exclusive Benefit of Customers. Such broker-dealers cannot carry margin accounts, must promptly forward all customer funds and deliver all securities received in connection with their activities as broker-dealers and cannot otherwise hold for, or owe money or securities to, customers.

[21] A contractual commitment haircut is a percentage deduction from net worth which must be taken by a broker-dealer that has open contractual commitments. Currently, the net capital rule requires that the appropriate haircut be applied to these positions reduced by any unrealized profits that the broker-dealer may have in these commitments. *See* Rule 15c3–1(c)(2)(viii) (17 CFR 240.15c3–1(c)(2)(viii)).

B. *Introducing Firms*—An introducing broker-dealer is one that has a contractual arrangement with another firm, the carrying or clearing firm, in which the carrying firm agrees to perform certain services for the introducing firm. Generally, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the accounts. The carrying firm's duties include the proper disposition of the customer monies and securities after trade date, the holding of customer securities and funds and the recordkeeping associated with carrying customer accounts.

The Commission believes that introducing firms create risks for investors, clearing firms, and other firms with which they deal, and thus that there is ample justification for an increase in their minimum capital requirements. Even though the failure of an introducing firm does not normally result in a SIPC liquidation, it may result in substantial costs to the firms that carry the customer accounts for the introducing firm. In addition, customers may be unable to trade for some period of time until they can find another introducing or clearing firm to which they can transfer their accounts. Finally, because many introducing firms do in fact handle customer funds and securities for short periods of time, there is SIPC exposure from their activities. As a result, the Commission believes that increased minimums for introducing firms are risk-justified.

As the Market Break Report pointed out,[22] introducing broker-dealers pose risks to the investing public as well as to other broker-dealers. First, those broker-dealers do, in fact, receive customer funds and securities, although the funds and securities must be promptly forwarded to firms that carry the customer accounts.

There is an obvious risk for the customer if the introducing firm fails while in possession of customer funds and securities. There have been several recent cases where an introducing firm failed and, because the firm was declared to have "customers" under SIPA, there was exposure and payout for the SIPC fund. Such "customers" are created, as mentioned above, when the introducing firm does not promptly forward the customer funds to the clearing firm and the introducing firm fails.

Second, if an introducing firm fails, or even ceases doing business temporarily, its customers are often stranded. The carrying firms associated with introducing firms often will not accept orders from customers because the carrying firm may regard the customers as those of the introducing firm. As a result, customers may be unable to liquidate securities positions or open new positions with the proceeds of sales until their accounts are transferred to other broker-dealers.

Finally, introducing broker-dealers can cause significant losses to carrying firms, exposing the customers and creditors of those firms to loss. During periods of market decline, customer accounts may become unsecured due to a precipitous drop in the value of the securities in margin accounts or because of changes in value of customer short options positions. If the account has been introduced, the introducing firm generally is obligated to the carrying firm for deficits in the introduced customer accounts. If the introducing broker-dealer does not have adequate resources to reimburse the carrying firm, the carrying firm may suffer significant losses.[23]

Because of the loss exposure from introducing firms, many clearing firms will not clear for introducing firms without substantial capital or substantial deposits, which serve as collateral for unsecured customer debits.[24] At the request of the Commission staff, the NASD conducted an informal survey of the firms that clear introduced accounts. The NASD survey indicates that the practices varied greatly among the clearing firms that were contacted. For example, the following arrangements for introducing firms were included in the surveyed clearing arrangements: A requirement of $150,000 minimum net capital and a deposit if the firm has trading accounts; minimum deposit of $5,000, but could go as high as $300,000 for market makers; clearing deposits between $50,000 and $100,000 determined by credit committee; a requirement of 110 percent of the introducing firms' highest inventory position.

The Commission believes that, while the NASD survey is informal and includes only a small number of clearing firms, it demonstrates that many firms have imposed capital and deposit requirements to protect themselves from the risk of failure of undercapitalized introducing firms. At the same time, because the standards are not uniform, weaknesses in the system tend to develop. Assuming that clearing firms that are more risk conscious require their introducing firms to maintain the greatest amount of capital, clearing firms that are not as sensitive to risk will tend to have a higher concentration of introducing firms that are poorly capitalized and engaging in riskier activities.

Accordingly, the Commission proposes to raise the minimum capital requirement for introducing firms based upon the activities that they engage in and the commensurate risks created. Thus, three classes of introducing firms would be created under the proposed amendments. Some introducing broker-dealers now routinely receive customer funds and securities for transmittal to the clearing firm. Those firms are responsible for the funds and securities until received by the clearing firm. Under the proposal, this class of introducing firm would be required to maintain net capital of at least $100,000. Introducing firms that occasionally receive customers' funds and securities would be required to maintain at least $50,000. This covers instances of customers inappropriately sending funds or securities to the introducing firm.

While the Commission preliminarily believes that the net capital minimums

[22] *See* The October 1987 Market Break, a Report by the Division of Market Regulation of the U.S. Securities and Exchange Commission, February 1988 ("The Market Break Report"). Approximately 55 firms that introduced customer transactions on a fully disclosed basis to a clearing broker-dealer ceased operations because of violations of the net capital rule caused by losses directly related to the October 1987 market break. Most of the losses resulted from defaults by customers that failed to make payment to the clearing broker-dealers for which the introducing broker-dealers were contractually liable. At least eleven of the fifty-five introducing firms made markets in OTC securities.

The losses sustained by these firms were a result of unsecured customer debits for which they were contractually liable and declines in the market value of proprietary inventory. Three of the 55 firms also suffered substantial trading losses related to their options market making business. *See* p. 5–9 of the Report.

Approximately forty percent of the introducing firms that ceased operations re-opened within a week after they closed. A number of firms forced to close because of unsecured customer debits were able to increase their net capital and therefore re-open by entering into subordination agreements with their clearing brokers. The remaining firms were able to acquire additional capital sufficient to bring them into compliance with the Commission's rules.

[23] During the October 1987 market break, Haas Securities Corporation, a market maker in 11 securities and a member of the NYSE, ceased operations. Haas introduced customer transactions on a fully disclosed basis to L.F. Rothschild. As a result of unsecured customer accounts introduced by Haas, Rothschild incurred a reduction in net capital of between $15 and $20 million. *See* Market Break Report pg. 5–11.

[24] Under the net capital rule, a bona fide clearing deposit made by an introducing firm with a clearing firm is treated as asset readily convertible into cash and therefore part of the net capital of the introducing firm. *See* Rule 15c3–1(c)(2)(iv)(E).

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should be increased substantially to reflect the risks entailed in the operation of many introducing broker-dealers, it is also cognizant of the importance of providing relatively free access to the securities industry when firms do not pose risks to their customers or the SIPC fund. Accordingly, introducing firms that never receive customer funds or securities and do not handle margin accounts would be allowed to remain in the $5,000 minimum net capital category. In order to avoid classification as a $50,000 broker-dealer, introducing broker-dealers who wish to remain in the $5,000 category would need to take the utmost care in advising their customers not to send funds or securities to the introducing firm. In addition to the requirement imposed on such introducing firms under the basic method, they would be required to maintain additional net capital of ¼ percent of the customer debit balances that they introduce.

Finally, the Commission proposes to increase the ability of introducing firms to participate in firm commitment underwritings. Under the current rule, broker-dealers that compute under the minimum required of introducing broker-dealers are prohibited from engaging in firm commitment underwritings. In light of the proposed higher minimum levels, introducing broker-dealers would be allowed to participate in firm commitment underwritings as long as they are only the selling dealer and not the statutory underwriter.[25]

The Commission requests comment on its proposed classes of introducing firms and the minimum levels associated with each class. Furthermore, the Commission requests comment regarding practices of firms that clear introduced accounts for setting financial responsibility standards for introducing firms. Specifically, the Commission requests comment on the effectiveness of standard-setting by the industry and whether higher minimum capital requirements are necessary.

C. *Over-the-Counter Market Makers*—In its Market Break Report, the Division of Market Regulation expressed its belief that the minimum amount of capital necessary for a broker-dealer to qualify as a market maker should be reviewed.[26] The Commission is also concerned about the limited amount of net capital the rule presently requires of a market maker. The market maker who maintains only the minimum amount of net capital required frequently is unable to assume even the smallest number of positions in the stocks in which it reportedly makes a market. Moreover, to the extent its net capital falls below the minimum amount required, such a firm is compelled to withdraw as market maker in at least some of its market making securities, an action which could impair the market in those securities. This has been a particular problem in the penny stock market, in which the failure of market making firms has resulted in the virtual elimination of a public market for many of the securities for which they made public markets. A sound marketplace requires that OTC market makers have the wherewithal to take positions in those securities in which they make markets.

The NASD has recommended that the capital requirements of certain market makers be increased. The NASD has recently approved rule amendments to its Small Order Execution System ("SOES") which require not only mandatory participation in the SOES for all market makers in certain securities, but also different maximum SOES order-size limits based upon the market characteristics of the securities.[27] Under mandatory SOES participation, market makers will be required to accept small orders received through the SOES system. Accordingly, the NASD Quality of Markets Committee has recommended that the Commission require an increase in capital to at least the amount required to support mandatory SOES positions.[28]

In response to the concerns noted above, the Commission proposes for comment two separate amendments. The first would increase the present ceiling of $100,000 net capital required of market makers to $1,000,000. The second would raise the requirement for each security priced at $5.00 or less per share to $1,000 from $500. Thus, for example, a firm making markets in 100 securities priced in excess of $5 and 50 securities priced below $5 would have a minimum net capital requirement of $300,000.

D. *Broker-Dealers That Transact a Business in Mutual Fund Shares*—The proposed amendments would also alter the capital requirements for broker-dealers that limit their activities to transactions in shares of registered investment companies. Currently, the minimum net capital requirement for this type of broker-dealer is the greater of $2,500 or 6⅔ percent of their aggregate indebtedness. This minimum requirement seems inappropriately low, however, considering that these firms receive money from customers and may also transact business directly with issuers. The Commission thus proposes for comment that the basic minimum requirement for mutual fund broker-dealers be raised to $25,000. However, for those mutual fund firms which do not handle any customer funds or securities and are not direct wire order firms, the Commission proposes a $5,000 minimum net capital requirement.

E. *Broker-dealers Who Trade Solely for Their Own Accounts*—Firms that trade solely for their own accounts ("trading firms") are currently required to maintain net capital of the greater of 6⅔ percent of their aggregate indebtedness or $25,000 under the basic method, or $100,000 under the alternative method. The Commission believes these firms should not be permitted to continue to compute under the alternative method.

The theory underlying the alternative method of calculating net capital is that, for large firms, customer debits will provide an approximate proxy of the amount of business and exposure of the firm. Because proprietary firms have no customer accounts, the alternative method does not limit leverage for those firms. This means that a firm with the $100,000 minimum capital required under the alternative method could have very large aggregate indebtedness and therefore very substantial leverage in its business, thereby increasing its assets substantially in relation to its net worth, without restriction except for the haircuts on its positions.

Yet, proprietary trading activities obviously are risky, and leverage exacerbates that risk. As pointed out in the October Market Break Report, several risk arbitrage firms lost an average of 41 percent of their combined net worth during the market break.[29] Moreover, such firms often have positions concentrated in a few stocks and may suffer substantial losses from arbitrage positions in a hostile takeover battle. Furthermore, the trading firms' business involves substantial risk to the extent that it consists of investing in large risk arbitrage or speculative positions with less diversification than that usually undertaken by larger firms. While these firms do not deal directly with customers, they do expose other broker-dealers, clearing entities, and creditors to substantial risk.

The Commission believes that failure of a proprietary firm with the relatively small cushion provided by the alternative method could impose financial risk on those contra parties and, in turn, their customers. Accordingly, the Commission proposes for comment that trading firms no longer be permitted to elect the alternative method. The Commission further proposes for comment that the minimum net capital requirement for those firms be raised to $100,000. As a consequence of these proposed amendments, most of those firms would be required to increase their capital by the difference between their current $100,000 minimum and 6⅔ percent of their aggregate indebtedness.

F. *All Other Broker-Dealers*—As noted above, the Commission has preliminarily determined to maintain a $5,000 category for introducing brokers and dealers who do not handle customer funds or securities. In addition, under the current rule, broker-dealers that participate in underwritings on a "best efforts" basis and who promptly forward all customer funds to the issuer or a designated independent escrow agent, are required to maintain minimum capital of only $5,000. This firm category should include primarily firms that sell direct participation programs ("DPP") in real estate syndications. Because of the limited business conducted by DPP firms, the Commission is making no specific proposal for change in the minimum capital requirements. However, the proposed amendments would provide that any firm that maintains only the $5,000 level of capital would be prohibited from receiving customer funds or securities. If they do so, they would immediately be required to maintain the next higher level. The Commission believes that this new requirement would help to protect investors from having their cash and securities exposed while being handled by a broker-dealer with very limited capital. The Commission requests comments as to whether it is appropriate to permit best efforts underwriting firms to remain in the $5,000 residual category.

Finally, some firms do not take customer orders, hold customer funds or securities, or execute customer trades, yet register with the Commission because of the nature of their activities. An example of such a broker-dealer is a firm that identifies and locates potential merger or acquisition opportunities on behalf of a client, and thereby earns a percentage fee. For these miscellaneous types of broker-dealers, the Commission also proposes a $5,000 minimum net capital requirement.

For most firms that would be included in this category, this will not represent an increase in the required minimum net capital.[30] Some mutual fund dealers that would fall into this category will go to a $5,000 requirement from a $2,500 requirement under the existing rule. Like the DPP firms, however, the Commission proposes that these firms be prohibited from having any contact with customer funds or securities. In addition, other firms, such as floor brokers, which may avail themselves presently of the $5,000 requirement, will continue to be able to comply with that requirement.

G. *Phase-In Schedule*—Because of the impact of the increased minimum capital requirements on some broker-dealers, the Commission proposes that the minimums be staggered over a period of four years from the effective date. Each year after the effective date, the minimum requirements for affected broker-dealers would increase by 25 percent of the increase. Thus, for example, if the increase was from $25,000 to $250,000, the minimum requirement one year after the effective date would be $81,250 (($225,000×.25)+$25,000). The proposed timing of the increases is summarized below:

i. *Firms That Hold Customer Funds or Securities (Aggregate Indebtedness Method)*
   a. Current rule: $25,000
   b. By 12/31/90: $81,250
   c. By 12/31/91: $137,500
   d. By 12/31/92: $193,750
   e. By 12/31/93: $250,000

ii. *Firms That Hold Customer Funds or Securities (Alternative Method)*
   a. Current Rule: $100,000
   b. By 12/31/90: $137,500
   c. By 12/31/91: $175,000
   d. By 12/31/92: $212,500
   e. By 12/31/93: $250,000

iii. *Clearing Firms That Do Not Hold Customer Funds or Securities*
   a. Current Rule: $25,000
   b. By 12/31/90: $43,750
   c. By 12/31/91: $62,500
   d. By 12/31/92: $81,250
   e. By 12/31/93: $100,000

iv. *Introducing Firms That Routinely Receive Customer Funds or Securities*
   a. Current rule: $25,000
   b. By 12/31/90: $43,750
   c. By 12/31/91: $62,500
   d. By 12/31/92: $81,250
   e. By 12/31/93: $100,000

v. *Introducing Firms That Do Not Routinely Receive Customer Funds or Securities*
   a. Current rule: $5,000
   b. By 12/31/90: $16,250
   c. By 12/31/91: $27,500
   d. By 12/31/92: $38,750
   e. By 12/31/93: $50,000

vi. *Mutual Fund Dealers That Routinely Receive Customer Funds*
   a. Current Rule: $2,500
   b. By 12/31/90: $8,125
   c. By 12/31/91: $13,750
   d. By 12/31/92: $19,375
   e. By 12/31/93: $25,000

The Commission specifically requests commentators to focus attention on the phase-in provisions and to indicate whether the proposed timing and method of phase-in are appropriate. In particular, the Commission is concerned that, given the significant level of risk present in the system, a four-year phase-in may be too long to achieve the maximum degree of customer and systemic protection contemplated by these proposals. On the other hand, given the size of some of the increases in minimums proposed, the Commission is interested in permitting, to the extent practicable, a smooth transition with minimal disruption for both firms and customers.

H. *Request for Comment*—The Commission requests comment on the minimum capital requirements set forth in the proposed amendments to the rule. In this connection, the Commission recognizes that the determination of the appropriate levels of minimum net capital necessarily requires consideration of the benefits of higher standards, as well as the impact of those standards on broker-dealers. In arriving at the proposed new minimum net capital requirements, the Commission, on the basis of available data and its regulatory experience, has attempted to balance the cost of raising additional capital (and the effect on those that will not be able to raise it) against the above described benefits of a prudent financial responsibility standard. The Commission, nevertheless, requests comment on alternative methods that might be used to establish minimum net capital requirements. More specifically, the Commission asks if a minimum absolute dollar amount requirement

[25] In a firm commitment underwriting, the underwriters agree to buy the entire issue of a security from the issuing corporation at a specified price. The current net capital rule allows introducing broker-dealers to participate in underwritings only on a "best efforts" or "all or nothing" basis. The Commission proposes that as long as the firm is only a selling dealer, i.e. purchases the issue from the statutory underwriter and not the issuer in order to sell, it can participate in firm commitment underwritings.

[26] *See* Market Break Report at p. 5–15.

[27] *See* File No. SR–NASD–88–1, Securities Exchange Act Release No. 25791 (June 9, 1988).

[28] *See* Report of Special Committee of the Regulatory Review Task Force on the Quality of Markets, NASD publication. 1988.

[29] *See* Market Break Report at p. 5–7.

[30] To qualify presently for a $5,000 minimum net capital requirement under paragraph (a)(2) of Rule 15c3–1, in addition to not carrying customer accounts, the broker-dealer must limit itself to certain specified activities in paragraph (a)(2). The Division has issued no-action positions that make the $5,000 minimum requirement available to certain firms that do not handle customer funds or securities, but engage in activities not specified in paragraph (a)(2).

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could be based on quantifiable measures of risk.

As discussed, the Commission is concerned with the large dollar amounts of customer fully-paid securities in the possession of broker-dealers with minimum capital. Some broker-dealers have access to several million dollars of fully-paid customer securities, but are required to maintain only $25,000 in net capital. This financial commitment does not appear commensurate with the resulting risk to SIPC or the investment community. The Commission requests comment as to whether this concern is best addressed by a larger minimum dollar requirement for broker-dealers that carry customer accounts or by requiring broker-dealers that carry customer accounts to regularly determine the dollar amount of customer fully-paid securities they have in their possession and take a charge against these amounts when computing their net capital requirement. The Commission also seeks comment regarding whether some combination of the above would be appropriate. Finally, the Commission requests comment as to whether it would be appropriate to have a smaller minimum dollar requirement (for example $100,000) for carrying firms that take a capital charge against customer fully-paid securities in their possession, and a larger minimum dollar requirement (for example $250,000) for firms that chose not to.

The Commission also requests comment on the costs imposed by the proposed amendments. While a precise estimate of the costs of the proposals is difficult, a rough estimate can be made based on the relative cost of capital. Persons who enter the broker-dealer business generally do so through partnerships or through corporations. In either case, the individual or individuals who establish the firm can deposit into the entity assets they have or cash they have borrowed. These assets are deemed to be capital of the broker-dealer. Indeed, as has happened before, a person may borrow $5,000 on a credit card and deposit the money as capital into a broker-dealer corporation and thus be in compliance with the net capital rule requirements for a $5,000 broker-dealer. In addition, a broker-dealer may, under the net capital rule, count as net capital monies borrowed from another person if subordinated in conformity with the net capital rule requirements.[31]

[31] *See* Appendix D to the net capital rule, Rule 15c3–1d.

Once in the broker-dealer corporation, the funds may be invested in high grade commercial paper, bank certificates of deposit or short-term government securities, all of which, as money market instruments, receive little or no haircut. The Commission estimates the difference between the lending rate and the rate the broker-dealer could earn on the above investments to be approximately three to four percent annually before taxes. Assuming a $45,000 borrowing for an introducing firm which only occasionally receives customer funds and securities (and thereby would qualify for the proposed $50,000 introducing level), the cost of the additional capital (assuming a net cost of 4%) would be only $1,800 per year.

From recent financial filings with the NASD [32] compiled as of March 31, 1989, it was determined that 173 clearing firms would need, on average, an additional $123,000 to comply with the new $250,000 minimum requirement. Using the above assumptions on the cost of capital (a four percent spread), in order to comply with the new minimum net capital requirement, it would cost each of the 173 clearing firms on average approximately $5,000 per year or a total of $850,000. Additionally, of the 763 market maker firms, 63 have required capital of between $100,000 and $1,000,000 and thus may be affected by the new higher ceiling on additional capital required of market makers.

As to introducing firms, NASD data as of the same period does not distinguish between introducing firms that routinely handle funds and securities and those that do not. Assuming that every introducing firm handles customer property on a routine basis, the data indicate that 1428 introducing firms would need, on average, $65,702 each to comply with the new $100,000 minimum capital requirement. The total cost of raising this capital based on a 4 percent cost of capital assumption is $3.8 million or $2,600 per firm. Assuming every introducing firm only occasionally handles customer funds and securities and thus would have a $50,000 minimum requirement, it was determined that 1,063 firms would need to raise an average of $28,555. Making the same cost assumption as discussed above, the cost of raising their capital requirements would be $1.2 million or $1,100 per firm per year.

The Commission acknowledges that broker-dealers may incur costs other than the estimated 4 percent referred to above in obtaining additional capital. For example, if the borrowing is done personally, the owner of the firm will likely be required to encumber personal assets. However, even if the estimated cost of obtaining additional capital were 8 percent, the average annual cost for a clearing firm would be only $10,000. At the 8 percent level, an introducing firm would incur annual costs of either $5,200 or $2,200 per year, depending on the method by which the firm elects to do business.

The Commission preliminarily does not believe that the costs described above will have the effect of barring entry or making unprofitable any group of entrepreneurs who have a serious commitment to developing a brokerage firm. The Commission requests comment, however, on the specific costs to broker-dealers of its proposal. In this connection, the Commission asks for comment as to the amount of net capital in excess of the early warning levels [33] that firms would normally maintain as a business matter. Additionally, commentators are requested to provide information regarding their likely sources for obtaining additional capital, the cost of those funds, and the return on the investment they would likely obtain from the use of those funds.

The Commission also asks if particular firms will change their operations so they can operate under one of the lower minimum net capital categories permitted under the proposals. Commentators are further encouraged to provide information regarding their lines of business and related revenues and the need for the Commission to determine if additional classes of firms should be created to accommodate the needs of smaller broker-dealers.

The Commission also requests comment from those small broker-dealers that elect to carry customer accounts rather than to take advantage of the lower capital requirements that are currently in the rule for introducing firms. The Commission is particularly interested in receiving input from smaller carrying firms regarding the reasons they have elected to remain as carrying firms and be subject to the higher minimum requirements and how their business would be affected if they were to switch to introducing their customers to another firm. The Commission is specifically interested in receiving input from firms regarding the potential impact on revenues and expenses in the event these broker-dealers decided to conform to the limitations imposed under the provisions of the lower capital requirements (such as not handling in any way customer funds and securities).

Finally, the Commission requests comment from those firms that may not be able to raise additional funds. The Commission requests input on whether the alternatives proposed by the Commission with respect to maintaining low levels of minimum net capital are flexible enough to permit those firms to continue to remain in business—even if that means they will have to forego handling funds and securities—or whether those firms will have to cease doing business as registered broker-dealers. For those firms that would cease doing business because of the increase in minimums, the Commission asks what factors would be important in making that decision.

[32] Under Securities Exchange Act Rule 17a–5 (17 CFR 240.17a–5), registered broker-dealers are required to file reports containing certain financial and operational information with both their designated examining authority and the Commission. These reports are filed on the Uniform Financial and Operational Combined Uniform Single Report (commonly known as the FOCUS report).

[33] *See* 17 CFR 240.17a–11.

III. Securities Haircuts

A. *Equity Securities*—The current rule requires different levels of deductions as to equity securities and different computations of those deductions depending on the broker-dealer's election of either the basic or alternative methods.[34] Although the nation's equity securities markets experienced an extraordinary surge of volume and price volatility during October 1987, in most circumstances the deductions incurred for those securities appear adequate. However, the distinctions in the haircuts between the alternative and basic methods, given the proposed raising of the minimum requirements, do not seem appropriate.

Haircuts generally are designed to provide a cushion of capital against adverse fluctuations in the prices of securities. The net capital rule haircut has varied over the years. Generally, equity haircuts were settled some 25 years ago at 30 percent of the greater of the long or short position. The lesser position was deemed by the rule to be hedged by the greater position but only to the extent that it did not exceed 25 percent of the greater position. The theory, of course, is since market movements are responsible for a substantial percentage of price movements for individual stocks, diversified long positions (or diversified short positions) will to some degree move in the same direction.

In 1975, the Commission adopted the present rule and a new, alternative method for determining haircuts. In order to facilitate market-making, the Commission determined to allow firms electing the alternative method to take a 15 percent haircut on the long positions. The haircut on the short position, to the extent it exceeded in value 25 percent of the long position, was taken at 30 percent of the market value. Firms electing the alternative, however, were required to have a minimum net capital of $100,000, rather than the $25,000 minimum otherwise required. This additional cushion of capital was deemed necessary in the event the haircuts proved inadequate.

Given the Commission's experience with the haircuts under the alternative method and because the Commission is revisiting its minimum net capital levels generally, the Commission preliminarily believes that the haircuts for equity positions under the aggregate indebtedness method should be lowered. However, haircuts may be appropriately reduced only if the minimum levels of net capital are raised because the value of a particular security could easily move more than the lower haircut. Moreover, generally, except for tender offer situations, a long would seem to be no less volatile or risky than a short position, and thus should not be subject to a different haircut.

Under the proposed amendments, the calculation of haircuts for those under the alternative method and those on the aggregate indebtedness method would be standardized.[35] The haircuts for both long and short positions would be 15 percent of the market value. An additional 15 percent would be assessed on the market value of the lesser position to the extent it exceeded 25 percent of the greater position. The 15 percent deduction for long positions would be available to those firms which have more than $100,000 in net capital. Under the proposed amendments, the alternative method for computing concentration charges would be adopted.

The Commission invites comment on particular methods for determining haircuts on equity securities positions. The Commission further requests comment on whether the use of historical price volatility data, such as the Commission has used in the past for developing haircuts for debt securities, is an appropriate method for determining haircuts on equity securities.

B. *Zero Coupon and Stripped Securities*—The Commission also proposes to amend its securities deductions to exclude instruments that include only principal or interest. Under the current rule, for example, any security that is "* * * issued or guaranteed as to principal or interest by the United States or any agency thereof * * *" incurs a haircut of zero to six percent, depending upon the maturity of the security. These percentages, however, were drafted to reflect the price volatilities of securities that include both principal and interest and thus do not contemplate the risk inherent in "stripped" securities. Under the proposal, these zero-coupon securities (other than those issued by the Treasury) would be subject to the 15 percent haircut proposed for equity securities.

The Commission recognizes that, while stripped securities have different price volatilities for differing maturities than corresponding coupon bonds, there is a distinct benefit in creating a uniform haircut across all maturities. Preliminarily, the Commission believes that, given the relatively lower level of activity in coupon instruments as compared to Treasury instruments that contain principal and interest, a uniform haircut is more practical because it minimizes the complexity of the rule. If the Commission does not adopt a uniform haircut for coupon instruments, it is likely that a separate series of maturity categories will have to be created for those securities. The Commission requests comment as to the appropriate haircut for zero-coupon Treasury as well as other stripped instruments.

IV. Aggregate Indebtedness

The aggregate indebtedness test has been included in the net capital rule since its adoption in 1942. Generally, the term aggregate indebtedness includes all of the liabilities and/or obligations (contingent or otherwise) of the broker-dealer. By limiting the amount of indebtedness of registered broker-dealers to a percentage of net capital, the rule limits the leverage that broker-dealers that elect the basic method are able to attain. The rule however, specifically excludes from aggregate indebtedness certain prescribed liabilities. In the two classes of liabilities described below, the Commission believes the 6⅔ percent aggregate indebtedness charge may not be appropriate, particularly in light of

[34] *See* note 4, *supra*.

[35] Under the proposed amendments, the broker-dealer would notify only its designated examining authority, and not the Commission (as is currently the case), of its election to operate under the alternative method.

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the proposed increases in the minimum requirements.

A. *Mutual Funds Payable Offset by Fails to Deliver*—The present rule requires a broker-dealer that owes money to a mutual fund in connection with a purchase of shares of that fund to include that amount in aggregate indebtedness even if offset by a receivable from another broker-dealer related to that transaction. This payable arises out of a purchase by the broker-dealer directly from the fund of shares of the fund for another broker-dealer (presumably for its customer). The first broker-dealer owes money to the fund secured by the investment company shares. The second broker-dealer owes money to the first broker-dealer. The debt on the first broker-dealer's books is offset by a receivable from the second broker-dealer, classified generally as a fail to deliver. That receivable is also secured by the mutual fund shares, since delivery of the shares will not occur until payment of the obligation by the second broker-dealer. Our experience indicates that, as a general rule, most of these fails to deliver are completed. The Commission believes that, to the extent that this class of fails to deliver is offset by a liability to the fund, a capital cushion of 6⅔ percent to cover the liability is unnecessary. Rather than the 6⅔ percent charge that results under the current rule, the Commission proposes that this requirement be lowered to one percent of the liability amount when an offset exists.

B. *Stock Loan and Stock Borrowed*—A stock loan payable is a liability arising from the receipt of cash collateral from a person who borrows securities from the broker-dealer. It is considered aggregate indebtedness even if the securities that were loaned were borrowed from another broker-dealer. When one broker-dealer lends securities to another broker-dealer, the lending broker-dealer generally receives cash collateral in excess of the value of the securities lent. That collateral is deemed to be a liability on the books of the lending broker-dealer, since that broker-dealer owes money to the borrowing broker-dealer.

Much of the stock lent by one broker-dealer to another broker-dealer has been borrowed from yet a third broker-dealer or other person. That borrowing, if collateralized by cash, results in a receivable from the lending person. The borrowing broker-dealer has turned over cash to the lending entity which in turn was received from the second borrower of securities. In that situation, the firm has a stock loan payable versus a stock loan receivaule analogous to a government securities repurchase book. Generally, excluding fraud, these are not risky positions. The major risk in such positions (normally characterized as a finder's book) is the liquidity risk. If a perception arises that a broker-dealer is in financial distress, stock borrowers will return stock to the lending broker-dealer for cash which cannot be as readily obtained from the persons to whom the failing broker-dealer has given cash. This run on a broker-dealer would likely impair its ability to function as a clearing agent.

Given the matched nature of those related payables and receivables, the Commission does not believe that risk merits a charge of 6⅔ percent on the dollar amount of the liability. The Commission believes, however, that a lower cushion (one percent) against the liquidity risk of a large finder's book is appropriate. The one percent number has previously been used by the Commission in the net capital rule in order to curtail leverage.[36] The Commission thus proposes that liabilities related to a corresponding securities borrowing incur only a 1 percent charge against net capital.

V. Technical Amendments

Because of the proposed amendments to the minimum net capital requirements and the equity securities haircuts, it became possible for the Commission to merge paragraph (f) with paragraph (a) of the rule. As a result, the proposed rule amendments include several technical changes to the rule. For example, all references to paragraph (f) would be deleted. Other examples include the proposed amendments to the concentration charges under paragraph (c)(2)(vi)(M) and the contractual commitment charge under paragraph (c)(2)(viii). The proposed amendments would also delete a provision from paragraph (c)(2)(ix) of Rule 15c3–1 that expired on January 1, 1983.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objective of the proposed amendments is to further the purposes of the various financial responsibility rules which provide safeguards with respect to the financial responsibility and related practices of brokers and dealers. In sum, the Analysis states that the proposed amendments would subject smaller broker-dealers to higher capital requirements. A copy of the Analysis may be obtained by contacting David I.A. Abramovitz, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2398.

[36] *See* Rule 15c3–1(f)(5)(iv).

VII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission proposes to amend § 240.15c3–1, of Title 17 of the Code of Federal Regulations in the manner set forth below.

VIII. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IX. Text of the Proposed Amendments

In accordance with the foregoing, 17 CFR part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. 240.15c3–1 is also issued under secs. 15(c)(3), 15 U.S.C. 78*o*(c)(3).

2. In § 240.15c3–1 by removing paragraph (f) and paragraphs (a)(8) and (a)(9), removing and reserving paragraph (c)(2)(vi)(I), adding paragraphs (c)(1)(xiv) and (c)(1)(xv) and revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (c)(1)(xiii), (c)(2)(i)(C)(*1*), (c)(2)(iv)(B), (c)(2)(iv)(F)(*3*)(*i*)(*B*), (c)(2)(iv)(F)(*3*)(*i*)(*C*), (c)(2)(vi), (c)(2)(vi)(A)(*1*), (c)(2)(vi)(A)(*5*), (c)(2)(vi)(B)(*2*), (c)(2)(vi)(F)(*1*), (c)(2)(vi)(J), (c)(2)(vi)(M), (c)(2)(viii), (c)(2)(ix), (c)(2)(x)(A) (*2*) through (*4*), (c)(2)(x)(A)(*5*), (c)(9), and (c)(10).

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall maintain net capital less than the amounts required as to that broker or dealer under this paragraph.

Ratio Requirements

Aggregate Indebtedness Method

(1)(i) No broker or dealer other than one that elects the provisions of paragraph (a)(1)(ii) of this section shall permit his aggregate indebtedness to all other persons to exceed 1500 percent of his net capital (or 800 percent of his net capital for 12 months after commencing business as a broker or dealer).

Alternative Method

(ii) A broker or dealer who carries customer accounts and holds customer funds or securities may elect not to be subject to the limitations of paragraph (a)(1)(i) of this section. Such broker or dealer shall not permit his net capital to be less than 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a). Such broker or dealer shall notify the Examining Authority for such broker or dealer. in writing, of his election to operate under this paragraph. Once a broker or dealer has notified its Examining Authority, he shall continue to operate under this paragraph unless a change is approved upon application to the Commission.

(A) In addition to the foregoing, a broker or dealer electing this alternative shall:

(*1*) make the computation required by 17 CFR 240.15c3–3(e) and set forth in Exhibit A, 17 CFR 240.15c3–3a, on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(*2*) include in Items 7 and 8 of Exhibit A, 17 CFR 240.15c3–3a, the market value of specified items therein more than 7 business days old;

(*3*) exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in paragraphs (c)(2)(vi) (A) and (E) of this section and any related debit items from the Exhibit A requirement for 3 business days; and

(*4*) Deduct from net worth in computing net capital 1 percent of the contract value of all failed to deliver contracts or securities borrowed which were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, 17 CFR 240.15c3–3a.

Futures Commission Merchants

(iii) No broker or dealer registered as a futures commission merchant shall permit his net capital to be less than 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the customer's account).

Minimum Requirements

Brokers or Dealers That Carry Customer Accounts

(2)(i) A broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons shall maintain net capital of not less than $250,000 (see paragraphs (a) and (b) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements).

Brokers or Dealers That Carry Customer Accounts, But Do Not Generally Hold Customer Funds or Securities

(ii) A broker or dealer who is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(i) shall maintain net capital of not less than $100,000 (see paragraph (c) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements).

Dealers, Underwriters and Arbitragers

(iii) A dealer shall maintain net capital of not less than $100,000 (see paragraph (c) of appendix (E) (17 CFR § 240.15c3–1e) for temporary minimum requirements) if he does not receive, directly or indirectly, funds or securities from, or owe money or securities to, customers and does not carry accounts of, or for, customers. For purposes of this section, the term "dealer" includes underwriters and any broker or dealer who endorses or writes options otherwise than on a registered national securities exchange or a facility of a registered national securities association.

Brokers Who Introduce Customers' Accounts and Routinely Receive Funds or Securities

(iv) A broker or dealer shall maintain net capital of not less than $100,000 (see paragraph (d) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements) plus ¼ percent of debit balances in introduced customers' cash and margin accounts if it is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(ii) of this section.

(v) Those introducing brokers or dealers that receive, but do not promptly forward, customer funds and securities shall maintain the minimum net capital requirement as set forth in paragraph (a)(2)(i) of this section.

Brokers Who Introduce Customer Accounts But Do Not Routinely Receive Funds or Securities

(vi) An introducing broker or dealer that is exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2)(ii) of this section but does not routinely receive customer funds or securities and effects ten or fewer transactions per year in securities for his own investment account with or through another registered broker or dealer shall maintain net capital of not less than $50,000 (see paragraph (e) of appendix (E) for temporary minimum requirements) plus ¼ percent of debit balances in introduced customers' cash and margin accounts.

(A) A broker or dealer operating under paragraph (a)(2)(iv) of this section and under this paragraph (a)(2)(vi) of this section may participate as a selling dealer in a firm commitment underwriting but may not enter into a contractual commitment with the issuer for the purchase of shares related to that underwriting.

(B) A broker or dealer operating under this paragraph may engage in the activities allowed under paragraphs (a)(2)(vii) and (a)(2)(ix) of this section.

Brokers or Dealers Engaged Solely in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(vii) A broker or dealer may maintain net capital of not less than $25,000 (see paragraph (f) of appendix (E) (17 CFR 240.15c3–1e) for temporary minimum requirements) if he meets all of the following conditions:

(A) His dealer transactions are limited to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account directly from the issuer on other than on a subscription way basis, except that he may also effect ten or fewer transactions per year in other securities for his own investment account with or through another registered broker or dealer;

(B) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers; and

(C) His transactions as broker are limited to one or more of the following;

(*1*) The sale and redemption of redeemable shares of registered investment companies or of interests or participation in an insurance company separate account whether or not registered as an investment company;

(*2*) The solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States;

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(3) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(4) The activities allowed under paragraph (a)(2)(ix) of this section.

Municipal Securities Brokers' Brokers

(viii) A municipal securities brokers' broker, as defined in subsection (A) of this paragraph (a)(2)(viii), may elect not to be subject to the limitations of paragraphs (c)(2)(ix) of this section, provided that such brokers' broker complies with the requirements set out in paragraphs (a)(2)(viii)(B), (C) and (D) of this section.

(A) The term municipal securities "brokers' broker" shall mean a municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" as defined in paragraph (c)(6) of this section and who does not have or maintain any municipal securities in its proprietary or other accounts.

(B) In order to qualify to operate under this paragraph (a)(2)(viii), a brokers' broker shall at all times have and maintain net capital of not less than $150,000.

(C) For purposes of this paragraph (a)(2)(viii), a brokers' broker shall deduct from net worth l percent of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(D) For purposes of this paragraph (a)(2)(viii), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receives as required by Rule 15c3–1(c)(2)(iv)(E).

Other Brokers or Dealers

(ix) A broker or dealer that does not receive, directly or indirectly, funds or securities from, or owe money or securities to, customers and does not carry accounts of, or for, customers and that engages in ten or fewer transactions in securities per year for his own account with or through another registered broker or dealer, shall maintain net capital of not less than $5,000. Those brokers or dealers that introduce cash accounts under this paragraph must maintain net capital of not less than the amounts required under this paragraph (a) plus ¼ percent of debit balances in introduced customers' cash and margin accounts.

Consolidated Minimum Requirements

(3) A broker or dealer shall maintain net capital of not less than its net capital requirement plus the sum of each broker's or dealer's subsidiary or affiliate minimum net capital requirements, which is consolidated pursuant to appendix (C), 17 CFR 240.15c3–1c.

Additional Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than $2,500 for each security in which he makes a market (unless a security in which he makes a market has a market value of $5 or less, in which event the amount of net capital shall be not less than $1,000 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall he have net capital less than that otherwise required by the other provisions of paragraph (a) of this section, or be required to maintain net capital of more than $1,000,000 unless otherwise required by the other provisions of paragraph (a).

Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements

(5) A broker or dealer shall maintain net capital in addition to the amounts otherwise required under paragraph (a) of this section in an amount greater than 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in Section 3(a)(41) of the Act subject to reverse repurchase agreements with any one party over 110 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party.

* * * * *

(c) * * *

Exclusions From Aggregate Indebtedness

(1) * * *

(xiii) Deferred tax liabilities;

(xiv) Eighty-five percent of amounts payable to a registered investment company related to fail to deliver receivables arising out of purchases of shares of those registered investment companies; and

(xv) Eighty-five percent of amounts payable against securities loaned for which the broker or dealer has a receivable related to securities of the same class and issue that are securities borrowed by the broker or dealer.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(2)(vi) and Appendices (A) and (B), 17 CFR 240.15c3–1a and 240.15c3–1b, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed.

* * * * *

Certain Unsecured and Partly Secured Receivables

(iv)(A) * * *

(B) All unsecured advances and loans, deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts maintained in compliance with the requirements of 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits

which are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.4(c) of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraphs (c)(2)(vi) or appendix A (17 CFR 240.15c3–1a); the market value of stock loaned in excess of the value of any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 10 business days; any collateral deficiencies in secured demand notes as defined in Appendix D (17 CFR 240.15c3–1d);

* * * * * *

(F) * * *

(*3*)(*i*)(*A*) * * *

(*B*) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraphs (c)(2)(vi) of this section (less any deduction taken with respect to repurchase agreements with that party under subparagraph (F)(3)(i)(A)) or, if greater:

(*C*) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker's or dealer's net capital before the application of paragraph (c)(2)(vi) of this section.

* * * * *

Securities Haircuts

(vi) Deducting the percentages specified in paragraphs (C)(2)(vi)(A)–(M) of this section (or the deductions prescribed for securities positions set forth in Appendix (A), 17 CFR 240.15c3–1a) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

Government Securities

(A)(*1*) In the case of a security consisting of principal and interest (except for stripped instruments issued by the United States Treasury) issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

* * * * * *

(*5*) In the case of a Government securities dealer which reports to the Federal Reserve System, which transacts business directly with the Federal Reserve System, and which maintains at all times a minimum net capital of at least $50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75 percent of the deduction otherwise computed under paragraph (c)(2)(vi)(A) of this section.

Municipals

(B) * * *

(*1*) * * *

(*2*) In the case of any municipal security (other than those specified in paragraph (c)(2)(vi)(B)(*1*)) consisting of principal and interest which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

* * * * * *

Nonconvertible Debt Securities

(F)(*1*) In the case of nonconvertible debt securities consisting of principal and interest having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

* * * * * *

(I) [Removed and reserved.]

All Other Securities

(J) In the case of all securities or evidences of indebtedness, except those described in Appendix (A), 17 CFR 240.15c3–1a which are not included in any of the percentage categories enumerated in paragraphs (c)(2)(vi) (A)–(H) of this section or (K)(ii) of this section, the deduction shall be 15 percent (30 percent if the broker's or dealer's net capital requirement as computed under paragraph (c)(2) of this section is less than $100,000) of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, the percentage deduction on such excess shall be 15 percent of the market value of such excess. No deduction need be made in the case of (*1*) a security which is convertible into or exchangeable for another security within a period of 90 days, subject to no condition other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable are short in the accounts of such broker or dealer or (*2*) a security which has been called for redemption and which is redeemable within 90 days.

* * * * * *

Undue Concentration

(M)(*1*) In the case of money market instruments or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempt securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), which are long or short in the proprietary or other accounts of a broker or dealer, including securities which are collateral to secured demand notes defined in appendix (D), 17 CFR 240.15c3–1d, and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraphs (c)(2)(vi)(B)–(H) and appendix (A), 17 CFR 240.15c3–1a, there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in appendix (D), 17 CFR 240.15c3–1d, equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c)(2)(vi) (B–I) or appendix (A), 17 CFR 240.15c3–1a, on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraph (c)(2)(vi) and appendix (A), § 240.15c3–1a.

(*2*) In the case of securities underwritten, the deduction required by this paragraph (c)(2)(vi)(M) shall be applied after 11 business days.

(*3*) In the case of securities described in paragraph (c)(2)(vi)(J), the additional deduction required by this paragraph (c)(2)(vi)(M) shall be 15 percent on that portion of the securities position and secured demand note collateral in excess of 10 percent of the net capital before the application of paragraph

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(c)(2)(vi) and appendix A, 17 CFR 240.15c3–1a.

(4) This paragraph (c)(2)(vi)(M) shall be applied to an issue of equity securities only on the market value of such securities in excess of $10,000 or the market value of 500 shares, whichever is greater, or $25,000 in the case of a debt security.

(5) This paragraph (c)(2)(vi)(M) shall apply notwithstanding any long or short position exemption provided for in paragraph (c)(2)(vi)(J) of this section (except for long or short position exemptions arising out of the first proviso to paragraph (c)(2)(vi)(J)) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of net capital before the application of paragraph (c)(2)(vi) and appendix (A), 17 CFR 240.15c3–1a.

(6) This paragraph (c)(2)(vi)(M) will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of $500,000 in bonds ($5,000,000 in notes) or 10% of tentative net capital, whichever is greater, and are held in position longer than 20 business days from the date the securities are received by the syndicate manager from the issuer.

(7) Any specialist who is subject to a deduction required by this paragraph (c)(2)(vi)(M), respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in paragraph (c)(2)(vi)(J) of this section be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application.

* * * * *

Open Contractual Commitments

(viii) Deducting, in the case of a broker or dealer who has open contractual commitments (other than those option positions subject to appendix (A), 17 CFR 240.15c3–1a), the respective deductions as specified in paragraph (c)(2)(vi) of this section or Appendix (B), 17 CFR 240.15c3–1b, from the market value (which shall be the market value whenever there is a market) on each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer.

(A) The deduction for contractual commitments in those securities that are treated in paragraph (c)(2)(vi)(J) of this section shall be 30 percent unless the class and issue of the securities subject to the open contractual commitment deduction are listed for trading on a national securities exchange or are designated as NASDAQ National Market System Securities.

(B) A broker or dealer that maintains in excess of $250,000 of net capital need not deduct from net worth any amount computed under this paragraph that is less than $150,000.

(C) The deduction with respect to any single commitment shall be reduced by the unrealized profit in such commitment, in an amount not greater than the deduction provided for by this paragraph (or increased by the unrealized loss), in such commitment, and in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) Deducting from the contract value of each failed to deliver contract which is outstanding five business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security which would be required by application of the deduction required by paragraph (c)(2)(vi). Such deduction, however, shall be increased by any excess of the contract price over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the fail, but not to exceed the amount of such deduction. The designated examining authority for the broker or dealer may, application of the broker or dealer, extend for a period up to 5 business days, any period herein specified when it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period up to 5 business days, any period herein specified when it satisfied that the extension is warranted.

* * * * *

(x)(A) * * *

(2) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a long position in a security, other than an option, and a short position in a call option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of this section) of the market value of the long position reduced by any excess of the market value of the long position over the exercise value of the short option position. In no event shall such reduction operate to increase net capital.

(3) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a short position in a security, other than an option, and a long position in a call option, the deduction shall be the lesser of 15 percent of the market value of the short position or the amount by which the exercise value of the long option position exceeds the market value of the short position; however, if the exercise value of the long option position does not exceed the market value of the short position, no deduction shall be applied.

(4) In the case of a bona fide position as defined in this paragraph (c)(2)(x) involving a short position in a security other than an option, and a short position in a put option, the deduction shall be 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of this section) of the market value of the short security position reduced by any excess of the exercise value of the short option position over the market value of the short security position. No such reduction shall operate to increase net capital.

(5) In the case of a bona fide hedged position as defined in this paragraph (c)(2)(x) involving a long position in a security, other than an option, and a long position in a put option, the deduction shall be the lesser of 15 percent of the market value of such long security position or the amount by which the market value of such long security position exceeds the exercise value of the long option position. If the market value of the long security position does not exceed the exercise value of the long option position, no deduction shall be applied.

* * * * *

Promptly Transmit and Deliver

(9) A broker or dealer is deemed to "promptly transmit" all funds and to "promptly deliver" all securities within the meaning of paragraph (a)(2)(vii) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities; provided, however, that such prompt transmission or delivery shall not be required to be effected prior to the settlement date for such transaction.

* * * * *

Forward and Promptly Forward

(10) A broker or dealer is deemed to "forward" or "promptly forward" funds or securities within the meaning of paragraph (a)(2)(v) only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

* * * * *

3. By amending § 240.15c3–1a by revising paragraphs (c)(1)–(c)(5), (c)(7), (c)(9) and (c)(10) as follows:

§ 240.15c3–1a Options (Appendix A to 17 CFR 240.15c3–1).

* * * * *

(c) * * *

Uncovered Calls

(1) Where a broker or dealer is short a call, deducting, after the adjustment provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.15c3–1) of the current market value of the security underlying such option reduced by an excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

Uncovered Puts

(2) Where a broker or dealer is short a put, deducting, after the adjustment provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.15c3–1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

Covered Calls

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting, after the adjustments provided for in paragraph (b) of this appendix (A), 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.1c3–1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this subparagraph shall have the effect of increasing net capital.

Covered Puts

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting, after the adjustment provided for in paragraph (b) of this appendix (A) 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.15c3–1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

Conversion Accounts

(5) Where a broker or dealer is long equivalent units of the underlying security, long an unlisted put written or endorsed by a broker or dealer and short an unlisted call in his proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.15c3–1) of the current market value of the long security.

* * * * *

Long Over-the-Counter Options

(7) Where a broker or dealer is long an unlisted put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A)–(K) of 17 CFR 240.15c3–1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of 17 CFR 240.15c3–1.

* * * * *

Certain Security Positions With Offsetting Options

(9) Where a broker or dealer is long a security for which he is also long a listed put (such broker or dealer may in addition be short a call), deducting, after the adjustments provided in paragraph (b) of this appendix (A), 15 percent of the market value of the long security position not to exceed the amount by which the market value of equivalent units of the long security position exceeds the exercise value of the put. If the exercise value of the put is equal to or exceeds the market value of equivalent units of the long security position, no percentage deduction shall be applied.

* * * * *

(10) Where a broker or dealer is short a security for which he is also long a listed call (such broker or dealer may in addition be short a put deducting), after the adjustments provided in paragraph (b) of the appendix (A) 15 percent of the market value of the short security position not to exceed the amount by which the exercise value of the long call exceeds the market value of equivalent units of the short security position. If the exercise value of the call is less than or equal to the market value of equivalent units of the short security position no percentage deduction shall be applied.

4. By amending § 240.15c3–1c by revising paragraph (b)(1), as follows:

§ 240.15c3–1c Consolidated computations of net Capital and aggregate indebtedness for certain subsidiaries and affiliates (Appendix C to 17 CFR 240.15c3–1).

* * * * *

Required Counsel Opinions

(b)(1) If the consolidation, provided for in paragraph (a) of this section of any such subsidiary or affiliate results in the increase of the broker's or dealer's net capital or the decrease of the broker's or dealer's minimum net capital requirement under paragraph (a) of 17 CFR 240.15c3–1, and an opinion of counsel described in paragraph (b)(2) has not been obtained, such benefits shall not be recognized in the broker's or dealer's computation required by this section.

* * * * *

5. By amending § 240.15c3–1d by revising paragraphs (b)(6)(iii), (b)(7), (b)(8), (b)(10)(ii)(b), (c)(2), (c)(5)(i), and (c)(5)(ii)(A) as follows:

§ 240.15c3–1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(b)(6) * * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction: the aggregate indebtedness of the broker or dealer may not exceed 1000 percent of its net capital, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, net capital may not be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of

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funds in the option customer's account). No single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1.

Permissive Prepayments

(7) A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such or on or prior to the date on which the Payment Obligation in respect of such or on prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either:

(i) aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, its net capital would be less than the greater of 5% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) its net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of 17 CFR § 240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

Suspended Repayment

(8) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Prepayment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either:

(i) the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital, or in the case of a broker or dealer operating pursuant to paragraph (a)(1(ii)) of 17 CFR 240.15c3–1, its net capital would be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) its net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of 17 CFR 240.15c3–1 including paragraph (a)(1)(ii) if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and § 240.15c3–1d.

* * * * *

(10)(ii) * * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than the greater of 2 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be seqregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority of the Commission first determines and notifies the broker or dealer of such fact;

* * * * *

(c) * * *

Notice of Maturity or Accelerated Maturity

(2) Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer:

(i) either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, its net capital would be less than the greater of 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or

(ii) less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of 17 CFR 240.15c3–1.

* * * * *

Temporary and Revolving Subordination Agreements

(5)(i) For the purpose of enabling a broker of dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions, or if immediately prior to entering into such subordination agreement either:

(A) the aggregate indebtedness of the broker or dealer exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1; or

(B) in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, its net capital is less than 5 percent of aggregate debits computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, its net capital is less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), or is less than 120 percent of the minimum dollar amount required by paragraph (a) of this section, or

(C) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3–1. Such temporary subordination agreement shall be subject to all other provisions of this appendix D.

(ii) * * *

(A) After giving effect thereto (and to all Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due with six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either

(*1*) aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by 17 CFR 240.15c3–1, or in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of 17 CFR 240.15c3–1, its net capital is less than the greater of 6 percent of aggregate debits computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 10 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account); or

(*2*) less than 200 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section or

* * * * *

6. By adding § 240.15c3–1e as follows:

§ 240.15c3–1e Temporary minimum requirements (Appendix E to 17 CFR 240.15c3–1e).

Brokers or Dealers That Carry Customer Accounts Aggregate Indebtedness Method

(a) A broker or dealer that falls within the provisions of paragraph (a)(2)(i), of Rule 15c3–1 and computes his required net capital under Rule 15c3–1(a)(1)(i) shall maintain net capital not less than the greater of the amount computed under that paragraph (a)(1)(i) or:

(1) $25,000 until December 31, 1990;
(2) $81,250 after January 1, 1991 but until December 31, 1991;
(3) $137,500 after January 1, 1992 but until December 31, 1992;
(4) $193,750 after January 1, 1993, but until December 31, 1993; and
(5) $250,000 after January 1, 1994.

Brokers or Dealers That Carry Customer Accounts

Alternative Method

(b) A broker or dealer that elects the provisions of Rule 15c3–1(a)(1)(ii) shall maintain net capital of not less than the greater of the amount computed under that paragraph (a)(1)(ii) or:

(1) $100,000 until December 31, 1990;
(2) $137,500 after January 1, 1991 but until December 31, 1991;
(3) $175,000 after January 1, 1992 but until December 31, 1992;
(4) $212,500 after January 1, 1993 but until December 31, 1993; and
(5) $250,000 after January 1, 1994.

Broker-Dealers That Carry Customer Accounts, But Do Not Generally Hold Customer Funds or Securities and Dealers, Underwriting and Arbitragers

(c) A broker or dealer that falls within the provisions of Rule 15c3–1(a)(2) (ii) or (iii) shall maintain net capital not less than the greater of the amount computed under Rule 15c3–1(a)(1)(i) or:

(1) $25,000 until December 31, 1990;
(2) $43,750 after January 1, 1991 but until December 31, 1991;
(3) $62,500 after January 1, 1992 but until December 31, 1992;
(4) $81,250 after January 1, 1993 but until December 31, 1993; and
(5) $100,000 after January 1, 1994.

Introducing Brokers That Routinely Receive Customer Funds or Securities

(d) An introducing broker that falls within the provisions of Rule 15c3–1(a)(2)(iv) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3–1(a)(1)(i) or ¼ percent of debit balances in introduced customers' cash and margin accounts plus:

(1) $25,000 until December 31, 1990;
(2) $43,750 after January 1, 1992 but until December 31, 1991;
(3) $62,500 after January 1, 1992 but until December 31, 1992;
(4) $81,250 after January 1, 1993 but until December 31, 1993; and
(5) $100,000 after January 1, 1994.

Introducing Brokers That Do Not Routinely Receive Customer Funds or Securities

(e) An introducing broker that falls within the provisions of Rule 15c3–1(a)(2)(vi) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3–1(a)(1)(i) or ¼ percent of debit balances in introducing customers' cash and margin accounts plus:

(1) $5,000 until December 31, 1990;
(2) $16,250 after January 1, 1991 but until December 31, 1991;
(3) $27,500 after January 2, 1992 but until December 31, 1992;
(4) $38,750 after January 1, 1993 but until December 31, 1993; and
(5) $50,000 after January 1, 1994.

Brokers or Dealers Engaged Solely in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(f) A broker or dealer that falls within the provisions of Rule 15c3–1(a)(2)(vii) shall maintain net capital of not less than the greater of the amount computed under Rule 15c3–1(a)(1)(i) or:

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(1) $2,500 until December 31, 1990;
(2) $8,125 after January 1, 1991 but until December 31, 1991;
(3) $13,750 after January 2, 1992 but until December 31, 1992;
(4) $19,375 after January 1, 1993 but until December 31, 1993;
(5) $25,000 after January 1, 1994.

* * * * *

By the Commission.
Dated: September 15, 1989.
Jonathan G. Katz,
Secretary.

[FR Doc. 89-23022 Filed 9-29-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89N-0411]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) antitussive drug products to use only the term "lozenge" to describe a solid dosage form intended for dissolution in the mouth and to clarify that an oral antitussive drug product can be marketed in a lozenge dosage form. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by December 1, 1989; written comments on the agency's economic impact determination by January 30, 1990.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published an advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. The Panel referred to solid topical dosage forms intended for dissolution in the mouth as either a troche or a lozenge. (See 41 FR 38312 at 38343 to 38353.)

In the **Federal Register** of October 19, 1983 (48 FDR 48576), FDA issued a notice of proposed rulemaking (tentative final monograph) for OTC antitussive drug products. One ingredient (menthol) was proposed as Category I in a lozenge dosage form. (See § 341.74(d)(2)(iii).) In response to a comment's request, the agency also included a "compressed tablet" dosage form for products containing menthol to be dissolved in the mouth. (See comment 20 at 48 FR 485786 at 48588 and proposed § 341.3(k) and § 341.74(d)(2)(iii) at 48 FR 48576, 48593 and 48594.)

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products (21 CFR part 341) that established conditions under which these products are generally recognized as safe and effective and not misbranded. The monograph provided for menthol to be used in a lozenge or compressed tablet dosage form. (See § 341.3(c) and § 341.74(d)(2)(iii) at 52 FR 30042, 30555 and 30056.)

Since the publication of the antitussive final monograph, the United States Pharmacopeial Convention, Inc., in a proposed revision of the United States Pharmacopeia (U.S.P.) (ref. 1), and in the recently published U.S.P. XXII (ref. 2), included a definition for lozenges as follows:

> Lozenges are solid preparations containing one or more medicaments, usually in a flavored, sweetened base which are intended to dissolve or disintegrate slowly in the mouth. They can be prepared by molding (gelatin and/or fused sucrose or sorbitol base) or by compression of sugar based tablets. Molded lozenges are sometimes referred to as pastilles while compressed lozenges are often referred to as troches. They are usually intended for treatment of local irritation or infections of the mouth or throat but may contain active ingredients intended for systemic absorption after swallowing.

Based on the new U.S.P. definition, the agency has reconsidered its position stated in comment 20 of the notice of proposed rulemaking for OTC antitussive drug products (see above) and intends to adopt the new U.S.P. definition. Accordingly, the agency is proposing (1) to amend the final monograph for OTC antitussive drug products to use only the term lozenge to describe a solid dosage form to be dissolved in the mouth for a local effect, and (2) to delete the term "compressed tablet" from the final monograph in § 341.3(c) and § 341.74(d)(2)(iii). In addition, the definition in § 341.3(b) for an "oral antitussive drug" is being revised slightly to clarify that such drugs may also be formulated as lozenges. This revision is being made because the U.S.P. definition of lozenges provides for this dosage form to be dissolved in the mouth and to contain ingredients intended to have a systemic effect and because the agency is aware that antitussive drug products intended for systemic use are currently being marketed as lozenges (ref. 3). Thus, the revised definition in § 341.3(b) will be consistent with the new U.S.P. definition of lozenges.

The agency does not intend to finalize this amendment until the U.S.P. XXII becomes official in January 1990. In addition, the agency intends to use the term "lozenge" for solid dosage forms to be dissolved in the mouth in applicable rulemakings for other OTC drug categories, in future issues of the **Federal Register.** While the various types of lozenges such as compressed tablets, troches, or pastilles will not be described in final monographs, these terms may continue to be used in labeling. Accordingly, this proposed amendment, when finalized will not require any labeling revisions.

References

(1) "Pharmacopeial Forum," In-Process Revision, The United States Pharmacopeial Convention, Inc., 14:4390, 1988.
(2) "The United States Pharmacopeia XXII—The National Formulary XVII," The United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1692, 1989.
(3) "Physicians' Desk Reference—For Nonprescription Drugs," 9th Ed., Medical Economics Co., Inc., Oradell, NJ, pp. 512. 515, 651, and 652, 1988.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entitites. However, this particular rulemaking for OTC drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antitussive drug products. Comments regarding the impact of this rulemaking on OTC antitussive drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1989, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before January 30, 1990. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Antitussive drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in part 341 as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

> **Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 341.3 is amended by revising paragraphs (b) and (c) to read as follows:

§ 341.3 Definitions.

* * * * *

(b) *Oral antitussive drug.* A drug that either is taken by mouth or is dissolved in the mouth in the form of a lozenge and acts systemically to relieve cough.

(c) *Topical antitussive drug.* A drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer, or when dissolved in the mouth in the form of a lozenge for a local effect.

* * * * *

3. Section 341.74 is amended by revising paragraph (d)(2)(iii) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(d) * * *
(2) * * *

(iii) *For products containing menthol identified in § 341.14(b)(2) in a lozenge.* The product contains 5 to 10 milligrams menthol. Adults and children 2 to under 12 years of age: Allow lozenge to dissolve slowly in the mouth. May be repeated every hour as needed or as directed by a doctor. Children under 2 years of age: consult a doctor.

* * * * *

Dated: September 12, 1989.
Ronald G. Chesemore,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23137 Filed 9-29-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Minor Field Revisions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns new permit revision procedures that will allow minor field revisions to be processed in the Department for Surface Mining Reclamation and Enforcement's (DSMRE) Regional Offices rather than in the central Office in Frankfort. The proposal contains a list of permit revisions defined as minor field revisions.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 1, 1989. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on October 27, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 17, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: Roger Calhoun, Acting Director, Lexington Field Office Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field

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Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327
Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240 Telephone: (202) 343–5492
Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828
Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated August 15, 1989, (Administrative Record No. KY–911), Kentucky submitted proposed regulations to revise Kentucky Administrative Regulations (KAR) at 405 KAR 8:010. The proposed amendment defines and establishes a new procedure for permit revisions that are minor field revisions by amending 405 KAR 8:010 section 20. The proposed amendment gives the Regional Offices of DSMRE the authority to process 27 types of minor field revisions as defined in the proposed amendment. The proposed regulations provide conditions for processing the various types of minor field revisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. on October 17, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1989.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89–23144 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

Misssouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Missouri Permanent Regulation Program. The proposed amendment pertains to revegetation, permitting, and phase III liability release. Missouri is withdrawing this amendment because it intends to revise it and submit it as another formal amendment at a future date.

DATE: This withdrawal is effective October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106; Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION: On March 23, 1989, (Administrative Record No. MO–422) and April 13, 1989, (Administrative Record No. MO–426) Missouri submitted a proposed amendment to its program pursuant to the Surface Mining Control and Reclamation Act of 1977. The proposed amendment revised regulations on revegetation requirements and permit application requirements, and established guidelines for phase III liability releases.

On May 9, 1989, (Administrative Record No. MO–435) OSM announced receipt and solicited public comment on the program amendment (54 FR 19923). On August 16, 1989, (Administrative Record No. MO–456) OSM notified Missouri of deficiencies in the proposed program amendment. On September 13, 1989, (Administrative Record No. MO–471) Missouri notified OSM of its desire to withdraw the proposed program amendment. Therefore, the proposed amendment announced in the May 9, 1989 **Federal Register** is withdrawn, and part 925 title 30 of the Code of Federal Regulations is not amended.

List of Subjects 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface Mining, Underground Mining.

Dated: September 20, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–23145 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3642–4]

Ocean Dumping; Proposed Designation of a Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate until midnight December 31, 1991 a woodburning site located approximately 21 nautical miles offshore of Seaside Park, New Jersey for the burning of driftwood, timbers, wooden hulls, and similar wooden debris generated in New York Harbor and its environs. This action is necessary to provide an acceptable ocean disposal site for the current and future disposal of this material. The proposed site is not the Interim site which has been used historically, but an alternative site in the vicinity of the Interim site. The Interim site was not proposed for designation because of its location within popular commercial and sport fishing areas. The alternative site proposed for designation was determined to be the most environmentally preferable location. The proposed site designation is until midnight December 31, 1991, and is subject to a seasonal restriction and continuing monitoring to ensure that unacceptable adverse environmental impacts do not occur.

Three public hearings regarding the proposed site designation have been scheduled.

DATE: Public Hearings will be held on October 10, 1989 in Seaside Park, New Jersey, October 11, 1989 in Mineola, New York, and October 12, 1989 Long Branch, New Jersey.

Hearing sessions will be held at each of the above locations starting at 7:00 PM and ending with the taking of the last consecutive statement.

Comments must be received on or before November 2, 1989.

ADDRESS: Public Hearing Locations:

Borough Hall, Borough of Seaside Park, 6th and Central Avenues, Seaside Park, New Jersey
Nassau County Executive Building, Board of Supervisors' Meeting Room, Fifth Floor, 1 West Street, Mineola, New York
Long Branch Municipal Building, Council Chamber, Second Floor, 344 Broadway, Long Branch, New Jersey

Send comments to: Mario P. Del Vicario, Chief, Marine and Wetlands Protection Branch, EPA Region II, 26 Federal Plaza, New York, New York 10278.

The file supporting this proposed rulemaking is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (Rear), 401 M Street Southwest, Washington, DC 20460
EPA Region II Library, 26 Federal Plaza, New York, New York 10278–0090
Environmental Services Division, Woodbridge Avenue, Raritan Depot, Building 10, Edison, New Jersey 08837

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264–5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("The Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate dredged material and woodburning sites to the Regional Administrator of the region in which the site is located. This site designation action is being proposed pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H § 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as proposed rulemaking in accordance with section 228 of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites. Interested persons may participate in this proposed rulemaking by submitting written comments by November 2, 1989.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this.

EPA has prepared a draft EIS entitled Draft Environmental Impact Statement for the Designation of an Ocean Woodburning Site for the New York Bight. The notice of availability of this draft EIS for public review and comment is being published concurrently in the **Federal Register**. The public comment period on this draft EIS is the same as for this proposed rule. Anyone desiring a copy of the draft EIS may obtain one from the addresses given above.

The action discussed in the draft EIS is the designation of an ocean site for woodburning at-sea. The purpose of the designation is to provide an environmentally acceptable location for ocean burning of wood. Appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

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New information concerning practicable land-based alternatives has become available since the printing of the draft EIS. Therefore, although the draft EIS suggested a 5 year site designation, the period of designation is being limited to midnight December 31, 1991 under this proposed rule.

In order to ensure that the December 31, 1991 expiration date is attained a phase out schedule would be added to the U.S. Army Corps of Engineers (COE) permit which will require them to develop and to implement land based alternatives and gradually reduce the volume of material burned at-sea until all the wooden material is disposed of via land-based alternatives by December 31, 1991. Any other potential permittees will be subject to the same requirements.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land-based disposal alternatives including land-based incineration; reuse/recycling alternatives such as horticultural mulch, lumber, and mass incineration with heat recovery or use as fuel; landfilling via burial along shorelines or via disposal at existing landfills; and use as fuel for gasification facilities are also examined. Generally, all of these land-based disposal methods presented various technical, economic and institutional constraints, and are not currently viable disposal alternatives for the large scale disposal of wooden debris from New York Harbor. Implementable disposal alternatives to burning at-sea are currently not available. However, in light of recent advances, particularly woodchipping and gasification facilities, EPA believes that implementable disposal alternatives can be available by December 31, 1991. For this reason, while the need for a woodburning site currently exists, land-based alternatives can be implemented that obviate the need for a permanent site designation beyond December 31, 1991. Certain land-based disposal methods may also be both technically and economically feasible for current projects, therefore EPA will determine the need for ocean burning on a permit-by-permit and case-by-case basis. In an effort to ensure the adequate investigation of land-based alternatives, EPA will include specific conditions in any future permits requiring the permittee to pilot woodchipping operations and associated land-based disposal. Designation of an ocean woodburning site does not imply that the site will be available for all permit applicants. Conversely, each permit applicant must demonstrate a need in order for the permit to be issued; and each project encompassed by the permit will be assessed individually before being allowed to use the site. Ocean woodburning site options evaluated included the continued use of the Interim woodburning site, the evaluation of alternative sites located within the New York Bight, and the consideration of an off-continental shelf site. An alternative woodburning site within the New York Bight was determined to be the most environmentally acceptable site.

The EIS presents the information needed to evaluate the suitability of ocean woodburning areas for final designation and is based upon a site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The proposed site is a rectangle approximately 2.5 by 5.0 nautical miles located approximately 21 nautical miles off the coast of Seaside Park, New Jersey. The site occupies an area of approximately 12.5 square nautical miles, and water depths average 30 meters. The coordinates of the site are as follows:

Latitude: 39° 52' 40" to 39° 57' 00" N
Longitude: 73° 35' 20" to 73° 38' 10" W

All of the wooden debris burned at the designated site will be from New York Harbor and its environs. No woodburning activities may occur from midnight May 26 to midnight September 7 each year, the peak periods of recreational activity. The total amount of wooden debris burned at the Interim site between 1973 and 1988 has been approximately 405,345 tons. If at any time woodburning operations at the site cause significant adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. (1) Sites are selected so as to minimize interference with other marine activities, (2) to keep any temporary perturbations from the woodburning from causing impacts outside the site, and (3) to permit effective monitoring to detect any adverse impacts at an early stage. (4) Where feasible, locations off the Continental Shelf are chosen. (5) If at anytime woodburning at an Interim site causes significant adverse impacts, the use of that site will be terminated as soon as suitable alternate woodburning sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed woodburning site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria except for the preference of sites located off the Continental Shelf. EPA has determined, based upon the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of the site proposed in this action. Technical constraints associated with the selection of a site off the Continental Shelf include a structural and stability review of each vessel by the Coast Guard and the potential structural retrofitting, and weather constraints on the time required to complete a round trip. From a safety standpoint, the selection of a site off the Continental Shelf would increase the transit time to the woodburning site from approximately 8–12 hours to about three days. Because weather conditions often fluctuate quite rapidly, EPA believes that the safety of the workers could be jeopardized if they were off the Continental Shelf and a storm arose. Danger is most inherent during a severe storm which may force the tug operator to release the barge, resulting in its uncontrolled passage which may endanger other vessels through its presence and/or the release of wood debris. The environmental benefits associated with relocating the burn site to a site off the Continental Site would not sufficiently outweigh the safety problems that would result from increasing the distance of the woodburning site from New York Harbor.

The location of the woodburning site has been chosen to minimize the interference of woodburning activities with other activities in the marine environment. The site is not located in major shipping lanes. Temporary impacts on water quality from burning at-sea can be expected to return to ambient levels before reaching any beach, shoreline, or known geographical limit of a fishery or shellfishery. Based upon woodburning site evaluation studies presented in the EIS, the site proposed for designation satisfies the criteria for site selection. The woodburning site has been limited in size in order to localize, for

identification and control, any immediate adverse impacts and to facilitate the implementation of an effective monitoring and surveillance program to prevent adverse long range impacts.

EPA established the eleven specific factors (§ 228.6) to constitute an environmental assessment of the impact of woodburning at the site. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the proposed site are reviewed below in terms of these eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The rectangular site is approximately 12.5 square nautical miles in size and is located approximately twenty one nautical miles off the coast of Seaside Park, New Jersey. The coordinates of the site are given above in Section C of this proposed rule. Water depths average 30 meters at the site. The bottom topography of the proposed site would not be altered by the woodburning activities as neither the wooden debris nor residual ashes are dumped into the water, hence, the impact on bottom topography will be virtually none.

2. Location in Relation to Breeding, Spawning, Nursery Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The proposed site does not encompass any known unique breeding, spawning, nursery, or passage area for nekton, finfish, shellfish, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, sea scallops, and lobsters can be found throughout the Bight. The Bight also supports a large commercial and recreational fisheries of species including fluke, Atlantic mackerel, scup, whiting, red hake, black sea bass, Atlantic bonito, bluefin tuna, tautog, and bluefish. The proposed woodburning site was selected because of its location outside of predominant commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species.

3. Location in Relation to Beaches and Other Amenity Areas. (40 CFR 228.6(a)(3))

For shoreline areas in both New York and New Jersey, recreation and tourism represent a major component of the economy. The recreationally developed land along these shoreline areas is a mixture of Federal and State parks and beaches operated by local communities. Recreational facilities under Federal jurisdiction include the Gateway National Recreational Area, Jamaica Bay National Seashore, and Fire Island National Seashore. Barnegat Lighthouse State Park and Island Beach State Park are operated by the New Jersey State Division of Parks and Forestry. Beaches under local jurisdiction include Point Lookout, Lido Beach Atlantic Beach, Nassau Beach Park, and Long Beach in New York and seventy miles of beaches in New Jersey. As neither wooden debris nor ashes are discharged into the water during a woodburning operation, site designation will not impact the use of these beaches.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any (40 CFR 228.6(a)(4))

Only wooden debris generated within New York Harbor and its environs may be burned at the currently used Interim site, as well as at the proposed site. Between 1973 and 1988, the volume of wooden debris burned at the Interim site has totaled 405,345 tons and has consisted primarily of pilings, timbers, driftwood, wooden hulls, and similar wooden materials. The annual tonnage burned varies significantly from year to year, and in 1988 a total of 32,167 tons was burned at the Interim site.

A waste characterization must be performed prior to burning in order to ascertain that the material is suitable for burning at-sea. Data on the chemical characteristics of the wood will be reviewed by EPA prior to allowing any wood to be burned.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance of woodburning operations at the proposed site could be achieved by helicopter, a shiprider aboard the tugboat transporting the burn barge, or an independent vessel. Periodic monitoring and surveillance by EPA, the Coast Guard, and the permittees will continue for as long as the site is used. Additional monitoring will be required if the volume or characteristics of the material to be burned changes significantly in order to ensure that adverse impacts do not develop. If evidence of significant adverse environmental effects is found, EPA will take the appropriate steps to limit or terminate burning at the site. Periodic reports of the monitoring operations will be made available to interested persons upon request.

6. Dispersal, Horizontal Transport, and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Because neither the wooden debris nor the resultant ashes are disposed overboard, the quantity of dissolved or particulate matter entering the water column as a result of the burning operations will be minimal. The only particulate matter which may enter the water column are ashes which are blown off the burn barge, and material which may wash into the water column when the barge is wetdown. Debris from these sources will not result in a significant increase in the level of suspended solids or turbidity. A permit condition will mandate that all permittees completely wetdown at the burnsite until there is no longer any steam emanating from the burn barge. A separate wetdown site will not be designated, and no barge may leave the burnsite until a wetdown has been performed.

Hydrographic conditions and related vertical mixing characteristics vary greatly from season to season in the New York Bight. The amount of vertical mixing will determine the degree to which materials released into the surface waters will remain at high concentrations or be dispersed. During the summer months, the high degree of stratification created by the strong temperature gradient and relatively moderate winds will result in a greater tendency for the dissolved and particulate materials to remain at shallow depths and be mixed horizontally by the surface currents. Dissolved and particulate materials added to the surface waters during the fall, winter, and spring would be more likely to disperse throughout the water column. Surface currents generally flow southward.

7. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The woodburning site is located near the navigation lanes serving the ports of New York and New Jersey, but woodburning activities should not interfere with shipping activities. Smoke resulting from woodburning activities could reduce visibility. However, any such problems would be restricted to the immediate area of the woodburning site since the burn barges are confined to

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that specific area. The woodburning site is clearly marked on National Oceanographic and Atmospheric Administration navigational maps, and the need for caution in this area is indicated.

Floating or partially submerged waste wood from the burn barge could become a navigational hazard or damage fishing nets and other gear. Specific procedures for barge loading and retrieving wood that might fall overboard are included in the permit conditions for use at the site to minimize the potential for wood wastes being dislodged during transport.

The smoke plume from the woodburning operation will not affect air traffic in the area. Although there is a great deal of air traffic in the New York Harbor area, this traffic is generally at altitudes above the height of the smoke plume. There is a possibility that a low-flying aircraft may pass through a smoke plume, but the passage would be so momentary that it would be extremely unlikely to affect aircraft. Previous monitoring reports have indicated that woodburning at-sea would have no significant environmental effect on either commercial or recreational fisheries in the New York Bight. The woodburning site does not infringe upon either commercial or sport fishing locations, and the closest sport fishing takes place approximately one nautical mile east of the site. Wind dispersion of the particulates followed by rapid dilution via diffusion in the water column prevents any significant increase in pollution loads above ambient sea water concentrations.

No significant physical or aesthetic impacts on beaches or other type of recreational resources would result from the woodburning operations. There are no known economically recoverable mineral resources on the sea floor below the woodburning site. Therefore, mineral extraction is not a concern. Similarly, fish and shellfish are not cultured in the vicinity of the woodburning site, and the water is not used for desalination. The woodburning site is not an area of special scientific importance.

A special permit condition prohibits woodburning activities from midnight May 26 to midnight September 7, during periods of peak recreational activity. This moratorium adds further protection against any adverse physical or aesthetic impacts on recreational resources from woodburning operations.

8. *The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys* (40 CFR 228.6(a)(9))

Water column species known to frequent the New York Bight include various finfish, shellfish, and marine mammals. Commercially and recreationally important species of finfish include fluke, flounder, Atlantic bonito, bluefin tuna, bluefish, and tautog. Shellfish resources within the Bight include surf clams, quahogs, sea scallops, and lobsters. Marine mammals such as whales, dolphins, and sea turtles frequent the Bight on a seasonal basis or during migration. The woodburning site is not a critical environment for any of these species.

Water quality characteristics at the site including temperature, salinity, density, and organic and inorganic loading rates are typical of the general Bight environment. The Bight Apex is a heavily used and environmentally stressed coastal area. Municipal and industrial wastewater effluents, along with runoff, atmospheric fallout, and the metals disposed of at the different dump sites, contribute large quantities of heavy metals, nutrients, organic matter, and chlorinated hydrocarbons to the waters there. The distribution of these materials is generally a function of the distance from the source and composition of the solids that are either suspended in the water column or accumulated on the bottom. Toward the outer edges and outside of the Apex, nutrient and dissolved oxygen levels are quite predictable and are a function of the water's temperature-salinity structure and the degree of weather-induced mixing. Woodburning activities will not adversely impact the water quality of the Bight.

9. *Existence At or In Close Proximity to the Site of Any Significant or Cultural Features of Historical Importance* (40 CFR 228.6(a)(11))

Cultural or historical activities at or near the woodburning site are not known to exist. There are no known shipwrecks of historical significance in the vicinity of the woodburning site. Certain historical re-enactments such as the parade of tall ships and similar regattas may occur in the vicinity of the woodburning site, but the impact of the disposal operation on such events would occur primarily during the summer months when there is a woodburning moratorium.

10. *Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects)* (40 CFR 228.6(a)(7))

A variety of disposal activities are currently practiced in the New York Bight. Sewage sludge, dredged material, cellar dirt, and acid wastes have all been discharged into the New York Bight. Several environmental impact statements have been prepared by EPA to address ocean waste disposal in the New York Bight.

Data suggest that previous dumping has created only minor modifications at the sight. Available information indicates that no significant increase of oil, grease, petroleum hydrocarbons, or trace metals will occur in the seawater concentrations as a result of fallout from the woodburning operations. Woodburning activities will not impact marine mammals other than to cause them to avoid the burn barge when in operation.

11. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Prior to burning, the wooden debris may contain undesirable organisms or nuisance species such as rodents; however, the burning process would exterminate them. There are no components in the wooden debris that would attract or recruit nuisance species at the disposal site. Therefore, the use of an ocean woodburning site is unlikely to result in the development or recruitment of nuisance species.

E. Proposed Action

The draft EIS recommends that the proposed site be designated for five years. However, because new information concerning practicable land-based alternatives has become available since the printing of the draft EIS, EPA is proposing that the period of designation of a woodburning at-sea site be limited until midnight December 31, 1991. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the woodburning site as an EPA approved ocean burning site is being published as proposed rulemaking. Management of this site has been delegated to the Regional Administrator of Region II.

It should be emphasized that designation of an ocean woodburning site does not constitute or imply EPA's approval of the actual burning of materials at-sea. Before burning any material at the site may commence, EPA must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual burning if it determines that environmental concerns under the Act have not been satisfied.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is requested to perform a regulatory flexibility analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for wooden debris. Consequently, this rule does not necessitate preparation of a regulatory flexibility analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory flexibility analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the executive order as a "major" rule. Consequently, this rule does not necessitate preparation of a regulatory impact analysis.

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 21, 1989.

William J. Muszynski, P.E.,

Acting Regional Administrator for Region II.

In consideration of the foregoing, subchapter H or chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(82) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(82) New York Harbor Woodburning Disposal Site—Region II.

Location: Latitude 39°52'40" to 39°57'00" N, Longitude: 73°35'20" to 73°38'10" W
Size: 12.5 square nautical miles
Depth: 30 meters average
Primary Use: Woodburning
Period of Use: Until December 31, 1991
Restrictions: Disposal shall be limited to wooden debris generated in New York Harbor and its environs.

[FR Doc. 89-21164 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-410, RM-6828]

Radio Broadcasting Services; Ferriday, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Tom D. Gay, d/b/a The Radio Group, licensee of Station KFNV-FM, Channel 296A, Ferriday, Louisiana, proposing the substitution of Channel 296C3 for Channel 296A at Ferriday and the modification of the station's license to specify operation on the higher class co-channel. The proposal could provide the community's first wide coverage area FM service. A site restriction of 12.4 kilometers (7.7 miles) east of the city is required. The coordinates are 31-40-00 and 91-26-00.

DATES: Comments must be filed on or before November 17, 1989, and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. Popham, Esquire, 700 Camp Street, New Orleans, LA 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-410, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibilty Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.120(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23202 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-412, RM-6735]

Radio Broadcasting Services; Rayville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ken Diebel, Delta Communications, Ltd., licensee of Station KTJC (FM), Rayville, Louisiana, proposing the substitution of Channel 222C2 for Channel 222A and modification of its license accordingly. The coordinates for Channel 222C2 are 32-14-15 and 91-33-50.

DATES: Comments must be filed on or before November 17, 1989 and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ken Diebel, Delta Communications, Ltd., 12071/2 Louisa St., Rayville, Louisiana 71269.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-412, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the

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Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23203 Filed 9-29-89; 8:45 am]

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47 CFR Part 73

[MM Docket No. 89-411, RM-6944]

Radio Broadcasting Services; Hazlehurst, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Copiah County Broadcasting Co. proposing the substitution of Channel 265C3 for Channel 265A at Hazlehurst, Mississippi. Petitioner also request modification of its license for Station WMDC(FM) to specify operation on Channel 265C3. The coordinates for Channel 265C3 are 31-50-00 and 90-11-00.

DATES: Comments must be filed on or before November 17, 1989 and reply comments on or before December 4, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Albert Mack Smith, Copiah County Broadcasting Co., P.O. Box 680, Hazlehurst, Mississippi 39083.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposing Rule Making, MM Docket No. 89-411, adopted September 11, 1989, and released September 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23204 Filed 9-29-89; 8:45 am]

BILLING CODE 6712-01-M

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

Acquisition Regulation (NRCAR)

RIN 3150-AC01

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The NRCAR is necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs of the agency. The NRCAR is intended to implement and supplement the government-wide Federal Acquisition Regulation (FAR).

DATES: The comment period expires December 1, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch; Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the **Federal Register** on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement FAR policies

and procedures within the agency and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementing of the FAR.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83-2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant." "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The NRC has determined that this rule is not significant within the meaning of OFPP Policy Letter No. 83-2. This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors.

While not required to do so under the terms of OFPP Policy Letter 83-2, the NRC is issuing the NRC Acquisition Regulation (NRCAR) as a proposed rule. The NRC is accepting comments on this regulation for 60 days after the date of publication. The NRC will review all comments and will consider changes to the rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5). Therefore, neither an environmental impact statement nor an environmental assessment is required for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule includes information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Accordingly, this rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-), Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would establish the procedures and requirements necessary to implement and supplement the Federal Acquisition Regulation (FAR) which will govern the acquisition of goods and services by the NRC. To the extent that the proposed rule would affect a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule, because this proposed regulation does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to add Chapter 20 to Title 48 of the Code of Federal Regulations.

1. Chapter 20 is added to Title 48 to read as follows:

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

Part 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.

2001.101 Purpose.
2001.102 Authority.
2001.103 Applicability.
2001.104 Issuance.
2001.104-1 Publication and code arrangement.
2001.104-2 Arrangement of the regulations.
2001.104-3 Copies.
2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.
2001.303 Public participation.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.
2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600-70 Scope of subpart.
2001.601 General.
2001.602-3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

Authority: Sec. 161, 68 Stat 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 2011 et. seq.), the Energy

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Reorganization Act of 1974 (42 U.S.C. 5811 et. seq.), the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), as amended, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from non-appropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104-1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the Federal Register; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104-2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104-1 is shown as 2001.104-1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954 as amended requires a more comprehensive organizational conflicts of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR, as written, is applicable to the NRCAR and requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104-2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104-2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1-104.

2001.104-3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2015.607, 2019.705-4, 2027.305-3, 2042.803, 2052.204-70, 2052.204-71, 2052.209-71, 2052.209-73, 2052.209-74, 2052.210-71, 2052.212-70, 2052.212-71, 2052.212-72, 2052.214-71, 2052.214-72, 2052.214-74, 2052.215.71, 2052.215-72, 2052.215-73, 2052.215-74, 2052.215-77, 2052.215-81, 2052.216-74, 2052.235-70, 2052.235-72.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be issued through internal NRC issuances such as Manual Chapters, directives, or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602-3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Director, Division of Contracts and Property Management, except that ratifications of procurement actions taken in emergency circumstances and valued at $1,000 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Director, Division of Contracts and Property Management.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The requestor shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Director, Division of Contracts and Property Management, with any comments or information which should be considered in evaluating the request for ratification

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority must include a clear statement of the delegated authority, including responsibilities and limitations.

PART 2002—DEFINITIONS

Subpart 2002.1—Definitions

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S C 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et. seq.).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or "Head of the Agency" means the NRC Executive Director for Operations, for the purposes specified in this regulation and the Federal Acquisition Regulation. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974, (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Pub. L. 98-369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period shall include the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the

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Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.
2003.101 Standards of conduct.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting of suspected violation of the gratuities clause.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2003.1—Safeguards

2003.101 Standards of conduct.

2003.101–3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§ 0.735–28).

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General (telephone number (202) 492–7170 or 492–7000). A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735–42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

The security clauses used in NRC contracts are found at 2052.204. They are:

(a) Security, § 2052.204–70. This clause will be used in all contracts during performance of which the contractor may have access to, or contact with restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, § 2052.204–71. This clause will be used in all contracts under which the contractor will require access to Government facilities.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 68 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, for regional procurements.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105–70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Lists of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
2009.405–2 Restrictions on subcontracting.
2009.406 Debarment.
2009.406–3 Procedures.
2009.407 Suspension.
2009.407–3 Procedures.
2009–470 Appeals.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et. seq.).

Subpart 2009.1—Responsible Prospective Contractors

2009.100 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action or with any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees, unless it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task type contract arrangement or as a principal under a contract awarded under the Small Business Administration's 8(a) Program. This policy shall also be applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) Justifications explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) above on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to the justification and any approvals required by the Federal Acquisition Regulation for use of other than full and open competition.

(c) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) 2052.209–70, Qualifications of Contract Employees.

(b) 2052.209–71, Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, or the Head of the Contracting Activity (HCA), or the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

2009.404 Lists of parties excluded from Federal procurement or non-procurement programs.

The cognizant contracting officer shall perform the actions required by FAR 9.404(c)(1)–(3).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

2009.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

(a) The contracting officer shall insert the certification found at 2052.209–72, Certification Regarding Debarment Status, in all solicitations.

(b) The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the debarring official immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decisionmaking process.* If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the suspending official immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) *Decisionmaking process.* If, after reviewing the recommendations and consulting with the Office of the Inspector General and Office of the General Counsel, as appropriate, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with FAR 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with Sec. 8, Pub. L. 95–601, adding Sec. 170A to Pub. L. 83–703, 68 Stat. 919, as amended (42 U.S.C. Ch. 14), NRC acquisitions are processed in accordance with 2009.570, which supplements FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance shall be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made

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automatically or routinely; the application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

As used in § 2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in § 2009.570–1(b).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest including their chief executives, directors, key personnel, proposed consultants or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflict of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests (indicates) that an actual conflict of interest may arise from award of a proposed contract. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies and subcontracts in the amount of $25,000 or less.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to information which has not been made available to the public, or to proprietary information. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) The ultimate determination by the NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendation to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications which are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs which could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might otherwise result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or may otherwise result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because it would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component which is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work during the performance of the NRC contract with the private sector which could create a conflict. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* As a result of operating problems in a certain type of commercial nuclear facility, it is imperative that the NRC secure specific data on various operational aspects of that type of plant so as to assure adequate safety protection of the public. Only one manufacturer has extensive experience with that type of plant. Consequently, that company is the only one with whom the NRC can contract which can develop and conduct the testing programs required to obtain the data within reasonable time. That company has a definite interest in any NRC decisions that might result from the data produced because those decisions affect the reactor's design and thus the company's costs.

(ii) *Guidance.* This situation would place the manufacturer in a role in which its judgment could be biased in relationship to its work for the NRC. Because the nature of the work required is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Information which is reported to the NRC by contractors will normally be disseminated by the NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When the NRC furnishes information to the contractor for the performance of contractor work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information developed under the contract is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the Eastern United States but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. The work for others clause of 2052.209–74(c) would preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(d) *Other considerations.* (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor.

(b) The organizational conflict of interest representation provision at 2052.209–73 must be included in all solicitations and unsolicited proposals for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort

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under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in an RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and small purchases of the types set forth in 2009.570–4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in 2052.209–74.

(b) *Addition to general clause for use when award of a follow-on contract would constitute an organization conflict of interest.* The contracting officer shall add the additional paragraphs found at 2052.209–75 to the clause found at 2052.209–74 when it is determined that award of a follow-on contract would constitute an organizational conflict of interest.

(c) *Addition to general clause for contractors having access to NRC-regulated activities.* In contracts for on-site work where the contractor may have access to a utility site or other facility subject to NRC's regulatory authority or in any contract for technical support of NRC's regulatory activities, the contracting officer shall change paragraph (c), "Work for others," to (c)(1) and add new paragraphs (c)(2) and (c)(3) found at 2052.209–76.

(d) *Additions to general clause for task order contracts.* In all contracts for task order contracts, add a new sentence to paragraph (b), "Scope," and a new paragraph (d)(3) to paragraph (d), "Disclosure after award," as found at 2052.209.77.

(e) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror under the representation requirements of 2009.570–4(b) and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, then the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures, or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do, in fact, exist and that it would not be in the best interest of the government to terminate the contract as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

§ 2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from subcontractors and consultants in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this section.

§ 2009.570–9 Waiver.

(a) Determination with respect to the need to seek a waiver for specific contract awards is made by the contracting officer with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the contracting officer, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and

(3) Contractual and/or technical review and supervision methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2010.004 Brand name products or equal.
2010.011 Solicitation provisions and contract clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as smended by Pub. L. 96–83, 93 Stat. 648, Pub L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2010.004 Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at 2052.210–70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

2010.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.210–71, Drawings, Designs, Specifications, and Data in all contracts in which drawings, designs, specifications, or other data will be developed.

PART 2012—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2012.104—Contract clauses

2012.104–70 NRC clauses.

(a) The contracting officer shall insert the clause at 2052.212–70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.212–71, Technical Progress Report, in all solicitations and contracts except (1) firm fixed price, and (2) indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.212–72, Financial Status Report, in all solicitations and contracts when detailed assessment of costs is warranted.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes only may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2013.5—Purchase Orders

2013.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.
2014.406–3 Other mistakes disclosed before award.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer shall insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids the provisions at:

(1) Section 2052.214–71, Bidder Qualifications and Past Experiences.

(2) Section 2052.214–72, Bid Evaluation (paragraph g. is optional).

(3) Section 2052.215–73, Timely Receipt of Bids.

(4) Section 2052.214–74, Disposition of Bids.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406–4.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2015.407–70 Solicitation provisions and contract clauses.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.
2015.506–1 Receipt and initial review.
2015.506–2 Evaluation.
2015.507 Contracting methods.

Subpart 2015.6—Source Selection

2015.602 Applicability.

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2015.604 Responsibilities.
2015.605 Evaluation factors.
2015.607 Disclosure of mistakes before award.
2015.608 Proposal evaluation.
2015.610 Written or oral discussions.
2015.611 Best and final offers.
2015.612 Source Evaluation Panel (SEP) structure.
2015.670 Contract provisions.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

2015.407-70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215-73, Data Universal Numbering System (DUNS) Number;

(2) Section 2052.215-74, Key Personnel;

(3) Section 2052.215-77, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(4) Section 2052.215-78, Project Officer Authority—Alternate 1 (for solicitations for issuance of delivery orders for specific products/services);

(5) Section 2052.215-78, Project Officer Authority—Alternate 1 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts);

(6) Section 2052.215-79, Timely Receipt of Proposals;

(7) Section 2052.215-80, Award Notification and Commitment of Public Funds; and

(8) Section 2052.215-81, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at 2052.215-71, Proposal Presentation and Format except that

(1) For all solicitations for negotiated task order contracts, paragraphs (d)(4)(xi) and (xii) shall be deleted (and the remainder renumbered), and the paragraph found at 2052.215-72 shall be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision 2052.215-71. The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect the evaluation criteria.

(c) The contracting officer shall insert the provision at 2052.215-70, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit circumstances.

(d) The contracting officer shall insert the clauses at 2052.215-75, Travel Reimbursement, and 2052-215-76, Travel Approvals, in RFPs where there will be travel.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Operations Support Staff, is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to: Chief, Operations Support Staff, Division of Contracts and Property Management, Mail Stop P-1118, U.S. Nuclear Regulatory Commission, Washington, DC 20555. This will ensure that the proposal is logged into the unsolicited proposal tracking system.

2015.506-1 Receipt and initial review.

(a) The NRC, Division of Contracts and Property Management, Operations Support Staff (OSS) shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) for evaluation.

(b) OSS shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by the OSS, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

2015.506-2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the OSS, in accordance with the criteria discussed in FAR 15.506-2(a).

2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6—Source Selection

2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award. Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe these restrictions to ensure that they understand that unauthcrized disclosure of information contained in or concerning proposals could compromise the acquisition process and is prohibited. A written acknowledgment of understanding must be obtained from each participant before he/she receives any proposal or participates in any discussion of proposals.

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict of interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with 2015.407-70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/no go" evaluation factors.

2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate proposals in accordance with the solicitation technical evaluation criteria, cost, and other terms of the solicitation. The SEP prepares the Competitive Range Recommendation Report for the review and approval of the Designating Offical. The contracting officer uses this technical evaluation in determining the competitive range.

(b) The Designating Official (appointed by the requesting office) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Recommendation Report and the Final Evaluation Recommendation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in fully understanding the proposals and their strengths and weaknesses. Discussions also assure that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

2015.611 Best and final offers.

The SEP evaluates the best and final offers. Proposals will be rescored and reranked by the SEP, as appropriate, and a Final Evaluation Recommendation Report will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Recommendation Report and will become part of the official file.

2015.612 Source Evaluation Panel (SEP) structure.

(a) For all proposed contracts with total estimated values in excess of $25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a Source Evaluation Panel (SEP).

(b) The SEP includes (1) at least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors, and (2) a contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC. Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members notwithstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. For proposed procurements with a total estimated cost of less than $500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to assure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at 2052.215-82, Contract Award and Evaluation of Proposals, in all solicitations except that:

(1) The contracting officer shall substitute the paragraph found at 2052.215-83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at 2052.215-84 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation

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procedures, such as evaluation of proposals against mandatory criteria and benchmarking criteria for ADP procurements.

Part 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.
2016.307–70 Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub L. 96–83, 93 Stat 648, Pub. L 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at § 2052.216–70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost plus award fee, cost plus fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–72, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216–73, Indirect Cost Rates—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts.

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216–74, Task Order Procedures;

(b) Section 2052.216–75, Accelerated Task Order Procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7—Subcontracting with small business and small disadvantaged business concerns

Sec.
2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2019.705–2 Determining the need for a subcontracting plan.
2019.705–4 Reviewing the subcontracting plan.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2019.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program

2019.705–2 Determining the need for a subcontracting plan.

In determining whether the acquisition meets the dollar threshold established in FAR 19.702 for requiring a subcontracting plan, the total value of the acquisition must be considered, including the value of all proposed option quantities and funding actions.

2019.705–4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

PART 2020—LABOR SURPLUS AREA CONCERNS

Subpart 2020.1—General

Sec.
2020.102 General policy.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2020.1—General

2020.102 General policy.

Acquisitions that are in excess of $25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from: U.S. Department of Labor, Employment and Training Administration, U.S. Employment Service, Office of Labor Market Information, 200 Constitution Avenue NW., Room N4456, Washington, DC 20510, Telephone Number: (202) 535–0157.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies

Sec.
2022.103–4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

Sec.
2022.901–70 Contract provisions.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2022.1—Basic Labor Policies

2022.103–4 Approvals.

The agency approving official for approval of contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.
2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, subpart A, Freedom of Information Act Regulations are applicable to the availability of NRC records to the public.

PART 2025—FOREIGN ACQUISITION

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2025.1—Buy American Act—Supplies

2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing. For contracts exceeding $1 million, the Head of the Contracting Activity shall approve the determination.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.
2027.305 Administration of patent rights clauses.
2027.305–3 Follow-up by Government.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1241, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305 Administration of patent rights clauses.

The contracting officer shall assure that each contractor report is in writing on whether any patent rights are being claimed, prior to final payment and closeout of the contract.

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or are there any to be paid directly to others.

(b) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

PART 2030—COST ACCOUNTING STANDARDS

Subpart 2030.2—CAS Program Requirements

Sec.
2030.201–5 Waiver.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1241, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

In accordance with the FAR 30.201–5(c), the Head of the Contracting Activity may waive CAS requirements.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Publ. L. 96–83, 93 stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor prior to the effective date of the contract. Approval for use of this clause shall be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Subpart 2032.4—Advance Payments

Sec.
2032.402 General.
2032.406 Letters of credit.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2032.4—Advance Payments

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

2032.406 Letters of credit.

Prior to authorizing a letter of credit arrangement, the contracting officer shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

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PART 2033—PROTESTS, DISPUTES AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.
2033.203 Applicability.
2033.211 Contracting officer's decision.
2033.214 Contract clause.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

(a) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals must be filed prior to bid opening date or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than prior to the next closing date for receipt of proposals following the incorporation.

(b) In cases other than those covered in paragraph (a) of this section, protests must be filed not later than ten working days after the basis of protest is known or should have been known, whichever is earlier.

(c) The agency may not process, or shall cease processing, agency level protests that are protested outside the agency.

2033.203 Applicability.

(a) Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract of Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contracting officer's decision.

(a) Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

2033.214 Contract clause.

(a) The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to National security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2035.70 Contract clauses.

The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

Section 2052.235–70, Dissemination of Contract Information.
Section 2052.235–71, Private Use of Contract Information and Data.
Section 2052.235–72, Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) The Competition in Contracting Act provides the Broad Agency Announcement (BAA) as an alternative method to the full competitive process for funding research. This acquisition method refers to the competitive selection of basic or applied research proposals resulting from a BAA published in the Commerce Business Daily (CBD). The publication of the BAA in the CBD satisfies the FAR requirement for full and open competition. A primary benefit of the BAA is the ability to make multiple awards on the basis of one announcement which reduces the procurement lead-time and the staff effort involved in initiating several competitive projects. It also provides flexibility in source selection, based on the merits of the individual proposal(s).

(b) The BAA is an efficient means of soliciting competitive basic or applied research "ideas." BAAs may be used to fulfill requirements for scientific study and experimentation directed toward advancing the state-of-the-art, or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique may only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

(1) The BAA consists of the following:

(i) A description of the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(ii) A description of the criteria for selecting the proposals, their relative importance and the method of evaluation;

(iii) A specification of the period of time during which proposals submitted in response to the BAA will be accepted; and

(iv) Instructions for the preparation and submission of proposals.

(2) Proposals received as a result of the BAA must be evaluated in accordance with evalution criteria specified in the announcement by a peer or scientific review group established by the Designating Official. The BAA evaluation criteria should include "scientific merit" and should describe the method that will be used for evaluating proposals. Written evaluation reports on individual proposals are necessary, but proposals will not be evaluated against each other since they are not submitted in accordance with a common work statement. Criteria for selecting contractors will include such factors as:

(i) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Overall scientific, technical, or socio-economic merits of the proposal.

(iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iv) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(v) Potential contribution of the effort to NRC's mission.

(vi) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art.

(3) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

PART 2039—ACQUISITION OF INFORMATION RESOURCES

Sec.
2039.001 Policy.
2039.002 Delegations of procurement authority.

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Manual issuances, the Office of Information Resources Management will be responsible for development and approval of information resources studies, including analyses of alternatives, software conversion studies, and other requirements analyses for information resources management procurements in excess of $25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Director, Office of Information Resources Management.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer as to why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs.

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision including any disallowance of questioned costs, and inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR 33.2, and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Requesting that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deducting the disallowed costs from the next invoice submitted under the contract;

(C) Deducting the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advising the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing government property (in general).

(a) A contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware prior to the submission of the request for procurement action (RFPA) that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

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SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.

2052.200 Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Qualifications of contract employees.
2052.209–71 Current/former agency employee involvement.
2052.209–72 Certification regarding debarment status.
2052.209–73 Contractor organizational conflicts of interest (representation).
2052.209–74 Contractor organizational conflicts of interest.
2052.209–75 Contractor organizational conflicts of interest—language for follow-on contracts.
2052.209–76 Contractor organizational conflicts of interest—language for work for others.
2052.209–77 Contractor organizational conflicts of interest—language for task order contracts.
2052.210–70 Brand name products or equal.
2052.210–71 Drawings, designs, specifications, and other data.
2052.212–70 Preparation of technical reports.
2052.212–71 Technical progress report.
2052.212–72 Financial status report.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Preproposal conference.
2052.215–71 Proposal presentation and format.
2052.215–72 Proposal presentation and format—language for negotiated task order contracts.
2052.215–73 Data universal numbering system (DUNS) number.
2052.215–74 Key personnel.
2052.215–75 Travel reimbursement.
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2052.215–77 Project officer authority.
2052.215–78 Project officer authority—Alternate 1.
2052.215–79 Timely receipt of proposals.
2052.215–80 Award notification and commitment of public funds.
2052.215–81 Disposition of proposals.
2052.215–82 Contract award and evaluation of proposals.
2052.215–83 Contract award and evaluation of proposals—cost more important than technical merit.
2052.215–84 Contract award and evaluation of proposals—cost and technical merit of equal value.
2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Indirect cost rates—Alternate 1.
2052.216–73 Indirect cost rates—Alternate 2.
2052.216–74 Task order procedures.
2052.216–75 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.231–70 Preaward costs.
2052.235–70 Dissemination of contract information.
2052.235–71 Private use of contract information and data.
2052.235–72 Safety, health, and fire protection.

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), insert the following clause in applicable solicitations and contracts:

Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors or others (e.g., bidders) who have or may have an NRC contractual relationship which requires access to classified information or matter, access on a continuing basis (in excess of 30 days) to NRC Headquarters controlled buildings or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard Restricted Data, Formerly Restricted Data, and other classified information. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of Restricted Data. The term "Restricted Data," as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(f) Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this clause, means all data removed from the Restricted Data category under Section 142–d of the Atomic Energy Act of 1954, as amended.

(g) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

(h) Criminal liabilities. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(i) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(j) In performing the contract work, the contractor shall assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with classification guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment shall provide that the subcontractor or supplier assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished by the contractor.

(End of Clause)

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirements

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with. Adherence to special requirements for Foreign Nationals, in accordance with NRC Manual Chapter 2101, Part VII.C is the responsibility of the contractor.

(End of Clause)

2052.209–70 Qualifications of contract employees.

As prescribed at 2009.105–70(a), insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel and consultants are accurate.

(End of Provision)

2052.209–71 Current/former agency employee involvement.

As prescribed at 2009.105–70(b), insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees can adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are not current/former NRC employees who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering or performing any contract, consultant agreement or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209–72 Certification regarding debarment status.

As prescribed at 2009.405–2(a), insert the following provision in applicable solicitations:

Certification Regarding Debarment Status

The offeror hereby certifies by submission of this offer that it and any subcontractor(s) that will be performing under this contract is not a debarred person or firm.

(End of Provision)

2052.209–73 Contractor organizational conflicts of interest (representation).

As prescribed in 2009.570–4(b), insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 2009.570–9.

(b) The refusal to provide the representation required by 2009.570–4(b), or upon request of the contracting officer, the facts required by 2009.570–3(b), must result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for awards; or if nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(End of Provision)

2052.209–74 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a), insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor: (1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described apply to performance or participation by the contractor as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) *Work for others.* Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) *Disclosure after award.* (1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in

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writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(e) *Access to and use of information.* (1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or data which has not been released to the public, the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public, or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) *Subcontracts.* Except as provided in 48 CFR 2009.570–2(g), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," must be appropriately modified to preserve the Government's rights.

(g) *Remedies.* For breach of any of the above restrictions, or for intentional nondisclosure of misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) *Waiver.* A request for waiver under this clause must be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in 48 CFR 2009.570–9.

(End of Clause)

2052.209–75 Contractor organizational conflicts of interest—language for follow-on contracts.

As prescribed by 2009.570(b), add the following to the general clause found at 2052.209–74:

(a) *Follow-on effort.* The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes in contractor for offering or selling its standard commercial items of the Government.

2052.209–76 Contractor organizational conflicts of interest—language for work for others.

As prescribed at 2009.570–5(c), add the following to the general clause found at 2052.209–74(c):

(2) The contractor may not perform any services for any NRC licensee or applicant that are the same as, or substantially similar to, the services contemplated under the scope of work for this contract without prior written approval of the NRC contracting officer.

(3) The contractor may not represent, assist, or otherwise support and NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract, except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity with NRC questions.

2052.209–77 Contractor organizational conflicts of interests—language for task order contracts.

As prescribed at 2009–570–5(d), the following two additions shall be made to the general clause found at 2052–209–784:

(a) Add to paragraph (b), "Scope," the following sentence:

Except where a lesser limitation is stated, these provisions apply to the entire subject matter set forth in the scope of work for the entire period of contract performance, including any extensions, and are therefore not limited to the scope or duration of a particular task order.

(b) Add to paragraph (d), "Disclosure after award," a new paragraph (d)(3) as follows:

Recognizing that the scope of work of this task order type contract necessarily encompasses a broad spectrum of activities, the contractor agrees that it will disclose all proposed new work of any type involving NRC licensees or applicants. Such disclosure must be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must be received by the NRC at least 15 days prior to the proposed award date in any event. The disclosure must include the statement of work and any other documents that are needed to fully described the proposed work for the regulated utility or other regulated entity.

2052.210–70 Brand name products or equal.

As prescribed at 2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offerors (proposers) offering other than brand name items identified berein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered.

2051.210–71 Drawings, designs, specifications, and other data.

As prescribed at 2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use. These data must be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.212–70 Preparation of technical reports.

As prescribed at 2012.104–70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached NRC Manual Chapter 3202, "Publication of Technical Reports Prepared by NRC Contractors, Including Reports Prepared Under or Pursuant to Interagency Agreements." NRC Manual Chapter 3202 is not applicable to any Contractor Spending Plan and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

2052.212–71 Technical progress report.

As prescribed at 2012.104–70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, FIN number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period; milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution; (if the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact).

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

2052.212–72 Financial status report.

As prescribed at 2012.104–70(c), insert the following clause in applicable solicitations and contracts:

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, FIN number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total estimated contract amount.

(2) Total funds obligated to date.

(3) Total costs incurred this reporting period.

(4) Total costs incurred to date.

(5) Balance of obligations remaining.

(6) Balance of funds required to complete contract.

(b) Details of all direct and indirect costs incurred during the reporting period for each task.

(c) Update the approved Contractor Spending Plan (CSP) if required under this contract. If there have been no changes to the projections, a certification to that effect may be provided with the Financial Status Report in lieu of the CSP.

(End of Clause)

2052.214–70 Prebid conference.

As prescribed in 2014.201–670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:
Date: *.
Location: *.
Time: *.

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled.

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission,
Division of Contracts and Property Management, ATTN: *, Mail Stop *,
Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

* To be incorporated into the solicitation.

(End of Provision)

2052.214–71 Bidder qualifications and past experiences.

As prescribed in § 2014.201–670(b)(1), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list * previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.:_____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(2) Contract No.:_____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(3) Contract No.:_____
Name and address of Government agency or commercial entity:_____
Point of Contact and Telephone Number:_____

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Respresentative
Name_____
Title_____
Telephone No.( ) _____

(2) Contracts/Business Representative
Name_____
Title _____
Telephone No. ( ) _____

* To be incorporated into the solicitation.

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(b)(2), insert the following provision in applicable solicitations:

Bid Evaluation

(a) Bids in response to this IFB must set forth full, accurate, and complete information as required herein. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(b) Award will be made to that responsive, responsible bidder within the meaning of Federal Acquisition Regulation 9–1 whose total bid amount, as set forth by the bidder in Section B of this IFB constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(c) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(d) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC are significantly less than

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cost for some work and/or prices that may be significantly overstated for other work.

(e) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(f) A preaward onsite survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1 and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after such request: (1) concerning their ability to meet any of the minimum standards set forth in FAR 9.104, (2) samples of work, and (3) names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(g) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity will cause the bid to be rejected as nonresponsive.

* To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at 2014.670(b)(3), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b)(4), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management. Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Preproposal conference.

As prescribed at 2015.407–70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date: *.
Location: *.
Time: *.

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than one working day prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify by letter or telephone, no later than close of business. Notification of your intention to attend is essential in the event the conference is rescheduled or cancelled.

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission,
Division of Contracts and Property Management, ATTN: *, Mail Stop *,
Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Preproposal Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

* To be incorporated into the solicitation.

(End of Provision)

2052.215–71 Proposal presentation and format.

As prescribed at 2015.407–70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and * copies of the "Cost Proposal" must be submitted.

(3) One (1) original and * copies of the "Technical and Management Proposal" must be submitted.

(c) Correctness of the Proposal.

Caution—offerors are hereby notified that all information provided in its proposals, including all resumés, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all such representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education and employment history of its employees, subcontractor personnel and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost Proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(e) Technical and Management Proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must set forth as a minimum, the manner and sequence outlined below:

(i) Discussion of the statement of work to substantiate the offeror's understanding of the work requirements.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(vi) Identification of "Key Personnel," and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumés for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explanation of the need for such services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list of proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation on the selection process, i.e., competitive vs. noncompetitive, technical and cost evaluations.

(xi) A detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Projected scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Description of the management organizational structure delineating areas of responsibility and authority under the proposed contract. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls and subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) List of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of * previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title and full telephone number for the proposer's technical representative and contracts/ business representative.

(xix) *___**___**___**___**___*

* To be incorporated into the solicitation.

(End of Provision)

§ 2052.215–72 Proposal presentation and format—language for negotiated task order contracts.

As prescribed at 2015.407–70(b)(1), insert the following language in provision 2052.215–71.

(d) Cost Proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

§ 2052.215–73 Data universal numbering system (DUNS) number.

As prescribed at 2015.407–70(a)(1), insert the following provision in applicable solicitations:

Data Universal Numbering Systems (DUNS) Number

All offerors shall provide their DUNS number code in the box marked "code" in item 15A of Standard Form 33. In the event the code is unknown, enter "NA."

(End of Provision)

§ 2052.215–74 Key personnel.

As prescribed at 2015.407–70(a)(2), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

*

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resumé for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work, is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss or damage.

(End of Clause)

* To be incorporated into any resultant contract.

2052.215–75 Travel reimbursement.

As prescribed at 2015.407–70.(d), insert the clauses in appropriate solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed *____ without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to praticipate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable domestic travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined by the Federal Travel Regulations that are in effect on the date of the trip. These regulations specify the daily maximum per diem rates for specific localities within the Conterminous United States (CONUS), the standard CONUS rate, the allowance for meals and incidental expenses (M&IE), the cost of travel by privately owned automobile, and the items which require receipts. A copy of the regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(d) When the Government changes the Federal Travel Regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

(e) The rates for foreign travel are established by the U.S. Department of State and are listed in a publication entitled "Maximum Travel Per Diem Allowances for Foreign Areas." Copies of this publication may be obtained from the U.S. Government Printing Office, Washington, DC 20402.

* To be incorporated into any resultant contract.

(End of Clause)

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2052.215-76 Travel approvals.

As prescribed in 2015.407-70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

2052.215-77 Project officer authority.

As prescribed in 2015.407(a)(3), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *.
Address: *.
Telephone Number: *.

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term "technical direction" is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical directions which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the Changes Clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to FAR 52.233-1—Disputes.

(i) In addition to providing technical direction as defined above, the project officer shall—

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

* To be incorporated into any resultant contract.

(End of Clause)

2052.215-78 Project officer authority—Alternate 1.

As prescribed at 2015.407-70(1)(4), insert the following clause in applicable solicitations and contracts:

Project Officer Authority—Alternate 1

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *.
Address: *.
Telephone Number: *.

(b) The project officer shall—

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

* To be incorporated into any resultant contract.

(End of Clause)

2052-215-79 Timely receipt of proposals.

As prescribed in 2015.407-70(a)(6), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§ 2052.215-80 Award notification and commitment of public funds.

As prescribed at 2015.407-70(a)(7), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided prior to award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include—

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

§ 2052.215-81 Disposition of proposals.

As prescribed in 2015.407-70(a)(8), insert the following provisions in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management. Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

§ 2052.215-82 Contract award and evaluation of proposals.

As prescribed in 2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance. Award is made to the offeror (1) whose proposal is technically acceptable, (2) whose technical/cost relationship is most advantageous to the Government, and (3) who is considered to be responsible within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may—

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective manangement of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

* To be incorporated into the solicitation.

(End of Provision)

2052.215-83 Contract award and evaluation of proposals—cost more important than technical merit.

As prescribed at 2015.670(1), substitute the following paragraph for paragraph (b) in the clause at 2052.215.83:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

2052.215-84 Contract award and evaluation of proposals—cost and technical merit of equal value.

As prescribed at 2015.670(2), substitute the following paragraph for paragraph (b) in the clause at 2052.215.83:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216-70 Level of effort.

Level of Effort

As prescribed at 2016.307-70(a), insert the following provision in applicable solicitations:

The NRC's estimate of the total of professional and clerical effort for this project is approximately * staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

* To be incorporated into any resultant contract.

(End of Provision)

2052.216-71 Indirect cost rates.

As prescribed at 2016.307-70(b)(1), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*.

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, as applicable, if these changes effect performance of work within the established cost or funding limitations.

* To be incorporated into my resultant contract.

(End of Clause)

2052.216-72 Indirect cost rates—Alternate 1.

As prescribed at 2016.307-70(b)(2), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetemined (fixed) rates:

*.

* To be incorporated into any resultant contract.

(End of Clause)

2052.216-73 Indirect cost rates—Alternate 2.

As prescribed at 2016.307-70(b)(3), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates—Alternate 2.

(a) For this contract, the final amount reimbursable for indirect costs is as follows:

*.

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

* To be incorporated into any resultant contract.

(End of Clause)

52.216-74 Task order procedures.

As prescribed at § 2016.506-70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task Order Request for Proposal.

When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which include the following, as appropriate—

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task Order Proposal.

By the date specified in the TORP, the contractor shall deliver to the contracting officer a written proposal that provides the following technical and cost information, as appropriate—

(1) Technical Proposal Content:

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumés for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience and a list of any pertinent publications authorized by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost Proposal.

The contractor's cost proposal for each task order must be prepared using Standard

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Form 1411, Contract Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task Order Award.

The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following—

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

§ 2052.216–75 Accelerated task order procedures.

As prescribed at 2016.506–70(b), insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that (a) contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements, and (b) that contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.231–70 Preaward costs.

As prescribed in 2031.109–70, insert the following clause in applicable solicitations and contracts:

Preaward Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from* and including* to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed* which is included in the estimated cost of this contract.

*To be incorporated into any resultant contracts.

(End of Clause)

2052.235–70 Dissemination of contract information.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Dissemination of Contract Information

The contractor shall comply with the requirements of the attached NRC Manual Chapters 3202, "Publication of Technical Reports Prepared by NRC Contractors, Including Reports Prepared Under or Pursuant to Interagency Agreements," and 3206, "NRC Contractor Unclassified Papers, Journal Articles and Press or Other Media Releases on Regulatory and Technical Subjects," (see Section J for List of Attachments) regarding publications or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause constitutes grounds for termination of this contract.

(End of Clause)

2052.235–71 Private use of contract information and data.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Private Use of Contract Information and Data

Except as specifically authorized by this contract, or as otherwise approved by the contracting officer, information and other data developed or acquired by or furnished to the contractor in the performance of this contract may be used only in connection with the work under this contract.

(End of Clause)

2052.235–72 Safety, health, and fire protection.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

PART 2053—FORMS [RESERVED]

Dated at Bethesda, Maryland this 22nd day of September, 1989.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 89–23025 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant, Wilkesia hobdyi (Dwarf Iliau)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant, *Wilkesia hobdyi* (dwarf iliau), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species grows on two adjacent, nearly vertical rock outcrops on the Na Pali Coast of western Kaua'i, Hawaiian Islands. The greatest immediate threat to the survival of this species is a rapidly increasing goat population in its habitat. The goats browse on the plant and their activity accelerates erosion of the habitat. A determination that *Wilkesia hobdyi* is endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Wilkesia hobdyi was discovered by Robert W. Hobdy on Polihale Ridge, Kaua'i, in 1968. He sent a specimen of the plant to Dr. Harold St. John of the Bishop Museum who described it as a new species, naming it in Hobdy's honor (St. John 1971). The plant was later found on the adjacent Ka'aweiki ridge and today only those two populations, comprising a total of about 350 individuals, are known. Both populations occur on State-owned land within the Pu'u ka Pele Forest Reserve, growing on the north-facing, nearly vertical rock outcrops near the summits of Polihale and Ka'aweiki ridges, island and county of Kaua'i.

Wilkesia is a shrub about 2 feet (60 cm) tall, which branches from the base. The tip of each branch bears a tuft of narrow leaves, which are about ½ inch (1.3 cm) wide and about 3 to 6 inches (7.5 to 15 cm) long. The leaves are produced in whorls, which are joined together into a short sheathing section where they are attached to the stem. The flower heads are in clusters of about 10 to 18 inches (25 to 45 cm) long. Each head is cream-colored and about ¾ inch (2 cm) in diameter (Carr 1982).

The greatest immediate threat to the survival of this species is a rapidly increasing goat population in its habitat. The goats browse on the plant and their activity in the area accelerates erosion. Although the low number of individuals and their restricted habitat could be considered a potential threat to the survival of the species, the plant appears to have vigorous reproduction and should survive indefinitely if goats were eliminated from its habitat. A cooperative effort between Federal and State agencies is needed to protect the remaining plants and to provide for the conservation of the species.

The Secretary of the Smithsonian Institution, as directed by Section 12 of the Endangered Species Act of 1973, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein, including *Wilkesia hobdyi*. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Wilkesia hobdyi* to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Wilkesia hobdyi* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate.

Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Wilkesia hobdyi* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. Publication of the present proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Wilkesia hobdyi* St. John (dwarf iliau) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Wilkesia hobdyi* is subject to disturbance by feral goats. The high, steep ocean cliffs on which the plant grows have always been subject to erosion by wind and water. However, the activity of the goats on the narrow cliff ledges, destroying the vegetation, dislodging stones, and loosening the soil, has accelerated the rate of erosion and degraded the plant's habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor.

C. *Disease or predation.* Browsing by feral goats probably is the greatest present threat to this species. Large herds of feral goats inhabit the cliffs upon which the plants grow and are responsible for much damage both through their predation on the plant and the concomitant habitat disturbance that favors the introduction and spread of exotic vegetation, and an increase in erosion. The large goat herds result from specific game management practices aimed at maintaining high goat population levels for hunting.

D. *The inadequacy of existing regulatory mechanisms. Wilkesia hobdyi* grows within the boundaries of the State-owned Pu'u ka Pele Forest Reserve. State regulations prohibit the removal, destruction, or damage of plants found on State forest land. However, these regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states that "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * * Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the

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conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under Section 6 of the Act (State Cooperative agreements). Therefore, listing this species would reinforce and supplement the protection available to it under State law. Also the Act would offer additional protection to the species, as it is now a violation of the Act to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small population (350 individuals) remaining makes *Wilkesia hobdyi* vulnerable to any catastrophe, natural or man-caused, that may impact the area. Reduction of the gene pool and genetic variability, resulting from a small population size, potentially could have detrimental effects on the continued existence of the species although the plant appears at present to be adequately reproducing itself.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Wilkesia hobdyi* as endangered. Only 350 individuals remain in the wild, and these face threats from feral goats and habitat degradation. Given these circumstances, the determination of endangered status is warranted. Critical habitat is not being proposed for the reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no known benefit to the species. All populations are on State land, and, due to the cliff terrain on which it grows, all but a few individual plants are inaccessible to man. Protection of this species habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, the Service finds that designation of critical habitat is not prudent for *Wilkesia hobdyi* at the present time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since *Wilkesia hobdyi* is known only to occur on State land, cooperation between Federal and State agencies is necessary to provide for its conservation. The protection required of Federal agencies and the prohibitions against trade and collecting are discussed, in part, below:

Section 7 (a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Wilkesia hobdyi* as all known sites for this plant are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Wilkesia hobdyi* all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments, particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Wilkesia hobdyi*;

(2) The location of any additional populations of *Wilkesia hobdyi* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Wilkesia hobdyi*.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G. D. 1982. Unpublished status survey of *Wilkesia hobdyi* St. John (Hobdy's iliau). U.S. Fish and Wildlife Service. 24 pp.

St. John, H. 1971. The status of the genus *Wilkesia* (Compositae), and discovery of a second Hawaiian species. Occas. Pap. B. P. Bishop Museum 24(6):127–138.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Wilkesia hobdyi	Dwarf iliau	U.S.A. (HI)	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23054 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Hawaiian Plants of the Genus Remya

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the three species of the genus Remva to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The three species of this genus are endemic to the islands of Kauai and Maui, Hawaiian Islands. The greatest immediate threat to their survival is the degradation of their habitat by grazing and browsing feral and domesticated animals. The quality of the Hawaiian environment has undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Feral and domesticated browsing and grazing animals and competing naturalized plants have impacted the Remva species and their habitat. A determination that the three species of the genus *Remya* are endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P 0 Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Remya is a genus of small perennial shrubs in the aster family (Asteraceae, also known as Compositae). The genus comprises three species and is endemic to the Hawaiian Islands Until 1985, there were two known species, *R. kauaiensis* and *R. mauiensis*, both described in 1888 (Hillebrand 1888). Apparently neither species has been common during historical times, and they rarely have been collected.

Remya kauaiensis was first collected prior to 1871 by Valdemar Knudsen at "Waimea" on Kauai. Knudsen sent the specimen to William Hillebrand, a Honolulu physician, who described it as a new species. It was next collected more than 80 years later by Otto Degener in 1952 in Kokee State Park, Kauai. The species was considered extinct until 1983 when it was rediscovered by Galen Kawakami, a forester on Kauai who discovered two small populations, both on State land in the Kokee area. Three additional small populations were discovered in the same general area in 1985 and 1986 by Timothy Flynn of the Pacific Tropical Botanical Garden.

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Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L. E. Bishop, W. Gagne, and S. Montgomery in Manawainui Gulch, West Maui. More recently, a small population has been found in an adjacent gulch.

Remya montgomeryi was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai, and presently is known only from that population (Wagner and Herbst 1987).

The genus *Remya* was published in 1876 by George Bentham in Bentham and Hooker's *Genera plantarum*. It was named in honor of Ezechiel Jules Remy, a French naturalist and ethnobotanist who visited Hawaii twice during an extended trip around the world in 1851 to 1863.

The members of this genus are small shrubs, about 3 feet tall, with many slender, sprawling or scandent to weakly erect branches. The branches are glabrous in *R. montgomeryi*, but covered with a fine tan fuzz near their tips in the other two species. The leaves are narrow, up to about 6 inches long, and are bunched at the ends of the branches. The leaves are coarsely toothed along the edges, and are green on the upper surface. The lower surface is green in *R. montgomeryi*. while in the other two species it is covered with a dense mat of fine white hairs. The flowers are small, about 3/10 inch in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* in press).

Because of the sprawling habit of the plant, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however estimates have been made. *Remya kauaiensis* is known from five small populations in the Kokee area of Kauai. The populations are of two to eight plants each with a total of about two dozen individuals. *Remya mauiensis* is known from two small populations on adjacent ridges on West Maui; there appears to be 20 to 25 plants in one population and 1 to 2 in the other. *Remya montgomeryi* is known from a single population on the rim of Kalalau Valley, Kauai; its size is unknown, but it consists of only a few plants.

The extremely small size of the populations is a serious potential threat to these species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the main threat to the members of this genus probably is the degradation of their habitat due to the introduction of alien plants and animals.

Federal government action on members of this genus began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. In this and subsequent notices, *R. kauaiensis* was included as extinct or probably extinct, and *R. mauiensis* was included as endangered. As a result of this review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal, Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *R. mauiensis* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate; *R. kauaiensis* was included as a Category 1° candidate, meaning that it possibly was extinct Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *R. mauiensis* and *R. kauaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. Publication of the present proposal constitutes the final 1-year finding. *Remya montgomeryi* was not included in any of the notices as it was not discovered until 1985 and was not described as a new species until 1987.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the three species of Remya are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The quality of the Hawaiian environment has undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Browsing and grazing feral and domesticated animals and competing naturalized plants have impacted the *Remya*species and their habitat through erosion and invasion of habitat by more aggressive species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but unrestricted scientific collecting or excessive visits could seriously affect the species because of their limited numbers and the potential for erosion resulting from soil disturbance.

C. *Disease or predation.* Due to the extreme rarity of the three species, little is known about the species or their predators. It can definitely be stated, however, that much potential habitat for the plant has been destroyed by cattle, goats, pigs, and deer, and that most of the presently existing plants are found growing in areas relatively inaccessible to these animals. The destruction of native vegetation in Hawaii by feral animals is well documented, and it can safely be predicted that they are a very real threat to the survival of these species.

D. *The inadequacy of existing regulatory mechanisms.* Most of the plants are found within a State park, forest reserve, or plant sanctuary. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, these regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, Sect 195D–4(a)) states that "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *" Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities could be made available under Section 6 of the Act (State Cooperative Agreements). Therefore, listing of this genus would reinforce and supplement the protection available to these species under State law. Also, the Act would offer additional protection to these species, as it is now a violation of the Act to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of a State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of each of the extant populations is in itself a considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy a significant percentage of the known extant individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the three genus *Remya* species as endangered. Only 6 populations with a total of about 60 individuals remain in the wild, and these face threats of browsing and grazing by feral and domestic animals, and general habitat degradation. Because three species (entire genus) are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose any habitat of a species that is considered to be critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time. Such a determination would result in no known benefit to the species. All populations are on State land; Federal and State agencies can be alerted to their presence without the publication of critical habitat descriptions and maps. Publication of such descriptions and maps would increase the degree of threat from taking or vandalism because live specimens of *Remya* could be of interest to curiosity seekers or collectors of rare plants. Also, as the plants grow mostly on steep slopes, visits to the area could result in severe erosion problems, an additional threat to the species. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since the *Remya* species are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below:

Section 7 (a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Remya* species as all known sites for these plants are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the three species of *Remya* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

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(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the three species of *Remya*;:

(2) The location of any additional populations of any of the three *Remya* species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and the possible impacts on the three species of *Remya*.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Herbst, D. R. 1988. Unpublished status survey of the genus *Remya*. U.S. Fish and Wildlife Service. 41 pp.

Hillebrand, Wm. Flora of the Hawaiian Islands. Facsimile ed., 1965, Hafner Publ. Co., N.Y. 673 pp.

Wagner, W. L. and D. R. Herbst. 1987. A new species of *Remya* (Asteraceae: Astereae) on Kaua'i and a review of the genus. Systematic Botany 12(4):601–608.

Wagner, W. L., D. R. Herbst, and S. H. Sohmer. In Press. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Remya kauaiensis	None	U.S.A. (HI)	E		NA	NA
Remya mauiensis	Maui remya	U.S.A. (HI)	E		NA	NA
Remya montgomeryi	None	U.S.A. (HI)	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

FR Doc. 89–23056 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN: 1018–AB31

Endangered and Threatened Wildlife and Plants; Proposal To List the Fanshell as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to lis a freshwater mussel, the fanshell (*Cyprogenia stegaria* {=*C. irrorata*}), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Virginia. Presently, the fanshell is believed to be reproducing in only three rivers—the Green and Licking Rivers in Kentucky, and the Clinch River in Tennessee and Virginia. Additionally, small, apparently nonreproducing populations (based on the collection of a few old specimens in the 1980s) may still persist in the Muskingum River, Ohio; the Kanawha River, West Virginia; the Wabash River system in Illinois and Indiana; Tygarts Creek, Kentucky; and the Tennessee and Cumberland Rivers in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments and navigation facilities, dredging for channel maintenance, sand and gravel mining, and water pollution. Comments and information are sought from the public concerning this proposal.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) was described by Rafinesque (1820). This freshwater mussel is characterized as a medium to large river species (Bates and Dennis 1985). The mussel has a medium-size shell (seldom exceeding 3.2 inches (80 millimeters) in length) that is subcircular in outline (Johnson 1980). The shell exterior has green rays on a light green or yellow surface ornamented with green mottling. The inside surface of the shell (nacre) is usually silvery white. Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Since the turn of the century, the fanshell has undergone a substantial reduction in its range. It was historically widely distributed in the Ohio, Wabash, Cumberland, and Tennessee Rivers and their larger tributaries in Pennsylvania, Ohio, West Virginia, Illinois, Indiana, Kentucky, Tennessee, Alabama, and Virginia (Johnson 1980, Kentucky Nature Preserves Commission 1980, Ahlstedt 1986, Bates and Dennis 1985, Lauritsen 1987, Cummings *et al.* 1987 and 1988. Starnes and Bogan 1988). The loss of many historic populations was likely due to the impacts of impoundments, navigation projects, pollution, and habitat alterations such as gravel and sand dredging, that directly affected the species and reduced or eliminated its fish host.

Based on a review of current literature on the species (see above) and on the following personal communications and letters involving knowledgeable individuals and State and Federal agency personnel, it is believed that reproducing populations are now present in only three rivers—the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Green River, Hart and Edmonson Counties, Kentucky; and the Licking River, Kenton, Campbell, and Pendleton Counties, Kentucky (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, personal communication, 1988; Robert Anderson and Mark Gordon, Tennessee Cooperative Fishery Research Unit, personal communication, 1988; Carl Becker, Illinois Department of Conservation, *in litt.*, 1988; Charles Bier, Western Pennsylvania Conservancy, *in litt.*, 1989; Richard Connor and William Sinozich, U.S. Army Corps of Engineers, *in litt.*, 1989; Kevin Cummings, Illinois Natural History Survey, *in litt.*, 1989; Ronald Cicerello and Richard Hannan, Kentucky Nature Preserves Commission, *in litt.*; 1988; Wendal Haag, Ohio State University Museum of Zoology, *in litt.*, 1988; Edward Hansen, Indiana Division of Fish and Wildlife, *in litt.*, 1989; Patricia Jones, Ohio Department of Natural Resources, *in litt.*, 1988; Richard Neves, Virginia Cooperative Fish and Wildlife Research Unit, *in litt.*, 1988; Brian McDonald and Michael Zeto, West Virginia Department of Natural Resources, *in litt.*, 1988 and 1989; James Sickle, Murray State University, personal communication, 1989; Clarke Shiffer, Pennsylvania Fish and Game Commission, personal communication, 1989; William Tolin, U.S. Fish and Wildlife Service, personal communication, 1988; and Paul Yokley, University of North Alabama, personal communication, 1988). Additionally, small remnant, apparently nonreproducing populations (based on collections of a few old individuals in the 1980s) may still persist in the Muskingum River in Morgan and Washington Counties, Ohio; the Wabash River in White and Wabash Counties, Illinois, and Posey County, Indiana; the East Fork White River, Martin County, Indiana; the Tippecanoe River, Tippecanoe County, Indiana; the Kanawha River, Fayette County, West Virginia; Tygarts Creek, Greenup and Carter Counties, Kentucky; the Cumberland River, Smith County, Tennessee; and the Tennessee River, Rhea, Meigs, and Hardin County, Tennessee.

The population in the Green River is likely the best of the three remaining reproducing populations. Fresh dead fanshells of various age classes from juvenile to adults have been recently (1987 and 1988) found in muskrat middens along the Green River (Ronald Cicerello, personal communication, 1988). However, the Green River, which lies partially within the Mammoth Cave National Park, is not free from threats. The river's mussel fauna have been seriously depleted. Cicerello (personal communication, 1988), based on his 1987 and 1988 surveys of the Green River within and above the Mammoth Cave National Park, believes that about forty mussel species still survive in the area. Ortmann (1926) reported finding 66 species of mussels in the Green River. The Green River has been degraded by runoff from oil and gas exploration and production sites and by alteration of stream flows by an upstream reservoir.

The Clinch River fanshell population extends over about 86 river miles (Ahlstedt 1986). However, a Tennessee Valley Authority (1988) survey reported that the fanshell comprised less than 1 percent of the mussels collected at 11 Clinch River quantitative sampling sites in 1979 and 1988. The Tennessee Valley Authority (1988) also reported that overall mussel abundance in the Clinch River has decreased from an average of 11.64 mussels per square meter in 1979 to 6.00 per square meter in 1988. The Clinch River also has environmental problems. Charles Sledd (Virginia Commission of Game and Inland Fisheries, personal communication, 1988) stated that land use practices along the Clinch River have contributed to a decline in water quality and mussel populations. The Clinch River has experienced some adverse impacts from coal mining, and the river has been subjected to two mussel kills resulting from toxic substance spills from a riverside coal-fired power plant.

The Licking River also supports a reproducing fanshell population (Ronald Cicerello, personal communication, 1989). Live and fresh-dead individuals of several year classes have been collected. However, despite collections made throughout the drainage by Kentucky Nature Preserve Commission biologists, the species is only known from the lower portion of the Licking River. This population could potentially be threatened by some of the water supply development alternatives presently under preliminary review for the Licking River watershed.

The fanshell was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) and January 6, 1989, **Federal Register** (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On December 6, 1988, the Service notified by mail (150 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review was being conducted specifically to determine if the fanshell should be protected under the Act. A total of 22 written responses was received as a result of the December 6, 1988, notification. No objections to the potential listing of the fanshell were received, and much information on the species' status and its former and present distribution was provided.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing

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provisions of the Act set forth procedures for adding species to the Federal list. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The fanshell was apparently once widespread in the Ohio River and its larger tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, Alabama, and Virginia (Johnson 1980). Johnson (1980) reported that the species was formerly known from at least 26 rivers. Many of these historically known populations were evidently lost when riverine habitat in the Ohio River system was converted to a series of large reservoirs. These reservoirs and other habitat altering factors (e.g. navigation projects and gravel and sand dredging) have diminished the species' preferred riverine gravel/sand habitat and eliminated or reduced the availability of the mussel's fish host. As a result, this species' distribution has been substantially reduced.

The following is a review by State of the species' status (see "Background" section for additional information on the species' status).

Pennsylvania: No definitive study of Pennsylvania's mussel fauna has been conducted in more than 50 years. However, based on the mussel survey data that are available and the documented history of habitat degradation that has occurred in the Pennsylvania rivers where the species was found early in this century, it is presumed that the species has been extirpated from the State (Clarke Shiffer, personal communication, 1989; and Charles Bier, *in litt.*, 1989).

West Virginia: In 1982 one old fresh-dead fanshell was collected below Kanawha Falls on the Kanawha River (William Tolin, personal communication, 1988). This is the only recent record of the species in West Virginia, and the species is believed to be very rare in the State (Brian McDonald and Michael Zeto, *in litt.*, 1988 and 1989).

Ohio: Based on letters from Wendal Haag (1988) and Patricia Jones (1989), the only recent (1980s) records for Ohio rivers are from the Muskingum River, and these were all large old individuals. Clayton Lakes (Ohio Department of Natural Resources, *in litt.*, 1988) stated: "We believe *Cyprogenia stegaria* should be protected under the 1973 Federal Endangered Species Act."

Indiana: The species was found at a few sites in the Wabash River system during 1987 and 1988 (Kevin Cummings, *in litt.*, 1989); Jim Engel, U.S. Fish and Wildlife Service, *in litt.*, 1989). However, these collections were represented by only a few live or fresh-dead old individuals. Edward Hansen (*in litt.*, 1989) stated that the fanshell was historically common in the Wabash River system but that recent surveys (1987 and 1988) document a dramatic decline in the species. The State of Indiana has classified the species as endangered, and the Indiana Division of Fish and Wildlife supports protection of the species under the Endangered Species Act.

Illinois: The fanshell (based on the collection of a few old specimens) is presently known in Illinois only from the Wabash River (Kevin Cummings, *in litt.*, 1989). The species was added to the Illinois list of endangered species in March 1989 (Carl Becker, pers. comm., 1987). Becker further stated: "The Wabash River experienced heavy commercial musseling pressure from the mid-1950s to the mid-1960s. Since that time, none of the river's mussel populations seem to have recovered very well."

Kentucky: The Kentucky Nature Preserve Commission, which classifies the species as threatened (Warren *et al.* 1986), reported that the fanshell was historically taken from 10 reaches of Kentucky rivers (Richard Hannan, *in litt.*, 1988). Presently, the species is known to survive in only three Kentucky rivers and to reproduce in only two.

Tennessee: In Tennessee, a few old specimens apparently still survive in the Cumberland and Tennessee Rivers (Bob Anderson, Stephen Ahlstedt, Mark Gordon, and Paul Yokley, personal communication, 1989); however, there is no indication that the species is reproducing in either of these rivers. The only known Tennessee population that is believed to still be reproducing is in the Clinch River above Norris Reservoir (Stephen Ahlstedt, personal communication, 1989). The Tennessee Wildlife Resources Agency (Robert Hatcher, *in litt.*, 1989) stated: ". . . we support any appropriate means of protecting this species and its habitats."

Alabama: Johnson (1980) reported that the species historically was taken in Alabama from the Tennessee River and its tributary, the Flint River. Based on literature records and personal communication with species experts (see "Background" section of this rule) the species is believed to be extirpated from the State of Alabama.

Virginia: The only historic record of the fanshell for Virginia is from the Clinch River (Johnson 1980). Although rare, the species still survives as a reproducing population in the Clinch River (Tennessee Valley Authority 1988). The Virginia Commission of Game and Inland Fisheries supports consideration of the species for protection under the Act (Charles Sledd, *in litt.*, 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in small numbers within some harvested mussel beds, and the species can therefore sometimes be taken by mussel fishermen. Also, the species is rare and prized by private and institutional collectors. Thus, take does pose some threat to the species. Federal protection could help to minimize the take of individuals.

C. *Disease or predation.* Although the fanshell is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* States within the species' range prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act from mussel collectors by requiring Federal permits to take the species, and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Only 3 of the 12 remaining populations are believed to be reproducing. Therefore, unless methods can be developed to maintain the nonreproducing populations, about 75 percent of the known populations will be lost in the foreseeable future due to their inability to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) as an endangered species. Historical records reveal that the species was once much more widely disturbed in many of the large rivers of the Ohio River system. Presently only three isolated, reproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the three remaining reproducing populations, endangered status appears to be the most appropriate classification for this species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the fanshell.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the fanshell at this time, owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers and the Tennessee Valley Authority are the two Federal agencies most involved, and they, along with the State natural resources agencies within the species' range, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. Both Federal agencies have conducted numerous studies in these river basins and are knowledgeable of the fauna and of their projects' potential impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the **"ADDRESSES"** section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this intragency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting the species. No specific proposed Federal actions were identified. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations can be resolved so that the species is protected and the project objectives met. In fact, many of the areas inhabited by the fanshell are also inhabited by other mussels that have been federally listed since 1976, and the Service has a history in many of these areas of successful Section 7 conflict resolutions.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate of foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

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National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Ahlstedt, S.A. 1986. Cumberland Mollusk Conservation Program. Activity 1: Mussel Distribution Surveys. Tennessee Valley Authority, Norris, Tennessee. January 1986. 125 pp.

Bates, J.M., and S.D. Dennis. 1985. Mussel Resource Survey—State of Tennessee. Tennessee Wildlife Resources Agency. Technical Report No. 85–4. 125 pp.

Cummings, K.S., C.A. Mayer, L.M. Page. 1988. Survey of the Freshwater Mussels (Mollusca: Unionidae) of the Wabash River Drainage, Phase II: Upper and Middle Wabash River. Technical Report 1988(8), Illinois Natural History Survey. 47 pp., plus Appendix I.

Cummings, K.S., C.A. Mayer, L.M. Page, and J.M. Berlocher. 1987. Survey of the Freshwater Mussels (Mollusca: Unionidae) of the Wabash River Drainage, Phase I: Lower Wabash and Tippecanoe Rivers. Technical Report 1987(5), Illinois Natural History Survey. 60 pp., plus Appendices I, II, and III.

Johnson, R.I. 1980. Zoogeography of North American Unionacea (Mollusca: Bivalvia) North of the Maximum Pleistocene Glaciation. Bulletin of the Museum of Comparative Zoology. 149(2):77–189.

Kentucky Nature Preserves Commission. 1980. *Cyprogenia stegaria* (Rafinesque). Kentucky Natural Areas Plan—Appendix A. Frankfort.

Lauritsen, Diane. 1987. The Nature Conservancy Element Stewardship Abstract: (*Cyprogenia stegaria*). The Nature Conservancy, Midwest Regional Office, Minneapolis, Minnesota. Unpublished report. 4 pp.

Ortmann, Arnold E. 1926. The Naiades of the Green River Drainage in Kentucky. Annals Carnegie Mus., 17:167–188.

Rafinesque, Constantine S. 1820. Monographie des Coquilles Bivalves Fluviatiles de la Riviere Ohio, Contenant Douze Genres et Soixantehuit Especies. Ann. Gen. des Sci. Physiq. Brux., 5:287–322.

Starnes, L.B., and A.E. Bogan. 1988. The Mussels (Mollusca: Bivalvia: Unionidae) of Tennessee. American Malacological Bulletin 6(1):19–37.

Tennessee Valley Authority. 1988. Biological Assessment of Columbia Dam Alternatives, Duck River, Tennessee, Tennessee Valley Authority. 28 pp., plus Appendices A–C.

Warren, M.L., Jr., W.H. Davis, R.R. Hannan, M. Evans, D.L. Batch, B.D. Anderson, B. Palmer-Ball, Jr., J.R. MacGregor, R.R. Cicerello, R. Athey, B.A. Branson, G.J. Fallo, B.M. Burr, M.E. Medley, and J.M. Baskin. 1986. Endangered, Threatened, and Rare Plants and Animals of Kentucky. Transactions of the Kentucky Academy of Science 47(3–4):83–98.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwide noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams:							
Mussel, fanshell	*Cyprogenia stegaria(=irrorata)*.	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, and WV).	NA	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23055 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB36

Endangered and Threatened Wildlife and Plants; Endangered Status Proposed for Mimulus glabratus var. michiganensis (Michigan monkey-flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This semi-aquatic perennial plant is known from only twelve sites in Michigan, eight of which contain less than 10 individual plants. The plant is endangered by habitat loss due to recreational and residential development. This proposed rule, if made final, will extend Federal protection provided by the Act to *Mimulus glabratus* var. *michiganensis*. Critical habitat is not proposed for this plant. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Endangered Species Program, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see ADDRESSES section) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Mimulus glabratus var. *michiganensis* (Michigan monkey-flower) was first recognized as a separate taxon by Pennell (1935) in his monograph of the Scrophulariaceae. He identified it as a subspecies, while Fassett (1939) assigned it varietal status. Some researchers have noted considerable morphological overlap with other taxa. However, recent studies (Bliss 1983, Minc 1989) of floral characters of closely related taxa showed distinct morphometric differences between *M. glabratus* var. *michiganensis*, *M. glabratus* var. *fremontii* and *M. guttatus*. Statistical analyses of measurements of corolla length, corolla width, pistil length, style length, and ovary length demonstrated that *M. glabratus* var. *michiganensis* is consistently and distinctively intermediate between the other two taxa: smaller than *M. guttatus*, but larger than *M. glabratus* var. *fremontii*. As Minc (1989) reports, the two *M. glabratus* varieties are readily distinguished by differences in flower size, while some size overlap occurs between *M. glabratus* var. *michiganensis* and *M. guttatus*. However, the latter two taxa differ in the shape of the floral characters. These studies confirmed the validity of recognizing this taxon at least as a distinct variety and perhaps as a separate species.

Mimulus glabratus var. *michiganensis* is an aquatic or semi-aquatic glabrous, perennial herb with lax stems averaging 36 centimeters (14 inches) in length. It roots at the lower stem nodes to produce clones of up to several hundred stems. The rotund, coarsely-toothed leaves are opposite and evenly distributed along the stem. The plant blooms from about mid-June to mid-July and occasionally to mid-August. However, pollen viability is low, suggesting that var. *michiganensis* is primarily dependent on vegetative reproduction. The yellow tubular flowers range from 16 to 27 millimeters (.63 to 1.1 inches) long (Bliss 1983, Minc 1989) and emerge from upper leaf axils on slender stalks. The flowers have two-lobed upper lips and three-lobed lower lips, with the lower lip and tube irregularly red spotted. The ranges of var. *michiganensis* and var. *fremontii* overlap, though these plants have not been found to co-occur at any site. *Mimulus glabratus* var. *michiganensis* can be distinguished from var. *fremontii* by flower size. The smaller var. *fremontii* flowers are 8 to 18 millimeters (.32 to .71 inches) long. Pistil length is 11 to 21 millimeters (.43 to .83 inches) for var. *michiganensis, and 5 to 10 millimeters (.2 to .39 inches) for var. fremontii*. Although their ranges are not presently known to overlap, *Mimulus glabratus* var. *michiganensis* is generally smaller than *M. guttatus* and can be distinguished from this taxon by the larger opening in the corolla throat and the shape of the calyx lobes

Crispin and Penskar (1989) report that var. *michiganensis* is narrowly restricted to cold, saturated soils of seepages on forest edges and in small openings located along streams and lakeshores. Nearly all known populations are associated with the current, or what were the ancient, shorelines of the Great Lakes. Northern white cedar (*Thuja occidentalis*) is usually dominant in the overstory. The Michigan monkey-flower grows in muck or mucky sand that is saturated or inundated by cold, flowing spring water. Typical associates include *Impatiens biflora* (touch-me-not), *Myosotis scorpioides* (forget-me-not), *Nasturtium officinale* (watercress), *Mentha arvensis (spearmint), and Conocephalum conicum* (liverwort). Other species frequently present are *Caltha palustris* (buttercup), *Mitella nuda* (miterwort), *Cystopteris bulbifera* (bulblet fern), *Eupatorium maculatum* (joe-pye-weed), *Equisetum arvensis* (scouring-rush), and *Thuidium delicatulum* (feather moss).

Many of the earliest herbarium specimens of *Mimulus glabratus* var. *michiganensis* were not initially identified beyond the species level. They were subsequently identified as var. *jamesii*, var. *fremontii*, and finally var. *michiganensis*. The first reported collection of var. *michiganensis* was by Charles F. Wheeler in Harbor Springs, Emmet County, Michigan in July 1890. However, the specimen was not identified as var. *michiganensis* until 1980. The type specimen was collected in July 1925 by J. H. Ehlers along the banks of Niger Creek near Topinabee, Cheboygan County, Michigan Whereas the *Mimulus glabratus* complex ranges from Canada to southern Chile, historical records and recent surveys have shown that var. *michiganensis* has a very narrow range, restricted to the Mackinac Straits and Grand Traverse regions of Michigan, specifically in Benzie, Cheboygan, Emmet, Leelanau and Mackinac Counties. The plant is no longer extant at four of the 16 known historical locations (including the type locality and the site of first collection). Two existing sites contain only one or two plants. Almost two-thirds of the extant occurrences are on privately-owned lands. The var. *michiganensis* also occurs at Sleeping Bear Dunes National Lakeshore, the University of Michigan Biological Station, a county park, a township park, and on land owned by the Michigan Nature Association, a private state-wide conservation organization.

Federal Government action on this plant began as a result of Section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report (Ayensu and DeFillipps 1976), designated as House Document No. 94–51, was presented to Congress on January 9, 1975. *Mimulus glabratus* var. *michiganensis* was listed as "threatened" in that document. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94–51 and the July 1, 1975, Federal Register publication.

Mimulus glabratus var. *michiganensis* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the Federal Register on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1976 Amendments to the Act. On December 15, 1980 (45 FR 82479), November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the Federal Register.

Mimulus glabratus var. *michiganensis* was included as a category 1 species in the 1980 notice. Category 1 species are those for which biological information in tha Service's possession warrants their listing as endangered or threatened. In the 1983 and 1985 notices. var. *michiganensis* was dropped to category 2 when it became evident that further biological research and surveys were needed to determine its status and

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taxonomic validity. Since that time, additional research (Minc 1989) and an updated status survey (Crispin and Penskar 1989) were completed, which clarified the taxonomic distinctness of the plant and demonstrated more clearly the biological threat and the need for protection under the Act.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Mimulus glabratus* var. *michiganensis*, was October 13, 1983. On October 13, 1983, and again in 1984, 1985, 1986, 1987 and 1988, the petition finding was that listing of *Mimulus glabratus* var. *michiganensis* was warranted pending finding of further information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes the final finding that the listing is warranted. The Service proposes to implement the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mimulus glabratus* var. *michiganensis* (Pennell) Fassett (Michigan monkey-flower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Mimulus glabratus* var. *michiganensis* is restricted to the current and what was the historical Great Lakes shorelines in the Mackinac Straits and Grand Traverse regions in Michigan. These areas are rapidly being developed for recreational and residential purposes. The major threat to var. *michiganensis* is the destruction and adverse modification of its habitat. Since most populations lie along lakeshores and streams, the plant is particularly vulnerable to increasing vacation home development in its range (Crispin and Penskar 1989). Of the 16 extant and historical populations, three have been extirpated and at least two additional sites have been severely impacted by residential and other developments. The plant has been extirpated at an additional site (the type locality) due to unknown causes.

Mimulus glabratus var. *michiganensis* appears to be highly dependent on continuous supplies of cold spring water. Two of the smaller populations have survived artificial disturbances, such as overstory thinning, and cutting and pulling in spring-fed rivulets that have been maintained adjacent to lakeside residences. Therefore, the plant may be impacted by both direct destruction of its habitat as well as by disturbance to its water supply. Upstream water supply may be impacted by roads and other activities which divert water from the small drainages which support the plant. Excessive pumping of groundwater upgradient of the sites may reduce stream baseflows. The plant may therefore be inadvertently impacted by offsite activities. One recent extirpation of a population appears to have been due to such a disturbance to its water supply.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites. Some incidental commercial use has occurred. One population was discovered after a botanist was served a sprig of *Mimulus glabratus* var. *michiganensis* as a garnish on his restaurant dinner plate.

C. *Disease or predation.* None known that affects this taxon

D. *The inadequacy of existing regulatory mechanisms. Mimulus glabratus* var *michiganensis* is listed as threatened by the State of Michigan. It is illegal to take, possess, transport, import, export, process, sell, buy, collect, pick, cut, dig up, or destroy in any manner any listed plants or plant parts, without a permit Although the State Endangered Species Act does not provide protection for habitat, State and Federal wetland laws regulate many activities within the streamside/wetland habitat of *Mimulus glabratus* var. *michiganensis*. However, there is no guarantee for preservation of this habitat nor the plant's water supply without the protection of the Act and subsequent recovery actions including development of specific management plans. The Endangered Species Act offers possibility for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Periodic high water levels of the Great Lakes impact the shoreline habitat of *Mimulus glabratus* var. *michiganensis*. Recent record high water levels and strong winter storms reshaped many shoreline areas, redirecting seepage streams which supported the plants and opening the overstory by felling cedars. At least one site occurrence listed as extant has not been resurveyed since these storms. Therefore, its present status is unknown. Other shoreline colonies appear to have survived the recent high water levels.

Mimulus glabratus var. *michiganensis* is particularly vulnerable because of the low numbers of individuals occurring at most sites and its limited capability for sexual reproduction. Since the plant roots at the lower stem nodes to produce new stems, it is impossible to distinguish the number of genetic individuals in each colony. However, if one assumes that each "clump" of stems is one individual plant, only four of 12 extant sites contain more than 10 plants. In addition, if, as Crispin and Penskar (1989) surmise, the largely clonal colonies have low genetic diversity, *Mimulus glabratus* var. *michiganensis* may have limited ability to survive or adapt to environmental change. With the limited number of colonies and individuals in existence, and the limited gene pool, the loss of any individuals would appreciably reduce the chances of survival and recovery.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Mimulus glabratus* var. *michiganensis* as endangered. Endangered status appears to be appropriate due to the restricted range of this taxon, the limited number of populations and individuals, its limited capability for sexual reproduction and hence its limited gene pool, and the severity of threats facing the species. Critical habitat is not being proposed for reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. The limited number of populations and individuals of *Mimulus glabratus* var. *michiganensis* make this plant particularly vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Mimulus glabratus* var. *michiganensis* more vulnerable and increase enforcement problems. The principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Mimulus glabratus* var. *michiganensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The National Park Service has jurisdiction over one *Mimulus glabratus* var. *michiganensis* site in Leelanau County, Michigan. Currently, no activities to be permitted, funded, or carried out by any Federal agency, are known to exist which would affect this taxon.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because *Mimulus glabratus* var. *michiganensis* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service. P.O. Box 3507, Arlington, VA 22208 (703/358–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, R.E., and R.A. DeFillippe. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, 403 pp.

Bliss, M. 1983. A comparative study of the two varieties of *Mimulus glabratus* (Scrophulariaceae) in Michigan. M.S. thesis. University of Michigan, Ann Arbor. 58 pp.

Crispin, S.R., and M.R. Penskar. 1989. Rangewide status survey of *Mimulus glabratus* var. *michiganensis* (Pennell) Fassett, the Michigan monkey-flower, Michigan Natural Features Inventory, unpublished report. 12 pp. and appendices.

Fassett, N.C. 1939. Notes from the herbarium of the University of Wisconsin. Rhodora 41:524–525

Minc, L.D. 1989. A morphometric comparison of *Mimulus glabratus* var. *michigonensis, M. glabratus* var. *fremontii*, and *M. guttatus* based on floral characters.

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Unpublished report prepared for the Michigan Natural Features Inventory, 20 pp.

Pennell, F.W. 1935. The Scrophulariaceae of eastern temperate North America. Monograph I, Academy of Natural Sciences, Philadelphia. 650 pp.

Author

The primary author of this proposed rule is Margaret T. Kolar, U.S. Fish and Wildlife Service, 1405 S. Harrison Road, East Lansing, Michigan 48823 (517/337-6650 or FTS 374-6650).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon family:						
Mimulus glabratus var. *michiganensis*	Michigan Monkey-flower	U.S.A. (MI)	E		NA	NA

Dated: September 14, 1989.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23057 Filed 9-29-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposal To Determine Threatened Status for the Puritan Tiger Beetle and Endangered Status for the Northeastern Beach Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for the Puritan tiger beetle (*Cicindela puritana*) and endangered status for the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), two shore-dwelling beetles of the family Cicindelidae. The former was known historically from the Connecticut River in New Hampshire, Massachusetts and Connecticut, and from along the Chesapeake Bay in Maryland; it is now restricted to Maryland and one site in Massachusetts. The latter once occurred commonly along coastal beaches from Cape Cod Massachusetts, to central New Jersey and along the Chesapeake Bay, from Calvert County, Maryland, south; it is now evidently extirpated north of Maryland. Both tiger beetles are threatened by rapid human population increase and development in the areas they occupy. Population and range reductions undergone by both make them more prone to chance extinctions; more vulnerable to the effects of winter storms, predators, and parasites; and less able to recolonize areas previously occupied. This proposal, if made final, will implement protection provided by the Endangered Species Act of 1973, as amended, for these beetles. Critical habitat is not proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and materials will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs at the above address or by telephone (301/269-5448).

SUPPLEMENTARY INFORMATION:

Background

Tiger beetles (genus: *Cicindela*) are day-active, predatory insects that capture small arthropods in a "tiger-like" manner, grasping prey with their mandibles (mouthparts). Tiger beetle larvae, which live in permanent burrows in the ground, are also voracious predators, fastening themselves by means of abdominal hooks near the tops of the burrows and rapidly extending from their burrows to seize passing invertebrate prey. Over 100 species and many additional subspecies of tiger beetles occur in the United States (Boyd 1982). Because of their interesting behavior and variety of forms and habitats, tiger beetles have received much study; a journal devoted exclusively to these beetles, "Cicindela," has been published since 1969. The Puritan tiger beetle (*Cicindela puritana*) and the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), both associated with beach habitats, have until recently received little ecological study.

The Puritan tiger beetle is brownish-bronze above with a metallic blue underside and measures under 11.5 mm (½-inch) in total length. Each eleytron (wing cover) is marked with narrow marginal and transverse white bands. It is distinguished from more common, similarly marked tiger beetles by the uneven or minutely broken edges of the middle band (Glaser 1984). Originally described by G. Horn (1876), *C. puritana* was later considered a subspecies of *Cicindela cuprascens* (Leng 1902, Horn 1930) and a subspecies of *Cicindela macra* (Vaurie 1951). Most recently, Willis (1967) established separate species status for these three taxa. The range of *C. puritana* is separated by several hundred miles from the overlapping ranges of *C. macra* and *C. cuprascens*.

Historically, the Puritan tiger beetle occurred in scattered localities along the Connecticut River in Connecticut, New Hampshire, and Massachusetts, and along the Chesapeake Bay in Calvert and Kent Counties, Maryland. The reasons for this disjunct distribution are unknown. However, its habitat in both areas is similar, characterized by the presence of narrow sandy beaches with adjacent, well-developed bluffs of sand and clay (Glaser 1984, Knisley 1987). The Puritan tiger beetle has a full one-year life cycle. In Maryland, adults are first seen in mid-June. Their numbers peak in early July and begin to wane by late July. Collection records from New England indicate a pattern similar but shifted about two weeks later (Knisley 1987). The newly emerged beetles feed and mate along the beach area. After mating, females move up onto the cliffs to deposit their eggs. Emerging larvae construct burrows in the cliffs. Knisley found larval burrows in moist areas of sandy clay cliffs adjacent to the beaches where the adults were found and along the back areas of these beaches. Statistical analysis of habitat features indicated that the presence of well-developed, sparsely vegetated cliffs as oviposition (egg-laying) sites is more important for this beetle than is the quality of adjacent beaches (Knisley 1987).

Most New England collection records for the Puritan tiger beetle were from the period 1900 to 1920, with the most recent collection in 1939 (Knisley 1987). Subsequent vigorous collection attempts were unsuccessful, leading to the belief that the Puritan tiger beetle was likely extirpated in New England. In July of 1986, however, a population of the Puritan tiger beetle was discovered in Hampshire County, Massachusetts, on a small island in the Connecticut River and on a sandy beach several hundred meters to the south. No other Connecticut River populations have since been discovered, despite intensive search (Knisley 1987, Nothnagel 1987). The decline of this species in New England is most likely due to habitat destruction, particularly of larval habitat. This is further discussed under Factor A below.

South of New England, the Puritan tiger beetle is restricted to a 26-mile stretch of the Chesapeake Bay in Calvert County and a recently discovered population in Kent County, Maryland. Status survey work in Calvert County during the breeding season, when adults are active, conducted in 1985 and 1986 by B. Knisley (1987), revealed five large populations (600+ individuals) and four small populations (100 or fewer individuals). However, great fluctuations in numbers may occur from year to year. Tiger beetle populations in Calvert County are potentially threatened by human encroachment into their habitat, as detailed below.

The northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), described as *C. dorsalis* by Say (1817), has white to light tan elytra, often with fine dark lines, and a bronze-green head and thorax. It is somewhat larger than the Puritan tiger beetle, measuring 13 to 15.5mm (½ to ⅝ inch) in total length.

Cazier (1954) considered *C. dorsalis* and three other previously described species as subspecies of the single species *C. dorsalis*. Boyd and Rust (1982) determined that these four taxa are clearly distinguishable. Recent morphological analyses and breeding experiments indicate that *C. dorsalis* is most likely a full species (B. Knisley, Randolf Macon College, pers. comm. June, 1987). Until this information is published, however, it is most appropriate to continue to refer to this taxon as a subspecies.

Historically, the northeastern beach tiger beetle occurred on sandy beaches from Cape Cod, Massachusetts south to central New Jersey and along the Chesapeake Bay of Maryland and Virginia. Early records indicate the abundance of this beetle on the northeast coast. Leng (1902) states that it occurred "in great swarms in July" from Martha's Vineyard south to New Jersey. Boyd (1978) cites many references, mostly from the 19th century, indicating the species' abundance in New Jersey. It was also common along the beaches of Rhode Island and Long Island, New York (Knisley 1987).

Between 1920 and 1950, the number of collections of the northeastern beach tiger beetle dropped precipitously (Knisley *et al.* 1987). Stamatov (1972) noted that northeastern beach tiger beetles were declining, and had possibly disappeared from New York and New Jersey. He suggested that this decline might be associated with increasing vehicular traffic along the beaches. He did report the existence of a breeding population at Block Island, Rhode Island. This is the most recent record of a northeastern beach tiger beetle population north of Maryland. Extensive surveys and information collected by Knisley (1987) indicate that the northeastern beach tiger beetle is now extirpated north of Maryland. Furthermore, only 19 extent populations are known to exist within the Chesapeake Bay area of Maryland and Virginia, and eight of these are considered "marginal" due to low population numbers (Knisley, pers. comm., April, 1989).

Unlike the larvae of the Puritan tiger beetle, northeastern beach tiger beetle larvae occupy burrows directly on the beach, in and above the high-tide zone. Rearing experiments (Stamatov 1972) and field observations by Knisley indicate these beetles have a full two-year life cycle, over-wintering twice as larvae, pupating at the bottoms of their burrows and emerging as winged adults during their third summer. Adults emerge from early June through August, with peak abundance in mid-July. Adults forage mostly in the damp sand of the intertidal zone and apparently scavenge on dead fish and invertebrates for much of their diet (Knisley 1987). Habitat characteristics significantly correlated with the presence of northeastern beach tiger beetles include large beach size (length and width), high degree of exposure (dynamic beaches), fine sand particle size and low human and vehicle activity (Knisley 1987).

The northeastern beach and Puritan tiger beetles were first recognized by the Service in the **Federal Reigster** Notice of Review published on May 22, 1984. That notice, which covered invertebrate wildlife being considered for classification as endangered or threatened, included these two beetles in Category 2. Category 2 comprises those taxa for which listing is possibly appropriate, but for which existing information is insufficient to support a proposed rule. In response to the publication of this notice, the Service received comments from the American Entomological Society expressing their view that the northeastern beach tiger beetle clearly qualified for endangered status, and that the status of the Puritan tiger beetle was questionable. The lack of available biological data on these taxa was also noted. Accordingly, in 1985, the Service contracted with Dr. Barry Knisley to conduct status survey work on these two beetles. Dr. Knisley's final report to the Service (Knisley 1987) provides much of the biological basis for this proposed listing action. The **Federal Register** Notice of Review published on January 6, 1989, included these two beetles in Category 1, indicating that the Service now possesses sufficient information to support the appropriateness of proposing to list them.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 153 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal Lists.

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Species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Puritan tiger beetle (*Cicindela puritana*) and northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Although it was once abundant in New England, the northeastern beach tiger beetle is now extirpated from all of its former range north of Maryland. This dramatic range contraction has been attributed primarily to the impacts of human and vehicle activities on beaches (Stamatov 1972, Boyd 1978, Knisley 1987). Northeastern beach tiger beetle larvae are particularly vulnerable to direct crushing or repeated compaction of their burrows by vehicles and heavy human use for two reasons. First, they occur in the intertidal zone (as opposed to Puritan tiger beetle larvae which burrow on cliffs or back beaches) and are therefore unavoidably in the path of beach users and their vehicles. Secondly, due to their prolonged life cycle, these beetles must pass through two summers in their vulnerable larval stage.

The significant impact of vehicles on this beetle is illustrated by a study of the related *Cicindela dorsalis media*, which Dr. Knisley conducted on Assateague Island in 1985. Adults (and larvae) were found only on the northern 2-mile section of the island where vehicles were restricted and human activity light. No beetles were found on the remaining 10–12 miles of beach, including the State Park portion and the southern portion in Maryland where off-road vehicle activity is heavy. But, just below the state line in Virginia, where vehicles are prohibited, adult beetles could again be found. A study of the northeastern beach tiger beetle presently underway in Maryland is yielding similar results; the abundance of larval tiger beetles is inversely correlated with the amount of human traffic that an area receives (Knisley, pers. comm., 1989). Southern Maryland and coastal Virginia are developing rapidly. Visible signs of development in Calvert County, Maryland are the widening of Routes 2–4 in the southern part of the county, development of a state park at Flag Ponds and creation and expansion of numerous housing developments. A private campground now occurs at one of Virginia's largest beetle population beaches, and several "planned community" developments have been proposed near other large populations on the Eastern Shore. Development of the Virginia's eastern shore threatens to be so rapid and haphazard that a citizens' group has been formed to try to bring some order to potential development. Such development results in increased human activity on the beaches, as well as construction of marinas and increased use of bulkheads and other structures that may eliminate or alter beaches.

Pollution and alteration of the intertidal beach areas are also potential threats to these beetles. Spills of oil or other pollutants that reach the shore could be lethal to the tiger beetle larvae directly, or indirectly, by interfering with their feeding behavior or diminishing their prey base. Dredge spoil material placed on beaches could also destroy larvae directly.

In contrast to northeastern beach tiger beetles, Puritan tiger beetle larvae burrow on beachside cliffs and back beaches, where they are less susceptible to direct impacts of human and vehicular traffic or other perturbations of intertidal habitat. However, this species has not escaped the effects of habitat degradation, particularly where it occurred along the Connecticut River. A total of 17 dams have been built along the Connecticut above Hartford, very likely inundating some Puritan tiger beetle populations and decreasing water flow necessary for habitat maintenance at others. The Connecticut has also been seriously polluted by effluent from pulp and paper mills and other factories and by inputs of raw sewage (McCarry 1972). Efforts over the past several decades to clean up this river have been largely successful, and may permit reestablishment of tiger beetle populations in some areas of previous extirpation (Tanner 1988). Cliff stabilization is another form of habitat alteration affecting the Puritan tiger beetle today. Continual erosion and breakdown of the cliffs, from wave action and rainfall, is necessary to create the newly exposed areas needed for oviposition and larval development. Construction of bulkheads and growth of kudzu or other introduced vegetation on cliffs curtails this erosive process and renders the cliffs unsuitable for the larvae. In Massachusetts, bank stabilization and urbanization along the Connecticut River have eliminated much potential tiger beetle habitat (Nothnagel 1987).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* It is no exaggeration to state that tiger beetles (genus *Cicindela*) are the most highly sought-after by amateur collectors of all bettle genera. Additionally, tiger beetles are frequently used as model organisms in physiological and ecological studies. In fact the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. This interest in tiger beetles is reflected in the publication since 1969 of a journal devoted exclusively to this genus.

At present, collecting pressure on adult beetles is not believed to be contributing to the decline of these species; threats to larval survival appear to outweigh any threats to adults. However, the proposed listings of these beetles as endangered and threatened could increase their desirability and perceived value to collectors.

C. *Disease or predation.* These tiger beetles are not known to be susceptible to any diseases that would threaten their survival; however, two insects known to be natural enemies have been commonly observed in their habitat. Adults of the wingless wasp, *Methocha*, were found at several population sites. Female *Methocha* attack and paralyze tiger beetle larvae, then lay a single egg on the beetle larva, so that their own larva may use the beetle for a food source as it develops. This parasitoid may account for significant tiger beetle mortality. Robber flies (family Asilidae) were also seen commonly at most sites visited by Knisley (1987). These predatory flies perch and wait for adult tiger beetles or other flying prey and capture them out of the air. Ten unsuccessful attacks of robber flies on northeastern beach tiger beetles were observed during status survey work (Knisley 1987). Normally, these predators and parasitoids, which evolved in conjunction with the tiger beetles, would not pose a severe threat to the survival of their host (or prey) species, since this would, in the long run, threaten their own survival. However, this natural balance has been altered by habitat degradation, as mentioned in factor A, and now these natural enemies may in some cases pose significant threats to the beetles' survival.

D. *The inadequacy of existing regulatory mechanisms.* The Puritan and northeastern beach tiger beetles are both classified as endangered under Maryland state law, and their take is prohibited, except as permitted for scientific research. While this lends some protection to individual beetles, it does not adequately protect the larval beetles' habitat. These beetles are not presently protected under Virginia's Endangered Plant and Insect Protection Act, but if they are Federally listed, they will be automatically added to the state

list. This law also provides protection from taking, but does not regulate habitat alteration. While both tiger beetles are on the state "Endangered" list in Massachusetts, the state Endangered Species Act has not yet been approved by the legislature. However, the beetles and their habitat are protected in Massachusetts under the Wetlands Protection Act, which requires permit applicants to consider the requirements of listed species in their project plans.

E. *Other natural or man-made factors affecting their continued existence.* Severe flooding may have contributed to the near extinction of the Puritan tiger beetle from the Connecticut River system. New England's worst floods occurred in 1927 and 1936, at about same the time collection records for this species became non-existent (Knisley 1987). These intensive floods likely inundated the adult beetles' beach habitat and/or stripped off portions of riverside cliffs where the larvae occurred.

Populations of both tiger beetle species normally experience very high larval mortality and dramatic year-to-year variations in abundance and local extinctions, due to factors such as flood tides, hurricanes, winter storms and other natural phenomena. A series of nearby or contiguous populations is probably necessary to reestablish populations that have been locally depleted or extirpated. Both decrease in habitat size and number of populations make it difficult for beetles to recover from population declines caused by natural or human-related factors. Small habitat size supports a smaller population with a greater probability of extinction. Gradual elimination or disruption of adjacent habitats eliminates the source of beetles for recolonization of extirpated population sites. This problem has apparently been more severe from New Jersey to Massachusetts, where climatic conditions for the beetles are less favorable and human pressures on habitats greater.

The Service has carefully assessed the best scientific and commercial information regarding past, present and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) as endangered and the Puritan tiger beetle (*Cicindela puritana*) as threatened. The northeastern beach tiger beetle has been extirpated from a significant portion of its range along the northeast coast of the U.S.; its prolonged larval stage and the location of larvae in the intertidal sands, in the path of human and vehicular traffic, render this beetle very vulnerable to local extinction through habitat destruction. Threatened status would not accurately reflect the status of this beetle, whose remaining habitat is undergoing rapid development. This same area is also the stronghold of remaining Puritan tiger beetle habitat. However, the Puritan tiger beetle appears somewhat less vulnerable to direct habitat disruption because its larval burrows are located in less accessible areas. Furthermore, certain areas along the Connecticut River where this beetle has been extirpated may be suitable for recolonization. Therefore, threatened status seems most appropriate for this species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. As mentioned in Factor B above, tiger beetle specimens are considered very valuable to collectors. Publication of maps detailing the specific locations of these beetles would increase the probability of their being over-collected, especially at sites containing smaller populations. Protection for these species and their habitats will be addressed through application of the jeopardy standard and through the recovery process. On balance, the threat of over-collection as a result of designation of critical habitat would outweigh any benefit of such designation. Therefore, it is not prudent to determine critical habitat for these beetles at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likey to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Private developers who are working without any Federal permits other such authorizations or monies, will be unaffected under this rule with respect to Section 7(a), but would be subject to restrictions against take, as specified in Section 9 of the Act and implementing regulations.

The U.S. Army Corps of Engineers (Corps) has jurisdiction over much of the area inhabited by these tiger beetles. Projects possibly affecting the beetles would include dredge spoil disposal, beach erosion control, marina construction, and other developments affecting beach areas. Other Federal agencies that could possibly be affected if these beetles are listed would include the U.S. Coast Guard, National Marine Fisheries Service, Soil Conservation Service and other agencies conducting or overseeing projects in coastal areas or along the Connecticut River.

At present, the only Federal projects or permitting actions known to the Service that could affect these beetles include several minor spoil disposal operations, a Corps beach stabilization project at Long Beach, Maryland and a proposed campground facility on Virginia's lower eastern shore. The Corps is aware of this proposed listing and is working with the Service to avoid any adverse impacts to the beetles associated with these projects.

The listing of these beetles would also bring Sections 5 and 6 of the Endangered Species Act into full effect in their behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to Section 6, the Service would be able to grant funds to affected states for management actions

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aiding the protection and recovery of the beetles.

Listing these tiger beetles as threatened and endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the beetles. The plan(s) would establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate the cost of various tasks necessary to accomplish them. They would assign appropriate functions to each agency and a time frame within which to complete them. They would also identify specific areas that need to be monitored and possibly managed for the beetles.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are at 17.22, 17.23, and 17.32. Such permits are available for scientific purposes to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Office of Management Authority, Permits Branch, P.O. Box 3507 Arlington, VA 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal be as accurate and effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commerical or other relevant data concerning any threat (or the lack thereof) to these tiger beetles;

(2) The location of any additional populations of Puritan tiger beetles or northeastern beach tiger beetles and the reasons that any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these beetles; and

(4) Current or planned activities in the subject areas that may impact these beetles;

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Boyd, H. P. 1978. The tiger beetles (Coleoptera: Cicindelidae) of New Jersey, with special reference to their ecological relationships. Trans. Amer. Entomol. Soc. 104:191–242.

Boyd, H. P. 1982. Checklist of Cicindelidae. The tiger beetles. Plexus Publ., Marlton, N.J.

Boyd, H.P. and R. W. Rust. 1982. Intraspecific and geographic variation in *Cicindela dorsalis* Say (Coleoptera: Cicindelidae). Coleopt. Bull. 36:221–239.

Cazier, M. A. 1954. A Review of the Mexican tiger battles of the genus *Cicindela* (Coleoptera: Cicindelidae). Bull. Amer. Mus. Nat. Hist. 103(3): 231–307.

Glaser, J. D. 1984. The Cicindelidae (Coleoptera) of Maryland. Md. Entomo1. 2(4): 65–76.

Horn, G. 1876. The sexual characters of North American Cicindelidae with notes on some groups of *Cicindela*. Trans. Amer. Entomol. Soc. V:232–240.

Horn, W. 1930. Notes on the races of *Omus californicus* and a list of the Cicindelidae of America north of Mexico (Coleoptera). Trans. Amer. Entomol. Soc. 56:73–86.

Knisley, B. 1987. Final Report: Status survey of two candidate tiger beetles, *Cicindelo puritana*. G. Horn and *C. dorsalis* Say. Submitted to USFWS, Region 5, 2/10/87, 20+ pp.

Knisley, B., J. I. Luebke and D. R. Beatty. 1987. Natural History and population decline of the coastal tiger beetle, *Cicindelo dorsalis dorsalis* Say (Coleoptera: Cicindelae). Virginia J. Sci. 38(4): 293–303.

Leng, C.W. 1902. Revision of the Cicindelidae of boreal America. Trans. Amer. Entomol. Soc. 28:93–186.

McCarry, C. 1972. Yesterday lingers along the Connecticut. Nat. Geogr. 142:334–69.

Nothnagel, P. 1987. *Cicindela puritana*.—The Puritan Tiger Beetle: Its current status in Masschusetts. Unpubl. Rept. to Mass. Nat. Heritiage Prog., 15pp.

Stamatov, J. 1972. *Cicindela dorsalis* endangered on northern Atlantic coast. Cicindela 4:78.

Tanner, O. 1988. Of tiger beetles and wedge mussels: protecting Connecticut River riches. The Nature Conserv. Mag. 38(5):4–11.

Vaurie, P. 1951. Five new species of tiger beetles of the genus *Cicindela* and two corrections. (Coleoptera, Cicindelidae). Amer. Mus. Novitates. No. 1479:1–12.

Willis, H. L. 1967. Bionomics and zoogeography of tiger beetles of saline habitats in the central United States (Coleoptera: Cicindelidae). Univ. Kans. Sci. Bull. 47:145–313.

Author

The primary author of this proposed rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301) 269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Part 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend Section 17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
Beetle, northeastern beach tiger.	*Cicindela dorsalis, dorsalis*	U.S.A. (CT, MA, MD, NJ, NY, PA, RI, VA).	NA	E		NA	NA
Beetle, Puritan tiger	*Cicindela puritana*	U.S.A (CT, MA, MD, NH, VT).	NA	T		NA	NA

Dated: September 13, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23058 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524–9228]

RIN 0648–AC44

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule for comment on Amendment 3 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The Amendment proposes that: (1) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 L) of sea scallops in the shell must offload all fish (as defined in 50 CFR 620.2, which includes sea scallops) within a specified 12-hour offloading period; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked scallops must offload all sea scallops within a specified offloading period. The proposed 12-hour offloading periods are as follows:

State of offloading	Period
ME, NH, NC, SC, GA, and FL	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA, PA	6 a.m. to 6 p.m.

A mechanism for modifying offloading periods is also proposed. The Amendment is intended to improve compliance with the meat count/shell height standards of the FMP and to enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery.

DATE: Comments on the proposed rule must be received on or before November 16, 1989.

ADDRESSES: Comments on the proposed rule should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Scallop Regulations."

Copies of the amendment, the environmental assessment, and the regulatory impact review (RIR) are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Resource Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508–281–9331.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the New England Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.*; it was approved by the Secretary of Commerce (Secretary) and implemented by final regulations effective August 13, 1982 (47 FR 35990). The FMP has been amended three times—twice by the Council and once by the Secretary. Amendment 1 became effective November 6, 1985 (50 FR 46069); a Secretarial Amendment superseding Amendment 1 became effective January 14, 1987 (52 FR 1462); and Amendment 2 became effective June 23, 1988 (53 FR 23634). Amendment 3 and proposed regulations for its implementation were initially submitted by the Council to the Secretary for review on April 7, 1989. Upon review of the Council's proposed regulations by NOAA General Counsel and NMFS Enforcement Northeast Region, it was determined that strict enforcement measures would be necessary for effective implementation of Amendment 3. Under authority of section 304(a)(1)(D)(i) of the Magnuson Act, as amended, 16 U.S.C. 1854(a)(1)(D)(i), the proposed regulations submitted by the Council were changed to explain more fully the scope of Amendment 3 and the enforcement measures necessary for its implementation; a proposed rule was published on May 19, 1989 (54 FR 21640). Because the changes made in the first submission of Amendment 3 broadly applied offloading restrictions to all sea scallop permit holders, the Council voted on May 24, 1989 to withdraw the Amendment from further Secretarial review. A notice of withdrawal of Amendment 3 was published on June 30, 1989 (54 FR 27656). After further development of the implementing regulations and consultation with NMFS, the Council resubmitted Amendment 3 for Secretarial Review on August 18, 1989.

The principal objective of the FMP is to maximize over time the joint social and economic benefits from the sea scallop resource. Sub-objectives to achieve this goal are: (1) Restoration of adult stock abundance and age distribution in order to reduce the year-to-year fluctuations in stock abundance caused by variation in recruitment; and (2) enhancement of yield per recruit for each stock.

The primary management measure used to achieve these objectives is the requirement that scallops harvested must, on average, meet a 30 meats per pound standard (30 meat count standard) for shucked sea scallops, with a corresponding 3⅛-inch (8.9 cm) shell height standard for sea scallops landed

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in the shell. This standard provides long-term benefits in terms of yield per recruit, stock abundance and stability of the Atlantic sea scallop resource.

Over the past 12 months, documentation from Council meetings, testimony at public hearings, and information received during meetings with scallop fishermen and industry organizations have indicated the occurrence of extensive landings of undersized scallops. Such landings take place at night, often in secluded places that are not quickly accessible to NMFS enforcement agents. This practice seriously jeopardizes achievement of the biological and conservation objectives of the FMP.

Landing of undersized scallops also undermines the conservation efforts and economic well-being of those in the industry who struggle to comply with the 30 meat count standard. Scallopers who comply are harvesting reduced quantities of scallops relative to those who do not comply. This in turn limits the revenue that scallopers in compliance receive from the sale of their catch. Conversely, violators harvest significantly greater quantities of scallops, which yield greater revenues. This disparity in earning ability has led to an increase in the level of non-compliance throughout the scallop harvesting industry.

Proposed Action

In light of the above mentioned circumstances, the Council believes that it is necessary to take steps to improve the level of compliance with the meat count/shell height standards in order to achieve the biological and conservation objectives of the FMP. The Amendment, if implemented, would improve compliance by etablishing offloading periods during which scallop vessels and sea scallops could legaly be offloaded, and would enhance the efficiency and effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. The proposed offloading periods cover different 12-hour periods in different states where Atlantic sea scallops are landed in order to accommodate customary industry practices in the states affected.

Specifically, the Amendment proposes that: (1) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 1) of sea scallops in the shell must offload all fish within a 12-hour offloading period specified for the state of offloading; and (2) all other vessels landing more than 40 pounds (18.1 kg) of shucked sea scallops must offload all sea scallops within the applicable specified offloading period. The proposed 12-hour offloading periods are as follows:

State of offloading	Period
ME, NH, NC, SC, GA, and FL	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, and VA, PA.	6 a.m. to 6 p.m.

The Amendment also proposes a mechanism for changing the daily timing of the 12-hour offloading periods when it is determined to be necessary and appropriate, and after public comment.

The offloading periods would reduce by half the amount of time each day during which catch subject to the offloading periods could lawfully be offloaded. Offloading outside an applicable offloading period would constitute a separate violation of the regulations, regardless of the meat count/shell height measurements of the scallops being offloaded.

For those vessels to which offloading periods apply, offloading would have to be commenced and completed within the applicable offloading period. It is the responsibility of vessel owners and/or their representatives to provide for sufficient time to complete any intended offloading within the offloading period. Catch subject to the proposed offloading periods and not offloaded during the applicable offloading period would have to remain on the vessel until the following offloading period. There would be a presumption of unlawful offloading for any catch subject to the proposed offloading periods observed or identified on a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

Effective enforcement of the Amendment would require applying the 12-hour offloading period to all fish on board a vessel in the directed fishery for Atlantic sea scallops. Vessels considered to be in the directed fishery for Atlantic sea scallops are those vessels rigged with scallop dredges, and all vessels that land more than 5 bushels (176.2 1) of scallops in the shell. NMFS weighout data indicate that, in 1988, scallop dredge vessels accounted for 92.6 percent of all sea scallops landed. Vessels landing sea scallops in the shell accounted for approximately 6.6 percent of all sea scallops landed. Together, these two types of vessels accounted for approximately 99 percent of all sea scallops landed. Requiring these vessels to offload all fish during an offloading period is necessary for effective enforcement of the Amendment because it would discourage, through 100 percent seizure of catch and civil penalty, the practice of covering up, or mixing, non-conforming scallops with other species of fish and offloading the catch outside of an offloading period.

Sea scallops dredge vessels, and vessels landing more than 5 bushels (176.2 1) of sea scallops in the shell, detected offloading fish outside of the applicable offloading period, would be subject to seizure of all fish in possession (regardless of the meat count or shell size of sea scallops), in addition to the assessment of a civil penalty. Also, persons detected receiving offloaded scallops or fish from a vessel subject to these proposed regulations at a time other than during the applicable offloading period would be subject to seizure of all fish in possession and a civil penalty.

Vessels that land more than 40 pounds (18.1 kg) of shucked sea scallops as bycatch of fisheries directed at other species would be required to offload only the sea scallops within the applicable offloading period. Vessels of this type detected offloading sea scallops outside of the applicable offloading period would be subject to seizure of all fish in possession, in addition to the assessment of a civil penalty.

The offloading periods, coupled with complete catch seizure for unlawful offloading, would increase the chances of detecting violations and would encourage voluntary compliance. The Amendment would allow enforcement resources to be used more efficiently because the time consuming task of sampling/weighing of scallops would only be used to sample scallops offloaded during the offloading periods. Offloading of vessels subject to the proposed offloading periods at any other time would constitute a *prima facie* violation of the offloading period prohibition, which would not require any sampling. With these measures in place, as discussed above, NMFS enforcement agents would be able to apply their resources more efficiently and effectively.

Amendment 3, if implemented, should have two immediate and directly beneficial biological results. First, the number of sea scallops surviving to sexual maturity is expected to increase as the number of illegal scallops landed decreases, thus augmenting the spawning stock biomass. Second, because the number of small scallops harvested should decrease, the average yield per recruit (i.e., the average size of scallops harvested) should increase, to the benefit of the fishermen.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, 16 U.S.C. 1854(a)(1)(D)(ii), requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time the Secretary has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address given above.

The Undersecretary for Oceans and Atmosphere, NOAA, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action would result in no change in legal landings, prices, costs, or revenues. It is expected to have an annual effect on the economy of less than $100 million, would not lead to cost or price increases and would not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign based enterprises. The Council prepared a regulatory impact review that concludes that this rule would have the following economic effects.

Administrative, enforcement, and paperwork and recordkeeping requirements would remain unchanged. Thus, there would be no impacts on federal, state, or local government agencies. The proposed action (offlcading period) is the preferred alternative for the following reasons.

(1) The proposed action would help to achieve the objectives of the FMP by improving compliance with the 30 meat count standard of the FMP, and by enhancing the effectiveness of NMFS enforcement efforts in the Atlantic sea scallop fishery. Compliance would be improved by limiting the number of hours during any day within which scallops could lawfully be offloaded from a vessel subject to the offloading periods. Offloading scallops at any other time than the specified 12-hour offloading periods would subject all fish on such a vessel to seizure, as well as to the assessment of a civil penalty. Enforcement would be enhanced because the time consuming task of sampling/weighing of scallops would have to be carried out only for inspections conducted during the off-loading periods. Detections of offloading at any other time would constitute a separate violation of the rgulations, not requiring any sampling/weighing, and would trigger seizure of all fish on board a vessel.

(2) Neither the government nor the industry would need to purchase any special equipment to implement the offloading period program.

(3) Legal landings and revenues would not be affected.

(4) The proposed action would result in greater compliance, which would result in small scallops being conserved and allowed to spawn and grow. Better compliance with the regulations, hence expected benefits, would be more readily achieved with the offloading period, and net benefits to society would be maximized.

(5) It is expected that the industry can adjust its practices to mitigate any burden resulting from this rule, if implemented.

(6) The proposed action is expected to have no impact on vessel safety in the Atlantic sea scallop fishery consistent with the intent of section 303(a)(6) of the Magnuson Act, as amended, 16 U.S.C. 1853(a)(6), because it would not require vessels to change their fishing practices, nor to remain at sea during inclement weather.

Employment impacts may occur in shucking houses, as evidenced in a letter from the North Carolina Fisheries Association, because scallops are usually processed along with crabs and shrimp as they are landed. The proposed action would have no effect on competition, investment, productivity or innovation in the fishery. The import market for Canadian-landed sea scallops, many of which are sold seasonally in the United States, should not be affected in any way. A copy of this review may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule within 15 days of its receipt. The proposed rule is being reported to the Director, Office of Management and Budget with an explanation of why it is not necessary to follow procedures of that order.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. About 480 vessels landed sea scallops in 1988 (267 of them were scallop dredges, which accounted for 92.6 percent of all scallops landed) and all are considered small entities. No differential effects should occur relative to competitive position, cash flow and liquidity, or ability to remain in the market. A copy of the Council's assessment that Amendment 3 would have no significant impact may be obtained from the Council (see **ADDRESSES**). As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Florida. Georgia does not have an approved coastal zone management program. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is proposed to be amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for 50 CFR part 650 continues to read as follows:

Authority: 16 U.S.C. 1081 *et seq.*

2. In § 650.2, the definition of *"Non-conforming Atlantic sea scallops"* is revised and definitions of *"Offload"* and *"Sea scallop dredge vessel"* are added in alphabetical order to read as follows.

§ 650.2 Definitions.

* * * * *

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Non-conforming Atlantic sea scallops means scallops that do not meet the standards specified in § 650.20 of these regulations, unless such scallops have been certified (through a procedure specified by the Regional Director) to have been taken under a management system that the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations, and also means any scallops that are offloaded or received from a vessel by any person at any time other than during the offloading periods as specified in § 650.21 (c) and (d) of these regulations.

Offload means to enter port and remove (i.e., to pass over the rail or otherwise take away) fish from any vessel.

* * * * *

Sea scallop dredge vessel means any fishing vessel that is equipped for fishing using gear in the Atlantic sea scallop fishery. For the purposes of this rule, dredge gear is that gear that consists of a mouth frame attached to a holding bag constructed of steel rings, or any other modification to this design that can be used in the harvest of Atlantic sea scallops.

* * * * *

3. In § 650.7, paragraphs (b) through (f) are redesignated (d) through (h), and new paragraphs (b) and (c) are added to read as follows:

§ 650.7 Prohibitions.

* * * * *

(b) Offload any fish from a sea scallop dredge vessel, or from a vessel landing more than 5 bushels (176.1) of Atlantic sea scallops in the shell, at any time other than during the applicable time specified in § 650.21(c).

(c) Offload Atlantic sea scallops from any vessel landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops at any time other than the times specified in § 650.21(c).

* * * * *

4. In § 650.21, the section heading is revised and new paragraphs (c), (d) and (e) are added to read as follows:

§ 650.21 Compliance and sampling.

* * * * *

(c) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.21) of Atlantic sea scallops in the shell must offload all fish each day within the applicable 12-hour offloading period as specified below:

State of offloading	Period
ME, NH, NC, SC, GA, and FL	7 a.m. to 7 p.m.
MA, RI, and CT	5 a.m. to 5 p.m.
NY, JN, DE, MD, VA, PA	6 a.m. to 6 p.m.

(d) All other vessels not covered by paragraph (c) of this section, landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops must offload the scallops within the applicable offloading period specified in paragraph (c) of this section.

(e) *Presumption.* Fish not offloaded from vessels subject to the provisions of paragraph (c), and shucked Atlantic sea scallops not offloaded from vessels subject to the provisions of paragraph (d), of this section during the offloading period must remain on the vessel until the following offloading period. There shall be a presumption of unlawful offloading for any such catch that is observed or identified on such a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

5. A new § 650.25 is added to read as follows:

§ 650.25 Modification of offloading period.

(a) The daily timing of the 12-hour offloading period in any state(s) may be adjusted by the Regional Director, if the Regional Director determines, and recommends to the Council, that such an adjustment is necessary and appropriate after reviewing any changes in the resource, fishery, or industry in accordance with § 650.22(a). The Council may, at any time, request that a change in an offloading period be evaluated by the Regional Director within 60 days.

The Regional Director will solicit and consider any recommendation of the Council regarding adjustment of the timing of an offloading period, and, with the Council, will provide for public notice and comment, and hold a public hearing on any recommended change in conjunction with the Council meeting at which the recommended change is discussed. The Regional Director will publish a notice of the public hearing and the recommended change in the Federal Register.

(c) After consideration of the full record, including comments at the public hearing, written comments, and comments from the Council, the Regional Director may accept, modify, or reject the recommended adjustment for the daily timing of the 12-hour offloading period. Notice of the Regional Director's decision, and the date such decision will take effect, will:

(1) Be published in the Federal Register; and

(2) Be mailed to each holder of a permit issued under § 650.4 of this chapter.

[FR Doc. 89-23116 Filed 9-27-89; 11:24 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 90927-9227]

RIN 0648-AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This proposed Amendment 3 (Amendment) will enable the New England Fishery Management Council (Council), its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish through a Flexible Area Action System. The intended effect is to: (1) Enhance age-at-entry controls; (2) eliminate the need for emergency actions; and (3) enable management agencies to respond to requests from the fishing industry for timely action.

DATE: Comments on the proposed rule must be received on or before November 16, 1989.

ADDRESSES: Send comments on the proposed rule and Amendment to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment 3".

Copies of the Amendment, Environmental Assessment (EA), Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, (Resource Policy Analyst) 508-281-9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended (16 U.S.C. 1801 *et seq*). This amendment proposes measures for managing the multispecies finfish fisheries in the Northwest Atlantic.

The FMP was conditionally approved by the Secretary on July 17, 1986. Regulations implementing the FMP were effective on September 19, 1986 (published August 20, 1986, 51 FR 29642), and became effective on September 15, 1986. Amendment 1 to the FMP, which was implemented on October 1, 1987 (published September 17, 1987, 52 FR 35093), responded to deficiencies that were identified by the Regional Director in the conditional approval of the plan. Amendment 2, promulgated on January 27, 1989 (published January 31, 1989, 54 FR 4798), improved the effectiveness of several of the existing measures in relation to two major factors (1) the promotion of regulatory compliance, and (2) the long-term achievement of management objectives.

Amendment 3 would implement a Flexible Area Action System (FAAS) whereby protection could be provided for large concentrations of juvenile, sublegal, or spawning fish. The Chairman of the Multispecies Committee (Committee) of the Council would initiate a 28 day administrative process if warranted by reports from harvesters, or other sources, of juvenile, sublegal, or spawning multispecies finfish. Upon request by the Chairman, the Regional Director will immediately notify the public that a specific problem in the fishery has been identified, and that various management measures to deal with the problem will be evaluated, in accordance with Amendment 3,III. B., and possibly implemented within 28 days. At the same time that public notice is given, the Regional Director will review the information received by the Council and verify, by other methods, the occurrence of juvenile, sublegal, or spawning fin.

The Regional Director's results will be summarized in a formal report made available to the public. The report will also include a statement concerning NMFS's capabilities for administering, monitoring, and enforcing any of the proposed management measures.

An opportunity for public review and comment on the proposed actions will be provided through a public notice and hearing. After the public hearing and review of the Regional Director's report, the Committee would recommend management measures to the Regional Director. After concurrence by the Regional Director, NMFS would implement the measures for a time period of between three weeks and six months. The process from initiation to implementation is expected to take no more than 28 days. Through this system the Council will be able to: (1) Enhance age-at-entry controls to enable the FMP to achieve its objectives; (2) eliminate the need for the type of emergency actions which were most recently implemented in the Northeast Multispecies fishery; and (3) respond to requests from the fishing industry for timely action in a way that improves the climate for cooperation and progress between the Council and the fishing industry.

Minimum size regulations do not protect concentrations of small or spawning fish under certain conditions. If a sufficient number of marketable fish are present in the same area as small fish, fishermen might continue to fish in that area, sometimes very intensely. Even if the mesh size is regulated, large quantities of small fish can block the mesh openings and a large amount of small fish can be caught and discarded. This scenario occurred most recently in the Nantucket Shoals area where large concentrations of small codfish were intermingled with some legal size cod in the winter of 1987-88 and December 1988. The earlier occurrence prompted the Council to request the Secretary to take emergency action to designate the area as a regulated mesh area. The Council included a measure in Amendment 2 which made this area a permanent seasonal regulated mesh area and its approval provided some protection during the second occurrence.

If small fish concentrate in an area where mesh size is unregulated, an even greater amount of small fish could be wasted. Such was the case in Southern New England in January through March, 1989, when large amounts of small yellowtail flounder were originally taken along with butterfish and later in a directed fishery for yellowtail. Members of the Southern New England industry requested that emergency action be taken to close the area. The Council concurred and forwarded the request to the Secretary who implemented an emergency closure of the area.

There are several reasons why the Council believes it is imperative to eliminate the need for emergency actions in response to problems associated with large concentrations of small or spawning fish. First, emergency actions require time to initiate and implement; tremendous quantities of small fish can be discarded. In terms of the volume of small fish that can be killed, it takes a significant amount of time to discuss the problem at a scheduled Council or Committee meeting. Second, emergency actions allow for less public input than would the proposed measure because emergency actions to not require a formal public review and comment period. There is usually considerable pressure for any action to be initiated as quickly as possible because of the urgency and the possible short duration of concentrations of small or spawning fish. Third, these types of problems should be anticipated and managed to the extent possible by the FMP. Those areas with a likelihood of large concentrations during a particular period of time have been addressed in the FMP. Additional areas have been addressed by amendments to the FMP and appropriate regulatory measures implemented. One-time occurrences cannot be satisfied by specified measures without a system such as is proposed. Finally, emergency actions require considerable time and resources from the Council and NMFS. Taking the two previous emergency actions delayed the Council's consideration of more fundamental management issues concerning the multispecies fishery.

The FAAS is designed to enable the Council and NMFS to respond to similar situations more quickly. The Council initiated both the emergency actions for cod on Nantucket Shoals and yellowtail flounder in Southern New England in response to fishing industry concerns, yet these measures were not as effective as they could have been because they took too long to implement. Most fishermen are not acquainted with the regulatory process and cannot understand why fisheries managers cannot quickly correct what seem to be simple but important problems, especially in comparison to the relatively short amount of time in which some of the states can resolve similar problems.

The FAAS will provide greater flexibility in defining the area and time period for changes in fishing regulations, provide a mechanism for areas to be reopened if the action is no longer appropriate, and save substantial management resources by eliminating the need for the type of emergency actions recently taken by the Council. The short lived nature of concentrations is an important consideration. If these situations are managed through inflexible regulations, there will be a proliferation of special case regulations with constraints placed on harvesters which serve no purpose after a relatively short period of time. The flexibility to end the action, if no longer warranted, is important to minimize costs imposed by the industry.

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Additional Changes

NOAA proposes procedural provisions, specifically § 651.26 (b) and (j), to the FAAS. These provisions are intended to assure the smooth operational process of the Council's Amendment. NMFS requests comments and views from the Council on these additions.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for the Amendment that discusses the impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft regulatory impact review (RIR), which demonstrates positive long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual impact of $100 million or more; nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets. A copy of the draft RIR may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Public Law 99–659, require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The proposed rule establishes an administrative procedure for prescribing management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does not initially impose specific management measures. Any management measure subsequently adopted under this procedure will be analyzed for its impact on small entities.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 651.2 Definitions.

* * * * *

Chairman means the Chairman of the Multispecies Finfish Committee of the Council.

* * * * *

Committee means the Multispecies Finfish Committee of the Council.

Council means the New England Fishery Management Council.

* * * * *

3. 50 CFR part 651 is proposed to be amended by adding a new § 651.26 to read as follows:

§ 651.26 Flexible area action system.

(a) The Chairman of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chairman will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chairman will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chairman will request the Regional Director to publish a notice in the **Federal Register**. The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is published in the **Federal Register**. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The day (Day 15) the Regional Director's verification report will be available for public review;

(4) The day (Day 21) on which a Committee meeting/public hearing will be held and the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action which may be taken, limited to the various management measures currently authorized by the FMP;

(12) The Council's initiation of analysis of the impacts;

(13) The day (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14 the following activities will take place:

(1) The Regional Director will prepare a fact finding report which will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this Section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.

(2) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council (see **ADDRESSES**).

(e) On Day 21, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure but already contained within and implemented by the FMP;

(2) Between three weeks and six months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities.

If the Committee recommends that action is not warranted, and the RD concurs, notice will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the decision.

(f) By Day 23 the Regional Director shall: (a) Accept, without modification, the Committee's recommended management action; or (b) reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the **Federal Register** to be filed by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies finfish. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report and the public comments, are no longer in existence, he will terminate the action by notice in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the **Federal Register**. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day which is not a Saturday, Sunday or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee, provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraph (d) of this section have been made available for public review.

[FR Doc. 89–23117 Filed 9–27–89; 11:24 am]
BILLING CODE 3510–22–M

VOL 54 ISS 189 OC 2 1989 UMI

Notices

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review, Committee on Regulation, Special Committee on Financial Services; Public Meetings

SUMMARY: Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463) of meetings of three committees of the Administrative Conference of the United States. Further information and copies of reports and draft recommendations may be obtained from the contact persons identified below.

Committee on Judicial Review

DATES: Thursday, October 19, 1989, 3:30 p.m.; Thursday, November 2, 1989, 2:00 p.m.

SUBJECTS: At the October 19 meeting, the committee will discuss a report by Professor Harold Bruff of the University of Texas School of Law concerning approaches to restructuring judicial review in administrative law. At the November 2 meeting, the committee will discuss a report by Professors Peter Schuck and Donald Elliot of Yale Law School on the effect of judicial review on agency decisionmaking and may also continue discussion of Professor Bruff's report.

CONTACT PERSON: Mary Candace Fowler, Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC 20037, 202-254-7020.

Committee on Regulation

DATES: Tuesday, October 10, 2:30 p.m.; Thursday, October 19, 1:00 p.m.

SUBJECTS: At the October 10 meeting, the committee will discuss a study of regulation of biotechnology, conducted by Professor Sidney Shapiro of the University of Kansas School of Law, and draft recommendations based on the study. At the October 19 meeting the committee will address both Professor Shapiro's study and a study of risk communication in regulatory programs, conducted by Professor Michael Baram of the Boston University School of Law.

CONTACT PERSON: David M. Pritzker, Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC 20037, 202-254-7020.

Special Committee on Financial Services

DATE: Friday, October 6, 1989, 10:00 a.m.

SUBJECT: The committee has scheduled this meeting to develop proposed recommendations dealing with bank failures, risk monitoring, and the market for corporate control, based upon a report by Professors Jonathan R. Macey of Cornell University Law School and Geoffrey Miller of the University of Chicago Law School.

CONTACT PERSON: Brian C. Murphy, Administrative Conference of the U.S., 2120 L Street, NW., Suite 500, Washington, DC 20037, 202-254-7020.

LOCATION: All meetings will take place in the Library of the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC, except the October 19 meeting of the Committee on Judicial Review, which will take place at the offices of Wilmer, Cutler & Pickering, Conference Room 6E2, 2445 M Street, NW., Washington, DC 20037.

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: September 27, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-23245 Filed 9-29-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1990 Program for Extra Long Stapel Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The Secretary of Agriculture proposed to make the following determinations with respect to the 1990 crop of extra long staple (ELS) cotton: (a) Whether an acreage reduction program should be implemented and, if so, the percentage reduction under such acreage reduction program; (b) redesignate for marketing year 1990 all counties designated as suitable for growing ELS cotton during marketing year 1989 and designate additional counties, as deemed appropriate by the Commodity Credit Corporation (CCC), prior to the final date for enrolling in the 1990 ELS cotton program; and (c) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act").

DATE: Comments must be received on or before November 16, 1989 in order to be assured of consideration.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Rm. 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles. V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations is available on request from the aforementioned individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "non major" since the proposed provisions are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title—Cotton Production Stabilization, Number 10.052 and Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It is necessary that the determinations for the 1990 crop of ELS cotton be made in sufficient time to permit ELS cotton producers to make plans for the production of their crop. Therefore, comments with respect to the following proposed determinations must be received by November 16, 1989 in order to allow the Secretary an adequate period to consider the comments before making the program decisions.

Proposed Determinations

a. *Acreage Reduction Program.* Section 103(h)(8)(A) of the 1949 Act provides that, with respect to the 1990 crop of ELS cotton, if the Secretary determines that the total supply of ELS cotton, in the absence of an acreage reduction program (ARP), will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency, the Secretary may provide for an ARP. Such reduction shall be achieved by applying a uniform percentage reduction of the acreage base for each ELS-cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted ELS cotton acreage shall be ineligible for ELS cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of an ARP shall be the average acreage planted on the farm to ELS cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of determining the acreage base, the acreage planted to ELS cotton for harvest shall include any acreage which producers were prevented from planting to ELS cotton or other nonconserving crops in lieu of ELS cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines necessary to establish a fair and equitable base. A number of acres on the farm determined by dividing (a) the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton times the number of acres actually planted to ELS cotton, by (b) the number of acres authorized to be planted to ELS cotton in accordance with the acreage reduction established by the Secretary, shall be devoted to approved conservation uses in accordance with regulations issued by the Secretary. If an ARP is in effect for the 1990 crop of ELS cotton, the national program acreage, program allocation factor, and voluntary reduction provisions of section 103(h) of the 1949 Act will not be applicable to such crop. The individual farm program acreage shall be the acreage planted on the farm to ELS cotton for harvest within the permitted ELS cotton acreage established for the farm under the ARP.

The need for an ARP for the 1990 crop of ELS cotton will depend upon the projected level of ending stocks for the 1989-90 marketing year and the likely demand for ELS cotton in 1990-91. Based on estimates as of July 1989, ELS cotton production in 1989-90 will reach a record level. Despite anticipated increases in usage, both foreign and domestic, 1989-90 ending stocks are projected at 100,000 bales. Therefore, in order to return stocks to a desirable level while assuring an adequate supply to meet expected demand, some reduction in production may be needed.

Options under consideration at this time include a 10-percent ARP, a 15-percent ARP, and a 20-percent ARP. However, future developments in weather conditions, market trends and projections of supply and use could affect the suitability of various production adjustment programs. Options considered at the final determination stage may vary depending upon conditions in existence and information available at that time.

Interested persons are encouraged to comment on whether an AR^{0} should be implemented for the 1990 crop of ELS cotton, and, if so, the appropriate percentage level of such reduction.

b. *Counties Designated as Suitable for Growing ELS Cotton.* Section 103(h)(1) of the 1949 Act defines extra long staple cotton for program purposes as "cotton which is produced from pure strain varieties of the Barbadense species or any hybrid thereof, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which American upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary as suitable for the production of such varieties or types and which is ginned on a roller-type gin, or, if authorized by the Secretary, ginned on another type gin for experimental purposes."

It is proposed that counties designated as suitable for growing ELS cotton during marketing year 1989 be redesignated for marketing year 1990 and that additional counties, as deemed appropriate by CCC, may be designated prior to the final date for enrolling in the 1990 ELS cotton program. Counties designated during marketing year 1989 were as follows:

Arizona: Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma.

California: Fresno, Imperial, Kern, Kings, and Riverside.

Florida: Alachua, Hamilton, Jefferson, Madison, Marion, Suwanee, and Union.

Georgia: Berrien and Cook.

Mississippi: Bolivar, Coahoma, Panola, Quitman, and Tunica.

New Mexico: Chaves, Dona Ana, Eddy, Hildalgo, Luna, Otero, and Sierra.

Texas: Andrews, Bee, Bexar, Brewster, Culberson, Dimmit, El Paso, Frio, Gaines, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Medina, Pecos, Presidio, Reeves, Refugio, Uvalde, Ward, and Zavala.

Interested persons are encouraged to comment on the proposed procedure for designating counties as suitable for growing ELS cotton during marketing year 1990.

c. *Other Related Provisions.* A number of other determinations must be made in order to carry out the ELS cotton loan program such as: (1) Commodity eligibility; (2) micronaire discounts; (3) loan levels for the individual qualities of 1990-crop ELS cotton; and (4) such other provisions as may be necessary to carry out the program.

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Consideration will be given to any data, views and recommendation that may be received relating to the above items.

Authority: 7 U.S.C. 1444(h), 15 U.S.C. 714b and 714c.

Signed at Washington, DC on September 26, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

FR Doc. 89-23160 Filed 9-29-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: School Project Evaluation—Administrator Questionnaire

Form Number: D-1402, D-1402(L)

Agency Approval Number: None

Type of Request: New collection

Burden: 82 hours

Number of Respondents: 700

AVG Hours Per Response: 7 minutes

Needs and Uses: This telephone survey will collect data from a sample of primary and secondary school administrators on the effectiveness of the 1990 Census Education Project. The data will be used by the Census Bureau to evaluate and improve the Census Education Project and associated materials that are targeted for school children.

Affected Public: Individuals or households and Nonprofit institutions

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

September 26, 1989.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 89-23099 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: 1990 Outreach Evaluation Survey

Form Number: D-1400, D-1400(L)

Agency Approval Number: None

Type of Request: New collection

Burden: 1,250 hours

Number of Respondents: 5,000

Avg Hours Per Response: 15 minutes

Needs and Uses: This survey will collect data from a national sample of 5,000 households to measure and examine the relationship between decennial outreach and promotion efforts and respondent awareness of, attitudes toward, and participation in the census. The survey will be conducted by personal visit. CSMR will use data to assess the cumulative effectiveness of the 1990 census outreach and promotion campaign. Census will use this information to further develop census-related outreach and promotion activities for the next census.

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23100 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: State Government Ratio Study Survey

Form Number: GP-37

Agency Approval Number: None

Type of Request: New collection

Burden: 51 hours

Number of Respondents: 51

Avg Hours Per Response: 1 hour

Needs and Uses: This survey collects data from each state and the District of Columbia concerning methodology, procedures, and findings of assessment-sales state ratio studies and other related topics. Census will use this information to explore the possibility of obtaining automated data from state governments for use in a nationwide assessment-sales price ratio study that will be conducted as part of the 1992 Census of Governments.

Affected Public: State or local governments

Frequency: One time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization

[FR Doc. 23101 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-07-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile Agreements

Announcement of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

September 27, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority.

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Turkey agreed to amend their current bilateral textile agreement to establish a specific limit for Categories 336/636 for three consecutive periods—September 30, 1988 through June 30, 1989, July 1, 1989 through June 30, 1990 and July 1, 1990 through June 30, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 27666, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 1989

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on October 4, 1989, the directive of June 23, 1989 is amended to include a limit of 247,000 dozen [1] for cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Turkey and exported during the period July 1, 1989 through June 30, 1990.

Textile products in Categories 336/636 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Imports charged to the limit for Categories 336/636 for the period September 30, 1988 through June 30, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

You are directed to charge the following amounts to the limit established in this directive for Categories 336/636. These charges are for goods imported during the period July 1 through 31, 1989.

Category	Amount to be charged
336	2,520 dozen.
636	0

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23146 Filed 9-29-89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after June 30, 1989.

COPYRIGHT ROYALTY TRIBUNAL

[CFT Docket No. 90-1-88JD]

Ascertainment of Whether Controversy Exists Concerning Distribution of 1988 Jukebox Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

DATE: Comments are due November 1, 1989.

ADDRESS: An original and five copies shall be sent to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202) 653-5175.

SUMMARY: In accordance with 17 U.S.C. 116(c)(3), the Copyright Royalty Tribunal directs that all claimants to the royalty fees paid by jukebox operators for calendar year 1988 shall submit not later than November 1, 1989 any comments concerning whether a controversy exists with regard to the distribution of the 1988 jukebox royalty fees. All claimants intending to participate in the 1988 proceeding shall include with their comments a notice of intent to participate.

Dated: September 26, 1989.

Edward W. Ray,

Chairman.

[FR Doc. 89-23122 Filed 9-29-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1990

Notice is hereby given that the Comptroller of the Department of Defense in a September 14, 1989, memorandum to the Assistant Secretary of Defense (Health Affairs), Assistant Secretaries of the Army and Navy (Financial Management) and Assistant Secretary of the Air Force (Financial Management and Comptroller) established reimbursement rates for inpatient and outpatient medical and dental care provided during fiscal year 1990 as follows:

	IMET [1]	Inter-agency [2]	Other
Per inpatient day:			
Burn unit	$1155	$1,929	$2,042

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	IMET [1]	Inter-agency [2]	Other
General medical and dental care...	218	519	554
Per outpatient visit.....	24	[3] 63	87
Per FAA air traffic: Controller examination.....	N/A	88	N/A

[1] International Military Education and Training students.
[2] Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside of the United States.
[3] DoD Civilian employees located in overseas areas shall be provided a bill when the services are performed. Payment is due 60 days from the date of the bill.

The per diem rate (supplies and subsistence) charged to dependents of military personnel in Federal medical facilities shall become $8.35 per day beginning January 1, 1990.

Dated: September 26, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23108 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Management

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Management will meet in closed session on October 16-17, October 30-31, November 14-15, November 28-29, and December 12-13, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop an action plan to implement the Secretary's Report to the President on Defense Management.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: September 26, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23106 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DoD.

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming conference of the DACOWITS. The purpose of the DACOWITS is to assist the Secretary of Defense on matters relating to women in the Services. The committee meets semiannually .

DATE: October 29-November 1, 1989 (Detailed agenda follows).

ADDRESS: Holiday Inn Executive Center, Norfolk, Virginia, unless otherwise noted in detailed agenda.

AGENDA: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following:

Sunday, October 29, 1989

8:00 a.m.—12:00 noon Registration.
9:30 a.m.—10:30 a.m. Briefing: Update on DoD Task Force on Women in the Military.
11:00 a.m.—12:30 p.m. Get Acquainted Luncheon (Current DACOWITS members, Military Representatives, Legal Advisors, and Liaison Officers only).
12:30 p.m.—1:15 p.m. Briefing: Update on Navy Study Group, Recommendations.
1:15 p.m.—2:00 p.m. Briefing: Navy Family Support Conference.
2:00 p.m.—6:00 p.m. Subcommittee Sessions (Evaluation and Disposition of Service Responses). Subcommittee 1. Subcommittee 2.—Briefing: Joint Duty—Army and Air Force. Subcommittee 3.
6:30 p.m.—7:30 p.m. Social (cocktails and hors d'oevres).

Monday, October 30, 1989

8:00 a.m.—8:30 a.m. Official Opening.
8:30 a.m.—11:30 a.m. Subcommittee Sessions (Evaluation of Briefings and Sunday Resolutions).
12:00 noon—1:30 p.m. OSD Luncheon (BY INVITATION ONLY)
1:45 p.m.—6:00 p.m. Subcommittee Sessions.
7:00 p.m.—10:00 p.m. OSD Reception and Dinner (BY INVITATION ONLY).

Tuesday, October 31, 1989

6:30 a.m.—4:00 p.m. Field trip hosted by the U.S. Navy; visit aboard a combat logistics force ship. Space limited.
4:00 p.m.—8:00 p.m. Executive Committee Mark-up.

Wednesday, November 1, 1989

9:30 a.m.—10:30 a.m. Presentations by Members of the Public.
10:30 a.m.—11:15 a.m. Briefing: Update on Navy Study "Lost Time of Men and Women".
11:30 a.m.—1:30 p.m. New Chair Luncheon.
1:30 p.m.—3:00 p.m. Individual Review of Resolutions.
3:15 p.m.—4:00 p.m. General Business Session.
4:00 p.m. Adjourn.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

a. Members of the public will not be permitted to attend the official Department of Defense luncheon or reception and dinner.

b. All business sessions, to include the Executive Committee meetings, will be open to the public.

c. Interested persons may submit a written statement for consideration by the committee and/or make an oral presentation of such during the conference.

d. Persons desiring to make an oral presentation or submit a written statement to the committee must notify the point of contact listed above no later than September 29, 1989.

e. Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

f. Oral presentation by members of the public will be permitted only from 9:30 a.m. to 10:30 a.m. on Wednesday, November 1, 1989, before the full committee.

g. Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation by October 6, 1989. Each person giving an oral presentation must provide 100 copies for distribution on November 1, 1989.

h. Persons submitting a written statement only for inclusion in the minutes of the conference must submit 1 copy either before or during the conference or within 5 days after the close of the conference.

i. Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

j. Members of the public will not be permitted to enter into oral discussion conducted by the commttee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the committee.

k. Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

l. Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Wednesday, November 1, 1989.

Dated: September 26, 1989

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23107 Filed 9-29-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before November 30, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 26, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for the School Dropout Demonstration Assistance Act
Frequency: One-time
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 1000
Burden Hours: 20,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by local education agencies, consortia of local education agencies, educational partnerships and community-based organizations. The Department will use this information to make grant awards and to insure that statutory and regulatory requirements are met.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for the Lectures Program of the Fund for the Improvement of Postsecondary Education
Frequency: Annually
Affected Public: State or local governments; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 6
Burden Hours: 480
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by postsecondary education institutions, and public and private educational institutions and agencies to apply for funding under the Lectures Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension
Title: Performance Report for the Law School Clinical Experience Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 300
Recordkeeping Burden:
Recordkeepers: 100
Burden Hours: 300
Abstract: Grantees that have participated in the Law School Clinical Experience Program submit this report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective management.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Application for Grants Under the Strengthening Research Library Resources Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 1,600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by research libraries to apply for funding under the Strengthening Research Library Resources Program. The Department uses the information to make grant awards

[FR Doc. 89-23105 Filed 9-29-89; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of meeting.

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SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs (NABIEP). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: October 18th—Orientation session for new members, October 19–20—Board business meetings.

LOCATION: The Quality Inn Capitol Hill Hotel, (Conference room will be posted), 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Executive Director, National Advisory Board on International Education Programs, U.S. Department of Education, 7th & D Streets, SW., Room 4907, Washington, DC 20202–5100, Telephone: 202–732–1862.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under Section 621 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498; 20 U.S.C. 1131). The Board's mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

Beginning on Wednesday, October 18th at 1:30 p.m. through Friday, October 20th, 12 noon, the agenda includes: (1) Orientation session for new members; (2) oath of office ceremonies; (3) an update of CAFLIS programs and activities; (4) a briefing of the budget outlook for Fiscal Year 1990; (5) a report on the Center for International Education programs; (6) a presentation on several current legislative initiatives in support of foreign languages and review/marks regarding several key NFLC "Occasional Papers" on international education; and (7) general board business for Fiscal Year 1990.

On Friday, October 20th at 1:30 p.m., the Board will conduct an on-site visit to the Center for International Studies at Johns Hopkins University.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Education, from 8 a.m. to 4 p.m., ROB–3, 7th & D Streets, SW., Room 4907, Washington, DC.

Signed in Washington, DC on September 27, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–23227 Filed 9–29–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Technical Methodology Standing Committee of the National Assessment Governing Board. This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 25, 1989.

TIME: 9:00 a.m. until adjournment.

LOCATION: Hilton Hotel, Room 2023, O'Hare International Airport, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Mary E. Switzer Building, 330 C Street, SW., Suite 4060, Washington, DC 20202–7583, Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Technical Methodology Standing Committee of the National Assessment Governing Board will meet on Wednesday, October 25, 1989 from 9:00 a.m. until the completion of business. The proposed agenda includes consideration of policies and procedures for the following: (1) Cognitive item review; (2) opportunity to learn measures; and (3) guidelines for trial state assessment. Discussion of these matters will result in the formulation of recommendations from the standing committee to the Board.

Records are kept of all Board proceedings, and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, Suite 4060, 330 C Street, SE., Washington, DC from 8:30 to 5:00 p.m., Monday through Friday.

Dated: September 20, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–23121 Filed 9–28–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2160], notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–JA–406, for the sale of 1 gram of uranium depleted in the isotope uranium-235, and 6.006 grams of low enriched uranium (an average of 3.755 percent enriched in uranium-235) to the Laser Atomic Separation Engineering Research Association of Japan, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 27, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89–23178 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

San Francisco Operations Office; Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the Material Research Society in the amount of $30,000 for the "Thirteenth Symposium on the Scientific Basis for Nuclear Waste Management". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that eligibility for this grant award shall be limited to the Material Research Society under criterion (A), continuation, or renewal of, an existing DOE grant.

GRANT NO. DE–FG03–89SF18428.

SCOPE OF PROJECT: The scope of the project is the overall planning of the conference associated with preparing the Proceedings, and distributing the Proceedings to the Department.

The Materials Research Society, with financial assistance from the U.S. Department of Energy and the U.S. Nuclear Regulatory Commission, has held symposia on the Scientific Basis for Nuclear Waste Management since the fall of 1978. This symposium is recognized as the leading forum for scientific papers dealing with nuclear waste management. The papers, all of which undergo a thorough review process before acceptance, are published as volumes of the MRS Symposia Proceedings series. Twelve volumes have been published since 1978.

Copies of the proceedings will be transmitted to the Department of Energy as deliverables.

The criterion of § 600.7(b)(2)(i) is being relied upon to justify the action. The activity to be funded is a continuation of research currently being funded by DOE. Competition for support would have a significant adverse impact on the continuity of the Materials Research Society Symposiums because the Materials Research Society is an integral part of the program. The basis for this financial assistance action is criterion (A) which states that an activity may be funded if it is necessary for the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE.

FOR FURTHER INFORMATION CONTACT: Bill O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, September 13, 1989.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 89–23179 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Modell Development Corporation

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award based on an unsolicited application under Grant No. DE–FG05–89CE40914 to Modell Development Corporation.

PROJECT SCOPE: The proposed work will provide insight into the applicability of a new Supercritical Water Oxidation (SCWO) technology in efficiently converting waste industrial sludge to useful energy, and at the same time, effectively destroying any potential hazardous waste components. A study will be performed to determine if SCWO can effectively oxidize pulp mill sludges, including hazardous dioxin constituents.

ELIGIBILITY: Based on receipt of an unsolicited application eligibility of this award is being limited to Modell Development Corporation. This project represents a unique idea for which a competitive solicitation would be inappropriate.

The term of this grant is for four months from date of award. The total estimated DOE cost is $50,000.

FOR FURTHER INFORMATION, CONTACT: Stan F. Sobczynski, Program Manager, CE–142, Washington, DC 20585, (202) 586–1878.

Issued in Oak Ridge, Tennessee, on September 19, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–23180 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Award Based on Acceptance of an Unsolicited Application; Solar Energy Industries Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14 (e)(1)(ii), it intends to award a grant to the Solar Energy Industries Association (SEIA) for support to the Committee on Renewable Energy Commerce and Trade (CORECT). The objective of the work to be supported by this grant is the development of a potential North Africa strategy to market solar thermal technologies to produce electricity, steam, and hot water for the industrial process and utility markets. SEIA will develop an industry survey to ascertain industry experience in North Africa as well as problems and potential niche markets. Following collection of the energy data and development of data on the region, SEIA will conduct a seminar in Washington, DC, for commercial and technical staff members in embassies of North African countries. A second seminar will be held in Morocco, Tunisia or Egypt.

FOR FURTHER INFORMATION CONTACT: Patricia Russo Schassburger, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231–1495.

SUPPLEMENTARY INFORMATION: CORECT undertakes activities in support of the U.S. renewable energy industry's export efforts. In order to carry out these activities, CORECT needs a close liaison with the U.S. renewable energy industry. The Solar Energy Industries Association, the national trade association of the photovoltaic and solar thermal manufacturers and component suppliers, is the only organization that represents the export interests of this segment of the U.S. renewable energy industries. Therefore, the unsolicited grant application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct these types of export assistance activities.

The Project period for the grant is a one year period, expected to begin in September 1989. DOE plans to provide funding in the amount of $45,658 for this project period.

Issued in Chicago, Illinois on September 19, 1989.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 89–23181 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office Cooperative Agreement Award: Urban Consortium Energy Task Force

AGENCY: Department of Energy.

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ACTION: Notice of noncompetitive financial assistance for cooperative agreement award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.7 (b)(2), it is pursuing a noncompetitive financial assistance award of a cooperative agreement with the Urban Consortium Energy Task Force. Under the terms of the agreement, the assistance would support applied research and development and technology transfer of innovative technologies and management practices that address urban energy problems. Specific proposal tasks include 21 projects in four general topic areas: electricity management; alternative vehicle fuels; waste management; and the broad relationships among energy, the environment and economic development. In addition to these individual projects a core program supports management coordination and technical assistance to each of the projects both collectively and individually. The program also provides for formal components for technology transfer and experience exchange.

FOR FURTHER INFORMATION CONTACT: Linda J. de la Croix, CE-133, U.S. Department of Energy, Federal and Community Programs, 1000 Independence Avenue SW., Washington, DC (202) 586-1851.

SUPPLEMENTARY INFORMATION: The Urban Consortium Energy Task Force (UCETF) is a coalition of 45 of the nation's largest cities and countries that were formed in 1979. The organization was created to develop, apply and transfer practical technologies and advanced management techniques, that aid effective energy management in America's largest cities and urban countries. The members develop work programs for applied research and development and technology transfer based on annual needs assessments of the priority energy concerns facing urban jurisdictions.

The UCETF has proposed to contract with its associate members to conduct research in the four general topic areas of electricity management, alternative vehicle fuels, waste management, and the broad relationships among energy, environment, and economic development.

Eligibility for the cooperative agreement award is being restricted to the UCETF because of its past experience with DOE and its unique ties and expertise developed in conducting and completing 180 similar projects since its inception in 1979. The estimated total cost of the 18-month cooperative agreement with UCETF is $1,960,000.00. The proposed award date is September 30, 1989.

Issued in Chicago, Illinois on September 19, 1989.

Timothy S. Crawford,

Assistant, Manager for Administration.

[FR Doc. 89-23182 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Wednesday, October 11, 1989, 1:30 p.m. to 10 p.m.; Thursday, October 12, 1989, 8 a.m. to 5 p.m.

Place: Solar Energy Research Institute, Denver West Office Park, 1617 Cole Boulevard, Building 17, 4th Floor Conference Room A, Golden, Colorado 80401

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-1770

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

October 11, 1989

1:30 p.m. Chairman John F. Ahearne Opens Meeting
Review of Issues at Rocky Flats
5:30 p.m. Meeting Adjourned until 8 p.m.
8 p.m.-10 p.m. Public Comment Session

October 12, 1989

8 a.m. Chairman John F. Ahearne Opens Meeting
Discussion of Waste Isolation Pilot Plant Report
Subcommittee Reports
Committee Business
11 a.m. Review of Issues at Rocky Flats
Noon. Lunch
1 p.m. Review of Issues at Rocky Flats
Review of Selected Technical Issues
5 p.m. Meeting Ends.

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 27, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-23184 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-655-000, et al.]

Pacific Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER89-655-000]

September 19, 1989.

Take notice that on September 18, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to certain rates, terms, and conditions concerning those services rendered by PG&E under settlement agreements between PG&E and Port of Oakland (Port) Rate Schedule FERC No. 95, and Lassen Municipal Utility District (Lassen) Rate Schedule FERC No. 117.

The settlement agreement with each customer embodies the agreement between PG&E and the customer regarding the procedure and mechanism designed to recover amounts due PG&E from the customer, and amounts due the customer from PG&E, as a result of rate changes based on certain California Public Utilities Commission (CPUC) decisions and resolutions.

Copies of this filing were served upon Port, Lassen and the CPUC.

Comment date: October 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa-Illinois Gas and Electric Co.

[Docket No. ER89-663-000]

September 25, 1989.

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), on September 19, 1989, tendered for filing pursuant to section 35.13 of the Regulations under the Federal Power Act two alternative proposed rate schedule changes to its Rate Schedule Wholesale Electric Service-Municipal Partial Requirements and a Second Electric Service Agreement (Agreement) dated August 29, 1989, between Iowa-Illinois and the City of Eldridge, Iowa (Eldridge) provided for under the aforementioned Rate Schedule. Eldridge is the only customer service under this Rate Schedule.

Iowa-Illinois states that the preferred Rate Schedule change would cap the billing demand charges in the Rate Schedule at the current levels while allowing customers to negotiate charges below the cap. Iowa-Illinois states the alternative proposal would instead reduce the billing demand charges by a fixed percentage from October 1, 1989 through December 31, 1982. Either proposed alternative Rate Schedule change would reduce the current level of annual billing demand charges for Eldridge from October 1, 1989 through December 31, 1992.

Iowa-Illinois proposed the Rate Schedule change and the Agreement be effective on October 1, 1989 and requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Eldridge, the Iowa State Utilities Board and the Illinios Commerce Commission.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. William N. Hubbard, Jr.

[Docket No. ID-2421-000]

September 25, 1989.

Take notice that on August 23, 1989, William N. Hubbard, Jr. (Applicant) tendered for filing an application under section 305(b) of the Fedeal Power Act to hold the following positions:

Director: Consumers Power Company
Director: Johnson Controls, Inc.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. William T. McCormick, Jr.

[Docket No. ID-2423-000]

September 25, 1989.

Take notice that on August 23, 1989, William T. McCormick, Jr. (Applicant), tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, Director: Consumers Power Company
Director: Rockwell International Corporation

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Don T. McKone

[Docket No. ID-2422-000]

September 25, 1989.

Take notice that on August 23, 1989, Don T. McKone, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Consumers Power Company
Director: TRINOVA Corporation

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Company

[Docket No. ER83-726-004]

September 25, 1989.

Take notice that on September 15, 1989, Boston Edison Company (Boston) tendered for filing its compliance refund report pursuant to the Commission's order issued on August 2, 1989.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket No. ER89-662-000]

September 25, 1989.

Take notice that on September 19, 1989, Washington Water Power Company (Water Power) tendered for filing copies of an Agreement for Exchange of Capacity and Energy between Washington and Public Utility District No. 1 of Pend Oreille County (Pend Oreille). Washington states the purpose of the agreement is to provide Pend Oreille with additional energy storage capability.

Water Power respectfully requests that the Commission grant a waiver of the notice requirements and that the effective date schedule be July 1, 1989, stating that there would be no effect upon purchasers under other rate schedules.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Power and Light Co.

[Docket No. ER89-659-000]

September 25, 1989.

Take notice that on September 19, 1989, Kansas Power and Light Company (KP&L) tendered for filing a newly executed contract dated September 6, 1989, with the City of Lindsborg, Kansas, (City) for wholesale electric service to that community. KP&L states that the rate schedule change is the replacement of the prior contract for wholesale sales service to the City with a new contract which provides for the continuation of sales service and the addition of transmission service.

The new contract has been negotiated to KP&L and the City in order to provide for the transmission of the power and energy associated with an allocation of power available to the City from the Western Area Power Administration through the Kansas Municipal Energy Agency. Copies of this filing have been mailed to the City of Lindsborg and the State Corporation Commission of Kansas.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket No. ER89-658-000]

September 25, 1989.

Take notice that New England Power Company (NEP), on September 19, 1989, tendered for filing a Transmission Facilities Support Agreement between NEP and Boston Edison Company (BECO) that provides for an additional interconnection between their systems for the purpose of strengthening each of the systems, and also provides the basis for the sharing of costs between the parties.

NEP requests an effective date of June 14, 1988, the initial date of service under the Agreement, and waiver of the Commission's notice provision pursuant to § 35.11.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Cincinnati Gas & Electric

[Docket No. ER89-661-000]

September 25, 1989.

Take notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing on September 19, 1989 an Interconnection Agreement between Cincinnati and the Ohio Valley Electric Corporation.

The Interconnection Agreement adopts Rate Schedules for Emergency Energy, Interchange Power, Short Term Power and Limited Term Power. The

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Rate Schedules establish the applicable charges. There is no estimate of increased revenued from the charges since transactions will occur only as load and capacity conditions dictate. A September 1, 1989 effective date has been requested.

Cincinnati states that the rates and services were negotiated by the parties. Ohio Valley Electric Corporation concurs in the filing of the Interconnection Agreement.

A copy of the filing was served upon Ohio Valley Electric Corporation and the Public Utilities Commission of Ohio.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service

[Docket No. ER89-656-000]

September 25, 1989.

Take notice that on September 15, 1989, Wisconsin Public Service Corporation (the "Company" or "WPSC") filed six copies of revisions to its W-3 FERC Electric Tariff. The filing includes the following Service Schedules to supplement Service Schedule A (Firm and Interruptible) and Service Schedule B (General Purpose 2) of the company's W-3 tariff for load pattern partial requirements service:

Service schedule	Service
C	Emergency
D	Economy
E	Short Term
F	Maintenance
G	General Purpose

These Service Schedules are identical to W-2 Service Schedules for these services as agreed to in the Settlement Agreement among the Company, Consolidated and the Algoma Group in Docket No. ER88-63-000 as approved by the Commission on September 29, 1988.

The filing includes, in addition to the Service Schedules to be added to the W-3 tariff, a change to the existing General Purpose 2 Service Schedules in both the W-2 and W-3 tariff. The change is to paragraph 5, which now makes those Service Schedules applicable to all energy not taken under Service Schedule A of each tariff. In order to recognize that a customer may take energy under Service Schedules other than Service Schedule A, Paragraph 5 is changed to make the General Purpose 2 Service Schedule apply to all energy not taken under all other rate schedules in the tariff.

WPSC states that copies of the filing have been served on its W-2 and W-3 customers and the Public Service Commission of Wisconsin.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. GEO East Mesa Limited Partnership

September 26, 1989.

[Docket Nos. QF82-18-001, QF88-202-002 and QF88-203-002]

GEO East Mesa Limited Partnership, 18872 MacArthur Boulevard, Suite 400, Irvine, California 92715, on behalf of itself and its wholly-owned subsidiary, GEO East Mesa facilities as qualifying small power production facilities pursuant to Section 292.207 of the Commission's regulations on the following dates:

September 7, 1989 McCabe Facility, Docket No. QF82-18-001
September 21, 1989 GEM 1 Facility, Docket No. QF88-202-002
September 21, 1989 GEM 2 Facility, Docket No. QF88-203-002

The three geothermal facilities are located within one mile of each other in the East Mesa Known Geothermal Resource Area of Imperial County, California. The McCabe Plant will have a maximum net power production capacity of approximately 10.4 megawatts, and the GEM 1 and GEM 2 facilities will have a combined maximum net power production capacity of approximately 40 megawatts. Power generated by the facilities will be sold to Southern California Edison Company. The primary energy source of the facilities will be natural geothermal water, steam, or brine.

Comment date: Thirty days form publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,
Secretary

[FR Doc. 89-23112 Filed 9-29-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-2126-000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP89-2126-000]

September 25, 1989.

Take notice that on September 19, 1989, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2126-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Xebec Gas Company (Xebec), under the blanket certificate issued in Docket No. CP89-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that pursuant to a Transportation Agreement dated May 8, 1989, it proposes to transport, on an interruptible basis, up to maximum of 7,463 MMBtu of natural gas for Xebec. ANR states that it would receive gas at existing points of receipt located in Kansas, Louisiana, Michigan, Oklahomas, Texas, and Offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Xebec at existing interconnections located in Michigan and Louisiana.

ANR also states that it will transport approximately 7,463 MMBtu on an annual basis.

ANR further states it commenced this service August 1, 1989, as reported in Docket No. ST89-4620-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP89-2130-000]

September 25, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2130-000 an application pursuant to Sections 157.205 and 284.223 18 CFR 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Transco Energy Marketing Co., (Transco), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88-532-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states it will receive the gas at various supply sources in the offshore area of Texas and deliver the gas for the account of Transco at existing points of interconnection also located in offshore Texas.

ANR proposes to transport up to 650,000 dt of gas on a peak and average day and approximately 237,000,000 dt of gas annually. ANR states the transportation commenced on August 3, 1989, pursuant to the 120-day automatic authorization under section 284.223 of the Commission's Regulations under the terms of a transportation agreement dated June 1, 1989. ANR notified the Commission of the transportation service in Docket No. ST89-4619-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP89-2105-000]

September 25, 1989.

Take notice that on September 15, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-2105-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place approximately 0.2 mile of 16-inch pipeline and appurtenant facilities south of the abandoned Kansas River crossing in Douglas County, Kansas, and to abandon the transportation of gas through said facilities under its blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the Kansas Power & Light Company (KPL Gas Service) domestic customer served by this pipeline has requested service by Kansas Public Service (KPS). Both KPL Gas Service and KPS have agreed to the transfer of service which will allow WNG to abandon this section of pipeline. The reclaim cost is estimated to be $2,970.00, with a salvage value of $1,901.00.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tarpon Transmission Co.

[Docket No. CP89-2140-000]

September 25, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2140-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Seagull Marketing Services, Inc. (Seagull), a marketer of natural gas, under Tarpon's blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-29-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport on an interruptible basis up to 15,330 MMBtu of natural gas on a peak day, 7,842 MMBtu on an average day and 2,862,330 MMBtu on an annual basis for Seagull. Tarpon indicates that it would receive the gas at a point in the Eugene Island Block 381, offshore Louisiana, and deliver the gas at a point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana. Tarpon indicates that it would transport the gas for Seagull pursuant to Tarpon's Rate Schedule ITS for a primary term of one year and on a monthly basis thereafter.

It is explained that the service commenced June 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4773. Tarpon indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tarpon Transmission Co.

[Docket No. CP89-2141-000]

September 25, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2141-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Anadarko Marketing Company (Anadarko), a marketer of natural gas, under Tarpon's blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-29-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport on an interruptible basis up to 51,100 MMBtu of natural gas on a peak day, 7,040 MMBtu on an average day and 2,569,600 MMBtu on an annual basis for Anadarko. Tarpon indicates that it would receive the gas at five points in the Eugene Island Area, offshore Louisiana, and deliver the gas at a point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana. Tarpon indicates that it would transport the gas for Anadarko pursuant to Tarpon's Rate Schedule ITS for a primary term of two years and on a monthly basis thereafter.

It is explained that the service commenced June 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4772. Tarpon indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Co.

[Docket No. CP89-2081-000]

September 25, 1989.

Take notice that on September 12, 1989, Natural Gas Pipeline Company of America (NGPA), filed, in Docket No. CP89-2081-000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of facilities to increase seasonal withdrawal capabilities at three of NGPA's existing storage fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGPA proposes to add eight new injection/withdrawal wells, convert a compressor engine and lay 0.75 mile of 10-inch diameter pipeline in the Herscher (Galesville) Storage Field; to recomplete eight wells previously used to remove water from below the reservoir and install two miles of 8-inch diameter pipeline in the Loudon (Devonian) Storage Field; and to drill five new wells, recomplete four observation wells and install 1.75 miles of 8-inch pipeline in the North Lansing (Rodessa Young) Storage Field systems, respectively. NGPA states that the increased seasonal withdrawal

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capability, (estimated to be 7.7 Bcf), is desirable to meet expected future demands.

The estimated cost is $11,403,000 to be achieved initially with funds on hand, issuance of commercial paper, use of existing bank lines of credit or interim financing arrangements as may be negotiated. Permanent financing subsequently will be undertaken as part of NGPA's overall long term financing program.

Comment dote: October 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket No. CP89-1281-001]

September 25, 1989.

Take notice that on September 19, 1989, Natural Gas Pipeline Company of America (Natural) filed on behalf of itself and the Customer Group a Stipulation and Agreement on Interim Gas Inventory Charge (IGIC) pursuant to Rule 602, 18 CFR 385.602. Natural states that the Customer Group jointly sponsoring this settlement consists of Northern Illinois Gas Company, the Peoples Gas Light and Coke Company, Northern Indiana Public Service Company, North Shore Gas Company, Iowa-Illinois Gas and Electric Company, Illinois Power Company, Iowa Electric Light and Power Company, Interstate Power Company, Iowa Southern Utilities Company, and Wisconsin Southern Gas Company.

The settlement provides that Natural's firm sales customers shall submit nominations on or before November 1, 1989, for the period from November 1, 1989 to November 30, 1990. If a customer nominates sales service less than its current daily contract quantity, the balance will be converted to firm transportation service. Commission approval of the settlement shall constitute permanent abandonment authority for the converted sales service. The settlement also provides for an interim gas inventory charge of $.40 per MMBtu to be applied on the basis of purchase deficiencies and for a reconciliation mechanism whereby any overcollections under the IGIC and purchased gas account (PGA) are to reduce Natural's current balance in its Account No. 191.

Comment date: October 10, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Southern Natural Gas.

[Docket No. CP89-2102-000]

[Docket No. CP89-2103-000]

September 25, 1989.

Take notice that on September 14, 1989, Southern Natural Gas Company (Southern) Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket Nos. CP89-2102-000 and CP89-2103-000,[1] requests pursuant to § 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis, a maximum quantity of 350,000 MMBtu of natural gas for Entrade Corporation (Entrade), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on filed with the Commission and open to public inspection.

In Docket No. CP89-2102-000, Southern states that it would transport a maximum quantity of 350,000 MMBtu on a peak day, 349,041 MMBtu on an average day and 127,400,000 MMBtu on an annual basis from various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various points in Georgia, Tennessee and South Carolina. Southern indicates that service commenced July 19, 1989, as reported in Docket No. ST89-4551.

In Docket No. CP89-2103-000, Southern states that it would transport the same maximum quantity of natural gas on peak days, average days and annually as previously noted for Docket No. CP89-2102-000. Southern would transport such gas from various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various points in Alabama and Georgia. Southern indicates that service commenced July 19, 1989, as reported in Docket No. ST89-4550.

Southern also states that no new facilities are required to implement the proposed services.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. The Inland Gas Company, Inc.

[Docket No. CP89-2137-000]

September 25, 1989.

Take notice that on September 19, 1989, The Inland Gas Company Inc. (Inland) 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89-2137-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, for authorization to transport natural gas under its blanket certificate issued in Docket No. CP89-779-000, pursuant to section 7 of the Natural Gas Act for Louisville Fire Brick Works (Louisville Fire Brick), all as more fully set forth in the request on file with the Commission and open to public inspection.

Inland proposes to transport up to 300 MMBtu equivalent of natural gas per day, projected average daily and annual quantities of 270 MMBtu and 98,550 MMBtu, respectively, for Louisville Fire Brick.

Inland explains that service commenced August 4, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4538-000.

Comment date: November 9, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. The Inland Gas Co., Inc.

[Docket No. CP89-2136-000]

September 26, 1989.

Take notice that on September 19, 1989, The Inland Gas Company, Inc. (Inland) P.O. Box 1180, Ashland, Kentucky 41105-3171, filed in Docket No. CP89-2136-000 a request, as supplemented on September 21, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for American National Rubber Company (American National), an end-user, under Inland's blanket certificate issued in Docket No. CP89-779-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Inland states that pursuant to a transportation agreement dated August 8, 1989, it proposes to receive up to 300 Mcf per day from American National from two specified points located in the state of Kentucky and redeliver the gas at specified points located in the state of West Virginia. Inland estimates that the peak day, average day, and annual volumes would be 300 million Btu, 160 million Btu, and 58,400 million Btu, respectively. It is stated that on August 9, 1989, Inland commenced a 120-day transportation service for American National under Section 284.223(a) as reported in Docket No. ST89-4536-000.

Inland further states that no facilities need be constructed to implement the service. Inland indicates that the service would continue until February 3, 1990.

Inland proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2147-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2147-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated July 10, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points of Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to the Anadarko North Richland Plant in Texas County, Oklahoma.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4665. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2149-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2149-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated June 26, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, and Illinois, and deliver such gas, less fuel used and unaccounted for line loss, to the Anadarko Beaver Plant in Beaver County, Oklahoma.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4661. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2143-000]

September 26, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2143-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated September 19, 1988, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Anadarko. Panhandle states that it would transport the gas from receipt points in Texas, Oklahoma, Colorado, Kansas, Michigan, Ohio, Illinois, and Wyoming, and deliver such gas, less fuel used an unaccounted for line loss, to National Hellum in Seward County, Kansas.

Panhandle advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4662. Panhandle further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effetive the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be

[1] These dockets are not consolidated.

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treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23113 Filed 9-29-89; 8:45 am]

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[Docket Nos. CP89-2091-000, et al.]

Mid Louisiana Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mid Louisiana Gas Co.

[Docket No. CP89-2091-000]

September 19, 1989.

Take notice that on September 13, 1989, Mid Louisiana Gas Company (Mid Louisiana), five Post Oak Park, Suite 800, Houston, Texas 77027, filed in Docket No. CP89-2091-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Mobil Natural Gas, Inc. (Mobil) under Mid Louisiana's blanket certificate issued in Docket No. CP86-214-000, on March 12, 1986, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that pursuant to a transportation agreement dated August 1, 1989, it proposes to transport natural gas for Mobil, on an interruptible basis, from a point of receipt located on West Cameron Block 32, 33, offshore Louisiana, to a point of interconnection with Tennessee Gas Pipeline Company, at Lower Mud Lake, Cameron Parish, Louisiana.

Mid Louisiana further states that the peak day, average day, and annual quantities would be 5,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu equivalent of natural gas per day, respectively. It is also stated that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4577-000, filed August 29, 1989.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. KN Energy, Inc.

[Docket No. CP89-2088-000]

September 19, 1989.

Take notice that on September 13, 1989, KN Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed a request with the Commission in Docket No. CP89-2088-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate sales taps for the delivery of natural gas to three end-users under KN's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

KN proposes to construct and operate sales taps to serve three residential end-users located along its jurisdictional pipelines in Scott County, Kansas, and Hamilton County, Nebraska. KN states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have an insignificant impact on KN's peak day and annual deliveries.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Equitrans, Inc.

[Docket No. CP89-2072-000]

September 19, 1989.

Take notice that on September 11, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, PA 15205, filed in Docket No. CP89-2072-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Angerman Associates, Inc. (Angerman), under the blanket certificate issued in Docket No. CP86-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that pursuant to a transportation service agreement dated July 6, 1989 under its Rate Schedule ITS, it proposes to transport up to 147 Mcf per day of natural gas for Angerman. Equitrans states that it would transport the gas from receipt points in West Virginia, and would redeliver the gas at the interconnect between Equitrans and Equitable Gas Company in Allegheny County, Pennsylvania.

Equitrans advises that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4523. Equitrans further advises that it would transport 147 Mcf on an average day and 53,655 Mcf annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP89-2117-000]

September 19, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2117-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated June 15, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for PSI. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Consumers Power in Elkhart County, Indiana.

Trunkline advises that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4673. Trunkline further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP89-2100-000]

September 19, 1989.

Take notice that on September 14, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-2100-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of United States Gypsum Company (U.S. Gypsum), an end-user, under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 8,900 dekatherms of natural gas per day for U.S. Gypsum from receipt points located in Offshore Louisiana, Louisiana, Offshore Texas and Alabama to delivery points located in Maryland, Massachusetts and New York. Tennessee anticipates transporting an annual volume of 3,248,500 dekatherms.

Tennessee states that the transportation of natural gas for U.S. Gypsum commenced August 31, 1989, as reported in Docket No. ST89-4713-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP89-2077-000]

September 19, 1989.

Take notice that on September 12, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79998, filed in Docket No. CP89-2050-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Shipper), under its blanket certificate issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all or more fully set forth in the request on file with Commission and open to public inspection.

El Paso states that it proposes to transport up to 158,250 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to various delivery points in Texas and New Mexico at the borderline between Arizona and California.

El Paso also states that the estimated daily and annual quantities would be 52,750 MMBtu and 19,253,750 MMBtu, respectively.

El Paso further states it commenced this service on August 12, 1989, as reported in Docket No. ST89-4566-000.

Comment date: November 3, 1989, in accordance with Standard paragraph G at the end of this notice.

7. Texas Gas Transmission Corp.

[Docket No. CP89-2109-000]

September 19, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2109-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated August 3, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Tejas. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to a delivery point in Acadia Parish, Louisiana, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced August 5, 1989, as reported in Docket No. ST89-4522. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Great Lakes Gas Transmission Co.

[Docket No. CP89-1898-000]

September 19, 1989.

Take notice that on August 2, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1898-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity to provide additional firm gas transportation service of 831,000 Mcf per day for ANR Pipeline Company (ANR), and to construct and operate facilities required to provide such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Great Lakes states that the existing TransCanada-Great Lakes Gas Transportation Contract dated September 12, 1967, as amended, currently provides for firm transportation by Great Lakes of up to a maximum of 1,405,000 Mcf per day of volumes from a point of interconnection between the facilities of Great Lakes and TransCanada on the International Boundary at Emerson, Manitoba (Emerson Interconnection), to points on the International Boundary located at Sault Ste. Marie and St. Clair Interconnections. Great Lakes states that TransCanada has requested that the additioinal 831,000 Mcf per day be transported by Great Lakes from the Emerson Interconnection to the St. Clair Interconnection. To provide this service, an Amendatory Agreement dated July 28, 1989, (Amendment) has been executed by the parties, which provides for such increase to a total of 2,236,000 Mcf per day, which is expected to commence November 1, 1991. A second increase of 166,000 Mcf per day is expected to commence on November 1, 1992.

It is stated that ANR and Great Lakes have entered into a Transportation Service Agreement (ANR Service Agreement) dated July 28, 1989, under which Great Lakes has agreed to transport up to 43,700 Mcf per day on a firm basis, for ANR, from the Emerson Interconnection to an existing point of interconnection between the facilities of ANR and Great Lakes, located at Fortune Lake, Michigan (Fortune Lake Delivery Point). ANR has advised Great Lakes that it will receive these volumes into the ANR Pipeline system at Fortune Lake Delivery Point for alternate deliveries to the joint subsidiaries of Kamine Engineering and Mechanical Contracting, Inc. and the Besicorp Group, Inc. (Cogen Developers), who are constructing gas-fired cogeneration projects in South Glen Falls, South Corning, and Holtsville, New York.

Great Lakes states ANR will provide transportation of the subject volumes from the Fortune Lake Delivery Point to a proposed point of interconnection between the facilities of ANR and CNG Transmission Corporation (CNG) located at Lebanon, Ohio (Lebanon Delivery Point). The Cogen Developers are entering into arrangements with CNG and other entities for transportation of the volumes from the Lebanon Delivery Point to the sites for the cogeneration projects.

It is stated that the proposed service for ANR is expected to commence on November 1, 1991, with a daily firm contract quantity of 14,200 Mcf per day, which will be increased by 29,500 to 43,700 Mcf, commencing on or about November 1, 1992.

Great Lakes further states that TransCanada and ANR have advised Great Lakes that their respective transportation of the arrangements are primarily required to satisfy the market needs of the U.S. Northeast. A substantial portion of the proposed services will be utilized in conjunction with the Iroquois, Champlain, and ANR-Lebanaon projects, previously determined by the Commission to be discrete, its "Order Ruling on Discreetness of Additional Northeast Projects and Establishing Procedures", issued January 12, 1989, in Docket No. CP87-451-016, 46 FERC ¶ 61,012 (1989).

Great Lakes states that, in order to provide the proposed transportation

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services, Great Lakes proposes to construct and/or install (1) thirty-three loop sections, totalling 68.5 miles of 36-inch diameter pipe and 465.1 miles of 42-inch diameter pipe; (2) seven compressor units of 27,000 horsepower class rating (3) twenty-five aerodynamic assemblies and station piping modifications at various Great Lakes' compressor stations; (4) an addition to Great Lakes' existing meter station located at St. Clair, Michigan; and (5) one aftercooler at an existing compressor station, as more fully explained in the application.

On September 7, 1989, Great Lakes filed a Supplement to Application stating, "Exhibit "K" of the Application filed by Great Lakes on August 2, 1989, shows the facilities that are required to be constructed in 1991 and 1992 to provide the proposed transportation service. However, the text of the Application and the prayer for relief inadvertently omitted and reference to the 1992 facilities. Similarly, the *pro forma* Notice does not contain any such reference. This supplement is to clarify that Great Lakes is requesting authority to construct and operate the 1992 facilities shown in Exhibit "K" of the Application." The 1992 facilities are 161.1 miles of 42-inch diameter pipe.

The rate for transportation of the volumes for TransCanada will be the effective rate under Rate Schedule T-4 of the Original Volume No. 2 of Great Lakes' FERC Gas Tariff, applicable for deliveries at the St. Clair Interconnection. The rate for ANR will be determined from the components of the Base Tariff Rates of a comparable, long-term transportation arrangement, applicable to volumes being transported from the Emerson Interconnection to Great Lakes' central zone.

Comment date: October 10, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Columbia Gas Transmission Corp.

[Docket No. CP89-2106-000]

September 19, 1989.

Take notice that on September 15, 1989, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP89-2106-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Brooklyn Interstate Natural Gas Corporation (Brooklyn Interstate) under its blanket authorization issued in Docket No. CP86-240-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia would perform the proposed interruptible transportation service for Brooklyn Interstate, pursuant to an interruptible transportation service agreement dated June 30, 1989. The transportation agreement is effective as of the date of its full execution and shall continue in full force and effect from month-to-month thereafer unless terminated by either party upon thirty days written notice. Columbia proposes to transport up to a maximum of 100,000 MMBtu equivalent of natural gas per day; 60,000 MMBtu on an average day; and 36,500,000 MMBtu annually. Columbia proposes to receive and deliver the subject gas at various existing points located on its system. Columbia avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of Section 284.223(a)(1) of the Commission's Regulations. Columbia commenced such self-implementing service on July 6, 1989, as reported in Docket No. ST89-4418-000.

Comment date: November 3, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Trunkline Gas Co.

[Docket No. CP89-2116-000]

September 20, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2116-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Amoco Production Company (Amoco), a shipper and producer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 100,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Amoco pursuant to a transportation agreement dated April 17, 1989, between Trunkline and Amoco. Trunkline would receive the gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Tennessee and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to Illinois Power (Bourbon) in Douglass County, Illinois.

Trunkline states that the estimated daily and annual quantities would be 30,000 dkt and 10,950,000 dkt, respectively. Service under § 284.223(a) commenced on August 1, 1989, as reported in Docket No. ST89-4674-000, it is stated.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Texas Gas Transmission Corp.

[Docket No. CP89-2112-000]

September 20, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation, (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301 filed in Docket No. CP89-2112-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing Inc. (Enron Marketing), under its blanket authorization issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas would perform the proposed interruptible transportation service for Enron Marketing, a natural gas marketer, pursuant to a gas transportation agreement dated December 14, 1988 (contract no. L000421). The term of the transportation agreement is from the date of execution by Enron Marketing and shall continue in effect month-to-month thereafter, unless terminated upon 30 days written notice by either party. Texas Gas proposes to transport on a peak day up to 400,000 MMBtu; on an average day up to 80,000 MMBtu; and on an annual basis 29,200,000 MMBtu for Enron Marketing. Texas Gas proposes to receive the subject gas from an exiting points of receipt on its system for transportation and redelivery for Enron Marketing's account at existing points of delivery on Texas Gas' system. The proposed rate to be charged is contained in Texas Gas' IT rate schedule.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Texas Gas commenced such self-implementing service on August 1, 1989, as reported in Docket No. ST89-4471-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Northwest Pipeline Corp.

[Docket No. CP89-2120-000]

September 21, 1989.

Take notice that on September 19, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-2120-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Greeley Gas Company (Greeley), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 MMBtu of natural gas per day for Greeley from receipt points located in Colorado Oklahoma, Oregon, Utah, Washington and Wyoming to delivery points located in Colorado, Idaho, New Mexico, Oklahoma; Oregon, Utah, Washington and Wyoming. Northwest anticipates transporting 300 MMBtu of natural gas on an average day and an annual volume of 120,000 MMBtu.

Northwest states that the transportation of natural gas for Greeley commenced August 16, 1989, as reported in Docket No. ST89-4735-000, for a 120-day period pursuant to section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. ANR Pipeline Co.

[Docket No. CP89-2129-000]

September 21, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP89-2129-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport natural gas on an interruptible basis for Coastal Gas Marketing Co. (Coastal). ANR explains that service commenced July 14, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4592. ANR further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the States of Kansas, Louisiana, Oklahoma, Texas and the Offshore Texas and Louisiana gathering areas. ANR states that it would further deliver the gas to Coastal at existing interconnections located in the State of Indiana

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Co.

[Docket No. CP89-2123-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2123-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various delivery points in Alabama and Georgia.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89-4357-000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Southern Natural Gas Co.

[Docket No. CP89-2124-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box, 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP89-2124-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various delivery points in Georgia, Tennessee and South Carolina.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89-4356-000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Co.

[Docket No. CP89-2125-000]

September 21, 1989.

Take notice that on September 19, 1989, Southern Natural Gas Company (Southern), P.O. Box, 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP89-2125-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), a producer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 21, 1989, under its Rate Schedule IT, it proposes to transport up to 70,000 MMBtu per day equivalent of natural gas for Kerr-

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McGee. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various production area points in Louisiana.

Southern advises that service under § 284.223(a) commenced July 21, 1989, as reported in Docket No. ST89–4358–000. Southern further advises that it would transport 70,000 MMBtu on an average day and 25,550,000 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. El Paso Natural Gas Co.

[Docket No. CP89–2060–000]

September 21, 1989.

Take Notice that on September 21, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89–2060–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82–433–000 for authorization to continue interruptible transportation service for Arizona Public Service Company (Shipper), all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso states that transportation service for Shipper was initiated under part 284, subpart B on February 1, 1986 and El Paso's initial report in accordance with § 284.106(a) of the Commission's Regulations was filed with the Commission at Docket No. ST86–1024–000. El Paso further states that Shipper and El Paso have agreed to continue such transportation under subpart G of the Commission's Regulations and to terminate the subpart B transaction upon receipt of the appropriate regulatory approvals for the subpart G transaction. El Paso would transport up to 112,885 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to various delivery points in the State of Arizona. El Paso states that the estimated daily and annual quantities would be 84,400 MMBtu and 30,806,000 MMBtu, respectively.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Texas Gas Transmission Corp.

[Docket No. CP89–2113–000]

September 21, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–2113–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A. Inc. (Chevron), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 10,000 MMBtu per day for Chevron. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 10,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89–4469.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89–2119–000]

September 21, 1989.

Take notice that on September 18, 1989, Transcontinental Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89–2119–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Consolidated Fuel Corporation (Consolidated) under its blanket certificate issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for Consolidated at various existing points of receipt in Mississippi, offshore Louisiana, Louisiana, offshore Texas, Texas, and New Jersey, and would redeliver the gas at an existing delivery point located in Pennsylvania.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for Consolidated would be 15,000 dt equivalent of natural gas, 10,000 dt equivalent of natural gas and 365,000 dt equivalent of natural gas, respectively.

Transco indicates that in a filing made with the Commission in Docket No. ST89–4603, it reported that transportation service for Consolidated commenced on August 2, 1989 under the 120-day automatic authorization provisions of Section 284.223(a).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Inland Gas Company, Inc.

[Docket No. CP89–2135–000]

September 21, 1989.

Take notice that on September 19, 1989, Inland Gas Company, Inc. (Inland), 336–338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89–2135–000 a request pursuant to sections 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Kentucky Electric Steel Corporation (Kentucky Electric) under its blanket certificate issued in Docket No. CP89–779–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Inland states that it proposes to transport natural gas for Kentucky Electric between a receipt point and a delivery point in Boyd County, Kentucky.

Inland further states that the maximum daily, average daily and annual quantities that it would transport for Kentucky Electric would be 3,000 MMBtu equivalent of natural gas, 1,800 MMBtu equivalent of natural gas and 657,000 MMBtu equivalent of natural gas, respectively.

Inland indicates that in a filing made with the Commission in Docket No. ST89–4537 it reported that transportation service for Kentucky Electric had begun on August 5, 1989 under the 120-day automatic authorization provisions of section 284.223(a).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Trunkline Gas Co.

[Docket No. CP89–2118–000]

September 21, 1989.

Take notice that on September 18, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2118–000 a request pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Panhandle Trading Company (Panhandle Trading), a marketer, under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 20, 1989, it proposes to receive up to 50,000 Mcf per day from Panhandle Trading at specified points located in Illinois, Texas and in offshore and onshore Louisiana and to redeliver the gas to Panhandle Trading, less fuel and unaccounted-for line loss, at Rotherwood Storage Facility in Harris County, Texas. Trunkline estimates that the peak day, average day, and annual volumes would be 50,000 dt equivalent of natural gas, 30,000 dt equivalent of natural gas, and 10,950,000 dt equivalent of natural gas, respectively. It is stated that on August 1, 1989, Trunkline initiated a 120-day transportation service for Panhandle Trading under Section 284.223(a) as reported in Docket No. ST89–4672–000.

Trunkline further states that no facilities need be constructed to implement the service. Trunkline indicates that the service would continue on a month-to-month basis until terminated by either party upon at least thirty days prior notice to the other. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Co.

[Docket No. CP89–2132–000]

September 21, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89–2132–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Consolidated Fuel Corp. (Consolidated), under the authorization issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Consolidated, a marketer of natural gas, pursuant to a transportation agreement dated July 26, 1989. The term of the transportation agreement is for a initial period of 120 days and thereafter until July 31, 1991, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 3,500 dekatherm; on an average day up to 3,500 dekatherm; and on an annual basis 1,278,000 dekatherm of natural gas for Consolidated. ANR states that it would receive the gas at ANR's existing points of receipt located in the States of Kansas, Louisiana, Oklahoma and Texas and the Offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Consolidated at existing interconnections located in the State of Indiana. It is alleged that Consolidated would pay ANR the effective rate contained in ANR's Rate Schedule ITS and the applicable provisions of the General Terms and Conditions of ANR's FERC Gas Tariff, Original Volume No. 1–A. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of section 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on August 8, 1989, as reported in Docket No. ST89–4654–000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Texas Gas Transmission Corp.

[Docket No. CP89–2111–000]

September 21, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–2111–000 a request pursuant to section 157.205 of the Commission's Regulations for authorization to transport natural gas for CNG Trading Company (CNG Trading), a marketer of natural gas, which has identified the end-user of the gas as Peoples Natural Gas Company, under Texas Gas' Order No. 509 blanket authorization pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 30,000 MMBtu equivalent on a peak day, 30,000 MMBtu equivalent on an average day and 6,950,000 MMBtu equivalent on an annual basis for CNG Trading. It is stated that Texas Gas would receive the gas for CNG Trading's account at various points on Texas Gas' system in the High Island area of offshore Texas, and would deliver equivalent volumes at a point on Texas Gas' system in the High Island area of offshore Texas. It is asserted that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is explained that the transportation service commenced August 1, 1989, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4688.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Tarpon Transmission Co.

[Docket No. CP89–2139–000]

September 21, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–2139–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Conoco, Inc. (Conoco), a producer, under the blanket certificate issued in Docket No. CP88–89–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tarpon states that pursuant to a transportation service agreement dated June 19, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,220 MMBtu per day equivalent of natural gas for Conoco. Tarpon states that it would transport the gas from a receipt point located in Eugene Island Area (S.A.), Block 361, offshore Louisiana, and would deliver the gas to a delivery point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana.

Tarpon advises that service under Section 284.223(a) commenced June 23, 1989, as reported in Docket No. ST89–4771–000 (filed September 20, 1989). Tarpon further advises that it would transport 3,373 MMBtu on an average day and 1,231 MMBtu annually.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

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25. Southern Natural Gas Co.

[Docket No. CP89-2108-000]
September 22, 1989.

Take notice that on September 15, 1989, Souther Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2108-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on an interruptible basis for Transco Energy Marketing Company (Transco Energy), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it would perform the proposed transportation service for Transco Energy pursuant to a service agreement dated June 21, 1989, under Southern's Rate Schedule IT. Southern further states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern indicates that the service agreement provides for a maximum quantity of 66,000 MMBtu of natural gas on a peak day, but Transco Energy anticipates requesting 30,000 MMBtu of natural gas on an average day, and accordingly, 10,950,000 MMBtu of natural gas on an annual basis. Southern states that it would receive the natural gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to Transcontinental Gas Pipe Line Corporation in Livingston Parish, Louisiana. Southern asserts that no new facilities would be required to implement the proposed service.

Southern states that it commenced the transportation of natural gas for Transco Energy on July 20, 1989, at Docket No. ST89-4547-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations (18 C.F.R. 284.223(a)).

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Williston Basin Interstate Pipeline Co.

[Docket No. CP89-2094-000]
September 22, 1989.

Take notice that on September 13, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed an application with the Commission in Docket No. CP89-2094-000, pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to remove and abandon two gas compressors in Park County, Wyoming, all as more fully set forth in the application which is open to public inspection.

Williston Basin proposes to remove and abandon a 298-horsepower compressor at its South Elk Basin compressor station, because the station's other two compressors could adequately handle the declining natural gas production. Williston Basin also proposes to remove and abandon a 139-horsepower compressor at its Southeast Polecat compressor station because of uneconomical natural gas production. Williston Basin states that its proposal would not affect its service to any of its customers.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

27. Overthrust Pipeline Co.

[Docket No. CP89-2062-000]

September 22, 1989.

Take notice that on September 6, 1989, Overthrust Pipeline Company (Overthrust), 79 South State Street, Salt Lake City, Utah 84111, filed in conjunction with the settlement of its section 4(e) rate proceeding in Docket No. RP85-60-000, an abbreviated application pursuant to sections 157.7 and 284.221 of the Commission's Regulations requesting a certificate of public convenience and necessity to enable it to provide open-access transportation service pursuant to the Commission's Regulations, all as more fully set forth in the request on file with the Commission and open to public inspection.

Overthrust requests authority to provide firm and interruptible open-access transportation service on a nondiscriminatory first-come, first-served basis to all parties requesting such service in accordance with the terms and conditions set forth in its proposed Original FERC Gas Tariff, Volume No. 1-A.

Overthrust states that acceptance of a blanket certificate, if issued by the Commission, is conditioned upon the settlement in Docket No. RP85-60-000 being approved as proposed.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

28. ANR Pipeline Co.

[Docket No. CP89-2128-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2128-000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips), a marketer, under its blanket authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Phillips, pursuant to an interruptible transportation service agreement dated June 13, 1989. The transportation agreement is effective for a term until 120 days from the day of initial deliveries, and thereafter until June 30, 1991, and month to month thereafter until terminated by either party on thirty days written notice. ANR proposes to transport approximately 80,000 dth natural gas on a peak and average day; and on an annual basis 29,200,000 dth of natural gas for Phillips. ANR proposes to receive the subject gas at Phillips Sherman Plant located in sections 7 and 8, (Block 1-PSL Survey), Hansford County, Texas. ANR states that it will redeliver the gas for the account of Phillips at the existing interconnection with Natural Gas Pipeline Company of America in section 32 (Block 4-T, T & NO RR Survey), Hansford County, Texas.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of section 284.223(a)(1) of the Commission's Regulations. ANR commenced such self-implementing service on August 1, 1989, as reported in Docket No. ST89-4589-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Gas Transmission Corp.

[Docket No. CP89-2049-000]

September 22, 1989.

Take notice that on September 1, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application with the Commission in Docket No. CP89-2049-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a six-inch meter station in Webster Parish, Louisiana, all as more fully set forth in the application which is open to public inspection.

Specifically, Texas Gas proposes to abandon its Cornerstone natural gas purchase meter station on its six-inch pipeline in Webster Parish, Louisiana. Texas Gas states that it placed the Cornerstone meter station in service December 1, 1987, to implement transportation service under Section 311 of the Natural Gas Policy Act of 1978. Since Texas Gas later used this meter station to provide jurisdictional natural gas service, Texas Gas states that it sought authorization for these facilities under its blanket certificate in Docket No. CP82-407-000 (20 FERC ¶62,417, September 2, 1982). Texas Gas now proposes to abandon the small Cornerstone meter station and replace it with a new meter station on its Sharon-Carthage 20-inch pipeline in Webster Parish, pursuant to the above blanket certificate. Texas Gas also states that since any gas measured at the Cornerstone meter station would be measured at the new Sharon-Carthage pipeline meter station, no service to any party would have to be abandoned or interrupted.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

30. Inter-City Minnesota Pipeline Ltd., Inc.

[Docket No. CP89-2093-000]

September 22, 1989.

Take notice that on September 13, 1989, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), 245 Yorkland Boulevard, North York, Ontario, Canada M5J 1R1 filed in Docket No. CP89-2093-000 an application pursuant to Section 3 of the Natural Gas Act Part 157.7 (18 CFR 157.7) of the Commission's Regulations for a certificate of public convenience and necessity authorizing the transportation of Canadian natural gas for use in Canada by ICG Utilities (Ontario) Ltd. (ICG Ontario), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inter-City requests Commission authorization to transport up to 15,600 Mcf of Canadian natural gas for ICG Ontario from the United States-Canadian border (border) at Sprague, Manitoba, where the gas enters the United States, across the State of Minnesota to the border at Baudette, Lake of the Woods County, Minnesota were the gas reenters Canada.

Inter-City requests an authorization term of 15 years to coincide with the term of the sale of electric power produced from the cogeneration facility that will be served by the Canadian gas supply. Inter-City proposes to transport the gas pursuant to a new Rate Schedule T-2 having an initial rate as contained in Inter-City's existing Rate Schedule T-1 Original Volume No. 2 of its FERC Gas Tariff.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

31. Black Marlin Pipeline Co.

[Docket No. CP89-2115-000]

September 22, 1989.

Take notice that on September 18, 1989, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-2115-000 an application pursuant to section 7 of the Natural Gas Act and subpart F of part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction and operation of certain facilities, for permission and approval to abandon certain facilities, and to perform other minor transactions eligible thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that such a certificate would allow Black Marlin, among other things, to make minor alterations and additions to its facilities with a minimum of delay in order to connect its system to additional suppliers and interconnect with other pipeline systems. Black Marlin states that it has no outstanding budget-type certificates, makes no sales for resale, and has no storage facilities. Black Marlin states that it will comply with the terms, conditions, and procedures specified in Subpart F of Part 157 of the Commission's Regulations. Black Marlin is requesting a blanket facilities certificate under section 157.201 so that it can connect its system to additional suppliers or interconnect with other systems holding blanket transportation certificates under section 284.221.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

32. Transwestern Pipeline Co., Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2104-000]

September 22, 1989.

Take notice that on September 15, 1989, Transwestern Pipeline Company, 1400 Smith Street, Houston, Texas 77002 and Panhandle Eastern Pipe Line Company (Applicants), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP89-2104-000, a request pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon the exchange agreement certificated by Commission order issued January 4, 1966, in Docket Nos. CP66-88 and CP66-83, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicants have agreed to terminate the above referenced agreement because Transwestern's gas purchase contracts behind this agreement have been released as of March 31, 1988, pursuant to Order 451 and six out of eleven wells behind Panhandle's two gas purchase contracts have been released as of July 1, and October 1, 1988, with one well having been plugged and abandoned. It is further stated that Transwestern would transport the gas from the four remaining wells for Panhandle under Rate Schedule ITS-1. Applicants state that the abandonment authorization requested herein would not adversely affect service to any customers.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

33. Viking Gas Transmission Co.

[Docket No. CP88-659-001]

September 22, 1989.

Take notice that on August 25, 1989, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-659-001 an application pursuant to section 7(c) of the Natural Gas Act for an amended certificate authorizing transportation for up to 125,000 Dt equivalent of natural gas per day for DeKalb Energy Canada, Ltd. (DeKalb) to serve end-users in addition to those authorized in the order issued March 29, 1989, in Docket No. CP88-659-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Viking states that the certificate issued in Docket No. CP88-659-000 authorized Midwestern Gas Transmission Company (Viking's predecessor) to transport up to 60,000 dt equivalent of gas per day for DeKalb on an interruptible basis. Viking proposes in the instant docket to amend the authorization by adding 65,000 dt equivalent to the daily transportation volume in order for DeKalb to serve marketers, local distribution companies and various additional end-users as

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customers. It is asserted that the transportation of additional volumes is required by DeKalb to meet existing and future market requirements to provide additional markets for DeKalb's Canadian and domestic suppliers.

Comment date: October 13, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

34. Colorado Interstate Gas Co.

[Docket No. CP89-2087-000]

September 22, 1989.

Take notice that on September 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-2087-000, an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of an observation well in the Boehm Storage Field located in Morton County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG avers that the observation well proposed to be abandoned is not useful as an observation well in the Boehm Storage Field and will be used as a gas well completed in a geological formation outside of the Boehm Storage Field.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

35. Texas Gas Transmission Corp.

[Docket No. CP89-2110-000]

September 22, 1989.

Take notice that on September 18, 1989, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2110-000 a request pursuant to sections 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Coastal Gas Marketing Company (Coastal Gas) under TGT's blanket transportation certificate issued by the Commission on September 15, 1988, in Docket No. CP88-686-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGT states it will receive the gas in High Island offshore Texas Block 244 and deliver the gas at an existing interconnection in High Island Block 247.

TGT proposes to transport on an interruptible basis up to 50,000 MMBtu of gas on a peak day, 35,000 MMBtu of gas on an average day and approximately 12,775,000 MMBtu of gas annually. TGT states the transportation service commenced under the 120-day automatic authorization of Section 284.223(a) of the Commission's Regulations on August 1, 1989, pursuant to a transportation agreement dated December 7, 1988, TGT notified the Commission of the commencement of the transportation service in Docket No. ST89-4470-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

36. ANR Pipeline Co.

[Docket No. CP89-2133-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP89-2133-000, pursuant to section 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is open to public inspection.

ANR proposes to transport gas on an interruptible basis for Brock Oil & Gas Company (Brock), a marketer. ANR states that service commenced August 4, 1989, under section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4655. ANR also states that the peak day quantity would be 300 dekatherms, the average daily quantity would be 300 dekatherms, and that the annual quantity would be 110,000 dekatherms. ANR states that it would receive the natural gas at ANR's existing receipt points in Oklahoma and redeliver the gas for Brock's account at existing interconnections in Oklahoma.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

37. ANR Pipeline Co.

[Docket No. CP89-2131-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2131-000 a request pursuant to section 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Odeco Oil & Gas Co. (Odeco), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 20,000 dt equivalent on a peak day for Odeco, 20,000 dt equivalent on an average day and 7,300,000 dt equivalent on an annual basis for Odeco. It is stated that ANR would receive the gas at designated points on ANR's system in Louisiana and offshore Louisiana, and would deliver equivalent volumes at designated points on ANR's system in Louisiana and offshore Louisiana. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced August 2, 1989, under the self-implementing authorization of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4622.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

38. ANR Pipeline Co.

[Docket No. CP89-2127-000]

September 22, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2127-000, a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Xebec Gas Company (Xebec), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 4,477 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Xebec. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Michigan, Oklahoma and Texas and the offshore Louisiana and Texas gathering areas and would redeliver the natural gas for the account of Xebec at existing interconnections located in the states of Michigan and Indiana. ANR indicates that the average day and annual volumes of natural gas to be transported would be 4,477 dt and 1,634,000 dt, respectively.

ANR states that service under section 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on August 1, 1989, as reported in Docket No. ST89-4623-000.

Comment date. November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

39. El Paso Natural Gas Co.

[Docket No. CP89-2122-000]

September 22, 1989.

Take notice that on September 19, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request for authorization at Docket No. CP89-2122-000, pursuant to sections 157.205 and 284.223 of the Commission's Regulations Under the Natural Gas Act, to provide interruptible transportation service for San Diego Gas & Electric Company (Shipper), under its blanket certificate issued at Docket No. CP88-433-000, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 400,000 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points at the borderline between the States of Arizona and California. El Paso states that the estimated daily and annual quantities would be 26,375 MMBtu and 9,626,875 MMBtu, respectively. El Paso further states that transportation service under section 284.223(a) commenced on July 1, 1989, as reported at Docket No. ST89-4576-000.

Comment date: November 6, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23120 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-470-000]

AEP Generating Co.; Initiation of Proceeding and Refund Effective Date

September 26, 1989.

Take notice that on September 22, 1989, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date will be the later of: the proposed effective date (the in-service date for Rockport Unit 2); or 60 days following publication in the **Federal Register** of this notice. In no event will the refund effective date be later than five months subsequent to the expiration of the 60-day period.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23114 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-14-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

September 26, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on September 21, 1989 tendered for filing Second Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Third Substitute Tenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Second Substitute Twenty-Fourth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Third Substitute Tenth Revised Sheet No. 57(v) reflected revised current PGA rates for the months of September and October, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective September 1, 1989, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

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inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23109 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-53-000]

K N Energy, Inc.; Tariff Filing

September 26, 1989.

On September 20, 1989, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Third Revised Volume No. 1

Forty-Third Revised Sheet No. 4
Twenty-First Revised Sheet No. 4B

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 918 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23110 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-15-001]

Mid Louisiana Gas Co.; Filing

September 26, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 21, 1989 tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective October 1, 1989:

Substitute Seventieth Revised Sheet No. 3a

Superseding

Seventieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Substitute Seventieth Revised Sheet No. 3a is to correct a computation error contained on Seventieth Revised Sheet No. 3a.

Mid Louisiana requests that Substitute Seventieth Revised Tariff Sheet No. 3a be accepted and allowed to become effective October 1, 1989.

This filing is being made in accordance with section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene of Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of the and 1.10). All such motions of protests should be filed on or before October 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23111 Filed 9-29-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: October 19, 1989—8:30 a.m. to 5 p.m.; October 20, 1989—8 a.m. to 3 p.m.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: (301) 353-3081

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda: Briefings and discussions of:

October 19, 1989

- Impact of the FY 1990 Appropriation
- Initiative on Research Related to Waste and the Environment
- Public Comment (10 Minute Rule)

October 20, 1989

- Organization of Basic Energy Sciences
- BESAC Annual Report
- Public Comment (10 Minute Rule)

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 27, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-23188 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-09-NG]

Consolidated Fuel Co.; Order Granting Long-Term and Short-Term Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting long-term and blanket authorization to import natural gas from Canada.

SUMMARY: The Ofice of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Consolidated Fuel Company (Consolidated Fuel) long-term and blanket authorization to import natural gas from Canada to the United States. The order issued in FE Docket No. 89-09-NG authorizes Consolidated Fuel to import up to 6,000 Mcf per day of Canadian gas for a 15-year term and blanket authority to import up to 500 Mcf per day in spot purchases for a two-year term beginning on the date of commercial operation of a proposed 28-megawatt cogeneration facility being constructed in East Georgia, Vermont.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 22, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23185 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-30-NG]

Petro-Canada Hydrocarbons Inc., Order Extending Blanket Authorization To Import Natural Gas From Canada and Granting Intervention

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Petro-Canada Hydrocarbons Inc. (PCH) an extension of its existing blanket authorization to import 75 Bcf of Canadian natural gas which expires March 3, 1990. The order authorizes PCH to import up to 75 Bcf of natural gas over a one-year period beginning March 4, 1990, through March 3, 1991.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23186 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Office Of Petroleum Reserves

Alternative Financing Methods for Funding the Purchase of Strategic Petroleum Reserve Oil Supplies and Facilities; Inquiry and Request for Proposed Financing Methods

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy is investigating alternative methods of financing crude oil acquisition and oil storage facilities for the Strategic Petroleum Reserve. The Department is interested in methods that would (1) reduce the total cost to the Federal Government or (2) reduce near-term effects on the Federal budget without significantly raising total costs. This notice requests ideas for or comments about the subject of alternative financing methods for completing the development and oil fill of the Strategic Petroleum Reserve.

DATE: Comments should be received by the Department by October 20, 1989.

ADDRESSES: Written comments (5 copies) should be addressed to: Howard G. Borgstrom; Director, Office of Planning and Financial Management; Office of Petroleum Reserves; Office of Fossil Energy; FE-43, Room 3G-038; U.S. Department of Energy; Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert G. Bidwell, Jr.; Director, Analysis Division; Office of Planning and Financial Management; Office of Petroleum Reserves; Office of Fossil Energy; FE-431, Room 3G-045; U.S. Department of Energy; Washington, DC 20585; telephone number 202-586-1886.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy and Conservation Act (EPCA), Public Law No. 94-163(42 U.S.C. 6201 *et seq.*), December 22, 1975, declared it to be U.S. policy to establish a national Strategic Petroleum Reserve of up to one billion barrels of petroleum. The Government's currently stated commitment is to complete a 750 million barrel reserve, although the Congress has directed that a billion barrel goal be assumed for certain analytical purposes, and the Department of Energy recently submitted a technical report on a one billion barrel reserve to Congress.

The Strategic Petroleum Reserve is located in salt domes at six sites on the U.S. Gulf Coast, where the currently projected storage goal is 750 million barrels of crude oil. The first shipment of crude oil was received in July 1977. There now are over 570 million barrels of crude oil in these Strategic Petroleum Reserve storage facilities.

Past funding for Strategic Petroleum Reserve facilities and oil has come primarily from direct Congressional appropriations. The Federal Government has obtained sites from private owners, exercising its power of eminent domain. Oil for the Reserve has been purchased on the open market and through government-to-government contracts. Total SPR appropriations for oil and facilities through Fiscal Year 1989 have been $19 billion, of which 83 percent has been for oil acquisition and transport, and the remainder has been for storage facility development and operations and program management. The Government's commitment to 750 million barrels of oil could cost as much as $25 billion by 1995, with roughly 20 percent of costs being for storage facilities and management and 80 percent for crude oil.

Strategic Petroleum Reserve oil purchases and facilities development are currently funded on-budget through Congressional appropriations. They count against the Federal budget deficit under Gramm-Rudman-Hollings procedures. Funding levels for Fiscal Year 1990, which begins on October 1, 1989, have not yet been determined.

II. Purpose of Inquiry

The Department of Energy has long been interested in alternative methods of financing the Strategic Petroleum Reserve; that is, in methods other than the direct appropriation and outlay approach which has been utilized in SPR oil and facility acquisition up to this point in time. The Department is interested in alternatives that would reduce the cost to the Federal Government of developing the Reserve or at least reduce the Government's actual outlays in early years without appreciably increasing the final total cost of the Reserve.

The Deparment is well aware that there is interest in alternative financing proposals in the oil industry and the banking and financial community. The Department has received numerous unsolicited proposals in recent years and some of these proposals have been the subject of informal meetings.

The Congress also is interested in alternative financing methods. Congress, in recently extending title I of the Energy Policy and Conservation Act, required the Secretary of Energy to study alternative financing methods that could be used to finance completion of a 1 billion barrel Strategic Petroleum Reserve. Specifically, Public Law No.

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101–46 sets out the following requirements:

Sec. 2. Study and Report on Oil Leasing and Other Arrangements to Fill SPR to One Billion Barrels.

(a) *In General.*—The Secretary of Energy shall carry out a study on potential financial arrangements (including long-term leasing of crude oil and storage facilities) that could be used to provide additional, alternative means of financing the filling of the Strategic Petroleum Reserve to one billion barrels. In carrying out such study, the Secretary shall—

(1) Assume that the legislation that extends title I of the Energy Policy and Conservation Act beyond April 1, 1990, will require the Secretary to amend, by July 1, 1990, the Strategic Petroleum Reserve Plan to provide plans for completion of storage of one billion barrels of petroleum products in the Reserve at an average fill rate of at least seventy-five thousand barrels per day;

(2) Consider a broad array of such arrangements;

(3) Consult with persons in the private sector who might be interested in leasing crude oil or storage facilities;

(4) Initiate, in cooperation with the Department of State, to the extent consistent with the interests of the United States, discussions with representatives of foreign governments and other entities as to the types of financial arrangements (including crude oil leasing arrangements) that would interest them; and

(5) Produce preliminary written solicitations for proposed alternative financial arrangements (including long-term leasing of crude oil and storage facilities) to assist in filling the Strategic Petroleum Reserve to one billion barrels.

(b) *Reports*—(1) The Secretary shall, no later than October 15, 1989, transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an interim report containing—

(A) An enumeration of the specific resources (both personnel and funding) committed to the study described in subsection (a);

(B) A description of the progress made toward completing the study; and

(C) Any preliminary findings and conclusions made by such date.

(2) The Secretary shall, no later than February 1, 1990, transmit to such committees a copy of the solicitations described in paragraph (5) of subsection (a) and a final report containing the findings and conclusions of the study carried out under this section, together with a draft of the legislative changes that would be necessary to authorize the most significant alternative financial arrangements studied by the Secretary (including long-term leasing of crude oil and storage facilities) and recommendations of the Secretary with respect to the need for and desirability of such financial arrangements (including long-term leasing of crude oil and storage facilities).

The purpose of this inquiry is to obtain assistance in fulfilling these legislative requirements. Both Congress and the Department of Energy are interested in alternative financing methods that could reduce the impact on the Federal deficit of developing the Strategic Petroleum Reserve. To that end, the Department is interested in methods that could be used to finance any additional development of the Reserve above the more than 570 million barrels of crude oil currently in storage, either to a level of 750 million barrels or to a level of one billion barrels.

III. Alternative Methods of Financing the Development of the Strategic Petroleum Reserve

There are a wide range of possible alternative methods for financing the Strategic Petroleum Reserve. As noted above, most prior financing of the Strategic Petroleum Reserve has been through direct appropriations by the Congress. Exceptions included use of Naval Petroleum Reserve sales revenues to finance Strategic Petroleum Reserve oil purchases in Fiscal Year 1987, use of special "entitlements" provisions to augment direct appropriations in Fiscal Year 1981, and use of the profits from the Strategic Petroleum Reserve test sale in late 1986.

The Department wishes to invite comments on all possible alternative financing methods for completing the development of the Strategic Petroleum Reserve. Suggestions may concern the financing of storage facilities, of oil to be stored in the reserve, or both. Suggestions may be approaches permitted under current legislation, or they may be of a nature requiring additional legislation. Suggestions should be in as much detail as possible. The purpose of this Notice of Inquiry is to gather information and insights about the options.

The following list, which is not intended to be all-inclusive, illustrates possible alternative financing approaches. It is provided merely to show interested parties the range of methods that might be of interest to the Government:

- Leases of oil;
- Leases of facilities;
- Bonds, other than conventional debt issued by the Treasury;
- SPR user charge linked to oil imports or consumption;
- Exchange of Federal assets for oil and/or storage facilities;
- Non-Federal public financing of state or regional petroleum reserves;
- Cancellation of government or private debt of foreign oil producers in return for oil;
- Sale of rights to acquire Strategic Petroleum Reserve oil during a disruption.

In reviewing alternatives, the Department will consider the following factors, among others:

- Effects on Strategic Petroleum Reserve costs under a broad range of plausible future energy conditions;
- Budget effects;
- Effects on Strategic Petroleum Reserve development schedules;
- Impacts on the use of the Strategic Petroleum Reserve during a severe energy supply interruption;
- Incentives created for foreign producer governments;
- Effects on energy markets;
- Incentives and disincentives for other parties to provide a reasonable degree of self-protection against the effects of a severe energy supply disruption;
- Complexity and administrative burdens.

IV. Request for Written Comments and Submission of Ideas for Alternative Methods of Financing the Development of the Strategic Petroleum Reserve

The Department of Energy hereby requests that interested parties submit ideas for or comments on the subject of alternative financing methods for further developing and filling the Strategic Petroleum Reserve. Five copies of each submission should be received by the Department by October 20, 1989. The proper address and other pertinent information are listed near the beginning of this notice.

Submissions believed to be "proprietary" should be identified as such. However, the decision that a financing method actually is proprietary is one that the Department reserves the right to make in light of all facts and circumstances. Submitters should be aware that a wide range of alternative financing concepts already have been considered by the Department over an extended period of time. The Department is charged with providing a public policy analysis to the Congress on this subject and may not be able to give full consideration to concepts which cannot be discussed openly. Potential respondents should be aware, furthermore, that should the Department request proposals for an alternative financing method or methods in the future, a competitive government solicitation may be used.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89–23187 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 19 Through June 23, 1989

During the week of June 19 through June 23, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Davis Wright & Jones, 6/21/89, KFA–0290

Davis Wright & Jones filed an Appeal from a partial denial by the Authority Official of the Idaho Operations Office of a Request for Information which the firm submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Authorizing Official did not adequately justify the deletion of information pursuant to Exemptions 4 and 6 of the FOIA. Accordingly, the DOE remanded the request and directed that the Authorizing Official either promptly release the material withheld or promptly issue a new determination which adequately justifies the applicability of Exemptions 4 and 6 to each deletion.

Palouse-Clearwater Environmental Institute, 6/23/89, KFA–0291

Palouse-Clearwater Environmental Institute (PCEI) filed an Appeal from a denial by the Freedom of Information Officer of the DOE's Idaho Operations Office of a request for a fee waiver which PCEI submitted under Freedom of Information Act. In considering the Appeal, the DOE found that PCEI had submitted information on appeal, which might be relevant to the merits of the fee waiver request. Accordingly, the DOE remanded PCEI's request and directed the FOI Officer to issue a new decision which considers the information and explains the reasons which justify either granting or denying the fee waiver request.

Remedial Order

Houston/Pasadena Apache Oil Company, Inc., 6/19/89, HRO–0299

Houston/Pasadena Apache Oil Company, Inc. objected to a Proposed Remedial Order that the DOE's Economic Regulatory Administration issued to the firm on April 30, 1985. In the PRO, the ERA alleged that the firm, a reseller-retailer, overcharged in wholesale and retail sales of motor gasoline during the period October 1, 1979 through December 31, 1979. The ERA requested that the firm be required to (i) refund the alleged overcharges and (ii) file a special report, for the period March 1, 1979 through September 30, 1979, from which its compliance with the price rules during the period could be determined.

With respect to the ERA's overcharge calculations, the DOE noted that the ERA's methodology was necessitated by the firm's failure to produce actual or reconstructed base period records. Accordingly, the DOE found, the firm had the burden of (i) demonstrating that the ERA's methodology was based on unreasonable assumptions or (ii) producing actual or reconstructed base period records and alternative MLSP calculations. Because the firm failed to meet that burden, the firm's objections were denied. Nonetheless, the DOE determined sua sponte that the portion of the PRO concerning the firm's retail transactions should be remanded to the ERA. Despite the firm's failure to produce any pre-audit period records, the ERA's MLSP calculations allowed the firm a bank to the extent permitted by 10 C.F.R. § 212.93(a)(4), which resulted in the virtual elimination of any alleged overcharges at the retail level. The DOE remanded so that the ERA could reconsider the allowance of a bank in light of the considerations noted in the Decision and Order. The portion of the PRO concerning the firm's wholesale transactions, with certain modifications, was issued as a final Remedial Order.

With respect to the ERA's request that the firm be required to file a special report for the period March 1, 1979 through September 30, 1979, the DOE noted that the firm had not challenged the ERA's assertion that the firm had sufficient resources to reconstruct its records for that period. The DOE upheld the requirement that the firm prepare a special report and stated that if the firm failed to comply with that requirement, the ERA might wish to consider the issuance of a second Proposed Remedial Order alleging overcharges based upon some reasonable reference to the overcharges found during the period October 1, 1979 through December 31, 1979.

Refund applications

ADA Resources, Inc./Galveston Wharves Board, 6/23/89, RQ24–513

The DOE issued a Decision and Order granting the second-stage refund application filed by the Galveston Wharves Board. Galveston filed its application pursuant to procedures established for the disbursement of funds remitted by Ada Resources, Inc. *Office of Enforcement*, 11 DOE ¶ 85,161 (1983). Galveston proposed to use its share of the Ada Resources, Inc. consent order fund to replace incandescent light fixtures with high pressure sodium lamps and to install new electrical conduit and wire. The DOE found that Galveston's proposal would result in increased energy efficiency and would benefit members of a class injured by the alleged Ada overcharges. The total amount granted to Galveston was $23,537.

City of New York, NYC Health & Hospitals, New York City Housing Auth., City University of New York, City of New York, Dept. of General Services, Brooklyn Public Library, Queens Borough Public Library, 6/21/89, RF272–00380, RF272–24966, RF272–52194, RF272–62496, RF272–66172, RF272–75415, RF272–75416

The DOE issued a Decision and Order concerning seven Applications for Refund submitted by the City of New York on behalf of the Department of General Services and various other city entities. Each applicant requested a refund based on its respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981 pursuant to the provisions of 10 CFR part 205, subpart V.

The DOE determined that the City of New York was ineligible to receive a subpart V crude oil refund because it was an affiliate of the New York City Departments of Sanitation (Sanitation) and Environmental Protection (DEP). Both Sanitation and DEP waived their rights and their affiliates' rights to a subpart V crude oil refund by participating in the Stripper Well Settlement Agreement, as claimants in the Refiners' Escrow. Accordingly, the Application submitted by NYC was denied.

The DOE further determined however, that the Waiver and Release which precluded NYC from receiving a subpart V crude oil refund was not binding upon the five other NYC entities. These entities demonstrated that they are independent municipal corporations. Accordingly, the DOE granted these five entities a refund based on the end-user presumption of injury. The sum of the refunds granted in this Decision is $970,504.

Farmers Union Marketing and Processing Associations, 6/21/89, RF272–28629

The DOE issued a Decision and Order granting refunds from crude oil

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overcharge funds to Farmers Union Marketing and Processing Association, an agricultural cooperative, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant demonstrated the volume of its claim by using a reasonable estimate of its purchases. Generally, we grant refunds to a cooperative based on volumes resold to its members, on the condition that the cooperative certify that it will pass through any refund received to those members. As Farmers furnished such certification, it was granted a refund of $7,663.

Getty Oil Company/Harry's Super Service, 6/23/89, RF265–2807, RF265–2808

Harry's Super Service filed duplicate refund claims, based on the same purchases, both of which were inadvertantly granted in the Getty Oil Company special refund proceeding. In order to preclude the issuance of duplicative refunds, DOE issued a Supplemental Decision and Order withdrawing the second refund for Harry's Super Service in Case Nos. RF265–107 and RF265–108.

Gulf Oil Corporation/Bagwell & Spears, Inc., 6/20/89, RF300–5222

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gagwell & Spears, Inc., a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $5,448.

Gulf Oil Corporation/Bob's Automotive Service, et al., 6/23/89, RF300–8350–et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $49,305.

Gulf Oil Corporation/Breezewood Gulf Service, et al., 6/23/89, RF300–113, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $88,472.

Gulf Oil Corporation/Cloverdale Gulf Service Station, et al., 6/20/89, RF300–39, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $38,106.

Gulf Oil Corporation/Hayes Service Station, et al., 6/23/89, RF300–8234, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $86,575.

Gulf Oil Corporation/Montgomery County Government, et al., 6/23/89, RF300–8334, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $78,478.

Gulf Oil Corporation/Reeves Oil Company, 6/20/89, RF300–5223.

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Reeves Oil Company, a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $6,641.

Gulf Oil Corporation/Texaco, Inc., Texaco Producing, Inc., NGL Div., Texaco, Inc., NGL Section, 6/23/89, RF300–4092, RF300–9680, RF300–9681.

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Texaco, Inc., Texaco Producing, Inc., NGL Div., and Texaco, Inc., NGL Section. Texaco was previously granted a refund of $1,866, including accrued interest, for 2,275,643 gallons in Case No. RF200–3774. Because each applicant was owned by Texaco during the consent order period, the applicants and Texaco were considered to be a single firm for purposes of the Gulf proceeding. The DOE determined that collectively the applicants were entitled to a $5,000 refund based on the small claims presumption of injury. Accordingly, the DOE subtracted the principal amount previously awarded to Texaco from the $5,000 refund to which it was entitled for all of the firms. The refund granted in this Decision is $4,707.

Gulf Oil Corporation/Union Texas Petroleum Corporation, et al., 6/23/89, RF300–6482, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Ten of the applicants were resellers of Gulf products and one applicant was a reseller and consignee. The DOE approved all of the applications by utilizing the appropriate presumption of injury. The DOE held that the applicant which was claiming purchases as a reseller and as a consignee was unable to simultaneously elect both the small claims presumption of injury and the 10 percent presumption of injury for consignees, but rather would have its refund calculated by utilizing either the $5,000 small claims presumption, or the sum of the 40 percent mid-range presumption (for gallons purchased as a retailer) and the 40 percent consignee presumption, depending on which formula produced the largest refund. In this instance, the applicant received a larger refund by utilizing the $5,000 small claims presumption. The sum of the refunds granted in this Decision is $110,064.

Los Angeles Unified School District, 6/19/89, RF272–9356.

The DOE issued a Decision and Order granting an Appliation for Refund filed by the Los Angeles Unified School District (L.A.U.S.D.) in the subpart V crude oil refund proceedings. The DOE found that L.A.U.S.D. satisfactorily documented its purchases of petroleum products during the period of crude oil price controls by using a computerized monitoring system of fuel withdrawals from underground storage tanks and by consulting its records of credit and purchases. The DOE also found that L.A.U.S.D. was not "controlled" by the City of Los Angeles and therefore was not an "affiliate" of an entity that had waived its right to participate in the subpart V crude oil proceedings. The refund granted was $13,554.

Mobil Oil Corporation, Cantro Petroleum Corporation, 6/19/89, RF225–37

The DOE granted in part a Motion for Reconsideration filed by Cantro Petroleum Corporation (Cantro) in the Mobil refund proceeding. Cantro sought an above-volumetric refund for an alleged overcharge involving the termination of an early payment discount. Cantro had submitted a letter from the DOE's Office of Special Counsel to Cantro in which the OSC had tentatively concluded that the Mandatory Petroleum Pricing Regulations entitled Cantro to a one percent early payment discount. However, Cantro failed to supply banks or any other evidence indicating that it was unable to pass through its higher costs. Instead, Cantro argued that it should not be required to prove its inability to pass through because: (1) according to classic microeconomic theory, passthrough was impossible; and (2) Cantro was entitled to keep the extra profit that would have resulted from the utilization of the discount, therefore it was harmed by its unavailability. The DOE rejected both of these arguments. However, the DOE found that the letter from OSC was strong evidence of injury and on that basis allowed Cantro to use the reseller level of absorption presumption. Therefore, the DOE granted a refund equal to the denied discount (i.e., one percent of the early payments made by Cantro), multiplied by 35 percent, the applicable reseller presumption. The total refund granted was $78,691.

Mobil Oil Corporation/Pettyjohn Oil Company, Haney Oil Company, 6/20/89, RF225–6624, et al.

The DOE issued a Decision and Order concerning Appliations for Refund filed by Pettyjohn Oil Company and Haney Oil Company in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1986). The DOE granted Pettyjohn a refund of $5,386 ($4,271 in principal plus $1,115 in interest) based on its purchases of motor gasoline, middle distillates, and lubricants during the Mobil consent order period. The DOE denied the application filed by Haney pursuant to the $5,000 small claims presumption of injury since another Haney entity had previously received a $5,000 refund based on that presumption.

Murphy Oil Corporation/Consumers Cooperative Association, 6/20/89, RF309–235.

The DOE issued a Decision and Order granting an Application for Refund filed by Consumers Cooperative Association, an agricultural cooperative, in the Murphy Oil Corporation special refund proceeding. Consumers purchased directly from Murphy and requested a refund of less than $5,000. Accordingly, the applicant was granted a refund of $248.

Murphy Oil Corporation/Hydrocarbon Trading & Transport Co., Inc., 6/20/89, RF309–302.

The DOE issued a Decision and Order concerning an Application for Refund filed by Hydrocarbon Trading & Transport Co., Inc., in the Murphy Oil Corporation special refund proceeding. The DOE determined that Hydrocarbon was not eligible to receive a refund from the Murphy consent order fund because it was a spot purchaser and did not attempt to rebut the spot purchaser presumption of noninjury. *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). Accordingly, Hydrocarbon's application was denied.

Shell Oil Company/Bowsman's Shell Service Station, et al., 6/20/89, RF315–4511, et al.

The DOE issued a Decision and Order granting 131 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $114,694.

Shell Oil Company/Julius C. Rakisits, et al., 6/20/89, RF315–4301, et al.

The DOE issued a Decision and Order granting 127 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $91,713.

Shell Oil Company/Tygart's Shell Service, et al., 6/19/89, RF315–1401, et al.

The DOE issued a Decision and Order granting 155 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $132,628.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Abbott Laboratories *et al*	RF272–60216	6–21–89	99	$12,753
Alfred Selb *et al*	RF272–52801	6–21–89	140	15,532
Allyn Towers Co. *et al*	RF272–61600	6–21–89	107	15,613
Avila College *et al*	RF272–56201	6–20–89	126	18,525
Charlotte B. Towsend *et al*	RF272–59800	6–21–89	129	18,700
City of Robbinsdale *et al*	RF272–62000	6–19–89	117	15,585
Delton R. Schnakenberg *et al*	RF272–60800	6–23–89	129	17,114
Dennis D. Richman *et al*	RF272–56003	6–21–89	135	18,235
Dittmer Transit *et al*	RF272–58601	6–19–89	150	15,992
Don Ashley *et al*	RF272–53800	6–21–89	91	11,524
Dugger Farms *et al*	RF272–54800	6–19–89	150	18,487
Elmer Boney *et al*	RF272–59200	6–21–89	148	15,668
Gloval Steel Products *et al*	RF272–52600	6–23–89	135	17,537
House of Carpets & Glass *et al*	RF272–65201	6–20–89	107	11,778
Howard Moore Farms *et al*	RF272–55401	6–21–89	124	15,534
James A Redlem *et al*	RF272–61800	6–21–89	122	17,931
James H. Van Arkel *et al*	RF272–63400	6–21–89	77	12,166
L.R. Pope *et al*	RF272–55000	6–21–89	152	16,344

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Name	Case No.	Date	No. of applicants	Total refund
McCurdy & Co. *et al.*	RF272-54800	6-21-89	138	18,810
Melvin C. Lowrey *et al.*	RF272-61400	6-20-89	121	15,814
Melvin J. Schafer *et al.*	RF272-56400	6-20-89	128	14,357
Merle Donbrock *et al.*	RF272-65400	6-21-89	77	10,472
Overhead Door Corp. *et al.*	RF272-64400	6-23-89	127	14,326
Pentair, Inc. *et al.*	RF272-26608	6-20-89	40	354,282
Reed Williamson *et al.*	RF272-69218	6-21-89	106	13,379
Robert J. Bolay *et al.*	RF272-63209	6-21-89	128	15,494
Roxy Associates *et al.*	RF272-64200	6-23-89	105	14,681
Roy Finley *et al.*	RF272-62200	6-23-89	118	14,480
St. Brendan R.C. Church *et al.*	RF272-65003	6-21-89	81	10,065
Swenson Bros. *et al.*	RF272-64000	6-21-89	115	12,717
Sycamore Ranches *et al.*	RF272-59401	6-21-89	131	15,698
Tiernay Metals *et al.*	RF272-63000	6-19-89	101	13,684
Timberline Inc. *et al.*	RF272-63604	6-21-89	103	13,326
Tobias Heller *et al.*	RF272-63802	6-21-89	91	13,153
Tommy J. Montgomery *et al.*	RF272-58800	6-23-89	154	17,846
Town of Granite Falls *et al.*	RF272-60000	6-20-89	87	112,379
W.H. Gibson *et al.*	RF272-66200	6-21-89	55	6,707
Willa Jean Dobson *et al.*	RF272-58400	6-21-89	130	18,792

Dismissals

The following submissions were dismissed.

Name	Case No.
Charles Brown	RF272-33110
Crown Service, Inc.	RF313-108
D&S Corp.	RF272-32517
Earl's Place	RF272-58096
H.H.&K. Bergh, Inc.	RF304-2756
Medley's Heavy Equipment	RF272-32520

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-23189 Filed 9-29-89; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders Issued the Week of July 3 Through July 7, 1989

During the week of July 3 through July 7, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John R. Penley, 7/6/89, KFA-0289

John R. Penley filed an Appeal from a denial by the Savannah River Operations Office of the Department of Energy of a Request for a fee waiver he had submitted in connection with a Request for Information under the Freedom of Information Act. In considering the Appeal, the DOE found that the information Penley has requested is in the public interest, and that Penley is in a position to contribute significantly to the public's understanding of the subject of his request through use of the requested documents. Accordingly, the DOE granted Penley's fee waiver request with respect to those requested documents not already in the public domain.

Lynn Landon, 7/7/89, KFA-0300

Lynn Landon filed an Appeal from a determination issued by the Freedom of Information Officer of the DOE Idaho Operations Office, denying in part Landon's request for information which she submitted pursuant to the Freedom of Information Act (FOIA). Landon sought access to, *inter alia*, the personal notebooks of DOE employees who were members of an investigative board preparing a report on a firearms accident at a DOE facility in which the husband of the Appellant was fatally wounded. In considering the Appeal, the DOE noted that the requested information was the subject of a previous Appeal, *Imhoff & Lynch*, 15 DOE ¶ 80,121 (1987). In that determination, the DOE concluded that the investigators' notebooks contained predecisional and deliberative material which was properly withheld pursuant to Exemption 5 of the FOIA. The DOE found no reason to reverse that previous determination. Accordingly, the Landon Appeal was denied.

William R. Bowling II, 7/7/89, KFA-0170

William R. Bowling II filed an Appeal from a partial denial by the DOE Office of the Executive Secretariat of a request for information that he had submitted under the Freedom of Information Act. In considering Bowling's Appeal, the DOE found that the material deleted from the copy of the requested document that was provided to him was properly withheld under FOIA Exemption 3. Accordingly, his Appeal was denied.

Interlocutory Order

Southwestern States Marketing Corporation, Kenneth Walker, 7/7/89, KRZ-0092, KRZ-0093

On March 17, 1989, the Trustee for the Estate in Bankruptcy of Southwestern States Marketing Corporation (Southwestern) filed a Motion to Reopen Evidentiary Hearing in connection with the remedial order proceeding involving Southwestern and Kenneth Walker. Shortly thereafter, on March 21, 1989, Kenneth Walker filed a Motion to Reopen Discovery in the same case. The filing of both motions was prompted by the Trustee's revelation at a hearing convened by the office of Hearings and Appeals (OHA) on March 8, 1989 that he had recently discovered "new" evidence relevant to the underlying enforcement case.

With respect to the Motion to Reopen Evidentiary Hearing, the OHA first decided that the motion should more appropriately be treated as a Motion for Reconsideration. The OHA then decided that the reconsideration motion should be granted in part, finding that the Trustee could not have discovered the new evidence he now seeks to introduce in the case earlier, and that the introduction of new evidence at this late stage of the proceeding will cause only minimal delay in the case. The OHA allotted the Trustee a limited time period to submit additional information relevant to the Southwestern proceeding which he obtains from the records and files of Compton Corporation (Compton), one of Southwestern's subsidiaries.

As for the Motion to Reopen Discovery filed by Walker in the case, the OHA decided it should also be granted in part. The OHA determined that since Mr. Walker had no access to the Compton records and files which are alleged to contain information pertinent to the Southwestern case, there was no way for him to have known that discovery of the Compton materials might be useful. The OHA next found that discovery of the Compton materials might be relevant and material to the instant enforcement case. Finally, the OHA determined that the proceeding would not be unduly delayed as long as the time within which additional discovery must be completed is limited. The OHA then decided that Walker should be permitted discovery of only the records and files of Compton, not the records and files of all of Southwestern's trading partners, as Walker had requested. Accordingly, the OHA directed the Trustee to give Walker access to the Compton records and files thirty days after his receipt of the Decision.

Refund Applications

Atlantic Richfield Company/Energy Gases, Inc., et al., 7/7/89, RF304-3152 et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claim or mid-level presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $85,937, representing $65,827 in principal and $20,110 in accrued interest.

Atlantic Richfield Company/Ken Wilton's Arco, et al., 7/6/89, RF304-2620, et al.

The DOE issued a Decision and Order concerning ten applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in the Decision totalled $35,757, including $8,366 in accrued interest.

Exxon Corporation/A.T. Liner, 7/7/89, RF307-991

The DOE issued a Decision and Order denying an Application for Refund filed by Energy Refunds, Inc. on behalf of A.T. Liner in the Exxon Corporation special refund proceeding. A.T. Liner was a consignee agent, and in the Exxon proceeding consignee agents are presumed to have been unaffected by any alleged overcharges. Liner did not submit any arguments or information to demonstrate that he was injured by Exxon's overcharges. Accordingly, A.T. Liner's application was denied.

Exxon Corporation/Ray's Exxon, 7/7/89, RF307-9988

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding to Ray's Exxon (Ray's), an applicant in *Exxon Corp./Fehring's Exxon Service Station*, 19 DOE ¶ 85,015 (1989). In that Decision, Ray's (Case No. RF307-3814) was granted a refund of $220 based on its purchases of refined petroleum products. However, Ray's had previously been granted a refund in the Exxon proceeding under the same case number and based upon the exact same purchase volume. Accordingly, the DOE rescinded the duplicate refund that was inadvertently granted to the claimant.

Kwikset Corporation, 7/5/89, RF272-18450

The DOE issued a Decision and Order granting an Application for Refund in the Subpart V crude oil refund proceedings to Kwikset Corporation (Kwikset) based on its purchases of petroleum products during the period from August 19, 1973, through January 27, 1981. However, the DOE denied that part of Kwikset's claim which was based on its purchases of epoxy enamel paint and perchloroethylene. The DOE held that these products were too far removed from crude oil to be the basis of a refund in these proceedings. The firm estimated its gallonage figures. The DOE found the Applicant's estimation technique reasonable and acceptable. The Applicant was an end-user of petroleum products that it claimed to have purchased and, therefore, was presumed injured. The refund approved in this Decision is $528.

Longview Fibre Co., 7/5/89, RF272-18497, RD272-18497

The DOE issued a Decision and Order concerning an Application for Refund filed by Longview Fibre Co. (Longview), a manufacturer of paper products, in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to Longview's application on the grounds that certain studies of the pulp and paper industry and annual reports of Longview's profitability indicated that Longview was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Longview and therefore the DOE should deny Longview's application. The DOE granted Longview's refund application, determining that the States had failed to show that Longview itself had passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut Longview's presumption of injury.

Murphy Oil Corporation/Eller & Slate Oil Co., Inc., et al., 7/6/89, RF309-250 et al.

The DOE issued a Decision and Order granting 17 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $30,844 ($26,195 principal plus $4,649 interest).

Petrolite Corporation, 7/6/89, RC272-46

The DOE issued a Supplemental Order rescinding the refund granted to Petrolite Corporation in *Merle Donbrock, et al.*, Case Nos. RF272-65400, *et al.*, (June 21, 1989). The amount of the refund rescinded was $188.

Russell Brothers Ranches, 7/6/89, RC272-49

The DOE issued a Supplemental Order rescinding the refund granted to Russell Brothers Ranches in *St. Brendon R.C. Church, et al.*, Case Nos. RF272-675003, *et al.*, (June 21, 1989). The amount of the refund rescinded was $137.

Shell Oil Company/Ascarate Shell et al., 7/5/89, RF315-1100 et al.

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The DOE issued a Decision and Order granting 160 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $151,762 ($130,007 principal plus $21,755 interest).

Shell Oil Company/Pallota Oil Co. et al., 7/7/89, RF315–3703 et al.

The DOE issued a Decision and Order granting 135 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each Applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $122,227 ($104,699 principal plus $17,528 interest).

Thorson, Inc., Bauerly Brothers, Inc., 7/5/89, RF272–14343, RD272–14343, RF272–17251, RD272–17251

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two construction companies, principally involved in asphalt production and road construction/paving. In reaching its determination, the DOE rejected the Objections to the applicants' claims submitted by a group of States and denied the States' Motions for Discovery. The DOE held that industry-wide data, with no particular reference to the applicants, is insufficient to rebut the presumption of injury for end-users outside of the petroleum industry. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that particular claimants were likely in fact to have passed through overcharges. The refund granted to Thorson, Inc., was $23,206 and the refund granted to Bauerly was $23,890.

Total Petroleum Inc./Imlay City Oil Co., Huron Valley Oil Co., 7/7/89, RF310–209, RF310–210

The DOE issued a Decision and Order concerning Applications for Refund filed by Imlay City Oil Company and Huron Valley Oil Company. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Both of the applicants purchased Total motor gasoline and No. 2 oils during the consent order period. Under the standards established in *Total Petroleum, Inc.* 17 DOE ¶ 85,542 (1988), the DOE granted Imlay City a refund of $35,638 ($30,006 principal and $5,632 interest) and Huron Valley a refund of $42,150 ($35,489 principal and $6,661 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Atlantic Pre-Hung Doors *et al.*	RF272–65706	7–3–89	19	$2,669
David Wickes *et al.*	RF272–70600	7–3–89	155	17,602
Mewes Farms Inc. *et al.*	RF272–62600	7–3–89	114	14,494
Publisher Clearing House *et al.*	RF272–66407	7–3–89	91	12,004
South Hamilton Community School *et al.*	RF272–70201	7–3–89	51	7,611
St. John the Baptist Church *et al.*	RF272–6600	7–3–89	97	11,821
Stanley R. Schilling *et al.*	RF272–67801	7–6–89	115	14,000

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Apco	RF310–27
Greene County School System	RF272–49258
Michael Haberchak	RF304–7497
Terrol Energy, Inc.	KEF–0177
W&J Propane Gas, Inc.	RF304–4757
West Coast Oil Co.	KRO–0500
	HEE–0098

Copies of the full text of these decisons and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–23190 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of July 10 Through July 14, 1989

During the week of July 10 through July 14, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Supplemental Order

Getty Oil Company, 7/13/89, KFX-0067

The DOE issued a Supplemental Order returning $148.73 (plus appropriate interest) which the DOE erroneously received from the Bank of Delaware as part of the Getty Oil Company refund proceeding. *See Getty Oil Co.*, 18 DOE ¶ 85,808 (1989); *Getty Oil Co.*, 18 DOE ¶ 85,918 (1989).

Refund Applications

Atlantic Richfield Company/Poor Sam's Mini Market, et al., 7/12/89, RF304–233, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by Energy Refunds, Inc., on behalf of three claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $10,636, representing $8,128 in principal and $2,508 in accrued interest.

Atlantic Richfield Company/Stem Mar Arco or John Reuther Stem Mar or Ronald Reuther, 7/31/89, RF304–9734, RF304–9736, RF304–9735

The DOE issued a Supplemental Order concerning a Decision and Order issued on June 27, 1989 to Stem Mar ACRO *et al.* in the Atlantic Richfield Company (ARCO) special refund proceeding. The DOE determined that the refunds granted to two claimants in that Decision had been miscalculated. Accordingly those refunds were rescinded and the correct refunds were granted to the claimants.

Benjamin Coal Company, 7/14/89, RF272–32857

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Benjamin Coal Company (Benjamin) based on its purchases of refined petroleum products during the period from August 19, 1973, through January 27, 1981. Benjamin used petroleum products for surface mining and determined its volume claim by consulting actual purchase records and by reasonably estimating its consumption. Benjamin was an end-user of the products it claimed and was therefore presumed injured. The refund granted in this Decision is $41,203.

Conway Asphalt Co., 7/14/89, RC272–55

The DOE issued a Supplemental Order rescinding the refund granted to Conway Asphalt Co. in *Stanley R. Schilling, et al.*, Case Nos. RF272–67801 *et al.* (July 6, 1989). The amount of the refund rescinded was $10.

Crown Central Petroleum Corp./Chana, Inc., et al., 7/12/89, RF313–173, et al.

The DOE issued a Decision and Order considering application filed by six purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $56,931, representing $48,329 in principal plus $8,602 in accrued interest.

Crystal Oil Company, 7/10/89, RF272–36427

The DOE issued a Decision and Order denying an Application for Refund filed by Crystal Oil Company in the crude oil refund proceeding. The DOE found that Crystal had previously filed in the Refiners Escrow, one of the escrow funds established pursuant to the final Settlement Agreement in the DOE Stripper Well Exemption Litigation, M.D.L. No. 378, and in doing so, signed a Waiver and Release, waiving Crystal's right to file in the crude oil refund proceeding. Accordingly, Crystal's application was denied.

Doug's Shell, et al., 7/12/89, RF272–53077, et al.

The DOE issued a Decision and Order denying 20 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was either a reseller or a retailer of petroleum products during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, the applicants were found ineligible for crude oil refunds.

Eveleth Mines, 7/10/89, RF272–22191

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Eveleth Mines, an iron ore mining operation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Eveleth demonstrated the volume of its claim by consulting contemporaneous financial records. Eveleth was an end-user of the products it claimed and was therefore presumed injured by the DOE. Accordingly, the DOE granted Eveleth a refund of $51,502.

Exxon Corporation/Brocks Exxon et al., 7/10/89, RF307–8 et al.

The DOE issued a Decision of Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $2,165 ($1,804 principal plus $361 interest).

F.M. Asphalt, Inc. et al., 7/14/89, RF272–31712 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants based on their purchases of refined petroleum products during the price control period from August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or reasonable estimates to support its gallonage claim. Each applicant was an end-user of the products that it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $59,385. The claimants will be eligible for additional refunds as further crude oil overcharge fund become available.

Georgia Kroft Company/Kimberly-Clark Corporation, 7/13/89, RC272–53, RC272–54

The DOE issued a Supplemental Order modifying a previous Decision in which the DOE granted refunds from crude oil overcharge funds to Georgia Kraft Company and Kimberly-Clark Corporation. *Georgia Kraft Co.*, 19 DOE ¶ 85,023 (1989). Pursuant to the applicants' requests, the method of payment of those refunds has been changed. The refunds will now be paid by electronic wire transfer.

Gulf Oil Corporation/Abston Petroleum, Inc., George Gee, Sr., Sutton Oil Co., Div. of Cagney & Bvk, 7/14/89, RF300–4054, RF300–4326, RF300–4565

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by three applicants. Each of the applicants was either a consignee or consignee/reseller of covered Gulf products. The firms all claimed refunds less than $5,000. They were granted refunds based upon the small claims and consignee presumptions of injury. The sum of refunds granted in this Decision is $4,226.

Gulf Oil Corporation/Chambers Gulf Service, et al., 7/14/89, RF300–8613, et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $92,823.

Gulf Oil Corporation/Charles E. Colley, James E. Johnson, 7/12/89, RF300–4158, RF300–4264

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $2,034.

Gulf Oil Corporation/Kiel Brothers Oil Company, K.P. Oil, Inc., 7/12/89, RF300–4105, RF300–10839

The DOE issued a Decision and Order concerning the Applications for Refund

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submitted in the Gulf Oil Corporation special refund proceeding by Kiel Brothers Oil Company and K.P. Oil, Inc. Because both applicants were commonly owned and operated during the consent order period, the applicants were considered to be a single firm for purposes of the Gulf proceeding. Because their collective total maximum refund exceeded $5,000 and no demonstration of injury was made, the Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $29,670.

Martin Limestone Inc. et al., 7/10/89, RF272–10760 et al.

The DOE issued a Decision and Order granting refunds to 16 purchasers of refined petroleum products in the Subpart V crude oil proceeding. Each applicant was an end-user of the purchased products, and therefore was not required to demonstrate injury. The refunds approved in this Decision total $226,462.

Mead Paper, et al., 7/10/89, RF272–15878, et al., RD272–14529, et al.

The DOE issued a Decision and Order concerning applications for refunds filed by four manufacturers of paper products in the Subpart V crude oil proceeding. A group of States and Territories (the States) objected to the applications on the ground that certain studies indicate that the pulp and paper industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by the applicants and therefore the DOE should deny their applications. The DOE granted the refund applications, determining that the States has failed to show that the applicants themselves had passed through increased fuel costs. The DOE also denied the States' Motions for Discovery, determining that they were not appropriate where the States had not presented relevant evidence to rebut the applicants' presumption of injury.

Middle Street Garage, 7/12/89, RC272–51

The DOE issued a Supplemental Order rescinding the refund granted to Middle Street Garage in *Allyn Towers Co., et al.*, Case Nos. RF272–61600, *et al.*, (June 21, 1989). The amount of the refund rescinded was $306.

National Propane Corporation, Conservative Gas Division/Synergy Gas Corporation, 7/12/89, RF296–01

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of propane covered by a consent order that the DOE entered into with National Propane Corporation, Conservative Gas Division (NPC). The applicant submitted information indicating the volume of its propane purchases from NPC and was eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $10,436, representing $4,977 in principal and $5,459 in accrued interest.

O'Connell Oil Company/Bona's Garage, Inc., 7/10/89, RF280–03

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a consent order that the DOE entered into with O'Connell Oil Company. The applicant submitted information indicating the volume of its motor gasoline purchases from O'Connell and was eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $1,391, representing $710 in principal and $681 in accrued interest.

O'Farrell Insurance, 7/12/89, RC272–50

The DOE issued a Supplemental Order rescinding the refund granted to O'Farrell Insurance in *Tow of Granite Falls, et al.*, Case Nos. RF272–60000, *et al.*, (June 20, 1989). The amount of the refund rescinded was $85.

Paul S. Stevens, 7/14/89, RA272–9

The DOE issued a Supplemental Order concerning an Application for Refund filed in the Subpart V crude oil refund proceeding. In a prior decision, *Tuscan Dairy Farms, Inc.*, 19 DOE ¶ 85,057 (1989) (*Tuscan*), the DOE granted Paul S. Stevens (Case No. RF272–33002) a refund based upon an approved volume of 8,204,680 gallons. However, the purchase volume should have been stated as 82,047 gallons. Consequently, the DOE modified *Tuscan* to reflect the correct number of approved gallons and the correct refund amount to be granted to the applicant.

Shell Oil Company/North Star Shell Service Station et al., 7/14/89, RF315–1031 et al.

The DOE issued a Decision and Order granting 25 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or and end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of refunds granted in the Decision was $24,544 ($21,023 principal plus $3,521 interest).

Sysco Food Systems, 7/12/89, RF272–74004, RC272–247

The DOE issued a Decision and Order and Supplemental Order concerning two Applications for Refund filed on behalf of Sysco Food Systems (Sysco) in the Subpart V crude oil refund proceedings. On August 17, 1988, the DOE had granted a refund from crude oil overcharge funds to Sysco, Case No. RF272–74068, based upon an application that had been submitted on Sysco's behalf by P.A.D., Inc. Because the gallonage amount listed in this application is incorrect, the DOE rescinded the August 17, 1988 Decision and Order with respect to Case No. RF272–74608, now designated as Case No. RC272–47.

In addition, the DOE received a second application submitted directly by Sysco, Case No. RF272–74004. Accordingly, the DOE granted a refund from crude oil overcharge funds to Sysco based on its claimed purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Sysco was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The refund granted to Sysco in the Decision and Order was $1,053.

Total Petroleum/Marsh's APCO, 7/13/89, RF310–341

The DOE issued a Decision and Order concerning an Application for Refund filed by Marsh's Apco in which the firm sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted Marsh's a refund of $525 ($442 principal and $83 interest).

Tross Farming Company, 7/14/89, RF272–56

The DOE issued a Supplemental Order rescinding the refund granted to Tross Farming Company in *Delton R. Schnakenberg, et al.*, Case Nos. RF272–60800, *et al.*, (June 23, 1989). The amount of the refund rescinded was $179.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Archie Bell Trucking *et al*	RF272–70800	7/12/89	138	$16,883
Arnold Buhr *et al*	RF272–72800	7/10/89	147	$17,717
Ben L. Berry *et al*	RF272–74201	7/14/89	107	$13,559
Billows Electric Supply *et al*	RF272–69600	7/12/89	89	$11,453
Charles Batscelett *et al*	RF272–71403	7/10/89	127	$15,306
Charles Fellows *et al*	RF272–72607	7/14/89	108	$13,428
Colonial Mirror & Glass *et al*	RF272–71602	7/14/89	124	$18,928
Danner Farms *et al*	RF272–68600	7/13/89	155	$18,132
Edwin Bentham *et al*	RF272–73801	7/14/89	125	$15,411
Housing Auth/La Crosse *et al*	RF272–74002	7/12/89	130	$17,154
James C. Chambers *et al*	RF272–69801	7/10/89	146	$16,949
L.W. Honey Farm *et al*	RF272–64800	7/11/89	106	$13,616
Lake Region Truck Line *et al*	RF272–70402	7/11/89	129	$15,765
Larry Mischell *et al*	RF272–73400	7/10/89	159	$18,863
Mark C. Hemington *et al*	RF272–71200	7/10/89	133	$16,794
Peter Croghan *et al*	RF272–73604	7/11/89	140	$17,305
Phil & Eli Sayer *et al*	RF272–71000	7/11/89	178	$16,527
Ronald Foppe *et al*	RF272–66800	7/13/89	134	$17,963
Shepherd Excavating *et al*	RF272–68400	7/14/89	85	$9,733
Wayne Sinclair *et al*	RF272–67800	7/10/89	112	$13,564

Dismissals

The following submissions were dismissed:

Name	Case No.
Adams Oil Company, Inc	RF307–6618
American Frozen Foods, Inc	RF272–70490
B & D Acro	RF304–9286
Brown's Automotive Service	RF307–8017
Bud's Arco Service	RF304–6229
Cahill's Arco	RF304–6615
Catanzaro Oil & Heating Co., Inc	RF285–1
De Marco's Arco, Inc	RF304–2584
Ferrari's Arco	RF304–7285
Jeff's Holiday Gulf	RF315–5652
Joe Wateska & Son	RF304–6939
John Patten	RF272–64531
Jones Arco	RF304–3843
Juall Arco	RF304–4724
Kenyon Oil Company	RF304–6504
Pollard Tire Company, Inc	RF304–6834
	RF304–6835
Richard's Arco	RF304–9328
Sahuaro Petroleum & Asphalt Co	RF272–65851
Seb's Arco Service	RF304–6870
Souza's Arco	RF304–9525
Sunlite Servicenter Inc	RF307–8357
Thomas P. Reidy, Inc	RF264–13
Vic's Arco Service Station	RF304–6797
William S. Pittman, Jr	RF307–9878
Zatopek Oil Company	RF304–6874

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. These are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 20, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–23191 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of July 17 Through July 21, 1989

During the week of July 17 through July 21, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Anne K. Magnuson, 7/20/89, KFA–0301

Anne K. Magnuson (Magnuson) filed an Appeal from a determination issued by the Chief of Freedom of Information and Privacy Acts (FOI Officer) in which the FOI Officer informed Magnuson that the DOE could not locate any documents responsive to her Freedom of Information Act (FOIA) request. In considering the Appeal, the Office of Hearings and Appeals (OHA) found that DOE's initial search was reasonably calculated to uncover responsive documents and was therefore adequate under the FOIA. The appeal was therefore denied.

Remedial Order

Rodgers Hydrocarbon Corporation, Ray V. Rodgers, Jr., 7/20/89, HRO–0298

Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr. (collectively, RHC) filed a Statement of Objections to a Proposed Remedial Order (PRO) which alleged that RHC, a reseller, both failed to certify and miscertified barrels of crude oil it sold in violation of 10 CFR 212.131(b) during the period September 1977 through January 1980 (the audit period). The PRO directed RHC to refund $2,782,495.73, plus interest, which it received in its unlawful sales of crude oil.

The DOE agreed with RHC's objections in part, finding that the alleged overcharges should be reduced by $1,043,666.87, i.e., overcharges previously nullified in the settlement of related litigation involving RHC's affiliate, Summa Energy Corporation. DOE rejected the balance of RHC's objections and issued the PRO as a final Remedial Order. Important issues decided in this Order include the findings that: (1) RHC's reclaimed product, pipeline condensate, was "crude oil" within the meaning of 10 CFR 212.31; (2) ERA's "gross profit" method of calculating overcharges was the proper method of calculating overcharges in a DOE restitutionary action where a reseller had failed to certify and/or improperly certified crude oil; (3) Rodgers is personally liable for the overcharges under both the "piercing the corporate veil" and "central figure" theories; and (4) RHC failed to meet the threshold test for retroactive exception relief.

Request for Exception

Farmington Gas Co., Inc. 7/17/89, KEE–0175

Farmington Gas Co., Inc. (Farmington) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Farmington of the requirement to file Form EIA–782B,

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entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On July 17, 1989, the Department of Energy (DOE) issued a Final Decision and Order which determined that the exception request be denied.

Implementation of Special Refund Procedures

Pedersen Oil, Inc., 7/19/89, HEF-0147

The DOE issued a Decision and Order implementing a plan for the distribution of $19,824.44 received pursuant to a Consent Order executed on October 15, 1981. The DOE determined that these funds should be distributed to successful claimants that had purchased motor gasoline from Pedersen during the period May 1, 1979 through September 30, 1979. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Appleton Papers, Inc., Inland Container Corporation, 7/19/89, RF272-4655, RD272-4655, RF272-5988, RD272-5988

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed identical, consolidated pleadings objecting to and commenting on the applications. The only evidence submitted by the States was affidavits by an economist stating that virtually every industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. In addition, the States filed Motions for Discovery which were denied. The sum of the refunds granted in this Decision is $49,927. The claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Atlantic Richfield Company/Clarence C. Bernath, Halloran Service 7/17/89, RF304-684, RF304-2572

The DOE issued a Decision and Order concerning two Applications for Refund in the Atlantic Richfield Company (ARCO) special refund proceeding. The applications filed by Clarence C. Bernath and Halloran Service clearly state that the firms operated as consignees of ARCO products. The applicants were contacted by phone and/or in writing and informed that they could try to rebut the presumption of non-injury against consignees, but they did not wish to do so. The DOE determinnd that, as consignees, Bernath and Halloran are not entitled to any refunds and that their applications should be denied.

Atlantic Richfield Company/Effat Elsabbon, et al., 7/17/89, RF304-3009, et al.

The DOE issued a Decision and Order concerning two Applications for Refund in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims or mid-level presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totaling $35,666, representing $27,261 in principal and $8,405 in accrued interest.

Atlantic Richfield Company/H. H. & K. Bergh, et al., 7/18/89, RF304-2383, et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $73,946 ($56,508 in principal and $17,438 in interest).

Atlantic Richfield Company/Hutchison's ARCO, et al., 7/18/89, RF304-1195, et al.

The DOE issued a Decision and Order concerning twenty-eight Applications for Refund filed by twenty-five claimants in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were either end users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totaling $51,713, representing $39,519 in principal and $12,194 in accrued interest.

Atlantic Richfield Company/L&M Express Company, et al., 7/20/89, FR304-4983, et al.

The DOE issued a Decision and Order concerning eleven Applications for Refund filed by six claimants from a consent order fund made available by Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling $18,875 representing $14,391 in principal and $4,484 in accrued interest.

Atlantic Richfield Company/Rodney C. Ripley, et al., 7/20/89, FR304-6687, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed by five claimants from a consent order fund made available by Atlantic Richfield Company. As resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling $12,404, representing $9,457 in principal and $2,947 in accrued interest.

Atlantic Richfield Company/Sal's ARCO Service Station, et al., 7/20/89, FR304-4208, et al.

The DOE issued a Decision and Order concerning twenty applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $30,574, including $7,265 in accrued interest.

Christian Haaland A/S, et al., 7/20/89, FR272-0244, et al.

Thirty-three foreign flagship carriers (Carriers) filed Applications for Refund from the Subpart V crude oil overcharge monies based upon their purchases of marine bunker fuel consumed by the Carriers' vessels for propulsion. A group of thirty States and two Territories of the United States (collectively "the States") filed objections opposing the receipt of refunds by the Carriers, on the basis that: (1) bunker fuel sales to the Carriers were "export sales" exempt from price controls and the Carriers are therefore ineligible to receive funds and (2) the Carriers were not injured by crude oil overcharges since they conventionally added bunker fuel surcharges to their shipping rates by means of industry regulation and also joined in ratemaking conferences which facilitated the passthrough of increased fuel costs. In considering the Carriers' refund claims and the States' objections, the DOE determined that the States' reading of the export sale exemption is overbroad and the Carriers' purchases of bunker fuel for propulsion were not "export sales." Consequently, the Carriers were not disqualified from receiving refunds by virtue of their foreign status. In addition, the DOE found that the Carriers, as end-users, were injured as a result of overcharges. In this regard, the DOE rejected the States' claims that the Carriers were automatically able to pass through increased costs of bunker fuel by means of industry regulation and trade practice. The DOE further determined, however, that the bunker fuel purchases claimed by the Carriers must be reduced to exclude any purchases made in the Panama Canal Zone. On the basis of these determinations, the Carriers' Applications for Refund were approved in substantial part. The Total of the refunds granted in this decision is $3,475,147.

City of Burbank, Public Service Department, 7/17/89, RF272-2580

The DOE issued a Decision and Order granting an Application for Refund filed by the City of Burbank, Public Service Department in the Subpart V crude oil refund proceedings. Burbank used refined petroleum products in its operation of an electric generating plant during the period August 19, 1973, through January 27, 1981. In addition to establishing its purchase volumes, Burbank submitted certification that it would notify the appropriate regulatory bodies of any refund it receives and pass through the entirety of the refund to its customers. Burbank is therefore eligible to receive its full volumetric share of available crude oil monies as an end-user of refined petroleum products. The total refund granted in this Decision is $166,345.

Exxon Corporation/Howmet Corp., Et al., 7/18/89, RF307-579, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $35,190 ($29,339 principal and $5,851 interest).

Exxon Corporation/John Kara, Jr., et al., 7/19/89, RF307-2118, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund of its full allocable share. The sum of the refunds granted in this Decision is $22,168 ($18,482 principal plus $3,686 interest).

Exxon Corporation/R.P. Noquin, Dist. Inc., Jubilee Oil Company, Rankin Patterson Oil Company, 7/19/89, RF307-2708; RF307-6227, RF307-6964

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was a reseller whose allocable share exceeded $5,000. None of the applicants attempted to demonstrate injury, and each elected to limit its refund to $5,000 or 40 percent of its allocable share, whichever was greater. The sum of the refunds granted in this Decision is $37,519 ($31,749 principal plus $5,770 interest).

Exxon Corporation/Ron's Esso, et al., 7/19/89, RF307-2030, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. All of the applicants disagreed with the gallonage information recorded on their Exxon volume sheets and submitted alternative gallonage figures which they requested that OHA accept in combination with or in lieu of Exxon's figures. The OHA accepted the applicant's figures because they were taken from the applicants' actual purchase records for the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $8,025 ($6,691 principal plus $1,334 interest).

Exxon Corporation/Scenic Exxon, et al., 7/18/89, RF307-1903, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. All of the applicants disagreed with the gallonage information recorded on their Exxon volume sheets and submitted alternative gallonage figures which they requested that the OHA accept either in lieu of or in combination with Exxon's figures. The OHA accepted the applicants' figures either uniformly or in combination with Exxon's figures because they were taken directly from the firm's actual Exxon invoices or monthly sales records from the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,621 ($16,390 principal plus $2,231 interest).

Exxon Corporation/Village Fuel, Inc., 7/19/89, RF307-2481

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding. The applicant, a wholesale distributor of fuel oil and kerosene, disagreed with the gallonage information recorded on its Exxon volume sheet and submitted alternative gallonage figures which it requested that the OHA accept in lieu of Exxon's figures. The OHA accepted the applicant's figures for March 6, 1973 through July 1, 1976 because they were taken from the applicant's actual records. However, the OHA denied the applicant's request for a refund for its purchases of kerosene and fuel oil occurring after July 1, 1976 because kerosene and fuel oil were decontrolled effective July 1, 1976. The DOE determined that the applicant was eligible to receive a refund equal to its full allocable share. The sum of the refund granted in this Decision is $722 ($602 principal plus $120 interest).

Exxon Corporation/Walker Exxon, et al., 7/18/89, RF307-1912, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $12,149 ($10,695 principal plus $1,454 interest).

General Telephone Company of Florida, 7/17/89, RF272-3787

The Department of Energy (DOE) issued a Decision and Order granting the application of the General Telephone Company of Florida (GTC) for a refund pursuant to the provisions of 10 CFR Part 205, Subpart V (Subpart V) for its purchases of crude oil products between August 1973 and January 1981. The DOE also rejected Motions for

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Discovery and Objections filed in the proceeding by a group of 30 State governments and two territories (The States). The States argued that GTC should not receive a refund because a regulatory body allowed it to pass along the overcharges to its customers. The DOE found that the States' had failed to show that GTC was specifically allowed to pass along its energy costs to its customers. Furthermore, the DOE found that the States had failed to show the relationship of the rates set for GTC and the overcharges which GTC incurred during the life of those rates. Finally, the DOE rejected the States contention that GTC was required to determine what percentage of its propane purchases were crude oil based because the States provided no evidence to the contrary. The total refund granted in this Decision is $19,827.

Gulf Oil Corporation/Highland Gulf, et al., 7/17/89, RF300–183, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $22,683.

Gulf Oil Corporation/J.C. Cornillie Company, et al., 7/19/89, RF300–6102, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $74,945.

Gulf Oil Corporation/L.S. & J.M. Gravelle, Inc., et al., 7/19/89, RF300–7871, et al.

The DOE issued a Decision and Order concerning 4 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $26,564.

International Mill Service, et al., 7/18/89, RF272–30460, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or reasonable estimates to support its gallonage claim. Each applicant was an end-user of the products that it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $26,043. The claimants will be eligible for additional refunds as further crude oil overcharge funds become available.

Murphy Oil Corporation/Booker Massey, et al., 7/20/89, RF309–1018, et al.

The DOE issued a Decision and Order granting 17 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each applicant purchased directly from Murphy and was either an end-user or a reseller of Murphy products whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision is $10,217 ($8,610 principal plus $1,607 interest).

Northeast Petroleum Industries, Inc./Huckins Oil Company, Inc., et al., 7/17/89, RF264–17, et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by a motor gasoline reseller in the Northeast Petroleum Industries, Inc. special refund proceeding. The applicant submitted information indicating the volume of its purchases of motor gasoline from Northeast and elected to limit its claim to $5,000. The total refund approved in this Decision is $8,898, including $3,898 in accrued interest.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Alice L. Tiede *et al.*	RF272–71800	7/21/89	149	$14,371
Arickaree R–2 School *et al.*	RF272–74603	7/21/89	94	$13,850
Arlyn Cox *et al.*	RF272–74400	7/21/89	91	$11,615
Council Brothers, Inc. *et al.*	RF272–74804	7/21/89	108	$14,267
Elmer W. Fehd *et al.*	RF272–72202	7/21/89	129	$16,464
Jim Bernhardt *et al.*	RF272–73000	7/20/89	145	$13,510
Lyle A. Swisher *et al.*	RF272–72000	7/21/89	152	$16,160
Mrs. Clarence Garrett *et al.*	RF272–68800	7/21/89	126	$13,688
Rose Pork, Inc. *et al.*	RF272–73200	7/20/89	138	$15,109

Dismissals

The following submissions were dismissed:

Name	Case No.
ABC Oil Co	RF307–7155
Bee Clean Car Wash	RF300–3407
Bordonaro's Exxon	RF307–8151
Campora Wholesale Propane, Inc	RF304–6331, RF304–9123
Carter Well Service, Inc	RF272–75459
Ferrari's Arco	RF304–3736
Griffin Bros. Fuel	RF307–7145
Hurley Oil Co., Inc	RF309–672
Middle Department Inspection Agency, Inc.	RF272–75448
Miracle Mile Exxon	RF307–9731
Patrons Oil Co., Inc	RF272–75548
Smith's Exxon	RF307–1796
Tweedell & Van Buren Oil Co	RF313–172
Walker Springs Exxon, John Parsons;	RF307–1916
William R. Bolling II	KFA–0305

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 27193 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of July 31 Through August 4, 1989

During the week of July 31 through August 4, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Roger Dingman, 8/1/89, KFA–0016

Roger Dingman filed an Appeal from a denial by the Director of the Office of Classification of the Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the requested material was properly classified and therefore not releasable under Exemption 3 of the FOIA. The Appeal was therefore denied. However, the DOE directed that a legible copy of a previously released document be provided to Mr. Dingman.

Motion for Discovery

Merit Petroleum Co. Inc., et al., 8/2/89, KRD–0530, KRH–0530, KRZ–0531, KRZ–0530

Merit Petroleum, Inc. (Merit), Thomas H. Battle (Battle) and Anton E. Meduna (Meduna) filed a Motion for Discovery in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to them on October 20, 1986. The DOE denied the respondents' request for contemporaneous construction and administrative record discovery of the layering regulation, 10 CFR 212.186, on the grounds that no new arguments had been presented that would cause it to reconsider determination in previous cases. The DOE also found that the respondents had presented no basis for granting discovery of ERA positions concerning the movement of the crude oil through pipelines or the involvement of Meduna in the crude oil transactions at issue. The DOE denied respondents' Motion for Evidentiary Hearing on the grounds that they had failed to identify the issues to be discussed and the witnesses to be called at such a hearing. The OHA also denied respondents' motion to clarify the Office of Hearings and Appeal's (OHA's) general authority to declare invalid regulations such as the layering rule. The DOE found this request to be unencessary, because the OHA was clearly delegated authority to review DOE regulations in the context of specific enforcement actions. Finally, the DOE granted a motion of the ERA and amended the PRO to reduce the potential liabiity of Battle and Meduna to conform to their respective shares of ownership in Merit at the time that the alleged overcharges occurred.

Supplemental Orders

Herbert L. Tanner/P.A.D., Inc., 8/3/89, KFX–0058

The DOE issued a Supplemental Order disposing of the Order to Show Cause issued to P.A.D. Inc. (PAD) and Herbert L. Tanner (Tanner), PAD's president. *Herbert L. Tanner, et al.*, 18 DOE ¶ 85,105 (1988). In the Order to Show Cause, OHA found that PAD and Tanner had violated 10 CFR 205.3(a) & (b) by: i) filing unauthorized refund applications or obtaining authorizations from applicants through misstatements of fact; ii) filing applications on behalf of firms that PAD knew or should have known were ineligible for refunds; and iii) using inaccurate and unsupported purchase volume estimates in cases where actual volume figures were available. PAD and Tanner filed a number of responses to the Show Cause Order in which they alleged that remedial action had been taken to remedy the violations outlined in that Order. The parties then requested that OHA allow a successor corporation, FRI, to take over the processing of all PAD claims pending before OHA. In the Supplemental Order, OHA determined that both PAD and Tanner be permanently denied the privilege of participating in all proceedings before the Office of Hearings and Appeals. OHA also denied PAD's request to allow FRI to take over the processing of PAD's claims.

Texaco Inc., 8/2/89, KFX–0068

The DOE issued a Supplemental Order correcting two errors made in a Decision issued on July 25, 1989 regarding the distribution of the crude oil portion of the Texaco consent order fund, *Texaco Inc.*, 19 DOE ¶_____, Case No. KFX–0066 (July 25, 1989). In the Order, the DOE corrected the calculation of the crude oil volumetric factor and the computation of the amount of interest to be distributed.

Implementation of Special Refund Procedures

McClure Oil Company, 8/4/89, KEF–0009

The DOE issued a Decision and Order implementing procedures for the distribution of $35,000 received as a result of a Stipulation and Agreed Final Judgment entered into by the DOE and McClure Oil Company on January 30, 1985. The DOE determined that these funds should be distributed to customers that purchased motor gasoline, diesel fuel and propane from McClure during the period November 1, 1973 through March 31, 1974. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Atlantic Richfield Company/Arthur F. Hazel & Son, Inc., et al., 8/4/89, RF304–3200 et al.

The DOE issued a Decision and Order concerning 58 Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims or mid-level presumptions. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds, totaling $134,033, representing $102,181 in principal and $31,852 in interest.

City of Troy, et al., 8/2/89; RF272–17773 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 61 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore found injured and entitled to a refund. The sum of the refunds granted in this Decision is $64,275.

Exxon Corporation/Earl Davis Service Station et al., 8/4/89, RF307–2050 et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $26,489 ($21,925 principal plus $4,564 interest).

Exxon Corporation/W.A. Fowler Co., Propane Gas Service, Inc., L.L. Smith and Son, Inc., 8/1/89, RF307–1893, RF307–2715, RF307–6509

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The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant elected to receive either 40 percent of its allocable share or $5,000, whichever is greater. The sum of the refunds granted in this Decision is $24,192 ($20,021 in principal and $4,171 in interest).

Gulf Oil Corporation/Lykes Bros. Steamship Co., Inc., et al., 8/4/89, RF300–8262 et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest is $55,074.

Hammermill Paper Co., et al, 8/1/89, RF272–19647 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to forty-four applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $48,201.

James R. Morse, 8/2/89, RC272–59

The DOE issued a Supplemental Order rescinding the refund granted to James R. Morse in Ben L. Berry, *et al., 19 DOE ¶ _____*, Case Nos. RF272–74201, *et al.*, (July 14, 1989). The amount of the refund rescinded was $20.

Murphy Oil Corporation/Cougar Oil, Inc., et al. 7/31/89, RF309–1.37 et al.

The DOE issued a Decision and Order granting 14 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus interest. The sum of the refunds granted in the Decision was $21,907 ($18,461 principal plus $3,446 interest).

Nippon Yusen Kaisha, Yamashita-Shinninon Steamship, Shinwa Kaiun Kaisha, Ltd., Showa Line Ltd., N.V. Bocimar S.A. 8/4/89, RC272–62, RC272–63, RC272–64, RC272–65, RC272–66

Nippon Yusen Kaisha, Yasmashita-Shinnihon Steamship, Shinwa Kaium Kaisha, Ltd., and N.V. Bocimar S.A. (collectively "the Applicants") filed a request for Supplemental Order regarding a July 21, 1989 Decision and Order which approved Subpart V crude oil refunds for thirty-three foreign ocean carriers, including the applicants. *Christian Haaland A/S*, 19 DOE ¶ _____, Case No. RF272.0244 (July 21, 1989). In *Christian Halland*, The DOE directed that the refund checks be made payable to the named ocean carriers. In their request for Supplemental Order, however, the Applicants stated that pursuant to Powers of Attorney which they executed, their refund checks should have instead been made payable to their counsel, Philip P. Kalodner. Accordingly, the DOE issued a Supplemental Order directing that the Applicants' refund checks approved in the *Christian Haaland* decision be made payable to Mr. Kalodner.

Northeast Petroleum Industries, Inc./ Chevron U.S.A., Inc., 8/1/89, RF264–14

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. Chevron U.S.A., Inc. submitted information indicating the volume of its purchases of motor gasoline from Northeast and elected to limit its claim to the $5,000 small claims threshold. The total refund approved in this Decision is $8,938, representing $5,000 in principal and $3,938 in accrued interest.

Pacer Oil Company of Florida, Inc./ Highway Oil, Inc., 8/4/89, RF218–02

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Pacer Oil Company of Florida, Inc. Highway Oil, Inc, submitted information indicating the volume of its purchases of motor gasoline from Pacer and elected to limit its claim to the $5,000 small claims threshold. The total refund approved in this Decision is $7,670, representing $5,000 in principal and $2,670 in accrued interest. However, DOE directed that the refund amount of $7,670 should be held in a separate interest-bearing escrow account on behalf of Highway Oil pending the outcome of an enforcement proceeding involving the firm which is currently before the Office of Hearings and Appeals.

Pacific Steamship Navigation Co., 8/1/89, RF272–10502

Pacific Steamship Navigation Co. (Pacific) filed an Application for Refund from the crude oil overcharge monies currently available for disbursement under 10 CFR 205, subpart V. In its Application, Pacific stated that it is a foreign flagship carrier, operating ocean-going vessels which transport cargo in foreign commerce. Pacific sought a refund with respect to 33,592,107 gallons of bunker fuel consumed by the firm's vessels for purposes of propulsion, all of which was purchased in the Panama Canal Zone. In considering Pacific's Application for Refund, the DOE determined on the basis of the decision in *Christian Haaland A/S*, 19 DOE ¶_____ (July 21, 1989), that ocean carriers are not entitled to receive refunds with respect to purchases made in the Panama Canal Zone since these purchases were not subject to price controls. Accordingly, Pacific's Application for Refund was denied.

Ron Loytercamp et al., 8/2/89, RF272–4498 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. Each applicant determined its volume claim either by utilizing actual purchase records from the crude oil price control period or by estimating its petroleum consumption during that period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is $10,487.

Shell Oil Company/Carl Robinson, Jr. et al., 8/2/89, RF315–5202 et al.

The DOE issued a Decision and Order granting 92 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $78,510 ($66,763 principal plus $11,747 interest).

Upshur-Rural Electric Co-op Corp., 8/4/89, RF272–7125

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Upshur-Rural Electric Co-op Corp. (Upshur) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Upshur is an electric distribution cooperative which used the petroleum products to operate its fleet of vehicles. Upshur determined its volume claims by utilizing actual purchase records from the crude oil price control period. Upshur was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The refund granted in this Decision is $438.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
Arganbright Farms *et al.*	RF272–48001	8–2–89	40	$21,065
Barton W. Lowe *et al.*	RF272–49501	8–4–89	40	21,666
Bay Island Drainage Dist. *et al.*	RF272–39002	8–3–89	68	86,543
Buffalo Goodwill Industries *et al.*	RF272–53001	8–3–89	44	19,698
Cazenovia Central School *et al.*	RF272–61500	8–3–89	83	50,060
City of Graham *et al.*	RF272–60002	8–4–89	103	63,804
Cord Meyer Development *et al.*	RF272–56504	8–3–89	70	42,117
Don Zimbleman *et al.*	RF272–51002	8–2–89	14	6,270
E.E. Guthrie *et al.*	RF272–55012	8–2–89	47	28,174
Elk Mound Area School District *et al.*	RF272–45005	8–4–89	52	26,454
Faulkton I.S.D. 24–2 *et al.*	RF272–43505	8–1–89	45	23,511
Forest Carpenter *et al.*	RF272–46043	8–4–89	11	20
Hamilton Co-op Apartments *et al.*	RF272–49005	8–3–89	35	21,152
Holy Cross Electric Association *et al.*	RF272–58001	8–3–89	57	32,273
Horchem and Sons *et al.*	RF272–44039	8–4–89	54	23,475
Houghton Chemical Co. *et al.*	RF272–61000	8–3–89	54	34,508
James C. Ray *et al.*	RF272–44500	8–1–89	36	16,915
Norwalk—La Miranda U.S.D. *et al.*	RF272–47503	8–1–89	43	22,666
Patrick J. Maloney *et al.*	RF272–52018	8–4–89	33	16,823
Peter Brega *et al.*	RF272–61518	8–2–89	43	24,519
Russell Dixon *et al.*	RF272–38005	8–1–89	19	17,925
San Jose Unified School Dist. *et al.*	RF272–53504	8–2–89	46	32,932
Shanks Farms, Inc. *et al.*	RF272–59001	8–2–89	49	31,033
Sheepshead Terrace Co-op *et al.*	RF272–54542	8–4–89	47	29,222
Standley Farms *et al.*	RF272–55504	8–4–89	55	33,748
Swanberg Twins, Inc. *et al.*	RF272–63502	8–4–89	60	36,639
Skolness, Inc. *et al.*	RF272–54029	8–1–89	53	31,721
Wahoo, Inc. *et al.*	RF272–56009	8–3–89	64	33,487
Wayne Sparks *et al.*	RF272–42514	8–1–89	50	25,731
West-Cal Construction *et al.*	RF272–60503	8–4–89	52	32,224
William W. Rowe *et al.*	RF272–59515	8–2–89	53	34,040
Wyoming County Community Hospital *et al.*	RF272–43020	8–4–89	48	26,306

Dismissals

Name	Case No.
Armstrong Oil Co	RF313–167
Bellemeade Spur	RF309–1354
Bonnett's Exxon	RE307–9154
	KRO–0580
	KRZ–0580
	KRO–0590
	KRD–0590
	KRH–0590
	KRZ–0590
Clark Oil & Refining Corp	KRD–0591
Apex Oil Company	KRO–0600
Novelty Oil Company	KRZ–0600
Goldstein Oil Company	KRO–0610
Apex Holding Company	KRZ–0610
Jacksonville Electric Authority	RC272–61
Towne Mall Esso	RF307–8698

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

September 20, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

FR Doc. 89–23194 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of August 7 Through August 11, 1989

During the week of August 7 through August 11, 1989 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

The Crude Company, 8/7/89, KRO–0440

The Crude Company (TCC) objected to a Proposed Remedial Order (PRO) issued to it on January 9, 1987, by the Economc Regulatory Administration (ERA). In the PRO, the ERA alleged that TCC unlawfully received excess revenues by reselling crude oil at a price that exceeded its maximum lawful selling price (MLSP) and permissible average markup. Based on the arguments presented by the firm in this proceeding, the DOE determined that the ERA failed to follow the appropriate regulations in establishing TCC's MLSP in two regards. First, the ERA incorrectly selected the Permian Corporation (Permian) as TCC's nearest comparable outlet. The DOE determined that, due to the wide disparity in the business operations of TCC and Permian, Permian could not be considered comparable to TCC. Second, the DOE stated that the ERA erroneously calculated TCC's base period sales price by failing to rely on the prices charged by TCC's nearest comparable outlet, and instead setting the firm's base price at the price TCC

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charged for crude oil in its first sales transaction. Since the DOE determined that the ERA failed to calculate TCC's MLSP in accordance with the appropriate regulations, it could not use that MLSP as a basis for calculating the firm's alleged overcharges. Accordingly, the PRO was dismissed.

Request For Exception

Range Oil Co., 8/10/89, KEE-0170

Range Oil Co. filed an Application for Exception from the requirement to file Form EIA-83 with the DOE's Energy Information Agency. In considering the request, the DOE found that the firm had failed to establish its claims that it did not have the necessary staff to complete the form and that hiring outside consultants in order to comply would be burdensome. Accordingly, exception relief was denied.

Refund Applications

A.S. Csaky Communications, 8/7/89, RC272-60

The DOE issued a Supplemental Order rescinding the refund granted to A.S. Csaky Communications in *Ben L. Berry, et al.*, 19 DOE ¶ ____, Case Nos. RF272-74201, *et al.*, (July 14, 1989). The amount of the refund rescinded was $12.

Atlantic Richfield Company/B & R Service, et al., 8/8/89, RF304-4247 et al.

The DOE issued a Decision and Order concerning forty-four Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $88,696 ($52,173 in principal and $16,423 in interest).

Bizzack Brothers Construction Corp., 8/11/89, RF272-33336, RD272-33336

The DOE granted a refund to Bizzack Brothers Construction Corp. (Bizzack), a purchaser of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of thirty states and two territories of the United States (the States) filed a consolidated pleading objecting to and commenting on Bizzack's application. The only evidence submitted by the States was an affidavit by an economist stating that virtually every industry was able to pass through some cost to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. Accordingly, Bizzack was granted a refund of $16,617.

City of Austin Electric Utility Department, 8/11/89, RF272-6695

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the City of Austin Electric Utility Department (Austin), a regulated public utility, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Philip P. Kalodner (Kalodner), Counsel for Utilities, Transporters, and Manufacturers, filed an Objection to Austin's Application for Refund. The DOE determined that Kalodner's Objection was insufficient to rebut the presumption of end-user injury. Austin certified that it will notify its appropriate state regulatory agency of any refund received in the crude oil proceedings and that it will pass through the amount of any refund received to its customers. The refund granted to Austin is $24,004. Austin will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crown-Trygg Corporation et al., 8/8/89, RF272-18874 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 30 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $47,980. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Diamond Gas & Fuel Company, 8/7/89, RR272-35

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Diamond Gas and Fuel Company in the Subpart V Crude Oil proceeding. Diamond requested that the DOE reconsider its Decision of May 4, 1989, in which the DOE denied Diamond a refund because Diamond had failed to demonstrate injury as is required for resellers in the crude oil refund proceedings. The DOE determined that Diamond had not introduced any new evidence of injury from crude oil overcharges. Therefore, Diamond's Motion for Reconsideration was denied.

Eastern Fine Paper, Inc., 8/10/89, RF 272-16591, RD272-16591

The DOE issued a Decision and Order concerning an application for refund filed by Eastern Fine Paper, Inc. (Eastern), a manufacturer of paper products, in the Subpart V crude oil proceeding. A group of States and Territories (the States) objected to Eastern's application on the grounds that certain studies of the pulp and paper industry may indicate that Eastern was able to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Eastern and therefore the DOE should deny Eastern's application. The DOE granted Eastern's refund application, determining that the States had failed to show that Eastern itself had passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut Eastern's presumption of injury.

Exxon Corporation/Edith M. Wolfe, et al., 8/9/89, RF307-7042 et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $19,510 ($16,143 principal plus $3,367 interest).

Exxon Corporation/J and M Service, Inc., 8/10/89, RF307-10043

The DOE rescinded one refund granted in *Exxon Corp./Murphy's Exxon*, 19 DOE ¶xx, Case Nos. RF307-812 *et al.* (July 26, 1989). In that Decision, the DOE granted J and M Service a refund based upon its purchases from Exxon. However, it was discovered that this was a duplicate of a refund granted to J and M in *Exxon Corp./Leonard H. Arridson*, 19 DOE ¶ 85,042 (1989). Accordingly, the DOE rescinded the duplicate refund.

Exxon Corporation/Taylor Oil Company, Floyd A. Labarre, 8/7/89, RF3097-5771, RF307-5871

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants, wholesale distributors of Exxon products, each had an allocable share in excess of $5,000. Each applicant elected to receive as its refund the larger of $5,000 or 40% of its allocable share up to $50,000. Each applicant was granted a refund of $5,000, plus interest. The sum of the refunds granted in this Decision is $12,084 ($10,000 in principal and $2,084 in interest).

Gulf Oil Corporation/Attleboro & Plainville Coal Company, Inc., et al., 8/11/89, RF300-8978 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $65,925.

Gulf Oil Corporation/Bayside Fuel Oil Depot Corp., et al., 8/9/89, RF300-923 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $89,833.

Gulf Oil Corporation/Columbia Road Gulf Inc., Pembroke Gulf, 8/7/89; RF300-8260, RF300-8261

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Columbia Road Gulf Inc., and Pembroke Gulf. Because the firms are commonly owned or run, and because their combined allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. The refund granted in this Decision, which includes both principal and interest, is $6,641.

Gulf Oil Corporation/Dolee Oil Company, 8/9/89, RF300-5020

The DOE issued a Decision and Order concerning an Application For Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision is $17,575.

Gulf Oil Corporation/F.&M. Canterbury, Inc., 8/9/89, RF300-10854

The DOE granted two refunds to F.&M. Canterbury, Inc. *See Gulf Oil Corporation/James D. Pressly, et al.*, 18 DOE ¶ 85,291 (1988); *Gulf Oil Corporation/J.D. Melton Gulf Station, et al.*, 18 DOE ¶ 85,312 (1988). Because of ownership changes, the DOE issued a Supplemental Order rescinding the $2,376 refund granted to F.&M. Canterbury, Inc. in *Gulf Oil Corporation/J.D. Melton Gulf Station.*

Gulf Oil Corporation/Floyd Oil, Inc., et al., 8/11/89, RF300-628 et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $13,984.

Gulf Oil Corporation/McAdory Oil Company, Woodford Oil Company, James M. Walker, Jr., 8/11/89, RF300-5321, RF300-5481, RF300-5485

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants is a consignee and reseller of Gulf refined products and each elected to base its refund on the appropriate presumptions of injury. Each applicant's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, the applicants were not required to provide a detailed demonstration that they absorbed Gulf's alleged overcharges. The sum of the refunds granted in this Decision is $9,605.

Gulf Oil Corporation/Sheridan Gulf, 8-7-89, RF300-10859

The DOE issued a Supplemental Order regarding Sheridan Gulf, an applicant who received a refund in *Gulf Oil Corporation/Alexander's Gulf Service Station*, 18 DOE ¶ 85,895 (1989). The OHA was unable to locate the applicant, and thus rescinded the $1,435 refund.

Gulf Oil Corporation/W.A. Hill & Sons, Inc., 8/11/89, RF300-5154

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $6,641.

Harris Marine & Tire, et al., 8/9/89, RF272-42092 et al.

The DOE issued a Decision and Order, denying 19 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer of refined petroleum products during the period August 19, 1973 through January 27, 1981. Because the Applicants did not demonstrate that they were injured due to the crude oil overcharges, their Applications for Refund were denied.

James River Corporation, 8/11/89, RF272-11244, RD272-11244

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to James River Corporation (James River), a manufacturer of pulp, paper and plastic products. In reaching its determination, the DOE rejected the objections to the applicant's claim submitted by a group of States and denied the States' Motions for Discovery. Specifically, the DOE restated its position that industry-wide data in general is insufficient to rebut the presumption that an end-user outside of the petroleum industry was injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular indusry or firm does not rebut the end-user presumption. The total refund granted to James River was $1,188,372.

Jeddo-Highland Coal Co., Empire Iron Mining Partnership, 8/9/89, RF272-4104, RF272-5179, RD272-4104, RD272-5179

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Jeddo-Highland Coal Co. and Empire Iron Mining Partnership based on their respective Partnership purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Both applicants used the products in their mining activities, and both determined their claims by consulting actual purchase records. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A consortium of 29 states and 2 territories filed Statements of Objections and Motions for Discovery with respect to each Applicant. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end users. Therefore, the Applications for Refund were granted and the Motions for Discovery were denied. The sum of the refunds granted in this Decision is $39,758.

Murphy Oil Corporation/Gene's Spur Service, et al., 8/9/88, RF309-1077 et al.

The DOE issued a Decision and Order granting 13 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was

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granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $13,609 ($11,468 principal plus $2,141 interest).

Oil Industry Lessors of Louisiana, Inc., et al., 8/9/89, RF272–56430 et al.

The DOE issued a Decision and Order denying five Applications for Refund filed in the Subpart V crude oil refund proceedings. Each of the five Applicants was engaged in the business of renting and/or leasing motorized vehicles during the period August 19, 1973 through January 27, 1981. The OHA has consistently considered vehicle renting and leasing companies to be retailers for the purposes of OHA-administered refund proceedings. Accordingly, these five Applicants were considered retailers of refined petroleum products. Because the Applicants did not demonstrate that they were injured due to the crude oil overcharges, their Applications for Refund were denied.

Palo Pinto Oil & Gas/Belridge Oil Co./National Helium Corp./Coline Gasoline Corp./Standard Oil Co. (Indiana)/Vermont, 8/10/89, RQ5–515 et al.

The DOE issued a Decision and Order granting the State of Vermont permission to use monies from the Palo Pinto Oil & Gas, Belridge Oil Co., National Helium Corp., Coline Gasoline Corp., and Standard Oil Co. (Indiana) second-stage refund proceedings for two programs. The first, Seniors Helping Seniors, is a program to train volunteers to provide senior citizens with information on, and assistance with, home energy efficiency measures. The other program involved the production of a booklet of information on energy conservation for owners of mobile homes. The OHA determined that the two programs would provide restitution to injured consumers of petroleum products and authorized the disbursal of $86,541 ($49,300 in principal plus $37,241 in interest) to Vermont.

Shell Oil Company/Fort Schuyler Shell, et al., 8/11/89, RF315–2237 et al.

The DOE issued a Decision and Order granting 105 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $81,641 ($69,429 principal plus $12,212 interest).

Shell Oil Company/Whittemore's Shell Service, et al., 8/11/89, RF315–5689 et al.

The DOE issued a Decision and Order granting 134 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $107,630 ($91,530 principal plus $16,100 interest).

State Escrow Distribution, 8/7/89, RF302–7

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $102,000,000.00 to the State Governments. Those funds had been set aside for distribution to the States in *Texaco Inc.*, 19 DOE ¶_____, No. KFX–0066 (July 31, 1989), as well as *Hood Goldsberry*, 18 DOE ¶ 85,902 (1989). The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	Number of applicants	Total refund
American National Corp. *et al*	RF272–64516	8/10/89	55	$32,991
Anjo's Motor Service, Inc. *et al*	RF272–74501	8/10/89	48	28,244
Central New York Redevelopment Co. *et al*	RF272–73513	8/8/89	50	28,940
City Van & Storage Co., Inc. *et al*	RF272–65006	8/10/89	49	30,718
Core Ltd. *et al*	RF272–66001	8/11/89	53	32,255
David Johnson *et al*	RF272–70518	8/11/89	40	25,002
Delta Farms *et al*	RF272–72509	8/11/89	56	23,074
Ernest Construction Co. *et al*	RF272–50501	8/7/89	46	25,958
Glen H. Lewton *et al*	RF272–70004	8/11/89	36	19,718
Glenwood C. Deboit *et al*	RF272–68000	8/11/89	136	14,902
Gould Academy *et al*	RF272–64002	8/7/89	77	46,536
H.G. Page & Sons *et al*	RF272–66511	8/11/89	61	35,902
James R. Williamson *et al*	RF272–75200	8/7/89	114	14,390
Joslaw Real Estate *et al*	RF272–48513	8/8/89	77	44,939
Kenneth Collins *et al*	RF272–69505	8/11/89	57	39,135
Lynchburg Ready Mix Concrete *et al*	RF272–57513	8/7/89	53	29,002
Lynwood Klaver *et al*	RF272–31006	8/7/89	17	39,789
M. Cohen Iron & Metal Co. *et al*	RF272–67002	8/10/89	47	29,909
Maryland Leasing Co. *et al*	RF272–63008	8/8/89	67	38,770
Midas International Corp. *et al*	RF272–62020	8/7/89	50	29,973
Nebtex Land Co. *et al*	RF272–72013	8/11/89	37	21,974
Paul & Marie Jensen *et al*	RF272–73011	8/10/89	47	24,544
Paul Johnson, Inc. *et al*	RF272–69001	8/9/89	42	26,167
Pioneer Steel Ball Co. *et al*	RF272–45506	8/8/89	29	15,875
Robert J. Faivre *et al*	RF272–71506	8/9/89	57	31,611
Rockledge-Hartsdale Assoc. *et al*	RF272–50021	8/7/89	41	24,906
Tooele County Board of Education *et al*	RF272–42023	8/7/89	43	26,333
Torrey Wood & Son, Inc. *et al*	RF272–71026	8/10/89	44	24,981
Urbana School District #116 *et al*	RF272–68506	8/10/89	36	23,859
William Gore & John Maxwell *et al*	RF272–46511	8/8/89	9	13

Dismissals

The following submissions were dismissed:

Name	Case No.
Abernathy Exxon	RF307–64
Banner Exxon (5187)	RF307–9987
David C. Walker	RF304–4948
Forest Park Arco	RF304–9363
Fowler Oil Company	RF307–7148
Gutshall's Exxon	RF307–9939
Harmon & Sanders	RF307–9900
J.P. Stevens & Co., Inc	RF307–9707
James S. Rother	RF307–9985
Joe Trafficano	RF307–9928
L.A. Harris	RF307–6382
Los Olivos Arco	RF304–9188
Manifold Oil Company	RF304–7146
Monticello Energy Corp	RF304–7509
Norb's Arco	RF304–8053
Norman and Bob's Esso North 5494	RF307–9938
Orazzi Service Station	RF304–4625
Paxville Road Exxon	RF307–8006
Penns Grove Exxon	RF307–840
Raymon L. Mobley	RF307–9901
Rochelle's Exxon	RF307–6716
Rudat's Variety Store	RF304–4650
Stanley Jajko	RF304–4949
Steve Hajas	RF304–4953
T. Frieze Company, Inc	RF304–1746
Texas Solvents & Chemical Co	RF307–5906
	RF307–5907
Vitro Corporation	RF307–9984
Walls Exxon	RF307–9142
Weyerhaeuser Paper Co	RF272–30473
Zimmerman's Exxon Service	RF307–8041

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–23195 Filed 9–29–89; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Meeting Postponement

An open meeting of the National Petroleum Council which was scheduled to be held on Tuesday, October 10, 1989, at 9:00 a.m., the Madison Hotel, Dolley Madison Ballroom, 15th & M Streets, NW., Washington, DC, has been postponed. This meeting was announced in the **Federal Register**, Vol. 54, No. 182 on Thursday, September 21, 1989 54 FR 38892.

J. Robert Franklin,

Deputy Advisory Committee Management Office.

[FR Doc. 89–23375 Filed 9–29–89; 11:16 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3653–3]

Rogue River, OR; Ocean Dredged Material Disposal Site; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA) Region 10.

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) on the final designation of an interim Ocean Dredged Material Disposal Site (ODMDS) located off the Rogue River, Oregon.

PURPOSE: The U.S. EPA, Region 10, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), and with the cooperation of the U.S. Army Corps of Engineers, Portland District, will prepare a draft EIS on the designation of an ODMDS off the Rogue River, Oregon. The EIS will provide the information necessary to designate an ODMDS. This Notice of Intent is issued pursuant to Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1977, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Mr. John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue WD–138, Seattle, Washington, 98101–3188, Phone (206) 442–1286. Questions regarding disposal site studies may also be directed to: Mr. Mark Siipola, U.S. Army Engineer District, Planning Division, P.O. Box 2946, Portland, Oregon, 97208–2946, Phone (503) 326–6463.

SUMMARY: The Rogue River navigation channel requires periodic maintenance dredging to ensure safe navigation. Disposal of dredged sediments at an interim designated ODMDS has occurred in the past. Studies to support final site designation were conducted by the Corps of Engineers, Portland District, and coordinated with EPA, Region 10. Designation of a final ODMDS site at this location provides a feasible and environmentally acceptable disposal site for present and anticipated future maintenance work in the area.

Need for Action: The Corps of Engineers, Portland District, has requested that EPA designate an ODMDS offshore from the Rogue River, Oregon, for disposal of sediments dredged to maintain the federally-authorized navigation project and for disposal of materials during other actions authorized in accordance with Section 103 of the MPRSA. EPA has voluntarily committed to prepare EISs in conjunction with ocean dumping site designations. This EIS will provide the necessary information to evaluate alternatives and designate a preferred ODMDS.

Alternatives

1. No action: The no action alternative is defined as not designating an ocean disposal site and termination of ocean disposal for this area.

2. Alternative disposal options in the nearshore, mid-shelf, and shelf break region of the Pacific Ocean, and on the uplands.

Scoping: A scoping meeting is not contemplated. Scoping will be accomplished with affected federal, state, and local agencies, and with interested parties by correspondence, telephone contact, etc.

Estimated Date of Release: The draft EIS will be available in Autumn 1989.

Responsible Official: Robie G. Russell, Regional Administrator, Region 10.

Dated: September 20, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89–23166 Filed 9–29–89; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–CD–86–073 (FRL–3653–4)]

Draft Criteria Document for Carbon Monoxide—Health Effects Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of an external review draft of an Air Quality Criteria Document for Carbon Monoxide. The conference site is the Washington Duke Inn, Durham, North Carolina.

DATES: The workshop will be held on October 16 and 17, 1989, from 8:30 a.m. to 5:00 p.m. and on October 18 from 8:30

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a.m. to 12:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: James A. Raub, Project Manager, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, North Carolina 27711, (919) 541–4157 or FTS 629–4157.

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents are required under the Clean Air Act to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards. EPA is currently revising the criteria document for carbon monoxide as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding this workshop to review certain draft chapters. These draft chapters cover population exposure, pharmacokinetics and mechanisms of action, health effects of CO alone or combined with other environmental factors, and population groups potentially at risk from exposure to carbon monoxide. Copies of the workshop draft will be made available to the public at the meeting, and members of the public will have an opportunity to make brief oral statements. The draft chapters subsequently will be revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the extenal review draft will be announced in a subsequent **Federal Register** notice.

Dated: September 22, 1989.

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89–23164 Filed 9–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3653–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Salina, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment regarding the City of Salina, Kansas.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 13, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–3853, the following Complaint: In the Matter of the City of Salina, Kansas, EPA Docket No. VII 89–W–007. The Complaint proposes a penalty of $55,000, for failure to implement and enforce the City's pretreatment program pursuant to the terms of Special Condition D of the City's National Pollutant Discharge Elimination System (NPDES) Permit No. KS–00038474.

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will open for public inspection during normal business hours. All information submitted by the City of Salina, Kansas is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Jean Crank at (913) 236–2808.

Dated: September 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–23161 Filed 9–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3653–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Topeka, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Topeka, KS.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 13, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2853, the following Complaint: In the Matter of the City of Topeka, Kansas, EPA Docket No. VII 89–W–0012. The Complaint proposes a penalty of $53,000, for failure to implement and enforce the City's pretreatment program pursuant to the terms Special Condition D of the City's National Pollutant Discharge Elimination System (NPDES) Permit No. KS–0042722.

Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Topeka, Kansas is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Jean Crank at (913) 236–2808.

Dated: September 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89–23162 Filed 9–29–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3655–1]

Approval of Washington's National Pollutant Discharge Elimination System (NPDES) General Permits Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of Washington's National Pollutant Discharge Elimination System General Permits Program.

SUMMARY: On September 26, 1989, the Regional Administrator of the Environmental Protection Agency, Region 10, approved the State of Washington's NPDES General Permits Program. This action authorizes state issuance of general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Ms. Andi Manzo, Water Permits Section, WD–134, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. State authority to issue general permits will reduce the backlog of unissued NPDES permits and reduce the administrative burden and cost of issuing individual permits.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

On November 14, 1973, Washington received authority to administer the NPDES program under section 402 of the Clean Water Act. Their program, as previously approved, did not include provisions for the issuance of general permits. The state's final application for authority to issue general permits was received November 30, 1988. The submittal included a letter from the state asking for approval, a copy of the Memorandum of Agreement (MOA), a supplementary NPDES program description, and copies of relevant state statutes and regulations. The submittal also included a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the state has adequate legal authority to administer the general permits program.

EPA determined that the State's application was complete and, as required under 40 CFR 123.62, issued a 30-day public notice of the State's request for authority to issue general permits. Three comment letters were received during the comment period. Each letter expressed support for delegation of the General Permits Program to Washington.

EPA concluded, upon review of the State's application and all public comments, that the State has legal authority to administer the general permits program. In addition, based upon Washington's program description and upon the State's experience in administering an approved NPDES program, EPA has concluded that the State has the necessary resources and procedures to adminiter the general permits program.

The following are responses to major comments.

Response to Comments

1. *Comment:* The Memorandum of Agreement (MOA) should clarify that any general permits issued by Ecology in the Puget Sound Basin will comply with requirements of the 1989 Puget Sound Water Quality Management Plan (PSWQMP) and the 1989 State/EPA Agreement (SEA).

Response: The MOA is a binding, long-term agreement between EPA Region 10 and the Washington Department of Ecology. The MOA is intended to outline broad, long-term commitments between these two agencies related to Ecology's implementation of the NPDES General Permits Program. In assuming this program, Ecology will be required to carry out Federal law as it pertains to the issuance and enforcement of general permits. It is beyond the scope of this Agreement to address state commitments to a third agency.

According to 40 CFR 123.24(c), the MOA should be consistent with the SEA; however, the SEA may not override the MOA. Page 2 of the MOA addresses this issue by stating that "all specific state commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/SEA process."

2. *Comment:* Effective July 1, 1989, WAC 173–223 (permit fees) will be changed to WAC 173–224.

Response: The reference has been changed accordingly.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table provides the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas [1]	11/01/86	11/01/86	11/01/86
California [1]	05/14/73	05/05/78	09/22/89
Colorado [1]	03/27/75		

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State	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Connecticut	09/26/73	01/09/89	06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/06/80	03/12/81
Hawaii	11/28/74	06/01/79	06/12/83
Illinois [1]	10/23/77	09/20/78	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	
Kentucky [1]	09/30/83	09/30/83	09/30/83
Maryland	08/05/74	11/10/87	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota [1]	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri [1]	10/30/74	06/26/79	06/03/81
Montana [1]	06/10/74	06/23/81	
Nebraska [1]	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	
New Jersey [1]	04/13/82	04/13/82	04/13/82
New York	10/26/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon [1]	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Utah [1]	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/76		
Virginia	03/31/75	02/09/82	04/14/89
Washington [1]	11/14/73		09/30/86
West Virginia [1]	05/10/82	05/10/82	05/10/82
Wisconsin [1]	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

[1] Indicates State approved to issue General Permits.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Approval of the Washington State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any municipal or industrial category. Program approval merely provides a simplified administrative process. Because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: September 26, 1989.

Robie G. Russell,

Regional Administrator, Region 10.

[FR Doc. 89-23300 Filed 9-29-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200078-004

Title: Maryland Port Administration Lease Agreement.

Parties:

Maryland Port Administration (MPA).

Clark Maryland Terminals, Inc. (CMTI).

Synopsis: The Agreement modifies Agreement No. 224-200078 for the use of portions of the Dundalk Marine Terminal to reflect the division of the overall leased premises into two Parcels, "A" and "B". Parcel "A" shall be used for cargo for all of CMTI's customers, except for customers to which Parcel "B" shall be specially dedicated. Parcel "B" shall be used exclusively for cargo of Orient Overseas Container Line (UK) Ltd. ("OOCL-UK") and by Orient Overseas Container Line, Inc. ("OOCLI") and any other carriers that are party to any cooperative working, sailing, or space charter agreements with OOCL-UK or OOCLI providing for use of the same terminals facilities and associated stevedoring services. The Agreement also replaces Agreement No. 224-200253 between MPA and CMTI.

By Order of the Federal Maritime Commission.

Dated: September 27, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23156 Filed 9-29-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Elmwood Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Elmwood Bancshares, Inc., Elmwood, Illinois; to acquire Warren E. Stenwall, d/b/a Stenwall Insurance Agency, Elmwood, Illinois and thereby engage in general insurance agency activities in Elmwood, Illinois, a town whose population does not exceed 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23123 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to merge with First Ohio Bancshares, Inc., Toledo, Ohio, and thereby indirectly acquire First National Bank of Toledo, Toledo, Ohio, and The Home Banking Company, Gibsonburg, Ohio.

In connection with this application, Applicant proposes to acquire First Ohio Life Insurance Company, Toledo, Ohio, and thereby engage in providing credit insurance pursuant to § 225.25(b)(8)(i); and First Ohio Investment Services, Inc., Toledo, Ohio, and thereby engage in providing portfolio management advice and services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. MNC Financial, Inc., Baltimore, Maryland; to merge with Equitable Bancorporation, Baltimore, Maryland, and thereby indirectly acquire Equitable Bank, N.A., Baltimore, Maryland, and Equitable Bank of Delaware, Dover, Delaware.

In connection with this application, Applicant proposes to acquire E.B. Mortgage Corporation, Towson, Maryland, and thereby engage in making, acquiring, and servicing mortgage loans for its own account and the accounts of others pursuant to § 225.25(b)(1); Equiban Life Insurance Company, and thereby engage in underwriting, as reinsurer, credit life, accident and health insurance and involuntary unemployment insurance in connection with extensions of credit by Equitable Bancorporation's subsidiaries, including Equitable Bank, N.A., Equitable Bank of Delaware, and E.B. Mortgage Corporation pursuant to § 225.25(b)(8); Fayette Insurance Corporation, Baltimore, Maryland, and thereby engage in acting as agent or broker for the sale of credit life, accident and health insurance solely in connection with extensions of credit by Equitable Bancorporation's subsidiaries, including Equitable Bank, N.A., Equitable Bank of Delaware, and E.B. Mortgage Corporation pursuant to § 225.25(b)(8); and Internet, Inc., Reston, Virginia, and thereby engage in providing data processing switching services for automatic teller machine and point of sale networks. Internet Inc. also provides and maintains data processing software to banks and other

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financial institutions for the operation of this hardware, and maintain ATM and POS data bases for some banks and financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23124 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Fuji Bank, Limited, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Fuji Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Kleinwort Benson Government Securities, Inc., in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The Plains Corporation, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Financial Corporation, Lubbock, Texas, a *de novo* corporation, in originating loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in West Texas.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23125 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 18, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Peoples Bancorp, Inc., Lebanon, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank of Lebanon, Lebanon, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, and Huntington Bancshares Michigan, Inc., Columbus, Ohio; to acquire 100 percent of the voting shares of First Macomb Bancorp, Inc., Mount Clemens, Michigan, and thereby indirectly acquire First Macomb Bank, Mount Clemens, Michigan.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. New East Bancorp, Raleigh, North Carolina; to acquire 100 percent of the voting shares of New East Bank of Elizabeth City, Elizabeth City, North Carolina, a *de novo* bank.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bradford Bankshares, Inc., Starke, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Bradford County, Starke, Florida, *de novo* bank.

2. First Commerce Bancorp, Inc., Commerce, Georgia; to merge with Citizens Holding Company, Lexington, Georgia, and thereby indirectly acquire Citizens Banking Company, Lexington, Georgia.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Sterling Bancorp, Inc., Sterling, Illinois; to acquire 100 percent of the voting shares of Rock Falls Bancshares, Inc., Rock Falls, Illinois, and thereby indirectly acquire Rock Falls National Bank, Rock Falls, Illinois.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. PBM Bancorp, Inc., Marion, Illinois; to merge with Rend Lake Bancorp, Inc., Marion, Illinois, and thereby indirectly acquire at least 80 percent of the voting shares of Rend Lake Bank, Christopher, Illinois.

F. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lincoln Holding Company, Canton, South Dakota; to become a bank holding company by acquiring 80.4 percent of the voting shares of Farmers State Bank of Canton, Canton, South Dakota.

2. WRZ Bankshares, Inc., Plainview, Minnesota; to become a bank holding company by acquiring at least 80 percent of the voting shares of Peoples State Bank, Plainview, Minnesota.

G. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Farmers State Bankshares, Inc., Circleville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Circleville, Circleville, Kansas.

2. Mountain West Banking Corporation, Denver, Colorado; to acquire 100 percent of the voting shares of Citywide Bank of Thornton, Thornton, Colorado, and NBR Financial, Inc., Boulder, Colorado, and thereby indirectly acquire National Bank of the Rockies, Boulder, Colorado, and National Bank of the Rockies, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23126 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

Stichting Amro, and Amsterdam-Rotterdam Bank N.V.; Amsterdam, the Netherlands; Proposal To Engage in Securities Brokerage and Investment Advisory Services on a Separate and Combined Basis

Stichting Amro and Amsterdam-Rotterdam Bank N.V., both of Amsterdam, the Netherlands, have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulations Y (12 CFR. 225.23(a)), to engage in a joint venture by increasing its ownership of the voting shares of DBI Holdings, Inc., New York, New York ("DBI Holdings"), from 5 percent to up to 66.3 percent.

DBI Holdings conducts its business through two wholly-owned subsidiaries, Discount Brokers International, Inc., New York, New York ("DBI London"). Applicants propose to conduct securities brokerage services through DBI London pursuant to section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9) and § 211.23 of the Board's Regulation K (12 CFR 211.23).

Applicants propose to engage in a joint venture through DBI whereby DBI will combine its business with Henry Kreiger & Co. to form Henry Kreiger/DBI, L.P., New York, New York, and thereby to engage in the following activities:

(1) Securities brokerage pursuant to § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15));

(2) Investment or financial advice as permitted by § 225.25(b)(4)(ii), (iii), (iv), and (v) of Regulaton Y (12 CFR 225.25(b)(4)(ii), (iii), (iv), and (v)); and

(3) Securities brokerage services in combination with investment advisory services to institutional and retail customers ("full-service brokerage").

Applicants propose to conduct these activities on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicants have applied to conduct their full-service brokerage activities in accordance with the limitations set forth in previous Board Orders approving these activities for a number of bank holding companies. *See, e.g., Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); and *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988).

Applicants believe the proposed transactions will benefit the public by permitting Henry Kreiger/DBI, L.P. to enter the market *de novo* as an investment advisor and by expanding the activities of DBI to U.S. customers. Applicants believe that the proposed transaction will result in increased convenience to customers and in increased efficiencies for Henry Kreiger/DBI, L.P.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 20, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, September 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23127 Filed 9-29-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9215]

Coca-Cola Bottling Company of the Southwest; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Dr Pepper take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against the Coca-Cola Bottling Company of the Southwest in this proceeding.

DATE: Comments must be received on or before December 1, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James E. Elliott, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 72501, 214-767-5503.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying

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at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order

In the matter of Coca-Cola Bottling Co. of the Southwest a corporation, and Dr Pepper/Seven-Up Companies, Inc. a corporation.

The Agreement herein, by and between the Dr Pepper/Seven-Up Companies, Inc. (hereinafter referred to as "Dr Pepper"), by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission (hereinafter referred to as the "Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent Dr Pepper is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with principal offices at 8144 Walnut Hill Lane, Dallas, Texas 75231.

2. The Commission has issued and served upon Coca-Cola Bottling Company of the Southwest (hereinafter referred to as "CCSW"), and Dr Pepper a complaint charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Dr Pepper has filed an answer to the complaint denying said charges.

3. Dr Pepper admits all jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Dr Pepper waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record of this proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days for the receipt and consideration of comments or views from any interested person and information with respect thereto will be publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Dr Pepper, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding with respect to respondent Dr Pepper.

6. This Agreement is for settlement purposes only and does not constitute an admission by Dr Pepper that the law has been violated as alleged in the complaint issued by the Commission.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to Dr Pepper, (1) issue its decision containing the following order in disposition of the proceeding with respect to respondent Dr Pepper, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Dr Pepper's address as stated in this Agreement shall constitute service. Dr Pepper waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in this Agreement may be used to vary or to contradict the terms of the order.

8. Dr Pepper has read the complaint and the order contemplated hereby. Dr Pepper understands that once the order has been issued, Dr Pepper will be required to file one or more compliance reports showing that it has fully complied with the order. Dr Pepper further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I—Definitions

For purposes of this Order the following definitions shall apply:

A. "Dr Pepper" means Dr Pepper/Seven-Up Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at 8144 Walnut Hill Lane, Dallas, Texas, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

B. "CCSW" means Coca-Cola Bottling Company of the Southwest, a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at One Coca-Cola Plaza, San Antonio, Texas and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

C. "Asset Purchase Agreement" means the Asset Purchase Agreement Between San Antonio Dr Pepper Bottling Company, Dr Pepper Company and Coca-Cola Bottling Company of the Southwest, dated as of August 28, 1984;

II

It is ordered That Dr Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that it prohibits CCSW from retaining any assets or business conveyed to CCSW under the Asset Purchase Agreement or to the extent that it orders CCSW to cease and desist from bottling or distributing any products pursuant to the Asset Purchase Agreement.

III

It is further ordered That for a period of ten years following the date of this Order, for the purpose of determining compliance with this Order, upon written request of the Federal Trade Commission, the Director or any Assistant Director of the Bureau of Competition or the Director of the Dallas Regional Office of the Federal Trade Commission made to Dr Pepper at its principal offices and subject to any legally recognized privilege, Dr Pepper shall permit duly authorized representatives of the Federal Trade Commission, of the Bureau of Competition or of the Dallas Regional Office:

A. Reasonable access during the office hours of Dr Pepper, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and documents in Dr Pepper's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to the reasonable convenience of Dr Pepper, to interview officers or employees of Dr Pepper, who may have counsel present, regarding such matters.

IV

It is further ordered That Dr Pepper shall cooperate in this proceeding by producing, at its own expense, information and documents in its possession, custody or control and individuals to provide deposition or hearing testimony as may be requested by complaint counsel in connection with this proceeding.

V

It is further ordered That, while paragraph III of this Order is effective, Dr Pepper shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in th emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligations arising out of this Order.

VI

It is further ordered That, within sixty (60) days after service upon Dr Pepper of the Commission's final order against CCSW in this proceeding and at such other times as the Commission or its staff may request, Dr Pepper shall file with the Commission a verified written report setting forth in detail the manner and form in which Dr Pepper has complied with this Order.

Signed this 4th day of August 1989.

Analysis of Proposed Consent Order to Aid Public Comment

[FTC Docket No. 9215]

In the Matter of: Coca-Cola Bottling Company of the Southwest

The Federal Trade Commission ("Commission") has provisionally accepted an agreement containing a proposed consent order with Dr Pepper/7-Up Companies, Inc. ("Dr Pepper") in partial settlement of a Complaint challenging the acquisition of assets and business of the then San Antonio Dr Pepper Bottling Company by Coca-Cola Bottling Company of the Southwest ("CCSW"). The Commission's Complaint against CCSW is still pending and is currently in adjudication in an administrative proceeding.

The proposed consent order with Dr Pepper has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint, which was issued on July 29, 1988, challenges the acquisition and the acquisition agreement among CCSW, San Antonio Dr Pepper Bottling Company and Dr Pepper as violations of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The Complaint alleges that, at the time of the acquisition, CCSW and San Antonio Dr Pepper Bottling Company were substantial, direct competitors in a concentrated market, namely, a market that is no broader than all carbonated soft drinks sold in a ten county area which includes San Antonio, Texas. The Complaint also alleges that entry into the relevant market is difficult. The Complaint further alleges that the acquisition and the acquisition agreement have the effect of reducing competition in the relevant market; eliminating San Antonio Dr Pepper Bottling Company as a significant competitor in the relevant market; significantly increasing the levels of concentration in the relevant market; significantly enhancing the likelihood of collusion or interdependent coordination among remaining firms in the relevant market; significantly raising the costs of production, distribution and sale by other firms in the relevant market; significantly lessening competition between Coca-Cola brands and both Dr Pepper and Canada Dry brands; and significantly enhancing the likelihood of dominant firm behavior to increase price in the relevant market.

The proposed consent order with Dr Pepper, accepted subject to final approval, preserves the Commission's remedial options with respect to the ongoing administrative proceeding. The proposed consent order provides that Dr. Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that such relief prohibits CCSW from retaining any assets or business conveyed to CCSW under the acquisition agreement or to the extent that CCSW is ordered to cease and desist from bottling or distributing any products pursuant to the acquisition agreement.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the Complaint or the agreement containing the proposed consent order, or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-23196 Filed 9-29-89; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 8719]

Lenox Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order granting in part request to reopen and set aside order.

SUMMARY: The Federal Trade Commission has set aside a portion of the 1970 consent order with Lenox, Inc., thus removing the provisions that prohibited respondent from terminating dealers after receiving complaints from other dealers and that required the respondent to reinstate dealers terminated for discounting prices or for transshipping products.

DATES: Consent order issued July 24, 1970. Order granting in part request to reopen and set aside order issued April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore or Sondra Mills, FTC/S-2115, Washington, DC 20580. (202) 326-2687 or 326-2673.

SUPPLEMENTARY INFORMATION: In the Matter of Lenox, Incorporated. The prohibited trade practices and/or corrective actions, as set forth at 35 FR 12754, are deleted in part.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

In the matter of Lenox, Inc., a corporation.

Order Granting in Part and Denying in Part Request to Reopen and Set Aside Order

On December 20, 1988, Lenox, Incorporated ("Lenox"), filed a "Request of Lenox, Incorporated to Vacate Final Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. In the Request, Lenox asks the Commission to reopen the proceeding and set aside the cease and desist order entered by the Commission on July 24, 1970 (77 F.T.C. 860) and modified by the Commission on July 12, 1982 (100 F.T.C. 259). Lenox alleges that setting aside the order is warranted by changed conditions of fact and law and the public interest. Request at 2. The Request was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules, and two comments were received. On February 24, 1989, Lenox submitted an affidavit responding to one of the public comments.

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The Commission has carefully considered Lenox's Request, the public comments and Lenox's response to one comment and has concluded that Lenox has not made a satisfactory showing that changed conditions of fact or law or the public interest require that the order be set aside in its entirety. The order prohibits Lenox from agreeing with its dealers with respect to resale prices and in essence requires compliance with section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Lenox has not shown changed circumstances that eliminate the need for the order. Lenox also has not shown that it is unduly burdened by an order that merely requires it to abide by the law, and, therefore, setting aside the order is not warranted in the public interest.

The Commission believes that the second part of paragraph 3 of the order should be set aside in the public interest. The second part of paragraph 3 prohibits conduct that by itself may not be unlawful, and this provision is no longer necessary to ensure Lenox's compliance with the law. In addition, paragraphs 9 (a) and (b), which require Lenox to reinstate dealers terminated for failing to observe Lenox's suggested resale prices or for transshipping Lenox products, are inconsistent with subsequent modifications of the order. Consequently, the public interest is served by setting aside these provisions.

I

The Commission's complaint in this matter, issued October 13, 1966, alleged that Lenox agreed with its dealers to fix the resale prices for its products. In the original proceeding, the Commission found that "agreements as to resale prices between respondent and its dealers do in fact exist," 73 F.T.C. at 597, and held that Lenox had entered into unlawful price agreements with its dealers in violation of Section 5 of the Federal Trade Commission Act. On appeal, the United States Court of Appeals for the Second Circuit affirmed the Commission's decision and order, as modified. *Lenox, Inc.* v. *FTC*, 417 F.2d 128 (2d Cir. 1969).[1]

The final order of the Commission contains provisions to remedy unlawful price maintenance by Lenox.[2] Paragraphs 1 and 2 of the order prohibit Lenox from requiring its dealers to agree to sell Lenox products at specified prices as a condition of dealing. The first part of paragraph 3 prohibits Lenox from asking its dealers "to report any person or firm who does not observe the resale prices suggested by respondent." The second part of Paragraph 3 prohibits Lenox from "acting on reports so received" by refusing to sell to noncompliant dealers. Paragraph 4 prohibits Lenox from "[h]arassing, intimidating, coercing, threatening or otherwise exerting pressure on dealers" to comply with established resale prices. Paragraph 7 prohibits Lenox from "[u]tilizing any other cooperative means of accomplishing the maintenance of resale prices." Paragraph 10 (later renumbered as paragraph 9) requires Lenox to reinstate dealers that had been terminated for failing to maintain resale prices or for transshipping.

Paragraphs 5 and 6 of the order, both of which expired in 1973, prohibited Lenox from selling to dealers at a discount from retail prices and from publishing suggested retail prices. Paragraph 8, which was vacated in 1982, prohibited Lenox from banning transshipment of its products by dealers. 100 F.T.C. 259 (1982).[3]

II

Section 5(b) of the Federal Trade Commission Act, 45 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel C. Hoffman, Esq. (March 24, 1983), at 2. For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C–2916, 101 F.T.C. 686, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make "a satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

III

Lenox has shown neither changed conditions of law or fact nor public interest considerations that require setting aside the order in this matter in its entirety. The order prohibits agreements to fix resale prices, conduct that is *per se* unlawful. The changed circumstances advanced by Lenox do not affect the *per se* illegality of agreements to maintain resale prices or bring the order into conflict with existing law. In addition, Lenox "has not shown that complying with an order that essentially requires adherence to the law is causing it injury." *William H. Rorer, Inc.*, Docket No. 8599, Order Modifying Cease and Desist Order, 104 F.T.C. 544, 545 (1984).[4]

Lenox asserts that the law governing vertical restraints and the circumstances in which an unlawful agreement can be inferred have changed significantly since the order was entered in 1970. According to Lenox, its argument in the original proceeding that its conduct was unilateral and therefore lawful under *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919), was rejected by the Commission on the authority of decisions that had expanded the circumstances in which an agreement between a manufacturer and its dealers could be inferred. Subsequent decisions, according to Lenox, "have changed the legal criteria for evaluating whether an agreement to maintain resale prices can be inferred" to such an extent that the evidence considered by the Commission in this matter "would not have given rise to [the original] proceeding much less to a conclusion of violation, under today's standards." Request at 55.

Lenox relies on *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984), in which the Supreme Court said that an unlawful vertical price agreement must be proved by unambiguous evidence so as not to deter or penalize legitimate, unilateral conduct and legitimate communications between a manufacturer and its dealers. The evidence must "tend to exclude the possibility that the manufacturer and the nonterminated distributor were acting independently." Lenox also cites *Business Electronics Corp.* v. *Sharp Electronics Corp.*, ___ U.S. ___, 108 S. Ct. 1515 (1988), in which the Court said that a vertical restraint is not *per se* unlawful unless it includes an agreement on price or price levels.[5] In both of these cases, the Supreme Court reiterated the *Colgate* doctrine that a manufacturer generally has a right to deal or to refuse to deal with whomever it likes, as long as it does so independently.

The Commission's conclusion in the original proceeding that Lenox had engaged in unlawful resale price agreements was based on findings consistent with these cases. The Commission expressly found that Lenox had required its dealers to agree to resale prices. *See* 73 F.T.C. at 594–95 & 597. Lenox is incorrect when it suggests that the standards applied by the Commission in the original proceeding are inconsistent with current law. Accordingly, Lenox has not shown that changed conditions of law require the Commission to reopen and set aside the order.

Here, as in *Monsanto*, it is necessary to distinguish between concerted and independent action and between concerted action to set prices, which is *per se* unlawful, and concerted action on nonprice vertical restraints, which is judged under the rule of reason. The order in this matter proscribes concerted action to set prices. Paragraphs 1 and 2 of the order prohibit Lenox from entering into agreements concerning price with its dealers. These prohibitions are consistent with *Monsanto* and *Sharp*, in which the Court said the vertical agreements to fix price are *per se* unlawful.

The first part of paragraph 3 and paragraphs 4 and 7 of the order also are consistent with *Monsanto* and *Sharp*. The first part of paragraph 3, which bars Lenox from "[r]equesting dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondent," in essence prohibits Lenox from inviting its dealers to participate in a resale price maintenance scheme. *See Monsanto*, 465 U.S. at 764 n.9 and 765. This provision does not bar dealers from complaining to Lenox about price cutters. Instead, it bars Lenox from seeking the dealers' participation in policing and maintaining resale prices.

Similarly, paragraph 4 of the order prohibits Lenox from coercing its dealers, by threats of termination or otherwise, to comply with Lenox's resale prices. Paragraph 7 prohibits Lenox from using "any other cooperative means of accomplishing the maintenance of resale prices fixed by respondent." Nothing in *Monsanto* makes the conduct described in these provisions of the order lawful. Threats to obtain dealer acquiescence in resale prices are "plainly relevant and persuasive to a meeting of the minds." *Monsanto*, 465 U.S. at 765 & n.10. Although cooperation and coordination between Lenox and its dealers "to assure that their product will reach the consumer persuasively and efficiently" is not unlawful, 465 U.S. at 763–64, cooperation to maintain resale prices clearly is unlawful.

The second part of paragraph 3 of the order prohibits Lenox from "acting on reports so obtained by refusing or threatening to refuse sales to the dealers so reported." As written, this provision applies only when Lenox solicits and obtains the cooperation of its dealers in enforcing compliance with resale prices and acts on the information so obtained. In addition, termination of a price cutting dealer is not lawful in all circumstances. For example, a manufacturer's threat to refuse to deal to obtain compliance with resale prices can evidence an invitation to an unlawful agreement. *Monsanto*, 465 U.S. at 765. Nevertheless, this provision will be set aside in the public interest. As the Court explained in *Monsanto*, dealers "are an important source of information for manufacturers," dealer complaints about price cutters " 'arise in the normal course of business and do not indicate illegal concerted action' " and a manufacturer's termination of a dealer following complaints from other dealers would not, by itself, support an inference of concerted action. 465 U.S. at 763–64. To the extent that this second part of paragraph 3 may inhibit Lenox from legitimate unilateral conduct, it may cause competitive injury.[6] Because any conduct that would be unlawful under this part of paragraph 3 would be prohibited by other provisions of the order, the reasons to set aside this provision outweigh any reasons to retain it.

IV.

Lenox alleges that "changes in market facts warrant vacation of the order." Request at 36. Lenox has not shown that these alleged changed conditions require setting aside the order. Agreements to fix resale prices remain unlawful, and Lenox has not shown that changed conditions of fact require setting aside

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[1] The court held that the Commission lacked authority to prohibit resale price maintenance agreements in states permitting such agreements under "fair trade laws," enacted pursuant to the McGuire Act. The Commission modified the order accordingly, incorporating a fair trade law proviso as paragraph 9 (later renumbered as paragraph 8) of the order. 77 F.T.C. 860.

[2] Four of the remaining eight paragraphs of the original order have no further effect. Paragraphs 5 and 6 were time-limited and expired in 1973. Former Paragraph 8, which prevented Lenox from banning dealer transshipments of its products, was set aside by the Commission in 1982. Finally, Lenox complied with the order provision that required it to file a compliance report 60 days after service of the order.

[3] After Paragraph 8 was set aside, Paragraphs 9 and 10 were renumbered Paragraphs 8 and 9. 100 F.T.C. at 259.

[4] In *Rorer*, the Commission declined to modify an order provision that "in essence" required the respondent to comply with section 2(a) of the Robinson-Patman Act. *See also Alhambra Motor Parts*, Docket No. 6889, Letter to John C. Peirce, Esq. (January 19, 1988), at 6–7 (denying petition to set aside order prohibiting violations of section 2(a) of Robinson-Patman Act).

[5] In *Monsanto*, the Court held that a *per se* unlawful agreement could not be inferred from nothing more than a dealer termination following competitors' complaints. In *Sharp*, the Court said that a vertical agreement to terminate a price-cutting dealer is not *per se* unlawful unless there is also an agreement on price or price levels. Absent an agreement on price, the rule of reason applies.

[6] As discussed below, Lenox's claims of competitive disadvantage and injury are premised for the most part on its perceived inability unilaterally to refuse to deal with firms that have small retail mark ups and do not provide customer services. Request at 19–20 & 52–54; *see* note 8 *infra*. Although paragraph 3 does not prohibit unilateral refusals to deal, the modification eliminates any ambiguity in that regard.

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order provisions that require compliance with the law.

Lenox claims that intrabrand competition has increased significantly. Since 1976, when the McGuire Act was repealed, Lenox states that it has authorized "multiple, quality dealers" in all marketing areas and that price competition among Lenox dealers is and will continue to be "the norm." Request at 326–37. An increase in the number of authorized Lenox dealers and increased competition among them are not changed conditions that eliminate the need for the order or make continued application of it inequitable. Instead of demonstrating a need to reopen and modify the order, these conditions appear to be consistent with compliance with the order.

Lenox also claims that interbrand competition has changed since 1970. According to Lenox, domestic manufacturers of fine china have withdrawn from the market, and imports have become dominant. Lenox claims that its foreign rivals are not restricted from preventing dealer practices that "tarnish[] [Lenox's] image and sap[] the profit of other quality dealers," so that Lenox is at a competitive disadvantage. Request at 38. Lenox does not claim that Lenox is competitively disadvantaged by the fact that other U.S. firms are no longer its competitors.[7] Increased competition from foreign firms also is not a changed condition that requires reopening and modification of the order. To the extent that the foreign firms do business in the United States, they, like domestic firms, are required to comply with the law, and they are not free to agree with their dealers to fix resale prices.

Lenox also alleges that marketing has changed, citing increased competition from "certain deep-discounting dealers, trading on the efforts of others" and "destroying Lenox's distribution through prestige outlets." Request at 38–39. According to Lenox, "deep" discounters often sell Lenox products at prices 30% to 50% less than suggested resale prices. *See* Velsmid Affidavit at 2. These discounters usually (but not always) maintain inferior displays and only minimal inventories of Lenox china and do not offer the full range of services that Lenox expects from its dealers. *Id.* at 3. Many of these discounters accept telephone orders from distant customers, who select their china from the displays of full-service dealers.

As a result of deep discounting and free riding, Lenox claims, full-service dealers discontinue or reduce their sales efforts for Lenox products. Request at 39–40, and Lenox's image of quality, prestige and elegance has begun to erode. To substantiate this claim, Lenox has submitted affidavits from its employees and from "prestige" retailers who say that such retailers have either cut back or discontinued their displays and sales of Lenox products, because widespread deep discounting has made carrying them both unprofitable and incompatible with the "quality image" of their stores. Lenox vigorously contends that its quality image is a major component of the value of fine china to consumers and that it must be allowed to terminate deep discounters to protect that image before it is irreversibly damaged. Request at 40–45. In addition, Lenox asserts that interbrand competition is impaired when prestige retailers curtail or discontinue sales of the Lenox lines. Request at 37–38.

Neither free riding nor the erosion of Lenox's quality image is a changed condition that would warrant vacating the order. The order prohibits vertical price fixing, which is unlawful. The order does not bar Lenox from imposing lawful nonprice vertical restraints to protect its product image.[8] Lenox, however, has made a threshold showing that continued application of the second part of paragraph 3 and of paragraphs 9 (a) and (b) of the order is causing injury to its competitive position. As discussed above, the second part of paragraph 3 may inhibit Lenox from legitimate conduct. Paragraphs 9 (a) and (b) of the order require Lenox to reinstate dealers terminated for discounting or for transshipping Lenox products.[9] Because unilateral termination of a dealer for discounting is not unlawful and because the order's prohibition of Lenox's ban on transshipments was set aside in 1982, requiring Lenox to reinstate dealers for these reasons would be inconsistent with the order, as modified, and clearly would serve no further remedial purpose. To the extent that conduct described in these provisions might be in furtherance of an unlawful scheme to fix resale prices, such conduct would be prohibited by the other provisions of the order. Consequently, the need to set aside these provisions of the order outweighs any reasons to retain them.

Accordingly, *it is ordered that* Lenox's Request to reopen and set aside the order in this matter in its entirety be, and it hereby is, denied; and

It is further ordered that this matter be reopened and that the Commission's order in Docket No. 8718, issued June 24, 1970, as modified by order dated July 12, 1982, be, and it hereby is, modified, as of the date of service of this order, by setting aside paragraph 9 and by deleting from paragraph 3 "or acting on reports so obtained by refusing or threatening to refuse sales to the dealers so reported."

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–23197 Filed 9–29–89; 8:45 am]

BILLING CODE 6750–01–M

[7] Lenox also does not claim that the withdrawal of other domestic firms, impliedly reducing interbrand competition, is in any way attributable to the order.

[8] To the extent that Lenox's injury claim turns on free riding by deep discounters on services provided by other dealers, Lenox has been able to ban resale of its products to unauthorized dealers since the 1982 modification of the order. Nothing in the order prevents Lenox from requiring its dealers to provide customer services and from terminating dealers for failing to do so.

[9] Lenox asserts that these provisions are "no longer applicable." Request at 7–8, footnote. By their terms, however, these paragraphs are still in effect.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health: RF-Induced Body Current and Absorbed Power Determinations; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC).

Name: RF–Induced Body Current and Absorbed Power Determinations.

Time and Date: 9:30 a.m.–5:00 p.m.—October 24, 1989.

Place: Robert A. Taft Laboratories, Taft Auditorium, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To review and discuss the utility of body current methodology and calculations to determine and minimize worker exposures to radiofrequency (RF) sources.

Contact Person: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, (C27), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533–8482, FTS: 684–8482.

Dated: September 26, 1989.

Robert L. Foster,

Assistant Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89–23128 Filed 9–29–89; 8:45 am]

BILLING CODE 4160–19–M

Health Care Financing Administration

[IOA–21–N]

Medicare and Medicaid Programs; Meeting of the Quadrennial Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Quadrennial Advisory Council on Social Security.

DATE: The meeting will be held on October 13, 1989, from 1 p.m. to 5 p.m. eastern daylight saving time (e.d.s.t.), and on October 14, 1989, from 8 a.m. to 4 p.m. e.d.s.t. The meeting will be open to the public.

ADDRESS: The meeting will be held at the Park Hyatt, 24th and M Sts. NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Darleen DiGirolamo, Administrative Officer, Quadrennial Advisory Council on Social Security, (202) 245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints a Quadrennial Advisory Council on Social Security every four years. The Quadrennial Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Quadrennial Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignani, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting will include the presentation of background information and general discussion related to health care financing for the elderly and nonelderly populations. Presentations will also include alternative systems with a mix of roles for government, employers, and individuals, including public payor/provider systems, systems that emphasize private responsibility, and systems that combine public and private responsibility in different ways.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: September 25, 1989.

Deborah J. Chollet,

Executive Director, Quadrennial Advisory Council on Social Security.

[FR Doc. 89–23348 Filed 9–29–89; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the second meeting of the National Deafness and Other Communication Disorders Advisory Board on October 6, 1989. The meeting will take place from 9 a.m. to 4:30 p.m. in the Bethesda Holiday Inn. Notice of the meeting room will be posted in the lobby.

The meeting will be open to the public and will include reports from Advisory Board subcommittees and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

Notice of this meeting is late because the meeting date had to be changed and it was difficult to find a agreeable time for all Board members.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496–7243, will furnish the meeting agenda, rosters of board members, and substantive program information upon request.

Dated: September 28, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23366 Filed 9–29–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–89–906; FR–2694]

Delegation of Authority With Respect to HUD Programs for the Homeless

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Title IV, subtitles C and D, and title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100–77, July 22, 1987; 42 U.S.C. 11301, *et seq.*) authorize the Secretary to carry out supportive housing demonstration programs for the provision of transitional housing and permanent housing for deinstitutionalized homeless persons, homeless families with children, homeless persons with mental disabilities, and other handicapped homeless persons; to provide supplemental assistance to facilities which assist the homeless for costs in excess of those covered by the Emergency Shelter Grant and Supportive Housing Demonstration Programs; and to identify suitable Federal real property for use as facilities to assist the homeless.

This notice delegates, to the Assistant Secretary for Community Planning and Development, the Secretary's power and authority with respect to these programs, with the exception of the authority to sue and be sued, and revokes delegations previously made to other assistant secretaries with respect to these programs.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: James Forsberg, Coordinator, Special Needs Assistance Program, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6300. (This is not a toll-free number.)

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The Assistant Secretary for Community Planning and Development is delegated the power and authority of the Secretary of HUD with respect to the Homeless programs authorized by title IV, subtitles C and D and Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100–77, July 22, 1987, 42 U.S.C. 11301, *et seq.*) which are set forth below, with the authority to redelegate such authority to employees of the Department unless otherwise specified. The Assistant Secretary for Community Planning and Development may issue rules and regulations to carry out these programs, and may waive such rules or regulations to the extent authorized by statute or by the rules or regulations but may not redelegate the authority to issue or waive rules and regulations. This delegation includes:

1. The authority of the Secretary of Housing and Urban Development with respect to the Supportive Housing Demonstration Program authorized by title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77, approved July 22, 1987; 42 U.S.C. 11381, *et seq.*).

2. The authority of the Secretary with respect to supplemental assistance for facilities to assist the homeless under title IV, subtitle D of the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77, approved July 22, 1987; 42 U.S.C. 11392, *et seq.*).

3. The authority of the Secretary to identify unutilized and underutilized Federal real property for use as facilities to assist the homeless under title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (Public Law 100–77, approved July 22, 1987; 42 U.S.C. 11411).

Delegations Revoked

Paragraph 12 of the Consolidated Delegations of Authority to the Assistant Secretary for Policy Development and Research, 52 FR 48730, 48731 (December 2, 1988).

[Docket No. D–88–889]

Paragraph 17 of the Consolidated Delegations of Authority to the Assistant Secretary for Housing-Federal Housing Commissioner, 54 FR 22033, 22034 (May 22, 1989).

[Docket No. D–89–896]

Any redelegations issued, or actions taken, under any delegation revoked herein shall remain in effect until expressly modified or revoked.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–23093 Filed 9–29–89; 8:45 am]

BILLING CODE 4210–29–M

Office of Administration

[Docket No. N–89–2056]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 26, 1989.

John T. Murphy,

Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Income Verification Procedures for Applicants and Participants in HUD Programs FR–2588.

Office: Office of Inspector General.

Description of the Need for the Information and Its Proposed Use: Section 904 of Public Law 100–628, permits the Department to require applicants/participants and household members to sign consent forms allowing HUD, Public Housing Authorities (PHAs), or the owner to verify employee income information. Also, HUD or PHAs can request that the State Wage Information Collection Agency (SWICA) release wage and unemployment information. A SWICA is required to disclose data to HUD and PHAs.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Wage and claim information	53		1		16		848

Total Estimated Burden Hours: 848

Status: New

Contact: Mary P. Barry, HUD, (202) 426–6493; John Allison, OMB, (202) 395–6880.

Dated: September 26, 1989.

[FR Doc. 89–23095 Filed 9–29–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

[Docket No. N–89–2057; FR–2701]

FHA Debenture Recall

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Chief, Financial Procedures and Review Branch, Office of Financial Management, Room 9138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–1591. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 8.5 percent or higher, outstanding as of September 30, 1989. The date of the call is January 1, 1990. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1989.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debenture will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by a mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1989. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after October 1, 1989, and provision will be made for the payment of final interest due on January 1, 1990, with the principal thereof, to the actual owner, as shown by the assignments thereon.

Instructions for the presentation and surrender of debentures for redemption will be provided by the Department of the Treasury.

Dated: September 26, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89–23094 Filed 9–29–89; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1948; FR–2607]

Requirements for Single Family Mortgage Instruments; Announcement of Mandatory Date for New Requirements; and Corrections

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of policy; announcement of mandatory date for new single family mortgage instruments requirements; announcement of OMB control number; and correction.

SUMMARY: On June 29, 1989, the Department published a notice announcing a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. The notice indicated that mortgagees would be responsible for developing or procuring their own instruments with provisions required by HUD, since the Department will no longer print or distribute single family mortgage forms, and will not approve the text of a complete form for each state. The effective date section of that document stated that the notice was effective June 29, 1989, but compliance would be optional until a later date or dates was announced in the **Federal Register**. This document announces a mandatory date for those new requirements. It also announces an OMB approval number under the Paperwork Reduction Act and corrects the Model Mortgage Form, which was Exhibit A to the notice of policy.

EFFECTIVE DATE: Compliance with the new requirements will be mandatory for insured single family mortgages closed on or after March 1, 1990 (June 1, 1990 for Puerto Rico, the Virgin Islands and Guam). Mortgagees may comply with the new requirements earlier at their option.

FOR FURTHER INFORMATION CONTACT: Donald B. Alexander, Home Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, Room 9252, 451 7th Street, SW., Washington, DC 20410, telephone No. (202) 755–7070. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 29, 1989 (54 FR 27596), the Department published a notice of policy that announced a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. The notice indicated that HUD will no longer print or distribute single family mortgage forms and will not approve the text of a complete form for each state. Mortgagees are now responsible for developing or procuring their own instruments, including in them certain specific provisions required by HUD and any additional provisions needed to produce a legally enforceable instrument conforming to the law of the state in which the property is located.

The effective date section of that notice stated that although the notice itself was effective on June 29, 1989, compliance was optional until "a date or dates to be later announced in the **Federal Register**." Initially, the Department was unable to announce a mandatory date for the new requirements because OMB had not granted approval of the information collection requirements as required under the Paperwork Reduction Act of 1980. OMB has now granted approval under OMB control number 2502–0404. Therefore, the Department now has a mandatory compliance date for these new requirements.

In addition, this document corrects the Model Mortgage Form which was Exhibit A to the policy notice. The first sentence of Paragraph 17 of the Model Mortgage Form was intended to be an adaptation of language from the FNMA/FHLMC mortgage form for Michigan, as indicated in footnote 6 of the Model Mortgage Form. Some of the FNMA/FHLMC language was inadvertently omitted.

The first sentence of Paragraph 17 of the Model Mortgage Form is being corrected.

Accordingly, the following corrections are being made to the Requirements for Single Family Mortgages Instruments, Notice of Policy, FR Doc. 89–15325,

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published June 29, 1989 (54 FR 27596), to read as follows:

1. On page 27596, in the first column, the **EFFECTIVE DATE** is corrected to read:

EFFECTIVE DATE: Compliance with the new requirements will be mandatory for insured single family mortgages closed on or after March 1, 1990 (June 1, 1990 for Puerto Rico, the Virgin Islands and Guam). Mortgagees may comply with the new requirements earlier at their option.

2. On page 27596, in the **SUPPLEMENTARY INFORMATION** section, in the third column, correct the first sentence and remove the second and third sentences under the heading "Paperwork Requirements", to read:

"The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502–0404. Public reporting * * *".

3. On page 27607, in Exhibit A, the Model Mortgage Form, in Paragraph 17, remove the first sentence, following the bracketed material, and substitute the following:

"If Lender requires immediate payment in full under paragraph 9,[6] Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees and costs of title evidence."

Dated: September 26, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–23092 Filed 9–29–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

National Strategic Materials and Minerals Program Advisory Committee

Renewal; National Strategic Materials and Minerals Program Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the renewal of the National Strategic Materials and Minerals Program Advisory Committee. Following consultation with the General Services Administration, the Secretary is renewing the Advisory Committee to advise the Secretary of the Interior with respect to his responsibilities for stratgeic materials and minerals issues.

Further information regarding the National Strategic Materials and Minerals Program Advisory Committee may be obtained from Brenda Kay, Staff Assistant, Office of Water and Science, Room 6650, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240; (202) 343–2136.

The certification of renewal is published below.

Certification

I hereby certify that the renewal of the National Strategic Materials and Minerals Program Advisory Committee is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by those statutory authorities listed in the Federal Land Policy and Management Act, the Mining and Minerals Policy Act of 1970, the National Materials and Minerals Policy Research and Development Act of 1980, the Defense Production Act of 1950, as amended, and the organic legislation of the Department and the several bureaus and agencies thereof.

Manuel Lugan Jr.,

Secretary of the Interior.

[FR Doc. 89–23096 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–53–M

Bureau of Land Management

[AZ–027–9–25]

Availability of the Final Lower Gila South Resource Management Plan Amendment (Goldwater Amendment) and Environmental Assessment, Phoenix District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Lower Gila South Resource Management Plan Amendment (Goldwater Amendment) and Environmental Assessment, Phoenix, District.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976, section 102(2)(c) of the National Environmental Policy Act of 1969 and the Military Lands Withdrawal Act of 1986 (Pub. L. 98–606), the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Lower Gila South Resource Management Plan. The amendment involves 1.6 million acres of land in southwest Arizona. The land lies within Maricopa, Pima and Yuma counties. The amendment describes the resource management practices the BLM intends to implement on the Barry M. Goldwater Air Force Range.

Among the management actions prescribed in the Final Amendment are the designation of three Areas of Critical Environmental Concern encompassing 191,500 acres. These areas include: (1) Tinajas Altas Mountains 53,000 acres; (2) Gran Desierto Dunes 25,500 acres and (3) Mohawk Mountains and San Dunes 113,000 acres. Major resource use limitations within these ACECs include:

—limit vehicle use to designated roads;
—limit military use, to the extent possible, within ACECs;
—establish interpretation facilities, hiking trails, and primary public access routes;
—prohibit land use authorizations for non-military actions;
—reclaim damaged soils and landscape areas using applicable measures;
—establish long-term study plots for ecological evaluation;
—establish regular use supervision by rangers;
—prohibit woodcutting and camping within certain areas.

The protest period will begin upon publication of this notice in the **Federal Register** and will run for 30 days after which the Decision will become final.

The document contains procedures for protesting the plan or any part of it. These procedures also can be found in the Code of Federal Regulations (43 CFR 1610.5–2).

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after 30 days from the date of this notice.

SUPPLEMENTARY INFORMATION: A limited number of copies of the amendment and environmental assessment are available upon request to the Phoenix District Manager, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. There are also copies available for review at the above location.

FOR FURTHER INFORMATION CONTACT: Carole Hamilton, Lower Gila Resource Area Manager, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, Telephone—602–863–4464.

Dated: September 26, 1989.

Charles Frost,

Associate District Manager.

[FR Doc. 89–23129 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–451 (Preliminary)]

Gray Portland Cement and Cement Clinker From Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–451 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of gray portland cement and cement clinker, provided for in subheadings 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 511.14 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 13, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201), as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–252–1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 26, 1989 by Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement of Washington, DC.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989) each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 17, 1989 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–252–1191) not later than October 13, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 20, 1989 a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7), as amended by 54 FR 13672 (April 5, 1989) and 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), may comment on such information in their written brief, and may also file additional written comments on such information no later than October 23, 1989. Such additional comments must be limited to comments on business

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proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 28, 1989.

By order of the Commission.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89-23260 Filed 9-29-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-448, 449, and 450 (Preliminary)]

Sweaters Wholly or in Chief Weight of Man-Made Fibers From Hong Kong, the Republic of Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-448, 449, and 450 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Hong Kong, the Republic of Korea ("Korea"), and Taiwan of sweaters, wholly or in chief weight of man-made fibers ("sweaters of man-made fibers") [1] provided for in subheadings 6103.23.00, 6103.29.10, 6103.29.20, 6104.23.00, 6104.29.10, 6104.29.20, 6110.30.10, 6110.30.20, 6110.30.30, and 6110.90.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 381.24, 381.25, 381.35, 381.66, 381.85, 381.89, 381.90, 381.99, 384.18, 384.27, 384.54, 384.77, 384.80, 384.96, and 791.74 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 6, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted in response to a petition filed on September 22, 1989, by the National Knitwear on Sportswear Association, New York, NY.

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 12, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than October 6, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before October 16, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than October 19, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 27, 1989.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89-23237 Filed 9-29-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 314X)]

Exemption; CSX Transportation, Inc.—Abandonment Exemption—in Logan County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment to abandon its 4.21-mile line of railroad between milepost 0.0, at Mud Junction, and milepost 4.21, at Island Creek Mine No. 29 near Argonne, in Logan County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 1, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 12, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 23, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 6, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 20, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-22934 Filed 9-29-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Haverstraw Joint Regional Sewerage Board

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Haverstraw Joint Regional Sewerage Board*, 89 Civ. 6355 (MEL), has been lodged with the United States District Court for the Southern District of New York. The complaint alleges violations by the Haverstraw Joint Regional Sewerage Board ("HJRSB") of Section 301 of the Clean Water Act, 33 U.S.C. 1311, and HJRSB's State Pollutant Discharge Elimination System ("SPDES") permit resulting from HJRSB's failure to timely and adequately implement its Industrial Pretreatment Program. The complaint seeks injunctive relief and civil penalties. The consent decree requires HJRSB to inspect all industrial users ("IUs") within three months of entry of the decree, issue wastewater contribution permits to all unpermitted significant industrial users ("SIUs") within two months of the date of entry of the consent decree, submit monthly progress reports to EPA regarding pretreatment program implementation, develop and implement specific Enforcement Response Procedures to address any pretreatment violations, and pay a civil penalty of $25,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Haverstraw Joint Regional Sewerage Board*, D.J. Reference No. 90-5-1-1-2878.

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[1] For purposes of this investigation, sweaters of man-made fibers are defined as knitted or crocheted garments wholly or in chief weight of man-made fibers, designed to cover the upper parts of the body and in a variety of forms, including jackets, vests, cardigans with button or zipper fronts, and pullovers, the foregoing usually having ribbing around the neck, bottom, and/or cuffs (if any). The term encompasses garments of various lengths but most typically ending at the waist. The phrase "in chief weight of man-made fibers" includes sweaters where the man-made fibers predominate by weight over each other single textile material. *Excludes* sweaters 23 percent or more by weight of wool. *Includes* men's, women's, boys' or girls' "sweaters", as defined above, but does *not* include sweaters for infants 24 months of age or younger. *Includes* all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, includes only those with a knit-on rib at the bottom.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

The proposed Consent Decree may be examined at the office of the United States Attorney, One St. Andrew's Plaza, New York, New York 10007 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.20 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23177 Filed 9-29-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated March 2, 1989, and published in the **Federal Register** on March 14, 1989, (54 FR 10597), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 22, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-23076 Filed 9-29-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Economic Survey Schedule

AGENCY: Office of the Secretary, Labor.

ACTION: Submission of the Economic Survey Schedule for clearance under the Paperwork Reduction Act.

SUMMARY: The Employment Standards Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C., chapter 35, 5 CFR Part 1320 (53 CFR 16618 to 16632, May 10, 1988)), is submitting a data collection on economic data in American Samoa to the Office of Managmeent and Budget for that Agency's approval. The information is to be collected under the authority of 29 CFR 511.6 and .11, Wage Order Procedure for Puerto Rico, Virgin Islands, and American Samoa.

DATE: ESA has requested an expedited review of this submission under the Paperwork Reduction Act, to be completed within 30 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the data collection should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-1301, Washington, DC 20210 (telephone (202) 523-6331). Comments should also be sent to the Paperwork Reduction Project, Office of Management and Budget, Room 3208, Washington, DC (telephone (202) 395-5880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: Current regulations (29 CFR 511.6 and 511.11) require that the Administrator of the Wage and Hour Division prepare for the industry committee an economic report containing data pertinent to establishing an industry wage rate in Samoa. Form WH-1, Economic Survey Schedule, is used by the Administrator to gather the information necessary to prepare this econimic report. Data concerning business operations and employment are provided on the WH-1 by respondents in Samoa covered by the FLSA. This information is essential to enable the Administrator to prepare the economic report for the committee so that wage rates can be set for the various industries in American Samoa.

The Agency estimates that approximtely 120 respondents will be responding and the burden will be 45 minutes per response for a total of 90 burden hours.

Data collection must begin at the end of November 1989 in order to insure that the Department's economic report will be provided to the industry committee in a timely fashion.

The following submission for approval of the data collection has been submitted to OMB with a request for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC this 21st day of September 1989.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510-27-M

Standard Form 83 (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request
U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

2. Agency code
1215

3. Name of person who can best answer questions regarding this request
Howard Ostmann

Telephone number
( )

4. Title of information collection or rulemaking
Form WH-1 Economic Survey Schedule
WH-1 Inst.; Instructions for completing WH-1

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*
29 USC 205, 206(a)(3), 208, 29 CFR 511.6 and 511.11

6. Affected public *(check all that apply)*
1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
____, or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification	*Stage of development*	*Type of review requested*
1 ☐ Major	1 ☐ Proposed or draft	1 ☐ Standard
2 ☐ Nonmajor	2 ☐ Final or interim final, with prior proposal	2 ☐ Pending
	3 ☐ Final or interim final, without prior proposal	3 ☐ Emergency
		4 ☐ Statutory or judicial deadline

9. CFR section affected
_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E O 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
Signature of authorized regulatory contact	Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev 9-83)
Prescribed by OMB
5 CFR 1320 and E O 12291

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PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Compensation; minimum wages; salary surveys; economic surveys; industry committees; American Samoa' Form WH-1 is used by the Wage-Hour Division to prepare an economic report used by an industry committee to set industry minimum wage rates in American Samoa.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 ☐ Regular submission
2 ☐ Emergency submission *(certification attached)*
Information collections contained in rules
3 ☒ Existing regulation *(no change proposed)*
4 ☐ Notice of proposed rulemaking (NPRM)
5 ☐ Final, NPRM was previously published
6 Final or interim final without prior NPRM
A ☐ Regular submission
B ☐ Emergency submission *(certification attached)*
7 Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 ☐ New collection
2 ☐ Revision of a currently approved collection
3 ☐ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 ☒ Reinstatement of a previously approved collection for which approval has expired
5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

WH-1, WH-1 Inst.

17. Annual reporting or disclosure burden

1 Number of respondents	120
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	120
4 Hours per response	45 mins.
5 Total hours *(line 3 times line 4)*	90

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17.5 plus line 18.3)*	90
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	90
Explanation of difference	
4 Program change	+ 90
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

1215-0028

21. Requested expiration date

Jan. 31, 1990

22. Purpose of information collection *(check as many as apply)*

1 ☐ Application for benefits
2 ☐ Program evaluation
3 ☐ General purpose statistics
4 ☒ Regulatory or compliance
5 ☐ Program planning or management
6 ☐ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 ☐ Recordkeeping
Reporting
2 ☐ On occasion
3 ☐ Weekly
4 ☐ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☐ Annually
8 ☒ Biennially
9 ☐ Other *(describe)*

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 ☒ Voluntary
2 ☐ Required to obtain or retain a benefit
3 ☐ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

29 CFR 511.6 and 511.11 ; or _____ FR _____ , or, Other *(specify)* 29 U.S.C. 205, 206(a)(3), 208

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with

Signature of program official Daniel F. Sweeney, Chief, Branch of Management Review and Analysis — Date 9/19/89

Signature of agency head, the senior official or an authorized representative — Date 21 SEP 89

U.S. GOVERNMENT PRINTING OFFICE: 1987 O - 413-400

Justification—WH-1, Economic Survey Schedule

1. Sections 5, 6(a) (3) and 8 of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.) require that covered, non-exempt employees in American Samoa must be paid at the applicable minimum wage rate established by the Secretary of Labor in accordance with recommendations of a special industry committee. The committe is to recommend to the Secretary the highest minimum wage rate (not to exceed the rate required in FLSA section 6(a) which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment. The committee must consider the wages established by collective bargaining agreements in various industries and wages paid by employers who voluntarily maintain minimum wage standards. This committee, appointed by the Secretary, is composed of residents of Samoa including disinterested persons representing the public, a like number representing employees in the industry and a like number representing employers in the industry. The Secretary must submit to the industry committee available data to enable the committee to recommend the industry wage rates.

Current regulations (29 CFR 511.6 and 511.11) require that the Administrator of the Wage and Hour Division prepare for the industry committee an economic report containing data pertinent to establishing an industry wage rate in Samoa. Form WH-1, Economic Survey Schedule, is used by the Administrator to gather the information necessary to prepare this economic report. Data concerning business operations and employment are provided on the WH-1 by respondents in Samoa covered by the FLSA. This information is essential to enable the Administrator to prepare the economic report for the committee so that wage rates can be set for the various industries in American Samoa.

2. WH-1 is a voluntary use form completed by businesses in American Samoa to disclose certain economic data concerning their particular industry. All covered industries in Samoa are requested to provide data. The completed forms are collected and examined by an employee of the Wage-Hour Division sent to American Samoa for one month to complete the survey. In addition, the employee identifies any business which has improperly completed or failed to complete the form and provides assistance that may be required by these businesses in completing the form. The data supplied on the completed forms are used by Wage-Hour to prepare an economic report to provide the industry committee with the information necessary to set the appropriate wage rates. Without the information provided on the forms, the Department would be unable to prepare an economic report and thus would be unable to provide the industry committee with the data necessary to recommend wage rates for the various industries in American Samoa.

3. There is no approved information technology available to provide the data required to prepare the economic report necessary to set wage rates in American Samoa. However, the submission of photocopies of the economic survey form is sufficient to satisfy the requirements of the regulations.

4. There is no duplication of existing Wage-Hour requirements.

5. Since the setting of wage rates in American Samoa is a program unique to the Wage and Hour Division, no similar information is available from any other source.

6. The information collection does involve small businesses. The use of the form, however, is optional. It also provides an easy method for the paticipating businesses to provide the information necessary to prepare the economic report needed by the industry committee to set the wage rates in American Samoa as required by law. The burden on small businesses to complete this voluntary form would be minimal since the information requested would generally be maintained in customary or usual business records.

7. It is a statutory requirement of the FLSA that the Department of Labor provide economic data to an industry committee to enable that committee to set wage rates in various industries in American Samoa. Less frequent collection of the economic data would prevent the Department from fulfilling its statutory obligation.

8. The information collection is conducted in a manner which is consistent with the guidelines on 5 CFR 1320.6.

9. The form was last utilized in the fall of 1986. No negative comments were received from employers who were contacted regarding completion of the form.

10. Confidentiality is assured with respect to income and expense statements provided by the businesses completing the forms. Financial information is protected from disclosure under Exemption 4 of the Freedom of Information Act and 29 CFR Section 70.24.

11. There are no sensitive questions.

12. The biennial Federal cost includes the printing and mailing of 120 forms. In additioin, there is the cost incurred in sending a GS-12/4 Wage-Hour Compliance Officer (annual salary, $38,039) to American Samoa for one month to collect the survey forms and the cost for three months spent by a GS-12/4 Wage-Hour analyst (annual salary, $38,039) to review the forms and prepare the economic report. Therefore, the annual Federal costs would be:

Printing 120 copies of the form	$6.00
Mailing (120 forms x $.25)	30.00
Travel and expense for Compliance Officer:	
Salary (½ year x $38,039)	3,170.00
Per diem (30 days x $102)	3,060.00
Travel (round trip from Honolulu to Pago Pago, American Samoa)	700.00
Car rental (estimated at $30 per day for a maximum of 30 days)	900.00
Other incidental expenses	300.00
Wage-Hour Analyst expense (¼ year x $38,039)	9,510.00
Total Federal costs	17,676.00

13. It is estimated that 120 forms are used biennially. Each form is completed only once by each respondent in the year the survey is conducted. Therefore, there are 120 annual responses. It is estimated that it requires 45 minutes for each respondent to complete this form since much of the information requested would already be maintained in customary or usual business records. This produces 90 annual burden hours (120 annual responses x 45 minutes = 90 annual hours).

14. This form was formerly cleared through 10/31/89 and has dropped from inventory. When the form was last cleared, burden was estimated at one hour per response. This has been reestimated at 45 min. because of the deletion of some questions and simplification of the form.

15. This information is not published. The survey material is used only by the Wage-Hour Division in the preparation of the economic report provided to the industry committee to determine the industry wage rates in American Samoa.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division, Washington, DC 20210

Subject: 1989 Wage-Hour Survey for American Samoa

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Sir/Madam: Please read the enclosed instructions and complete the enclosed Form WH–1, Economic Survey Schedule.

The information in this report will be used by an Industry Committee to recommend minimum wage rates for industries in American Samoa.

Please remember that the "reference payroll period" is the calendar week of November 12, 1989 to November 18, 1989. See items 8 and 9 and page 2 of the Economic Survey Schedule. You may request assistance in filling out this form.

A Compliance Officer will be in Pago Pago to conduct the survey. Please keep the Economic Survey Schedule (Form WH–1) and show it to him/her when he/she calls at your establishment.

Thank you for your cooperation.

Sincerely,

BILLING CODE 4510-27-M

Economic Survey Schedule

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

1. Name and Address of Establishment: (Include ZIP Code and telephone number)

OMB No. 1215-
Expires:

2. Industry and Classification:

3. Type of business activity:

4. Source of materials:

5. Destination of finished products:

6. Is firm tax exempt?
☐ Yes ☐ No ☐ Pending

7. You are requested to furnish copies of balance sheets and income and expense statements for the 2 most recent years. (Income and expense statements are held in confidence.) Attached:
☐ Yes ☐ No

8. Survey payroll period:
Begins _____ Ends _____

9. a. Total employment during survey payroll period:

b. Employees covered by this industry wage order:

c. Employees not covered by this industry wage order:

10. Employment covered by this industry wage order (Item 9b) for the 3 most recent years:

Year	Feb.	May	Aug.	Nov.

11. Collective bargaining agreement: ☐ Yes ☐ No If yes, please attach a copy.

12. Fringe benefits provided by establishment:

Number of paid holidays: _____ ☐ Health care plan

Number of paid vacation days: _____ ☐ Pension plan

Number of paid sick leave days: _____ ☐ Other (specify) _____

13. Additional remarks:

14. Name of person submitting information:	Title:	Date submitted:

Form WH-1
Rev. July 1989

ECONOMIC SURVEY SCHEDULE | Payroll Period: From _____ Thru _____ | Page ____ of ____

15. Name: | 1 | 2 | 3

16. Address:

17. Wage order industry: | 4 | 5 | 6

18. Wage order classification: | 7 | 8 | 9

19. Wage order rate in effect during payroll period: | 10 | 11 | 12 | 13

20. Unduplicated number of covered employees under this classification in this establishment: Total = _____ | 14 | 15 | 16 | Homeworkers _____ | 17 | 18 | 19

21. EMPLOYMENT AND EARNINGS

a. Number Of workers 20 - 22	b. Straight time hourly wage rate 23 - 26	c. Salary or incentive earnings (1) Hours worked for → 27 - 30	c. Salary or incentive earnings (2) Total straight-time earnings 31 - 36	a. Number Of workers 20 - 22	b. Straight time hourly wage rate 23 - 26	c. Salary or incentive earnings (1) Hours worked for → 27 - 30	c. Salary or incentive earnings (2) Total straight-time earnings 31 - 36

Public Burden Statement

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1215-0028), Washington, D.C. 20503.

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U.S. Department of Labor

Employment Standards Administration,

Wage and Hour Division

Instructions for Completing Form WH–1 Economic Survey Schedule

Information requested on Form WH–1 is for use in Industry Committee Review of Minimum Wage Rates, pursuant to sections 5, 8 and 8 of the Fair Labor Standards Act (FLSA). The following instructions have been prepared to assist you in completing the form.

Use of form: For companies with more than one establishment, use a separate survey form for each establishment. Where a single location encompasses two or more distinct and separate economic activities for which different industry wage order definitions are applicable, such activities should be treated as separate establishments.

Establishment defined: An "establishment" is generally defined as a single physical location where business is conducted or where services or industrial operations are performed; for example, a factory, mill, store, mine, or farm. Where a single physical location comprises two or more units which maintain separate payroll and inventory records and which are engaged in distinct or separate industrial activities, each unit should be treated as a separate establishment. An establishment is not necessarily identical with the business concern or firm, which may consist of one or more establishments. It is also to be distinguished from organizational sub-units, departments, or divisions within an establishment.

Item 1. If the establishment has a legal name and a trade name, enter the legal name, the abbreviation "dba" (doing business as), and the trade name. Enter the address of the office of the establishment. If the address of the plant or the store is different from the address of the office, enter it in "Additional remarks." Enter the post office box number, if any, and the telephone number where management can be reached.

Item 2. Enter the name of the industry, and classification within the industry if applicable, whose definition covers the activities of this establishment.

Item 3. State the principal activity or activities performed by the establishment. If the establishment is engaged in manufacturing, list the principal products. If the establishment is engaged in service activity, list the types of services performed.

Item 4. Indicate whether raw materials or goods to be sold at retail are obtained from the U.S. mainland, from a foreign country, or from local sources. Please name the foreign countries.

Item 5. Indicate whether goods are shipped to the U.S. mainland, to foreign markets, or sold locally. Please name the foreign countries.

Item 6. If yes, please indicate length of exemption.

Item 7. Income and expense statements are held in confidence. A combined statement will be prepared for an industry only if it can be done without revealing individual firm data.

Item 8. The survey payroll period is the most recent period which includes the 12th of the month. If this period is not a normal payroll period, enter the first normal payroll period which precedes it. Note the reason for an abnormal payroll period in "Additional remarks." Examples of payroll periods considered abnormal would be those during which there was little business activity due to seasonal factors, natural disasters, strikes, etc.

Item 9a. Total employment includes all employees in the establishment, whether or not covered by FLSA or exempt from FLSA overtime provisions. Include part-time employees and any employee who received pay for any part of the survey payroll period. Also include persons on vaction or sick leave for which they received pay.

Item 9b. Include all covered, nonexempt employees.

Item 9c. Include those employees exempt from FLSA overtime provisions, those not covered by FLSA, and those who may be covered by another FLSA industry wage order.

Item 10. Enter the total number of covered employees employed during workweeks containing the 12th of the month. For the current payroll period this figure would be the same as Item 9b. If accurate data cannot be given going back 3 years, then please provide estimates.

Item 11. If a collective bargaining agreement is in effect, please attach a copy.

Item 12. Only fringe benefits involving a cost to the employer should be entered. Enter in "Additional remarks" any information on variations in fringe benefits based on length of service or other factors.

Item 13. If it is necessary to clarify or expand on the information requested, use this section to do so.

Item 14. Enter the name and title of the person submitting the information and the date submitted.

Items 15–21. This section of the form is used to report data on the employment and earnings in each surveyed establishment in a manner permitting direct tabulation by automatic data processing equipment. It is therefore essential that, for companies with more than one establishment or establishments with employees in two or more classifications, a separate sheet be used to report the employment and earnings in each classification in each establishment.

If more than one sheet is required for an establishment due to the volume of employees or a multiplicity of classifications within the establishment, enter the sequential page number and total pages for the establishment, e.g. Page 1 of 3, 2 of 3, 3 of 3. Include all classifications within the establishment in the total number of pages. Schedules for multi-establishments within a single company shall be stapled together to facilitate the assignment of a code number which will identify the individual establishments and classifications as well as the company.

Payroll period. Enter the beginning and ending date of the payroll period covered by the survey. (See Item 8.)

Item 15. Enter the legal and trade name of the firm. Leave boxes 1–3 blank.

Item 16. Enter the address of the physical location of the establishment.

Item 17. Enter the name of the wage order industry. Leave boxes 4–6 blank.

Item 18. Enter the name of the classification within the wage order industry. Leave boxes 7–9 blank.

Item 19. (To be completed by the Wage and Hour Division.) Enter the current wage order rate (industry minimum) applicable to this industry or classification in boxes 10–13. The rate is to be reported in dollars and cents with cents expressed in decimals, not in fractions. For example, if the current wage order rate in effect is one dollar and eight-five cents, the entry in boxes 10–13 would be 1850. If the current wage order rate is one dollar, eighty-five and one-half cents, the entry in boxes 10–13 would be 1855. Note that box 13 is always assigned to the fractional part of a cent and must be zero if the wage rate is an even-cent amount.

Item 20. Enter the total unduplicated number of employees covered and not exempt in this industry and classification in this establishment in boxes 14–16. Include any homeworkers reported in boxes 17–19. NOTE: If an employee has worked in two or more classifications or in two or more establishments of the same company, he is to be reported only once in the establishment and classification in which he worked the greater number of hours during the survey period. If the hours worked in each classification or establishment cannot be determined or are equally proportioned, include the employee only once in the applicable classification with the highest wage order rate.

Enter the unduplicated number of homeowners covered and not exempt under this classification in this establishment in boxes 17–19. The entries in boxes 14–16 and 17–19 shall be preceded by zeros, where necessary, to fill all of the boxes.

Numbers which have more digits then the number of boxes provided shall be entered in entirety in the available space to the left of the boxes.

Item 21. Enter the employment data in column a. and the earnings data in column(s) b. or c(1) and c(2) as applicable.

Hourly paid employees. Neither hours worked (column c(1)) nor total earnings (column c(2)) need be shown for employees whose pay is based solely on flat hourly rates. Where two or more employees have the same hourly wage rate, enter (on one line) in column a. the number of workers and in column b. the hourly rate. The hourly rate is to be reported in dollars and cents rounded to the nearest half cent. Cents are to be expressed in three decimal places and not in fractions. For example, if the employee is paid one dollar and forty-five cents an hour, the entry would be 1.450; if the employee is paid one dollar and two and one-half cents an hour, the entry would be 1.025.

Employees paid salaries and/or incentive earnings. It is not necessary to compute the straight-time hourly wage rate (column b) of employees paid salaries or incentive earnings. If two or more workers have the same number of hours worked and total straight-time earnings, enter the combined data on one line. Otherwise enter data for each employee on a separate line.

Column c(1). "Hours worked for" shall include total hours worked at straight-time and overtime rates, plus any hours paid for standby, reporting time, holidays, vacations, sick leave, or other leave, providing that payment was made directly by the establishment. Do not convert overtime or other premium paid hours to straight-time equivalent hours. The number of hours is to be counted in quarter hours and expressed in two decimal places and not in fractions. For example, if an employee worked thirty-eight and three-quarters hours, the entry would be 38.75; if the employee worked thirty-nine and one half hours, the entry would be 39.50; if he worked forty-one and one-quarter hours, the entry would be 41.25.

Column c(2). "Total straight-time earnings" refer to earnings before deductions for old age and unemployment insurance, group insurance, withholding tax, bonds, and union dues. This includes pay for holidays, vacations, sick leave, and other leave, if payment is made directly by the establishment. It excludes premium (extra) pay for overtime or holday work; bonuses (unless earned and paid regularly each pay period); and retroactive pay. Straight-time earnings, including straight-time earnings for overtime hours worked, are to be reported in dollars and cents rounded to the nearest whole cent.

Homeworkers. If homeworkers are employed, indicate the total number of homeworkers in column a. and combined earnings in column c(2). Enter the letter "H" in column c(1) and enter the applicable classification wage order rate in column b. expressed in dollars and cents to three decimal places (See Item 19).

FR Doc. 89–23078 Filed 9–29–89; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–7959 et al.]

Proposed Exemptions; Carstens Health Industries, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requested for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representation with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Carstens Health Industries, Inc. Employees Profit Sharing and 401(k) Plan (the Plan), Located in Chicago, Illinois

[Application No. D–7959]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of

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section 4975 (c)(1) (A) through (E) of the Code shall not apply to a proposed sale by the Plan of certain real estate limited partnership units (the Units) to Carstens Health Industries Inc. (the Employer), the sponsor of the Plan and as such, a party in interest with respect to the Plan, provided the sales price is the greater of $226,300 or the fair market value of the Units at the time of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which as of January 1, 1988, had 68 participants and $1,810,840 in assets. The trustees of the Plan are George P. Block, Barbara Ann Block and George R. Block, Jr. (the Turstees), who are also officers and directors of the Employer. George P. Block is also the majority shareholder of the Employer. The Employer is an Illinois corporation which is in the business of manufacture and sale of medical patient charting systems and other health care related facilities.

2. The 2010 Building Partnership (the Partnership) was formed on October 23, 1987. The sole business of the Partnership is the ownership and operation of a three-story medical office building, known as 2010 South Arlington Heights Road, Arlington Heights, Illinois (The Building). On June 12, 1987, the Plan paid $230,599 cash for 4.621 units of the Partnership and received $4,311.90 from the Partnership as a distribution for the quarter ending March 31, 1988. The Applicant represents that the Plan has not made any capital contributions to the Partnership since its initial investment. The Units were purchased from the Partnership, at that time an unrelated third party. The Trustees of the Plan believed that the purchase was a prudent investment for the Plan. However, the Building has depreciated in value and the rate of return has been lower than expected.

3. Donald C. Carroll and Warren E. Albert, independent appraisers with Allstate Appraisal Inc., were retained to determine the fair market value of these assets (Allstate Appraisal). The Allstate Appraisal determined the value of the Building as of May 23, 1988 by using a market comparison analysis of the earnings yield of similar parcels in the same marketing location. The Allstate Appraisal determined that the fair market value of the Building is $3,825,000. The net fair market value of the Partnership's assets was determined by subtracting the remaining bond mortgage ($1,677,607) from the fair market value. Thus, the net fair market value of the Partnership's assets is $2,147,393. The Plan has 4.621 units, each valued at $39,043. The net fair market value of the Plan's Units is thus $180,420.

4. The Employer proposes to purchase the Units from the Plan for $226,300 in cash.[1] This price equals the Plan's initial investment minus distributions during the holding period of the Units. The purchase price of $226,300 will also allow the Plan to recover any losses incurred as a result of the investment. No entities or individuals will receive a sales commission as a result of the transaction. The Employer currently owns 1.5 units of the Partnership. However, the proposed purchase of the Plan's Units will not create additional value for the units already owned by the Employer in as much as the Employer will continue to have only a minority interest in the Partnership.

5. Chicago Title and Trust Company (CTT), is a custodian and an investment manager for the Plan and it represents that it has no other relationship to the Employer or the Plan. CTT has advised the Plan to sell the Units because the investment is illiquid and was earning less than other alternative investments could earn. Also, CTT represents that because the investment is considered a long term investment by its definition and has certain restrictions regarding any sale, it does not lend itself to the participant directed type investment found in this profit sharing plan.

6. In summary, the Applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction;

(b) The Plan will not pay any commissions or other expenses with respect to the sale;

(c) The sale will allow the Plan to invest in other investment instruments with a higher return;

(d) The sale will allow the Plan to create a greater diversification of its assets;

(e) The sale will permit the Plan to recover its initial investment in the Units; and

(f) The purchase price will be the greater of $226,300 or the fair market value as determined by a qualified, independent appraiser at the time of the sale.

[1] The Employer represents that the limitations of section 415 of the Internal Revenue Code regarding employer contributions to defined contribution plans will not be exceeded as a result of the proposed transaction wherein the purchase price of the Units may exceed their fair market value.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Ekaterina Uzlyan of the Department telephone (202) 523-8194. (This is not a toll-free number.)

The Jay A. Baier, Ltd. Employees Profit Sharing Plan and Trust (the Plan), Located in Chicago, Illinois

[Application No. D-8026]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1(40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of undivided 25% and 50% interests in two real estate partnerships (collectively, the Partnerships) to Jay A. Baier (Mr. Baier), a party in interest with respect to the Plan.[2]

Summary of Facts and Representations

1. The Plan is a defined contribution plan which as of December 31, 1988 had $647,301 in assets. Jay A. Baier, Ltd. (the Employer) is an Illinois corporation engaged in the practice of law. Mr. Baier is the sole participant in the Plan, and the sole shareholder of the Employer.

2. In February 1975, Mr. Baier acting as a trustee for the Plan, purchased a 25% interest in the Read Limited Partnership (Read) for $30,625 cash. In September 1977, Mr. Baier purchased for the Plan a 25% interest in the Eakins Limited Partnership (Eakins) for $20,500 cash. The underlying asset of both Partnerships consists of farm land (the Land) which has been utilized in farming operations. The Land was purchased by

[2] Because Jay A. Baier is the only participant in the Plan and the Employer is wholly owned by Jay A. Baier, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Read and Eakins by a combination of equity contributed by the partners and mortgage financing. The mortgages are held by an independent third party. The Plan's mortgage liability in Read and Eakins is proportionate to the Plan's interest in each Partnership.

3. In August 1977 Read sold the original underlying farm property and in September 1977 acquired another farm for a total of $442,500. As a result of this sale and acquisition, the Plan retained its 25% interest in Read and received $6,103 in distribution from the sale of the original farm property. Since the acquisition of the Read interest in 1975, the Plan contributed to Read $56,432 to pay its share of Partnership costs, essentially interest on debt financing for property held by Read.

4. Between March 1984 and July 1987, approximately 45 acres of land held by Eakins were sold to independent third parties. The aggregate proceeds to Eakins from this sale amounted to $204,000, which was used to pay off a portion of the mortgage indebtedness on the remaining land held by Eakins. In 1985, the Plan paid $21,287 for an additional 25% interest in Eakins. Currently, Eakins holds approximately 80 acres of farm land. Since the acquisition of the Eakins' interest in 1977, the Plan contributed to Eakins an additional $44,378 to pay its share of partnership costs, essentially interest on debt financing.

5. The fair market value of the remaining Land held by the Partnerships has been determined by Robert Jaeger and Gene Jaeger, independent and qualified appraisers with Jaeger and Jaeger Midwest Appraisers. The appraisal, dated October 26, 1988, estimated that the fair market value of the land held by Read was $778,500. The second appraisal, dated December 2, 1988, also by Robert and Gene Jaeger, estimated that the fair market value of the land held by Eakins was $336,000. Both appraisals used the comparison and income approaches in determining the fair market value of the Land.

6. Two appraisals of the Plan's Partnership interests were performed by Steven M. Busa, a certified public accountant, independent of the parties involved (Appraisal 1 and Appraisal 2). Appraisal 1, dated April 11, 1989, estimated that as of December 31, 1988, the net fair market value of the 25% Read interest was $131,280. Read's liabilities are limited to a mortgage in the amount of $256,698 as of December 31, 1988, held by Furnas Realty. Appraisal 1 represented that there are no discounts for minority or majority positions in Read and that the interests are not readily marketable.

7. Appraisal 2, dated April 11, 1989, estimated that as of December 31, 1988 the net fair market value of the 50% interest in Eakins was $134,133. The Eakins' liabilities are also limited to a mortgage in the amount of $103,073 as of December 31, 1988, held by Furnas Realty. Appraisal 2 represented that there are no discounts for minority or majority positions in Eakins and that the interests are not readily marketable.

8. Mr. Baier proposes to purchase the Read and Eakins interests currently owned by the Plan for, respectively, $131,280 and $134,133 or their fair market values, if greater. The Applicant represents that the holding of interests in the Land is not in the best interest of the Plan. The economic return to the Plan can be increased through other investment instruments with a higher return. Also, currently approximately 50% of the Plan's assets are tied up in Eakins and Read. Thus, the sale will allow the Plan to greatly diversify its investment portfolio.

9. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The respective prices for Read and Eakins will be the greater of $131,280 and $134,133 or the fair market value as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plan will pay no costs or commissions associated with the sale;

(d) The sale will allow the Plan to diversify its investment portfolio; and

(e) Jay A. Baier as the sole participant of the Plan would be the only individual affected by the transaction.

Notice to Interested Persons

Because Jay A. Baier is the sole participant of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523-8194. (This is not a toll-free number).

James E. McIntosh, M.D., P.A. Defined Benefit Pension Plan (the Plan), Located in Tyler, Texas

[Application No. D-8077]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property located in Missoula County, Montana (the Property) to James E. McIntosh, M.D. (Dr. McIntosh), a disqualified person with respect to the Plan; provided that all terms of such transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with total assets of $651,125.35 as of September 30, 1988. The Plan is sponsored by James E. McIntosh, M.D., P.A. (the Employer), a Texas professional corporation by which Dr. McIntosh has engaged in the general practice of medicine in Tyler, Texas. Dr. McIntosh is the Plan's sole participant and trustee and the sole shareholder of the Employer.[3] Dr. McIntosh retired from practice on October 1, 1986, at which time the Employer ceased active operations. There are no active employees of the Employer. The Plan is in process of termination and Dr. McIntosh represents that there will not be any additional Plan participants.

2. Because Dr. McIntosh is in retirement and the Plan is being terminated prior to distribution of the assets, he is planning alternative investments and a rollover of assets into an individual retirement account. To accomplish these objectives, Dr. McIntosh represents that the Plan assets, including the Property, must be converted to cash. Therefore, Dr. McIntosh proposes to purchase the Property in his individual capacity from the Plan and is requesting an exemption to permit such transaction under the terms and conditions described herein.

3. The Property consists of 160 acres of unimproved forest and meadow land in Missoula County, Montana and is located approximately twenty five miles west of the city of Missoula. The Property was purchased on behalf of the Plan from unrelated parties in 1975 for a cash purchase price of $56,000. The

[3] Since Dr. McIntosh is the sole shareholder of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

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Property was selected for its investment potential with the intention that the Plan would realize a return on the investment therein upon resale of the Property. Dr. McIntosh represents that neither he nor any other parties in interest have utilized or occupied the Property, which remains vacant, since its acquisition by the Plan. As of June 20, 1988, the Property had a fair market value of $80,000, according to an appraisal conducted by the independent professional real estate appraisal firm of Hall-Widdoss, Inc. (Hall-Widdoss) in Missoula, Montana, which also describes the highest and best use of the Property as a combination of agricultural, residential and recreational uses.

4. It is proposed that Dr. McIntosh will pay the Plan cash for the Property in the amount of no less than $80,000. The appraisal of the Property conducted by Hall-Widdoss will be updated as of the sale date and the final purchase price for the Property will reflect increases, if any, in the Property's fair market value since the appraisal of June 20, 1988. Dr. McIntosh will bear all costs and expenses related to the transaction and no sales commissions or other fees will be paid in connection with the transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the requirements of section 4975(c)(2) of the Code for the following reasons: (1) The proposed transaction will enable the Plan's sole participant, Dr. McIntosh, to realize a total distribution of the Plan's assets in cash and to roll over such assets into an individual retirement account; (2) The Plan will receive cash for the Property in the amount of no less than its fair market value as of the date of the sale; and (3) The proposed transaction will only affect its sole participant, Dr. McIntosh, who desires that the transaction be consummated.

Notice to Interested Persons: Because Dr. McIntosh is the sole shareholder of the Plan sponsor and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Casino Signs Inc. Money Purchase Pension Plan (the Plan), Located in Las Vegas, Nevada

[Application No. D-8086]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of real property (the Property) by the Plan to W. Ben Maze, K.A. Maze and Michael Dean Rogers individually, officers and directors of Casino Signs Inc. (the Employer), and as such parties in interest with respect to the Plan, provided the Plan receives the greater of $96,6000 or the fair market value as determined by an independent, qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plan is a money purchase plan and trust with approximately 37 participants, which as of October 31, 1988 had $502,917 in assets. The current trustees of the Plan are W. Ben Maze, K.A. Maze and Michael Dean Rogers (the Trustees) who are also officers and directors of the Employer. The Employer is a Nevada corporation which is in the sign making business.

2. On September 3, 1985, the Plan bought the Property for $82,851 from an unrelated third party. The Property consists of .64 acres of unimproved vacant land located in Oquendo Industrial Park, Las Vegas, Nevada. The Property was originally purchased in order to diversify the Plan's investment portfolio and to increase the return to the Plan. However, since its purchase the Property has not appreciated as envisioned by the Trustees. It is represented that the Property has not been used by any parties in interest since its acquisition by the Plan.

3. The Applicant proposes to sell the Property to the Trustees, and after the sale, the Trustees intend to leaseback the Property to the Employer. An appraisal of the Property was prepared by Dennis Pulsipher (Mr. Pulsipher), an independent real estate appraiser with Circle Realty. Mr. Pulsipher used the comparable sales method and estimated that the fair market value of the Property as of May 15, 1989 was $92,000. However, because the Property will be ultimately leased back to the Employer, Mr. Pulsipher concluded that the Property's adjacency to the Employer's facilities merited a premium above the fair market value of $92,000. Specifically, Mr. Pulsipher stated that the Trustees should be willing to pay a premium for the Property because it would enable the Employer to expand its facilities. Mr. Pulsipher estimates that a $4,600 premium should thus be placed on the original appraisal value of $92,000. Thus, the Plan will receive at least $96,600 for the Property.

4. The Applicant represents that the transaction is desirable for the Plan and will increase the liquidity of the Plan's investment portfolio. The transaction is protective of the Plan and the fair market value of the Property was determined by a qualified independent appraiser. Finally, the Applicant maintains that economic hardship will result if the transaction is not consummated as the Plan will forego an opportunity to invest in vehicles with a higher return.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one time cash transaction;

(b) The price paid to the Plan will be the greater of $96,600 or the fair market value at the time of the sale as determined by an independent qualified appraiser;

(c) The Plan will pay no expenses associated with the sale; and

(d) The sale will allow the Plan to liquidate its assets and will provide cash for investments with a higher yield.

FOR FURTHER INFORMATION CONTACT: Ekaterina Uzlyan of the Department, telephone (202) 523-8184. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinotions, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-23173 Filed 9-29-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-85; Exemption Application No. D-7954 et al.]

Grant of Individual Exemptions; Margaret L. Lial, Inc. Defined Benefit Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Margaret L. Lial, Inc. Defined Benefit Pension Plan (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 89-Exemption Application No. D-7954]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain real property (the Property) from the Plan to Edwin C. Lial and Margaret L. Lial, disqualified persons with respect to the Plan, provided the Plan receives the greater of $220,000 or fair market value for the Property at the time of sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 23, 1989, at 54 FR 35097.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Hawaii Carpenters Annuity Fund (the Annuity Fund) and Hawaii Carpenters Financial Security Fund (the FS Fund; together, the Funds) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 89-86; Exemption Application Nos. D-8048 and D-8049]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of assets from the Annuity Fund to the FS Fund, provided each of the assets will be valued at its fair market value at the time of the transfer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 3, 1989 at 54 FR 27962.

Written Comments: The Department received one written comment with respect to the proposed exemption. The comment raised concerns regarding the allocation of the respective assets of the Annuity Fund and the FS Fund between pensioners and active employees. The applicants have responded that both Funds are defined contribution plans. Each participant has his own account in the plan, and the assets of that account can be used only for the benefit of that participant. In the case of a rollover from the Annuity Fund to the FS Fund, a separate account will be created for the participant making the rollover. The benefits payable to each participant will be limited to the value of his account(s). If the proposed transaction is consummated, the applicant represents that each participant making a rollover will have an aggregate account balance in the FS Fund that equals the sum of his previous FS Fund balance and his previous Annuity Fund balance. The participant's ultimate FS Fund benefit will be whatever benefit can be

[1] Because the Lial's are the sole shareholders of the Employer and the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

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purchased with such aggregate account balance. Each participant's benefits are paid only from his account(s), and no participant's account is or will be used to pay the benefits of any other participant.

The commentator also raised concerns relating to the allocation of administrative expenses of the two Funds. The applicants responded that administrative expenses of the Funds are properly allocated on a per capita basis and that after the proposed transaction is consummated, the administrative expenses should be lower because there will be one Fund rather than two.

The Department, having considered the entire record, has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

A. C. Products Co. Defined Benefit Pension Plan (the Plan) Located in Wooster, Ohio

[Prohibited Transaction Exemption 89-87; Exemption Application No. D-8090]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a parcel of improved real property (the Property) to Wayne Mullet, a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 8, 1989 at 54 FR 32543.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of September, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-23174 filed 9-29-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed revision to Federal Standard 1035.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on Federal Telecommunications Standard 1035, "Coding, Modulation, and Transmission Requirements for Single Channel, Medium and High Frequency Radiotelegraph Systems Used in Government Maritime Mobile Communications." This Federal Standard is being reviewed to determine: (1) If it is obsolete (no longer of value) and should be withdrawn, (2) If it is still useful but should be modified and updated, (3) If the service it standardizes is still required, but the standard should be completely rewritten.

DATE: Comments are due by January 2, 1990.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Mr. Robert T. Adair, telephone (303) 497-3723, or Mr. Tom Jones, telephone (303) 497-5953.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that propoer consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the proposed FED-STD 1035A should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 89-23205 Filed 9-29-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Meeting; Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Pre-Screening Section) to the National Council on the Arts will be held on October 24-26, 1989, from 9:00 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 22, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-23147 Filed 9-29-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-454, 50-455, 50-456, and 50-457]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses for the Commonwealth Edison Company (CECo, the licensee) for Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Braidwood Station, Units 1 and 2, located in Will County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would modify Technical Specification Figure 3.2-2 which depicts the normalized heat flux hot channel factor as a function of core height.

These revisions to the licenses of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, would be made in response to the licensee's application for amendment dated December 4, 1987.

The Need For The Proposed Action

Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses NPF-37 and NPF-66 for Byron Station, Units 1 and 2, respectively and Facility Operating Licenses NPF-72 and NPF-77 for Braidwood Station, Units 1 and 2, respectively. The amendments would modify Technical Specification Figure 3.2-2 to include more operating margin. This resulted from removing some conservatism when the small break loss of coolant accident analysis was repeated for the hot leg temperature reduction program.

Environmental Impacts of the Proposed Action

The Commission has evaluated the environmental impact of the proposed amendments. The modification to Figure 3.2-2 is acceptable since the analyses on which it is based used acceptable codes and the results of these analyses meet the criteria of 10 CFR 50.46. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Byron Station, Units 1 and 2" dated April 1982 and in the "Final Environmental Statement related to the operation of Braidwood Station, Units 1 and 2" dated June 1984, regarding environmental impacts from the plants during normal operation or after accident conditions, are not adversely altered by this action.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that no adverse environmental effects are associated with this proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements related to these facilities.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal of December 4, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 31, 1987 (52 FR 49540). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application dated December 4, 1987 and the Final Environmental Statements for Byron, dated April 1982, and Braidwood, dated June 1984; which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23159 Filed 9-29-89; 8:45 am]

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Department of Energy and National Aeronautics and Space Administration (Galileo Radioisotope Thermoelectric Generators); Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a petition dated September 3, 1989, filed by Thomas J. Saporito, Jr., on behalf of the Nuclear Energy Accountability Project (NEAP). NEAP requested that action be taken by the Nuclear Regulatory Commission (NRC) to intervene and stop the launch of the Galileo Spacecraft scheduled for October 12, 1989. The Petition alleged that the launch of the Galileo Spacecraft, which contains considerable quantities of plutonium-238, would be in violation of Public Law 94–79 which provides that the NRC shall not license any shipments by air transport of plutonium in any form with the exception of certain medical devices. The Petition also alleged a number of health and safety concerns should the launch fail and should the material be dispersed into the atmosphere.

On September 15, 1989, the Director of the Office of Nuclear Material Safety and Safeguards acknowleged receipt of the Petition and notified NEAP that a Decision pursuant to 10 CFR 2.206 would be issued within a reasonable time.

The Director has determined that the Petition should be denied. The reasons for the denial are set forth in the Director's Decision under 10 CFR 2.206, DD–89–07, issued on September 25, 1989, which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW, Washington, DC.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–23098 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–603 and 50–604; ASLBP No. 89–596–01–OM/SC

All Chemical Isotope Enrichment, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding

All Chemical Isotope Enrichment, Inc.

Construction Permit Nos. CPEP–1 and CPEP–2 (Order Modifying Licenses)

This Board is being designated pursuant to Licensee's request for a hearing regarding an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated August 8, 1989, entitled "Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked" in the matter of All Chemical Isotope Enrichment, Inc. (54 FR 35544–46, August 28, 1989).

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 26th day of September 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89–23141 Filed 9–19–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–36–MLA; ASLBP No. 89–593–01–MLA]

Combustion Engineering, Inc.; Hearing and Prehearing Conference

September 26, 1989.

In the Matter of Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM–33).

This proceeding involves a proposed amendment to Special Nuclear Materials License No. SNM–33, to authorize Combustion Engineering, Inc. to operate new pellet production lines at its facility in Hematite, Missouri. In response to a Notice of Opportunity for Hearing published on May 24, 1989 (54 FR 22510), four requests for a hearing and petitions for leave to intervene were received.

Notice is hereby given that a hearing will be held in this matter. By Memorandum and Order dated August 18, 1989 (LBP–89–23) and Memorandum and Order dated September 25, 1989 (LBP–89–25), the Presiding Officer has granted the petitions of Ms. Martha T. Dodson, of Crystal City, Missouri, Sen. Jeremiah W. (Jay) Nixon, of Jefferson County, Missouri, and Ms. Karen Sisk, of Imperial, Missouri. The Presiding Officer deferred action on the petition of the Coalition for the Environment, of St. Louis, Missouri, pending further consideration at a hearing conference.

This proceeding will be conducted under the Commission's "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings," set forth in 10 CFR part 2, subpart L. Further details appear in LBP–89–23 and LBP–89–25, referenced above. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L St. NW., Washington, DC.

Although this proceeding may be decided entirely on the basis of the parties' written filings, together with relevant documents, the Presiding Officer has the option in specified circumstances to entertain oral presentations from the parties. In addition, for reasons set forth in LBP–89–25, the Presiding Officer has determined that a prehearing conference to define and narrow issues to be litigated in the proceeding would be useful.

Please take notice that a prehearing conference will be held on Wednesday, October 25, 1989, beginning at 9:00 a.m., at the Student Center Building, Viking Room, Jefferson College, Hillsboro, Missouri.

Pursuant to 10 CFR 2.1211(a), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this license amendment proceeding. Although these statements are not evidence and do not become part of the decisional record, the Presiding Officer may ask the parties to develop information for the record (or at least have the NRC Staff consider information) concerning matters raised in such statements and not directly covered by issues identified by the parties. Limited appearances may either be in writing or oral. The Presiding Officer will hear oral statements on Tuesday, October 24, 1989, the evening prior to the prehearing conference, from 7:00–9:30 p.m. (or until the last person present has delivered his or her statement, whichever is earlier), at the Arts and Sciences Building, Little Theatre, Jefferson College, Hillsboro, Missouri. Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of statements and requests should also be forwarded to the Presiding Officer.

Dated: September 26, 1989, Bethesda, Maryland.

Charles Bechhoefer,

Presiding Officer, Administrative Judge.

[FR Doc. 89–23143 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

Duquesne Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66 issued to Duquesne Light Company, et al. (the licensees) for operation of the Beaver Valley Power Station Unit 1 located in Shippingport, Beaver County, Pennsylvania.

The proposed amendment would revise the Technical Specifications, Table 3.6–1 (Containment Penetrations) to remove containment isolation valve SI–91 listed for penetration 113–1–A. The bypass line on which valve SI–91 is installed would be eliminated since its function has been obviated by Amendment No. 71. The physical change would involve cutting the line and capping the resulting stubs.

Before issuance of the proposed license amendment, the Commissoin will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The bypass line and associated isolation valve were originally installed to flush the safety injection piping downstream of the Boron Injection Tank (BIT) after a safety injection actuation or functional test. Amendment 71 reduced the required BIT boron concentration so that flushing the downstream piping is no longer required. In addition, this piping configuration is similar to that arrangement identified in NRC Bulletin 88–08 "Thermal Stresses in Piping Connected to Reactor Coolant Systems," and if this valve and piping were removed, the potential for the incident that occurred at Farley Unit 2 would also be removed. This would effectively increase the safety posture of the plant by eliminating a potential unisolable piping failure. Hence the answer to the first criterion is negative.

The containment isolation valve will be physically removed and will no longer provide a potential pathway for containment leakage. The seal-welded caps on the piping will eliminate the potential for containment and safety injection leakage through this piping. Therefore, the answer to the second criterion is negative.

No analytical assumptions or acceptable criterion will be affected in any way by the proposed amendment. Hence the answer to the third criterion is also negatve.

Therefore, based on the above considerations, the staff has made a proposed determination that the requested amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By November 1, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 wich is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.174, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

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the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should also be given Datagram Identification Number 3737 and the following message addresed to John F. Stolz: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 22, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at B.F. Jones Memorial Library, 663 Franklin Ave., Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 26th day of September, 1989.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23158 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–18655; ASLBP No. 89–597–01–EA]

Nuclear and Radiological Imaging Physicians; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Nuclear and Radiological Imaging Physicians

Byproduct Material License No. 21–24472–01 EA 89–068

This Board is being established pursuant to the Licensee's request for a hearing regarding an Order issued by the Director, Office of Enforcement, dated August 23, 1989, entitled "Order Suspending License and Revoking License." (54 FR 36922–24, September 5, 1989)

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Judge B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.

Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 26th day of September 1989.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89–23142 Filed 9–29–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27285; File No. SR–NASD–89–40]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Service Charge for NASDAQ Workstation™ Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to part IX of Schedule D of the Schedules to the By-Laws revising the service charges applicable to NASDAQ Workstation™ Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing a revision to the existing monthly charge for NASDAQ Workstation™ Service. The current monthly service charge for NASDAQ Workstation Service includes charges for Level 2/3 service, communication lines, and development expenditures. The new rate of $345 per month per device reflects increases in the communications cost component of the service charge, in the recovery of development costs, and in the recovery of charges for NASDAQ/National Market System last sale information (payable to Market Services Inc.), of $7.50 per terminal per month, which was not included in the original fee structure for Workstation Service. In its order granting permanent approval of the Workstation Service and applicable fees [1], the Commission in 1987 recognized that the costs for the Workstation Service could only be estimated at the phase-in stage, and the NASD represented that it would undertake to reevaluate the fee structure when the Workstation Service had replaced the Harris Level 2/3 service. Although the NASD still supports both Workstation and Harris terminal service, it has reviewed the existing rate structure for the services in light of empirical cost data derived from a sample based on geographical distribution of the Workstation Service and hereby proposes this pricing modification.

The NASD proposes increasing the communication component of the service charge for the Workstation Service at this time because of increased regional telephone line costs associated with delivering the service to subscribers as a result of rate increases and conversion of small locations to the Service. In addition, the development component of the service charge is being increased to defray costs associated with enhancements to Workstation Service which have increased the functionality and efficiency of the service beyond that available at its initial implementation in 1987. The additional costs consist of $11 per terminal per month for communication expenses and $4,200,000 unrecovered development costs which are being amortized over a period of 39 months. These costs are being written off over a projected average NASDAQ Workstation population of 3,050 terminals through the end of 1992.

As the Commission acknowledged in its approval order, the NASD proposed the fee for Workstation Service to provide for costs for Level 2/3 service, communication costs, and development costs: "The Commission believes that it is sufficient that the proposed fee bears a reasonable relationship to the existing fee structure for Level 2 and 3 terminals with a good faith estimate of the additional costs attributable to the development and operation of the Workstation," and the Commission found "that the proposed fees for the Workstation Service are consistent with the requirements of section 15A." [2] The NASD believes that the increases in fees for Workstation service are within the guidelines of the original order approving the service and reflect increases in communication line costs as well as development costs that could only be approximated when the service first became available in 1987.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provided for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The NASDAQ Workstation Service fee increase proposed in this filing has been formulated on the basis of the costs of developing and operating that service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act because the proposed fee seeks to recover increased costs associated with operating the Workstation™ Service, and will be applicable to all recipients of that service.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rules change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[1] *See* Release No. 34–25156, 52 FR 45894, December 2, 1987.

[2] *Id.*, at 52 FR 45896.

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the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all writtten communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23154 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27284; File No. SR-NASD-89-39]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Fees for the Intermarket Trading System/Computer Assisted Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to part IX of Schedule D of the Schedules to the By-Laws revising the transaction charges assessed market makers for use of the ITS/CAES linkage.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change in transaction charges for the ITS/CAES market makers proposed in this filing is to assess the same charge for ITS/CAES commitments entered by market maker participants as currently are applied to a member that receives commitments through ITS. In the past, the NASD charged transaction fees to both the market making and order entry side of a trade. Currently, however, the NASD does not assess transaction fees to order entry firms in the CAES system. This rule change maintains the current distinction between order entry firms and market makers but seeks to assess ITS market makers for transaction related charges and thereby recover the costs associated with use of the ITS/CAES System to send as well as receive ITS commitments to trade. The NASD believes that assessing this transaction fee on outgoing commitments as well as incoming commitments is appropriate because all NASD participants in the ITS linkage with exchanges are market makers, and the operational expenses of the system are accrued for incoming and outgoing traffic pattern usage. At present there is no charge imposed upon members for outbound commitments to an ITS exchange participant and correspondingly no revenue to offset the costs of outbound transactions through ITS/CAES. In addition, the proposed transaction fee for outbound ITS commitments will reduce the yearly deficit that operating the ITS/CAES system accounts for by approximately 50%.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"). Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The NASD believes the proposed transaction charge allocated for ITS/CAES commitments entered by market makers is equitable as prescribed in section 15A(b)(5) of the Act as the proposed transaction charge is the same amount currently applied to members that receive commitments through ITS.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended. Market maker participation in ITS/CAES is voluntary and the proposed rule change will apply to all ITS/CAES market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The following rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 23, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23155 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17153; (811-5244)]

Investment Grade Bond Trust; Notice of Application

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Investment Grade Bond Trust ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The Application was filed on July 10, 1989 and a supplemental letter was submitted on September 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 19, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicant, Investment Grade Bond Trust, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is availble for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, organized as Massachusetts Business Trust, is registered under the 1940 Act as an open-end, diversified management investment company.

2. On July 20, 1987, Applicant registered under the 1940 Act and filed a registration statement for an indefinite number of shares of beneficial interest without par value. The registration statement became effective on December 4, 1987. Applicant began offering its shares in January, 1988 to insurance company separate accounts (shareholders) in connection with the insurance of certain variable life insurance and variable annuity contracts. Applicant served as an underlying investment for insurance company separate accounts of Keystone Provident Life Insurance Company ("KPLIC").

3. Effective December 31, 1988, KPLIC became a wholly-owned subsidiary of Liberty Mutual Insurance Company. At a meeting on December 15, 1988, the Board of Trustees of the Applicant voted to authorize the dissolution of Applicant, effective January 1, 1989. On December 31, 1988, there were 269,264 shares of beneficial interest outstanding. The aggregate net asset value of those shares was $2,597,436 and the per share value was $9.65. Applicant redeemed in kind all of its asets, in the amount of $2,597,438, and KPLIC, the sole shareholder of Applicant, transferred all of Applicant's assets to a SteinRowe Variable Investment Trust ("SteinRoe Trust"). SteinRoe Trust is a series company advised by Stein Roe & Farnham Incorporated, an indirect subsidiary of Liberty Mutual Insurance Company.

4. To effectuate the dissolution, Applicant's Board of Trustees by unanimous writtten consent, dated September 13, 1988, authorized the filing of an application with the SEC for an order pursuant to sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d-1 thereunder. On December 30, 1988, Applicant received an order (Investment Company Act Release No. 16728) approving a redemption in kind of shares of certain funds, including Applicant, the redemption of cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust.

5. At the time of dissolution, there were $3,587 in unamortized organizational expenses. Applicant was reimbursed the unamortized organizational expenses by KPLIC.

6. No brokerage commissions were paid in connection with the transaction. No expenses were incurred in connection with the liquidation of the Applicant.

7. At the time of the filing of the application, Applicant had no securityholders and there were no existing shareholder balances or claims. No assets have been retained by applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed a Form N-SAR for the period ending December 31, 1988. If a Form N-SAR is required for any period from December 31, 1988 through the date Applicant is deregistered, Applicant undertakes to file such form promptly after the earlier of the due date of the form or the issuance of the requested order.

9. Applicant filed with the Commonwealth of Massachusetts and the City of Boston, Massachusetts a Secretary's Certificate certifying that the Applicant's Board of Trustees approved the dissolution of the Massachusetts Business Trust creating the Applicant, effective January 1, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23150 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17152; (811-4505)]

Government Securities Zero Coupon Trust; Notice of Application

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

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Applicant: Government Securities Zero Coupon Trust ("Applicant").

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The Application was filed on July 10, 1989 and a supplemental letter was submitted on September 21, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 19, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Government Securities Zero Coupon Trust, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272–2856 or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, organized as a Massachusetts Business Trust, is registered under the 1940 Act as an open-end, diversified management investment company.

2. On November 27, 1985, Applicant registered under the 1940 Act and filed a registration statement for an indefinite number of shares of beneficial interest without par value. The registration statement became effective on August 7, 1986. Applicant issued five series of shares: MMS 1991, MMS 1993, MMS 1996, MMS 1998, and MMS 2001. Only MMS 1991 and MMS 1996 series were offered for sale. Applicant began offering its shares on August 12, 1986 to insurance company separate accounts (shareholders) in connection with the insurance of certain variable life insurance and variable annuity contracts. Applicant served as an underlying investment for insurance company separate accounts of Keystone Provident Life Insurance Company ("KPLIC").

3. Effective December 31, 1988, KPLIC became a wholly-owned subsidiary of Liberty Mutual Insurance Company. At a meeting on December 15, 1988, the Board of Trustees of the Applicant voted to authorize the dissolution of Applicant, effective January 1, 1989. On December 31, 1988, there were 12,519 shares of MMS 1991 series outstanding. The aggregate net asset value of those shares was $114,323 and the per share value was $9.13. On the same date there were 23,589 shares of beneficial interest of MMS 1996 series outstanding. The aggregate net asset value of those shares was $201,979 and the per share value was $8.56. Applicant redeemed in kind all of its assets, in the aggregate amount of 316,302, and KPLIC, the sole shareholder of Applicant, transferred all of Applicant's assets to a SteinRowe Variable Investment Trust ("SteinRoe Trust"). SteinRoe Trust is a series company advised by Stein Roe & Farnham Incorporated, an indirect subsidiary of Liberty Mutual Insurance Company.

4. To effectuate the dissolution, Applicant's Board of Trustees by unanimous written consent, dated September 13, 1988, authorized the filing of an application with the SEC for an order pursuant to sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d–1 thereunder. On December 30, 1988, Applicant received an order (Investment Company Act Release No. 16728) approving a redemption in kind of shares of certain funds, including Applicant, the redemption of cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust.

5. At the time of dissolution, Applicant's MMS 1991 series had $557 in unamortized expenses and Applicant's MMS 1996 series had $558 in unamortized expenses. Applicant's MMS 1991 and MMS 1996 series were reimbursed the unamortized organizational expenses by KPLIC.

6. No brokerage commissions were paid in connection with the transaction. No expenses were incurred in connection with the liquidation of the Applicant.

7. At the time of the filing of the application, Applicant had no securityholders and there were no existing shareholder balances or claims. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed a Form N–SAR for the period ending December 31, 1988. If a Form N–SAR is required for any period from December 31, 1988 through the date Applicant is deregistered, Applicant undertakes to file such form promptly after the earlier of the due date of the form or the issuance of the requested order.

9. Applicant filed with the Commonwealth of Masschusetts and the City of Boston, Massachusetts a Secretary's Certificate certifying that the Applicant's Board of Trustees approved the dissolution of the Massachusetts Business Trust creating the Applicant, effective January 1, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23149 Filed 9–29–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17151; 812–6793]

Kidder, Peabody & Co. Inc., et al.; Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Execution under the Investment Company Act of 1940 ("1940 Act").

Applicants: Kidder, Peabody & Co. Incorporated on behalf of itself and all series of Target Unit Investment Trust, Corporate High Yield Series.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 17(b) from section 17(a).

Summary of Application: Applicants seek an order to permit Kidder, Peabody & Co. Incorporated ("Sponsor") to purchase securities from the series of Target Unit Investment Trust, Corporate High Yield Series ("Trust" or "Trust") in principal transactions under certain conditions.

Filing Date: The application was filed on July 15, 1987, and amended on May 13, 1988, August 10, 1988, February 23, 1989, and July 18, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Kidder, Peabody & Co. Incorporated, 10 Hanover Square, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each series of the Trust, including future series, is or will be a registered unit investment trust under the 1940 Act with units of beneficial interest therein (the "Units") registered under the Securities Act of 1933. The Sponsor is the sponsor of the Trusts.

2. The principal objective in selecting securities for series of the Trust is the achievement of a high level of income through an investment in a varied portfolio of "high yield" bonds. The term "high yield" securities typically refers to obligations which are rated below investment grade quality by recognized rating services (i.e., lower than Baa (3) by Moody's Investors Service, Inc. or BBB—by Standard & Poor's Corporation).

3. Virtually all trading of high yield securities takes place in over-the-counter markets consisting of groups of market markers who are primarily major securities firms. Because the high yield security market is a dealer market, rather than an auction market, there is not a single obtainable price for a given security that prevails at any given time. Prices are determined by negotiation between buyers and sellers.

4. Not all dealers maintain markets in all high yield Bonds. By its nature, the high yield bond market is a very specialized market and investors in it have been predominantly financial institutions. The Sponsor is presently a major market maker in high yield corporate bonds. Over the past three years, the Sponsor has been among the top ten firms in the high yield bond market.

5. Upon the occurrence of certain specified events, enumerated in the indenture that creates the Trusts, the Sponsor of the Trusts may direct the trustee (the "Trustee") to dispose of a portfolio security. One such event is where a sale is necessary to meet a redemption request. Such a sale is anticipated to be made infrequently and would be made in order to provide funds to meet Unit redemption requirements.

Applicants' Legal Analysis

1. The Sponsor, under the limited circumstances set forth below, requests an exemption from section 17 of the 1940 Act to permit it to repurchase securities from the Trusts. The Sponsor will not purchase any security from any series of the Trust unless the security is being sold to meet redemption requests and, at the time of sale, there are three market makers for the security who are not affiliated persons of the Sponsor. Purchases may be made by the Sponsor only when there are three independent market makers who will have bid on the securities at the time of purchase.

2. While the Sponsor will not be obligated to make a market in any security deposited in one of the Trusts, the inability of the Trust to sell to the Sponsor under the conditions described in paragraph 3 below would not be beneficial to unitholders, in furtherance of the 1940 Act, or consistent with the 1940 Act's enunciated goal of protecting investors.

3. Conforming to the statutory prohibition of section 17(a) of the 1940 Act on a sale by one of the Trusts to the Sponsor when the Sponsor is the market maker with the best quoted price for the deposited security being sold would either force the Trust to retain a security under circumstances when the retention of such security would not be in the best interests of the unitholders or force the Trustee of the Trust to sell the security at a price lower than the best available price in the marketplace.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions in connection with the sale of any security from the Trusts to the Sponsor:

1. Before any transaction is executed with the Sponsor, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and, in doing so, the Trustee will be required to check with at least three other unaffiliated dealers to obtain a competitive quotation. These dealers must be those who, in the experience of the Trustee, are in a position to quote favorable prices and are actively engaged in the market making of high yield bonds.

2. The Sponsor will not purchase any security from any series of the Trust, unless at the time of sale, there are three market makers for the security who are not affiliated persons of the Sponsor. The Sponsor's bid will be accepted only if a minimum of three bids are received from persons other than the Sponsor or its affiliates.

3. In each instance where other quotations are obtained, a determination will be required, based upon the information available to the Trustee, that the price quoted by the Sponsor is "better than" the price quoted from other sources in order for the Trustee to effect the sale with the Sponsor. To be considered "better than" that available from other sources, the Sponsor quotation must be at least ⅛ of 1% of the principal amount ($1.25 per $1,000 principal amount) better than the quotations from other sources.[1] The Trustee will maintain records with respect to any transactions effected with the Sponsor where the Sponsor quotes the "best price" to the Trust including documentation for having obtained quotations from other dealers.

4. While the determination that a security should be sold from a Trust will be made by the Sponsor as Sponsor, the personnel and officers of the Sponsor making these decisions will not be the same personnel and officers that are directly involved in the underwriting and market making of "high yield" securities. The department of the Sponsor that identifies market opportunities and then structures the portfolios of the Trusts (the "Research Group") will not inform the Sponsor's High Yield Trading department (the "Department"), which exclusively performs the Sponsor's market making of high yield securities, of the Research Group's recommendations to sell a portfolio security. All transactions involving the sale of portfolio securities

[1] The "high yield" corporate bond market does not have a standard minimum price increment; however, ⅛ of 1% of principal amount generally is greater than the range of minimum price increments prevalent in this market.

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will originate with the Trust, the Research Group and the Sponsor's Unit Investment Trust Group (the "UIT Group"), the department of the Sponsor that actually administers the Trusts, and not with the Department. In discussions with respect to proposed sales between the Trusts and the Sponsor, the Department personnel will confine their activities to responding to inquiries from the Trusts, the Trustee, the Research Group and the UIT Group. No solicitation will be made of the Trusts by the Department. The Department will not attempt to influence or control in any way the placing of orders to sell portfolio securities by the Trusts with the Sponsor.

5. Purchases by the Sponsor from the Trust will be limited to transactions necessary to generate cash to meet redemptions.

6. For the period of six months following the Sponsor's purchase of a security from the Trust, should the Sponsor resell that same security and receive a price greater than that paid by the Sponsor for the security, the Sponsor must tender that difference between the purchase and sales prices to the series of the Trust that sold the security to the Sponsor. The Sponsor may retain an amount equal to the transaction costs of the subsequent resale and certain "carrying costs." For purposes of these transactions, carrying costs will consist of interest charges computed at the lower of: (i) the prime commercial lending rate charged by Citibank, N.A., during the period from the date the Sponsor acquires the security from the Trust until the Sponsor transfers its ownership interest in the security to the subsequent purchaser; or (ii) the effective cost of borrowings by the Sponsor during such period. The "effective cost of borrowings" is equal to the Sponsor's "actual cost of funds" as calculated on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during such period.

7. The Legal Department of the Sponsor will prepare guidelines for the Sponsor's personnel to follow in connection with any transactions effected pursuant to the proposed exemptive order and the Legal Department will periodically monitor the activities of the Sponsor in this regard to determine adherence to these policies.

8. The Trustee of the Trust will prepare guidelines for the Trust and the Trustee to enable the Trust to obtain the best price and execution for the security being sold pursuant to the exemptive order.

9. The Sponsor will undertake to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth or otherwise referred to in the application and herein. Such records will be readily available to the SEC for review purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23151 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17150; File No. 812-7349]

Nationwide Life Insurance Co., et al.; Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: Nationwide Life Insurance Company ("Nationwide Life"), Nationwide Variable Account-II ("Variable Account") and Nationwide Financial Services, Inc. ("NFS").

Relevant 1940 Act Sections: Order requested under Section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of shares of the American Variable Insurance Series for the shares of the American Life-Annuity Series held by the Variable Account.

Filing Date: The application was filed on June 28, 1989 and amended on August 3, 1989, August 15, 1989 and August 29, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Nationwide, Variable Account, and NFS, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272-2058, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Nationwide Life, a stock life insurance company incorporated under the laws of the State of Ohio, is the depositor of the Variable Account. The Variable Account is a separate account of Nationwide Life registered under the 1940 Act as a unit investment trust, and was established for the purpose of funding individual deferred variable annuity contracts (the "Contracts"). NFS is the general distributor of the Contracts issued by the Variable Account.

2. Purchase payments made under the Contracts are allocated by the Contract Owners ("Owners") to the Variable Account and invested in shares of one or more diversified, open-end management investment companies ("mutual funds") which are registered under the 1940 Act. For each mutual fund option available within the Variable Account, there is a sub-account of the Variable Account for Contracts issued under tax qualified plans and one for Contracts under nonqualified plans. Presently under the Contracts, purchase payments are allocated to sub-accounts consisting of 13 mutual funds managed by five different fund managers.

3. Nationwide Life does not deduct a sales charge from purchase payments made for the Contracts. However, if any part of the Contract value of the Contracts is surrendered, Nationwide Life will, with certain exceptions, deduct from the Owner's Contract value a contingent deferred sales charge not to exceed 7% of the lesser of the total of all purchase payments made within 84 months prior to the date of the request to surrender, or the amount surrendered. Owners may exchange amounts among the mutual fund options without charge and without limitation. Nationwide Life has reserved the right under the Contracts to substitute, without consent of the Owners, shares of any mutual

funds held by the Variable Account for shares of another mutual fund.

4. For Contracts issued on or after May 1, 1987, the Variable Account utilizes three separate series of the American Life/Annuity Series ("AL Series"). These funds are the High-Yield Bond Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA-Rated Securities Fund (collectively "AL Funds"). The AL Series was organized as a Massachusetts business trust in 1986 and is registered under the Act as a diversified, open-end management investment company. Capital Research and Management Company provides investment advisory services to the AL Series.

5. Nationwide Life has been informed that at a meeting held on March 6, 1989 the Board of Trustees of the AL Series decided to cease operations of the AL Series because of the AL Series relatively small asset size and high level of expenses. Thus, Nationwide Life on behalf of the Variable Account proposes to effect a substitution of all shares of the AL Funds for shares of funds available under the American Variable Insurance Series ("VI Series").

6. The VI Series was organized as a Massachusetts Business Trust in 1983 and is registered with the Commission under the Act as a diversified, open-end management investment company. The investment objectives of the VI Funds are almost identical to the investment objectives of the corresponding funds of the AL Series. Like the AL Series, the VI Series is advised by Capital Research and Management Company. Presently, Lincoln National Life Insurance Company is the only insurance company investing in the VI Series. The annual expenses, as expressed as a ratio of expenses to average net assets, of the VI Funds for 1987 and 1988 were, with one exception, lower than the 1987 and 1988 expenses for the corresponding AL Funds. For both the AL Series and the VI Series, CRMC receives, as compensation for investment advisory and other services, a monthly fee which is accrued daily at the annual rates of 0.60% on the first $30 million of each fund's net assets, plus 0.50% on each fund's net assets in excess of $30 million.

7. It is proposed that shares of the AL Funds be substituted for shares of the corresponding funds of the VI Series (collectively "VI Funds"). Accordingly, in effect, shares of the VI Series High-Yield Bond Fund will be substituted for shares of the AL Series High-Yield Bond Fund, shares of the VI Series Growth Fund will be substituted for shares of the AL Series Growth Fund, and shares of the VI Series U.S. Government Guaranteed/AAA-Rated Securities Fund will be substituted for shares of the AL Series U.S. Government Guaranteed/AAA-Rated Securities Fund. Thereafter, Owners would be permitted to direct Contract Values to the VI Fund(s) of their choice pursuant to the free exchange privileges afforded by the Contracts. Applicants have been advised by the AL Series and the VI Series that the AL Series and the VI Series will seek exemptive relief under the Act to engage in a sale and purchase transaction, respectively, of the securities held by the AL Series when the Variable Account redeems its shares of that Series.

8. Any expenses of the substitution with respect to the Contracts will be borne by Nationwide Life or CRMC. Any expenses incurred in winding down and liquidation of the AL Series (including deregistration under the Act) will be borne by CRMC. Accordingly, the costs of the proposed substitution will not be borne by the Owners.

9. At the time of substitution, Nationwide Life will redeem, without charge to Owners and at net asset value, all shares of the AL Funds it currently holds on behalf of the Variable Account and will simultaneously purchase, at net asset value, shares of the corresponding VI Funds, so that the purchases will be for the exact amounts of the redemption proceeds. As a result, at all times, Contract values attributable to Owners currently invested in the AL Funds will be fully invested. It is intended that the above transaction will be effected by a simple net asset value exchange without charge to Owners. Applicants believe that no transaction nor brokerage costs will result from the redemption and purchase transaction. However, in the event such expenses are incurred, they will be borne entirely by CRMC. After the substitution, the VI Funds, not the AL Funds will be available for all Contracts issued on or after May 1, 1987 and before September 1, 1989. The Owners of such Contracts will, in the future, have access to the VI Funds, with the ability to transfer assets in and out of the VI Funds, and to make additional purchase payments. The VI Funds will not be available for Contracts issued on or after September 1, 1989.

10. The Owners' interests in the Contracts in practical economic terms, will be the same after the substitution as such interests immediately prior to the substitution. The substitution will in no way alter the annuity or other benefits to Owners or the contractual obligations of Nationwide Life. In addition, the substitution will not affect the voting rights of the Owners. Furthermore, the fees and charges paid by the Owners will not be any different after the substitution than they were before the substitution.

11. Within five days after the substitution, Nationwide Life will send Owners written notice of the substitution that identifies the shares of the AL Funds that have been eliminated and the shares of the VI Funds that have been substituted. Nationwide Life will include in such mailing the prospectus for the AL Funds and a revised prospectus for the Variable Account which describes the substitution. Owners will be reminded in the notice that they may exchange all assets, as substituted, to any other mutual fund option available under their Contract without charge and without limitation. Following the substitution, Owners will be afforded the same Contract rights with regard to amounts invested under the Contracts as they currently have.

12. The proposed substitution is consistent with the principles and purposes of section 26(b) and will not entail any of the abuses it is designed to prevent, is in the best interest of the Owners, and is consistent with their investment expectations. Of primary significance is the fact that the substitution is occasioned by a compelling corporate purpose. Because the operation of the AL Series is being discontinued, continued investment in the AL Series by the Variable Account is not possible.

13. The substitution will not result in the type of costly forced redemption which 26(b) was intended to guard against for the following representations and reasons: (1) The substitution is of shares of the VI Funds whose objectives, policies and restrictions are virtually indentical to those of the AL Funds in all material respects as to continue fulfilling the objectives and expectations of Owners; (2) Owners will be notified after the substitution to allow them to direct their contract values to other investment options available under the Contracts; (3) the substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charges; (4) the substitution will in no way alter the annuity benefits to Owners or the contractual obligations of Nationwide Life; (5) no sales load is deducted from purchase payments made to the Contracts and no charges are imposed on amounts exchanged among the mutual fund options available under the Contracts; (6) the substitution will not affect the voting rights of the Owners; (7) the fees and charges paid by Owners will not be any different after the substitution than they were before the substitution; (8) Nationwide Life has

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determined that no adverse tax consequences will be incurred by Owners as a result of the substitution; (9) it is anticipated that in the future the total expenses of the VI Funds will not be greater than the expenses would have been for the AL Funds, had the AL Funds not been discontinued; (10) the cost of the substitution will be borne entirely by Nationwide Life, not by the Owners; and (11) the substitution is expected to confer other economic benefits to Owners in that the larger asset size of the VI Funds than the AL Funds gives the VI Funds greater flexibility in meeting the investment policies and objectives of the VI Funds.

14. The application states that, for the reasons set forth above, the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23152 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17149; 812-7311]

Transamerica Life Insurance and Annuity Company, et al.; Notice of Application

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: Transamerica Life Insurance and Annuity Company ("Transamerica Life") and Separate Account VA-1 of Transamerica Life Insurance and Annuity Company (the "Separate Account").

Relevant 1940 Act Section: Order requested under Section 26(b).

Summary of Application: Applicants seek an order to approve the substitution of shares of the American Variable Insurance Series for the shares of the American Life/Annuity Series held by the Separate Account.

Filing Date: The Application was filed on May 5, 1989 and amended on August 9, 1989 and August 30, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 16, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Transamerica Life Insurance and Annuity Company, 1150 South Olive Street, Los Angeles, California 90015.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director at (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Statements

1. Transamerica Life is a stock life insurance company incorporated in California. The Separate Account, which was established by Transamerica Life to fund flexible premium deferred variable annuity contracts (the "Contracts"), is registered as a unit investment trust under the Act. The Separate Account has five divisions ("Sub-accounts"), each of which currently invests exclusively in a corresponding fund of the American Life/Annuity Series (the "AL Series"). The AL Series, a registered, diversified, open-end management investment company, consists of five funds: the Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, and the U.S. Government Guaranteed/AAA-Rated Securities Fund. Capital Research and Management Company ("CRMC") provides investment advisory services to the AL Series.

2. The American Variable Insurance Series (the "VI Series"), a registered, diversified, open-end management investment company, is also advised by CRMC and consists of six funds: The Cash Management Fund, the High-Yield Bond Fund, the Growth-Income Fund, the Growth Fund, the U.S. Government Guaranteed/AAA-Rated Securities Fund, and the Asset Allocation Fund. The investment objectives of the funds are almost identical to the investment objectives of the corresponding funds of the AL Series. The application states that the VI Series is an existing mutual fund that, according to Post-Effective Amendment No. 11 to its registration statement, began operations in 1984 and as of January 1989, was selling its shares to separate accounts of the Lincoln National Life Insurance Company. Following the substitution, the VI Series will be the only investment vehicles for the Contracts.

3. A Series Participation Agreement (the "Agreement") between Transamerica Life, the Separate Account, the AL Series and CRMC provides that the AL Series will sell shares of the funds to the Separate Account to fund the Contracts. The Agreement also gives each party the right to terminate the Agreement at any time upon six months written notice to the other parties. The Contracts reserve to Transamerica Life the right to replace the shares of the AL Series held by the Separate Account with shares of another registered investment company such as the VI Series, subject to Commission approval.

4. Transamerica Life has been informed that at a meeting held on March 6, 1989, the Board of Trustees of the AL Series decided to cease operations of the Series because of its relatively small asset size and high level of expenses. Accordingly, the AL Series notified Transamerica Life in writing on March 15, 1989 that it was exercising its option to terminate the agreement and that it would discontinue making its shares available to the Separate Account on September 15, 1989 or, with Transamerica Life's consent, at such earlier time when Transamerica Life has arranged for a substitute investment vehicle for the Separate Account.

5. Transamerica Life has, subject to Commission approval, arranged to substitute shares of the Cash Management, High-Yield Bond, Growth-Income, Growth, and U.S. Guaranteed/AAA-Rated Securities Funds of the VI Series for shares of the corresponding AL Series funds held by the Separate Account. Transamerica Life believes that the substitution would be consistent with the interests of Contract Owners because of the substantial similarity, or indeed the near identity between the VI Series and the AL Series. Both Series have the same investment adviser, CRMC, and the corresponding funds of the VI Series (the proposed series) have investment objectives that are, for all practical purposes, indentical to those of the AL Series (the current series) funds. The annual expenses of the VI Series' funds for 1988 were lower than the 1988 expenses for the corresponding funds of the AL Series.

6. The transaction is intended to be effected by a simple net asset value exchange, so that, following the substitution, the dollar amount invested in shares of each fund of the AL Series would be redeemed and invested in shares of the corresponding fund of the VI Series. That is, all of the shares of each fund of the AL Series held by the Separate Account would be redeemed at the net asset value per share, calculated in accordance with Rule 22c-1 under the Act, and the proceeds would be used to purchase shares of the corresponding fund of the VI Series, at the net asset value per share, also calculated in accordance with Rule 22c-1.

7. The application states it will be an in-kind redemption, and that no transaction or brokerage costs will result from the redemption and purchase transaction. Applicants understand that, in order to eliminate any possible doubt as to full compliance with the Act, CRMC, the AL Series and the VI Series (and possibly other affiliates of CRMC and/or one or both Series) will obtain whatever exemptive relief is deemed necessary or appropriate from Section 17 of the Act and the rules thereunder. Accordingly, in effect, shares of the Cash Management Fund of the VI Series would be substituted for shares of the Cash Management Fund of the AL Series; shares of the High-Yield Bond Fund of the VI Series would be substituted for shares of the High-Yield Bond Fund of the AL Series; shares of the VI Series' Growth-Income Fund would be substituted for shares of the AL Series' Growth-Income Fund; shares of the VI Series' Growth Fund would be substituted for shares of the AL Series' Growth Fund; and shares of the VI Series' U.S. Government Guaranteed/AAA-Rated Securities Fund would be substitued for shares of the AL Series' U.S. Government Guaranteed/AAA-Rated Securities Fund. Thereafter, Contract Owners would be permitted to direct Contract Value to the VI Series fund(s) of their choice (with the exception of the Asset Allocation Fund) pursuant to the transfer privileges afforded by the Contacts.

8. Any expenses of the substitution with respect to the contracts will be borne by Transamerica Life or CRMC. Any expenses incurred in winding down the AL Series (including deregistration under the Act) will be borne by CRMC. Accordingly, the costs of the substitution will not be borne by the Contract Owners. Contract owners will be given notice of the substitution and an opportunity to allocate policy value among the funds of the VI Series as they wish (in the absence of a request for a different allocation, the policy values would be appropriately allocated to the corresponding funds of the VI Series). As Transamerica Life imposes no fee on transfers between Sub-accounts of the Separate Account, Contract Owners will incur no transfer fees in connection with this re-allocation of Contract Value (the VI Series will be the only fund available after the substitution), and Transamerica Life does not limit the frequency of transfers. The substitution will have no federal income tax consequences for Contract Owners. In addition, the substitution will in no way alter the insurance benefits to Contract Owners or the contractual obligations of Transamerica Life, and Contract Owners will continue to look to Transamerica Life with regard to their rights under the Contracts. The voting rights of Contract Owners will be the same before and after the substitution. The fees and charges paid by Contract Owners will be no greater after the substitution than before the substitution as a result of the substitution. Finally, the substitution is expected to confer economic benefits to Contract Owners, as the VI Series' expenses for 1988 were lower than those of the corresponding funds of the AL Series in that year.

9. The application states that the requested Order under Section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23153 Filed 9-29-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-078]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on November 1, 1989 in Room 6244 at Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC. The meeting is scheduled to begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of the following topics:
(a) Personnel Manning and Licensing
(b) Tug-Barge Construction, Certification and Operations
(c) Port Facilities and Operations
(d) Personnel Safety and Work Place Standards
3. Presentation of any new items for consideration by the Subcommittees.
4. Adjournment.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW., Washington, DC 20593-0001, (202) 267-1483.

Dated: September 25, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23131 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-077]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on November 2, 1989 in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. Topics on the proposed agenda are as follows:

Subcommittee Reports

A. Tug-Barge Construction, Certification and Operations
1. Vessel Tonnage in U.S. Laws and Regulations
2. 46 CFR Part 151
3. Review of Inspection Requirements for Tank Barges and Consideration of Cargo Tank High Level Alarms
4. Recommended Nondestructive Testing (NDT) Requirements for

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Pressure Vessel Type Cargo Tanks
5. Other matters
B. Personnel Manning and Licensing
C. Port Facilities and Operations
D. Personnel Safety and Work Place Standards
Discussion of Coast Guard Task Statements and Issue Briefs
Any other matter properly brought up before the Committee.

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each member of the Committee, 20 copies of the written material should be submitted to the Executive Director no later than October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW, Washington, DC 20593-0001, (202) 267-1483.

Dated: September 25, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23130 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Service Station Closure, Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight service station closure—Cedar Rapids, Iowa.

SUMMARY: Notice is hereby given that on October 1, 1989, the Flight Service Station at Cedar Rapids, Iowa, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Fort Dodge, Iowa. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 18, 1989.

William Behan,

Acting Air Traffic Division Manager.

[FR Doc. 89-23133 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station Closure; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station closure—Springfield, Missouri.

SUMMARY: Notice is hereby given that on October 1, 1989, the Flight Service Station at Springfield, Missouri, will be closed. Thereafter services to the general public will be provided by the Flight Service Station at Columbia, Missouri. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 18, 1989.

William Behan,

Acting Air Traffic Division Manager.

[FR Doc. 89-23134 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; Central Trust Co., N.A.

Notice is hereby given that The Central Trust Company, N.A., with offices at 201 East Fifth Street, Cincinnati, Ohio, has been approved as Trustee, pursuant to Public Law 100-710 and 46 CFR 221.47.

Dated: September 25, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-23091 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and the the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0021
Form Number: TD F 90-22.1
Type of Review: Reinstatement
Title: Report of Foreign Bank and Financial Accounts
Description: This reporting requirement is intended to discourage the use of foreign financial accounts to facilitate illegal activities including tax fraud. A failure to report that is related to other violations of law is a felony. It will also be used for economic analysis. Banks, multinational corporations, and wealthy individuals are the ones most effected by the requirement.
Respondents: Individuals and households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 200,000
Estimated Burden Hours Per Response/ Recordkeeping: 10 mintues
Frequency of Response: Annually
Estimated Total Reporting Burden: 34,000 hours
Clearance Officer: Dale A. Morgan (202) 343-0263 Departmental Offices Room 2409, Main Treasury Building 1500 Pennsylvania Avenue, NW. Washington, DC 20220
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget Room 3001,, New Executive Office Building Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-23171 Filed 9-29-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0140

Form Number: Form 2210 and Form 2210F
Type of Review: Extension
Title: Underpayment of Estimated Tax by Individuals and Fiduciaries; Underpayment of Estimated Tax by Farmers and Fishermen
Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 900,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 1 hour, 19 minutes
Learning about the law or the form: 31 minutes
Preparing the form: 1 hour, 16 minutes
Copying, assembling, and sending the form to IRS: 20 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 2,965,500 hours
OMB Number: 1545-0904
Form Number: None
Type of Review: Extension
Title: Foreign Management and Foreign Economic Processes Requirements of Foreign Sales Corporation
Description: The regulations provide rules for complying with foreign management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign trading gross receipts and qualify for reduced tax rates. Rules are included for maintaining records to substantiate compliance. Affected public is limited to large corporations that export goods or services.
Respondents: Businesses or other for-profit
Estimated Number of Recordkeepers: 11,001
Estimated Burden Hours Per Recordkeeper: 2 hours
Frequency of Response: Other
Estimated Total Recordkeeping/ Reporting Burden: 22,001 hours
OMB Number: 1545-0938
Form Number: Form 1120-IC-DISC, Schedules K and P
Type of Review: Revision
Title: Interest Charge Domestic International Sales Corporation Return—1989; Shareholder's Statement of IC-DISC Distributions; Computation of Inter-Company Transfer Price or Commission
Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC-DISC) file Form 1120-IC-DISC to report their income and deductions. The IC-DISC is not taxed but IC-DISC shareholders are taxed on their share of IC-DISC income. IRS uses Form 1120-IC-DISC to check the IC-DISC's computation of income. Schedule P (Form 1120-IC-DISC) is used by the IC-DISC to report its dealings with related suppliers, etc.; Schedule K (Form 1120-IC-DISC) is used to report income to shareholders.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,673
Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to IRS
1120-IC-DISC	96 hrs., 23 mins	18 hrs., 40 mins	27 hrs., 5 mins	53 mins.
Sched. K	4 hrs., 4 mins	47 mins	54 mins	
Sched. P	11 hrs., 58 mins	1 hr., 17 mins	1 hr., 34 mins	

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,032,087
OMB Number: 1545-1019
Form Number: Schedule S (Form 706)
Type of Review: Revision
Title: Increased Estate Tax on Excess Retirement Accumulations
Description: Schedule S (Form 706) is used by estates to compute and pay the increased estate tax imposed by Internal Revenue Code section 4980A(d). IRS uses the information to determine whether the tax was correctly computed and paid.
Respondents: Individuals or households
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 40 minutes
Learning about the law or the form: 32 minutes
Preparing the form: 45 minutes
Copying, assembling, and sending the form to IRS: 25 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 2,350
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-23172 Filed 9-29-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 26-89]

Treasury Notes of September 30, 1991, Series AE-1991

Washington, September 21, 1989.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of September 30, 1991, Series AE-1991 (CUSIP No. 912827 XZ 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 2, 1989, and will accrue interest from that date, payable on a semiannual basis on March 31, 1990, and each subsequent 6 months on September 30

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and March 31 through the date that the principal becomes payable. They will mature September 30, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, September 26, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 25, 1989, and received no later than Monday, October 2, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 2, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89–23206 Filed 9–27–89; 3:32 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 27–89]

Treasury Notes of September 30, 1993, Series Q–1993

Washington, September 21, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of September 30, 1993, Series Q–1993 (CUSIP No. 912827 YA 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 2, 1989, and will accrue interest from that date, payable on a semiannual basis on March 31, 1990, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will ge issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, September 27, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 26, 1989, and received no later than Monday, October 2, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts for customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks ad foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

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3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive bidder will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 2, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, September 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-23207 Filed 9-27-89; 3:32 pm]

BILLING CODE 4810-40-M

Customs Service

[T.D. 89-90]

Extension of Analyses for Which Commodity Control Services, Inc., an Accredited Customs Laboratory, Have Been Accredited to Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of additional analysis for which Commodity Control Services, Inc., a Customs accredited commercial laboratory, have been accredited to perform.

SUMMARY: Commodity Control Services Inc., of Clark, New Jersey, a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of their commercial laboratory accreditation to include the following analyses: Reid Vapor Pressure, Saybolt universal viscosity, percent by weight sulfur of petroleum products, and percent by weight lead in gasoline.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses from Customs-accredited commercial laboratories for certain products. Commodity Control Services Corp., which holds Customs accreditation in certain laboratory analyses has applied to Customs to extend its accreditation to the performance of additional analyses. Review of Commodity Control Corp.'s qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: September 26, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-23090 Filed 9-29-89; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Federal Tax Deposit Fee Reduction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that Treasury plans to reduce the fees paid to depositaries for processing Federal tax deposit (FTD) payments beginning in November 1989. It is the Department of the Treasury's intent to announce rate changes to the affected financial institutions prior to the effective date of the change and allow them the opportunity to comment. Treasury plans to reduce the current per-item fee from $0.30 to $0.25 for large depositaries that process FTD dollar deposit volumes in excess of $10 million annually. The affected depositaries will include depositaries in the remittance option Class 1 category and the note option Class B and Class C categories. At this time, fee reductions will not be implemented for depositaries that process the smaller FTD dollar deposit volumes (depositaries in the note option Class A category and remittance option Class 2 category) or any depositary that participates in the Federal Government's Minority Bank Deposit Program (MBDP). This fee reduction will become effective with the Federal Reserve Banks' November reporting cycle which begins November 2, 1989. The new fee structure will be reflected in the fees paid to depositaries in December 1989 for the FTD payments processed during the November 1989 reporting cycle.

DATES: Comments must be received by October 20, 1989.

ADDRESS: Comments may be mailed to the Treasury Programs Branch, Financial Management Service, U.S. Department of the Treasury, Room 420, Liberty Center, 401 14th Street SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Michael C. Salapka on (202) 287-0590.

SUPPLEMENTARY INFORMATION: On March 1, 1989, Treasury published a final rule concerning the reduction of fees in the **Federal Register** (54 FR 8532). Treasury proposes to reduce the per-item fee paid to the large note option and remittance option depositaries from thirty ($0.30) cents per Federal tax deposit coupon processed to twenty-five ($0.25) cents. Treasury regulations in the "Treasury Financial Manual" on paying fees to financial institutions for maintaining Treasury Tax and Loan (TT&L) accounts and processing Federal tax deposit payments will be revised to reflect the new fee schedule. The "Treasury Financial Manual" may be obtained from any Federal Reserve Bank.

Reasons for Treasury's policy regarding FTD payments include: First, depositaries that choose to participate in the Treasury Tax and Loan Investment program earn interest on the overnight use of funds deposited as Federal tax payments. Second, Treasury has determined that the larger depositaries are in a better position to accommodate the fee reduction. The larger depositaries process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds.

Treasury estimates the earning capacity of depositaries from the overnight use of Federal tax deposit funds during Fiscal Year 1988 was approximately $142 million. This estimate is based on the FY 1988 Federal tax deposit dollar volume cited in the "Daily Treasury Statement" dated September 30, 1988. Further, Treasury estimates that implementing the new fee structure on November 2, 1989 will save the Treasury nearly $3.3 million in Fiscal Year 1990.

Treasury plans to reduce fees paid to all depositaries that process over $10 million in Federal tax deposit dollar volumes annually, regardless of classification as note option or remittance option depositaries. However, there is an exception for the MBDP participants. Treasury will decide at a later date when fee reductions, if any, will be implemented for the smaller depositaries and MBDP depositaries. The new and any subsequent fee schedules will be published in the "Treasury Financial Manual." Future notice of, and opportunity to comment on, any subsequent reductions in the fees paid to depositaries for processing FTD payments will be provided to the affected financial institutions.

Economic Assessment

Nearly, 3,200 financial institutions participate as note option depositaries while approximately 11,400 financial institutions participate as remittance option depositaries. Treasury estimates that approximately 3,900 financial institutions will be affected by the fee reduction. The larger financial institutions process the largest dollar deposit volumes and generally benefit most from the overnight use of Federal funds. In Fiscal Year 1988, the note option depositaries processed $498.6 billion in FTD payments which comprised 70% of the total FTD dollar deposit volumes received by TT&L depositaries. The remittance option depositaries processed $211.2 billion in FTD payments in FY 1988 which was 30% of the total FTD dollar deposit volumes received by TT&L depositaries. Note option Class B and Class C depositaries and remittance option Class 1 depositaries would lose proportionately less income from loss of fees relative to the smaller note option Class A and remittance option Class 2 depositaries. Therefore, Treasury has determined that the fee reduction will be limited to note option Class B and Class C depositaries and remittance option Class 1 depositaries, which process over $10 million in FTD deposits annually.

Distribution of the revised "Treasury Financial Manual" to the Federal Reserve Banks and TT&L depositaries will be coordinated with the fee reduction.

W.E. Douglas,

Commissioner.

[FR Doc. 89-23257 Filed 9-29-89; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89-61, 1989-21 I.R.B. 25, of petitions requesting that *formic acid, isopropyl acetate, normal propyl acetate, isobutyl acetate, normal butyl acetate,* and *ethyl acetate* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to these petitions must be delivered or mailed by December 1, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on July 13, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this

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substance. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Formic Acid

Harmonized Tariff System number: 2915.11.00 00 7
Schedule B number: 2915.11
Chemical Abstract Service number: 64–18–6

This substance is derived from the taxable chemical *butane*. Formic acid is produced as a co-product in the liquid phase oxidation of butane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{butane}}{C_4H_{10}} + \underset{\text{oxygen}}{2.5\ O_2} \longrightarrow \underset{\text{formic acid}}{HCOOH} + \underset{\text{propionic acid}}{C_2H_5COOH} + \underset{\text{water}}{H_2O}$$

According to the petition, taxable chemicals constitute 98.2 per cent by value of the materials used to produce this substance. The stated cost for butane is $0.0678 per pound and the stated cost for oxygen is $0.0009 per pound. The rate of tax for this substance would be $1.90 per ton. This is based upon a conversion factor for butane of 0.3900.

Isopropyl Acetate

Harmonized Tariff System number: 2915.39.50 00 4
Schedule B number: 2915.39
Chemical Abstract Service number: 108–21–4

This substance is derived from the taxable chemicals *ethylene* and *methane*. Isopropyl acetate is produced predominantly by esterifying isopropyl alcohol with acetic acid. Isopropyl alcohol is produced predominantly by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{C_2H_4} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{isopropyl acetate}}{CH_3COOC_3H_7} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 67.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.34 per ton. This is based upon a conversion factor for ethylene of 0.3260 and a conversion factor for methane of 0.2173.

Normal Propyl Acetate

Harmonized Tariff System number: 2915.39.45 10 0
Schedule B number: 2915.39
Chemical Abstract Service number: 109–60–4

This substance is derived from the taxable chemicals *ethylene* and *methane*. Normal propyl acetate is produced predominantly by esterifying normal propyl alcohol with acetic acid. Normal propyl alcohol is produced predominantly by the hydrogenation of propionaldehyde. Propionaldehyde is produced by the oxo reaction of ethylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{ethylene}}{C_2H_4} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{n-propyl acetate}}{CH_3COOC_3H_7} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 67.9 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.26 per ton. This is based upon a conversion factor for ethylene of 0.3149 and a conversion factor for methane of 0.2118.

Isobutyl Acetate

Harmonized Tariff System number: 2915.34.00 00 0
Schedule B number: 2915.34
Chemical Abstract Service number: 110–19–0

This substance is derived from the taxable chemicals *Propylene* and *Methane*. Isobutyl acetate is produced predominantly by esterifying isobutyl alcohol with acetic acid. Butyl alcohol is produced predominantly by the hydrogenation of butyraldehyde. Butyraldehide is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{propylene}}{C_3H_6} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{isobutylacetate}}{CH_3COOC_4H_9} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 71.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.86 per ton. This is based upon a conversion factor for propylene of 0.4524 and a conversion factor for methane of 0.1920.

Normal Butyl Acetate

Harmonized Tariff System number: 2915.33.00 00 1
Schedule B number: 2915.33
Chemical Abstract Service number: 123–86–4

This substance is derived from the taxable chemicals *propylene* and *methane*. Normal butyl acetate is produced predominantly by esterifying normal butyl alcohol with acetic acid. Butyl alcohol is produced predominantly by the hydrogenation of butyraldehyde. Butyraldehide is produced by the oxo reaction of propylene with synthesis gas. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{propylene}}{C_3H_6} + \underset{\text{methane}}{3\ CH_4} + \underset{\text{water}}{2\ H_2O} \longrightarrow \underset{\text{N-butylacetate}}{CH_3COOC_4H_9} + \underset{\text{hydrogen}}{5\ H_2}$$

According to the petition, taxable chemicals constitute 71.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.72 per ton. This is based upon a conversion factor for propylene of 0.4242 and a conversion factor for methane of 0.1882.

Ethyl Acetate

Harmonized Tariff System number: 2915.31.00 00 3
Schedule B number: 2915.31
Chemical Abstract Service number: 141–78–6

This substance is derived from the taxable chemical *butane*. Ethyl acetate is produced predominantly by esterifying acetic acid with ethyl alcohol. Ethyl alcohol is produced predominantly by the fermentation of grain. The predominant method for the synthetic production of ethyl alcohol is ethylene hydration. Acetic acid is made predominantly by carbonylation of methanol. Both carbon monoxide and methanol are produced from methane. Hoechst Celanese uses the esterification method to produce ethyl acetate. The acetic acid and the ethyl alcohol are prepared as a co-product by the oxidation of butane.

The stoichiometric material consumption formula for this substance is:

$$\underset{\text{butane}}{C_4H_{10}} + \underset{\text{oxygen}}{1.5\ O_2} \rightarrow \underset{\text{ethyl acetate}}{CH_3COOC_2H_5} + \underset{\text{water}}{H_2O}$$

According to the petition, taxable chemicals constitute 54.7 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.40 per ton. This is based upon a conversion factor for butane of 0.9032.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel, (Corporate).

[FR Doc. 89–23085 Filed 9–29–89; 8:45 am]

BILLING CODE 9630–01–M

Tax on Certain Imported Substances; Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance under Notice 89–61, 1989–21 I.R.B. 25, of petitions requesting that *vinyl acetate* and *acetic acid* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATE: Written comments and requests for a public hearing relating to these petitions must be delivered or mailed by December 1, 1989.

ADDRESS: Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special

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Industries). Telephone 202–566–4475 (not a toll-free number.).

SUPPLEMENTARY INFORMATION: The petitions were received on July 11, 1989. The petitioner is Hoechst Celanese, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Acetic Acid

Harmonized Tariff System number: 2915.21.

Schedule B number: 2915.21.

Chemical Abstract Service number: 64–19–7.

This substance is derived from the taxable chemical *methone*. Acetic acid is produced predominantly by methanol carbonylation. Carbon monoxide and methanol are produced from methane.

The stoichiometric material consumption formula for this substance is:

$$2CH_4 + 2H_2O \longrightarrow CH_3COOH + 4H_2$$

methane; water; acetic acid; hydrogen

According to the petition, taxable chemicals constitute 92.7 per cent by value of the materials used to produce this substance. The stated cost for methane is $0.0436 per pound and the stated cost for steam is $0.0027 per pound. The rate of tax for this substance would be $1.28 per ton. This is based upon a conversion factor for methane of 0.3709.

Vinyl Acetate

Harmonized Tariff System number: 2915.32.

Schedule B number: 2915.32.

Chemical Abstract Service number: 108–05–4.

This substance is derived from the taxable chemicals *ethylene* and *methane*. Vinyl acetate is produced predominantly by oxyacetylation of ethylene with oxygen and acetic acid. Acetic acid is made predominantly by carbonylation of methanol.

The stoichiometric material consumption formula for this substance is:

$$C_2H_4 + 2CH_4 + H_2O + \tfrac{1}{2}O_2 \longrightarrow CH_3COOCH_2 + 4H_2$$

ethylene; methane; water; oxygen; vinyl acetate; hydrogen

According to the petition, taxable chemicals constitute 63.8 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $2.72 per ton. This is based upon a conversion factor for ethylene of 0.3669 and a conversion factor for methane of 0.2695.

Dale D. Goode,

Chief, Regulations Unit Assistant Chief Counsel, (Corporate).

[FR Doc. 89–23084 Filed 9–29–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Governemnt in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, September 26, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the Corporation's corporate activities; (2) matters relating to the possible closing of an insured bank; and (3) matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' ntoice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 27, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–23243 Filed 9–28–89; 9:27 am]

BILLING CODE 6714–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 25, 1989, 54 FR 39255.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 27, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Items CAG–4, CAG–5, CAG–28 and CAG–93 on the Agenda of 9/27/89:

Item No., Docket No., and Company

CAG–4
RP89–75–000 and RP89–213–000, Black Marlin Pipeline Company
CAG–5
RP89–203–000, Southern Natural Gas Company
CAG–28
RP88–259–000, Northern Natural Gas Company, Division of Enron Corp.
CAG–93
RP88–177–061 and RP88–67–012, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89–23351 Filed 9–28–89; 3:43 pm]

BILLING CODE 6717–02–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, October 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meting.

Date: September 27, 1989

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–23264 Filed 9–28–89; 10:58 am]

BILLING CODE 6210–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:24 p.m. on Wednesday, September 27, 1989, the Board of Directors of the Resolution Trust Corporation met in open session to consider the requirements that a potential bidder must meet in order to qualify as an acceptable bidder for a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 27, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 89–23315 Filed 9–28–89; 2:04 pm]

BILLING CODE 6714–01–M

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Corrections

Federal Register
Vol. 54, No. 189
Monday, October 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-144]

Oriental Fruit Fly

Correction

In rule document 89-19611 beginning on page 34477 in the issue of Monday, August 21, 1989, make the following corrections:

§ 301.93-2 [Corrected]

1. On page 34481, in the second column, in the 30th line, *(Sandericum koetjape)* was misspelled.

2. On the same page, in the same column, in the 39th line, *(Lycopersicon esculentum)* was misspelled.

§ 301.93-3 [Corrected]

3. On the same page, in the third column, in paragraph (b), in the 18th line, "of" should read "or".

§ 301.93-5 [Corrected]

4. On page 34482, in the second column, in paragraph (a)(1)(ii), in the second line, "premises" was misspelled.

5. On the same page, in the same column, in footnote 5, the section number should read § 301.93-5(a)(2).

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of California

Correction

In notice document 89-21947 beginning on page 38423 in the issue of Monday, September 18, 1989, make the following corrections:

On page 38423, in the first column, in the fourth paragraph, in the seventh line "bran" should read "brain", and in the tenth line "obain" should read "obtain".

On the same page, in the third column, under *Docket Number:* 89-211, in the fifth line "BM 900T" should read "EM 900T".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

Correction

In notice document 89-22636 appearing on page 39456 in the issue of Tuesday September 26, 1989, make the following correction:

In the third column, in the third line, the meeting date should read "Monday, November 13, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on the Analysis of Workplace Air for Diesel Exhaust Particulates

Correction

In notice document 89-21911 beginning on page 38438 in the issue of Monday, September 18, 1989, make the following correction:

On page 38438, in the third column, under **ACTION**, "Nation" should read "Notice".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404

RIN 0960-AB96

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

Correction

In proposed rule document 89-18763 beginning on page 33238 in the issue of Monday, August 14, 1989, make the following corrections:

1. On page 33239, in the third column, in the third complete paragraph, in the first line, "of" should read "or".

Appendix 1 to Part 404- [Corrected]

2. On page 33241, in the second column, in 112.00A., in the second line, "listing" should read "listings".

3. On page 33242, in the second column, in 112.00C.2., in the second line from the bottom of the first complete paragraph, the second "of" should read "or".

4. On the same page, in the third column, in 112.00D., in the ninth line, "aware" should read "are".

5. On page 33243, in the first column, in the last incomplete paragraph, in the third line, insert "of" after "determination".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Uruguay Round Negotiations on Tariff and Non-Tariff Measures

Correction

In notice document 89-21865 beginning on page 38311 in the issue of Friday, September 15, 1989, make the following correction:

On page 38312, in the second column, under **III. PUBLIC HEARING**, in the second paragraph, in the eighth line, "Seventh" should read "Seventeenth".

BILLING CODE 1505-01-D

federal register

Monday
October 2, 1989

Part II

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations; Notice of Proposed Rulemaking

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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the danger zone and restricted area regulations in 33 CFR part 334 to remove obsolete materials and add procedural type requirements. These danger zone, restricted area and prohibited area regulations were consolidated under 33 CFR part 334 on October 22, 1985. We are eliminating the designation "prohibited area" and redesignating them as restricted areas.

DATE: Comments must be received on or before November 1, 1989.

ADDRESS: USACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272–1783.

SUPPLEMENTARY INFORMATION: On October 22, 1985 (50 FR 42696–42699), the Department of the Army published final rules which combined all danger zones, restricted areas and prohibited areas in a new part. In order to avoid confusion and to keep the consolidated rules as brief as possible, only the repromulgated rules were published while new definitions, procedures and corrections were planned, but were held in abeyance. Those interpretive type rules and other changes to remove obsolete materials in 33 CFR part 334 are now proposed.

In § 334.1 we have stated the purpose of this part; in § 334.2 we are proposing the definitions of "restricted area" and "danger zone;" in § 334.3 we are proposing special policies which concern the establishment of danger zones and restricted areas and in § 334.4 we are proposing procedures for establishing danger zones and restricted areas. The term "prohibited area" is being deleted because the function of denying access to a defined area is also achieved by designating the area as a restricted area.

We are also making minor editorial amendments which reflect that the titles of several military commands have changed. We are making a change in the designation of the color of signal lights from red to blue on Navy patrol boats as specified in § 334.230 to avoid confusing those lights with lights commonly used on U.S. Coast Guard aids to navigation. We have added the feminine gender within the regulations where appropriate.

NOTES

1. The U.S. Army Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is in accordance with the exemption provided military functions.

2. The undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

Accordingly, we proposed to amend part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS [AMENDED]

1. The authority citation for part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.1 *Purpose* is added as follows:

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing danger zones and restricted areas,

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

3. Section 334.2 *Definitions* is added as follows:

§ 334.2 Definitions.

(a) *Danger zone.* A defined water area (or areas) used for target proactice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full time or intermittent basis, as stated in the regulations.

(b) *Restricted area.* A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for government property and/or protection to the public from the risks of damage or injury arising from the government's use of that area.

4. Section 334.3 Special policies is added as follows:

§ 334.3 Special policies.

(a) *General.* The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate.

(b) *Food fishing industry.* The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the district engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use.* If the use of the water area is desired only for such temporary, occasional, or intermittent periods that operations can be operated safely without imposing unreasonable restrictions on navigation, applicants may be informed that formal regulations are not required. However, proper notices for mariners requesting that vessels avoid the area will be issued by the district engineer, or if appropriate, the Agency requesting such use of the water area, to all known interested persons. Copies will also be sent to appropriate state agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390, ATTN: Code NS 12.

5. Section 334.4 *Establishment procedures* is added as follows:

§ 334.4 Establishment procedures.

(a) *Application.* Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the district engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice.* (1) The Corps of Engineers will normally publish public notices and **Federal Register** documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the district engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft **Federal Register** document to the Office of the Chief of Engineers, ATTN: CECW–OR. The Chief of Engineers will publish the proposal in the **Federal Register** concurrent with the public notice issued by the district engineer.

(2) *Content.* The public notice and **Federal Register** documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the district engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution.* Public notices will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington: Commander, Naval Base, Seattle
California: Commander, Naval Base, San Diego
Hawaii and Trust Territories: Commander, Naval Base, Pearl Harbor

(c) *Public hearing.* The district engineer may conduct a public hearing in accordance with 33 CFR part 327.

(d) *Environmental documentation.* The district engineer shall prepare environmental documentation in accordance with Appendix B to 33 CFR part 325.

(e) *District engineers recommendation.* After closure of the comment period, and upon completion of the district engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW–OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The district engineer shall include a copy of environmental documentation prepared in accordance with Appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the **Federal Register.**

(f) *Final decision.* The Chief of Engineers will notify the district engineer of the final decision to either approve or disapprove the regulations. The district engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the **Federal Register** and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the **Federal Register** unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

6. Section 334.80 is amended by revising the section heading as follows:

§ 334.80 Narragansett Bay, R.I.; restricted area.

* * * * * *

7. Section 334.110(b)(4) is revised to read as follows:

§ 334.110 Delaware Bay, off Cape Henlopen, Del.; naval restricted area.

* * * * * *

(b) * * *

(4) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

8. Section 334.120(b)(2) is revised to read as follows:

§ 334.120 Delaware Bay off Milford Neck; naval aircraft bombing target area.

* * * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commandant, Naval Base, Philadelphia, and such agencies as he/she may designate.

9. Section 334.150 is amended by revising the section heading and paragraphs (a) and (b)(4), to read as follows:

§ 334.150 Severn River, at Annapolis, MD; experimental test area, David W. Taylor Naval Ship Research and Development Center.

(a) *The restricted area.* The waters of Severn River shoreward of a line beginning at the southeasternmost corner of the David W. Taylor Naval Ship Research and Development Center sea wall and running thence southwesterly perpendicular to the main Severn River channel, approximately 560 feet, thence northwesterly parallel to and 50 feet shoreward of the edge of the channel, 1,035 feet, and thence northeasterly perpendicular to the channel, approximately 600 feet, to the shore. Spar buoys will mark the corners of the area adjacent to the channel.

(b) * * *

(4) The regulation in this section shall be enforced by the Superintendent, U.S. Naval Academy, and such agencies as he/she may designate.

10. Section 334.230(a)(2)(iii) is revised to read as follows:

§ 334.230 Potomac River.

(a) * * *

(2) * * *

(iii) The regulations in this section shall be enforced by the Commander, Naval Surface Weapons Center and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a flashing blue light shall be displayed at the mast head. The Naval Surface Weapons Center (Range Control) can be contacted by marine VHF radio (Channel 16) or by telephone (703) 663–8791.

* * * * * *

11. Section 334.260 is amended by revising the section heading, the heading of paragraph (a)(1) and revising paragraphs (a)(2) and (b)(1), as follows:

§ 334.260 York River, Va.; naval restricted areas.

(a) *The areas*—(1) *Naval mine service-testing area.* * * *

(2) *Naval mine service-testing area.* A rectangular area adjacent to the northeast boundary of the area described in subparagraph (1) of this paragraph, beginning at latitude 37 16′00″ N., longitude 76 32′29″ W.; thence to latitude 37 16′23″ N., longitude 76 32′00″ W.; thence to latitude 37 15′27″ N., longitude 76 30′54″ W.; thence to latitude 37 15′05″ N., longitude 76 31′27″

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W.; thence to latitude 37 15'27" N., longitude 76 31'48" W.; thence to latitude 37 15'42" N., longitude 76 32'06" W.; thence to latitude 37 15'40" N., longitude 76 32'09" W.; and thence to the point of beginning.

* * * * * *

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the area described in paragraph (a)(1) of this section

* * * * * *

12. Section 334.310(b)(3) is revised to read as follows:

§ 334.310 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.

* * * * * *

(b) * * *

(3) This section shall be enforced by the Commander, Naval Base, Norfolk, and such agencies as he/she may designate.

13. Section 334.320(b)(2) is revised to read as follows:

§ 334.320 Chesapeake Bay entrance; naval restricted area.

* * * * * *

(b) * * *

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, VA.

14. Sections 334.400, 334.500, 334.540 and 334.560 are amended by revising the section headings to read as follows:

§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

* * * * * *

§ 334.500 St. Johns River, Fla, Ribault Bay; restricted area.

* * * * * *

§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.

* * * * * *

§ 334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.

* * * * * *

15. Section 334.700 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 334.700 Choctawatchee Bay, Aerial Gunnery Ranges, Armament Division, Eglin Air Force Base, Fla.

* * * * * *

(b) * * *

(2) *Enforcing agency.* The regulation in this section shall be enforced by the Commander, Armament Division, Eglin AFB, and such agencies as he/she may designate.

16. Section 334.710 is amended by revising the section heading and paragraph (b)(2) as follows:

§ 334.710 The Narrows and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

* * * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

17. Section 334.720 is amended by revising the section heading and paragraph (b)(4) as follows:

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Armament Division, United States Air Force, Eglin Air Force Base, Florida.

* * * * * *

(b) * * *

(4) The regulations in this section shall be enforced by the Commanding Officer, Armament Division, Eglin Field, Florida, and such agencies as he/she may designate.

18. Section 334.730 is amended by revising the section heading and paragraph (b)(5) as follows:

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico, adjacent to Santa Rosa Island, Armament Division, Eglin Air Force Base, Florida.

* * * * * *

(b) * * *

(5) The regulations in this section shall be enforced by the Commander, Armament Division, Eglin Air Force Base, Florida, and such agencies as he/she may designate.

19. Sections 334.870(d), 334.880(a) and (b)(3) and 334.890(b)(3) are revised to read as follows:

§ 334.870 San Diego Harbor, Calif.; restricted areas.

* * * * * *

(d) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

§ 334.880 San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.

(a) *The area.* That portion of San Diego Bay southerly of Ballast Point, exclusive of the southwesterly portion of the restricted area described in § 334.890 located westerly of the entrance channel, bounded on the west by the shoreline at Point Loma, on the east by the entrance channel west project line, and on the south by latitude 32 40'.

(b) * * *

(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, Calif., and such agencies as he/she may designate.

§ 334.890 Pacific Ocean, off Point Loma, Calif.; naval restricted area.

* * * * * *

(b) * * *

(3) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

20. Section 334.920(b)(4) is revised to read as follows:

§ 334.920 Pacific Ocean, off the east coast of San Clemente Island, Calif.; naval restricted area.

* * * * * *

(b) * * *

(4) The regulations in this section shall be enforced by security personnel attached to the U.S. Naval Ordance Test Station, China Lake, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, California.

21. Section 334.950(b)(2) is revised to read as follows:

§ 334.950 Pacific Ocean at San Clemente Island, Calif.; Navy shore bombardment area in vicinity of Pyramid Cove.

* * * * * *

(b) * * *

(2) Except in an emergency, no vessel shall anchor in the area without first obtaining permission from the Commander, Naval Base, San Diego, or from the Senior Officer present in the anchorage who may grant permission to anchor not exceeding the period he himself, is authorized to remain there. The Senior Officer present shall advise the Commander, Naval Base, San Diego, when and to whom he/she assigns a berth.

22. Section 334.960(b)(5) is revised to read as follows:

§ 331.960 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.

* * * * * *

(b) * * *

(5) The regulations in this section shall be enforced by security personnel attached to the Naval Ordnance Test Station, Pasadena Annex, and by such agencies as may be designated by the Commander, Naval Base, San Diego.

23. Section 334.960(b)(2) is revised to read as follows:

§ 334.970 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off China Point.

* * * * * *

(b) * * *

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she may designate.

24. Section 334.980(d)(5) is revised to read as follows:

§ 334.980 Pacific Ocean, around San Nicolas Island, Calif.; naval restricted area.

* * * * * *

(b) * * *

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, California, and by such agencies as may be designated by the Commander, Naval Base, San Diego, Calif.

25. Section 334.1000, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1000 San Francisco Bay, north of Alcatraz Island; submarine operating area.

(a) *The area.* * * *

(b) *The regulations.* Prior notification of the dates and times of all operations will be made by local notice to mariners. A patrol boat will direct the movement of vessels passing in the vicinity of the operating area by means of signal light and loud hailer. Vessels traversing this area shall be alert and comply with the orders of the patrol boat. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1010 [Amended]

26. In Section 334.1010, the heading preceding paragraph (a) is removed.

27. In § 334.1020, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a)(1) (i) and (ii) are redesignated as (a) (1) and (2), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda.

(a) *The areas.*

(1) * * *

(2) * * *

(b) *The regulations.* (1) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer U.S. Naval Air Station, Alameda, California, shall navigate, anchor, or moor in the area described in paragraph (a)(1) of this section.

(2) No vessel without special authority from the Commander, Twelfth Coast Guard District, shall lie, anchor, or moor in the area described in paragraph (a)(2) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

§ 334.1030 [Amended]

28. In § 334.1030, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1040 [Amended]

29. In § 334.1040, paragraph (a) heading is removed, paragraph (a)(2) is redesignated as paragraph (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as paragraphs (b) (1) and (2).

§ 334.1050 [Amended]

30. In § 334.1050, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1060 [Amended]

31. In § 334.1060, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1070 [Amended]

32. In § 334.1070, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as paragraph (a), and paragraph (a)(2) is redesignated as paragraph (b).

33. In § 334.1080, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b) and revised to read as follows:

§ 334.1080 San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area.

(a) *The area.* * * *

(b) *The regulations.* No vessels, except those engaged in naval operations, shall lie, anchor, moor or unnecessarily delay in the area. Vessels may pass through the area in the process of ordinary navigation except as directed by patrol boats. The regulations in this paragraph shall be enforced by the Commander, Naval Base, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

§ 334.1090 [Amended]

34. In § 334.1090, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as paragraph (b).

§ 334.1100 [Amended]

35. In § 334.1100, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

§ 334.1110 [Amended]

36. In § 334.1110, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), and paragraph (a)(2) is redesignated as (b).

37. In § 334.1120, is amended by revising the section heading and revising paragraph (b)(6) to read as follows:

§ 334.1120 Pacific Ocean, in the vicinity of Point Mugu, California; naval small arms firing range.

* * * * * *

(b) *The regulations.* * * *

(6) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

38. Section 334.1140 is amended by revising paragraph (c)(7) to read as follows:

§ 334.1140 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.

* * * * * *

(c) *The regulations.* * * *

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commander, Naval Base, San Diego, California, may designate.

* * * * * *

39. Section 334.1170(b) is amended by designating the existing text as paragraph (b)(1) and adding new paragraph (b)(2) to read as follows:

§ 334.1170 San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.

* * * * * *

(b) *The regulations.*

(1) * * *

(2) The regulations in this section will be enforced by the Commander, Naval Base, San Francisco, San Francisco, CA 94130–5018, and such agencies as he/she may designate.

40. Section 334.1180(c) is revised to read as follows:

§ 334.1180 Strait of Juan de Fuca, Washington; air-to-surface weapon range, restricted area.

* * * * * *

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

41. Section 334.1190 is amended by revising paragraphs (a)(2)(ii), (b)(1) and (c) to read as follows:

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§ 334.1190 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing areas.

(a) *Hood Canal in vicinity of Bangor.* * * *

(2) *The Regulations.* * * *

(ii) Navigation will be permitted within the area at all times except when naval exercises are in progress. No vessel shall enter or remain in the area when such exercises are in progress. Prior to commencement of an exercise, the Navy will make an aerial or surface reconnaissance of the area. Vessels under way and laying a course through the area will not be interfered with, but they shall not delay their progress. Vessels anchored or cruising in the area and vessels unobserved by the Navy reconnaissance which enter or are about to enter the area while a torpedo is in the water will be contacted by a Navy patrol boat and advised to steer clear. Torpedoes will be tested only when all vessels or other craft have cleared the area.

* * * * *

(b) *Dabob Bay in the vicinity of Quilcene*—(1) *The area.* All waters of Dabob Bay beginning at latitude 47 39'27", longitude 122 52'22"; thence northeasterly to latitude 47 40'19", longitude 122 50'10"; thence northeasterly to a point on the mean high water line at Tskutsko Pt.; thence northerly along the mean high water line to latitude 47 48'00"; thence west on latitude 47 48'00" to the mean high water line on the Bolton Peninsula; thence southwesterly along the mean high water line of the Bolton Peninsula to a point on longitude 122 51'06"; thence south on longitude 122 51'06" to the mean high water line at Whitney Pt.; thence along the mean high water line to a point on longitude 122 51'15"; thence southwesterly to the point of beginning.

* * * * *

(c) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, and such agencies as he/she may designate.

§ 334.1200 [Amended]

42. In section 334.1200, paragraph (a) heading is removed, paragraph (a)(1) is redesignated (a), paragraph (a)(2) is redesignated (b), paragraph (a)(3) is redesignated (c), former paragraphs (a)(3) (i) and (ii) are redesignated (c) (1) and (2) and former paragraph (a)(4) is redesignated (d).

§ 334.1210 [Amended]

43. In § 334.1210, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b), and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1220 [Amended]

44. In § 334.1220, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) and (4) are redesignated as (b), (c), and (d), former paragraphs (a)(3) (i) and (ii) are redesignated (c)(1) and (c)(2), and former paragraphs (a)(3)(ii) (A), (B), (C), (D) and (E) are redesignated as (c)(2) (i), (ii), (iii), (iv), and (v).

§ 334.1230 [Amended]

45. In § 334.1230, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1240 [Amended]

46. In § 334.1240, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c) and former paragraphs (a)(3) (i), (ii) and (iii) are redesignated as (c) (1), (2) and (3).

§ 334.1250 [Amended]

47. In § 334.1250, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraphs (a) (2) and (3) are redesignated as (b) and (c), former paragraphs (a)(2) (i), (ii), (iii), (iv), and (v) are redesignated as (b) (1), (2), (3), (4), and (5), former paragraphs (a)(2)(v) (*a*) through (*g*) are redesignated as (b)(5) (i) through (vii), and former paragraph (a)(2)(v)(*a*) (*1*) through (*3*) are redesignated as (b)(5)(i) (A) through (C).

§ 334.1260 [Amended]

48. In § 334.1260 paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(2) is redesignated as (b) and former paragraphs (a)(2) (i) and (ii) are redesignated as (b) (1) and (2).

§ 334.1270 [Amended]

49. In § 334.1270, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a) and paragraph (a)(2) is redesignated as (b).

Dated: September 14, 1989.

Wilbur T. Gregory,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-23088 Filed 9-29-89; 8:45 am]

BILLING CODE 3710-92-M

federal register

Monday
October 2, 1989

Part III

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision; Final Rule

VOL
54
ISS
189
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DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document presents the final rule partially implementing section 103(m) of Public Law 99–662, 33 U.S.C. 2213m, which directs the Secretary of the Army to reduce the non-Federal cost-share of flood control and agricultural water supply projects under an "ability to pay" determination. This rule applies only to flood control projects. Guidelines for agricultural water supply projects are to be promulgated in the future.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Daniel (202) 272–8568.

SUPPLEMENTARY INFORMATION: An interim final rule was published in the **Federal Register** on September 23, 1987 (52 FR 35875). Comments were solicited prior to publication of the final rule. As a result of the comments received, certain changes have been made. These changes, as well as certain technical clarifications which have arisen as a result of the comments received and application of the rule since September 23, are discussed in the supplementary information.

The basic structure of the interim final rule has been retained. Two tests are applied to each flood control project in order to determine whether a project qualifies for a reduction in the non-Federal cost-share. The benefits test sets an alternative cost-sharing floor whenever one fourth of the benefit-cost ratio, expressed as a percentage, is less than the standard cost-share as defined in the applicable portion of section 103 of Public Law 99–662, 33 U.S.C. 2213. To be eligible for any cost-share reduction that would result from application of the benefits test, a project must also have an Eligibility Factor that exceeds zero. The Eligibility Factor is determined by the income test which compares the income of people in the project area (as measured by the county) and state to the national average. If the county and state per capita income values are low, projects with an alternative non-Federal cost-share established by the benefits test will be eligible for a reduction.

There are three major changes to the interim final rule. First, the income test has been modified by giving less weight to state per capita personal income (PCI) and more weight to the income of the project area (as represented by county PCI). Second, when the income test yields an Eligibility Factor which is greater than zero, we are permitting deferred payments for a portion of the non-Federal share by non-Federal parties regardless of the outcome of the benefits test. Third, when a Native American tribe or village is the local sponsor, the Eligibility Factor is based on income data for the tribe or village only.

Background

There were 11 responses to the interim final rule. Some concentrated on a single point, others brought up a number of concerns. Each point raised by the commenters is addressed in the discussion that follows.

In our previously published discussion of September 23, 1987, on interpretation of section 103(m), we argued that the language was broad and that there was no definite Congressional direction on how the Secretary is to proceed. We concluded that every flood control project should retain at least a five percent non-Federal share. Several commenters disagreed, expressing the view that the Secretary should grant exemptions to non-Federal cost-sharing in the most extreme economic circumstances. In two letters, it was pointed out that Rep. Roe was asked specifically about the projects authorized by section 202 of Public Law 96-367, 94 Stat. 1339. In his response, Rep. Roe stated that "It is the committee's view that improverished areas such as those affected by the Section 202 projects should be exempted from the cost sharing provisions of the bill pursuant to the Secretary's authority." (p. H11567). A third commenter also pointed to Rep. Roe's remarks in supporting the review that exemptions from cost sharing be generally considered. We acknowledged in our previous discussion that Rep. Roe expressed his view that the Secretary should be encouraged to provide new flood control protection at reduced or no non-Federal cost-sharing. We also found evidence of the opposite position, as taken by Sen. Stafford: "It is anticipated that the Secretary will only rarely invoke this authority. And this provision can never be used to eliminate the non-Federal share." (p. S16983).

Both Rep. Roe and Sen. Stafford were quoted in order to show the wide range of opinions that Congress had towards this provision. We continue to believe that we can retain non-Federal cost-sharing requirements for all flood control projects, without damaging the underlying purpose of section 103(m). Furthermore, our policy is constructive in maintaining the integrity of the cost-sharing philosophy which would be damaged by wider divergences in the non-Federal share. We have consistently opposed cost-sharing exemptions and Congress has generally held the same view, making only a small number of exemptions in Pub. L. 99–662 (Barbourville and Harlan KY were the only two section 202 projects exempted). Given this background, we will retain our requirement that at least five percent of the project be a non-Federal share.

The Role of the Local Sponsor

The interim final rule was premised in part on our view that the state should have a responsibility to participate in project financing when a local sponsor's financing options are limited. In the comments received, there was some disagreement on this point. One commenter saw no role for state government: "until Congressional intent is clearly established, the COE should follow existing Federal policy on this issue, i.e., Federal responsibility remains with the involved federal agency for water project costs over and above the local sponsor's contribution." Others stressed the importance of the local sponsor below the state level in planning and financing decisions citing political, legal, and other institutional constraints which limit state participation. The opposite extreme was also expressed, "if the Corps insists that '* * * states have a responsibility in cases where the local sponsor seems incapable of providing the non-Federal share.', then perhaps it is incumbent upon only the states to contract for these projects."

We do not want to exclude consideration of state resources as a source of financing. There is no basis for the assertion that state participation is against Federal policy. This is abundantly clear from the various arrangements states have made for providing state support for such projects. In some cases, when state constraints present a problem, we believe it is incumbent on state and local Governments to address these problems directly, rather than seek additional Federal support. At the same time, we do not feel it is appropriate to insist that states be solely responsible, or attempt to define with any precision, the degree to state involvement in individual cases. In many cases that

state and local governments have preferred to use the smaller jurisdiction as the source of financing.

Our formula therefore continues to include state income as a factor in the analysis. In response to the concerns expressed in the comments, we have however, changed the weights given to state and local incomes so that the local income is now given twice the weight of the state.

The Use of Project Benefits in Developing a Cost-Share Alternative

We argued previously that "local sponsors and their states have two sources of economic resources that can be used to pay for the non-Federal share of the project. First, existing resources as reflected in traditional measures of income and/or wealth, may be sufficient. Second the project itself will generate benefits.

Many of the benefits to flood control projects are either due to flood damage reduction or to income enhancement to households and businesses located in the project area. These benefits represent an important source of income and wealth that will be available for project funding no matter how poor the project area is before implementation."

Several commenters disagreed with our use of project benefits to define the limits of cost-share reductions. They expressed the view that benefits do not represent the "real dollars" needed for project financing and that the "approach favors projects with less merit and discriminates against those projects that provide the greater *National* benefits." We remain convinced that the resources saved (i.e. the National benefits) by a flood control project can legitimately be used in an ability to pay evaluation and that this will not in any way favor low benefit projects over those with high benefits. The Federal policy, which gives the highest priority to projects with a high benefit/cost ratio, will be unaffected. Communities will still prefer projects with high benefit/cost ratios, because the extra benefits received will be greater than the additonal non-federal costs that might be incurred after application of the ability to pay rule.

We will therefore, continue to use project benefits to determine the alternative level of cost-sharing under the ability to pay test. This alternative level establishes a benefits based floor (BBF) below which the non-Federal cost-share will not be reduced. When projects are fully eligible based on the income test describe below, the reduction in the non-Federal share will be such as to set the share equal to one fourth of the project's benefit/cost ratio, when this ratio is expressed as a percentage. For example, if a project has a benefit/cost ratio of 1.2, share reductions cannot bring the share below one fourth of this, or 30 percent of project first costs. In this example, if the "standard" level of cost-sharing, i.e. the amount required by section 103(a) or 103(b), 33 U.S.C. 2213, a and b, is less than 30 percent, there will be no reduction under the ability to pay provision.

We are, however, modifying our interim rule by allowing that for projects with an Eligibility Factor greater than zero, a portion of the non-Federal share may be deferred even if the BBF exceeds the standard non-Federal cost-share. We require for structural projects, that the local sponsor provide during construction, cash payments equal to five percent of total project costs, and to contribute lands, easements, rights of way, relocations, and dredged material disposal areas (LERRD) paid for or acquired by the local sponsor prior to signing a cost-sharing agreement. The remaining non-Federal share, either for LERRD or for cash requirements in excess of 5 percent of project costs, can be deferred. For non-structural projects, we require during construction LERRD paid for or acquired by the local sponsor prior to the agreement with the remainder eligible for deferment. By permitting deferred payments when the Eligibility Factor exceeds zero, we are more closely matching the non-Federal payment requirement to the benefits stream for projects in low income areas. In those areas with the greatest possible cost-share reductions (Eligibility Factor equals or exceeds one), payments during construction and repayments of deferred amounts need be no greater than one fourth of project benefits. We do not believe this represents a hardship

As in the interim rule, any reductions in non-Federal shares under the ability to pay provision will apply to first costs only. For administrative simplicity, we will use one fourth of the benefit-cost ratio as an alternative share, even though the costs in this calculation include O&M costs. This ratio will be calculated based on the discount rate which the Corps is using to evaluate projects at the time the local cooperation agreement (LCA) is signed. For LCA's signed in 1989 for example, an 8.875 percent discount rate would be used.

The Use of Per Capita Personal Income To Determine Project Eligibility

The final rule continues to determine project eligibility for reductions in the non-Federal share by using the per capita personal income of the project area (using county income as the surrogate for project area income) and the state in which the project is located. In developing the interim final and final rule, two of our guiding principles have been: (a) That the rule should not be any more complex than is necessary; and (b) that it should be based on easily accessible, publicly available data. We concluded that a standard measure of income would be the appropriate statistic to use. Several comments were directed towards our approach.

One observation was made that since local or county government taxes are structure-based rather than income-based, household income, rather than per capita personal income would be a better measure to use. There are three sources of income data available from the Federal Government which might be used to measure the underlying resource base of political subdivisions below the state level. First is per capita personal income (PCI), published yearly for each county, by the Bureau of Economic Analysis (BEA). Second is per capita money income available biannually for counties and incorporated (sub-county) places, published by the Bureau of the Census. Third is median family income (MFI), available yearly for each county, from data published by the Department of Housing and Urban Development (HUD). The HUD estimates are more up to date (HUD currently has estimates for 1988, while the BEA data are currently available only through 1986), but are based in part on projections of previous years' data using other economic factors as the basis of the projections.

We continue to feel that data should be available on a yearly basis and that a three-year average should be used in the calculation of the Eligiblity Factor. This limits our choice to per capita personal income and median family income. There are a number of reasons for differences in the measures of PCI and MFI. Perhaps the most significant is that PCI is a measure of the mean, while MFI is a measure of the median. This is relevant to our choice of income variable. The revenue potential from a structure-based tax is more closely related to the total value of the structures (and therefore to the mean) than to the median value. It allows that if income is being used as a proxy for wealth to measure a local government's revenue potential, the mean is a more appropriate measure than the median, even if a local government raises revenues by using a structured-based tax. Thus we have decided to stay with PCI in our eligibility formula.

Two commenters pointed out that the local sponsor may be an entity which is

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smaller than the county level, so that county income does not necessarily represent the income of the residents under the sponsor's jurisdiction. As pointed out above, this information is not available on a yearly basis. Even if it were available, we do not feel it necessary or desirable to match the income estimate precisely to the project sponsor's jurisdiction, since sponsors vary from project to project.

One disagreed with our "formula approach", stating that it would be preferable to have the Secretary apply judgment to each project rather than rely on a "simplistic and unsophisticated formula". We believe that a formula approach is far preferable to a case by case analysis. It is important that any rule be capable of being applied consistently and objectively throughout the nation. This requires that specific factors be identified and that the consequences of these factors be the same in all ability to pay tests. By keeping the formula relatively simple, there is a possibility that a subtle aspect of a single project may be missed. At the same time, we have proposed an approach which can be easily understood and fairly applied. This advantage far outweighs the disadvantages.

One commenter argued that since Native American tribes and villages have special relationships with the Federal Government, the use of county and state PCI figures is inappropriate for projects sponsored by these groups. We are persuaded that such projects do warrant different consideration. Indian, Eskimo, and Aleut tribes and villages do not receive support from state and local governments. Unfortunately, current income data for reservations, tribes, and villages are very limited. The most recent comprehensive information is from the Bureau of Census, 1980 Census, which reports median family income, by reservation, for 1979 in *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, Part 1, Table 10; and per capita money income for 1979 in *General Social and Economic Characteristics-United States Summary (1980)*, Table 252. The data are for Native Americans living on reservations or in villages and are not strictly comparable to the income of all Tribal members, or for all Native Americans living on or near a reservation or village. Our revised procedures require the use of publicly available data such as that appearing in the Census publications identified here and a comparison of data for the relevant Indian, Eskimo, or Aleut group to the national average of the same concept of income and for the same year. For example, using the data cited above, the median family income for the reservation would be compared to 1979 median family income for the United States. We will require the use of the most recently available data, which in any case must be no earlier year than the 1979 data cited above. If later or more accurate information is available, it may be used as a substitute provided that the substitute data is comparable to an equivalent national average which is publicly available. These projects will, of course, also be subject to the benefits test.

We have maintained our decision from the Interim Final Rule, that all U.S. Territories will be eligible for the full amount of cost-share reduction derived from the benefits test. Unpublished data from the Bureau of Economic Analysis indicates that in 1985, per capita personal income in the territories ranged from 66 percent of the U.S. average (Guam) to 25 percent of the U.S. average (American Samoa).

We will continue to exclude unemployment and the sponsor's borrowing capability in our Eligibility Factor formula. While no one advocated that unemployment be used, several comments addressed our decision to exclude borrowing capability. One commenter for example, pointed out that the legal constraints against borrowing vary from state to state and should therefore be a factor in our ability to pay analysis. Consideration of these constraints would result in unequal treatment on a national scale and in our judgment, would be inappropriate. In addition, per capita income itself represents a rough measure of fiscal capacity which can be applied without regard to past spending and taxing decisions, or legal or other institutional constraints. Our final rule implicitly recognizes a potential limit to borrowing capacity for "low income projects". When the Eligibility Factor, described below, exceeds zero we will allow payments over time rather than during construction, for a portion of the non-Federal share. As pointed out above, this repayment provision applies whenever the income of the project area and state is low, regardless of the outcome of the benefits test.

The Eligibility Formula

The eligibility factor (EF) is determined by:

$$EF = a - b_1 \times (\text{State PCI Index}) - b_2 \times (\text{County PCI Index})$$

where a, b_1, and b_2 are positive constants. The county and state PCI indices are a measure of the local PCI relative to the national average. If per capita income in a state equals the national average, the state's index number would be 100. If a project includes beneficiaries in more than one county, the county PCI index will be a combined PCI index, where each county PCI index is weighted by the share of project benefits which can be located geographically. Similarly, when project beneficiaries are located in more than one state, the state index will be determined using weights determined by the states' shares of project benefits.

If EF is less than zero, the project is not eligible for cost-share reductions under the ability to pay test. If EF is greater than or equal to one, the project is eligible for full application of the benefits based cost-share alternative described above. For EF less than one but greater than zero, the value represents the degree of application for which the project is eligible. For example if the standard cost-share is 50 percent and the minimum cost-share under the ability to pay formula is 30 percent and EF = .6, the non-Federal cost-share reduction will be the fractional amount 0.6 or 60 percent of the difference between 50 percent and 30 percent. The cost-share in this example would be 38 percent (50−.06×(50–30)=38.0).

In the interim final rule, we gave equal weights to state and county PCI, that is b_1 and b_2 were set equal to each other. As discussed above (the role of the local sponsor), we have reevaluated the weights and concluded that the county index factor should be set at twice the state factor. The values for a, b_1 and b_2 will be published in Engineering Circulars. The formula will reflect our view that the ability to pay provision should only apply in exceptional circumstances. Therefore, two thirds of the counties will not be eligible; 20 percent of the counties will be eligible for the full application; and the remaining 13⅓ percent will be eligible for a partial application.

Available county PCI data lag behind available state PCI data. County information currently exists through 1987, state information through 1988. The guidelines require the use of the three latest years even if these years are different for counties and states. We believe that this represents the most up to date economic profile of a project area which can be applied uniformly to all projects.

Other Issues

We have retained the five percent minimum cash requirement of section 103(a)(1)(A), 33 U.S.C. 2213(a)(1)(A), even for projects where the ability to pay test leads to a reduction in the non-Federal cost-share. This requirement is intended to demonstrate that the non-Federal interest has a serious commitment to the project. It is identical to the cash requirement in the interim final rule. One commenter found no basis for a cash requirement in section 103(a)(1)(A) (although the comments included recognition that section 104(g), 33 U.S.C. 2214, refers to the 103(a)(1)(A) requirement as a cash requirement. We believe that this reference, plus the language in the Conference Report for Public Law 99–662 (p. 206) shows clearly that a 5 percent cash payment is required under standard cost-sharing of structural flood control projects. By keeping the 5 percent cash requirement under the ability to pay provision, it may be necessary to negotiate cash repayments to the local sponsor at the end of the project, or to make Federal payments for Lands, Easements, Rights of Way, Relocations, and Dredge Material Disposal Areas (LERRD) that are, under standard cost-sharing, the responsibility of the non-Federal interest.

Two commenters observed that the Ability to Pay Interim Final Rule did not address the relationship between credits given under section 104 and cost-share reductions under 103(m). In cases where a project is eligible for both credits and a cost-share reduction, the ability to pay calculation should be made first. Credits would then be applied against the non-Federal share as adjusted. The application of credits is subject to a separate regulation, ER 1165–2–29, published in the **Federal Register**, Nov. 18, 1987 (33 CFR 240).

The remaining comments (and our response) are listed here:

Comment: The ecological design of a project can reduce economic benefits, which becomes a liability under the ability to pay guidelines.

Response: When economic benefits are reduced, the project's benefit-cost ratio is reduced, increasing the likelihood that there will be a reduction under the ability to pay test.

Comment: The Secretary does not have the legal authority to reduce the non-Federal share under section 103(m).

Response: In our judgment, the record shows that this authority has in fact been given to the Secretary.

Comment: It is not clear how the rule is to be applied when the state, rather than a smaller entity, is the non-Federal sponsor.

Response: The rule is applied to all projects in exactly the same way regardless of the nature of the local sponsor.

Comment: The rule should include a chart showing how the ability to pay tests would affect projects with various characteristics.

Response: This suggestion was made by an advocate of a simpler formula. Given the number of factors in the final rule, a chart may cause imprecision in the application of the rule which our formula avoids.

Three other points have arisen during application of the interim rule which require clarification. First, some projects have been authorized without calculation of the economic benefit-cost ratio as defined in the Water Resource Council's Principles and Guidelines. In these cases, such a calculation must be made before the ability to pay test can be applied. Second, when determining the alternative cost share, it should be calculated to the nearest ⅒ of one percent. Finally, the test must be applied to projects constructed under section 208 of the 1954 Flood Control Act, 33 U.S.C. 701g (as amended), as well as the projects constructed under the other continuing authority programs identified in the interim final rule.

E.O. 12291 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, it imposes few, if any, administrative burdens of any sort on small entities. Furthermore, the number of entities affected by this rule is small.

List of Subjects in 33 CFR Part 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

Kenneth L. Denton,

Alternate Army Liaison Officer, with the Federal Register.

The Corps of Engineers is hereby issuing final rules revising part 241 in title 33, chapter II as follows:

PART 241 FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Sec.
241.1 Purpose.
241.2 Applicability.
241.3 References.
241.4 General policy.
241.5 Procedures for estimating the alternative cost-share.
241.6 Deferred payments for certain qualifying projects.
241.7 Application of test.

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99–662, 33 U.S.C. 2213, as it applies to flood control projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and field operating activities (FOA's) of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*

(b) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, March 10, 1983.

(c) Office of Personnel Management, *FPM Bulletin* 591–30.

(d) Office of Personnel Management, *FPM Bulletin* 591–32

(e) U.S. Army Corps of Engineers, *Engineer Regulation* 1165–2–29.

§ 241.4 General policy.

(a) Procedures described herein establish an "ability to pay" test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the standard non-Federal share that would be required under the provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213. The "standard share", as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m) requires that all cost-sharing agreements for flood control covered by the terms of section 103(a) or 103(b) be subject to the ability to pay test. The test must therefore be applied not only to projects specifically

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authorized by Congress, but to the continuing authority projects constructed under Section 14 of the 1946 Flood Control Act (33 U.S.C. 701r), section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act (33 U.S.C. 701g), all as amended.

(c) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance and rehabilitation responsibilities are unaffected by the ability to pay test.

(e) When projects are eligible for credits as outlined in ER 1165–2–29, reference § 241.3(e), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal share, the allowable amount of credits will be limited by the lower share.

(f) The test is based on the following principles:

(1) Since the standard non-Federal cost-share is substantilly less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(2) The test should depend not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project area is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(3) The alternative level of cost-sharing determined under the ability to pay principle should be governed in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(4) Since project benefits represent availability of resources in the future, but not the present, project sponsors should be permitted to defer a certain percentage of the non-Federal share whenever current economic circumstances suggest that non-Federal resources may be limited.

(g) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the standard cost-share and no further economic inquiry will be required.

§ 241.5 Procedures for estimating the alternative cost-share.

(a) *Step one, the benefits test.* Determine the maximum possible reduction in the level of non-Federal cost-sharing for any project.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*—ref. § 241.3(b)) to flood control costs for the project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four. For example, if the project's (or separable element's) benefit-cost ratio is 1.2:1, the factor for this project equals 0.3. If a project has been authorized for construction without a benefit-cost ratio calculated in accordance with the Principles and Guidelines, determination of the ratio is a prerequisite for consideration under the ability to pay provision.

(2) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is greater than the standard level of cost-sharing, the standard level will apply.

(3) If the factor determined in § 241.5(a)(1), when expressed as a percentage, is less than the standard level of cost-sharing, projects may be eligible for either a reduction in the non-Federal share to this "benefits based floor" (BBF), or for a partial reduction to a share between the standard level and the BBF, as determined by the procedures in step two, § 243.5. In no case however, will the non-Federal cost-share be less than five percent.

(b) *Step two, the income test.* Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the current economic resources of the project area and of the state or states in which the project is located.

(1) To assure consistency, the calculations in § 241.5(b) (2) and (3) will be performed by HQUSACE and distributed to all FOA's via Engineering Circulars. The information will be updated and distributed to HQUSACE and to the field as soon as new data are available. The procedures may be verified for any single county or state using the sources cited.

(2) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the state in which the project beneficiaries are located, and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business*. (If the project beneficiaries are located in Alaska or Hawaii, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI as contained in References §§ 241.3(c) and 241.3(d).) Determine the state's per capita personal income as an index number in comparision to the national average (U.S.=100), and calculate the three year average of the state's index number.

(3) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the county where the project beneficiaries are located (the "project area"), and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business*. (If the project beneficiaries are located in Alaska or Hawaii, divide the county's per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.) Calculate the index for the county's per capita personal income to the national average (U.S.=100), and calculate the three year average of the county's index number.

(4) When the project area, as determined by the location of the project's beneficiaries, includes more than one county, calculate a composite project area index by taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. When the project area includes more than one state, the state index for the project should be calculated using the same weighting technique.

(5) Calculate an "Eligibility Factor" for the project according to the following formula:

$$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor}).$$

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the standard non-Federal cost-share in accordance with the procedures described in paragraph § 241.5(c) below. The values of a, b_1 and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of 0 or less. These values will be adjusted periodically as new information becomes available. Changes will be published in Engineering Circulars. The values will be set so that $b_2 = 2 \times b_1$, giving local income twice the weight of state income.

(6) Since estimates (available from the Bureau of Economic Analysis) of per capita personal income for Puerto Rico, Guam and other U.S. territories are well below the national average, the eligibility factor for projects in these areas is administratively established to be equal to 1.

(7) For flood control projects sponsored by Native American tribes or villages, the EF shall be calculated using information on tribe or village income as a replacement factor for both the area and state factor (that is multiply the replacement income factor by both b_1 and b_2 and subtract each from a in the equation in § 241.5(b)(5)). The replacement factor will be tribe or village income as a percentage of the national average for the equivalent definition of income (for example a Tribe's median family income as a percentage of the median family income for all U.S. families). The data should be the latest available information. It is acceptable, but not required that the data be obtained from the Bureau of the Census, *American Indians, Eskimos and Aleuts on Identified Reservations and in Historic Areas of Oklahoma (Excluding Urbanized Areas)*, part 1, Table 10, or *General Social and Economic Characteristics—United States Summary (1980)*, Table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the standard cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The alternative non-Federal share will be calculated and reported to the nearest one tenth of one percent. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Public Law 99–662, 33 U.S.C. 2213, as follows:

(1) When EF > 1, non-Federal cost-share = BBF

(2) For structural projects covered by section 103(a), when $0 < EF < 1$:

(i) If LERRD equals or exceeds 45 percent:
non-Federal cost-share = 50 − EF × (50 − BBF)

(ii) If LERRD exceeds 20 percent but is less than 45 percent:
non-Federal cost-share = (LERRD + 5) − ER × [(LERRD + 5) − BBF]

(iii) If LERRD is less than 20 percent:
non-Federal cost-share = 25 − EF × (25 − BBF)

(3) For non-structural projects covered by section 103(b), when $0 < EF < 1$:
non-Federal cost-share = 25 − EF × (25 − BBF)

(4) In no case however, can the non-Federal share be less than five percent, even if the calculation made in § 241.5(c) (1), (2), or (3) results in a smaller number.

(5) Note: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas expressed as a percentage of total project costs. The BBF and numerical terms in the equations above are also expressed as percentages.

§ 241.6 Deferred payments for certain qualifying projects.

(a) Whenever a project's Eligibility Factor exceeds zero, the project sponsor will be permitted to defer a portion of its share of flood control costs. The maximum allowable amount deferred equals the total non-Federal share less (for structural projects) five percent of total project costs and less (for all projects) any amounts for LERRD paid for or acquired by the sponsor prior to the time the LCA is signed. If for example, the non-Federal share of a structural project = 35.0 percent (after the ability to pay adjustment, if any) of which 10 percent is LERRD already paid for by the local sponsor, the maximum allowable amount to be deferred = 20 percent of project flood control costs (35 less the 5 percent cash requirements, less the 10 percent LERRD already acquired). Deferred payments at the option of the sponsor will be allowed regardless of the outcome of the benefits test described in § 241.5(a) whenever the Eligibility Factor exceeds zero.

(b) When EF > 1, the project sponsor may defer as much as the maximum allowable amount as described in § 241.6(a).

(c) When $0 < EF < 1$, the sponsor may defer a fraction of the maximum allowable amount described in § 241.6(a), where the fraction equals the Eligibility Factor expressed to three decimal places. Continuing the example described in § 241.6(a), if EF = .712, total allowed deferral equals .712 × 20 percent = 14.2 percent of total project costs.

(d) The deferred payment can be made in equal installments over any period of time selected by the non-Federal sponsor, provided that all repayments are made between the end of construction and thirty years thereafter. The amount repaid shall include interest during the repayment period as well as interest for the appropriate portion of the construction period for any amounts deferred prior to the end of construction. The rate of interest shall be determined in accordance with the provisions of section 106 of Public Law 99–662, 33 U.S.C. 2216.

§ 241.7 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the standard share, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Local Cooperation Agreement (LCA) between the Corps of Engineers and the Non-Federal sponsor is signed. For structural flood control projects, the standard level of cost-sharing will not be known until the end of the project (since the standard level as specified in section 103(a), 33 U.S.C. 2213, includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs.

(c) The LCA for all projects subject to the ability to pay test will include a "whereas" clause indicating the results

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of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the LCA (there will be no recalculation of this share once the LCA is signed).

(2) An exhibit attached to the LCA will include the Benefits Based Floor (BBF) determined in § 241.5(a); the Eligibility Factor (EF) determined in § 241.5(b); if the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share; and the formula used in determining the ability to pay share as described in paragraphs § 241.5 (c)(1) through (c)(4).

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the LCA, the standard share will apply.

(e) For structural projects. (1) If the standard LERRD plus cash requirement exceeds the ability to pay cost-share, the Federal Government will make any necessary adjustments in expenditures in the following order: First, paying any cash requirement in excess of five percent of total project costs (if any) that would, under standard cost-sharing, have been the responsibility of the non-Federal sponsor; second, making payments for LERRD; and third, providing for reimbursement at the end of construction. Federal payments for LERRD will be made only after the non-Federal payment for LERRD reaches a percentage of total project costs equal to the ability to pay non-Federal cost-share less the five percent cash requirement. If such arrangements are necessary, the LCA should be prepared to reflect agreement on the best manner available for acquisition of those LERRD over the limiting percentage, or for reimbursing the sponsor upon completion of construction.

(2) The non-Federal sponsor will be required to provide a cash payment equal to a minimum of five percent of estimated total project costs, regardless of the outcome of the ability to pay test. The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the amount of Federal expenditures (including sunk pre-construction engineering and design costs as a first year Federal construction expenditure) as a percentage of total Federal expenditures. Total Federal expenditures include cash payments for construction and if necessary (due to ability to pay considerations), for LERRD, and for reimbursement to the non-Federal sponsor. Total Federal expenditures for the purpose of this calculation, do not include expenditures which allow the non-Federal sponsor to defer payment of the non-Federal share under the provisions of this rule.

(f) For non-structural projects, reductions in the non-Federal cost-share as a result of the ability to pay test will not affect the procedures for determining the non-Federal and Federal payment schedules. For non-structural projects, no specific cash payments during construction are required by law.

[FR Doc. 89-22918 Filed 9-29-89; 8:45 am]
BILLING CODE 3710-92-M

federal register

Monday
October 2, 1989

Part IV

Department of Transportation

Federal Aviation Administration

Aeronautical Charts and Aeronautical Publications Change of Effective Dates; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26024]

Aeronautical Charts and Aeronautical Publications Change of Effective Dates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy.

SUMMARY: This notice proposes to change the day of the week on which aeronautical charts and aeronautical publications will become effective. Currently aeronautical charts and publications become effective on Thursdays at 0901 Universal Coordinated Time. However, increases in air traffic activity on weeknights indicate that a change may be required to resolve problems being experienced by certain Air Freight Operators.

DATES: Comments must be received on or before December 1, 1989.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26024, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Oliver F. Cooper, National Flight Data Center, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9311.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed policy change by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposal. Communications should identify the docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposed policy change must submit with those comments a self-addresseo, stamped postcard on which the following statement is made: "Comments to Docket No. 26024." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed change. The proposal may be changed as a result of comments received. All comments submitted will be available for examination in the Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposed policy change will be filed in the docket.

Availability of the Proposed Policy

Any person may obtain a copy of the notice of proposed policy by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this proposed policy. Persons interested in being placed on a mailing list for future proposals should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

In January 1989, the FAA was requested, by way of a letter from seven major air freight carriers, to change the day on which aeronautical charts and related publications are put into effect. The letter was followed by several conferences with the FAA Administrator and others to discuss this request. As a result of these discussions, the FAA has agreed to evaluate a proposal to change the effective dates of certain charts and associated aeronautical publications.

Discussion

The International Civil Aviation Organization (ICAO) Annex 15 prescribes, in part, that the various forms of notices to airmen regarding circumstances affecting aeronautical systems, e.g., flight information regions, air traffic system routes, navigation aids, communication facilities, air traffic service procedure, etc., shall be originated under the Aeronautical Information Regulated System. That is, the establishment or withdrawal of, or significant changes to elements of such systems are to be based on a series of common effective dates at 28-day intervals beginning Thursday, May 5, 1966. Additionally, Annex 15 provides procedures for the origination and distribution of aeronautical information well in advance of effective dates (Annex 15, section 5.2). Further, the current edition of Annex 15 specifies January 15, 1987, a more recent date, on the same "28-day Thursday" interval.

The United States follows these provisions except that, since 1975, the United States, along with Canada and Mexico, has used a 56-day cycle, i.e., alternate "28-day Thursdays." Flight information publications, including navigation charts and other aeronautical documents used by all operational and planning elements of the aviation community, are processed on the same cycle.

Air route traffic control center (ARTCC) computer systems must be shut down to update their data bases with the system changes effective on "Aeronautical Information Regulation and Control Thursdays." This shutdown procedure requires all flight plans in the system to be printed out and then re-entered manually when changeover to the updated data base is completed. In one ARTCC in particular, the shutdown and startup must be accomplished between the inbound and outbound peak traffic periods of eight air freight carriers—a period of about 2 hours. Approximately 200 proposed flight plans must be re-entered when the updated system is operational. If hardware, software, or other problems delay the system startup, flight delays can, and have resulted from lack of flight plan information. These carriers report that the consequences of this situation have included late freight deliveries, missed connections, financial loss, and customer dissatisfaction for the air freight companies.

Thursday has become one of the busiest days for air traffic operations. The problem could be alleviated by changing the aeronautical information regulations and control (AIRAC) day to Monday when air freight traffic and other traffic activity are at their lowest. To accomplish this change, the United States would be required to propose to ICAO that Annex 15 be amended accordingly. Such a proposed amendment would need to be coordinated and approved through the Interagency Group on International Aviation (IGIA) before being submitted to ICAO.

Issues for Public Comment

Before presenting the issue to IGIA, the FAA is soliciting comments from all interested parties on the desirability of changing the AIRAC day to Monday. Comments should address the advantages or disadvantages, e.g., economic, procedural, operational, safety, etc., that would result if this policy change were made.

Issued in Washington, DC, on September 22, 1989.

David J. Hurley,

Acting Director, Air Traffic Operations Service.

[FR Doc. 89-23135 Filed 9-29-89; 8:45 am]

BILLING CODE 4910-13-M

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federal register

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Part V

Department of Transportation

Coast Guard

46 CFR Parts 50, 56 and 61
Vessel Piping Systems; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 56 and 61

[CGD 77-140]

RIN 2115-AA17

Vessel Piping Systems

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations amend the vessel piping systems regulations to clarify technical requirements, correct errors, and revise the lists of acceptable standards and specifications. These changes result from advances in technology and suggestions from industry and Coast Guard field units and provide a better understanding of the technical requirements for vessel piping systems. In addition, these amendments delete the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, incorporate industry developed standards. These changes eliminate the submission of technical information for these components and reduce the overall cost burden in staff hours and paperwork for both industry and the Government, while providing a better method for ensuring that the components comply with Coast Guard regulations.

DATES: This rule is effective on November 1, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Peter Richardson, Office of Marine Safety, Security, and Environmental Protection; Marine Technical and Hazardous Materials Division, (202) 267-2206.

SUPPLEMENTARY INFORMATION: On January 9, 1985, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (50 FR 1072). The NPRM was entitled "Miscellaneous Changes to parts 50 and 56," and 27 comments were received on the proposal. On May 18, 1988, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled "Vessel Piping Systems," in the Federal Register (53 FR 17868). The SNPRM expanded upon the earlier NPRM and further proposed deletion of the affidavit system whereby manufacturers verify compliance with regulations in the fabrication of vessel piping system components. The Coast Guard received 8 comments in response to the SNPRM, bringing the total number of comments received on the proposal to 35. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard L. Hime, Project Manager, and Mr. Stephen H. Barber and Lieutenant Commander Don M. Wrye, Project Counsels, Office of Chief Counsel.

Background

These regulations clarify certain technical requirements for vessel piping systems in 46 CFR part 56, correct errors, and revise the lists of acceptable standards and specifications. In addition, these regulations delete from 46 CFR part 50 the manufacturers' affidavit system used to verify compliance of various piping components with the regulations and, instead, incorporates industry developed standards. These regulations have no effect on installations and equipment already accepted by Coast Guard marine inspectors and maintained in good and serviceable condition. However, when a piece of equipment or a system is replaced, these regulations (as well as other regulations issued after the original date of acceptance) which relate to the equipment or system would be applicable to the replacement.

Discussion of Comments and Changes

1. Section 50.25-1

This section was revised by the SNPRM to describe the basic acceptance criteria for materials and piping components.

One comment requested clarification of the marking required by paragraphs (c) and (d). Paragraph (c) was revised to clarify that the marking is that required by the adopted industry standard. Paragraph (d) and § 50.25-10, which are for components not complying with an industry standard, were not changed since it is clear that the marking is that which is normally applied to the component by the manufacturer.

2. Section 56.01-3

One comment pointed out the section title is incorrect since there is no longer a 102.4.7 in American National Standards Institute (ANSI) B31.1. The section title in the final rule has been revised to delete this reference.

3. Section 56.01-6

This section has been removed and all standards referenced in that section have been incorporated into a new § 56.01-2. Regarding comments on the old § 56.01-6, one comment recommended the adoption of American Society for Testing and Materials (ASTM) F-25 and ASTM F-25.13 standards. Several standards developed under ASTM F-25 Committee on Shipbuilding Standards were proposed for incorporation by reference under the SNPRM. The Coast Guard is actively involved with industry in the development of shipbuilding standards through this committee, its subcommittees, and its task groups. The final rule incorporates many of these standards. As more standards are developed and found to be suitable for incorporation into the regulations, they will be included by future rulemaking projects.

4. Section 56.01-10

A new paragraph (f) was added by the proposed rule which would have permitted the substitution of a piping system diagram (required to be submitted by § 56.01-10(c)(1)) which contained locations where required and a fully detailed material list in lieu of an arrangement drawing (as required by § 56.01-10(c)(2)) unless calculations were also required for that system.

Three comments questioned the requirement in paragraph (f)(2) for "a fully detailed bill of material." One stated the requirement should be deleted since the presently permitted diagram material schedule is sufficient. One felt the wording needed clarification. One indicated the wording was misleading and would be incompatible with the efforts of the National Shipbuilding Standards Program (Panel SP-6) to develop a standardized method of describing pipe and piping system components on piping diagrams. The introductory sentence to paragraph (f) of the final rule has been changed to clarify that this paragraph provides an alternative to submitting the arrangement drawings of § 56.01-10(c)(2). Paragraph (f)(2) has been reworded to ensure that piping diagrams contain sufficient information to enable plan reviewers to substantiate that components comply with applicable regulations, while at the same time be compatible with the efforts of Panel SP-6 of the National Shipbuilding Standards.

5. Section 56.04-10

This section was changed by the proposed rule to clarify the acceptance criteria for piping systems which do not require specific plan approval.

One comment indicated that a statement should be included in this section to indicate that pressure vessels would have to meet part 54 as applicable. This recommendation has not been incorporated. Pressure vessels are not considered appurtenances and are not covered by this section. It is unnecessary to indicate that pressure vessels must meet part 54, as applicable.

One comment said paragraph (c) should specify "operational" failures, since failure in any pressurized system could constitute a hazard to personnel. This recommendation has not been incorporated. The wording has been unchanged in the final rule. This paragraph allows the inspector to evaluate systems and consider many parameters (e.g., proximity to switchboards, locations relative to personnel access routes, the dependence of vital systems upon them, etc.) in determining whether they are inherently safe and suitable for the environment in which they are installed.

6. Section 56.07-5

This section was amended by the addition of a definition for "vital system."

Two comments said the definition was itself subject to broad interpretation and did little to clarify the intent of the term. This definition has been changed to coincide with the definition for "vital system or equipment" found in § 62.10 of this subchapter. This change was made to promote uniformity in the regulations and clarify the intent behind this definition.

7. Section 56.07-10

Paragraph (c) of this section was revised by the proposed rulemaking to clarify that it replaced only paragraph 101.5.3 of ANSI B31.1, which deals with considerations to account for earthquake effects, with requirements which relate specifically to ship motion dynamic effects.

One comment questioned the requirement of paragraph (c)(2) of reducing tabulated allowable stress values by at least 20% when a ship motion analysis is not conducted for Class I systems. The comment stated that since the system would not be operated while the ship was in motion, no dynamic ship motion analysis should be required and no reduction in specified allowable stresses would be necessary. This paragraph is unchanged in the final rule. The proposed wording is clear in specifying when allowable stress values must be reduced. If vessel owners feel they have extenuating circumstances which warrant a relaxation of this requirement, they may seek an approval of their system on a case-by-case basis from the Marine Safety Center.

One comment said that paragraph (d)(1) should reference 102.2.2 of ANSI B31.1 instead of 102.2. This recommendation has been included in the final rule.

8. Section 56.15-1

Paragraph (a) of this section was amended by the proposed rules to clarify the fact that materials used in the fabrication of pipe joining fittings manufactured in accordance with standards referenced in these regulations must comply with subpart 56.60 of this part.

One comment said that requiring a component's material to meet Subpart 56.60 when it complied with a referenced standard was unjustified. The comment stated that any material specified within an adopted standard should be acceptable for use. This paragraph was revised by the SNPRM and the wording in question has been left unchanged in the final rule. Component materials must meet the requirements of subpart 56.60, since these have been found to be specifically suitable for shipboard applications. While referenced standards ensure components of acceptable pressure/temperature designs, some materials accepted in those standards may be unsuitable for the marine environment.

9. Section 56.20-1

This section was amended by the proposed rules to clarify wording that has been a frequent cause of confusion. Additionally, the SNPRM deleted reference to the affidavit system, instructed manufacturers how to obtain acceptance of their products, permitted, with some limitations, the use of welded valves, and incorporated into the regulations additional current industry standards for valves.

Three comments were received in response to the initial proposed rules. One stated the valve specification should be broadened to include modern valve designs not currently acceptable. The SNPRM accomplished this with its proposed method for manufacturers to gain product acceptance of valves not built to referenced standards. These procedures are included in the final rule.

One comment indicated that clarification was needed as to what constitutes a "welded valve." The SNPRM expands upon the present working of the regulations and clarifies that the procedures of subpart 56.70 and part 57 must be followed for welded valves. These requirements are applicable to welds which form part of the pressure-containing boundary of the valve (i.e., body, bonnet).

10. Section 56.20-9

This section was revised by the proposed rules for clarification purposes and to limit the use of wafer valves to agree with the American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels and allow piping inboard of a skin valve to be removed without drydocking the vessel.

Three comments indicated questions remained with the revised wording of paragraph (a). They also all uged that quarter-turn (rotary) valves be permitted in addition to outside yoke and screw valves with rising-stem. The attempt to clarify the requirements of this section obviously led to further confusion. Quarter-turn (rotary) valves have long been accepted aboard Coast Guard inspected and certificated vessels. Numerous standards referenced in Table 56.60-1 (b) relate to this type of valve. Paragraphs (e) and (f) of this section specifically address plug cocks. Section 56.20-15 addresses resiliently seated valves, traditionally quarter-turn valves. The fact that three commenters said such valves should be permited indicates still further clarification of this section is necessary. Therefore, requirements have been added for quarter-turn and lever operated valves.

Four comments indicated that further clarification of paragraph (b) was necessary, while one commenter felt that the paragraph was overly restrictive on the size limitation for socket type welding ends for class I piping systems. These comments are agreed with. The size restrictions have been changed to agree with other socket weld restrictions in the regulations and the ABS Rules for Building and Classing Steel Vessels, which also clarifies the requirements of this paragraph.

One comment requested further clarification of the allowable use of wafer-type valves for shell connections in paragraph (c). This recommendation has been incorporated in the final rule. The intent behind not allowing wafer-type valves as shell connection shut-off valves is that many wafer valves are held in place by the pressure exerted by adjacent piping flanges. They do not permit piping immediately inboard of the valve to be removed for repair without raising the shell connection out of the water. This is not in keeping with good marine practice. Therefore, this paragraph has been revised to clarify this point.

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11. Section 56.20–15

A new paragraph (c) was added by the proposed rule which clarified the requirements of resiliently seated valves. It specified how manufacturers are to qualify their valves to desired categorization.

One comment pointed out that the valve categorization specified in paragraph (b) did not coincide with the valve categorization criteria of paragraph (a). This comment is agreed with. The first sentence of paragraph (b) has been revised to include positive shutoff valves as a third category of resiliently seated valves.

Several comments were received which related to paragraph (c). Three indicated that actual fire testing provided the most meaningful results and should be used to determine Category A and positive shutoff designations. Four questioned the formulas used to determine leakage rates for the various categorizations, claiming they were unclear or incapable of being met. None of the comments made were incorporated. Being a new requirement, confusion was anticipated. These tests were included in the regulations to provide definite limits to be used in categorizing resiliently seated valves. Testing a valve by removing the resilient seating material affords manufacturers a way to avoid bearing the cost of fire testing their product. It is a simple matter to determine the flow through a valve at its rated pressure and comparing it against the flow through the valve closed with the resilient seating material removed and subjected to the same pressure. For those manufacturers who choose not to utilize this option, they may conduct a fire test of their valve or submit calculations verifying their product acceptance, provided the alternate method chosen is acceptable to the Commandant (G–MTH).

12. Section 56.25–20

The SNPRM modified this section to bring its wording into line with that contained in ANSI B31.1. One commenter felt that paragraph (b) of this section should be further revised to more fully comply with ANSI B16.5. Specifically, carbon steel bolts should be permitted to have either hex heads or square heads, and the maximum operating temperature for low strength carbon steel bolts should be reduced to 400 °F. The final rule reduces the maximum operating temperature allowed for low strength carbon steel bolts to 400 °F. This is in agreement with ANSI B16.5 and ANSI B31.1. The requirement that carbon steel bolts have heavy hexagon steel heads and nuts has been retained. Though this exceeds the requirements of ANSI B16.5, it complies with the requirements of ANSI B31.1 and retains the requirements presently contained within these regulations.

Two comments pointed out that paragraph (c), in prohibiting the use of headed alloy bolts, conflicts with ANSI B16.5 and ANSI B31.1. The final rule eliminates this prohibition. It additionally leaves the wording of the first sentence of paragraph (d) unchanged. This change brings the regulatory requirement into line with long adopted codes and standards.

One comment indicated that Class 3 threads have been the standard used by all manufacturers and felt that paragraph (d) should be revised to reflect this fact. This comment has not been included in the final rule. The present wording permits Class 3 threads as well as others and agrees with the requirements of ANSI B16.5, ANSI B31.1 and the ASME Code. No change is warranted. The Coast Guard sees no reason to restrict the choice to only one class of threads.

13. Section 56.30–5

The SNPRM proposed revisions to several of the requirements for welded joints outlined in this section.

One comment pointed out that, in paragraph (c), the references to subparagraphs § 56.30–10(b) (5) and (6) should be deleted from the first sentence of this paragraph since they are not applicable to socket welds. This suggestion has been included in the final rule.

Two comments were made regarding paragraphs (c) and (d), questioning why the requirement for a fillet weld leg size of 1.4 times the nominal pipe wall thickness (1.4T) has been retained when ANSI B31.1 has permitted this dimension to be reduced to 1.09T. The final rule has not been changed. A fillet weld leg size of 1.4T results in a fillet weld throat thickness equal to the nominal pipe wall thickness. The NPRM discussed the recent trend of reducing fillet weld leg size to 1.09T. The reduction in fillet weld size was permitted primarily for socket type pipe joints and socket weld fittings where the surface of the parts to be joined did not always allow for larger fillets. However, many experts do not consider this reduction appropriate for fillet welds which effectively serve as all or part of the hub area of a flange to a pipe joint. Our regulations already contain provisions to reduce the fillet size in Class II piping and when heavy wall pipe is used for long life in corrosive service rather than for strength. For these reasons we decided not to change our requirements for fillet weld size except to include a provision that the fillet weld need not be larger than the space available for it on the hub of the flange. No data, as specifically requested by the NPRM, was submitted to prove the 1.4T requirement is overly conservative. Therefore, the change to 1.09T will not be made.

14. Section 56.30–10

The SNPRM proposed revisions to several of the requirements for flanged joints outlined in this section.

Two comments were made about the proposed sentence added to the note to Figure 56.30–10(b). Both pointed out referencing a hub thickness of ⅛-inch is meaningless since all ANSI hubs have a thickness larger than this. These comments are agreed with. The note has been changed accordingly.

Two comments stated that in paragraph (b)(2), the size of the strength fillet welds for slip-on type flanges should be changed to coincide with ANSI B31.1, i.e., permit a leg length of 1.09 times the nominal pipe thickness. This suggestion has not been included in the final rule for the reasons discussed above.

One comment objected to the proposed wording of paragraph (b)(3) since it limits the use of slip-on flanges to a maximum nominal pipe size (NPS) of 4 for all Class I piping systems whereas the existing rules permit their use in sizes exceeding 4 NPS in relatively low pressure Class I systems. The final rule is as proposed. The changes to this section and § 56.95–10 are made to bring regulatory requirements into agreement with ANSI B31.1 and correct long-standing printing errors in 46 CFR Table 56.95–10.

One comment stated that paragraph (b)(5) should be modified to allow hubbed plate flanges in accordance with appendix 2 of section VIII of the ASME Code. This suggestion has not been included in the final rule. Hubbed plate flanges are currently permitted by § 56.25–5 which allows flanges to meet the design requirements of appendix 2 of section VIII of the ASME Code. Paragraph (b)(5) is intended only to address flat plate flanges and modifying this paragraph to include hubbed plate flanges is unnecessary.

15. Section 56.30–20

One comment stated paragraph (c) of this section, regarding restrictions on threaded joints, is too vague but offered no suggestions for clarification. The wording of this paragraph has been unchanged in the final rule. The rule is sufficiently specific to allow designers and plan reviewers to determine where threaded joints are not permitted.

16. Section 56.35–15

The NPRM attempted to clarify and differentiate the requirements for metallic and nonmetallic expansion joints.

Four comments indicated confusion still exists and recommended the Coast Guard recognize the standards of the Expansion Joint Manufacturers Association (EJMA). This suggestion was incorporated. The SNPRM revised this section and § 56.35–10. Section 56.35–10 now contains requirements for nonmetallic expansion joints (regardless of their pressure rating) and § 56.35–15 contains requirements for metallic expansion joints. Standards of the EJMA have been added to Table 56.60–1(b) as applicable to piping systems. Expansion joints meeting adopted standards will be suitable for use within their design pressure/temperature ratings. Those not built to recognized standards must be proven suitable on a case-by-case basis in accordance with § 50.25 of this chaper.

17. Section 56.50–1

Paragraph (c) of this section was amended by including the fact that modern sluicing arrangements for tankships would be considered for approval on a case-by-case basis by the Marine Safety Center.

One comment stated that the use of sluicing systems should be allowed on vessels other than tankships. This comment has not been included in the final rules. Sluicing arrangements are only suitable for vessels dedicated to the carriage of liquid cargoes, i.e., tankships. Should, at some future date, another vessel designer propose such a system, it may be considered for acceptance under the "general equivalency" regulations of 46 CFR 50.20–30.

One comment suggested that paragraph (g)(2) be amended to include a requirement that valve position indicating systems be independent of the valve control systems. This suggestion has been incorporated into the final rules. Vessel personnel must know the status of remotely operated valves from the position of the remote valve control. The position indicating system should be independent of the control system in order that failure of the latter will not result in failure of the former. Paragraph (g)(2)(iii) has been amended by the addition of the requirement that valve position indicator systems be independent of the valve control systems. This is consistent with the requirement contained in § 62.30–5 of this subchapter.

One comment suggested that paragraph (g)(3) be revised to clarify its intent. This recommendation has been included in the final rule. Paragraph (g)(3) has been revised to clarify that the required self-indicating air cock in the actuating line to an air operated remote control valve must indicate the desired valve position, i.e., open or closed. The independent valve position indicator, required by amended paragraph (g)(2)(iii), serves to verify that the actual valve position coincides with the desired valve position.

18. Section 56.50–15

One comment pointed out that the steam heating requirements of paragraph (h) of this section should be amended to bring the regulatory requirements into line with accepted shipboard practices. This comment is agreed with. The present regulations limit steam pressure for "space heating" to 45 pounds per square inch gage (psig). The question has frequently been asked as to the meaning of "space heating." Space heating has been interpreted to mean heating for accommodation and public spaces. Non-accommodation and non-public spaces (e.g., work spaces, machinery spaces, gear lockers) are permitted to have steam heating systems in excess of 45 psig. Paragraph (h) of this section has been revised to clarify this policy.

19. Section 56.50–45

The NPRM proposed that paragraph (b) of this section be modified by specifying that the suctions for the main and emergency circulating pumps be "well separated" in addition to independent.

Two comments pointed out that the proposed change was vague and open to significant variations in interpretation. These comments are agreed with, and the proposed change has been deleted from the final rule.

20. Section 56.50–50

The proposed rules amended paragraph (c) of this section to inform designers that bilge systems other than the conventional manifold-type may be considered on a case-by-case basis by the Marine Safety Center, and to require bilge discharge valves to comply with the rapid operation requirements currently imposed upon suction valves.

One comment stated the requirements for common rail-type systems should be clearly specified and moved to a separate section. This suggestion has not been incorporated into the final rule. The present regulations adequately address common rail-type bilge systems, and the amendments to this paragraph permit any nonmanifold-type bilge system to be evaluated on a case-by-case basis.

Two comments indicated that the proposed wording could be interpreted to require stop-check manifold type valves for bilge overboard discharges. This point is agreed with. The intent of the proposed rule was that bilge overboard discharge valves comply with the location and accessibility requirements of the bilge suction valves, but the proposed rules did not intend that bilge overboard discharge valves be of the stop-check type. Therefore, the fourth sentence has been modified to indicate that bilge overboard discharge valves must meet the location and accessibility requirements of the suction manifolds.

The proposed rules amended paragraph (d)(1) of this section to correct a long-standing typographical error in the formula used to determine the diameter of the suction to each main bilge pump.

Five comments pointed out that the proposed rule was still incorrect. This observation is agreed with. The improper fix was a result of a misprint. The formula is correct in the final rule.

Paragraph (f)(3) of this section was amended by the proposed rules to clarify the emergency bilge suction requirements of paragraph (f).

One comment was made which pointed out that the proposed amendment did not accomplish its goal. This comment is agreed with. The existing text of paragraph (f)(3) will be left unchanged. Instead, the word "except" will be deleted from the first sentence of the introductory text of paragraph (f). This word is the apparent cause of the confusion over this requirement. By this deletion, vessel designers should have no problem determining when a vessel is required to have an emergency bilge suction. It should be noted that vessels engaged solely in river service are not required to have an emergency bilge suction. The requirements for emergency bilge suctions stem from the International Convention for the Safety of Life at Sea 1974, as amended (SOLAS 74/83), which is not applicable to these vessels. Additionally, the purpose of an emergency bilge suction is to "buy time" in the event of catastrophic flooding. Vessels in river service, unlike vessels with ocean, coastwise or Great Lakes routes, are usually closer to the safety of shore.

The NPRM proposed incorporating piping separation requirements

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contained in various locations within 33 CFR and 46 CFR into paragraph (h) of this section.

Several comments were made in response to this proposal. These pointed out that the requirements went beyond bilge and ballast piping to which § 56.50–50 pertains, that this paragraph should be referenced in other sections, and the imposition of requirements for spaces which could contain Grade E liquids (with flashpoints below 150°F) will cause problems with diesel propelled vessels (since diesel flashpoints are at 140°F). These comments are agreed with, and the proposed change has been deleted. To clarify the ambiguity in the present text, wording has been added to indicate that these bilge piping requirements are intended to apply to drain spaces containing dry cargo (i.e., cargo holds). The first sentence of this paragraph specifies "cargo holds" instead of "cargo spaces."

The NPRM proposed modifying paragraph (k) of this section by making the requirements applicable to all tanks through which bilge and ballast piping pass rather than just deep tanks, with the specific exception of ballast piping passing through ballast tanks.

Three comments were received that related to this proposed change. One comment stated that the wording was still unclear and proposed alternate wording. Two comments stated that the restrictions were excessive and proposed allowing the use of expansion joints and dresser-type couplings in bilge and ballast lines within tanks. As a result of these comments, this paragraph was modified by the SNPRM. The requirements still apply to all tanks, rather than just deep tanks, with the exception of ballast piping passing through ballast tanks. In addition, alternates to welded pipe or enclosing piping in pipe tunnels (such as expansion joints or dresser-type couplings) could be approved by the Marine Safety Center, provided certain design verifications are submitted and found to be satisfactory.

21. Section 56.50–55

Three comments indicated that clarification was needed in paragraph (c) with respect to the requirement of a suction velocity of not less than 400 feet per minute through the bilge suction pipe. This requirement was included in the SNPRM and has been retained in the final rule. The question has been frequently raised as to whether or not this suction velocity was required in suction piping larger than that required by § 56.50–50 of this part. This would require builders to install pumps larger than that required if the minimum pipe size were provided.

The intent of the regulations regarding bilge suction velocity is to ensure that a given volume of water can be removed in a given time. The larger (or deeper) the compartment, the larger the required volumetric flow rate. Minimum pipe sizes are specified in the regulations. Since volumetric flow rate is the prime concern, if a designer opts to install larger than required piping, a pump may be installed which will produce a lesser fluid velocity through that pipe, provided the volume of fluid removed in a given time will at least equal that amount passing through the minimum required pipe size at 400 feet per minute.

Paragraph (e)(1) of this section was modified by the proposed rules to clarify the intent of the separation of bilge pump requirements and to provide an example of an acceptable alternative bilge pump arrangement.

Two comments interpreted the example to be a required pumping arrangement and took exception. Though the example was provided to illustrate one acceptable alternative pumping arrangement, rather than a required alternative, it is clear that the proposed wording could lead to confusion. To remedy this problem, the example has been deleted from the final rule. Ideally, bilge pumps should be located in separate watertight compartments. In vessels which do not have separate watertight compartments, or in which it is not practicable to locate bilge pumps in separate watertight compartments, designers may propose alternative arrangements (i.e., locating all bilge pumps within the machinery space) for consideration by the Marine Safety Center.

22. Section 56.50–60

The NPRM combined the requirements of § 56.50–5 with the requirements of this section and changed the title of this section to read: "Systems containing oil."

Three comments pointed out the new title would lead readers to believe the requirements also apply to lube oil, hydraulic oil, and thermal fluid systems. The Coast Guard agrees with these comments since this was the intent of the combination as stated in the NPRM. Unless otherwise specified, the requirements apply to all oil systems. Therefore, the proposed section heading is retained.

One comment suggested that the first sentence of paragraph (c) of this section be reworded for the sake of clarification. This has been done in the final rule by revising the first sentence to remove redundant language.

Three comments requested that paragraph (d) of this section be expanded to address acceptable valve types in specific locations (i.e., Category A valves at tanks with positive shutoff valves at the machinery space bulkhead), clarify the energy storage requirements for power operated valves, and clarify the design requirements for the power actuators for power operated valves. Paragraph (3)(i) of this section was revised by the SNPRM to clarify that the energy storage requirements are applicable only to valves actuated by hydraulic or pneumatic power. The Coast Guard reviewed the present requirements for valves at tanks and the design requirements for valve power operators and found the requirements adequate. Therefore, these requirements have not been changed in the final rule.

23. Section 56.50–75

This section was modified by the NPRM with minor editorial corrections.

One comment stated further revisions were necessary to address the use of heated fuel oil systems. The comment has not been included in the final rule. The present regulations of this section, coupled with fuel system and general requirements found elsewhere in this subchapter (e.g., §§ 56.01–1, 56.50–60, 58.01–5, etc.) are considered at this time to be adequate.

24. Section 56.50–85

Paragraph (a) of this section was modified by the NPRM to clarify that the venting requirements specified applied to independent fixed non-pressure tanks or containers as well as to integral tanks. Paragraph (a)(4) of this section was revised by the SNPRM to require all tank vents to extend above the weather deck, with certain specified exceptions.

One comment stated that the venting requirements for cofferdams, voids, duct keels, etc., should also be included. This comment has not been included in the final rule. These requirements are intended to apply to liquid-carrying tanks. Venting requirements for other spaces are found in other, more appropriate, places within the regulations.

One comment questioned the fact that paragraph (a)(7) of this section addresses flame screens on bilge slop and contaminated drain tank vents, but neglects to specify where such vents should terminate. This concern was addressed in the SNPRM and has been included in the final rule. Paragraph (a)(7) was redesignated as (a)(8) in the final rule. Paragraph (a)(4) of this section now contains requirements for the terminus of tank vents dependent upon the fluid within the tank.

Two comments felt the proposed regulations were too lax. Allowing bilge oily-water holding tanks and bilge slop tanks to vent into the machinery space is, they indicate, an unsafe practice. These comments are not agreed with. Bilge oily-water holding tanks and bilge slop tanks contain oil/water mixtures from the machinery space bilge. Present regulations permit venting of these tanks within the machinery space. The Coast Guard is unaware of any problems that indicate this practice is unsafe. The danger of lighter, more volatile, vapors being concentrated within such tanks is minimized since they largely separate from the oil as it accumulates in the bilge and are exhausted to atmosphere through the ventilation system. Additionally, vents from these tanks are required to be fitted with flame screens. This proposed regulation clarified present regulations, agrees with present policy, and is in agreement with classification society requirements.

25. Section 56.50–95

This section was amended by the NPRM to clarify existing wording, address tank overflows used as tank vents, and establish requirements for locking of sea valves.

One comment proposed amending paragraph (a)(1) of this section to indicate that valves required by this section should be as close to the hull penetration as practicable. This comment is agreed with and is included in the final rule.

One comment stated that paragraph (b)(1) of this section should be further modified to clarify that it applies only to discharges above the waterline. This comment has not been incorporated. The requirements are sufficiently clear and have caused no confusion in the past. In their present form they are virtually identical to the requirements found in the Load Line Regulations (46 CFR 42.15–60(c)) and various classification society rules (e.g., ABS Rules, 36.25–2).

One comment stated the intent behind the proposed change to paragraph (c) of this section was unclear because the term "storage tank" is not defined. This comment is agreed with. The final rules have been changed to eliminate the term "storage tank" from the second sentence. Additional, the fourth sentence has been rewritten to clearly indicate that overflow pipes which also serve as tank vents must not be fitted with positive shutoff valves.

26. Section 56.60–1

The section heading and the note to the heading of Table 56.60–1(a) of this section were amended by the SNPRM to clarify that Table 50.60–1(a) actually replaces Table 126.1 in ANSI B31.1.

One comment stated that "eliminating Table 126.1" reduced the choice of allowable materials. It is precisely because of such misunderstandings that the wording in the heading has been changed. As stated in paragraph (a)(1) of this section, the material requirements in this subpart must be used in lieu of those in ANSI B31.1. Table 56.60–1(a) is a list of only those materials currently listed in Table 126.1 of ANSI B31.1 that are acceptable. If all the materials in Table 126.1 were acceptable, there would be no need for Table 56.60–1(a). The choice of allowable materials is not narrowed; it is the same as it was before. The proposed change has been retained in the final rule.

The SNPRM incorporated additional industry standards, in large part in conjunction with the deletion of the affidavit system. Standards will continue to be adopted as they are found suitable. This section was further amended by the NPRM and SNPRM to clarify wording, incorporate additional acceptable material standards into the regulations, and delete those which have been discontinued or found to be unsuitable for shipboard applications.

Sixteen comments suggested additional standards to be incorporated by reference. The suggested standards were reviewed. Several were found to be already incorporated by reference into the regulations. Others were found to be suitable and have been included in the final rule. Of those standards not adopted, some were found to have an unsuitable design factor of safety, lacked adequate testing criteria, or had no marking requirements. The Coast Guard is constantly looking for standards to adopt so as to reduce the regulatory burden on industry. However, certain key elements must be included in a marine engineering standard before it will be incorporated by reference. These elements include: Acceptable materials of construction, adequate design criteria, quality assurance during fabrication, final product testing, manufacturer's certification, and product marking to indicate conformance to the standard. Members of standards developing committees are strongly encouraged to include these criteria in their standards, thereby enabling them to be incorporated by reference into these regulations. Interested persons are strongly encouraged to continue to suggest standards for incorporation in these regulations.

27. Section 56.60–2

One comment stated that the restriction in footnote 5 of Table 56.60–2(a) of this section prohibiting certain brass materials from being used in salt water systems should be eliminated. This comment has not been included in the final rule. However, the second sentence of footnote 5 has been revised to explain the intent behind this restriction. The brass materials affected by this footnote all have high concentrations of zinc, and are subject to dezincification when used in a salt water environment. Copper-zinc alloys containing more than 15% zinc are susceptable to this dealloying process which weakens the alley and allows the leakage of liquids or gasses through the remaining porous mass. Most of the aluminum alloys affected by this footnote have greater than 0.6% copper and are susceptable to stress corrosion cracking unless they are solution heat treated and either naturally aged or subjected to a precipitation heat treated temper.

28. Section 56.60–10

One comment questioned whether cast iron and malleable iron conforming to standards and specifications other than those listed in Tables 56.60–1(a) and 56.60–1(b) of this part are restricted to a maximum temperature limitation of 450°F. The 450°F temperature limitation applies to all components made from cast iron or malleable iron. Section 56.60–10(a) has been changed to clarify this requirement.

29. Section 56.60–15

Two comments pointed out that Appendix E no longer exists in ANSI B31.1. This comment is agreed with. This section was revised by the SNPRM. Reference to Appendix E has been deleted.

30. Section 56.60–20

Paragraph (a)(1) of this section was amended by the NPRM to address the low melting points of other nonferrous materials instead of just aluminum and aluminum alloys.

Two comments indicated the proposed wording was vague, especially with respect to silver brazing alloys. These comments are not agreed with. The intent of this section has not been changed. Instead it has been clarified by pointing out that the low melting point of all nonferrous materials, not only aluminum and aluminum alloys, must be

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considered in certain piping applications. Requirements relating to melting points of brazing materials are contained elsewhere in the regulations.

31. Section 56.60–25

Modifications and amendments to this section were proposed by both the NPRM and SNPRM. In addition to correcting grammatical errors in the text, burning rates for glass reinforced resins and other plastics were specified, and specific test criteria for nonmetallic hoses were given.

One comment questioned the deletion of the word "valve" from the first sentence of paragraph (a)(1)(ii) of this section. This deletion was unintentional, and the word has been retained in the final rule.

Five comments requested that reinforced thermosetting resin pipe (RTRP) be given wider acceptance in the regulations, including a relaxing of the present prohibitions placed upon the material when passing through bulkheads and being installed in concealed spaces. This suggestion has not been included in the final rule. The Coast Guard has been actively involved in studying RTRP for use aboard inspected and certificated vessels. In September of 1986, Navigation and Vessel Inspection Circular NVIC 11–86, "Guidelines Governing the Use of Fiberglass Pipe (FGP) on Coast Guard Inspected Vessels" was issued. It provided the marine industry with updated guidance regarding the application of FGP aboard vessels. Through this NVIC, the accepted applications of FGP were greatly expanded. Coast Guard personnel have been working closely with industry to develop consensus-type standards for FGP through ASTM's Committee F–25 on Shipbuilding. One of these standards, ASTM F1173, has been completed and is incorporated by reference into these regulations. Internationally, the Coast Guard is leading in the development of acceptance criteria for all piping materials other than steel, which includes FGP, in all shipboard systems. For FGP, the requested regulatory change will be addressed in a separate regulatory action.

Two comments indicated that the burning rate to determine a self-extinguishing flammability criteria has been deleted from ASTM D635. This comment is agreed with. The SNPRM amended this paragraph to specify an acceptable burning rate. This has been included in the final rule.

Numerous comments responded to the proposed changes to paragraph (c) of this section. Comments to the changes were favorable. Most comments wanted the changes to go further, expanding the permitted reinforcing materials, allowing reuse of field attachable fittings, and modifying various test requirements. The final rule is changed only to the extent proposed by the NPRM and SNPRM. Currently the Rubber Manufacturers Association (RMA) and the Society of Automotive Engineers (SAE) are working together to develop an industry standard for hoses intended for marine applications. Accordingly, no changes are anticipated to this paragraph until this effort is finalized. At that time, it is anticipated that the standard can be incorporated by reference, thereby negating the necessity to develop additional regulations.

32. Section 56.97–5

One comment indicated the term "scuppers" should be replaced with "scupper valves" since the former is used to describe a deck drain fitting which is not normally a part of a pressure piping system. Though the comment was correct in describing a scupper, the suggestion has not been included in the final rule. Valve tests are described in other portions of the subchapter and need not be repeated here. It is more appropriate to delete the word "scuppers" from this section. This has been done in the final rule.

33. Section 61.15–12

This new section was added by the SNPRM to detail requirements for the inspection and replacement of nonmetallic expansion joints. Although not a comment on the regulations, the National Transportation Safety Board (NTSB) recommended in their marine accident reports on the Prince William Sound (NTSB/MAR–87/07) and the Ogden Willamette (NTSB/MAR–83/06) that the Coast Guard require a complete internal and external examination of nonmetallic expansion joints installed in the main seawater circulating system during drydock inspections. This rulemaking requires external inspection of all nonmetallic expansion joints at each drydock inspection. Only if the external inspection indicates the need for additional examination would the fitting be required to be removed for internal inspection. Removal of expansion joints to facilitate routine internal examinations, when no defects are suspected, may not only be cost-prohibitive, but would increase the likelihood of inadvertent damage. In addition and in accordance with the NTSB recommendation in the same reports, nonmetallic expansion joints in piping systems which penetrate a vessel's side, where both the expansion joint and the hull penetration are below the deepest load waterline, would be required to be replaced ten years after their date of manufacture.

One comment pointed out that the proposed wording of paragraph (d) of this section did not differentiate between metallic and nonmetallic expansion joints, nor did it differentiate between specific piping systems. This comment partially is agreed with. In the final rule, the section title has been changed to "Nonmetallic expansion joints" and paragraph (a) of this section has been revised to specifically require inspection of nonmetallic expansion joints. The final rule continues to apply to any piping system which penetrates the hull where both the penetration and the nonmetallic expansion joint are below the deepest load waterline.

One comment stated the required ten year replacement interval, as specified in paragraph (b) of this section, is unjustified. The comment maintained that with proper installation, and long-term care, nonmetallic expansion joints can last the life of a vessel. The comment also stated that if a replacement interval was to be required, it should be tied to the date of installation, not the date of manufacture of the joint. Another comment requested that nonmetallic expansion joints on Great Lakes and other freshwater vessels be excluded from the ten year replacement interval. While some nonmetallic expansion joints do last the life of a vessel, many do not. Flooding as a result of failure of large nonmetallic joints in seawater and freshwater systems can have catastrophic results. Basing replacement intervals on dates of installation ignores the natural deterioration which occurs to the organic materials used to fabricate nonmetallic expansion joints. Despite the fact that joints may be "properly maintained," this deterioration cannot be avoided. Also, since large joints are not normally kept in a vessel's spare parts inventory, the date of installation of a joint should be close to its date of manufacture. The final rule retains the ten year replacement interval, based on date of manufacture. However, words have been added which gives the Officer in Charge, Marine Inspection authority to grant an extension of the ten year replacement requirement to coincide with the vessel's next required drydocking.

Incorporation by Reference

The material in subpart 50.15 and § 56.01–2 has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in § 56.01–2.

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation.

However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A final evaluation has been prepared and placed in the public docket.

Two major issues in these regulations are the deletion of the affidavit system and the addition of the requirement to periodically replace certain nonmetallic expansion joints. A study conducted in 1980 concluded that the deletion of the affidavit system would result in an estimated annual savings in excess of $70,000 for the Coast Guard and $500,000 for vessel owners. Adjusting these figures by the Producer Price Index for Finished Goods for the years 1980 to 1987 results in an estimated annual savings (in 1987 dollars) of $84,000 for the Coast Guard and $600,000 for vessel owners. These savings are based on the elimination of the overall cost of the affidavit system, which was determined by evaluating the costs incurred by the Coast Guard to grant initial affidavit acceptances, evaluate products of affidavited manufacturers, and verify the proper use of affidavited products; by manufacturers to comply with the requirements of the affidavit system; and by vessel owners to purchase products from affidavited manufacturers.

Requiring vessel owners to periodically replace nonmetallic expansion joints in seawater piping systems would result in an estimated annual cost (in 1987 dollars) to vessel owners of approximately $2,520 for each steam propelled vessel and $1,172 for each diesel propelled vessel. In 1989, the U.S. fleet of vessels over 100 gross tons was made up of 937 diesel powered vessels and 376 steam powered vessels. The average age of the diesel and steam powered vessel fleet is approximately 10 and 15 years old, respectively. The economic burden upon the maritime industry to replace nonmetallic expansion joints within the existing fleet will be approximately $2,040,000 (in 1987 dollars) spread over the next ten years, or an average annual cost of $204,000. Considering the age of the average existing vessel and taking into the account replacement of some older nonmetallic expansion joints through routine maintenance, it is projected that the cost to the industry during the first year of implementation of these regulations will be $350,000 (in 1987 dollars). The economic benefits of periodic replacements of nonmetallic expansion joints are difficult, if not impossible, to quantify. However, when the costs of vessel replacement and the loss of vessel revenues which could result from expansion joint failures are considered, the economic benefits of periodic expansion joint replacement are substantial.

Regulatory Flexibility Act

These regulations have been evaluated in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As described in the Regulatory Policies and Procedures section above, the effect of these regulations is to reduce Coast Guard and industry costs. Most of the changes clarify technical requirements, update lists of acceptable standards or editorially correct errors and will have a minimal economic impact. There is no reason to assume that the deletion of the affidavit system as a result of proposed regulations would cause small entities to be unable to effectively compete against larger concerns. To the contrary, the elimination of the affidavit system should increase sales opportunities for new companies entering the marine market because prospective clients would be unable to require a company first to have an affidavit accepted by the Coast Guard. The regulations requiring periodic replacement of nonmetallic expansion joints would apply to owners of Coast Guard inspected and certificated vessels. Due to the cost of owning and operating a vessel, the annualized cost of replacements is not considered to have a significant impact. The cost will be less on smaller vessels than on larger ones.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no new information or recordkeeping requirements. The information collection requirements contained in this rulemaking have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2115–0142. Section 50.25–10 eliminates the requirement for a manufacturer's affidavit, Form CG–935A, thus reducing this paperwork burden. The savings associated with this reduction have been previously discussed.

Section 56.01–10(f) reduces the number of arrangement drawings required to be submitted. Arrangement drawings are unnecessary if certain conditions are satisfied, e.g., the information is satisfactorily presented on associated diagrams.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, these regulations will have no significant environmental impact and are categorically excluded from further environmental documentation. The proposed regulations revise existing regulations to clarify technical requirements, correct errors, and substitute industry standards for existing regulatory requirements.

List of Subjects in 46 CFR Parts 50, 56, and 61

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, chapter I of title 46, parts 50, 56, and 61 of the Code of Federal Regulations are amended as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 50.01–20 also issued under the authority of 44 U.S.C. 3507.

2.–3. A new § 50.10–23 is added to read as follows:

§ 50.10–23 Marine Safety Center.

The term "Marine Safety Center" refers to the Commanding Officer, U.S.

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Coast Guard, Marine Safety Center, 400 7th St., SW., Washington, DC 20590.

4. Section 50.15–1 is amended by revising the section heading and paragraph (b) and removing paragraph (c) to read as follows:

§ 50.15–1 General acceptance of standard requirements.

* * * * *

(b) The issue of the industry specification, standard, or code described in this subchapter as incorporated by reference, is generally accepted as an alternate during plan review and approval, or for repair or replacement. The Commandant (G–MTH) may authorize the use of an issue of an earlier or later date when circumstances warrant such action.

5. Section 50.15–20 is amended by revising paragraphs (a)(1) through (a)(13) and adding new paragraph (a)(14) to read as follows:

§ 50.15–20 Additional standards.

(a) * * *

(1) American Boat and Yacht Council, Inc. (ABYC), 305 Headquarters Drive, Suite 3, Millersville, MD 21108.

(2) American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(3) American Welding Society (AWS), United Engineering Center, 345 East 47th Street, New York, NY 10017.

(4) Commercial Standards, Commerce Department, National Bureau of Standards, Washington, DC 20234.

(5) Compressed Gas Association (CGA), 1235 Jefferson Davis Highway, Suite 501, Arlington, VA 22202.

(6) Expansion Joint Manufacturers Association, Inc. (EJMA), 25 North Broadway, Tarrytown, NY 10591.

(7) Fluid Controls Institute, Inc. (FCI), 31 South Street, Suite 303, Morristown, NJ 07960.

(8) Manufacturers' Standardization Society of the Value and Fittings Industry (MSS), 127 Park Street, NE., Vienna, VA 22180.

(9) Military specifications, which may be obtained from the Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120.

(10) National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269.

(11) National Fluid Power Association (NFPA), Post Office Box 49, Theinsville, WI 53092.

(12) Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, PA 15096.

(13) Tubular Exchanger Manufacturers' Association, Inc. (TEMA), 25 North Broadway, Tarrytown, NY 10591.

(14) Underwriters' Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709.

* * * * *

6. Section 50.20–5 is amended by revising paragraphs (b) and (c), removing existing paragraph (d) and redesignating paragraph (e) as paragraph (d) to read as follows:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(b) The plans, except as noted in paragraph (c) of this section, may be submitted in duplicate to the Officer in Charge, Marine Inspection, at or nearest the place where the vessel is to be built. Alternatively, plans may be submitted in triplicate to the Marine Safety Center.

(c) Plans for nuclear vessels should be submitted in triplicate to the Commandant (G–MTH).

* * * * *

7. Section 50.20–15 is amended by revising paragraph (a)(3) to read as follows:

§ 50.20–15 Previously approved plans.

(a) * * *

(3) A copy of the approved plan is available for review by the approving office.

8. The heading of subpart 50.25 is revised to read "Acceptance of Material and Piping Components."

9. Section 50.25–1 is revised to read as follows and Table 50.25–1(a) is removed:

§ 50.25–1 General.

(a) Materials and piping components used in the construction of boilers, pressure vessels, pressure piping systems, and related components are accepted by review of manufacturer or mill certificates under § 50.25–3 of this part, product marking in accordance with an adopted industry standard, or technical information indicating their compliance with the requirements of this subchapter.

(b) Plate, bar stock, pipe, tube, pipe joining fittings (tees, elbows, reducers, etc.), bolting, castings, forgings, and flanges, are accepted by review of manufacturer or mill certificates under §§ 50.25–3, 50.25–5, and 50.25–7 of this part.

(c) Valves, fluid conditioner fittings, and special purpose fittings complying with an adopted industry standard and marked in accordance with the standard are accepted through review of the marking indicating compliance with the adopted industry standard.

(d) Valves, fluid conditioner fittings, special purpose fittings, and pipe joining fittings not complying with an adopted industry standard are accepted for use on a case-by-case basis. Acceptance is granted by the Marine Safety Center or the Officer in Charge, Marine Inspection, having cognizance over the installation of the product. To obtain acceptance of a product, the manufacturer must submit, via the vessel owner or representative, the information described in § 50.25–10 of this part to the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection.

(e) Components designed for hydraulic service which require shock testing under § 58.30–15(f) of this chapter and nonmetallic flexible hose assemblies must be accepted by the Commandant (G–MTH). Manufacturers desiring acceptance of these products must submit information necessary to show compliance with §§ 56.60–25(c) or 58.30–17 of this chapter, as applicable. Acceptance of specific installations of acceptable nonmetallic flexible hose assemblies and shock tested hydraulic components is granted by the Marine Safety Center or the cognizant Officer in Charge, Marine Inspection, as described in paragraph (d) of this section.

(f) The vessel owner or representative shall make available to the Officer in Charge, Marine Inspection, the manufacturer or mill certificates, specific letters of acceptance, or approved plans necessary to verify that piping components comply with the requirements of this subchapter.

10. In § 50.25–3, paragraph (a) is revised to read as follows:

§ 50.25–3 Manufacturer or mill certification.

(a) A manufacturer or mill producing materials used in certain products for installation on inspected vessels, shall issue a certificate or mill test report which shall report the results of chemical analysis and mechanical properties required by the ASTM specification.

* * * * *

11. Section § 50.25–5 is amended by revising paragraphs (a) and (d)(3) to read as follows:

§ 50.25–5 Products requiring manufacturer or mill certification.

(a) Products required to be certified by a manufacturer or by mill certificate shall be fabricated and tested in accordance with the applicable specifications. Such products will not normally be subject to mill inspection by the Coast Guard except as required by § 50.25–7.

* * * * *

(d) * * *

(3) In the opinion of the Officer in Charge, Marine Inspection, the application of the product does not require knowledge of the exact chemical analysis or mechanical properties enumerated on the manufacturer or mill certificate.

* * * * *

12. Section 50.25–7 is amended by revising paragraph (a) to read as follows:

§ 50.25–7 Testing of products required to be certified in presence of marine inspector.

(a) Certified products are not normally tested in the presence of a marine inspector. The Commandant may, however, assign a marine inspector to witness tests required by the applicable specifications to satisfy himself that the requirements are met.

* * * * *

13. Section 50.25–10 is revised to read as follows:

§ 50.25–10 Acceptance of piping components by specific letter or approved plan.

(a) A manufacturer of a piping component which does not comply with an adopted industry standard and requires acceptance by specific letter or approved plan must do the following:

(1) Submit an engineering type catalog or representative drawings of the component which includes the pressure and temperature ratings of the component and identify the service for which it is intended.

(2) Identify materials used to fabricate the component. Materials must meet the requirements of subpart 56.60 of this chapter. If the component is not manufactured to accepted material specifications, the manufacturer must prove equivalency to accepted material specifications by comparing details of the materials' chemical composition, mechanical properties, method of manufacture, and complete chemical and mechanical test results with an accepted material specification.

(3) Identify the industry standard, if any, to which the component is manufactured.

(4) Submit a description of nondestructive testing performed on the component.

(5) Submit a description of the marking applied to the component.

(6) Submit information showing compliance with the requirements of part 56, subparts 56.15, 56.20, 56.25, 56.30, or 56.35 of this chapter, as applicable.

(7) Submit any additional information necessary to evaluate the component's acceptability for its intended application.

(b) If the component is found to comply with the requirements of this subchapter, the component is designated as acceptable for its intended installation. This acceptance is in the form of a specific letter relating directly to the particular component or in the form of an approved piping system plan in which the component is identified as an integral part.

§§ 50.25–15, 50.25–20, 50.25–25, 50.25–30, 50.25–35 and 50.25–40 [Removed]

14. Sections 50.25–15, 50.25–20, 50.25–25, 50.25–30, 50.25–35, and 50.25–40 are removed.

PART 56—PIPING SYSTEMS AND APPURTENANCES [AMENDED]

15. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. In the note to subpart 56.01 preceding § 56.01–1, "USAS–B31.1" is revised to read "ANSI B31.1".

17. A new § 56.01–2 is added to read as follows:

§ 56.01–2 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b).

(b) The standards and specifications approved for incorporation by reference in this part, and the sections affected are:

American National Standards Institute (ANSI); 1430 Broadway, New York, NY 10018:	
ANSI B1.1–82 Unified Inch Screw Threads (UN and UNR Thread Form).	56.60–1; 56.25–20
ANSI B1.20.1–83 Pipe Threads, General Purpose (Inch).	56.60–1
ANSI B1.20.3–76 (reaffirmed 1982) Dryseal Pipe Threads (Inch).	56.60–1
ANSI B16.1–75 Cast Iron Pipe Flanges and Flanged Fittings, Class 25, 125, 250 and 800.	56.60–1; 56.60–10
ANSI B16.3–85 Malleable Iron Threaded Fittings, Classes 150 and 300.	56.60–1
ANSI B16.4–85 Cast Iron Threaded Fittings, Classes 125 and 250.	56.60–1
ANSI B16.5–81 Pipe Flanges and Flanged Fittings.	56.25–20; 56.30–10; 56.60–1
ANSI B16.9–86 Factory-Made Wrought Steel Buttwelding Fittings.	56.60–1
ANSI B16.10–86 Face-to-Face and End-to-End Dimensions of Valves.	56.60–1
ANSI B16.11–80 Forged Steel Fittings, Socket-Welding and Threaded.	56.30–5; 56.60–1
ANSI B16.14–83 Ferrous Pipe Plugs, Bushings, and Lockmuts with Pipe Threads.	56.60–1
ANSI B16.15–85 Cast Bronze Threaded Fittings, Classes 125 and 250.	56.60–1
ANSI B16.18–84 Cast Copper Alloy Solder Joint Pressure Fittings.	56.60–1
ANSI B16.20–73 Ring-Joint Gaskets and Grooves for Steel Pipe Flanges.	56.60–1
ANSI B16.21–78 Nonmetallic Flat Gaskets for Pipe Flanges.	56.60–1
ANSI B16.22–80 Wrought Copper and Copper Alloy Solder Joint Pressure Fittings.	56.60–1
ANSI B16.23–84 Cast Copper Alloy Solder Joint Drainage Fittings—DWV.	56.60–1
ANSI B16.24–79 Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300.	56.60–1
ANSI B16.25–86 Buttwelding Ends.	56.60–1; 56.30–5; 56.70–10
ANSI B16.28–86 Wrought Steel Buttwelding Short Radius Elbows and Returns.	56.60–1
ANSI B16.29–86 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings—DWV.	56.60–1
ANSI B16.34–88 Valves-Flanged, Threaded and Welding End.	56.20–1; 56.60–1
ANSI B16.42–87 Ductile Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300.	56.60–1
ANSI B18.2.1–81 Square and Hex Bolts and Screws, Inch Series.	56.25–20; 56.60–1
ANSI B18.2.2–87 Square and Hex Nuts (Inch Series).	56.25–20; 56.60–1
ANSI B31.1–86 Power Piping.	56.01–5
ANSI B36.10M–85 Welded and Seamless Wrought Steel Pipe.	56.07–5; 56.30–20; 56.60–1
ANSI B36.19M–85 Stainless Steel Pipe.	56.07–5; 56.60–1

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American Society of Mechanical Engineers (ASME): United Engineering Center, 345 East 47th Street, New York, NY 10017:	
Boiler and Pressure Vessel Code:	
Section I, Power Boilers, 1986 with addenda.	56.15-5; 56.15-10; 56.60-1; 56.60-1; 56.70-15; 56.95-10 56.15-1
Section III, Rules for the Construction of Nuclear Power Plant Components, 1986 with addenda.	56.60-1
Section VIII, Division 1, Pressure Vessels, 1986 with addenda.	56.15-1; 56.15-5; 56.15-10; 56.25-5; 56.30-10; 56.30-30; 56.60-15; 56.60-1; 56.95-10
Section IX, Welding and Brazing Qualifications, 1986 with addenda.	56.70-5; 56.70-20; 56.75-20; 56.85-10
American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM A 36-84a Structural Steel.	56.30-10
ASTM A 47-84 Malleable Iron Castings.	56.60-1
ASTM A 53-84a Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	56.10-5 56.60-1
ASTM A 106-84a Seamless Carbon Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 126-84 Gray Iron Castings for Valves, Flanges, and Pipe Fittings.	56.60-1
ASTM A 134-80 Pipe, Steel, Electric-Fusion (ARC)-Welded (Sizes NPS 16 and Over.	56.60-1
ASTM A 135-84 Electric-Resistance-Welded Steel Pipe.	56.60-1
ASTM A 139-84 Electric-Fusion (Arc)-Welded Steel Pipe (Sizes 4 in. and over).	56.60-1
ASTM A 178-84a Electric-Resistance-Welded Carbon Steel Boiler Tubes.	56.60-1
ASTM A 179-84 Seamless Cold-Drawn Low-Carbon Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 182-84c Forged or Rolled Alloy-Steel Pipe Flanges, Forged Fittings, and Valves and Parts for High-Temperature Service.	56.50-105
ASTM A 192-84a Seamless Carbon Steel Boiler Tubes for High-Pressure Service.	56.60-1
ASTM A 194-84a Carbon and Alloy Steel Nuts for Bolts for High-Pressure and High-Temperature Service.	56.50-105
ASTM A 197-79 Cupola Malleable Iron.	56.60-1
ASTM A 199-84 Seamless Cold-Drawn Intermediate Alloy-Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 210-84a Seamless Medium-Carbon Steel Boiler and Superheater Tubes.	56.60-1
ASTM A 213-84b Seamless Ferritic and Austenitic Alloy-Steel Boiler, Superheater, and Heat-Exchanger Tubes.	56.60-1
ASTM A 214-84a Electric-Resistance-Welded Carbon Steel Heat-Exchanger and Condenser Tubes.	56.60-1
ASTM A 226-84a Electric-Resistance-Welded Carbon Steel Boiler and Superheater Tubes for High-Pressure Service.	56.60-1
ASTM A 234-84a Piping Fittings of Wrought Carbon Steel and Alloy Steel for Moderate and Elevated Temperatures.	56.60-1
ASTM A 249-84b Welded Austenitic Steel Boiler, Superheater, Heat-Exchanger, and Condenser Tubes.	56.60-1
ASTM A 268-84a Seamless and Welded Ferritic Stainless Steel Tubing for General Service.	56.60-1
ASTM A 276-84a Stainless and Heat-Resisting Steel Bars and Shapes.	56.60-2
ASTM A 307-84 Carbon Steel Externally Threaded Standard Fasteners.	56.25-20
ASTM A 312-84c Seamless and Welded Austenitic Stainless Steel Pipe.	56.50-105; 56.60-1
ASTM A 320-84a Alloy-Steel Bolting Materials for Low-Temperature Service.	56.50-105
ASTM A 333-84b Seamless and Welded Steel Pipe for Low-Temperature Service.	56.50-105; 56.60-1
ASTM A 334-84b Seamless and Welded Carbon and Alloy-Steel Tubes for Low Temperature Service.	56.50-105; 56.60-1
ASTM A 335-84a Seamless Ferritic Alloy Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 350-84a Forgings, Carbon and Low-Alloy Steel, Requiring Notch Toughness Testing for Piping Components.	56.50-105
ASTM A 351-84a Steel Castings, Austenitic, for High-Temperature Service.	56.50-105
ASTM A 352-84a Steel Castings, Ferritic and Martensitic, for Pressure-Containing Parts Suitable for Low-Temperature Service.	56.50-105
ASTM A 358-84b Electric-Fusion-Welded Austenitic Chromium-Nickel Alloy Steel Pipe for High-Temperature Service.	56.60-1
ASTM A 369-84 Carbon and Ferric Alloy Steel Forged and Bored Pipe for High Temperature Service.	56.60-1
ASTM A 376-84 Seamless Austenitic Steel Pipe for High-Temperature Central-Station Service.	56.07-10; 56.60-1; 56.60-2
ASTM A 395-80 Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures.	56.60-1; 56.50-60; 56.60-15
ASTM A 403-84a Wrought Austenitic Stainless Steel Piping Fittings.	56.60-1
ASTM A 420-84 Piping Fittings of Wrought Carbon Steel and Alloy Steel for Low-Temperature Service.	56.50-105; 56.60-1
ASTM A 430-84a Austenitic Steel, Forged and Bored Pipe for High-Temperature Service.	56.60-1
ASTM A 520-72 Supplementary Requirements for Seamless and Electrical-Resistance-Welded Carbon Steel Tubular Products for High-Temperature Service Conforming to ISO Recommendations for Boiler Construction.	56.60-1
ASTM A 522-81 Forged or Rolled 8 and 9% Nickel Alloy Steel Flanges, Fittings, Valves, and Parts for Low-Temperature Service.	56.50-105
ASTM A 575-81 Steel Bars, Carbon, Merchant Quality, M-Grades.	56.60-2
ASTM A 576-81 Steel Bars, Carbon, Hot-Wrought, Special Quality.	56.60-2
ASTM B 16-85 Free-Cutting Brass Road, Bar, and Shapes for Use in Shapes for Use in Screw Machines.	56.60-2
ASTM B 21-83b Naval Brass Rod, Bar, and Shapes.	56.60-2
ASTM B 26-84 Aluminum-Alloy Sand Castings.	56.60-2
ASTM B 42-84 Seamless Copper Pipe, Standard Sizes.	56.60-1
ASTM B 43-84 Seamless Red Brass Pipe, Standard Sizes.	56.60-1

ASTM B 68-83 Seamless Copper Tubes, Bright Annealed.	56.60-1
ASTM B 75-84 Seamless Copper Tube.	56.60-1
ASTM B 85-84 Aluminum-Alloy Die Castings.	56.60-2
ASTM B 88-83a Seamless Copper Water Tube.	56.60-1
ASTM B 96-84a Copper Silicon Alloy Plate and Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels.	56.60-2
ASTM B 111-85 Copper and Copper-Alloy Seamless Condenser Tubes and Ferrule Stock.	56.60-1
ASTM B 124-84 Copper and Copper-Alloy Forging Rod, Bar, and Shapes.	56.60-2
ASTM B 154-82 Mercurous Nitrate Test for Copper and Copper Alloys.	56.60-2
ASTM B 161-81 Nickel Seamless Pipe and Tube.	56.60-1
ASTM B 165-81 Nickel-Copper Alloy (UNS N04400) Seamless Pipe and Tube.	56.60-1
ASTM B 167-80 Nickel-Chromium-Iron Alloy (UNS N06600-N06690) Seamless Pipe and Tube.	56.60-1
ASTM B 171-85a Copper-Alloy Condenser Tube Plates.	56.60-2
ASTM B 210-82a Aluminum-Alloy Drawn Seamless Tubes.	56.60-1
ASTM B 234-85 Aluminum-Alloy Drawn Seamless Tubes for Condensers and Heat Exchangers.	56.60-1
ASTM B 241-83a Aluminum-Alloy Seamless Pipe and Seamless Extruded Tube.	56.60-1
ASTM B 280-83 Seamless Copper Tube for Air Conditioning and Refrigeration Field Service.	56.60-1
ASTM B 283-83b Copper and Copper-Alloy Die Forgings (Hot-Pressed).	56.60-2
ASTM B 315-85 Seamless Copper-Alloy Pipe and Tube.	56.60-1
ASTM B 361-81 Factory-Made Wrought Aluminum and Aluminum-Alloy Welding Fittings.	56.60-1
ASTM D 635-81 Rate of Burning and/or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position.	56.60-25
ASTM D 1785-83 Poly(Vinyl Chloride)(PVC) Plastic Pipe, Schedules 40, 80, and 120.	56.60-25
ASTM D 2241-84 Poly(Vinyl Chloride) (PVC) Pressure-Rated Pipe (SDR-Series).	56.60-25
ASTM D 2464-76 Threaded Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 80.	56.60-25
ASTM D 2468-76 Poly(Vinyl Chloride) (PVC) Plastic Pipe Fittings, Schedule 40.	56.60-25
ASTM D 2467-76a Socket-Type Poly(Vinyl Chloride)(PVC) Plastic Pipe Fittings, Schedule 80.	56.60-25
ASTM D 2665-82 Poly(Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings.	56.60-25
ASTM D 2863-77 Measuring the Minimum Oxygen Concentration to Support Candle-Like Combustion of Plastic (Oxygen Index).	56.60-25
ASTM E 23-82 Notched Bar Impact Testing of Metallic Materials.	56.50-105
ASTM F 682-82a Wrought Carbon Steel Sleeve-Type Pipe Couplings.	56.60-1
ASTM F 1008-86 Entrainment Separators for Use in Marine Piping Applications.	56.60-1
ASTM F 1007-86 Pipe-Line Expansion Joints of the Packed Slip Type for Marine Application.	56.60-1
ASTM F 1020-86 Line-Blind Valves for Marine Applications.	56.60-1
ASTM F 1120-87 Circular Metallic Bellows Type Expansion Joints for Pipeng.	56.60-1
ASTM F 1123-87 Non-Metallic Expansion Joints.	56.60-1
ASTM F 1139-88 Steam Traps and Drains.	56.60-1
ASTM F 1172-88 Fuel Oil Meters of the Volumetric Positive Displacement Type.	56.60-1
ASTM F 1173-88 Epoxy Resin Fiberglass Pipe and Fittings to be Used for Marine Applications.	56.60-1; 56.60-25
ASTM F 1199-88 Cast (All Temperatures and Pressures) and Welded Pipe Line Strainers (150 psig and 150°F Maximum.	56.60-1
ASTM F 1200-88 Fabricated (Welded) (Pipe Line Strainers (Above 150 psig and 150°F).	56.60-1
ASTM F 1201-88 Fluid Conditioner Fittings in Piping Applications Above 6°F.	56.60-1
Expansion Joint Manufacturers Association Inc. (EJMA) 25 North Broadway, Tarrytown, NY 10591:	
Standards of the Expansion Joint Manufacturers Association, 1980.	56.60-1
Fluid Controls Institute Inc. (FCI) 31 South Street, Suite 303, Morristown, NY 07960:	
FCI 69-1 Pressure Rating Standard for Steem Traps.	56.60-1
Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS) 127 Park Street NE, Vienna, VA 22180:	
SP-6-85 Standard Finishes for Contact Faces of Pipe Flanges and Connecting-End Flanges of Valves and Fittings.	56.25-10; 56.60-1
SP-9-87 Spot Facing for Bronze, Iron and Steel Flanges.	56.60-1
SP-25-88 Standard Marking System for Valves, Fittings, Flanges and Unions.	56.15-1; 56.20-5; 56.60-1
SP-44-85 Steel Pipe Line Flanges.	56.60-1
SP-45-87 Bypass and Drain Connection Standard.	56.20-30; 56.60-1
SP-51-86 Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings.	56.60-1
SP-53-85 Quality Standard for Steel Castings and Forgings for Valves, Flanges and Fittings and Other Piping Components—Magnetic Particle Examination Method.	56.60-1
SP-55-86 Quality Standard for Steel Castings for Valves, Flanges and Fittings and Other Piping Components—Visual Method.	56.60-1
SP-58-83 Pipe Hangers and Supports—Materials, Design and Manufacture.	56.60-1
SP-61-85 Pressure Testing of Steel Valves.	56.60-1
SP-67-83 Butterfly Valves.	56.60-1
SP-69-83 Pipe Hangers and Supports—Selection and Application.	56.60-1
SP-72-87 Ball Valves with Flanged or Butt-Welding Ends for General Service.	56.60-1
SP-73-88 Brazing Joints for Wrought and Cast Copper Alloy Solder Joint Pressure Fittings.	56.60-1
SP-83-87 Steel Pipe Unions, Socket-Welding and Threaded.	56.60-1
Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, Pa 15096:	
J343-80 Tests and Procedures for SAE 100R Series Hydraulic Hose and Hose Assemblies.	56.60-25

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J1475–84 Hydraulic Hose Fittings for Marine Applications. 56.60–25

18. Section 56.01–3 is revised to read as follows:

§ 56.01–3 Power boiler external piping (Replaces 100.1.1, 100.1.2, 111.6, 122.1, 132 and 133).

(a) Power boiler external piping and components must meet the requirements of this part and §§ 52.01–105, 52.01–110, 52.01–115, and 52.01–120 of this chapter.

(b) Specific requirements for power boiler external piping and appurtenances, as defined in §§ 100.1.1 and 100.1.2, appearing in the various paragraphs of ANSI B31.1, are not adopted unless specifically indicated elsewhere in this part.

19. In Table 56.01–5(a), the entry "Table 126.1 modified by * * * 56.30–5(c)(3), 56.60–1." is revised to read "Table 126.1 replaced by * * * 56.60–1."

§ 56.01–6 [Removed]

20. Section 56.01–6 is removed.

21. Section 56.01–10 is amended by revising paragraphs (c)(1)(vii) and (c)(1)(xiii), removing paragraph (c)(1)(xviii), and adding a new paragraph (f) to read as follows:

§ 56.01–10 Plan approval.

* * * * *

(c)(1) * * *

(vii) Tank cleaning piping.

* * * * *

(xiii) Hot water heating systems if the temperature is greater than 121°C(250°F).

* * * * *

(xviii) [Removed]

* * * * *

(f) Arrangement drawings specified in paragraph (c)(2) of this section are not required if—

(1) The location of each component for which there is a location requirement (i.e., shell penetration, fire station, foam monitor, etc.) is indicated on the piping diagram;

(2) The diagram includes, or is accompanied by and makes reference to, a material schedule which describes components in sufficient detail to substantiate their compliance with the regulations of this subchapter;

(3) A thermal stress analysis is not required; and

(4) A dynamic analysis is neither required nor elected in lieu of allowable stress reduction.

22. In Table 56.04–1 of § 56.04–1, remove the number "5" after the word "subchapter".

23. Section 56.04–10 is revised to read as follows:

§ 56.04–10 Other systems.

Piping systems and appurtenances not requiring plan approval may be accepted by the marine inspector if:

(a) The system is suitable for the service intended,

(b) There are guards, shields, insulation and similar devices where needed for protection of personnel,

(c) Failure of the systems would not hazard the vessel, personnel or vital systems, and

(d) The system is not manifestly unsafe.

24. Section 56.07–5 is amended by revising paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 56.07–5 Definitions (modifies 100.2).

* * * * *

(e) *Nonstandard fittings.* "Nonstandard fitting" means a component of a piping system which is not fabricated under an adopted industry standard.

(f) *Vital system.* A "vital system" is one which is essential to the safety of the vessel, its passengers and crew.

(g) *Plate flange.* The term "plate flange," as used in this Subchapter, means a flange made from plate material, and may have a raised face and/or a raised hub.

25. Section 56.07–10 is amended by revising paragraphs (c), (d)(1) and (d)(2), and the first sentence of paragraph (e) to read as follows:

§ 56.07–10 Design conditions and criteria (modifies 101–104.7).

* * * * *

(c) *Ship motion dynamic effects (replaces 101.5.3).* (1) In Class I, I–L, and II–L systems, the full allowable stress permitted by these regulations may be used only if:

(i) The effects of ship motion and flexure, including collision, weight, yaw, sway, roll, pitch, heave and vibration, are taken into account by either calculations or model testing acceptable to the Coast Guard; and

(ii) Additional nondestructive testing that provides complete volumetric examination of the material (e.g., Supplemental Requirement S6.1 to ASTM A376 for ultrasonics or other forms of nondestructive examination acceptable to the Coast Guard) is performed.

(2) Otherwise, 80% or less of the allowable stress permitted must be used in Class I, I–L and II–L systems. This reduction in allowable stress is not intended to take into account impact loading inside the piping system, such as water or steam hammer and hydraulic shock.

(3) For Class II systems the full allowable stress may be used without the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(d) * * *

(1) The details of components not having specific ratings as described in 102.2.2 of ANSI B31.1 must be furnished to the Marine Safety Center for approval.

(2) Boiler blowoff piping must be designed in accordance with § 56.50–40 of this part.

(e) Materials for use in piping systems must be selected as described in § 56.60–1(a) of this part. * * *

* * * * * *

26. Section 56.10–5 is amended by revising paragraph (b) to read as follows:

§ 56.10–5 Pipe.

* * * * * *

(b) *Ferrous pipe.* ASTM Specification A53 furnace welded pipe shall not be used for combustible or flammable liquids within machinery spaces. (See §§ 30.10–15 and 30.10–22 of this chapter.)

* * * * * *

27. Subpart 56.15 is revised to read as follows:

Subpart 56.15—Fittings

§ 56.15–1 Pipe joining fittings.

(a) Pipe joining fittings certified in accordance with Subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Threaded, flanged, socket-welding, buttwelding, and socket-brazing pipe joining fittings, made in accordance with the applicable standards in Tables 56.60–1(a) and 56.60–1(b) of this part and of materials complying with Subpart 56.60 of this part, may be used in piping systems within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Fittings must be designed for the maximum pressure to which they may be subjected, but in no case less than 50 pounds per square inch gage.

(c) Pipe joining fittings not accepted for use in piping systems in accordance with paragraph (b) of this section must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60–1 of this part.

(2) Fittings must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Marine Safety Center.

(3) Fittings must be tested in accordance with § 56.97–5 of this part.

(4) If welded, fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically approved by the Marine Safety Center. In addition, for fittings to be accepted for use in piping systems in accordance with this paragraph, the following requirements must be met:

(i) For fittings sized three inches and below—

(A) The longitudinal joints must be fabricated by either gas or arc welding;

(B) One fitting of each size from each lot of 100 or fraction thereof must be flattened cold until the opposite walls meet without the weld developing any cracks;

(C) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(D) If a fitting fails to meet the test in paragraph (c)(4)(i)(B) or (c)(4)(i)(C) of this section, no fitting in the lot from which the test fitting was chosen is acceptable.

(ii) For fittings sized above three inches—

(A) The longitudinal joints must be fabricated by arc welding;

(B) For pressures exceeding 150 pounds per square inch, each fitting must be radiographically examined as specified in Section VIII of the ASME Code;

(C) For pressures not exceeding 150 pounds per square inch, the first fitting from each size in each lot of 20 or fraction thereof must be examined by radiography to ensure that the welds are of acceptable quality;

(D) One fitting of each size from each lot of 100 or fraction thereof must be hydrostatically tested to the pressure required for a seamless drawn pipe of the same size and thickness produced from equivalent strength material, as determined by the applicable pipe material specification; and

(E) If a fitting fails to meet the test in paragraph (c)(4)(ii)(C) or (c)(4)(ii)(D) of this section, no fitting in the lot from which the test fitting was chosen is acceptable.

(d) Single welded butt joints without the use of backing strips may be employed in the fabrication of pipe joining fittings of welded construction provided radiographic examination indicates that complete penetration is obtained.

(e) Each pipe joining fitting must be marked in accordance with MSS Standard SP–25.

§ 56.15–5 Fluid conditioner fittings.

(a) Fluid conditioner fittings certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Fluid conditioner fittings, not containing hazardous materials as defined in § 150.115 of this chapter, which are made in accordance with the applicable standards listed in Table 56.60–1(b) of this part and of materials complying with subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) The following requirements apply to nonstandard fluid conditioner fittings which do not contain hazardous materials as defined in § 150.115 of this chapter:

(1) The following nonstandard fluid conditioner fittings must meet the applicable requirements in § 54.01–5 (c)(3), (c)(4), and (d) of this chapter or the remaining provisions in Part 54 of this chapter, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (inches) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

(2) All other nonstandard fluid conditioner fittings must meet the following:

(i) All pressure-containing materials must be accepted in accordance with § 56.60–1 of this part.

(ii) Nonstandard fluid conditioner fittings must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(A) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code;

(B) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(C) Other means specifically accepted by the Marine Safety Center.

(iii) Nonstandard fluid conditioner fittings must be tested in accordance with § 56.97–5 of this part.

(iv) If welded, nonstandard fluid conditioner fittings must be welded in accordance with Subpart 56.70 of this part and Part 57 of this chapter or by other processes specifically approved by the Marine Safety Center.

(d) All fluid conditioner fittings that contain hazardous materials as defined in § 150.115 of this chapter must meet the applicable requirements of part 54 of this chapter, except subpart 54.10.

(e) Heat exchangers having headers and tubes and brazed boiler steam air heaters are not considered fluid conditioner fittings and must meet the requirements in part 54 of this chapter regardless of size. For brazed boiler steam air heaters, see also § 56.30–30(b)(1) of this part.

§ 56.15–10 Special purpose fittings.

(a) Special purpose fittings certified in accordance with Subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Special purpose fittings made in accordance with the applicable standards listed in Table 56.60–1(b) of this part and of materials complying

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with subpart 56.60 of this part, may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter.

(c) Nonstandard special purpose fittings must meet the requirements of §§ 56.30–25, 56.30–40, 56.35–10, 56.35–15, or 56.35–35 of this part, as applicable.

28. Section 56.20–1 is revised to read as follows:

§ 56.20–1 General.

(a) Valves certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Non-welded valves complying with the standards listed in § 56.60–1 of this part may be used within the specified pressure and temperature ratings of those standards, provided the limitations of § 56.07–10(c) of this part are applied. Materials must comply with subpart 56.60 of this part. Welded valves complying with the standards and specifications listed in § 56.60–1 of this part may be used in Class II systems only unless they meet paragraph (c) of this section.

(c) All other valves must meet the following:

(1) All pressure-containing materials must be accepted in accordance with § 56.60–1 of this part.

2. Valves must be designed so that the maximum allowable working pressure does not exceed one-fourth of the burst pressure or produce a primary stress greater than one-fourth of the ultimate tensile strength of the material for Class II systems and for all Class I, I–L, and II–L systems receiving ship motion dynamic analysis and nondestructive examination. For Class I, I–L, or II–L systems not receiving ship motion dynamic analysis and nondestructive examination under § 56.07–10(c) of this part, the maximum allowable working pressure must not exceed one-fifth of the burst pressure or produce a primary stress greater than one-fifth of the ultimate tensile strength of the material. The maximum allowable working pressure may be determined by—

(i) Calculations comparable to those of ANSI B31.1 or Section VIII of the ASME Code, if the valve shape permits this;

(ii) Subjecting a representative model to a proof test or experimental stress analysis described in paragraph A–22 of Section I of the ASME Code; or

(iii) Other means specifically accepted by the Marine Safety Center.

(3) Valves must be tested in accordance with § 56.97–5 of this part.

(4) If welded, valves must be welded in accordance with subpart 56.70 of this part and part 57 of this chapter or by other processes specifically approved by the Marine Safety Center.

(d) Where liquid trapped in any closed valve can be heated and an uncontrollable rise in pressure can result, means must be provided in the design, installation, and operation of the valve to ensure that the pressure in the valve does not exceed that allowed by this part for the attained temperature. (For example, if a flexible wedge gate valve with the stem installed horizontally is closed, liquid from testing, cleaning, or condensation can be trapped in the bonnet section of the closed valve.) Any resulting penetration of the pressure wall of the valve must meet the requirements of this part and those for threaded and welded auxiliary connections in ANSI B16.34.

29. Section 56.20–9 is amended by revising paragraph (a), (b) and (c) to read as follows:

§ 56.20–9 Valve construction.

(a) All valves must close with a right-hand (clockwise) motion of the handwheel or operating lever when facing the end of the valve stem. Gate, globe and angle valves must generally be of the rising-stem type, preferably with the stem threads external to the valve body. Where operating conditions will not permit such installations, the use of nonrising-stem valves will be permitted. Nonrising-stem valves, lever operated valves, and any other valve where, due to design, the position of the disc or closure mechanism is not obvious shall be fitted with indicators to show whether the valve is opened or closed. Such indicators are not required for valves located in tanks or similar inaccessible spaces where indication is provided at the remote valve operator. Operating levers of the quarter-turn (rotary) valves must be parallel to the fluid flow in the open position and perpendicular to the fluid flow in the closed position.

(b) Valves of Class I piping systems (for restrictions in other classes refer to sections on nuclear and low temperature service), having diameters exceeding 2 inches must have bolted, pressure seal, or breech lock bonnets and flanged or welding ends, except that socket type welding ends shall not be used where prohibited by § 56.30–5(c) of this part, § 56.30–10(b)(4) of this part for the same pressure class, or elsewhere in this part. For diameters not exceeding 2 inches, screwed union bonnet or bolted bonnet, or bonnetless valves of a type which will positively prevent the stem from screwing out of the body may be employed. Outside screw and yoke design must be used for valves 3 inches and larger for pressures above 600 pounds per square inch gage. Cast iron valves with screwed-in or screwed-over bonnets are prohibited. Union bonnet type cast iron valves must have the bonnet ring made of steel, bronze, or malleable iron.

(c) Valves must be designed for the maximum pressure to which they may be subjected, but in no case shall the design pressure be less than 50 pounds per square inch gage. The use of wafer type resilient seated valves is not permitted for shell connections unless they are so arranged that the piping immediately inboard of the valve can be removed without affecting the watertight integrity of the shell connection. Refer also to § 56.20–15(b)(2)(ii) of this part. Large fabricated ballast manifold connecting lines exceeding 8 inches nominal pipe size must be designed for a pressure of not less than 25 pounds per square inch gage.

* * * * *

30. Section 56.20–15 is amended by revising the introductory sentence to paragraph (b) and paragraph (b)(2)(ii) and adding a new paragraph (c) to read as follows:

§ 56.20–15 Valves employing resilient material.

* * * * *

(b) Valves employing resilient material shall be divided into three categories: Category A, Category B, and positive shut-off.

* * * * *

(2) * * *

(ii) Category B valves may be used in any piping system, except: In any location in a fixed fire extinguishing system or bilge system; as the positive closure for any opening in the shell of a vessel; in a position in which the valve serves as the positive shutoff valve required by § 56.50–60(d) of this part for systems subject to internal head pressure from tanks containing flammable, combustible, or hazardous materials; or as otherwise prohibited under this subchapter.

(c) Valves employing resilient material will be determined to be qualified as Category A, Category B, or positive shut-off as follows:

(1) Category A—The closed valve must pass less than the greater of five percent or $15\%/\sqrt{[NPS]}$ of its fully open flow rate through the line after complete removal of all resilient seating material or equivalent and testing at full rated pressure. (Note.—"NPS" is nominal pipe size.)

(2) Positive shutoff—The closed valve must pass less than 10 ml/hour (0.34 fluid oz/hour) of liquid or 3 liters/hour (0.11 standard cubic feet/hour) of gas per inch nominal size through the line after removal of all resilient seating material or equivalent and testing at full rated pressure. Packing material must be fire resistant. This valve type will be considered suitable for internal head pressure from tanks (positive shutoff) as well as a Category A valve.

(3) If a valve designer elects to use either calculations or actual fire testing in lieu of material removal and pressure testing, the proposed calculation method or test plan must be accepted by the Commandant (G–MTH).

(4) Category B—Valves containing resilient seating or packing material, nonmetallic composition discs, or similar components and which have not passed one of the above tests are considered Category B valves.

31. Section 56.25–5 is revised to read as follows:

§ 56.25–5 Flanges.

Flanges must conform to the design requirements of the applicable standards of Table 56.60–1(b) of this part of Appendix 2 of section VIII of the ASME Code. Plate flanges must meet the requirements of § 56.30–10(b)(5) of this part and the material requirements of § 56.60–1(a) of this part. Flanges may be integral or may be attached to pipe by threading, welding, brazing, or other means within the applicable standards specified in Table 56.60–1(b) of this part and the requirements of this subpart. For flange facing gasket combinations other than those specified above, calculations must be submitted indicating that the gaskets will not result in a higher bolt loading or flange moment than for the acceptable configurations.

32. Section 56.25–10 is amended by revising paragraph (b) to read as follows:

§ 56.25–10 Flange facings.

* * * * *

(b) When bolting class 150 standard steel flanges to flat face cast iron flanges, the steel flange must be furnished with a flat face, and bolting must be in accordance with § 56.25–20 of this part. Class 300 raised face steel flanges may be bolted to class 250 raised face cast iron flanges with bolting in accordance with § 56.25–20(b) of this part.

33. Section 56.25–20 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 56.25–20 Bolting.

(a) *General.* (1) Bolts, studs, nuts, and washers must comply with applicable standards and specifications listed in § 56.60–1 of this part. Unless otherwise specified, bolting must be in accordance with ANSI B16.5.

(2) Bolts and studs must extend completely through the nuts.

(3) See § 58.30–15(c) of this chapter for exceptions on bolting used in fluid power and control systems.

(b) Carbon steel bolts or bolt studs may be used if expected normal operating pressure does not exceed 300 pounds per square inch gage and the expected normal operating temperature does not exceed 400 °F. Carbon steel bolts must have heavy hexagon heads in accordance with ANSI B18.2.1 and must have heavy semifinished hexagonal nuts in accordance with ANSI B16.2.2, unless the bolts are tightly fitted to the holes and flange stress calculations taking the bolt bending stresses into account are submitted. When class 250 cast iron flanges are used or when class 125 cast iron flanges are used with ring gaskets, the bolting material must be carbon steel conforming to ASTM Specification A307, Grade B.

(c) Alloy steel stud bolts must be threaded full length or, if desired, may have reduced shanks of a diameter not less than that at the root of the threads. They must have heavy semifinished hexagonal nuts in accordance with ANSI B18.2.2.

(d) All alloy bolts or bolt studs and accompanying nuts are recommended to be threaded in accordance with ANSI B1.1, Class 2A external threads, and Class 2B internal threads (8-thread series 8UN for 1 inch and larger).

* * * * *

34. Section 56.30–5 is amended by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 56.30–5 Welded joints.

* * * * *

(b) * * *

(3) Consumable insert rings must be used. Commonly used types of butt welding end preparations are shown in ANSI B16.25.

* * * * *

(c) *Socket welds (modifies 127.3.3A).* (1) Socket welds must conform to ANSI B16.11, applicable standards listed in Table 56.60–1(b) of this part, and Figure 127.4.4C in ANSI B31.1 as modified by § 56.30–10(b)(4) of this part. A gap of approximately one-sixteenth inch between the end of the pipe and the bottom of the socket must be provided before welding. This may best be provided by bottoming the pipe and backing off slightly before tacking.

(2) Socket welds must not be used where severe erosion or crevice corrosion is expected to occur. Restrictions on the use of socket welds appear in § 56.70–15(d)(3) of this part for Class I service and in § 56.50–105 of this part for low temperature service. These sections should be checked when designing for these systems. See § 56.70–15(d)(4) of this part for Class II service.

(3) (Reproduces 111.3.4.) Drains and bypasses may be attached to a valve of fitting by socket welding provided the socket depth, bore diameter, and shoulder thickness conform to ANSI B16.11.

(d) *Fillet welds.* Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A of ANSI B31.1. Fillet weld details for socket-welding components must meet § 56.30–5(c) of this part. Fillet weld details for flanges must meet § 56.30–10 of this part. See also § 56.70–15(d)(3) and (d)(4) of this part for applications of fillet welds.

* * * * *

35. Section 56.30–10 is amended by adding the sentence "Fillet weld leg size need not exceed the thickness of the applicable ANSI hub." to the end of the Note in Figure 56.30–10(b), and revising paragraphs (a), (b), and (b)(1) through (b)(5) to read as follows:

§ 56.30–10 Flanged joints (modifies 104.5.1(a)).

(a) Flanged or butt-welded joints are required for Classes I and I–L piping for nominal diameters exceeding 2 inches, except as otherwise specified in this subchapter.

(b) Flanges may be attached by any method shown in Figure 56.30–10(b) or by any additional means that may be approved by the Marine Safety Center. Pressure temperature ratings of the appropriate ANSI standard must not be exceeded.

(1) *Figure 56.30–10(b), Method 1.* Flanges with screw threads may be used in accordance with Table 56.30–20(c) of this part.

(2) *Figure 56.30–10(b), Method 2.* ANSI B16.5 class 150 and class 300 low-hubbed flanges with screw threads, plus the addition of a strength fillet weld of the size as shown, may be used in Class I systems not exceeding 750 °F or 4 NPS, in Class II systems without diameter limitations, and in Class II–L systems not exceeding 1 NPS. If 100 percent radiography is required by § 56.95–10 of this part for the class, diameter, wall thickness, and material of pipe being joined, the use of the threaded flanges is not permitted and buttwelding flanges must be provided. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T.

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(3) *Figure 56.30–10(b), Method 3.* ANSI B16.5 slip-on flanges may be used in Class I, Class II, or Class II–L systems not to exceed the service pressure-temperature ratings for the class 300 and lower class flanges, within the temperature limitations of the material selected for use, and not to exceed 4 NPS in Class I and Class II–L systems. If 100 percent radiography is required by § 56.95–10 of this part for the class, diameter, wall thickness, and material of the pipe being joined, the use of slip-on flanges is not permitted and a butt welding flange must be provided. The configuration in Figure 127.4.4B(b) of ANSI B31.1, utilizing a face and backweld may be preferable in those applications where it is desirable to eliminate void spaces. For Class II piping systems, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch. Restrictions on the use of slip-on flanges appear in § 56.50–105 of this part for low temperature piping systems.

(4) *Figure 56.30–10(b), Method 4.* ANSI B16.5 socket welding flanges may be used in Class I or II–L systems not exceeding 3 NPS for class 600 and lower class flanges and 2½ NPS for class 900 and class 1500 flanges within the service pressure-temperature ratings of the standard. Whenever full radiography is required by § 56.95–10 for the class, diameter, and wall thickness of the pipe being joined, the use of socket welding flanges in not permitted and a butt weld type connection must be provided. For Class II piping, socket welding flanges may be used without diameter limitation, and the size of the fillet weld may be limited to a maximum of 0.525 inch instead of 1.4T. Restrictions on the use of socket welds appear in § 56.50–105 for low temperature piping systems.

(5) *Figure 56.30–10(b), Method 5.* Flanges fabricated from steel plate meeting the requirements of Part 54 of this chapter may be used for Class II piping for pressures not exceeding 150 pounds per square inch and temperatures not exceeding 450 °F. Plate material listed in UCS–6(b) Section VIII of the ASME Code may not be used in this application, except that material meeting ASTM Specification A36 may be used. The fabricated flanges must conform at least to the American National Standard class 150 flange dimensions. The size of the strength fillet weld may be limited to a maximum of 0.525 inches instead of 1.4T and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch.

* * * * *

36. Section 56.30–20 is amended by revising the heading, paragraphs (a), (b), (c), and (d), footnotes 1 and 2 of Table 56.30–20(c), and relocating Table 56.30–20(c) to follow paragraph (c), to read as follows:

§ 56.30–20 Threaded joints.

(a) Threaded joints may be used within the limitations specified in subpart 56.15 of this chapter and within other limitations specified in this section.

(b) (Reproduces 114.1.) All threads on piping components must be taper pipe threads in accordance with the applicable standard listed in Table 56.60–1(b). Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seal weld or a seating surface other than the threads, and where experience or test has demonstrated that such threads are suitable.

(c) Threaded joints may not be used where severe erosion, crevice corrosion, shock, or vibration is expected to occur, or at temperatures over 925 °F. Size limitations are given in Table 56.30–20(c) of this section.

* * * * *

[1] Further restrictions on the use of threaded joints appear in the low temperature piping section.

[2] Threaded joints in hydraulic systems are permitted above the pressures indicated for the nominal sizes shown when commercially available components such as pumps, valves and strainers may only be obtained with threaded connections.

(d) Pipe with a wall thickness less than that of standard weight of ANSI B36.10 steel pipe must not be threaded regardless of service. For additional threading limitations for pipe used in steam service over 250 pounds per square inch or water service over 100 pounds per square inch and 200 °F, see part 104.1.2(c)(1) of ANSI B31.1. Restrictions as to the use of threaded joints appear for low temperature piping and should be checked when designing for these systems.

37. Section 56.30–25 is amended by revising paragraphs (a), (d), and (f)(2) to read as follows:

§ 56.30–25 Flared, flareless, and compression joints.

(a) Flared, flareless, and compression type tubing fittings may be used for tube sizes not exceeding 2-inch outside diameter within the limitations of applicable standards and specifications listed in § 56.60–1 of this part and as specified in this section.

* * * * *

(d) Threads must be either American National Standard taper pipe threads or Dryseal American National Standard taper pipe threads. Threads other than taper pipe threads may be used for piping components where tightness of the joint depends on a seating surface other than the threads and where experience or testing has demonstrated that the threads are suitable.

* * * * *

(f) * * *

(2) Grip-type fittings that are tightened in accordance with the manufacturers' instructions need not be disassembled for checking. For fluid services (other than hydraulic systems) using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel copper, or copper nickel alloy. When using copper or copper zinc alloys, flared fittings are required. See also § 56.50–70 of this part for gasoline fuel systems and § 56.50–75 of this part for diesel fuel systems. In the case of hydraulic systems, flareless fittings of the bite type may be used where experience or testing has demonstrated that the fittings are suitable.

38. Section 56.30–27 is revised to read as follows:

§ 56.30–27 Caulked joints.

Caulked joints may not be used in marine installations.

39. Section 56.30–40 is amended by revising paragraphs (a), (b), (e), and (f) to read as follows:

§ 56.30–40 Flexible pipe couplings of the compression or slip-on type.

(a) Flexible pipe couplings of the compression or slip-on type must not be used as expansion joints. To ensure that the maximum axial displacement (approximately ⅜" maximum) of each coupling is not exceeded, positive restraints must be included in each installation.

(b) Positive means must also be provided to prevent the coupling from "creeping" on the pipe and uncovering the joint. Bite type devices do not provide positive protection against creeping and are not generally accepted for this purpose unless other means are also incorporated. Machined grooves or centering pins are considered positive means, and other positive means will be considered

* * * * *

(e) Flexible couplings made in accordance with the applicable standards listed in Table 56.60–1(b) of this part and of materials complying with subpart 56.60 of this part may be used within the material, size, pressure, and temperature limitations of those standards and within any further limitations specified in this subchapter. Flexible couplings fabricated by welding must also comply with part 57 of this chapter.

(f) Flexible couplings must not be used in cargo holds or in any other space where leakage, undetected flooding, or impingement of liquid on vital equipment may disable the ship, or in tanks where the liquid conveyed in the piping system is not compatible with the liquid in the tank. Where flexible couplings are not allowed by this subpart, joints may be threaded, flanged and bolted, or welded.

* * * * *

40. Section 56.35–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 56.35–1 Pipe stress calculations (replaces 119.7).

(a) A summary of the results of pipe stress calculations for the main and auxiliary steam piping where the design temperatures exceed 800 °F shall be submitted for approval. Calculations shall be made in accordance with one of the recognized methods of stress analysis acceptable to the Marine Safety Center to determine the magnitude and direction of the forces and movements at all terminal connections, anchor and junction points, as well as the resultant bending stress, longitudinal pressure stress, torsional stress, and combined expansion stress at all such points. The location of the maximum combined stress shall be indicated in each run of pipe between anchor points.

(b) Special consideration will be given to the use of the full tabulated value of S in computing S_h and S_c where all material used in the system is subjected to additional nondestructive testing as specified by the Marine Safety Center, and where the calculations prescribed in 119.6.4 and 102.3.2 of ANSI–B31.1 and § 56.07–10 are performed. The nondestructive testing procedures and method of stress analysis shall be approved by the Marine Safety Center prior to the submission of computations and drawings for approval.

41. Section 56.35–10 is revised to read as follows:

§ 56.35–10 Nonmetallic expansion joints (replaces 119.5.1).

(a) Nonmetallic expansion joints certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Nonmetallic expansion joints must conform to the standards listed in Table 56.60–1(b) of this part. Nonmetallic expansion joints may be used within their specified pressure and temperature rating in vital and nonvital machinery sea connections inboard of the skin valve. These joints must not be used to correct for improper piping workmanship or misalignment. Joint movements must not exceed the limits set by the joint manufacturer.

42. Section 56.35–15 is revised to read as follows:

§ 56.35–15 Metallic expansion joints (replaces 119.5.1).

(a) Metallic expansion joints certified in accordance with subpart 50.25 of this subchapter are acceptable for use in piping systems.

(b) Metallic expansion joints must conform to the standards listed in Table 56.60–1(b) of this part and may be used within their specified pressure and temperature rating.

43. Section 56.50–1 is amended by revising paragraphs (c), (g)(1), (g)(2)(iii), (g)(3), and (l) to read as follows:

§ 56.50–1 General (Replaces 122.6 through 122.10).

* * * * *

(c) Valves and cocks not forming part of a piping system are not permitted in watertight subdivision bulkheads, however, sluice valves or gates in oiltight bulkheads of tankships may be used if approved by the Marine Safety Center.

* * * * *

(g)(1) Power actuated valves in systems other than as specified in § 56.50–60 of this part may be used if approved for the system by the Marine Safety Center. All power actuated valves required in an emergency to operate the vessel's machinery, to maintain its stability, and to operate the bilge and firemain systems must have a manual means of operation.

(2) * * *

(iii) Remote valve controls, except reach rods, must be fitted with indicators that show whether the valves they control are open or closed. Valve position indicating systems must be independent of valve control systems.

* * * * *

(3) Air operated remote control valves must be provided with self-indicating lines at the control boards which indicate the desired valve positions, i.e., open or closed.

* * * * *

(l) Where pipes are run through dry cargo spaces they must be protected from mechanical injury by a suitable enclosure or other means.

§ 56.50–5 [Removed]

44. Section 56.50–5 is removed.

45. Section 56.50–15 is amended by revising paragraph (h) to read as follows:

§ 56.50–15 Steam and exhaust piping.

* * * * *

(h)(1) Steam piping, with the exception of the steam heating system, must not be led through passageways, accommodation spaces, or public spaces unless the arrangement is specifically approved by the Marine Safety Center.

(2) Steam pressure in steam heating systems must not exceed 150 pounds per square inch gage, except that steam pressure for accommodation and public space heating must not exceed 45 pounds per square inch gage.

(3) Steam lines and registers in non-accommodation and non-public spaces must be suitably lcoated and/or shielded to minimize hazards to any personnel within the space. Where hazards in a space cannot be sufficiently minimized, the pressure in the steam line to that space must be reduced to a maximum of 45 pounds per square inch gage.

(4) High temperature hot water for heating systems may not exceed 375 °F.

* * * * *

46. Section 56.50–20 is amended by revising paragraphs (a) and (c) to read as follows:

§ 56.50–20 Pressure relief piping.

(a) *General.* There must be no intervening stop valves between the vessel or piping system being protected and its protective device or devices, except as specifically provided for in other regulations or as specifically authorized by the Marine Safety Center.

* * * * *

(c) *Stop valves.* Stop valves between the safety or relief valve and the point of discharge are not permitted, except as specifically provided for in other regulations or as specifically approved by the Marine Safety Center.

* * * * *

47. Section 56.50–25 is amended by adding a sentence at the end of paragraph (d) to read as follows:

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§ 56.50–25 Safety and relief valve escape piping.

* * * * *

(d) * * * Back pressure must be calculated with all relief valves which discharge to a common escape pipe relieving simultaneously at full capacity.

48. Section 56.50–50 is amended by revising paragraphs (c)(1), (d)(1), Note 1 of paragraph (d)(2), the introductory text of paragraph (f), and paragraphs (f)(3), (h), and (k) to read as follows:

§ 56.50–50 Bilge and ballast piping.

* * * * *

(c)(1) Bilge suctions must be led from manifolds except as otherwise approved by the Marine Safety Center. Insofar as practicable, manifolds must be located in, or be capable of remote operation from, the same space as the bilge pump which normally takes suction on that manifold. In either case, the manifolds must be capable of being locally controlled from above the floorplates, and be easily accessible at all times. Bilge overboard discharge valves must comply with the location and accessibility requirements for suction manifolds insofar as practicable. Except as otherwise permitted by paragraph (h) of this section for Great Lakes cargo vessels employing a common bilge and ballast system for the cargo spaces, bilge manifold valves controlling bilge suctions from various compartments must be of the stop-check type.

* * * * *

(d) * * *

(1) For suctions to each main bilge pump:

$$d=1+\sqrt{L(B+D)/2500}\,(1)(4)(5)$$

(2) * * *

Note 1. For tank vessels, "L" may be reduced by the combined length of the cargo oil tanks.

* * * * *

(f) *Emergency bilge suctions.* In addition to the independent bilge suction(s) required by paragraph (e) of this section, an emergency bilge suction must be provided in the machinery space for all self-propelled vessels as described in the following subparagraphs. Emergency suctions must be provided from pumps other than those required by § 56.50–55(a) of this part. Such suctions must have nonreturn valves, and must meet the following criteria as appropriate:

* * * * *

(3) Vessels over 180 feet in length which are not passenger vessels and which operate on international voyages or in ocean, coastwise, or Great Lakes service, must be provided with a direct emergency bilge suction from any pump in the machinery space, except that a required bilge pump may not be used. The discharge capacity of the pump selected must exceed the capacity of the required main bilge pump and the area of the suction inlet is to be equal to the full suction inlet of the pump.

* * * * *

(h) Pipes for draining cargo holds or machinery spaces must be separate from pipes which are used for filling or emptying tanks where water or oil is carried. Bilge and ballast piping systems must be so arranged as to prevent oil or water from the sea or ballast spaces from passing into cargo holds or machinery spaces, or from passing from one compartment to another, whether from the sea, water ballast, or oil tanks, by the appropriate installation of stop and non-return valves. The bilge and ballast mains must be fitted with separate control valves at the pumps. The requirements of this paragraph do not apply to bilge and ballast systems on Great Lakes cargo vessels which may employ a common line for the bilge and ballast system for the cargo spaces.

* * * * *

(k) Where bilge and ballast piping is led through tanks, except ballast piping in ballast tanks, means must be provided to minimize the risk of flooding of other spaces due to pipe failure within the tanks. In this regard, such piping may be in an oiltight or watertight pipe tunnel, or the piping may be of Schedule 80 pipe wall thickness, fitted with expansion bends, and all joints within the tanks are welded. Alternated designs may be installed as approved by the Marine Safety Center. Where a pipe tunnel is installed, the watertight integrity of the bulkheads must be maintained. No valve or fitting may be located within the tunnel if the pipe tunnel is not of sufficient size to afford easy access. These requirements need not be met provided the contents of the tank and piping system are chemically compatible and strength and stability calculations are submitted showing that crossflooding resulting from a pipe, the tank, and the spaces through which the piping passes will not seriously affect the safety of the ship, including the launching of lifeboats due to the ship's listing. Bilge lines led through tanks without a pipe tunnel must be fitted with nonreturn valves at the bilge suctions.

* * * * *

49. Section 56.50–55 is amended by revising Table 56.50–55(b)(1) and paragraphs (c) and (e)(1) to read as follows:

§ 56.50–55 Bilge pumps.

* * * * *

TABLE 56.50–55(b)(1)—Bilge Pumps Required for Nonself-Propelled Vessels

Type of vessel	Waters navigated	Power pumps [1]	Hand pumps
Sailing	Ocean and coastwise	Two	[2]
Manned barges	do	Two	[2]
Manned barges	Other than ocean and coastwise	[3]	[2]
Unmanned barges	All waters	[3]	[2]
Mobile offshore drilling units	All waters	Two	None.

[1] Where power is always available, independent power bilge pumps shall be installed as required and shall be connected to the bilge main.
[2] Efficient hand pumps connected to the bilge main may be substituted for the power pumps. Where there is no common bilge main, one hand pump will be required for each compartment.
[3] Suitable hand or power pumps or siphons, portable or fixed, carried either on board the barge or on the towing vessel shall be provided.

* * * * *

(c) *Capacity of independent power bilge pump.* Each power bilge pump must have the capacity to develop a suction velocity of not less than 400 feet per minute through the size of bilge main piping required by § 56.50–50(d)(1) of this part under ordinary conditions; except that, for vessels of less than 65 feet in length not engaged on international voyages, the pump must have a minimum capacity of 25 gallons per minute and need not meet the velocity requirement of this paragraph.

* * * * *

(e) *Location.* (1) For self-propelled vessels, if the engines and boilers are in two or more watertight compartments, the bilge pumps must be distributed throughout these compartments. On other self-propelled vessels and mobile offshore drilling units, the bilge pumps must be in separate compartments to the extent practicable. When the location of bilge pumps in separate watertight compartments is not practical, alternative arrangements may be submitted for consideration by the Marine Safety Center.

* * * * *

50. Section 56.50–60 is amended by revising the section heading, paragraphs (a), (c), (d) introductory text, (d)(1), (d)(2), (d)(3) introductory text, (d)(3)(i), and (d)(4), and adding new paragraphs (h), (i), (j), (k) and (l) to read as follows:

§ 56.50–60 Systems containing oil.

(a)(1) Oil-Piping systems for the transfer or discharge of cargo or fuel oil must be separate from other piping systems as far as practicable, and positive means shall be provided to prevent interconnection in service.

(2) Fuel oil and cargo oil systems may be combined if the cargo oil systems contain only Grade E oils and have no connection to cargo systems containing grades of oil with lower flash points or hazardous substances.

(3) Pumps used to transfer oil must have no discharge connections to fire mains, boiler feed systems, or condensers unless approved positive means are provided to prevent oil from being accidentally discharged into any of the aforementioned systems.

* * * * *

(c) Filling pipes may be led directly from the deck into the tanks or to a manifold in an accessible location permanently marked to indicate the tanks to which they are connected. A shutoff valve must be fitted at each filling end. Oil piping must not be led through accommodation spaces, except that low pressure fill piping not normally used at sea may pass through accommodation spaces if it is of steel construction, all welded, and not concealed.

(d) Piping subject to internal head pressure from oil in the tank must be fitted with positive shutoff valves located at the tank.

(1) Valves installed on the outside of the oil tanks must be made of steel, ductile cast iron ASTM A395, or a ductile nonferrous alloy having a melting point above 1,700 °F and must be arranged with a means of manual control locally at the valve and remotely from a readily accessible and safe location outside of the compartment in which the valves are located.

(2) If valves are installed on the inside of the tank, they may be made of cast iron and arranged for remote control only. Additional valves for local control must be located in the space where the system exits from the tank or adjacent tanks. Valves for local control outside the tanks must be made of steel, ductile cast iron ASTM A395, or a ductile nonferrous alloy having a melting point above 1,700 °F.

(3) Power operated valves installed to comply with the requirements of this section must meet the following requirements:

(i) Valve actuators must be capable of closing the valves under all conditions, except during physical interruption of the power system (e.g., cable breakage or tube rupture). Fluid power actuated valves, other than those opened against spring pressure, must be provided with an energy storage system which is protected, as far as practicable, from fire and collision. The storage system must be used for no other purpose and must have sufficient capacity to cycle all connected valves from the initial valve position to the opposite position and return. The cross connection of this system to an alternate power supply will be given special consideration by the Marine Safety Center.

* * * * *

(4) Remote operation for shutoff valves on small independent oil tanks will be specially considered in each case where the size of tanks and their location may warrant the omission of remote operating rods.

* * * * *

(h) Oil piping must not run through feed or potable water tanks. Feed or potable water piping must not pass through oil tanks.

(i) Where flooding equalizing cross-connections between fuel or cargo tanks are required for stability considerations, the arrangement must be approved by the Marine Safety Center.

(j) Piping conveying oil must be run well away from hot surfaces wherever possible. Where such leads are unavoidable, only welded joints are to be used, or alternatively, suitable shields are to be fitted in the way of flanged or mechanical pipe joints when welded joints are not practicale. Piping that conveys fuel oil or lubricating oil to equipment and is in the proximity of equipment or lines having an open flame or having parts operating above 500 °F must be of seamless steel. (See § 56.50–65 of this part.)

(k) Oil piping drains, strainers and other equipment subject to normal oil leakage must be fitted with drip pans or other means to prevent oil draining into the bilge.

(l) Where oil piping passes through a non-oil tank and stop valves complying with paragraph (d) of this section are not provided at all penetrations, the piping must comply with § 56.50(k) of this part.

51. Section 56.50–65 is amended by revising the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 56.50–65 Burner fuel oil service systems.

(a) All discharge piping from the fuel oil service pumps to burners must be seamless steel with a thickness of at least Schedule 80. If required by § 56.07–10(e) of this part or paragraph 104.1.2 of ANSI B31.1, the thickness must be greater than Schedule 80. Short lengths of steel, or annealed copper nickel, nickel copper, or copper pipe and tubing may be used between the fuel oil burner front header manifold and the atomizer head to provide flexibility. All material used must meet the requirements of subpart 56.60 of this part. The use of non-metallic materials is prohibited. The thickness of the short lengths must not be less than the larger of 0.9 mm (0.35 inch) or that required by § 56.07–10(e) of this part. Flexible metallic tubing for this application may be used when approved by the Marine Safety Center. Tubing fittings must be of the flared type except that flareless fittings of the nonbite type may be used when the tubing is steel, nickel copper or copper nickel.

(b)(1) All vessels having oil fired boilers must have at least two fuel service pumps, each of sufficient capacity to supply all the boilers at full power, and arranged so that one may be overhauled while the other is in service. At least two fuel oil heaters of approximately equal capacity must be installed and so arranged that any heater may be overhauled while the other(s) is (are) in service. Suction and discharge strainers must be of the duplex or other type capable of being cleaned without interrupting the oil supply.

(2) All auxiliary boilers, except those furnishing steam for vital equipment and fire extinguishing purposes other than duplicate installations, may be equipped with a single fuel oil service pump and a single fuel oil heater. Such pumps need not be fitted with discharge strainers.

(3) Strainers must be located so as to preclude the possibility of spraying oil on the burner or boiler casing, or be provided with spray shields. Coamings, drip pans, etc., must be fitted under fuel oil service pumps, heaters, etc., where

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necessary to prevent oil drainage to the bilge.

(4) Boilers burning fuel oils of low viscosity need not be equipped with fuel oil heaters, provided acceptable evidence is furnished to indicate that satisfactory combustion will be obtained without the use of heaters.

* * * * *

(d) If threaded-bonnet valves are employed, they shall be of the union-bonnet type capable of being packed under pressure.

* * * * *

52. Section 56.50–75 is amended by revising the last sentence in paragraph (a)(1) to read as follows:

§ 56.50–75 Diesel fuel systems.

(a) * * *

(1) * * * Fuel oil service or unit pumps shall be equipped with controls to comply with § 58.01–25 of this subchapter.

* * * * *

53. Section 56.50–85 is amended by revising the introductory text of paragraph (a), removing paragraph (a)(4–a), revising paragraphs (a)(4) and (a)(5), redesignating existing paragraphs (a)(6) through (a)(12) as paragraphs (a)(7) through (a)(13), adding a new paragraph (a)(6), revising paragraphs (a)(8) and (a)(10), as redesignated, and adding a new paragraph (b) to read as follows:

§ 56.50–85 Tank vent piping.

(a) This section applies to vents for all independent, fixed, non-pressure tanks or containers or for spaces in which liquids, such as fuel, ship's stores, cargo, or ballast, are carried.

* * * * *

(4) Tank vents must extend above the weather deck, except vents from fresh water tanks, bilge oily-water holding tanks, bilge slop tanks, and tanks containing Grade E combustible liquids, such as lubricating oil, may terminate in the machinery space, provided—

(i) The vents are arranged to prevent overflow on machinery, electrical equipment, and hot surfaces;

(ii) Tanks containing combustible liquids are not heated; and

(iii) The vents terminate above the deep load waterline if the tanks have boundaries in common with the hull.

(5) Vents from oil tanks must terminate not less than three feet from any opening into living quarters.

(6) Vents extending above the freeboard deck or superstructure deck from fuel oil and other tanks must be at least Schedule 40 in wall thickness. Except for barges in inland service and for Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches (760mm) on the freeboard deck and 17½ inches (450mm) on the superstructure deck. On Great Lakes vessels, the height from the deck to any point where water may gain access through the vent to below deck must be at least 30 inches (760mm) on the freeboard deck, 24 inches (610mm) on the raised quarterdeck, and 12 inches (305mm) on other superstructure decks. Where the height of vents on Great Lakes vessels may interfere with the working of the vessel, a lower height may be approved by the Marine Safety Center provided the vent cap is properly protected from mechanical damage. For barges in inland service, the vents must extend at least six inches above the deck. A lesser amount may be approved by the Marine Safety Center if evidence is provided that a particular vent has proven satisfactory in service.

* * * * *

(8) Vent outlets from all tanks which may emit flammable or combustible vapors, such as bilge slop tanks and contaminated drain tanks, must be fitted with a single screen of corrosion-resistant wire of at least 30 by 30 mesh, or two screens of at least 20 by 20 mesh spaced not less than one-half inch (13mm) nor more than 1½ inches (38mm) apart. The clear area through the mesh must not be less than the internal unobstructed area of the required pipe.

* * * * *

(10) The diameter of each vent pipe must not be less than 1½ inches nominal pipe size for fresh water tanks, 2 inches nominal pipe size for water ballast tanks, and 2½ inches nominal pipe size for fuel oil tanks, except that small independent tanks need not have a vent more than 25% greater in cross-sectional area than the fill line.

* * * * *

(b) Tank vents must remain within the watertight subdivision boundaries in which the tanks they vent are located. Where the structural configuration of a vessel makes meeting this requirement impracticable, the Marine Safety Center may permit a tank vent to penetrate a watertight subdivision bulkhead. All tank vents which penetrate watertight subdivision bulkheads must terminate above the weather deck.

54. Section 56.50–95 is amended by revising paragraphs (a)(1), (b)(1), (c) and (e)(3), and adding a new paragraph (i) to read as follows:

§ 56.50–95 Overboard discharges and shell connections.

(a)(1) All inlets and discharges led through the vessel's side shall be fitted with efficient and accessible means, located as close to the hull penetrations as is practicable, for preventing the accidental admission of water into the vessel either through such pipes or in the event of fracture of such pipes.

* * * * *

(b)(1) Scuppers and discharge pipes originating at any level and pentrating the shell either more than 17½ inches (450mm) below the freeboard deck or less than 23½ inches (600mm) above the summer load waterline must be provided with an automatic nonreturn valve at the shell. This valve, unless required by paragraph (b)(2) of this section, may be omitted if the piping is not less than Schedule 80 in wall thickness for nominal pipe sizes through 8 inches, Schedule 60 for nominal pipe sizes above 8 inches and below 16 inches, and Schedule 40 for nominal pipe sizes 16 inches and above.

* * * * *

(c) Overflow pipes which discharge through the vessel's side must be located as far above the deepest load line as practicable and fitted with valves as required by paragraph (b) of this section. Two automatic nonreturn valves must be used unless it is impracticable to locate the inboard valve in an accessible position, in which case a nonreturn valve with a positive means of closure from a position above the freeboard deck will be acceptable. Overflows which extend at least 30 inches above the freeboard deck before discharging overboard may be fitted with a single automatic nonreturn valve at the vessel's side. Overflow pipes which serve as tank vents must not be fitted with positive means of closure without the specific approval of the Marine Safety Center. Overflow pipes may be vented to the weather.

* * * * *

(e) * * *

(3) The thickness of inlet and discharge connections outboard of the shutoff valves, and exclusive of seachests, must be not less than that of Schedule 80 for nominal pipe sizes through 8 inches, Schedule 60 for nominal pipe sizes above 8 inches and below 16 inches, and Schedule 40 for nominal pipe sizes 16 inches and above.

* * * * *

(i) Except as provided for in § 56.20–20(c) of this chapter, sea valves must not be held open with locks. Where it is necessary to hold a discharge or intake closed with a lock, either a locking valve may be located inboard of the sea valve, or the design must be such that there is sufficient freedom of motion to fully close the locked sea valve after an event, such as fire damage to the seat, causes significant leakage through the valve. Valves which must be opened in and emergency, such as bilge discharges or fire pump suctions must not be locked closed, whether they are sea valves or not.

55. Section 56.50–96 is amended by revising paragraphs (a)(2)(ii) and (a)(2)(iv) to read as follows:

§ 56.50–96 Keel cooler installations.

(a) * * *

(2) * * *

(ii) The flexible connections and all openings internal to the vessel, such as expansion tank vents and fills, in the installation are above the deepest load line and all piping components are Schedule 80 or thicker below the deepest load line.

* * * * *

(iv) The forward end of the structure must be faired to the hull such that the horizontal length of the fairing is no less than four times the height of the structure, or be in a protected location such as inside a bow thruster trunk.

56. Section 56.50–102 is revised to read as follows:

§ 56.50–102 Liquefied petroleum gas for domestic services.

Requirements for liquefied petroleum gas systems for domestic services are in subpart 58.16 of this chapter.

57. Section 56.50–105 is amended by revising paragraph (a)(1)(iii), revising the title and heading of Table 56.50–105, and adding new footnotes 3 and 4 to Table 56.50–105 to read as follows:

§ 56.50–105 Low temperature piping.

(a) * * *

(1) * * *

(iii) Steels equivalent to those listed in Table 56.50–105 of this part, but not produced according to a particular ASTM specification, may be used only with the prior consent of the Marine Safety Center. Steels differing in chemical composition, mechanical properties or heat treatments from those specified may be specially approved by the Marine Safety Center. Similarly, aluminum alloys and other nonferrous materials not covered in Table 56.50–105 of this part may be specifically approved by the Marine Safety Center for service at any low temperature. There are restrictions on the use of certain materials in this part and in subchapter O of this chapter.

* * * * *

TABLE 56.50–105—ACCEPTABLE MATERIALS AND TOUGHNESS TEST CRITERIA [2]

Product form	ASTM specification [3]	Grade [4]	Minimum service temperature	Minimum avg Charpy V notch energy

* * * * *

[3] Any repair method must be acceptable to the Commandant (G–MTH), and welding repairs as well as fabrication welding must be in accordance with part 57 of this chapter.

[4] The acceptability of several alloys for low temperature service is not intended to suggest acceptable resistance to marine corrosion. The selection of alloys for any particular shipboard location must take corrosion resistance into account and be approved by the Marine Safety Center.

58. Section 56.60–1 is amended by revising the section heading and paragraphs (a)(2) and (b) to read as follows:

§ 56.60–1 Acceptable materials and specifications (replaces 123 and Table 126.1 in ANSI B31.1).

(a) (1) * * *

(2) Materials used in piping systems must be selected from the specifications which appear in Table 56.60–1(a) of this section or Table 56.60–2(a) of this part, or they may be selected from the material specifications of section I, III, or VIII of the ASME Code if not prohibited by a regulation of this subchapter dealing with the particular section of the ASME Code. Table 56.60–1(a) of this section contains only pipe, tubing, and fitting specifications. Determination of acceptability of plate, forgings, bolting, nuts, and castings may be made by reference to the ASME Code as previously described. Additionally, accepted materials for use as piping system components appear in Table 56.60–2(a) of this part. Materials conforming to specifications not described in this subparagraph must receive the specific approval of the Marine Safety Center before being used. Materials listed in Table 126.1 of ANSI B31.1 are not accepted unless specifically permitted by this paragraph.

(b) Components made in accordance with the commercial standards listed in Table 56.60–1(b) of this section and made of materials complying with paragraph (a) this section may be used in piping systems within the limitations of the standards and within any further limitations specified in this subchapter.

* * * * *

§ 56.60–1 [Amended]

59. In § 56.60–1, Table 56.60–1(a) is amended by revising the table heading, the table headnote, the line entry for "Pipe, centrifugally cast," and note 16, removing the entries for ASTM standards A72, A155 and A445, and adding footnote 19 to read as follows:

TABLE 56.60–(a)—ADOPTED SPECIFICATIONS AND STANDARD (REPLACES TABLE 126.1)

NOTE: Table 56.60–1(a) identifies the acceptable pipe, tubing, and fitting specifications intended for piping system use and replaces Table 126.1 in ANSI B31.1. Piping system applications will be considered if certification of mechanical properties is furnished. Without this certification, use is limited to applications inside heat exchangers that insure containment of the material inside a pressure shell.

Pipe, centrifugally cast:	(None applicable)		[19]

* * * * *

[19] Copper pipe must not be used for hot oil systems except for short flexible connections at burners. Copper pipe must be annealed before installation in Class I piping systems. See also §§ 56.10–5(c) and 56.60–20.

* * * * *

[19] Centrifugally cast pipe must be specifically approved by the Marine Safety Center.

60. In § 56.60–1, Table 56.60–1(b) is amended by revising the heading, table entries, and footnote 2, removing and reserving footnote 1, ANSI standard B2.2 and B18.2, and MSS standards SP–37, SP–42, and SP–66, and adding ANSI standards B1.20.1, B1.20.3, B16.34, B16.42, B18.2.1, B18.2.2, ASTM standards F682, F1006, F1007, F1020, F1123, F1139, F1172, F1173, F1199, F1200, and F1201, EJMA standards, MSS standard SP–83, and footnotes 3 and 4 to read as follows:

—

TABLE 56.60–1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)

ANSI Standards (American National Standards Institute), 1430 Broadway, New York, NY 10018.

* * * * *

B1.20.1—Pipe Threads, General Purpose.
B1.20.3—Dryseal Pipe Threads.

* * * * *

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TABLE 56.60–1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)—Continued

B16.1—C.I. Flanges and Fittings—Classes 125 and 250 Only.
B16.3—M.I. Threaded Fittings—Classes 150 and 300.
B16.4—C.I. Threaded Fittings—Classes 125 and 250.
B16.5—Steel Pipe Flanges and Flanged Fittings.[3]
B16.9—Steel Buttwelding Fittings.[3]
* * * * * * *
B16.14—Ferrous-Threaded Plugs, Bushings and Locknuts.[4]
B16.15—Cast Bronze Threaded Fittings—Classes 125 & 250.[4]
B16.18—Cast Brass Solder Joints.[4]
* * * * * * *
B16.22—Wrought Copper and Bronze Solder Joint Fittings.[4]
B16.23—Cast Bronze Solder-Joint Drainage Fittings.[4]
B16.24—Bronze Pipe Flanges and Flanged Fittings—Class 150 and 300.[3]
* * * * * * *
B16.28—Wrought Steel Buttwelding Short Radius Elbows and Returns.[4]
B16.29—Wrought Copper and Wrought-Copper Alloy Solder Joint Drainage Fittings.[4]
B16.34—Valves—Flanged, Threaded and Welding end.[3]
B16.42—Ductile Iron Pipe Flanges and Fittings.[3]
B16.2.1—Square and Hex Bolts and Screws, Inch series.
B18.2.2—Square and Hex Nuts.
* * * * * * *

ASTM Standards (American Society for Testing and Materials), 1916 Race St., Philadelphia, PA 19103.

F682—Wrought Carbon Steel Sleeve-Type Couplings.
F1006—Entrainment Separators for Use in Marine Piping Applications.[9]
F1007—Pipe Line Expansion Joints of the Packed Slip Type for Marine Applications.
F1020—Line Blind Valves for Marine Applications.[4]
F1120—Circular Metallic Bellows Type Expansion Joints.
F1123—Non-Metallic Expansion Joints.
F1139—Steam Traps and Drains.
F1172—Fuel Oil Meters of the Volumetric Positive Displacement Type.
F1173—Epoxy Resin Fiberglass Pipe and Fittings to be Used for Marine Applications.
F1199—Cast and Welded Pipe Line Strainers.
F1200—Fabricated (Welded) Pipe Line Strainers.
F1201—Fluid Conditioner Fittings in Piping Applications Above 0 °F.

EJMA Standards (Expansion Joint Manufacturers Association, Inc.), 25 North Broadway, Tarrytown, NY 10591

Standards of the Expansion Joint Manufacturers Association, Inc.

FCI Standards (Fluid Controls Institute, Inc.), 31 South Street, Suite 303, Morristown, NJ 07960.

FCI 69–1—Pressure Rating Standard for Steam Traps.[4]

MSS Standards (Manufacturers' Standardization Society of the Valve and Fittings Industry), 127 Park Street NE, Vienna, VA 22180.

* * * * * * *
SP–25—Standard Marking System for Valves, Fittings, Flanges and Unions.
SP–44—Steel Pipe Line Flanges.[4]
* * * * * * *

TABLE 56.60–1(b)—ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS (REPLACES TABLE 126.1)—Continued

SP–51—Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings.[4]
* * * * * * *
SP–67—Butterfly Valves.[2 4]
* * * * * * *
SP–72—Ball Valves with Flanged or Butt-Welding Ends for General Service.[4]
* * * * * * *
SP–83—Carbon Steel Pipe Unions Socket-Welding and Threaded.

[1] [Removed and Reserved]
[2] In addition, for bronze valves, adequacy of body shell thickness shall be satisfactory to the Marine Safety Center. Refer to § 56.60–10 of this part for cast iron valves.
[3] Mill or manufacturer's certification is not required, except where a needed portion of the required marking is deleted due to size or is absent due to age of existing stocks.
[4] Because this standard offers the option of several materials, some of which are not generally acceptable to the Coast Guard, compliance with the standard does not necessarily indicate compliance with these regulations. The marking on the component or the manufacturer or mill certificate must indicate the material specification and/or grade as necessary to fully identify the materials used. The material used must comply with the requirements in this subchapter relating to the particular application.

61. In § 56.60–2, table 56.60–2(a) is amended by revising footnotes (2), (3), (5), (9), and (14) to read as follows:

§ 56.60–2 Limitations on materials.

* * * * *

[2] Allowable stresses shall be the same as those listed in UCS23 of section VIII of the ASME Code for SA–675 material of equivalent tensile strength.
[3] Physical testing shall be performed as for material manufactured to ASME Specification SA–675, except that the bend test shall not be required.
* * * * *
[5] Limited to air and hydraulic service with a maximum design temperature of 150 °F. The material must not be used for salt water service or other fluids that may cause dezincification or stress corrosion cracking.
* * * * *
[9] A mercurous nitrate test, in accordance with ASTM B154, shall be performed on a representative model for each finished product design. Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table 3 of ASTM B283.
* * * * *
[14] Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table X–2 of ASTM B85.
* * * * *

62. Section 56.60–10 is amended by revising paragraphs (a) and (c) to read as follows:

§ 56.60–10 Cast iron and malleable iron.

(a) The low ductility of cast iron and malleable iron should be recognized and the use of these metals where shock loading may occur should be avoided. Cast iron and malleable iron components shall not be used at temperatures above 450 °F. Cast iron and malleable iron fittings conforming to the specifications of Table 56.60–1(a) of this part may be used at pressures not exceeding the limits of the applicable standards of Table 56.60–1(b) of this part at temperatures not exceeding 450 °F. Valves of either of these materials may be used if they conform to the standards for class 125 and class 250 flanges and flanged fittings in ANSI B16.1 and if their service does not exceed the rating as marked on the valve.
* * * * *

(c) Malleable iron and cast iron valves and fittings, designed and marked for Class 300 refrigeration service, may be used for such service provided the pressure limitation of 300 pounds per square inch is not exceeded. Malleable iron flanges of this class may also be used in sizes 4 inches and smaller (oval and square design).
* * * * *

63. Section 56.60–15 is revised to read as follows:

§ 56.60–15 Ductile iron.

(a) Ductile cast iron components made of material conforming to ASTM A395 may be used within the service restrictions and pressure-temperature limitations of UCD–3 of section VIII of the ASME Code.

(b) Ductile iron castings may be used in hydraulic systems at pressures in excess of 1000 pounds per square inch gage, provided:

(1) The castings receive a ferritizing anneal when the as-cast thickness does not exceed one inch;

(2) Large castings for components, such as hydraulic cylinders, are examined as specified for a casting quality factor of 90 percent in accordance with UG–24 of section VIII of the ASME Code; and

(3) The castings are not welded, brazed, plugged, or otherwise repaired.

(c) After machining, ductile iron castings must be hydrostatically tested to twice their maximum allowable working pressure and must show no leaks.

64. Section 56.60–20 is amended by revising paragraphs (a)(1), (a)(4), and (b) and removing footnote 2 to read as follows:

§ 56.60–20 Nonferrous materials.

(a) * * *

(1) The low melting points of many nonferrous metals and alloys, such as aluminum and aluminum alloys, must be recognized. These types of heat sensitive materials must not be used to conduct flammable, combustible, or dangerous fluids, or for vital systems unless approved by the Marine Safety Center.

Note: For definitions of flammable or combustible fluids, see §§ 30.10–15 and 30.10–22 or parts 151–154 of this chapter. Dangerous fluids are those covered by regulations in part 98 of this chapter.

* * * * *

(4) The corrosion resistance of copper bearing aluminum alloys in a marine atmosphere is poor and alloys with copper contents exceeding 0.6 percent should not be used. Refer to Table 56.60–2(a) of this part for further guidance.

(b) An additional requirement for cast aluminum alloys in hydraulic fluid power systems is described in § 58.30–15(f) of this chapter.

65. Section 56.60–25 is amended by revising the introductory text of paragraph (a), the first sentence of (a)(1)(ii), paragraphs (a)(7)(i)(A), (a)(7)(i)(B), (a)(8), (a)(10), the first sentence of paragraph (b)(1), Table 56.60–25(c), paragraphs (c)(2) and (c)(5); adding new paragraphs (c)(7), (c)(8), (c)(9) and (c)(10); and, removing paragraph (e) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 56.60–25 Nonmetallic materials.

(a) *Plastic pipe-nonvital service.* Plastic pipe may be used for nonvital fresh and salt water service, including drains for waste and sewage services not involving treatment chemicals incompatible with the pipe, or flammable vapors from degenerating waste or other sources, subject to the following limitations:

(1) * * *

(ii) An acceptable metallic shutoff valve is installed adjacent to the spool piece. * * *

* * * * *

(7) * * *

(i) * * *

(A) *Pipe (PVC).*

ASTM D1785 (Schedule 40, 80, 120).
ASTM D2241 (Standard Dimension Ratio).
ASTM D2665.

(B) *Fittings (PVC).*

ASTM D2464 (Schedule 80 threaded).
ASTM D2466 (Schedule 40 socket).
ASTM D2467 (Schedule 80 socket).
ASTM D2665.

* * * * *

(8) In using PCV pipe, a schedule or Standard Dimension Ratio must be chosen so that the maximum value of hoop stress in service will not be more than 20 percent of the specified minimum burst stress as listed in the applicable specification. Pipe and fittings meeting ASTM D2665 are limited to drain, waste, and associated vent services.

* * * * *

(10) Materials, such as glass reinforced resins not meeting ASTM F1173 or other plastics, may be authorized by the Commandant (G–MTH) if full mechanical and physical properties and chemical description are furnished. Flammability of the material must be determined by the standard test methods ASTM D635 and ASTM D2863. The average extent of burning must be less than 0.394 inches (10mm), the average time of burning must be less than 50 seconds, and the limiting oxygen index must be greater than 21.

(b) * * *

(1) Vital machinery served by plastic pipe must be duplicated by equivalent machinery units served entirely by conventional metallic pipe, however, when such machines are in separate watertight compartments, or they are located or insulated such that damage to both a single localized fire is unlikely, both may be fitted with plastic pipe. * * *

(c) * * *

(1) * * *

TABLE 56.60–25(c)—INSTALLATION REQUIREMENTS FOR NONMETALLIC FLEXIBLE HOSE

Type of service	Maximum service pressure (psi)	Type cover required	Required hose reinforcement	Where permitted
Vital fresh and salt water	150	Flame resistant [1]	Wire or polyester	([2 3])
Nonvital fresh and salt water	150	do [1]	do	(4)
Nonvital water and pneumatic	50	do [1]	None	(4)
Do	150	do [1]	Fiber	(4)
Lube oil and fuel systems		do [1 5]	Wire	For flexibility only.[6]
Fluid power systems		do [1]	Wire or polyester	([7])

[1] The hose must be judged flame-resistant as detailed in § 56.60–25(c)(7) of this section.
[2] May be used in duplicate installations in accordance with § 56.60–25(b) of this section for plastic pipe or in reasonable lengths where flexibility is required at pressures not exceeding manufacturer's rating subject to the limitations of § 56.60–25(a) (1) through (6) for plastic pipe.
[3] Casualty control systems, such as firefighting and bilge systems, may utilize a flexible connection only if the pump is flexibly supported and the flexible connection is located directly at the pump.
[4] May be used subject to the limitations of §§ 56.60–25(a) (1) through (6) of this section for plastic pipe.
[5] The hose assembly must be capable of withstanding the fire test detailed in § 56.60–25(c)(8) of this section.
[6] May only be used in reasonable lengths for the purpose of flexibility at pressures not exceeding manufacturer's rating.
[7] See § 58.30–20 of this chapter for installations permitted.

(2) Reinforced nonmetallic flexible hose must be fabricated with an inner tube and a cover of synthetic rubber or other suitable material and reinforced with wire or polyester braid, or an even number of oppositely laid layers of closely-packed spirally wound wire.

* * * * *

(5) Nonmetallic hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, except that field attachable type fittings may be used. Hose end fittings must comply with SAE J1475, (Hydraulic Hose Fittings For Marine Applications). Field attachable fittings must be installed following the manufacturer's recommended practice (method). If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5 of this part.

* * * * *

(7) Nonmetallic hose must pass the flame resistance test and be marked as required by 30 CFR 18.65 of this chapter.

(8) Nonmetallic hose for lube oil or fuel service must not leak during or after a 2½ minute exposure to a N-heptane fire under the following conditions.

(i) The hose must be pressurized to the maximum allowable working pressure during the test. (The use of water as the pressurizing medium is strongly recommended for safety purposes).

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(ii) No fluid flow may occur in the hose during the test.

(iii) The hose length must be between 18 inches (46cm) and 24 inches (61cm).

(iv) The hose must be positioned 9 inches (23cm) above an open pan of N-heptane.

(v) At least one end fitting of the hose assembly must be engulfed in the fire.

(vi) The test must be witnessed by a Coast Guard inspector or performed by an independent testing laboratory accepted by the Commandant (G-MTH).

(vii) The hose must be burst at the end of the test after cool-down.

(viii) The results of testing must be submitted to the Commandant (G-MTH).

(9) Nonmetallic hose used in fluid power systems must be impulse tested at 125% of maximum allowable working pressure, using the fluid to be used in service, at a temperature of 93 °C (200 °F), for a minimum of 150,000 cycles in accordance with the test method in SAE J343, Tests and Procedures for SAE 100R Series Hydraulic Hose and Hose Assemblies. If acceptance for higher temperature service is desired, the test must be performed at the higher temperature.

(10) After hose assemblies have been impulse tested, fire tested, or tested for flame resistance, duplicate hose assemblies of the same materials, design, construction and size need not be so tested, but must be given a hydrostatic test as required in paragraph (c)(5) of this section.

* * * * *

66. Section 56.70–1 is revised to read as follows:

§ 56.70–1 General.

(a) The following generally applies to all types of welding, such as stud welding, casting repair welding and all processes of fabrication welding. Where the detailed requirements are not appropriate to a particular process, alternatives must be approved by the Marine Safety Center.

67. Section 56.70–10 is amended by revising the heading and paragraph (b) to read as follows:

§ 56.70–10 Preparation (modifies 127.3).

* * * * *

(b) *Fillet welds (modifies 127.3.2).* In making fillet welds, the weld metal must be deposited in such a way as to obtain adequate penetration into the base metal at the root of the weld. Piping components which are to be joined utilizing fillet welds must be prepared in accordance with applicable provisions and requirements of this section. For typical details, see Figures 127.4.4A and 127.4.4C of ANSI B31.1 and Figure 56.30–10(b) of this part. See § 56.30–5(d) of this part for additional requirements.

68. Section 56.70–15 is amended by revising paragraphs (b)(2), the heading of (b)(5), (b)(7), the first sentence of paragraph (c) and (d), removing detail A from Figure 56.70–15(g) and redesignating the remaining details "A" through "E", and revising the heading of Table 56.70–15 to read as follows:

§ 56.70–15 Procedure.

* * * * *

(b) * * *

(2) Girth butt welds in Class I, I–L, and II–L piping systems shall be double welded butt joints or equivalent single welded butt joints for pipe diameters exceeding three-fourth inch nominal pipe size. The use of a single welded butt joint employing a backing ring (note restrictions in paragraph (b)(3)(iv) of this section) on the inside of the pipe is an acceptable equivalent for Class I and Class II–L applications, but not permitted for Class I–L applications. Single welded butt joints employing either an inert gas for first pass backup or a consumable insert ring may be considered the equivalent of a double welded butt joint for all classes of piping and is preferable for Class I–L and II–L systems where double butt welds cannot be used. Appropriate welding procedure qualification tests shall be conducted as specified in part 57 of this subchapter. A first pass inert gas backup is intended to mean that the inside of the pipe is purged with inert gas and that the root is welded with the inert gas metal arc (mig) or inert gas tungsten arc (tig) processes. Classes I, I–L, and II–L piping are required to have the inside of the pipe machined for good fit up if the misalignment exceeds that specified in § 56.70–10(a)(3). In the case of Class II piping the machining of the inside of the pipe may be omitted. For single welded joints, where possible, the inside of the joint shall be examined visually to assure full penetration. Radiographic examination of at least 20 percent of single welded joints to check for penetration is required for all Class I and Class I–L systems regardless of size following the requirements of § 56.95–10. Ultrasonic testing may be utilized in lieu of radiographic examination if the procedures are approved.

* * * * *

(5) (Reproduces 127.2(c)). * * *

* * * * *

(7) The type and extent of examination required for girth butt welds is specified in § 56.95–10.

* * * * *

(c) *Longitudinal butt welds.* Longitudinal butt welds in piping components not made in accordance with the standards and specifications listed in 56.60–1 (a) and (b) must meet the requirements of paragraph 104.7 of ANSI–B31.1 and may be examined nondestructively by an acceptable method. * * *

(d) *Fillet welds.* (1) Fillet welds may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A in ANSI B31.1. Fillet weld details for socket-welding components must meet § 56.30–5(c) of this part. Fillet weld details for flanges must meet § 56.30–10(c) of this part. Fillet weld details for flanges must meet § 56.30–10 of this part.

(2) The limitations on cracks and undercutting set forth in paragraph (b)(6) of this section for girth welds are also applicable to fillet welds.

(3) Class I piping not exceeding 3 inches nominal pipe size and not subject to full radiography by § 56.95–10 of this part may be joined by sleeves fitted over pipe ends or by socket type joints. Where full radiography is required, only butt type joints may be used. The inside diameter of the sleeve must not exceed the outside diameter of the pipe or tube by more than 0.080 inch. Fit between socket and pipe must conform to applicable standards for socket weld fittings. Depth of insertion of pipe or tube within the socket or sleeve must not be less than three-eighths inch. The fillet weld must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10 of this part.

(4) Sleeve and socket type joints may be used in Class II piping systems without restriction as to size of pipe or tubing joined. Applicable standards must be followed on fit. The fillet welds must be deposited in a minimum of two passes, unless specifically approved otherwise in a special procedure qualification. Requirements for joints employing socket weld and slip-on flanges are in § 56.30–10 of this part.

* * * * *

TABLE 56.70–15 REINFORCEMENT OF GIRTH AND LONGITUDINAL BUTT WELDS

Thickness (in inches) of base metal	Maximum thickness (in inches of reinforcement for design temperature		
	Below 0 °F or above 750 °F	350° to 750 °F	0 °F and above but less than 350 °F

* * * * *

69. Section 56.75–5 is amended by revising paragraph (a) to read as follows:

§ 56.75–5 Filler metal.

(a) The filler metal used in brazing must be a nonferrous metal or alloy having a melting point above 1,000 °F. and below that of the metal being joined. The filler metal must meet and flow freely within the desired temperature range and, in conjunction with a suitable flux or controlled atmosphere, must wet and adhere to the surfaces to be joined. Prior to using a particular brazing material in a piping system, the requirements of § 56.60–20 of this part should be considered.

* * * * *

§ 56.85–10 [Amended]

70. In § 56.85–10, Table 56.85–10 is amended by removing the word "minimum" wherever it appears in the column under the heading "Minimum Temperature", and adding the word "inclusive" after the words "up to ¾ in." in the "Minimum Wall" column opposite "P–5(15) (less than 5 cr.)".

71. Section 56.95–10 is amended by removing Table 56.95–10 and revising paragraphs (a) and (c)(2) to read as follows:

§ 56.95–10 Type and extent of examination required.

(a) *General.* The types and extent of nondestructive examinations required for piping must be in accordance with this section and Table 136.4 of ANSI–B31.1. In addition, a visual examination shall be made.

(1) 100 percent radiography [1] is required for all Class I, I–L and II–L piping equal to or greater than 4 inches nominal diameter or 0.375 inches nominal wall thickness.

(2) Nondestructive examination is required for all Class II piping equal to or greater than 18 inches nominal diameter regardless or wall thickness. Any test method acceptable to the Officer in Charge, Marine Inspection may be used.

(3) Appropriate nondestructive examinations of other piping systems are required only when deemed necessary by the Officer in Charge, Marine Inspection. In such cases a method of testing satisfactory to the Officer in Charge, Marine Inspection must be selected from those described in this section.

* * * * *

(c) * * *

(2) *Random radiography.* Where random radiography [1] is required, one or more welds may be completely or partially radiographed. Random radiography is considered to be a desirable means of spot checking welder performance, particularly in field welding where conditions such as position, ambient temperatures, and cleanliness are not as readily controlled as in shop welding. It is to be employed whenever an Officer in Charge, Marine Inspection questions a pipe weld not otherwise required to be tested. The standards of acceptance are the same as for 100 percent radiography.

* * * * *

72. Section 56.97–5 is amended by revising paragraph (a) to read as follows:

§ 56.97–5 Pressure testing of nonstandard piping system components.

(a) All nonstandard piping system components such as welded valves and fittings, nonstandard fittings, manifolds, seacocks, and other appurtenances must be hydrostatically tested to twice the rated pressure stamped thereon, except that no component should be tested at a pressure causing stresses in excess of 90 percent of its yield strength.

* * * * *

PART 61—PERIODIC TESTS AND INSPECTIONS [AMENDED]

73. The authority citation for Part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; 49 CFR 1.46.

74. Subpart 61.15 is amended by adding a new § 61.15–2 to read as follows:

§ 61.15–12 Nonmetallic expansion joints.

(a) Nonmetallic expansion joints must be examined externally at each inspection for certification for signs of excessive wear, fatigue, deterioration, physical damage, misalignment, improper flange-to-flange spacing, and leakage. A complete internal examination must be conducted when an external examination reveals excessive wear or other signs of deterioration or damage.

(b) A nonmetallic expansion joint must be replaced ten years after its date of manufacture if it is located in a system which penetrates the vessel's side and both the penetration and the nonmetallic expansion joint are located below the deepest load waterline. The Officer in Charge, Marine Inspection may grant an extension of the ten year replacement to coincide with the vessel's next drydocking.

Dated: May 3, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–22978 Filed 9–29–89; 8:45 am]

BILLING CODE 4910–14–M

VOL
54
ISS
189
OC
2
1989
UMI

federal register

Monday
October 2, 1989

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0144]

RIN 0905-AA06

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use; Proposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish that topically applied hormone-containing drug products for over-the-counter (OTC) human use are not generally recognized as safe and effective and are misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and the public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 1, 1989. New data by October 2, 1990. Comments on the new data by December 3, 1990. Written comments on the agency's economic impact determination by January 30, 1990.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 430), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify topically applied hormone-containing drug products for OTC human use as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above). In response to the advance notice of proposed rulemaking, one drug manufacturers' association, one law firm, and two manufacturers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In this proposed rule to amend part 310 by adding to subpart E new § 310.530 (21 CFR 310.530), FDA states for the first time its position on OTC topically applied hormone-containing drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC topically applied hormone-containing drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC topically applied hormone-containing drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final rule stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the proposed rule stage.

In the advance notice of proposed rulemaking, the agency stated that if it proposed to adopt the Panel's recommendation it would propose that topically applied hormone-containing drug products be eliminated from the OTC market effective 6 months after the date of publication of a final rule in the **Federal Register**, regardless of whether further testing was undertaken to justify their future use. Based on all information available to date, the agency is proposing that OTC topically applied hormone-containing drug products be found not to be generally recognized as safe and effective. If the proposed finding is adopted in the final rule, the agency advises that the conditions under which the drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions) will be effective 6 months after the date of publication of the final rule in the **Federal Register**. On or after that date, no OTC drug products that are subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application (NDA). Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the proposed rule at the earliest possible date.

I. The Agency's Tentative Conclusions on the Comments

A. General Comments on Topically Applied Hormone-Containing Drug Products

1. One comment urged that § 310.530 be amended to limit it to the kind and type of hormone ingredients and products considered by the Panel in this rulemaking proceeding, i.e., skin creams and skin oils containing estrogens and progesterone that are marketed for topical use with claims for the improvement to or enhancement of the condition of the skin. Noting that estradiol was considered separately by the Panel under two dockets, hair grower and hair loss prevention drug products and hormone-containing drug products, the comment maintained that "the agency should separate the subject matter in the proposed monographs and new regulations."

The term "hormone" broadly describes a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect (ref. 1). There are many types of hormones (ref. 2). Standard reference texts, such as "Dorland's Illustrated Medical Dictionary," "AMA Drug Evaluations," and "The Pharmacological Basis of Therapeutics," use a number of similar terms to describe the various types of hormones. The terms "estrogens" and "progestins" are generally used to describe the types of ingredients reviewed by the Panel (refs. 3 and 4). Estrogens include steroidal estrogens such as estradiol, estrone, conjugated estrogens, esterified estrogens, and ethinyl estradiol, and nonsteroidal estrogens such as dienestrol and diethylstilbestrol (ref. 5). Progestins include progesterone, esthisterone, and medroxyprogesterone acetate (refs. 6 and 7). Pregnenolone is a steriod closely related to progesterone in chemical structure, but it exerts an estrogen-like action on the skin when applied topically (ref. 8).

One of the call-for-data notices that listed ingredients in hormone creams for which data should be submitted to the Panel listed the ingredients estradiol, estrogen, estrogenic hormones, estrone, natural estrogens, pregnenolone acetate, and progesterone. (See the **Federal Register** of August 27, 1975; 40 FR 38179.) This list was intended to be a representative, but not all-inclusive, list of the types of hormones to be reviewed. Likewise, the list of hormones in this document is intended to be representative, but not all-inclusive.

Examples of other general types of hormones are adrenal corticosteroids and synthetic analogs, androgens, and anabolic steroids (ref. 9). Hydrocortisone is an adrenal corticosteroid. The synthetic analogs include dexamethasone, prednisone, prednisolone, and triamcinolone. Androgens include testosterone and methyltestosterone. Anabolic steroids include ethylestrenol, methandrostenolone, and oxymetholone.

The Panel discussed topically applied hormone-containing drug products as a therapeutic class with emphasis on the two groups of active ingredients, the estrogens and progesterone, that are generally used in these products (47 FR 430 at 432). The Panel concluded that none of these ingredients is generally recognized as safe and effective for OTC drug use. The Panel also stated that it was not aware of any data demonstrating the safety and effectiveness of any other ingredient used in topically applied hormone-containing drug products for OTC use (47 FR 432). The agency is not aware of any estrogens, progestins, androgens, anabolic steroids, or adrenal corticosteroids that are currently generally recognized or proposed for general recognition as safe and effective for OTC topical drug use, except hydrocortisone preparations for topical use for the temporary relief of itching associated with minor skin irritations, inflammation, and rashes. (See the **Federal Register** of February 8, 1983; 48 FR 5852.)

As the comment pointed out, estradiol was also reviewed by the Panel in its report on hair grower and hair loss prevention drug products for OTC human use, published in the **Federal Register** of November 7, 1980 (45 FR 73955). The Panel concluded that there was a lack of evidence to establish effectiveness of estradiol and hormone constituents as hair growers or hair loss prevention OTC drug products and recommended that they be classified in Category II (45 FR 73959). The agency concurred with the Panel's recommendations in the proposed rule for these products that was published in the **Federal Register** of January 15, 1985 (50 FR 2190). More recently, in the **Federal Register** of July 7, 1989 (54 FR 28772), the agency concluded that estradiol is not generally recognized as safe and effective for claims of hair growth and hair loss prevention.

For the reasons stated above, the agency has determined that the title of the regulation that is the subject of this document should remain "topically applied hormone-containing drug products for OTC human use," as stated in the advance notice of proposed rulemaking. However, FDA has revised § 310.530(a) to state the scope of the regulation. Also, the agency is adding a new paragraph (e) in which it will list any hormone ingredients that are not covered by the regulation. This paragraph will include any hormone that is currently generally recognized or proposed for general recognition as safe and effective for OTC topical drug use. At the present time, the only hormones that are included in paragraph (e) are hydrocortisone and hydrocortisone acetate, which were proposed as Category I ingredients for the temporary relief of itching associated with minor skin irritations, inflammation, and rashes in the notice of proposed rulemaking for external analgesic drug products for OTC human use, published in the **Federal Register** of February 8, 1983 (48 FR 5852).

References

(1) "Webster's New World Dictionary," College Ed., Cleveland and New York, 1968, s.v. "hormone."

(2) "Dorland's Illustrated Medical Dictionary," 29th Ed., W.B. Saunders Co., Philadelphia, 1985, s.v. "hormone."

(3) "The Pharmacological Basis of Therapeutics," 7th Ed., edited by A.G. Gilman, L.S. Goodman, T.W. Rall, and F. Murad, Macmillan Publishing Co., Inc., New York, p. 1412, 1985.

(4) "Drug Evaluations," 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, p. 689, 1986.

(5) "Drug Evaluations," 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 703-705, 1986.

(6) "Drug Evaluations," 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 705-708, 1986.

(7) "The Pharmacological Basis of Therapeutics," 7th Ed., edited by A.G. Gilman, L.S. Goodman, T.W. Rall, and F. Murad, Macmillan Publishing Co., Inc., New York, p. 1425, 1985.

(8) Silson, J.E., "Pregnenolone Acetate—A Dermatologically Active Steroid," *Journal of the Society of Cosmetic Chemists*, 8:129-137, 1962.

(9) "Drug Evaluations," 6th Ed., American Medical Association, W.B. Saunders Company, Philadelphia, pp. 661-687, 1986.

2. Two comments stated that the Panel's proper function was to evaluate the safety and effectiveness of hormone-containing products intended for OTC drug use, and not those intended for cosmetic use. One comment from a manufacturer pointed out that the drug/cosmetic status of a product presents legal rather than scientific questions, that the labeling of its products contains only cosmetic claims, and therefore that the products are not drugs. The comments maintained that it is the intended use of a product, rather than its physical properties, that determines whether the product is a drug or a cosmetic. To support this contention, one comment cited several court cases, including *National Nutritional Foods Association* v. *Mathews*, 557 F.2d 325 (2d Cir. 1977); *National Nutritional Foods Association* v. *FDA*, 504 F.2d 761 (2d Cir. 1974); *United States* v. *"Sudden Change,"* 409 F.2d 734 (2d Cir. 1969). The comments added that "FDA's own regulations explicitly recognize that articles represented as hormone skin care products are cosmetics" and cited 21 CFR 720.4(c)(12)(v). One comment concluded that FDA acted properly in not incorporating into § 310.530 the Panel's discussion concerning the cosmetic use of hormone ingredients. The comments requested that the agency clarify that any regulation adopted as part of the OTC drug review applies to OTC drug products and not to cosmetic products for which no drug claims are made. One specific suggestion was that the agency revise the title for proposed § 310.530 to read "Topically Applied Hormone-Containing Products for Over-the-Counter (OTC) Human Drug Use."

The agency agrees that this regulation applies only to topically applied hormone-containing drug products that fall within the statutory definition of a drug. A "drug" is principally defined in the act as an article "intended for use in the diagnosis, cure, mitigation,

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treatment, or prevention of disease" or "intended to affect the structure or any function of the body * * *." (See 21 U.S.C. 321(g)(1)(B), (C).) A "cosmetic," on the other hand, is defined primarily as an article intended to be "* * * applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance * * *." (See 21 U.S.C. 321(i).) The intended use of a product, therefore, determines whether it is a "drug," a "cosmetic," or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. See, e.g., *National Nutritional Foods Ass'n* v. *Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). A manufacturers' subjective claims of intent may be pierced to find its actual intent on the basis of objective evidence. *National Nutritional Foods Ass'n* v. *FDA, supra*, 504 F.2d at 789.

The agency believes that the title of § 310.530 clearly states that the regulation covers drug products. However, paragraph (a) has been changed to clarify that this regulation pertains only to products that are intended for use as drugs.

The agency has reviewed the labeling in current NDAs for skin care products that contain estrogen, progesterone, and pregnenolone acetate (refs. 1, 2, and 3). One product with labeling submitted by the comment contains estrogen and progesterone and makes the following labeling claim: "This cream (or oil) is scientifically prepared with natural estrogen and progesterone. Contains lubricants and moisturizers to help counteract dryness. Gives the skin a softer, smoother, more supple look." The other product identifies itself as a cosmetic cream. Although it does not explicitly make any claims that would be considered drug claims, its labeling does identify the hormone ingredient as "pregnenolone acetate."

Skin care products that contain hormones are solely cosmetics if the claims in the labeling, promotional material, advertising, and other relevant materials are only cosmetic in nature (e.g., to promote attractiveness), and no actual or implied therapeutic claims, or claims that the product will affect the structure or function of the body, are made. The agency considers the use of the word "hormone" in the text of the labeling (e.g., "This cream (or oil) is scientifically formulated to contain a hormone") or in the ingredient statement to be an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones" are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

If a manufacturer includes a hormone in its product, it may denominate this ingredient in the labeling by any appropriate name. However, use of the chemical name is preferable. For example, for progesterone, the chemical name is "pregn-4-ene-3,20-dione;" and for pregnenolone acetate, the chemical name is "3-hydroxypregn-5-ene-20-one acetate." Nevertheless, the agency cautions that any statement on the label of a cosmetic product of the presence of a hormone ingredient, e.g., "contains natural estrogen and progesterone," must be consistent with 21 CFR 701.1 and must not be given undue prominence.

While § 720.4(c)(12)(v) does list hormone skin care preparations as a cosmetic product category, such recognition does not preclude regulation of such products as drugs. See also 36 FR 16934; August 26, 1971. A product that contains hormone ingredients can be either a cosmetic or a drug, or both, depending on the intended use of the product. If the skin care products that contain estrogen, progesterone, and pregnenolone acetate, which are currently subject to new drug applications (refs. 1, 2, and 3), were to be relabeled as discussed above (i.e., no reference to the term "hormone"), the products could properly be regulated as cosmetics alone. Upon promulgation of a final regulation for OTC hormone-containing drug products, the agency will publish a notice of opportunity for a hearing on a proposal to withdraw approval of the NDAs for those products that presently have NDAs but that are determined not to be safe and effective or that are no longer marketed as drugs.

References

(1) FDA-approved labeling from NDA 10-766, copy in OTC Volume 16GTFM, Docket No. 81N-0144, Dockets Management Branch.

(2) FDA-approved labeling from NDA 11-539, copy in OTC Volume 16GTFM.

(3) FDA-approved labeling from NDA 12-603, copy in OTC Volume 16GTFM.

B. Comments on Hormone Ingredients

3. Two comments disagreed with the Panel's conclusions on the safety of estrogen and progesterone when applied to the skin and objected to the Panel apparently basing its conclusions on the safety of topically applied estrogen on its judgment that the safety data are "relatively old" (47 FR 430 at 433). One comment claimed that there is no evidence showing that the studies to which the Panel referred are less valid now than when they were completed, adding that its products, which contain 10,000 International Units per ounce (I.U./oz) of estrogen, have been marketed OTC under effective new drug applications for approximately 24 years with an extremely low incidence of adverse reactions. Noting that such proof of safety is included as part of the standards for the safety of an OTC drug in 21 CFR 330.10(a)(4)(i), the comment stated that it appears that the Panel ignored these standards in reaching its conclusions about the safety of topically applied estrogens at a level of 10,000 I.U./oz. The comment added that its products were reviewed by the National Academy of Science/National Research Council (NAS/NRC) as part of the FDA Drug Efficacy Study Implementation (DESI) review, and that this group of experts did not raise any questions regarding the safety of these products.

The other comment maintained that the Category III classification is inappropriate in view of the evidence cited by the Panel that estrogen does not produce systemic effects and has a low incidence or irritation and allergic effect when used at a concentration of 10,000 I.U./oz. The comment also objected to the Panel's failure to recognize the safety of progesterone at a concentration of 5 milligrams per ounce (mg/oz). Citing the Panel's statements on the safety of progesterone at this concentration (47 FR 430 at 433), the comment asked that the agency recognize the safety of progesterone in a concentration of 5 mg/oz in the next FDA **Federal Register** publication on this subject.

The comment added that the regulation should be revised to specify that high level estrogen and progesterone concentrations (exceeding 10,000 I.U./oz estrogen and 5 mg/oz progesterone) have not been shown to be generally recognized as safe and effective for OTC drug use, and that such concentrations of hormone ingredients in a product intended for topical OTC drug use would require an effective NDA. The comment asserted that such action would protect the public without depriving manufacturers and consumers of effective products.

The Panel concluded that inadequate data were submitted to establish the safety of topically applied estrogens in concentrations up to 10,000 I.U./oz when used in amounts not to exceed 2 oz per month (47 FR 430 at 433). It also pointed out that the lack of systemic effects of concentrations up to 10,000 I.U./oz is well documented in studies, and that these estrogen concentrations have a low incidence of irritation or allergic local effects. The agency has reviewed all of the data submitted to the Panel, considered the data for these products evaluated as part of the DESI review, considered the OTC marketing history of these products for over 25 years, and evaluated the adverse reaction reports submitted for these products for the last 16 years (ref. 1). The agency concludes that estrogens in concentrations up to 10,000 I.U./oz are safe for topical application to the skin when used in amounts not to exceed 2 oz per month.

The Panel recognized the safety of progesterone at a concentration of 5 mg/oz when used in amounts not to exceed 2 oz per month, but concluded "that there was no evidence that using a hormone-containing drug product at the levels which are safe for OTC use will do anything more than using the cream vehicle alone" (47 FR 430 at 433). The agency concurs with this conclusion. The comments did not submit sufficient data to establish the effectiveness of either ingredient for OTC drug use. While the agency concurs with the comments that up to 10,000 I.U./oz estrogen and 5 mg/oz progesterone are safe for OTC use, these ingredients are classified in Category II because of a lack of effectiveness for drug use at these concentrations.

Reference

(1) Department of Health Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969-1985, copy in OTC Volume 16GTFM, Docket No. 81N-0144, Dockets Management Branch.

4. One comment objected to the Panel's statement that it could not locate, nor was it aware of, any data demonstrating the safety and effectiveness of pregnenolone acetate used in topically applied hormone-containing drug products for OTC use (47 FR 430 at 432). According to the comment, safety data on this ingredient are included in an NDA, and the Panel could have reviewed these data. The comment added that annual reports on adverse reactions filed with FDA show a low incidence of adverse reactions to pregnenolone acetate. The comment requested that FDA's preamble and record in this rulemaking proceeding note the existence of an effective NDA for a product containing this ingredient. The comment also requested that § 310.530(b) be revised to clarify that drug products containing hormones are misbranded unless they are covered by NDAs.

There is an effective NDA (12-603) for a product containing pregnenolone acetate. However, NDAs were not available to the Panel for review unless the holder of the NDA specifically submitted the data it contained to the Panel for evaluation in the OTC drug review. NDA 12-603 became effective before 1962. Thus, it was approved for safety only and not for effectiveness. The product covered by the NDA contains 0.5 percent pregnenolone acetate and was reviewed by the NAS/NRC as part of the FDA DESI review (ref. 1). The agency published the NAS/NRC findings in the **Federal Register** of October 2, 1969 (34 FR 15389), stating that the products were possibly effective for their labeled indications. The agency considers concentrations up to 0.5 percent pregnenolone acetate as safe for OTC use, but that there is a lack of evidence that this ingredient is effective at these concentrations. The agency is revising § 310.530(b) to clarify that a product covered by the regulation is a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing, and in the absence of an approved NDA the product would be in violation of section 505 and also would be misbranded under section 502 of the act (21 U.S.C. 352). With respect to NDA 12-603, if the product covered by the NDA is relabeled as discussed above, the product could be regulated as a cosmetic and the NDA withdrawan. (See comment 2 above.)

Reference

(1) National Academy of Sciences/National Research Council, Drug Efficacy Study, ACC 1907, copy in OTC Volume 16GTFM, Docket No. 81N-0144, Dockets Management Branch.

II. The Agency's Tentative Adoption of the Panel's Report

As discussed above, the agency has clarified that the scope of this rulemaking applies to all topically applied hormone-containing drug products for OTC human use, to include, but not limited to, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. The regulation also covers pregnenolone and pregnenolone acetate, steroids that are closely related to progesterone in chemical structure and that exert an estrogen-like action on the skin when applied topically. With the exception of hydrocortisone and hydrocortisone acetate used in external analgesic drug products, the agency is not aware of any hormone that is generally recognized or proposed for general recognition as safe and effective for OTC topical drug use. FDA is revising § 310.530(a) to clarify the scope of the regulation and is adding a new § 310.530(e) to identify hormones that are not covered by the regulation.

The agency is also revising § 310.530(b) to clarify that a product covered by the regulation is a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved NDA under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing, and in the absence of an approved NDA the product would be in violation of section 505 and also would be misbranded under section 502 of the act (21 U.S.C. 352). As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to establish a monograph. (See 21 CFR 10.30.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC topically applied hormone-containing drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topically applied hormone-containing drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that

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this rulemaking would have on OTC topically applied hormone-containing drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by January 30, 1990. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 1, 1989, submit to the Dockets Management Branch written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 30, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before October 2, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 2, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 2, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1049–1053 as amended, 52 Stat. 1055–1056 as amended, 67 Stat. 477 as amended, 52 Stat. 1057–1058 (21 U.S.C. 351, 352, 353, 355, 371, 374, 375); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 310.530 is added to subpart E to read as follows:

§ 310.530 Topically applied hormone-containing drug products for over-the-counter (OTC) human use.

(a) The term "hormone" is used broadly to describe a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect. Hormones include, for example, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. Estrogens, progesterone, pregnenolone, and pregnenolone acetate have been present as ingredients in OTC drug products marketed for topical use as hormone creams. However, there is a lack of adequate data to establish effectiveness for any OTC drug use of these ingredients. Therefore, with the exception of those hormones identified in paragraph (e) of this section, any OTC drug product containing an ingredient offered for use as a topically applied hormone cannot be considered generally recognized as safe and effective for its intended use. The intended use of the product may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. The use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones" are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

(b) Any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of those hormones identified in paragraph (e) of this section, is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act, for which an approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a topically applied hormone-containing drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After the effective date of the final regulation, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) This section does not apply to hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical use in accordance with Part 348 of this chapter.

Dated: August 26, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-23140 Filed 9-29-89; 8:45 am]
BILLING CODE 4160-01-M

federal register

Monday
October 2, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Restriction on Certain Flights From the United States To the Republic of the Philippines (SFAR No. 57); Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26027; SFAR No. 57]

Restriction on Certain Flights From the United States To the Republic of the Philippines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits the transportation by aircraft of the remains of Ferdinand Marcos from the territory of the United States to the Republic of the Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such transportation, as well as to persons involved in the flight, in consideration of measures taken by the Government of the Republic of the Philippines to prevent the landing of the aircraft in the Republic of the Philippines.

DATE: *Effective date:* September 28, 1989.

Expiration date: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Gregory S. Walden, Chief Counsel, Office of the Chief Counsel, AGC–1, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–3222.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958, as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of the national security.

On June 3, 1989, Robert M. Kimmitt, Undersecretary of State for Political Affairs, U.S. Department of State (DOS), sent a letter to Robert E. Whittington, Acting Administrator, Federal Aviation Administration, requesting that the FAA act to prohibit the return by transportation of the remains of former Philippine President Ferdinand Marcos to the Republic of the Philippines. The DOS letter noted that in a May 20, 1989, diplomatic note to the U.S. Embassy in Manila, the Government of the Republic of the Philippines stated its policy of opposition of the return of Mr. Marcos to the Philippines and stated that this policy applied in the event of Mr. Marcos' death. In a May 22 note to the U.S. Embassy in Manila, the Government of the Philippines stated that it has taken action to prevent the return of the Marcos remains, by instructing all Philippine ports and aeronautical authorities not to give entry or landing clearance to vessels or aircraft bearing those remains. In a Memorandum Circular to commercial airlines and private aircraft operators dated May 26, the Philippine Government served notice of its prohibition on the entry of the Marcos remains into the Philippines. The contents of the May 22 note and the May 26 Memorandum Circular were consolidated in a revised Memorandum Circular issued by the Philippine Government on June 8. Copies of these documents have been placed in the docket for this rulemaking.

Ferdinand Marcos lived in exile in the United States from 1986 to 1989. At all times during that period, the Philippine Government refused Marcos' request to return to the Philippines, in consideration of the potential for political unrest and destabilization of the current democratic government. That concern extends to the remains of Ferdinand Marcos after his death, in that the return of his remains to the Philippines could lead to civil unrest and potentially to violence given the respective support and opposition to his former rule by various political factions in the Philippines. It is the conclusion of DOS, as stated in its letter of June 3, that return of the Marcos remains to the Philippines would be contrary to U.S. strategic and foreign policy interests and would create a danger to the aircraft and persons involved in the flight.

It is the State Department's own assessment that the concerns of the Philippine Government are well-founded. However, the DOS is also concerned for the safety of any aircraft and crew involved in the return of the Marcos remains, as well as others who might be present at the actual or expected destination. The safety of these persons, who might include U.S. citizens, in the Philippines could be threatened by civil unrest in that country if the remains of Ferdinand Marcos were returned to the Philippines.

The safety of the aircraft that carried the Marcos remains could be jeopardized as a result of the reaction to carriage of the remains. The aircraft, crew, and any passengers could be directly threatened by any civil unrest attendant on arrival of the aircraft in the Philippines, if the time and place of arrival were known in advance. Also, an aircraft on a flight to the Philippines that was prevented from landing in the Republic of the Philippines could have insufficient fuel to reach an alternate airport after a trans-Pacific flight, in that the closest suitable alternate landing field is approximately 500 to 600 nautical miles away. Fuel exhaustion would result in crash landing or ditching of the aircraft in the open ocean. For both reasons, a flight to the Philippines carrying the remains of Ferdinand Marcos, at this time, could present serious hazards to the aircraft crew and passengers, including hazards that may not be apparent to the aircraft owner or the aircrew at the time the aircraft departed the United States.

Temporary Restrictions on Flights Leaving the United States

On the basis of the above, I find that the circumstances existing in the Republic of the Philippines, including the possibility of civil unrest if the remains of former President Ferdinand Marcos are returned to that country, represent a hazard to any aircraft used for that purpose, and, accordingly, that these circumstances require immediate action by the FAA in order to maintain the safety of flight and promote the national security interests of the United States. In order to prevent operation of an aircraft for the purpose of returning the Marcos remains to the Philippines, it is necessary for the FAA to issue a special regulation prohibiting the carriage of the remains from points in U.S. territory, where the remains are now located, to the Republic of the Philippines.

Effective Date of Final Rule

Because the potential hazard to flight currently exists, immediate action is required to maintain safety of flight by prohibiting any flight which would expose the flight crew, passengers, and aircraft to that hazard. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The rule contains an expiration date of October 1, 1990, but may be extended if circumstances in effect at that time warrant.

Regulatory Evaluation

The cost of this regulation is limited to the net revenue of a single flight between the United States—specifically Hawaii—and the Republic of the Philippines. However, such a flight would not necessarily be conducted for compensation by a commercial operator, or by an operator certificated by the United States. Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 73

Aviation safety, Republic of the Philippines.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 57 to read as follows:

SFAR No. 57—Restriction on Certain Flights From the United States To the Republic of the Philippines

1. *Applicability.* This rule applies to all operations in the United States.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight carrying the remains of Ferdinand Marcos from the Hawaiian Islands or any other point in the United States to any point in the Republic of the Philippines or to any intermediate destination on a flight the ultimate destination of which is the Republic of the Philippines.

3. *Expiration.* This special rule expires October 1, 1990.

Issued in Washington, DC on September 28, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–23287 Filed 9–28–89; 1:05 pm]

BILLING CODE 4910–13–M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1–699	15.00	Jan. 1, 1989
700–1199	17.00	Jan. 1, 1989
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53–209	18.00	Jan. 1, 1989
210–299	24.00	Jan. 1, 1989
300–399	12.00	Jan. 1, 1989
400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1989
900–999	28.00	Jan. 1, 1989
1000–1059	16.00	Jan. 1, 1989
1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	20.00	Jan. 1, 1989
1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
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*1950–1999	22.00	Jan. 1, 1989
2000–End	9.00	Jan. 1, 1989
8	13.00	Jan. 1, 1989
9 Parts:		
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10 Parts:		
0–50	19.00	Jan. 1, 1989
51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
400–499	14.00	Jan. 1, 1989
500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	12.00	Jan. 1, 1989
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500–599	20.00	Jan. 1, 1989
600–End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
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1200–End	12.00	Jan. 1, 1989
15 Parts:		
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300–399	20.00	Jan. 1, 1988
800–End	14.00	Jan. 1, 1989
16 Parts:		
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150–999	14.00	Jan. 1, 1989
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18 Parts:		
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19 Parts:		
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400–499	24.00	Apr. 1, 1989
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21 Parts:		
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1700–End	13.00	Apr. 1, 1989
*25	25.00	Apr. 1, 1989
26 Parts:		
§§ 1.0-1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	25.00	Apr. 1, 1989
§§ 1.170–1.300	17.00	Apr. 1, 1988
*§§ 1.301–1.400	15.00	Apr. 1, 1989
*§§ 1.401–1.500	28.00	Apr. 1, 1989
§§ 1.501–1.640	16.00	Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1989
§§ 1.851–1.1000	28.00	Apr. 1, 1988
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*§§ 1.1401–End	23.00	Apr. 1, 1989
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50–299	16.00	Apr. 1, 1989
*300–499	16.00	Apr. 1, 1989
500–599	7.00	Apr. 1, 1989
600–End	6.50	Apr. 1, 1989
27 Parts:		
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200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

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29 Parts:		
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100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
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30 Parts:		
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31 Parts:		
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200–End	17.00	July 1, 1988
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1–39, Vol. III	18.00	[4] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[5] July 1, 1986
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800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
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38 Parts:		
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18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
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52	27.00	July 1, 1988
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300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
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43 Parts:		
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46 Parts:		
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90–139	12.00	Oct. 1, 1988
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50 Parts:		
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CFR Index and Findings Aids	29.00	Jan. 1, 1989
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Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
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Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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CFR ISSUANCES 1989
January—July 1989 Editions and Projected October, 1989 Editions

This list sets out the CFR issuances for the January—July 1989 editions and projects the publication plans for the **October, 1989** quarter. A projected schedule that will include the **January, 1990** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1988—1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1989:

Title	
CFR Index	**9 Parts:**
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1—2 (Revised as of April 1, 1989)	200—End
	10 Parts:
3 (Compilation)	0—50
	51—199
4	200—399 (Cover only)
	400—499
5 Parts:	500—End
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700—1199	**11 (Cover only)**
1200—End	
	12 Parts:
6 [Reserved]	1—199
	200—219
7 Parts:	220—299
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27—45	500—599
46—51	600—End
52 (Cover only)	
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300—399	**14 Parts:**
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700—899	60—139
900—999	140—199
1000—1059	200—1199
1060—1119	1200—End
1120—1199	
1200—1499	**15 Parts:**
1500—1899	0—299
1900—1939	300—799
1940—1949	800—End
1950—1999	
2000—End	**16 Parts:**
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Titles revised as of April 1, 1989:

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240—End	0—199*
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18 Parts:	500—699
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280—399	
400—End	**25**
19 Parts:	**26 Parts:**
1—199*	1 (§§ 1.0–1—1.60)
200—End	1 (§§ 1.61—1.169)
20 Parts:	1 (§§ 1.170—1.300)
1—399	1 (§§ 1.301—1.400)
400—499	1 (§§ 1.401—1.500)
500—End	1 (§§ 1.501—1.640)
	1 (§§ 1.641—1.850)
21 Parts:	1 (§§ 1.851—1.1000)*
1—99	1 (§§ 1.1001—1.1400)
100—169	1 (§§ 1.1401—End)
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22 Parts:	**27 Parts:**
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Titles revised as of July 1, 1989:

Title	
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1900—1910 (§§ 1901.1—1910.441)*	**36 Parts:**
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30 Parts:	**38 Parts:**
1—199*	**(Revised as of September 1, 1989)**
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31 Parts:	**39**
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	1—51*
32 Parts:	52*
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 2	October 17	November 1	November 16	December 1	January 2
October 3	October 18	November 2	November 17	December 4	January 2
October 4	October 19	November 3	November 20	December 4	January 2
October 5	October 20	November 6	November 20	December 4	January 3
October 6	October 23	November 6	November 20	December 5	January 4
October 10	October 25	November 9	November 24	December 11	January 8
October 11	October 26	November 13	November 27	December 11	January 9
October 12	October 27	November 13	November 27	December 11	January 10
October 13	October 30	November 13	November 27	December 12	January 11
October 16	October 31	November 15	November 30	December 15	January 16
October 17	November 1	November 16	December 1	December 18	January 16
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10-3-89
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federal register

Tuesday
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10-3-89
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Presidential Documents

Title 3—

The President

Executive Order 12692 of September 29, 1989

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1991:

(a) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration).

(b) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).

(c) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as amended (Department of Labor).

(d) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(e) President's Committee on the Arts and the Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts).

(f) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor).

(g) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services).

(h) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).

(i) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services).

(j) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce).

(k) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in Section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive orders, which established committees that have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12462, as amended by Executive Order No. 12533, establishing the President's Advisory Committee on Mediation and Conciliation.

(b) Executive Order No. 12592, establishing the President's Commission on Compensation of Career Federal Executives.

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(c) Executive Order No. 12668, establishing the President's Commission on Federal Ethics Law Reform.

(d) Executive Order No. 12607, establishing the President's Commission on Privatization.

(e) Executive Order No. 12296, as amended by Executive Order No. 12309, establishing the President's Economic Policy Advisory Board.

(f) Executive Order No. 12528, as amended by Executive Order No. 12604, establishing the Presidential Board of Advisors on Private Sector Initiatives.

(g) Executive Order No. 12601, as amended by Executive Order No. 12603, establishing the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

Sec. 4. Executive Order No. 12610 is superseded.

Sec. 5. This order shall be effective September 30, 1989.

George Bush

THE WHITE HOUSE,
September 29, 1989.

[FR Doc. 89-23579
Filed 10-02-89; 11:08 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12693 of September 29, 1989

Exclusion of the Defense Mapping Agency Reston Center and Elements Under the Joint Special Operations Command From the Federal Labor-Management Relations Program

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 7103(b)(1) of title 5 of the United States Code, and having determined that the Defense Mapping Agency Reston Center and the elements under the operational control of the Joint Special Operations Command have as a primary function intelligence, counterintelligence, investigative, or national security work and that the provisions of Chapter 71 of title 5 of the United States Code cannot be applied to those organizations in a manner consistent with national security requirements and considerations, Executive Order No. 12171 of November 19, 1979, as amended, is further amended as follows:

Section 1. Section 1–212(v) is amended by deleting the period and inserting in lieu thereof "and all elements under its operational control."

Sec. 2. A new section is inserted after section 1–214 as follows:

"1–215. The Defense Mapping Agency Reston Center, Department of Defense."

George Bush

THE WHITE HOUSE,
September 29, 1989.

[FR Doc. 89-23580
Filed 10-02-89; 11:09 am]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 88-029F]

Meat Inspection; Incorporation by Reference; Updating of Text

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document changes the Federal meat inspection regulations to update two references to the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC). A 1984 edition of this publication was published subsequent to the initial incorporation by reference. Although there are no substantive changes in the methods, the referenced pay numbers of the AOAC publication have changed. The Food Safety and Inspection Service (FSIS) is amending its regulation provisions that reference AOAC methods of analysis to reflect the most recent edition of the AOAC publication. In accordance with § 51.11 of title 1 of the Code of Federal Regulations (1 CFR 51.11), an Agency wishing to change information incorporated by reference into its regulations must first provide notice of the change in the **Federal Register** and amend the Code of Federal Regulations as appropriate. It must also ensure that a copy of the amended or revised reference is on file at the Office of the Federal Register.

EFFECTIVE DATE: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8168.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule only changes the citations to material that previously has been approved for incorporation by reference.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule places no new requirements on industry. It only reflects changed citations to methods of analysis already approved for incorporation by reference. Therefore, small entities will not be affected.

Background

Title 1 of the Code of Federal Regulations (1 CFR part 51) requires that an Agency seeking approval of a change to a publication that is approved for incorporation by reference in the Code of Federal Regulations must publish notice of the change in the **Federal Register** and amend the Code of Federal Regulations; ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and notify the Director of the Federal Register in writing that the change is being made.

Accordingly, FSIS has reviewed the materials pertaining to meat and meat food products and poultry and poultry products that have been approved for incorporation by reference by the Director of the Office of the Federal Register. It was determined that references to the AOAC publication approved for incorporation in §§ 319.5 and 319.700 of title 9 needed to be updated to reflect the 1984 edition and new page numbers. The Agency, therefore, finds it necessary to amend these regulations to reflect changes in the AOAC publication that is approved for incorporation.

Because this amendment merely updates the citations to material that has been previously approved for incorporation by reference, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553).

A copy of the 14th edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is on file at the Office of the Federal Register, and may be obtained directly from the AOAC at the address noted below.[1]

List of Subjects in 9 CFR Part 319

Meat and meat food products, Mechanically separated (species), Standards of identity or composition, Food labeling, Incorporation by reference, Margarine, oleomargarine.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

1. The authority citation for part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 319.5, paragraph (e)(2) is amended to replace the four sentences starting with the words "Finished product samples", as follows:

§ 319.5 Mechanically separated (species).

* * * * *

(e)(2) * * * Finished product samples shall be analyzed in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 14th ed. 1984, sections 24.005 (page 431), 24.006–24.008 (page 431), 24.027 (page 434), and 43.212–43.216 (page 869), which are incorporated by reference, or if no AOAC method is available, in accordance with the "Chemistry Laboratory Guidebook," U.S.

[1] Association of Official Analytical Chemists, 2200 Wilson Boulevard, Suite 400, Arlington, Virginia 22201.

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Department of Agriculture, Washington, DC, March 1986 edition, sections 6.011–6.013, Revised June 1987 (pages 6–35 through 6–65). Alternative methods of analysis may be submitted to the Administrator to determine their acceptability based upon their accuracy, repeatability, reproducibility, and lowest level of reliable measurement, as demonstrated by at least 3 laboratories. Copies of AOAC's "Official Methods" may be obtained from: AOAC, 2200 Wilson Boulevard, Suite 400, Arlington, VA 22201. Copies of USDA's Chemistry Laboratory Guidebook may be obtained from: Superintendent of Documents, Government Printing Office, Washington, DC 20402. * * *

3. Section 319.700 is amended by revising the first sentence of paragraph (a) and redesignating footnotes 2, 3 and 4 as 1, 2, and 3, and by revising newly redesignated footnote 2. The text of newly redesignated footnote 1 is republished.

§ 319.700 Oleomargarine or margarine.[1]

(a) Margarine or oleomargarine is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed under section 16.206 of the "Indirect Methods," in "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC)," 14th Edition 1984.[2]

* * * * *

Done at Washington, D.C., on: September 27, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-23241 Filed 10-2-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-171-AD; Amdt. 39-6342]

Airworthiness Directives; Boeing Models 727, 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 and Model 737-100, -200 and -200C series airplanes, which requires inspection of engine mount cone bolt nuts, changing of maintenance procedures, and reporting findings of engine mount cone bolt nuts which are not in accordance with the type design of the airplane. This amendment is prompted by recent reports of counterfeit engine mount cone bolt nuts installed by the operators during maintenance. Since the structural quality of counterfeit nuts manufactured without quality control procedures cannot be determined, the engine mount strength cannot be assured. This condition, if not corrected, could lead to engine separation.

EFFECTIVE DATE: October 16, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On June 30, 1989, the manufacturer informed the FAA of a recent report from an operator of Boeing Models 727 and 737 series airplanes who had discovered a discrepancy with the engine mount cone bolt nuts, Boeing Part Number 69-59074-1. The operator discovered that the engine mount cone bolt nuts were marked with the Boeing part number and NAS1805 in different locations on the nuts from those previously purchased from other sources. The operator also stated that these counterfeit nuts had been used in ninety-four engine overhauls prior to this discovery. The FAA has determined that more than one source manufactured the counterfeit nuts to unknown quality control standards. One of the manufacturers indicated that it had sold in excess of 2,600 nuts to more than thirty operators, aircraft repair station, and aircraft part distributors worldwide.

On July 21, 1989, the manufacturer released Telegraphic Service Letter M-7272-89-3551 to all operators, field service bases, the Air Transport Association, and Boeing resident service representatives for Boeing 727 and 737-100, -200, and -200C airplanes, indicating that counterfeit engine mount cone bolt nuts had been discovered and specifying a methodology to determine the authenticity of the approved parts.

Since the release of the Boeing Service Letter, the FAA has determined, in conjunction with the Federal Bureau of investigation, that various new versions of counterfeit engine mount cone bolt nuts have been produced to unknown quality control standards and that the distribution is widespread. Since the structural quality of the various counterfeit nuts cannot be determined, the engine mount strength cannot be assured. This condition, if not corrected, could lead to engine separation.

The FAA has reviewed the Boeing Service Letter M-7272-89-3551, dated July 21, 1989, which describes procedures for identifying the counterfeit engine mount cone bolt nuts. However, since new configurations of counterfeit nuts have been found subsequent to the release of that Service Letter, the FAA has determined that the method described in the Service Letter will not reliably determine an authentic engine mount cone bolt nut.

The only FAA-approved sources for the 69-59074-1 engine mount cone bolt nuts are The Boeing Company and Standard Press Steel. The authentic part markings of the engine mount cone bolt nuts are labeled on the vertical rim of the nut base at the largest diameter; nuts produced prior to 1969 may have this part marking on the sloping surface in lieu of vertical rim. An authentic engine mount cone bolt nut is identified as "-SPS 69-59074-1-" with a single space between the "S" and "6" and absolutely no other markings. Several counterfeit nuts have been produced with the marking "69-59074-1 SPS", with the "SPS" sometimes separated from the marking "69-59074-1" by more than one space; or with "NAS1805" in addition to other marks; or with the Bristol logo "* * * B+ * * *" in addition to the other marks; or with "ENGW-10A" in addition to other marks; and an unknown quantity may have been produced with the part marking "SPS 69-59074-1" instead of "-SPS 69-59074-1-".

Since this condition is likely to exist on other airplanes, this AD requires the inspection for authentic engine mount cone bolt nuts on all Boeing Model 727 and Model 737-100, -200, -200C series airplanes engine installations, and reporting of all findings to the FAA. Additionally, this AD requires a revision to the FAA-approved maintenance program to ensure that only authentic engine mount cone bolts nuts are installed on the engine mount cone bolt.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 and Model 737-100, -200, and -200C series airplanes certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation, accomplish the following:

A. Within the next 5 days after the effective date of this AD, revise the FAA-approved maintenance program to indicate that only FAA-approved engine mount cone bolt nuts specified in the table below shall be installed on the engine mount cone bolt on Boeing Models 727 and 737-100, -200, -200C airplanes.

Line No.	FAA-approved engine mount cone bolt nut
Boeing Model 727:	
1-193	BACN10B-10L or BACN10GW-10 or NAS1804-10 or LHEB220-108 or 69-59074-1
194-692	LHEB220-108 or 69-59074-1
693-1832	69-59074-1
Boeing Model 737-100, -200, -200C:	
1-124	LHEB220-108 or 69-59074-1
125-1585	69-59074-1

No substitute shall be used for the LHEB220-108 or Boeing 69-59074-1 engine mount cone bolt nut.

B. Within 60 days after the incorporation of paragraph A., above, conduct an inspection to verify that each installed engine mount cone bolt nut conforms to the approved type design as described in paragraph A., above, and, if the 69-59074-1 is installed, verify its authenticity. If the authenticity of the engine mount cone bolt nut 69-59074-1 cannot be verified, replace it with an authentic 69-59074-1 engine mount cone bolt nut prior to further flight. The authenticity of the FAA-approved 69-59074-1 engine mount cone bolt nut is determined by the following method:

The only FAA-approved sources for the 69-59074-1 engine mount cone bolt nuts are The Boeing Company and Standard Press Steel. The authentic part markings of the engine mount cone bolt nuts are labeled on the vertical rim of the nut base at the largest diameter; nuts produced prior to 1969 may have the part marking on the sloping surface in lieu of the vertical rim. The authentic cone bolt nut is identified as "-SPS 69-59074-1-" with a single space between the "S" and "6" and absolutely no other markings.

C. Within 10 days after completion of the inspection required by paragraph B., above, for each airplane, submit a report of findings of counterfeit engine mount cone bolt nuts installed on the airplane to the Manager, Manufacturing Inspection Office, ANM-108, FAA, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. This report must include the model of the airplane inspected, the date of inspection, and the number of cycles flown since the last engine maintenance where engine mount cone bolts were installed.

Note: The report should be forwarded through the assigned air carrier Principal Maintenance Inspector (PMI), who will then send it to the Manager, Manufacturing Inspection Office, ANM-108.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 16, 1989.

Issued in Seattle, Washington, on September 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23285 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-172-AD; Amdt. 39-6329]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires a revision to the FAA-approved maintenance program and Airplane Flight Manual (AFM) to specify actions

[1] Insofar as the standard contains provisions relating to margarine or oleomargarine which does not contain any meat food products, such provisions merely reflect the applicable standard under the Federal Food, Drug, and Cosmetic Act.

[2] Copies of the AOAC methods may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Boulevard, Suite 400 Arlington, VA 22201. * * *

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to be performed on the Integrated Display System (IDS) prior to release of the airplane to the flightcrew. This amendment is prompted by laboratory test results which documented the inability, under certain conditions, to record some airplane status messages on the STATUS page of the IDS. This condition, if not corrected, could result in equipment failures on the airplane, unknown to the crew or maintenance personnel. This could result in subsequent dispatch of an airplane in an unairworthy condition.

EFFECTIVE DATE: October 17, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1937. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The manufacturer of the Integrated Display System (IDS) installed on the Model 747-400 has reported that, during validation testing of an updated version of the IDS software, it was found that certain Engine Indication and Crew Alerting System (EICAS) status messages may not be retained for corrective maintenance action on the status page at the completion of the flight. In such cases, maintenance personnel, upon reviewing the status level messages after flight, would be unaware of the equipment malfunctions and unable to take corrective action prior to the next flight dispatch. This condition is only true for certain status level EICAS messages which must be maintained for post-flight maintenance activities. Flight and engine control sensors that are vital to the airworthiness of the airplane are monitored and maintained by this system. Memo, Caution, Advisory, and Warning level messages are not affected. This condition, if not corrected, could result in equipment failures on the airplane unknown to the crew or maintenance personnel. This could result in subsequent dispatch of an airplane in an unairworthy condition.

The FAA has reviewed and approved Boeing Telegraphic Maintenance Tip (M-7201-89-1141), dated July 27, 1989, which describes maintenance action required prior to dispatch if preparation of the airplane involved erasing any EICAS messages.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires a revision of the FAA-approved maintenance program to implement a maintenance procedure in accordance with the telegraphic maintenance tip previously described, and a revision to the Airplane Flight Manual (AFM) that cautions the flightcrew not to erase Status Messages from the IDS.

This is considered interim action. The FAA may consider revising this AD to require the replacement of the Integrated Display System software with an updated version, after development of such software and subsequent approval by the FAA is accomplished.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-400 series airplanes, with Integrated Display System (IDS) software installed as identified in Boeing Telegraphic Maintenance Tip (M-7201-89-1141), dated July 27, 1989, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To preclude the possibility of airplane status messages not being properly latched into memory which may prevent maintenance from properly dispatching the airplane, accomplish the following:

A. Change the FAA-approved maintenance program, with concurrence of the assigned FAA Principal Maintenance Inspector, to include the following special procedures, as described in Boeing Telegraphic Maintenance Tip 747-400 MT 31-12 (transmitted by Boeing message M-7201-89-1141, dated July 27, 1989):

1. If preparation of the airplane involved erasing any EICAS messages, as the final maintenance action prior to dispatch, simultaneously cycle power to the three electronic interface units (EIU).

2. Pull the following circuit breakers:

Location	Nomenclature
P7-1 F09	EIU L
P7-1 F10	EIU C
P7-2 F15	EIU R

3. After three seconds, restore all three circuit breakers to the power-on position.

B. Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Due to an IDS anomaly, information necessary for dispatch of subsequent flights may be lost if EICAS status messages are erased. To preclude this possibility, do not erase any EICAS status messages."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 3, 1989.

Issued in Seattle, Washington, on September 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23273 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-182-AD; Amdt. 39-6343]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires the installation of protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall. This amendment is prompted by inspections of several airplanes that revealed certain wire bundles could contact oxygen lines at six locations. This condition, if not corrected, could result in chafing of the wires, which could then arc and possibly burn through to an adjacent oxygen line; this would create a fire hazard should the oxygen line be pressurized.

EFFECTIVE DATE: October 16, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Inspections of several airplanes at the manufacturer's facility, revealed that wire bundles could contact oxygen lines at six locations. A chafed wire could result in arcing and possible burn-through of the adjacent oxygen line. If the oxygen system were pressurized for any reason, the arcing could provide an ignition source, where there is a concentration of oxygen in the sidewall of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-35-2059, dated August 17, 1989, which describes the installation of protective sleeves on wire breakouts and oxygen lines at six locations in the upper deck left sidewall, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-35-2059, dated August 17, 1989, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the chafing of wire bundles, subsequent arcing and burn-through of adjacent oxygen lines, and a resulting potential fire hazard, accomplish the following:

A. Install protective sleeves on wire breakouts and oxygen lines in the upper deck left side wall in accordance with Boeing Service Bulletin 747-35-2059, dated August 11, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the

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appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Air Craft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 16, 1989.

Issued in Seattle, Washington, on September 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23282 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-176-AD; Amdt. 39-6347]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with a Door 5 crew rest area, which requires replacement of the oxygen generator release cable assemblies. These cable assemblies are used in the oxygen modules installed in the crew rest area. This action is prompted by reports of broken release pins found during inspection of the same part on Boeing Model 767 series airplanes. This condition, if not corrected, could result in failure of the oxygen generator to activate and supply oxygen to the crew members in the crew rest area.

EFFECTIVE DATE: October 19, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recently, two operators of Boeing Model 767 series airplanes reported finding broken oxygen generator release pins. If the release pin breaks while attempting to activate the oxygen generator, the firing mechanism will not be activated and oxygen will not be produced. These same passenger oxygen supply units are used in the Door 5 crew rest area on Boeing Model 747 series airplanes. Units affected by the release pin deficiency are only used in the Door 5 crew rest area. The Model 747 passenger oxygen supply units (PSU) do not use an oxygen generator and are not affected by this AD.

The release cable assembly pins used on these airplanes have now been correctly drilled to prevent the fractures from occurring and color coded green for easy recognition.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-35A2065, dated August 3, 1989, which describes the replacement of the release cable assembly to ensure proper operation of the oxygen generator.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires replacement of the oxygen generator release cable assembly in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with a Door 5 crew rest area, certificated in any category. Compliance required within the next 60 days after the effective date of this AD, unless previously accomplished.

To ensure proper operation of the oxygen generators, accomplish the following:

A. Replace the oxygen generator release cable assembly in accordance with Boeing Alert Sevice Bulletin 747-35A2065, dated August 3, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region. Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 19, 1989.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23283 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-201-AD; Amdt. 39-6349]

Airworthiness Directives; Boeing Model 767 Series Airplanes, Equipped With Pratt and Whitney JT9D Series Engines or General Electric CF6-80A Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which requires modifications to the electromagnetic protection shielding of the wires to the respective engine electronic engine controls (EEC). This amendment is prompted by a review of the wiring installation between the engine fan case and the strut, which has shown that not all engine and EEC wires requiring electromagnetic protection shielding have been shielded. This condition, if not corrected, could lead to an electrical transient from a lightning strike to one engine, which could cause damage or malfunction to the unstruck engine's EEC; this may affect the thrust of the unstruck engine, as well as that of the struck engine. A lightning strike during takeoff, causing maximum EEC downtrim on both engines, could result in a thrust loss greater than the loss of one engine.

EFFECTIVE DATE: November 6, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bernie Gonzalez, Propulsion Branch, ANM-140S; telephone (206) 431-1964. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes equipped with Pratt and Whitney JT9D series engines or General Electric CF6-80A series engines, which requires improvement of the electromagnetic protection shielding of the wires to the respective engine electronic engine controls, was published in the Federal Register on February 14, 1989 (54 FR 6892).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comments were received from Boeing Commercial Airplanes and from the Air Transport Association (ATA) of America on behalf of three of its members.

Boeing suggested word changes to the description of the unsafe condition to reflect that a lightning strike could cause a "maximum EEC downtrim" rather than a "shutdown" on both engines leading to a thrust loss greater than the loss of one engine. The FAA concurs and this comment has been incorporated in the Summary section of this preamble.

One ATA member disputed the contention that the lightning strike induced thrust loss would be greater than the loss of thrust of a single engine. The member indicated that to its knowledge, the downtrim authority of the CF6-80A engine EEC was in the ten percent (10%) N_1 speed range and equivalent to approximately 12,000 lbs. of thrust at takeoff power. It stated that the total thrust loss would therefore be approximately 24,000 lbs., which is much less than the loss of thrust from a single engine (48,000 lbs.). The ATA indicated that if this member's contention is correct, the FAA should withdraw the AD for lack of justification. The FAA does not concur. A review of the downtrim authority of the EEC provided by the airframe manufacturer, has indicated that, on the Pratt and Whitney JT9D-7R4D/E and the General Electric CF6-80A/80A2 engines installed on the Model 767-200/300 airplanes, the electronic engine controls (EEC) operate by downtrimming the hydromechanical engine fuel control. The authority of this trim is limited by the fuel control N_1 speed governor. Approximate values for these authority limits are 24.8% N_1 and 10.9% N_1 for the respective Pratt and Whitney and General Electric engines. The manufacturer also indicated that the fuel control limits EEC authority so that the engines cannot be downtrimmed below normal idle levels. An EEC failure resulting in the maximum downtrim being applied to the hydromechanical control would result in a significant thrust loss. The magnitude of this thrust loss depends upon the ambient conditions (e.g., ambient temperature, pressure altitude) prevailing at the time of failure. For both engine types, the manufacturer has indicated the loss may exceed 50% thrust at some operating conditions. Should both engine EEC's experience a maximum downtrim, as with a lightning strike induced failure, the loss of thrust would be greater than the loss of a single engine. For the CF6-80A engine noted by the ATA member, a 10.9% N_1 downtrim would result in approximately a 25.8% N_1 speed change under standard day sea level conditions and would be equivalent to a thrust change of 25,600 lbs. for each engine. As the total loss of 51,200 lbs. is greater than the 48,160 lbs. thrust of a single CF6-80A engine at takeoff power, the FAA has determined that an unsafe condition exists, thus justifying the issuance of this AD action.

The ATA also indicated that most of its members intend to accomplish the modification but are opposed to the proposed compliance time of one year. Several members suggested that the compliance time be extended to two or three years, based upon the manufacturer's revised delivery schedule of 40 weeks for the modification parts and the operators' desire to accomplish the modification without removing airplanes from scheduled airline service. The ATA members prefer accomplishing the modification during airplane and engine base maintenance periods/C-check. The FAA does not concur with the suggested three-year compliance time. Since issuance of the NPRM, the availability of modification parts schedule was revised to 40 weeks but, in addition, subsequent revision of the applicable Service Bulletin allows for optional modification parts, increasing the quantity of parts available. The manufacturer indicates the required modifications can be accomplished in 4 to 11½ hours. The FAA considers that accomplishment of this modification does not warrant C-check or base maintenance period scheduling. The FAA has determined that the required modifications can, therefore, be

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accomplished within 15 months from the effective date of the AD, allowing for the parts availability, and has revised the AD compliance time to 15 months.

Since issuance of the NPRM, Boeing has issued Revision 1 and Revision 2 to Service Bulletin 767-71-0041, dated April 6, 1989, and June 29, 1989, respectively. These revisions provide for the installation of an optional wire bundle assembly (this will improve the availability of parts, as discussed above), and contain certain procedural clarifications and clerical corrections. The AD has been revised to allow compliance to the later revisions of the service bulletin.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 188 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 93 airplanes of U.S. registry will be affected by this AD, that it will take approximately 35⅛ manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The average parts cost per airplane would be $7,554. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $833,185.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with Pratt and Whitney JT9D series engines or General Electric CF6-80A series engines, specified in Boeing Service Bulletin 767-76-0041, dated September 22, 1988, certificated in any category. Compliance required within 15 months after the effective date of this AD, unless previously accomplished.

To minimize the potential for a thrust loss greater than the loss of one engine due to a lightning strike, accomplish the following:

A. Modify the engine electrical and electronic engine control wiring in accordance with Boeing Service Bulletin 767-71-0041, dated September 22, 1988; Revision 1, dated April 6, 1989; or Revision 2, dated June 29, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 8, 1989.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23281 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-87-AD; Amdt. 39-6345]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes, Equipped with Grumman Aerospace Corporation Engine Exhaust Duct Part No. C46P13100-3 or C46P13100-103 (Not Applicable to Airplanes Equipped With Dee Howard Thrust Reversers)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125-800A series airplanes, which requires installation of a strengthened engine exhaust duct. This amendment is prompted by one report of the tail pipe collapsing inward due to compressor stall. This condition, if not corrected, could lead to loss of required engine power.

EFFECTIVE DATE: November 8, 1989.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 125-800A series airplanes, equipped with Grumman Aerospace Corporation engine exhaust duct Part No. C46P13100-3 or C46P13100-103 (not applicable to airplanes equipped with Dee Howard thrust reversers), which requires installation of a strengthened engine exhaust duct, was published in the **Federal Register** on June 21, 1989 (54 FR 26053).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule. However, the commenter recommended the compliance time be extended from the proposed 60 days to one year because of the long turn around time for modification of removed exhaust ducts. The FAA agrees with this commenter's suggestion to extend the compliance time. Review of new information concerning parts availability and modification turn around time indicates it takes about 90 days for a part to be modified after it is received at the modification facility. Considering the number of airplanes remaining to be modified in the U.S. fleet, parts modification time, and availability of modified ducts for exchange, it may take as long as 180 days from October 1, 1989, to complete the modification of the U.S. fleet. British Aerospace has also advised that its review indicates a sufficient number of exhaust ducts can be modified to complete the modification of the U.S. fleet within 120 days after October 1, 1989. In view of the fact that an engine compressor stall must occur during certain flight modes for this problem to occur on an exhaust duct and the rather low probability of a compressor stall occurring, the FAA has determined that the compliance time can be extended to 180 days after the effective date of the AD without a significant adverse effect on safety of the fleet. Accordingly, the compliance time in the final AD has been changed to 180 days after the effective date of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,400

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800A series airplanes equipped with Grumman Aerospace Corporation engine exhaust duct Part No. C46P13100-3 or C46P13100-103 (not applicable to airplanes with Dee Howard thrust reversers) certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent collapse of the engine exhaust duct, accomplish the following:

A. Replace the left and right engine exhaust ducts in accordance with British Aerospace Service Bulletin 71-40-3213A, Revision 2, dated April 12, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 8, 1989.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23284 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-56; Amdt. 39-6340]

Airworthiness Directives; Sikorsky Aircraft Model S-61N and S-61NM Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment amends an airworthiness directive (AD) which requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components; and replacement of the components, as necessary, on Sikorsky Model S-61N and S-61NM series helicopters. This amendment is needed to correctly identify part numbers misidentified in the last amendment.

EFFECTIVE DATE: October 30, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be

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examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989), AD 89-04-01 R1, which currently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary, on Sikorsky Models S-61N and S-61NM series helicopters. The one-time hardness test is applicable to certain truss tube assemblies which have a butt-welded end fitting with a lug welded to the end fitting. A Tungsten inert gas (TIG)-welded single piece end fitting which has the lug as an integral part of the fitting does not require the hardness test.

Since issuing the AD, the FAA has determined that four part numbers included in the introductory text of paragraph (a) and one part number and location for the last truss listed in Table 1 were misidentified. Therefore, the FAA is amending AD 89-04-01, Amendment 39-6131, as amended by Amendment 39-6279, to correctly identify these part numbers.

Since this amendment is clarifying in nature only, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is clarifying in nature and imposes no further cost. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989), AD 89-04-01R1, by revising paragraph (a) introductory text as follows; and by revising Table 1 by removing part number (P/N) 61250-51234-041 (sponson tube truss assembly column) and the words "clevis and lug hole" (inspection locations column) under the 2500 inspection interval section; and inserting P/N S6125-51217-1, -041 and the words "clevis lug hole" in their place in the 2500 inspection interval section:

Sikorsky Aircraft: Applies to Models S-61N and S-61NM helicopters certificated in any category [Docket No. 88-ASW-56]

* * * * *

(a) Within the next 50 hours' time in service after the effective date of this AD, conduct a hardness test of each welded lug of sponson truss tube assemblies, part number (P/N) S6125-51212-4 and 61250-51233-042, aft lower truss tube assembly-left side; S6125-51212-5 and 61250-51233-043, aft lower truss tube assembly-right side; S6125-51214-3 and 61250-51235-041, forward upper truss tube assembly-left and right side; and S6125-51214-4 and 61250-51235-042, aft upper truss tube assembly-left and right side, as follows:

* * * * *

This amendment becomes effective October 30, 1989.

This amendment amends Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989), AD 87-04-01R.

Issued in Fort Worth, Texas, on September 19, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-23272 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 776

[Docket No. 81136-9154]

RIN 0694-AA06

Exports from Abroad of Foreign Products Incorporating U.S.-Origin Parts and Components

AGENCY: Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: On December 7, 1988, the Bureau of Export Administration (BXA) published a proposed rule (53 FR 49327) designed to implement section 5(a)(5)(A) of the Export Administration Act of 1979, as amended by the Omnibus Trade and Competitiveness Act of 1988. Having reviewed and considered the comments on the proposed rule, BXA is now issuing this interim rule that revises § 776.12 of the Export Administration Regulations (EAR) to reduce U.S. export controls on U.S.-origin parts and components incorporated in foreign-made products. This change applies a 25% exemption to all destinations, except that a 10% exemption—with no dollar value limitation—is continued for Country Groups S and Z, and Iran, Syria and the People's Democratic Republic of Yemen. Paragraph (h) of § 776.12, which addressed controlled in fact entities, has been removed because of the expansion of the 25% exemption.

This rule also creates a new exemption based on the Advisory Notes that indicate a likelihood of approval for exports to Country Groups Q, W, and Y. Like the 25% exemption, the QWY Advisory Note exemption applies to all destinations, except those located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen. A 10% exemption—with no dollar value limitation—applies to these destinations.

The effect of this rule will be to reduce the licensing requirements that would apply to foreign products containing U.S.-origin parts and components.

The Commerce Department will consider comments on these changes; especially comments concerning the economic impact on U.S. firms of retaining a 10% exemption—with no dollar value limitation—on Iran, Syria, the People's Democratic Republic of Yemen, and Country Groups S and Z.

EFFECTIVE DATE: This rule is effective October 3, 1989. Comments must be received by November 2, 1989.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act amended section 5(a)(5)(A) of the Export Administration Act of 1979 (the Act), as amended, to require a reduction of U.S. controls on U.S.-origin parts and components incorporated in foreign products. Currently, when U.S.-origin parts and components are valued at $10,000 or less and comprise 10% or less of the value of a foreign-made product, the Export Administration Regulations (EAR) permit the foreign-made product to be exported from abroad to any destination without written U.S. authorization. Written U.S. authorization is also not required for exports, from foreign countries, of foreign-made products with a U.S. content value of 25% or less to countries listed in Supplement No. 2 or 3 to part 773, except Ethiopia, Lebanon, and Nicaragua.

The U.S. Department of Commerce proposed, on December 7, 1988 (53 FR 49327), to amend § 776.12 of the Export Administration Regulations (15 CFR parts 730-799) by making three significant revisions:

(1) Expanding the existing 25% exemption to apply to countries not listed in Supplement No. 2 or 3 to part 773, and to Ethiopia, Lebanon, and Nicaragua, provided that the export of the foreign product to the new destination would be subject to U.S. national security controls only;

(2) Creating an exemption from written authorization requirements that applies to foreign-made products containing U.S.-origin content when none of the U.S. content, regardless of its value, exceeds the technical performance characteristics of any Advisory Note on the Commodity Control List that indicates licenses are likely to be approved for export to satisfactory end-users in Country Groups Q, W, and Y—unless the new destination is in Ethiopia, Lebanon, or Nicaragua or in a country not listed in Supplement No. 2 or 3 to part 773 and the export of the foreign product would be subject to U.S. export controls other than, or in addition to, national security controls; and

(3) Revising the definition of "U.S. content value" in § 776.12(d) to exclude parts, components, or materials that could be exported from the United States to the new country of destination under General Licenses G-COCOM, G-COM, or GFW, as well as General License G-DEST.

The Department received public comments from 12 firms and associations. In general, the comments were opposed to the restrictions that the proposed rule placed on countries not listed in Supplement Nos. 2 or 3, and to Ethiopia, Lebanon, and Nicaragua. Most comments stressed that the proposed exemptions should apply to all destinations, regardless of the reason for control. Comments concerning the definition of the term "U.S. content value"—which was revised to exclude components that may be exported to the new destination under General Licenses G-COCOM, G-COM, and GFW, as well as General License G-DEST—were generally favorable.

In drafting this interim rule, the Department has reviewed the public comments that address the scope of the 25% and QWY Advisory Note exemptions. Both the 25% exemption and the QWY Advisory Note exemption described in the proposed rule are expanded to apply to all destinations—except for those located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen—regardless of the reason for control. A 10% exemption—with no dollar value limitation—will apply to destinations located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen.

This interim rule, like the proposed rule, revises the U.S. content that is to be counted when calculating "U.S. content value" as defined in §776.12(d). Parts, components, or materials that could be exported from the United States to the new country of destination under General Licenses G-DEST, G-COCOM, G-COM, or GFW may be excluded from the calculation of "U.S. content value". Previously, under the EAR, only G-DEST items were excluded from this calculation.

Several comments expressed support for providing an exemption for U.S.-origin parts and components incorporated in foreign-made supercomputers provided that the U.S.-origin parts and components could be exported to the new destination under General Licenses G-COCOM, G-COM, and GFW, as well as General License G-DEST. These comments were not adopted. However, this rule does clarify the supercomputer restriction by stating that exports of U.S.-origin parts and components incorporated in foreign-made supercomputers may be made under § 776.12(b), Provided That these parts and components are eligible for export to the new destination under General License G-DEST. The Department will treat cases involving supercomputers on a case-by-case basis.

The interim rule also revises §776.12(d). This section previously permitted U.S.-origin controlled spare parts to accompany a shipment of a foreign-made product incorporating U.S.-origin parts and components, provided that the value of the spare parts did not exceed the value of the controlled U.S. content in the foreign-made product. The interim rule limits the value of the U.S.-origin spare parts that may accompany such a shipment to 10% of the value of the foreign-made product. This change is made to ensure that only a reasonable complement of spares will be shipped.

Exporters are reminded that, in accordance with the provisions of § 779.8, a foreign-made product that is the direct product of U.S.-origin technical data may require U.S. authorization regardless of the U.S. content. Exporters should be also aware that this rule deals only with U.S.-origin parts and components incorporated in foreign-made products. Statutory provisions related to U.S.-origin technical data that are used to produce foreign-made products and to section 5(m) of the Act, "Goods Containing Controlled Parts and Components", will be implemented in separate rules.

Exporters have claimed that this change will significantly benefit exports of U.S.-origin parts and components by encouraging foreign manufacturers to continue to use or even expand their use of U.S.-origin parts and components in their products. Industry has not quantified the increase in exports that may result from this change. The Department does not have adequate data available to estimate the trade volume that might be affected by these changes.

The Commerce Department will consider comments that address the

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changes made by this interim rule, including comments on the economic impact on U.S. firms of retaining a 10% exemption—with no dollar value limitation—for Iran, Syria, the People's Democratic Republic of Yemen, and Country Groups S and Z.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0010. Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Room 3889, Washington, DC 20230; and to the Office Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–0010). The effect of the rule will be to reduce the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. This rule is not subject to the requirements of section 13(b) of the Export Administration Act because it is not imposing new controls. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 2, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 776

Exports, Reporting and recordkeeping requirements.

Accordingly, part 776 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of Dec. 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 776—[AMENDED]

3. Section 776.12 is amended by revising the section heading, by revising the introductory text, by revising paragraphs (a), (b), (c), (d), (e)(2)(i) through (e)(2)(ix), and (e)(3), by adding paragraphs (e)(2)(x) through (e)(2)(xii), by removing paragraph (b), and by adding a parenthetical phrase at the end of the section, as follows:

§ 776.12 Parts, components, and materials incorporated abroad into foreign-made products.

U.S. origin parts, components, materials, or other commodities incorporated abroad into a foreign-made product are subject to United States export controls under § 776.12. U.S. origin parts, components, materials, or other commodities that are not incorporated abroad into products are subject to the reexport provisions of part 774. U.S. origin peripheral or accessory devices that are merely rack mounted with or cable connected into foreign equipment are not deemed to be incorporated components even though intended for use with products made abroad. Rather, such items are treated as U.S. items that retain their identity and remain subject to the reexport provisions of part 774. The Department of Commerce asserts control over parts, components, and materials incorporated in foreign-made products to prevent the use of such U.S. origin parts, components, or materials in a manner detrimental to the national security or foreign policy of the United States. These controls do not apply if either the U.S. content or the foreign-made product is subject to control only for short supply reasons.

(a) *Calculation of values.* Use the following guidelines in determining values for establishing exemptions or for submission of a request for authorization:

(1) *U.S. content value.* (i) U.S. content value is the delivered cost to the foreign manufacturer of the U.S. origin parts, components, or materials. (When affiliated firms have special arrangements that result in lower than normal pricing, the cost should reflect "fair market" prices that would normally be charged to similar, unaffiliated customers.)

(ii) In calculating the U.S. content value, do not include parts, components, or materials that could be exported from the United States to the new country of destination under General License G–DEST, G–COCOM, G–COM, or GFW.

(2) The foreign-made product value is the normal export selling price f.o.b. factory (excluding value added taxes or excise taxes).

(b) *Determining approval requirements.* The prior written approval of the Office of Export Licensing is required for the export from a foreign country of a foreign-made supercomputer containing U.S. origin parts, components, or materials that are not G–DEST to the new destination, without exception. Prior written approval also is required for any other foreign-made product incorporating U.S. origin parts, components, or materials, unless:

(1) The export of the foreign-made product meets any of the conditions of § 774.2 (permissive reexports); or

(2) All of the U.S. content could be exported from the United States to the new destination under General License G–DEST or G–COCOM; or

(3) The U.S. content value is 10% or less; or

(4) The U.S. content value is 25% or less and the ultimate destination of the foreign-made product is not located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen; or

(5) None of the technical performance characteristics of the U.S. content exceed those of any Advisory Note in the CCL that indicates licenses are likely to be approved for Country Groups Q, W, and Y and the ultimate destination of the foreign-made product is not located in Country Group S or Z, or in Iran, Syria or the People's Democratic Republic of Yemen.

Note: See § 776.12(g) for other controls that may apply even if the export would be excepted from prior written approval by paragraph (b) of this section.

(c) *Applicability of exceptions to approval requirements.* The exceptions to the approval requirements in paragraph (b) of this section apply only if the U.S. content is normal and usual for the product being exported and is not physically incorporated in the foreign product as a device to evade the requirement for reexport authorization.

(d) *Spare parts.* Shipments of foreign-made products that incorporate U.S. origin components may be accompanied by U.S. origin controlled spare parts, provided that they do not exceed 10% of the value of the foreign-made product.

(e) How to request approval.

(1) * * *

(2) * * *

(i) In Item 4, insert "Parts and Components";

(ii) In Item 6, insert the foreign party who will be receiving the foreign-made product (if various, state "various" and list the specific countries, Country Groups, or geographic areas in Item 14 or on an attached sheet);

(iii) In Item 8, insert the foreign party who will be exporting the foreign-made product incorporating U.S. origin parts, components or materials;

(iv) In Item 9(a), specify the quantity for each foreign-made product, if known—otherwise insert "1";

(v) In Item 9(b), briefly describe the foreign-made product that will be exported, specifying type and model or part number. Attach brochures or specifications, if available. Show as part of the description in Item 9(b) the unit value, in U.S. dollars, of the foreign-made product (if more than one foreign-made product is listed on the application, specify the unit value for each type/model/part number). Also include in Item 9(b) a description of the U.S. content (including the applicable Export Control Commodity Number(s)) and its value in U.S. dollars. If more than one foreign-made product is identified on the application, describe the U.S. content and specify the U.S. content value for each foreign-made product. Provide sufficient supporting information to explain the basis for the stated values. To the extent possible, explain how much of the value of the foreign-made product represents foreign origin parts, components, or materials, as opposed to labor, overhead, etc. When the U.S. content varies and cannot be specified in advance, provide a range of percentage and value that would indicate the minimum and maximum U.S. content;

(vi) In Item 9(c), enter the applicable Export Control Commodity Number (ECCN) opposite the description of each foreign-made product;

(vii) In Item 9(d), "total price", insert "0" opposite the commodity description of each foreign-made product;

(viii) In Item 9(d), "total of entire transaction", insert "0";

(ix) Include separately in Item 9(b) a description of any U.S. origin spare parts to be reexported with the foreign-made product, if they exceed the amount allowed by paragraph (d) of this section. Enter the quantity, if appropriate, in Item 9(a). Enter the ECCN for the spare parts in Item 9(c) and show the value of the spare parts in Item 9(d);

(x) In Item 11, indicate "Parts and Components Request" and describe the activity of the end-user (new ultimate consignee) and the end-use of the foreign-made product. Indicate the final configuration if the product is intended to be incorporated in a larger system. If end-use is unknown, state "unknown" and describe the general activities of the end-user;

(xi) In Item 13, check "Other" and insert "P & C";

(xii) If the foreign-made product is the direct product of U.S. origin technical data that was exported subject to written assurance, a request for waiver of that assurance, if necessary, may be made in Item 14. If U.S. origin technical data will accompany a shipment to Country Groups Q, S, W, Y or Z, or the People's Republic of China, explain in Item 14 what type of data and how it will be used.

(3) Multiple requests. OEL will consider requests on Form BXA–699P for authorization to export to multiple consignees or multiple countries. Such requests will not be approved for Country Groups S or Z and may be approved only in limited circumstances for Country Groups Q, W, Y, and the People's Republic of China. To submit such a request, insert "various" in Item 6 of Form BXA–699P and list the countries or Country Groups where the commodities will be marketed in Item 11 or 14.

* * * * *

(Approved by the Office of Management and Budget under control number 0694–0010).

Dated: September 28, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–23333 Filed 10–2–89; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Part 779

[Docket No. 60228–9157]

RIN 0694–AA17

General License GTDA: Technical Data Available to All Destinations

AGENCY: Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Final rule.

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SUMMARY: On Friday, May 16, 1986, a notice of proposed rulemaking was published in the **Federal Register** (51 FR 17986). It sought to provide clarified guidelines for the use of Export Administration Regulations § 779.3, General License GTDA: technical data available to all destinations, and invited comments from the public. This final rule includes some of the suggestions made in the public comments on that proposed rule. A detailed discussion of the public comments is contained in the SUPPLEMENTARY INFORMATION section of this document.

EFFECTIVE DATE: This rule is effective October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnum, Bureau of Export Administration, Telephone: (202) 377–5695.

SUPPLEMENTARY INFORMATION:

Background

In addition to soliciting comments on the May 16, 1986 proposed clarification, the Department specifically requested public comments on the treatment of software and on the definition of "public availability."

The Department received thirty-six responses, including comments from 14 universities, six corporations, nine associations, and two individuals. The interagency Working Group on Export Controls and Scientific Communications, which had formulated the recommendations upon which the proposed changes were based, met twice to consider the responses and to make recommendations to the Department.

Most public comments were positive and urged adoption of the proposed rule, although a few responses suggested fundamentally different approaches or recommended that final adoption be postponed pending further study of the issues behind the proposed changes. There was general recognition that the guidelines clarified certain ambiguities in the regulations, and yet conformed with existing Commerce Department interpretations.

The proposed revisions to §§ 779.1 and 779.4 published in the May 1986 proposed rule were treated in the general revision to part 779 of the EAR, which was published in the **Federal Register** in proposed form on October 13, 1988 (53 FR 40074).

Specific comments were as follows:

1. *Treatment of software.* Public comment overwhelmingly favored retaining the treatment of software as proposed. The Working Group also recommended to Commerce that the treatment of software remain as proposed in the draft regulation. Consequently, no change has been made.

2. *Definition of "publicly available" (section 779.3(b)).* Comments on 779.3(b) were generally very favorable.

Several commenters noted that because the term "public domain" is a term-of-art in copyright law, use of the same term in § 779.3(b) might cause confusion and unintentionally limit the meaning of the section to items with no copyright protection. They recommended that the phrase "become generally accessible to the interested public" be substituted for the phrase "are put into the public domain." The Working Group also recommended this change. Consequently, the subsection is changed to read as follows:

> Information is made public and so becomes "publicly available" when it becomes generally accessible to the interested public in any form, including * * *.

One Government commenter suggested that §779.3(b) state explicitly that information in issued patents available from the Patent and Copyright Office (that is, issued patents not covered by secrecy orders) is publicly available. A new subparagraph has been added to § 779.3(b) to this effect.

Other comments noted that the scope of the items listed in § 779.3(b)(1) should be expanded to include optical or laser disk media. The Working Group agreed that it was not its intent to exclude such items and recommended that the language of the subsection be broadened.

The Department concurs and the subsection has been revised to read as follows:

> (b) * * *
> (1) Publication in periodicals, books, print, electronic, or any other media * * *.

Following interagency consultation, Commerce is clarifying the maximum price at which technical data and software not otherwise publicly available nonetheless qualifies for General License GTDA. Such maximum price may not exclude the costs of reproduction and distribution. This reflects the current practice of BXA. Many aspects of this provision of the rule are clarified in the question and answer section at the end of the rule. As to mass-market software, proposed General License GTDU will provide much of the additional relief software firms sought in the review of General License GTDA and during the broader technical data review now coming to a close.

Several other minor changes were suggested by a number of commenters, but none were deemed as significant.

3. *"Information resulting from fundamental research" § 779.3(c).* Comments suggested that the phrase "trade secrets" as used in § 779.3(c)(2)(ii), "university-based research", was too narrow and restrictive. They argued that there is no significant difference between a sponsor's prepublication review for inadvertent disclosure of trade secrets and review for inadvertent disclosure of other proprietary information. The Working Group agreed and recommended that the subsection be revised as follows:

> Prepublication review by a sponsor of university research solely to ensure that publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the rule described in (c)(2)(i).

One comment from within the Government suggested that for clarity and closer conformity with § 779.3(f), § 779.3(c)(4) be revised slightly. The Working Group agreed and recommended that it read as follows:

> Research conducted by scientists or engineers working for a business entity will be considered "fundamental research" at the time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls, as detailed in paragraph (f) of this section.

These recommendations have been adopted.

4. *Impact of regulation on corporate activities.* Several comments from industry stated that although the proposed rules resolved many outstanding issues for the scientific and educational communities, they posed concerns for industry that needed to be resolved:

a. *Proprietary research informally shared among scientists.* Commenters questioned the operational presumption of § 779.3(c)(4) that corporate research will be considered "fundamental research" only when researchers are free to make their work "available without restriction or delay based on proprietary or national security considerations." They argued that certain research, which one commenter termed "interim research", may be communicated between U.S. employees and foreign persons "at a point in time when it cannot yet be determined whether any prepublication review by the company is to be limited solely to non-compromise of patent rights or whether the company prepublication review will have a broader purpose." Put another way, certain data is communicated informally between and among scientists—with the approval of the company—but is not allowed to be generally released by publication or to be otherwise made available without the prior review of the company. This type of data, it is argued, should be given the same treatment as "university-based research" in § 779.3(c)(2).

The difficulty is that there is no operational way to know, either before or after the fact, when these data are freed for open scientific communication other than by the company's own actions. The presumption that research results will be openly published does not hold for corporate research as it does for university-based research. Corporate research, generally speaking, is intended to be proprietary.

This limitation on corporate research in GTDA should not hamper commercial operations extensively. In many cases, General License GTDR offers full relief.

b. *Prepublication review.* Section 779.3(c)(2)(ii) permits research conducted at universities to be considered "fundamental research" despite a sponsor's right to prepublication review if the review is "solely" to ensure that the publication would not compromise patent rights or inadvertently divulge the sponsor's proprietary information provided by the sponsor to the researchers.

No similar exception was provided in § 779.3(c)(4) for corporate research. This difference in treatment was objected to as having no public policy justification. Section 779.3(c)(4) has been revised to eliminate the difference, and the sentences at issue now read as follows:

> Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (c)(4)(i) of this section.
>
> Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

c. *Definition of "fundamental research" (§ 779.3(c)).* A number of comments, including those from universities and other organizations, revealed confusion over the definition of "fundamental research" in § 779.3(c)(1). Some saw two hurdles to be overcome before qualifying under the section—the definition in paragraph (c)(1) and the requirements of paragraphs (c)(2) through (c)(4). Others saw contradictions between the definition and either the previously announced Presidential policy or other parts of the section itself.[1]

Section 779.3 (c)(2) through (c)(4) was written first and was always intended to serve as the operational definition of the term "fundamental research." Section 779.3(c)(1) was added later, but logically put first to clarify the intent behind the operational definitions. Section 779.3(c)(1) has been revised with the hope of ending any confusion and reads as follows:

> Fundamental research. Paragraphs (c)(2) through (c)(4) and paragraph (f) provide specific operational rules that will be used to identify whether research in particular institutional contexts qualifies as "fundamental research". The intent behind those operational rules is to identify as "fundamental research" basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

5. *"Patent applications", § 779.3(e).* The Council on Governmental Relations (COGR) and several universities suggested expanding GTDA coverage to include information contained in a patent application when sent to a foreign country before or within six months following the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

This suggested change has been added to § 779.3(e).

6. *"Government-sponsored research covered by contract controls", § 779.3(f).* There was considerable comment on this section. Many of the comments were the result of misunderstanding the nuances of the section itself and its relation to § 779.3(c) on "fundamental research" and to previously announced Presidential policy. The Interagency Working Group recommended that the subsection be unchanged, but it also recommended that a more detailed explanation of the intent behind the section be given.

Commenters correctly noted that the definition of "fundamental research" in § 779.3(c)(1) parallels that set forth in previously announced Presidential policy proclaiming as national policy that "the products of fundamental research remain unrestricted" and that "where the national security requires control, the mechanism for control * * * is classification".[2] The comments suggested that § 779.3(f), as presently formulated, is inconsistent with this policy.

Consistent with the previously announced Presidential policy, § 779.3(c)(1) defines "Fundamental research" to exclude work "the results of which * * * are restricted for national security reasons." Section 779.3(f) deals with research that is indeed restricted for national security reasons by specific controls agreed on in a contract or other funding agreement. In effect, however, it only partially exempts such work from the general license made available for "fundamental research". Section 779.3(f)(1) states that the general license remains available "for any export of information resulting from the research that is consistent with the specific controls". The effect is to reinforce contract controls with remedies available under the Export Administration Act, but to restrict scientific communication as minimally as possible consistent with those controls. In effect, moreover, an institution accepting such a contract needs to be concerned only about compliance with the contract controls it has agreed to, not with a second set of requirements under these regulations.

A number of rewordings were considered to make clearer the consistency of § 779.3(f) with the definition of "fundamental research". Each of them seemed either to allow an interpretation that would remove the intended partial availability of the general license, or to add too many extra words and complications, or both. Therefore no change has been made from the proposed regulation. Neither the intent nor the effect of the regulatory language detracts from the previously announced Presidential policy; on the contrary, these regulations provide a broader general license than would be strictly required by that policy.

7. *"Consulting", § 779.3(g).* One commenter noted that § 779.3(g) on consulting was not necessary because it had no operative effect and stated the obvious. The Working Group, which recommended the subsection, recognized that it is redundant. The Working Group continues to believe, however, that because consulting is an especially effective mechanism of technology transfer, the section should remain as a reminder to persons that while General License GTDA allows release of technical data described in

[1] *See* Statement by Principal Deputy Press Secretary to the President, 21 *Weekly Comp. Pres. Doc.* 1147 (Sept. 27, 1985).

[2] *Id.* at 1148.

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§ 779.3(a)(1) by means of a consulting arrangement, it does no authorize release of other technical information or application abroad of other personal knowledge or technical experience acquired in the United States.

Other comments argued that training is also an effective means of technology transfer and should also be mentioned with consulting. The Working Group agreed and the provision has been revised accordingly.

Because the statement is merely cautionary, it has been redesignated as a note following § 779.3(g), rather than a paragraph within it. It now reads:

Note: Consulting and training. Technical data can be inadvertently exported in various ways. Consulting and training are especially effective mechanisms of technology transfer. The exporter should be aware that the Department of Commerce maintains controls on exports of technical data that do not qualify for General License GTDA as described in paragraphs (a)(1) through (a)(3) of this section, including application abroad of personal knowledge or technical experience acquired in the United States. (See also paragraph (g)).

Paragraph (h), Advice concerning uncontrolled information, has been redesignated as paragraph (g).

8. *The term "information" vs. "technical data".* One commenter urged that the word "information" be changed to "technical data" wherever that word appeared in the regulations, since not all "information", but only "technical data", is controlled to begin with.

"Information" was deliberately used in this section because it is clearer for persons unfamiliar with the terminology of export controls. The Department has added a sentence to § 779.3(a) to clarify that for the purposes of § 779.3, the word "information" means "technical data" as defined in § 779.1, including software.

9. *New supplement with questions and answers.* The Department has added a new supplement No. 5 to part 779 that provides questions and answers covering major areas of interest.

10. *Miscellaneous changes.* Some commenters read the final paragraph in § 779.3(a), that begins "However, see paragraph (f)", as implying an exception to subsection (1)–(4) that precede the paragraph. This was not the intent. The use of the word "However" to introduce the paragraph was intended only as a clarification of § 779.3(f) itself. Since the word "However" has caused confusion and is not necessary, it has been deleted from the final text.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves export of information in connection with certain patent applications related to technical data. The patent information requirements, which are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), have been cleared by the Office of Management and Budget under Control Number 0651–0011.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 533), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. This rule is not subject to section 13(b) of the EAA because this rule does not impose new controls. Further no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Nevertheless, to help ascertain the impact of this regulation upon the general public, the regulation was issued in proposed form and public comment was solicited.

5. Because a notice of proposed rulemaking and an opportunity for public comment were not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis was prepared.

These regulations are final. While the Department does not expect to make further changes to the rule published here, because of the importance of the issues raised by these regulations, the Department will consider further comments on this rule together with comments submitted in response to the proposed changes to the remainder of part 779, as published in the October 13, 1988 **Federal Register** (53 FR 40074).

List of Subjects in 15 CFR Part 779

Exports, Reporting and recordkeeping requirements.

Accordingly, part 779 of the Export Administration Regulations (15 CFR part 779) is amended as follows:

PART 779—[AMENDED]

1. The authority citation for 15 CFR part 779 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of Dec. 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of Aug. 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of Dec. 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985) as affected by notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99–440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

2. Section 779.3 is revised to read as follows:

§ 779.3 General license GTDA; technical data available to all destinations.

Note: In this § 779.3 the word "information" means "technical data" as defined in § 779.1 including software.

(a) *Establishment of general license.* A General License GTDA is hereby established authorizing:

(1) Unrestricted export to any destination of information that is already publicly available or will be made publicly available as described in paragraph (b) of this section;

(2) Unrestricted export to any destination of information arising during or resulting from fundamental research, as described in paragraph (c) of this section;

Note: Paragraphs (a)(1) and (a)(2) of this section do not authorize the export of data contained in a patent application for purposes of filing and/or publishing for opposition abroad. Such exports are controlled by the U.S. Patent and Trademark Office and must be licensed by that office. *See* EAR § 770.10(j).

(3) Release of educational information, as described in paragraph (d) of this section; and

(4) Export of information in connection with certain patent applications, as described in paragraph (e) of this section.

Note 1: See paragraph (f) regarding Government sponsored research covered by contractual national security controls and the note following this section regarding consulting and training. Use of General License GTDA is subject to the prohibitions of § 771.2(c) (1), (4), and (9), but not to the other prohibitions of § 771.2(c).

Note 2: Supplement No. 5 to part 779 contains explanatory questions and answers about the use of General License GTDA. Certain paragraphs of this § 779.3 are followed by references to relevant questions and answers in supplement No. 5.

(b) *Publicly available.* Information is made public and so becomes "publicly available" when it becomes generally accessible to the interested public in any form, including:

(1) Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons, such as those in a scientific or engineering discipline, interested in the subject matter either free or at a price that does not exceed the cost of reproduction and distribution (see Questions A(1) through A(6));

(2) Ready availability at libraries open to the public or at university libraries (see Question A(6));

(3) Patents available at any patent office; and

(4) Release at an open conference, meeting, seminar, trade show, or other open gathering.

(i) A conference or other gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations.

(ii) All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding:

(A) A registration fee reasonably related to costs and reflecting an intention that all interested and technically qualified persons be able to attend, or

(B) A limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility (see Questions B(1) through B(6)).

This General License GTDA authorizes submission of papers to domestic or foreign editors or reviewers of journals, or to organizers of open conferences or other open gatherings, with the understanding that the papers will be made publicly available if favorably received. (See Questions A(1) and A(3).)

(c) *Information resulting from fundamental research.*—(1) *Fundamental research.* Paragraphs (c)(2) through (c)(4) and paragraph (f) of this section provide specific operational rules that will be used to determine whether research in particular institutional contexts qualifies as "fundamental research." The intent behind those operational rules is to identify as "fundamental research" basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in §779.3(f). (See Question D(8).)

(2) *University-based research.* (i) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described below. ("University" means any accredited institution of higher education located in the United States.)

(ii) Prepublication review by a sponsor of university research solely to ensure that publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the rule described in paragraph (c)(2)(i) of this section. However, General License GTDA does not authorize the release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review. See other sections in this part 779 for provisions that may authorize such releases without a validated license. (See Questions D(7), D(9), and D(10).)

(iii) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the rule described in paragraph (c)(2)(i) of this section, so long as the review causes no more than a temporary delay in publication of the research results.

(iv) However, General License GTDA does not authorize the initial transfer of information from an industry sponsor to university researchers where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Question D(2).)

(v) University based research is not considered "fundamental research" if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless become subject to General License GTDA once all such restrictions have expired or have been removed. (See Questions D(7) and D(9).)

(vi) The provisions of paragraph (f) of this section will apply if a university or its researchers accept specific national security controls (as defined in paragraph (f) of this section) on a research project or activity sponsored by the U.S. Government. (See Questions E(1) and E(2).)

(3) *Research based at Federal agencies or FFRDCs.* Research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC) may be designated as "fundamental research" within any appropriate system controlling release of information by such scientists and engineers devised by the agency or the FFRDC. (See Questions D(8) and D(11).)

(4) *Corporate research.* (i) Research conducted by scientists or engineers working for a business entity will be considered "fundamental research" at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls as defined in paragraph (f) of this section.

(ii) Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction under paragraph (c)(4)(i) of this section. However General License GTDA does not authorize the release of information to university researchers where the research results are subject to prepublication review. See other sections in this part 779 for provisions that may authorize such releases without a validated license. (See Questions D(8), D(9), and D(10).)

(iii) Prepublication review by the company solely to ensure that prepublication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of the research results.

(iv) However, General License GTDA does not authorize the initial transfer of information from a business entity to researchers where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.

(5) *Research based elsewhere.* Research conducted by scientists or engineers who are not working for any of the institutions described in paragraphs (c)(2) through (c)(4) of this section will be treated as corporate research, as described in paragraph (c)(4) of this section. (See Question D(8)).

(d) *Educational information.* The release of "educational information"

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referred to in paragraph (a)(3) of this section is release by instruction in catalog courses and associated teaching laboratories of academic institutions. Dissertation research is treated in paragraph (c)(2) of this section. (See Question C(1) through C(6).)

(e) *Patent applications.* The information referred to in paragraph (a)(4) of this section is:

(1) Information contained in a patent application prepared wholly from foreign-origin technical data where the application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark office;

(2) Information contained in a patent application, or an amendment, modification, supplement, or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5 (see § 770.10(j)); or

(3) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

(f) *Government-sponsored research covered by contract controls.* (1) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, paragraph (a)(2) of this section will not apply to any export of such information in violation of such controls. General License GTDA as described in paragraph (a)(2) of this section is nonetheless available for any export of information resulting from the research that is consistent with the specific controls.

(2) Examples of "specific national security controls" include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a "specific national security control". (See Questions E(1) and E(2).)

(g) *Advice concerning uncontrolled information.* Persons may be concerned that an export of uncontrolled information could adversely affect U.S. national security interests. Exporters who wish advice before exporting such information can contact the appropriate Government scientific or technical personnel by calling the Bureau of Export Administration at (202) 377–4811.

Note: Consulting and training. Technical data can be inadvertently exported in various ways. Consulting and training are especially effective mechanisms of technology transfer. The exporter should be aware that the Department of Commerce maintains controls on exports of technical data that do not qualify for General License GTDA as described in paragraphs (a)(1) through (a)(3) of this section, including application abroad of personal knowledge or technical experience acquired in the United States. (See also paragraph (g) of this section and Question F(1).)

(Approved by the Office of Management and Budget under control number 0605–0011)

3. A new supplement No. 5 to part 779 is added to read as follows:

Supplement No. 5 to Part 779—Questions and Answers—General License GTDA

This supplement No. 5 contains explanatory questions and answers about General License GTDA. This Supplement is divided into six sections according to topic as follows:

Section A: Publication of technical data and exports of technical data that has been or will be published.

Section B: Release of technical data at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

Section E: Federal contract controls.

Section F: Commercial consulting.

Section G: Software.

Section H: Available in a public library.

Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in § 779.4(d). Do I need a validated license?

Answer: No. General License GTDA permits unrestricted export to any destination not only of technical data that are already publicly available, but of technical data that are made public by the transaction in question (§ 779.3(a)(1)). Your research results would be made public by the planned publication. You would not need a validated license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the General License would not relieve you from any restrictions on publications that your employer or another sponsor of your research may have imposed.

Question A(3): Would it make any difference if I published in a foreign journal? Would I need a validated license to send the paper to the editors for review?

Answer: No to both questions. General license GTDA authorizes submission of papers to editors or reviewers of journals, including foreign journals, if the intention is that the papers will be published if favorably received (§ 779.3(b), last paragraph).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy. The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No; GTDA would still apply. But if you publish in violation of the controls you have accepted in the grant, you will be subject to appropriate administrative, civil, and possible criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects of the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is around $15,000. Does general license GTDA cover publication and sale of such handbooks or manuals?

Answer: No. The price is above the cost of reproduction and distribution (§ 779.3(b)(1)). Thus, you would need some other form of license before you could export any of these handbooks or manuals.

Question A(6): My Ph.D. thesis on a subject listed in § 779.4(d) has never been published for general distribution. However, it is available at the institution from which I took the degree. Do I need a validated license to send another copy to a collegue overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not "publicly available" and the GTDA license would not be available on that ground. The GTDA license would still be applicable if your PH.D. research qualified as "fundamental research" under § 779.3(c). If not, however, you will need some other form of license before you can send a copy out of the country.

Question A(7): We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need validated licenses to sell our products to foreign customers?

Answer: You would not need a validated license for otherwise controlled technical data or software if the technical data and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, General License GTDA authorizes the export if the technical data or software source code is in a library accessible to the public. (§ 779.3(b)(1).

Section B. Conferences

Question B(1): I have been invited to give a paper at a prestigious international scientific conference on a subject listed in § 779.4(d). Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged by a panel of scientific peers to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a validated license to give my paper?

Answer: No. General license GTDA is available for release of information at an open conference. The conference you decribe fits the definition of an open conference (§ 779.3(a)(1) and (b)(4)).

Question B(2): Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an "open" conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records as altogether prohibited, the conference would not be considered "open."

Question B(3): Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend (§ 779.3(b)(4)(ii)(A)).

Question B(4): Would it make any difference if the conference were to take place in another country?

Answer: No.

Question B(5): Must I have a validated license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. General license GTDA authorizes submission of papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received (§ 779.3(b), last paragraph).

Question B(6): Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

Answer: No. You may use GTDA to export the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the Export Administration Regulations relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

Section C: Educational Instruction

Question C(1): I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a validated license to teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is licensed under general license GTDA (§ 779.3(d)).

Question C(2): Would it make any difference if some of the students were from Communist Bloc countries?

Answer: No.

Question C(3): Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question C(4): Even if that research is funded by the Government?

Answer: Even then the general license would apply, but the export Administration Regulations would not release you from any separate obligations you have accepted in your grant or contract.

Question C(5): Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question C(6): We teach proprietary courses on design and manufacture of high-performance aircraft and missiles. Is the instruction in our classes covered by the GTDA license?

Answer: That instruction would not qualify as "release of educational information" under § 779.3(a)(3) because your proprietary business does not qualify as an "academic institution" within the meaning of § 779.3(d). Conceivably, however, the instruction might qualify as "release at an open * * * seminar, * * * or other open gathering" under § 779.3(b)(4). The conditions for qualification of such a seminar or gathering as "open," including a fee "reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons be able to attend," would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

Question D(1): Do I need a validated license in order for a foreign graduate student to work in my laboratory?

Answer: Not if the research on which the foreign student is working qualifies as "fundamental research" under § 779.3(c). In that case, the GTDA general license is available.

Question D(2): Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a Polish national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the Polish scientist. Do we need to obtain a validated license to protect against that possibility?

Answer: No. General License GTDA authorizes the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between a firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must qualify for another general license or obtain a validated license before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary export authorization prior to transferring the information to the research team.

Question D(3): My university will host a prominent scientist from the Soviet Union who is an expert on research in engineered ceramics and composite materials. Do I require a validated license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of research results agreed to with a sponsor of the research, your research would qualify as "fundamental research" (§ 779.3(c)(2)). Unrestricted export of information arising during or resulting from such research is covered by general license GTDA (779.3(a)(2)). You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though licensed, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Export Administration, Office of Technology and Policy Analysis, P.O. Box 273, Washington, DC 20044.

Question D(4): Would it make any difference if I were proposing to talk with a Soviet expert in the Soviet Union?

Answer: No, if the information in question arose during or resulted from the same "fundamental research."

Question D(5): Could I properly do some work with him in his research laboratory inside the Soviet Union?

Answer: Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export is subject to the Export Administration Regulations (§ 779.1(b)(1)(iii) and (2)(iii) and § 779.2). Such an export must be licensed. If any of the knowledge or experience you export in this way is not covered by general license, you would need a validated license.

Question D(6): I would like to correspond and share research results with a Soviet-Bloc expert in my field, which is listed in § 779.4(d). Do I require a validated license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as "fundamental" under the rules spelled out in § 779.3(c).

Question D(7): Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as "fundamental" would depend on the nature and purpose of the prepublication

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review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as "fundamental." But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as "fundamental." As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as "fundamental" and so comes under general license GTDA.

Question D(8): In determining whether research is thus open and therefore counts as "fundamental," does it matter where or in what sort of institution the research is performed?

Answer: In principle, no. "Fundamental research" is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies "fundamental research"—not the institutional locus (§ 779.3(c)).

Question D(9): I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from an East Bloc country and discuss the results of the research with her when she visits the United States. Do I need a validated license to do so?

Answer: You probably do need a validated license (§ 779.3(c)(4)). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered "fundamental research," in which case you may be able to share information under the GTDA general license. Note that GTDA will not be available if the prepublication review is intended to withhold the results of the research from publication.

Question D(10): Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

Answer: If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the GTDA license will apply and you will not need a validated license for this exchange (§ 779.3(c)(4)).

Question D(11): I work as a researcher at a Government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the Export Administration Regulations?

Answer: That is up to the sponsoring agency and the center's management. If your research is designated "fundamental research" within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the GTDA license will apply. Otherwise, you would need some other form of license, except to publish or otherwise make the information public (§ 779.3(c)(3)).

Section E: Federal Contract Controls

Question E(1): In a contract for performance of research entered into with the Department of Defense, we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as "fundamental research" under § 779.3(c). Does the GTDA license cover information arising during or resulting from this sponsored research?

Answer: Any "export" inconsistent with the controls you have agreed to will not qualify for export under GTDA as "fundamental research." Any "export" consistent with the controls will qualify for export under GTDA as "fundamental research." Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the Export Administration Regulations. If you violate those controls and export information as "fundamental research" under § 779.3(c), you may subject yourself to the sanctions provided for under the Export Administration Regulations, including criminal sanctions, in addition to administrative and civil remedies for breach of contract.

Question E(2): Do the Export Administration Regulations restrict my ability to publish the results of my research?

Answer: The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

Section F: Commercial Consulting

Question F(1): I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a "third-world" company that wishes to manufacture such devices. Do I need a validated license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations (§ 779.1(b) (1)(iii) and (2)(iii), and § 779.2). Such an export must be licensed. If any part of the knowledge or experience you export in this way is not covered by general license, you would need a validated license.

Section G: Software

Question G(1): Does General License GTDA authorize the export of software in machine readable code when the source code for such software is publicly available?

Answer: If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore eligible for General License GTDA.

Question G(2): Does General License GTDA authorize the export of software sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

Question G(3): Does General License GTDA authorize the export of software sold at a price BXA concludes in a classification letter to be sufficiently low to qualify the particular software for General License GTDA?

Answer: In response to classification requests, BXA may choose to classify certain software as eligible for General License GTDA even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BXA.

Section H: Available in a Public Library

Question H(1): Does General License GTDA authorize the export of information available in a library and sold through an electronic or print service?

Answer: Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library—itself accessible to the public—or has been published in any way, that information is "publicly available" for those reasons, and the information itself remains eligible for General License GTDA even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

Question H(2): Does General License GTDA authorize the export of information available in an electronic form in a library at no charge to the library patron?

Answer: Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

Question H(3): Does General License GTDA authorize the export of information available in a library and sold for more than the cost of reproduction and distribution?

Answer: Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public qualifies for General License GTDA. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is "publicly available" even though the author makes a profit on your particular purchase for the inherent value of the information.

Section I: Miscellaneous

Question I(1): The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that an export license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, does General License GTDA authorize this type of export?

Answer: EAR § 779.1(b) defines exports of technical data to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Consequently, you must obtain export authorization prior to permitting foreign nationals to tour your facilities. Such an export qualifies under the "publicity available" provision of General License GTDA so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours (§ 779.3(a)(1)).

Question I(2): Does General License GTDA authorize the export of information not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

Answer: Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become "publicly available" if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition of the technical data or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

Question I(3): Does General License GTDA authorize the export of information contributed to an electronic bulletin board?

Answer: Assume each of the following:

1. Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;

2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and

3. The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.

Such information is "publicly available" and therefore eligible for General License GTDA even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

Question I(4): Does General License GTDA authorize the export of patented information fully disclosed on the public record?

Answer: Information to the extent it is disclosed on the patent record open to the public is eligible for General License GTDA even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however, General License GTDA is nonetheless available because any person can obtain the technical data from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.

Dated: September 25, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-23046 Filed 10-2-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 89N-0323]

Antibiotic Drugs; Ceftazidime Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of ceftazidime, ceftazidime sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 2, 1989; written comments, notice of participation, and request for hearing by November 2, 1989; data, information, and analyses to justify a hearing by December 4, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of ceftazidime, ceftazidime sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 442 (21 CFR part 442) to provide for the inclusion of accepted standards for this product by adding new § 442.216 and by redesignating § 442.216 as § 442.216a and adding new §§ 442.216 and 442.216b.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective November 2, 1989. However, interested persons may, on or before November 2, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file

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objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before November 2, 1989, a written notice of participation and request for hearing, and (2) on or before December 4, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 442.16 is added to subpart A to read as follows:

§ 442.16 Ceftazidime pentahydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftazidime pentahydrate is pyridinium, 1-[[7-[[(2-amino-4-thiazolyl)[1-carboxy-1-methylethoxy]imino]-acetyl]amino]-2-carboxy-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-en-3-yl]methyl]-, hydroxide, inner salt, [6*R*-[6α,7β(*Z*)]]-, pentahydrate. It is so purified and dried that:

(i) Its potency is not less than 950 micrograms and not more than 1,020 micrograms of ceftazidime activity per milligram on an anhydrous basis.

(ii) Its loss on drying is not less than 13.0 percent and not more than 15.0 percent.

(iii) The pH of an aqueous solution containing 5 milligrams of ceftazidime per milliliter is not less than 3.0 and not more than 4.0.

(iv) It is crystalline.

(v) It gives a positive identity test for ceftazidime.

(vi) Its high molecular weight polymer content is not more than 0.05 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, loss on drying, pH, crystallinity, identity, and high molecular weight polymer content.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.16a(b)(1).

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 5 milligrams of ceftazidime per milliliter.

(4) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(5) *Identity.* The high performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the ceftazidime working standard.

(6) *High molecular weight polymer content.* Proceed as directed in § 442.16a(b)(8).

§ 442.16a [Redesignated from § 442.216]

3. Section 442.216 is redesignated as § 442.16a and new §§ 442.216 and 442.216b are added to subpart C to read as follows:

§ 442.216 Ceftazidime injectable dosage forms.

§ 442.216b Ceftazidime sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ceftazidime sodium injection is a frozen, aqueous, iso-osmotic solution of ceftazidime sodium which may contain one or more suitable and harmless buffer substances and a tonicity adjusting agent. Each milliliter contains ceftazidime sodium equivalent to 10, 20, or 40 milligrams of ceftazidime per milliliter. Its ceftazidime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of ceftazidime that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 5.0 and not more than 7.5 It passes the identity test. The ceftazidime pentahydrate conforms to the standards prescribed by § 442.16(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The ceftazidime pentahydrate used in making the batch for potency, loss on drying, pH, crystallinity, identity, and high molecular weight polymer content.

(B) The batch for ceftazidime content, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research;

(A) The ceftazidime pentahydrate used in making the batch: 10 packages, each containing 500 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Ceftazidime content.* Proceed as directed in § 442.216(b)(1), except prepare the sample solution and calculate the ceftazidime content as follows:

(i) *Preparation of sample solution.* Remove an accurately measured representative portion from each container immediately after thawing and reaching room temperature and dilute with mobile phase to obtain a solution containing 100 micrograms of ceftazidime per milliliter (estimated). Prepare the sample solution just prior to its introduction into the chromatograph.

(ii) *Calculation.* Calculate the milligrams of ceftazidime per milliliter of sample as follows:

$$\text{Milligrams of ceftazidime per milliliter} = \frac{A_u X P_s X d}{A_s X 1{,}000}$$

where:

A_u = Area of the ceftazidime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the ceftazidime peak in the chromatogram of the ceftazidime working standard;

P_s = Ceftazidime activity in the ceftazidime working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, except inject a sufficient volume of the diluted solution to deliver 80 milligrams of ceftazidime per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identify.* The high performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the ceftazidime working standard.

Dated: September 22, 1989.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-23212 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 442

[Docket No. 89N-0326]

Antibiotic Drugs; Cefuroxime Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of cefuroxime, cefuroxime sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 2, 1989; comments, notice of participation, and request for hearing by November 2, 1989; data, information, and analyses to justify a hearing by December 4, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of cefuroxime, cefuroxime sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 442 (21 CFR part 442) by adding new § 442.18, redesignating § 442.218 as § 442.218a, and adding new §§ 442.218 and 442.218b to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective November 2, 1989. However, interested persons may, on or before November 2, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before November 2, 1989, a written notice of participation and request for hearing, and (2) on or before December 4, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, indentified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

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2. New § 442.18 is added to subpart A to read as follows:

§ 442.18 89Cefuroxime sodium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefuroxime sodium is the sodium salt of (6*R*, 7*R*)-3-carbamoyloxymethyl-7-[(2*Z*)-2-(2-furyl)-2-methoxyiminoacetamido]cepha-3-em-4-carboxylic acid. It is so purified and dried that:

(i) Its potency is not less than 855 micrograms and not more than 1,000 micrograms of cefuroxime activity per milligram on an anhydrous basis.

(ii) Its moisture content is not more than 3.5 percent.

(iii) The pH of an aqueous solution containing 100 milligrams of cefuroxime per milliliter is not less than 6.0 and not more than 8.5.

(iv) It gives a positive identity test for cefuroxime.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, moisture, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 1 gram.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 442.343.

(2) *Moisture.* Proceed as directed in § 436.18a(b)(4) of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of cefuroxime per milliliter.

(4) *Identity.* Proceed as directed in § 442.18a(b)(6).

§ 442.218a [Redesignated from § 442.218]

3. Section 442.218 is redesignated as § 442.218a and new §§ 442.218 and 442.218b are added to read as follows:

§ 442.218 Cefuroxime injectable dosage forms.

§ 442.218b Cefuroxime sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefuroxime sodium injection is a frozen, aqueous, iso-osmotic solution of cefuroxime sodium which may contain one or more suitable and harmless buffer substances and a tonicity adjusting agent. Each milliliter contains cefuroxime sodium equivalent to 15 or 30 milligrams of cefuroxime per milliliter. Its cefuroxime content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefuroxime that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 5.0 and not more than 7.5. It passes the identity test. The cefuroxime sodium used confirms to the standards prescribed by § 442.18(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefuroxime sodium used in making the batch for potency, moisture, pH, and identity.

(B) The batch for cefuroxime content, sterility, pyrogens, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefuroxime sodium used in making the batch: 10 packages, each containing 1 gram.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Cefuroxime content.* Proceed as directed in § 436.343 of this chapter, except prepare the sample solution and calculate the cefuroxime content as follows:

(i) *Preparation of sample solution.* Remove an accurately measured representative portion from each container immediately after thawing and reaching room temperature and dilute with water to obtain a solution containing 50 micrograms of cefuroxime per milliliter (estimated). Prepare the sample solution just prior to its introduction in the chromatograph.

(ii) *Calculation.* Calculate the milligrams of cefuroxime per milliliter of sample as follows:

$$\text{Milligrams of cefuroxime per milliliter} = \frac{A_u X P_s X d}{A_s X 1{,}000}$$

where:

A_u = Area of the cefuroxime peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the cefuroxime peak in the chromatogram of the cefuroxime working standard;

P_s = Cefuroxime activity in the cefuroxime working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) this chapter, except inject a sufficient volume of the undiluted solution to deliver 50 milligrams of cefuroxime per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(5) *Identity.* The high performance liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section compares qualitatively to that of the cefuroxime working standard.

Dated: September 22, 1989.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–23214 Filed 10–2–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 453

[Docket No. 89N–0324]

Antibiotic Drugs; Clindamycin Phosphate Lotion

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of clindamycin phosphate, clindamycin phosphate lotion. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 2, 1989; written comments, notices of participation, and request for hearing by November 2, 1989; data, information, and analyses to justify a hearing by December 4, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20875.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of clindamycin phosphate, clindamycin phosphate lotion. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended by adding new 21 CFR 453.522c to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective November 2, 1989. However, interested persons may, on or before November 2, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before November 2, 1989, a written notice of participation and request for hearing, and (2) on or before December 4, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation, and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1950, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 453

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 453 is amended as follows:

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 453 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 453.522c is added to subpart F to read as follows:

§ 453.522c Clindamycin phosphate lotion.

(a) *Requirements for certificotion*—(1) *Standards for identity, strength, quality, and purity.* Clindamycin phosphate lotion contains clindamycin phosphate in a suitable and harmless lotion vehicle, with one or more suitable and harmless emollients, buffers, and dispersants. Each milliliter contains clindamycin phosphate equivalent to 10 milligrams of clindamycin. Its clindamycin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of clindamycin that it is represented to contain. Its pH is not less than 4.5 and not more than 6.5. It passes the identity test. The clindamycin phosphate used conforms to the standards prescribed by § 453.22(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The clindamycin phosphate used in making the batch for clindamycin content, microbiological activity, moisture, pH, crystallinity, and identity.

(B) The batch for clindamycin content, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The clindamycin phosphate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Clindamycin content (high performance liquid chromatographic assay).* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an untraviolet detection system operating at a wavelength of 210 nanometers, a 25-centimeter long x 4.6 millimeter ID column packed with microparticulate (5 to 10 micrometers in diameter) reversed phase octysilane hydrocarbon bonded silicia packing material, a flow rate of about 1.08 milliliter per minute, and a known injection volume of between 10 and 20 microliters. The retention time of clindamycin phosphate and clindamycin are approximately 6 and 9 minutes, respectively. Reagents, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(A) *0.1M Potassium phosphate monobasic buffer.* Dissolve 13.61 grams of potassium phosphate monobasic in 775 milliliters of water. Adjust the pH to 2.5 with phosphoric acid. Further dilute with water to a volume of 1,000 milliliters.

(B) *Mobile phase.* Mix 225 milliliters of acetonitrile and 775 milliliters of 0.1*M* potassium phosphate, pH 2.5 buffer (225:775). Filter through a suitable filter capable of removing particulate matter greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution test solutions*—(A) *Working standard solution.* Dissolve an accurately weighted portion of the clindamycin phosphate working standard with sufficient mobile phase

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(prepared as directed in paragraph (b)(1)(i)(B) of this section) to obtain a solution containing 200 micrograms of clindamycin activity per milliliter.

(B) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient mobile phase (prepared as directed in paragraph (b)(1)(i)(B) of this section) to obtain a solution containing 200 micrograms of clindamycin per milliliter (estimated).

(C) *Resolution test solution.* Dissolve 30 milligrams of clindamycin phosphate in 25 milliliters of mobile phase. Dissolve 30 milligrams of clindamycin hydrochloride in 25 milliliters of mobile phase. Combine both solutions in a 50-milliliter volumetric flask and shake or use a vortex shaker to assure mixture of both solutions. Use this solution to determine the resolution factor.

(iii) *System suitability requirements*—(A) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 5 percent of the peak height from the baseline as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and

b = Horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not more than 1.3.

(B) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) of this chapter, calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)\ (10{,}000)}{(n)\ (d_p)}$$

where:

L = Length of the column in centimeters;

n = Number of theoretical plates; and

d_p = Average diameter of the particles in the analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 15.

(C) *Resolution factor.* The resolution factor (R) between the peak for clindamycin phosphate and the peak for clindamycin (hydrochloride) in the chromatogram of the resolution test solution is satisfactory if it is not less than 6.0.

(D) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_a in percent) of 5 replicate injections of the working standard solution (prepared as directed in paragraph (b)(1)(ii)(A) of this section is satisfactory if it is not more than 2.5 percent.

If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculations.* Calculate the clindamycin content as follows:

$$\text{Milligrams of clindamycin per milliliter} = \frac{A_u X P_s X d}{A_s X 1000}$$

where:

A_u = Area of the clindamycin phosphate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the clindamycin phosphate peak in the chromatogram of the clindamycin phosphate working standard;

P_s = Clindamycin activity in the clindamycin phosphate working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted lotion.

(3) *Identity.* The high-performance liquid chromatogram of the sample determined in paragraph (b)(1) of this section compares qualitatively to that of the clindamycin phosphate working standard.

Dated: September 22, 1989.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-23213 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Yohimbine injectable

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change in sponsor and approval of a new animal drug application (NADA) filed by Vet-A-Mix, Inc. The NADA provides for use of yohimbine injectable solution in dogs as a xylazine reversing agent and antidote.

EFFECTIVE DATE: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Vet-A-Mix Laboratories, Inc., P.O. Box 86, Shenandoah, IA 51601, has informed FDA of a change in sponsor name and address to Vet-A-Mix, Inc., P.O. Box A, Shenandoah, IA 51601. Vet-A-Mix, Inc., has filed NADA 140-866 which provides for use of Yobine ™ (yohimbine hydrochloride, 2 milligrams per milliliter) injectable Solution for dogs to reverse the effects of xylazine. The NADA is approved and new 21 CFR 522.2670 is added to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, the list of sponsors of approved NADA's in the table in 21 CFR 510.600(c) (1) and (2) is amended to reflect the new sponsor name and address.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11 (e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table of paragraph (c)(1) by revising the entry for "VET-A-MIX Laboratories, Inc.," and in the table of paragraph (c)(2) in the entry for "032998" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Vet-A-Mix, Inc., P.O. Box A, Shenandoah, IA 51601	032998
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
032998	Vet-A-Mix, Inc., P.O. Box A, Shenandoah, IA 51601.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 522.2670 is added to read as follows:

§ 522.2670 Yohimbine injectable.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 2 milligrams of yohimbine (as hydrochloride).

(b) *Sponsor.* See 032998 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* 0.05 milligram per pound (0.11 milligram per kilogram) of body weight.

(2) *Indications for use.* To reverse the effects of xylazine.

(3) *Limitations.* For intravenous use in dogs only. Not for use in food-producing animals. Safety of use in pregnant dogs or in dogs intended for breeding has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 25, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-23215 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Monensin; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that amended the animal drug regulations to reflect approval of Elanco Products Co.'s supplemental new animal drug application (NADA 95-735) for use of a monensin Type C goat feed (August 9, 1989; 54 FR 32633). In providing for the amended medicated feed application regulation, the document inadvertently omitted turkeys and quail. This document corrects that omission.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

PART 558—[AMENDED]

§ 558.4 [Corrected]

In FR Doc. 89-18589, appearing at page 32633 in the Federal Register of Wednesday, August 9, 1989, the following correction is made: On the same page, in the 3d column, in § 558.4, under amendment "4.", 6th line, "Chickens:" is revised to read "Chickens, turkeys, and quail:".

Dated: September 25, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-23216 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Designation of Anchorage (AK) Equal Rights Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on certified designated 706 agencies. Publication of this amendment effectuates the designation of the Anchorage (AK) Equal Rights Commission as a certified 706 Agency.

EFFECTIVE DATE: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Valentina Jackson, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, State and Local Branch, 1801 L Street NW., Room 8060, Washington, DC 20507, Telephone 202/663-4892.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Anchorage (AK) Equal Rights Commission meets the eligibility criteria for certification of a designated 706 agency as established in 29 CFR 1601.75(b). In accordance with 29 CFR 1601.75(c), the Commission hereby amends the list of certified designated 706 agencies to include the Anchorage Commission. Publication of this amendment to § 1601.80 effectuates the designation of the following agency as a certified 706 agency: Anchorage (AK) Equal Rights Commission.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, 29 CFR part 1601 is amended as follows:

PART 1601—[AMENDED]

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17.

§ 1601.80 [Amended]

2. Section 1601.80 is amended by adding, in alphabetical order, the "Anchorage (AK) Equal Rights Commission."

Signed at Washington, DC this 27th day of September 1989, for the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 89-23219 Filed 10-2-89; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3653-8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

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ACTION: Final rule.

SUMMARY: The purpose of this notice is to announce final rulemaking action on a Stipulation of Entry of Consent Order and Final Order, State Implementation Plan (SIP) No. 14–1987; for Continental Fiber Drum, Inc. (Continental) in Midland, Michigan. The order concerns the volatile organic compounds (VOC) emissions from surface coating operations. This action approves Consent Order No. 14–1987, as a revision to the Michigan SIP.

DATES: This action is effective December 4, 1989, unless notice is received within 30 days that someone wishes to submit comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886–6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On December 17, 1987, the State of Michigan submitted to USEPA a revision in the form of Stipulation for Entry of Consent Order and Final Order, SIP No. 14–1987 for Continental. The order concerns volatile organic compounds (VOC) emissions from the surface coating operations at the facility located in Midland, Michigan.

Continental is a metal drum coating facility located in Midland County, which is classified as rural nonattainment for ozone. Continental operations involve applying interior and exterior coatings to shells and heads of metal drums which are subject to Michigan's Rule 336.1621. Rule 336.1621 limits the VOC content of extreme performance coating applied to miscellaneous metal parts and products to 3.5 pounds per gallon coating.

Michigan's Consent Order No. 14–1987, proposed the following requirements as an alternative to the requirements contained in Rule 336.1621:

1. The emission of VOCs from the coating line operations conducted at Continental meet the following limits:

(a) 3.0 pounds of VOC per gallon of coating, minus water, as applied, for each exterior drum coating; and

(b) 4.3 pounds of VOC per gallon of coating, minus water, as applied, for each interior drum coating.

2. The total annual emission of VOCs from the coating line operations conducted at the Continental shall not exceed 80 tons per year. Continental shall not operate the coating line for more than 3,000 hours per year.

3. Continental shall employ heat application to all coatings for which such application is determined to be technically feasible.

USEPA's guidance recommends that a "presumptive norm of 4.3 pounds of VOC per gallon of coating less water is a reasonably available control technology (RACT) for coatings used in pail and drum interior protective linings". Therefore, USEPA is today approving the Stipulation for Entry of Consent Order and Final Order, SIP No. 14–1987, for Continental as a revision to the Michigan SIP, because it represents a site-specific RACT determination which limits the interior coating used by Continental to the presumptive norm of 4.3 pounds of VOC per gallon of coating less water.

USEPA believes it is not necessary for Michigan to provide an up-to-date attainment demonstration for Midland County in this case, because the revision will not cause an increase in actual emissions and Midland County is a rural nonattainment area that was never required to have an ozone attainment demonstration. USEPA believes today's action to be noncontroversial and routine, therefore, it is being approved without prior proposal. This action will become effective December 4, 1989. However, if we receive notice by November 2, 1989, that someone wishes to submit comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP approval action will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 22, 1989.

F. Henry Habicht,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart X—Michigan

Title 40 of the Code of Federal Regulations, chapter 1, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1170 is amended by adding paragraph (c)(90) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(90) On December 17, 1987, the State of Michigan submitted to USEPA a revision to the Michigan State Implementation Plan for the Continental Fiber Drum, Inc., which limits volatile organic compound emissions from the surface coating operations at the facility.

(i) Incorporation by reference.

(A) State of Michigan, Air Pollution Control Commission, Stipulation for Entry of Consent Order and Final Order No. 14–1987, which was adopted by the State on December 9, 1987.

(B) Letter of December 17, 1987, from the State of Michigan, Department of Natural Resources to USEPA.

[FR Doc. 89–23240 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[SC–012; FRL–3655–2]

Approval and Promulgation of Implementation Plans, South Carolina: Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the South Carolina State Implementation Plan (SIP) which were submitted by the South Carolina Department of Health and Environmental Control (SCDHEC) on June 5, 1985. EPA is deferring action on the revisions to Regulation 62.1, section II (Permit Requirements). The entire section has been reorganized affecting each of the parts in this section collectively including part B (Operating Permit). EPA does not currently have regulations for evaluating operating permit programs and consequently does not recognize such operating permit programs as being part of a SIP. Since the revisions to this section affect each of the parts including part B, EPA is deferring action on the entire Section II until such time that the operating permit program issue is decided. EPA at this time is not taking action on the revisions to Regulations 62.5, Standard No. 6 (Alternative Emission Limitation Options) since EPA is presently evaluating this regulation for agreement with the new Emissions Trading Policy (ETP) published on December 4, 1986 (51 FR 43814). The changes and additions to the regulatory and nonregulatory parts of the South Carolina plan involved: requirements concerning prohibition of open burning; emissions from fuel burning operations; emissions from process industries; requirements concerning air pollution episodes; control of fugitive particulate matter; requirements concerning the prevention of significant deterioration of air quality in South Carolina; and the requirements concerning source evaluation contained in chapter 7 of the narrative portion of the SIP.

DATES: This action will be effective November 2, 1989.

ADDRESSES: Written comments should be addressed to Beverly T. Hudson of EPA Region IV (address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 (FTS 257–2864).

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the South Carolina State Implementation Plan, and EPA is today approving a number of them. This submittal contained certification that the revisions were preceded by adequate notice and public hearing. The revisions submitted by South Carolina on June 5, 1985, were discussed in detail in the December 15, 1988, proposal notice (53 FR 50425). For simplicity, only those portions of the submittal which EPA is not taking action on will be discussed again here. They are as follows:

- Regulation 62.1, section II (Permit Requirements) was amended by reorganizing and adding to the existing regulation. The regulation is split into six parts. Part A stipulates requirements for construction permits. Part B stipulates requirements for operating permits. The remaining parts pertain to permit applications, special permit conditions, permit exemptions, and permit inspections. The entire section has been reorganized affecting each of the parts in this section collectively including part B (Operating Permit). EPA currently has no regulations or guidance which specify the requirements for an approvable operating permit program and consequently does not recognize such operating permit programs as part of a SIP. Since the revisions affect each of the parts in this section including Part B, EPA is deferring action on the entire section II. EPA is planning on proposing operating permit regulations in the near future as a result of the Chemical Manufacturers Association (CMA) rulemaking pursuant to the out of court settlement. If and when EPA promulgates the operating permit regulations, EPA will take action to approve or disapprove the revisions to section II at that time.
- Regulation 62.5, Standard No. 6 (Alternative Emission Limitation Options) was revised to provide better clarity within the regulation. EPA is not taking action at this time on the revisions to this regulation since EPA is presently evaluating this regulation for agreement with the new Emissions Trading Policy (ETP) published on December 4, 1986 (51 FR 43814). These revisions will be acted upon in a separate notice.

For a detailed discussion of the revisions EPA is acting on, please refer to the December 15, 1988, proposal notice.

On December 15, 1988 (53 FR 50425), EPA proposed to approve the revisions which South Carolina submitted on June 5, 1985. At that time, the public was invited to submit written comments on the proposed action. However, no comments were received.

Final Action: EPA is approving the regulation changes which were submitted on June 5, 1985, as detailed in December 15, 1988, proposal notice. EPA is taking no action on revisions to Regulations 62.1, section II B (Operating Permit) since EPA does not recognize that this section is part of the SIP. EPA is also not taking action on the revisions to Regulations 62.5, Standard No. 6 (Alternative Emission Limitation Options) since EPA is presently evaluating this regulation for agreement with the new Emissions Trading Policy (ETP) published on December 4, 1986 (51 FR 43814).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of appeals for the appropriate circuit by December 4, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of South Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 3, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register September 28, 1989.

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PART 52—[AMENDED]

Part 52 of chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart PP—South Carolina

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2120 is amended by adding paragraph (c)(31) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(31) Changes in South Carolina's SIP submitted to EPA on June 5, 1985, by the South Carolina Department of Health and Environmental Control.

(i) Incorporation by reference.

(A) Changes in South Carolina's Regulations which were adopted May 24, 1985:

(*1*) Regulations 62.1, Section I (Definitions) No. 1 and Section III (Emission Inventory)

(*2*) Regulation 62.2 (Prohibition of Open Burning)

(*3*) Regulation 62.3 (Air Pollution Episodes); except for Section I and Section II Introductory paragraph

(*4*) Regulation 62.5, Standard No. 1 (Emissions From Fuel Burning Operations), Section IV Part B, Section V, and Section VII

(*5*) Regulation 62.5, Standard No. 4 (Emissions from Process Industries), Except for Section III, Section VIII(A), and Section XI Introductory paragraph

(*6*) Regulation 62.5, Standard No. 7 (Prevention of Significant Deterioration), Section I, Parts B(1), E, F and Q(2)

(*7*) Regulation 62.6 (Control of Fugitive Particulate Matter), Section I (b) and (c) and Section III (c) and (d)

(ii) Other material.

[FR Doc. 89–23330 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[SC–020; FRL–3655–3]

Approval and Promulgation of Implementation Plans South Carolina: Revisions for PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the approval of the South Carolina State Air Quality State Implementation Plan (SIP) for particulate matter. On July 1, 1987, EPA promulgated new ambient air quality standards for particulate matter which are based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, states are required to develop plans which provide for attainment and maintenance of these new standards. The South Carolina statewide SIP revision demonstrates that the existing SIP for total suspended particulates (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

DATES: This action will become effective on December 4, 1989 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Beverly T. Hudson of EPA Region IV's Air Programs Branch (see EPA region IV address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

EPA Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require the Environmental Protection Agency (EPA) to review periodically and, if appropriate, revise the criteria on which each National Ambient Air Quality Standard (NAAQS) is based, along with the standard itself. In response to these requirements, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary NAAQS by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. These particles are referred to as "PM_{10}." The PM_{10} standard covers a size range of particles different than the range of particles covered by the former particulate standard, total suspended particulate (TSP). This means the states have to develop and implement PM_{10} control programs. This process will follow the basic approach used in the development and implementation of TSP control programs. First, the air quality across the state is examined and areas where improvement is needed are delineated. Then, the degree of improvement needed is determined. Next, the sources contributing to the problem are inventoried and a strategy is developed to reduce emissions from those sources to bring about attainment of the NAAQS. Finally the strategy is implemented and steps are taken to ensure that the NAAQS will not be violated.

EPA, in conjunction with the states, have completed the first two steps in the development and implementation of control programs. Areas have been categorized into three groups. They are:

Group I—Areas for which the existing particulate matter SIP may need substantial revision to be adequate for attaining and maintaining PM_{10} standards.

Group II—Areas for which the existing particulate matter SIP may be adequate or need only minor adjustment.

Group III—Areas for which the existing particulate matter SIP's are believed adequate to attain and maintain the PM_{10} standards.

EPA evaluated the probabilities of PM_{10} air quality levels predicted from actual TSP data and concluded that South Carolina is a Group III area; therefore, the South Carolina State Implementation Plan had to be revised to address the PM_{10} NAAQS in the following ways:

a. To include State ambient air quality standards for PM_{10} at least as stringent as the NAAQS;

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions;

c. To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 $\mu g/m^3$;

d. To meet ambient PM_{10} monitoring requirements of 40 CFR Part 58; and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

On April 29, 1988, the State of South Carolina submitted to EPA several revisions to the State Implementation Plan (SIP). Subsequent to the April 29 submittal, by letters of June 16 and August 1, 1988, EPA noted deficiencies in the revision. As a result of the noted deficiencies, the State's rulemaking process was reinitiated, culminating in a public hearing on November 28, 1988. All of EPA's comments and revisions are reflected in the following regulations which South Carolina resubmitted on April 4, 1989.

Regulation 62.1, Definitions, Permit Requirements, and Emissions Inventory
Regulation 62.3, Air Pollution Episodes
Regulation 62.5, Standard No. 1—Emissions from Fuel Burning Operations
Regulation 62.5, Standard No. 2—Ambient Air Quality Standards
Regulation 62.5, Standard No. 4—Emissions from Process Industries
Regulation 62.5, Standard No. 6—Alternative Emission Limitation Options
Regulation 62.5, Standard No. 7—Prevention of Significant Deterioration
SIP Narrative Section 8—New Source Review and Source Permit System and Offset Policy

SIP Amendments

Regulation 62.1, Definitions, Permit Requirements, and Emissions Inventory, was revised to include definitions of "PM_{10}," "particulate emissions," and "particulate matter emissions." The definition of "suspended particulate" was amended to "total suspended particulate." The regulation also revised references to "particulate" and includes permit conditions presently stated in the State's Pollution Control Act. EPA currently has no regulations or guidance which specify the requirements for an approvable operating permit program and consequently does not recognize such operating permit programs as part of a SIP. Regulation 62.1, section II was previously revised in a June 5, 1985, submittal. EPA has deferred action on the June 5, 1985, revision and is deferring action on this revision. EPA is planning on proposing operating permit regulations in the near future as a result of the Chemical Manufacturers Association rulemaking pursuant to the out of court settlement. If and when EPA promulgates the operating permit regulations, EPA will take action to approve or disapprove the revisions to section II at that time.

Regulation 62.3, Air Pollution Episodes, is revised by adding PM_{10} Watch, Alert, and Emergency levels. It specifies the conditions justifying the proclamation of an air pollution episode. The revision deletes levels for "Particulate," "SO_2 and Particulate combined," and revises references to "Particulate."

Regulation 62.5, Standard No. 1, Emissions from Fuel Burning Operations, is revised in its references to "Particulate."

Regulation 62.5, Standard No. 2, Ambient Air Quality Standards, is revised to incorporate the PM_{10} ambient air quality standards, to revise the "suspended particulates" standard, and to include methods used to determine attainment of the PM_{10} standard which are the same as the standards and methods in the July 1, 1987, Federal Register notice.

Regulation 62.5, Standard No. 4, Emissions from Process Industries, is amended to revise references to "Particulate."

Regulation 62.5, Standard No. 6, Alternative Emission Limitation Options, was amended to revise references to "Particulate." The state submitted a revision to 62.5, Standard No. 6, on June 5, 1985. EPA is evaluating this regulation, as revised in both submittals for agreement with the new Emissions Trading Policy published on December 4, 1986 (51 FR 43814). EPA will act on both revisions to Standard No. 6 at the same time.

Regulation No. 62.5, Standard No. 7 is revised to add clarifying references to "particulate matter" and "governing standard," to delete the "24-hour" averaging time reference, to add a requirement for EPA's concurrence, to change the referenced standard from federal to State, to replace "particulate matter" in the Class I variance table with "TSP," to add PM_{10} emission rates, to add a "Grandfather rule," to add a PM_{10} impact level, to add PM_{10} monitoring transition requirements, and to include allowable increases of PM_{10}.

In addition to the revisions to the Regulations and Standards, clarifying language was added to the narrative portion of the South Carolina Air Quality Implementation Plan to maintain consistency with the regulatory and federal requirements. The narrative portion includes section 8, New Source Review and Source Permit System, and the offset policy. EPA will approve these revisions in a separate notice.

In order to complete South Carolina's PM_{10} SIP submittal, the Bureau of Air Quality Control submitted a list of the regulations relied upon to maintain the PM_{10} National Ambient Air Quality Standards along with the corresponding Federal Register approval dates.

Final Action. EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR part 51. Therefore, EPA approves the South Carolina PM_{10} revisions. However, the revisions for the nonattainment new source review and source permit system, and offset policy will be dealt with in a forthcoming notice.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of South Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 22, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart PP—South Carolina

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

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2. Section 52.2120 is amended by adding paragraph (c)(32) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(32) Provisions for PM_{10} submitted on April 29, 1988 and April 4, 1989, by the South Carolina Department of Health and Environmental Control. The April 29, 1988, submittal contained revisions that were effective on April 22, 1988. The April 4, 1989, submittal contained revisions that were effective on March 24, 1989.

(i) Incorporation by reference.

(A) Regulation 62.1, Definitions, Permit Requirements, and Emissions Inventory as revised by the addition on April 22, 1988, of Section I, Nos. 22, 23, 25, and 42.

(B) The following portions of Regulation 62.3, Air Pollution Episodes were revised April 22, 1988.

(*1*) Section I.

(*2*) Section II, Introductory paragraph.

(C) The following portions of Regulation 62.5, Standard No. 1—Emissions from Fuel Burning Operations were revised April 22, 1988:

(*1*) Section II, Title.

(*2*) Section VI, Introductory paragraph

(D) Regulation 62.5, Standard No. 2—Ambient Air Quality Standards revised April 22, 1988.

(E) The following portions of Regulation 62.5, Standard No. 4—Emissions from Process Industries were revised April 22, 1988.

(*1*) Section III

(*2*) Section VIII (A)

(*3*) Section XI, Introductory paragraph

(F) The following portions of Regulation 62.5, Standard No. 7—Prevention of Significant Deterioration were revised April 22, 1988.

(*1*) Section I, Part V(1)

(*2*) Section II, Part A

(*3*) Section III Part H(1)

(*4*) Section IV Part E(4)

(G) The following portions of Regulation 62.5, Standard No. 7—Prevention of Significant Deterioration were revised March 24, 1989.

(*1*) Section III, Part D, (6) and (7)

(*2*) Section III Part (J)(3), (4), and (5)

(*3*) Section IV Part (H)(4)

(ii) Other materials.

(A) Letters of April 29, 1988, and April 4, 1989, from the South Carolina Department of Health and Environmental Control which address PM_{10} revisions.

(B) Revised narrative on particulate matter.

[FR Doc. 89-23329 Filed 10-2-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3651-1; Docket No. AMO705]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Delaware

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act (CAA) permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR parts 60 and 61, Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). On December 21, 1988, the State of Delaware requested EPA to delegate to it the authority for additional NSPS and NESHAP source categories.

EFFECTIVE DATE: April 26, 1989.

ADDRESSES: Applications and reports required under NSPS and NESHAP source categories which EPA has delegated Delaware authority to implement and enforce should be addressed to: Mr. Robert French, Delaware Department of Natural Resource and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, rather than to EPA Region III.

FOR FURTHER INFORMATION CONTACT: Terry Yost at (215) 597-2746.

SUPPLEMENTARY INFORMATION: On December 21, 1988, the State of Delaware requested additional NSPS and NESHAP source categories. Delaware requested these delegations to supplement the delegations for other source categories which the State had already received and which EPA had published notifications at 43 FR 66771 (1978), 44 FR 70465 (1979), 46 FR 28402 (1981), 48 FR 41764 (1983), 47 FR 17989 (1982), 51 FR 12144 (1986).

The following letter was sent to Delaware on delegating authority for additional source categories:

Dear Secretary Clark:

On December 21, 1988, Mr. Wilson, former Secretary, requested that EPA delegate to the State of Delaware the authority to implement and enforce additional New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for various NSPS and NESHAP source categories. These additional source categories are as follows:

1. Standards of Performance for Petroleum Liquids for which Construction, Reconstruction, or Modification commenced after June 11, 1973, and prior to May 19, 1978. This action would replace the previous delegation with EPA revised version of 6/16/87.

2. Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification commenced after May 18, 1978, and prior to July 23, 1984. This amends the previous delegation, EPA's revised version, to incorporate the 40 CFR part 60, Subpart Ka (4/8/87).

3. Standards of Performance for Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry. This action will replace the previous delegation to incorporate EPA revised version of 1/21/86.

4. Standards of Performance for Industrial-Commercial-Industrial Steam Generating Units. This is an additional adoption by reference of the Federal NSPS, subpart D which was promulgated on 11/25/86.

5. Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels), for which Construction, Reconstruction, or Modification commenced after July 23, 1984. This is an additional adoption by reference of the Federal NSPS subpart Kb, which was promulgated on 6/16/87.

6. National Emission Standards for Mercury. This action will replace the 2/15/78 delegation with EPA revised version of 3/19/87.

7. National Emission Standards for Vinyl Chloride. This action will replace the 4/27/82 delegation with EPA revised version of 9/30/86.

8. National Emission Standards for Equipment Leaks (Fugitive Emission Sources). This action will replace the delegation with EPA revised version of 7/1/86.

Also requested was EPA's approval of Delaware's adoption by reference of the following Test Methods for the determination of compliance with applicable New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants:

1. 40 CFR, part 60, Standards of Performance for New Stationary Sources: Appendix A, Reference Methods, Miscellaneous Clarifications and Additions of Concentration Calculation Equations to Method 19, 1987, pp. 5106–5112, and the corrections as they appear in 40 CFR, part 60, Vol. 52, No. 64, Friday, April 3, 1987, p. 10852.

2. 40 CFR, part 60, Standards of Performance for New Stationary Sources: Addition of Alternative Procedures (Critical Orifice as Calibration Standards) to Method 5, Appendix A, published in the **Federal Register** Vol. 52, No. 58, Thursday, March 26, 1987, pp. 9658–9662, and the corrections as they appear in 40 CFR, Part 60, Vol. 52, No. 115, Thursday, June 16, 1987, p. 22888.

3. 40 CFR, part 60, Standards of Performance for New Stationary Sources; Reference Methods; Method 15A for the Determination of Total Reduced Sulfur Emissions from Sulfur Recovery Plants in Petroleum Refineries, published in the **Federal Register**, Vol. 51, No. 107, Wednesday, June 4, 1986, p. 20288.

4. 40 CFR, part 60, Standards of Performance for New Stationary Sources; Addition of Alternative Procedure to Method 1 of Appendix A; Measurement Location, published in the **Federal Register**, Vol. 51, No. 107, Wednesday, June 4, 1986, p. 20288.

5. 40 CFR, part 60, Standards of Performance for New Stationary Sources, subparts D and Da, Appendix A, published in the **Federal Register**, Vol. 51, No. 112, Wednesday, June 11, 1986, pp. 21164–21172, and the corrections as they appear in 40 CFR, part 60, Vol. 52, No. 101, Wednesday, May 27, 1987 p. 196797.

6. 40 CFR, part 60, Appendix B, Alternative Procedure to Performance Specification 2, for SO_2 and NO_x Continuous Emission Monitoring Systems, published in the **Federal Register**, Vol. 51, No. 115, Monday, June 16, 1986.

7. 40 CFR, part 60, Appendix F, Procedure 1, Quality Assurance Requirements for Gaseous Continuous Emission Monitoring Systems Used for Compliance Determination, Published in the **Federal Register**, Vol. 52, No. 107, Thursday, June 4, 1987, pp. 21007–21010.

8. 40 CFR, part 61, Test Method 107 for National Emission Standards for Hazardous Air Pollutants, published in the **Federal Register**, Vol. 521, No. 104, dated Monday, June 1, 1987.

We have reviewed the pertinent laws, rules, and regulations of the State of Delaware and have determined that they continue to provide adequate and effective procedures for implementing and enforcing the NSPS and NESHAP regulations. Therefore, we hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAP regulations listed above to the State of Delaware for all sources located or to be located in Delaware that fall under the requirements of these regulations. We also approve Delaware's adoption by reference of the above test methods and test method revisions.

This NSPS and NESHAP delegation is based upon the following conditions:

1. Quarterly reports which may be combined with other reporting information are to be submitted to EPA Region III, Air Enforcement Section (3AM20) by the Delaware Department of Natural Resources and Environmental Control (DNREC) and should include the following:

(i) Source determined to be applicable during that quarter.

(ii) Applicable sources which started operating during that quarter or which have not been previously reported:

(iii) The compliance status of the above, including the summary sheet from the compliance test(s); and

(iv) Any legal actions which pertain to these sources.

2. Enforcement of the NSPS and NESHAP regulations in the State of Delaware will be the primary responsibility of the DNREC. Where DNREC determines that such enforcement is not feasible and so notifies EPA, or where DNREC acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Delaware subject to NSPS regulations.

3. Acceptance of this delegation of regulations for the source categories listed above does not commit the State of Delaware to request or accept delegation of other present or future standards and requirements. A new request for delegation will be required for any additional standards or amendments to previously delegated standards.

4. DNREC will not grant a variance from compliance with the applicable NSPS and NESHAP regulations if such variances delays compliance with the Federal Standards. Should DNREC grant such a variance EPA will consider the source receiving the variance to be in violation of the applicable Federal regulation and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The grant of such variance by the Agency shall also constitute grounds for revocation of delegation by EPA.

5. DNREC and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between DNREC's interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of DNREC.

6. If at any time there is a conflict between DNREC and the Federal regulation found at 40 CFR part 60, the federal regulation must be applied if it is more stringent than that of DNREC. If DNREC does not have to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

7. DNREC will utilize the methods specified in 40 CFR part 60 in performing source tests pursuant to these regulations. However, alternatives to continuous monitoring procedures and requirements may be acceptable upon concurrence by EPA as stipulated in 40 CFR 60.13.

8. If the Director of the Air Management Division determines that DNREC's program for enforcing or implementing the NSPS and NESHAP regulations is inadequate, or is not being effectively carried out this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice or Revocation to DNREC.

EPA procedures permit delegation of all the Administrator's authorities under 40 CFR parts 60 and 61 except for any which require rulemaking in the **Federal Register** to implement or where Federal overview is the only way to ensure national consistency in the application of standards. Accordingly, the following authorities are not delegable under section 111 of the Clean Air Act, as amended.

1. Performance Tests, §§ 60.8(b)(2) and 60.8(b)(3). In order to ensure uniformity and technical quality in the test methods used for enforcement of national standards, EPA will retain the authority to approve alternative and equivalent methods which effectively replace a reference method. This restriction on delegation does not apply to 60.8(b)(1), which allows for approval of minor modifications to reference methods on a case-by-case basis.

Some subparts include general references to the authority in § 60.8(b) to approve alternative or equivalent standards. Examples include, but are not necessarily limited to §§ 60.11(b), 60.274(d), 60.396(e)(1), 60.396(e)(2), and 60.393(c)(1)(i). These references are reminders of the provisions of paragraphs 60.8 and are not separate authorities which can be delegated.

2. Compliance with Standards and Maintenance Requirements § 60.195(e). The granting of an alternative opacity standard requires a site-specific capacity limit to be adopted under 40 CFR part 60.

3. Subpart S, § 60.195(b). Development of alternative compliance testing schedules for primary aluminum plants is done by adopting site-specific amendments to Subpart S.

4. Subpart Da § 60.45a. Commercial demonstration permits allow an alternative emission standard for a limited number of utility steam generators.

5. Subpart GG, §§ 60.332(a)(3) and 60.335(a)(ii). These sections pertain to approval of customized factors (fuel nitrogen content and ambient air conditions, respectively), for use by gas turbine manufacturers in assembly-line compliance testing. Since each approval potentially could affect emissions from equipment installed in a number of States, the decisionmaking must be maintained at the Federal level to ensure national consistency. Notice of approval must be published in the **Federal Register**.

6. Equivalency Determinations, section 111(h)(3) of the Clean Air Act. Approval of alternative to any design, equipment, work practice, or operational standard, e.g., §§ 60.114(a) and 60.302(d)(3) is accomplished through the rulemaking process and is adopted as a change to the individual subpart.

7. Innovative Technology Waiver, section 111(i) of the Clean Air Act. Innovative Technology waivers must be adopted as site-specific amendments to the individual subpart. Any questions pertaining to such waivers should be sent to the Director of the Air Management Division, Region III. (States may be delegated the authority to enforce waivers provisions if the State has been delegated the authority to enforce NSPS.)

8. Determination of Construction or Modification (Applicability), § 60.5. In order to ensure uniformity in making applicability determinations pertaining to sources, EPA will retain this authority. The delegated agency may exercise judgment based upon the Compendium of Applicability Determinations issued by EPA annually, and updated quarterly. Any applicability determinations made by the State agency based on the Compendium must be sent to EPA for informational purposes in order for EPA to maintain national consistency.

9. Determination of whether actions intended to be taken constitute construction or modification of source subject to a standard (40 CFR 61.06).

10. Allowance of alternative means of compliance (40 CFR 61.12(d)).

11. Approval of specified or alternative emission testing (40 CFR 61.13(h)).

12. Approval of specified or alternative monitoring requirements (40 CFR 61.14(g)).

13. Determination of public availability of information (40 CFR 61.16).

14. Allowance of use of alternative means of emission limitation (40 CFR 61.244).

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A Notice announcing this delegation will be published in the **Federal Register** in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the above-enumerated Federal NSPS and NESHAP regulations by sources located in the State of Delaware should be submitted to the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware 19901. In addition to EPA Region III, any original reports which are received by EPA region III will be promptly transmitted to DNREC.

Since this delegation is effective immediately, there is no requirement that DNREC notify EPA of its acceptance. Unless EPA receives from DNREC written notice of objections within ten (10) days of receipt of this letter, DNREC will be deemed to have accepted all of the terms of the delegation.

Sincerely,

Edwin B. Erickson,

Regional Administrator.

The Office of Management and Budget has exempted this delegation of authority from the requirements of section 3 of the Executive Order 12291.

Authority: Secs. 11(c) and 112(d), the Clean Air Act, 42 U.S.C. 7412(d).

Edwin B. Erickson,

Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 52 U.S.C. 7401, 7411, 7414, 7416, and 7601.

§ 60.4 [Amended]

2. Section 60.4(b)(I) is amended by removing the parenthetical statement.

PART 61—[AMENDED]

3. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

§ 61.04 [Amended]

4. Section 61.04(b)(I) is amended by removing the parenthetical statement.

[FR Doc. 89-22894 Filed 10-2-89; 8:45 am]

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40 CFR Parts 123 and 403

[FRL 3652-2]

Approval of California's Revisions to the State National Pollution Discharge Elimination System Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program, approval to issue NPDES general permits and approval of revisions to the existing NPDES permit regulations of the State of California.

SUMMARY: On September 22, 1989, the Environmental Protection Agency, Region IX approved the State of California NPDES Pretreatment Program which authorizes the State of California to administer the National Pretreatment Program as it applies to municipalities and industries within the State. EPA, Region IX also approved authority of the State of California to issue NPDES general permits and approved revisions to the State's existing NPDES permit regulations.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: William H. Pierce, Chief, Permits Branch, Water Management Division, 215 Fremont Street, San Francisco, CA 94105 (415-974-8110).

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) requires EPA to administer the NPDES permit program under which the Agency may issue permits for the discharge of pollutants into waters of the United States in accordance with conditions required by the Act. Section 402(b) of the CWA provides for States to assume NPDES permitting responsibilities upon approval by EPA. States also may request authority to issue general permits for similar dischargers with the same effluent limitations. (*See* 40 CFR 122.28.) In addition, under section 54 of the 1977 amendments to the CWA, States requesting NPDES permitting authority, as well as States already approved to administer the NPDES permit program, must also request permitting authority over dischargers from federal facilities located within the State and authority to administer the federal pretreatment program governing the introduction of non-domestic pollutants into publicly owned treatment works (POTWs). (*Cf.* CWA section 402(n) 33 U.S.C. 1342(n).) After EPA approves a State's request for NPDES permit and/or pretreatment authority, the State must thereafter submit any proposed program revisions to EPA for reapproval pursuant to 40 CFR 123.62(b).

On May 14, 1973, California became the first State to be approved by EPA to administer the NPDES permit program. On May 5, 1978, it also became the first State to receive EPA approval to regulate discharges from federal facilities.

On June 8, 1989, California submitted an application to EPA for approval of revisions to its approved NPDES program in accordance with 40 CFR 123.62 and 403.10. This application included a request to add pretreatment and general permit authority to its approved program. It also included a request for EPA approval of revisions to the State's existing NPDES permit regulations. (California does not have, and has not requested, EPA approval to administer the NPDES and pretreatment programs on Indian lands.) Pursuant to 40 CFR 123.62(b) and 403.10(g), California submitted in support of its application an Attorney General's Statement (including copies of all applicable State statutes and regulations) certifying that the State has adequate authority to administer the NPDES program being sought, a program description describing how the State intends to carry out its responsibilities, and a proposed EPA/California Memorandum of Agreement. These documents were revisions of the original copies submitted to EPA when California sought approval of its existing NPDES permit program.

With respect to California's request for approval of revisions to the State's existing NPDES permit regulations, EPA has approved the State's request to implement the State permit program under State law, which, according to the California Attorney General, incorporates by reference all existing and future federal NPDES law and regulations. Specifically, the Attorney General has certified that the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which implements the California NPDES program, incorporates federal NPDES and pretreatment law and regulations prospectively, meaning that future amendments to federal law and regulations are automatically incorporated into State law without the need for amendment of State statutes and regulations. (In support of this authority for prospective incorporation by reference, the California Attorney General has cited the Porter-Cologne Act, Water Code sections 13160, 13170, 13177, 13385, 13386, and 13387.) The California Attorney General also has certified that regulations adopted by the California State Water Resources Control Board, the Statewide NPDES permitting agency, prospectively incorporate EPA regulations applicable to the processing of NPDES applications and issuance of NPDES permits. [The cited State regulations in the Attorney General's Statement are 23 Cal. Admin. Code sections 2235.1(c), 2235.2, and 2235.4] Such prospective incorporation of federal law and regulations is, according to the California Attorney General, authorized under California law and the State's Constitution.

As discussed above, California also has requested authority to issue NPDES general permits and administer the pretreatment program. With respect to general permit authority, EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of waste water which result from similar operations, are of the same type of wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. EPA is approving California's request for general permit authority. Each general permit proposed by the State will be subject to EPA review and approval as provided by 40 CFR 123.44(a)(2). Public notice and opportunity to request a hearing also must be provided for each general permit.

EPA is also approving California's request for pretreatment authority. California has demonstrated that there is appropriate legal authority, procedures, available funding, and qualified personnel to implement the program as specified in 40 CFR 403.10. The State will implement its pretreatment program under the Porter-Cologne Act provisions which prospectively incorporate federal law and regulations. Under the CWA and EPA regulations at 40 CFR part 403, the primary objectives of the pretreatment program are to: (1) Prevent the introduction of pollutants into POTWs which will interfere with plant operations and/or disposal or use of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works in unacceptable amounts to receiving waters; and (3) improve the feasibility of recycling and reclaiming municipal and industrial wastewater and sludge. Local pretreatment programs will be the primary vehicle for administering, applying, and enforcing California's pretreatment requirements. Currently, 102 such programs have been approved by EPA. Where local programs have not yet been required or developed in California, the State must apply and enforce the pretreatment requirements directly against industries that discharge to POTWs (*e.g.*, 40 CFR 403.10(f)(2)(i)).[1]

The Regional Administrator's decision to approve California's proposed program revisions, including its request for pretreatment and general permit authority, is based on a determination that the program meets the requirements of the Clean Water Act and 40 CFR parts 122, 123, 124, and 403. The public was notified in the July 20, 1989 **Federal Register** (54 FR 30405) of the submittal, public comment period and opportunity to request a public hearing, and EPA's proposal to approve all requested program revisions. In addition, notice was provided in four major newspapers in the State on July 20, 1989 and notice was provided to all POTWs with approved pretreatment programs. No comments were received by EPA during the public comment period which ended September 5, 1989.

California's pretreatment program, as well as its revised NPDES permit program, is administered by the California State Water Resources Control Board and nine Regional Water Quality Control Boards.

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Approval of California's NPDES program revisions, including the addition of pretreatment and general permit authority, does not alter the regulatory control over any municipal or industrial category. No new substantive requirements are established by this action. Therefore, since this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: September 22, 1989.

John Wise,

Acting Regional Administrator for Region IX.

[FR Doc. 89-23163 Filed 10-2-89; 8:45 am]

BILLING CODE 6560-50-M

[1] According to the California Attorney General, the requirements of the CWA and implementing regulations incorporated by reference by the Porter-Cologne Act, include but are not limited to the pretreatment standards and reporting requirements for IUs of POTWs (for example 40 CFR 403.5, 403.6 and 403.12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Denial of Petitions for Exemption by Low Volume Petitioners

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for exemption from average fuel economy standards and for establishment of alternative standards.

SUMMARY: This consolidated notice responds to individual petitions filed by four low volume manufacturers, Bitter, Ferrari, Lotus, and Maserati, each requesting exemption from the generally applicable passenger automobile average fuel economy standards, and that lower alternative standards be established for each model year (MY) from which they seek exemption. This notice denies each petition as follows:

Bitter Automobile of America, Inc. (Bitter) petitioned to be exempted for MYs 1983 through 1987. This notice denies Bitter's request because the Bitter petition and its amendment were not timely filed for those years and good cause was not shown for the late filing.

Ferrari S.p.A. (Ferrari) petitioned to be exempted for MYs 1986 through 1988. A separate notice published on December 10, 1986 (51 FR 44492) proposed to grant Ferrari's petition for MY 1986, establishing an alternative standard of 16.0 miles per gallon (mpg) and for MY 1988, establishing an alternative standard of 16.6 mpg. For MY 1987, this notice denies Ferrari's request because Ferrari was not eligible for an exemption as a low volume manufacturer for that model year.

Lotus Cars Ltd. (Lotus) petitioned to be exempted for MYs 1983 through 1987. This notice denies Lotus' request because the Lotus petition was not timely filed for MYs 1983 through 1985 and good cause was not shown for the late filing. This notice also denies Lotus' request for MYs 1986 and 1987. The agency concludes that Lotus was ineligible in those years for exemption as a low volume manufacturer.

Officine Alfieri Maserati S.p.A. (Maserati) petitioned to be exempted for MYs 1982 through 1985. This notice denies Maserati's request for MYs 1982 through 1983 because the Maserati petition was not timely filed for those

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years and good cause was not shown for the late filing. A separate notice proposes to grant the requested exemption for MYs 1984 and 1985, and to establish alternative standards for Maserati of 17.3 mpg for MY 1984 and 16.6 mpg for MY 1985.

ADDRESS: Comments on this notice must refer to Docket No. LVM 89-01; Notice 1 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

Statute

Title V of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), which is codified at 15 U.S.C. 2001-2002, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. The standards for passenger automobiles for MY's 1982-1988, the years covered by the petitions for exemption, are: 24 miles per gallon (mpg) for MY 1982; 26 mpg for MY 1983; 27 mpg for MY 1984; 27.5 mpg for MY 1985; and 26 mpg for MY's 1986-88.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the NHTSA establishes an alternative standard for the manufacturer at its maximum level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

Regulation: Timing of Petitions

Title 49 CFR part 525 sets forth the required contents of and procedures for processing petitions for exemption from the generally applicable passenger automobile average fuel economy standards. Section 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown; * * *" The stated reasons for including this provision in § 525.6 were to facilitate the low volume manufacturers' planning to comply with the alternative standards, and to ensure that the NHTSA's analysis of those manufacturers' maximum feasible average fuel economy would not be simply a "rubber stamping" of the individual manufacturer's planned fuel economy, caused by insufficient leadtime for the manufacturer to make changes. *See* 41 FR 53827, at 53828; December 9, 1976.

However, the agency recognized that there would be situations when good cause existed for not filing 24 months before the start of the model year. NHTSA has recognized two circumstances as establishing good cause for failure to submit a timely petition. First, there are situations in which the necessary supporting data for the petition were unavailable until after the due date has passed. For example, a recently incorporated manufacturer would not have adequate time to file an exemption petition 24 months prior to the model year. Second, there are situations in which a legitimately unexpected noncompliance occurs. An example is if a company providing a low volume manufacturer with its engines goes out of business, and the manufacturer is forced to make an unanticipated engine switch, resulting in lower than expected fuel economy. *See* 44 FR 21051 at 21055, April 9, 1979.

Agency Response to Petitions

Bitter

By letter dated November 22, 1985, Bitter petitioned NHTSA for an alternate fuel economy standard for Bitter passenger automobiles for MYs 1983 through 1986. NHTSA requested that additional information be provided to justify the reason for late filing of the petition and to more fully describe the models and quantities that will be or have been imported. Bitter was reminded of the need to submit future petitions at least two years before the start of the model year. By letter dated May 16, 1986, Bitter amended the original petition to cover MY 1987. The amendment also provided additional information on Bitter's product offerings but did not include any reason for late filing of the petition.

Since the Bitter petition and its amendment were not filed in a timely manner to qualify for an alternate corporate average fuel economy standard and Bitter has not furnished any justification for the late filing, the agency denies Bitter's petition for an alternate fuel economy standard for Bitter passenger cars for MYs 1983 through 1987.

Ferrari

By letter dated January 2, 1986, Ferrari requested an exemption from the generally applicable corporate average fuel economy standards and requested alternate standards for MYs 1986-88. On December 10, 1986 (51 FR 44492), NHTSA issued a proposed decision to grant an exemption for Ferrari from the average fuel economy standards and to establish alternative standards for MYs 1986 through 1988. The notice proposed to grant the requested exemptions for all three years, and to establish alternative standards for Ferrari of 16.0 mpg for MY 1986, 16.2 mpg for MY 1987, and 16.6 mpg for MY 1988. No comments were received on the proposed decision.

As of the time of that proposal, Ferrari was eligible for exemptions for all of those years despite Fiat's ownership of 50 percent of Ferrari. Section 502(c) allows NHTSA to exempt manufacturers from the generally applicable standards only if the manufacturer produces fewer than 10,000 passenger automobiles in the model years for which exemption is sought. By itself, Ferrari would qualify as a low volume manufacturer under section 502(c) since it manufactures about 3,500 cars annually worldwide. Section 503(c)(1) of the Act specifies that any reference in Title V to automobiles manufactured by a manufacturer "shall be deemed to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer." NHTSA found that Fiat controls Ferrari for purposes of section 503(c). Nevertheless, Fiat's production was not added to Ferrari's for the purpose of determining Ferrari's eligibility for an exemption. In a July 26, 1978 interpretation letter to Howard E. Chase, of Singer, Hutner, Levine & Seeman, NHTSA determined that, for purposes of section 502(c) of the Cost Savings Act, the term "manufacture" means "to produce or assemble in the customs territory of the United States, or to import." Since for MY 1987, Fiat neither assembled its car in the United States nor imported its cars into the United States, it did not manufacture any automobiles for the purposes of section 503(c). Accordingly, although Ferrari was controlled by Fiat, for purposes of determining Ferrari's low volume manufacturer status, none of Fiat's automobiles would be added to Ferrari's total.

Ferrari's eligibility for MY 1987 changed on January 1, 1987, when Fiat acquired 100 percent ownership of Alfa Romeo. That acquisition rendered Ferrari ineligible under Title V for a exemption for that year. Section 503(c) requries all of the automobiles imported by Alfa Romeo to be added to those manufactured by Ferrari to determine whether Ferrari is eligible for a low volume exemption for MY 1987 and thereafter. Since Alfa Romeo imported 8,930 cars into the United States for MY 1987, Alfa Romeo would be considered a "manufacturer" for purposes of section 502(c). Further, because Alfa Romeo and Ferrari are under the common control of Fiat, Alfa Romeo's, 8,930 import cars would be added to Ferrari's annual world wide production in order to determine Ferrari's low volume manufacturer status. The resulting total exceeds the 10,000 vehicle limitation on eligibility. Accordingly, Ferrari is statutorily ineligible for a low volume exemption for MY 1987.

However, in MY 1988, Alfa Romeo imported only 4,166 cars into the United States. This figure, even when combined with Ferrari's worldwide production in 1988 of 3,996, would not exceed the 10,000 vehicle limitation. Accordingly, Ferrari remains eligible for an exemption for MY 1988.

Lotus

MYs 1983-1985: Timeliness of Petition

Lotus filed its original exemption petition on February 14, 1985 and later filed a number of addenda. Under part 525, Lotus' petition was untimely filed with respect to MYs 1983 through 1985. In defense of this later filing, the company essentially argues that its history since 1982 has been tumultuous. However, during its corporate distress, the company continued to sell its products in the United States. Nothing in its petition suggests an unanticipated event that made compliance with this deadline impossible. The fact that the company continued to operate and sell products during this period indicates that Lotus retained control of data necessary to file the exemption petition. Under the circumstances, NHTSA concludes that Lotus has not made a showing of good cause for having filed its petition late. Therefore, the Agency denies Lotus' petition for exemption and alternative standards for MYs 1983-1985.

MYs 1986 and 1987: Timeliness of an Eligibility for Exemption

According to Lotus's petition, in July 1986, General Motors (GM) acquired at least 93% of Lotus' shares. Section 503(c)(1) of the Act states that any reference in Title V to automobiles manufactured by a manufacturer includes "all automobiles manufactured by persons who control the manufacturer." NHTSA concludes that General Motors' 93% interest in Lotus is a controlling interest under section 503(c) of the Act, and that its production must be added to that of Lotus. GM manufactured over 10,000 passenger automobiles in both the second model year preceding the model years for which the application for exemption was made and in those model years. The agency therefore finds Lotus ineligible for consideration as a low volume manufacturer for MYs 1986 and 1987. Further, Lotus did not provide a showing of good cause to explain the lateness of its petition for those years.

Maserati

Background Information About Maserati

Maserati's automobiles have traditionally been expensive high performance vehicles. According to its petition, Maserati's reputation is based on a combination of performance and luxury. The company experienced an extended period of financial instability in the late 1970's and early 1980's. In 1974, Citroen, the owner of Maserati, put Maserati into voluntary bankruptcy. This action resulted in Maserati's totally ceasing all production for more than a year during 1975 and 1976. The company produced very few cars through MY 1981, and the models it did produce were simply continuations of its older models. However, a loan from the Italian government permitted Maserati to develop and introduce a new model, the Biturbo, in Europe in 1982. This new model helped return Maserati to profitability. In fact, Maserati had projected sales of 4,100 vehicles in the United States in MY 1985, up from sales of 52 vehicles in MY 1983.

Maserati produced two models during MYs 1982-1985. One of these models, the Quattroporte, was the first "new" vehicle produced by Maserati after the company was reorganized in bankruptcy. However, this vehicle was designed on very short notice, using as many components in Maserati's inventory as possible. The company's management determined that they needed to generate revenue quickly to reverse the significant operating losses Maserati had accumulated. The Quattroporte, according to Maserati's petition, "cannot play a leading role in the company's future."

The other model is the Biturbo, which is primarily responsible for the company's improved financial status. The Biturbo was introduced in Europe in 1982 and in the United States for MY 1984. It was a completely new design by Maserati that was not required to use components in the company's inventory. The Biturbo is much lighter and more aerodynamic than the Quattroporte. Further, the Biturbo is powered by a 152 cubic inch displacement (CID) V-6 engine with two turbochargers and 3 valves per cylinder, while the Quattroporte is powered by a 301 CID V-8 engine with only 2 valves per cyclinder.

Denial of Maserati's Petition for MYs 1982-1983

Maserati filed a petition asking for an exemption from the average fuel economy standards for MYs 1982 through 1985 on May 3, 1983. Its petition was clarified and updated in a June 1985 submission. In the original petition, Maserati stated that it was unable to file the petition in a timely manner because its "future viability was in serious doubt" through the middle of 1982. The petition also stated, "Maserati's return to profitability in 1982 only now enables it to project the realistic prospect of continued and profitable operations, without which it would be impossible, as a practical matter, to provide the appropriate information (required to be included in petitions filed under part 525)."

The financial difficulties experienced by Maserati during the late 1970's and early 1980's were serious. The company's financial ability to design and introduce its new Biturbo model, much less its ability to produce and export a U.S. version of the model, was not foreseeable 24 months in advance of MY 1984. Accordingly, NHTSA tentatively concludes that Maserati showed good cause for the late filing of its petition for MYs 1984 and 1985.

However, NHTSA does not believe that financial difficulties constituted good cause for the late filing of Maserati's petition for MYs 1982 and 1983. The company had full knowledge 24 months in advance of those model years that it would be selling only the

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Quattroporte in the United States, and knew all the required technical information for that vehicle. Since Maserati knew that it would be only selling the Quattroporte, and there was no issue of model mix, the company knew that its CAFE would be the same as the fuel economy figure for that model. Further, Maserati knew that its total production would be well under 10,000, and that it would therefore be eligible for a low volume exemption. After considering these factors, NHTSA has concluded that Maserati has not shown good cause for the late filing of its petitions for MYs 1982 and 1983. Accordingly, Maserati's request for exemptions for MYs 1982 and 1983 is denied.

(Sec. 9, Pub. L. 89-670, 80 Stat. 981 (49 U.S.C. 1657); Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on September 26, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23087 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 380

[Docket No. 90923-9223]

Antarctic Marine Living Resources Convention Act of 1984

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) promulgates this rule to implement further the Antarctic Marine Living Resources Convention Act of 1984 (the Act), which provides the legislative authority for United States implementation of the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The Convention establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources. This rule gives effect, for vessels of the United States and persons subject to the jurisdiction of the United States, to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) System of Observation Inspection (the system). The system applies to all vessels of Contracting Parties to the Convention harvesting marine living resources (including those vessels engaged in scientific research) in the Convention area. It will operate through the use of inspectors designated by Contracting Parties to the Convention and through information transmitted to the Department of State by scientists, fishermen, and others in the Convention area not designated as inspectors. All Contracting Parties, whether or not they designate inspectors, have agreed to transmit to CCAMLR information about violations of conservation and management measures observed by scientists, fishermen, and other non-inspectors under their jurisdiction.

EFFECTIVE DATE: October 3, 1989.

ADDRESSES: A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, International Science, Development and Polar Affairs Division, NMFS, NOAA, Room 7240, 1335 East-West Highway, Silver Spring, MD 20910 (301-427-2282).

SUPPLEMENTARY INFORMATION: The United States, at the seventh meeting of the Commission for the Conservation of Antarctic Marine Living Resources, agreed to and is obligated by the framework of the CCAMLR System of Observation and Inspection. As approved, each member of CCAMLR may designate inspectors who will be allowed to board vessels engaged in scientific research or harvesting in the Convention area in order to verify compliance with measures in effect under the Convention.

CCAMLR has not elaborated provisions for scientific observation under the system. Once elaborated and adopted, members of CCAMLR may place individuals on board vessels to observe the harvesting of marine living resources in the Convention area. Observation will facilitate the acquisition of information needed to better understand and more effectively model and manage the harvesting of Antarctic marine living resources.

These regulations implement for the United States the inspection provisions of the system. Additional regulations implementing observation provisions will be promulgated by the Department of Commerce once CCAMLR has adopted an observation scheme.

The inspection provisions of the system require that inspectors be familiar with the fishing and scientific research activities to be inspected, the provisions of the Convention, and measures adopted under it. A Contracting Party (Party) must certify the qualifications of its designated inspectors to CCAMLR. Designated inspectors must be nationals of the designating Party and while carrying out inspection activities, will be subject solely to the jurisdiction of the designating Party. Inspectors must be able to communicate in the language of the flag State of the vessels on which they carry out their activities and must be accorded the status of ship's officer while on board such vessels.

Inspection will be carried out by U.S. designated inspectors from U.S. vessels and by any foreign inspectors that may be designated by members of CCAMLR. Vessels carrying inspectors will fly a special flag or pennant approved by CCAMLR to indicate that the inspectors on board are carrying out their duties in accordance with the system. U.S. inspectors may also board the vessels of other Party States.

Any U.S. vessel present in the Convention area for the purpose of harvesting marine living resources (including vessels engaged in scientific research) must, when given the appropriate signal in the International Code of Signals by a ship carrying an inspector (as signified by flying the CCAMLR-approved flag or pennant), stop or take such other actions as necessary to facilitate the safe and prompt transfer of the inspector to the vessel, unless the vessel is actively engaged in scientific research or other harvesting operations, in which case it shall do so as soon as practicable.

The master of the U.S. vessel must permit the inspector, who may be accompanied by appropriate assistants, to board the vessel. Inspectors will have the authority to inspect catch, nets, and other fishing gear, as well as fishing and scientific research activities, and must be given access to records and reports of catch and location data insofar as necessary to carry out their functions. However, in order to protect scientific research that could be compromised by an inspection, CCAMLR inspectors will not disturb areas in which the operator of a harvesting vessel asserts that specific, sensitive scientific research is in progress. Research requiring a controlled environment (e.g., light, temperature) and areas restricted for safety reasons (e.g., isotope vans) qualify as sensitive research or conditions. Vessel operators asserting such special circumstances must produce an Individual Permit covering the specific research. "Individual permit" is defined by 50 CFR 380.2 as a National Science Foundation (NSF) permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under 50 CFR 216.31; or an endangered species permit issued under 50 CFR 222.21. CCAMLR inspectors will record information pertaining to the denial of access or inspection in these circumstances.

Each inspector will carry an identity document issued by the designating State in a form approved or provided by CCAMLR stating that the inspector has been designated to carry out inspection. On boarding a vessel, the inspector will present the identity document.

Inspection will be carried out so that the vessel is subject to minimum interference and inconvenience. Inquiries will be limited to the ascertainment of facts in relation to compliance with CCAMLR measures in effect. Inspectors are permitted to take photographs as necessary to document alleged violations of CCAMLR measures in effect. If photographs are taken, a duplicate will be attached to the notice of alleged violations provided to the vessel master. Inspectors will affix an identification mark approved by CCAMLR to any net or other fishing gear which appears to have been used in contravention of conservation measures in effect and shall record the fact in all reports and notifications.

Inspectors must be provided appropriate assistance by the master of the U.S. vessel in carrying out their duties, including access as necessary to communications equipment. If a U.S. vessel refuses to stop or otherwise facilitate transfer of an inspector, or if the master or crew of a vessel interferes with the authorized activities of an inspector, the inspector involved will prepare a detailed report, including a full description of all the circumstances, and provide the report to the United States. Such refusal or interference is prohibited.

U.S. inspectors will prepare detailed reports on their inspection activities. These reports will be provided to the Department of State, which shall in turn report to CCAMLR. Before leaving vessels that have been inspected, the inspector shall give the master of the vessel a Certification of Inspection and a written notification of any alleged violations of CCAMLR measures in effect and will afford the master opportunity to comment in writing on any such notification. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

U.S. scientists, fishermen, and other non-inspectors present in the Convention area are encouraged to report violations of CCAMLR conservation and management measures observed in the Convention area to the Office of Ocean Affairs, Department of State. The U.S. Government will transmit the information contained in these reports to the Chairman of CCAMLR for forwarding to the State named in the report. The Chairman will circulate the information and any comment upon it to all CCAMLR Members prior to the next meeting of the Commission.

Reports of inspection of U.S. activities will be provided to the United States and the United States will have the opportunity to comment on them prior to their consideration by CCAMLR. If, as a result of inspection activities carried out in accordance with these provisions, there is evidence of violation by U.S. vessels of measures adopted under the Convention, the United States will take steps to prosecute and, if necessary, impose sanctions.

Classification

The Secretary has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 and to give effect to the conservation and management measures adopted by CCAMLR and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared a framework environmental assessment (EA) for the implementation of the Antarctic Marine Living Resources Convention Act of 1984 in 1987. NMFS has reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs functions of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared.

At present there are no U.S. vessels or vessels subject to the jurisidiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under NSF permits and by the U.S. Antarctic Marine Living Resources directed research program. Accordingly, these regulations should not have an incremental impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule does not impose a collection-of-information requirement and therefore is not subject to the Paperwork Reduction Act. The rule restates at § 380.8(a)(2)(3) a requirement previously approved by the Office of Management and Budget under Control Number 06480194 to provide vessel positions.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*

2. Section 380.2 is amended by adding the definitions "CCAMLR inspector" and "Inspection vessel" in alphabetical order to read as follows:

§ 380.2 Definitions.

* * * * *

CCAMLR inspector means a person designated by a member of the Commission as an inspector under Article XXIV of the Convention to verify compliance with measures in effect under the Convention.

* * * * *

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by the Commission to identify such vessel.

* * * * *

§ 380.4 [Amended]

3. Section 380.4 paragraph (g) is amended by adding the words "or CCAMLR inspector" to the end of the first sentence.

§ 380.6 [Amended]

4. Section 380.6 paragraph (b) is amended by adding the words "or CCAMLR inspector" before the semicolon at the end of the paragraph.

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§ 380.7 [Amended]

5. In § 380.7, in paragraphs (a) and (d)(2) the words "or inspection" are added between "enforcement" and "vessel", and in paragraph (c)(3) the words "or CCAMLR inspector" are added at the end of the paragraph.

6. Section 380.8 is revised to read as follows:

§ 380.8 Facilitation of enforcement and inspection.

(a) *General.* (1) The owner, operator, or any person aboard any harvesting vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the harvesting vessel; to move the harvesting vessel to a specified location; or to take any other action to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and harvested resources.

(2) The owner, operator, or any person aboard any harvesting vessel subject to this part must immediately comply with instructions and signals issued by a CCAMLR inspector, unless the vessel is actively engaged in scientific research or other harvesting operations, in which case it shall do so as soon as practicable. The vessel must comply with any instructions and signals to stop the vessel, move the vessel to a specified location, or to take any other action to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, or harvested resources.

(3) The operator of each harvesting vessel subject to this part must provide vessel position or other information when requested by NMFS, the Coast Guard, an authorized officer or CCAMLR inspector within the time specified in the request.

(4) CCAMLR inspectors must be provided appropriate assistance by the master of the vessel in carrying out their duties, including access as necessary to communications equipment.

(b) *Communications equipment.* (1) Each harvesting vessel must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each harvesting vessel must be equipped with a radiotelegraph station capable of communicating via 500 kHz radiotelegraphy and at least one working frequency between 405 kHz and 535 Khz, and a radiotelephone station capable of communicating via 2182 kHz radiotelephony. Each operator must be ready to communicate via 500 kHz radiotelegraph and 2182 kHz radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) Harvesting vessels that are not equipped with processing facilities and that deliver all catches to a processing vessel on the harvesting grounds are exempt from the requirements of paragraph (b)(2) of this section.

(4) Harvesting vessels with no IRCS which do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The Assistant Administrator, with the agreement of the appropriate Coast Guard commander, may, upon request by the owner or operator, accept alternatives to the communications equipment requirements of paragraphs (b)(1) and (b)(2) of this section for certain harvesting vessels or types of harvesting vessels, provided they are adequate for communications needs.

(c) *Communications procedures.* (1) Upon being approached by a Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer or CCAMLR inspector aboard, the operator of any harvesting vessel subject to the jurisdiction of the United States must be alert for communications conveying enforcement or inspection instructions. The enforcement or inspection unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz radiotelephone, 500 kHz radiotelegraph, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals extracted from the International Code of Signals are among those which may be used.

(i) "AA, AA, AA, etc." which is the call for an unknown station. the signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 380.6 of this part:

(ii) "RY–CY" meaning "You should proceed at a slow speed; a boat is coming to you";

(iii) "SQ3" meaning "You should stop or heave to: I am going to board you";

(iv) "L" meaning "You should stop your vessel instantly."

(2) The operator of, or any person aboard, a harvesting vessel who does not understand a signal from an enforcement unit or inspection vessel and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the vessel instantly.

(d) Boarding equipment and procedures. The operator of a harvesting vessel signaled for boarding must:

(1) Stop immediately or lay to or maneuver in such a way as to maintain the safety of the harvesting vessel and facilitate boarding by an authorized officer of CCAMLR inspector and the boarding party;

(2) Provide the authorized officer or CCAMLR inspector and boarding party a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the harvesting vessel and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea, 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent standard approved by letter from the Assistant Administrator, with the agreement of the Coast Guard. A summary of safe pilot ladder standards follows:

(i) The ladder must be of a single length of not more than 9 meters (30 feet), capable of reaching the water from the point of access to the harvesting vessel, accounting for all conditions of loading and trim of the harvesting vessel and for an adverse list of 15 degrees. Whenever the distance from sea level to the point of access to the ship is more than 9 meters (30 feet), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be:

(A) Of hardwood, or other material or equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics;

(B) Not less than 480 millimeters (19 inches) long, 115 millimeters (4½ inches) wide, and 25 millimeters (1 inch) in depth, excluding any non-slip device; and

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 millimeters (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps which are secured in position by a method different from that used in the original construction of the ladder.

(iv) The sides ropes of the ladder must consist of two uncovered manila rope not less than 60 millimeters (2¼ inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous with no joint below the top step.

(v) Battens made of hardwood, or other material of equivalent properties in one piece and not less than 1.8 meters (5 feet 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed nine steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the harvesting vessel not less than 0.7 meters (2 feet 3 inches) nor more than 0.8 meters (2 feet 7 inches) apart, not less than 40 millimeters (2½ inches) in diameter, must extend not less than 1.2 meters (3 feet 11 inches) above the top of the bulwark.

(3) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manrope, a safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the authorized officer, CCAMLR inspector, and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an Individual Permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspecton and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(f) *Reports by non-inspectors.* All scientists, fishermen and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(g) *Storage of Antarctic marine living resources.* The operator of each harvesting vessel storing Antarctic marine living resources in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

7. In § 380.10, paragraph (f) is redesignated (i), paragraphs (g) through (q) are redesignated (k) through (u), and new pargraphs (f), (g), (h), and (j) are added to read as follows:

§ 380.10 Prohibitions.

* * * * *

(f) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this part, or any permit issued under the Act.

(g) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(h) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(i) * * *

(j) Assault, resist, oppose, impede, intimidate or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this part, or any permit issued under the Act.

* * * * *

[FR Doc. 89–23224 Filed 10–2–89; 8:45 am]
BILLING CODE 3510–22–M

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Proposed Rules

Federal Register
Vol. 54, No. 190
Tuesday, October 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-16]

Petitions for Rulemaking; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before:

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25700, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 20, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25700.
Petitioner: David W. Galvin.
Regulations Affected: 14 CFR 121.599 and 121.601.
Description of Petition/Disposition: The petition, if granted, would require all domestic carriers and supplemental air carriers to provide its dispatchers access to professional meteorological advice by having a meteorological department or office in the flight dispatch center and that all meteorologists used as advisory aviation meteorologists must have graduated from an accredited university or college with a degree in meteorology. Denied September 6, 1989.

[FR Doc. 89-23286 Filed 10-2-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-193-AD]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, which would require a one-time functional test of the main landing gear (MLG) door manual release system, and replacement of the MLG door manual release system control bell crank. This proposal is prompted by a report that the main gear door manual release system may not properly release when needed due to rigging interference. This condition, if not corrected, could prevent manual extension of the main landing gear.

DATES: Comments must be received no later than November 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-193-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-NM-193-AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that an unsafe condition exists in AMD-BA Model Falcon 50 and 900 series airplanes. There has been a recent report that the main landing gear (MLG) door manual release system may not properly release when needed, due to rigging interference. This condition, if not corrected, could prevent manual extension of the MLG.

AMD-BA has issued Alert Service Bulletins F50-A212 (F50-A32-19), and F900-A65 (F900-A32-6), both dated July 25, 1989, which describe procedures for performing a functional test of the MLG door manual release system, and replacement of the MLG door manual release system control bell crank with a new adjustable bell crank. The Direction Generale de L'Aviation Civile, which is the airworthiness authority of France, has approved these service bulletins, but has not classified them as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time functional test and replacement of the MLG door manual release system control bell crank, in accordance with the service bulletins previously described.

It is estimated that 171 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,680.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reason discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, or a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD-BA): Applies to all Model Mystere Falcon 50 and 900 series airplanes, as listed in AMD-BA Alert Service Bulletins F50-A212 (F50-A32-19) and F900-A65 (F900-A32-6), both dated July 25, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inability to manually open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Within 30 days after the effective date of this AD, verify the integrity of the MLG emergency release mechanism by performing a functional test of the emergency release system, in accordance with AMD-BA Alert Service Bulletin F50-A212 or F900-A65 (as applicable), both dated July 25, 1989. If door release does not occur, prior to further flight, replace the MLG door manual release system control bell crank with an adjustable bell crank, in accordance with the appropriate service bulletin. If door releases normally, the bell crank may remain in service until the requirements of paragraph B., below, are accomplished.

B. Within 180 days after the effective date of this AD, replace the MLG door manual release system control bell crank with an adjustable bell crank, in accordance with AMD-BA Alert Service Bulletin F50-A212 or F900-A65 (as applicable), both dated July 25, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23276 Filed 10-2-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-180-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require installation of control cable block plates. This proposal is prompted by an FAA certification inspection which revealed that, under simulated cable system proof load, there was enough cable slack for the empennage cables to hang up on the cable shroud brackets above the Door 5 crew rest area. This

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condition, if no corrected, could lead to the control cables snagging on the cable shroud brackets above Door 5 crew rest area, which could reduce the ability of the pilot to safely control the airplane.

DATES: Comments must be received no later than November 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103. Attention: Airworthiness Rules Docket No. 89–NM–180–AD, 17900 Pacific Highway South C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–180–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An FAA certification cable inspection of a Boeing Model 747 series airplane, revealed that, under simulated empennage cable system proof load, enough cable slack developed to hang up the empennage cables on the cable shroud brackets above the Door 5 crew rest area. This condition, if not corrected, could lead to the control cables snagging on the cable shroud brackets above Door 5 crew rest area, which could reduce the ability of the pilot to safely control the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–25–2776, dated June 8, 1989, which describes procedures for installation of control cable block plates, which will preclude the possibility of the cable shroud brackets interfering with cable travel.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of control cable block plates in accordance with the service bulletin previously described.

There are approximately 13 Model 747 series airplanes of the affected design in the worldwide fleet. Currently, no airplanes of U.S. registry would be affected by this AD; therefore, there is no cost impact of this AD on U.S. operators. However, should an affected airplane be imported and placed on the U.S. Register in the future, approximately 8 manhours would be necessary to accomplish the actions required by this AD, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $320 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Excutive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the Criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subject in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 746 series airplanes with a Door 5 crew rest area, listed in Boeing Service Bulletin 747–25–2776, dated June 8, 1989, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent empennage control cables from snagging on the cable shroud brackets above the Door 5 crew rest area, accomplish the following:

A. Install control cable block plates in accordance with Boeing Service Bulletin 747–25–2776, dated June 8, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: the request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–23275 Filed 10–2–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–187–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require replacement of the oxygen generator release cable assembly. This proposal is prompted by reports of broken release pins. This condition, if not corrected, could result in failure of the oxygen generator to activate and supply oxygen to the passengers and flight attendants.

DATE: Comments must be received no later than November 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–187–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David M. Herron, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–187–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two operators of Boeing Model 767 airplanes reported finding broken oxygen generator release pins while inspecting the generator and attempting to replace the 1½-turn lanyard pull rings with 2-turn rings. If the release pin breaks while attempting to activate the oxygen generator, the firing mechanism will not be activated and oxygen will not be produced.

New release cable assembly pins have been correctly drilled to prevent the fractures from occurring and color coded green for easy recognition.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–35A0015, dated July 13, 1989, which describes the replacement of the release cable assemblies to ensure proposed operation of the oxygen generator. The replacement assembly incorporates the new correctly drilled pins.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the oxygen generator release cable assemblies in accordance with the service bulletin previously described.

There are approximately 264 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement parts are available at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $213,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, listed in Boeing Alert Service Bulletin 767–35A0015, certificated in any category. Compliance required within 360 days after the effective date of this AD, unless previously accomplished.

To ensure proper operation of the oxygen generator, accomplish the following:

A. Replace the oxygen generator release cable assemblies in accordance with Boeing Alert Service Bulletin 767–35A0015, dated July 13, 1989.

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B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23274 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-115-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that would have required modification or replacement of the autopilot mode control panel (MCP). That proposal was prompted by reports of uncommanded altitude changes in the MCP. This proposal would delete the proposed requirement to modify or replace the MCP, and as an interim, would require a revision to the FAA-approved Airplane Flight Manual to include new procedures related to the use of the autopilot. Failure to detect altitude changes in the MCP could result in the airplane flying at an unassigned altitude.

DATES: Comments must be received no later than November 3, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-115-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124; and Honeywell Incorporated, Sperry Commercial Flight Systems Group, P.O. Box 21111, Phoenix, Arizona 85036, ATTN: Customer Services, Air Transport Systems Division. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Alvin R. Habbestad, Systems & Equipment Branch, ANM-130S; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-NM-115-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification or replacement of the autopilot mode control panel (MCP) on Boeing Model 737-300 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 20, 1988 (53 FR 36467). That action was prompted by reports of undetected airplane altitude changes caused by uncommanded changes in the altitude select window of the autopilot MCP. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

Since issuance of the NPRM, Boeing has advised the FAA of several reports received from operators of the altitude window of the MCP continuing to make nonselected changes. These occurred on airplanes on which the proposed modifications to the MCP had already been incorporated.

The FAA has considered this information and has determined that since the proposed corrective action is apparently ineffective in correcting the unsafe condition addressed, the proposal must be amended to delete the requirement to modify or replace the MCP. Accordingly, this supplemental NPRM proposes to require incorporation of certain MCP operating limitations into the Airplane Flight Manual. This is considered interim action. When the manufacturers have developed a modification that will correct the problem, the FAA may consider further rulemaking on this subject. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate opportunity for public comment.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising the Notice of Proposed Rulemaking, Docket No. 88-NM-115-AD, published in the **Federal Register** on September 20, 1988 (53 FR 36467), as follows:

Boeing: Applies to Model 737-300 series airplanes, equipped with Sperry Model SP300 autopilot flight control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin 737-22A1092, dated June 30, 1988, certificated in any category. Compliance required within 15 days after the effective date of this AD unless previously accomplished.

To reduce the potential for nonselected changes in the autopilot mode control panel being undetected, accomplish the following:

A. Incorporate the following procedures into the Airplane Flight Manual (AFM), Limitations Section. This may be accomplished by inserting a copy of this AD in the AFM.

Autopilot Limitations

For airplanes with SP300 autopilot mode control panels (MCP), flightcrews must use the following procedures:

1. Check MCP settings after any electrical power interruptions.

2. Following change in ALT selection in the MCP window, check ALT display to ensure desired altitude is displayed.

3. Closely monitor altitude during all altitude changes to ensure that the autopilot captures and levels off at the desired altitude.

4. Note: Standard "callouts", crew coordination and cross-checking of MCP settings and flight instruments are necessary to detect any nonselected MCP display changes.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Operations Inspector (POI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificaton Service.

[FR Doc. 89-23280 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-169-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to British Aerospace Model BAe 146-100A, -200A and -300A series airplanes, which would have required inspection and modification of certain aileron disconnect units (ADU's). This proposal would require inspection of additional ADU's and clarify part numbers of certain ADU's that need to be modified.

DATES: Comments must be received no later than November 3, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-NM-169-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations, which would have required inspection and modification of certain aileron disconnect units (ADU) on British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 25, 1989 (54 FR 22802). That NPRM was prompted by reports of the ADU failing to cock and/or release when tested. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur. The comment period closed July 14, 1989.

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The single commenter to the proposal supported the rule, but noted that British Aerospace Modification Service Bulletin 27-87, dated September 30, 1988, covers three models of ADU's: Normalair Garrett LTD (NGL) Part Numbers 1099R000 and 1244R000, and Fraser Nash Part Number A0-100-902. The commenter also noted that the Fraser Nash model should be included in paragraph A.3., since inspection of this part is necessary, in accordance with the British Aerospace service bulletin. Upon further review of the service bulletins and additional information provided by the manufacturer, the FAA concurs. Accordingly, the NPRM has been revised to clarify the part number of ADU's to be modified, and identify Fraser Nash and NGL part numbers of ADU's to be inspected. Since this additional requirement would expand the scope of the previously proposed rule, the FAA has determined that it is necessary to provide additional time for public comment.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 58 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the modifications is $100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket 88-NM-169-AD, FR Doc. 89-12501, published in the **Federal Register** on May 25, 1989 (54 FR 22602), as follows:

British Aerospace: Applies to British Aerospace (BAe) Model 146-100A, -200A and -300A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of roll control should a jam in the aileron control system occur, accomplish the following:

A. Within 60 days after the effective date of this AD:

1. Determine if Fraser Nash Part Number AO-100-902 aileron disconnect units (ADU's) or Normalair-Garrett, Ltd., (NGL) Part Number 1099R000, 1224R000, or 1295R000 ADU's are installed. If NGL Part Number 1295R000 ADU's modified to British Aerospace (BAe) Modification HCM70212C (NGL Modification No. 5RM) configuration are installed, no further action is required.

2. Modify NGL Part Number 1295R000 ADU's to BAe modification HCM70212C (NGL modification 5RM) configuration, in accordance with BAe Modification Service Bulletin 27-88-70212C, dated November 10, 1988.

3. Inspect Fraser Nash Part Number AO-100-902 and NGL Part Numbers 1099R000 and 1224R000 ADU's for dormant failure, in accordance with British Aerospace Inspection Service Bulletin 27-87, dated September 30, 1988. Replace any failed units with serviceable units prior to further flight.

B. For all airplanes equipped with NGL Part Numbers 1099R000 and 1224R000 ADU's that have not been previously modified to BAe HCM 70212A&B (NGL Modification 3RM and 4RM) configuration:

1. Within one year after the effective date of this AD, modify NGL Part Numbers 1099R000 and 1224R000 ADU's to BAe HCM70212A&B (NGL Modifiction 3RM and 4RM) and BAe HCM70212C(NGL Modification 5RM) configuration, in accordance with BAe Modification Service Bulletin 27-75-70212A&B, dated June 16, 1988, and 27-88-70212C, dated November 10, 1988.

Note: British Aerospace Modification Service Bulletin 27-75-70212A&B refers to NGL Service Bulletins 1099R-27-4 and 1224R-27-5. British Aerospace Modification Service Bulletin 27-88-70212C refers to NGL Service Bulletin 1295R-27-6, Revision 1, and NGL Service News Letter, dated September 12, 1988, for specific installation procedures.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23279 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-170-AD]

Airworthiness Directives: Lockheed L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to L-1011 series airplanes, which would require inspection and replacement of the flap vane carriage fitting. This proposal is prompted by reports of flap vane separations. This condition, if not corrected, could result in danger to persons and property on the ground.

DATES: Comments must be received no later than November 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-170-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P. O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5225.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-170-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recently, an operator of a Model L-1011 series airplane experienced separation of the No. 3 flap vane from the airplane on approach for landing. Inspection of the parts revealed signs of an existing fatigue crack in the base of the lower lug of the flap vane outboard carriage link assembly (P/N 1562426-101/-105). Study of previous vane link failures has determined the cause to be inadequate clearance between the spoilers and flap vane causing pressure against the vane during flight cruise mode due to wing deflections. There had been 24 other occurrences. This condition, if not corrected, could result in separation of the flap vane from the airplane, which could endanger endanger persons and property on the ground.

The FAA has reviewed and approved Lockheed Service Bulletin 093-57-209, dated August 10, 1989, which describes procedures for inspection of the No. 3 flap vane outboard link for cracks, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require periodic inspections of the P/N 1562426-101/-105 aluminum link assembly using eddy-current procedures, and if cracks are found, replacement of the aluminum link with a new aluminum link or a P/N 1562426-109 titanium link. Additionally, if the vane installation is not rigged with clearance equal to or greater than the minimum clearance specified in Lockheed Service Bulletin 093-57-209, removal of the outboard spoiler rub strips to increase the vane-to-spoiler clearance would be required.

Finally, this proposal would require operators to eventually replace all aluminum fittings with titanium fittings; this would constitute terminating action for the proposed inspections.

There are approximately 240 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 130 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20.0 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of the fittings replacement kit would be $2,000 each (2 kits per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $624,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Administration as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Applies to Model L-1011 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of No. 3 flap vane outboard carriage link assembly, accomplish the following:

A. Prior to the accumulation of 6,000 landings or 15,000 flight hours, whichever occurs first, or within 30 days after the effective date of this AD, whichever occurs later, conduct the following in accordance with Section 2, "Accomplishment Instructions," of Lockheed Service Bulletin 093-57-209, dated August 10, 1989:

1. Inspect the left and right No. 3 flap vane outboard carriage link assembly for cracks, using the eddy-current procedure as described in the Service Bulletin.

2. If no cracks are found, conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 1,000 landings.

3. If a crack is found, replace the link assembly with a new link assembly P/N

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1562426-101/-105 or with a titanium No. 3 flap vane outboard carriage link assembly, P/N 1562426-109.

4. If not previously accomplished, remove existing rub strips on lower surface of spoilers No. 3 through No. 6 in accordance with the procedure described in the Service Bulletin. Then conduct an outboard flap vane-to-flap contact check, rigging check, and adjustment in accordance with L-1011 Maintenance Manual, Section 27-51-00. Check the vane-to-spoiler clearance to ensure that a minimum clearance of 0.20 inch is maintained.

5. If rub strips were previously removed, check the vane-to-spoiler clearance as described in the L-1011 Maintenance Manual, Section 27-51-00.

B. Installation of the titanium link assembly, P/N 1562426-109, constitutes terminating action for the repetitive inspections required by Paragraph A.2., above.

C. Within 2½ years after the effective date of this AD, replace all aluminum fittings with titanium fittings.

D. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request with adequate justification should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1790 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23277 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-214-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10 Series Airplanes Equipped With Lavatories H and J

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, which would have required modification of the electrical terminal caps on overhead light assembles installed in those lavatories to seal the terminals. This proposal was prompted by reports of an electrical short in the light assembly terminal cap. This condition, if not corrected, could result in an in-flight fire in the overhead of a lavatory if an electrical short occurs and the insulation blanket above the light assembly is loose. This action revises the proposed rule by revising the service information for modification of the light assemblies, and by requiring an inspection of the insulation blankets in the area of the H and J lavatories.

DATES: Comments must be received no later than November 3, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-214-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on the which the following statement is made: "Comments to Docket Number 88-NM-214-AD." This post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, which would have required modification of the electrical terminal caps on the overhead light assemblies installed in those lavatories to seal the terminals, was published in the **Federal Register** on February 21, 1989 (54 FR 7445). That proposal was prompted by reports of evidence of electrical arcing in overhead fluorescent light assembly terminals on light assemblies installed in H and J lavatories and flames observed coming from the insulation blanket above the light assemblies. This condition, if not corrected, could result in an in-flight fire in the overhead of a lavatory.

Since issuance of that proposal, a Model DC-10 airplane experienced a fire in Lavatory J while parked at the gate for cleaning and servicing. During tests of insulation blankets from the H and J lavatories on that airplane, a flammable lubricant, used to lubricate the passenger door drive chain, was found on some of the insulation blanket covers. McDonnell Douglas issued All Operator TWX DC-10-COM-35/EHH, dated June 15, 1989, to advise Model DC-10 operators of the lubricant found on the blankets and to recommend they check the blankets at the next practical maintenance period.

It was determined during the investigation that the procedures specified in McDonnell Douglas Service Bulletin 25-350, dated May 5, 1989, which describe sealing the electrical terminal caps on overhead light assemblies installed in lavatories H and J, may not be completely effective in preventing arcing at the electrical terminals. A new modification to the fluorescent light assemblies has been designed which will preclude the electrical terminals from becoming a fire ignition source. The FAA has reviewed and approved McDonnell Douglas Service Bulletin 25-357, dated September 5, 1989, which describes a newly-developed modification to the H and J overhead fluorescent light assemblies which locates the electrical terminals internally to the light assembly.

The FAA has determined that this NPRM must be revised to require installation of the newly-developed, more effective modification of the fluorescent light assemblies described in McDonnell Douglas Service Bulletin 25-357. In addition, this proposal would require an inspection of the insulation blankets by the H and J lavatories for the presence of lubricant from the passenger door drive chain, and replacement, if necessary.

There are approximately 428 McDonnell Douglas Model DC-10 series airplanes in the worldwide fleet. It is estimated that 58 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5.4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost for parts is estimated to be $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,728.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes equipped with lavatories H and J, as listed in McDonnell Douglas Service Bulletin 25-357, dated September 5, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire resulting from an electrical short in the H and J lavatory overhead light assembly terminal caps, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the overhead light assemblies in lavatories H and J, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 25-357, dated September 5, 1989.

B. Within 60 days after the effective date of this AD, inspect the insulation blankets and foam insulating material in the areas above lavatories H and J and in the areas outboard of lavatories H and J. Prior to further flight, replace any insulation blankets and/or foam insulating material which has been contaminated by passenger door drive chain lubricant.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager of the office indicated above.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90846-2425.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23278 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 772, 773, 774, 786, and 799

[Docket No. 90645-9145]

RIN 0694-AA12

General License G-TEMP; Temporary Exports

AGENCY: Bureau of Export Administration Commerce.

ACTION: Proposed rule, with request for comments.

SUMMARY: General License GTE authorizes temporary exports for certain purposes such as exhibition, demonstration, inspection and testing, and requires prompt return to the country of export. This proposed rule would redesignate that license as General License G-TEMP and amend it by removing the registration requirement and by establishing guidelines for the use of the general license. One effect of removing the registration requirement would be that parties abroad who were not eligible to register under the former General License GTE would be able to use G-TEMP as authorization for a permissive reexport in accordance with the appropriate provisions of the regulations. This proposed rule would permit news media personnel to take their equipment to all destinations and permit shipments of kits consisting of parts that would be eligible for export as one-for-one replacement parts under General License GLR.

DATE: Comments should be received by November 17, 1989.

ADDRESSES: Written comment (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of

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Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections were approved by the Office of Management and Budget (OMB) under Control Numbers 0694–0010 and 0694–0029.

Public reporting for these collections of information is estimated to average 25 minutes per response for 0649–0010 and 15 minutes per response for 0694–0029. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing these burdens, to Office of Security and Management, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC, 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0010 and 0694–0029), Washington, DC 20503.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app 2412(a)), exempts this rule from all requirements of section 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Because this rule is being issued in proposed form, this rule complies with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Invitation to Comment

Because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 17, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Parts 771, 772, 773, 774, 786, and 799

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PARTS 771, 772, 773, 786 and 799—[AMENDED]

1. The authority citation for 15 CFR parts 771, 772, 773, 786 and 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of Dec. 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985) and Pub. L. 100–418 of Aug. 23, 1988; Pub. L. 95–223 of Dec. 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of Sept. 9, 1985 (50 FR 36861, Sept. 10, 1985) as affected by notice of Sept. 4, 1986 (51 FR 31925, Sept. 8, 1986); Pub. L. 99–440 of Oct. 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of Oct. 27, 1986 (51 FR 39505, Oct. 29, 1986).

PART 774—[AMENDED]

2. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985 and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 771.1 [Amended]

3. In § 771.1, the second sentence is revised to read: "No written authorization is required for using a general license and no document is issued by Commerce as a precondition to use a general license."

§ 771.22 [Amended]

4. § 771.22 is revised to read as follows:

§ 771.22 General License G–TEMP; temporary exports

(a) *Scope.* A general license designated G–TEMP is established authorizing export of commodities for temporary use abroad (including use in international waters) subject to the conditions and exceptions set forth below. Commodities shipped under this general license must be returned to the country from which exported as soon as practicable but, except in circumstances described below, no later than one year from the date of export. This requirement does not apply if the commodities are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the Export Administration Regulations or in writing by the Office of Export Licensing.

(b) *Eligible commodities.* The following commodities are eligible to be shipped under General License G–TEMP:

(1) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped unaccompanied within one month before or after the individual's departure from the United States. Notwithstanding the restriction in § 771.22(c), personal computers that do not exceed the limits of Advisory Note 9 to 1565A on the Commodity Control List (Supplement No. 1 to § 799.1) may be taken as tools of trade to Country Group Q, W, Y and the People's Republic of China.

(2) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported under this provision, provided that:

(i) Such parts would qualify for shipment under General License GLR if exported as one-for-one replacements;

(ii) Such kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of General License GLR and the defective parts returned.

(3) *Exhibition and demonstration Country Groups T and V.* Commodities and software for exhibition or demonstration in Country Groups T or V (excluding the People's Republic of China) may be exported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities and software shall not be exhibited or demonstrated at any one site more than 30 days after installation and debugging, unless authorized by the Office of Export Licensing. However, prior to or after an exhibition or demonstration, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over disposition of commodities and software, pending movement to another site, return to the U.S., or approval for other disposition. The export documentation for this type of transaction shall show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(4) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(5) *Containers.* Containers for which another general license is not available and that are necessary for export of commodities. However, General License G–TEMP does not authorize the export of the container's contents, which must be separately authorized for export under either a general or validated license.

(6) *Broadcast material.* (i) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(ii) Blank video tape (raw stock) for use in recording program material abroad.

(7) *Assembly in Mexico.* Commodities to be exported to Mexico and returned under HTSUS Nos. 9802.00.60 and 9802.00.80 after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States. (See § 771.22(c)(3).)

(8) *News media.* (i) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) that accompany "accredited" news media personnel, i.e., persons with credentials from a news gathering or reporting business to Country Groups Q, S, W, Y, or Z, or the People's Republic of China if the commodities:

(A) Are retained under ownership of the exporting news gathering firm;

(B) Remain in the physical possession of the news media personnel; and

(C) Are removed with the news media personnel at the end of the trip.

(ii) Exports under this provision that originate from the U.S. shall be registered with the U.S. Customs Service at the time of both exit and reentry.

(iii) Commodities necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported under and in accordance with paragraph (b)(1), *tools of trade*, of this section if owned by the exporter/company or shall be exported under and in accordance with § 771.6, General License Baggage if they are personal property of the individual news media personnel.

(c) *Special restrictions*—(1) *Destinations.* (i) No commodity or software may be exported under this general license to Country Group S or Z except as permitted by paragraph (b)(8), *news media*, of this section;

(ii) No commodity or software identified by the code letter "A", "B", or "M" following the Export Control Commodity Number on the Commodity Control List may be exported under this general license to Country Group Q, W, or Y except:

(A) Commodities and software exported under paragraph (b)(8), *news media*, of this section; and

(B) Note 9 personal computers and necessary software exported under paragraph (b)(1), *tools of trade*, of this section.

(iii) No commodity or software identified by the code letter "A" or "M" following the Export Control Number on the Commodity Control List may be exported under this general license to the People's Republic of China except:

(A) Commodities and software exported under paragraph (b)(8), *news media*, of this section; and

(B) Note 9 personal computers and necessary software exported under paragraph (b)(1), *tools of trade*, of this section.

(iv) These destination restrictions apply to any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Groups Q, S, W, Y and Z, and the People's Republic of China, or any national thereof.

(2) *Commodities.* (i) The following commodities may not be exported to any destination under this general license:

(A) Supercomputers;

(B) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 either directly or indirectly in any sensitive nuclear activity as described in § 778.3.

(C) Electronic, mechanical, or other devices, as described in § 776.13(a), primarily useful for surreptitious interception of wire or oral communications; and

(D) Commodities listed in supplement No. 1 to part 773, except that commodities identified in the footnotes thereto as available for shipment to certain countries under the Distribution License procedure may be shipped to

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those same countries under General License G–TEMP.

(ii) When warranted, additional eligibility for General License G–TEMP of commodities listed in supplement No. 1 to part 773 will be considered. To request an exception, submit a letter to:

Office of Export Licensing, Room 1099D, P.O. Box 273, Washington, DC 20044.

describing fully the commodity or software to be exported, its proposed use and disposition, and the reasons eligibility is warranted. The Office of Export Licensing will notify the exporter of its decision on the request for eligibility.

(3) *Use or disposition.* No commodity or software may be exported under this general license if an order to acquire the commodity has been received before shipment or if the exporter has prior knowledge that the commodity will stay abroad beyond the terms of General License G–TEMP.

(d) *Return or disposal of commodities.* All commodities and software exported under this General License G–TEMP shall, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were exported under G–TEMP, or shall be disposed of or retained by one of the following ways:

(1) *Authorization under Form BXA–699P.* If the U.S. exporter wishes to sell or otherwise dispose of the commodities or software abroad or extend the retention of the commodities or software abroad, except as permitted by this general license, he shall request authorization therefore by submitting Form BXA–699P, Request to Dispose of Commodities or Technical Data Previously Exported, to the Office of Export Licensing at the address listed in § 771.2(h). (See § 774.3 for more information on reexport authorizations.) Such request shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination. The request shall also be accompanied by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination. The Office of Export Licensing will advise the exporter of its decision.

(2) *Use of validated license.* An outstanding validated export license may also be used to dispose of commodities or software covered by General License G–TEMP provided that the outstanding license authorizes direct shipment from the United states of the same commodity or software to the same new ultimate consignee in the new country of destination.

(3) *Use of a Permissive Reexport,* as defined in § 774.2.

(4) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity(ies) and software abroad beyond the 12 months authorized in § 771.22(b), he shall request such authorization by submitting Form BXA–699P, Request to Dispose of Commodities or Technical Data Previously Exported, 90 days prior to the expiration of the 12 month period. The request shall be sent to the Office of Export Licensing at the address listed in § 771.22(c)(2) and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If the Office of Export Licensing approves the extension request, the exporter will receive authorization for a one-time extension not exceeding six months. The Office of Export Licensing normally will not allow an extension for commodities and software that have been abroad more than 12 months, nor will a second six month extension be authorized.

(e) *Records.* In accordance with the provisions of § 787.13, the exporter shall retain for two years and make available for inspection, upon demand, by the Office of Export Enforcement all records of each export under this general license as well as the Customs Entry Number or any other evidence of the disposition of the commodities exported.

(Approved by the Office of Management and Budget under Control Numbers 0694–0010 and 0694–0029)

§ 772.8 [Amended]

5. In section 772.8(c)(1), the reference "General License GTE" is revised to read "General License G–TEMP" both places it appears.

§ 773.3 [Amended]

6. In section 773.3(j)(5), the parenthetical portion after the first sentence is deleted.

§ 774.2 [Amended]

7. Section 774.2 is amended by redesignating footnotes 4 and 5 as footnotes 5 and 6; and by revising paragraph (a)(1), as follows:

§ 774.2 Permissive reexports.

* * * * *

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License G–DEST, G–TEMP[4], G–COM, GFW, G–CEU, GCG, G–NNR, G–FTZ, GUS or BAGGAGE.

* * * * *

[4] Commodities legally exported from the United States may be reexported to a new country(ies) of destination under General License G–TEMP provided the restrictions described in § 771.22 are met and the commodities and software are returned to the country from which the reexport occurred.

* * * * *

§ 786.6 [Amended]

8. In § 786.6(a)(1)(ii) and (a)(2), the reference to "GTE" is revised to read "G–TEMP".

§ 799.2 [Amended]

9. In Supplement 1 to § 799.2, Interpretation 21, the reference to "GTE" is revised to read "G–TEMP" each place it appears.

Dated: September 25, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–23047 Filed 10–2–89; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AD60

Basic Eligibility Determinations; Education

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending the regulation which provides authority and guidelines for making a service-connected discharge determination needed to determine eligibility for educational assistance under the Vietnam Era GI Bill and the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). The amended regulation adds a second rule for determining eligibility for VEAP, rules for deciding when such a determination must be made for a veteran who has applied for benefits under the Montgomery GI Bill—Active Duty, and a rule for deciding when a determination of service connection for a disability must be made for a reservist who otherwise would be eligible for benefits under the Montgomery GI Bill—Selected Reserve.

DATES: Comments must be received on or before November 2, 1989. Comments will be available for public inspection until November 13, 1989.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 13, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 46635 and 46636 of the **Federal Register** (54 FR 46635) of November 18, 1988, VA published a notice of intent to amend part 3 in order to show when a service-connected discharge determination is needed in determining eligibility for educational assistance under the Montgomery GI Bill—Active Duty. Interested people were given 31 days to submit comments, objections or suggestions. VA received no comments, objections or suggestions.

On the same day as this proposal appeared in the **Federal Register**, the Veterans' Benefits and Programs Improvement Act of 1988 was enacted. That Act contains some provisions which affect the eligibility requirements for the Montgomery GI Bill—Active Duty. Some changes to the proposed text of § 3.315(c) are necessary in order to avoid a conflict between the regulations and the law. Rather than make these changes final, VA is seeking further comment. Moreover, after reviewing this proposal, VA has decided to generalize the paragraph to include when decisions concerning service connection must be made for those otherwise eligible to receive benefits under the Montgomery GI Bill—Selected Reserve.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.124)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR Part 3, Adjudication, § 3.315 is proposed to be amended by revising paragraph (c) to read as follows:

§ 3.315 Basic eligibility determinations-dependents, loans, education.

* * * * *

(c) *Veterans' educational assistance.* (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 34 and is eligible for such benefits except for the 181 days active duty requirement;

(ii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service required of 38 U.S.C. 3103A to not apply to him or her, and the veteran is eligible for such benefits except for the 181 days active duty requirement;

(iii) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 3103A apply to him or her, and the veteran would be eligible for such benefits only if—

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 11; or

(iv) The veteran applies for benefits under 38 U.S.C. chapter 30 and—

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.

(2) A determination is required as to whether a veteran was discharged or released from service in the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and—

(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected disability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or

(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in § 21.7138(a) or § 21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.

(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when—

(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. chapter 106, and

(ii) He or she applies for an extension of his or her eligibility period.

(4) The determinations required by paragraphs (c)(1) through (3) of this section are subject to the presumptions of incurrence under § 3.304(b) and aggravation under § 3.306 (a) and (c) of this part, based on service rendered after January 31, 1955, and before

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August 5, 1964, or after May 7, 1975, and § 3.306(b) based on service rendered during the Vietnam era.

(Authority: 38 U.S.C. 1411(a)(1)(A)(ii), 1412(b)(1), 1602(1)(A), 1652(a), 10 U.S.C. 2133(b))

[FR Doc. 89-23246 Filed 10-2-89; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 3

RIN 2900-AD71

Definition of Former Prisoner of War

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulation defining former prisoner of war (POW) and is establishing criteria for deciding such status. The Veterans' Benefits and Services Act of 1988 provides the basis for redefinition. The effect of the change will be to permit VA to decide POW status for an extended class of veterans.

DATES: Comments must be received on or before November 2, 1989. This change is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until November 13, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Bill Leonard, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 46834-35 of the **Federal Register** of November 18, 1988, VA published a proposed rule on the definition of "former prisoner of war". Interested persons were given until December 19, 1988, to submit comments on the proposed rule. Four comments were received.

Comments received included those of the Chairman and Ranking Minority Member of the Senate Veterans Affairs Committee and the Chairman of the House Veterans' Affairs Committee. These three commenters all stated that the regulation as proposed did not implement the Congressional intent of The Veterans' Benefits and Services Act of 1988, Public Law 100-322. They pointed out that the law intended to convey former POW status to those service persons who were detained or interned by neutral nations without regard to the reason for detainment or internment. It was stated that Congress intended the controlling factor to be the circumstances under which individuals or groups of individuals were detained or interned as compared to circumstances experienced by persons forcibly detained by enemy governments during periods of war.

The current regulation, 38 CFR 3.1(y)(2)(ii), does not provide for consideration of the treatment of a serviceperson during detainment or internment for determinations of POW status during a period other than a period of war. This rule was promulgated in 1982 based on the authority of section 2, Public Law 97-37, which gave VA authority to determine if an incident of detainment or internment during a period other than a period of war was comparable to that which occurred during a period of war. VA considered whether the reasons for the capture as well as the deprivations endured by the captured serviceperson should be included as factors for determining whether or not the detainment or internment occurred under comparable circumstances. It was determined that, due to possible unavailability of information regarding treatment of the captured individuals, the reason for the detainment or internment would be the determinative factor as to a service person being considered a former POW during a period other than a period of war. This factor was carried forward into the rule proposed during 1988.

Based on the comments received in response to the publication of the proposed rule defining a former POW, VA recognizes the need for change in the determinative factor for decisions concerning POW status. We are proposing to make the determinative factor, in decisions which are not based on acceptable service department findings, to be the circumstances of detention or internment rather than the reason for same.

We are proposing to amend 38 CFR 3.1(y) to more closely follow the wording found in 38 U.S.C. 101(32)(B), requiring that decisions to recognize a serviceperson as a former POW will require a finding that he or she was forcibly detained or interned under circumstances comparable to those experienced by a POW of an enemy government during a period of war. Examples of such circumstances are provided.

In an effort to minimize the burden of proof placed on VA claimants to show circumstances endured as a detainee or internee, we are proposing an amendment to recognize that each member of a group was individually treated in the same manner as the entire group was treated generally unless evidence is presented to show otherwise. Through claims experience, this provision will allow eventual recognition of certain groups as meeting or not meeting the criteria for recognition of its members as former POWs. Individual members of a group which is not shown to meet the criteria could establish entitlement through submission of evidence showing individual circumstances comparable to enemy government detainees or internees during wartime.

A fourth commenter suggested that the regulation provide a list of the countries and periods which would constitute eligibility for recognition of former POW status. The commenter felt that such a list would speed the determination process by reducing the number of reviews required by VA Central Office.

We cannot accommodate the commenter at this time because the VA lacks sufficient data for such determinations. With the VA Central Office approval requirement contained in the regulation, we hope to be able to identify groups and periods to allow such determinations in the future.

As this constitutes a major change from the initial proposed definition, we are again publishing a proposed rule.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 8, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

In 38 CFR Part 3, Adjudication, § 3.1 is proposed to be amended by revising paragraph (y) to read as follows:

§ 3.1 Definitions.

* * * * *

(y) *"Former prisoner of war."* The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings.* The Department of Veterans Affairs shall accept the finding of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Other decisions.* In all other situations, including those in which the Department of Veterans Affairs cannot accept the service department finding, the following factors shall be used to determine prisoner of war status:

(i) *Circumstances of detention or internment.* To be considered a former prisoner of war, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detailed or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. Each individual member of a particular group of detainees or internees shall, in the absence of evidence to the contrary, be considered to have experienced the same circumstances as those experienced by the group.

(ii) *Reason for detainment or internment.* The reason for which a serviceperson was detailed or interned is immaterial in determining POW status, except that a serviceperson who is detailed or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW on the basis of that period of detention or internment, unless the charges are a sham intended to legitimize the period of detention or internment.

(3) The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations establishing or denying POW status, with the exception of those service department determinations accepted under paragraph (y)(1) of this section.

(4) *In line of duty.* The Department of Veterans Affairs shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was the proximate result of the serviceperson's own willful misconduct. Willful misconduct means an act involving conscious wrongdoing or known prohibited action. It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(5) *Hostile force.* The term "hostile force" means any entity other than an enemy or foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives or views, or to attempt to embarrass the United States.

(Authority: 38 U.S.C. 101(32))

* * * * * *

[FR Doc. 89-23249 Filed 10-2-89; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AC91

Extension of Time Limits for Claims

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rules to provide increased protection of a veteran's rights to secure benefits and services under the vocational rehabilitation program. These proposed regulatory changes will help assure that the veteran is not adversely affected if VA fails to take actions required by VA procedures for informing veterans of the time limits during which information in support of claims must be provided.

DATES: Comments must be received on or before November 2, 1989. Comments will be available for public inspection until November 13, 1989. We propose to make these amendments effective 30 days after publication of the final regulations.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202)-233-2886.

SUPPLEMENTARY INFORMATION: Under current policy contained in § 21.32, the failure of VA to furnish notice of a time limit for the submission of evidence by the veteran in support of a claim does not extend the period allowed for these actions. Under the proposed changes, the period allowed for filing information in support of a claim will be extended if VA fails to inform the veteran of these time limits.

VA has initiated a review of the rules governing the vocational rehabilitation program to identify any existing rules which may not satisfy current standards for procedural due process. The amendments which we are proposing are the results of this review.

These proposed regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. These proposed regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs has certified that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulatory amendments, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

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This certification can be made because the proposed regulatory amendments only affect the eligibility of certain veterans with service-connected disabilities for benefits and assistance under the vocational rehabilitation program. The proposed regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affeted by these proposed regulatory amendments is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.32, paragraph (b) and the cross-references at the end of the section are revised and paragraph (c) is added to read as follows:

§ 21.32 Time limit.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* The failure of VA to furnish a claimant:

(1) Any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim is not a basis for adjusting the periods allowed for these actions;

(2) Appropriate notice of time limits within which evidence must be submitted to perfect a claim shall result in an adjustment of the period during which the time limit runs. The period during which the time limit runs shall be determined in accordance with paragraph (c) of this section. As to appeals see § 19.129 of this chapter.

(Authority: (38 U.S.C. 3013)

(c) *Adjustment of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary to perfect the types of claims described in paragraph (a) of this section, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(2) The period during which the veteran must provide information necessary to perfect his or her claim does not begin to run until the veteran has been notified of this requirement for submission of information. The date of the letter of notification informing the veteran of the action required and the time limit for accomplishing the action shall be "The first day of the specified period" referred to in paragraph (c)(1) of this section.

(Authority: U.S.C. 3001, 3013, 201(c))

Cross-Reference: Due Process. See § 3.103.

2. In § 21.322, paragraph (c)(1)(i)(B), (ii)(B), (iii), (2)(i)(B) and (C) are revised to read as follows:

§ 21.322 commencing dates of subsistence allowance.

* * * * *

(c) *Increases for dependents—*

(1) * * *

(i) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part;

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) * * *

(i) * * *

(B) Date notice is received of the dependent's existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(C) Date VA receives evidence of the dependent's existence if this date is more than 1 year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

* * * * *

[FR Doc. 89-23247 Filed 10-2-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AD77

Disabling Effects of Chronic Alcoholism

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulation.

SUMMARY: The Veterans' Benefits and Improvement Act of 1988 provides that the disabling effects of chronic alcoholism shall not be considered to be the result of the veteran's willful misconduct for the purpose of extending a delimiting date under any education benefit or rehabilitation program administered by the Department of Veterans Affairs (VA). The intended effect of this proposed rule is to implement this provision of the statute with respect to the vocational rehabilitation program.

DATES: Comments must be received on or before November 2, 1989. Comments will be available for public inspection until November 13, 1989. The proposed effective date of the proposed regulation, like the effective date of the law which it interprets, is November 18, 1988.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-6496.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits and Improvement Act of 1988, Public Law 100-689, provides that the disabling effects of chronic alcoholism shall not be considered the result of the veteran's willful misconduct for the purpose of extending a delimiting date under any educational assistance or rehabilitation program administered by VA. In order to include this provision of section 109, Public Law 100-689, in rules governing the vocational rehabilitation program an amendment is made to § 21.42(c). Under § 21.42(c) the basic 12-year period of eligiblity does not run during any period of 30 days or more during which the veteran was unable to participate in a vocational rehabilitation program because of his or her medical condition. Section 21.42(c) is amended to specifically include chronic alcoholism as a condition for which the basic 12-year eligibility period for vocational rehabilitation may be adjusted. The proposed regulation also defines what VA considers as the disabling effects of chronic alcoholism for the purpose of adjusting the basic 12-year period of eligibility. This proposed regulation will have no effect on provisions of the regulations relating to the compensation and pension program.

VA has determined that this proposed regulation does not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

It is proposed to make this amendment retroactively effective. This is an intepretative rule which implements statutory provisions. Moreover, VA finds good cause exists for making this rule, like the section of the law which it implements, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that this proposed regulation only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by this regulation.

(The Catalog of Federal Domestic Assistance number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 8, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising paragraph (c) of § 21.42 to read as follows:

§ 21.42 Basic period of eligibility deferred.

* * * * *

(c) *Medical condition prevents initiation or continuation.* (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(5) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35 of this part.

(2) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of "chronic alcoholism."

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 1503(b)(1), Pub. L. 100-689)

[FR Doc. 89-23248 Filed 10-2-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3654-5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On August 14, 1989 (54 FR 33245), EPA proposed approval of a revision submitted by the Commonwealth of Massachusetts for the Acushnet Company, Plant A. On September 12, 1989, Acushnet Company requested an extension of the public comment period. EPA has evaluated this request and is hereby granting a thirty (30) day extension of the public comment period.

DATES: Comments should be received on or before October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene; (617) 565-3244; FTS 835-3244.

Authority: 42 U.S.C. 7401-7642.

Dated: September 20, 1989.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89-23299 Filed 10-2-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89-01; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Proposed Exemptions and Alternative Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision to grant exemptions from average fuel economy

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standards and to establish alternative standards.

SUMMARY: This consolidated notice responds to individual petitions filed by three low volume manufacturers, Lamborghini, LondonCoach, and Maserati, each requesting exemption from the generally applicable passenger automobile average fuel economy standards, and seeking establishment of lower alternative standards for each model year (MY) from which they seek exemption. This notice proposes to grant exemptions and establish alternative standards as follows:

Lamborghini of North America (Lamborghini) petitioned to be exempted for MYs 1983 and 1984. This notice proposes to exempt Lamborghini and establish an alternative standard of 13.7 mpg for MYs 1983 and 1984.

London Coach Co., Inc. (LondonCoach) petitioned to be exempted for MYs 1985 through 1987. This notice proposes to exempt LondonCoach and to establish an alternative standard of 21.0 mpg for MYs 1985 through 1987.

Officine Alfieri Maserati S.p.A. (Maserati) petitioned to be exempted for MYs 1982–1985. In a separate notice published today, the agency denies Maserati's request for MYs 1982 through 1983 because the Maserati petition was not timely filed for those years and good cause was not shown for the late filing. This notice proposes to exempt Maserati for MYs 1984 and 1985, and to establish alternative standards of 17.3 mpg for MY 1984 and 16.6 mpg for MY 1985.

DATES: Comments on the proposals in this notice must be received by NHTSA on or before November 17, 1989.

ADDRESS: Comments on this notice must refer to Docket No. LVM 89–01; Notice 2 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), which is codified at 15 U.S.C. 2001–2002, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Title V was added in 1975 to the Cost Savings Act by the Energy Policy and Conservation Act (EPCA). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Section 502 specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg for MYs 1978, 1979, and 1980, respectively, and 27.5 mpg for model year 1985 and thereafter. The Secretary of Transportation was required to establish standards for MYs 1981 through 1984 by July 1, 1977. Section 502(a)(3) requires that the standards for each of those model years be set at a level which (1) is the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the standard for MY 1985. On June 30, 1977, NHTSA adopted CAFE standards for passenger automobiles for MYs 1981 through 1984 (42 FR 33534). These standards were 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984.

Title V provides that NHTSA has broad discretion to decide whether to amend the standards. If NHTSA decides to amend the standards for MY 1985 and thereafter, however, the agency is required to comply with the Administrative Procedure Act (APA) (5 U.S.C 501 *et seq.*) and to set the amended standards at the "maximum feasible" level of average fuel economy. Pursuant to that authority, the agency reduced the MY 1986–88 standards to 26 mpg.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

Selection of the Type of Alternative Standard

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

If exemptions are granted to the petitioners for the model years covered by their petitions, NHTSA believes it is appropriate to establish separate standards for each manufacturer because the agency has already used that approach for other low volume manufacturers that petitioned for exemptions during MYs 1978–1989. NHTSA has reached final decisions on several exemption petitions filed by low volume manufacturers for the 1978 through 1989 model years; Avanti Motor Corporation for MYs 1978 through 1985 (49 CFR 531.5(b)(1)), Rolls-Royce Motors, Inc. for MYs 1978 through 1989 (49 CFR 531.5(b)(2)), Checker Motors Corporation for MYs 1978 through 1982 (49 CFR 531.5(b)(3)), Aston Martin Lagonda, Inc. for MYs 1979 through 1985 (49 CFR 531.5(b)(4)), and Excalibur Automobile Corporation for MYs 1978 through 1985 (49 CFR 531.5(b)(5)).

Timing of Petitions

Title 49 CFR part 525 sets forth the required contents of and procedures for processing petitions for exemption from the generally applicable passenger automobile average fuel economy standards. 49 CFR 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown; * * *." The reasons for including this deadline in § 525.6 were to facilitate the low volume manufacturers' planning to comply with the alternative standards, and to ensure that the agency's analysis of those manufacturers' maximum feasible average fuel economy would not be simply a "rubber stamping" of the individual manufacturer's planned fuel economy, caused by insufficient leadtime for the manufacturer to make changes. *See* 41 FR 53827, 53828; December 9, 1976.

However, the agency recognized that there would be situations when good cause existed for not filing 24 months before the start of the model year. NHTSA has recognized two situations as establishing good cause for failure to submit a timely petition. First, there are situations in which the necessary supporting data for the petition were unavailable until after the due date had passed. For example, a recently incorporated manufacturer might not have adequate time to file an exemption petition 24 months prior to the model year. Second, there are situations in which a legitimately unexpected noncompliance occurs. An example is if a company providing a low volume manufacturer with its engines goes out of business, and the manufacturer is forced to make an unanticipated engine switch, resulting in lower than expected fuel economy. *See* 44 FR 21051 at 21055, April 9, 1979.

Timing of Exemptions

The agency has stated on several occasions that it interprets section 502 as providing the agency broad discretion to decide whether an amendment of an average fuel economy standard is warranted. (53 FR 15241, at 15243, April 28, 1988; 53 FR 39115, at 39116, October 5, 1988) In the absence of explicit guidance in title V on the exercise of its discretion, NHTSA has looked to the statutory scheme as a whole and the Administrative Procedure Act (APA) to determine whether it should or could amend a CAFE standard for a bygone year. The agency has concluded that for passenger automobiles produced by other than low volume manufacturers, such retroactive amendment is inconsistent with several aspects of the statutory scheme. (53 FR 15241, April 28, 1988)

A recent Supreme Court decision, *Bowen* v. *Georgetown University Hospital*, 109 S.Ct. 468 (1988), confirms that an agency's ability to adopt retroactive rules is very limited. In delivering the opinion of the Court, Justice Kennedy stated that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." 109 S.Ct. at 471.

While this decision provides additional support for NHTSA's determination that it would be inappropriate (if not illegal) to retroactively amend the industry-wide CAFE standards, there are compelling reasons to distinguish low volume exemptions from the general principle that retroactive rulemaking is prohibited.

As an initial matter, while it is true that section 502(c) of the Cost Savings Act provides that the Secretary may grant low volume exemptions "by rule," in fact, the agency's consideration of an application for such an exemption has more of the characteristics of a case-by-case adjudication. In this regard, although the Supreme Court concluded in *Georgetown University Hospital* that the Medicare Act, 42 U.S.C. 1395 *et seq.*, does not provide authorization to retroactively adopt the cost-limit rules at issue in that case, the Court recognized that "case-by case inquiry into the accuracy of reimbursement determinations for individual providers" was authorized. *Id.* at 472.

Moreover, although Justice Scalia's concurrence expresses an extremely limited view of an agency's authority to issue retroactive rules, his opinion recognizes that "implicit authorization of particular retroactive rulemaking can be found in existing legislation." 109 S.Ct. at 480. As an example, Justice Scalia referred to a situation in which an agency misses a statutory deadline. Here, the agency's failure to act upon timely applications for low volume exemptions from the industry-wide CAFE standards would appear to fall within the exception noted by Justice Scalia, particularly since the manufacturers were in no way responsible for the agency's inaction.

Similarly, this case seems to fit within the principle established by *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U.S. 607 (1944). As Justice Scalia recognized, *Addison* stands for the proposition that retroactive rulemaking is implicitly authorized where "the Administrator would, by his inaction, have totally eliminated the congressionally prescribed * * * exemption." 109 S.Ct. at 479. If NHTSA could not issue exemptions from the industry-wide CAFE standards for low volume manufacturers after the commencement of a model year, the agency also would, by inaction, have "totally eliminated the congressionally prescribed" low volume manufacturer exemption for the manufacturers and years in question.

These manufacturers filed timely applications for low volume exemptions because they recognized that they could not meet the generally applicable CAFE standards. If the Act were read to preclude NHTSA from acting upon those timely applications at this time, those manufacturers would be unfairly penalized by agency inaction that was beyond their control. In order to avoid such a result, the Motor Vehicle Information and Cost Savings Act must be construed to implicitly authorize the grant of retroactive low volume exemptions under these circumstances.

Agency Response to Petitions

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Petitioners

In this particular proceeding, NHTSA is not conducting rulemaking in advance of the model years for which the fuel economy standards are applicable. The vehicles which are the subject of this rulemaking have already been produced and tested by the Environmental Protection Agency (EPA). To determine the fuel economy benefits of the technology incorporated on these vehicles, NHTSA relied on the EPA test figures to establish the fuel economy level actually achieved by the petitioners. (45 FR 84108, December 22, 1980; 47 FR 20639, May 13, 1982) NHTSA then considered whether there were any technological or other improvements that would have been technologically feasible and economically practicable for the petitioners' cars, but were not incorporated on those cars.

NHTSA has interpreted "technological feasibility" as meaning that technology which was available for use in automobiles in a given model year and which would have improved the fuel economy for those automobiles. (42 FR 33533, June 30, 1977) The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, reduced rolling resistance, and mix shifts.

The agency considered two methods of weight reduction: downsizing and materials substitution. The goal of downsizing is to reduce the exterior dimensions and mass of the car without significantly reducing the interior passenger and luggage volume of the car. Materials substitution refers to the substitution of lighter materials, such as aluminum, plastics, and high strength low alloy steels, for currently used materials.

Mix shifts refers to shifting the percentage of vehicles sold in each of a manufacturer's model types for the purpose of increasing the manufacturer's average fuel economy. That is, the manufacturer can try to switch customers from its less fuel-efficient models to its more fuel-efficient models without reducing its total sales.

"Economic practicability" has been interpreted as meaning the financial capability of a manufacturer to improve

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its average fuel economy by incorporating technologically feasible changes in its automobiles. (42 FR 33533 June 30, 1977)

Lamborghini

Background Information on Lamborghini

Lamborghini is a very small manufacturer of high performance sports cars. Lamborghini itself manufactures the engines, transmissions, and many other components used in its vehicles.

The company underwent a reorganization in bankruptcy during 1978 and 1979. It produced no more than 75 cars for worldwide sales in any model year between 1979 and 1982 and did not export any cars to the United States during MYs 1978 through 1982. Lamborghini sold 7 cars in the United States during MY 1983 and 9 during MY 1984. Lamborghini's total production in 1983 was 178 vehicles, and in 1984 it was 231. By letter dated December 15, 1980, Lamborghini filed a petition for exemption for MY 1983. On November 17, 1981, this petition was amended to include MY 1984.

Methodology used to project maximum feasible average fuel economy level for Lamborghini

The cars sold by Lamborghini in MYs 1983 and 1984 were all one vehicle configuration, the Countach, with a fuel economy of 13.7 mpg. This figure was used as a baseline and any changes found technologically feasible and economically practicable were added thereto to arrive at a proposed determination of Lamborghini's maximum feasible average fuel economy for MYs 1983 and 1984. Throughout this analysis, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lamborghini automobiles. Lamborghini automobiles have traditionally been high performance sports cars with luxury features in the interior. Design changes which would significantly reduce the cars' performance or eliminate items traditionally offered on these types of vehicles, such as air conditioning, were not examined in consideration of the economic practicability criterion. Such changes to the basic design might well significantly reduce the demand for these cars, thereby reducing sales and causing a serious economic injury to the low volume manufacturer.

Weight reduction

In determining whether Lamborghini could have made weight reductions on its 1983 and 1984 cars, the agency considered two options: downsizing and materials substitution. The Lamborghini is already a very short two seater automobile with relatively small exterior dimensions. Accordingly, NHTSA has tentatively concluded that downsizing would not have been economically practicable for 1983 and 1984 Lamborghini cars.

The other primary means of weight reduction is materials substitution. Taking this step would have required a change of suppliers and some vehicle design by Lamborghini. Again, considering the company's economic position at the time it manufactured its MY 1983 and 1984 cars, NHTSA has tentatively concluded that weight reduction by materials substitution would not have been economically practicable for Lamborghini in those model years.

Aerodynamic Improvements

The 1983 and 1984 Lamborghini automobiles had a relatively small frontal area, which gives less wind resistance and greater fuel economy than a larger frontal area. Generally speaking, Lamborghini and those vehicles it considers as its competition have already been designed with much attention to the aerodynamics of the vehicles. Consequently, for these Lamborghini cars to have shown fuel economy gains as a result of aerodynamic improvements, a complete redesign of the vehicles would have been necessary. After considering the financial position of the company at the time, NHTSA has tentatively concluded that fuel economy improvements as a result of improved aerodynamics would not have been economically practicable for the MY 1983 and 1984 Lamborghini cars.

Engine improvements

NHTSA also considered whether Lamborghini could have improved the fuel economy of its MY 1983 and 1984 cars by either reducing the engine displacement or by using an alternative engine. The engine used in those vehicles had a displacement of 4754 cubic centimeters, or roughly 290 cubic inches. The company stated that a reduction in the size of its engines would result in its vehicles not offering comparable performance to that of its competitors, thereby reducing sales of Lamborghini cars.

Additionally, Lamborghini designs and builds its own engines. Thus, a reduction in the size of the engine would have required extensive design and testing of a smaller engine at a time when the company was coming out of a major financial reorganization. For both these reasons, NHTSA nas tentatively concluded that a reduction of engine size would not have been economically practicable for MY 1983 and 1984 Lamborghini cars.

NHTSA believes the only opportunity for engine improvements would have been to increase the efficiency of the existing engine. In order to judge the feasibility of such action, NHTSA compared the fuel economy of the Lamborghini to cars of similar market intent. The fuel economy of the Lamborghini was compared to the Ferrari 308, the Lotus Turbo Esprit, and other similar vehicles. After "normalizing" for characteristics important to fuel efficiency, the Lamborghini's fuel economy was 3.9–5.0 mpg higher than the Ferrari and Lotus, and 0.4–1.2 mpg below that of high-volume models such as the Chevrolet Corvette, Porsche 928, and Alfa Romeo GTV6. Thus, the agency has tentatively concluded there is little opportunity to improve the fuel efficiency of the existing engine without sacrificing the performance necessary in Lamborghini's segment of the market.

Drive Line Improvements

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower axle ratio. Lamborghini already uses a manual five-speed transmission, with the fifth gear functioning as an overdrive. This is the most fuel-efficient type of transmission currently available. Accordingly, NHTSA tentatively concludes that it would not have been technologically feasible for Lamborghini to have improved its 1983 and 1984 fuel economy by means of transmission improvements.

The 1983 and 1984 Lamborghini cars used a 4 09 axle ratio. While this is a relatively high axle ratio, the company stated in its petition that any significant reduction in the axle ratio would considerably worsen the cars, drivability, and hurt sales. In addition, acceleration performance necessary to compete in this segment of the market would suffer. Thus, NHTSA has tentatively concluded that it would not have been economically practicable to change the axle ratio.

Mix Shifts

Since Lamborghini sold only one vehicle configuration in the 1983 and 1984 model years, no fuel economy improvement could have been achieved by means of mix shifts.

Impacts of Other Federal Standards

Lamborghini claimed that its MY 1983 and 1984 models which complied with U.S. vehicle standards showed fuel economy values 5 to 10 percent lower than for those same models which did not comply with U.S. standards. However, the agency has already accounted for that fuel economy difference by using EPA's fuel economy figures for the U.S. standard vehicles as the baseline in its analysis. Those figures reflect whatever impact compliance with the U.S. vehicle standards has on the fuel economy of those vehicles. Therefore, for the purposes of the Lamborghini petition for the 1983 and 1984 model years, NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

The Need of the Nation to Conserve Energy

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it would not have been technologically feasible or economically practicable for Lamborghini to achieve an average fuel economy above a level of 13.7 mpg in the 1983 and 1984 model years. Denying an exemption to Lamborghini or setting higher alternative standards than the 13.7 mpg level in both affected model years would not, therefore, have resulted then and would not result now in any additional fuel consumption or in any effect on the need of the Nation to conserve energy.

Proposed Alternative Standards

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for Lamborghini to have improved the fuel economy of its 1983 and 1984 model year cars above an average of 13.7 mpg, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemptions and establishing alternative standards. Consequently, this agency tentatively concludes that the maximum feasible average fuel economy for Lamborghini was 13.7 mpg in the 1983 model year and 13.7 mpg in the 1984 model year. Therefore, NHTSA proposes to exempt Lamborghini from the generally applicable standards of 26.0 mpg and 27.0 mpg for MYs 1983 and 1984, respectively, and to establish alternative standards of 13.7 mpg for Lamborghini for both years.

LondonCoach

Background Information About LondonCoach

On September 6, 1985, LondonCoach Co., Inc. petitioned the agency for alternative standards for MYs 1985–1987 for a taxicab known as the "London Taxi" and a limousine known as the "London Sterling." LondonCoach was organized in May 1984 for the purpose of manufacturing and selling vehicles for hire, namely taxicabs and limousines. The body and chassis of the vehicles are purchased from Carbodies Limited of Coventry, England. U.S. built Ford engines and transmissions are installed by LondonCoach. LondonCoach produced 75 vehicles for combined MYs 1985 and 1986, and estimated production to be 75 vehicles for MY 1987. Prior to 1985, LondonCoach did not manufacture or sell any vehicles in the United States. The fuel economy value for these vehicles is 21.0 mpg. Accordingly, LondonCoach qualifies as a "low volume manufacturer" and seeks an exemption from the CAFE standards for MYs 1985 through 1987.

Timeliness of LondonCooch's Petition

LondonCoach was unable to file 24 months before the start of MY 1985 because the corporation was not organized until May 1984. LondonCoach had no fuel economy data on which to base its petition until the conclusion of EPA testing. EPA testing of the vehicle was completed in August 1985. LondonCoach filed its petition for the 1985 through 1987 model years on September 6, 1985. Accordingly, pursuant to 49 CFR § 525.6(b), NHTSA has tentatively concluded that LondonCoach has shown good cause for late filing of its petition for the affected model years.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for LondonCoach

Based on an EPA test conducted on August 7, 1985, the combined city and highway fuel economy value for the LondonCoach vehicle was 21.04 mpg. The petitioner contemplated that the maximum feasible fuel economy level for model years 1985 through 1987 would be no less than 21.0 mpg. LondonCoach purchases the body and chassis from Carbodies Limited of Coventry England and installs U.S. Ford engines and transmissions. No immediate changes were contemplated by LondonCoach which would enhance the feasible fuel economy for these vehicles. Under the Act, this agency considered whether any technical or other improvements would have been feasible for the 1985 through 1987 model year LondonCoach vehicles, regardless of whether the company had any actual plans to incorporate any improvements.

Throughout this analysis, NHTSA has considered only those improvements which would have been compatible with the basic design concepts and intended uses of LondonCoach vehicles. NHTSA assumes that LondonCoach will continue to produce the taxicab and limousine versions of the automobiles. The automobile's intended purpose is as a vehicle for hire to provide passengers with an exceptionally large passenger compartment allowing easy accessibility to the vehicle.

LondonCoach expected its taxis to fill a void left by the 1982 termination of production by the Checker Cab Co. by providing the public with vehicles designed primarily for taxicab purposes. The petitioner also anticipated that the vehicles will be used by handicapped and elderly persons as an alternative mode of transportation that is more accommodating than conventional taxi vehicles. Hence, design changes which would have made the cars unsuitable for multiple passengers or removed features that are necessary to preserve the unique characteristics of the LondonCoach vehicles were not examined.

Further, these vehicles are designed to be operated up to 60,000 miles per year, have an average service life of 10 years, and to be extremely maneuverable on city streets. Therefore, these vehicles must remain highly durable. Any changes that would alter the basic uses of the vehicle, or which could significantly reduce the demand for these automobiles were not considered because of the economic hardship that would result to the low volume manufacturer.

Baseline Fuel Economy

The MY 1985 LondonCoach vehicles were measured by the EPA as achieving a CAFE of 21.0 mpg. No change to the vehicle's specifications were planned by the manufacturer for MY 1986 or MY 1987. Therefore, the 1985 fuel economy rating is valid for the MY 1986 and 1987 vehicles.

LondonCoach offers a single body style vehicle with two variations for the taxicab and the limousine. The two versions have an equivalent test weight of 3875 pounds and each achieves 21.0 mpg. Therefore, both the London Taxi and the London Sterling can be

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considered to be identical for fuel economy purposes.

Accordingly, the fuel economy rating of 21.0 mpg was used as the baseline. The agency has considered whether any possible changes would be technologically feasible and economically practicable in order to determine LondonCoach's maximum feasible average fuel economy for MYs 1985 through 1987.

Weight Reduction

A reduction in the size of the vehicle would not be feasible since LondonCoach purchases the body and chassis structure of the automobile as an assembly from Carbodies. This arrangement allows little opportunity for significant weight reductions in the body and chassis of the vehicle. Further, LondonCoach intends to offer the public the use of distinctive London taxis on streets in the United States. A smaller version of the London taxi would alter the intended market and demand for the vehicles.

LondonCoach intended to produce a vehicle specifically designed with a large passenger compartment allowing easy entrance and exit from the vehicle, as well as providing a large luggage compartment. LondonCoach vehicles have a combined EPA passenger and cargo volume that is greater than any U.S. passenger automobile except Ford and General Motors large station wagons. The passenger volume alone is greater than any automobile offered for sale in the U.S.

The Checker Cab, which was also designed for taxicab service, had a passenger volume of 100 cubic feet and CAFE of 19.1 mpg in its final year of production, model year 1981. LondonCoach's passenger volume is 144 cubic feet with its average fuel economy of 21.0 mpg. The agency determined that the fuel consumption per cubic foot of passenger volume for the LondonCoach automobiles is between 16 and 43% more efficient when compared with other vehicles used for taxicab service. These other taxi vehicles achieve either equivalent or only slightly better fuel economies than the LondonCoach vehicle. Therefore, LondonCoach vehicles achieve fuel economy comparable to that of other vehicles that are typically used for taxicab services.

The other primary means to achieve weight reduction is by materials substitution The petitioner is not in a position to change the materials used in constructing the body and chassis of the vehicle because it purchases the assembled body and chassis from Carbodies. It would not be economically practicable for Carbodies to retool its facilities to produce a vehicle using lighter materials because LondonCoach buys such a small number of vehicles from Carbodies. The exact percentage of Carbodies' taxi body and chassis production that was purchased by LondonCoach is not known.

The LondonCoach automobiles are constructed from steel. Although the use of aluminum could produce significantly lighter automobiles, this could reduce the durability of the cars. The need to provide a durable, long-life structure for taxi service militates against weight reduction in this manner. The materials currently used by Carbodies have a proven record of durability, safety, and structural integrity with its 29 year history in the United Kingdom.

In an effort to comply with the average fuel economy standards, the petitioner has selected a Ford Motor Co. 2.3 liter engine which is approximately 350 pounds lighter and considerably more efficient than the engine used in the vehicle manufactured by Carbodies and sold in the United Kingdom. The use of the Ford engine and automatic transmission yields a weight reduction of approximately 8% of the total weight of the vehicle. The petitioner stated that the engine and transmission that it selected are the lightest available that comply with EPA emission standards. The agency has determined that this is among the smallest engines that could be used in such a heavy automobile.

Given the limited resources of the petitioner as a low volume manufacturer and the substantial expense and engineering effort required to redesign in order to downsize or substitute materials while remaining in compliance with other Federal Motor Vehicle Safety Standards (FMVSS), NHTSA has tentatively concluded that further weight reduction would not have been economically practicable for LondonCoach MY 1985–1987 vehicles.

Aerodynamic Improvements

Since LondonCoach has an arrangement with Carbodies to purchase the body and chassis, it would not be feasible for LondonCoach to make any immediate aerodynamic design improvements to increase fuel economy. In addition, LondonCoach intended to market the distinctive London taxis for use in the United States. These automobiles are recognized in the United States as being the large London taxis. The large frontal area, boxy proportions and unique shape of the vehicles give rise to the recognition and the market for these cars. While these features may not be aerodynamically efficient, they are necessary to meet the intended demand for this specific vehicle.

Alterations in the shape of the vehicle for aerodynamic improvements could result in a decrease of the passenger or luggage areas, or alter recognition of the automobile as a London taxi. These changes would significantly reduce LondonCoach's intended market and cause economic harm to the low volume manufacturer. Significant improvements in aerodynamics would require major alterations requiring substantial development, testing and leadtime in addition to the expense. Additionally, these vehicles would not be operated at highway speeds as often as the average passenger car, making aerodynamic improvements unnecessary as a practical matter. Due to these factors, NHTSA has tentatively concluded that it would not have been economically practicable for LondonCoach to implement aerodynamic improvements to increase the fuel economy of its automobiles for MYs 1985 through 1987.

Engine Improvements

This agency has examined the question of whether LondonCoach could have improved the fuel economy of its 1985 through 1987 automobiles by using a different engine than the one currently used. The petitioner specifically chose to substitute the Ford Motor Co. 2.3 liter OHC, 4 cylinder in-line gasoline engine for the one that is installed in the vehicle manufactured and sold in the United Kingdom. The Ford engine is 350 pounds lighter and more efficient than the one used in the United Kingdom. It has been used in Ford vehicles. especially in the Ford LTD and Mustang, which have complied with EPA standards for the past 10 years. The engine selected has among the lowest horsepower offered by a manufacturer of vehicles intended for use as taxis or limousines.

Because of the low volume of production, it is impractical for London-Coach to consider producing its own engine. LondonCoach considered using the diesel engine Carbodies uses in the UK version of the automobile, but this engine does not meet U.S. emissions standards. The small engine compartment of the vehicle limits the selection of available U.S. certified diesel engines, and the manufacturer decided that there were no significant fuel economy advantages to justify offering a diesel, considering the relatively low cost of gasoline in the United States. Furthermore, all diesel passenger car engines of the appropriate size that were certified in MY 1985 were imported, potentially creating another problem for a small company in development and production. Although the fuel economy could increase by using a diesel engine, the agency has determined that it would not have been economically feasible for LondonCoach to choose such engines due to the overall higher cost of diesel engines. LondonCoach does anticipate adopting the engine design improvements that Ford incorporates in its own cars which would result in improved fuel economy in future years.

A larger engine could improve fuel economy if it operated at more nearly optimum efficiencies on the EPA test cycle, but the extra weight would offset any such improvement. Further, the vehicle is intended to be used at low speeds in urban areas. Therefore, a larger, more powerful engine would not enhance fuel economy at these low speeds. After considering these factors, NHTSA has tentatively determined that it would not have been technologically feasible nor economically practicable for LondonCoach to improve its fuel economy by using an alternative engine.

Drive Line Improvements

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower rear axle ratio. The transmission chosen is a Ford C–3 3-speed automatic transmission that is compatible with the Ford engine. Although an additional transmission gear or a lock up clutch on the torque converter could improve fuel economy, it would have been economically impractical for LondonCoach to match the engine with a different transmission. This would have required extensive redesign beyond the economic capabilities of a low volume manufacturer. Further, there would have been little fuel economy improvement in actual service from these changes for vehicles that are intended to be driven primarily at low speeds in urban traffic.

The overall drive ratio of LondonCoach vehicles, N/V, (engine rpm/vehicle speed in top gear) is 58.8 on air-conditioned models. Although this ratio is high, a lower value would have been impractical and would have penalized performance since the engine is so small in relation to the weight of the automobiles. NHTSA has determined that such changes to the overall drive ratio or to the transmission would have been economically impracticable for LondonCoach. Based on this analysis, the agency has tentatively determined that it would not have been technologically feasible or economically practicable for LondonCoach to improve its fuel economy by making drive line improvements.

Mix Shifts

The two versions of the LondonCoach vehicles are with different trim appointments. One is known as the London Taxi and the other is the London Sterling. Both have the same fuel efficiency of 21.0 mpg when equipped with air conditioning. The only configurations offered by LondonCoach with different fuel economies are those same vehicles without air conditioning. This means that LondonCoach offers four possible options: the London Taxi with air conditioning, the London Taxi without air conditioning, the London Sterling with air conditioning, and the London Sterling without air conditioning. The models without air conditioning attain a fuel economy of 22.4 mpg. Because there are basically only two configurations, i.e., a model with air conditioning and a model without air conditioning, there is little opportunity to affect fuel economy through mix shifts. Further, since the intended use of the vehicles is to carry fare-paying passengers, it is unlikely that there would have been any significant demand for the model without air conditioning. Therefore, the agency believes that it would not have been economically practicable for Londoncoach to have made any significant increase in fuel economy through mix shifts.

Impacts of Other Federal Standards

LondonCoach did not claim any negative impacts on its average fuel economy as a result of applicable Federal safety damageability, emission, or noise standards. In the absence of a specific showing of fuel economy penalty arising from those standards, NHTSA concludes that whatever fuel economy was lost as a result of compliance with Federal standards was built into the EPA's fuel economy test results. With respect to the LondonCoach petition, the NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

The Need of the Nation to Conserve Energy

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it would not have been technologically feasible or economically practicable for LondonCoach to achieve an average fuel economy above the level of 21.0 mpg in the 1985 through 1987 model years. Since LondonCoach was producing such a small number of vehicles and could not achieve higher average fuel economy than these levels in the 1985 through 1987 model years, granting it an exemption and setting alternative standards at those levels for those model years would not then have resulted and would not now result in any additional fuel consumption or have any effect on the need of the Nation to conserve energy.

Proposed Alternative Standards

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for LondonCoach to achieve a higher average fuel economy than 21.0 mpg in MYs 1985 through 1987, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for LondonCoach in MYs 1985 through 1987 is 21.0 mpg. Therefore, the agency proposes to exempt LondonCoach from the generally applicable standard of 27.5 mpg for MY 1985, and 26.0 mpg for MYs 1986 through 1987.

Maserati

Background Information About Maserati

Maserati's automobiles have traditionally been expensive high performance vehicles. According to its petition, Maserati's reputation is based on a combination of performance and luxury. The company experienced an extended period of financial instability in the late 1970's and early 1980's. In 1974, Citroen, then owner of Maserati, put Maserati into voluntary bankruptcy. This action resulted in Maserati totally ceasing all production for more than a year during 1975 and 1976. The company produced very few cars through MY 1981, and the models it did produce were simply continuations of its older models. However, a loan from the Italian government permitted Maserati to develop and introduce a new model, the Biturbo, in Europe in 1982. This new model helped return Maserati to profitability. In fact, Maserati had projected sales of 4,100 vehicles in the United States in MY 1985, up from sales of 52 vehicles in MY 1983. According to *Ward's Yearbook*, world wide

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production of all Maserati models was 6180 in 1984 and 5668 in 1985.

Maserati produced two models during MYs 1982 through 1985. One of these models, the Quattroporte, was the first "new" vehicle produced by Maserati after the company was reorganized in bankruptcy. However, this vehicle was designed on very short notice, using as many components in Maserati's inventory as possible. The company's management determined that they needed to generate revenue quickly to reverse the significant operating losses Maserati had accumulated. The Quattroporte, according to Maserati's petition, "cannot play a leading role in the company s future."

The other model is the Biturbo, which is primarily responsible for the company's improved financial status.

The Biturbo was introduced in Europe in 1982 and in the United States for MY 1984. It was a completely new design by Maserati that was not required to use components in the company's inventory. The Biturbo is much lighter and more aerodynamic than the Quattroporte. Further, the Biturbo is powered by a 152 cubic inch displacement (CID) V–6 engine with two turbochargers and 3 valves per cylinder, while the Quattroporte is powered by a 301 CID V–8 engine with only 2 valves per cylinder.

Methodology Used to Determine Maseroti's Maximum Feasible Average Fuel Economy for the 1984 and 1985 Model Years

Throughout this analysis, NHTSA has considered only those improvements which would have been compatible with the basic design concepts of Maserati automobiles. Design changes that would have made the cars something other than high performance luxury vehicles or remove items traditionally offered on expensive, high-performance vehicles were not considered. Such changes to the basic design or performance might have significantly reduced the demand for these automobiles, thereby reducing sales and causing additional economic pressure on Maserati.

Baseline Fuel Economy

Table I shows the projected composition of Maserati's fleet and its EPA measured fuel economy for MYs 1984 and 1985:

TABLE I—COMPOSITION OF MASERATI'S U.S. FLEET

Model year	Model	Transmission type	Sales	Combined fuel economy (mpg)	CAFE (mpg)
1984	Quattroporte	A3L	182	10.0	
	Biturbo	M5	1,884	18.7	[1] 17.3 [2] 17.9
1985	Quattroporte	A3L	143	10.0	
	M5		505	18.7	
Biturbo	Biturbo (no-light-off catalyst)	M5	675	17.7	
	Biturbo	A3	678	15.7	[1] 16.8 [2] 16.8

[1] Unadjusted CAFE for actual sales.
[2] Actual EPA adjusted figure.

Maserati expected its sales to more than double between MYs 1984 and 1985. The sales in both years are substantial when compared with MY 1983, when Maserati sold only 52 cars in the United States. The configurations of the Biturbo model increased from one for MY 1984 to three in MY 1985. The one Biturbo configuration available in 1984 was carried forward unchanged to 1985. This was planned as the Biturbo configuration that would be certified as complying with the California emissions standards in the 1985 model year. The "no-light-off catalyst" configuration of the Biturbo eliminated the catalysts near the exhaust manifold. Maserati did this to reduce its costs for the Biturbo, by saving the cost of the additional catalyst. Maserati's original intention was to offer this less costly, single catalyst version of the Biturbo as the 49-State version, and continue to offer the Biturbo with the additional "light-off" catalyst as the California version. However, when Maserati finished its compliance testing for the no-light-off catalyst version of the Biturbo, it learned that this version also complied with the California emissions standards. Thus, both versions of the Biturbo were offered as 50-State models in the 1985 model year. Finally, Maserati introduced a configuration of the Biturbo with a 3-speed automatic transmission for MY 1985. This change allowed Biturbo purchasers to order the car with an automatic transmission

For the purposes of this proposed determination of Maserati's maximum feasible average fuel economy, 17.9 mpg was used as the baseline for MY 1984 and 16.8 mpg was used as the baseline for MY 1985. Any changes found technologically feasible and economically practicable were added to these levels to arrive at these proposed determinations of Maserati's maximum feasible average fuel economy for MYs 1984 and 1985.

Weight Reduction

In analyzing this area, there are significant differences between the two Maserati models. The older Quattroporte has a curb weight of 4,740 pounds. This is heavy even when compared with other high performance vehicles. However, the newer Biturbo model has a curb weight of 2,600 pounds, which is at the lower end of the weight range for high performance vehicles. For example, the Biturbo weighed less during MYs 1984 and 1985 than the Chevrolet Corvette and the Nissan 300 ZX.

The agency has examined two means by which Maserati could have reduced the weight of its MY 1984/85 vehicles. The first is downsizing, which requires a complete redesign of a vehicle. In the case of the Quattroporte, Maserati stated in its petition that this model could not play a leading role in the company's future. Instead, the company chose to concentrate its financial and engineering efforts to improving fuel economy on the newer Biturbo model. Recognizing the limited capital and engineering resources available to Maserati, NHTSA has tentatively

determined that it would not have been economically practicable for Maserati to downsize its Quattroporte model in the affected model years.

With respect to the Biturbo, Maserati introduced that model in the United States in MY 1984. Its fuel economy was 77 percent higher than the Quattroporte, and it was a lightweight high performance sedan. Since Maserati had just made the necessary investments to introduce this model in MY 1984, NHTSA tentatively determines that it would have been neither economically practicable nor technologically feasible for Maserati to have downsized the Biturbo for MYs 1984 and 1985.

The other means examined for achieving weight reduction was materials substitution. In the case of the Quattroporte, Maserati did not attempt to use materials substitution to reduce its weight. While weight reduction for this model would have been technologically feasible had Maserati made use of materials substitution, such a capital investment appears to have been beyond the financial capabilities of Maserati for MYs 1984 and 1985. This is particularly true in view of the company's large investment in its new Biturbo model. Therefore, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have used materials substitution to reduce the weight of its Quattroporte during MYs 1984 and 1985.

Maserati seems to have been very conscious of vehicle weight when designing the Biturbo. As noted above, the Biturbo has a curb weight of 2600 pounds, which is lower than the curb weight of high-performance vehicles produced by Nissan and General Motors. NHTSA has tentatively concluded that it would not have been technologically feasible for Maserati to have further reduced the weight of its Biturbo by means of materials substitution. Accordingly, NHTSA tentatively determines that it would not have been technologically feasible or economically practicable for Maserati to have improved the average fuel economy of its 1984/85 vehicles by means of weight reduction.

Aerodynamic Improvements

The Quattroporte has a relatively large frontal area. Aerodynamic improvements would have probably increased the fuel economy of this model during the affected model years. However, aerodynamic improvements to this model, whether achieved by redesigning the body or using add-on devices, would have required considerable development and testing. Since Maserati was devoting its limited resources to developing and introducing its Biturbo model, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have improved the fuel economy of the Quattroporte by means of aerodynamic improvements.

The Biturbo model has a frontal area more than 10 percent less than the Quattroporte. Since it was a new model for MY 1984, further reductions of the frontal area or aerodynamic improvements would not be practical until a major redesign is done for a future model year. The Biturbo was designed under severe financial constraints, precluding the extensive development required to optimize aerodynamics. NHTSA tentatively determines that it would not have been technologically feasible or economically practicable for Maserati to have improved the fuel economy of its Biturbo by means of aerodynamic improvements.

Engine Improvements

The Quattroporte was equipped with a 301 CID V–8 engine during the affected model years. As noted above, this engine was carried over from past model years. Maserati achieved some fuel economy gains from the engine by using a leaner carburetion mix. However, the most significant fuel economy gains would have been achieved by reducing the size of the engine, or redesigning it to accommodate more advanced technology. Any such course of action would have required Maserati to have diverted its resources from designing and introducing the Biturbo model. NHTSA has tentatively determined that such a diversion of resources to improve the engine of the Quattroporte would not have been economically practicable for Maserati for the affected model years.

The Biturbo was equipped with a 152 CID V–6 engine during the affected model years. To increase the thermal efficiency and maintain a high level of performance, the engine includes two turbochargers. A third valve was also added to each cylinder to promote complete combustion of the fuel mixture. All Maserati models meet 50-state emissions standards. The 1985 Biturbo "no-light-off catalyst" model was intended to be a 49-state certification model. It turned out, however, that despite the elimination of the catalysts near the exhaust manifold, this model also met California emissions standards. If Maserati had included the "light off catalyst" on all 1985 models, its CAFE would be somewhat higher. For the reasons stated below in the discussion of drive line improvements, this was not an economically practicable alternative. NHTSA has therefore tentatively determined that it would not have been technologically feasible and economically practicable to have improved the fuel economy of the Biturbo by means of engine improvements.

Drive Line Improvements

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower rear axle ratio. The Quattroporte used a 3-speed automatic transmission with a lockup torque converter made by Chrysler in both affected model years. A 5-speed manual transmission would probably increase fuel economy for the Quattroporte. However, the vehicle is marketed as a high-performance luxury car. These types of cars are traditionally equipped with automatic transmissions. If the Quattroporte were offered only with a manual transmission, it could loss potential customers who would demand an automatic transmission. Given this risk and Maserati's need to generate revenue in the wake of its then recent financial difficulties. NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have used manual transmissions on its Quattroporte during the affected model years.

A 4-speed automatic transmission with a lockup torque converter would have also probably improved the fuel economy achieved by the Quattroporte. However, it is not clear that any available 4-speed automatic transmission with a lockup torque converter would have had adequate capacity for the horsepower rating (288) of the Maserati 301 CID engine. General Motors offers a 4-speed automatic transmission with a lockup torque converter on the Corvette, but that engine has a horsepower rating of 230. Even if it were technologically feasible to equip the Quattroporte engine with a 4-speed automatic transmission, it would have required substantial development and certification costs for Maserati. These costs would have diverted Maserati's resources from the development of its Biturbo. After considering this, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have used a 4-speed automatic transmission with a lockup torque converter on the Quattroporte for the affected model years.

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The majority of the Biturbo models are sold with a manual five-speed transmission with overdrive, which is a very efficient transmission. For 1984, the Biturbo was offered only with a 5-speed manual transmission, so NHTSA tentatively determines that no transmission improvements were technologically feasible for the Biturbo during the 1984 model year. For 1985, the Biturbo was offered with a 5-speed manual transmission and a 3-speed automatic transmission without a lockup torque converter. A small part of the MY 1985 production used a Zahnradfabrik Friedrichshafen (ZF) three-speed automatic transmission. Maserati investigated other available automatic transmissions, but none existed with adequate torque capacity for the Biturbo engine and that would fit the packaging constraints of this small car. A major redesign of the body structure to accommodate a more efficient automatic transmission would have been expensive and would have delayed the introduction of the automatic transmission in the U.S. market, where it was an important option.

Until recently, Maserati was operating at a very low level of production. The second catalyst was removed from some of the 1985 Biturbos, with the intention of reducing production costs for the 49 State vehicles and improving performance without reducing demand for those vehicles. This was an action taken to reduce production costs and improve its sales potential as a high performance car. While this action did lower the fuel economy of these vehicles, the concept of economic practicability is broad enough to recognize the severe recent financial crises experienced by Maserati when determining the maximum feasible average fuel economy for that company. After considering Maserati's critical need to earn profits in light of its recent financial difficulties, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have increased its 1985 fuel economy by installing two catalysts on all manual transmission versions of its Biturbo model.

The overall drive ratios on both Maserati models during the affected model years were fairly high, but very similar to those of other high performance vehicles, both domestic and imported. While fuel economy could have been increased by reducing these drive ratios, the performance of the vehicles would have been reduced as a result of these reductions. Such reductions would very likely have reduced the demand for Maserati vehicles. NHTSA has previously stated that it does not consider such changes to be economically practicable, especially given the then recent difficulties of Maserati. Accordingly, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have improved its 1984 and 1985 fuel economy by means of drive line improvements.

Mix Shifts

In Maserati's case, this would primarily involve shifting purchasers from its Quattroporte to its Biturbo model. More than 90 percent of Maserati's sales in MY 1984 were Biturbos, and more than 92 percent of its sales in MY 1985 were Biturbos. Further mix shifts to reduce the sales of Quattroportes were not feasible because of the already dominant position of the Biturbo. Therefore, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have improved its 1984 and 1985 fuel economy through mix shifts.

Impacts of Other Federal Standards

Compliance with emissions standards has made fuel economy improvements difficult for Maserati. As a low volume, financially-troubled manufacturer, Maserati has been slow to develop and introduce technology that would permit better optimization of emissions and fuel economy. However, Maserati did not claim any negative impacts on its average fuel economy as a result of applicable Federal safety, damageability, emission, or noise standards. In the absence of a specific showing of fuel economy penalty arising from those standards, NHTSA will assume that whatever fuel economy was lost as a result of compliance with Federal standards was built into the EPA's fuel economy test results. With respect to the Maserati petition, NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

The Need of the Nation to Conserve Energy

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it was not technologically feasible or economically practicable for Maserati to attain an average fuel economy above the level of 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985. Since Maserati was producing such a small number of vehicles and could not achieve higher average fuel economy than these levels in the 1984 and 1985 model years, granting Maserati an exemption and setting alternative standards at those levels for those model years would not then have resulted and would not now result in any additional fuel consumption or in any effect on the need of the Nation to conserve energy.

Proposed Alternative Standards

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for Maserati to achieve a higher average fuel economy than 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for Maserati is 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985. Therefore, the agency proposes to exempt Maserati from the generally applicable standard of 27.0 mg for MY 1984, and 27.5 mpg for MY 1985.

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The exemptions are not generally applicable, since they apply only to the manufacturers discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted companies would not be required to pay civil penalties for achieving what the agency has tentatively determined to be their maximum feasible average fuel economy for the models years in question. Since this proposal sets an alternative standard at the level determined to be each company's maximum feasible level, no fuel would have been or would now be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

In accordance with 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, I certify that this proposed rule would not, if promulgated, have a "significant economic impact on a substantial number of small entities." The rationale for this certification is that this proposal applies specifically to three low volume manufacturers and not to industry in general.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act. As an initial matter, this is not a "major Federal action." Moreover, this proposal, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they were required to meet the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. If applicable, it is requested that two copies of films, tapes, and other similar materials be provided.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, gasoline, imports, motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Sections 531.5 would be amended by revising paragraphs (b)(7) and adding paragraphs (b)(8) and (b)(9) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) * * *

(7) *Maserati.*

Model year	Average fuel economy standard (miles per gallon)
1984	17.9
1985	16.8

(8) *Lamborghini.*

Model year	Average fuel economy standard (miles per gallon)
1983	13.7
1984	13.7

(9) *LondonCoach.*

Model year	Average fuel economy standard (miles per gallon)
1985	21.0
1986	21.0
1987	21.0

* * * * *

Issued on September 26, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23089 Filed 10-2-89; 8:45am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

RIN 0648-AB47

[Docket No. 80106-9148]

Endangered Fish or Wildlife; Permits for the Incidental Taking of Endangered Marine Species

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Revisions are proposed to 50 CFR part 222 to establish procedures for issuing permits under section 10 of the Endangered Species Act (ESA) for the incidental taking of endangered marine species that are under the jurisdiction of the Secretary of Commerce. These permits are authorized by the 1982 amendments to the ESA. The proposed regulations would allow permits to be issued for a take of endangered marine species incidentally to an otherwise lawful activity, provided certain conditions are met.

DATE: Comments on this proposed rule must be received by December 4, 1989.

ADDRESS: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio or Margaret Lorenz, Office of Protected Resources, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

The 1982 amendments to the ESA revised section 10(a) to allow the Secretaries of Commerce and the Interior greater flexibility in regulating the incidental taking of endangered

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species. Prior to the amendments, taking could be allowed incidentally to most Federal activities and federally regulated or funded activities under section 7 of the ESA, but could not be allowed incidentally to strictly private activities. The 1982 amendments authorize the Secretaries to issue permits, under limited circumstances, allowing a taking of endangered species incidentally to an otherwise lawful activity.

These regulations propose procedures for issuing permits for the incidental take of endangered species under the jurisdiction of NOAA Fisheries, Department of Commerce. These species are identified in 50 CFR 222.23(a), and are referred to in this document as endangered marine species. All other endangered species are under the jurisdiction of the U.S. Fish and Wildlife Service, Department of the Interior, and are subject to the incidental taking provisions at 50 CFR 17.22 and 17.32.

Section 10(a)(1)(B) of the ESA authorizes NOAA Fisheries to permit a taking of an endangered marine species otherwise prohibited by section 9(a)(1)(B) of the ESA if the taking is incidentally to, and not the purpose of, an otherwise legal activity. Section 9(a)(1)(B) prohibits the taking of any endangered species within the United States or its territorial sea. Thus, ESA section 10 incidental take permits can be issued only for activities which may incidentally take endangered marine species within the United States or the U.S. territorial sea. These permits will not be issued for activities, such as commercial fishing, that occur outside the territorial sea.

Section 10(a)(2)(A) requires each applicant for an incidental take permit to submit a conservation plan that specifies (i) the impact which will likely result from such taking; (ii) what steps will be taken to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (iii) what alternative actions to such taking have been considered and the reasons why such alternatives are not being used; and (iv) such other measures that NOAA Fisheries may require as being necessary or appropriate for purposes of the plan.

The proposed regulations would establish two categories of permits: an ESA section 10 individual incidental take permit and an ESA section 10 general incidental take permit. The individual permit would cover the activities of a single applicant, such as a corporation, that resulted in the incidental take of an endangered marine species. A general permit would cover the activities of members of a group or organization, such as a fishing association, who wish to conduct activities in a specific geographical area that have similar impacts on endangered marine species. After a general permit is issued, members of the group, as well as unaffiliated individuals such as fishermen who were not members, could obtain coverage under its terms by applying for and receiving a certificate of inclusion. An applicant for a certificate of inclusion must agree to comply with the terms and conditions of the general permit and the conservation plan.

As required by section 10(a)(2)(B), NOAA Fisheries will issue the permit if it finds, after notice in the **Federal Register** and opportunity for comments, that (i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking; (iii) the applicant will ensure that adequate funding for the plan will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (v) any additional measures required by NOAA Fisheries as being necessary or appropriate for the purposes of the conservation plan will be met. NOAA Fisheries will prescribe terms and conditions to ensure that appropriate conservation measures are taken, including reporting requirements, and may revoke the permit if the terms and conditions of the permit are not being complied with.

Relation to Section 7 of the ESA

The incidental take provisions of section 10 parallel certain provisions of section 7 of the ESA. Section 7(a)(2) requires all Federal agencies, in consultation with NOAA Fisheries, to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened marine species or result in the destruction or adverse modification of the critical habitat of that species. Under section 7(b)(4), when an agency action that may involve incidental taking is found to be consistent with section 7(a)(2), NOAA Fisheries issues an incidental take statement authorizing an incidental take and specifying the terms and conditions necessary to monitor the taking and minimize the impact of such taking. Thus, Federal agencies and private entities regulated or funded by the Federal agency may carry out activities resulting in the incidental take of endangered species consistent with the incidental take statement without violating the ESA and without a section 10 permit.

Congress amended section 20 of the ESA to address incidental taking associated with actions that are not covered by section 7. Under section 10, individuals or entities not otherwise covered by a section 7 incidental take statement can apply for incidental take permits. These permits would provide exemptions from the taking prohibitions similar to those made under section 7 incidental take statements given to Federal agencies.

Since the section 7 incidental take statement only covers activities where there is continuing Federal involvement or control, section 10 incidental take permits may be appropriate for certain Federally regulated or funded activities where there is no continuing Federal involvement over a project once the Federal permit, authorization or funding is made. Federally regulated or funded projects that sustain Federal involvement throughout the life of the project remain subject to the provisions of section 7 of the ESA.

Section 10 permits may also be issued in cases where a section 7 incidental take does not appear to be provided for, such as the taking of marine mammals incidentally to commercial fishing operations within the U.S. territorial sea. A section 7 incidental take statement cannot be issued in this case since in order to issue an incidental take statement for marine mammals, the taking must be authorized under section 101(a)(5) of the Marine Mammal Protection Act which applies to activities other than commercial fishing.

Pre-application Assistance

Any person considering applying for an ESA section 10 incidental take permit may contact NOAA Fisheries for assistance before submitting an application. To the extent practicable, NOAA Fisheries will (1) review the requirements of these regulations and determine if a permit is necessary; (2) identify and provide information on listed and proposed species that may be present in the vicinity of the proposed action; (3) identify possible alternatives to avoid an incidental take; and (4) identify possible mitigating measures. Persons engaging in pre-application discussion are in no way required to apply for a permit.

Conservation Plan

In developing a conservation plan, the applicant must use the best scientific and commercial data available to identify potential impacts to the endangered species and to incorporate the most effective use of research and technology to monitor, minimize and mitigate such impacts. The applicant has the responsibility for securing appropriate data for the preparation of a conservation plan although NOAA Fisheries will provide assistance to the extent practicable (see "Pre-application Assistance" above). All information requirements must be satisfied before NOAA Fisheries will process a permit application.

The conservation plan need only address listed species, although the applicant may include species that have been proposed for listing to facilitate early resolution of potential endangered species conflicts. This may avoid delays in processing or the need to revise the conservation plan and modify the permit should the species become listed after the permit is issued. However, failure to include proposed species will not be a factor in deciding whether to issue or deny a requested permit.

Duration of Permits

Since some projects may take many years to complete, applicants may need long-term permits. To provide sufficient incentives for the private sector to participate in the development of long-term conservation plans, NOAA Fisheries has the discretion to issue ESA section 10 incidental take permits that run for periods significantly longer than are commonly provided for under current administrative practices. In determining the duration of a permit, NOAA Fisheries will consider the duration of the proposed activities as well as the possible positive and negative effects associated with issuing a long-term permit, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or increase the survivability of the species.

Since circumstances and information may change over time, the original plan might need to be revised. Therefore, any plan approved for a long-term permit must contain a procedure by which NOAA Fisheries and the permit holder will deal with unforeseen circumstances.

Terms and Conditions of Permits

Permit conditions will be based on the extent of a project's anticipated impacts on the species at issue. In establishing terms and conditions necessary and appropriate to minimize adverse impacts to endangered species, NOAA Fisheries will consider the scope, magnitude and duration of a proposed project, the anticipated level of take, and the availability of technologically and economically feasible methods of avoiding or reducing incidental takings. Examples of possible mitigating measures include restricting the time or area of certain activities (such as the use of explosives), relocating individual animals from designated sites, and modifying techniques or equipment (such as fishing gear or water intake structures).

Classification

NOAA Fisheries has determined that this action will not have a significant impact on the human environment and has prepared an environmental assessment for this proposed rulemaking. Therefore, an environmental impact statement is not required. The environmental assessment is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Under Secretary for Oceans and Atmosphere, Department of Commerce, determined that this is not a major rule requiring a regulatory impact analysis under E.O. 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic effect on a substantial number of small entities because the rule reflects changes made to the Endangered Species Act and is intended to provide guidance for potential applicants concerning procedures and requirements for obtaining permits to take endangered species incidentally to an otherwise lawful activity.

This proposed rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been submitted to the Office of Management and Budget for approval. The proposed rule contains three sets of information collections subject to the Paperwork Reduction Act: (1) Applications for incidental take permits under § 222.22(b); (2) applications for certificates of inclusion under § 222.22(g)(1); and (3) reporting requirements of issued permits under § 222.22(d)(1). Public reporting burden for this collection of information is estimated to average 80 hours for permit applications, .5 hours for certificate of inclusion applications, and .5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Project—0648–XXXX).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 222

Endangered and threatened wildlife; Administrative practice and procedure; Exports; Fish; Imports; Marine mammals.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. A new § 222.22 is added to read as follows:

§ 222.22 Permits and certificates of inclusion for the incidental taking of endangered species.

(a) *Scope.* The Assistant Administrator may issue permits to take endangered marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (known as ESA section 10 incidental take permits). If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an ESA section 10 individual incidental take permit. If the applicant represents a group or organization whose members wish to conduct activities in a specific geographical location with similar impacts on endangered marine species, the Assistant Administrator will issue an ESA section 10 general incidental take permit. To be covered by a general permit, each individual conducting the activity must have a certificate of inclusion. The regulations in this section apply only to those endangered species under the jurisdiction of the Secretary of

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Commerce, identified in § 222.23(a) of this part.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. The sufficiency of the application will be determined by the Assistant Administrator in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and include the following:

(1) The type of permit requested: "ESA Section 10 Individual Incidental Take Permit" or "ESA Section 10 General Incidental Take Permit."

(2) The name, address and telephone number of the applicant. If the applicant is a partnership or a corporate entity or applying on behalf of an organization or group, the applicable details.

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks.

(4) A detailed description of the proposed activity, including the anticipated dates, duration, level of activity and specific location. If the request is for a general permit, an estimate of the total level of activity expected to be conducted under the terms and conditions of the permit.

(5) A conservation plan, based on the best scientific and commercial data available, which specifies:

(i) The anticipated impact (*i.e.*, amount, extent and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize and mitigate such impacts, and the funding available to implement such measures; and

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used.

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) the views of the public, scientists and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures not originally proposed by the applicant that the Assistant Administrator requests as being necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in part 220 of this subpart, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of a fee to reimburse the National Marine Fisheries Service the cost of processing the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects associated with issuing a permit of the proposed duration on listed species, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by an ESA Section 10 general incidental take permit must apply to the Assistant Administrator for a certificate of inclusion.

(2) Each application must be signed and dated and include the following:

(i) The name of the ESA section 10 general incidental take permit under which the applicant wants coverage.

(ii) The name, address and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details.

(iii) A description of the activity the applicant seeks to have covered under the general permit including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general permit and conservation plan and will comply with their terms and conditions and will fund and implement applicable measures of the conservation plan.

(3) To issue a certificate of inclusion, the Assistant Administrator must find that

(i) The applicant will be engaged in the activity covered by the general permit and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

3. Section 222.24 is amended by adding a final sentence to paragraph (d) and by removing the last sentence from paragraph (e), to read as follows:

§ 222.24 Procedures for issuance of permits.

* * * * *

(d) * * * The requirements of this paragraph pertain solely to the permits issued under § 222.23.

* * * * *

§ 222.25 [Amended]

4. Section 222.25 is amended by replacing "§ 222.23(c)" with "§§ 222.22(c) and 222.23(c) of this part."

§ 222.27 [Amended]

5. Section 222.27 is amended by replacing "certificates of exemption" and "certificate of exemption" with "permits" and "permit", respectively, wherever they appear.

§ 222.31 [Amended]

6. Section 222.31 is amended by replacing "§§ 222.23 through 222.28 (Scientific permits)" with "part 222, subpart C (Endangered Fish or Wildlife Permits)" wherever it appears.

Dated: September 27, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-23210 Filed 10-2-89; 8:45am]

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50 CFR Part 228

[Docket No. 90518-9118]

RIN 0648-AC69

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: NOAA Fisheries is proposing regulations that would allow the harassment of marine mammals during exploration for oil and gas in the Chukchi Sea and the Beaufort Sea for the next 5 years. Any taking of marine mammals that results in more than harassment would be a violation of the Marine Mammal Protection Act of 1972 which allows an incidental, but not intentional, take of marine mammals if certain conditions are met. Two of the six species of marine mammals authorized for an incidental take are considered depleted, and four are not depleted.

These regulations do not permit the actual activities associated with exploration, but rather allow an incidental take of these marine mammals during exploration. The Department of the Interior is responsible for permitting activities associated with oil and gas exploration.

Through the preparation of an Evironmental Assessment, a finding was made that the impact on populations of marine mammals will be negligible, and there will be no unmitigable adverse impacts on the availability of the species for subsistence by Alaska natives. A copy of the Environmental Assessment is available on request from the address below.

On request, public hearings also will be held in Anchorage, Alaska and Washington, DC. The dates of the hearings will be publised in the **Federal Register.**

DATE: Comments on the proposed rule must be received by December 4, 1989. A public hearing will be held in Barrow, Alaska on Friday, November 10.

ADDRESSES: Comments should be sumitted to Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Send Comments on the collection of information burden estimate to the Office of Information and Regulatory Affairs, Project (0648-0151), Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act of 1972 (MMPA) gives the Secretary of Commerce (Secretary) authority to allow, on request by U.S. citizens who engage in a specified activity (other than commercial fishing) in a specified geographical region, the incidental (but not intentional) taking of small numbers of marine mammals. Permission may be granted for a period of 5 years or less.

The taking of marine mammals is allowed only if NOAA Fisheries finds, based on the best scientific evidence available, that the taking will have a negligible impact on the species or stocks and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least adverse impact on the species and its habitat and on the availability of the species for subsistence uses. Also, the regulations must include requirements for monitoring and reporting.

This request is for an incidental take of six species of marine mammals: the beluga whale, bowhead whale, gray whale, bearded seal, ringed seal, and spotted seal. Two of the species, the bowhead and gray whale, are considered depleted under the MMPA and endangered under the Endangered Species Act (ESA). In 1986, both of these Acts were amended to allow incidental takings of depleted, endangered, or threatened marine mammals. Previously, only non-depleted marine mammals could be taken under this exemption to the MMPA. On September 29, 1989, NOAA Fisheries and the U.S. Fish and Wildlife Service, Department of the Interior, jointly published general regulations implementing the 1986 amendments. Among other things, the amendments revised the scope of the regulations, the definition of negligible impact, and added a new definition for unmitigable adverse impact. Negligible impact is defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not likely to, adversely affect the species through effects on annual rates of recruitment or survival." Unmitigable adverse impact means "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (A) causing the marine mammals to abandon or avoid hunting areas, (B) directly displacing subsistence users, or (C) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met."

Endangered Species Act

Before the 1986 amendments to the MMPA and the ESA, the more restrictive provisions of the MMPA prevailed, and an incidental take of endangered or depleted marine mammals could not be allowed even if the anticipated take would result in only negligible impacts. The new amendments allow a take of endangered animals under the MMPA, but additional authority is needed to allow takings under the ESA.

Under the ESA, Federal agencies are required to consult with NOAA Fisheries on any action authorized, funded or carried out by the agencies that may affect endangered or threatened species or critical habitat. After consultation with the agencies, NOAA Fisheries issues a biological opinion which includes an assessment of impacts and a conclusion on whether the action is likely to jeopardize the continued existence of endangered or threatened species. NOAA Fisheries addressed the activities covered in this proposed rule in biological opinions conducted for Outer Continental Shelf Lease Sales in the Arctic Region including all areas of the Beaufort Sea, Chukchi Sea and Hope Basin Planning Area. An updated opinion issued November 23, 1988, and covering the entire Arctic Region, concluded that leasing and exploration activities are not likely to jeopardize the continued

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existence of any endangered or threatened whales. However, because an incidental take of these species had not yet been authorized under the MMPA, the Incidental Take Statement attached to the opinion did not include an authorized take. The statement will be amended when these proposed regulations, which would allow an incidental take under the MMPA, are final. Also, NOAA Fisheries will issue a biological opinion on this authorization because the granting of an incidental take of marine mammals is a Federal action that requires a Section 7 ESA consultation.

Summary of Request

The request for a take of bowhead and gray whales was received on February 16, 1988 from a group of oil companies: Amoco Production Co., Inc.; Chevron U.S.A., Inc.; Exxon Co. U.S.A.; Shell Western E&P Inc.;, Unocal Corp.; and Western Geophysical Co. of America. An amended petition received February 23, 1989, requested as incidental take exemption for four additional species of marine mammals, none of which are depleted.

The petitioners describe the request for taking an incidental and unintentional harassment of marine mammals during pre-lease and post-lease exploration for oil and gas resources in Alaska State waters and on the Outer Continental Shelf. They are requesting a take by harassment, and do not anticipate any lethal takes. The MMPA defines "takes" as harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Exploration activities will include geological and geophysical surveys, drilling of stratigraphic test wells, exploratory drilling for oil and gas, and associated support activities. Potential causes of taking are noise, oil spills and physical obstruction. This request does not cover future development or production of offshore oil and gas fields. Also, the petition does not request a take of marine mammals during the period in the spring when bowhead whales are migrating through the Chukchi Sea and the Beaufort Sea around Pt. Barrow (usually late March or early April to early or mid June). An exemption is requested for 5 years.

On April 13, 1988, NOAA Fisheries published in the **Federal Register** (53 FR 12170) a Notice of receipt of request for rulemaking from the oil companies and a request for information. At the end of the 90-day comment period, comments had been received from Alaska native groups, conservation groups, Federal, State, and local government agencies, private industry and other interested parties.

Based on the comments received and NOAA Fisheries review of the request, additional information was sought from the petitioners on August 18, 1988, concerning the anticipated levels of activity, the effects on marine mammals, plans for monitoring and reporting, and measures for mitigating any adverse impacts on the availability of the species for subsistence. NOAA Fisheries also suggested that the request be amended to include the incidental take of several non-depleted marine mammals since we believe they may be affected by the activities associated with exploration; these species are the beluga whale, ringed seal, spotted seal and bearded seal.

Summary of Proposed Rule

NOAA Fisheries proposes to allow an incidental take of marine mammals in the Beaufort and Chukchi Seas from 1989–1994 by individuals who are conducting pre-lease and post-lease oil and gas exploratory activities. A taking will not be allowed when bowhead whales are using the spring lead system to migrate through the Chukchi Sea and the Beaufort Sea past Pt. Barrow. The proposed regulations include requirements for monitoring and reporting and measures to effect the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. The regulations are proposed based on a finding that exploration in the Chukchi and Beaufort Seas may involve the taking (by harassment) of six species of marine mammals. However, NOAA Fisheries believes that the total impact of the taking will have a negligible impact on the species and on the availability of the species for subsistence uses. All activities must be conducted in a manner that minimizes adverse effects on the species and their habitat. The proposed regulations require those who request a Letter of Authorization to submit a plan to monitor the effects on the populations of marine mammals that are present during exploratory activities. The plan and the person or persons designated to observe and record the effects of exploration activities must be approved by NOAA Fisheries. Also, the applicant for an authorization must identify what measures have been taken to minimize any adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request will be evaluated on the specific activity and the specific location, and each authorization will identify allowable methods or conditions that are specific to that activity and location. A report on all exploratory activities must be submitted to NOAA Fisheries within 90 days after the completed activity. A notice of issuance of Letters of Authorization will be published in the **Federal Register**. Any substantive modifications of the Letters will be subject to public review unless NOAA Fisheries determines that an emergency exists whhich requires immediate action.

A Letter of Authorization must be requested by each group or individual conducting an exploratory activity where there is the likelihood of taking by harassment of any of the six species of marine mammals considered in this rule. The granting of each Letter will be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts. If the level of activity is more than anticipated, such as more support vessels or aircraft, more drilling units, or more miles of geophysical surveys, NOAA Fisheries will reevaluate its findings to determine if they continue to be appropriate. The individual Letters of Authorization will include monitoring and reporting requirements that are specific to each activity.

Description of Activity

The petitioners have supplied information on the kinds and the level of activities they expect to occur over the next five years. NOAA Fisheries has used this estimated level of activity as a basis for its findings. If requests for Letters of Authorization exceed the highest estimated level of activity, NOAA Fisheries will reevaluate its findngs to determine if they continue to be appropriate before any Letters are issued.

Activities that are covered in the request are geophysical surveys, exploratory drilling and support activities. Geophysical surveys are divided into two classes: Deep seismic and shallow hazard. Both kinds of surveys use a "reflective" method to acquire data. Both include an energy source that generates a seismic signal, hydrophones that receive the signal, and electronic equipment on board a seismic vessel that amplifies and records the signal. Energy sources used in deep seismic surveys release bursts of compressed air or water. Sound sources in shallow hazard surveys operate at lower energy levels and generate less

acoustic pressure than deep seismic surveys.

The four principal forms of exploratory drilling structures currently in use or under development for Arctic exploration are artificial islands, bottom-founded structures, drillships and semi-submersible vessels.

The exploratory activities discussed in the petition are currently being conducted in Arctic waters. Seismic surveys have been made in the Beaufort and Chukchi Seas since the 1960s. Exploratory drilling has not been conducted as yet in the Chukchi Sea, but has taken place in the Beaufort Sea.

Marine seismic surveys operate only during the open-water season which is variable. In the southern Chukchi Sea, open water may occur July through mid-November and in the Beaufort and northern Chukchi Seas, open water may occur from August through October. Often, there is no more than 60 days of open water. The scope of the petition is limited to "open-water" seismic surveys and does not include any on-ice survey activity near spring lead systems. Seismic surveys and exploratory drilling will continue for at least the next 7 to 10 years. They will occur on tracts already leased and those offered in future lease sales.

Over the next 5 year, pre-lease survey activity (deep seismic) will occur in unleased portions of the Beaufort and Chukchi Seas. Pre-lease surveys will likely be concentrated in the proposed sale areas during the open water season. The industry estimates that the number of vessels conducting pre-lease and post-lease surveys in all areas of the Beaufort and Chukchi Sea in any open-water season should not exceed six.

The following number of trackline miles is anticipated in each area:

Beaufort Sea—Pre-lease Activity:	
OCS Sale 124:	1,500 trackline miles.
State waters (Sales 52, 65, 68).	1,500 trackline miles.
Chukchi Sea—Pre-lease Activity:	
Chukchi Sea OCS Sale 126.	4,000 trackline miles.
Hope Basin OCS Sale 133.	1,500 trackline miles.

Post-lease surveys (usually shallow hazard) will take place as a result of Lease Sale 97 in the Beaufort Sea, Lease Sale 109 in the Chukchi Sea and previous OCS Lease Sales in the Beaufort Sea (BF, 71 and 87). In the Beaufort Sea, surveys will take place in 345 square kilometers in the Lease Sale 97 area and 805 square kilometers in previously leased sales for a total of 1,105 kilometers. In the Chukchi Sea, under the highest level of anticipated activity, it is estimated that shallow-hazard seismic activity will take place on about 73 tracts for a total of 13,479 trackline kilometers.

During all years of exploration in the entire Arctic Region, Minerals Management Service (MMS) predicts that shallow-hazard seismic activity will cover 80,000 trackline kilometers. However, the level of activity considered for this exemption includes only the activities that will occur during the 5 years the exemption will be effective.

Before drilling can begin, lessees must file an Outer Continental Shelf Plan of Exploration and Environmental Report with the Minerals Management Service as well as an Application for Permit to Drill. The Plan of Exploration is reviewed by the State of Alaska for consistency with the Alaska Coastal Management Program under the provisions of the Coastal Zone Management Act. Because only one Plan of Exploration has been filed with MMS for Lease Sale 97 in the Beaufort Sea, the information on exploratory drilling comes from the Final Environmental Impact Statement filed for the lease sale. The high case assumption (based on low, mean, and high assumptions) suggests that 24 exploratory wells and 11 delineation wells will be drilled from 1989 through 1993 on tracts leased in Sale 97 and three previous sales. The mean case assumption suggests 10 exploratory and 4 delineation wells. There may be as many as 5 or as few as 2 drilling units operating during any single year in the Beaufort Sea. In addition, two drilling units may be operating each year in State waters of the Beaufort. Inshore drilling units are usually bottom-founded structures. Generally, a well is not drilled on every block leased since one to three wells are normally drilled to prove a formation that may span a cluster of leases.

In the Chukchi Sea (OCS Lease Sale 109), 351 blocks were leased. Although no plans of exploration have been filed with MMS, the high case assumption suggests that 33 exploratory and 40 delineation wells will be drilled from 1989–1996. From 1989 through 1993, when the regulations will be in effect, 21 exploratory and delineation wells may be drilled under the high-case assumption. The mean case assumes 16 exploratory and 12 delineation wells. As few as two or as many as seven drilling units could be working each year in the Chukchi Sea. These estimates for drilling units are for both floating as well as bottom-founded units. No exploratory activity is anticipated at this time in State waters of the Chukchi Sea.

An appropriate drilling unit will be selected by the lessees when an application for Permit to Drill is filed with MMS or the State of Alaska. Although the level of support activities is speculative, supplies during the drilling season will be transported to the drill ships by helicopters and supply vessels. Bottom-founded units will be resupplied from barges. During 1989–1993, 13 barge trips probably will be made to the Chukchi Sea. The first three of the barge trips would take place in 1991. The high-case estimate suggests up to 27 barge trips during the peak year of exploration. It is assumed that an average of 3 helicopters will service an average of 2 drilling units, and one flight per day per helicopter is estimated.

In the Beaufort Sea, most of the equipment used in exploratory drilling will arrive by barge. To date, annual barge traffic that supports onshore and offshore oil and gas development in the North Slope area has ranged from 2 to 26 trips. Helicopter traffic is estimated at one trip per day per well drilled. The Final Environmental Impact Statement (FEIS) estimates that it takes 90 days to drill and test a well, and it predicts 90 helicopter trips in a year a well is drilled. However, Amoco's Plan of Exploration, which has been filed with MMS, suggests that two helicopter trips per well will take place each day, but it will take only 70 days to drill and test a well.

The number of required support vessels for each drilling unit will depend on the type of characteristics of the unit and the sea-ice conditions. For drilling operations in open water, MMS requires the operator to maintain an emergency standby vessel to be in the immediate vicinity of the drilling unit to ensure evacuation of personnel in the event of an emergency. Depending on ice conditions, two or more icebreaking vessels may be required to perform ice management tasks for the floating unit. Based on exploration plans submitted for OCS Lease Sale 87 tracks, it is assumed that up to three ice management vessels would be used to support each floating unit in the Beaufort Sea.

Biological Information

The geographical area covered by the request is the continental shelf of the Arctic Ocean adjacent to Alaska. This area includes the waters and seabed of the Chukchi Sea off the northwest coast of Alaska, and the Beaufort Sea off the northern coast of Alaska. This area encompasses all waters north of the Bering Strait that are east of the U.S.-Russia Convention Line of 1867 and are

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within 200 miles of the northern coast of Alaska.

Arctic Region Marine Mammals

1. Bowhead Whale *(Balaena Mysticetus)*

The bowhead whale is the most northern of the great whales. The size of the Western Arctic population of this species has recently been estimated to number 7,800 animals (IWC, in press). These whales migrate northward in the spring from their wintering areas in the Bering Sea. They pass through the Bering Strait and eastern Chukchi Sea from late-March to early June through open leads and polynyas in the shear zone between the shorefast ice and the offshore pack ice. Their path varies in distance from shore depending on water depth and coastal topography, and is often within a few kilometers at coastal promontories such as Cape Lisburne and Point Barrow. The lead system at Point Barrow is especially narrow, and all whales are believed to funnel through the leads or broken pack ice near the Point.

In the Beaufort Sea, the shorefast ice zone is broader and the leads are progressively farther offshore as they extend eastward. Past Pt. Barrow, the leads begin to branch offshore and the migration corridor widens into multiple lead systems as they extend toward Banks Island in Canada. Although activities such as calving, socialization, and some active feeding occur in the spring, the main activity is migration.

Bowhead whales are generally absent in the Chukchi Sea and the Alaska portion of the Beaufort Sea in the mid-summer. Although at least the southern Chukchi Sea is relatively open, the northern Chukchi and Beaufort Seas are still generally ice-covered until early August, or later in some years. The majority of the population is feeding in Canadian waters from June through August.

As early as the beginning of August, bowhead whales return to the eastern Alaska Beaufort Sea, particularly the offshore waters which may be part of their summer feeding grounds. The path of the ensuring fall migration is relatively broad across the Beaufort Sea shelf. Many whales follow nearshore paths while others occur far offshore. Most whale sightings in the fall are in depths between 20 m and 50 m and from 10 to 50 km offshore.

By early September, both feeding and migration activities occur in the Alaska Beaufort Sea. The best documented feeding area is east of Barter Island during September, including the waters offshore of Demarcation Bay. Feeding bowheads have also been observed at numerous other areas along the Beaufort Sea coast, presumably where hydrographic conditions support the development of significant concentrations of zooplankton such as copepods, euphausilds, and mysids.

Depending on ice conditions and proximity to freeze-up, the bowhead may actively feed and migrate from September to early November. As the whales leave the Beaufort Sea in the fall they pass into the Chukchi Sea. Their migration route past Pt. Barrow is less well known and may be less well defined. Some whales apparently follow the edge of the pack ice west toward Wrangel Island while others head southwest across open waters of the Chukchi Sea toward the Chukchotsk Peninsula of Siberia. Feeding is not documented in the Chukchi Sea but probably occurs, if less frequently, than in the Alaskan Beaufort Sea.

Most movements observed by bowheads in Alaska waters of the Chukchi Sea appear to be purposeful, with little milling or resting. Eventually, the whales pass out of the Arctic Region through the Bering Strait where they will over-winter in the central and western Bering Sea among the broken pack ice and polynyas until the next spring.

Bowhead whales have no natural predators in the Arctic other than man. Bowhead whales are hunted by Eskimo whalers both on their spring and fall migrations through Alaska waters. Native villages that hunt bowhead whales in northern Alaska are Wales, Point Hope, Point Lay, Wainwright, Barrow, Nuiqsut, and Kaktovik. Strike quotas are allocated to each village through an agreement with the Alaska Eskimo Whaling Commission, up to the total strikes allowed under a cooperative agreement with NOAA based on quotas set by the International Whaling Commission (IWC). Most villages conduct their hunts in the spring in the open ice leads. However, Kaktovik and Nuiqsut hunt only in the fall since the bowheads do not pass these villages in the spring. Barrow hunts in both spring and fall if they have unused strikes remaining in their quota after their spring hunt, or are transferred unused strikes from other villages.

2. Gray Whales *(Eschrichtius Robustus)*

The northern Bering and Chukchi Seas are the main summer feeding grounds for the California gray whale population. The Bering Strait is an important migratory corridor for gray whales moving north between late May and August, and returning to the Bering Sea from September to November on their way to southern waters. Gray whales are regular residents in the Chukchi Sea from June through October, although the majority of the population probably summers south of the Bering Strait. From July through mid-October, some gray whales are found regularly as far north as Pt. Barrow, and a few occasionally travel as far east as Canada.

Present knowledge of the summer-fall distribution and abundance of gray whales is incomplete. Up to one-fourth of the total gray whale population, estimated at 21,113 (IWC in press), may enter the northern Chukchi Sea to feed in the summer and early fall (July-October). They are known to inhabit coastal waters of the Siberian Peninsula as well as Alaskan waters.

Gray whales have been observed feeding in the Chukchi Sea well into October. Most whales are found feeding in nearshore waters averaging 20.5 m in depth and within 14.5 km of shore (Moore *et al.*, 1986). Offshore feeding also occurs, but is less well documented. It is not known if these whales observed in the Chukchi Sea represent a resident summer feeding population or are transient whales that move between the Bering and Chukchi Seas during the summer.

Gray whales normally avoid heavy ice conditions. They remain south of the polar ice pack, and typically leave these northern waters ahead of freeze-up.

Gray whales have few natural predators in the Arctic other than polar bears and man. Polar bears are not a common predator, even though they are known to feed on whale carcasses. There is little subsistence taking of gray whales by Alaska natives. A few have been taken over the years (averaging less than one whale a year), and they are not actively hunted by any of the northern Alaska villages. The few takes are usually in the fall by bowhead whalers seeking to supplement a poor season. The Soviets, however, harvest up to 179 gray whales annually under a subsistence harvest allocation from the IWC.

3. Other Marine Mammal Populations

In addition to the bowhead and gray whale, there are 14 other species of marine mammals that inhabit the Beaufort and/or Chukchi Seas. Of these, four are endangered: the right, sei, humpback and fin whales. The right and sei whales are rare in Arctic waters. The few that have been seen in the Chukchi Sea are probably stray individuals well outside the normal ranges of their populations. Humpback and fin whales are occasional inhabitants of the Chukchi Sea, usually in low numbers. Both are at the northern edge of their summer range when in the Chukchi Sea, and have been sighted only irregularly in the Alaska portion of the Chukchi.

Although three other cetaceans, the minke whale, killer whale, and harbor porpoise are present in Arctic waters, they are generally considered uncommon, and are more abundant in the Bering Sea.

However, beluga whales (*Delphinapterus leucas*) are present in large numbers in Alaska waters. There are an estimated 16,000 to 18,000 beluga whales in the Bering-Arctic population off Alaska with an estimated 11,500 of these migrating to and from the Beaufort Sea each summer (Davis and Evans, 1982). The entire population migrates westward out of Canadian Arctic waters during the fall season. Their migration route is generally associated with the seasonal pack ice edge (Hazard, 1988) which varies in distance from shore year to year. A few may inhabit or pass through coastal waters, but most are observed along the ice front.

A second population of 1,500 to 2,500 beluga whales move into the Chukchi Sea in early summer after the Beaufort Sea stock has passed through on their spring migration north. This second group summers in the Kasegaluk Lagoon area. Both calving and feeding occur in the nearshore waters outside the lagoon. There is a subsistence take of beluga whales by Alaska natives. The average annual kill in Alaska is 365 with 93 taken in the Alaskan Beaufort Sea and 150 from the Eastern Chukchi Sea (Hazard 1988).

In addition to whales and porpoises, four species of seals inhabit the Arctic Region: the bearded seal, ribbon seal, ringed seal and spotted seal. While the ribbon seal is considered uncommon, the ringed seal (*Phoca hispida*) is the most abundant and widely distributed marine mammal in the Beaufort Sea (Frost *et al.*, 1987; 1988b). Although there is not a good estimate of its abundance or distribution during the open water season, it is widely distributed in Arctic Alaska with an estimated population size of 1 to 1.5 million animals (Kelly 1988a). The Chukchi Sea is regarded as better ringed seal habitat than either the Beaufort or Bering Sea. Ringed seals are generlaly considered year-round residents of the seasonal shortfast-ice zone throughout their range, but there is an influx of seals through the Bering Strait into the Chukchi Sea in May and June. Nonbreeding subadults are believed to remain offshore except for periods in the spring and fall when they move into the outer edges of the shorefast ice to haul out (Kelly 1988a). There is a subsistence take of ringed seals by Alaska natives. The estimated current total annual take in Alaska exceeds 3,000 (Kelly 1988a). The Eskimo Walrus Commission records the species and number of all seals taken in five villages in the Bering Strait and Yukon-Kuskokwim regions.

Bearded seals (*Erignathus barbatus*) are the second most abundant pinniped in Arctic waters off Alaska, estimated to number about 250,000 to 300,000 (Kelly 1988b). Their overall summer distribution is quite broad with major concentrations in the Chukchi Sea in association with the edge of the polar pack ice. Since they are benthic feeders, they are limited to shelf areas less than 200 meters depth, and prefer depths of 25 to 50 meters. There is a subsistence take of bearded seals by Alaska natives. In recent years, records have not been kept consistently, but between August 1985 and June 1986, 791 bearded seals were harvested from several villages in the Bering Strait region (Kelly 1988b).

The spotted seal (*Phoca largha*) is an ice-associated species closely related to the harbor seal. They inhabit broken pack ice in the winter and move to coastal habitats in the summer when the ice retreats. They migrate into the Chukchi and Beaufort Seas in the summer, and overwinter in the Bering Sea. The total Bering Sea population is estimated at 200,000 to 250,000 (Quakenbush, 1988). The percentage of the population occupying the Chukchi and Beaufort Seas is unknown. They are more numerous in the Chukchi Sea where major haulouts are known at Kasegaluk Lagoon. They are common in the coastal waters in the vicinity of Peard Bay especially near the mount of the Kugrua River. In the Beaufort Sea, an estimated 1,000 seals haul out on beaches, barrier islands, and remote sandbars at river deltas, mainly in the western Beaufort Sea. Known haulouts are at the Colville River Delta, Oarlock Island in Dease Inlet, and at the mouth of the Piasuk River in Smith Bay (Oliver, 1987). Spotted seals are taken in subsistence harvests by Alaska natives especially in the Bering Strait and Yukon-Kuskokwim regions. From 1966 to 1976, Alaska's spotted seal harvest ranged from 850 to 3,600 per year and averaged about 2,400 annually (Lowry 1984). From September 1985 to June 1986, the combined harvest from five villages was 986 (Iya, unpublished data).

Walruses and Polar Bears. Polar bears are common in the Arctic Region. Walrus are seen only occasionally. The U.S. Fish and Wildlife Service has jurisdiction over these species, and will determine whether these species will be affected by oil and gas exploration in the Beaufort and Chukchi Seas.

Studies of Effects of Exploration on Marine Mammals

In the past 5 years, several studies have been conducted on the possible effects of OCS activities on bowhead and gray whales. Although studies on the effects of oil on marine mammals have continued using baleen from dead specimens (Geraci and St. Aubin 1986), none has been conducted on living baleen whales. The effects of noise disturbance of bowhead whales from industrial activities was studied during a 5-year program in the Canadian Beaufort Sea (Richardson and Green 1983, Richardson et al. 1985a, b, 1986, 1987). Two recent studies investigated noise disturbance of bowhead whales in Alaskan waters (LGL 1987, Miles et al. 1987).

Research specific to gray whales and energy exploration include a study by Kent et al (1983) on the responses of migrating gray whales to natural oil seeps in southern California and a study by Malme et al (1983 and 1984) on the potential effects of underwater noise from petroleum industry activities off the California coast.

Although studies have been conducted on the beluga whale's reaction to aircraft and certain kinds of boats (Richardson and Green 1987, Fraker 1978, and Fraker and Fraker 1979), there is no information on the species' reaction to seismic vessels or other industrial activities.

There have been several studies by Smith and Geraci (1975 and 1977) of the consequences of ringed seals coming into contact with crude oil. However, other than studies regarding the effects of on-ice seismic surveys on ringed seals, there are no disturbance studies or other behavioral observations that document the reactions of ringed, bearded, or spotted seals to industrial activities.

Noise Disturbance Studies

Many of the sounds produced by industrial activities are at low frequencies (below 1000 Hz) which is also the range of most bowhead whale vocalizations. Such low-frequency noises could travel long distances to waters used by bowhead whales for migration and feeding in spring and fall.

There has been little opportunity to assess directly the impacts of industrial activities on bowhead whales in Alaska waters because seasonal drilling restrictions were imposed for the first three Beaufort Sea Federal oil and gas lease sales and because most prior OCS activities in Arctic Alaska (all of which are still in the exploration phase) have

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occurred in the Beaufort Sea during the winter when bowhead whales are not present. During the spring, the ice leads used by the migrating whales are offshore and away from any gravel islands where most Beaufort Sea wells have been drilled to date, and exploratory drilling in the spring lead systems has not occurred.

Recently, exploration at a few drilling locations has been permitted during the fall migration of bowhead whales. Most of these locations have also been shoreward of the main migration corridor. In 1986, Shell Western conducted exploratory drilling during the beginning of the fall migration, and Unocal subsequently drilled an exploratory well during the migration. The two wells which were located in the nearshore migration path of the bowhead whales, were drilled using a drillship, an icebreaker and icebreaking support vessels. Drill-associated noises were monitored to determine their effects on the migrating whales (LGL 1987).

Data from these studies suggested that migrating bowhead whales avoided and could have been displaced by the offshore drilling operation. No whales were sighted closer than 9.5 km from the drillship, and few were sighted closer than 15 km (LGL 1987). Significant numbers of bowhead whales passed south of the rig as well as north of it. One whale was tracked for 6.8 hours while it travelled 32 km. The whale moved in an arc around the drilling operation maintaining a distanct of about 23–27 km from the drillship. Bowhead whales observed between 15 and 30 km from the drillship apparently did not exhibit "strong" (i.e., definite responses which usually involved major changes in respiration, surfacing, and dive cycles) behavioral responses.

There was no evidence that the drilling operation (including the support vessels) act as a barrier to migration (LGL 1987). However, during the study period, ice conditions were light and animals could pass north or south of the rig. No evidence exists to determine if whales would or would not approach an operating rig to continue their migration during heavy ice conditions if the rig was located in the migration path.

Disturbance responses of bowhead whales summering in the Canadian Beaufort to industrial activities have been the focus of a 5-year study (Richardson 1981, 1982, 1985; Richardson et al. 1985a,b, 1986, 1987). Sound sources, besides ambient noise, included geophysical seismic exploration, drilling and associated machinery noise, dredging, icebreaker activity, boat and aircraft traffic, and construction of gravel islands or other offshore structures. Behavior near actual and simulated activities associated with offshore oil exploration was compared with presumbly undisturbed behavior. In general, bowhead whales showed considerable tolerance of ongoing noise from dredging or drilling, but tended to react more strongly to a moving or rapidly changing noise source such as an approaching boat or aircraft or the startup of noise sources (Richardson et al. 1985a,b, 1986, 1987).

In a study by Miles et al. (1987), a simulation model was used to investigate the effects on bowhead whales of noise associated with a drilling operation. Roughly half of the whales in this study showed avoidance responses to industrial sounds which had a 30 dB signal to noise (S:N) ratio. A smaller proportion of the whales observed by Richardson et al. reacted when the S:N was about 20 dB, which would occur at greater ranges than those estimated by Miles et al., and a few bowhead whales may react with even lower signal to noise ratios.

In the Canadian Beaufort Sea, responses of whales to moving boats was the most consistent and second-most pronounced of all disturbance factors tested (Montague 1985). In most cases, bowhead whales oriented away from a moving vessel up to 4 km away and actively swam away from vessels 2 km or less away.

In the Richardson studies (1982, 1985a), there was no clear relationship between the size of the vessel and the distance of the response. The whales ceased to avoid the vessel when it passed out of range, but they may have remained scattered for longer periods. Collisions between bowhead whales and vessels can be avoided if vessels take appropriate steps or if the whales can detect the vessels.

The reaction of bowhead whales to aircraft is more variable than to vessel noise. Most reactions to fixed-wing aircraft occur at altitudes of less than 1,500 feet (Richardson et al. 1985a). Reaction to helicopters may have a similar area of influence (M. Dahlheim, NOAA Fisheries, pers. comm.).

Beluga whales respond to noise and vessel traffic based on the "behavior" of the sound source. For example, Fraker and Fraker (1979) reported that whales closely approached stationary operations such as barge camps and dredges, but in shallow waters were frightened by moving barges at distances of up to 2.4 km. Belugas often approached within a few kilometers of drilling operations on artificial islands and even closer to drilling ships (Fraker 1977, Fraker and Fraker 1979). Belugas also respond to helicopters flying at altitudes below 150m (Fraker 1978, Fraker and Fraker 1979). As with vessels and fixed-wing aircraft, helicopters seemed to affect feeding belugas less than those not feeding (Hazard 1988).

Studies and Probabilities of Oil Spills

MMS has concluded that the probability of an oil spill resulting from a blowout during exploratory drilling is extremely low (Martin 1986). To date, there has been no oil spilled as a result of a blowout during exploratory drilling on the U.S. outer continental shelf. MMS cites several studies of offshore drilling statistics that indicate the probability of a blowout during offshore exploration on the U.S. OCS is around 0.64 percent or about 1 blowout per 156 wells drilled.

MMS cites legal authorities and operational procedures (Murrell et al. 1987) that are supposed to be in place to ensure safe drilling practices on OCS leases. Such authorities include operational requirements contained in regulations, OCS Operating Orders, lease stipulations, inspection requirements, and conditions of approval of Exploration Plans, Applications for a Permit to Drill, and Critical Operations and Curtailment Plans.

However, if an oil spill should occur during exploration activities from either a blowout or an operational discharge, the conditional probabilities (expressed as percent chance) that an oil spill will contact a certain bowhead whale habitat (i.e., spring or fall migration corridors, feeding areas) within 3 to 30 days have been calculated to range from nil (less than 0.5 percent) to nearly 100 percent depending on spill location and season (MMS 1985, 1987a,b).

Although there are no data on effects of oil on bowhead whales in the open ocean, Albert (1981) speculated that the most likely adverse effects of oil contact to bowhead whales would be (1) cojunctivitis and corneal eye inflammation leading to reduced vision and possibly blindness, (2) development of skin ulcerations from existing eroded areas on the skin surface with subsequent possibility of bacteremia, (3) compromising of tactile hairs as sensory structures, and (4) development of bronchitis or pneumonia as the result of inhaled irritants.

While marine mammals may feed on contaminated prey, it appears to be difficult for them to consume enough oil in this manner to be poisoned by absorbed hydrocarbons. As in humans, cetaceans could develop lung damage from aspirating regurgitated hydrocarbons (Geraci and St. Aubin 1986).

Hansen (1985) reviewed the literature on the potential effects of oil spills on whales and other marine mammals, and suggested that the level of effects would be related to the degree of exposure of a cetacean to an oil spill. Baleen whales, such as the bowhead and gray whale, may be less likely to avoid oil slicks than more mobile small cetaceans, and the bowhead whales' association with sea-ice may also provide less ability or opportunity for avoidance than for subarctic species (Geraci and St. Aubin, 1986).

Other effects of oil spills on whales may include reduction in availability of food within localized areas near the spill site and in areas where the oil slick occurred. However, Richardson (1987) suggests that it is unlikely that accidental oil spills would have a significant or lasting effect on zooplankton in the study area, or on the availability of zooplankton to bowheads. Nonetheless, there may be uncertain long-term effects of oil ingestion and hydrocarbon accumulation.

Although no research has been conducted specifically on the effects of oil pollution on beluga whales, possible effects of oil on odontocetes (tooth whales) include oil fouling, such as blocking of the digestive track, damage to eyesight or skin, poisoning from ingestion or inhalation, chronic toxicity from exposure to components passed through the food chain, changes in prey populations due to pollution, and reduction in suitable habitat (Hazard 1988). Some cetaceans can detect and avoid oil slicks. In one experiment, bottlenose dolphins avoided surfacing in a slick of darkened mineral oil after two or three initial surfacings in the oil (Geraci and St. Aubin 1982). Although Geraci et al (1983) pointed out that while visual and tactile perceptions led dolphins to avoid oil in an undisturbed and stress-free setting, Free-ranging dolphins may enter slicks because of urgency or because of their inability to detect oil in rough or turbid waters or where prey is very dense. It seems likely that oil could be particularly difficult to detect in Arctic waters because of the widespread ice cover and extended hours of darkness in winter. Physical and biological factors directing the movements of belugas, such as the location of leads and polynyas in the spring and the ice front in autumn, the use of estuaries in the summer, and association with seasonal fish runs, could affect the whales' ability to avoid pollution.

Effects on ringed seals of contact with crude oil were reported to include eye irritation, kidney lesions and possible liver damage (Geraci and Smith 1975, Smith and Geraci 1975). Six ringed seals that were immersed for 24 hours in crude oil shortly after capture survived but showed evidence of the above pathological conditions. Three ringed seals held in captivity in Guelph, Ontario, for a longer period all died within 71 minutes of immersion, apparently as the combined result of stress and exposure to oil (Smith and Geraci 1975). It was suggested that vulnerability of ringed seals to environmental disturbances such as oil spills would vary with condition of the animals; older seals and those in poor nutritional health would be most vulnerable (Kelly 1988).

Effects of Exploration on Marine Mammals and on Subsistence Uses

Bowhead Whales

The primary concern of NOAA Fisheries in the Arctic Region is the bowhead whale. The entire population of bowhead whales is susceptible to impacts in this area during their spring migration through nearshore leads. In the fall, a large portion of the bowhead whale population may again be exposed to distrubance from exploration noise when they migrate through the Arctic Region both nearshore and offshore with the pack ice.

To date, the exposure of bowhead whales to the effects of OCS activities has largely been confined to the Canadian Beaufort Sea. In Alaska waters, limited drilling during the fall migration of the whales has only recently begun.

The ability of the bowhead whale to accommodate increasing industrial disturbance is uncertain. Some accommodation undoubtedly can occur, but the level of stress imposed on the species as a result cannot be predicted. A decreased use by bowhead whales of the Canadian Beaufort Sea industrial areas, as evidenced from aerial surveys during the summer, has been noted (Richardson *et al.* 1985a,b, 1986, 1987). However, changes in bowhead whale abundance has also occurred outside the main industrial area. One suggested cause for the decreased use is the effect of increased disturbance from industrial activity that began in the early 1970's and significantly increased since 1980. Variation in food availability (zooplankton concentrations) may also have been involved.

Present and proposed OCS exploratory and development activities in the Arctic Region may eventually adversely affect the successful life cycle of bowhead whales. At present, we are unable to predict what these tolerance thresholds might be, but we do not believe the foreseeable additive effects of previous and planned sales should exceed this level of concern. Continued efforts to monitor distribution patterns and indicators of population health, such as reproductive success, recruitment, growth rates and behavior are important to assure the combined effects from all OCS activities are not likely to have more than a negligible impact on the bowhead whale population.

Large or widespread noise disturbance along the spring or fall migration paths or in feeding areas could affect bowhead whales by interfering with successful feeding, migration, or other behavioral activities. The range or level of noise required to produce these effects depends on the location and source of noise, and on the acoustic propagation properties of the environment. Although some impacts to individuals may occur, we do not believe proposed exploratory activities will produce noise levels expected to reduce appreciably the likelihood of survival and recovery of the bowhead whales by reducing the reproduction, numbers, or distribution of the species. This conclusion is based on the assumption that exploratory activities will not occur within the spring lead system during the bowhead migration.

Subsistence. Bowhead whales return to the eastern Alaskan Beaufort Sea as early as the beginning of August to begin their fall migration out of the Beaufort Sea. Unlike the spring hunt in the Chukchi Sea, the ice conditions in the Beaufort Sea progress from open water to freeze-up through the hunting season and successful hunting often depends both on favorable weather and ice conditions. Restrictions on drilling in the Beaufort Sea during the bowhead whale fall migration were imposed by MMS and the State of Alaska in response to concerns that drilling might disrupt the fall migration. The open-water season for exploration activities in the Beaufort Sea coincides with the hunting season for the villages of Kaktovik and Nuiqsut. Most exploratory drilling has been shoreward of the main migration corridor. Also, drilling is limited to above threshold depth until 50 percent of the whales have passed the drilling location. Also, any drilling that occurs during the fall migration requires monitoring to determine the effects of noise associated with exploration.

In Kaktovik, hunting activities generally occur within 10 miles of the

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coastline, but sometimes as much as 20 miles offshore (Jackobson and Wentworth, 1982). According to village elders, Kaktovik was a pre-historic whaling site. However, Kaktovik's most recent whaling began in 1964. From 1973 to 1988, Kaktovik landed at least one whale every year except in 1975, 1985 and 1987 for a total of 27 whales. Fall whaling in Nuiqsut occurs along the coast as far east as the Canning River with Flaxman Island as the most heavily used site. Nuiqsut has been a whaling community since 1973, and landed a whale in 1973, 1982, 1986 and 1987.

These and other whaling communities are concerned that heavy boat and air traffic and associated noise cause whales to abandon traditional migratory paths; that whalers are prevented from scouting for whales because of heavy boat traffic; and that industry boats moving directly in the path of whaling crews prevent the pursuit of a whale. Concern has been expressed by whalers because Kaktovik did not land a whale in 1985 when there was considerable seismic activity occurring during the fall bowhead whale migration and, again, in 1987 when both seismic and drilling activities occurred during the migration. However, in 1986 when Kaktovik landed three whales and in 1988 landed one, exploratory activities also were taking place in the vicinity of the hunting grounds. Bad ice conditions in 1985 and bad weather conditions in 1987 may have prevented whaling crews from reaching their traditional hunting grounds. Data gathered during aerial surveys in 1985 indicate that whales were present in the traditional hunting areas that year. On the other hand, 1986 was an exceptionally good ice year and a good year for hunting.

In 1986, the first Oil/Whalers Working Group's "Cooperative Program for the Beaufort Sea" provided for the coordination of oil and gas industry exploration activities in the Beaufort Sea with the Eskimo subsistence hunt of bowhead whales. This cooperative agreement was renegotiated for the 1987 and the 1988 season. These agreements are entered into by the Alaska Eskimo Whaling Commission (AEWC) and exploration companies that are operating in the Beaufort Sea at the time of the fall bowhead whale migration. The purpose of the agreement is to ensure that exploratory drilling does not interfere with or restrict the fall hunt of bowhead whales by the residents of the villages of Kaktovik and Nuiqsut. The town of Barrow also hunts for bowhead whales in the fall, but so far has not been a party to the agreement since it can hunt only if there is an unused quota available. Agreements are conditioned on the renewal of a NOAA–AEWC Memorandum of Understanding which is based on the satisfaction of NOAA that the cooperative program is consistent with and not prohibited under relevant provisions of the law. Basically the agreement provides for reliable communication among crews on the whaling and industry vessels, and includes a process for resolving disputes.

Gray Whales

In Arctic waters, gray whales are most likely to be encountered in the southern Chukchi Sea and the Bering Strait region, and would be affected must by oil and gas exploration activities in those areas. As much as one-fourth of the gray whale population may enter the northern Chukchi Sea through the Bering Strait. Although some individuals may suffer disturbances or other impacts from the proposed activities, due to the good overall condition of the gray whale population and to its widespread distribution in the Bering and Chukchi Seas, such impacts are not likely to be more than negligible.

However, additive impacts that could result from past and future OCS activities in the Arctic Region, the Bering Sea, and in other regions outside Alaska, may have the potential to affect the population adversely. Annually, the gray whale population migrates by or through at least eight oil lease areas in U.S. waters alone (Rice et al., 1984). Continued monitoring of the health of the gray whale population and the effects of OCS activities in these areas is necessary to assess whether the combined impacts are affecting the gray whales adversely.

Subsistence. There is little subsistence take of gray whales by Alaska natives although a few have been taken over the years (averaging less than one whale a year). The few takes are usually in the fall by bowhead whalers seeking to supplement a poor season. Since gray whales are not actively hunted by any of the northern Alaska villages, exploratory activities will not limit their availability for subsistence uses.

Beluga Whales

This species occurs in all of the Alaska OCS oil and gas lease sale areas. During the ice-free months, the largest concentrations are found in the eastern Beaufort Sea north of Canada although a few have been seen off Barter Island. The spring migration passes through the Chukchi Sea and the Beaufort Sea lease areas. Major summer concentrations occur in the North Aleutian Basin, Norton Basin, Hope Basin and Barrow Arch. During the fall, many belugas pass through the lease sale areas of the Beaufort Sea although this westward migration takes place primarily offshore. Information on sensitivity to oil and gas activities is limited. However, because they form dense aggregations, their populations as a whole may be significantly affected by local degradation of the environment. The effects of habitat changes on belugas could take various forms including direct mortality, displacement, increased stress or illness, changes in reproductive success, changes in fat reserves or energy expenditures, and changes in the ability to communicate, navigate or locate prey (Hazard 1988). Marine mammals may abandon areas as their habitat deteriorates, or they may exhibit high site tenacity. Belugas return to estuaries in northern Quebec every year despite severe overhunting that has reduced population levels. Although belugas in Kotezebue Sound (Chukchi Sea) are intensely hunted, and in the Mackenzie Delta (Canada) are hunted and exposed to dramatic increases in vessel traffic and industrial noise, they return each year. In other areas, where vessel traffic has increased, belugas have disappeared. Thus, site tenacity may better reflect the critical value of the habitat than the level of human-imposed stress (Hazard 1988).

Subsistence. Belugas have never been observed in large numbers during the summer in coastal waters of the Beaufort Sea, and there have been only a few nearshore sightings in the autumn (Frost, Lowry and Burns 1988). In the Chukchi Sea, the spring migration of belugas generally is in association with the bowhead migration, and the proposed regulations do not authorize a take during the bowhead whale spring migration. However, beluga whales are present in the summer in some coastal areas of the Chukchi Sea where they are hunted for subsistence. Although no exploration activities are planned in State waters of the Chukchi Sea, offshore exploration should be sited and timed so that belugas are not displaced or prevented from entering these areas.

Bearded, Ringed and Spotted Seals

Potential adverse effects of noise disturbances on ringed seals, particularly those associated with on-ice seismic activities in the Arctic, were considered by Burns and Kelly (1982) and Kelly et al. (1986). Displacement of seals from breathing holes and lairs was found to occur in local areas, but was not significant to the population. Effects on ringed seals of contact with oil was discussed previously. Although bearded seals would likely show the same effect of contact with oil as ringed seals, potentially greater harm to bearded seals may result from development activities that adversely affect their benthic foods. Petroleum oil spills have resulted in mortality of benthic invertebrates, including bivalve molluscs.

No studies have been conducted on the effects of industrial noise and other human activities on bearded seals. Bearded seals generally appear to be less readily disturbed by human activities than are many other pinnipeds (Kelly 1988), and Burns (1981) noted that bearded seals are less wary in the spring than in winter.

Although the long-term effects of oil and the effects of oil on the specific food chain of spotted seals are not known, the effects of energy exploration on spotted seals probably are the same as for ringed and bearded seals.

Subsistence. Most of the subsistence take of bearded, ringed and spotted seals occurs in the Bering Strait Region of Alaska where exploration activity will be limited to pre-lease geophysical surveys in the Hope Basin Area. Also, most seals are widely distributed at sea during the open water season, the time exploratory activities considered in this rulemaking will take place.

Conclusions

The Marine Mammal Commission, in response to NOAA Fisheries' request for comments, concurs with the petitioners' judgement that noise and disturbance from exploration are likely to have no more than temporary and localized effects on bowhead and gray whale behavior and movements, and that these effects are not likely to affect the survival or productivity of the whales or have more than temporary and localized effects on the availability of whales for native subsistence hunting. However, the Commission notes that the survival and productivity of the bowhead whale could be affected if noise or disturbance interfered with breeding, caused increased energy expenditures and food requirements, caused animals to avoid or abandon important or breeding areas, or disrupted feeding for more than a few hours or days in more than a single summer feeding season.

NOAA Fisheries agrees with this assessment and concludes that noise and disturbance will not adversely affect the marine mammal species through effects on annual rates of recruitment or survival if certain conditions are met.

The Commission also notes that noise and disturbance from exploration and related activities are not likely to have significant adverse effects on survival, productivity, or availability to native subsistence hunters due at least partially to the fact that activities would be limited in time and space. That is, an activity that interferes with feeding or breeding, or increases energy expenditures, for short periods may have negligible effects on survival or productivity, whereas the same activity might cause more than negligible impacts if it occurred in the same area year after year. Therefore, it is important to recognize that this does not mean that disturbance and noise from development and production activities, which could occur in certain locations for many years, also would have negligible effects.

NOAA Fisheries agrees with the Marine Mammal Commission that noise and disturbance will not have an unmitigable adverse impact on the availability of marine mammals for subsistence needs if certain conditions are met.

The Commission concurs with the petitioners that during exploration activities there is a low probability of oil spills occurring and contacting either bowhead or gray whales or habitats important to their survival or productivity. However, a low probability of occurrence does not, by itself, provide justification for concluding that oil spills would have negligible impacts. The potential impact of an oil spill is independent of its probability of occurrence, and the possible severity of that impact should be factored into the negligible impact determination. In this case, it may be reasonable to assume that, because the possibility of a spill occurring is so small, there is no need to consider the possible impacts of a spill, not that the impacts would be negligible if in fact a spill did occur.

The final regulations implementing the 1986 amendments to the MMPA and ESA include a discussion on weighing the likelihood of occurrence against the severity of the potential impact. The legislative history of the 1986 amendments states: "the degree of certainty of occurrence required in these judgements should be inversely proportional to the resultant harm to the overall population." NOAA Fisheries agrees with the Commission that while there is a low probability of oil spills occurring and contacting whales or seals or habitats important to their survival or productivity, the impacts would not be negligible if an oil spill occurred. Yet, NOAA Fisheries believes a finding of negligible impact is appropriate because of the low probability of an oil spill during the exploration phase.

The Commission adds, "the judgement that exploration and related activities would have negligible effects on marine mammals, especially the bowhead whale, is based on several assumptions. One is that changes in diving and movement patterns in response to ship and aircraft operations do not affect breeding or feeding in ways that would have either immediate or long-term effects on survival or productivity. Another assumption is that noise and disturbance would not cause whales to abandon or avoid traditional breeding areas, feeding areas, migratory routes, and native hunting grounds. The assumption is also made that there are alternative feeding areas, breeding areas, migratory routes, and hunting grounds that can be used with little or no effect on survival, productivity, or availability of whales to subsistence hunters."

The Commission believes that although these assumptions may be reasonable, their validity has not been verified. This would require accurate determinations of migration routes and the knowledge of age- or size-specific survival and reproductive rates of the bowhead, gray and beluga whales. Monitoring programs need to be established that are capable of detecting behavioral changes in whales that may be caused by exploration activities. NOAA Fisheries agrees that it is important to verify these assumptions.

In addition, NOAA Fisheries believes the populations of the bearded, ringed, and spotted seals and beluga whales also need to be better assessed, and the status of these populations needs to be monitored. To assess and minimize the possible adverse effects of offshore oil and gas exploration on these animals, studies need to be made to identify important habitat areas and to determine if noise or disturbance causes avoidance or abandonment of traditional habitat areas. Existing data are not sufficient to predict the effects of OCS exploration and development on seals particularly in the Chukchi and Beaufort Sea waters.

Based on the previous discussion, NOAA Fisheries makes the following specific conclusions regarding the proposed action.

Impact on Species

NOAA Fisheries concludes that based on the best scientific information available the effects of currently planned exploration will not adversely affect the species through effects on annual rates of recruitment or survival if certain conditions are met. The conclusion of "negligible impact"

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applies only to exploration, and does not apply to the development and production phases of oil and gas activity in the Beaufort and Chukchi Seas. The conditions are designed to eliminate interference with normal breeding and feeding patterns and migration to ensure that the effects remain negligible.

First, a take of marine mammals would not be allowed in the Chukchi Sea and Beaufort Sea until the bowhead whale spring migration has passed Pt. Barrow. This would allow for the whales to use the spring lead system through which they migrate without any interference from exploration activities. Although the petitioners have stated that they do not seek authorization for a take during this time, they reserve the option to do so if operations become feasible. Also, they believe that if technology develops, drilling units and support vessels could be in the area during the early open water period while the subsistence hunt is in progress. Nonetheless, these activities are not included in the proposed authorization for an incidental take.

Second, each activity would require a site-specific monitoring program approved by NOAA Fisheries. The purpose of the program would be to monitor the effects of the activity on marine mammals in that area.

Third, findings for this exemption were based on the total level of activity estimated by the industry and MMS in its environmental impact statements. If the level of activity, including the number of trackline miles for seismic activity, drilling units, and all the support vessels and aircraft associated with exploration, is more than the level estimated by industry and MMS, NOAA Fisheries will re-evaluate its findings to determine if they continue to be appropriate based on the higher level of activity. Depending on the results of this evaluation, NOAA Fisheries could add further conditions to the authorization or withdraw it.

Impact on Subsistence

Although exploratory activities may occasionally place physical barriers between marine mammals and subsistence hunters (i.e. survey vessels and barges traveling to exploration sites) and marine mammals may avoid certain structures such as drillships, NOAA Fisheries concludes that these activities over the next 5 years are not likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs if certain conditions are met. We did not find any evidence that exploratory activities directly displaced hunters or caused marine mammals to abandon hunting areas.

The conclusion that the activities will not have an "unmitigable adverse impact" applies only to exploration, and does not apply to the development and production phases of oil and gas activity in the Beaufort and Chukchi Seas.

The first condition concerns the spring migration of bowhead whales. As discussed previously, a take would not be allowed until NOAA Fisheries had determined that the spring migration of bowhead whales had passed Pt. Barrow. This would allow all the villages to participate in the spring hunt without any interference from exploratory activities.

Also, to lessen any possible effects concerning subsistence, NOAA Fisheries believes it is necessary for the exploration industry to continue cooperative efforts with villages that conduct subsistence hunts when exploration activities occur in the same areas. Therefore, the second condition would require applicants for a Letter of Authorization to contact the subsistence communities to discuss potential conflicts and to identify in the application what measures have been taken to minimize any adverse effects on the availability of marine mammals, especially the bowhead whale.

Third, if there is evidence in the future that exploration activities are reducing the availability of marine mammals for subsistence, NOAA Fisheries would revaluate its findings regarding subsistence and the measures required to ensure the availability of the species for subsistence. Depending on the results of the evaluation, NOAA Fisheries could add further conditions to the authorization or withdraw it.

Monitoring

The purpose of a monitoring program is to determine the effects of exploration activities on populations of marine mammals that inhabit the Arctic region. Ideally, monitoring programs should be designed to determine the direct, indirect and cumulative effects of offshore oil and gas exploration activities on the survival and productivity of these species.

Every applicant for a Letter of Authorization must submit a site-specific plan for monitoring the effects on the populations of marine mammals that are present during exploratory activities. The plan, which must be approved by NOAA Fisheries Service, must identify what survey techniques will be used to determine the movement and activity of the marine mammals near the exploratory sites. Qualified observers, approved by NOAA Fisheries, must monitor the behavior of the marine mammals present to determine the effects. The requirements for monitoring plans will vary depending on the activity, the location and the time. Not all monitoring plans will necessarily require a researcher or biologist as an observer, and activities that are not in areas known for the presence of marine mammals will require less extensive monitoring plans. NOAA Fisheries will coordinate monitoring plans so that the information obtained during monitoring is gathered in a consistent manner, and the information can be used to determine the cumulative impacts of exploration on marine mammals.

Although sponsoring a research program is not a requirement for obtaining a Letter of Authorization, NOAA Fisheries encourages research programs that would include (1) determinations of migration routes (especially bowhead whales) and the age or size-specific survival and reproductive rates of whales, (2) identification and characterization of feeding areas and habitat use and determination of their importance to the populations of marine mammals in the Arctic Region, (3) determination of the nature and effects of industrial noise in the Arctic Region on marine mammals including geophysical seismic sounds using airguns and drilling noise from both fixed and floating units and their support activities including icebreakers and dredges and (4) detection of cumulative effects.

Discussion of Comments

Those who favor NOAA Fisheries granting the oil companies an exemption mentioned the considerable amount of information that has been developed from studies concerning the interactions of exploratory operations with whales, and they believe this information indicates that exploratory operations have a negligible impact on marine mammals, and they do not have an adverse impact on the availability of the species for subsistence.

Those who expressed concern regarding the granting of an exemption question the conclusions of the petitioners regarding the effects of energy exploration on marine mammals, especially bowhead whales, and the effects on the availability of the bowhead whale for subsistence. The major concern mentioned by most commentators is the lack of information on the cumulative effects of energy exploration on the bowhead and gray whale. Generally, they believe that only if research occurs concurrently with exploratory activities will changes be detected. They believe that large-scale monitoring is the best method of detecting cumulative effects of industrial activities over a number of years.

Several commentators believe that the petitioners should add other species of marine mammals to their request because these species are also likely to be taken incidentally to these activities. Also, they felt the petitioners did not address adequately the mitigation measures that the MMPA requires if exploratory activities have an adverse impact on the availability of the bowhead whale for subsistence uses.

NOAA Fisheries appreciates the many thoughtful comments regarding the request for comments and information, and took these comments into account when preparing the Environmental Assessment and the proposed regulations. For example, in the first request for more information (August 1988), NOAA Fisheries suggested that the petitioners include four other species of marine mammals that we believe may be taken incidental to exploratory activities. These species are the beluga whale and the bearded, ringed and spotted seals. In February 1989, the petitioners agreed to this request. NOAA Fisheries forwarded comments regarding the inclusion of polar bears and walruses to the Fish and Wildlife Service which is conducting a review to determine if there will be a take of these species.

NOAA Fisheries also asked for more information on the level of exploratory activities to allow a better assessment of the effects on the species and on the availability of the species for subsistence. Also, the petitioners have been encouraged to continue working with the Alaska native groups to prevent in advance any adverse impact on the availability of the species for subsistence.

Classification

NOAA Fisheries prepared an environmental assessment for this proposed rulemaking and concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment may be obtained at the address listed above.

The Undersecretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since only oil and gas exploration companies, which usually do not qualify as small businesses, would be affected. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. In anticipation of this proposed rule, additional requirements were approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB Control Number 0648-0151. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service and OMB (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

NOAA Fisheries determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program under the Coastal Zone Management Act (CZMA). This rule does not authorize oil exploration activities for which a consistency determination may be required. Rather, the rule authorizes the non-lethal taking of marine mammals incidental to such activities. This determination will be submitted to the State of Alaska's Division of Governmental Coordination for review under § 3.7 of the CZMA.

References

Ahmaogak, G., 1986. Integration of relevant data regarding potential impacts to the bowhead whale from contact with spilled oil. Attachment to a May 13, 1986, letter to the Commissioners of Alaska Dept. of Environmental Conservation, Fish and Game, and Natural Resources. 24 pp.

Albert, T.F. (ed.), 1981. Tissue structural studies and other investigations on the biology of endangered whales in the Beaufort Sea. Rpt. to the Bureau of Land Management from the Department of Veterinary Science, University of Maryland, College Park, Md., 20742. 953 pp.

Braham, H.W., M.A. Fraker, and B.D. Krogman, 1980. Spring migration of the Western Arctic population of bowhead whales. Mar. Fish. Rev. 42:36–46.

Braithwaite, L.F., M.G. Aley, and D.L. Slater, 1983. The effects of oil on the feeding mechanism of the bowhead whale. Final Report Prepared for U.S. Dept. of the Interior under Contract No. AA851LT055. June 10, 1983. 45 pp.

Burns, J.J., 1967. The Pacific bearded seal. Alaska Dept. Fish and Game, Pittman-Robertson Proj. Rep. W–6–R and W–14–R. 66 pp.

Burns, J.J., 1981. Bearded seal—*Erignathus barbatus* Erxleben, 1777. Pages 145–170 in S.H. Ridgway and R.J. Harrison, eds. Handbook of marine mammals. Vol. 2 Seals, Academic Press, New York.

Burns, J.J. and B.P. Kelly, 1982. Studies of ringed sealed in the Alaskan Beaufort Sea during winter: impacts of seismic exploration. Unpubl. annual report, OCSEAP Res. Unit 232 to U.S. Dept. of Commerce, Office of Marine Pollution Assessment, Juneau, Alaska. 57 pp.

Davis, R.A. and C.R. Evans, 1982. Offshore distribution and numbers of white whales in the eastern Beaufort Sea and Amundsen Gulf, summer 1981. Rep. prepared for SOHIO Alaska Petroleum Co., Anchorage, Alaska, and Dome Petroleum Ltd., Calgary, Alberta, LGL Ltd. 76 pp.

Davis, R.A. and D.H. Thompson, 1984. Marine mammals. Chapter 4 in The Barrow Arch Environment and Possible Consequences of Planned Offshore Oil and Gas Development. Proceedings of a Synthesis Meeting. J.C. Truett, editor. OCSEAP/NOAA/OAD, Anchorage, Alaska pp. 47–80.

Finley, K.J. and R.A. Davis, 1984. Reactions of beluga whales and narwhals to ship traffic and ice-breaking along ice edges in the eastern Canadian High Arctic: 1982–1984. An overview. Rep. prepared for Can. Dept. Indian Affairs and Northern Development, Ottawa. LGS Limited, King City, Ontario, 42 pp.

Fraker, M.A. and P.N. Fraker, 1979. White whale distribution and abundance and the relationship to physical and chemical characteristics of the McKenzie Estuary. Can. Fish. Mar. Serv. Tech. Rep. 863. 59 pp.

Fraker, M.A., D.E. Sargeant, and W. Hoek, 1978. Bowhead and white whales in the southern Beaufort Sea. Dept. Fish and Environment., Sidney, B.C., Beaufort Sea Tech. Rep. 4, 114 pp.

Frost, K.J., L.L. Lowry, and J.J. Burns, 1987. Chapter 14. Ringed seal monitoring: RU 667. In: Chukchi Sea Information Update, D.A. Hale, editor. NOAA/NOS/OAD, Alaska Office, June 1987. pp. 87–96.

Frost, K.J., L.L. Lowry, and J.J. Burns, 1988a. Distribution, abundance, migration, harvest, and stock identify of belukha whales in the Beaufort Sea. Chapter 4 in:

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Beaufort Sea Information Update, April 1988, P.R. Becker, editor, NOAA/NOS/OAD, Alaska office, June 1987. pp. 87–98.
Frost, K.J., L.L. Lowry, and J.J. Burns, 1988b. Ringed seals in the Beaufort Sea. Chapter 5 in: Beaufort Sea Information Update, April 1988, P.R. Becker, editor. NOAA/NOS/OAD, Alaska Office. pp. 41–50.
Geraci, J.R. and D.J. St. Aubin, 1982. Study of the effects of oil on cetaceans. Final Rept. U.S. Dept. Interior, Bureau of Land Management, Washington, DC 274 pp.
Geraci, J.R. and D.J. St. Aubin, 1985. Expanded studies of the effects of oil on cetaceans. Final Rept. Contract #14–12–0001–29169 U.S. Dept. Interior, Minerals Management Service, Washington, DC 144 pp.
Geraci, J.R. and D.J. St. Aubin, 1986. An assessment of the effects of oil on bowhead whales *Balaena mysticetus*. Report submitted to Amoco Production Company, Anchorage, AK. 42 pp + appendices.
Geraci, J.R. and T.G. Smith, 1975. Functional hematology of ringed seals in the Canadian Arctic. J. Fish. Res. Board, Canada 32:2559–2564.
Goodale, D.R., M.A. Hyman, and H.E. Winn, 1982. Cetacean responses in association with the *Regal Sword* oil spill. Ch. XI In: A Characterization of Marine Mammals and Turtles in the Mid and North Atlantic Areas of the U.S. Outer Continental Shelf. Cetacean and Turtle Assessment Program, Univ. Rhode Island, Annual Report, 1979, For U.S. Dept. Interior, Bur. Land Manag., Washington, DC, pp XI–1 to XI–15.
Hansen, D.J., 1985. The potential effects of oil spills and other chemical pollutants on marine mammals occurring in Alaskan waters. OCS Report MMS 85–0031. Minerals Management Service, Anchorage, AK. 21 pp.
Hazard, K., 1988. Beluga whale, *Delphinapterus leucas*. In Selected Marine Mammals of Alaska, Species Accounts with Research and Management Recommendations. J.W. Lentfer, editor. Marine Mammal Commission, Washington, DC. pp 195–236.
International Whaling Commission, In press. Report of the Subcommittee on Protected Species and Aboriginal Subsistence Whaling.
Kelly, B.P. 1988a. Ringed Seal, *Phoca hispida*. In Selected Marine Mammals of Alaska, Species Accounts with Research and Management Recommendations. J.W. Lentfer, editor, Marine Mammal Commission, Washington DC, pp. 57–76.
Kelly, B.P., 1988b. Bearded Seal, *Erignothus barbatus*. In Selected Marine Mammals of Alaska, Species Accounts with Research and Management Recommendations. J.W. Lentfer, editor, Marine Mammal Commission, Washington DC, pp. 77–94.
Kelly, B.P., 1988. Ringed seal winter ecology and effects of noise disturbance. Final rep., part 2, OCSEAP Res. Unit 232, to U.S. Dep Commerce, NOAA/NOS, Alaska Office, Anchorage, 91 pp.
LGL and Greeneridge Sciences Inc. 1987. Responses of bowhead whales to an offshore drilling operation in the Alaskan Beaufort Sea, Autumn 1986. Draft Report prepared for Shell Western E & P Inc. Anchorage, Alaska. 308 pp.
Ljungblad, D.K., S.E. Moore, and D.R. Van Schoik, 1983. Aerial surveys of endangered whales in the Beaufort, eastern Chukchi, and northern Bering Seas, 1982. Final Rpt: April October, 1982. Tech. Mem. 605, Naval Ocean Systems Center, San Diego, CA. Prepared for Minerals Management Service, U.S. Department of the Interior.
Ljungblad, D.K., S.E. Moore, J.T. Clarke, and J.C. Bennett, 1987. Distribution, abundance, behavior, and bioacoustics of endangered whales in the Alaskan Beaufort and Eastern Chukchi Seas, 1979–1986. NOSC Tech. Rep. 1177. prepared for MMS OCS Study. 167 pp. + appendices.
Ljungblad, D.K., S.E. Moore, D.R. Van Schoik and C.S. Winchell. 1982. Aerial surveys of endangered whales in the Beaufort, Chukchi and northern Bering Seas. NOSC TD 486, prepared for MMS Alaska OCS Office. 374 pp.
Ljungblad, D.K., S.E. Moore, J.T. Clarke, D.R. Van Schoik, and J.C. Bennett, 1985a. Aerial surveys of endangered whales in the northern Bering, eastern Chukchi, and Alaskan Beaufort Seas, 1984: with a six year review. 1979–1984. Tech. Rep. 1046, Naval Oceans Systems Center, San Diego, CA., 104 pp. + appendices.
Ljungblad, D.K., S.E. Moore, J.T. Clarke, and J.C. Bennett, 1985b. Fall data summary: Endangered whale aerial surveys in the Chukchi and Beaufort Seas, 1985. SEACO, Inc., San Diego, CA. Prepared for Minerals Management Service, Anchorage, AK. 8 pp + appendices.
Ljungblad, D.K., B. Wursig, S.L. Swartz, and J.M. Keene. 1985c. Behavioral responses of bowhead whales (*Balaena mysticetus*) elicited by close approaches of active geophysical vessels in the Alaskan Beaufort Sea. Prepared for USDOI, MMS. San Diego, CA: Naval Ocean Systems Center.
Martin, F.B. 1986. The probability of a major oil spill from a Beaufort Sea OCS exploratory blowout. Rept. submitted as Amoco Production Company Written Testimony to State of Alaska Concerning Beaufort Sea Seasonal Drilling Restrictions. Amoco Production Company. 9 pp.
Miles, P.R., C.I. Malme, and W.J. Richardson. 1987. Prediction of drilling site-specific interaction of industrial acoustic stimuli and endangered whales in the Alaskan Beaufort Sea. Rep. by BBN Laboratories Incorporated, Cambridge, MA for the Minerals Management Service, Anchorage, AK, Under Contract No. 14–12–0001–30295. OCS Study MMS 87–0084. 341 pp.
Minerals Management Service, 1985. Scenario of Sale 109 Environmental Impact Statement. Memorandum to Regional Director, Alaska OCS Region from Regional Supervisor, Leasing and Environment, Dec. 19, 1985.
Minerals Management Service, 1987a. Chukchi Sea Sale 109 Draft Environmental Impact Statement, MMS 87–0009. U.S. Department of the Interior, Minerals Management Service, Alaska OCS Region.
Minerals Management Service, 1987b. Alaska outer continental shelf Beaufort Sea Sale 97. Final Environmental Impact Statement, MMS 87–0069. U.S. Department of the Interior, Minerals Management Service, Alaska OCS Region.
Montague, J. 1985. Responses of endangered whales to offshore oil industry activities. Paper presented at 6th Biennial Conference on the Biology of Marine Mammals, 22–26 November 1985, Vancouver, B.C. 8 pp.
Moore, S.E., J.T. Clarke, and D.K. Ljungblad, 1988. A comparison of gray whale (*Eschrichtius robustus*) and bowhead whale (*Balaena mysticetus*) distribution, abundance, habitat preference and behavior in the northeastern Chukchi Sea, 1982–1984. Rpt. Int. Whal. Comm. 38:273–279.
Murrell, T.L., J.R. Levine, J.B. Regg, and E.J. Tennyson. 1987. Alaskan Outer Continental Shelf oil-spill-response measures for offshore oil and gas operations. Rpt. prepared by Minerals Management Service. OCS Rpt. MMS 87–0062. 165 pp.
Oliver, G.S., 1987. Marine Mammals. The Diapir Field Environment and Possible Consequences of Planned Offshore Oil and Gas Development. Proceedings of a Synthesis Meeting. P.R. Becker, editor. OCSEAP/NOAA/OAD, Alaska Office. pp. 147–186.
Powers, A.D., 1987. Letter presenting statistics on the frequency and probabilities of oil spills in the Alaskan OCS dated November 18, 1987 from MMS to Rennie S. Holt, NMFS, 1825 Connecticut Avenue, NW., Washington, DC. 3 pp.
Quakenbush, L.T., 1988. Spotted seal, *Phoca largha*. In Selected Marine Mammals of Alaska, Species Accounts with Research and Recommendations. J.W. Lentfer, editor. Marine Mammal Commission, Washington DC. pp. 197–124.
Rice, D.W., A.A. Wolman, J.M. Breiwick, 1984. Gray whale, *Eschrichitius robustus*. In the status of endangered Whales, a special section of the Marine Fisheries Review, NOAA/NMFS, Seattle, Wash. pp. 7–14.
Richardson, W.J. (ed.), 1982. Behavior, disturbance responses and distribution of bowhead whales *Balaena mysticetus* in the Beaufort Sea, 1980–81. Rpt. by LGL Ecol. Res. Assoc. Inc., Bryan, TX, for the U.S. Bureau of Land Management, Washington. 456 pp.
Richardson, W.J. (ed.), 1985. Behavior, disturbance responses and distribution of bowhead whales *Balaena mysticetus* in the eastern Beaufort Sea, 1980–1984. OCS Study MMS 85–0034, NTIS PB87–124376. Rpt. from LGL Ecol. Res. Assoc., Inc., Bryan, TX, for Minerals Manage. Serv., Reston, VA. 306 pp.
Richardson, W.J. (ed.), 1987. Importance of the Eastern Alaska Beaufort Sea to feeding bowhead whales, 1985–1986. OCS Study MMS 87–0037. Rpt. from LGL Ecol. Res. Assoc., Inc., Bryan, TX, for Minerals Manage. Serv., Reston, VA 547 pp.
Richardson, W.J., and Greene, C.R., 1987. Noise and marine mammals. Pages 271–282 in P.R. Becker, ed. Proceedings of a synthesis meeting: the Diapir Field environment and possible consequences of planned offshore oil and gas development; Chena Hot Springs, Alaska, January 1983. DOC/NOAA/OCSEAP—National Oceans Service, Alaska Office, Anchorage.

Richardson, W.J., C.R. Greene, and B. Wursig, 1985b. Behavior, disturbance responses and distribution of bowhead whales in the eastern Beaufort Sea, 1980–1984: a summary. LGL Ecological Research Associates, Inc., Bryan, TX for U.S. Minerals Management Service, Reston, VA. 30 pp.
Richardson, W.J., M.A. Fraker, B. Wursig, R.S. Wells, 1985c. Behavior of Bowhead Whales *Balaena mysticetus* summering in the Beaufort Sea: Reactions to industrial activities. Biol. Conserv. 32 (1985) 195–230.
Richardson, W.J., B. Wursig, and G.W. Miller. 1987. Bowhead distribution, numbers and activities. pp. 257–368 in Richardson, W.J. (ed). Importance of the Eastern Alaskan Beaufort Sea to feeding bowhead whales, 1985–1986. Prepared for MMS, Reston VA. OCS MMS 87–0037.
Richardson, W.J., B. Wursig, G.W. Miller, and G. Silber, 1986. Bowhead distribution, numbers and activities. pp. 148–218 in Richardson, W.J. (ed). Importance of the Eastern Alaskan Beaufort Sea to feeding bowhead whales, 1985. LGL Ecological Research Associates, Inc. Prepared for MMS. Reston VA. OCS MMS 86–0026.
Smith, T.G. and J.R. Geraci, 1975. The effect of contact and ingestion of crude oil on ringed seals of the Beaufort Sea. Dept. Environ., Victoria, B.C., Beaufort Sea Tech. Rep. 5., 66 pp.
Thomson, D.H., 1986. Energetics of bowheads. pp 220–244 in Richardson, W.J. (ed). Importance of the Eastern Aleskan Beaufort Sea to feeding bowhead whales, 1985. LGL Ecological Research Associates, Inc. Prepared for MMS, Reston, VA. OCS MMS 86–0026.

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting, Reporting and recordkeeping requirements.

Dated: September 27, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

For reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1371(a)(5).

2. Subpart D is added to read as follows:

Subpart D—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

Sec.
228.31 Specified activity and specified geographical region.
228.32 Effective dates.
228.33 Permissible methods.
228.34 Prohibitions.
228.35 Level of activity.
228.36 Measures to ensure availability of species for subsistence.
228.37 Requirements for monitoring and reporting.
228.38 Letters of Authorization.

Subpart D—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 228.31 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking (by harassment) of marine mammals (bowhead, gray, and beluga whales and bearded, ringed, and spotted seals) by U.S. citizens engaged in oil and gas exploration in the Chukchi Sea or Beaufort Sea off the coast of Alaska. The geographical region includes Alaska state waters and outer continental shelf waters that have been leased for exploration or that are being considered for leasing. The activities include geophysical surveys and exploratory drilling and support operations (e.g. ice-breakers, supply vessels and aircraft).

§ 228.32 Effective dates.

Regulations in this subpart are effective for a 5-year period except for the time each year when bowhead whales are migrating through the spring lead system in the Chukchi Sea and Beaufort Sea. This period is approximately from mid-April through early June. Each year, the National Marine Fisheries Service will determine when the spring migration of bowhead whales has passed Pt. Barrow. The National Marine Fisheries Service will notify applicants when the migration is completed.

§ 228.33 Permissible methods.

(a) The incidental, but not intentional, taking of whales by U.S. citizens holding a Letter of Authorization is permitted using the following methods for exploration:

(1) Geophysical surveys including shallow hazard and acoustic surveys, and

(2) Exploratory drilling including ice-breakers, support vessels and aircraft.

(b) The methods and activities identified in § 228.33(a) must be conducted in a manner that minimizes to the greatest extent possible any adverse impacts on marine mammals, their habitat, and on the availability of these marine mammals for subsistences uses.

(c) The National Marine Fisheries Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Authorization will identify allowable conditions or methods that are specific to that activity and location.

§ 228.34 Prohibitions.

(a) An incidental take of bowhead whales will not be allowed during their spring migration in the Chukchi Sea and Beaufort Sea (see § 228.32).

(b) An incidental take other than by harassment will not be allowed.

§ 228.35 Level of activity.

When Letters of Authorization are requested each year, the National Marine Fisheries Service will determine whether the level of activity identified in the requests exceeds that considered by the National Marine Fisheries Service in making a finding of negligible impact on the species and a finding of no adverse impact on the availability of the species for subsistence. If the level of activity is higher, the National Marine Fisheries Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the higher level of activity. Depending on the results of the evaluation, the National Marine Fisheries Service could add further conditions to the authorization or withdraw it.

§ 228.36 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must identify what measures have been taken to minimize any adverse effects on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant must contact affected subsistence whaling communities to discuss potential conflicts with the siting, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with any subsistence hunt.

§ 228.37 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration on marine mammals. The Holder must notify the National Marine Fisheries Service, Alaska Region, of any activities that may involve a potential take at least 90 days prior to the activity in order to satisfy § 228.37(d).

(b) Holders of Letters of Authorization must designate a qualified individual or

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individuals to observe and record the effects of exploration activities on marine mammals. The observer must be approved by the National Marine Fisheries Service.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects on populations of marine mammals that are present during exploratory activities. This plan, which must be approved by the National Marine Fisheries Service, should identify what survey techniques will be used to determine the movement and activity of marine mammals near the exploratory sites including migration and other habitat uses, such as feeding. A qualified researcher should observe the behavior of the marine mammals present to determine if they are being affected. The monitoring program should document the acoustical effects on marine mammals and document or estimate the actual level of take. The requirements for monitoring plans will vary depending on the activity, the location, and the time.

(d) At its discretion, the National Marine Fisheries Service may place an observer on board drillships, aircraft, etc. to monitor the impact of exploration activities on marine mammals.

(e) The holder of a Letter of Authorization must submit a report to the Assistant Administrator for Fisheries within 90 days of the completion of any exploratory activities. This report must include the following information:

(1) Dates and types of activity;

(2) Dates and locations of any activities related to monitoring the effects of exploration on marine mammals;

(3) Results of the monitoring activities including an estimate of the actual level of take; and

(4) Results of behavioral, feeding, or population studies.

§ 228.38 Letters of authorization.

(a) Each company conducting an exploratory activity in the geographical area described in § 228.31 must apply for a Letter of Authorization for each geophysical survey or seismic activity and each drilling operation. The application must be submitted to the National Marine Fisheries Service at least 90 days before the activity is scheduled to begin.

(b) When a company submits an application for a Letter of Authorization, it must include the following:

(1) A plan to monitor the behavior and the effects of the activity on marine mammals;

(2) A description of the measures taken to minimize any potential conflicts between the proposed activity and subsistence hunting; and

(3) A description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity.

(c) In addition to the provisions of § 228.6 (see General Regulations), any substantive modifications of the Letters of Authorization will be made after notice and opportunity for public comment.

(d) The requirement for notice and public review in § 228.38(c) will not apply if the National Marine Fisheries Service determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

[FR Doc. 89-23209 Filed 10-2-89; 8:45 am]
BILLING CODE 4310-55-M

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50 CFR Parts 611, 672, and 675

[Docket No. 90370-9191]

RIN 0648-AC88

Foreign Fishing; Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) proposes a rule that redefines directed fishing using directed fishing standards for various groundfish species in the Gulf of Alaska and in the Bering Sea and Aleutian Islands area. This action is necessary to promote conservation and management of groundfish. It is intended to further the goals and objectives contained in fishery management plans that govern these fisheries.

DATE: Comments are invited until November 1, 1989.

ADDRESS: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska and Bering Sea and Aleutian Islands area are managed by the Secretary under the Fishery Management Plans (FMPs) for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675.

At its January 16-19, 1989, meeting, the Council requested that NMFS prepare a regulatory amendment so that a more permanent change could be made to the regulatory text concerning directed fishing than that afforded by an emergency rule that was in effect from March 28 through September 23, 1989 (see 54 FR 13191, March 31, 1989; 54 FR 27384, June 29, 1989). The emergency rule modified the definition of directed fishing with respect to enforcement and also limited the amount of sablefish caught in the Bering Sea and Aleutian Islands area (BSAI) to 10 percent of Greenland turbot and Pacific ocean perch, and 1 percent of other groundfish, retained on board a vessel. The Council also requested that NMFS develop and include in the regulatory amendment definitions specific to the Gulf of Alaska (GOA) sablefish trawl fishery and the various BSAI groundfish fisheries.

The Council intends that amounts of groundfish species that are not available for a directed fishery should be caught only in amounts necessary to support directed fisheries for other groundfish species. At the same time, the Council does not intend that occasional catches of groundfish incidental to other directed fisheries should be discarded at sea and wasted unnecessarily. To the contrary, the Council recognizes that, given the variable composition of groundfish species in the ecosystem, fishermen can be expected to inadvertently catch other species while conducting directed fishing for a particular species. The Council intends that fishermen should be given the chance to adjust fishing practices during the course of a trip such that the resulting composition of the total catch at the end of the trip would not violate a directed fishing closure.

The Council often expressed this intent at its April 11-14, 1989, meeting during its review of the regulatory amendment drafted by NMFS. The Council heard testimony from fishing industry representatives concerning the need for a time period in which to adjust catches so that resulting catch for a species for which directed fishing had been prohibited would not violate a directed fishing closure. Other industry representatives testified that fishermen should not be allowed to retain amounts of groundfish on board after the date of the last offloading or transfer, because large amounts of groundfish for which directed fishing had been prohibited could be caught and retained without being in violation. As a result, these species of groundfish could be taken in excessively disproportionate amounts as allowable bycatch and cause the total allowable catch (TAC) to be reached before the fishing year ended. In such cases, additional catches of these species would have to be treated as prohibited species and discarded at sea as waste. Finally, other industry representatives testified that groundfish caught in another GOA regulatory area or district, or BSAI subarea, should not be considered for purposes of calculating percentages used in the definition, again, because larger amounts of groundfish for which a directed fishery had been closed could otherwise be caught, causing the TAC to be reached too early.

Council Recommendations

After considering testimony, the Council recommended that the regulatory amendment be implemented, but with the following changes:

1. The definition should be based on amounts of fish caught since the date of last offloading rather than on a haul or set basis, which would allow fishermen to adjust amounts of bycatch species over the time period of the trip;

2. Percentages used to define directed fishing should be reduced where appropriate to remove economic incentives to target on bycatch species, but not reduced so low as to require excessive discard of bycatch species and resultant wastage;

3. Fish and fish products retained onboard a vessel from a prior trip should not be used for purposes of calculating a percentage of a species when determining compliance with a directed fishing closure during a subsequent trip; and

4. Fish and fish products onboard a vessel that were caught in another GOA regulatory area or district, or BSAI subarea, should not be used for purposes of calculating a percentage when determining compliance with a directed fishing closure.

Definitions

The definitions of directed fishing are specified in the relevant fishing regulations (see 50 CFR 672.2 for GOA groundfish and 50 CFR 675.2 for BSAI groundfish and 50 CFR 611 for foreign fishing). The codified definitions of directed fishing for both GOA and BSAI groundfish read as follows:

Directed Fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish.

The codified definition of directed fishing applicable to foreign fishing is different and is specified under 50 CFR part 611.

These codified definitions were superseded temporarily by emergency rule to allow time for the preparation of a regulatory amendment to resolve this issue (see 54 FR 13191, March 31, 1989; 54 FR 27384, June 29, 1989). The definition of foreign fishing was revised temporarily to be consistent with the appropriate temporary definitions. These temporary definitions are effective through September 23, 1989.

The definition of directed fishing has been a contentious issue. Under the codified definitions, catches of species for which directed fishing is prohibited are compared against catches of other fish over any period on an individual haul or set basis, as well as against the total amount of fish on board. If a fisherman catches groundfish species for which directed fishing is prohibited in an amount greater than an allowable percentage, the fisherman may be charged with a violation. Fishing industry representatives complain that they may be liable for their catches before they have had the chance to observe and sort them. If a catch is brought on board a vessel and a particular groundfish species is observed by enforcement officers to be in excess of the maximum allowable percentage of total catch, the vessel operator could be cited. The industry has contended that the codified definitions of directed fishing create potential enforcement standards that are too burdensome.

Proposed rules

Although the codified definition in the Code of Federal Regulations was intended to encourage fishermen to modify fishing practices when excessive amounts of bycatch might result, the Secretary recognizes the bycatch permitted under these definitions is too high in many cases and further recognizes the burden that these definitions has imposed on fishermen who may not be aware of the true composition of their catches until they have observed them after retrieving their gear. The Secretary, therefore, proposes a rule that replaces the directed fishing definition and implements directed fishing standards for various groundfish species and gear types.

Pertinent to the Council's recommendations are the following three aspects of the proposed rule:

(1) The standards would be enforced on a trip basis, which means that fishermen would be held accountable for catches during the period of time since the date of last offloading or transfer of any fish or fish products, or until the vessel leaves the GOA regulatory area or district or BSAI subarea in which fishing commenced, which ever occurred first. Fishermen would be allowed to adjust catches of a species and the amounts of a species that are retained would be compared against other species and the total amount of fish and fish products retained during the same trip in determining whether the vessel was engaged in directed fishing.

(2) Any catches retained on board from a prior trip would not be used to compare the amounts of a particular species to other species and to the total amount of fish retained during a subsequent trip. A vessel is engaged in a single fishing trip from the commencement of any fishing activity until any offload or transfer of any fish or fish product from that vessel, or until the vessel leaves the GOA regulatory area or district or BSAI subarea where fishing activities commenced, whichever occurs first.

(3) The amount of a species caught in a GOA regulatory area or district or BSAI subarea can only be compared with amounts of other species and the total amount of fish and fish products on board a vessel that were caught in the same regulatory area or district or subarea. Thus, fishermen would not be allowed to calculate the percentage of a species caught in one regulatory area or

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district or subarea using amounts of fish and fish products from another regulatory area or district or subarea.

As discussed below, proposed percentages used in the directed fishing standards are reduced from the codified definitions where necessary to better reflect natural rates of catch. Fishermen would have little economic incentive, if any, to target on species for which directed fishing is prohibited. As a result, if the Secretary prohibited directed fishing for a species for purposes of extending harvest of such species over a longer time period, it also would delay the point at which the species must be discarded at sea and result in reduced resource wastage. The Secretary has made a preliminary determination that this proposed rule is superior to the status quo and is consistent with the goals and objectives of both groundfish FMPs.

Editorial and related changes

The form of the proposed rule differs in several respects from the Council recommendations but is essentially the same in substance except as otherwise noted. The proposed rules establish standards for directed fishing. This approach is more flexible and will be more likely to accommodate future revisions. The actual percentages recommended by the Council are not changed except as indicated in the discussion on percentages below. In addition, the numbering and paragraph designations for various provisions are revised, some provisions are combined, and a variety of other minor revisions are included to ensure consistency, to provide clarity, and to accomplish the intent of the Council. For example, subparagraphs within the redesignated paragraph § 672.20(c)(3), *Notices of closure*, in 50 CFR part 672 are changed by renumbering and by removing the word "directed." This word makes this paragraph confusing, since it references management responses appropriate when the TAC for any target species or the "other species" category has been reached and has been declared a prohibited species.

Percentages

Recommendations made by the Council to change certain percentages used to determine whether a vessel is engaged in directed fishing in the Gulf of Alaska are limited to sablefish caught with trawl gear. Council recommendations for the BSAI are pertinent to all species.

Gulf of Alaska Groundfish

Sablefish typically are caught incidentally while targeting with trawl gear for flounder, rockfish, pollock, and Pacific cod. The Council considered recommendations from its Advisory Panel, as well as testimony presented by the public, about the percentage of sablefish that ought to be used to define directed fishing for sablefish in the GOA by vessels using trawl gear. The Council recommended that the directed fishing percentage should be 5 percent or more for all groundfish species, except for Dover sole and Rex sole and rockfish of the genera *Sebastes* and *Sebastolobus*. For the exceptions, the directed fishing percent should be no less than 15 percent. The Council recommended this percentage to accommodate higher bycatch rates of sablefish in fisheries for Dover sole, Rex sole, and rockfish.

The Secretary proposes a directed fishing standard for sablefish caught with trawl gear in the GOA based upon 5 percent of all fish and fish products excluding rockfish of the genera *Sebastes* and *Sebastolobus*, for which the percentage is 15 percent. The Secretary is not proposing the Council's recommended percentage of Dover sole and Rex sole at this time. A definition of directed fishing for any species must be tied to an established TAC for that species. Since only a single TAC is specified for the flatfish complex, only a single definition of directed fishing for sablefish is proposed when compared to amounts of flatfish.

Prior to the Council's recommendations, NMFS had calculated that the definition of sablefish directed fishing ought to be at least 20 percent of rockfish and 10 percent of pollock and Pacific cod on the basis of the EA/RIR, using the high end in the data range. However, the recommendations of the Council also reasonably approximate the low end in the data range. The Council's recommendations for lower percentages are intended to reduce economic incentives such that individual vessels would not be encouraged to target on species for which directed fishing is prohibited. The Secretary, on the basis of the EA/RIR, concurs with the Council recommendation and proposes 15 percent to define directed fishing for sablefish when compared to amounts of rockfish on board but proposes a definition of 5 percent of all the other fish and fish products.

For sablefish caught with hook-and-line gear, the retention of sablefish in an amount that constitutes 4 percent or more of all fish and fish products retained during that trip constitutes directed fishing for sablefish. For all other species of groundfish, the retention of a species or species group in an amount that equals or exceeds 20 percent of all fish and fish products retained during the same trip constitutes directed fishing for that species or species group.

Bering Sea and Aleutian Islands Groundfish

The Council reviewed bycatch percentages recommended by NMFS to define directed fishing. Amounts of fish and fish products retained on board that are equal to, or greater than, these percentages would be considered to be directed fishing. With the exception of a sablefish bycatch percentage in rockfish and Greenland turbot fisheries, the Council adopted the recommended percentages. Although NMFS had determined that the sablefish bycatch percentage could be up to 25 percent of Greenland turbot and up to 15 percent of rockfish, the Council adopted 10 percent for both Greenland turbot and rockfish as recommended by the Advisory Panel and public testimony. The higher percentages recommended by NMFS represent the high end of the data range. However, the recommendations of the Council also reasonably approximate the low end of the data range. As with the standard for directed fishing proposed for sablefish caught with trawl gear in the Gulf of Alaska, the Council intends that the percentages be lower to remove economic incentives to target on species closed to directed fishing.

The bycatch percentages in the Bering Sea and Aleutian Islands groundfish fisheries were examined by gear type and by target fishery. The Secretary notes that these percentages vary among areas and seasons fished. Annual variation is likely, too, if stocks of any species vary substantially in abundance. As bycatch species fluctuate in abundance, changes in bycatch rates should show the same trend. For example, when sablefish is abundant, then sablefish bycatch rates would be higher for each gear type. If sablefish is not abundant, then sablefish bycatch rates would be lower.

This variability presents practical problems that must be considered when proposing bycatch rates for the fisheries. Although different bycatch rates for different times of the fishing year and for each area might be observed, the accounting by enforcement officers for discrepancies in apparent catches on board fishing vessels at this level of refinement is not feasible without inordinate management costs. Consequently, the Secretary is proposing percentages that are aggregated, using data from the combined statistical areas 51–54 of the International North Pacific Fishery Commission. Although percentages were examined for trends, no obvious patterns were detected to warrant regulation of bycatches differently during seasons of the year.

Bycatch rates among the gear types are expected to be independent. Consequently, bycatch percentages for trawl, hook-and-line, and pot gear are summarized and proposed independently.

Monitoring and Enforcement

Compliance with the directed fishing standards would be monitored through the review of catches retained during a trip through a review of the amounts of fish and fish products on board a vessel at the completion of a trip. Part of the latter review would likely be accomplished by reviewing the vessel's catch, production, and offloading records. Although a number of specific percentages are used in the standards for directed fishing, accounting is done the same way. For example, if directed fishing for pollock is prohibited in a particular area, then a boarding officer would calculate the round weight equivalents for all species recorded to have been caught in that area during a trip, other than "other flatfish", Pacific cod, and yellowfin sole, and multiply the sum by 1 percent. Then, the boarding officer would calculate the sum of the round weight of "other flatfish", Pacific cod, and yellowfin sole caught in the same area during the trip and multiply that sum by 20 percent. The sum of the two results would be compared to the amount of pollock retained in that area during the trip. If the amount of pollock exceeded the sum, that vessel would have violated the directed fishing closure for pollock.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment for this rule that discusses the environmental, social, and economic impacts on the human environment that will occur as a result of this rule. You may obtain a copy of the EA/RIR/IRFA from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis as part of the regulatory impact review, which concludes that this proposed rule, if adopted, could have significant economic impacts on a substantial number of small entities. Implementation and enforcement of a bycatch definition that is based on a trip basis instead of an individual haul or set basis is better for small entities than the status quo because it will allow fishermen to sort their catch over a period of time to accomplish the objective that the amount of bycatch retained is within the allowable percentage. The reduced percentages are superior to the status quo, because they reflect more accurately amounts of groundfish actually needed as bycatch and will reduce the amount of groundfish discarded at sea as prohibited species.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Under Secretary has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 611, 672, and 675

Fisheries.

Dated: September 26, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, parts 611, 672, and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.92, paragraph (j) is added to read as follows:

§ 611.92 Gulf of Alaska Groundfish Fishery.

* * * * *

(j) *Directed fishing.* See 50 CFR part 672, subpart A, for standards for directed fishing applicable to this section. These standards apply to fishing activities conducted under this section notwithstanding the definition for "directed fishing" under § 611.2 of this part. If the Regional Director determines that the amount of a target species or the "other species" category apportioned to a fishery is likely to be attained, he may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount in table 1 of 50 CFR part 672, as revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation for TALFF and the apportionment for JVP. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group which will be taken as bycatch in directed fishing for other species in the same regulatory area or district which is attributable to any TALFF allocation or JVP apportionment. If the Regional Director establishes a directed fishing allowance and that allowance is, or will be, reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district. The fishery closure procedures of § 611.13(c) of this part apply to the closure of an area to directed fishing under this paragraph. No person may engage in directed fishing in violation of an area closure. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing under the standards in 50 CFR part 672, subpart A, may not be retained and must be treated in the same manner as a prohibited species under § 611.11 of this part.

3. In § 611.93, paragraph (b)(1)(iii) is revised and paragraph (j) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(iii) *Directed fishing.* See 50 CFR part 675, subpart A, for standards for directed fishing applicable to this section. These standards apply to fishing activities conducted under this section notwithstanding the definition under § 611.2 of this part. See paragraph (j) of this section for prohibitions on directed fishing.

* * * * *

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(j) *Prohibitions on directed fishing and restrictions on the retention of bycatch.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be attained, he may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount under table 1 of 50 CFR part 675, as revised by inseason adjustments, for that species or species group, as identified by subarea and as further identified according to any allocation for TALFF and the apportionment for JVP. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group which will be taken as bycatch in directed fishing for other species in the same subarea which is attributable to any TALFF allocation or JVP apportionment. If the Regional Director establishes a directed fishing allowance and that allowance is, or will be, reached, he will prohibit directed fishing for that species or species group in the specified subarea. The fishery closure procedures of § 611.13 (c) of this part apply to the closure of a subarea to directed fishing under this paragraph. No person may engage in directed fishing in violation of a subarea closure. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing under the standards in 50 CFR part 675, subpart A, may not be retained and must be treated in the same manner as a prohibited species under § 611.11 of this part.

* * * * *

PART 672—GROUNDFISH OF THE GULF OF ALASKA

4. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 672.2, the definition of directed fishing is revised to read as follows:

§ 672.2 Definitions.

* * * * *

Directed fishing means any fishing activity which constitutes directed fishing under the standards specified in § 672.20(g) of this part.

* * * * *

6. In § 672.20, the heading of paragraph (c)(2) is removed, paragraphs (c)(2)(i), (ii), (iii), and (iv) are redesignated as paragraphs (c)(3), (4), (5), and (6), and revised, and new paragraphs (c)(2), (g) and (h) are added to read as follows:

§ 672.20 General limitations.

* * * * *

(c) *Notices.* * * *

(2) *Notices prohibiting directed fishing.* If the Regional Director determines that amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount in table 1 or, if applicable, table 2, as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area or district and as further identified according to any allocation for TALFF, the apportionment for JVP, the apportionment for DAP and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group which will be taken as bycatch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is, or will be, reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(3) *Notices of closure.* If the Regional Director determines that the TAC for any target species or of the "other species" category in a regulatory area or district in Table 1 has been or will be reached, the Secretary will publish a notice in the **Federal Register** declaring that the species or species group is to be treated as a prohibited species under paragraph (e) of this section in all or part of that area or district. During the time that this notice is in effect, the operator of every vessel regulated by this part must minimize the catch of that species in the area or district, or part thereof where the notice is applicable.

(4) *Notice of prohibitions or limitations.* If, in making a determination under paragraph (c)(3) of this section, the Regional Director also determines that fishing for other target species or species groups in the area, district, or part thereof where the notice applies, may lead to the overfishing of the species or species group for which the TAC is or will be reached, the Secretary will publish a notice in the **Federal Register** specifying prohibitions or limitations designed to prevent overfishing of the species or species group for which the TAC is or will be reached. These prohibitions and limitations may prohibit the directed fishing for other species or species groups in the area, district, or part thereof where the notice applies, or may limit the time, area, or gear types which may be used in the directed fishing for the other species or species groups.

(5) *Factors to be considered.* In making a determination under paragraph (c) (3) or (4) of this section, the Secretary may allow fishing with certain gear types to continue after taking into account and issuing findings relevant to the following considerations:

(i) The risk of biological harm to a groundfish species or species group for which the TAC is or will be reached;

(ii) The risk of socioeconomic harm to authorized users of the groundfish species or species group for which the TAC is or will be reached; and

(iii) The impact that the continued closure might have on the socioeconomic well-being of other domestic fisheries.

(6) *Prohibition of JVP or TALFF fishing if PSC limit is or will be reached.* If the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery in a regulatory area or district in Table 1 is or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting all further JVP or TALFF fishing in all or part of the regulatory area or district concerned.

* * * * *

(g) *Standards for directed fishing*—(1) *Using trawl gear for sablefish.* The operator of a vessel is engaged in the directed fishing for sablefish if at the completion of a trip sablefish caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 15 percent of the amount of rockfish of the genera *sebastes* and *sebastolobus* retained on the vessel during the same trip; plus

(ii) 5 percent of the total amount of all fish species not identified under paragraph (g)(1)(i) of this section retained on the vessel during the same trip.

(2) *Using hook-and-line gear for sablefish.* The operator of a vessel is engaged in the directed fishing for sablefish if at the completion of a trip sablefish caught using hook-and-line gear is retained on the vessel in an amount equal to or greater than 4 percent of the total amount of all fish species retained by the vessel during the same trip.

(3) *Other.* Except as provided under paragraphs (g) (1) and (2) of this section, the operator of a vessel is engaged in the directed fishing for a specific species or species group if at the completion of a trip that species or species group is retained on the vessel in an amount equal to or greater than 20 percent of the amount of all fish species retained on the vessel during the same trip.

(h) *Directed fishing—calculations and determinations*—(1) *Calculations.* In making any determination concerning directed fishing the amount or percentage of any species, species group or any fish or fish products will be calculated in round weight equivalents.

(2) *Trip.* A vessel is engaged in a single fishing trip from the commencement of any fishing activity until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the regulatory area or district where fishing activities commenced, whichever occurs first.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

7. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

8. In § 675.2, the definition of directed fishing is revised to read as follows:

§ 675.2 Definitions.

* * * * *

Directed fishing means any fishing activity which constitutes directed fishing under the standards specified in § 675.20(h) of this part.

* * * * *

9. In § 675.20, paragraph (a)(8) is revised and new paragraphs (h) and (i) are added to read as follows:

§ 675.20 General limitations.

(a) * * *

(8) If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount under table 1, as revised by inseason adjustments, for that species or species group, as identified by subarea and as further identified according to any allocation for TALFF, the apportionment for JVP, the apportionment for DAP and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group which will be taken as bycatch in directed fishing for other species in the same subarea. If the Regional Director establishes a directed fishing allowance and that allowance is, or will be, reached, he will prohibit directed fishing for that species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * * * *

(h) *Standards for directed fishing*—(1) *Using trawl gear for pollock.* The operator of a vessel is engaged in the directed fishing for pollock if at the completion of a trip pollock caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 20 percent of the amount of all "other rockfish", Pacific cod, and yellowfin sole retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(1)(i) of this section retained on the vessel during the same trip.

(2) *Using trawl gear for yellowfin sole.* The operator of a vessel is engaged in the directed fishing for yellowfin sole if at the completion of a trip yellowfin sole caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 20 percent of the amount of all "other rockfish" retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(2)(i) of this section retained on the vessel during the same trip.

(3) *Using trawl gear for "other flatfish".* The operator of a vessel is engaged in the directed fishing for "other flatfish" if at the completion of a trip "other flatfish" caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 20 percent of the amount of all yellowfin sole retained by the vessel during the same trip; plus

(ii) 10 percent of the amount of all Pacific cod retained on the vessel during the same trip; plus

(iii) 1 percent of the total amount of all fish species not identified under paragraphs (h)(3) (i) and (ii) of this section retained on the vessel during the same trip.

(4) *Using trawl gear for Pacific cod.* The operator of a vessel is engaged in the directed fishing for Pacific cod if at the completion of a trip Pacific cod caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 20 percent of the amount of all "other flatfish," yellowfin sole, and pollock retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(4)(i) of this section retained on the vessel during the same trip.

(5) *Using trawl gear for sablefish.* The operator of a vessel is engaged in the directed fishing for sablefish if at the completion of a trip sablefish caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 10 percent of the amount of all Greenland turbot and rockfish retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(5)(i) of this section retained on the vessel during the same trip.

(6) *Using trawl gear for Greenland turbot.* The operator of a vessel is engaged in the directed fishing for Greenland turbot if at the completion of a trip Greenland turbot caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 10 percent of the total amount of all sablefish retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(6)(i) of this section retained on the vessel during the same trip.

(7) *Using trawl gear for rockfish.* The operator of a vessel is engaged in the directed fishing for rockfish if at the completion of a trip rockfish caught using trawl gear is retained on the vessel in an amount equal to or greater than:

(i) 10 percent of the total amount of all sablefish retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraphs (h)(7)(i) of this section retained on the vessel during the same trip.

(8) *Using hook-and-line gear for sablefish.* The operator of a vessel is engaged in the directed fishing for sablefish if at the completion of a trip sablefish caught using hook-and-line

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gear is retained on the vessel in an amount equal to or greater than:

(i) 10 percent of the amount of all Greenland turbot and rockfish retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(8)(i) of this section retained on the vessel during the same trip.

(9) *Using hook-and-line gear for Pacific cod.* The operator of a vessel is engaged in the directed fishing for Pacific cod if at the completion of a trip Pacific cod caught using hook-and-line gear in an amount equal to or greater than 1 percent of the total amount of all other fish species is retained on the vessel during the same trip.

(10) *Using hook-and-line gear for Greenland turbot.* The operator of a vessel is engaged in the directed fishing for Greenland turbot if at the completion of a trip Greenland turbot caught using hook-and-line gear is retained on the vessel in an amount equal to or greater than:

(i) 20 percent of the amount of all sablefish retained on the vessel during the same trip; plus

(ii) 1 percent of the total amount of all fish species not identified under paragraph (h)(10)(i) of this section retained on the vessel during the same trip.

(11) *Using pot gear for sablefish.* The operator of a vessel is engaged in the directed fishing for sablefish if at the completion of a trip sablefish caught using pot gear is retained on the vessel in an amount equal to or greater than 1 percent of the total amount of all other fish species retained on the vessel during the same trip.

(12) *Using pot gear for Pacific cod.* The operator of a vessel is engaged in the directed fishing for Pacific cod if at the completion of a trip Pacific cod caught using pot gear is retained on the vessel in an amount equal to or greater than 1 percent of the total amount of all other fish species retained on the vessel during the same trip.

(13) *Other.* Except as provided under paragraphs (h) (1) through (12) of this section the operator of a vessel is engaged in the directed fishing for a specific species or species group if at the completion of a trip that species or species group is retained on the vessel in an amount equal to or greater than 20 percent of the amount of all fish species retained on the vessel during the same trip.

(i) *Directed fishing—calculations and determinations*— (1) *Calculations.* In making any determination concerning directed fishing the amount or percentage of any species, species group or any fish or fish products will be calculated in round weight equivalents.

(2) *Trip.* A vessel is engaged in a single fishing trip from the commencement of any fishing activity until any offload or transfer of any fish or fish product from that vessel or until the vessel leaves the subarea where fishing activities commenced, whichever occurs first.

[FR Doc. 89-23223 Filed 10-02-89; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 190
Tuesday, October 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Member of Performance Review Board; Meeting

AGENCY: ACTION.

ACTION: Revision of list of Performance Review Board Positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., Room 5101, (Washington, DC 20525, (202) 634-9283.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendation to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members of the ACTION Performance Review Board:

1. Associate Director, Office of Management and Budget—Chairman
2. Executive Officer—Office of the Director
3. Comptroller

Issued in Washington, DC on September 26, 1989.

Dated: September 28, 1989.

Jane A. Kenny,

Acting Director.

[FR Doc. 89-23266 Filed 10-2-89; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Fourth Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Public Law 96-177, Public Law 100-418, and Public Law 100-449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 020.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.60, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1989 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on April 4, 1989 (54 FR 13538), the estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1989 is 1,245.3 million pounds.

In accordance with the requirements of the Act, I have determined that the fourth quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1989 is 1,160 million pounds.

Done at Washington, DC this 27th day of September, 1989.

Secretary of Agriculture.

Clayton Yeutter,

[FR Doc. 89-23334 Filed 10-2-89; 8:45 am]
BILLING CODE 3410-10-M

Determination of the Market Stabilization Price for Sugar for Fiscal Year 1990

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice sets forth the market stabilization price for sugar for the period October 1, 1989–September 30, 1990 as 21.95 cents per pound, raw value. In market stabilization price is needed to determine bond requirements and maximum liabilities under certain programs authorized by paragraph (ij) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS).

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447-2916.

SUPPLEMENTARY INFORMATION: The market stabilization price is used to determine bond requirements and maximum liabilities under certain programs authorized by paragraph (ij) of additional U.S. note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). The calculation of the market stabilization price is provided for in 7 CFR 6.300–6.302 and is the sum of (1) the price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cents per pound. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast points, as determined by the Secretary. Interest costs are the amount of interest, as determined and estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs shall only be applicable where, as under the current

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sugar price support program, a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral.

The Secretary of Agriculture has announced that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, will be 18.00 cents per pound for loans disbursed during the period October 1, 1989–September 30, 1990.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1990 shall be 21.95 cents per pound. This consists of the 18.00 cents per pound loan rate; adjusted average transportation costs of 3.04 cents per pound; an interest cost of .71 cent per pound; and 0.2 cent per pound. The transportation further represents estimated costs for 1989 projected forward to 1990 by applying a projected increase in the producer price index (PPI) for finished goods over this time. The interest factor is based on an estimated average interest rate of 7.875 percent over the year, and a six month loan maturity period.

Notice is hereby given that, in conformity with the provisions of 7 CFR 6.300(a), the market stabilization price for sugar for fiscal year 1990 has been determined to be 21.95 cente per pound.

Signed at Washington, DC on September 28, 1989.

Jack C. Parnell,

Acting Secretary of Agriculture.

[FR Doc. 89-23268 Filed 10-2-89; 8:45 am]

BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

[Docket No. 89-161]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance of veterinary biological product and establishment licenses by the Animal and Plant Health Insepction Service during the month of July 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Enviromental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436–8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *se seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a licenese shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of July 1989:

Product license code	Dated issued	Product	Establishment	Establishment license no.
1485.22	07-19-89	Encephalomyelitis Vaccine, Eastern and Venezuelan, Killed Virus	Coopers Animal Health, Inc	107
1485.23	07-19-89	Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus	Coopers Animal Health, Inc	107
2101.02	07-17-89	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin.	Ambico, Inc	281
4637.20	07-14-89	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine—Leptospira Bacterin, Modified Live Virus.	Smithkline Beckman Corporation	189
46J7.20	07-24-89	Canine Distemper-Adenovirus Type 2-Corona-Parainfluenza-Parvovirus Vaccine—Leptospira Bacterin, Modified Live and Killed Virus.	Smithkline Beckman Corporation	189
4835.20	07-19-89	Encephalomyelitis-Influenza Vaccine—Tetanus Toxoid, Eastern and Western, Killed Virus.	Coopers Animal Health, Inc	107
4865.20	07-19-89	Encephalomyelits Vaccine—Tetanus Toxoid, Eastern and Western, Killed Virus	Coopers Animal Health, Inc	107
4865.23	07-19-89	Encephalomyelitis Vaccine—Tetanus Toxoid, Eastern, Western, and Venezuelan, Killed Virus.	Coopers Animal Health, Inc	107
5038.00	07-25-89	Feline Immunodeficiency Virus Antigen Test Kit	IDEXX Corporation	313
7423.00	07-21-89	Clostridium Chauvoei-Septicum-Novyi-Sordellii-Perfringens Types C&D-Haemophilus Somnus Bacterin-Toxoid.	Grand Laboratories, Inc	303
B659.00	07-21-89	Haemophilus Somnus Bacterin, For Further Manufacture	Grand Laboratories, Inc	303

Done in Washington, DC, this 28th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-23267 Filed 10-2-89; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: October 29–31, and November 1, 1989.

Time:

1:00 p.m.–5:00 p.m., October 29, 1989,
8:00 a.m.–7:00 p.m., October 30, 1989,
8:00 a.m.–7:00 p.m., October 31, 1989,
8:00 a.m.–9:00 p.m., November 1, 1989.

Place: Embassy Suites Hotel, Baton Rouge, Louisiana.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will conduct an orientation session for new UAB members, review local industry operations, hear presentations on Louisiana State University and Southern University research and extension programs, and be briefed, in a joint session with the Joint Council, on recommendations and actions of the USDA/1890 Institutions Task Force.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684. Done in Washington, DC this 22nd day of September 1989.

John Patrick Jordan,

Administrator.

[FR Doc. 89-23269 Filed 10-2-89; 8:45 am]

BILLING CODE 3410-22-M

Farmers Home Administration

Submission of Information Collection to the Office of Management and Budget OMB

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted on OMB for emergency clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. This action is necessary in order to comply with the Disaster Assistance Act of 1989 (Pub. L. 101–62).

ADDRESS: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, FmHA Business and Industry Division, USDA Room 6327-South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202–475–3805.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within seven days.

The supporting statement shown below delineates the revisions to 7 CFR part 1980, subpart E, Business and Industrial Loan Program.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3407.

Supporting Statement

Amendments to 7 CFR part 1980, subpart E Implementing "Disaster Assistance for Rural Business Enterprises Guaranteed Loans"

FmHA is requesting OMB clearance of changes in the reporting and record-keeping requirements relating to 7 CFR 1980–E. FmHA seeks to implement a program of loan guarantees mandated by section 4091 of Public Law 101–82 (Disaster Assistance Act of 1989, "the Act") which will result in an increase in reporting and recordkeeping burden.

The Act provides $200 million from the Rural Development Insurance Fund which FmHA anticipates obligating over approximately 36 months. The Act directs guarantees to rural business entities which have suffered losses or distress as a result of certain natural disasters in 1988 or 1989, which means loans will be made to existing rather than start-up operations. FmHA anticipates approving 900 loans during the 36-month period.

FmHA seeks to operate Disaster Assistance for Rural Business Enterprises or "DARBE" a guaranteed loans through the well-established Business and Industry (B&I) guaranteed loan program. The interim rule implementing the DARBE program will make amendments to subpart E of part 1980.

The DARBE program will require two new forms to be used in processing these loans. The new forms are described as follows:

Form FmHA 1980–71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," is used to establish a contract between FmHA and the lender for DARBE Guaranteed Loans.

This form is being used in lieu of Form FmHA 449–35, "Lender's Agreement," and Form FmHA 1980–68, "Lender's Agreement—Drought and Disaster," in order to differentiate between the programs under the Business and Industrial Loan Program. Separate forms will simplify foan processing and reporting.

FmHA estimates 300 respondents will use this form since every lender participating in the DARBE loan program will be required to execute the form. This estimate is based on the number of inquiries received from the general public, congressional offices and FmHA field offices. The estimated number of hours per response is 1.5 hours and is based in the completion time of the existing Lender's Agreements.

Form FmHA 1980–73, "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Graranteed Loans," is used to express the terms of the guarantee and the natue and limits of contractual conditions when a holder buys a guaranteed loan.

This form is being used in lieu of Form FmHA 449–36, "Assignment Guarantee Agreement," and Form FmHA 1980–70, "Assignment Guarantee Agreement—Drought and Disaster," in order to differentiate between the guaranteed loan programs under the Business and Industrial Loan Program. Separate forms will simplify loan processing and reporting.

FmHA estimates 50 respondents will use this form. This estimate is based upon historical data from loans that have been sold to another holder in the open market. The estimated number of hours per response is 2 hourse and is based on the completion time of the existing Assignment Grarantee Agreements.

Two new items of non-form reporting burden are also being added by this action. In appendix K, a statement is required showing the causal connection between a loss/distress and a listed 1988 or 1989 natural disaster. FmHA estimatses 300 respondnents with a total of 1,200 burden hours. Also, appendix K requires the applicant to furnish evidence of compliance with Sodbuster/Swampbuster requirements. FmHA estimates 50 respondents with a total of 4 burden hours. Estimates are based on historical burden data and information provided from the public and Congressional offices.

The information collected under this program is considered the minimum necessary to conform to the requirements of present program regulations established by law, such as those for intergovernmental consultation and environmental review. The informaiton collected is considered to be the minimum necessary to ensure that the intent of the law is achieved while maintaining consistency with OMB circulars such as A–102, A–110, A–70, and A–129 and other requirements. Collection of information under the provisions of this action are not inconsistent with the guidelines of 5 CFR 1320.6.

This rule is to be published as an interim rule with a 60 day comment period to follow publication. All comments received will be analyzed and considered in finalizing the regulation.

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Dated: September 29, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-23494 Filed 10-2-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An informal working group, drawn from the two North Pacific Fishery Management Council groundfish fishery management plan (FMP) teams will meet on October 17, 1989, at 8:30 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, N.E., Building 4, Room 2143, Seattle, WA. The group will discuss definitions for overfishing and exchange ideas and information on overfishing to better focus the plan teams' analyses. Newly-published guidelines at 50 CFR 602.11 require that Regional Fishery Management Councils define overfishing in an objective and measurable way. The plan teams agreed at August 1989 meetings that the definition contained in the North Pacific Council's groundfish FMPs needs revision. A plan amendment to review the definition will have to be developed during the North Pacific Council's 1990 amendment cycle.

For more infrmation contact Hal Weeks, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: September 27, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23220 Filed 10-2-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting on October 16-18, 1989, at the Metro Center Building, 2000 S.W. First Avenue, Room 240, Portland, OR. The GMT will begin meeting at 1 p.m., on October 16 and will adjourn its meeting on October 18 at noon. The proposed agenda will include review of draft stock assessment documents, preparation of the annual groundfish stock assessment document for 1990, analysis of proposed measures to extend the joint venture season for Pacific whiting, and sablefish management. Other issues related to West Coast groundfish fisheries management may also be discussed.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

September 27, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23221 Filed 10-2-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's groundfish fishery management plan (FMP) Rewrite Oversight Group (ROG) will hold a public meeting on October 3-4, 1989. On October 3 the meeting will begin at 10 a.m., at the Metro Center Building, Room 440, 2000 S.W. First Avenue, Portland, OR. On October 4 the meeting will continue in the Pacific Council's Chamber Room, at the same address. The ROG will make final revisions to draft Amendment #4 of the groundfish FMP, so that the Pacific Council may review the draft at its November 1989 meeting in Portland, OR.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: September 27, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23222 Filed 10-2-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces a forthcoming meeting of the Department of Defense Clothing and Textiles Board (DoD C&T Board).

DATE AND TIME: October 24, 1989, 1300-1600.

ADDRESS: Defense Logistics Agency, Cameron Station, Room 3B247, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Metcalf, Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274-7141.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will focus on improvements to DOD acquisition of clothing and textile products.

MG Charles R. Henry,

USA, Deputy Director, Acquisition Management.

[FR Doc. 89-23250 Filed 10-2-89; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 19, 1989, beginning at 11:30 a.m. to October 22, 1989, at 6:00 p.m..

ADDRESS: The Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW., Washington, DC 20202 (202) 732-5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board will be open to the public. The proposed agenda includes:

—Recommendations of National Board Subcommittee;
—Recapitulation of FY 1989 competitions;
—First joint meeting of FIPSE and FIRST (Fund for the Improvement and Reform of Schools and Teaching) Boards to provide an overview of FIPSE and FIRST priorities and programs and mutual interests;
—Discussion of proposed jointly-sponsored conference on articulation and sponsorships; and
—Observation and participation in the Fund for the Improvement of Postsecondary Education Annual Project Directors' Meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets SW., Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

William L. Moran

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-23265 Filed 10-2-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Broad Agency Research Announcement, 1989; Fossil Energy Research and Development

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Cancellation notice.

SUMMARY: The Morgantown Energy Technology Center, Department of Energy, published a Broad Agency Research Announcement for Fossil Energy Research and Development in the **Federal Register** on January 18, 1989 (54 FR 1983). That Announcement has been cancelled, effective September 30, 1989. Those proposals which have been received will, upon request of the proposer, be evaluated as unsolicited proposals.

FOR FURTHER INFORMATION CONTACT: Jerome S. Hensley, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880.

Dated: September 22, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center

[FR Doc. 89-23328 Filed 10-2-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-27-NG]

Ocean State Power and Ocean State Power II

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders amending an authorization to import natural gas granted to Ocean State Power and granting an authorization to import natural gas to Ocean State Power II.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued two orders in FE Docket No. 89-27-NG. The first order amends DOE Economic Regulatory Administration (ERA) Opinion and Order No. 243-A in ERA Docket No. 86-62-NG, to reduce the import authority granted Ocean State Power from 100,000 Mcf per day to up to 50,000 Mcf per day of natural gas for a 20-year term. The other order grants Ocean State Power II authority to import up to 50,000 Mcf per day of natural gas for a 20-year term beginning on the date of first delivery of the import.

A copy of each order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 27, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23326 Filed 10-2-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-37-NG]

Vesgas Co.; Order Granting Blanket Authorization To Import and Export Natural Gas and Granting Intervention

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada and to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Vesgas Company (Vesgas) blanket authorization to import and export natural gas. The order issued in FE Docket No. 89-37-NG authorizes Vesgas to import up to 36.5 Bcf of Canadian natural gas and to export up to 29.2 Bcf of domestically produced natural gas to Mexico for short-term and spot market sales over separate two-year periods beginning on the dates of the first import and the first export.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 27, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23327 Filed 10-2-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-21; Certification Notice—47]

BIO Development Corp; Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the

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Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Bio Development Corporation, Bedford, NH	09–14–89	Combined cycle cogen	70–86	Lowell, MA.

Amendments to the FUA on May 21, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586–6769.

Issued in Washington, DC on September 27, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23325 Filed 10–2–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3654–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Financial Responsibility for Hazardous Waste Management Facilities (EPA ICR #947.04), OMB #2050–0036. This is a renewal.

Abstract: Owners and operators of hazardous waste management facilities with RCRA permits must submit and keep a copy of the instrument used to demonstrate their financial ability to pay the costs of corrective actions and closure and post-closure care for their facilities (i.e., trust fund agreement, surety bond, letter of credit, corporate guarantee, or letter from the chief financial officer). EPA will evaluate the submissions for compliance with the regulations.

Burden Statement: The estimated average public reporting and recordkeeping burden for this collection of information is about 6 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering data, and preparing and submitting the instrument to the Agency.

Respondents: Owners and operators of hazardous waste management facilities.

Estimated No. of Respondents: 5,247.

Estimated Total Annual Burden of Respondents: 31,424 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460,
and
Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: September 21, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–23295 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3654–8]

Agency Information Collection Activities under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: AHERA section 210 Asbestos Liability Study (EPA ICR #1453.01). This ICR requests clearance for a new collection.

Abstract: Under section 210 of the Asbestos Hazard Emergency Response Act (AHERA), EPA must study the availability of asbestos liability insurance to local educational agencies (LEAs) and accredited asbestos abatement professionals and submit a final report to Congress by October 1, 1990. To implement this directive, EPA will survey LEAs, providers of asbestos abatement services, current/potential providers of financial assurance, and reinsurers on the changes to the cost, coverage, and availability of liability insurance over time and how these changes have affected development and implementation of management plans and inspections under AHERA.

Burden Statement: The public reporting burden for this collection of information is estimated to average 42 minutes per response for local educational agencies, providers of asbestos abatement services, potential providers of financial assurance, and reinsurers, and 1 hour per response for current providers of financial assurance. These estimates include the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Local educational agencies, providers of asbestos abatement services, potential/current providers of financial assurance, and reinsurers.

Estimated No. of Respondents: 2800.

Estimated Total Annual Burden on Respondents: 1200 hours.

Frequency of Collection: One-time.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460,
and
Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20530, (Telephone (202) 395–3084).

Dated: September 19, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–23296 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3654–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICZRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instrument.

DATE: Comments must be submitted on or before November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: 1989 Hazardous Waste Report System (EPA ICR # 0976.04). This a renewal of a previously approved collection for which approval has expired; OMB # 2050–0024

Abstract: Owners and operators of hazardous waste management facilities must compile a biennial report of information on location, amount and description of hazardous waste handled. EPA uses the information to define the population of the regulated community and to expand its data base of information for rulemaking and compliance with statutory requirements.

Burden Statement: The estimated average public reporting burden for this collection of information is about 10 hours per respondent. This estimate includes all aspects of the information collection including time for reviewing instructions, gathering the data needed, and submitting the form.

Respondents: Generators and Handlers of Hazardous Waste.

Estimated No. of Respondents: 23,300.

Estimated Total Annual Burden on Respondents: 118,900 hours.

Frequency of Collection: biennial.

Title: Uniform Hazardous Waste Manifest for Generators, Transporters, and Disposal Facilities (EPA ICR # 801.07). This is a renewal of a previously approved collection; OMB # 2050–0039.

Abstract: All shipments of hazardous waste made by generators of greater than 100 kg/month must be accompanied by copies of the Uniform Hazardous Waste Manifest form. Copies of the manifest must then be signed and retained by all transporters and the designated disposal facility. The disposal facility must also check the manifest against the shipment and file a discrepancy report if necessary, and return a signed copy of the manifest to the generator.

Burden Statement: Public reporting and recordkeeping burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form.

Respondents: Generators and transporters of hazardous waste and owners and operators of hazardous waste facilities.

Estimated No. of Respondents: 139,280.

Estimated Total Annual Burden on Respondents: 911,840 hours.

Frequency of Collection: One manifest per shipment.

Send comments regarding the burden estimates, or any other aspects of these information collections, including suggestions for reducing the burden to both of the following addresses:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460.

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395–3084).

Dated: September 21, 1989.

Paul Lapsley,

Director, Informotion and Regulotory System Division.

[FR Doc. 89–23297 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3653–9]

National Advisory Council For Environmental Technology Transfer

Under Public Law 92463 (the Federal Advisory Committee Act), EPA gives notice of the second meeting of the National Advisory Council for Environmental Technology Transfer (NACETT) on October 25, 1989, from 9:00 a.m. to 4:30 p.m. in the Board Room of the American Institute of Architects, 1735 New York Avenue, NW., Washington, DC. EPA also gives notice of the meetings on October 24, 1989, of the five standing Committees of NACETT in Washington, DC.

The agenda for the second meeting of NACETT will include reports from NACETT's standing Committees and discussion by the NACETT members of these reports:

1. Environmental Financing Advisory Board
2. Technology Innovation and Economics Committee
3. State and Local Programs Committee
4. Education and Training Committee
5. International Committee.

The locations of the meetings of NACETT's Committees are listed below. The National Press Club, where four of the meetings will be held, is located at 14th and F Street, NW. All meetings will begin at 9:00 a.m. and end at 5:00 p.m.:

1. Environmental Financing Advisory Board: National Press Club, Large Conference Room
2. Technology Innovation and Economics Committee: National Press Club, Zenger Room
3. State and Local Programs Committee: National Press Club, Private Dining Room

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4. Education and Training Committee: National Press Club, First Amendment Room
5. International Committee: World Bank, 701 18th Street, NW., Room J4009 (Attendance notification required—phone 202–475–9744).

Members of the public wishing to make comments to NACETT or any of its committees are invited to submit them in writing to R. Thomas Parker, Designated Federal Official for NACETT, by October 19, 1989. Please send comments to R. Thomas Parker (A–101 F6), EPA, 499 South Capitol Street, SW., Washington, DC 20460.

The meetings will be open to the public. Additional information on the meeting may be obtained from R. Thomas Parker by writing to the above address or by calling Mr. Parker at 202–475–9741.

Dated: September 21, 1989.

R. Thomas Parker,

Designated Federal Official, National Advisory Council for Environmental Technology Transfer.

[FR Doc. 89–23233 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00283; FRL–3654–1]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Registration and Classification and Working Committee on Enforcement and Certification; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Registration and Classification will hold a two day meeting beginning on October 2, 1989 and ending on October 3, 1989. The Working Committee on Enforcement and Certification will hold a two-day meeting beginning on October 5, 1989 and ending on October 6, 1989. This notice announces the location and times for the meetings and sets forth tentative agenda items. The meetings are open to the public.

DATES: The SPIREG Working Committee on Registration and Classification will meet on Monday, October 2, 1989 from 8:30 a.m. to 5:00 p.m. and on Tuesday, October 3, 1989 beginning at 8:30 a.m. and adjourning at approximately noon. The Working Committee on Enforcement and Certification will meet on Thursday, October 5, 1989 from 8:30 a.m. to 5:00 p.m. and on Friday, October 6, 1989 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESS: The meeting will be held at: Grantree Inn, 1325 North Seventh Avenue, Bozeman, Montana 59715, (406) 587–5261 or (800) 624–5865.

FOR FURTHER INFORMATION CONTACT:

By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–3401.

SUPPLEMENTARY INFORMATION: The tentative agenda for the meeting of the Working Committee on Registration and Classification includes the following:

1. Bulk handling policy status report.
2. Channels of trade policy update.
3. Update on the Pesticide Officials Pilot Training program.
4. Status of FIFRA 1988 regulations.
5. Good laboratory practice regulations. Update on statements of practical treatment workgroup.
7. Food Safety.
8. Report on September 11, 1989 meeting with EPA on data management and information sharing.
9. Report on the September 27, 1989 chemistry workshop.
10. Status report on efforts to resolve whether nominal or lower limit concentration shall be on pesticide labels.
11. Report on the Termiticide Labeling Taskforce.
12. Enforcement issues resulting from voluntary cancellation of pesticides in response to FIFRA 1988 requirements.
13. Applicability of existing endangered species labeling.
14. EPA position on pesticide labels referring user to additional information for "other accepted uses."
15. Definitions of "low volume" and "minor use" for purposes of fee apportionment under FIFRA.
16. Other topics as appropriate.

The tentative agenda for the meeting of the Working Committee on Enforcement and Certification includes the following:

1. Items 1 through 7 of the agenda topics of the Working Committee on Registration and Classification, will also be discussed at the meeting of the Working Committee on Enforcement and Certification.
2. Pesticide inspector training and status on Agency Order 3500.1.
3. National compliance strategies progress report.
4. Fiscal Year 1990 Cooperative Enforcement Agreements progress review.
5. Worker protection regulations status.
6. Enforcement case tracking resolution.
7. Certification and training regulations status.
8. Discussion on new directions for the Working Committee.
9. Update on Pesticide Enforcement Tracking System.
10. Other topics as appropriate.

Dated: September 22, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89–23234 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3654–4]

National Pollutant Discharge Elimination System General Permit for Construction Related Activities in South Dakota

AGENCY: U.S. Environmental Protection Agency (EPA), Region VIII.

ACTION: Notice of issuance of final general permit.

SUMMARY: On July 26, the Region VIII Office of the Environmental Protection Agency published a **Federal Register** notice (54 FR 31081) of its intent to reissue a National Pollutant Discharge Elimination System (NPDES) general permit for the Construction Related Activities of Excavation Dewatering and Hydrostatic Testing conducted within the State of South Dakota, NPDES permit Number SDG–070000. This permit contains discharge requirements and standards that are based on technology and water quality consideration, prohibitions, Best Management Practices, and other conditions applicable to the types of Waste waters generated by construction facilities. Persons seeking discharge authorization under the general permit are required to submit a request for discharge approval prior to their commencement of such discharge.

Because the Region received no comments during the 30-day public comment period, the final permit is being reissued with the same conditions as contained in the draft public noticed permit. On behalf of the State of South Dakota, EPA certifies that this permit conforms to all applicable requirements of sections 301, 302, 306, and 307 of the Clean Water Act.

Economic Impact

EPA reviewed the effect of Executive Order 12291 on the general permit and has determined the permit not to be major under that Order. The proposed permit was submitted to the Office of Management and Budget for review as required by the Executive Order.

Paperwork Reduction Act

EPA reviewed the requirements imposed on regulated facilities by this general NPDES permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget under submissions made for the Clean Water Act's NPDES permit program.

The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. Moreover, it reduces a significant administrative burden on regulated sources.

DATES: Effective Date. This General Permit shall be effective November 2, 1989.

Expiration Date This General Permit shall expire at 12:00 a.m., midnight, September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Fischer, Region VIII, U.S. Environmental Protection Agency, Compliance Branch (8WM–C), 999 18th Street, Suite 500, Denver, Colorado 80202–2405, telephone (303) 293–1592 or FTS 564–1592.

SUPPLEMENTARY INFORMATION:

General Permit to Discharge under the National Pollutant Discharge Elimination System for Construction Activities in South Dakota Including Hydrostatic Testing and Excavation Dewatering—NPDES General Permit Number SDG–070000

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (hereinafter referred to as "the Act"), facilities engaged in either construction dewatering of groundwaters and/or hydrostatic testing of fluid vessels are authorized to discharge at locations throughout the State of South Dakota to waters of the United States, in accordance with effluent limitations, monitoring requirements and other conditions set forth in parts I and II, hereof.

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Part I. Effluent Limitations and Monitoring Requirements

A. Coverage Under this Permit

1. *Applicability of General Permit*—This general permit is potentially applicable to all facilities conducting excavation dewatering in conjunction with construction activities, as well as pipeline hydrostatic testing with the State of South Dakota. The water discharged from any of these activities must be relatively uncontaminated and must not have the potential to contribute non-conventional or toxic pollutant loadings to the receiving stream.

2. *Request for Authorization*—In order to be considered eligible for authorization to discharge waste water under the terms and conditions of this permit, owner, operator, and/or the authorized agent of any facility desiring to discharge must submit, the following information by certified letter at least thirty (30) days prior to the first anticipated date of discharge:

a. Name, address, and descriptive location of the facility;

b. Name of principal in charge of operation of the facility;

c. Name of water receiving the discharge and, if known, the beneficial use classification(s) and 10-year, 7-day low flow of the water receiving the discharge;

d. A brief description of the type of activity resulting in the discharge, including the anticipated date for commencement of the discharge, duration of the discharge, termination date of the discharge, total volume, average and maximum flow rate of the discharge, and the source of water which is to be discharged;

e. A brief description of the type of water treatment processes employed;

f. A map and/or schematic diagram showing area of the activity and location of the waste water flow and of any treatment system employed;

In addition for *Hydrostatic Testing Related Discharges*, the following must be included:

g. The type of vessel being tested (e.g., pipe, tank, etc.);

h. The type of material from which the vessel is constructed;

i. Whether the vessel has been previously used or is of virgin material; and,

j. A description of the fluid material normally contained and/or transported through the vessel.

Such information should be submitted to:

U.S. Environmental Protection Agency, Compliance Branch, Water Management, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, Telephone: (303) 293–1592

South Dakota Department of Water and Natural Resources, Division of Land and Water Quality, Surface Water Quality Program, Joe Foss Building, Pierre, South Dakota 57501, Telephone: (605) 773–5270

The permit issuing authority shall have up to thirty (30) days after receipt of the information to request additional data and/or deny the authorization under this general permit for any particular discharge. If the person proposing a new discharge does not receive a request for additional information or a notification of denial from the permit issuing authority, authorization to discharge in accordance with the conditions of the permit shall be deemed granted. For existing individually authorized discharges,

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coverage under the general permit will not be effective unless and until the individual permit is either revoked or inactivated. The permit issuing authority may waive, at its discretion, the thirty (30) day period in special cases.

B. Definitions.

1. The "30-day (and monthly) average," is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.

2. "Daily Maximum" ("Daily Max.") is the maximum value allowable in any single sample or instantaneous measurement.

3. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:

a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;

b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;

c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,

d. Continuous collection of sample, with sample collection rate proportional to flow rate.

4. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.

5. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.

6. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

7. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

8. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

9. "Director" means Director of the United States Environmental Protection Agency's Water Management Division.

10. "EPA" means the United States Environmental Protection Agency.

11. "Sludge" is any solid, semi-solid or liquid residue that contains materials removed from the wastewater during treatment.

12. "Waters of the United States" means:

a. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(3) Which are used or could be used for industrial purposes by industries in interstate commerce.

b. All impoundments of waters otherwise defined as waters of the United States under this definition;

c. Tributaries of waters identified in paragraphs a.–d. of this definition;

d. The territorial sea;

e. "Wetlands" adjacent to waters (other than waters that are themselves "wetlands") identified in paragraphs a.–f. of this definition.

C. Specific Limitations and Self-Monitoring Requirements

1. Effluent Limitations.

a. There shall be no discharge of any process generated waste waters except those waste waters resulting from dewatering of groundwater and/or surface runoff from construction sites and/or hydrostatic testing of pipelines or other fluid vessels.

b. This permit does not authorize discharges from dewatering activities at hazardous waste sites or discharges of toxic materials from any location.

c. There shall be no direct discharge of any solids and/or sludges generated by the treatment of the discharge.

d. There shall be no discharge of sanitary waste waters from toilets or related facilities.

e. There shall be no discharge of floating solids or visible foam in other than trace amounts.

f. No chemicals containing toxic pollutants and/or any priority pollutants listed at 40 CFR Part 401 are to be added to the discharge. No chemical, except lime or aluminum salts specifically added as an aid to the flocculation and settling of solids, may be added to the discharge unless prior permission for the use of the additive is specifically granted by the permit issuing authority.

g. The use of chlorinated water (e.g., potable tap water) for a hydrostatic test fluid shall not be allowed unless it can be demonstrated that the chlorine substantially dissipates prior to discharge and/or possesses no potential for toxic impacts to the receiving waters.

h. The permittee shall take such steps as are necessary to prevent or minimize stream scouring caused by the discharge.

i. The concentration of oil and grease in any single sample shall not exceed 10 mg/L nor shall there be a visible sheen in the discharge.

j. The pH of the discharged waters shall not be less than 6.5 nor more than 9.0 units.

k. Total suspended solids shall be limited as follows:

Parameter	Discharge limitation
Total suspended solids.	90 mg/L in any single grab or composite sample.

2. Monitoring and Reporting

a. Daily Logs. The permittee shall maintain a daily log relating to the authorized discharge(s). The log shall contain:

(1) flow information and data,

(2) sample results,

(3) records of visual observations, and

(4) notations on any problems relating to treatment of the discharge.

b. Samples shall be taken as often as necessary to provide representative information as to the nature and volume of the discharge(s). At a minimum, samples of each discharge shall be taken as follows:

(1) CONSTRUCTION DEWATERING

Anticipated average discharge rate	Pollutant parameter	Sample frequency	Sample type
Greater than 1 Cubic Foot Per Second (CFS) During the actual period of discharge	Flow	Daily	Instantaneous or by continuous recorder.
	pH	Weekly	Instantaneous or by continuous recorder.
	Oil and Grease	Daily	Visual.
	Oil and Grease	Monthly	Grab.
	Total Suspended Solids	Weekly	Grab or Composite.
Less than 1 Cubic Foot Per Second (CFS) During the actual period of discharge	Flow	Daily	Instantaneous or by continuous recorder.
	pH	Weekly	Instantaneous or by continuous recorder.
	Oil and Grease	Daily	Visual.
	Oil and Grease	Monthly	Grab.
	Total Suspended Solids	Weekly	Grab or Composite.

(2) HYDROSTATIC TESTING DISCHARGES

Anticipated average discharge rate	Pollutant parameter	Sample frequency	Sample type
Greater than 1 Cubic Foot Per Second (CFS) During the actual period of discharge	Flow Rate	Daily	Instantaneous or by continuous recorder.
	Flow Volume	Daily	Measure or Calculate.
	pH	Daily	Instantaneous or by continuous recorder.
	Oil and Grease	Daily	Visual.
	Oil and Grease	Monthly	Grab.
	Total Suspended Solids	Daily	Grab or Composite.
Less than 1 Cubic Foot Per Second (CFS) During the actual period of discharge	Flow	Daily	Instantaneous or by continuous recorder.
	Flow Volume	Daily	Measure or Calculate.
	pH	Daily	Instantaneous or by continuous recorder.
	Oil and Grease	Daily	Visual.
	Oil and Grease	Monthly	Grab.
	Total Suspended Solids	Daily	Grab or Composite.

c. If sampling performed by the permittee indicates a violation, the permittee shall notify the permit issuing authority in accordance with the provisions at part II.H. of this permit. The permittee shall also repeat the sampling and analysis and submit the results of the repeat analysis to the permit issuing authority within thirty days after becoming aware of the violation.

Part II. Monitoring Recording and Reporting Requirements

A. Representative Sampling

Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge. Sludge samples shall be collected at a location representative of the quality of sludge immediately prior to the use-disposal practice.

B. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

C. Penalties for Tampering

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

D. Reporting of Monitoring Results

Effluent monitoring results obtained during the previous 3 months shall be summarized for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320–1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (See part IV) and submitted to the Director, Water Management Division and the State water pollution control agency at the following addresses:

Original to: U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405. Attention: Water Management Division Compliance Branch (8WM–C)

Copy to: South Dakota Department of Water and Natural Resources, Division of Land and Water Quality, Surface Water Quality Program, Joe Foss Building, Pierre, South Dakota 57501

E. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

F. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The initials or name(s) of the individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The time(s) analyses were initiated;

5. The initials or name(s) of individual(s) who performed the analyses;

6. References and written procedures, when available, for the analytical techniques or methods used; and,

7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

G. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records

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and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

H. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee shall report any noncompliance which may seriously endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the EPA, Region VIII. Emergency Response Branch at (303) 293–1788 and the State of South Dakota at (605) 773–3231.

2. The following occurrences of noncompliance shall be reported by telephone to the EPA, Region VIII, Compliance Branch at (303) 293–1589 and the State of South Dakota at (605) 773–3151 by the first workday (8:00 a.m.–4:30 p.m. Mountain Time) after the day the permittee became aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See *part III.G., Bypass of Treatment Facilities.*); or,

b. Any upset which exceeds any effluent limitation in the permit (See *part III.H., Upset Conditions.*); or,

c. Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. Period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue, if it has not been corrected; and,

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Compliance Branch, Water Management Division, Denver, Colorado, by phone, (303) 293–1589.

5. Reports shall be submitted to the address in *part II.D., Reporting of Monitoring Results.*

I. Other Noncompliance Reporting

Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for part II.D. are submitted. The reports shall contain the information listed in part II.H.2.

J. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Part III. Compliance Responsibilities

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the Director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.

B. Penalties for Violations of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Act is subject to a fine of not less than $5,000, nor more than $50,000 per day of violation, or by imprisonment for not more than three (3) years, or both. Except as provided in permit conditions on *part III.G., Bypass of Treatment Facilities* and *part III.H., Upset Conditions*, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process, whether or not this process is needed to achieve permit effluent compliance.

F. Removed Substances

Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be buried or disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass Not Exceeding Limitations

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These

bypasses are not subject to the provisions of paragraphs 2. and 3. of this section.

2. Notice.

a. *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.

b. *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required under *part II.H., Twenty-four Hour Reporting.*

3. Prohibition of Bypass

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(3) The permittee submitted notices as required under paragraph 2. of this section.

H. Upset Conditions

1. Effect of an Update

An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations).

2. Conditions necessary for a demonstration of upset.

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part II.H., *Twenty-four Hour Notice of Noncompliance Reporting;* and,

d. The permittee complied with any remedial measures required under *part III.D., Duty to Mitigate.*

3. Burden of Proof

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/L);

b. Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or,

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/L);

b. One milligram per liter (1 mg/L) for antimony:

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or.

d. The level established by the Director in accordance with 40 CFR 122.44(f).

Part IV. General Requirements

A. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b);

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under part IV.A.1.; or,

3. There are any planned substantial changes to the existing sewage sludge facilities, the manner of its operation, or to current sewage sludge management practices of storage and disposal. The permittee shall give the Director notice of any planned changes at least 30 days prior to their implementation.

B. Anticipated Noncompliance

The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

C. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

D. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permitee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

E. Duty to Provide Information

The permitee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or

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to determine compliacne with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director, it shall promptly submit such facts or information.

G. Signotory Requirements

All applications, reports or information submitted to the Director shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: By a responsible corporate officer;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively;

c. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person.

A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director, and,

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. *Changes to authorization.* If an authorization under paragraph IV.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.G.2. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. *Certification.* Any person signing a document under this section shall make the following certification: attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

I. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,

3. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.

N. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

O. Reopener Provision

This permit may be reopened and modified include the appropriate effluent limitations or other appropriate requirements if one or more of the following events occurs:

1. Water Quality Standards

The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.

2. Wasteload Allocation

A wasteload allocation is developed and approved by the State and/or EPA for incorporation in this permit.

3. Water Quality Management Plan

A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.

P. Requiring an Individual NPDES Permit

The Director may require any owner or operator covered under this permit to apply for and obtain an individual NPDES permit if:

1. The discharger is not in compliance with the conditions of this General Permit; or,

2. Conditions or standards have changed so that the discharge no longer qualifies for a General Permit.

The owner or operator must be notified in writing that an application for an individual NPDES permit is required. When an individual NPDES permit is issued to an owner or operator otherwise covered under this General Permit, the applicability of the general permit to that owner or operator is automatically terminated upon the effective date of the individual NPDES Permit.

Q. Requesting an Individual NPDES Permit

Any owner or operator covered by this general permit may request to be excluded from the coverage by applying for an individual NPDES Permit.

R. Requesting Coverage Under the General Permit

The owner or operator of a facility excluded from coverage by this General Permit, solely because that facility already has an individual permit, may request that the individual permit be revoked and that the facility be covered by this General Permit. Upon revocation of the individual permit, this General Permit shall apply to that facility.

Signed this 20th day of September 1989.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 89-23298 Filed 10-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR part 580 (Definition of a Shipper and Availability of Mixed Commodity Rates—Docket 89-20)

FMC requests clearance of an amendment to 46 CFR part 580 which would (1) amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shippper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier (NVOCC), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The Commission estimates a filing burden of 30,000 hours for 2105 carriers to implement the proposed rule's provisions. There will be no additional cost to the Federal Government for this amendment. Estimated cost to respondents for this amendment is $150,000.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23230 Filed 10-2-89; 8:45 am]

BILLING CODE 6730-01-M

San Francisco Port Commission Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200289

Title: San Francisco Port Commission Terminal Agreement

Parties: San Francisco Port Commission (Port) American Niugini Shipping (ANS)

Synopsis: The Agreement provides that ANS will make San Francisco its Northern California port of call and will pay the Port 60% of the Port's tariff charges for all revenue derived from dockage and wharfage at the Port's facilities. The terms of the Agreement is for five years and may be extended for a similar term.

By Order of the Federal Maritime Commission.

Dated: September 27, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23231 Filed 10-2-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

A.B.N.—Stichting, et al.—Formulations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

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not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1989.

A. Federal Reserve Bank of Chicago, (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690.

1. A.B.N.—Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; Algemene Bank Nederland N.V., Amsterdam, The Netherlands; and LaSalle National Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Exchange Bancorp., Inc., Chicago, Illinois, and thereby indirectly acquire Exchange National Bank of Chicago, Chicago, Illinois; Exchange Bank of DuPage, Oak Brook, Illinois; Exchange Bank of River Oaks, Calumet City, Illinois; and Exchange Bank of Lake County, Vernon Hills, Illinois.

In connection with these applications, Applicants also propose to acquire Exchange Securities Corp., Hallandale, Florida, and thereby engage in underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16); and to expand Company's activities to include engaging in broker activities for stocks, bonds and other securities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23252 Filed 10-2-89; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Inc., et al.; Formations of, Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Banking Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 23, 1989.

A. Federal Reserve Bank of Cleveland, (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101.

1. Huntington Bancshares Incorporated, Columbus, Ohio, and Huntington Bancshares of West Virginia, Inc., Columbus, Ohio; to acquire 100 percent of the voting shares of First Banc Securities, Inc., Morgantown, West Virginia, and thereby indirectly acquire The First National Bank of Morgantown, Morgantown, West Virginia; The Peoples National Bank of Martinsburg, Martinsburg, West Virginia; and First Bank, N.A., of Uniontown, Pennsylvania. In connection with this application, Huntington Bancshares of West Virginia, Inc., has also applied to become a bank holding company.

B. Federal Reserve Bank of Richmond, (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261.

1. Allegheny Bankshares Corporation, Lewisburg, West Virginia; to acquire 100 percent of the voting shares of First National Bank in Marlinton, Marlinton, West Virginia.

C. Federal Reserve Bank of St. Louis, (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166.

1. Liberty National Bankcorp, Inc., Louisville, Kentucky, and its subsidiary, KBT Bancshares, Inc., Madisonville, Kentucky; to acquire 100 percent of the voting shares of The Community Bank, Inc., Erlanger, Kentucky.

D. Federal Reserve Bank of Minneapolis, (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480.

1. Claremont Financial Services, Inc., St. Paul, Minnesota; to become a bank holding company by acquiring 90.88 percent of the voting shares of Security State Bank, Claremont, Minnesota.

E. Federal Reserve Bank of Kansas City, (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198.

1. FirsTier Financial, Inc., Lincoln, Nebraska; to acquire 100 percent of the voting shares of Scottsbluff National Corporation, Scottsbluff, Nebraska, and thereby indirectly acquire Scottsbluff National Bank and Trust Company, Scottsbluff, Nebraska.

2. Hillsboro Financial Corporation, Wichita, Kansas; to merge with Council Grove BancShares, Inc., Wichita, Kansas, and thereby indirectly acquire Council Grove National Bank, Council Grove, Kansas; Potwin Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Potwin State Bank, Potwin, Kansas; K & B Producers, Inc., Wichita, Kansas, and thereby indirectly acquire Allen County Bank & Trust, Iola, Kansas; Eureka Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Citizens National Bank, Eureka, Kansas; Toronto Financial Corporation, Wichita, Kansas, and thereby indirectly acquire First National Bank, Toronto, Kansas; and Moline Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Exchange State Bank, Moline, Kansas. In connection with this application, Applicant also proposes to acquire 93.33 percent of the voting shares of Citizens State Bank, Moran, Kansas.

Board of Governors of the Federal Reserve System, September 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23254 Filed 10-2-89; 8:45 am]

BILLING CODE 6210-01-M

MNC Financial, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 1989.

A. Federal Reserve Bank of Richmond, (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261

1. MNC Financial, Inc., Baltimore, Maryland; to acquire ABTS, Inc., Rock Hill, South Carolina, and thereby engage in making, acquiring, and servicing first, second and third lien position mortgage loans for its own account and the account of others and making, acquiring and servicing secured and unsecured loans, conditional sales contracts and other extensions of credit to individuals for personal, family or household purposes pursuant to § 225.25(b)(1); acting as agent for credit life, accident and disability insurance directly related to an extension of credit by it or its subsidiaries pursuant to § 225.25(b)(8)(i); and acting as agent for credit collateral insurance directly related to extensions of credit by it or its subsidiaries pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. Such insurance is limited to insuring the repayment of the outstanding balance in the event of loss or damage to property which is used as collateral for the extension of credit.

Board of Governors of the Federal Reserve System, September 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23253 Filed 10-2-89; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 19, 1989.

A. Federal Reserve Bank of New York, (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045

1. National Westminster Bank PLC, London, England; Natwest Holdings, Inc., Wilmington, Delaware; and National Westminster Bancorp, Inc., New York, New York; to engage *de novo* though its subsidiary, Natwest Leasing Corp., New York, New York, in leasing personal or real property or acting as agent, broker, or adviser in leasing such property in accordance with the provisions of § 225.25(b)(5); and making, acquiring, or servicing loans or other extensions of credit for the subsidiary's own account or for the account of others, such as would be made, acquired or serviced by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23255 Filed 10-2-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 13, 1989.

A. Federal Reserve Bank of New York, (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045

1. Siggi B. Wilzig, c/o The Trust Company of New Jersey, Jersey City, New Jersey; to acquire 5.4 percent of the voting shares of The TrustCompany Bancorporation, Jersey City, New Jersey, and thereby acquire indirectly The Trust Company of New Jersey, Jersey City, New Jersey.

B. Federal Reserve Bank of Cleveland, (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101.

1. Jack A. Coblentz and Carole A. Coblentz, New Madison, Ohio; to retain up to 13.51 percent of the voting shares of FSB Financial Corp., New Madison, Ohio, and thereby indirectly control Farmers State Bank & Trust Co., New Madison, Ohio.

C. Federal Reserve Bank of Minneapolis, (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480

1. Barbara Lee Bacich, Anna Maria, Florida; to acquire an additional 3.45 percent of the voting shares of Little

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Mountain Bancshares, Inc., Monticello, Minnesota, for a total of 14.03 percent, and thereby indirectly acquire First National Bank of Monticello, Monticello, Minnesota.

D. Federal Reserve Bank of Kansas City, (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198

1. Robert W. Kaplan, Wichita, Kansas; Yale J. Kaplan, Omaha, Nebraska; Calvin L. McMillan, Wichita, Kansas; and Carl Chuzy, Wichita, Kansas; to each acquire an additional 7.55 percent of the voting shares of Andover Banc Shares, Inc., Andover, Kansas, and thereby indirectly acquire National Bank of Andover, Andover, Kansas.

2. John F.Y. Stambaugh Living Trust, John F.Y. Stambaugh, trustee, Tulsa, Oklahoma, to acquire 16.27 percent, and Elizabeth L. Stambaugh Living Trust, Elizabeth L. Stambaugh, trustee, Tulsa, Oklahoma, to acquire 10.05 percent of the voting shares of Security Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Security Bank, Tulsa, Oklahoma.

E. Federal Reserve Bank of Dallas, (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222.

1. John W. Hancock, El Campo, Texas, to acquire 2.39 percent of the voting shares of Louise Bancshares, Inc., Louise, Texas, and thereby indirectly acquire The First State Bank, Louise, Texas, and The Wallis State Bank, Wallis Texas.

Board of Governors of the Federal Reserve System, September 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23256 Filed 10-2-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time and date: 10:00 a.m., October 17, 1989.
Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, D.C.
Status: Open.
Matters to be Considered: Approval of the minutes of the July 12, 1989, meeting; report of the Executive Director on the status of the Thrift Savings Plan; legislation; loan program/process; TSP change of address process; November 15, 1989—January 31, 1990, Open Season; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-5367.

Dated: September 27, 1989.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 89-23242 Filed 10-2-89; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0416]

Vitarine Pharmaceuticals, Inc.; Proposal To Withdraw Approval of Abbreviated Antibiotic Drug Applications and Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of certain abbreviated antibiotic drug applications (AADA's) and abbreviated new drug applications (ANDA's) held by Vitarine Pharmaceuticals, Inc., 227-15 North Conduit Ave., Springfield Gardens, NY 11413 (hereinafter referred to as Vitarine). The basis for the proposal is that the applications contain untrue statements of material fact and that the drugs covered by these applications lack substantial evidence of effectiveness.

DATES: A hearing request is due on November 2, 1989; data and information in support of the hearing request are due on December 4, 1989.

ADDRESS: Requests for hearing, supporting data, and other comments should be identified with Docket No. 89N-0416, and submitted to the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, or Walter A. Brown, Division of Regulatory Affairs (HFD-366), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

Background

Vitarine manufactures antibiotic and nonantibiotic drugs at two manufacturing facilities, Springfield Gardens, NY, and St. Croix, Virgin Islands.

During review of one of Vitarine's ANDA's, FDA questioned whether a pilot batch of product may have been produced in the Springfield Gardens plant and not in the St. Croix plant as claimed in the application. An FDA investigator visited the Springfield Gardens plant on February 14, 1989, to determine the actual manufacturing location of the pilot batch in question.

FDA conducted a followup inspection at the St. Croix plant on April 3, 1989. Based on the information uncovered at the St. Croix plant, FDA investigators returned to the Springfield Gardens plant on May 1, 1989. During these inspections, FDA found evidence that documents such as batch records had been falsified or destroyed. At the end of the inspections, FDA issued Notices of Inspectional Observations (Form FD 483's) at both the St. Croix and the New York facilities. These notices detailed the instances of falsified or missing records relating to certain product approvals. By letters dated June 23, July 5, and July 27, 1989, Vitarine responded to the FD-483 observations for the New York facility.

At a meeting on June 28, 1989, between FDA and Vitarine, the firm revealed that the retention samples from bioequivalency testing of its triamterene 50 milligrams (mg) and hydrochlorothiazide 25 mg capsules (covered by ANDA 71-737) were not actually its product. Specifically, the firm's capsules had been filled with material that appeared to be the innovator's product. In bioequivalency testing, the generic product is compared with the innovator's product. Approval of Vitarine's product was withdrawn in a notice published in the **Federal Register** of August 28, 1989 (54 FR 35535). In a letter dated July 19, 1989, Vitarine supplied information pertaining to the falsification of records for several applications not covered by the inspections.

Based on the information obtained from inspections of the Vitarine plants in New York and the Virgin Islands, and information supplied by Vitarine, the Director of the Center for Drug Evaluation and Research has determined that approval of the AADA's and ANDA's listed below should be withdrawn because they contain untrue statements of material fact and because there is a lack of substantial evidence that the drugs will have the effects they purport to have in their labeling. These applications contain false records or records that are presumed to be false concerning batches of product that were used to document that the firm can properly manufacture its products, and

to perform tests necessary for approval (e.g., bioequivalence testing, stability testing, validation studies). A discussion of the evidence that supports the determination that Vitarine's applications contain untrue statements of material fact, and that there is a lack of substantial evidence of effectiveness for these drugs, follows:

AADA 62-910; Clindamycin HCl 75 mg and 150 mg Capsules

In support of AADA 62-910, Vitarine submitted copies of batch records 870501, 870502, 870504 through 870506, and 870416. During the inspection of the New York facility, FDA investigators discovered numerous discrepancies between records at the firm and records submitted to FDA in this AADA. First, based on the raw material receiving records, there was insufficient raw material available to Vitarine to produce the batch sizes reported to FDA. Second, on stability sample containers, original batch numbers were crossed out and new batch numbers applied, raising questions about whether the batches actually tested were those reported to FDA as having been tested. Third, stability records for certain batches show that batches were allegedly put on stability testing programs before their manufacturing dates noted on the batch records. Fourth, entries in a "research and development" notebook at the firm show that the batch sizes for batches 870416 and 870504 were each 5,000 capsules, whereas the batch records for batch 870416 submitted in the AADA report 80,000 capsules as the batch size and the batch records for batch 870504 submitted in the AADA report 150,000 capsules as the batch size. Fifth, the product inventory is much less than would be expected from the yield reported in the batch records submitted to FDA. Sixth, laboratory records for batch 870504 show a greater average capsule fill weight than allowed by the encapsulation specifications; no documentation of this was included in the batch record for 870504 submitted with the AADA. Finally, there are discrepancies between the batch records submitted with the AADA, the firm's analytical findings, and the manufacturer's certificate of analysis concerning the potency of the clindamycin used in the batches.

In response to a number of these discrepancies, Vitarine stated in its July 27 letter to FDA that is appeared that only two batches were actually manufactured, rather than six as reported in the AADA.

These discrepancies show that various statements on the batch records (e.g., manufacturing dates, active ingredient potencies, batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records) and statements on the stability test records (e.g., batch identifiers, number of batches tested) are untrue. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the application.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as the the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.[1]

ANDA 71-711; Indomethacin 25 mg Capsules

During the inspection of the New York facility, FDA noted various discrepancies between the records for batch 860608 at the firm and the records for this batch submitted to FDA with the ANDA. No original batch production records exist for 860608. However, copies of the batch production records were found at the firm. These records are not initialed, yet the copies submitted with the ANDA are initialed. There are also discrepancies between the firm's raw material production inventory and disposition records and the batch records. For example, the batch records show that a certain lot of raw material was in the batch, but the firm's inventory record does not show a transfer of the material to the firm's Research and Development Department (where batch 860608 was produced) until after the reported date of the batch's manufacture. In addition, there exists a significant discrepancy between the amount of product remaining from batch 860608 and the amount claimed to have been produced. The theoretical yield from this batch was 45,000 capsules. The equivalent of only 3,177 capsules was accounted for and there were no records that any capsules had been destroyed.

These discrepancies show that various statements on the batch records are untrue (e.g., batch size, type, and quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the application.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-712; Indomethacin 50 mg Capsules

During the inspection of the New York facility, FDA noted various discrepancies between the batch production records for lot 860406 and the records for this batch submitted to FDA with the ANDA. No original batch production records exist for lot 860406. However, copies of the records were found at the firm. THese copies are not initialed, yet the copies submitted to

[1] Although ANDA's and AADA's are approved for generic drugs without the submission of adequate and well-controlled clinical efficacy studies, which are required under the substantial evidence standard in 21 U.S.C. 355(d), these approvals are supported by such clinical efficacy studies based on a showing of bioequivalence to the listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated effective based on clinical efficacy studies satisfying the substantial evidence requirement or must be related through bioequivalence data to another drug that has been demonstrated effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelf-life, there is no basis for assuming that the clinical efficacy studies supporting the approval of the listed drug likewise support the claims of efficacy on the part of the generic drug.

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FDA are initialed. There are significant discrepancies between the amount of product remaining from batch 860408 and the amount claimed to have been produced. Although the batch production records show a yield of 30,000 capsules, the equivalent of only 1,070 capsules were accounted for and there were no records that any capsules had been destroyed. In addition, the "research and development" notebook for this batch shows a size of 15,000 capsules. There are also discrepancies between the raw material production inventory and disposition records and the batch records.

From the discrepancies it follows that various additional statements on the batch records are untrue (e.g., batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). There are also untrue statements on the stability test records for the batch. Furthermore, batch identifiers on the stability samples at the firm were altered. These statements are unture statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71–531; Indomethacin ER (Extended Release) 75 mg Capsules

During the inspection of Vitarine's New York facility, FDA investigators noted discrepancies between the batch and production records at the firm for batch 860511, the batch used for bioequivalence testing, and the full statement of the composition of the drug and the full list of articles used as components of the drug submitted with the ANDA. Thus, ANDA 71–531 contains untrue statements of material fact regrding the composition of the drug product that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, and manufacturing process on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 72–179; Mefenamic Acid 250 mg Capsules

In support of ANDA 72–179, Vitarine submitted a copy of the batch records for batch 870125. The inspection of Vitarine's New York facility revealed that the firm's receiving records show that there was insufficient raw material available to produce the quantity of product reported for the batch. There were no raw material usage records for this batch at the firm. Vitarine, in its July 27 letter, states that it believes the records were destroyed. In addition, a lab notebook at the firm reported the batch size to be 8,000 capsules whereas the batch records submitted to FDA report the batch size as 35,000 capsules. A significant discrepancy also exists between the amount of product remaining from batch 870125 and the batch record in that only 4,097 capsules remain at the firm and there were no destruction records for this batch.

From these discrepancies it follows that additional statements on the batch records are untrue (e.g., batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements were untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71–832, Trimipramine 25 mg Capsules; ANDA 71–833, Trimipramine 50 mg Capsules; and ANDA 71–834; Trimipramine 100 mg Capsules

Various batch records were submitted in support of ANDA's 71–832, 71–833, and 71–834. FDA investigators, during an inspection of Vitarine's New York facilities, discovered records that indicate that the batch records submitted to FDA do not accurately reflect the amounts of active ingredients used in producing the batches. The receiving records for certain materials to be used in the batches and a research notebook entry for one particular batch (861108) show that the batches had to be smaller than reported to FDA. The firm has conceded that the batch records do not accurately state the amount of active ingredients used. In addition, there is a large discrepancy between the amounts of product remaining from the three batches and the amounts claimed to have been produced in the batch records submitted to FDA. There are no records of destruction or distribution of the remainder of these batches.

These discrepancies also show that various additional statements on the batch records are untrue (e.g., batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA's.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 61–471; Tetracycline Hydrochloride 250 mg and 500 mg Capsules

In support of AADA 61–471, Vitarine submitted records for batches 861006, 861205, and 861207. In its July 19 letter, Vitarine revealed that records at the firm indicate that there was insufficient active ingredient to produce the batch sizes reported in the AADA for batches 861006, 861205, and 861207. The firm also noted, based on the formulator's notebook, that the three batches, represented as separate batches in the AADA, were probably the same batch.

These discrepancies show that various additional statements on the batch records are untrue (e.g., batch identification, batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records) and that certain batch records may be complete fabrications. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the AADA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62–780; Doxycycline Hyclate 50 Capsules

In support of AADA 62–780, Vitarine submitted records for batches 860605, 861206, and 861208. In its July 19 letter, the firm disclosed that records at the firm show that there was insufficient active ingredient to produce the batch sizes reported in the AADA for batches 860605, 861206, and 861208. The firm also disclosed that, based on entries in a formulator's notebook, it appears that all three batches, represented as separate batches in the AADA, were actually one batch.

These discrepancies show that various additional statements on the batch records are untrue (e.g., batch identifiers, batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records) and that certain batch records may be complete fabrications. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the AADA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62–227; Doxycycline Hyclate 100 mg Capsules

In support of AADA 62–227, Vitarine submitted records for batches 860409, 861209, and 861210. In its July 19 letter, the firm disclosed that records at the firm show that there was insufficient active ingredient to produce the batch sizes reported in the AADA for batches 860409, 861209, and 861210. The firm also disclosed that, based on entries in a formulator's notebook, it appears that all three batches, represented as separate batches in the AADA, were actually one batch.

These discrepancies show that various additional statements on the batch records are untrue (e.g., batch identifiers, batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records) and that certain batch records may be complete fabrications. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the AADA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62–779, Cephalexin for Oral Suspension 125 mg/5 Milliliter (mL) and AADA 62–781, Cephalexin for Oral Suspension 250 mg/5 mL

In support of AADA's 62–779 and 62–781, Vitarine submitted copies of batch records 860611 through 860613 and 870102 through 870109. These batches wer purportedly made at the St. Croix facility.

During the inspection of the St. Croix facility, the firm could not produce records demonstrating that the batches were actually produced at the facility. In addition, the employee whose initials were on the records could not state that the initials were his and could not state that he participated in the production of the batches. Moreover, there are no records corroborating that these batches were manufactured in the St. Croix facility (e.g., no raw data to support actual raw material weighings and active ingredient potency calculations, and no shipping records to support movement of raw materials or finished product).

Other discrepancies also exist. A "raw material inventory and disposition record" for an inactive ingredient shows that the inactive ingredient was not used in any batch of Cephalexin for Oral Suspension made at St. Croix; however, the batch of Cephalexin for Oral Suspension made at St. Croix; however, the batch records submitted to FDA show that the inactive ingredient was used.

There is inadequate evidence to demonstrate that the batch records submitted in support of AADA's 62–779 and 62–781 were from batches produced

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in St. Croix or whether the batches were ever manufactured. FDA concludes that the batch records in their entirety are untrue statements of material fact.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-564; Orphenadrine Compound (Orphenadrine Citrate 25 mg, Aspirin 385 mg, Caffeine 30 mg) Tablets

In support of ANDA 71-564, Vitarine submitted a copy of the batch records for batch 860205. In its July 19 letter, the firm disclosed that the purchasing, receiving, and transfer records for orphenadrine citrate indicate insufficient material to manufacture batch 860205 in the amount specified in the batch record submitted with the ANDA.

There discrepancies show that various statements on the batch records are untrue (e.g., batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have affected approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-565; Orphenadrine Compound (Orphenadrine Citrate 50 mg, Aspirin 770 mg, Caffeine 60 mg) Tablets

In support of ANDA 71-565, Vitarine submitted a copy of the batch records for batch 860301. In its July 19 letter, the firm disclosed that the purchasing, receiving, and transfer records for orphenadrine citrate indicate insufficient material to manufacture lot 860301 in the amount specified in the batch record submitted with the ANDA.

These discrepancies show that various statements on the batch records are untrue (e.g., batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62-813; Cephradine 250 mg and 500 mg Capsules

In support of AADA 62-813, Vitarine submitted to FDA copies of batch records for batches 860814, 860815, and 870119 through 870122. These batches were purportedly manufactured at the St. Croix facility. The records show that these batches were produced during August 1986 and January 1897, at a time when the St. Croix facility was reportedly inactive.

In addition, there are no records to corroborate the production of these batches at the St. Croix facility (e.g., no raw material receipts from New York, no finished product receipts from St. Croix to New York, no records to document preparation and cleaning of the equipment, no raw data on loss-on-drying results, and no documentation to show the final disposition of batches 870119 through 870122). Moreover, one of the St. Croix employees whose initials were on the records could not assure that he actually participated in the manufacture of the batches, and could not state that the records were ligitimate documents describing the production activities associated with the batches. He also could not explain how he and one other employee were able to accomplish all the work which the records indicate they performed between January 13 and 17, 1987, on these batches using equipment that other records indicate were being used to produce certain batches of another product (Cephalexin tablets).

There is inadequate evidence to demonstatrate that the batch records submitted in support of AADA 62-813 were from a batch produced in St. Croix or whether the batch were ever manufactured. FDA concludes that the batch records in these entirety are untrue statements of material fact.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62-863; Cephalexin 250 mg, 500 mg, and 1,000 mg Tablets

Vitarine submitted copies of batch records 870110 through 870118 in support AADA 62-863. These batches were purportedly made at the St Croix facility. During the inspection of the St. Croix facility, the firm could not demonstarte that the batch records accurately reflect the purported production of these batches in St. Croix. Many records are lacking, incomplete, or contain inconsistencies (e.g., more active ingredient was used that accounted for by receiving records, no temperature chart records for drying ovens and coating machines, no raw data for loss-on-drying results, no

records to document receipt of the necessary tablet punches and dies, no raw data on calculating the amounts of active ingredient needed for each batch, discrepancies and omissions in some of the dates and signatures for some items, and no records for the shipping of most of the finished products). Furthermore, one of the St. Croix employees whose initials were on the records could not assure that he actually participated in the manufacture of the batches, and could not state that the records were legitimate documents describing the production activities associated with the batches. He also could not explain how he and one other employee were able to accomplish all the work, even using some of the same equipment, which the records indicate they performed between January 13 and 17, 1987, on six of these batches and certain batches of other products. Moreover, these batches were purportedly made during a time when the St. Croix facility was reportedly inactive.

There is inadequate evidence to demonstrate that the batch records submitted in support of AADA 62-863 were from batches produced in St. Croix or whether the batches were ever manufactured. Thus, FDA concludes that the batch records in their entirety are untrue statements of material fact that invalidate any tests or studies that were represented to have been conducted with the batches.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-360; Triamterene 75 mg/ Hydrochlorothiazide 50 mg Tablets

In support of ANDA 71-360, Vitarine submitted a copy of batch record 860106. During the inspection of Vitarine's New York facility, the firm could not produce the original batch record for this batch. There are also discrepancies between other relevant records at the firm and the batch records submitted to FDA. The relevant raw material card for hydrochlorothiazide shows no usage of this raw material before February 11, 1986 and no usage in batch 860106, whereas the batch record submitted to FDA shows usage of the raw material on February 7, 1986. There is no record of the existence of the batch of triamterene that was purportedly used in batch 860106. Furthermore, the amount of product remaining at the firm is inconsistent with the yields reported in the batch records coupled with the number of tablets reported to have been destroyed.

These discrepancies show that various statements on the batch records are untrue (e.g., dates of manufacture, batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-684, Meclofenamate 100 mg Capsules and ANDA 71-710, Meclofenamate 50 mg Capsules

Two batch records submitted in support of ANDA 71-684 (lot 860804) and ANDA 71-710 (lot 860706) were evaluated in FDA's inspection of the firm's New York facility. FDA investigators determined that the finished product yeilds reported for these batches could not be accurate based on the amount of available meclofenamate noted in Vitarine's receiving or inventory records. The firm has conceded that the amounts of meclofenamate raw material stated to have been used and the reported finished product yields were incorrect for these batches. There was no raw material inventory and disposition card at the firm covering the meclofenamate raw material used to make the batches. Vitarine believes that the records were deliberately destroyed by or under the supervision of research and development personnel.

The discrepancies noted between the batch records submitted to FDA and the existing records at the firm show that various statements on the batch records are untrue (e.g., batch size, quantities of components used in the batches, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records). These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA's.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71-901; Baclofen 10 mg Tablets

In support of ANDA 71-901; vitarine submitted a copy of batch record 860819. An inspection of Vitarine's New York facility revealed missing or incomplete raw material and disposition records for the batch. In a letter dated June 23, 1989, Vitarine stated that these records could have been destroyed deliberately. From the records that were found, however, FDA investigators determined that there was insufficient raw material to make the amount of product reported for batch 860819. In addition, there are no records showing that an excipient purportedly used in the batch was transferred to the department where the batch was produced.

Moreover, there exists a significant discrepancy between the amount of product remaining from batch 860819 and the batch record. The batch record submitted to FDA reports a theoretical yield of 50,000 tablets. The firm's

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inventory, however, contains only 480 tablets and there is no destruction record for the batch. In its letter of June 23, 1989, Vitarine told FDA that the amount of baclofen raw material on hand was sufficient to make about 15,000 tablets, not the 50,000 theoretical yeild claimed in the batch record submitted in the application.

The discrepancies show that various statements on the batch records are untrue, including batch size, quantities of components used in the batch, all calculations that rely on or utilized quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records. These statements are untrue statements of material fact in that the concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 71–902; Baclofen 20 mg Tablets

In support of ANDA 71–902, Vitarine submitted a copy of a batch record for batch 860513A. An inspection of Vitarine's New York facility revealed missing or incomplete raw material and disposition records for this batch. From the records that were found, FDA investigators determined and Vitarine has agreed in its letter of June 23, 1989, that there was insufficient raw material to make the amount of product reported for batch 860513A. In addition, there exists a significant discrepancy between the amount of product remaining from batch 860513A and the batch record. The batch record submitted to FDA reports a theoretical yield of 25,000 tablets. The firm's inventory, however, contains only 181 tablets and there is no record of destruction for the batch. Vitarine has concluded in its July 23, 1989, letter that the amount of baclofen raw material on hand was sufficient to make about 17,000 tablets, not the 25,000 theoretical yield claimed in the batch record submitted in the application.

These discrepancies show that various statements on the batch records are untrue, including batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectivenes.

ANDA 72–167; Desipramine Hydrochloride 10 mg Tablets

In support of ANDA 72–167, Vitarine submitted a copy of the batch records for batch 870414. In its July 19 letter, Vitarine disclosed that the raw material inventory and disposition records at the firm are inconsistent with the batch size stated in the batch records submitted with the ANDA.

The discrepancy shows that various statements on the batch records are untrue, including batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities or components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records. These statements are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

ANDA 72–254; Desipramine Hydrochloride 150 mg Tablets

In support of ANDA 72–254, Vitarine submitted a copy of the batch records for batch 870415. In its July 19 letter, Vitarine disclosed that the raw material inventory and disposition records at the firm are inconsistent with the batch size stated in the batch records submitted with the ANDA.

This discrepancy shows that various statements on the batch records are untrue, including batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, all control records that rely on or utilize quantities of components, and representations that the manufacturing steps were conducted in accord with the batch records. These statement are untrue statements of material fact in that they concern matters that could have influenced approval of the ANDA.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

AADA 62–159; Cephalexin 250 mg and 500 mg Capsules

Vitarine submitted records associated with batches 860609, 860610, 860915, and 860916 in support of AADA 62–159. These batches were purportedly made at the St. Croix facility. However, upon inspection of the facility, Vitarine was unable to produce any documentation demonstrating that the batches were actually produced in St. Croix. There is inadequate evidence to demonstrate that the batch records submitted in support of AADA 62–159 were from batches produced in St. Croix or whether the batches were ever manufactured. Thus, the batch records in their entirety are untrue statements of material fact.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequivalence to the listed drug, there is a lack of substantial evidence of effectiveness.

Proposed Action and Notice of Opportunity for Hearing

The Director of the Center for Drug Evaluation and Research has evaluated the information discussed above concerning the filing of false data by Vitarine and, on the grounds stated, is proposing to withdraw approval of the following AADA's and ANDA's:

AADA 61–471; Tetracycline Hydrochloride 500 mg Capsules
AADA 62–159; Cephalexin 250 mg and 500 mg Capsules
AADA 62–227; Doxycycline Hyclate 100 mg Capsules
AADA 62–779; Cephalexin for Oral Suspension, 125 mg/5 mL
AADA 62–780; Doxycycline Hyclate 50 mg Capsules
AADA 62–781; Cephalexin for Oral Suspension, 250 mg/5 mL
AADA 62–813; Cephradine 250 mg and 500 mg Capsules
AADA 62–863; Cephalexin 250 mg, 500 mg, and 1,000 mg Tablets
AADA 62–910; Clindamycin HCl 75 mg and 150 mg Capsules
ANDA 71–360; Triamterene 75 mg/ Hydrochlorothiazide 50 mg Tablets
ANDA 71–531; Indomethacin ER 75 mg Capsules
ANDA 71–564; Orphenadrine Compound Tablets, Single Strength
ANDA 71–565; Orphenadrine Compound Tablets, Double Strength
ANDA 71–684; Meclofenamate 100 mg Capsules
ANDA 71–710; Meclofenamate 50 mg Capsules
ANDA 71–711; Indomethacin 25 mg Capsules
ANDA 71–712; Indomethacin 50 mg Capsules
ANDA 71–832; Trimipramine 25 mg Capsules
ANDA 71–833; Trimipramine 50 mg Capsules
ANDA 71–834; Trimipramine 100 mg Capsules
ANDA 71–901; Baclofen 10 mg Tablets
ANDA 71–902; Baclofen 20 mg Tablets
ANDA 72–167; Desipramine Hydrochloride 10 mg Tablets
ANDA 72–179; Mefenamic Acid 250 mg Capsules
ANDA 72–254; Desipramine Hydrochloride 150 mg Tablets

Notice is hereby given to the holder of the AADA's and ANDA's listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug and Cosmetic Act (the act), withdrawing approval of the foregoing AADA's, ANDA's, and all amendments and supplements thereto. The Director finds that the applications contain untrue statements of material fact and, on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505 of the act and 21 CFR Part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the AADA's and ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before November 2, 1989, a written notice of appearance and request for hearing, and (2) on or before December 4, 1989, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 (except that the limitations imposed by 21 CFR 314.200(d)(1) and (2) do not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant ot this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the Federal Register notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 502, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: September 28, 1989.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 89–23374 Filed 10–2–89; 8:45 am]
BILLING CODE 4160–01–M

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Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 2,4-Dichlorophenol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 2,4-dichlorophenol. 2,4-Dichlorophenol is used principally as a chemical intermediate in the manufacture of the herbicide, 2,4-dichlorophenoxyacetic acid (2,4-D).

Toxicology and carcinogenesis studies were conducted by feeding diets containing 0, 5,000 or 10,000 ppm 2,4-dichlorophenol to groups of 50 male rats and 50 male and 50 female mice for 103 weeks. Groups of 50 female rats received diets containing 0, 2,500 or 5,000 ppm.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity * for male F344/N rats fed diets containing 5,000 or 10,000 ppm 2,4-dichlorophenol or for female F344/N rats fed diets containing 2,500 or 5,000 ppm 2,4-dichlorophenol. There was no evidence of carcinogenic activity for male and female B6C3F$_1$ mice fed diets containing 5,000 or 10,000 ppm 2,4-dichlorophenol.

The study scientist for these studies is Dr. R. Melnick. Questions or comments about the conduct of this Technical Report should be directed to Dr. R. Melnick at P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4142.

Copies of *Toxicology and Carcinogenesis studies of 2,4-Dichlorophenol in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR 353) are available without charge from the NTP Public Information Office, MD B2–04, P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: September 27, 1989.

David P. Rall,

Director.

[FR Doc. 89–23292 Filed 10–2–89; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Furosemide

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of furosemide, a diuretic used in human and veterinary medicine.

Toxicology and carcinogenesis studies were conducted by feeding diets containing, 0, 350, or 700 ppm furosemide to groups of F344/N rats for 103 weeks. Groups of 50 mice of each sex were administered diets containing 0, 700 or 1400 ppm furosemide for 104 weeks.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity * of furosemide for male F344/N rats, as shown by marginal increases in uncommon tubular cell neoplasms of the kidney and meningiomas of the brain. There was no evidence of carcinogenic activity of furosemide for female F344/N rats fed diets containing 350 or 700 ppm furosemide for 2 years. There was no evidence of carcinogenic activity for male B6C3F$_1$ mice fed diets containing 700 or 1400 ppm furosemide for 2 years. There was some evidence of carcinogenic activity of furosemide for female mice, as shown by an increase in malignant tumors of the mammary gland.

The study scientist for these studies is Dr. John R. Bucher. Questions or comments about the conduct of this Technical Report should be directed to Dr. Bucher at P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4532.

Copies of *Toxicology and Carcinogenesis studies of Furosemide in F344/N Rats and B6C3F$_1$ Mice (Feed Studies)* (TR 356) are available without charge from the NTP Public Information Office, MD B2–04, P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: September 27, 1989.

David P. Rall,

Director

[FR Doc. 89–23293 Filed 10–2–89; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Tribromomethane

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of tribromomethane, a chemical intermediate and solvent. This chemical has been identified as a drinking water contaminant resulting from water chlorination.

Toxicology and carcinogenesis studies were conducted by administering doses of 0, 100, or 200 mg/kg tribromomethane in corn oil by gavage, 5 days per week for a period of 103 weeks, to groups of 50 rats of each sex and 50 female mice. Groups of 50 male mice were administered 0, 50, or 100 mg/kg tribromomethane on the same schedule.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity * of tribromomethane for male F344/N rats and clear evidence of carcinogenic activity for female F344/N rats, based on increased incidences of uncommon neoplasms of the large intestine. Reduced survival for male rats given 200 mg/kg tribromomethane lowered the sensitivity of this group to detect a carcinogenic response. Chemically related nonneoplastic lesions included fatty change end active chronic inflammation of the liver in male and female rats, minimal necrosis of the liver in male rats, and mixed cell foci of the liver in female rats. There was no evidence of carcinogenic activity for male B6C3F$_1$ mice given 50 or 100 mg/kg tribromomethane or for female B6C3F$_1$ mice given 100 or 200 mg/kg; male mice might have been able to tolerate a higher dose. Survival of the female mice was reduced, partly due to a utero-ovarian infection.

The study scientist for these studies is Dr. Ronald L. Melnick. Questions or comments about the conduct of this Technical Report should be directed to Dr. Melnick at P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4142.

Copies of *Toxicology and Carcinogenesis Studies of Tribromomethane (Bromoform) in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 350) are available without charge from the NTP Public Information Office, MD B2–04, P. O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: September 27, 1989.

David P. Rall,

Director.

[FR Doc. 89–23294 Filed 10–2–89; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 741901

Applicant: John Gehan, Irving, Texas.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. M. Greggor of Elandsberg Farms, Hermon, Republic of S. Africa, for the purpose of enhancement of survival of the species.

PRT 741910

Applicant: Gladys Porter Zoo, Brownsville, TX.

The applicant requests a permit to import one male and one female captive-hatched saltwater crocodile (*Crocodylus porosus*) from the Samutprakan Crocodile Farm & Zoo Co., Ltd., Samutprakan, Thailand, for the purpose of captive propagation, zoological exhibition and behavioral research.

PRT 741913

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one captive-born male Persian fallow deer (*Cervus dama mesopotamica*) from Tierpark Berlin, Berlin, East Germany, for the purpose of enhancement of propagation.

PRT 741881

Applicant: Minden Wildlife Sanctuary, Minden, LA.

The applicant requests a permit to purchase in interstate commerce six pairs of adult wild-caught golden parakeets (*Aratinga gaurouba*) imported from Brazil, from Life Fellowship, Seffner, Florida, for enhancement of propagation through educational display and breeding.

PRT 741785

Applicant: Steve Martin, Acton, CA.

The applicant requests a permit to export and reimport a captive-bred male tiger (*panthera tigris*) to Argentina and return for the purpose of enhancement of propagation through educational display. This tiger will be reexported and reimported to and from other countries in the future.

PRT 741995

Applicant: Cincinnati Zoo, Cincinnati, Ohio.

The applicant requests a permit to import 1.1 Komodo dragons (*Varanus komodoensis*) from Metro Zoo of Jakarta, Jakarta Selatan, Indonesia, for enhancement of propagation through educational display, breeding and research.

PRT 742015

Applicant: Clyde Peeling's Reptiland Ltd., Allenwood, Pa.

The applicant requests a permit to purchase in interstate commerce six (6) Galapagos tortoises (*Geochelone elephantopus*) from Life Fellowship, Seffner Florida, for enhancement of propagation through educational display and breeding.

PRT 741885

Applicant: Avicultural Breeding and Research, Loxahatchee, FL.

The applicant requests a permit to purchase in interstate commerce two female nene geese (*Nesochen sandvicensis*) from St. Louis Zoological Park, St. Louis, MO, for enhancement of propagation through breeding.

PRT 741823

Applicant: International Animal Exchange, Inc., Ferndale, MI.

The applicant requests a permit to purchase one pair of captive born jaguars (*Panthera onca*) from the Cleveland Metroparks Zoo, Cleveland, Ohio, and export them to Yong-In Farmland, Swoul, Korea, for breeding and display purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 26, 1989.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–23239 Filed 10–2–89; 8:45 am]

BILLING CODE 4310–55–M

Issuance of Permit for Marine Mammals

On August 8, 1989, a notice was published in the **Federal Register** (Vol. 54, No. 151) that an application had been filed with the Fish and Wildlife Service by the Service's Alaska Office of Fish and Wildlife Research, Anchorage, Alaska (PRT–740507) for a permit to take (harass) up to 650 Alaska sea otters for the purpose of scientific research.

Notice is hereby given that on September 18, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permit, as well as an Environmental Assessment and Finding of No Significant Impact prepared in compliance with the National Environmental Policy Act, are available for public inspection during normal business hours at the Service's Office of Management Authority, Room 432, 4401 North Fairfax Drive, Arlington, Virginia.

Dated: September 26, 1989.

S.M. Lawrence,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–23238 Filed 10–2–89; 8:45 am]

BILLING CODE 4310–55–M

U.S. Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Office and to the Office of Management and Budget, Interior

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Department, Desk Officer, Paper Reduction Project (1028–0013), Washington, DC 20503, telephone: (202) 395–7340.

Title: Inventory of Hydrologic Data.
OMB Approval Number: 1028–0013.
Abstract: The collection is required to provide a data base for coordination of water-data acquisition activities in compliance with OMB Circular A–67. It is used within all governmental, academic, and private levels of the water-data community for national or regional network design and operation and for water resources and environmental management planning.
Bureau Form Number: 9–1961–1 through 6; 7A.
Frequency: Biennially.
Description of Respondents: Federal, State, County, River Basin, Interstate, Municipality, Local Government.
Estimated Completion Time: .35 hours.
Annual Responses: 1624.
Annual Burden Hours: 284.
Bureau Clearance Officer: Geraldine A. Wilson, (703) 648–7309.

Dated: July 18, 1989.

Philip Cohen,
Chief Hydrologist.

[FR Doc. 89–23321 Filed 10–2–89; 8:45 am]
BILLING CODE 4130–31–M

Bureau of Land Management

[CO–030–09–4410–08]

Availability of Approved Uncompahgre Basin Resource Management Plan/ Record of Decision; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the approved Uncompahgre Basin Resource Management Plan/Record of Decision and notice of four areas designated as Areas of Critical Environmental Concern (ACECs) and as either Research Natural Areas or Outstanding Natural Areas.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management has prepared a Record of Decision (ROD) for the Uncompahgre Basin Resource Management Plan (RMP).

EFFECTIVE DATE: The Resource Management Plan/ROD and ACEC designations became effective with the signing of the documents on July 26, 1989, by Neil F. Morck, Colorado State Director.

ADDRESS: Copies of the approved Resource Management Plan/ROD are available upon request at the Uncompahgre Basin Resource Area Office, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Allen J. Belt, Area Manager, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, Colorado 81401, Telephone 303–249–7791.

SUPPLEMENTARY INFORMATION: The Uncompahgre Basin RMP is approved. The plan was prepared under the regulations for implementing the Federal Land Policy and Management Act (FLPMA) of 1976 (43 CFR 1600). An environmental impact statement was prepared for this plan in compliance with the National Environmental Policy Act (NEPA) of 1969. The approved RMP is identical to the Proposed RMP published in September 1988.

Decisions: The RMP describes the management objectives and prescriptions for the 16 management units of the Uncompahgre Basin Planning Area. The RMP designates a total of 224,270 acres open to off-road vehicle (ORV) use, 38,600 acres closed to ORV use and 220,201 acres limited either seasonally or year-long to ORV use. The RMP recommends to the Secretary of the Interior the Gunnison Gorge WSA (21,038 acres) as suitable for inclusion into the National Wilderness Preservation System. The RMP designates four areas as ACECs:

A 1,895-acre portion of Escalante Canyon located west of Delta, Colorado, is designated as the Escalante Canyon Area of Critical Environmental Concern. Specifically, this area is located in T. 51 N., R. 13 W., sections 19, 20, 21, 22, 27, 28, 29, and 30, New Mexico Principal Meridian. This area contains several federally-listed threatened and endangered plant species and two unique plant associations. The area also receives significant recreational use.

An area comprised of two tracts totalling 377 acres located eight miles east of Montrose, Colorado, is designated as the Fairview Research Natural Area/Area of Critical Environmental Concern. Specifically, this area is located in T. 49 N., R. 8 W., sections 18 and 19; T. 48 N., R. 8 W., section 6; and T. 48 N., R. 9 W., section 1, New Mexico Principal Meridian. The tracts contain a large population of a listed endangered species and significant populations of a candidate species.

An 80-acre site located northeast of Crawford, Colorado, is designated as the Needle Rock Outstanding Natural Area/Area of Critical Environmental Concern. Specifically, this area is located in T. 15 S., R. 91 W., section 27, Sixth Principal Meridian. This site contains a volcanic geologic structure with high-value scientific, interpretive, and scenic characteristics. A 6,783-acre are located approximately three miles northwest of Delta, Colorado, is designated as the Adobe Badlands Outstanding Natural Area/Area of Critical Environmental Concern. Specifically, this area is located in T. 14 S., R. 96 W., sections 8, 9, 10, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; and T. 15 S., R. 96 W., sections 2, 3, and 4, Sixth Principal Meridian. The area consists of Mancos shale hills and flats which, through wind and water erosion, have formed unique scenic formations. The area's soils are highly erodible and saline, resulting in high sediment loads and very saline runoff.

The area also contains known and potential habitat for several endangered and threatened plant species.

Dated: September 25, 1989.

Tom Walker,
Associate State Director.

[FR Doc. 89–23320 Filed 10–2–89; 8:45 am]
BILLING CODE 4310–JB–M

[AZ–020–09–4213–01]

Phoenix District Advisory Council; Meeting Cancellation

AGENCY: Bureau of Land Managmeent, Interior.

ACTION: Cancellation notice of the Phoenix District Advisory Council.

DATE: Scheduled for October 5–6, 1989, 9:00 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona 85027.

SUMMARY: The above scheduled meeting of the Phoenix District Advisory Council has been canceled. It will be rescheduled at a later date.

Dated: September 25, 1989.

Henri R. Bisson,
District Manager.

[FR Doc. 89–23319 Filed 10–2–89; 8:45 am]
BILLING CODE 4310–32–M

[NM 910–GP9–467; NM NM 55953]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2–3, Southland Royalty Company petitioned for reinstatement of oil and gas lease NM NM 55953 covering the following described lands located in Lea County, New Mexico:

Eddy County, New Mexico
T. 24 S., R. 32 E., NMPM
sec. 7: E½NE¼, SE¼,
sec. 8: N½, NW¼SW¼,
sec. 9: W½, SE¼
Containing 1,080.000 acres.

It has been shown to my satisfaction that failure to make timely payments of rental was due to inadvertence.

No valid lease has been issued effecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale of 4 percentage points greater than the competative royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Dated: September 22, 1989.

Martha A. Rivera,
Acting Chief, Adjudication Section.

[FR Doc. 89–23331 Filed 10–2–89; 8:45 am]
BILLING CODE 4310–FB–M

[CA–010–090–4212–13, CA 25913]

Realty Action: Exchange of Public Land in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land
T.16 N., R. 9 E., MDM, California
Sec. 18: Lots 16, 18 and 19.
Containing 16.67 acres, more or less.

The above described land is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register.**

This land is difficult and uneconomic to manage as part of the public lands and is not considered suitable for management by another Federal agency.

The above land is being considered for possible transfer to a nonprofit conservation organization (American River Land Trust, Trust for Public Land, or The Nature Conservancy). In exchange, the public would receive private land (approximately equal in value) located on either the South Fork of the American River or the Merced River, or wetlands and waterfowl habitat located in the Sacramento Valley. The purpose would be to acquire these lands in order to prevent development and to preserve their natural character for the enjoyment of future generations.

SUPPLEMENTARY INFORMATION: A right-of-way wold be reserved to the U.S. on the Federal land being considered for exchange (43 U.S.C. 945); a transfer would also incude a protection for and preservation of certain elements of a historic Chinese Cemetery which once occupied the Federal parcel.

All necessary clearancers including clearances for archaeology, rare plants and animals would be completed prior to any conveyance of title by the U.S.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley, (916) 985–4474 or at the address listed below.

ADDRESS: For a period of 45 days from publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager c/o the Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

Dated: September 22, 1989.

D. K. Swickard,
Area Manager.

[FR Doc. 89–23322 Filed 10–2–89; 8:45 am]
BILLING CODE 4310–40–M

[MT–020–09–4340–02]

Montana; Intent To Prepare a Resource Management Plan Environmental Impact Statement and Hold Scoping Meetings in the Big Dry Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: A Resource Management Plan (RMP) will be prepared for the BLM-administered lands within the Big Dry Resource Area, Miles City District, Montana. The RMP will be based upon the existing statutory requirements and will meet the requirements of the Federal Land Policy and Management Act of 1976. The RMP and accompanying Environmental Impact Statement (EIS) will guide management decisions within the Big Dry Resource Area. The RMP and EIS are scheduled for completion by September 1992.

SUPPLEMENTARY INFORMATION: The RMP geographic area is northeastern Montana and consists of BLM-administered lands in Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Sheridan, and Wibaux Counties, the northern tip of Custer County, the northwest tip of Carter County and the northern half of Rosebud County.

The public will assist the BLM in identification of the issues. Examples of potential issues (problems, concerns) are: acquisition of lands with important resource values, access to public lands, off-road vehicle use, identifying areas of special management concerns, rights-of-way, withdrawal review, forage allocation, riparian and wetlands management, land treatment, exploration and development, wildlife expansion and reintroduction, biological and chemical weed control, recreation permits and range improvement funding allocations for improving and maintaining allotments.

BLM is also extending a call for coal resource information and any information regarding resources which may affect the leasing of Federal coal or be affected by the leasing of Federal coal. Resource information pertinent to any other BLM resource management activities is also requested.

The public is also asked to assist BLM in identification of areas of critical and environmental concern (ACECs). An ACEC is an area within the public lands where special management attention is required to protect important historic, cultural or scenic values, fish and wildlife resources or other natural systems, or to protect life and safety from natural hazards. Nominations must meet both the relevance and importance criteria under the Code of Federal Regulations: 43 CFR part 1610.7–2(a) to be considered as a potential ACEC. Four alternatives will be developed to present a range of feasible management actions. The "No Action Alternative" is included in accordance with 43 CFR 1502.14(d) and represents the continuation of current management.

Three alternatives being considered are: the "Resource Production Alternative" favoring the use and development of public land resources over extensive natural and cultural resource protection; the "Resource Protection Alternative" which would go beyond legal mandates of resource protection, allowing the protection of natural and cultural resources to dictate other allowable uses; and management under the "Resource Production—

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Protection" Alternative which would balance use of the public land resources with protection of valuable and/or sensitive natural and cultural resources.

Development of this RMP will require involvement of professionals from these disciplines: wildlife management, threatened and endangered species, hydrology, riparian, soil science, range management, land use planning, realty, forestry, geology, archaeology, recreation, economics, and sociology. The public will be provided the opportunity to review and comment on issues and ACECs developed by BLM and to identify new issues and potential ACECs. A mailing list is being developed and will be used to communicate with and solicit comments from all local, state and federal agencies, Native American tribes, the Miles City BLM District Advisory Council, the Miles City BLM Grazing Advisory Board, and the public at large which may be affected by the plan. As the planning process proceeds, these publics will be encouraged to participate.

Public information and scoping meetings for this RMP will be held at Baker, Circle Forsyth, Glendive, Jordan, Miles City, Sidney, Terry and Wolf Point, Montana, from January 8 through the 24, 1990 (exact places and dates to be provided later).

Recommendations for issues, ACECs and/or other public concerns should be submitted to BLM on or before February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Area Manager, Big Dry Resource Area, Miles City Plaza, Miles City, Montana 59301 or telephone (406) 232–7000.

Darrel G. Pistorius,

Acting District Manager.

[FR Doc. 89–23217 Filed 10–2–89; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Plugging and Abandonment of Four Wells; Big Thicket National Preserve, Lance Rosier Unit, Hardin County, Texas

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Mobil Exploration and Producing U.S., Inc., a Plan of Operations for plugging and abandonment of four wells located within the Lance Rosier Unit of Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Dated: September 18, 1989.

Richard W. Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89–23208 Filed 10–2–89; 8:45 am]

BILLING CODE 4310-10-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 23, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 18, 1989.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Alamosa County

Superintendent's Residence, Great Sand Dunes National Monument, CO 150, SW of Mosca, Mosca vicinity, 89001761

Delta County

Curtis Hardware Store, 228 Grand Ave., Paonia, 89001746

Denver County

Field Officer's Quarters, Fort Logan, 3742 W. Princeton Cir., Denver, 89001745

DISTRICT OF COLUMBIA

District of Columbia

Mayfair Mansions Apartments, 3819 Jay St., NE., Washington, 89001735

Park Tower, 2440 Sixteenth St., NW., Washington, 89001744

Sheridan—Kalorama Historic District, Roughly bounded by Rock Creek Park, Connecticut Ave., NW., Florida Ave., NW., 22nd St., NW., and P St., NW., Sheridan, 89001743

FLORIDA

Pinellas County

Pass-a-Grille Historic District, Roughly bounded by 12th Ave., Gulf Blvd., 4th Ave., and Gulf Ave., St. Petersburg Beach, 89001734

ILLINOIS

Champaign County

Farm House, 1403 E. Lorado Taft Dr., Urbana, 89001728

Inman Hotel, 17 E. University Ave., Champaign, 89001732

Cook County

Crow Island School, 1112 Willow Rd., Winnetka, 89001730

West Jackson Historic District (Boundary Increase), 1513 W. Adams St., Chicago, 89001729

Du Page County

Whitney, William, House, 142 E. First St., Hinsdale, 89001731

Warren County

Stewart, Minnie, House, 1015 E. Euclid Ave., Monmouth, 89001733

MASSACHUSETTS

Suffolk County

Mission Hill Triangle Historic District, Roughly bounded by Smith St., Worthington St., Tremont St., and Huntington Ave., Boston, 89001747

NORTH DAKOTA

Adams County

US Post Office—Hettinger (US Post Offices in North Dakota, 1900–1940 MPS), Lake St. and Adams Ave., Hettinger, 89001751

Barnes County

US Post Office—Valley City (US Post Offices in North Dakota, 1900–1940 MPS), 149 NE. Third St., Valley City, 89001758

Cavalier County

US Post Office—Langdon (US Post Offices in North Dakota, 1900–1940 MPS), 323 Eighth Ave., Langdon, 89001752

Dickey County

US Post Office—Oakes (US Post Offices in North Dakota, 1900–1940 MPS), 611 Main Ave., Oakes, 89001753

Eddy County

US Post Office—New Rockford (US Post Offices in North Dakota, 1900–1940 MPS), 821 N. First Ave., New Rockford, 89001750

Foster County

US Post Office—Carrington (US Post Offices in North Dakota, 1900–1940 MPS), 87 N. Ninth Ave., Carrington, 89001754

Pembina County

US Customs House and Post Office—Pembina (US Post Offices in North Dakota, 1900–1940 MPS), 125 S. Cavalier St., Pembina, 89001755

Pierce County

US Post Office—Rugby (US Post Offices in North Dakota, 1900–1940 MPS), 205 SE. Second St., Rugby, 89001748

Ransom County

US Post Office—Lisbon (US Post Offices in North Dakota, 1900–1940 MPS), 17 W. Fourth Ave., Lisbon, 89001749

Richland County

US Post Office—Wahpeton (US Post Offices in North Dakota, 1900–1940 MPS), 620 Dakota Ave., Wahpeton, 89001760

Stark County

US Post Office—Dickinson (US Post Offices in North Dakota, 1900–1940 MPS), 15 E. First St., Dickinson, 89001757

Walsh County

US Post Office—Grafton (US Post Offices in North Dakota, 1900–1940 MPS), 506 S. Griggs Ave., Grafton, 89001756

SOUTH DAKOTA

Bon Homme County

Greenfield, Dr. John C., Houseq, 307 W. First St., Avon, 89001717

Brookings County

Sterling Methodist Church, US 77, 5 mi. E of Bruce, Bruce vicinity, 89001723

Brown County

Bickelhaupt, William G., House, 1003 S. Jay, Aberdeen, 89001727

Clark County

Telemariken Lutheran Church, NW of Wallace, Wallace vicinity, 89001720

Codington County

Reeve's Resort, 6 mi. S. of Florence, Florence vicinity, 89001726

Davison County

Welch, L.J., House, 608 E. 4th Ave., Mitchell, 89001722

Hughes County

McDonald, Henry M., House, 1906 E. Erskine, Pierre, 89001718

Lake County

Chicago, Milwaukee, St. Paul, and Pacific Railroad Depot, 315 S. Egan, Madison, 89001719

Minnehaha County

Daniels, E.J. and Alice, House, 3801 S. Hawthorne, Sioux Falls, 89001724

Moody County

Flandreau Masonic Temple, 300 E. Second Ave., Flandreau, 89001725

Potter County

Holland, George, House, 314 N. Exene St., Gettysburg, 89001721

TENNESSEE

Hickman County

Shelby Bend Archeological District, Address Restricted, Greenfield Bend vicinity, 89001760

UTAH

Salt Lake County

Armista Apartments (Salt Lake City MPS), 555 E. 100 South, Salt Lake City, 89001736

Cluff Apartments (Salt Lake City MPS), 1270—1280 E. 200 South, Salt Lake City, 89001739

Cornell Apartments (Salt Lake City MPS), 101 S. 600 East, Salt Lake City, 89001741

Corona Apartments (Salt Lake City MPS), 335 S. 200 East, Salt Lake City, 89001742

Ivanhoe Apartments (Salt Lake City MPS), 417 E. 300 South, Salt Lake City, 89001738

Lincoln Arms Apartments (Salt Lake City MPS), 242 E. 100 South, Salt Lake City, 89001737

Smith Apartments (Salt Lake City MPS), 228 S. 300 East, Salt Lake City, 89001740

The following property is also being considered for listing in the National Register:

ALASKA

Anchorage Borough

Indian Valley Mine, Address Restricted, Indian vicinity 89001762

[FR Doc. 89–23288 Filed 10–2–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[ICC Order No. P–106]

Passenger Train Operation; Chicago Central and Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks near Tunnel City, Wisconsin will be out of service because of scheduled track work and tunnel repair on September 16th and 19th. An alternate route is available via the Burlington Northern Railroad that requires the use of the Chicago & Central Pacific Railroad Company tracks between East Cabin and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 [45 U.S.C. 562(c)], Chicago & Central Pacific Railroad Company is directed to operate trains of the National Railroad Passenger Corporation between East Cabin and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said questions. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:01 a.m., (C.D.T.), September 16, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., (C.D.T.), September 19, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, September 11, 1989, Heber P. Hardy, Agent

Noreta R. McGee,

Secretary.

[FR Doc. 89–23291 Filed 10–2–89; 8:45 am]

BILLING CODE 7035-01-M

[ICC Order No. P–105]

Passenger Train Operation; Wisconsin Central Ltd.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL

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tracks near Deerfield, Illinois are temporarily out of service because of a derailment. An alternate route is available via the Wisconsin Central Ltd. (WC) between Columbus, Wisconsin and Chicago, Illinois via Duplainville, Wisconsin.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, (a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Wisconsin Central Ltd. (WC) is directed to operate trains of the National Railroad Passenger Corporation (AMTRAK) between Columbus, Wisconsin, via Duplainville, Wisconsin, and Chicago, Illinois.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 1:00 p.m., (e.d.t.), September 4, 1989.

(e) *Expiration date.* The provisions of this order shall expire at 1:00 p.m., (c.d.t.), September 5, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Wisconsin Central Ltd., and upon the National Railroad Passenger Corporation (AMTRAK), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, September 4, 1989, Bernard Gaillard, Agent.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23289 Filed 10-2-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Associated Materials, Inc., et al.,* Civil Action No. 89-2511 (D.N.J.) was lodged with the United States District Court for the District of New Jersey on June 20, 1989.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311 and 1344, as a result of dredging and the discharge of fill material into portions of Pompton Lake, NJ., and onto wetlands adjacent to the lake, without authorization from the U.S. Army Corps of Engineers. The consent decree requires Associated Materials, Inc. to restore Pompton Lake by removing all fill material placed into the lake by them, to a depth of seven feet, and by removing all access roads, berms, dikes and unconsolidated sidecast fill material. The decree furthers requires Associated Materials, Inc. to acquire suitable wetlands property in Northern New Jersey, valued at a minimum of $50,000.00, and convey that property to the State Office of Natural Lands Management, or, in the alternative, to the U.S. Fish and Wildlife Service.

The Department of Justice will receive until October 25, 1989, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Attention: Robert LeFevre, Road 7130, 10th St. & Constitution Avenue, NW., Washington, DC 20530 and should refer to *United States* v. *Associated Materials, Inc.,* DJ Reference No. 90-5-1-1-3356.

The consent decree may be examined at the Clerk's Office, United States District Court, U.S. Post Office and Courthouse Building, Newark, NJ 07101.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Do. 89-23317 Filed 10-2-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,795; Textron Lycoming Div., Avco Corp., Stratford, CT
TA-W-23,134; Babcock & Wilcox Co., Bryan, TX
TA-W-23,140; Designers Workshop, Phoenix, AZ
TA-W-23,181; Laird & Co., Scobeyville, NJ
TA-W-23,210; Shadyside Stamping Corp of Ohio, Shadyside, OH
TA-W-23,157; Schaevitz Engineering Co., Aerospace Div., Pennsauken, NJ
TA-W-23,138; DeBari Foshions Finishing Corp., Middle Village, NY
TA-W-23,096; Albert Forte Neckwear, Paulsboro, NJ
TA-W-23,193; Trasco, Inc., South Paris, ME
TA-W-23,126; Universol Resources Corp., Oklahomo City, OK
TA-W-23,144; Globe Motors Div. Of LCS, Dayton, OH

TA-W-23,175; Dover Weaver Corp., Poris, KY
TA-W-23,119; R.S.P. Industries, Inc., Brooklyn, NY
TA-W-23,102; Demetrious Designs, New York, NY
TA-W-23,135; Burlington Industries, Inc., Rockly Mount, NC
TA-W-23,159; Teleflex, Inc., Marine Div., Limerick, PA

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-23,194; United Auto Workers, Local #558, Willow Springs, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,205; Murphy/Hennessee, Inc., Owensboro, KY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,156; Phoenix Geoscience, Inc., Denver, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,148; Kline Hydraulic, Inc., Westerville, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,122; Santa Fe Energy Co., Amarillo, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,202; Control Data Corp., Grey Fox Component Technology Center, St. Paul, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,219; Delta Chemicals, Inc., Searsport, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,154; Philips Medical System N.A., Shelton, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,182; Mercury Manufacturing Corp, Hancock, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,186; Peter Stewart, Inc., Pleasantville, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,151; Nelson Oil & Gas, Inc., Shreveport, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,187; Petroleum Mancgement, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,195; Wycoff Steel, Inc., Plymouth, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,206; Newan Crosby Steel, Inc., Pawtucket, RI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,172; Alside, Div. of Associated Materials, Inc., Cuyahoga Falls, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,188; Petrorentas Internacionals, Inc., McAllen, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determination

TA-W-23,196; American Stratigrophic Co., Denver, CO

A certification was issued covering all workers separated on or after July 5, 1988.

TA-W-23,204; Depoister Drilling Co., Effingham, IL

A certification was issued covering all workers separated on or after June 28, 1988 and before July 1, 1989.

TA-W-23,152; Paris Manufacturing Corp., South Paris, ME

A certification was issued covering all workers separated on or after June 22, 1988 and before July 31, 1989.

TA-W-23,155; Philips Park-Norelco, Essex, CT

A certification was issued covering all workers separated on or after June 21, 1988.

TA-W-23,139; Delta Apparel, Inc., Knoxville, TX

A certification was issued covering all workers separated on or after June 29, 1988 and before September 12, 1989.

TA-W-23,105; Datronix, Inc., Elk River, MN

A certification was issued covering all workers separated on or after July 21, 1988.

TA-W-23,131; A-1 Bit & Tool Co. Service Center, Layfoyette, LA

A certification was issued covering all workers separated on or after June 26, 1988.

TA-W-23,184; Paterson Shade Co., Paterson, NJ

A certification was issued covering all workers separated on or after July 6, 1988.

TA-W-23,113; Lasmo Energy Corp., Great Bend, KS

A certification was issued covering all workers separated on or after June 12, 1988.

TA-W-23,185; Pecten International, Houston, TX

A certification was issued covering all workers separated on or after July 5, 1988.

TA-W-23,177; Fox Testing Co., Inc., Dodge City, KS

A certification was issued covering all workers separated on or after June 6, 1988 and before January 1, 1989.

TA-W-23,190; Shell Offshore, Inc., New Orleans, LA

A certification was issued covering all workers separated on or after July 5, 1988.

TA-W-23,191; Shell Oil Co., Houston, TX

A certification was issued covering all workers separated on or after July 5, 1988.

TA-W-23,192; Shell Western E & P, Inc., Houston, TX and At Various Locations in California

A certification was issued covering all workers separated on or after July 5, 1988.

TA-W-23,150; Montgomery Drilling, Bakersfield, CA

A certification was issued covering all workers separated on or after June 28, 1988 and before September 1, 1989.

TA-W-23,150A; Montgomery Drilling, Roosevelt, UT

A certification was issued covering all workers separated on or after June 26, 1988 and before September 1, 1989.

TA-W-23,147; Houston Processors, Inc., Houston, TX

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A certification was issued covering all workers separated on or after June 23, 1988.

TA-W-23,133; BTK Industries, Inc., El Paso, TX

A certification was issued covering all workers separated on or after November 1, 1988.

TA-W-23,132; Alert Shoe Corp., New York, NY

A certification was issued covering all workers separated on or after June 27, 1988.

TA-W-23,129; Atlas Cased Hole Div. of Western Atlas International, Pampa, TX

A certification was issued covering all workers separated on or after June 8, 1988.

TA-W-23,091; St. Clair Pakwell, Wilsonville, OR

A certification was issued covering all workers separated on or after May 19, 1988.

TA-W-23,200; C.N. Burman Co., Paterson, NJ

A certification was issued covering all workers separated on or after July 8, 1988.

TA-W-23,180; Knox Corder Drilling Co., Devine, TX

A certification was issued covering all workers separated on or after July 10, 1988 and before July 1, 1989.

TA-W-23,143; General Electric Co., Holland, MI

A certification was issued covering all workers engaged in employment related to the production of cables for hermetic motors at area 58 of subassembly operations at the Holland, Michigan plant of General Electric Manufacturing Dept. separated on or after June 28, 1988.

TA-W-23,001; Getter Trucking, Inc., Corp. Headquarters, Billings, MT and At Various Locations In The Following States

TA-W-23,001A MT
TA-W-23,001B ND
TA-W-23,001C OK
TA-W-23,001D TX
TA-W-23,001E WY

A certification was issued covering all workers separated on or after May 12, 1988.

I hereby certify that the aforementioned determinations were issued during the month of September 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-23310 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 024]

Bison Drilling, Inc., Wakeeney, KS; Negative Determination Regarding Application for Reconsideration

By an application dated September 5, 1989 the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The denial notice was issued on August 9, 1989 and published in the **Federal Register** on September 6, 1989 (54 FR 37031).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that Bison Drilling is a producer and markets its oil to independent distributors.

In order for a worker group to be certified eligible to apply for adjustment assistance, it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations. In the subject case the "contributed importantly" test was not met.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated by a survey of the customers of the workers' firm. The Department's survey of Bison Drilling's customers showed that the customers either reduced their import purchases of crude oil or did not purchase imported crude oil during the period under investigation.

The claim, that the price of crude oil paid to Bison Drilling by its customers is largely the result of the price of imported crude oil, would not form a basis for certification. Price is not one of the Group Eligibility Requirements for certification. Also, the investigation findings show that none of the customers of Bison Drilling had increased purchases of imported crude oil at the expense of Bison Drilling during the relevant time period.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of September 1989.

Mary Ann Wyrsch,

Director, Office of Unemployment Insurance Service, UIS.

[FR Doc. 89-23311 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,032]

Chrysler Corp., Kenosha, WI; Negative Determination Regarding Application for Reconsideration

By a letter of September 6, 1989, counsel for the United Auto Workers of America (UAW) requested administrative reconsideration of the Department's negative determination for trade adjustment assistance specifically for those workers engaged in the production of "L" body models (Omni/Horizon) at the Chrysler Corporation plant in Kenosha, Wisconsin. The denial notice was issued on August 4, 1989 and published in the **Federal Register** on September 6, 1989 (54 FR 37032).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel for the union states that the Department should have used a broader comparison of the production data on "L" bodies, the Omni/Horizon models, by collecting production data from September 1986 to the transfer of production operations to Detroit, Michigan, instead of comparing the production in the 1st quarter of model year (MY) 1989 with the same quarter of MY 1988.

The union's petition dated May 24, 1989 was filed for approximately 5,000 workers laid off at Kenosha in December 1988. The earliest coverage possible based on the petition is May 24, 1988.

The Department's denial of trade adjustment assistance to workers at Kenosha producing Omni/Horizon autos noted that production and sales were higher in the third quarter of calendar year 1988—(1st quarter of (MY) 1989) when Chrysler Corporation decided to transfer. That decision and the actual transfer of production was the dominant cause of the cessation of production and unemployment of workers at Kenosha. The transfer of production from Kenosha to Detroit was so dominant a cause that worker separations would have occurred regardless of the level of imports of small automobiles. Production in Detroit of the Omni/Horizon models began in the 2nd quarter of MY 1989.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of September 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-23314 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,214]

Conoco, Inc., Production Engineering and Research (Formerly Production Engineering Services), Houston, TX.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

The notice corrects the location of the workers' firm for the subject petition published on March 3, 1989 in the **Federal Register** on page 9099 of FR Document 89-5035.

Under Negative Determinations, in column 2 lines 22 and 23 on page 9099 the location of the workers' firm is corrected to read "Houston, TEX." instead of Denver, CO.

Signed at Washington, DC, this 25th day of September, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-23312 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,058]

Keystone Lamp Mfg. Corp., Slatington, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on August 17, 1989 applicable to all workers of Keystone Lamp Manufacturing Corporation, Slatington, Pennsylvania. The notice was published in the **Federal Register** on September 6, 1989 (54 FR 37033).

The Department also issued a certification, TA-W-17,893, for the same worker group on November 19, 1986 which expired on November 19, 1988.

The Department, on its own motion, is amending TA-W-23,058 by deleting the May 31, 1988 impact date and inserting a new impact date of November 19, 1988 in order to delete the overlap period for coverage in the two certifications. The amended notice applicable to TA-W-23,058 is hereby issued as follows:

All workers of Keystone Lamp Mfg. Corp., Slatington, Pennsylvania who became totally or partially separated from employment on or after November 19, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-23313 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,731]

Linden Apparel Corp.; Linden TN; Notice of Negative Determination on Reconsideration

Pursuant to a remand by the U.S. Court of International Trade, dated June 6, 1989, in *Former Employees of Linden Apparel Corporation* v. *Secretary of Labor* (USCIT 87-04-00625) the Department makes the following negative determination on reconsideration for workers of Linden Apparel Corporation, Linden, Tennessee.

The workers at Linden Apparel produced men's and boys' painter pants in 1985 and 1986. Overalls were produced at Linden from 1979 to 1985. The investigation findings show increased production in the last quarter of 1985, and for the first five months of 1986 compared to the respective periods in 1984 and 1985. A small pressing and packing operation started at Linden Apparel after painter pants production ceased in June 1986.

The Department's initial denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. Linden Apparel was a contractor who worked exclusively for one apparel manufacturer—the Washington Manufacturing Company. The Washington Manufacturing Company did not import men's and boys' painter pants and overalls or use any foreign contractors during the period applicable to the petition. Also, during the period applicable to the petition, Washington Manufacturing increased its reliance on other domestic contractors and experienced increased sales of men's and boys' painter pants and overalls. No customer survey was conducted since it would have been difficult to show adverse impact when the company had increased sales of painter pants and overalls in 1986.

The USCIT's remand directed the Department to conduct a customer survey in order to determine whether the shift in purchases by Washington's customers from the articles Linden produced to imports "contributed importantly" to the worker separations at Linden Apparel. The USCIT also directed the Department to inquire into the corporate structure of Washington Industries as it affects Linden Apparel.

On remand, the Department surveyed Washington Manufacturing Company's customers and found that none imported painter pants in the period applicable to the petition. Most of the customers indicated that painter pants were a fad which ended abruptly in 1986.

Other findings on remand show that Washington Industries was the holding company for several corporations including Washington Manufacturing—the apparel arm of Washington Industries. Linden Apparel Corporation, a pants contractor, was owned by Washington Manufacturing.

New findings on remand show that Haywood Male was merged into Washington Industries sometime in early 1987. Haywood had started a plant in Haiti in late 1985; however, there was no corporate relationship between Haywood Male and Washington

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Industries at that time. Production of painter pants at Linden ceased in June 1986 before any corporate relationship between Haywood and Washington Industries existed. Further, at the time applicable to the petition, the Haitian plant produced men's jackets and western shirts—articles not produced at Linden. The Haitian plant did not produce painter pants during the period applicable to the petition.

In October 1986, BNHH Properties purchased Washington Industries through a leveraged buy out. Prior to this transaction, there had been no relationship between Haywood Male and Washington Industries except that since October 1, 1986, both had been owned by BNHH Properties, Inc. In March 1988 Washington Manufacturing filed for bankruptcy and most of its records were conveyed to the Washington Apparel Group in Franklin, Kentucky or discarded by the trustee. Officials at the Washington Apparel Group reported no records of the Washington Manufacturing Company.

Counsel for the petitioners submitted several affidavits for the Department to consider. Some of the affiants indicated that after the closure of Linden in 1986 they were transferred to another company plant in Hohenwald, Tennessee whose workers subsequently became eligible to apply for trade adjustment assistance benefits (TA–W–20,972).

On September 30, 1988, the Department issued certifications to workers at several plants of the Washington Manufacturing Company. These certifications were based on increased company imports of tops and bottoms with tops consisting between 85 to 90 percent of the company imports in 1987. One of these certifications was for workers at the Hohenwald plant which was part of an integrated production operation at Washington Manufacturing. The Hohenwald certification had an impact date of August 15, 1987, one year prior to its petition date.

The Department's certifications, mentioned above, would not provide a basis for certifying the workers at Linden since they are based on a much later petition dated August 15, 1988. The Linden petition was dated November 21, 1988. Further, the Linden plant produced mainly painter pants in 1988 whose cycle as a fad came to an end when customers did not reorder. According to company officials, the finishing and packing operation at Linden was transferred to other domestic company plants. These Linden workers cannot be reached for coverage under the August 15, 1988 petition.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers of Linden Apparel Corporation, Linden, Tennessee.

Signed at Washington, DC, this 22nd day of September 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–23309 Filed 10–2–89; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act (JTPA): JTPA Native American Programs' Advisory Committee; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the Job Training Partnership Act (JTPA) Native American Programs' Advisory Committee is in the public interest in regard to the consultation responsibilities imposed on the Department under title IV, section 401 of JTPA.

The Committee will provide advice to the Assistant Secretary for Employment and Training on rules, regulations and performance standards specifically and solely for Native American programs authorized under title IV, section 401 of JTPA. The Assistant Secretary seeks this advice, as one of several means of consultation with the Native American community, in order to develop such rules, regulations and performance standards. The Committee will provide the Assistant Secretary with a summary report of the advice offered on these matters within 30 days of its scheduled meetings.

As paragraph 401(h)(1) of JTPA directs, the Committee shall be comprised of representatives of the Native American community. The Committee will include, but not be limited to, representatives of JTPA, section 401 grantees and national organizations representing the Native American community. An equitable geographic distribution will be sought in addition to appropriate representations of both tribes and non-tribal organizations. The members shall not be compensated and shall not be deemed to be employees of the United States.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter has been filed under the Act concurrently with this publication.

Interested persons are invited to submit comments regarding the renewal of the JTPA Native American Programs' Advisory Committee. Such comments should be addressed to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, U.S. Department of Labor, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW., Washington, DC 20210, Telephone: (202) 535–0500.

Signed at Washington, DC, this 27th day of Sept., 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–23307 Filed 10–2–89; 8:45 am]

BILLING CODE 5410–30–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before November 2, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316?).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504 (h).

Category: Revisions

Title: General Programs: Humanities Projects in Museums and Historical Organizations/Guidelines and Application Instructions.

Form Number: Not Applicable.

Frequency of Collection: Twice a year at each deadline.

Respondents: Museums and historical organizations.

Use: Application for funding.

Estimated Number of Respondents: 280.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 40 per respondent.

Estimated Total Annual Reporting and Recording Burden: 11,200 hours.

Thomas Kingston,

Assistant Chairman for Operations.

[FR Doc. 89–23228 Filed 10–2–89; 8:45 am]

BILLING CODE 7536–01–M

Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on October 24–26, 1989, from 9:00 a.m.–6:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 26, 1989, from 4:00 p.m.–6:00 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portions of this meeting on October 24–25, 1989, from 9:00 a.m.–6:00 p.m. and on October 26, 1989, from 9:00 a.m.–4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: September 28, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–23318 Filed 10–2–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Power Authority of the State of New York; Environmental Assessment and Findings of no Significant Impact

[Docket No. 50–333]

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of appendix J of 10 CFR part 50 to the Power Authority of the State of New York (PASNY/the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of section IV.A. of appendix J to 10 CFR part 50 to the extent that a Type A, Type B, or Type C Leak Rate Test would not have to be performed following repair of Weld Number 10–14–884A in the "B" Core Spray System full flow test return piping to the suppression chamber (Pipe No. 10"–W23–152–9B) prior to startup from the current maintenance outage. The weld would be subject to a Type A Primary Containment Leak Rate Test prior to startup from the next refueling outage, which is scheduled to start in March 1990.

The Need for the Proposed Action

In accordance with section IV.A. of appendix J, a Type A, Type B or Type C Test (as applicable) is required to be performed following any major modification or replacement of a component which is part of the primary containment boundary. An inservice inspection conducted during the current mid-cycle maintenance outage has revealed the presence of a slag inclusion within Weld Number 10–14–884A, which has been repaired in accordance with ASME Section XI and ANSI B–31.1–1967. In order to comply with the intent of appendix J, the licensee has determined that the Type A, Type B, or Type C Leak Rate Test criteria are applicable. However, the licensee has also determined that, because of the location of the weld repair, an isolatable volume cannot be attained. Therefore, pressure testing can only be accomplished by performing a Type A primary containment integrated leak rate test. Further, the licensee has determined that performance of a Type A test is not feasible at this time since it would seriously delay plant startup from the current maintenance outage. Therefore, the licensee has requested an exemption from section IV.A. of appendix J to 10 CFR part 50.

In lieu of a Type A, Type B, or Type C Test, the licensee has proposed 100 percent radiography, surface examination of the affected weld repair, and an inservice flow test. This will ensure that the intent of section IV.A. (the identification of any potential leakage paths resulting from repair of a component which is part of the primary containment boundary) is met.

Environmental Impact of the Proposed Action

The alternate proposals would ensure that excessive leakage from the primary containment via the weld repair does not exist and would provide a level of safety at least equivalent to that attained by compliance with section IV.A. of appendix J to 10 CFR part 50. On this basis, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has not other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption and associated

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license amendment; any alternative to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating licensee) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 28, 1989, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Rockville, Maryland, this For the Nuclear Regulatory Commission.

Scott A. McNeil,

Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23397 Filed 9–29–89; 12:11 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Director's Task Force on Pay Reform

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the OPM Director's Task Force on Pay Reform will be held on:.

DATE: October 18, 1989, 11:00 a.m., Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

AGENDA: The Task Force is considering various alternatives for reforming the Federal white collar pay system and developing options for the Director's consideration.

FOR FURTHER INFORMATION CONTACT: Vernon B. Parker, Counselor to the Director, Room 5524, Office of Personnel Management, 1900 E Street, NW., 20415.

SUPPLEMENTARY INFORMATION: As time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–23495 Filed 10–2–89; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Amendments to the Commercial Model Conservation Standards

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of amendment to the 1986 Northwest Power Plan model conservation standards for new commercial buildings, conversions, and utility residential and commercial conservation programs; and surcharge methodology.

SUMMARY: At its April 12, 1989 meeting, the Council voted to distribute for public comment a draft revision of the Model Conservation Standards (MCS) for new commercial buildings. The Council then held public hearings in each of the four Northwest states, as required by the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 *et seq.*, the Act). At its meeting of August 9, 1989 in Portland, Oregon the Council adopted the final amendments.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Council developed and adopted a regional conservation and electric power plan shortly after its formation. The Power Plan includes an energy conservation program, including, but not limited to, Model Conservation Standards for new commercial buildings.

In implementing the Power Plan, the Council has developed a practice of reviewing and updating various elements of the Plan on an ongoing basis. The frequency with which an element is updated often depends on the availability of new information or changed circumstances. While some proposed amendments are taken up on the Council's own initiative, others are the result of informal suggestions or recommendations from outside parties. In addition, the Council has adopted specific procedures that allow any person to petition for an amendment to the Plan at any time. In the case of the commercial MCS, the Northwest Conservation Act Coalition (NCAC) and the Natural Resources Defense Council (NRDC) petitioned the Council to amend the MCS on the ground that potentially economically feasible and regionally cost-effective savings remained beyond the Council's existing MCS. The Council, based on its own analysis, on public comments received and on information obtained from consultations with interested parties, has now adopted revisions to the MCS for new commercial buildings so that the standards capture all electricity savings that are cost effective for the region and economically feasible for consumers, taking into account financial assistance from Bonneville. At its September 13–14, 1989 meeting in Coeur d'Alene, Idaho, the Council approved a response to comments thus concluding this amendment proceeding.

FOR FURTHER INFORMATION CONTACT: If you would like a copy of these amendments and the response to comments, please contact Judi Hertz in the Council's Office of Public Information and Involvement. The Council's address is: 851 S.W. 6th Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222–5161 and (toll free) (800) 222–3355 in Idaho, Montana, and Washington or (800) 452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89–23251 Filed 10–2–89; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Corp. Reorg. Rel. No. 384, Rel. No. 34–27300; File No. 4–351]

Request for Public Comments on the Role of the Securities and Exchange Commission in Reorganization Cases Under Chapter 11 of the Bankruptcy Code

AGENCY: Securities and Exchange Commission.

ACTION: Notice; request for comments.

SUMMARY: The Commission is soliciting comments on the scope of its participation in federal court

reorganizations of publicly-held companies under the Bankruptcy Code. The results of this inquiry will assist the Commission in its reassessment of its role in reorganization cases with a view to determining whether that role should be modified.

The Commission will hold a public hearing during the course of this review. Interested individuals and organizations will have an opportunity to present their views on the topics covered in this release.

DATES: Comments are due by November 15, 1989. The public hearing is tentatively scheduled for December 11, 1989, 10:00 a.m. in the Public Meeting Room (Room 1C30) of the Securities and Exchange Commission in Washington, DC, 450 Fifth Street, N.W. Individuals or organizations who wish to participate in the public hearing should contact the Commission's Secretary by November 17, 1989.

ADDRESS: Persons wishing to submit comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. 4–351 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Michael A. Berman, Esq. (202) 272–2493, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: .

I. Summary

Chapter 11 of the Bankruptcy Code, 11 U.S.C. 101, *et seq.*, which became effective October 1, 1979, provides three roles for the Commission:

First, 11 U.S.C. 1109(a) accords the Commission the right to "raise and * * * appear and be heard on any issue in a case."

Second, 11 U.S.C. 1125(d) authorizes the Commission to comment on the adequacy of the information contained in disclosure statements—the functional substitute for securities law registration and proxy statement—relating to plans of reorganization, under which new securities often are issued.

Third, 11 U.S.C. 1129(d) authorizes the Commission to object to confirmation of a reorganization plan if the principal purpose of the plan is to avoid the application of the registration provisions of the Securities Act of 1933.

On June 8, 1989, the Commission voted to review its role under section 1109(a) in bankruptcy reorganization cases involving publicly-held debtor corporations. The review seeks to determine the impact of Commission participation in the reorganization process and to determine the most appropriate role for the Commission's bankruptcy program. The object of this review is to help to provide an informed basis upon which to reassess the Commission's role in such proceedings and also to consider whether there is a need for legislation.

In this release, the Commission seeks comments on specific questions relating to the appropriate scope and nature of the Commission's participation in Chapter 11 reorganizations. In particular, the Commission invites the views of the bankruptcy bench and bar and others concerning whether or not Commission section 1109(a) participation aids in the fair and efficient resolution of chapter 11 cases. In that connection, interested persons are asked to address the impact of that participation on public investors and also how it affects other parties to chapter 11 reorganization cases, such as nonpublic creditors employees, and others. A related area of inquiry is the extent to which the interests of public investors are sufficiently protected in reorganziation cases through the activities of U.S. Trustees, official investor committees, indenture trustees, institutional investors, or other entities. Finally, the Commission invites public comment on the desirability of legislative change with respect to its section 1109(a) role in bankruptcy reorganization, and with respect to other mechanisms for the protection of public security holders. The Commission anticipates that the responses to these questions will be helpful in framing its future role under section 1109(a).

II. Background

Commission Role in Corporate Reorganization Proceedings

1. The Chandler Act of 1938

The Commission's participation in reorganization cases began in 1938 with passage of the Chandler Bankruptcy Act.[1] Under that Act, a financially troubled business seeking to reorganize its affairs while continuing operations could file for reorganization generally under chapter X or chapter XI. Reorganizations under chapter X affected both secured and unsecured creditors as well as stockholders. A chapter XI arrangement could affect only the claims of unsecured creditors.[2] Congress required prior court approval of a chapter X reorganization plan as to its fairness [3] and feasibility before permitting solicitation of acceptances from affected classes of creditors and stockholders. In contrast, the formulation of a plan of arrangement under chapter XI was in the control of the debtor; and a plan was confirmed unless it failed to meet the "best interest of creditors" standard, *i.e.*, that creditors receive more under the plan than they would in a liquidation.

The Commission's responsibilities under the Chandler Act in chapter X cases were two-fold.[4] First, the Commission furnished advice to the court and investors by examining and reporting on the fairness and feasibility of reorganization plans (the "Advisory Report"). Under section 172 of chapter C, the judge, before confirming a plan, was required to submit to the Commission, for examination and an advisory report, all plans "worthy of consideration" involving a debtor with liabilities in excess of $3 million. Second, the Commission was granted general authority to participate on behalf of public investors in all matters.[5]

2. The Bankruptcy Code of 1978

The Bankruptcy Code, which became effective October 1, 1979, consolidated the various reorganization provisions of the old Bankruptcy Act, including chapters X and XI, into chapter 11. Chapter 11 encourages negotiation of a consensual plan of reorganization between a debtor and those creditors and stockholders whose claims and

[1] The Chandler Act was passed following a congressionally directed study conducted by the Commission into the abuses of protective and reorganization committees. "Report of the Securities and Exchange Commission on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees" (1937).

[2] In enacting Chapter X, Congress sought "to afford greater protection to creditors and stockholders by providing greater judicial control over the entire proceedings and impartial and expert administrative assistance in corporate reorganizations through appointment of a disinterested trustee and the active participation of the SEC." *Securities and Exchange Commission* v. *American Trailer Rentals Co.*, 379 U.S. 594, 604 (1965).

[3] The requirement that a reorganization plan could not be confirmed by the court unless it was found to be "fair and equitable" incorporated the so-called strict priority standard, under which creditors and stockholders participated in the plan strictly in accordance with their legal priorities. Stockholders could not participate at all unless the claims of creditors were statisfied in full with interest.

[4] The Commission reviewed cases filed under chapter XI to ensure that the investor protections found in chapter X were not circumvented by a debtor filing under chapter XI of the Act. Section 328 of former chapter XI specifically authorized the Commission to make application to the court to transfer a chapter XI proceeding to chapter X.

[5] Pursuant to section 208 of chapter X, the Commission was deemed to be a party in interest, but could not initiate an appeal.

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interests are to be compromised. Unlike the procedure under old chapter X, where an independent trustee was appointed to be the focal point of the reorganization, in new chapter 11 the debtor (*i.e.*, existing management) typically remains in possession during the pendency of the reorganization proceeding and is granted a period of time during which it exclusively may propose a plan. Interested parties negotiate with the debtor through official committees. Once a plan is proposed, approval is solicited through a "disclosure statement," which substitutes in effect for a Securities Act registration statement and Exchange Act proxy statement if securities are issued under the plan.[6] Under chapter 11, a plan need not be "fair" in the absolute priority sense, if each class affected (or "impaired") by the plan votes to approve it.[7] According to Congress, the premise underlying the chapter 11 standard for confirmation is "the same as the premise of the Federal securities law:" that once parties are given adequate disclosure of all relevant information they should be able to make an informed decision as to whether to accept a proposed reorganization plan.[8]

One of the major changes effected by the Bankruptcy Code was the advent of official committees, whose expenses and professional fees are paid as an administrative expense of the estate, to represent the various constituent interests. The Code mandates the appointment of an official committee to represent the interests of unsecured creditors; other committees may, in the discretion of the court, be appointed to represent the interests of equity holders or other constituencies.[9] Representation by an official committee was deemed essential to participation in the formulation of a plan in light of the emphasis on the formulation of a consensual plan in lieu of adherence to the absolute priority standard.

[6] 11 U.S.C. 1125(d), 1145. Where the solicitation involves bad faith or fraud, the anti-fraud provisions of the securities laws would be applicable.

[7] A "fairness" concept, similar to the "fair and equitable" rule of chapter X, is preserved under the present statute only in those situations where at least one class has voted to accept the plan and another class rejects it. In that instance, the plan proponent may invoke the so-called "cramdown" provision (section 1129(b)) to seek court approval of the plan notwithstanding the objection of the rejecting class.

[8] H.R. Rep. No. 595, 95th Cong., 1st Sess. 224 (1977).

[9] Under old chapter X, committees were unofficial and responsible for their own expenses and professional fees unless they could demonstate a benefit to the administration of the case. Committees actively representing equity interests were rare.

The Bankruptcy Code abolished the requirement that the court submit reorganzation plans to the Commission for examination and an advisory report in order to expedite the reorganization process. Section 1109(a) maintained the Commission's general authority to participate in corporate reorganizations, granting the Commission the right to "raise and * * * appear and be heard on any issue in a case." Additionally, the Bankruptcy Code no longer requires, as chapter X did, a request for or leave of court for the Commission to address an issue in a case.

3. Commission practice in corporate reorganization cases

a. *Commission participotion prior to 1984.* Under chapter X of the prior Bankruptcy Act, the Commission usually participated only in cases involving large public companies. The Commission viewed the filing of an appearance as imposing a responsibility actively to participate in a case. In implementing this policy, Commission counsel attended committee meetings, key court hearings and informational meetings held by the trustee, and participated in discussions and negotiations about matters arising in the case. The premise underlying these activities was that, by understanding the dynamics of a case, the debtor's prospects for reorganization, and the business problems that caused its failure, the staff could react knowledgeably and expeditiously to issues as they arose. In addition, the Commission usually participated in the process of making an adequate record in court as to the debtor's financial fitness and its prospects for reorganization so that it could later render an advisory report on proposed plans of reorganization on an informed basis. The Commission's presence in these cases served as an invitation to the parties informally to seek the staff's views before matters were formally submitted to the bankruptcy court. Responses to these requests frequently led to consensual resolution.

Under old chapter X, the Commission did not participate on every key question, but focused primarily on protecting the rights of public investors and attempting to secure uniformity in judicial construction of the statute. The Commission was also active in advising the courts concerning the compensation of court appointees.

From the effective date of the new Code in 1979 until the end of 1983, the Commission continued to perform its general participatory role in much the same way as it had under the prior law. During the first four years in which the Code was in effect, approximately 250 debtors with publicly issued securities outstanding filed chapter 11 petitions. The Commission actively participated in 79, or about 32%, of the filed cases.[10] In those proceedings the Commission participated on a wide range of issues, including the appointment of trustees and examiners, interim compensation, employment of professionals, use of property, appointment of shareholder and creditor committees, administrative expenses, and confirmation issues.

b. *The Commission's current program.* In 1983, Commissioner Bevis Longstreth conducted a study of the Commission's participation in reorganization cases in light of the comprehensive changes under the Bankruptcy Code. The study concluded that the Commission should alter then existing practices by curtailing its active participation in reorganization cases. The report interpreted the Code's silence regarding the manner in which the Commission was to perform its section 1109(a) role as conferring on the Commission discretion in defining its participation in reorganization cases.[11] It recommended that the Commission focus on legal questions of precedential significance to public investors generally and respond to judicial requests for assistance.[12]

The conclusion that the program should be significantly curtailed was based in part on the belief that the Commission could reduce its own resource commitment in the reorganization area and rely on the combined efforts of the (then new) U.S. Trustees and of official shareholder committees to protect the interests of the investing public. Accordingly, the study recommended that the Commission restructure its existing program, using the Commission's participation as *amicus curiae* in private securities litigation as a model for its general participatory role in reorganization proceedings. The Commission adopted this recommendation in December 1983.

[10] Commission Annual Reports 1980–1983 and the staff's public company list.

[11] The report concluded that "the SEC has an optional, rather than a mandatory, role to play in bankruptcy proceedings." Report at 3. Thus, the report asserted that the Commission "should depend upon its own informed sense of the benefits to be derived" from its participation in determining how to perform its section 1109(a) role. *Id.* at 4.

[12] The report also concluded that the Commission should no longer review and comment on the appropriate amount of fees to be awarded to parties to a reorganization case. Such fact intensive issues require substantial resources and, the report said, are better left to the courts and to the U.S. Trustees who exercise direct oversight on such matters.

Subsequently, the staff has administered the bankruptcy program in accordance with a series of staff guidelines [13] that emphasize participation on significant legal issues of precedential value to investors generally.[14]

Since January 1984, the Commission has participated in the resolution of such issues in 32 cases at all court levels, including the United States Supreme Court. To identify significant legal issues, the Commission files notices of appearance in most public company cases in order to receive mailed copies of pleadings. The Commission's legal staff does not actively participate (*i.e.*, does not attend informational meetings, committee meetings, or key court hearings) in reorganization cases and ordinarily takes no position on issues significant only to the particular case. However, the Commission has sought the appointment of an equity holder committee in cases in which it believed such a committee necessary to assure the adequate representation of public investors.[15]

[13] See Corporate Reorganization Release No. 331 (Feb. 2, 1984) 29 SEC Docket 1181.

[14] The 1983 revision left unchanged the manner in which the Commission comments on plan disclosure statements and reviews reorganization plans to assure compliance with Securities Act registration provisions.

The Commission staff reviews disclosure statements to determine whether the issuance of securities under a plan is consistent with the exemption from registration in the Bankruptcy Code or otherwise in compliance with the federal securities laws. The Commission also reviews disclosure statements to determine whether there is adequate disclosure concerning the proposed plan. Generally, the Commission seeks to resolve questions concerning bankruptcy disclosure through staff comments to the plan proponent. If questions cannot be resolved through this process, the Commission may file objections to the disclosure statement with the bankruptcy court.

During fiscal year 1988, the Commission commented on disclosure statements in 63 cases and objected to disclosure statements in two cases. The Commission also acts to assure that public investors are given an adequate opportunity to be heard on disclosure-related questions.

[15] Since January 1984, the Commission sought or supported the appointment of investor committees in 33 cases, or about 12% of the cases in which the Commission filed a notice of appearance. The Commission does not seek the appointment of an investor committee in every case involving a public company. Generally, the Comission takes the position that separate stockholder representation is not appropriate in cases in which the debtor is so hopelessly insolvent that liquidation appears likely or where the assets of the debtor are completely pledged and investor interests are likely to be extinguished. Among the factors that the Commission considers in determining whether to seek the appointment of an official committee are the value of the equity as publicly reported by the issuer, the going concern or inherent value (if realistically higher), the likelihood of reorganization, the extent of management holdings of common stock, the degree to which incumbent management can be relied on to represent adequately investor interests, and the asset size of the debtor.

The Commission's participation with respect to legal issues of general significance has played a role in the development of bankruptcy law. For example, the Commission has successfully supported stockholders' rights to corporate governance,[16] rights of securities fraud claimants to adequate notice of the claims bar date,[17] and the ability of class representatives to file claims in bankruptcy on behalf of similarly situated claimants.[18] The Commission's participation on these legal issues has generally been at the appellate rather than the bankruptcy court level.

III. Request for Comment

The Commission is again reviewing its section 1109(a) role in Chapter 11 reorganization cases and is also studying the functioning and nature of public investor protections under that chapter. The Commission seeks public comment on three general subject areas:

—To what extent would the Commission's more active participation contribute to a fair, efficient, and effective resolution of chapter 11 proceedings, and to what extent would participation by the Commission affect the rights of non-investors or impede the resolution of cases by adding delay and costs to the process?

—Should the Commission play a more active section 1109(a) role on behalf of investors in reorganization cases, rather than limit its involvement to its present amicus-type role?

—Should the Commission propose legislative changes concerning its section 1109(a) role in reorganizations or in the statutory protections for public investors?

The Commission requests that commentators be as specific as possible and, where appropriate, that they provide quantitative data and cite to the source of the data. The Commission also invites commentators to address any other matters that they believe relevant to the study.

A. To what extent would the Commission's more active participation contribute to a fair, efficient, and effective resolution of chapter 11 proceedings, and to what extent would participation by the Commission affect the rights of non-investors or impede the resolution of cases by adding delay and costs to the process?

The Commission recognizes that its active participation may have an impact on the bargaining positions of competing claimants in a chapter 11 case, especially in strengthening the position of public investors. Indeed, depending on the issue, the Commission's involvement may have the effect of increasing the ultimate distribution received by public investors at the expense of other parties to the case. Is such participation on behalf of investors unfair to other parties to the case, such as employees, commercial lenders, trade creditors, tort claimants, and others with claims against the debtor? If so, how should this consideration enter into the Commission's determination whether to participate in a proceeding?

Participation may also have the effect of protracting the proceedings or requiring the payment of fees for professional services or the expenditure of other monies that might otherwise be available to satisfy claims of creditors. On the other hand, Commission participation may result in an increase in the value of the estate available for distribution among all claimants.[19] The Commission requests that commentators address whether active Commission participation contributes to a fair and effective resolution of chapter 11 proceedings: Does such participation tend to benefit general creditor interests? Or does it impede the resolution of the case, adding time and costs to the process? Does such participation tend to increase or decrease the size of the estate or to reallocate the estate to public investor classes? How should the Commission take these factors into consideration in deciding whether and how to participate?

Companies that have filed for reorganization will occasionally have classes of public securityholders with adverse interests. For example, holders of publicly traded debt instruments may have interests adverse to those of preferred stockholders, and both those

[16] *In re Johns-Manville Corp.*, Corporate Reorganization Release No. 356 (May 28, 1986), 35 SEC Docket 1402 and 801 F.2d 60 (2d Cir. 1986) (adopting Commission position); *In re Allegheny International, Inc.*, Corporate Reorganization Release No. 376 (July 20, 1988), 41 SEC Docket 770.

[17] *In re Standard Metals Corp.*, Corporate Reorganization Release No. 365 (May 22, 1987), 38 SEC Docket 827 and 839 F.2d 1383 (10th Cir. 1987) (adopting Commission position).

[18] *See, e.g., In re The Charter Co.*, Corporate Reorganization Release No. 375 (July 1, 1988), 41 SEC Docket 556 and 876 F.2d 866 (11th Cir. 1985) (adopting Commission position); *In re American Reserve Corp.*, Corporate Reorganization Release No. 366 (May 22, 1987), 38 SEC Docket 829 and 840 F.2d 487 (7th Cir. 1988) (adopting Commission position); *but see In re Standard Metals Corp.*, Corporate Reorganization Release No. 348 (Aug. 14, 1985), 33 SEC Docket 1425 and 817 F.2d 625 (10th Cir.) (rejecting Commission position), *vacated and reversed on other grounds*, 839 F.2d 1383 (10th Cir. 1987), *cert. dismissed*, 109 S. Ct. 201 (1988).

[19] For example, Commission participation on applications by debtors to sell substantial assets of the estate may increase the value of the estate.

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constituencies may have interests adverse to those of the company's common stockholders. How should the Commission's participation be influenced, if at all, by the potential for conflict among the holders of various types of publicly traded securities? Under which circumstances should the Commission seek the appointment of separate committees for holders of different types of publicly traded securities?

B. Should the Commission play a more active section 1109(a) role on behalf of investors in reorganization cases, rather than limit its involvement to its present amicus type role?

As described above, in 1963 the Commission significantly curtailed its general participatory role in reorganization cases under chapter 11. This change had the effect of shifting the Commission's participation away from an active bankruptcy court practice on a wide range of factual and legal issues that affect the rights of public investors or the reorganization process itself. Under the current program, the Commission's practice in this area is limited to *amicus* type participation on significant legal issues.

In assessing the direction the program should take in the future, the Commission invites commentators to address whether or not there presently is a need for greater Commission participation in bankruptcy cases. In this connection, the Commission requests information and data on whether other participants in a chapter 11 case provide adequate representation to shareholder and other public investor interests, thereby obviating the need for a more active Commission presence. Certain participants that may fulfill this role in whole or in part are discussed below. The Code specifically provides for some of these participants. Others, drawn to the process by economic self-interest, may provide indirect representation for or advance the interests of public investors, by virtue of actions taken in their own interests.

1. Investor Committees

As noted, one of the major changes under the Bankruptcy Code was the creation of the official committee system. An official committee for unsecured creditors is mandated in all Chapter 11 cases, and additional committees may be appointed to represent other constituencies, such as bondholders or shareholders. The U.S. Trustee is granted authority to appoint additional committees. In cases in which the U.S. Trustee determines not to appoint an additional committee, the bankruptcy court has authority to direct the U.S. Trustee to do so. Actual committee membership is left to the discretion of the U.S. Trustee.

According to the drafters of the Code, committees are to serve as "the primary negotiating bodies for the formulation of the plan of reorganization."[20] Congress intended that committees represent and protect the interests of the various classes of creditors and equity security holders from which they are selected and provide supervision of the debtor in possession.[21]

The Commission's observations of investor committee practices do not provide clear evidence of whether the committee structure is effective in protecting the interests of public securities holders. In some cases, it appears that committees are not formed or are unable, either because of internal conflicts or delays in organizing or for other reasons, to deal appropriately with critical issues. In other cases, multiple committees are active and appear to participate meaningfully. The Commission invites commentators to address the value of the committee system in protecting investors. In cases in which investor committees are formed, do they function effectively?

The Commission also seeks information on whether committees representing public investors' interests are appointed where appropriate. As noted above, U.S. Trustees have the authority, on their own initiative, to appoint committees to represent the interests of public investors. In practice, do the U.S. Trustees appoint committees to represent those interests in appropriate cases?

In certain cases in which it appears to the Commission staff that shareholders may have an economic interest in the reorganization, no one has sought appointment of an equity committee. The Commission wishes to explore the reason why committees are not formed in some cases where certain evidence suggests that equity holders may have a meaningful economic stake in the debtor. Are investors generally aware of their right to seek formation of an official committee to represent their interests? The Commission staff has informed the Commission that frequently there is an absence of publicly available financial information about corporations undergoing reorganization. Does this lack of current financial information deter persons from seeking formation of a committee, or are other factors predominately responsible for that decision? Alternatively, investors may have determined that the costs of seeking committee formation and participating in committee activities are not justified by the likely rewards. Does the failure of investors to seek a committee represent an informed decision of this nature?

As pointed out above, the Commission has moved or supported motions for the appointment of investor committees in about 12% of the cases where it has appeared. But the Commission has not sought a committee in every case meeting its criteria for appointment (see footnote 15, page 12 above). Are the Commission's general standards for determining whether to seek the appointment of additional investor committees appropriate? Should the Commission become more active by seeking the formation of investor committees? In contrast, the Commission recognizes that its efforts to encourage committee formation in cases in which no equity investor has sought a committee may have imposed costs on the estate which could otherwise have been avoided. Are such costs justified by increased returns to public investors? If so, are those returns obtained at the expense of other constituencies involved in the proceeding, or do they reflect an increase in value resulting from the Commission's participation? Accordingly, should the Commission be less active in seeking formation of investor committees?

The Commission staff reports that in some cases, even when an investor committee is authorized early in the case, there are significant delays in the actual appointment of the committee's members, thus delaying the functioning of the committee in the case. The Commission solicits comments on the reasons for this phenomenon and what steps, if any, the Commission should take to remedy this problem. Is the delay in part caused by a difficulty in finding investors willing to serve on a committee or a reluctance by investors to serve on committees? Should the U.S. Trustee, or the Commission, take some action to speed the process of committee formation? The staff has observed in some cases that investors refrain from accepting membership on a committee because of a concern that such membership would result in access to nonpublic information which, in turn, would inhibit the investors' ability to trade in the debtor's securities. Are potential securities trading restrictions for committee members considered a significant impediment to accepting membership on an official committee? To what extent, if any, can or should the Commission change its own rules or procedures to address those concerns?

[20] H.R. Rep. No. 595, 95th Cong., 1st Sess. 401 (1977).

[21] *Id.*

2. Management (the debtor in possession)

Unlike prior Chapter X, under which a trustee was appointed automatically in all large cases, Chapter 11 leaves debtor's current management in control of the proceedings with an initial exclusive right to file a reorganization plan.[22] One commentator has noted that the Code has made stockholders much more dependent on management to negotiate a plan that protects their interests, because a Chapter 11 plan can modify, dilute or even cancel their interests without their consent.[23] The staff has observed that in some cases management is more likely to look after the interests of shareholders when management owns a substantial amount of the outstanding common stock. On the other hand, the staff has found that management may have a potential conflict of interest in that it may also seek to negotiate for its own continued services after reorganization. Under what circumstances can shareholders rely on management to represent their interests? Of course, levels of management equity ownership vary widely among public companies. Should the percentage of equity owned by management influence the Commission in determining whether to participate in a particular proceeding? If so, how and why? [24]

3. Indenture Trustees

The Bankruptcy Code grants indenture trustees party-in-interest status and the right to file claims on behalf of all debtholders. In practice, indenture trustees sit on the mandatory unsecured creditors committee either as a full voting member or in an *ex-officio* status (non-voting). Indenture trustees do not have a clearly defined role in chapter 11 cases but rather, pursuant to the Trust Indenture Act of 1939, must exercise the same degree of care and skill as a "prudent person" would exercise in the conduct of the person's own affairs.[25] The Commission requests that commentators address whether they believe indenture trustees effectively represent the interests of debtholders in reorganization cases.

Under the Bankruptcy Code, as carried forward from prior chapter X, indenture trustees may receive payment for fees and expenses directly out of the assets of the debtor's estate, if they can demonstrate that their services made a "substantial contribution" to the estate. In some cases, however, indenture trustees have found it difficult to establish that their services, under the legal test employed, made a substantial contribution to the estate.[26] In such situations, it is the bondholder who ultimately pays for the indenture trustee's services, pursuant to standard provisions of trust indentures qualified under the Trust Indenture Act of 1939. Is this "substantial contribution" standard of compensation an impediment to useful participation of indenture trustees in chapter 11 cases?

In many chapter 11 cases there is more than one outstanding issue of publicly held debt. Often these issues are subordinated to senior bank debt, or one public debt issue is subordinated to another. Under what circumstances should a separate official committee be appointed to represent a class of publicly held debt? Should indenture trustees or the Commission seek to form separate public debtholder committees?

4. U.S. Trustees

The U.S. Trustee program represents a major modification of pre-Code reorganization practice. The U.S. Trustees perform a variety of functions previously assumed by the bankruptcy court. What role do the U.S. Trustees play in protecting the interests of public investors in chapter 11 reorganization proceedings?

5. Institutional Investors

Institutional investors, including both private and public pension funds, frequently hold large quantities of stocks or bonds of companies that have filed for reorganization. While historically such institutions often sold their securities when the companies filed for bankruptcy, recently some have chosen to hold their securities and to become active participants in the reorganization process through service on equity security holders' committees or unsecured creditors' committees. How active are institutional investors in reorganization cases? When institutional investors are active, does their participation operate to protect the interests of other (non-institutional) public investors?

Last year, the Commission's staff met with representatives of the Council of Institutional Investors ("Council") to discuss a problem that the Council believed tended to discourage pension funds from actively participating in chapter 11 cases. The Council expressed concern that the Commission's insider trading rules effectively prevent pension funds from serving on an equity committee because they may become privy to material non-public information about the reorganization, inhibiting institutions from engaging in ordinary trading strategies in derivative securities that may include the debtor's stock. To address this problem, the Council suggested that the Commission consider adopting a rule or release extending Commission Rule 14e–3(b), 17 CFR 240.14e–3(b), in order to approve the use of "Chinese walls" to avoid potential liability for securities trading decisions made by an institution's trading department while the institution is participating on a committee and has access to non-public information. Would promulgation of such a rule or release by the Commission encourage greater institutional participation on committees? Should the Commission consider other measures to address the concern identified by the Council? If so, which measures should be considered?

6. Funds specializing in securities of distressed companies

It has been reported that, in the past year, funds specializing in securities of distressed companies, generally known as "recovery" or "vulture" funds, have raised from $300 million to $500 million to invest primarily in debt but also to a limited extent in equity securities of corporations undergoing

[22] Section 1121 of the Bankruptcy Code grants the debtor in possession an initial 120-day period of exclusivity, but bankruptcy courts, especially in cases involving large public companies, routinely grant extensions of the period of exclusivity. *See* 5 *Collier on Bankruptcy* ¶ 1121.04 at 121–13 (15th ed. 1988).

[23] Gerber, *The Election of Directors and Chapter 11—The Second Circuit Tells Stockholders To Walk Softly And Carry A Big Lever*, 53 Brooklyn L. Rev. 295 (1987).

[24] Recently, in a number of cases, shareholders, dissatisfied with management's efforts at negotiating a favorable reorganization plan, have sought, through state-law procedure, to replace management by compelling an annual meeting for the election of directors; courts have long recognized the right of shareholders to do so unless the exercise of such function is likely to threaten the reorganization. *See In re Johns-Manville Corp.*, 52 B.R. 879 (Bankr. S.D.N.Y. 1985), *aff'd*, 60 B.R. 842 (S.D.N.Y. 1986), *rev'd and remanded*, 801 F.2d 60 (2d Cir. 1986); *Saxon Industries v. NKFW Partners*, 488 A.2d 1298 (Del. 1984); *In re Lifeguard Industries, Inc.*, 37 B.R. 3 (Bankr. S.D. Ohio 1983); *In re Lionel Corp.*, 30 B.R. 327 (Bankr. S.D.N.Y. 1983); *In re Bush Terminal Co.*, 75 F.2d 662, 664–65 (2d Cir. 1935).

[25] *See* Dunham & Borowitz, *The Role of the Indenture Trustee in Reorganization Cases Under the Bankruptcy Code*, 102 Banking L.J. 436 (1985).

[26] *See, e.g., In re Flight Transportation Corp. Securities Litigation*, 874 F.2d 576 (8th Cir. 1989); *In re Multiponics, Inc.*, 622 F.2d 731 (5th Cir. 1980); *In re Baldwin-United Corp.*, 79 B.R. 321 (Bankr. S.D. Ohio 1987). In an appeal to the district court in *Baldwin*, the Commission set forth its views as to the appropriate legal standard for testing whether an indenture trustee has made a "substantial contribution" in a Chapter 11 case. *See* Corporate Reorganization Release No. 370 (Feb. 22, 1988), 40 SEC Docket 585. The district court did not decide the issue; the appeal was dismissed after a settlement provided that the indenture trustee would receive payment of its entire fee request.

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reorganization.[27] One commentator has referred to a $3 billion "pool" available for investment in securities of companies in bankruptcy.[28] The evolution of funds that specialize in the securities of distressed enterprises has attracted supporters and critics. Supporters claim that, with substantial funds now available for the purchase of distressed securities, the discount from face value has narrowed substantially, resulting in a more efficient market with higher stock and bond prices. If so, the small public investor may benefit from the participation of these funds because their presence helps support the price of securities issued by debtor firms.[29] Critics complain, however, that, if the bankruptcy process were more effective in representing the interests of public security holders to begin with, the price of securities might not decline as steeply in the wake of bankruptcy and that the profit opportunities for funds specializing in distressed enterprises would not be as great.[30] They complain that it is the small investor who typically sells his securities early in the bankruptcy process and who loses money as a result of the steep decline in the price of the securities.[31]

The Commission is interested in learning about the impact of these funds on the reorganization process. How do the recovery funds affect the interests of public securityholders? Do such funds participate in the committee process or propose or back reorganization plans that might advance the interests of some or all public investors? The literature tends to suggest that the recovery funds are interested primarily in the larger bankruptcy cases. Are such funds also active in the medium or small size public-company Chapter 11 case? On what basis do such funds decide to participate in specific proceedings?

C. Should the Commission propose legislative changes concerning its section 1109(a) role in reorganizations or in the statutory protections for public investors?

As noted above, chapter 11 of the Bankruptcy Code grants the Commission the right to "raise and * * * appear and be heard on any issue in a case." The Code does not, however, specify the kind of role the Commission should play, but appears to leave to the Commission discretion to determine how best to foster investor protection through its participation in corporate reorganizations. Is a legislative amendment clarifying the Commission's section 1109(a) role necessary or desirable?

With regard to the Code's official committee structure, only the general unsecured creditors' committee is mandatory. Other official committees can be appointed to represent public investor classes—senior debentureholders, subordinated debentureholders, preferred shareholders, common shareholders—in the discretion of the U.S. Trustee or the bankruptcy court. The standard used to determine whether other official committees will be formed looks to whether those committees are needed to assure adequate representation. Does this legal standard—i.e., the need to assure adequate representation—provide sufficient protection for public investors? Should, under certain criteria, there be an automatic appointment of a shareholder committee or a presumption that a shareholder committee is needed in all public company cases? If so, under what criteria? Should committees also be automatically established for holders of non-equity securities? Should there be presumptions in favor of the formation of such committees?

As noted above, the Code intends for indenture trustees to play an active role in the reorganization process on behalf of the debtholders. Indenture trustees and their counsel are required to establish, before receiving reasonable compensation for their services, that their activities made a "substantial contribution" to the case (see section 503(b)(3)(D)). Official participants in a chapter 11 case—a trustee, counsel for a trustee, the debtor, an official committee and professionals retained by a trustee, debtor or an official committee—on the other hand, are paid reasonable compensation for their services that are "actual and necessary" without the need to demonstrate that their activities made a substantial contribution to the case (see section 330). An alternative would be for Congress to permit payment of compensation to indenture trustees on the same basis as payment to official participants in the case. Is the stricter standard of compensation applicable to indenture trustees appropriate or should the Commission formulate a modification? Is it appropriate to require indenture trustees to recoup some or all of their expenses from the debtholders themselves?

IV. Conclusion

For more than 50 years the Commission has participated, on behalf of public investors, in corporate reorganization proceedings under the bankruptcy laws. Over the years, the nature and scope of the Commission's participation in bankruptcy reorganization has undergone change, both as a result of statutory revision and as a result of changes in the Commission's own view as to its proper role. The Commission is currently revisiting the question of its role in reorganization cases under section 1109(a) and the possible need for legislative change. To this end, the Commission invites comments on the subjects covered by this release.

Dated: September 27, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23306 Filed 10-2-89; 8:45 am]

BILLING CODE 8010-01-M

[27] *See Preying on the Busted*, Economist at 86, 88, May 13, 1989; Rohrer, *Jumping on the Bankruptcy Bandwagon*, 23 Institutional Investors at 84, July 1989.

[28] *Preying on the Busted*, *supra* note 27, at 86.

[29] *Id.* at 88.

[30] Linden, *The Big Money in Busted Bonds*, Fortune at 100–104, Feb. 15, 1988. A similar phenomenon has been reported with regard to the purchase of trade claims. *See* Fanning, *A Stacked Deck?* Forbes at 128, June 12, 1989.

[31] *The Big Money in Busted Bonds*, *supra* note 30.

Release No. 34-27295; File No. SR-PSE-88-01]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Changes to the Constitution

On March 7, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change to amend the PSE's Certificate of Incorporation in order to eliminate, under limited circumstances, the personal liability of a member of the PSE's Board of Governor for monetary damages arising from a breach of his or her fiduciary duty as a Governor to the Exchange or its members. Additionally, the proposal sought to make five technical amendments to the PSE Constitution.[2]

[1] 15 U.S.C. 78s(b) (1982) and 17 CFR 240.19b-4 (1989).

[2] The proposed PSE rule change was noticed in Securities Exchange Act Release No. 25549 (April 6, 1988), 53 FR 12488. No comments were received on this proposal. On October 3, 1988, the PSE submitted Amendment No. 1 to File No. SR-PSE-88-01. Amendment No. 1 added language that provides that the proposed exemption from monetary damages for breach of fiduciary duty by members of the PSE's Board of Governors would not be available if the liability arose, directly or indirectly, as a result of a violation of Federal securities laws.

On September 5, 1989, the PSE submitted Amendment No. 2 to File No. SR-PSE-88-01 which narrows the above proposed rule change by deleting all references to the Certificate of Incorporation, while maintaining the five proposed changes to the PSE Constitution as the proposal's sole focus. The PSE explicitly stated that it plans to file a separate rule change containing an amendment to its Certificate of Incorporation regarding Board of Governor liability.[3]

The proposed rule change would adopt five technical amendments to the PSE Constitution. The proposal will delete an obsolete transition provision in Article II, section 7, that was drafted to govern the timing of the election and the duties of the Chairman and Vice Chairman of the Exchange's Board of Governors for the period immediately following the effectiveness of amendments to the Constitution adopted in 1979. The proposal will also amend Article V, section 1, to reflect an increase in the number of authorized memberships from the current level of 516 by stating that it shall "not exceed 552." This increase in the number of memberships was approved by the Commission in April 1982.[4] The proposal will amend Article VI, section 2, to clarify that an application for membership must be made in accordance with Rule IX of the PSE Board of Governors and that, upon approval, the name of the applicant will be posted with members of the Exchange. The proposal will also amend Article VII, section 4, so that the payment of the purchase price for a PSE membership will only have to be made to the Exchange prior to the effective date for admission to membership rather than four days prior to admission. Finally, the proposal will amend Article VIII, section 4, to specify that the membership of every member of the Exchange who has conferred his membership privileges on any firm shall be deemed to be an asset of such firm only to the extent necessary to protect claimants under Article VII of the PSE Constitution as to the disposition of such proceeds.

The Commission believes the proposed amendments to the PSE's Constitution are consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act.[5] The Commission believes that the five proposed amendments to the PSE Constitution are not substantive and simply eliminate obsolete provisions, update other provisions, and simplify and clarify various membership application and payment procedures. In view of this, the Commission believes these changes should be approved.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: September 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23305 Filed 10-2-89; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* Amendment No. 2 to File No. SR-PSE-88-01.

[4] *See* File No. SR-PSE-87-5, approved in Securities Exchange Act Release No. 24401 (April 29, 1987), 52 FR 16470.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 C.F.R. 200.30-3(a)(12) (1989).

[Release No. IC-17154; No. 812-7363]

Sun Life Assurance Co. of Canada (U.S.), et al.

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sun Life Assurance Company of Canada (U.S.) (the "Company"); Sun Life of Canada (U.S.) Variable Account F (the "Variable Account" or the "Account"); and Clarendon Insurance Agency, Inc. ("Clarendon").

RELEVANT 1940 ACT SECTION: Exemptions requested under section 6(c) from sections 2(a)(35), 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Company to deduct from the assets of the Variable Account the mortality and expense risk charge and distribution expense charge assessed under the variable portion of certain combination fixed/variable annuity contracts ("Contracts") issued in connection with the Variable Account.

FILING: The application was filed on July 27, 1989 and amended on September 22, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Company and the Variable Account, One Sun Life Executive Park, Wellesley Hills Massachusetts 02181, and Clarendon, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, (202) 272-2028 or Clifford E. Kirsch, Acting Assistant Director, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. The Company is a stock life insurance corporation incorporated under the laws of Delaware on January 12, 1970, which issues life insurance policies and individual and group annuities. The Company is a wholly-owned subsidiary of Sun Life Assurance Company of Canada, a mutual life insurance company incorporated pursuant to an Act Parliament of Canada in 1865.

2. The Company established the Variable Account as a separate account to act as the funding medium for the variable portion of the Contracts. The Variable Account is registered under the Act as a unit investment trust. The assests of the Variable Account are divided into Sub-Accounts, each of which invests exclusively in shares of one of seven designated series of MFS/Sun Life Series Trust (the "Series Fund"), an open-end management investment company registered under the Act. Massachusetts Financial Services Company ("MFS"), a wholly-owned subsidiary of Sun Life (U.S.), is the investment adviser to the Series Fund.

3. The Contracts will be distributed by Clarendon, a wholly-owned subsidiary of MFS, and sold by insurance agents licensed in those states where the

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Contracts may lawfully be sold. Such agents will be registered representatives of broker-dealers registered under the Securities Exchange Act of 1934 who are members of the National Association of Securities Dealers, Inc.

4. The assets of the Variable Account will be derived from the Contracts any may in the future be derived from other contracts providing for investment in a Sub-account of the Variable Account. The Contracts are deferred combination fixed/variable group annuities which provide that annuity payments will begin on a selected future date.

5. Sun Life (U.S.) will establish a Participant's Account for each Participant under a Contract. Only one purchase payment may be made per Certificate. The net purchase payment will be credited to a Participant's Account in the form of variable accumulation units of one or more of the Sub-Accounts and/or allocated to Sun Life (U.S.)'s general account (the "Fixed Account"). The value of the variable portion of a Participant's Account will vary with the investment performance of the respective Sub-Account(s).

6. No sales charge is deducted from a purchase payment. However, a withdrawal charge (contingent deferred sales charge), when applicable, will be assessed in the event of a full or partial withdrawal of Participant's Account value, and a market value adjustment, when applicable, will be applied to withdrawals from the fixed account. During the first seven account years, up to 10% of the net purchase payment may be withdrawn in each account year on a non-cumulative basis without the imposition of a withdrawal charge. Amounts withdrawn from a Participant's Account in excess of such amount (adjusted by an applicable market value adjustment) are subject to a withdrawal charge assessed against such excess amount as follows:

Number of contract year	Withdrawal charge—percent
1–2	6
3–4	5
5–6	4
7	3
Thereafter	0

No withdrawal charge is imposed after the end of the seventh account year, upon payment of the death benefit, or upon annuitization.

7. The Company assumes the risk that the withdrawal charges may be insufficient to compensate it for the costs of distributing the Contracts. For assuming such risk, the Company makes a deduction from the Variable Account at the end of each valuation period for the first seven account years (during both the accumulation period and, if applicable, after annuity payments begin) at an effective annual rate of 0.15% of the assets of the Variable Account (the "Distribution Expense Charge"). No deduction is made after the seventh account anniversary. Applicants represent that the distribution expense charges and the withdrawal charges assessed against a Participant's Account will not exceed 9% of the purchase payment and that Sun Life (U.S.) will monitor each Participant's Account for the purpose of ensuring that this limitation is not exceeded.

8. On each account anniversary and upon surrender of a Participant's Account for full value on other than the account anniversary, the Company deducts from each Participant's Account an account administration fee ("Account Fee") equal to the lesser of $30.00 or 2% of the Participant's Account value to reimburse it for administrative expenses relating to the issuance and maintenance of the Contract and the Participant's Account. This charge is designed not to exceed the Company's current estimates of the administrative costs attributable to the Contracts and Certificates over their expected lifetime, and is not designed or expected to generate a profit. The Contract provides that Sun Life (U.S.) may modify the Account Fee provided that such modification shall apply only with respect to Participant's Accounts established after the effective date of such modification. Applicants propose to rely on Rule 26a–1 under the Act for the exemptive relief necessary to charge such fees.

9. The Company assumes certain mortality and expense risks under the Contracts. For assuming these risks, the Company will make a deduction from the Variable Account at the end of each valuation period at an effective annual rate of 1.25%.

10. Applicants state that the mortality risk assumed by the Company arises from the contractual obligation under some annuity options available under the Contract to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long all annuitants as a group live. The expense risk assumed by the Company is the risk that the administrative charges assessed under the Contract may be insufficient to cover the actual administrative expenses incurred by the Company. The Company does not believe it feasible to identify precisely that portion of the deduction applicable to either the mortality risk or expense risk, but estimates that a reasonable allocation would be 0.80% for the assumption of the mortality risk, and 0.45% for the assumption of the administrative expense risk. If the mortality and expense risk charges are insufficient to cover the actual cost of the mortality and expense risk undertaking, the Company will bear the loss. Conversely, if the deduction proves more than sufficient, any excess will be profit to the Company and would be available for any proper corporate purpose including, among other things, payment of distribution expenses.

11. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity products. This representation is based on the Company's analysis of publicly available information about comparable annuity products, in light of such product's particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, charge guarantees, and sales loads. The Company undertakes to maintain and make available to the Commission upon request a memorandum setting forth the basis for its representations.

12. Applicants represent that the company has concluded that there is a reasonable likelihood that the Variable Account's distribution financing arrangements will benefit the Variable Account and Participants, and that the Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for this conclusion. The Variable Account will invest only in open-end management companies which have undertaken to have a Board of Directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan adopted under Rule 12b–1 of the Act to finance distribution expenses.

13. Based upon the foregoing reasons, Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent deemed necessary or appropriate to permit imposition of the mortality and expense risk charge and from sections 2(a)(35), 26(a)(2) and 27(c)(2) to the extent deemed necessary or appropriate to permit imposition of the distribution expense charge.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23304 Filed 10–2–89; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–65]

Determinations Under Section 304 of the Trade Act of 1974, as Amended, Regarding the Republic of Korea's Restrictions on Imports of Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade Representative (USTR) has determined that rights to which the United States is entitled under a trade agreement are being denied by Korea's restrictions on the import of beef and that the appropriate action to be taken under section 301 of the Trade Act is to suspend the application of tariff concessions on products of interest to Korea. The USTR has further determined that a delay in implementation of such action is necessary and desirable to obtain U.S. rights under the General Agreement on Tariffs and Trade.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Gordana Earp, (202) 395–6813, Office of the U.S. USTR, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On Feburary 16, 1988, the American Meat Institute (AMI) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Government of the Republic of Korea maintains a restrictive import licensing system covering all bovine meat, including high-quality beef, and noting that on May 21, 1985, the Korean Government had banned the importation of beef. AMI maintained that this prohibition violates Article XI of the General Agreement on Tariffs and Trade (GATT), nullifies and impairs tariff concessions on beef made by Korea under the GATT, and is otherwise unjustifiable and unreasonable and burdens or restricts U.S. commerce.

On March 28, 1988, the USTR initiated an investigation of these practices (53 FR 16995). On May 4, 1988, the GATT Council of Representatives ("GATT Council") authorized establishment of a dispute settlement panel, under GATT Article XXIII:2, to examine the United States complaint regarding Korea's import restrictions on beef.

On May 24, 1989, the GATT dispute settlement panel issued a report concluding that Korea's import restrictions on beef are contrary to the provisions of GATT Article XI:1, and not justified for balance-of-payments purposes in light of the improvement of the Korean balance-of-payments situation. The panel recommended prompt establishment of a timetable for phasing out Korea's restrictions on beef. At meetings of the GATT Council on June 21 and July 19, 1989, Korea declined to agree to adoption of the panel report. Adoption will be reviewed again in October 1989.

Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether Korea's import restrictions deny "rights to which the United States is entitled" under the GATT and whether such practices are unjustifiable or unreasonable and burden or restrict U.S. commerce. This determination must be made no later than September 28, 1989, which is 18 months after the date of initiation of this investigation.

On the basis of the GATT panel report on this matter, the USTR has determined that rights to which the United States is entitled under a trade agreement (the GATT) are denied by Korea's restrictions on imports of beef. Section 301(a)(1) of the Trade Act provides that if the USTR makes such a determination, the USTR shall take action authorized under section 301(c) subject to the specific direction, if any, of the President. The USTR has determined that the appropriate action to take under section 301(c) is to suspend the application of GATT tariff concessions with respect to Korea, affecting products of Korea in an amount that is equivalent in value to the burden or restriction on United States commerce.

Section 305(a)(1) provides that any action to be taken under section 301 shall be implemented within 30 days—in this case, by October 28, 1989. Section 305(a)(2) further provides that such implementation may be delayed by not more than 180 days if the USTR determines that a delay is necessary or desirable to obtain U.S. rights under a trade agreement. The USTR has decided that it is desirable to delay implementation of action under section 301 in this case beyond October 28, 1989, to allow additional time for proceedings in the GATT. However, the USTR has directed that a list of potential products on which to impose increased duties be published in the **Federal Register** by mid-November 1989 for public comment, if by that time substantial movement toward a resolution of this matter has not occurred.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–23263 Filed 10–2–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 22, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46496

Date Filed: September 18, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 16, 1989

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize nonstop air service between Chicago, Illinois, and Glasgow, Scotland (via Abbotsinch Airport).

Docket No. 46500

Date Filed: September 20, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 18, 1989

Description: Application of Cordoba Air Cargo S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air

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carrier permit for authority to conduct up to four weekly round trips in nonscheduled foreign air transportation of property and mail between points in Argentina on the one hand and Miami, Florida, New York, New York, and Los Angeles, California on the other, via the intermediate traffic points of Santiago, Chile, Asuncion, Paraguay, Lima, Peru, Panama City, Panama, and Sao Paulo and Rio De Janeiro, Brasil.

Docket No. 46504

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 19, 1989

Description: Application of Airline of The Marshall Islands, Inc., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in foreign transportation of passengers, property and mail between points in the Republic of the Marshall Islands including Majuro and Kwajalein, on the one hand, and points in the United States including Honolulu and Guam, on the other hand; and overseas and interstate air transportation as requested.

Docket No. 46508

Date Filed: September 22, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 1989

Description: Conforming Application of United Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests amendment of its Certificate of Public Convenience and Necessity for Route 57 to authorize service between Washington, DC on the one hand, and Montreal, P.Q., and Ottawa, Ontario, on the other hand.

Docket No. 46509

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 20, 1989

Description: Application of Amerijet International, Inc., pursuant ot section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide foreign scheduled all-cargo service.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-23232 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Flight Standards District Office at Sacramento, CA; Relocation

Notice is hereby given that on or about October 15, 1989, the Flight Standards District Office at Executive Airport, 6107 Freeport Blvd., Sacramento, California 95822 will be relocating to 6650 Belleau Wood Lane, Sacramento, California 95822. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Hawthorne, CA, on September 20, 1989.

Carl B. Schellenberg,

Deputy Regional Administrator.

[FR Doc. 89-23271 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Highway Traffic Safety Administration

[FHWA Docket No. 89-18]

RIN 2125-AC39

Uniform System for Handicapped Parking; Establishment of Advisory Committee Public Meeting

AGENCY: Federal Highway Administration (FHWA); National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of establishment of advisory committee for regulatory negotiation; Charter; Notice of first meeting.

SUMMARY: This notice announces the establishment of an advisory committee for the purpose of regulatory negotiation. The committee will develop a report concerning the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities. This report will include a recommended rulemaking proposal and will be submitted to the Administrators of FHWA and NHTSA. After the agencies issue a notice of proposed rulemaking (NPRM), the committee will review any comments submitted to the rulemaking docket and write a second report which will include a recommended final rule. The charter for the committee is set forth in this notice. This notice also announces the time and place of the first meeting of the advisory committee. This meeting is open to the public.

DATE: The first meeting of the advisory committee will be held at 9:00 a.m. on Wednesday, October 18, 1989, and will continue through Thursday, October 19, 1989.

ADDRESS: The first meeting of the advisory committee will be held at the Department of Transportation, Room 4200, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Agency contact: Mr. Vincent Nowakowski, FHWA, Office of Traffic Operations (202) 366-2146, Ms. Judith S. Kaleta, FHWA, Office of the Chief Counsel (202) 366-0764, or Mr. E. William Fox, NHTSA, Office of the Chief Counsel (202) 366-1834, 400 Seventh Street SW., Washington, DC 20590. *Mediator:* Robert Robertory, Deputy Chief Administrative Judge, Board of Contract Appeals, 400 Seventh Street SW., Washington, DC 20590 (202) 366-4305.

SUPPLEMENTARY INFORMATION:

Background

The Congress passed Public Law 100-641, 102 Stat. 3335 (1988) which directs the Secretary of Transportation to establish a uniform system for handicapped parking. This authority has been delegated to FHWA and NHTSA. To implement this law, FHWA and NHTSA published a notice of intent to form an advisory committee for regulatory negotiation. 54 FR 24908 (1989). The notice stated that the committee would develop a report concerning the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities. This report would include a recommended rulemaking proposal and would be submitted to the Administrators of FHWA and NHTSA. After the agencies issue a notice of proposed rulemaking (NPRM), the committee would review any comments submitted to the rulemaking docket, and write a second report which would include a recommended final rule.

We received nineteen comments on the notice of intent to form an advisory committee. Most of the commenters endorsed the use of regulatory negotiation for this rulemaking, and many requested appointment to the committee.

Establishment

Based on this response, and for the reasons stated in the notice of intent, FHWA and NHTSA have determined that establishment of an advisory committee for regulatory negotiation on this subject is necessary and in the public interest. Accordingly, FHWA and NHTSA have established an advisory committee for regulatory negotiation. The purpose of this committee is to provide a forum for the consideration and development of a rulemaking to create a uniform system for handicapped parking. The charter, which explains the scope and objectives of the Committee, is set forth in appendix to this notice.

Mediator

In the notice of intent, we stated that a "convener/mediator/facilitator" will chair the negotiations, ask the parties to present additional material, and offer alternative suggestions toward the desired consensus.

Because the objectivity of the mediator is crucial, we opted for an administrative judge from the Board of Contract Appeals. He will be the chairperson of the committee, and will mediate all disputes and issues arising before the committee.

Membership and Interests to be Represented

The following organizations have been appointed as members of the advisory committee:

American Association of Motor Vehicle Administrators
American Public Transit Association
Arthritis Foundation
Dignity for the Disabled, Inc.
Disabled American Veterans
Federal Highway Administration
National Association of Governors' Highway Safety Representatives
National Committee on Uniform Traffic Laws and Ordinances
National Governors' Association
National Highway Traffic Safety Administration
National Sheriffs' Association
New York State Office of the Advocate for the Disabled
Paralyzed Veterans of America
United States Architectural and Transportation Barriers and Compliance Board

In the notice of intent to form an advisory committee, we had tentatively identified the International Association of Chiefs of Police (IACP), Association of Persons with Severe Handicaps (APSH), and the American Automobile Association (AAA), as possible advisory committee members. Furthermore, several commenters suggested the appointment of other members. The Washington State Governor's Committee on Disability Issues and Employment (WSGCDE) suggested that the President's Committee on Employment of People with Disabilities, the National Council on Disability, the National Council on Independent Living (NCIL), and the National Rehabilitation Association, be appointed as members of the advisory committee. WSGCDE contacted each of the organizations it suggested for membership, and we sent letters to IACP, APSH, AAA, and NCIL, advising of our intent to form this advisory committee. None of the organizations expressed any interest in appointment to the committee. Furthermore, the meetings of this committee will be open to the public. Any interested person or organization will, in the discretion of the chairperson of the committee, have the opportunity to address the committee. Therefore, we have not appointed any of the organizations suggested by WSGCDE nor IACP, APSH, or AAA, but we welcome their participation.

Persons with disabilities face problems when they travel throughout the United States, and their problems also extend outside of our borders. Many of our States have entered into reciprocity agreements with the provinces of Canada. For these reasons, we notified the Director of the Transportation of the Disable Program, Transport Canada, of our intent to form this advisory committee. He intends to participate in the meetings of the committee. Although we have invited Mexico to participate, Mexico has not expressed any interest at this time.

Major Issues

This advisory committee will consider the following issues:

1. The adoption of the International Symbol of Access (ISA) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps that limit or impair the ability to walk.
2. The issuance of license plates displaying the ISA for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk.
3. The issuance of removable windshield placards (displaying the ISA) to individuals with handicaps which limit or impair the ability to walk.
4. The fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps.
5. The recognition of licenses and placards which display the ISA and are issued by other States and countries.

We anticipate that this advisory committee may discuss matters that are ancillary to the issues set forth above.

Procedures

The Paralyzed Veterans of America (PVA) discussed several procedural aspects of the advisory committee.

First, PVA requested a series of negotiated rulemaking training sessions for the committee members. To provide the participants with an informal educational setting and augment and update their negotiation skills, we plan a pre-negotiation training session. This session will be held on Tuesday, October 17, 1989, the day before the first day of negotiations, at the Department of Transportation, Room 4200, 400 7th Street, SW., Washington, DC. Chris Kirtz, the Director of the Regulatory Negotiation Project at the Environmental Protection Agency, will lead the session.

Second, PVA asked FHWA and NHTSA to accommodate the needs of persons with disabilities who will directly or indirectly participate in the negotiations. PVA asked that interpreters and assistive devices be made available for the hearing impaired, and that written materials and meeting transcripts be provided in braille and on tape for persons with visual impairments. With regard to persons wih mobility impairments, PVA requested that the meetings be held in accessible locations, with accessible lavatories.

FHWA and NHTSA will take the appropriate steps to ensure that the advisory committee and its meetings are conducted in a way that enables all members, including those with disabilities, to participate. We request that those persons who will need special assistance to contact us at least one week prior to the first meeting. However, we do not intend to provide a braille transcript at this time. Given the limited funds available to the agencies, the cost of a braille transcript appears to outweigh any benefit that it would provide to parties interested in this rulemaking. (We had forwarded a copy of our notice of intent to form an advisory committee to the American Council for the Blind, and that organization did not submit any comments.) FHWA and NHTSA do not believe that it is appropriate to make any determination concerning a tape of each meeting. We believe that the method for keeping minutes should be discussed by the committee.

Third, with regard to membership on the committee, PVA suggested that DOT (the Office of the Secretary) be appointed as a member of the committee, and that FHWA and NHTSA merely advise the DOT member. To achieve the full benefits of regulatory negotiation, we believe that both agencies should be members of the committee. Without full participation as members, the committee would lack direct input from the agencies. We seek to work with all interested parties to define the issues and agree on acceptable solutions. Since the Secretary has delegated his authority to implement Public Law 100-641 to the

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Administrators of FHWA and NHTSA, it is appropriate that FHWA and NHTSA are members.

Schedule

In light of the Congressional time frame and consistent with the importance that FHWA and NHTSA attach to this issue, we noted in the notice of intent that we intended to expedite the process. We had set a fifteen day comment period, and had hoped to establish the committee in July and to hold the first meeting in August. PVA was concerned that this period of time was too short. To ensure that all interested parties had the opportunity to express their concerns, we delayed the process and have reviewed the comments submitted after the closing date. Due to this delay, we were not able to hold our first meeting in August, as originally anticipated.

The following schedule is established for the regulatory negotiation process:

First meeting: October 18, 1989.

Completion of negotiations for NPRM: December 20, 1989.

Publication of the NPRM: January 20, 1990.

End of comment period: February 19, 1990.

Negotiations on final rule: February 26, 1990.

Conclusion of negotiations on final rule: March 30, 1990.

Publication of final rule: April 30, 1990.

Note: On October 17, 1989, FHWA and NHTSA are sponsoring an orientation session for members of the advisory committee. The session will focus on successful approaches to negotiation. Chris Kirtz, Director of the Regulatory Negotiation Program for the Environmental Protection Agency will conduct the session.

The schedule is deliberately focused on the early stages of the committee's efforts, emphasizing our view of the importance of the committee's achieving consensus before the publication of the NPRM.

Notices of the meetings will be published in the **Federal Register**, if time permits. We note that publication may not be possible in cases when the committee decides to meet for a few days, break for a few days, and then resume negotiations.

Committee Dissolution

PVA notes that the notice of intent to form an advisory committee stated that FHWA and NHTSA would dissovle the committee if it "cannot reach agreement within 45 days after the final pre-NPRM meeting." 54 FR 24912 (1989). PVA agrees that a target date is useful, and PVA encourages FHWA and NHTSA to incorporate issues upon which the committee has reached consensus into the NPRM, in the event that the committee is dissolved. FHWA and NHTSA intend to give careful consideration to all deliberations of the advisory committee and the agencies hope that they will be successful in obtaining a consensus report from this committee.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. THe RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Appendix

Charter; Regulatory Negotiation Advisory Committee for Uniform System for Handicapped Parking Rulemaking

I. *Purpose:* This Charter establishes the Regulatory Negotiation Advisory Committee for the Federal Highway Administration's (FHWA's) and the National Highway Traffic Safety Administration's (NHTSA's) Uniform System for Handicapped Parking rulemaking and sets forth guidelines for its operation in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, Public Law 100–641, Federal regulation 49 CFR part 95 and Department of Transportation Order 1120.3A.

II. *Sponsor and Office Providing Support Services:* FHWA and NHTSA will be the sponsors. Support services will be provided by the Office of the Traffic Operations, FHWA.

III. The Committee shall develop a report to establish a system which:

(i) Adopts the International Symbol of Access (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk;

(ii) Provides for the issuance of license plates displaying the International Symbol of Access for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(iii) Provides for the issuance of removable windshield placards (displaying the International Symbol of Access) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(iv) Provides that fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State; and

(v) For purposes of easy access parking, recognizes licenses and placards displaying the International Symbol of Access which have been issued by the other States and countries.

(b) This report shall include a recommended rulemaking proposal, form the basis for an FHWA and NHTSA Notice of Proposed Rulemaking (NPRM), and be included in the public docket for the rulemaking. The NPRM will be published in the **Federal Register** for public comment. The Committee will review the comments, and using the negotiation process, develop a report, including a recommended final rule.

(c) The Committee shall act solely in an advisory capacity to the agencies and shall not exercise any program management responsibility nor make decisions directly affecting the matters on which it provides advice.

IV. *Duties:* Consistent with the scope and objectives described in paragraph III, the Committee is authorized to:

(a) Review the current handicapped parking system of the States and identify the problems the handicapped encounter when traveling;

(b) Recommend approaches for the establishment of a uniform system for handicapped parking and indicate the most efficient means to pursue such approaches;

(c) Write a report which includes a recommended NPRM;

(d) Review comments submitted to rulemaking docket;

(e) Write a report which includes a recommended final rule; and

(f) Respond to specific assignments made by the sponsor.

V. *Membership:* (a) The Committee shall consist of approximately fifteen members appointed by the Secretary of Transportation after consultation with organizations that have an interest in the establishment of a uniform system for handicapped parking, including the State and local governments, associations representing handicapped persons, and law enforcement agencies.

(b) The membership will be fairly balanced in terms of the points of view represented.

VI. *Chairperson:* The Chairperson shall be appointed by agreement of the Administrators, FHWA and NHTSA. The Chairperson shall mediate all disputes and issues arising before the Committee. The Chairperson shall designate the Secretary for the Committee and the Secretary of each subcommittee established.

VII. *Meetings:* (a) The Committee and any subcommittee shall meet and terminate at the call of the Committee Chairperson. Agendas will be reviewed and approved by the Chairperson.

(b) All committee and subcommittee meetings shall be open to the public. A notice of each meeting shall be published in the **Federal Register** at least fifteen days in advance of the meeting. Shorter notice is permissible in case of emergency, but the reason for the emergency must be reported in the notice.

(c) Detailed minutes of each meeting shall be kept and their accuracy certified to by the Committee Chairperson. The minutes shall include the time and place of the meeting, a record of the persons present, a complete summary of matters discussed and conclusions reached and copies of all reports received, issued or approved by the committee or subcommittee.

VIII. *Compensation for Non-Government Members:* Non-Federal government members serve without compensation and will not be reimbursed for expenses.

IX. *Estimated Annual Cost to the Government:* No cost to the government is anticipated. However, should costs be incurred, in no event shall those costs exceed $2,000, which is the ceiling for this Committee. No government staff positions are being allocated to the Committee on a full-time basis.

X. *Public Interest:* The formation and use of the Committee is determined to be in the public interest in connection with the performance of duties imposed on the Department of Transportation by law.

XI. *Effective Date:* This charter is effective fifteen days after publication in the **Federal Register**, and terminates upon completion of the subject rulemaking or two years after this date, whichever occurs first, unless, prior to such time, it is extended in accordance with the FACA and other applicable requirements.

Issued on: September 29, 1989.

T. D. Larson,

Federal Highway Administrator.

Jeffrey R. Miller,

Acting Administrator, National Highway Traffic Safety Administration.

[FR Doc. 89–23491 Filed 10–2–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Chittenden County, Vermont

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Chittenden County, Vermont.

FOR FURTHER INFORMATION CONTACT: George A. Jensen, Assistant Division Administrator, Federal Highway Administration, Federal Building, Montpelier, VT 05601, Telephone (802) 828–4423.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation, will prepare an EIS on a proposal to improve Interstate 89 (I–89) in Chittenden County, Vermont. The proposed improvement would involve the construction of an interchange between I–89 and US Route 2 (US 2) in Bolton. The proposed interchange would consist of exit and entrance ramps on I–89 and south bound lanes.

An interchange is proposed to provide for existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) improving US Route 2 between Jonesville and Waterbury; (3) constructing an interchange between I–89 and US 2 in Bolton.

No formal scoping meeting is planned at this time. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The draft EIS will be available for review and comment prior to a public hearing. Public notice of the time and place of the hearing will be given.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.).

Issued on September 21, 1989.

Karle Snyder,

FHWA Division Administrator, Montpelier.

[FR Doc. 89–23218 Filed 10–2–89; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Discretionary Grants To Support the Evaluation of the Effectiveness of Innovative Occupant Protection Countermeasures

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of a discretionary grant program to support the evaluation of the effectiveness of innovative occupant protection countermeasure strategies.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the anticipated availability of a FY 1990 discretionary grant program to support the application of effectiveness evaluation methodologies and analytical techniques to quantifiably measure the impact of innovative occupant protection countermeasure strategies on the usage of occupant protection systems, including their influence on reducing the death and injury consequences of motor vehicle crashes. This notice solicits applications from educational institutions and research organizations that are interested in participating in this grant program.

DATE: Applications must be received at the office designated below on or before November 15, 1989.

ADDRESS: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Waston, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22–90–Z–05008. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Ms. Rose Watson, Office of Contrcts and Procurements, at (202) 366–9557. Programmatic questions relating to this grant program should be directed to Dr. William E. Tarrants, NHTSA, Traffic Safety Programs, Evaluation Staff (NTS–02.1), 400 7th Street, SW., Room 5125–E, Washington, DC 20590 at (202) 366–2699.

SUPPLEMENTARY INFORMATION:

Background

One of the most effective countermeasures for reducing motor vehicle fatalities and crash injuries is automatic or manual occupant protection. The most recent 19-city survey (August, 1988) revealed that safety belt use by drivers had reached 46 percent, up trom 43 percent the previous quarter. Program planners and managers involved in the implementation of State belt use laws and child passenger safety laws understand the importance of public attitudes about (1) the need for occupant protection, (2) the necessity of laws to achieve high usage rates, and (3) the tradeoff between the benefits obtained and interference with individual freedom of choice. As of December 1988, a total of 32 States plus the District of Columbia had enacted mandatory safety belt use laws.

NHTSA estimates that enactment of belt use laws saved nearly 4,000 lives in 1987. From 1983 through 1987, safety belts have saved nearly 11,000 lives. This accomplishment is primarily due to the efforts of State and local leadership in promoting occupant protection and implementation of safety belt use laws. If all States had belt use laws and usage levels were as high as those in many

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foreign countries (for example, 85%), it is estimated that at least 10,000 lives could have been saved in 1987. The current national safety belt use goal is 70% by 1990 in those States with safety belt use laws.

Since 1981, NHTSA has conducted and promoted programs designed to increase safety belt use. Surveys during the early years indicated that the national safety belt use rate for drivers was below 11 percent and, prior to 1984, no State had enacted a mandatory safety belt usage law. An early program goal was to improve the public's knowledge and understanding of the benefits of occupant protection by promoting the active involvement of public interest organizations such as the American Red Cross, physician's professional organizations, nursing associations, civic groups and others. A program to involve various corporations, businesses, government agencies and other employers in promoting safety belt use by employees and their families was initiated by NHTSA, with emphasis on "The Profit of Safety Belts." With a vested interest in employee safety, both on and off-the-job, employers attended workshops, received instructional and promotional materials, and planned, organized and conducted worksite employee programs consisting of safety belt use policies, education, incentives, and strong management support. Employee safety belt usage rates exceeding 90 percent were achieved in many organizations.

Promoting the correct use of occupant protection systems is one of the highest priority highway safety program activities within NHTSA. Special emphasis is placed on working with the law enforcement units, as well as building community support for these efforts to raise the level of compliance with existing laws. Low use groups and those who are at greatest risk for crash involvement receive special attention. Public information and education programs concentrate on promoting the use of manual safety belts, including automatic restraint systems in motor fleets, and increasing the correct use of child safety seats. Community-based traffic safety programs concentrate on effective public information programs, increased law enforcement, face-to-face education, and laying the foundation for acceptance of belt use laws.

Objectives and Program Description

During FY 1990, State and local governments, State and local affiliates of national organizations, as well as community interest groups, will be conducting projects, in various locations throughout the United States, which represent innovative countermeasure strategies designed to increase the usage of occupant protection systems. Such projects will be conducted utilizing various sources of funding.

The principal purpose of NHTSA's grant program is to support the application of evaluation research methodologies and analytical techniques to quantifiably assess the effectiveness of such projects, both in terms of their impact on the usage of occupant protection systems and their influence in reducing the death and injury consequences of motor vehicle crashes. Secondary objectives of this proposed grant program include the identification of projects involving innovative countermeasure strategies, as well as the dissemination of evaluation results and recommendations to concerned State and community leaders.

This grant program provides support for the planning, development, and conduct of the evaluation component of an innovative occupant protection countermeasure project being performed within a State, a county, a single community, or group of communities during FY 1990. The following evaluation topics relating to occupant protection countermeasures are examples of areas important to NHTSA:

- The impact of innovative occupant protection law enforcement techniques, alone or in combination with Public Information and Education (PI&E) programs.
- The impact of monetary fines of varying magnitude for violations of State mandatory safety belt use laws.
- The effectiveness of primary versus secondary offense belt use laws.
- Variations in belt usage as a function of age, education rural versus urban residency, profession or vocation, socio-economic Status, etc.
- Methods for increasing public awareness of safety belt use law enforcement.
- Effectiveness of occupant protection usage programs intended for the young driver population.
- Effectiveness of employer/corporate safety belt usage programs.
- Techniques for sustaining interest and positive safety belt usage behavior by employees and their families.
- Effectiveness of various models for planning, organizing and operating a successful community-based safety belt usage program.
- Effectiveness of various occupant protection education and incentives programs.
- Identification of ways to increase safety belt use by "high risk" drivers.
- Identification of the characteristics of safety belt users and non-users for use in developing effective programs for the non-use target groups.
- Techniques to increase public understanding and acceptance of automatic occupant protection systems.

Applicants are encouraged to propose other innovative topics for evaluation that are believed to be of particular importance.

NHTSA Involvement

It is not anticipated that NHTSA will be substantially involved in activities undertaken as part of this grant program. Evaluation staff of the Office of Traffic Safety Programs, will make available one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), with responsibility for providing:

1. Technical direction in finalizing the detailed evaluation work plan and evaluation design plan, and
2. Technical assistance and guidance to the recipient.

Period of Support

The grant program described in this notice will be supported through the award of approximately 5 to 6 grants, depending upon the merit of the applications received and the availability of funding. Each grant shall provide for an anticipated performance period of 12 months. The application for funding assistance should address what is proposed and can be accomplished during this period. No grant awarded as a result of this notice shall exceed $50,000. This notice is published in advance of the availability of appropriations, and all awards shall be subject to the availability of funds in FY 1990.

Eligibility Requirements

In order to be eligible to participate in this grant program, an applicant must be an educational institution or research organization. For-profit research organizations may apply; however, no profit factor shall be allowed.

Application Procedure

Prior to the preparation of an application, interested applicants should contact the Governor's Representative for Highway Safety to ascertain those projects being conducted within the State in FY 1990 involving innovative occupant protection countermeasure strategies. From among those being conducted, the applicant should identify that project which appears to be most suitable for effectiveness evaluation,

and which offers the potential for contributing to increased occupant protection use, reducing death and injury consequences of motor vehicle crashes, and advancing the state-of-the-art technology in this field. Such coordination must also assure cooperation in the conduct of the evaluation.

Each applicant must submit one original and two copies of the application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22–90–Z–05008. Only complete applications received on or before November 15, 1989 shall be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed brakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

2. Applications shall include a program narrative statement which addresses the following:

a. A detailed description of the innovative occupant protection countermeasure(s) project proposed for evaluation, including the factors and activities considered in the formulation and planned implementation of the project itself, as well as the rational for selecting the project for evaluation.

b. A brief description of the proposed evaluation work plan and schedule for conducting the evaluation, including proposed personnel.

c. A brief description of the proposed evaluation design plan, including what will actually be measured and how the effectiveness evaluation goals will be accomplished.

d. The proposed program director and other key personnel identified for participation in the proposed evaluation effort, including a brief description of their qualifications and respective organizational responsibilities.

e. A brief description of previous organizational evaluation experience involving similar or related efforts, including a description of the effort, the sponsoring agency, the evaluation methodology used, and the results of effectiveness evaluations conducted.

e. Applications shall include a letter(s) from the State Governor's Representative for Highway Safety and from the organization conducting the project to be evaluated, if other than the State Office of Highway Safety, which indicates that the applicant has appropriately coordinated the proposed evaluation component and that, if the applicant is awarded a grant, their cooperation will be provided during performance of the evaluation.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents of this notice.

Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. The potential of the innovative countermeasure project proposed for evaluation to make a significant contribution to increasing occupant protection use, reducing death and injury consequences of motor vehicle crashes, and advancing the state-of-the-art technology in the occupant protection field.

2. The adequacy of organizational resources for accomplishing the proposed evaluation effort, including the qualifications and experience of the proposed personnel, the various disciplines represented, and the relative level of effort proposed for the professional, technical, and support staff.

3. The applicant's understanding of the purpose and objectives of the grant program as evidenced in the project proposed for evaluation, as well the soundness of the proposed evaluation work plan and design, including the adequacy of proposed data collection methodology and the feasibility of statistical or other analytical methods proposed.

4. The adequacy of the organization's experience on similar or related evaluation efforts.

5. The adequacy, appropriateness, and realism of the applicant's plan for accomplishing the grant activities within the time period provided for grant support, and considering the schedule of the project proposed for evaluation.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. Reporting Requirements:

a. Evaluation Work Plan and Schedule—within 30 days after award, the recipient shall submit a detailed evaluation work plan and schedule to the NHTSA COTR which describes the major activities, with a breakdown of specific tasks, and a schedule which identifies the beginning and ending dates for each task, and the sequence of task performance. The work plan shall specify the research questions or issues to be studied in the evaluation. The work plan shall be subject to the technical direction, and approval, of the NHTSA COTR. In the event technical revisions to the work plan are necessary, the recipient shall submit a revised plan for approval. The schedule will be updated in monthly progress imports.

b. Evaluation Design Plan—within 45 days after grant award, the recipient shall submit a detailed evaluation design plan to the NHTSA COTR which, as a minimum, shall contain the following:

(1) a description of the evaluation research to be conducted, including the proposed methodology to be followed, and the rationale for its selection.

(2) an analytic framework and procedure for conducting an assessment and analysis of the data, including a specification of the statistical methodologies to be followed, and the rationale for their use.

(3) a data collection methodology or information acquisition procedure to be followed corresponding to the questions, issues and objectives specified in the evaluation work plan. The collection methodology or information acquisition procedure shall specify how the validity and accuracy of the data will be determined.

(4) draft data collection instruments along with instructions concerning their use.

The evaluation design plan shall be subject to the technical direction, and approval, of the NHTSA COTR. In the event technical revisions to the design plan are necessary, the recipient shall submit a revised plan for approval.

c. Monthly Progress Reports—The recipient shall submit monthly letter-type progress reports.

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d. Final Report—the evaluation research results shall be documented in a Final Report prepared as a two-part document.

(1) Part One shall contain the formal technical report, including a discussion of the innovative occupant protection countermeasures used; the rationale for their selection; a description of the administrative procedures and tasks followed in conducting the project; the evaluation design plan, including the data collection and analysis procedures used; a discussion of the analyses conducted; the presentation of the evaluation results, including their interpretation; a discussion of the conclusions, including their rationale and interpretation; and recommendations, guidelines, and implementation procedures for use by other States and/or communities interested in adopting the countermeasure studied.

Part One of the Final Report shall also contain recommendations for future evaluation research, suggested occupant protection countermeasure strategy improvements, and any suggested organizational and/or operational changes which may enhance the implementation of the evaluated countermeasure.

(2) Part Two of the Final Report shall be a less technical document addressing the information needs of a general manager/administrator who may be interested in adopting the innovative occupant protection countermeasure. The Part Two document shall contain a description of the occupant protection countermeasure project studied, including its goals, strategies and methodology for use; a brief discussion of the findings, conclusions and recommendations; and guidelines for implementation of the innovative occupant protection countermeasure by the appropriate State or local community program official.

A minimum of 30 days prior to the end of the grant period, the recipient shall submit the final report, in draft form, to the NHTSA COTR for review and comments. The recipient shall incorporate the COTR's comments and suggestions, and resubmit the Final Report.

3. During the effective period of the grant(s) awarded as a result of this notice, the grant(s) shall be subject to the general administrative requirements of OMB Circular A–110 (or the "common rule," if effected prior to award), the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 29.

Issued On: September 28, 1989.

George L. Reagle,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89–23270 Filed 10–2–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Fiscal Services

Surety Companies Acceptable on Federal Bonds Liquidation; Southeastern Casualty and Indemnity Insurance Co., Inc., and Southeastern Reinsurance Co., Inc.

Southeastern Casualty and Indemnity Insurance Company, Inc., and Southeastern Reinsurance Company, Inc., both Florida corporations, formerly held Certificates of Authority as acceptable sureties on Federal bonds and were last listed as such at 53 FR 25075, July 1, 1988. The Companies' authorities were terminated by the Department of the Treasury effective May 12, 1989. Notices of these terminations were published in the **Federal Register** of May 18, 1989, on page 21521.

On September 1, 1989, upon a petition by the Insurance Commissioner of the State of Florida, the Florida Circuit Court of the Second Judicial Circuit, issued an Order of Liquidation with respect to Southeastern Casualty and Indemnity Insurance Company, Inc., and Southeastern Reinsurance Company, Inc. The Department of Insurance was appointed as the Liquidator. All persons having claims against the companies must file their claims by March 1, 1990, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713 who have not yet filed their claim should do so, in writing, to: Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against Southeastern Casualty and Indemnity Insurance Company, Inc., and Southeastern Reinsurance Company, Inc., on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202 or FTS 724–7194).

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, Telephone 202–287–3921.

Dated: September 25, 1989.

Mitchell A. Levine,

Assistant Commissioner, Camptroller Financial Management Service.

[FR Doc. 89–23211 Filed 10–2–89; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 190
Tuesday, October 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:55 p.m. on Tuesday, September 26, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider a proposal of the United States Treasury regarding the establishment of exit fees that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds).

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Amphitheater of the Resolution Trust Corporation Building located at 801 17th Street, N.W., Washington, D.C.

Dated: September 28, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–23376 Filed 9–29–89; 11:23 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:53 a.m. on Wednesday, September 27, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in open session, by telephone conference call, to consider the requirements that a potential bidder must meet in order to qualify as an acceptable bidder for a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting was practicable.

Dated: September 28, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–23377 Filed 9–29–89; 11:23 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 28, 1989.

TIME AND DATE: 10:00 a.m., Thursday, October 5, 1989.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions to Commission Procedural Rules.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–23427 Filed 9–29–89; 1:36 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME: October 13, 1989, 8:30 a.m., Closed Session; 9:00 a.m., Open Session.

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 18:

Closed Session (8:30 a.m. to 9:00 a.m.)

1. Minutes—August 1989 Meeting.
2. NSB and NSF Staff Nominees.
3. Future NSF Budgets.
4. Grants and Contracts—Action Items.

Open Session (9:00 a.m. to 12:00 noon)

5. Grants, Contracts, and Programs—Action Item.
6. Proposed 1990 Award Review Exemptions.
7. Chairman's Report.
8. Minutes—August 1989 Meeting.
9. Director's Report.
10. Reaffirmation of and Proposed Amendment to 1982 NSB Statement on Science in the International Setting.
11. Discussion of Major National Science Initiatives.
12. Other Business.

Thomas Ubois,

Executive Officer.

[FR Doc. 89–23474 Filed 9–29–89; 3:40 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION:

DATE: Weeks of October 2, 9, 16, and 23, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 2

There are no meetings scheduled for the Week of October 2.

Week of October 9 (Tentative)

Thursday, October 12

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 16 (Tentative)

Thursday, October 19

10:00 a.m.
Briefing on Status of Comanche Peak (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote Public Meeting) (if needed)

Week of October 23 (Tentative)

Wednesday, October 25

10:00 a.m.
Briefing on Emerging Technical Issues (Public Meeting)
11:30 a.m.

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Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: September 28, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–23449 Filed 9–29–89; 2:49 pm]

BILLING CODE 7500–01–M

Corrections

Federal Register
Vol. 54, No. 190
Tuesday, October 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-136]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

Correction

In notice document 89-19242 beginning on page 33741 in the issue of Wednesday, August 16, 1989, make the following correction:

On page 33742, in the first column, in the 14th line, "introduction gener" should read "introduced gene".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 264

[Docket No. 90804-9204]

RIN 0648-9204

United States Standards for Grades of Frozen Fish Blocks

Correction

In proposed rule document 89-22208 beginning on page 38881 in the issue of Thursday, September 21, 1989, make the following corrections:

§ 264.104 [Corrected]

1. On page 38882, in the third column, in § 264.104 (b), in the third line, "§ 264.208" should read "§ 264.106".

2. On page 38883, in the third column, in § 254.104(e)(12), in the fifth line, "9.6s" should read "9.66".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ89-3-23-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-22002 appearing on page 38554 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38554, in the first column, the docket heading should read as set forth above.

BILLING CODE 1505-01-D

[Docket No. TQ90-1-33-001]

El Paso Natural Gas Co.; Correction to Proposed Change in Rates

Correction

In notice document 89-22003 appearing on page 38554 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38554, in the second column, the docket heading should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-5]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System

Correction

In proposed rule document 89-21415 beginning on page 38083 in the issue of Thursday, September 14, 1989, make the following corrections:

1. On page 38083, in the first column, under **DATES**, in the second paragraph, in the fourth line, "October 4, 1989" should read "October 11, 1989".

2. On page 38090, in the first column, the heading *B. Benzene Category Operations* should read *B. Benzene Transfer Operations.*

§ 61.355 [Corrected]

3. On page 38133, in the first column, in § 61.355(e)(8), in table 1, in the heading in the third column to the table, "t" should read "t'".

4. On page 38134, in the third column, in § 61.355(p)(3)(v), in the equation, "100" should appear immediately to the right of the times sign.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC07

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decisions by Administrative Law Judges in Cases Remanded by the Courts

Correction

In rule document 89-21447 beginning on page 37789 in the issue of Wednesday, September 13, 1989, make the following corrections:

§ 404.984 [Corrected]

1. On page 37792, in the third column, in § 404.984(a), in the 22nd line, remove the period between "either" and "make".

2. On page 37794, in the first column, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 89-21447 Filed 9-12-89; 8:45 am]

BILLING CODE 1505-01-D

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

Correction

In notice document 89-18776 appearing on page 33092 in the issue of Friday, August 11, 1989, make the following correction:

On page 33092, in the second column, under "**Mount Diablo Meridian Nevada**", the numerical designation for each township should be followed by an "N."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD27

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-level Radioactive Waste at a Geologic Respository

Correction

The page number for proposed rule document 89-22604 appearing in the issue of Tuesday, September 26, 1989, was incorrectly cited on page V of the table of contents. The page number should read "39387".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Filing of Petition

Correction

In notice document 89-21308 appearing on page 37757 in the issue of Tuesday, September 12, 1989, make the following correction:

In the third column, under "**SUPPLEMENTARY INFORMATION**", in the next to last paragraph, in the seventh line, "great" should read "graft".

BILLING CODE 1505-01-D

federal register

Tuesday
October 3, 1989

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 383 and 391
Commercial Driver's License Standards; Disqualifications; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC-88-14]

RIN 2125-AC19

Commercial Driver's License Standards; Disqualifications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending 49 CFR part 383 to define the serious traffic violations for which commercial motor vehicle operators may be disqualified for periods of 60 and 120 days under § 383.51. Specifically, the FHWA is defining these serious traffic violations to include a conviction for "excessive speeding," which is any speed of 15 miles per hour or more above the posted speed limit; "reckless driving"; "improper or erratic traffic lane changes"; "following the vehicle ahead too closely"; and, any other motor vehicle traffic control laws which arise in connection with a fatal traffic accident. The FHWA is also allowing States, under certain circumstances, to reduce a lifetime disqualification from driving a commercial motor vehicle (CMV) to ten years. This final rule also clarifies other issues pertaining to convictions and disqualifications of CMV drivers, and makes a conforming amendment to 49 CFR part 391 of the Federal Motor Carrier Safety Regulations.

EFFECTIVE DATE: November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570 (the Act), was signed into law by the President. As a first step in implementing the requirements of the Act, a final rule and request for comments on "Commercial Driver Licensing Standards; Requirements and Penalties" was published in the **Federal Register** on June 1, 1987 (52 FR 20574), implementing the single license requirement, notification requirements, Federal disqualifications, and other provisions of the Act required to be effective on July 1, 1987.

The June 1, 1987 rule left several components under "serious traffic violations" undefined, and sought public comment on these areas. On January 31, 1989 the FHWA published a notice of proposed rulemaking (NPRM) (54 FR 5036) based on those comments, seeking to rectify the omissions and clarify other points of the June 1, 1987 rule. The FHWA received 60 responses to the NPRM; these are listed by category in Exhibit 1.

The final rule amends 49 CFR part 383, "Commercial Driver Licensing Standards; Requirements and Penalties," to clarify which violations will be defined as "serious traffic violations." It amends § 383.31 to clarify certain notification requirements, especially how such requirements would apply to casual, intermittent, or occasional drivers. Section 383.51, "Disqualification of Drivers," is modified to allow reduction of lifetime disqualifications under certain circumstances. Also, the final rule adds precision to the wording of other existing regulations pertaining to the disqualification of drivers in 49 CFR parts 383 and 391.

Each of these changes is discussed below in the context of the relevant public responses to the docket.

Exhibit 1—Respondents to the NPRM by Category

State agencies representing 14 States:	
Department of Motor Vehicles	11
State Police Departments	2
Other State Agencies	2
Total State Agencies	15
State Organizations (AAMVA)	1
Trucking Industry and related parties:	
Associations	6
Carriers	2
Unions	1
Total trucking-related	9
Bus Industry and related parties:	
Associations	1
Carriers	1
Unions	4
Total Bus-related	6
Individuals	17
Insurance Industry	8
Trade associations	2
Consultant	1
Public Association (AAA)	1
Total respondents	60

Definition of "Serious Traffic Violations"

Excessive Speeding

As demonstrated in Exhibit 2, the majority of respondents in most categories supported the definition of excessive speed proposed in the NPRM—15 miles per hour or more above the posted limit. In endorsing the FHWA's proposal, most respondents also favored a single standard which could be applied universally in all speed zones and under all conditions and situations. Several opposing views were, however, also presented for consideration.

EXHIBIT 2—RESPONDENTS' PROPOSED DEFINITIONS OF "EXCESSIVE SPEEDING"

	Number of respondents by category supporting		
	NPRM definition: 15 mph or more above posted speed limit	Definition more strict than NPRM	Definition less strict than NPRM
State Agencies	7	1	1
AAMVA	1		
Trucking Carriers and associations	5	1	2
Trucking Unions	1		
Bus Carriers and associations		1	1
Bus Unions			3
Trade Associations	2		
AAA		1	
Individual Drivers	3		2
Other Individuals	2		
Insurance Industry	1	6	
Totals	22	10	9

A motor carrier asserted that a "flat rate" concept of greater than 15 m.p.h. over the posted speed limit for excessive speed is not consistent with providing greater restriction for greater hazard. Claiming that areas that are posted with speed limits less than 55/65 m.p.h. are lower because excessive speed presents a greater danger, the respondent suggested that a standard based on percentage of increase over posted limits, specifically 20%, would provide a standard which is more representative of the risk factor at all speeds.

Another respondent from a bus transit company explained that many factors should influence the development of an appropriate definition for excessive speed. As an example, the respondent explained that a truck carrying hazardous materials loaded to 80,000 pounds, going 50 in a 35 m.p.h. zone should be considered to be traveling at an excessive speed. However, a bus or empty vehicle traveling at the same speed in the same speed zone may not be considered to be traveling at an excessive speed.

Other respondents recommended that maximum speed limits be included in the definition. The American Automobile Association (AAA) pointed out that in forty-one States which have a 65 m.p.h. maximum speed limit, the proposal would allow drivers to speed up to 80 m.p.h. before being charged with an excessive speeding violation. Thus, the AAA recommends a cap of 75 m.p.h. above which any speeding would be considered "excessive."

The majority of respondents reiterated the FHWA's belief that Congress intended the definition for "excessive speed" to be used to identify and penalize the most severe cases of speeding violations. Several respondents, however, maintain that any speed over the posted limit should be considered to be "excessive."

One commenter noted that no provision for appeal has been provided for those drivers with impeccable records who, quite inadvertently in many cases, are stopped for operating at 15 m.p.h. or more above the posted speed limit. The respondent suggested that the driver's record be taken into consideration before disqualifying him/her for two serious violations.

Although some of the alternatives offered by respondents may have merit, each one has related enforcement or administrative problems. For example, a standard which would change with posted limits would be confusing to drivers and to enforcement officials. The FHWA agrees with the overwhelming number of respondents who explained that anything other than a practical, straightforward definition would not be effective. To be practical, "excessive speed" needs to be defined in terms that are both easy to understand and practical to administer. Thus, the FHWA has elected to retain the proposed definition of "excessive speed" as any single conviction for any speed of 15 miles per hour or more, above the posted speed limit. This definition is not intended to supplant existing State cumulative point systems which continue to control the licensing privilege under existing administrative procedures. The concerns, therefore, expressed by commenters who believe that there would be no provisions for appeal or that conditions or special zones would no longer be considered will continue to be dealt within existing enforcement of State speeding convictions.

In retaining the proposed definition, the FHWA does not want to give the impression that other single speeding violations or that repeated violations of driving above the posted speed limit should be condoned because they may not be considered to be "excessive" according to the definition. On the contrary, the FHWA believes that all speeding violations—either driving above the post limit or driving too faat for conditions—pose a potential hazard and should continue to be strictly enforced by the States. While a more stringent, encompassing definition which includes a cap of 75 m.p.h. or a standard based on percentage above posted limits may appear to give more recognition to the greater potential dangers associated with the higher speeds, the FHWA agrees with the majority of respondents that a single definition would be more enforceable than a more intricate definition which incorporates other factors. However, States are free to establish more stringent definitions to address local or particular concerns. The comments submitted by the Owner-Operators Independent Drivers Association of America, Inc. (OOIDA) reflect the concerns expressed by majority of the respondents who objected to a multi-part definition for "excessive speed." The OOIDA wrote: "The Association feels strongly that the CMVSA must be interpreted by the FHWA in a simple and straightforward manner such that drivers are aware of the specific offenses for which they may be disqualified, as well as the penalties to be imposed. OOIDA feels that a situational definition that includes other factors in the definition of "excessive speed" would needlessly confuse the issue among drivers, and create a very cumbersome administrative process." Also, the single license provision of the Act will greatly reinforce the states' authority to assess points for speeding, since drivers can no longer spread convictions over several licenses. The points will add up and the likelihood that a driver who habitually speeds will lose his/her license will be greatly increased. Thus, all CMV drivers will be deterred from speeding, even at levels below the 15 m.p.h. standard. Furthermore, States may apply other charges to address local concerns or special conditions. For example, States apply charges, such as "reckless driving" in cases of speeding at less than 15 m.p.h. above the posted speed limit where weather, traffic, hazardous cargo or other conditions combine to constitute a willful or wanton disregard for safety. Such actions are not prohibited by this rulemaking.

In sum, the FHWA believes that when considered in conjunction with the current State penalty systems, the definition that has been adopted will fully satisfy the Act's goal to promote compliance with the posted speed limits and encourage drivers to use good judgement under all kinds of driving conditions.

Reckless Driving

Regarding the definition of "reckless driving," section 12019 of the Act states that: "reckless driving shall be as defined under State or local law." To promote uniformity and because a majority of the States are already using the Uniform Vehicle Code and Model Traffic Ordinance (UVCMTO) definition, the FHWA proposed to amend the definition of reckless driving to incorporate the language used in the UVCMTO, 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances. Such language states (in chapter 11, Rules of the Road, at section 11-901—Reckless Driving (a) that "any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." The FHWA further proposed to amend the definition of "reckless driving" to clarify that it would include two additional traffic offenses, both of which are frequently associated with excessive speeding and/or reckless driving. These two additional offenses were:

1. Improper/erratic lane changes (Incorporating the concepts cited in the UVCMTO section 11-304 through section 11-306 and section 11-309); and

2. Following the vehicle ahead too closely (incorporating the concepts in the UVCMTO section 11-310).

The FHWA asked for comments on whether these two infractions should be listed separately as serious traffic violations instead of being included under "reckless driving." Of the 31 docket respondents who addressed this issue, of whom 12 represented State agencies, 23 (including 10 from State agencies) supported treating these two infractions as serious traffic violations either as part of "reckless driving" or as separate serious violations. However, most respondents stated that the inclusion of the two additional violations in the basic definition of "reckless driving" would overly complicate that definition and the manner in which existing State traffic codes are enforced and handled in the courts.

In opposition, several drivers, motor carriers, and union representatives asserted that the two additional violations should neither be included in the definition of "reckless driving" nor listed separately as serious violations. The Owner-Operators Independent Drivers Association of America contended that the two additional violations are relatively minor traffic infractions in the majority of cases in which they occur. They further claimed that since "following the vehicle ahead too closely" can be the equal fault of both vehicles, it would be unfair for a truck driver to be subject to a severe penalty for an infraction for which he/

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she was only partly to blame. The International Brotherhood of Teamsters presented a similar argument for its recommendation against mentioning these additional violations in the rule.

Accident data available to FHWA show that these two violations are commonly attributed to commercial motor vehicle accidents in which human factors or driver error is cited as a casual factor. In a 1988 report entitled "Gearing Up for Safety: Motor Carrier Safety in a Competitive Enviornment," the Office of Technology Assessment (OTA) lists "following too closely" as a contributor in nearly 10 percent of the heavy truck accidents. The same report identifies "improper lane change" violations as major contributors in more than 13 percent of heavy truck accidents. The "Heavy Truck Safety Study" final report of the National Highway Traffic Safety Administration (NHTSA, 1987), explains that regardless of any improvements made to vehicle characteristics, to the roadways, or to other features of the operating environment to improve safety, the manner in which a vehicle is driven will always play a paramount role in the safe operation of the vehicle. The NHTSA report cites an analysis by the State of Ohio of crashes in which the truck driver was at fault. The analysis identifies "improper lane changes" and "following too closely" as the two most frequent driver errors contributing to the accident. On the basis of available accident data, and in light of the comments to the docket from State agencies which support including these violations because of their potential for causing serious accidents, the FHWA has concluded that "improper/erratic lane changes" and "following too closely" should be treated as serious violations for the purposes of the final rule.

The FHWA shares the concern of some of the respondents that enforcement officials may cite CMV drivers for these offenses when they are the equal fault of both drivers or the fault of noncommercial drivers. However, a CMV driver is not disqualified until he or she is convicted of the offense. The due process embodied in a conviction determination should prevent unfair or unfounded violations from becoming a conviction.

Finally, some of the respondents opposed including "improper/erratic lane changes" and "following too closely" as serious violations because of the resultant penalties. Under § 383.51, a CMV driver who is convicted a second time for a serious violation within a three-year period is disqualified for 60 days; the penalty for a third such violation in a three-year period is a 120 day disqualification. Given the potential importance of these penalties on a driver's employment and livelihood, the FHWA recognizes the possibility that more "improper/erratic lane changes" and "following too closely" traffic violations may be contested, resulting in lost time to drivers and an increased burden on the judicial system. The expected safety benefit, however, is considered countervailing, especially since these two types of violations are major contributors to accidents in which driver error is the casual factor. The penalties related to convictions for these violations are also considered by the FHWA to be appropriate.

In formulating the final definition for "reckless driving," the FHWA agrees with the numerous respondents who asserted that the two additional violations should be listed separately in order to minimize any administrative complications. Therefore, the definition of "reckless driving" in the final rule incorporates the UVCMTO wording regarding "willful or wanton disregard for the safety of persons or property." The other two items, "improper or erratic lane changes" and "following the vehicle ahead too closely" are included, however, as serious traffic violations. States may apply their existing corresponding violations to deal with situations involving improper/erratic lane changes and following the vehicle ahead too closely.

Lifetime Disqualifications

The FHWA proposed to amend § 383.51(b)(3)(v), to allow States the option of providing an opportunity for sanctioned drivers to apply for a reduction of their lifetime penalty only after they serve a minimum disqualification period of ten years, and only after they successfully complete a requisite rehabilitation program as determined by their State's driver licensing agency. The lifetime disqualification would not be expunged from the driver's record for any reason even after successful rehabilitation and reinstatement, and a third conviction of an offense under § 383.51(b) would lead to permanent disqualification for life. A CMV driver convicted of any felony involving the manufacture, distribution, or dispensing of controlled substances (under § 383.51(b)(2)(v)) will continue to be ineligible to apply for any reduction whatsoever of the lifetime disqualification, hence, permanently disqualified for life.

Most respondents on this issue supported the FHWA's proposal, which is adopted in the final rule. Several States and the American Association of Motor Vehicle Administrators (AAMVA), however, alerted the FHWA that other concerns related to the content and effectiveness of rehabilitation programs still need to be addressed. Since the States have until October 1, 1993, to begin enforcement of commercial driver qualifications, ample time remains for the States to develop, in concert, appropriate CMV driver rehabilitation programs. FHWA could then consider such State-developed programs in future rules. This approach is consistent with federalism considerations.

Section-by-Section Analysis

Items not discussed in detail in this section-by-section analysis are either highlighted as major issues above, adopted verbatim from the NPRM and discussed in its preamble, or of a nonsubstantive nature (for example, wording changes to conform with other items).

Section 383.1 Purpose and Scope

The wording changes in this section are for conformity with § 383.31, discussed below.

Section 383.5 Definitions

Disqualification. The FHWA has incorporated a definition for "disqualification" in the final rule in response to several requests that FHWA provide further clarification on how to apply the sanctions included in the Act and the implementing regulations. The FHWA agrees with the contention of the AAMVA's Model CDL Law Subcommittee that nothing in the Act or Federal rules prohibits the holder of a CDL, disqualified from driving a commercial motor vehicle, from driving a non-commercial motor vehicle, if he/she is otherwise legally eligible to do so. The FHWA further agrees with the Subcommittee that a CDL holder subject to a disqualification should not be allowed to operate a commercial motor vehicle under any circumstances during that period. The Act does not provide for any type of "limited" driving privilege for someone who is disqualified from operating a commercial motor vehicle.

In developing a definition for "disqualification," the FHWA recognized that procedures differ from State to State, and that the most effective way to impose the disqualification sanctions is to allow States to use their own current systems. States may impose the disqualification through a suspension, revocation, cancellation or any other means a State determines to be appropriate, as long as the driver's privilege to operate a commercial motor vehicle is withdrawn in conformance with the Act. While the definition also provides for Federal disqualifications by the FHWA, the disqualification of drivers under the provisions of part 383 will be primarily the responsibility of the States through their existing driver's licensing mechanisms.

Employee. The FHWA noted in the NPRM that because the casual, intermittent or occasional type of driver has no "regular employer" per se, the regulations published on June 1, 1987, are unclear as to whom such casual, intermittent or occasional drivers should report their convictions and adverse actions against their driving privileges, as set forth in §§ 383.31 and 393.33. In response, the FHWA proposed to amend the definition of "Employee" to include all casual, intermittent or occasional type drivers, and to specify in § 383.31(b) that notification must be given to the "current" employer.

All the respondents to this issue agreed with FHWA's proposed definition, which has been incorporated in the final rule.

Section 383.31 Notification of Convictions for Driver Violations

The FHWA has made the following technical modifications to this section:

(1) Drivers must notify their licensing State and employer of "convictions" for violations of State or local motor vehicle traffic control laws (other than parking violations). Notification of the "violations" themselves is not required. This clarification, which is in keeping with due process, was endorsed by most commenters on this issue.

(2) The FHWA has replaced the term "State," as used in the June 1, 1987 rule, with the term "State or jurisdiction" in order to include convictions incurred in Canadian provinces and territories and other foreign jurisdictions which the FHWA recognizes, as testing drivers and issuing CDLs in accordance with or under standards similar to the standards of part 383. This change is consistent with the intent of the Act and incorporates concerns of AAMVA and several States that drivers licensed in the United States may fail to report their convictions by foreign jurisdictions to their employers and licensing States. In accordance with the commercial driver licensing reciprocity recently announced by the United States and Canada (at 54 FR 22392, May 23, 1989), the FHWA believes that foreign convictions must be reported in order to allow States to ascertain the driver's qualifications and fully implement the intent of the Act. (A conforming change has also been made to § 383.33.)

(3) Section 383.31 requires that CDL holders report their convictions irrespective of the type of vehicle in which the violation occurs. This requirement, however, is only explicit in § 383.31(c)(5) which specifies that the notification to the State and employer must state whether the violation was in a commercial motor vehicle. To provide further clarification and eliminate any doubt on the applicability of the notification requirements, FHWA has included language in § 383.31(a) and § 383.31(b) to make it explicit that the notifications apply to "any type of motor vehicle."

The FHWA does not have the authority to impose disqualifications, or to require States to impose disqualifications, on CDL holders who commit criminal or other offenses under § 383.51 in noncommercial vehicles. However, the purpose of requiring drivers to report such convictions in noncommercial vehicles is to provide additional information to States which may wish to consider such convictions in their licensing actions. (Also see discussion of self-reporting below.)

(4) As discussed above under the definition of "employee," notification is to be made to the "current employer." Conforming changes have been made in §§ 383.1 and 383.33. If a driver is not currently employed, he/she must still notify the State of licensure. One respondent from a State motor vehicle department recommended that the rule further clarify that intermittent and occasional drivers need to also notify their permanent employers. Since it is the current employer who is in a position to take immediate action (including the permanent employer), and since the addition of further subtleties to this section will make its enforcement more difficult, the FHWA has not adopted that suggestion.

Several respondent States questioned the need for and efficacy of any self-reporting of convictions by drivers to their licensing States. These States assert that they cannot legally impose sanctions against a driver until they receive formal notification about the conviction. Similar objections were expressed prior to the publication of the June 1, 1987, final rule, "Commerical Driver Licensing Standards: Requirements and Penalties." As noted in that rule, one purpose of requiring driver notification to the State is to alert a State of violations which may ultimately warrant the suspension, revocation, or disqualification of the driver's CDL. At this time, States are not required to impose sanctions based on the driver's informal notification. When the State-to-State reporting of convictions through the Commerical Driver's License Information System (CDLIS) is fully operational, the FHWA will consider elimination of this requirement.

Section 383.51 Disqualification of Drivers

Period of Disqualification

The FHWA has received several questions asking whether the period of time for which a driver may be disqualified is to begin on the date of the violation or the date of conviction. In the NPRM, the FHWA explained that, because the Act requires that drivers be disqualified when they are "found to have committed" certain offenses, the disqualification period should begin at the time when the driver is convicted of the disqualifying offense.

Several States and the AAMVA pointed out potential problems with the proposal that disqualification begin at the time of conviction. They asserted that, in many instances, the "conviction" is determined by a court or another State agency, and the motor vehicle agency responsible for taking action against the license is not notified of the conviction until sometime later. Others indicated that because of differences in the due process and appeals mechanisms among the various States, setting the disqualification starting point at the "time of conviction" is not manageable.

The FHWA is aware of the varying procedures used by the States in applying sanctions. The FHWA is also aware that under certain circumstances—i.e., when a driver is considered to be dangerous, or when the violation is severe enough—the courts are able to revoke the driver's driving privileges immediately upon conviction. On the other hand, the FHWA appreciates the administrative problems to which the AAMVA refers.

As a compromise between the practical reality adduced by the AAMVA and the expectations of the underlying legislation, the final rule omits the phrase "at the time of such conviction" from § 383.51 (b)(1) and (c)(1), and defers establishment of a time limit on when a State would begin the disqualification of drivers until the forthcoming rulemaking on State compliance under section 12009 of the Act. In the meantime, States should attach at least the same degree of urgency to CDL sanctions as they now do in similar instances. Without precluding States from using their

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current penalty systems or from dealing with any due-process issues, the FHWA expects States to begin the disqualification process immediately upon conviction; and if circumstances warrant it, to provide an administrative mechanism whereby the CDL holder's driving privileges can also be taken away immediately upon conviction. In any event, whenever the disqualification period begins for a CDL sanction, States will still need to comply with sections 12009(a) (8) and (9) of the Act which specify that a State convicting a CMV operator of any traffic violation (other then a parking violation) must notify the State of license issuance within 10 days after such conviction; and that disqualifications must be reported to the CDLIS and to the State of license issuance within 10 days from the date of disqualification.

Leaving the Scene of an Accident

Because the driver of a large commercial motor vehicle may be involved in a minor accident of which he/she is genuinely unaware, the FHWA proposed to add "knowingly and willfully" to the disqualifying offense of "leaving the scene of an accident while operating a commercial motor vehicle."

Most respondents, including the States and the AAMVA, considered the addition of the "knowingly and willfully" qualifiers to be unnecessary, and to place a potentially unreasonable burden of proof on the States. Since the issues inherent in the words "knowingly and willfully" would undergo examination during the due process leading to a conviction, the FHWA has elected to eliminate "knowingly and willfully" from the proposed description of "leaving the scene of an accident." Section 383.51(b)(2)(iii) will therefore remain unchanged.

Lifetime Disqualification From Separate Incidents

In the NPRM, the FHWA proposed to clarify that the driver is disqualified for life if he or she is convicted for offenses which arise from two or more separate incidents.

All comments which addressed this issue agreed with this proposal, which is incorporated in § 383.51(b)(3)(iv) and applied by analogy to § 383.51(c)(2) (i) and (ii) dealing with serious traffic violations.

Section 383.73 State Procedure

All States currently have laws which deal with falsification of information on license documents. These laws, however, are not consistent. As part of the NPRM, the FHWA included a requirement that States must impose a penalty on a CDL applicant who is discovered by the State to have falsified information required for the CDL. The FHWA explained in the NPRM that it believes that a minimum level for such penalties need to be established to ensure similar treatment of CMV operators across the country. Such penalties would also help deter an applicant from attempting to get a second license or a new CDL during the time he/she is disqualified.

All respondents who provided information on this issue endorsed the proposed 60 day penalty. Several respondents indicated, however, that they currently have and will continue to impose stringent penalties, a policy which the FHWA endorses.

Thus, the FHWA has amended § 383.73(g) to provide minimum penalties of at least 60 days for those persons who knowingly falsify or evade submitting required information when applying for any CDL licensing action under §§ 383.71 and 383.73. States may apply the sanction either through a license suspension, revocation, cancellation, or disqualification.

The deadline for imposing the penalty (formerly "30 days after discovering the falsification") has been eliminated because it does not allow for due process and State administrative procedures.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The final rule is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. Because of the public interest in the issue of commercial motor vehicle safety and the expected benefits of improved transportation safety, however, this action is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. For this reason, a full regulatory evaluation is not required. However, since an analysis of impacts, including economic factors, is necessarily involved in the preparation of related motor vehicle safety regulations, a regulatory evaluation has been prepared for this rulemaking action as well as other actions needed to implement the Commercial Motor Vehicle Safety Act of 1986. This evaluation addresses the provisions contained in this action and has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590.

A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the regulatory evaluation/regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with FHWA's August 1, 1986, ANPRM as well as the several other rulemaking notices required by the Act. The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this action.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Impact

The FHWA has reviewed these changes to the Commercial Driver Licensing Standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety. Congress identified commercial motor vehicle safety as a matter of national importance and included requirements for a single license and driver disqualifications as part of the mandates in the Act.

In the Executive Order on Federalism, Executive Departments and agencies were directed to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of this rule. Thus rule would limit the policy making discretion of the States only in narrow ways, and does so only to achieve the national purposes of the act. For example, States would continue to have sole discretion as to whether or not to license any CMV operator and what specific procedures, tests, fees or penalty applications are applicable. Thus, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's federalism initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Paperwork Reduction Act

The collection of information required by the final rule published on June 1, 1987, to implement the single license and certain reporting and notification requirements has been approved by the Office of Management and Budget (OMB No. 2125–0542). No additional burdens are expected to result from this rulemaking.

List of Subjects in 49 CFR Part 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Issued on: September 22, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, as set forth below:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

2. Section 383.1(b) (2) and (5) are revised as follows:

§ 383.1 Purpose and scope.

* * * * *

(b) * * *

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

* * * * *

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

* * * * *

3. Section 383.5 is amended by adding one definition entitled "Disqualification", and by revising four other definitions and placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

Controlled substance has the meaning such term has under section 102(6), of the Controlled Substances Act (21 U.S.C. 802(6)) and includes all substances listed on schedules I through V of 21 CFR part 1308, as they may be revised from time to time. Schedule I substances are identified in appendix D of this subchapter and schedules II through V are identified in appendix E of this subchapter.

* * * * *

Disqualification means either:

(a) The suspension, revocation, cancellation, or any other withdrawal by a State of a person's privileges to drive a commercial motor vehicle; or

(b) A determination by the FHWA, under the rules of practice for motor carrier safety contained in part 386 of this title, that a person is no longer qualified to operate a commercial motor vehicle under part 391; or

(c) The loss of qualification which automatically follows conviction of an offense listed in § 383.51.

* * * * *

Driver's license means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

* * * * *

Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

* * * * *

Serious traffic violation means conviction, when operating a commercial motor vehicle, of:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely; or

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control (other than a parking violation). (Serious traffic violations exclude vehicle weight and defect violations.)

* * * * *

4. Section 383.31 is amended by revising paragraphs (a), (b) and (c)(4) as follows:

§ 383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) * * *

(4) The specific criminal or other offense(s), serious traffic violation(s), and other violation(s) of State or local law relating to motor vehicle traffic control, for which the person was convicted and any suspension, revocation, or cancellation of certain

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driving privileges which resulted from such conviction(s):

* * * * *

5. Section 383.33 is revised to read as follows:

§ 383.33 Notification of driver's license suspensions.

Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.

6. The subpart heading for subpart D is revised to read as follows:

Subpart D—Driver Disqualifications and Penalties

7. Section 383.51 is amended by revising paragraphs (b)(1), (b)(3) (i) through (v), and (c) (1) and (2), to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified for the period of time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

* * * * *

(3) * * *

(i) *First offenders.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of one year provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(ii) *First offenders transporting hazardous materials.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of three years if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(iii) *First offenders of controlled substance felonies.* A driver who is convicted of an offense described in paragraph (b)(2)(v) of this section, is disqualified for life.

(iv) *Subsequent Offenders.* A driver who is convicted of an offense described in paragraphs (b)(3)(i) through (b)(2)(iv) of this section, is disqualified for life if the driver had been convicted once before in a separate incident of any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(v) Any driver disqualified for life under § 383.51(b)(3)(iv) of this paragraph, who has both voluntarily enrolled in and successfully completed, an appropriate rehabilitation program which meets the standards of his/her State's driver licensing agency, may apply to the licensing agency for reinstatement of his/her commercial driver's license. Such applicants shall not be eligible for reinstatement from the State unless and until such time as he/she has first served a minimum disqualification period of 10 years and has fully met the licensing State's standards for reinstatement of commercial motor vehicle driving privileges. Should a reinstated driver be subsequently convicted of another disqualifying offense, as specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, he/she shall be permanently disqualified for life, and shall be ineligible to again apply for a reduction of the lifetime disqualification.

(c) * * *

(1) *General rule.* A driver who is convicted of serious traffic violations is disqualified for the period of time specified in paragraph (c)(2) of this section, if the offenses were committed while operating a commercial motor vehicle.

(2) *Duration of disqualification for serious traffic violations*—(i) *Second violation.* A driver who, during any 3-year period, is convicted of two serious traffic violations in separate incidents, is disqualified for a period of 60 days.

(ii) *Third violation.* A driver who, during any 3-year period, is convicted of three serious traffic violations in separate incidents, is disqualified for a period of 120 days.

* * * * *

8. Section 383.73(g) is revised to read as follows:

§ 383.73 State procedures.

* * * * *

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certifications required in § 383.71(a), the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS

9. Section 391.15(c)(2)(iv) is revised to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

* * * * *

[FR Doc. 89-22883 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-22-M

federal register

Tuesday
October 3, 1989

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Issuance of Program Announcement, "Nonparticipating State Initiative"; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Issuance of Program Announcement, "Nonparticipating State Initiative"

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of issuance of program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988 (hereinafter "Act") is issuing a program announcement and a solicitation for applications from states not participating in the Formula Grants Program established by Part B of the Act. Eligible applicants are limited to local public and private nonprofit agencies in nonparticipating States. Agencies in South Dakota and Wisconsin are currently eligible to receive funds. The amount available in South Dakota is up to $225,000, in Wisconsin, up to $838,000. If additional funds become available for other states, a notice will be placed in the **Federal Register** naming the state, the amount of funds available, and the deadline for submission of applications by agencies in that state.

I. Introduction and Background

A. Legislation

Pursuant to section 223(d) of the Act, the OJJDP Administrator must endeavor, under section 222(a) of the Act, to make the Formula Grants fund allotment of a State which chooses not to participate or loses its eligibility to participate in the Formula Grants Program available to local public and private nonprofit agencies within the nonparticipating State. Should a State choose not to participate or lose its eligibility to participate in OJJDP's Formula Grants Program, the OJJDP Administrator, pursuant to section 223(d) of the Act, must endeavor to make that nonparticipating State's formula grants fund allotment available to local public and private nonprofit agencies within the State pursuant to section 222(a) of the Act. The funds may be used only for the purpose(s) of achieving compliance with:

1. Section 223(a)(12)(A), which provides that juveniles shall not be placed in secure detention or correctional facilities if (1) they are charged with or have committed offenses that would not be criminal if committed by an adult, (2) they are charged with or have committed offenses which do not constitute violations of valid court orders, or (3) they are non-offenders such as dependent or neglected children;

2. Section 223(a)(13), which provides that juveniles alleged or found to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have regular contact with incarcerated adults convicted of crimes or awaiting trial on criminal charges; and

3. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

a. Are outside a Metropolitan Statistical Area,

b. Have no existing acceptable alternative placements available, and

c. Provide for the sight and sound separation of juveniles and incarcerated adults.

B. Definition of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Local private nonprofit agency.* A private nonprofit agency or organization that provides services within an identifiable unit or a combination of units of general local government, but which is not under public supervision or control. No part of the net earnings of such a private nonprofit agency or organization inures or may lawfully inure to the benefit of any private shareholder or individual. In addition such an agency or organization has been held by the IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

10. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

11. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

12. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the Act and thus is not participating in the Formula Grants Program authorized by part B of the Act for a particular fiscal year; or a State found ineligible to receive funds because of failure to achieve or maintain substantial or full compliance with a mandate of the Act.

13. *Secure.* As used to define a detention or correction facility this term describes residential facilities which include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

14. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

15. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States. The requirements for taking this exception can be found in the Formula Grants Regulation, 28 CFR 31.303(f), published in the **Federal Register** of June 20, 1985.

16. *State Program Coordinator.* The agency/organization selected by OJJDP to implement Stage 1 and 2 of this Initiative.

C. Problem Addressed

Many communities within the boundaries of the nonparticipating States have not been able to implement the mandates of the Act because the State has elected not to participate in the Formula Grants Program, has become ineligible to continue participation in the program, or has elected to withdraw from participation. State or local policies, failure to coordinate, concentrate and redirect existing resources, and/or the limited number of alternative resources available to communities have resulted in an overreliance on the use of jails, lockups and other secure facilities for criminal-type offenders, status offenders and non-offenders.

This over-reliance on secure facilities may be due to a number of problems such as:

1. A lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, corrections, public and private service providers, and local public interest groups, which contributes to the inappropriate placement of juveniles in jails and lockups.

2. A lack of public awareness and policies regarding the issues of juveniles in jails and lockups and the secure confinement of status offenders and non-offenders.

3. The lack of a flexible network of services and programs that is responsive to the local jurisdiction's needs and capabilities and focused upon jurisdictions with the most difficult barriers to overcome.

4. The lack of alternative services which can be sustained over time with local resources, inclusive but not limited to:

a. Supervision of juveniles in secure facilities that conforms to the requirements set forth in the Formula Grants Regulation, 28 CFR part 31, published in the **Federal Register** of August 8, 1989.

b. Intensive supervision in a child's home as a placement alternative.

c. Emergency foster care, shelter care, group care and independent living arrangements.

d. Crisis intervention services and shortterm residential crisis intervention programs that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

e. Objective intake criteria that are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

II. Program Goals and Objectives

Pursuant to section 223(d) of the Act, the goal of this program is to assist nonparticipating states in developing a range of alternatives to secure confinement and revising associated policies and procedures and bring them into compliance with section 223(a)(12)(A), the deinstitutionalization of status offenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups. To achieve this goal applicants must address the following objectives:

A. The removal of juveniles from adult jails and lockups through systemwide coordination, cooperation and concentration of existing and new resources to develop community juvenile service systems that provide viable alternatives to the use of adult jails and lockups.

B. The development of a statewide, flexible network of services and placement options for juvenile offenders and non-offenders that will provide such juveniles with supervision and control, give them protection from victimization and exploitation and bold them accountable for their offenses.

C. The development and implementation of objective intake criteria and operational policies and procedures that are consistent with nationally recognized standards and applicable to alleged juvenile offenders and non-offenders who are awaiting court appearance.

D. An enhanced capacity for parents, schools, police and other private and public youth serving agencies to resolve juveniles' problems without the use of jail and lockups. This includes, where appropriate, the coordination and interaction between public and private juvenile services.

E. An increased public awareness of the problems of juveniles in jails and lockups as well as the difficulties of status offenders and non-offenders in secure confinement, resulting in the development of public policies to address such problems.

III. Program Strategy

This program consists of two stages: (1) Assessment and Planning; and (2) Strategy Implementation. A single State Program Coordinator (SPC) will be selected through this program announcement to implement the program in each nonparticipating state. The SPC will develop a statewide strategy and provide funds and assistance to selected communities in developing and implementing comprehensive youth service systems focused on complying with the mandates of the JJDP Act.

An advisory committee that meets, to the degree appropriate, the provisions of section 223(a)(3) will be established for this program to provide comments and recommendations to the SPC regarding the program strategy and activities. At a minimum, a meeting of the advisory committee should be held at the beginning of stages 1 and 2 to brief them on the purpose and activities and determine their role in the program. Where appropriate, consideration should be given to appointing some of the persons who served effectively on the advisory board to each State's prior nonparticipating grantee, if any.

A. Stage 1, Assessment and Planning

The first stage of the program consists of an assessment of detention and incarceration legislation, policy, procedures and practices, and the development of a detailed, statewide, strategy to change these laws, policies, procedures, and/or practices to move the State toward compliance with subsections 223(a)(12)(A), 223(a)(13) and 223(a)(14). The strategy should provide for improving the supervision and

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protection of status offenders and non-offenders in a non-secure setting as well as removing juveniles from adult jails and lockups. A major purpose of this stage is to establish a solid foundation of information and use it as the basis for developing a statewide strategy for implementing comprehensive community juvenile services systems.

1. The major activities of stage 1 consist of:

a. Establishing the advisory committee;

b. Developing the assessment plan;

c. Collecting information and data on laws, policies, procedures, practices and programs;

d. Preparing an assessment report; and

e. Developing an action plan.

2. The major products of stage 1 are:

a. An assessment plan that specifies each step of the first stage.

b. An assessment report that includes:

(1) Problem statement;

(2) Review of current legislation, policies, practices and programs pertaining to the detention and jailing of juveniles including alternative services;

(3) Data on the number and types of jails, lockups, juvenile detention facilities, and correctional facilities in which juveniles are placed;

(4) Data on the number and types of juveniles in juvenile detention facilities, correctional facilities and adult jails and lockups;

(5) An assessment of the needs of the juveniles involved in the State's juvenile justice system;

(6) Status of the State laws, policies, procedures and practices with regard to the deinstitutionalization of status offenders and non-offenders, the separation of juveniles from adults in adult jails and lockups and the removal of juveniles from jails and lock-ups;

(7) Identification of the needs that must be addressed to develop a statewide strategy for improving detention and incarceration practices and for bringing the State into compliance with the JJDP Act; and

(8) Specification of the State and local public and private resources available to support the implementation of the strategy.

c. A statewide strategy that specifies:

(1) Who will be involved in implementing the strategy;

(2) What the major activities will be and how they are related to the problems and needs identified during the assessment process;

(3) Where in the State the activities will be targeted;

(4) A schedule of strategy implementation;

(5) How the strategy will be implemented; and

(6) The project budget, including the detailed budget narrative.

B. Stage 2, Strategy Implementation

During stage 2 the strategy developed during stage 1 will be implemented. The SPC will contract with local public agencies and private nonprofit organizations within the State to support specific projects in local jurisdictions. These projects should emphasize the development and implementation of systemwide strategies for coordinating, concentrating and redirecting existing resources to improve services for the care and custody of juveniles and meet the mandates of the JJDP Act. Activities should promote a coordinated statewide effort. If projects were initiated under a previous non-participating State award, the SPC will need to review the projects funded under that award to determine what projects, if any, should be continued. The SPC will provide training and technical assistance to the projects to ensure their performance is consistent with, and enhances, the overall strategy.

1. The major activities of stage 2 consist of:

a. Preparing an RFP for local projects;

b. Reviewing applications, selecting finalists and making awards;

c. Convening project staff and advisory committee members to review strategy;

d. Providing training and technical assistance to projects supported under the initiative;

e. Developing and implementing a statewide public education program; and

f. Developing and implementing an assessment of the effectiveness of the overall program.

2. The major products of stage 2 are:

a. A Request for Proposals to implement the program strategy developed under Stage 1;

b. A plan for providing training and technical assistance to local projects and State agencies; and

c. An assessment report on the effectiveness of the program in meeting its goals and objectives.

IV. Dollar Amount and Duration

A. The project period for this program is three years from the date of award. The recipient in each of the nonparticipating States will be eligible for awards of up to the amount of that State's FY 1988 Formula Grant allocation for the initial one-year budget period unless the State has already received its FY 1988 Formula Grant allocation. Any State which has already received its FY 1988 Formula Grant Award will be eligible for an award of up to the amount of that State's FY 1989 Formula Grant allocation for the initial one-year budget period. The second and third year awards, if made, will each be for an amount not to exceed that State's Formula Grant allocations for the succeeding two fiscal years, respectively. Both the second and third 12-month assistance awards will be subject to the availability of Federal funds; a demonstration of satisfactory completion of identified objectives; satisfactory progress toward compliance with the provisions of sections 223(a)(12)(A), 223(a)(13), and 223(a)(14); and whether the State has or has not announced an intention of becoming a participating State.

Funds will be made available through a cooperative agreement. Financial support for the SPC (planning and administration costs) may not exceed 20% of the total award for the project period. The SPC will contract the remainder of the first-year award to local public and private nonprofit agencies to enable them to implement Stage 2 of the initiative. SPC financial support for the second and third-year awards, if any, will be negotiated with each recipient but should not exceed 20% of the award. Financial assistance provided under this program requires no matching contribution with the exception of construction funds as provided in this announcement.

B. One application will be selected for each of the nonparticipating States pursuant to the selection criteria established in this announcement, and consistent with the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The agency or organization selected as the SPC will not be eligible to receive, beyond the three-year project period, funds allocated pursuant to section 222(a) for purposes related to section 223(d).

C. No more than one-fourth of the funds received by a public or private organization for Stage 2 may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for less than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction. The SPC and the local jurisdiction and/or the private organization will be held accountable for adherence to section 294 of the Act and the requirements for construction programs as contained in the effective edition of the OJP Financial and Administrative Guide for Grants, M7100.1. The erection of new buildings or the renovation of secure facilities is not permitted with funds acquired through this program.

V. Eligibility Criteria

Applications to serve as the SPC are invited from local public and private nonprofit agencies within the nonparticipating States that have knowledge and experience in developing and/or implementing programs and projects on a statewide basis at the local level.

To be eligible for consideration, the applicant must demonstrate in the application that it has experience in the following areas:

A. An understanding of the intent of the statutory mandates of the JJDP Act and the general approaches for implementing the mandates on the local level.

B. Knowledge of and experience with juvenile justice systems; local jails, lockups, and secure juvenile detention facilities; the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program; and strategy development and implementation.

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds.

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy Section of this announcement.

E. Capability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the boards of public and private youth service providers which exist within the State for the purposes of achieving the objectives of this program.

VI. Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. All applications must include the information outlined in this section of the solicitation (subsection VI).

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must provide a certification that they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2, which will be supplied with the application information package, must be submitted with the application.

Applicants for this program must submit a copy of their application to the State Single Point of Contact (SPOC), if one has been established and if the State has selected this program to be covered in its review process. Applications must be submitted to the SPOC for review and comment at the same time they are submitted to OJP. Under the regulations, the State process has at least (30) days to comment on noncompeting continuation applications and at least sixty (60) days to comment on all other applications.

Applicants must provide a *Certification Regarding Drug-Free Workplace Requirements* which meets the requirements of the Drug Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). Form 4061/3, which will be supplied with the application information package, must be submitted with the application.

When submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working with Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, and other groups whose cooperation or participation is necessary to the success of the program. The applicant must certify that it is able to obtain the necessary cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form.

All questions are to be answered regardless of instructions (section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals

A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement to include the following:

1. Discuss your understanding of: (a) The State's placement of juveniles in adult jails and lockups as well as status offenders and non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (b) State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal, and (c) programs, community services, organizations and planning approaches which can be used in an effort to

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develop comprehensive community services and achieve the Act's mandates.

2. Discuss the anticipated major difficulties and problem areas in the management and implementation of Stage 1 activities, selection of jurisdictions for implementing Stage 2, management of Stage 2 activities, and coordination with OJJDP. This discussion of anticipated problems should also address potential or recommended approaches for their solution.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of the program. A discussion of how each of the activities of both stages of the program will be accomplished and a description of the products to be prepared should be included.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program and how the program will be managed. The plan must include an annotated organization chart that depicts the roles and responsibilities of the SPC and the public and private organizations that receive funds during Stage 2. The process for identifying, selecting, and awarding funds to these organizations must be described. The policies and procedures for managing the contracts and for monitoring and assessing the effectiveness of the overall program must be described.

E. Time-Task Plan

Applicants must develop a time-task plan for the 12-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in Section III, Program Strategy.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the program application requirements, organizational capability, the goals, objectives and program strategy described in this announcement, and thoroughness and innovation in responding to strategic issues in project implementation.

Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. The statement of the problem to be addressed by the project is clear, concise and well justified. (5 Points)

B. The objectives of the proposed project are clearly defined. (10 Points)

C. The project design is sound and contains program elements directly linked to the achievement of project objectives. (15 Points)

D. Project Management (35 Points):

1. The project management structure is adequate to the successful conduct of the project. This criterion includes the adequacy and appropriateness of the activities and the project management structure, and the feasibility of the time task plan. (15 Points)

2. Highly qualified staff are identified to manage and implement the program including staff to be hired through contracts. This criterion includes the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan and the qualifications of existing staff demonstrated by their resumes. (20 Points)

E. Organizational capability is demonstrated at a level sufficient to successfully support the project. Applicants must evidence the following qualifications and experience: (35 Points)

1. The applicant demonstrates capability and diversified experiences in working with local jurisdictions to develop and implement plans and programs for youth and establishing services and policy changes at the local, regional and statewide level. (15 Points)

2. The applicant demonstrates an ability to establish effective relationships with the juvenile justice system and alternative service providers. (5 Points)

3. The applicant's key staff are experienced in providing diverse populations with technical expertise in substantive topics related to the development and implementation of plans. (5 Points)

4. The applicant demonstrates capability and expertise in maintaining and managing contracts where local agencies or jurisdictions will be implementing various projects, new policies, and different techniques. (10 Points)

F. The budget is complete, appropriate and cost-effective in relationship to the proposed strategy and tasks to be accomplished. (5 Points)

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

This program announcement is a request for proposals from local public and private nonprofit agencies in those States currently not participating in the JJDP program.

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on October 15, 1989. (Or six (6) weeks after the date of publication in the **Federal Register**) Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the SRAD, Room 768, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

X. Contact

For further information contact: Eric Peterson, Juvenile Justice Specialist, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–5924.

Dated: September 19, 1989.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89–23228 Filed 10–2–89; 8:45 am]

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federal register

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October 3, 1989

Part IV

Environmental Protection Agency

40 CFR Part 35
Financial Assistance for the National Estuary Program; Interim Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3553-6]

RIN 2040-AB54

Financial Assistance for the National Estuary Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an interim final rule on the award of financial assistance under the Clean Water Act (CWA) for the National Estuary Program (NEP). This rule codifies policies and procedures for financial assistance awarded by EPA to state, interstate, and local agencies and other eligible agencies, institutions, organizations, and individuals for pollution abatement and control programs under the NEP.

DATES: Effective Date: This interim final rule is effective on October 3, 1989. EPA will accept public comments on this rule until November 2, 1989. The docket for this rule and copies of the public comments submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, Room 2904, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-5926.

ADDRESSES: Comments may be mailed to Mr. Thomas Armitage, Office of Marine and Estuarine Protection (WH-556F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Armitage, (202) 475-7378.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Water Act (CWA), as amended by the Water Quality Act of 1987 (WQA), established in section 320 the National Estuary Program (NEP) to promote long-term planning and management in nationally significant estuaries threatened by pollution, development, or overuse. Overall responsibility for the program is given to the U.S. Environmental Protection Agency (EPA). The CWA also authorizes up to $12 million to be appropriated by Congress in each year through 1991 to support the NEP. For fiscal years 1989 and 1990, CWA section 205(1) directs the Administrator to reserve 0.5 percent of Title II funds appropriated for construction grants for carrying out the NEP. EPA is today promulgating a regulation outlining the eligibility requirements for receiving funds under the NEP and specifying the general contents of an Annual Work Plan to be prepared by Management Conferences convened by the Administrator under the Act.

1. Description of the National Estuary Program

The NEP is managed by EPA's Office of Marine and Estuarine Protection (OMEP) to identify nationally significant estuaries threatened by pollution, development, or overuse, and to promote the preparation of comprehensive conservation and management plans to ensure the ecological integrity of these estuaries. The program seeks to protect and improve water and sediment quality, and to enhance living resources. To achieve these general goals, the NEP conducts activities to help to:

- Establish working partnerships among Federal, State, and local governments
- Transfer scientific and management experience and expertise to program participants
- Increase public awareness of pollution problems and ensure public participation in consensus building
- Promote basinwide planning to control pollution and manage living resources
- Oversee development and implementation of pollution abatement and control programs.

The NEP builds on the experience of the Great Lakes and the Chesapeake Bay programs as well as six programs initiated in 1985 and 1986 in Narragansett Bay in Rhode Island, Buzzards Bay in Massachusetts, Long Island Sound in New York and Connecticut, Puget Sound in Washington, San Francisco Bay in California, and Albemarle/Pamlico Sounds in North Carolina. These efforts provide useful models and lessons for the NEP. One lesson is that the success of these programs in identifying and controlling pollution evolved from a phased process: identifying pollution problems, evaluating alternative solutions, and recommending and implementing cost-effective plans to alleviate the problems. Perhaps more importantly, these experiences indicate that collaborative problem solving is crucial to the success of an estuary program. The collaboration process involves all concerned parties in every phase of the program and secures commitments from these parties to carry out recommended actions.

Drawing on the lessons learned from these programs, the NEP focuses on the most significant problems, uses existing and readily available data, emphasizes applied research, provides funding for specifically targeted research, and employs time-tested and cost effective management strategies to meet its Congressionally mandated purposes. These techniques lead to early protection and corrective actions as well as efficient use of allocated resources.

(a) Water Quality Act of 1987

Prior to the enactment of the WQA, EPA made assistance awards for estuary activities based on its broad, general authority contained in section 104(b)(3) of the CWA. In the WQA, Congress provided a specific authorization for the NEP. Section 317(a) of the WQA declared that the increase in coastal population, demands for development, and other direct and indirect uses of the estuaries threaten these unique bodies of water. Section 317(b) of the WQA amended the CWA to add a new section 320. Under section 320(a), the Governor of any state may nominate an estuary located wholly or partly within the state and request that a Management Conference be convened to develop a comprehensive conservation and management plan (CCMP) for the estuary. Such nominations must document the national significance of the estuary, the need for the conference, and its likelihood of success. The nomination must also show that additional control of point and nonpoint sources of pollution is necessary to attain or maintain the water quality required to protect public water supplies; protect and propagate balanced, indigenous populations of shellfish, fish, and wildlife; and allow recreational activities in and on the water.

In response to a Governor's nomination or on his own initiative, the EPA Administrator is to determine whether the attainment or maintenance of a desired level of water quality in an estuary requires additional pollution abatement and control programs to supplement existing controls. The Administrator is authorized under CWA section 320(a)(2)(A) to select such estuaries and to convene Management Conferences to develop CCMPs for managing the estuaries. The conferees are charged with developing plans that balance the conflicting uses in the estuary while restoring or maintaining its natural character.

CWA section 320 also authorizes the appropriation of up to $12 million per year through fiscal year 1991 to support

the NEP. These funds must be appropriated annually by Congress to support grants or cooperative agreements under section 320(g), monitoring the implementation of a CCMP by the Management Conference or the Administrator, and the administration of management conferences (not to exceed 10 percent of the annual appropriation). These funds assist in developing and conducting the initial three of four phases of an estuary program, as described below.

In addition, other sources of funds have been authorized or appropriated for estuary program activities. Section 205(1) of the CWA reserves funds to support section 320 activities. For convened Management Conferences, EPA currently uses portions of these funds to support Priority Action Demonstration Projects. These projects are designed to test, in part of an estuary, important environmental actions that have implications for the whole estuary. The CWA specifies this fund to be ⅓ of 1.0 percent of the section 207 funds appropriated under title II of the CWA in fiscal years 1987 and 1988, and ½ of 1.0 percent of the 207 funds in fiscal years 1989 and 1990.

Grants under section 320(g) using section 320(i) funds or section 205(1) funds can only be used for activities leading to the preparation of CCMPs. Section 320(g) grants cannot be used for implementation.

Funding for implementation activities may be available under CWA title II, title VI, and section 319 to the extent the activities meet the applicable requirements of these provisions.

(b) Matching Funds

Assistance awards under section 320(g) using either section 320(g) or section 205(1) appropriated funds for each estuary program must be matched, in proportion, by non-Federal funds. Consistent with CWA section 320(g)(3), EPA is requiring that 25 percent of the total estuary program cost be provided from non-Federal sources. The Annual Work Plan developed and approved by the Management Conference must make a demonstration showing that non-Federal sources provide at least 25 percent of the aggregate costs of research, surveys, studies, modeling, and other technical work necessary for the development of a CCMP for the estuary. Each assistance application must contain a copy of the Annual Work Plan that demonstrates the 25 percent match requirement is being met.

In many cases, recipients of individual assistance awards may not be required to provide matching funds for their projects because the aggregate cost share is being provided by a state or a third party. Nevertheless, because such assistance awards are conditioned on compliance with the aggregate cost share requirement, the recipient remains responsible for matching funds if they are not provided as specified in the Annual Work Plan.

(c) Phases of an Estuary Program

Once an estuary has been selected for inclusion in the NEP, the Administrator convenes a Management Conference to oversee its activities. The CWA defines seven purposes for the Management Conference:

1. Assess trends in water quality, natural resources, and uses of the estuary.
2. Collect, characterize, and assess data and identify the causes of environmental problems.
3. Evaluate relationships between pollutant loadings and environmental effects.
4. Develop a CCMP.
5. Develop plans with states and other agencies to coordinate implementation of the CCMP.
6. Monitor the effectiveness of actions taken pursuant to the CCMP.
7. Review Federal financial assistance programs and development projects for consistency with the CCMP.

To accomplish these purposes, the Management Conference first organizes the management framework for the estuary program—the Planning Initiative in Figure 1. Activities relating to the seven purposes are then divided among the three remaining phases; Characterization, CCMP Development, and CCMP Implementation.

During the Characterization Phase, the Management Conference objectively assesses the state of the estuary and evaluates existing management programs designed to protect the estuary. Characterization is the basis for identifying and selecting the problems to be addressed by the CCMP.

In CCMP Development, the Management Conference establishes implementation goals and objectives through a collaborative process and determines desirable and allowable uses for the entire estuary and parts thereof. The goals may range from maintaining present conditions to restoring the estuary to a past condition to maintaining pristine quality. Cost-effective pollution control and resource management strategies, designed to meet each objective, are the core of the CCMP.

After carefully evaluating the strategies, the conferees select for implementation those strategies that will produce the greatest environmental benefit—in the most cost-effective and the most timely manner.

The final phase is Implementation of the CCMP. Strong public support and political commitments are required to accomplish the actions agreed upon in the CCMP. A key objective of the NEP is to help foster the necessary support and commitment for successful State/local implementation.

(d) Planning for Estuary Programs

As provided in § 35.9065, EPA is establishing a three-level process to assist individual estuary programs with planning and oversight of their activities and to manage the funds available to the NEP. The first level of planning is the Five-Year State/EPA Conference Agreement that is developed by each Management Conference shortly after it is convened. This Agreement sets out milestones to be achieved over the term of each program.

Based on this Agreement, OMEP sets budgetary targets for each Management Conference when the budget for the NEP is announced in each fiscal year. These budget targets establish the amount of Federal funds available to the Conference (the NEP contribution) and are used to support activities carried out by each Management Conference in a given year as specified in the Agreement. Given the possibility that required activities may change during the course of the Characterization and CCMP Development phases, Management Conferences may request that OMEP reconsider previously established targets prior to the budget cycle.

The second level of planning culminates in an Annual Work Plan which is developed by the Management Conference using the budgetary targets provided. These Annual Work Plans present progress to date, indicate major program directions necessary to meet previously established milestones, document projects to be undertaken in the upcoming year, and specify funds to be used to support the projects. They also document the way in which 25 percent program match requirements will be met.

At the most detailed level, the third level of planning is a series of individual assistance applications that are prepared by potential recipients and submitted to the Regional Administrator for review. These applications specify in detail the work to be conducted, who will do it, what will be accomplished and how, and the costs and schedule for completion to meet the overall goals for the work on a project-by-project basis. Assistance applications are essentially

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the same as other grant applications for EPA funds, but the NEP has certain additional requirements, as addressed below.

(e) Annual Cycles

The first three phases of an estuary program (i.e., Planning Initiative, Characterization and Problem Definition, and CCMP Development) are completed within 5 years. Implementation may require as much as 20 years before all goals set in the CCMP can be achieved.

Within the major phases of each estuary project, there are annual cycles for program review, assistance applications, and project activity. Although there is some flexibility in the annual cycle, OMEP encourages each Management Conference to adopt a cycle that allows for completing Annual Work Plans and assistance application review within the first quarter (by January 1) of each Federal fiscal year (1 October to 30 September). A typical annual cycle (Figure 2) calls for establishing program targets for total expenditure on each estuary program by October 15, submitting draft Management Conference Annual Work Plans by December 1, and submitting assistance applications by January 1.

However, the annual schedule depends on the date on which OMEP is informed of its annual budget. If Congress does not appropriate funds until after October 1, OMEP will not be able to inform conferences of program targets until at least 2 weeks after it has been informed of its budget. The schedule for such a year will be delayed.

(f) Development and Submission of Annual Work Plans and Assistance *Applications*

As specified in § 35.9065(b), the Annual Work Plan for each estuary program must be approved by the Management Conference before individual assistance awards can be made by the Regional Administrator. Annual Work Plans should be prepared within 60 days of the receipt of targets for that year. The Management Conference must submit a draft Annual Work Plan to EPA Headquarters through EPA Regions for review and comment before final ratification by the Management Conference.

Individual assistance applications may be developed at the same time as the Annual Work Plan, but should not be submitted until after the Annual Work Plan is approved by the Management Conference. In FY 1989, and subsequent fiscal years, assistance award decisions will be made by the Regional Administrator and thus applications should be sent to the appropriate EPA Regional grants office.

In addition to providing for assistance awards by the Regional Administrator to support individual estuary programs, the regulations (§ 35.9070) authorize the Assistant Administrator for Water at EPA Headquarters to approve National Program assistance agreements.

These headquarters awards are limited to projects the results of which have broad applicability to estuaries of national significance and shall be deemed to be consistent with Annual Work Plans and Five-Year State/EPA Conference Agreements approved by individual management conferences. Applications for such projects should be sent to OMEP for consideration.

Each Assistance Application submitted as part of an individual estuary program must be endorsed by the Management Conference before funds are awarded by the Regional Administrator. This requirement ensures that the Management Conference has control over how funds are spent on its estuary. This requirement also allows the Management Conference to direct the effort to be conducted on its behalf, ensuring that each project is consistent with annual goals and objectives of the Management Conference.

(g) Evaluation of Annual Work Plans

Section 35.9065 (b) and (c) of the regulation require the compilation of an Annual Work Plan. This requirement allows each Management Conference to review its current activities in light of its goals and past activities, and encourages direct focus on necessary activities for the upcoming year. The Annual Work Plan should be the result of extensive planning and review by each of the conference committees and should represent a consensus on directions to be taken.

The Management Conference's development of the Annual Work Plan should address the following questions:

- Have successes and failures in the program in the previous year been taken into account in planning the activities of the upcoming year?
- Is planned work for the upcoming year consistent with the seven purposes of the Management Conference specified in section 320(b) of the CWA?
- Is planned work for the upcoming year directed toward meeting negotiated milestones contained in the Five-Year State/EPA Conference Agreement?
- Will individual projects undertaken during the upcoming year obtain information necessary to further define problems or develop solutions?
- Are the problems to be addressed during the upcoming year significant to the entire estuary?
- Is there a demonstration of the 25 percent program cost share?

(h) Evaluation of Assistance Applications

Based on the information presented in each Assistance Application, the Regional Administrator approves or disapproves each application on the following criteria:

- Is the work, schedule, and budget consistent with the Annual Work Plan?
- Has the proposed work been adequately reviewed by the Management Conference, Conference committees, EPA, and if appropriate, other peer reviewers?
- Do the benefits of the proposed effort exceed the costs of obtaining the products?
- In the case of cooperative agreements, is there substantial Federal involvement in the project? (Cooperative agreements require some form of substantial Federal involvement.)
- Is the organization that would perform the work qualified to do so?
- Is the 25 percent non-Federal cost share requirement of CWA section 320(g)(3) being demonstrated?

II. Annual Work Plans

Each year a Management Conference sets realistic goals using the resources available. These goals are enunciated in the Annual Work Plan, designed as a blueprint for their achievement. Such a blueprint is a measuring stick against which to gauge the successes, delays, and failures of program activities and to identify the need, if any, to redirect program efforts. Accordingly, it must include a number of elements, each dealing with a different facet of the designed program. These elements are discussed below.

(a) Introduction

As provided in § 35.9065(c)(1), the Introduction to the Annual Work Plan must identify and discuss the major goals and milestones pursued in the past year and establish the goals and milestones to be achieved in the year to come. Goals are based on the five-year program goals established by the Management Conference. They are comprehensive and broad by design and will dictate the overall scope or primary emphasis of the program for the upcoming year.

An explanation of the key activities undertaken to accomplish these goals also should be included in the Introduction. This narrative should not discuss the entirety of the projects or tasks performed, but rather should relate how attainment of goals was furthered. It should state whether the goals pursued were achieved, and if not, it should discuss any important information obtained from the endeavor.

Information acquired from pursuit of past goals may cause modification of existing goals or redistribution of program resources and efforts. It is expected that the Management Conference will take a flexible approach to drafting and implementing the Annual Work Plan. Goals and milestones will be established at the beginning of the year, but as activities make more definitive technical information available, these goals and milestones may be updated. This re-evaluation and re-orientation can be conducted informally during each year, but is formally documented in the upcoming year's Annual work Plan.

(b) Fund Sources

As provided in § 35.9065(c)(2), before the Annual Work Plan can be adopted by the Management Conference, the kinds and amounts of funds to be used in the upcoming year must be documented. These funds may come from a variety of sources and take a variety of forms. Mostly, the funds will come from Federal and State government sources, but will be augmented with funds from private or local government organizations.

Fund sources must be summarized in a table showing the source of funds to be used during the upcoming year (e.g., EPA, state matching funds, state in-kind services, or private donations), the amount of funds committed during the upcoming year, and the specific type of award or fund within each source during the upcoming year (e.g., Clean Water Act section 320, state appropriation, the type of state in-kind contribution, and other private sources of funds). The table must include, at a minimum, four types of sources:

- CWA section 320(g) funds
- CWA section 205(1) funds
- Matching funds (from non-Federal sources)
- Matching in-kind contributions (from non-Federal sources).

The table must also quantify the total amount of funds, by source, to be devoted to the NEP. Figure 3 is an example of the Fund Sources Table.

When a Management Conference uses in-kind contributions or services as part of its matching share, it must eventually provide an accounting of the sources of funds for those contributions. The CWA requires that matching funds come from non-Federal sources. Thus, details of appropriations, gifts, or non-Federal grants that support these projects must be specifically identified in the Annual Work Plan.

(c) Projects

In addition to information on the amount of funding and its source(s), consistent with §§ 35.9065(c)(2) and 35.9065(c)(3), an acceptable Annual Work Plan contains information on how funds have been spent in the past year and how the Management Conference plans to spend funds in the upcoming year.

The discussion should be project-specific—a three- or four-sentence discussion of the activities of each project to be undertaken during the upcoming year in relation to the seven purposes of the Management Conference. The narrative description explains the relationship between the product for each project and the Management Conference purpose being served and outlines the activities being conducted as part of the project. For example, phrases such as "field collection of data to identify the cause of algal blooms" tell the reader the nature of the activity and likely products, and relate directly to the Management Conference purpose of identifying causes of environmental problems. The rest of the narrative can describe project status and any problems or results that have been reported. A table summarizing tasks will include the following items:

- Project or task name;
- Products delivered or to be produced;
- Schedule for (or date of) completion;
- Total projected (or actual) cost;
- Source of funds;
- Responsible organization.

A sample format is shown in Figure 4.

III. Assistance Agreement Applications

Before EPA will allocate Federal grant funds for any estuary program, the organization or agency requesting the funds must submit the appropriate completed application forms.

In accordance with § 35.9065, the application must have been approved by the Management Conference and be consistent with the Annual Work Plans. In addition, projects must comply with applicable administrative requirements contained in the 40 CFR parts 29, 30, 31, 32, 33, and 40 as well as other applicable Federal laws such as the Coastal Zone Management Act (CZMA). In implementing these requirements, OMEP policy specifies that projects must have a combined work/quality assurance project plan and Office of Research and Development (ORD) concurrence.

IV. Effective Date

This regulation is effective immediately. The only purpose of this rule is to codify policies and procedures for financial assistance awarded by EPA under the NEP. Accordingly, this is a grants-related rule and the Administrative Procedure Act, 5 U.S.C. 553(a), does not require that it be published, in proposed form, prior to promulgation.

V. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a new regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments do not satisfy any of the criteria the Executive Order specifies for a major rulemaking. Therefore, this is not subject to a Regulatory Impact Analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and EPA response to those comments are available for public inspection at the EPA Public Information Reference Unit, Room 2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

VI. Paperwork Reduction Act

The information collection requirements contained in this interim final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1500) and a copy may be obtained from Harold Woodley, Information Policy Branch; EPA 401 M Street SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2738. This ICR covers the information collection requirements in both the Financial Assistance for the National Estuary Program Regulation and the Guidance on the Contents of the Governor's nomination.

Public reporting burden for this collection of information is estimated to average 1500 hours for each of the governor's nominations under the Guidance and 250 hours for each of the annual work plans under the Regulation.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs,

BEST COPY AVAILABLE

Office of Management and Budget, Washington, DC 20503, marked "attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this interim final rule.

VII. Regulatory Flexibility Act

EPA did not develop a Regulatory Flexibility Analysis for this regulation because grant regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

Dated: September 22, 1989.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR Part 35

State and local assistance.

BILLING CODE 6560-50-M

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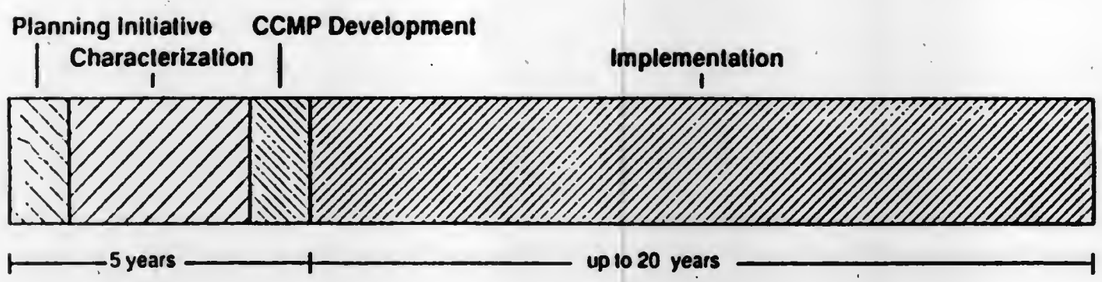


Figure 1. Phases of a Typical Estuary Project

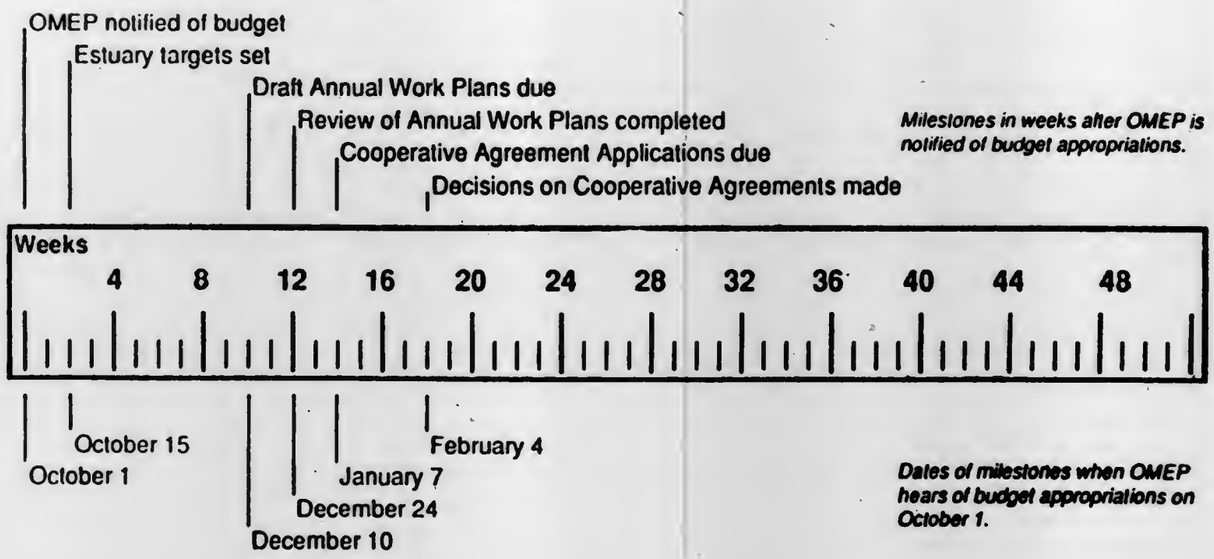


Figure 2. Cycle of Submission and Review of Annual Work Plans and Cooperative Assistance Application

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Figure 3. Sample Table of Fund Sources

FUNDING TABLE, FISCAL YEAR 1989

Source of funds	Amount	Type of award
EPA	$400,000	CWA Sect. 320.
State Matching Funds.	125,000	State Appropriation.
State Services in Kind.	62,000	Monitoring Program.
Private Donations	38,000	Contributions (Save the Bay Project).
Total funding	625,000	
EPA Share=$400,000/$625,000=64%		
Rec. Share=$235,000/$625,000=36%		

Figure 4. Sample Table of Project Status

PROJECT STATUS TABLE FISCAL YEAR 1989

Project name	Management conference purpose [1]	Products delivered/ projected	Date of delivery	Cost	Source of funds	Responsible organization	Percent nonfederal share (percent)
Waste load allocation study.	1, 2	Study report	10/1/93	$180,000	EPA	State Water Quality Management Office.	0
NPDES compliance report	1, 2, and 3	Summary of compliance by each permitted facility.	6/30/89	10,000	State Appropriation 275.27(q).	State NPDES Program Office.	25
NPS study recommendations.	2, 3, and 4	Recommended NPS controls.	10/1/93	30,000 60,000	EPA State Appropriation 275.27(q).	State Water Resources Board.	100

[1] Management conference purpose numbers refer to the seven purposes of a management conference set forth in section 320 of the Clean Water Act. This column provides an indication of the purposes(s) served by each project.

For the reasons set out in the preamble, title 40, chapter I, subchapter B, part 35 of the Code of Federal Regulations, is amended as follows:

PART 35—[AMENDED]

1. Part 35 is amended by adding an authority citation for subpart P to read as follows:

Authority: Sec. 320 of the Clean Water Act, as amended (33 U.S.C. 1330).

2. Subpart P is added to part 35 to read as follows:

Subpart P—Financial Assistance for the National Estuary Program

Sec.
35.9000 Applicability.
35.9005 Purpose.
35.9010 Definitions.
35.9015 Summary of annual process.
35.9020 Planning targets.
35.9030 Work program.
35.9035 Budget period.
35.9040 Application for assistance.
35.9045 EPA action on application.
35.9050 Assistance amount.
35.9055 Evaluation of recipient performance.
35.9060 Maximum Federal share.
35.9065 Limitations.
35.9070 National program assistance agreements.

Subpart P—Financial Assistance for the National Estuary Program

§ 35.9000 Applicability.

This subpart codifies policies and procedures for financial assistance awarded by the EPA to state, interstate, and regional water pollution control agencies and entities and other eligible agencies, institutions, organizations, and individuals for pollution abatement and control programs under the National Estuary Program (NEP). These provisions supplement the EPA general assistance regulations in 40 CFR parts 30 and 31.

§ 35.9005 Purpose.

Section 320(g) of the Clean Water Act (CWA) authorizes assistance to eligible states, agencies, entities, institutions, organizations, and individuals for developing a comprehensive conservation and management plan (CCMP) for an estuary.

§ 35.9010 Definitions.

Aggregate Costs. The total cost of all research, surveys, studies, modeling, and other technical work completed by a Management Conference during a fiscal year to develop a Comprehensive Conservation and Management Plan for the estuary.

Annual Work Plan. The plan, developed by the Management Conference each year, which documents projects to be undertaken during the upcoming year. The Annual Work Plan is developed within budgetary targets provided by EPA.

Five-Year State/EPA Conference Agreement. Agreement negotiated among the States represented in a Management Conference and the EPA shortly after the Management Conference is convened. The agreement identifies milestones to be achieved during the term of the Management Conference.

Management Conference. A Management Conference convened by the Administrator under Section 320 of the CWA for an estuary in the NEP.

National Program Assistance Agreements. Assistance Agreements approved by the EPA Assistant Administrator for Water for work undertaken to accomplish broad NEP goals and objectives.

Work Program. The Scope of Work of an assistance application, which identifies how and when the applicant will use funds to produce specific outputs.

§ 35.9015 Summary of annual process.

(a) EPA considers various factors to allocate among the Management Conferences the funds requested in the President's budget for the NEP. Each year, the Director of the Office of Marine and Estuarine Protection issues budgetary targets for the NEP for each Management Conference. These targets are based upon negotiated Five-Year State/EPA Conference Agreements.

(b) Using the budgetary targets provided by EPA, each Management Conference develops Annual Work Plans describing the work to be completed during the year and identifies individual projects to be funded for the completion of such work. Each applicant having a scope of work approved by the Management Conference completes a standard EPA application, including a proposed work program. After the applicant submits an application, the Regional Administrator reviews it and, if it meets applicable requirements, approves the application and agrees to make an award when funds are available. The Regional Administrator awards assistance from funds appropriated by Congress for that purpose.

(c) The recipient conducts activities according to the approved application and assistance award. The Regional Administrator evaluates recipient performance to ensure compliance with all conditions of the assistance award.

(d) The Regional Administrator may use funds not awarded to an applicant to supplement awards to other recipients who submit a score of work approved by the management conference for NEP funds.

(e) The EPA Assistant Administrator for Water may approve National Program awards as provided in § 35.9070.

§ 35.9020 Planning targets.

The EPA Assistant Administrator for Water develops planning targets each year to help each Management Conference develop an Annual Work Plan. These targets are broad budgetary goals for total expenditures by each estuary program and are directly related to the activities that are to be carried out by each Management Conference in that year as specified in the Five-Year State/EPA Conference Agreement. The planning targets also are based on the Director's evaluation of the ability of each Management Conference to use appropriated funds effectively.

§ 35.9030 Work program.

The work program is part of the application for financial assistance and becomes part of the award document. It is part of the basis for an award decision and the basis for management and evaluation of performance under an assistance award. The work program must specify the level of effort and amount and source of funding estimated to be needed for each identified activity, the outputs committed for each activity, and the schedule for delivery of outputs.

§ 35.9035 Budget period.

An applicant may choose its budget period in consultation with and subject to the approval of the Regional Administrator.

§ 35.9040 Application for assistance.

Each applicant should submit a complete application at least 60 days before the beginning of the budget period. In addition to meeting applicable requirements contained in 40 CFR part 30 or 31, a complete application must contain a discussion of performance to date under an existing award, the proposed work program, and a list of all applicable EPA-approved State strategies and program plans, with a statement certifying that the proposed work program is consistent with these elements. The annual workplan developed and approved by the management conference each fiscal year must demonstrate that non-Federal sources provide at least 25 percent of the aggregate costs of research, surveys, studies, modeling, and other technical work necessary for the development of a CCMP for the estuary. Each application must contain a copy of the Annual Work Plan as apecified in § 35.9065(c) (2) and (3) for the current Federal fiscal year. The funding table in the workplan must demonstrate that the 25 percent match requirements is being met, and the workplan table of project status must show the sources of funds supporting each project.

§ 35.9045 EPA action on application.

The Regional Administrator will review each completed application and should approve, conditionally approve, or disapprove the application within 60 days of receipt. When funds are available, the Regional Administrator will award assistance based on an approved or conditionally approved application. For a continuation award made after the beginning of the approved budget period, EPA will reimburse the applicant for allowable costs incurred from the beginning of the budget period, provided that such costs are contained in the approved application and that the application was submitted before the expiration of the prior budget period.

(a) *Approval.* The Regional Administrator will approve the application only if it satisfies the requirements of CWA section 320; the terms, conditions, and limitations of this subpart; and the applicable provisions of 40 CFR parts 30, 31, and other EPA assistance regulations. The Regional Administrator must also determine that the proposed outputs are consistent with EPA guidance or otherwise demonstrated to be necessary and appropriate; and that achievement of the proposed outputs is feasible, considering the applicant's past performance, program authority, organization, resources, and procedures.

(b) *Conditional approval.* The Regional Administrator may conditionally approve the application after consulting with the applicant if only minor changes are required. The award will include the conditions the applicant must meet to secure final approval and the date by which those conditions must be met.

(c) *Disapproval.* If the application cannot be approved or conditionally approved, the Regional Administrator will negotiate with the applicant to change the output commitments, reduce the assistance amount, or make any other changes necessary for approval. If negotiation fails, the Regional Administrator will disapprove the application in writing.

§ 35.9050 Assistance amount.

(a) *Determining the assistant amount.* In determining the amount of assistance to an applicant, the Regional Administrator will consider the Management Conference planning target, the extent to which the applicant's Work Program is consistent with EPA guidance, and the anticipated cost of the applicant's program relative to the proposed outputs.

(b) Reduction of assistance amount. If the Regional Administrator determines that the proposed outputs do not justify the level of funding requested, he will reduce the assistance amount. If the evaluation indicates that the proposed outputs are not consistent with the priorities contained in EPA guidance, the Regional Administrator may reduce the assistance amount.

§ 35.9055 Evaluation of recipient performance.

The Regional Administrator will oversee each recipient's performance under an assistance agreement. In consultation with the applicant, the Regional Administrator will develop a process for evaluating the recipient's performance. The Regional Administrator will include the schedule for evaluation in the assistance agreement and will evaluate recipient performance and progress toward completing the outputs in the approved work program according to the schedule. The Regional Administrator will provide the evaluation findings to the recipient and will include these findings in the official assistance file. If the evaluation reveals that the recipient is not achieving one or more of the conditions of the assistance agreement, the Regional Administrator will attempt to resolve the situation through negotiation. If agreement is not reached, the Regional Administrator may impose

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sanctions under the applicable provisions of 40 CFR part 30 or 31.

§ 35.9060 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work program costs for a particular application provided that non-Federal sources provide at least 25 percent of the aggregate costs of research, surveys, studies, modeling, and other technical work necessary for the development of a comprehensive conservation and management plan for the estuary as specified in the estuary Annual Work Plan for each fiscal year.

§ 35.9065 Limitations.

(a) *Management conferences.* The Regional Administrator will not award funds pursuant to CWA section 320(g) to any applicant unless and until the scope of work and overall budget have been approved by the Management Conference of the estuary for which the work is proposed.

(b) *Consistency with work plans.* The Regional Administrator will not award funds pursuant to section CWA 320(g) to any applicant whose application is not consistent with work plan elements in an approved Annual Work Plan and an approved Five-Year State/EPA Conference Agreement by the Management Conference of the estuary for which the work is proposed.

(c) *Elements of annual work plans.* Annual Work Plans to be prepared by estuary Management Conferences must be reviewed by the Office of Marine and Estuarine Protection before final ratification by the Management Conference and must include the following elements:

(1) Introduction—A discussion of achievements in the estuary, a summary of activities undertaken in the past year to further each of the seven purposes of a Management Conference specified in section 320(b) of the CWA, the major emphases for activity in the upcoming year, and a schedule of milestones to be reached during the year.

(2) Funding sources—A table of fund sources for activities in the new year, including a description of the sources and types (e.g., in-kind contributions to be performed by the applicant) of funds comprising the contribution by applicants or third parties, and the source and type of any other non-Federal funds or contributions.

(3) Projects—A description of each project to be undertaken, a summary table of project status listing all activities, the responsible organization or individual, the products expected from each project, approximate schedules, budgets, and the source and type of the non-Federal 25 percent minimum cost share of the aggregate costs of research, surveys, studies, modeling, and other technical work necessary for the development of a comprehensive conservation and management plan for an estuary.

§ 35.9070 National program assistance agreements.

The Assistant Administrator for Water may approve the award of NEP funds for work that has broad applicability to estuaries of national significance. These awards shall be deemed to be consistent with Annual Work Plans and Five-Year State/EPA Conference Agreements approved by individual management conferences. The amount of a national program award shall not exceed 75 percent of the approved work program costs provided the non-Federal share of such costs is provided from non-Federal sources.

[FR Doc. 89-23235 Filed 10-2-89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
October 3, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 347 and 348
Skin Protectant and External Analgesic Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Poison Ivy, Poison Oak, Poison Sumac, and Insect Bites Drug Products

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N-021P]

RIN 0905-AA06

Skin Protectant Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Poison Ivy, Poison Oak, Poison Sumac, and Insect Bites Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the tentative final monograph (proposed rule) for over-the-counter (OTC) skin protectant drug products. The proposed rulemaking would establish conditions under which OTC skin protectant drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the statements on OTC drug products for poison ivy, poison oak, and poison sumac, and for use as insect bite neutralizers of the Advisory Review Panel on OTC Miscellaneous External Drug Products, public comments on an advance notice of proposed rulemaking that was based on those statements, and public comments on the notice of proposed rulemaking for OTC skin protectant drug products. (See the **Federal Register** of February 15, 1983; 48 FR 6820.) The agency's proposals concerning the use of other OTC drug products for treating the symptoms of poison ivy, poison oak, poison sumac, and insect bites are being published elsewhere in this issue of the **Federal Register**. These proposals are part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed rulemaking before the Commissioner of Food and Drugs by January 31, 1990. The agency is allowing a period of 120 days for comments and objections instead of the normal 60 days for the following reasons: (1) The concurrent publication of two rulemakings regarding OTC drug products for poison ivy, poison oak, poison sumac, and insect bites and (2) this document contains the first published evaluation of several submissions of data on OTC drug products for the treatment and/or prevention of these conditions that were made to, but not reviewed by, the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel). New data by October 3, 1990. Comments on the new data by December 3, 1990. Written comments on the agency's economic impact determination by January 31, 1990.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1982, FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking and reopened the administrative records for OTC external analgesic drug products (47 FR 39412) and skin protectant drug products (47 FR 39436). The notices were published to allow for consideration of statements on OTC drug products for the prevention of poison ivy, poison oak, poison sumac, and for use as insect bite neutralizers. The statements were prepared by the Miscellaneous External Panel, which was the advisory review panel responsible for evaluating data on the active ingredients used for these conditions. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the **Federal Register** of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC skin protectant drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information.

One trade association and five drug manufacturers submitted comments concerning the use of skin protectant drug products for poison ivy, poison oak, poison sumac, and insect bites (poison ivy-oak-sumac and insect bites). Some of these comments were submitted to both the external analgesic and skin protectant rulemakings. In those cases where the same comments were submitted to both rulemakings, the comments will be addressed only in the appropriate amendment to either the proposed rule for OTC skin protectant drug products or for OTC external analgesic drug products published elsewhere in this issue of the **Federal Register**. Copies of the comments received are on public display in the Dockets Management Branch.

The Panel provided general statements on OTC drug products for the prevention of poison ivy, poison oak, poison sumac, and for use as insect bite neutralizers. However, the Panel did not review all of the submitted individual ingredients nor develop labeling for drug products for these indications. Also, the Panel reviewed only ingredients with labeling claims for prevention of poison ivy, poison oak, or poison sumac, or for treatment of insect bites by neutralization or inactivation of insect venom. However, many submissions to the Panel were for drug products used to treat the symptoms (i.e., itching, minor irritations) of poison ivy-oak-sumac and insect bites by the mechanism of providing a physical or mechanical barrier to protect the exposed skin surfaces from harmful or annoying stimuli. Additionally, a number of skin protectant drug products labeled for the treatment and/or prevention of poison ivy, poison oak, poison sumac and for the treatment and/or neutralization of insect bites were not submitted to the Miscellaneous External Panel. Therefore, the agency is expanding the scope of this segment of the skin protectant rulemaking to include all OTC skin protectant drug products labeled for any of these uses.

In this document, the agency is addressing comments concerning drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac and for the treatment and/or neutralization of insect bites when the mechanism of action for these uses involves the ingredient's ability to neutralize or inactivate insect venom or the ingredient's ability to provide a mechanical barrier to protect exposed skin surfaces from harmful or annoying stimuli. In the external analgesic rulemaking (published elsewhere in this issue of the **Federal Register**), the agency is addressing claims for the treatment of symptoms of poison ivy-oak-sumac and insect bites when the mechanism of action for these claims involves the depression or stimulation of cutaneous sensory receptors.

In the **Federal Register** of February 15, 1983 (48 FR 6820), the agency published a tentative final monograph (proposed rule) for OTC skin protectant drug products. The agency issued this notice after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations.

Interested persons were invited to submit comments by April 18, 1983, new data by February 15, 1984, and comments on new data by April 16, 1984. In response to that notice, one manufacturer's association and five drug manufacturers submitted comments concerning the use of skin protectant ingredients for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites. The agency is also addressing these comments in this notice of proposed rulemaking. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In this notice of proposed rulemaking, FDA responds to public comment and further discusses its position on OTC skin protectant drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites. Final agency action on this matter will occur with the publication at a future date of a final rule relating to OTC skin protectant drug products for these conditions.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** on November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notices of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

The agency has reviewed the comments submitted to this rulemaking. As noted above, most of the comments were also submitted to the external analgesic rulemaking. The agency has addressed the general comments in the proposed rulemaking to amend the tentative final monograph for OTC external analgesic drug products, published elsewhere in this issue of the **Federal Register**. These comments are incorporated into this rulemaking.

1. One comment requested that colloidal oatmeal be included in the skin protectant monograph as a safe and effective ingredient for the claim: "For prompt temporary relief of itchy, sore, sensitive skin due to: * * * poison ivy/oak * * *." The comment based its request on the Miscellaneous External Panel's review of colloidal oatmeal as an antipruritic at that Panel's 23d meeting on January 29 and 30, 1978. The comment noted that the Panel found colloidal oatmeal at all concentrations to be safe and effective as a bath additive, cleansing bar, and soak for the symptomatic relief and treatment of dry skin and the resultant itching (Ref. 1).

The comment contended that colloidal oatmeal falls within the Topical Analgesic Panel's definition of a skin protectant. The comment argued that, due to its physical and chemical properties, colloidal oatmeal isolates exposed skin or mucous membrane surface from harmful or annoying stimuli. (See proposed § 347.3 at 43 FR 34628 at 34648; August 4, 1978.) Moreover, the comment added that colloidal oatmeal meets the Panel's criteria described at 43 FR 34630 in that it protects by mechanical or other physical means, is inert, insoluble, finely subdivided, and adsorbs some moisture. The comment stated that colloidal oatmeal that is dispersed in water and applied to the skin deposits particles on the skin and leaves behind an occlusive film barrier that is helpful in protecting skin against irritation and in soothing irritated or pruritic skin conditions. The comment added that colloidal oatmeal when added to water controls the osmotic pressure of water with respect to the skin and permits adequate water to enter into the stratum corneum. The comment stated that the oatmeal leaves behind a thin occlusive film on the skin and this serves to hold in the adsorbed moisture. The result of this coating is that the skin is protected against irritation; hence, the ingredient has an antipruritic and generally soothing effect. The comment noted that the Topical Analgesic Panel stated at 43 FR 34630 that "* * * the fluids from seeping rashes or toxic dermatoses (poison ivy, poison sumac, * * *) are absorbed or adsorbed by many of these drugs. Often itching is ameliorated." Based on the above, the comment contended that the following claim for colloidal oatmeal is justified: "For prompt temporary relief of itchy, sore, sensitive skin due to: * * * poison ivy and oak * * *."

The Topical Analgesic Panel stated at 43 FR 34630 that well-controlled clinical

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studies have not been conducted for most of the skin protectant ingredients. The Panel recommended that the requirement for well-controlled studies be waived, on the grounds that clinical studies are not necessary to support the use of mechanical barriers such as these ingredients to protect the skin from further injury. The agency agrees with this recommendation regarding skin protectant (physical barrier type) ingredients.

In addition, the agency agrees that colloidal oatmeal qualifies as a skin protectant because of its barrier-like properties. Montebovi (Ref. 2) identified and evaluated a number of hydrophilic colloids including colloidal oatmeal using the "Gold Number" as a means of determining the protective ability of hydrophilic solutions. The "Gold Number" is an in vitro physical chemical determination intended to measure the protective ability of hydrophilic colloids. Montebovi also measured and evaluated the viscosity of hydrophilic colloids with particular reference to colloidal oatmeal and stated that:

> The colloidal adsorbents are used in dermatology primarily for their protective demulcent effects. On the basis of the physical properties of the agents commonly used for this purpose, the role of colloidal oatmeal appears to be well founded. Chemically it is made up of gums, protein, and oil in a ratio which is consistent with the desirable characteristics of the purified agents. Its high protective colloidal activity is demonstrated by the low Gold Number. The viscosity and surface tension establish a good spreading and clinging property which would be necessary for sustained protective action.

Furthermore, the agency has reviewed the data submitted by the comment (Ref. 3) in view of the Panel's recommendations and concludes there is sufficient information to demonstrate that colloidal oatmeal is safe and effective when used in a bath to relieve minor skin irritation and itching due to poison ivy, poison oak, and poison sumac. The comment cited the Merck Manual (Ref. 4) which recommends that, in extensive pruritis, the patient should soak for 10 to 20 minutes twice a day in a colloidal oatmeal bath. Also, the American Medical Association Drug Evaluations (Ref. 5) states that pruritus accompanying acute dermatitis or extensive exanthematous lesions is often alleviated by immersion of the part or the entire body in water and that colloidal substances can be added to such baths for their soothing and antipruritic activities. It recommends the use of colloidal oatmeal added to a tub half-filled with water.

Other references submitted by the comment also describe the use of colloidal oatmeal in therapeutic baths to relieve minor skin irritation. Epstein (Ref. 6) recommended tepid colloidal oatmeal baths (250 grams in a tub of water twice daily) to ease discomfort in cases of generalized dermatitis. Lewis and Wheeler (Ref. 7) recommended the use of baths (e.g., colloidal oatmeal ½ to 1 cupful to a tub of water) when dermatosis is extensive and stated that such baths are used for their soothing or antipruritic properties and are often the most efficient method for applying medication to exudative surfaces. Whyte (Ref. 8) stated that, in acute (exudative) dermatitis and subacute dermatitis (less exudative), colloidal oatmeal in warm water should be used to soothe and coat the inflamed skin with a bland colloid. Whyte added that a paroxysm of itching is often best treated by a comfortable warm colloid bath once or more daily. O'Brasky (Ref. 9) described one patient with "an erythematous, vesicular and edematous eruption, typical of a contact dermatitis (ivy) * * * ." The investigator stated that the patient responded well to treatment with colloidal oatmeal baths (no other medication was used), and was discharged 10 days after treatment began. O'Brasky treated 111 patients with dry skin manifestations (including one patient with multiple insect bites) and noted that the colloidal oatmeal baths had antipruritic properties because patients complained of recurrent itching when the baths were omitted.

The agency agrees with the comment that the evidence is supportive of the general recognition of colloidal oatmeal as a safe and effective skin protectant. Based on the available information, the agency believes that colloidal oatmeal could be classified as a Category I skin protectant when labeled with the following claim: "Provides temporary skin protection and relieves minor irritation and itching due to poison ivy, poison oak, poison sumac, and insect bites."

However, in order for colloidal oatmeal to be generally recognized as safe and effective as a skin protectant, the agency must have sufficient data on the composition and concentration of the different constituents and the quantity (range) of each that is contained in marketed products. For an ingredient or mixture to be included in an OTC drug final monograph, it is necessary to have publicly available chemical information that can be used by all manufacturers to determine that the ingredient is appropriate for use in their products.

The comment submitted a report by MonteBovi (Ref. 2) that describes colloidal oatmeal as a specifically milled constant fraction of the colloid-producing portion of the oat grain, having a chemical analysis of 46 percent carbohydrate, 9.0 percent oil, 24.0 percent protein, 8.0 percent moisture, and 0.03 percent crude fiber. However, the agency does not find this information to be an adequate public standard for colloidal oatmeal.

The agency believes that it would be appropriate for interested parties to develop with the United States Pharmacopeial Convention appropriate standards for the quality and purity of colloidal oatmeal. In this tentative final monograph, colloidal oatmeal is proposed in Category I. However, should interested parties fail to provide necessary information so that an appropriate standard may be established, colloidal oatmeal will not be included in a final monograph.

The comment submitted the following directions for the use of colloidal oatmeal in a bath: Turn the warm bath water on to full force, then slowly sprinkle one cupful of colloidal oatmeal into the bathtub under the faucet. Before entering the tub, stir any colloidal oatmeal that may have settled to the bottom of the tub. Bathe for 15 to 20 minutes. For infants, use 2 tablespoonfuls per bath. Use once or twice daily, or as directed by your physician.

The agency is proposing these directions for colloidal oatmeal with minor revisions. Because it is desirable to leave a thin layer of the colloidal oatmeal on the skin after bathing, the agency is adding directions to pat the skin dry, rather than to rub it dry, after the bath. In addition, the submitted labeling recommends a dosage for infants, but it does not specify a particular age range, how much water to which the 2 tablespoonfuls of colloidal oatmeal should be added, or how it should be added to ensure dispersion of the colloidal oatmeal to make a colloidal suspension. In general, infants would be bathed in something smaller than an adult-sized tub and the amount of water would be less. Therefore, the agency has not included specific directions for children under 2 years of age at this time and requests specific comment on appropriate directions for this age group as well as a possible lower age limit for use of this ingredient.

Based on the submitted labeling, the following directions are being proposed for colloidal oatmeal for use as a skin protectant: Adults and children 2 years of age and over: For use as a soak in a tub. Turn tub warm water faucet on to full force, then slowly sprinkle 1 cupful of colloidal oatmeal directly under the faucet into the tub. Before entering the tub, stir any colloidal oatmeal that may have settled to the bottom of the tub. Soak the affected area for 15 to 20 minutes as needed. Do not rub area dry, but instead pat dry so that a thin layer of the colloidal oatmeal will be left on the skin. Soak once or twice daily, or as directed by your doctor. Children under 2 years of age: consult a doctor.

In addition, several references mentioned that patients should be careful when using colloidal oatmeal in a bath to avoid slipping in the tub (Ref. 3). Current labeling for the submitted product states: "Take special care to avoid slipping" (Ref. 10). The agency believes it is appropriate to propose that a statement like this be required as a warning for skin protectant drug products containing colloidal oatmeal. The agency is expanding the statement to read "Take special care to avoid slipping when getting into and out of the tub" to make it more specific for consumers.

References

(1) Summary of Minutes of the Twenty-Third Meeting of the Advisory Review Panel on OTC Miscellaneous External Drug Products, January 29 and 30, 1978, OTC Volume 16DPA1, Docket No. 78N–0021, Dockets Management Branch.

(2) MonteBovi, A. J., "The Colloidal Demulcents. I. Physical and Chemical Properties," *American Journal of Pharmacy*, 128:4–7, 1954.

(3) OTC Volumes 160069 and 160070.

(4) "The Merck Manual," 12th Ed., Merck Sharpe & Dohme Research Laboratories, West Point, PA, p. 1431, 1972.

(5) "Drug Evaluations," 6th Ed., American Medical Association, Chicago, p. 1030, 1986.

(6) Epstein, W. L., "Contact Dermatitis," in OTC Volume 160070.

(7) Lewis, G. M., and C. E. Wheeler, Jr., "Practical Dermatology," in OTC Volume 160070.

(8) Whyte, H. J., "Atopic Dermatitis," in OTC Volume 160070.

(9) O'Brasky, L., "Management of Extensive Dry Skin Conditions," *Connecticut Medicine*, 23:20, 1959.

(10) Labeling for Colloidal Oatmeal Product in OTC Volume 06P1STPM, Docket No. 78N–021P, Dockets Management Branch.

2. Two comments requested that corn starch be classified as a Category I skin protectant for the treatment of poison ivy, poison oak, and poison sumac. One comment, noting that the agency had tentatively deleted corn starch from the skin protectant tentative final monograph until diaper rash drug products are reviewed, stated that although corn starch is widely used in diaper rash products, it is also an ingredient in skin protectant products for use by the general population. The second comment agreed with the agency's proposal that the maximum Category I concentration of corn starch be raised from 85 to 97 percent (48 FR 6820 at 6828). However, the comment disagreed with the agency's statement in the tentative final monograph that "at the present time none of the proposed Category I indications are applicable to corn starch," (48 FR 6820 at 6828). Accordingly, both comments requested that corn starch be included in the skin protectant monograph as a general skin protectant labeled with the following indication proposed in § 347.50(b)(3) of the tentative final monograph: "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac."

The Topical Analgesic Panel classified 10 to 85 percent corn starch as a Category I skin protectant in its report (43 FR 34628 at 34636). One of the skin protectant indications recommended by the Panel for corn starch in § 347.50(b) reads "For symptoms of oozing or weeping" (optional, any or all of the following) "due to contact dermatitis, poison oak, or poison ivy" (43 FR 34648). In its discussion of corn starch, the Panel mentioned that absorption by corn starch probably surpasses that of any powder described in the official compendia. It protects the skin by absorbing moisture, perspiration, and noxious secretions, and it soothes dermal irritation and itching (43 FR 34636). However, the Panel did not cite any studies or literature references on the use of corn starch for the treatment of poison ivy, poison oak, poison sumac, or other types of contact dermatitis.

In the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6828), the agency stated that "at the present time, none of the proposed Category I indications are applicable to corn starch. Most of the uses of corn starch discussed by the Topical Analgesic Panel are cosmetic uses. The primary OTC drug use of corn starch appears to be in diaper rash drug products." Therefore, the agency did not include corn starch in the tentative final monograph, but deferred evaluation of corn starch until its use in diaper rash drug products was reviewed. That evaluation will be published in a future issue of the **Federal Register**.

In the present document, the agency is classifying topical starch in Category III for the treatment of poison ivy, poison oak, and poison sumac.

Note: Although "corn starch" has been used as the name for this ingredient, "topical starch" is the official title used in the United States Pharmacopeia XXI (Ref. 1).

The comments did not submit any data on the use of topical starch for use as a treatment for poison ivy, poison oak, and poison sumac. In addition, the submissions to the Panel do not contain any data on the use of topical starch as a poison ivy treatment. Several articles in one submission state that starch is used to cover and protect the skin, mucous membranes, ulcers, and wounds, but also state that water-absorbent powders should not be used on extensive profusely secreting raw surfaces, as they tend to cake and form adherent crusts, and that starch becomes doughy (Refs. 2 through 5). Further, although two submissions to the Panel contain information on products containing topical starch and include poison ivy labeling claims (e.g., helps dry weeping of poison ivy, poison oak, and poison sumac), the therapeutic properties of the products were attributed to other ingredients in the product, and topical starch was only included as an inactive ingredient (Ref. 6). Other submissions of products containing topical starch did not contain any poison ivy treatment labeling claims (Ref. 7). Additionally, the agency is unaware of any products that bear poison ivy treatment labeling claims that contain topical starch as an active ingredient.

The initial symptoms following exposure to poison ivy include erythema or rash. The development of raised lesions follows, and finally vesicles and bullae form, caused by fluid accumulation in the epidermis. The initial lesions usually are marked by mild to intense itching and burning. The affected area, often hot and swollen, oozes and eventually dries and crusts. Most cases of poison ivy are self-limiting and disappear in 14 to 20 days (Ref. 8). Topical starch is safe when applied topically, but should not be used on broken skin because crusting and skin granulomas have been known to occur when starch is applied to broken skin (Refs. 9 and 10). Thus, because of the weeping and oozing vesicles associated with poison ivy and related contact dermatitis, the agency believes that topical starch may not be appropriate to treat the symptoms of poison ivy, poison oak, and poison sumac. Further, because of a lack of data on effectiveness and a suitable concentration of topical starch for this use, and because the agency is unaware of any marketed products that contain topical starch as an active ingredient for the treatment of poison ivy, as discussed above, the agency proposes that topical starch be classified in Category III as a skin protectant drug

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product for the treatment of poison ivy, poison oak, and poison sumac. Other skin protectant uses of topical starch will be addressed in the diaper rash amendment to the tentative final monograph for OTC skin protectant drug products and in the final monograph for OTC skin protectant drug products.

References

(1) "The United States Pharmacopeia, XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 984, 1985.

(2) Welsh, A.L., "Powders," *in* "The Dermatologist's Handbook," Charles C. Thomas, Springfield, IL, pp. 12–14, 1957.

(3) Martin, E.W., "Techniques of Medication. A Manual on the Administration of Drug Products," J.B. Lippincott Co., Philadelphia, pp. 56–57, 1969.

(4) Balsam, M.S., and E. Sagarin, editors, "Cosmetics: Science and Technology," Vol. 1, 2d Ed., Wiley-Interscience, New York, pp. 136–138 and 152–154, 1972.

(5) Swinyard, E.A., "Locally Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L. S. Goodman and A. Gilman, The Macmillan Co., New York, p. 989, 1970.

(6) OTC Volumes 160040 and 160077.

(7) OTC Volumes 060137 and 160242.

(8) Wormser, H., "Poison Ivy and Poison Oak Products," *in* "Handbook of Nonprescription Drugs," 8th Ed., American Pharmaceutical Association, Washington, pp. 633–642, 1986.

(9) Kelly, R., and P.E. Campbell, "Granuloma Glutaeale Infantum with Starch Granules in the Lesion," *The Medicol Journal of Australia*, 2:438–439, 1973.

(10) Leonard, D.D., "Starch Granulomas," *Archives of Dermotology*, 107:101–103, 1973.

3. One comment requested that sodium bicarbonate (baking soda) be classified as a Category I skin protectant for drying the oozing and weeping of poison ivy, poison oak, and poison sumac, and for protecting and relieving the irritation associated with various skin problems, such as poison ivy and minor insect bites and stings. Referring to the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6830), which discussed FDA's decision to transfer sodium bicarbonate from the rulemaking for OTC skin protectant drug products to the rulemaking for OTC external analgesic drug products, the comment stated that baking soda should be considered in both rulemakings. The comment expressed concern that sodium bicarbonate had been placed in Category II as an insect bite neutralizer by the Miscellaneous External Panel in its statement on OTC insect bite neutralizer drug products, published in the **Federal Register** of September 7, 1982 (47 FR 39448). The comment contended that the ingredient was incorrectly categorized. The comment asked that the data on sodium bicarbonate previously submitted to the Miscellaneous External Panel (Ref. 1) and to the rulemakings for OTC skin protectant and external analgesic drug products (Refs. 2 through 5) be reconsidered as demonstrating that sodium bicarbonate has been used and marketed for many dermatological conditions, including for the relief, protection, and for drying the oozing and weeping of poison ivy, poison oak, and poison sumac, and for the relief of itching of poison ivy-oak-sumac and insect bites. The comment added that a survey (Ref. 1) indicates that many dermatologists and other physicians routinely prescribe sodium bicarbonate for a wide variety of external drug uses, including, but not limited to, relief of minor insect stings and bites.

The comment noted that, although sodium bicarbonate has not been the subject of double-blind clinical trials (a concept of relatively recent development, circa 1952), it has been used for a long time for its effectiveness in the treatment of a variety of skin conditions (Ref. 6). The comment included a "dermatological summary of baking soda" (sodium bicarbonate) (Ref. 6) which contained references in the medical literature on the topical use of sodium bicarbonate (e.g., as a powder and in a bath) in a number of dermatological conditions.

The Topical Analgesic Panel classified sodium bicarbonate as safe and effective for use as a skin protectant (43 FR 34628 at 34640). That Panel concluded that sodium bicarbonate is safe for use as a skin protectant with no age or concentration limits. That Panel stated that sodium bicarbonate has a long history of market acceptability, soothes irritated skin, and as a topical protectant is effective in the symptomatic relief of minor irritations, insect bites, and stings (43 FR 34640). That Panel stated that sodium bicarbonate is effective as a skin protectant due to its absorbent properties, but did not include the ingredient in its table which categorized the purposes (i.e., for dryness, wetness, or lubricity) for which Category I skin protectants are used (43 FR 34632).

In the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6830), the agency stated that the Panel pointed out that sodium bicarbonate is an effective antipruritic in relieving itching due to nonpoisonous insect stings and bites, or due to sunburn, and that it is also used to relieve the pain of minor acid burns. Because the indication "for the temporary relief of pain and itching due to minor burns, sunburn, * * * insect bites, and minor skin irritations" was being addressed in the external analgesic rulemaking (December 4, 1979; 44 FR 69768), the agency transferred sodium bicarbonate to that rulemaking proceeding.

Now that all of the information submitted on the uses of sodium bicarbonate has been reviewed, the agency has determined that sodium bicarbonate should be addressed in the skin protectant rulemaking, not in the external analgesic rulemaking. For reasons discussed below, the agency believes that claims related to the "relief of itching of poison ivy and insect bite" for sodium bicarbonate should be considered under the skin protectant rulemaking.

The agency has reviewed the data referred to by the comment (Refs. 1 through 6), which include information on (1) the historical use of sodium bicarbonate as a paste for treatment of skin irritation, including insect bites and poison ivy, (2) eye, skin, and oral toxicity data, which indicate that sodium bicarbonate is relatively nontoxic, (3) a survey of dermatologists and general practitioners in which it was concluded that one out of three responding dermatologists and one out of two responding general practitioners have used or recommended use of sodium bicarbonate for relief of insect bites, minor burns, and pruritis, and (4) efficacy data consisting of references indicating that sodium bicarbonate used as a paste, wet dressing, or in a tub bath provides relief of skin irritation and minor skin conditions such as mild itching, erythema, and insect bites, and because of its emollient effect relieves skin irritation.

The data show that alkaline baths (sodium bicarbonate) are useful in chronic, scaly dermatoses and urticaria, and help to soften the skin. However, for insect bites and stings, first aid measures are not entirely effective because the bite wound extends beneath the skin, although a paste made of baking soda and cold cream provides some relief. The comment claimed that sodium bicarbonate reduces pain by neutralizing the formic acid injected by the insect.

The agency agrees with the Topical Analgesic Panel that sodium bicarbonate can be generally recognized as a safe and effective skin protectant (43 FR 34628 at 34640). Additionally, the agency agrees with the Panel's statement in its report on skin protectant drug products that sodium bicarbonate has antipruritic activity (43 FR 34640). Moreover, other information discussed above indicates that sodium bicarbonate provides relief of itching (Refs. 1 through 6). The Panel's discussion of sodium bicarbonate's antipruritic activity concerned the ingredient's use as a skin protectant, not as an external analgesic. The relief of itching attributed to skin protectants was based on the pharmacologic action of these drugs in providing a physical or mechanical barrier to protect exposed skin surfaces from harmful or annoying stimuli (43 FR 34630). The pharmacological action of external analgesics is to depress or stimulate the cutaneous sensory receptors as a means of relieving the symptoms of pain and itching (44 FR 69768 at 69772). Thus, sodium bicarbonate's mechanism of action in relieving itching is based on its use as a mechanical barrier (i.e., skin protectant), rather than on physiological or physiochemical factors (i.e., external analgesic). Therefore, the "relief of itching" claim for sodium bicarbonate is addressed in this rulemaking.

Based on the available information, the agency believes that sodium bicarbonate can be classified as a Category I skin protectant when labeled with the following claim: "Provides temporary skin protection and relieves minor irritation and itching due to poison ivy, poison oak, poison sumac, and insect bites." However, the submitted data do not provide any information on sodium bicarbonate's drying effect in conditions such as poison ivy, poison oak, and poison sumac; therefore, the indication "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac" is not being proposed for sodium bicarbonate. Nor is there evidence to support the use of sodium bicarbonate as an insect bite neutralizer. Therefore, the agency is retaining the Category II classification that was proposed for this ingredient as an insect bite neutralizer by the Miscellaneous External Panel (47 FR 39436 at 39448).

The Topical Analgesic Panel did not recommend any age or concentration limits for the use of sodium bicarbonate. The agency is not proposing any concentration limits for sodium bicarbonate in this amendment; however, it is including an age limitation. No data were provided on the use of sodium bicarbonate on infants for the requested uses. The agency is aware of one report of an adverse reaction in a 4-month-old infant after treatment of diaper rash with sodium bicarbonate (Ref. 7). The adverse reaction report states that liberal amounts of sodium bicarbonate and petrolatum had been applied to a severe diaper rash at every diaper change for more than a week. The infant experienced hypokalemic metabolic alkalosis which the authors attributed to excessive sodium bicarbonate absorption from the baking soda that was applied to the diaper rash. The authors postulated that metabolic alkalosis occurred because the infant's immature renal system was not able to effectively excrete the excessive load of bicarbonate.

The agency notes that a marketed product containing sodium bicarbonate provides directions for emollient baths to relieve skin irritations (Ref. 1). Regarding the use of sodium bicarbonate for such baths, the submission (Ref. 1) cites the Merck Manual (Ref. 8) as recommending that 8 ounces of sodium bicarbonate be dissolved in about 30 gallons of warm water and that the patient should remain in the bath for 10 to 30 minutes or longer. The skin should be patted dry rather than rubbed so that a thin film of the drug remains on the skin. Other submitted data (Ref. 6) indicated that although there is variation regarding the recommended or optimal concentration of sodium bicarbonate for baths and solutions, a range of 1 to 5 percent would encompass most of the concentrations.

The following directions are being proposed for sodium bicarbonate for use as a skin protectant: "Adults and children 2 years of age and over: Topical dosage is 1 to 100 percent sodium bicarbonate.

(i) *For use as a paste.* Add sufficient water to the sodium bicarbonate to form a paste and apply to the affected area of the skin as needed. Children under 2 years of age: Consult a doctor.

(ii) *For use as a soak in a tub.* Dissolve 1 to 2 cupfuls of this product in a tub of warm water and soak for 10 to 30 minutes as needed. Do not rub dry, but instead pat dry so that a thin layer of the sodium bicarbonate will be left on the skin. Children under 2 years of age: Consult a doctor.

(iii) *For use as a wet dressing.* Add sodium bicarbonate to water to make a solution. Use a container in which you can saturate a cloth. Saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Repeat as often as necessary. Discard remaining solution after use."

The agency has considered the warnings proposed for skin protectants in § 347.50(c) to determine which are applicable to sodium bicarbonate. In the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6830), a comment requested that sodium bicarbonate be exempted from the general warning for skin protectants "For external use only" because it is both a food and an antacid and, thus, this warning would confuse consumers. The agency agrees that sodium bicarbonate can be exempted from the warning "For external use only." Further, the directions for using the ingredient as a skin protectant clearly indicate that the product is for external use. The comment also requested that sodium bicarbonate be exempted from the warning "Avoid contact with the eyes." The comment contended that the drug is nonirritating according to the Draize rabbit eye irritation test, and it is used in swimming pools and baths.

The agency has reviewed the eye irritation study referred to by the comment (Ref. 1). Six rabbits were tested using sodium bicarbonate (0.086 grams) instilled into the right eye. All rabbits exhibited redness of the conjunctiva because of sodium bicarbonate, and two exhibited a slight discharge. However, as stated by the comment, the drug would not be considered an eye irritant according to the standards prescribed in the Draize testing methodology. Although sodium bicarbonate is not considered an eye irritant, it caused redness of the eye in rabbits. Because any product that might be used on the face could accidentally get into the eye and cause irritation, the agency believes that a general warning to avoid contact with the eyes is appropriate. Therefore, the warning is being retained for sodium bicarbonate. Thus, the following warnings proposed in § 347.50(c) (1) and (2) are applicable to sodium bicarbonate: (1) "Avoid contact with the eyes," and (2) "If condition worsens or does not improve within 7 days, consult a doctor."

The use of sodium bicarbonate for other skin protectant uses will be discussed in future issues of the **Federal Register**.

References

(1) OTC Volume 160032.

(2) Comment C00027, Docket No. 78N–0021, Dockets Management Branch.

(3) Comment C00050, Docket No. 78N–0021, Dockets Management Branch.

(4) Comment C00047, Docket No. 78N–0301, Dockets Management Branch.

(5) Comment C00065, Docket No. 78N–0301, Dockets Management Branch.

(6) Eisenstat, B.A., "Dermatological Summary of Baking Soda," unpublished study, pp. 1–7, October 7, 1983, in OTC Volume 06PISTFM, Docket No. 78N–021P, Dockets Management Branch.

(7) Gonzalez, J., and R.J. Hogg, "Metabolic Alkalosis Secondary to Baking Soda

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Treatment of a Diaper Rash." *Pediatrics*, 67:820–822, 1981.

(8) Lyght, C.E., editor, "The Merck Manual," 9th Ed., Merck & Co., Rahway, NJ, p. 1756, 1956.

4. Two comments contended that limiting the statement of identity for different skin protectant drug products to the one term "skin protectant" is too restrictive, that other equally descriptive terms are appropriate, and that other statements of identity should be allowed for such products. One comment stated that the statement of identity should reflect the mode of action and suggested that the term "poison ivy and oak (dosage form)" be allowed for skin protectant drug products labeled for this use. The other comment argued that because the tentative final monograph provides separate and distinct indications for each group of skin protectant drug products, there should be equally separate and distinct statements of identity for each group. According to the comment, the large diversity of appropriate indications justifies an equally diverse list of appropriate statements of identity that would properly inform the consumer of the intended use of the product. The comment requested that additional statements of identity be included in the skin protectant monograph and suggested such statements as "poison ivy, oak, sumac treatment," "poison ivy, oak, sumac protectant," and "drying (dosage form)" for ingredients proposed in § 347.50(b)(3) and also for corn starch.

The agency agrees with one comment that the term "poison ivy, oak, sumac treatment" is an appropriate statement of identity for skin protectant drug products used for this purpose, including the ingredients colloidal oatmeal and sodium bicarbonate that are proposed for Category I status in this document (see comments 1 and 3 above.). However, the agency does not find the statements "poison ivy and oak (dosage form)" and "poison ivy, oak, sumac protectant" to be as descriptive and informative to consumers. Further, the agency believes that the word "protectant" in the latter statement is confusing and could be interpreted as protecting against poison ivy, oak, and sumac.

In addition, the agency believes that while the statement "drying (dosage form)" describes the principal intended action of skin protectant drug products used for the proposed indication ("Dries the oozing and weeping of poison ivy, poison oak, and poison sumac"), it is too general if used alone. If the concept of "drying" is combined with "poison ivy, oak, and sumac," it would be an acceptable statement of identity. However, this statement of identity is not appropriate for the ingredients colloidal oatmeal and sodium bicarbonate, because the agency is not proposing that these ingredients be Category I for the indication "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac." (See comments 1 and 3 above.) Accordingly, the agency is proposing that the statement of identity in § 347.50(a) for skin protectant drug products used to treat poison ivy, poison oak, and poison sumac be revised to read as follows: "(a) *Statement of Identity*. The labeling of the product contains the established names of the product, if any, and identifies the product with one or more of the following:

(1) "Skin protectant."

(2) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), or (m).* "Poison ivy, oak, sumac drying" (insert dosage form, e.g., "cream," "lotion," or "ointment").

(3) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), (m), (t), or (u).* "Poison ivy, oak, sumac treatment.

II. The Agency's Evaluation of the Submissions

The Miscellaneous External Panel discussed only the use of OTC drug products for the prevention of poison ivy, poison oak, and poison sumac and for use as insect bite neutralizers. The Panel recommended that the agency consider in appropriate rulemakings ingredients and labeling claims submitted for treating poison ivy, poison oak, poison sumac, and their related symptoms (47 FR 39436 at 39441).

In this document, the agency discusses the use of OTC skin protectant drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites. The agency has evaluated a number of submissions (Ref. 1) that were not reviewed by the Panel. Some of the submissions include drug products that are no longer marketed or that have been reformulated to include active ingredients and/or conditions that were proposed in the tentative final monograph for OTC skin protectant drug products (48 FR 6820). The manufacturers of these drug products have requested that their submissions or portions of their submissions concerning these drug products be withdrawn from further consideration in this rulemaking, as follows:

1. Submissions (Ref. 2) concerning drug products containing stabilized aloe vera for topical use for numerous indications including the symptoms of insect bites and poison ivy were withdrawn by the manufacturers (Refs. 3 and 4).

2. Submissions and portions of submissions (Ref. 5) concerning drug products containing zirconium oxide for the prevention and/or treatment of poison ivy, poison oak, and poison sumac were withdrawn by the manufacturers (Refs. 6 and 7).

References

(1) OTC Volumes 160032, 160074, 160152, and 160186.

(2) OTC Volumes 160143, 160196, 160252, 160261, 160273, and 160274.

(3) Letter from J.F. Girardi, Aloe Creme Laboratories, to W.E. Gilbertson, FDA, dated October 22, 1988, included in OTC Volume 06PISTFM, Docket No. 78N–021P, Dockets Management Branch.

(4) Letters from A. Davis, Aloe Vera of America, to W.E. Gilbertson, FDA, dated October 24, 1986 and May 20, 1988, included in OTC Volume 06PISTFM, Docket No. 78N–021P, Dockets Management Branch.

(5) OTC Volumes 160030, 160076, and 1600288.

(6) Letter from J. Wright, North Health Care, to W.E. Gilbertson, FDA, dated April 15, 1988, included in OTC Volume 06PISTFM, Docket No. 78N–021P, Dockets Management Branch.

(7) Letter from R. Kirpitch, Warner-Lambert, to A. Mustafa, FDA, dated May 10, 1988, included in OTC Volume 06PISTFM, Docket No. 78N–021P, Dockets Management Branch.

5. One manufacturer submitted information to the Miscellaneous External Panel requesting Category I status for a drug product containing 6 percent ferric chloride solution labeled as an astringent "for topical use only in prevention of ivy poisoning" and as a "preventative solution for poison ivy, poison oak, poison sumac" (Refs. 1, 2, and 3).

The Miscellaneous External Panel reviewed these submissions, but inadvertently did not cite one of them (Ref. 1) in its statement on OTC drug products for the prevention of poison ivy, oak, and sumac (47 FR 39412 at 39417 and 39441). The agency has reviewed these submissions and determined that the volume not cited by the Panel contains only labeling for the manufacturer's products and that one of the submissions that the Panel did review and cite (Ref. 2) contains all of the supporting information for the ferric chloride product.

The Panel stated that the submissions contained no substantial data to establish the safety and effectiveness of ferric chloride to prevent poison ivy, poison oak, or poison sumac and classified this ingredient in Category II (47 FR 39412 at 39417 and 39436 at 39441). No additional data have been submitted. The agency concurs with the Panel's determination that the manufacturer's submissions do not contain substantial data in support of the safety or effectiveness of ferric chloride and with the Panel's recommendation that ferric chloride be classified Category II for the prevention of poison ivy, poison oak, or poison sumac.

References

(1) OTC Volume 160074.

(2) OTC Volume 160152.

(3) OTC Volume 160132.

6. One submission (Ref. 1) contained a label for a spray product containing benzalkonium chloride and polyvinylpyrrolidone-vinyl acetate copolymers as active ingredients claimed to be effective for the treatment of itching and burning of poison ivy, poison oak, and poison sumac and "in reducing the swelling and itching of insect bites, from chiggers, mosquitoes, bees, wasps, etc."

The submission did not contain any data to support the claims made for these ingredients. Because no information has been submitted to the agency on the safety and effectiveness of polyvinylpyrrolidone-vinyl acetate copolymers, the agency is classifying this ingredient in Category II in this rulemaking. The agency proposed a Category III classification for benzalkonium chloride as a skin antiseptic and as a skin wound protectant in the tentative final monograph for OTC topical antimicrobial drug products (January 6, 1978; 43 FR 1210 at 1229). This ingredient will be discussed further in the tentative final monograph for OTC first aid antiseptic drug products in a future issue of the **Federal Register**.

Reference

(1) OTC Volume 160186.

III. The Agency's Tentative Conclusions and Adoption of the Panel's Statements

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of Ingredient Categories

In the Miscellaneous External Panel's advance notice of proposed rulemaking for skin protectant drug products (47 FR 39436 at 39440 and 39448), the Panel stated that, although the agency's call-for-data notices (38 FR 31697 and 40 FR 38179) requested the submission of data and information for a number of specific active ingredients (47 FR 39436 at 39440 and 39448) or any other active ingredients used in OTC poison ivy and oak remedy drug products and insect bites drug products, the Panel reviewed only those ingredients with claims for preventing poison ivy, oak, or sumac or for treating insect bites by neutralization or inactivation of insect venom. As stated above, drug products for treatment of the symptoms of poison ivy-oak-sumac and insect bites are discussed in the external analgesic rulemaking published elsewhere in this issue of the **Federal Register** and will not be discussed further here.

The Panel received submissions for products containing a buffered mixture of cation and anion resins and for products containing ferric chloride that claimed to prevent poison ivy, oak, or sumac by complexing with the plant antigen before it enters the skin. The agency concurs with the Panel's determination that there are insufficient data to demonstrate the effectiveness of a buffered mixture of cation and anion resins in preventing poison ivy, poison oak, and poison sumac and agrees with the Panel's Category III classification of these ingredients. In addition, the agency concurs with the Panel's determination that there are no substantial data to support the safety and effectiveness of ferric chloride and agrees with the Panel's Category II classification of this ingredient.

The Panel also received submissions for products containing ammonium hydroxide and triethanolamine (trolamine) that claimed to neutralize or inactivate insect venom. The agency concurs with the Panel's determination that there are insufficient data to demonstrate the effectiveness of ammonium hydroxide and trolamine as insect bite neutralizers and concurs with the Panel's Category III classification of these ingredients.

Although the Miscellaneous External Panel mentioned the use of skin protectant ingredients for the prevention of poison ivy, poison oak, and poison sumac, and use as insect bite neutralizers, it did not review or classify all of the individual ingredients. Most of the ingredients in marketed products submitted to the Panel or ingredients that appeared in the call-for-data notices were simply listed in the Panel's statements on OTC drug products for the prevention of poison ivy, poison oak, and poison sumac (47 FR 39436 at 39440) and on OTC insect bite neutralizer drug products (47 FR 39448). The Panel noted at 47 FR 39440 that many of these ingredients labeled with claims as skin protectant drug products for symptoms of oozing or weeping due to contact dermatitis, poison ivy, or poison oak have been previously addressed by another OTC panel, the Topical Analgesic Panel. The agency has further considered the recommendations of the Topical Analgesic Panel on OTC skin protectant drug products (43 FR 34628), the tentative final monograph on OTC skin protectant drug products (48 FR 6820), and the additional data and information available at this time. Based upon this information, the agency is adding several active ingredients to the "Summary of Ingredient Categories" table for skin protectant active ingredients that appeared in the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6831). These ingredients are ammonium hydroxide, buffered mixtures of cation and anion exchange resins, colloidal oatmeal, ferric chloride, polyvinylpyrrolidone-vinyl acetate copolymers, and trolamine. In addition, the agency is amending the entries for two ingredients that were listed as deferred and transferred to other rulemakings. These ingredients (corn starch and sodium bicarbonate) are now classified as skin protectants in this rulemaking. An updated table appears below for the convenience of the reader.

Summary of Ingredient Categories

Skin protectant active ingredients	Category
Allantoin[1]	I
Aluminum hydroxide gel	I
Ammonium hydroxide	III
Bismuth subnitrate	II
Boric acid	II
Buffered mixture of cation and anion exchange resins.	III
Calamine	I
Cocoa butter	I
Colloidal oatmeal [2]	I
Corn starch	III
Dimethicone	I
Ferric Chloride	II
Glycerin	I
Kaolin	I
Live yeast cell derivative [3]	III
Petrolatum	I
Polyvinylpyrrolidone-vinylacetate co-polymers.	II
Shark liver oil	I
Sodium bicarbonate	I
(a) for the temporary protection and relief of itching due to poison ivy/oak/sumac, and insect bites.	I
(b) for drying oozing and weeping	III
(c) as an insect bite neutralizer	II
Sulfur	II
Tannic acid	II
Trolamine [4]	III
White petrolatum	I
Zinc acetate [1]	I
Zinc carbonate	I
Zinc oxide	I

[1] Also classified by the Topical Analgesic Panel and the agency as a Category III wound healing agent.

[2] On condition that a standard chemical composition and concentration of the colloidal oatmeal can be established.

[3] Classified only as wound healing agent.

[4] Identified by the Miscellaneous External Panel as triethanolamine.

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The Miscellaneous External Panel also listed a number of other ingredients in its statement that it said should be considered in other appropriate rulemakings for their use in treating poison ivy, poison oak, and poison sumac, and their related symptoms (47 FR 39438 at 39440). Except for the ingredients listed in the table above, no information has been provided on any of the other ingredients in the Panel's list. Accordingly, all of those ingredients are considered Category II.

The Miscellaneous External Panel also stated that it was not able to locate nor was it aware of data demonstrating the safety or effectiveness as OTC insect bite neutralizers of a number of active ingredients listed in its report (47 FR 39436 at 39448) and recommended a Category II classification for these ingredients. The agency concurs with the Panel's Category II classification of these ingredients for use as insect bite neutralizers.

2. Testing of Category II and Category III Conditions

The agency is not proposing specific testing guidelines in this document. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any skin protectant ingredient or conditions included in the review for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites, by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summory of the Agency's Changes

FDA has considered comments submitted to the Topical Analgesic Panel and the Miscellaneous External Panel, the submissions to the Miscellaneous External Panel, and other relevant information and concludes that it will tentatively adopt the substance of the Miscellaneous External Panel's statements. This Panel did not recommend a specific monograph for skin protectant drug products for use in the treatment and/or prevention of poison ivy, poison oak, and poison sumac or for the treatment and/or neutralization of insect bites. However, the Topical Analgesic Panel did recommend a monograph for skin protectant drug products (43 FR 34628), and the agency adopted this recommended monograph with some revisions in the tentative final monograph for OTC skin protectant drug products (48 FR 6820 at 6832). The agency is amending the tentative final monograph to include conditions for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as for the treatment and/or neutralization of insect bites based on its evaluations of the data and its responses to the comments described above, and the other changes described in the summary below. A summary of the changes made by the agency follows.

1. The agency is proposing in § 347.3(d) of this tentative final monograph the following definition for poison ivy, poison oak, or poison sumac dermatitis: an allergic contact dermatitis (usually an intensely itching skin rash) due to exposure to plants of the genus *Rhus* (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizing agent.

2. After reviewing all of the information submitted on the uses of sodium bicarbonate, the agency has decided to address sodium bicarbonate in the skin protectant rulemaking, not in the external analgesic rulemaking. Although the agency stated in the tentative final monograph for skin protectant drug products (48 FR 6820 at 6830) that it would address this ingredient in the external analgesic rulemaking, the agency finds that, because of its mechanism of action in relieving itching, i.e., its ability to form a mechanical barrier, it is appropriate to address sodium bicarbonate in the skin protectant rulemaking. (See comment 3 above.)

3. Based on the agency's review of data on colloidal oatmeal and the available information on sodium bicarbonate, the agency is revising the tentative final monograph to include these two ingredients as Category I skin protectant drug products and is proposing the following indication for these two ingredients in § 347.50(b)(4): "Provides temporary skin protection and relieves minor irritation and itching due to poison ivy, poison oak, poison sumac, and insect bites." However, for colloidal oatmeal, the agency states that sufficient data on the composition and concentration of the different constituents of this ingredient need to be established before it can be included in the final monograph. (See comments 1 and 3 above.)

4. The agency has added letter designations in § 347.10 *Skin protectant active ingredients* to include the addition of the ingredients colloidal oatmeal in paragraph (t) and sodium bicarbonate in paragraph (u). The agency has added these letter designations for these two active ingredients in appropriate paragraphs of § 347.50.

5. The agency is proposing to revise the statement of identity in § 347.50(a) to read as follows: (a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product with one or more of the following:

(1) "Skin protectant."

(2) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), or (m).* "Poison ivy, oak, sumac drying" (insert dosage form, e.g., "cream," "lotion," or "ointment").

(3) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), (m), (t), or (u).* "Poison ivy, oak, sumac treatment." (See comment 4 above.)

As noted above, an OTC skin protectant drug product may be labeled for one or more uses. Other uses for skin protectant active ingredients will be added to this monograph in the future, e.g., claims for the treatment and prevention of diaper rash. When the labeling of the product contains more than one labeled use, it must contain the appropriate statement(s) of identity, indications, warnings, and directions for each labeled use. For multiple use skin protectant drug products, the labeling appropriate to different uses may be combined to eliminate duplicate words and phrases so that the resulting information is clear and understandable. Introductory text to § 347.50 has been added in this amendment to reflect the above labeling requirements.

6. The agency is proposing that the warning in § 347.50(c)(1) "For external use only" not be required for sodium bicarbonate because this ingredient can be used orally for other purposes. (See comment 3 above.)

7. Because colloidal oatmeal can be slippery in a tub of water, the agency is proposing a warning in § 347.50(c)(9) when colloidal oatmeal is labeled for use as a soak in a tub, to read "Take special care to avoid slipping when getting into and out of the tub." (See comment 1 above.)

8. The agency is proposing directions in § 347.50(d)(2) for the use of colloidal oatmeal as a skin protectant, to read "Adults and children 2 years of age and over: *For use as a soak in a tub.* Turn tub warm water faucet on to full force, then slowly sprinkle 1 cupful of colloidal oatmeal directly under the faucet into the tub. Before entering the tub, stir any colloidal oatmeal that may have settled to the bottom of the tub. Soak the affected area for 15 to 20 minutes as needed. Do not rub area dry, but instead pat dry so that a thin layer of the colloidal oatmeal will be left on the skin. Soak once or twice daily, or as directed by your doctor. Children under 2 years of age: Consult a doctor." (See comment 1 above.)

9. The agency is proposing directions in § 347.50(d)(3) for the use of sodium bicarbonate as a skin protectant, to read "Adults and children 2 years of age and over: Topical dosage is 1 to 100 percent sodium bicarbonate.

(i) *For use as a paste.* Add sufficient water to the sodium bicarbonate to form a paste and apply to the affected area of the skin as needed. Children under 2 years of age: Consult a doctor.

(ii) *For use as a soak in a tub.* Dissolve 1 to 2 cupfuls of this product in a tub of warm water and soak for 10 to 30 minutes as needed. Do not rub dry, but instead pat dry so that a thin layer of the sodium bicarbonate will be left on the skin. Children under 2 years of age: Consult a doctor." (See comment 3 above.)

(iii) *For use as a wet dressing.* Add sodium bicarbonate to water to make a solution. Use a container in which you can saturate a cloth. Saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Repeat as often as necessary. Discard remaining solution after use.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC skin protectant drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac, as well as for the treatment and/or neutralization of insect bites is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulation Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC skin protectant drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac as well as the treatment and/or neutralization of insect bites is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC skin protectant drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by January 31, 1990. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 31, 1990, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 31, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before October 3, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 3, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch. Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph for OTC skin protectant drug products, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 3, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs, Skin protectant drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in Part 347 as proposed in the **Federal Register** of February 15, 1983 (48 FR 6820) as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 347 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 347.3 is amended by adding new paragraph (d) to read as follows:

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§ 347.2 Definitions.

* * * * *

(d) *Poison ivy, poison oak, or poison sumac dermatitis.* An allergic contact dermatitis (usually an intensely itching skin rash) due to exposure to plants of the genus *Rhus* (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizing agent.

3. Section 347.10 is amended by adding new paragraphs (n), (o), (p), (q), (r), and (s) and reserving them and by adding new paragraphs (t) and (u) to read as follows:

§ 347.10 Skin protectant active ingredients.

* * * * *

(n)–(s) [Reserved]

(t) Colloidal oatmeal.

(u) Sodium bicarbonate, 1 to 100 percent.

4. Section 347.50 is amended by adding an introductory text paragraph, by revising paragraph (a), by adding new paragraph (b)(4), by revising paragraphs (c)(1), (c)(2), and (c)(3), by adding new paragraph (c)(9), and by revising paragraph (d) to read as follows:

§ 347.50 Labeling of skin protectant drug products.

A skin protectant drug product may have more than one labeled use. When the labeling of the product contains more than one labeled use, then the appropriate statement(s) of identity, indications, warnings, and directions must be stated in the labeling. For multiple use skin protectant drug products, the labeling appropriate to different uses may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product with one or more of the following:

(1) "Skin protectant."

(2) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), or (m).* "Poison ivy, oak, sumac drying" (insert dosage form, e.g., "cream," "lotion," or "ointment").

(3) *For products containing any ingredient in § 347.10 (b), (c), (g), (k), (l), (m), (t), or (u).* "Poison ivy, oak, sumac treatment."

(b) * * *

(4) *For products containing any ingredient in § 347.10 (t) and (u).* "Provides temporary skin protection and relieves minor irritation and itching due to poison ivy, poison oak, poison sumac, and insect bites."

(c) * * *

(1) "Avoid contact with the eyes."

(2) "If condition worsens or does not improve within 7 days, consult a doctor."

(3) *For products containing any ingredient in § 347.10 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (t).* "For external use only."

* * * * *

(9) *For products containing colloidal oatmeal identified in § 347.10(t) when labeled for use as a soak in a tub.* "Take special care to avoid slipping when getting into and out of the tub."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing any ingredient in § 347.10 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m).* Apply liberally as often as necessary.

(2) *For products containing colloidal oatmeal identified in § 347.10(t).* Adults and children 2 years of age and over: *For use as a soak in a tub.* Turn tub warm water faucet on to full force, then slowly sprinkle 1 cupful of colloidal oatmeal directly under the faucet into the tub. Before entering the tub, stir any colloidal oatmeal that may have settled to the bottom of the tub. Soak the affected area for 15 to 20 minutes as needed. Do not rub area dry, but instead pat dry so that a thin layer of the colloidal oatmeal will be left on the skin. Soak once or twice daily, or as directed by your doctor. Children under 2 years of age: Consult a doctor.

(3) *For products containing sodium bicarbonate identified in § 347.10(u).* Adults and children 2 years of age and over: Topical dosage is 1 to 100 percent sodium bicarbonate.

(i) *For use as a paste.* Add sufficient water to the sodium bicarbonate to form a paste and apply to the affected area of the skin as needed. Children under 2 years of age: Consult a doctor.

(ii) *For use as a soak in a tub.* Dissolve 1 to 2 cupfuls of this product in a tub of warm water and soak for 10 to 30 minutes as needed. Do not rub dry, but instead pat dry so that a thin layer of the sodium bicarbonate will be left on the skin. Children under 2 years of age: Consult a doctor.

(iii) *For use as a wet dressing.* Add sodium bicarbonate to water to make a solution. Use a container in which you can saturate a cloth. Saturate a clean, soft, white cloth (such as a diaper or torn sheet) in the solution, gently squeeze, and apply loosely to the affected area. Saturate the cloth in the solution every 15 to 30 minutes and apply to the affected area. Repeat as often as necessary. Discard remaining solution after use.

* * * * *

Dated: August 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-23262 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 348

[Docket No. 78N-301P]

RIN 0905-AA06

External Analgesic Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Poison Ivy, Poison Oak, Poison Sumac, and Insect Bites Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the tentative final monograph (proposed rule) for over-the-counter (OTC) external analgesic drug products. The proposed rulemaking would establish conditions under which OTC external analgesic drug products for the treatment of the symptoms of poison ivy, poison oak, poison sumac, and insect bites are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the statements on OTC drug products for poison ivy, poison oak, and poison sumac, and for use as insect bite neutralizers of the Advisory Review Panel on OTC Miscellaneous External Drug Products, public comments on an advance notice of proposed rulemaking that was based on those statements, and public comments on the notice of proposed rulemaking for OTC external analgesic drug products. (See the Federal Register of February 8, 1983; 48 FR 5852.) The agency's proposals concerning the use of other OTC drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac and for the treatment and/or neutralization of insect bites are being published elsewhere in this issue of the Federal Register. These proposals are part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed rulemaking before the Commissioner of Food and Drugs by January 31, 1990. The agency is allowing a period of 120 days for comments and objections instead of the normal 60 days for the following reasons: (1) The concurrent publication of two rulemakings regarding OTC drug products for poison ivy, poison oak, poison sumac, and insect bites and (2) this document contains the first published evaluation of several submissions of data on OTC drug products for the treatment of symptoms of these conditions that were made to, but not reviewed by, the Advisory Review Panel on OTC Miscellaneous External Drug Products (Miscellaneous External Panel). New data by October 3, 1990. Comments on the new data by December 3, 1990. Written comments on the agency's economic impact determination by January 31, 1990.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 7, 1982, FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking and reopened the administrative records for OTC external analgesic drug products (47 FR 39412) and skin protectant drug products (47 FR 39436). The notices were published to allow for consideration of statements on OTC drug products for the prevention of poison ivy, poison oak, poison sumac, and for use as insect bite neutralizers. The statements were prepared by the Miscellaneous External Panel, which was the advisory review panel responsible for evaluating data on the active ingredients used for these conditions. Interested persons were invited to submit comments by December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 5, 1983.

In the Federal Register of December 28, 1982 (47 FR 57738), in response to a request for an extension of time, the comment period and reply comment period for OTC external analgesic drug products were extended to February 4, 1983, and to March 7, 1983, respectively.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information.

One trade association and five drug manufacturers submitted comments concerning the use of external analgesic drug products for poison ivy, poison oak, poison sumac, and insect bites (poison ivy-oak-sumac and insect bites). Some of these comments were submitted to both the external analgesic and skin protectant rulemakings. In those cases where the same comments were submitted to both rulemakings, the comments will be addressed only in the appropriate amendment to either the proposed rule for OTC external analgesic drug products or for OTC skin protectant drug products published elsewhere is this issue of the Federal Register. Copies of the comments received are on public display in the Dockets Management Branch.

The Panel provided general statements on OTC drug products for the prevention of poison ivy, poison oak, poison sumac, and for use as insect bite neutralizers. However, the Panel did not review all of the submitted individual ingredients nor develop labeling for drug products for these indications. Also, the Panel reviewed only ingredients with labeling claims for prevention of poison ivy, poison oak, or poison sumac, or for treatment of insect bites by neutralization or inactivation of insect venom. However, many submissions to the Panel were for drug products used to treat the symptoms (i.e., itching, minor irritations) of poison ivy-oak-sumac and insect bites by the mechanism of depressing or stimulating cutaneous sensory receptors. Additionally, a number of external analgesic drug products labeled for the treatment of poison ivy-oak-sumac and insect bites were not submitted to the Miscellaneous External Panel. Therefore, the agency is expanding the scope of this segment of the external analgesic rulemaking to include all OTC external analgesic drug products labeled for any of these uses.

In this document, the agency is addressing comments concerning drug products for the treatment of symptoms of poison ivy-oak-sumac and insect bites when the mechanism of action involves the depression or stimulation of cutaneous sensory receptors. In the skin protectant rulemaking (published elsewhere in this issue of the Federal Register), the agency is addressing the claims for the treatment and/or prevention of poison ivy, poison oak, and poison sumac and for the treatment and/or neutralization of insect bites when the mechanism of action for these claims involves the ingredient's ability to neutralize or inactivate insect venom or the ingredient's ability to provide a mechanism barrier to protect the exposed skin surfaces from harmful or annoying stimuli.

In the Federal Register of February 8, 1983 (48 FR 5852), the agency published a tentative final monograph (proposed rule) for OTC external analgesic drug products. The agency issued this notice after considering the report and recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) and public comments on an advance notice of proposed rulemaking that was based on those recommendations.

Interested persons were invited to submit comments by April 11, 1983, new data by February 8, 1984, and comments on new data by April 9, 1984. In response to that notice, one manufacturer's association and five drug manufacturers submitted comments concerning the use of external analgesic ingredients for the treatment of poison ivy-oak-sumac and insect bites. The agency is also addressing these comments in this notice of proposed rulemaking. Copies of the comments received are on public display in the Dockets Management Branch (address above).

In this notice of proposed rulemaking, FDA responds to public comment and further discusses its position on OTC external analgesic drug products for the treatment of poison ivy-oak-sumac and insect bites. Final agency action on this matter will occur with the publication at a future date of a final rule relating to OTC external analgesic drug products for the treatment of these conditions.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II,

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and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** on December 12, 1972 (37 FR 26456), November 16, 1973 (38 FR 31697), and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency's attention since publication of the advance notices of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments

The agency has reviewed the comments submitted to this rulemaking. As noted above, most of the comments were also submitted to the skin protectant rulemaking. Several of these comments are general in scope and will be addressed in this rulemaking for external analgesic drug products. Any of these general comments that are applicable to the skin protectant rulemaking are incorporated into that rulemaking.

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** on November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. Noting its continued opposition to FDA's exclusivity of labeling policy for OTC drugs, one comment stated that FDA should not prohibit the use of alternative OTC labeling terminology that is truthful, not misleading, and intelligible to the consumer. Another comment stated that its objections to FDA's "exclusivity" policy were presented at the agency's hearing on this subject on September 29, 1982.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "Approved Uses"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "Approved Uses"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "Approved Uses," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g). The proposed rule in this document is subject to the labeling provisions of § 330.1(c)(2).

3. Two comments in response to the tentative final monograph for OTC external analgesic drug products (48 FR 5852) requested that specific indications for rashes caused by poison ivy be added to the monograph. One comment stated that the phrase "and rashes due to poison ivy, poison oak, or poison sumac" should be added to the indication "for the temporary relief of itching associated with sunburn, insect bites, or minor skin irritations." The comment requested that the agency revise this indication for external analgesic ingredients identified in § 348.10 (a), (b), and (c) to read "For the temporary relief of" (select one of the following: "pain," "itching," or "pain and itching") which may be followed by: "associated with" (select one or more of the following: "minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," "minor skin irritations," or "rashes due to poison ivy, poison oak, or poison sumac"). The comment used the example of Category I combination products containing an external analgesic (antihistamine) and a skin protectant to support its request. The comment noted that the agency proposed the indication "Dries the oozing and weeping of poison ivy, poison oak, and poison sumac" in the skin protectant tentative final monograph (February 15, 1983; 48 FR 6820 at 6832). According to the comment, the purpose of a combination product containing a topical antihistamine and a skin protectant is both to help dry the poison ivy, poison oak, or poison sumac lesions and to relieve the itch associated with these conditions. The comment argued that not permitting an indication for the relief of itch associated with rashes due to poison ivy, poison oak, and poison sumac in the external analgesic monograph is not only inconsistent with the allowed combination but also misleading and would cause confusion to consumers.

The second comment stated that the proposed indication for external analgesic ingredients identified in § 348.10 (a), (b), and (c) of the tentative final monograph is too restrictive for the broad range of uses for these products. The comment proposed the following as an example of a truthful statement that is an appropriate indication for external analgesic drug products: "For the temporary relief of pain and itching associated with poison ivy, poison oak, and poison sumac."

The agency agrees that indications for the relief of pain and itching associated with rashes due to poison ivy, poison oak, and poison sumac are appropriate for external analgesic ingredients identified in § 348.10 (a), (b), and (c).

The Topical Analgesic Panel recognized that the causes of pain and itch are multivaried but did not provide an exhaustive list of these causes in its report on OTC external analgesic drug products (December 4, 1979; 44 FR 69768 at 69776 and 69777). The Panel stated that itching is amenable to topically applied OTC external analgesic drug products that have antipruritic activity. The Panel explained that the anatomic pathways subserving pain and itch are identical and that itching results when cutaneous pain fibers are weakly stimulted, i.e., the difference between stimuli causing pain and itch is one of intensity. Further, the Panel stated that since the sensation of itch is mediated via pain fibers, local anesthetics and analgesics that block conduction along the axonal membranes, such as the nitrogenous drugs of the "caine" type and of the alcohol type, all have antipruritic activity. In addition, itching due to chemomediators can be relieved by drugs such as antihistamines that act competitively or combine with chemical agents released by trauma and other factors. The Panel recommended the following indication for external analgesic ingredients with antipruritic activity: "For the temporary relief of pain and itching due to minor burns, sunburn, minor cuts, abrasions, insect bites, and minor skin irritations."

In the tentative final monograph for OTC external analgesic drug products, the agency revised the Topical Analgesic Panel's recommended indication to allow the claim "For the temporary relief of itching" without listing examples of causes of itching (48 FR 5852 at 5863). The agency stated that such labeling would be clearly recognizable and meaningful to a consumer who was experiencing itching without knowing the cause. The agency also proposed in § 348.50(b)(2) the Topical Analgesic Panel's recommended list of examples of causes of itching as optional labeling as follows: "For the temporary relief of" (select one of the following: "pain," "itching," or "pain and itching") (which may be followed by: "associated with" (select one or more of the following: "minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," or "minor skin irritations.")) At that time, the agency did not expand the Panel's recommended list of causes of itching to include poison ivy, poison oak, and poison sumac because it had not evaluated the Miscellaneous External Panel's recommendations on products for that use.

The agency believes that, as with other conditions that cause pain and itching, external analgesic drug products with antipruritic activity will help to relieve the pain and itching associated with rashes due to poison ivy, poison oak, and poison sumac. Poison ivy, poison oak, and poison sumac dermatitis is an allergic contact dermatitis that usually causes an intensely itching skin rash due to exposure to plants of the genus *Rhus* (poison ivy, poison oak, and poison sumac), which contain urushiol, a potent skin-sensitizing agent (Refs. 1 and 2). The agency believes that the pain and itching of rashes caused by contact of the skin with poison ivy, poison oak, or poison sumac are readily recognizable by the consumer. The agency accepts one comment's suggestion that the phrase "rashes due to" be included in the indications statement. However, because manifestations of contact with poison ivy, oak, or sumac or other than a rash, such as blistering, may be present and not all manufacturers may want to use the phrase "rashes due to" in the indications statement, the agency is proposing that the use of this phrase be optional.

The agency is therefore proposing that the indication in § 348.50(b)(2) be revised to read "For the temporary relief of" (select one of the following: "pain," "itching" or "pain and itching,") (which may be followed by: "associated with" (select one or more of the following: " minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," "minor skin irritations," (optional, may include the following: "rashes due to") "poison ivy," "poison oak," or "poison sumac.")) This revised indication will also provide for consistent labeling of a combination product containing an external analgesic and a skin protectant, as noted by one comment.

In addition, the agency is proposing in § 348.3(g) of the tentative final monograph the following definition for poison ivy, poison oak, or poison sumac dermatitis: an allergic contact dermatitis (usually an intensely itching skin rash) due to exposure to plants of the genus *Rhus* (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizing agent.

References

(1) "Dorland's Illustrated Medical Dictionary," 27th Ed., W. B. Saunders Co., Philadelphia, 1988, s.v. "rhus dermatitis."

(2) "Webster's New Collegiate Dictionary," G. & C. Merriam Co., Springfield, MA, 1979, s.v. "poison ivy."

4. One comment submitted data to the agency in support of claims for 3.6 percent ammonium hydroxide for the "relief of pain and itching from insect bites and discomfort due to nettle and berry bush scratches" (Ref. 1). In a later submission (Ref. 2), the company stated that the ingredient does not work by reducing inflammation or wheal size, nor is there any indication that it neutralizes insect venom. The company described a possible mechanism of action and concluded that the ingredient has a generalized antipruritic effect in relieving pain and itching that follow insect bites. The company noted the Topical Analgesic Panel's Category I classification of 1 to 2.5 percent ammonium hydroxide as a counterirritant (44 FR 69768 at 69792) and stated that the transcripts of the Panel's meetings show that members of that Panel recognized that ammonium hydroxide was effective for relief of itching due to insect bites. The company requested that 3.6 percent ammonium hydroxide be classified as a Category I antipruritic external analgesic ingredient in the final monograph for OTC external analgesic drug products.

Because the company has requested an antipruritic claim for all conditions included in the external analgesic tentative final monograph, the agency is not addressing the data in this document, which addresses only poison ivy-oak-sumac and insect bite claims. The agency will discuss the data regarding ammonium hydroxide in the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**.

References

(1) Comment No. C00046, Docket No. 78N–0301, Dockets Management Branch.

(2) Comment coded HER, Docket No. 78N–0301, Dockets Management Branch.

II. The Agency's Evaluation of the Submissions

The Miscellaneous External Panel reviewed only the use of OTC drug products for the prevention of poison ivy, poison oak, and poison sumac and for use as insect bite neutralizers. The Panel recommended that the agency consider in appropriate rulemakings ingredients and labeling claims submitted for treating poison ivy, poison oak, poison sumac, and their related symptoms (47 FR 39412 at 39417).

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In this document, the agency discusses the use of OTC external analgesic drug products for the treatment of poison ivy-oak-sumac and insect bites. The agency has evaluated a number of submissions (Ref. 1) that were not reviewed by the Panel. Some of the submissions include drug products that are no longer marketed or that have been reformulated to include active ingredients and/or conditions that were proposed in the tentative final monograph for OTC external analgesic drug products (48 FR 5852). The manufacturers of these drug products have requested that their submissions or portions of their submissions concerning these drug products be withdrawn from further consideration in this rulemaking, as follows:

(1) Submissions (Ref. 2) concerning drug products containing pyrilamine maleate for the treatment of the symptoms of insect bites and/or poison ivy, poison oak, and poison sumac were withdrawn by the manufacturers (Refs. 3 and 4).

(2) A submission (Ref. 5) concerning a combination drug product containing chlorobutanol, glycerin, boric acid, salicylic acid, resorcinol, phenol, oxyquinoline sulfate, camphor, and 28 percent alcohol for the treatment of the symptoms of insect bites and poison ivy was withdrawn by the manufacturer (Ref. 6).

(3) A submission (Ref. 7) concerning a combination drug product containing benzocaine, phenol, and iodine for the treatment of the symptoms of insect bites and poison ivy was withdrawn by the manufacturer (Ref. 8).

(4) A submission (Ref. 9) concerning a combination drug product containing ethyl alcohol, gum camphor, oil of eucalyptus, and boric acid for the itch of insect bites and poison ivy, poison oak, and poison sumac was withdrawn by the manufacturer (Ref. 10).

(5) A portion of two submissions (Ref. 11) concerning drug products containing dexpanthenol in lotion form for the treatment of the symptoms of insect bites, poison ivy, and poison sumac was withdrawn by the manufacturer (Ref. 12).

References

(1) OTC Volumes 160006, 160076, 160104, 160124, 160204, and 160288.

(2) OTC Volumes 160074, 160080, 160132, 160156, and 160216.

(3) Letter from J. Wright, North Health Care, to W.E. Gilbertson, FDA, dated April 15, 1988, included in OTC Volume 06PIETFM.

(4) Letter from W.E. Byerley, Law Offices of W.E. Byerly, to H. Cothran, FDA, dated April 29, 1988, included in OTC Volume 06PIETFM.

(5) OTC Volume 160059.

(6) Letter from S. Smith, Dep Corp., to W.E. Gilbertson, FDA, dated May 3, 1988, included in OTC Volume 06PIETFM.

(7) OTC Volume 160278.

(8) Letter from M.H. Davis, Whitehall Laboratories, to W.E. Gilbertson, FDA, dated July 13, 1988, included in OTC Volume 06PIETFM.

(9) OTC Volume 160084.

(10) Letter from L. Sonopp, Clairol, to W.E. Gilbertson, FDA, dated June 9, 1987, included in OTC Volume 06PIETFM.

(11) OTC Volumes 160104 and 160204.

(12) Letter from A. Ryan, Armour Pharmaceutical Co., to L. Geismar, FDA, dated January 7, 1987, included in OTC Volume 06PIETFM.

5. One manufacturer submitted data in 1975 (Refs. 1 and 2) in support of the safety and efficacy of the combination of 2 percent dexpanthenol, 0.1 percent camphor, and 0.1 percent menthol "for use in mild eczemas and dermatoses; itching skin, minor wounds, stings, bites, poison ivy and poison oak (dry stage), minor skin irritations." The current labeling (submitted in 1987) contains the same indications, but lists dexpanthenol 2 percent as the only active ingredient (Ref. 3)

Because camphor and menthol are no longer listed as active ingredients in the product, the agency is addressing only dexpanthenol for use in the treatment of poison ivy-oak-sumac and insect bites in this comment. Dexpanthenol was not reviewed by any OTC advisory review panel for these uses.

The agency has evaluated one study on acute oral toxicity of dexpanthenol in male rats (Ref. 1). In a 14-day study, three preparations containing 2 percent dexpanthenol were orally administered to groups of six rats at a dose level of 50 milliliters per kilogram; no toxic or untoward effects, mortality, or loss of body weight occurred. However, the data provided no detailed information, and were neither blinded nor well-controlled. Dixon and Mastin (Ref. 4) treated 69 patients with various skin conditions of the lower extremities with a 2-percent dexpanthenol cream and reported that no evidence of sensitization was encountered. Likewise, no evidence of sensitization with the topical use of 2 percent dexpanthenol was observed by Welsh and Ede (Ref. 5) in 54 patients treated for dermatoses of various causes, by Kline and Caldwell (Ref. 6) in 31 patients treated for a variety of dermatoses, or by Kline (Ref. 7) in 500 dermatologic patients.

Regarding effectiveness, Dixon and Mastin (Ref. 4) cited 17 representative cases out of 69 patients and summarized the results in a table. In the table, the authors report some clinical evidence of relief of irritation and pruritus in a variety of skin diseases. However, none of the subjects had poison ivy, poison oak, poison sumac, or insect bites. Kline and Caldwell (Ref. 6) summarized 31 cases of various dermatoses treated with topical application of 2 and/or 5 percent dexpanthenol. The authors reported that many of the patients with skin diseases that cause itching obtained excellent results. However, none of the subjects had poison ivy, poison oak, poison sumac, or insect bites. The authors did state that further investigation of the topical application of this drug in other types of dermatoses is indicated. Kline (Ref. 7) reported 12 years of experience with topical dexpanthenol treatment of 500 dermatologic patients with a variety of itching dermatoses, including 64 patients with acute or chronic contact dermatitis (412 patients out of 500 or 82.4 percent obtained satisfactory results). However, none of the above studies were either blinded or well-controlled. Because no well-controlled safety or efficacy data were submitted to support topical use of 2 percent dexpanthenol for itching, such as that associated with poison ivy-oak-sumac or insect bites, the agency is classifying 2 percent dexpanthenol in Category III for safety and effectiveness for these uses.

Although the submitted labeling lists dexpanthenol as the active ingredient in the drug product, the United States Pharmacopeia recognizes both panthenol, which is a racemic mixture, and dexpanthenol, which is the dextro-form of panthenol (Ref. 8). Therefore, the agency is classifying both dexpanthenol and panthenol in Category III.

References

(1) OTC Volume 160104.

(2) OTC Volume 160204.

(3) Letter from A. Ryan, Armour Pharmaceutical Co., to L. Geismar, FDA, dated January 7, 1987, in OTC Volume 06PIETFM.

(4) Dixon, F. C., and M. N. Mastin, "The Use of Panthothenylol in Lower Extremity Lesions," *Journal of the National Association of Chiropodists*, 47:61–62 and 108, 1957.

(5) Welsh, A. L., and M. Ede, "Panthoderm: A Topical Therapeutic Adjuvant," *A.M.A. Archives of Dermatology and Syphilology*, 69:732–734, 1945.

(6) Kline, P. R., and A. Caldwell, "Treatment of Various Dermatoses with Topical Application of Panthenol," *New York State Journal of Medicine*, 52:1141–1143, 1952.

(7) Kline, P. R., "12 Years Experience Using Pantothenylol Topically," *Western Medicine*, 4:78–81, 1963.

(8) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 296 and 781, 1985.

6. One comment submitted data to the Miscellaneous External Panel to support the safety and effectiveness of 1 to 2 percent diphenhydramine hydrochloride applied topically "for relief of itching due to insect bites, mild cases of sunburn, poison ivy or oak, and other minor skin irritations" and "for relief of itching due to mild poison ivy or oak, insect bites, or other minor skin irritations, and soothing relief of mild sunburn" (Ref. 1). The data included the results of three studies of a test product containing 1 percent diphenhydramine hydrochloride, calamine lotion, camphor, and 2 percent alcohol for the relief of itching caused by poison ivy/oak. In these studies, the antipruritic effect of diphenhydramine hydrochloride in the test product was compared with the antipruritic effect of calamine lotion alone as a control. The control did not contain diphenhydramine, camphor, or alcohol. According to the comment, the principal difference between the test product and the control is the presence of 1 percent diphenhydramine hydrochloride in the test product. No adverse reactions were reported in any of the studies.

The agency has evaluated the following three studies:

(1) Protocol 282–15 (Ref. 2) is a double-blind controlled study which included 45 subjects with a history of contact dermatitis (poison ivy/oak) with a pruritic component. To induce a contact dermatitis, poison ivy antigen patches were applied to both forearms and removed after 24 to 48 hours of contact with the skin. Both subjective and objective evaluations and examinations of the contact dermatitis were made. Subjects then applied the test product on one arm and the control containing calamine on the other arm every 3 hours and at night, as desired, for 3 consecutive days after development of contact dermatitis. After 3 days of observation, 84 percent preferred the test product for relief of itching. The investigators concluded that the test product reduced pruritus more than the control.

(2) Protocol 282–12 (Ref. 3) is a double-blind, randomized, controlled study. Poison ivy was induced with challenge patches in 50 subjects with a history of hypersensitivity to poison ivy. Twenty subjects with the most severe itching after the application of challenge patches were selected for the study. The test product was applied to one arm, and the control was applied to the other arm every 3 hours in six applications over a 24-hour period. Pruritus was assessed after each application. The investigator stated that a statistical analysis utilizing a t-test ($t_{19}=3.75$, $p<0.01$) strongly indicates that the antipruritic response with the use of the test product is significantly superior to the control.

(3) Protocol 282–10 (Ref. 4) is a double-blind, randomized, controlled study. Sixteen out of 29 subjects with artificially-induced poison ivy were studied after developing moderate to severely pruritic lesions. The test product was applied to one arm and the control was applied to the other arm every 3 hours for 48 hours. Pruritus was assessed after each application. The investigators found a significant difference ($p<0.05$) in favor of the test product.

The agency has determined that these studies were inappropriately designed because the test product contained camphor and alcohol but the control did not contain camphor and alcohol. The Topical Analgesic Panel has recommended (December 4, 1979; 44 FR 69768) and the agency has proposed (February 8, 1983; 48 FR 5852) that camphor be a Category I analgesic, anesthetic, and antipruritic at a 0.1- to 0.3-percent concentration. Because of the nature of the studies, it cannot be determined whether the 1 percent diphenhydramine hydrochloride, the camphor, or both provided the relief obtained. Although there is a problem with the study design, based on other information discussed below concerning the antipruritic properties of diphenhydramine hydrochloride, the agency believes that the above studies provide supporting evidence that 1 percent diphenhydramine hydrochloride relieves itching caused by poison ivy or oak.

The above data were not examined by the Miscellaneous External Panel in its statement on OTC drug products for the prevention of poison ivy, poison oak, and poison sumac. That Panel stated that ingredients such as diphenhydramine hydrochloride should be considered in other appropriate rulemakings for their use in treating poison ivy, poison oak, poison sumac, and their related symptoms. (See 47 FR 39412 at 39417 and 39440.) The Miscellaneous External Panel was aware that the Topical Analgesic Panel had reviewed similar data (Ref. 5) concerning the antipruritic effectiveness of 1 to 2 percent diphenhydramine hydrochloride and had recommended Category I status for this ingredient in its proposed monograph with the indication "For the temporary relief of pain and itching due to minor burns, sunburn, minor cuts, abrasions, insect bites, and minor skin irritations" (44 FR 69768 at 69865). In the tentative final monograph for OTC external analgesic drug products (48 FR 5852), the agency concurred with the Topical Analgesic Panel's recommendations and also agreed with a comment to that Panel's report that products containing antipruritic ingredients (including diphenhydramine hydrochloride) should be allowed to use the general indication "For the temporary relief of itching" without listing specific examples of the causes of the itching, or for itching associated with one or more causes. (See comment 28 at 48 FR 5863.) Section 348.50(b)(2) of the external analgesic tentative final monograph already provides the option of listing specific causes of itching such as "insect bites," "sunburn," and "minor skin irritations."

After reviewing the above data, the agency is now proposing to amend § 348.50(b)(2) to expand the list of optional causes of itching by adding "poison ivy," "poison oak," and "poison sumac." As revised, proposed § 348.50(b)(2) will now read as follows: *For products containing any external analgesic active ingredients identified in § 348.10 (a), (b), and (c).* "For the temporary relief of" (select one of the following: "pain," "itching," or "pain and itching") (which may be followed by: "associated with" (select one or more of the following: "minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," "minor skin irritations," (optional, may include the following: "rashes due to") "poison ivy," "poison oak," or "poison sumac.")) (See also comment 3 above.)

References

(1) OTC Volume 160124.

(2) Protocol 282–15, draft of unpublished data, in OTC Volume 160124.

(3) Protocol 282–12, draft of unpublished data, in OTC Volume 160124.

(4) Protocol 282–10, draft of unpublished data, in OTC Volume 160124.

(5) OTC Volume 060095.

7. One manufacturer submitted data and information (Refs. 1 and 2) to the Miscellaneous External Panel on three combination drug products containing either 8 or 10 percent tannic acid and requested that these combinations be Category I for the temporary relief of itching associated with poison ivy, poison oak, or poison sumac. In addition to 10 percent tannic acid, one product contains 12.5 percent isopropanol as an active ingredient and is labeled "for temporary relief of itching associated with poison ivy, oak or sumac." A second product contains the following active ingredients: 10 percent tannic acid, 1.25 percent benzocaine, 0.4

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percent camphor, 0.2 percent menthol, and 35 percent isopropanol, and is labeled "for the temporary relief of poison ivy-oak-sumac, sunburn, insect bites and other minor irritations." The third product contains the active ingredients 8 percent tannic acid, 0.5 percent benzocaine, 0.4 percent menthol, and 0.8 percent camphor, and is labeled "for the relief of minor pain and itching caused by poison ivy, poison oak, insect bites, sunburn and other minor skin irritations." The manufacturer stated that the tannic acid-isopropanol combination has been marketed since 1943, based on the findings of Schwartz and Warren (Ref. 3) and on informal testing by "local physicians," as a "'safe,' simple and economical product which helped to dry the blisters and relieved the itching due to poison ivy rash." The submissions included a 1949 "Federal Security Agency Public Health Service Health Information Series No. 65" publication that describes a method of using a 10-percent alcoholic solution of tannic acid to treat mild cases of poison ivy (Ref. 1). The manufacturer stated that the multicomponent combination drug products "were added as additional forms [of the original drug product] for the convenience of the users," and that all of the active and inactive components of the products have been acceptable to the medical profession and have been used in OTC drugs for many years. The manufacturer submitted several letters from consumers supporting the safety and effectiveness of these products and stated that it has an extensive file containing testimonials from satisfied customers confirming the effectiveness of its products. The submissions contained several studies on the safety of tannic acid or tannin and a table of summaries of several studies on the carcinogenicity of tannic acid (Refs. 2 and 4 through 8). The manufacturer concluded that 35 years of marketing experience with no serious complaints other than staining of the skin or clothing substantiates the fact that the products are safe and effective for the labeling claims. The manufacturer added that over this period of time its tannic acid-isopropanol product "has proven to be a mild, safe product to alleviate the discomforts of mild cases of poison ivy, sunburn, insect bites and minor skin irritations due to its astringent and protein precipitating properties." The manufacturer noted that it had compared its product "subjectively to every other leading OTC product on the market" and found its product to be at least as effective and generally more effective than other products, with no undesirable side effects.

The Topical Analgesic Panel reviewed tannic acid and stated that this ingredient is not safe for use as an OTC skin protectant (August 4, 1978; 43 FR 34628 at 34644). The Panel reviewed studies concerning the safety of topical use of tannic acid (Refs. 9, 10, and 11) and stated that the documented hepatotoxicity of tannic acid with repeated topical applications over large areas of damaged skin make this ingredient unsuitable for use as a skin protectant. In addition, the Panel stated that the desired effect of tannic acid, i.e., to produce a protein precipitate which would act as a protective coat (43 FR 34628 at 34644), causes the formation of an outer crust under which bacterial growth may flourish. The Miscellaneous External Panel and the agency concurred with the Topical Analgesic Panel's conclusions regarding the safety of tannic acid (47 FR 39412 at 39426 and 48 FR 6820 at 6825).

The manufacturer's summaries of some of the studies cited in support of the safety of tannic acid (Ref. 1) indicate that either no data were presented in the studies (Refs. 2 and 7) or the studies concerned the carcinogenic effect of tannic acid (Refs. 4, 6, and 8). One other study cited by the manufacturer (Ref. 5) was reviewed by the Topical Analgesic Panel in its discussion of tannic acid (43 FR 34628 at 34644). The Panel's evaluation of this study did not change its view that tannic acid is not safe for use as an OTC skin protectant. The studies cited in the submissions do not address the issues raised by the Panel, i.e., (1) that repeated use of tannic acid over large areas of damaged skin can cause liver damage, or (2) that formation of an outer crust on the skin (produced by the tannin's ability to precipitate protein) may allow bacteria to grow and flourish under the crust.

In addition, the information submitted on the effectiveness of 10 percent tannic acid to relieve itching of poison ivy-oak-sumac or insect bites is inadequate. The 1949 Public Health Service publication (Ref. 1) describes the use of a 10-percent alcoholic solution of tannic acid to treat mild cases of poison ivy, but does not present any data concerning the effectiveness of this solution. The 1941 Schwartz and Warren study (Ref. 3) involved "only 11 patients having dermatitis presumably caused by poison ivy," one of whom failed to return for final observation. The authors state that itching and discomfort in nine of the patients stopped within 1 or 2 days and all nine had recovered at the end of 1 week. The authors go on to state that the 10th patient, who did not fully recover for 2 weeks, was suspected of having dermatitis caused by crab grass, not poison ivy. This study does not support the effectiveness of 10 percent tannic acid because it is uncontrolled, the etiology of the dermatitis is uncertain, and objective methods of determining the effectiveness of the treatment are not described. In fact, the authors state that this treatment is reported in the hope that other physicians will give it a trial, and either confirm or disprove the efficacy of this treatment on a larger number of patients.

The testimonials included in the submissions are not adequate to establish effectiveness. The standards for establishing effectiveness in the OTC drug review state that isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered. (See 21 CFR 330.10(a)(4)(ii).)

Based on the above, the agency is placing 8 to 10 percent tannic acid in Category III for the temporary relief of itching associated with poison ivy-oak-sumac and insect bites. Therefore, any combination drug product that contains 8 to 10 percent tannic acid for these uses is also Category III.

With respect to the other active ingredients in the submitted combination drug products, 0.2 percent menthol and 0.4 percent camphor are Category I external analgesics and may be combined; isopropanol has not been classified as an external analgesic or as a skin protectant and would require adequate data to support its safety and effectiveness for such use; and although 5 to 20 percent benzocaine is Category I as an external analgesic, 0.5 to 1.25 percent benzocaine and any combination containing 0.5 to 1.25 percent benzocaine are Category III and would require adequate data to demonstrate effectiveness.

References

(1) OTC Volume 160076.
(2) OTC Volume 160288.
(3) Schwartz, L., and L. H. Warren, "Tannic Acid Treatment of Poison Ivy (Rhus Spp.) Dermatitis," *Public Health Reports*, 56:1039–1041, 1941.
(4) Armstrong, D. M. G., E. G. C. Clark, and E. Cotchin, "A Note on the Acute Toxicity of Hydrolyzable and Condensed Tannins," *The Journal of Pharmacy and Pharmacology*, 9:98–101, 1957.
(5) Korpassy, B., and M. Mosonyi, "The Carcinogenic Action of Tannic Acid: Effect of Casein on the Development of Liver Tumors," *Acta Morphologica Academiae Scientiarum Hungaricae*, 1:37–54, 1951.
(6) Krezanoski, J. Z., "Tannic Acid: Chemistry, Analysis, and Toxicology," *Radiology*, 87:655–657, 1966.

(7) Korpassy, B., and M. Mosonyi, "The Carcinogenic Activity of Tannic Acid: Liver Tumors Induced in Rats by Prolonged Subcutaneous Administration of Tannic Acid Solutions," *British Journal of Cancer*, 4:411–420, 1950.
(8) Robinson, H. J., and O. E. Graessle, "Toxicity of Tannic Acid," *Journal of Pharmacology*, 77:63–69, 1943.
(9) Wells, D. B., H. D. Humphrey, and J. J. Coll, "The Relation of Tannic Acid to Liver Necrosis Occurring in Burns," *The New England Journal of Medicine*, 226:629–636, 1942.
(10) Barnes, J. M., and R. J. Rossiter, "Toxicity of Tannic Acid," *The Lancet*, 2:218–222, 1943.
(11) McClure, R. D., C. R. Lam, and H. Romence, "Tannic Acid and the Treatment of Burns: An Obsequy," *Annals of Surgery*, 120:387–398, 1944.

8. One manufacturer (Ref. 1) submitted data and information for a product containing 0.5 percent tripelennamine hydrochloride, and 0.5 percent methapyrilene hydrochloride, and 0.1 percent menthol in combination with 0.0495 percent benzalkonium chloride with the labeling claims "Relieves itch and discomforts of skin allergies, hives, bee stings, nonpoisonous insect bites, poison ivy and oak, sunburn and minor skin disorders," and "Helps prevent skin infection." The comment subsequently informed the agency that it had reformulated its product by substituting 1 percent diphenhydramine hydrochloride for the 0.5 percent methapyrilene hydrochloride, but did not submit any additional data on the reformulated product (Ref. 2). The company subsequently submitted updated labeling stating that the active ingredients are diphenhydramine hydrochloride 1.0 percent, tripelennamine hydrochloride 0.5 percent, and benzalkonium chloride 0.12 percent and that menthol is an inactive ingredient (Ref. 3).

Two of the three active ingredients (tripelennamine hydrochloride and diphenhydramine hydrochloride) have been proposed as Category I for the temporary relief of pain and/or itching associated with insect bites and minor skin irritations in the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5868). The Topical Analgesic Panel stated that there is evidence that topical creams containing 2 to 3 percent tripelennamine hydrochloride are effective in temporarily relieving the pruritus of poison ivy eruptions (44 FR 69768 at 69839). Based on the agency's discussion of poison ivy, poison oak, and poison sumac claims for all Category I antipruritic ingredients in comments 3 and 6 above, tripelennamine hydrochloride and diphenhydramine hydrochloride are being proposed as Category I ingredients for the temporary relief of pain and/or itch associated with poison ivy-oak-sumac, insect bites, and minor skin irritations. The agency proposed that benzalkonium chloride, the third active ingredient in the product, be classified Category III for use as a skin antiseptic and as a skin wound protectant in the tentative final monograph for OTC topical antimicrobial drug products (January 6, 1978; 43 FR 1210 at 1229). This ingredient will be discused further in the tentative final monograph for OTC first aid antiseptic drug products in a future issue of the **Federal Register**.

Proposed § 348.20(b)(2) of the external analgesic tentative final monograph provides for the combination of the antihistamine tripelennamine hydrochloride or diphenhydramine hydrochloride and any Category I topical antimicrobial active ingredient or combination identified in Part 333, when labeled for concurrent symptoms (48 FR 5852 at 5868). However, because the product described above contains two antihistamines, it does not qualify as a permitted combination included in § 348.20, nor does it meet the agency's combination policy for OTC drugs as stated in 21 CFR 330.10(a)(4)(iv) and in the agency's general guidelines for OTC drug combination products (Ref. 4). These guidelines state that Category I active ingredients from the same therapeutic category (antihistamines, in this case) that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredients in terms of enhancing effectiveness, safety, patient acceptance, or quality of formulation. No data have been submitted demonstrating any of these advantages. Therefore, such a combination of ingredients is classified as Category III for treating poison ivy-oak-sumac and insect bites. Further, in a telephone conversation between representatives of the agency and the company, a company representative indicated that the diphenhydramine "was likely to be deleted" from the product at the time that a final order goes into effect (Ref. 5).

References

(1) OTC Volume 160006.
(2) Letter from H.W. Gordon, Commerce Drug Co., Inc., to W.E. Gilbertson, FDA, dated January 14, 1983, included in OTC Volume 06PIETFM.
(3) Letter from H.W. Gordon, Commerce Drug Co., Inc., to M. Benson, FDA, dated April 20, 1988, included in OTC Volume 06PIETFM.
(4) "Food and Drug Administration General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D-0322, Dockets Management Branch.
(5) Memorandum of telephone conversation between H.W. Gordon, Commerce Drug Co., Inc., and M. Benson, FDA, dated March 3, 1983, included in OTC Volume 06PIETFM.

III. The Agency's Tentative Conclusions and Adoption of the Panel's Statements

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of Ingredient Categories

In the Miscellaneous External Panel's advance notice of proposed rulemaking for external analgesic drug products (47 FR 39412 at 39416 and 39430), the Panel stated that, although the agency's call-for-data notices (38 FR 31697 and 40 FR 38179) requested the submission of data and information for a number of specific active ingredients (47 FR 39412 at 39416 and 39430) or any other active ingredients used in OTC poison ivy and oak remedy drug products and insect bites drug products, the Panel reviewed only those ingredients with claims for preventing poison ivy, poison oak, or poison sumac or for treating insect bites by neutralization or inactivation of insect venom. As stated above, drug products for the treatment and/or prevention of poison ivy, poison oak, and poison sumac and for the treatment and/or neutralization of insect bites are discussed in the skin protectant rulemaking published elsewhere in this issue of the **Federal Register** and will not be discussed further here.

Although the Miscellaneous External Panel mentioned the use of external analgesic ingredients for the treatment of poison ivy-oak-sumac and insect bites, it did not review or classify all of the individual ingredients. Most of the ingredients in marketed products submitted to the Panel or ingredients that appeared in the call-for-data notices were simply listed in the Panel's statements on OTC drug products for the prevention of poison ivy, poison oak, and poison sumac (47 FR 39412 at 39416) and on OTC insect bite neutralizer drug products (47 FR 39412 at 39430). The Panel noted at 47 FR 39417 that many of these ingredients labeled with claims for the relief of minor skin irritations, itching, and rashes due to poison ivy, poison oak, and poison sumac have been previously addressed by another OTC panel, the Topical Analgesic Panel. The agency has further considered the recommendations of the Topical Analgesic Panel on OTC external analgesic drug products (44 FR 69768), the tentative final monograph on OTC

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external analgesic drug products (48 FR 5852), and the additional data and information available at this time. Based upon this information, the agency is adding several active ingredients to the "Summary of Ingredient Categories" table for analgesic, anesthetic, and antipruritic active ingredients that appeared in the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5865). These ingredients are benzocaine 0.5 to 1.25 percent, dexpanthenol, panthenol, and tannic acid. An updated table appears below for the convenience of the reader.

SUMMARY OF INGREDIENT CATEGORIES

Analgesic, anesthetic, and antipruritic active ingredients	Category
Aspirin	III
Benzocaine	
(a) 5 to 20 percent	I
(b) 0.5 to 1.25 percent	III
Benzyl alcohol	I
Butamben picrate	I
Camphor	I
Camphorated metacresol	I
Chloral hydrate	II
Chlorobutanol	III
Cyclomethycaine sulfate	III
Dexpanthenol	III
Dibucaine	I
Dibucaine hydrochloride	I
Dimethisoquin hydrochloride	I
Diphenhydramine hydrochloride	I
Dyclonine hydrochloride	I
Eugenol	III
Glycol salicylate	III
Hexylresorcinol	III
Hydrocortisone [1]	I
Hydrocortisone acetate [1]	I
Juniper tar	I
Lidocaine	I
Lidocaine hydrochloride	I
Menthol	I
Methapyrilene hydrochloride	II
Panthenol	III
Phenol	I
Phenolate sodium	I
Pramoxine hydrochloride	I
Resorcinol	I
Salicylamide	III
Tannic acid	III
Tetracaine	I
Tetracaine hydrochloride	I
Thymol	III
Trolamine salicylate [2]	III
Tripelennamine hydrochloride	I

[1] Hydrocortisone and hydrocortisone acetate are OTC external analgesics only for use as topical antipruritics.
[2] Identified by the Topical Analgesic Panel as triethanolamine salicylate.

The Miscellaneous External Panel's list of ingredients in marketed products for treating poison ivy, poison oak, poison sumac, and their related symptoms (47 FR 39412 at 39417) included a number of ingredients, with the exception of sodium bicarbonate, for which no information was provided. These ingredients are considered Category II. The agency is addressing sodium bicarbonate in the skin protectant document published elsewhere in this issue of the Federal Register because the mechanism of action of sodium bicarbonate involves the ingredient providing a mechanical barrier to protect the exposed skin surfaces from harmful or annoying stimuli.

2. Testing of Category II and Category III Conditions

The agency is not proposing specific testing guidelines in this document. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any external analgesic ingredients or conditions included in the review for the treatment of poison ivy-oak-sumac and insect bites by following the procedures outlined in the agency's policy statement published in the Federal Register of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered comments submitted to the Topical Analgesic Panel and the Miscellaneous External Panel, the submissions to the Miscellaneous External Panel, and other relevant information and concludes that it will tentatively adopt the substance of the Miscellaneous External Panel's statements. This Panel did not recommend a specific monograph for external analgesic drug products for use in the treatment of poison ivy-oak-sumac and insect bites. However, the Topical Analgesic Panel did recommend a monograph for external analgesic drug products (44 FR 69768), and the agency adopted this recommended monograph with some revisions in the tentative final monograph for OTC external analgesic drug products (48 FR 5852 at 5867). In this document, the agency is amending that tentative final monograph to include conditions for the treatment of poison ivy-oak-sumac and insect bites based on its evaluations of the data and its responses to the comments described above. A summary of the changes made by the agency follows.

1. The agency is proposing in § 348.3(g) to add a definition for poison ivy, poison oak, or poison sumac dermatitis to the tentative final monograph. (See comment 3 above.)

2. The agency is amending proposed § 348.50(b)(2) ("Indications") by expanding the optional list of causes of itching to include "poison ivy," "poison oak," and "poison sumac" to read: "For the temporary relief of" (select one of the following: "pain," "itching," or "pain and itching") (which may be followed by: "associated with" (select one or more of the following: "minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," "minor skin irritations," (optional, may include the following: "rashes due to") "poison ivy," "poison oak," or "poison sumac.")) (See comment 3 above.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC external analgesic drug products for the treatment of poison ivy-oak-sumac and insect bites, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC external analgesic drug products for the treatment of poison ivy-oak-sumac and insect bites is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC external analgesic drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by January 31, 1990. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before January 31, 1990, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 31, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before October 3, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 3, 1990. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch. Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph for OTC external analgesic drug products, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 3, 1990. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 348

External analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in part 348 as proposed in the Federal Register of February 8, 1983 (48 FR 5852) as follows:

PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 348 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Section 348.3 is amended by adding new paragraph (g) to read as follows:

§ 348.3 Definitions.

* * * * * *

(g) *Poison ivy, poison oak, or poison sumac dermatitis.* An allergic contact dermatitis (usually an intensely itching skin rash) due to exposure to plants of the genus *Rhus* (poison ivy, poison oak, poison sumac), which contain urushiol, a potent skin-sensitizing agent.

3. Section 348.50 is amended by revising paragraph (b)(2) to read as follows:

§ 348.50 Labeling of external analgesic drug products.

* * * * * *

(b) * * *

(2) *For products containing any external analgesic active ingredients identified in § 348.10 (a), (b), and (c).* "For the temporary relief of" (select one of the following: "Pain," "itching," or "pain and itching") (which may be followed by: "associated with" (select one or more of the following: "minor burns," "sunburn," "minor cuts," "scrapes," "insect bites," "minor skin irritations," (optional, may include the following: "rashes due to") "poison ivy," "poison oak," or "poison sumac.")]

* * * * * *

Dated: August 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-23261 Filed 10-2-89; 8:45 am]

BILLING CODE 4160-01-M

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federal register

Tuesday
October 3, 1989

Part VI

Department of the Treasury

Bureau of the Public Debt and Fiscal Service

31 CFR Part 317

U.S. Savings Bonds; Use of Regional Delivery System for Issuance of Over-the-Counter Purchases of Series EE Bonds and Revised Fee Schedule; Final Rule and Notice

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DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

31 CFR Part 317

[Dept. of the Treasury Circ., Public Debt Series No. 4-67, Second Rev.]

U.S. Savings Bonds; Use of Regional Delivery System for Issuance of Over-the-Counter Purchases of Series EE Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule is being promulgated to authorize use of the Regional Delivery System (RDS) for issuance of over-the-counter purchases of Series EE United States Savings Bonds. Under RDS, the actual inscription of and delivery arrangements for the bonds will be made by the Federal Reserve Banks. This rule also contains changes which will enhance the Bureau's cash management program by requiring the earlier remittance of sales proceeds, and will correct an omission in the appendix to § 317.8, by providing for the remission of bond registration stubs.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, West Virginia 26106-1328.

SUPPLEMENTARY INFORMATION: The Regional Delivery System (RDS) is a program developed by the Bureau of the Public Debt to automate the inscription; and provide for the delivery of Series EE savings bonds sold over-the-counter and through Bond-a-Month plans. When the Regional Delivery System is fully operational in all Federal Reserve Districts, most issuing agents heretofore qualified to sell and inscribe over-the-counter bonds will no longer conduct all phases of such transactions. They will continue to accept purchase orders and payments from customers, but will not inscribe the bonds. Instead, they will transmit funds and purchase order information to designated Federal Reserve Banks that will inscribe the bonds in an automated environment. Special arrangements will be made for large-volume issuing agents, where authorized by the Bureau, to inscribe bonds sold over-the-counter and report sales on magnetic tape.

Issuing agents that are not yet authorized RDS participants and agents that are authorized to inscribe bonds sold over-the-counter and report such sales on magnetic tape, will continue to inscribe and deliver bonds.

An audit by the Inspector General's Office and a study conducted by the Savings Bond Operations Office of its Cash Remittance/Interest Assessment System resulted in recommendations to modify agent reporting requirements, thereby necessitating revisions of the regulations prior to implementation. These changes relate to issuing agent remittance requirements and the submission of savings bond registration records. One change, in particular, should be noted with respect to Treasury Tax and Loan Accounts. As a result of the study, credits to Treasury Tax and Loan Accounts may no longer be used for savings bond sales payments. The provision has therefore been eliminated from § 317.2(f).

In the past several years, there has been a substantial change in the investment patterns of bondholders. As bonds became more competitive and appealing to investors, issuing agents began experiencing individual sales at face amounts of $30,000 or more. Investors can use different inscriptions to purchase bonds in excess of $30,000 face amounts. Many monthly agents are now occasionally holding large sums of sales proceeds until their scheduled remittance date.

The revisions will both clarify and strengthen the requirements for agent submission of sales proceeds. They will further enhance the Department's cash management program by requiring agents to submit accumulations of sales proceeds of $5,000 or more prior to their scheduled remittance.

The changes will also include correction of an oversight in the current regulations which resulted in the omission of instructions for remitting bond registration stubs. Issuing agents will now be required to submit bond registration records (stubs or tape) within 30 days following the month of issue. This will facilitate reconciliation of agent activity in an earlier time frame.

Procedural Requirements

Because this final rule relates to public contracts, the notice and public comment and delayed effective date provisions of the Administrative procedure Act are inapplicable pursuant to 5 U.S.C. 553(a)(2). This final rule is not a "major rule" as defined in executive Order 12291, "Federal Regulations". A regulatory impact analysis is, therefore, not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Parts 352, 353, 332, and 315

Bonds, Federal Reserve System, Government securities.

Dated: September 28, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II, part 317, Department of the Treasury Circular, Public Debt Series No. 4-67, Revised, is hereby further revised and issued as a Second Revision, to read as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

Sec.

317.0 Purpose and effective date.
317.1 Definitions.
317.2 Organizations authorized to act.
317.3 Procedure for qualifying and serving as issuing agent.
317.4 Isuing agents currently qualified.
317.5 Termination of qualification.
317.6 Issuance of bonds.
317.7 Obtaining and accounting for bond stock.
317.8 Remittance of sales proceeds and registration records.
317.9 Role of Federal Reserve Banks.
317.10 Reservation.

Authority: Sec. 22 of the Second Liberty Bond Act, as amended, 49 Stat. 21 (31 U.S.C. 3105) and 5 U.S.C. 301.

§ 317.0 Purpose and effective date.

The regulations in this part govern the manner in which an organization may qualify and act as an agent for the sale and issue of Series EE United States Savings Bonds.

§ 317.1 Definitions.

(a) *"Bond(s)"* means Series EE United States Savings Bonds.

(b) *"Federal Reserve Bank"* refers to the Federal Reserve Bank of the district in which the issuing agent or the applicant organization is located, and includes the Branch(es) of the Reserve Bank, where appropriate.

(c) *"Issuing agent"* refers to an organization that has been granted a certificate of qualification by a Federal Reserve Bank to sell savings bonds. The definition encompasses (1) each organization that accepts and processes purchase orders for bonds sold over-the-counter, but does not inscribe bonds, and (2) each organization that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans.

(d) *"Offering circular"* refers to Department of the Treasury Circular, Public Debt Series No. 1-80, current revision.

(e) *"Organization"* means an entity, as described in § 317.2, which may qualify as an issuing agent of bonds.

§ 317.2 Organizations authorized to act.

Organizations eligible to apply for qualification and serve as savings bond issuing agents include:

(a) Banks, trust companies and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(b) Agencies of the United States and of State and local governments; and

(c) Employers operating payroll savings plans for the purchase of United States Savings Bonds.

§ 317.3 Procedure for qualifying and serving as issuing agent.

(a) *Execution of application-agreement.* The applicant-organization shall obtain from, duly execute, and file with a Federal Reserve Bank an application-agreement form. The terms of each application-agreement shall include the provisions prescribed by section 202 of Executive Order No. 11246, entitled "Equal Employment Opportunity" (3 CFR, subchapter B, 42 U.S.C. 2000e note).

(b) *Certificate of qualification.* Upon approval of an application-agreement, the Federal Reserve Bank will issue a certificate of qualification to the organization. Until the receipt of such a certificate, an organization shall not perform any act as an issuing agent, or advertise in any manner that it is authorized to so act or that it has applied for qualification as an issuing agent. After receipt of a certificate of qualification, an organization may perform the functions of an issuing agent. Under the terms of the application-agreement, the proceeds of the sale of bonds are at all times the property of the United States for which the organization shall be fully accountable.

(c) *Adverse action or change in qualification.* An organization will be notified by the Federal Reserve Bank if its application-agreement to act as issuing agent is not approved, or if, after issuance, its certificate of qualification is terminated.

§ 317.4 Issuing agents currently qualified.

Each organization, qualified as an issuing agent under a trust agreement currently in effect, is authorized to continue to act in that capacity without requalification. By so acting, it shall be subject to the terms and conditions of the previously executed application-agreement and these regulations in the same manner and to the same extent as though it had requalified hereunder.

§ 317.5 Termination of qualification.

(a) *By the United States.* The Secretary of the Treasury or a delegate may terminate the qualification of an issuing agent at any time, upon due notice to the agent. If this action is taken, the agent will be required to make a final accounting for the balance of savings bond stock for which it is charged, based on the records of the Federal Reserve Bank. The agent must surrender all unissued bonds and remit the issue price of any remaining bonds included in its accountability.

(b) *At request of issuing agent.* A Federal Reserve Bank will terminate the qualification of an issuing agent upon its request, provided the agent is in full compliance with the terms of its agreement and the applicable regulations and instructions, and renders a final accounting.

§ 317.6 Issuance of bonds.

(a) *General.* Each issuing agent shall comply with all regulations and instructions issued by the Department of the Treasury directly, or through the Federal Reserve Bank, concerning the sale, inscription, dating, and validation of bonds; the acceptance, processing, and transmittal of over-the-counter purchase orders; the remittance of sales proceeds; and the disposition of paper and electronic registration records. No issuing agent shall have authority to sell bonds other than as provided in the offering circular.

(b) *Fees.* Each issuing agent, other than a Federal agency, will be paid a fee for each savings bond transaction. Fee payments for bonds issued through payroll savings plans, and by agents authorized to inscribe bonds sold over-the-counter, will be based on the number of individual issues transmitted to a Federal Reserve Bank. Fee payments for over-the-counter sales, where the agent is not authorized to inscribe the bonds, will be based on the number of purchase orders forwarded to a Federal Reserve Bank. A schedule reflecting the amount of the fees and the basis upon which they are computed will be published separately in the **Federal Register**.

(c) *No charge to customers.* Any issuing agent that accepts fees from the Department of the Treasury for selling savings bonds, and/or accepting over-the-counter purchase orders, shall not make any charge to customers for the same service.

§ 317.7 Obtaining and accounting for bond stock.

An issuing agent that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans may obtain bond stock from a Federal Reserve Bank. The bond stock is, at all times, the property of the United States. The organization shall be fully accountable for the bond stock consigned to it in accordance with all regulations and instructions issued by the Department of the Treasury.

§ 317.8 Remittance of sales proceeds and registration records.

An issuing agent shall account for and remit bond sales proceeds and registration records promptly in accordance with regulations and instructions issued by the Department of the Treasury, either directly or through the Federal Reserve Banks. Failure to comply with these instructions may subject an agent to penalties, including termination of its qualification as an issuing agent.

Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4-67, Second Revision (31 CFR Part 317) Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

1. *Purpose.* This appendix is issued for the guidance of organizations qualified as issuing agents of Series EE United States Savings Bonds under the provisions of Department of the Treasury Circular, Public Debt Series No. 4-67, current revision. Its purpose is to supplement the provisions of § 317.8 of the Circular relating to the remittance of savings bond sales proceeds and registration records, including the interest charge to be collected for late remittances.

2. *Definition of terms.* As used in this appendix:

(a) *"Issue Date"* is the date as of which a bond begins to earn interest. It is the date entered by the issuing agent in the upper right corner of the bond.

(b) *"Validation Date"* is the date as of which a bond is actually inscribed for issue. It is entered by the issuing agent immediately below the "Issue Date" in the area marked "Issuing Agent's Dating Stamp".

(c) *"Over-the-counter sale"* includes all sales of savings bonds (i) on the basis of individual purchase applications received over-the-counter or by mail, and (ii) on Bond-a-Month plans.

(d) *"Payroll sale"* includes all issues of savings bonds paid for with deductions withheld from the pay of employees of organizations which maintain (i) payroll savings plans or (ii) thrift, savings, vacation, or similar plans.

(e) *"Issuing agent"*, as provided in § 317.1(c) of the Circular, refers to an organization which has been granted a certificate of qualification by a Federal

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Reserve Bank to accept over-the-counter purchase orders for, or, heretofore, to sell and issue savings bonds.

(f) *"Immediately available funds"* are remittances of funds which are available for the use by the Department of the Treasury immediately upon receipt by the Department or its fiscal agents, and include, but are not limited to:

(1) A change to the remitter's (or a correspondent depository institution's) reserve account with a Federal Reserve Bank;

(2) A Federal funds check;

(3) A United States Government check; or

(4) A postal money order.

(g) *"Financial institutions"* refers to banks, trust companies, credit unions, and savings institutions chartered by or incorporated nnder the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(h) *"Nonfinancial institutions"* refers to any issuing agent not described under paragraph (g) of this appendix.

3. *Determination of issue date.* The obligation of the United States to pay interest on a savings bond is determined by its issue date. That date is the first day of the month in which a qualified issuing agent receives or accumulates the full purchase price of the bond. In the case of a bond purchased under a payroll savings plan operated by an organization which is not an issuing agent, the issue date should be fixed as of the month in which the organization accumulates the full purchase price of the bond. Such funds must, however, be remitted to the issuing agent in time to permit such dating.

4. *Forms of remittance.* Issuing agents shall remit sales proceeds in timely fashion as follows:

(a) Issuing agents which are financial institutions must remit in immediately available funds.

(b) Issuing agents which are nonfinancial institutions should remit in immediately available funds.

(c) The Commissioner of the Public Debt, as designee of the Secretary of the Treasury, may waive or modify this provision. The Commissioner may do so in any particular case or class of cases for the convenience of the United States or in order to relieve any agent or agents of unusual hardship:

(1) If such action would not be inconsistent with law or equity,

(2) If it does not impair any existing rights, and

(3) If the Commissioner is satisfied that such action would not subject the United States to any substantial expense or liability.

5. *Remittance date.* Sales proceeds should be remitted on the date shown on the transmittal document, i.e., PD F 3252–OC or PD F 5255–RDS for over-the-counter sales or PD F 4848 for payroll sales. If there is a significant time difference between the date on the transmittal document and the date of receipt in the Federal Reserve Bank, the transmittal date may be determined, for purposes of this appendix, by the postmark, if the remittance is mailed, or the receipt date, if the remittance is forwarded by courier, messenger, or similar means.

Subpart B—Over-the-Counter Sales

1. *Regional Delivery (RDS) participants.* An agent participating in the Regional Delivery System (RDS) is authorized to sell bonds over-the-counter. It will accept and review customer purchase orders, but it will not inscribe the bonds. Purchase order information will be forwarded to a Federal Reserve Bank for inscription of the bonds. An authorized RDS participant shall remit sales proceeds and purchase orders (on paper or in an electronically processible format) to a Federal Reserve Bank within five (5) business days of receipt from the customer.

2. *Issues-on-Tape Program participants.* An agent that has been authorized by the Bureau of the Public Debt to inscribe bonds sold over-the-counter and report such sales on magnetic tape shall remit sales proceeds and electronic issue records no less often than once a week on a schedule established by the Federal Reserve Bank.

3. *Agents not participating in RDS.* An agent that has not been authorized to participate in RDS by a Federal Reserve Bank shall remit sales proceeds and paper registration records, as directed by the Federal Reserve Bank, in accordance with one of the schedules set forth below, based on a periodic determination by the Bureau of the Public Debt of the average monthly over-the-counter sales remitted by the agent.

(a) *Agents with average monthly sales of less than $5,000.* Each agent with average monthly over-the-counter sales of less than $5,000 (issue price) shall remit the proceeds of such sales no less often than once each month on a schedule established by the Federal Reserve Bank. The agent will be allowed two (2) business days to prepare the remittance; sales during those two (2) business days may be included in the following month's remittance. If an agent accumulates monthly over-the-counter sales of $5,000 (issue price) or more prior to its scheduled remittance date, those sales proceeds shall be remitted within two (2) business days; the agent will also report on its normal reporting date.

(b) *Agents with average monthly sales of $5,000 or more.* Each agent with average monthly over-the-counter sales of $5,000 (issue price) or more shall remit the proceeds of such sales no less often than once a week on a schedule established by the Federal Reserve Bank. The agent will be allowed two (2) business days to prepare the remittance; sales during those two (2) business days may be included in the following week's remittance. At the end of each calendar month, the agent shall remit within two (2) business days all remaining sales made during that calendar month, even though the last business day of the month may not coincide with the established reporting date.

Subpart C—Remittance of Payroll Sales Proceeds

1. *Application of requirements.* The remittance requirements on payroll sales apply to the agent that issues the bonds. That agent may be either (a) an employer organization that maintains a payroll savings plan, or (b) a financial institution that services an employer organization. An organization that maintains a payroll savings plan but does not issue bonds should be notified by the servicing issuing agent that it must remit sales proceeds to the agent in sufficient time to permit compliance with the requirements.

2. *Remittance of payroll sales deductions.* Payroll agents shall remit sales proceeds throughout the month shown in the issue date as soon as the full amount of the purchase price of the bonds has been received or accumulated. In no case should such proceeds be remitted later than the second business day of the month following the month shown in the issue date. The agent shall ensure that its system properly accounts for and recognizes when the full purchase price is received, or is accumulated, so that timely remittance is made. The agent shall transmit registration records, on paper or on magnetic tape, within thirty (30) days following the month shown on the issue date.

Subpart D—Interest on Late Remittances

1. *Rate of Interest.* Interest will be assessed for each day's delay in the remittance of sales proceeds, based on the actual date of remittance. The rate of interest to be used will be the current value of funds to the Department of the Treasury, as set forth each quarter in the Treasury Fiscal Requirements Manual. The rate applied will be that in effect during the entire period in which the remittance is late. The interest assessment will be collected by the Federal Reserve Bank.

2. *Waiver.* Interest will be waived in the situations described below as well as in any specific case where, in the judgment of the Commissioner of the Public Debt, the circumstances warrant such action. The Commissioner's decision on any waiver action shall be final.

(a) *Bonds inscribed by issuing agent.*—(i) *Payroll or book-entry issues.* If, during any three (3) month period, the interest assessed on an agent's late remittance of payroll or book entry sales proceeds accumulates to less than $50 for each type of sales, the interest assessed for the first month will be waived. The interest assessed for each type of sales for the remaining two (2) months will then be carried forward to the next period of three (3) consecutive months.

(ii) *Over-the-counter issues.* The interest assessed on an agent's late remittance of over-the-counter sales proceeds transmitted during a given month will be waived if it is less than $50.

(b) *Bonds inscribed by Federal Reserve Bank.* The interest assessed on late remittance of over-the-counter sales proceeds transmitted by a financial institution's parent and branch offices during a given month will be waived if it is less than $25. The interest assessed on late remittances of payroll or book-entry sales proceeds transmitted by a financial institution or employer during a given month will be waived if it is less than $25.

(c) *Suspension of waiver.* The Commissioner may suspend the application of the waiver in the case of any agent that consistently fails to meet the remittance requirements.

§ 317.9 Role of Federal Reserve Banks.

(a) *Role as fiscal agent.* In their capacity as fiscal agents of the United States, the Federal Reserve Banks are authorized to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

(b) *Specific activities of Federal Reserve Banks.* The specific activities of Federal Reserve Banks include:

(1) Qualifying issuing agents;

(2) Supplying agents with bond stock, maintaining records of agent accountability, and monitoring compliance with stock consignment rules;

(3) Instructing agents regarding the sale and issue of bonds, the custody and control of bond stock, and the accounting for and remittance of sales proceeds; and

(4) Providing guidelines covering the amount of bond stock agents may ordinarily requisition and maintain.

§ 317.10 Reservation.

The Secretary of the Treasury may at any time, or from time to time, supplement or amend the terms of these regulations.

[FR Doc. 89–23367 Filed 9–29–89; 10:03 am]
BILLING CODE 4810–40–M

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DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. of the Treasury Circ., Public Debt Series No. 4-67, Second Rev.]

U.S. Savings Bonds; Revised Fee Schedule

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice of change in the method of calculation of issuing agent fees and payment date for fees for over-the-counter sales.

SUMMARY: This notice is being published to set out a revised schedule for fees payable to eligible issuing agents for United States Savings Bonds sold over-the-counter and through Bond-a-Month plans and to establish payment dates for such fees. The revised fee schedule applies to issue records transferred to the Bureau of the Public Debt and over-the-counter purchase orders received by Federal Reserve Banks on and after the effective date of this notice. The change is required due to the implementation of the Regional Delivery System (RDS).

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26106-1328 (304) 420-6505.

SUPPLEMENTARY INFORMATION: Department of the Treasury Circular, Public Debt Series No. 4-67, Second Revision (31 CFR part 317), at § 317.6(b), provides that issuing agents, other than Federal agencies, will be paid a fee for each savings bond transaction. The Circular further provides that a schedule of fees and the basis on which the fees are computed and paid will be separately published in the **Federal Register**.

The Regional Delivery System (RDS) is a program developed by the Bureau of the Public Debt to automate the inscription and to arrange delivery of Series EE savings bonds sold over-the-counter and through Bond-a-Month plans. When the Regional Delivery System is fully operational in all Federal Reserve Districts, most issuing agents heretofore qualified to sell and inscribe over-the-counter bonds will no longer conduct all phases of such transactions. They will continue to accept purchase orders and remit sales proceeds received from customers, but they will not inscribe the bonds. Instead, they will transmit funds and purchase order information to designated Federal Reserve Banks that will then complete the process in an automated environment. Special arrangements will be made for large-volume issuing agents authorized by the Bureau to inscribe bonds sold over-the-counter and report sales on magnetic tape.

Issuing agents that are not yet authorized RDS participants and agents that are authorized to inscribe bonds sold over-the-counter and report such sales on magnetic tape will continue to receive a fee of $.85 for each bond issued during a calendar quarter; such fees will be paid quarterly by the Bureau of the Public Debt based on transfer dates assigned to transmittals by the Federal Reserve Bank. As set forth in a notice published in the **Federal Register** on June 30, 1989 (54 FR 27853), such payments will be made by the Bureau within sixty (60) days after the close of the quarter.

Fees for over-the-counter bonds, sold by agents authorized to participate in the Regional Delivery System, will be based on the number of purchase orders received by a Reserve Bank during a calendar month; such fees will be paid monthly by the Reserve Bank within forty-five (45) days after the close of the month. Authorized RDS participants will receive a fee of $.50 for each hard-copy purchase order received by a Reserve Bank. Such amount has been determined to be appropriate compensation for agents' lessened responsibilities in conducting over-the-counter transactions. In recognition of additional processing costs, RDS participants that elect to prepare electronic records of purchase order information will receive a fee of $.85 per purchase order record received by a Reserve Bank. Heretofore, issuing agents that provided electronic input to Reserve Banks for inscription of bonds sold over-the-counter have not received fees, since they were not the issuing agent of record.

No changes have been made to the schedule of fees paid to issuing agents for bonds issued through payroll savings plans or reissued to effect distribution to participants in thrift, savings, vacation, or similar plans; provisions related thereto are included here for ease of reference. The fee schedules are included by reference in all issuing agent agreements and Bureau regulations, as well as the Issuing Agent Fee Statement (PD F 4982) distributed to issuing agents.

Dated: September 28, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Schedules of Fees

The schedules of fees for the issue of Series EE savings bonds are hereby set forth below.

Eligible organizations, qualified as issuing agents by Federal Reserve Banks and Branches under the provisions of Department of the Treasury Circular, Public Debt Series No. 4-67, Second Revision (31 CFR part 317), will receive a fee for each savings bond issued or, in the case of agents authorized to participate in the Regional Delivery System, for each over-the-counter purchase order received from them by a Federal Reserve Bank.

Fee Schedule—Over-the-Counter Issues

Qualified issuing agents, other than Federal agencies, will be paid a fee for each over-the-counter savings bond transaction based on the method used to transmit purchase information to a Federal Reserve Bank.

(a) *Class 1 Fee:* Each issuing agent that (1) has not yet been authorized to participate in the Regional Delivery System or (2) is authorized under a special arrangement to inscribe bonds sold over-the-counter and report sales on magnetic tape will be paid a fee of $.85 for each Series EE bond issue record transmitted to the Bureau of the Public Debt during a calendar quarter based on transfer dates assigned to the transmittals by a Federal Reserve Bank. Class 1 fees will be paid to each issuing agent by the Bureau of the Public Debt within sixty (60) days after the close of the quarter via check or direct deposit (electronic funds transfer).

(b) *Class 2 Fee:* Each issuing agent authorized to participate in the Regional Delivery System will be paid a fee of $.50 for each paper Series EE purchase order received from them by a Federal Reserve Bank during a calendar month. Class 2 fees will be paid to each depository financial institution by the Reserve Bank, within forty-five (45) days after the close of the month, via a credit to the institution's reserve account.

(c) *Class 3 Fee:* Each issuing agent, authorized to participate in the Regional Delivery System, that elects to prepare electronic records of Series EE purchase order information and transmit such information to a Federal Reserve Bank for inscription of the bonds will be paid a fee of $.85 for each purchase order record received by the Reserve Bank during a calendar month. Class 3 fees will be paid to each depository financial institution by the Reserve Bank within forty-five (45) days after the close of the month via a credit to the institution's reserve account.

Coverage of Over-the-Counter Fees

Class 1 fees are intended to recompense issuing agents that are authorized to inscribe bonds sold over-the-counter for costs associated with obtaining and controlling unissued bond stock and inscribing and delivering bonds, exclusive of the cost of postage for bonds mailed in envelopes provided by a Federal Reserve Bank. Class 2 fees are intended to recompense authorized RDS participants for costs associated with accepting and reviewing purchase orders and preparing transmittals to a Reserve Bank. Class 3 fees are intended to recompense authorized RDS participants for costs associated with accepting and reviewing purchase orders, generating electronic records of purchase orders, and transmitting such information to a Reserve Bank.

Fee Schedule—Payroll and Other Issues

Qualified issuing agents, other than Federal agencies, will be paid a fee for each Series EE savings bond issued on the basis of deductions under a payroll savings plan, on the following scale:

(a) For the first 1,500 bonds issued in a calendar quarter, $.32.

(b) For the next 8,500 bonds issued in a calendar quarter, $.11.

(c) For all Series EE bonds over 10,000 issued in a calendar quarter, $.06.

Qualified issuing agents, other than Federal agencies, will be paid a fee of $.05 for each Series E or EE savings bond issued on reissue during a calendar quarter to effect distribution to participants in thrift, savings, vacation, or similar plans.

Payroll fee payments will be based on the number of individual bond issue records transmitted by an issuing agent to the Bureau of the Public Debt during a calendar quarter, according to transfer dates assigned to the transmittals by a Federal Reserve Bank. Payroll fees will be paid to each eligible issuing agent by the Bureau within sixty (60) days after the close of the quarter via check or direct deposit (electronic funds transfer).

Coverage of Payroll Fees

In establishing and paying a fee for savings bonds issued via payroll or other savings plans, the Department of the Treasury is recompensing issuing agents for costs associated with obtaining and controlling bond stock and inscribing and delivering bonds. The fee does not include the cost of postage for bonds mailed in envelopes provided by a Federal Reserve Bank. The amount of the fee is generally based on alternative costs to the Department for obtaining or providing this issuing service.

Charges to Customers

A financial institution that accepts fees from the Department of the Treasury for issuing savings bonds or accepting over-the-counter purchase orders shall not make any charge to customers for the same service. Customers, in this context, include employers that provide a payroll savings plan for employees and have arranged for a financial institution to issue the bonds. Individuals who purchase savings bonds over-the-counter, through Bond-a-Month plans, or through payroll deduction, may not be charged a fee by either the issuing agent or the employer.

[FR Doc. 89-23368 Filed 9-29-89; 10:03 am]

BILLING CODE 4810-40-M

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federal register

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Part VII

The President

Proclamations 6030–6033

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Presidential Documents

Title 3—

The President

Proclamation 6030 of September 28, 1989

To Provide for the Tariff Treatment of Goods From the Freely Associated States, To Implement Tariff Reductions on Certain Tropical Products, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 242 of the Compact of Free Association (the Compact) entered into by the Government of the United States and the Governments of the Marshall Islands and of the Federated States of Micronesia (the freely associated states), as given effect by section 401(a) of the Compact of Free Association Act of 1985 (the Association Act) (Public Law No. 99–239, 99 Stat. 1770), provides that upon implementation of the Compact the President shall proclaim duty-free treatment for most products of the freely associated states, subject to the limitations provided in sections 503(b) and 504(c) of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2463(b) and 2464(c)).

2. Section 243 of the Compact, as given effect by section 401(b) of the Association Act, provides that certain articles imported from the freely associated states are to be excluded from the duty-free treatment proclaimed by the President and are to receive most-favored-nation treatment. In addition, section 401(a) of the Association Act sets restrictions on the aggregate quantity of canned tuna that may be entered free of duty in any calendar year. The foregoing exclusions and restrictions were set forth in terms of the former Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The United States converted the TSUS to the Harmonized Tariff Schedule of the United States (HTS) effective January 1, 1989. Accordingly, the exclusions and restrictions set out in section 401 of the Association Act must be incorporated into the HTS. Further, certain technical rectifications to particular HTS provisions are necessary in order to designate such provisions correctly.

3. In accordance with section 401 of the Association Act, I have determined that the existing preferential tariff treatment provided under the Generalized System of Preferences (GSP), pursuant to Title V of the 1974 Act, to products of the freely associated states should be terminated and that certain modifications and rectifications to the HTS are necessary in order to reflect the appropriate treatment of such articles under the Compact.

4. Pursuant to section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 2902(a)), I have determined that one or more existing duties or other import restrictions of the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of Title I of the 1988 Act (19 U.S.C. 2901 *et seq.*) will be promoted by entering into a trade agreement providing for the reduction of rates of duty applicable to imports of certain tropical products.

5. The requirements set forth in sections 125, 126(a), 131–135, and 161(b) of the 1974 Act (19 U.S.C. 2135, 2136(a), 2151–2155, and 2211(b)) have been complied with.

6. Pursuant to section 1102(a) of the 1988 Act, the President, through his duly empowered representative, on December 5, 1988, entered into a trade agreement with other contracting parties to the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), as amended, consisting of a statement

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of negotiating results and schedules of concessions agreed upon by parties thereto, and implementing on a provisional basis tariff reductions on enumerated tropical products. A copy of the agreement and the attached schedule of United States concessions on such products is annexed to this Proclamation as part (b) of Annex II.

7. Pursuant to the 1988 Act, I hereby determine that the modification or continuance of existing duties hereinafter proclaimed is required or appropriate to carry out the trade agreement on tropical products. Pending the successful conclusion of the Uruguay Round of Multilateral Trade Negotiations, I have decided to implement the United States tropical products concessions on a temporary basis.

8. Section 201(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Public Law No. 100-449, 102 Stat. 1851) authorizes the President to proclaim such modifications or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out Article 401 of the United States-Canada Free-Trade Agreement and the schedule of duty reductions with respect to goods originating in the territory of Canada set forth in Annexes 401.2 and 401.7 to the Agreement.

9. Pursuant to section 201(a) of the Implementation Act, I have determined that it is necessary to provide for the staged reduction in duties on certain plywood and certain motor vehicle equipment originating in the territory of Canada, and to correct an omission in Proclamation 5978 of May 12, 1989, of the staged reduction in duties on certain puzzles originating in the territory of Canada.

10. Section 1204(b) of the 1988 Act (19 U.S.C. 3004(b)) directs the President to proclaim such modifications to the HTS as are necessary or appropriate to implement the applicable provisions of executive actions taken after January 1, 1988, and before the effective date of the HTS, and such technical rectifications as the President considers necessary. Pursuant to the terms of section 1204(b)(1) of the 1988 Act (19 U.S.C. 3004(b)(1)), I have determined that certain technical rectifications to the HTS are necessary.

11. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and other Acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to section 401 of the Association Act, section 201 of the Implementation Act, sections 1102 and 1204(b) of the 1988 Act, and Title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the tariff treatment of goods from the freely associated states, general note 3 to the HTS is modified as set forth in Annex I to this Proclamation.

(2) In order to implement the agreement on tropical products on a provisional basis, chapter 99 of the HTS is modified as set forth in Annex II(a) to this Proclamation.

(3) In order to implement the duty treatment provided by the United States-Canada Free-Trade Agreement for certain motor vehicle equipment, certain plywood, and certain puzzles originating in the territory of Canada, the HTS is modified as provided in Annex III to this Proclamation.

(4) In order to make technical rectifications in particular provisions, the HTS is modified as set forth in Annex IV to this Proclamation.

(5) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this Proclamation are hereby superseded to the extent of such inconsistency.

(6)(a) The amendments made by Annex I and IV(b) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the publication of this Proclamation in the **Federal Register**.

(b) The amendments made by Annex II(a) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in such Annex.

(c) The amendments made by Annex III of this Proclamation shall be effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in such Annex.

(d) The amendments made by Annex IV(a) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

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ANNEX I

Modifications to General Note 3 to the HTS

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the publication of this Proclamation in the Federal Register, general note 3(c) to the HTS is modified as follows:

(a) by striking out, from the enumeration in general note 3(c)(ii)(A) of independent countries designated as beneficiary developing countries for purposes of the Generalized System of Preferences, "Marshall Islands, Republic of" and "Micronesia, Federated States of"; and

(b) by inserting in appropriate sequence the following new subdivision (viii):

"(viii) Products of Freely Associated States.

(A) Pursuant to sections 101 and 401 of the Compact of Free Association Act of 1985 (99 Stat. 1773 and 1838), the following countries shall be eligible for treatment as freely associated states:

Marshall Islands
Micronesia, Federated States of

(B) Except as provided in subparagraphs (D) and (E) of this paragraph, any article the product of a freely associated state shall enter the customs territory of the United States free of duty if--

(1) such article is imported directly from the freely associated state, and

(2) the sum of (I) the cost or value of the materials produced in the freely associated state, plus (II) the direct costs of processing operations performed in the freely associated state is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article the product of a freely associated state and not described in subparagraph (D) of this paragraph, an amount not to exceed 15 percent of the appraised value of such article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B)(2)(II) above.

(C) Tuna of subheading 1604.14.20 in an aggregate quantity entered in any calendar year from the freely associated states not to exceed 10 percent of United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, may enter the customs territory free of duty, provided that such imports shall be counted against the aggregate quantity of tuna that is dutiable under the general subcolumn of rate of duty column 1 for subheading 1604.14.20 for that calendar year.

(D) The duty-free treatment provided under subparagraph (B) of this paragraph shall not apply to--

(1) tuna of subheading 1604.14.20 (except tuna in an aggregate quantity entered in any calendar year from the freely associated states not to exceed 10 percent of United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service);

(2) textile and apparel articles which are subject to textile agreements;

(3) footwear, handbags, luggage, flat goods, work gloves and leather wearing apparel, the foregoing which were not eligible articles for purposes of the Generalized System of Preferences on April 1, 1984;

(4) watches, clocks and timing apparatus of chapter 91 (except such articles incorporating an optoelectronic display and no other type of display); and

(5) buttons of subheading 9606.21.40 or 9606.29.20.

(E) No article the product of a freely associated state and not excluded from duty-free treatment in subparagraph (D) of this paragraph shall enter the customs territory free of duty during a calendar year if the freely associated state--

(1) has exported (directly or indirectly) to the United States during the calendar year a quantity of such article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974 (as determined for purposes of section 504(c)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)(A)); or

(2) has exported (either directly or indirectly) to the United States a quantity of such article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during the preceding calendar year.

(F) Any article the product of a freely associated state and excluded from duty-free treatment pursuant to subparagraphs (D) or (E) of this paragraph shall be dutiable at the rate provided in the general subcolumn of rate of duty column 1 for the appropriate heading or subheading."

ANNEX II
TEMPORARY REDUCTIONS IN RATES OF DUTY
FOR CERTAIN TROPICAL PRODUCTS

Note: The following supersedes provisions now in the Harmonized Tariff Schedule of the United States (HTS). The provisions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

(a)(1) Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the publication of this Proclamation in the Federal Register and before the close of December 31, 1992, the following new provisions are inserted in chapter 99 of the HTS:

"9903.10.01	Other live herbaceous perennials, with soil attached to roots (provided for in subheading 0602.99.30).....	1.7%	No change	No change
9903.10.02	Other live plants, with soil attached to roots (provided for in subheading 0602.99.60).....	2.3%	No change	No change
9903.10.03	Cassava (manioc), fresh or dried (provided for in subheading 0714.10.00).....	22%	No change	No change
9903.10.04	Fresh dasheens (provided for in subheading 0714.90.10).....	3.6%	No change	No change
9903.10.05	Pignolia nuts, fresh or dried, in shell (provided for in subheading 0802.90.20).....	1.1¢/kg	No change	No change
9903.10.06	Pignolia nuts, fresh or dried, shelled (provided for in subheading 0802.90.25).....	1.7¢/kg	No change	No change
9903.10.07	Plantains, dried (provided for in subheading 0803.00.40).....	2.3%	No change	No change
	Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter:			
9903.10.08	Bananas and plantains (provided for in subheading 0811.90.10).....	5.8%	No change	No change
9903.10.09	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops (provided for in subheading 0811.90.25).....	5.3%	No change	No change
9903.10.10	Barberries, dried (provided for in subheading 0813.40.15).....	4.1¢/kg	No change	No change
9903.10.11	Bombay or wild mace, ground (provided for in subheading 0908.20.20).....	12.4¢/kg	No change	No change
9903.10.12	Ginger, ground (provided for in subheading 0910.10.40).....	1.7¢/kg	No change	No change
9903.10.13	Thyme, other than crude or not manufactured (provided for in subheading 0910.40.30).....	5.6%	No change	No change
9903.10.14	Origanum, other than crude or not manufactured (provided for in subheading 0910.99.40).....	5.6%	No change	No change
9903.10.15	Other spices (provided for in subheading 0910.99.60).....	2.3%	No change	No change
9903.10.16	Mint leaves, other than crude or not manufactured (provided for in subheading 1211.90.40).....	5.6%	No change	No change
9903.10.17	Turpentine gum (oleoresinous exudate from living trees) (provided for in subheading 1301.90.40).....	3.6%	No change	No change
9903.10.18	Other rattans of a kind used primarily for plaiting (provided for in subheading 1401.20.40)...	2.3%	No change	No change
9903.10.19	Other vegetable materials of a kind used primarily for plaiting (provided for in subheading 1401.90.40).....	3.6%	No change	No change
9903.10.20	Vegetable hair of a kind used primarily as stuffing or as padding (provided for in subheading 1402.91.00).....	0.8¢/kg	No change	No change
	Glycerol (glycerine), whether or not pure; glycerol waters and glycerol lyes:			
9903.10.21	Glycerol (glycerine), crude; glycerol waters and glycerol lyes (provided for in subheading 1520.10.00).....	0.3¢/kg	No change	No change
9903.10.22	Other, including synthetic glycerol (provided for in subheading 1520.90.00).....	0.8¢/kg	No change	No change
9903.10.23	Cocoa paste, wholly or partly defatted (provided for in subheading 1803.20.00).....	0.62¢/kg	No change	No change
9903.10.24	Cocoa powder, not containing added sugar or other sweetening matter (provided for in heading 1805.00.00).....	0.62¢/kg	No change	No change

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ANNEX II (con.)

(a)(1) (con.):

9903.10.25	Other tapioca and substitutes therefor prepared from starch (provided for in subheading 1903.00.40).....	0.9¢/kg	No change	No change
9903.10.26	Chestnuts, prepared or preserved by vinegar or acetic acid (provided for in subheading 2001.90.42).....	5.6¢/kg	No change	No change
	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter:			
9903.10.27	Coconuts (provided for in subheading 2008.19.15).....	3%	No change	No change
9903.10.28	Palm hearts (provided for in subheading 2008.91.00).....	2.6%	No change	No change
9903.10.29	Banana pulp (provided for in subheading 2008.99.13).....	5.6%	No change	No change
9903.10.30	Bananas, other than pulp (provided for in subheading 2008.99.15).....	2.3%	No change	No change
9903.10.31	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops (provided for in subheading 2008.99.23).....	2.1%	No change	No change
9903.10.32	Yucca (provided for in subheading 2008.99.65).....	14.5%	No change	No change
9903.10.33	Oilcake and other solid residues whether or not ground or in the form of pellets, resulting from the extraction of fats or oils from palm nuts or kernels (provided for in subheading 2306.60.00)....	0.5¢/kg	No change	No change
9903.10.34	Essential oils of eucalyptus (provided for in subheading 3301.29.10).....	2.1%	No change	No change
9903.10.35	Essential oils of orris (provided for in subheading 3301.29.20).....	1.9%	No change	No change
9903.10.36	Rattan webbing (provided for in subheading 4601.20.20).....	2.3%	No change	No change
9903.10.37	Other baskets and bags, whether or not lined, of rattan or of palm leaf (provided for in subheading 4602.10.13).....	7.5%	No change	No change
9903.10.38	Other basketwork, wickerwork and other articles, made directly to from plaiting materials or made up from articles of heading 4601 (provided for in subheading 4602.10.50).....	2.3%	No change	No change
9903.10.39	Single yarn of jute or of other textile bast fibers of heading 5303 (provided for in subheading 5307.10.00).....	2.3%	No change	No change
9903.10.40	Multiple (folded) or cabled yarn of jute or of other textile bast fibers of heading 5303 (provided for in subheading 5307.20.00).....	3.0%	No change	No change
9903.10.41	Woven fabrics of jute or of other textile bast fibers of heading 5303, other than unbleached (provided for in subheading 5310.90.00).....	9.6%	No change	No change
9903.10.42	Seats (other than those of heading 9402) of cane, osier, bamboo or similar materials (provided for in subheading 9401.50.00).....	5.6%	No change	No change"

(a)(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified below for the enumerated provisions, the rate of duty in the general subcolumn of column 1 for such provisions is stricken from the HTS and the corresponding new rate of duty is inserted in lieu thereof:

9903.10.03	July 1, 1990---10%	
	July 1, 1991---18.5%	
9903.10.32	July 1, 1990---13.1%	

ANNEX II (con.)

(b) Text of the Agreement identified in the sixth recital of this proclamation.

MULTILATERAL TRADE NEGOTIATIONS
THE URUGUAY ROUND

MTN.GNG/17
5 December 1988

Group of Negotiations on Goods (GATT)

TROPICAL PRODUCTS

Specific Negotiating Results for the Uruguay Round Mid-Term Review Submitted by Australia, Austria, Brazil, Canada, Central American Countries, Colombia, European Communities, Finland, Japan, Malaysia, Mexico, New Zealand, Norway, Philippines, Sweden, Switzerland, Thailand, United States

1. The present document contains a first result obtained thus far in the negotiations. It consists of contributions by a number of participants towards the achievements of the objectives established by the Ministerial Declaration of Punta del Este for negotiations on tropical products in the Uruguay Round. This result will be further improved and extended in the course of continuing negotiations in the light of paragraphs 2 and 3 under the heading "Tropical Products" in Section III of the Report of the Group of Negotiations on Goods to the Trade Negotiations Committee.

2. These contributions are made under the following terms and conditions:

(a) Participants undertake to apply the measures indicated by them on a provisional basis, for the duration of the round, it being understood that if any participant finds it necessary to withdraw any or all of its contributions other participants may wish to reassess their own contributions;

(b) in relation to m.f.n. contributions, individual participants undertake to consider binding concessions at the end of the Round in the light of the overall results achieved.

List of Attachments

1. Australia
2. Austria
3. Brazil
4. Canada
5. Central American Countries
6. Colombia
7. European Communities
8. Finland
9. Japan
10. Malaysia
11. Mexico
12. New Zealand
13. Norway
14. Philippines
15. Sweden
16. Switzerland
17. Thailand
18. United States

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ANNEX III

TARIFF TREATMENT OF CERTAIN MOTOR VEHICLE EQUIPMENT, OF CERTAIN PLYWOOD, AND OF CERTAIN PUZZLES ORIGINATING IN THE TERRITORY OF CANADA

(a) Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, subchapter V of chapter 99 of the HTS is modified as follows:

1. U.S. note 3 to subchapter V of chapter 99 is renumbered as 5, and the following new U.S. notes 3 and 4 are inserted in subchapter V of chapter 99:

"3. For the following subheadings, the percentage set forth in the "Special" subcolumn of rate of duty column 1 for heading 9905.00.00 which is applicable to goods originating in the territory of Canada shall be applied to the rate of duty set opposite such subheading instead of the column 1-general rate of duty--

7419.99.30	8.5%
8308.90.60	4.8%
8708.50.50	2.6%
8708.50.80	2.6%
8708.80.50	2.8%
8708.80.80	2.6%
8708.80.50	2.6%

4. On or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in HTS headings 9905.00.10 and 9905.00.20 that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty are inserted in such subheadings in lieu thereof:

	1990	1991	1992	1993	1994	1995	1996	1997	1998
9905.00.10	:1.7¢/kg + 1.3%	:1.1¢/kg + 0.9%	:0.5¢/kg + 0.4%	:Free	:Free	:Free	:Free	:Free	:Free
9905.00.20	:2.3¢/kg + 1.8%	:2¢/kg + 1.6%	:1.7¢/kg + 1.3%	:1.4¢/kg + 1.1%	:1.1¢/kg + 0.9%	:0.8¢/kg + 0.6%	:0.5¢/kg + 0.4%	:0.2¢/kg + 0.2%	:Free"

2. The rate of duty in the Rates of Duty 1-Special subcolumn for HTS heading 9905.00.00 is modified by striking out the rate of duty followed by the symbol "CA" in parentheses and inserting "80 percent of the column 1-general rate of duty (except as otherwise noted in U.S. note 3 to this subchapter) applicable under the respective listed subheading" in lieu thereof.

(b) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after May 30, 1989, the Rates of Duty 1-Special subcolumn for HTS subheading 9503.60.20 is modified by inserting "8.1% (CA)" for such subheading.

(c) Effective with respect to goods originating in the territory of Canada entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the publication of this Proclamation in the Federal Register, subchapter V of chapter 99 of the HTS is modified by inserting the following new provisions:

"9905.00.10	Articles provided for in subheadings 4412.11, 4412.12, 4412.21, 4412.29 or 4412.91, if tongued, grooved or rabbetted continuously along any edge and of a type used in the construction of walls, ceilings or other parts of buildings	No change	No change (A,E,IL) 2.3¢/kg + 1.8% (CA)	No change
9905.00.20	Articles provided for in subheadings 4412.19 or 4412.99, if tongued, grooved or rebbetted continuously along any edge and of a type used in the construction of walls, ceilings or other parts of buildings	No change	No change (A,E,IL) 2.6¢/kg + 2% (CA)	No change"

(d) On or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in HTS subheading 9503.60.20 that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty are inserted in such subheadings in lieu thereof:

	1990	1991	1992	1993	1994	1995	1996	1997	1998
9503.60.20	:5.4%	:4.7%	:4%	:3.4%	:2.7%	:2%	:1.3%	:0.6%	:Free

ANNEX IV

TECHNICAL RECTIFICATIONS TO THE HTS

(a) Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, the HTS is modified as follows:

1. General note 3(c)(ii)(A) to the HTS, setting forth those beneficiary developing countries designated as eligible for benefits of the Generalized System of Preference, is modified by striking out, from the enumeration of members of the Association of South East Asian Nations (ASEAN), "Phillipines" and by inserting in lieu thereof "Philippines"; and by inserting "Bahamas, The" in the enumeration of member countries of the Caribbean Common Market (CARICOM).

2. General note 3(c)(vii)(L) to the HTS is modified by inserting "of" before "Canada".

3. Additional U.S. note 3(c)(i) to chapter 17 is modified by striking out, from the table setting forth allocations of quantities of sugar to supplying countries, "8. Panama 2.0" and by renumbering the subsequent allocations in the table accordingly.

ANNEX IV (con.)

(a) (con.):

4. The article description of subheading 2007.91.10 is modified by striking out "Paste and puree" and by inserting in lieu thereof "Pastes and purees".

5. The article description of subheading 2106.90.05 is modified by striking out "0403.90.20" and by inserting in lieu thereof "0403.90.40".

6. Subheading 4016.99.03 is modified by striking out the word "the" appearing immediately before the word "pecking".

7. Additional U.S. note 2 to chapter 40 of the HTS is modified by striking out "$5,000" and by inserting in lieu thereof "$10,000".

8. The colum 2 rate of duty for subheading 4105.11.00 is modified by striking out "kg".

9. Subheading 6911.10.30 is modified by inserting, in the parenthetical expression in the "Rates of Duty 1-Special" subcolumn, the symbol "A," immediately before "E,".

10. Additional U.S. note 2 to chapter 71 of the HTS is modified by striking out "$5,000" and by inserting in lieu thereof "$10,000".

11. The article description of subheading 7211.41.30 is modified by striking out "less than" and inserting "not exceeding" in lieu thereof.

12. Additional U.S. note 2 to chapter 73 of the HTS is modified by striking out "7303.19.30" and by inserting in lieu thereof "7307.19.30".

13. Heading 7410.00.00 of the HTS is modified by striking out the column 2 duty rate of "5%" and by inserting in lieu thereof "45%".

14. Subheading 8483.50.60 of the HTS is modified by inserting in alphabetical sequence in the parenthetical enumeration in the "Rates of Duty 1-Special" subcolumn the symbol "B,".

15. Subheading 8708.00.15 of the HTS is modified by inserting in alphabetical sequence in the parenthetical enumeration in the "Rates of Duty 1-Special" subcolumn the symbol "B,".

16. U.S. note 4, subchapter II, chapter 98 is modified by striking out the word "heading" and by inserting in lieu thereof the word "text".

17. U.S. note 1, subchapter X, chapter 98 is modified by striking out the word "subheadings" and by inserting in lieu thereof "subheading", by striking out the comma after "9810.00.20" and by inserting "and headings" immediately thereafter, by striking out "any subheading" and by inserting in lieu thereof "any provision", and by inserting "heading" before the second appearance of "9810.00.70."

18. U.S. note 6(a)(xvii), subchapter X, chapter 98 is further modified by inserting "subheadings" after "except".

19. U.S. note 6(a)(xviii), subchapter X, chapter 98 is further modified by inserting "subheadings" after "except" at the first appearance.

20. U.S. note 6(a)(xix), subchapter X, chapter 98 is modified by inserting "subheading" after "except.".

21. U.S. note 2(ad), subchapter XVII, chapter 98 is modified by striking out "subheadings 9603.50, 9604.00, 9605.00 and 9616.10" and by inserting in lieu thereof "subheading 9603.50.00, headings 9604.00.00 and 9605.00.00 and subheading 9616.10.00".

22. U.S. note 8, subchapter II, chapter 99 is modified by striking out the word "subheadings" at the first appearance and by inserting in lieu thereof the word "provisions", by striking out the word "subheading" at the first appearance and by inserting in lieu thereof the word "provision", and by striking out "subheading or subheadings" and by inserting in lieu thereof "provisions".

23. Heading 9902.29.94 of the HTS is modified by striking out the words "for in" at their first appearance, and by striking out "change" from the column 2 rate of duty.

24. The article description of heading 9902.29.95 is modified by striking out "2922.50.25" and by inserting in lieu thereof "2922.19.15".

25. Heading 9902.29.97 is modified by striking out "change" from the column 2 rate of duty.

26. The article description of heading 9902.36.05 is modified by inserting after "subheading" the reference "2912.50.00,".

27. The article description of heading 9902.37.07 is modified by striking out the parenthetical expression and by inserting in lieu thereof the following: "(however provided for in chapter 29 or in subheading 3707.90.30 or 3707.90.60)".

28. The article description of heading 9902.40.11 is modified by striking out "4012.90.30" and by inserting in lieu thereof "4012.90.50".

29. The article description of heading 9902.48.23 is modified by striking out "or 8448.59.50" and by inserting in lieu thereof ", 8448.11.00 or 8448.49.00".

30. Heading 9902.71.13 is modified by striking out "9505.90.00" and by inserting in lieu thereof "9505.90".

31. Heading 9902.79.02 is modified by striking out "subheading 7902.00" and by inserting in lieu thereof "heading 7902.00.00".

32. The article description of heading 9902.81.05 is modified by striking out "coalt" and by inserting in lieu thereof "cobalt".

33. Headings 9902.84.48 and 9902.84.49 are each modified by striking out "8448.19" and by inserting in lieu thereof "8448.19.00".

34. U.S. note 6, subchapter III, chapter 99 is modified by striking out "through 9903.04.55" and by inserting in lieu thereof "and 9903.04.10, headings 9903.04.15 through 9903.04.55".

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ANNEX IV (con.)

(a) (con.):

35. The article description of heading 9903.84.35 is modified by striking out "1602.42.40" and by inserting in lieu thereof "1602.42.20".

36. U.S. note 4(d) to subchapter IV of chapter 99 is modified by striking out "subheadings 9904.20.10 and 9904.40.40" and by inserting in lieu thereof "subheading 9904.40.40".

37. Subheading 9904.10.66 is modified by striking out "1806.90," and by inserting in lieu thereof "1806.90.00 and", and by striking out "2105.00" and by inserting in lieu thereof "heading 2105.00.00".

38. The article description of subheading 9904.10.75 is modified by striking out ", 2106.90.05 and 2106.90.50" and by inserting in lieu thereof "and 2106.90.05".

39. Heading 9905.00.00 is modified by inserting "headings and" after "following", and by inserting "heading or" after "listed".

40. The following general and U.S. notes are modified by striking out at each instance the word "subheading" and by inserting in lieu thereof the word "provision":

general note 3(c)(i)(D)
general note 3(c)(ii)(C)
general note 3(c)(v)(C)
general note 3(c)(v)(D)
general note 3(c)(vi)(A)
general note 3(c)(viii)(A)
general note 3(c)(vii)(G)(2)
U.S. note 5, subchapter II, chapter 98

41. The following general and U.S. notes are modified by striking out at each instance the word "subheadings" and by inserting in lieu thereof the word "provisions":

U.S. note 1 (at the first appearance), subchapter I, chapter 98
U.S. note 6(a)(xvii), subchapter X, chapter 98
U.S. note 6(a)(xviii), subchapter X, chapter 98

42. The following U.S. notes and tariff provisions are modified by striking out at each instance the word "subheading" and by inserting in lieu thereof the word "heading":

U.S. note 1(c), subchapter I, chapter 98
9801.00.70
U.S. note 1(d), subchapter II, chapter 98
U.S. note 4, subchapter II, chapter 98
U.S. note 2(b), subchapter III, chapter 98
U.S. note 3, subchapter IV, chapter 98
U.S. note 2, subchapter VI, chapter 98
U.S. note 6(a)(iii), subchapter X, chapter 98
U.S. note 6(a)(ix), subchapter X, chapter 98
9810.00.85
U.S. note 2, subchapter XI, chapter 98
9811.00.60
U.S. note 1, subchapter XII, chapter 98
U.S. note 2, subchapter XII, chapter 98
U.S. note 1(a) and (b), subchapter XIII, chapter 98
U.S. note 2, subchapter XIII, chapter 98
U.S. note 3, subchapter XIII, chapter 98
U.S. note 4, subchapter XIII, chapter 98
U.S. note 5, subchapter XIII, chapter 98
9815.00.50
U.S. note 1, subchapter XIV, chapter 98
U.S. note 1, subchapter XVII, chapter 98
9817.00.50
9817.00.60
U.S. note 2, subchapter I, chapter 99
U.S. note 2, subchapter II, chapter 99
U.S. note 3(a) and (b), subchapter II, chapter 99
U.S. note 6, subchapter II, chapter 99
9902.26.11
9902.30.03
9902.39.14
9902.50.05
9902.70.12
9902.84.44
U.S. note 3(c), subchapter IV, chapter 99
9904.10.72
U.S. note 1, subchapter V, chapter 99
U.S. note 2, subchapter V, chapter 99

43. The following provisions are modified by striking out at each instance the word "subheadings" and inserting lieu thereof the word "headings":

U.S. note 2, subchapter XV, chapter 98
U.S. note 2, subchapter XVII, chapter 98
immediately superior text to subheading 9904.60.20

44. The following U.S. notes are modified by striking out the word "subheading" and by inserting in lieu thereof the word "text":

U.S. note 5, subchapter II, chapter 98
U.S. note 6, subchapter II, chapter 98
U.S. note 7, subchapter II, chapter 98

(b) Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the publication of this proclamation in the Federal Register, HTS subheading 2915.39.10 is modified by striking out "20%" and by inserting in lieu thereof "23.5%".

[FR Doc. 89-23496

Filed 9-29-89; 4:29 pm]

Billing code 3190-01-C

Presidential Documents

Proclamation 6031 of September 29, 1989

National Quality Month, 1989

By the President of the United States of America

A Proclamation

Producing quality goods and services is crucial not only to the continued economic growth of the United States, but also to our national security and the well-being of each American family. Our Nation has long been recognized for its leadership in producing quality products. However, in recent years, the position of the United States as quality leader has been challenged by foreign competition in domestic and overseas markets.

Reasserting our leadership position will require a firm commitment to total quality management and the principle of continuous quality improvement. The United States can, and must, excel in this area, setting new standards for world-class quality and competing vigorously in international markets.

Improving quality takes time and resources and can only be achieved through a combination of factors. It takes a long-term commitment by management that involves working with suppliers to improve performance; educating, training, and motivating workers; developing accurate and responsive information systems; and establishing targets for quality improvement.

Quality improvement principles apply to small companies as well as large corporations, to service industries as well as manufacturing, and to the public sector as well as private enterprise. Improving the quality of goods and services goes hand in hand with improving productivity and lowering costs. It is also essential to enhancing worker fulfillment and customer satisfaction.

Private sector organizations and government institutions across the country are joining forces to promote a national commitment to excellence. At the national, regional, and local level, business executives and public officials are working together to develop the skills and techniques needed for producing quality goods and services.

As part of this important effort, the Federal Government is promoting quality through such programs as the Malcolm Baldrige National Quality Award of the Department of Commerce, the Federal Quality Institute, the President's Council on Management Improvement, the Productivity Improvement Plan of the Department of Defense, and the NASA Excellence Award for Quality and Productivity.

The American Society for Quality Control—together with other national professional organizations, businesses, industries, government agencies, and academic institutions—is sponsoring activities in observance of "National Quality Month." These activities, focused on the theme of "Quality First," are designed to promote awareness of the importance of quality to production and services throughout the United States.

The Congress, by House Joint Resolution 204, has designated October as "National Quality Month" and has authorized and requested the President to issue a proclamation in observance of this month.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1989 as National Quality Month. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-23560
Filed 10-2-89; 10:53 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6032 of September 29, 1989

Mental Illness Awareness Week, 1989

By the President of the United States of America

A Proclamation

The 20th century has been marked by major advances in medical research and technology. Today, we can easily prevent or cure many diseases that once proved to be debilitating or even deadly. Because this remarkable scientific progress has included the study of mental illness, scientists and health care professionals now have a much greater understanding of such afflictions as depression, schizophrenia, phobias, and anxiety disorders.

During the past 10 years alone, our knowledge of mental illness has increased dramatically. Indeed, our ever-expanding knowledge of the brain might well be considered one of the most profound accomplishments of our time. That is why continued failure to diagnose or treat mental illness—and to accept and understand those who suffer from it—is so needless and so regrettable. Far too many mentally ill Americans are also victims of fear, prejudice, and distrust. Mental illness not only inhibits their ability to function normally in society, but also inflicts untold personal anguish upon them and their loved ones.

Frequently the result of biological or chemical disorders in the brain, mental illness can affect anyone—regardless of age, gender, race, or economic status. For a child or adolescent, a mental illness left untreated can mean years of torment, as well as lost opportunities to learn and grow. Adults who suffer from mental illness may not only lose their independence and ability to contribute, but also become strangers to their families and friends. Elderly victims can enjoy neither the comforts of retirement nor the well-earned respect and dignity rightfully afforded to our senior citizens. Tragically, the confusion, alienation, and loss of hope felt by some victims of mental illness—young and old alike—have even led them to take their own lives.

We can—and we must—help the victims of mental illness. Of the millions of Americans who suffer from depression, well over half could benefit from proper treatment. Scientific research has produced treatments that can alleviate the hallucinations and delusions that haunt victims of schizophrenia. There are also treatments, including medications and various forms of psychotherapy, to allay crippling panic and anxiety disorders and to help patients overcome disfunctional behavior patterns. Today, improved methods of diagnosis and care can offer hope and healing to millions of people with mental disorders.

This week, we salute the dedicated scientists, health care professionals, and volunteers who are working hard to help solve the mysteries of mental illness and alleviate the suffering of its victims. In academic institutions, hospitals, and community-based mental health programs across the country, they are helping to destroy the myths and fears that prevent too many victims of mental illness from obtaining the help and compassion they need. All of us can assist their efforts by learning more about mental illness and by supporting continued research and effective treatment programs. Most important, however, we can help victims of mental illness and their families by giving them our encouragement and understanding.

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In recognition of the importance of informing the public about mental illness and the needs of those who suffer from it, the Congress, by Senate Joint Resolution 55, has designated the week beginning October 1, 1989, as "Mental Illnesss Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 1 through October 7, 1989, as Mental Illness Awareness Week. I call upon all citizens of the United States to observe this week with appropriate ceremonies and activities designed to promote greater understanding of mental illness and its victims' need for effective treatment and rehabilitation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-23561
Filed 10-2-89; 10:54 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6033 of September 29, 1989

Child Health Day, 1989

By the President of the United States of America

A Proclamation

In this most fortunate of nations, millions of us can look with pride and gratitude upon happy, healthy children and grandchildren—children who are able to enjoy all the wonderful opportunities life offers. However, we cannot afford to forget that each year tens of thousands of children in this country die before reaching their first birthday.

Our hearts ache over this country's high rate of infant mortality, a rate that is all the more tragic because it occurs in a Nation that boasts one of the highest standards of living in the world. The statistics cannot reveal the suffering of bereaved parents, for their anguish is immeasurable. Nor can numbers reflect the costs incurred by our entire country. When the life of a child is destroyed, so, too, is the promise that he or she holds for our Nation's future. A society that fails to protect its most vulnerable members from harm suffers untold losses itself.

The failure of pregnant women to obtain adequate prenatal care is a major factor in our Nation's high infant mortality rate. While the government must not usurp the role of the family—and while it cannot fulfill parents' responsibilities in caring for their children—public officials at the Federal and State level are examining ways to help improve child health in the United States. Together with health care providers, insurers, and other concerned Americans, government officials have been working to develop ways to encourage more pregnant women to protect the lives of their unborn children through proper nutrition and prenatal care.

Already, advances in technology have enabled us to save the lives of babies who are born prematurely, or who develop dangerous illnesses and conditions while still in the womb. Scientific discoveries have helped us to reduce the incidence of some debilitating and life-threatening childhood diseases, and even eliminate others. Thanks to effective immunization programs, fear of the spread of diseases such as polio and smallpox is virtually a thing of the past. Nevertheless, we still face great challenges and responsibilities in the area of child health.

We must continue to encourage parents to have their children immunized, and we must promote education in child nutrition, safety, and hygiene. We must also recognize that our fight against drug abuse is a life-and-death struggle for the fate of a generation—in hospital nurseries and foster homes across the country, infants who were born addicted to drugs or infected with the AIDS virus provide heartrending evidence of the devastation wrought by chemical dependency. Children who grow up in homes torn apart by drug and alcohol abuse are also at grave risk. For their sake, for the sake of their families, and for the sake of our Nation's future, we must redouble our efforts in the war on substance abuse.

Today, as we begin the 7th decade of this national observance for children, let us resolve to ensure that every American child receives the best possible start in life—beginning with quality health care throughout pregnancy for expectant mothers and extending through each child's formative years.

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The Congress, by Joint Resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has authorized and requested the President to issue annually a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, October 2, 1989, as Child Health Day. I urge all Americans to rededicate themselves to protecting the lives and health of our youngest and most vulnerable citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-23562
Filed 10-2-89; 10:55 am]
Billing code 3195-01-M

federal register

Tuesday
October 3, 1989

Part VIII

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217, 219, and 225
Alcohol/Drug Regulations; Public Hearing; Notice of Public Hearing on Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 219, 225

[FRA Docket No. RSOR-6, Notice No. 27]

RIN 2130-AA43

Alcohol/Drug Regulations; Public Hearing

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: FRA announces a public hearing on its notice of proposed rulemaking with respect to its rule on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules.

DATES: The public hearing will be held at 9:30 a.m. on Tuesday, October 17, 1989. FRA requests that prepared statements for the public hearing be submitted to the Docket Clerk at the address set forth below not later than Friday, October 13, 1989. As previously announced, written comments on the notice of proposed rulemaking must be received no later than October 27, 1989. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: The hearing will be held in Room 6244, Nassif Building, Washington, DC. Prepared statements for the hearing and written comments should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety (RRS-3), FRA, Washington, DC 20590 (Telephone: (202) 366-0897), Dr. Sam Holley, Alcohol & Drug Program Manager (RRS-10), Office of Safety Enforcement, FRA, Washington, DC 20590 (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4) FRA, Washington, DC 20590 (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: On September 27, 1989, FRA published in the Federal Register a notice of proposed rulemaking concerning miscellaneous amendments to conform and update its alcohol/drug regulations (Docket No. RSOR-6, Notice No. 24) (54 FR 39646). That notice indicated that an opportunity for oral presentations would be provided at a date to be announced. The public hearing will be held at 9:30 a.m. on Tuesday, October 17, 1989 in room 6244, Nassif Building, Washington, D.C. Persons wishing to attend and make oral presentations are requested to submit prepared statements to the Docket Clerk at the address indicated above prior to the hearing.

Issued in Washington, DC, on September 28, 1989.

Susan M. Coughlin,

Deputy Administrator.

[FR Doc. 89-23520 Filed 10-2-89; 8:45 am]

BILLING CODE 4910-06-M

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H.J. Res. 407/Pub. L. 101–100

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-89-031]

Milk in the Iowa Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Iowa Federal milk marketing order for the months of September through November 1989. The action increases the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 21, 1989; published August 25, 1989 [54 FR 35354].

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 25, 1989 (54 FR 35354) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Two comments, one supporting and one opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph.

Statement of Consideration

This action, for the months of September through November 1989, suspends certain provisions of the Iowa Federal milk order that limit the amount of milk that may be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. The order provides that cooperative associations and pool plant operators may divert up to 50 percent of milk receipts to nonpool plants during September-November and 70 percent of receipts during other months. This action removes the 50-percent diversion limitation and allows greater quantities of milk to be diverted to nonpool plants.

The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. AMPI maintains that the action is necessary because of the relationship between available milk production and fluid milk sales. AMPI points out that producer milk receipts during the first six months of 1989 were up about 4.7 percent from the previous year while fluid milk sales were at about the same level as a year earlier. As a result, the Class I utilization of producer milk for the first six months was about 26.5 percent, down slightly from the previous year. Consequently, AMPI projects that about 30 percent of the market's milk supply will be needed for Class I use during the September-November period this year, with about 70 percent of the milk supply being available for manufacturing uses. AMPI maintains that this reserve supply of milk can be most efficiently handled by diverting it directly from farms to nonpool plants for processing. Absent a suspension action, AMPI contends that the costly and inefficient marketing practices of receiving and transferring milk from pool plants would be undertaken to continue to pool the milk of dairy farmers who supply the market. AMPI also requested that consideration be given to suspending the 50-percent diversion limitation for the September-November period for an indefinite duration since the same provision has been suspended during each of the last five years.

The National Farmer's Organization, Inc. (NFO), a cooperative assocation that represents producers who supply the market, supported the proposed action for the months of September-November 1989. NFO indicates that the 50-percent diversion limitation is out-of-line with the current marketing conditions and has been so for several years. In view of the market's supply/demand relationship, NFO contends that the diversion limitation should be suspended for the Fall of 1989, but, opposed suspending the provision for an indefinite period since it would result in the same diversion limitation being applicable during the relatively short and flush production seasons of the year.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply the market, opposed the proposed action. Mid-Am indicates that the more recent data (May-July 1989) exhibit a

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tightening of the market relative to the prior year that is not reflected in the marketwide data for the first six months of the year. Mid-Am notes that for May–July, producer milk receipts in 1989 were about 0.2 percent higher than the same period in 1988, while milk in Class I uses increased by about 5.8 percent. Also, Mid-Am points out that for July 1989, producer milk receipts were below the same month for the previous year, reversing a trend of increased milk production from the same month of the previous year that has lasted since February 1987. As a result of this perceived change in the trend of milk production, and because of anticipated increases in fluid milk sales because of school openings and the uncertainties of the effect of the 1988 drought on future production, Mid-Am contends that the suspension action would be inappropriate. Mid-Am contends that such an action could jeopardize the movement of sufficient supplies of milk to distributing plants to meet fluid milk needs.

The diversion provisions of the producer milk definition recognize that reserve milk supplies that are associated with the fluid milk market can be most efficiently marketed by moving it directly from farms to manufacturing plants for processing. Absent a suspension action of the 50-percent diversion limit, the same quantities of milk could still be moved to manufacturing plants, although handlers would have to utilize the relatively inefficient and costly practice of first receiving milk at pool plants and transferring it to nonpool manufacturing facilities. Thus, the suspension of the 50-percent diversion limitation does not have a direct bearing on the availability of milk at distributing plants. Such availability is more a function of the standards for pooling the various categories of plants under the order. Nevertheless, in view of the concerns expressed by Mid-Am, as well as those of NFO, the suspension should be limited to the months of September through November 1989 and should not be extended for an indefinite period as was proposed.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would likely be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for the months of September through November 1989.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1079.13 [Suspended in part]

2. In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph are suspended for the months of September through November 1989.

Signed at Washington, DC, on September 28, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 89–23404 Filed 10–3–89; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Corps

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim Rule.

SUMMARY: This interim rule amends, for the 1988 through 1990 peanut corps, the regulations at 7 CFR Part 1446 with respect to the establishment of a "shrink" adjustment of 4.5 percent for the export obligation of "contract additional peanuts" purchased by peanut handlers operating under nonphysical supervision if such handlers agree to abide by use restrictions as may be imposed by the Executive Vice President of the Commodity Credit Corporation (CCC). This action is taken as a result of the amendment of section 359 of the Agricultural Adjustment Act of 1938 by the Disaster Assistance Act of 1989 (Pub. L. 101–82).

DATES: This interim rule is effective October 4, 1989. To be assured of consideration, comments must be submitted so as to be received on or before November 3, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

This title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

As a result of certain changes made by the peanut industry concerning the handling of peanuts, 7 CFR part 1446 was amended by an interim rule published in the **Federal Register** on September 15, 1988 (53 FR 35964) to provide a shrink allowance of 2.0 percent for the 1988 through 1990 crops for those handlers who choose nonphysical supervision and abide by such use restrictions as the Executive Vice President, CCC, specified.

That interim rule was adopted in a final rule published in the **Federal Register** on July 20, 1989 (54 FR 30366). However, as a result of the comments received in response to the interim rule, a proposed rule was published concurrently (54 FR 30395) which, if adopted, would have increased the shrink allowance for such nonphysical supervision handlers to 4 percent for the 1989 and 1990 crops if use restrictions were agreed to and complied with by the handler.

On August 14, 1989, the Disaster Assistance Act of 1989 (the Act) was enacted. Section 601 of the Act requires, effective for the 1988 through 1990 crops of peanuts, that the export obligation of a handler choosing nonphysical supervision shall be reduced by a shrinkage allowance, as determined by the Secretary, to reflect actual dollar value shrinkage experienced by handlers in commercial operations except that the allowance may not be less than 4.5 percent. However, section 601 also provides that the Secretary may establish a lower shrikage allowance for handlers who fail to comply with restrictions on the use of peanuts as may be specified by CCC to take into account common industry practices.

The comment period for the July 20, 1989, proposed rule ended August 20, 1989. Five comments were received representing one area sheller group, one national and two area grower groups, and one State commodity commission. The sheller organization, although indicating that actual shrik of peanuts exceeded 4.5 percent, supported a 4.5 percent shrink adjustment. The three grower groups supported the proposed rule on the condition that a study be conducted to determine the actual shrink amount of peanuts. The State commission neither supported nor opposed the proposed rule but expressed concern that the shrink adjustment should represent the actual amount of shrink during storage and handling and that the shrink adjustment be fair to all segments of the peanut industry.

Based on prior information and comments, this interim rule, issued in response to the Act, amends 7 CFR part 1446 to permit for the 1988–90 crops of peanuts a shrink allowance 4.5 percent for nonphysical supervision handlers who comply with CCC-specified use restrictions. With respect to handlers who do not certify compliance with such restrictions, or do not comply with the restrictions, the shrink allowance will remain at 0.5 percent. This rule does not affect handers who have chosen physical supervision.

All public comments are invited. This rule is issued as an interim rule since the Act amended section 359 of the Agricultural Adjustment Act of 1938 to specify a new conditional minimum of 4.5 percent and marketing of the 1988 crop is almost complete. In order that a final rule may be issued promptly so as to avoid undue uncertainty, it has been determined that the comment period should be limited to 30 days.

List of Subjects in 7 CFR Part 1446

Loan Programs—Agriculture, Peanuts, Price support programs, Warehouse.

Interim Rule

Accordingly, 7 CFR part 1446, Subpart Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops, is amended as follows:

PART 1446—[AMENDED]

1. The authority citation for part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et. seq;* 15 U.S.C. 714 *et. seq.*

§ 1446.138 [Amended]

2. Section 1446.138(b) is amended by removing "2.0" and adding "4.5" in its place.

Signed at Washington, DC, on September 28, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–23405 Filed 9–29–89; 1:47 pm]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

RIN 3150–AD24

Access Authorization Fee Schedule for Licensee Personnel and Implementation of the Standard Form 312

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations requiring NRC to publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations. The amendments also inform licensees that they have the option, for an additional cost, to have their applications processed in an expedited manner. The NRC is also amending its regulations to require each person to complete a Standard Form 312, "Classified Information Nondisclosure Agreement," when granted an NRC access authorization.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1989, OPM plans to increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate it charges for background investigations by approximately 8 percent. NRC is passing

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this additional cost to licensees. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner. These changes comply with current regulations requiring NRC to publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations.

As a result of a legal challenge to portions of the SF 189–A, "Classified Information nondisclosure Agreement," the Information Security Oversight Office has issued a final rule that implements the use of the SF 312, of the same title, in lieu of the SF 189–A. National Security Decision Directive 84 requires that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access. The SF 312 replaces the SF 189–A to fulfill that requirement.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with an adjustment in access authorization fees and implementation of the SF 312, in lieu of the SF 189–A.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(a). Therefore, neither an environmental impact statement nor an environmental assessment have been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0046, 3150–0047, and 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 "L" Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4124.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials—Transportation, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Independent Office Appropriation Act of 1952 and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, 95.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i	NRC–U requiring full field investigation.	$2,415
ii	NRC–U requiring full field investigation (expedited processing).	2,932
iii	NRC–U based on certification of comparable full field background investigation.	[1] 0
iv	NRC–U or R renewal	[1] 15
v	NRC–R	[1] 15
vi	NRC–R based on certification of comparable investigation.	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,415.00 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data that a National Agency Check investigation is necessary, a fee of $15.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of $2,415.00 will be assessed prior to the conduct of the investigation.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841), E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17 (a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)), and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 25.18 [Removed]

4. Section 25.18 is removed.

§ 25.23 [Amended]

5. In the second and fourth sentence of the introductory paragraph to § 25.23, the references to "SF 189–A" are changed to read "SF 312."

6. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" access authorization	[1] $15
Reinstatement of "L" access authorization	[1] 15
Extension or transfer of "L" access authorization	[1] 15
Initial "Q" access authorization	2,415
Initial "Q" access authorization (expedited processing)	2,932
Reinstatment of "Q" access authorization	[2] 2,415
Reinstatement of "Q" access authorization (expedited processing)	[2] 2,932
Extension or transfer of "Q"	[2] 2,415

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION—Continued

Category	Fee
Extension or transfer of "Q" (Expedited processing)	[2] 2,932

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,415.00 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

7. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201), sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note). E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

§ 95.33 [Amended]

8. In the third sentence in § 95.33, the reference of "SF 189–A" is changed to read "SF 312."

Dated at Rockville, Maryland this 22nd day of September, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89–23403 Filed 10–3–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, and 799

[Docket No. 90806–9206]

Corrections and Revisions to the Export Administration Regulations; General License GCG and ECCN 6490F; Intransit Shipments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule makes several corrections and revisions to the Export Administration Regulations (EAR). The corrections and revisions are designed to change certain provisions that could prove confusing to exporters. These changes are as follows:

(a) Section 771.14, which authorizes certain shipments of U.S. commodities to agencies of cooperating governments under General License GCG, is amended by inserting language to provide that crime control and detection instruments and equipment may be exported under General License GCG only to COCOM participating countries.

(b) Supplement No. 1 to § 799.1 (the Commodity Control List) is amended by inserting language that was inadvertently omitted from the "Validated License Required" paragraph for ECCN 6490F.

(c) Section 770.5—which currently exempts certain intransit shipments from Commerce Department validated licensing requirements if the shipments are made, without unloading, on board vessels—is revised to include intransit shipments, without unloading, on board aircraft as well as vessels.

EFFECTIVE DATE: This rule is effective October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 770, 771, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, and 799 of the Export Administration regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 770 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for 15 CFR Parts 771 and 799 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 770—[AMENDED]

3. Section 770.5 is revised to read as follows:

§ 770.5 Intransit shipments without unloading.

Commodities or technical data shipped on board a vessel or aircraft and passing through the United States in transit from one foreign country to another may be exported without a license from the Office of Export Licensing provided that:

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(a) While passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, *and*

(b) They are not originally manifested to the United States.

PART 771—[AMENDED]

4. Section 771.14 is amended by adding a new paragraph (d)(3) to read as follows:

§ 771.14 General license GCG; shipments to agencies of cooperating governments.

* * * * *

(d) *Exclusions.* * * *

(3) No crime control and detection instruments and equipment may be exported under this general license except to COCOM participating countries.

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6490F is amended by revising the "*Validated License Required*" paragraph to read "*Validated License Required*: Country Groups S and Z, Iran, and as required by Special South Africa policy below."

Dated: September 28, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-23332 Filed 10-3-89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6846; 34-27281; 35-24954; 39-2227; IC-17146 IA-1205]

Organization, Functions and Authority Delegations

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendments.

SUMMARY: The Commission is publishing amendments to its rules to delete references to the closed Cleveland, Detroit, and St. Louis Branch Offices, to update the addresses and office hours of the regional and branch offices, and to revise the delegations of authority during emergency conditions.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2472), or Fran L. Paver (202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Two subsections of 17 CFR part 200 are being amended to delete references to the Cleveland, Detroit and St. Louis Branch Offices. The functions of these branch offices have been transferred to the Chicago Regional Office.

One subsection of 17 CFR part 200 is being amended to update the regional and branch offices' addresses and office hours. The addresses listed in the regulations for the following offices are being revised: Atlanta Regional Office, Boston Regional Office, Denver Regional Office, Fort Worth Regional Office, Houston Branch Office, Los Angeles Regional Office, Miami Branch Office, New York Regional Office, Salt Lake City Branch Office and San Francisco Branch Office.

Section 200.203 of title 17 of the CFR, which concerns delegations of authority during emergency conditions, is being amended to delete references to a statute that was repealed and to divisions and regional offices that are no longer in existence. Changes to the order of succession contained in 17 CFR 200.203(c)(1) are necessary to allow the Commission to function effectively under emergency conditions.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure.

Text of Amendments

Title 17, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

1. The authority citation for part 200, subpart G, is revised to read as set forth below.

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Section 200.203 is also issued under 15 U.S.C. 78d, 78d-1.

2. Section 200.203 is amended by removing from paragraph (c) the reference to "Pub. L. 87-592 approved August 20, 1962," and in its place inserting "Pub. L. 100-181, section 308(b), 101 Stat. 1249 (1987)." Section 200.203 also is amended by removing paragraph (c)(1) (vii), (viii), and (ix) and revising the remaining paragraphs as follows:

§ 200.203 Organization, and delegations of authority.

* * * * *

(c) * * *

(1) * * *

(i) The Commissioners in order of seniority

(ii) The General Counsel.

(iii) The Executive Director.

(iv) The Executive Assistant to the Chairman.

(v) The Division Directors in order of seniority.

(vi) The Regional Administrators in order of seniority.

* * * * *

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

3. The authority citation for part 200, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 552a(f), unless otherwise noted. Section 200.312 is also issued under 5 U.S.C. 552a(k).

4. Section 200.303 is amended in paragraph (a)(2) by (1) removing the complete references to the Cleveland, Detroit, and St. Louis Branch Offices, and (2) revising the remaining addresses and office hours as set forth below.

§ 200.303 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to the records pertaining to them.

(a) * * *

(2) * * *

Atlanta Regional Office, 1375 Peachtree Street, NE., Suite 788, Atlanta, Georgia 30367. Office hours—9 a.m.-5:30 p.m. e.s.t.

Boston Regional Office, John W. McCormack Post Office and Courthouse Building, Suite 700, Boston, Massachusetts 02109. Office hours—9 a.m.-5:30 p.m. e.s.t.

Chicago Regional Office, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Illinois 60604. Office hours—8:45 a.m.-5:15 p.m. e.s.t.

Denver Regional Office, 410 Seventeenth Street, Suite 700, Denver, Colorado 80202. Office hours—8 a.m.-4:30 p.m. m.s.t.

Fort Worth Regional Office, 411 West Seventh Street, 8th Floor, Fort Worth, Texas 76102. Office hours—8:30 a.m.-5 p.m. c.s.t.

Houston Branch Office, 7500 San Felipe Street, Suite 550, Houston, Texas 77063. Office hours—8:30 a.m.-5 p.m. c.s.t.

Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036-3648. Office hours—8:30 a.m.-5 p.m. p.s.t.

Miami Branch Office, Dupont Plaza Center, 300 Biscayne Blvd. Way, Suite 500, Miami, Florida 33131. Office hours—8:30 a.m.-5 p.m. e.s.t.

New York Regional Office, 75 Park Place, Room 1228, New York, New York 10007. Office hours—9 a.m.-5:30 p.m. e.s.t.

Philadelphia Regional Office, William J. Green, Jr. Federal Building, 600 Arch Street, Room 2204, Philadelphia, Pennsylvania 19106. Office hours—8:30 a.m.-5 p.m. e.s.t.

Salt Lake City Branch Office, U.S. Post Office and Courthouse, 350 S. Main Street, Room 505, Salt Lake City, Utah 84101. Office hours—8 a.m.-4:30 p.m. m.s.t.

San Francisco Branch Office, 901 Market Street, Suite 470, San Francisco, California 94103. Office hours—8:30 a.m.-5 p.m. p.s.t.

Seattle Regional Office, 3040 Federal Building, 915 Second Avenue, Seattle, Washington 98174. Office hours—8 a.m.-4:30 p.m. p.s.t.

* * * * *

5. Section 200.312 is amended by removing paragraphs (a)(8), (a)(10) and (a)(18) and redesignating remaining paragraphs (a)(9) through (a)(29) as paragraphs (a)(8) through (a)(26) and republishing them as follows:

§ 200.312 Specific exemptions.

* * * * *

(a) * * *

8. Denver Regional Office Cross-Reference Index Cards and Denver Regional Office Investigatory Files;

9. Fort Worth Regional Office General Indices and Fort Worth Regional Office Investigatory Files;

10. Houston Branch Office General Indices and Houston Branch Office Investigatory Files;

11. Los Angeles Regional Office Investigative Files;

12. Miami Branch Office General Index of Files and Miami Branch Office Investigatory Files;

13. New York Regional Office Master Card Index and New York Regional Office Investigatory Files;

14. New York Regional Office Index of Complaints;

15. Philadelphia Regional Office Investigatory Files;

16. Salt Lake City Branch Office Cross-Reference Index Cards and Salt Lake City Branch Office Investigatory Files;

17. San Francisco Branch Office Investigative Files and San Francisco Branch Office Regulation A Files;

18. Seattle Regional Office Master Card Index and Related Regulatory, Investigatory and Legal Files Systems;

19. Office of the General Counsel Working Files;

20. Office of the Chief Accountant Working Files;

21. Investigations and Actions Index;

22. Complaint Processing System;

23. Investor Service Complaint Index;

24. Name-Relationship Index System;

25. Rule 2(e) of the Commission's Rules of Practice—Appearing or Practicing Before the Commission;

26. Division of Enforcement Liaison Working Files.

* * * * *

By the Commission.

Dated: September 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23303 Filed 10-3-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 1710

[Docket No. R-89-1390; FR-2503]

RIN 2502-AD81

Amendments Relating to Interstate Land Sales Registration

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner Office of Lender Activities and Land Sales Registration, (HUD).

ACTION: Final rule.

SUMMARY: The Department, under the authority provided by 15 U.S.C. 1702(c), is amending its regulations to provide a regulatory exemption from the registration requirements of the Interstate Land Sales Full Disclosure Act. The new exemption applies to sales in subdivisions (as that term is defined by the Act) of 100 or more lots that are created by the continual acquisition and disposal of lots in geographically scattered locations which, unless extraordinary steps are taken, are offered under one common promotional plan and are, therefore, subject to registration. However, because of the very nature of these types of operations that are constantly acquiring tracts of land in scattered and diverse parts of the country, registration is impractical from both the registrant's and the registering agency's standpoint.

The new exemption allows developers of these subdivisions to operate without the necessity of maintaining a registration or taking the steps required to avoid operating under one common promotional plan.

DATES: *Effective Date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will not become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Director, Interstate Land Sales Registration Division, Department of Housing and Urban Development, room 6278, Washington, DC 20410. Telephone (202) 755-0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0243. The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Interstate Land Sales Full Disclosure Act (the Act), 15 U.S.C. 1701 through 1720, authorizes the Secretary of Housing and Urban Development to issue and amend Regulations implementing the Act. This rule will provide relief from the registration requirements placed upon certain developers by creating the "Multiple Site Subdivision Exemption". This exemption will permit developers of numerous sites of fewer than 100 lots each to promote and sell the revolving inventory of lots under a single common promotional plan without registration by simply meeting certain eligibility requirements which are, for the most part, already characteristic of the offerings, and by providing general information about real estate ownership along with a minimum of information about specific lots.

The new exemption is a regulatory exemption and could be listed in 24 CFR 1710.14 but, because of the unique character of this exemption, it is being added as a new § 1710.15, Regulatory Exemption—Multiple Site Subdivision—

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Determination Required. The termination provisions of 24 CFR 1710.16(f) are included in the new section, as are the anti-fraud provisions of 24 CFR 1710.4 (b) and (c).

Response to Public Comment

On August 12, 1988 the Department published its proposed rule (53 FR 30443) authorizing this special exemption. Public comments concerning the proposal were generally favorable. The specific comments received, and the Department's response to them are set forth below.

Seven comments were received and evaluated by the Department. These comments resulted in some revisions to the proposed rule. Several technical changes were made to include references to § 1710.15 where applicable. Several corrections were made to change incorrect citations and spellings.

Several comments were received that implied that HUD was changing its policy in regard to other existing exemptions or offering amendments to them. One commenter believed that HUD was limiting the application of the "100-lot" exemption in light of the common promotional plan concept. HUD does not intend to change its application of any existing exemption, or to modify the definition of a common promotional plan. The new exemption is neither intended to apply to subdivisions clearly qualifying for the "100-lot" exemption nor is it intended to cover those with fewer than 25 lots. Lots that qualify for the statutory exemptions under § 1710.5 will not be counted for purposes of the new exemption.

Another commenter suggested that the scattered site exemption (§ 1710.8) be amended to delete the limitation to prior ownership of 20 lots. Since the less than 25 lot exemption (§ 1710.5(a)) and the 100-lot exemption (§ 1710.6) are statutorily mandated, they cannot be changed through this rule. The exemption in this rule is not intended to cover the limited nature of offerings for the specific types of subdivisions qualifying for those exemptions.

Another commenter asked whether the exemption could be used in conjunction with other exemptions. HUD will treat sales qualifying for the § 1710.5 exemptions as being eligible for use in conjunction with the exemption set forth in this rule.

Two commenters asked for a definition of the word "adjacent" as used in the proposed § 1710.15(a)(2). It was decided to change the word to "contiguous" in this final rule to maintain conformity in the Regulations since that word is defined and used in other parts of the Regulations.

The most frequent comment related to the new § 1710.15(a)(2), which disqualifies the sale of lots within a subdivision established by a separate developer. Five comments were received recommending removal of this provision. The final rule retains the provision. The new exemption is intended for those developers that continually acquire numbers of scattered sites with limited sales and not those acquiring lots in established subdivisions.

Established subdivisions are normally structured to some degree and are characterized by a plan that contains use restrictions on the land, facilities and amenities; fees; property owners associations; architectural control committees; planned or existing facilities and amenities; liens and mortgages; and other not-readily-apparent characteristics. It is felt that purchasers from a secondary developer—who may or may not be responsible for any of the planned or established subdivision structure—sorely need full disclosure of all these possible hidden factors to assure that they are aware of all conditions, along with the total cost impact, before they purchase a lot and unwittingly become financially obligated or physically involved in (or constricted by) circumstances imposed on lot owners.

Another commenter asked under what circumstances a developer was deemed to have "other evidence of intent," as stated in § 1710.15(a)(2), to acquire land that could disqualify lots in a site from the exemption. No specific definition is anticipated, since we do not intend to restrict the methods by which future acquisitions can be made.

A similar comment suggested that lots purchased from a previous developer be allowed to qualify if none had been sold, if certain county approvals had been obtained and restrictions had been recorded. Under these rare circumstances, HUD will consider making a case-by-case determination if requested under § 1710.16.

Another comment suggested adding additional lot sales situations that could qualify for the exemption. None of these situations has been included in this rule since these suggestions are already covered by other exemptions. Furthermore, such comments are outside the scope of the rule.

Three comments were received regarding § 1710.15(b)(1), which requires lots to be sold in "as is" condition with all advertised improvements or amenities completed and in the condition advertised. The comments requested that HUD allow lots to qualify where there are uncompleted improvements or amenities, provided that certain assurances, such as bonds, escrow funds, letters of credit or performance bonds exist. Another mentioned that a developer may not be able to deliver telephone service and electricity to certain lots until there is a substantial demand.

The rule's requirement is not being changed, since the exemption does not require a developer to complete any improvements or amenities. Subdivisions with completed facilities may qualify for the single family residence exemption. Furthermore, the issuance of bonds or other assurances does not necessarily guarantee the completion of facilities, since state law requirements for bonding vary widely. It also would be burdensome for HUD to keep current as to the status of the bonds, or to determine the amount necessary to complete such improvements and amenities.

Therefore, if a developer places an advertisement for lot sales under the exemption, it can only refer to those improvements and amenities that are completed. Developers advertising lots as homesites or building lots should make certain that lots meet the criteria set forth in § 1715.20(i).

Two comments were received regarding the access to a lot, both legally and physically, by a road suitable for use by automobile, as stated in § 1710.15(b)(3) of the rule. One requested that HUD consider exempting lots that were inaccessible by automobile, such as island property or unimproved sportsmen's preserves. Another suggested that the term "automobile" be amended to "conventional passenger automobile".

Based upon the comments received and other available information, the Department realizes that a significant number of sites that would otherwise qualify for the new exemption (and that were intended to be eligible for the exemption) would be disqualified if the physical access requirement was limited to "automobile". Therefore, except as noted below, the term "automobile" has been removed.

The exception is for lots which are advertised or otherwise represented as "residential", either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed. In such cases there must be physical access by automobile, pick-up truck or equivalent "on-road" vehicle.

A comment was received regarding the title assurance provision of

§ 1710.15(b)(4), requesting that HUD allow exceptions to be approved in writing by the purchaser before the time of closing. This procedure would be acceptable, provided that the actual title binder, policy or opinion is current at the time of closing and shows that title is vested in the seller. This conforms with a similar requirement for the single family residence exemption (see part V(e)(3)(vii) of the Exemption Guidelines, published August 6, 1984 in the **Federal Register** and included as appendix A to 24 CFR part 1700).

With respect to § 1710.15(b)(5), it was suggested that the actual rescission language be set forth in the rule. The same comment also suggested that the term "date of sale" be changed to "date the purchaser signed the contract." This suggestion has been accepted. The section has been rewritten to include the actual rescission language and to refer to the date of signing the contract where applicable instead of the date of sale.

Two comments were received on the requirement in § 1710.15(b)(6) relating to the on-the-lot inspection. These comments suggested that parents or legal guardians be allowed to make onsite inspections for children and minors; that purchasers refusing to visit be permitted to sign a waiver; and that sales be exempted in cases where a purchaser exchanges an originally unseen lot for another lot after visiting the subdivision and receiving disclosure information.

The Department feels that the requirement should remain as written. This conforms to the on-the-lot inspection requirement of other exemptions, such as the single-family residence, intrastate and SMSA exemptions. Any deviation from this requirement would deny the purchaser the opportunity to view the exact lot he or she is purchasing and to make a rational decision on whether or not to purchase the lot.

A comment was received that suggested that the language "or until escrow agent determines that the deed has been duly recorded" be inserted after "developer" in § 1710.15(b)(7). This suggestion was based on "long costly delays" allegedly incurred by developers awaiting the return of recorded deeds from local recorders.

This comment has been rejected, since it is unlikely that the rule's requirement will result in the delay of delivery of the deed. The term "delivery of deed" is defined in Part II(c) of the Exemption Guidelines as "the physical transfer of a recordable deed, executed by the seller to the purchaser, to the purchaser's agent or to the appropriate governmental recording office."

In regard to § 1710.15(b)(8), a comment was received about the disclosure of taxes in the Lot Information Statement for new subdivisions. It was suggested that the last tax bill available or the newly appraised tax value of the lot be used, since the taxing officials may not have made an estimate for taxes when the lots were offered for sale. This rule does not require exact figures. Estimates that the developer makes based upon the best available information are acceptable for purposes of the new exemption.

One commenter brought to HUD's attention several technical errors in the proposed rule that have been corrected. These included the removal of references to telephone and fuel in § 1710.15(b)(9), since they were not referred to in § 1710.15(b)(11). References to § 1710.15 (b)(9) and (b)(10) § 1710.15(b)(11) have been changed to § 1710.15 (b)(8) and (b)(9).

In further reference to § 1710.15(b)(11), the same commenter questioned whether the signature line on the bottom line of the receipt for the Lot Information Statement was for the salesperson or the purchaser. The sample receipt has been revised to contain the designated signature line for both the salesperson and purchaser.

Based upon advice from the Office of Management and Budget, the Department has decided to eliminate a specific printed form for the Lot Information Statement, and has substituted a format, to avoid the time involved to respond to any changes and the cost of regulatory amendments. Therefore, a sample format for the Lot Information Statement and a description of required disclosures is provided.

Four comments were received in regard to the filing fee and request procedure required in proposed § 1710.15(c). One commenter suggested that the $500 filing fee be reduced to $50 per lot for subdivisions with less than 10 lots. This comment on the fee has not been accepted, since the exemption is for a method of operation rather than for a set number of lots. Developers eligible for the exemption will not know the total number of lots to be offered at the time of filing, since they are continually acquiring and selling lots as they are located and, if necessary, platted.

Other commenters questioned the necessity of a burdensome clearing process and asked why the new exemption is not self-determining. HUD believes that certain judgment decisions must be made because of the unique nature of the offerings that will be eligible for the new exemption. Therefore, it is essential that the exemption requirements be uniformly applied from the outset.

Another comment suggested that the "Agent" caption on the "Request for Multiple Site Exemption" form be expanded to state "Agent for purposes of notices or correspondence in connection with this Request." HUD does not believe that this change is necessary in light of the § 1710.1 definition of the term "Agent."

A comment was also received suggesting a change in a statement in the Request for Multiple Site Exemption located in parentheses directly below the agent's telephone number. Certain revisions have been made in response to this comment.

A comment was received regarding the termination of the exemption for failure to submit the Annual Report, as required by § 1710.15(d)(4). This commenter felt that termination should only occur after a notice is issued and an opportunity for hearing is given. The provision has been revised to give the developer 10 days after the receipt of notice from the Secretary to file the Annual Report. Otherwise, the exemption will be terminated.

In regard to the termination of the Exemption Order under § 1710.15(e), a commenter suggested that such termination apply only to the affected site or sites, rather that the entire offering. Since this exemption applies to the entire sales operation and not to individual sites within that operation, this suggestion has not been accepted.

Finding and Certifications

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD Regulations in 24 CFR part which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection from 8:45 a.m. to 5:15 p.m., Eastern Standard Time, in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order of Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on

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competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paper Reduction Act of 1980. Sections 1710.15, 1710.15(d) and 1710.15(b)(11) of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN

Description	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
Exemption Filing (1710.15)	150	1	150	20.00	3,000
Annual Reports of Activity (1710.15(d))	150	1	150	.28	42
Lot Information Statement Receipts (1710.15(b)(11))	150	50	7,500	.03	225
Subtotals	(1)	(1)	7,800	(1)	3,267
Recordkeeping			150	.28	42
Totals			7,950		3,309

(1) Varies.

The rule was listed as item H–47–86 (Sequence Number 966) in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16730) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Congress provided several specific exemptions from the Act, and from the registration requirements of the Act, for identified small entities. In 15 U.S.C. 1702(c), Congress also directed the Department to create, by regulation, additional exemptions for small entities whose offerings are of a small amount or limited character. This exemption is being promulgated pursuant to that authority.

The Catalog of Federal Domestic Assistance Program number is 14.801.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal Government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule provides an exemption, under specified conditions, from otherwise applicable registration requirements, to private entities subject to the Interstate Land Sales Full Disclosure Act. Provision of such an exemption is expressly authorized by statute.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it does not affect the role or institution of the family in society. The rule provides a specific exemption from registration requirements for particular types of transactions under the Interstate Land Sales Full Disclosure Act. Any impact on the institution of the family in society is most indirect and most minimal.

List of Subjects in 24 CFR Part 1710

Consumer protection, Land sales, reporting and recordkeeping requirements.

Accordingly, 24 CFR part 1710 is amended as follows:

PART 1710—LAND REGISTRATION

1. The authority citation for 24 CFR part 1710 is revised to read as follows:

Authority: Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 1710.1 is amended by adding a new paragraph as follows:

§ 1710.1 [Amended]

* * * * *

"*Senior executive officer*" * * *

"*Site*" means a group of contiguous lots whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or any similar object.

"*State*" * * *

3. Section 1710.4 is amended by revising paragraph (d) to read as follows:

§ 1710.4 Exemptions—general.

* * * * *

(d) Eligibility for exemptions available under §§ 1710.5 through 1710.14 is self-determining. With the exception of the exemptions available under §§ 1710.15 and 1710.16, a developer is not required to file notice with or obtain the approval of the Secretary in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

* * * * *

4. The following new section is added as § 1710.15:

§ 1710.15 Regulatory exemption—multiple site subdivision—determination required.

(a) *General.* (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan, is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b) *Eligibility Requirements.* The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold "as is" with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as "residential", either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent "on-road" vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes—

(i) Contain the following non-waivable provision in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures:

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.

If you did not receive a Lot Information Statement prepared pursuant to the rules and regulations of the Interstate Land Sales Registration Division, U.S. Department of Housing and Urban Development, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased (see paragraph (b)(11) of this section).

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 24 CFR 1710.4 (b) and (c) and the sales practices and standards in 24 CFR 1715.10 through 1715.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to OILSR upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right.

Sample Format

(Use of the following headings and first paragraph are mandatory.)

Lot Informotion Statement

Important: Read Corefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right to Cancel

(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1710.15(b)(5)(i)).

Risk of Buying Land

(Under this heading the developer is to list the following information:)

There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. Do not expect all land to automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

Developer Information

(Under this heading the developer is to list the following information:)

Developer's Name: _____

Address: _____

Telephone Number: _____

Lot Information

(Under this heading the developer is to list the following information:)

Lot Location: _____

(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits

(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information.

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:

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	Name, Address and Telephone Number of	
	Governmental agency	Supplier
Water		
Sewer		
Electricity		

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Interstate Land Sales Registration Division, HUD Building, Room 6278, 451 Seventh Street, SW., Washington, DC 20410.

(The Receipt is to be in the following form:)

Sample Receipt For Lot Information Statement

Purchaser (print or type): _____
Date: _____
Signature of purchaser: _____
Street Address: _____
City: _____
State: _____
Zip: _____
Name of salesperson (print or type): _____
Signature of salesperson: _____

(c) *Request for Multiple Site subdivision Exemption.* (1) The developer must file a request for the Multiple Site Subdivision Exemption in the following format. The request must be accompanied by a filing fee of $500 (prepared in accordance with § 1710.35 (a)) and a sample Lot Information Statement.

Request for Multiple Site Subdivision Exemption

Developer:
Name: _____
Address: _____
Telephone No.: _____
Agent:
Name: _____
Address: _____
Telephone No.: _____

(Insert a general description of the developer's method of operation.)

I affirm that I am, or will be the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 24 CFR 1710.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date: _____
Signature: _____
Title: _____

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

(2) This exemption will become effective upon issuance of an Exemption Order by the Secretary.

(d) *Annual Report.* (1) By January 31 of each year the developer will send a report to the Secretary listing each site and its location available for a sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of $100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Secretary will automatically terminate eligibility for the exemption as of the Report due date.

(e) *Terminotion.* If, subsequent to the issuance of an Exemption Order, the Secretary has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Secretary may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Secretary, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by 24 CFR 1720.238.

5. Section 1720.238 is amended by revising the heading, the introductory paragraph and paragraphs (a) and (d) to read as follows:

§ 1720.238 Notices of proceedings to terminate exemptions pursuant to §§ 1710.14, 1710.15 and 1710.16 of this chapter.

A proceeding to terminate a self-determining exemption under § 1710.14 or an exemption order under § 1710.15 or § 1710.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1710.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1710.15 or § 1710.16, an identification of the exemption order to which the notice applies.

* * * * *

(d) A notice that failure to file an answer or motion as provided under § 1720.240 will result, in the case of a notice issued under § 1710.14, an order terminating eligibility for the exemption, or, in the case of a notice issued under either § 1710.15 or § 1710.16, an order terminating the exemption order.

6. Section 1720.239 is amended by revising the heading and paragraphs (a) and (c) as follows:

§ 1720.239 Hearings—Notice of proceedings pursuant to §§ 1710.14, 1710.15 and 1710.16 of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued under §§ 1710.14, 1710.15 and 1710.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement under § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

* * * * *

(c) Failure to answer within the time allowed by § 1720.240, or failure to appear at a duly scheduled hearing shall result in an appropriate order under § 1710.14 § 1710.15 or § 1710.16 of this chapter terminating the developer's exemption. The order shall be effective as of the date of service or receipt.

Dated: August 18, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 89-23365 Filed 10-3-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay Reg. 89-03]

Safety Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone extending 200 yards ahead, 100 yards astern, and 50 yards abeam both sides around the Red & White Fleet ferry boat HARBOR EMPEROR as it transit from Pier 1 in San Francisco to the naval vessel USS INDEPENDENCE anchored in approximate position 37-49-29 N, 122-26-30 W on October 7, 1989 at approximately 9:45 a.m. P.d.t. The Zone is needed to protect the ferry boat HARBOR EMPEROR and her embarked dignitaries from a safety hazard associated with transiting through unusually dense small vessel concentrations assembled along the San Francisco waterfront for a parade of naval ships and a series of aerial displays. Entry into this zone is prohibited unless authorized by the captain of the port.

DATES: *Effective Dates:* This regulation becomes effective on October 7, 1989 at approximately 9:45 a.m. P.d.t., when the Red & White Fleet ferry boat HARBOR EMPEROR, carrying approximately 300 dignitaries departs Pier 1 in San Francisco and remains in effect as the ferry boat transits to USS INDEPENDENCE anchored west of Alcatraz island in San Francisco Bay. It terminates on October 7, 1989 at approximately 10:15 a.m. P.d.t., when the ferry boat has moored to the naval vessel USS INDEPENDENCE unless sooner terminated by the captain of the port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Keith Bradley, Marine Safety Office San Francisco Bay, at (415) 437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Keith Bradley, project officer for the captain of the port, and Lieutenant Commander John Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation will occur on October 7, 1989 when a large number of small craft will gather along the San Francisco waterfront to watch the Navy parade of ships and aerial displays during the public start of Fleetweek '89 activities. Ferry boats will continue to operate on their normal weekend schedules during the Fleetweek '89 activities, and small craft will be accustomed to ferry traffic departing and arriving near Piers 39 and 41 in San Francisco. The departure of Red & White Fleet ferry boat HARBOR EMPEROR from Pier 1 on October 7, 1989 will be an unusual event that warrants measures beyond the Rules of the Road to ensure the safety of the ferry, its embarked dignitaries, and members of the boating public as the ferry transits the waters of San Francisco Bay near the San Francisco waterfront. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new § 165.T1163 is added to read as follows:

§ 165.T1163 Safety Zone: San Francisco Bay.

(a) *Location:* The following area is a safety zone: The waters of San Francisco Bay extending 200 yards ahead, 100 yards astern, and 50 yards abeam both sides of the Red & White Fleet ferry boat HARBOR EMPEROR from the time that it departs from Pier 1 in San Francisco at approximately 9:45 a.m. P.d.t., while it transits the waters of San Francisco Bay, until it moors at approximately 10:15 a.m. P.d.t. to the naval vessel USS INDEPENDENCE which will be anchored west of Alcatraz island in approximate position 37-49-29 N, 122-26-30 W.

(b) *Effective date:* This regulation becomes effective on October 7, 1989 at approximately 9:45 a.m. p.d.t., when the Red & White Fleet ferry boat HARBOR EMPEROR departs Pier 1 in San Francisco. It terminates on October 7, 1989 at approximately 10:15 a.m. P.d.t., when the ferry boat moors to USS INDEPENDENCE, unless sooner terminated by the captain of the port.

(c) *Regulation:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

Dated: September 27, 1989.

Thomas H. Robinson,

Captain, U.S. Coast Guard, Captain of the Port San Francisco Bay.

[FR Doc. 89-23360 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Francisco Bay Reg. 89-02]

Security Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters of San Francisco Bay extending one hundred yards around the naval vessel USS INDEPENDENCE as it transits the waters of San Francisco Bay and during the time that the vessel is anchored west of Alcatraz island on Saturday, October 7, 1989. The zone is needed to safeguard USS INDEPENDENCE against destruction, loss, and injury from sabotage or other subversive acts, accidents, or other incidents of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective on October 7, 1989, when USS INDEPENDENCE passes beneath the Golden Gate Bridge at approximately 7:00 a.m. P.d.t. It terminates on October 7, 1989, when USS INDEPENDENCE moors at Pier 30/32 in San Francisco at approximately 4:00 p.m. P.d.t., unless sooner terminated by the captain of the port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Keith Bradley, Marine Safety Office, San Francisco Bay, at (415) 437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, and injury to USS INDEPENDENCE.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Keith Bradley, project officer for the captain of the port, and Lieutenant Commander John Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

BEST COPY AVAILABLE

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Discussion of Regulation

The event requiring this regulation will begin on October 7, 1989, when USS INDEPENDENCE enters San Francisco Bay to participate in Navy Fleetweek '89 activities. It is expected Fleetweek '89 will attract significant public and media attention. The prominence and controversial nature of the event cause potential for strife or acts of violence. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to help prevent situations where strategic naval assets of the United States may come to harm. The security of these assets is in the national interest and a Security Zone is justified to help protect these assets and spectators both onboard and near these assets. The parameters of the Security Zone will continue to afford the public with reasonable opportunity to exercise their constitutional rights without imposing a security risk to the naval vessel or its crew. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A new § 165.T1162 is added to read as follows:

§ 165.T1162 Security Zone: San Francisco Bay.

(a) *Location:* The following area is a security zone: The waters of San Francisco Bay extending 100 yards around the naval vessel USS INDEPENDENCE during its transit from the Golden Gate Bridge to its anchoring point at 37–49–29 N, 122–28–30 W, while the vessel is anchored at or near the above point, and while the vessel transits from the above anchoring point until its moors at Pier 30/32 in San Francisco.

(b) *Effective date:* This regulation becomes effective on October 7, 1989, when USS INDEPENDENCE enters San Francisco Bay at approximately 7:00 a.m. P.d.t. It terminates on October 7, 1989, when USS INDEPENDENCE moors at Pier 30/20 in San Francisco at approximately 4:00 p.m. P.d.t., unless sooner terminated by the captain of the port.

(c) *Regulation:* In accordance with the general provisions in § 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

Dated: September 27, 1989.

Thomas H. Robinson,

Captain, U.S. Coast Guard, Captain of the Port San Francisco Bay.

[FR Doc. 89-23361 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AD50

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its current regulation which establishes the number of Committee members required to render a decision on a waiver request or compromise offer. The regulation will require one, two, or three member panels in all cases. The effect of the regulation will be to provide the most efficient use of Committee members.

EFFECTIVE DATE: November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Finance and Planning, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3405.

SUPPLEMENTARY INFORMATION: On pages 21229 through 21230 of the **Federal Register** of May 17, 1989 (54 FR 21229), VA published a proposed regulation concerning panel membership on our Committees on Waivers and Compromises. We did not receive any comments during the 30-day public comment period.

Title 38 CFR 1.955 establishes one member, three member, and five member panels for the Committees on Waivers and Compromises. Under this regulation and current VA manuals, a one member panel is used to consider waiver requests on debts of $1,000 or less, a three member panel is required for waiver requests on debts in excess of $1,000, and a five member panel is required for those cases where a three member panel cannot reach a unanimous decision. Three member panels are currently used to consider all compromise offers.

Our revision requires only one, two, or three member panels in all cases. A one member panel would be used for all waiver requests or compromise offers on debts of $20,000 or less, exclusive of interest and administrative costs. A two member panel would be required for all waiver requests and compromise offers on debts within the Committee's jurisdiction of more than $20,000, exclusive of interest and administrative costs. If the two member panel cannot reach a unanimous decision, then a third member will be added to the panel and the majority opinion will be the panel's decision. This panel alignment would also hold true on any Notice of Disagreement filed with a Committee decision to deny waiver.

We believe that this revison will provide the most efficient use of Committee members. Under current procedures, three or five Committee members must be used to consider all compromise offers. Since the Committees are considering an increasing number of loan guaranty debts and these debts average approximately $15,000 per debt, more and more Committee decisions require at least three member panels.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this rule primarily affects only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

This final rule has also been reviewed under Executive Order 12291, Federal Regulation, and has been determined to be nonmajor because it will not have a $100 million annual effect on the economy and will not have any adverse economic impact on, or increase costs to, consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

Approved: September 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 1, General, is amended as follows:

PART 1—[AMENDED]

1. In § 1.955, paragraphs (b) heading, (b)(1), (c) and (d) are removed; paragraphs (b)(2), (b)(3), and (b)(4) are redesignated as paragraphs (b), (c), and (d) respectively and paragraph (e) is added to read as follows:

§ 1.955 Regional Office Committees on waivers and compromises.

* * * * *

(e) *Committee composition.* (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is $20,000 or less (exclusive or interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than $20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagreement with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of collection of a debt of $20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than $20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.

(Authority: 38 U.S.C. 210(c)(1))

§ 1.956 [Amended]

2. In § 1.956(a)(1), remove the words "Department of Veterans Benefits" where they appear and add, in their place, the words, "Veterans Benefits Administration".

§ 1.956 [Amended]

3. In § 1.956(a)(2) and (a)(2)(iv) remove the words, "Department of Medicine and Surgery" where they appear and add, in their place, the words "Veterans Health Services and Research Administration".

[FR Doc. 89-23324 Filed 10-3-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AD27

Due Process

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This regulatory amendment sets out procedural protections to be followed when the Department of Veterans Affairs (VA) is considering reduction of the veteran's subsistence allowance because VA has received evidence that the veteran has lost a dependent. This rule brings the procedures followed in these cases into agreement with procedural protections of due process when a veteran is receiving disability compensation or pension and VA receives evidence that the veteran has lost a dependent. The effect of this rule will be to improve and more clearly define procedural protections afforded the veteran.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: At pages 10378 through 10380 of the **Federal Register** of March 13, 1989, the Department of Veterans Affairs (VA) published proposed regulations to improve due process protections when VA is considering reduction of subsistence allowance because VA has received evidence that the veteran has lost a dependent. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, this rule is adopted as final.

These final regulations do not meet the criteria for a major rule as that term is defined by Executive Order 12291. These final regulations will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these final regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This final rule concerns only VA procedural protections followed in making certain adjustments in awards to individual beneficiaries. This certification can be made because these regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by these regulatory amendments is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Educational, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 13, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.420, paragraph (d) introductory text is revised to read as follows:

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§ 21.420 Informing the veteran.

* * * * *

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to indicate his or her disagreement with an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:

* * * * *

2. Section 21.422 is added to subpart B under the undesignated center heading "Informing the Veterans" to read as follows:

§ 21.422. Reduction in subsistence allowance following the loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;

(ii) VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.* (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decison, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-23323 Filed 10-3-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6851]

List of Communities Eligible for the Sale of Flood Insurance; Ohio et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of

Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Ohio	Fairlawn, City of	Summit	390657	August 3, 1989, Suspension withdrawn.
Do	Hanover, Village of	Licking	390831	Do.
Do	Holland, Village of	Lucas	390659	Do.
Do	Indian Hill, City of	Hamilton	390221	Do.
Do	Ironton, City of	Lawrence	390327	Do.
Do	Kenton, City of	Hardin	390253	Do.
Pennsylvania	Hulmeville, Borough of	Bucks	420190	Do.
South Dakota	Kennebec, Town of	Lyman	460050	Do.
Utah	Glenwood, Town of	Sevier	490126	Do.
Do	Green River, City of	Emery	490062	Do.
Do	Hatch, Town of	Garfield	490068	Do.
Do	Henrieville, Town of	Garfield	490069	Do.
Do	Holden, Town of	Millard	490201	Do.
Do	Hyde Park, Town of	Cache	490016	Do.
Do	Unincorporated Areas	Iron	490073	Do.
Do	Joseph, Town of	Sevier	490127	Do.
Do	Lewiston, City of	Cache	490018	Do.
Do	Mantua, Town of	Box Elder	490009	Do.
Colorado	Frisco, Town of	Summit	080245	August 15, 1989, Suspension withdrawn.
Maryland	Unincorporated Areas of	Frederick	240027	Do.
North Dakota	Beulah, City of	Mercer	380066	Do.
Do	Unincorporated Areas of	Dunn	380026	Do.
Do	Lindaas, Township of	Traill	380300	Do.
Do	Lisbon, City of	Ransom	380091	Do.
Do	Wing, City of	Burleigh	380213	Do.
Ohio	Mentor, City of	Lake	390317	Do.
Do	Middletown, City of	Butler	390040	Do.
Do	Mount Healthy, City of	Hamilton	390229	Do.
Do	Mount Vernon, City of	Knox	390311	Do.
Do	New Holland, Village of	Fayette	390448	Do.
Do	New Miami, Village of	Butler	390043	Do.
Do	North College Hill, City of	Hamilton	390232	Do.
South Dakota	Unincorporated Areas of	Davison	460020	Do.
Do	Sisseton, City of	Roberts	460072	Do.
Do	Veblen, Town of	Marshall	460146	Do.
Utah	Smithfield, City of	Cache	490029	Do.
Do	Spring City, City of	Sanpete	490119	Do.
Do	Stockton, Town of	Tooele	490144	Do.
Do	Sunset, City of	Davis	490050	Do.
Wyoming	Unincorporated Areas of	Park	550085	Do.

Issued: September 25, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-23421 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-605; RM-6392]

Radio Broadcasting Services; Brush, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C1 for Channel 296A at Brush, Colorado, and modifies the Class A license of Randall S. Jacobson, Receiver, for Station KKDD(FM), as requested, to specify operation on the higher powered channel, thereby providing the community with its first expanded coverage FM service. See 54 FR 4048, January 27, 1989. Coordinates used for Channel 296C1 at Brush are 40-15-39 and 103-38-15. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

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FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–605, adopted September 11, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended for Brush, by removing Channel 296A and adding Channel 296C1.Q04

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23379 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–501; RM–6450]

Radio Broadcasting Services; Clearwater, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gulf Coast Radio, Inc., substitutes Channel 250C for Channel 250C1 at Clearwater, Florida, and modifies its license for Station WKRL (FM) to specify operation on the higher powered channel. See 53 FR 44502, November 3, 1988. Channel 250C can be allotted to Clearwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to accommodate petitioners desired transmitter location. The coordinates for this allotment are North Latitude 28–02–34 and West Longitude 82–40–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–501, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Clearwater, Florida, by removing Channel 250C1 and adding Channel 250C.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23380 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–505; RM–6447]

Radio Broadcasting Services; Fitzgerald, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of William L. Taylor, allots Channel 245A to Fitzgerald, Georgia, as that community's first local service. See 53 FR 44208, November 2, 1988. Channel 245A can be allotted to Fitzgerald in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) north to avoid a short-spacing to a rule making proposal in MM Docket No. 88–436, which proposes substitution of Channel 244C2 for Channel 244A at Valdosta, Georgia. The coordinates for this allotment are North Latitude 31–49–25 and West Longitude 83–14–00. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989. The window period for filing applications will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–505, adopted September 13, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Georgia by adding Fitzgerald, Channel 245A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23381 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–499; RM–6435]

Radio Broadcasting Services; Lumpkin, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of William L. Taylor, Jr., allots Channel 257C2 to Lumpkin, Georgia, as that community's first local FM service. (See 53 FR 44503, November 3, 1988). Channel 257C2 can be allotted to Lumpkin in compliance with the Commission's minimum distance separation requirements with a site restriction of 19 kilometers (18.8 miles) southwest to avoid a short-spacing to Station WAYS, Channel 256C1, Macon, Georgia, and to the construction permit of Station WDMG–FM, Channel 258C, Douglas, Georgia. The coordinates for this allotment are North Latitude 31–54–30 and West Longitude 84–54–38. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989. The window period for filing applications will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–499, adopted September 13, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Lumpkin, Georgia, Channel 257C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23382 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–252; RM–5099]

Radio Broadcasting Services; Leroy and Urbana, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281B1 for Channel 224A at Leroy, Illinois, and modifies the license for Station WMLA(FM) to specify operation on the higher powered channel, as requested by McLean County Broadcasters, Inc. See 51 FR 24412, July 3, 1986. This action also substitutes Channel 223B1 for Channel 280A at Urbana, Illinois, and modifies the license of Station WKIO(FM) to specify operation on the higher class channel, at the request of Tak Communications, Inc. Channel 281B1 can be allotted to Leroy, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) northeast of the city. The coordinates are North Latitude 40–25–10 and West Longitude 88–43–02. Channel 223B1 can be allotted to Urbana, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction 9.7 kilometers (6.0 miles) south, in order to avoid a short-spacing to Station WDEK, Channel 223B at Dekalb, Illinois. The coordinates are North Latitude 40–01–42 and West Longitude 88–10–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–252, adopted September 19, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Leroy, Illinois, by removing Channel 224A and adding Channel 281B1, and for Urbana, Illinois, by removing Channel 280A and adding Channel 223B1.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23383 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–610; RM–6496]

Radio Broadcasting Services; Wellston, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jackson County Broadcasting, Inc., substitutes Channel 244B1 for Channel 244A at Wellston, Ohio, and modifies its license for Station WKOV(FM) to specify the higher powered channel. Channel 244B1 can be allotted to Wellston in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 39–01–45 and West Longitude 82–35–51. Canadian concurrence has been received since Wellston is located within 320 kilometers of the United States-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–610, adopted August 21, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

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§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended for Wellston, Ohio, by removing Channel 244A and adding Channel 244B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23384 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1532 and 1552

[FRL-3655-8]

Acquisition Regulation; Prompt Payment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rule with request for comment.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) coverage on prompt payment in response to the Prompt Payment Act Amendments of 1988 in order that payments may be made within the time-frames required. This interim rule affects the preparation and distribution of contractor invoices. Under this rule, EPA contractors will be required to include EPA accounting information on payment requests, to have payment requests and progress reports cover the same time period, and to submit copies of payment requests to EPA project officers and contracting officers.

EFFECTIVE DATE: This regulation is effective October 4, 1989. Public comments on this interim rule must be received on or before December 4, 1989.

ADDRESS: Comments should be addressed to Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW, Washington, DC 20460, attn: Joseph Nemargut, Jr.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut, Jr. at (202) 475-8176 (FTS 475-8176).

SUPPLEMENTARY INFORMATION:

A. Background

The Prompt Payment Act (P.L. 97-177) established standards for the payment of contractor invoices. On October 17, 1988, the President signed Public Law 100-496, known as the Prompt Payment Act Amendments of 1988. Among other things, these amendments establish a thirty day payment period for contractor payments and eliminate an additional 15 day grace period previously allowed for Federal agencies to make invoice payments without interest penalty.

In making voucher payments, EPA relies on its project officers to ensure vouchers are accurate based on goods or services received. Under EPA's internal processing requirements, these project officers are also required to distribute invoiced costs among various elements of accounting data to ensure the correct funds are used in paying invoices.

The requirement for project officers to assign accounting data to contractor invoices has delayed EPA payments to contractors causing some payments to be made outside the periods required by the Prompt Payment Act. By requiring contractors to indicate applicable accounting information under this interim rule, EPA can better ensure timely payment to contractors. Additionally, by having copies of invoices sent directly to project officers and Contracting Officers, and requiring that invoices have the same period of performance as progress reports, EPA can more quickly and accurately verify invoice information.

This regulation is published as an interim rule due to the urgency of making changes to comply with the Prompt Payment Act Amendments of 1988. The Federal Acquisition Regulation (FAR) 1.501-3(b) permits publication of regulations without the opportunity for advance comments when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of coverage.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The change in invoice distribution requires only one additional copy of an invoice be provided to EPA. The requirement for contractors to have the same period of performance for both invoices and progress reports reflects existing practices for many contractors and should require only minimal changes for small entities not already in compliance. The requirement for contractors to include accounting information on invoices requires contractors to include information clearly identified on contracts, work assignments, or delivery orders. This should require only minimal changes to invoicing procedures for small entities.

List of Subjects in 48 CFR Parts 1532 and 1552

Government procurement, Contract financing, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

PART 1532—[AMENDED]

1. The authority citation for Part 1532 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1532.908 is amended by adding the following to the end of the section:

1532.908 [Amended]

* * * except for acquisitions not exceeding the small purchase limitation.

PART 1552—[AMENDED]

3. The authority citation for Part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Section 1552.232-70 is amended by revising the introductory paragraph and paragraph (a) and by adding paragraphs (d) and (e) to read as follows:

1552.232-70 Submission of invoices.

* * * * *

Submission of Invoices (Oct. 1989)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following requirements in addition to those of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and four copies. The contractor shall submit the invoice to the following offices/individuals designated in the contract: original and one copy to the accounting operations office; two copies to the project officer (the project officer may direct one of these copies to a separate address); and one copy to the Contracting Officer.

* * * * *

(d) Invoices must clearly indicate the period of performance for which payment is requested and include EPA accounting information necessary to process payments. Separate invoices are required for charges applicable to the basic contract and for each option period. If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number and EPA accounting information. When contracts, work assignments or delivery orders contain multiple lines of accounting data, charges that cannot be assigned to a single line of accounting information should be allocated based on the percentage of total dollars, unless otherwise specified. Required accounting information includes the Document Control Number (DCN) and the account number shown in block 14 of the SF 26, block 21, of the SF 33, block 12 of the SF 30, or on the individual work assignment or delivery order.

(e) When the contractor invoices on a monthly basis, the period covered by requests for contract financing payments must be the same as the period for monthly progress reports required under this contract. If, in accordance with FAR 52.216-7, the contractor submits requests for contract financing payments more frequently than monthly, one payment request each month must have the same ending period of performance as the monthly progress report. Where cumulative amounts on the monthly progress report differ from the aggregate amounts contained in the request(s) for contract financing payments covering the same period, the contractor must provide a reconciliation of the difference as part of the payment request.

(End of clause)

Dated: September 25, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89-23428 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2813 and 2819

[Justice Acquisition Circular 89-1]

Amendments to the Justice Acquisition Regulations (JAR) Regarding Class Deviations, Requests for Deviations, Purchase Order Checklist and Withdrawal or Modification of Small Business Set-Asides

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rules.

SUMMARY: Justice Acquisition Circular (JAC) 89-1 amends the JAR, 48 CFR, Chapter 28 as follows: to amend Part 2801 by revising the procedures for obtaining class deviations and adding procedures and requirements for requesting deviations; to amend Part 2813 by adding a purchase order checklist, which prescribes documentation requirements for the Department's purchase order files; and, to amend Part 2819 by adding agency procedures for withdrawing or modifying small business set-asides.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division, Telephone (202) 272-8354.

SUPPLEMENTARY INFORMATION: The determination is hereby made that these amendments must be issued as final rules. Any delay in issuing these amendments could impair the Department's efforts to make class deviations, to standardize documentation required for purchase orders as well as the ability to resolve differences in the withdrawal or modification of small business set-asides. These amendments were not published for public comment because they do not have an effect beyond the internal operating procedures of the agency.

The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to these rules. The Department of Justice certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Parts 2801, 2813 and 2819

Government procurement, small business set-asides.

Harry H. Flickinger,

Assistant Attorney General for Administration.

For the reasons set out in the preamble, Title 48, Chapter 28 of the Code of Federal Regulations is amended as follows. The authority citation for Parts 2801, 2813 and 2819 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.4 [Amended]

1. Section 2801.404 Class deviations is revised as follows:

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the Procurement Executive. The Procurement Executive will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his recommendations to the Assistant Attorney General for Administration. The Assistant Attorney General for Administration will grant or deny requests for such deviations. For the purposes of this regulation, requests for deviations involving basic ordering agreements, master type contracts or situations where multiple awards are made on one solicitation are considered to involve more than one contract and are therefore considered to be class deviation requests.

2. A new section 2801.470 Requests for deviations is added as follows:

2801.470 Requests for deviations.

Requests for approval of any deviation from the FAR or JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the Chief of the contracting office. Requests for deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain the following information as a minimum:

(a) Identification of the FAR or JAR requirement from which a deviation is sought;

(b) A full description of the deviation and the circumstances under which it will be used including background information which will contribute to a fuller understanding of the deviation sought;

(c) A description of the intended effect of the deviation together with the number of procurement actions affected by the deviation, if approved;

(d) A statement as to whether the deviation has been requested previously, and if so, the circumstances of the previous request;

(e) The name of the contractor(s) and identification of the contract(s) affected including the dollar value;

(f) A copy of all pertinent documents including forms or clauses and the proposed contractor's request if any;

(g) A statement of the period of time for which the deviation is needed (when it is known that a deviation will be

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required on a permanent basis the chief of the contracting office shall forward with the request an appropriate FAR revision which will cover the matter);

(h) A copy of the alternate procedures the bureau intends to use if the deviation is approved; and,

(i) A copy of the bureau legal counsel's concurrence or comments thereon.

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.5—[Amended]

3. A new section 2813.570 Content of purchase order files added as follows:

2813.570 Content of purchase order files.

(a) Is the policy of the Department that all purchase order files contain sufficient documentation to accurately portray the circumstances surrounding the purchase action. Each purchase order file shall contain the following completed checklist, or one similar, which contains as a minimum the documents and information that are indicated on the checklist.

(b) Small purchase documentation checklist. The purpose of this small purchase documentation checklist is to assure that all required documentation has been made and a record of that documentation is kept in the small purchase file. The checklist should be completed by responding yes, no or N/A. "No" responses must be explained on a separate sheet of paper which must be attached to the checklist.

(1) Presolicitation:

Are sufficient funds available to cover all purchases? .....
Have excess listings, FPI, CPBOSH, GSA, and FSS been reviewed prior to soliciting open market sources? (FAR Part 8) .....
Were all necessary waivers, clearances, or exceptions obtained? (FAR 8.404–3. 8.605, 8.706) .....
Was the requirement synopsized or posted? (FAR 5.101, FIRMR 201–32.206(f)) .....
Was the requirement set aside for small business? (FAR 13.105) .....
If sole source, is the justification clearly documented? (FAR 13.106(b)) .....
Is the reason for not obtaining competition clearly documented? (FAR 13.106(c)(2)) .....
Is all quotation information properly documented? (FAR 13.106(c)(3)) .....
Has a wage determination been obtained? (Service contracts over $2500 FAR 22.1002–1) .....

(2) Award:

Is the price paid fair and reasonable? (FAR 13.106(c)(1)) .....
Is the vendor currently suspended or debarred? (FAR 9.405) .....
Have all discounts, time and quantity, been properly recorded? .....
Are delivery terms and destination points clear and concise? (FAR 47.303) .....
Is all correspondence answered? .....
Has a determination of responsibility been made? (FAR 9.103) .....
Have all variances to the specifications been approved by the requisitioner? .....
If the award is over $25,000 was an ICAR prepared and reported to the ACF? (FAR 4.601) .....

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

4. A new Subpart 2819.5 Set-Asides for Small Business, consisting of section 2819.506, is added as follows:

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

Before a contracting officer may withdrawn or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall forward the matter to the Deputy Attorney General for resolution.

[FR Doc. 89–23415 Filed 10–3–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191 and 195

[Docket No. PS–111; Amdt. No. 191–8 and 195–44]

Transportation of Gas or Hazardous Liquid by Pipeline: New Telephone Numbers for Reporting Incidents, Accidents, and Safety-Related Conditions

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Technical amendment.

SUMMARY: The telephone number to use in Washington, DC to give telephonic notice of gas pipeline incidents and hazardous liquid pipeline accidents has been changed to 267–2675. Also, the telephone number to use at any location to file a safety-related condition report by telefacsimile (fax) will be changed effective October 9, 1989, from (202) 472–1666 to (202) 366–7128. This document amends the reporting requirements to show these new telephone numbers.

DATES: The amendment to §§ 191.5(b) and 195.52(b) regarding incidents and accidents takes effect October 4, 1989. The amendment to §§ 191.25(a) and 195.56(a) regarding safety-related condition reports takes effect October 9, 1989.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 191

Pipeline Safety, Gas, Reporting requirements.

49 CFR Part 195

Pipeline Safety, Hazardous liquids, Reporting requirements.

Therefore, parts 191 and 195 of title 49 of the Code of Federal Regulations are amended as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1606(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

§ 191.52 [Amended]

2. The introductory text of § 191.5(b) is amended by removing "426–2675" and adding "267–2675" in its place.

§ 191.25 [Amended]

3. Section 191.25(a) is amended by removing "(202) 472–1666" and adding "(202) 366–7128" in its place.

PART 195—[AMENDED]

4. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

§ 195.52 [Amended]

5. The introductory text of § 195.52(b) is amended by removing "426–2675" and adding "267–2675" in its place.

§ 195.56 [Amended]

6. Section 195.56(a) is amended by removing "(202) 472–1666" and adding "(202) 366–7128" in its place.

Issued in Washington, DC on September 28, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89–23362 Filed 10–3–89; 8:45 am]

BILLING CODE 4910–60–M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR–6, Notice No. 28]

RIN: 2130–AA43

Amendment to Alcohol/Drug Regulations; Designation of Post-Accident Testing Laboratory; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; correction.

SUMMARY: FRA issues a correction to its final rule amendment that designates a new post-accident testing laboratory. The correct Area Code of the laboratory is (916).

DATES: This correction is effective on October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Sam Holley, Manager, Railroad Safety Alcohol and Drug Program (RRS–10), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366–0501).

SUPPLEMENTARY INFORMATION: On September 27, 1989, FRA published in the **Federal Register** a final rule amendment designating a new post-accident testing laboratory (54 FR 39716). The notice contained an incorrect area code for the laboratory. The correct area code for the laboratory is (916), rather than (915), as previously published.

The following correction is made to 49 CFR part 219, Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing, as revised at 54 FR 39716, in the third column, immediately above the words "Issued in Washington, DC": Change "Telephone No. (915) 923–0640" to "Telephone No. (916) 923–0840."

Issued in Washington, DC on October 2, 1989.

Susan M. Coughlin,

Deputy Administrator.

[FR Doc. 89–23645 Filed 10–3–89; 9:24 am]

BILLING CODE 4910–06–M

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Proposed Rules

Federal Register
Vol. 54, No. 191
Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Improved Use of Medical Personnel in Social Security Disability Determinations

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Administration has under consideration a draft recommendation on improved use of medical personnel in making Social Security disability determinations.

DATE: Comments by Friday, October 27, 1989.

ADDRESS: Send comments to Charles Pou, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, 202–254–7020.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Administration is seeking comment on a draft recommendation and report on improved use of medically-trained decisionmakers in Social Security disability determinations. The draft report, by Professor Frank Bloch of Vanderbilt University Law School, examines five federal agencies' use of medical personnel and seeks to draw conclusions from their experiences. Copies of the report are available on request.

The proposed Conference recommendation, which will be discussed in detail when the Committee meets next on Friday, November 3, calls on the Social Security Administration ("SSA") to enhance the role of medically-trained personnel in the initial decision of eligibility and to take steps to improve the quality of medical evidence in decisionmaking. In brief, it recommends elimination of the reconsideration stage and greater attention to effective development of medical evidence at the initial stage. Several specific steps toward these goals are recommended.

The Committee on Adminstration seeks comments on the draft recommendation, in preparation for its meeting to be held on Friday, November 3, 1989 at 2:00 pm at the Administrative Conference. At that time, the Committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 14 & 15, 1989. The Committee also seeks comment on several issues that reflect concerns—expressed by some Committee members—that could ultimately be addressed by a revised recommendation, should the full Committee so decide. These issues are as follows:

(1) How can SSA ensure consistent, effective implementation by state agencies of the recommended changes in initial decisionmaking, given states' diversity and varying degrees of competence? Would "federalization" of the initial decision stage be necessary?

(2) What would be the fiscal, administrative, and qualitative implications—long- and short-term—for SSA and others if the recommendations for enhanced initial stage use of medical deciders were implemented?

(3) Should the Conference's recommendations be extended explicitly to call for the same changes by four other disability agencies—the Department of Labor's Black Lung program, OPM's federal employee pension benefits program, the Department of Veterans Affairs compensation benefits program, and Railroad Retirement benefits?

(4) Should the logic of the recommendations be extended to the appeal stage, so as to call on SSA to replace decisions by administrative law judges ("ALJs") in certain cases with decisions by medically-trained personnel? If so, should medical deciders replace ALJs for *all* appeals cases? For some? Which ones? What decisional or other role should medically-trained personnel, as opposed to legally-trained ALJs, have in the appeal process?

(5) What steps should be taken to secure the appropriate degree of decisional independence for medical staff? Does the draft recommendations go far enough? Too far?

(6) How can agencies ensure that qualified medical personnel are used in a system with enhanced medical input? What lessons can SSA or other agencies derive from the experience of private insurers' determination processes?

Draft Recommendation

Improved Use of Medical Personnel in Social Security Disability Determinations

The Social Security Administration processes more than two million requests for Disability Insurance Benefits and Supplemental Security Income inquiring a determination whether the claimant is disabled. The Administrative Conference has addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.[1] This recommendation forcuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration uses medical personnel currently in two way. First, initial and reconsideration decisions are made at state agencies by teams composed of one lay disability examiner and one medical doctor. Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other soruces. Medical doctors provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels and to administrative law judges at the hearing level. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medically-trained personnel are involved in the disability determinations process for other federal disability programs as well. Although

[1] *See* Recommendations 78–2 (appeals process), 67–6 (initial and reconsideration determinations), 67–7 (Appeals Council).

the extent to which they are used varies from program to program, all programs concentrate the use of medical staff at the initial decision stage, as does the Social Security Administration.

There is no doubt that medically-trained personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Nothwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that medical doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Medical doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs for the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medically-trained personnel perform three main functions in current practice. First, they assist in developing the medical records on which disabiilty decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medically-trained decisionmakers in Social Security disability determinations. The first model would increase the responsibility of medical personnel for compiling all relevant medical evidence. Medical staff would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical staff would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decisionmakers. A second model would improve the use of medical doctors as sources for supplying medical data and opinions on which disability decisons can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case, there are medical issues that can be identified as appropriate for separate decision. A third model would make more effective use of medical personnel in a final decisionmaking role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibilty for decisionmaking with a non-medical disabilty examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that enough open exchange of information between the two decisionmakers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conficts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of those models.

Recommendations

1. The Social Security Administration should enhance the decisionmaking role of medical staff at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician and non-medical member who is a disability examiner—to determine disability.

2. The medical member of the team should be given primary respnsibility for developing the medical evidence in the record.

(a) Additional staff and funds should be made available to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including non-medical personnel and nurses, should be available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, assume direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

3. The Social Security Administration should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established which identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be done by medical staff independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Additional funds should be made available to train and compensate physicians asked to provide medical information.

(d) Medical staff should be able, when appropriate, to consult with specialists before ordering special examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record.

4. The Social Security Administration should identify selected issues raised by the applicable disability standards that are appropriate for separate decision by medical staff. The medical member of the team assigned to a claim should be responsible for identifying any special issues raised in the claim that have been designated for separate decision, developing all evidence relevant to the issue, and reaching a decision on that issue.

5. Medically-trained personnel should be used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level

(a) Senior medical staff should have the authority to review claims where the team members are unable to agree and to recommend further action, including the development of additional medical evidence, in order to resolve the conflict.

(b) If the conflict persists, a designated senior medical staff member should have the authority to decide the medical issues in dispute.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

6. Claimants should be informed specifically of any apparent deficiencies in the medical evidence that could lead to an adverse determination before an initial decision is made.

(a) This notice should be prepared by the medical member of the team and should encourage the claimant to

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provide additional information and explanation, as needed.

(b) This notice should express any deficiency clearly in medical terms so that claimants, or their representatives or doctors, can understand what the deficiency is, what additional information or clarification is needed, and that they have the opportunity to correct the deficiency. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(c) As part of this process, the medical member should have the authority to require a face-to-face interview with the claimant.

7. All medical staff should be trained fully on legal and program issues, and should work under the supervision of a chief medical office with significant status and independence in the agency.

8. The efforts of the disability determination team should be concentrated on a single initial decision process. A separate reconsideration evaluation should be eliminated.

9. Administrative law judges should have the option to call on a medical export to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.

(a) Communication with medical experts should, whenever possible, be in writing. A request for a written opinion from a medical expert would not abridge a claimant's right to cross-examine the expert.

(b) All information and opinions provided by consultants must be included in the record.

Dated: September 28, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-23516 Filed 10-3-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 24, and 133

Enforcement of Production of Semiconductor Chip Products; Patent Surveys

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to enable persons seeking protection from infringing semiconductor chip products (mask works) to obtain the assistance of Customs in preventing pirated chips from being imported into the U.S. This would give rise to a process of Customs recordation of mask works similar to that for copyrights. This proposed remedy would be in addition to, and not in lieu of, the mask work owner's other rights and remedies, such as the right to attempt to secure an injunction against importation from a district court or an exclusion order from the U.S. International Trade Commission (USITC).

Further, the section dealing with patent import surveys would be shifted to the Part entitled "Trademarks, Trade Names and Copyrights", which would then be retitled "Trademarks, Trade Names, Copyrights, Mask Works and Patents."

DATE: Comments must be received on or before December 4, 1989.

ADDRESS: Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Management and Budget, Paperwork Reduction Project (1515-0119), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Director, Intellectual Property Rights Task Force, 566-8933.

SUPPLEMENTARY INFORMATION:

Background

Title III of Public Law 98-620, cited as the "Semiconductor Chip Protection Act of 1984," added a new Chapter 9 to title 17, United States Code (17 U.S.C. 901 through 914), providing for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

As a condition of the protection extended to mask works under 17 U.S.C. 908(a), protection terminates "if application for registration of a claim of protection in the mask work is not made * * * within 2 years after the date on which the mask work is first commercially exploited." The U.S. Copyright Office has been designated to administer the registration system for mask works.

The owner of a registered mask work has the exclusive right, under 17 U.S.C. 905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied. In addition, pursuant to 17 U.S.C. 906, the owner of a particular product made by the owner of the mask work may import or distribute or otherwise dispose of or use, but not reproduce, that particular product without the authority of the owner of the mask work. The term of protection for the mask work owner is 10 years from the date on which the mask work is registered, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

Under 17 U.S.C. 910(c)(1), the Secretary of the Treasury and the U.S. Postal Service are empowered to separately or jointly issue regulations for the protection of the rights of mask work owners with respect to importations. These regulations may require, as a condition for the exclusion of articles from the U.S., that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that the importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

Under options (2) or (3), which involve a Customs determination, without the intervention of a court or the USITC, that an imported mask work is infringing, articles which are imported in violation of the rights set forth in 17 U.S.C. 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs laws. Any such forfeited artiole may be destroyed as directed by the Secretary of the Treasury, except that the article may be returned to the country of export whenever it is shown to the satisfaction of the Secretary that the importer had no reasonable grounds for believing that his acts constituted a violation of the law.

The Semiconductor Chip Protection Act (the SCPA) became effective upon its enactment on November 8, 1984. However, 17 U.S.C. 913(a) held the registration and enforcement mechanisms in abeyance for 60 days. The registration mechanisms and enforcement provisions, therefore, went into effect on January 9, 1985.

By a final rule published as T.D. 87-132 in the **Federal Register** on October 21, 1987 (52 FR 39217), Customs considered all three of the options for protection of the mask work owner's rights under 17 U.S.C. 905 and decided that it was unable to proceed under options (2) and (3). Instead, Customs amended § 12.39, Customs Regulations (19 CFR 12.39), to add a new paragraph (d), requiring that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the USITC under 19 U.S.C. 1337, excluding, importation of the articles. Exclusion orders issued by the USITC would be enforceable by Customs under section 12.39(b), Customs Regulations (19 CFR 12.39(b)).

Briefly, the reasons given for proceeding in this fashion were that Customs lacked the necessary expertise in semiconductor chip technology to make an infringement determination on its own; chips, and any products in which they were contained, would have to be detained and disassembled for testing purposes, which was considered operationally infeasible; and the process of determining infringement would involve a full adjudicatory review requiring an in-depth analysis of highly technical material.

In view of the continued existence of infringement of intellectual property rights, and the Government's desire to pursue initiatives to encourage adequate and effective protection of those rights, Customs has placed a high priority on enforcement efforts in this area. To this end, Customs is acquiring high technology analyzing equipment as well as additional laboratory personnel. Customs has also created an Intellectual Property Rights Task Force to develop and coordinate extensive training programs, which are already under way, relating to mask works and other intellectual property rights (IPRs). Conversion of a data base for Customs recordations of IPRs to an automated system should also facilitate the enforcement capability for protecting mask works.

Accordingly, under the proposed regulatory revision, the owner of rights in a mask work would be able to obtain the assistance of Customs in preventing pirated chips from being imported into the U.S. This remedy would be in addition to, not in lieu of, the owner's other rights and remedies, such as the right to attempt to secure an injunction against importation from a court or an exclusion order from the USITC under 19 U.S.C. 1337.

Customs activist approach to protecting mask works thus contemplates the creation of a new recordation procedure similar to that for copyrights, while at the same time maintaining the mask work owner's option of requesting Customs to enforce an order from a court or the USITC. Information as to what is protected and what is suspected will be required from mask work owners, with a high degree of specificity involving such data as tariff subheading and model numbers, and detailed descriptions of products.

Since protection for mask works parallels that for copyrights, it is proposed to revise part 133, Customs Regulations (19 CFR part 133), to include mask works in Customs seizure, detention and ruling proceedings. The protections afforded mask work owners in § 12.39(d) will thus be expanded and included in part 133. For purposes of administrative convenience and consolidation, § 12.39a, covering "patent import surveys", would also be transferred into part 133. The reference to § 12.39a in part 24, Customs Regulations (19 CFR part 24), with respect to fee schedules, would be revised to reflect the transfer of "import surveys" to part 133.

Also, proposed § 133.71(b), which is otherwise identical to present § 133.51(b) (19 CFR 133.51(b)), omits reference to the American manufacturing clause, inasmuch as this is no longer an effective provision of the U.S. copyright laws.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria of a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified, that if adopted, this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515-0119), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this regulation is in §§ 133.52 and 133.53. The information concerning the recordation of semiconductor mask works is required to enable Customs to protect such products against infringing imports. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden per respondent and/or recordkeeper: 30 Minutes.

Estimated number of respondents and/or recordkeepers: 50

Estimated annual frequency of responses: 1.

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control number assigned by OMB would be amended accordingly if the proposal is adopted.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Imports, Unfair competition.

19 CFR Part 24

Accounting.

19 CFR Part 133

Imports, Copyrights, Mask works, Patents, Semiconductor chip products, Trademarks, Trade names.

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Proposed Amendments

It is proposed to amend the Customs Regulations (19 CFR chapter I) as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

§ 12.39 [Amended]

§ 12.39a [Removed]

2. It is proposed to amend part 12, Customs Regulations (19 CFR part 12), by deleting §§ 12.39(d) and 12.39a therefrom.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 31 U.S.C. 9701; 26 U.S.C. 4461–4462.

* * * * *

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

* * * * *

§ 24.12 [Amended]

2. It is proposed that § 24.12(a)(3) (19 CFR 24.12(a)(3)), with respect to fee schedules, be revised to remove the reference to § 12.39a and to insert in its place "§ 133.61".

PART 133—TRADEMARKS, TRADE NAMES, COPYRIGHTS, MASK WORKS AND PATENTS

1. It is proposed to revise the title of part 133 to read as set forth above.

2. The authority citation for part 133 would be revised, and would include the specific sectional authority thereunder, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; (31 U.S.C. 9701).

Subparts F and G also issued under 19 U.S.C. 1337, 1623; 17 U.S.C. 910.

Section 133.1 also issued under 15 U.S.C. 1096, 1124.

Sections 133.2–133.7, 133.11–133.13, 133.15 also issued under 15 U.S.C. 1124.

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526.

Sections 133.24, 133.46 also issued under 19 U.S.C. 1623.

Section 133.73 also issued under 19 U.S.C. 1558(a).

3. It is proposed to revise § 133.0 to read as follows:

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, copyrights, and mask works, for the purpose of prohibiting the importation of certain articles, as well as for the conduct of patent import surveys. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

4. It is proposed to amend part 133, by redesignating subpart F as subpart H, revising it, and by adding new subparts, F and G and I, to read as follows:

Subpart F—Recordation of Mask Works

Sec.

133.51 Recordation of mask works.
133.52 Application to record mask work.
133.53 Documents, samples and fees to accompany application.
133.54 Effective date, term and cancellation of recordation.
133.55 Change of ownership of recorded mask work.
133.56 Change in name of owner of recorded mask work.

Subpart G—Importations Violating Mask Work Law

133.61 Articles in violation of mask work rights.
133.62 Clearly violating articles—Ex parte seizure and forfeiture.
133.63 Procedure on suspicion of importation of violating mask works.
133.64 Decision of disputed claim of violation.
133.65 Demand for redelivery of released articles.
133.66 Return of seized or detained articles to country of export.
133.67 Alternative procedure: order of a court or the International Trade Commission.

Subpart H—Procedure Following Forfeiture or Assessment of Liquidated Damages

133.71 Relief from forfeiture or liquidated damages.
133.72 Disposition of forfeited merchandise.
133.73 Refund of duty.

Subpart I—Patents: Import Survey on Behalf of Registered Patent Owners

133.81 Registered patent owners: import survey.

Subpart F—Recordation of Mask Works

§ 133.51 Recordation of mask works.

(a) *Eligible works.* A mask work protected under the Semiconductor Chip Protection Act of 1984 (chapter 9, title 17, United States Code, 17 U.S.C. 901–914) and registered with the U.S. Copyright Office in accordance with title 37, Code of Federal Regulations, part 211 (37 CFR part 211), may be recorded with Customs for import protection.

(b) *Persons eligible to record.* A registered mask work may be recorded with the U.S. Customs Service by the "owner" as that term is defined in 17 U.S.C. 901(a)(6) and includes either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Semiconductor Chip Protection Act of 1984 (37 CFR 211.4(b)(2)(ii)).

(c) *Notification of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.52, § 133.53, § 133.55, or § 133.56.

§ 133.52 Application to record mask work.

An application to record a registered mask work to secure Customs protection against the importation of infringing articles shall be in writing, addressed to: Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the mask work owner;

(b) The country of manufacture of genuine mask works;

(c) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, a statement as to the exclusive rights authorized; and

(d) When known, information such as relevant item numbers of the Harmonized Tariff Schedule of the U.S., product descriptions and model numbers, importers, or suspected violators of mask work protection.

§ 133.53 Documents, samples and fees to accompany application.

The application for recordation shall be accompanied by the following documents, samples and fees:

(a) *Documents.* An "additional certificate" of mask work registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the mask work owner in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the Copyright Office showing that the applicant has acquired ownership of the mask work.

(b) *Samples.* (1) A photograph of the chip.

(2) Two reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited and, if possible, a sample of each layer of the mask work in integrated circuit form. The reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

(i) Drawings or plots in composite form on a single sheet or on separate sheets; or

(ii) A photograph of each layer of the work fixed in a semiconductor chip product.

(3) If the mask work has not been commercially exploited, a visually perceptible representation revealing the totality of the mask work contribution.

(c) *Fee.* Each application shall be accompanied by a fee of $190 for each mask work to be recorded. The fee shall be paid by a check or money order made payable to the U.S. Customs Service.

§ 133.54 Effective date, term and cancellation of recordation.

(a) *Effective date.* Recordation of a mask work and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by Customs Headquarters instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of a mask work shall remain in effect until the end of the protection period 10 years after the date on which protection commences under the Semiconductor Chip Protection Act of 1984, or until the ownership of the mask work expires or is transferred.

(c) *Cancellation.* Recordation of a mask work with Customs shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

§ 133.55 Change of ownership of recorded mask work.

(a) *Application.* If the ownership of a recorded mask work is transferred and the new owner wishes to continue recordation with Customs, he shall make written application to the Commissioner of Customs as follows:

(1) Comply, as appropriate, with § 133.52; and

(2) Describe any time limit on the rights of ownership transferred;

(3) Provide a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the mask work.

(b) *Fee.* The application shall be accompanied by a fee of $80, which covers all mask works included in the application which have been previously recorded with Customs. A check or money order shall be made payable to the U.S. Customs Service.

§ 133.56 Change in name of owner of recorded mask work.

If there is a change in the name of the owner of a recorded mask work, but no transfer of ownership, written notice specifying the change shall be given to Customs accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $80, which covers all mask works included in the application which have been previously recorded with Customs. A check or money order shall be made payable to the U.S. Customs Service.

Subpart G—Importations Violating Mask Work Law

§ 133.61 Articles in violation of mask work rights.

(a) *Definition.* Articles violating mask work law are those imported in violation of the exclusive rights of the owner of a mask work to do or to authorize any of the following specified in 17 U.S.C. 905, namely:

(1) To reproduce the mask work by optical, electronic, or any other means;

(2) To import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) To induce or knowingly to cause another person to do any of the above-described acts.

(b) *Importation prohibited.* The importation of articles in violation of the rights of the owner of a mask work registered in the U.S. Copyright Office is prohibited by 17 U.S.C. 910. The importation of lawfully made copies is not a violation of the law enforced by Customs.

§ 133.62 Clearly violating articles—Ex parte seizure and forfeiture.

(a) *Seizure.* (1) The district director shall seize any imported article which he determines is clearly a violating importation of a mask work protected by recordation with Customs. This determination may be made on the basis of Customs Headquarters rulings or instructions, controlling judicial opinions, or facts clearly evidencing a violation. The adversary proceedings provided for in § 133.63 will not be invoked in this situation.

(2) The district director shall also seize an imported article if the importer does not deny under § 133.63(a) a representation that the article is in violation of a protected mask work.

(b) *Forfeiture.* In either case, the district director shall institute forfeiture proceedings in accordance with part 162 of this chapter, unless other relief is granted or the violating article may be returned to the country of export as provided in § 133.66.

§ 133.63 Procedure on suspicion of importation of violating mask works.

(a) *Notice to the importer.* If the district director has any reason to believe that an article may be imported in violation of the exclusive rights in a mask work recorded with Customs, he shall withhold delivery, notify the importer of his action, and advise the importer that if the facts so warrant he may file a statement denying that the article is in fact a violating one and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The district director also shall advise the importer that, in the absence of a denial by the importer within 20 days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) that the article constitutes a violation of exclusive mask work rights, it shall be considered to be such a violation and shall be subject to seizure and forfeiture.

(b) *Notice to mask work owner.* If the importer of suspected violating articles files a denial as provided in paragraph (a) of this section, the district director shall furnish the mask work owner with a sample of the imported article, together with notice that the imported article will be released to the importer unless, within 20 days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays), the mask work owner files with the district director:

(1) A written demand for the exclusion from entry of the detained imported articles; and

(2) A bond, in the form and amount specified by the district director, conditioned to hold Customs and the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not a violating one prohibited importation under 17 U.S.C. 910.

(c) *Result of action or inaction by mask work owner.* After notice to the mask work owner that delivery is being withheld for imported articles suspected of violating a recorded mask work, the district director shall proceed in accordance with the following procedures:

(1) *Demand and bond filed.* If the mask work owner files a written demand for exclusion of the suspected violating articles together with a proper bond, the district director shall promptly

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notify the importer and the mask work owner that they must submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of violation, within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) from the date of the notice. The burden of proof shall be upon the mask work owner claiming that the article is in fact a violating one. At the close of the period specified for submission of evidence, the district director shall forward the entire file, together with a sample of the imported article, and his view or comments, to Customs Headquarters, Attention: Director, Commercial Rulings Division, Washington, DC 20229, for decision on the disputed claim of violation.

(2) *Violation disclaimed or unsupported.* If the mask work owner disclaims that the specified imported article is in violation of his recorded mask work, or fails to present sufficient evidence or proof to substantiate a claim of violation, the district director shall release the detained shipment to the importer and all further importations of the same article by whomever imported.

(3) *Failure to file demand or bond.* If the mask work owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer and notify the mask work owner of the release. However, if the mask work owner provides a satisfactory explanation to Customs of why he failed to file a written demand for exclusion and bond, Customs may detain future shipments of the same article on suspicion of violation of the mask work owner's rights.

(4) *Withdrawal of bond.* At any time before transmittal of the case to Customs Headquarters for decision, the mask work owner may withdraw a bond filed in accordance with paragraph (b) of this section. Before returning the bond to the mask work owner and release of the detained articles, the district director shall require the mask work owner and the importer to file written statements agreeing to hold Customs and the district director harmless for any consequence of the return of the bond and release of the detained articles. After the withdrawal of a bond, the district director shall release importations of the same articles by the same importer without further notice to the mask work owner.

§ 133.64 Decision of disputed claim of violation.

(a) *Claim of violation sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.63(c)(1) is in violation of the mask work owner's rights, the district director shall seize the detained shipment and either institute forfeiture proceedings in accordance with part 162 of this chapter or, if the conditions prescribed by § 133.66 are met, permit the importer to return the article to the country of export. In either event, the bond of the mask work owner shall be returned.

(b) *Denial of violation sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.63(c)(1) is not a violating one, the district director shall release all detained merchandise and transmit the mask work owner's bond to the importer for private settlement or recovery under the bond.

§ 133.65 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the district director at the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the same bond conditions as set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

§ 133.66 Return of seized or detained articles to country of export.

Articles seized or detained for violations or suspected violations of the Semiconductor Chip Protection Act of 1984 may be returned to the country of export whenever it is shown to the satisfaction of the district director that the importer had no reasonable grounds for believing that his actions constituted a violation of the Act. If the district director is in doubt as to whether the articles should be returned, the matter may be forwarded to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for decision.

§ 133.67 Alternative procedure: order of a court or the International Trade Commission.

As an alternative to the administrative procedure described in this subpart and subpart F, the mask work owner, whether or not he has recorded the mask work with Customs, may seek an order from a Federal Court or the International Trade Commission enjoining or excluding importation of an article in violation of mask work rights. To obtain Customs enforcement of an injunction or exclusion order, the mask work owner shall submit a certified copy of the court or ITC order to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229.

Subpart H—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.71 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the mask work, trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24, § 133.46, or § 133.65.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully inported or prohibited articlea are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles.

§ 133.72 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* The Commissioner of Customs or his designee shall dispose of forfeited articles bearing a counterfeit trademark after obliteration of the trademark, where feasible, in the following manner:

(1) *Government use.* By delivery to any Federal, State, or local government agency which, in the opinion of the Commissioner or his designee, has established a need for the article.

(2) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the article.

(3) *Sale.* If more than 1 year has passed since the forfeiture, the article may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall determine that a need for the article has not been established by any eligible government organization or charitable institution under paragraph (c)(1) or (c)(2) of this section.

(4) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed.

(d) *Articles violating a protected mask work.* Articles forfeited for violation of the Semiconductor Chip Protection Act of 1984, shall be destroyed.

§ 133.73 Refund of duty.

If a violation of the trademark, copyright or mask work laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

Subpart I—Patents: Import Survey on Behalf of Registered Patent Owners

§ 133.81 Registered patent owners: import survey.

(a) *Application for survey.* When the owner of a patent registered in the United States believes that merchandise is being imported into the United States which infringes such patent, an application for a survey to assist the patent owner in taking appropriate action may be made. The purpose of the survey is to provide the patent owner with the names and addresses of importers of merchandise which appears to infringe the registered patent.

(b) *Content of application.* The application may be made by letter addressed to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229. It shall state the name and address of the patent owner; and if available, a description of the merchandise believed to infringe the registered patent and the country of manufacture of the merchandise. A certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed, 3 additional copies of the patent registration for Customs files, and a check or money order to cover the fee prescribed by § 24.12(a)(3) of this chapter for the survey selected shall be submitted with the application.

(c) *Length of survey.* Surveys will be made for periods of 2, 4 or 6 months at the option of the applicant.

Approved: September 28, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-23341 Filed 10-3-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 132 and 142

RIN 1515-AA76

Withdrawal of Proposed Customs Regulations Amendments Regarding Quota Quantity Entry Limits and the Filling of Absolute Quotas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rules; withdrawal.

SUMMARY: This document withdraws two proposals to amend the Customs Regulations regarding quota class merchandise. One proposed rule concerned the quantity of such merchandise that could be entered at the opening of a quota. It was intended to correct a situation whereby some importers have attempted to receive a quantity of quota class merchandise in excess of their pro rata share by filing multiple entries for a quantity in excess of the known restraint level. The other proposed rule was to provide that importers may not transfer allotments from one port of entry to another for absolute quotas that fill at opening. Both proposed rules were intended to overcome very labor intensive procedures Customs had implemented to assure that importers received only their pro rata share of quota class merchandise.

After consideration of the comments received in response to the proposed rules and in light of advances in the automated quota system capabilities and projected additional advances therein, as well as increased voluntary use of the Automated Broker Interface (ABI), it is anticipated that Customs will be able to utilize the automated system capabilities to establish the appropriate controls in the subject situations.

DATE: Withdrawal effective October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Karen Cooper, Quota Branch, Regulatory Trade Programs Division, (202) 566-8592.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, Customs published a notice in the **Federal Register** (53 FR 1376), proposing to amend §§ 132.4, 132.13 and 142.21, Customs Regulations (19 CFR 132.4, 132.13 and 142.21), to provide that when an importer files entries or withdrawals for consumption for quantities of quota-class merchandise in excess of the admissible quantity, those entries and withdrawal would be rejected and returned to the importer. The purpose of the proposed rule was to relieve Customs quota control personnel from a considerable workload involved in matching quota quantities and importers to assure that any particular importer would not be allocated a quantity in excess of its pro rata share.

On February 23, 1989, Customs published a notice in the **Federal Register** (54 FR 7781), proposing to amend § 132.12, Customs Regulations (19 CFR 132.12) to provide that an importer could combine merchandise from one entry summary for consumption or withdrawal for consumption with others within the same port to fill his quota allotment, but he could not transfer an allotment of quota from one port of entry to another. The purpose of this proposal was to permit use of the Customs Automated Commercial System (ACS) in calculating quota closings and prorations.

Discussion

Six comments were received in response to the first noted proposed rule. They noted there was difficulty in knowing the exact quota quantity available and that rejection of the entries for what may be an inadvertence or clerical error was rather severe.

Two comments were received in response to the latter proposed rule. They noted that the proposal would increase costs, add delays to an otherwise costly and time consuming process, and would generally be anti-facilitative. The commenters also wondered whether the Automated Commercial System (ACS) could be designed to allow for the transfer of allotments.

Although some of the difficulties noted by the commenters have been corrected, upon reviewing the above comments and noting advances in automation, the increase in voluntary participation in the Automated Broker Interface (ABI) portion of ACS, and projected additional advances in the automated quota system capabilities, Customs has concluded that procedures

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contained in the proposed rules would not be necessary. Customs agrees with the commenters that the ACS system could be designed to assure that only available quota quantities are prorated and to track the transfer of allocated quota quantities between ports. The use of the ACS capabilities would relieve Customs from labor intensive procedures without placing additional burdens on the importing public.

Conclusion

In accordance with the above discussion, Customs now believes that the procedures proposed are no longer necessary and should not be implemented. Accordingly, the proposed rule to amend §§ 132.4, 132.13 and 142.21, Customs Regulations (19 CFR 132.4, 132.12, and 142.4) and the proposed rule to amend § 132.12, Customs Regulations (19 CFR 132.12) are being withdrawn.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

Michael Schmitz,
Acting Commissioner of Customs.

Approved: September 27, 1989.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 89-23342 Filed 10-3-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Administrative Functions, Practices, and Procedures

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations concerning administrative inspections to set forth its authority to inspect any person who manufactures, distributes, imports, or exports listed chemicals, tableting machines, or encapsulating machines. This amendment is required to fully implement the Chemical Diversion and Trafficking Act of 1988.

DATE: Written comments and objections must be received on or before November 20, 1989.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act, which is included as part of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), establishes a system which requires certain regulated persons to maintain records of specified transactions which involve chemicals listed in the Act and transactions with tableting and encapsulating machines. Section 6052 of the Chemical Diversion and Trafficking Act (21 U.S.C. 830) describes the records required to be kept pursuant to the Act and provides that such records "shall be available for inspection and copying by the Attorney General."

The Controlled Substances Act, which was amended by the Chemical Diversion and Trafficking Act, provides a mechanism for the Attorney General and his designees to conduct administrative inspections of premises where records required to be kept under provisions of the Act are located. This mechanism is outlined in 21 U.S.C. 880. This section authorizes the Attorney General to conduct administrative inspections of controlled premises. Controlled premises include places where records required under the Act are kept or required to be kept. The definition of controlled premises, therefore includes places where records required to be kept under the Chemical Diversion and Trafficking Act are kept or required to be kept.

This proposed rule will amend that section of the regulations concerning administrative inspections to specifically include records required to be kept pursuant to the Chemical Diversion and Trafficking Act. This is to clarify that such records are subject to inspection utilizing the same requirements of the Act that relate to records concerning controlled substances.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 this proposed rule has been submitted for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeitures.

For reasons set out above, it is proposed that 21 CFR part 1316 be amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316, subpart A, is revised to read as follows:

Authority: 21 U.S.C. 822(f), 830(a)(2), 871(b), 880, 958(f), 965.

2. Section 1316.03 is amended by revising paragraph (a) as follows:

§ 1316.03 Authority to make inspections.

* * * * *

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to part 1304 of this chapter, order form records required to be kept pursuant to part 1305 of this chapter, prescription and distribution records required to be kept pursuant to part 1306 of this chapter, records of listed chemicals, tableting machines, and encapsulating machines required to be kept pursuant to part 1310 of this chapter, import/export records of listed chemicals required to be kept pursuant to part 1313 of this chapter, shipping records indentifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

* * * * *

Dated: August 23, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 89-23340 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3655-9]

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan; Withdrawal

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking—Withdrawal.

SUMMARY: On February 22, 1989, (54 FR 7572), USEPA proposed to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This proposed revision had been submitted by the Wisconsin Department of Natural Resources as a revision to the Wisconsin SIP and consisted of portions of Wisconsin's 1987 Act 27, which created a program for allocating any growth allowance for sources of volatile organic compounds in Southeastern Wisconsin.

Wisconsin subsequently withdrew this revision to its SIP from further USEPA rulemaking. Thus, USEPA is withdrawing its February 22, 1989, proposal.

EFFECTIVE DATE: October 4, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Fayette Bright, (312) 886-6069, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6069.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: September 21, 1989.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 89-23429 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-3654-6]

Taylor Borough Superfund Site NPL Deletion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Delete a Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Taylor Borough site.

DATE: Comments concerning the site may be submitted on or before November 3, 1989.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and available through the EPA Regional Docket clerk.

The Regional Docket is located at the U.S. EPA Region III Office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA Headquarters Docket Office. A local docket is located at the Taylor Borough Municipal Building.

Addresses for the Regional and Local Docket Offices are:

U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107

Taylor Borough Municipal Building, 122 Union Street, Taylor, PA 18517

FOR FURTHER INFORMATION CONTACT: Patricia Tan, SARA Special Sites Section, 3HW17, Region III, Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107 (215) 597-3164

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Delegation Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete The Taylor Borough Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject to Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA intends to delete The Taylor Borough site from the NPL. The EPA will accept comments on this site for thirty days after publication of this notice in the "Federal Register."

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

The Agency believes it is appropriate to review all sites being considered or proposed for deletion from the NPL, including the site being notice today, to determine whether the requirement for a five-year review (under CERCLA section 121(c)) applies. This is consistent with the intent of the statement in the Administrator's *Management Review of the Superfund Program* (the "90-day Study"), that "EPA will modify Agency policy so that no site, where hazardous substances remain, will be deleted from the NPL until at least one five year review is conducted and the review indicates that the remedy remains protective of human health and the environment." EPA will shortly issue its policy on when and how five-year review sites may be deleted from the NPL. This policy may have an effect on the timing of site deletions proposed in this and other notices.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL, as published in the **Federal Register** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites

* * * may be deleted from or recategorized in the NPL where no further response is appropriate.

In making this determination EPA will consider whether any of the following criteria has been met:

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(I) EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required.

(II) All appropriate Fund-financed response under CERCLA has been implemented and EPA in consultation with the State has determined that no further cleanup by responsible parties is appropriate; or

(III) Based on a remedial investigation, EPA in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of public health, welfare, and the environment considering environmental requirements that are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletions of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in Section II of this notice, Section 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA will solicit public comment on the proposed deletion of The Taylor Borough Site for thirty days. The comments received during the notice and comment period will be evaluated before the final decision to delete is made.

A decision will occur after U.S. EPA Region III places a notice in the **Federal Register**. The NPL will reflect any deletion in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The Taylor Borough Site is located in Taylor Borough, Lackawanna County, Pennsylvania. This site had been extensively mined for anthracite coal by both strip and underground mining operations. Following the mining operations, the unreclaimed strip mine pits were used as a municipal landfill. Records from the Pennsylvania Department of Environmental Resources (PADER) also document the disposal of industrial wastes during the 1960's. After the landfill operation ceased, drummed industrial wastes were found on the surface of the site.

During September through November of 1983, EPA removed approximately 1,200 drums from the site. A Remedial Investigation and Feasibility Study Report was initiated in March 1984 and completed in May 1985 by EPA. This report described the necessary remedial actions for this site as follows: removal and off-site disposal to a qualifying facility under the Resource Conservation and Recovery Act (RCRA) 40 CFR part 264, Subpart N of approximately 125 crushed and intact drums and remnants remaining on the surface or partially buried; collection and treatment of contaminated surface water in Ponds 1 and 2; excavation of contaminated soils and wastes from former Drum Storage Areas Nos. 1 and 2 and sediments in Ponds Nos. 1 and 2 for off-site disposal to a qualified RCRA facility; proper backfilling and placement of a 24 inch soil cover over: (a) former drum storage areas 3 and 6 and the entire area in between, and (b) former drum storage area 4 and installation of a chain link fence aroound the perimeter of both soil covered areas. Since no releases of site contaminants to the groundwater or to the St. John's Creek has been documented there is no need for remediation of either of these waters, however, a monitoring program is warranted to verify over time that no release is occurring. Specifically identified groundwater wells on site will be monitored on a semi-annual basis and the St. John's Creek will be monitored on an annual basis, both for a minimum five year period as part of Operation and Maintenance activities. PADER has agreed with these remedial actions.

During the time period July 1987 through May 1988 a group of Potentially Responsible Parties (PRPs) performed the required remedial actions identified above. EPA was on-site every day during this time period overseeing the work and verifying that the work was performed according to the EPA approved Remedial Design. On December 23, 1988 EPA sent a letter to the PRPs who performed the remedial actions certifying that the work was completed to EPA's satisfaction. Operation and Maintenance acivities will be initiated at the Site beginning Spring 1989.

Dated: December 31, 1988.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 89-23301 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6946]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 2150 on January 19, 1989. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Augusta County, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Augusta County, previously published at 54 FR 2150 on January 19, 1989, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 2150, in the January 19, 1989 issue of **Federal Register**, the entries under Augusta County (Unincorporated Areas) are corrected to read as follows:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Lewis Creek Tributary:	
At downstream County boundary	*1,370
Approximately 50 feet upstream of State Highway 613	*1,495
Potterhead Run:	
At confluence with South River	*1,231
Approximately .4 mile upstream of State Highway 795	*1,276
Christians Creek:	
At confluence with Middle River	*1,153
Approximately 550 feet upstream of U.S. Highway 340	*1,383
Long Meadow Run:	
At confluence with Christians Creek	*1,157
Approximately 1.1 miles upstream of State Highway 608	*1,292
Pratts Run:	
At downstream County boundary	*1,394
At downstream side of U.S. Highway 250	*1,413
Back Creek:	
At confluence with South River	*1,336
Approximately 2.4 miles upstream of State Highway 610	*1,593
Staples Hollow:	
Approximately 1,830 feet above confluence with Sulphur Springs Hollow	*1,562
Approximately .4 mile upstream of confluence with Sulphur Springs Hollow	*1,593
Sulphur Springs Hollow:	
Approximately .6 mile upstream of confluence with Grassy Run	*1,567
Approximately 150 feet upstream of Howard Street	*1,580
Stuples Hollow:	
Approximately .6 mile upstream of confluence with Grassy Run	*1,627
Approximately .7 mile upstream of confluence with Grassy Run	*1,636
Steele's Run:	
Approximately 80 feet upstream of Malcom Avenue	*1,316
Approximately 960 feet upstream of Malcom Avenue	*1,325

Issued: September 29, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-23420 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89-20]

Definition of Shipper and Availability of Mixed Commodity Rates

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its tariff and service contract rules in 46 CFR parts 580 and 581 to: (1) Amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier ("NVOCC") it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The proposed rule is intended to preclude untariffed NVOCC operations and to otherwise ensure that persons acting as shippers pursuant to the 1984 Act qualify to do so.

DATE: Comments due on or before November 20, 1989.

ADDRESS: Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5796.

SUPPLEMENTARY INFORMATION: Section 3(23) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(23), defines "shipper" as "an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made." While the meanings of "owner" and "person to whom delivery is to be made" are generally understood by those involved in ocean transportation, there has been uncertainty as to the meaning of the phrase "person for whose account the ocean transportation of cargo is provided."

In recent years, a variety of entities have emerged as intermediaries or middlemen between the shipper of the goods and the provider of the ocean transportation, *i.e.*, the ocean common carrier. These include NVOCCs,[1] ocean freight forwarders,[2] shippers' associations,[3] transportation or property brokers, and export trading companies.

The Investigative Officer's Report in Fact Finding Investigation No. 15—*Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Commerce*, addressed the extent to which such middlemen were reselling transportation and how carriers are having difficulty determining whether an entity is indeed a shipper. The Report advised that persons were engaging in practices not contemplated by and in contravention of the 1984 Act. For example, persons other than actual shippers were joining shippers' associations and entering into service contracts. Others were acting as shippers without the benefit of a tariff on file with the Commission.

In order to address this situation, the Commission is proposing to amend its rules governing the publishing and filing of tariffs by common carriers in the foreign commerce (46 CFR part 580) and those governing service contracts (46 CFR part 581) in two respects. First, the Commission proposes to redefine the term "shipper" to include only the person who is legally responsible for payment of the ocean transportation charges. Second, the proposed rule restricts the availability of an ocean common carrier's mixed commodity rate to those persons meeting the definition of "shipper," by requiring that when a mixed commodity rate is used, the "shipper" must identify its status on such carrier's bill of lading and on service contracts. The shipper would also be required to provide the ocean common carrier with a house bill of lading, container manifest, or packing list covering the cargo which is to be assessed the mixed commodity rate or rates. In the event the "shipper" is an NVOCC, the NVOCC's FMC tariff number must appear on the ocean common carrier's bill of lading and on any service contracts to which it is a party.

Combined, the rule changes proposed in this proceeding are intended to limit the scope of those that can act as "shipper" vis-a-vis the ocean common carriers, preclude untariffed shipper operations and otherwise ensure that the statutory scheme contemplated by the Shipping Act of 1984 is preserved. Comments on the specific aspects of the proposed rule, and suggestions as to alternatives are also welcome.

The Commission is presently conducting a comprehensive review of shipper associations and their relationship with carriers. Upon completion of this review, appropriate action, including the issuance of proposed regulations governing their

[1] Section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17), defines an NVOCC as "a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with the ocean common carrier."

[2] Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as "a person in the United States that—(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments."

[3] Section 3(24) of the 1984 Act, 46 U.S.C. app. 1702(24), defines a shippers' association as "a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts."

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activities, if necessary, will be taken. However, it should be noted that to the extent that shippers' associations are currently acting as shippers or ocean freight forwarders, they are subject to the Commission's tariff filing and licensing regulations. Furthermore, membership in shippers' associations will be limited to "shippers" as defined in the proposed rule.

The Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the rule proposed in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the proposed rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on the information collection aspects of the rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 580 and 581

Maritime carriers, Rates and fares, Service contracts, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716, the Federal Maritime Commission proposes to amend parts 580 and 581 of the Code of Federal Regulations as follows:

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

2. It is proposed to amend § 580.2 by revising paragraph (t) to read:

§ 580.2 Definitions.

* * * * *

(t) "*Shipper*" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tariffed non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, or a person acting as an NVOCC without a tariff on file with the Commission.

3. It is proposed to amend § 580.5 by adding a new paragraph (d)(22) to read:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(22) *Mixed commodity rates.* Mixed commodity rates such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a "shipper," as defined by § 580.2(t), of this part or a "shipper' association" as defined by § 581.1(r) of this chapter. The shipper's status, *e.g.* owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be addressed the mixed commodity rate or rates.

* * * * *

PART 581—[AMENDED]

4. The authority citation for part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

5. It is proposed to amend § 581.1 by revising paragraph (q) to read:

§ 581.1 Definitions.

* * * * *

(q) "*Shipper*" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tariffed non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, agent, or a person acting as an NVOCC without a tariff on file with the Commission.

§ 581.4 [Amended]

6. It is proposed to amend paragraph (a)(1)(v) of § 581.4 by replacing the semicolon with a period and adding the prior to the word "and":

(a) * * *

(1) * * *

(v) * * *"If one of the contract parties is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be stated;

§ 581.5 [Amended]

7. It is proposed to amend paragraph (a)(3)(iii) of § 581.5 by replacing the semicolon with a period and adding the following:

(a) * * *

(3) * * *

(iii) * * * Mixed commodity rates such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a shipper," as defined by § 581.1(q), or a "shippers' association" as defined by § 581.1(r). The shipper's status, *e.g.* owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be assessed the mixed commodity rate or rates.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–23336 Filed 10–3–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–416, RM–6700, RM–6858]

Radio Broadcasting Services; Metropolis, Illinois, Camden and Henderson, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by Samuel K. Stratemeyer ("Stratemeyer"), licensee of WRIK(FM), Channel 252A at Metropolis, Illinois, proposes the substitution of Channel 252C2 for Channel 252A at Metropolis and modification of its license to specify operation on the higher class co-channel. The Metropolis substitution requires the substitution of Channel 240A for Channel 252A at Camden, Tennessee, and the substitution of Channel 239A for Channel 240A at Henderson, Tennessee. The second petition, filed by Valley Wide Broadcasting, Inc. ("Valley"), licensee of WRJB(FM), Channel 252A at Camden, Tennessee, proposes the substitution of Channel 252C3 for Channel 252A at Camden and modification of its license to specify operation of the higher class co-channel. The coordinates for Channel 252C2 at Metropolis are North Latitude 37–02–30 and West Longitude 88–36–00. The coordinates for Channel 240A at Camden at its current site are North Latitude 36–03–25 and West Longitude 88–06–10, and the coordinates for Channel 239A at Henderson at its current site are North Latitude 35–29–52 and West Longitude 88–42–29. The coordinates for Channel 252C3 at Camden are North Latitude 35–56–00 and 88–16–42.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Kathryn R. Schmeltzer, John Joseph McVeigh, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037–1125, (Attorneys for Samuel K. Stratemeyer).

Jerrold Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Attorney for Valley Wide Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–416, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23388 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–419, RM–6822]

Radio Broadcasting Services; Bunkie, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Owensville Communications Company proposing the substitution of Channel 282C3 for Channel 282A at Bunkie, Louisiana, and the modification of its construction permit to specify Channel 282C3 in lieu of Channel 282A. A site restriction of 11.3 kilometers (7 miles) north of the city is required, at coordinates 31–02–56 and 92–08–34. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Francis E. Fletcher, Jr., Esquire, Joseph P. Benkert, Esquire, Gardner, Carton & Douglas, 1001 Pennsylvania Ave., NW., Suite 750N, Washington, DC 20004 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Ruling Making, MM Docket No. 89–419, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23389 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89-413, RM-6764]

Radio Broadcasting Services; Brusly, LA, and Woodville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Livingston Communications, Inc., proposing the substitution of Channel 241C2 for Channel 242A at Brusly, Louisiana, and modification of its construction permit for Channel 242A to specify operation on the higher class channel. In order to accomplish the substitution at Brusly, Channel 299A must be substituted for Channel 240A (vacant) at Woodville, Mississippi. The allotment of Channel 241C2 at Brusly also requires a site restriction of 27 kilometers (16.8 miles) northeast of the city, at coordinates 30-30-00 and 91-00-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edward W. Hummers, Jr., Esquire, Barry Lambergman, Esquire, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-413, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23390 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-415, RM-6943]

Radio Broadcasting Services; Cleveland, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Carol B. Ingram, proposing the substitution of FM Channel 252C3 for Channel 295A at Cleveland, Mississippi. Petitioner also requests modification of her construction permit for Station WEZU, Channel 295A, to specify Channel 252C3. The coordinates for Channel 252C3 are 33-52-00 and 90-45-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carol B. Ingram, WEZU Radio, P.O. Box 73, Batesville, Mississippi 38606.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-415, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23391 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-414, RM-6923]

Radio Broadcasting Services; Indianola, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Walter Gray Gilbert, proposing the substitution of FM Channel 245C3 for Channel 245A at Indianola, Mississippi. Petitioner also requests modification of his construction permit to specify Channel 245C3 in lieu of Channel 245A. The coordinates for Channel 245C3 are 33-31-41 and 90-39-15.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Walter Gray Gilbert, P.O. Box 1475, Clarksdale, Mississippi 38614.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-414, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23391 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23392 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-409, RM-6693]

Radio Broadcasting Services; Linden, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Marengo County Broadcasting, Inc., licensee of Station WDAL(FM), Linden, Alabama, seeking the substitution of FM Channel 253C1 for Channel 253C2, and modification of its license accordingly. Coordinates for this proposal are 32-10-00 and 87-40-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: Marengo County Broadcasting, Inc., Attn: Billy G. Hogan, President, Rt. 1, Box 183, Elkmont, AL 35620 and Larry G. Fuss, Contemporary Communications, P.O. Box 4010, Opelika, AL 36803.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-409, adopted September 11, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23385 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-417, RM-6865]

Radio Broadcasting Services; Century, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ziffle Broadcasting Company Inc. requesting the substitution of Channel 286C3 for Channel 286A at Century, Florida, and modification of its license for Station WKGT(FM) to specify the higher powered channel. Channel 286C3 can be allotted to Century in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) north. The coordinates for this allotment are North Latitude 31-02-03 and West Longitude 87-16-58. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 286C3 at Century will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Walker, Bordelon, Hamlin, Theriot & Hardy, 701 South Peters Street, New Orleans, Louisiana 70130 (Counsel for Ziffle Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-417, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-23386 Filed 10-3-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-418, RM-6879]

Radio Broadcasting Services; Wrens, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Val-Tel, Inc. requesting the substitution of Channel 245C3 for Channel 244A at Wrens, Georgia, and modification of its license for Station WRDW(FM) to specify the higher powered channel. Channel 245C3 can be allotted to Wrens in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) east, in order to avoid a shortspacing to Station WFOX, Channel 246C, Gainesville, Georgia. The coordinates for this allotment are North Latitude 33-13-20 and West Longitude 82-17-50. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Wrens or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: M. Scott Johnson, Catherine M. Crofer, Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750-N, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-418, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 89-23387 Filed 10-3-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-20; Notice 1]

RIN 2127-AD08 and 2127-AC57

Federal Motor Vehicle Safety Standards; Seating Systems; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks comments on two related petitions for rulemaking from Mr. Kenneth Saczalski and Mr. Edward Horkey which request that the National Highway Traffic Safety Administration (NHTSA) amend Standard No. 207 *Seating Systems*, Standard No. 208, *Occupant Crash Protection*, and Standard No. 209, *Seat Belt Assemblies*. Each petition focuses on an occupant's safety during rear impact. This notice specifically requests comments and data on the interaction of seat backs and safety belts in rear impacts as well as more general information about seat performance in crashes.

DATES: Comment closing date: Comments on this notice must be received on or before December 4, 1989.

ADDRESS: Any comment on this notice should refer to the docket number and notice number and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 8:00 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Dr Richard Stombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2264.

SUPPLEMENTARY INFORMATION: This notice follows grants of two related petitions for rulemaking concerning Standard No. 207, *Seating Systems* (49 CFR 571.207), Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), and Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209). The first petition, from Mr. Kenneth J. Saczalski of Environmental Research and Safety Technologists, Flagstaff, AZ, requests that the agency increase the seat back requirements in Standard No. 207. The second petition, from Mr. Edward J. Horkey of Horkey & Associates, Tempe, AZ, requests that the agency amend Standard No. 208 and Standard No. 209 to change the requirements related to safety belt retractors in passenger cars. The agency has consolidated these two rulemaking petitions in this notice because each petition focuses on the effect of rear impacts on vehicle occupants.

In his petition, Mr. Saczalski informed the agency that he has uncovered what he perceives to be a safety problem related to inadequate seat strength and seat back failure in rear impacts. He explained that as a vehicle safety consultant, he has investigated in the last two years four cases in which occupants suffered serious or fatal injuries as a result of rear impacts. The petitioner attributed this problem to the fact that during rear impact, the seat backs are loaded by the inertia of the occupant's upper body, a factor that the current seat back requirements do not consider. As a result, the petitioner stated that the seat back collapses, allowing the occupants to slide out from under the lap safety belt. This makes it more likely for the occupants to impact against the vehicle's interior or to be ejected.

Mr. Saczalski requested that NHTSA amend Standard No 207 as follows.

First, he petitioned that the agency reexamine the general performance requirements in Standard No. 207. Second, he requested that Standard No. 207 specify that the load must be both 20 times the weight of the seat back *and* 20 times the weight of the occupant. Sections S4.2 (a) and (b) of Standard No. 207 currently only require that the seat withstand 20 times the weight of the seat back. Third, he requested that Section S4.2(d)'s seat back moment criterion be increased to 56,000 inch-pounds. Section S4.2(d) currently requires a seat back to resist a moment of 3,300 inch pounds.

Mr. Horkey submitted two petitions to NHTSA related to safety belt mechanisms. The first petition stated that safety belt mechanisms currently installed in many American automobiles are ineffective in rear end collisions, and requested that the agency conduct a defect investigation. The agency denied this petition since it did not appear that there was a reasonable possibility that an order concerning the notification, correction and remedy of a defect would be issued at the conclusion of an investigation.

Mr. Horkey's second petition asked for rulemaking to change the type of safety belt mechanisms required in automobiles. He submitted additional information, including a sketch and a video, to illustrate his claim that in a rear impact, the occupant may suffer an injury caused by what he terms "the slingshot effect." (The agency notes this phenomenon is also referred to as a "rebound effect.") Mr. Horkey theorized that in a rear impact, an occupant is pushed rearward against his or her seatback, which stores the energy and then propels the occupant forward. However, after the occupant is pushed rearward by the rear impact, the vehicle deceleration sensitive emergency locking retractor (ELR) on some safety belts could move to the unlocked position if there is no tension in the belt. As a result, when the occupant is subsequently thrown forward, the occupant is more likely to strike the vehicle's interior surfaces because the belt does not restrain the occupant's forward motion if the ELR is not locked. Mr. Horkey requests that the regulations require the "use (of) the older rotary inertia reel type mechanism." Mr. Horkey reasons that his proposal "would insure holding the occupant in either direction and would not loosen or disengage if a vehicle's accelerations change during a crash."

After carefully reviewing the issues raised in the petitions, NHTSA has determined that the two petitioners' theories concerning seat back strength, the "slingshot effect," and the effectiveness of ELRs, warrant further consideration. Therefore, on July 24, 1989, the agency decided to grant the petitions and is now requesting detailed comments and data on the issues raised in the petitions and related matters. As more information becomes available, the agency will be able to determine what appropriate measures, if any, are needed to address this situation. NHTSA emphasizes that the grant of these petitions and the issuance of this request for comments does not necessarily mean that a notice of proposed rulemaking (NPRM) will follow. In accordance with statutory criteria, NHTSA will determine whether to issue an NPRM after it evaluates the comments it receives.

Issues for Consideration

To assist in evaluating the requested changes to Standard No. 207, Standard No. 208, and Standard No 209, the agency is interested in obtaining comments, accident data, and other information relating to the following issues.

1. In analyzing Mr. Saczalski's and Mr. Horkey's petitions, NHTSA reviewed data and studies related to the interaction of seat back strength and safety belt retractors, especially in rear impact situations. The agency notes that there are two competing schools of thought related to the proper performance of seats in rear impacts. Some safety experts, such as Mr. Saczalski, argue that the seat back requirements should be increased. This would result in stronger, stiffer seats that would be less likely to break during an impact. Other safety experts, such as Mr. Horkey, believe that the seat should be used as an energy absorber in rear impacts and that seats should collapse in a controlled manner. According to these theorists, requiring a stronger seat back would exacerbate the "slingshot effect" because a stiffer, stronger seat back stores and then releases greater amounts of energy. As a result, they contend that a stronger seat would result in more serious injuries, especially whiplash and other neck injuries.

In light of this background, NHTSA requests detailed comments about the "slingshot effect." In particular, does the "slingshot effect" provide a realistic hypothesis for a failure mode for safety belt operation in rear impacts? What are estimates of injury frequency and severity to belted occupants as a result of the "slingshot effect?" Conversely, what are estimates of injury frequency and severity to rear seat occupants, caused by front seats collapsing rearward? Have manufacturers received complaints about the "slingshot effect" in vehicles? How is the "slingshot effect" related, if at all, to seat or seat back design, especially in relation to seat back strength requirements?

The agency is aware of studies which conclude that the "slingshot effect" is only relevant to low speed impacts, because at higher speeds (over 30 mph) the seat backs deform. The agency seeks comments concerning how different speeds at the time of rear impact affect the "slingshot effect."

2. At present, section S4.3(j) of Standard 209 requires that an ELR "shall lock before the webbing extends 1 inch when the retractor is subjected to an acceleration of 0.7g." The agency notes that ELRs were developed to overcome deficiencies with automatic locking retractors (ALRs), such as cinch up. The ELR retractor permits free movement of the webbing during non-crash conditions and can be manufactured to lock up as a result of webbing acceleration, vehicle acceleration or both. The agency notes that some foreign manufacturers include ELRs with two inertial sensing modes (i.e., "dual-mode sensing ELRs"). One mode is sensitive to webbing acceleration, and the other to vehicle acceleration. The dual-mode sensor provides fast response and lock up in the vehicle acceleration mode and also locks the webbing whenever the occupant is thrown against it. It also permits the user to test the belt locking mode by jerking on the webbing. This action causes lock up in the webbing acceleration sensing mode. Accordingly, it is possible that requiring dual mode ELRs would negate injuries caused by the "slingshot effect." NHTSA requests detailed comments about the effectiveness and costs of dual-mode ELRs.

In particular, are dual-mode ELRs compatible with other designs such as motorized automatic safety belts? In the case of motorized automatic safety belts, could the motor withdrawal rate cause reel lockup when the occupant enters the car? Are any manufacturers currently using or planning to use dual-mode ELRs in their vehicles? If so, have they observed or do they anticipate any safety benefits with these ELRs?

3. NHTSA also seeks comments related to the costs of requiring the dual-mode ELRs as compared to single-mode sensing ELRs. One domestic manufacturer informed the agency that dual-mode ELRs would cost about 30 to 40 cents per reel for each dual-mode ELR or between $1.20 and $1.60 per

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vehicle for four reels. NHTSA requests cost estimates, especially from those manufacturers that currently use or are developing these ELRs

4. NHTSA is concerned about consumer acceptance of different types of retractors. The agency notes that some consumers may not like the dual-mode ELRs because sudden movements could cause the belt to lock. This might cause some consumers to believe that the belts were less comfortable or more inconvenient. If a significant number of consumers had this perception, then the agency would have to factor this "cost" (i e., lowered safety belt use) into its analysis. On the other hand, NHTSA notes that some consumers do not believe that a vehicle sensitive retractor is working properly, since they cannot lock it up by pulling rapidly on the webbing. Being able to test the belt with the dual mode retractor might help instill trust in the belt system's value in a crash. If so, this could increase belt use. Accordingly, the agency seeks comments on whether and how the use of dual-mode ELRs would affect the comfort, convenience, and use of the safety belt system. In particular, would requiring the use of dual-mode ELRs affect occupants during ingress or egress?

5. NHTSA notes that Mr. Saczalski petitioned the agency to conduct a general review of Standard No. 207's performance requirements. Accordingly, while this notice focuses on the interaction of the seat back strength requirements and safety belt retractors in rear impacts, the agency welcomes additional comments on other matters relating to seat back performance in other crash situations. What relation do the seat back performance requirements in general have to injuries in front impacts? in side impacts? in vehicle rollovers? What types of injuries are seen in side and front impact and vehicle rollover accidents that could possibly be mitigated by practical seat design modifications? Are there any innovative designs to absorb and control energy in the side and front impacts or rollovers? From a design standpoint, how is the optimum seat strength determined? What are the seat back and seat back latch force deflection characteristics of current production seats? Are current or strengthened seat back latches effective in mitigating injuries of either front seat or rear seat occupants? What would be the increases in cost and weight for increasing seat strength to withstand a 56,000 inch pounds moment?

6. On a related topic, NHTSA has contemplated changing the measurement and evaluation of seat performance. Accordingly, it seeks comments on the following matters. How should seat performance be measured? To measure seat back and head restraint performance, should the agency adopt an instrumented dummy as used in Standard No. 208 *Occupant Crash Protection* test? Would a dynamic test that measured the response of the neck, head and chest of a Hybrid III dummy provide a realistic test procedure for a seat, the restraint system and head restraint in a rear impact? Other impacts? What type of injury criteria should we measure on a dummy in a rear impact test? Other impacts? In particular, what should the neck criteria be in a rear impact test? Would a currently produced seat pass a 30 mile per hour impact test, without "killing" the dummy? What would be objective force/deflection requirements for Standard No. 207, to define a seat failure, rather than the term "shall withstand"?

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on September 29, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23438 Filed 10-3-89; 8:45 am]
BILLING CODE 4510-59-M

Notices

Federal Register
Vol. 54, No. 191
Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office Of The Secretary

State of Indiana Critical Soil Erosion Cost-Share Program; Determination of Primary Purpose of Program Payments for Consolidation as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Indiana Critical Soil Erosion Cost-Share Program are made primarily for the purpose of soil and water conservation and protection or restoration of the environment. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended. The determination permits recipients to exclude these payments from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Charles C. McKee, Director, Division of Soil Conservation, Indiana Department of Natural Resources, FLX1, Purdue University, West Lafayette, Indiana, 47907, (317) 494-8383; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the state conservation programs is the Indiana Critical Soil Erosion Cost Share Program authorized by chapter 1, Article 3, title 13 of the Indiana Code.

The objectives of the program are: (1) To conserve and protect Indiana's soil and water resources, and (2) to protect or restore the environment by reducing soil erosion and its resulting offsite sedimentation damage.

Procedural Matters: The USDA has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that this will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. An Indiana Critical Soil Erosion Cost-Share Program Primary Purpose Determination for Federal Tax Purposes, Record of Decision, has been prepared and is available upon request from the Director, Division of Soil Conservation, Indiana Department of Natural Resources, FLX1, Purdue University, West Lafayette, Indiana, 47907 or the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013.

DETERMINATION: As authorized by section 126 of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Indiana Critical Soil Erosion Cost-Share Program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-share payments made under this program are primarily for soil and water conservation and protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Indiana Critical Soil Erosion Cost-Share Program.

Signed at Washington, DC, on September 21, 1989.

Clayton Yeutter,

Secretary.

[FR Doc. 89-23346 Filed 10-3-89; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

Commonwealth of Pennsylvania Cheseapeake Bay Financial Assistance Funding Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954.

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all state payments under the Pennsylvania Cheseapeak Bay Financial Assistance Funding Program have been made primarily for the purpose of soil and water conservation, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with Section 126 of the Internal Revenue Code of 1954, as amended. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Paul O. Swartz, Director, Bureau of Soil and Water Conservation, Department of Environmental Resources, One Ararat Boulevard, Room 214, Harrisburg, Pennsylvania 17110, (717) 540-5080, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013 (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of

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1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for fedeal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" detemination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Cheseapeake Bay Financial Assistance Funding Program provides financial and technical assistance to private landowners who have control of agricultural lands located in approved priority watersheds and have consented to the development of a nutrient management program (NMP) which will address critical nutrient management problems of the farm. The program is administered by the State Conservation Commission and cooperatively with Conservation Districts.

The purpose of the Financial Assistance Funding Program is to assist landowners with the cost of the installation of best management practices (BMPs). This cost share program is administered by the State Conservation Commission cooperatively with Conservation Districts and the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture. Cost share payments accomplish one or more of the following purposes:

1. Identification of nonpoint pollution sources, monitoring water quality, measuring runoff characteristics of watershed areas, and designing treatment methods for sources of nonpoint pollution.

2. Adoption and demonstration of the use of soil and water conservation management techniques through educational programs.

3. Acceleration of the installation of BMPs for landowners for the proper disposal and application of nutrients on land areas that are responsible for nonpoint source pollution.

4. Provide assistance to landowners with the installation of BMPs.

The Pennsylvania Chesapeake Bay Financial Assistance Funding Program is authorized under the Act of December 19, 1984 (3 P.S. sections 894–864), and the Statement of Policy which provides guidance to the program is published at 25 Pa. Code chapter 83 et seq. Funding for this program is allocated through annual State appropriations which provide financial assistance to owners of agricultural land helping them install various conservation practices on their land.

Grants are given to Conservation Districts for the local administration of the program based upon detailed watershed assessments or other pertinent water quality land use data. The State Conservation Commission approves a list of eligible best management practices for cost sharing. Each Conservation District may select from this list those BMPs it will approve for cost sharing.

Costs eligible for cost sharing include, but are not limited to, any necessary approved costs incurred by the landowner to install or implement an approved BMP, such as equipment costs, material and labor, not to exceed a rate established by the Conservation District to be fair and reasonable.

Procedural Matters

The authorizing legislation and policies for the Chesapeake Bay Financial Assistance Funding Program of the Commonwealth of Pennsylvania have been carefully examined using the criteria set forth in 7 CFR part 14. The Department has concluded that the payments made under this cost share program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures, and protecting the environment.

A Chesapeake Bay Financial Assistance Funding Program, Primary Purpose Determination for Federal Tax Purposes, "Record of Decision" has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or Director, Bureau of Soil and Water Conservation, Department of Environmental Resources, One Ararat Boulevard, Room 214, Harrisburg, Pennsylvania 17110.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Pennsylvania Chesapeake Bay Financial Assistance Funding program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-sharing payments made under this program are for soil and water conservation, protecting the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipinets to exclude from gross income, for federal income tax puroses, all or part of such payments made under the Pennsylvania Chesapeake Bay Financial Assistance Funding Program.

Signed at Washington, DC, on September 21, 1989.

Clayton, Yeutter,

Secretary.

[FR Doc. 89–23345 Filed 10–3–89; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of the Cairo (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Cairo Grain Inspection Agency, Inc., as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act). The notice also announces the designation of Ohio Valley Grain Inspection, a neighboring official agency, to certain excepted points assigned to the Cairo agency.

EFFECTIVE DATE: November 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Cairo's designation terminates on October 31, 1989, and requested applications for official agency designation to provide official services within a specified geographic area in the May 1, 1989, **Federal Register** (54 FR 18559). Applications were to be postmarked by May 31, 1989. There were two applicants for designation. Cairo applied for designation renewal in the entire area currently assigned to that agency, except for Hopkinsville Elevator Company, Inc., Hopkinsville, Kentucky, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, both in Christian County, Kentucky. Ohio Valley Grain Inspection (Ohio Valley) a neighboring official agency, applied for designation only at those points. These facilities are located in the contiguous area currently assigned to Ohio Valley, but are exceptions to that agency's assigned geographic area. The Service announced the applicant names in the July 3, 1989, **Federal Register** (54 FR 27906) and requested comments on the applicants for designation. Comments were to be postmarked by August 17, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that (1) Cairo is able to provide official services in the geographic area for which the Service is renewing its designation; and that (2) Ohio Valley is able to provide official services to the excepted points, for which the Service is selecting it for designation. Effective November 1, 1989, and terminating October 31, 1992, Cairo is designated to provide official inspection functions in its specified geographic areas, as previously described in the May 1 **Federal Register**, with the exception of Hopkinsville Elevator Company, Inc., and the L&N Railroad Siding. Ohio Valley will provide official inspection services to these points effective November 1, 1989, and terminating March 31, 1992, when that agency's current designation terminates.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Cairo at (618) 734–0689 and Ohio Valley at (812) 858–5444.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 28, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89–23354 Filed 10–3–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to William D. Prince dba Farwell Grain Inspection Company (Farwell).

DATE: Comments must be postmarked on or before November 20, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows;

TO: Lewis Lebakken.

TLX: 760351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1989, **Federal Register** (54 FR 31712). Applications were to be postmarked by August 31, 1989. W. D. Prince and Glenna Prince proposing to establish a new corporation, Farwell Grain Inspection, Incorporated, was the only applicant for designation in that area, and applied for the entire area currently assigned to Farwell.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 28, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89–23355 Filed 10–3–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Alton (MO), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Thomas P. Russell dba Alton Grain Inspection Department (Alton), Robert J. Bohlman d.b.a. Grand Forks Grain Inspection Department (Grand Forks), and John R. McCrea d.b.a. John R. McCrea Agency (McCrea).

DATE: Applications must be postmarked on or before November 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

All applications received will be made available for public inspection at the address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official

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services after a determination is made that the applicant is better able than any other applicant to provide official services in an asigned geographic area.

Alton, located at 3601 Vago Lane, Florissant, Mo, 63034; Grand Forks, located at 1504 State Mill Road, Grand Forks, ND, 58201; and McCrea located at 96—18th Place, Clinton, IA, 52732, were designated under the Act as official agencies on April 1, 1987, to provide official inspection functions.

The official agencies' designations terminate on March 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alton, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 ane 270) Counties.

The geographic area presently assigned to Grand Forks, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State route 200 west-northwest to the western Traill County line west of U.S. Route 281; U.S. line; the southern Grand Forks and Nelson county lines; the southern Eddy county line west of U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Fork's assigned geographic area are the following locations inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County.

The geographic area presently assigned to McCrea, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Illinois: Carroll and Whiteside Counties.

In Iowa: Clinton and Jackson Counties.

Interested parties, including Alton, Grand Forks, and McCrea, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning April 1, 1990, and ending March 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 23, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–23356 Filed 10–3–89; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Northern Drainage District Watershed

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Northern Drainage District Watershed, Bolivar and Sunflower Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A. H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269–1399, telephone (601) 965–5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project concerns a plan for flood protection in the predominantly urban portion of the watershed. The planned works of improvement include approximately 23 miles of channel work, enlargement/replacement of 14 inadequate bridges/culverts, and 196 overfall and/or drop inlet pipe. Planned measures will be installed by the Soil Conservation Service as a component of the Yazoo Basin, Mississippi Flood Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: September 12, 1989.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 89–23347 Filed 10–3–89; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission originally scheduled for October 5, 1989, from 9 a.m. to 12 noon in Anchorage, Alaska, has a new date and meeting time. The meeting will be held on November 2, 1989, from 2 p.m. to 5 p.m. The purpose and address of the meeting remain the same as previously published at 54 FR 37820 (September 13, 1989).

Persons desiring additional information should contact Committee Chairperson Daniel Alex or Philip Montez, Director of the Western Regional Division (213) 894–3437 (TDD (213) 894–0506).

Dated at Washington, DC, September 28, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–23363 Filed 10–3–89; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky. The purpose of the meeting is to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/436–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 22, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–23406 Filed 10–3–89; 8:45 am]

BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

September 27, 1989.

In the letter to the Commissioner of Customs, published on July 26, 1989 (54 FR 31068), the 1989 levels and sublevels, as adjusted, should be corrected as follows:

Category	Adjusted twelve-month limit
342	232,101 dozen.
369–L	2,428,987 kilograms.
410–A	1,506,715 square meters.
410–B	1,501,593 square meters.
635	504,994 dozen.
640	1,283,753 dozen.
846	121,821 dozen.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–23373 Filed 10–3–89; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Hong Kong

September 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 24, 1989, the Government of the United States requested consultations with the Government of Hong Kong with respect to fabric of yarns of different color in Category 218. This request was made on the basis of the current Bilateral Textile Agreement between the Governments of the United States and Hong Kong.

If no solution is agreed upon in consultations between the two governments, the United States may request the Government of Hong Kong to limit exports in Category 218, produced or manufactured in Hong Kong and exported to the United States during 1989. The United States reserves the right to control imports at the established level.

Anyone wishing to comment or provide data or information regarding the treatment of Category 218, under the agreement with the Government of Hong Kong, or in any other respect thereof, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 218. Should such a solution be reached in consultations with the Government of Hong Kong, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–23372 Filed 10–3–89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 26, 1989.

The USAF Scientific Advisory Board Tactical Cross-Matrix Panel will meet on 24 Oct 1989 from 8:00 a.m. to 5:00 p.m. at Langley AFB, Virginia.

The purpose of this meeting is to exchange information among SAB Panel members and TAC personnel on technical developments and tactical operations issues. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

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For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–23409 Filed 10–3–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24–25 October 1989.

Time of Meeting: 0900–1700 hours each day.

Place: Fort Sheridan, Illinois.

Agenda: The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its next meeting with emphasis on evaluation of the Army's program for environmental restoration and hazardous waste minimization. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–23410 Filed 10–3–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan Programs

AGENCY: Department of Education.

ACTION: Extension of deadline dates for requesting and submitting need analysis servicer agreements.

SUMMARY: The Secretary extends the deadline date for requesting a need analysis servicer agreement package from August 4, 1989, to October 19, 1989, to provide additional time for the servicers to request an agreement package. In addition, the Secretary extends the deadline date for submitting the need analysis servicer agreement package to the Department of Education from September 1, 1989 to November 3, 1989, to provide additional time for the servicers to return the agreement package.

On June 27, 1989, the Secretary published in the **Federal Register** a Notice (54 FR 27100–27101) informing individuals and organizations that operate need analysis systems of the procedures the Secretary will use to certify need analysis systems for the 1990–91 award year, and of the applicable deadlines for requesting and submitting an agreement package. The purpose of this Notice is to extend the deadline dates for requesting and submitting an agreement package.

FOR FURTHER INFORMATION CONTACT: Paula M. Husselmann or C. Lorraine Kennedy, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4613, Washington, DC 20202–5346, Telephone (202) 732–5579.

Dated: September 26, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–23398 Filed 10–3–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretarial Panel for the Evaluation of Epidemiologic Research Activities for the Department of Energy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities

Date and Time: Thursday, October 26, 1989, 8:30 am–5:30 pm; Friday, October 27, 1989, 8:00 am–4:30 pm

Place: Chicago Marriott Hotel, Michigan/Michigan State Rooms, 540 North Michigan Avenue, Chicago, IL 60611

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC, 20585, Telephone: (202) 586–7304

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Thursday, October 26, 1989

8:30 am Presentation by Dr. Richard Remington, Chairman DOE Committee on Radiation, Epidemiology Research Program, National Research Council, National Academy of Sciences

9:15 am–10:00 Presentation by Health Physics Society

10:00 am–10:45 am Presentation by DOE's Office of Environment, Safety and Health

10:45 am–11:30 am Presentation by DOE's Office of Defense Programs

Thursday, October 26, 1989

11:30 am–1:00 pm Lunch Break

1:15 pm–1:45 pm Public Comment

1:45 pm–3:00 pm Presentation by DOE's Office of Energy Research

3:00 pm–5:30 pm Work Session

Friday, October 27, 1989

8:00 am–9:00 am Presentation on Comprehensive Epidemiological Data Resource Project (DOE's Office of Energy Research)

9:00 am–9:30 am Public Comment

9:30 am–11:30 am Invited Testimony and Work Session

11:30 am–1:00 pm Lunch Break

1:00 pm–4:30 pm Invited Testimony and Work Session

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on September 28, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–23433 Filed 10–3–89; 8:45 am]

BILLING CODE 6450–01–M

ENERGY INFORMATION ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted to the Office of Management and Budget for review.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OBM DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

For Further Information and Copies of Relevant Materials Contact: Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, 1000 Independence Avenue SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–80
3. 1902–0106
4. Licensed Hydropower Development Recreation Report
5. Extension
6. Quadrennial reporting
7. Mandatory
8. Businesses or other for profit, Individuals or households, Farms
9. 300 respondents
10. 300 responses annually
11. The estimated average hours per response for each of the respondents is 5 burden hours.
12. The estimated total reporting hours are 1,500.
13. Part I, Section 10a of the Federal Power Act requires that a licensee submit to the Commission for approval, plans, maps and specifications which will present a comprehensive plan for improving or developing a waterway or waterways for beneficial uses, including recreation.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–23434 Filed 10–3–89; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, 1000 Independence Avenue, SW., Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–213, 412, 759, 826, 860, and 861
3. 1905–0129
4. Electric Power Surveys
5. Revision—A **Federal Register** notice (54 FR 14381, April 11, 1989), outlined proposed changes to the Electric Power Surveys, and requested comments. Since that time, a new

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schedule, "Demand Side Management Information," containing six questions was added to the EIA–861. The demand side management information will fill a gap in data collected by the EIA, and will be useful for policy makers and analysts in designing and managing Federal, State and electric utility conservation programs.

6. Monthly and Annually
7. Mandatory
8. State or local governments, Businesses or other for profit, and Federal agencies or employees
9. 7,150 respondents
10. 21,450 responses annually
11. The estimated average hours per response for each of the respondents is 3.9 burden hours.
12. The estimated total reporting hours are 82,783.
13. The Electric Power surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, typical electric bills, construction costs, operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 28, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89–23435 Filed 10–3–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP89–50–000]

Oklahoma State Corporation Commission, Section 102 NGPA Determination, Bracken Exploration Company, Van Winkle No. 1–5 Well FERC No. JD 83–34695; Petition to Reopen and Vacate Affirmative Well Category Determination

September 27, 1989

On July 18, 1989, the Oklahoma Corporation Commission (Oklahoma) filed with the Federal Energy Regulatory Commission (Commission) an order which vacates an affirmative determination issued April 25, 1983, concerning a new onshore well application by the Bracken Exploration Company (Bracken) under section 102 of the Natural Gas Policy Act of 1978.[1] The order is being treated as a petition to reopen and vacate Bracken's Van Winkle No. 1–5 well in the C SW/4 NW/4, Section 5, Township 18N, Range 15W, Dewey County, Oklahoma. According to Oklahoma, the determination must be vacated because Bracken's well does not qualify as a new onshore well in view of the fact that a marker is well located within 2.5 miles.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or .211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23244 Filed 10–3–89; 8:45 am]

BILLING CODE 6717–01–M

[1] 15U.S.C. 3301–3432 (1962).

[Docket No. RP89–239–000]

Boundary Gas, Inc.; Proposed Changes in FERC Gas Tariff

September 27, 1989.

Take notice that on September 21, 1989, Boundary Gas, Inc. ("Boundary") tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, First Revised Tariff Sheet Nos. 3, 4, 8, 14, 18–22, 35, 37, 40, 41 and 43 to supersede Original Tariff Sheet Nos. 3, 4, 8, 14, 18–22, 35, 37, 40, 41 and 43.

Boundary states that the purposes of this filing are: (i) To provide for billing by and payment to Boundary's supplier, TransCanada PipeLines Limited ("TransCanada"), in United States dollars; (ii) to reflect a change in the expiration date of the Sales Agreements between Boundary and its Repurchasers from November 1, 1996 to January 15, 2003; (iii) to implement a bookkeeping adjustment to allow one Boundary Repurchaser to pay its Gas Research Institute surcharge directly to the FERC rather than through Boundary; and, (iv) to reflect the Connecticut Light and Power Company's transfer of all of its interests, rights and obligations in the Boundary project to Yankee Gas Service Company.

The revised tariff sheets are proposed to become effective on November 1, 1989.

Copies of the filing have been served upon each of the Boundary Repurchasers and their respective state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23357 Filed 10–3–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–240–000]

Northern Natural Gas Company; Filing

September 27, 1989.

Take notice that on September 21, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Fourth Revised Sheet No. 52f.3

Original Sheet No. 52f.3a

The proposed effective date is October 20, 1989. Northern proposes to delete from the presently effective tariff the following sentence contained in section 5(b) of Rate Schedule FT–1:

For all requests other than priority requests, the effective date shall be the date of execution by Shipper of the FT–1 Firm Transportation Service Agreement."

Northern states that in response to the concerns of Shippers on Northern's system, Northern is proposing to change its policy to allow in a nondiscriminatory manner Shippers to request service under Rate Schedule FT–1 230 days in advance and execute firm Service Agreements prior to the proposed effective date thereof, except where facilities are required to be constructed, or where Shipper is required to give Notice of Termination

under a presently effective contract. Northern states that this will allow advance planning by prospective Shippers, provide assurance that the firm transportation service will be available when required without necessitating the payment of reservation fees before the service is actually required or can be utilized, and remove the restrictions on Shippers' options and increase competition in the transportation service business.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23358 Filed 10–3–89; 8:45 am]

BILLING CODE 6717–01–M

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

[Docket No. RP89–116–002]

September 27, 1989.

Take notice that on September 21, 1989, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

One hundred and thirty-eighth Revised Sheet No. 16

Twenty-sixth Revised Sheet No. 16A2

The foregoing revised tariff sheets bear an issue date of September 21, 1989 and a proposed effective date of October 1, 1989.

The revised filing is being made pursuant to the Commission's Order issued April 28, 1989 in these proceedings. In this regard, Columbia's currently pending One hundred and thirty-seventh Revised Sheet No. 16 and Twenty-fifth Revised Sheet No. 16A2 are being revised to reflect the volumetric surcharge proposed in Columbia's March 31, 1989 filing. Columbia further requests that the Commission permit the tariff sheets to become effective November 1, 1989, instead of October 1, 1989. Columbia is hopeful that the Commission will approve the Offer of Settlement filed June 29, 1989 in Docket No. RP86–168, *et al.*, before the proposed effective date of November 1, 1989. In that event, Columbia would withdraw its rate filing at Docket No. RP89–116–000. Thus, Columbia would avoid being required to refund, almost immediately, any amounts collected under Docket No. RP89–116–000.

Copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 23359 Filed 10–3–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee

Date & Time: Saturday, October 14, 1989 from 7:30 p.m. to 10:00 p.m.; Sunday, October 15, 1989 from 8:30 a.m. to 12:00 Noon

Place: Scripps Room, Asilomar Conference Center, Pacific Grove, California

Contact: John Erskine, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Report on the budgets and status of the NSF nuclear physics program.
- Report on the budgets and status of the DOE nuclear physics program.
- Final discussion of the 1989 Long Range Plan for Nuclear Science.
- Public comment period.

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact John Erskine at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisioins will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 28, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–23436 Filed 10–3–89; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Final Environmental Impact Statement Availability; Proposed Charlie Creek-Belfield 345–KV Transmission Line Project, North Dakota

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability, Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review a final environmental impact statement (EIS) for the proposed Charlie Creek-Belfield 345–kilovolt (kV) Transmission Line Project in North Dakota (DOE/EIS–0134–F). The final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations (40 CFR 1500–1508), and DOE guidelines for compliance with NEPA (52 FR 47662).

DATE: Written responses to the final EIS are due no later than November 3, 1989.

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FOR FURTHER INFORMATION OR COPIES OF THE FINAL EIS CONTACT:

Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 657–6532

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401. (303) 231–1527.

SUPPLEMENTARY INFORMATION: In June 1988, Western filed the draft EIS for the Charlie Creek-Belfield 345–kV Transmission Line Project with the Environmental Protection Agency (EPA). The EPA published a Notice of Availability in the Federal Register on June 24, 1988 (53 FR 23791). The comment period on the draft EIS ended on August 8, 1988. The final EIS contains a comprehensive summary of the draft EIS, copies of comments received on the draft EIS and Western's responses, errata and changes to the draft EIS, and other information. The draft and final EISs are intended to be reviewed together.

Western proposes to construct, operate, and maintain approximately 40.9 miles of new 345–kV transmission line which would interconnect the existing Antelope Valley Station (AVS)-Charlie Creek 345–kV Transmission Line in southern McKenzie County with the Dawson County-Dickinson 230–kV Transmission Line near the town of Belfield in Stark County, North Dakota. The northern terminus of the new line would be the existing Charlie Creek Substation, and the southern terminus would be a new substation near Belfield, North Dakota. The electrical needs of the Charlie Creek-Williston area are presently served by the AVS-Charlie Creek 345–kV line and several 115–kV transmission lines from Garrison, Tioga, Wolf Point, and Richland. Distribution to consumers is provided by McKenzie Electric Cooperative and West Plains Electric Cooperative. The need for additional transmission capacity into the area has been demonstrated by operational experience and power system simulation studies. Any outage of the AVS-Charlie Creek tranmission line causes severe low voltages, facility overloads, and possible loss of electric service to customers in the Charlie Creek-Williston area. If the Charlie Creek-Belfield transmission line is not constructed, future system voltages and facility loadings will be unacceptable during both outage and system intact conditions.

The proposed project will provide improved service to area loads, improve system reliability, contribute to energy conservation, and provide flexibility for future expansion of the transmission system, should it become necessary. Alternatives considered include no action, energy conservation, other generation sources, other transmission systems and technologies, and the proposed action with routing and design alternatives. Unavoidable adverse effects of the proposed action would be construction related impacts, primarily on visual resources and land use.

The final EIS was prepared in compliance with all applicable regulations. Copies have been distributed to appropriate Federal, State, and local agencies; elected State officials; Boards of County Commissioners; and interested groups and individuals. Copies are maintained for public inspection at Western offices in Billings, Montana, and Golden, Colorado, and the Dickinson Public Library at Dickinson, North Dakota. Copies of the draft and final EISs are available to the public upon request from these Western offices.

Interested agencies, organizations, and individuals are encouraged to review the final EIS for adequacy, completeness, and accuracy. Any responses should be sent to Mr. James D. Davies, Area Manager, at the address given above. Responses received after the review period may not be considered in Western's decision making process.

Issued at Golden, Colorado, September 25, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89–23437 Filed 10–3–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

September 28, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20073, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

Title: Basic Signal Leakage Performance Report.

Form No.: FCC 320.

Action: New collection.

Responsdents: Business (including small business).

Frequency of Response: Annually.

Estimated Annual Burden: 27,000 Responses, 20 hours each (average).

Needs and Uses: Filing is required of cable television system operators who use frequencies in the bands 108–137 and 225–400 MHz. The data is used to ensure the safe operation of aeronautical and marine radio services, and to monitor for compliance of cable aeronautical usage which will minimize future interference to these safety of life services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–23393 Filed 10–3–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 USC chapter 35).

Type: Extension of 3067–0141.

Title: Reimbursement for Cost of Firefighting on Federal Property.

Abstract: The Federal Emergency Management Agency (FEMA) shall reimburse local fire departments, in accordance with federal regulations 44 CFR 151, for certain costs for fighting fires occurring on federal properties, including federally owned offices, bases, installations, buildings, forests, or other real federal property holdings. Reimbursement is available if the fire department has sustained costs above normal operating expenses.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 192.

Number of Respondents: 8

Estimated Average Burden Hours Per Response: 6

Frequency of Response: Other. Claims are submitted within 90 days of occurrence of fire.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 14, 1989.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 89–23417 Filed 10–3–89; 8:45 am]

BILLING CODE 6718–01–M

North Carolina; Major Disaster and Related Determinations

[FEMA–844–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–844–DR), dated September 25, 1989, and related determinations.

DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated September 25, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Hugo on September 21–22, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93–288, as amended by Public Law 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

That time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this delcared major disaster: The counties of Gaston, Lincoln, Mecklenburg, and Union for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–23418 Filed 10–3–89; 8:45 am]

BILLING CODE 6718–02–M

South Carolina; Amendment to Notice of a Major Disaster Declaration

[FEMA–843–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–843–DR), dated September 22, 1989, and related determinations.

DATED: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989: The counties of Calhoun, Claredon, Florence, Lee, and York for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–23419 Filed 10–3–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011251.

Title: IGSL/UAL Westbound/Eastbound Space Charter Agreement.

Parties: Interglobal Shipping Company Limited ("IGSL"), Universal Africa Lines N.V. (N.A) ("UAL").

Synopsis: The proposed agreement would permit IGSL to charter space aboard vessels owned or operated by UAL in the trade between United States Atlantic and Gulf ports and ports in Nigeria.

By Order of the Federal Maritime Commission.

Dated: September 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–23335 Filed 10–3–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review; Background

September 27, 1989.

Notice is hereby given of final approval of proposed information

BEST COPY AVAILABLE

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collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340).

Final approval under OMB delegated authority of the extension, without revision, of the following reports

1. Report title: Consolidated Financial Statements for Bank Holding Companies; Parent Company Only Financial Statements for Bank Holding Companies.

Agency form numbers: FR Y–9C, FR Y–9LP, FR Y–9SP.

OMB Docket number: 7100–0128.

Reporters: Bank holding companies.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y–9C and Y–9LP:			
For bank holding companies with total consolidated assets of $150 million or more.	935	Quarterly	25.25
For bank holding companies with consolidated assets of less than $150 million but which have more than one subsidiary bank.	449	Quarterly	14.25
FR Y–9SP	4,501	Semiannually.	3

No significant effect on small businesses is affected.

General description of report:

These reports are required by law [12 U.S.C. § 1844(b) and (c)] and are not given confidential treatment.

These reports are the source of information for the Federal Reserve's surveillance function in its ongoing monitoring of the financial condition of bank holding companies.

2. Report title: Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies; Annual Supplement to the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y–11Q, FR Y–11AS.

OMB Docket number: 7100–0244.

Reporters: Bank holding companies.

Annual reporting hours: 4,380.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y–11Q	292	Quarterly	2.5
FR Y–11AS	292	Annually	5.0

No significant effect on small businesses is expected.

General description of report:

These reports are required by law [12 U.S.C. 1844(c)] and are not given confidential treatment.

As part of the Federal Reserve System's surveillance function, these reports collect financial data on combined nonbank subsidiaries of bank holding companies with total consolidated assets of $1 billion or more, and on bank holding companies with total consolidated assets of at least $150 million but less than $1 billion and that have material nonbanking activities.

Final approval under OMB delegated authority of the implementation of the following report

Report title: Reports of Medium-Term Note Issuance.

Agency form number: FR 2600m, 2600q, and 2600s.

OMB Docket number: 7100–0245.

Frequency: Monthly or quarterly or semiannually.

Reporters: U.S. corporations.

Annual reporting hours: 49.

Estimated average hours per response: 0.083.

Number of respondents: 182.

Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225a and 353) and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports will collect monthly balances of corporate medium-term note issues. Medium-term notes are interest-bearing noncallable corporate obligations with a maturity greater than 270 days but generally less than 10 years. The data will be used to improve the estimates of corporate securities issues issued and outstanding.

Board of Governors of the Federal Reserve System, September 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–23369 Filed 10–3–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89G–0384]

Genencor, Inc.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genencor, Inc., has filed a petition (GRASP 9G0352) proposing that chymosin derived from the fermentation of a genetically modified *Aspergillus niger* var. *awamori* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Comments by December 4, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eric L. Flamm, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 9G0352) has been filed by Genencor, Inc., 180 Kimball Way, South San Francisco, CA 94080, proposing that chymosin derived by fermentation from *Aspergillus niger* var. *awamori* genetically modified to contain and express a prochymosin gene be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before December 4, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 22, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–23378 Filed 10–3–89; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (46 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 25907–08, June 20, 1989) is amended to reflect the following changes within the Center for Infectious Diseases: (1) Revision of the functional statement for the Office of the Director; (2) establishment of the Office of Program Resources within the Office of the Director; (3) establishment of the Arctic Investigations Program; (4) revision of the functional statement for the Office of Scientific Services and establishment as the Scientific Resources Program; (5) revision of the functional statement for the Sexually Transmited Diseases Laboratory Program and establishment as the Division of Sexually Transmitted Diseases Laboratory Research; (6) revision of the functional statement for the AIDS Program and establishment as the Division of HIV/AIDS; (7) revision of the functional statement for the Division of Host Factors and title change to Division of Immunologic, Oncologic, and Hematologic Diseases; (8) revision of the functional statement for the Division of Parasitic Diseases; (9) revision of the functional statement for the Division of Vector-Borne Viral Diseases and title change to Division of Vector-Borne Infectious Diseases; and (10) revision of the functional statement for the Division of Viral Diseases and title change to Division of Viral and Rickettsial Diseases.

Section HC–B, Organization and Functions, is hereby amended as follows:

Under *Office of the Director (HCR1),* substitute the word "program" for "support" in item (4); delete items (5) and (6); and renumber items (7) through (9) as (5) through (7) respectively.

After the heading and statement for the *Office of Administrative Services (HCR13),* insert the following:

Office of Program Resources (HCR14). The Office of Program Resources provides support to CID staff in carrying out the mission of prevention and control of infectious diseases of public health importance. To do this, the Office (1) coordinates information resources by exercising review and approval authority for computer, word processing, and telecommunication equipment; develops CID information resources management strategic plans; plans and develops CID-wide information systems for disease surveillance, epidemiologic investigations, reference diagnostic services, and applied research; assures that training, consultative services, and software systems are available CID-wide; (2) maintains liaison with other CDC components, Federal agencies, and international organizations, providing administrative and consultative support for bilateral and multilateral agreement activities, and coordinates the activities of foreign visitors at CID, providing for orientation and short-term training when appropriate; (3) coordinates budget initiative submissions and preparation of the infectious disease part of the CDC budget briefing document, manages the CID project tracking system, consolidates and prepares program review documents, assists in the analysis of infectious disease programs and development of proposed legislation, tracks CID's progress toward program objectives, and maintains liaison with other program planning offices in CDC; (4) provides policy clearance and editorial assistance in the preparation of scientific articles and other documents for publication or presentation; assists with bibliographic searches; secures necessary clearance for publications from the Office of Management and Budget; maintains databases of manuscripts and published works by CID staff; provides training in various aspects of publishing and presenting science to different audiences; assists with conference planning; designs, prepares, and facilitates clearance for health information pamphlets and brochures; provides for and promotes usage of state-of-the art graphics; provides liaison with the scientific information offices of other components of CDC; (5) provides staff services and coordination for the CID Advisory Council, arranging meetings and preparing and distributing briefing information and minutes; (6) provides liaison with other components of CDC in the areas of human subject research protocol clearance, assurance of confidentiality, Privacy Act, surveillance issues, and ethical and policy review of CID scientific projects and activities.

Arctic Investigations Program (HCRJ). (1) Conducts surveillance of diseases and conditions that impact the health of Arctic residents, particularly Alaskan Natives; (2) designs and conducts epidemiologic studies to investigate the causes and risk factors for diseases among residents of the Arctic and sub-Arctic, and conducts long-term studies to determine sequelae of various etiologic agents; (3) conducts laboratory research to evaluate existing laboratory tests, modifies methods as needed to apply the technology in the Alaskan health-care setting, and develops new methods for diagnosis, treatment, and follow-up of health problems; (4) designs and implements studies to evaluate strategies for control of health problems in the Arctic and among small, widely scattered populations in collaboration with the Indian Health Service, State of Alaska, Native Health Corporations, etc.; (5) provides epidemiologic, statistical, computer, and laboratory consultation to the Indian Health Service, other health providers, and public and private agencies and assists in developing guidelines for disease prevention and control applicable to Arctic residents; (6) disseminates information on problems of particular import for residents of the Arctic and sub-Arctic; (7) provides training and technological assistance in epidemiology, statistics, and laboratory methodology to health-care personnel working in the Arctic or planning to conduct research; (8) participaes in the Circumpolar Health Symposium and

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other international collaborative efforts to improve the health of all circumpolar populaions; (9) as the predominate Federal agency conducting health reseach in the Arctic, provides local input as needed to the Interagency Arctic Research and Policy Committee, Arctic Research Commission, and National Science Foundation as established under the U.S. Arctic Research and Policy Act of 1984.

Delete in their entirety the titles and statements for the *Office of Scientific Services (HCR15)* and the *AIDS Program (HCRK)* and substitute the following:

Division of HIV/AIDS (HCRK). (1) Conducts national surveillance of infectious diseases and other illnesses associated with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and sentinel surveillance of HIV infection; (2) conducts national and international surveillance, epidemiologic and laboratory investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (3) develops recommendations and guidelines on the prevention and control of HIV/AIDS; (4) evaluates prevention and control activities in collaboration with other CDC components; (5) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance fof HIV/AIDS surveillance activities to State and local health departments; (6) provides consultation to other PHS agencies, medical institutions, and private physicians; (7) provides information to the scientific community through publications and presentations; (8) conducts laboratory investigations and studies of the syndrome and the retrovirus associated with its cause; (9) develops and evaluates laboratory methods and procedures for the isolation, characterization, pathogenesis, and serodiagnosis of HIV; (10) provides reference laboratory services and assists in standardizing and providing reference reagents; (11) assists in providing training to national and international public health laboratorians; (12) serves as the World Health Organization (WHO) Collaborating Center on HIV/AIDS for epidemiology, surveillance, and laboratory consultation.

Scientific Resources Program (HCRL). (1) Provides animals, animal blood products, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to CID laboratories and other CDC organizations; (2) installs, fabricates, modifies, services, and maintains laboratory equipment used in the research and service activities of CDC; (3) develops and implements applied research programs to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (4) conducts both basic and applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (5) provides services for CID investigators in protein and DNA synthesis and sequencing; (6) provides clinical and anatomic veterinary pathology services to attending veterinarians and investigators who use laboratory animals; (7) for reagents prepared at CDC, maintains a computerized inventory; provides dispensing, lyophilization, capping, and labeling; and retrieves from storage and ships to requesters; (8) provides support for liquid nitrogen freezers; (9) provides consultation and liaison with other components of CDC and national and international research and professional organizations; (10) provides technical expertise and assistance in professional intramural and extramural training activities; (11) administratively and technically supports the CDC Animal Policy Board and the Atlanta Area Animal Care and Use Committee.

After the heading and statement for the *Hospital Infections Program (HCRM),* delete in its entirety the title and statement for the *Sexually Transmitted Diseases Laboratory Program (HCRN)* and substitute the following:

Division of Sexually Transmitted Diseases Laboratory Research (HCRN). (1) Performs research and development on the sexually transmitted diseases (STDs), including gonorrhea, syphilis, chancroid, donovanosis, bacterial vaginosis, and chlamydial and mycoplasmal infections; conducts or participates in clinical, field, and laboratory trials to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of STDs; and conducts research on the other treponematoses; (2) serves as the CID focus for coordinating studies and issuing recommendations and guidelines on laboratory aspects of STDs; (3) provides reference/diagnostic services for STDs to State and local health departments, other Federal agencies, and national and international health organizations; (4) collaborates with the Center for Prevention Services on epidemiologic and clinical studies of STDs; (5) collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (6) provides consultation and liaison with other components of CID and CDC, clinical and public health laboratories, and national and international health organizations; (7) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (8) serves as appropriately designated national and international reference centers for STDs.

After the heading and statement for the *Division of Bacterial Diseases (HCRP),* delete in its entirety the title and statement for the *Division of Host Factors (HCRQ)* and substitute the following:

Division of Immunologic, Oncologic, and Hematologic Diseases (HCQR). (1) Conducts surveillance, investigations, and studies with respect to immunologic, oncologic, and hematologic disorders associated with or occurring as a consequence of infectious disease; (2) conducts research on the role of infectious agents in the production of cancers and other perturbations of cell growth and differentiation; (3) conducts research and collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (4) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodoligies and material used for rapid accurate diagnostic tests; (5) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (6) provides reference/diagnostic services for selected immunologic, oncologic, hematologic, and pathologic determinations to other components of CDC and to State and local health departments, other Federal agencies, and national and international health organizations; (7) obtains and distributes experimental vaccines and drugs, antisera and antitoxins, skin test antigens and immune globulins to prevent and control laboratory infections and to prevent or minimize disease in particular groups; (8) develops and provides reference materials to national and iternational scientists for use in research, diagnosis, and training; (9) provides immunologic, hematologic, and oncologic consultation and liaison with other components of CID and CDC, clinical and public health laboratories, and national and international health organizations; (10) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not otherwise available; (11) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (12) serves as appropriately designated national and international reference centers for immunologic, oncologic, and hematologic disorders, pathological conditions and related technologies; (13) serves as World Health Organiztion (WHO) Collaborating Center for Human Immunoglobulin Research and Reference Reagents.

After the heading and statement for the *Division of Mycotic Diseases (HCRR),* delete in its entirety the functional statement for the *Division of Parasitic Diseases (HCRS)* and substitute the following:

(1) Conducts surveillance, investigations, and studies of parasitic diseases to define disease etiology, mode of transmission, and populations at risk and to develop effective methods for diagnosis, prevention, and control; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies and materials and therapeutic practices used or rapid and accurate diagnosis and treatment of parasitic diseases; (3) collaborates with the Division of Vector-Borne Infectious Diseases in providing training in the epidemiology and control of vector-borne diseases; (4) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (5) provides reference/diagnostic services for parasitic diseases to State and local health departments, other Federal agencies, and national and international health organizations; (6) conducts a program of research and development in the biology, ecology, host-parasitic relationships, and control of vectors of arthropod-borne parasitic diseases including development, application, and analysis of pesticides for vector control; (7) conducts laboratory studies of selected parasitic infections, emphasizing animal in vitro model systems for parasitic relationships, chemotherapy, and immunology, to develop effective methods for diagnosis, prevention, and control; (8) conducts research and collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (9) provides scientific and technical assistance to other components when the work requires unique expertise or specialized equipment not available in other CID components; (10) provides intramural and extramural technical expertise and assistance in professional training; (11) serves as World Health Organization (WHO) Collaborating Center for Research Training and Control of Dracunculiasis.

Delete in their entirety the headings and statements for the *Division of Vector-Borne Viral Diseases (HCRT)* and the *Division of Viral Diseases (HCRU)* and substitute the following:

Division of Vector-Borne Infectious Diseases (HCRT). (1) Conducts surveillance, investigations, and studies of vector-borne viral and bacterial diseases and plague to define disease etiology and to develop effective methods and strategies for diagnosis, prevention, and control; (2) conducts investigations on the biology, ecology, and control of vectors of viral and bacterial diseases as a basis for development and/or modification of existing measures for more effective prevention and control of vector-borne viral and bacterial diseases and plague; (3) conducts or participates in clinical, field, and laboratory studies to develop, evaluate, and improve laboratory methods and materials and therapeutic practices used for diagnosis, prevention, and treatment of vector-borne diseases; (4) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (5) provides reference/diagnostic services for vector-borne viral and bacterial and plague diseases to State and local health departments, other Federal agencies, and national and international health organizations; (6) conducts research and collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (7) provides guidance and scientific direction to the San Juan, Puerto Rico, field activities for application of effective programs in surveillance, diagnosis, prevention, and control of dengue fever; (8) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not available in other components; (9) provides intramural and extramural technical expertise and assistance in professional training activities; (10) serves as appropriately designated national and international reference centers for vector-borne viral and bacterial diseases.

Division of Viral and Rickettsial Diseases (HCRU). (1) Conducts surveillance, investigation, and studies of viral diseases and reckettsial diseases to define disease etiology and to develop effective methods for prevention, diagnosis, and control; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods and materials and therapeutic practices used for prevention, diagnosis, and treatment of viral and rickettsial diseases; (3) conducts research on virus transmission to develop effective control strategies and on vaccine effectiveness to assess prevention potential; (4) conducts ecological studies to develop effective disease prevention and control measures of viral, rickettsial, and zoonotic infections; (5) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (6) provides reference/diagnostic services for viral and rickettsial diseases to state and local health departments, other Federal agencies, and national and international health organizations; (7) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not available in other components; (8) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (9) serves as appropriately designated national and international reference centers for viral and rickettsial diseases.

Dated: September 21, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-23349 Filed 10-3-89; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4333-08]

Boundary and Classification Decision for the Merced Wild and Scenic River, Mariposa County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

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SUMMARY: The Bureau of Land Management (BLM) has established a Wild and Scenic River boundary measuring one-quarter mile in width on both sides of the Merced River administered by BLM. This segment of the river (from the Forest Service boundary on the east to 300 feet east of the confluence to Bear Creek) will be classified recreational.

This determination is based on analysis derived from the South Fork Merced and Merced Wild and Scenic River classifications and boundary Environmental Assessment. The selected alternative (Alternative B) has been determined not to be a major Federal Action that would significantly affect the human environment.

DATE: Affected individuals may file an appeal on or before November 3, 1989.

ADDRESSES: Information on this action may be obtained at:

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825.

Bureau of Land Management, Bakersfield District Office, 800 Truxton Avenue, Room 302, Bakersfield, CA 93301.

Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

SUPPLEMENTARY INFORMATION: 1. The South Fork Merced and Merced Wild and Scenic River classifications and boundaries Environmental Assessment was jointly developed by the Forest Service and the Bureau of Land Management. The final EA was completed in August, 1989. Notice of Availability was published in the **Federal Register** August 9, 1989 (54 FR 32677).

2. Any appeal to the decision should be done in accordance with the regulations in 43 CFR, part 4, Subpart E.

D. K. Swickard,

Area Manager.

[FR Doc. 89-23411 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-40-M

(WY-060-09-4120-17)

Availability of Lithologic and Geophysical Logs; Campbell County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice of availability of three lithologic and four geophysical logs for three groundwater monitoring wells drilled without a Bureau of Land Management permit through unleased Federal coal in T. 47 N., R. 72 W., section 2, SE¼SE¼; T. 51 N., R. 72 W., section 29, NW¼NE¼; and section 33, SE¼SE¼, Campbell County, Wyoming.

SUMMARY: Notice is hereby given that three lithologic logs and four geophysical logs including Wyoming State Plane Coordinates are now available to the public for Campbell County, Wyoming.

Reproduction of the logs are available through the Casper District, Branch of Solid Minerals. The groundwater monitoring information is available through the Wyoming State Engineer's Office.

FOR FURTHER INFORMATION CONTACT: Edward Coy, Chief, Branch of Solid Minerals, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, phone (307) 261-7660.

Dated: September 25, 1989.

James Monroe,

District Manager.

[FR Doc. 89-23408 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-22-M

[OR 42239; OR 118-84-6334-12; GPO-002]

Exchange of Public Lands in Josephine and Curry County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands in Josephine and Curry, Oregon.

SUMMARY: This notice is to advise the public that the Glendale and Grants Pass Resource Areas of the Medford District Bureau of Land Management (BLM) and private landowner Larry Brown are proposing a land exchange.

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, USC 1716:

Willamette Meridian

T. 35 S., R. 6 W.,
Section 29, NW¼NW¼ (O&C).
T. 36 S., R. 6 W.,
Section 8, NW¼SE¼, S½SE¼; (PD).
Section 17, N½N½; (O&C).
T. 36 S., R. 7 W.,
Section 11, NW¼NW¼NW¼, N½SW¼NW¼NW¼; (O&C).
T. 37 S., R. 6 W.,
Section 11, N½NW¼; (O&C).
Section 17, SW¼SW¼,SE¼SE¼; (O&C).

The above described area comprises approximately 495(±) acres in Josephine County, Oregon.

The Federal Government will acquire the following described private lands from Larry Brown:

Willamette Meridian

T. 32 S., R. 10 W.,
Section 36, SE¼SW¼, SW¼SE¼;
T. 33 S., R. 10 W.,
Section 1, Lots 1 and 2, S½NE¼, S½NW¼, NE¼SW¼;
Section 2, NE¼NE¼SE¼NE¼, S½NE¼SE¼NE¼, N½SE¼SE¼NE¼;

The above described area comprises approximately 378 (±) acres in Curry County, Oregon.

The purpose of the Land exchange (identified by Serial Number OR 42239) is to facilitate resource management opportunities by the Glendale Resource Area, Medford District. The Private land being offered has very important values for timber, which would be managed as mandated by the O&C Act, and for wildlife. The exchange would block ownership of BLM-administered lands in the area. The selected BLM parcels are isolated tracts, non-contiguous to other BLM lands, and in some cases, lacking legal access. The parcels are mostly timbered, however, because of the above factors and their direct proximity to rural residences and highly populated areas, BLM timber management on the parcels could be uneconomical and difficult. The public interest would be highly served by making this exchange.

Acreage consisting of any or all of the BLM parcels to be exchanged must be approximately equal in value to the acreage offered by Mr. Brown, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. Reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 USC 945).

2. All other valid existing rights, including but not limited to, any right-of-way, easement or lease of record.

Publication of this Notice in the **Federal Register** will segregate the public lands described above, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

Detailed information concerning the exchange is available for review at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, or by calling Jim Badger, at (503) 770-2306.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Date signed: September 26, 1989.

David A. Jones,

District Manager.

[FR Doc. 89-23412 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-09-4214-10; CACA 24047]

Partial Termination of Proposed Withdrawal and Reservation of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the U.S. Department of the Navy application CACA 24047 for the withdrawal and reservation of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, was published in the **Federal Register** on February 2, 1989 (54 FR 5284). The U.S. Department of the Navy has cancelled its application as to the lands described below:

Mount Diablo Meridian

T. 28 S., R. 43 E.,
Sec. 19, S½N½N½, S½N½, and S½.

The area described contains 560 acres in San Bernardino County.

DATE: At 10 a.m. on November 6, 1989, the land will be relieved of its segregative effect in accordance with the regulations in 43 CFR 2310.2-1(c).

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E-2845 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4820.

Dated: September 26, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-23407 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-262]

The Economic Effects of Significant U.S. Import Restraints Phase II: Agricultural Products and Natural Resources

AGENCY: United States International Trade Commission.

ACTION: Scheduling of hearing and request for comments in connection with phase II of the investigation.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Seth Kaplan (202) 252-1231, or Donald Rousslang (202) 252-1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332-262 following receipt of a letter dated September 9, 1988, from the Senate Committee on Finance. The Committee requested that the investigation be conducted in three consecutive annual phases addressing the effects of significant U.S. import restrains on (1) imports of manufactured products, (2) imports of agricultural products and natural resources, and (3) service industries. The Commission has submitted its report on phase I on September 11, 1989. Notice of the institution of the investigation and of the hearing and other matters related to phase I was published in the **Federal Register** of October 19, 1988 (53 FR 40971).

As requested by the Committee, the phase II report (like the reports on the other two phases) will include an assessment of the effects on U.S. consumers, on the output and profits of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. It will assess the direct effect on U.S. industries that are protected by the import restraints and the indirect effects on "downstream" industries that are customers of the protected industries.

This phase will focus on U.S. restraints to imports of agricultural products and natural resources, whether the restraints result from an Act of Congress, an action taken under the fair trade laws of the United States, such as 201 of the Trade Act of 1974, or an international agreement. However, the report will not cover those import restraints resulting from final antidumping or countervailing duty investigations by the ITC and the Department of Commerce, investigations by the ITC under section 337 of the Tariff Act of 1930, or section 406 of the Trade Act of 1974, or investigations by the U.S. Trade Representative under section 301 of the Trade Act of 1974.

The Commission expects to report the results of this phase of the investigation to the Committee on Finance on or about September 11, 1990.

Public Hearing

A public hearing in connection with the second phase of this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, D.C. 20436, beginning at 9:30 a.m. on March 7, 1990. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, no later than noon, February 21, 1990. The deadline for filing prehearing briefs (original and 14 copies) is February 21, 1990. A date for public hearings in connection with the third phase will be announced later.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than March 21, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC

Hearing impaired persons are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 27, 1989.

[FR Doc. 89-23394 Filed 10-3-89; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Issuance of General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of small aluminum flashlights and components thereof which directly or contributorily infringe claims 1, 2, 3, or 4 of U.S. Letters Patent 4,577,236.

ADDRESSES: Copies of the general exclusion order, the Commission Opinion relating thereto, and all other nonconfidential documents on the record of the above-captioned investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1092. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On January 25, 1988, the Commission determined that there was no violation of section 337 (19 U.S.C. § 1337) in this investigation. On February 15, 1989, the United States Court of Appeals for the Federal Circuit issued an opinion and judgment which affirmed in-part and reversed in-part the Commission's determination and remanded this investigation to the Commission for further proceedings not inconsistent with the Court's opinion and judgment. On March 21, 1989, the Court amended its opinion and judgment as a result of a petition for rehearing. On April 11, 1989, the Court issued its mandate, returning this investigation to the jurisdiction of the Commission.

After considering the submissions received and examining the record developed during the investigation, the Commission determined that there was a violation of section 337 and that the appropriate remedy for the violation of section 337 is a general exclusion order prohibiting the importation of infringing small aluminum flashlights and components thereof for the remaining term of the patent, except under license from the patent owner.

The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a general exclusion order and that while the order is under review by the President pursuant to subsection (j) of section 337 (19 U.S.C. 1337(j)), the excluded articles will be entitled to enter the United States under a bond in the amount of 150 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the general exclusion order is contained in 19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418 100th Cong., 1342, 102 Stat. 1212 (August 23, 1988), and in interim rules 210.53-58 of the Commission's Rules of Practice and Procedure, 53 FR 33070 (August 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 26, 1989

[FR Doc. 89-23395 Filed 10-3-89; 8:45 am]

BILLING CODE 7020-02-M

Certain Strip Lights; Issuance of General Exclusion Order

[Investigation No. 337-TA-287]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that the Commission has issued a general exclusion order in the above-captioned investigation. The order prohibits the unlicensed importation from any country of certain strip lights and certain packaging and literature pertaining to strip lights. With regard to findings of fact concerning various non-respondents that were noticed for review, the Commission takes no position regarding the adoption or vacatur of such findings. The Commission determines that those findings do not affect the outcome of this investigation.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC., 20436, telephone (202)-252-1116. Copies of the Commission's order, the nonconfidential version of the opinion issued therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC, 20436, telephone (202)-252-1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 28, 1988 (53 FR 37882), upon a complaint filed by Vista Manufacturing, Inc., of Elkhart, Indiana. Vista's complaint alleged violation of section 337 through the importation or sale of certain strip lights by reason of patent infringement, registered trademark infringement, misappropriation of trade dress, and misappropriation of photographs. The Commission's notice of investigation named as respondents Cherng Lian Enterprises Co., Inc., of Taiwan, and Golden Apple Corporation of Queens Village, New York.

On January 19, 1989, the presiding ALJ denied complainant's motion to amend the complaint to include four additional respondents (Order No. 4). On April 5, 1989, the Commission determined not to review an ID granting complainant's motion to amend the notice of investigation to delete the counts relating to misappropriation of trade dress and misappropriation of photographs, thus leaving only the counts of patent and registered trademark infringement (54 FR 14874, April 13, 1989).

On March 27, 1989, the ALJ issued an ID (Order No. 7) finding respondents Cherng Lian and Golden Apple in default. The ID provided that the respondents had "waived their right to be served with documents and to contest the allegations at issue in the investigation." The Commisson determined not to review the ID, which thus became the Commission's finding (54 FR 22636, May 25, 1989). An evidentary hearing was held on April 3, 1989, at which complainant and the Commission investigative attorney (IA) appeared.

On June 27, 1989, the ALJ issued his final ID finding that a violation of section 337 had been established in the importation and sale of certain strip lights by reason of infringement of Trademark Registration No. 1,433,725 for "Flex Lite," and claims 1-4 and 7 of U.S. Letters Patent 4,376,966, owned by complainant Vista. The Commission determined to review only the question of whether it was proper for the ID to contain findings as to patent and trademark infringement, importation, and/or sale by several non-respondents. The remainder of the ID thereby became the determination of the Commission. Briefs were filed by complainant and the IA regarding the issue under review, and remedy, the public interest, and bonding. No reply briefs or submissions of government agencies or other members of the public were received.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission interim rules 210.56 and 210.58 (53 FR 33071-72, Aug. 29, 1988).

By order of the Commission.

Lisbeth K. Godley,

Acting Secretary.

Issued: September 26, 1989.

[FR Doc. 89-23396 Filed 10-3-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 22)]

CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc.

[Finance Docket No. 29430 (Sub-No. 20) [1]]

Norfolk Southern Corporation—Control—Norfolk and Western Railway Co. and Southern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening and request for comments.

SUMMARY: The Commission is seeking public comment on legal issues involving the interrelationship between the Commission's approval of transactions under 49 U.S.C. 11343, the imposition of labor conditions under 49 U.S.C. 11347, the provisions of 49 U.S.C. 11341(a), and the Railway Labor Act.

DATES: Comments are due by October 24, 1989. Replies to comments are due by November 3, 1989.

ADDRESS: Send comments referring to Finance Docket No. 28905 (Sub-No. 22) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: On July 25, 1989, the United States Court of Appeals for the District of Columbia Circuit issued its opinion on review of the above-entitled proceedings in *Brotherhood of Railway Carmen* v. *Interstate Commerce Commission and United States of America*, No. 88-1724, and *American Train Dispatchers' Association* v. *Interstate Commerce Commission and United States of America*, No. 88-1694. The court reversed parts of the Commission's decisions and remanded other parts to the agency for further proceedings, if necessary.

We believe that further proceedings are necessary in order to permit the Commission to properly reassess the role of the Commission and its labor conditions in railroad consolidations. Accordingly, we are reopening these proceedings so that we may address and explain in detail our views on the issue specifically remanded; *i.e.*, whether the provisions of 49 U.S.C. 11341(a) operate to override the provisions of the Railway Labor Act (RLA), as well as on the general issues raised in these proceedings, particularly the impact of our approval of a transaction under 49 U.S.C. 11343 *et seq.* and imposition of our standard labor conditions upon the parties' rights and remedies under the RLA and with respect to existing collective bargaining agreements.

We have also filed a limited petition seeking rehearing of the court's ruling. In the petition, we advised the court of our intention to reopen these proceedings and to promptly issue a comprehensive decision on remand addressing issues we believe the court directed us to reconsider and those left open for resolution in further proceedings. We requested that the court refrain from ruling on our petition for rehearing until we issue our decision on remand. A copy of the rehearing petition is available from the Secretary of the Commission.

In light of the importance of the legal issues involved and our intention to conduct a comprehensive examination of our authority under 49 U.S.C. 11341, 11343, and 11347, etc., and the labor conditions we have customarily imposed in approving railroad consolidations, we are seeking further comment by the parties to these proceedings as well as any other interested parties. We have described above the nature of the issues that the Commission will be exploring. Interested parties are encouraged to comment on any or all of these legal issues. We also note that there are other recent court decisions concerning labor protective conditions, including *Pittsburgh & Lake Erie RR. Co.* v. *Railway Executives' Ass'n*, ___ S. Ct. ___ (No. 87-1589, June 21, 1989) and *Railway Labor Executives' Ass'n* v. *ICC*, No. 88-1391 (D.C. Cir. August 29, 1989) and request the parties and other interested persons to comment on these cases to the extent that they are relevant here.

As we advised the court in our petition for rehearing, the decision on remand will be issued no later than December 15, 1989.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23290 Filed 10-3-89; 8:45 am]

BILLING CODE 7035-01-M

[1] This corrects the notice, cited at 54 FR 38754, published on September 20, 1989, which inadvertently contained the wrong docket number for Norfolk Southern Corporation.

Release of Waybill Data for Use By Intermodal Policy Division (IPD) Association of American Railroads

The Commission has received a request from the Intermodal Policy Division (IPD) of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1988 ICC Waybill Sample in economic and policy research work. The IPD states that the analysis for the Waybill data is requested as crucial in determining the intermodal competition and public policy issues of national importance.

The Data will be used exclusively as input data for the AAR Intermodal Competition Model. This model is the chief means by which the AAR and the rail industry predict the impact of changes in rail or truck costs on rail industry traffic and revenue. Analysis using the Intermodal Competition Model is very general in nature and national in

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scope. Results are reported for the industry as a whole and are aggregated to the two-digit Standard Transportation and Commodity Code (STCC) level.

The full Waybill Sample is the only data base available for these purposes. The Public Use File does not contain several essential model inputs including: six digit Standard Point Location Code, the seven digit STCC, railroad car type, and route.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any State (49 CFR part 12244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of publication in the **Federal Register** of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23430 Filed 10-3-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Anti-Bribery Provisions of the Foreign Corrupt Practices Act

AGENCY: United States Department of Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to 15 U.S.C. 78dd-1(d) and 78dd-2(e), [Public Law 100-418, sec. 5003(a) and Public Law 100-418, sec. 5003(c)], all interested persons are invited to submit their views concerning the extent to which compliance with 15 U.S.C. 78dd-1 and 78dd-2 would be enhanced and the business community assisted by further clarification of the provisions of the anti-bribery provisions through the issuance of guidelines.

DATES: All written submissions should be made by November 3, 1989.

ADDRESSES: Interested persons are invited to submit written views concerning the foregoing. Persons making written submission should file seven copies thereof with the Criminal Division, Fraud Section, P.O. Box 28188, Central Station, Washington, DC 20038. Copies of the submissions, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in Room 7120, Bond Building, 1400 New York Avenue, N.W., Washington, DC between the hours of 10 am and 4 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter B. Clark, Senior Litigation Counsel, Fraud Section, Criminal Division, U.S. Department of Justice at the Fraud Section address given above; telephone 202/786-4363, [FTS] 786-4363.

Dated: September 26, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-23414 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-01-M

Joint Newspaper Operating Agreement; Las Vegas Sun and Las Vegas Review Journal; Extension of Comments and Requests for Hearing Dates

Notice is hereby given that the Attorney General has extended the date for submitting written comments and requests for a hearing concerning the application by two Las Vegas newspapers, the Las Vegas Sun and the Las Vegas Review-Journal, for approval of a joint operating arrangement (JOA) under the Newspaper Preservation Act, 15 U.S.C. 1801, *et seq.*

The original notice concerning the application by the two newspapers appeared in 54 FR 33984 on August 17, 1989. The deadline for public comments and/or requests for a hearing, as well as for submission of a report by the Antitrust Division of the Department of Justice responding to the JOA, is normally 30 days from that date. The Attorney General received a request for an extension of time to submit comments. The Antitrust Division also filed a motion for an extension of time to submit its report. The Attorney General granted that motion and extended the public comment period in an order signed on September 25, 1989.

Interested parties may now file their comments or requests for a hearing by mailing or delivering five (5) copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, by November 20, 1989.

Replies to any comments filed on or before that date may be filed on or before December 20, 1989.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202-633-3452.

Dated: September 26, 1989.

Lee E. Probst,

Special Assistant to the Assistant Attorney General for Administration.

[FR Doc. 89-23413 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Caseyville Township, IL, and the State of Illinois

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 25, 1989, a proposed consent decree in *United States* v. *Caseyville Township, Illinois and The State of Illinois*, Civil Action No. 89-5270, was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at Caseyville's wastewater treatment plants. The complaint alleges that Caseyville discharged pollutants into navigable waters in excess of the limitations in its National Pollutant Discharge Elimination System ("NPDES") permits, and failed to timely upgrade its facilities in order to meet the discharge limitations included in its NPDES permits. The State of Illinois is named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The complaint seeks injunctive relief to require Caseyville to comply with its NPDES permit and to pay civil penalties for past violations.

The consent decree requires Caseyville to undertake plant construction upgrades at its facilities in order to come into compliance with its NPDES permits and the Clean Water Act. Caseyville is also required to pay a civil penalty of $30,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Caseyville Township, Illinois*, D.J. Ref. 90-5-1-1-3335.

The proposed consent decree may be examined at the Region V Office of the United States Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23416 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, D.C. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Access to Employee Exposure and Medical Records
1218-0065
On Occasion
Businesses or other for profit and Small business or organizations 1,170,979 respondents; 17,499,944 responses; .072 hours per response; 0 forms

Information Collection Activity

a. Records Preservation—811,982
b. Records Access—20,303
c. Denial of Records Access—8,120
d. Employee Notification—428,075

This regulation requires employers to preserve and provide access to records associated with employee exposure to toxic chemicals and harmful physical agents. Employee records and access to them are important tools for the detection, treatment and prevention of occupational illness and disease.

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics
1220-0017, BLS 3040, LAUS-2, LAUS-3
Monthly and Annually
State Governments
67,680 total responses; 137,249 total hours; 2.03 hours per response; 3 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Signed at Washington, DC, this 29th day of September 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-23424 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-26-M
BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 16, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

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Assistance, at the address shown below, not later than October 16, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 25th day of September 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petion	Petition number	Articles produced
AT&T Information Systems (CW)	Arlington, VA	9/25/89	9/8/89	23,408	Telecommunication Equipment
American Recreation Production, Inc. (Workers)	New Haven, MO	9/25/89	9/14/89	23,409	Outdoor Products
BHP Petroleum (Americans), Inc., Corporate Headquarters (Company).	Houston, TX	9/25/89	8/18/89	23,410	Oil & Gas
Baxter Healthcare Corp. (Workers)	Eaton, OH	9/25/89	9/10/89	23,411	Gloves
(The) Bovaird Supply Co. (Workers)	Tulsa, OK	9/25/89	9/7/89	23,412	Oil & Gas
Briscoe Drilling Co. (Workers)	Kingfisher, CO	9/25/89	8/31/89	23,413	Oil & Gas
CooperVision Cilco (Company)	Bellevue, WA	9/25/89	9/11/89	23,414	Intraocular Lenses
Cotter Corp., Schwartwalder Mine (OCAWIU)	Golden, CO	9/25/89	9/15/89	23,415	Uranium
Cuddle Wit, Inc. (Company)	Orange, NJ	9/25/89	9/11/89	23,416	Stuffed Toys
Grand Drilling, Inc. (Workers)	Breckenridge, TX	9/25/89	9/14/89	23,417	Oil & Gas
Jonesboro Wood Products (Workers)	Jonesboro, LA	9/25/89	8/20/89	23,418	Lumber
Mid-Continent Supply Co. (Workers)	Ft. Worth, TX	9/25/89	9/14/89	23,419	Oilfield Equip.
Mid-Continent Supply Co. (Workers)	Natchez, MS	9/25/89	9/14/89	23,420	Oilfield Equip.
Mobil Exploration & Producing U.S., Inc. Dallas Affiliate (Company).	Dallas, TX	9/25/89	9/12/89	23,421	Oil & Gas
Mobil Exploration & Producing U.S., Inc. Denver Div. (Company).	Denver, CO	9/25/89	9/12/89	23,422	Oil & Gas
Mobil Exploration & Producing U.S., Inc. New Orleans/Offshore Div. (Company).	New Orleans, LA	9/25/89	9/12/89	23,423	Oil & Gas
Mobil Exploration & Producing Services Headquarters (Company).	Dallas, TX	9/25/89	9/12/89	23,424	Oil & Gas
Pulsonix, Inc. (Company)	Englewood, CO	9/25/89	9/5/89	23,425	Seismic Data Processing
Seagate Technology, Service Center	Delray Beach, FL	9/25/89	9/13/89	23,426	Repair & Service of Disc Drives
Sensus Technologies, Inc. (USWA)	Uniontown, PA	9/25/89	9/9/89	23,427	Watermeters
Specialty Services (Workers)	Farmington, NM	9/25/89	9/13/89	23,428	Repair Gas Compressors
Target Kent I (ACTWU)	Curwensville, PA	9/25/89	9/6/89	23,429	Ladies'/Mens' Sportswear
Target Kent II (ACTWU)	Curwensville, PA	9/25/89	9/6/89	23,430	Ladies'/Mens' Sportswear
Target, Hyde (ACTWU)	Hyde, PA	9/25/89	9/6/89	23,431	Ladies'/Mens' Sportswear
Target, Fletcherville (ACTWU)	Clearfield, PA	9/25/89	9/6/89	23,432	Ladies'/Mens' Sportswear
Taurus Petroleum, Inc. (Company)	Denver, CO	9/25/89	9/1/89	23,433	Oil & Gas
Valdez Creek Mining Co. (Company)	Cantwell, AK	9/25/89	9/8/89	23,434	Gold Nuggets
Van Dorn Plastic Machinery Co. (Workers)	W. Boylston, MA	9/25/89	9/12/89	23,435	Plastic Injection Molding Machines

[FR Doc. 89-23423 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-143-C]

Aero Energy Inc.; Petition for Modification of Application of Mandatory Safety Standard

Aero Energy Inc., Box 62, Toler, Kentucky 41569 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15-07062) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least one entry of each intake and return aircourse be examined in its entirety on a weekly basis.

2. Due to several roof falls certain intake and return entries in the mine cannot be safely traveled.

3. As an alternative method, petitioner proposes to establish evaluation points at specific locations where the air passing over the falls would be evaluated.

4. In support of this request, petitioner states that—

(a) These evaluations points would be examined weekly for quality and quantity of ventilation current; and

(b) The results would be recorded in a weekly Examinations for Hazarous Conditions Book.

5. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 3, 1989. Copies of the petition are available for inspection at that address.

Dated: September 27, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23422 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Cancellation of scheduled meeting.

SUMMARY: On September 15, 1989, the Occupational Safety and Health Administration (OSHA) published in the Federal Register notice of a meeting of the Shipyard Employment Standards Advisory Committee scheduled to be held on October 11-12, 1989 at the Holiday Inn, Arlington, Virginia (54 FR 38298). That meeting is hereby cancelled; additional time is needed to consider and review written materials on the various agenda items. OSHA plans to reschedule this meeting and will advise interested persons of the new date for the Advisory Committee meeting by notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of October 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89-23586 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Appeals"

AGENCY: U.S. Merit Systems Protection Board.

NOTICE: Notice of call for riders for the Board's publication, "Questions & Answers About Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Appeals," will be available on riders to the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 9-00255.

DATE: Agency requisitions (Standard Form 1) must be received by the Government Printing Office on or before October 9, 1989.

ADDRESS: Interested departments and agencies should send requisitions from their Washington, DC, headquarters offices authorized to procure printing to the Government Printing Office, Requisitions Section, Room 836, Washington, DC 20401.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Office of Managment Analysis, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This publication is a completely revised and updated version of the Board's 1980 publication, "How to File an Appeal." It contains general information on the rights of Federal employees to appeal certain personnel actions to the Board, information on how to file an appeal with the Board, and other procedural information regarding the appeals process. The publication has been rewritten in a question and answer format to enhance understanding.

Agencies may estimate cost by using the current Government Printing Office price list of printing services. The report will be 5⅞ x 9⅛ inches, saddle stitched, and 24 pages.

In making this publication available, the Board intends to provide general information about appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

The publication has been updated to include information about the provisions of the Whistleblower Protection Act of 1989, Public Law No. 101-12, effective July 9, 1989, that apply to Board appeals generally. It does not include information on the special provisions of the Act applying to "whistleblower" appeals. That information will be provided in a separate publication, titled "Questions & Answers About Whistleblower Appeals," to be issued at a later date. When that publication is transmitted to the Government Printing Office, the Board will publish a notice of call for riders in the **Federal Register.**

Dated: September 29, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc 89-23425 Filed 10-3-89; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first hearing of the National Commission on Children to be held in Chicago, Illinois.

Time: 7:00 p.m.-10:00 p.m. Thursday, October 12, 1989

Place: Madison Consolidated High School, 743 Clifty Drive, Madison, Indiana 47250

Status: 7:00 p.m.-10:00 p.m. Open to the public

Agenda: Children and Families in Rural America

Contact: Jeannie Atalay (202) 254-3800

Date: September 28, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89-23364 Filed 10-3-89; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786-0322.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by

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grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meeting, I have determined that this meeting will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. Date: October 31, 1989.

Time: 8:30 a.m. to 5:00 p.m.

Room: 316–2.

Program: This meeting will review applications for Regrant Conferences, submitted to the Division of Research Programs, for projects beginning after December, 1989.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89–23352 Filed 10–3–89; 8:45 am]

BILLING CODE 7536–01–M

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for October 26–27, 1989, and published in the **Federal Register** on September 19, 1989, at page 38571, has been cancelled. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Programs, Division of General Programs for the September 1989 deadline. The meeting was to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC, Room 430 from 9:00 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89–23353 Filed 10–3–89; 8:45 am]

BILLING CODE 7536–01–M

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 26, 1989, from 9:15 a.m.—5:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 27, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–23343 Filed 10–3–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 11, 1989 through September 22, 1989. The last biweekly notice was published on September 20, 1989 (54 FR 38759).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facilities involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during thenotice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: August 22, 1989

Description of amendment request: The amendment would change the allowable minimum setpoint value on the Pressurizer Code Safety Valves as specified in Technical Specification (TS) 3.4.2 and 3.4.3 from 1% to 3%. It would also change the minimum setpoint value for the Main Steam Line Code Safety Valves from 1% to 3% as specified in Technical Specification Table 3.7-5. Under these TS revisions, if the setpoint for either type of safety valve was found outside a 271% tolerance band, the setpoint would be adjusted to within 271% of the lift setting specified in the TS.

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The change would allow more flexibility during plant operation and would result in reduced worker radiological exposure associated with valve testing and setpoint adjustment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to a operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would: (1) Involve a significant increase in the probability or consequences of a accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in the margin of safety. Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that it involves no significant hazards considerations, in that operation of the facility in accordance with the proposed amendment would not:

Criterion 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not affect previously analyzed events or any parameters associated with plant operations. Although a decrease in the Main Steam Line Code Safety Valves lift settings of 3% may affect the automatic transfer to post-trip secondary pressure control to the Turbine Dump and Bypass System (TDBS), previously analyzed events have conservatively not taken credit for operation of the TDBS. The primary and secondary coolant overpressure limits are not changed by this proposed amendment since the upper limits of pressure will be maintained at +1%. Furthermore, during testing, the valves will be adjusted to be within the currently required 2?1% tolerance. Therefore, the proposed changes have no impact on the safety analyses presented in the Safety Analysis Report and the probability or consequences of previously evaluated accidents would not be increased.

Criterion 2 - Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change does not introduce a new mode of plant operation. The safety valves will continue to function per their design and a 3% decrease in a lift setting will remain significantly above normal system operating pressures. Since no hardware modifications or changes in operating procedures will be made, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Involve a Significant Reduction in a Margin of Safety

The safety margin is controlled by the upper tolerance limit, which is not changed. The lift settings will continue to be set within 1% of setpoint and with an "as-found" tolerance of +1%, -3%, the safety function of the setpoint is not altered. The system capabilities to mitigate and/or prevent accidents will be the same as they were prior to these changes. Thus, the proposed changes would not involve a reduction in a margin of safety.

The staff has reviewed AP&L's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 30, 1989

Description of amendment request: The methodology for predicting reactor vessel material embrittlement has been improved and revised. The new methodology was published in Revision 2 of Regulatory Guide 1.99 (RG 1.99), "Radiation Embrittlement of Reactor Vessel Materials." Generic Letter 88-11 requested an evaluation and schedule for the implementation of the RG 1.99, Revision 2 changes to the Technical Specifications (TS). This amendment request incorporates the changes of the new methodology into the Shearon Harris Nuclear Power Plant, Unit 1, (Harris) TS. The revisions affect the pressure-temperature limitations on the Reactor Coolant System (RCS), the heatup and cooldown rates for the RCS, and the associated Low Temperature Overpressure Protection System (LTOP) set points. In addition, the new methodology requires related changes in (1) recalculated limiting material reference temperature (RT sub-NDT), (2) modified LTOP enable temperature, (3) the selection of instrumentation for monitoring RCS average temperature and (4) revisions to the TS Bases. Finally, some administrative changes are requested such as: (1) rewording to clarify certain specifications, (2) delete redundant surveillances, and (3) removal of the reference to criticality limits in TS 3.4.9.1, 3.4.9.2 and Figure 3.4-3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated as described below.

(a) Technical Specifications 3.4.9.1 and 3.4.9.2 "REACTOR COOLANT SYSTEM PRESSURE/TEMPERATURE LIMITS" provide RCS pressure-temperature limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP setpoints in Specification 3.4.9.4 are designed to ensure that the RCS pressure-temperature limits are not exceeded during any condition of normal operation, including anticipated operational occurrences, and system hydrostatic tests.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," and Appendix H, "Reactor Vessel Material Surveillance Program Requirements," require the calculation of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors. The 'change' is used in conjunction with the initial material reference temperature (RT_{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Revision 2 of the regulatory guide upgrades and expands the procedures for calculating vessel radiation embrittlement. Generally, Revision 2 methods result in a lowering of the Appendix G pressure-temperature curves. By increasing the margin between the region where the vessel may be subject to brittle fracture and the region of acceptable operations, these more restrictive curves ensure the continued safe operation of SHNPP by reducing the probability of operation in a manner which may exceed the brittle fracture limits of the reactor vessel.

The revised pressure-temperature curves required modification of the LTOP setpoints and the heatup and cooldown rates. Revised LTOP setpoints and heatup/cooldown rates were chosen to ensure that the existing margin was maintained i.e., that given a limiting mass or heat input to the RCS during normal operations, anticipated occurrences and system hydrostatic testing, the Appendix G pressure-temperature curves are not exceeded.

Therefore, the proposed amendments to the pressure-temperature limitations, the heatup and cooldown rates, the LTOP setpoints and the recalculated initial limiting material RT_{NDT} do not involve a significant increase in the probability or consequences of an accident previously evaluated because collectively they implement more accurate and restrictive protection to prevent brittle fracture of the reactor pressure vessel.

(b) The revised LTOP enable temperature does not significantly increase the probability or consequences of an accident previously evaluated. Low Temperature Overpressure Protection of the RCS is required by Technical Specification 3.4.9.4. LTOP is necessary at low temperature since operator response to an RCS pressurization event may not successfully avoid exceeding the RCS pressure-temperature limits. The Regulatory Analysis for Revision 2 of Regulatory Guide 1.99 specified that LTOP is necessary at temperatures below RT_{NDT} + 90°F. This corresponds to 296°F for SHNPP. The SHNPP LTOP system is currently armed at 335°F. A 10°F lowering of the enable temperature would have no impact on the LTOP system's capability to perform its automatic protection function at low temperatures since LTOP is still armed above 296°F. Therefore, the proposed LTOP enable temperature change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(c) The change to Technical Specification Table 4.4-6 concerning the choice of the instrumentation for monitoring RCS temperature provides the operator with temperature information that more accurately characterizes the vessel material temperature. It would be used to determine the appropriate heatup or cooldown rate for the RCS. Use of more accurate temperature information would have no adverse affect on the probability or consequences of previously evaluated accidents.

(d) The remaining changes, i.e., removal of criticality limits, specification clarifications, and deleted redundant surveillance are administrative in nature and therefore would have no impact on the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not introduce any new equipment, operating procedures or constraints. This amendment either changes existing limits or incorporates adminstrative changes. Therefore no new accident or malfunction is introduced by this amendment.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety defined in the Technical Specification Bases is not reduced by the change, since restrictions remain in place to ensure the operating limits of the reactor vessel are not challenged. The effect of the amendment is to implement more accurate and restrictive protection from brittle fracture of the reactor pressure vessel and as such to enhance the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendment: June 1, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.6.1.8 action statement regarding the operations of the drywell and suppression chamber purge system during operational conditions 1, 2, and 3. It would allow continued operation with a drywell and/or suppression chamber purge supply and/or exhaust butterfly isolation valve open for other than inerting, de-inerting or pressure control. This would allow performance of periodic cycling of the pneumatically operated VQ valves per the manufacturer's recommendation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in this request for a license amendment. The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendment, will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because this change does not affect the original system design of venting or purging the primary containment. Operation with one valve closed assures primary containment integrity;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this change does not affect the original system design or venting or purging the primary containment, which is designed to have both valves in the containment penetration open; and

(3) Involve a significant reduction in the margin of safety because primary containment is still maintained with one of the two valves open in each penetration and the open valve is subject to closure by a primary containment isolation signal.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 21, 1989

Description of amendments request: The proposed amendment to the Technical Specifications (TS) would modify TS 3/4 4.6 regarding pressure-temperature limits of the reactor coolant system in order to comply with Generic Letter 88-11 and Regulatory Guide 1.99, Revision 2. Specifically, the submittal would replace the current pressure and temperature curves with new curves, which would be reflected in the limiting conditions for operation. The associated

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Bases would be modified as well. Additionally, the amendment would allow that during shutdown conditions for hydrostatic or leak testing or heatup by non-nuclear means, the average coolant temperature limit for cold shutdown and hot shutdown may be measured to 212°F.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendment, will not:

(1) Involve significant increase in the probability or consequences of an accident previously evaluated because the proposed change is administrative and does not change the physical facility. The proposed change is the result of a re-evalaution that will put more stringent limits on the pressure - temperature relationship at the station for operation of both units. The revised temperature limit of 200°F still provides for subcooling of the reactor vessel coolant below the boiling point;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the propose change will not introduce any new concerns for safety at the station. Reactor coolant system failure are previously addressed in the UFSAR, as well as pressure and temperature effects on the reactor coolant system. The change to the 200°F temperature limit does not imply any new or different kind of accident but recognizes the actual boiling point of the reactor coolant; and

(3) Involve a significant reduction in the margin of safety because the margin of safety, if anything, will be increased since the new pressure-temperature curve limits will help ensure the continued integrity of the reactor vessel over the life of the plant.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Paul C. Shemanski, Acting Director

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 26, 1989

Description of amendments request: The amendment would revise the TS Table 3.3.2-1, Isolation Actuation Instrumentation, Item A.1.d (main steam line tunnel temperature - high) and Item A.1.3 (main steam line tunnel delta temperature - high). The revised table would allow both channels of each trip system to be placed in an inoperable status for up to 12 hours for required reactor building ventilation maintenance, filter changes, damper cycling and surveillance testing without placing the trip system in the tripped condition. Additionally, the Bases for the TS would be modified to reflect this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee states that operation of LaSalle County Station, Units 1 and 2, in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences on an accident previously evaluated because the Updated Final Safety Analysis Report (UFSAR) provides the safety analysis for inadvertent main steam isolation valve (MSIV) closure. Main steam tunnel (MST) temperature trips are a potential cause of spurious MSIV closures; therefore, by removing the temperature trips, the risk of an inadvertent MSIV closure will be reduced. Additionally, the UFSAR safety analysis for steam system break outside of the containment assumes that a main steam line instantaneously and circumferentially breaks at a location downstream of the outermost isolation valve. Therefore, the analysis does not take into account the ability to detect small steam leaks in the MST;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the safety evaluation in the UFSAR does not include an analysis of small steam leaks. The only analysis is for a catastropic failure of a main steam line which represents the envelope evaluation of steam line failures outside of the containment; and

(3) Involve a significant reduction in the margin of safety because analysis has shown that the decrease in the margin of safety due to the removal of the MST temperature trips is insignificant. The small increase in risk to plant safety due to small steam line breaks which quickly propagate to large breaks is more than offset by the reduction in risk to plant safety posed by the challenges to plant systems caused by the spurious MSIV closures.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 18, 1989 and supplemented September 13, 1989.

Description of amendments request: The proposed amendment would revise Technical Specifications (TS) 3/4 2.1, 3/4 2.3, and 3/4 2.4 regarding "Power Distribution Limits," and Table 3.3.6-2, "Control Rod Withdrawal Block Instrumentation Setpoints," to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. The Core Operating Limits Report has been included in the Definitions Section of the Technical Specifications to note that it is the unit-specific document that provides these limits for the current operating reload cycle. In addition, the associated Bases would be modified to reflect these changes. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the TS 6.6.A.6. This specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. This report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988 from the NRC, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter. Additionally, the proposed amendment would administratively renumber and reorganize the Definitions Section and the Table of Contents. Finally, the proposed amendment would make editorial changes to TS 5.3.1, "Fuel Assemblies," and TS 5.3.2, "Control Rod Assemblies."

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The proposed revision to the TS is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance to an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendments, will not:

(1) Involve a significant increase in the probability of consequences of any accident previously evaluated because no plant protective functions are changed by this amendment. The amendment is essentially administrative in nature by removing cycle-specific and fuel bundle type specific power distribution limits from the TS and placing them in a separate controlled document, the Core Operating Limits Report (COLR). The MCPR and MAPLHGR Bases section changes are also administrative. NRC approved methods will still be used to analyze reloads of NRC-approved fuel types to determine the results reported in the COLR in accordance with TS. The surveillance requirements for these power distribution limits remain unchanged. Additionally, previously analysed accidents are also not affected by the proposed changes to the fuel assemblies and control rod assemblies sections of the design features, since the changes do no allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core. These changes are being made to eliminate the design characteristics from the Technical Specifications since this information is fuel assembly and control rod assembly specific. Use of new types of fuel assemblies and control and rod assemblies is evaluated in accordance with 10 CFR 50.92 and 10 CFR 50.59;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because it will not result in changes in the operating mode or configuration of the reactor core or any plant components; thus the change does not create any new accident type. The current spectrum of reactor transients and accident analyzed remains unchanged. The proposed change to the fuel assemblies and control rod assemblies sections of the design features does not allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core; thus the change does not create any new or different accident mode. The current spectrum of reactor transient and accident analyses remain unchanged. As new designs are developed, appropriate reviews will be conducted as required by 10 CFR 50.92 and 10 CFR 50.59 to ensure no new or different kind of accident scenario is created; and

(3) Involve a significant reduction in the margin of safety because the methods for determining fuel/core limits are not affected by this change. No revisions in the parameters required to verify operation with existing safety bases are involved (i.e., LHGR, MCPR and MAPLHGR are still the limits). No safety limits are changed. The change only removes cycle-speific and fuel bundle type specific power distribution limits from the TS and incorporates these limits into COLR. The plant will continue to be operated under these same power distribution limits, which will be calculated using NRC-approved methods. The MCPR and MAPLHGR Bases section changes are administrative and therefore no impact on margin of safety. The proposed change to the fuel assemblies and control rod assemblies section of the design features does not allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core. Any new type of fuel assemblies and control rod assemblies will be evaluated before use in the reactor core. This change only removes specific design characteristics of the fuel assemblies and control rod assemblies from the TS and does not impact any current Limiting Condition for Operation or Surveillance Requirements.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 25, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete all requirements on the steam/feedwater mismatch trip signal. This signal was not credited in any FSAR Chapter 15 accident analysis for its trip function. In those analyses, the slower-responding low level trip was conservatively

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credited with causing reactor trip when the accidents occur.

Elimination of this function would yield the benefit of reduced challenges to plant safety systems. Plant safety could be enhanced when challenges to safety systems are reduced. In addition, surveillance/maintenance work needed for the Reactor Protection System would be lowered, resulting in reduced possibility of system interaction. The requested amendment is similar to one granted to Prairie Island Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

As stated above, the subject trip function was not credited in any safety analysis; its elimination would not involve any change to any previous analysis. Furthermore, its functioning or failure was not considered a precursor to any accident. Hence the answer to the first criterion is negative.

No new equipment or system would be provided as a result of the amendment. Hence the answer to the second criterion is also negative,

No previous analytical assumptions would be changed and no acceptance criterion would be relaxed. Hence the answer to the third criterion is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 29, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification to change the qualification requirements for members of the Independent Safety Evaluation Group (ISEG). The current requirement specifies that a member has a bachelor's degree in engineering or related science, and a minimum of 2 years of relevant experience. The revised requirement would permit two other options for some members of the ISEG: 5 years of nuclear experience and holding or has held a Senior Reactor Operator License, and 10 years professional level experience (5 years in the nuclear field).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The proposed change involves only the membership qualification of the ISEG. No system, component or operational procedure changes are involved with this amendment; hence the answers to criteria (1) and (2) are negative. No safety analysis assumptions or acceptance criteria are to be changed; hence the answer to criterion (3) is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 14, 1989

Description of amendment request: The proposed amendment would modify the Facility Operating License, NPF-49, by deleting the following license conditions: (1) 2.C(3), "Containment Average Temperature," (2) 2.C(4), "N-1 Loop Operation," (3) 2.C(6), "Instrumentation for Monitoring Post-Accident Conditions, R.G. 1.97, Revision 2 Requirements," (4) 2.C(8), "Moisture in Air Start System," (5) 2.C(8), "Operating Staff Exprience Requirements," (6) 2.C(11), "Revised Small Break LOCA Methods to Show Compliance With 10 CFR 50.46, TMI Item II.K.3.31," (7) 2.C(12), "Safety Parameter Display System (SPDS)," and (8) 2.C(13), "Detailed Control Room Design Review."

The licensee has proposed that the above license conditions be deleted in that their subject provisions have been satisfied.

Basis for proposed no significant hazards consideration determination: On January 31, 1986, the NRC staff issued Facility Operating License No. NPF-49 to Northeast Nuclear Energy Company, et. al. (the licensee) for operation of Millstone Unit No. 3. As part of NPF-49, the NRC specified that certain actions, "License Conditions," were to be undertaken by the licensee. The license condition numbers correspond to sections within NPF-49. The satisfaction of these license condition is described below.

1. License Condition 2.C(3)--Containment Average Temperature

License Condition 2.C(3) in the Millstone Unit No. 3 Operating License requires that "Prior to start-up following the first refueling outage, the qualified life of electrical equipment within the scope of 10 CFR 50.49 located inside containment shall be recalculated based on the actual temperature monitored inside containment during the first cycle of operation." In a letter dated October 3, 1988, the NRC concluded that License Condition 2.C(3) had been met.

2. 2.C(4)--N-1 Loop Operation

License Condition 2.C(4) in the Millstone Unit No. 3 operating license prohibits three-loop operations until outstanding issues are resolved to the satisfaction of the NRC Staff. The NRC reviewed information presented by the licensee and concluded in a letter dated November 16, 1987 that the Staff's concerns were satisfied and the license condition was met.

3. 2.C(6)--Instrumentation for Monitoring Post-Accident Conditions R.G. 1.97, Revision 2 Requirements

License Condition 2.C(6) requires that "NNECO shall install and have operational instrumentation to monitor containment sump water temperature at the first scheduled outage of sufficient duration after procurement is complete, but no later than start-up after the first refueling outage." In a letter dated October 21, 1987, the NRC informed NNECO that the Staff is currently generically reviewing the need for Category 2 instrumentation to monitor the containment sump water temperature, and the use of Category 3 instrumentation was acceptable for operation while their review is ongoing. In addition, the Staff concluded that License Condition 2.C(6) was satisfied.

4. 2.C(8)--Mositure in Air Start System

License Condition 2.C(8) requires that "NNECO shall install air dryers in the emergency diesel air start system at the first scheduled outage of sufficient duration after procurement is completed, but no later than start-up after the first refueling outage." In response to this license condition, air drying skids were installed in each emergency diesel generator starting air system and made operational during the first refueling outage. In a letter dated January 21, 1988, NNECO confirmed the completion of actions to satisfy License Conditon 2.C(8).

5. 2.C(9)--Operating Staff Experience Requirements

License Condition 2.C(9) specifies that each operating shift shall have a licensed senior operator or an advisor who had certain experience in the operation of facilities similar to Millstone Unit No. 3. In a letter dated July 9, 1986, the NRC confirmed that NNECO met license condition 2.C(9).

6. 2.C(11)--Revised Small Break LOCA Methods to Show Compliance With 10 CFR 50.46, TMI Item II.K.3.31

License Conditon 2.C(11) required plant-specific analysis using NOTRUMP or a generic submittal referencing NOTRUMP. In a letter dated January 13, 1987, the NRC indicated that the Staff has reviewed WCAP 22245 and the information submitted in the licensee's letter dated June 6, 1986, and concluded that License Condition 2.C(11) had been met.

7. 2.C(12)--SPDS

License Condition 2.C(12) required that "Prior to restart following the first refueling outage, NNECO shall add to the Safety Parameter Display System (SPDS) and have operational the following SPDS parameters:

(i) Residual Heat Removal (RHR) flow"

(ii) Containment Isolation

(iii) Containment Hydrogen Concentration

(iv) Primary Coolant System Hot Leg Temperature

In a letter dated March 7, 1988, the NRC staff concluded that license condition 2.C(12) had been satisfied.

8. 2.C(13)--Detailed Control Room Design Review

License Condition 2.C(13) required that "NNECO shall correct all human engineering discrepancies (HEDs) not resolved prior to exceeding 5 percent power, and according to the schedule specified in a letter from J. F. Opeka to V. S. Noonan dated January 29, 1986." In a letter dated January 13, 1987, the NRC concluded that License Condition 2.C(13) of the Millstone Unit No. 3 operating license had been satisfied.

As can be seen from the above, each license condition has been satisfied by the licensee.

Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existence of no significant hazards considerations with regard to issuance of license amendments. The licensee has addressed the standards of 10 CFR 50.92, with regard to the proposed changes to the license associated with the August 14, 1989 application, as follows:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Individual license conditions discussed above were one-time commitments that have been met. Their existence is no longer warranted; therefore, removal of license conditions is appropriate and safe. As a result of theproposed amendment, there are no physical changes to the facility and all operating procedures, limiting conditions for operation (LCO), limiting safety system settings, and safety limits specified in the Technical Specifications will remain unchanged.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety. Plant safety margins are established through LCO, limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits; therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed, and concurs in, the licensee's statement regarding "no significant hazards considerations" associated with the August 14, 1989 application for license amendment.

Accordingly, the staff has made a proposed determination that the application for amendment, dated August 14, 1989, involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 22, 1989

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.3.3.7, "Fire Detection Instrumentation" as follows: (1) An incorrect reference to containment air temperature monitoring requirements would be corrected, (2) A definition of "not accessible during plant operation" would be incorporated in the TS as a footnote and (3) Changes would made to the list of fire detectors contained in TS Table 3.3-11, "Fire Detection Instruments."

Basis for proposed no significant hazards consideration determination: At the present time, TS 3.3.3.7, Action b, references TS 4.6.1.6 regarding remedial action to be taken when required fire detectors inside containment become inoperable. The correct reference in TS 3.3.3.7 should be TS 4.6.1.5 rather than TS 4.6.1.6. The purpose of TS 4.6.1.5 is to allow containment temperature to be monitored in the event of a malfunction of the fire detection system. Section 4.6.1.6 deals with structural integrity and is incorrectly referenced under the existing TS 3.3.3.7.

On March 6, 1986, the NRC staff published, in the **Federal Register** (51 FR 7744) examples of Amendments that are not likely to involve significant hazards considerations. Example (i) involves, "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Since the proposed change to TS 3.3.3.7 would correct an

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error, the NRC staff proposes to determine that the change involves no significant hazards considerations.

The licensee has also proposed a change to TS 4.3.3.7.1. At the present time, TS 4.3.3.7.1 allows the licensee to delay the operational test for fire detectors, which are not accessible during plant operation, until the next cold shutdown exceeding 24 hours. The licensee has proposed that TS 4.3.3.7.1 be clarified by the addition of a footnote which identifies inaccessible fire detectors to include, "...detectors in the Reactor Containment, HIGH Radiation Areas, and areas contaminated in excess of 100,000 dpm per 100 cm^2."

Finally, the licensee has proposed a change to TS Table 3.3-11. The proposed changes would correct inconsistencies between the TS and the actual location and numbers of fire detectors at Millstone Unit 3. Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existence of no significant hazards considerations with regard to issuance of license amendments. In this regard, the proposed addition of the footnote to TS 4.3.3.7.1 and the changes to TS Table 3.3-11 would not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes to the TS do not in any way change the existing fire hazards analysis and thus no changes to probability or consequences of fires are involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The changes do not alter the way the plant is operated or any changes in plant equipment. The changes do not introduce new failure modes. For these reasons, the changes do not have the potential to create a new type of accident from that previously analyzed.

3. Involve a significant reduction in a margin of safety. Since no new safety analyses, plant equipment, or operational modes are associated with the proposed changes to the TS, no safety margins are reduced.

Based upon the above, the NRC staff proposes to determine that the proposed addition of the footnote to TS 4.3.3.7.1 and the proposed changes to TS Table 3.3-11 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 1989

Description of amendment request: The proposed changes to the Technical Specifications of the Fort Calhoun Station are required to incorporate modifications that will be made to the Control Room Air Treatment System as a result of a control room survey conducted by the NRC staff. This survey determined that excessive amounts of unfiltered air were being pulled into the control room envelope, and calculations performed by the licensee indicate that these amounts of unfiltered air would result in operators receiving more than the 30 REM thyroid dose limit allowed in a 30 day post accident period. The licensee has taken interim measures to protect the operators while the Control Room Air Treatment System was being evaluated and while the modifications are being incorporated into the design to rectify the problem.

The licensee's design modifications are to replace the existing single, 90% efficient charcoal filter unit with two full capacity 99% efficient filter trains. Calculations using these new filter trains indicate that the exposure is reduced and meets the GDC 19 dose limits from the combination of all sources of airborne radiation to the operators in the control room. In addition, the installation of the additional charcoal filters will introduce an increased fire load in room (Room 81) where these charcoal filters are located. The filters are equipped with fire detection and deluge systems that are designed to alert operators and extinguish any fires without reliance on existing fire protection equipment in the area. Therefore, two new fire zones are being added to the Technical Specifications as a result of this modification to the fire system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed changes do not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The charcoal contained in the new filter units will increase the fire loading in Room 81. However, the new fire loading sources will be equipped with new detection, monitoring, and deluge systems. The existing filter system is not equipped with fire detection, so this represents an increased level of fire detection capability. Therefore, the fire detection and suppression capabilities for the plant will not be degraded, and the consequences of an accident previously evaluated will not be increased.

Dose calculations show that the new filter system will prevent the operators from exceeding the 10 CFR 50 Appendix A GDC 19 dose limits from the combination of all sources of airborne radioactive iodine.

The consequences of an accident previously analyzed will not be increased because the testing requirements are being increased, resulting in a more efficient filter thus lowering the doses in the control room.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The addition of two new fire detection zones will not create a new or different kind of accident from any previously evaluated since there will be new monitoring and deluge systems installed for each new area.

The new filtration system will consist of redundant 99% efficient units rather than the single 90% efficient configuration that currently exists. This does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The new monitoring and deluge systems for each unit are designed to alert the operators and extinguish any fires without reliance on any existing fire protection equipment in the area. Since the units are equipped with their own monitoring and deluge systems, the margin of safety of any existing system is not reduced.

Dose calculation show that the existing single 90% efficient filter unit does not provide enough iodine removal capacity to achieve the design dose limit of 30 REM (SRP 6.4) to the thyroid. In addition, a review of the design requirements stated in R.G. 1.52 showed the existing filtration system and associated isolation dampers to not meet the redundancy criteria.

The new redundant 99% filter trains and associated bubble-tight dampers will provide the required iodine removal to meet the dose limit as well as all design requirements of R.G. 1.52, (i.e., redundancy, local and remote indication, humidity control).

Therefore, it can be concluded that the new filtration system will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 1989

Description of amendment request: The proposed amendment is to correct an administrative error that was made when Amendment 32 was issued to change the surveillance method on Technical Specification Page 3-15, Table 3-3, Item 8 - Dropped CEA Indication. In the submittal of the application for the amendment, the surveillance method for Item 12 - Interlocks-Isolation Valves on Shutdown Cooling Line of Table 3 was inadvertently changed. This Item 12 was previously changed by Amendment 16. Amendment 32 changed Item 12 of Table 3-3 back to the original version of the Technical Specification thereby negating Amendment 16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed change does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. This change corrects wording in Table 3-3, Item 12, that was altered inadvertently by an administrative error.

2. create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. This change is administrative and restores Table 3-3, Item 12 to the condition of the Safety Evaluation Report issued for Amendment 16.

3. involve a significant reduction in a margin of safety. The change is administrative and will not affect the conduct of the Surveillance Testing of Interlocks-Isolation Valves and the Shutdown Cooling Line presently in use.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 6, 1989 (Reference LAR 89-11)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the setpoint tolerance of the pressurizer and main steam line code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent, except for the lowest set pressure bank of main steam line safety valves, which would be changed to -2/+3 percent. Code safety valves at Diablo Canyon and other plants have incurred numerous surveillance test failures due to setpoint drift. This proposed change would reduce the number of test failures incurred and is supported by an analysis of the impact of an increased code safety valve tolerance band on plant operations.

The specific TS changes proposed would include revision of Sections 3.4.2.1 and 3.4.2.2 of TS 3/4.4.2, "Safety Valves," to change the setpoint tolerance for the pressurizer code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent. Also, Table 3.7-2, "Steam Line Safety Valves per Loop," of TS 3/4.7.1, "Turbine Cycle," would be revised to change the setpoint tolerance for the main steam line code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent, except for the lowest set pressure bank of valves, which would be changed to -2/+3 percent. TS Bases 3/4.7.1.1, "Safety Valves," would be revised to reference the correct secondary system design pressure and overpressure limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 6, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The pressurizer and main steam line safety valves are designed to mitigate transients by preventing overpressurization of the RCS and MSS. The proposed change does not alter this design basis. The revised analysis shows that the probability or consequences of all previously analyzed accidents are not changed by increasing the setpoint tolerance of the safety valves.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. Any pressurizer safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the pressurizer high pressure reactor trip

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or a high lift setpoint that allows RCS overpressurization. Any main steam safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the normal "no load" system pressure or a high lift setpoint that allows MSS overpressurization.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

With the increased setpoint tolerances, the pressurizer and main steam line safety valves will still prevent pressure from exceeding 110 percent of design pressure in accordance with the ASME code. All conclusions for the FSAR Update accident analyses are not affected by the change and remain valid.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the Staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: August 8, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to ensure the design level of counting certainty is maintained at all times for the Source Range Monitors (SRMs). The Limerick Unit 1 TS presently allow reduction of the minimum SRM count rate required for control rod withdrawal or core alterations from the normal 3 counts per second (cps) to 0.7 cps as long as the signal-to-noise ratio is greater than or equal to two. General Electric Company (GE) has advised licensees that this provision is non-conservative with respect to the design bases of the SRM system, in that utilization of this provision could result in a reduction in counting certainty. In order to ensure that the design level of counting certainty is maintained, a change to the TS is proposed to incorporate a graph of SRM minimum count rate versus signal-to-noise ratio such that reduction of the count rate permitted by TS (3 cps to 0.8 cps) is accompanied by a corresponding increase in the signal-to-noise ratio (2 to 30).

Similar amendments were recently approved for Peach Bottom Units 2 and 3 (Amendment Nos. 147 and 149 to Facility Operating License Nos. DPR-44 and DPR-56 dated August 28, 1989).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes reduce the minimum SRM count rate required to permit core alterations during reactor refueling and withdrawal of control rods during reactor startup. The proposed count rate is still within the design range of the SRM and specifying a signal-to-noise ratio assures the SRMs are responding to thermal neutron flux. No hardware changes are required to the SRM system, therefore malfunction of an SRM will still produce the required control rod withdrawal blocks.

The applicable eccidents related to the proposed change are those involving SRMs during reactor startup (control rod drop accident (RDA) and continuous control rod withdrawal, and those involving SRMs during reactor refueling (i.e., control rod removal error during refueling, a second control rod removal or withdrawal, fuel insertion with the control rod withdrawn, and a control rod removal without the fuel removed). No credit is taken for the SRMs in any of these accidents.

The RDA is the more limiting accident during reactor startup. Chapter 15 (Section 15.4.9) of the FSAR assumes an initial condition of 10^{-8} of rated power with the reactor critical in the analysis of transient cold conditions including the RDA. Therefore, reduction of the minimum SRM count rate required to permit withdrawal of control rods as shown in Figure 3.3.6-1 still ensures that criticality will be achieved well above 10^{-8} of rated power.

Accordingly, this proposed change does not affect the probability of consequences of previously evaluated accidents.

The nuclear characteristics of the core assure that the reactor is subcritical even at its most reactive condition with the most reactive control rod withdrawn during refueling. When the mode switch is in REFUEL, only one control rod can be withdrawn. Selection of a second control rod initiates a control rod block, thereby preventing the withdrawal of more than one control rod at a time. Therefore, the refueling interlocks prevent any condition which could lead to inadvertent criticality due to a control rod withdrawal error during refueling. Further, the mechanical design of the control rod, incorporating the velocity limiter, does not physically permit the upward removal of the control rod without the simultaneous or prior removal of the four adjacent fuel assemblies, thus eliminating any hazardous condition. In addition,the refueling interlocks require that all control rods must be fully inserted before a fuel assembly may be inserted into the core.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No hardware modifications are required to implement this change. The design functions of the SRM system are not being changed. The only effect of this proposed change is a reduction in the minimum count rate required for control rod withdrawal and reactor core alterations. The reduced minimum count rate, which must be accompanied by a corresponding increase in signal-to-noise ratio, will continue to assure that all transients begin above 10^{-8} of rated power, thereby maintaining the validity of the FSAR analysis.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The normal requirement of at least 3 cps assures that any transient, should it occur, begins at or above the initial value of 10^{-8} of rated power with the reactor critical as used in analysis of transient cold conditions. In fact, any observable neutron count rate on the SRM is sufficient to ensure the analysis remains valid. Therefore, reduction of the minimum count rate from 3 cps to the values shown in Figure 3.3.6-1 will not reduce this margin of safety because any transient will still begin at or above 10^{-8} of rated power with the reactor critical. Further, the SRMs are not required to ensure the margin of safety as analyzed in Chapter 15 of the FSAR.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 30, 1989

Description of amendment request: The following changes are proposed to the Trojan Technical Specification (TTS) Section 6.0, "Administrative Controls".

1. Organizational title in Sections 6.1.1, 6.5.1.1, 6.5.1.7.a, 6.5.1.7.c, and 6.14.2.b changed from "General Manager" to "Plant General Manager".

2. Responsibility for the direction of the Training Department in Sections 6.4.1 and 6.4.2 changed from "the General Manager" to "a General Manager".

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is organizational in nature and has no impact on Plant systems or their overall performance in any manner that could lead to an accident. The purpose of the change is to more effectively utilize the company resources for operating the Trojan Nuclear Plant. The probability or consequences of an accident previously evaluated are not increased.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change is organizational in nature, and has no role in creating the possibility of any accidents.

3. This change does not involve a significant reduction in a margin of safety.

As discussed above, the proposed change is organizational in nature and has no impact on the accident analysis. Therefore, the margin of safety is not affected.

In the March 6, 1986 **Federal Register** (51 FR 7750), the NRC published a list of examples of license amendments that are not likely to involve a significant hazards consideration. One of the examples is: "A purely administrative change to technical specifications, e.g., a change to achieve a consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change is similar to this example, inasmuch as the proposed changes would (1) reflect the current organization and (2) achieve consistency in the technical specifications. In addition, the staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: July 14, 1989

Description of amendment request: The proposed amendment would correct Note 1 of Table 3.2-3, "Instrumentation That Initiates Control Rod Blocks." The present wording states that the Average Power Range Monitor (APRM) rod blocks are not required in the start-up mode. This contradicts both the body of Table 3.2-3 which indicates a separate trip level setting for the APRM instrumentation in the start-up mode (less than or equal to 12%) and Table 3.1-1, "Reactor Protection System (SCRAM) Instrumentation Requirement," which requires that two APRM instrument channels per trip system must be operable in the startup mode. Therefore, the proposed change to Note 1 would specify that the APRM Upscale (Start-up Mode) rod block is required to be operable when the reactor is in the startup mode. Also, as further clarification, the proposed change to the note would indicate that the APRM Upscale (Flow Biased) and the Downscale rod blocks are required to be operable when the reactor is in the run mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed change is administrative in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The change corrects Note 1 to Table 3.2-3 to clearly identify the APRM rod blocks [which are] required during start-up operations. This change is purely editorial in nature and does not involve the modification of any existing safety structures, systems, or components. There are no changes in probability or consequences to the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely editorial in nature with no resulting impacts on plant parameters or operational procedures. This change does not create any new failure modes or accident scenarios.

3. involve a significant reduction in the margin of safety. The proposed change does not alter any established trip level settings nor does it revise the start-up procedure. This change does not relax any administrative controls or limitations imposed on the existing plant equipment; nor does it involve the modification of any system or component. This change is purely editorial in nature and does not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes

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do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Tennessee Valley Authority Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: August 9, 1989 (TS 274)

Description of amendment requests: The proposed amendments would revise Sections 3.5.E.1 and 3.5.F.1 to require the High Pressure Coolant Injection (HPCI) System and the Reactor Core Isolation Cooling (RCIC) System to be operable after reactor pressure reaches 150 psig. The current sections require HPCI and RCIC to be operable at reactor pressures greater than 122 psig. This change would bring the Browns Ferry Technical Specifications (TS) into conformance with the design capabilities of HPIC and RCIC as defined in Chapters 6.3 and 14 of the Browns Ferry Final Safety Analyses Report (FSAR). In addition, the proposed amendments would revise the applicable surveillance (Sections 4.5.E.1.a and e, and 4.5.F.1.c and e) for these two sections to read "once/18 months" rather than "once/operating cycle." An 'operating cycle' at Browns Ferry is normally expected to be 18 months in duration.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. This proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment requires the HPCI/RCIC systems to be operable when reactor pressure is greater than 150 psig instead of 122 psig as currently stated in the TS. Additionally, this amendment allows demonstrating HPCI/RCIC operability within 12 hours after sufficient reactor steam pressure becomes available during a cold startup. This revision brings the BFN TS into technical agreement with the analyzed operating range and design specifications of the HPCI/RCIC systems. The HPCI and RCIC systems provide full design flow in the reactor pressure range of 150 to 1120 psig with their isolation setpoints greater than 100 psig and greater than 50 psig reactor pressure respectively. The shutoff head for the Core Spray System and RHR/LPCI are 285 psig and 295 psig respectively. These low pressure coolant systems will begin injecting flow into the vessel at approximately 230 psig and continue providing adequate core cooling down to zero reactor pressure. Thus, it can be seen that there is considerable overlap with the HPCI/RCIC systems and the low pressure CS/LPCI systems before cutoff of the high pressure systems below 150 psig. Therefore the high pressure systems are not required to provide core cooling below 150 psig. Based on this, no adverse effects on safety are encountered in raising the operability requirements of the HPCI/RCIC systems from 122 psig to 150 psig.

Since there is an overlap between the high pressure injection systems and the low pressure injection systems, there is more than adequate core cooling capability to ensure that the reactor core remains covered as analyzed in the BFN Final Safety Analysis Report (FSAR). With this overlap, allowing the reactor pressure to be at or above 150 psig for twelve hours while demonstrating the HPCI/RCIC systems to be operable, will not increase the probability or consequences of an accident as previously evaluated in the BFN FSAR.

Revising the surveillance requirements from once per operating cycle to once every 18 months provides consistency with other BFN TS, industry standard practices, and NRC guidelines. Using the plus 25 percent allowed by TS, there could be a maximum of 22.5 months between surveillance tests. There are additional surveillance requirements that are performed at lesser frequencies which demonstrate pump operability. The simulated automatic actuation test and the pump flow rate at 150 psig are tested once per 18 months. The pump operability, and motor-operated valve operability are tested in accordance with ASME Section XI testing. In addition, the flow rate at normal reactor vessel operating pressure is tested once per 3 months. Performance of these tests provides adequate assurance that the HPCI/RCIC systems will perform their intended function.

These proposed change do not involve any physical alteration of the plant or add any new equipment which could be the source of a malfunction or accident. Based on the above, this proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

The proposed changes do not add any new equipment or require any existing equipment to operate outside its design specifications. Operating BFN under the requirements of the proposed TS does not alter the function of any instrumentation, involve any type of modification to the plant, introduce a new or different release pathway of any radioactive material to the environment, or create any new modes of operation that have not previously been analyzed. Implementation of this proposed change is consistent with and remains within the bounds of the BFN FSAR analysis.

3. This proposed changes does not involve a significant reduction in a margin of safety.

As stated above, there is considerable overlap with the high pressure HPCI/RCIC systems and the low pressure CS/LPCI systems before cutoff of the high pressure systems below 150 psig reactor pressure. Therefore, HPCI/RCIC are not required to provide core cooling below 150 psig. Consequently, there is no significant reduction in the margin of safety by raising the operability requirements from 122 psig to 150 psig. In addition, the plant's operating flexibility is enhanced by leaving in the option, that is currently in the TS, to demonstrate HPCI/RCIC operability with auxiliary steam.

Considering the low reactor pressure, the redundancy and availability of the low pressure systems during startup from a Cold Condition, twelve hours is a reasonable time to demonstrate HPCI/RCIC operability once steam of sufficient pressure is available. This relatively short time frame will not create any significant increase in the risk associated with the unavailability of the HPCI/RCIC than has already been evaluated in the seven day out-of-service time that is typical industry practice. Therefore, it is concluded that there will be no significant reduction in the margin of safety due to implementing these TS operability requirements.

Revising the surveillance frequency requirements is consistent with other BFN TS. BFN fuel is not designed to operate for 22.5 months at continuous full power operation. Changing the surveillance requirements to once every 18 months does not exceed the design limits nor change the intent of the existing TS.

The staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 18, 1989, supplemented on August 21, 1989 (NLR-N89160) (LCR 89-12, Rev. 1)

Brief description of amendment request: Remove fuel cycle-specific operating limits from the Technical Specifications.

Date of publication of individual notice in Federal Register: September 19, 1989 (54 FR 38577)

Expiration date of individual notice: October 19, 1989

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 21, 1989

Brief description of amendment request: The amendment would change the description of fuel and control rod assemblies.

Date of publication of individual notice in Federal Register: September 15, 1989 (54 FR 38306)

Expiration date of individual notice: Comment period expired October 2, 1989; Notice period expires October 16, 1989.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 29 and August 31, 1989

Brief description of amendment request: The amendments will allow an individual who does not hold a current, valid senior reactor operator's license to assume the duties of the Operations Manager for the Salem Units 1 and 2.

Date of publication of individual notice in Federal Register: September 15, 1989 (54 FR 38304)

Expiration date of individual notice: Comment period expires October 2, 1989; Notice period expires October 16, 1989.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: January 12, 1989

Brief description of amendment: The amendment revises the Technical Specifications to incorporate cycle specific changes in support of Cycle 3 operation.

Date of issuance: September 19, 1989

Effective date: September 19, 1989

Amendment No.: 44

Facility Operating License No. NPF-41: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: March 22, 1989 (54 FR 11834). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1989.

No significant hazards consideration comments received No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 16, 1988 as supplemented on April 27, 1989.

Brief description of amendment: The amendment revised the Technical Specification surveillance test frequency requirements for the radiation monitoring system.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 126

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 9, 1989 (54 FR 32705) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

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No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: May 26, 1989

Brief description of amendment: The amendment revised Attachment 2 to the operating license to not perform diesel generator air-roll tests if the other diesel generator is already inoperable. It also made an administrative change to correctly reflect the most recently issued Safety Evaluation related to diesel maintenance/surveillance.

Date of issuance: September 15, 1989

Effective date: September 15, 1989

Amendment No: 24

Facility Operating License No. NPF-58: This amendment revised Attachment 2 to the operating license.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29402) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: August 23, 1989

Brief description of amendment: The amendment permits the use of functioning channels of the Traversing In-Core Probes (TIP) System to provide necessary data when up to ten of the TIP measurement locations are inaccessible or inoperable.

Date of Issuance: September 22, 1989

Effective Date: September 22, 1989

Amendment No.: 25

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 35955, August 30, 1989). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 29, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Ohio, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September, 22, 1989.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

NRC Project Director: John N. Hannon.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Millstone Units 1, 2, and 3, New London County, Connecticut

Date of application for amendment: June 29, 1989

Brief description of amendment: The amendments change Technical Specifications (TS) 4.10.1.D.1.h for the Haddam Neck Plant and TS 4.4.5.4.a.8 for Millstone Unit 3. The change to the TS allows the licensees to inspect steam generator tubes by insertion of the ultrasonic test probe from the cold leg side of the steam generator tube.

Date of Issuance: September 11, 1989

Effective date: September 11, 1989

Amendment Nos: 123, 41

Facility Operating License Nos. DPR-61 and NPF-49: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32708) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 11, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 4, 1988

Brief description of amendment: This amendment revises Technical Specification Table 3.17.4, Instrument Operating Requirements for Other Safety Feature Functions, and Table 4.1.3, Minimum Frequencies for Checks, Calibrations, and Testing of Miscellaneous Instrumentation and Controls. Specifically, the operability requirements for the subcooling margin monitor are extended from 515°F and greater to 325°F and greater, and operability and surveillance requirements for the reactor vessel level monitoring system are added to the Technical Specifications.

Date of Issuance: September 15, 1989

Effective date: September 15, 1989

Amendment No.: 129

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 11, 1988 (53 FR 39666). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: June 9, 1989

Brief description of amendments: The amendments revised Technical Specification 3.7.8 to allow a one-time outage of ten days to change out power circuit breaker 9.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment Nos.: 175, 175, and 172

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29405) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1989 and an Environmental Assessment dated September 1, 1989 (54 FR 37514).

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 12, 1989

Brief description of amendment: This amendment changes the TS to allow an alternate method for calculating containment leakage rates.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 120

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31106) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 9, 1989, as supplemented July 28 and August 14, 1989.

Brief description of amendments: The amendments modified the Technical Specifications to revise requirements regarding containment tendon surveillance.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment Nos.: 23 and 4

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25374) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 23, 1988, as supplemented March 30, 1988.

Description of amendment request: The proposed change will revise the onsite personnel organization.

Date of issuance: September 13, 1989

Effective date: September 13, 1989

Amendment No.: 27

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30135) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 1, 1989

Brief description of amendment: The amendment added a license condition to allow the sale and leaseback of an individual ownership interest in the Waterford Steam Electric Station, Unit No. 3.

Date of issuance: September 18, 1989

Effective date: September 18, 1989

Amendment No.: 57

Facility Operating License No. NPF-38. Amendment revised the license.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21309) and for Antitrust June 2, 1989 (54 FR 23723).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 7, 1989

Brief description of amendment: This amendment revises the Technical Specifications to permit the use of up to two alternates in meeting the quorum requirement for the plant Operations Committee. The plant Operations Committee consists of at least six members drawn from the key supervisors of the Onsite Supervisory Staff whose responsibilities include the review of: (1) modifications for plant systems or components described in the Updated Safety Analysis Report; (2) changes to normal and emergency operating procedures; (3) proposed Technical Specification changes; and (4) the results of Technical Specification violation investigations.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 69

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15832) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: July 7, 1988

Brief description of amendment: This amendment changed the Technical Specifications involving the operating limits for all fuel types for Cycle 8 operation, the slope of the Average Power Range Monitor scram and rod block setpoints and administrative changes to the Bases.

Date of issuance: September 1, 1989

Effective date: September 1, 1989

Amendment No.: 150

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27234) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: November 10, 1988, supplmented July 24, 1989.

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Brief description of amendment: The amendment revises the Technical Specifications to eliminate organization charts, Figures 6.2-1 and 6.2-2.

Date of issuance: September 8, 1989
Effective date: September 8, 1989
Amendment No.: 89
Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1023) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 8, 1989

Brief description of amendment: The amendment changes the Technical Specifications (TS) Table 1.2, "Operational Conditions," and TS 3/4.9.1, "Reactor Mode Switch," to allow movement of a single control rod with the reactor in hot shutdown or cold shutdown for purposes such as venting of the control rod drive, timing of the control rod scram and friction testing of the control rod. The TS had previously permitted movement of a control rod in these operational conditions to recouple it to its drive.

Date of issuance: September 15, 1989
Effective date: September 15, 1989
Amendment No. 23
Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29412) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: June 20, 1989, as supplemented by the letter dated August 10, 1989 (TS 89-24).

Brief description of amendment: This amendment modifies the Sequoyah Nuclear Plant, Unit 1, Technical Specifications. The change revises Surveillance Requirement (SR) 4.6.5.1.b.2 to allow Unit 1 a one-time extension to the next refueling outage for weighing ice baskets in the containment ice condenser. A footnote is added to the current requirement that the SR be performed at least once every 12 months. The footnote states that the SR will be performed in the Unit 1 Cycle 4 refueling outage, which shall begin no later than April 1, 1990. The supplemental information provided in the licensee's August 10, 1989 letter did not change the substance of the Notice of Consideration for Amendment which was published in the **Federal Register** on July 21, 1989.

Date of issuance: September 19, 1989
Effective date: September 19, 1989
Amendment Nos: 126
Facility Operating License No. DPR-77: Amendment revised the Technical specifications

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29414). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: August 26, 1988 (TS 254)

Brief description of amendment: This amendment updates the Unit 2 Technical Specifications to reflect revised reactor core operating limits for Unit 2 Cycle 6 operation.

Date of issuance: September 13, 1989
Effective date: September 13, 1989, and shall be implemented within 90 days
Amendment No.: 172
Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48336) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 16, 1987

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to reflect existing operating procedures which require at least one operator in the control panel area when fuel is in the reactor, at least two licensed operators, one with a senior operator license, in the Control Room while the plant is in Operational Modes 1 through 4, and at least two senior operators onsite while the plant is in Modes 1 through 4.

Date of issuance: September 20, 1989
Effective date: September 20, 1989
Amendment No: 137
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31119) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 8, 1988

Brief description of amendment: This amendment revised the Technical Specifications to reflect changes in organization, positions and titles. The changes include the separation of the Chemistry and Health Physics Department reflected by the change in title of the Chemistry and Health Physics General Superintendent to Radiological Controls Superintendent. This title change is also reflected in the Station Review Board membership. Also, the changes revise the position of the Performance Engineering Manager to reflect the elevation of this position to the director's level with the title of the Performance Engineering Director, and changes the title of Senior Vice President, Nuclear, to Vice President, Nuclear.

Date of issuance: September 20, 1989
Effective date: September 20, 1989
Amendment No: 138

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27241) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 12, 1989, as supplemented on July 14, 1989.

Brief description of amendment: The amendment revises the Technical Specifiations (TS) to eliminate cycle-specific parameter limits, and instead refer to a Core Operating Limit Report for the value of these parameters.

Date of issuance: September 15, 1989
Effective date: 30 days after issuance
Amendment No. 116
Facility Operating License No. DPR-28. Amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27243). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 12, 1989, as supplemented July 26, 1989 (partial).

Brief description of amendments: The amendments revise the NA-1&2 TS 3/4 3.2.1 from monthly to quarterly testing for selected Engineered Safety Features (ESF) Slave Relays. Other changes requested will be addressed at a later date.

Date of issuance: September 7, 1989
Effective date: September 7, 1989
Amendment Nos.: 123 and 107
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register: August 8, 1989 (54 FR 32729)** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: July 24, 1989

Brief description of amendments: These amendments add the Superintendent-Engineering to the list of specified members of the Station Nuclear Safety and Operating Committee.

Date of issuance: September 13, 1989
Effective date: September 13, 1989
Amendment Nos: 133 and 133
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32721) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-23302 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-D

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: 48 CFR chapter 20, Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion; one time.

5. Who will be required or asked to report: Offerors responding to NRC solicitations and contractors receiving contract awards from NRC.

6. An estimate of the number of responses: 10,045.

7. An estimate of the burden per response: 12 hours.

8. An estimate of the total number of hours needed to complete the requirement or request: 115,420.

9. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

10. Abstract: The NRCAR is necessary to implement and supplement the government-wide Federal Acquisition Regulation, and to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Comments and questions can be directed to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150-xxxx), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395-3084.

The NRC clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-23399 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-M

GPU Nuclear Corp., Forked River Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit No. CPPR-96 which authorized construction of the Forked River Nuclear Plant, Unit 1 located in Ocean County, New Jersey. The construction permit is held by the GPU Nuclear Corporation (GPUN). The latest construction completion date in the permit is February 2, 1983. Construction activities at this site were

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discontinued on April 3, 1979. By letter dated July 12, 1988, GPUN requested that the construction permit for Forked River be withdrawn.

Environmental Assessment

Identification of Proposed Action: The proposed action is to issue an order that would terminate Construction Permit No. CPPR–96 for the Forked River Nuclear Plant, Unit 1. This action was requested by GPUN because it does not plan to complete the plant.

The staff conducted an inspection of the Forked River site on March 15, 1989, to determine, among other things, whether GPUN's site stabilization plan, described in a summary attached to the July 12, 1988, GPUN letter, had been satisfactorily completed and to determine whether the site stabilization plan considered all critical site areas. A particular effort was made to inspect areas of the site that could be subject to continued erosion and contribute silt to surface water-bodies. Based on the inspection and its review of the site stabilization plan, the staff has not identified any area at the site that required attention that was not covered in the GPUN stabilization plan. Additionally, the site was found to be adequately stabilized and there were no areas where erosion could lead to detrimental offsite environmental impact.

The staff concludes, based on its review and inspection, that the Forked River site is in an environmentally stable condition.

Need for Proposed Action: GPUN has terminated construction of the nuclear power plant. This action by NRC would terminate the construction permit.

Environmental Impacts of the Proposed Action: This is a simple administrative action of terminating the outstanding permit to reflect the fact that there are no longer nuclear utilization facilities under construction at the Forked River site and the site has been adequately stabilized.

Alternatives to the Proposed Action and Alternative Use of Resources: This action, for which there are no appropriate alternatives, does not involve the use of and, therefore, will not affect, available resources.

Agencies and Persons Consulted: The NRC staff reviewed GPUN's request for termination of the construction permit and conducted the environmental review and inspection of the facility. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the GPUN's request for termination of Construction Permit No. CPPR–96 dated July 12, 1988, GPUN's site stabilization report transmitted by the July 12, 1988, letter, and the NRC Staff Evaluation dated September 27, 1989. These documents regarding the NRC staff's environmental assessment of the proposed action are available for public inspection at the Commission's Public Document Room, Washington, DC 20555. Correspondence concerning this facility will continue to be maintained at this location for at least one year.

Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.ge

[FR Doc. 89–23402 Filed 10–3–89; 8:45 am]

BILLING CODE 7590–01–M

Boston Edison Co. (Pilgrim Nuclear Power Station); Exemption

[Docket No. 50–293]

I.

The Boston Edison Company (BECo), the licensee, is the holder of Operating License No. DPR–35 which authorizes operation of the Pilgrim Nuclear Power Station (PNPS). The license provides, among other things, that the PNPS is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II.

Section III.D.(a) of Appendix J to 10 CFR part 50 requires that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) be performed at approximately equal intervals during each 10-year service period. Section III.A.6(a) of Appendix J to 10 CFR part 50 requires that if any periodic Type A test fails to meet the applicable NRC acceptance criteria, a review of the test schedule be performed and approved by the Commission. Section 111.A.6(b) of Appendix J also requires that if two consecutive periodic Type A tests fail to meet the applicable NRC acceptance criteria, a Type A test shall be performed at each subsequent refueling outage or approximately every 18 months, whichever comes first, until two consecutive Type A tests meet the acceptance criteria given in Section III.A.5(b).

Section III.D.2.(a) of Appendix J to 10 CFR part 50 requires that Type B Local Leak Rate Tests (LLRTs), except tests for air locks, shall be performed during reactor shutdowns for refueling, or other convenient interval, but in no case at intervals greater than two years.

Section III.D.3 of Appendix J to 10 CFR part 50 requires that Type C LLRTs shall be performed during each reactor shutdown for refueling, but in no case at intervals greater than two years, for containment isolation valves.

III.

The PCILRTs performed during the 1982, 1983, and 1987 refueling outages of the PNPS were deemed failures in the "as-found" condition due to penalties as the result of leakage from the pathways of the Type B and C LLRTs. Accordingly, the licensee would be required to perform a PCILRT during the surveillance outage scheduled for October 1989. As an alternative to performing the required Type A test, the licensee has submitted a Corrective Action Plan to eliminate excessive local leakage in accordance with the guidance provided in NRC Information Notice 85–71, "Containment Integrated Leak Rate Tests," dated August 22, 1985. The Corrective Action Plan is in lieu of the increased test frequency required by Section III.A.6(b) of Appendix J to 10 CFR Part 50. Therefore, an exemption from this requirement is needed.

The Corrective Action Plan includes a LLRT Failure Analysis Team to investigate LLRT failures, determine root causes, and recommend corrective actions. The plan also includes a trending program, test method improvements and augmented testing. Analysis of failures during the last refueling outage (RFO–7) and corrective actions for all LLRT failures were implemented resulting in the "as-left" PCILRT at PNPS in December of 1987, being the lowest leakage in the plant's history. As part of the augmented testing portion of the plan, two additional LLRTs have been performed subsequent to the corrective actions implemented in December of 1987. These tests verified that the root cause analyses and corrective actions were successful. LLRTs will be performed during the upcoming maintenance outage in the Spring of 1990, with the exception of specific penetrations which will be discussed later. The licensee further

indicates that LLRTs will be conducted during any planned outage of greater than 30 days at PNPS. The penetrations selected for the tests will be based on the results of the trending portion of the Corrective Action Plan. This Plan will result in the completion of five full sets of LLRTs between June 1987 and June 1991; this exceeds Appendix J requirements. In addition, the licensee previously initiated a Valve Betterment Program which has resulted in the replacement of 17 valves and modifications to 12 other valves which were identified as having excessive leakage.

The Corrective Action Plan includes long term corrective actions in addition to augmented testing and trending. These actions include the opening and inspection of at least one feedwater check valve and line loading or replacement of packing in the main drain outboard isolation valves during each refueling outage; and procurement of spare parts, such as seats, bronze bushings and associated hardware for the torus main exhaust valves. It should be noted, that the major portion of the leakage (about 83%) as the result of the LLRTs performed in December 1987, was due to the feedwater check valves. The short term replacement of problem components in the valves and the long-term effort previously discussed, has resulted in successful testing to date.

The licensee's Corrective Action Plan, Valve Betterment Program and recent results of the LLRTs will provide an equivalent level of protection as that provided by the more frequent testing requirement by Section III.A.6(b) for Type A PCILRT. The staff concludes that a one-time extension until RFO–8 and a return to the normal Type A test schedule of Section III.D of Appendix J to 10 CFR part 50 is justified. This conclusion is based on the next Type A test, which will be performed during RFO–8, meeting the established NRC acceptance criteria. If the criteria is not met, the licensee shall revert to the more frequent testing requirement of Section III.A.6(b).

A one-time schedule exemption from the test interval requirement of Section III.D.2(a) of Appendix J to 10 CFR part 50 for the drywell head and the drywell head access hatch is needed due to the extent of the work required to be performed and resultant worker exposure to radiation, which would result, if the tests were required to be performed during the upcoming outage in October 1989. Nine shield blocks above the drywell must be removed. These are normally removed only during refueling outages, such as the upcoming RFO–8, to allow removal of the reactor head for fuel unloading and loading.

The drywell head and access hatch have exhibited minimum leakage which is only detectable on the most sensitive scale of the measuring instrumentation for all previous LLRTs. The request provides only temporary relief for approximately six months from the maximum two-year test interval required by Section III.D.2(a) of Appendix J to 10 CFR part 50.

The staff concludes that the accelerated LLRTs, previous test history, the extent of work required, resulting worker exposure to radiation and the short interval of the extension, support the requested one-time schedule extension of six months.

The one-time schedule exemption from the requirement of Section III.D.3 of Appendix J to 10 CFR part 50 is requested for the Shutdown Cooling Suction Isolation Valves (MO–1001–47 and MO–1001–50) and Reactor Building Closed Cooling Water (RBCCW) Isolation Valves (MO–4002 and Check Valve 30–CK–432).

The schedule extension for the Shutdown Cooling Suction Isolation valves is needed to defer the leak rate testing until the next scheduled refueling outage. The shutdown cooling system is the only normal means of removing decay heat from the reactor vessel during short outages, such as the upcoming October 1989, surveillance outage. The valves have been tested four times since May 1987. Only one failure occurred in MO–1001–50. As a result, the valve was refurbished and has successfully passed three subsequent LLRTs.

The schedule extension for the RBCCW system isolation valves is needed because the testing would impact components cooled by the RBCCW system during the upcoming short outage. The RBCCW system is a closed-water system and does not provide a direct leakage flow path from the drywell to the secondary containment. In addition, staging to provide access must be built and removed resulting in considerable exposure of workers to radiation. The water in the system is also required to be drained and treated which will result in an increase in the production of radioactive waste. The previous LLRTs performed on these valves, which include three since 1987, have demonstrated minimal leakage, similar to that discussed above, related to the drywell head and access hatch.

In relation to the shutdown cooling suction isolation valves and the RBCCW valves, the staff concludes based on the accelerated LLRTs, the previous test history, the required system functions that would be needed during the upcoming October outage, added worker exposure, increased production of radioactive waste, and the short interval of the extension, that the requested one-time schedule extension of six months is acceptable.

The staff's Safety Evaluation dated September 27, 1989, provides additional details and bases supporting the requested exemptions.

IV.

As discussed above, the underlying purpose of the requirements of Section III.A.6(b) of Appendix J to 10 CFR part 50 is to ensure the integrity of the primary containment and its penetrations. The underlying purpose is achieved and served by the licensee's Corrective Action Plan, Valve Betterment Program and recent good test results of the LLRTs. Thus, an equivalent level of protection is provided.

Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR Part 50.12(a)(2)(ii).

Also as discussed above, the underlying purpose of the requirements of III.D.2(a) and III.D.3 of Appendix J to 10 CFR part 50 are to detect local leaks and measure leakage across primary reactor penetrations and containment isolation valves at intervals of no greater than two years. The licensee has made a good faith effort to comply with the regulations by performing an increased number of LLRTs on containment penetrations and valves, including the ones discussed above. In addition, the previous test history, corrective actions, and need for the Shutdown Cooling System and RBCCW system during the October outage, support the requested one-time schedule extension of six months. Thus, the exemption which is only to provide temporary relief, and in that the licensee has made a good faith effort to comply with the regulations; thus, again an equivalent level of protection is provided.

Therefore, the Commission's staff finds that there are special circumstances, in these instances, which satisfy the standards of 10 CFR Part 50.12(a)(2)v.

V.

Based upon the above evaluation, the staff considers the licensee's alternate test schedule to be equivalent to that achieved by conformance to Appendix J

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to 10 CFR part 50. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the purpose of the rule.

Accordingly, the Commission hereby grants an exemption to Section III.A.6(b) of Appendix J to 10 CFR part 50 to allow the licensee to perform the next Type A test during RFO–8 and to resume the Type A retest schedule of Section III.D.1(a) for the PNPS. This exemption does not apply if the next Type A test is deemed a failure based on the NRC acceptance criteria. Such a failure would require the licensee to comply with the retest schedule of Section III.A.6(b) until two consecutive Type A tests meet the NRC acceptance criteria.

The Commission has further determined that the special circumstances, as set forth in 10 CFR 50.12(a)(2)(v) are present, justifying the one-time schedule extension of approximately six months, in that the licensee has made a good faith effort to comply with the regulations.

Accordingly, the Commission hereby grants a one-time exemption to the schedule requirements of III.D.2(a) and III.D.3 for the required Type B and C LLRTs as follows:

III.D.2.(a) (Type B Tests)—Drywell Head, Drywell Head Access Hatch

III.D.3 (Type C Tests)—Isolation Valve MO–1001–47, Isolation Valve MO–1001–50, Isolation Valve MO–4002, Check Valve 30–CK–432

The LLRTs on the penetrations and valves identified above will be performed during RFO–8.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (54 FR 39236).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23400 Filed 10–3–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29634; License No. 47–24878–01; EA 89–171]

Ultrasonic Specialists, Inc., Scott Depot, WV; Confirmatory Order Suspending License

I

Ultrasonic Specialists, Incorporated (USI or licensee), currently holds NRC License No. 47–24878–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 16, 1986, pursuant to 10 CFR parts 30 and 34. The license is due to expire on December 31, 1991. The license authorizes USI to possess sealed sources, containing a maximum of 100 curies per source of iridium-192 and 100 curies per source of cobalt-60, at temporary job sites and the company's location in Scott Depot, West Virginia, for use in industrial radiography operations.

II

In November 1987, the licensee's Radiation Protection Officer (RPO) terminated employment with USI. The NRC, Region II, performed a routine, unannounced inspection of USI on September 28, 1988. The inspection identified a failure of the licensee to notify the NRC of the RPO's termination since November 1987. The NRC, Region II, issued a Notice of Violation (NOV) on October 17, 1988. The licensee responded to the NOV in a letter dated November 16, 1988, signed by Mr. Terry E. Blake, President of USI, admitting the violation. In its response to the violation, the licensee submitted a license amendment request to remove the terminated RPO's name from the license and to name Mr. Blake as the RPO. The licensee also provided a copy of Mr. Blake's resume.

In response to allegations received by the NRC Region II office, an investigation by the NRC Office of Investigations was initiated in April, 1989. This investigation is still in progress. By letter dated September 14, 1989, Mr. Blake requested that the license issued to USI be terminated. He also stated that he was in the process of negotiating the sale of his sources and that he had placed the sources in secured storage and completely halted the radiography business.

III

Based upon the licensee's desire to terminate its license, I have determined that the public health, safety and interest require that License No. 47–24878–01 be suspended. Furthermore, pursuant to 10 CFR 2.704, I found that the public health, safety, and interest require that the order be immediately effective.

IV

Accordingly, in view of the foregoing, and pursuant to sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and part 30, *It is hereby ordered, effective immediately,* That:

A. NRC Materials License No. 47–24878–01 is suspended, except as provided in section IV.B. The licensee shall not receive any licensed material.

B. All licensed material in USI's possession shall remain in safe secured storage until transferred to an authorized recipient in accordance with 10 CFR 30.41. Such transfer should be completed within 60 days of the date of this Order.

C. Within 10 days after the actual transfer of the licensed material, the licensee shall certify in writing, under oath or affirmation, that all licensed material has been transferred to an authorized recipient and that no licensed material is still in its possession. That certification shall be accompanied by a completed NRC Form 314 and shall be addressed to the Regional Administrator, USNRC Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

The Regional Administrator, Region II may, in writing, relax or rescind any of the above provisions on demonstration of good cause by the licensee.

V

Any person other than the licensee adversely affected by this Order may request a hearing within 20 days of this Order. Any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, Suite 2900, 101 Marietta Street, Atlanta, Georgia 30323.

If any such person requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for

hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of September 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89–23401 Filed 10–3–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Publication of Commercial Activities Inventories

AGENCY: Office of Management and Budget.

ACTION: Publication of commercial activities inventories.

SUMMARY: This Notice contains the initial inventory of commercial activities provided by the Department of Energy. Executive Order 12615, "Performance of Commercial Activities," dated November 19, 1987, requires OMB to publish for public review department inventories of commercial activities. The initial submission is attached and includes the number of positions and the projected year of study. Additions to this inventory will be forthcoming.

Interested parties are invited to nominate, in writing to the Privatization Official listed below, with a copy to OMB, additional activities for inclusion on the inventory and for eventual study. There is no time limit for these nominations.

The Privatization Official is as follows: Donna Fitzpatrick, Department of Energy, 1000 Independence Ave., SW., Room 7A145, Washington, DC 20585.

Specific questions relating to the A–76 inventory should be referred to the following individual:

Richard Moore, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Room 4B194, Washington, DC 20585.

Linda Mesaros, Office of Management and Budget, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, NEOB, Washington, DC 20503.

Frank Hodsoll,

Executive Associate Director.

A–76 INVENTORY

Unit year	Geographic location	Commercial activity	FTE	
AOO	Albuquerque, NM.	Guard Services.	12	89
ASDP	Germantown, MD.	Security Clearance.	10	89
ASMA	Washington, DC Germantown, MD.	Processing Central Mail Services.	18	89
ASMA	Germantown, MD.	Utility/ General Maintenance.	122	92
ASMA	Germantown, MD.	Payroll Operations.	20	91
BPA	Portland, OR.	Mapping Services.	14	89
BPA	Portland, OR.	Aircraft Services.	16	89
BPA	Portland, OR.	Mail Services	14	91
BPA	Portland, OR.	Heavy Mobile Equipment Maintenance.	42	92
BPA	Portland, OR.	Material Handling/ Warehouse.	46	93
BPA	Portland, OR.	Graphic & Photo.	19	94
BPA	Portland, OR.	Supply Services.	12	94
BPA	Portland, OR.	Library Services.	11	94
BPA	Portland, OR.	Maintenance Shop Services.	65	95
BPA	Portland, OR.	ADP/ Computer Services.	186	95
IOO	Idaho Falls, ID.	Fire Protection Services.	45	91
WPA	Golden, CO	Fixed-Wing Aircraft.	02	89
WPA	Golden, CO	Rotary Wing Aircraft.	08	89
Total			660	

Unit:
AOO—Albuquerque Operations Office.
ASDP—Assistant Secretary Defense Programs.
ASMA—Assistant Secretary Mgmt & Admin.
BPA—Bonneville Power Administration.
IOO—Idaho Operations Office.
WPA—Western Area Power Administration.

[FR Doc. 89–23344 Filed 10–3–89; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under subsection 170 (1), of Public Law 100–408, the Price-Anderson Act of 1988, will hold a meeting on October 25, 1989, from 10:00 a.m.–5:00 p.m. and on October 26, 1989, from 9:00 a.m.–5:00 p.m., at the Bellevue Hotel, 15 E Street, NW., Washington, DC 20001. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress not later than August 20, 1990.

At this meeting, Dr. Richard Wilson of the Energy and Environmental Policy Center at Harvard University, and Professor Marvin Goldman of the Department of Radiological Sciences at University of California-Davis will speak on the nuclear accident at Chernobyl and its effects. In addition, Dennis Kwiatkowski, Assistant Associate Director of the office of Natural and Technological Hazards from the Federal Emergency Management Agency will speak on the various funds for and methods of responding to natural and man-made disasters in the United States. Marianna Smith, Executive Director of the Mansville Personal Injury Settlement Trust will speak on protecting the integrity of the tort system while developing means to fully compensate victims. Professor Paul Wyler of Harvard Law School and his colleagues will speak on recent studies in personal injury tort reform. William Magavern, Staff Attorney, of the U.S. Public Interest Research Group will also address the Commission.

The Commission will also discuss its anticipated activities and plans for future meetings, and will organize itself for the research and preparation of its report to Congress.

The public is permitted to attend this meeting, and there will be time during the sessions for brief statements. Transcripts of the meeting will be available at the Commission office, 600 E Street, NW., Room 660.

For further information, contact Jerome Saltzman at 600 E Street, NW., Room 660, Washington, DC 20004, (202)272–5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202)272–5695 before the close of business, October 23, 1989.

Dated: September 29, 1989.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 89–23371 Filed 10–3–89; 8:45 am]

BILLING CODE 6820–SP–M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition: Barr

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. W.A. Barr submitted a petition dated June 29, 1989, requesting the agency to commence a proceeding to determine whether to issue an order requiring the recall and remedy of certain motor vehicles which are claimed to contain a safety-related defect. The petition describes the alleged defect as a susceptibility of the automatic transmission to fail to engage or hold in the "Park" position after the driver believes he or she has shifted into Park and left the vehicle; it refers to the "illusion" of having engaged the transmission in the Park position.

NHTSA previously conducted a formal investigation of whether certain automatic transmissions installed in vehicles manufactured by the Ford Motor Company between 1970 and 1979 contained alleged safety-related defects similar to those alleged defects which are of concern to Mr. Barr. That investigation was closed in 1981, as a result of a settlement agreement between the agency and Ford, in which Ford notified owners of the affected vehicles of NHTSA's initial determination that the vehicles contained a safety-related defect, and supplied those owners with dashboard warning labels that were intended to provide permanent reminders to operators of appropriate measures for securing their parked vehicles from unintended movement. That settlement was upheld by the United States Court of Appeals for the District of Columbia Circuit in *Center for Auto Safety* v. *Lewis*, 685 F.2d 656 (1982).

Since closing that investigation, in monitoring the settlement agreement, the agency has maintained a public file which includes information concerning unintended vehicle movement in vehicles manufactured by Ford and other motor vehicle manufacturers. In addition, the agency has considered various petitions, submitted by Mr. Barr, the Center for Auto Safety (CFAS), and others, requesting that the agency reopen the investigation. Because no substantive information was submitted to change the agency's view of the adequacy of the settlement, all of the previous petitions have been denied.

The petitioner, who is familiar with the agency's prior actions and expressed views on this subject, now requests that the issues be subjected to a new investigative examination of broader scope. This petition observes that vehicles produced by manufacturers other than Ford have also been involved in similar incidents of inadvertent movement while unattended. In fact, the petition notes that accidents of this nature involving Ford vehicles, as recorded in the agency's Fatal Accident Reporting System, are approximately equal to Ford's share of the automotive market "* * * because of the functional similarity of all automatic transmissions." The present petition, therefore, requests that the agency investigate, through studies and surveys, the claim that such accidents are evidence of a safety defect common to vehicles produced by all automotive manufacturers, and that an order be issued for recall and remedy on an industry-wide basis.

In 1985, while considering a CFAS petition to reopen the Ford transmission investigation, NHTSA conducted a detailed peer group analysis in order to evaluate the inadvertent park-to-reverse experience of Ford vehicles as compared to those produced by General Motors Corporation, Chrysler Corporation, and American Motors. The agency concluded that such incidents occurred among vehicles produced by all manufacturers, and that the evidence suggested that driver behavior contributed to many of the reported incidents. The agency also noted that the overall trend of such incidents was decreasing, and that the degree of difference between incidents involving Ford vehicles and those built by other manufacturers was smaller than in 1980. Mr. Barr's present petition, filed almost four years after the peer analysis, supports the agency's earlier findings by claiming that the alleged safety problem is not unique to Ford vehicles; rather, it has been experienced on an industry-wide basis.

This petition presents a lengthy discussion of a set of specific procedures that Mr. Barr proposes for the investigation requested. It also offers projections and speculations as to the results of the surveys and studies proposed. Based on the projected results of the requested efforts, the petition also proposes remedies and suggests specific actions available to the agency, ranging from public notices to regulation of design features. The petition does not, however, offer new substantive information beyond that which the agency has previously considered and found to be insufficient to warrant reopening the earlier investigation.

Also, the breadth of the relief petitioner requests increases the uncertainty of the agency's succeeding in any necessary enforcement litigation. In upholding the agency's decision to settle and close its Ford transmission investigation, the court observed that "[NHTSA] would have faced great difficulties in sustaining its burden to prove the existence of a defect * * *" *CFAS* v. *Lewis*, *supra*, 685 F.2d at 663. These difficulties would undoubtedly be multiplied if the agency became involved in industry-wide litigation on this issue. For these reasons, there is no reasonable possibility that the recall order requested in the petition would be issued at the conclusion of an investigation.

The agency's Rulemaking Office is already considering another petition filed by Mr. Barr, which also addresses inadvertent shifting out of park. Also, on April 5, 1988, our Rulemaking Office issued a Notice of Proposed Rulemaking on inadvertent steering column lockup which addresses some of Mr. Barr's concerns. It would not be appropriate for both the Enforcement Office and the Rulemaking Office simultaneously to devote scarce agency resources to this issue.

Accordingly, it is our judgment that further allocation of our limited investigative resources to undertake a further, expanded examination of this alleged defect is not warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-23426 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that an Agency has made such a submission. USIA is requesting approval for a three-year extension of its information collection on a standardized program report.

DATE: On or before November 30, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Foreign Data.

Form Number: IAP-10.

Abstract: The form is intended to supplement other security investigation forms used in processing security clearances for prospective employees. It is used for the purpose of allowing investigators to contact people in the United States who have knowledge of a candidate's overseas residence and/or employment. By making contacts domestically, USIA can save both time and money that might otherwise be needed in conducting an overseas investigation.

Proposed frequency of responses: No. of Respondents—200, Recordkeeping Hours—0, Total Annual Burden—100.

Dated: September 28, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-23370 Filed 10-3-89; 8:45 am]

BILLING CODE 8230-01-M

VOL 54 ISS 191 OC 4 1989 UMI

Sunshine Act Meetings

Federal Register
Vol. 54, No. 191
Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANOUNCEMENT: 54 FR 39075, Friday, September 22, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, October 2, 1989.

CHANGE IN THE MEETING:

Open Session

The items listed below have been deleted from the agenda:

- Proposed Final Procedural Rule, 29 C.F.R. Section 1613.215(a)(7)—Federal Sector Cancellation of Complaints for Failure to Accept Full Relief.
- Proposed Revision to Equal Employment Opportunity—Management Directive 107 (EEO–MD 107), Federal Sector Complaint Processing Manual.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat (202) 663–7100.

Dated: October 2, 1989.

This Notice Issued October 2, 1989.

Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 89–23615 Filed 10–2–89; 1:20 pm]
BILLING CODE 6750–06–M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

September 28, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: October 5, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Docket No. RM87–34–000, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,
Secretary.
[FR Doc. 89–23498 Filed 10–2–89; 9:04 am]
BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

September 28, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: October 5, 1989, 9:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket Nos. IN89–2–000, CP89–304–000, and CP89–305–000, Northwest Pipeline Corporation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,
Secretary.
[FR Doc. 89–23497 Filed 10–2–89; 9:04 am]
BILLING CODE 6717–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 89–23077.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 5, 1989 10:00 a.m.

MEETING OPEN TO THE PUBLIC:

The following matter has been added to the above meeting:

Protest from Americans for Robertson, Inc., RE: Procedures for Matching Fund Resubmissions.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89–23587 Filed 10–2–89; 12:05 pm]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 10, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary action) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 2, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89–23646 Filed 10–2–89; 4:02 pm]
BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, October 11, 1989.

PLACE: Board Room, Eight Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first three items are open to the public. The last three are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Safety Study: Passenger Vessels Operating from U.S. Ports.
2. Safety Study: Crashworthiness of Small Poststandard School Buses. (Calendared by Member Burnett.)
3. Reconsideration of Problem Cause: Midair Collision of SkyWest Airlines Metro II and Mooney M20, Kearns, Utah, January 15, 1987.
4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE–6144 and SE–6159; disposition of the Administrator's appeal. (Calendared by Member Nall.)
5. Opinion and Order: Administrator v. Godwin, Docket SE–8397; disposition of respondent's appeal. (Calendared by Member Burnett.)
6. Opinion and Order: Administrator v. Trail Lake Flying Service, Dockets SE–6578; disposition of respondent's appeal. (Calendared by Member Burnett and Nall.)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 383–6525.

Dated: September 29, 1989.

Bea Hardesty,
Federal Register Liasion Officer.
[FR Doc. 89–23536 Filed 10–2–89; 9:05 am]
BILLING CODE 7533–01–M

RESOLUTION TRUST CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:50 a.m. on Friday, September 29, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session, by telephone conference call, to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B)).

Dated: September 29, 1989.

Resolution Trust Corporation.

John M. Buckely, Jr.,
Executive Secretary.
[FR Doc. 89–23631 Filed 10–2–89; 8:45 am]
BILLING CODE 6714–01–M

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federal register

Wednesday
October 4, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75
Approval Requirements for Diesel-Powered Machines and Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines; Proposed Rules

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75

RIN 1219-AA27

Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: These proposed rules would establish new requirements for the approval of diesel engines and other related equipment used in underground coal mines, establish exposure monitoring and reporting requirements for air sampling of gaseous diesel emissions by coal mine operators, and provide safety standards for the use of diesel-powered equipment in underground coal mines. The proposals are, in part, derived from existing regulations in 30 CFR parts 18, 31, 32, 36, and 75 and are intended to provide protection against explosion, fire and other safety and health hazards related to the use of diesel-powered equipment. The proposed rules would also seek to amend certain equipment safety standards in existing part 75 that are now applicable only to electric-powered equipment so that such standards would apply, where necessary, to diesel-powered equipment as well. The new standards would be consistent with advances in mining technology, address known hazards not now covered by standards and provide reduced paperwork requirements where possible.

DATE: Written comments must be submitted on or before January 2, 1990.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the "Report of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines" may be obtained from the same office.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, telephone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Summary and Rulemaking Background

The Mine Safety and Health Administration is proposing to regulate the approval and use of diesel-powered equipment in underground coal mines, and establish related health monitoring provisions. These proposals are made under the authority of sections 101 and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 957. This proposal is based on the final report of the Mine Safety and Health Administration (MSHA) Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines (Committee).

On October 6, 1987, MSHA published a Notice of Establishment of the Advisory Committee in the **Federal Register** (52 FR 37381). The notice announced the Secretary of Labor's (Secretary) finding that it was in the public interest to establish the Committee to review standards and regulations related to the approval and use of diesel-powered equipment in underground coal mines, and that the Secretary was considering the promulgation of standards and regulations for diesel-powered equipment. The Committee Charter was subsequently filed in compliance with the provisions of the Federal Advisory Committee Act and section 102(c) of the Mine Act. Nine Committee members were appointed by the Secretary, and notice of their appointment was published in the **Federal Register** on January 5, 1988 (53 FR 189). As required by the Mine Act, the majority of members had no economic interests in the coal or other mining industry, and were not operators, miners, or officers or employees of the Federal Government or any state or local government. Two of the Committee members represented the interests of the industry, and two of the Committee members represented the interests of labor.

The nine Committee members provided a broad range of expertise in the areas of health, mine safety, and engineering. Two Committee members were medical doctors. One physician had experience in studying and treating pulmonary occupational diseases, and the other was a former public health officer as well as a private practitioner. Another Committee member was as a certified industrial hygienist with a doctoral degree in public health, and extensive experience studying and working for the occupational health needs of miners. One Committee member was a scientific researcher who conducted studies to show the effects of diesel exhaust on laboratory animals. The Committee also included a retired engineer who designed mining equipment for a large mining equipment manufacturing company and an engineer and college professor who had researched the mechanics of diesel-powered engines in the underground mine environment. Also present as a Committee member was a health and safety specialist who had investigated health and safety related problems at mines. A mine operator with extensive experience operating a mine using diesel-powered equipment was appointed to the Committee. The Chairman of the Committee had served as the Deputy Director of the Bureau of Mines and also had years of management experience in several mining companies. The areas of expertise represented by the Committee members provided a body of experience and knowledge covering all mining topics which aided the group in reaching its conclusions and recommendations about diesel-powered equipment. Under the Mine Act, the Committee was chartered for a 6-month term. The Committee mandate was to provide recommendations on three broad issue areas concerning equipment approval, safe use, and protection of miners' health.

On January 4, 1988, a notice in the **Federal Register** (53 FR 87) announced the date of the first Committee meeting, and responded to comments received from interested parties on the establishment of the Committee.

The Advisory Committee held six meetings over a six-month period. Two supplemental visits were made to underground coal mines where diesel equipment was in use. Each Committee member visited at least one of the coal mines. By visiting the coal mines, each member was able to see diesel-powered equipment in operation. They observed the methods used to service and maintain the equipment, provide for fuel storage, and otherwise provide health and safety protections for the miners at work underground.

Several panel presentations of health and safety experts were given at meetings in order to help provide information and data for the Committee to consider in reaching its recommendations. At the third meeting of the Committee, a panel of health experts presented the most recent studies concerning the possible carcinogenic effect of diesel exhaust exposure. The panel of experts also attempted to address how the information which was presented could be integrated in order to reach an objective estimation of the human risks to exposure. As a result of the health panel presentations and in order to adequately address the health issues presented, the Committee Chairman appointed a four-member Health Subcommittee. The Subcommittee met several times in order to reach a conclusion on the recommendation concerning diesel particulate. The fourth meeting of the Committee included a panel of experts who provided information and data to the Committee concerning the use of fire suppression systems as an alternative approach for addressing the potential fire hazard of diesel-powered equipment for use in areas where permissible electric equipment is not required. At the Committee's fifth meeting, a panel of 13 miners who worked with diesel-powered equipment in underground coal mines presented their experiences and concerns with the use of diesel-powered equipment including health effects, equipment hazards, and training and maintenance needs.

MSHA provided the Committee with a set of draft regulations covering the approval of diesel engines and power packages, safety and use practices, and exposure monitoring. The Committee reviewed the information as a first step in developing its recommendations. Several Committee members also provided for consideration draft regulations for the safe use of diesel-powered equipment and for exposure monitoring of gaseous diesel emissions. Initial presentations were conducted for the Committee by MSHA, the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Mines (BOM). The Committee received an overview of MSHA's Interagency Task Force Report entitled, "The Health and Safety Implications of the Use of Diesel-Powered Equipment in Underground Coal Mines."

During its deliberations, the Committee addressed three broad areas of concern: approval issues—issues concerning equipment design and performance; use issues—issues concerning the safe use of diesel equipment in the underground coal mine environment; and health issues—issues concerning the evaluation and control of health hazards associated with diesel equipment. These areas are generally regulated by 30 CFR parts 7, 70, and 75. The Committee recognized potential hazards in a number of areas including safety hazards not present with electric equipment traditionally used in coal mines, fire hazards attendant with the use of diesel-powered equipment, hazards involved in the handling of fuel underground, and the acute and long-term effects of diesel exhaust on the health of the miners. Based on the information which it examined, the Committee concurred that regulations should be promulgated by MSHA to govern the approval and use of diesel-powered equipment in underground coal mines and recommended that a number of specific areas be addressed. The Committee recommendations serve as the basis for this proposal. The Committee, as part of its transmittal letter transferring the Report to the Secretary, stated that, "[t]he actions which we suggest reflect our best judgment on how to ensure the safety and health of our nation's coal miners. We believe that the recommendations contained in [the] report are worthy of serious and immediate attention by the Department [of Labor]." The Committee's final report should be read in conjunction with the discussion of this proposed rule. Copies are available upon request from MSHA's Office of Standards, Regulations, and Variances at the address listed above.

II. Discussion of Proposed Rules

A. 30 CFR Part 7 General Discussion

Approval requirements for diesel-powered equipment used in underground coal mines are necessary to protect against mine fires and explosions, the risks of which are greater in coal mines due, in part, to the presence of potentially explosive concentrations of methane and combustible dust. In underground coal mines, methane combined with sparks which may be present from the internal combustion process, accumulation of combustible fuel, oil, and excessive heat on engine and power package surfaces, all contribute to the increased risk. Further, diesel exhaust may contribute to miners' exposure to harmful gases. Accordingly, MSHA is proposing to establish requirements for testing and approval of diesel-powered equipment in underground coal mines.

Under the Mine Act, MSHA is required to approve certain products for use in underground mines. This approval indicates that these products have met MSHA's specifications and test requirements, and have been designed and manufactured to ensure that the products will not present a fire, explosion, or other safety hazard related to use.

The Committee was presented with an overview of the approval process. Historically, MSHA and its predecessor agencies have approved equipment intended for use in areas of mines where methane and combustible dusts might provide possible sources of explosion or fire. During the approval process, equipment is evaluated against a set of published technical requirements. Conformance with design requirements is established by a detailed comparison of the design requirement against the finished product and the drawings provided by the manufacturers. Compliance with performance aspects of these requirements is determined by testing the product and comparing the test results against established criteria. If the product complies with the design and technical performance requirements, an MSHA approval is issued which is valid as long as that product is built in accordance with the drawings and specifications. The Agency has established programs through which the manufacturer or purchaser can modify approved equipment after appropriate technical evaluation by MSHA.

Diesel-powered equipment was first introduced in the United States into underground coal mines in 1946 but did not attain significant use until the 1970's. In 1989, there were over 1500 diesel-powered units in use in over 120 coal mines across the United States. Because of the growth in use of these machines, MSHA believes that regulations are necessary in order to protect the safety and health of the nation's coal miners. Currently, MSHA under the authority of 30 CFR part 36, approves diesel-powered equipment for use in gassy non-coal mines under regulations requiring that certain technical requirements are met. In underground coal mines, mine ventilation plans specify the use of diesel-powered equipment approved as permissible under part 36 in areas of the mine where permissible electric equipment is required. Thus, diesel-powered equipment for underground coal mines is generally approved under part 36. However, part 36 was originally developed for gassy non-coal mines and does not address a number of more recent technical improvements in diesel technology. MSHA is seeking comments from interested parties on the continued use of parts 31, 32, and 36 in underground coal mines, and the continued applicability of these parts to metal and nonmetal mines in light of the newly proposed requirements for diesel engines and diesel power packages which are contained in this document. MSHA could revoke or revise parts 31, 32, or 36 and seeks information from all parts of the mining industry on how to best handle those approval requirements. This proposal provides new subparts for the testing and approval of diesel engines and power

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packages in underground coal mines. The Agency intends that, once these subparts would be published as a final rule, the use of part 36 equipment would be permitted according to the provisions of proposed 30 CFR 75.1907. Part 36 could remain in effect for metal-nonmetal mines; however, MSHA specifically seeks comments from interested parties on the continued application of the part 36 approval regulations to metal-nonmetal mines and specifically requests comments on whether part 36 should be revised or revoked and replaced in light of the new proposed approval regulations for diesel-powered equipment in underground coal mines.

In preparation for the Advisory Committee, MSHA reviewed existing approval requirements for diesel-powered equipment and provided four draft documents to serve as the basis for Advisory Committee discussions on the approval issues. These documents included draft approval requirements developed under part 7 for diesel engines and diesel power packages intended for use in areas of coal mines, depending upon the hazard likely to be present in the coal mine.

For the proposed approval regulation, subpart E, category A engine requirements and subpart F power package requirements are applied to products intended for use in an underground mine environment where methane may be encountered and where combustible materials are present. Subpart E engine and subpart G power package approval requirements are applied to products for use in areas of the mine where no methane is expected to be present but where combustible materials are present. Separate approval requirements were established for the engine since features affecting health and safety are controlled by the engine manufacturer. Certain other safety features such as flame arresters, spark arresters, and water scrubbers must be added to the engine to ensure that it can be operated safely in the coal mine environment. An engine in combination with these safety features is termed a diesel power package. A proposal for a separate approval was developed for the power package because the power package manufacturer is normally a company other than the engine manufacturer and controls the assembly of the power package. Approved diesel power packages can be incorporated by equipment manufacturers into a wide variety of machines without the need for further MSHA evaluation of power package features. MSHA therefore intends that two approvals would be necessary: one for the engine and one for the power package.

At the time of the Committee's work, MSHA had not yet drafted proposals for the evaluation of the completely assembled unit of diesel-powered equipment incorporating an approved power package. The MSHA drafts which were initially provided to the Committee only specified the engine and power package requirements. Committee discussions also raised the issue of the scope of additional features which could be included in the approval requirements for the completely assembled unit of equipment. The Committee recommended that an approval program be established which would emphasize other equipment safety features which could be readily addressed by an equipment manufacturer. These features could include the incorporation of a fuel system, exhaust gas dilution system, fire suppression system, and appropriate electric and braking systems, and would address the interrelationship of all these systems and would provide some safety advantages. For example, the location of the fuel system might be important in relation to the surface temperature encountered on a diesel power package.

In order to carry out the Committee recommendation, MSHA has published an advance notice for proposed rulemaking (ANPRM) elsewhere in today's **Federal Register**. MSHA has not sought to propose approval requirements at this time because the Agency is seeking further guidance on certain issues from the mining community.

It should be noted that the ANPRM has referred to the approval requirements for diesel machines as subparts H and I to part 7. Subpart H would provide an approval evaluation for diesel machines used where permissible electric equipment is required, and subpart I would provide an approval evaluation for diesel machines used where permissible electric equipment is not required. In attempting to provide notice to the public about the interaction between the proposed approval evaluation and the dates by which products would be required to be evaluated under proposed § 75.1907, the Agency has referred to the ANPRM part 7 subparts H and I in the proposed rule published in today's **Federal Register**. The use of those subparts is meant as guidance to the public on MSHA's intended application of those subparts and the time schedule for their implementation on diesel-powered machinery used in underground coal mines.

The Committee endorsed the concept that approved diesel equipment be required in all areas of the mine where permissible electric equipment is required. This endorsement was based on the MSHA draft approval regulations provided to the Committee which essentially follow existing part 36 approval requirements to protect equipment from potentially explosive concentrations of methane gas and combustible quantities of coal dust. Thus, subpart E, category A engines and subpart F of the proposal, dealing with diesel engines and power packages respectively, were designed to apply to products intended for use in an underground mine environment where methane may be encountered and where combustible materials are present. Conversely, the Committee recommended that permissible diesel-powered equipment should not be required in outby areas where non-permissible electric equipment is allowed. This delineation of where to require certain types of explosion-proof diesel-powered equipment is based largely on the regulatory structure currently used by MSHA for electric equipment, and the fact that current safety standards enforced by MSHA are designed to keep intake airways free of methane. Therefore, equipment used in these outby areas would not be exposed to explosive concentrations of methane and would not need to have explosion protection features.

The need to approve diesel-powered equipment, except for the limited class which is addressed below, for use in outby areas is a concept which the Committee directly recommended based on the MSHA draft regulation originally submitted to the Committee. MSHA is proposing approval programs for outby diesel-powered equipment. Subpart E, category B engines and subpart G power packages are designed to apply to engines and power packages for use in areas of the mine where no methane is expected to be present, but combustible materials are present. MSHA specifically solicits comments on whether outby diesel-powered equipment should be approved.

The proposals for the diesel engine and power package and the advance notice of proposed rulemaking (ANPRM) for the machine approval have been included under part 7. In establishing the part 7 concept, MSHA anticipated proposing additional subparts for products that have characteristics suitable for applicant or third party testing because the tests can be objectively run in a routine and readily reproducible manner, without any elements of subjective analysis. Products whose testing and evaluation depend upon the experience, judgment and knowledge of Agency personnel would not be candidates for part 7 subparts. In light of these factors, MSHA solicits comments on the suitability of diesel engines, power packages and machine approvals under part 7. An alternative could be development of approval requirements calling for MSHA testing and evaluation based on applicant submissions of product samples and technical data or a program combining features of part 7 and other approval programs.

A major recommendation made by the Committee was to establish a category of "limited class" outby equipment which, instead of surface temperature controls, would have fire prevention features such as special fuel system protection, fire suppression systems and an engine compartment air temperature sensor with the capability to shut down the engine. They also recommended this be accomplished without a formal part 7 approval program. This recommendation is addressed more completely under part 75.

1. Topic-by-Topic Discussion of 30 CFR part 7 subpart E

Section 7.81 Purpose and Effective Date. Proposed subpart E would establish specific requirements for approval of all diesel engines intended for use in underground coal mines. That is, this subpart would establish engine performance and exhaust emission requirements for approval of diesel engines in areas of underground coal mines where permissible electric equipment is required, and where nonpermissible electric equipment is allowed. An effective date would also be set for implementation of the regulation.

Section 7.82 Definitions. Section 7.82 would set out the definitions which apply in subpart E. The definitions are specific to this subpart. They are designed to clarify the requirements of subpart E and apply to approvals for diesel engines in areas of mines where permissible electric equipment is required and where nonpermissible electric equipment is allowed. Category A engines would be defined as engines intended for use in areas of underground coal mines where permissible electric equipment is required. Category B engines would be defined as engines intended for use in areas of underground coal mines where nonpermissible electric equipment is permitted.

Section 7.83 Application Requirements. Under the proposed rule, an application for approval of a subpart E diesel engine would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail drawings of emission related parts, and a drawing list that would identify the drawings which are to be included as part of the approval process. A statement would also be required which specifies whether the approval application is for a category A engine or a category B engine.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing system. The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed.

Some information on the diesel engine cannot be determined prior to performing the approval tests. The information would include the ventilation rate, particulate index, and the fuel deration chart for altitude. The ventilation rate and fuel deration chart would be documented in the approval letter and on the approval marking under § 7.90. The particulate index would be documented in the approval letter. The information is necessary to ensure that the diesel engine would be operated properly and sufficient ventilating air would be available to provide miners with protection against overexposure to the diesel engine's gaseous and particulate exhaust emissions. The addition of the particulate index would provide miners some health benefits.

Section 7.84 Technical Requirements. Proposed § 7.84 would list the specific technical requirements for both category A and category B engines necessary to ensure that the diesel engine's gaseous and particulate exhaust emissions are controlled and would provide protection against overexposure of the miner to these contaminants. The technical requirements for the gaseous emissions are based on the applicable sections of the existing requirements in 30 CFR part 36. The technical requirement for a diesel particulate index would be new. These requirements would provide a health benefit to miners.

The proposal would address the design requirements of the fuel injection system that affect the performance and emission characteristics of the diesel engine. The requirement would also prevent unauthorized changes or adjustments to the fuel system which would help ensure the integrity of the fuel system.

The Advisory Committee recommended that limits be placed on the gaseous pollutants to achieve a basically clean engine. The proposal limits the maximum levels of carbon monoxide and oxides of nitrogen (nitric oxide and nitrogen dioxide). The limit for oxides of nitrogen for category B engines is a new requirement for outby engines although it is based on § 36.26(b). These limits were derived from existing §§ 36.26(b) and 32.4(f) and have been used by MSHA for many years in approving diesel equipment. These limits have proven to be effective in providing a clean burning engine, and would provide health benefits to underground coal miners.

The Advisory Committee addressed the issue that for each engine model, a ventilation rate would be established that indicates the amount of air required to dilute carbon monoxide, nitric oxide, nitrogen dioxide, and carbon dioxide to the (8-hour) air quality standard level. A nameplate airflow quantity will be determined for each speed and horsepower rating requested by the applicant.

The proposal would require that a fuel deration chart be developed to ensure that when the engine is performing at higher altitudes, the gaseous components of carbon monoxide and oxides of nitrogen at the maximum fuel-air ratio remain below the specified levels stated.

The Advisory Committee recommended that the particulate emissions should be evaluated based on engine emission data. The proposal would establish a particulate index that would report the air quantity necessary for dilution of the diesel particulate matter to one milligram of diesel particulate per cubic meter of air for each speed and horsepower rating requested by the applicant. The amount of particulate matter would be determined by operating the diesel engine at 10 steady state conditions, introducing the exhaust gas into a dilution tunnel, and collecting a particulate sample from the diluted exhaust gas on a filter. The establishment of the particulate index would provide a health benefit to miners.

Section 7.85 Critical Characteristics. Proposed § 7.85 would list the critical characteristics that must be inspected or tested on each subpart E diesel engine prior to shipment or use. This would ensure that the performance and emission characteristics of production engines are equivalent to the

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performance and emission characteristics of the laboratory test engine. This section would help to provide protection to the miner against overexposure to the diesel engine's gaseous and particulate exhaust emissions.

Section 7.86 Test Equipment and Specifications. Proposed § 7.86 would describe the principal equipment required to perform the approval tests and would divide the test equipment into three main areas: (1) dynamometer test cell; (2) gaseous emission sampling system; (3) particulate sampling system. For each area, the proposal would give specifications for the test apparatus and standard laboratory test conditions. Where appropriate, specific requirements are outlined for either category A engines or category B engines. The apparatus used for the dynamometer test cell and gaseous emission sampling system has been successfully used in the MSHA laboratory for many years and is typical of the equipment used by diesel engine manufacturers. The apparatus used for the particulate sampling system would be new and is based on the Advisory Committee's recommendation that the particulate emissions should be evaluated. Most manufacturers of diesel engines used for over-the-road applications and engine emissions laboratories use this apparatus to comply with existing Environmental Protection Agency (EPA) particulate emission requirements for that type of engine. The apparatus used for the particulate sampling system was derived from specifications meeting EPA requirements in 40 CFR part 86.1310–88.

Section 7.87 Test for Determination of Maximum Fuel-Air Ratio. Proposed § 7.87 would describe the test for determination of the maximum fuel-air ratio as referenced in the technical requirements, § 7.84(b). Where appropriate, specific requirements are outlined for either category A engines or category B engines. The test would determine the maximum concentrations of carbon monoxide and oxides of nitrogen throughout the manufacturer's specified operational range of the engine. If the prescribed levels are not exceeded, then the manufacturer's specified maximum fuel-air ratio is allowed. If the prescribed levels are exceeded, the engine manufacturer must modify the engine to conform to the requirements. The proposal would require that the tests be conducted using the equipment specified in proposed §§ 7.86(a) and 7.86(b). The test procedure specified in the proposal would provide repeatable and reliable test results. The test procedure is currently used by MSHA for certification tests under 30 CFR part 36 except for the percent of methane injected into the engine intake air system. Existing part 36 specifies 1.5 percent by volume methane, whereas the proposal would specify 1.0 percent by volume methane. The 1.0 percent concentration would be proposed for consistency with existing part 75, which requires changes or adjustments in the mine ventilation when 1.0 percent methane or more is detected.

Section 7.88 Test for Determination of Ventilation Rate. Proposed § 7.88 would describe the test for determination of a ventilation rate as referenced in the technical requirements, § 7.84(c). Where appropriate, specific requirements are outlined for either category A engines or category B engines. The test would determine the raw exhaust gas concentration of carbon monoxide, carbon dioxide, nitric oxide, nitrogen dioxide, and methane in the exhaust.

The proposal would specify the test equipment and operating parameters required as discussed in § 7.87. Using the laboratory test data and calculations specified, ventilation numbers would be determined for each gas component at the (8-hour) air quality standard level. The proposal would specify a method for determining the ventilation rate which would represent the gaseous nameplate ventilation rate for the engine.

This test would help ensure that correct quantities of ventilating air are provided to give miners protection against overexposure to the diesel engine's gaseous emissions.

Section 7.89 Test for Determination of Particulate Index. Proposed § 7.89 would describe the test for determination of a particulate index as referenced in proposed § 7.84(e). Where appropriate, specific requirements are outlined for category A engines. The test would be performed to determine the concentration of diesel particulate matter. This concentration of particulate matter collected would be an equal weighted, average particulate emission generated from the engine at several steady-state speed and horsepower conditions. This type of test would represent average engine conditions that would be experienced by miners during normal operation of the diesel engine. The proposal would require that the test be conducted using the equipment specified in proposed §§ 7.86(a) and 7.86(c).

The proposal would give the calculations required and give a method of determining the particulate index. The particulate index would be expressed as a ventilation number and, as recommended by the Advisory Committee, be used by mine operators for mine system design and by MSHA as a basis for evaluating and approving minimum air quantities in mine ventilation plans.

Section 7.90 Approval Marking. Proposed § 7.90 would require a legible and permanent approval plate with the assigned MSHA approval number, ventilation rate, and pertinent engine information inscribed. This plate would be required to be securely attached to the subpart E diesel engine. The proposal would allow identification of approved subpart E diesel engines in a manner that facilitates field identification of the engine as approved by MSHA.

Section 7.91 Post-Approval Product Audit. Proposed § 7.91 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart E diesel engine for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart E diesel engines for audit from the approval holder or other sources such as mine suppliers or equipment distributors any time at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.92 New Technology. Section 7.92 of the proposal would allow approval of subpart E diesel engines that incorporate technology for which the specific requirements of subpart E are not appropriate, if MSHA determines that the diesel engine is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart E diesel engines. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

2. Topic-by-Topic Discussion of 30 CFR Part 7 Subpart F

Section 7.95 Purpose and Effective Date. Proposed subpart F would establish specific requirements for MSHA approval of diesel power packages intended for use in areas of underground coal mines where permissible electric equipment is required. It would also set an effective date for implementation of the regulation.

Section 7.96 Definitions. Section 7.96 would set out the definitions which apply in subpart F. The definitions are specific to this subpart and do not apply to any other subpart. They are designed to clarify the requirements of subpart F and apply to approvals for diesel power packages in areas of mines where permissible electric equipment is required.

Section 7.97 Application Requirements. Under the proposed rule, an application for approval of a subpart F diesel power package would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail and assembly drawings of certain parts and system components, a power package checklist, documentation showing that applicable electrical systems and components have been previously approved, and a drawing list that would identify the drawings which are to be included as part of the approval process.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing systems.

The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed. Some specifications of the diesel power package design cannot be determined prior to performing the approval tests. These specifications would include the settings of adjustable sensors and devices utilized on the diesel power package to meet the test requirements and the operating limitations of the equipment.

These specifications are necessary to ensure that the fire and explosion proof characteristics of the diesel power package are maintained.

This section would also require the applicant to submit a finalized version of the power package checklist because the checklist submitted with the initial application may not include the proper settings as determined by the approval testing.

Section 7.98 Technical Requirements. The technical requirements specified by this section are intended to ensure that the diesel engine can be operated without creating a fire or explosion hazard. This section follows the Advisory Committee recommendation that permissible diesel-powered equipment be required in areas of coal mines where permissible electric equipment is required. These technical requirements would provide the same protection to diesel-powered equipment as is presently provided by permissible electric equipment. The primary hazards in these areas would be explosive concentrations of methane gas and combustible quantities of coal dust. These technical requirements are largely derived from 30 CFR part 36 which established requirements for diesel-powered equipment in gassy, non-coal mines. They have been modified to address the presence of combustible coal dust by reducing the maximum allowable surface temperature to 302 °F (150 °C). That maximum surface temperature is the same as is required for permissible electric equipment.

Other detailed requirements would be specified to ensure that flame arresting, spark arresting, and surface temperature limiting features are provided.

Section 7.99 Critical Characteristics. Proposed § 7.99 would list the critical characteristics that must be inspected or tested on each subpart F diesel power package prior to shipment or use to ensure that the diesel power package will not create an explosion or fire hazard, produce hazardous levels of emissions or diesel particulate, or be a safety hazard. This list of critical characteristics was developed using the applicable sections of the detailed technical requirements, § 7.98, and the proposed application requirements, § 7.97.

Section 7.100 Explosion Tests. Proposed § 7.100 would describe the explosion tests to be performed as referenced in the proposed technical requirements, § 7.98. This proposal is derived from existing § 36.46, and retains requirements for explosion testing of the intake and exhaust systems to determine the adequacy of the flame arresters and joints in preventing propagation of an explosion. It also evaluates the ability of the intake and exhaust system components to withstand internal explosions without permanent deformation, passage of flames, or glowing particles. Additionally, the proposal would determine the lowest water level of the exhaust conditioner where it would act as an effective flame arrester, and the peak explosion pressures in each segment of the intake and exhaust system.

Section 7.101 Surface Temperature Tests. Proposed § 7.101 would describe the surface temperature tests to be performed as referenced in the proposed technical requirements, § 7.98. The requirement for these tests are retained from existing § 36.48, which requires testing of the surface temperatures of components. The surface temperature tests would be used to determine if the temperature of any surface of the subpart F diesel power package exceeds 302 °F (150 °C). Because this machinery would operate in underground mine environments where combustible materials are present, a surface temperature of 302 °F (150 °C) or less would be necessary to avoid a potential fire hazard.

Section 7.102 Exhaust Gas Cooling Efficiency Test. Proposed § 7.102 would describe the exhaust gas cooling efficiency test to be performed as referenced in the proposed technical requirements, § 7.98. This requirement is retained from existing § 36.47 which requires testing of the exhaust gas cooling system. This test would be performed to determine whether the exhaust conditioner functions effectively and cools the exhaust gas below 170 °F (76 °C) when operating under the specified conditions.

Section 7.103 Safety System Controls Test. Proposed § 7.103 would describe the tests which must be conducted to ensure that all the safety system controls are properly designed for the system and are functioning properly. This requirement is retained from existing § 36.47 which specifies tests for specific safety sensors. The safety system controls include a variety of sensors, shutdown devices, and power package features that ensure that the engine is operating without creating a fire or explosion hazard.

One of the sensors evaluated during these tests is the exhaust gas temperature sensor. This device would shut the engine down before the exhaust gas temperature exceeds 185 °F (85 °C). This sensor is a device used in addition to the low water level shutdown and ensures that flame arresting protection is provided in the exhaust system should the low water level sensor fail to function. The Advisory Committee specifically recommended that this device be provided.

Section 7.104 Internal Static Pressure Test. Proposed § 7.104 would describe the internal static pressure test that would be performed to determine if the designs of the intake and exhaust system components are structurally sound as referenced in the technical requirements, § 7.98, and the explosion tests, § 7.100.

Included are installation procedures, instrumentation specifications, procedures for conducting the tests, and criteria for evaluating the test results. The specified procedures are intended to ensure that test results are reliable, repeatable and consistent.

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MSHA has designed all of the procedures to be easily understood by applicants who may choose to conduct their own testing, or by third party testing facilities, under 30 CFR part 7.

Section 7.105 Approval Marking. Section 7.105 of the proposal would require a legible and permanent approval plate with the assigned MSHA approval number and the exhaust conditioner grade limitation inscribed. This plate would be required to be securely attached to the subpart F diesel power package in a way that would not impair any explosion proof characteristics of the machine. The proposal would allow identification of approved subpart F diesel power packages in a manner that facilitates field identification of the machine as approved by MSHA, and would restrict operation of the machine to the maximum grade specified on the approval plate.

Section 7.106 Post-Approval Product Audit. Proposed § 7.106 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart F diesel power package for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart F diesel power packages for audit from the approval holder or other sources such as mine suppliers or equipment distributors anytime at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.107 New Technology. Section 7.107 of the proposal would allow approval of subpart F diesel power packages that incorporate technology for which the specific requirements of subpart F are not appropriate, if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart F diesel power packages. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

Section 7.108 Power Package Checklist. Proposed § 7.108 would provide that the approval holder provide with each approved diesel power package, a power package checklist which identifies the features that must be checked or tested to determine if the subpart F diesel power package is in approved condition. MSHA envisions that this checklist would identify many of the critical characteristics specified in § 7.99. The checklist would also include the tests that would be performed to ensure that the safety shutdown system devices are functioning properly. Illustrations would be required to assist the user in identifying specific features on the diesel power package. Although proposed 30 CFR part 75 maintenance requirements would require the use of these checklists in equipment maintenance programs, MSHA does not intend that the subpart F power package checklist be used as a maintenance manual. It would be provided in addition to the manufacturer's maintenance manual.

3. Topic-by-Topic Discussion of 30 CFR part 7 Subpart G

Section 7.111 Purpose and Effective Date. Proposed subpart G would establish specific requirements for MSHA approval of diesel power packages intended for use in areas of underground coal mines where permissible electric equipment is not required. It would also set an effective date for implementation of the regulation.

Section 7.112 Definitions. Section 7.112 would set out the definitions which apply in subpart G. The definitions are specific to this subpart and do not apply to any other subpart. They are designed to clarify the requirements of subpart G and apply to approvals for diesel power packages in areas of mines where permissible electric equipment is not required.

Section 7.113 Application Requirements. Under the proposed rule, an application for approval of a subpart G diesel power package would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail and assembly drawings of certain parts and system components, a power package checklist, and a drawing list that would identify the drawings which are to be included as part of the approval process.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing systems.

The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed. Some specifications of the diesel power package design cannot be determined prior to performing the approval tests. These specifications would include the settings of adjustable sensors and devices utilized on the diesel power package to meet the test requirements and the operating limitations of the equipment.

These specifications are necessary to ensure that the characteristics of the diesel power package which provide fire protection are maintained.

This section would also require the applicant to submit a finalized version of the power package checklist because the checklist submitted with the initial application may not include the proper settings as determined by the approval testing.

Section 7.114 Technical Requirements. The technical requirements specified by this section are intended to ensure that the diesel engine can be operated without creating a fire hazard. This section follows the Advisory Committee recommendation that surface temperature controls be required on all diesel-powered equipment (except limited class equipment) operating in areas of mines where nonpermissible electric equipment is allowed. The surface temperature controls would maintain external surfaces of the diesel power package below temperatures that could ignite combustible materials. The primary hazard in these areas would be combustible quantities of coal dust. The technical requirements are largely derived from existing part 36 which established requirements for diesel-powered equipment in gassy, non-coal mines. The requirements have been modified by eliminating the explosion proof requirements to address the outby areas of mines where explosive concentrations of methane are not present and by reducing the maximum allowable surface temperature to 302 °F (150 °C) to address the presence of combustible coal dust.

Other detailed requirements would be specified to ensure that surface temperature limiting features are provided.

Section 7.115 Critical Characteristics. Proposed § 7.115 would list the critical characteristics that must be inspected or tested on each subpart G diesel power package prior to shipment or use to ensure that the diesel power package will not create a fire hazard, produce hazardous levels of emissions or particulate, or be a safety hazard. This list of critical characteristics was developed using the applicable sections of the detailed technical requirements, § 7.114, and the proposed application requirements, § 7.113.

Section 7.116 Surface Temperature Tests. Proposed § 7.116 would describe the surface temperature tests to be performed as referenced in the proposed technical requirements, § 7.114. The requirements for these tests are retained from existing § 36.48, which requires testing of the surface temperatures of components. The surface temperature tests would be necessary to determine if the temperature of any surface of the subpart G diesel power package exceeds 302 °F (150 °C). Because this machinery would operate in underground mine environments where combustible materials are present, a surface temperature of 302 °F (150 °C) or less would be necessary to avoid a potential fire hazard.

Section 7.117 Exhaust Gas Cooling Efficiency Test. Proposed § 7.117 would describe the exhaust gas cooling efficiency test that would be performed as referenced in the proposed technical requirements, § 7.114. This requirement is retained from existing § 36.47 which requires testing of the exhaust gas cooling system. This test would be performed to determine whether the exhaust conditioner functions effectively and cools the exhaust gas below 302 °F (150 °C) when operating under the specified conditions.

Section 7.118 Safety System Controls Test. Proposed § 7.118 would describe the tests which must be conducted to ensure that all the safety system controls are properly designed for the system and are functioning properly. This requirement is retained from existing § 36.47 which specifies tests for specific safety sensors. The safety system controls include a variety of sensors, shutdown devices, and power package features that ensure that the engine is operating without creating a fire hazard.

Included are installation procedures, instrumentation specifications, procedures for conducting the tests and criteria for evaluating the test results. The specified procedures are intended to ensure that test results are reliable, repeatable and consistent.

MSHA has designed all of the procedures to be easily understood by applicants who may choose to conduct their own testing, or by third party testing facilities, under 30 CFR part 7.

Section 7.119 Approval Marking. Section 7.119 of the proposal would require a legible and permanent approval plate with the assigned MSHA approval number inscribed. This plate would be required to be securely attached to the subpart G diesel power package. The proposal would allow identification of approved subpart G diesel power packages in a manner that facilitates field identification of the machine as approved by MSHA.

Section 7.120 Post-Approval Product Audit. Proposed § 7.120 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart G diesel power package for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart G diesel power packages for audit from the approval holder or other sources such as mine suppliers or equipment distributors anytime at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.121 New Technology. Section 7.121 of the proposal would allow approval of subpart G diesel power packages that incorporate technology for which the specific requirements of subpart G are not appropriate, if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart G diesel power packages. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

Section 7.122 Power Package Checklist. Proposed § 7.122 would provide that the approval holder provide with each approved diesel power package, a power package checklist which identifies the features that must be checked or tested to determine if the subpart G diesel power package is in approved condition. MSHA envisions that this checklist would identify many of the critical characteristics specified in § 7.115. The checklist would also include the tests that would be performed to ensure that the safety shutdown system devices are functioning properly. Illustrations would be required to assist the user in identifying specific features on the diesel power package. Although proposed 30 CFR part 75 maintenance requirements would require the use of these checklists in equipment maintenance programs, MSHA does not intend that the subpart G power package checklist be used as a maintenance manual. It would be provided in addition to the manufacturer's maintenance manual.

B. 30 CFR Part 70 Discussion

From the beginning of its assignment, the Committee regarded the health effects of diesel exhaust as a key area to be addressed in its deliberations. At the same time, the Committee expressed concern about the ability to assess all the health effects of diesel exhaust based on the limited amount of data available at that time. As part of its introductory materials, MSHA gave each Committee member a draft regulation on occupational exposure limits and environmental monitoring. The staff representative from NIOSH presented some information on the health effects of exposure to diesel emissions. The Committee requested additional information from experts and the Committee Chairman appointed one member to organize a panel of health and research experts in the field of diesel exhaust. The panel was convened at the third Committee meeting where health issues were extensively discussed. The Committee Chairman appointed a special subcommittee to determine whether an exposure level of diesel particulate could be recommended and how the diesel particulate could be controlled and monitored. The Committee adopted the subcommittee's report and recommendations.

In its final recommendations, the Committee emphasized the importance of the health implications of diesel exhaust relating to both the gaseous and particulate components.

Based on available information that whole diesel exhaust represents a probable risk for causing human lung cancer, the Committee recommended that MSHA regulate the use of diesels in underground coal mines to protect the health of miners. The Committee recommended regulation by monitoring and controlling the diesel particulate, but could not recommend a specific level of exposure based on the existing data and current available technology for monitoring the amount of diesel particulate in underground coal mines. Following the Committee's decision not to provide a recommendation, MSHA is not proposing a standard to set a specific exposure level for the diesel particulate at this time.

In August 1988 after the Committee's report was submitted to the Secretary, the National Institute for Occupational Safety and Health issued its "Current Intelligence Bulletin 50" on the carcinogenic effects of exposure to diesel exhaust. NIOSH recommended that whole diesel exhaust be regarded as a potential occupational carcinogen in conformance with the cancer policy of the Occupational Safety and Health Administration.

Regulatory action to deal with diesel exhaust as a probable human carcinogen would involve two primary components: quantification of its potential effect on workers and

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development of a means to determine the levels at which diesel exhaust is present in the workplace. Soon after receipt of the Committee's recommendations, MSHA began to coordinate research efforts with NIOSH and the Bureau of Mines (BOM) in order to determine at what diesel particulate exposure levels health effects occur, and how to develop a sampling strategy for the diesel particulate. MSHA and BOM are testing and evaluating a sampling method for the detection of diesel particulate in underground coal mines. NIOSH is in the initial steps of conducting a risk assessment based upon animal study data. These steps are being taken as a result of the Committee's recommendations.

MSHA believes that the NIOSH risk assessment is an important step in the development of a particulate standard for diesel emissions. Because the risk assessment could form the basis on which to develop a standard, MSHA will make the risk assessment available for public comment soon after it is received from NIOSH. The risk assessment should be available from NIOSH by early 1990.

The Committee recommended that control of the diesel particulate underground could be accomplished by several means including fuel requirements, equipment design, and in-mine controls such as the ventilation system and equipment maintenance. The Committee recommended that particulate emissions be evaluated through the machine approval process by determining the appropriate air quantity for dilution of particulate emissions and reporting that quantity as an index of that necessary for dilution to one milligram of diesel particulate per cubic meter of air. That ventilation rate could then be used for mine system design and as a basis for evaluating and approving minimum air quantities in mine ventilation plans. MSHA has implemented the Committee's recommended approach in the proposals for 30 CFR part 7, subpart E (approval schedule for diesel engines) and 30 CFR part 75 (fuel, ventilating air requirements and equipment maintenance requirements).

MSHA believes that the proposed rule provisions that address diesel engine approval, fuel, ventilating air, a particulate index, and better equipment maintenance will result in cleaner running diesel engines, lowering the amount of potentially harmful diesel emissions. These requirements would provide a health benefit to miners.

Discussions on those specific proposals are found elsewhere in this document. MSHA expects to address the question surrounding exposure levels of the diesel particulate in a later rulemaking after the available data are more fully evaluated.

The Advisory Committee recommended that exposure limits for the gaseous contaminants in diesel exhaust should not be unique from the exposure limits set for the same contaminants generated by other mining sources such as blasting. In line with that recommendation, MSHA's air quality proposed rule published on August 29, 1989 (54 FR 35760), includes permissible exposure limits for carbon dioxide, carbon monoxide, nitric oxide, nitrogen dioxide, and sulfur dioxide. The Agency intends that the permissible exposure limits arrived at through the air quality rulemaking will address the hazards to miners posed by such gases, regardless of their source. Because of the particular importance of such standards to miners exposed to diesel exhaust, the Agency further intends that the air quality rulemaking will be final by the time that this rulemaking on the approval of and monitoring requirements for diesel equipment is complete.

Another recommendation made by the Committee concerns the approach that MSHA should use in exposure monitoring for gaseous emissions. The Committee recommended that mine operators should be required to periodically sample for oxides of nitrogen (NO and NO_2) and carbon monoxide (CO). In addition, sulfur dioxide (SO_2) would be sampled when diesel fuel was in use that contained more than 0.25 percent of sulfur. The Committee further recommended that MSHA should develop a sampling strategy that uses return air sampling to trigger personal exposure monitoring. These recommendations would be implemented by MSHA's proposals for §§ 70.1900 and 70.1901.

The proposed requirements would follow the Committee's recommendation for mine operators to take representative samples of carbon monoxide (CO), nitric oxide (NO) and nitrogen dioxide (NO_2). Those samples would be taken in the ventilation return airways on a weekly basis.

The proposal to require sampling in the return airway is based on knowledge of the specific operation of equipment underground and the behavior of gaseous emissions generated by these machines. Because, for example, nitrogen dioxide generated by the diesel equipment would be found in the immediate return airway of a section where diesel-powered equipment was in use, it is therefore logical to sample the immediate return airway on a consistent basis as a trigger to personal exposure monitoring. If the sample taken in the immediate return was not high enough to trigger personal sampling, no personal exposure monitoring would be required at that time. Personal exposure monitoring would therefore be reduced in frequency provided that the weekly samples did not exceed 50 percent of the permissible exposure limit (PEL) for any of the gases required. Samples exceeding 50 percent of the PEL, as referenced in proposed § 72.100, would trigger personal exposure monitoring by the mine operator. It should be noted that the revised air quality standards for coal and metal-nonmetal mines presently under development would update the threshold limit values (TLVs®) currently found in existing § 75.301-2 and refer to those values as "permissible exposure limits" (PELs). For consistency, MSHA incorporated the generic air monitoring proposal found in the proposed air quality standards with the area and personal monitoring requirements found in proposed §§ 70.1900 and 70.1901 which are published today. Thus, proposed §§ 72.100 and 72.200, which are referenced in today's proposal can be found at 54 FR 35829-35830 (August 29, 1989). MSHA specifically solicits comments from interested persons on today's proposal and the appropriate interrelationship of the area and personal exposure monitoring provisions to the proposed air quality rules.

Once the personal monitoring requirements are triggered, mine operators would be required by § 70.1901 to monitor the personal exposure of miners which would be representative of affected miners, exposure under § 70.1901. Additionally, when 75 percent of the PEL concentration is found, personal monitoring would be conducted on each operational shift. When personal exposure monitoring results indicate levels that are less than 100 percent of the PEL with 95 percent confidence, area sampling requirements under § 70.1900 would be reestablished.

The proposal would address the frequency and procedures for exposure monitoring.

Frequency. The proposal would require that weekly representative samples for carbon monoxide, nitric oxide, and nitrogen dioxide be taken. In addition, when an operator uses fuel which contains more than 0.25 percent of sulfur, the operator must take representative samples of sulfur dioxide. The proposal would require an operator to provide a certified statement to MSHA inspectors as to the fuel's sulfur content when fuel is used which contains 0.25 percent or less of sulfur. Operators who use fuel with 0.25 percent or less of sulfur, and who provide a certified statement to the MSHA inspector as to the sulfur content, would not need to take representative samples for sulfur dioxide. The purpose of the certified statement would be to require verification of the sulfur content (percent by weight) of the fuel.

In order to address the Committee's recommendation, MSHA is proposing that a minimum of weekly samples (that is, one concentration determination per week per substance) be taken in the immediate return of any split of air in which diesel equipment is used. MSHA believes this will provide adequate screening for the targeted contaminants and the triggering of the more comprehensive personal monitoring requirement. The proposal intends the weekly samples to be a minimum requirement. It is not MSHA's intent to require an alteration of a more frequent sampling program if one is already established at the mine.

Sampling Procedure. The proposal would require that weekly samples be taken in the immediate return airways of any split of air where diesel equipment is used in a mine. The immediate return would be interpreted as an accessible area of a mechanized mining unit at the interface between areas classified as intake and return air courses. Also the term could include the area normally called the "tailgate" in a longwall operation, or an area immediately in by the last piece of operating diesel equipment during longwall moves where additional dilution of the air split has not occurred. Other situations may provide different parameters for an immediate return area.

Proposed § 70.1900(b) would require that the weekly monitoring be conducted according to the proposed air quality standards in § 72.200 (c), (d), (e), and (f), and that such samples shall be collected during periods when contaminant concentrations are representative of peak exposures to miners at risk, and when required by § 72.200(a). Proposed § 72.200 (c), (d), (e), and (f) provide the monitoring procedures, recordkeeping, access to exposure records, and observation of monitoring requirements from the air quality proposed rules. Because these procedures are generic to any mine and any contaminant, MSHA has proposed that they are applicable to the area exposure monitoring recommended by the Advisory Committee. A full explanation of these paragraphs can be found in the preamble for the air quality proposal located at 54 FR 35777 (August 29, 1989).

Paragraph (b) of this section would require that samples shall be taken during periods when contaminant concentrations are representative of peak exposure to miners at risk. This provision seeks to establish the necessity of taking samples during periods of maximum diesel activity. Maximum diesel activity could occur when maximum numbers of equipment are operating on a section or when the diesel engines on a section are operating under a maximum load. This provision does not place its primary emphasis on an absolute peak concentration but relies on an operator to determine when maximum diesel activity is likely to occur, and it requires sampling during that period.

This paragraph also states that sampling is required under proposed § 72.200(a)(1) when the operator has reason to believe that there would be an increase in contaminant concentrations such as during a change in production, process, materials, equipment, engineering, or when administrative controls would increase a contaminant's concentration above the PEL. This provision requires that the operator, through sample interpretation, determine the most appropriate sampling schedules which will give the best indication of peak concentration periods. A full explanation of this provision can be found at 54 FR 35777 (August 29, 1989).

The proposal in paragraph (c) of this section would require personal exposure monitoring according to § 70.1901 when the results of the sampling conducted in accordance with § 70.1900(b) exceed 50 percent of the PEL concentration listed in § 72.100. The Advisory Committee recommended area sampling requirements in order to create an appropriate and efficient means of determining when personal exposure monitoring would be required to protect the health of miners. Personal monitoring would be required only after area samples showed concentrations over 50 percent of the PEL concentration. This concept is referred to as an action level. The Advisory Committee considered a range of action levels which would trigger personal monitoring, each with its own rationale and justification. However, the Committee came to no final recommendation on this issue.

The proposal intends that an action level of 50 percent of the PEL concentration is an appropriate trigger for establishing a personal monitoring program. MSHA believes there is risk of overexposure to miners when weekly immediate return air samples exceed 50 percent of the PEL concentration, given the variability associated with such things as, but not limited to, sampling and analytical error, diesel activity level, ventilation rates, and duty cycles. In addition, the air in the immediate return would be a combination of several air splits of lesser quantities and therefore would be a diluted concentration of possible personal exposures in other areas of the mine ventilated by that air. MSHA believes this action level will not be burdensome upon the operator since previous MSHA test results show the majority of samples fall below 50 percent of the PEL concentration.

The Agency solicits comments on whether a trigger concentration different than that specified would be appropriate. For example, MSHA could allow a different concentration to be approved by the District Manager if sampling conducted in accordance with § 75.390(b)(4) shows that a different trigger concentration would indicate the need for personal monitoring in accordance with proposed § 70.1901. In this way, MSHA could be assured that a return air area sample would be capable of indicating the need for personal monitoring at a percentage of the PEL concentration different from 50 percent. Such a provision could be used to prevent a cycle where area sampling indicates the need for personal monitoring, and subsequent personal monitoring results in the re-institution of area sampling which then indicates the need for personal monitoring.

Provisions for the 50 percent action level concept have been suggested by Nelson A. Leidel in NIOSH Publication No. 77-173 and is used by the Occupational Safety and Health Administration. Since the 50 percent action level is normally applied to personal exposure monitoring, MSHA solicits comments on the establishment of 50 percent of the PEL concentration as an action level and on its applicability to an area monitoring program. Action levels are instituted in order to minimize the risk that employees will be overexposed due to variability associated with monitoring programs. This concept is largely based on random statistical considerations, which do not take into account unpredicted trends or sudden disturbances caused by overt changes in ventilation rates, decreased efficiencies of engine performance, or any other deviation in equipment performance

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which may affect either the output or control of diesel emissions.

Personol exposure monitoring. Proposed § 70.1901 would state the personal exposure monitoring requirements which are triggered when the action level set in § 70.1900(c) is exceeded. Thus, when samples from the immediate return airways indicate levels exceeding 50 percent of the PEL concentration of the targeted substances, the operator would be required to begin a personal exposure monitoring program for each applicable substance.

Section 70.1901(a) would provide that operators be required to maintain exposure of all miners at or below the appropriate PEL. It would also require that when work shifts are greater than 8 hours in duration, 8-hour time weighted limits should be adjusted proportionally.

The Advisory Committee considered establishing specific limits for the gaseous diesel exhaust components. However, the Committee determined through its deliberations that suitable protection for miners would be achieved by the use of the coal mine air quality standards as they exist or may be changed in the future. The Committee also determined that consistency with established air quality standards was desirable. MSHA agrees with this recommendation. It is important that the concepts of each limit value and associated measurement strategy are used correctly. When personal exposures of an 8 hour duration are determined, those measurements should be correlated to the limits associated with 8 hour exposures.

Section 70.1901(b) requires the mine operator to begin a personal monitoring program once a sample in the immediate return airway exceeds 50 percent of the PEL concentration. The proposal recommends no minimum time limit to determine when the personal exposure monitoring program would start.

MSHA believes that a program may be initiated as early as the following shift since most measurement methods which might be used for the return air sampling could be adapted for personal exposure monitoring. It is not MSHA's intent to preclude the possibility of modification to a monitoring program. For instance, an operator may be using certified detector tubes for its return airway sampling which on some occasions indicates a level exceeding 50 percent of the PEL concentration. The operator may find it necessary to use the same measurement tool; i.e., detector tubes, to establish a personal monitoring program on a subsequent shift. MSHA believes that an operator which has monitoring capability for return air samples has capability of establishing a personal monitoring program in a very short period of time. However, once the monitoring program has been initiated, the operator may find that other sampling methods and strategies more adequately address exposures and therefore change those procedures and methods.

Section 70.1901(b) also requires the mine operator to monitor personal exposures which shall be representative of the affected miners' exposures. MSHA's intent is not to require every miner in the affected air split to be personally monitored. The proposal does intend that a monitoring program would be established which will characterize the exposures of all the miners' most likely by sampling those whose duties put them at greatest risk of excessive exposure to diesel emissions. Therefore, a personal sampling program would not require separate sampling for each exposed miner but would require enough sampling for the operator to determine each miner's probable exposure and establish an indivlidual exposure record for each miner who frequents an area requiring personal sampling. For example, if a number of miners perform essentially the same job, under the same conditions, or are in comparable locations over the same periods of time, one personal sample may be sufficient to assess each miner's exposure and assign that exposure to each miner's record.

Sections 70.1901 (c) and (d) would require the operator to determine the percentage of personal exposure in relation to the appropriate PEL. If the sample indicates an exposure which exceeds 75 percent of the PEL, the operator would be required to maintain an adequate monitoring program for each shift during which miners are exposed in the area. If the samples indicate an exposure below 100 percent of the PEL with 95 percent statistical confidence, the operator may revert back to the return air sampling provisions detailed in proposed § 70.1900.

MSHA intends that personal monitoring would continue until the concentration was below 100 percent of the PEL, as determined with 95 percent confidence. This would ensure that the operator has determined that the affected miners' exposures are below the PEL with statistical certainty. Specifying only the confidence level allows the operator to choose from a full range of sampling and analytical options available. In choosing the sampling and analytical methods, the operator would be able to identify the number of samples as well as the concentration range needed to ensure that the limits are not exceeded at a 95 percent confidence level. Although an operator using detector tubes would have a different strategy than an operator using an electrochemical analyzer, both methods could be used to determine whether exposures were above or below 100 percent of the PEL at 95 percent confidence.

C. 30 CFR Part 75 General Discussion

The Advisory Committee also addressed the safe use of diesel-powered equipment in such areas as fuel handling and storage, work practices, equipment maintenance, and qualification for maintenance personnel. Machine-related features providing protection from possible hazards are separately addressed under the proposed approval requirements in part 7, except for the scope and requirements of the limited class of diesel-powered equipment.

MSHA provided the Committee with a draft rule for part 75 safety standards during the Committee's deliberations. In addition to that initial draft rule, and other information and data supplied to the Committee, the Committee Chairman and staff redeveloped the draft in order to address some of the concerns raised by Committee review and discussion of the issues. One of the Committee members also redeveloped the draft and submitted his version to the Committee for discussion and comment. Ultimately, the Committee relied on the draft developed by the Chairman as the basis for many of its recommendations. This draft is provided as an appendix to the Committee's final report. Copies of the Committee report may be obtained from MSHA at the address listed above.

The proposed rule would implement the Committee recommendations which would affect various aspects of the safety and health of miners when using diesel-powered equipment underground. Proper underground use and maintenance of diesel fuel and diesel-powered equipment would be necessary to protect against mine explosions and fires. The proposed rule would be new in providing for standards to control the use, handling, storage and transfer of diesel fuel; the type of diesel fuel for underground use; a time schedule for the introduction of approved diesel-powered equipment underground; the development of a limited class of outby diesel-powered equipment which does not need to meet newly proposed approval schedules; requirements for the use of stationary diesel-powered equipment such as air compressors, fire suppression systems, diesel fuel starting aids; maintenance of diesel-powered equipment; training and qualification for diesel mechanics; and traffic controls underground.

1. Other Issues Under 30 CFR Part 75

Amendment of Equipment Standards and Other Revisions. At this stage of the rulemaking process, the Agency anticipates that the final rule would include a number of other amendments to existing part 75. Most of these would require applicability to diesel-powered equipment. MSHA solicits comments on whether these sections or other sections should be made applicable to diesel-powered equipment: §§ 75.313, 75.400, 75.400–2, 75.523, 75.523–1, 75.523–2, 75.1107–1, 75.1710, and 75.1710–1. Section 75.313 would additionally require the use of a methane monitor on all diesel equipment used to load coal. Section 75.400 would prohibit the accumulation of coal dust, including float coal dust, loose coal, and other combustible materials on diesel-powered equipment. Section 75.400–2 would be applicable to diesel-powered equipment. Section 75.523 would additionally require that diesel-powered face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency. Section 75.523–1 would include self-propelled diesel-powered face equipment. Section 75.523–2 would include self-propelled diesel-powered face equipment. Section 75.1107–1 would include unattended diesel-powered equipment. Sections 75.1710 and 75.1710–1 would include diesel-powered face equipment and diesel-powered shuttle cars.

2. Topic-by-Topic Discussion of 30 CFR Part 75

Section 75.390 Ventilating Air Where Diesel-Powered Equipment is Operoted. In its final recommendations, the Committee emphasized the need to establish minimum ventilation requirements where diesel-powered equipment is operated underground. The establishment and application of minimum ventilation rates were addressed by the Committee in all three major areas of concern: equipment approval, use, and health recommendations. The establishment of minimum ventilation rates should provide a health benefit to miners.

In addressing equipment specifications, the Committee recommended that only approved diesel engines be used underground and that these engines be evaluated for both gaseous and particulate emissions. Based upon these evaluations, minimum ventilation rates should be determined and reported as the approval plate air quantity and particulate index.

The Committee's health recommendations also addressed minimum ventilation quantities by determining the appropriate air quantity for dilution of emissions based upon the emission data considered during the engine approval. The particulate index would be reported as the quantity of air needed to dilute the particulate emissions to one milligram per cubic meter of air. The Committee further recommended that both the approval plate air quantity and the particulate index be used for ventilation system design by the mine operator and in the evaluation and approval of minimum air quantities in ventilation plans by MSHA.

The Committee addressed the implementation of these recommendations in their use recommendations for the establishment of minimum ventilation rates and making the minimum quantities part of the approved mine ventilation plan currently required by existing § 75.316. They recommended that these minimum quantities should be based on the engine approval plate air quantities and particulate index and that provisions should be made for multiple units operating in the same ventilation current or split. The Committee also recommended that provisions be made to allow an adjusted minimum ventilation requirement if operating experience and work place sampling so indicated. The concept of an adjusted minimum ventilation requirement was included to allow for the requirement of a greater minimum quantity or a lesser minimum quantity than that based upon approval test data.

Proposed § 75.390 is based on the Committee recommendations addressing minimum ventilation requirements. Paragraph (a) of the proposal would require that the minimum quantity of air in any split of air where diesel equipment is operated would be at least that which is specified in the approval plate air quantity. This provision is intended to apply to any individual unit of diesel-powered equipment. MSHA envisions applying this requirement to all equipment having an approval plate air quantity and would implement this requirement as applicable in accordance with proposed § 75.1907 addressed elsewhere in this document.

Proposed paragraph (b) addresses the inclusion of minimum ventilation quantities in the mine ventilation plan. Paragraph (b)(1) would require the mine operator to specify the minimum air quantity on any split of air where multiple diesel units are operating in accordance with the formula included. This requirement would also apply where face equipment was being installed or removed. The formula is designed to account for the differences in duty cycles of diesel equipment in that the approval plate air quantity for gases is based upon the "worst" point of the operating range of the equipment relative to gaseous emissions. Under normal operating conditions, multiple units would not all be operating in these points at the same time.

Proposed paragraph (b)(2) would require a minimum ventilation rate as determined by the particulate index if it were in excess of that determined in paragraph (b)(1) of this section. MSHA does not envision using a multiplication factor of less than one for multiple units since the particulate index is determined in the approval process using a duty cycle. Therefore, it is proposed that the minimum quantities based upon the particulate index be additive for multiple units.

MSHA envisions a two-phase application of the particulate index in approving minimum ventilation quantities. In the first phase, MSHA would consider the current particulate exposure to respirable coal mine dust compared to the applicable standard such as 2.0 milligrams per cubic meter of air. For example, if a mine was currently using three pieces of diesel equipment in a production cycle and the average respirable dust concentrations were 1 milligram per cubic meter and the mine operator proposed the introduction of a fourth piece of equipment to the production cycle, MSHA would then consider the current respirable dust concentrations along with the particulate index for the additional piece of equipment in approving a new minimum air quantity. Since the difference between normal and the allowable respirable dust concentrations in this example is 1 milligram per cubic meter, MSHA would require at least the amount of air, based upon the particulate index, that would be expected to add no more than one milligram per cubic meter. In this example, this would be the particulate index air quantity. If the difference explained in this example were half a milligram per cubic meter, MSHA would require twice the particulate index air quantity and so forth. MSHA would expect to apply this approach until a specific diesel particulate standard is established and promulgated.

Upon promulgation of a diesel particulate standard, phase two of this provision would become effective. Here

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MSHA intends to determine a minimum quantity based on the particulate index to dilute to whatever standard is set for diesel particulate. Since the particulate index is the amount of air needed to dilute particulate emissions to 1 milligram per cubic meter, for diesel particulate standards of 0.1, 0.5, 1.0, or 2.0 the corresponding minimum air quantities would be 10, 2, 1, and 0.5 times the particulate index, respectively.

Paragraph (b)(3) of the proposal would exclude certain equipment types from the calculation of minimum quantities in paragraphs (b) (1) and (2) of this section. These exclusions would be equipment which intermittently operates and therefore would not add significantly to exposures.

Paragraph (b)(4) of the proposal specifies the information that would be required to be submitted to MSHA to use an air quantity different than those determined in paragraphs (b) (1) or (2). The data submitted would be collected under conditions meeting paragraphs (b) (1) or (2) and based upon those results, MSHA would evaluate a proposed different air quantity.

Section 75.1901 Diesel Fuel. The Committee made recommendations concerning the diesel fuel used to operate equipment underground. The proposal is based on the Committee recommendations and the general requirements in the draft rule developed by the Committee Chairman. Proposed § 75.1901 would require the use of low volatile hydrocarbon fuel classified as ASTM D975 No. 2 diesel fuel having a flash point of 125 °F or greater. This classification would require fuel to have a sulfur content of less than 0.5 percent by weight but in accordance with the Committee recommendation, if fuel having a sulfur content greater than 0.25 percent by weight is used, § 70.1900 of this proposal would require sampling for sulfur dioxide. The use of lower sulfur fuel would provide a health benefit to miners.

Sections 75.1902, 75.1903, 75.1904, 75.1905, and 75.1906 Fuel Handling and Storage. The Committee recommended that fuel handling and storage be addressed as a system including the storage facilities; the transfer of fuel from storage tanks to transportation vehicles and ultimately into the equipment; the design and construction of mobile storage facilities; and the transportation of fuel from one location to another. The Committee concluded that the general requirements as drafted by the Committee Chairman should be followed. These Committee recommendations are included in proposed § 75.1902 which lists general requirements for diesel fuel storage underground. Proposed § 75.1903 specifies construction and safety precautions. Section 75.1904 of the proposal details requirements for diesel fuel storage tanks. Section 75.1905 of the proposal lists requirements for the transfer of diesel fuel including through pipelines, and proposed § 75.1906 gives requirements for containers used to transport diesel fuel underground. MSHA specifically requests comments on whether manual pouring for transfer should be allowed, and under what conditions it can occur.

The proposed requirements in these sections are based on the Committee's recommendations for providing fire protection for the storage and handling of diesel fuel underground. Two areas of these proposed requirements were modified from the Committee's recommendations. The Committee originally recommended that the electrical systems located in diesel fuel storage areas meet the requirements of the National Electric Code (NEC). Upon researching this recommendation, MSHA found that for areas where a Class II combustible liquid is used, which includes diesel fuel, the NEC requires that electrical equipment meet the requirements for "normal" areas as specified by the NEC. Therefore, MSHA believes that the existing regulations in part 75 would be applicable and no further requirements are being proposed. This NEC requirement would be applicable to combustible liquids having a flash point of 100 degrees Fahrenheit or above up to an elevation of approximately 11,000 feet above sea level. Since proposed § 75.1901 limits diesel fuel to No. 2 diesel fuel with flash points of 125 °F or greater, elevation would not affect the provisions and the NEC requirements would not be necessary.

Another area where the Committee's recommendation was modified is in proposed § 75.1903(b) which would require drain systems and sumps in fixed storage facilities to be capable of handling 150 percent of the maximum capacity of the fuel storage system. The Committee recommendation addresses 100 percent of the fuel storage capacity; however, MSHA believes that since water would also tend to accumulate in these sumps, 150 percent would provide a safeguard so that spilled fuel could be contained.

Sections 75.1907 and 75.1910 Approved Diesel-Powered Equipment. Section 75.1907 of the proposal would require, with certain exceptions, that diesel-powered equipment used in underground coal mines be approved. This section would establish equipment classes that would be exempt and time frames in which equipment not specifically approved for use in coal mines would be required to have additional health and safety related features.

Throughout this section, references are made to machine approval requirements under 30 CFR part 7, subparts H and I. In another part of today's **Federal Register**, the Agency has published an advance notice of proposed rulemaking which describes the scope of the expected machine approval requirements pursuant to part 7 subparts H and I. Briefly, such requirements would consist of an approved engine under proposed subpart E, an approved power package under proposed subparts F or G, and such other machine related features as would be necessary to provide fire and explosion protection, and safety features appropriate to the area of the mine where the equipment would be used. MSHA expects to receive comments from interested parties on the scope of the machine approval. However, at this time, this terminology has been selected to convey the Agency's intent to require machine approval. Subpart H refers to machine approval requirements that provide fire and explosion protection for use in areas of underground coal mines where permissible electric equipment is required, and subpart I refers to machine approval requirements that provide protection against hazards in areas of underground coal mines where permissible electric equipment is not required.

MSHA expects that subpart H machines would incorporate a power package approved under part 7 subpart F, an engine approved under proposed subpart E and include electrical systems that meet the requirements of 30 CFR Parts 18 or 27. MSHA expects that subpart I machines would incorporate a power package approved under proposed part 7, subpart G, electrical systems that meet the requirements of part 18 and could use an engine approved under proposed part 7, subpart E. Both subparts H and I would establish requirements to address other machine related safety features specified in Parts 18, 31, 32, 36 and 75. References to machine approval under subparts H or I are retained to convey the manner in which the Agency would expect to implement the Advisory Committee recommendations.

Proposed paragraph (a) of § 75.1907 would require that, with two exceptions, all diesel-powered equipment used in an underground coal mine must be approved. One exception is found in proposed § 75.1909 which would establish requirements for a limited class of light duty equipment. The other exception is found in proposed § 75.1910 which would establish requirements for stationary unattended equipment. Thus, neither limited class light duty equipment nor stationary unattended equipment would be required to receive formal Agency approval. Compliance with the cited requirements would be established by MSHA inspectors. Time frames in which equipment needs to meet the requirements of § 75.1909 or § 75.1910 would be specified in other paragraphs of this section.

Proposed paragraph (a) is based on an Advisory Committee recommendation that MSHA develop a time schedule to allow for conversion of outby equipment presently in use. The Committee recommended that the conversion be achieved by retrofits, replacement, or through the incorporation of additional safety features. The Committee also recommended that equipment newly introduced underground after an established date meet the new standards.

In establishing time frames incorporated in the section, the Agency has addressed the useful life of existing equipment. MSHA considered the availability of devices required to be added to existing equipment and the resources that would be necessary to perform retrofits. The Agency has not required existing equipment to be approved. Instead, the proposed standard has been structured to utilize the incorporation of additional features onto existing equipment to achieve the required level of protection. For example, certain outby equipment would be required to have a fire suppression system installed, and modifications made to brake systems, fuel systems, electrical systems, and other machine systems. Mine operators may determine whether the useful life of the equipment warrants the resource commitment.

Proposed paragraph (a)(1) would require that, effective immediately upon promulgation of the final rule, only diesel-powered equipment approved under 30 CFR part 7, subpart H or 30 CFR part 36 be used where permissible electric equipment is required. The technical requirements specified in part 36, and that MSHA expects would be specified in part 7, subpart H, are intended to ensure that the machine can be operated without creating a fire or explosion hazard. This paragraph follows the Advisory Committee recommendation that permissible diesel-powered equipment be required in areas of coal mines where permissible electric equipment is required. These technical requirements would provide the same protections for diesel-powered equipment as are presently provided by permissible electric equipment. The primary hazards in these areas would be explosive concentrations of methane gas and combustible quantities of coal dust.

Proposed paragraph (a)(2) would establish a time schedule under which equipment approved under part 36 would be required to be provided with additional safety features. Paragraph (a)(2)(i) would require that, effective immediately upon promulgation of the final rule, power packages in such approved equipment would have a maximum surface temperature of less than 302 °F (150 °C). Under existing part 36, the maximum surface temperature of power package components is limited to 400 °F (204 °C).

The proposal would require that the diesel power packages in equipment approved under part 36 meet the same surface temperature requirement as equipment approved under part 7, subpart H and permissible electric equipment. To date, only one power package used in part 36 approved equipment has a surface temperature between 302 °F and 400 °F. MSHA is not aware of any power packages currently in use in underground coal mines which do not meet the proposed requirement. Consequently, MSHA believes that this requirement poses no hardship on the industry. The intent of the requirement is to ensure that power packages with surface temperatures above 302 °F are not subsequently introduced into underground coal mines.

Paragraph (a)(2)(ii) would require that all equipment approved under part 36 have a fire suppression system installed as of 6 months after the effective date of this section that meets the requirements of proposed § 75.1911. The Advisory Committee recommended that fire prevention features including surface temperature controls and fire suppression systems be installed on diesel-powered equipment used in outby areas. The fire suppression systems would be required in addition to surface temperature controls to address fire hazards created by other machine system malfunctions. Equipment approved under existing part 36 is of the same type as outby equipment referred to by the Advisory Committee and similar fire hazards are present. The Agency has determined that fire suppression systems should be installed to address these hazards.

MSHA believes that 6 months is an appropriate amount of time to install fire suppression systems. Fire suppression systems that meet the requirements of proposed § 75.1911 are available and are presently installed on some diesel-powered mining equipment. Approximately 451 units of part 36 approved equipment are in use in underground coal mines. A number of these units are already equipped with fire suppression systems which comply or can be easily made to comply with § 75.1911. MSHA expects that 1 to 3 worker-days would be necessary to install a system depending on machine size and fire suppression system complexity. Approximately 73 mines have from 1 to 5 diesel units and about 12 mines have from 6 to 10 units. In addition, about 5 mines have eleven to 20 units, and three mines have at least 30 units each.

Paragraph (a)(2)(iii) would require that equipment approved under existing part 36 have a particulate index and dilution air quantity determined in accordance with part 7, subpart E as of 24 months after the effective date of this section. This requirement would implement a number of Advisory Committee recommendations. The Committee recommended that a ventilation rate be established for each engine that would indicate the amount of air required to dilute CO, NO, or NO_2 to the 8-hour air quality standard level. The air quality standard level would be the current TLVs referred to in existing § 75.301–2 or as they may be revised in the future. Section 75.301–2 would be modified by the air quality standards currently under revision by MSHA. With that revision the values used for determining the dilution air quantity and allowable exposure levels would be the same.

The Committee further recommended that particulate emissions be evaluated and, based on that data, a particulate index be developed. The particulate index would be the quantity of air required to dilute the particulate emissions to one milligram per cubic meter of air.

Although the gaseous emissions of diesel engines used in equipment approved under existing part 36 are evaluated during the approval process, those tests are performed with 1.5 percent methane in the intake air instead of the 1.0 percent required by part 7, subpart E. Furthermore, the dilution air quantity computed under part 36 is based on allowable contaminant levels that are different than the values specified in § 75.301–2. It is expected that the dilution air quantity computed using part 7, subpart E procedures could be significantly

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different than the dilution air quantity computed for existing part 36.

Six engine models manufactured by three companies constitute 90 percent of the engines currently in use in underground coal mines. The Agency believes that some of these engine models will be submitted for approval under these proposed regulations. Test data submitted as part of those applications will be considered applicable to existing engines. MSHA envisions developing programs to establish dilution air quantities and particulate indices for existing engines for which similar designs are not submitted for approval under these regulations.

Proposed paragraph (a)(3) of this section would establish a two-phase program in which additional features would be required to be incorporated into certain self-propelled and portable attended diesel-powered equipment used in outby areas of underground coal mines. Equipment approved under existing part 36 or proposed part 7, subpart H or I would already incorporate such features and not be subject to the requirements of this paragraph. Fire suppression systems, fire prevention features and equipment safety features would be required on all equipment in the first phase. During the second phase, surface temperature controls would be required on heavier duty equipment and approved engines would be required on all equipment.

Proposed paragraph (a)(3)(i) would require that all self-propelled and portable attended diesel-powered equipment meet the requirements of § 75.1909 as of 12 months after the effective date of this section. Section 75.1909 would require the incorporation of fire suppression systems, fire prevention features, and other equipment-related safety features. Although § 75.1909 would require the incorporation of an engine approved in accordance with proposed part 7, subpart E, the Agency has determined that such engines may not be available for all equipment within the 12 month time frame. Consequently, the Agency is proposing a longer period of time for the incorporation of such engines. This section would implement a number of Advisory Committee recommendations pertaining to outby equipment.

Proposed paragraph (a)(3)(ii) would require that self-propelled and portable attended diesel-powered equipment, except for equipment considered to be in the limited class of equipment as defined by proposed § 75.1908 would be required to have a power package approved in accordance with proposed part 7, subpart F or G and installed as of 24 months after the effective date of this section.

The requirements specified by this section are intended to ensure that the diesel machine can be operated without creating a fire hazard and that engine gaseous and particulate emissions are addressed. This section follows the Advisory Committee recommendation that diesel-powered equipment operating in areas of coal mines where permissible electric equipment is not required should be provided with fire prevention features including surface temperature controls and fire suppression systems. The primary hazard in these areas would be combustible quantities of coal dust.

Power packages approved in accordance with proposed part 7, subpart F or G would utilize approved engines. Such engines would be tested and evaluated to ensure that they are basically clean engines when properly adjusted and maintained. Dilution air quantities and particulate indices would be determined for these engines.

The Agency has determined that there are approximately 367 units of diesel-powered equipment located in approximately 56 mines that would be affected by this paragraph.

Proposed paragraph (a)(3)(iv) would establish procedures to be followed to obtain agency approval for the extended use of certain mine locomotives used in outby areas. Locomotives would be subject to § 75.1907(a)(3)(ii) which would require the use of an approved power package in 24 months. These locomotives would already be provided with fire suppression systems, fire protection features, and equipment safety features in accordance with proposed § 75.1907(a)(3)(i).

There are 64 locomotives located in 20 mines that are used for transportation of coal, supplies, and personnel. MSHA believes that suitable power packages approved under proposed part 7, subpart F or G may not be available for all of these locomotives as of 24 months after the effective date of this section. Some locomotives are used in mines with low seam heights. Power packages may not be available with a sufficiently low profile to be incorporated into these locomotives. Power packages approved under proposed part 7, subpart F or G will generally be longer than engines presently in use in many locomotives. Space may not be available to incorporate approved power packages in existing engine compartments. Gaining the necessary space by lengthening the engine compartment may change the locomotive wheelbase to the extent that the locomotive may be unable to negotiate turns in some mines. This paragraph would establish a program that would allow the Agency to consider, on a case by case basis, whether suitable power packages are available. Upon application by the mine operator, MSHA's Director of Technical Support would conduct a study to identify and evaluate mine related factors, equipment considerations, and available approved power package designs. Depending upon the findings of the study, approval for the extended use of the locomotive may be granted. Such approval could include the incorporation of additional safety features, administrative procedures, and operating practices as necessary to achieve protection from fires and reduce miners' exposure to exhaust contamination. The Director of Technical Support would monitor power package designs as they are approved. If it were determined that an approved power package would be suitable for use in a locomotive for which extended use had been granted, the owner of that locomotive would be notified and a time frame established for installation of the power package.

Proposed paragraph (a)(4) would require that only new diesel-powered equipment approved under proposed part 7, subpart H or I, or the limited class of equipment which meets the requirements of proposed § 75.1909, or stationary unattended equipment which meets the requirements of proposed § 75.1910 can be introduced into underground coal mines. This provision would take effect 60 months after the effective date of this section.

Limited class equipment and stationary equipment do not require formal machine approval by the Agency. However, this equipment is required to utilize approved engines and stationary equipment would also be required to utilize approved power packages. These approval programs would be implemented under the provisions of 30 CFR part 7 which would accelerate the availability of these products.

Equipment required to be approved under proposed part 7, subpart H or I would also utilize approved engines and power packages. As discussed earlier, the final form of the administrative procedures for the approval of equipment has not been determined. Based on comments received from the advance notice of proposed rulemaking, MSHA would intend to develop administrative procedures that will make approved equipment available in a timely manner.

By establishing 60 months as the period of time after which only equipment approved under proposed part 7, subpart H or I may be used, the Agency believes it will achieve two important goals. The mining equipment manufacturing industry will be able to focus its efforts on developing approved power packages for existing equipment and for future use in approved equipment. Sixty months will allow sufficient time to design, develop, and approve the variety of equipment types required by the mining industry.

The Agency has developed these time schedules based on what it believes will be the availability of the equipment. Based on MSHA's experience with other rules, and manufacturers' estimates of time needed to produce the equipment, the Agency believes that these time limits are reasonable. MSHA specifically solicits comments or other information on the practicability of these time frames.

Proposed paragraph (b) would establish diesel-powered ambulances and firefighting equipment as a special equipment class. Such equipment would be permitted for use underground without approval under proposed part 7 subpart H or I or existing part 36, and without meeting the requirements of proposed §§ 75.1908 and 1909. The use of such equipment would be subject to the existing requirements of § 75.1101–23. That section establishes requirements for the development of a specific firefighting and mine evacuation plan. The mine operator would include the proposed use of ambulances and firefighting equipment in the plan submitted to the District Manager as required by § 75.1101–23. Use of the equipment would be limited to emergency situations and drills as defined in the plan.

Proposed paragraph (c) would require that stationary unattended diesel-powered equipment comply with the requirements defined in proposed § 75.1910 as of 12 months after the effective date of this section. That section would provide for the installation of fire suppression systems; the incorporation of fire protection features; specific additional control requirements necessitated by unattended operation; and would establish requirements for stationary equipment installations. This paragraph would implement all of the Advisory Committee recommendations for the use of such equipment. The Agency does not believe that power packages approved under proposed part 7, subparts H or I would be available for all stationary equipment within 12 months of the effective date of this section and proposes to delay the requirement for such approved power packages.

Proposed paragraph (d) would require that all stationary diesel-powered equipment meet the requirements of proposed § 75.1910 including the utilization of an approved power package as of 24 months after the effective date of this section. This paragraph would fully implement the Advisory Committee recommendations for the use of stationary equipment.

Sections 75.1908 and 75.1909 Limited Class Equipment—Scope, Design and Performance Requirements. Proposed § 75.1908 would establish equipment characteristics to define a limited class of diesel-powered equipment. Proposed paragraph (a) would establish certain equipment characteristics that would implement Advisory Committee recommendations. Equipment as defined by this section would be light duty type rather than typical production equipment. Engines would not be turbocharged and would be limited to less than 90 horsepower. MSHA has determined that 90 percent of the equipment presently in use and considered to be light duty has engines of less than 90 horsepower.

Equipment utilizing turbocharged engines and hydraulic systems were specifically excluded from the limited class by the Committee recommendation. Hydraulic systems referred to in this paragraph are those systems which operate at relatively high pressures with large quantities of fluid. Such systems are presently used in articulated steering systems, hydraulic wheel units, and bucket lift cylinders. Automotive style power steering units and brake units are not considered hydraulic systems for purposes of this paragraph.

The Advisory Committee recommended that the potential fire hazards associated with diesel-powered equipment be addressed through fire prevention features that include the limitation of surface temperatures to prevent ignition of diesel fuel, hydraulic fluids, or accumulations of loose coal and coal dust. However, the Committee recognized the difficulties of obtaining equipment with surface temperature controls on small light duty equipment such as utility vehicles, personnel carriers, tractors, and ambulances which tend to utilize very low horsepower engines. Because of the duty cycle and relatively small horsepower, the fire hazards on this equipment are fewer than on heavy duty equipment. In addition, heavy duty equipment also has significant quantities of hydraulic fluids adding to the fire hazard.

Therefore, the Advisory Committee recommended that, rather than setting requirements to prevent hot surface temperatures, fire protection features be required. These features include fire suppression devices, reduction of the potential for fuels to contact hot surfaces, and reduction of potential ignition sources. The Advisory Committee recommended that this equipment not be required to have a formal MSHA approval. The specific Advisory Committee recommendations for fire protection features are included in proposed § 75.1909.

Advisory Committee discussions suggested that equipment characteristics other than horsepower be considered in defining the light duty class. The Environmental Protection Agency (EPA) has utilized vehicle weight to establish classes of over the road trucks for purposes of regulating diesel engine emissions. Trucks that weigh less than 6,000 pounds are considered to be light duty by the EPA. MSHA has determined that most self-propelled diesel-powered mining equipment presently in use would be considered to be light duty equipment and weighs less than 6,000 pounds. The only portable equipment which would be considered as part of the limited class are air compressors and welders. This equipment would only be considered portable equipment if someone were in the immediate area to take action in the event of an equipment problem.

Proposed paragraph (b) would allow the use of altitude compensation devices. Although these devices operate on the same principle as turbochargers, the surface temperature of the engine components is no greater than normally aspirated engines permitted in the limited class. Altitude compensation devices allow engine performance to be maintained at high altitudes without adverse effects on emissions. Because improperly adjusted fuel injection rates can cause increased surface temperatures, the Agency would require the mine operator to certify that the engine fuel injection system is properly adjusted whenever the altitude compensation device is first installed or when maintenance or adjustments are made on the injection pump.

Proposed § 75.1909 would establish design and performance requirements to be met by limited class equipment. Compliance with these requirements would be determined by MSHA inspectors. The section would implement Advisory Committee recommendations that such equipment be provided with fire suppression systems and fire prevention features including fuel system protection, and an engine compartment air temperature

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sensor with engine shutdown capability. Other equipment fire prevention features and safety features were specified by the Advisory Committee for both self-propelled and portable attended equipment and are included in this section. Limited class equipment would also be required to utilize an approved engine.

MSHA has determined that a parking brake would be adequate for limited class equipment and that an automatic emergency parking brake would not be necessary on this equipment. The Agency has determined that there is no fatality accident history to support the addition of such a requirement. MSHA believes that limited class equipment is primarily used for transportation or as light duty equipment. The potential hazard of an unexpected stop on a limited class piece of equipment with passengers on board does not justify the use of an automatic emergency parking brake on this type of equipment.

Paragraph (a)(1) would require the use of an approved engine to provide protection from the exhaust. The approval would include evaluation of diesel particulate through determination of the particulate index. Paragraph (a)(2) would require a fire suppression system to put out a fire should fuels come in contact with hot surfaces or be ignited by a faulty electrical system.

Hazards associated with the fuel tank and fuel lines are addressed by paragraph (a)(3). These precautions include venting the fuel tank to prevent spillage or blow out of fuels and routing of the fuel lines to prevent leakage of fuel on hot surfaces of the engine or exhaust.

Proposed paragraphs (a) (4) and (5) address the installation of sensors in the engine cooling system and in the engine compartment. These safety features would detect an overheating engine and would sense a fire in the engine compartment and give warning to the operator of this equipment. While these features do not eliminate the hazards of hot surface temperatures, MSHA believes that proposed precautions would provide adequate protection because of the light duty cycles of this equipment.

Electrical systems frequently have caused fires on diesel equipment. Paragraph (a)(6) addresses the hazards associated with the electrical systems on this equipment. These requirements are consistent with other MSHA electrical standards but are tailored for this type of diesel equipment.

Sections 75.1911 and 75.1912 Fire Suppression Systems. Proposed § 75.1911 would establish requirements for fire suppression systems on mobile diesel-powered equipment and fuel transportation units. These requirements would be applicable to approved equipment, limited class equipment, and to fuel transportation units, both self-propelled and towed. Proposed § 75.1912 would establish requirements for fire suppression systems to be installed at diesel fuel storage areas and stationary diesel-powered equipment sites.

These requirements would implement a number of Advisory Committee recommendations regarding fire suppression systems. The recommendations were directed towards specific applications such as limited class equipment or stationary equipment.

The standards would require that only fire suppression systems listed or approved by a nationally recognized independent testing laboratory be used. The requirements would include design features, installation requirements, and inspection, testing and recordkeeping requirements.

Starting Aids. The Committee addressed the use of cold starting aids and recommended that the MSHA proposal should indicate requirements for the storage and use of cold starting aids. Normally, ether is used to assist starting of diesel engines in cold weather. The MSHA proposal addresses volatile starting aids to provide protection from fire and explosion hazards associated with the use of these substances. The proposal includes the prohibition of such substances in the presence of 1.0 percent or more of methane since permissible equipment may not prevent a flashback of fire which could ignite a methane atmosphere.

Maintenance of Diesel-Powered Equipment. The Committee recommended that diesel equipment be examined on the same basis as electric equipment and that the checklist developed during the approval process under proposed part 7, subparts E through G and subparts H and I of the advance notice of proposed rulemaking be used as part of this evaluation. They also recommended that equipment be maintained in approved condition and that filters and scrubber water be changed on a regular basis.

Proposed § 75.1914 specifies the requirements for maintaining equipment in safe and approved condition, changing filters when dirty or the intake pressure device so indicates, weekly examination of approved safety features and the certification of required examinations. The proposal would also require that maintenance and repair of approved features be made only by persons qualified in accordance with proposed § 75.1915. This would not include maintenance such as flushing water scrubbers or changing air filters.

The proposal would require that the water scrubber system be drained and flushed at least once on each shift that diesel-powered equipment is operated. Scrubber maintenance problems, frequency and modes of failure were identified and reported by the Bureau of Mines Report of Investigations "Failure Analysis of Diesel Exhaust Gas Water Scrubbers" (RI 8682). In this study, the Bureau of Mines contacted 29 mine maintenance departments and equipment manufacturers concerning service experience and construction of water scrubbers on mobile diesel-powered equipment. Because these scrubbers cool exhaust gas and act as flame arresters, their failure would compromise safety in underground mines. In this study, mine water and scrubber water solution samples were also analyzed chemically to determine their corrosive properties.

In order to properly act as a flame arrester and adequately cool the exhaust gases, minimum water levels in scrubbers are usually ensured by float devices connected to a reservoir or a low water shutdown device. Scrubbers are designed to maintain enough water for an 8 hour shift operation at a one-third load factor. This ensures against any flame propagation caused by engine backfire or discharge of incandescent particles into a gassy atmosphere. If a scrubber fails to maintain the necessary water level while in operation, built-in devices detect the low water level and shut down the engine in a fail-safe manner. Due to the harsh mining environment, it is not uncommon for these devices to become inoperable on mine equipment. Adherence to rigid flushing and cleaning schedules is critical since solid particles and sludge are trapped in the scrubber. If allowed to remain, these materials will accumulate and eventually block internal passages of the scrubber. As a result, scrubber effectiveness as an exhaust-gas cooler and a flame arrester becomes impaired. Furthermore, once permitted to accumulate in the scrubber and safety shutdown floats, this material cannot be removed by subsequent flushing. Therefore, this material must be prevented from accumulating in order to provide adequate safety. The proposal would require maintenance of scrubbers at least once each shift to remove material accumulation. This maintenance would be normally performed as part of refilling the scrubber with water.

This proposal would also require the testing and evaluation of the undiluted exhaust on a weekly basis as part of the mine's maintenance program. This provision is based on the Committee's recommendation for conducting such tests and should provide a health benefit to miners.

Sections 75.1915 and 75.1916 Qualifications and Training of Diesel Mechanics. The Committee recommended that MSHA require that persons performing maintenance on approved features of diesel-powered equipment be trained and tested for competency and that such training and testing be approved by MSHA. This recommendation addresses concerns that maintenance is a vital step in ensuring safe and healthful use of diesel equipment, and therefore only trained persons should be permitted to work on diesel equipment to be used underground.

Proposed § 75.1915 would address the training, testing and qualification requirements for diesel mechanics performing work on approved features of diesel-powered equipment. The requirements would include a demonstration of competency through a test approved by MSHA and administered by the mine operator. It would also require annual retraining and include a provision for revocation of a diesel mechanic's qualifications for cause. Following the Committee recommendation, MSHA would approve the program developed by the operator, including the qualification test. Each program would be individually geared to the different equipment types at a particular mine and the machine specific methods of testing, evaluating, and repairing the various features of the equipment. The MSHA-approved checklist would be used for the specific equipment at each individual mine site to ensure that testing was appropriate for the various types of equipment in use. Proposed § 75.1916 addresses the procedures for developing and administering training and retraining programs for diesel mechanics.

Operating Speeds of Diesel-Powered Equipment (Section 75.1917). Proposed § 75.1917 addresses roadway conditions, operator control of diesel-powered equipment and traffic rules including standardizing warning signs. This proposal is based on the Committee recommendation which recognized the mine related conditions that affect the operation of diesel equipment.

III. Drafting Information

The principal persons responsible for preparing these proposed rules are Peter M. Turcic, George J. Dvorznak, Steve Engleman, and Steve Gigliotti, Office of Technical Support; Jerry O. D. Lemon, Coal Mine Safety and Health; Tony Turyn, Office of Standards, Regulations and Variances; and Heidi W. Strassler, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

A. Summary of Costs and Benefits

The Mine Safety and Health Administration (MSHA) is proposing standards and regulations for diesel-powered equipment in underground coal mines. These standards address the approval of diesel-powered equipment, the safe use of the equipment, and the protection of miners' health.

Executive Order 12291 requires that a regulatory impact analysis be performed for any regulations that would have a major impact on the economy. MSHA has determined that these standards and regulations would not result in major cost increases nor have a major effect of $100 million or more on the economy.

MSHA data shows that this rulemaking will affect approximately 13,100 employees at 116 underground coal mines. About 89 large mines and 27 small mines (of which 20 were operating during the past year) will be affected.

Diesel-powered equipment has been used for many years in underground metal and nonmetal mines and has been increasingly used in coal mines during the past 10 years. The use of diesel-powered equipment in underground coal mines has increased from 175 units in 30 mines in 1977 to over 1,500 units in about 120 mines in September 1989. Given the current state of the industry and assuming no change in existing regulations, about 2,720 pieces of diesel-powered equipment may be used in about 220 mines by the year 2000.

The benefits of the proposed rule are the fatalities, injuries, and illnesses that would be prevented at these underground coal mines. These benefits can be divided between those injuries and fatalities resulting from fires and other sources, and illnesses and deaths resulting from various respiratory effects including lung cancer. The primary safety hazards associated with the use of diesel-powered equipment are fires and explosions. Although there have been fires involving diesel-powered equipment in surface and underground coal and metal and nonmetal mines, there have been few in underground coal mines. MSHA believes that diesel-powered equipment usage is increasing and the resulting likelihood of fires related to diesel-powered equipment is increasing. Other types of accidents that can be reduced may result from heat, noise, and operating speeds. The Agency believes that increased benefits will result after promulgation of these rules. Finally, there exist a potential hazards to employee health resulting from the exhaust of diesel-powered equipment in underground coal mines. These include respiratory impairment, the increased risk of lung cancer and other adverse health effects such as increased susceptibility to airway infection. The promulgation of these proposed rules will reduce these adverse health effects.

Lack of data prevents MSHA from conducting a quantitative benefits analysis of the hazardous health effects associated with exposure to diesel emissions. MSHA requests data to determine current exposure levels by job category, number of workers exposed, and the risk associated with each exposure level. Data is also lacking to calculate the potential benefits resulting from improved safety. MSHA requests data to determine the potential benefits resulting from improved safety and the use of diesel-powered equipment.

The compliance costs associated with the proposed standards directly impact two industry groups: manufacturers of diesel-powered mining equipment and operators of underground coal mines. The total annual and annualized cost for equipment manufacturers is about $267,000. Most, if not all, of this compliance cost, however, will be passed on to purchasers in the form of increased equipment costs.

The total initial cost for underground coal mines is about $2,110,300 or about $18,300 per mine. About $278,900 or over 13 percent of this initial cost is incurred by small mines. The average initial cost is $10,300 per small mine and $20,600 per large mine. The total annual operating and annualized cost is about $8,233,400 or about $71,000 per mine. About $141,300 or less than 2 percent of the annual cost is incurred by small mines. The annual compliance cost is about $5,200 per small mine and $91,000 per large mine.

The mine operator's choice to use diesel-powered equipment, therefore, reflects a consideration of compliance costs as they relate to increased productivity resulting from using diesel-powered equipment. MSHA concludes that the proposed rule will not present a significant economic impact on underground coal mines.

Under the Regulatory Flexibility Act of 1980, MSHA has analyzed the impact of the proposal upon small businesses. Several standards impact small mines

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disproportionately because they contain the same requirements irrespective of the numbers of pieces of diesel-powered equipment in use at the mine. The most costly standards, however, impose costs in direct proportion to the number of pieces of equipment affected. MSHA preliminarily determines that the proposed standards and regulations for diesel-powered equipment in underground coal mines will not have a significant adverse impact upon a substantial number of small coal mines.

B. Request for Additional Information

MSHA requests additional information to form a better basis for its final regulatory impact analysis. All information received will be carefully evaluated in developing the final rule. Of particular interest to MSHA is information concerning the following:

1. How many cases of worker illness due to diesel exhaust exposures have been reported at your mine? What types of illnesses? What were the circumstances of exposure? What steps were taken to lower the exposure?

2. What is being done to measure exposure to diesel exhaust? What kind of equipment is used to determine worker exposure? How often are measurements taken?

3. What are your current exposure levels of diesel exhaust by job category? How many workers are exposed? How often do exposures occur (hourly, daily, weekly)? What is the duration of these exposures (hours per day, days per week)?

4. What measures are being taken to reduce general worker exposures to diesel exhaust?

5. How many incidents of worker injury unique to diesel equipment (for example, unsafe operating speeds, noise, burns from fuel) have occurred in your mine? What types of diesel equipment have been associated with these incidents? How many pieces of diesel equipment are used in your mine?

6. What would be the impact of the engineering controls identified in the proposed rule? What would be the quantitative effect of these controls upon the productivity of diesel equipment? What would be the quantitative effect of the work practices required in the proposed rule upon the productivity of diesel equipment? If possible, provide estimates by general type of equipment.

V. Paperwork Reduction Act

The proposed rule contains information collection requirements in §§ 70.1900 (a), (b), and (d); 70.1900(a)(1); 70.1901(g); 75.390(b); 75.1907(a)(3)(iv); 75.1911 (i), (j), and (k) and 75.1912 (g), (h), and (i); 75.1914(d); 75.1915 and 75.1916; and part 7, subparts E, F, and G. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980.

The respondents in each of the paperwork provisions would be mine operators. Each of the following public reporting burden hour estimates includes the time for reviewing instructions, gathering and maintaining the data needed, and completing the review of the collection information. The resultant information collection would be used by MSHA to assess compliance with the proposed requirements.

Exposure monitoring records. These records are necessary for the mine operator to assess exposure trends and whether the exposures are below the permissible limits. Recording and reviewing the weekly data would alert operators and MSHA to exposure and equipment problems. The public reporting burden for this collection of information is estimated to average 3 minutes per weekly sample of the average 7 splits per large mine and 2 splits per small mine for a total annual burden of 5,281 hours.

Statement of low sulfur content in diesel fuel. These records are necessary in order for mine operators to justify to MSHA that it is unnecessary to test for potential sulfur dioxide emissions because the sulfur content of the diesel fuel is less than 0.25 percent. The public reporting burden for this collection of information is estimated to be zero hours because it will be less costly for operators to use high sulfur fuel and perform air monitoring than for operators to pay the low sulfur fuel premium and to pay the costs of obtaining such certification from the fuel supplier.

Personal exposure monitoring records. These records are necessary in order for the mine operator to determine which employees have been exposed above the permissible exposure limits and the extent of the potential overexposure. Recording the data and informing the employee would alert both mine operators and employees to the exposure problem. The public reporting burden for this collection of information is estimated to be zero hours because compliance with the proposed requirements for engineering controls and work practices will ensure that personal exposure monitoring will not be necessary.

Mine ventilation plan records. These records are necessary in order for MSHA to determine whether the required mine ventilation plan is sufficient to ensure acceptable air quantity. The public reporting burden for this collection of information is estimated to be negligible because listing the air quantity requirements of diesel-powered equipment would add little time to the ventilation plan submission. Any future modifications of the ventilation plan due to the addition of diesel-powered equipment would be performed as part of the routine biannual ventilation plan submission and would not require an additional application.

Approval for locomotive use. These records are necessary in order for MSHA to ensure that the use of locomotives that do not have approved power packages would be limited until such time as approved power packages suitable for mine conditions and locomotive design are available. The public reporting burden for this collection of information is estimated to be negligible because there are relatively few locomotives that do not have approved power packages.

Fire suppression system inspection. These records are necessary in order for the mine operators to ensure that the systems are examined routinely and, thus, kept in operating order. The mine operator would use this weekly record to determine if needed repairs were conducted. The public reporting burden for this collection of information is estimated to average 20 minutes per weekly inspection and test of each of the 1,439 pieces of diesel-powered equipment for a total annual burden of 24,943 hours. The public reporting burden is also estimated to average 20 minutes per weekly inspection and test of each of the 319 diesel-fuel storage areas for a total annual burden of 5,529 hours.

Development of standard operating procedures for evaluating exhaust emissions. These written procedures are necessary in order for MSHA to ensure that the procedures used to measure diesel exhaust emissions are valid. The public reporting burden for this collection of information would be a one-time effort of 4 hours for each type of diesel-powered equipment found in this mine. At an average of 2 types of equipment in the 27 small mines and 3 types of equipment in the 89 large mines, the total one-time burden hours would be 1,284 hours.

Testing and evaluating exhaust emissions. These records are necessary in order for the mine operator to ensure that the equipment exhaust continues to meet the required air quality. Recording and reviewing the weekly data would alert operators when the equipment's emissions are deteriorating, thus signifying a need for equipment maintenance or repair. The public reporting burden for this collection of information is estimated to average 20 minutes per week for each of the 1,439 pieces of diesel-powered equipment. The total annual burden hours would be 24,943 hours.

Underground diesel mechanic certification. These records are necessary in order to ensure that only appropriately trained and certified diesel mechanics are allowed to maintain and repair diesel-powered equipment in underground coal mines. The average public reporting burden for this collection of information would be: 2 hours to develop the examination; 9 hours to prepare and submit for approval a training program; 5 hours to prepare and submit for approval a retraining program; 4 hours at small mines and 6 hours at large mines to administer the examination; 10 hours of initial training (5 for the instructor and 5 for the trainee) for each type of equipment upon which the mechanic may work; and 5 hours of retraining (2.5 for the instructor and 2.5 for the trainee) for each type of equipment upon which the mechanic may work. The total first-year burden would be 19,060 hours and the annual burden would be 10,242 hours.

MSHA approvals of engines and power packages. These applications are necessary for MSHA to ensure that only approved nonpermissible engines and power packages are used on diesel-powered equipment. The public reporting burden for this collection of information is estimated to average 4 hours per application. At 33 existing engines and 113 existing power packages, the first-year initial burden hours would be 584 hours. At 6 new engines and 15 new power packages every year, the total annual burden hours would be 84 hours.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for MSHA.

VI. Executive Order 12612

The Agency has reviewed the final rule in accordance with Executive Order 12612 regarding federalism and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under this Executive Order.

List of Subjects in 30 CFR Parts 7, 70, 75

Mine safety and health, Underground coal mines, Diesel-powered equipment.

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: September 26, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

PART 7—[AMENDED]

A. It is proposed to amend 30 CFR part 7 as follows:

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. New subparts E, F, G are added to part 7 to read as follows:

* * * * *

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines.

Sec.
7.81 Purpose and effective date.
7.82 Definitions.
7.83 Application requirements.
7.84 Technical requirements.
7.85 Critical characteristics.
7.86 Test equipment and specifications.
7.87 Test for determination of maximum fuel-air ratio.
7.88 Test for determination of ventilation rate.
7.89 Test for determination of particulate index.
7.90 Approval marking.
7.91 Post-approval product audit.
7.92 New technology.

Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required.

7.95 Purpose and effective date.
7.96 Definitions.
7.97 Application requirements.
7.98 Technical requirements.
7.99 Critical characteristics.
7.100 Explosion tests.
7.101 Surface temperature tests.
7.102 Exhaust gas cooling efficiency test.
7.103 Safety system control tests.
7.104 Internal static pressure test.
7.105 Approval marking.
7.106 Post-approval product audit.
7.107 New technology.
7.108 Power package checklist.

Subpart G—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Not Required.

7.111 Purpose and effective date.
7.112 Definitions.
7.113 Application requirements.
7.114 Technical requirements.
7.115 Critical characteristics.
7.116 Surface temperature tests.
7.117 Exhaust gas cooling efficiency tests.
7.118 Safety system control tests.
7.119 Approval marking.
7.120 Post-approval product audit.
7.121 New technology.
7.122 Power package checklist.

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines.

§ 7.81 Purpose and effective date.

This subpart establishes the specific engine performance and exhaust emission requirements for MSHA approval of diesel engines for use in areas of underground coal mines where permissible electric equipment is required and areas where non-permissible electric equipment is allowed. Any engine approved under this subpart may be incorporated with a power package which shall meet the appropriate requirements of subpart F or G of this part. It is effective [60 days after date of final publication in the Federal Register].

§ 7.82 Definitions.

The following definitions apply in this subpart.

Category A engines. Diesel engines intended for use in areas of underground coal mines where permissible electric equipment is required.

Category B engines. Diesel engines intended for use in areas of underground coal mines where nonpermissible electric equipment is permitted.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Diesel engine. Any compression ignition internal combustion engine using the basic diesel cycle where combustion results from the spraying of fuel into air heated by compression.

Diesel particulate matter (part). Any material, with the exception of water, which is collected on a filter passed by an air diluted exhaust stream.

Exhaust emission. Any substance emitted to the atmosphere from the exhaust port of the combustion chamber of a diesel engine.

Intermediate speed. Peak torque speed as specified by the manufacturer or 60 percent of rated speed, whichever is higher.

Peak torque speed. The speed at which an engine develops maximum torque.

Percent load. The fraction of the maximum available torque at an engine speed.

Rated horsepower (HP). The maximum horsepower output of a diesel engine as stated by the manufacturer.

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Rated speed. The engine speed at which the rated HP is obtained.

Steady-state condition. Diesel engine operating condition which is at a constant speed and load and at stabilized temperatures and pressures.

Total oxides of nitrogen (NO_x). The sum total of the measured parts per millions (ppm) of nitric oxide (NO) plus the measured ppm of nitrogen dioxide (NO_2).

§ 7.83 Application requirements.

(a) An application for approval of a diesel engine shall contain sufficient information to document compliance with the technical requirements of this subpart and specify whether the application is for a category A engine or category B engine.

(b) The application shall include the following engine specifications:

(1) Model number.

(2) Number of cylinders, cylinder bore diameter, piston stroke, engine displacement.

(3) Maximum intake vacuum and exhaust backpressure.

(4) Rated speeds, rated horsepowers at rated speeds, peak torque speed, maximum rated torque, high idle, minimum permitted engine speed at full load, low idle.

(5) Fuel consumption at rated horsepowers and at the maximum rated torque.

(6) Performance specifications of turbocharger, if applicable.

(c) The application shall include drawings of the following components specifying all details affecting the technical requirements of this subpart. Composite drawings specifying the required construction details may be submitted instead of individual drawings:

(1) Cylinder head.

(2) Piston.

(3) Inlet valve.

(4) Exhaust valve.

(5) Cam shaft—profile.

(6) Fuel cam shaft, if applicable.

(7) Injector body.

(8) Injector nozzle.

(9) Injection fuel pump.

(10) Governor.

(11) Turbocharger—water-cooled, if applicable.

(12) Aftercooler, if applicable.

(13) Valve guide.

(14) Intake manifold.

(15) Water-cooled exhaust manifold, if applicable.

(16) Cylinder head gasket.

(17) Precombustion chamber, if applicable.

(d) The application shall include a drawing showing the general arrangement of the engine.

(e) All drawings shall be titled, dated, numbered, and include the latest revision number.

(f) When all necessary testing has been completed, the following information shall be submitted:

(1) The gaseous ventilation rate for the rated speed and horsepower.

(2) The particulate index for each rated speed and horsepower.

(3) A fuel deration chart for altitudes for each rated speed and horsepower.

§ 7.84 Technical requirements.

(a) *Fuel injection adjustment.* The fuel injection system of the engine shall be constructed so that the quantity of fuel injected can be controlled at a desired maximum value. This adjustment shall be changeable only after breaking a seal or by altering the design.

(b) *Maximum fuel-air ratio.* At the maximum fuel-air ratio determined by § 7.87 of this subpart, the concentrations (by volume, dry basis) of carbon monoxide (CO) and oxides of nitrogen (NO_x) in the undiluted exhaust gas shall not exceed the following:

(1) For category A engines: CO no more than 0.30 percent; NO_x no more than 0.20 percent.

(2) For category B engines: CO no more than 0.25 percent; NO_x no more than 0.20 percent.

(c) *Gaseous emissions ventilation rate.* For each rated speed and horsepower requested, the ventilation rate necessary to dilute gaseous exhaust emissions to the following permissible exposure levels shall be determined under § 7.88 of this subpart: TWA_{CO2}; TWA_{CO}; TWA_{NO}; TWA_{NO2}. Each rate shall be determined using the maximum f/a ratio established by paragraph (b) of this section.

(d) *Fuel deration.* The fuel rates specified in the fuel deration chart shall be based on the tests conducted under paragraphs (b) and (c) of this section and shall ensure that the maximum f/a ratio determined under paragraph (b) is not exceeded at the altitudes specified in the fuel deration chart.

(e) *Particulate index.* For each rated speed and horsepower requested, the particulate index necessary to dilute the exhaust particulate emissions to 1 mg./m³ shall be determined under § 7.89 of this subpart.

§ 7.85 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel engine to which an approval marking is affixed:

(a) Fuel rate is set to altitude.

(b) Fuel injection pump adjustment is sealed, if applicable.

§ 7.86 Test equipment and specifications.

The principal components of a dynamometer test cell and emissions sampling system to test for determination of maximum f/a ratio, ventilation rates, and the particulate index shall be as follows:

(a) *Dynamometer test cell.* (1) An apparatus for measuring torque shall be provided and accurate to ±0.5 percent of the indicated full load reading.

(2) An apparatus for measuring revolutions per minute (rpm) shall be provided and accurate to ±0.5 percent of the indicated rpm reading.

(3) An apparatus for measuring temperatures shall be provided and accurate to ±0.75 percent of the indicated reading.

(4) An apparatus for measuring pressure shall be provided and accurate to ±3 percent of the indicated reading.

(5) An apparatus for measuring fuel flow shall be provided and accurate to ±1 percent of full scale reading. An accuracy of ±2 percent of full scale reading is permitted at an idle power point.

(6) An apparatus for measuring the inlet air flow rate of the diesel engine shall be provided and accurate to ±2 percent of the indicated reading.

(7) For testing category A engines, an apparatus for metering in 1.0±0.1 percent, by volume, of methane (CH_4) into the intake air system shall be provided.

(8) The test fuel shall be a low volatile hydrocarbon fuel classified as ASTM D975, No. 2D, diesel fuel and which has a flash point of 125 °F (52 °C) or greater at standard temperature and pressure. The sulfur content shall be a minimum of 0.25 percent, by weight. The test fuel temperature at the inlet to the diesel engine's fuel injection pump shall be controlled to 104 °F ±5 °F (40 °C ±3 °C).

(9) The engine coolant outlet temperature (if applicable) shall be controlled to within ±5 °F (3 °C) of the nominal thermostat value specified by the manufacturer.

(b) *Gaseous emission sampling system.* (1) A schematic of the gaseous sampling system which is to be used for testing category A engines under this subpart is shown in Figure E–1. Since other sampling or analytical systems can produce equivalent results, exact conformance with Figure E–1 is not required. The following list of components is shown:

(i) Filters—F1, F2, F3, and F4.

(ii) Flowmeters—FL1, FL2, FL3, FL4, FL5, FL6, and FL7.

(iii) Upstream Gauges—G1, G2, and G5.

(iv) Downstream Gauges—G3, G4, and G6.

(v) Pressure Gauges—P1, P2, P3, P4, P5, and P6.

(vi) Water traps WT1 and WT2 shall remove water from the sample by condensation. The sample gas temperature within the water trap shall be monitored and shall not exceed 45 °F (7 °C). Chemical dryers are not an acceptable method of removing the water.

(vii) Regulators—R1, R2, R3, R4, R5, R6, and R7.

(viii) Selector Valves—V1, V2, V3, V4, V6, V7, V8, V15, and V19.

(ix) Heated Selector Valves—V5, V13, V16, and V17.

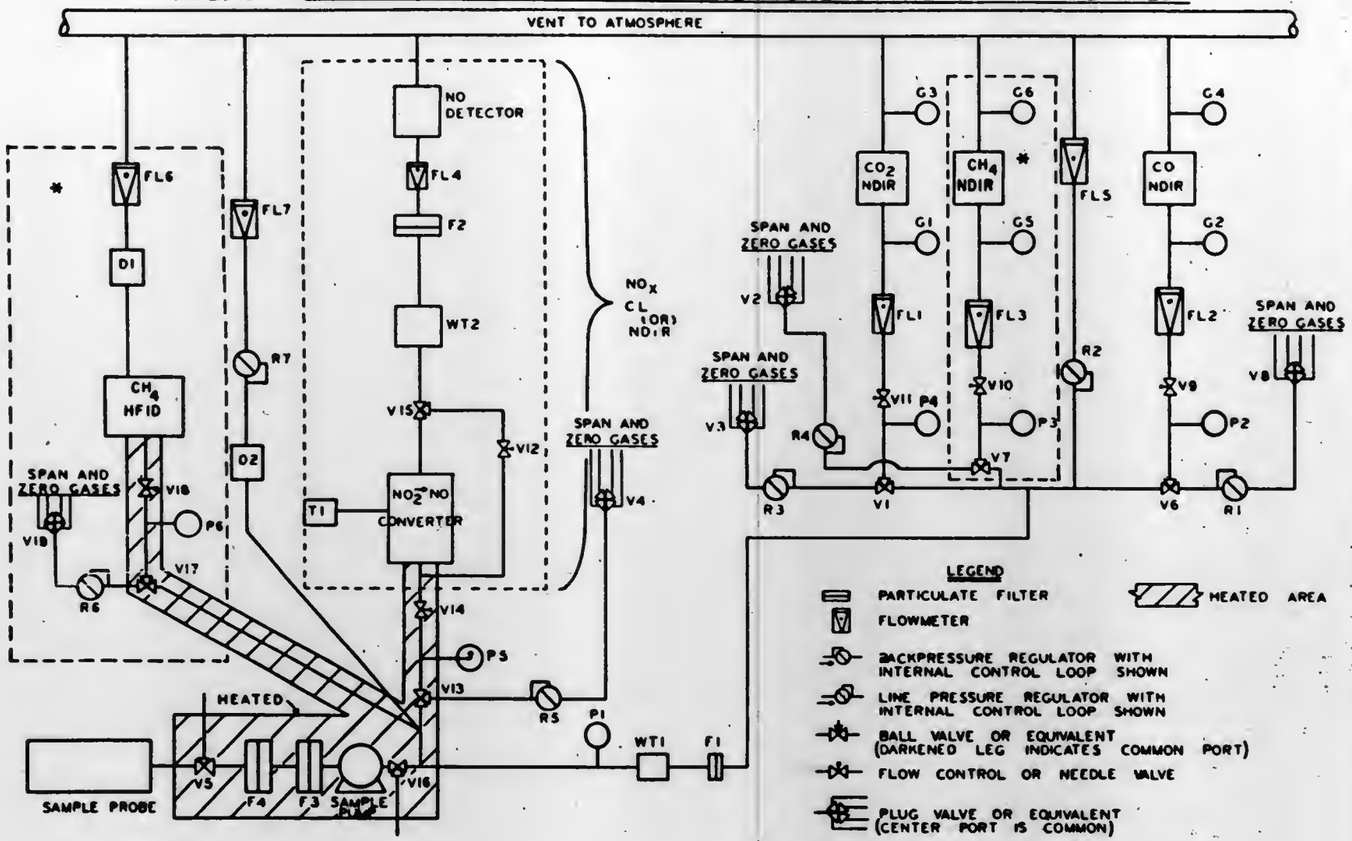
(x) Flow Control Valves—V9, V10, V11, and V12.

(xi) Heated Flow Control Valves—V14 and V18.

(xii) Pump—Sample Transfer Pump.

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FIG. E-1 EXHAUST GAS SAMPLING AND ANALYTICAL TRAIN — CATAGORY A ENGINES



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(xiii) Temperature Sensor—(T1).
(xiv) Dryer—D1 and D2.

(2) A schematic of the gaseous sampling system which is to be used for testing category B engines under this subpart is shown in Figure E–2. Since other sampling or analytical systems can produce equivalent results, exact conformance with Figure E–2 is not required. The following list of components is shown:

(i) Filters, F1, F2, F3, and F4.
(ii) Flowmeters—FL1, FL2, FL3, and FL4.
(iii) Upstream Gauges—G1, and G2.
(iv) Downstream Gauges—G3, and G4.
(v) Pressure Gauges—P1, P2, P3, and P4.

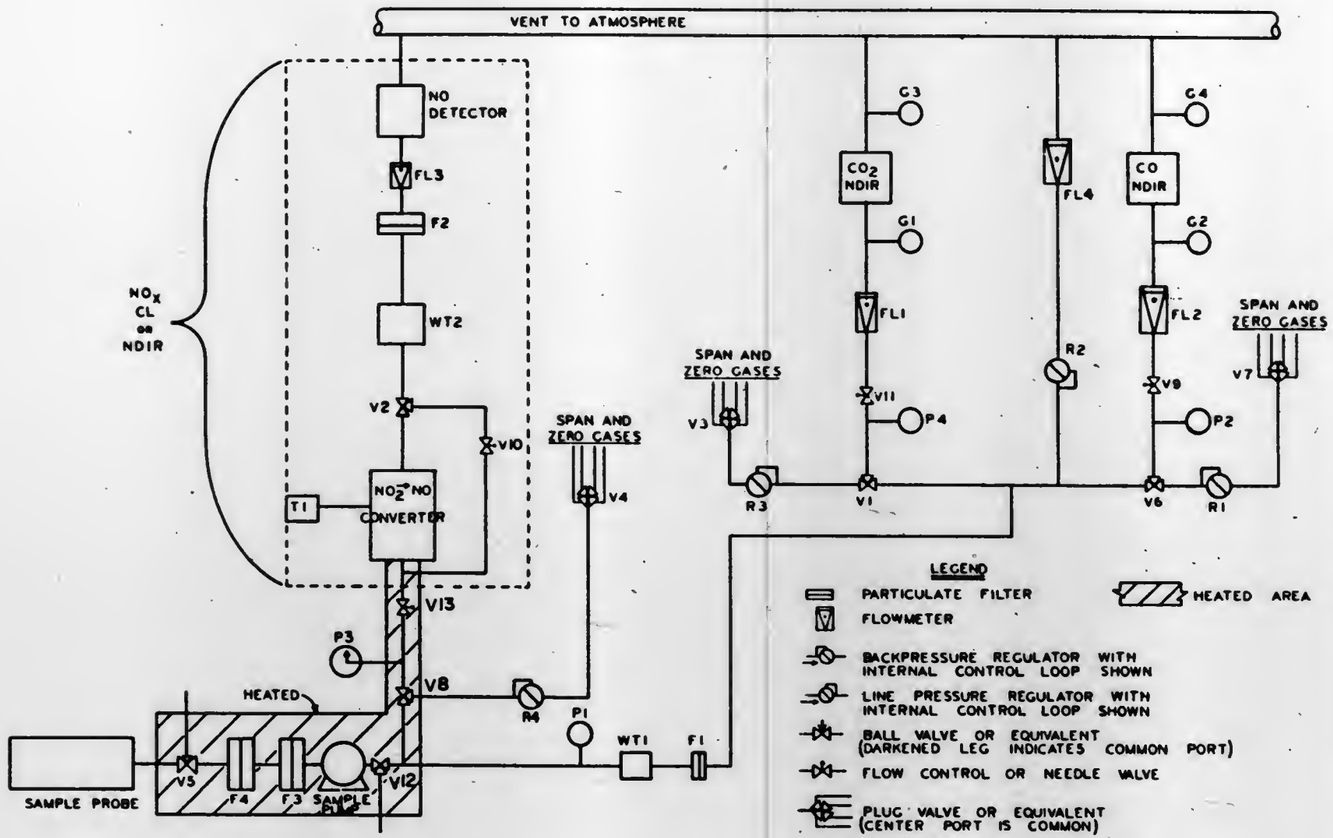
(vi) Water traps WT1 and WT2 shall remove water from the sample by condensation. The sample gas temperature within the water trap shall be monitored and shall not exceed 45 °F (7 °C). Chemical dryers are not an acceptable method of removing the water.

(vii) Regulators—R1, R2, R3, and R4.
(viii) Selector Valves—V1, V2, V3, V4, V6, and V7.
(ix) Heated Selector Valves—V5, V8, and V12.
(x) Flow Control Valves—V9, V10, V11.
(xi) Heated Flow Control Valves—V13.
(xii) Pump—Sample Transfer Pump.
(xiii) Temperature Sensor—(T1).

(3) All components or parts of components that are in contact with the sample gas or corrosive calibration gases shall be corrosion-resistant material.

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FIG. E-2 EXHAUST GAS SAMPLING AND ANALYTICAL TRAIN-CATAGORY B ENGINES



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(4) All analyzers shall obtain the sample to be analyzed from the same sample probe.

(5) CO and CO_2 measurements shall be made on a dry basis.

(6) Calibration or span gases for the NO_x measurement system shall pass through the NO_2 to NO converter.

(7) The sample probe shall be straight, closed-end, multiholed, and shall be placed inside the exhaust pipe. The probe length shall be at least 80 percent of the diameter of the pipe. The total open area of the sampling holes shall not exceed the total cross-sectional area of the probe. The angular spacing of any 2 holes around the same circumference shall not be 160° to 200°.

(8) The sample probe shall be located in the exhaust pipe at a distance of 3–10 feet (1–3 meters) from the exhaust manifold outlet flange or the outlet of the turbocharger.

(9) Within 20 seconds after introduction of span gases at the sample probe or valve V5, all analyzers shall respond with a reading of 90 percent of the span gas concentration.

(10) *General analyzer specifications.* (i) The analyzer shall respond to an instantaneous change at the entrance to the analyzer with a response equal to 95 percent of that change in 6.0 seconds or less on all analyzer ranges. The change shall be at least 60 percent of full scale reading for the analysis range.

(ii) The precision of the analyzer shall be ±1 percent or less of full scale readings for each range used. The precision is defined as 2.5 times the standard deviations of 10 repetitive responses to a given calibration or span gas.

(iii) The analyzer peak to peak response to zero and calibration of span gases over any 10 second period shall not exceed 2 percent of full scale reading within the analysis range.

(iv) The analyzer zero-response drift during a 1-hour period shall be less than 2 percent of full scale reading on the lowest range used. The zero-response is defined as the mean response including noise to a zero gas during a 30-second time interval.

(v) The analyzer span drift during a 1-hour period shall be less than 2 percent of full scale reading on the lowest range used. The analyzer span is defined as the difference between the span response and the zero response. The span response is defined as the mean response including noise to a span gas during a 30 second time interval.

(11) *CO and CO_2 analyzer specifications.* (i) Measurements shall be made with nondispersive infrared (NDIR) analyzers.

(ii) The minimum water rejection ratio (maximum H_2O interference) shall be as follows:

(A) For CO analyzers: 1000:1.

(B) For CO_2 analyzers: 100:1.

(iii) The minimum CO_2 rejection ratio (maximum CO_2 interference) for CO analyzers shall be 5000:1.

(12) When NO_x analyzer specifications use a chemiluminescence (CL) analyzer the following shall apply:

(i) From the sample point to the NO_2 to NO converter, the NO_x sample shall be maintained between 203 °F (95 °C) and 446 °F (230 °C).

(ii) For high vacuum CL analyzers with heated capillary modules, supplying a heated sample from the probe to the capillary module is sufficient.

(iii) The NO_2 to NO converter efficiency shall be at least 90 percent.

(iv) The quench interference must be less than 3.0 percent.

(13) When NO_x analyzer specifications use an NDIR analyzer system the following shall apply:

(i) The system shall include a NO_2 to NO converter, a water trap, and a NDIR analyzer.

(ii) From the sample point to the NO_2 to NO converter, the NO_x sample shall be maintained between 203 °F (95 °C) and 446 °F (230 °C).

(iii) The minimum water rejection ratio (maximum water interference) for the NO_x NDIR analyzer shall be 5000:1.

(iv) The minimum CO_2 rejection ratio (maximum CO_2 interference) for the NO_x NDIR analyzer shall be 30,000:1.

(14) When CH_4 analyzer specifications use a heated flame ionization detector (HFID) the following shall apply:

(i) The analyzer shall be fitted with a constant temperature oven housing the detector and sample-handling components. The detector, oven, and sample-handling components within the oven shall be suitable for continuous operation at temperatures from 347 °F (175 °C) to 392 °F (200 °C) ±4 °F (2 °C).

(ii) The analyzer fuel shall contain 40 ±2 percent hydrogen. The balance shall be helium. The mixture shall contain less than 2 parts per million carbon (ppmC) hydrocarbon.

(iii) The burner air shall contain less than 2 ppmC hydrocarbon.

(iv) The percent of oxygen interference shall be less than 3 percent.

(15) An NDIR analyzer for measuring CH_4 may be used in place of the HFID specified in paragraph (b)(14) of this section and shall conform to the requirements of § 7.86(b)(10) of this subpart. Methane measurements shall be made on a dry basis.

(16) Calibration gas values shall be traceable to the National Bureau of Standards (NBS), "Standard Reference Materials" (SRM's). The analytical accuracy of the calibration gas values shall be within 2.0 percent of the assigned values.

(17) Span gas values shall be traceable to NBS SRM's. The analytical accuracy of the span gas values shall be within 3.0 percent of the assigned values.

(18) Calibration or span gases for the CO and CO_2 analyzers shall have zero-grade nitrogen as a diluent. Calibration or span gases for the CH_4 analyzer shall be CH_4 with zero-grade air or nitrogen as diluent.

(19) Calibration or span gases for the NO_x analyzer shall be NO_x with a maximum NO_2 concentration of 5 percent of the nominal NO value. Zero-grade nitrogen shall be the diluent.

(20) Zero-grade gases for the CO, CO_2, and NO_x analyzers shall be either zero-grade air or zero-grade nitrogen. Zero-grade gas for CH_4 analyzer shall be zero-grade air or nitrogen.

(21) The allowable zero-grade gas (air or nitrogen) impurity concentrations shall not exceed 10 ppm CO, 400 ppm CO_2, and 1 ppm NO.

(c) *Particulate sampling system.* (1) A schematic of a particulate sampling system for testing under this subpart is shown in Figures E–3 and E–4. The system consists of a dilution air filter, dilution tunnel, heat exchanger, pumps, mass measurement device, particulate probe, filters, and associated temperature sensors. A double dilution method or a partial dilution system may also be used in conformance with the specifications required in this paragraph.

(2) The mass of particulate in the exhaust is determined via filtration. The exhaust temperature shall not exceed 125 °F (51.7 °C) at the primary filter.

(3) Exhaust system backpressure shall not be artificially lowered by the particulate sampling system or dilution air inlet.

(4) The gas mixture temperature shall be measured at a point immediately ahead of the pump or mass measurement device and after the heat exchanger and shall be maintained within ±10 °F (5.6 °C) of the average operating temperature observed during the test.

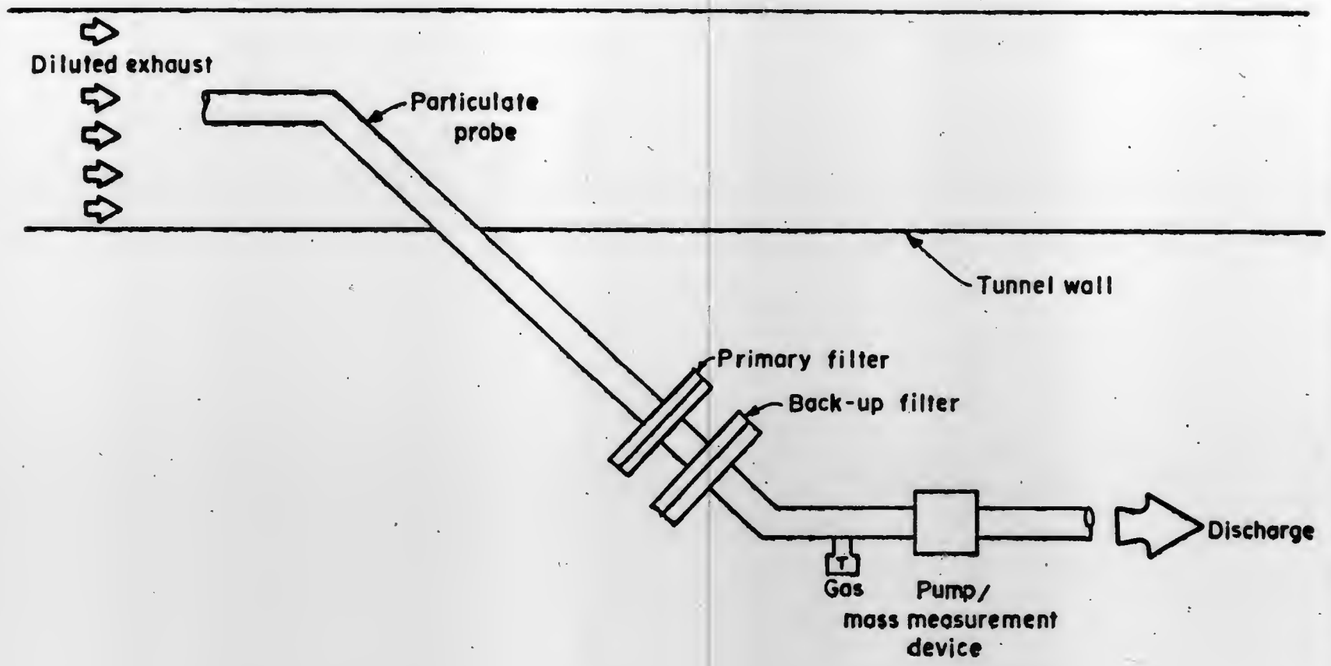
(5) The flow capacity of the system shall be large enough to eliminate water condensation.

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FIG. E-3 DILUTION TUNNEL/CONSTANT VOLUME SYSTEM

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FIG. E-4 PARTICULATE SAMPLING SYSTEM



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(6) The flow capacity of the system shall maintain the diluted exhaust stream at a temperature of 125 °F (51.7 °C) or less at the particulate sample probe inlet.

(7) The mass flow measurement device of the sample system shall be accurate to ±5 percent of the indicated reading.

(8) The dilution air shall have a temperature of 77 °F ±9 °F (25 °C ±5 °C), and be—

(i) Filtered at the air inlet; or

(ii) Sampled to determine background particulate levels, which can then be subtracted from the values measured in the exhaust stream.

(9) The dilution tunnel shall—

(i) Be small enough in diameter to cause turbulent flow (Reynolds number greater than 4,000) and of sufficient length to cause mixing of the exhaust and dilution air;

(ii) Be constructed of electrically conductive material which does not react with the exhaust component;

(iii) Be electrically grounded;

(iv) Have the engine exhaust directed downstream at the point where it is introduced into the dilution tunnel; and

(v) Have a total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the dilution tunnel not to exceed 32 feet. When the total length exceeds 12 feet, then all tubing in excess of 12 feet shall be insulated. The radial thickness of the insulation shall be at least R inches, where R=16(k)−(2)r, where k=Thermal conductivity of the insulating material (Btu/hr-ft-°F), and r=Outer radius of uninsulated tubing (inches).

(10) The particulate sample probe shall—

(i) Be installed in the dilution tunnel facing upstream, on the dilution tunnel centerline, and approximately 10 dilution tunnel diameters downstream of the point where the engine's exhaust enters the dilution tunnel;

(ii) Have 0.5 inches (1.27 cm) minimum inside diameter;

(iii) Have a distance from the probe's sample tip to the filter holder of at least 5 probe diameters for filters located inside the dilution tunnel, and not more than 40 inches (102 cm) for filters located outside the dilution tunnel;

(iv) Be designed to minimize the deposit of particulate in the probe; and

(v) Be constructed of electrically conductive material which does not react with the exhaust components.

(11) The inlet gas temperature to the particulate sample pump or mass measurement device shall remain a constant temperature of ±5 °F (2.8 °C) if flow compensation is not used.

(12) The particulate sampling filters shall—

(i) Be fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters;

(ii) Have a minimum diameter of 2.75 inches (70 mm), 2.36 inches (60 mm) stain diameter;

(iii) Have a recommended minimum loading on a primary 2.75 inch (70 mm) filter of 0.0019 ounces (5.3 milligrams); and

(iv) Simultaneously sample the diluted exhaust by a pair of filters (one primary and one backup filter). The backup filter holder shall be located no more than 4 inches (10.2 cm) downstream of the primary filter holder. The primary and backup filters shall not be in contact with each other.

(13) *Weighing chamber specifications.* (i) The temperature of the chamber in which the particulate filters are conditioned and weighed shall be maintained to within ±10 °F (6 °C) of a set point between 68 °F (20 °C) and 86 °F (30 °C) during all filter conditioning and weighing.

(ii) The relative humidity of the chamber (room) in which the particulate filters are conditioned and weighed shall be maintained to within ±10 percent (relative humidity) of a set point between 30 and 70 percent during all filter conditioning and weighing.

(iii) The chamber environment shall be free of any ambient contaminants (such as dust) that would settle on the particulate filters during their stabilization. This shall be determined as follows:

(A) Two unused reference filters remain in the weighing room at all times.

(B) The filters are weighed once each 24-hour period.

(C) If the weight of either or both filters changes by more than ±1.0 percent of the nominal filter loading (a recommended minimum of 5.3 mg) during the conditioning period, then all filters in the process of being stabilized should be discarded and any tests repeated.

(D) The reference filters shall be changed at least once per month.

(14) The microgram balance used to determine the weights of all filters shall have a precision (standard deviation) of 20 micrograms and readability of 10 micrograms.

§ 7.87 Test for determination of maximum fuel-air ratio.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86 of this subpart.

(2) Install sample probe as specified in § 7.86(b) (7) and (8) of this subpart.

(3) Prior to testing, zero and span the CO and NO_x analyzers to the lowest analyzer range that will be used during this test.

(4) Run the engine.

(i) For maximum CO determination test, the intake and exhaust restrictions on the engine shall be set as follows:

(A) Inlet vacuum (inch H_2O)=(P_b×13.6)−(400−R_i).

(B) Exhaust backpressure (inch H_2O)=(400+R_e)−(P_b×13.6).

(C) P_b=barometric pressure (inch mercury, Hg).

(D) R_i=manufacturers recommended maximum inlet restriction (inch H_2O).

(E) R_e=manufacturers recommended maximum exhaust restriction (inch H_2O).

(F) The inlet and exhaust restrictions shall be set at high idle for a naturally aspirated engine, and at rated speed and horsepower for a turbocharged engine. These restrictions shall be set within 0.2 inch Hg.

(ii) For maximum NO_x determination, the intake and exhaust restrictions on the engine shall be set as specified in paragraph (a)(4)(i) of this section except that R_i-manufacturers recommended clean air filter restriction (inch H_2O).

(5) During the test, the engine shall be at a steady-state condition before the exhaust gas samples are collected and other test data is measured. For category A engines, 1.0%±0.1 CH_4 shall be injected into the engine's intake air.

(6) Operate the engine at several speed/torque conditions to determine the concentrations of CO and NO_x, dry basis, in the raw exhaust.

(b) *Acceptable performance.* The CO and NO_x concentrations in the raw exhaust shall not exceed the limits specified in § 7.84(b) of this subpart throughout the specified operational range of the engine.

§ 7.88 Test for determination of ventilation rate.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and attach the sampling and measurement devices specified in § 7.86 of this subpart.

(2) Prior to testing, zero and span the CO, CO_2, NO_x, and CH_4 analyzers to the lowest analyzer range that will be used during this test.

(3) Run the engine. For this test, the intake and exhaust restrictions on the engine shall be set as specified in § 7.87(a)(4)(ii) of this subpart.

(4) During the test, the engine shall be at a steady-state condition before the exhaust gas samples are collected and other data is measured. For category A engines, 1.0%±0.1 CH_4, by volume, shall be injected into the engine's intake air.

(5) Operate the engine at the speed and load combinations listed below to measure the raw exhaust gas concentration, dry basis, of CO, CO_2, NO, and NO_2. For category A engines, the concentration of CH_4 shall also be measured.

(i) Test speeds shall be at—

(A) Each rated speed for which approval is requested.

(B) The speed at which peak torque occurs.

(C) The two speeds between the maximum rated speed requested and peak torque speed.

(D) Governor overrun speeds.

(ii) At each of the test speeds listed in paragraph (a)(5)(i) of this section, the following percent loads shall be run: 100 percent, 90 percent, 80 percent, 70 percent, 60 percent, 50 percent, 25 percent, 2 percent (±2 percent).

(6) The gaseous ventilation rate for each exhaust gas contaminant shall be calculated as follows—

(i) The following abbreviations shall apply to both category A and category B engine calculations as appropriate—

cfm—Cubic feet per min (ft^3/min)
Exh—Exhaust
A—Air (lbs/hr)
H—Grains of water per lb. of dry intake air
J—Conversion factor
m—Mass flow rate (mass/hr)
TI—Intake air temperature (°F)
PCAir—Percent Air
$PCCH_4$—Percent CH_4 (intake air)
UCH_4—Unburned CH_4
$PCECH_4$—Percent Exhaust CH_4
TWA—Time Weighted Average

(ii) Exhaust gas flow calculation for category B engines—

(m Exh)=(m air)+(m fuel)

(iii) Fuel/air ratio for category B engines—

(f/a)=(m fuel)−(m air)

(iv) For category A engines the methane flow through the engine is determined by—

PCAir=100−$PCCH_4$
Y=(PCAir)(0.289)+($PCCH_4$)(0.16)
Z=(0.16)($PCCH_4$)÷Y
CH_4=(A)(Z)÷(1−Z)

(v) Exhaust gas flow calculation for category A engines—

(m Exh)=(m air)+(m fuel)+(m CH_4)

(vi) Unburned CH_4 (lbs/hr) calculation for category A engines—

UCH_4=(m Exh)(0.00552)($PCECH_4$)

(vii) Fuel/air ratio for category A engines—

(f/a)=(m fuel)+(m CH_4) −(m UCH_4)÷(m air)

(viii) Conversion from dry to wet basis for both category A and category B engines—

(NO wet basis)=(NO dry basis)(J)
(NO_2 wet basis)=(NO_2 dry basis)(J)
(CO_2 wet basis)=(CO_2 dry basis)(J)
(CO wet basis)=(CO dry basis)(10^{-4})(J)
Where J=(f/a)(−1.87)
+(1−(0.00022)(H))

(ix) NO and NO_2 correction for humidity and temperature for category A and category B engines—

(NO corr)=(NO wet basis)÷(E)
(NO_2 corr)=(NO_2 wet basis)÷(E)
Where E=1.0+(R)(H−75)+(G)(TI−85)
Where R=(f/a)(0.044)−(0.0038)
Where G=(f/a)(−0.116)+(0.0053)

(x) The calculations for determining the m of each exhaust gas contaminant in grams per hour at each test point shall be as follows for category A and category B engines—

(m NO)=(NO corr)(0.000470)(m Exh)
(m NO_2)=(NO_2 corr)(0.000720)(m Exh)
(m CO_2)=(CO_2 wet basis)(6.80)(m Exh)
(m CO)=(CO wet basis)(4.38)(m Exh)

(xi) The calculations for determining the ventilation rate for each exhaust gas contaminant at each test point shall be as follows for category A and category B engines—

(cfm NO)=(m NO)(K)
(cfm NO_2)=(m NO_2)(K)
(cfm CO_2)=(m CO_2)(K)
(cfm CO)=(m CO)(K)

$$\text{Where } K = \frac{13.913.4}{(\text{pollutant grams/mole})(\text{pollutant TWA})}$$

(b) A gaseous ventilation rate for each requested rated speed and horsepower shall be selected as follows:

(1) If there is only one rated speed and horsepower requested, the highest gaseous ventilation rate calculated in paragraph (a)(6)(xi) of this section shall be the gaseous ventilation rate.

(2) If there are several rated speeds and horsepowers requested, the highest gaseous ventilation rate calculated in paragraph (a)(6)(xi) of this section for each operating range shall be the gaseous ventilation rate.

(3) All ventilation rates shall be rounded up according to the rates listed:

(i) Ventilation rates less than 20,000 cfm shall be rounded up to the next 500 cfm.

Example: 10,432 cfm shall be listed 10,500 cfm.

(ii) Ventilation rates greater than 20,000 cfm shall be rounded up to the next 1,000 cfm.

Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.89 Test for determination of particulate index.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86(a) and § 7.86(c) of this subpart.

(2) Prior to testing, condition and weigh the particulate filters as follows:

(i) At least 1 hour, but not more than 80 hours, before the test, place each filter in an open petri dish and place in a weighing chamber (room) for stabilization.

(ii) At the end of the stabilization period, weigh each filter on a balance. The reading is the tare weight.

(iii) The filter shall then be stored in a covered petri dish or a sealed filter holder, either of which shall remain in the weighing chamber until needed for testing.

(iv) If the filter is not used within 1 hour of its removal from the weighing chamber, it must be re-weighed before use. This limit of 1 hour may be replaced by an 8-hour limit if any of the following three conditions are met—

(A) A stabilized filter is placed and kept in a sealed filter holder assembly with the ends plugged; or,

(B) A stabilized filter is placed in a sealed filter holder assembly, which is then immediately placed in a sample line through which there is no flow; or,

(C) A combination of the conditions specified in paragraph (a)(2)(iv) of this section.

(3) Run the engine. For this test, the intake and exhaust restrictions on the engine shall be set as specified in § 7.87(a)(4)(ii) of this subpart.

(4) During the test, the engine shall be at a steady state condition before the particulate sample is collected and other test data is measured. For category A engines, 1.0%±0.1 CH_4, by volume, shall be injected into the engine's intake air.

(5) Operate the engine at the speed and load conditions listed below to collect particulate on the primary filter to a minimum loading of 0.0019 ounces (5.3 mg). One composite filter may be collected or ten individual filters may be collected at the specified speed and load conditions.

(i) Test speeds shall be—

(A) Rated speeds for which approval is requested.

(B) Intermediate speed.

(ii) Test load shall be at 10 percent, 75 percent, 50 percent, 25 percent, 2 percent (±2 percent) for each test speed.

(6) After completion of the test, condition and weigh the particulate filters in the weighing chamber as follows—

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(i) Condition the filters for at least 1 hour, but not more than 80 hours, in an open petri dish.

(ii) At the end of the stabilization period, weigh each filter on a balance. The reading is the gross weight.

(iii) The net weight of each filter is its gross weight minus its tare weight. If the sample on the filter contacts the petri dish or any other surface, the test is void and must be rerun.

(iv) A ratio of net weights will be determined by the following formula—

$$\text{Ratio of net weights} = \frac{\text{(Net Weight) Primary Filter } (P_f)}{\text{(Net Weight) Primary Filter + (Net Weight) Backup Filter.}}$$

If the ratio of weights is greater than 0.95, then P_f is the net weight of the primary filter only.

If the ratio of net weights is less than or equal to 0.95, then P_f is the sum of the net weights of the primary filter and the backup filter.

(v) The following optional weighing procedure is permitted—

(A) At the end of the stabilization period, weigh both the primary and backup filters as a pair on the balance. This reading is the tare weight.

(B) After the test, in removing the filters from the filter holder, the backup filter is inverted on top of the primary filter. They must then be conditioned in the weighing chamber for at least 1 hour, but not more than 80 hours. The filters are then weighed as a pair. This reading is the gross weight of the filters.

(7) The particulate index for the mass particulate shall be calculated from the equations listed below—

(i) Abbreviations used—

cfm—Cubic feet per min (ft^3/min)

Part—Particulate (mg/min)

m mix—Mass flow rate of total diluted exhaust volume (mass/min)

m sample—Mass flow rate of total sample removed from dilution tunnel (mass/min)

P_f part—Mass particulate on filter measured at test point (mg) as determined in paragraph (a)(6)(iv) of this section.

(ii) Mass of particulate emitted per minute (grams/min)

$$\text{Part mg/min} = (\text{m mix mass/min} + \text{m sample mass/min}) \frac{(P_f \text{ part mg})}{(\text{m sample mass/min}).}$$

(iii) Determination of particulate index for the mass particulate at each test point shall be as follows: cfm Part = (Part mg/min)(35.31 ft^3/m^3) ÷ (1 mg/m^3)

(b) A particulate index for each requested rated speed and horsepower shall be selected as follows—

(1) If there is only one rated speed and horsepower requested, the particulate index shall be the average of the ten filters or the composite filter collected as calculated in paragraph (a)(7)(iii) of this section.

(2) If there are several rated speeds and horsepowers requested, a separate particulate index will be determined for each requested rating as calculated in paragraph (a)(7)(iii) of this section.

(3) The particulate index shall be rounded up according to the rates listed—

(i) Particulate indices less than 20,000 cfm shall be rounded up to the next 500 cfm.

Example: 10,432 cfm shall be listed 10,500 cfm.

(ii) Particulate indices greater than 20,000 cfm shall be rounded up to the nearest thousand (1,000) cfm.

Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.90 Approval marking.

Each approved diesel engine shall be identified by a legible and permanent approval marking inscribed with the assigned MSHA approval number and securely attached to the diesel engine. The marking shall also contain the following information:

(a) Ventilation rate.
(b) Rated power.
(c) Rated speed.
(d) High idle.
(e) Maximum altitude before deration.
(f) Engine model number.

§ 7.91 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval holder shall make a diesel engine available for audit at no cost.

§ 7.92 New technology.

MSHA may approve a diesel engine that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel engine is as safe as those which meet the requirements of this subpart.

Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required

§ 7.95 Purpose and effective date.

This subpart establishes the specific requirements for approval of diesel power packages intended for use in areas of underground mines where permissible electric equipment is required. It is effective (60 days after the date of publication of the final rule in the **Federal Register**).

§ 7.96 Definitions.

The following definitions apply in this subpart.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Cylindricol joint. A joint composed of two contiguous, concentric, cylindrical surfaces.

Diesel power package. A diesel engine with an intake system, exhaust system, and a safety shutdown system installed.

Exhaust conditioner. A corrosion-resistant enclosure, containing a cooling system, through which the exhaust gases pass.

Exhaust system. A system connected to the outlet of the diesel engine which includes the exhaust manifold, the exhaust pipe, the exhaust conditioner, the exhaust flame arrester, and any adapters between the exhaust manifold and exhaust flame arrester.

Explosive mixture. A mixture of methane or natural gas with normal air, that will propagate flame or explode violently when ignited.

Fastening. A device such as a bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from the diesel power package.

Flame arrester. A device which allows the passage of gases, but which prevents the passage of flame.

Flame arresting path (explosion-proof joint). Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Grade. The slope of an incline expressed as a percent.

High idle speed/no load. The maximum no load speed specified by the engine manufacturer.

Idle speed/no load. The minimum no load speed specified by the engine manufacturer.

Intake system. A system connected to the inlet of the diesel engine which includes the intake manifold, the intake flame arrester, the emergency intake air shutoff device, the air cleaner, and all piping and adapters between the intake manifold and air cleaner.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Rated speed. The speed at which the engine manufacturer specifies the rated brake horsepower of the engine.

Safety shutdown system. A system which, in response to signals from various safety sensors, recognizes the existence of a potential hazardous condition and automatically shuts off the fuel supply to the engine.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Threaded joint. A joint consisting of a male and female threaded member, both of which are the same type and thread gauge.

§ 7.97 Application requirements.

(a) An application for approval of a diesel power package shall contain sufficient information to document compliance with the technical requirements of this subpart and include the following information—

(1) Drawings, specifications, and descriptions with dimensions (including tolerances) demonstrating compliance with the technical requirements of this subpart. The specifications and descriptions shall include the materials of construction and quantity.

(2) A general arrangement drawing showing the diesel power package and the location and identification of the intake system, exhaust system, safety shutdown system sensors, flame arresters, exhaust conditioner, emergency intake air shutoff device, automatic fuel shutoff device and the engine.

(3) Diesel engine specifications including the MSHA approval number, and speed, horsepower, and fuel flow if different than the maximum rated condition in the engine approval.

(4) A schematic which includes the location and identification of all water-cooled components, coolant lines, radiator, surge tank, temperature sensors, and orifices; arrows indicating proper flow direction; the height relationship of water-cooled components to the surge tank; and the proper procedure for filling the cooling system.

(5) A schematic showing the relative location and identification of components in the safety shutdown system.

(6) Specific component identification, or specific information including detail drawings that identify the characteristics of the cooling system and safety shutdown system that ensures compliance with the technical requirements.

(7) Detail drawings of gaskets used to form explosion-proof joints.

(8) An assembly drawing showing the location and identification of all intake system components from the air cleaner to the engine head.

(9) An assembly drawing showing the location and identification of all exhaust system components from the engine head (excluding the dilution system).

(10) Detail drawings of those intake and exhaust system components identified in §§ 7.97(a)(1)(vii) and 7.97(a)(1)(viii) of this subpart that ensure compliance with the technical requirements. If an exhaust conditioner is used, an exhaust conditioner assembly drawing shall be provided showing the location, dimensions, and identification of all internal parts, exhaust inlet and outlet, sensors, fill port, drain port, low water check port; high or normal operating water level; minimum allowable low water level; maximum allowable grade to maintain explosion-proof operations; and exhaust gas path through the exhaust conditioner.

(11) A power package checklist which shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow the evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

(12) Information showing that the electrical systems and components meet the requirements of § 7.98 of this subpart.

(13) A drawing list consisting of a complete list of those drawings and specifications which show the details of the construction and design of the diesel power package.

(b) Composite drawings specifying the required details of construction are acceptable instead of the individual detailed drawings in paragraph (a) of this section.

(c) All documents shall be titled, dated, numbered, and include the latest revision number.

(d) When all testing has been completed, the following information shall be submitted and become part of the approval documentation:

(1) The settings of any adjustable devices used to meet the performance requirements of this subpart.

(2) The coolant temperature sensor setting and exhaust gas temperature sensor setting used to meet the performance requirements of this subpart.

(3) The minimum allowable low water level and the low water sensor setting used to meet the performance requirements of this subpart.

(4) The maximum grade on which the exhaust conditioner can be operated retaining the flame arresting characteristics.

(5) A finalized version of the power package checklist.

§ 7.98 Technical requirements.

(a) The diesel power package shall use a category A diesel engine approved under subpart E of part 7 of this chapter with the following additional requirements:

(1) A hydraulic, pneumatic, or other mechanically actuated starting mechanism. Other means of starting shall be evaluated in accordance with the provisions of § 7.107.

(2) If an air compressor is provided, the intake air line shall be connected to the engine intake system between the air cleaner and the flame arrester or the air compressor shall have an integral air filter.

(b) The temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C). Diesel power package designs using water jacketing to meet this requirement shall be tested in accordance with § 7.101 of this subpart. Diesel power packages using other techniques will be evaluated under the provisions of § 7.107 of this subpart. When using water-jacketed components, provisions shall be made for positive circulation of coolant, venting of the system to prevent the accumulation of air pockets, and effective activation of the safety shutdown system before the temperature of the coolant in the jackets exceeds the manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(c) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

(d) If nonmetallic fans are used, they shall prevent an accumulation of static electricity. Static conducting materials shall have a total resistance of 1 megohm or less, measured with an applied potential of 500 volts or more. Static conducting materials having a total resistance greater than 1 megohm will be evaluated under the provisions of § 7.107 of this subpart.

(e) All V-belts shall be static conducting and have a resistance not exceeding 6 megohms, when measured with a direct current potential of 500 volts or more.

(f) The engine crankcase breather shall not be connected to the air intake system of the engine. The discharge from the breather shall be directed away from hot surfaces of the engine and exhaust system.

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(g) Electrical components on diesel power packages shall be certified or approved by MSHA under Parts 7, 18, 20, and 27 of this chapter.

(h) Electrical systems on diesel power packages consisting of electrical components, interconnecting wiring, and mechanical and electrical protection shall meet the requirements of Parts 7, 18, and 27 of this chapter as applicable.

(i) The diesel power package shall be equipped with a safety shutdown system which will automatically shut off the fuel supply and stop the engine in response to signals from sensors indicating—

(1) The coolant temperature limit specified in § 7.98(b) of this subpart;

(2) The exhaust gas temperature limit specified in § 7.98(s)(4) of this subpart; or

(3) The minimum allowable low water level as established by tests of § 7.100 of this subpart. Restarting of the engine shall be prevented until the water level in the exhaust conditioner has been replenished above the minimum allowable low water level.

(j) The safety shutdown system shall have the following features:

(1) A means to automatically disable the starting circuit and prevent engagement of the starting mechanism while the engine is running, or a starting mechanism constructed of nonsparking materials.

(2) If the design of the safety shutdown system requires that the lack of engine oil pressure must be overridden to start the engine, the override shall not be capable of overriding any of the safety shutdown sensors specified in paragraph (i) of this section.

(k) The diesel power package shall be explosion-proof when tested in accordance with the explosion tests of § 7.100 of this subpart.

(l) Engine joints that directly or indirectly connect the combustion chamber to the surrounding atmosphere shall be explosion-proof in accordance with paragraphs (m) through (q) of this section and § 7.100 of this subpart. This paragraph does not apply to the following:

(i) Pistons and piston rings.

(ii) Pistons and cylinder walls.

(iii) Piston rings and cylinder walls.

(iv) Cylinder head to cylinder block.

(v) Valve stem to valve guide.

(vi) Injector body to cylinder head.

(m) Each segment of the intake system and exhaust system required to provide explosion-proof features shall be constructed of metal and designed to withstand an internal pressure equal to four times the maximum pressure observed in that segment in tests of § 7.100 of this subpart or a pressure of 150 psig, whichever is less. Castings shall be free from blowholes.

(n) Welded joints forming the explosion-proof intake and exhaust systems shall be continuous and gas-tight. At a minimum, they shall be made in accordance with American Welding Society Standard D14.4–77 or meet the test requirements of § 7.104 of this subpart with the internal pressure equal to four times the maximum pressure observed in tests of § 7.100 of this subpart or a pressure of 150 psig, whichever is less.

(o) Flexible connections shall be permitted in segments of the intake and exhaust systems required to provide explosionproof features, provided that failure of the connection activates the safety shutdown system before the explosion-proof characteristics are lost.

(p) Explosion-proof joints in the intake and exhaust systems shall be formed either by—

(1) Flanged metal to metal joints meeting the requirements of paragraph (q) of this section; or

(2) Metal flanges fitted with metal gaskets and meeting the following requirements:

(i) Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished in manufacture to not more than 250 microinches.

(ii) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(iii) Fastenings shall be uniform in size to preclude improper assembly.

(iv) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(v) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(vi) The minimum thickness of material for flanges shall be ½-inch, except that a final thickness of 7/16-inch is allowed after machining rolled plate.

(vii) The maximum fastening spacing shall be 6 inches.

(viii) The minimum diameter of fastenings shall be ⅜-inch, except smaller diameter fastenings may be used if the joint first meets the requirements of the static pressure test in § 7.104 of this subpart, and the explosion test in § 7.100 of this subpart.

(ix) The minimum thread engagement of fastenings shall be equal to or greater than the nominal diameter of the fastenings specified, or the intake or exhaust system must meet the test requirements of the static pressure test in § 7.104 of this subpart.

(x) The minimum contact surface of gaskets forming flamearresting paths shall be ⅜-inch, and the thickness of the gaskets shall be no greater than 1/16-inch. The minimum distance from the interior edge of a gasket to the edge of a fastening hole shall be ⅜-inch. The gaskets shall be positively positioned, and a means shall be provided to preclude improper installation. When the joint is completely assembled, it shall be impossible to insert a 0.0015-inch thickness gauge to a depth exceeding ⅛-inch between the gasket and mating flanges.

(q) The following construction requirements shall apply to explosion-proof joints:

(1) Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished in manufacture to not more than 250 microinches. When a thin film of nonhardening preparation to inhibit rusting is applied to these finished metal surfaces, it shall not promote the adherence of foreign materials.

(2) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(3) Fastenings shall be uniform in size to preclude improper assembly.

(4) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(5) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(6) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (q)(7) of this section.

(7) Intake and exhaust systems joints shall meet the following specifications:

Minimum thickness of material for flanges	[1] 1/2"
Minimum width of joint-all in one plane	1"
Maximum clearance-joint all in one plane	[2] 0.004"
Minimum width of joint, portions of which are different planes-cylinders or equivalent	[3] 3/4"
Maximum clearances-joint in two or more planes, cylinders or equivalent:	
Portion perpendicular to plane	[4] 0.006"
Plane portion	0.006"
Maximum fastening [5] spacing-joints all in one plane [6] with minimum of 4 fastenings	6"
Maximum fastening spacing-joints, portions of which are in different planes with minimum of 4 fastenings	8"
Minimum diameter of fastening (without regard to type of joint) [7]	3/8"
Minimum thread engagement of fastenings [8]	3/8"
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes [9]	1/16"
Minimum distance from interior of the intake or exhaust system to the edge of a fastening hole:[10]	
Joint-minimum width 1"	[11] [12] 7/16"
Shafts centered by ball or roller bearings:	
Minimum length of flame-arresting path	1"
Maximum diametrical clearance	0.010"
Shafts through journal bearings:	
Minimum length of flame-arresting path	1"
Maximum diametrical clearance	0.010"

[1] 1/16-inch less is allowable for machining rolled plate.

[2] 0.006-inch for cylindrical joints.

[3] If only two planes are involved, neither portion of a joint shall be less than ⅛-inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved, the combined lengths of those portions having prescribed clearances are considered.

[4] The allowable diametrical clearance is 0.006-inch when the portion perpendicular to the plane portion is ¼-inch or greater in length. If the perpendicular portion is more than ⅛-inch but less than ¼-inch wide, the diametrical clearance shall not exceed 0.008-inch.

[5] When studs are provided, they shall bottom in blind holes, be completely welded in place, or the bottom of the hole shall be closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.

[6] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[7] Fastening diameters smaller than specified may be used if the joint or assembly meets the test requirements of first § 7.104 and then § 7.100 of this subpart.

[8] Minimum thread engagement shall be equal to or greater than the nominal diameter of the fastening specified, or the intake or exhaust system must meet the test requirements of § 7.104 of this subpart.

[9] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[10] Edge of the fastening hole shall include any edge of any machining done to the fastening hole, such as chamfering.

[11] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[12] If the diametrical clearance for fastenings does not exceed 7/32-inch, then the minimum distance shall be ¼-inch.

(r) *Intake system.* (1) The intake system shall include a device between the air cleaner and intake flame arrester, operable from the equipment operator's compartment, to shut off the air supply to the engine for emergency purposes. Upon activation, the device must operate immediately and the engine shall stop within 15 seconds.

(2) The intake system shall include a flame arrester that will prevent an explosion within the system from propagating to a surrounding atmosphere when tested in accordance with the explosion tests in § 7.100 of this subpart. The flame arrester shall be located between the air cleaner and the intake manifold and shall be attached so that it can be removed for inspection or cleaning. The flame arrester shall be constructed of corrosion-resistant metal and meet the following requirements:

(i) Two intake flame arrester designs, the spaced-plate type and the crimped ribbon type, will be tested in accordance with the requirements of § 7.100 of this subpart. Variations to these designs or other intake flame arrester designs will be evaluated under the provisions of § 7.107 of this subpart.

(ii) In flame arresters of the spaced-plate type, the thickness of the plates shall be at least 0.125-inch; spacing between the plates shall not exceed 0.018-inch; and the flame-arresting path formed by the plates shall be at least 1 inch wide. The unsupported length of the plates shall be short enough that permanent deformation resulting from explosion tests shall not exceed 0.002-inch. The plates and flame arrester housing shall be an integral unit which cannot be disassembled.

(iii) In flame arresters of the crimped ribbon type, the dimensions of the core openings shall be such that a plug gauge 0.018-inch in diameter shall not pass through, and the flame-arresting path core thickness shall be at least 1 inch. The core and flame arrester housing shall be an integral unit which cannot be disassembled.

(3) The intake system shall be designed so that improper installation of the flame arrester is impossible.

(4) The intake system shall include an air cleaner service indicator. The air cleaner shall be installed so that only filtered air will enter the flame arrester. The air cleaner shall be sized and the service indicator set in accordance with the engine manufacturer's recommendations. Unless the service indicator is explosion-proof, it shall be located between the air cleaner and flame arrester, and the service indicator setting shall be reduced to account for the additional restriction imposed by the flame arrester.

(5) The intake system shall include a connection between the intake flame arrester and the engine head for temporary attachment of a device to indicate the total vacuum in the system.

(s) *Exhaust system.* (1) The exhaust system shall include a flame arrester that will prevent an explosion within the system from propagating to a surrounding atmosphere. The flame arrester shall be constructed of corrosion-resistant metal.

(i) If a mechanical flame arrester is used, it shall be positioned so that only cooled exhaust gas at a maximum temperature of 302 °F (150 °C) will be discharged through it.

(ii) If a spaced-plate flame arrester is used, it must meet the requirements of paragraph (r)(2)(ii) of this section and be used in conjunction with exhaust conditioners meeting the test requirements of § 7.100 of this subpart. Variations to the spaced-plate flame arrester design and other flame arrester designs used in conjunction with exhaust conditioners shall be evaluated under the provisions of § 7.107 of this subpart. The flame arrester shall be designed and attached so that it can be removed for inspection and cleaning.

(2) The exhaust system shall allow an exhaust conditioner to be used as the exhaust flame arrester provided that the explosion tests of § 7.100 of this subpart demonstrate that the exhaust conditioner will arrest flame. When used as a flame arrester, the exhaust conditioner shall be equipped with a sensor to automatically activate the safety shutdown system at or above the minimum allowable low water level established by § 7.100 of this subpart. Restarting of the engine shall be prevented until the water supply in the exhaust conditioner has been replenished above the minimum allowable low water level. All parts of the exhaust conditioner and associated

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components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material. The exhaust conditioner shall include a means for verifying that the safety shutdown system operates at the proper water level. A means shall be provided for draining and cleaning the exhaust conditioner. The final exhaust gas temperature as discharge from the exhaust conditioner shall not exceed 170 °F (76 °C) under test conditions specified in § 7.102 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the exhaust conditioner exceeds 185 °F (85 °C) under test conditions specified in § 7.103(a)(4) of this subpart.

(3) The exhaust system shall be designed so that improper installation of the flame arrester is impossible.

(4) The exhaust system shall provide a means to cool the exhaust gas and prevent discharge of glowing particles.

(i) The temperature of the exhaust gas at discharge from the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the surface temperature test of § 7.101 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas exceeds 302 °F (150 °C) when tested in accordance with the safety system control test in § 7.103 of this subpart.

(ii) When an exhaust conditioner is used to cool the exhaust gas and prevent the discharge of glowing particles, the temperature of the exhaust gas at discharge from the exhaust conditioner shall not exceed 170 °F (76 °C) when tested in accordance with the exhaust gas cooling efficiency test in § 7.102 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the exhaust conditioner exceeds 185 °F (85 °C) when tested in accordance with the safety system controls test in § 7.103 of this subpart. All parts of the exhaust conditioner and associated components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material.

(5) Other means for cooling the exhaust gas and preventing the propagation of flame or discharge of glowing particles shall be evaluated under the provisions of § 7.107 of this subpart.

(6) There shall be a connection in the exhaust system for temporary attachment of a device to indicate the total backpressure in the system.

§ 7.99 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel power package to which an approval marking is affixed:

(a) Finish, width, planarity, and clearances of surfaces that form any part of a flame-arresting path.

(b) Thickness of walls and flanges that are essential in maintaining the explosion-proof integrity of the diesel power package.

(c) Size, spacing, and tightness of fastenings.

(d) The means provided to maintain tightness of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that ensure the explosion-proof integrity of the diesel power package.

(f) Diesel engine approval marking.

(g) Fuel rate setting to ensure that it is appropriate for the intended application, or a warning tag shall be affixed to the fuel system notifying the purchaser of the need to make proper adjustments.

(h) Material and dimensions of gaskets that are essential in maintaining the explosion-proof integrity of the diesel power package.

(i) Dimensions and assembly of flame arresters.

(j) Materials of construction to ensure that the intake system, exhaust system, cooling fans, and belts have been fabricated from the required material.

(k) Proper interconnection of the coolant system components and use of specified components.

(l) Proper interconnection of the safety shutdown system components and use of specified components.

(m) All plugs and covers to ensure that they are tightly installed.

(n) The inspections and tests described in the diesel power package checklist shall be performed and all requirements shall be met.

§ 7.100 Explosion tests.

(a) *Test procedures.* (1) Prepare for diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted under § 7.97 of this subpart to determine that the parts and drawings coincide.

(ii) Remove all parts that do not contribute to the operation or ensure the explosion-proof integrity of the diesel power package such as the air cleaner and exhaust gas dilution system.

(iii) Fill coolant system fluid and engine oil to the engine manufacturer's recommended levels.

(iv) Remove all liquid fuel from the lines, filter, fuel pump, and engine.

(v) Establish a preliminary exhaust conditioner low water level.

(2) Perform static and dynamic tests of the intake system as follows:

(i) Install the diesel power package in an explosion test chamber which is large enough to contain the complete diesel power package and has a means to observe all side of the diesel power package. Couple the diesel power package to an auxiliary drive mechanism. Attach a pressure measuring device, a temperature measuring device, and an ignition source to the intake system. The pressure measuring device shall be capable of indicating the peak pressure accurate to ±1 pound-per-square inch gauge (psig) at 100 psig static pressure and shall have a frequency response of 40 Hertz or greater. The ignition source shall be an electric spark with a minimum energy of 100 millijoules. The ignition source shall be located immediately adjacent to the intake manifold and the pressure and temperature devices shall be located immediately adjacent to the flame arrester.

(ii) Fill the exhaust conditioner to the specified high or normal operating water level.

(iii) Fill the test chamber with a mixture of natural gas and air or methane and air. If natural gas is used, the content of methane and ethane shall total at least 98.0 percent, by volume, with nitrogen and propane the remainder. For all tests, the methane concentration shall be 7±0.1 to 10±0.1 percent, by volume, and the oxygen concentration shall be 18 to 21 percent, by volume. If the concentrations fall below the specified values, the test chamber shall be purged and refilled.

(iv) Using the auxiliary drive mechanism, motor the engine to fill the intake and exhaust systems with the explosive mixture. The intake system, exhaust system, and test chamber gas concentration shall not differ by more than ±0.3 percent, by volume, at the time of ignition.

(v) For static tests, stop the engine, actuate the ignition source, and observe the peak pressure. The peak pressure shall not exceed 125 psig. If the peak pressure exceeds 125 psig, construction changes shall be made that result in a reduction of pressure to 125 psig or less, or the system shall be tested in accordance with the static pressure test of § 7.104 of this subpart with the pressure parameter replaced with a static pressure of twice the highest value recorded.

(vi) If the peak pressure does not exceed 125 psig or if the system meets the static pressure test requirements of this section and there is no discharge of visible flames or glowing particles or ignition of the explosive mixture in the chamber, a total of 20 tests shall be conducted in accordance with the explosion test specified above.

(vii) For dynamic tests, follow the same procedures for static tests, except actuate the ignition source while motoring the engine. A total of 40 dynamic tests shall be conducted, twenty at rated speed and twenty at 50 percent of rated speed. Under some circumstances, during dynamic testing the explosive mixture may continue to burn within the diesel power package after ignition. This condition can be recognized by the presence of a rumbling noise and a rapid increase in temperature. Ignition of the explosive mixture in the test chamber under these circumstances does not constitute failure of the flame arrester.

(3) Perform static and dynamic tests of the exhaust system as follows:

(i) Prepare the diesel power package for explosion tests according to § 7.100(a)(2)(i) of this subpart, with the ignition source located immediately adjacent to the exhaust manifold. Pressure measuring devices shall be located in each segment as follows: immediately adjacent to the exhaust conditioner inlet; in the exhaust conditioner; and immediately adjacent to the flame arrester, if applicable. A temperature device shall be located immediately adjacent to the exhaust conditioner inlet.

(ii) If the exhaust system is provided with a spaced-plate flame arrester in addition to an exhaust conditioner, explosion tests of the exhaust system shall be performed as described for the intake system in accordance with this section. Water shall not be present in the exhaust conditioner for the tests.

(iii) If the exhaust conditioner is used as the flame arrester, explosion testing of this type of system shall be performed as described for the intake system in accordance with this section with the following modifications:

(A) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at 2 inches below the minimum allowable low water level with all entrances in the exhaust conditioner which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, opened.

(B) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at 2 inches below the minimum allowable low water level with all entrances in the exhaust conditioner (except the exhaust conditioner outlet) which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, closed.

(C) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at the specified high or normal operating water level with all entrances in the exhaust conditioner which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, opened.

(D) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at the specified high or normal operating water level with all entrances in the exhaust conditioner (except the exhaust conditioner outlet) which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, closed.

(iv) After successful completion of the explosion tests of the exhaust system, the minimum allowable low water level shall be determined by adding two inches to the lowest water level that passed the explosion tests.

(v) A determination shall be made of the maximum grade on which the exhaust conditioner can be operated retaining the flame arresting characteristics.

(b) *Acceptable performance.* The explosion tests shall not result in any of the following—

(1) Discharge of flame or glowing particles.

(2) Visible discharge of gas through gasketed joints.

(3) Ignition of the explosive mixture in the test chamber.

(4) Rupture of any part that affects the explosion-proof integrity.

(5) Excessive clearances along flame-arresting paths.

(6) Pressure exceeding 125 psig, unless the intake system or exhaust system has withstood a static pressure of twice the highest value recorded in the tests.

(7) Permanent distortion of any planar surface of the diesel power package exceeding 0.04-inch/linear foot.

(8) Permanent deformation exceeding 0.002-inch between the plates of spaced-plate flame arrester designs.

§ 7.101 Surface temperature tests.

(a) *Test procedures.* (1) Prepare for diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted to MSHA under compliance with § 7.97 of this subpart to determine that the parts and drawings coincide.

(ii) Fill the coolant system with a mixture of equal parts of antifreeze and water, following the procedures specified in the application, § 7.97(a)(4) of this subpart.

(iii) Fill the exhaust conditioner to the high or normal operating water level and having a reserve water supply available, if applicable.

(2) Tests shall be conducted as follows:

(i) Adjust the liquid fuel rate of the injector pump of the diesel engine as specified in § 7.97(a)(3) of this subpart.

(ii) Install sufficient temperature measuring devices to determine the location of the highest coolant temperature. The temperature measuring device shall be accurate to +1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(iii) Operate the engine at rated speed and maximum fuel delivery and with 0.5±0.1 percent, by volume, of natural gas or methane in the intake air mixture until all parts of the engine, exhaust coolant system, and other components reach their respective equilibrium temperatures. The liquid fuel temperature into the engine shall be maintained at 100 °F (38 °C)±10 °F (5.5 °C) and the intake air temperature shall be maintained at 70 °F (21 °C)±5 °F (2.7 °C). If natural gas is used in the intake air, the content of methane and ethane shall total at least 98.0 percent, by volume, with nitrogen and propane the remainder.

(iv) Increase the coolant system temperatures until the highest coolant temperature is 205 °F to 212 °F (96 °C to 100 °C), or to the maximum temperature specified by the applicant, if lower.

(v) After all coolant system temperatures stabilize, operate the engine for 1 hour.

(vi) The ambient temperature shall be between 50 °F (10 °C) and 104 °F (40 °C) throughout the tests.

(b) *Acceptable performance.* The surface temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) during the test.

§ 7.102 Exhaust gas cooling efficiency test.

(a) *Test procedures.* (1) Follow the procedures specified in § 7.101(a) of this subpart.

(2) Install a temperature measuring device to measure the exhaust gas temperature at discharge from the

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exhaust conditioner. The temperature measuring device shall be accurate to ±1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(3) Determine the exhaust gas temperature at discharge from the exhaust conditioner before the exhaust gas is diluted with air.

(b) *Acceptable performance.* The exhaust gas temperature at discharge from the exhaust conditioner before the exhaust gas is diluted with air shall not exceed 170 °F (76 °C).

§ 7.103 Safety system control test.

(a) *Test procedures.* (1) Prior to testing, perform the tasks specified in § 7.101(a)(1) of this subpart and install sufficient temperature measuring devices to measure the highest coolant temperature and exhaust gas temperature at discharge from the exhaust conditioner. The temperature measuring device shall be accurate to ±1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(2) Determine the effectiveness of the coolant system temperature shutdown sensors which will automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower, by operating the engine and causing the water in the cooling jackets to exceed the specified temperature.

(3) Determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 302 °F (150 °C), by operating the engine and causing the cooled exhaust gas to exceed the specified temperature.

(4) For systems using exhaust conditioners where the exhaust gas temperature at discharge does not exceed 170 °F (76 °C) under test conditions of § 7.100(a)(2) of this subpart, determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 185 °F (85 °C), with the engine operating at a high idle speed/no load condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the exhaust gas temperature sensor. Prior to testing, set the water level in the exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the exhaust gas temperature sensor activates the safety shutdown system and stops the engine.

(5) Determine the effectiveness of the low water sensor which will automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level established from results of the explosion tests in § 7.100 of this subpart with the engine operating at a high idle speed/no load condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the low water sensor. Prior to testing, set the water level in the exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the low water sensor activates the safety shutdown system and stops the engine. Measure the low water level. Attempt to restart the engine.

(6) Determine the effectiveness of the device in the intake system which is designed to shut off the air supply and stop the engine for emergency purposes with the engine operating at both a high idle speed/no load condition and an idle speed/no load condition. Run the engine and activate the emergency intake air shutoff device.

(7) Determine the total vacuum of the complete intake system, including the air cleaner, as measured between the intake flame arrester and the engine head with the engine operating as follows:

(i) At high idle speed/no load condition for normally aspirated engines.

(ii) At rated speed and maximum fuel delivery for turbocharged engines.

(8) Determine the total exhaust backpressure with the exhaust conditioner filled to the high or normal operating water level and with the engine operating as specified in § 7.103(a)(7) of this subpart.

(9) The starting mechanism shall be tested to ensure that engagement is not possible while the engine is running. Operate the engine and attempt to engage the starting mechanism.

(10) Where the lack of engine oil pressure must be overridden in order to start the engine, test the override to ensure that it does not override any of the safety shutdown sensors specified in § 7.98(i) of this subpart. After each safety shutdown sensor test specified in paragraphs (a)(2) through (a)(5) of this section, immediately override the engine oil pressure and attempt to restart the engine.

(b) *Acceptable performance.* Tests of the safety system controls shall result in the following:

(1) The coolant system temperature shutdown sensor shall automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(2) The temperature sensor in the exhaust gas stream shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 302 °F (150 °C).

(3) The temperature sensor in the exhaust gas stream of the exhaust conditioner shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 185 °F (85 °C).

(4) The low water sensor shall automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level and prevent restarting of the engine.

(5) The emergency intake air shutoff device shall operate immediately when activated and stop the engine within 15 seconds.

(6) The total intake vacuum and the total exhaust backpressure shall not exceed the engine manufacturer's specifications.

(7) It shall not be possible to engage the starting mechanism while the engine is running.

(8) The engine oil pressure override shall not override any of the shutdown sensors.

§ 7.104 Internal static pressure test.

(a) *Test procedures.* (1) Isolate and seal each segment of the intake system or exhaust system to allow pressurization.

(2) Internally pressurize each segment of the intake system or exhaust system to four times the maximum pressure observed in each segment during the tests of § 7.100 of this subpart, or 150 psig ± 5 psig, whichever is less. Maintain the pressure for a minimum of 10 seconds.

(3) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the intake system or exhaust system.

(b) *Acceptable performance.* (1) The intake system or exhaust system, during pressurization, shall not exhibit—

(i) Leakage through welds and gasketed joints; or

(ii) Leakage other than along joints meeting the explosion-proof requirements of § 7.98(q) of this subpart.

(2) Following removal of the pressurizing agent, the intake system or exhaust system shall not exhibit any—

(i) Changes in fastening torque;

(ii) Visible cracks in welds;

(iii) Permanent deformation affecting the length or gap of any flame-arresting paths;

(iv) Stretched or bent fastenings; or

(v) Damaged threads of parts affecting the explosion-proof integrity of the intake system or exhaust system.

§ 7.105 Approval marking.

Each approved diesel power package shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the diesel power package in a manner that does not impair any explosion-proof characteristics. The grade limitation of the exhaust conditioner shall be included on the approval marking.

§ 7.106 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved diesel power package available for audit at no cost.

§ 7.107 New technology.

MSHA may approve a diesel power package that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart.

§ 7.108 Power package checklist.

Each diesel power package bearing an MSHA approval plate shall be accompanied by a power package checklist. The power package checklist shall consist of a list of specific features that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

Subpart G—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Not Required

§ 7.111 Purpose and effective date.

This subpart establishes the specific requirements for approval of diesel power packages intended for use in areas of underground mines where permissible electric equipment is not required. It is effective (60 days after the date of publication of the final rule in the Federal Register).

§ 7.112 Definitions.

The following definitions apply to this subpart.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Diesel power package. A diesel engine with an intake system, exhaust system, and a safety shutdown system installed.

Exhaust conditioner. A corrosion-resistant enclosure containing a cooling system, through which the exhaust gases pass.

Exhaust system. A system connected to the outlet of the diesel engine which includes the exhaust manifold, the exhaust pipe, the exhaust conditioner, the exhaust flame arrester, and any adapters between the exhaust manifold and exhaust flame arrester.

High idle speed/no load. The maximum no load speed specified by the engine manufacturer.

Idle speed/no load. The minimum no load speed specified by the engine manufacturer.

Intake system. A system connected to the inlet of the diesel engine which includes the intake manifold, the intake flame arrester, the emergency intake air shutoff device, the air cleaner, and all piping and adapters between the intake manifold and air cleaner.

Rated speed. The speed at which the engine manufacturer specifies the rated brake horsepower of the engine.

Safety shutdown system. A system which, in response to signals from various safety sensors, recognizes the existence of a potential hazardous condition and automatically shuts off the fuel supply to the engine.

§ 7.113 Application requirements.

(a) An application for approval of a diesel power package shall contain sufficient information to document compliance with the technical requirements of this subpart and include the following information:

(1) Drawings, specifications, and descriptions with dimensions (including tolerances) demonstrating compliance with the technical requirements of this subpart. The specifications and descriptions shall include the materials of construction and quantity.

(2) A general arrangement drawing showing the diesel power package and the location and identification of the intake system components, exhaust system components, safety shutdown system sensors, emergency intake air shutoff device, automatic fuel shutoff device, and the engine.

(3) Diesel engine specifications stating the MSHA approval number. Speed, horsepower, and fuel flow shall also be included if different from the maximum rated condition in the engine approval.

(4) A schematic which includes: the location and identification of all water-cooled components, coolant lines, radiator, surge tank, temperature sensors, and orifices; arrows indicating proper flow direction; the height relationship of water-cooled components to the surge tank; and the proper procedure for filling the cooling system.

(5) A schematic showing the relative location and identification of components in the safety shutdown system.

(6) Specific component identification, or specific information including detail drawings that identify the characteristics of the cooling system, safety shutdown system and emergency intake air shutoff device that ensures compliance with the technical requirements.

(7) An assembly drawing showing the location and identification of all intake system components from the air cleaner to the engine head.

(8) An assembly drawing showing the location and identification of all exhaust system components from the engine head (excluding the dilution system).

(9) Detail drawings of the exhaust system components identified in paragraph (a)(8) of this section.

(10) A power package checklist which shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow the evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

(11) A drawing list consisting of a complete list of those drawings and specifications which show the details of the construction and design of the diesel power package.

(b) Composite drawings specifying the required details of construction are acceptable instead of the individual detailed drawings listed in paragraph (a) of this section.

(c) All documents shall be titled, dated, numbered, and include the latest revision number.

(d) When all testing has been completed, the following information shall be submitted and become part of the approval documentation:

(1) The settings of any adjustable devices that are used to meet the performance requirements of this subpart.

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(2) The coolant temperature sensor setting and exhaust gas temperature sensor setting that are used to meet the performance requirements of this subpart.

(3) A finalized version of the power package checkliat.

§ 7.114 Technical requirements.

(a) The diesel power package shall use an engine approved under subpart E of part 7 of this chapter.

(b) The temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the surface temperature test in § 7.116 of this subpart. Diesel power package designs that use water jacketing to meet this requirement shall be tested in accordance with § 7.116. Diesel power packages using other techniques will be evaluated under the provisions of § 7.121 of this subpart. When using water-jacketed components, provisions shall be made for positive circulation of coolant; venting of the system to prevent the accumulation of air pockets, and effective activation of the safety shutdown system before the temperature of the coolant in the jackets exceeds the manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(c) A means shall be provided to cool the exhaust gas such that the temperature of the exhaust gas at discharge from the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the exhaust gas cooling efficiency test in § 7.117 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas exceeds 302 °F (150 °C) under test conditions specified in § 7.116(a)(3) of this subpart.

(d) The diesel power package shall be equipped with a safety shutdown system which will automatically shut off the fuel supply and stop the engine in response to signals from sensors indicating—

(1) The coolant temperature limit specified in § 7.114(b) of this subpart; or

(2) The exhaust gas temperature limit specified in § 7.114(c) of this subpart.

(e) The intake system shall be provided with the following features:

(1) The intake system shall include a device, operable from the equipment operator's compartment, to shut off the air supply to the engine for emergency purposes. Upon activation, the device must operate immediately and the engine shall stop within 15 seconds.

(2) The intake system shall include an air cleaner and service indicator. The air cleaner shall be sized and the service indicator set in accordance with the engine manufacturer's recommendations.

(3) A connection shall be provided in the intake system for temporary attachment of a device to indicate the total vacuum in the system.

(f) The discharge from the engine crankcase breather shall be directed away from hot surfaces of the engine and exhaust system.

(g) A connection shall be provided in the exhaust system for temporary attachment of a device to indicate the total backpressure in the system.

§ 7.115 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel power package to which an approval marking is affixed:

(a) Diesel engine approval marking.

(b) Fuel rate setting to ensure that it is appropriate for the intended application, or a warning tag shall be affixed to the fuel system notifying the purchaser of the need to make proper adjustments.

(c) Proper interconnection of the coolant system components and use of specified components.

(d) Proper interconnection of the safety shutdown system components and use of specified components.

(e) The inspections and tests described in the diesel power package checklist shall be performed and all requirements shall be met.

§ 7.116 Surface temperature tests.

(a) *Test procedures.* (1) Prepare for testing the diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted under § 7.113 of this subpart to determine that the parts and drawings coincide.

(ii) Fill the coolant system with a mixture of equal parts of antifreeze and water, following the procedures specified in the application, § 7.113(a)(4) of this subpart.

(iii) Fill the exhaust conditioner to the high or normal operating water level and having a reserve water supply available, if applicable.

(2) Conduct the tests as follows:

(i) Adjust the liquid fuel rate of the injector pump of the diesel engine as specified in § 7.113(a)(3) of this subpart.

(ii) Install sufficient temperature measuring devices to determine the location of the highest coolant temperature. The temperature measuring device shall be accurate to ±1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(iii) Operate the engine at rated speed and maximum fuel delivery until all parts of the engine, exhaust coolant system, and other components reach their respective equilibrium temperatures. The liquid fuel temperature into the engine shall be maintained at 100 °F (38 °C)±10 °F (5.5 °C) and the intake air temperature shall be maintained at 70 °F (21 °C)±5 °F (2.7 °C).

(iv) Increase the coolant system temperatures until the highest coolant temperature is 205 °F to 212 °F (96 °C to 100 °C), or to the maximum temperature specified by the applicant, if lower.

(v) After all coolant system temperatures stabilize, operate the engine for 1 hour.

(vi) The ambient temperature shall be between 50 °F (10 °C) and 104 °F (40 °C) throughout the tests.

(b) *Acceptable performance.* The surface temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) during the test.

§ 7.117 Exhaust gas cooling efficiency tests.

(a) *Test procedures.* (1) Follow the procedures specified in § 7.116(a) of this subpart.

(2) Install a temperature measuring device to measure the exhaust gas temperature at discharge from the exhaust system. The temperature measuring device shall be accurate to ±1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(3) Determine the exhaust gas temperature at discharge from the exhaust system.

(b) *Acceptable performance.* The exhaust gas temperature at discharge from the exhaust system shall not exceed 302 °F (150 °C).

§ 7.118 Safety system controls tests.

(a) *Test procedures.* (1) Prior to testing, perform the tasks specified in § 7.116(a)(1) of this subpart and install sufficient temperature measuring devices to measure the highest coolant temperature and exhaust gas temperature at discharge from the exhaust system. The temperature measuring device shall be accurate to ±1 percent of the indicated reading or ±5 °F (±3 °C), whichever is greater.

(2) Determine the effectiveness of the coolant system temperature shutdown sensors which will automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower, by operating the engine and causing the water in the cooling jackets to exceed the specified temperature.

(3) Determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 302 °F (150 °C) shall be determined by operating the engine and causing the cooled exhaust gas to exceed the specified temperature.

(4) Determine the effectiveness of the device in the intake system which is designed to shut off the air supply and stop the engine for emergency purposes with the engine operating at both a high idle speed/no load condition and an idle speed/no load condition. Run the engine and activate the emergency intake air shutoff device.

(5) Determine the total vacuum of the complete intake system, including the air cleaner, with the engine operating as follows:

(i) At high idle speed/no load condition for normally aspirated engines.

(ii) At rated speed and maximum fuel delivery for turbocharged engines.

(6) Determine the total exhaust backpressure with the exhaust conditioner filled to the high or normal operating water level, if applicable, and with the engine operating as specified in paragraph (a)(5) of this section.

(b) *Acceptable performance.* Tests of the safety system controls shall result in the following:

(1) The coolant system temperature shutdown sensor shall automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(2) The temperature sensor in the exhaust gas stream shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 302 °F (150 °C).

(3) The emergency intake air shutoff device shall operate immediately when activated and stop the engine within 15 seconds.

(4) The total intake vacuum and the total exhaust backpressure shall not exceed the engine manufacturer's specifications.

§ 7.119 Approval marking.

Each approved diesel power package shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the diesel power package.

§ 7.120 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved diesel power package available for audit at no cost.

§ 7.121 New technology.

MSHA may approve a diesel power package that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart.

§ 7.122 Power package checklist.

Each diesel power package bearing an MSHA approval plate shall be accompanied by a power package checklist. The power package checklist shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

PART 70—[AMENDED]

B. It is proposed to amend 30 CFR part 70 as follows:

The heading of part 70 is revised to read as follows: "HEALTH STANDARDS—UNDERGROUND COAL MINES."

2. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961.

3. Subparts G—S are reserved and a new subpart T is added to part 70 to read as follows:

* * * * *

Subpart T—Diesel-Powered Equipment Exposure Monitoring

Sec.

70.1900 Exposure monitoring—general requirements.

70.1901 Personal exposure monitoring—general requirements.

* * * * *

Subpart T—Diesel-Powered Equipment Exposure Monitoring

§ 70.1900 Exposure monitoring—general requirements.

(a) Weekly area samples of CO, NO, and NO_2 shall be taken in the immediate return airways of each split of air where diesel equipment is used in a mine.

(1) When fuel is used which contains 0.25 percent sulfur or less, the mine operator shall provide a certified statement as to the sulfur content of the fuel.

(2) When fuel is used which contains more than 0.25 percent of sulfur, weekly area samples of SO_2 shall be taken.

(b) Weekly exposure monitoring of the gases listed in paragraph (a) of this section shall be conducted pursuant to § 72.200(c), (d), (e), and (f) [1] of this title and shall be collected during periods when contaminant concentrations are representative of peak exposures to miners at risk, and when required under § 72.200(a)(1) of this title.

(c) When the results of sampling conducted under this section exceed 50 percent of the permissible exposure limit concentration listed in Table B–1, § 72.100 of this title, personal exposure monitoring shall be conducted according to § 70.1901 of this part.

§ 70.1901 Personal exposure monitoring—general requirements.

(a) The exposure of all miners shall be maintained at or below the appropriate permissible exposure limit. When work shifts are greater than 8 hours in duration, 8-hour time weighted averages shall be adjusted proportionately in accordance with § 72.100(b) of this title.

(b) When the results of area sampling conducted in accordance with § 70.1900 of the part exceed 50 percent of the specified permissible exposure limit listed in Table B–1, § 72.100 of this title, the personal exposure of miners that are representative of the affected miners' exposures shall be monitored. This monitoring shall be conducted according to § 72.200 (c), (d), (e), (f), and (g) of this title.

(c) When personal monitoring results indicate levels greater than 75 percent of the appropriate permissible exposure limit, personal monitoring shall be conducted on each operational shift of the area affected. Monitoring shall be conducted according to § 72.200 (c), (d), (e), (f) and (g) of this title.

(d) When personal exposure monitoring results indicate levels less than 100 percent of the appropriate permissible exposure limit with 95 percent confidence, the area sampling required under § 70.1900 of this part shall be reinstituted.

PART 75—[AMENDED]

C. It is proposed to amend 30 CFR part 75 as follows:

[1] Proposed exposure monitoring requirements under § 72.200 and permissible exposure limits under § 72.100 have been previously published in the **Federal Register** on August 29, 1989 (54 FR 35760) under MSHA's air quality proposed rule.

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1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. A new § 75.390 is added to subpart D as follows:

Subpart D—Ventilation

* * * * *

§ 75.390 Ventilating air where diesel-powered equipment is operated.

(a) The minimum quantities of air in any split where any individual unit of diesel-powered equipment is being operated shall be at least that specified on the approval plate for that equipment.

(b) The minimum quantities of air in any split where any diesel-powered equipment is operated shall be specified in the mine ventilation plan as follows:

(1) Where multiple diesel units are regularly operated, the minimum quantity shall be at least 100 percent of the highest approval plate air quantity plus 75 percent of the next highest quantity plus 50 percent of the approval plate quantity of each additional unit operating in that split. Such air quantity shall be maintained in the last open crosscut of each working section or in the intake splits of longwall sections. These quantities shall also be maintained when face equipment is being installed or removed.

(2) If the particulate index indicates that air quantities in excess of those required in paragraph (b)(1) of this section are required to maintain particulate levels below applicable standards, minimum quantities shall be determined considering the particulate index with particulate indices for multiple units being additive.

(3) The following equipment may be excluded in the calculations required by paragraph (b) (1) or (2) of this section:

(i) Equipment meeting the requirements of § 75.1908 of this part, except diesel-powered air compressors which are regularly used.

(ii) Equipment that discharges its exhaust directly into a return air course.

(iii) Other equipment having duty cycles such that the emissions would not significantly affect the exposure of miners in that split if such equipment exclusion is approved by the District Manager.

(4) Modification of the required ventilation quantities, except those specified in paragraph (a) of this section, may be approved if the results of a comprehensive personal monitoring program which represents the affected area of the mine indicate that exposure levels are below 75 percent of the applicable contaminant standards with 95 percent confidence. The following information shall be submitted to the District Manager for consideration of approval of the modified air quantity:

(i) The minimum quantity being proposed.

(ii) The equipment operating limitations and conditions and area of the mine for which the modification applies.

(iii) The sampling plan including the occupations sampled, actual air quantities during the monitoring, contaminants sampled, and the sampling and analytical methods used including the accuracies and precisions.

(iv) An evaluation of the results, including actual data collected, demonstrating the exposure levels with 95 percent confidence.

(v) The records required by § 70.1901 of this chapter.

* * * * *

3. A new subpart T is added to part 75 to read as follows:

* * * * *

Subpart T—Diesel-Powered Equipment

Sec.

75.1900 Definitions.
75.1901 Diesel fuel requirements.
75.1902 Underground diesel fuel storage facilities—general requirements.
75.1903 Diesel fuel storage facilities; construction and safety precautions.
75.1904 Underground diesel fuel storage tanks.
75.1905 Transfer of diesel fuel.
75.1906 Containers for the transport of diesel fuel.
75.1907 Approved diesel-powered equipment.
75.1908 Limited class equipment—scope.
75.1909 Limited class equipment design and performance requirements.
75.1910 Stationary diesel-powered equipment.
75.1911 Fire suppression systems for mobile diesel-powered equipment and fuel transportation units.
75.1912 Fire suppression systems for diesel fuel storage areas and stationary diesel-powered equipment.
75.1913 Starting aids.
75.1914 Maintenance of diesel-powered equipment.
75.1915 Training and qualification of diesel mechanics.
75.1916 Procedures for approval and administration of diesel mechanic training and qualification programs.
75.1917 Operating speed of diesel-powered equipment.

* * * * *

Subpart T—Diesel-Powered Equipment

§ 75.1900 Definitions.

The following definitions apply in this subpart.

Fixed underground diesel fuel storage facility. A facility designed and constructed to remain at one location for an extended period of time for the storage or dispensing of diesel fuel, and which does not move as mining progresses.

Mobile underground diesel fuel storage facility. A facility designed and constructed to provide for the short-term storage or dispensing of diesel fuel and which moves as mining progresses.

§ 75.1901 Diesel fuel requirements.

Diesel-powered equipment shall be used underground only with low volatile hydrocarbon fuel classified as ASTM D975 No. 2D diesel fuel and which has a flash point of 125 °F or greater at standard temperature and pressure.

§ 75.1902 Underground diesel fuel storage facilities—general requirements.

(a) No more than 1000 gallons of diesel fuel shall be stored in a fixed underground diesel fuel storage facility.

(b) No more than 500 gallons of diesel fuel shall be stored in a mobile underground diesel fuel storage facility.

(c) Fixed and mobile underground diesel fuel storage facilities shall be located—

(1) At least 100 feet from shafts, slopes, shops, explosives magazines;

(2) At least 25 feet from trolley wires, haulageways, power cables, and electric equipment not necessary for the operation of the storage facilities; and,

(3) In an area as dry as practicable.

§ 75.1903 Diesel fuel storage facilities; construction and safety precautions.

(a) Fixed and mobile underground diesel fuel storage facilities shall be—

(1) Constructed of noncombustible materials and provided with a means for automatic enclosure;

(2) Ventilated directly into the return air course using noncombustible materials;

(3) Equipped with an automatic fire suppression system complying with § 75.1912 of this part;

(4) Equipped with at least two portable 20 pound multipurpose dry chemical type fire extinguishers;

(5) Marked with conspicuous signs designating combustible liquid storage.

(b) Fixed diesel fuel underground storage facilities shall be provided with a drain system and a sump capable of holding 150 percent of the maximum capacity of the fuel storage system.

(c) Welding or cutting other than that performed in accordance with paragraph (d) of this section shall not be done within 50 feet of a diesel fuel storage facility.

(d) When it is necessary to weld, cut, or solder pipelines, cylinders, tanks, or containers that may have contained diesel fuel, these practices shall be followed:

(1) Cutting or welding shall not be performed on or within containers or tanks that have contained combustible or flammable materials until such containers or tanks have been thoroughly purged and cleaned or inerted and a vent or opening is provided to allow for sufficient release of any buildup pressure before heat is applied.

(2) Diesel fuel shall not be allowed to enter pipelines or containers that have been welded, soldered, brazed, or cut until the metal has cooled to ambient temperature.

§ 75.1904 Underground diesel fuel storage tanks.

(a) Unless located in dry areas, underground diesel fuel storage facility tanks shall be—

(1) Placed on noncombustible supports so that the tanks are at least 6 inches above water or wet bottom, or

(2) Constructed of noncorrosive material.

(b) Underground diesel fuel storage tanks shall have the following:

(1) Devices for venting.

(2) Self-closing caps.

(3) Vent pipes at least as large as the fill or withdrawal connection, whichever is larger, but not less than 1¼ inch nominal inside diameter.

(4) Liquid tight connections for all tank openings that are—

(i) Identified by conspicuous markings; and

(ii) Closed when not in use.

(5) Vent pipes that drain toward the tank without sagging and that are higher than the fill pipe opening.

(6) Shutoff valves located within 1 inch of the tank shell on each connection through which liquid can normally flow.

(c) When tanks are provided with openings for manual gauging, liquid tight caps or covers shall be provided and shall be kept closed when not open for gauging.

(d) Tanks located in fixed underground diesel fuel storage facilities shall be supported by concrete, masonry, protected steel, or equivalent supports, and except for steel saddles less than 12 inches from the floor, steel supports shall be protected by materials having a fire resistance rating of not less than two hours.

(e) Before being placed in service, tanks shall be tested for strength and leakage at a pressure equal to the static head.

(f) Tanks located in fixed underground diesel fuel storage facilities shall be provided with an automatic closing, heat-actuated valve on each withdrawal connection below the liquid level, except for connections used for emergency disposal.

§ 75.1905 Transfer of diesel fuel.

(a) When diesel fuel is transferred by means of a pump and a hose equipped with a nozzle containing a self-closing valve, a powered pump may be used only if—

(1) The hose is equipped with a nozzle containing a self-closing valve without a latch-open device; and

(2) The pump is equipped with an accessible emergency shutoff switch.

(b) Diesel fuel shall not be transferred using compressed gas.

(c) Diesel fuel shall not be transferred to the fuel tank of diesel-powered equipment while its engine is running.

(d) Diesel fuel piping systems shall be designed and operated as dry systems unless an automatic shutdown is incorporated that activates an alarm system and prevents accidental loss or spillage of fuel.

(e) All piping, valves and fittings shall be—

(1) Capable of withstanding working pressures and stresses;

(2) Capable of withstanding four times the static pressures;

(3) Compatible with diesel fuel; and

(4) Maintained in a manner which prevents leakage.

(f) Vertical pipelines shall have manual shutoff valves installed at the surface filling point, and at the underground discharge point.

(g) If fuel lines are not buried in the ground, shutoff valves shall be located every 300 feet.

(h) Shutoff valves shall be installed at each branch line where the branch line joins the main line.

(i) Diesel fuel piping systems shall be used only to transport fuel from the surface directly to a fixed underground diesel fuel storage facility.

(j) When boreholes are used, the diesel fuel piping system shall not be located in a borehole with electric power cables.

(k) Diesel fuel piping systems located in entries shall not be located on the same side of the entry as electric cables or powerlines.

(l) Diesel fuel piping systems shall be protected and located to prevent physical damage.

§ 75.1906 Containers for the transport of diesel fuel.

(a) Diesel fuel shall be transported only in containers specifically designed for the transport of diesel fuel.

(b) No more than one safety can, conspicuously marked, shall be transported on a vehicle at any time.

(c) Containers other than safety cans used to transport diesel fuel shall be provided with the following:

(1) Devices for venting.

(2) Self-closing caps.

(3) Vent pipes at least as large as the fill or withdrawal connection, whichever is larger, but not less than 1¼ inch nominal inside diameter.

(4) Liquid tight connections for all container openings that are—

(i) Identified by conspicuous markings; and

(ii) Closed when not in use.

(5) Shutoff valves located within 1 inch of the tank shell on each connection through which liquid can normally flow.

(d) When tanks are provided with openings for manual gauging, liquid tight caps or covers shall be provided and shall be kept closed when not open for gauging.

(e) Containers used for the transport of diesel fuel shall not exceed a capacity of 500 gallons.

(f) Containers, other than safety cans, used for the transport of diesel fuel shall be permanently fixed to the transportation unit.

(g) Diesel fuel shall not be transported on conveyor belts.

(h) When transporting diesel fuel in containers other than safety cans a fire extinguisher shall be provided on each end of the transportation unit. The fire extinguishers shall be multipurpose type dry chemical fire extinguishers containing a nominal weight of 20 pounds.

(i) Diesel fuel transportation units shall have a fire suppression system which meets the requirements of § 75.1911 of this part.

(j) When the distance between a diesel fuel transportation unit and an energized trolley wire at any location is less than 12 inches, the requirements of § 75.1003–2 of this part shall be followed.

(k) Unattended diesel fuel transportation units shall be parked only in fixed or mobile underground diesel fuel storage facilities.

§ 75.1907 Approved diesel-powered equipment.

(a) All diesel-powered equipment taken underground, except equipment meeting the requirements of §§ 75.1909 or 75.1910 of this part, shall be approved under subparts H and I [1] of part 7 of this

[1] Approval requirements for diesel equipment, as a unit, are currently under development. Public

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title or meet the alternative requirements set forth below.

(1) Only diesel-powered equipment approved under subpart H of part 7 or part 36 of this title shall be used where permissible electric equipment is required.

(2) Any diesel-powered equipment approved under part 36 of this title shall be provided with additional safety features in accordance with the following time schedules:

(i) Upon the effective date of this section, this equipment shall have a power package that limits surface temperatures to those specified in subpart F of part 7 of this title.

(ii) As of six months after the effective date of this section, this equipment shall have a fire suppression system installed which meets the requirements of § 75.1910 of this part.

(iii) As of 24 months after the effective date of this section, this equipment shall have a particulate index and dilution air quantity determined in accordance with subpart E of part 7 of this title.

(3) Self-propelled and portable attended diesel-powered equipment used where nonpermissible electric equipment is permitted which is not approved in accordance with subparts H or I of part 7 or part 36 of this title shall be used in accordance with the following time schedules:

(i) As of 12 months after the effective date of this section, this equipment must meet the requirements of § 75.1909 of this part, except that such equipment does not need an engine approved in accordance with subpart E of part 7 of this title.

(ii) As of 24 months after the effective date of this section, diesel-powered equipment except that equipment meeting the requirements of § 75.1908 of this part, shall use a power package meeting the requirements of subparts F or G of part 7 of this title.

(iii) As of 24 months after the effective date of this section, equipment meeting the requirements of § 75.1908 of this part must have an engine approved in accordance with subpart E of part 7 of this title.

(iv) An operator may apply to the Director of Technical Support, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203 for approval of the extended use of locomotives which do not have a power package approved pursuant to subpart F or G of part 7 of this title. The Director of Technical Support may approve such extended use if approved power packages suitable for the mine conditions and locomotive design are not available. The approval will be limited to the time until such technology is available. The approval may include such additional safety features, administrative procedures, and operating practices as necessary to achieve protection from fires and reduce exposure to exhaust contaminants.

(4) As of 60 months after the effective date of this section, only new diesel-powered equipment approved pursuant to subparts H or I of part 7 of this title or meeting the requirements of §§ 75.1909 or 75.1910 of this part shall be introduced in underground coal mines.

(b) Diesel-powered ambulances and firefighting equipment shall constitute a special class of equipment that shall only be permitted for use underground according to the mine evacuation plan required under § 75.1101–23 of this part.

(c) As of 12 months after the effective date of this section, all stationary diesel-powered equipment shall meet the requirements specified in § 75.1910 of this part with the exception of the requirement for a certified power package pursuant to subpart F or G of part 7 of this title.

(d) As of 24 months after the effective date of this section, all stationary diesel-powered equipment shall meet the requirements specified in § 75.1910 of this part.

§ 75.1908 Limited class equipment—scope.

(a) Only diesel-powered equipment meeting the requirements of this section shall be considered limited class equipment which may be used in accordance with § 75.1907(a)(2) of this part. This equipment shall—

(1) Use engines of less than 90 horsepower and not be turbocharged;

(2) Not use hydraulic systems;

(3) If self-propelled, have a vehicle weight of less than 6,000 pounds;

(4) If portable, be limited to compressors and welders.

(b) Altitude compensation devices may be used. For limited class equipment using altitude compensating devices, fuel injection rates shall be tested and certified by the operator as to approval compliance upon installation of the altitude compensation device or when maintenance of the fuel injection pump is performed.

§ 75.1909 Limited class equipment design and performance requirements.

(a) Limited class equipment shall have the following:

(1) An engine approved under subpart E of part 7 of this title.

(2) A fire suppression system designed and installed pursuant to § 75.1911 of this part.

(3) A fuel system specifically designed for diesel fuel meeting the following requirements:

(i) A fuel tank that is substantially constructed and protected from collision damages. The fuel tank shall be of leakproof construction. A drain plug shall be provided. A vent opening shall be provided that maintains atmospheric pressure in the tank. The size of the vent shall prevent fuel from splashing out of the vent opening. A self-closing or tethered filler cap shall be used. The tank, filler and vent shall be located so that any spillage during refueling, or leaks, will not contact hot engine surfaces.

(ii) Fuel line piping shall be metal and clamped. Location of the primary fuel lines shall be such that leaks do not contact hot surfaces. The fuel lines shall be separated from electrical wiring and protected from damage in ordinary use.

(iii) A manual shutoff valve shall be installed in the fuel system near the tank.

(iv) Fuel filters and a water strainer shall be provided.

(4) A sensor to monitor the temperature and provide a visual warning of an overheated cylinder head on air cooled engines.

(5) A temperature sensor located in the engine compartment that automatically activates an intake air shutdown device to stop the engine before the engine compartment temperature exceeds the activation temperature of the fire suppression system.

(6) Electrical circuits and components on equipment with storage batteries and integral charging systems shall conform to the following:

(i) Each electric conductor from the battery to the starting motor shall be protected against short circuit by fuses or other circuit interrupting devices placed as near as practicable to the battery terminals.

(ii) Fuses or other automatic circuit-interrupting devices shall be inserted in each conductor of all branch circuits that are connected to the main circuit between the battery and charging generator. Headlight circuits and circuits for instruments and instrument panel lights are considered as being branch circuits.

(iii) The electrical system shall be equipped with a circuit-interrupting device by means of which all power conductors can be deenergized. The device shall be located as close as practicable to the battery terminals. A manually operated controller will not be acceptable as a service switch. Circuit-interrupting devices and other controls shall be so designed that they can be operated without opening any compartment in which they may be enclosed. These devices shall not automatically reset after being actuated and shall meet the applicable requirements of § 75.520 of this part. All magnetic circuit-interrupting devices shall be mounted in a manner to preclude the possibility of their closing by gravity.

(iv) Each motor and charging generator shall be protected by an automatic overcurrent device. One protective device will be acceptable when two motors of the same rating operate simultaneously and perform virtually the same duty.

(v) Overload and short circuit protection shall be provided for electric circuits and components in accordance with §§ 75.518 and 75.518–1 of this part.

(vi) Electric conductors shall meet the applicable requirements of §§ 75.513 and 75.513–1 of this part. Each ungrounded conductor shall have insulation compatible with the impressed voltage. Insulation shall be selected with special reference to its ability to resist deterioration from engine heat and oil. Conductors for equipment or accessories added to a vehicle's electrical system, after manufacture, shall not be smaller than No. 14 AWG in size.

(vii) All wiring shall have adequate mechanical and electrical protection to minimize damage to the cable that might result in short circuits.

(viii) Sharp edges and corners shall be removed at all points where there is a possibility of damaging wires, cables, or conduits by cutting or abrasion. Cables within a battery box shall be protected against abrasion of the insulation. In addition, wiring shall be installed in accordance with § 75.515 of this part, as applicable.

(ix) All electrical connections and splices shall meet the applicable requirements of § 75.514 of this part. Only bolted connectors may be used on battery terminals.

(x) The battery shall be secured to prevent movement and shall be protected from external damage by position, or be enclosed in a box. Insulation shall be provided to prevent battery terminals from contacting conducting surfaces. Batteries that are not protected from external damage by position shall be enclosed in a box.

(xi) A battery box, including the cover, shall be constructed of steel with a minimum thickness of 3/16-inch. Materials other than steel that provide equivalent strength will be considered.

(xii) Battery-box covers shall be lined with a flame-resistant insulating material, permanently attached to the underside of the cover, unless equivalent protection is provided. Battery-box covers shall be provided with a means for securing them in closed position. At least ½ inch of airspace shall be provided between the underside of the cover and the top of the battery, including terminals.

(xiii) Battery boxes shall be provided with ventilation openings to prevent the accumulation of flammable or toxic gases or vapors within the battery box. The size and locations of openings for ventilation shall prevent direct access to battery terminals.

(xiv) The battery shall be insulated from the battery-box walls and supported on insulating materials. Insulating materials that may be subject to chemical reaction with electrolyte shall be treated to resist such action.

(xv) Drainage holes shall be provided in the bottom of each battery box.

(7) Adequate guarding to protect fuel and electric lines when such lines pass near rotating parts.

(8) Reflectors or warning lights mounted on the equipment which can be readily seen in all directions.

(b) Self-propelled limited class equipment shall have the following features in addition to those listed in paragraph (a) of this section:

(1) An audible warning device conveniently located near the operator.

(2) Service brakes for each wheel of the vehicle such that failure of one brake line shall not result in a complete loss of service braking capability.

(3) Service brakes that safely bring the fully loaded vehicle to a complete stop on the maximum grade on which it is operated.

(4) A parking brake that holds the equipment stationary despite any contracting of the brake parts, exhaustion of any nonmechanical source of energy or leakage.

(5) Headlights, tail lights and back-up lights.

(i) Units normally operated in both directions shall be equipped with headlights for both directions.

(ii) Lights shall be protected from accidental damage.

(c) Portable limited class equipment shall have the following features in addition to those listed in paragraph (a) of this section:

(1) Sensors to monitor the operation of limited class portable equipment and stop the engine when an equipment malfunction would result in the creation of a hazardous condition.

(2) A means to prevent inadvertent movement of the equipment.

(3) Safety chains or other suitable secondary connections on equipment that is being towed.

(4) One portable 20-pound multipurpose fire extinguisher on each unit.

(d) Portable limited class equipment shall not be operated unattended.

§ 75.1910 Stationary diesel-powered equipment.

(a) Unattended stationary diesel-powered equipment shall not be permitted where permissible electric equipment is required.

(b) Stationary diesel-powered equipment shall have the following:

(1) A diesel power package approved under subpart F or G of part 7 of this title.

(2) A fuel system constructed in accordance with § 75.2909(a)(3) of this part.

(3) A maximum fuel supply limited to that needed for one shift operation unless the storage facility and tank are constructed in accordance with §§ 75.1902, 75.1903 and 75.1904 of this part and are separated from the stationary diesel-powered equipment by a noncombustible barrier.

(c) Stationary diesel-powered equipment shall be located in a noncombustible enclosure vented directly to the return air course. An automatic self-closing door may be used to form one side of the enclosure. Stationary diesel-powered equipment shall have the following:

(1) A fire suppression system designed and installed according to § 75.1912 of this part.

(2) A means to shut down the diesel engine from the surface and prevent restarting. The remote shutdown shall be designed and installed to shut the engine down if the system is not operating.

(3) A methane monitor that automatically activates an engine intake air shutdown device at 1.0 percent methane concentration and which prevents restarting. The methane monitor shall be placed to take a representative sample of the atmosphere in the noncombustible enclosure.

(d) Unattended stationary diesel-powered equipment shall not be permitted in the primary intake escapeway.

(e) Exhaust shall be discharged directly into the return air course.

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comments and suggestions on the approach to be taken are solicited in an Advance Notice of Proposed Rulemaking, published elsewhere in today's Federal Register. MSHA intends that when promulgated, as Subparts I and J, these approval requirements would be made applicable to diesel powered equipment in accordance with § 75.1907.

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(f) A spark arrester shall be provided to eliminate sparks before the exhaust air enters the return air stream.

(g) All hydraulic lines shall be mounted to protect them against damage in ordinary use, and they shall be routed to prevent leaks from contacting hot surfaces.

§ 75.1911 Fire suppression systems for mobile diesel-powered equipment and fuel transportation units.

(a) An automatic multipurpose dry powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory shall be installed.

(1) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(2) The system shall be installed in a protected location or guarded to minimize physical damage from routine vehicle operations.

(3) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(4) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness in the protected areas. Nozzles shall also be protected against the entrance of foreign materials such as mud, coal dust, or rock dust which could prevent proper discharge of suppressant agent.

(b) The fire suppression system shall provide automatic fire detection and suppression for the following:

(1) The engine compartment and battery areas and air compressors for limited class equipment meeting the requirements of § 75.1908 of this part.

(2) The engine, transmission, hydraulic pumps and tanks, fuel tanks, exposed brake units, air compressors and battery areas on all other mobile diesel-powered equipment.

(3) Fuel containers and electric panels or controls used during fuel transfer operations on fuel transportation units.

(c) The fire suppression system shall include a system fault and fire alarm annunciator which can be seen and heard by the equipment operator.

(d) The fire suppression system shall provide for automatic engine shutdown. Engine shutdown and discharge of suppressant agent may be delayed for a maximum of 15 seconds after the fire alarm annunciator alerts the operator.

(e) At least two manual actuators shall be provided with at least one manual actuator at each end of the equipment. If the equipment is provided with an operator's compartment, one of the mechanical actuators shall be located in the compartment within easy reach of the operator.

(f) The fire suppression system shall remain operative in the event of engine shutdown, equipment electrical system failure, or failure of any other equipment system.

(g) The electrical components of each fire suppression system installed on equipment used where permissible electric equipment is required shall be permissible or intrinsically safe and such components shall be maintained in permissible or intrinsically safe condition.

(h) If electrically operated, the detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If not electrically operated, a means shall be provided to indicate the functional readiness status of the system.

(i) All fire suppression devices shall be visually inspected at least once each week by a person qualified to make such inspections.

(j) Each fire suppression device shall be tested and maintained in accordance with the requirements specified in § 75.1100 of this part, as applicable.

(k) A record shall be maintained of the inspections required by this section. The record of the weekly inspections shall be maintained at an appropriate location for each fire suppression device.

(l) All miners normally assigned to the active workings of the mine shall be instructed about the hazards inherent to the operation of the fire suppression devices installed and, where appropriate, the safeguards available for each device.

§ 75.1912 Fire suppression systems for diesel fuel storage areas and stationary diesel-powered equipment.

(a) An automaic multipurpose dry-powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory shall be installed.

(1) Inert or halogenated gas suppressant agents may be used only in unoccupied and enclosed areas where the use of such suppressants would not pose a toxic hazard to persons.

(2) Alternate types of fire suppression systems shall be approved in accordance with § 75.1107–13 of this part.

(3) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(4) The system shall be installed in a protected location or guarded to minimize physical damage from routine vehicle operations.

(5) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(6) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness in the protected areas. Nozzles must also be protected against the entrance of foreign materials such as mud, coal dust, and rock dust, that could prevent proper discharge of suppressant agent.

(b) The fire suppression system shall provide automatic fire detection and suppression for the following areas:

(1) The engine, hydraulic pumps and tanks, fuel tanks, battery areas and the stationary equipment being powered if such equipment poses a fire hazard.

(2) The fuel storage tanks, containers, safety cans, pumps, electrical panels and control equipment in fuel storage areas.

(c) Audible and visual alarms to warn of fire or system faults shall be provided at the protected area and at a surface location which is always staffed when personnel are underground who could be endangered by a fire. A means shall also be provided for warning all endangered personnel in the event of fire.

(d) Fire suppression systems shall include two manual actuators located as follows:

(1) At least one within the fuel storage facility or noncombustible enclosure housing stationary equipment.

(2) At least one a safe distance away from the storage facility or equipment enclosure and located in intake air.

(e) The fire suppression system shall remain operative in the event of electrical system failure or engine shutdown.

(f) If electrically operated, the detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If not electrically operated, a means shall be provided to indicate the functional readiness status of the system.

(g) Fire suppression devices shall be visually inspected at least once each week by a person qualified to make such inspections.

(h) Each fire suppression device shall be tested and maintained in accordance with the requirements specified in § 75.1100 of this part as applicable.

(i) A record shall be maintained of the inspections required by this section. The record of the weekly inspections may be maintained at an appropriate location for each fire suppression device.

(j) All miners normally assigned to the active workings of the mine shall be instructed about any hazards inherent to the operation of all fire suppression devices installed and, where appropriate, the safeguards available for each device.

§ 75.1913 Starting aids.

(a) When not in use containers for volatile fuel starting aids shall be stored in a fire proof enclosure.

(b) Volatile fuel starting aids shall not be used or taken into areas where permissible equipment is required.

(c) Volatile fuel starting aids shall be used in accordance with the specific recommendations in the engine manufacturer's maintenance and operation manual.

(d) Volatile fuel starting aids shall not be used in the presence of open flames, or burning flame safety lamps, or when welding and cutting.

(e) Volatile fuels starting aids shall not be used in any area where 1.0 percent concentration of methane is detected.

(f) Compressed oxygen or compressed flammable gases shall not be connected to diesel air-start systems.

§ 75.1914 Maintenance of diesel-powered equipment.

(a) Diesel-powered equipment shall be maintained in approved and safe condition or removed from service.

(1) Maintenance and repairs of approved features of diesel-powered equipment shall be made only by a person qualified in accordance with § 75.1915 of this part.

(2) The water scrubber system shall be drained and flushed at least once on each shift that the diesel equipment is operated.

(3) The intake air filter shall be replaced or serviced when dirty or when the intake air pressure drop device so indicates.

(b) Mobile diesel-powered equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Equipment defects affecting safety shall be reported to the mine operator.

(c) All diesel-powered equipment shall be examined and tested weekly by a person qualified in accordance with § 75.1915 of this part.

(1) Examinations and tests shall be conducted in accordance with approved checklists.

(2) Persons performing weekly examinations and tests of diesel-powered equipment shall certify by initials and date that the examination and tests were performed.

(3) Certifications shall be retained for at least one year at a surface location at the mine.

(d) The mine operator shall develop and implement written standard operating procedures for testing and evaluating, on a weekly basis, the undiluted exhaust emissions of diesel engines in use underground. The procedures shall include the following:

(1) The method of achieving a repeatable loaded engine operating condition for each type of equipment.

(2) Sampling and analytical methods which include calibration of instrumentation capable of accurately detecting carbon-monoxide in the expected concentrations.

(3) Evaluation and interpretation of the results.

(4) The concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance. Carbon monoxide concentrations shall not exceed 2,500 parts per million.

(5) The designation and training of the individual to perform the test.

(6) The maintenance and retention of necessary records.

§ 75.1915 Training and qualification of diesel mechanics.

(a) A diesel mechanic shall be qualified to perform maintenance and repairs of approved features of diesel equipment as required by § 75.1914 of this part only after successfully completing a training and qualification program, including an examination, developed by the mine operator and approved by MSHA as meeting the requirements of this section.

(b) The examination shall require the applicant to demonstrate that the applicant is capable of maintaining the equipment in approved condition with acceptable emissions and in safe operating condition. Successful completion of any written portion of a qualification examination shall require a score of 80 percent.

(c) A qualified diesel mechanic shall complete annual retraining in accordance with the approved program once every 12 months.

(d) An approved training and qualification program shall contain the following:

(1) A description of the course content, materials and teaching methods to be used for initial training and retraining.

(2) A copy of the qualification examination.

(3) For retraining, a copy of the evaluation program to be used to assess the knowledge, skills and ability of the mechanic to perform the required duties in accordance with applicable requirements.

(e) Courses in a training and retraining program shall—

(1) Be presented by a qualified diesel mechanic or other instructor determined by MSHA to be qualified;

(2) Be of sufficient length and content to prepare or maintain a person to perform the duties of a diesel mechanic in accordance with all applicable regulatory requirements;

(3) Address each piece of diesel equipment in use at the mine; and

(4) Address, at a minimum, the following areas of instruction:

(i) The requirements of subpart T of this part.

(ii) Use of appropriate power package or machine check lists to conduct appropriate tests to ensure that diesel equipment is in approved condition, including emission levels and safe operation.

(iii) Proper maintenance of approved features and the correct use of the appropriate maintenance manuals; including machine adjustments, service, and assembly.

(iv) Diesel equipment fire protection system tests and maintenance.

(v) Fire ignition sources and their control or elimination.

(lv) Safe fueling procedures and maintenance of the fuel system of the machine.

(vii) Intake air system maintenance and tests.

(viii) Engine shutdown device tests and maintenance.

(ix) Other subjects determined by the District Manager to be necessary to address specific health and safety needs.

§ 75.1916 Procedures for approval and administration of diesel mechanic training and qualification programs.

(a) Mine operators who use diesel-powered equipment underground shall submit to the appropriate District Manager not later than [90 days after publication of the final rule] a training and qualification program for diesel mechanics.

(b) As of [180 days after the effective date of the final rule] all persons performing the duties of a diesel mechanic shall be initially qualified in accordance with § 75.1915 of this part.

(c) The training and qualification program submitted to the District Manager shall contain the following:

(1) The company name, mine name, and MSHA identification number of the mine.

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(2) A list of instructors and the courses they are qualified to teach.
(3) The location where the instruction will take place.
(4) A description of the teaching methods and the course materials which are to be used in the training.
(5) A copy of the qualification examination and, in the case of annual retraining, the evaluation program to be used.
(d) The operator shall furnish to the representative of the miners a copy of the training and qualification program 14 days prior to its submission to the District Manager. Where a miner's representative is not designated, a copy of the program shall be posted on the mine bulletin board 14 days prior to its submission to the District Manager. Written comments received by the operator from miners or their representatives shall be submitted to the District Manager. Miners or their representatives may submit written comments directly to the District Manager.
(e) Revisions to the program may be initiated by the mine operator or the District Manager to gain approval, retain approval, or to address training needs, changes or modifications, and new technology.
(f) In the event the District Manager disapproves a program or a revision of the program, the District Manager shall notify the mine operator in writing of—
(1) The specific changes or items of deficiency;
(2) The action necessary to effect the changes or bring the disapproved program or modification into compliance; and
(3) The deadline for the completion of the revision.
(g) Failure of a qualified diesel mechanic to complete required retraining within 3 years of initial training and qualification or the most recent annual retraining shall result in a lapse of qualification. A mechanic whose qualification lapses shall complete initial training and qualification to regain qualification.
(h) The District Manager may revoke a diesel mechanic's qualifications for cause, including intentional violation of the requirements of part 75 or the intentional defeat of any safety or health device. Before any revocation becomes effective, the District Manager shall send written reasons for revocation to the diesel mechanic, who shall be given ten calendar days to respond. Unless otherwise determined by the District Manager, revocation shall become effective ten days from notification to the diesel mechanic. A decision by the District Manager, to revoke a diesel mechanic's qualification, may be appealed by the diesel mechanic to the Administrator for Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. Such an appeal shall be submitted to the Administrator within 30 days from the effective date of the revocation. Upon revocation of a diesel mechanic's qualification, the District Manager shall immediately notify the appropriate mine operator.
(i) The operator shall maintain a copy of the MSHA approved training and qualification program available at the mine site. This copy shall contain a current instructor list.
(j) The operator shall maintain available for inspection, at the mine site, the names of all persons qualified as underground diesel mechanics, dates of qualification, and the date of the last annual retraining.

§ 75.1917 Operating speed of diesel-powered equipment.

(a) All roadways where diesel-powered equipment is operated shall be maintained as free as practicable from bottom irregularities, debris and wet or muddy conditions that affect control of the equipment.
(b) Diesel-powered equipment operating speeds shall be consistent with conditions of roadways, grades, clearances, visibility and traffic and type of equipment used.
(c) Mobile diesel-powered equipment operators shall have full control of the equipment while it is in motion.
(d) Traffic rules, including speed, signals and warning signs, shall be standardized at each mine and posted.

[FR Doc. 89-23170 Filed 10-3-89; 8:45 am]
BILLING CODE 4510-43-M

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30 CFR Part 7

RIN 1219-AA27

Approval Requirements for Diesel-Powered Machines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing approval requirements for diesel machines to reduce or eliminate fire, explosion, and safety hazards associated with the use of diesel-powered equipment in underground coal mines. The approval requirements that are being developed are based on the recommendations of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines (Advisory Committee). Comments and information pertaining to any aspect of the approval requirements are invited. This notice also outlines specific issues on which MSHA is seeking comment and information from the mining community concerning the scope of such approval requirements, their content, and how they would be administered by the Agency.

DATES: All comments and information should be submitted by January 2, 1989.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, telephone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Based on the recommendations of the MSHA Advisory Committee, MSHA has developed proposed approval regulations under 30 CFR part 7 for diesel engines and power packages to be used in diesel-powered equipment. These proposals are found elsewhere in today's **Federal Register**. As part of its discussions, the Advisory Committee raised the issue of what types of features should be included in the machine approval requirements for diesel-powered equipment. A machine would consist of an approved diesel engine and an approved diesel power package along with those features added to the machine to reduce or eliminate fire, explosion, or safety hazards. The Advisory Committee recommended that in addition to approval regulations for diesel engines and power packages, an approval program for self-propelled, diesel powered equipment and portable, attended diesel power equipment should be established. The approval program as recommended by the Committee would be directed to those equipment design features most readily addressed by equipment manufacturers. These features would include the incorporation of an approved engine and power package, and include provisions for fuel systems, exhaust gas dilution systems, fire suppression systems, electrical systems, and braking systems. The approval evaluation would stress the inter-relationships of all of these systems. Specific features such as a neutral start capability, load locking valves and guarding of moving parts would be addressed. In addition, under the Committee recommendation, the machine design would be evaluated to ensure that provisions have been made for the installation of other devices such as methane monitors and cabs and canopies when appropriate.

The Committee also discussed the applicability of certain safety features currently installed on electric equipment such as headlights for illumination and panic bars for emergency shut-downs which might also be applicable to diesel powered equipment. The Committee recommended that MSHA review all existing approval and use standards for equipment safety features potentially applicable to diesel powered equipment in underground coal mines. Machine related safety features currently are addressed in parts 18, 20, 27, 31, 32, 36, and 75.

Specific Issues Identified for Comment

In this advance notice of proposed rulemaking, MSHA is seeking comments and information on a number of issues. Commenters should provide detailed reasons to support their respective positions based upon particular experience and circumstance. MSHA requests comments on all aspects of diesel machine approval requirements and on the following issues in particular:

General Approach and Scope of MSHA Approval Requirements for Diesel Machines

—Should MSHA approval requirements for diesel machines be promulgated under part 7? If part 7 is not appropriate, how should MSHA administer an approval program for diesel machines?
—Should MSHA establish an approval program which ensures that underground use standards have been met? That is, should MSHA include as part of the machine approval evaluation, machine features required by part 75 such as audible warning systems, presence of reflective material, and safety chains for equipment that is towed, and other features such as emergency de-energization devices (panic bars) and fire suppression systems?

Machine Features

—Which of the following machine features are appropriate to include under approval requirements for diesel machines: fuel systems (including piping, tanks, direction of exhaust flow); neutral start capability; emergency de-energization devices (panic bars); braking systems (including service brakes and automatic emergency parking brakes); operators compartment (including controls and gauges); fire suppression systems; electrical systems, (including all components); exhaust dilution systems; fuel dispensing systems on fuel transportation units; hydraulic and pneumatic systems; load locking valves, and guarding of moving parts?
—Should MSHA provide for certain redundant requirement in both the approval evaluation and part 75 to allow an operator to make changes to a machine pursuant to Part 75 without a need for the operator to apply for a field modification?

Economic Impact

—Some machines currently manufactured and in use underground already have some of the features referred to previously in this ANPRM. What percent of machines, by machine type (e.g., self-propelled), has each of the recommended features?
—Many of the above mentioned features would need to be added to both newly built machines and machines currently in use underground. What specific features are they? How much would these features cost if they were factory installed? How much would these features cost if they were retrofitted to existing equipment?
—What quantitative safety and health related data are available to document the potential benefits of a machine approval? Specifically, what exposure data, incidence rate information and any published studies are available?

Dated: September 26, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-23169 Filed 10-2-89; 8:45 am]
BILLING CODE 4510-43-M

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federal register

Wednesday
October 4, 1989

Part III

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3655-4]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Rule Covering Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 23 sites. Based on a review of public comments, EPA has decided that 13 of these sites, which are subject to the corrective action authorities of Subtitle C of the Resources Conservation and Recovery Act ("RCRA"), meet the listing requirements of the NPL. This rule also adds 5 RCRA sites on which no comments were received, and adds 5 no-comment sites which filed RCRA permit applications as a precaution and are not subject to RCRA corrective action authorities. Finally, today's action removes 27 RCRA sites from the proposed NPL. EPA has reviewed public comments on the removal of these sites and has decided not to place them on the NPL because they are subject to the subtitle C corrective action authorities of RCRA, and do not, at this time, appear to come within the categories of RCRA facilities that EPA considers appropriate for the NPL. Information supporting these actions is contained in the Superfund Public Docket.

Elsewhere in today's **Federal Register** is another final rule that adds 70 sites, including 11 Federal Facility sites, to the NPL and drops 4 sites from the proposed NPL. These two rules result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are proposed to the NPL, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 3, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register.**

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see section I of the **"SUPPLEMENTARY INFORMATION"** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, John F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 213/597-0580

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street NE., Atlanta, GA 30365, 404/347-4216

Cathy Freeman, Region 5, U.S. EPA, 5HS-12, 230 South Dearborn Street, Chicago, IL 50604, 312/886-6214

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740

Brenda Ward, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444

Linda Sunnen, Region 9, U.S. EPA, Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103

FOR FURTHER INFORMATION CONTACT: Henry Stevens, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, Stat. 1613 *et seq.* To implement CERCLA, the U.S. Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)).

Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until EPA has reviewed public comments and the proposed revisions have been put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criterion, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants througout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CLA-financed remedial action only after it is placed on the NPL as provided in the NCP at 40 CFR 300.66(c)(2), and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency has also published a number of proposed rulemakings to add sites to the NPL most recently a special update of two sites on August 16, 1989 (54 FR 33846).

EPA may delete sites when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date the Agency has deleted 28 sites from the NPL, most recently on September 22, 1989 (54 FR 38994) when the Cecil Lindsey site, Newport, Arkansas, was deleted.

Of the sites in this rule, 30 were originally proposed in the first four updates to the NPL,[1] prior to publication in 1986 of an expanded policy for listing on the NPL certain categories of sites regulated under the Resource Conservation and Recovery Act ("RCRA") (announced on June 10, 1986 (51 FR 21054) and further amended on June 24, 1988 (53 FR 23978)) (the "NPL/RCRA policy"). The 39 sites were identified as possibly subject to the Subtitle C corrective action authorities of RCRA, and therefore possibly subject to the NPL/RCRA policy. Because the public had not been afforded notice and opportunity to comment on the application of this policy to these sites, the Agency reproposed the sites (13 to be listed, 26 to be dropped) on June 24, 1988 under the amended policy and at the same time solicited comments on the proposed actions (53 FR 23978). Nine RCRA sites proposed in NPL Update #7 (53 FR 23988, June 24, 1988) and one site proposed in Update #8 (54 FR 19526, May 5, 1989) are also being added to the NPL in this final rule; these sites were proposed under the NPL/RCRA policy, but received no comments. In addition, one RCRA site proposed in Update #7 is being dropped in this final rule because of a change in its RCRA status.

EPA has carefully considered all the public comments submitted on the 39 previously proposed RCRA sites, both in response to the original proposal of the sites, as well as in response to the application of the NPL/RCRA policy to the specific sites. The Agency has made some modifications in this final rule in response to those comments. In addition, the Agency is dropping one proposed Update #7 site in response to comments concerning the site's RCRA status.

The Agency has responded to a number of major comments on the policy for listing RCRA sites in thia notice. Responses to more site-specific listing policy issues, as well as comments on HRS scores, are presented in the "Support Document for the Revised National Priorities List—Final Rule Covering Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act, October, 1989" which is a separate document available in the Headquarters and Regional public dockets (see Addresses portion of this notice).

This rule, together with the final rule appearing elsewhere in today's **Federal Register,** results in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are in proposed status, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases"simply as "releases," or alternatively, as "facilities" or "sites."

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring and evaluation of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains a memorandum-to-the-record describing the RCRA status of the sites, HRS score sheets for each final site, a Documentation Record for each Final site describing the information used to compute the scores, a list of documents referenced in the Documentation Record, comments received, and the Agency's response to those comments (the "Support Document").

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data upon which EPA principally relied upon in calculating or evaluating the HRS scores for sites in the Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment

[1] Update #1 (48 FR 40674, September 8, 1983). Update #2 (49 FR 40320, October 15, 1984). Update #3 (50 FR 14115, April 10, 1985) and Update #4 (50 FR 37950, September 18, 1985).

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of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2), and are included on the NPL even if there are RCRA hazardous waste management units within the facility boundaries, consistent with the Federal facilities listing policy (54 FR 10520, March 13, 1989). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA against responsible parties regardless of whether the site is on the NPL. The fact that the Agency may defer the listing of a site subject to RCRA Subtitle C does not preclude the use of CERCLA section 104 to respond to a release or CERCLA section 106 to compel action by multiple parties at such a site. EPA also has the authority to take removal actions at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65-67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA (e.g., RCRA). Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other statutory authorities, to proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or to do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed investigations undertaken during the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the type and extent of contamination. It also takes into account the amount of contaminants in the environment, the risk to affected populations and the environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in Superfund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher scoring sites are later added to the NPL.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *" The definition of "removal" also includes "action taken under Section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The Agency has received a number of inquiries concerning whether EPA could (or would) revise NPL site boundaries. The issue frequently arises where a landowner seeks to sell an allegedly uncontaminated portion of an NPL site. The Agency's position is that it is neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for the Agency to describe precise boundaries of releases.

CERCLA section (a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release "come to be located" (CERCLA Section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.[2] Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL release would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, *see* 48 FR 40663 (September 8, 1983)).

Because the Agency does not formally define the geographic extent of releases (or sites) at the time of listing, there is no administrative process to "delist" allegedly uncontaminated areas of an NPL site (or to expand sites to follow the contamination where it has come to be located).[3] Such a process would be time-consuming, subject to constant re-verification, and wasteful of resources. Further, the NPL is only of limited significance, as it does not assign liability to any party. *See* Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). However, this inquiry focuses on an evaluation of the *threat* posed; it is not a requirement to define the boundaries of the release, and in any event is independent of the NPL listing. Moreover, it is generally impossible to discover the full extent of where the contamination "has come to be located" prior to completion of all necessay studies *and* remedial work at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

At the same time, however, the Agency notes that the RI/FS or Record or Decision (ROD) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, *based on information known at that time.* For example, EPA may evaluate (and list) a release over a 400-acre area, but the ROD may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) should also note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.
>
> 49 FR 37061 (September 21, 1984).[4]

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All of the sites in today's final rule have been placed on the NPL based on HRS scores.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional offices. EPA Regional offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional offices may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing

[2] Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeability. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as the highest priority "facilities.") (For ease of reference, EPA also uses the term "release" and "facility.")

[3] The Agency has already discussed its authority to follow contamination as far as it goes, and then to consider the release or facility for response purposes to be the entire area where the hazardous substances have come to be located. 54 FR 13298 (March 31, 1989).

[4] See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 767, 751 (D.C.Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries v. EPA] II*, 759 F. 2d [921,] at 932 [(D.C.Cir. 1985)].

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(and EPA's listing policies) and solicits public comments on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to consider certain types of sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policy of relevance to this final rule applies to sites subject to the corrective action authorities of RCRA Subtitle C.

V. Development of the NPL/RCRA Policy

Since the first NPL final rule (48 FR 40658, September 8, 1983) the Agency's policy has been to defer listing sites that could be addressed by the RCRA Subtitle C corrective action authorities, even though EPA has the statutory authority to list all RCRA sites that meet the NPL eligibility criterion (i.e., a score of 28.50 or greater under the HRS). Until 1984, RCRA corrective action authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous waste after July 26, 1982. Sites which met these criteria were listed only if they were abandoned or lacked sufficient resources, Subtitle C corrective action authorities could not be enforced, or a significant portion of the release came from nonregulated units.

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) were enacted. HWSA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at a treatment, storage, or disposal facility seeking a permit.
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.
- Section 3008(h) authorizes the Administrator of EPA to issue an order requiring corrective action or such other response measures as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

As a result of the broadened Subtitle C corrective action authorities of HSWA, the Agency sought comment on a policy for deferring the listing of non-Federal sites subject to the Subtitle C corrective action authorities (50 FR 14117, April 10, 1985). Under the draft policy, the listing of such sites would be deferred unless and until the Agency determined that RCRA corrective action was not likely to succeed or occur promptly due to factors such as:

- The inability or unwillingness of the owner/operator to pay for addressing the contamination at the site.
- Inadequate financial responsibility guarantees to pay for such costs.
- EPA or State priorities for addressing RCRA sites.

The intent of the policy was to maximize the number of site responses achieved through the RCRA corrective action authorities, thus preserving the CERCLA Fund for sites for which no other authority is available. Federal facility sites were not considered in the development of the policy at that time because the NCP prohibited placing Federal facility sites on the NPL.

On June 10, 1986 (51 FR 21057), EPA announced components of a policy for the listing, or the deferral from listing, of several categories of non-Federal sites subject to the RCRA Subtitle C corrective action authorities. Under the policy, RCRA sites not subject to Subtitle C corrective action authorities would continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations), and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste were managed.
- RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit.

Further, the policy stated that certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criterion for listing (i.e., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action. Authorization to operate may be lost when issuance of a corrective action order under RCRA section 3008(h) terminates the interim status of a facility or when the interim status of the facility is terminated as a result of a permit denial under RCRA section 3005(c). Also, authorization to operate is lost through operation of RCRA section 3005(e)(2) when an owner or operator of a land disposal facility did not certify compliance with applicable ground water monitoring and financial responsibility requirements and submit a Part B permit application by November 8, 1985—also known in HSWA as the Loss of Interim Status Provision (LOIS)).
- Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis.
- On June 24, 1988 (53 FR 23978) EPA amended the June 10, 1986 policy (51 FR 21057) to include four additional categories of RCRA sites as appropriate for the NPL. These categories are:
  - Non- or late filers.
  - Converters.
  - Protective filers.
  - Sites holding permits issued before the enactment of HSWA.

In that same June 24, 1988 notice, the Agency proposed to add 13 sites to the NPL on the basis of the amended NPL/RCRA policy, and to drop 30 sites from the proposed NPL because they were subject to the Subtitle C corrective action authorities of RCRA and did not, at the time, appear to fall into one of the categories of RCRA facilities that EPA considers appropriate for listing under the current policy. In addition, in a separate Federal Register notice on the same date (53 FR 23988), the Agency proposed Update #7, which included a number of RCRA sites for listing under the NPL/RCRA policy. Nine of these sites are being added to the NPL in today's final rule. Also, on May 5, 1989 (54 FR 19526), the Agency proposed Update #8, which included 10 sites. One of these sites, a RCRA site, received no comment and is being added to the NPL in today's final rule.

Unwillingness Criteria

As part of the NPL/RCRA policy announced on June 10, 1986 (51 FR 21059), EPA explained its policy of listing RCRA sites where the owner/operator has demonstrated an unwillingness to take corrective action. The policy stated that, as a general matter, EPA prefers using available RCRA enforcement or permitting authorities to require corrective action by the owner/operator at RCRA sites because this helps to conserve CERCLA resources for sites with no financially viable owner/operator. However, when the Agency determines that a RCRA facility owner/operator is unwilling to carry out corrective action directed by EPA or a State pursuant to a RCRA order or permit, there is little assurance that releases will be addressed in a timely manner under a RCRA order or permit. Therefore, such facilities should be listed in order to make CERCLA resources available expeditiously. Under the policy, RCRA facilities will be placed on the NPL when owners/operators are found to be unwilling based on a case-by-case determination.

Several RCRA facilities being finalized in this rule were proposed for the NPL based upon their HRS scores and EPA's case-by-case determination that the owner/operators were unwilling to take corrective action. For each such site, the Agency has prepared a lengthy memorandum to the record, documenting the actions (or failures to act) upon which the unwillingness finding was based. EPA solicited comment on the listing of these sites (and on the findings of unwillingness), and is responding to comment here and in the accompanying support document. EPA believes that the sites are appropriate for the NPL. On August 9, 1988 (53 FR 30005), EPA added objective criteria to its policy for determining unwillingness. Specifically, a RCRA facility would be placed on the NPL based on unwillingness when the owner/operators are not in compliance with one or more of the following:

- Federal or substantially equivalent State unilateral administrative order requiring corrective action, after the facility owner/operator has exhausted administrative due process rights
- Federal or substantially equivalent State unilateral administrative order requiring corrective action, if the facility owner/operator did not pursue administrative due process rights within the specified time period
- Initial Federal or State preliminary injunction or other judicial order requiring corrective action
- Federal or State RCRA permit condition requiring corrective action after the facility owner/operator has exhausted administrative due process rights
- Final Federal or State consent decree or administrative order on consent requiring corrective action, after the exhaustion of any dispute resolution procedures

However, the Agency explained it would be both unnecessary and inappropriate to go back and reexamine already proposed sites based on the revised criteria. First, the revised criteria had not been announced when the sites in this rule were evaluated for unwillingness and proposed for the NPL. Second, the new criteria do not represent a substantive change, but rather, an attempt at developing more easily applied and understood objective crtieria. EPA believes that the determinations of unwillingness made for the sites in this rule fully satisfy the Agency's policy and goals. Third, the Agency recognized that some lead time would be necessary for the Regions and States to apply the new criteria to sites before submitting them for proposal to the NPL; specifically, the Regions and States would be required to issue corrective action orders at RCRA sites before determining unwillingness, rather than evaluating all evidence on a case-by-case basis. Thus, the Agency decided to apply the new criteria only to sites proposed after August 9, 1988, so as not to significantly and unneccessarily delay promulgation and response action at already proposed sites.

Amended NPL/RCRA Policy

On June 24, 1988 (53 FR 23978), the Agency amended its NPL/RCRA policy by adding four categories of RCRA sites appropriate for listing.

(1) *Non- or late Filers:* Facilities that were treating storing or disposing of Subtitle C hazardous waste after November 19, 1980, and did not file a Part A RCRA permit application by that date and have little or no history of compliance with RCRA.

The Agency decided to place on the NPL "non- or late filers" based on the finding that RCRA treatment, storage or disposal facilities ("TSDFs") that fail to file Part A of the RCRA permit application generally remain outside the range of cognizance of authorities responsible for compliance with RCRA, and generally are without the institutional mechanisms, such as ground water monitoring programs, necessary to assure prompt compliance with the standards and goals of the RCRA program. Therefore, EPA believes that it is not appropriate to defer to RCRA for action at these sites, even though RCRA technically may apply. However, in cases where non- or late filer facilities have in fact come within the RCRA system and demonstrated a history of compliance with RCRA regulations (as may be the case with late filers), the Agency may decide to defer listing and allow RCRA to continue to address problems at the site.

(2) *Converters:* Facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to an activity for which interim status is not required (e.g., generators who store hazardous waste for 90 days or less). These facilities, the withdrawal of whose Part A application has been acknowledged by EPA or the State, are referred to as converters.

Converters at one time treated or stored Subtitle C hazardous waste and were required to obtain interim status. EPA believes that under RCRA section 3008(h) it can compel corrective action at such sites. However, RCRA's corrective action program currently focuses on TSDFs subject to permitting requirements, and thus EPA has not routinely reviewed converters under RCRA Subtitle C. EPA has decided that the deferral of this category of sites is not appropriate, as these sites are not currently engaged in treatment, storage, or disposal activities subject to RCRA permitting and they are not a priority for prompt corrective action under RCRA. Instead, the Agency has decided to list such sites to make full CERCLA resources and authorities available, if necessary. In cases where a converter has agreed to corrective action under a RCRA unilateral or consent corrective action order, the Agency will generally defer listing and allow RCRA to continue to address problems at the site.

EPA is currently prioritizing RCRA facilities for corrective action. If the

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Agency determines that converter sites will in the future be addressed in an expeditious manner by RCRA authorities, then it will reconsider the listing policy for RCRA converter sites and may defer converters to RCRA for corrective action.

(3) *Protective Filers:* Facilities that have filed RCRA Part A permit applications for treatment, storage, or disposal of Subtitle C hazardous waste as a precautionary measure only. These facilities may be generators, transporters, or recyclers of hazardous wastes, and are not subject to Subtitle C corrective action authorities.

These facilities filed RCRA Part A permit applications as TSDFs as a precautionary measure only, and are generators, transporters, or recyclers of hazardous wastes. Protective filers are not subject to Subtitle C corrective action authorities, and thus, EPA has decided to place them on the NPL in order to make full CERCLA resources and authorities available.

(4) *Pre-HSWA Permittees:* Facilities with RCRA permits for the treatment, storage, or disposal of Subtitle C hazardous waste that were issued prior to the enactment of HSWA, and whose owner/operator will not voluntarily consent to the reissuance of their permit to include corrective action requirements.

For facilities with permits that predate HSWA, the owner/operators are not required through the permit to perform corrective action for releases from solid waste management units, and the Agency does not have the authority to modify such pre-HSWA permits to include facility-wide RCRA corrective action under RCRA section 3004(u) until the permit is reissued. Because many pre-HSWA permits are for 10 years, with the last pre-HSWA permit having been issued prior to November 8, 1984, it could be 1994 before the Agency could reissue some permits to include corrective action requirements. Therefore, the Agency has decided to list RCRA facilities with pre-HSWA permits (that have HRS scores of at least 28.50, or are otherwise eligible for listing), so that CERCLA authorities will be available to more expeditiously address any releases at such sites. However, if the permitted facility consents to the reissuance of its pre-HSWA permit to include corrective action requirements, the Agency will consider not adding the facility to the NPL.

Financiol Inability to Pay

On August 9, 1988 (53 FR 30002), EPA solicited comment on amendments to the NPL/RCRA policy concerning the inability of an owner/operator to pay for cleanup at a RCRA-regulated site. The Agency received a number of comments on the amendments under consideration, but has made no final decision concerning these issues. The Agency will respond to comments and announce its decision on this policy in the future.

VI. Response to Public Comments

The Agency received a number of comments on the June 24, 1988 amendments to the NPL/RCRA policy, and on the application of those amendments and the June 10, 1986 NPL/RCRA policy to sites proposed for the NPL. Responses to the significant comments concerning the general application of the amended criteria are summarized below. All site-specific comments are summarized and responded to in the support document accompanying this rule, which is available in the Superfund dockets.

VI.a. Support for the Policy

A number of commenters supported the policy to drop sites from the NPL that can be adequately addressed under the corrective action authorities of RCRA Subtitle C. One commenter supported EPA's ability to initiate short-term emergency actions at RCRA sites. Another commenter supported the planned use of RCRA authority whenever possible, since the use of RCRA authorities "avoids the administrative complexity and unneeded political burden of NPL listing."

In response, the Agency notes that its decision to defer certain sites subject to the RCRA Subtitle C corrective action authorities is based on the ability of those authorities to achieve cleanup at a site and to preserve CERCLA resources for use at other sites.

VI.b. Opposition to the Policy

A number of commenters opposed dropping RCRA sites from the proposed NPL, transferring the sites from CERCLA to RCRA authorities, on the grounds that Superfund authorities are more protective of human health and the environment than are RCRA authorities. One commenter stated that Superfund cleanup standards are more stringent than RCRA's. The commenter noted that CERCLA requires permanent treatment to the maximum extent feasible, whereas RCRA does not. The commenter added that the RCRA program does not include cleanup guidelines similar to those under Superfund. Another commenter stated that CERCLA offers more remedial options than RCRA.

In response, both statutes require that remedies employed protect human health and the environment. The Agency intends for the two programs to provide similar cleanup solutions for similar environmental problems, even if procedural requirements differ. Indeed, one of the Agency's primary objectives in development of the RCRA corrective action regulations is to achieve substantive consistency with the CERCLA remedial program.

The NPL/RCRA policy is based on efficient allocation of limited CERCLA resources. Although CERCLA provides authority to clean up all sites, including RCRA sites, using CERCLA in all cases would be inefficient because RCRA has authority to conduct certain cleanup actions. Corrective action provisions are now required in RCRA permits, which direct activities at the site, often long after cleanup actions are completed. By deferring to RCRA, more sites are addressed, and the overall goals of both statutes are advanced.

Two commenters opposed transferring sites from CERCLA to RCRA authorities, maintaining that enforcement oversight is greater under CERCLA than RCRA.

In response, EPA believes the RCRA program assures adequate oversight. RCRA orders and permits establish oversight on a site-by-site basis. If a remedial action is extremely complex or the owner/operator is not fully cooperative, EPA may provide extensive oversight. In other cases, extensive oversight is not necessary. In any event, EPA inspection requirements apply to all sites under RCRA corrective action authorities. Under RCRA, States may be authorized to operate a hazardous waste program in lieu of the Federal program. Consequently, in many cases States provide oversight (RCRA section 3006).

One commenter opposed the policy to drop RCRA sites from the NPL because RCRA was not intended as a cleanup bill.

In response, the Agency disagrees. As discussed earlier, HSWA greatly expanded Subtitle C corrective action authorities, and EPA believes a complete cleanup can be achieved under RCRA. As the House Committee on Energy and Commerce noted in its report on HSWA:

> Unless all hazardous constituent releases from solid waste managment units at permitted facilities are addressed and cleaned up the Committee is deeply concerned that many more sites will be added to the future burdens of the Superfund program with little prospect for control or cleanup. The responsibility to control such releases lies with the facility owner and operator and should not be shifted to the Superfund program, particularly when a final [RCRA] permit has been requested by the facility. H.Rept. 198, 98th Cong., 1st Sess. 61 (1983).

Sites are not included on the NPL if they are subject to the RCRA Subtitle C corrective action authorities and prompt cleanup appears likely. RCRA authorities may be used by themselves or in conjunction with CERCLA removal and enforcement authorities to initiate corrective action or to continue actions already begun. For sites being dropped from the proposed NPL, if a CERCLA Remedial Investigation/Feasibility Study (RI/FS) or enforcement actions have been initiated, these actions will continue in order to avoid disruption of site cleanup activities. And, of course, deferred RCRA sites may later be added to the NPL if corrective action is not being taken.

One commenter stated that the deletion of sites prior to a complete cleanup sets a bad precedent. The commenter believes that the removal of a site from the NPL because it is being managed under RCRA could give the false impression that the site is no longer a significant threat to public health and the environment.

In response, the deferral of a site to RCRA authorities does not mean that the Agency has determined that cleanup is complete or that a site no longer poses a threat to human health and the environment. Rather, it means that the Agency has determined that the sites can be addressed under another authority, and that, to conserve CERCLA resources and avoid duplication, listing should not proceed. Furthermore, the Agency does not believe that the deferral of a site to RCRA authorities jeopardizes any cleanup that is underway or planned.

The Agency has requested comment on deleting certain final RCRA sites from the NPL in the proposed NCP revisions (53 FR 51421, December 21, 1988); even under the proposed approach, sites would only be deferred where response action was "progressing adequately" under an enforcement order or a RCRA permit and where several other conditions were met.

Several commenters stated that, because RCRA does not give EPA the powers granted by CERCLA, and because not all CERCLA authorities are available at sites not on the NPL, deferring a site from the NPL may deny the Agency the full scope of authorities necessary to compel cleanup by a responsible party. The commenters were particularly concerned that CERCLA cost recovery authorities are not available at RCRA sites. One commenter added that the lack of joint and several liability authorities under RCRA may obstruct RCRA cleanup at multiparty sites where one party is unwilling.

In response, the only authority unavailable at a deferred RCRA facility is use of the CERCLA Trust Fund for remedial action. The Agency retains ample authorities, under both RCRA and CERCLA, to ensure expeditious cleanup at RCRA facilities. CERCLA section 104 removal actions, including Fund-financed RI/FS's, can be taken at RCRA sites to respond promptly to a release, and cost recovery for such actions would be available. In addition, where an "imminent and substantial endangerment" is posed by a release at a RCRA facility, the Agency may take enforcement action under CERCLA section 106 and thereby compel action by multiple parties.

Although cost recovery and joint and several liability provisions are not available for all RCRA actions, significant authorities are available under RCRA. First, enforcement actions against multiple parties can be brought under RCRA section 7003 if an imminent hazard exists. Second, EPA has corrective action authorities under RCRA section 3008(h) at interim status facilities and under RCRA section 3004 (u) and (v) at permitted facilities. Third, RCRA section 3013 gives EPA authority to conduct investigations and studies at RCRA facilities and require the owner/operator to reimburse EPA for the costs. Although RCRA focuses on owner/operator liability, the Agency can take joint RCRA/CERCLA actions where appropriate (e.g., surface cleanups under RCRA, ground water cleanups under CERCLA section 106), making multiple party solutions feasible.

Under RCRA Subtitle C authorities, liability focuses on the owner/operator for cleanup of hazardous waste releases. However, if the owner/operator is unwilling or unable to carry out such action, EPA may decide to place the site on the NPL to allow Fund-financed cleanup. The Agency may then pursue cost recovery against the owner/operator and other Potentially Responsible Parties (PRPs).

Several commenters opposed transferring sites to RCRA because, they stated, CERCLA provides for more public participation. In addition, one commenter noted that Technical Assistance Grants (TAGs) and public hearing requirements available under Superfund are not available at sites being dropped from the NPL (53 FR 9741, March 24, 1988).

In response, although the process is somewhat different in the two statutes, public participation nevertheless plays an important role in reaching cleanup decisions under both. The commenter is correct in stating that, under CERCLA section 117(e)(1), a TAG is not available if a site is not on or proposed for the NPL. However, the RCRA program provides for significant public participation opportunities. When issuing a draft permit (or notice of intent to deny), the Agency gives public notice and allows 45 days for written comment. If interest is expressed, public hearings must be held. The Agency will also issue a fact sheet or a statement of basic about the permitting process that is taking place. Procedures for modifying permits at the remedy selection stage, for example, provide similar opportunities for public involvement.

Remedy selection through the permitting process offers public notice and comment opportunities like those in the development of a Superfund Record of Decision. Public participation requirements are also included in a RCRA corrective action order, the amount depending on the circumstances. At a minimum, the public has the opportunity to comment on the corrective measure EPA proposes; EPA considers and responds to all comments received on the corrective measure, and may change the corrective measure in response to public comment. Requirements for additional public involvement, such as public meetings, may be included in the order based on public interest.

VI.c. General Policy Comments/ Suggestions

Two commenters stated that to obtain maximum cleanup, EPA should use both RCRA and CERCLA authorities. The commenters believe there will be some instances when one law or the other will be more effective.

The Agency agrees. In general, the NPL/RCRA policy considers which authority is likely to most expeditiously accomplish cleanup, while using the Fund's limited resources as efficiently as possible. If a CERCLA section 106 enforcement action requiring cleanup has been initiated, and a RCRA permit is to be issued to the facility, the Agency may choose to continue these actions under CERCLA. In such cases, the CERCLA cleanup undertaken by the responsible parties would be considered in the RCRA permit proceedings, and the Agency would take steps to avoid inconsistent cleanup actions under RCRA sections 3004(u) at the affected portion of the facility.

One commenter argued that the use of RCRA or CERCLA should not depend upon the solvency of the owners or operators of a site.

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The Agency disagrees. RCRA Subtitle C authorities make owner/operators liable for cleanup of most hazardous waste releases. The Agency has simply decided, as a matter of policy, that where the owner/operator is unable to pay for cleanup (e.g., has invoked the protection of the bankruptcy laws), the Agency should list the RCRA-regulated facility and thereby make Superfund moneys available for possible remedial action.

A number of commenters suggested the Agency should defer the listing of RCRA facilities if corrective action is being implemented under other authorities, or is being pursued voluntarily by the owner/operator. Commenters stated that EPA should defer the listing of sites being addressed under CERCLA section 106 enforcement orders, or sites being addressed under State authorities (regardless of whether State programs are RCRA authorized). One commenter argued that listing RCRA sites already being addressed by State agencies discourages owner/operators from cooperating with State authorities since EPA may supplant State enforcement efforts. According to the commenter, for sites with well-advanced remedial action programs under State authorities, a shift to CERCLA would result in a delay and a duplication of effort.

In response, the Agency at present defers to a limited number of authorities, including RCRA Subtitle C. In the proposed revisions to the NCP, the Agency has solicited comment on a policy to expand deferral to include deferral to other Federal and State authorities (53 FR 51415, December 21, 1988); however, that policy is not currently in effect. The Agency has committed not to implement any part of the expanded deferral approach until the public and Congressional concerns have been fully reviewed and analyzed and a decision reached on whether or not to implement such a policy.

The Agency does not agree that its NPL/RCRA policy results in EPA supplanting State enforcement efforts. Before a CERCLA RI/FS is begun at a site (often after listing), a State or voluntary action may proceed unencumbered. Even after an RI/FS is underway, EPA may allow a PRP to go forward with voluntary or State-ordered remedial actions, pursuant to CERCLA section 122(e)(6) (see 54 FR 10520, March 13, 1989). Even if a PRP is not authorized to go forward with non-CERCLA remedial actions, the Agency will consider the work accomplished; thus, actions under State law will not have been wasted. However, if EPA finds that remedial action under CERCLA is still necessary, then the cleanup standards of CERCLA section 121 must be met.

Several commenters argued that shifts of responsibility from one program to the other (RCRA or CERCLA) may result in counterproductive changes in oversight personnel, duplication of administrative effort, and ultimately, delays in cleanup of sites. Commenters expressed particular concern about programmatic shifts at sites in the latter stages of a remedial effort, at sites undergoing an RI/FS, and at sites with multiple PRPs.

In response, the Agency generally prefers to apply RCRA authorities at RCRA sites, and has developed the NPL/RCRA policy to avoid duplication and delays. In addition, EPA will ensure that actions undertaken by one program will be adopted by the other program if programmatic responsibility shifts. One of the Agency's primary objectives in the development of the RCRA corrective action regulations is to achieve substantive consistency with the remedial program under CERCLA. CERCLA section 104 or section 106 enforcement orders for remedial activities can be referenced in a RCRA permit. In such cases, the Agency would take steps to avoid inconsistent cleanup actions under RCRA section 3004(u) at the affected portion of the facility.

At RCRA sites with many PRPs, EPA may choose to proceed with an enforcement action under CERCLA section 106. Even if the Agency proceeds against the owner/operator alone under RCRA, the owner/operator may seek to recover costs from other PRPs under CERCLA section 107(a)(4)(B); of course, to maintain such an action, the owner/operator would have to show that the costs incurred under RCRA were consistent with the National Contingency Plan.

A number of commenters stated that placing new categories of RCRA sites—such as converter sites—on the NPL will overburden CERCLA resources and increase the possibility that sites on the NPL will not be addressed expeditiously.

In response, after considering the potential impact the NPL/RCRA policy may have, the Agency concluded that the policy will not significantly impact the Trust Fund or jeopardize the timely cleanup of other sites on the NPL.

As noted above, the Agency will consider deferring converter sites if the new prioritizing initiative under RCRA results in their prompt consideration for RCRA corrective action. In addition, the Agency will consider deferring individual converter sites that have agreed to corrective action under a RCRA permit or order. Similarly, where it appears that certain late filers or pre-HSWA permittee sites will be cleaned up under RCRA, EPA will defer those sites. Finally, even where RCRA sites have been placed on the final NPL, the proposed revisions to the NCP consider deleting such sites for corrective action under RCRA in certain prescribed circumstances (see 53 FR 51421, December 21, 1988).

Two commenters opposed including new categories of RCRA sites in the NPL/RCRA policy. According to one commenter, EPA has departed from its established policy to place on the NPL only those RCRA sites where the owner/operator is unwilling or financially unable to implement the remedy. The commenter argues that EPA has improperly expanded the listing policy to include RCRA sites where RCRA will produce a cleanup. The commenter suggests making the categories no more than rebuttable presumptions for listing.

EPA disagrees with the commenter's suggestion that the Agency acted improperly. The NPL/RCRA policy is, as its name suggests, simply a general statement of policy, issued to advise the public of how the Agency intends to exercise a discretionary power. The Agency is free to decide to change that policy, as it did here, and advise the public of that change (53 FR 23978, June 24, 1988). Indeed, as with any policy, the Agency can exercise its discretion as to whether to apply the policy at all in specific cases (Davis, *Administrative Law Treatise*, section 7:5 (Supp. 1982)).

EPA's June 1988 decision to list—that is, not defer from listing—four new categories of RCRA sites was not inconsistent with the Agency's prior policy on the deferral and listing of RCRA sites; rather it was an expansion of the existing policy. Initially, the Agency decided to defer listing for sites already regulated under RCRA, in order to avoid duplicative actions, maximize the number of cleanups, and help preserve the Trust Fund. The Agency did, however, state that it would list RCRA sites if expeditious cleanup appeared to be unlikely under RCRA, such as when an owner/operator proved to be unwilling or unable to take corrective action EPA deemed necessary (51 FR 21057, June 10, 1986).

Over time, the Agency has developed more experience with the RCRA deferral program and with RCRA cleanups at sites deferred from the NPL. EPA has determined that prompt corrective action under RCRA is not likely when a RCRA owner/operator is unwilling or unable to pay, a protective filer, a non- or late filer, a converter, or a pre-HSWA permittee. Just as unwillingness is not a requirement for demonstrating inability, neither is it a requirement for demonstrating non-filer or converter status. The rationale for listing the new categories is to capture all potential types of sites that are unlikely to be cleaned up expeditiously under RCRA; the policy does not infer unwillingness on the part of the owner/operator. Converters, non- or late filers, and pre-HSWA permittees, while technically within RCRA jurisdiction, are not likely to be addressed promptly by RCRA. Non-filers generally remain outside the legal cognizance of RCRA, and therefore lack the institutional mechanisms necessary to assure prompt compliance with the standards and goals of RCRA. (If a non- or late filer comes within the RCRA system and demonstrates a history of compliance with RCRA regulations, the Agency may decide to defer listing). Converters, while within the legal purview of RCRA, are not routinely reviewed under Subtitle C because of the current priorities of the RCRA corrective action program. Finally, the Agency does not have the authority to modify pre-HSWA permits to include RCRA corrective action under RCRA section 3004(u) until the permit is reissued; therefore, it could be 1994 before the Agency could reissue some permits to include corrective action.

The Agency agrees with the commenter that RCRA sites may be listed under the new criteria even if there is no express finding of unwillingness. The new categories are not subsets of the unwillingness exception to the NPL/RCRA policy. Rather, these categories are situations where cleanups are not progressing expeditiously under RCRA, making it appropriate to provide the option of spending CERCLA funds for remedial action.

The commenter's suggestion that the four categories be made no more than "rebuttable presumptions" for listing is largely addressed by the policy. The Agency has stated that, in general, it will not defer non- or late filers, although it will consider deferring a site with a history of RCRA compliance such that the Agency has confidence that it will be addressed under RCRA. Similarly, RCRA sites with pre-HSWA permits will be deferred if the permittee agrees to reissuance of the permit, with corrective action provisions included. As for converters, EPA will consider deferring individual converter sites that have agreed to corrective action under a RCRA unilateral or consent corrective action order, and the Agency will reconsider its general policy for listing converters if it finds that converters are being addressed promptly under RCRA (53 FR 23961, June 24, 1988). The Agency does not have authority to compel RCRA corrective action in the case of protective filers.

One commenter requested adding a listing criterion for sites being addressed as part of a basin-wide scheme under CERCLA.

The response, EPA does not intend to add such a criterion. Under the present policy, the Agency has mechanisms for accomplishing comprehensive remedies at such sites without placing them on the NPL (not listing a site limits only the availability of Fund financing for remedial action). Area-wide contamination involving RCRA and CERCLA units may be addressed under: (1) an area-wide CERCLA section 106 order or (2) a hybrid of RCRA and CERCLA authorities, with RCRA addressing the surface cleanup of RCRA units, CERCLA addressing the surface cleanup of CERCLA units, and CERCLA addressing the cleanup of overlapping ground water contamination (with the RCRA owner/operator as a potentially responsible party). In either case, the Agency may also choose to do one comprehensive RI/FS study of the area under its CERCLA removal authority (54 FR 13298, March 31, 1989).

One commenter stated that the decision on which authority to use should be made after the site is placed on the final NPL. According to the commenter, placement of a site on the NPL does not bind either EPA or owner/operators and PRPs to address the site under RCRA or CERCLA, and allows EPA to use enforcement authorities RCRA does not have, if necessary.

In response, it is true that placing a site on the NPL does not force the Agency to use CERCLA authorities, or CERCLA authorities alone. The Agency is free to use CERCLA and/or any other authorities that apply to the site in question. The converse is also true—EPA can use CERCLA removal and enforcement authorities at NPL and non-NPL sites. The NPL serves primarily as a management tool for the Agency in setting priorities under CERCLA, especially for use of the Trust Fund. The NPL/RCRA policy is one tool in this prioritization process; its goal is to maximize the overall number of site cleanups by using RCRA corrective action authorities where available and likely to result in espeditious cleanup, thus preserving CERCLA resources for other sites. The Agency believes that RCRA owner/operators should finance cleanups at their facilities. If, however, the owner/operator is unwilling or unable to finance cleanup, or the facility is outside the RCRA regulatory system (a non-filer), the Agency has established criteria for the listing of these sites.

The commenter stated it would be poor policy to transfer sites from CERCLA to RCRA at the end of the Reagan Administration. The commenter believes the new Administration should reassess the policy.

In response, this rule has been reviewed by and signed by the current Administration. The NPL/RCRA policy is being continued, subject to periodic review.

VI.d. Non- or Late Filers

The commenter argued that the decision to list a non- or late filer should be based on the facility's history of compliance with RCRA. The commenter added that the Agency should assure that sites that filed a part A permit application late, or not at all, but that have subsequently made an effort to comply with RCRA regulations, will be deferred from the NPL. According to the commenter, potential buyers of non- or late filer facilities will be inhibited from buying these facilities (and cleaning them up) because of the possibility of listing.

In response, EPA deliberately stated that it "will consider" deferring certain non- or late filers, because the Agency does not wish to imply that deferral is automatic. The Agency will consider for deferral any non- or late filer facility that has come within the RCRA system and demonstrated a history of compliance with RCRA regulations. The Agency does not believe that its determination of the adequacy of a non- or late filer's effort to comply with RCRA regulations will inhibit a potential sale. A non- or late filer that complies with the appropriate RCRA regulations and actively pursues corrective action under RCRA (through a permit or order) will generally be seen as a good candidate for deferral.

The commenter stated that non- or late filing often results from ignorance of regulatory requirements, and that placing a site on the NPL should therefore be based on willingness, not history of RCRA compliance.

In response, non- or late filers are not subsets of the unwillingness exception to the RCRA deferral policy. Rather, the Agency has identified this and two other categories as situations where cleanups may not progress expeditiously under RCRA, and thus EPA wants the option of spending CERCLA funds for remedial action. The decision to add a non- or

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late filer site to the NPL is generally based on the fact that no timely permit application has been made, and thus adequate regulatory mechanisms (e.g., ground water monitoring programs, compliance inspections, and closure requirements) may not be in place to assure prompt compliance with the standards and goals of the RCRA program. Because of RCRA program priorities, the Agency may not always be able to immediately address a non- or late filer that is suddenly willing to be addressed under RCRA authorities. The Agency believes that in most cases it is in the best interest of environmental protection to make CERCLA funds available at such sites.

VI.e. Converters

One commenter supported the proposed policy to list converters but suggested that the policy should include facilities that submitted part A permit applications under RCRA and did not actively pursue part B permits and/or whose operations no longer demand a part B permit. The commenter refers to these sites as "de facto" converters and believes they should be treated the same as generators.

In response, converters are facilities that at one time treated or stored RCRA subtitle C hazardous waste but have since converted to generator-only status (i.e., facilities that now store hazardous waste for 90 days or less, an activity for which interim status is not required). The sites described by the commenter will be considered converters only if there is documentation of conversion and the Agency agrees that the sites are appropriate for the NPL.

The Agency does not believe that converters should receive the same treatment as generators with regard to the NPL. The Agency does not have corrective action authority under RCRA subtitle C to compel cleanup at generator-only facilities, and thus deferral to RCRA for corrective action would be inappropriate. By contrast, the Agency can, under subtitle C, compel corrective action at converter facilities; however, because of current priorities in the RCRA program, the Agency believes converter facilities should be placed on the NPL to ensure prompt corrective action.

Some of the facilities described by the commenter may also be protective filers; that is, they filed a Part A permit application as a precautionary measure only and did not pursue a Part B permit. If a facility did in fact file for interim status protectively, listing may be appropriate under this policy.

Several commenters suggested that the policy for listing converters unfairly penalizes owner/operators that take environmentally responsible actions to close waste handling activities and convert to generators status. The commenter stated that the policy would inhibit owner/operators from reducing their hazardous waste activities, because if they converted to generator status they might be placed on the NPL as a converter.

In response, the Agency does not list a RCRA site solely on the basis of a its decision to discontinue treatment or storage activities. A site must receive an HRS score equal to or higher than the cutoff score to be placed on the NPL. The Agency believes it unlikely that, to avoid listing, a facility owner/operator would choose to retain treatment or storage status, which means the site remains subject to all RCRA requirements, including cleanup under RCRA corrective action authorities. In addition, it is unlikely and owner/operator will incur the cost of RCRA permitting and/or oversight merely to avoid listing. Finally, if a converter agrees to corrective action under RCRA, the Agency will generally defer the listing of such a site.

One commenter opposed the listing of converters, arguing that the Agency should use RCRA section 3008(h) corrective action authorities at such facilities. According to the commenter, the RCRA program should prioritize and allocate its resources to address any sites, including converters, that may need corrective action.

The Agency believes that under RCRA section 3008(h) it can compel corrective action at converter facilities. Nonetheless, the Agency has decided, as a matter of policy, to list converters since EPA has not routinely reviewed converters under RCRA subtitle C, and the Agency believes it can ensure expeditious remedial action at these sites if they are placed on the NPL. The EPA is currently prioritizing RCRA facilities for corrective action. If the Agency determines that converter sites will be addressed in an expeditious manner by RCRA authorities, then it will reconsider the policty to list converters.

Moreover, where a converter has agreed to corrective action such as under a RCRA section 3008(h) order, the Agency will generally defer listing such sites and allow RCRA to continue to address the contamination problems at the site.

VI.f. Protective Filers

Two commenters agreed with EPA's conclusion that the Agency does not have the authority to compel cleanup of protective filers under RCRA subtitle C corrective action authorities. One commenter suggested RCRA section 7003 authorities as an alternative to CERCLA authorities when an "imminent and substantial endangerment" exists.

In response, since the beginning of the NPL, EPA's clear policy has been to defer the listing of RCRA sites where the regulatory authorities of RCRA subtitle C apply. For example, on September 8, 1983 (48 FR 40662), the Agency stated: "where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL" (48 FR 40662). The Agency explained that the Hazardous Waste Management Regulations (40 CFR 260–265) give EPA and the states authority to control sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for post-closure plans and financial responsibility.

The passage of HSWA, in 1984, expanded RCRA's corrective action authorities under subtitle C even further, and the scope of the RCRA deferral policy was corespondingly expanded. The deferral policy was thus based on a determination that in most cases, hazardous waste treatment, storage and disposal facilities would be managed and permitted (or closed) under an on-going RCRA regulatory system, and that in most appropriate cases, contamination would be cleaned up.

EPA did not, in its NPL/RCRA policy, propose to defer sites if a RCRA section 70003 enforcement action could potentially be taken. Unlike the provisions of RCRA subtitle C, which set up an on-going program for the management of hazarous wastes, section 7003 provides authority for the Agency to take enforcement actions in extraordinary cases where "the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent or substantial endangerment to health or the environment." Although limited to cases involving imminent and substantial endangerment, section 7003 is sweeping at the same time. It applies to past RCRA owners as well as present owner/operators, and it applies to all facilities that handle "solid" (nonhazardous) wastes; solid waste facilities are not required to have RCRA subtitle C permits or interim status. EPA has determined that it would not be appropriate to defer listing RCRA sites (and solid waste sites) to section 7003 simply because that section might provide a means of addressing contamination problems. Rather, EPA has limited deferral to cases where the subtitle C regulatory program is in place, and prompt corrective action appears likely.

VI.g. Pre-HSWA Permittees

Several commenters opposed listing pre-HSWA permittees because they believe Congress intended that pre-HSWA permitted facilities be addressed under RCRA. The commenters stated that EPA has authority under RCRA section 3005(c)(3) to modify a permit at any time to comply with currently applicable RCRA regulations, including corrective action, and under RCRA section 7003 to require cleanup if an "imminent and substantial endangerment" exists. The commenters believe that listing pre-HSWA permittees would circumvent Congressional intent and burden Superfund. One commenter added that the Agency's requirement that a facility with a final RCRA permit "consent" to a modification of its pre-HSWA permit, including corrective action requirements to avoid listing, consitutes an abuse of Agency authority.

In response, RCRA section 3005(c)(3), which states "Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term," merely preserved preexisting authority to modify permits. However, facility-wide corrective action at RCRA facilities applies only when the permit is issued or reissued. Section 3004(u), the facility-wide corrective action authority, requires such corrective action only for permits "issued" after 1984. Under EPA regulations, a "modification" is significantly different from a permit issuance. Modification of a pre-HSWA permit does not trigger 3004(u) corrective action; the permit must be reissued to include facility-wide corrective action.

Because the Agency lacks authority to address pre-HSWA permittees through RCRA section 3004(u) until permit reissuance, there is no immediate mechanism to require corrective action at pre-HSWA permitted facilities. As EPA explained on June 24, 1988 (53 FR 23978), many pre-HSWA permits were issued for 10 years, and the last pre-HSWA permit was issued in 1984. Thus, it could be 1994 before the Agency can reissue all pre-HSWA permits to include facility-wide corrective action. The Agency is proposing that facilities with pre-HSWA permits be considered for the NPL in order to assure expeditious corrective action at the site.

The Agency disagrees that allowing a pre-HSWA permittee to consent to modification of its permit rather than to be placed on the NPL is an "abuse of authority." Allowing a pre-HSWA permittee to consent to reissuance of its pre-HSWA permit to include 3004(u) corrective action rather than be placed on the NPL gives the opportunity to clean up under RCRA if the permittee chooses to do so.

VI.h. Application Of Unwillingness Policy

Several commenters asserted that sites proposed for the NPL based on the case-by-case unwillingness criteria of June 10, 1986 (51 FR 21057) should be re-examined under the revised criteria of August 9, 1988 (53 FR 30005).

In response, the Agency specifically stated that the new criteria should be applied prospectively only, and that it would be unnecessary and inappropriate to devote CERCLA resources to an additional review of unwillingness determinations that were properly made under a case-by-case determination (53 FR 30007).

Prior to the August 1988 policy, EPA listed RCRA sites as "unwilling" after a detailed case-by-case review that required considerable time and resources, and generated long support documents. To simplify the process and make it easier to understand, the Agency laid out objective criteria that would be simple to apply (53 FR 30005, August 9, 1988). In doing so, the Agency was not suggesting that prior determinations were somehow insufficient or incorrect; indeed, EPA believes that its case-by-case determinations were appropriate, and fully in line with the goals of the NPL/RCRA policy. Rather, the new criteria reflect an effort to replace the flexible and case-specific requirements of the past with more standardized documentation requirements in the future; the substantive goals of the policy are not changed. Thus, the issuance of the new standardized criteria for the future did not warrant a reassesement of sites already proposed for the NPL based on thorough, past unwillingness determinations.

The Agency chose to apply the new criteria prospectively to give EPA Regions and States enough lead time to understand the new requirements and prepare appropriate listing packages. For instance, the Regions or States may issue a specific RCRA corrective action order to demonstrate unwillingness even if other indicators of unwillingness are available. Applying the new criteria to already-proposed sites might require issuing additional orders fruitlessly if the owner/operator has already shown unwillingness, and listing would be significantly delayed, contrary to Congressional intent that EPA expeditiously list sites.

In any event, listing does not mean that remedial action will be taken; it only makes the site eligible for Fund-financed remedial action, should that prove necessary. Thus, the significance of the listing decision is limited. As the U.S. Court of Appeals for the D.C. Circuit noted in *City of Stoughton, Wisconsin* v. *EPA*, "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." (858 F.2d 747, 751 (D.C. Cir. 1988)). It is both reasonable and appropriate for EPA to limit the resources it expends on the determination of which of its statutues—RCRA or CERCLA—should have primary responsibility for securing needed corrective action.

One commenter suggested that the unwillingness policy rewards recalcitrance under RCRA, since if the owner/operator ignores RCRA obligations, and the site is placed on the NPL, EPA will find PRPs and engage in cost recovery efforts. The unwilling owner/operator has fewer transactional and administrative costs and a smaller share of cleanup costs.

In response, the Agency believes it is not advantageous for owner/operators to ignore their RCRA obligations. If an owner/operator does not comply with RCRA regulations, the Agency can pursue both RCRA and CERCLA enforcement authorities. RCRA corrective action orders can contain penalties of up to $25,000 per day of noncompliance and can result in a suspension or revocation of the facility's permit or interim status. EPA can also use CERCLA section 106 authorities and subsequently recover any cost incurred. EPA does not believe the policy rewards recalcitrance; the policy is designed to provide a framework for most effectively addressing releases that may affect public health and the environment.

One commenter believes that sites where owner/operators show unwillingness to cooperate with State-issued cleanup orders, actions, or permit conditions should be listed.

EPA agrees. The Agency's stated policy is list RCRA sites where the owner/operator has been found to be unwilling to perform corrective action. The August 9, 1988 (53 FR 30005) policy statement includes certain objective criteria (for prospective application) for determining unwillingness by RCRA owner/operators. The policy generally defines unwillingness as noncompliance with corrective actions directed by a

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State or Federal authority pursuant to a RCRA order or permit, an administrative or judicial order, or a consent decree.

VII. Disposition of Sites in Today's Final Rule

This final rule adds 23 sites to the final NPL; a list of these sites is at the end of this rule. This rule also drops 27 sites from the proposed NPL (Table 1). The June 24, 1988 notice addressed 39 of these sites, which were originally proposed in the following NPL updates:

- Update #1 (48 FR 40674, September 8, 1983)
- Update #2 (49 FR 40320, October 15, 1984)
- Update #3 (50 FR 14115, April 10, 1985)
- Update #4 (50 FR 37950, September 18, 1985)

The remaining 11 sites were proposed in NPL Update #7 (53 FR 23988, June 24, 1988) and Update #8 (54 FR 19526, May 5, 1989), based on the NPL/RCRA policy. Nine of the proposed Update #7 sites received no comments and are being listed; one of the proposed Update #7 sites is being dropped because it is no longer bankrupt and therefore, no longer meets the criteria for listing under the NPL/RCA policy. One of the Update #8 sites received no comments and is being listed. EPA has not reached a decision on four other sites that were proposed to be dropped from the NPL on June 24, 1988. These sites will remain proposed for the NPL. They are:

- Fairchild Semiconductor Corp., (Mountain View Plant), Mountain View, CA
- Chemplex Co., Clinton/Camanche, IA
- Findett Corp., St. Charles, MO
- Burlington Northern Railroad (Somers Tie-Treating Plant), Somers, MT

All comments submitted after the close of the comment periods associated with the rules proposing these sites were considered for this final rule. EPA has revised the HRS scores for 5 sites based on its review of comments and additional information developed by EPA and the States (Table 2). None of the score changes has resulted in scores below the cut-off of 28.5. Some of the changes have placed the sites in different groups of 50 sites. The Agency's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List—Final Rule Covering Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act, October, 1989."

TABLE 1.—RCRA SITES DROPPED FROM PROPOSED NPL

State/Site name	Location	Date proposed
CA: FMC Corp. (Fresno Plant)	Fresno	10/15/84
CA: Hewlett-Packard	Palo Alto	10/15/84
CA: IBM Corp. (San Jose Plant)	San Jose	10/15/84
CA: Kaiser Steel Corp. (Fontana Plant)	Fontana	06/24/88
CA: Marley Cooling Tower Co	Stockton	10/15/84
CA: Rhone-Poulenc, Inc./Zoecon Corp	East Palo Alto	10/15/84
CA: Signetics, Inc	Sunnyvale	10/15/84
CA: Southern Pacific Transportation Co	Roseville	10/15/84
CA: Van Waters & Rogers Inc	San Jose	10/15/84
CO: Martin Marietta (Denver Aerospace)	Waterton	09/18/85
FL: Pratt & Whitney Aircraft/United Technologies Corp	West Palm Beach	09/18/85
GA: Olin Corp. (Areas 1, 2 & 4)	Augusta	09/08/83
IA: A.Y. McDonald Industries, Inc	Dubuque	09/18/85
IA: Frit Industries (Humboldt Plant)	Humboldt	04/10/85
IA: John Deere (Dubuque Works)	Dubuque	09/18/85
IA: U.S. Nameplate Co	Mount Vernon	10/15/84
IL: Sheffield (U.S. Ecology, Inc.)	Sheffield	10/15/84
IN: Firestone Industrial Products Co	Noblesville	09/18/85
KS: National Industrial Environmental Services	Furley	10/15/84
MI: Hooker (Montague Plant)	Montague	09/18/85
MI: Lacks Industries, Inc	Grand Rapids	10/15/84
NE: Monroe Auto Equipment Co	Cozad	09/18/85
NJ: Matlack, Inc	Woolwich Township	09/18/85
OH: General Electric Co. (Coshocton Plant)	Coshocton	10/15/84
PA: Rohm & Haas Co. Landfill	Bristol Township	04/10/85
VA: IBM Corp. (Manassas Plant Spill)	Manassas	10/15/84
WV: Mobay Chemical Corp. (New Martinsville Plant)	New Martinsville	10/15/84

TABLE 2.—SITES WITH HRS SCORE CHANGES

State/Site name	City/County	Proposed	Final
CA: Fairchild Semiconductor (South San Jose)	San Jose	37.79	44.46
IN: Prestolite Battery Division	Vincennes	37.54	40.63
ME: Union Chemical Co., Inc	South Hope	30.78	32.11
MO: Conservation Chemical Co	Kansas City	29.99	29.85
NC: National Starch & Chemical Corp	Salisbury	31.94	46.51

VIII. Disposition of all Proposed Sites/ Federal Facility Sites

To date, EPA has proposed nine major updates to the NPL, as well as a special update of two sites. A total of 213 sites remain proposed (Table 3). At this time, 150 sites and 63 Federal facility sites continue to be proposed pending completion of response to comments, resolution of technical issues, and various policy issues.

All sites that remain proposed will be considered for future final rules. Although EPA has in the past considered late comments on proposed sites to the extent practicable, it may not be able to do so in the future.

TABLE 3.—NPL PROPOSALS

Update No.	Date/Federal Register Citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1	9/8/83; 48 FR 40674	132/1	1/0
2	10/15/84; 49 FR 40320	208/36	17/3
3	4/10/85; 50 FR 14115	26/6	0/1
4	9/18/85; 50 FR 37950	38/3	1/2
5	6/10/86; 51 FR 21099	43/2	8/0
6	1/22/87; 52 FR 2492	63/1	13/0
7	6/24/88; 53 FR 23988	215/14	103/5
8	5/5/89; 54 FR 19526	10/0	5/0
9	7/14/89; 54 FR 29820	0/52	0/52
ATSDR	8/16/89; 54 FR 33846	2/0	2/0
Total		735/115	150/63

IX. Contents of the NPL

The NPL, with the Federal facility sites in a separate section, appears as Appendix B to the NCP at the end of the other final rule appearing in today's **Federal Register.** Sites on the NPL are arranged according to their HRS scores. The 23 new sites added to the NPL in today's rule have been incorporated into the NPL in order of their HRS scores, except where EPA modified the order to reflect top priorities designated by the States, as discussed in section III of this rule.

The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site—the Lansdowne Radiation site in Lansdowne, PA—was placed on the NPL because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score of less than 28.50, and appears at the end of the list.

Each entry on the new NPL and Federal section contains the name of the facility and the State and city or county in which it is located. In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. In the interim, information on activities at the new proposed sites is available upon request to the appropriate Regional Office.

X. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the following: the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP, the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985), and the economic analysis prepared for the NCP proposed revisions of December 21, 1988 (53 FR 51471). The Agency believes the anticipated economic effects related to adding 23 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as requested by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any section by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/ feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is

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wide variation in costs for individual sites, depending on the amount, type, and extend of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [a]
RI/FS	1,100,000
Remedial design	750,000
Remedial action	[b] 13,500,000
Net present value of O&M [c]	3,770,000

[a] 1988 U.S. dollars.
[b] Includes State cost-share.
[c] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs to privately-owned sites and sites which are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period for participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $59 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25 percent of sites. Using this estimate, State O&M costs would be approximately $66 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

XI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impact of this action on small entities or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impact from the listing of these 23 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 26, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste & Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. Appendix B of part 300 is amended by the addition of the sites in the following list. Appendix B is revised elsewhere in today's **Federal Register.**

NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989

NPL Group [1]	NPL Rank	State	Site Name	City/County
2	60	NJ	Brook Industrial Park	Bound Brook
3	138	CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin
5	224	NE	Lindsay Manufacturing Co	Lindsay
6	257	NC	National Starch & Chemical Corp	Salisbury
6	278	VA	Culpeper Wood Preservers, Inc	Culpeper
7	310	CA	Fairchild Semiconducts (S. San Jose)	South San Jose
7	315	NY	Tri-Cities Barrel Co., Inc	Port Crane
8	365	IA	Electro-Coatings, Inc	Cedar Rapids
9	420	AZ	Motorola, Inc. (52nd Street Plant)	Phoenix
9	424	VA	Buckingham County Landfill	Buckingham
9	429	IN	Prestolite Battery Division	Vincennes
13	639	CA	J.H. Baxter & Co	Weed
14	661	IL	Ilada Energy Co	East Cape Girardeau
14	664	TX	Dixie Oil Processors, Inc	Friendswood
14	678	MI	Kysor Industrial Corp	Cadillac
14	679	CA	Lorentz Barrel & Drum Co	San Jose
16	760	ME	Union Chemical Co., Inc	South Hope
16	765	PA	Recticon/Allied Steel Corp	East Coventry Twp
16	772	FL	City Industries, Inc	Orlando
16	796	NC	Bernfield Industries, Inc	Hazelwood
17	850	WA	American Crossarm & Conduit Co	Chehalis
18	861	GA	Marzone Inc./Chevron Chemical Co	Tifton
18	876	MO	Conservation Chemical Co	Kansas City

[1] State top priority site.
[1] Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Sites: 23.

[FR Doc. 89-23338 filed 10-3-89; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 3655-6]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Rule 10/04/89

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 70 sites, including 11 Federal facility sites. Based on a review of public comments on these sites, EPA has decided that they meet the eligibility requirements of the NPL and are consistent with the Agency's listing policies. In addition, today's action removes four sites from the proposed NPL. Information supporting these actions is contained in the Superfund Public Dockets.

Elsewhere in this **Federal Register** is another final rule that adds 23 sites to the NPL that meet EPA's eligibility requirements and listing policies and removes 27 sites from the proposed NPL that do not, at this time, appear to come within the categories of Resource Conservation and Recovery Act ("RCRA") facilities that EPA considers appropriate for the NPL.

These two rules result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are proposed to the NPL, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 3, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha* 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register.**

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see Section I of the "Supplementary Information" portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580

Gayle Alston, Region 4, U.S. EPA Library, Room C-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216

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Brenda Ward, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828
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Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082
David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103

FOR FURTHER INFORMATION CONTACT:
Robert Myers, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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IX. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until EPA has reviewed public comment and the proposed revisions have been put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criterion, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded, most recently on March 31, 1989 (54 FR 13296). The Agency has also published a number of proposed rulemakings to add sites to the NPL, most recently a special update of two sites on August 16, 1989 (54 FR 33846).

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 28 sites from the final NPL, most recently on September 22, 1989 (54 FR 38994), when Cecil Lindsey, Newport, Arkansas, was deleted.

This rule adds 70 sites, including 11 Federal facility sites, to the NPL. EPA has carefully considered public comments submitted for the sites in today's final rule and has made some modifications in response to those comments. This rule and the additional final rule published elsewhere in today's Federal Register result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are in proposed status, 63 of them in the Federal section. In addition, 31 sites are being dropped from the proposed NPL in the two rules. With these changes, final and proposed sites now total 1,194.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases", "facilities", or "sites".

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m, Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains HRS score sheets for each final site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by special study waste or other requirements, or Resource Conservation and Recovery Act or other listing policies; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List—Final Rule 10/04/89."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator. It does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65-67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat posed by the release or threatened release. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher-scoring sites are later added to the NPL.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *" The definition of "removal" also includes "action taken under Section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The Agency has received a number of inquiries concerning whether EPA could (or would) revise NPL site boundaries. The issue frequently arises where a landowner seeks to sell an allegedly uncontaminated portion of an NPL site. The Agency's position is that it is neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for the Agency to describe precise boundaries of releases.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the

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boundaries of such facilities or releases.[1] Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL release would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, *see* FR 40663 (September 8, 1983)).

Because the Agency does not formally define the geographic extent of releases (or sites) at the time of listing, there is no administrative process to "delist" allegedly uncontaminated areas of an NPL site (or to expand sites to follow the contamination where it has come to be located).[2] Such a process would be time-consuming, subject to constant re-verification, and wasteful of resources. Further, the NPL is only of limited significance, as it does not assign liability to any party. *See* Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). However, this inquiry focuses on an evaluation of the *threat* posed; it is not a requirement to define the boundaries of the release, and in any event is independent of the NPL listing. Moreover, it is generally impossible to discover the full extent of where the contamination "has come to be located" prior to completion of all necessary studies *and* remedial work at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

At the same time, however, the Agency notes that the RI/FS or Record of Decision (ROD) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, *based on information known at that time.* For example, EPA may evaluate (and list) a release over a 400-acre area, but the ROD may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) should also note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process * * * [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.
>
> 49 FR 37081 (September 21, 1984).[3]

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presening the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All of the sites in today's final rule have been placed on the NPL based on their HRS scores.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

[1] Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as the highest priority "facilities.") (For ease of reference, EPA also uses the term "Site" interchangeably with "release" and "facility.")

[2] The Agency has already discussed its authority to follow contamination as far as it goes, and then to consider the release or facility for response purposes to be the entire area where the hazardous substances have come to be located. 54 FR 13298 (March 31, 1989).

[3] See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries v. EPA] II*, 759 F. 2d [921,] at 932 [(D.C. Cir. 1985)].

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites deferred as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The Agency has solicited comment on a policy to expand deferral to other Federal and State authorities (53 FR 51415, December 21, 1988); however, that policy is not currently in effect and has not been applied to sites in this rule. The Agency has committed not to implement any part of an expanded deferral policy until public and Congressional concerns have been fully reviewed and analyzed, and a decision reached on whether or not to implement such a policy.

The listing policies and statutory requirements of relevance to this final rule cover Resource Conservation and Recovery Act (RCRA) (U.S.C. 6901–6991i) sites, Federal facility sites, sites with "special study wastes," and mining waste sites, and are discussed below. These and other listing policies and statutory requirements have been explained in previous rulemakings, the latest being March 31, 1989 (54 FR 13296).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

On June 10, 1986 (51 FR 21054), EPA announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to RCRA Subtitle C corrective action authorities. Under the policy, sites not subject to RCRA Subtitle C corrective action authorities will continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.
- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators of transporters, which are not required to have Interim Status or a final RCRA permit.

Further, the policy stated that certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criterion for listing (i.e., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance corrective action as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

On August 9, 1988 (53 FR 30005), EPA announced a policy for determining whether RCRA facilities are unwilling to perform corrective actions, and therefore should be proposed to the NPL. Additionally, on August 9, 1988 (53 FR 30002), EPA requested comment on a draft policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site; that draft policy is still under review.

On June 24, 1988 (53 FR 23978), EPA announced its intent to list RCRA sites in several other categories which the Agency considers appropriate for the NPL. These categories are non- or late filers, converters, protective filers, and sites holding RCRA permits issued before enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Consistent with this policy, 23 sites in these categories are being placed on the final NPL in a rule appearing elsewhere in today's Federal Register.

In this final rule, EPA is adding to the NPL four sites that are subject to RCRA Subtitle C corrective action authorities. These sites are not appropriate for deferral under the NPL/RCRA deferral policy because either the site owners are unable to finance corrective action, as evidenced by their invocation of the bankruptcy laws, or the sites are converters (i.e., their Part A permits have been withdrawn).

Releases from Federal Facility Sites

On June 10, 1986 (51 FR 21054), the Agency announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to the RCRA Subtitle C corrective action authorities. The policy was intended to reflect RCRA's broadened corrective action authorities as a result of HSWA. In announcing the RCRA policy, the Agency reserved for a later date the question of whether this or another policy would be applied to Federal facility sites that include one or more RCRA hazardous waste management units, and thus are subject to RCRA Subtitle C corrective action authorities.

The Agency interprets SARA and its legislative history to indicate that Congress clearly intended that Federal facilities be placed on the NPL if they meet the prescribed eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility is also subject to the corrective action authorities of RCRA Subtitle C. In that way, cleanup, if appropriate, could be effected at those sites under CERCLA. The Agency's statement of this policy,

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and the reasons behind it, are fully discussed at 54 FR 10520 (March 13, 1989). Thus, the June 10, 1986 RCRA deferral policy (51 FR 21057) applicable to private sites is not applicable to Federal facility sites.

Federal facility sites are placed in a separate section of the NPL. This rule adds 11 Federal facility sites to the final NPL, bringing the total number of final Federal facility sites to 52. Currently, 63 Federal facility sites are proposed to the NPL.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires EPA to consider certain factors before adding sites involving RCRA "special study wastes" to the NPL. Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dusts]. Before these sites can be added to the NPL, section 105(g) requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from, the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

This final rule includes five sites containing or potentially containing special study wastes subject to the provisions of section 105(g). EPA has placed in the dockets addenda that evaluate for each site the information called for in section 105(g). The addenda indicate the special study wastes present a threat to human health and the environment, and that the sites should be added to the NPL.

CERCLA section 125, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to section 125.

Releases from Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc.* v. *EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

In addition, Agency policy statements regarding including mining sites on the NPL are located at 53 FR 23988, 23993 (June 24, 1988); 54 FR 10512, 10514–16 (March 13, 1989); 54 FR 13296, 13300–01, 13302–03 (March 31, 1989). The Agency is including three mining sites in today's final rule.

V. Disposition of Sites in Today's Final Rule

This final rule promulgates 70 sites (Table 1) and drops 4 sites from several proposed rulemakings. These 74 sites are from the following proposed updates:

- Update #2 (49 FR 40320, October 15, 1984): 2 sites.
- Update #3 (50 FR 14115, April 10, 1985): 1 site.
- Update #5 (51 FR 21099, June 10, 1986): 6 sites.
- Update #6 (52 FR 2492, January 22, 1987): 14 sites.
- Update #7 (53 FR 23988, June 24, 1988): 47 sites.
- Update #8 (54 FR 19526, May 5, 1989): 4 sites.

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989

	NPL Group [1] Rank	State	Site Name	City/County
1	44	PA	Publicker Industries Inc	Philadelphia
2	70	WA	General Electric (Spokane Shop)	Spokane
3	129	PA	Raymark	Hatboro
4	164	ID	Kerr-McGee Chemical (Soda Springs)	Soda Springs
4	190	IL	Woodstock Municipal Landfill	Woodstock
4	199	CT	Precision Plating Corp	Vernon
5	214	MO	Wheeling Disposal Service Co. Lf	Amazonia
6	256	PA	Tonolli Corp	Nesquehoning
6	265	CT	Gallup's Quarry	Plainfield
6	271	PA	Berks Landfill	Spring Township
6	274	CA	Pacific Coast Pipe Lines	Fillmore
6	277	PA	Occidental Chem/Firestone Tire	Lower Pottsgrove Township
6	297	FL	Agrico Chemical Co	Pensacola
7	318	VT	Darling Hill Dump	Lyndon
7	334	PA	River Road Lf/Waste Mngmnt, Inc	Hermitage
7	343	FL	Standard Auto Bumper Corp	Hialeah
8	363	PA	A.I.W. Frank/Mid-County Mustang	Exton
8	366	PA	Commodore Semiconductor Group	Lower Providence Township
8	368	IL	Lenz Oil Service, Inc	Lemont
8	371	PA	Novak Sanitary Landfill	South Whitehall Township
8	375	NJ	South Jersey Clothing Co	Minotola
8	381	MI	Barrels, Inc	Lansing
8	400	VT	BFI Sanitary Landfill (Rockingham)	Rockingham
9	434	PA	Jacks Creek/Sitkin Smelting & Ref	Maitland
10	469	PA	AMP, Inc. (Glen Rock Facility)	Glen Rock
10	470	NC	JFD Electronics/Channel Master	Oxford

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989—Continued

	NPL Group [1] Rank	State	Site Name	City/County
10	473	FL	Sydney Mine Sludge Ponds	Brandon
10	474	NM	Cimarron Mining Corp	Carrizozo
10	489	MO	St Louis Airport/HIS/Fut Coatings	St. Louis County
10	497	RI	Rose Hill Regional Landfill	South Kingstown
11	504	CT	Barkhamsted-New Hartford Landfill	Barkhamsted
11	513	FL	Chemform, Inc	Pompano Beach
11	516	SC	Lexington County Landfill Area	Cayce
11	519	UT	Utah Power&Light/American Barrel	Salt Lake City
11	546	VA	Saunders Supply Co	Chuckatuck
12	553	SC	Rochester Property	Travelers Rest
12	574	VT	Tansitor Electronics, Inc	Bennington
12	585	DE	Dover Gas Light Co	Dover
12	590	PA	North Penn—Area 2	Hatfield
12	596	NM	Pagano Salvage	Los Lunas
13	601	CA	Fresno Municipal Sanitary Landfill	Fresno
13	615	CA	Jasco Chemical Corp	Mountain View
13	619	VA	Dixie Caverns County Landfill	Salem
13	635	PA	Bell Landfill	Terry Township
14	662	WI	Sauk County Landfill	Excelsior
14	677	CT	Durham Meadows	Durham
14	687	MO	Kem-Pest Laboratories	Cape Girardeau
14	696	MI	Albion-Sheridan Township Landfill	Albion
15	736	NC	Geigy Chemical Corp (Aberdeen Plt)	Aberdeen
16	752	LA	D.L. Mud, Inc	Abbeville
16	762	CA	Montrose Chemical Corp	Torrance
16	785	CA	Synertek, Inc. (Building 1)	Santa Clara
16	793	FL	Wingate Road Munic Incinerat Dump	Fort Lauderdale
17	822	PA	Eastern Diversified Metals	Hometown
17	840	NJ	Witco Chemical Corp. (Oakland Plt)	Oakland
18	870	GA	Firestone Tire (Albany Plant)	Albany
18	889	TN	Mallory Capacitor Co	Waynesboro
19	910	DE	Sussex County Landfill No. 5	Laurel
19	927	PA	CryoChem, Inc	Worman

* State top priority site.
[1] Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Sites: 59.

NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, NEW FINAL (BY GROUP), OCTOBER 1989

NPL Group [1]	State	Site Name	City/County
1	WA	Hanford 200-Area (USDOE)	Benton County
1	WA	Hanford 300-Area (USDOE)	Benton County
1	CO	Rocky Flats Plant (USDOE)	Golden
2	PA	Naval Air Develop Center (8 Areas)	Warminster Township
2	OH	Wright-Patterson Air Force Base	Dayton
6	WA	Hanford 100-Area (USDOE)	Benton County
12	WA	Hanford 1100-Area (USDOE)	Benton County
14	PR	Naval Security Group Activity	Sabana Seca
15	WA	Naval Undersea Warf Sta (4 Areas)	Keyport
15	NC	Camp Lejeune Military Reservation	Onslow County
17	MD	Aber Prov Ground-Michaelsville Lf	Aberdeen

* State top priority site.
[1] Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Federal Facility Sites: 11.

EPA read all comments received on these sites, including late comments. In past rules, EPA responded even to late comments. However, given the volume and number of late comments received and the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect, EPA was not able to respond to all late comments received for sites in this rule. EPA has responded (in the Support Document) to those comments received no later than October 31, 1988 for all sites included in this final rule which were proposed in Updates #2, 3, 5, 6, and 7, and to those comments received no later than September 12, 1989 for sites in this final rule which were proposed in Update #8. (EPA had previously indicated at the time of proposal of Update #7 and Update #8 that it may no longer be able to consider late comments (53 FR 23990, June 24, 1988 and 54 FR 19527, May 5, 1989)).

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Although EPA has not responded to all late comments, it has read all late comments, and has endeavored to respond in the Support Document to those late comments which bring to the Agency's attention a fundamental error in the scoring of a site. In addition, the Agency has routinely responded to late comments that result from EPA correspondence which provided commenters with more recent data or requested that the commenters be more specific in their comments.

Based on the comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. Where the public comments or additional information dropped a score below 28.50, the site has been removed from the NPL. EPA did not spend the additional resources to determine a new score for dropped sites; once the data indicated that a score would fall below 28.50, and no new information or comments suggested a higher score, EPA ceased the time-consuming process of evaluating the comments in detail and of rescoring the site. Rather, EPA has simply provided the rationale for its decision to drop each applicable site. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List—Final Rule 10/04/89."

Resource Conservation and Recovery Act (RCRA) Sites

Four sites are subject to Subtitle C corrective action authorities, but either the site owner has invoked the protection of the bankruptcy laws, or the part A permit has been withdrawn (converter status). The sites are being added to the final NPL consistent with the NPL/RCRA listing policy:

- Firestone Tire and Rubber Co. (Albany Plant), Albany, GA (converter)
- Lenz Oil Service, Inc., Lemont, IL (bankruptcy)
- AMP, Inc., (Glen Rock Facility), Glen Rock, PA (converter)
- Tonolli Corp., Nesquehoning, PA (bankruptcy)

Federal Facility Sites

There are 11 Federal facility sites being added to the NPL (Table 1).

Special Study Waste Sites

Five sites containing or possibly containing special study wastes are being added to the NPL in this rule. The sites and the special study wastes are:

- Dover Gas Light Co., Dover, DE (coal tar)
- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, ID (mining wastes)
- D.L. Mud, Inc., Abbeville, LA (oil drilling mud and produced waters)
- Cimarron Mining Corp., Carrizozo, NM (mining wastes)
- Jacks Creek/Sitkin Smelting and Refining, Inc., Maitland, PA (mining wastes)

Mining Sites

Three noncoal mining sites are being added to the NPL in this final rule:

- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, ID
- Cimarron Mining Corp., Carrizozo, NM
- Jacks Creek/Sitkin Smelting and Refining, Inc., Maitland, PA

EPA has examined whether these mining sites might be satisfactorily addressed using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Cimarron Mining Corp. operated after the August 7, 1977 SMCRA enactment date, and therefore is not eligible for SMCRA AMLR funds. The Kerr-McGee (Soda Springs Plant) site is located in Idaho, which does not have an AMLR program. The other site, Jacks Creek/Sitkin Smelting and Refining, Inc., was abandoned prior to the enactment date of SMCRA. Since Pennsylvania has an approved AMLR program, the site is potentially eligible for SMCRA funds. However, available information suggests the site will not be addressed under SMCRA in the foreseeable future. Information outlining the State's position on use of AMLR funds at the site is available in the docket.

Score Revisions

EPA has revised the HRS scores for 19 sites based on its review of comments and additional information developed by EPA and the States (Table 2). Some of the changes have placed the sites in different groups of 50 sites. For four of these sites, the public comments and/or additional information have resulted in scores below the cut-off of 28.50. Accordingly, these four sites are being dropped from the proposed NPL at this time.

- GBF Inc. Dump, Antioch, CA
- Pigeon Point Landfill, New Castle, DE
- Stauffer Chemical Co. (Chicago Heights Plant), Chicago Heights, IL
- McCarty's Bald Knob Landfill, Mt. Vernon, IN

TABLE 2.—SITES WITH HRS SCORE CHANGES

State/Site Name	Location	HRS Score [1]	
		Proposed	Final
CA: GBF, Inc., Dump	Antioch	32.04	*
CA: Montrose Chemical Corp	Torrance	33.85	32.10
CT: Barkhamsted-New Hartford Landfill	Barkhamsted	52.00	38.05
DE: Dover Gas Light Co	Dover	42.24	35.57
DE: Pigeon Point Landfill	New Castle	37.93	*
GA: Firestone Tire & Rubber Co. (Albany Plant)	Albany	35.39	30.08
IL: Stauffer Chemical Co. (Chicago Heights Plant)	Chicago Heights	31.14	*
IN: McCarty's Bald Knob Landfill	Mt. Vernon	35.39	*
MD: Aberdeen Proving Ground (Michaelsville Landfill)	Aberdeen	31.45	31 09
MO: St. Louis Airport/Hazelwood Interim Storage/Futura Coatings Co	St. Louis County	37.79	38.31
MO: Wheeling Disposal Service Co. Landfill	Amazonia	29.85	48.58
NC: Camp Lejeune Military Reservation	Onslow County	36.84	33.02
NC: JFD Electronics/Channel Master	Oxford	39.11	39.03
PA: Novak Sanitary Landfill	South Whitehall Twp	42.34	42.31
PA: Publicker Industries, Inc	Philadelphia	59.99	59.06
SC: Rochester Property	Travelers Rest	41.34	36.72
VA: Dixie Caverns Sanitary Landfill	Salem	34.12	35.27
VA: Saunders Supply Co	Chuckatuck	55.57	36.88
VT: Darling Hill Dump	Lyndon	45.91	43.92

[1] * = score below 28.50.

Name Revisions

The names of two sites addressed in this final rule have been changed in response to information received during the comment period. The changes are intended to reflect more accurately the location, nature, or potential sources of contamination at the site:

- Camp Lejeune Marine Corps Base, Onslow County, NC changed to Camp Lejeune Military Reservation
- Ametek, Inc. (Hunter Spring Division), Hatfield, PA changed to North Penn—Area 2

VI. Disposition of All Proposed Sites/ Federal Facility Sites

To date, EPA has proposed nine major updates to the NPL as well as special update of two ATSDR sites. Taking into account this rule and the additional NPL final rule published elsewhere in today's Federal Register, 150 sites and 63 Federal facility sites continue to be proposed pending completion of response to comment, resolution of technical issues and resolution of various policy issues (Table 3). All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

TABLE 3.—NPL PROPOSALS

Update No.	Date/Federal Register citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1	9/8/83; 48 FR 40674	132/1	1/0
2	10/15/84; 49 FR 40320	206/36	17/3
3	4/10/85; 50 FR 14115	26/6	0/1
4	9/18/85; 50 FR 37950	38/3	1/2
5	6/10/86; 51 FR 21099	43/2	6/0
6	1/22/87; 52 FR 2492	63/1	13/0
7	6/24/88; 53 FR 23988	215/14	103/5
8	5/5/89; 54 FR 19526	10/0	5/0
9	7/14/89; 54 FR 29820	0/52	0/52
ATSDR	6/16/89; 54 FR 33846	2/0	2/0
Total		735/115	150/63

VII. Contents of the NPL

The 70 new sites added to the NPL in today's rule (Table 1) have been incorporated into the NPL in order of their HRS scores except where EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on March 31, 1989 (54 FR 13296).

The NPL appears at the end of this final rule and will be codified as part of Appendix B to the NCP. Sites on the NPL are arranged according to their scores on the HRS. The NPL is presented in groups of 50 sites to emphasize the minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site—the Lansdowne Radiation Site in Lansdowne, PA—was placed on the NPL on September 16, 1985 (50 FR 37630) because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score less than 28.50, and appears at the end of the list.

This rule adds 11 new sites to the Federal facility section of the NPL by group number.

Each entry on the NPL contains the name of the facility and the State and city or county in which it is located. In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. In the interim, information on activities at the new final sites is available upon request to the appropriate Regional Office.

VIII. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding these 70 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/ feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or

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all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars.
[2] Includes State cost-share.
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites which are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 59 non-Federal sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $100 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately $189 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 59 non-Federal sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 21, 1989.

Robert H. Wayland III,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

APPENDIX B to PART 300

2. Appendix B of Part 300 is revised to read as set forth below.

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989

NPL Rank	EPA Reg	State	Site Name	City/County
			Group 1 (HRS Scores 75.60 - 58.54)	
1	02	NJ	Liperi Landfill	Pitman
2	03	DE	Tybouts Corner Landfill*	New Castle County
3	03	PA	Bruin Lagoon	Bruin Borough
4	02	NJ	Helen Kramer Landfill	Mantua Township *
5	01	MA	Industri-Plex	Woburn
6	02	NJ	Price Landfill*	Pleasantville
7	02	NY	Pollution Abatement Services*	Oswego
8	07	IA	LaBounty Site	Charles City
9	03	DE	Army Creek Landfill	New Castle County
10	02	NJ	CPS/Madison Industries	Old Bridge Township
11	01	MA	Nyanza Chemical Waste Dump	Ashland
12	02	NJ	GEMS Landfill	Gloucester Township
13	05	MI	Berlin & Farro	Swartz Creek
14	01	MA	Baird & McGuire	Holbrook
15	02	NJ	Lone Pine Landfill	Freehold Township
16	01	NH	Somersworth Sanitary Landfill	Somersworth
17	05	MN	FMC Corp. (Fridley Plant)	Fridley
18	06	AR	Vertac, Inc	Jacksonville
19	01	NH	Keefe Environmental Services	Epping
20	08	MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge
21	08	SD	Whitewood Creek*	Whitewood
22	06	TX	French, Ltd	Crosby
23	05	MI	Liquid Disposal, Inc	Utica
24	01	NH	Sylvester*	Nashua
25	03	PA	Tysons Dump	Upper Merion Township
26	03	PA	McAdoo Associates*	McAdoo Borough
27	06	TX	Motco, Inc*	La Marque
28	05	OH	Arcanum Iron & Metal	Darke County
29	08	MT	East Helena Site	East Helena
30	06	TX	Sikes Disposal Pits	Crosby
31	04	AL	Triana/Tennessee River	Limestone/Morgan
32	09	CA	Stringfellow*	Glen Avon Heights
33	01	ME	McKin Co	Gray
34	06	TX	Crystal Chemical Co	Houston
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport
36	08	CO	Sand Creek Industrial	Commerce City
37	06	TX	Geneva industries/Fuhrmann Energy	Houston
38	01	MA	W.R. Grace & Co., Inc. (Acton Plant)	Acton
39	05	MN	Reilly Tar (St. Louis Park Plant)*	St. Louis Park
40	05	MN	New Brighton/Arden Hills	New Brighton
41	04	FL	Schuylkill Metals Corp	Plant City
42	02	NJ	Vineland Chemical Co., Inc	Vineland
43	02	NJ	Burnt Fly Bog	Marlboro Township
44	03	PA	Publicker Industries Inc	Philadelphia
45	02	NY	Old Bethpage Landfill	Oyster Bay
46	02	NJ	Shieldalloy Corp	Newfield Borough
47	04	FL	Reeves Southeast Galvanizing Corp	Tampa
48	06	MT	Anaconda Co. Smelter	Anaconda
49	10	WA	Western Processing Co., Inc	Kent
50	05	WI	Omega Hills North Landfill	Germantown
			Group 2 (HRS Scores 58.41—55.97, except for state top priority sites)	
51	04	FL	American Creosote (Pensacola Plt)	Pensacola
52	02	NJ	Caldwell Trucking Co	Fairfield
53	02	NY	GE Moreau	South Glen Falls
54	06	OK	Tar Creek (Ottawa County)	(Ottawa County)
55	07	KS	Cherokee County	Cherokee County
56	05	IN	Seymour Recycling Corp.*	Seymour
57	05	OH	United Scrap Lead Co., Inc	Troy

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APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
58	04	FL	Peak Oil Co./Bay Drum Co	Tampa
59	02	NJ	Brick Township Landfill	Brick Township
60	02	NJ	Brook Industrial Park	Bound Brook
61	05	MI	American Anodco, Inc	Ionia
62	10	WA	Frontier Hard Chrome, Inc	Vancouver
63	05	WI	Janesville Old Landfill	Janesville
64	05	MI	Nothernaire Platng	Cadillac
65	04	SC	Kalama Speciality Chemicals	Beaufort
66	04	SC	Independent Nail Co	Beaufort
67	05	WI	Janesville Ash Beds	Janesville
68	04	FL	Davie Landfill	Dave
69	05	OH	Miami County Incinerator	Troy
70	10	WA	General Electric (Spokane Shop)	Spokane
71	04	FL	Gold Coast Oil Corp	Miami
72	09	AZ	Tucson International Airport Area	Tucson
73	05	IN	International Minerals (E. Plant)	Terre Haute
74	05	WI	Wheeler Pit	La Prairie Township
75	09	CA	Operating Industries, Inc. Lndfil	Monterey Park
76	02	NY	Wide Beach Development	Brant
77	09	CA	Iron Mountain Mine	Redding
78	02	NJ	Scientific Chemical Processing	Carlstadt
79	05	MI	Gratiot County Landfill*	St. Louis
80	01	RI	Picillo Farm*	Coventry
81	01	MA	New Bedford Site*	New Bedford
82	06	LA	Old Inger Oil Refinery*	Darrow
83	05	OH	Chem-Dyne*	Hamilton
84	04	SC	SCRDI Bluff Road*	Columbia
85	01	CT	Laurel Park, Inc.*	Naugatuck Borough
86	08	CO	Marshall Landfill*	Boulder County
87	05	IL	Outboard Marine Corp.*	Waukegan
88	06	NM	South Valley*	Albuquerque
89	01	VT	Pine Street Canal*	Burlington
90	03	WV	West Virginia Ordnance*	Point Pleasant
91	07	MO	Ellisville Site*	Ellisville
92	08	ND	Arsenic Trioxide Site*	Southeastern ND
93	07	IA	Aidex Corp.*	Council Bluffs
94	05	WI	N.W. Mauthe Co., Inc.*	Appleton
95	04	TN	North Hollywood Dump*	Memphis
96	04	KY	A.L. Taylor (Valley of Drums)*	Brooks
97	09	GU	Ordot Landfil*	Guam
98	04	MS	Flowood Site*	Flowood
99	08	UT	Rose Park Sludge Pit*	Salt Lake City
100	07	KS	Arkansas City Dump*	Arkansas City
101	08	CO	California Gulch	Leadville
102	02	NJ	D'Imperio Property	Hamilton Township
103	05	MN	Oakdale Dump	Oakdale
104	05	IL	Parsons Casket Hardware Co	Belvidere
105	05	IL	A & F Material Reclaiming, Inc	Greenup
106	03	PA	Douglassville Disposal	Douglassville
107	05	MN	Koppers Coke	St. Paul
108	01	MA	Plymouth Harbor/Cannon Eng. Corp	Plymouth
109	10	ID	Bunker Hill Mining & Metallurg	Smelterville
110	02	NY	Hudson River PCBs	Hudson River
111	02	NJ	Universal Oil Products (Chem Div)	East Rutherford
112	09	CA	Aerojet General Corp	Rancho Cordova
113	10	WA	Com Bay, South Tacoma Channel	Tacoma
114	03	PA	Osborne Landfill	Grove City
115	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City
116	01	CT	Old Southington Landfill	Southington
117	02	NY	Syosset Landfill	Oyster Bay
118	02	NY	Circuitron Corp	East Farmingdale
119	09	AZ	Nineteenth Avenue Landfill	Phoenix
120	10	OR	Teledyne Wah Chang	Albany
121	10	WA	Midway Landfill	Kent
122	02	NY	Sinclair Refinery	Wellsville
123	04	AL	Mowbray Engineering Co	Greenville
124	05	MI	Spiegelberg Landfill	Green Oak Township
125	04	FL	Miami Drum Services	Miami
126	02	NJ	Reich Farms	Pleasant Plains
127	10	ID	Union Pacific Railroad Co	Pocatello
126	02	NJ	South Brunswick Landfill	South Brunswick
129	03	PA	Raymark	Hatboro
130	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	Mcintosh
131	04	FL	Kassauf-Kimerling Battery	Tampa
132	05	IL	Wauconda Sand & Gravel	Wauconda
133	05	MI	Bofors Nobel, Inc	Muskegon
134	06	TX	Bailey Waste Disposal	Bridge City
135	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston
136	05	MI	Ott/Story/Cordova Chemical Co	Dalton Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
137	05	MI	Thermo-Chem, Inc	Muskegon
138	09	CA	Brown & Bryant, Inc.(Arvin Plant)	Arvin
139	03	VA	Greenwood Chemical Co	Newtown
140	02	NJ	NL Industries	Perdricktown
141	05	MN	St. Regis Paper Co	Cass Lake
142	04	NC	Aberdeen Pesticide Dumps	Aberdeen
143	01	VT	Burgess Brothers Landfill	Woodford
144	02	NJ	Ringwood Mines/Landfill	Ringwood Borough
145	04	FL	Whitehouse Oil Pits	Whitehouse
146	04	GA	Hercules 009 Landfill	Brunswick
147	02	NY	Joes Sanitation	Hyde Park
148	05	MI	Velsicol Chemical (Michigan)	St. Louis
149	05	OH	Summite National	Deerfield Township
150	02	NY	Love Canal	Niagara Falls
			Group 4 (HRS Scores 52.15—49.09)	
151	03	DE	Coker's Sanitation Service Lndfls	Kent County
152	05	MI	Rockwell International (Allegan)	Allegan
153	05	MN	Pine Bend Sanitary Landfill	Dakota County
154	07	IA	Lawrence Todtz Farm	Comanche
155	05	IN	Fisher-Calo	LePorte
156	04	FL	Pioneer Sand Co	Warrington
157	05	MI	Springfield Township Dump	Davisburg
158	03	PA	Hranica Landfill	Buffalo Township
159	04	NC	Martin-Marietta, Sodyeco, Inc	Charlotte
160	03	PA	Hellertown Manufacturing Co	Hellertown
161	04	FL	Zellwood Ground Water Contamin	Zellwood
162	05	MI	Packaging Corp. of America	Filer City
163	05	WI	Muskego Sanitary Landfill	Muskego
164	10	ID	Kerr-McGee Chemical (Soda Springs)	Soda Springs
165	02	NY	Hooker (S Area)	Niagara Falls
166	03	PA	Lindane Dump	Harrison Township
167	08	CO	Central City-Clear Creek	Idaho Springs
168	02	NJ	Ventron/Velsicol	Wood Ridge Borough
169	04	FL	Taylor Road Landfill	Seffner
170	01	RI	Western Sand & Gravel	Burrillville
171	02	NY	Rosen Brothers Scrap Yard/Dump	Cortland
172	04	SC	Koppers Co Inc (Florence Plant)	Florence
173	02	NJ	Maywood Chemical Co	Maywood/Rochelle Park
174	02	NJ	Nascolite Corp	Millville
175	05	OH	Industrial Excess Landfill	Uniontown
176	06	OK	Hardage/Criner	Criner
177	05	MI	Rose Township Dump	Rose Township
178	05	MN	Waste Disposal Engineering	Andover
179	02	NY	Liberty Industrial Finishing	Farmingdale
180	02	NJ	Kin-Buc Landfill	Edison Township
181	05	IN	Waste, Inc., Landfill	Michigan City
182	05	OH	Bowers Landfill	Circleville
183	06	TX	Brio Refining, Inc	Friendswood
184	02	NJ	Ciba-Geigy Corp	Toms River
185	05	MI	Butterworth #2 Landfill	Grand Rapids
186	02	NJ	American Cynamid Co	Bound Brook
187	03	PA	HeLeva Landfill	North Whitehall Township
188	02	NJ	Ewan Property	Shamong Township
189	02	NY	Batavia Landfill	Batavia
190	05	IL	Woodstock Municipal Landfill	Woodstock
191	05	MN	Boise Cascade/Onan/Medtronics	Fridley
192	01	RI	Landfill & Resource Recovery	North Smithfield
193	03	PA	Butler Mine Tunnel	Pittston
194	04	FL	Northwest 58th Street Landfill	Hialeah
195	02	NJ	Delilah Road	Egg Harbor Township
196	03	PA	Mill Creek Dump	Erie
197	02	NJ	Glen Ridge Radium Site	Glen Ridge
198	02	NJ	Montclair/West Orange Radium Site	Montclair/W Orange
199	01	CT	Precision Plating Corp	Vernon
200	04	FL	Sixty-Second Street Dump	Tampa
			Group 5 (HRS Scores 49.09 - 46.77)	
201	05	MI	G&H Landfill	Utica
202	01	VT	Bennington Municipal Sanitary Lfl	Bennington
203	04	NC	Celanese (Shelby Fiber Operations)	Shelby
204	02	NJ	Meta tec/Aeroesystems	Franklin Borough
205	05	WI	Schmalz Dump	Harrison
206	05	MI	Motor Wheel, Inc	Lansing
207	09	CA	Southern Calif Edison (Visalia)	Visalia
208	02	NJ	Lang Property	Pemberton Township
209	06	TX	Stewco, Inc	Waskom
210	02	NJ	Sharkey Landfill	Parsippany/Troy Hls

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APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
211	09	CA	Selma Treating Co.	Selma
212	06	LA	Cleve Reber	Sorrento
213	05	IL	Velsicol Chemical (Illinois)	Marshall
214	07	MO	Wheeling Disposal Service Co. Lf	Amazonia
215	05	MI	Tar Lake	Mancelona Township
216	02	NY	Johnstown City Landfill	Town of Johnstown
217	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh
218	08	CO	Lowry Landfill	Arapahoe County
219	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton
220	03	PA	Hunterstown Road	Straban Township
221	03	MD	Woodlawn County Landfill	Woodlawn
222	05	WI	Hechimovich Sanitary Landfill	Williamstown
223	07	IA	Mid-America Tanning Co.	Sergeant Bluff
224	07	NE	Lindsay Manufacturing Co.	Lindsay
225	02	NJ	Combe Fill North Landfill	Mount Olive Twp
226	01	MA	Re-Solve, Inc.	Dartmouth
227	02	NJ	Goose Farm	Plumstead Township
228	04	TN	Velsicol Chem (Hardeman County)	Toone
229	02	NY	York Oil Co.	Moira
230	04	FL	Sapp Battery Salvage	Cottondale
231	04	SC	Wamchem, Inc.	Burton
232	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport
233	05	WI	Master Disposal Service Landfill	Brookfield
234	07	KS	Doepke Disposal (Holliday)	Johnson County
235	02	NJ	Florence Land Recontouring Lndfll	Florence Township
236	01	RI	Davis Liquid Waste	Smithfield
237	01	MA	Charles-George Reclamation Lndfll	Tyngsborough
238	02	NJ	King of Prussia	Winslow Township
239	03	VA	Chisman Creek	York County
240	05	OH	Nease Chemical	Salem
241	08	CO	Eagle Mine	Minturn/Redcliff
242	02	NJ	Chemical Control	Elizabeth
243	04	NC	Charles Macon Lagoon & Drum Stor	Cordova
244	04	SC	Leonard Chemical Co., Inc.	Rock Hill
245	05	OH	Allied Chemical & Ironton Coke	Ironton
246	05	MI	Verona Well Field	Battle Creek
247	07	MO	Lee Chemical	Liberty
248	01	CT	Beacon Heights Landfill	Beacon Falls
249	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks
250	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter
			Group 6 (HRS Scores 46.72—44.87)	
251	05	MI	Torch Lake	Houghton County
252	01	RI	Central Landfill	Johnston
253	03	PA	Malvern TCE	Malvern
254	02	NY	Facet Enterprises, Inc.	Elmira
255	03	DE	Delaware Sand & Gravel Landfill	New Castle County
256	03	PA	Tonolli Corp.	Nesquehoning
257	04	NC	National Starch & Chemical Corp.	Salisbury
258	03	PA	MW Manufacturing	Valley Township
259	03	VA	C & R Battery Co., Inc.	Chesterfield County
260	04	TN	Murray-Ohio Dump	Lawrenceburg
261	05	IN	Envirochem Corp.	Zionsville
262	05	IN	MIDCO I	Gary
263	05	OH	Ormet Corp.	Hannibal
264	05	OH	South Point Plant	South Point
265	01	CT	Gallup's Quarry	Plainfield
266	03	PA	Whitmoyer Laboratories	Jackson Township
267	04	FL	Coleman-Evans Wood Preserving Co.	Whitehouse
268	02	NJ	Dayco Corp./L.E. Carpenter Co.	Wharton Borough
269	03	PA	Shriver's Corner	Straban Township
270	03	PA	Dorney Road Landfill	Upper Macungie Township
271	03	PA	Berks Landfill	Spring Township
272	05	IN	Northside Sanitary Landfill, Inc.	Zionsville
273	05	IL	Interstate Pollution Control, Inc.	Rockford
274	09	CA	Pacific Coast Pipe Lines	Fillmore
275	02	NJ	Global Sanitary Landfill	Old Bridge Township
276	04	FL	Florida Steel Corp.	Indiantown
277	03	PA	Occidental Chem/Firestone Tire	Lower Pottsgrove Township
278	03	VA	Culpeper Wood Preservers, Inc.	Culpeper
279	05	IL	Pagel's Pit	Rockford
280	05	MN	University Minn Rosemount Res Cen	Rosemount
281	05	MN	Freeway Sanitary Landfill	Burnsville
282	05	WI	Tomah Municipal Sanitary Landfill	Tomah
283	09	AZ	Litchfield Airport Area	Goodyear/Avondale
284	09	CA	Firestone Tire (Salinas Plant)	Salinas
285	02	NJ	Spence Farm	Plumstead Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
286	06	AR	Mid-South Wood Products	Mena
287	04	MS	Newsom Brothers/Old Reichhold	Columbia
288	09	CA	Atlas Asbestos Mine	Fresno County
289	09	CA	Coalinga Asbestos Mine	Coalinga
290	04	FL	Brown Wood Preserving	Live Oak
291	02	NY	Port Washington Landfill	Port Washington
292	05	IN	Columbus Old Municipal Lndfll #1	Columbus
293	02	NJ	Combe Fill South Landfill	Chester Township
294	02	NJ	JIS Landfill	Jamesburg/S. Brnswck
295	02	NY	Tronic Plating Co., Inc.	Farmingdale
296	03	PA	Centre County Kepone	State College Boro
297	04	FL	Agrico Chemical Co.	Pensacola
298	05	OH	Fields Brook	Ashtabula
299	01	CT	Solvents Recovery Service New Eng	Southington
300	08	CO	Woodbury Chemical Co.	Commerce City
			Group 7 (HRS Scores 44.86–42.69)	
301	02	NJ	Waldick Aerospace Devices, Inc.	Wall Township
302	01	MA	Hocomonco Pond	Westborough
303	04	KY	Distler Brickyard	West Point
304	02	NY	Ramapo Landfill	Ramapo
305	09	CA	Coast Wood Preserving	Ukiah
306	09	CA	South Bay Asbestos Area	Alviso
307	02	NY	Mercury Refining, Inc.	Colonie
308	04	FL	Hollingworth Solderless Terminal	Fort Lauderdale
309	02	NY	Olean Well Field	Olean
310	09	CA	Fairchild Semiconduct (S San Jose)	South San Jose
311	05	MN	Joslyn Manufacturing & Supply co.	Brooklyn Center
312	03	PA	York County Solid Waste/Refuse Lf	Hopewell Township
313	05	WI	Spickler Landfill	Spencer
314	08	CO	Denver Radium Site	Denver
315	02	NY	Tri-Cities Barrel Co., Inc.	Port Crane
316	03	PA	Route 940 Drum Dump	Pocono Summit
317	04	FL	Tower Chemical Co.	Clermont
318	01	VT	Darling Hill Dump	Lyndon
319	03	PA	C&D Recycling	Foster Township
320	07	MO	Syntex Facility	Verona
321	08	MT	Milltown Reservoir Sediments	Milltown
322	05	MN	Arrowhead Refinery Co.	Hermantown
323	10	OR	Martin-Marietta Aluminum Co.	The Dalles
324	08	CO	Uravan Uranium (Union Carbide)	Uravan
325	02	NJ	Pijak Farm	Plumstead Township
326	02	NJ	Syncon Resins	South Kearny
327	05	MN	Oak Grove Sanitary Landfill	Oak Grove Township
328	09	CA	Liquid Gold Oil Corp.	Richmond
329	09	CA	Purity Oil Sales, Inc.	Malaga
330	01	NH	Tinkham Garage	Londonderry
331	04	FL	Alpha Chemical Corp.	Galloway
332	02	NJ	Bog Creek Farm	Howell Township
333	01	ME	Saco Tannery Waste Pits	Saco
334	03	PA	River Road Lf/Waste Mngmnt, Inc.	Hermitage
335	02	PR	Frontera Creek	Rio Abajo
336	04	FL	Pickettville Road Landfill	Jacksonville
337	05	OH	Alsco Anaconda	Gnadenhutten
338	01	MA	Iron Horse Park	Billerica
339	03	PA	Palmerton Zinc Pile	Palmerton
340	05	IN	Neal's Landfill (Bloomington)	Bloomington
341	05	WI	Kohler Co. Landfill	Kohler
342	04	AL	Interstate Lead Co. (ILCO)	Leeds
343	04	FL	Standard Auto Bumper Corp.	Hialeah
344	07	KS	Hydro-Flex Inc.	Topeka
345	09	AZ	Hassayampa Landfill	Hassayampa
346	06	LA	Gulf Coast Vacuum Services	Abbeville
347	05	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin
348	01	MA	Silresim Chemical Corp.	Lowell
349	01	MA	Wells G&H	Woburn
350	01	CT	Nutmeg Valley Road	Wolcott
			Group 8 (HRS Scores 42.69–41.92	
351	02	NJ	Chemsol, Inc.	Piscataway
352	05	WI	Lauer I Sanitary Landfill	Menomonee Falls
353	05	MI	Petoskey Municipal Well Field	Petoskey
354	05	MN	Union Scrap Iron & Metal Co.	Minneapolis
355	02	NJ	Radiation Technology, Inc.	Rockaway Township
356	02	NJ	Fair Lawn Well Field	Fair Lawn
357	05	IN	Main Street Well Field	Elkhart
358	05	MN	Lehillier/Mankato Site	Lehillier/Mankato
359	10	WA	Lakewood Site	Lakewood

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APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
360	03	PA	Industrial Lane	Williams Township
361	05	IN	Fort Wayne Reduction Dump	Fort Wayne
362	05	WI	Onalaska Municipal Landfill	Onalaska
363	03	PA	A.I.W. Frank/Mid-County Mustang	Exton
364	05	WI	National Presto Industries, Inc.	Eau Claire
365	02	NJ	Monroe Township Landfill	Monroe Township
366	03	PA	Commodore Semiconductor Group	Lower Providence Township
367	02	NJ	Rockaway Borough Well Field	Rockaway Township
368	05	IL	Lee Oil Service, Inc.	Lemont
369	05	IN	Wayne Waste Oil	Columbia City
370	03	MD	Mid-Atlantic Wood Preservers, Inc.	Harmans
371	03	PA	Novak Sanitary Landfill	South Whitehall Township
372	10	ID	Pacific Hide & Fur Recycling Co.	Pocatello
373	07	IA	Des Moines TCE	Des Moines
374	02	NJ	Beachwood/Berkeley Wells	Berkley Township
375	02	NJ	South Jersey Clothing Co.	Minotola
376	02	NY	Vestal Water Supply Well 4-2	Vestal
377	02	PR	Vega Alta Public Supply Wells	Vega Alta
378	05	IL	Southeast Rockford Grnd Wtr Con	Rockford
379	05	IN	Galen Myers Dump/Drum Salvage	Osceola
380	05	MI	Sturgis Municipal Wells	Sturgis
381	05	MI	Barrels, Inc.	Lansing
382	05	MN	Washington County Landfill	Lake Elmo
383	06	TX	Odessa Chromium #1	Odessa
384	06	TX	Odessa Chromium #2 (Andrews Hgwy)	Odessa
385	07	IA	Electro-Coatings, Inc.	Cedar Rapids
386	07	NE	Hastings Ground Water Contamin	Hastings
387	09	AZ	Indian Bend Wash Area	Scottsdale/Tmpe/Phnx
388	09	CA	San Gabriel Valley (Area 1)	El Monte
389	09	CA	San Gabriel Valley (Area 2)	Baldwin Park Area
390	09	CA	San Fernando Valley (Area 1)	Los Angeles
391	09	CA	San Fernando Valley (Area 2)	Los Angeles/Glendale
392	09	CA	San Fernando Valley (Area 3)	Glendale
393	09	CA	T.H. Agriculture & Nutrition Co.	Fresno
394	10	WA	Com Bay, Near Shore/Tide Flats	Pierce County
395	05	IL	LaSalle Electric Utilities	LaSalle
396	05	IL	Cross Brothers Pail (Pembroke)	Pembroke Township
397	04	NC	Jadco-Hughes Facility	Belmont
398	05	IN	Southside Sanitary Landfill	Indianapolis
399	02	NJ	Monitor Devices/Intercircuits Inc.	Wall Township
400	01	VT	BFI Sanitary Landfill (Rockingham)	Rockingham
			Group 9 (HRS Scores 41.92–39.93)	
401	02	PR	Upjohn Facility	Barceloneta
402	04	NC	Koppers Co., Inc. (Morrisville Plnt)	Morrisville
403	09	CA	McColl	Fullerton
404	03	PA	Henderson Road	Upper Merion Township.
405	02	NY	Hooker Chemical/Ruco Polymer Corp	Hicksville
406	10	WA	Colbert Landfill	Colbert
407	06	LA	Petro-Processors of Louisiana Inc	Scotlandville
408	02	NY	Applied Environmental Services	Glenwood Landing
409	02	PR	Barceloneta Landfill	Florida Afuera
410	01	NH	Tibbets Road	Barrington
411	03	MD	Sand, Gravel & Stone	Elkton
412	03	PA	Delta Quarries/Stotler Landfill	Antis/Logan Townships
413	01	CT	Revere Textile Prints Corp	Sterling
414	05	MI	Spartan Chemical Co	Wyoming
415	02	NJ	Roebling Steel Co	Florence
416	03	PA	East Mount Zion	Springettsbury Township
417	04	GA	T.H. Agricul. & Nutri. (Albany)	Albany
418	04	TN	Amnicola Dump	Chattanooga
419	02	NJ	Vineland State School	Vineland
420	09	AZ	Motorola, Inc. (52nd Street Plant)	Phoenix
421	01	MA	Groveland Wells	Groveland
422	02	NY	General Motors (Cent Foundry Div.)	Massena
423	01	NH	Mottolo Pig Farm	Raymond
424	03	VA	Buckingham County Landfill	Buckingham
425	04	SC	SCRDI Dixiana	Cayce
426	05	MI	Roto-Finish Co., Inc.	Kalamazoo
427	05	MN	Olmsted County Sanitary Landfill	Oronoco
428	07	MO	Quality Plating	Sikeston
429	05	IN	Prestolite Battery Division	Vincennes
430	07	MO	Fulbright Landfill	Springfield
431	02	NJ	Williams Property	Swainton
432	02	NJ	Renora, Inc	Edison Township
433	04	NC	FCX, Inc. (Washington Plant)	Washington
434	03	PA	Jacks Creek/Sitkin Smelting & Ref	Maitland

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
435	06	NM	Cleveland Mill	Silver City
436	02	NJ	Denzer & Schafer X-Ray Co	Bayville
437	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown
438	05	IN	Ninth Avenue Dump	Gary
439	03	MD	Bush Valley Landfill	Abingdon
440	04	SC	Golden Strip Septic Tank Service	Simpsonville
441	06	TX	Texarkana Wood Preserving Co.	Texarkana
442	06	AR	Gurley Pit	Edmondson
443	04	FL	Petroleum Products Corp	Pembroke Park
444	01	RI	Peterson/Puritan, Inc	Lincoln/Cumberland
445	07	MO	Times Beach Site	Times Beach
446	05	MI	Wash King Laundry	Pleasant Plains Township
447	05	MN	Whittaker Corp	Minneapolis
448	05	WI	Algoma Municipal Landfill	Algoma
449	05	MN	NL Industries/Taracorp/Golden	St. Louis Park
450	09	CA	Westinghouse Elec (Sunnyvale Plt)	Sunnyvale
			Group 10 (HRS Scores 39.92–38.10)	
451	01	CT	Kellogg-Deering Well Field	Norwalk
452	03	PA	Boarhead Farms	Bridgeton Township
453	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater
454	05	MI	H. Brown Co., Inc	Grand Rapids
455	02	NY	Nepera Chemical Co., Inc	Maybrook
456	02	NY	Niagara County Refuse	Wheatfield
457	04	FL	Sherwood Medical Industries	Deland
458	04	AL	Olin Corp. (McIntosh Plant)	McIntosh
459	05	MI	Southwest Ottawa County Landfill	Park Township
460	02	NY	Kentucky Avenue Well Field	Horseheads
461	02	NY	Pasley Solvents & Chemicals, Inc	Hempstead
462	06	TX	Sol Lynn/Industrial Transformers	Houston
463	02	NJ	Asbestos Dump	Millington
464	04	KY	Lee's Lane Landfill	Louisville
465	06	AR	Frit Industries	Walnut Ridge
466	05	OH	Fultz Landfill	Jackson Township
467	04	NC	New Hanover Cnty Airport Burn Pit	Wilmington
468	05	OH	Coshocton Landfill	Franklin Township
469	03	PA	AMP, Inc. (Glen Rock Facility)	Glen Rock
470	04	NC	JFD Electronics/Channel Master	Oxford
471	04	TN	Arlington Blending & Packaging	Arlington
472	06	LA	PAB Oil & Chemical Service, Inc	Abbeville
473	04	FL	Sydney Mine Sludge Ponds	Brandon
474	06	NM	Cimarron Mining Corp	Carrizozo
475	01	RI	Davis (GSR) Landfill	Glocester
476	03	PA	Lord-Shope Landfill	Girard Township
477	10	WA	FMC Corp. (Yakima Pit)	Yakima
478	05	WI	Northern Engraving Co	Sparta
479	06	TX	South Cavalcade Street	Houston
480	01	MA	PSC Resources	Palmer
481	05	MI	Forest Waste Products	Otisville
482	03	PA	Drake Chemical	Lock Haven
483	01	NH	Kearsarge Metallurgical Corp	Conway
484	04	SC	Palmetto Wood Preserving	Dixiana
485	05	IL	Petersen Sand & Gravel	Libertyville
486	05	MI	Clare Water Supply	Clare
487	03	PA	Havertown PCP	Haverford
488	03	DE	New Castle Spill	New Castle County
489	07	MO	St. Louis Airport/HIS/Fut Coatings	St. Louis County
490	08	MT	Idaho Pole Co	Bozeman
491	03	DE	NCR Corp. (Millsboro Plant)	Millsboro
492	05	IN	Lake Sandy Jo (M&M Landfill)	Gary
493	05	IL	Johns-Manville Corp	Waukegan
494	05	MI	Chem Central	Wyoming Township
495	05	MI	Novaco Industries	Temperance
496	05	MN	Windom Dump	Windom
497	01	RI	Rose Hill Regional Landfill	South Kingstown
498	02	NJ	Jackson Township Landfill	Jackson Township
499	05	IL	NL Industries/Taracorp Lead Smelt	Granite City
500	04	KY	Red Penn Sanitation Co. Landfill	Peewee Valley
			Group 11 (HRS Scores 38.10—36.73)	
501	05	MI	K&L Avenue Landfill	Oshtemo Township
502	05	OH	TRW, Inc. (Minerva Plant)	Minerva
503	10	WA	Kaiser Aluminum Mead Works	Mead
504	01	CT	Barkhamsted-New Hartford Landfill	Barkhamsted
505	05	MN	Perham Arsenic Site	Perham
506	05	MI	Charlevoix Municipal Well	Charlevoix
507	02	NJ	Montgomery Township Housing Devel	Montgomery Township

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APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
508	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough
509	02	NJ	Cinnaminson Ground Water Contamin	Cinnaminson Township
510	02	NY	Brewster Well Field	Putnam County
511	02	NY	Vestal Water Supply Well 1-1	Vestal
512	03	PA	Bally Ground Water Contamination	Bally Borough
513	04	FL	Chemform, Inc	Pompano Beach
514	04	FL	Wilson Concepts of Florida, Inc	Pompano Beach
515	04	NC	Bypass 601 Ground Water Contamin	Concord
516	04	OC	Lexington County Landfill Area	Cayce
517	07	MO	Solid State Circuits, Inc	Republic
518	07	NE	Waverly Ground Water Contamin	Waverly
519	08	UT	Utah Power&Light/American Barrel	Salt Lake City
520	09	CA	Advanced Micro Devices, Inc	Sunnyvale
521	10	WA	Hidden Valley Lndfl (Thun Field)	Pierce County
522	10	WA	Yakima Plating Co	Yakima
523	05	MN	Nutting Truck & Caster Co	Faribault
524	02	NJ	U.S. Radium Corp	Orange
525	05	MI	Carter Industrials, Inc	Detroit
526	06	TX	Highlands Acid pit	Highlands
527	03	PA	Resin Disposal	Jefferson Borough
528	08	MT	Libby Ground Water Contamination	Libby
529	04	KY	Newport Dump	Newport
530	03	PA	Moyers Landfill	Eagleville
531	01	NH	Savage Municipal Water Supply	Milford
532	05	MN	LaGrand Sanitary Landfill	LaGrand Township
533	05	IN	Poer Farm	Hancock County
534	03	PA	Brown's Battery Breaking	Shoemakersville
535	02	NY	SMS Instruments, Inc	Deer Park
536	05	MI	Hedblum Industries	Oscoda
537	06	TX	United Creosoting Co	Conroe
538	02	NY	Byron Barrel & Drum	Byron
539	08	WY	Baxter/Union Pacific Tie Treating	Laramie
540	02	NY	Anchor Chemicals	Hicksville
541	05	MI	Waste Management-Mich (Holland)	Holland
542	06	TX	North Cavalcade Street	Houston
543	02	NJ	Sayreville Landfill	Sayreville
544	01	NH	Dover Municipal Landfill	Dover
545	02	NY	Ludlow Sand & Gravel	Clayville
546	03	VA	Saunders Supply Co	Chuckatuck
547	05	WI	City Disposal Corp. Landfill	Dunn
548	02	NJ	Tabernacle Drum Dump	Tabernacle Township
549	07	MO	Minker/Stout/Romaine Creek	Imperial
550	04	KY	Howe Valley Landfill	Howe Valley

Group 12 (HRS Scores 36.72—35.57)

551	01	CT	Yaworski Waste Lagoon	Canterbury
552	03	WV	Leetown Pesticide	Leetown
553	04	SC	Rochester Property	Travelers Rest
554	04	FL	Cabot/Koppers	Gainesville
555	02	NJ	Evor Phillips Leasing	Old Bridge Township
556	03	PA	William Dick Lagoons	West Cain Township
557	05	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka
558	03	PA	Lackawanna Refuse	Old Forge Borough
559	06	OK	Compass Industries (Avery Drive)	Tulsa
560	02	NJ	Mannheim Avenue Dump	Galloway Township
561	05	IN	Neal's Dump (Spencer)	Spencer
562	02	NY	Fulton Terminals	Fulton
563	06	LA	Dutchtown Treatment Plant	Ascension Parish
564	03	PA	Westinghouse Elevator Co. Plant	Gettysburgh
565	01	NH	Auburn Road Landfill	Londonderry
566	03	WV	Fike Chemical Inc	Nitro
567	05	MN	General Mills/Henkel Corp	Minneapolis
568	04	TN	Wrigley Charcoal Plant	Wrigley
569	05	OH	Laskin/Poplar Oil Co	Jefferson Township
570	05	OH	Old Mill	Rock Creek
571	07	KS	Johns' Sludge Pond	Wichita
572	05	WI	Stoughton City Landfill	Stoughton
573	09	CA	Del Norte Pesticide Storage	Crescent City
574	01	VT	Transitor Electronics, Inc	Bennington
575	02	NJ	De Rewal Chemical Co	Kingwood Township
576	03	PA	Middletown Air Field	Middletown
577	02	NJ	Swope Oil & Chemical Co	Pennsauken
578	04	GA	Monsanto Corp. (Augusta Plant)	Augusta
579	01	NH	South Municipal Water Supply Well	Peterborough
580	01	ME	Winthrop Landfill	Winthrop
581	03	WV	Ordnance Works Disposal Areas	Morgantown
582	05	OH	Zanesville Well Field	Zanesville
583	02	NY	Suffern Village Well Field	Village of Suffern
584	02	NY	Endicott Village Well Field	Village of Endicott

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
585	03	DE	Dover Gas Light Co	Dover
586	03	PA	Aladdin Plating	Scott Township
587	03	PA	North Penn—Area 1	Souderton
588	03	PA	North Penn—Area 7	North Wales
589	03	PA	North Penn—Area 6	Lansdale
590	03	PA	North Penn—Area 2	Hatfield
591	03	PA	North Penn—Area 5	Montgomery Township
592	04	FL	Harris Corp. (Palm Bay Plant)	Palm Bay
593	05	MN	Kummer Sanitary Landfill	Bemidji
594	05	OH	Sanitary Landfill Co. (IWD)	Dayton
595	05	WI	Eau Claire Municipal Well Field	Eau Claire
596	06	NM	Pagano Salvage	Los Lunas
597	07	MO	Valley Park TCE	Valley Park
598	09	CA	San Fernando Valley (Area 4)	Los Angeles
599	09	CA	Monolithic Memories	Sunnyvale
600	09	CA	National Semiconductor Corp	Santa Clara

Group 13 (HRS Scores 35.57 - 34.60)

601	09	CA	Fresno Municipal Sanitary Lndfll	Fresno
602	09	CA	Newmark Ground Water Contamin	San Bernardino
603	04	GA	Powersville Site	Peach County
604	05	MI	Grand Traverse Overall Supply Co	Grellickville
605	05	MI	Metamora Landfill	Metamora
606	05	MI	Whitehall Municipal Wells	Whitehall
607	03	DE	Standard Chlorine of Delaware, Inc	Delaware City
608	05	MN	South Andover Site	Andover
609	02	NJ	Diamond Alkali Co	Newark
610	05	IN	Carter Lee Lumber Co	Indianapolis
611	01	NH	Fletcher's Paint Works & Storage	Milford
612	03	VA	Avtex Fibers, Inc	Front Royal
613	05	MI	Kentwood Landfill	Kentwood
614	05	MI	Electrovoice	Buchanan
615	09	CA	Jasco Chemical Corp	Mountain View
616	02	NY	Katonah Municipal Well	Town of Bedford
617	09	CA	Teledyne Semiconductor	Mountain View
618	02	PR	Fibers Public Supply Wells	Jobos
619	03	VA	Dixie Caverns County Landfill	Salem
620	05	IN	Marion (Bragg) Dump	Marion
621	05	OH	Pristine, Inc	Reading
622	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township
623	04	TN	American Creosote (Jackson Plant)	Jackson
624	08	CO	Broderick Wood Products	Denver
625	02	NY	C & J Disposal Leasing Co. Dump	Hamilton
626	05	OH	Buckeye Reclamation	St. Clairsville
627	02	NY	Preferred Plating Corp	Farmingdale
628	06	TX	Bio-Ecology Systems, Inc	Grand Prairie
629	08	UT	Monticello Rad Contaminated Props	Monticello
630	02	NJ	Woodland Route 532 Dump	Woodland Township
631	05	IN	American Chemical Service, Inc	Griffith
632	01	MA	Salem Acres	Salem
633	02	NY	Richardson Hill Road Lndfll/Pond	Sidney Center
634	01	VT	Old Springfield Landfill	Springfield
635	03	PA	Bell Landfill	Terry Township
636	02	NY	Solvent Savers	Lincklaen
637	03	VA	U.S. Titanium	Piney River
638	05	IL	Galesburg/Koopers Co	Galesburg
639	09	CA	J.H. Baxter & Co	Weed
640	02	NY	Hooker (Hyde Park)	Niagara Falls
641	05	MI	SCA Independent Landfill	Muskegon Heights
642	02	NY	Action Anodizing, Plating Polish	Copiague
643	09	CA	MGM Brakes	Cloverdale
644	06	LA	Bayou Sorrel Site	Bayou Sorrel
645	05	MI	Duell & Gardner Landfill	Dalton Township
646	10	WA	Mica Landfill	Mica
647	02	NJ	Ellis Property	Evesham Township
648	04	KY	Distler Farm	Jefferson County
649	09	CA	Waste Disposal, Inc	Santa Fe Springs
650	10	WA	Harbor Island (Lead)	Seattle

Group 14 (HRS Scores 34.58 - 33.76)

651	05	WI	Lemberger Transport & Recycling	Franklin Township
652	05	OH	E.H. Schilling Landfill	Hamilton Township
653	05	MI	Cliff/Dow Dump	Marquette
654	02	NY	Clothier Disposal	Town of Granby
655	03	PA	Ambler Asbestos Piles	Ambler
656	10	WA	Queen City Farms	Maple Valley
657	02	NJ	Curcio Scrap Metal, Inc	Saddle Brook Township
658	03	VA	L.A. Clarke & Son	Spotsylvania County

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APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
659	05	WI	Scrap Processing Co. Inc	Medford
660	03	MD	Southern Maryland Wood Treating	Hollywood
661	05	IL	Ilada Energy Co	East Cape Girardeau
662	05	WI	Sauk County Landfill	Excelsior
663	06	NM	Homestake Mining Co	Milan
664	06	TX	Dixie Oil Processors, Inc	Friendswood
665	09	CA	Beckman Instruments (Porterville)	Porterville
666	04	FL	Dubose Oil Products Co	Cantonment
667	05	MI	Mason County Landfill	Pere Marquette Township
668	05	MI	Cemetery Dump	Rose Center
669	07	IA	Red Oak City Landfill	Red Oak
670	05	IN	Lakeland Disposal Service, Inc	Claypool
671	02	NJ	Hopkins Farm	Plumstead Township
672	04	NC	Cape Fear Wood Preserving	Fayetteville
673	01	RI	Stamina Mills, Inc	North Smithfield
674	05	WI	Lemberger Landfill, Inc	Whitelaw
675	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis
676	01	ME	Pinette's Salvage Yard	Washburn
677	01	CT	Durham Meadows	Durham
678	05	MI	Kysor Industrial Corp	Cadillac
679	09	CA	Lorentz Barrel & Drum Co	San Jose
680	02	NJ	Wilson Farm	Plumstead Township
681	02	NY	Conklin Dumps	Conklin
682	03	PA	Old City of York Landfill	Seven Valleys
683	03	PA	Modern Sanitation Landfill	Lower Windsor Township
684	05	IL	Byron Salvage Yard	Byron
685	05	MI	North Bronson Industrial Area	Bronson
686	03	PA	Stanley Kessler	King of Prussia
687	07	MO	Kem-Pest Laboratories	Cape Girardeau
688	02	NJ	Imperial Oil-Champion Chemicals	Morganville
689	02	NJ	Coeden Chemical Coatings Corp	Beverly
690	05	MN	St. Augusta San Lndfll/Engen Dump	St. Augusta Township
691	02	NJ	Myers Property	Franklin Township
692	02	NJ	Pepe Field	Boonton
693	04	KY	Tri-City Disposal Co	Shepherdsville
694	10	WA	Northwest Transformer	Everson
695	02	NY	Genzale Plating Co	Franklin Square
696	05	MI	Albion-Sheridan Township Landfill	Albion
697	05	WI	Sheboygan Harbor & River	Sheboygan
698	05	MI	Ossineke Ground Water Contamin	Ossineke
699	03	WV	Follansbee Site	Follansbee
700	03	PA	Keystone Sanitation Landfill	Union township

Group 15 (HRS Scores 33.76—32.36)

701	04	NC	Carolina Transformer Co	Fayetteville
702	02	NY	North Sea Municipal Landfill	North Sea
703	03	PA	Bendix Flight Systems Division	Bridgewater Township
704	09	CA	Koppers Co. Inc. (Oroville Plant)	Oroville
705	09	CA	Lousiana-Pacific Corp	Oroville
706	03	VA	H & H Inc., Burn Pit	Farrington
707	05	MI	South Macomb Disposal (Lf 9 & 9A)	Macomb Township
708	05	MI	U.S. Aviex	Howard Township
709	03	PA	Walsh Landfill	Honeybrook Township
710	02	NJ	Landfill & Development Co	Mount Holly
711	02	NJ	Upper Deerfield Township San Lndf	Upper Deerfield Township
712	02	NY	Hertel Landfill	Plattekill
713	02	NY	Haviland Complex	Town of Hyde Park
714	02	NY	Malta Rocket Fuel Area	Malta
715	04	GA	Cedartown Municipal Landfill	Cedartown
716	05	MI	Kent City Mobile Home Park	Kent City
717	05	MN	Adrian Municipal Well Field	Adrian
718	06	NM	AT & SF (Clovis)	Clovis
719	07	KS	Strother Field Industrial Park	Cowley County
720	07	KS	Obee Road	Hutchinson
721	02	NJ	Fried Industries	East Brunswick Township
722	02	NY	American Thermostat Co	South Cairo
723	08	ND	Minot Landfill	Minot
724	04	TN	Lewisburg Dump	Lewisburg
725	05	MI	McGraw Edison Corp	Albion
726	02	NY	Goldisc Recordings, Inc	Holbrook
727	02	NY	Islip Municipal Sanitary Landfill	Islip
728	04	KY	Airco	Calvert City
729	03	PA	Metal Banks	Philadelphia
730	05	IL	Yeoman Creek Landfill	Waukegan
731	02	NY	Sarney Farm	Amenia
732	05	MI	Folkertsma Refuse	Grand Rapids
733	01	MA	Rose Disposal Pit	Lanesboro

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
734	05	OH	Van Dale Junkyard	Marietta
735	08	MT	Montana Pole and Treating	Butte
736	04	NC	Geigy Chemical Corp (Aberdeen Pit)	Aberdeen
737	04	KY	B.F. Goodrich	Calvert City
738	05	MI	Organic Chemicals, Inc	Grandville
739	02	NY	BioClinical Laboratories, Inc	Bohemia
740	02	NY	Volney Municipal Landfill	Town of Volney
741	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby
742	05	WI	Tomah Fairgrounds	Tomah
743	01	MA	Sullivan's Ledge	New Beford
744	04	KY	Smith's Farm	Brooks
745	10	OR	Joseph Forest Products	Joseph
746	02	PR	Juncos Landfill	Juncos
747	07	KS	Big River Sand Co	Wichita
748	05	IN	Bennett Stone Quarry	Bloomington
749	10	WA	Wyckoff Co./Eagle Harbor	Bainbridge Island
750	02	NJ	Industrial Latex Corp	Wallington Borough

Group 16 (HRS Scores 32.37—31.62)

751	04	FL	Munisport Landfill	North Miami
752	06	LA	D.L. Mud, Inc	Abbeville
753	04	AL	Stauffer Chem (LeMoyne Plant)	Axis
754	02	NJ	M&T Delisa Landfill	Asbury Park
755	06	TX	Crystal City Airport	Crystal City
756	04	SC	Geiger (C & M Oil)	Ramtoules
757	05	WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee
758	05	WI	Waste Research & Reclamation Co	Eau Claire
759	10	OR	Gould, Inc	Portland
760	01	ME	Union Chemical Co., Inc	South Hope
761	02	NY	Cortese Landfill	Vil of Narrowsburg
762	09	CA	Montrose Chemical Corp	Torrance
763	05	MN	St. Louis River Site	St. Louis County
764	05	MI	Auto Ion Chemicals, Inc	Kalamazoo
765	03	PA	Recticon/Allied Steel Corp	East Coventry Township
766	05	WI	Hagen Farm	Stoughton
767	04	SC	Carolawn, Inc	Fort Lawn
768	07	IA	Midwest Manufacturing/North Farm	Kellogg
769	03	PA	Berks Sand Pit	Longswamp Township
770	09	CA	Valley Wood Preserving, Inc	Turlock
771	03	PA	Butz Landfill	Stroudsburg
772	04	FL	City Industries, Inc	Orlando
773	05	MI	Sparta Landfill	Sparta Township
774	05	IL	Acme Solvent (Morrison Plant)	Morristown
775	01	NH	Holton Circle Ground Water Contam	Londonderry
776	02	NJ	Pomona Oaks Resident Wells	Galloway Township
777	02	NY	Rowe Industries Ground Water Cont	Noyack/Seg Harbor
776	03	PA	Hebelka Auto Salvage Yard	Weisenberg Township
779	04	FL	Hipps Road Landfill	Duval County
780	05	MN	Long Prairie Ground Water Contam	Long Prairie
781	05	MN	Waite Park Wells	Waite Park
782	09	CA	Applied Materials	Santa Clara
783	09	CA	Intel Magnetics	Santa Clara
784	09	CA	Intel Corp. (Santa Clara III)	Santa Clara
785	09	CA	Synertek, Inc. (Building 1)	Santa Clara
786	04	FL	Pepper Steel & Alloys, Inc	Medley
787	02	NY	Mattiace Petrochemical Co., Inc	Glen Cove
788	01	ME	O'Connor Co	Augusta
789	05	WI	Oconomowoc Electroplating Co. Inc	Ashippin
790	05	IN	Continental Steel Corp	Kokomo
791	05	MI	Rasmussen's Dump	Green Oak Township
792	02	NY	Kenmark Textile Corp	Farmingdale
793	04	FL	Wingate Road Munic Incinerat Dump	Fort Lauderdale
794	03	PA	Westline Site	Westline
795	04	KY	Maxey Flats Nuclear Disposal	Hillsboro
796	04	NC	Benfield Industries, Inc	Hazelwood
797	08	MT	Mouat Industries	Columbus
798	05	MI	J & L Landfill	Rochester Hills
799	02	NY	Claremont Polychemical	Old Bethpage
800	05	OH	Powell Road Landfill	Dayton

Group 17 (HRS Scores 31.60-30.44)

801	03	PA	Croydon TCE	Croydon
802	04	SC	Medley Farm Drum Dump	Gaffney
803	04	SC	Elmore Waste Disposal	Greer
804	07	IA	Vogel Paint & Wax Co	Orange City
805	05	MN	Kurt Manufacturing Co	Fridley
806	05	MI	Parsons Chemical Works, Inc	Grand Ledge
807	03	PA	Revere Chemical Co	Nockamixon Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
806	05	MI	Ionia City Landfill	Ionia
809	06	TX	Koppers Co., Inc. (Texarkana Plant)	Texarkana
810	08	CO	Lincoln Park	Canon City
811	08	CO	Smuggler Mountain	Pitkin County
812	05	IN	Wedzeb Enterprises, Inc	Lebanon
813	02	PR	GE Wiring Devices	Juana Diaz
814	05	MI	Avenue "E" Ground Water Contamin	Traverse City
815	05	OH	New Lyme Landfill	New Lyme
816	02	NJ	Woodland Route 72 Dump	Woodland Township
817	02	PR	RCA Del Caribe	Barceloneta
818	05	MN	Koch Refining Co./N-Ren Corp	Pine Bend
819	03	PA	Brodhead Creek	Stroudsburg
820	05	WI	Fadrowski Drum Disposal	Franklin
821	10	OR	United Chrome Products, Inc	Corvallis
822	03	PA	Eastern Diversified Metals	Hometown
823	05	MI	Anderson Development Co	Adrian
824	05	WI	Hunts Disposal Landfill	Caledonia
825	05	MI	Shiawassee River	Howell
826	06	OK	Tenth Street Dump/Junkyard	Oklahoma City
827	10	AK	Alaska Battery Enterprises	Fairbanks N Star Borough
828	03	PA	Taylor Borough Dump	Taylor Borough
829	03	DE	Halby Chemical Co	New Castle
830	06	OK	Double Eagle Refinery Co	Oklahoma City
831	04	GA	Mathis Bros Lf (S Marble Top Rd.)	Kensington
832	03	DE	Harvey & Knott Drum, Inc	Kirkwood
833	04	TN	Gallaway Pits	Gallaway
834	05	OH	Big D Campground	Kingsville
835	06	AR	Midland Products	Ola/Birta
836	02	NY	Robintech, Inc./National Pipe Co	Town of Vestal
837	02	NY	BEC Trucking	Town of Vestal
838	03	PA	Strasburg Landfill	Newlin Township
839	06	OK	Fourth Street Abandoned Refinery	Oklahoma City
840	02	NJ	Witco Chemical Corp. (Oakland Plt)	Oakland
841	05	WI	Tomah Armory	Tomah
842	03	DE	Wildcat Landfill	Dover
843	05	MI	Burrows Sanitation	Hartford
844	03	PA	Bloseneki Landfill	West Caln Township
845	03	VA	Rhinehart Tire Fire Dump	Frederick County
846	03	DE	Delaware City PVC Plant	Delaware City
847	03	MD	Limestone Road	Cumberland
848	02	NY	Hooker (102nd Street)	Niagara Falls
849	02	NJ	Higgins Farm	Franklin Township
850	10	WA	American Crossarm & Conduit Co	Chehalis
			Group 18 (HRS Scores 30.36–29.07)	
851	06	NM	United Nuclear Corp	Church Rock
852	03	PA	Reeser's Landfill	Upper Macungie Township
853	03	VA	Rentokil, Inc. (VA Wood Pres. Div.)	Richmond
854	06	AR	Industrial Waste Control	Fort Smith
855	09	CA	Celtor Chemical Works	Hoopa
856	01	MA	Haverhill Municipal Landfill	Haverhill
857	04	AL	Perdido Ground Water Contamin	Perdido
858	02	NY	Marathon Battery Corp	Cold Springs
859	02	NY	Colesville Municipal Landfill	Town of Colesville
860	04	FL	Yellow Water Road Dump	Baldwin
861	04	GA	Marzone Inc./Chevron Chemical Co	Tifton
862	05	OH	Skinner Landfill	West Chester
863	03	VA	First Piedmont Quarry (Route 719)	Pittsylvania County
864	04	NC	Chemtronics, Inc	Swannanoa
865	05	IN	MIDCO II	Gary
866	06	TX	Sheridan Disposal Services	Hempstead
867	07	KS	Pester Refinery Co	El Dorado
868	03	MD	Kane & Lombard Street Drums	Baltimore
869	07	MO	Shenandoah Stables	Moscow Mills
870	04	GA	Firestone Tire (Albany Plant)	Albany
871	07	IA	Shaw Avenue Dump	Charles City
872	03	PA	Berkley Products Co. Dump	Denver
873	10	WA	Silver Mountain Mine	Loomis
874	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County
875	05	OH	Republic Steel Corp. Quarry	Elyria
876	07	MO	Conservation Chemical Co	Kansas City
877	05	MN	Ritari Post & Pole	Sebeka
878	06	LA	Bayou Bonfouca	Slidell
879	09	CA	Intel Corp. (Mountain View Plant)	Mountain View
880	09	CA	Raytheon Corp	Mountain View
881	05	MN	Agate Lake Scrapyard	Fairview Township
882	05	MI	Adam's Plating	Lansing

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
883	06	AR	Jacksonville Municipal Landfill	Jacksonville
884	06	AR	Rogers Road Municipal Landfill	Jacksonville
885	03	VA	Saltville Waste Disposal Ponds	Saltville
886	04	SC	Palmetto Recycling, Inc	Columbia
887	01	MA	Shpack Landfill	Norton/Attleboro
888	03	PA	Kimberton Site	Kimberton Borough
889	04	TN	Mallory Capacitor Co	Waynesboro
890	01	MA	Norwood PCBs	Norwood
891	02	NY	Warwick Landfill	Warwick
892	02	NY	Sidney Landfill	Sidney
893	10	WA	Pesticide Lab (Yakima)	Yakima
894	05	IN	Lemon Lane Landfill	Bloomington
895	05	IN	Tri-State Plating	Columbus
896	10	ID	Arrcom (Drexler Enterprises)	Rathdrum
897	01	NH	Coakley Landfill	North Hampton
898	04	NC	Potter's Septic Tank Service Pits	Maco
899	04	NC	ABC One Hour Cleaners	Jacksonville
900	03	PA	Fischer & Porter Co	Warminster
			Group 19 (HRS Scores 28.98–28.50, except for health-advisory sites)	
901	03	PA	Elizabethtown Landfill	Elizabethtown
902	06	AR	Arkwood, Inc	Omaha
903	09	CA	Jibboom Junkyard	Sacramento
904	02	NJ	A. O. Polymer	Sparta Township
905	05	WI	Wausau Ground Water Contamination	Wausau
906	02	NJ	Dover Municipal Well 4	Dover Township
907	02	NJ	Rockaway Township Wells	Rockaway
908	02	NJ	Pohatcong Valley Ground Water Con	Warren County
909	02	NJ	Garden State Cleaners Co	Minotola
910	03	DE	Sussex County Landfill No. 5	Laurel
911	05	WI	Delavan Municipal Well #4	Delavan
912	07	MO	North-U Drive Well Contamination	Springfield
913	09	CA	San Gabriel Valley (Area 3)	Alhambra
914	09	CA	San Gabriel Valley (Area 4)	La Puente
915	09	CA	Modesto Ground Water Contamin	Modesto
916	10	WA	American Lake Gardens	Tacoma
917	10	WA	Greenacres Landfill	Spokane County
918	10	WA	Northside Landfill	Spokane
919	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs
920	06	TX	Pesses Chemical Co	Fort Worth
921	05	MN	East Bethel Demolition Landfill	East Bethel Township
922	06	TX	Triangle Chemical Co	Bridge City
923	02	NJ	PJP Landfill	Jersey City
924	03	PA	Craig Farm Drum	Parker
925	05	IL	Belvidere Municipal Landfill	Belvidere
926	07	MO	Bee Cee Manufacturing Co	Malden
927	03	PA	CryoChem, Inc	Worman
928	02	NJ	Kauffman & Minteer, Inc	Jobstown
929	03	PA	Lansdowne Radiation Site	Lansdowne

* = State top priority site.
Number of NPL Sites: 929.

NATIONAL PRIORITIES LIST, FEDERAL SECTION (BY GROUP), OCTOBER 1989

NPL Groups [1]	State	Site Name	City/County
1	WA	Hanford 200-Area (USDOE)	Benton County
1	WA	Hanford 300-Area (USDOE)	Benton County
1	CO	Rocky Flats Plant (USDOE)	Golden
1	NM	Cal West Metals (USSBA)	Lemitar
1	MO	Weldon Spring (USDOE/Army)	St. Charles County
2	TN	Milan Army Ammunition Plant	Milan
2	CO	Rocky Mountain Arsenal	Adams County
2	CA	McClellan AFB (Ground Water Cont)	Sacramento
2	PA	Naval Air Develop Center (8 Areas)	Warminster Township
2	OH	Wright-Patterson Air Force Base	Dayton
4	AL	Anniston Army Depot (SE Ind Area)	Anniston
4	GA	Robins AFB (Lndfil #4/Sludge Lag)	Houston County
4	NE	Cornhusker Army Ammunition Plant	Hall County
4	NJ	Naval Air Engineering Center	Lakehurst
4	UT	Hill Air Force Base	Ogden
5	NJ	W.R. Grace/Wayne Int Stor (USDOE)	Wayne Township
6	WA	Hanford 100-Area (USDOE)	Benton County
6	UT	Ogden Defense Depot	Ogden
7	CA	Sacramento Army Depot	Sacramento
7	IL	Sangamo/Crab Orchard NWR (USDOI)	Carterville
7	ME	Brunswick Naval Air Station	Brunswick

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NATIONAL PRIORITIES LIST, FEDERAL SECTION (BY GROUP), OCTOBER 1989—Continued

NPL Groups [1]	State	Site Name	City/County
8	CA	Sharpe Army Depot	Lathrop
8	OK	Tinker AFB (Soldier Cr/Bldg 3001)	Oklahoma City
8	CA	Lawrence Livermore Lab (USDOE)	Livermore
8	WA	McChord AFB (Wash Rack/Treatment)	Tacoma
8	IL	Savanna Army Depot Activity	Savanna
10	CA	Norton Air Force Base	San Bernardino
11	CA	Castle Air Force Base	Merced
11	PA	Letterkenny Army Depot (PDO Area)	Franklin County
11	NJ	Fort Dix (Landfill Site)	Pemberton Township
11	AL	Alabama Army Ammunition Plant	Childersburg
12	WA	Hanford 1100-Area (USDOE)	Benton County
12	DE	Dover Air Force Base	Dover
13	IL	Joliet Army Ammu Plant (LAP Area)	Joliet
14	PR	Naval Security Group Activity	Sabana Seca
14	PA	Letterkenny Army Depot (SE Area)	Chambersburg
14	NY	Griffiss Air Force Base	Rome
14	VA	Defense General Supply Center	Chesterfield County
14	WA	Fort Lewis (Landfill No. 5)	Tacoma
15	MN	Twin Cities Air Force (SAR Lndfill)	Minneapolis
15	MO	Lake City Army Plant (NW Lagoon)	Independence
15	WA	Naval Undersea Wharf Sta (4 Areas)	Keyport
15	NC	Camp Lejeune Military Reservation	Onslow County
16	IL	Joliet Army Ammu Plant (Mfg Area)	Joliet
16	WA	Fairchild Air Force Base (4 Areas)	Spokane County
16	TX	Lone Star Army Ammunition Plant	Texarkana
17	OR	Umatilla Army Depot (Lagoons)	Hermiston
17	MD	Aber Prov Ground-Michaelsville Lf	Aberdeen
17	WA	Bangor Ordnance Disposal	Bremerton
18	LA	Louisiana Army Ammunition Plant	Doyline
18	CA	Moffett Naval Air Station	Sunnyvale
19	CA	Mather AFB (AC&W Disposal Site)	Sacramento

*State top priority site.
[1] Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of NPL Federal Facility Sites: 52.

[FR Doc. 89-23337 Filed 10-3-89; 8:45 am]
BILLING CODE 6560-50-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2696/Pub. L. 101–101

Energy and Water Development Appropriations Act, 1990. (Sept. 29, 1989; 103 Stat. 641; 27 pages) Price: $1.00

H.J. Res. 204/Pub. L. 101–102

To designate October 1989, as "National Quality Month". (Sept. 29, 1989; 103 Stat. 668; 2 pages) Price: $1.00

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VOL
54
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192
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10-5-89
Vol. 54 No. 192

federal register

Thursday
October 5, 1989

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VOL
54
ISS
192
OC
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10-5-89
Vol. 54 No. 192
Pages 41039-41236

federal register

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Title 3—

The President

Proclamation 6034 of October 2, 1989

Minority Enterprise Development Week, 1989

By the President of the United States of America

A Proclamation

The United States was built by men and women who were willing to face both the unknown dangers of life on the frontier and its certain demand for constant hard work. These courageous pioneers were willing to take great risks because they believed that even greater opportunities awaited them in the new land.

Today, that same pioneer spirit can be found among the thousands of Americans who accept the risks of starting a new business, making it succeed, and keeping it competitive. This week, we recognize the industrious and determined spirit of minority business men and women in particular.

Our Nation's economic growth and ability to compete in the international marketplace depend on the full participation of all members of our society. Minority business men and women have helped to expand our economy through innovation, hard work, and by taking advantage of the opportunities available in our free enterprise system. These entrepreneurs have become an indispensable force in our economy, and they will continue to play a key role in our efforts to expand America's share of world markets.

Increasing our Nation's competitiveness in the rapidly changing global marketplace will require us to continue harnessing the entrepreneurial spirit of all our people. Therefore, we must renew our commitment to eliminating the barriers that hinder the participation of minority men and women in our economy; we must continue to promote quality education and effective job training; and we must foster an appreciation for individual initiative and private enterprise among young people.

The United States already benefits from the talent, energy, and labors of more than 800,000 minority businesses. This week, we honor them for their many achievements and reaffirm our commitment to helping young men and women follow their fine example.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 1 through October 7, 1989, Minority Enterprise Development Week, 1989. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-23730
Filed 10-3-89; 3:31 pm]
Billing code 3195-01-M

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Presidential Documents

Proclamation 6035 of October 3, 1989

National Health Care Food Service Week, 1989

By the President of the United States of America

A Proclamation

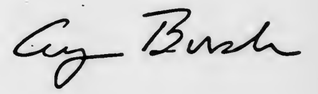
Sound nutrition is important to all Americans, but for the ill it is an essential component in the process of healing and recovery. The dedicated men and women who work in the health care food and nutrition departments of our Nation's hospitals and nursing facilities thus play a very important role in patient care.

Working in concert with other health care professionals, these individuals provide a variety of patient care services, from nutrition instruction to the preparation and delivery of appetizing and nutritious meals. This week, we salute America's health care food services personnel—administrators, dieticians, dietary assistants, menu planners, chefs, production workers, and volunteers—for their professionalism and hard work.

In recognition of the vital contribution made by health care food service professionals to the well-being of the American people, the Congress, by Senate Joint Resolution 81, has designated the week of October 1 through October 7, 1989, as "National Health Care Food Service Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 1, 1989, as National Health Care Food Service Week, and I call upon the people of the United States to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-23731
Filed 10-3-89; 3:32 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corp.

7 CFR Part 1435

Price Support Loan Program for 1986 Through 1990 Crops of Sugar Beets and Sugarcane

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This final rule adopts without change, the interim rule published in the **Federal Register** on October 29, 1986 (51 FR 39507). The interim rule amended the regulations at 7 CFR part 1435 to implement section 201 of the Agricultural Act of 1949 ("1949 Act") as amended by the Food Security Act of 1985 for the 1986–1990 crops of sugar. The amended provisions principally relate to the price support loan program. Under this program, the Commodity Credit Corporation (CCC) will support prices to domestic producers of the 1986 through 1990 crops of sugarcane and sugar beets through nonrecourse loans made by CCC to sugar processors.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–4229. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available from Thomas W. Fink, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-8701.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determined that this action in not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this final rule applies is: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The reporting and record keeping requirements of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Interim Rule

An interim rule was published in the **Federal Register** at 51 FR 39507 on October 29, 1986, which amended the Price Support Loan Program for 1986–1990 Crops of Sugar Beets and Sugarcane. The interim rule amended the regulations at 7 CFR part 1435 to set forth the provisions applicable to the price support loan program for the 1986 through 1990 crops of sugarcane and sugar beets. This program is mandated by the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Under the program, the CCC will support prices to domestic producers of the 1986 through 1990 crops of sugarcane and sugar beets through nonrecourse loans from CCC to sugar processors.

The amended provisions incorporated the financial assurance requirements that provide CCC with some protection in the event the processor does not pay producers the maximum benefits under the sugar price support program due to bankruptcy or insolvency of the processor. Comments of the interim rule were invited.

General Summary of Comments

The public was given until December 29, 1986, to comment on the interim rule. The Department has considered all comments received in developing this final rule. The Department received comments with respect to the interim rule from seven respondents, including sugar producer's associations, and producer/processor cooperative, sugar beet refiners, and an individual.

All comments received are on file and available for public inspection in Room 3627—South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

The following is a summary of comments received and actions taken:

Comments on Major Program Provisions

I. Bonding for Protection of Sugar Producers

A. *Provisions of Interim Rule.* The interim rule provided that a processor making application for a sugar loan must post a bond payable to CCC, or provide other financial assurance as agreed upon by CCC, to protect CCC in the event the processor does not pay producers the maximum benefits under the sugar price support program. CCC must obtain such assurance of payment by the processor of maximum program benefits as a result of the statutory requirements contained in section 401(e)(2) of the 1949 Act. This section provides that CCC will pay to sugar producers, under certain circumstances, the maximum benefits from the sugar price support program, less benefits previously received by the producers.

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The bond or other assurance must be in an amount equal to the applicable crop year regional minimum price support level for sugar beets or sugarcane times ten percent of the total annual quantity of sugar beets or sugarcane delivered by producers to the processor in the previous year or, in the event such quantity cannot be determined, the quantity estimated by CCC that will be delivered to the processor for that crop.

B. *Comments.* Four comments were received regarding the bond or other financial assurance requirements. Three of the respondents are sugar processors. One of the respondents is a sugar beet association.

Two respondents expressed their satisfaction with the actions taken by the Department of Agriculture in seeking ways that processors could meet the financial assurance requirements. One respondent, a cooperative sugar processor, requested to be exempt from the bonding requirement based on its agreement with growers. One respondent made the following suggestions: (1) that financial assurances should be considered satisfied, without posting additional security, if loan proceeds are segregated and used solely to pay producers and; (2) any security requirement should be reduced proportionately as payments are made to growers.

C. *Discussion and conclusion.* The cooperative sugar processor seeking exemption from the financial assurance requirements based on its agreement with growers stated that it makes payment to its members/shareholders/growers on a break-even concept. The respondent also stated that according to the agreement, the grower waives and abandons any rights or claims for damages in case of bankruptcy or destruction.

After careful review of the growers contract, it was determined that CCC would remain obligated to make payments to growers in the event of insolvency of the cooperative sugar processor. Consequently, an exemption of financial assurance requirements is not justified.

The respondent suggesting that financial assurances should be considered satisfied if loan proceeds are segregated and used solely to pay producers, submitted the following statements: The respondent understands the purpose of providing financial assurance is to assure CCC that growers receive the benefits of the price support program.

The respondent further stated that if producers are the sole recipients of the loan proceeds, no further security is needed. The same respondent suggested that any security requirement should be reduced proportionately as payments are made to growers.

Section 401(e) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985, requires CCC to pay sugar producers, under certain circumstances such as bankruptcy or insolvency, the maximum benefits from the sugar price support program, less benefits previously received by the producers. Therefore, CCC's exposure begins when a processor receives the first loan disbursement.

The respondent's comment that further security is unnecessary if loan proceeds are segregated and used solely to pay producers is incorrect. CCC's exposure is not limited to the amount of loan proceeds disbursed to a processor. Once a sugar loan is disbursed to a processor, CCC's exposure is to pay the maximum benefits to every eligible producer for every ton of sugar beets or sugarcane delivered to the processor.

Similarly, CCC's total exposure CCC's exposure is to pay the total less amounts paid by the processor. Reducing the financial assurance amount as repayments are made by the processor to producers would reduce the limited protection that the financial assurance requirements provide CCC.

After careful consideration of the comments submitted, it has been concluded that the bonding provisions of the interim rule should be adopted in the final rule without change.

II. Maturity of Loans

A. *Provisions of Interim Rule.* The interim rule provided that loans will mature on the last day of the sixth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan.

B. *Comments.* Two comments were received with respect to the maturity of loans. Both respondents recommended changing the loan maturity date to the end of the ninth month following disbursement. The respondents stated that six month loans made during the fall season mature well in advance of traditional sales, requiring processors to obtain supplemental financing. Both respondents identified sugar as the only commodity for which the term of CCC loans is six months.

C. *Discussion and conclusion.* As set forth in the interim rule, a loan maturity date on the last day of the sixth month in which the loan is disbursed, but no later than September 30 following disbursement, appears to be in the best interest of CCC and the trade. The final date of September 30 is mandated by statute. If a nine-month loan period were offered, all loans would mature between July 31 and September 30. Experience with other commodities suggests that having all loans mature within a short time frame usually has a depressant effect upon the market price of the commodity. Accordingly, the basic provisions of the interim rule have been retained.

In order to accommodate unusual situations, the final rule provides that the processor and CCC may agree upon an earlier or later maturity date (but in no event later than September 30 following disbursement of the loan) if such maturity date will not impair the effectiveness of the price support program, as determined by CCC.

III. Refined Beet Sugar Loan Rate

A. *Provisions of the Interim Rule.* The Food Security Act of 1985 requires the Secretary to support the price of domestically grown sugarcane at such a level as the Secretary determines appropriate, but not less than 18 cents per pound, and to support the price of domestically grown sugar beets at a level which is fair and reasonable in relation to the loan level for sugarcane.

B. *Comment.* One respondent, a sugarcane producer's association, objected to the methodology used in determining the loan rate for refined beet sugar. The commenter stated that the refined beet sugar loan rate is the key factor in determining the market price for refined sugar. The commenter suggested that the loan rate for refined beet sugar was too low in relation to the Market Stabilization Price.

C. *Discussion and conclusion.* The 1987, 1988, and 1989 loan rates for refined beet sugar reflect the value of the sugar based on the relationship between the weighted average of grower returns for sugar beets and the weighted average of grower returns for sugarcane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the immediately preceding 10-year period. After adjustment to reflect the proper price relationship, the estimated 1987 and 1988 sugar beet crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. This is the same method that was used for the 1986 crop.

The respondent's comment objected to the resulting beet sugar loan rate, but the comment did not identify the methodology as not meeting the statutory requirement that such loan rate be fair and reasonable in relation to the cane sugar loan rate. Consequently, after careful consideration of the comment received, it has been determined that the net return methodology used should be retained to determine the beet sugar loan rate.

IV. Location Differentials

A. *Provisions of Interim Rule.* The interim rule established separate location loan rate differentials for each sugarcane and sugar beet production area. Location loan rate differentials were established based on the estimated average freight costs between the processor and such processor's normal market. Under this method, the loan rate for each area or region was established by adding to or subtracting from the U.S. average loan rate for raw cane sugar and refined beet sugar the difference between a particular area's freight cost and the weighted average freight costs for all areas. The most current transportation data available to the Department was used in formulating the location differentials.

B. *Comments.* One respondent commented that there is no authority in the applicable legislation for location differentials in the sugar loan rates.

C. *Discussion and conclusion.* In accordance with Section 403 of the 1949 Act, CCC may make adjustments in loan rates based on the location of the stored commodity. Such location differentials are common to most of the price support programs conducted by CCC. Location differentials are generally based upon transportation costs and are essential in order to prevent distortions of ordinary market relationships as the result of the price support program.

After careful consideration of the comment received, it has been concluded that the provisions of the interim rule should be retained.

V. Extension of Comment Period

A. *Comment.* One commenter requested that the comment period be extended for at least six months.

B. *Discussion and conclusion.* The interim rule stated that comments must be received on or before December 29, 1986 in order to be assured of consideration. No additional comments were received since December 29, 1986, and most aspects of the new program provisions have been implemented smoothly. Consequently, it has been concluded that an extension of the comment period was not needed.

VI. Elimination of Support Program

A. *Comment.* One commenter recommended that the Department do away with all sugar controls and quotas as they exist now.

B. *Discussion and conclusion.* Since the sugar loan program is mandated by statute further discussion of this comment is not required.

List of Subjects in 7 CFR Part 1435.

Sugar, Price support program, Loan programs.

Final Rule

Accordingly, the interim rule published at 51 FR 39507, which amended 7 CFR Part 1435, is hereby adopted as a final rule without change.

Signed at Washington, DC, on September 28, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-23450 Filed 10-4-89; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88-001F]

RIN 0583-AA91

Definition of Terms—"Import (Imported)" and "Offer(ed) for Entry" and "Entry (Entered)"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat inspection regulations and the poultry products inspection regulations by defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify what these terms are intended to mean and to clarify at what point meat and poultry products offered for entry into the United States are no longer considered to be imported products and are deemed and treated as domestic articles under the law. Once product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been "entered" into the United States and, therefore, is the regulatory equivalent of domestic product. At that point, such product is subject to the laws and regulations of the United States as applied to domestic product, particularly with respect to the disposal of product found to be adulterated.

The definitions of "offer(ed) for entry" and "entry (entered)" are different for products imported from Canada under the interim rule recently published in the **Federal Register** (54 FR 273). The interim rule exempted such products from the requirement that they be marked with the official mark of inspection and provided for a "streamlined" inspection procedure.

This action is a result of litigation which indicated the need for clarification of terms with respect to USDA's interpretation of provisions of the Federal Meat Inspection Act and the regulations promulgated thereunder concerning at what point FSIS considers imported products to be domestic products.

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

FSIS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule clarifies, through the addition of definitions, when meat and poultry products are considered to be "imported' and when such products offered for entry are considered to be entered and, therefore, are treated as domestic products. Such domestic products are subject to the laws and regulations of the United States applicable to such products, particularly with respect to the disposal of products found to be adulterated. Clarification of these terms will not result in any change in current procedures. Domestic producers or

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domestic importers will not be affected by this rule.

Background

Section 20 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 620) and section 17 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 466) prohibit the importation of meat or poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products. Section 20 of the FMIA and section 17 of the PPIA also provide that once imported products are entered into the United States, such products are considered to be and should be treated as domestic products subject to the provisions of the FMIA and PPIA and other food related statutes. FSIS is defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify at what point product offered for entry into the United States is considered to be domestic product. The term "import (imported)" is considered to be that point when the product is brought within the territorial limits of the United States whether that arrival is accomplished by land, air, or water. For product other than from Canada, the term "offered for entry" is considered to be that point at which the importer offers the product for reinspection to FSIS, that is, the point at which imported product from eligible countries has been presented to FSIS for reinspection. The term "entry (entered)" is considered to be the point at which product from eligible countries, other than Canada, imported into the United States and subsequently offered for entry receives reinspection and is marked with the official mark of inspection.

FSIS is providing separate definitions for "offer(ed) for entry" and "entry (entered)" for Canadian product as a result of the interim rule which was published on January 5, 1989, (54 FR 273) that exempted imported Canadian meat and poultry products from the requirement that such product be marked with the official mark of inspection. As part of the interim rule, FSIS also instituted new "streamlined" inspection procedures for Canadian product exported to the United States. Under these procedures, inspectors at participating Canadian establishments are authorized to request reinspection assignments and, if deemed necessary, to draw samples for reinspection by Program import inspectors. Therefore, FSIS is providing a separate definition for "offer(ed) for entry" as it applies to participating Canadian establishments. The term is defined as that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment. Products from nonparticipating establishments will receive an inspection assignment upon arrival at an import inspection establishment. For Canadian product produced in nonparticipating establishments, "offer(ed) for entry" is defined as that point at which the importer presents the product to the Program for reinspection.

FSIS has also instituted a new sampling program for all Canadian product, based on statistically based random sampling plans developed by FSIS, whereby some product is subject to reinspection by FSIS and some product is not. (For additional information on procedures used for the reinspection of Canadian product, refer to the interim rule published on January 5, 1989 (54 FR 273).) Therefore, because of the new "streamlined" inspection procedures, the new sampling plans, and the exemption of Canadian product from application of the official mark, FSIS is providing separate definitions for "entry (entered)" of Canadian product. For Canadian product not subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR part 123.

For Canadian product subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

The FMIA and PPIA and the regulations promulgated thereunder require that product found to be adulterated on the day it is reinspected be refused entry, and such product may be reexported (9 CFR 327.13(a)(2) and 381.202(a)(2)). In cases where meat product is only misbranded (e.g., labeling or certificates are missing, incorrect, or incomplete), such product may be brought into compliance by the importer, under FSIS's supervision (9 CFR 327.13(a)(4)).

Before a foreign country can export product to the United States it must be granted eligibility to do so. FSIS has established procedures by which foreign countries desiring to export meat and/or poultry products to the United States may become eligible to do so. These regulations are contained in part 327 of the Federal meat inspection regulations and part 381, subpart T, of the poultry products inspection regulations (9 CFR part 327 and part 381, subpart T). These regulations provide that a meat and/or poultry product inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, must ensure compliance of such establishments and their meat and/or poultry products with requirements at least equal to all the provisions of the FMIA and the PPIA and the regulations that are applied to official establishments in the United States and their meat and poultry products. In addition, for approval to export meat and/or poultry products to the United States, the requirement that reliance can be placed on certificates required under the regulations from authorities in the country must also be met.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of system operations. The document review process involves a review of the laws, regulations, directives and other written materials used by the country to operate its inspection program. FSIS assists the country in organizing this material by providing questionnaires in five risk areas: contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations or publish special directives to achieve equivalency with United States requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multi-disciplinary team to evaluate all aspects of the country's program including laboratories and individual establishments within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operation.

After a review of all the documents submitted by the foreign country and an evaluation of the findings of the on-site reviews, the Administrator makes a determination concerning the ability of the foreign country to assure, with respect to certified establishments within the foreign country preparing product for export to the United States, compliance with requirements at least equal to those applicable to official establishments within the United States which prepare meat and/or poultry products, and that reliance can be placed upon certificates required under the FMIA and the PPIA from authorities of the foreign country.

This judgment by the Administrator—that the foreign country's inspection system is considered to be "at least equal to" the inspection system of the United States—is the primary means used by FSIS to assure that product intended for export to the United States will be "at least equal to" all the requirements applied to domestic product. Once eligibility is granted, FSIS conducts ongoing reviews of the system in operation to assure that procedures and standards continue to meet United States requirements.

FSIS relies on its initial determination of a foreign country's eligibility coupled with ongoing reviews to provide assurance that products offered for entry from such eligible country are, and continue to be, wholesome, unadulterated and properly labeled and packaged. As a further check on the effectiveness of the foreign inspection system, all product offerd for entry into the United States, except that from Canada as discussed above, is subject to basic reinspection by FSIS import inspectors. This reinspection consists of a review of the product containers to check for damage or other problems received in transit to the United States, and a review of product labeling, health certificates and FSIS inspection forms to assure that the documentation is correct and complete.

Such imported products offered for entry also receive a form of secondary level reinspection depending on the type of product. Secondary reinspection consists of examinations for production defects such as the presence of hair, grease, hide, dirt and similar substances in frozen or fresh bulk product; net weight checks, condition of container examinations, and incubation tests for canned products; laboratory analyses for food chemistry (fat, water, and nitrite levels) for processed products; and, analyses for chemical residues in fresh, frozen and canned product. Some of these test results are available immediately; others, such as incubation results or chemical residue analyses, are not available for several days. In cases where the product has passed basic resinspection, even though secondary inspection results are not available, the product is stamped with the official mark of inspection and is entered into the United States and is considered to be domestic product. At this point, FSIS assumes that the secondary test results will confirm that the product meets United States requirements.

When secondary test results are received by FSIS and the results indicate violations of United States requirements, especially in chemical residue analyses which would render the product adulterated under United States laws, FSIS institutes actions to locate the product and, if appropriate, to destroy it in accordance with requirements for product produced in the United States. Domestic product which is found to be adulterated, as defined in the Acts and under § 301.2(c) of the meat inspection regulations (9 CFR 301.2(c)) and § 381.1(b)(4) of the poultry products inspection regulations (9 CFR 381.1(b)(4)), must be destroyed for human food purposes in accordance with the provisions of part 314 of the Federal meat inspection regulations (9 CFR part 314) and part 381, subpart L, of the poultry products inspection regulations (9 CFR part 381, subpart L).

Proposed Rule

On June 6, 1989, FSIS published a proposed rule (54 FR 24181) as a result of litigation concerning the seizure and condemnation of product offered for entry that had been reinspected, marked and allowed entry into the United States. The importers had asserted that the product should be permitted to be exported because the statutes and regulations are not clear as to when imported products offered for entry are to be deemed and treated as domestic product. To preclude any future questions on that point, FSIS concluded that clarifying changes needed to be made in the meat and poulty products inspection regulations. Clarification of terms would assure that all interested parties understand what is meant by use of the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" with respect to FSIS's jurisdiction over imported meat and poultry products. FSIS did not receive any comments in response to the proposal.

Final Rule

Therefore, FSIS is amending section 327.1 of the Federal meat inspection regulations (9 CFR 327.1) and section 381.195 of the poultry products inspection regulations (9 CFR 381.195) to add definitions for the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)." FSIS defines "import (imported)" as "to bring within the territorial limits of the United States whether that arrival is accomplished by land, water, or air." For imported products other than from Canada, FSIS defines "offer(ed) for entry" as "that point at which the importer presents the imported product to the Program for reinspection;" and defines "entry (entered)" as "that point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection."

For Canadian product produced in Canadian establishments participating in the "streamlined" inspection procedures, FSIS defines "offer(ed) for entery" as "that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment.

For Canadian product produced in nonparticipating establishments, FSIS defines "offer(ed) for entry" as "the point at which the importer presents the imported product to the Program for reinspection."

For Canadian product not subject to reinspection, FSIS defines "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customshouse in accordance with 19 CFR part 123."

For Canadian product subject to reinspection, FSIS defines "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as Inspected and Passed by the import inspector."

FSIS is also amending several sections of Parts 327 and 381 with respect to the terms "import (imported)," "offer(ed) for entry," and "entry (entered)" as defined in this rule. These amendments make consistent the use of the above terms as they are used in the affected sections. These amendments are editorial only and make no changes to the content of those sections.

For the reasons stated in the preamble, FSIS is amending Part 327 of the Federal meat inspection regulations and Part 381, Subpart T, of the poultry products inspection regulations as set forth below:

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List of Subjects in 9 CFR

Part 327

Imported products, Meat inspection.

Part 381

Imported products, Poultry products inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Section 327.1 is amended by revising the section heading, by designating the existing text as paragraph (b), and by adding a new paragraph (a) to read as follows:

§ 327.1 Definitions; application of provisions.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (imported).* To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry.* The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered).* The point at which imported product offered for entry receives reinspection and is marked with the offical mark of inspection in accordance with § 327.26 of this subchapter.

(3) For product from Canada:

(i) *Offer(ed) for entry* from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment.

(ii) *Offer(ed) for entry* from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) *Entry (entered)* for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian port stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR Part 123.

(iv) *Entry (entered)* for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

3. Paragraph (b) of § 327.2 is revised to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

* * * * *

(b) It has been determined that product of cattle, sheep, swine, and goats from the following countries covered by foreign meat inspection certificates of the country of origin as required by § 327.4, except fresh, chilled, or frozen or other product ineligible for importation into the United States from countries in which the contagious and communicable disease of rinderpest or of foot-and-mouth disease or of African swine fever exists as provided in Part 94 of this title, is eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part.

* * * * *

4. The introductory text of paragraph (b) and paragraph (d) of § 327.3 are revised to read as follows:

§ 327.3 No product to be imported without compliance with applicable regulations.

* * * * *

(b) No fresh or cured meat or meat trimmings in pieces too small to permit adequate inspection shall be imported into the United States. Individual pieces or trimmings must not be smaller than 2-inch cubes or pieces comparable in size. Except as provided in paragraph (c) of this section, processed meat food products prepared with meat pieces smaller than 2-inch cubes or pieces comparable in size shall not be imported except under the following conditions:

* * *

* * * * *

(d) Further, no carcasses or parts of carcasses of livestock offered for entry from which naturally associated tissues such as the peritoneum, pleura, body lymph glands, or the portal glands of the liver have been removed, shall be imported into the United States.

5. The heading of § 327.5 and the first sentence of paragraph (a) are revised to read as follows:

§ 327.5 Importer to make application for inspection of products for entry; information required; "streamlined" inspection procedures for Canadian product.

(a) Except for importers of Canadian products, each importer shall apply for inspection of any product offered for entry by contacting the Import Field Office covering the location where import inspection will take place. * * *

* * * * *

6. Paragraph (a)(1) of § 327.6 is revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) Except as provided in §§ 327.5(d)(1), 327.16 and 327.17, all products offered for entry from any foreign country shall be reinspected by a Program inspector before they shall be allowed entry into the United States.

* * * * *

7. Paragraph (b) of § 327.10 is revised to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(b) Except for product offered for entry from Canada, the outside containers of all products offered for entry from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon reinspection by import inspectors are found not to be adulterated or misbranded and are otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this part. Except for Canadian product, all other products so marked, in compliance with this part, shall be entered into the United States, insofar as such entry is regulated under the Act.

* * * * *

8. Paragraph (c) of § 327.15 is revised to read as follows:

§ 327.15 Outside containers of foreign products; marking and labeling; application of official inspection legend.

* * * * *

(c) Except for product offered for entry from Canada, all outside containers of products which have been inspected and passed in accordance with this part shall be marked by a Program import inspector or under a Program import inspector's supervision with the official import meat inspection mark prescribed in § 327.26.

9. Section 327.16 is revised to read as follows:

§ 327.16 Small importations for importer's own consumption; requirements.

Any product in a quantity of 50 pounds or less which was purchased by the importer outside the United States for his/her own consumption, is eligible to be imported into the United States from any country without compliance with the provisions in other sections of this part but subject to applicable requirements under other laws, including the regulations in Part 94 of this title. However, Program employees may inspect any product imported under this section to determine whether it is within the class eligible to be imported under this paragraph.

10. Paragraphs (a) and (b) of § 327.18 and its heading are revised to read as follows:

§ 327.18 Products offered for entry and entered to be handled and transported as domestic; exception.

(a) All products, after entry into the United States, shall be deemed and treated as domestic products and shall be subject to the applicable provisions of the Act and the regulations in this subchapter and the applicable requirements under the Federal Food, Drug and Cosmetic Act, except that products imported under § 327.16 are required to comply only with the requirements of that Act and § 327.16 of this subchapter.

(b) Products entered in accordance with this part may, subject to the provisions of part 318 of this subchapter, be taken into official establishments and be mixed with or added to any product in such establishments which has been inspected and passed therein.

* * * * *

11. Section 327.20 is revised to read as follows:

§ 327.20 Importation of foreign inedible fats.

No inedible grease, inedible tallow, or other inedible rendered fat shall be imported into the United States unless it has been first denatured as prescribed in § 327.25 of this part and the containers marked as prescribed by § 316.15 of this subchapter or unless it is identified and handled as prescribed by § 325.11 (b) or (c) of this subchapter.

12. Section 327.22 is revised to read as follows:

§ 327.22 Official seals for transportation of products.

The official mark for use in sealing cars, trucks, other means of conveyance, or containers in which any product offered for entry is conveyed shall be the inscription and a serial number hereinafter shown below,[1] and the import meat seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. Such device shall be attached to the means of conveyance only by a Program employee, or a Customs officer or his/her designee, and he/she shall also affix thereto a "Warning Tag" (Form MP–408–3).

[1] The term "F–351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

13. The heading of § 327.23 and the introductory text of paragraph (b) are revised to read as follows:

§ 327.23 Compliance procedure for cured pork products offered for entry.

* * * * *

(b) *Normal monitoring procedures.* Except for product imported from Canada, the Department shall collect sample(s) of cured pork product on a random basis from lots offered for entry at the Port of Entry and, after analyzing the sample for fat and indigenous protein content, calculate the PFF percentage. The product shall not be held pending laboratory results during the monitoring phase. The PFF percentage for each sample shall be considered along with the cumulative results of prior samples to assess the effectiveness of a country's overall compliance program and to determine the course of action for subsequent lots of product. * * *

14. Paragraph (b) of § 327.26 is revised to read as follows:

§ 327.26 Official import inspection marks and devices.

* * * * *

(b) Except for product offered for entry from Canada, when import inspections are performed in official establishments the official inspection legend to be applied to meat and meat food products offered for entry shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

15. The authority citation for part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

16. Section 381.195 is amended by revising the heading, by designating the current text of paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and by adding a new paragraph (a) to read as follows:

§ 381.195 Definitions; requirements for importation into the United States.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (Imported).* To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry.* The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered).* The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 327.26 of this part.

(3) For product from Canada:

(i) *Offer(ed) for entry* from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian inspection system contacts the Import Field Office for an inspection assignment.

(ii) *Offer(ed) for entry* from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) *Entry (entered)* for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR part 123.

(iv) *Entry (entered)* for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

17. The introductory text of paragraph (b) of § 381.196 is revised to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

* * * * *

(b) It has been determined that poultry products from the following countries, covered by foreign poultry inspection certificates of the country of origin as required by § 381.197, are eligible under the regulations in this subpart for entry into the United States, after inspection and marking as required by the applicable provisions of this subpart: * * *

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18. The heading of § 381.198 and first sentence of paragraph (a) are revised to read as follows:

§ 381.198 Importer to make application for inspection of poultry products offered for entry.

(a) Each person who wishes to offer for entry any slaughtered poultry or other poultry product shall make application for inspection to the import supervisor of the import field office at the port where the poultry product is to be offered for entry, or to the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, as long as possible in advance of the anticipated arrival of each consignment of such product, except in the case of poultry product exempted from inspection by §§ 381.207 or 381.209. * * *

19. Paragraphs (a)(1) and (b) and the heading of § 381.199 are revised to read as follows:

§ 381.199 Inspection of poultry products offered for entry.

(a)(1) Except as provided in §§ 381.198(b)(1) and 381.209 of this part, and paragraph (c) of this section, all slaughtered poultry and poultry products offered for entry from any foreign country shall be reinspected by a Program import inspector before they shall be allowed entry into the United States.

* * * * *

(b) Inspectors may take, without cost to the United States, from each consignment of poultry products offered for entry, such samples of the products as are deemed necessary to determine the eligibility of the products for entry into the commerce of the United States.

* * * * *

20. The first sentence of paragraph (c) and the heading of § 381.200 are revised to read as follows:

§ 381.200 Poultry products offered for entry, retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities and assistance; official seal.

* * * * *

(c) Means of conveyance or outside containers in which any poultry product intended to be offered for entry is moved, prior to inspection from the port or wharf where first unloaded in the United States, shall be sealed with the official seals of the Department of Agriculture as prescribed in paragraph (h) of this section or otherwise identified as provided in this paragraph unless already sealed with customs or consular seals in accordance with the customs regulations. * * *

* * * * *

21. The heading of § 381.201 is revised to read as follows:

§ 381.201 Means of conveyance and equipment used in handling poultry products offered for entry to be maintained in sanitary condition.

22. The heading and text of § 381.203 are revised to read as follows:

§ 381.203 Products offered for entry; charges for storage, cartage, and labor with respect to products which are refused entry.

All charges for storage, cartage, and labor with respect to any product offered for entry which is refused entry pursuant to the regulations shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any other products offered for entry thereafter by or for such owner or consignee.

23. Paragraph (a) of § 381.204 is revised to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

(a) Except for products offered for entry from Canada, poultry products which upon reinspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

* * * * *

24. The heading and paragraphs (a) and (c) of § 381.205 are revised to read as follows:

§ 381.205 Labeling of immediate containers of poultry products offered for entry.

(a) Immediate containers of poultry products imported into the United States shall bear a label printed in English showing in accordance with Subpart N of this part all information required by that section (except that the inspection mark and establishment number assigned by the foreign poultry inspection system and certified to the Inspection Service shall be shown instead of the official dressed poultry identification mark or other official inspection legend, and official establishment number); and in addition the label shall show the name of the country of origin preceded by the words "Product of," which statement shall appear immediately under the name of the product.

* * * * *

(c) Labels for immediate containers of imported poultry products shall be submitted for approval in sketch form to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, USDA, Washington, DC 20250. * * *

25. The heading and the first sentence of § 381.206 are revised to read as follows:

§ 381.206 Labeling of shipping containers of poultry products offered for entry.

Shipping containers of imported poultry products are required to bear in a prominent and legible manner the name of the product, the name of the country of origin, the foreign inspection system establishment number of the establishment in which the product was processed, and the inspection mark of the country of origin. * * *

26. Section 381.207 up to the proviso is revised to read as follows:

§ 381.207 Small importations for consignee's personal use, display, or laboratory analysis.

Any poultry product (other than one which is forbidden entry by other Federal law or regulation) from any country in quantities of less than 50 pounds net weight, exclusively for the personal use of the consignee, or for display or laboratory analysis by the consignee, and not for sale or distribution; which is sound, healthful, wholesome, and fit for human food, and which is not adulterated and contains no substance not permitted by the Act or regulations, may be imported into the United States without a foreign inspection certificate, and such product is not required to be inspected upon arrival in the United States and may be shipped to the consignee without further restriction under this part, except as provided in § 381.199(c): * * *

27. The heading and paragraphs (a) and (b) of § 381.208 are revised to read as follows:

§ 381.208 Poultry products offered for entry and entered to be handled and transported as domestic; entry into official establishments; transportation.

(a) All poultry products, after entry into the United States in compliance with this subpart, shall be deemed and treated and, except as provided in § 381.207, shall be handled and transported as domestic products, and shall be subject to the applicable provisions of this part and to the provisions of the Poultry Products Inspection Act and the Federal Food, Drug, and Cosmetic Act.

(b) Poultry products entered in accordance with this subpart may, subject to the provisions of the regulations, be taken into official establishments and be mixed with or added to poultry products that are inspected and passed or exempted from inspection in such establishments.

* * * * *

Done in Washington, DC, on October 2, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-23633 Filed 10-4-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-24; Amdt. 39-6344]

Airworthiness Directives; Pratt & Whitney (PW) JT3D-3B and JT3D-7 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires that certain PW JT3D-3B and JT3D-7 engines returned to service by Jet Power, Inc. (JPI) (FAA Repair Station No. 705-70) be removed from service within 30 calendar days after the effective date of this AD.

An FAA audit of JPI revealed unacceptable engine repair practices which may result in a reduced level of safety for engines approved for return to service by this repair station. This AD is needed to prevent the development of an unsafe condition such as disk rupture, engine fire, loss of engine power, engine instability, or other circumstances inhibiting normal engine operation.

EFFECTIVE DATE: October 31, 1989.

Comments for inclusion in the docket must be received on or before November 30, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments must be marked: Docket No. 89-ANE-24.

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. This information may be examined at the Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain engines approved by JPI for return to service may be unairworthy due to inadequate repair and overhaul practices.

The FAA audit of JPI, conducted during June 21-24, 1989, and August 7-14, 1989, revealed numerous irregularities. Specifically, this repair station had approved for return to service an engine in which a second stage turbine disk containing seven cracks was installed. This disk had been inspected and documented as cracked by the previous owner/operator. In another instance, an engine was approved for release to service with a stage four compressor disk which had been inspected by its previous owner/operator, and found to have exceeded dimensional limits. Several other engines were approved for release to service with negative exhaust gas temperature (EGT) margin. A review of JPI records also indicated inadequate recordkeeping on engine life-limited rotating components, and errors in the documentation of cyclic utilization for a certain turbine disk. Also, in numerous cases where used engine components were obtained from JPI's stock, neither the origins for these components were established, nor was the airworthiness of the components determinable through review of the component records prior to approval for return to service.

Additionally, this repair station has acquired engines without sufficient maintenance recordkeeping to determine the types of previous engine maintenance programs or whether the engine had been involved in a previous accident. Without such knowledge of prior history, a complete engine overhaul, component removal from service, or other appropriate action may be necessary.

This AD requires that these engines be removed from service within 30 calendar days after the effective date of this AD. To return the engines to service, (a) an engine overhaul must be accomplished and, if applicable, the special inspections required on engine components removed from engines previously involved in an accident be accomplished, or (b) submit the repair/overhaul records identified in the body of this AD to the FAA for review and obtain an FAA approval to return the engine to service. Upon review of the relevant data submitted to the FAA, a determination of relaxed or additional requirements on certain engines prior to return to service may be possible.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 calendar days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance

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of the AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–24. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT3D–3B and JT3D–7 turbofan engines approved for return to service by Jet Power, Inc. (JPI), FAA Repair Station No. 705–70, located at 4275 Northwest 77th Avenue, Miami, Florida, identified by serial number (S/N) as follows:

630197;
631102, 631540, 631996;
632278, 632282, 632285, 632339, 632340, 632346, 632351, 632406, 632478, 632481, 632487, 632749, 632842, 632846, 632852, 632962, 632966, 632968, 632973;
633040, 633495, 633541, 633558, 633564, 633607, 633609, 633615, 633669, 633732, 633742, 633744;
634616;
642390, 642490, 642512, 642901, 642910, 642914, 643332, 643471, 642715, 643803, 643812, 643899, 643904, 643973;
644047, 644071, 644131, 644200, 644218, 644306, 644350, 644667, 644756, 644953, 644973;
645017, 645030, 645051, 645068, 645128, 645145, 645177, 645214, 645294, 645370, 645401, 645407, 645570, 645675, 645753, 645769, 645785, 645854, 645865, 645913, 645915, 645977, 645999;
646001;
667054, 667677, 667736, 667792, 667879, 667932, 667979;
668042, 668103, 668229, 668312, 668331, 668373, 668430, 668557, 668594, 668603, 668609, 668658, 668678, 668827, 668877;
669156, 669252, 669324, 669360, 669375, 669377, 669411, 669425, 669464, 669564, 669583, 669644, 669690, 669793, 669797, 669801;
670744;
671102, 671133, 671133, 671141, 671233, 671254, 671340,
671391, 671425;
675803;
678988, 678994, 678999;
688430.

Compliance is required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To ensure the continuing structural integrity and certificated performance capabilities of JT3D–3B and JT3D–7 turbofan engines, accomplish the following:

(a) Remove from service those engines identified above.

(b) Engines removed from service in accordance with paragraph (a) above may be returned to revenue service by accomplishing either one of the two following requirements:

(1) Accomplish the overhaul manual requirements on all parts, sub-assemblies, accessories, and components installed on the engine and, if any of the engines or components of the engines referred to in paragraph (a) have been in an accident, accomplish the pertinent overhaul manual special check and inspection requirements. The engine overhaul and special inspection requirement must be accomplished in accordance with the requirements of Pratt & Whitney JT3D–3B Overhaul Manual, Part Number (P/N) 411568, Revision 78, dated December 15, 1988, or Pratt & Whitney JT3D–7 Overhaul Manual P/N 615105, Revision 50, dated December 15, 1988, as applicable.

Note.—The Light Overhaul Manual requirements, included in the above overhaul manuals, are not applicable in this case.

(2) Submit to the FAA, Manager, Engine Certification Office, through the cognizant FAA Airworthiness Inspector, all the pertinent records identified below for review, and obtain a written FAA approval prior to returning an engine to service:

(i) If the parts, sub-assemblies, accessories, or other components of an engine approved for return to service by JPI were subjected to overhaul or maintenance activities during the last shop visit at JPI, provide records establishing the origin and/or the prior service history of the subject parts. If the determination of the origin of such parts leads to other engines, the records for reason of removal from service, and if available, trend monitoring data for those engines must also be included. Provide records of accomplishment of the required inspections, checks, tests, as applicable in accordance with engine manual requirements that establish the components' airworthiness.

(ii) A list of all life limited components by S/N, service history, and current status as required by FAR Part 121, Section 380, or FAR Part 91, Section 173, as appropriate.

(iii) All repair or overhaul records, concerning the last shop visit at JPI, as required by FAR Part 121, Section 380, or FAR Part 91, Section 173, as appropriate.

(iv) Substantiating evidence that the work performed during the last shop visit at JPI was done in accordance with FAA approved data as required by the FAR's.

(v) Engine acceptance test data or engine "on-wing" test data, accomplished after repair or overhaul, whichever is applicable.

(vi) Engine operation trend monitoring data, if available, for the current engine installation.

(vii) A list by P/N or S/N of any engine, part, sub-assembly, accessory, or component acquired from JPI that has been known to have been involved in an accident.

Note.—If engine owners, operators, or cognizant Civil Aviation Authorities outside the United States wish to have the FAA's assistance in this effort, they may contact the FAA at the following address: Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, Attention: Manager, Engine Certification Office, ANE–140, 12 New England Executive Park, Burlington, Massachusetts 01803.

Information collection requirements contained in the amendment to Section 39.13 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control No. 2120–0056.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The engine overhaul and special inspection requirements shall be done in accordance with PW JT3D–3B Overhaul Manual P/N 411568, Revision 78, dated December 15, 1988, or JT3D–7 Overhaul Manual P/N 615105, Revision 50, dated December 15, 1988, as applicable. The sections of these manuals pertinent to Light Overhaul are not applicable. All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803.

This amendment becomes effective on October 31, 1989.

Issued in Burlington, Massachusetts, on September 19, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–23538 Filed 10–4–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–56–AD; Amdt. 39–6350]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires periodic inspections of the fuselage skin just above the forward main entry doors for cracks emanating from the circumferential skin splice, and modifications, if necessary. This amendment is prompted by reports of cracks on 15 airplanes in this area. This condition, if not corrected, could lead to loss of cabin pressure during flight.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires periodic inspections of the fuselage skin just above the forward main entry doors for cracks emanating from the circumferential skin splice, and modifications, if necessary, was published in the **Federal Register** on May 22, 1989 (54 FR 21969).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that paragraph A. be revised to allow a detailed external visual inspection, with paint removed, at 1,000-cycle intervals, as an option, in lieu of the high frequency eddy current (HFEC) inspections at 3,000-cycle intervals. The FAA does not concur with this request. It is known that the cracking originates at multiple locations in the skin splice and these small cracks can affect strength before they become visible. The HFEC inspections will be more effective in finding cracking before it reaches critical proportions.

Two commenters requested that the restrictions to two coats of paint, or less, when conducting eddy current inspections of the skin be deleted. The FAA concurs. The FAA has determined that eddy current inspections may be reliably performed as long as the outline of the fastener is clearly visible through the paint. The final rule has been revised accordingly.

Two commenters requested that the AD include provisions for deferral of repair of certain small skin cracks. The FAA does not concur. Recent service experience has indicated that repair deferrals are not always prudent, even when supported by the engineering data, because the possibility of human error in either the interpretation or execution of the crack repair deferral inspection requirements could result in an unsafe condition. The inspection intervals specified in the AD are long enough to allow inspections to be performed at a time when repair action can be taken; therefore, the deferral of the repair should not normally be required. In certain special situations, when justified, repair deferral could be accomplished on a case-by-case basis using an adjustment of compliance time, as provided for in the paragraph F. of the final rule.

Two commenters requested inclusion of an alternative repair scheme if cracking is found in the skin, but no cracking is found in the internal splice strap. The FAA concurs. The alternative repair scheme, along with necessary inspections for the repair, have been included in the final rule. The repaired area would be subject to modification when the airplane reaches 20,000 flight cycles in accordance with the 747 Aging Fleet Modification Program, proposed in Notice of Proposed Rulemaking, Docket No. 89–NM–68–AD (54 FR 22300; May 23, 1989).

One commenter stated that flight cycles during which the cabin pressure differential does not exceed 1.5 psi do not cause significant fatigue damage, and suggested that these cycles not be counted when determining the number of landings on an airplane for the inspection requirements of this AD. The FAA concurs and has revised the final rule accordingly.

One commenter requested that terminating action be allowed either in accordance with Revision 1 of the service bulletin or in accordance with the original issue, since these modifications are essentially the same. The FAA concurs and has revised the final rule accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest required the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 205 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,560.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

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to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2289, Revision 1, dated January 26, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cabin pressure loss due to fatigue cracks in the skin at body station (BS) 460 just above left and right number 1 main entry doors, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within the next 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, conduct a high frequency eddy current (HFEC) inspection of the fuselage skin along the aft row of fasteners at the left and right BS 460 circumferential splices between stringers S-14E and S-16 for cracks, in accordance with Boeing Service Bulletin 747-53-2289, Revision 1, dated January 26, 1989. If the external doubler modification forward of BS 460 has not previously been installed in accordance with Boeing Service Bulletins 747-53-2161 or 747-53-2105, then also conduct a HFEC insection of the fuselage skin along the forwardmost row of fasteners of the same skin splice.

B. To conduct the inspections required by this AD, remove the paint, using an approved chemical stripper, or ensure that the fastener heads are clearly visible.

C. If cracks are found when conducting the inspections required by paragraph A., above, accomplish either paragraph C.1. or C.2., below:

1. Prior to further flight, modify the affected BS 460 circumferential splice in accordance with Boeing Service Bulletin 747-53-2289, Revision 1, dated January 26, 1989. Cracks found in the internal splice strap while performing the modification must be repaired in accordance with the 747 Structural Repair Manual (SRM) concurrently with accomplishment of the skin modification.

2. Prior to further flight, perform an internal HFEC inspection of the aft row of fasteners of the internal splice strap to verify there are no cracks in the internal splice strap. This HFEC inspection must be conducted using a HFEC pencil probe, 360 degrees around the fastener heads, in accordance with Boeing Document D6-7170, Section 51-00-00, Figure 4. Repair the skin cracks prior to further flight, in accordance with the 747 SRM. Continue to inspect the unrepaired areas of the skin in accordance with paragraph A., above.

a. In addition, conduct an internal HFEC pencil probe inspection, 360 degrees around the fastener heads of the aft row of the internal splice strap at all fastener locations between stringer S-14E and S-15 between S-15 and S-16, at intervals not to exceed 1,000 landings, in accordance with the aforementioned Boeing Document. If cracks are found in the internal splice strap, prior to further flight, modify in accordance with paragraph C.1, above.

b. Prior to the accumulation of 20,000 landings, modify the affected BS 460 circumferential splice in accordance with paragraph C.1., above.

D. Terminating action for the HFEC inspection requirements of paragraph A., above, consists of modification of the left and right BS 460 circumferential splices between S-14E and S-16 in accordance with Boeing Service Bulletin 747-53-2289, original issue, dated October 22, 1987, or Revision 1, dated January 26, 1989.

E. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles in which the cabin pressure differential was greater than 1.5 psi.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 13, 1989.

Issued in Seattle, Washington, on September 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23539 Filed 10-4-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-125-AD; Amdt. 39-6348]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which currently requires replacement of certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs. This amendment requires similar replacement in accordance with a later revision to the service bulletin specified in the existing AD, and provides additional time for compliance. This amendment is prompted by reports that the kits and service information previously supplied by the manufacturer could not be utilized on all airplanes. This condition, if not corrected, could result in airframe damage due to flutter.

DATE: Effective October 5, 1989.

ADDRESSES: The applicable service information may be obtained from Contrucciones Aeronauticas S.A. (CASA) Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Direcorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87-18-08 R1, Amendment 39-6013 (53 FR 34038; September 2, 1988), applicable to CASA Model C-212 series airplanes, to require replacement of certain elevator, rudder, and aileron trim control system rods, lever, links, and tabs, was published in the **Federal Register** on July 31, 1989 (54 FR 31537).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

In light of the fact that this amendment "rescinds" a requirement that would have been effective on October 15, 1989, the FAA finds good cause to make this amendment effective upon publication in the **Federal Register.**

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 275 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts are estimated to cost $60,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,124,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6013 (53 FR 34038; September 2, 1988), AD 87-18-08 R1, with the following new airworthiness directive:

Casa: Applies to all Model C-212 series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system components, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components, in accordance with CASA Service Bulletin 212-27-25, Revision 6, dated February 24, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A. (CASA) Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Amendment 39-6013, AD 87-18-08-R1.

This amendment becomes effective October 5, 1989.

Issued in Seattle, Washington, on September 22, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23543 Filed 10-4-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 779 and 799

[Docket No. 90932-9232]

Revisions to the Commodity Control List Based on COCOM Review; Chemical and Petroleum Equipment; Transportation Equipment; Electronics and Precision Instruments; Chemicals, Metalloids, Petroleum Products and Related Materials

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of Export Control Commodity Numbers in the CCL and the technical data provisions of part 779 of the Export Administration Regulations (15 CFR parts 768 through 799). Changes in the list represent a comprehensive review by COCOM of a quarter of the list. Certain entries have been rewritten for clarity, and some commodities have been relocated to different entries. A few items not previously subject to national security control have been added (e.g., titanium diboride). Most of the changes represent partial or total decontrol of entries.

This rule amends 15 CFR part 779, Supplement No. 3 to part 779, Supplement No. 4 to part 779, and a number of Export Control Commodity Numbers on the CCL in Commodity Group 4 (Transportation Equipment), Commodity Group 5 (Electronics and Precision Instruments), Commodity Group 6 (Metals, Minerals, and Their Manufacturers) and Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials). This rule also amends the licensing requirements for technical data related to these commodities. In addition, this rule removes three ECCNs: In Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 1142A; in Commodity Group 4 (Transportation Equipment), ECCN 2418A; in Commodity Group 5 (Electronics and Precision Instruments), ECCN 1505A; and in Commodity Group 5 (Electronics and Precision Instruments), ECCN 1560A. Commodities covered in ECCN 1142A have been transferred to ECCN 1754A. Commodities covered in ECCN 2418A have been transferred to ECCN 1418A.

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With the concurrence of the Departments of State and Defense, the Department of Commerce has determined that this rule is consistent with the U.S. national security provisions of section 5 of the Export Administration Act of 1979, as amended.

EFFECTIVE DATE: This rule is effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature on transportation equipment, call Bruce Webb, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–3806.

For questions of a technical nature on semiconductor manufacturing equipment, call Robert Anstead, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–1641.

For questions of a technical nature on communications equipment, call Joseph Westlake, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–0730.

For questions of a technical nature on chemicals, metalloids, petroleum products and related materials, call Jeff Tripp, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–1309.

For questions of a technical nature on software covered in Supplement 3 to part 779, call Randy Williams, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–0708.

For general inquiries, call Kathryn Sullivan, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377–4479.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Kathryn Sullivan, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 779 and 799

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 779 and 799 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for 15 CFR parts 779 and 799 continues to read as follows:

Authority: Pub. L. 96–72, 83 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 779—[AMENDED]

2. Section 779.4(d) is amended by adding a heading to paragraph (d) immediately preceding introductory text; by redesignating paragraph (d)(25) as new paragraph (d)(26) and adding a new paragraph (d)(25) to read as follows:

§ 779.4 General License GTDR: Technical data under restriction.

* * * * *

(d) *Restrictions applicable to all destinations except Canada.* * * *

* * * * *

(25) Technical data including "specially designed software" for submersible systems, as follows, covered in ECCN 1417A; as follows:

(i) Air-independent power systems controlled by paragraph (h)(1), (h)(2) or (h)(3) in ECCN 1417A;

(ii) Subsystems controlled by paragraph (h)(1)(i), (h)(1)(ii), (h)(1)(iii), (h)(3)(i) or (h)(4) in ECCN 1417A; *and*

(iii) Subsystems described in paragraph (h)(2)(i), (h)(2)(ii) or (h)(2)(iii) in ECCN 1417A.

(26) * * *

Supplement No. 3 to Part 779 [Amended]

3. Supplement No. 3 to part 779, "Computer Software", is amended:

By revising in Technical Note 2 the second paragraph following the introductory text and beginning with the phrase "Software" to convert";

By revising paragraphs (c)(2), (c)(3) and (c)(8);

By revising in the introductory text of Advisory Note 9 and in paragraph (a) of Advisory Note 9 the phrase "ECCN 1565" to read "ECCN 1565A";

By removing in the introductory text of Advisory Note 10 the phrase "ECCN 1533, Advisory Note 6, or";

By revising in the introductory text of Advisory Note 10 the phrase "ECCN 1565" to read "ECCN 1565A";

By revising paragraphs (a)(3)(i) and (a)(3)(ii) of Advisory Note 10 as set forth below;

By removing paragraph (a)(3)(iii) of Advisory Note 10;

By revising in the introductory text of Advisory Note 11 the phrase "ECCN 1565" to read "ECCN 1565A";

By revising in paragraph (a) of Advisory Note 11 the phrase "ECCN 1565(h)(1)(i) (A), (B) or (C)" to read "ECCN 1565A(h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(i)(C)"; and

By revising in paragraph (f) under the definition of "Related equipment" in Advisory Note 12 the phrase "ECCN 1565" to read "ECCN 1565A" and the phrase "ECCN 1572" to read "1572A", as follows:

Supplement No. 3 to Part 779—Computer Software

* * * * *

Technical Notes:

1. * * *

2. * * *

"Development system"—* * *

"Programming system"—

"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Diagnostic system"—* * *

* * * * * *

List of Software Subject to This Supplement to Part 779:

* * * * * *

(c) "Specially designed software" for equipment, as follows:

(1) * * *

(2) Equipment controlled under ECCN 1417A;

(3) Equipment controlled under ECCN 1501A;

* * * * * *

(8) Equipment controlled under ECCN 1520A(b);

* * * * * *

Advisory Notes

* * * * * *

Advisory Note 10: * * *

(a) * * *

(3) "Specially designed software" for:

(i) Equipment approved for export under ECCN 1565A, Advisory Note 5, for one or more of the functions described in ECCN 1565A(h)(1)(i)(A), (h)(1)(i)(B) or (h)(1)(i)(D); *or*

(ii) Equipment approved for export under ECCN 1565A, Advisory Note 9, for one or more of the functions described in ECCN 1565A(h)(1)(i)(A), (h)(1)(i)(B) or (h)(1)(i)(C);

* * * * * *

Supplement No. 4 to Part 779 [Amended]

4. Supplement No. 4 to part 779 "Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada" is amended:

By revising paragraphs (a) and (b) and adding a new paragraph (c) in the Note in paragraph (6)(vi) as set forth below;

By adding paragraph (6)(xiii) at the end of paragraph (6) as follows:

Supplement No. 4 to Part 779—Additional Specifications for Certain Technical Data Requiring A Validated License to All Destinations Except Canada

* * * * * *

(6) * * *

(vi) * * *

Note: * * *

(a) Constructed wholly of wood or glass-fiber-reinforced plastics;

(b) Constructed mainly of wood or glass-fiber-reinforced plastics; and using other materials only in the leading edge or tip; *or*

(c) Constructed mainly of glass-fiber-reinforced or carbon-fiber-reinforced plastics.

* * * * * *

(xiii) Technical data for the development and production of integrated automated propulsion and airfoil control systems for tilt wing and tilt rotor aircraft.

* * * * * *

PART 779—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), the following Export Control Commodity Numbers (ECCNs) are removed:

In Commodity Group 1 (Chemical and Petroleum Equipment) ECCN 1142A;

In Commodity Group 5 (Electronics and Precision Instruments), ECCN 1505A;

In Commodity Group 5 (Electronics and Precision Instruments), ECCN 1560A.

Supplement No. 1 to § 799.1 [Amended]

6. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) ECCN 1416A is amended:

By revising paragraphs (b) and (d)(3);

By revising paragraphs (e)(1) and (e)(2);

By revising paragraphs (f)(1), (f)(2) and (f)(3)(ii);

By adding a new paragraph (f)(4) and a new Note and Technical Note following paragraph (f)(4); and

By revising paragraphs (h) introductory text, (h)(3), (h)(5), (h)(7), (h)(10) and (h)(11); as follows:

1416A Vessels, surface-effect vehicles, water-screw propellers and hub assemblies, water-screw propeller systems, moisture and particulate separator systems and specially designed components.

* * * * * *

List of Equipment Controlled by ECCN 1416A

* * * * * *

(b) Surface-effect vehicles, i.e., hovercraft, air cushion vehicles (both sidewall and skirted varieties) and all variations of vehicles using the wing-in-ground effect for positive lift, *except hovercraft having all of the following characteristics:*

(1) *Designed to carry fewer than 5 passengers including the driver;*

(2) *Dry mass less than 500 kg;*

(3) *Maximum speed less than 50 knots (90 km/h) at Sea State 0; and*

(4) *Not designed for operation above Sea State 3;*

(c) * * *

(d) * * *

(3) Closed ventilation systems designed into the vessel that are designed to maintain air purity and positive pressure regardless of the conditions external to the vessel, *except where those closed ventilation systems are specially designed for and incorporated in the vessel's medical facilities only;*

* * * * * *

(e) * * *

(1) Supercavitating propellers rated at more than 7.46 MW (10,000 hp);

(2) Controllable-pitch propellers and hub assemblies rated at more than 29.83 MW (40,000 hp) capacity;

(f) * * *

(1) Contrarotating propeller systems rated at more than 14.92 MW (20,000 hp);

(2) Ventilated, base ventilated and super-ventilated propeller systems and semi-submerged propeller systems (or surface propellers) rated at more than 2.24 MW (3,000 hp);

(3) * * *

(i) * * *

(ii) Other vessels with propeller rotational speeds above 20 rev/min. or with propellers rated at more than 44.74 MW (60,000 hp) per shaft;

(4) *"Pumpjet Systems"*;

Note: Subparagraph (4) above does not control technical data for flow conditioning vane techniques equipment.

Technical Note: "Pumpjet systems" are propulsion systems that utilize divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion generated underwater radiated noise.

(g) * * *

(h) Specially designed components for vessels controlled by paragraphs (a), (b) and (c) of this List, as follows:

* * * * * *

(3) Lightweight structural components for SWATH vessels, hydrofoil vessels and surface-effect vehicles, constructed using anisotropic, orthotropic or sandwich construction methods;

* * * * * *

(5) Active systems for automatically controlling the stability of SWATH vessels, hydrofoil vessels or surface-effect vehicles;

(6) * * *

(7) Lightweight, high capacity (K factor higher than 150) gearing (planetary, cross-connect and multiple input-output gears and bearings) for SWATH vessels, hydrofoil vessels and surface-effect vehicles;

* * * * * *

(10) Lift fans for surface-effect vehicles, rated at more than 300 kW (400 hp);

(11) Waterjet propulsor systems for hydrofoil vessels and surface-effect vehicles rated at an input of 2.24 MW (3,000 hp) or more.

* * * * * *

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Supplement No. 1 to § 799.1 [Amended]

7. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1417A is amended:

By revising the ECCN heading;

By adding a new Note immediately following the heading;

By revising in paragraph (a) the phrase "Automatically controlled atmosphere regeneration" to read "Automatically-controlled atmosphere-regeneration'";

By revising paragraph (c)(1) and the Technical Note following paragraph (c)(1);

By revising paragraph (c)(2) and adding a new Note to follow paragraph (c)(2);

By revising paragraph (e) introductory text, and (e)(3) through (e)(5), and adding new paragraphs (e)(6) through (e)(8);

By revising paragraph (f);

By adding new paragraphs (g) and (h) and a new parenthetical phrase immediately following new paragraph (h); as follows:

1417A Submersible systems (including those incorporated in a submersible vehicle) and specially designed components therefor.

Note: For "specially designed software", see Supp. No. 3 to part 779.

* * * * *

List of Equipment Controlled by ECCN 1417A

* * * * *

(c) * * *

(1) Television systems (comprising camera, lights, monitor and signal transmission equipment) specially designed or modified for remote operation with a submersible vehicle, having a "limiting resolution", when measured in the air, or more than 500 lines, or underwater television cameras having a "limiting resolution", when measured in the air, of more than 600 lines, using IEEE Standard 208/1960 or any equivalent standard;

Technical Note: "Limiting resolution" in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart.

(2) Systems specially designed or modified for remote operation with a submersible vehicle employing techniques to minimize the effects of back-scatter, including range-gated illuminators and laser systems; Note: Export controls of underwater vision systems using lasers is defined in this ECCN.

(d) * * *

(e) Photographic cameras and associated equipment specially designed or modified for underwater use, having a film format of 35mm or larger, incorporating any of the following:

* * * * *

(3) Taking more than 400 full frame exposures without changing the film;

(4) Autofocusing or remote focusing specially designed or modified for underwater use;

(5) Automatic back focal distance correction;

(6) Passive or automatic compensation control specially designed to permit underwater camera housings to be usable at depths exceeding 1,000 meters;

(7) Titanium underwater camera housings specially designed for depths exceeding 1,000 meters; *or*

(8) Automatic exposure control by using sensing devices in or external to the camera, if the camera is capable of operating at depths of more than 300 meters;

(f) Light systems, as follows, specially designed or modified for underwater use:

(1) Stroboscopic lights capable of:

(i) Light output energy of more than 250 Joules per flash; *or*

(ii) Flash rates of more than 5 flashes per second at a light output energy of more than 10 Joules per flash;

(2) Other lights and associated equipment, designed for operation with equipment controlled by paragraph (e)(1) or (e)(8) above;

(g) Specially designed components for the equipment controlled by paragraphs (a) through (f) above;

(h) Air-independent power systems and specially designed components therefor, as follows, specially designed for underwater use:

(1) Brayton, Stirling or Rankine Cycle Engine air-independent power systems having any of the following characteristics:

(i) Specially designed chemical scrubber or absorber subsystems to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

(ii) Specially designed subsystems for utilizing a monoatomic gas;

(iii) Specially designed devices for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *or*

(iv) Specially designed systems for pressurizing products of reaction or for fuel reformation, specially designed systems for the storage of products of the reaction, and specially designed systems for discharging the products of the reaction against a pressure of 100 kP (1 bar, 15 lb/sq. in.) or more;

(2) Diesel Cycle Engine air-independent systems having all of the following characteristics:

(i) Specially designed chemical scrubber or absorber subsystems to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

(ii) Specially designed subsystems for utilizing a monoatomic gas;

(iii) Specially designed devices for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *and*

(iv) Specially designed exhaust systems that do not continuously exhaust products or combustion;

(3) Alkaline, phosphoric acid or ion exchange membrane fuel cell air-independent power systems with an output exceeding 2 kW and operating at a temperature of less than 523K (250 °C), having any of the following characteristics:

(i) Specially designed enclosures for underwater noise reduction in frequencies less than 10 kHz, or special mounting devices for shock mitigation; *or*

(ii) Specially designed systems for pressurizing products of reaction or for fuel reformation, specially designed systems for the storage of products of the reaction, and specially designed systems for discharging the products of the reaction against a pressure of 100 kP (1 bar, 15 lb/sq. in.) or more; *and*

(4) Specially designed components for subsystems controlled by paragraphs (h)(1)(iii) or (h)(3)(i) or described in (h)(2)(iii) above;

Note: [Reserved]

(For electromechanical, semiconductor and radioactive devices, see ECCN 1205A.)

(For underwater "robots", see ECCN 1391A.)

* * * * *

Supplement No. 1 to § 799.1 [Amended]

8. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) ECCN 1418A is amended:

By revising the ECCN heading;

By revising the "List of Equipment Controlled by ECCN 1418A";

By removing first parenthetical reference immediately following the list of controlled equipment;

By adding a new technical note at the end of the ECCN; as follows:

1418A Deep submergence vehicles and autonomous submersible vehicles.

* * * * *

List of Equipment Controlled by ECCN 1418A

Deep submergence vehicles and autonomous submersible vehicles as follows: (a) Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed or modified associated systems and equipment therefor, including the following:

(1) Pressure housings or pressure hulls;

(2) Propulsion motors and thrusters;

(3) Hull penetrators or connectors;

(b) Other manned underwater vehicles that may "operate autonomously" for ten hours or more provided their maximum "range" underwater exceeds 15 nautical miles.

Technical Note: Definition of terms used in this ECCN 1418A:

"Operate autonomously." Fully submerged, without snorkel, all systems working and cruising minimum speed at which the submersible can safely control its depth dynamically by using its depth planes only, with no need for a support vessel or support base on the surface, sea-bed or shore, and containing a propulsion system for submerged or surface use.

"Range." Half the maximum distance the vehicle can cover.

Supplement No. 1 to § 799.1 [Amended]

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment ECCN 1460A is amended:

By revising the ECCN heading as set forth below:

By revising the undesignated paragraphs covering turbine blades in the paragraph designated "I. Materials and Manufacturing Procedures." of Note 8 as set forth below:

By removing in paragraph A of paragraph "I. Materials and Manufacturing Procedures" in Note 9 the phrase "Load carrying structures applying fiber techology"; as follows:

1460A Aircraft and helicopters, including tilt wing and tilt rotor aircraft, aero-engines and aircraft and helicopter equipment.

* * * * *

List of Nonmilitary Equipment controlled by ECCN 1460A

* * * * * *

Note 8. * * *

I. Materials and Manufacturing Procedures.

* * * * *

Turbine blades on basis of directional solidification capable of operating in high gas temperature environments (in excess of 1,563K (1,320 °C)).

Turbine blades on basis of monocrystal technology.

Turbine blades consisting of several parts connected by diffusion bonding.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment) ECCN 1485A is amended:

By revising the ECCN heading and adding a Note before the existing Note to the heading as set forth below;

By revising the heading for the list of controlled equipment;

By revising paragraph (b) as set forth below;

By adding a new Technical Note immediately following paragraph (b)(2)(ii);

By revising paragraphs (c), (e), (f), (g) and (i);

By adding a Note immediately following paragraph (e); as follows:

1485A Inertial navigation systems, inertial equipment, gyroscopes (gyros) and accelerometers, as follows, and specially designed components thereof.

Note: See also ECCNs 1385A and Category VIII on the U.S. Department of State Munitions List Supp. No. 2 to part 770.

* * * * *

List of Equipment Controlled by ECCN 1485A

* * * * *

(b) "Integrated digital flight instrument systems" that include gyrostabilizers or automatic digital flight control systems for aircraft and "specially designed software" for the integration thereof, *except:*

(1) Flight instrument systems integrated solely for VOR, ILS, or MLS navigation and approaches; or

(2) Integrated flight instruments systems that:

(i) Have been in normal civil use for more than two years; and

(ii) Are standard equipment of "civil aircraft" and "civil helicopters";

Technical Note: "Integrated digital flight instrument system" is defined as a primary instrument and display system using digital data processing techniques to provide maneuver guidance information.

Note 1: An "integrated digital flight instrument system" is often integrated with an autopilot to the extent of embodying a common unit for setting up the required demands.

(c) Gyro-astro compasses and other devices that derive position or orientation by means of automatically tracking celestial bodies;

(d) * * *

(e) Automatic pilots used for purposes other than aircraft control and "specially designed software" for the integration therefor, except marine types for surface vessels;

Note: This paragraph (e) does not include automatic pilots for underwater vehicles that are covered in ECCN 1417A.

(f) Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having either of the following characteristics:

(1) A threshold of 0.005 g or less; *or*

(2) A non-linearity of less than 0.25% of full scale output;

(g) Gyros with a rated free directional drift rate (rated free precession) of less than 0.5° (1 sigma or root mean square value (r.m.s)) per hour in a 1 g environment;

(h) * * *

(i) Inertial or other equipment using accelerometers controlled by paragraph (f) or (h) above or gyros controlled by paragraph (g) or (h) above, and systems incorporating such equipment, and "specifically designed software" for the integration thereof;

* * * * *

Supplement No. 1 to § 799.1 [Amended]

11. In Supplement No. 1 to § 799.1 the (Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1502A is amended:

By removing the Note immediately following Note 2;

By removing Note 3;

By redesignating Note 2 as Note 3;

By revising newly-designated Note 3;

By redesignating Note 4 as Note 2;

By revising newly designated Note 2;

By adding a new Note 4;

By revising paragraph (a) of Note 5;

By adding a Technical Note immediately following Note 5:

By removing Advisory Note 6 for the People's Republic of China; as follows:

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

* * * * *

List of Equipment Controlled by ECCN 1502A

Note 1: * * *

Note 2: This ECCN 1502A does not control:

(a) Industrial equipment employing cells not controlled by ECCN 1548A;

(b) Industrial and civilian intrusion alarm, traffic and industrial movement control and counting system:

(c) Medical equipment;

(d) Industrial equipment used for inspection, sorting or analysis of the properties of materials;

(e) "Simple education devices" that employ photocells;

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(f) Simple devices for entertainment or for home use that employ photocells;
(g) Flame detectors for industrial furnaces;
(h) Equipment for non-contract temperature measurment for laboratory or industrial purposes using a single detector cell with no scanning of the detector;
(i) Instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds;
(j) Equipment designed for measuring radiated power or energy for laboratory, agricultural or industrial purposes using a single detector cell with no scanning of the detector and single detector cell assemblies or probes specially designed therefor, having a response time constant exceeding 1 miscrosecond;
(k) Infrared geodetic equipment, provided that equipment uses a lighting source other than a laser and is manually operated, or uses a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment;
(l) Infrared communication equipment with characteristics not exceeding those in ECCN 1519A.
Note 3: This ECCN 1502A does not control ultrasonic devices;
(a) Operating in contact with a controlled material to be inspected;
(b) Used for industrial cleaning, sorting or materials handling;
(c) Used for emulsification;
(d) Used for homogenization;
(e) Used in "simple educational devices";
(f) Used in simple entertainment devices.
Note 4: This ECCN 1502A does not control underwater ultrasonic communication systems that do not have any of the following:
(a) Electronic beam steering;
(b) Encryption techniques; *or*
(c) A carrier frequency outside the range from 20 to 60 kHz.
Note 5: This ECCN 1502A does not control:
(a) Infrared thermal imaging equipment having all the following characteristics:
(1) The detector is a single element;
(2) The detector is neither a charge coupled device (CCD) nor an integrate-while-scan device;
(3) The detector is either:
(i) Not cooled; *or*
(ii) Cooled by using a liquid nitrogen Dewar vessel; *and*
(4) The equipment is:
(i) Non-ruggedized, medical equipment; *or*
(ii) Has both of the following:
(A) A resolution not exceeding 22,500 resolvable elements; *and*
(B) A Noise Equivalent Temperature Difference (NETD), (or temperature sensitivity) of no less than 273.25K (0.1°C);
Note: This paragraph (a) does not release Joule-Thompson coolers, cooling engines or thermoelectric coolers.)
(b) * * *
(Note: * * *)
Technical Note: The term "simple educational devices" is defined as devices designed for use in teaching basis scientific principles and demonstrating the operation of those principles in educational institutions.

Supplement No. 1 to § 799.1 [Amended]

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1510A is amended
By revising the heading for ECCN 1510A;
By redesignating paragraphs (a)(1)(iv)(C), (a)(1)(iv)(D) and (a)(1)(iv)(E) as (a)(1)(iv)(E), (a)(1)(iv)(F) and (a)(1)(iv)(G);
By revising paragraph (a)(1)(iv)(B) to read as follows;
By adding new paragraph (a)(1)(iv)(C) to read as follows;
By adding new paragraph (a)(1)(iv)(D) to read as follows;
By adding at the end of paragraph (b)(1) the word "*and*" immediately following the semicolon;
By adding at the end of paragraph (h)(2) in Note 7 the word "*or*" immediately following the semicolon.

1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnet geophones), except those systems or equipment listed below.

* * * * *

(a) * * *
(1) * * *
(iv)) * * *
(A) * * *
(B) They are not capable of processing responses from more than four beacons in the calculation of a single point;
(C) They do not use coherent signals from two or more beacons;
(D) They have neither devices nor "software" for the automatic correction of velocity-of-propagation errors for point calculation;

* * * * *

Supplement No. 1 to § 799.1 [Amended]

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended:
By revising the ECCN heading to read as set forth below;
By revising in paragraph (b) the phrase "test equipment specially designed" to read "test equipment, including bit error rate test sets, specially designed";
By revising in the Technical Note's defined term "telecommunication transmission equipment" paragraph (a)(9) to read "Stored program controlled digital crossconnection equipment; and";
By correcting in Note 1 the final punctuation, replacing the semicolon with a period;
By correcting in paragraph (c) of the Note immediately following paragraph (a) of Note 2 the final punctuation, replacing the semicolon with a period.

1519A "Telecommunication transmission equipment", measuring and test equipment, as follows, and specially designed components and accessories therefor.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1520A is amended:
By revising the Note immediately following the ECCN heading;
By revising paragraph (a)(2) as set forth below;
By revising in paragraph (a)(3) the phrase "15 GHz" to read "19.7 GHz";
By revising in paragraph (a)(4)(iii) the phrase "kU- and kA-band" to read "Ku- and Ka-band";
By revising paragraph (a)(5) as set forth below;
By adding at the end of paragraph (a)(6)(iv) the word "*or*" immediately following the semicolon;
By revising in Note 3 paragraph (a) the phrase "45 Mbit per second" to read "45 million bit/s";
By removing in Note 4 paragraph (c) the word "*and*" after the semicolon; as follows:

1520A Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.

Note: For "specially designed software" controlled by paragraph (b), see Supp. No. 3 to part 779.

* * * * *

List of Equipment Controlled by ECCN 1520A

(a) * * *
(1) * * *
(2) Microwave radio links:
(i) Designed for operation at a total bit rate not exceeding 45 million bit/s;
(ii) Not employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the total bit rate exceeds 8.5 million bit/s; *and*
(iii) Not exceeding an operating frequency of 19.7 GHz;

* * * * *

(5) The equipment is specially designed for the transmission of television signals:
(i) Between camera and studio or studio and television transmitter; *and*
(ii) Not exceeding line-of-sight distance with respect to any one installation;

* * * * *

Supplement No. 1 to § 799.1 [Amended]

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1529A is amended:
By revising the the ECCN heading;
By revising the "Reason for Control" paragraph;
By revising the list of controlled equipment;
By revising the technical notes;
By revising the Note immediately following the technical notes;
By revising Note 1 following the technical notes;
By revising (Advisory) Note 2 for the People's Republic of China; as follows:

1529A Electronic equipment for testing, measuring or for microprocessor/microcomputer development, as follows.

* * * * *

Controls for ECCN 1529A

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraph (c) and (d) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 766.18(a).

* * * * *

List of Equipment Controlled by ECCN 1529A

(a) Any testing or measuring equipment:
(1) Not described in any other ECCN in the Commodity Control List; *and*
(2) Designed for use at frequencies exceeding 18 Ghz;

Note: This paragraph (a)(2) does not control the following equipment having a maximum specified operating frequency of 26.5 GHz or less:
(a) Power meters;
(b) Broadband noise sources; *or*
(c) Noise figure meters;

(b) Logic analysers having any of the following characteristics, and specially designed accessories and specially designed components therefor:
(1) More than a total of 64 channels;
(2) A synchronous (state) channel sampling rate of more than 50 MHz;
(3) An asynchronous (timing) channel sampling rate of more than 200 MHz;
(4) Probe interfaces and inverse assemblers, *except those designed for use with a microprocessor or microcomputer microcircuit "family" that contains at least one microprocessor or microcomputer microcircuit not controlled by ECCN 1564A;*
(c) Frequency standards having both of the following characteristics:
(1) Designed as reference standards for laboratory use; *and*
(2) Either of the following:
(i) A long-term drift (aging) over 24 hours or more of 1 part in 10^{10} or less; *or*
(ii) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;
(d) Equipment containing frequency standards, having any of the following characteristics:
(1) Designed for mobile use and having a long-term drift (aging) over 24 hours or more of 1 part in 10^{9} or less;
(2) Designed for fixed ground use and having a long-term drift (aging) over 24 hours or more of 5 parts in 10^{10} or less; *or*
(3) A short-term drift (instability) over a period from 1 to 100 seconds of 1 part in 10^{12} or less;
(e) "Comb frequency generators" designed for use at frequencies exceeding 12.5 GHz;
(f) Instruments, as follows, designed for use at frequencies exceeding 1 GHz:
(1) Specially calibrated microwave instrumentation receivers capable of measuring amplitude and phase simultaneously;

Note: This paragraph (f)(1) includes receivers used in equipment for the near- and far-zone measurement of phase and amplitude patterns of antennae.

(2) Automatic "frequency (heterodyne) converters";
(3) Automatic "transfer oscillators";
(g) Digital counters, as follows:
(1) Capable of counting successive input signals with less than 5 ns time difference without prescaling (digital division) of the input signal (for counter/timers having a time interval measurement mode, see also (h) below)
(2) Employing prescaling of the input signal, in which the prescaler is capable of resolving successive input signals with less than 1 ns time difference;
(3) Capable of measuring "burst frequencies" exceeding 100 MHz for a burst duration of less than 5 ms;
(h) Time interval measuring equipment, having both of the following characteristics:
(1) Employing digital techniques; *and*
(2) Capable or measuring time intervals of less than 5 ns on a single shot basis;
(i) Digital voltage measuring equipment capable of more than 1,000 readings per second with a resolution of more than 4½ digits, not including changes in range or polarity;

Note: This paragraph (i) does not control:
(a) Visual quantization apparatus capable of providing an average value, displayed or not, of the results of the measurement;
(b) Multichannel analyzers of all types used in nuclear-experimentation; *or*
(c) Industrial telemeasuring devices in which a pre-set storage value is used as a basis for measuring.

(j) General purpose data communication protocol analyzers, testers and simulators for X.25 level 3 and above as well as Integrated Services Digital Networks (ISDN) protocols (CCITT/ISO);
(k) Microprocessor or microcomputer development instruments or systems, capable of developing "software" for, or capable of programming microcircuits controlled by ECCN 1564A.

Note 1: This paragraph (k) includes accessories specially designed for these microprocessor or microcomputer development instruments or systems such as:
(a) "Cross-hosted" assemblers, "cross-hosted" compilers;
(b) Adapter interfaces for prototypes and/or emulation probes;
(d) Programmable read-only memory (PROM) programmers;
(e) Programmable read-only memory (PROM) copiers of a capacity of more than 32 kbit and a word length of more than 8 bit;
(f) So-called personality modules that contain more than one of the accessories enumerated under (a) to (e).
Note 2: This paragraph (k) does not control mircoprocessor or microcomputer development instruments or systems having all of the following characteristics:
(a) They can be used to develop "software" for, or to program a "family" of microprocessor or microcomputer microcircuits not designed within a controlled country.
(b) They can be used only for microprocessor or microcomputer microcircuits having both:
(1) An operand (data) word length of no more than 8 bits; *and*
(2) An arithmetic logic unit (ALU) not wider than 8 bits; *and*
(c) The "family" contains at least one microprocessor or microcomputer microcircuit that is not controlled by ECCN 1564A.
Note 3: "Cross-hosted" compilers or "cross-hosted" assemblers, needed for use with a particular microprocessor or microcomputer development instrument or system, not controlled by this paragraph (k), must contain only the minimum "software" in machine executable form to perform the functions for which they were designed. To make other.

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incompatible instruments of systems perform the same functions must require:

(a) Modification of this "software"; *or*

(b) Additional of "programs".

Note 4: For "cross-hosted" compilers or "cross-hosted" assemblers that are not specially designed for use with microprocessor or microcomputer development instruments or systems described in this paragraph (k), see Supp. 3 to part 779.

Technical Notes: Definition of terms used in this ECCN 1529A.

1. *"Burst frequency"* measurement. The capability of a counter to start only when the input signal is present and stop counting at the completion of the burst.

2. *"Comb frequency generators."* Apparatus that generate a spectrum of harmonics.

3. *"Frequency (heterodyne) converters."* Equipment that down-converts an unknown frequency by mixing it with an accurately known frequency. This accurately known reference frequency is derived from a crystal, by multiplication of its frequency and passing it through a harmonic generator. By mixing the appropriate harmonic and the unknown frequency, an accurate third frequency results.

4. *"Transfer oscillators."* Like "frequency (heterodyne) converters," are based on the principle of harmonic mixing. The known reference frequency is derived from a local oscillator instead of from a crystal. The unknown frequency is mixed with the local oscillator frequency, the two are phase-locked by tuning the local oscillator and can then be measured by a counter.

5. *"Family."* Consists of microprocessor or microcomputer microcircuits that have:

(a) The same architecture;

(b) The same basic instruction set; *and*

(c) The same basic technology (e.g., only NMOS or only CMOS).

6. *"Pulse frequency profiling."* The capability of measuring the changes of frequency (or phase) within a pulse as a function of time; such changes in frequency would be present in a transmitted pulse-compression radar pulse ("chirp radar"). This profiling may be achieved by internal or external gating. "Pulse frequency profiling" is not intended to include "frequency modulation tolerance" while it is being frequency modulated and is of interest to the communication field. The ability to perform measurement of the time interval of the pulse itself (pulse width) as opposed to frequency measurements within a pulse is covered under time interval instruments in paragraph (f) above.

Note 1: For specially designed testing and measuring equipment controlled by other ECCNs on the Commodity Control List, see those ECCNs.

(Advisory) Note 2 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Quartz or rubidium frequency standards not specially designed from military use;

(b) "Swept frequency network analyzers" or sweep generators for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely;

(c) Instruments in which the functions can be controlled by the injection of digitally coded electrical signals from an external source where the maximum frequency does not exceed 20 GHz;

(d) Microprocessor and microcomputer development instruments for microcircuits that are included either in ECCN 6599G or in the Advisory Note for the People's Republic of China;

(e) Digital counters not having any of the following characteristics:

(1) Capable of performing frequency measurements above 20 GHz;

(2) Capable of measuring either the frequency or the change in phase or frequency within a pulse ("pulse frequency profiling:), using either internally or externally gated sampling intervals of 100 ns or less; *or*

(3) Capable of measuring "burst frequencies" exceeding 250 MHz for a burst duration of less than 2 ms;

(f) Time interval measuring equipment employing digital techniques, not capable of measuring time intervals of less than 1 ns on a single shot basis;

(g) PROM programmers controlled by paragraph (k) above.

Supplement No. 1 to § 799.1 [Amended]

16. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended:

By revising the heading for List of Frequency Synthesizers controlled by ECCN 1531A;

By adding in paragraph (a) quotation marks around the phrase "Frequency synthesizers";

By revising in paragraph (a) the phrase "ECCN 1529A(a)(1)" to read "1529A(c)";

By adding in the introductory text of paragraph (b) quotation marks around the phrase "frequency synthesizers";

By adding in paragraph (b)(3) quotation marks around the phrase "Electrically programmable in frequency";

By revising in paragraph (b)(4) the phrase "except those equipments incorporating pre-emphasis networks for frequency modulation;" to read *"except those equipments incorporating pre-emphasis networks for frequency modulation;"*;

By revising in paragraph (b)(5) the word "or" to read *"or"*;

By adding in paragraph (b)(6) the word *"or"* after the semicolon;

By revising in paragraph (c)(1) the word "greater" to read "of more";

By revising in paragraph (c)(2) the phrase *"136 MHz incorporating facilities for the rapid selection of 720"* to read *"137 MHz incorporating facilities for the rapid selection of 760"*;

By adding in paragraph (c)(4) quotation marks around the phrase "frequency synthesizers";

By revising in paragraph (d)(1) the phrase "except non-ruggedized digitally-controlled preset type radio receivers designed for use in civil communications that have 200 selective channels or fewer;" to read *"except non-ruggedized digitally-controlled preset type radio receivers designed for use in civil communications that have 200 selective channels or fewer;"*;

By adding in paragraph (d)(2) quotation marks around the phrase "Frequency synthesizers";

By revising in paragraph (d)(2) the phrase *"except* those specially designed for receivers freed from control under paragraph (d)(1) above;" to read *"except those specially designed for receivers freed from control under paragraph (d)(1) above;"*;

By adding in paragraph (e)(1) the word "(less)" immediately following the word "better";

By adding in paragraph (e)(2) the word "(less)" immediately following the word "better";

By adding in paragraph (e)(3)(i) the word "(less)" immediately following the phrase "frequency resolution of not better";

By revising in paragraph (e)(3)(ii) the phrase "420 to 470 MHz" to read "403 to 470 MHz";

By adding in paragraph (e)(3)(ii) the word "(less)" immediately following the phrase "frequency resolution of not better";

By revising in paragraph (e)(3)(iii)(A) the phrase "420 to 960 MHz" to read "403 to 960 MHz";

By revising in paragraph (e)(3)(iii)(B) the phrase "10 W" to read "25 W";

By revising paragraph (e)(6) as set forth below;

By revising in Tehnical Note 2 paragraph (a) the word "or" after the semicolon to read *"or"*;

By adding in paragraph (d)(4) in (Advisory) Note 3 for the People's Republic of China quotation marks around the phrase "frequency agility"; as follows:

1531A "Frequency synthesizers" (and equipment containing such "frequency synthesizers").

* * * * *

List of "Frequency Synthesizers" Controlled by ECCN 1531A

* * * * *

(e) * * *

(6) "Frequency synthesizers" designed for equipment described in this paragraph, whether supplied separately or with the said equipment, exceeding the parameters specified in (b) above; *except those specially designed for radio telephones freed from control under paragraph (e)(3)(iii) above.*

* * * * *

Supplement No. 1 to § 799.1 [Amended]

17. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1533A is amended:

By revising the ECCN heading;

By adding a Note immediately following the heading;

By revising the "Reason for Control" paragraph under the heading "Controls for ECCN 1533A";

By revising the heading the list of radio spectrum analyzers controlled by ECCN 1533A;

By revising the technical note;

By removing Notes 1, 2, 3, 4, and Advisory Notes 5 and 6;

By removing the technical note following Advisory Note 5;

By adding new Notes 1, 2, and 3; as follows:

1533A "Signal analyzers" (including spectrum analyzers) and network analyzers, as follows, and specially designed components and accessories therefor.

Note: For 'specially designed software', see Supp. 3 to part 779.

Controls for ECCN 1533A

* * * * *

Reason for Control: National security and foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to commodities described in paragraph (b) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 778.18(a).

* * * * *

List of Equipment Controlled by ECCN 1533A

(a) "Signal analyzers" having any of the following characteristics:

(1) Capable of analyzing frequencies exceeding 18 GHz;

(2) Capable of analyzing frequencies exceeding 2.3 GHz with a "frequency span" of more than 2.3 GHz; *or*

(3) Using time compression of the input signal;

(b) "Dynamic signal analyzers", *except when having a "real-time bandwidth" less than 5.12 kHz;*

(c) Swept frequency network analyzers for the automatic measurement of complex equivalent circuit parameters over a range of frequencies and having a maximum operating frequency exceeding 1.0 GHz; *or*

Note: This does not include equipment for continuous wave, point-to-point measurement.

(d) Scalar network analyzers having a maximum operating frequency exceeding 2.3 GHz.

Technical Note: Definition of terms used in this ECCN 1533A:

1. *"Signal analyzers."* Apparatus capable of measuring and displaying basic properties of the single-frequency components of multi-frequency signals.

2. *"Dynamic signal analyzers."* "Signal analyzers" that use digital sampling and transformation techniques to form a Fourier spectrum display of the given waveform including amplitude and phase information.

3. *"Real-time bandwith."* For "dynamic signal analyzers" is the widest frequency range that the analyzer can output to display or mass storage without causing any discontinuity in the analysis of the input data. For analyzers with more than one channel, the channel configuration yielding the widest "real-time bandwidth" shall be used to make the calculation.

4. *"Frequency span."* The maximum range of the frequency segment displayed.

Note 1: This ECCN does not control:

(a) Optical spectrum analyzers such as:

(1) Prism or grating monochrometers;

(2) Optical interferometers;

(3) Optical spectrometers;

(b) Equipment only using constant percentage bandwidth filters (also known as octave or fractional octave filters);

(c) Medical equipment containing, as an integral part, "signal analyzers".

Note 2: If the "signal analyzer" is a plug-in-module for oscilloscopes, see ECCN 1548A for controls on the associated "mainframe".

Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "dynamic signal analyzers" controlled by paragraph (b) above provided they:

(a) Have no zoom capability; *and*

(b) Cannot compute 512 real spectral lines in less than 50 ms.

Supplement No. 1 to § 799.1 [Amended]

18. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1537A is amended:

By revising in the undesignated paragraph immediately following the heading "List of Equipment Controlled by ECCN 1537A" the reference *"1520A, 1526A(a), 1529A"* to read *"1520A and 1529A"*;

By revising in paragraphs (e)(2) and (e)(3) the phrase *"frequency over the range"* to read *"frequency in the range"*;

By revising in paragraph (f) the phrase *"302 °F (150° C)"* to read *"423K (150 °C)"*;

By removing in paragraph (g) the phrase "but not limited to" immediately following the word "including";

By revising in paragraph (j) the word "greater" to read "more";

By removing in paragraphs (k)(1) and (k)(2) the phrase "They are" and revising the word "specially" to read "Specially";

By removing Advisory Notes 1, 2 (Advisory) Note 7 for the People's Republic of China and the Note immediately following (Advisory) Note 7;

By redesignating Advisory Notes 3, 4, 5 and (Advisory) Note 6 for the People's Republic of China to read Advisory Notes 1, 2, 3 and (Advisory) Note 4 for the People's Republic of China;

By revising newly designated (Advisory) Note 4 for the People's Republic of China as set forth below; as follows:

1537A Microwave, including millimetric wave, equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).

* * * * *

(Advisory) Note 4 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of:

(a) Microwave equipment controlled for export by paragraphs (a), (b) or (c) of this ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument;

(b) PIN modulators controlled by paragraph (l) above, designed for use at frequencies not exceeding 10.5 GHz.

Supplement No. 1 to § 799.1 [Amended]

19. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1549A is amended:

By revising paragraph (a) and (b);

By removing paragraph (d) and the parenthetical reference following paragraph (d);

By removing Advisory Note 1 and Note 2;

By adding two parenthetical references at end of the entry; as follows:

1549A Photomultiplier tubes.

* * * * *

List of Photomultiplier Tubes Controlled by 1549A

Photomultiplier tubes of the following description: (a) They are solar blind types for which the long wavelength cutoff is below 350 nm, where the long wavelength cutoff is defined as 10% of the maximum sensitivity;

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Note: Photomultiplier tubes specially designed for use in spectrophotometry having a peak sensitivity at a wavelength shorter than 300 nm are not controlled by this paragraph.

(b) An anode pulse rise time of less than 1 ns; *or*

* * * * *

(For photosensitive components, see ECCN 1548A.)

(For microchannel plate electron multipliers, see ECCN 1556A.)

Supplement No. 1 to § 799.1 [Amended]

20. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1555A is amended:

By revising the heading "List of Electron Tubes Controlled by ECCN 1555A" and introductory text immediately following the heading;

By revising paragraphs (a) and (b);

By removing paragraph (c);

By revising Note 1 as set forth below;

By removing Advisory Notes 3 and 4;

By revising the heading "Advisory Note for the People's Republic of China" as "(Advisory) Note 3 for the People's Republic of China:";

By revising in newly designated (Advisory) Note 3 for the People's Republic of China paragraph (b) as set forth below; as follows:

1555A Electron tubes and specially designed components therefor.

* * * * *

List of Equipment Controlled by ECCN 1555A

Electron tubes, as follows, and specially designed components therefor:

(a) Electron tubes for image conversion or intensification, including those designed for streak or framing cameras, incorporating:

(1) Microchannel-plate electron multipliers; *or*

(2) Semi-transparent photocathodes incorporating epitaxially grown layers of compound semiconductors, such as gallium arsenide;

(b) Electron tubes for television or video cameras, having any of the following characteristics:

(1) Incorporating microchannel-plate electron multipliers;

(2) Coupled with electron tubes covered by paragraph (a) of this ECCN;

(3) Ruggedized and having a maximum length-to-bulb diameter ratio of 5:1 or less.

* * * * *

Note 1: This ECCN does not control commercial standard X-ray amplifier tubes.

* * * * *

(Advisory) Note 3 for the People's Republic of China:

* * * * *

(a) * * *

(b) Television and video camera tubes that incorporate microchannel-plate electron multipliers not controlled by ECCN 1556A.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

21. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1558A is amended:

By revising the heading for the list of controlled equipment as set forth below;

By revising in paragraph (a)(1)(ii) the phrase "(expressed in watts)" to read "(expressed in kW)" both places it appears and the phrase "10^4" to read "10" and the phrase "2×10^4" to read "20";

By adding in paragraph (a)(2)(i) the phrase "greater than 45kW" immediately following the word "power";

By revising in paragraph (a)(2)(ii) the phrase "(expressed in watts)" to read "(expressed in kW)" and the phrase "4.5×10^4" to read "45";

By revising (c)(1)(ii) as set forth below;

By removing paragraph (c)(1)(iii);

By redesignating paragraphs (c)(1)(iv), (c)(1)(v) and (c)(1)(vi) as paragraphs (c)(1)(iii), (c)(1)(iv) and (c)(1)(v);

By revising newly designated paragraph (c)(1)(iv) as set forth below;

By revising paragraph (c)(3) as set forth below;

By revising in paragraph (e) the phrase "including but not limited to gyrotrons, ubitrons, and peniotrons;" to read "including gyrotrons, ubitrons and peniotrons *except gyrotron oscillators*";

By revising in paragraph (g) the phrase "200°C" to read "473K (200°C)";

By removing in paragraph (h) the word "*or*" after the semicolon; as follows:

1558A Electronic vacuum tubes (valves) and cathodes and other components specially designed for those tubes.

* * * * *

List of Electronic Vacuum Tubes (Valves) and Cathodes, as Follows, and Other Components Specially Designed for Those Tubes Controlled by ECCN 1558A

(c) * * *

(1) * * *

(i) * * *

(ii) Instantaneous bandwidth tubes with any of the following sets of characteristics:

(A) Tubes with:

(1) An instantaneous bandwidth of half an octave or less (i.e., the highest operating frequency does not exceed 1.5 times the lowest operating frequency); *and*

(2) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 0.3;

(B) Tubes that:

(1) Have an instantaneous bandwidth of 10% or less (i.e., the highest operating frequency does not exceed 1.1 times the lowest operating frequency);

(2) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 3; and

(3) Operate in standard international telecommunications bands; or

(C) Tubes that:

(1) Have an instantaneous bandwidth of 3% or less (i.e., the highest operating frequency does not exceed 1.03 times the lowest operating frequency);

(2) The product of the rated output power (expressed in kW) and the maximum operating frequency (expressed in GHz) does not exceed 25; and

(3) Operate in standard international telecommunications bands;

(iii) * * *

(iv) No multiple grid, including shadow grid, electron guns; and

(v) * * *

* * * * *

(3) Fixed frequency pulsed tubes, as follows:

(i) For civil applications;

(ii) Operating at frequencies below 3.5 GHz;

(iii) Having a peak output power of 1.6 Mw or less; *and*

(iv) Having an operating bandwidth of less than 1%;

* * * * *

Supplement No. 1 to § 799.1 [Amended]

22. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1574A is amended:

By revising the ECCN heading;

By revising the heading and the list of controlled equipment;

By adding a Note at the end of the list;

By revising Technical Notes 1 and 2; as follows:

1574A Electronic devices, circuits or systems containing components manufacturing from "superconductive" materials.

* * * * *

List of Equipment Controlled by ECCN 1574A

Electronic devices, circuits or systems containing components manufactured from "superconductive" materials, as follows: (a) Specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents; *and*

(b) Performing functions such as:

(1) Electromagnetic sensing and amplification;

(2) Current switching;

(3) Frequency selection; *or*

(4) Electromagnetic energy storage at resonant frequencies above 1 MHz.

Note: This ECCN includes Josephson-effect devices and superconducting quantum interference devices (squids).

Technical Notes: 1. "Superconductive." Materials (i.e., metals, alloys or compounds) that can lose all electrical resistance (i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating).

Note: The "superconductive" state of a material is individually characterized by a "critical temperature", a critical magnetic field, which is the function of temperature, and a critical current density, which is a function of both magnetic field and temperature.

2. "Critical temperature" (sometimes referred to as the transition temperature) of a specific "superconductive" material. The temperature at which the material loses all resistance to the flow of direct current.

Supplement No. 1 to § 799.1 [Amended]

23. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1584A is amended:

By revising the ECCN heading;

By adding a new Note immediately following the ECCN heading;

By revising the heading for the list of controlled equipment;

By revising paragraphs (a) and (b) as set forth below:

By removing Notes 1 and 2;

By adding Technical Notes 1 and 2 as set forth below;

By revising the heading for the Advisory Note for the People's Republic of China and adding paragraph (g) as set forth below; as follows:

1584A Oscilloscopes, transient recorders and plug-in modules, as follows, and specially designed components, including amplifiers, preamplifiers and sampling devices therefor.

Note: Oscilloscopes may also be referred to as waveform recorders or waveform digitizers.

* * * * *

List of Equipment Controlled by ECCN 1584A

(a) Analogue oscilloscopes or plug-in modules having any of the following characteristics:

(1) Non-modular oscilloscopes having a "bandwidth" exceeding 250 MHz;

(2) Modular oscilloscope systems having either of the following:

(i) "Mainframes" with a "bandwidth" exceeding 250 MHz; *or*

(ii) Plug-in modules with an individual "bandwidth" exceeding 400 MHz;

(3) Having a horizontal sweep speed faster than 1 ns per cm with an accuracy (linearity) better (less) than 2% measured over a 1 ns time interval; *or*

(4) Containing or designed for use with cathode-ray tubes controlled by ECCN 1541A(c);

(b) Digital oscilloscopes or transient recorders with either of the following characteristics:

(1) A digitizing rate exceeding 50 million samples per second for measurement of single-shot phenomena; *or*

(2) A "bandwidth" exceeding 4 GHz for measurement of recurring phenomena;

Technical Notes: Definition of terms for the purpose of this ECCN 1584A.

1. *"Bandwidth"*. The band of frequencies over which the displayed signal does not fall by more than 3 dB (i.e., below 70.7%) of that at the maximum point measured with a constant input voltage.

2. *"Mainframes"*. Equipment that includes a display, power supply and means of accepting and utilizing the plug-in modules.

(Advisory) Note for the People's Republic of China: * * *

* * * * *

(g) Transient recorders, not capable of sampling single input signals at successive intervals of less than 10 ns.

Supplement No. 1 to § 799.1 [Amended]

24. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Insruments) ECCN 1585A is amended:

By revising the ECCN's heading as set forth below;

By adding two Notes immediately following the heading as set forth below;

By revising the heading for the list of controlled equipment;

By revising the introductory text of paragraph (a);

By removing in paragraph (a)(1) the word *"and"* after the semicolon;

By adding in paragraph (a)(2) the phrase "exceeding the limits in paragraph (a)(1) above" immediately following the phrase "frames per second";

By revising in paragraph (b) the phrase "High speed" to read mechanical high speed";

By revising paragraph (c);

By revising in paragraph (d) the phrase "Steak cameras" to read "Mechanical or electronic streak cameras";

By removing in paragraph (d) the phrase ", and specially designed parts and accessories therefor";

By redesignating paragraph (e) as paragraph (h);

By adding a new paragraph (e) as set forth below;

By redesignating paragraph (f) as paragraph (i) and revising it;

By revising paragraph (g);

By adding new paragraphs (f) and (j);

By adding and reserving Notes 1 and 2 and adding (Advisory) Note 3;

By revising the heading "Advisory Note for the People's Republic of China:" to read "(Advisory) Note 4 for the People's Republic of China:"; as follows:

1585A Cameras, components and photographic recording media.

Note: For cameras operating at below 190 nm (ultra-violet) or above 1,200 nm (infrared), see ECCN 1502A.

Note: For cameras specially designed or modified for underwater use, see ECCN 1417A.

List of Equipment Controlled by ECCN 1585A

Cameras, components and photographic recording media therefor, as follows: (a) High speed cinema recording cameras and equipment as follows: * * *

(b) * * *

(c) Cameras incorporating electron tubes controlled by ECCN 1555A, *except television or video cameras specially designed for television broadcasting use;*

(d) * * *

(e) Electronic framing cameras having a speed exceeding 10^6 frames per second;

(f) Video cameras incorporating solid state sensors, having any of the following characteristics:

(1) More than 4×10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

(2) More than 4×10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

(3) More than 12×10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

Note: The camera output in each case is thereby limited to 4×10^6 resolvable elements excluding color information.

Technical Note: Definition of terms used in this ECCN 1585A

"Active pixels." A minimum element of the solid state array (sensor) that has a

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photoelectric transfer function and that is exposed to the light.

(g) Electronic cameras having both of the following characteristics: (1) An electronic shutter speed (gating capability) of less than 10 microseconds per full frame; *and*

(2) A read out time allowing a framing rate of more than 400 full frames per second;

(h) * * *

(i) Film, as follows: (1) Having a speed of ISO 10,000 (or its equivalent) or better;

(2) Color film having a spectral sensitivity extending beyond 7,200 Angstroms or below 2,000 Angstroms;

(j) Cameras incorporating: (1) Linear detector arrays exceeding a size of 4,096 elements per array; *and*

(2) Mechanical scanning in one direction.

Note 1: [Reserved]

Note 2: [Reserved]

(Advisory) Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of cameras controlled only by paragraph (j) above provided:

(a) They are intended for civil end-users and civil end-users; *and*

(b) They do not contain linear detector arrays exceeding a size of 8,192 elements per array.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

25. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments) ECCN 1587A is amended:

By revising in paragraph (a)(2) the phrase "three series" to read "four series";

By revising in paragraph (c)(1) the phrase "better than ±0.00015 percent over their operating temperature range" to read "better (less) than $\pm 1.0 \times 10^{-7}$ over an operating temperature range exceeding 70 °C";

By removing paragraph (c)(3);

By redesignating paragraphs (c)(4), (c)(5), and (c)(6) as paragraphs (c)(3), (c)(4), and (c)(5);

By redesignating old "Note 1" as new "Note 2" and old "Note 2" as new "Note 1";

By revising in paragraph (b) of new "Note 2" the phrase "45 kHz" to read "4 kHz".

Supplement No. 1 to § 799.1 [Amended]

26. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and Their Manufactures) ECCN 1675A is amended:

By revising the ECCN heading;

By revising list of controlled items;

By revising the technical note;

By removing Advisory Note; as follows:

1675A "Superconductive" materials and composite conductors, as follows:

* * * * *

List of Items Controlled by ECCN 1675A

(a) "Superconductive" materials of all types:

(1) Having a "critical temperature", at zero magnetic induction, of 9.85K (−263.3 °C) or higher; *and*

(2) In quantities of more than 25 g;

(b) "Superconductive" niobium-titanium wire not embedded in a metallic matrix with a cross section area of less than 3.14×10^{-4} mm² (i.e., 20 micrometre diameter for circular filaments);

(c) Composite conductors containing at least one "superconductive" constituent having a "critical temperature", at zero magnetic induction, of 9.3K (−263.85 °C) or higher, *except those that:*

(1) *Have "superconductive" filaments embedded in a copper or copper-based mixture matrix; and*

(2) *Fulfill either of the two following sets of characteristics:*

(i) *The "superconductive" constituent or filament:*

(A) *Has a cross section area of more than 3.14×10^{-4} mm² i.e., 20 micrometre diameter for circular filaments;*

(B) *Is either non-coated or insulated with*

(1) Varnish;

(2) Glass fiber;

(3) Polyamide; or

(4) Polyimide; and

(C) *Does not remain in the "superconductive" state when:*

(1) Evaluated in sample lengths of less than 1 meter; and

(2) Exposed to a magnetic field with an induction of more than 12 tesla at a temperature of 4.2K (−268.95 °C); or

(ii) *The composite conductor contains:*

(A) *"Superconductive" niobium-titanium wire with a cross section area of more than 9.5×10^{-5} mm² i.e., 11 micrometer diameter for circular filaments; and*

(B) *A total mass, i.e., including the mass of the matrix, not exceeding 10 kg.*

Technical Notes: Definition of terms used in this ECCN 1675A

1. *"Superconductive"*. Materials (i.e. metals, alloys or compounds) that can lose all electrical resistance, i.e., that can attain infinite electrical conductivity and carry very large electrical currents without Joule heating.

Note: The "superconductive" state of a material is individually characterized by a "critical temperature", a critical magnetic field, which is a function of temperature, and a critical current density which is, however, a function of both magnetic field and temperature.

2. *"Critical temperature"*. "Critical temperature" (sometimes referred to as the transition temperature) of a specific "superconductive" material—the temperature at which the material loses all resistance to the flow of direct current.

Supplement No. 1 to § 799.1 [Amended]

27. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1733A is amended:

By revising the ECCN heading;

By revising the heading for the list of controlled Items;

By removing the existing Technical Note;

By placing Notes 1, 2 and 3 immediately following paragraph (d)(3);

By adding new Technical Notes 1 and 2 immediately following Note 3; as follows:

1733A Base materials, non-"composite" ceramic materials, ceramic-ceramic "composite" materials and precursor materials, as follows, for the manufacture of high temperature fine technical ceramic products.

* * * * *

List of Base Materials, Non-"Composite" Ceramic Materials, Ceramic-Ceramic "Composite" Materials and Precursor Materials, as Follows, for the Manufacture of High Temperature Fine Technical Ceramic Products Controlled by ECCN 1733A.

* * * * *

Technical Notes: Definition of terms used in this ECCN 1733A

1. A "matrix" is defined as a substantially continuous phase that fills the space between particles, whiskers or fibers.

2. A "composite" is defined as a "matrix" and an additional phase or additional phases consisting of particles, whiskers, fibers or any combination thereof, present for a specific purpose or purposes.

Supplement No. 1 to § 799.1 [Amended]

28. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials) ECCN 1746A is amended:

By revising the ECCN heading as set forth below;

By revising the heading for the list of controlled commodities and by adding introductory text immediately following the heading as set forth below;

By revising paragraph (c) as set forth below;

By removing the Note immediately following paragraph (c);

By removing the Technical Note;

By removing the Note immediately following the Technical Note; as follows:

1746A Non-fluorinated polymeric substances and manufactures thereof, as described in this entry.

* * * * *

List of Non-Fluorinated Polymeric Substances and Manufactures Controlled by ECCN 1746A

Non-fluorinated polymeric substances, as follows, and manufactures thereof:

* * * * *

(c) Aromatic polyamides, including heterocyclic aromatic polyamides characterized as aromatic due to the presence of a benzene ring;

* * * * *

Supplement No. 1 to § 799.1 [Amended]

29. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials) ECCN 1754A is amended:

By revising introductory text of paragraph (a) as set forth below;

By revising paragraph (b)(2) as set forth below;

By revising in the paragraph (b)(5) the phrase "containing 10%" to read "containing 30%";

By adding paragraphs (b)(6) and (b)(7) as set forth below;

By adding in paragraph (c)(1) the phrase ", *except greases and lubricants made from poloyperfluoroalkylethers (See ECCN 1781(a))*" immediately preceding the word "above";

By revising in paragraph (c)(3) the phrase "(b)(2), specially" to read "(b)(2), (b)(5), (b)(6) or (b)(7) above, specially";

By adding paragraph (c)(5) as set forth below; as follows:

1754A Fluorinated compounds, materials and manufactures as described in this entry.

* * * * *

List of Fluorinated Compounds, Materials and Manufactures Controlled by ECCN 1754A

Fluorinated compounds, materials and manufactures, as follows: (a) Non-polymeric materials, as follows: * * *

(b) * * *

(1) * * *

(2) Fluoroelastomeric compounds of at least 95% of:

(i) A combination of two or more of the following monomers:

(A) Tetrafluoroethylene;

(B) Chlorotrifluoroethylene;

(C) Vinylidene fluoride;

(D) Hexafluropropylene;

(E) Bromotrifluoroethylene;

(F) Iodotrifluoroethylene;

(G) Perfluoromethylvinylether; *and*

(H) Perfluoropropoxypropylvinylether;

(ii) A copolymer of tetrafluoroethylene and propylene; *or*

(iii) A terpolymer of tetrafluoroethylene, vinylidene fluoride and propylene;

* * * * *

(6) Fluorinated polyimides, and hexafluoroacetone and other intermediates for their production, containing 30% or more of combined fluorine;

(7) Fluorinated phosphazene elastomers, and intermediates for their production, containing 30% or more of combined fluorine;

(c) * * *

(5) Reinforced tubing (including connectors and fittings for use with such tubing) incorporating coagulated dispersion grade of polytetrafluoroethylene, copolymers of tetrafluoroethylene and hexafluoropropylene, or any of the fluorocarbon materials controlled by paragraph (b)(2) above and designed for operating (working) pressures of 21 MPa (3,000 psi) more, whether or not specially processed to make the flow surfaces electrically conductive.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

30. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials) ECCN 1759A is amended:

By revising the ECCN heading;

By adding list of items controlled;

By adding a technical note;

By adding (Advisory) Notes 1 and 2; as follows:

1759A "Syntactic foam" for underwater use and microspheres.

Controls for ECCN 1759A

* * * * *

List of "Syntactic Foam" for Underwater Use and Microspheres, as follows, Controlled by ECCN 1759A

(a) "Syntactic foam" as follows:

(1) Designed for marine depths exceeding 1000 meters; *or*

(2) With a density less than 0.561 g/cm³ (35 lb/cu ft) *except that designed for use at marine depths less than 100 meters;*

(b) Hollow microspheres (microballoons), having all of the following characteristics, for use in "syntactic foam"

(1) Made from glass or plastic;

(2) A true particle density of more than 0.16 g/cm³ (10 lb/cu ft) and less than 0.41 g/cm³ (26 lb/cu ft);

(3) A bulk density of more than 0.088 g/cm³ (5.5 lb/cu ft) and less than 0.23 g/cm³ (14.4 lb/cu ft);

(4) A compressive strength more than 2.8 MPa (400 psi);

(5) A particle size range or 20 to 200 micrometre; *and*

(6) A floater content of at least 94% by volume.

Technical Note: Definition of Terms used in the ECCN 1759A1. "Syntactic foam" is defined as hollow spheres of plastic or glass embedded in a resin matrix.

(Advisory) Note 1: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of "syntactic foam" controlled by paragraph (a) above, provided it fulfills any of the following sets of conditions:

(a) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 200 meters;

(2) To be used in manned autonomous underwater vehicles excepted from export control; *and*

(3) To be installed by the supplier;

(b) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 300 meters; *and*

(2) Shaped or preshaped and to be used in civil offshore drilling or production equipment; *or*

(c) The "syntactic foam" is:

(1) Designed for use at depths not exceeding 300 meters;

(2) To be used in manned autonomous underwater vehicles excepted from export control; *and*

(3) To be installed by the supplier.

(Advisory) Note 2: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of microspheres controlled by paragraph (b) above, for civil uses other than underwater applications.

Supplement No. 1 to § 799.1 [Amended]

31. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum products and Related Materials) ECCN 1763A is amended:

By revising the ECCN heading;

By adding in paragraphs (a) and (b) quotation marks around the phrase "Fibrous and filamentary materials";

By removing in paragraph (a) the phrase ", *except* silicate glass fibers";

By adding in paragraph (b)(1) the word "*and*" immediately following the semicolon;

By adding in paragraph (d) quotation marks around the word "Composite ';

By adding paragraph (f) to Technical Note 1 as set forth below;

By adding in Technical Note 2 the phrase "pascals, equivalent to"

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immediately following the phrase "Young's modulus in";

By removing in Tcchnical Note 3 the phrase "and a relative humidity of (50±5)%";

By adding in Technical Note 4 quotation marks around the word "composite";

By adding Note 5 and (Advisory) Note 6 as set forth below; as follows:

1763A "Fibrous and filamentary materials" that may be used in organic "matrix", metallic "matrix" or carbon "matrix" "composite" structures or laminotes, and such "composite" structures and laminotes and "specially designed software" therefor

* * * * *

Technical Notes:

1. * * *

* * * * *

(f) Aromatic polyamide pulp.

* * * * *

Notes: 1. to 4. * * *

5. This ECCN does not control manufactured articles where the value of the aromatic polyamide content controlled by paragraph (a) above, together with other controlled materials, is less than 50% of the total value of the material used.

(Advisory) Note 6: Licenses are likely to be approved for export to bona fide civil end-users for non-military, non-aerospace end-use in country Groups QWY for the shipment of polyethylene fiber controlled by paragraph (a) above.

* * * * *

Supplement No. 1 to § 799.1 [Amended]

32. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids/, Petroleum products and Related Materials) ECCN 1781A is amended by revising paragraph (b) as set forth below:

1781A Synthetic lubricating oils and greases

* * * * *

List of the Principal Ingredients of Synthetic Lubricating Oils and Greases Controlled by ECCN 1781A

(a) * * *

(b) Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than 2 ether or thio-ether functions or mixtures thereof.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-23559 Filed 10-2-89; 4:35 pm]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 31, 145, and 147

Leverage Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended its rules relating to leverage transactions to permit additional participation in the leverage business, as directed by Congress in section 19(c)(2) of the Commodity Exchange Act ("Act"). Futures Trading Act of 1986, Pub. L. No. 99-641, § 109, 100 Stat. 3558 (1986). The substance of the current regulatory framework has been retained. Most of the rule amendments and the few new rules are of a procedural nature and are designed to provide for a regulatory structure of direct supervision by a registered futures association under Commission oversight. Such a structure is consistent with the other regulatory programs administered by the Commission under the Commodity Exchange Act. The rule amendments and new rules have been adopted essentially as proposed, with certain minor change noted below.

Each leverage transaction merchant ("LTM") is required to be a member of a registered futures association, and a registered futures association with LTM members is required to adopt rules establishing minimum financial, cover, segregation and sales practice requirements, and related reporting requirements. With respect to each area, these rules must be at least as stringent as the Commission's standards set forth in Part 31 of the rules promulgated under the Act. Such a registered futures association also would be required to have an arbitration procedure to settle leverage customer claims or grievances. The Commission has separately approved such rules of the National Futures Association ("NFA"), the only registered futures association.

The Commission previously authorized NFA to perform the function of processing the registration of LTMs and associated persons ("APs") of LTMs. The Commission is now authorizing NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, and to process a request for withdrawal from registration by an LTM.

LTMs must file monthly reports of leverage contract trading volume and pricing, and quarterly reports of closed-out leverage contracts, with NFA instead of with the Commission. NFA will prepare summaries of those reports for the Commission.

The specific exemption procedure currently set forth in Rule 31.24 has been deleted, and the provisions of exemptions previously granted under Rule 31.24 to the existing LTMs which are of general applicability have been incorporated into the rules as appropriate. The only major function with respect to leverage contracts for which the Commission retains sole authority is the registration of leverage commodities.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-8955; David R. Merrill, Senior Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-9880; or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The annual public reporting burden for this collection of information is estimated to average 49 hours per LTM, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This includes the time necessary to maintain the various records and to prepare and file the appropriate reports required by the Part 31 rules promulgated under the Act. Of course, this burden will vary from firm to firm based on the number of leverage contracts offered and sold, the number of employees, the firm's financial condition and other factors. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0029), Washington, DC 20503.

II. Background

The Commission published its proposed rule amendments with respect to leverage transactions and allowed sixty days for public comment thereon. 54 FR 3476 (January 24, 1989). The Commission received nine written comments on the proposals. The commenters included the U.S. Department of Justice, NFA, two registered LTMs (one of which submitted two written comments), three contract markets and a private attorney. The Commission has carefully considered each of the comments and has determined to adopt the rule amendments and new rules essentially as proposed, with certain minor changes noted below.

The Commission previously adopted rule amendments providing for the transfer to NFA of the function of processing the registration of LTMs and APs of LTMs. 54 FR 19556 (May 8, 1989). The Commission authorized NFA to perform this function effective May 15, 1989. 54 FR 19594 (May 8, 1989). The Commission is now amending Rule 3.33 regarding withdrawal from registration. The Commission also has issued an Order that authorizes NFA to process registration withdrawal requests made by LTMs, and authorizes NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, which is published elsewhere in the "Notices" Section of this issue.

III. Rule Amendments and Comments Thereon

A. Moratoria Rules

The Commission proposed to delete Rules 31.1 and 31.2 [17 CFR 31.1 and 31.2 (1988)], which imposed moratoria on the entry of new firms into the leverage business unless a firm was so engaged on June 1, 1978 (with respect to leverage contracts involving gold and silver bullion and bulk coins) or February 2, 1979 (with respect to leverage contracts involving all other commodities upon which leverage contracts could have been offered at that time, *i.e.*, all but the agricultural commodities enumerated in the Act), respectively. Other provisions of the rules which related to the moratoria and their treatment of "grandfathered" firms, *i.e.*, those firms which were engaged in a leverage business on the dates specified in the moratoria rules, also were proposed to be deleted. These provisions include paragraphs (c), (d) and (e) of Rule 31.5 and paragraphs (a)(1) and (b)(1) of Rule 31.6, as well as Rule 31.22. The Commission intended by these proposals to conform the regulatory framework for an applicant for registration as an LTM or an AP of an LTM to the framework for any other applicant for registration. Such applicant would not be permitted to engage in business requiring registration until registration had been granted.

One commenter suggested that the Commission may wish to consider a gradual end to the moratoria, which the Act permits, particularly if there is uncertainty about the number of firms that would enter the leverage business. This commenter suggested that a higher capital requirement for LTMs could be imposed temporarily to accomplish a gradual end to the moratoria. The Commission has carefully considered this comment, but it has determined that changing the minimum adjusted net capital requirement is not appropriate at this time. Accordingly, the rule amendments referred to in the preceding paragraph relating to the moratoria and "grandfathered" firms have been adopted as proposed.

B. Status of Copper and Foreign Currency Leverage Contracts

The amendments to section 19 of the Commodity Exchange Act enacted by Congress in 1986 made it unlawful for any person to offer to enter into, to enter into, or to confirm the execution of, any leverage contract to or with a leverage customer involving any leverage commodity other than gold and silver bullion, bulk gold and silver coins and platinum. These amendments had the effect of prohibiting new leverage contracts involving copper, which had been offered by International Precious Metals Corporation ("IPMC"), and four foreign currencies (British pound, Deutsche mark, Japanese yen and Swiss franc), which had been offered by Monex International, Ltd. ("Monex"), on and after the date of enactment of the Futures Trading Act of 1986, November 10, 1986. Congress also provided that its ban on new copper and foreign currency leverage contracts did not affect any rights or obligations arising out of any leverage contract involving any of those commodities that was entered into prior to November 10, 1986. The Commission sent letters to IPMC and Monex in November 1986 to inform them of these amendments to the law and to remind them of their obligations to service leverage contracts involving copper and foreign currencies, respectively, entered into prior to November 10, 1986, including providing cover for such open contracts. The Commission proposed to codify the statutory provision and its November 1986 letter to IPMC and Monex in a new paragraph 31.5(c). The only commenter who addressed these proposed amendments favored them, and the Commission has adopted the amendments as proposed.

Because of the reference to November 10, 1986 in that provision, the Commission also proposed to make technical amendments to the introductory text of paragraph (a) and to paragraph (b) of Rule 31.5 to make clear that the current reference to the "effective date of this section" meant the *original* effective date of the section, April 13, 1984. *See also* Rules 31.13(b)(2) and 31.21. There were no comments on these technical amendments, and the Commission has adopted them as proposed.

Another proposed technical amendment to Rule 31.5 was the deletion of paragraph (g), which related to the denial, suspension or revocation of registration of an LTM or an AP of an LTM. The Commission adopted subpart C of part 3 of its rules, which applies to the denial, suspension or revocation of registration for all registrants, subsequent to the adoption of the leverage contract rules in 1984. Because of that and in light of the Commission's authorizing NFA to take adverse action with respect to LTMs and APs of LTMs as noted above, the Commission has deleted Rule 31.5(g).

C. Definitions

The Commission proposed to amend the definition of "leverage commodity" in Rule 31.4(g), which currently includes references to copper and four foreign currencies.[1] IPMC closed out its last copper leverage contract in November 1987, and Monex closed out its last foreign currency leverage contract in August 1988. The proposed amendment to the leverage commodity definition was intended to reflect the amendment to section 19 of the Act limiting the offer and sale of leverage contracts to those involving gold and silver bullion, bulk gold and silver coins and platinum. The Commission also indicated when it proposed these rule amendments that it had reviewed all of the other definitions in Rule 31.4 and believed that changes thereto were neither necessary nor appropriate.

One commenter addressed the definitions applicable to leverage transactions. This commenter approved the deletion of reference to copper and foreign currencies. However, this

[1] The Commission also proposed to delete the reference to leverage contracts on foreign currencies in Rule 31.25(b), which governs the treatment of carrying charges.

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commenter would make certain further definitional changes and would generally eliminate the use of futures terminology with respect of leverage contracts, specifically referring to such terms as "long" and "repurchase." This commenter also recommended amending Rule 31.4(t) which defines leverage account equity. The commenter believes that the definition should be amended so that leverage contract equity is based on the cash price series the LTM must designate as a benchmark for use by leverage customers in determining the value of each leverage commodity, rather than relying on the LTM's bid and ask price in computing the value of long and short leverage contracts as the rule currently requires. The purpose of the cash price series is to assist a leverage customer in comparing the LTM's prices to those in normal cash market channels. However, the value of any leverage contract is determined solely by the prices established by the LTM, and the Commission therefore believes it is appropriate to maintain the definition of leverage account equity solely in terms of the LTM's prices. The Commission has carefully considered these comments, has again reviewed the definitions in Rule 31.4, and has determined to adopt the amendment to Rule 31.4 as proposed.

D. Leverage Commodity Registration

The Commission, as proposed, has retained for itself the function of processing applications for and granting leverage commodity registration under Rule 31.6. This is the only function which the Commission has reserved completely to itself at this time. However, the Commission also indicated when it proposed these rule amendments that as experience is gained and leverage commodity registration becomes more standardized, it would consider amending the rules to authorize NFA to register leverage commodities.

The Commission also proposed to add a new paragraph (a)(6) to Rule 31.6 which would provide an additional condition for leverage commodity registration. This additional condition would be that the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests such as options, certificates of deposit or other regulated instruments. The Commission required an extended period of time to resolve two leverage commodity registration applications, which were subsequently withdrawn, because the leverage contracts contained an option component.

One commenter supported the Commission's proposal in this area. Another commenter opposed this proposal, arguing that "there is nothing in the history of the Act that even implies that a leverage contract may not have elements of another commodity interest." This commenter also stated that "if a leverage contract is submitted to the CFTC for approval which contains an option component, the Commission should judge that submission on its compliance with the Commission's leverage and option rules." A third commenter disputed the implication that the Commission has the legal authority to permit off-exchange trading of hybrid leverage commodities. This commenter further stated that if the Commission were granted legal authority to consider such applications, the prevailing requirements for contract market designation should be used to evaluate such applications.

The Commission has carefully considered these comments and has determined to add a new paragraph (a)(6) to Rule 31.6 as proposed. As the Commission noted when it proposed the ban on leverage contracts with substantial characteristics of other interests such as options, certificates of deposit or other regulated instruments, such instruments may be extremely complex and may raise additional issues regarding customer protection. Moreover, such hybrid leverage instruments are not readily included under the present regulatory program, and may raise other legal issues.

As noted above, the cross-references to current Rule 31.5(c) "grandfathered" LTMs have been deleted from paragraphs (a)(1) and (b)(1) of Rule 31.6. No leverage commodity registration will be granted to a person that is not a registered LTM. The Commission will endeavor to coordinate with NFA so that the first leverage commodity registration will be granted simultaneously with the granting of registration as an LTM.[2]

One commenter recommended that all leverage commodity registration applications be published in the **Federal Register** for comment. The Commission has not previously done this with leverage commodity registration applications and does not believe that such a requirement is warranted.

This commenter made another point with respect to Rule 31.6 which was not raised in the Commission's proposed rule amendments but was discussed in the Commission's November 1988 report to Congress on leverage transactions, which was mandated by the Futures Trading Act of 1986. The issue is whether leverage contracts should be subject to an economic purpose test. The commenter pointed out that the Commission stated on page 18 of its report to Congress "that an 'economic purpose' test is not included *in the Act* as a condition for leverage commodity registration." [Emphasis by the commenter.] The commenter expressed strenuous disagreement with that statement if it was meant to imply that the Commission lacks the authority to impose an economic purpose test for leverage contracts by rule. The commenter stated that Congress' request for findings and recommendations as to whether leverage contracts serve an economic purpose in the mandated report referred to above indicates Congress expected that question to be addressed in the rules relating to leverage transactions.

The commenter also raised the issue of regulatory parity, arguing that if an economic purpose test is necessary for either futures or leverage contracts, it is only fair to impose such a test on both types of contracts. This could be done, according to the commenter, by adding a new provision to Rule 31.6(a), or by interpreting Rule 31.6(a)(5) to require leverage contracts to meet an economic purpose test. The commenter pointed out that Rule 31.6(a)(5) currently requires that leverage contract terms and conditions not be contrary to the public interest, which tracks the language of section 5(g) of the Act, the basis for the economic purpose test for futures contracts. Conversely, the commenter stated that if the Commission is prepared to allow the market to determine whether leverage contracts serve an economic purpose, fairness demands that contract markets be afforded the same freedom for a new futures contract and not be subjected to meeting the economic purpose test before designation is granted. The commenter stated that this could be done by deleting the economic purpose test from the Commission's Guideline No. 1 concerning economic and public interest requirements for contract market designations.

The Commission has carefully reviewed the comments with respect to whether leverage contracts should be subject to an economic purpose test. The Commission believes that it has thoroughly addressed that issue in pages 16–21 of the mandated report to Congress referred to above. The Commission notes that the regulatory framework for leverage transactions has never included an economic purpose test. The Commission further notes that during each of its previous reauthorizations by Congress, the issue of leverage transactions has been discussed extensively and Congress has enacted statutory changes regarding leverage transactions on each occasion. However, Congress has never mandated that leverage contracts be subject to an economic purpose test. It is well established that when Congress revisits a statute giving rise to a longstanding agency interpretation without pertinent change, the failure to repeal or revise the interpretation, or to mandate an alternative requirement, is persuasive evidence that the agency interpretation is the one intended by Congress. *See Commodity Futures Trading Commission* v. *Schor*, 476 U.S. 833, 846 (1986).

Congress did state that revised leverage transaction rules shall provide for permitting additional persons to engage in such transactions, which these rules do, and may authorize or require, notwithstanding any other provision of law, a futures association registered under the Act to perform such responsibilities in connection with such transactions as the Commission may specify, which these rules and related orders also accomplish.[3] The only other references in section 19 of the Act to the Commission's rules relating to leverage transactions are the general provisions contained in the Act prior to the 1986 amendments, *i.e.*, the rules should be designed to ensure the financial solvency of leverage transactions and prevent manipulation or fraud, such rules can be adopted only after notice and opportunity for hearing, and the Commission may set different terms and conditions for transactions involving different commodities. The Commission has responded by repealing the moratoria on the entry of new firms into the leverage business, providing for a structure of direct self-regulation by a registered futures association under Commission oversight in all areas other than leverage commodity registration, and otherwise generally maintaining the regulatory structure currently in place. The Commission further notes that it transmitted the mandated report on leverage transactions to Congress in November 1988 as required and that the report contained the aforementioned discussion of economic purpose and the amendments to the leverage transaction rules and certain new rules as they were subsequently proposed. There was no rule amendment or new rule contained in that report that would subject leverage contracts to an economic purpose test. The Commission received no comment from Congress on the issue. Accordingly, the Commission believes that it is appropriate to maintain the rules relating to leverage contracts without an economic purpose test for leverage contracts.[4]

E. Financial Early Warning System

The Commission, as proposed, has amended Rule 31.7(c) to delete the exception that persons who have applied for registration as LTMs are not required to send early warning notices to NFA. Such applicants must send such notices to NFA since NFA, and not the Commission, will be processing applications for registration as an LTM. However, an LTM or an applicant for registration as an LTM must file financial early warning notices with the Commission also. Futures commission merchants ("FCMs") and introducing brokers ("IBs"), and applicants for registration in either category, must do so under Rule 1.12 (17 CFR 1.12 (1988)), the relevant provisions of which are incorporated by reference in Rule 31.7(c). Paragraphs (a) and (b) of Rule 31.7 already contain references to the capital, cover and segregation rules of a designated self-regulatory organization ("DSRO"), and these provisions will become operative under the Commission's regulatory framework for an expanded leverage business which is set forth herein. The Commission received no comments on this aspect of its proposals.

F. Cover and Segregation of Customer Funds

The Commission proposed to maintain the basic cover requirements as they exist under the current rules. Under these requirements, at least 90 percent of the amount of physical commodities subject to open long leverage contracts and, separately, at least 90 percent of the amount of physical commodities subject to open short leverage contracts, must be covered by the LTM. In addition, at least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered with physicals. Such physical cover may be subject to a loan not exceeding 70 percent of current market value.

One commenter asserted that cover is too lenient in the current rules, and stated that only unencumbered warehouse receipts should be allowed as good cover. This commenter also objected to the current rules permitting metal ingots to be treated as good cover for leverage contracts involving coins. The commenter further stated that LTMs should be required to maintain 100 percent cover rather that 90 percent, arguing that a high net capital requirement is not very effective without requiring full cover by an LTM and a stricter definition of what constitutes good cover. The Commission has carefully considered the basic cover requirement in light of these comments and its experience administering these rules, and has determined to maintain the basic cover requirements as currently in effect.

The Commission remains concerned about cover being held outside of the United States, and therefore, as indicated in the **Federal Register** release proposing these amendments, it will retain the requirement that permissible cover consisting of futures contracts or commodity options be limited to those futures contracts or commodity options which are traded on or subject to the rules of a contract market.[5] Although the Commission has adopted rules to govern foreign futures and option transactions (52 FR 28980 (August 5, 1987), most of which are codified at 17 CFR Part 30 (1988)), foreign futures or foreign options do *not* constitute permissible cover for leverage contracts and the Commission has not amended Rule 31.6 in that area. No comments were received on this issue.

The Commission proposed three substantive amendments to its cover requirements to incorporate the provisions of exemptions granted to the current LTMs. The first proposal was to amend Rule 31.8(a)(2)(ii) to provide that permissible cover could also include one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the LTM. Similar treatment also would be allowed for different types of bulk silver coins. The commenter that asserted cover is too lenient in the current rules also opposed the Commission's proposals to codify

[2] The current fee for processing a leverage commodity registration application is $4,500.

[3] Congress also provided that the Commission may require that permission for additional persons to engage in the leverage business be given on a gradual basis so as not to place an undue burden on the Commission's resources. As discussed above, the Commission has not adopted any formal mechanism in this regard. We note, however, that the administration of any registration system normally results in certain applicants being granted registration before others.

[4] The Commission does not express an opinion as to whether it could adopt such a rule under the broad rulemaking authority of section 19 of the Act.

[5] *See also* Rule 31.12(a)(2) (17 CFR 31.12 (a)(2) (1988)), which requires leverage customer funds to be kept in the United States.

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the previously-granted exemptions with respect to cover. The Commission has carefully considered this comment and has determined to adopt the amendment to Rule 31.8(a)(2)(ii) as proposed. As noted above, this is consistent with current Commission policy as set forth in exemptions granted to the current LTMs. Further, the Commission's cover rules currently permit bullion to be used as cover for leverage contracts involving bulk coins and vice versa (which, as indicated above, the commenter also opposes). Since the bulk coins are valued based upon their metallic content rather than their numismatic value, the Commission believes that it is appropriate to allow some fungibility between bullion and bulk coins for cover purposes.

The Commission also proposed to codify two other exemptions which have been granted with respect to permissible physical cover for long leverage contracts. One of these additional forms of permissible physical cover of a long leverage contract is the purchase of the leverage commodity subject to the leverage contract under a two-day settlement procedure, which is the normal cash market procedure. The LTM is considered covered from the time the purchase order is confirmed, even though the LTM does not get possession or control of a warehouse receipt until settlement on the second following business day. Such a purchase could not be made from an affiliated firm of the LTM. As noted above, one commenter opposed codification of this previously-granted exemption. One commenter supported the Commission's proposal in this area and suggested that it be extended to the rules regarding segregation of customer funds. This commenter urged that the rules be amended to provide that an LTM may sell metal or coins from the pool of segregated assets and be able to count the receivable from its counterparty to the sale as a good asset for segregated funds purposes while it is awaiting transfer of the proceeds of the sale from the counterparty.

The Commission has carefully considered these comments and has determined to codify the previously-granted exemption to the cover rules as proposed but not to extend similar treatment with respect to the rules relating to segregation of leverage customer funds. The Commission believes that this distinction is warranted because the cover requirements are intended in part to assure sufficient physical goods are available to satisfy customer demands for delivery (which generally arise in less than ten percent of purchased leverage contracts) and the segregation of funds rules are intended to assure that at every moment an LTM can satisfy its obligations to all of its customers. Therefore, while only 90 percent of leverage contracts by commodity volume must be covered (and only 25 percent of the total must be in physicals), 100 percent of segregation requirements must be maintained at all times. Further, permissible physical cover can include warehouse receipts encumbered up to 70 percent, but leverage customer funds can only be used to purchase warehouse receipts that are unencumbered. The Commission has maintained a somewhat stricter regulatory framework for treatment of leverage customer funds as compared to cover requirements, and the Commission believes that the codification of the exemption to allow purchases of metal or coins under a two-day settlement procedure to be considered good cover should not be extended to the rules regarding segregation of leverage customer funds.

The other additional form of permissible physical cover of a long leverage contract which the Commission proposed to allow is a long spot futures contract on the leverage commodity subject to the leverage contract, if the LTM has stopped a non-transferable delivery notice with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery. If those conditions are met, the LTM would be considered to have covered his commitments to leverage customers with physical cover, even though the LTM does not have possession or control of a warehouse receipt for two business days. The Commission notes that simply holding a spot futures position is considered to be futures cover rather than physical cover, since the futures position could be liquidated by an offsetting transaction prior to the beginning of the delivery process. The Commission received no comments on this proposal, other than the comment referred to above which opposed codification of any of the exemptions related to cover, and the Commission has determined to adopt this amendment as proposed.

In the cases referred to in the three preceding paragraphs, the alternative forms of cover set forth in paragraph (a)(2)(ii) (bullion for coins and vice versa, as well as certain cross-coin cover) will be allowed, and the LTM must maintain records of the transactions subject to inspection, copying and audit by the Commission and a DSRO. The Commission, as proposed, has also limited the amount of cover which could consist of purchases under a two-day settlement procedure or spot futures contracts on which a delivery notice has been stopped to 10 percent of the LTM's obligations on long leverage contracts in each case. One commenter opposed these limits, stating that there could be market conditions that force an LTM to cover solely with physicals and that such conditions probably would coincide with heavy buying and/or selling by customers. The Commission has carefully considered this comment, but based upon its experience in administering the leverage transaction rules, it believes the limits adopted are appropriate.

As noted, the Commission has previously granted exemptions in these areas so these new provisions of the cover rule, Rule 31.8, are consistent with existing Commission policy. These codifications appear as new paragraphs (a)(2)(iii) and (a)(2)(iv) of Rule 31.8. The current paragraph (a)(2)(iii), which contains the permissible futures cover for long leverage contracts, has been redesignated as paragraph (a)(2)(v).

The Commission has also adopted, as proposed, two technical amendments to the cover rule. Paragraph (b) has been amended to provide that a DSRO can take action against a member LTM for not maintaining adequate cover in accordance with the DRSO's rules. Paragraph (e) has been amended to include a specific reference to Rule 31.28, which is the new rule that requires any self-regulatory organization with member LTMs to adopt and enforce minimum cover requirements for its member LTMs at least as stringent as those of the Commission.[6] No comments were received on these technical amendments.

C. Minimum Financial and Related Reporting Requirements

The only amendments which the Commission proposed to Rule 31.9, the minimum capital requirements for an LTM, are of a procedural nature. Paragraph (a)(2) of Rule 31.9 was proposed to be amended in a manner similar to the proposed amendment to Rule 31.8(e) discussed in the preceding paragraph. The amendment includes a specific reference to Rule 31.28, which is the new rule that requires any self-regulatory organization with member LTMs to adopt and enforce minimum financial requirements for its member LTMs that are at least as stringent as those of the Commission. Paragraph (a)(4) of Rule 31.9 was proposed to be amended in a manner similar to the amendment to Rule 31.8(b) discussed in the preceding paragraph. The amendment provides that a DSRO can take action against a member LTM for non-compliance with the DSRO's minimum financial requirements.

The third proposed amendment to Rule 31.9 would make paragraph (d) thereof conform to Rule 1.18 (17 CFR 1.18 (1988)), the comparable provision for FCMs. Rule 31.9(d) requires an LTM or an applicant therefor to make a formal monthly capital computation. That rule currently requires that the computation be made available for inspection by any representative of the Commission, the DSRO or the United States Department of Justice. The amendment maintains that required availability of the monthly capital computation for an LTM, but an applicant for registration as an LTM is required only to make its monthly capital computation available to any representative of NFA, which has been authorized to perform the processing of LTM registration applications. 54 FR 19556 and 54 FR 19594 (May 8, 1989). The Commission received no comments on these procedural amendments to Rule 31.9, and they have been adopted as proposed.

The Commission has determined to maintain the current $2.5 million minimum adjusted net capital requirement for an LTM. As the Commission noted when it adopted the rules relating to leverage transactions, "if an LTM were to join the existing registered futures association, the National Futures Association, or any other such association which may be established, the LTM's minimum financial requirement or its minimum cover requirement would not necessarily be lowered." 49 FR 5498, 5512 (February 13, 1984).

The Commission considered whether there should be an adjustment to the LTM capital requirement, but determined not to propose any such adjustment based on its regulatory experience and the off-exchange environment in which leverage contracts are traded. The Commission believes that any increase in supervision afforded by membership in a self-regulatory organization does not affect the reasons why the Commission set financial requirements for an LTM substantially higher than those for an FCM, which were stated as follows:

The leverage market is essentially a principals' market, and the purchaser of a leverage contract is solely dependent on the LTM for performance on the contract. Because leverage contracts are not traded on boards of trade designated as contract markets by the Commission, there is no clearing organization to take the other side of every trade, no FCM guarantee of variation margin to the clearing organization and no clearing organization guaranty fund and assessment power, nor is there any established secondary market for leverage contracts.

Because the LTM takes the other side of every leverage contract entered into by a leverage customer and because the LTM is the sole guarantor of performance on the leverage contract, an LTM may properly be viewed as comparable to the clearing organization of a contract market.[7]

The only comments received on the required minimum level of adjusted net capital for LTMs have been alluded to above. One commenter considers a tightening up of current cover requirements as more important than a high net capital requirement, but the commenter also stated that "if anything, the net capital requirement should be even higher." Another commenter suggested a higher net capital requirement temporarily as a means to provide for a gradual lifting of the moratoria. The Commission has carefully considered these comments, but it believes the required minimum amount of adjusted net capital for LTMs should be maintained at the current level based upon its experience in administering these rules.

The latter commenter referred to in the preceding paragraph also recommended that the Commission confirm that no LTM capital can be provided by affiliates. Otherwise, according to the commenter, the fundamental integrity of and the risk of doing business with an LTM would be misrepresented. The Commission notes that Rule 31.9(b)(10) currently incorporates by reference the provisions of Rule 1.17(f), which is the provision governing the treatment of assets and liabilities of subsidiaries or affiliates of FCMs and IBs. The Commission believes this parity of treatment should be maintained and has determined not to adopt the recommendation of the commenter which respect to LTM capital provided by affiliates.

The Commission further notes that Rule 31.9(b)(10) also incorporates by reference Rule 1.17(h) concerning subordinated debt. Rule 1.17(h)(vii) requires the approval of the Commission for prepayment of subordinated debt by an FCM or an IB. However, by means of a "no-action" letter issued on September 10, 1985, the Commission's Division of Trading and Markets permits such prepayment by an FCM or an IB upon approval of the DSRO only. [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,738. The Commission hereby confirms that similar treatment will be extended to LTMs with respect to prepayment of subordinated debt.

The amendments to the financial reporting requirements in Rule 31.13 are also of a procedural and conforming nature. As noted above, the reference in the introductory text of paragraph (a) as to where to file an application for registration as an LTM has been changed from the Commission to NFA. Paragraph (b)(2) has been amended to include a specific reference to Rule 31.28, for the same reasons that a similar amendment to Rules 31.9(a)(2) and 31.8(e) was adopted. Paragraph (c) has been amended to conform to a recent amendment to Rule 1.16, which is cross-referenced in Rule 31.13(c). *See* 53 FR 4606, 4612 (February 17, 1988).

Paragraph (g)(2) of Rule 31.13 has been amended to conform to a recent amendment to Rule 1.10(d)(2)(ii) to accommodate the recently issued Financial Accounting Standards Board Statement No. 95 which requires companies to file a statement of cash flows as part of a full set of financial statements in place of the statement of changes in financial position. *See* 53 FR 4606, 4609, 4611.[8] Various amendments have also been adopted to paragraphs (j), (k), (l), and (m) of Rule 31.13 to refer to NFA or the DSRO, as appropriate, in lieu of the Commission. Those

[6] A similar amendment has been adopted as a new Rule 31.12(h) regarding segregation rules of a self-regulatory organization. That is the only amendment of Rule 31.12.

[7] 49 FR 5498, 5512. Congress has also recognized the need for a high net capital requirement for LTMs. Indeed, in proposing the 1982 amendments to Section 19 of the Act directing the Commission to promulgate regulations governing leverage transactions, which amendments were adopted by Congress essentially as proposed, Congressman Glickman stated: "I think the CFTC has to set regulatory standards and high net capital requirements to keep bad operators out of business." Excerpt from Unofficial Transcript of Mark-Up Session, Subcommittee on Conservation, Credit and Rural Development, House Committee on Agriculture, at 50, April 1, 1982, with the permission of Congressman Dan Glickman. *Id.* at n.32.

[8] Conforming amendments have also been made to Form 2–FR, the basic financial reporting form for LTMs, and to Rules 145.5(d)(1)(i)(H) and 147.3(b)(4)(i)(A)(*6*) so that the statement of cash flows will receive confidential treatment to the same extent as the statement of changes in financial position. Other minor, technical changes have been made to Form 2–FR to conform to certain of the rule amendments discussed herein. Due to the nature of those changes, and the fact that Form 2–FR does not appear in the Code of Federal Regulations, the amendments to Form 2–FR are not reproduced here. Anyone interested in further information on this aspect of the amendments should contact Mr. Patent at the telephone number listed above.

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provisions relate to an LTM's choice of fiscal year, extensions of time to file financial reports, and the availability of financial reports. No comments were received with respect to Rule 31.13 and the amendments thereto have been adopted as proposed.

The Commission also wishes to note that since the revised Form 2–FR will have the Statement of Changes in Ownership Equity, which was previously required to be filed with interim financial reports and the year-end certified report, and the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, which was previously only required to be filed with a certified year-end report, appearing on the same page, the Commission is requiring that the subordinated liabilities statement also be included with interim financial reports. *See* Rule 31.13(f)(3). This conforms the treatment of financial reports for LTMs with the treatment of financial reports for FCMs and IBs, Forms 1–FR–FCM and 1–FR–IB, respectively. 17 CFR 1.10(d)(1)(iii) (1988); *see also* 53 FR 4606, 4608.

H. Disclosure and Confirmation Statements

The Commission proposed certain minor, technical amendments to its disclosure requirements for an LTM, which are set forth in Rule 31.11, to take account of the fact that leverage contracts are now limited to those involving gold and silver bullion, bulk gold and silver coins, and platinum. The reference to foreign currencies in the first paragraph of the bold-faced risk disclosure statement has been deleted. The cross-reference to Rule 31.4(g) in Rule 31.11(a)(2)(ii) now refers to the revised Rule 31.4(g)(1)–(4). Paragraph (a)(2)(viii) has also been amended to delete the specific reference to metal or coins in the provision referring to the possible need for an inspection or assay at the customer's expense. The reference to metal or coins presumed that there would be other types of leverage commodities, such as foreign currencies. Since leverage contracts involving such other types of leverage commodities are now prohibited, a specific reference to metal or coins in Rule 31.11(a)(2)(viii) is unnecessary. The Commission also proposed to amend Rule 31.11(e) to require LTMs to file their Disclosure Documents with NFA for review. A copy of the Disclosure Document also must be filed with the Commission, but NFA will perform the review function. No comments were received with respect to these amendments to Rule 31.11, and they have been adopted as proposed.

The Commission proposed other amendments to Rule 31.11 intended to codify exemptions previously granted by the Commission. Rule 31.11(h) was proposed to be amended by adding a proviso that no notification to leverage customers is required if the LTM changes its carrying charge rate by less than one percent from the rate charged at the prior month-end and the new rate is made available to leverage customers by means of a toll-free telephone call and such availability is set forth in the LTM's Disclosure Document. Two commenters pointed out that the exemption granted by the Commission permits no direct notification to customers of carrying charge rate changes of one percent or less, and not only when such changes are less than one percent as the proposed amendment to Rule 31.11(h) stated. The Commission has reviewed this matter and has determined to modify its proposal so that LTMs need not notify leverage customers directly of carrying charge rate changes of one percent or less compared to the rate charged at the prior month-end provided the new rate is made available to leverage customers by means of a toll-free telephone call and such availability is set forth in the LTM's Disclosure Document. An LTM must also include notice of all interest rate changes in the monthly statement to leverage customers. *See* Rule 31.15(b)(4) (17 CFR 31.15(b)(4) (1988)).

The other amendments which the Commission proposed to Rule 31.11 are set forth in a new paragraph (m) and codify another exemption granted by the Commission. Rule 31.11(m) allows those LTMs which offer only long leverage contracts to delete various specific references to short leverage contracts in their Disclosure Documents that are otherwise required by Rule 31.11.[9] Rule 31.11(m)(2) provides that any LTM using a Disclosure Document that deletes or disregards references to short leverage contracts must file a new Disclosure Document meeting all of the requirements of Rule 31.11 at least 30 calendar days before it begins to offer any short leverage contract. No comments were received on Rule 31.11(m) and it has been adopted as proposed.

The Commission is also adopting two other amendments to Rule 31.11(k) regarding confirmation statements. These exemptions codify exemptions recently granted by the Commission in response to petitions received in August 1989, so the Commission obviously was unable to include these matters in its proposed rule amendments. None of the commenters on the proposals raised these issues. The first amendment relating to confirmation statements concerns the time within which such statements must be issued by LTMs. Rules 31.11 (k)(1) and (k)(2) have been amended to require an LTM to issue a confirmation statement within one business day after the entry into a leverage contract with a leverage customer, rather than within 24 hours. This change conforms the requirements for confirmation statements with respect to leverage contracts with similar rules for futures contracts and exchange-traded options. *See* 17 CFR 1.33(b) (1988).

The other amendment regarding confirmation statements relates to the notice regarding rescission rights which apply to a first-time leverage customer. Rules 31.11 (k)(1)(i) and (k)(2)(i) have been amended to require such a notice only in the confirmation statement with respect to a leverage customer's initial trade or trades. For purposes of identifying a leverage customer's right to rescind, the Commission considers all leverage contracts entered into by a leverage customer on the same day as the first contract to be included in the first transaction and therefore subject to rescission. 49 FR 5498, 5509 n.27 (February 13, 1984). The Commission, of course, has no objection if an LTM wishes to include the notice regarding rescission in all confirmation statements issued with respect to transactions other than the initial opening trade or trades. The Commission believes that the wording of the notice regarding rescission rights makes clear that such rights apply only to a first-time leverage customer. The Commission also wishes to emphasize that all LTMs have the burden of demonstrating that each first-time leverage customer has received the appropriate rescission notice.

I. Monthly Reports of LTMs

Rule 31.16 requires each LTM to file a written report each month stating the total number of open leverage contracts as of the end of the month and the total number of leverage contracts entered into during the month. (These are to be shown separately for all customers and for commercial interests, but to date no commercial interests have appeared in these reports.) The monthly report must also show the total number of leverage contracts repurchased, resold, and liquidated by the LTM, as well as the number of deliveries and rescissions. The Commission proposed to amend Rule 31.16 to require the LTM to file its monthly reports with NFA instead of with the Commission, in accordance with the instructions and in the format specified by NFA. NFA would prepare summaries of these reports for the Commission.[10] Although one commenter opposed this, stating that the Commission should receive the full report from the LTM, the Commission has determined to adopt the amendment to Rule 31.16 as proposed and has directed NFA to prepare summaries of LTM monthly reports for the Commission.

J. Separate LTM Entity

The Commission, as proposed, has retained the substance of Rule 31.22, which prohibits an FCM from offering to enter into, entering into, or confirming the execution of, or soliciting or accepting orders for, any leverage contract, and has extended it to include IBs as well.[11] As noted above, the proviso to Rule 31.22 which applied to "grandfathered" firms has been deleted since it is no longer relevant.

Rule 31.22 therefore requires any FCM or IB seeking to enter the leverage business to set up a separate firm to conduct LTM business.[12] The Commission believes that a separate entity requirement is appropriate based on the disparate nature of the financial requirements applicable to FCMs and IBs and LTMs. The Commission also believes that this structure is necessary to prevent financial difficulties of the LTM from having a direct impact on the adjusted net capital of the FCM or the IB.

The Commission notes that Rules 3.12(f)(2) (ii) and (iii) and 3.18(f)(1) (ii) and (iii) prohibit an AP from being associated simultaneously with an FCM or IB and an LTM. The Commission further notes, however, that both Rules 3.12 and 3.18, in paragraph (g) of each rule, contain a procedure whereby any person adversely affected by the operation of each rule can file a petition for exemption from the requirements of the rule. The Commission has previously granted exemptions in this area to the two registered LTMs, each of whom has an affiliated FCM. One commenter would require an LTM to maintain a separate sales force from the FCM or IB. The commenter expressed concern that dual registration may lead to "switching hats" when dealing with a customer. The Commission has carefully reviewed this comment but it will still consider petitions under Rules 3.12 and 3.18 for dual association of APs of LTMs and FCMs or IBs and evaluate any such petitions on a case-by-case basis.

K. Petitions for Exemption

The Commission proposed to delete the specific petition for exemption provisions currently set forth in Rule 31.24. One commenter supported this proposal. Another commenter opposed the proposal, stating that such a petition procedure is available in other contexts such as foreign futures and options, dealer options and domestic exchange-traded options. This commenter further noted that if the number of LTMs increases and the metals markets become more active than they have been in the last five years, the need for a petition for exemption procedure may be greater than it has been under the current rules.

The Commission now has some experience with the rules relating to leverage transactions and, as noted throughout this document, has codified petitions for exemption already granted which are of general applicability. The Commission therefore does not believe that it would be necessary or appropriate to maintain the extremely time-consuming special exemption procedure for an expanded leverage business. The Commission would expect to see greater uniformity in an expanded leverage business than has been the case with the "grandfathered" firms. The Commission has therefore deleted Rule 31.24 as proposed. However, any person involved in the leverage business would have whatever petition rights are afforded by the Administrative Procedure Act.

L. Carrying Charges

The Commission proposed to amend Rule 31.25(b) regarding carrying charges to take into account another exemption granted by the Commission. The proposed amendment would permit the compounding of carrying charges on long leverage contracts, *i.e.*, including in the base upon which carrying charges are assessed previously assessed but unpaid carrying charges. If an LTM compounded carrying charges on long leverage contracts, it would be compelled to pay compound interest on short leverage contracts. One commenter opposed this proposed amendment and also made general comments that the rules relating to carrying charges are too vague. The Commission has carefully considered these comments and it has determined to adopt the amendment with respect to compounding of carrying charges as proposed, which codifies a previously granted exemption and is therefore consistent with current Commission policy. As noted above, Rule 31.25 has also been amended by deleting the reference to leverage contracts on foreign currencies.

M. Quarterly Reporting Requirement

Rule 31.26 provides that each LTM must file a quarterly report setting forth various information on each leverage contract which was either repurchased, resold or settled by delivery during the quarter, including, with respect to each contract repurchased or resold, the profit or loss incurred by the leverage customer.[13] The Commission proposed to amend Rule 31.26 to require an LTM to file its quarterly report with NFA instead of with the Commission, in accordance with the instructions and in the format specified by NFA. NFA would be delegated the function to review and analyze those reports.[14] The commenter who opposed the Commission's similar proposal with respect to Rule 31.16 concerning monthly reports also opposed the proposed amendment to Rule 31.26. The

[9] Of the forty-six affirmative respondents to the survey which Congress directed the Commission to conduct with the assistance of a registered futures association regarding interest in entering the leverage business, two respondents indicated that they would offer long leverage contracts only and ten others reported that they were undecided on the long leverage/short leverage issue.

[10] As in the case of the amendments to Part 3 of the Commission's rules and other references to applications for LTM or AP of an LTM registration, there is a specific reference to NFA in Rule 31.16. The Commission believes that this is appropriate because the monthly report data should be centralized and maintained with a single custodian, even if multiple self-regulatory organizations for the leverage business are established.

[11] One IB responded affirmatively to the leverage survey.

[12] Twenty-one FCMs responded affirmatively to the leverage survey.

[13] The calculation of the profit or loss incurred on each closed-out leverage contract must include, among other things, the carrying charges associated with each leverage contract. Monex and IPMC were granted exemptions with respect to this rule so that they only are required to include contract-by-contract carrying charges in the profit and loss calculations for those contracts which were already open when Rule 31.26 became effective from that point until the contract was closed out, since those firms had not previously calculated carrying charges in that manner. Since there will be no similar problems for new LTMs, the Commission has not amended Rule 31.26 regarding the inclusion of contract-by-contract charges in the profit and loss calculation. Monex and IPMC will, of course, be permitted to continue to operate pursuant to the exemptions previously granted by the Commission with respect to Rule 31.26. However, Monex and IPMC will be required to be in full compliance with Rule 31.26 when the exemptions are no longer applicable, *i.e.*, after all the pre-1986 leverage contracts are closed out.

[14] As in the case of the amendments to part 3 of the Commission's rule and other references to applications for LTM or AP of an LTM registration, there is a specific reference to NFA in Rule 31.26. The Commission believes that this is appropriate because a computerized database would be involved, as in the case of registration, and the data should be centralized and maintained with a single custodian, even if multiple self-regulatory organizations for the leverage business are established.

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Commission has carefully considered this comment, has determined to adopt the amendment to Rule 31.26 as proposed, and has directed NFA to prepare summaries of LTM quarterly reports for the Commission.

N. Mandatory Membership

The Commission proposed a new Rule 31.27 to provide that each person required to register as an LTM must become and remain a member of a registered futures association which provides for member LTMs, unless no such futures association is so registered. The Commission viewed this as one of the key provisions necessary to establish a regulatory structure for LTMs and APs of LTMs similar to that for other registrants under the Act, which is direct supervision by a DSRO under Commission oversight.

One commenter suggested, however, that Rule 31.27 regarding mandatory membership in a registered futures association should require such membership for any firm which is registered as an LTM or is required to register as an LTM, rather than merely for those required to register as an LTM as stated in proposed Rule 31.27. In the commenter's view, this would make clear that an inactive firm which remained registered as an LTM, even though it may not be required to be so registered, must be a member of a registered futures association and thus subject to the regulatory jurisdiction of the registered futures association. The commenter believes that without the change in the language of Rule 31.27, an inactive registered LTM could arguably be subject only to the Commission's direct regulatory authority. This would be less efficient than concentrating the direct oversight of all LTMs in one regulator, *i.e.*, a registered futures association, which is a Commission goal. The Commission finds merit in this suggestion, and the language of Rule 31.27 has been modified to make clear that any registered LTM, as well as any firm required to register as an LTM, must be a member of a registered futures association. Under current conditions, the Commission anticipates that NFA would have the direct supervisory responsibility for LTMs.

O. DSRO Plan

The Commission also proposed to add a new Rule 31.28, which is a counterpart to Rule 1.52 (17 CFR 1.52 (1988)) that is applicable to FCMs and IBs. The most important provision of Rule 31.28 requires each self-regulatory organization with member LTMs to adopt and enforce rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for its member LTMs. These self-regulatory organization requirements must be the same as, or more stringent than, the rules set forth in Part 31. This rule, taken together with Rule 31.27, form the basis for the self-regulatory structure of LTMs under Commission oversight.

The sales practice requirements of the self-regulatory organization must encompass several of the Part 31 rules: 31.3 (general antifraud); 31.10 (repurchase and resale of leverage contracts by LTMs); 31.11 (disclosure and confirmation statements); 31.14 (recordkeeping); 31.15 (purchase-and-sale and monthly statements to leverage customers); 31.17 (records of leverage transactions); 31.18 (margin calls); 31.19 (unlawful representations); 31.20 (prohibitions of guarantees against loss); and 31.23 (limited right to rescind first leverage contract). All of these Part 31 rules have remained unchanged, except for Rule 31.11, as noted above. The self-regulatory organization is expected to assure that all LTM oral solicitations and promotional material adequately disclose the risks involved with respect to leverage contracts.

The self-regulatory organization is allowed to set its own fees for conducting financial and sales practice audits, and the Commission, as proposed, has deleted its schedule of fees for audits of LTMs set forth in Appendix B to Part 31.

Rule 31.28 provides for a situation where there is more than one self-regulatory organization for LTMs. If such a situation arises, which the Commission does not presently foresee, the self-regulatory organizations could develop a joint auditing arrangement to provide for a DSRO to conduct the auditing and monitoring for compliance with minimum financial, cover, segregation and sales practice, and related reporting requirements. These provisions are also modelled on those in Rule 1.52 applicable to DSRO plans for FCMs and IBs.

Two commenters expressed concern that Rule 31.28 could impose obligations on contract markets to regulate leverage transactions. Rule 31.28 does not impose such obligations, but only requires that if a self-regulatory organization establishes a membership category for LTMs, it must then also establish an appropriate self-regulatory program. However, Rule 31.27 requires registered LTMs and those required to register as LTMs to become members only of a registered futures association, not a contract market. The Commission thus anticipates, as it has noted throughout this release, in the release announcing the proposal of these amendments, and in the releases effecting the transfer of LTM and AP of an LTM registration processing to NFA, that the regulatory structure for LTMs will consist of direct regulation by NFA under Commission oversight. *See* 54 FR 3476, 3477&n.2, 3479, 3480, 3481 (January 24, 1989); 54 FR 19556 (May 8, 1989); and 54 FR 19594 (May 8, 1989).

The Commission's intention in structuring Rule 31.28 as it did was to track Rule 1.52 which is applicable to FCMs and IBs, as noted above. When the Commission proposed rules for IBs, it assumed that only NFA would conduct financial surveillance of IBs, and Rule 1.52 was proposed to be amended accordingly. One contract market which commented on the proposed IB rules urged the Commission to make it clear that contract markets may, in their discretion, adopt financial and reporting requirements for IB members of contract markets. The Commission adopted that suggestion. 48 FR 35248, 35263–64 (August 3, 1983). To date, however, no contract market has established a membership category for IBs and NFA is the only self-regulatory organization with such a membership category and with a direct regulatory program for IBs. The Commission therefore anticipates that, although it has allowed contract markets in their discretion to establish a membership category and regulatory program for LTMs, only NFA will have such a membership category and regulatory program, as is the case for IBs.

One commenter expressed concern that transferring the regulatory burden with respect to leverage transactions from the Commission to NFA would place added strain on one of the futures industry's self-regulatory mechanisms at a time when the adequacy of these mechanisms may be called into question. This commenter stated that the Commission should make clear that the firms engaged in leverage transactions must bear the cost of their regulation and that NFA should not use funds accumulated from futures-related activities to finance regulation of leverage transactions. As referred to above, the Commission has deleted its schedule of fees for audits of LTMs and its registration fees for LTMs and APs of LTMs. 54 FR 19556, 19557 (May 8, 1989). NFA has established its own fee structures in these areas and the Commission trusts NFA has adequately provided resources for its new responsibilities.

Another commenter requested the Commission to confirm that NFA's action with respect to LTMs will be subject to oversight and review by the Commission under Section 17 of the Act, and also urged the Commission to carefully monitor NFA's enforcement of rules with respect to LTMs. NFA's regulation of leverage transactions is subject to Commission oversight under Section 19 of the Act as well as under Section 17 of the Act. The Commission takes its oversight responsibility in this area, as is the case with its oversight of contract markets, very seriously. The Commission has carefully considered all comments on Rule 31.28, including one submitted by a commenter that generally opposed transferring direct regulatory authority to NFA, and has determined to adopt Rule 31.28 as proposed.

P. Arbitration

The third new rule which the Commission proposed is Rule 31.29. The rule requires each self-regulatory organization with member LTMs to provide an arbitration or other dispute settlement procedure consistent with the standards set forth in Part 180 of the Commission's rules. The two commenters that expressed concern with respect to Rule 31.28 imposing obligations on contract markets expressed similar concerns about Rule 31.29. For the reasons discussed in the preceding section, the Commission again reiterates that these rules impose no obligations on contract markets.

One commenter expressed opposition to pre-dispute arbitration agreements in general. In this commenter's view, the customer should have the option of choosing arbitration after a dispute arises but should never be compelled to do so. The commenter also stated that arbitration should not be permitted for leverage customer disputes; the customer should use the reparations forum instead, so that a record may be kept of the incidence of complaints. The Commission has carefully considered this comment and has determined to adopt Rule 31.29 as proposed.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rule amendments in proposed form, and their associated information collection requirements, to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with these rule amendments on April 12, 1989 and assigned OMB control number 3038–0029 to these rules. The burden associated with this entire collection including these rules amendments, is as follows:

Average Burden Hours Per Response.	48.004845.
Number of Respondents	24.
Total Burden Hours	9,726.10.
Frequency of response	Daily, weekly, quarterly and annually.

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1982), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being proposed herein would affect LTMs. The Commission has previously determined that with respect to FCMs based upon the fiduciary nature of FCM/customer relationships, as well as the requirements that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[15] Since LTMs have a somewhat similar relationship with their customers as to FCMs, and since LTMs have a higher minimum financial requirement than FCMs, LTMs should likewise be excluded from the definition of a small entity. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

List of Subjects

17 CFR Part 1

Reporting and recordkeeping requirements.

17 CFR Part 3

Reporting and recordkeeping requirements, Registration.

17 CFR Part 31

Gold, Silver, Reporting and recordkeeping requirements, Leverage transactions.

[15] *See* 47 FR 18618, 18619 (April 30, 1982).

17 CFR Part 145

Freedom of information, Commission records.

17 CFR Part 147

Sunshine Act, Commission records.

In consideration of the foregoing, and pursuant to the authority contained in sections 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982 & Supp. IV 1986), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposed to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, 19 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, 23 and 24.

2. Section 1.3 is amended by revising paragraph (ff) to read as follows:

§ 1.3 Definitions.

* * * * *

(ff) *Designated self-regulatory organization.* This term means:

(1) self-regulatory organization of which a futures commission merchant, an introducing broker or a leverage transaction merchant is a member; or

(2) If a futures commission merchant or an introducing broker is a member of more than one self-regulatory organization and such futures commission merchant or introducing broker is the subject of an approved plan under § 1.52 of this part, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such futures commission merchant or introducing broker for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant or introducing broker is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such futures commission merchant or introducing broker; or

(3) If a leverage transaction merchant is a member of more than one self-regulatory organization and such leverage transaction merchant is the subject of an approved plan under

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§ 31.28 of this chapter, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations of which the leverage transaction merchant is a member, and for receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements from such leverage transaction merchant.

* * * * *

PART 3—REGISTRATION

Subpart A—Registration

3. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 12a, 13c, 16a, and 23 unless otherwise noted.

4. Section 3.33 is amended by revising paragraphs (a) introductory text, (b) introductory text, (e), and (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A registrant may request that its registration in one or more capacities be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration under this section must be made on a Form 7–W completed and filed with the National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by the sole proprietor if the registrant is a sole proprietorship, by a general partner if a partnership, or by the president or chief executive officer if a corporation, and must specify:

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the registrant, and by the National Futures Association within three business days of the receipt of such withdrawal request, to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. Within three business days of any determination by the National Futures Association under §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) or 3.17(c) of this part to treat the failure by a registrant to file an annual For 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in §§ 3.10(d), 3.13(c), 3.14(c), 3.15(c) and 3.17(c) of this part, a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

PART 31—LEVERAGE TRANSACTIONS

5. The authority citation for part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23, unless otherwise noted.

§ 31.1 [Removed and reserved]

6. Section 31.1 is removed and reserved.

§ 31.2 [Removed and reserved]

7. Section 31.2 is removed and reserved.

8. Section 31.4 is amended by revising paragraph (g) to read as follows:

§ 31.4 Definitions.

* * * * *

(g) "Leverage commodity" means a commodity (gold bullion, silver bullion, bulk gold coins, bulk silver coins, or platinum) which is the subject of a leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects the price for the leverage commodity which the customer can expect to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(2) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(3) The method of pricing; and

(4) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

* * * * *

9. Section 31.5 is amended by revising paragraph (a) introductory text and paragraph (b), by removing paragraphs (c), (d); (e) and (g), by adding a new paragraph (c) and by redesignating paragraph (f) as paragraph (d) to read as follows:

§ 31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

* * * * *

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the confirmation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with § 3.18 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with § 31.8 of this part and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the

execution of which was confirmed, before November 10, 1986.

* * * * *

10. Section 31.6 is amended by revising paragraphs (a)(1), (a)(4) and (a)(5), by adding a new paragraph (a)(6) and by revising paragraph (b)(1) to read as follows:

§ 31.6 Registration of leverage commodities.

(a) * * *

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant;

* * * * *

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract;

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest; and

(6) The terms and conditions of the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests, such as options, certificates of deposit, or other regulated instruments.

(b) * * *

(1) Provide evidence that the person applying for registration of the leverage commodity is registered or has applied to the National Futures Association for registration as a leverage transaction merchant;

* * * * *

11. Section 31.7 is amended by revising paragraph (c) to read as follows:

§ 31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.

* * * * *

(c) The requirements of §§ 1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant or applicant therefor" were substituted for the phrase "applicant or registrant."

12. Section 31.8 is amended by revising paragraph (a)(2)(ii), by redesignating paragraphs (a)(2)(iii)(A) and (a)(2)(iii)(B) as paragraphs (a)(2)(v)(A) and (a)(2)(v)(B), by adding new paragraphs (a)(2)(iii) and (a)(2)(iv), and by revising paragraphs (b) and (e) to read as follows:

§ 31.8 Cover of leverage contracts.

(a) * * *

(2) * * *

(ii) Warehouse receipts for gold bullion in the case of leverage contracts on bulk gold coins, bulk gold coins in the case of leverage contracts on gold bullion, silver bullion in the case of leverage contracts on bulk silver coins, bulk silver coins in the case of leverage contracts on silver bullion, one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6 of this part, and one type of bulk silver coins for leverage contracts involving another type of bulk silver coins on an ounce-for-ounce basis if each type of bulk silver coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under § 31.6 of this part, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided,* That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) Purchase, in physical form, of the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, with settlement within two business days shall be considered permissible cover from the time the purchase order is confirmed, even though the leverage transaction merchant does not have possession or control of a warehouse receipt until settlement: *Provided, however,* That such purchases are not made from an affiliated firm, and such purchases at no time constitute more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14 of this part, detailed records of these transactions which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(iv) A long spot futures contract on the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, if the leverage transaction merchant has stopped a delivery notice which is non-transferable with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery, even though the leverage transaction merchant does not have possession or control of a warehouse receipt for two business days: *Provided, however,* That the amount of physical commodities subject to such long spot futures contracts at no time constitutes more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14 of this part, detailed records of its deliveries on futures contracts, which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

* * * * *

(b) Such leverage transaction merchant must be in compliance with paragraph (a) of this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization. A leverage transaction merchant who is not in compliance with paragraph (a) of this section or in unable to demonstrate such compliance must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph (b) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section.

* * * * *

(e) The requirements of paragraphs (a) through (d) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum cover standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

13. Section 31.9 is amended by revising paragraphs (a)(2), (a)(4) and (d) to read as follows:

§ 31.9 Minimum financial requirements.

(a) * * *

(2) The requirements of paragraph (a) of this section shall not be applicable if the applicant or registrant is a member of a designated self-regulatory organization and conforms to minimum

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financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

* * * * *

(4) A leverage transaction merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section. Any leverage transaction merchant required immediately to cease doing business under this paragraph shall remain liable on all leverage contracts previously entered into until all rights of and obligations owing to the customers thereunder have been fulfilled.

* * * * *

(d) Each registered leverage transaction merchant, and each person who has applied for registration as a leverage transaction merchant, must make and keep as a record in accordance with § 31.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission, the designated self-regulatory organization, if any, or the United States Department of Justice in the case of a registrant, within 30 days after the date for which the computations are made, commencing the first month-end after the date the application for registration is filed.

14. Section 31.11 is amended by revising the first sentence of paragraph (a)(1), paragraphs (a)(2)(ii), (a)(2)(viii), (e), (h), (k)(1) introductory text, (k)(1)(i) introductory text before bold-face statement, (k)(1)(ii) introductory text, (k)(2) introductory text, (k)(2)(i) introductory text before bold-face statement and (k)(2)(ii) introductory text, and by adding a new paragraph (m) to read as follows:

§ 31.11 Disclosure.

(a) * * *

(1) The following bold-face risk disclosure statement in at least ten-point type on the first page of the Disclosure Document: **BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC.** * * *

(2) * * *

(ii) The distinguishing characteristics of the contract and of the leverage commodity, including, in particular, those characteristics of the leverage commodity enumerated in § 31.4(g)(1)–(4) of this part;

* * * * *

(viii) A statement to the effect that other persons may be unwilling to buy from the leverage customer the leverage commodity that is deliverable on the leverage contract without first requiring an inspection or assay at the expense of the leverage customer; a statement to the effect that the leverage transaction merchant may be unwilling to accept delivery and pay for such leverage commodity without first requiring an inspection or assay at the expense of the leverage customer; and a description of any other requirements for the delivery of a leverage commodity by a leverage customer to a leverage transaction merchant in connection with a short leverage contract;

* * * * *

(e)(1) The leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, DC headquarters, Attn: Secretariat, one copy of the document for each leverage contract that it offers or that it intends to offer not less than 21 calendar days prior to the date the leverage transaction merchant first intends to furnish the document to a prospective leverage customer. The leverage transaction merchant must specify with the filing the date it first intends to deliver the document to a prospective leverage customer;

(2) Submit to paragraphs (h) and (m) of this section, the leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, D.C. headquarters, Attn: Secretariat, one copy of all subsequent amendments to the document for each leverage contract that it offers or that it intends to offer within 30 calendar days after the date upon which the leverage transaction merchant first knows or has reason to know of the defect requiring the amendment.

* * * * *

(h) A leverage transaction merchant must transmit a notification to each leverage customer within 24 hours of making any change not otherwise permitted under the contract terms set forth in accordance with paragraph (a)(2) of this section. A notification of any change in the interest rate charged by the leverage transaction merchant must also be transmitted to each leverage customer within twenty-four hours of each change: *Provided, however,* That no notification is required if the change in interest rate is one percent or less as compared to the rate charged at the prior month-end and the new interest rate is made available to customers by means of a toll-free telephone call, and such availability is set forth in the Disclosure Document. The notification required by this paragraph must be transmitted by first class mail or other, at least equivalent, means of communication.

* * * * *

(k)(1) Not later than the next business day after the entry into a long leverage contract with a customer, each leverage transaction merchant shall furnish to such customer, by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(i) For a leverage customer's first leverage transaction, the following bold-faced statement in at least ten-point type: * * *

(ii) For every leverage transaction, the following information:

* * * * *

(2) Not later than the next business day after entry into a short leverage contract with a customer, each leverage transaction merchant shall furnish to such customer by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(i) For a leverage customer's first leverage transaction, the following bold-faced statement in at least ten-point type: * * *

(ii) For every leverage transaction, the following information:

* * * * *

(m)(1) Notwithstanding any other provision in this section, if a leverage transaction merchant is not offering to enter into, entering into or confirming the execution of, soliciting or accepting a leverage customer's order for, or accepting any leverage customer funds from a leverage customer to enter into or maintain any short leverage contract, the leverage transaction merchant may delete or disregard references to short leverage contracts in its Disclosure Document as follows:

(i) The third sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(ii) The words "and a short leverage transaction" in the fourth sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iii) The words "and leverage contracts sold to a leverage transaction merchant are re-established at the then prevailing ask price" in the fifth sentence of the third paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iv) The second sentence of the fifth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(v) The words "or resold to" in the first sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vi) The words "or resell," "and must also offer to resell any short leverage contract previously sold by a leverage customer," and "or short" in the second sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vii) The words "or resold" and "or resale" (twice) in paragraph (a)(2)(vii) of this section;

(viii) All of the words following the first semicolon in paragraph (a)(2)(viii) of this section;

(ix) The words "and a representative single short leverage contract" in paragraph (a)(3) of this section; and

(x) The words "or short" in paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

(2) Any leverage transaction merchant using a Disclosure Document that deletes or disregards references to short leverage contracts as permitted by paragraph (m)(1) of this section must file, in accordance with the provisions of paragraph (e)(2) of this section, a new Disclosure Document meeting all of the requirements of paragraphs (a) through (i) of this section at least 30 calendar days before it begins to offer any short leverage contract.

15. Section 31.12 is amended by adding a new paragraph (h) to read as follows:

§ 31.12 Segregation.

* * * * *

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

16. Section 31.13 is amended by revising paragraphs (a) introductory text, (b)(2) and (c), by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), by adding a new paragraph (f)(3), and by revising paragraphs (g)(2), (j), (k), (l)(1) introductory text, (l)(1)(vii), (l)(2), (l)(3), and (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under § 3.17 of this chapter shall submit concurrently with the filing of such application either:

* * * * *

(b) * * *

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984, by the Commission pursuant to section 19 of the Act and § 31.28 of this part: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2–FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with § 1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of § 1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of § 1.16 (except paragraph (f)) of this chapter: *Provided, however,* That the term "Form 2–FR" shall be substituted for "Form 1–FR" in § 1.16(c)(5) of this chapter, the term "§ 31.9" shall be substituted for the term "§ 1.17," the term "leverage transaction merchant" shall be substituted for the term "futures commission merchant," and "the segregation requirements of § 31.12" shall be substituted for "the segregation requirements of section 4d(2) of the Act and these regulations and the secured amount requirement of the Act and these regulations."

* * * * *

(f) * * *

(3) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

* * * * *

(g) * * *

(2) Statements of: income (loss); cash flows; changes in ownership equity; and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made: *Provided, however,* That for an applicant filing pursuant to paragraph (a) of this section, the period must be the year ending as of the date of the statement of financial condition;

* * * * *

(j) Any leverage transaction merchant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year in writing, concurrently with the filing of Form 2–FR pursuant to paragraph (a) of this section, but in no event may such fiscal year end more than one year from the date of the Form 2–FR filed pursuant to paragraph (a) of this section. A leverage transaction merchant which does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year. A leverage transaction merchant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the designated self-regulatory organization.

(k) In the event any leverage transaction merchant finds that it cannot file its report for any period within the time specified in paragraphs (b) or (d) of this section without substantial undue hardship, it may file with the designated self-regulatory

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organization an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial report was to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the designated self-regulatory organization before the time specified in paragraphs (b) or (d) of this section for filing the report. Within 10 calendar days after receipt of the application for an extension of time, the designated self-regulatory organization shall: (1) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (2) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(l)(1) In the event a leverage transaction merchant finds that it cannot file its certified financial report and schedules for any year within the time specified in paragraph (b) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date not more than 90 days after the date as of which the certified financial report and schedules were to have been filed. The application must be submitted by the leverage transaction merchant and must:

* * * * *

(vii) Be received by the designated self-regulatory organization prior to the date on which the report is due; and

* * * * *

(2) Within 10 calendar days after receipt of an application for extension of time, the designated self-regulatory organization shall: (i) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (ii) indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(3) On the written request of a leverage transaction merchant, or on its own motion, the designated self-regulatory organization may grant an extension of time or an exemption from any of the certified financial reporting requirements of this section either unconditionally or on specified terms and conditions.

(m) All of the Forms 2–FR filed pursuant to this section will be public: *Provided, however,* That if the statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9 of this part, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, then such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

17. Section 31.16 is revised to read as follows:

§ 31.16 Monthly reporting requirements.

(a) *Monthly activity.* Each leverage transaction merchant shall file written monthly reports with the National Futures Association in the format specified by the National Futures Association, by the tenth business day of the month following the month covered by the report and shall include the following information separately for each leverage commodity and each long and short leverage contract:

(1) The total number of leverage contracts that are open as of the close of business on the last business day of the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(2) The total number of leverage contracts entered into by leverage customers during the month for:

(i) All customer accounts, and

(ii) Separately for commercial leverage accounts.

(3) The total number of leverage contracts which were repurchased or resold by the leverage transaction merchant during the month.

(4) The total number of leverage contracts which were liquidated by the leverage transaction merchant during the month (*i.e.*, as a result of overdue or unanswered margin calls).

(5) The total number of deliveries on leverage contracts during the month.

(6) The total number of leverage contracts which were rescinded during the month.

(b) *Prices.* The monthly report shall also show the following information separately for each leverage commodity and each long and short leverage contract: the leverage transaction merchant's last bid price offered and last ask price offered as of the close of business on each business day.

18. Section 31.21 is revised to read as follows:

§ 31.21 Leverage contracts entered into prior to April 13, 1984; subsequent transactions.

Nothing contained in these regulations shall be construed to affect any lawful activities that occurred prior to April 13, 1984. All leverage contracts offered or entered into on or after April 13, 1984 shall be subject to the terms and conditions of these regulations.

19. Section 31.22 is revised to read as follows:

§ 31.22 Prohibited trading in leverage contracts.

No futures commission merchant or introducing broker shall offer to enter into, enter into, confirm the execution of, or solicit or accept orders for any leverage contract.

§ 31.24 [Removed and reserved]

20. Section 31.24 is removed and reserved.

21. Section 31.25 is amended by revising paragraph (b) to read as follows:

§ 31.25 Bid and ask prices; carrying charges.

* * * * *

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however,* That in the case of a long leverage contract, interest on unpaid carrying charges may be assessed at the same rate as the interest rate component of the carrying charges and, if such an assessment were made and if the leverage transaction merchant offers short leverage contracts, payment of interest on carrying charges that have been credited to the leverage customer's account and not withdrawn must be made at the same rate as the interest rate component of the carrying charges.

22. Section 31.26 is amended by removing paragraph (b) and the designation for paragraph (a), redesignating former paragraphs (a) (1) through (12) as paragraphs (a) through (l), and by revising the introductory text, to read as follows:

§ 31.26 Quarterly reporting requirement.

Each leverage transaction merchant must file, in accordance with the instructions of, and in the format specified by, the National Furtures Association a quarterly report with the National Futures Association by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or to the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

* * * * *

23. Section 31.27 is added to read as follows:

§ 31.27 Registered futures association membership.

Each person registered or required to register as a leverage transaction merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such leverage transaction merchant, unless no such futures association is so registered.

24. Section 31.28 is added to read as follows:

§ 31.28 Self-regulatory organization adoption and surveillance of minimum financial, cover, segregation and sales practice requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for all its members who are registered leverage transaction merchants. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in this part 31 and the definition of adjusted net capital must be the same as that prescribed in § 31.9(b)(4) of this part.

(b) Each self-regulatory organization which has members who are registered leverage transaction merchants shall have in effect and enforce rules submitted to the Commission pursuant to paragraph (a) of this section and approved by the Commission.

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered leverage transaction merchant which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements.

(d) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by the designated self-regulatory organization among the self-regulatory organizations participating in such a plan.

(e) A plan's designated self-regulatory organization must report to that plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such designated self-regulatory organization under this section.

(f) The self-regulatory organizations may, among themselves, establish programs to provide access to any necessary information.

(g) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of leverage customers;

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations submitting the plan for any leverage transaction merchant which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the information necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements by any leverage transaction merchant which is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under Section 17 of the Act.

(h) After the Commission has approved a plan or part of one under paragraph (g) of this section, a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial, cover, segregation and sales practice, and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

(i) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan or part of one established under this section, if such plan or part of one ceases to effectuate adequately the purposes of Section 19 of the Act or of this section.

(j) Whenever a registered leverage transaction merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, D.C. and send a copy of that notification to such leverage transaction merchant.

(k) Nothing in this section shall preclude the Commission from examining any leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements to which such leverage transaction merchant is subject.

(l) In the event a plan is not filed and/or approved for each registered leverage transaction merchant which is a member

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of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those leverage transaction merchants which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

25. Section 31.29 is added to read as follows:

§ 31.29 Arbitration or other dispute settlement procedures.

Each self-regulatory organization which has members who are registered as leverage transaction merchants must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a leverage customer's claim or grievance brought against any member leverage transaction merchant. Such rules shall be consistent with the rules set forth in Part 180 of this chapter governing contract market arbitration and dispute settlement procedures.

Appendix B to Part 31—[Removed]

26. Appendix B to Part 31 is removed.

PART 145—COMMISSION RECORDS AND INFORMATION

27. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (7 U.S.C. 4a(j)); Pub. L. 99–570.

28. Section 145.5 is amended by revising paragraph (d)(1)(i)(H) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(H) The following portions, and footnote disclosures thereof, of the Form 2-FR, provided the procedure set forth in § 31.13(m) of this chapter is followed: The Statement of Income (Loss), the Statement of Cash Flows, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

Issued in Washington, DC on September 29, 1989 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–23452 Filed 10–4–89; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB 86]

Staff Accounting Bulletin No. 86

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: Staff Accounting Bulletin No. 78 ("SAB 78"), which was released on August 25, 1988, expressed the staff's views regarding certain matters relating to quasi-reorganizations, including deficit eliminations. Since the issuance of SAB 78, the staff has received inquiries about its position concerning the accounting for the tax benefits of operating loss carryforwards that existed as of the date of a quasi-reorganization that are subsequently recognized in the financial statements. This staff accounting bulletin addresses this issue.

FOR FURTHER INFORMATION CONTACT: Kenneth V. Moreland, Office of the Chief Accountant (202/272–2130); or Robert A. Bayless (202/272–2553), Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: September 28, 1989.

Jonathan G. Katz,

Secretary.

Staff Accounting Bulletin No. 86

The staff herein adds questions 4 and 5 to section S of Topic 5 of the Staff Accounting Bulletin Series. Section S discusses certain matters related to quasi-reorganizations, including deficit eliminations.

Topic 5: Miscellaneous Accounting

* * * * *

S. Quasi-Reorganization

* * * * *

Question 4: The interpretive response to question 1 indicates that the staff believes that a deficit reclassification of any nature is considered to be a quasi-reorganization, and accordingly, must satisfy all the conditions of section 210.[8] Assume a company has adopted Statement of Financial Accounting Standards ("SFAS") No. 96, has satisfied all the requisite conditions of section 210, and has eliminated a deficit in retained earnings by a concurrent reduction in paid-in capital, but did not need to restate assets and liabilities by a charge to capital because assets and liabilities were already stated at fair values. How should the company reflect the tax benefits of operating loss or tax credit carryforwards for financial reporting purposes that existed as of the date of the quasi-reorganization when such tax benefits are subsequently recognized for financial reporting purposes?

[8] *Supra* Note 2.

Interpretive Response: The staff believes SFAS No. 96 requires that any subsequently recognized tax benefits of operating loss or tax credit carryforwards that existed as of the date of a quasi-reorganization be reported as a direct addition to paid-in capital. The staff believes that this position is consistent with the "new company" or "fresh-start" concept embodied in section 210,[9] and in existing accounting literature regarding quasi-reorganizations, and with the FASB staff's justification for such a position when they stated that a "new enterprise would not have tax benefits attributable to operating losses or tax credits that arose prior to its organization date.[10]

The FASB recognized that a practice existed of recording deficit elimination type quasi-reorganizations without evaluating the concurrent need to restate assets and liabilities to fair values, and provided guidance on accounting for the tax benefits of carryforward items subsequent to such an event.[11] This practice and accounting is not permitted by section 210, and accordingly, is not appropriate for registrants. The staff believes that all registrants that comply with the requirements of section 210 in effecting a quasi-reorganization should apply the accounting required by the first sentence of paragraph 54 of SFAS No. 96 for the tax benefits of tax carryforward items.[12]

Therefore, even though the only effect of a quasi-reorganization is the elimination of a deficit in retained earnings because assets and liabilities are already stated at fair values and the revaluation of assets and liabilities is unnecessary (or a write-up of net assets is prohibited as indicated in the interpretive response to question 3 above), subsequently recognized tax benefits of operating loss or tax credit carryforward items should be recorded as a direct addition to paid-in capital.

Question 5: If a company had previously recorded a quasi-reorganization that only resulted in the elimination of a deficit in retained earnings, may the company reverse such entry and "undo" its quasi-reorganization?

Interpretive Response: No. The staff believes APB Opinion No. 20 would preclude such a change in accounting. It states: "a method of accounting that was previously adopted for a type of transaction or event which is being terminated or *which was a single, nonrecurring event in the past should not be change.*" [Emphasis added.][13]

[FR Doc. 89–23481 Filed 10–4–89; 8:45 am]

BILLING CODE 23481

[9] Section 210 discusses the "conditions under which a quasi-reorganization has come to be applied in accounting to the corporate procedures in the course of which a company, without creation of new corporate entity and without intervention of formal court proceedings, is enabled to eliminate a deficit whether resulting from operations or recognition of other losses or both and to establish a new earned surplus account for the accumulation of earnings subsequent to the date selected as the effective date of the quasi-reorganization." It further indicates that "it is implicit in a procedure of this kind that is not to be employed recurrently *but only under circumstances which would justify an actual reorganization or formation of a new corporation,* particularly if the sole purpose of the quasi-reorganization is the elimination of a deficit in earned surplus resulting from operating losses." [Emphasis added.]

[10] *Special Report: A Guide to Implementation of Statement 96 on Accounting for Income Taxes:* Financial Accounting Standards Board (March 1989); question 28, pages 36 and 37, states in part: "ARB No. 43, Chapter 7, "Capital Accounts," states that after a quasi-reorganization, the enterprise's accounting should be substantially similar to that appropriate for a new enterprise. As such, any subsequently recognized tax benefit of an operating loss or tax credit carryforward for financial reporting that existed at the date of a quasi-reorganization should not be included in the determination of income of the "new" enterprise, regardless of whether losses that gave rise to an operating loss carryforward were charged to income prior to the quasi-reorganization or directly to contributed capital as part of the quasi-reorganization. A new enterprise would not have tax benefits attributable to operating losses or tax credits that arose prior to its organization date."

[11] SFAS No. 96 (December 1987); paragraph 54, states: "Some quasi reorganizations involve only the elimination of a deficit in retained earnings by a concurrent reduction in contributed capital. *For that type of reorganization,* subsequent recognition of the tax benefit of a prior operating loss or tax credit carryforward for financial reporting is reported as required by paragraph 52 and then reclassified from retained earnings to contributed capital." [Emphasis added.] Also, *Supra* Note. 10.

[12] The first sentence of paragraph 54 of SFAS No. 96 states: "The tax benefit of an operating loss or tax credit carryforward for financial reporting as of the date of a quasi-reorganization as defined and contemplated (involving write-offs directly to contributed capital) in ARB No. 43, Chapter 7, "Capital Accounts," is reported as a direct addition to contributed capital if the tax benefits are recognized in subsequent years".

[13] Accounting Principles Board Opinion No. 20 (July 1971); paragraph 16.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM89–13–000; Order No. 514–A]

Revision of Formula for Computing Monthly Carrying Charges in PGA Filings

Issued, September 28, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts as final and without change an interim revision of the formula used to compute the monthly carrying charge rate for Account No. 191 carrying charges required in the Commission's Purchased Gas Adjustment (PGA) filings. The Commission revised the regulations on an interim basis in Order No. 514 (54 FR 25,235 (June 14, 1989)) and at the same time sought comments. No comments were received.

EFFECTIVE DATE: The effective date of this final rule is September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of the final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn System Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Ann Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting as final a revision of the formula used to compute the monthly carrying charge rate for Account No. 191 carrying charges required in the Commission's Purchased Gas Adjustment (PGA)

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filings.[1] Under the regulations adopted on an interim basis in Order No. 514, the daily interest rate to be determined in the second step of the carrying changes formula in § 154.305(h)(4) of the Commission's regulations must be expressed to the nearest one ten-thousandth of one percent (*i.e.*, rounded to the sixth decimal place).[2] The Commission did not receive any comments on the interim rule and is therefore adopting this final rule without any changes.

II. Background and Discussion

Prior to Order No. 514, the Commission's PGA regulations specifically required that each result in the formula for determining the carrying charge rate on a pipeline's Account No. 191 balances must be expressed to the nearest one one-hundredth of one percent, *i.e.*, rounded to the fourth decimal place.[3]

The Commission noted in Order No. 514 that several pipelines were granted a limited waiver of the carrying charges formula in § 154.305(h)(4) to permit them to express the daily interest rate calculated under § 154.305(h)(4)(ii), the second step of the carrying charges formula, to the nearest one ten-thousandth of one percent. The Commission granted these waivers because a Commission staff study found that expressing the daily interest rate in the second step of the carrying charges formula to the nearest one one-hundredth of one percent created variances between the de facto annual rate used to compute carrying charges on a pipeline's Account No. 191 balances and the annual rate used to calculate refunds for general NGA section 4 rate proceedings according to § 154.67(c)(2)(ii)(A) of the Commission's regulations.[4]

The Commission revised the carrying charges rate computation formula in § 154.305(h)(4)(ii) in Order No. 514, an interim rule issued on June 8, 1989, in order to provide an immediate generic remedy to pipelines, and to ensure uniform treatment of the monthly carrying charges formula by all pipelines at the earliest date possible. The Commission's interim rule also rendered unnecessary the filing of further petitions by pipelines for limited waiver of the carrying charges formula in § 154.305(h)(4).

[1] *See* 18 CFR 154.305(h), (1988).

[2] 54 FR 25,235 (June 14, 1989); FERC Stats. & Regs. ¶ 30,855 (June 8, 1989).

[3] *See* 18 CFR 154.305(h)(6) (ii) and (iii) (1988).

[4] 18 CFR 154.67(a)(2)(iii)(A) (1988).

The Commission sought comments on the interim rule due on or before July 24, 1989. No comments were filed.

Accordingly, for the reasons discussed in Order No. 514, the Commission is adopting as final and without change the regulations amended on an interim basis in Order No. 514.

This final rule is effective September 28, 1989.

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (Act) generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.[5] The pipelines affected by this rule are too large to be considered "small entities" within the meaning of the Act.[6] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. National Environmental Policy Act Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[8] This rule involves the review of natural gas rate filings and establishment of rates for the transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act. Pursuant to § 380.4(a)(25) of the Commission's regulations, the establishment of such rates is categorically excluded from the requirement.[9] The Commission, therefore, will not prepare an environmental assessment or an environmental impact statement for this rule.

V. Paperwork Reduction Act Statement

The Paperwork Reduction Act [10] and the Office of Management and Budget (OMB) [11] require that OMB approve certain information collection requirements imposed by agency rule. This final rule does not change the information collection requirements approved by OMB. The rule simply changes the decimal place that must be used in expressing the daily interest rate in § 154.305(h)(4)(ii), the second step of the carrying charges formula in § 154.305(h)(4) of the Commission regulations. The Commission, therefore, is not required to notify OMB of the technical change.

[5] 5 U.S.C. 601–612 (1982).

[6] The act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1982). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 5 U.S.C. 6.32(a) (1982).

[7] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 14, 1987).

[8] CFR 380.4 (1988).

[9] 18 CFR 380.4(a)(25) (1988).

[10] 44 U.S.C. 3501–3520 (1982).

[11] 5 U.S.C. 1320.13 (1988).

List of Subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 154, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 154—RATE SCHEDULE AND TARIFFS

1. The authority citation for part 154 continues to read as follows:

Authority: Natural Gas Act, 5 U.S.C. 717–717w (1982), Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982).

PART 154—[AMENDED]

2. The interim rule amending 18 CFR part 154 which was published at 54 FR 25,235 on June 14, 1989, is adopted as a final rule without change.

[FR Doc. 89–23499 Filed 10–4–89; 8:45 am]
BILLING CODE 6717–01–M

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18 CFR Part 294

[Docket No. RM79–52–001; Order No. 401–A]

Procedures for Shortages of Electric Energy and Capacity Under Section 206 of the Public Utility Regulatory Policies Act of 1978; Technical Amendment

Issued September 28, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this technical amendment to make two corrections in part 294 of its regulations.

On October 5, 1984, the Commission issued a final rule in Order No. 401 making permanent the procedures for utilities to report shortages of electric energy and capacity under section 206 of the Public Utility Regulatory Policies Act of 1978 in part 294 of the Commission's regulations (49 FR 39,536 (Oct. 9, 1984)). The regulatory text in Order No. 401 failed to (1) reflect the correct title and (2) delete the note at the end of § 294.101 which was applicable to the interim rule only.

This technical amendment is correcting the title for part 294 to reflect that the above regulations are final and not interim. This amendment is also correcting a note which should have been deleted at the end of § 294.101 of the Commission's regulations, stating that the section's reporting requirements are not subject to OMB approval. By issuing this technical amendment, the Commission is clarifying that these reporting procedures are permanent and that OMB has reviewed and approved them.

EFFECTIVE DATE: These technical corrections are effective September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this technical amendment will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE, Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) is making two technical corrections in part 294 of the Commission's regulations. The Commission is correcting the title for Part 294 to reflect that these regulations are final and not interim. The Commission is also deleting the note at the end of § 294.101 of the regulations which states that the section's reporting requirements are not subject to OMB approval. The reporting requirements in the regulations are subject to OMB approval under the Paperwork Reduction Act, and the note therefore is incorrect.

On October 5, 1984, the Commission issued a final rule in Order No. 401 making these reporting procedures permanent (49 FR 39,536 (Oct. 9, 1984)). The order was submitted to OMB at that time for approval of the reporting requirements and assignment of an OMB control number. However, the regulatory text in Order No. 401 failed to either change the title from interim to final or delete the note at the end of § 294.101 of the Commission's regulations. The note was applicable to the interim rule only, and not to the final rule.

The technical amendment clarifies that these reporting procedures are permanent and that OMB has reviewed and approved them.

These technical corrections are effective September 28, 1989.

List of Subjects in 18 CFR Part 294

Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, part 294, chapter I, title 18 of the Code of Federal Regulations is amended as set forth below.

Lois D. Cashell,

Secretary.

PART 294—PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY AND CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

1. The authority citation for part 294 continues to read as follows:

Authority: Public Utility Regultory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117; Federal Power Act, 16 U.S.C. 792 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O., 12,009 42 FR 40267; Administrative Procedure Act, 5 U.S.C. 553.

2. The heading for part 294 is revised to read as set forth above.

§ 294.101 [Amended]

3. The note at the end of § 294.101 is removed.

[FR Doc. 89–23500 Filed 10–4–89; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8259]

RIN 1545–AM99

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8259, which was published in the **Federal Register** for Thursday, September 7, 1989 (54 FR 37098). The temporary regulations relate to real estate mortgage investment conduits.

FOR FURTHER INFORMATION CONTACT: Laura Ann M. Lauritzen, 202–566–6624 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections prescribe the manner in which an entity elects status as a real estate mortgage investment conduits (REMIC) for Federal income tax purposes and procedures to be followed when filing a Federal income tax return as a REMIC. The regulations also require REMICs and certain other issuers to file information returns with the Internal Revenue Service and to provide notice to holders of REMIC interests or other debt instruments to which section 1272(a)(6) applies of income and certain allocable expenses attributable to their interests. These provisions were added or amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, T.D. 8259 inadvertently omitted language and contains

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typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8259) which was the subject of FR Doc. 89–20917, is corrected as follows:

§ 1.6049–7 [Corrected]

1. On page 37105, column 2, § 1.6049–7T(e)(2)(x), first line, the first word "For" is removed and the language "Information required to compute the accrual of market discount including, for" is added in its place.

2. On page 37106, column 1, § 1.6049–7T(f)(2)(i)(G), first line, the language "For calendar years after 1989," is removed. In the second line, the first word "information" is removed and the word "Information" is added in its place. In the third line, the word "including:" is removed and a "." is added in its place followed by the language "For calendar years after 1989, this information includes:".

3. On page 37106, column 2, § 1.6049–7T(f)(2)(ii)(K), first line, the language "For calendar years after 1989," is removed. In the second line, the word "information" is removed and the word "Information" is added in its place. In the third line, the word "including:" is removed and a "." is added in its place followed by the language "For calendar years after 1989, this information includes:".

4. On page 37107, column 2, § 1.6049–7T(f)(7)(ii), fifth line, the word "within" is removed and the language "by the later of 45 days after the close of the calendar quarter for which the information was requested, or" is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–23463 Filed 10–4–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218–AA20

[Docket No. S–301A]

Concrete and Masonry Construction Safety Standards

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule, technical amendment.

SUMMARY: This rule corrects a technical error in OSHA's final rule for Concrete and Masonry Construction located in subpart Q of 29 CFR 1926.704(b). That final rule was published in the **Federal Register** on June 16, 1988 (53 FR 22612), and was subsequently incorrectly published in the 1988 edition of the Code of Federal Regulations (CFR). Both the **Federal Register** and the CFR contain the error. Both documents contain the word "should" in § 1926.704(b) instead of the word "shall." This rule corrects the error by changing the word "should" to "shall."

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, 200 Construction Avenue NW., Washington, DC 20210, telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: On September 16, 1985, OSHA published a notice of proposed rulemaking in the **Federal Register** (50 FR 37543) proposing to amend its requirements in subpart Q addressing the hazards associated with concrete and masonry constuction. That notice contained a requirement in § 1926.706(a)(4)(i) which required, "* * * lifting inserts for tilt-up precast concrete members shall be capable of supporting at least two times the maximum intended load applied or transmitted to them."

On June 16, 1988, when the final rule for Concrete and Masonry Construction was issued in the **Federal Register** (53 FR 22612), OSHA discussed the above-mentioned provision in the Summary and Explanation Section (53 FR 22637). In its explanation, OSHA noted that the provision in § 1926.706(a)(4)(i) was being relocated to § 1926.704(b) and that the provision in the final rule was unchanged from the proposed rule. In response to the one comment received on the provision, OSHA clarified the provision by adding the words "which are embedded or otherwise attached to" after the words "lifting inserts;" otherwise the provision was the same as proposed. Further, in paraphrasing the regulation, OSHA also stated in its discussion of § 1926.704(b) that "Paragraph (b) specifies that lifting inserts which * * * to tilt-up wall panels must be capable of supporting twice the maximum intended load applied or transmitted to them." This language further indicates OSHA's intent that the requirement be viewed as mandatory. OSHA does not promulgate regulations using the term "should." Use of that term would render the provision unenforceable.

OSHA notes that the error occurred during the printing process. The document submitted by OSHA for publication contained the word "shall," however the word "should" was printed in the **Federal Register** on June 16, 1988, and in the CFR issued for July 1988.

Public Participation

In accordance with 5 U.S.C. 553(b)(3)(B), OSHA is waiving the opportunity for public comment because it finds good cause that comment is not necessary. This rule merely corrects an error that occurred in the printing of the **Federal Register** issued on June 16, 1988, and subsequently repeated in the Code of Federal Regulations.

Additionally, pursuant to 5 U.S.C. 553(d)(3), OSHA finds good cause for making the effective date of this rule the same date as its date of publication.

Signed at Washington, DC, this 29 day of September 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

Part 1926 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1926—[AMENDED]

1. By revising paragraph (b) of § 1926.704 to read as follows:

§ 1926.7804 Requirements for precast concrete.

* * * * *

(b) Lifting inserts which are embedded or otherwise attached to tilt-up precast concrete members shall be capable of supporting at least two times the maximum intended load applied or transmitted to them.

* * * * *

[FR Doc. 89–23476 Filed 10–4–89; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–94]

Special Local Regulations for Marine Events; Seventh Annual Intra-Harbor Power Boat Regatta, Elizabeth River, Norfolk, Virginia and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the Seventh Annual Intra-Harbor Power Boat Regatta. The event will be held on the Elizabeth River between the Norfolk and Portsmouth downtown areas. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 11:30 a.m. to 6:00 p.m., October 14, 1989. If inclement weather causes the postponement of the event, the regulations are effective from 11:30 a.m. to 6:00 p.m., October 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Portsmouth Power Boat Association has submitted an application on August 17, 1989 to hold the Seventh Annual Intra-Harbor Power Boat Regatta on October 14, 1989. The event was previously scheduled for July 16, 1989, but was cancelled due to inclement weather. The rescheduled powerboat regatta will be held in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect. Because vessels will be permitted to transit the regulated area between heats, commercial traffic should not be severely disruptsd. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Local Notice to Mariners.

Dated: September 27, 1989.

P. A. Welling,

Rear Admiral U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–23627 Filed 10–4–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB08

Hells Canyon National Recreation Area; Management

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for public comment.

SUMMARY: This interim rule provides management standards and guidelines to ensure than the natural beauty, paleontological, historical, and archeological values of the Hells Canyon National Recreation Area, including the seventy-one mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, are protected. In addition the recreational and ecological values and public enjoyment of the area are enhanced as directed in the Hells Canyon National Recreation Area Act (Act).

The need for this interim rule results from a recent decision of the Ninth Circuit Court of Appeals which held that the Secretary of Agriculture must promulgate distinct and separate rules to govern the Recreation Area as directed by section 10 of the Act. The intended effect of these regulations is to provide a regulatory basis for managing the Federal lands within the Recreation Area consistent with the requirements of the Act and other laws and regulations applicable to National Forest System lands. In order to respond quickly to the court ruling and to continue an undisrupted program of land management, it is necessary to make this rule effective upon publication. However, public comment is invited on this interim rule and will be considered in promulgating a final rule.

DATES: This interim rule is effective October 5, 1989. Comments must be received by December 4, 1989.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2730), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim rule in the Office of the Director, Recreation Management Staff, Room 4229, South Agriculture Building, 14th and Independence, SW., Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m. To facilitate entry into the building, the public is requested to make arrangements for inspection in advance by calling (202) 447–2871.

FOR FURTHER INFORMATION CONTACT: John C. Anderson, Recreation Management Staff, (202) 447–2871, South Agriculture Building, 14th and Independence, SW., Washington, DC, or Elton Thomas, Environmental Affairs Staff, Pacific Northwest Region, 319 SW Pine St., Portland, Oregon, 97208, (503) 423–2322.

SUPPLEMENTARY INFORMATION:

Background

The Hells Canyon National Recreation Area was established by an Act of Congress (16 U.S.C. 460gg) on December 31, 1975. Section 8 of the Act required the development of a Comprehensive Management Plan (Plan) within 5 years of the enactment of the law, and section 10 directed the Secretary of Agriculture to promulgate rules as he deemed necessary to accomplish the purposes of the Act. The Forest Service interpreted the language of section 10 of the Act as granting rulemaking discretion to the Secretary, rather than compelling the Secretary to promulgate rules, and believed that the management direction to be developed through the Plan and already established in existing regulations would be adequate to manage the Recreation Area. In accordance with section 8, the Forest Service developed,

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with full public involvement, a Comprehensive Management Plan for the Hells Canyon National Recreation Area. The Plan relied on existing regulations governing National Forest management in chapter II of title 36 of the Code of Federal Regulations to meet management objectives and standards for the Recreation Area. For example, management direction for wilderness in the Plan is based on the rules at 36 CFR parts 219 and 293 as well as the Wilderness provisions of the Act establishing the Recreation Area.

Recently, the 9th Circuit Court of Appeals, in *Oregon Natural Resources Council* v. *Lyng*, D.C. No. CV–88–680–PA, ruled that the Secretary must promulgate rules as specified in section 10 of the Act to address standards and guidelines for the protection and preservation of the historic, archeological, and paleontological resources, use and management of roads and trails, use and number of rivercraft, timber management, mining, range management, wildlife and fisheries, and other resources. In response, the Department is promulgating this interim rule. Because regulations are in place that adequately guide management of most of the resources of the Recreation Area, this rule does not repeat those rules but rather makes clear that these other rules apply to the Recreation Area. This approach is fully consistent with the Circuit Court's finding that section 10 "compels the Secretary to promulgate nonduplicative regulations" (Op., p. 20).

Section-by-Section Analysis

The interim rule establishes a new subpart F of part 292, Hells Canyon National Recreation Area in title 36 of the Code of Federal Regulations.

Section 292.40 establishes that the purpose of the rules is to govern the management of Federally-owned lands within the Recreation Area. It should be noted that the agency is developing and will propose at a later time separate rules governing private land uses within the Recreation Area as required by section 10 of the Act. In accordance with section 7 of the Act this section of the rules provides that the area will be managed in accordance with the rules of the subpart as well as other rules of title 36, chapter II, of the Code of Federal Regulations. This section lists the major existing rules that apply to Hells Canyon National Recreation Area management but makes clear that in event of any inconsistency between these rules and other existing rules, the rules of subpart F have precedence.

Section 292.41 sets forth definitions of terms used in this rule. The definitions of various silvicultural terms used in the rule are those found in Forest Service Manual section 2470.5, Amendment 148, 10/88, and "Terminology of Forest Science Technology Practices and Products" published by the Society of American Foresters (1971) which is the recognized basis for silvicultural terminology and definitions.

Section 292.42 provides direction for developing a Comprehensive Management Plan for the Recreation Area as required by section 8 of the Act. Because the Recreation Area is comprised of lands from 3 National Forests located in the States of Idaho and Oregon, it is necessary to assign administrative responsibility for preparing the plan. Thus, paragraph (1) of § 292.42 assigns the planning responsibility to the Forest Supervisor of the Wallowa-Whitman National Forest, in which the largest percentage of the Recreation Area is located.

Paragraph (b) sets forth the management objectives that the Comprehensive Management Plan must address. These objectives are a restatement of those set forth in section 7 of the Act itself, which have proven to be sufficiently comprehensive to guide the resource management planning for the Recreation Area. Therefore, there is no need to expand these objectives further in the rule.

Paragraph (c) of this section requires that the Plan establish the array, manner, and levels of resource use and enhancement and set forth the broad management direction for the area. It is not feasible or practical to establish the intensity, mix, and methods of resource use in regulation. These decisions must be based on site-specific data and consideration of various alternatives formulated in response to that data, as well as public review and involvement. Paragraph (c) also makes clear that management direction and practices identified in the Plan must be consistent with standards set forth in § 292.43 of the rule.

Because the Agency originally concluded that additional rules were not needed to govern the Hells Canyon National Recreation Area, the Agency proceeded to develop a Comprehensive Management Plan, which was adopted April 30, 1982. To avoid any question as to the status of that plan in light of the Ninth Circuit Court's Ruling, paragraph (d) asserts and directs that the Plan as adopted shall continue to guide the management of the area. This paragraph also brings the adopted plan into uniformity with other Agency-wide planning by directing that the Plan be incorporated as part of the Wallowa-Whitman National Forest Management Plan and that future revisions or amendments to the Hells Canyon Plan shall be made in accordance with the rules governing forest planning at 36 CFR part 219. This assures public involvement in any future revisions or amendments and assures the public that the Agency established land and resource management planning process will apply to such revisions. The Act itself did not address the need for and manner of revisions of the Comprehensive Management Plan; therefore, the provisions of the National Forest Management Act and implementing regulations at 36 CFR part 219 apply.

Section 292.43 establishes management standards for Federal land in the Recreation Area Comprehensive Management Plan. Consistent with the direction governing the plan in § 292.42, the rules of this section do not establish levels, intensities, types, and mixes of resource uses. Rather this section establishes baseline standards and guidelines for resource management within the Recreation Area which the plan must embrace. These guidelines are consistent with the broad management objectives contained in the Comprehensive Management Plan, which were adopted following full public involvement and comment and have proven to be adequate guidance for devising more specific direction for managing the area and for implementing specific project plans within the area.

(a) *Cultural Resources.* The Recreation Area contains a virtual storehouse of historic and prehistoric evidence of human occupation. Existing regulations at 36 CFR parts 36, 62, 63, 65, 68, 78, 296, and 800 are adequate to ensure full protection and preservation of historic, archeological, and paleontological resources within the Recreation Area. The interim rule does not replicate the requirements of these existing regulations but directs that the cultural resources of the Recreation Area be protected and preserved through inventorying cultural resources, recommending areas for listing on the National Register of Historic Places, monitoring and protecting known cultural resources from vandalism, conducting research of the cultural resources, and stabilizing, maintaining, and/or improving important historic sites.

(b) *Roads and Trails.* Section 10 of the Act requires that the rules include provisions for "control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal Land within the Recreation Area". Existing regulations at 36 CFR parts 212—Forest Development Roads and Trails; 262—Prohibitions; and 295—Use of Motor Vehicles Off Forest Development Roads are adequate for establishing control of motorized and mechanical equipment. Moreover, transportation needs and uses within the Recreation Area must be identified and considered in the context of the overall management objectives for the Area as part of the comprehensive management planning. Accordingly, the interim rule does not specify the controls on use and type of vehicles but rather directs that the Recreation Area Ranger shall establish such controls as are necessary to meet the requirements of the Act, these regulations, and the management objectives of the Comprehensive Management Plan. In addition, consistent with the purposes for which the Recreation Area was established, paragraph (b) of this section gives emphasis to providing the public adequate and safe access to recreational and other sites. Finally, this section directs that alternative transportation routes may be developed to meet resource management objectives identified in the Comprehensive Management Plan.

(c) *Use and Number of Rivercraft.* Paragraph (c) directs that the use, type, and number of rivercraft shall be consistent with the purposes for which the area was established and shall be regulated through the management direction in the Plan and applicable rules of chapter II of title 36 of the Code of Federal Regulations. The interim rule specifically requires that the Plan address seasons of use and opportunities for outfitters and guide services.

(d) *Timber Management.* Section 7 of the Act directs the Secretary to manage the Recreation Area for public outdoor recreation in accordance with laws, rules, and regulations applicable to the National Forests and in a manner compatible with, among other objectives, management, utilization, and disposal of natural resources including "timber harvesting by selective cutting." Section 10 of the Act, as interpreted by the Ninth Circuit Court, directs the Secretary to include in the rules governing the area "standards for such management, utilization and disposal of natural resources, including, but not limited to, timber harvesting by selective cutting * * *"

Accordingly, paragraph (d) of § 292.43 of the interim rule sets forth two major guidelines for managing the timber resources of the Recreation Area; namely, that timber be managed—

(1) To perpetuate healthy stands of diverse tree species, size, and age classes, and

(2) To emphasize stand condition, scenery, wildlife habitat, and recreation needs over optimum wood fiber production.

The rule further provides that timber harvesting shall be by selection cutting methods and generally limits permitted silvicultural treatment to individual tree selection, group selection, sanitation, salvage, and intermediate cuts.

It should be noted that the language of section 10 of the Act refers to timber harvesting by "selective cutting." As defined by the Society of American Foresters, "selective cutting" is a type of exploitation cutting that removes only the largest and most valuable species from a stand. This practice, known as high grading, is inconsistent with the legislative history of the Act which clearly shows that Congress intended that timber be harvested selectively and not in an exploitive manner. Thus, the interim rule adopts the term "selection cutting" which is an uneven-aged cutting method which can involve cutting of individual trees and/or as small groups of trees.

It is also evident from the legislative history of the Act that Congress intended broader discretion for salvaging timber in unusual situations than the term "selection cutting" would ordinarily permit. The report of the Senate Energy Committee states: ". . . Where unusual situations exist, for example, in cases of fire, insect, disease, or wind-damaged timber, clearcutting is permitted to be practiced where its use would mitigate the situation. This is intended to be the exception rather than the rule". (S. Rept. No. 94–153, 94th Cong., 1st Sess., P. 5.). Accordingly, the interim rule adopts the language from Senate Report to permit clearcutting where this practice is determined to be the best timber harvest practice to mitigate resource deterioration or the spread of forest pests to adjacent stands of timber.

(e) *Mining.* The Act recognizes the exercise of valid existing mining rights within the Recreation Area and requires that the rules address mining. Because the Act withdrew the Recreation Area from further entry under the Mining Laws, paragraph (e) prohibits the Area Ranger from approving any application for location, entry, or patent of minerals under the U.S. Mining laws.

The interim rule incorporates the provision of the Act that allows the exercise of valid mining rights existing on the date of enactment and gives notice that such activity is subject to the Secretary's mining regulations at 36 CFR part 228. In exercising its authority to manage surface disturbing activities, the Forest Service will regulate mining activities to assure they are conducted in a manner consistent with the Act and so as not to preclude meeting the management objectives and direction of the rules or the Comprehensive Management Plan. Consistent with Agency policy (Forest Service Manual Title 2800), the Area Ranger will work cooperatively with mining operators to try to identify methods of operation that are compatible with the area's management.

(f) *Range Management.* Ranching and livestock grazing are traditional uses within the Recreation Area. The Act recognizes these uses and provides for grazing under existing regulations at 36 CFR, 219.20 and part 222 to the extent compatible with the administrative provisions of section 7 of the Act.

(g) *Wildlife and Fisheries.* Hells Canyon National Recreation Area contains important resident and anadromous fisheries and provides habitat for a variety of wildlife. Section 7 of the Act directs the Secretary to administer the Area to provide for protection and maintenance of fish and wildlife habitat and section 12 recognizes hunting and fishing pursuant to Federal and State laws as a recognized use. Accordingly, paragraph (g)(1) establishes broad management standards to emphasize diversity of wildlife habitat for game and nongame species, to enhance opportunities for survival and increase of threatened and endangered species, and to provide public enjoyment of the protection of wildlife.

In addition, section 12 of the Act provides discretion for the Secretary to designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration or public use and enjoyment. Paragraph (g)(2) of this section of the interim rule authorizes the Forest Supervisor to designate zones and periods when hunting and fishing shall not be permitted.

(h) *Other Resources.* There are many other forest resources and values that must be addressed in managing the Recreation Area. The Act does not require that rules address these other resources and existing law, regulations, and policy are adequate to guide their management. Accordingly, this paragraph of this interim rule merely recognizes the need to address additional resource values and uses through the Comprehensive Management Plan.

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Need for Interim Rule

The Secretary of Agriculture is promulgating this interim rule based on a finding resulting from a legal action filed against the Secretary for a salvage timber sale. This timber sale, Duck Creek, was to salvage dead and dying timber from a spruce bark beetle infestation. The Forest Supervisor made a finding of No Significant Impact and issued a Decision Notice to advertise and award the timber sale. After unsuccessfully pursuing administrative appeals to stop the sale, the appellants filed suit in the U.S. District Court for the District of Oregon, *Oregon Natural Resources Council* v. *Lyng*, alleging that the Forest Service had violated the National Environmental Policy Act (NEPA), and the Clean Water Act, and that the Secretary had violated the Hells Canyon National Recreation Area Act by failing to promulgate rules as required by section 10 of the Act. Following a trial on the merits held July 7, 1988, the District Court found for the Forest Service by finding the proposed sale was in accordance with applicable law.

On appeal by the plaintiffs, the Ninth Circuit Court of Appeals, affirmed the District Court's finding with regard to the National Environmental Protection and Clean Water Acts. However, the Court ruled that the Secretary did not have the discretion not to promulgate rules under section 10 of the Act, and that the language of the Act compelled the Secretary to promulgate rules to govern both the Federal lands and private lands use of the Recreation Area.

As a result of the Court's ruling, regulations issued under section 10 of the Act are necessary to permit ongoing activities, particularly timber sales, to continue without disruption. Salvage timber sales are particularly affected due to rapid deterioration of timber damaged by fire and insects. Approximately 34 million board feet of timber is awaiting immediate harvest. This timber was prepared for sale due to fire and insect damage and, if not marketed within the next few weeks, will lose considerable value or deteriorate to the extent that it is not salvageable. Accordingly, there is an urgent need to promulgate these rules as an interim rule. The time required to publish a proposed rule for public comment prior to adoption of a final rule would create a managerial hiatus and could lead to further legal challenge and uncertainty over the sales, resulting in serious disruption of the ongoing management activities. Therefore, there is good cause for publishing these rules as interim rules without opportunity for public comment. However, public comment is invited on the interim rule and will be considered in adoption of the final rule.

Environmental Impact

This interim rule is promulgated in accordance with section 10 of the Hells Canyon National Recreation Area Act, (16 U.S.C. 460gg). The potential environmental impact of management direction (and of six alternative management plans) for the area were analyzed and disclosed in the environmental impact statement for the Comprehensive Management Plan that was transmitted to the Environmental Protection Agency on May 28, 1981. A review of this rule indicates no potential for significant effect on the quality of the human environment other than that previously disclosed in the environmental impact statement. The environmental consequences of any future projects will be subject to Forest Service National Environmental Policy Act procedures. Therefore, no additional environmental documentation is deemed needed on this rule.

Regulatory Impact

This interim rule has been reviewed under Department of Agriculture procedures implementing Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule itself will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumer, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

This rule has been considered in light of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

This rule will not result in additional paperwork not already approved for use. Therefore, the review provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

This rule has been determined not to have taking implications for private property for purposes of Executive Order 12630 concerning "Government Actions and Interference With Constitutionaliy Protected Property Rights."

List of Subjects in 36 CFR Part 292

Recreation, Recreation areas.

Therefore, for the reasons set forth in the preamble, part 292 of chapter II of title 36 of the Code of Federal Regulations is hereby amended by establishing a new Subpart F to read as follows:

PART 292—NATIONAL RECREATION AREAS

Subpart F—Hells Canyon National Recreation Areas

Sec.

292.40 Purpose and scope.
292.41 Definitions.
292.42 Comprehensive management plan.
292.43 Management standards and guidelines.

Authority: Sec. 10, Public Law 94–199 (16 U.S.C. 460gg–7); 16 U.S.C. 551; 16 U.S.C. 1281(d).

Subpart F—Hells Canyon National Recreation Area

§ 292.40 Purpose and scope.

(a) The rules of this subpart govern management of the National Forest System lands that comprise the Hells Canyon National Recreation Area located in the Wallowa-Whitman, Nezperce, Payette National Forests in the States of Idaho and Oregon as established by the Act of December 31, 1975, as amended (89 Stat. 1117; 16 U.S.C. 460gg).

(b) Other rules of this chapter that govern management of National Forest System lands and resources, as well as direction issued through the Forest Service Manual and Handbooks (36 CFR part 200), also apply to management of the Recreation Area. Specifically, the resources of the Recreation Area shall be managed in accordance with the rules of this title, including, but limited to:

(1) 36 CFR part 212—Administration of the Forest Development Transportation system.

(2) 36 CFR part 219—Planning.

(3) 36 CFR part 222—Range Management.

(4) 36 CFR part 223—Sales and disposal of National Forest System Timber.

(5) 36 CFR part 228—Minerals.

(6) 36 CFR part 241—Wildlife.

(7) 36 CFR part 293—Wilderness-Primitive Areas.

(8) 36 CFR part 297—Wild and Scenic Rivers.

(9) 36 CFR part 296—Protection of Archaeological Resources: Uniform Regulations.

(10) 36 CFR part 800—Protection of Historic and Cultural Properties.

(c) In the event of conflict or inconsistency between rules of this subpart and other rules within this title, the rules of this subpart shall take precedence to the extent permitted by law.

§ 292.41 Definitions.

"Act" means the Act of December 31, 1975, as amended (89 Stat. 1117) which established the Hells Canyon National Recreation Area.

"Area Ranger" is the Forest Service line officer given administrative responsibility for the Hells Canyon National Recreation Area. The Area Ranger reports to the Forest Supervisor of the Wallowa-Whitman National Forest.

"Clearcutting" is an even-aged cutting method in which the entire standing crop of trees from an area is removed at one time.

"Group selection" is an uneven-aged cutting method in which small groups of trees, usually no more than 2 acres in size, are removed to meet a predetermined goal of size distribution and species in the remaining stand.

"Intermediate cutting" is a cutting which removes trees from a stand between the time of its formation and the regeneration cut.

"Individual tree selection" is an uneven-aged cutting method in which selected trees from specified size or age classes are removed over the entire stand area to meet a predetermined goal of size or age distribution and species composition in the remaining stand.

"Plan" means the Comprehensive Management Plan for the Hells Canyon National Recreation Area.

"Recreation area" means the Hells Canyon National Recreation Area.

"Salvage cutting" is an intermediate cutting made to remove trees that are dead or in imminent danger of being killed by injurious agents.

"Sanitation cutting" is an intermediate cutting made to remove dead, damaged, or susceptible trees to prevent the spread of pests or pathogens.

"Selection cutting" is an uneven-aged cutting method which entails the annual or periodic removal of trees individually or in small groups.

§ 292.42 Comprehensive Management Plans.

(a) The Forest Supervisor of the Wallowa-Whitman National Forest shall prepare a Comprehensive Management Plan to guide management of the Recreation Area.

(b) The Plan shall provide broad direction for administration of the area for public outdoor recreation in a manner compatible with the following objectives:

(1) The maintenance and protection of the free-flowing nature of the rivers within the recreation area;

(2) Conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;

(3) Preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;

(4) Protection and maintenance of fish and wildlife habitat;

(5) Protection of archaeological and paleontological sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;

(6) Preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and

(7) Management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to timber harvesting by selection cutting, mining, and grazing and the continuation of such existing uses and developments to the extent that such uses are compatible with the provisions of the Act.

(c) The Plan shall establish the array, levels, and manner of resource use within the Recreation Area. Management direction and practices identified in the Plan shall be consistent with the standards and guidelines set forth in § 292.43 of this subpart.

(d) The Plan adopted May 23, 1981, shall continue to guide management of the area and shall be incorporated as part of the Wallowa-Whitman National Forest Land and Resource Management Plan. Any revision or amendments to the Plan shall be carried out in accordance with the rules of 36 CFR part 219.

§ 292.43 Management standards and guidelines.

The Recreation Area shall be managed in accordance with the following standards for the preservation and protection of the natural, scenic, historic, pastoral, timber, fish, and wildlife values and enhancement of the recreation values of the area:

(a) *Cultural resources.* Historic, archaeological and paleontological resources of the area shall be preserved and protected by:

(1) Developing and maintaining inventories of these resources;

(2) Recommending areas deemed suitable for listing with the National Register of Historic Places;

(3) Monitoring and protecting known cultural resources from vandalism;

(4) Conducting or authorizing archaeological, paleontological, and historic research; and

(5) Stabilizing, maintaining, and/or restoring important historic sites.

(b) *Use and managmeent of roads and trails.* Adequate and safe access to identified recreational and other sites shall be provided for the enjoyment of the public. Existing roads and trails may be upgraded and improved as necessary to ensure public safety and prevent unacceptable resource damage. Alternative transportation routes may be developed to meet identified resource management objectives in the Comprehensive Management Plan. Consistent with the rules at 36 CFR parts 212, 261, and 293, the Area Ranger shall establish such control on use and types of motorized vehicles and mechanical equipment as is necessary to meet the requirements of the Act, applicable regulations, and the management direction in the Plan.

(c) *Use and number of rivercraft.* The use, type, and number of rivercraft on rivers within the Recreation Area shall be regulated through the management direction established in the Plan and other applicable rules of this chapter. The Plan shall address seasons of use and opportunities for outfitter and guide services.

(d) *Timber management.* (1) The timber resources within the Recreation Area shall be managed to perpetuate healthy stands of diverse tree species and size and age classes and to emphasize stand condition, scenery, wildlife habitat, and recreation needs, except as provided for in (d)(2) of this section. Timber harvesting for utilization and disposal of forest products shall be by selection cutting methods. Permitted silvicultural treatments generally shall be limited to individual tree selection, group selection, sanitation, salvage, and intermediate cuttings.

(2) Where timber has been damaged by fire, insect, disease, or wind, clearcutting is permitted where its use would mitigate the situation.

(e) *Mining.* Subject to valid existing rights as of December 31, 1975, the Recreation Area is withdrawn from location, entry, or patent of minerals under the federal mining laws. Valid mining activity existing as of December 31, 1975, may continue under regulation at 36 CFR part 228. Insofar as

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practicable, permissible mining activities shall be regulated to assure that they are conducted in a manner which will best assure the purposes for which the Recreation Area was established.

(f) *Range management.* Ranching and grazing in existance on December 31, 1975 are traditional and valid uses of the Recreation Area. Consistent with these uses, range resources in the Recreation Area shall be managed in accordance with existing regulations at 36 CFR parts 219.20 and 222 in a manner compatible with the purposes for which the area was established and administered as defined in section 7 of the Act.

(g) *Wildlife and fisheries.* (1) Management of wildlife and fisheries resources within the Recreation Area shall:

(i) Maintain or enhance wildlife habitat for non-game and game species by emphasizing diversity of habitat;

(ii) Enhance opportunities for threatened and endangered species to survive and increase in numbers; and,

(iii) Provide for public enjoyment and for protection of wildlife.

(2) As provided by section 12 of the Act (16 U.S.C. 460gg–9), the Forest Supervisor may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons of public safety, administration of the area, or public use and enjoyment.

(h) *Other resources.* The Plan shall establish management direction and standards for wilderness, soil and water, wild and scenic rivers, developed recreation, and other values and resources of the Recreation Area consistent with the Act and other applicable laws, orders, and regulation.

Dated: September 29, 1989.

Jack C. Parnell,

Deputy Secretary.

[FR Doc. 89–23634 Filed 10–4–89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3647–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending an error in the regulatory text that was published in the Federal Register on September 27, 1984. That notice approved a revision to the Missouri State Implementation Plan involving start-up, shutdown, and malfunction conditions.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Carol LeValley, EPA Region VII Air Branch, at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking in the Federal Register (45 FR 27932) on May 22, 1981, involving provisions for start-up, shutdown, and malfunction conditions. In this rulemaking an error was made in the sentence "Included in the plan * * *." In this sentence a reference was made to Missouri rule 10 CSR 10–4.050; the rule should have been 10 CSR 10–5.050. This error was corrected by amending 40 CFR 52.1320(c)(27) in a final rulemaking published in the Federal Register (49 FR 38103) on September 27, 1984.

When this notice was published on September 27, 1984, some of the narrative language published in the original rulemaking was inadvertently deleted. Today's notice reinstates the deleted material. This amendment does not change the substantive requirements of the approved plan.

Dated: August 29, 1989.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart AA, is amended as follows:

Subpart AA—Missouri

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—7642.

2. Section 52.1320 is amended by revising paragraph (c)(27) to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

(27) On September 5, 1980, the state of Missouri submitted a plan revision which involved provisions for start-up, shutdown, and malfunction conditions. Included in the plan are new Missouri Rule 10 CSR 10–6.050, Start-up Shutdown, and Malfunction Conditions; and revisions to Rule 10 CSR 10–6.020, Defintions and Amended Start-up, Shutdown and Malfunction Provisions in Rules 10 CSR 10–2.030, 10–3.050, 10–3.060, 10–3.080, 10–4.030, 10–4.040, and 10–5.050.

[FR Doc. 89–21960 Filed 10–4–89; 8:45 am]

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40 CFR Parts 52, 81

[FRL–3636–8]

Approval and Promulgation of State Implementation Plans, North Dakota; Visibility Protection; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: In this action, EPA is approving the general plan requirements and the long-term strategy (LTS) for visibility protection in North Dakota's mandatory Class I federal areas in a revision to the North Dakota State Implementation Plan (SIP). This action is a result of the November 24, 1987, (52 FR 45132) rulemaking at which EPA disapproved North Dakota's SIP for failing to comply with the provisions of 40 CFR 51.302 (visibility general plan requirements) and 51.306 (visibility LTS). EPA also incorporated these federal plans and regulations into North Dakota's SIP.

The Governor of the State of North Dakota submitted a SIP revision on April 18, 1989. The revision: (1) Established new and revised existing New Source Performance Standards, (2) updated existing State rules (including Prevention of Significant Deterioration regulations) and control strategies to address PM–10, and (3) added a control strategy to address visibility protection. This action only addresses visibility protection; the other portions of the submittal will be addressed in separate actions.

Review of the visibility protection plan indicates that North Dakota has met the criteria of 40 CFR 51.302 and 51.306, and that these revisions will replace the federal visibility regulations of 40 CFR 52.29 in the North Dakota SIP.

Also in this action, EPA is revising 40 CFR 81.423 to reflect that Theodore Roosevelt National Memorial Park was renamed Theodore Roosevelt National Park.

DATES: This action will be effective on December 4, 1989, unless notice is received by November 6, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1769, (FTS) 564–1769.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I federal areas" (hereinafter Class I areas) are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–81.437.) Section 169A specifically requires EPA to promulgate regulations requiring certain states (including North Dakota) to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the court stayed the litigation, pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. Distrit Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate Visibility SIPs. A negotiated Settlement Agreement between EPA and EDF required EPA to determine the adequacy of state Visibility SIPs to meet the general plan requirements including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302–307), and long-term strategies (LTS) (40 CFR 51.306). The Settlement Agreement required EPA to propose and promulgate federal Visibility SIPs (hereinafter Federal Implementation Plans (FIPS)) to remedy any deficiencies on a specified schedule. On January 23, 1986 (51 FR 3046), EPA preliminarily determined that the SIPs of 32 states (including North Dakota) were deficient with respect to the above mentioned visibility provisions.

The EPA and the plantiffs negotiated revisions to the Settlement Agreement which extended the deadlines for proposing FIPs to remedy the deficiencies. Under this revised Agreement, EPA must propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and LTS, and can defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal Land Managers (FLMs) have certified to EPA.

On March 12, 1987 (52 FR 7802), EPA proposed to disapprove the SIPs of 32 states (including North Dakota) for failing to meet the general plan and LTS requirements of 40 CFR 51.302 and 51.306, and to incorporate these federal regulations into each state's SIP. The states were given the opportunity to avoid promulgation if they submitted SIP revisions to EPA by August 31, 1987.

On November 24, 1987, EPA disapproved SIPs for states (including North Dakota) which failed to meet the requirements of 40 CFR 51.302 and 51.306. EPA also incorporated these federal regulations (40 CFR 52.29) into the SIPs of these states.

On March 8, 1988, North Dakota submitted to EPA a draft Visibility SIP for review. EPA's May 6, 1988, response to the State included comments that identified two problems with the draft SIP: (1) The FLM/State coordination and control strategy requirements of 40 CFR 51.302 were not addressed, and (2) the State's description of the Class I areas was not consistent with 40 CFR 81.423.

On April 18, 1989, North Dakota submitted a SIP revision that includes a new "Section 3.7, Control Strategy: Visibility" in Chapter 3 of the Implementation Plan for the Control of Air Pollution (hereinafter "Section 3.7") to comply with the federal provisions of 40 CFR 51.302 and 51.306. North Dakota has chosen not to protect integral vistas from visibility impairment at this time. However, the submittal meets the integral vista requirements of 40 CFR 51.304.

In response to EPA's May 6, 1988, comments, North Dakota included language in the SIP submittal to adequately address the FLM/State coordination requirements of 40 CFR 51.302. Also, EPA retracts the comment that the State did not include the necessary control strategy provisions of 40 CFR 51.302; the State only has to set-up the process to assess and address visibility impairment, which it has accomplished in the LTS. Concerning the issue of consistency with 40 CFR 81.423, the State's listing of the Class I areas (see below) provides the public with a detailed description of the Class I areas presented in 40 CFR 81.423, which EPA finds acceptable.

Affected Areas

The following areas in North Dakota are Class I areas where visibility is an important value:

The Theodore Roosevelt National Park—South Unit;
The Theodore Roosevelt National Park—Elkhorn Ranch Unit;
The Theodore Roosevelt National Park—North Unit;
A portion of the Lostwood National Memorial Wildlife Refuge—The Lostwood National Wilderness Area.

These are listed in 40 CFR 81.423 as follows:

Theodore Roosevelt National Park;
Lostwood National Wildlife Refuge.

EPA is taking this opportunity to revise 40 CFR 81.423 to read as follows:

Theodore Roosevelt National Park;
Lostwood National Wildlife Refuge.

Theodore Roosevelt National Memorial Park was re-named "Theodore Roosevelt National Park" on November 10, 1978.

General Plan Requirements

A. Requirements

The visibility regulations provide general plan requirements for Visibility SIPs. The general plan requirements of 40 CFR 51.302(c) require that the SIPs include: (1) An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal; (2) emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources; (3) provisions to protect integral vistas; (4) provisions to address any existing impairment certified by the FLM; and (5) an LTS (10 to 15 years) for making reasonable progress toward the national goal.

The North Dakota Visibility SIP reiterates these general plan requirements throughout Section 3.7, with the exception of "3) provisions to protect integral vistas." Since the State has not listed integral vistas in North Dakota, the State need not address the mechanisms necessary to protect integral vistas from impairment at this time.

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B. Control Strategies

The regulations establish the following process for developing control strategies to remedy existing impairment. First, the State or the FLM identifies the Class I areas where visibility impairment exists. The regulations require the States to address in the SIP any impairment which has been certified at least six months prior to SIP submittal. (See 40 CFR 51.302(c)(4).)

In identifying existing facilities which cause or contribute to the visibility impairment, the regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources. Although the FLMs may provide the State with a list of sources suspected of causing any existing impairment in the certification, the responsibility of identifying sources is the State's. (See 45 FR 80086, col. 3 and 40 CFR 51.302(c)(4)(i).)

The State is required to perform a BART analysis for any existing stationary facility which has been identified as causing impairment in a Class I area. The State determines BART on a case-by-case basis taking into account the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, the remaining useful life of the source, and the degree of improvement that can be anticipated to result from the use of the controls. The State must adopt emission limitations representing BART which must be installed as expeditiously as practical, but no later than five years from SIP approval. (See 40 CFR 51.302(c)(4).)

The State is not required to adopt emission limitations representing BART if, for example, retrofit controls do not exist or are not anticipated to result in improvements in visibility. (See 45 FR 80087, col. 1.) However, if a source has not been subject to BART because control technologies do not exist, and, if the Administrator determines that new technologies are available which would more effectively control that pollutant, the State must re-analyze for BART at that time. (See 40 CFR 51.302(c)(4)(v).)

The regulations do not specify methods other than visual observation for characterizing visibility impairment. However, if a state is to adequately and timely address existing visibility impairment, a thorough characterization may be necessary. The EPA is aware that it, or the State, may find that the impairment cannot be attributed to specific sources and therefore cannot be addressed under the existing visibility regulations. (See 52 FR 7804, col. 1.) A thorough characterization is important when a BART analysis is conducted so that the anticipated improvements in visibility may be estimated. The State or EPA may find that the impairment is attributable to minor stationary sources or to emissions from prescription fires. In these cases, the need for a control strategy to remedy the impairment is assessed as part of the LTS rather than BART. (See 52 FR 7804, col. 1.)

Even though visibility impairment due to a source or small group of sources has not been identified in North Dakota's Class I areas, the North Dakota Visibility SIP contains provisions in Section 3.7 which address the above control strategies. (A significant amount of detail on the development of federal control strategies is contained in 52 FR 7802 (March 12, 1987).)

C. Assessment of Visibility Impairment

The EPA reviewed the information provided by the Department of Interior (DOI) to determine if impairment (1) appeared to occur in North Dakota's Class I areas, and (2) if impairment was a type which may be traceable to specific sources. The information provided by the FLMs indicated that no Class I area in North Dakota is experiencing visibility impairment which may be traceable to specific sources.

The EPA is aware that the FLMs may in the future provide additional information on this impairment which would allow EPA or a state to attribute it to a specific source. In such cases, Section 3.7 commits North Dakota to review the information under the procedure described above and in the periodic review of the LTS discussed below.

Long-term Strategy

A. Requirements

The regulations require that the LTS be a 10 to 15 year plan for making reasonable progress toward the national goal. The LTS must cover any existing impairment that the FLM certified at least six months before plan submission. A LTS must be developed which covers each Class I area within the State and each Class I area in another state that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The LTS and SIP must provide for review of the impact of new sources as required by 40 CFR 51.307.

The State must consider at a minimum the following six factors in the LTS:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management (techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes); and
6. Enforcement for emission limitations and control measures.

The State must commit to periodic review for the SIP on a schedule not less frequent than every three years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;
2. The ability of the LTS to achieve reasonable progress toward the national goal;
3. Any change in visibity conditions since the last report or since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;
5. The progress achieved in implementing Best Available Retrofit Technology (BART) and meeting other schedules laid out in the LTS to remedy existing impairment; and
6. The impact of any BART exemption granted.

The North Dakota Visibility SIP includes provisons which address these federal LTS requirements listed above throughout Section 3.7. Additional information concerning the federal LTS requirements is contained in 52 FR 7802 (March 12, 1987).

B. Remedies

The existing visibility regulations are designed to address impairment which can be traced to specific sources. Although visibility impairment which is reasonably attributable to a source or small group of sources has not been identified by the EPA, State, or FLMs in North Dakota, the federal LTS establishes a mechanism to address any additional impairment which may be certified in the future. Although EPA intends for these discussions to be the federal remedy, North Dakota must develop its own LTS when developing the Visibility SIP.

1. Ongoing Air Pollution Control Programs

The regulations require that each LTS provide for the review of the potential impact on visibility of new major stationary sources or major modifications in accordance with 40 CFR 51.307. The regulations further require that each SIP contain a discussion of the effect of ongoing air pollution control programs on remedying existing and preventing future impairment of visibility.

The North Dakota Visibility SIP has met these requirements. EPA approved the North Dakota NSR program for visibility protection on September 28, 1988 (53 FR 37757), and North Dakota discusses its ongoing programs in Section 3.7 of the SIP. These ongoing programs include:

(a) The review of major stationary sources that are subject to the State's Prevention of Significant Deterioration of Air Quality Rules (PSD);

(b) Inspecting sources that could potentially affect visibility in Class I areas to ensure that the required air pollution control equipment is operating and to ensure that allowable emission limits are not being exceeded;

(c) Enforcement of the State's open burning regulations;

(d) Encouraging the processing of natural gas to remove sulfur from oil wells that are currently flaring in the vicinity of Class I areas;

(e) Enforcement of the State's ambient air quality standards for sulfur dioxide, particulate matter, nitrogen dioxide, and hydrogen sulfide;

(f) Controlling fugitive emissions, through permit conditions, during construction activities; and

(g) Developing BART rules should any existing impairment be identified.

2. Smoke Management Practices

The FLMs have not specifically identified smoke from prescribed fires as a cause of visibility impairment in North Dakota's Class I areas. North Dakota currently regulates controlled or "open" burning in Chapter 33–15–04 of the North Dakota Air Pollution Control Rules (NDAPCR). North Dakota prohibits open burning for agriculture and forest management practices and the disposal of liquid hydrocarbons, if the burning would have an adverse impact on visibility in Class I areas.

3. Future Certifications of Impairment

Under the revised Settlement Agreement, EPA must address existing deficiencies in Visibility SIPs. Thus, EPA has only addressed the certifications of impairment in Class I areas made by the FLMs prior to June 1, 1988. The EPA is aware, however, that information may become available which indicates the existence of additional visibility impairment within the Class I areas or which may allow EPA or the State to attribute impairment to a specific source which could not be addressed at this time. A discussion of how any future impairment will be addressed may be found in 40 CFR 51.302(c). North Dakota has committed in Section 3.7 to address any future visibility impairment identified by a FLM or the State through: (a) The NSR program, (b) the enforcement of emission limits and ambient air quality standards, and (c) the 3-year periodic review process.

4. Existing Visibility Impairment

Because the FLMs have not identified existing visibility impairment in any of North Dakota's Class I areas, discussions related to source impact (such as additional emission limitations, source retirement and replacement, construction activities, and enforceability of emission limitations) are not required in the SIP at this time. North Dakota, however, discusses source impact mitigation measures in Section 3.7, which include:

(a) Emission reductions due to ongoing air pollution control activities;

(b) Additional emission limitations and schedules for compliance;

(c) Measures to mitigate the impacts of construction activities;

(d) Source retirement and replacement schedules;

(e) Smoke management techniques; and

(f) Enforcement of emission limitations and control measures.

North Dakota has also committed to develop BART rules should any existing impairment (due to a source or small group of sources) be identified in a Class I area.

5. Periodic Review

EPA regulations require that the LTS be reviewed and revised, if necessary, every three years. During this review, the results of any monitoring program will be considered, the FLMs will be consulted, and a report will be prepared which discusses the progress toward the national goal. North Dakota has committed to this three-year periodic review of the LTS.

Final Action: The April 18, 1989, submittal by the Governor of North Dakota includes the visibility general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 45132 (November 24, 1987). (See March 12, 1987 (52 FR 7802), for additional information.) The State commits to a review of the Visibility SIP every three years, making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The approval will replace the federal plans and regulations of 40 CFR 52.29 (visibility long-term strategies) in the North Dakota SIP.

EPA hereby approves the revisions to the North Dakota Visibility SIP for the general plan requirements and the long-term strategies.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 4, 1989.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation, and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

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List of Subjects

40 CFR Part 52

Air pollution control, Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 14, 1989.

Jack McGraw,

Regional Administrator.

Parts 52 and 81 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart JJ—North Dakota

The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1831 is revised to read as follows:

§ 52.1831 Visibility protection.

A revision to the SIP was submitted by the Governor on April 18, 1989, for visibility general plan requirements and long-term strategies.

PART 81—[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 81.423 [AMENDED]

4. Section 81.423 is revised as follows:

Area name	Acreage	Public Law establishing	Federal land manager
Lostwood Wild.	5,557	93–632	USDI–FWS.
Theodore Roosevelt, NP.	69,675	80–38	USDI–NPS.

[FR Doc. 89–23514 Filed 10–4–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 2F2623, 3F2824, and 4F2986/R1038; FRL 3656–5]

Pesticide Tolerances for Cypermethrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, extension of tolerance.

SUMMARY: This rule extends tolerances for the residues of the synthetic pyrethroid insecticide cypermethrin in or on certain raw agricultural commodities. This regulation to extend the effective date for tolerances for maximum permissible levels of residues of cypermethrin in or on these commodities was requested by ICI Americas, Inc. (ICI), and FMC Corp. (FMC).

EFFECTIVE DATE: Effective on October 5, 1989.

ADDRESS: Written objections, identified by the document control number [PP 2F2623, 3F2824, and 4F2986/R1038], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:

George T. LaRocca, Product Manager (PM) 15, Registration Division (H7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: Pursuant to petitions from FMC and ICI, EPA issued final rules establishing/extending tolerances for residues of the insecticide cypermethrin in or on (1) cottonseed at 0.5 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep, and milk at 0.05 ppm; (2) pecans at 0.05 ppm; and (3) lettuce (head) at 10.0 ppm (see the **Federal Register** of June 15, 1984 (49 FR 24864) as amended in the **Federal Registers** of February 21, 1985 (50 FR 7172), September 27, 1985 (50 FR 39100), April 30, 1986 (51 FR 16032), and February 24, 1988 (53 FR 5375), respectively).

To be consistent with conditional registrations for cypermethrin on cotton, pecans, and lettuce, which are due to expire December 31, 1988, the Agency established these tolerances with an expiration date of December 1, 1989, to cover residues expected to be present from use during the period of conditional registration. One of the conditions of registration was the submission of a filed study (pond study) to determine the effect of cypermethrin on aquatic life. This study is required for all agricultural use patterns of cypermethrin.

In the **Federal Register** of March 23, 1989 (54 FR 12011), EPA announced its January 3 decision to grant ICI and FMC new conditional registrations for products containing cypermethrin for use on cotton, pecans, and lettuce for a period which extended to June 15, 1989. That document set forth EPA's evaluation of data that had been submitted, the product's regulatory history, and other relevant facts about cypermethrin. The Agency issued the new conditional registrations for this short period of time to ICI and FMC in light of their agreement to:

1. Submit all data generated in the course of the cypermethrin Alabama pond study pertaining to runoff and residues in water and sediment to the Agency by January 15, 1989.

2. Submit all other data in existence and not previously submitted to the Agency, as well as all data generated in the future in the course of the cypermethrin Alabama pond study, as soon as possible.

3. Conduct an aquatic mesocosm study (a simulated 2-year field study) for which EPA would develop and provide the protocol no later than April 15, 1989, provided ICI/FMC could not persuade EPA that the current cypermethrin pond study was acceptable.

4. Within 30 days of receipt of an EPA protocol for an aquatic mesocosm study, provide the Agency with written unconditional acceptance of the protocol and an unconditional commitment to conduct the study through completion. For any modification of the protocol to be valid it must be agreed to by EPA within the above mentioned 30-day period. The Agency reviewed the additional information on the pond study, reaffirmed its conclusion regarding the study's inadequacy, and determined that the aquatic mesocosm study would be necessary.

On May 8, 1989, FMC and ICI provided the Agency with written unconditional acceptance of the protocol and an unconditional commitment to conduct the mesocosm study through completion. On the basis of this unconditional commitment to conduct the aquatic mesocosm study, the Agency is issuing new conditional registrations for products containing cypermethrin, which will expire on July 1, 1992, and notice of this action appears elsewhere in this issue of the **Federal Register**. To be consistent with these new conditional registrations, the Agency is extending the expiration date for the cypermethrin tolerances to cover residues expected to be present from use during the period of conditional registration.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in related documents, published in the **Federal Registers** of June 15, 1984 (49 FR 24864), April 30, 1986 (51 FR 16032), and February 24, 1988 (53 FR 5375).

Based on a 1-year dog feeding study with a no-observed-effect level (NOEL) of 1.0 mg/kg/day [1] and using a safety factor of 100, the acceptable daily intake (ADI) has been calculated to be 0.01 mg/kg/day with a maximum permissible intake (MPI) of 0.6 mg/day for a 60-kg person. (The Agency used the 1-year dog feeding study no-observed-effect level (NOEL) to establish the ADI since the dog was the most sensitive species tested, i.e., gave the lowest NOEL.) The tolerances represent a theoretical maximum residue contribution (TMRC) of 0.002772 mg/day in a 1.5-kg diet and represent 27.7 percent of the ADI.

There are no regulatory actions pending against the registration of cypermethrin. The metabolism of cypermethrin in plants and animals is adequately understood. An analytical method using electron capture gas-liquid chromatography is available for enforcement purposes.

Based on the above information, the Agency has determined that extending the tolerances for residues of the pesticide cypermethrin in or on the subject commodities will protect the public health. Therefore, as set forth below, the tolerances are extended to July 1, 1993, to cover residues existing from the continued conditional registration of cypermethrin. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the **Federal Register**.

Pursuant to section 408(d)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(5)) and 40 CFR 180.13, any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. As required by 40 CFR 180.13 (a) and (b), such objections must be accompanied by the requisite filing fee and specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances of raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 1, 1989.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.418 [Amended]

2. Section 180.418 *Cypermethrin; tolerances for residues* is amended in the introductory text by changing "Tolerances are established until December 31, 1989, * * *" to read, "Tolerances are established until July 1, 1993, * * *."

[FR Doc. 89–23439 Filed 10–6–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Temp. Reg. H–27]

Homeless Assistance; Modification of Policies and Procedures

AGENCY: Federal Property Resources Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation temporarily modifies GSA's policies and procedures for making Federal public buildings and other Federal real properties (including fixtures) available for homeless assistance use pursuant to title V of the Stewart B. McKinney Homeless Assistance Act.

DATES: *Effective date:* October 5, 1989.

Expiration date: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service (202–535–7052).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Government property management, Surplus Government property.

Authority: Section 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

In 41 CFR chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter H to read as follows:

Federal Property Management Regulations Temporary Regulation H–27

September 7, 1989.

To: Heads of Federal Agencies.

Subject: Stewart B. McKinney Homeless Assistance Act.

1. *Purpose.* This regulation provides revised General Services Administration (GSA) policy and procedures for making Federal public buildings and other Federal real properties (including fixtures) available for homeless assistance use pursuant to title V of the Stewart B. McKinney Homeless Assistance Act (McKinney Act), 42 U.S.C. 11411 *et seq.*

2. *Effective date.* This regulation is effective October 5, 1989.

3. *Expiration date.* This regulation expires October 7, 1991.

4. *Applicability.* The provisions of this regulation apply to all Federal agencies that report property excess to GSA under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471 *et seq.*, and as implemented by the Federal Property Management Regulations (41 CFR part 101). GSA has prepared this regulation in consultation with the Interagency Council on the Homeless which is currently working to streamline the process of making title V properties available to the homeless. As the process is refined, this regulation will be revised accordingly.

5. *Definitions.* The definitions of terms (excess, surplus, underutilized, unutilized) are found in 41 CFR 101–47.103 and 801.

6. *Background.* Title V of Public Law 100–77 enacted on July 22, 1987, as amended by Public Law 100–628 on November 7, 1988, and Orders issued by the U.S. District Court for the District of Columbia on December 12, 1988, and May 22, 1989, in the case of the *National Coalition for the Homeless, et al.* vs. *Veterans Administration, et al.* provide in part:

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a. Federal agencies controlling land (holding agencies) are required to submit to the Department of Housing and Urban Development (HUD), on a quarterly basis, completed suitability checklists on properties identified as unutilized and underutilized as the result of surveys under FPMR subpart 101–47.8, or any other surveys that holding agencies conduct. HUD will determine whether or not the properties are suitable for use as facilities to assist the homeless, and will advise holding agencies of HUD's determinations regarding suitability within 2 months of submission of the checklists. (See **Federal Register** dated June 23, 1989 (54 FR 26421), for specific procedures as to underutilized and unutilized properties as briefly discussed in this section and section 7 of this temporary regulation for excess properties.)

b. HUD is required to publish a list of properties determined suitable in the **Federal Register** on a weekly basis. Within 30 days after receipt of notice of suitability from HUD, holding agencies shall transmit to HUD and GSA a response which shall include the following: a statement of the agency's intention to declare the property excess, a statement of the agency's intention to make the property available to the homeless on an interim basis, or a statement of the reasons why the property cannot be declared excess or made available on an interim basis.

c. Homeless providers interested in the use of listed suitable properties must confirm with the holding agencies that the properties are available and then apply to the Department of Health and Human Services (HHS). HHS will evaluate each application and determine if it is approvable. HHS will refer approved applications to the holding agencies.

d. Holding agencies may make suitable properties available to the homeless by permit or lease or may report the properties to GSA as excess.

7. *Revised Procedures.* The following procedures apply to real property reported excess to GSA.

a. Holding agencies will provide to GSA, as part of the report of excess, a copy of any HUD suitability determination.

b. If the holding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will submit a completed suitability checklist to HUD.

c. Within 60 days from GSA's submission, HUD will advise GSA of the suitability determination and HUD will publish a list of suitable properties in the **Federal Register**.

d. Upon publication in the **Federal Register** (for properties not previously determined suitable) or upon receipt of the report of excess (for properties previously determined suitable), in accordance with current procedures, GSA will concurrently notify identified homeless assistance providers; HHS; HUD; State and local governmental units; known expressions of interest; and other organizations, as appropriate, concerning suitable properties.

e. GSA will screen excess properties for Federal use and will screen surplus properties with State and local governmental units and eligible nonprofit institutions in accordance with current regulations. (See 41 CFR 101–47.203–5 and 41 CFR 101–47.204–1 and 303–2.)

f. Prospective applicants must express written interest to HHS during the 30-day period following the date of publication in the **Federal Register** and must submit complete applications to HHS as soon as possible, but in no case later than 90 days from the date of publication. For properties previously determined suitable, prospective applicants must express written interest to HHS during the 30-day period following the date of the GSA screening notice and must submit complete applications to HHS as soon as possible, but in no case later than 90 days from the date of the screening notice. HHS, subject to the approval of GSA, may grant reasonable extensions to applicants. In accordance with the Court's Order of December 12, 1988, if the deadlines noted above have been met, GSA will defer the disposal of the property until HHS has completed action on the homeless assistance application or HHS advises GSA of no expressions of interest or disapproval of the application(s).

g. Within 15 days from receipt of a complete application, HHS will approve or disapprove the application.

h. Where HHS approves the application, HHS will request assignment from GSA for homeless assistance purposes and provide GSA with a copy of the approved application.

i. Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs. In deciding the disposition of real property, GSA will give priority of consideration to homeless assistance use.

j. Suitable property to be assigned to HHS for homeless assistance use will be determined surplus by GSA.

k. Upon assignment of the property to HHS, HHS shall execute a lease for homeless assistance use for at least 1 year and monitor for compliance. Consistent with the provisions of the McKinney Act, the Government retains the fee interest in all properties made available for homeless use. In accordance with 41 CFR 101–47.402, HHS, upon execution of a lease, shall become the holding agency and shall assume custody, accountability, protection, and maintenance of such property pending report of excess as provided in 41 CFR 101–47.308(m).

l. GSA will defer disposing of all properties determined unsuitable for homeless assistance use for 2 weeks from the date of publication by HUD in the **Federal Register**. Thereafter, GSA will proceed with disposal action following procedures set forth in 41 CFR part 101–47.

m. GSA will proceed with normal disposal procedures upon written notice from HHS that no homeless provider expressed written interest in the property during the 30-day homeless screening period or upon advice from HHS that any and all applications have been disapproved.

8. *Categorical exceptions.* The following categories of properties may be treated as categorical exceptions to the McKinney Act and will not undergo suitability review:

a. Machinery and equipment.

b. Restricted disposals.

(1) Government-owned contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military production requirement.

(2) Properties subject to special legislation directing a particular action.

c. Transactions performed for executive agencies under the National Economy Act (31 U.S.C. 1535).

d. Property subject to a court order directing a particular action.

e. Mineral rights interests.

9. *Assistance.* Requests for additional information regarding these procedures may be directed to the General Services Administration, Office of Real Estate Policy and Sales (DR), 18th and F Streets, NW., Washington, DC 20405.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–23350 Filed 10–4–89; 8:45 am]

BILLING CODE 6820–96–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–284; RM–6138, RM–6474, RM–6489]

Radio Broadcasting Services; Angola, Decatur and Lagrange, IN; and Brooklyn and Hudson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273A for Channel 249A at Hudson, Michigan, to provide that community with its first local broadcast service, in response to a request filed by Randall Bhirdo (RM–6474). Coordinates used for Channel 273A at Hudson are 41–50–09 and 84–25–39. (See also, **SUPPLEMENTARY INFORMATION,** *infra.*) With this action, the proceeding is terminated with respect to RM–6474 only.

DATES: Effective November 13, 1989; The window period for filing applications on Channel 273A at Hudson, Michigan, will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Report and Order, MM Docket No. 88–284, adopted September 6, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

An additional proposal in this proceeding, filed on behalf of Midwest Communications Company ("MCC"), licensee of Station WQTZ(FM), Channel 224A, Decatur, Indiana, seeking to substitute Channel 286B1 for Channel 224A and modification of its license accordingly (RM–6489), is the subject of a separate *Order*, and therefore, will be resolved separately.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under the entry for Hudson, Michigan, by removing Channel 249A and adding Channel 273A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23578 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132–9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the combined Central and Western Regulatory Areas of the Gulf of Alaska will be reached on October 1, 1989. The Secretary of Commerce (Secretary) is prohibiting further retention of pollock in these combined areas from 12:00 noon, Alaska Daylight Time (ADT), on October 1, 1989 through December 31, 1989.

DATES: Effective from 12 noon on October 1, 1989, ADT, until midnight, Alaska Standard Time (AST), December 31, 1989. Public comments are invited through October 16, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, (907) 586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for each target groundfish species and species group are specified annually. For 1989, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

An overall TAC for pollock equal to 60,000 mt was specified for the Central and Western Regulatory Areas, combined (54 FR 6524, February 13, 1989), and under authority of § 672.22 was increased by the Secretary to 72,000 mt (54 FR 32819, August 10, 1989) with an original effective date of September 5, 1989 that was subsequently revised to be September 15, 1989 (54 FR 37109, September 7, 1989). The Director, Alaska Region, has determined that 68,845 mt has been landed through September 26, 1989. At the current average rate of 550 mt landed per day, the 72,000 mt TAC will be achieved at 12:00 noon on October 1, 1989.

Therefore, pursuant to section 672.20(c)(2), the Secretary is prohibiting further retention of pollock in the Central and Western Regulatory Areas of the Gulf of Alaska, effective 12:00 noon, ADT, October 1, 1989. Any catches of pollock after that date must be treated as prohibited species and discarded at sea.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 29, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23517 Filed 9–29–89; 5:03 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 90407–9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director) has determined that the "JVP other fishery" has attained its primary prohibited species catch (PSC) allowance of Pacific halibut in the Bering Sea and Aleutian Islands (BSAI) area. "JVP other fishery" is defined as joint venture processing fishing operations which deliver, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a "flatfish fishery". Therefore, the Secretary of Commerce (Secretary) is prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from bycatch limitation zones 1 and 2H that is composed of 20 percent or more of pollock and Pacific cod in aggregate. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fishery for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of recently implemented measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

DATE: Effective September 29, 1989 through December 31, 1989. Public comments are invited through October 14, 1989.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802–1668, Telephone 907–586–7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12A to the Fishery Management Plan for the groundfish fishery in the Bering Sea and Aleutian

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Islands area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule (54 FR 32642 August 9, 1989) (as corrected at 54 FR 37469 September 11, 1989) which is effective September 3, 1989, through December 31, 1990.

The purpose of amendment 12A is to limit incidental catches of the prohibited species, Tanner crab, red king crab, and Pacific halibut, by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting other species.

The Amendment establishes five PSC limits, each of which are apportioned among four fisheries: the domestic annual processing (DAP) fisheries for flatfish and other species, and the joint venture processing (JVP) fisheries for flatfish and other species. Each of the 20 PSC allowances prescribed for the 1989 groundfish fisheries were specified in the final rule implementing Amendment 12A (§ 675.21, Table 2, 54 FR 32651, August 9, 1989). Specification of the PSC allowances was based on the anticipated bycatch of prohibited species through the use of a mathematical prediction procedure using statistical information derived from fishery performance in previous years and projected performance for the 1989 fishing year.

In early September, the Regional Director determined that the prediction procedure has led to incorrect specification of the PSC allowances for Pacific halibut and he adjusted PSC allowances based on the best available scientific information concerning the actual groundfish harvest to date and new projections of harvest for the remainder of the fishing year. Pacific halibut PSC amounts were apportioned to the DAP and JVP flatfish fisheries from the DAP and JVP other fisheries, effective September 3, 1989 (54 FR 37113, September 7, 1989). The current primary PSC allowance for Pacific halibut for the "JVP other fishery" is 415 mt.

Closure

The Regional Director has determined that the "JVP other fishery" primary bycatch allowance for Pacific halibut, 415 mt, has been caught by U.S. fishing vessels participating in the "JVP other fishery."

Therefore, the Secretary, by this notice and under authority of § 675.21(c)(4)(iii), prohibits for the remainder of the fishing year the receipt by foreign vessels of groundfish caught from bycatch limitation zones 1 and 2H with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

Classification

These actions are taken under §§ 675.20 and 675.21 and comply with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority 16 U.S.C. 1801 *et seq.*

Dated: September 29, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23518 Filed 9-29-89; 5:02 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 192
Thursday, October 5, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-189-AD]

Airworthiness Directives; Boeing Model 747-200 and 747-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive, applicable to certain Boeing Model 747-200 and 747-300 series airplanes, which currently requires repetitive visual inspections of the center wing fuel tank for leakage into the forward cargo compartment. This action would require replacement and resealing of two drag splice fitting bolts located on the front spar, and a one-time inspection and repair, if necessary, of the center wing fuel tank front spar and upper surface secondary fuel barrier application. This action would also terminate the repetitive inspections of the center fuel tank for fuel leakage into the forward cargo compartment when the proposed modifications and inspections are completed. This condition, if not corrected, could result in fuel or fuel vapors entering the cargo and passenger compartments in the event of a failure of a primary seal or a crack in the center wing box structure.

DATE: Comments must be received no later than November 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-189-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Dostert, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-189-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 8, 1988, the FAA issued Telegraphic AD T88-08-51, applicable to certain Boeing Model 747-200 series airplanes, which required visual inspections of the wing center section front spar lower chord area for fuel leaking from the center wing fuel tank into the forward cargo compartment, and repair of any leaks that were discovered. That action was prompted by reports of fuel leaks, due to either loose or broken bolts which connect the body station (BS) 1000 bulkhead chord to the wing center section front spar lower chord through an internal drag splice fitting and a bathtub fitting at body stringer S-38 on both sides of the airplane. Fuel leaking into the forward cargo compartment, which is not a flammable fluid leakage zone, creates a potential fire hazard.

Subsequent to the issuance of that Telegraphic AD, which was applicable only to Boeing Model 747-200 series airplanes through line number 592, further investigation revealed that a required secondary fuel barrier (CAT-A-LAC coating), may not have been applied to cover the bolt areas described above on Model 747-200 and 747-300 series airplanes through line number 699. Without this coating, failure of the bolt would allow fuel to leak into the cargo compartment area causing a fire hazard. Therefore, the FAA determined that these additional airplanes must also be inspected for fuel leakage, and issued AD 88-11-11, Amendment 39-5939 (53 FR 18834; May 25, 1988), which superseded T88-08-51 and increased the applicability to include airplanes through line number 699.

Since issuance of those airworthiness directives, the FAA has determined that the secondary fuel barrier on the center wing fuel tank front spar and upper surface may not have been properly applied. In addition, the cause of the loose and broken bolts has been determined to be reduced fatigue life due to inadequate preload of the drag splice fitting bolts during initial installation. Leaks which have been reported were found to be caused by loose bolts which damage sealant due to later?l bolt movement or tearing of the sealant when bolts, which have been weakened due to stress corrosion, fail under load.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989, which describes procedures for a one-time inspection of the center wing fuel tank front spar and upper surface secondary fuel barrier application, and modification of the drag splice fitting bolt installation. The service bulletin includes procedures for replacement of

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bolts made of H-11 steel with bolts made of Inconel 718, which have improved stress corrosion properties. Use of Inconel 718 bolts, in conjunction with improved torquing procedures, will increase bolt life. For added protection against leakage, a bolt head retention cap is installed to preclude damage to the secondary fuel barrier due to bolt failure. The improved drag splice fitting bolt installation was phased into production and fully implemented on airplanes starting at line number 721.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-11-11 with a new AD that would expand the applicability of the existing AD to include airplanes, line numbers 700 through 720. This proposed AD would require repetitive visual inspections for fuel leaks at the center wing fuel tank, and repair if necessary, on airplanes through line number 720; and eventual installation of bolt head retention caps and replacement of the H-11 steel drag splice fitting bolts with Inconel 718 bolts on those airplanes, in accordance with the service bulletin previously described. Accomplishment of the bolt replacement would constitute terminating action for the required visual inspections. In addition, this proposed AD would require inspection of the secondary fuel barrier application on airplanes through line number 699, and repair if necessary, in accordance with the service bulletin previously described.

There are approximately 450 Model 747-200 and 747-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 97 airplanes of U.S. registry would be affected by this AD, that it would take approximately 136 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $527,680.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5939 (53 FR 18834; May 25, 1988), AD 88-11-11, with the following new airworthiness directive:

Boeing: Applies to Model 747-200 and 747-300 series airplanes, listed in Boeing Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fuel or fuel vapors from entering the forward cargo compartment, accomplish the following:

A. For airplanes line numbers 1 through 720, within the next 50 flight hours after the effective date of this AD, unless previously accomplished within the last 350 flight hours, and thereafter at intervals not to exceed 400 flight hours, conduct a visual inspection for fuel leaks at the forward side of the forward wall of the center wing fuel tank (body station 1000 pressure bulkhead) between fuselage stringers S-37 and S-39, left and right side of the airplane, with specific attention to the bathtub fittings at fuselage stringer S-38 (Body Buttline 78.5, left and right), in accordance with Boeing Alert Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989.

1. If fuel leakage or fuel staining is detected, prior to further flight, accomplish the drag splice fitting modification in accordance with paragraph B., below.

2. If no sign of fuel leakage is found, but the sealant around the nut is cracked or damaged, within the next 400 flight hours, accomplish the drag splice fitting modification in accordance with paragraph B., below.

B. For airplanes line numbers 1 through 720, within the next 36 months after the effective date of this AD, install the bolt head retention caps, replace the H-11 steel drag splice fitting bolts with Inconel 718 bolts, and reseal the drag splice fitting, in accordance with Boeing Alert Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989. Accomplishment of these actions constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. For airplanes line numbers 1 through 699, within the next 36 months after the effective date of this AD, inspect the center wing fuel tank front spar and upper surface secondary fuel barrier for proper application, in accordance with Boeing Alert Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989. If improper fuel barrier application is detected, repair prior to further flight, in accordance with Alert Service Bulletin 747-57A2247, Revision 3, dated June 22, 1989.

D. Within 10 days after accomplishing the inspection required by paragraphs C above, submit a report of the complete description of findings of inspections from which it is determined that the secondary fuel barrier is not properly applied to: Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; rapid fax (206) 431-1913; telex 756366.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-23542 Filed 10-4-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-127-AD]

Airworthiness Directives; Canadair, Ltd., Models CL-600-1A11, CL-600-2A12, and CL-600-2B16 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Canadair Model CL-600-1A11 and CL-600-2A12 series airplanes, which currently requires that aileron and elevator flutter dampers be repetitively inspected for fluid leakage and replaced, if necessary; and that the hydraulic fluid be replenished. This condition, if not corrected, could result in flutter of the affected part and eventual loss thereof. This action would allow an increase in the currently required repetitive inspection interval for dampers with certain part numbers, change the applicability statement to include the Model CL-600-2B16, and clarify the accomplishment procedures of the required inspections.

DATE: Comments must be received no later than November 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-127-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec, Canada; telephone (514) 744-1511. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-127-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 6, 1986, the FAA issued AD 86-10-02, Amendment 39-5310 (51 FR 17613; May 14, 1986), to require that aileron and elevator flutter dampers be repetitively inspected and replaced, if necessary, and that the hydraulic fluid be replenished. That action was prompted by reports of these dampers were leaking hydraulic fluid. This condition, if not corrected, could result in flutter of the affected parts and eventual loss thereof.

Since issuance of that AD, Canadair, Ltd. has been examining service data and investigating the causes of leaking dampers. Analysis of the survey data for dampers with part numbers 600-75134-9 and 600-75135-5 indicates that the leakage rate for these part numbers is less than previously determined.

Canadair has issued Alert Wire TA600-000-032/194, Revision 1, dated November 21, 1985, which describes procedures to inspect the hydraulic fluid level of these dampers periodically, replenish the fluid, and replace the damper, if necessary. This Alert Wire increases the originally recommended interval for repetitive inspections from 200 flight hours to 300 flight hours. Transport Canada has issued Canadian Airworthiness Directive CF-86-04RI, dated March 22, 1989, addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 86-10-02 to increase the repetitive inspection interval for aileron and elevator flutter dampers with part numbers 600-75134-9 and 600-75135-5, from 200 flight hours to 300 flight hours or 12 months, whichever occurs first, in accordance with the service document previously described. Based on the survey data described above, the FAA has determined that the currently required 200-flight hour interval can be increased to 300 flight hours without adversely affecting safety.

This action would also expand the applicability statement to include Model CL-600-2B16 airplanes, Serial Numbers 5001 through 5033. These airplanes utilize the same affected part number dampers and, therefore, would be subject to the same unsafe condition addressed in the existing AD. (Model CL-600-2B16 series airplanes with Serial Numbers 5034 and higher are equipped with improved dampers, Part Number 600-75142-1, which have been tested to allow inspection intervals of 600 flight hours, in accordance with the inspection procedure defined in the maintenance manual.)

Additional information has been added to paragraph A. of the proposed rule to clarify the procedures utilized in determining actions to be taken following the required inspection. Paragraph A. has been changed to correctly address the elevator "flutter" damper which was previously referred to in the original AD as a "flight" damper.

It is estimated that 32 Model CL-600-2B16 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required inspection, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators due to the increase in airplanes affected is estimated to be $6,400 for the initial inspection cycle.

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The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39–5310 (51 FR 17613; May 14, 1986), AD 86–10–02, as follows:

Canadair, Ltd.: Applies to Model CL–600–1A11 series airplanes, all serial numbers, Model CL–600–2A12 series airplanes, all serial numbers, and Model CL–600–2B16 series airplanes, Serial Numbers 5001 through 5033, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that flutter does not occur in the event of failure of two hydraulic systems, accomplish the following:

A. Within 100 flight hours after June 2, 1986 (the effective date of Amendment 39–5310), inspect the aileron and elevator flutter dampers, replenish the hydraulic fluid, or replace the damper, if necessary, in accordance with Canadair Alert Wire TA600–000–032/194, Revision 1, dated November 21, 1985.

1. Dampers, P/N 600–75135–5 and 600–75134–9, with more than .030 inch of green stripe showing, are serviceable and may remain in service until the next inspection required by this AD.

2. Dampers, P/N 600–75135–3 and 600–75134–7, with more than .040 inch of green stripe showing, are serviceable and may remain in service until the next inspection required by this AD.

3. Dampers having less green stripe showing than specified in paragraphs A.1. and A.2., above, must be replenished prior to further flight, in accordance with paragraph 3.3 of the Canadair Alert Wire.

4. Dampers having the green stripe entirely covered by the red cup must be replenished prior to further flight, in accordance with paragraph 3.4 of the Canadair Alert Wire, provided that no more than one flutter damper in this condition is fitted to the same control surface. If *more* than one flutter damper on any control surface is in this condition, prior to further flight, replace it with either a new flutter damper or one which is serviceable under the conditions specified in paragraph A.1., A.2., or A.3., above.

B. Repeat the procedures required by paragraph A., above, as follows:

1. At intervals not to exceed 200 flight hours or six months, whichever occurs first, for dampers, Part Numbers (P/N) 600–75134–7 and 600–75135–3, that indicated green at the last inspection.

2. At intervals not to exceed 100 flight hours or 3 months, whichever occurs first, for dampers, P/N 600–75134–7 and –9, and P/N 600–75135–3 and –5, that indicated completely red at the last inspection.

3. At intervals not to exceed 300 flight hours or 12 months, whichever occurs first, for dampers, P/N 600–75134–9 and 600–75135–5, that indicated green at the last inspection.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, FAA, New England Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Canadair, Ltd., P.O. Box 6087, Montreal, H3C 3G9, Quebec, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on September 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–23540 Filed 10–4–89; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–183–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8F–54, –55, DC–8–61F, –62F, –63F, –71F, –72F, and –73F Series Airplanes; Model DC–8–33 Airplanes With STC Number SA3403WE Incorporated; and Model DC–8–43 Airplanes With STC Number SA3749WE Incorporated

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, which currently requires certain inspections and modifications of the main cargo door assembly to prevent inadvertent opening of the main cargo door in flight. This condition, if not corrected, could result in loss of pressurization and control of the airplane. This action would require installation of a main cargo door hydraulic isolation valve; installation of an additional, and modification of the existing, door-open indicating system; installation of a main cargo door lock pin viewing window; installation of a main cargo door vent system; installation of a vent door-open indicating circuit; installation of a main cargo door hinge pin retainer; and modification to the main cargo door latch operating mechanism. This proposal is prompted by further review of the main cargo door design and operation by the FAA and constitutes terminating action for the existing AD.

DATE: Comments must be received no later than November 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–183–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publication, C1–L00 (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5341.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–183–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 24, 1989, the FAA issued AD 89–17–01, Amendment 39–6285 (54 FR 31806; August 2, 1989), to require inspection and modification of the main cargo door hydraulic control valve and control panel access door, visual inspection of the main cargo door to ensure the door is locked prior to each takeoff, inspection and modification of the exterior markings on the main cargo door, and functional checks of the door-open indicating system. That action was prompted by a recent accident in which the main cargo door on a Model DC–9 series airplane opened in flight. Similar incidents of the Model DC–8 main cargo door opening in flight have been reported. This condition, if not corrected, could result in loss of pressurization and control of the airplane.

Since issuance of that AD, which was considered an interim action, the FAA further reviewed the Model DC–8 main cargo door, including the main cargo door design, prior incidents of inadvertent opening of the door in flight, maintenance of the door, operational aspects of the door, all available service information, and the need to provide terminating action for the initial and repetitive inspections/checks required by that AD. Based on this review, the FAA has determined that additional mandatory corrective actions are necessary to ensure that the Model DC–8 main cargo door will be properly closed, latched, and locked prior to takeoff and will not inadvertently open in flight.

McDonnell Douglas has developed additional safety features to prevent the door from opening in flight. The FAA has reviewed and approved the following related McDonnell Douglas service bulletins:

a. Service Bulletin 52–74, Revision 2, dated November 19, 1975, which describes installation of a main cargo door hydraulic isolation valve to shut off the hydraulic pressure to the control valve when the system is not in use;

b. Service Bulletin 52–76, Revision 3, dated January 29, 1986, which describes procedures for installation of a redundant (dual) door-open indicating system by installing a new door-open indicating circuit, modifying the existing door-open indicating system, and installing a main cargo door indicating system test circuit;

c. Service Bulletin 52–75, Revision 1 dated August 9, 1974, which describes installation of a viewing window in the exterior skin of the door for visual inspection of the lock pin position;

d. Service Bulletin 52–71, dated September 12, 1969, which describes a modification of the main cargo door latch operating mechanism to prevent the latches from closing prematurely during the door closing cycle; and

e. Service Bulletin 52–80, dated March 23, 1977, which describes installation of a vent door system to improve the positive lock feature of the cargo door latching and locking system and limit pressurization of the airplane.

In addition, McDonnell Douglas is currently developing a vent door-open indicating circuit which will alert the flight crew when the vent door is not properly closed and latched. The circuit will be part of the main cargo door-open indicating system. McDonnell Douglas plans to have this vent door-open indicating circuit available for installation on in-service Model DC–8 airplanes by December 1989.

McDonnell Douglas is also developing a cargo door hinge pin retainer to ensure that the hinge pin will be retained in the event of a failure of the hinge pin. McDonnell Douglas plans to have hinge pin retainers available for installation on in-service Model DC–8 airplanes by December 1989.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 89–17–01 to require installation of a main cargo door hydraulic isolation valve, modification to the existing door-open indicating system, installation of an additional door-open indicating circuit, installation of a main cargo door indicating system test circuit, installation of a main cargo door lock pin viewing window, modification of the main cargo door latch operating mechanism and installation of a main cargo door vent system, in accordance with the service bulletins previously described. In addition, this AD would require the installation of the aforementioned vent door-open indicating circuit which will signal the appropriate flight crew member when the vent door is not fully closed and latched; and would require the installation of a main cargo door hinge pin retainer to ensure retention of the hinge pin in the event of its failure. Installation of all the above described modifications would constitute terminating action for the repetitive inspections and checks required by the existing AD.

Additionally, the degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position on continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The proposed modification requirements of

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this action are in consonance with that policy decision.

There are approximately 137 McDonnell Douglas Model DC–8 series airplanes of the affected design in the worldwide fleet. It is estimated that 71 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required material cost is estimated to be $80,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,191,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by revising AD 89–17–01, Amendment 39–6285 (54 FR 31806; August 2, 1989), as follows:

McDonnell Douglas: Applies to Model DC–8F–54, –55, DC–8–61F, –62F, –63F, –71F, –72F, and –73F series airplanes, as listed in McDonnell Douglas DC–8 Service Bulletin 52–71, dated September 12, 1969; Service Bulletin 52–74, Revision 2, dated November 19, 1975; Service Bulletin 52–75, dated August 9, 1974; Service Bulletin 52–78, Revision 3, dated January 29, 1986; and Service Bulletin 52–80, dated March 23, 1977; certificated in any category. Also applies to Model DC–8–33 airplanes with STC Number SA3403WE incorporated, and Model DC–8–43 airplanes with STC Number SA3749WE incorporated, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inadvertent opening of the main cargo door in flight, a condition which could result in loss of pressurization and control of the aircraft, accomplish the following:

A. Within 14 days after August 18, 1989 (the effective date of Amendment 39–6285), ensure that the main cargo door is closed, latched, and locked prior to takeoff following each operation of the door, in accordance with the procedures specified below. The procedures required by this paragraph must be accomplished by qualified and trained personnel, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). The method for documentation of compliance must also be approved by the FAA PMI.

1. From the outside of the airplane perform a visual check of the exterior manual latch controls, to ensure that the latch actuating shaft and the lock pin handle are in the LOCK position; or

2. Perform a visual check of the latches and lock pins, located on the inside of the main cargo door, to ensure that the latches are in the closed position and the lock pins are in the locked position.

3. Prior to taxi, communicate to the flight crew that the main cargo door has been closed, latched, locked, and checked.

B. Unless the modifications described in paragraph E.2. of this AD have previously been accomplished, within the next 30 days after August 18, 1989 (the effective date of Amendment 39–6285), and thereafter at intervals not to exceed 45 days, conduct a main cargo door-open indicating system functional check in accordance with McDonnell Douglas All Operator's Letter (AOL) 8–669, dated April 19, 1974, paragraph 1. If the main cargo door-open indicating system functional check is not successfully accomplished, repair the main cargo door-open indicating system prior to further flight, in accordance with AOL 8–669.

C. For airplanes with hydraulic cargo door latch systems, accomplish the following:

1. Within 30 days after August 18, 1989 (the effective date of Amendment 39–6285), and thereafter at intervals not to exceed 45 days, inspect and modify the main cargo door control panel access door plate and "T" handle stowage clip in accordance with McDonnell Douglas AOL 8–669, dated April 19, 1974, paragraph 2. In addition, inspect the control panel access door to ensure the door can be secured in the down and locked position. If the control panel access door can not be secured in the down and locked position, repair prior to further flight.

2. Unless previously accomplished in accordance with paragraph (2) of AD 75–03–02, Amendment 39–2075, within 30 days after August 18, 1989 (the effective date of Amendment 39–6285), verify that the main cargo door hydraulic control valve shaft operates freely, without binding, between the operate neutral and neutral lock positions. This shall be accomplished by opening the main cargo door hydraulic control valve control panel access door; raising the "T" handle Douglas P/N 4777888–1, and pulling the "T" handle vertically upward to its maximum travel (operate neutral position). When the vertical force on the "T" handle is relieved, the main cargo door hydraulic control valve shaft should return to the neutral lock (down) position without binding. Replace the main cargo door hydraulic control valve, Douglas P/N 5777869–5001 or 5919985–5001, prior to further flight, if the valve shaft does not return freely to the neutral lock position.

D. Within 30 days after August 18, 1989 (the effective date of Amendment 39–6285), inspect the main cargo door exterior lock pin handle and latch actuating shaft markings in accordance with McDonnell Douglas AOL 8–669, dated April 19, 1974, paragraph 7, and with one of the following McDonnell Douglas Drawings: 7718621–59 and –61, Revision "AV"; or 5633828, Revision "E"; or 5633939, Revision "C"; or 5804421, Revision "A/H". If the exterior markings are not correct, mark in accordance with the appropriate McDonnell Douglas drawings, above, prior to further flight.

E. Within the next six months after the effective date of this amendment, accomplish the following:

1. Install a main cargo door hydraulic isolation valve in accordance with McDonnell Douglas Service Bulletin 52–74, Revision 2, dated November 19, 1975; and

2. Install a new main cargo door-open indicating circuit, revise the existing main cargo door-open indicating circuit, and install a main cargo door-open indicating system test circuit in accordance with McDonnell Douglas Service Bulletin 52–76, Revision 3, dated January 29, 1986. Compliance with the requirements of paragraph B., above may be terminated upon the accomplishment of the requirements of this paragraph.

F. Within one year after the effective date of this amendment, accomplish the following:

1. Install a main cargo door lock mechanism view window in accordance with McDonnell Douglas Service Bulletin 52–75, dated August 9, 1974; and

2. Install a main cargo door vent system in accordance with McDonnell Douglas Service Bulletin 52–80, dated March 23, 1977; and

3. Modify the main cargo door latch operating mechanism in accordance with McDonnell Douglas Service Bulletins 52–71 dated September 12, 1969; and

4. Install a main cargo door hinge pin retainer on each end of the hinge, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will retain the hinge pin in the event of a structural failure of the pin; and

5. Install a vent door-open indicating system, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched.

G. Compliance with the requirements of paragraphs E., F.1., F.2., F.3., and F.5., constitute terminating action for the initial and repetitive inspections required by paragraphs A., B., and C.1. of this AD.

H. The checks and modifications specified in paragraphs A. through F. of this AD are not required on airplanes which have the main cargo door deactivated and secured in the closed and locked position, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, until that door is reactivated.

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpresseurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention: Director of Publications, C1–L00 (54–60). These documents may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on September 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–23541 Filed 10–4–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AGL–14]

Proposed Transition Area Establishment; Clare, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish the Clare, MI, transition area to accommodate a new VOR/DME–A Standard Instrument Approach Procedure (SIAP) to Clare Municipal Airport, Clare, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before November 17, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Asst. Chief Counsel, AGL–7, Attn: Rules Docket No. 89–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket nay also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AGL–14". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area in the vicinity of Clare, MI. This transition area is being established to accommodate a new VOR/DME–A SIAP to Clare Municipal Airport.

The development of this procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic

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procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Clare, MI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Clare Municipal Airport (lat. 43°49'55" N., long. 84°44'30" W.); within 2 miles each side of the 181° bearing from Clare Municipal Airport, extending from the 5-mile radius to 6.5 miles south of the airport.

Issued in Des Plaines, Illinois, on September 22, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-23544 Filed 10-4-89; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AEA-15]

Proposed Alteration of Transition Area; Great Bend, NY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: An error was discovered in the notice of proposed rulemaking that was published in the Federal Register on Tuesday, August 1, 1989, Airspace Docket No. 88-AEA-15. This action corrects that error.

EFFECTIVE DATE: Effective October 5, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, Systems Management Branch, AEA-530, Docket No. 88-AEA-15, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 88-AEA-15, published on Tuesday, August 1, 1989 (54 FR 31697), proposed to alter the description of the Great Bend, New York transition area. An error was discovered in the magnetic and true bearings from the Wheeler Sack Army Air Field upon which the bearings were based. This action corrects that error.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 88-AEA-15, as published in the Federal Register on Tuesday, August 1, 1989, is corrected to read as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Corrected]

2. Great Bend, NY [Corrected]

By removing the description of the Great Bend transition area in its entirety and substituting the following:

"That airspace extending upward from 700 feet above the surface within a 7-mile radius of the center, lat. 44°03'00"N., long. 75°44'00"W., of Wheeler Sack A.A.F., NY; within an 8-mile radius of the center of the airport, extending clockwise from a 065°(T) 076°(M) bearing to a 135°(T) 148°(M) bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 135°(T) 148°(M) bearing to a 165°(T) 178°(M) bearing from the airport; within a 13.5-mile radius of the center of the airport, extending clockwise from a 165°(T) 178°(M) bearing to a 195°(T) 208°(M) bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 195°(T) 208°(M) bearing to a 242°(T) 255°(M) bearing from the airport; within 4.5 miles each side of the Watertown, NY VORTAC (lat. 43°57'07"N., long. 76°03'54"W.) 066°(T) 078°(M) radial, extending from the 7-mile radius area and the 10.5 mile radius area to the VORTAC, and within 5 miles each side of the Watertown, NY, VORTAC 069°(T) 061°(M) radial, extending from the 7-mile radius area and the 10.5-mile radius area to the VORTAC."

Issued in Jamaica, New York, on September 11, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-23545 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD76

Extension of Vocational Programs for Seriously Disabled Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations governing two programs which provide vocational services to seriously disabled veterans receiving pension or individual unemployability benefits from VA. These changes are required because recent legislation extended both programs through January 31, 1992, and revised eligibility criteria for participation. The intended effect of these amendments is to make these programs available to an expanded group of veterans in receipt of pension from VA and eliminate the mandatory participation requirement for veterans awarded individual unemployability benefits on or after February 11, 1985.

DATES: Comments must be received on or before November 6, 1989. Comments will be available for public inspection until November 14, 1989. It is proposed to make these amendments effective the same dates the statutory provisions which they implement were enacted. The amendments are effective November 18, 1988, except for § 21.6059(b) which is effective December 31, 1987.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 14, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service for rules included in § 21.6000 through 21.6525, (202) 233-6496; and Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, in regard to §§ 3.341 through 3.343, (202) 233-3005.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits Improvement Act of 1984 (Pub. L. 98-543) established a temporary 4-year program of vocational training for certain veterans awarded VA pension and a temporary 4 year program of trial work periods and vocational rehabilitation for service-disabled veterans awarded individual unemployability (IU). These programs removed certain disincentives in order to help eligible disabled veterans secure suitable employment. The statutory provisions governing both programs have been amended by the Veterans Benefits Improvement Act of 1988, Pub. L. 100-687. The Act:

(1) Extends the vocational training program through January 31, 1992;

(2) Extends eligibility for program participation to certain veterans awarded pension before the beginning of the program period on February 1, 1985; and

(3) Continues provisions which protect the veteran's eligibility for VA health care if pension is terminated because of income from work or training through January 31, 1992.

In addition to statutory changes made by the Veterans' Benefits Improvement Act of 1988, a related change contained in the Veterans' Benefits and Cost of Living Adjustment Act of 1987 is also implemented. This change increased the number of evaluations which could be provided under the vocational training program for VA pensioners during each 12 month period from 2,500 to 3,500.

Under the temporary program for veterans receiving compensation, those who were newly rated as totally disabled based on individual unemployability between February 1, 1985, and January 31, 1989, were required to undergo an evaluation to determine whether achievement of a vocational goal was reasonably feasible. Failure to do so was a cause for a reduction of the IU rating to the schedular evaluation of their disabilities. Pub. L. 100-687 extended the program period for these veterans until January 31, 1992, and eliminated the requirement for mandatory participation.

It is proposed that these regulatory amendments be retroactively effective. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the sections of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisons of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed rules only affect the rights of individual VA beneficiaries. No new regulatory burdens are imposed on small entities by these rules.

The Catalog of Federal Domestic Assistance numbers are 64.109 and 64.116.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health Care, Pension, Veterans.

38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 18, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, and part 21, Vocational Rehabilitation are proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.341 paragraph (c) is revised to read as follows:

1. § 3.341 Total disability ratings for compensation purposes.

* * * * *

(c) *Temporary program for vocational rehabilitation.* Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1992, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be offered to determine whether the achievement of a vocational goal by the veteran is reasonably feasible.

(Authority: 38 U.S.C. 363)

§§ 3.342 and 3.343—[Amended]

2. In § 3.342(c)(1) and § 3.343(c)(2) remove the words "January 31, 1989" where they appear and add, in their place, the words "January 31, 1992".

3. In § 3.342, paragraph (c)(2) is revised to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) *Temporary program of vocational rehabilitation.* * * *

(2) Veterans awarded disability pension prior to February 1, 1985, and veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1992, are also eligible to apply for participation in vocational rehabilitation training; however, such participation is strictly voluntary, and the provisions of paragraph (c)(1) of this section do not apply to such veterans.

(Authority: 38 U.S.C. 524)

PART 21—[AMENDED]

4. Section 21.6001 is revised to read as follows:

§ 21.6001 Temporary vocational training program for certain pension recipients.

This program provides certain veterans awarded pension with an evaluation and, if feasible, with vocational training, employment assistance and other services to enable them to achieve a vocational goal.

(Authority: 38 U.S.C. 524, Pub. L. 100-687)

5. In § 21.6005(f), remove the words "paragraph (e)" where they appear and add, in their place, the words "paragraph (f)".

6. In § 21.6005, paragraphs (d), (e), (f), (g), and (h) are redesignated as paragraphs (e), (f), (g), (h), and (i) respectively; paragraphs (a), (b) and (c) are revised, new paragraph (d) is added, and newly redesignated paragraph (h) is revised to read as follows:

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§ 21.6005 Definitions.

(a) *Temporary program.* The term "temporary program" means the program of vocational training for certain pension recipients authorized by section 524, Chapter 15, Title 38 United States Code.

(Authority: 38 U.S.C. 524, Pub. L. 100-687)

(b) *Program period.* The term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1992.

(Authority: 38 U.S.C. 524(a)(4), Pub. L. 100-687)

(c) *Qualified veteran.* The term "qualified veteran" means:

(1) A veteran awarded disability pension during the program period; or

(2) A veteran who was awarded disability pension prior to the beginning of the program period on February 1, 1985, has been continuously in receipt of pension since that time, and is in receipt of pension on the date his or her claim for assistance under the vocational training program is received by VA.

(Authority: 38 U.S.C. 524(a), Pub. L. 100-687)

(d) *Program participant.* The term "program participant" means a qualified veteran as defined in paragraph (c) of this section who, following an evaluation in which VA finds achievement of a vocational goal is reasonably feasible for the veteran, elects to participate in a vocational training program.

(Authority: 38 U.S.C. 524(a), Pub. L. 100-687)

* * * * *

(h) *Job development.* The term "job development" means comprehensive professional services to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran.

(Authority: 38 U.S.C. 524(b)(3))

* * * * *

7. In § 21.6015 paragraphs (c), (d), and (e) are redesignated as new paragraphs (d), (e), and (f) respectively; the heading and the authority citation for paragraph (a) are revised, paragraphs (b) is revised and new paragraph (c) is added to read as follows:

§ 21.6015 Claims and elections.

(a) *Claims by veterans under age 50 for whom participation in an evaluation is required.*

* * * * *

(Authority: 38 U.S.C. 524(b); Pub. L. 100-687)

(b) *Claims by qualified veterans for whom participation in an evaluation is not required.* Qualified veterans in the following categories will be provided an evaluation if they request assistance under the temporary program, and are found to have good employment potential. These veterans include:

(1) Veterans age 50 and more who are awarded pension during the program period;

(2) Veterans awarded pension prior to the beginning of the program period on February 1, 1985 who meet the conditions contained in § 21.6005(c) of this part.

(Authority: 38 U.S.C. 524(b), Pub. L. 100-687)

(c) *Filing a claim.* A veteran is one of the categories identified in paragraph (b) of this section must file a claim in the form prescribed by VA in order to be considered for an evaluation of his or her abilty to achieve a vocational goal through participation in this temporary program. The veteran's claim is considered a request for both the evaluation, and if achievement of a vocational goal is found reasonably feasible, for participation in the vocational training program.

(Authority: 38 U.S.C. 524, Pub. L. 100-687)

8. In § 21.6021 paragraph (a) and its authority citation is revised to read as follows:

§ 21.6021 Nonduplication—38 U.S.C. Chapters 30, 31, 32, 34 and 35.

(a) *Election between this temporary program and Chapter 31 required.* A service-disabled veteran awarded VA pension who is offered a vocational training program under 38 U.S.C. Chapter 15 and is also eligible for such assistance under Chapter 31, must elect which benefit he or she will receive. The veteran may reelect at any time if he or she is still eligible for the benefit desired.

(Authority: 38 U.S.C. 524(b)(2); Pub. L. 100-687)

* * * * *

9. In § 21.6040, paragraph (a) (1) and (c) and the authority citations for paragraphs (b) and (c) are revised to read as follows:

§ 21.6040 Eligibility for vocational training and employment assistance.

(a) *Basic eligibility requirements.*

* * *

(1) The veteran is a qualified veteran as described in § 21.6005(c) of this part.

* * * * *

(Authority: 38 U.S.C. 524(b); Pub. L. 100-687)

(c) *Eligibility if pension is terminated.* A qualified veteran for whom a program of vocational training has been found reasonably feasible shall remain eligible for the temporary program, subject to the rules of this subpart and section 524 of 38 U.S.C. ch. 15, even if his or her pension award is subsequently terminated, except when the veteran's award of VA pension was the result of fraud or administrative error.

(Authority: 38 U.S.C. 524(a); Pub. L. 100-687)

§ 21.6042 [Amended]

10. a. In § 21.6042 (b) and (d) add the following to the authority citation, "; Pub. L. 100-687".

b. In § 21.6042 in the introductory text of paragraph (a), paragraph (a)(1) and paragraph (b), remove "1989" and add, in their place, "1992".

c. In § 21.6042(d) remove the words "January 31, 1994" and add, in their place, the words "January 31, 1997".

11. In § 21.6050 (b), (c), (d), and (e) add the following to the authority citation, "; Pub. L. 100-687".

12. In § 21.6050, paragraph (d)(1)(ii) is removed; the heading for paragraph (b) and the first sentence of paragraph (b), the first sentence of paragraph (c)(1), paragraph (c)(2), and paragraph (e) are revised to read as follows:

§ 21.6050 Participation of eligible veterans in an evaluation.

* * * * *

(b) *Evaluating other qualified veterans.* An evaluation shall be accorded each qualified veteran as described in § 21.6005(c) of this part who seeks to become a program participant provided VA first determines the veteran has good potential for achieving employment. * * *

(c) *Notice to eligible veteran.* (1) A qualified veteran under age 50 awarded pension during the progrm period for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded a pension. * * *

(2) A qualified veteran age 50 or older awarded pension during the program period will be informed of the provisions of this temporary program and the procedure for requesting an evaluation.

* * * * *

(d) *Scheduling the evaluation.* * * *

(2) Other qualified veterans identified in § 21.6054 of this part who are found to have good employment potential under § 21.6054 of this part.

* * * * *

(e) *Followup of qualified veterans who do not complete an evaluation.* The case of each qualified veteran under age 50 awarded pension during the program period for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation and Counseling (VR&C) staff as provided in §§ 21.197(c)(4) and 21.198(d) of this part.

* * * * *

13. In § 21.6054, the section heading, the firt sentence of paragraph (a), and the authority citation for paragraph (a) are revised to read as follows:

§ 21.6054 Criteria for determining good employment potential.

(a) *Determining good employment potential.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under § 21.6005(c)(2) of this part, VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. * * *

(Authority: 38 U.S.C. 524(a)(2); Pub. L. 100-687)

* * * * *

§ 21.6059 [Amended]

14. a. In § 21.6059 (a) and (b) remove the numbers "2,500" and add, in their place, the numbers "3,500".

b. In § 21.6059 (a), (b) and (c) add the following to the authority citation, "; Pub. L. 100-227".

15. In § 21.6059 paragraph (b)(1) is removed, and paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2) respectively; paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 21.6059 Limitations on the number of evaluations.

* * * * *

c. *Cases not counted as evaluations.*

* * *

(1) The veteran under age 50 awarded pension during the program period is unable to participate for reasons beyond his or her control;

(2) Review of available informaiton does not indicate a good potential for employment of other qualified veterans.

* * * * *

16. a. In part 21, subpart J, §§ 21.6511, 21.6513, 21.6517, and 21.6525 are removed and reserved.

b. In part 21, subpart J, the authority citation is revised to read as follows:

Authority: Pub. L. 98-543, sec. 111; 38 U.S.C. 363; Pub. L. 100-687, sec. 1301.

17. In § 21.6501, the heading and authority citation for paragraph (b) are revised to read as follows:

§ 21.6501 Overview.

* * * * *

(b) *Chapter 31 evaluations.* * * *

(Authority: 38 U.S.C. 363; Pub. L. 100-687)

* * * * *

§ 21.6503 [AMENDED]

18. In § 21.6503(a) remove the words "January 31, 1989" and add, in their place, the words "January 31, 1992".

19. Section 21.6505 is revised to read as follows:

§ 21.6505 Participation in the temporary program.

Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans.

(Authority: 38 U.S.C. 363(a)(2)(A))

20. Section 21.6509 is revised to read as follows:

§ 21.6509 Notice to qualified veterans.

(a) At the time notice is provided to a qualified veteran of an award of an IU rating, VA shall provide the veteran with an additional statement. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 363;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing, a vocational rehabilitation program under Chapter 31; and

(3) A summary description of the scope of services and assistance available under that chapter.

(Authority: 38 U.S.C. 363(c)(1))

(b) *Opportunity for evaluation.* After providing the notice required under paragraph (a) of this section, VA shall offer the veteran the opportunity for an evaluation under § 21.50 of this part.

(Authority: 38 U.S.C. 363(c); Pub. L. 100-687)

(c) *Evaluation.* The term "evaluation" hereinafter shall be understood to mean the same evaluation accorded in an "initial evaluation" and an "extended evaluation" a those terms are described in §§ 21.50 and 21.57 of this part.

(d) *Responsible staff member.* The evaluation or reevaluation will be provided by a counseling psychologist in the Vocational Rehabilitation and Counseling (VR&C) Division.

(Authority: 38 U.S.C. 363(c))

21. In § 21.6515 paragraph (b) and its authority citation are revised to read as follows:

§ 21.6515 Formulation of rehabilitation plan.

* * * * *

(b) *Existing plan.* If the veteran already has undetaken a rehabilitation program under Chapter 31, a new plan shall not be developed unless circumstances indicate that the existing plan should be modified or replaced.

(Authority: 38 U.S.C. 363(c); Pub. L. 100-687)

22. In § 21.6519 paragraph (c) is revised to read as follows:

§ 21.6519 Eligibility of qualified veterans for employment and counseling services.

* * * * *

(c) *Veteran elects counseling, placement and postplacement services.* If a qualified veteran elects not to undertake the IWRP and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 1504(a) (2) and (5), he or she may be provided those services.

(Authority: 38 U.S.C. 363(b))

§ 21.6523 [Amended]

23. a. In § 21.6523(a) remove the words "January 31, 1989" and add, in their place, the words "January 31, 1992".

B. In § 21.6523 add the following to the authority citation, "; Pub. L. 100-687".

[FR Doc. 89-23547 Filed 10-4-89; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 3657-6]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Correction.

SUMMARY: The EPA is correcting an error in the applicability section of the proposed National Emission Standard for Benzene Emissions from Benzene Transfer Operations source category which appeared in the **Federal Register** on September 14, 1989 (54 FR 38063).

FOR FURTHER INFORMATION: Ms. Shirley Tabler at (919) 541-5256, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On September 14, 1989 (54 FR 38083), EPA proposed regulations limiting benzene emissions from several source categories. The proposed National Emission Standard for Benzene Emissions from Benzene Transfer

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Operations contained an omission in the applicability section of regulation. The omission is being corrected by this notice.

Dated: September 29, 1989.

Richard D. Wilson,

Acting Assistant Administrator.

The following correction is being made in FRL 3620–5; National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System published in the **Federal Register** on September 14, 1989 (54 FR 38083).

1. Paragraph (d) of § 61.300 on page 38118, column 2, is correctly revised to read as follows:

§ 61.300 Applicability.

* * * * *

(d) The owner or operator of an affected facility, as defined in § 61.300(a), that loads a marine vessel shall be in compliance with the provisions of this subpart on and after February 1, 1991. If an affected facility that loads a marine vessel also loads a tank truck or railcar, the marine vessel loading racks shall be in compliance with the provisions of this subpart on and after February 1, 1991, while the tank truck loading racks and the railcar loading racks shall be in compliance as required by § 61.12.

[FR Doc. 89–23583 Filed 10–4–89; 8:45 am]

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40 CFR Part 261

[SW–FRL–3657–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Occidental Chemical Corporation, Delaware City, Delaware, to exclude certain solid wastes to be generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270 and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes once they are disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until November 20, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by October 20, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–89–OTEP–FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460 (202) 475–9928.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.* ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of

hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the Petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Occidental's petitioned wastes on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned wastes, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted wastes off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Occidental is seeking an upfront delisting (*i.e.*, an exclusion for waste generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the wastes are not necessary. Because the petitioned wastes are not currently generated or disposed, ground-water data would not characterize the effects of the petitioned wastes on the underlying aquifer at the disposal site, and thus, would serve no purpose.

Occidental petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled down version of a proposed treatment system), untreated waste characteristics, and process descriptions. The Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system, verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable level of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of Occidental's upfront delisting petition, a list of constituents was developed for the verification testing and proposed maximum allowable treated waste concentrations for these constituents were derived by back calculating from the health-based levels used for delisting decision-making through the use of the proposed fate and transport model for a landfill management scenario. These maximum allowable concentrations (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes, which without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to generate data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from subtitle C control.

Finally, the Hazardous and Solid Waste Amendents of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

Occidental Chemical Corporation Delaware City, Delaware.

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1. Petition for Exclusion

Occidental Chemical Corporation (Occidental), located in Delaware City, Delaware, produces chlorine, sodium hydroxide, potassium hydroxide, and hydrogen. Occidental petitioned the Agency to exclude its treated sodium chloride brine sludge, sodium chloride saturator cleanings, and potassium chloride brine sludge, all presently as EPA Hazardous Waste No. K071—"Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used." The listed constituent of concern for EPA Hazardous Waste No. K071 is mercury. Occidental petitioned to exclude its wastes because it does not believe that the treatment residues meet the criteria of the listing. Occidental also does not believe that the treated wastes are hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's review of Occidental's petition.

2. Background

Occidental petitioned the Agency to exclude its treated mercury brine mud wastes on September 2, 1987 and subsequently provided additional information to complete its application. In support of its petition, Occidental submitted (1) detailed descriptions of its manufacturing and proposed waste treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and EP toxicity analyses for all the EP toxic metals and nickel from representative samples of the brine wastes treated in the laboratory-scale treatment process; (4) results from total constituent analyses for total cyanide, and total oil and grease; and (5) results from analysis for the hazardous waste characteristics (ignitability, corrosivity and reactivity) on representative samples of the treated waste streams from the laboratory-scale process. Once Occidental's full-scale treatement system is on-line, EPA proposes that Occidental be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel and cyanide, and for the total constituent concentration of reactive sulfide and reactive cyanide on batches of treated waste (see Section 6—*Verification Testing Conditions*).

Occidental produces chlorine, sodium hydroxide (caustic soda), and potassium hydroxide using a mercury cell process which electrolyzes saturated salt solutions (*i.e.*, sodium chloride or potassium chloride brine). The sodium chloride and potassium chloride systems are described further below.

The saturated salt brine solution which is fed to the electrolytic mercury cell is prepared by dissolving sodium chloride (rock salt, or NaCL) or potassium chloride (KCl) in the depleted brine solution recycled from the mercury cells. After clarification and filtration to remove impurities in the salt, the separate NaCl and KCl brines flow into their respective electrolytic cells. The solid impurities removed from the brine saturators and clarifiers are the K071 waste described in Occidental's petition. Occidental is currently generating three K071 waste streams (two sodium chloride K071 waste and one potassium chloride waste). Each individual stream is described below.

1. Sodium Chloride Saturator Cleanings

The raw rock salt used to produce a sodium chloride brine contains many impurities, consisting primarily of calcium sulfate, magnesium, iron, aluminum and sand. The inert and insoluble materials which are collected on the salt support screen are a portion of Occidental's K071 wastes and are referred to herein as the sodium chloride saturator cleanings (NaCl–SC). These NaCl–SC wastes are segregated from Occidental's remaining K071 wastes as discussed below. In the full scale system, the NaCl–SC wastes will be manually removed from the salt support screen as necessary (when sufficient volume for efficient treatment has accumulated) and treated. (Occidental must monitor the volume of the NaCl–SC wastes which accumulate on the screen; if excessive volumes accumulate, then the brine system will subsequently slow, and the mercury cell process will no longer operate efficiently.) Treatment of the NaCl–SC wastes is described further below. The K071 insoluble waste materials which settle in the bottom of the saturator tank are transferred every 8 hours to the brine recycle basins. These K071 wastes are discussed below.

2. Sodium Chloride Treatment Sludge

After the brine is re-saturated, it is transferred to the brine treatment area, where it is treated with certain chemicals in a prescribed ratio in accordance with Occidental's proprietary processing sequence.[1] The chemically treated brine then flows by gravity to one of two clarifiers. As settling occurs in these clarifiers, the K071 clarifier sludges accumulate. Solids are removed from the bottom of the clarifier by a slow-moving rake to a sump. A pump transfers the sludges to the brine recycle basins. The clear brine is transferred to the brine filtration area. Both sand and precoated pressure leaf filters are used.[2] When the filters are periodically backwashed, the residual material from the backwashing is transferred to the brine recycle basins.

Thus, the recycle bins collect the K071 wastes from four separate streams: (1) saturator tanks sludges; (2) clarifier sludges; (3) pressure-leaf filter wastes; and (4) sand filter wastes. These four waste streams are combined to form what is referred to herein as the NaCl Treatment Sludge (NaCl–TS).

Once the sodium chloride brine is inside the electrolytic mercury cell and current is applied, the sodium and chloride are split. The chloride forms chlorine gas (Cl_2), and the sodium ion forms an amalgam with the mercury. Depleted brine is recycled back to the sodium chloride saturator tank. The amalgam flows out of the electrolytic cell into a decomposer unit. This unit is packed with carbon; water is fed into this vessel along with the amalgam. The water reacts with the amalgam to form caustic soda, hydrogen and mercury. The mercury is then recycled back to the electrolytic cell to repeat the process. The caustic soda and hydrogen are further processed and sold as products.

3. Potassium Chloride Treatment Sludge

The potassium chloride brine system is somewhat similar to the sodium chloride system. However, the potassium chloride salt is received in a very pure form and contains very few impurities. Thus, no salt screen is needed to remove inerts and other impurities and no saturator cleanings are generated in the saturation unit. Brine treatment consists of simple filtration to remove any rust that may have mixed with the salt during railcar shipment to the facility. The filters are periodically backwashed with brine solution to a holding tank. The holding tank bottoms are referred to herein as

[1] Occidental claimed that its brine treatment process is confidential and proprietary; therefore, the Agency is handling information on Occidental's treatment process as Confidential Business Information (CBI).

[2] The precoat material is either Solka Floc or activated carbon. (Solka Floc does not contain any hazardous constituents as listed in 40 CFR part 261 Appendix VIII.)

potassium chloride treatment sludge (KCl–TS), which are also K071 wastes and the subject of Occidental's petition.

Once the potassium chloride brine is inside the electrolytic mercury cell, the potassium and chloride are split. The chloride forms chlorine gas (Cl_2) and the potassium ion forms an amalgam with the mercury. The depleted brine is recycled to the potassium chloride saturator tank. The amalgam flows out of the electrolytic cell into a decomposer. The water added to the decomposer reacts with the amalgam to form potassium hydroxide, hydrogen and mercury. The mercury is then recycled back to the electrolytic cell. The potassium hydroxide and hydrogen are further processed and sold as products.

Occidental proposes to treat the NaCl–TS wastes using a three-step filtration process, producing a final filtercake residue. As part of this treatment, Occidental proposes that thickened (dewatered) K071 wastes from the saturator tank and filters be combined with thickened clarifier sludges in a holding tank. These combined sludges will then be pumped to a dewatering filter. First stage filtration will debrine the waste and return the filtrate to the brine treatment system. Second stage filtration will consist of a water wash step to wash away the salt and mercury from the dewatered filter cake. (Wash water may either be re-used in a process slurry (where the additional mercury will have no effect) or will be transferred to the on-site wastewater treatment facility, and discharged under the conditions of a National Pollution Discharge Elimination System (NPDES) permit.) Third stage filtration will dewater the cake to its final form. (Wash water from the second and third stage filtrations also will be either transferred to the wastewater treatment system or recycled back to the mercury brine system.) The filtercake will be discharged to a hopper and dumped to a collection box prior to final disposal at an off-site non-hazardous waste facility if the exclusion is granted.

For laboratory-scale testing purposes, a sample of well-mixed raw NaCl–TS waste was transferred to pre-wetted filter paper. (Filter was pre-wetted to aid the filtration process.) The sample was then washed with deionized water and subsequently dried using vacuum filtration. The dewatered filter cake was removed from the filter and mixed well with deionized water. The slurry was then dewatered again using vacuum filtration.

Occidental's proposed treatment for the KCl–TS waste will be similar to the NaCl–TS waste described above. For laboratory-scale testing purposes, a sample of well-mixed KCl sludge was transferred to pre-wetted filter paper along with a 50% by weight Norit carbon to aid in filtration. The sample/carbon mixture was then washed with deionized water and subsequently dewatered using vacuum filtration.

As part of the treatment for the NaCl-SC waste, Occidental proposes to wash the wastes after transfer from the salt support screen to a batch wash-hopper to remove salt and soluble mercury. (Mercury will be recovered and recycled back to the process.) The waste will be filter drained prior to testing and disposal.

Occidental has tested the three treatment processes described above and submitted sample data from this laboratory-scale unit as the basis for an upfront delisting. Occidental plans to construct a full-scale treatment facility if their laboratory-scale system has produced wastes that support granting an upfront delisting. As noted above, if the petitioned wastes are delisted, the resulting dewatered K071 treated residues will be disposed at an off-site non-hazardous waste facility.

To collect representative samples for upfront delisting demonstrations, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time. See "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA Office of Solid Waste (EPA/530–SW–85–003, April 1986). Representative sampling for each waste stream is described below.

1. Sodium Chloride Saturator Cleanings (NaCl-SC)

Samples of the NaCl-SC waste were collected from the support screen where it accumulates. A core sample was collected from each quadrant of the circular screen using a dipper; the samples were immediately transferred to a plastic container. The four quadrant samples were then composited into a single sample, and subjected to the laboratory-scale treatment described above. One composite sample was obtained each week for a period of five weeks (February 20, 1987 to March 25, 1987).

2. Sodium Chloride Treatment Sludges (NaCl-TS)

Occidental collected separate samples of each of the four streams (saturator tank sludges, clarifier sludges, pressure leaf filters and sand filters) which comprise the NaCl-TS. The four NaCl-TS waste streams were initially pumped to separate decant tanks, to allow wastes to settle so that supernatant brine could be separated from sludges. Each individual sample was collected from its decant tank through a valve or sampling hose and transferred into a plastic sample container. The four stream samples were subsequently composited using amounts which are proportional to the solids generation rate of each stream. (The Agency agrees the use of composite samples is most appropriate here, because if delisted, Occidental intends to combine the four individual wastestreams prior to disposal as non-hazardous. The Agency further believes that even if the bulk of the hazardous constituents were to accumulate at high concentrations in any one of the four separate wastestreams (enough to cause the individual steam sample to fail), the composite sample would indicate such an anomaly). Each stream was sampled on a weekly basis over the period of June 26, 1987 to July 7, 1987, producing six composite samples. All composite samples were subjected to the laboratory-scale treatment described shortly after collection.

As noted above, the Agency typically requires petitioners to collect a minimum of four composite samples over a representative time period. The Agency reviewed Occidental's sampling strategy to determine if their waste samples are representative of their manufacturing and treatment process. As part of their demonstration, Occidental noted that its mercury cell process is a continuous operation with a continuous brine feed and continuous brine mud waste treatment. Occidental also noted that the only raw material used in their mercury cell brine system is either rock salt (for the NaCl system) or potassium chloride salt (for the KCl system), both of which exhibit minimal variation and are obtained from one of two suppliers.

Based on the minimal amount of variation in the manufacturing and treatment process, the Agency agrees that the NaCl-TS waste samples collected by Occidental are representative of their manufacturing and treatment process. In addition, the Agency recognizes the fact that Occidental's data were obtained from a laboratory-scale system. In order to verify that the full-scale treatment system is operating properly, the Agency proposes that treated batches from the full-scale system be required to undergo verification testing. Any batches which

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fail to meet the maximum allowable concentrations for the constituent must be either re-treated or managed as hazardous.

3. Potassium Chloride Treatment Sludges

The KCl-TS grab samples were obtained during the draining of the KCl filter backwash tank. (The KCl-TS waste stream is generated daily by draining the filter backwash tank to waste containers.) Waste samples were collected in plastic buckets; samples were then allowed to settle to decant brine supernatant prior to laboratory-scale treatment. Six composite samples were collected over the period of November 6, 1987 to November 17, 1987, and treatment was conducted shortly thereafter. The sampling strategy used for the KCl-TS wastes is similar to the one used for the NaCl-TS wastes described above.

The eighteen composite samples of treated waste (six from the treated NaCl-TS wastes, six from the treated NaCl-TS wastes, and six from the treated KCl-TS wastes) were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste), and extraction procedure (EP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of all the EP toxic metals and nickel. One composite sample from the NaCl-TS sample set, one from the NaCl-SC sample set and one from the KCl-TS sample set were also analyzed for ignitability, corrosivity, reactivity, total oil and grease, and total cyanide.

Occidental claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over the corresponding time periods (for each of the three waste streams) are representative of any variation in the waste or the treatment residue constituent concentrations.

3. Agency Analysis

Occidental used SW–846 Methods 7060–7760 to quantify the total constituent concentrations of the EP toxic metals and nickel in the treated mercury brine mud wastes. In addition to these methods, SW–846 Method 1310 (standard EP) was used to quantitate the leachable concentrations of the EP toxic metals and nickel in the treated mercury brine mud wastes. Method 9010 was used to determine the total cyanide concentration in the three wastes. Tables 1 through 3 present the maximum total constituent concentrations of the EP toxic metals, nickel and cyanide in the NaCl-SC, NaCl-TS and KCl-TS wastes, respectively. Tables 4 through 6 present the maximum EP leachate values of the EP toxic metals, nickel and cyanide in the three waste streams. Detection limits represent the lowest concentrations achievable by Occidental when using the appropriate SW–846 analytical methods to analyze its wastes. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising detection limits.)

TABLE 1.—Maximum Total Constituent Concentrations NaCl Saturator Cleanings (NaCl-SC)

Constituents	Total Constituent concentrations (mg/kg)
Arsenic	53
Barium	200
Cadmium	5.2
Chromium	820
Lead	110
Mercury	240
Selenium	<0.5
Silver	4.7
Nickel	260
Cyanide	ND (<0.05)

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.

TABLE 2.—Maximum Total Constituent Concentrations NaCl Treatment Sludge (NaCl-TS)

Constituents	Total constituent concentrations (mg/kg)
Arsenic	4.3
Barium	37
Cadmium	3.4
Chromium	26
Lead	48
Mercury	150
Selenium	ND (<0.5)
Silver	0.89
Nickel	12
Cyanide	0.95

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.

TABLE 3.—Maximum Total Constituent Concentrations KCl Treatment Sludges (KCl-TS)

Constituents	Total constituent concentrations (mg/kg)
Arsenic	2.8
Barium	13
Cadmium	0.61
Chromium	42
Lead	1200
Mercury	85
Selenium	ND (<0.5)
Silver	3.0
Nickel	110
Cyanide	0.71

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.

TABLE4.—Maximum EP Leachate Concentrations NaCl Saturator Cleanings (NaCl-SC)

Constituents	Maximum EP leachate concentrations (mg/L)
Arsenic	ND (<0.005)
Barium	0.52
Cadmium	0.014
Chromium	0.019
Lead	0.11
Mercury	.0.011
Selenium	ND (<0.005)
Silver	ND (<0.005)
Nickel	1.2
Cyanide (1)	ND (<0.05)

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.
(1) Calculated by assessing a dilution factor of twenty times (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

TABLE 5.—Maximum EP Leachate Concentrations NaCl Treatment Sludge (NaCl-TS)

Constituents	Maxium EP leachate concentrations (mg/L)
Arsenic	ND (<0.005)
Barium	0.4
Cadmium	0.016
Chromium	0.011
Lead	0.31
Mercury	0.024
Selenium	ND (<0.005)
Silver	ND (<0.005)
Nickel	0.08
Cyanide (1)	ND (<0.05)

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.
(1) See Footnote (1) to Table 4.

TABLE 6.—Maximum EP Leachate Concentrations KCl Treatment Sludge (KCl-TS)

Constituents	Total EP leachate concentrations (mg/L)
Arsenic	ND (<0.005)
Barium	0.08
Cadmium	ND (<0.005)
Chromium	0.008
Lead	ND (<0.03)
Mercury	0.0074
Selenium	ND (<0.005)
Silver	ND (<0.005)
Nickel	0.13
Cyanide (1)	ND (<0.05)

ND: Not Detected. Denotes concentrations below the detection limit shown in parentheses.
(1) See Footnote (1) to Table 4.

Using SW–846 Method 9071, Occidental determined that the maximum oil and grease content of the three streams were as follows: the NaCl-SC wastes contained 0.01 percent, the NaCl-TS wastes contained 0.012 percent and the KC1-TS wastes contained 0.67 percent. Therefore, the EP analyses did not need to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than 1 percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330. On the basis of information provided by Occidental, pursuant to 40 CFR 260.22, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Based on the level of total cyanide in the NaCl-SC (<0.05 mg/L), the NaCl-TS (0.95 mg/L) and the KCl-TS (0.71 mg/L), the Agency estimated the EP leachate concentrations of cyanide by assessing a dilution factor of twenty times (based on 10 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

Occidental submitted a signed certification stating that, based on current annual waste generaton and experimental treatment data for the wastes, its maximum annual generation rate of NaCl-TS wastes, NaCl-SC wastes will be 960 tons, 48 tons, and 12 tons, respectively. The Agency reviews a petitioner to re-evaluate estimated waste volume. EPA accepts Occidental's certified estimates.

EPA does not generally verify submitted test data before proposing delisting decisions, and it has not verified the data upon which it proposes to grant Occidental's exclusion. The sworn affadavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and it may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for treated mercury brine mud wastes and decided that a landfill scenario is the most reasonable, worst-case scenario. Under a landfill disposal scenario, the major exposure route of concern for most hazardous constituents would be through ingestion of contaminated ground water. Thus, the Agency evaluated the petitioned wastes using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1965), 50 FR 48898 (November 27, 1985), and the RCRA public docket for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in the ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluaton of Occidental's wastes.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Occidental's treated mercury brine mud wastes. Although Occidental's three K071 wastes are generated separately and at different rates, the Agency believes it is reasonable to assume that Occidental will simultaneously dispose of its three treated K071 residues. Thus, the combined estimated generation rate of the three treated wastes (1018 tons per year) and the maximum EP leachate value for each constituent (from the collection of data from the three wastes) were used as input parameters to the VHS model. [It should be noted that the use of the maximum EP leachate value is a more conservative approach in that it does not account for any dilution that may occur, if the three wastestreams were actually mixed.] These parameters provided the VHS model compliance-point concentratons shown in Table 7. VHS model compliance-point concentrations shown in Table 7. VHS model compliance-point concentrations were generated only for those constituents of concern which were detected above the appropriate detection limits, as noted in Tables 4–6. The Agency believes it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specificaly, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE—POINT CONCENTRATIONS (*1*) *Combined Total of:* NaCl Saturator Cleanings (NaCl-SC) NaCl Treatment Sludge (NaCl-TS) Potassium Chloride Treatment Sludge (KCl-TS)

Constituents	Max. EP concs. (mg/L)	Comp. pt. concs. (mg/L)	Levels of reg. concern (mg/L) (2)
Barium	0.052 (NaCl-SC)	0.0335	1.0
Cadmium	0.016 (NaCl-TS)	0.0010	0.01
Chromium	0.019 (NaCl-SC)	0.0012	0.05
Lead	0.31 (NaCl-TS)	0.0200	0.05
Mercury	0.024 (NaCl-TS)	0.0015	0.002
Nickel	1.2 (NaCl-SC)	0.0773	0.5

(*1*) VHS model calculations based on a total annual generation of 1018 tons per year (combined total of all three waste generation rates) and the maximum EP leachate value for each constituent (from the collection of data from the three wastes.
(*2*) See "Docket Report of Health-Based Regulatory Levels and Solubilities used in the Evaluation of Delisting Petitions," June 8, 1988, U.S. EPA RCRA Docket.

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The NaCl-SC, NaCl-TS and KCl-TS wastes exhibited barium, cadmium, chromium, lead, mercury and nickel concentrations at the compliance point below the health-based levels used for delisting decision-making.

The concentration of total cyanide is equal to or less than 0.05, 0.95, and 0.71 mg/L in the NaCl-SC, NaCl-TS, and KCl-TS wastes, respectively. (See Tables 1–3.) Thus, the Agency believes that the concentration of reactive cyanide in the total volume of the combined waste will be below the Agencys' interim standard of 250 ppm. Occidental also provided data for reactive sulfide. None of the individual treated mercury brine mud samples exhibited levels of reactive sulfide greater than 10 ppm. This is well below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 22, 1985, Internal Agency Memorandum, in the RCRA public docket.

The Agency has concluded, after reviewing Occidental's processes, waste treatment and raw materials list, that no other hazardous constituents of concern are being used by Occidental and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Occidental's wastes. Analytical data provided by Occidental show that none of the petitioned K071 wastes exhibit any of the characteristics of ignitability, corrosivity, or reactivity.

5. Conclusion

The Agency believes that Occidental's treatment system can render its treated mercury brine mud wastes non-hazardous. The manufacturing and treatment proceses are believed to be uniform and consistent since the facility neither operates as a job shop nor has seasonable product variations. As noted earlier, the single raw material used by Occidental (rock salt for the NaCl system and potassium choloride for the KCl system) is obtained through one of only two suppliers, and is of very consistent quality. (In particular, rock salt is a naturally occurring salt). Thus, the Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes for the NaCl-TS, NaCl-SC and KCl-TS wastes. As stated earlier, use of the maximum EP leachate value for each constituent in the VHS model is a more conservative approach in that it does not account for any dilution that might have occurred if the three wastestreams were actually mixed.

The Agency has determined, however, through its review of similar petitions from mercury cell operations, that the total mercury concentration of the treated waste may vary to some extent, depending on the amount of contaminant precipitation which occurs during treatment. As a result of the possible variation in the total mercury concentration, Occidental requested an exclusion conditioned upon the collection of samples of treated mercury brine mud wastes and the subsequent analysis for EP levels of mercury. The Agency believes this testing condition will address possible variations in the EP leachable mercury levels occurring in Occidental's treated brine muds.

The Agency, therefore, is proposing that all three of Occidental's mercury brine wastes described in the petition (NaCl-SC, NaCl-Ts and KCl-TS), once they meet certain testing requirements, be considered non-hazardous, because they should not present a hazard to either human health or the environment. The Agency proposes to grant an upfront exclusion to the Occidental Chemical Corporation, located in Delaware City, Delaware, for its treated mercury brine mud wastes described in their petition as EPA Hazardous Waste No. K071. If the proposed rule becomes effective, and the testing requirements are met, the treated mercury brine mud wastes would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can meet the Agency's verification testing limitations (i.e., "delisting levels"). All sampling and analyses (including quality control procedures) must be performed according to SW–846 methodologies. These proposed conditions are specific to the upfront exclusion petitioned for Occidental. This proposed exclusion is conditional upon the following:

(1) *Initiol Testing.* During the first four weeks of full-scale treatment operation, Occidental must do the following:

(A) Collect representative grab samples from every batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl-SC), sodium chloride treatment sludges (NaCl-TS) and potassium chloride treatment sludges (KCl-TS)) on a daily basis, and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using deionized water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Occidental must report the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch.

(B) Collect respresentative grap samples of each batch of the three treatment wastestreams (NaCl-SC, naCl-TS and KCl-TS) and composite the grab samples to produce three separate composite samples (of each type of K071 waste) on a daily basis. The three daily composite samples must be analyzed prior to its disposal for EP leachate concentration of mercury. Occidental must report the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch.

(2) *Subsequent Testing.* After the first four weeks of full-scale treatment operation, Occidental must do the following:

(A) Continue to sample and test as described in condition (1)(A). Occidental must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of the petitioned waste, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded (in all three wastes) and the Section Chief, Variances Section, notifies Occidental that the requirements of this condition have been lifted.

(B) Continue to sample and test for mercury as described in condition (1)(B).

Occidental must compile and store on-site for a minimum for three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated and replaced with the requirements of condition (2)(C), if Occidental provides EPA with analytical and quality control data for thirty consecutive batches of treated material, collected as described in condition (1)(B), demonstrating that the EP leachable level of mercury in condition (3) is not exceeded (in all three treated wastes), and the Section Chief, Variances Section, notifies Occidental that the testing in condition (2)(B) may be replaced with (2)(C).

(C) (If the conditions in (2)(B) are satisfied, the testing requirements for mercury in (2)(B) shall be replaced with the following condition). Collect representative grab samples from each batch of the three treated wastestreams (NaCl-SC, NaCl-TS, and KCl-TS) on a daily basis and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware.

(3) If, under conditions (1) or (2), the EP leachate concentrations for chromium, lead, arsenic or silver exceed 0.77 mg/L; for barium exceeds 15.5 mg/L; for cadmium or selenium exceed 0.16 mg/L; for mercury exceeds 0.031 mg/L; for nickel or total cyanide exceeds 10.9 mg/L or for reactive sulfide exceed 500 mg/kg, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA.

The Agency is proposing to require Occidental to continually test each batch of treated waste for the EP leachate concentration of mercury prior to disposal or recycling of the waste in order to ensure that the EP leachate concentration of mercury has been reduced to below the level of regulatory concern. This requirement is included because, as noted earlier, the mercury levels in the treated waste may vary to some extent.

(4)(A) Within one week of system start-up, Occidental must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained through condition (1) and (2) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS–343), U.S. EPA, 401 M Street SW., Washington, DC 20460 within the time period required in conditions (1) and (2). At the Section Chief's request, Occidental must submit any other analytical data obtained through conditions (1) and (2) to the above address, within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data (either submitted to EPA or maintained on site) must be accompanied by the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(Name of Certifying Person)

(Title of Certifying Person)

Date

The Agency is proposing a mechanism both to collect a minimum of four weekly composite samples of each waste and to terminate the testing and reporting requirements of conditions (2)(A) after four consecutive weeks of meeting the delisting levels, for the reasons stated below.

First, the Agency is proposing to require sufficient analytical data to show that the treatment system is on-line and operating properly. The Agency determined through its review of similar petitions that approximately four weeks are required for a facility to train operators and collect sufficient data to verify that the full-scale treatment process is operating correctly. Accordingly, the Agency is proposing that Occidental be required to collect a minimum of four weekly composite samples of each of the three wastes. (If Occidental needs more than the four initial weeks to bring its full-scale treatment process up to specifications in order to meet the delisting levels of condition (3), the terms of condition (4) would require four consecutive weeks upon meeting specifications.) The limits set forth in the conditions are based on Occidental's total estimated maximum generation rate (for the three wastes combined) of 1018 tons per year. As noted earlier, the Agency believes it is reasonable to assume that Occidental will simultaneously dispose of its three treatment residues. Thus, the maximum waste generation rate was used to determine the conditional testing delisting limits.

Second, based on the pilot-scale data submitted by Occidental, the characteristics of the untreated wastes (NaC1–SC, NaC1–TS and KC1–TS), Occidental's consistent mercury cell process, and the consistency of the single raw material used in the mercury cell process, the Agency believes that consistently non-hazardous levels of the EP toxic metals (except mercury), nickel, cyanide, reactive sulfide, and reactive cyanide can be generated from Occidental's mercury brine mud treatment process. Thus, the Agency believes that in this case, a requirement for continued testing, after four consecutive weekly samples meet the delisting levels of condition (3), would be excessive. The continued testing requirement for mercury is discussed further below.

With regard to the continued testing for mercury, the Agency expects that the total mercury concentration of the treated waste may vary to some extent as noted earlier, depending on the amount of constituent precipitation which occurs during treatment. The Agency realized that the presence of significant mercury concentrations in KO71 wastes was one of the reasons for listing KO71 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste, 1980. The Agency however, believes that the date presented in the Background Document characterize the physical/chemical nature of mercury contaminated mercury brine muds (such as untreated KC1–TS), and these data are not representative of the physical/chemical nature of Occidental's treated wastes.

As noted earlier, the Agency expects that this waste will be disposed of in a municipal landfill, where soil conditions would be midly acidic. The EP extraction procedures is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentration as required by the conditions of this exclusion will be adequate to protect human health and the enviroment. Furthermore, the Agency has not developed a health-based delisting criteria for evaluating the total constituent concentration of mercury. Therefore, EPA chose levels of mercury in the EP leachate, rather than the total mercury in the waste itself.

The Agency has incorporated a reduction in mercury testing to be implemented once Occidental meets the delisting limit for mercury in thirty consecutive batches. The Agency believes that the reduction in the frequency of analysis from daily to weekly composites will provide sufficient protection to human health and the environment, once it has been established that the treatment system can render the waste non-hazardous with regard to mercury content.

Lastly, the termination of the sampling and reporting requirements of condition (2), after four consecutive weekly composite samples of each treated waste meet the delisting levels of condition (3), is consistent with existing

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policy that testing may be terminated for continuously generated wastes after taking a minimum of four representative samples if those wastes are well mixed and uniformly produced. See "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (e.g., see 51 *FR* 41323, November 14, 1986) may require continuous batch testing. The inclusion of conditions for continued mercury testing in today's proposal is also due to possible variations in mercury concentration in the treated waste.

If made final, the proposed exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisting waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entitles (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. chapter 35) and have been assigned OMB Control Number 2050–0053VII.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: September 27, 1989.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Occidental Chemical	Delaware City, DE	Sodium chloride treatment sludge (NaC1-TS), sodium chloride saturator cleanings (NaCal-SC), and potassium chloride treatment sludge (KCl-TS) (all classified as EPA Hazardous Waste No. K071) generated from the mercury cell process where prepurified brine is not used. This exclusion becomes effective October 5, 1989 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control procedures) must be performed according to SW–846 methodologies. This testing program must meet the following conditions for the exclusion to be valid: (1) Initial Testing: During the first four weeks of full-scale treatment operation, Occidental must do the following: (A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaC1–SC), sodium chloride treatment sludges (NaCl–TS) and potassium chloride treatment sludges (KC1–TS)) on a daily basis, and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using deionized water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Occidental must report the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (B) Collect representative grab samples of each batch of the three treated wastestreams (NaC1–SC, NaC1–TS and KC1–TS) and composite the grab samples to produce three separate composite samples (of each type of K071 waste) on a daily basis. The three daily composite samples must be analyzed prior to disposal for EP leachate concentration of mercury. Occidental must report the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. (2) *Subsequent Testing* After the first four weeks of full-scale treatment operation, Occidental must do the following (all sampling and analyses (including quality control procedures) must be performed according to SW–846 procedures): (A) Continue to sample and test as described in condition (1)(A). Occidental must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated by EPA when the results of four consecutive weekly composite samples of the petitioned waste, obtained from either the initial testing or subsequent testing, show the maximum allowable levels in condition (3) are not exceeded (in all three wastes) and the Section Chief, Variance Section, notifies Occidental that the requirements of this condition have been lifted. (B) Continue to sample and test for mercury as described in condition (1)(B). Occidental must compile and store on-site for a minimum for three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. These testing requirements shall be terminated and replaced with the requirements of condition (2)(C), if Occidental provides EPA with analytical and quality control data for thirty consecutive batches of treated material, collected as described in condition (1)(B), demonstrating that the EP leachable level of mercury in condition (3) is not exceeded (in all three treated wastes), and the Section Chief, Variances Section, notifies Occidental that the testing in condition (2)(B) may be replaced with (2)(C). (C) [If the conditions in (2)(B) are satisfied, the testing requirements for mercury in (2)(B) shall be replaced with the following condition]. Collect representative grab samples from each batch of the three treated wastestreams (NaC1–SC, NaC1–TS, and KC1–TS) on a daily basis and composite the grab samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentration of mercury. Occidental must compile and store on-site for a minimum of three years all analytical data and quality control data. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Delaware. (3) If, under conditions (1) or (2), the following EP leachate concentrations for chromium, lead, arsenic or silver exceed 0.77 mg/L; for barium exceeds 15.5 mg/L; for cadmium or selenium exceed 0.16 mg/L; for mercury exceeds 0.031 mg/L, for nickel or for total cyanide exceed 10.9 mg/L or for reactive sulfide exceed 500 mg/kg, the waste must either be re-treated or managed and disposed in accordance with all applicable hazardous waste regulations.

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TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4)(A) Within one week of system start-up, Occidental must notify the Section Chief, Variances Section (see address below) when the full-scale system is on-line and waste treatment has begun. All data obtained trough condition (1) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period required in conditions (1) and (2). At the Sections Chief's request, Occidental must submit any other analytical data obtained through conditions (1) and (2) to the above address, within the time period specified by the Section Chief. Failure to submit the required data will be considered by the Agency sufficient basis to revoke Occidental's exclusion to the extent directed by EPA. All data (either submitted to EPA or maintained on site) must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion".

[FR Doc. 89-23582 Filed 10-4-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 33, 35, 70, 71, 75, 78, 90, 91, 94, 97, 107, 108, 109, 112, 154, 160, 161, 167, 168, 188, 189, 192, 196, and 199

[CGD 84-069]

RIN 2115-AB72

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period and notice of public hearing.

SUMMARY: On April 21, 1989, the Coast Guard published a notice of proposed rulemaking (54 FR 16198) proposing a complete revision of the lifesaving equipment regulations for tank vessels, cargo and miscellaneous vessels, mobile offshore drilling units, passenger vessels, nautical school ships, offshore supply vessels, and oceanographic research vessels. The primary purpose of the project is to implement the provisions of the new chapter III of the Safety of Life at Sea Convention 1974, as amended in 1983, which came into force July 1, 1986. The proposed rules would also implement a number of recommendations arising from major vessel casualties. Lifesaving regulations for Great Lakes vessels and certain vessels in domestic trade which are not covered by the Safety of Life at Sea Convention would also be revised.

Because of requests for a public hearing and additional time to comment on the proposed rulemaking, the comment period is being reopened for 90 additional days. A public hearing will also be held on the date and in the location specified below.

DATES: Comments must be submitted on or before January 3, 1990. A public hearing will be held Tuesday, October 17, 1989, beginning at 10:00 a.m.

ADDRESSES: Comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 84-069), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street SW., Washington, DC, 20593-0001, (202) 267-1477.

The location of the public hearing is South Auditorium (4th Floor), Henry Jackson Federal Building, 915 Second Ave., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Marine Safety, Security, and Environmental Protection (G-MVI-3), Room 1404, U.S. Coast Guard, 2100 Second Steeet SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Written comments

The notice of proposed rulemaking published on April 21, 1989 invited and encouraged interested persons to participate in the proposed rulemaking by submitting written comments, including views, data or arguments by August 21, 1989. Several persons requested additional time to prepare comments citing the need to consider other related rulemaking proposals in formulating their comments, and the difficulty in preparing meaningful responses within the original 120 day comment period. Because of these requests, the comment period is reopened for 90 additional days until January 3, 1990.

Comments should include the name and address of the person making them, identify this Notice (CGD 84-069) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed post card shuld be enclosed. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Public hearing

A public hearing was requested by the State of Washington, Marine Division, operators of the Washington State Ferries, for the purpose of hearing public comments on the lifesaving rules proposed for passenger ferries. The rules proposed were, in part, responsive to Congressional direction in the 1984 Coast Guard Authorization Act which required the Secretary of Transportation to proceed vigorously with efforts to develop improved lifesaving equipment for use on passenger ferries. In their request for public hearing, Washington State Ferries stated that the proposed regulations would have a significant financial effect on the ferry system.

The public hearing is specifically for the purpose of hearing public comments on the lifesaving proposals for passenger ferries. If speakers wish to make comments on other portions of the proposed regulations, they will be provided an opportunity to do so if time remains after all speakers on the subject of passenger ferries have been heard. As a result of the request, a public hearing will be held at the following location, beginning at 10:00 a.m. and ending at 5:00 p.m., or earlier if all speakers have been heard:

Seattle, Washington; Tuesday, October 17, 1989, South Auditorium (4th Floor), Henry Jackson Federal Building, 915 Second Ave., Seattle, WA.

Interested persons are invited to participate in these hearings. Those wishing to make an oral statement should register by Friday, October 13, 1989. Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. To register, write or call the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 84-069), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001; telephone number (202) 267-1477.

Dated: September 5, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23628 Filed 10-4-89; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket Nos. 89-116, 89-117, 89-118]

FCC Procedure for Measurement of Intentional Radiators, Measuring RF Emissions From Intentional Radiators and Measurement of Unintentional Radiators

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, extension of time.

SUMMARY: The Chief Engineer, in response to a request for an extension, granted additional time in which to file comments in the proceeding to revise the FCC procedure for testing intentional radiators (TP-3), unintentional radiators (TP-4) and radio control and security devices and their associated receivers (TP-6). The additional time will give interested parties the necessary time to file meaningful comments.

DATES: Comments are due on or before October 9, 1989 and reply comments are due on or before November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard Fabina, FCC Laboratory, (301)-725-1585.

SUPPLEMENTARY INFORMATION:

In the Matter of:

FCC Procedure for Management of Intentional Radiators (Except for Periodic and Spread Spectrum Devices and Devices Operating below 30 MHz)

FCC Procedure For Measuring RF Emissions from Intentional Radiators with Periodic Operation and Associated Superregenerative Receivers

FCC Procedure for Measurement of Unintentional Radiators (Except Digital Devices and Devices Operating below 30 MHz)

Order Extending Time To File Comments

Gen Docket Nos. 89-116, 89-117 and 89-118

Adopted: September 22, 1989.

Released: September 25, 1989.

By the Chief Engineer:

1. Notices of Proposed Rule Making in the above entitled proceedings (54 FR 28690, July 7, 1989); FCC 89-154, FCC 89-155 and FCC 89-156, respectively, were adopted by the Commission on May 12, 1989, and released on June 29, 1989. Comments and reply comments in these proceedings originally due on August 21, 1989, and September 5, 1989, respectively, were extended by Commission Order to September 25, 1989 and October 30, 1989, respectively.

2. On September 18, 1989 American Telephone and Telegraph Company (AT&T) filed with the Commission a petition requesting a further extension of the time for filing comments in these proceedings from September 25, 1989 to October 9, 1989 and the time for filing reply comments from October 30, 1989 to December 11, 1989. The petitioner states that although the test procedures proposed in these proceedings are somewhat similar to TP-5, which was the subject of an earlier proceeding, there are differences not only between TP-5 and the proposed test procedures but also between the proposed test procedures themselves. They express the opinion that more time is needed to sort out these differences and to prepare responses to the expected voluminous reply comments.

3. The Commission recognizes the complexity and interrelated nature of these proceedings, and values the contributions of the petitioner and others in the development of the subject test procedures. Because of our desire to have a fully developed record before us, it has been determined that an extension of the comment and reply comment dates in each of these proceedings is warranted. However, due to our desire to resolve these proceedings as soon as possible and because a previous extension has already been granted, we feel that extending the reply comment period as requested will unnecessarily prolong these proceedings. We believe that the concerns of all interested parties can still be resolved by extending the reply comment period to November 13, 1989 instead of the requested December 11, 1989.

4. Accordingly, it is ordered, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5) that the period of time for the filing of comments in the above proceedings is extended until October 9, 1989, and the time for the filing of reply comments is extended until November 13, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89-23432 Filed 10-4-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-423, RM-6878]

Radio Broadcasting Services; Riviera Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

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SUMMARY: This document requests comments on a petition by Lappin Communications-Florida, Inc. requesting the substitution of Channel 232C3 for Channel 232A at Riviera Beach, Florida, and modification of its license for Station WMXQ(FM) to specify the higher powered channel. Channel 232C3 can be allotted to Riviera Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north. The coordinates for this allotment are North Latitude 26–54–21 and West Longitude 80–03–42. In accordance with section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Riviera Beach or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., Washington, DC 20005, (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–423, adopted September 13, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23574 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–422, RM–6867]

Radio Broadcasting Services; Mary Esther, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Holladay Broadcasting Company, Inc. requesting the substitution of Channel 288C3 for Channel 288A at Mary Esther, Florida, and modification of its license for Station WYZB(FM) to specify the higher powered channel. Channel 288C3 can be allotted to Mary Esther in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 kilometers (12.3 miles) east. The coordinates for this allotment are North Latitude 30–23–30 and West Longitude 86–27–30. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–422, adopted September 13, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23573 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–424; RM–6868]

Radio Broadcasting Services; Holmes Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by 98.7 Partnership seeking the substitution of Channel 254C3 for Channel 254A at Holmes Beach, Florida, and modification of its construction permit (BPH–861206MW) to specify the higher class channel. Channel 254C3 can be allotted to Holmes Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers (10.1 miles) north. The coordinates for this allotment are North Latitude 27–39–39 and West Longitude 82–42–34. In accordance with

§ 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require the petitioner demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Charles R. Naftalin, Koteen & Naftalin, 1150 Connecticut Avenue, NW. Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–424, adopted September 13, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23575 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–425, RM–6829]

Radio Broadcasting Services; Rome, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Briar Creek Broadcasting Corp. seeking the substitution of Channel 249C3 for Channel 249A at Rome, Georgia, and modification of its license for Station WKCX(FM) to specify the higher powered channel. Channel 249C3 can be allotted to Rome in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.5 kilometers (8.4 miles) northeast. The coordinates for this allotment are North Latitude 34–20–00 and West Longitude 85–03–00. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the higher powered channel at Rome or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Briar Creek Broadcasting Corp., P.O. Box 1546, Rome, Georgia 30161.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–425, adopted September 12, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23576 Filed 10–4–89; 8:45am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–426, RM–6776]

Radio Broadcasting Services; Sylvania, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sam/Mac Broadcasting System, Inc., which proposes to allot Channel 293A to Sylvania, Georgia, as that community's first local FM service. The coordinates for the proposal are North Latitude 32–44–54 and West Longitude 81–37–36.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Shula Mahaffer, President, Sam/Mac Broadcasting System, Inc., P. O. Box 519, Sylvania, Georgia 30467.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–426, adopted September 12, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23576 Filed 10–4–89; 8:45am]

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copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. I11Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23577 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–420, RM–6845]

Radio Broadcasting Services; Brockport, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by John Rosenkrans seeking the allotment of Channel 288A to Brockport, New York, as the community's first local commercial FM service. Channel 288A can be allotted to Brockport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43–12–48 and West Longitude 77–56–24. Canadian concurrence will be sought since Brockport is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ann Thomas Paxson, Esq., Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–420, adopted September 11, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23571 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–421, RM–6853]

Radio Broadcasting Services; Idalou, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Express Communications proposing the allotment of Channel 289A to Idalou, Texas, as that community's first local FM service. Channel 251A can be allotted to Idalou in compliance with the Commission's minimum separation requirements at the city reference coordinates, which are 33–39–48 and 101–40–42.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David Honig, Esquire, 1800 N.W. 187th Street, Miami, Florida 33056 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–421, adopted September 11, 1989, and released September 29, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23572 Filed 10–4–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 54, No. 192

Thursday, October 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Temporary Emergency Food Assistance Program Availability of Surplus Commodities for Fiscal Year 1990

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Subject to available appropriations, this notice announces: (1) The commodities that will be available for donation under the Temporary Emergency Food Assistance Program as authorized by the Temporary Emergency Food Assistance Act of 1983; and (2) the additional commodites that will be available as authorized by Section 110 of the Hunger Prevention Act of 1988 for donation to soup kitchens and food banks. The commodities made available under this notice shall be directed to needy persons, including unemployed and low-income persons.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302 or telephone (703) 756–3660.

EFFECTIVE DATE: October 1, 1989.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Availability of Commodities

Donations of commodities to needy households were initiated in 1981 as part of efforts to reduce stockpiles of government-owned commodities. These donations responded to concern over the costs to taxpayers of storing vast quantities of food, while at the same time there were persons in need of food assistance. The Temporary Emergency Food Assistance Act Program was codified in Title II of Public Law 98–8, the Temporary Emergency Food Assistance Act (TEFAA) of 1983 (7 U.S.C. 612c note). Foods made available for distribution under TEFAA were limited to amounts determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic and foreign food assistance programs.

Since 1983, the supply of available commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales.

The Secretary of Agriculture anticipates that the following commodities acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through the Temporary Emergency Food Assistance Program during Fiscal Year 1990: Butter, 72 million pounds; flour, 144 million pounds; and cornmeal, 48 million pounds. The Department anticipates that 12 million pounds of honey will be available through December 1989.

The actual type and quantities of commodities made available by the Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets.

Sections 213 and 214 of the TEFAA, as added by section 104 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), require the Secretary to spend $120 million during Fiscal Year 1990 to purchase, process, and distribute commodities for household consumption in addition to those otherwise provided under the Temporary Emergency Food Assistance Program. Further, section 110 of the Hunger Prevention Act requires the Secretary to spend an additional $40 million during Fiscal Year 1990 to purchase, process and distribute commodities for soup kitchens and food banks.

The Secretary anticipates that the following additional commodities will be purchased for distribution to households through the Temporary Emergency Food Assistance Program during Fiscal Year 1990: Peanut butter, raisins, canned vegetarian beans, canned green beans, and canned pork. The Secretary also anticipates that the following commodities will be purchased in institutional size packages for distribution to soup kitchens and food banks: canned freestone peaches, canned applesauce, canned sweetpotatoes, canned whole corn, dry beans, canned pork, and peanut butter. The amounts to be purchased are subject to the availability of appropriations and will depend on the prices USDA must pay.

Dated: September 28, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89–23464 Filed 10–4–89; 8:45 am]

BILLING CODE 3410–30–M

Soil Conservation Service

Virgil Creek Watershed, NY; Availability of Record of Decision

AGENCY: Soil Conservation Service.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: Paul A. Dodd, responsible federal official for projects administered under the provisions of Public Law 93–566, 16 U.S.C. 1001–1008, in the state of New York, is hereby providing notification that a Record of Decision to proceed with the installation of the Virgil Creek Watershed project is available. Single copies of this Record of Decision may be obtained from Paul A. Dodd at the address shown below.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone 315/423–5521.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 26, 1989.

Paul A. Dodd,

State Conservationist.

[FR Doc. 89–23454 Filed 10–4–89; 8:45 am]

BILLING CODE 3410–16–M

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee; Public Meeting in the Matter of Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held meetings (described below) of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on October 26–27, 1989 at the Old Colony Inn, 625 First Street, Alexandira, Virginia 22313.

Each of these Committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The Committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the October 26 combined meeting that will begin at 8:45 a.m. and end at 11:45 p.m. is: 1) Introductory remarks by the Deputy Director, Bureau of the Census; 2) 1990 decennial update; 3) settlement of *City of New York, et al* v. *U.S. Department of Commerce, et al;* 4) 1900 decennial promotion update; 5) use of the "White, not Hispanic," Population as the comparison group for reports on racial and ethnic origin population; and 6) census evaluation programs.

The agendas for the four committees in their separate meetings that will begin at 1 p.m. and end at 4:30 p.m. on October 28 are as follows;

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: 1) Review of Census Bureau responses to Committee recommendations; 2) election of chair-elect; 3) census promotion update; 4) behavioral research projects update; and 5) tabulation-publication system.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: 1) Review of Census Bureau responses to Committee recommendations; 2) election of chair-elect; 3) tabulation-publication system; and 4) census promotion update.

The CAC on the Black Population for the 1990 Census; 1) Review of Census Bureau responses to Committee recommendations; 2) election of chair-elect; 3) initiative with the Great City Schools; 4) tabulation-publication system; and 5) census promotion update.

The CAC on the Hispanic Population for the 1990 Census; 1) Review of Census Bureau responses to Committee recommendations; 2) election of chair-elect; 3) census promotion update; 4) tabulation-publication system; and 5) report on the meetings with the Secretariat for Hispanic Affairs, Census Bureau partnership.

The agenda for the October 27 combined meeting that will begin at 8:45 a.m. and end at 12:15 p.m. is: 1) Future plans and feedback from the four committees on their outreach and promotion activities; and 2) open dialogue discussion between committee members and Census Bureau staff.

All meetings are open to the public and a brief period is set aside on October 27 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact Ms. Diana Harley, Decennial Planning Division, Bureau of the Census, Room 3541, Federal Building 3, Suitland, Maryland, (Mailing address: Washington, DC 20233) Telephone: (301) 763–4275.

Dated: September 29, 1989.

Bryant Benton,

Associate Director for Management Services, Bureau of the Census.

[FR Doc. 89–23592 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held October 25, 1989, 9:00 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda

General Session

1. Presentation on Defense RAD-Hard Policy.
2. Overview of TAC efforts on Segment A, List Review.
3. Comments from attendees.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10,1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4969.

Dated: September 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 23477 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

[Docket No. 90889–9189]

Precision Measurement Grants

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcing Continuation of the NIST Precision Measurement Grants Program.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Services; 11.609.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing a $180,000 per year program of research grants, formally titled Precision Measurement Grants, to scientists in U.S. academic institutions for significant, primarily experimental research, in the field of precision measurement and fundamental constants. Applications are now being accepted for two new NIST Precision Measurement Grants to be awarded beginning October 1, 1990 (fiscal year 1991). Each grant is in the amount of $30,000 per year, renewable at NIST's option for up to two additional years, for a total of $90,000.

CLOSING DATE FOR APPLICATIONS: February 1, 1990, is the deadline for applying for the FY 91 awards.

FOR FURTHER INFORMATION CONTACT: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 221, Rm B160, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4220.

SUPPLEMENTARY INFORMATION: As authorized by section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272), the National Institute of Standards and Technology (NIST) conducts directly, and through grants and contracts, a basic and applied research program in the general area of precision measurement and the determination of fundamental constants of nature. As part of this research program, NIST has since 1970 awarded Precision Measurement Grants to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants..

NIST is now accepting applications for two new $30,000 grants to be awarded for the period October 1, 1990, through September 30, 1991 (fiscal year 1991). At NIST's option, each grant may be renewed for up to two additional years for a total of $90,000

NIST sponsors these grants to encourage basic, measurement-related research in U.S. colleges and universities and to foster contacts between NIST scientists and those researchers in the U.S. academic community who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for workers in U.S. academic institutions to pursue new measurement ideas for which other sources of support may be difficult to find. The Precision Measurement Grants Program does not involve the payment of any matching funds from a state or local government and does not directly affect any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Precision Measurement Grants Program. This notice does not contain policies with federalism with implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Research Topics/Who May Apply

There is considerable latitude in the kind of research projects which will be considered for support under the Precision Measurement Grants Program. The key requirement is that they generally support NIST work in the field of basic measurement science, for example:

Experimental and theoretical studies of fundamental physical phenomena to test the basic laws of physics or which may lead to improved or new fundamental measurement methods and standards.

The determination of important fundamental physical constants.

The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Measurement of fundamental constants using three-level resonances in hydrogen," Carl E. Wieman, University of Michigan.

"Quantum limited measurement of a harmonic oscillator," William C. Oelfke, University of Central Florida.

"Fine-Structure constant determination using precision Stark spectroscopy," Michael G. Littman, Princeton University.

"Eätvös experiment-cryogenic version," D. F. Bartlett, University of Colorado.

"A test of local Lorentz invariance using polarized ^{21}Ne nuclei," T. E. Chupp, Harvard University.

"A new method to search for an electric dipole moment of the electron," L. R. Hunter, Amherst College.

"High precision timing of milisecond pulsars," D. R. Stinebring, Princeton University.

Procedures

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

Candidates are requested to submit a preapplication proposal to NIST by February 1, 1990 using standard form 424 with a description of their proposed work of no more than five double spaced pages.

Three copies should be sent to Dr. Barry N. Taylor at the address shown above.

On the basis of this material, four to eight semi-finalist candidates will be selected by the NIST Precision Measurement Grants Committee and the Outside Advisory Committee to submit more detailed proposals. The same committees will evaluate the detailed proposals, and on the basis of their evaluation, the two grantees for fiscal year 1990 will be selected. The semi-finalists will be notified of their status by March 20, 1990, and will be requested to submit their full proposals to NIST by May 5, 1990. The successful grantees will be notified of their selection by August 15, 1990.

The criteria to be used in evaluating the preapplication proposals and full proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently

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pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to measurement science—is there a possibility that it will lead to a new or improved basic measurement unit, physical standard, or measurement method? (Or to a better understanding of important, but already existing, measurement units, physical standards, or measurement methods?)

3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors are given equal weight in the selection process.

Technical Questions concerning the NIST Precision Measurement Grants Program may be directed to the above address or call Dr. Taylor on (301) 975–4220.

Paperwork Reduction Act

The standard form 424 referenced in this notice is subject to the Paperwork Reduction Act and has been cleared under Office of Management and Budget (OMB) control number 0348–0006.

Additional Requirements

All applicants must submit a certificate ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace Act of 1988, 15 CFR part 26, subpart F.

Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay debt.

Administrative Information

Contact: Grants Office, Office of Acquisition and Assistance Division, Building 301/Rm. B143, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–6328.

Dated: September 29, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–23589 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Application for Endangered Species Permit; Gulf Specimen Marine Laboratories, Inc. (P456)

Notice is hereby given that the Applicant has applied to due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:* Dr. Ann Rudloe, Gulf Specimen Marine Laboratories, Inc., P.O. Box 237, Panacea, Florida 32346.

2. *Type of Permit:* Scientific Purposes.

3. *Name and Number of Species:* Kemp's Ridley sea turtles (*Lepidochelys kempi*), 60.

4. *Type of Take:* The applicant proposes to conduct scientific studies on Kemp's Ridley to provide fishery independent data on the occurrence, seasonality and population structure of Kemp's ridleys in the shallow, inshore waters of the northeastern Gulf of Mexico. The study will develop population data necessary to write a management plan for this species and will allow development of sampling procedures adequate for later efforts to calculate a population estimate for this species.

5. *Location and Duration of Activity:* The collecting efforts will be adjacent to Piney Island and Shell Point Reef, Wakulla County, Florida; Alligator Point and off the Carrabelle River, Franklin County, Florida. The activities are estimated to expand three field seasons beginning Oct/Nov 1989 to Sep/Oct 1992 covering four calendar years.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: September 27, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–23515 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Marine Mammals Permit; Golden Nugget-Strip Corp. (P451)

On June 12, 1989, notice was published in the **Federal Register** (54 FR 24934) that an application had been filed by Golden Nugget-Strip Corporation, operating as The Mirage, Las Vegas, Nevada 89125, to obtain and maintain up to six (6) captive, captive born, or rehabilitated beached/ stranded bottlenose dolphins (*Tursiops truncatus*) for public display. This notice stated that, if bottlenosed dolphins (*Tursiops truncatus*) are not available, alternative captive, captive born, or rehabilitated beached/stranded species will be considered for relocation, with the exception of killer whales (*Orcinus orca*); and that no take from the wild is requested or anticipated. On August 1, 1989, notice was published in the **Federal Register** (54 FR 31722) that a hearing would be held on this application on August 15, 1989. The hearing record was left open for ten working days after the date of the hearing.

Notice is hereby given that on September 28, 1989 and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policies of the Marine Mammal Protection Act. The Service has determined that the Golden Nugget-Strip Corporation, operating as The Mirage, will offer an acceptable program for education or conservation purposes. The Mirage facilities will be open to the public on a regularly scheduled basis and access to the facilities will not be limited or restricted other than by the charging of an admission fee. The decision by National Marine Fisheries Service to issue this Permit was based on available information, present regulations, and existing policy. A more detailed discussion of the basis for this decision is available upon request.

The Permit is available for review by interested persons in the following Offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD

Director, Southwest Region, National Marine Fisheries Service, 301 South Ferry Str., Terminal Island, California 90731.

Dated: September 28, 1989.

Nancy Foster,

Director, Office of Protected and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–23632 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–22–M

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Additional Membership to NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these additional members to the NOAA PRB's will be for periods of 24 months service beginning October 2, 1989.

DATE: The effective date of service of these additional appointees to the NOAA Performance Review Board is October 2, 1989.

FOR FURTHER INFORMATION CONTACT: John Innocenti, Chief Personnel Division, Office of Administration, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443–8811.

SUPPLEMENTARY INFORMATION: The names and titles of the additional members of the NOAA PRB's are all NOAA officials and are set forth below.

Gray C. Castle, Deputy Under Secretary for Oceans and Atmosphere

Virginia K. Tippie, Assistant Administrator for Ocean Services and Coastal Zone Management

Thomas J. Maginnis, Director for Policy and Planning

Dated: September 26, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89–23616 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–08–M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the inventions embodied in U.S. Patent Application Serial Numbers 6–802,680 (U.S. Patent 4,692,463), "AntiInflammatory 2, 3-Didemethylcolchicine and Additional Derivatives"; U.S. Serial Numbers 6–601,314 (U.S. Patent 4,533,675), "Carbamates of Colchicine and Thiocolchicine Suitable for Treatment of Gout"; U.S. Serial Numbers 7–235,907, "Esters of 3-Demethylthiocolchicine and N-Acyl Analogs" to Advanced Biofactures Corporation having a place of business at 30 Wilbur Street, Lynbrook, NY 11583. The patent rights in these inventions will be assigned to the United States of America as represented by the Department of Commerce.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

A copy of the issued U.S. Patent may be obtained from the Commissioner, U.S. Patent and Trademark Office, Box 9, Washington, DC 20231.

Inquiries, comments, and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–23563 Filed 10–4–89; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 19 October 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meeting.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, September 28, 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–23457 Filed 10–4–89; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Performance of Functions Related to Leverage Transactions by National Futures Association

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order authorizing the National Futures Association ("FNA") to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any leverage transaction merchant ("LTM") or associated person ("AP") of an LTM, or an applicant for registration in either

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category, to process requests for withdrawal from registration by LTMs, to enforce its rules regarding minimum financial, cover, segregation and sales practice requirements, and related reporting requirements for its member LTMs and their APs, and to conduct arbitration proceedings to settle leverage customer claims or grievances.

SUMMARY: The Commission is authorizing NFA to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any leverage transaction merchant ("LTM") or associated person ("AP") of an LTM, or an applicant for registration in either category, to process requests for withdrawal from registration by LTMs, to enforce its rules regarding minimum financial, cover, segregation and sales practice requirements, and related reporting requirements for its member LTMs and their APs, and to conduct arbitration proceedings to settle leverage customer claims or grievances. This Order, together with the rule amendments and the few new rules related to leverage transactions published elsewhere in the "Rules and Regulations" Section of this issue, provide a regulatory structure for leverage transactions of direct supervision by a registered futures association under Commission oversight. Such a structure is consistent with the other regulatory programs administered by the Commission.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel or Robert P. Shiner, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955 or 254–6112, respectively.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

UNITED STATES OF AMERICA

Before the Commodity Futures Trading Commission

Order Authorizing the Performance of Functions Related to Leverage Transactions

I. Authority and Background

By letter dated August 9, 1989, NFA requested Commission authority to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, to process requests for withdrawal from registration by LTMs, to enforce its rules regarding minimum financial, cover, segregation and sales practice requirements, and related reporting requirements for its member LTMs and their APs, and to conduct arbitration proceedings to settle leverage customer claims or grievances. NFA submitted for Commission approval amendments to its rules to govern its new responsibilities with respect to leverage transactions.

Section 19(c)(2) of the Commodity Exchange Act ("Act") provides that the Commission may authorize or require, notwithstanding any other provision of law, a registered futures association to perform such responsibilities in connection with leverage transactions as the Commission may specify.[1] The Commission has adopted a new Rule 31.27 that requires each person registered or required to register as an LTM to become and remain a member of a registered futures association. The Commission has also adopted a new Rule 31.28 that requires a registered futures association with member LTMs to adopt and enforce rules to govern the activities of such firms with respect to leverage transactions.

The Commission has previously authorized NFA to process and, where appropriate, grant applications for registration in the categories of LTM and AP of an LTM and to be official custodian of certain registration records of LTMs and APs of LTMs.[2] Upon consideration, the Commission has determined to authorize NFA, effective January 1, 1990, to perform such additional registration and other functions requested in its August 9, 1989 letter in accordance with the standards estabished by the Act and the regulations promulgated thereunder. Such standards are set forth in sections 8a(2)–(4) of the Act (7 U.S.C. 12a(2)–(4) (1982)) and 17 CFR part 3, subpart C promulgated thereunder (adverse registration actions); Rule 3.33 (withdrawal of registration); Rules 31.7, 31.8, 31.9, 31.12 and 31.13 (minimum financial, cover, segregation and related reporting requirements); the sales practice and related reporting requirements, Rules 31.3 (general antifraud); 31.10 (repurchase and resale of leverage contracts by LTMs); 31.11 (disclosure and confirmation statements); 31.14 (recordkeeping); 31.15 (purchase-and-sale and monthly statements to leverage customers); 31.16 (monthly reports of volume and prices); 31.17 (records of leverage transactions); 31.18 (margin calls); 31.19 (unlawful representations); 31.20 (prohibitions of guarantees against loss); 31.23 (limited right to rescind first leverage contract); 31.25 (bid and ask prices and carrying charges); and 31.26 (quarterly reports of closed-out contracts); and 17 CFR Part 180 (arbitration proceedings).[3]

In authorizing NFA to undertake these registration and other functions, the Commission is retaining for the time being certain of the responsibilities pertaining to leverage transactions. Specifically, the Commission has not authorized NFA to act upon requests for exemption from registration or to render "no-action" opinions with respect to applicable LTM or AP of an LTM registration requirements. The Commission also has not authorized NFA to process leverage commodity registration applications.

The Commission wishes to note certain other items. With respect to adverse actions or requests for withdrawal pending at the time NFA is authorized to assume the above-mentioned registration functions, the Commission will retain the responsibility to complete such matters. Second, NFA shall follow the same procedures with respect to recordkeeping, disclosure and tracking of fitness investigations and adverse action proceedings concerning LTMs and APs of LTMs as it must follow in cases involving FCMs, IBs, CPOs, CTAs, and their respective APs.[4] Third, NFA has, as previously indicated, instituted a testing requirement for APs of LTMs that is comparable to that for APs of FCMs that will become effective following the lifting of the leverage moratoria.[5] Further, the Commission directs NFA to provide the Commission with summaries of the monthly and quarterly reports that NFA will receive under Rules 31.16 and 31.26 commencing in 1990.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of section 19 of the Act, to authorize NFA, effective January 1, 1990, to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any LTM or AP of an LTM, or an applicant for registration in either category, to process requests for withdrawal from registration by LTMs, to enforce its rules regarding minimum financial, cover, segregation and sales practice requirements, and related reporting requirements for its member LTMs and their APs, and to conduct arbitration proceedings to settle leverage customer claims or grievances in accordance with the standards established by the Act and the regulations promulgated thereunder. The Commission also directs NFA to provide the Commission with summaries of the monthly and quarterly reports that NFA will recieve under Rules 31.16 and 31.26 commencing in 1990. These Commission determinations are based upon the Congressional intent that the Commission be allowed to authorize NFA to perform any portion of the Commission's responsbilities with respect to leverage transactions under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner, and NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption or render "no-action" opinions or interpretations with respect to applicable LTM or AP of an LTM registration requirements, or to accept or act upon leverage commodity registration applications.

Nothing in this Order or section 19 of the Act shall affect the Commission's authority to review the granting of a registration application by NFA, or the taking of adverse action with respect to an applicant or registrant by NFA, in the performance of Commission registration functions. *See also* section 17(o)(3) of the Act, 7 U.S.C. 21(o)(3) (1982).

Issued in Washington, DC on September 29, 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–23453 Filed 10–4–89; 8:45 am]

BILLING CODE 6351–01–M

[1] Futures Trading Act of 1986, Pub. L. No. 99–641, § 109, 100 Stat. 3556 (1986). *See also* Section 8a(10) of the Act, 7 U.S.C. 12a(10) (1982).

[2] 54 FR 19594 (May 8, 1989). That grant of registration authority to NFA also included the authority to grant temporary licenses to APs of LTMs, where appropriate. The Commission has previously authorized NFA to perform registration functions with respect to futures commission merchants ("FCMs"), introducing brokers ("IBs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs") and APs of such entities, as well as floor brokers. *See* 48 FR 15940 (April 13, 1983); 48 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 49 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986) and 51 FR 34490 (September 29, 1986).

[3] The Commission has separately approved NFA's rules for its member LTMs in light of these standards.

[4] 50 FR 34885, 34887.

[5] 54 FR 19594, 19595. *See also* 7 U.S.C. 21(p)(1) (1982).

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Personal Information Questionnaire; NAVMC 10064; and OMB Control Number 0703–0012.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 Minutes.

Frequency of Response: On occasion.

Number of Respondents: 16,700.

Annual Burden Hours: 8,350.

Annual Responses: 16,700.

Needs and Uses: The Personal Information Questionnaire is used as a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: September 29, 1989.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–23478 Filed 10–4–89; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: Thursday, 26 October 1989 (8:30 a.m. to 4:00 p.m.).

ADDRESS: 3100 Clarendon Blvd., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

Dated: September 29, 1989.

P. H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–23479 Filed 10–4–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Manufacturing Board; Meeting

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces the next meeting of the Defense Manufacturing Board.

DATE AND TIME: 17–18 Oct. 89, 0830–1700.

ADDRESS: The Pentagon, Room 3E869, Washington, DC.

The agenda for the meeting will include a review of the current projects being pursued by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat at (202) 697–0957.

Dated: September 29, 1989.

P. H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–23480 Filed 10–4–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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Committee on Superconductivity will meet October 23, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development and application of both cryogenic and high temperature superconductivity to naval systems and related intelligence, particularly that related to integrated ship power and combat systems. The entire agenda of the meeting will consist of discussions of key issues regarding research requirements and risks, the ability of the industrial base, both here and abroad, to support these requirements and field prototype systems, and related intelligence analyses. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 28, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–23469 Filed 10–4–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet October 24–25, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda of the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in scction 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 28, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–23470 Filed 10–4–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee on Superconductivity will meet October 30, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development and application of both cryogenic and high temperature superconductivity to naval systems and related intelligence, particularly that related to integrated ship power and combat systems. The entire agenda of the meeting will consist of discussions of key issues regarding research requirements and risks, the ability of the industrial base, both here and abroad, to support these requirements and field prototype systems, and related intelligence analyses. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 28, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–23471 Filed 10–4–89; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet November 21–22, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda of the meeting will consist of disucssions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 28, 1989.

Sandra M. Kay

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–23472 Filed 10–4–89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on October 26–27, 1989. The meeting will be held at the Naval Training Systems Center, Orlando, Florida. The meeting will commence at 8:00 A.M. and terminate at 4:30 P.M. on October 27, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on training devices and simulators. The agenda will include briefings, demonstrations and discussions related to human factors, advanced simulation, computer technology, research and engineering, front and analysis and program management. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Dated: September 28, 1989.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89–23473 Filed 10–4–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, information collection, Extraordinary Contractual Action Requests. Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Roger Schwartz, Office of Federal Acquisition Policy, (202) 523–4746.

SUPPLEMENTARY INFORMATION:

Purpose

1. This request covers the collection of information as a first step under Public Law 85–804 as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate National Defense. In order for a firm to be granted relief under the act specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contracts.

b. Annual reporting burden

This is estimated as follows: Respondents, 100; responses, 100; Reporting and Recordkeeping hours, 1600.

Obtaining Copies of Proposals: Requester may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests.

Dated: September 21, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–23460 Filed 10–4–89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF89–339–000, et al.]

Mecklenburg Cogeneration Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Mecklenburg Cogeneration Limited Partnership

[Docket No. QF89–339–000]

September 26, 1989.

On September 7, 1989, Mecklenburg Cogeneration Limited Partnership (Applicant), of 526 South Church Street, P.O. Box 36911, Charlotte, North Carolina 28238, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Mecklenburg County, near Clarksville, Virginia. The facility will consist of two pulverized coal fired boilers and two extraction/condensing steam turbine generators. Thermal energy recovered from the facility, in the form of extraction steam, will be used by Burlington Industries, Inc. in its existing worsted wool fabric and clothing manufacturing operations for fiber preparation, cloth cleaning and drying and for space heating and humidification. The primary energy source will be coal. The net electric power production capacity of facility will be 128.8 MW. Construction of the facility is expected to begin early in 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Mississippi Power Company

[Docket No. ER89–657–000]

September 27, 1989.

Take notice that on September 14, 1989, Mississippi Power Company (MPC) tendered for filing Revised Tariff Sheet No. 14 Supplement documents which identify two new services together with an updated Tariff Sheet 15 which updates the Index of the MPC wholesale distribution EPA customers of MPC.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Electric Light and Power Company

[Docket No. ES89–37–000]

September 27, 1989.

Take notice that on September 19, 1989, Iowa Electric Light and Power Company ("Applicant") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue not more than $75 million of short-term notes with a final maturity date of not later than December 31, 1993.

Comment date: October 18, 1989 in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER89–666–000]

September 27, 1989.

Take notice that on September 22, 1989, Arizona Public Service Company

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(APS or Company) tendered for filing an Economy Energy Interchange Agreement (Agreement) between APS and M–S–R) executed on August 4, 1989.

APS requested that this Agreement become effective June 15, 1989 as agreed between the Parties.

This Agreement provides that Economy Energy sales by APS to M–S–R shall be priced at one of the following rates: (A) A bifurcated rate containing a ceiling adder based on the fixed costs associated with facilities likely to produce the required energy as well as the actual variable costs incurred to produce the required energy; (b) a "split-the-savings" concept; or (c) a selling price based on 120 percent of the costs to produce such energy.

Copies of this filing are being served upon M-S-R and the Arizona Corporation Commission.

Comment date: October 11, 1989, in accordance with Standard Paragraph E end of this notice.

5. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89–660–000]

September 27, 1989.

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light, on September 19, 1989, tendered for filing PacifiCorp's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average system Cost [ASC] for the state Oregon (Bonneville's Docket No. 5–A1–8901). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and PacifiCorp.

PacifiCorp requests waiver of the Commission's notice requirements to permit this rate schedule to become effective January 24, 1989, which it claims is the date of commence of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commission of Oregon and Bonneville's Direct Service Industrial Customers.

Comment date: October 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Power and Light Company

[Docket No. ER89–667–000]

September 27, 1989.

Take notice that on September 19, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing an Interchange Agreement between Iowa Power and the Indianola Waterworks and Electric Light and Power Board of Trustees (Board of Trustees) dated January 9, 1989.

Iowa Power states that the Interchange Agreement is a negotiated agreement specifying the respective rights and obligations of the parties; that it supercedes the 1973 Interchange Agreement; and that the Board of Trustees and the State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests an effective date of February 1, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER89–561–000]

September 27, 1989.

Take notice that on Arizona Public Service Company (APS) tendered an amendment to its filing which provides that in consideration of the resolution of all disputes between Arizona Electric Power Cooperative, Inc. (AEPCO) and APS including the dismissal of a State lawsuit, the contract between the parties was agreed to be terminated early. This amendment is filed in response to the Deficiency Letter from the Commission dated August 25, 1989.

APS requests waiver of the Commissions' notice requirements in order that the originally proposed effective termination date of March 9, 1989 may be granted. Copies of the amended filing have been served on Arizona Electric Power Cooperative, Inc., Citizens Utilities Company, and the Arizona Corporation Commission.

Comment date: October 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER89–664–000]

September 27, 1989

Take notice that on September 20, 1989, Arizona Public Service Company ("APS" or "Company") tendered for filing a revised Exhibit B reducing the Maximum Demand under the Wholesale Power Agreement with the Town of Wickenburg [APS–FPC Rate Schedule No. 74].

No changes from the currently effective Wholesale Power rate level are proposed herein. No new facilities are required to provide this service.

A copy of this filing has been served on the Town of Wickenburg and the Arizona Corporation Commission.

Comment date: October 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. The Potomac Edision Company West Penn Power Company

[Docket No. ER89–665–000]

September 27, 1989.

Take notice that on September 20, 1989, The Potomac Edison Company (Potomac Edison) and West Penn Power Company (West Penn) filed changes in their Electric Service Agreements. Potomac Edison filed a change in its Agreement with the Town of Williamsport, Maryland (Town), which revised Appendix A to that Agreement to increase the number of connection points to two and increase the maximum capacities for firm and emergency Allegheny Electric Cooperative, Inc., (the Coop) to reduce the maximum capacity at an existing connection and to change the facilities charge at the connection, and a new Electric Service Agreements with Duquesne Light Company (Duquesne Light) and Pennsylvania Power and Light Company (PP&L) to add Duquesne Light and PP&L as customers on an existing West Penn rate schedule. Potomac Edison has requested that the revised Appendix A be deemed effective as of July 1, 1989; West Penn has requested that the Addendum to its Agreement with the Coop be deemed effective as of May 12, 1988, and that the new Electric Service Agreements with Duquesne Light and PP&L be deemed effective as of August 1, 1989.

Copies of the filing have been served upon the Town, the Coop, Duquesne Light, PP&L Metropolitan Edison Company, and upon the Maryland Public Service Commission and the Pennsylvania Public Utility Commission.

Comment date: October 11, 1989, in accordance with Standard Paragraph E end of this notice.

10. Iowa Power and Light Company

[Docket No. ER89–670–000]

September 27, 1989.

Take notice that on September 22, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing an Interchange Agreement between Iowa Power and the City of Ames, Iowa, February 14, 1989.

Iowa Power states that the Interchange Agreement is a negotiated agreement specifying the respective rights and obligations of the parties; that it supersedes the 1970 Interchange Agreement; and that the Board of Trustees and the State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests an effective date of February 14, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Indiana

[Docket No. ER89–672–000]

September 27, 1989.

Take notice that on September 25, 1989, Public Service Company of Indiana, Inc. (PSI) tendered for filing proposed Rate Schedule FS–1. PSI requests authorization to provide long-term firm power sales at negotiated rates to certain unaffiliated customers.

PSI states that copies of the filing have been served on the Indiana Utilities Regulatory Commission, the Attorney General of of the State of Indiana, the Utility Consumer Counselor, the Indiana Muncipal Power Agency, the Wabash Valley Power Association, the City of Logansport, Indiana, and PSI's existing wholesale customers who purchase under Rate MUN and Rate REMC–1.

Comment date: October 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23502 Filed 10–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2111–005; Washington]

Pacific Power and Light Co.; Availability of Environmental Assessment

September 28, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application requesting approval for nonproject use of lands and waters of the Swift Hydroelectric Project on the Lewis River. The staff has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of the nonproject use of project lands and waters would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Hearing Room A, of the Commission's offices, located at 825 North Capitol Street, NW., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23503 Filed 10–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–2064–000, et al.]

Colorado Interstate Gas Company, et al.—Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP89–2064–000]

September 26, 1989.

Take notice that on September 6, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–2064–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to increase transmission capacity on a portion of its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that significant capacity can be created on its system by installing facilities on that portion of its system extending from Denver, Colorado through Colorado Springs and Pueblo, Colorado, to CIG's Campo Junction facility located in the extreme southeastern portion of Colorado. CIG indicates that this portion of its transmission system, known as the Valley Line, currently serves only those customers connected directly to it.

Since the issuance of Order Nos. 436 and 500, CIG states that it has experienced tremendous growth in the volumes of both firm and interruptible transportation gas flowing under agreements providing for delivery by CIG to third party pipelines connected to CIG's Southern System. (CIG states that it refers to that portion of its system connected to supplied in Texas, Oklahoma, Kansas, and southern Colorado as its Southern System.) CIG explains that requests for firm and interruptible service have already exceeded CIG's existing transmission system capacity and have resulted in the interruption of nonfirm transportation volumes on a number of occasions. CIG asserts that by increasing the capacity of the Valley Line, it would be in a position to accommodate additional firm transportation requests on its Southern System and to utilize its system more completely.

In order to accomplish this objective, CIG requests authority to construct and operate:

- Four 2,000 horsepower, high-speed reciprocating compressor units at the existing Watkins Station in Adams County, Colorado;
- A new compressor station consisting of three 2,000-horsepower, high-speed reciprocating compressor units in Pueblo County, Colorado;
- A new measurement facility at CIG's existing Campo Junction measurement and blending facility located in Baca County, Colorado;
- Miscellaneous facilities, including a new pressure-regulator station, minor additions and modifications to various existing regulator and meter stations, replacement of approximately 50 feet of 20-inch pipeline, and the uprating of the maximum allowable operating pressure of approximately 43 miles of 20-inch pipeline.

GIC notes that it would also install a thermal stabilization facility at the existing Watkins Compressor Station in order to condition the high-Btu gas flowing into the Valley Line from CIG's Northern System and to replace the air that is now injected into the gas flowing in the Valley Line. CIG asserts that the conditioning facility requires no certification under Section 2.55 of the Commission's Regulations.

GIC states that the proposed facilities would increase the capacity of the Valley Line to by approximately 116,000 Mcf per day. CIG estimates that the proposed facilities would cost approximately $17,900,000 and states that the project would be financed through a combination of funds on hand, internally generated cash, short-term loans and long-term loans.

Comment date: October 17, 1989, in accordance with Standard Paragraph F at the end of the notice.

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2. Northwest Pipeline Corporation

[Docket No. CP89-789-000]

September 26, 1989.

Take notice that on February 3, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance new Service Agreements under Rate Schedules ODL-1 and DS-1, to be effective July 1, 1988, between Northwest and Cascade Natural Gas Corporation, CP National Corporation, City of Ellensburg, Intermountain Gas Company, Southwest Gas Corporation. Utah Gas Servicc Company, Washington Natural Gas Company, the Washington Water Power Company; October 1, 1988 between Northwest Natural Gas Company; and November 1, 1988 between Northwest and Wyoming Industrial Gas Company.

Northwest states the above-mentioned Service Agreements reflect its customers' requests to convert firm sales contract demand to firm transportation contract demand, pursuant to § 284.10(c)(3)(ii), and to the terms offered by Northwest on June 10, 1988, in docket number CP88-578-000.

Northwest requests effective dates of July 1, October 1 and November 1, 1988 for the new Service Agreements.

A copy of this filing has been mailed to the parties listed above.

Comment Date: October 10, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Tarpon Transmission Company

[Docket No. CP89-2142-000]

September 26, 1989.

Take notice that on September 20, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2142-000 a request pursuant to section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Chevron U.S.A. Inc. (Chevron), a producer of natural gas, under Tarpon's blanket certificate issued in Docket No. CP88-89-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tarpon requests authorization to transport, on an interruptible basis, up to a maximum of 35,770 MMBtu of natural gas per day for Chevron from a point of receipt located in Eugene Island Area Block 361, Offshore Louisiana to a point of delivery located in Ship Shoal Area Block 274, South Addition, Offshore Louisiana. Tarpon anticipates transporting 10, 103 MMBtu of natural gas on an average day and an annual volume of 3,687,595 MMBtu.

Tarpon states that the transportation of natural gas for Chevron commenced September 1, 1989, as reported in Docket No. ST89-4774-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tarpon in Docket No. CP88-89-000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP 89-2144-000]

September 26, 1989.

Take notice that on September 21, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-2144-000 a request pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Teepak, Inc. (Teepak), a shipper and end user of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-00 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 1,600 Dt. per day on an interruptible basis on behalf of Teepak pursuant to a Transportation Agreement dated Aguust 1, 1989 between Panhandle and Teepak (Agreement). The Agreement provides for Panhandle to receive gas from Haven Pool in Reno County, Kansas. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Illinois Power-Danville #1, #2 and #3 in Vermilion County, Illinois.

The shipper states that the estimated daily and estimated annual quantities would be 1,600 Dt. and 584,000 Dt., respectively. Service under Section 284.223(a) commenced on August 1, 1989, as reported in Docket No. ST89-4660-000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP 89-2121-000]

September 26, 1989.

Take notice that on September 19, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-2121-000 a request pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place and by reclaim approximately 1.87 miles of 4-inch lateral pipeline and appurtenant facilities located in Brown and Atchison Counties, Kansas, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the proposed abandonment would have no effect on service since there is an existing pipeline to continue service to the KPL Gas Service Horton town border and master meter currently being served by the Horton 4-inch lateral. It is stated that the reclaim cost is estimated to be $600 and the salvage value $0.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Williams Natural Gas Company

[Docket No. CP89-2153-000]

September 26, 1989.

Take notice that on September 22, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1826-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Williams Gas Marketing Company (WNG), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 25,000 dt equivalent of natural gas on a peak day, 25,000 dt equivalent on an average day and 9,125,000 dt equivalent on an annual basis for WGM. It is stated that WNG would receive the gas for WGM's account at various receipt points on WNG's system in Colorado, Oklahoma, and Wyoming and would deliver equivalent volumes at various points, on WNG's system in Kansas, Missouri, and Nebraska. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced August 1, 1989, under the self-implementing authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4647.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-2159-000]

September 26, 1989.

Take notice that on September 25, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-2159-000 a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.2120 for authorization to realign certain volumes and modify three existing delivery points to accommodate natural gas deliveries for Minnegasco, A Company of Diversified Energies, Inc. (Minnegasco), under Northern's blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes, at Minnegasco's request, to realign Rate Schedule CD-1 firm sales service by increasing firm sales entitlements by 37,500 per day for five communities in Minnesota, and South Dakota served by Minnegasco [1] and by decreasing firm sales entitlements for the community of Lincoln, Nebraska by an equivalent amount. Northern indicates that the realignment of such volumes would not result in an increase in Northern's total peak day and total annual deliveries. It is indicated that Minnegasco has experienced load growth on those portions of its system for which increased entitlements are proposed, especially in the communities of St. Bonifacious, Waconia and Mound, Minnesota.

Northern indicates that to provide the requested realignment, it would make modifications to three existing town border stations located at St. Bonifacious No. 1, Waconia No. 1, and Mound No. 1, all located in the State of Minnesota. Northern states that the modifications at St. Bonifacius No. 1 and Mound No. 1 would consist of replacing the existing meters with larger capacity meters, and that Waconia No.1 would require an additional meter of the equivalent size of the existing meter. Northern estimates the cost of modifying the meters at $523,900, to be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

[1] Northern proposes to increase CD-1 service for Sioux Falls, South Dakota by 500 Mcf, Minnespolis, Minnesota by 33,259 Mcf, Mound, Minnesota by 3,018 Mcf, St. Bonifacius, Minnesota by 636 Mcf and Waconia, Minnesota by 89 Mcf.

8. ANR Pipeline Company

[Docket No. CP89-2134-000]

September 26, 1989.

Take notice that on September 19, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2134-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 11,195 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of Transtate pursuant to a transportation agreement dated April 5, 1989, between ANR and Transtate. ANR would receive the gas at various existing points of receipt in Louisiana, offshore Louisiana, Michigan and Texas and deliver equivalent volumes, less fuel used and unaccounted for line loss, at existing points of delivery in Michigan and Wisconsin.

ANR states that the estimated daily and annual quantities would be 11,195 dkt and 4,086,000 dkt, respectively. Service under Section 284.223(a) commenced on July 13, 1989, as reported in Docket No. ST89-4588-000, it is stated.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Iowa Public Service Company

[Docket No. CP89-2002-000]

September 27, 1989.

Take notice that on August 25, 1989, Iowa Public Service Company (IPS), 401 Douglas, P.O. Box 778, Sioux City, Iowa 51102, filed in Docket No. CP89-2002-000 an application requesting the Commission issue IPS a Section 7(f) determination for service area comprised of Union, Clay, Yankton [1] and Lincoln Counties of South Dakota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

IPS also requests that the Commission make a determination that IPS qualifies as a local distribution company (LDC) in the area proposed as a section 7(f) service area.

IPS states that it owns and operates a pipeline which extends from Sioux City, Iowa, across the South Dakota border (Big Sioux River) providing natural gas service at retail to the communities of North Sioux City and McCook Lake in South Dakota. All the gas transported serves both residential and commercial customers and is not for resale. IPS indicates that it has one arrangement to sell gas for resale off the ANR Pipeline Company (ANR) system whereby it purchases gas from ANR for resale to Great River Gas Company.

Comment date: October 18, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] IPS supplemented its application. by letter filed September 18, 1989, stating that the county of Yankton, South Dakota, should be inserted in the Notice of Application dated August 31, 1989, in place of the County of Turner, South Dakota.

10. Southern Natural Gas Company

[Docket No. CP89-2157-000]

September 27, 1989.

Take notice that on September 22, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, field in Docket No. CP89-2157-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated June 26, 1989, under its Rate Schedule IT, it proposes to transport up to 35,000 MMBtu per day equivalent of natural gas for Citizens. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various production area points in Louisiana.

Southern advises that service under Section 284.223(a) commenced July 26, 1989, as reported in Docket No. ST89-4549-000. Southern further advises that it would transport 34,520 MMBtu on an

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average day and 12,600,000 MMBtu annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Williams Natural Gas Company

[Docket No. CP89–2161–000]

September 27, 1989.

Take notice that on September 25, 1985, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–2161–000 a request pursuant to section 157.205 of the Commission's Regulations for permission to replace and relocate measuring, regulating and appurtenant facilities serving the Missouri Public Service Company (Missouri) Clinton town border and to construct replacement measuring, regulating and appurtenant facilities and approximately 0.1 mile of 4-inch pipeline to the new town border located in Johnson County, Missouri under William's blanket certificates issued in Docket No. CP82–479–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that the present town border facilities located approximately one mile south of Williams' Ottawa-Sedalia 12-inch pipeline are obsolete and oversized and are in need of replacement. Also, Williams states that Missouri owns the lateral pipeline upstream and downstream of Williams' town border station. The projected volumes of delivery through the replacement facilities is not expected to exceed the volumes currently being delivered of 585,095 Mcf per year with a maximum peak load of 8,465 Mcf per day, it is indicated. Williams states that the reclaim cost is estimated to be $3,060 with a salvage value of $500 and that the estimated cost of construction is approximately $51,650, which would be paid from funds on hands.

Williams states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without deteriment or disadvantage to its other customers. Williams further states it has discussed the proposals set forth herein with Missouri and that Missouri is in agreement with the proposals.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Company

[Docket No. CP89–2156–000]

September 27, 1989.

Take notice that on September 22, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–2156–000 a request pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Citizens Gas Supply Corporation (Citizens), a marketer, under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis up to 35,000 MMBtu of natural gas equivalent per day on behalf of Citizens pursuant to a transportation agreement dated June 30, 1989, between Southern and Citizens. Southern would receive gas at various receipt points in Louisiana, offshore Louisiana, Mississippi, Alabama, Texas and offshore Texas and redeliver equivalent volumes of gas, less the applicable fuel charge set forth in Rate Schedule IT and any shrinkage, at various delivery points in Mississippi and Louisiana.

Southern further states that the estimated average daily and annual quanitities would be 34,520 MMBtu and 12,600,000 MMBtu, respectively. Service under section 284.223(a) commenced on July 26, 1989, as reported in Docket No. ST89–4548–000, it is stated.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89–2148–000]

September 27, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2148–000, a request pursuant to section 157.205 of the Commission's Regulations under the Natuaral Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated October 19, 1988, between Panhandle and Amgas (Agreement), it would transport up to 50,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Amgas. Panhandle further states that the Agreement provides for Panhandle to receive the natural gas from various existing points of receipt on its system in the states of Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming. Panhandle would then transport and redeliver the natural gas, less fuel used and unaccounted-for line loss, to various counties located in the state of Illinois.

Panhandle states that Amgas has indicated that the estimated daily and estimated annual quantities would be 25,000 dt and 18,250,000 dt, respectively.

Panhandle states that it commenced the transportation of natural gas for Amgas on August 1, 1989, as reported in Docket No. ST89–4682–000, for a 120-day period pursuant to section 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. El Paso Natural Gas Company

[Docket No. CP89–2152–000]

September 27, 1989.

Take notice that on September 22, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–2152–000 a request pursuant to sections 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to continue interruptible transportation service for Giant Industries, Inc. (Giant) under El Paso's blanket transportation certificate issued by the Commission on November 2, 1988, in Docket No. CP88–433–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that interruptible transportation service was initiated under Part 284, Subpart B of the Commission's Regulations on February 1, 1986, as reported by El Paso to the Commission on February 28, 1986, in Docket No. ST86–1030–000 Giant and El Paso have agreed to continue the transportation service under Subpart G of the Commission's Regulations and to terminate the Subpart B transportation service upon receipt of regulatory authority for the Subpart G transportation. Therefore, El Paso requests authority for the interruptible transportation service for Giant, pursuant to Subpart G of the Commission's Regulations, of up to 5,381 MMBtu of natural Gas per day from any point of receipt on El Paso's system to delivery points in the State of New Mexico. El Paso states that the estimated daily and annual quantities of gas would be 3,693 MMBtu and 1,347,763 MMBtu, respectively.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Company

[Docket No. CP89–2146–000]

September 27, 1989.

Take notice that on September 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2146–000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Eli Lily and Company (Eli Lily) under the blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a Transportation Agreement dated August 1, 1989, between Panhandle and Eli Lily it proposes to transport up to 1,900 dt per day on a firm basis on behalf of Eli Lily. The Transportation Agreement provides for Panhandle to receive gas from Union Texas, Sohio, Producers, Producers Gas Company, Caliche Interconnect, and Oklahoma Natural Gas Company located in various counties of Oklahoma and CIG-Lakin in Kearny County, Kansas. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to various counties in Indiana.

Panhandle states that the maximum day, average day and annual transportation volumes would approximately 1,900 dt., 1,900 dt., and 693,500 dt., respectively.

Panhandle further states that it commenced this service on August 1, 1989, as reported in Docket No. ST89–4670–000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP89–2146–000]

September 27, 1989.

Take notice that on September 25, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–2164–000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Gulf South Pipeline Company (Gulf South). United explains that service commenced July 26, 1989, under section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4699. United explains that the peak day quantity would be 309,000 MMBtu, the average daily quantity would be 309,000 MMBtu, and that the annual quantity would be 112,785,000 MMBtu. United explains that it would receive natural gas for Gulf South's account at various receipt points in the States of Louisiana, Texas and Offshore Louisiana. United States that it would redeliver the gas at interconnections in the States of Louisiana, Alabama and Mississippi.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. The Inland Gas Company, Inc.

[Docket No. CP89–2138–000]

September 27, 1989.

Take notice that on September 19, 1989, The Inland Gas Company, Inc. (Inland), 336–338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89–2138–000 a request pursuant to section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Armco Steel Company, L.P. (Armco), under Inland's blanket certificate issued in Docket No. CP89–779–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inland requests authorization to transport, on an interruptible basis, up to a maximum of 15,700 MMBtu equivalent of natural gas per day for Armco from receipt points located in Kentucky to delivery points located in Kentucky. Inland anticipates transporting, on an average day 9,950 MMBtu and an annual volume of 3,631,750 MMBtu.

Inland states that the transportation of natural gas for Armco commenced August 4, 1989, as reported in Docket No. ST89–4535–000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Inland in Docket No. CP89–779–000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Panhandle Eastern Pipe Line Company

[Docket No. CP89–2145–000]

September 27, 1989.

Take notice that on September 21, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152–1642, filed in Docket No. CP89–2145–000 an application pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Home Petroleum Corporation transport natural gas on behalf of Home Petroleum Corporation (Home Petroleum), a producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on an interruptible basis, up to 20,000 Dt. equivalent of natural gas per day for Home Petroleum. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volume would be approximately 20,000 Dt. equivalent, 20,000 Dt. equivalent and 7,300,000 Dt. equivalent respectively.

Panhandle advises that service under Section 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89–4667.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Texas Eastern Transmission Corporation

[Docket No. CP89–2151–000]

September 27, 1989.

Take notice that on September 21, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed a

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request with the Commission in Docket No. CP89–2151–000 pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for Diamond Shamrock Offshore Partners, Limited Partnership (Diamond Shamrock), a natural gas producer, under the blanket certificate issued by the Commission in Order No. 509 pursuant to section 7 of the NGA, corresponding to the rates, terms, and conditions filed in Docket No. RP89–95–000, all as more fully set forth in the request which is open to the public inspection.

Texas Eastern proposes, pursuant to a July 7, 1989, transportation agreement under its Rate Schedule IT–1, a daily interruptible transportation service for Diamond Shamrock of up to 2,200 MMBtu equivalent of natural gas. Texas Eastern would receive Diamond Shamrock's gas at an existing High Island Block 289, offshore Texas, receipt point and deliver the gas for Diamond Shamrock's account at an existing West Cameron Block 543, offshore Louisiana, delivery point to Natural Gas Pipeline Company of America. Texas Eastern estimates that it would transport annually 803,000 MMBtu equivalent of natural gas for Diamond Shamrock. Texas Eastern also states that it commenced transportation service for Diamond Shamrock on August 1, 1989, as reported in Docket No. ST89–4568.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP89–2167–000]

September 27, 1989.

Take notice that on September 26, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–2167–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Commonwealth Gas Company (Commonwealth), under the blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated May 30, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Commonwealth. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to deliver points in Warren County, Ohio, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under Section 284.223(a) commenced August 18, 1989, as reported in Docket No. ST89–4683. Texas Gas further advises that it would transport 100,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23504 Filed 10–4–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–3783–001, et al.]

Conoco Inc. et al.; Applications for Termination or Amendment of Certificates [1]

September 27, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 17, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G–3783–001, D, 9–14–89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Company, San Juan, *et al.*, Fields, (Allison Unit Area), La Plata and Archuleta Counties, Colorado and San Juan County, NM.	Assigned 8–1–89 to Robert L. Bayless.
G–12564–000, D, 9–18–89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, New Mexico Federal Unit Leases, Lea County, NM.	Assigned 1–24–89 to V.H. Westbrook.
CI62–942–000, D, 9–1–89	Conoco Inc.	Northern Natural Gas Company, Division of Enron Corp., Eumont-Monument Field, Lea County, NM.	Assigned 7–1–89 to John H. Hendrix Corporation.
CI85–490–001, D, 9–14–89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, New Mexico Federal Unit Leases, Lea County, NM.	Assigned 1–20–89 to Charles W. Kemp.
CI89–538–000 (CI73–41), D, 9–5–89.	Conoco Inc.	Panhandle Eastern Pipe Line Company, Angel Field, Meade County, KS.	Assigned 7–1–89 to A.L. Abercrombie, Inc.
CI89–539–000 (G–10127), D, 9–5–89.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253–3725.	Florida Gas Transmission Company, Mustang Island Field, Nueces County, TX.	Assigned 7–1–89 to Merrico Resources, Inc.
CI89–540–000 (CI86–120–000), D, 9–1–89.	ENSTAR Corporation, P.O. Box 2120, Houston, TX 77252–2120.	ANR Pipeline Company, South Briscoe Field, Wheeler County, TX.	Assigned 10–1–87 to Memorial Exploration Company.
CI89–541–000 (CI87–442) (CI67–43) (CI87–444) (CI87–445), D, 9–12–89.	Enron Oil & Gas Company, P.O. Box 1188, Houston, TX.	Williston Basin Interstate Pipeline Company, Boxcar Butte Field, McKenzie County ND.	Assigned 9–1–88 to Quanterra Alpha Limited Partnership.
CI89–542–000 (CI76–303), D, 9–12–89.	Enron Oil & Gas Company	Northern Natural Gas Company, Division of Enron Corp., Ozona Field, Crockett County, TX.	Assigned 9–1–88 to Ladd Petroleum Company.
CI89–543–000 (CI87–446) D, 9–13–89.	Enron Oil & Gas Company	Panhandle Eastern Pipe Line Company, Hambert Field, Weld County, CO.	Assigned 12–15–88 to Prima Oil & Gas Company.
CI89–544–000 (CI87–448), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Armstrong CT #1, Eagle Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–449), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Vandiven, DO #1, Atoka West Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–450), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Caskey EV Com #1, Eagle Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–451), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Terry FU #1, Cotton Wood Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–453), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Federal CZ #1, Eagle Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–454), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Federal FC #1, Eddy Uno Field, Charles County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–455), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Federal BZ #12, Eagle Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–456), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company Arco EC #2, Eagle Creek Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–544–000 (CI87–457), D, 9–13–89.	Enron Oil & Gas Company	Transwestern Pipeline Company, Arco EC State #1–B, Eagle Creek East Field, E.J. Hnulik C #1, Kennedy Farms Field, Eddy County, NM.	Assigned 12–29–88 to Yates Petroleum Corporation.
CI89–546–000 (CI87–461), D, 9–13–89.	Enron Oil & Gas Company	El Paso Natural Gas Company, Williamson BC #3, #4, #5, Burton Flat N. Field, Eddy County, NM.	Assigned 12–30—88 to Yates Petroleum Corporation.
CI89–546–000 (CI75–720), D, 9–13–89.	Enron Oil & Gas Company	El Paso Natural Gas Company, Cooper Federal #1, Cooper (Morrow) Field, Lea County, NM.	Assigned 12–30–88 to Quinoco Petroleum, Inc.
CI89–546–000 (CI78–697), D, 9–13–89.	Enron Oil & Gas Company	El Paso Natural Gas Company, Woods 9 Com #1, #2, Ogden 8 Comm #1, Malaga West Field, Eddy County, NM.	Assigned 12–30–88 to Quinoco Petroleum, Inc.
CI89–547–000 (CI64–1306), D, 9–18–89.	Conoco Inc.	El Paso Natural Gas Company, Ignacio Field, La Plata County, CO.	Assigned 8–1–89 to Robert L. Bayless.

Filing code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial succession.

[FR Doc. 89–23505 Filed 10–4–89; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. G-2737-011, et al.]

Conoco Inc., et al.; Applications for Certificates and Abandonment of Service [1]

September 27, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 17, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2737-011, B, 9-7-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Williams Natural Gas Company, West Panhandle Field, Carson and Gray Counties, TX.	Lease reverted. Well assigned 2-17-89 to Bryan Exploration Company.
G-4579-063, B, 9-1-89	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Company, Division of Enron Corp., Various Leases, Morton County, KS.	Leases reverted.
CI89-209-000 (CI76-490-001), B, 1-5-89.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Northern Natural Gas Company, Division of Enron Corp., Farnsworth Field, Ochiltree County, TX.	Lease Nos. 23-T(A) and 24-T(A) expired. Remaining acreage assigned 7-24-87 to Atlantic Energy Corporation.
CI89-500-000 (G-3894), B, 8-7-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Mid-Louisiana Gas Company, Vixen Field, Caldwell Parish, LA.	Well plugged and abandoned.
CI89-545-000, E, 9-14-89	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Company of America, Indian Basin Field, Eddy County, NM.	Acreage acquired 3-1-89 from Citation Oil & Gas Corp.

[FR Doc. 89-23506 Filed 10-4-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST89-4359-000 through ST89-4637-000]

Rocky Mountain Natural Gas Co., Inc., et al.; Self-Implementing Transactions

September 28, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before October 19, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to section 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales, or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales, or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 282.303 of the Commission's regulations.

Lois D. Cashell,
Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket Number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/MMBTU)
ST89-4359	Rocky Mountain Natural Gas Co., Inc	Intermountain Gas Co	08-01-89	G-HT		
ST89-4360	Trunkline Gas Co	Central Illinois Light Co	08-01-89	B		
ST89-4361	Panhandle Eastern Pipe Line Co	Anges, Inc	08-01-89	G-S		
ST89-4362	Valero Interstate Transmission Co	VT,L.P	08-01-89	B		
ST89-4363	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	08-01-89	B		
ST89-4364	Kansas Power and Light Co	Northern Natural Gas Co	08-01-89	C		
ST89-4365	Columbia Gulf Transmission Co	Elf Aquitaine, Inc	08-01-89	G-S		
ST89-4366	Valero Transmission L.P	Transcontinental Gas Pipe Line Corp	08-02-89	C		
ST89-4367	Arkla Energy Resources	Houston Lighting and Power Co	08-02-89	B		
ST89-4368	SNG Intrastate Pipeline, Inc	Tennessee Gas Pipeline Co	08-02-89	C	12-30-89	13.50
ST89-4369	Trans Texas Pipeline	United Gas Pipe Line Co	08-03-89	C		
ST89-4370	K N Energy, Inc	Peoples Natural Gas Co	08-03-89	B		
ST89-4371	K N Energy, Inc	Northern Illinois Gas Co	08-03-89	B		
ST89-4372	K N Energy, Inc	Miami Pipeline Co	08-03-89	B		
ST89-4373	K N Energy, Inc	BP Gas Transmission Co	08-03-89	B		
ST89-4374	K N Energy, Inc	Kansas Pipeline Co	08-03-89	B		
ST89-4375	K N Energy, Inc	Northern Intrastate Pipeline Co	08-03-89	B		
ST89-4376	K N Energy, Inc	Hastings Utilities, et al	08-03-89	B		
ST89-4377	K N Energy, Inc	Associated Intrastate Pipeline Co	08-03-89	B		
ST89-4378	K N Energy, Inc	Peoples Natural Gas Co	08-03-89	B		
ST89-4379	K N Energy, Inc	Northwestern Public Service Co	08-03-89	B		
ST89-4380	K N Energy, Inc	MGTC, Inc	08-03-89	B		
ST89-4381	K N Energy, Inc	Amoco Gas Co	08-03-89	B		
ST89-4382	Black Marlin Pipeline Co	Oxy U.S.A., Inc	08-03-89	K-S		
ST89-4383	Natural Gas Pipeline Co. of America	North Shore Gas Co	08-03-89	B		
ST89-4384	Natural Gas Pipeline Co. of America	Acacia Gas Corp	08-03-89	G-S		
ST89-4385	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	08-03-89	B		
ST89-4386	United Gas Pipe Line Co	Mobile Gas Service Corp	08-03-89	B		
ST89-4387	Mid Louisiana Gas Co	Tennessee Gas Pipeline Co	08-03-89	G		
ST89-4388	Colorado Interstate Gas Co	MGTC, Inc	08-04-89	B		
ST89-4389	Colorado Interstate Gas Co	MGTC, Inc	08-04-89	B		
ST89-4390	Colorado Interstate Gas Co	MGTC, Inc	08-04-89	B		
ST89-4391	Texas Gas Transmission Corp	Access Energy Corp	08-03-89	G-S		
ST89-4392	Texas Gas Transmission Corp	Eastern Stainless Corp	08-03-89	G-S		
ST89-4393	Transcontinental Gas Pipe Line	BP Gas Transmission Co	08-03-89	B		
ST89-4394	Stingray Pipeline Co	Union Exploration Partners, Ltd	08-04-89	K-S		
ST89-4395	BP Gas Transmission Co	ANR Pipeline Co., et al	08-04-89	C	01-01-90	13.70
ST89-4396	BP Gas Transmission Co	ANR Pipeline Co., et al	08-04-89	C	01-01-90	13.70
ST89-4397	Tennessee Gas Pipeline Co	Columbia Gas Development Corp	08-04-89	G-S		
ST89-4398	Tennessee Gas Pipeline Co	Bridgeline Gas Distribution Co	08-04-89	B		
ST89-4399	Columbia Gas Transmission Corp	Elizabethtown Gas Co	08-04-90	B		
ST89-4400	Williams Natural Gas Co	Reliance Gas Marketing Co	08-04-89	B		
ST89-4401	Northwest Pipeline Corp	Exxon Corp	08-04-89	G-S		
ST89-4402	Northwest Pipeline Corp	Exxon Corp	08-04-89	G-S		
ST89-4403	Panhandle Eastern Pipe Line Co	Providence Gas Co	08-04-89	B		
ST89-4404	Transcontinental Gas Pipe Line Corp	Louisiana Resources Co	08-04-89	B		
ST89-4405	Northern National Gas Co	Feagan Gathering Co	08-07-89	G-S		
ST89-4406	ONG Transmission Co	Getty Gas Gathering, Inc	08-07-89	C	01-04-90	24.32
ST89-4407	ONG Transmission Co	United Gas Pipe Line Co	08-07-89	C	01-04-90	24.32
ST89-4408	Tennessee Gas Pipeline Co	Yankee Gas Services Co	08-07-89	B		
ST89-4409	El Paso Natural Gas Co	Mallon Oil Co	08-07-89	G-S		
ST89-4410	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	08-07-89	B		
ST89-4411	El Paso Natural Gas Co	Southern Industrial Gas Corp	08-07-89	B		
ST89-4412	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	08-07-89	B		
ST89-4413	Natural Gas Pipeline Co. of America	North Shore Gas Co	08-07-89	B		
ST89-4414	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	08-07-89	B		
ST89-4415	Natural Gas Pipeline Co. of America	Public Service Elect. & Gas Co., et al	08-07-89	B		
ST89-4416	Equitrans, Inc	Equitable Resources Marketing Co	08-07-89	G-S		
ST89-4417	Western Transmission Corp	Stauffer Wyoming Pipeline Co	08-07-89	B		
ST89-4418	Columbia Gas Transmission Corp	Brooklyn Interstate Natural Gas Corp	08-07-89	G-S		
ST89-4419	Trunkline Gas Co	Providence Gas Co	08-07-89	B		
ST89-4420	Transcontinental Gas Pipe Line Corp	Bishop Pipeline Corp	08-07-89	B		
ST89-4421	Northwest Pipeline Corp	Conoco, Inc	08-07-89	G-S		
ST89-4422	Arkla Energy Resources	Associated Intrastate Pipeline Co	08-07-89	B		
ST89-4423	El Paso Natural Gas Co	Cabot Gas Supply Corp	08-08-89	G-S		
ST89-4424	United Gas Pipe Line Co	Seagull Marketing Services, inc	08-09-89	G-S		
ST89-4425	United Gas Pipe Line Co	Air Products & Chemicals, Inc	08-09-89	G-S		
ST89-4426	Northwest Pipeline Corp	Greeley Gas Co	08-09-89	B		
ST89-4427	Northwest Pipeline Corp	Coastal Gas Marketing Co	08-09-89	G-S		
ST89-4428	Northwest Pipeline Corp	Gasmark Inc	08-09-89	G-S		
ST89-4429	Panhandle Eastern Pipe Line Co	Phillips 66 Natural Gas Co	08-09-89	G-S		
ST89-4430	Colorado Interstate Gas Co	Vesgas Co	08-09-89	B		
ST89-4431	Columbia Gulf Transmission Co	Exxon Corp	08-09-89	G-S		
ST89-4432	Valero Transmission, L.P.	Transcontinental Gas Pipe Line Corp	08-10-89	C		

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ST89-4433	Stingray Pipeline Co	Phillips Petroleum Co	08-10-89	K-S		
ST89-4434	Stingray Pipeline Co	Enmark Gas Corp	08-10-89	K-S		
ST89-4435	Tennessee Gas Pipeline Co	Columbia Gas Transmisstion Corp	08-10-89	G		
ST89-4436	Transwestern Pipeline Co	Union Pacific Reeources Co	08-10-89	G-S		
ST89-4437	Panhandle Eastern Pipe Line Co	Levinson Partners Corp	08-10-89	G-S		
ST89-4438	Panhandle Eastern Pipe Line Co	Gastrak Corp	08-10-89	G-S		
ST89-4439	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	08-10-89	B		
ST89-4440	Columbia Gulf Transmission Co	Entrade Corp	08-10-89	G-S		
ST89-4441	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	08-10-89	G-S		
ST89-4442	Texas Eastern Transmission Corp	Elizabethtown Gas Co	08-10-89	B		
ST89-4443	K N Energy, Inc	Delhi Gas Pipeline Corp	08-11-89	B		
ST89-4444	K N Energy, Inc	Delhi Gas Pipeline Corp	08-11-89	B		
ST89-4445	K N Energy, Inc	Delhi Gas Pipeline Corp	08-11-89	B		
ST89-4446	K N Energy, Inc	Associated Intrastate Pipeline Co	08-11-89	B		
ST89-4447	K N Energy, Inc	Metropolitan Utils. Dist. of Omaha	08-11-89	B		
ST89-4448	K N Energy, Inc	Colony Energy Corp	08-11-89	B		
ST89-4449	Williams Natural Gas Co	Midwest Grain Pipeline, Inc	08-11-89	B		
ST89-4450	Northern Natural Gas Co	Pacific Gas and Electric Co	08-11-89	B		
ST89-4451	Northern Natural Gas Co	Enron Gas Marketing, Inc	08-11-89	G-S		
ST89-4452	Texas Eastern Transmission Corp	Texas Industrial Energy Co	08-11-89	B		
ST89-4453	Texas Eastern Transmission Corp	Olympic Pipeline Co	08-11-89	B		
ST89-4454	Columbia Gulf Transmission Co	Meth Corp	08-11-89	G-S		
ST89-4455	Columbia Gulf Transmission Co	Meth Corp	08-11-89	G-S		
ST89-4456	Columbia Gas Transmission Corp	NGC Intrastate Pipeline Co	08-11-89	B		
ST89-4457	Paiute Pipeline Co	Westar Marketing Co	08-14-89	G-S		
ST89-4458	Tennessee Gas Pipeline Co	General Refractories Co	08-11-89	G-S		
ST89-4459	Natural Gas Pipeline Co of America	Lavaca Pipe Line Co	08-14-89	B		
ST89-4460	Trunkline Gas Co	Natural Gas Clearinghouse, Inc	08-14-89	K-S		
ST89-4461	United Gas Pipe Line Co	Victoria Gas Corp	08-14-89	G-S		
ST89-4462	Columbia Gulf Transmission Co	Phibro Distributors Corp	08-14-89	G-S		
ST89-4463	Columbia Gulf Transmission Co	American Central Gas Marketing Co	08-14-89	G-S		
ST89-4464	Columbia Gulf Transmission Co	Alabama-Tennessee Natural Gas Co	08-14-89	B		
ST89-4465	Tennessee Gas Pipeline Co	City of Lexington	08-15-89	B		
ST89-4466	Natural Gas Pipeline Co. of America	Enmark Gas Corp	08-15-89	B		
ST89-4467	Natural Gas Pipeline Co. of America	American Central Gas Marketing Co	08-15-89	G-S		
ST89-4468	Texas Gas Transmission Corp	River Gas Co	08-15-89	B		
ST89-4469	Texas Gas Transmission Corp	Chevron U.S.A., Inc	08-15-89	G-S		
ST89-4470	Texas Gas Transmission Corp	Coastal Gas Marketing Co	08-15-89	G-S		
ST89-4471	Texas Gas Transmission Corp	Enron Gas Marketing, Inc	08-15-89	G-S		
ST89-4472	United Gas Pipe Line Co	Laser Marketing Co	08-15-89	G-S		
ST89-4473	Southern Natural Gas Co	Diamond Shamrock Nat. Gas Marketing Co	08-15-89	G-S		
ST89-4474	Southern Natural Gas Co	Total Minatome Corp	08-15-89	G-S		
ST89-4475	Southern Natural Gas Co	Total Minatome Corp	08-15-89	G-S		
ST89-4476	Southern Natural Gas Co	American Central Gas Marketing Co	08-15 -89	G-S		
ST89-4477	Southern Natural Gas Co	Diamond Shamrock Offshore Partners, L.P.	08-15-89	G-S		
ST89-4478	Southern Natural Gas Co	Manville Sales Corp	08-15-89	G-S		
ST89-4479	Southern Natural Gas Co	Centran Corp	08-15-89	G-S		
ST89-4480	Southern Natural Gas Co	Total Minatome Corp	08-15-89	G-S		
ST89-4481	Southern Natural Gas Co	Total Minatome Corp	08-15-89	G-S		
ST89-4482	Arkla Energy Resources	AER Intrastate	08-16-89	B		
ST89-4483	El Paso Natural Gas Co	Bridgegas U.S.A. Inc	08-16-89	G-S		
ST89-4484	United Texas Transmission Co	Transcontinental Gas Pipe Line Corp	08-17-89	C		
ST89-4485	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	08-16-89	B		
ST89-4486	Northwest Pipeline Corp	Fuel Resources Development Co	08-16-89	G-S		
ST89-4487	Transcontinental Gas Pipe Line Corp	Peoples Natural Gas Co	08-17-89	B		
ST89-4488	Transcontinental Gas Pipe Line Corp	North Penn Gas Co	08-17-89	B		
ST89-4489	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	08-17-89	G-S		
ST89-4490	Transcontinental Gas Pipe Line Corp	Corpus Christi Transmission Co	08-17-89	B		
ST89-4491	Northern Natural Gas Co	Cabot Gas Supply Corp	08-17-89	B		
ST89-4492	Northern Natural Gas Co	V.H.C. Gas System, L.P.	08-17-89	G-S		
ST89-4493	United Gas Pipe Line Co	Graham Energy Marketing Co	08-17-89	G-S		
ST89-4494	Trans Texas Pipeline	Transcontinental Gas Pipe Line Corp	08-18-89	C		
ST89-4495	Transcontinental Gas Pipe Line Corp	Alabama Gas Corp., Et Al	08-18-89	B		
ST89-4496	Texas Eastern Transmission Corp	Apollo Gas Co	08-18-89	B		
ST89-4497	Texas Eastern Transmission Corp	Teco Pipeline Company	08-18-89	B		
ST89-4498	Texas Eastern Transmission Corp	Consumers Power Co	08-18-89	B		
ST89-4499	Northern Natural Gas Co	Amoco Gas Co	08-18-89	B		
ST89-4500	Northern Natural Gas Co	Texline Gas Co	08-18-89	B		
ST89-4501	Northern Natural Gas Co	Carnation Co	08-18-89	G-S		
ST89-4502	Northern Natural Gas Co	WTG Exploration, Inc	08-18-89	G-S		
ST89-4503	Northern Natural Gas Co	Sun Operating LTD. Partnership	08-18-89	G-S		
ST89-4504	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4505	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4506	CNG Transmission Corp	Cuyahoga Asphalt Co	08-18-89	G-S		
ST89-4507	CNG Transmission Corp	Osborne Concrete & Stone Co	08-18-89	G-S		
ST89-4508	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4509	CNG Transmission Corp	Stand Energy Corp	08-18-89	G-S		
ST89-4510	CNG Transmission Corp	Grand River Asphalt Co	08-18-89	G-S		
ST89-4511	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4512	CNG Transmission Corp	Appex International Alloys, Inc	08-18-89	G-S		
ST89-4513	CNG Transmission Corp	Lake Erie Asphalt Preoduction, Inc	08-18-89	G-S		

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ST89-4514	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4515	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4516	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4517	CNG Transmission Corp	Brooklyn Interstate Natural Gas Co	08-18-89	G-S		
ST89-4518	Dow Pipeline Co	Transcontinental Gas Pipe Line Corp	08-21-89	C	01-18-90	07.31
ST89-4519	Dow Pipeline Co	El Paso Natural Gas Co	08-21-89	C	01-18-90	07.31
ST89-4520	Texas Gas Transmission Corp	American Central Gas Marketing Co	08-21-89	G-S		
ST89-4521	Texas Gas Transmission Corp	Tejas Power Corp	08-21-89	G-S		
ST89-4522	Texas Gas Transmission Corp	Tejas Power Corp	08-21-89	G-S		
ST89-4523	Equitrans, Inc	Angerman Associates, Inc	08-21-89	G-S		
ST89-4524	Equitrans, Inc	Consolidated Fuel Corp	08-21-89	G-S		
ST89-4525	Colorado Interstate Gas Co	Llano, Inc	08-21-89	B		
ST89-4526	Northwest Pipeline Corp	Texaco, Inc	08-21-89	G-S		
ST89-4527	Sabine Pipe Line Co	Brooklyn Union Gas Co	08-21-89	B		
ST89-4528	Transok, Inc	Natural Gas Pipeline Co. of America	08-22-89	C	01-19-90	32.50
ST89-4529	Williston Basin Interstate P/L Co	Quivira Gas Co	08-23-89	B		
ST89-4530	Williston Basin Interstate P/L Co	Northern Illinois Gas Co	08-23-89	B		
ST89-4531	Williston Basin Interstate P/L Co	MGTC, Inc	08-23-89	B		
ST89-4532	Williston Basin Interstate P/L Co	Quivira Gas Co	08-23-89	B		
ST89-4533	Williston Basin Interstate P/L Co	Cody Gas Co	08-23-89	B		
ST89-4534	Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	08-23-89	B		
ST89-4535	Inland Gas Co., Inc. (The)	Armco Steel Co., L.P.	08-22-89	G-S		
ST89-4536	Inland Gas Co., Inc. (The)	American National Rubber Co	08-22-89	G-S		
ST89-4537	Inland Gas Co., Inc. (The)	Kentucky Electric Steel Corp	08-22-89	G-S		
ST89-4538	Inland Gas Co., Inc. (The)	Louisville Fire Brick Works	08-22-89	G-S		
ST89-4540	Tennessee Gas Pipeline Co	Peidmont Natural Gas Co	08-23-89	B		
ST89-4541	Tennessee Gas Pipeline Co	City of Ripley	08-23-89	B		
ST89-4542	Trunkline Gas Co	Access Energy Pipeline Corp	08-23-89	B		
ST89-4543	Trunkline Gas Co	PPG Industries, Inc	08-23-89	G-S		
ST89-4544	Panhandle Eastern Pipe Line Co	Amgas, Inc	08-23-89	G-S		
ST89-4545	United Texas Transmission Co	Phillips Natural Gas Co	08-24-89	C		
ST89-4546	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	08-24-89	G-S		
ST89-4547	Southern Natural Gas Co	Transco Energy Marketing Co	08-18-89	G-S		
ST89-4548	Southern Natural Gas Co	Citizens Gas Supply Corp	08-18-89	G-S		
ST89-4549	Southern Natural Gas Co	Citizens Gas Supply Corp	08-18-89	G-S		
ST89-4550	Southern Natural Gas Co	Entrade Corp	08-18-89	G-S		
ST89-4551	Southern Natural Gas Co	Entrade Corp	08-18-89	G-S		
ST89-4552	United Gas Pipe Line Co	Transamerican Gas Transmission Corp	08-24-89	B		
ST89-4553	United Gas Pipe Line Co	CNG Trading Co	08-24-89	G-S		
ST89-4554	Columbia Gulf Transmission Co	Northern Illinois Gas Co	08-24-89	B		
ST89-4555	Enogex Inc	Panhandle Eastern Pipe Line Co	08-24-89	C	01-21-90	43.57
ST89-4556	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	08-25-89	B		
ST89-4557	Paiute Pipeline Co	R.R. Donnelley & Sons Co	08-25-89	G-S		
ST89-4558	Florida Gas Transmission Co	PSI, Inc	08-25-89	K-S		
ST89-4559	Florida Gas Transmission Co	PSI, Inc	08-25-89	K-S		
ST89-4560	Florida Gas Transmission Co	PSI, Inc	08-25-89	K-S		
ST89-4561	Northern Natural Gas Co	Peoples Natural Gas Co	08-25-89	B		
ST89-4562	Northern Natural Gas Co	NGP Pipeline Co	08-25-89	B		
ST89-4563	Northern Natural Gas Co	Phibro Distributors Corp	08-25-89	G-S		
ST89-4564	Tomcat	Texas Eastern Transmission Corp	08-25-89	C	01-22-90	11.00
ST89-4565	Tennessee Gas Pipeline Co	North Penn Gas Co	08-25-89	B		
ST89-4566	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	08-25-89	G-S		
ST89-4567	El Paso Natural Gas Co	TXO Gas Marketing Corp	08-25-89	G-S		
ST89-4568	Texas Eastern Transmission Corp	Diamond Shamrock Offshore Partners L.P.	08-25-89	G-S		
ST89-4569	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	08-25-89	B		
ST89-4570	Williams Natural Gas Co	Rangeline Corp	08-25-89	G-S		
ST89-4571	Columbia Gas Transmission Corp	Inland Gas Co., Inc. (The)	08-28-89	G-S		
ST89-4572	Pacific Gas Transmission Co	Pacific Gas and Electric Co	08-28-89	B		
ST89-4573	ONG Transmission Co	Phillips Gas Pipeline Co	08-28-89	C	01-25-90	24.32
ST89-4574	ONG Transmission Co	Williams Natural Gas Co	08-28-89	C	01-25-90	24.32
ST89-4575	ONG Transmission Co	Natural Gas Pipeline Co. of America	08-28-89	C	01-25-90	24.32
ST89-4578	El Paso Natural Gas Co	San Diego Gas & Electric Co	08-29-89	G-S		
ST89-4577	Mid Louisiana Gas Co	Mobil Natural Gas, Inc	08-29-89	G-S		
ST89-4578	Mid Louisiana Gas Co	Shell Gas Trading Co	08-29-89	G-S		
ST89-4579	Mid Louisiana Gas Co	NGC Transportation, Inc	08-29-89	G-S		
ST89-4580	BP Gas Transmission Co	ANR Pipeline Co., et al	08-29-89	C	01-26-90	13.70
ST89-4581	ONG Transmission Co	Iowa Public Service Co	08-29-89	C	01-26-90	24.32
ST89-4582	Tennessee Gas Pipeline Co	Desoto Pipeline Co	08-29-89	B		
ST89-4583	Natural Gas Pipeline Co. of America	Seagull Marketing Services, Co	08-29-89	G-S		
ST89-4584	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	08-29-89	B		
ST89-4585	United Gas Pipe Line Co	Texican Natural Gas Co	08-28-89	G-S		
ST89-4586	ANR Pipeline Co	Nothern Illinois Gas Co	08-29-89	B		
ST89-4587	ANR Pipeline Co	Coastal States Gas Transmission Co	08-29-89	B		
ST89-4588	ANR Pipeline Co	Transtate Gas Service Co	08-29-89	G-S		
ST89-4589	ANR Pipeline Co	Phillips 66 Natural Gas Co	08-29-89	G-S		
ST89-4590	ANR Pipeline Co	Southeastern Michigan Gas Co	08-29-89	B		
ST89-4591	ANR Pipeline Co	Northern Illinois Gas Co	08-29-89	B		
ST89-4592	ANR Pipeline Co	Coastal Gas Marketing Co	08-29-89	G-S		
ST89-4593	Transok, Inc	Williams Natural Gas Co	08-29-89	C	01-26-90	32.50
ST89-4594	ANR Pipeline Co	Longhorn Pipeline Co	08-30-89	B		
ST89-4595	ANR Pipeline Co	BP Gas Transmission Co	08-30-89	B		

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ST89-4596	ANR Pipeline Co	Ohio Valley Gas Corp	08-30-89	B		
ST89-4597	ANR Pipeline Co	NGC Intrastate Pipeline Co	08-30-89	B		
ST89-4598	ANR Pipeline Co	Coastal States Gas Transmission Co	08-30-89	B		
ST89-4599	ANR Pipeline Co	Coastal States Gas Tranemission Co	08-30-89	B		
ST89-4600	Transcontinental Gas Pipe Line Corp	South Carolina Gas Pipeline Corp	08-30-89	B		
ST89-4601	Transcontinental Gas Pipe Line Corp	Bay State Gas Co	08-30-89	B		
ST89-4602	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Co	08-30-89	B		
ST89-4603	Transcontinental Gas Pipe Line Corp	Consolidated Fuel Corp	08-30-89	G-S		
ST89-4604	Tennessee Gas Pipeline Co	North Penn Gas Co	08-30-89	B		
ST89-4605	Tennessee Gas Pipeline Co	North Penn Gas Co	08-30-89	B		
ST89-4606	Enogex Inc	Phillips Gas Pipeline Co	08-30-89	C	01-27-90	43.57
ST89-4607	United Gas Pipe Line Co	Oxy U.S.A., Inc	08-30-89	G-S		
ST89-4608	Natural Gas Pipeline Co. of America	Sonat Marketing Co	08-30-89	G-S		
ST89-4609	El Paso Natural Gas Co	Meridian Oil Hydrocarbons, Inc	08-31-89	B		
ST89-4610	El Paso Natural Gas Co	Meridian Oil Hydrocarbons, Inc	08-31-89	B		
ST89-4611	Enserch Gas Transmission Co	Tennessee Gas Pipeline Co	08-31-89	C		
ST89-4612	Black Marlin Pipeline Co	Conoco, Inc	08-31-89	K-S		
ST89-4613	Pacific Gas Transmission Co	Intermountain Gas Co	08-31-89	B		
ST89-4614	Pacific Gas Transmission Co	Washington Water Power Co	08-31-89	B		
ST89-4615	Pacific Gas Transmission Co	Pacific Gas and Electric Co	08-31-89	B		
ST89-4616	Pacific Gas Transmission Co	Pacific Gas and Electric Co	08-31-89	B		
ST89-4617	Transwestern Pipeline Co	Gas Co. or NM (Div. Public Serv. Co. NM)	08-31-89	B		
ST89-4618	Transwestern Pipeline Co	Pacific Gas and Electric Co	08-31-89	B		
ST89-4619	ANR Pipeline Co	Transco Energy Marketing Co	08-31-89	G-S		
ST89-4620	ANR Pipeline Co	Xebec Gas Co	08-31-89	G-S		
ST89-4621	ANR Pipeline Co	Coastal States Gas Transmission Co	08-31-89	B		
ST89-4622	ANR Pipeline Co	Odeco Oil Gas Co	08-31-89	G-S		
ST89-4623	ANR Pipeline Co	Xebec Gas Co	08-31-89	G-S		
ST89-4624	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY. Inc	08-31-89	B		
ST89-4625	Transcontinental Gas Pipe Line Corp	Union Gas Co	08-31-89	B		
ST89-4626	Transcontinental Gas Pipe Line Corp	Industrial Energy Services Co	08-31-89	G-S		
ST89-4627	Trans Texas Pipeline	Northern Natural Gas Co	08-31-89	C		
ST89-4628	Valero Transmission, L.P	Texas Eastern Transmission Corp	08-31-89	C		
ST89-4629	Southern Natural Gas Co	South Carolina Gas Pipeline Corp	08-31-89	B		
ST89-4630	Southern Natural Gas Co	Diamond Shamrock Offshore Partners L.P	08-31-89	G-S		
ST89-4631	Southern Natural Gas Co	Texican Natural Gas Co	08-31-89	G-S		
ST89-4632	Carnegie Natural Gas Co	Aristech Chemical Corp	08-31-89	G-S		
ST89-4633	Valero Transmission, L.P	Northern Natural Gas Co	08-31-89	C		
ST89-4634	Transok, Inc	Phillips Gas Pipeline Co	08-31-89	C	01-28-90	32.50
ST89-4635	Southern Natural Gas Co	Sonat Marketing Co	08-31-89	G-S		
ST89-4636	Southern Natural Gas Co	Gulf Ohio Corp	08-31-89	G-S		
ST89-4637	Southern Natural Gas Co	Phibro Distributions Corp	08-31-89	G-S		

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The intrastate pipeline has sought commission approval of its transportation rate pursuant to section 284.123(B)(2) of the commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the commission does not take action by the date indicated.

[FR Doc. 89-23507 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-49-000]

Petition to Reopen and Vacate Final Well Category Determination

September 28, 1989.

In the matter of: New York State Department of Environmental Conservation section 108 NGPA Determination, National Fuel Gas Supply Corp.; Potter No. SC-419 Well, FERC No. JD 83-27247.

Take notice that on July 17, 1989, the New York State Department of Environmental Conservation (New York) filed with the Commission a letter from National Fuel Gas Supply Corporation (National Fuel) requesting withdrawal of New York's determination that the Potter No. SC-419 well located in Steuben County, New York, qualified as a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA) and to permit National Fuel to withdraw its application for the determination.

In a letter dated August 16, 1989, National Fuel states that the production history which accompanied the section 108 filing with New York was incorrect and that the well produced in excess of 60 Mcf per day so that it did not qualify as a stripper well. National Fuel also submitted a refund report which indicates that on June 30, 1989, $515,906.55, consisting of $361,679.59 in principal and $154,226.96 in interest, was refunded to National Fuel, the purchaser.

Any person desiring to be heard or to protest in this proceeding should file a motion to intevene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days following publication of this notice in the Federal Register. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23506 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-241-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 28, 1989

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 25, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets as listed in Appendix A, attached to the filing.

Algonquin states that it wishes to participate in Texas Eastern Transmission Corporation's ("Texas Eastern") Transportation Assignment Program ("TAP Program") as authorized by the Commission's Order Amending Blanket Certificate issued August 22, 1989 in Docket No. CP88-136-007.

Algonquin states that it is filing new Rate Schedule ATAP and Form of Service Agreement applicable to Rate Schedule ATAP, to provide for the assignment by Algonquin, on either a firm or an interruptible basis, its firm transportation rights on Texas Eastern pipeline under Texas Eastern's Rate Schedule FT-1 ("FT-1 Service Rights").

Algonquin states that pursuant to the provisions of Rate Schedule ATAP, Rate Schedule ATAP will be available to any customer that has made an election to convert on a permanent basis from firm sales services under Rate Schedule F-1 and/or F-4 to firm transportation under Rate Schedule AFT-1 and/or has submitted a valid request pursuant to Section 3 of Rate Schedule ATAP which has been accepted by Algonquin.

Algonquin further states that pursuant to the provisions of Rate Schedule ATAP, Algonquin proposes to allow its AFT-1, and AIT-1 Shippers ("Assignees") to acquire, by means of assignment, Algonquin's FT-1 Service Rights on Texas Eastern's pipeline system under Algonquin's FT-1 Service Agreement with Texas Eastern. Algonquin states that Assignees must submit a request in writing ("Transportation Assignment Request") to Algonquin indicating their desire for such assignment of FT-1 Service Rights and their agreement to comply with the terms and conditions of Algonquin's Rate Schedule ATAP and Texas Eastern's TAP Program. Under Algonquin's proposal, Assignees may reassign to subsequent parties ("Secondary Assignees") without limit to the number of reassignments, their rights under the Transportation Assignment Request to FT-1 Service Rights on Texas Eastern's pipeline system.

Algonquin states that pursuant to the terms and conditions of Rate Schedule ATAP as contained in Algonquin's instant filing, Algonquin will assign its FT-1 Service Rights on a "first-come, first-serve" basis. For the purposes of determining service on a "first-come, first-served" basis, all requests received within five (5) business days from the date that Algonquin announces that it is accepting requests for transportation assignment shall be deemed to have been received simultaneously.

Angonquin states that in order to implement Rate Schedule ATAP in time for the winter season it is requesting an effective date of November 1, 1989.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23509 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-243-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 28, 1989.

Take notice that ANR Pipeline Company (ANR) on September 26, 1989, tendered for filing the following tariff sheets to be included in its FERC Gas Tariff, Original Volume No. 1.

Original Sheet No. 90C
Original Sheet No. 90D
Original Sheet No. 90E
Original Sheet No. 122
Original Sheet No. 123

The proposed effective date of these tariff sheets is October 1, 1989.

ANR states that the purpose of this filing is to place tariff sheets into effect which establish the procedures pursuant to Order No. 500 through which ANR will recover from its sales customers the buyout buydown fixed charges which Northern Natural Gas Company bills to ANR under section 2.104 of the Commission's General Policy and Interpretations. In particular, this filing is being made pursuant to section 2.104(e) of the Commission's General Policy and Interpretations which permits downstream pipelines to flow through approved upstream pipeline buyout buydown costs to their customers on an "as billed" basis.

ANR states that copies of its filing were served on each of ANR's sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.211, 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23510 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-217-004]

Hopewell Cogeneration Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

September 28, 1989.

On September 15, 1989, Hopewell Cogeneration Limited Partnership (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77207, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hopewell, Virginia. The facility will consist of three combustion turbine generators, three heat recovery steam generators. Thermal energy recovered from the facility will be used by the Aqualon Company in its manufacturing operations and space heating. The net electric power production capacity will be 356.5 MW. The primary source of energy will be natural gas. The installation of the facility commenced in July 1988 with a scheduled date of completion during the first half of 1990.

The original application for certification was granted on March 30, 1987 (38 FERC ¶62,326). The current recertification is requested due to change in ownership structure. One of

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the limited partners, Prince George Energy Company, is an indirect wholly owned subsidiary of SCECorp, an electric utility holding company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23501 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-15-002]

Mid Louisiana Gas Co.; Filing

September 27, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 25, 1989 tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets to become effective October 1, 1989:

	Superseding
First Substitute Seventieth Revised Sheet No. 3a.	Substitute Seventieth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of First Substitute Seventieth Revised Sheet No. 3a is to correct a typographical error contained on Substitute Seventieth Revised Sheet No. 3a.

Mid Louisiana requests that First Substitute Seventieth Revised Tariff Sheet No. 3a be accepted and allowed to become effective October 1, 1989.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such motions of protests should be filed on or before October 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23511 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-208-019, et al.]

Paiute Pipeline Co., et al.; Filing of Pipeline Refund Reports

September 28, 1989.

Take notice that the pipeline listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before October 20, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

Filing date	Company	Docket No.
11-9-88	Paiute Pipeline Company	RP88-208-019
8-15-89	Northwest Pipeline Corporation	RP72-154-020

[FR Doc. 89-23512 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-242-000]

Tennessee Gas Pipeline Co.; Filing

September 28, 1989.

Take notice on September 25, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 25, 1989:

Second Revised Sheet No. 106
Substitute Second Revised Sheet No. 111
Substitute Original Revised Sheet No. 111A
Substitute Third Revised Sheet No. 114
Second Substitute Second Revised Sheet No. 205
Second Revised Sheet No. 208
First Revised Sheet No. 208A
First Revised Sheet No. 208B
Second Revised Sheet No. 247
Second Revised Sheet No. 249
Second Revised Sheet No. 252
Second Revised Sheet No. 339
Second Revised Sheet No. 347

Tennessee states that the purpose of this filing is (1) to correct certain minor errors in the tariff, (2) to update provisions in the tariff concerning notices and other filings made to Tennessee, (3) to amend the form pursuant to which shippers request transportation service on Tennessee, (4) to amend Tennessee's balancing and scheduling provisions, and (5) to establish throughput requirements associated with the operation of Tennessee's compression facilities.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214). All such motions or protests should be filed on or before October 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23513 Filed 10-4-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50696]

Receipt of a Notification Application To Do Field Testing Using a Non-Indiginous Mircoorganism

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received from NNP, Inc. a notification application requesting permission to do small-scale field testing using a non-indiginous isolate of *Mamestra brassica* Nuclear Polyhedrosis Virus (NPV). This virus occurs naturally in several countries, and has been isolated in Bulgaria, Czechoslovakia, China, France, Germany, Japan, the Netherlands, and the Soviet Union. This product is being evaluated to determine efficacy on soybeans, corn, tobacco, and cotton for control of a wide variety of insects. All crops will be destroyed after tests have been completed.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (H7503C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2690)

SUPPLEMENTARY INFORMATION: EPA has received a notification for the purpose of using this strain of *Mamestra brassica* to evaluate the efficacy of the isolate, *Mamestra brassica* against the European corn borer in comparison to chemical pesticides. The material will be applied to less than 2 acres of corn in the State of Iowa. The application sites will be closely monitored to ensure that the product does not spread from the test sites. Long-term monitoring of the test site will be done to determine any persistence of this microorganism in the soil.

Following the review of this notification and any comments received in response to this notice, EPA will decide whether or not an experimental use permit is required and announce this decision in the **Federal Register.**

Dated: September 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23441 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50695; RFL-3656-8]

Receipt of a Notification Application To Do Field Testing Using a Non-Indiginous Microorganism

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received from NNP, Inc. a notification application requesting permission to do small-scale field testing using a non-indiginous isolate of *Beauvaria bassiana*, which was orginally isolated in the "Le Vesdille" region of France. The proposed testing will be done on corn, cotton, soybeans, and tobacco for control of a wide variety of insects. All crops will be destroyed after tests have been completed.

ADDRESS: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (H7503C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-2690)

SUPPLEMENTARY INFORMATION: EPA has received a notification for the purpose of using this strain of *Beauvaria bassiana* to evaluate the efficacy of the isolate, *Beauvaria bassiana* (LX1147-04) against the European corn borer in comparison to chemical pesticides. The material will be applied to less than 2 acres of corn in the State of Iowa. The application sites will be closely monitored to ensure that the product does not spread from the test sites. Long-term monitoring of the test site will be done to determine any persistence of this microorganism in the soil.

Following the review of this notification and any comments received in response to this notice, EPA will decide whether or not an experimental use permit is required and announce this decision in the **Federal Register.**

Dated: September 20, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23440 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30081C; FRL 3592-8]

Cypermethrin; Issuance of Conditional Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conditional registration; request for comments.

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SUMMARY: This notice announces the issuance, pursuant to section 3(c)(7)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), of new conditional registrations for products containing the synthetic pyrethroid cypermethrin for use on cotton, pecans, and head lettuce to control various insects. Previous conditional registrations for these pesticide products expired June 15, 1989. The Agency has determined that issuing these new conditional registrations would not cause a significant increase in the risk of unreasonable adverse effects on the environment during the term of conditional registration.

DATE: Comments must be received on or before November 6, 1989.

ADDRESS: Comments, identified by the document control number [OPP–30081C], should be submitted by mail to:

Public Docket and Freedom of Information Section, Field Operations Division (H7504C), Office of Pesticide Programs, Environmental Protection Agency 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by making any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of this comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

George T. LaRocca, Product Manager (PM) 15, Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2400)

SUPPLEMENTARY INFORMATION: In the Federal Register of January 9, 1985 (50 FR 1112), EPA announced its decision to grant ICI Americas, Inc. (ICI), and FMC Corp. (FMC) conditional registrations for products containing the synthetic pyrethroid active ingredient (±) *alpha*-cyano (3-phenoxopheny1) methyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcylcopropanecarboxylate (cypermethrin) for use on cotton to control various cotton insects for a period which extended to December 31, 1988, to allow time for the submission and evaluation of a full field study (due in April 1986). That document set forth EPA's evaluation of other data that had been submitted, the product's regulatory history, and other facts about cypermethrin.

On June 12, 1985, and June 14, 1985, ICI and FMC, respectively, submitted letters to the Agency requesting an extension of time to April 15, 1988, for submittal of the field-monitoring study. Based upon the justification included in the request, the Agency extended the conditional registrations to December 31, 1988 (50 FR 39172).

On December 22, 1987, ICI, which was doing the study on behalf of both registrants, requested an administrative extension of 4 months for submission of this study in order to complete all of the biological and residue analysis necessary to prepare a final report. The Agency granted the extension for that short period of time to August 15, 1988, but retained the expiration date for the conditional registrations of December 31, 1988.

On August 23, 1988, ICI Americas, Inc., submitted the results of the cypermethrin Alabama field study. EPA reviewed the study and found that the data, as presented, were not scientifically adequate nor sufficiently complete to allow the Agency to evaluate the actual impact that the use of cypermethrin would have on aquatic life forms. The Agency's review of the data indicated that the deficiencies noted during the conduct of the study and in the results reported were serious enough to label the study as unacceptable. Both FMC and ICI disagreed with the Agency's conclusion and argued that the study was scientifically sound; however, not all data generated in the course of this study pertaining to runoff and residues in water and sediment had been submitted to the Agency. ICI and FMC stated that all information, including post-treatment year data from 1988, would be submitted in 1989 and indicated their belief that this additional information was necessary in order for the Agency to complete its risk assessment. On the basis of the above information, EPA seriously considered whether to issue new conditional registrations for cypermethrin. After much thought, on January 3, 1989, the Agency issued new conditional registrations of cypermethrin, which expired on June 15, 1989. (See the Federal Register of March 23, 1989 (54 FR 12010).)

The Agency issued these new conditional registrations for this short period of time to ICI and FMC in light of their agreement to:

1. Submit all data generated in the course of the cypermethrin Alabama pond study pertaining to runoff and residues in water and sediment to the Agency by January 15, 1989.

2. Submit all other data in existence and not previously submitted to the Agency, as well as all data generated in the future in the course of the cypermethrin Alabama pond study, as soon as possible.

3. Conduct an aquatic mesocosm study (a simulated 2-year field study) for which EPA would develop and provide the protocol no later than April 15, 1989, provided ICI/FMC could not persuade EPA that the cypermethrin pond study was acceptable.

4. Within 30 days of receipt of an EPA protocol for an aquatic mesocosm study, provide the Agency with written unconditional acceptance of the protocol and an unconditional commitment to conduct the study through completion. For any modificaiton of the proposal to be valid, it must be agreed to by EPA within the above mentioned 30-day period. The Agency reviewed the additional information on the pond study, reaffirmed its conclusion regarding the study's inadequacy, and determined that the aquatic mesocosm study would be necessary.

Following receipt of the EPA protocol on May 8, 1989, ICI/FMC provided EPA with written unconditional commitment to conduct the mesocosm study through completion and to follow the EPA protocol as written. After further discussion between EPA and ICI/FMC, a final version of the mesocosm protocol was issued to FMC and ICI on June 15, 1989.

Since FMC and ICI have met the conditions set forth in the January 3, 1989 Notice of Conditional Registration and a mesocosm study is still needed to complete a risk assessment and allow the Agency to evaluate the impact of use of cypermethrin on aquatic organisms, the Agency has decided to issue new conditional registrations for cypermethrin products for use on cotton, pecans and lettuce for such a period of time to allow for completion and Agency review of the mesocosm study. These conditional registrations will expire automatically on July 1, 1992, notwithstanding fulfillment of the mesocosm study. (Expiration of these conditional registrations will not give rise to hearing rights pursuant to FIFRA section 6(e).)

As required by section 3(c)(7)(B) of FIFRA, EPA has concluded that the continual use of cypermethrin during the term of conditional registration will not cause a significant increase in the risk of adverse effects to the environment. Upon receipt and evaluation of any additional data relating to the cypermethrin pond study, the mesocosm study, and all other available relevant data, EPA will decide whether the products could be registered under FIFRA section 3(c)(5) or if other regulatory action is warranted.

In accordance with FIFRA section 3(c)(2), a copy of the approved label and the list of data references used to support the conditional registrations are available for public inspection in the office of the Product Manager listed under **"FOR FURTHER INFORMATION CONTACT."** The data and other scientific information used to support registration, except for the material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, Arlington, VA 22202.

Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should identify the product name(s) and registration number(s) and specify the data or information desired.

Dated: September 1, 1989.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89–23443 Filed 10–4–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180817; FRL 3656–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 15 States and Puerto Rico listed below. Six crisis exemptions were initiated by various States, and one by the Wisconsin Department of Agriculture, Trade, and Consumer Protection for the month of May. These exemptions, issued during the month of June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied an exemption request from the Washington Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1806)

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of bromoxynil on rice to control broadleaf weeds; June 13, 1989, to August 1, 1989. (Jim Tompkins)

2. Idaho Department of Agriculture for the use of fenbutatin-oxide on hops to control two-spotted spider mites; June 5, 1989, to September 15, 1989. (Gene Asbury)

3. Iowa Department of Agriculture for the use of sethoxydim on lima beans to control wild proso millet and shattercane; June 28, 1989, to August 31, 1989. (Susan Stanton)

4. Louisiana Department of Agriculture for the use of bromoxynil on rice to control broadleaf weeds; June 13, 1989, to August 1, 1989. (Jim Tompkins)

5. Michigan Department of Agriculture for the use cryolite on potatoes to control the Colorado potato beetle; June 12, 1989, to September 30, 1989. (Libby Pemberton)

6. Michigan Department of Agriculture for the use of metolachlor on onions to control yellow nutsedge and prostrate; June 8, 1989, to September 1, 1989. (Robert Forrest)

7. Michigan Department of Agriculture for the use of imazethapyr (Pursuit) on dry edible beans to control broadleaf weeds; June 23, 1989, to July 15, 1989. (Robert Forrest)

8. Mississippi Department of Agriculture for the use of bromoxynil on rice to control broadleaf weeds; June 13, 1989, to August 1, 1989. (Jim Tompkins)

9. Nebraska Department of Agriculture for the use of sethoxydim on dry edible beans to control wild proso millet; June 19, 1989, to July 20, 1989. (Susan Stanton)

10. Nevada Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; June 30, 1989, to September 1, 1989. (Gene Asbury)

11. New Mexico Department of Agriculture for the use of sethoxydim on snap beans to control johnsongrass; June 19, 1989, to August 1, 1989. (Susan Stanton)

12. New York Department of Environmental Protection for the use vinclozolin on snap beans to control gray mold; June 15, 1989, to October 31, 1989. (Libby Pemberton)

13. Ohio Department of Agriculture for the use of chloramben on lettuce, endive, and escarole to control livid amaranth; June 14, 1989, to September 15, 1989. (Libby Pemberton)

14. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control white and gray mold; June 15, 1989, to October 31, 1989. (Libby Pemberton)

15. Oregon Department of Agriculture for the use of permethrin on red raspberries to control root weevils; June 10, 1989, to August 10, 1989. (Susan Stanton)

16. Oregon Department of Agriculture for the use of fenbutatin-oxide on hops to control two-spotted spider mites; June 5, 1989, to September 15, 1989. (Gene Asbury)

17. Puerto Rico Department of Agriculture for the use of triadimefon on coffee to control coffee rust; June 12, 1989, to February 22, 1990. Puerto Rico had initiated a crisis exemption for this use. (Libby Pemberton)

18. Texas Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; June 19, 1989, to May 11, 1990. Texas had initiated a crisis exemption for this use. (Susan Stanton)

19. Washington Department of Agriculture for the use of permethrin on red raspberries to control root weevils; June 15, 1989, to August 10, 1989. (Susan Stanton)

20. Washington Department of Agriculture for the use of fenbutatin-oxide on hops to control two-spotted spider mites; June 5, 1989, to September 15, 1989. (Gene Asbury)

21. Washington Department of Agriculture for the use chlorpyrifos on wheat to control Russian wheat aphid; June 21, 1989, to December 31, 1989. (Robert Forrest)

22. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of cypermethrin on dry bulb onions to control onion thrips; June 30, 1989, to August 30, 1989. (Gene Asbury)

23. Wisconsin Department of Agriculture, Trade, and Consumer

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Protection for the use of vinclozolin on snap beans to control white mold; June 15, 1989, to October 31, 1989. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Louisiana Department of Agriculture and Forestry on June 23, 1989, for the use of sodium chlorate on wheat to control weeds. This program has ended. (Susan Stanton)

2. Michigan Department of Agriculture on June 19, 1989, for the use of benomyl on field corn grown for seed to control anthracnose. This program has ended. (Libby Pemberton)

3. Minnesota Department of Agriculture on June 12, 1989, for the use of fenvalerate on small grains to control grasshoppers. Since it was anticipated that this program would be needed for more than 15 days, Minnesota is expected to request a specific exemption to continue it. (Libby Pemberton)

4. Mississippi Department of Agriculture and Commerce on June 1, 1989, for the use of sodium chlorate on wheat to control weeds. This program has ended. (Susan Stanton)

5. Texas Department of Agriculture on June 30, 1989, for the use of iprodione on rice to control sheath blight. This program has ended. (Libby Pemberton)

6. Texas Department of Agriculture on June 29, 1989, for the use of fenvalerate on sorghum to control sorghum headworms and sorghum midge. Since it was anticipated that this program would be needed for more than 15 days, Texas is expected to request a specific exemption to continue it. (Libby Pemberton)

7. Wisconsin Department of Agriculture, Trade, and Consumer Protection on May 27, 1989, for the use of sethoxydim on peas to control annual and perennial grasses. This program has ended. (Libby Pemberton)

EPA has denied a specific exemption request from the Washington Department of Agriculture on June 12, 1989, for the use of glyphosate on wheat to control volunteer rye. The Agency has denied the request because of the lack of progress toward registration of the proposed use. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: September 7, 1989.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 89-23444 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50

Office of Pesticides and Toxic Substances

[OPP-180819; FRL-36564]

Receipt of Application for Emergency Exemption To Use Hydrogen Cyanamide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use the active ingredient hydrogen cyanamide (Dormex) to promote uniform bud break in 19,100 acres of table grapes grown in Coachella Valley and 800 acres of table grapes grown in the Cadiz Valley. Dormex contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before October 20, 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180819," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-1806.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered plant regulator, hydrogen cyanamide (CAS 420-04-2), manufactured as Dormex, by SKW Trostberg Aktiengesellschaft, to promote uniform bud-break in table grapes grown in the Coachella Valley and Cadiz Valley, California. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Approximately 19,900 acres of table grapes, *Vitis* spp., are grown in the two valleys. The Applicant indicates that California growers of early market table grapes are facing economic losses due to increasing competition from foreign imports, particularly from Mexico. The Applicant states that table grapes grown in the two valleys may not experience adequate winter chilling to promote uniform bud-break and fruit ripening in the spring. As a result, cane growth can be delayed and uneven, causing the harvest to be late and allowing foreign competition to dominate the market. Currently there are no registered materials to promote uniform bud-break in grapes.

Dormex will be applied by ground at a maximum rate of 4 gallons (16 pounds active ingredient) per acre. Application will be made once in dormancy after pruning sometime between December 1 and February 15, 1990, to approximately 19,900 acres of table grapes.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Food and Agriculture.

Dated: September 18, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23445 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240086; FRL 3656-7]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 33 States and Puerto Rico. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460.

Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in May through July of 1989. Receipts of State registrations, will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 89 0007. Chevron Chemical Co., c/o Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on tomatoes to control western flower thrips. June 13, 1989.

EPA SLN No. AL 89 0008. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on tomatoes to control western flower thrips. June 13, 1989.

Arizona

EPA SLN No. AZ 89 0014. Snowden Enterprises, Inc. Registration is for The Fruit Doctor to be used on grapes in cold storage to control grey mold. October 3, 1989.

EPA SLN No. AZ 89 0015. Gowen Co. Registration is for Prokil Methyl Parathion 5 to be used on Chinese cabbage to control aphids. June 30, 1989.

EPA SLN No. AZ 89 0016. Gowen Co. Registration is for Prokil Methyl Parathion 6-3E to be used on Chinese cabbage to control aphids. June 30, 1989.

Arkansas

EPA SLN No. AR 89 0008. Valent U.S.A. Corp. Registration is for Orthene 90 S to be used on cotton to control flea hoppers and plant bugs. June 6, 1989.

EPA SLN No. AR 89 0009. ICI Americas, Inc. Registration is for Reflex 2 LC Herbicide to be used on soybeans to control broadleaf weeds. June 9, 1989.

California

EPA SLN No. CA 89 0015. Monrovia Nursey Co. Registration is for Chipco Ronstar G to be used on ornamentals not listed on the Federal label. March 10, 1989.

EPA SLN No. CA 89 0032. Bear Creek Production Co. Registration is for Dithane F-45 to be used on roses to control downy mildew, blackspot and rust. May 3, 1989.

EPA SLN No. CA 89 0033. Sun World International. Registration is for Clean Crop Dimethoate 267 Systemic Insecticide to be used on nonbearing mango trees to control citrus thrips. April 28, 1989.

EPA SLN No. CA 89 0035. Robert E. Jones. Registration is for Metasystox-R to be used on Christmas trees to control balsam twig aphids. May 10, 1989.

EPA SLN No. CA 89 0036. Microbio Resources, Inc. Registration is for Pyrellin E.C. to be used on microalgae to control protozoa. May 6, 1989.

EPA SLN No. CA 89 0038. Natures Harvest. Registration is for Metasystox-R Spray Concentrate to be used on flowers grown for dried flowers to control aphids, leafminers, white flies, mites, and leafhoppers. June 6, 1989.

EPA SLN No. CA 89 0039. Desert Ag Services. Registration is for Kelthane MF Agricultural Miticide to be used on jojoba grown for seed wax to control two-spotted spider mites. June 13, 1989.

EPA SLN No. CA 89 0040. University of California Cooperative Extension, Kern County. Registration is for Nemacur 3 to be used on apples to control nematodes. June 15, 1989.

Colorado

EPA SLN No. CO 89 0001. FMC Corp., Agricultural Chemical Group. Registration is for Furadan 4F to be used on winter wheat to control grasshoppers. April 4, 1989.

EPA SLN No. CO 89 0002. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Glean Herbicide to be used on permanent grass stands to control several weeds. April 4, 1989.

EPA SLN No. CO 89 0003. Fermenta Plant Protection Co. Registration is for Dacthal W-75 to be used on alfalfa grown only for seed to control dodder. April 4, 1989.

EPA SLN No. CO 89 0004. Scentry, Inc. Registration is for Tra-Kill Tracheal Mite Killer to be used on over-wintering honey bee hives to control tracheal mites. April 14, 1989.

EPA SLN No. CO 89 0005. E.I. du Pont de Nemours & Co., Inc. Registration is for DuPont Ally Herbicide to be used on preharvest grain treatment to control several weeds. June 1, 1989.

Delaware

EPA SLN No. DE 89 0002. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. March 21, 1989.

EPA SLN No. DE 89 0003. Valent U.S.A. Corp. Registration is for Cobra Herbicide to be used on soybeans to control several broadleaf weeds. June 28, 1989.

Georgia

EPA SLN No. GA 89 0003. Uniroyal Chemical Co. Registration is for Terracolor 10% Granular to be used on peanuts to control foot and stem rot. July 6, 1989.

EPA SLN No. GA 89 0004. Griffin Corp. Registration is for Kocide 101 to be used on pecans to control shuck and kernel rot and zonate leafspot. July 10, 1989.

Idaho

EPA SLN No. ID 89 0005. Ciba-Geigy Corp., Agricultural Div. Registration is for Ridomil 2E to be used on hops to control downy mildew. June 16, 1989.

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Illinois

EPA SLN No. IL 89 0003. ICI Americas, Inc. Registration is for Ambush Insecticide to be used on collards and turnips to control cabbage loopers, cabbage worms, diamondback moth, and cabbage aphids. June 9, 1989.

Indiana

EPA SLN No. IN 89 0001. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. April 1, 1989.

EPA SLN No. IN 89 0002. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on corn grown for seed to control Southern corn leaf blight. June 22, 1989.

EPA SLN No. IN 89 0003. FMC Corp., Agricultural Chemical Co. Registration is for Thiodan 3 EC Insecticide to be used on rape-seed to control several insect pests. July 17, 1989.

Louisiana

EPA SLN No. LA 89 0006. ICI Americas, Inc., Agricultural Products Div. Registration is for Fusilade 2000 Herbicide to be used on soybeans and cotton grown adjacent to sugarcane fields to control several weeds. May 4, 1989.

EPA SLN No. LA 89 0008. ICI Americas, Inc. Registration is for Reflex 2LC Herbicide to be used on soybeans to control several broadleaf weeds. May 31, 1989.

EPA SLN No. LA 89 0009. E.I. Du Pont de Nemours & Co., Inc. Registration is for Velpar Herbicide to be used on Bermudagrass to control smutgrass. June 12, 1989.

EPA SLN No. LA 89 0010. E.I. Du Pont de Nemours & Co., Inc. Registration is for Velpar L Herbicide to be used on Bermudagrass to control smutgrass. June 12, 1989.

EPA SLN No. LA 89 0011. FMC Corp., Agricultural Chemicals Group. Registration is for Ammo-Methyl 1 Parathion EC to be used on cotton to control several insect pests. July 12, 1989.

EPA SLN No. LA 89 0012. Rhone Poulenc Ag Co. Registration is for Rovral 4 Flowable to be used on rice to control sheath blight. July 21, 1989.

Maine

EPA SLN No. ME 89 0001. Rhone Poulenc Ag Co. Registration is for Asulox Herbicide to be used on nonbearing lowbush blue-berries to control bracken fern. June 19. 1989

Michigan

EPA SLN No. MI 89 0005. Platte Chemical Co. Registration is for Clean Crop Cucurbit EC Herbicide to be used on cucumbers, melons, and watermelons to control certain annual grasses and broadleaf weeds. April 21, 1989.

EPA SLN No. MI 89 0006. Fermenta Plant Protection Co. Registration is for Bravo C/M to be used on celery, carrots, and potatoes to control late blight and bacterial blight. July 7, 1989.

Mississippi

EPA SLN No. MS 89 0007. Fairfield American Corp. Registration is for Permanone 10% EC to be used on various indoor and outdoor areas to control mosquitoes, wasps, gnats, and skippers. May 9, 1989.

EPA SLN No. MS 89 0008. ICI Americas, Inc. Registration is for Reflex 2 LC Herbicide to be used on soybeans to control broadleaf weeds. May 12, 1989.

EPA SLN No. MS 89 0009. Ciba-Geigy Corp., Agricultural Div. Registration is for Cotoran DF to be used on cotton to control several broadleaf weeds. May 16, 1989.

EPA SLN No. MS 89 0010. Ciba-Geigy Corp., Agricultural Div. Registration is for Cotoran 4L to be used on cotton to control several broadleaf weeds. May 10, 1989.

EPA SLN No. MS 89 0011. Valent U.S.A. Corp. Registration is for Orthene Turf, Tree & Ornamental to be used on turf, trees, and ornamental plants to control imported fire ants. May 22, 1989.

EPA SLN No. MS 89 0012. Universal Cooperatives, Inc. Registration is for DSMA Liquid Herbicide to be used on cotton to control several weeds. July 14, 1989.

EPA SLN No. MS 89 0013. Universal Cooperatives, Inc. Registration is for MSMA Liquid Herbicide to be used on cotton to control several weeds. July 14, 1989.

EPA SLN No. MS 89 0014. Universal Cooperatives, Inc. Registration is for MSMA Liquid Herbicide to be used on cotton to control several weeds. July 14, 1989.

EPA SLN No. MS 89 0016. ICI Americas, Inc. Registration i for Karate Insecticide to be used on cotton to control several insect pests. July 20, 1989.

Missouri

EPA SLN No. MO 89 0005. ICI Americas, Inc. Registration is for Ordram 15G Herbicide to be used for preplant use on rice to control several grasses and weeds. April 21. 1989.

EPA SLN No. MO 89 0006. Valent U.S.A. Corp. Registration is for Cobra Herbicide to be used on soybeans for preemergent control of annual grass and broadleaf weeds. June 7, 1989.

EPA SLN No. MO 89 0007. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on corn grown for seed to control southern corn leaf blight. June 7, 1989.

Montana

EPA SLN No. MT 89 0010. Uniroyal Chemical Corp. Registration is for Comite® to be used on alfalfa grown for seed to control two-spotted spider mite complex. June 5, 1989.

Nebraska

EPA SLN No. NE 89 0006. Dow Chemical Co. Registration is for Tordon 22K Weed Killer to be used for rangeland and permanent grass pastures to control several weeds. April 19, 1989.

Nevada

EPA SLN No. NV 89 0003. FMC Corp. Registration is for Capture 2EC Insecticide/Miticide to be used on seed alfalfa to control lygus bugs and spider mites. May 4, 1989.

New Jersey

EPA SLN No. NJ 89 0005. Fairfield American Corp. Registration is for Rotacide EC to be used on vegetables and ornamentals, forest and shade, fruit and nut trees to control several insect pests. May 5, 1989.

EPA SLN No. NJ 89 0007. FMC Corp., Agricultural Chem. Div. Registration is for Command 4 EC Herbicide to be used for preemergence application to peas to control several grasses and broad-leaf weeds. May 9, 1989.

EPA SLN No. NJ 89 0008. Mobay Corp. Registration is for Guthion 35% WP Crop Insecticide to be used on parsley to control carrot weevils. May 12, 1989.

EPA SLN No. NJ 89 0009. FMC Corp., Agricultural Chem. Div. Registration is for Command 4 EC Herbicide to be used for preemergence application to soybeans to control several grasses and weeds. June 2, 1989.

New Mexico

EPA SLN No. NM 89 0002. Bureau of Pesticide Management, New Mexico Dept. of Agriculture. Registration is for Treflan EC to be used for postemergence application to chile peppers to control several weeds. May 24, 1989.

EPA SLN No. NM 89 0003. Bureau of Pesticide Management, New Mexico Dept. of Agriculture. Registration is for Treflan MTF to be used for postemergency application to chile peppers to control several weeds. May 24, 1989.

EPA SLN No. NM 89 0004. Bureau of Pesticide Management, New Mexico Dept. of Agriculture. Registration is for Treflan 5 to be used for postemergence application to chile peppers to control several weeds. May 24, 1989.

North Carolina

EPA SLN No. NC 89 0006. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. April 26, 1989.

EPA SLN No. NC 89 0007. Mobay Corp., Agricultural Chemicals Div. Registration is for Monitor 4 to be used on tomatoes to control several pests. May 2, 1989.

EPA SLN No. NC 89 0008. ICI Americas, Inc. Registration is for Karate Insecticide to be used on tobacco breeding plots and seed nurseries to control tobacco budworms. June 23, 1989.

EPA SLN No. NC 89 0009. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on corn to control corn leaf aphids. June 27, 1989.

North Dakota

EPA SLN No. ND 89 0001. Sandoz Crop Protection Corp. Registration is for Banvel Herbicide to be used on preharvest wheat to control several weeds. July 25, 1989.

Ohio

EPA SLN No. OH 89 0005. Rhone Poulenc Ag Co. Registration is for Larvin 3.2 Thiodicarb Insecticide to be used on sweet corn to control armyworms, corn earworms, and European corn borers. April 28, 1989.

EPA SLN No. OH 89 0006. FMC Corp., Agricultural Chemicals Group. Registration is for Thiodan 3 EC Insecticide to be used on rapeseed to control aphids, mites, and several pests. May 19, 1989.

Oklahoma

EPA SLN No. OK 89 0001. ICI Americas, Agricultural Products Div. Registration is for Karate Insecticide to be used on cotton to control several insect pests. May 3, 1989.

EPA SLN No. OK 89 0002. Valent U.S.A. Corp. Registration is for Orthene 90 S to be used on cotton to control fleahoppers, plantbugs, and thrips. May 15, 1989.

Oregon

EPA SLN No. OR 89 0003. Charles H. Lilly Co. Registration is for Lilly/Miller Rotefive to be used on apples and pears to control maggots, psylla, and codling moths. April 24, 1989.

EPA SLN No. OR 89 0004. Mobay Corp., Agricultural Chemicals Div. Registration is for Metasystox-R Spray Concentrate to be used on field-grown nursery stock to control aphids, mites, and scale. April 28, 1989.

EPA SLN No. OR 89 0005. Platte Chemical Co. Registration is for Clean Crop Phorate 20G to be used on potatoes to control several insect pests. April 16, 1989.

EPA SLN No. OR 89 0006. American Cyanamid Co. Registration is for Arsenal Herbicide Applicators Concentrate to be used on forestry land to control bigleaf maple and red alder. May 16, 1989.

EPA SLN No. OR 89 0007. Platte Chemical Co. Registration is for Clean Crop Sclerban 75 WDG to be used on potatoes to control white mold. May 16, 1989.

EPA SLN No. OR 89 0008. Ciba-Geigy Corp., Agricultural Div. Registration is for Ridomil 2E to be used on hops to control downy mildew. June 1, 1989.

EPA SLN No. OR 89 0009. E.I. du Pont de Nemours & Co. Registration is for Du Pont Asana XL Insecticide 0.66EC to be used on caneberries and raspberries to control aphids and several other pests. July 6, 1989.

EPA SLN No. OR 89 0010. Flora & Fauna Labs, Inc. Registration is for Deer-Away Big Game Repellent Powder BGR-P to be used on young Douglas-fir seedlings to control mountain beavers. July 7, 1989.

Pennsylvania

EPA SLN No. PA 89 0004. FMC Corp., Agricultural Chemicals Group. Registration is for Talstar 10 WP to be used on ornamental trees, shrubs, plants, and flowers to control several insect pests. May 8, 1989.

EPA SLN No. PA 89 0005. FMC Corp., Agricultural Chemicals Group. Registration is for Command 4 EC Herbicide to be used on soybeans for postemergence weed control. May 8, 1989.

EPA SLN No. PA 89 0006. Valent U.S.A. Corp. Registration is for Cobra Herbicide to be used on soybeans to control several weeds. June 20, 1989.

Puerto Rico

EPA SLN No. PR 89 0001. Ochoa Fertilizer Co., Inc. Registration is for Temik 10G to be used on bananas and plantains to control nematodes and banana corn weevils. June 9, 1989.

South Dakota

EPA SLN No. SD 89 0004. FMC Corp. Registration is for Furadan 4F Insecticide to be used on wheat, oats, and barley to control grasshoppers. June 30, 1989.

Tennessee

EPA SLN No. TN 89 0003. Vanderbilt University. Registration is for DRC–1339 (Starlicide) to be used on outside locations at a power plant and football stadium to control pigeons. May 4, 1989.

EPA SLN No. TN 89 0004. Van Waters & Rogers, Inc. Registration is for Van Waters & Rogers Standard 2,4–D Amine to be used on ponds, lakes, reservoirs, etc. to control water hyacinth. May 8, 1989.

EPA SLN No. TN 89 0005. USDA, APHIS, Animal Damage Control. Registration is for DRC–1339 (Starlicide) to be used on outside locations not readily used by children, pets, and/or domestic animals to control feral pigeons and common crows. May 24, 1989.

EPA SLN No. TN. 89 0006. Red Panther Chemical Co. Registration is for Red Panther DSMA Special to be used on cotton to control several weeds. June 27, 1989.

Texas

EPA SLN No. TX 89 0004. ICI Americas, Inc., Agricultural Products. Registration is for Karate Insecticide to be used on cotton to control several insect pests. May 2, 1989.

EPA SLN No. TX 89 0005. Fairfield American Corp. Registration is for PyraPerm 455 Dust to be used on rodent burrows to control fleas that otherwise serve as vectors of the bubonic plague from rodents to humans. June 12, 1989.

EPA SLN No. TX 89 0006. Bell Laboratories, Inc. Registration is for Quintox Rat and Mouse Bait to be used on homes and industrial and commercial buildings to control rats and mice. July 7, 1989.

EPA SLN No. TX 89 0007. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on peppers to control aphids, leafminers, thrips, and flea beetles. July 12, 1989.

EPA SLN No. TX 89 0008. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on peppers to control aphids, leafminers, thrips, and flea beetles. July 12, 1989.

Utah

EPA SLN No. UT 89 0001. Mobay Corp., Agricultural Chemicals Div. Registration is for Di-Syston 15% Granular to be used on wheat and barley to control several pests. April 17, 1989.

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Virginia

EPA SLN No. VA 89 0004. Valent U.S.A. Corp. Registration is for Cobra Herbicide to be used on soybeans to control several weeds. July 12, 1989.

EPA SLN No. Va 89 0005. Rhom and Haas. Registration is for Kelthane 35 Agricultural Miticide to be used on raspberries and blackberries to control mites. July 12, 1989.

Washington

EPA SLN No. WA 89 0009. Union Oil Co. of California. Registration is for Enquick to be used on canebarries to control primocanes. May 3, 1989.

EPA SLN No. WA 89 0010. FMC Corp., Agricultural Chemicals Group. Registration is for Capture 2EC Insecticide/Miticide to be used on alfalfa seed to control lygus bugs, weevils, aphids, and spider mites. May 3, 1989.

EPA SLN No. WA 89 0011. Drexel Chemical Co. Registration is for Drexel Diuron 4L to be used on perennial bluegrass grown for seed to control several broadleaf weeds. May 10, 1989.

EPA SLN No. WA 89 0012. Tri-River Chemical, Inc. Registration is for 2,4-DB 175 to be used on radishes grown for seed to control various weeds. May 18, 1989.

EPA SLN No. WA 89 0013. American Cyanamid Co. Registration is for Arsenal herbicide Applicators Concentrate to be used on forestry land to control bigleaf maple and red alder. May 28, 1989.

EPA SLN No. WA 89 0014. Webb Wright Corp. Registration is for Pyrellin EC to be used on spinach, lettuce, turnips, beans, and peas to control aphids, white flies, and several pests. June 6, 1989.

EPA SLN No. WA 89 0015. Ciba-Beigy Corp., Agricultural Div. Registration is for Ridomil 2E to be used on hops to control downy mildew. June 6, 1989.

EPA SLN No. WA 89 0016. Platte Chemical Co., Inc. Registration is for Clean Crop Dimethoate 400 to be used on lentils to control aphids and lygus. June 7, 1989.

EPA SLN No. WA 89 0017. Platte Chemical Co., Inc. Registration is for Clean Crop Sclerban 75 WDG to be used on potatoes to control white mold. June 12, 1989.

EPA SLN No. WA 89 0018. Wilbur Ellis Co. Registration is for Wilbur-Ellis Sulfur DF to be used on spearmint to control powdery mildew. July 7, 1989.

EPA SLN No. WA 89 0019. Valent U.S.A. Corp. Registration is for Dibrom 8 Emulsive to be used on alfalfa grown for seed to control lygus and thrips. June 22, 1989.

Wyoming

EPA SLN No. WY 89 0001. Fairfield American Corp. Registration is for PyraPerm 455 Dut to be used on ground squirrels, tree squirrels, chipmunks, and wild and domesticated rats, and mice to control fleas and other ectoparasites. May 31, 1989.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated: September 12, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23446 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

[PF-523; FRL 3656-2]

Pesticide Tolerance Petitions; Amendment and Withdrawals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an amendment to pesticide petition (PP) 7F3516 by the Rhone Poulenc Ag Co. and the withdrawal of PP 8F3657 and food additive petition (FAP) 8H5560 by the Ciba-Geigy Corp.

ADDRESS: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holiday.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attention: Product Manager (PM) named in the petition, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703-557-4416.	1921 Jefferson Davis Hwy., Arlington, VA.
Susan Lewis (Acting PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and a food additive petition as follows, proposing an amendment and two withdrawals of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Amended Petition

1. *PP 7F3516.* EPA has received from the Rhone Poulenc Ag Co., TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, an amendment to PP 7F3516, which proposed to amend 40 CFR 180.407 by proposing to establish a regulation to permit combined residues of the insecticides thiodicarb (dimethyl *N,N*-[thiobis[[(methylimino)carbonyl]]oxy]bis[ethan-imidothioate]) in or on leafy vegetables at 30.0 parts per million (ppm). Notice of this petition was published in the FEDERAL REGISTER of May 13, 1987 (52 FR 18019). Rhone Poulenc Ag Co. has amended the petition to request an increase from 30 to 35 ppm for the insecticide on the commodity. The proposed analytical method for determining residues is liquid gas chromatography. (PM 12)

Withdrawn Petitions

1. *PP 8F3657.* Ciba-Geigy Corp., P.O. Box 18300, Greenboro, NC 27419, filed PP 8F3657, notice of which was published in the FEDERAL REGISTER of October 12, 1988 (53 FR 39784), for the fungicide [R,S]-1-[2-(2,4-dichlorophenyl)-n-pentyl]-1H-1,2-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on apples at 0.5 ppm; eggs at 0.1 ppm; grapes at 1 ppm; kidney and liver of cattle, goats, hogs, horses, and sheep at 1 ppm; and meat, fat, and meat byproducts, excluding kidney and liver, of cattle, goats, hogs, horses, and sheep and meat, fat, and meat byproducts of poultry at 0.1 ppm; and milk at 0.1 ppm. This notice announces that the petitioner has withdrawn the petition without prejudice. (PM 21)

2. *FAP 8H5560.* Ciba-Geigy Corp. filed FAP 8H5560, notice of which was published in the **Federal Register** of October 12, 1988 (53 FR 39785), for the fungicide described in paragraph 1. above, in or on raisins at 5 ppm, apple pomace (dried) at 3 ppm, grape pomace (dried) at 16 ppm, grape pomace (wet) at 5 ppm, and raisin waste at 20 ppm. This notice announces that the petitioner has withdrawn the petition without prejudice. (PM 21)

Authority: 7 U.S.C. 136a.

Dated: August 3, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23442 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3263/T585; FRL 36563]

Oxyfluorfen; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the herbicide oxyfluorfen and its metabolites in or on the raw agricultural commodity alfalfa at 0.1 part per million (ppm).

DATE: This temporary tolerance expires December 31, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: JoAnne Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 30, 1987 (52 FR 49200), stating that a temporary tolerance had been extended for residues of the herbicide oxyfluorfen, 2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene, and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity alfalfa at 0.1 part per million (ppm). This tolerance is renewed in response to pesticide petition (PP) 5G3263, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

The company has requested a 1-year renewal of a temporary tolerance for residues of the herbicide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 707-EUP-110, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1989. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 23, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-23447 Filed 10-4-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Petition No. P6-89]

Motor Vehicle Manufacturers Association of the United States, Inc.; Application for Exemption of Vehicle Shipments From Portions of the Shipping Act of 1984; Filing

September 29, 1989.

Notice is hereby given that the Motor Vehicle Manufacturers Association of the United States, Inc. ("Petitioner") has applied for exemption pursuant to section 16 of the Shipping Act of 1984 ("the Act"), 46 U.S.C. app. 1715. Petitioner seeks an order from the Federal Maritime Commission exempting the carriage of motorized vehicles in lots of more than 50 vehicles per sailing, or moving under contracts of more than 300 vehicles in a three-month period, from section 8 and 10(b) (1)-(4), (6), and (10)-(12) of the Act, 46 U.S.C. app. 1707, 1709(b) (1)-(4), (6), and (10)-(12). Thus, the exemption would remove such motorized vehicle shipments from the tariff and service contract provisions of the Act, as well as related prohibited acts provisions of the Act.

Interested persons are requested to submit views or arguments on the application no later than November 17, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on counsel for Petitioner: Robert N. Kharasch, Esq., David P. Street, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., 1054 Thirty-First Street, NW., Washington, DC 2007.

Copies of the application are available for examination at the Washington, DC, office of the Commission, 1100 L Street, NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23555 Filed 10-4-89; 8:45 am]

BILLING CODE 6730-01-M

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FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 28, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the implementation of the following report

Report title: Survey of Currency Handling Practices of Depository Institutions.

Agency form number: FR 3060.

OMB Docket number: 7100-0241.

Frequency: One-time.

Reporters: Commercial banks, savings and loan associations, and credit unions in the U.S.

Annual reporting hours: 1384.

Estimated average hours per response: 1.5.

Number of respondents: 923. Small businesses are affected.

General description of report:

This survey will provide a general assessment of the costs incurred by depository institutions in the handling of United States paper currency, with particular attention to the effects of currency quality on handling costs. This survey will also determine the probable effects on depository institution currency handling costs that would be associated with changes in the quality of currency paid out by the Federal Reserve System.

Board of Governors of the Federal Reserve System, September 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23548 Filed 10-4-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 1989.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Duane S. Amundson* and E.J. Amundson, Henning, Minnesota; to acquire an additional 5.19 percent of the voting shares of Culbertson Ban Corp, Culbertson, Montana, and thereby indirectly acquire Culbertson State Bank, Culbertson, Montana.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Everett L. Mangum*, South Laguna, California; to acquire an additional 10.02 percent of the voting shares of Monarch Bancorp, Laguna Niguel, California, and thereby indirectly acquire Monarch Bank, Laguna Niguel, California.

Board of Governors of the Federal Reserve System, September 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23550 Filed 10-4-89; 8:45 am]

BILLING CODE 6210-01-M

Financial Institutions, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 C.F.R. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 26, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Financial Institutions, Inc.*, Warsaw, New York; to acquire 100 percent of the voting shares of Salamanca Trust Company, Salamanca, New York.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; First City Bancorp, Inc., Marietta, Georgia; and Suncoast Bancorp, Inc., Vero Beach, Florida; to acquire 100 percent of the voting shares of Barnett Bank of Southwest Georgia, Columbus, Georgia, a *de novo* bank. Barnett proposes to convert the charter of Barnett Federal Savings Bank, Columbus, Georgia, to that of a state-chartered commercial bank to be named Barnett Bank of Southwest Georgia, Columbus, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Exchange Corp.*, Cape Girardeau, Missouri; to acquire 100 percent of the voting shares of First Exchange Bank of North St. Louis County, Florissant, Missouri, a *de novo* bank.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American State Financial Corporation of Delaware*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Brownfield State Bank, Brownfield, Texas; American State Bank, Lubbock, Texas; Liberty State Bank, Lubbock, Texas; and American State Bank of Snyder, Snyder, Texas.

Board of Governors of the Federal Reserve System, September 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23551 Filed 10-4-89; 8:45 am]

BILLING CODE 6210-01-M

Chemical Banking Corp.; New York, N.Y.; Proposal To Conduct Private Placements as Agent of All Types of Securities and Engage in Full Service Brokerage Activities and Providing Financial Advisory Services

Chemical Banking Corporation, New York, New York ("Chemical"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.23(a)(3) of the Board's Regulation Y (12 C.F.R. 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, Chemical Securities, Inc., New York, New York ("Company"), in the placement, as agent for issuers, of all types of securities, providing investment advisory and brokerage services on a combined basis, and providing financial advisory services.

Chemical is currently authorized to engage indirectly in providing discount brokerage and investment and financial advisory services, as well as underwrite and deal in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks are authorized to underwrite and deal in under 12 U.S.C. §§ 24 and 335. Chemical is also authorized to engage through Company in underwriting and dealing to a limited extent in commercial paper, residential mortgage-backed securities, municipal revenue bonds and consumer receivable-related securities.

Chemical proposes to provide investment advisory and brokerage services on a combined basis subject to all of the conditions of 12 CFR 225.25(b)(15), Bank of New England Corporation, 74 Federal Reserve Bulletin 700 (1988), and PNC Financial Corp, 75 Federal Reserve Bulletin 396 (1989), including brokering and recommending to institutional customers securities in which Company has a principal's position as permitted in Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 695 (1988).

Chemical also proposes that Company will provide financial advisory services including: (i) Providing advice regarding the structuring of, and arranging loan syndications and similar transactions; (ii) providing advice regarding the structuring of, and arranging, "swaps", "caps", and similar transactions relating to factors such as interest rates, currency exchange rates, prices and economic and financial indices; (iii) providing advice in connection with financing transactions, including but not limited to advice with respect to alternative financing or capital structures; (iv) arranging equity and/or debt financing for transactions, and assisting in structuring and negotiating the terms of specific financings; (v) Providing valuation services; (vi) advising in connection with merger, acquisition, joint venture and divestiture considerations; (vii) rendering fairness opinions in connection with merger, acquisition and similar transactions; and (viii) conducting feasibility studies for corporations.

Chemical has committed to abide by the conditions set out in the Board's Order in Scandinavian Bank Group plc, 75 Federal Reserve Bulletin 311 (1989), with respect to Company's financial advisory service activities.

Chemical has also applied to engage, through Company, in the placement, as agent for issuers, of all types of securities within the following limitations: (i) Company will act only as agent, without recourse, solely upon the order and for the account of clients, or as "riskless principal", and will not assume market risk with respect to the securities being placed; (ii) Company will place securities only with a limited number of financially sophisticated institutions and individuals, and will not offer securities to the general public or make any general solicitation or advertisement of the securities it privately places, (Company will not engage in "best efforts" underwriting as part of the proposed activities); (iii) Company will not purchase or repurchase for its own account, or inventory overnight any securities placed by the Company, however Company may engage in riskless principal transactions not involving a foreign affiliate of Company; (iv) Company will comply with all applicable rules and regulations of the Securities and Exchange Commission and state securities commissions, as well as the applicable Rules of Fair Practice of the National Association of Securities Dealers or the rules of the applicable self-regulatory organization.

Company and its affiliates will also abide by the conditions numbered 5-9, 11, 13-16, and 19 contained in the Board's Orders authorizing Chemical to underwrite and deal to a limited extent in certain securities, as if references in such conditions to securities underwritten or distributed and to underwriting and distribution were references to securities privately placed and to private placement, as the context may require. *See Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987); and *Chemical New York Corporation*, 73 Federal Reserve Bulletin 616 (1987). *See also, Citicorp, J.P. Morgan and Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987).

The Board has not previously determined that the proposed combination of activities is permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be

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a proper incident thereto." Chemical maintains that the proposed placement activities are closely related to banking because banks generally provide private placement services.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Chemical contends that permitting Company to engage in the proposed activities on a consolidated basis at the same location would result in increased efficiencies for Chemical as well as increased convenience for customers. Furthermore, states Chemical, any potential conflicts of interest that might be said to arise from the proposed activities are ones that banks have been managing successfully for years in conducting placement activities, and nonetheless are adequately addressed by the commitments noted above, as well as the disclosure obligations and antifraud provisions of the various federal securities laws, and the anti-tying provisions of various banking and antitrust statutes including the Bank Holding Company Act and the Federal Reserve Act.

Chemical further contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on Securities Industry Ass'n v. Board of Governors, 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 25, 1989.

Board of Governors of the Federal Reserve System, September 29, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23552 Filed 10-4-89; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, October 26. The meeting, which will be open to public observation, will take place in the Board Room of the Eccles Building. The meeting is expected to begin at 9:00 a.m. and to continue until 5:00 p.m. with a lunch break from 1:00 until 2:00 p.m. The Eccles Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. **Home Mortgage Disclosure Revisions** Discussion of the Board's proposal to implement recent statutory amendments requiring depository institutions and mortgage companies to report information about the race, gender, and income levels of mortgage applicants and borrowers.
2. **Community Development Credit Unions** Discussion led by the Community Affairs Committee on community development credit unions and their work.
3. **Levels of Consumer Indebtedness and Personal Bankruptcies** Briefing by Board staff on nationwide trends regarding levels of consumer's indebtedness and personal bankruptcy filings; and discussion led by the Consumer Education Committee.
4. **The Use of Credit Cards in Telemarketing Operations** Discussion led by the Consumer Credit Committee on problems related to the use of credit cards in telemarketing programs and whether legislative remedies or voluntary industry actions should be used to address these problems.
5. **Committee Reports** Progress reports from Council committees on their work for the year.
6. **Members Forum** Views of individual Council members regarding ways to promote affordable housing for low-income and older Americans (with emphasis on the contributions that financial institutions can make).

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, October 21, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson, (202) 452-3544.

Board of Governors of the Federal Reserve System, September 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23549 Filed 10-4-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Determination of Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Request for public comment on the use of Gross Registered Tonnage (GRT) [1] as reported by Lloyd's Registry of Shipping in the determination of fees collected for sanitation inspections of cruise ships and the fee schedule for an extra small ship.

SUMMARY: Public comment is requested on the GRT as reported by Lloyd's Registry of Shipping as the basis for the determination of fees for sanitation inspections of passenger cruise ships and the fees to be set for small passenger cruise ships currrently inspected under the Vessel Sanitation Program, Centers for Disease Control (CDC).

DATE: Comments must be received on or before November 6, 1989.

ADDRESS: Comments should be mailed to Director, Center for Environmental Health and Injury Control (F29), Centers for Disease Control, 1600 Clifton Road NE, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephone: FTS: 236-4111, Commercial: (404) 488-4111.

[1] GRT-Gross tonnage in cubic feet, as shown in Lloyd's Registry of Shipping.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The purpose of this announcement is to set out for public comment administrative policies for charges for vessel sanitation inspections conducted by CDC.

A notice of request for public comment on a proposal for collection of fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program, CDC, was published in the **Federal Register** on Friday, July 17, 1987 (52 FR 27060); a subsequent amendment to extend the comment period an additional 30 days was published in the **Federal Register** on Wednesday, August 12, 1987 (52 FR 29889). The notice providing the Department's response to the comments received and setting forth the schedule of fees to be charged for 1988 was published in the **Federal Register** on Tuesday, November 24, 1987 (52 FR 45019). A revised fee schedule for 1989 was published in the **Federal Register** on Thursday, November 3, 1988 (53 FR 44526).

The **Federal Register** Notice of July 17, 1987 (52 FR 27060), cited the appropriate authority for the vessel sanitation inspections (Public Health Service Act Sections 361-369, 42 U.S.C. 264-272) and the authority to collect fees for the full costs of service (Pub L. 99-551, Sec. 101(i)).

The schedule of fees set for in the public notices are based on the Gross Registered Tonnage (GRT) of the passenger vessels as reported by Lloyd's Registry of Shipping. Use of GRT as the basis for determining fees was suggested as being the most reasonable and equitable since the number and size of the food service areas and the size of the onboard water systems, and therefore the complexity and length of sanitation inspections, are generally a function of the vessel's GRT. At the time public comments were solicited on determination of fees for sanitation inspections, there were no objections received regarding the use of the GRT as reported by Lloyd's Registry of Shipping. It has recently been brought to the Department's attention that the method of determining the gross tonnage varies from country to country and is not always consistent. The most consistent method comparing ships of different countries registries is that used by Lloyd's Registry of Shipping. The Department is aware of a company which questioned the GRT of one of its vessels and submitted to the Vessel Sanitation Program certification from Lloyd's Registry of Shipping for a change in the GRT. There has been instances when other companies petitioned Lloyd's Registry of Shipping for an adjustment to a certified GRT and the gross tonnage has not yet been changed.

In order to assure a consistent and fair determination of tonnage for the purpose of establishing sanitation inspection fees, the Department will continue to use the report from Lloyd's Registry of Shipping as the accepted GRT. Companies wishing to adjust the GRT used by the Department to establish sanitation inspection fees should submit certification from Lloyd's Registry of Shipping showing the changed GRT. In the interim, the Department will continue to assess sanitation fees based upon GRTs in the current Lloyd's Registry of Shipping.

Public comment is requested on the most fair and equitable method of determining the gross tonnage of a vessel for the purpose of calculating fees to be charged for vessel sanitation inspections.

In addition, public comment is requested on the proposed method of setting fees for vessels of less than 15,000 GRT. The current size/cost factor is as follows:

Size	Cost factor
Small ship <15,000 GRT.	Avg. Cost × 0.5
Medium Ship 15,000-30,000 GRT.	Avg. Cost × 1.0
Large Ship >30,000-65,000 GRT.	Avg. Cost × 1.5
Extra Large Ship >65,000 GRT.	Avg. Cost × 2.0

There are a number of vessels whose tonnage does not exceed 3,000 GRT but who meet all other criteria for sanitation inspections. The number of passengers on board these small vessels varies from 40 to 140. The Department proposes to revise the schedule of sanitation inspection fees by adding an additional category of Extra Small Ship (below 3,000 GRT) and adjusting the size range of a Small Ship to 3,000-15,000 GRT. The fee for the Extra Small Ship would be one-fourth (0.25) the amount charged for a medium vessel (15,001-30,000 GRT).

Dated: September 29, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-23546 Filed 10-4-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87B-0025]

Preproduction Quality Assurance Planning; Availability of Recommendations for Medical Device Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers—September 1989." These recommendations are intended to assist medical device manufacturers in planning and implementing a preproduction quality assurance program. Such a program could provide additional assurance of the safety and effectiveness of the device design, prior to the manufacturer releasing the design to production. A draft document was previously made available for public comment.

ADDRESSES: Submit written requests for single copies of the final recommendations to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597 (toll-free outside MD, 800-638-2041). Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The final document and the previous draft are on file and are available for review at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: W. Fred Hooten, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1128.

SUPPLEMENTARY INFORMATION: FDA, through the Center for Devices and Radiological Health (CDRH), develops and carries out a national program to ensure the safety and effectiveness of medical devices. FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the agency. Accordingly, FDA is making available these recommendations under 21 CFR 10.90(c). As such, the recommendations are not legally binding on medical device manufacturers. The recommendations contain preproduction practices which are intended to minimize design defects

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that have resulted in device recalls and to ensure the safety and effectiveness of device designs before their release to production.

In monitoring device recalls, FDA has compiled data which show that from October 1983 to November 1987 approximately 45 percent of all recalls were due to preproduction-related problems, i.e., problems or deficiencies incorporated into the device design during the preproduction phase. FDA believes that use of these recommendations will help to reduce the number of design flaws in medical devices and thereby improve their overall safety and effectiveness.

In the **Federal Register** of May 19, 1987 (52 FR 18747), FDA announced the availability of a draft document entitled "Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers—May 1987." Interested persons were invited to comment during a 90-day period. As a result of that notice, the agency received 33 comments from 4 parties: a law firm, 2 manufacturers' associations, and 1 manufacturer of medical devices. In addition to these comments, the agency received 28 comments from the Good Manufacturing Practice Advisory Committee and the American Society for Quality Control. All of the comments were carefully reviewed and a number of changes were made in the recommendations as a result of the review.

Copies of the recommendations are on file and available for review in the Dockets Management Branch (address above). Single copies of the recommendations may be obtained from the Division of Small Manufacturers Assistance (address above), which also will, upon request, provide information regarding how to obtain copies of the references identified in Appendix II to the recommendations.

Interested persons may at any time submit to the Dockets Management Branch written comments regarding the recommendations identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments to or revisions of the recommendations are warranted. Two copies of comments are to be submitted, except that individuals may submit single copies. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23564 Filed 10-4-89; 8:45 am]

BILLING CODE 4160-10-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

Agency: Health Care Financing Administration, HHS. The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revision; *Title of Information Collection:* Quarterly Showing; *Form Number:* HCFA-R-41; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 188; *Average Hours per Response:* 45; *Total Estimated Burden Hours:* 8,460 (Reporting) and 752 (Recordkeeping) for a total of 9,212 hours.

2. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements at 42 CFR 1004.40, 1004.50, 1004.60 and 1004.70 (Peer Review Organizations Sanctions); *Form Number:* HCFA-R-65; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 1,080; *Average Hours per Response:* 28.4; *Total Estimated Burden Hours:* 30,672.

3. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in Alternative Sanctions for Long Term Care Facilities, 42 CFR 442.118; *Form Number:* HCFA-R-93; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 686; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 686.

4. *Type of Request:* Extension; *Title of Information Collection:* Hospice Survey Report Form; *Form Number:* HCFA-449; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 560; *Average Hours per Response:* 3; *Total Estimated Burden Hours:* 1,680.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Approval as a Supplier of ESRD Services; *Form Number:* HCFA-3402; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 800; *Average Hours per Response:* 166; *Total Estimated Burden Hours:* 133.

6. *Type of Request:* Extension; *Title of Information Collection:* Conditions of Participation for Long Term Care Facilities for the Mentally Retarded; *Form Number:* HCFA-R-120; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 3,660; *Average Hours per Response:* 14.8; *Total Estimated Burden Hours:* 54,181.

7. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements Concerning Systems Performance Review (SPR); *Form Number:* HCFA-R-86; *Frequency:* Not applicable—recordkeeping; *Respondents:* State/local governments; *Estimated Number of Recordkeepers:* 22; *Average Hours per Recordkeeper:* 2,000; *Total Estimated Burden Hours:* 44,000.

8. *Type of Request:* Revision; *Title of Information Collection:* Home Health Agency Certification and Survey Report Form; *Form Number:* HCFA-1515 and 1572; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 3,180; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 5,565.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Home Office Cost Statement; *Form Number:* HCFA-287; *Frequency:* Annually; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 850; *Average Hours per Response:* 328 (Reporting) and 138 (Recordkeeping); *Total Estimated Burden Hours:* 278,800 (Reporting) and 117,300 (Recordkeeping) for a total of 396,100.

10. *Type of Request:* Extension; *Title of Information Collection:* Application for Hospital Insurance; *Form Number:* HCFA-18; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 50,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 12,500.

11. *Type of Request:* Extension; *Title of Information Collection:* Organ Procurement Agency/Histocompatibility Laboratory Statement of Reimbursable Costs; *Form Number:* HCFA-216; *Frequency:* Annually; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 97; *Average Hours per Response:* 45; *Total Estimated Burden Hours:* 4,365.

12. *Type of Request:* Revision; *Title of Information Collection:* Demonstration Cost Report; *Form Number:* HCFA-2552-DEMO; *Frequency:* Annually; *Respondents:* All hospitals in the States of California and Colorado; *Estimated Number of Responses:* 700; *Average Hours per Response:* 150; *Total Estimated Burden Hours:* 105,000. Notice of a request for OMB expedited review for HCFA-2552-DEMO was published in the **Federal Register** of August 28, 1989 (54 FR 35535); however, HCFA has withdrawn the request for expedited review.

Additional Information or Comments: Call the Reports Clearance Office on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-23581 Filed 10-4-89; 8:45 am]

BILLING CODE 4120-03-M

Region VI—Dallas; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pp. 56927-56928, dated Thursday, November 19, 1981, and Vol. 48, No. 196, pp. 46446-46447, dated Wednesday, October 12, 1983, Vol. 52, No. 178, pp. 34849-34850, dated Tuesday, September 15, 1987, Vol. 53, No. 139, pp. 27401-27402, dated Wednesday, July 20, 1988, Vol. 54, No. 92, pp. 20925-20926, dated Monday, May 15, 1989, Vol. 54, No. 95, pp. 21476-21479, dated Thursday, May 18, 1989, and Vol. 54, No. 102, pp. 22955-22956, dated Tuesday, May 30, 1989, is amended to reflect a reorganization within Region VI, Office of the Associate Administrator for Operations (AAO). The regional office is reorganizing from a functional structure to a programmatic structure with respect to the administration of the Medicare and Medicaid programs. The reorganization is similar to those in Regions II, IV, VII, IX, and X. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicaid and the Division of Medicare.

The specific amendments to Part F. are described below

- Section FP.20.D.3., Division of Financial Operations (FPD (V, VI)C), is amended by deleting Region VI from the title. The new section title reads: Section FP.20.D.3., Division of Financial Operations (FPD (V)C).
- Section FP.20.D.4., Division of Program Operations (FPD (V, VI)D), is amended by deleting Region VI from the title. The new section reads: Section FP.20.D.4., Division of Program Operations (FPD (V)D).
- Section FP.20.D.5., the Division of Medicaid (FPD(I, II, III, IV, VII, VIII, IX and X)E) is amended to include Region VI. The new section reads:

5. Division of Medicaid (FPD(I, II, III, IV, VI, VII, VIII, IX and X)E).

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activities under title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to states on freedom of choice waivers; reviews and provides comments to the central office on waiver requests; and monitors the approved waiver requests. Provides consultation to States in the administration of the amount, duration, scope, and payment of health services available under the State program. Monitors, reviews, and approves (after central office concurrence for hospitals and long-term care facilities) State payment systems and determines the allowability or non-allowability of claims for Federal financial participation (FFP); and where State expenditures have not been in accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers payment action on questionable State claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending FFP on behalf of State payments to title XIX provider institutions and the recovation of such suspension orders. Supports, evaluates, and provides advice on State management information and claims payment systems. Implements title XIX special iniatives, such as prepaid health plans, health maintenance organizations, and other special or experimental programs, and operations of major management initiatives such as quality control. Where appropriate, provides an opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, congressional, provider, and public inquiries concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

- Section FP.20.D.6., the Division of Medicare (FPD(I, II, III, IV, VII, VIII, IX and X)F) is amended to include Region VI. The new section reads:

6. Division of Medicare (FPD(I, II, III, IV, VI, VII, VIII, IX and X)F).

Under the direction of HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers, physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General, and other organizations and individuals concerned with program operations. Assures the continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts a quality assurance programs and onsite performance appraisals and analyzes statistical

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performance reports. Negotiates and approves contractor budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, monitors banking activities, and evaluates the cost allocation procedures of contracts. Conducts contractor appraisals. Interprets HCFA's institutional payment policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with peer review organizations. Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes responsibility for program training and assures timely responses to congressional and public inquiries. Relates appropriately to central office components such as providing feedback on operations, activities, and problems, and by providing regional perspectives in the development of Agency policies, objectives, and work plans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Dated: September 25, 1989.

Robert A. Streimer,

Acting Associate Administrator for Management.

[FR Doc. 89-23465 Filed 10-4-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement for Nurse Anesthetist Traineeship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Nurse Anesthetist Traineeship Grants will be accepted under the authority of section 831 of the Public Health Service Act, as amended by Title VII of Pub. L. 100-607.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 831 of the Public Health Service Act, as amended, authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists and for projects to develop and operate programs for the education of nurse anesthetists.

This announcement under section 831 is limited to traineeship assistance. Another FY 1990 announcement will be issued to cover requests for program support.

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with full-time nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs and must currently have full-time students who are registered nurses who are enrolled beyond the 12th month of study in the nurse anesthetist training program.

Review Criteria

To receive support, applicants must meet the requirements of final regulations in 42 CFR part 74, subpart F as specified below.

The review of applications will take into consideration the following criteria:

(a) The qualifications of the Program Director;

(b) The number of full-time registered nurse students enrolled in the program who have completed 12 months of study; and

(c) The level of student support for nurse anesthetist training provided by the applicant.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups or applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The Administration does not intend to apply any funding priorities or special considerations in the review of applications for Fiscal Year 1990.

Funding Preferences for Fiscal Year 1990

In determining the funding of applicants which have been recommended for approval, preference will be given to applications which satisfactorily demonstrate a commitment to increased enrollment and retention of minority and financially needy students in their programs or show evidence of efforts to recruit minority and financially needy students. "Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic.

"Financially needy" means that a student has exceptional financial need. For purposes of this program a student will have exceptional financial need if the school determines that the student's resources do not exceed the lesser of $5,000 or one-half of the cost of attendence at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need.

The Department notes that all eligible applications will be reviewed and given consideration for funding.

These funding preferences were implemented in 1989 and are being extended for Fiscal yeart 1990.

In determining the amount of the grant award, the Department will use a formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

The application deadline date is November 1, 1989.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

For specific guidelines and information regarding this program contact:

Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5763.

Requests for application materials, questions regarding grants policy and completed applications should be directed to:

Grants Management Officer (A-22), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 208547, Telephone: (301) 443-6915.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 7, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-23451 Filed 10-4-89; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduling to meet during the month of October 1989.

Nome: Advanced General Dentistry Review Committee.

Date and Time: October 10-12, 1989, 8:30 a.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on October 10, 8:30 a.m.-3:30 a.m.
Closed for Remainder of Meeting.

Purpose: The Avanced General Dentistry Review Committee shall review applications from public and nonprofit private schools of dentistry or accredited postgraduate dental training institutions that plan, develop and operate an approved residency program or advanced educational program in the general practice of dentistry, including the support of trainees in such programs who plan to specialize in the practice of general dentistry.

Agenda: The open portion of the meeting will cover welcome and opening remarks, legislative updates, and overview of the review process. The meeting will be closed to the public on October 10, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Actding Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Richard Weaver, Executive Secretary, Advanced General Dentistry Review Committee, Room 8C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6837.

Agenda Items are subject to change as priorities dictate.

Dated: October 2, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-23723 Filed 10-4-89; 8:45 am]

BILLING CODE 4160-15-M

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proce dings brought by the filing of petitions for compensation under the Program, the United States Claim Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally contact the Clerk, United States Claims Court, 717 Madison Place, NW. Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensaton for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Tables set forth in section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the Federal Register a notice of each petition filed. Set forth below is a list of petitions received by PHS from August 4 through September 25, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustaineed, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person

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choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Mark Faith on behalf of Michael T. Faith, Deceased, Bowling Green, Kentucky, Claims Court Number 89–88 V.

2. Heidi Ann Badman on behalf of James W. Badman, Deceased, Elkhart, Indiana, Claims Court Number 89–89 V.

3. Melissa Hines on behalf of Amber Sevier, Orlando, Florida, Claims Court Number 89–90 V.

4. Steven & Joan Gresh on behalf of Megan A. Gresh, Colorado Springs, Colorado, Claims Court Number 89–91 V.

Dated: September 29, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–23565 Filed 10–4–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 18–19, 1989, in Building 31C, Conference Room 7, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:15 a.m. on October 18, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:15 a.m. until recess on October 18, and from 8:30 a.m. until adjournment on October 19. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301)496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Olivia T. Preble, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 3A10, Bethesda, Maryland 20892, telephone (301–496–8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: September 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23596 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for November 1989.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Dote of Meeting: November 3–4, 1989.

Place of Meeting: Hyatt Regency Phoenix, 122 North Second Street, Phoenix, Arizona.

Open: November 3, 1989, 6:00 p.m.—7:00 p.m.

Closed: November 3, 1989, 7:00 p.m.—12:00 p.m. November 4, 1989, 8:30 a.m.—adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496–1485.

Date of Meeting: November 7–8, 1989.

Place of Meeting: American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, Maryland.

Open: November 7, 1989, 8:30 a.m.—9:30 a.m.

Closed: November 7, 1989, 9:30 a.m.—5:00 p.m. November 8, 1989, 8:00 a.m.—adjournment.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Dote of Meeting: November 20–21, 1989.

Place of Meeting: Executive Plaza North, Conference Rm. H, 6130 Executive Blvd, Rockville, Maryland.

Open: November 20, 1989, 9:00 a.m.—10:00 a.m.

Closed: November 20, 1989, 10:00 a.m.—5:00 p.m., November 21, 1989, 9 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Progam No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23597 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee of the National Institute on Deafness and Other Communication Disorders, October 16–17, 1989, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

This meeting will be open to the public on October 16 from 8:30 a.m. to 9:00 a.m. to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

This meeting will be closed to the public on October 16 from 9:00 a.m. to recess and on October 17 from 8:30 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion on personal privacy.

A summary of meeting, roster of committee members, and other information pertaining to the meeting can be obtained from Dr. Marilyn Semmes, Executive Secretary of the Communication Disorders Review Committee, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: September 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23598 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institutee of Dental Research, November 7–8, 1989, in the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814. The Committee will meet in the Charles Room. The meeting will be open to the public from 9 a.m. to 9:30 a.m. on November 7 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 7 from 9:30 a.m. to recess, and on November 8 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Rose Marie Petrucelli, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13–122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845—Dental Research Institute; National Institutes of Health.)

Dated: September 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23599 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, December 7 and 8, 1989, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. on December 7 and from 9:00 a.m. to 12 noon on December 8 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 12 noon to adjournment on December 8 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7n214, phone (301) 496–2116.

Dated: September 25, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23600 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on November 2–3, 1989, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on November 2 will be open to the public from 8:30 a.m. to approximately 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

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In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on November 2 will be closed to the public for the review, discussion, and evaluation of individual grant applications from approximately 11:00 a.m. to 5 p.m., and on November 3, from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: September 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23602 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting, Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research on November 29–30, and December 1, 1989, Conference Room 1B07, Building 36, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 5:00 p.m. on November 30 in Bldg. 36, Rm. 1B07, to discuss program planning and program accomplishments. Attendance by the pubic will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on November 29 and from 9 a.m. until adjournment on December 1 in Bldg. 36, Rm. 1B07 for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigations and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. David Mineo, Federal Building, Room 1004, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Irwin J. Kopin, Director, Division of Intramural Research, NINDS, Building 10, Room 5N214, National Institutes of Health, Bethesda, MD 20892, telephone (301) 496–4297 will furnish a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: September 25, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23601 Filed 10–4–89; 8:45 am]

BILLING CODE 4140–01–M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection for the Administration for Children, Youth and Families' Annual Summary of Child Welfare Services and Annual Budget Request for title IV–B Funds.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and queations regrading the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Annual Summary of Child Welfare Services and Annual Budget Request for Title IV–B Funds.

OMB No.: 0980–0047.

Description: Each State submits to the Administration for Children, Youth and Families the Annual Summary of Child Welfare Services and Annual Budget Request for Title IV–B Funds enabling it to receive formula grant funds under Title IV–B of the Social Security Act.

Annual Number of Respondents: 95.

Annual Frequency: 2.

Average Burden Hours Per Response: 7.

Total Burden Hours: 1,330.

Dated: September 27, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89–23466 Filed 10–4–89; 8:45 am]

BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection for the Administration for Children, Youth and Families' Study of Adoption Assistance Impact and Outcomes.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Study of Adoption Assistance Impact and Outcomes.

OMB No: N/A.

Description: Interviews with adoptive parents of children placed by public adoption agencies will assess the impact of the federal adoption subsidy program on adoptions of special needs children and examine the impact of adoptions on children and families. Findings are expected to generate recommendations for future adoption program and policy.

Annual Number of Respondents: 480.

Annual Frequency: Varies.

Average Burden Hours Per Response: 5.7.

Total Burden Hours: 2,733.

Dated: September 27, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 89–23467 Filed 10–4–89; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2058]

Submission of Proposed Information collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: September 28, 1989.

John T. Murphy,

Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey of Owner's Degree of Customer Satisfaction as a Result of Using the Rental Rehabilitation Program.

Office: Community Planning and Development.

Description of the need for the information and its proposed use: The survey will be used to measure the degree of customer satisfaction with the Rental Rehabilitation Program Administration at the local, regional, and national levels.

Form number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of submission: One-time Survey.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Survey	30,000		1		.083		2,500

Total estimated burden hours: 2,500.

Status: New.

Contact: Marybeth Frazier, HUD, (202) 755–5970, John Allison, OMB, (202) 395–6880.

Date: September 28, 1989.

[FR Doc. 89–23519 Filed 10–4–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–050–09–4351–12]

Emergency Closure of Public Lands (Western Portion of the Shoshone BLM District)

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: Notice is hereby given that effective immediately all public lands located in the western portion of the Shoshone BLM District are closed to off-road motorized travel. The closed area is bounded and generally described as follows:

That portion of Idaho Department of Fish and Game Unit 45, west of the Bliss-Hill City Road to the Snake River, downstream to the confluence of King Hill Creek with the Snake River, up King Hill Creek to the Idaho Power two power line, east along the power line to White Arrow Ponds on the Bliss-Hill City Road to the point of beginning.

All public lands administered by the Bureau of Land Management within the above described area are closed to off-road motorized vehicle use, from the date of the notice until April 1, 1990.

Exemptions from this closure for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and all other licensed/permitted individuals may be approved by the Authorized Officer.

The described area is currently experiencing high concentrations of Mule Deer hunters during a late muzzeloader hunt season. The hunting activity has encouraged off-road motorized use which is opening tracks for excessive soil erosion during snowmelt or seasonal rains. The purpose of the closure is to protect the natural resources from excessive soil erosion caused by disturbances from off-road vehicle use.

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The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until April 1, 1990.

DATE: Wednesday, September 27, 1989.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, ID 83352

FOR FURTHER INFORMATION AND APPLICATION FOR EXCLUSION PERMITS CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2–B, Shoshone Idaho 83352, telephone (208) 886–2206.

K. Lynn Bennett,
District Manager.

[FR Doc. 23617 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–GG–M

[NM–010–09–4333–13/GP9–0122]

Albuquerque District Office; Land Closure, New Mexico.

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

ACTION: Closure of Public Lands to Public Access.

SUMMARY: The public land inside the La Plata Coal Mine permit area in northern San Juan County New Mexico is closed to public access.

Notice is hereby given that the La Plata Mine permit area in San Juan County, New Mexico is closed to public access year-round. All public uses are restricted except those uses authorized in the mine permit.

The purpose of the closure is for safety reasons. The closure will prevent injury to the public in the immediate mining area and protect personnel and facilities from stray bullets during hunting season and recreational target practice. The Mine permit area is fenced and signed to identify the closure.

The authority for this closure is 43 CFR part 8360—Subpart 8364.1, Closure and Restriction Orders. Failure to comply with this order will subject violators to the penalties provided in 43 CFR 8360.0–7.

The La Plata Mine permit area closed to public access is described as:

T. 32 N., R. 12 W.
- Sec. 7: Lot 3, SE/4SW/4: north to Colorado border;
- Sec. 8: Lots 5–8; north to Colorado border;
- Sec. 17: lots 3–5;
- Sec. 18: Lots 1, 3, N/2SE/2, NE/4SW/4, SE/4NE/4.

T. 32 N., R. 13 W.
- Sec. 13: Lots 3–12, S/2NW/4;
- Sec. 14: S/2NE/4; SE/4NW/4, S/2;
- Sec. 15: E/2SE/4;
- Sec. 22: E/2NE/4;
- Sec. 23: All (includes area between haul road and permit boundary);
- Sec. 24: Lots 1–4, NW/4NE/4, W/2W/2SW/4;
- Sec. 25: NW/4NW/4NW/4;
- Sec. 26: N/2N/2NE/4.

Dated: September 29, 1989.

Robert T. Dale,
District Manager.

[FR Doc. 89–23618 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–FB–M

[WO–150–00–4830–11]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management.

ACTION: Call for Nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the established staggered-term arrangement, the terms of seven members on the Council will expire on December 31, 1989. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1990, and expiring December 31, 1992.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by November 6, 1989.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidate's qualifications to: Director (150), Bureau of Land Management, MS–5558, Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION: Karen Slater, Bureau of Land Management (150), MS–5558, Department of the Interior, Washington, DC 20240, Telephone: (202) 343–5101.

Dated: September 28, 1989.

Hillary A. Oden,
Acting Deputy Director.

[FR Doc. 89–23534 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–84–M

[WO–650–00–4120–09]

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Salt Lake City, Utah, November 8, 1989. The public is invited to attend. The Board will (1) review the status of regional coal leasing activities, (2) discuss the market outlook for coal, and (3) formulate a recommendation on a long-range lease sale plan for Federal coal.

DATE: The Board will meet at 10:30 a.m. on November 8, 1989.

ADDRESS: The Board meeting will be held at the Red Lion Inn, 255 South West Temple Street, Salt Lake City, Utah 84111, telephone 801–328–2000.

SUPPLEMENTARY INFORMATION: The Board will review the status of coal leasing activities. Regional coal team representatives will present an update of coal leasing activities within their respective regions, including the outlook for lease sales and the current status of preference right lease applications and lease exchanges, where applicable. In addition, Headquarters Bureau of Land Management personnel will present for discussion information on current activities and issues that impact on the coal management program.

The Board will review the long-range outlook for coal markets and its potential impact on the demand for Federal coal. This information will be used to assist the Board in formulating a recommendation on a long-range Departmental lease sale plan at this meeting.

The public will have an opportunity to address the Board on agenda topics during the public comment periods noted on the agenda below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on comments to ensure that everyone wishing to address the Board is able to do so.

Agenda—Federal-State Coal Advisory Board Meeting

November 8, 1989
Salt Lake City, Utah
Welcome and Introductions
—BLM Director
—Assistant Director, Energy and Mineral Resources
—Other Staff
—Review and Approval of Meeting Agenda
—Approval of 1987 Meeting Minutes
—Director's Remarks
—Regional Coal Team Reports
—Washington Office Report
—Long-Range Market Outlook
—Long-Range Lease Sale Plan
—Discussion
—Public Comments
—Board Recommendation
Adjourn

FOR FURTHER INFORMATION: Stan McKee or Dan Wedderburn, Bureau of Land Management (650), MS–3559, Department of the Interior, Washington, DC 20240, Telephone: (202/FTS) 343–4636.

Dated: September 29, 1989.

Hillary A. Oden,
Acting Deputy Director

[FR Doc. 89–23585 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–84–M

[WO–150–00–4830–11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet November 2–4, 1989, at the Red Lion Inn, 3100 Camino del Rio Court, Bakersfield, California. The meeting hours will be 8:00 a.m. to 11:30 a.m., on Thursday, the 2nd, 8:00 a.m. to 5:00 p.m. on Friday the 3rd, and 8:00 a.m. to 11:00 a.m. on Saturday, the 4th. The Council will also participate in a field tour of the Carrizo Plains Natural Area the afternoon of November 2. The proposed agenda for the meeting is:

Thursday, November 2: The State view of public land management in California; Panel discussion on Bureau of Land Management outreach initiatives; Presentation on Fish and Wildlife 2000 program implementation; Discussion of BLM's Area of Critical Environment Concern (ACEC) and Natural Area System.

Friday, November 3: Morning: Overview of California Desert legislative proposals; Presentation on BLM's natural resource education initiatives in California; Council old and new business, to include Department responses to previous Council resolutions; Management by Objective overview; Meeting of Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources). Afternoon: Public statement period; Meeting of Council Subcommittees.

Saturday, November 4: Final meetings of Council Subcommittees; Reports from Subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, November 3. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written comments by October 27 to the Bureau of Land Management's California State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: November 2–4—Council Meeting. November 3—Public Statements.

ADDRESS: Copies of public statements should be mailed by October 27 to: Director, California State Office (912), Bureau of Land Management, Federal Building, 2800 Cottage Way, E–2841, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343–5101; or Tony Staed, California State Office, BLM, telephone (916) 978–4746.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Dated: September 29, 1989.

Hillary A. Oden,
Acting Deputy Director.

[FR Doc. 89–23535 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–84–M

[CA–020–09–4050–90]

Susanville District Advisory Council Meeting

September 27, 1989.

AGENCY: Bureau of Land Management, Interior, Susanville District Advisory Council, Susanville, California.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 (FLPMA), that a meeting of the Susanville District Advisory Council has been scheduled for Tuesday, November 14, 1989. The meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall St., Susanville, CA 96130, and end at 4 p.m. The agenda will include discussion of an update of agreements on the Fort Sage OHV area, a status report on the Eagle Lake Basin Integrated Management Plan, a report on the status of the District Advisory Council nomination process and a report on the District funding outlook for FY 1990. The council will also be briefed on developments with the District's Wild Horse Adoptability effort, hear a status report on the Cedar Creek IRMP and a discussion about the District's law enforcement program.

The meeting is open to the public, and interested persons may make oral statements or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA, 96130, by November 3, 1989. Depending on the number of persons wishing to speak, a time limit may be imposed.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana, (916) 257–5381.

Herrick E. Hanks,
District Manager.

[FR Doc. 89–23619 Filed 10–4–89; 8:45 am]

BILLING CODE 4310–40–M

[NM 940–09–4730–12]

New Mexico; Filing of Plat Survey

September 27, 1989.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on November 6, 1989.

A survey representing the dependent resurvey of a portion of the North Boundary, a portion of the subdivisional lines and the adjusted record meanders of the left bank of the Washita River in section 5, the approximation of a portion of the 1872 right bank of the Washita River in section 5, the subdivision of section 5, the survey of a portion of the meanders of the 1984 left and right banks of the Washita River in section 5, the medial line of the avulsed portion of the Washita River in section 5 and the

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division of accretion lines in section 5, Township 7 North, Range 12 West, of the Indian Meridian, in the state of Oklahoma, executed under Group No. 40, Oklahoma.

This survey was requested by the Area Manager, Bureau of Land Management, Oklahoma Resource Area Headquarters (ORAH), Oklahoma.

A survey representing the dependent resurvey of a portion of the north boundary of the Peralta Tract within the Lo de Padilla Grant, a portion of the subdivisional lines, and certain small holding claim boundaries, and the survey of the west boundary of Isleta Pueblo lands, and certain parcels, Township 7 North, Range 3 East of the New Mexico Principal Meridian, in the State of New Mexico, executed under Group No. 804, New Mexico.

This survey was requested by the Area Director, Bureau of Indian Affairs, Albuquerque Area Office, Albuquerque.

A survey representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, the adjusted record meanders of the 1873 left bank of the Cimarron River in section 2, and the survey of the 1987 meanders of the left bank of the Cimarron River in section 2, Township 27 North, Range 20 West, of the Indian Meridian, in the state of Oklahoma, executed under Group No. 58, Oklahoma.

This survey was requested by the Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

A supplemental plat showing the subdivision of original lot 2, section 19, Township 23 South, Range 3 East, New Mexico Principal Meridian, New Mexico.

These plats will be held in the open files until officially filed at the New Mexico State Office, Bureau of Land Management, Post Office Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 89-23567 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-FB-M

[NM-030-09-4212-12; NM NM 67560]

Issuance of Surface and Mineral Exchange Conveyance Documents; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued two exchange conveyance documents to the State of New Mexico on September 8, 1988, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described surface and mineral interests in Dona Ana County, New Mexico.

New Mexico Principal Meridian

Mineral Estate

T. 22 S., R. 2 E.,
Sec. 23, S½NE¼, SE¼NW¼, E½SW¼, S½N½NW¼SW¼, S½NW¼SW¼, SW¼SW¼, and SE¼;
Sec. 24, S½;
Sec. 25, NE¼ and S½;
Sec. 26, W½NE¼, NW¼, and S½;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all.
T. 23 S., R. 2 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½.
T. 22 S., R. 3 E.,
Sec. 17, SW¼, SW¼NE¼SE¼, W½SE¼, and SE¼SE¼;
Sec. 18, lots 3 to 10, inclusive, lots 13 to 19, inclusive, E½SW¼, and SE¼;
Sec. 20, N½ and NW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½.
T. 23 S., R. 3 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
Containing 6,866.43 acres.

Surface and Mineral Estates

T. 22 S., R. 3 E.,
Sec. 20, NE¼SW¼, S½SW¼, and SE¼;
Sec. 29, all;
Sec. 32, all.
Containing 1,560.00 acres.

In exchange for the surface and mineral interests described above, the State of New Mexico conveyed to the United States the following surface and mineral interests in Dona Ana County:

New Mexico Principal Meridian

Surface and Mineral Estates

T. 22 S., R. 3 E.,
Sec. 21, NW¼SW¼;
Sec. 23, W½W½, NE¼NW¼, and SE¼SW¼.
T. 25 S., R. 3 E.,
Sec. 36, all.
T. 26 S., R. 4 E.,
Sec. 16, all.
Containing 1,560.00 acres, more or less.

Mineral Estate

T. 22 S., R. 3 E.,
Sec. 14, W½;
Sec. 36, N½NE¼, SW¼NE¼, W½, and W½SE¼.
T. 23 S., R. 3 E.,
Sec. 2, lots 1 to 9, inclusive, and S½N½;
Sec. 13, SE¼SW¼ and SW¼SE¼;
Sec. 24, N½NE¼, SE¼NE¼, and E½SE¼;
Sec. 25, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 26, lots 7, 8, and SE¼NE¼;
Sec. 36, all.
T. 24 S., R. 3 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 11, E½E½;
Sec. 12, N½S½;
Sec. 14, N½N½;
Sec. 34, NW¼SE¼;
Sec. 36, all.
T. 25 S., R. 3 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½.
Containing 5,515.33 acres, more or less.

The purpose of the exchange was to consolidate and reunite the Federal surface and subsurface estates in and adjacent to Wilderness Study Areas, Organ Mountains Recreation Lands, and areas possessing high riparian wildlife habitat and cultural values. The exchange was consistent with land ownership adjustments as set forth in the Record of Decision for the Southern Rio Grande Plan Amendment dated December 22, 1986. The values of the Federal public land and the non-Federal land in the exchange were equal.

Dated: September 25, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-23620 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-FB-M

[NV-040-09-4110-08]

Resource Management Plan; Egan Resource Area, NV

September 28, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an energy and minerals amendment and supplemental Environmental Impact Statement (EIS) for the Egan Resource Management Plan (RMP) and the notice of a scoping period and public workshop for the identification of issues, review of preliminary planning criteria and formulation of alternatives for the plan amendment.

SUMMARY: The Ely Bureau of Land Management (BLM) District Office gives notice of its intent to prepare an amendment and supplemental EIS to the Egan RMP. The Egan Resource Area contains approximately 3,842,216 acres of public lands and public minerals underlying private lands in White Pine, Nye and Lincoln Counties, Nevada. The primary purpose of the amendment is to incorporate determinations for fluid, locatable and salable minerals into the Egan RMP.

DATES: Public comments on the preliminary issues and planning criteria will be accepted for 30 days following publication of this notice. In addition, two informal public workshops are scheduled for Wednesday, October 25, 1989 at the Ely BLM District Office, Pioche Highway, Ely, Nevada and Thursday, October 26, 1989 at the Holiday Inn, 1000 E. Sixth Street, Reno, Nevada. Both meetings will begin at 7:00 p.m. each evening.

ADDRESSES: Written comments should be addressed to: Gene L. Drais, Area Manager, Egan Resource Area, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Gene L. Drais, Ely BLM District Office, telephone (702) 289-4865.

SUPPLEMENTAL INFORMATION: The proposed planning action will result in determinations as to which public lands will be leased for fluid and non-energy minerals, which lands will be open to locatable and material minerals, and what stipulations or conditions may be necessary to protect other resource values.

The anticipated issues for this proposed amendment include:

(1) Determination of which lands will be open to leasable, locatable and salable minerals;

(2) Determination of what stipulations or conditions are necessary on exploration or development of energy and mineral resources to protect, maintain and enhance other resources, including the protection of critical wildlife habitat, protection of T&E plant and animal species as well as mitigation against wildlife and migatory waterfowl kills; and

(3) Determination of what the impacts to the energy and minerals industries are from conditions placed on mineral leasing and mineral exploration and development by consideration of other resources.

Preliminary planning criteria for the Egan RMP energy and minerals amendment call for the following:

(A) Decisions proposed through this amendment will be in conformance with the decisions in the Egan RMP Record of Decision (ROD).

(B) BLM 1620 Manual, Supplemental Program Guidance (SPG), and BLM 1624 Manual, SPG for Energy and Mineral Resources, will be utilized to identify the energy and mineral resource determinations that will be made in this amendment.

(C) Determinations for other resources, as they apply to the energy and minerals amendment, will follow the BLM 1620 Manual SPG series for those resources.

(D) The Draft Bureau Fluid Minerals Handbook (H-1624-1) will be used to guide use of the SPGs for fluids as well as other mineral resources.

(E) Coal resources will not be considered in this amendment due to the known poor quality and marginal occurrence of this resource in the Egan Resource Area and no recent interest in its development.

(F) Management of Wilderness Review" (WSAs) for energy and minerals will continue under the "Interim Management Policy for Lands Under Wilderness Review" (IMP). Should all or part of any of the WSAs in the Egan Resource Area be released by Congress from wilderness study, management for energy and minerals will come under the scope of the determinations made for the Resource Area as a result of this amendment.

(G) Existing studies, the most current available inventories, current publications, and professional judgment will be used to determine potential occurrence for locatable, leasable and salable minerals as well as potential impacts.

(H) Reasonable development scenarios will be based on available data and trends and will be projected for the life of the Egan ROD (18 years or the year 2007).

(I) An interdisciplinary approach will be used to develop reasonable scenarios; analyze impacts, including cumulative impacts to natural and cultural resources, and the social and economic environment; identify alternatives and make determinations.

(J) Impacts of uses on adjacent or nearby non-Federal lands and non-public land surface over Federally-owned minerals will be considered.

(K) Impacts from energy and mineral development on public lands will be considered.

Alternatives proposed for consideration at a minimum include:

(1) No action—defined as a continuation of current management.

(2) Preferred Alternative—to be defined by BLM management following consultations with staff and input from the public.

An interdisciplinary team representing the following disciplines will be assigned to this planning effort: minerals, oil and gas operation, wildlife, range, wild horsea and burros, lands, recreation, wilderness, cultural resources, soils, hydrology, and air quality. All documentation will be reviewed by the interdisciplinary team.

Public participation is an integral part of the planning process. It begins with this scoping period and public workshops and will continue throughout the development of this plan amendment. The next major opportunity for public review and comment will be offered with the publication of the draft plan amendment and draft supplemental EIS; however, the public is encouraged to comment or to become involved at any time during the planning process.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-23566 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-942-09-4730-12]

Colorado: Filing of Plats of Survey

September 27, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., September 27, 1989.

The supplemental plat creating new lots 7 and 8, T. 1 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted August 31, 1989.

The plat representing the dependent resurvey of portions of the south and west boundaries and the subdivisional lines and the subdivision of certain sections, T. 13 S., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 803, was accepted August 29, 1989.

The plat representing the dependent resurvey of portions of the west boundary and the subdivisional lines and the subdivision of sections 4, 5, and 6, T. 14 S., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 803, was accepted August 29, 1989.

The plat (in three sheets) representing the dependent resurvey of portions of the Ninth Guide Meridian West (west boundary), the subdivisional lines, and certain mineral claims and the subdivision of section 7, T. 2 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 889, was accepted August 29, 1989.

These surveys were executed to meet certain administrative needs of the Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 3 and 4, Frac. T. 46 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group No. 814, was accepted August 23, 1989.

The plat (in two sheets) representing the dependent resurvey of portions of the south, east, and west boundaries, the subdivisional lines, and certain tracts and the subdivision of certain sections, Frac. T. 47 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group No. 814, was accepted August 23, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 8, 9, and 16, T. 7 N., R. 91 W.,

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Sixth Principal Meridian, Colorado, Group No. 836, was accepted August 18, 1989.

The plat representing the corrective dependent resurvey of portions of the Base Line, T. 1 N., R. 91 W. and the subdivisional lines and the corrective survey of sections 3 and 4, T. 1 S., R. 91 W., Sixth Principal Meridian, Colorado, Group No. 866, was accepted August 18, 1989.

The plat representing the subdivision of section 6, T. 2 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 878, was accepted August 18, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquirites about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-23569 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-09-4214-11; IDI-1637, et al]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 308.936 acres withdrawn in the Challis, Payette, and Sawtooth National Forests continue for an additional 30 years. The lands are now being used for three recreation sites and three administrative sites. The lands would remain closed in surface entry and mining, but have been and would remain open to mineral leasing.

DATE: Comments should be received on or before January 3, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by public land orders and secretarial orders as shown below be continued for a period of 30 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

(PLO 4449)

Phi Kappa Recreation Site
T. 6 N., R. 19 E.
Sec. 17, metes and bounds.
(PLO 4632)
Star Hope Recreation Site
T. 5 N., R. 21 E.
Sec. 22, metes and bounds.
(Secretarial Order dated February 29, 1908)
Antelope Administrative Site
T. 4 N., R. 23 E.
Sec. 24, a portion of the W½.
(Secretarial Order dated October 19, 1906)
Skelton Creek Ranger Station
T. 3 N., R. 12 E.
Sec. 15, metes and bounds.
(Secretarial Order dated November 14, 1908)
Shake Creek Administrative Site
T. 3 N., R. 11 E.
Secs. 8 and 9, metes and bounds.
(Secretarial Order dated November 14, 1908)
Big Smoky Administrative Site
T. 3 N., R. 13 E.
Secs. 2 and 11, metes and bounds.
The area described aggregates 308.936 acres.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 25, 1989.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-23621 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-66-M

[NM-940-09-4214-11; NM NM 0225991]

Continuation of Withdrawal and Reservation of Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that a 160.50-acre withdrawal for the Columbine Campground (formerly Columbine Forest Camp) and Fawn Lakes Campground (formerly Fawn Lake Forest Camp) continue for an additional 20 years. The land will remain closed to mining, but has been and will remain open to the public land laws and mineral leasing.

DATE: Comments should be received by January 3, 1990.

ADDRESS: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 3667, dated June 10, 1965, be continued for a period of 20 years for the Columbine Campground (formerly Columbine Forest Camp) and Fawn Lakes Campground (formerly Fawn Lake Camp) pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Columbine Campground (formerly Columbine Forest Camp)
T. 28 N., R. 13 E. (unsurveyed), That portion of the following subdivisions lying south of New Mexico State Highway No. 38:
Sec. 11, E½E½E½NE¼, excluding HES 101;
Sec. 12, W½W½NW¼, E½NW¼NW¼, NE¼SW¼NW¼, and W½NW¼SW¼.
Fawn Lakes Campground (formerly Fawn Lake Forest Camp)
T. 29 N., R. 14 E. (partially unsurveyed),
Sec. 32, E½SE¼SE¼NE¼, E½NE¼NE¼SE¼, and NE¼SE¼NE¼SE¼;
Sec. 33, S½S½NW¼, N½N½NW¼SW¼, SW¼NE¼NW¼SW¼, S½NW¼NW¼SW¼, and NW¼SW¼NW¼SW¼.
The areas described aggregate 160.50 acres in Taos County.

The purpose of the withdrawal is for the protection of substantial capital improvements on the Questa Ranger District, Carson National Forest. The withdrawal closed the described land to mining but not to surface entry or mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in

connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 26, 1989.

Larry L. Woodard,

State Director.

[FR Doc. 89-23568 Filed 10-4-89; 8:45 am]

BILLING CODE 4310-FB-M

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service

Pacific Northwest Outer Continental Shelf (OCS) Task Force
Notice of Third Meeting: October 20, 1989

The Pacific Northwest OCS Task Force will meet October 20, 1989, from 8 a.m. to 5 p.m., at the Red Lion Inn/SeaTac, 8740 Pacific Highway South, Seattle, Washington 98188 (206-246-8600). This will be the third meeting of the task force, which was established January 19, 1989, in accordance with the provisions of the Federal Advisory Committee Act, P.L. No. 92-463, 5 U.S.C. Appendix 1. The meeting is open to the public.

The task force will discuss the Task Force Charter, the OCS Environmental Studies Program, and the work program and membership of a Technical Subcommittee that will be established to review and make recommendations on environmental studies.

The task force is composed of representatives of the Columbia River Intertribal Fish Commission, Northwest Indian Fisheries Commission, State of Oregon, State of Washington, and the Minerals Management Service. The purpose of the task force is to assist the Secretary of the Interior with resolution of OCS issues specific to the Northwest and help develop coordinated programs and policies related to the potential leasing and development of oil and gas resources of the OCS off Oregon and Washington.

Minutes of the meeting will be made available for public inspection and copying at the Minerals Management Service, Pacific OCS Region, Suite 244, 1340 West Sixth Street, Los Angeles, California 90017. For more information, contact John Smith or Ann Copsey at (213) 894-4154 or 7107.

Approved:

Barry Williamson

Director, Minerals Management Service
Barry Williamson

OCT 1

Date

[FR Doc. 89-23588 Filed 10-4-89; 8:45 am]
BILLING CODE 4310-MR-C

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-276

Certain Erasable Programmable Read Only Memories etc.; Certification of Formal Enforcement Proceeding to the Chief Administrative Law Judge for Hearing and Issuance of a Recommended Determination

In the matter of certain erasable programmable read only memories, components thereof, products containing such memories, and processes for making such memories.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has referred the formal enforcement proceeding instituted August 3, 1989, in the above- captioned investigation to the Chief Administrative Law Judge, or such Commission administrative law judge as she shall designate, for appropriate proceedings and the issuance, within six months of the date this notice is published in the **Federal Register**, of a recommended determination.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33076 (Aug. 29, 1988), to be codified at 19 CFR 211.56(c).

On March 16, 1989, the Commission issued its final determination in the above-referenced investigation. The Commission determined that there was a violation of section 337 in the unlicensed importation and sale of certain EPROMs, and in particular certain EPROMs manufactured abroad for Atmel Corporation (Atmel) which infringe valid U.S. patents owned by complainant Intel Corp. (Intel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Atmel, and prohibited certain conduct by, *inter alia*, Atmel's officers and employees. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to them.

On July 11, 1989, complainant Intel filed a request for a formal enforcement proceeding. Intel alleged that Atmel and Jack Peckham, Atmel's Vice President of Sales, had violated and are violating the exclusion order and the cease and desist order issued to Atmel at the conclusion of the investigation. Intel requested that the Commission presume that Atmel EPROMs infringe the patents at issue in the investigation; allow liberal third party discovery; impose civil penalties; modify the exclusion order issued at the conclusion of the investigation; and issue such further relief as the Commission deems necessary and appropriate.

On August 3, 1989, the Commission docketed Intel's request, issued an Order instituting a formal enforcement proceeding, and transmitted the request to Atmel and Jack Peckham (hereinafter respondents) for a response.

On August 16, 1989, a response to the request was filed on behalf of Atmel and Jack Peckham. On August 23, 1989, Intel filed a request for leave to file a reply to the response, which the respondents oppose.

The Commission having examined Atmel's response to the request for a formal enforcement proceeding filed by Intel, and having found that issues concerning possible violation of the Commission's Orders issued March 16, 1989, remain, has determined to refer the enforcement proceedings to the Chief Administrative Law Judge for designation of a presiding administrative law judge, for discovery, hearing, and issuance within six (6) months of a recommended determination concerning whether Atmel Corporation and/or Jack Peckham are in violation of the Commission's Orders.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this formal enforcement proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: September 29, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-23553 Filed 10-4-89; 8:45am]
BILLING CODE 7020-02-M

[Investigation No. 332-280]

Surveys of Views on the Impact of Granting Most Favored Nation Status to the Soviet Union

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation, scheduling of hearing, and request for comments.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas F. Jennings (202-252-1260), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background: The Commission instituted investigation No. 332-280 following receipt of a letter dated September 19, 1989 from the Senate Committee on Finance, requesting that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide a survey of the views of business persons and recognized authorities on U.S.-Soviet trade relations on the impact of granting most-favored-nation (MFN) trade status to the Soviet Union on the business climate for U.S. Soviet trade. The Commission plans to forward its report to the Senate Finance Committee on January 16, 1990.

As requested by the Committee, in its report the Commission will seek to include an assessment of the commercial implications of granting MFN status to the Soviet Union, including the potential for U.S. agricultural exports, and opportunities for joint ventures. The Commission will also seek to identify products that would be most affected by the change in the trading status of the Soviet Union, and indicate the extent if any, the action is likely to have on the ability of the U.S. to compete with other exporters (i.e., Japan and the European Community) for sales in the Soviet market.

Public Hearing: A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on November 6, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, October 23, 1989. Prehearing briefs (original and 14 copies) should be filed not later than noon, October 23, 1989.

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Post-hearing briefs are due by 5:15 pm, November 13, 1989.

Written Submissions: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for public inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than November 13, 1989. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, D.C. Hearing inpaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–252–1107.

By order of the Commission.

Issued: September 29, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 23475 Filed 10–4–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By Economics and Finance Department Association of American Railroads

The Commission has received a request from the Economics and Finance Department of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1972–1988 ICC Waybill Sample as input to a study of the cost associated with serious or catastrophic hazardous materials accidents which occurred during the 1982 through 1988 period. This will be an update of a study by AAR covering the period 1971 through 1981.

The Economics & Finance department is seeking permission to access the following data fields from the 1972 through 1988 ICC Waybill Sample to develop consistent measures of hazardous materials and chemical exposure: Seven digit STCC code, factored carloads, factored tonnage, factored intermodal unit count, short line miles, and estimates of actual route distance.

The full waybill Sample is the only data base available for this purpose. The Public Use File does not contain essential inputs including: The seven digit STCC and estimates of actual route distance.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines; (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex parte No. 385(Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of publication of this Notice in the **Federal Register**. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23595 Filed 10–4–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Chemix Corp

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Chemix Corporation*, Civil Action No. C 84–2898, was lodged with the United States District Court for the Northern District of Ohio, on August 28, 1989. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Water Act in Berea, Ohio.

The proposed consent decree provides that the Defendant is in compliance with the Clean Water Act and for payment of $7,500 in settlement of the action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chemix Corporation*, D.J. Ref. 90–5–1–1–2137.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio and at the Region 5 Office of the Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23622 Filed 10–4–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Hoechst Celanese Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Hoechst Celanese Corporation*, was lodged with the United States District Court for the Western District of North Carolina. This Partial Consent Decree is the second and final consent decree regarding Celanese's Fiber Operations facility near Shelby, North Carolina. This action was originally filed on August 24, 1988, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, along with a Partial Consent Decree pertaining to cleanup of contaminated groundwater at the facility.

Under this Partial Consent Decree, Celanese agrees to implement the remedial action selected by the Environmental Protection Agency ("EPA") pertaining to cleanup of waste material and contaminated soil at the facility. This work will be performed under the oversight of EPA. A prior study performed by Celanese indicated that groundwater contamination will likely continue unless the source of the contamination is removed. Under this Partial Consent Decree, Celanese will excavate about 1800 cubic yards of sludge and contaminated soil and burn the material in an incinerator at the facility. Approximately 1800 cubic yards of other buried waste material and contaminated soil, not susceptible to incineration, as well as the incinerator ash, will undergo chemical fixation, to treat and solidify the material. The solidified and inert material will then be buried at the facility. In addition, approximately 110 cubic yards of stream sediments that have been contaminated at the facility will be excavated and also undergo chemical fixation and solidification and on-site disposal. The completed remedy will be monitored for a set period of time to ensure the effectiveness of the remedy.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Hoechst Celanese Corporation*, D.J. Ref. 90–11–3–342.

The proposed Consent Decree may be examined at the office of the United States Attorney, Post Office Building, Room 306, Asheville, North Carolina 28802 and at the Region IV office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $12 for copying costs ($0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23623 Filed 10–4–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree; Comprehensive Environmental Response, Compensation and Liability Act; United States v. Homer Rasmussen et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on September 25, 1989, a proposed Consent Decree in *United States*, v. *Homer Rasmussen, et al.*, Civil Action No. 88CV40010FL, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree sets forth a settlement with one of the defendants in this action, Hoover Universal, Inc., for a portion of the claims asserted by the United States for costs incurred by the United States at the Rasmussen Dump Site in Livingston County, Michigan. The proposed Consent Decree requires Hoover Universal to reimburse the United States for $295,838.37 in costs incurred at the Site. The Consent Decree resolves the liability of Hoover Universal for $295,838.37 of the United States, past costs. The remainder of the action will be dismissed without prejudice against Hoover Universal.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Homer Rasmussen, et al.*, D.J. Ref. No. 90–11–3–281 (Hoover settlement).

The proposed Consent Decree may be examined at the office of the United States Attorney, 113 Federal Building, 600 Church Street, Flint, Michigan 48504 and at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23624 Filed 10–4–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Lima Demolition

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on August 23, 1989 a proposed Consent Decree in *United States of America* v. *Gary Lauck, d/b/a Lima Demolition and A. B. Fink*, Civil Action No. 3:89 CV 7490 (N.D. Ohio), between the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Gary Lauck and A. B. Fink has been lodged with the United States District Court for the Northern District of Ohio. The Consent Decree resolves the claims of the United States against Gary Lauck, d/b/a Lima Demolition and A. B. Fink under the Clean Air Act, for violations of the National Emissions Standard for Hazardous Air Pollutants for asbestos ("asbestos NESHAP") and Section 112 and 114 of the Clean Air Act in connection with a demolition operation in Lima, Ohio. The settlement reflected in the proposed Consent Decree provides for compliance with the asbestos NESHAP and the Clean Air Act, payment of a civil penalty of $22,500 to the United States and payment of stipulated penalties should the decree be violated. In addition, defendants will be required to maintain and submit to U.S. EPA and Ohio prior notice and detailed reports concerning all future renovation or demolition activity.

The Department of Justice will receive comments relating to the Consent

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Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Gary Lauck, d/b/a Lima Demolition and A. B. Fink*, D.J. Ref. No. 90-5-2-1-1335. The proposed Consent Decree may be examined at the Office of the United States Attorney, 307 U.S. Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio 43624, at the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-23625 Filed 10-4-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Macon et al.

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on September 25, 1989, a proposed consent decree in *United States* v. *Macon, et al.*, Civil Action No. C-86-623-R, was lodged with the United States District Court for the Middle District of North Carolina. The complaint filed by the United States alleged that defendants were either owners or operators of the Macon and Dockery Sites ("the facility") or had generated and arranged for the transportation or disposal of hazardous substances at the facility; and that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs. The complaint sought the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases. The settlement, as set forth in the consent decree, (1) requires the defendants to pay the sum of $1,585,100.00, which fully reimburses the United States for its past costs; (2) requires nine of the ten defendants sued by the United States to admit that in any subsequent action for future response costs and/or remedial action at the site, plaintiff has made out its *prima facie* case against them; (3) effects a modified *de minimis* settlement with two third-party defendants; and (4) dismisses, with prejudice as to past costs only, some of the individual owner defendants.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Macon, et al.*, D.J. Ref. 90-11-3-126.

A copy of the proposed consent decree may be examined at the office of the United States Attorney for the Middle District of North Carolina, 326 Federal Building, 324 West Market Street, Greensboro, North Carolina; at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Macon, et al.*, D.J. Ref. 90-11-3-126, and enclose a check in the amount of $5.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Barry Hartman,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23626 Filed 10-4-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Labor has resubmitted to OMB for clearance the following collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection of information, as well as the form of which it is a part, is a currently approved collection with Control Number 1210-0016. This resubmission does not affect the status of that collection approval.

Title, Applicable Form, and Applicable OMB Control Number: Annual Return/Report of Employee Benefit Plans; Line Items 35(b) (iv) and (v) of Form 5500 and the Instructions for Form 5500, with regard to those line items; OMB Control Number 1210-0016.

Type Request: Resubmission of a currently approved collection.

Average Burden Hours/Minutes Per Response: 0 hours.

Frequency of Response: Annually.

Number of Respondents: 900,000.

Annual Burden Hours: 0 hours.

Annual Responses: 900,000.

Needs and Uses: Section 104(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement. Line items 35(b) (iv) and (v) of the Form 5500, as indicated in the applicable Form 5500 Instructions, are for the purpose of reporting realized and unrealized gain or loss using a current value approach.

Affected Public: Employee Benefit Plans.

Respondents Obligation: Mandatory.

Requests for Which Paperwork Reduction Act Approval Is Being Sought: (1) Form 5500 (1988) (54 FR 8647, March 1, 1989); Line Item: 35.

(b) Earnings on investments:

(iv) Net gain (loss) on sale of assets:

(A) Aggregate proceeds.

(B) Aggregate costs.

(v) Unrealized appreciation (depreciation) of assets.

(2) Instructions for Form 550 (54 FR 8663, March 1, 1989):

35b(iv). Column (b), total of net gain (loss) on sale of assets, should reflect the sum of the net realized gain (or loss) on each asset held at the beginning of the plan year which was sold or exchanged during the plan year and each asset which was both acquired and disposed of within the plan year.

Note: As current value reporting is required for the Form 5500, assets are revalued to current value at the end of the plan year. For the purposes of this form, the increase or decrease in the value of assets since the beginning of the plan year (if held on the first day of the plan year) or their acquisition date (if purchased during the plan year) is reported in item 35b(v) below, with two exceptions: (1) the realized gain (or loss) on each asset which was disposed of during the plan year is reported in 35b(iv) (NOT in 35b(v)), and (2) the net investment gain (or loss) from certain investment arrangements is reported in item 35(vi).

The sum of the realized gain (or loss) of all assets sold or exchanged during the plan year is to be calculated by—

(1) Entering the sum of the amount received for these former assets in 35b(iv), column (a), line (A),

(2) Entering in 35b(iv), column (a), line (B), the sum of the current value of these former assets as of the beginning of the plan year, for those assets on hand at the beginning of the plan year, or the purchase price for those assets acquired during the plan year, and

(3) *Subtracting (B) from (A) and entering this result in column (b).*

A negative figure should be replaced in parentheses.

35b(v). Subtract the current value of assets at the beginning of the year plus the cost of any assets acquired during the plan year from the current value of assets at the end of the year to obtain this figure. A negative figure should be placed in parentheses. Do not include assets which were disposed of within the plan year (reportable in 35b(iv) above) or certain investment arrangements (reportable in 35b(vi) below).

OMB Desk Officer: Ms. Diana Rowen.

Written comments and recommendations on the information collection should be sent to Ms. Diana Rowen at Office of Management and Budget, Desk Officer, Room 3001, New Executive Office Building, Washington, DC 20503, telephone number: 202/395-6880 by December 4, 1989.

A copy of the information collection proposal may be obtained from Mr. Paul Larson, Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210, telephone number: 202/523-6331.

Signed at Washington, DC, this 29th day of September, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-23448 Filed 10-4-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: September 27, 1989.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reducton Act of 1980, Pub. L. 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street NW., Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0016.

Form Number: None.

Type of Review: Renewal.

Title: Letter of Understanding and Agreement for Special Assistance.

Description: Federally-insured credit unions receiving special assistance are required to submit monthly financial reports.

Respondents: Federally-insured credit unions.

Estimated Number of Respondents: 150.

Estimated Burden Hours per Response: 2.78 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 5,004 hours.

OMB Number: 3133-0032.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Title: Records Preservatoin—12 CFR 749.

Description: Federally-insured credit unions are required to establish a Records Preservation program for storage of copies of vital records at an off-site location.

Respondents: Federally-insured credit unions.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 28,000 hours.

OMB Number: 3133-0035.

Form Number: None.

Type of Review: Renewal.

Title: Trustees and Custodians of Pension Plans.

Description: A federal credit union acting as trustee or custodian of a Keogh plan or Individual Retirement Account must maintain individual records for each member/participant showing all transactions in detail.

Respondents: Federal credit unions.

Estimated Number of Respondents: 4,142.

Estimated Burden Hours per Response: 50 hours.

Frequency of Response: As necessary.

Estimated Total Reporting Burden: 207,100 hours.

OMB Number: 3133-0052.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Title: Federal Credit Union Membership.

Description: Persons applying for federal credit union membership must complete a membership application. Action taken on the application must be recorded and retained.

Respondents: Federal credit unions.

Estimated Number of Respondents: 2,250.

Estimated Burden Hours per Response: 1 hour.

Frequency of Response: One time.

Estimated Total Reporting Burden: 2,250 hours.

OMB Number: 3133-0053.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Title: Report of Officals.

Description: All federal credit unions are required to provide the names and addresses of the executive officers, members of the Supervisory Committee, Credit Committee, and Loan Officers to the NCUA within 10 days of their election/appointment.

Respondents: Federal credit unions.

Estimated Number of Respondents: 9,000.

Estimated Burden Hours per Response: .5 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 3133-0057.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Title: Monthly Board Meeting Minutes.

Description: All federal credit unions are required to prepare and maintain full and correct records of all meetings of members and the board.

Respondents: Federal credit unions.

Estimated Number of Respondents: 9,000.

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Estimated Burden Hours per Response: 3.25 hours.
Frequency of Response: 13 times per year.
Estimated Total Reporting Burden: 27,225 hours.
OMB Number: 3133–0059.
Form Number: None.
Type of Review: Reinstatement of a previously approved collection.
Title: Supervisory Committee Records.
Description: The Supervisory Committee of each federal credit union must prepare, maintain, and have custody of full and correct records of all actions taken by the committee.
Respondents: Federal credit unions.
Estimated Number of Respondents: 9,000.
Estimated Burden Hours per Response: 10 hours.
Frequency of Response: 2 times per year.
Estimated Total Reporting Burden: 90,000 hours.
OMB Number: 3133–0060.
Form Number: CLF 0001.
Type of Review: Renewal.
Title: Annual Stock Subscription Statement.
Description: Member credit unions annually determine their minimum legal stock requirement for another year of membership in the CLF.
Respondents: CLF member credit unions.
Estimated Number of Respondents: 259.
Estimated Burden Hours per Response: .50 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 131 hours.
OMB Number: 3133–0064.
Form Number: NCUA 7000–A, 7001, 7002, 7003 and 7004.
Type of Review: Renewal.
Title: Request for Funds—CLF.
Description: Forms used by each borrower in requesting a loan from the CLF.
Respondents: CLF member credit unions.
Estimated Number of Respondents: 25.
Estimated Burden Hours per Response: 1 hour.
Frequency of Response: Once per year.
Estimated Total Reporting Burden: 28 hours.
Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street NW., Washington, DC 20456.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,
Secretary of the NCUA Board.
[FR Doc. 89–23461 Filed 10–4–89; 8:45 am]
BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Meeting of the Advisory Committee for Atmospheric Sciences

The National Science Foundation announces the following meeting:
Name: Advisory Committee for Atmospheric Sciences (ACAS).
Date: October 23–24, 1989.
Time: 9:00 a.m.—5:00 p.m. each day.
Place: Room 642, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.
Type of Meeting Open—October 23 & 24—9:00 a.m. to 5:00 p.m.
Contact: Dr. Eugene W. Bierly, Division Director, Division of Atmospheric Sciences, Room 644 National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9874.
Minutes: May be obtained from the Contact Person listed above.
Purpose: Discussion of Long-Range Planning.
Agenda:
—Remarks by the Director, NSF
—Remarks by the Assistant Director for Geosciences
—Long-range plan discussion

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23603 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel for Biochemistry; Meeting

The National Science Foundation announces the following meeting.
Name: Advisory Panel for Biochemistry.
Dated: Monday, Tuesday and Wednesday, October 23–25, 1989, from 9:00 am to 5:00 pm.
Place: The Inn at Foggy Bottom, Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. H. T. Huang, Program Director, Dr. Marcia Steinberg, Program Director, Dr. Walter Hill, Program Director, Biochemistry Program, Room 325, Telephone (202) 357–7945.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for Biochemistry research proposals.
Agenda: To review and evaluate research proposal as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23604 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Meeting of the Advisory Panel for Cell Biology Program

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Cell Biology Program.
Date and Time: October 16–18, 1989, 8:30 a.m. to 5:00 p.m.
Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Part Open—Closed 10/16—8:30 a.m. to 5:00 p.m., Open 10/17—12:00 p.m. to 1:30 p.m., Closed 10/18—8:30 a.m. to 5:00 p.m.
All other times the meeting is closed.
Contact Person: Dr. Maryanna P. Henkart, Program Director, Cell Biology Program, Room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7474.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cell Biology.
Agenda: Open—General discussion of the current status and future plans of the Cell Biology Program. Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23605 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Meeting of the Advisory Panel for Cellular Biochemistry

The National Science Foundation announces the following meeting:
Name: Advisory Panel for Cellular Biochemistry.
Date/Time: November 2 and 3, 1989, Thursday, 9:00 a.m. to 5:00 p.m., Friday, 8:30 a.m. to 5:00 p.m.
Place: The River Inn, 924 25th Street NW., Washington, DC 20037, Columbia Suite, Room 105.
Type of Meeting: Closed.
Contact Person: Carter Kimsey, Cellular Biochemistry Program, Rm 321-F, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7987.
Minutes: May be obtained from the Contact Person at the above address.
Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in cellular biochemistry and metabolism.
Agenda: To review and evaluate research proposals a part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23606 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Developmental Biology Advisory Panel; Meeting

Name: Advisory Panel for Developmental Biology.
Date and Time: October 25, 26, 27, 1989—8:30 a.m. to 5:00 p.m.
Place: The Chancellor Hotel, 433 Powell Street on Union Square, San Francisco, California 94102, Telephone: 415/362–2004.
Type of Meeting: Closed.
Contact Person: Dr. Frank C. Greene, Program Director, Developmental Biology Program, Room 321, National Science Foundation, Washington, D.C. 20550, Telephone: 202/357–7989.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in developmental biology.
Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23607 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Meeting; Advisory Committee for Earth Sciences

The National Science Foundation announces the following meeting:
Name: Advisory Committee for Earth Sciences, NSF.
Date: October 30–31 and November 1, 1989.
Time: 9:00 a.m. to 5:30 p.m., October 30, 8:30 a.m. to 5:00 p.m., October 31, 8:30 a.m. to 4:30 p.m., November 1.
Place: The National Science Foundation, Room 543, 1800 G Street NW., Washington, DC 20550.
Type of Meeting: Open—October 31—8:30 a.m. to 5:00 p.m., November 1—8:30 a.m. to 4:30 p.m., Closed—October 30—9:00 a.m. to 5:30 p.m.
Contact Person: Dr. James F. Hays, Division Director, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–9591.
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.
Agenda: Closed—Oversight review of the Stratigraphy and Paleontology and Surficial Processes Programs, including examination of proposals, reviewer comments, and other privileged material.
Open—Discussion of Earth Sciences' (EAR) budgets, responses to previous oversight reports, Chandler Continental Lithosphere Workshop, cross-directorate programs, educational issues in Earth Sciences (especially pre-college activities), the Stratigraphy and Palentology Program, the Surficial Processes Program, and general discussion.
Reason for Closing: The Oversight Committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed, and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23608 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

Meeting; Advisory Panel for Ethics and Values Studies

The National Science Foundation announces the following:
Name: Advisory Panel for Ethics & Values Studies, NSF.
Date/Time: November 2, 1989, 8:30 a.m. to 5:00 p.m., November 3, 1989, 8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, 1800 G Street, NW., Room 1242.
Type of Meeting: Part Open-Open November 3, 8:30 a.m. to 10:45 a.m., Closed Remainder.
Contact: Rachelle Hollander, Program Director, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9894 Room 312.
Minutes: May be obtained from the contact person at the above address.
Purpose of Panel Meeting: To provide advice and recommendations concerning support for research in Ethics and Values Studies in Science, Technology, and Society.
Agenda: Open—General discussion of approaches to "ethics" and "values" in the discourse of the physical and natural sciences, social sciences, and humanities disciplines.
Closed—To review and evaluate research proposals and projects as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 89–23610 Filed 10–4–89; 8:45 am]
BILLING CODE 7555–01–M

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Meeting; Advisory Panel for Genetics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics, NSF.

Date/Time: Sunday, October 22, 1989, 12:00 p.m. to 5:00 p.m. Monday, and Tuesday, October 23, 24, 1989, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Philip Harriman, Program Director, Genetics, Room 325, Telephone (202) 357–9687.

Minutes: May be obtained from the contact person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23609 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; Advisory Panel for History and Philosophy of Science

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science, NSF.

Date Time: November 17, 1989, 9:00 a.m. to 5:00 p.m. November 18, 1989, 9:00 a.m., to 4:00 p.m.

Place: The Holiday Inn, 17th Street at Rhode Island Avenue, NW., Washington, DC 20036.

Type of Meeting: Closed.

Contact: Ronald J. Overmann, Program Director, Studies in Science, Technology & Society, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9694, Room 312.

Minutes: May be obtained from the contact person at the above address

Purpose of Advisory: To provide advice and recommendations concerning research in the Studies in Science, Technology & Society Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23611 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; Advisory Panel for Human Cognition and Perception

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Human Cognition & Perception, NSF.

Date and Time: November 1–2, 1989, 9:00 a.m.—5:00 p.m.

Place: National Science Foundation, 1800 G. Street, NW., Room 1242, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9698.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in human cognition and perception.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23612 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; Advisory Panel for Linguistics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics, NSF.

Date and Time: October 26–27, 1989, 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Rm 536, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7696.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: CLOSED—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Manager Officer.

[FR Doc. 89–23613 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Ocean Sciences (ACOS); Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ocean Sciences (ACOS), NSF.

Date: Oct. 16, 1989—8:30 A.M. to 5:00 P.M., Oct. 17, 1989—8:30 A.M. to 5:00 P.M.

Place: American Institute of Architects, Board Room, 1735 New York Avenue, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation Washington, DC—Telephone: 202/357–9639.

Summary Minutes: May be obtained from the contact person.

Purpose of Committee: To provide advice and recommendations concerning ocean research and its support by the NSF Division of Ocean Sciences.

Agenda

The Committee will hold a two day meeting. Following opening remarks and general introductions, the Committee will hear presentations and status reports of current and topical interest from various officials and representatives from NSF, ACOS, and other organizations active in ocean sciences matters. The committee will hear progress reports from subcommittees on program oversight and human resources planning. The committee will discuss Long-Range Planning for Ocean Sciences, the impact of NSF budgets on this planning and take appropriate action concerning implementation procedures. The committee will also conduct necessary administrative functions in accordance with established custom and practice with respect to: approval of the minutes of the previous meeting; determination of time and place of the next meeting; as well as any other appropriate business.

Reason for late notice: Administrative Oversight.

Dated: September 29, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23456 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; President's Committee on the National Medal of Science

The National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science, NSF.

Date: Friday, October 27, 1989.

Time: 9:00 a.m.—5:00 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Lois J. Hamaty, Staff Assistant, President's Committee on the National Medal of Science, National Science Foundation, Washington, DC 20550. Telephone 202/357–7512.

Purpose of Committee: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: The Determination made on September 25, 1989 by the Director of the National Science Foundation pursuant to the provision of section 10(d) of Public Law 92–463.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23614 Filed 10–4–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–OLA–4; ASLBP No. 89–595–03–OLA]

Change in Prehearing Conference Date

September 28, 1989.

Before Administrative Judges: Robert M. Lazo, chairman; Jerry Harbour; Frederick J. Shon.

In the Matter of: Vermont Yankee Nuclear Power Corp., Vermont Yankee Nuclear Power Station.

At the request of counsel for Vermont Yankee Nuclear Power Corporation (Licensee), with no objection by NRC Staff (Staff) and the State of Vermont (Petitioner), the date of the prehearing conference now scheduled to begin on Tuesday, November 14, 1989 is changed to Wednesday, November 15, 1989. The time and location remain the same: 9:30 a.m. at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont.

It Is So Ordered.

For The Atomic Safety and Licensing Board.

Issued at Bethesda, Maryland, this 28th day of September 1989.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 89–23556 Filed 10–4–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–00582, 030–06886, 070–00053; License Nos. 06–00183–03, 06–00183–06, SNM–52; EA 89–131]

Yale University; Order to Show Cause Why Licenses Should Not Be Modified

I

Yale University (the licensee), New Haven, Connecticut 06520 is the holder of NRC License Nos. 06–00183–03, 06–00183–06, and SNM–52 issued pursant to 10 CFR parts 30 and 70. The licenses authorize the licensee to use licensed material for research and development, teaching and training of students, calibration of instruments, and performing irradiations. The licenses were most recently renewed on May 23, 1989, February 4, 1987, and May 23, 1989 and are due to expire on May 31, 1994, February 29, 1992 and May 31, 1994, respectively.

II

From May 30 to June 2, 1989, an NRC inspection was conducted at the licensee's facility to review the circumstances associated with an exposure in excess of regulatory limits which occurred at the facility and which was initially identified by the licensee on April 19, 1989 and reported to the NRC on May 1, 1989, after the magnitude of the dose became apparent to the licensee. The event involved a radiation exposure of 178 rem to the tip of the finger of one hand of an individual who was eluting iodine–125 from a protein separation column. The circumstances associated with the exposure are described in the Notice of Violation and Proposed Imposition of Civil Penalties (Notice) issued on this date.

In addition to this exposure, other violations of NRC requirements were identified at the facility. These violations, more fully described in the Notice, include: (1) Failure to wear gloves when handling radioactive material, (2) failure to perform bioassays at required intervals, (3) failure to perform required surveys, (4) failure to keep records of disposal of radio-active material, (5) failure to train laboratory personnel in radiation safety procedures, (6) disposal of radioactive material by unauthorized means, and (7) repeat occurrences of a previous violation involving eating and drinking in areas where radioactive materials are present.

III

The enforcement history at Yale University has been poor, as evidenced by the fact that twenty violations were identified during four NRC inspections of the radiation safety program conducted since 1984. Furthermore, enforcement conferences were conducted with licensee management at the NRC Region I offices and civil penalties were assessed for the violations identified during the NRC inspections in 1984 and 1988 (EA 84–99 and EA 88–157). Notwithstanding prior enforcement actions, the current violations, which are indicative of a breakdown in management control over licensed activities, demonstrate that the licensee has not effected adequate improvements in the administration and implementation of the radiation safety program.

The continued failure to effectively prevent violations demonstrates that the previous corrective actions taken by the licensee do not sufficiently address the

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underlying causes of the violations and that additional requirements are necessary to ensure that the licensee's activities are conducted safely and in accordance with the terms of the licenses. Accordingly, I have determined that this Order should be issued to require the preparation of a comprehensive analysis of the deficiencies and requirements of the licensee's Radiation Safety Program, and a detailed plan for correction of the deficiencies, including an analysis of the human and financial resources required, and a timetable for implementation of the plan.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR 2.202 and 10 CFR part 31, it is Hereby Ordered That the Licensee Shall:

A. Within the time specified in IV.B. below, perform a comprehensive assessment of activities conducted under the licenses issued by the NRC and, based on the assessment findings, develop a detailed improvement plan for correcting identified deficiences and ensuring effective implementation of the radiation safety programs. The plan shall include a description of all changes to be implemented, the specific improvements in management oversight to be instituted, and additional resources to be dedicated, to upgrade the radiation safety program.

As a minimum, the assessment shall address the current status of, and the plan shall address improvements in, the following areas:

1. Procedures for reviewing and approving both new and renewal applications submitted to the Radiation Safety Committee for use of licensed material, including the procedures specifying:

a. the degree of detail contained in the application,
b. criteria on the need for pre-approval visit or contact with the applicant,
c. clarity of the requirements imposed as a condition of authorizing the application, and
d. follow-up to assure that those requirements are met.

2. Communications directed to individuals who use licensed material under the approval of the Radiation Safety Committee, including the clarity of the language used to indicate requirements that must be followed, and the methods used to assure that these requirements, as well as other communications, have been understood and are complied with.

3. Training, responsibilities, and performance criteria for members of the Radiation Safety Staff who perform audits and surveys of laboratories.

4. Oversight of individual users of licensed material by the surveyors, Radiation Safety Officer (RSO), and Radiation Safety Committee (RSC), including: observaton of performance, review of procedures, evaluation of training, and determination that the necessary instrumentation is available, and is used, to perform radiation safety tasks.

5. The human and financial resources that are provided to maintain the radiation safety program.

B. Within sixty days of the effective date of this Order, submit to the Regional Administrator, NRC Region I, for approval: 1) A summary of the assessment findings, 2) the improvement plan developed as a result of the assessment findings, and 3) a specific timetable for implementing the various aspects of the improvement plan.

C. Within seven days of the Regional Administrator's approval of the plan, begin implementation of the plan.

D. Three months after Regional Administrator's approval of the plan, and at intervals of three months thereafter until the plan is fully implemented, submit a written report to the Regional Administrator, NRC Region I, reporting on the progress in implementing the plan. Each report shall explain the reasons why any milestones in the timetable have been missed and provide, for review and approval of the Regional Administrator, a new date for completion of any milestone that has been missed.

The Regional Administrator, NRC Region I, may, in writing, relax or rescind any of these provisions for good cause shown.

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under oath or affirmation within 30 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. If the licensee fails to file an answer within the specified time, or consents to this Order, this Order shall be final without further proceedings.

VI

The licensee or any other person whose interest is adversely affected by this Order may request a hearing within 30 days of its issuance. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon failure of the licensee or any person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall become final without further proceedings.

Dated at Rockville, Maryland, this 26th day of September 1989.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89-23557 Filed 10-4-89; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides are DG-1005, "Standard Format and Content for Decommissioning Plans for Nuclear Reactors," and DG-1006, "Records Important for Decommissioning of Nuclear Reactors;" they are intended for Division 1, "Power Reactors." The new guide DG-1005 is being developed to identify the information and format acceptable to the NRC staff for preparing and submitting decommissioning plans for nuclear reactors. The new guide DG-1006 is being developed to provide guidance on retention of specific records on radiological conditions that could affect occupational and public health and safety during decommissioning.

The draft guides and their associated value/impact statements are being issued to involve the public in the early stages of the development of regulatory positions in these areas. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guides, including any implementation schedules. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 29, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 27th day of September 1989.

For the Nuclear Regulatory Commission.

R. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-23558 Filed 10-4-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27297; File No. SR-DTC-89-16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company Relating to Automation of Demands for Loan Collateral

The Depository Trust Company ("DTC") on August 15, 1989, filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit public comment on the proposal.

I. DTC's Description of the Proposal

DTC states in its filing that the proposed rule change would enable pledgee banks in DTC's Collateral Loan Program [1] to make electronic demands for collateral from its pledgors. Such demands would be issued via DTC's Participant Terminal System ("PTS"). [2]

DTC states in its file that in the past such collateral demands would have been submitted to DTC in paper form and DTC would have required from any pledgee bank demanding collateral: (1) a written representation concerning its right to the collateral, and (2) and an indemnity agreement. Accordingly, for this proposal, the PTS Reference Manual would be modified to include: (1) a standard representation, warranting that the pledgee has the right to the securities specified by its PTS collateral demands, and (2) a standard indemnity agreement, which holds harmless DTC for complying with any such instructions.

II. DTC's Rationale for the Proposal

DTC states in its filing that the proposal is consistent with the Act, particularly Section 17A(b)(3)(F) of the Act, because the proposal would improve the safeguarding of securities and funds in the control of a clearing agency.

III. Proposal's Effectiveness and Solicitation of Comments

The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the DTC. All submissions should refer to File No. SR-DTC-89-16 and should be submitted by October 26, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 27, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23483 Filed 10-4-89; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Section G of DTC's Participant Operating Procedures for procedures governing DTC's Collateral Loan Program.

[2] The demand for collateral contemplated here would be from a pledgee (a commercial bank) to a pledgor (typically a broker-dealer). This is not a routine financial transaction and ordinarily would occur in the case of a default by the broker. Telephone conversation between Carl Urist, Deputy General Counsel, DTC, and Thomas C. Etter, Attorney, SEC, September 22, 1989.

[Rel. No. 34-27287; File No. SR-GSCC-89-09]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by Government Securities Clearing Corp. Relating to the Fee Structure for Government Securities Clearing Corp. ("GSCC")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1989 GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's fee schedule as described in Section II. A. below.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to amend the fee schedule for use of GSCC's netting service.

Currently, there is a basic netting fee of $1.00 per side that goes into the net, which fee is used to cover GSCC's expenses associated with the provision of netting services. However, as an incentive for Netting Members to participate in the netting operation as early as possible, a discount of 50 cents per side was established, to be effective during the interim period from the start-up of the Netting System until the point in time when GSCC determines that all Treasury Note issues on GSCC's file are eligible for netting.

This rule change eliminates the 50 cent per side discount of the basic netting fee. This action is being taken by the Board of Directors of GSCC in recognition of the fact that, as of August 18, 1989, the six Treasury Note issues, which comprise both the vast majority of secondary market trading in Treasury Notes and a major portion of secondary market trading in all Treasury securities were eligible for netting. Given this, and the fact that the five Government securities brokers that handle the large majority of brokered Government securities transactions are participating in the netting operation, the Netting Members that are now participating in netting are able to enjoy significant benefits from netting. The elimination of the discount at this time reflects the Board's determination, upon further consideration of this issue, that it is not appropriate to have the discount terminate only at the point in time at which all Treasury Notes are made eligible for the net, because, due to current operational constraints on the part of certain Netting Members, GSCC may not be able to make all Treasury Notes eligible for netting for several months. The end of the discount will, of course, enhance the level of netting revenue received by GSCC, which will be necessary to support the cost of providing the netting service.

(b) The proposed rule change does not substantially effect the current, equitable allocation of fees and charges and is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The following rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number GSCC–89–09 and should be submitted by October 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 25, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23484 Filed 10–4–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27311; File No. SR–MSTC–88–8]

Self Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change On A Temporary Basis

September 28, 1989.

On June 30, 1989, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"), [1] the Securities and Exchange Commission ("Commission") approved on a temporary basis a proposal by the Midwest Securities Trust Company ("MSTC") to enhance MSTC's File Transmission Service ("FTS") by allowing Depository Delivery Instructions ("DDI") [2] to be transmitted through FTS.[3] On June 30, 1989, the Commission granted an extension of the pilot program until September 30, 1989.[4] MSTC is currently transmitting DDIs via FTS on a pilot basis. The Commission is continuing its review of the proposal and is extending MSTC's pilot program in order to obtain further operational data concerning the safety and security of the proposal. This order extends the pilot program until March 31, 1990.

The Commission preliminarily finds that the proposed rule change is consistent with the requirements of section 17A of the Act in that it is designed to promote prompt and accurate clearance and settlement of securities transactions.

[1] 15 U.S.C. 78s (b)(1).

[2] The DDI service allows firms to transmit delivery instructions to deliver securities to other MSTC participants and non-MSTC participants.

[3] *See* Securities Exchange Act Release No. 26418 (January 4, 1989), 54 FR 1040. The Commission extended this temporary approval until June 30, 1989 in Securities Exchange Act Release No. 26688 (April 3, 1989) 54 FR 14307 (April 30, 1989).

[4] *See* Securities Exchange Act Release No. 26995 (June 30, 1989), 54 FR 29127 (July 11, 1989).

It is therefore ordered, by authority of Section 19(b)(2) of the Act, that the proposed rule change (SR–MSTC–88–8) be, and is hereby, approved on a temporary basis until March 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23485 Filed 10–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27292; File No. SR–NYSE–89–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Specialist Contact With Issuers

On June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 106 and new Form 106.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26969 (June 23, 1989), 54 FR 28139 (July 5, 1989).

The proposed rule change would adopt new Exchange Rule 106, which requires (1) quarterly contacts by specialist units, at least one of which is an in-person meeting, with a senior official, of the rank of Corporate Secretary or higher, of each of the specialist unit's listed companies, and (2) semi-annual contacts by specialist units, off the Exchange floor, with the 15 largest NYSE member organizations, any other member organizations that are significant customers of the specialist unit, as well as any other member organizations that request such contact. The proposed rule change also would adopt Form 106, which would be used to report semi-annually such contacts.

The Exchange stated that the purpose of the proposed rule change is to enhance the specialist's communication function by requiring that the specialist maintain frequent and personal contact with the listed companies and member firm companies that he serves. The Exchange's expectations regarding specialist performance are discussed in the Exchange's revised specialist job description, which was approved by the Commission on February 7, 1989 in Release No. 34–26523.[4] The Exchange's specialist job description emphasizes key expectation regarding specialist performance that are consistent with the competitive demands of an evolving market place. Two revisions of the specialist job description that were adopted in Release No. 34–26523 were requirements to extend an annual invitation to meet with representatives of issuers of the specialist's specialty stock and to meet regularly with appropriate representatives of the specialist's member firm customers.

Because there is at present no formal NYSE rule requiring that specialists maintain regular contacts with their member firm customers or their listed companies' officials, the Exchange has proposed new Rule 106. As described above, Rule 106 will require specialists to contact quarterly senior officials of the issuers of each of their specialty stocks. The Exchange believes that these quarterly contacts will help to foster an understanding of the specialist function, the operations of the Exchange market, and the markets that are maintained in the listed companies' stocks. In addition, as described above, Rule 106 will require semi-annual contacts between specialist units and NYSE member organizations. The Exchange states that the purpose of these semi-annual contracts is to discuss the service, operational, and competitive requirements of the member firms.

The Exchange also has proposed to adopt Form 106, which would be used by specialist units to report to the Exchange, on a semi-annual basis, contacts made with their listed companies and member firm customers pursuant to Rule 106.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, and the rules and regulations thereunder.[5] By promoting a better understanding of the needs of listed companies and member organizations and fostering communications among specialists, listed companies, and the NYSE member firms, proposed Rule 106 and Form 106 are consistent with the requirements of Section 6(b)(5) of the Act, which requires that rules of an exchange be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest . . ." Moreover, the new requirements will help specialists to perform their functions better by receiving input on performance by issuers and member firms. In addition, proposed Rule 106 (and Form 106) implement a provision of the Exchange's specialist job description that was approved by the Commission in Release No. 34–26523.[6]

Rule 106 and Form 106 also are consistent with the requirements of Rule 11b–1(a)(2)(iv) under the Act, which mandates that the rules of a national securities exchange include "[p]rovisions stating the responsibilities of a specialist acting as a broker in securities in which he is registered."[7] By enumerating the contacts a specialist must make with listed companies and member firm customers, Rule 106 defined in detail for NYSE specialists their obligations and responsibilities under Section 11 of the Act[8] and Rule 11b–1 thereunder.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change is approved.[10]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: September 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23486 Filed 10–4–89; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4 (1989).

[3] The Exchange has requested that current NYSE Rule 106 be re-designated as Rule 106A so that the proposed new rule set forth in this filing can be designated as Rule 106. Letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Exchange Regulation, SEC, dated July 7, 1989.

[4] *See* Securities Exchange Act Release No. 26523 (February 7, 1989), 54 FR 6631 (February 3, 1989), approving File No. SR–NYSE–87–38.

[5] 15 U.S.C. § 78f (1982).

[6] *See* note 4, *supra*.

[7] 17 CFR 240.11b–1 (1989).

[8] 15 U.S.C. 78k (1982).

[9] 15 U.S.C. 78s (b)(2) (1982).

[10] The Commission also approves the Exchange's request that current NYSE Rule 106 be re-designated as Rule 106A so that the proposed new rule approved herein can be designated as Rule 106.

[11] 17 CFR 200.30–3(a)(12) (1989).

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[Rel. No. 34-27293; File No. SR-NYSE-89-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Reporting of Extensions of Time for Payment/Delivery of Securities by Correspondent Broker-Dealers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989 the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to require member organizations to file a monthly report indicating all correspondent broker-dealers whose overall ratio of requested extensions of time on payment/delivery of securities to total transactions for the month exceeds 2%.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the report is to permit the Exchange to identify and effectively regulate instances where an excessive number of extension of time requests have been made by member organizations on behalf of their correspondent broker-dealers.

In order to allow the Exchange to assess the overall incidence and impact of requests for extensions of time for payment/delivery of securities transactions submitted pursuant to Federal Reserve Board Regulation T ("Reg T") and Securities Exchange Act Rule 15c3-3(n) by member organizations on behalf of accounts carried for other broker-dealers ("correspondents") and to take appropriate action to monitor and regulate extensions of credit for customers of broker-dealers, certain information will be required to be submitted to the Exchange monthly commencing ninety days after Commission approval of this filing. Member organizations will be required to file monthly reports indicating all correspondents whose overall ratio of extensions requested to total transactions for the month exceeds 2% (regardless of whether such requests were made to the Exchange or another self-regulatory organization).

The Exchange feels it is necessary to monitor extensions requested on behalf of correspondents because the credit is being extended by the member organization carrying the account. Since other SRO's that process extensions do not necessarily utilize the same standards, parameters and restrictions, the Exchange is requiring such reporting in order to allow it to determine the aggregate affect of extensions upon its members. In addition, while the ratio of extensions requested to transactions is computed by the Exchange from extension requests filed with it, the capability does not exist to make such calculations separately for each correspondent requesting extensions through a member organization.

(b) The report is consistent with the requirements of Rule 17d-1 under the Act in that the Exchange has been designated as having responsibility for examining its members for compliance with applicable financial responsibility rules such as Regulation T of the FRB and Rule 15c3-3 under the Act. It is also consistent with section 7(a) of the Act in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities and supports the purposes of Regulation T of the FRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change And Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23487 Filed 10-4-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27294; File No. SR-NYSE-89-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Time Records of Orders

On July 25, 1989, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] a proposed rule change relating to time records of orders. The proposal would amend NYSE Rules 121 and 123 to require that time records are maintained for orders received by a specialist at the post or at a member's booth on the Floor from off the Floor, respectively.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27107, August 8, 1989), and by publication in the **Federal Register** (54 FR 33999, August 17, 1989). The Commission received no comments on the proposed rule change.

The Exchange's proposal would amend NYSE Rule 121 to require that records be maintained as to the time an order is received by a specialist at the post. Currently, Rule 121 requires specialists to keep records of all orders placed with them, as well as all executions, modifications and cancellations of such orders for at least three (3) years. Although the rule does not currently contain an explicit time-recording requirement,[3] as a practical matter, the only orders directed to a specialist that do not have a time record are non-systematized, non-percentage orders. The proposed amendments to Rule 121 will impose a standard requirement that all orders be time recorded. The amendments to Rule 121 would also require that the specialist's records of orders and modifications or cancellations of orders include the name and the amount of the security and the terms of the order, modification or cancellation.

Similarly, the Exchange's proposal would amend NYSE Rule 123 to require that records be maintained as to the time an order is received at a member's booth on the Floor from off the Floor, since, at the present time, there are no requirements that members time-record orders received on the Floor from off the Floor. The amendments to NYSE Rule 123 will require that every member preserve a record, for at least three years, of every order received by the member on the Floor from off the Floor. The record would have to indicate the name and the amount of the security, the terms of the order and the time when the order was received on the Floor.

The Exchange contends that the purpose of the proposed rule change is to further enhance market surveillance procedures and to assist the Exchange in the reconstruction of market activity by providing the Exchange with the ability to pinpoint the time that each order is received by a specialist or is received at a member's booth on the Floor from off the Floor. The Exchange believes that its proposal is consistent with section 6(b)(5) of the Act,[4] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the NYSE's proposed rule change is appropriately designed to require Exchange members and member organizations to document the trade information necessary to reconstruct detailed audit trails for trades executed on the Exchange. The Commission agrees with the Exchange that its proposal is consistent with section 6(b)(5) of the Act, which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, because the proposed amendments to NYSE Rules 121 and 123 enhance the Exchange's ability to reconstruct market activity. The proposal also is consistent with section 6(b)(1) of the Act in that it will enhance the NYSE's surveillance programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: September 26, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23488 Filed 10-4-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] However, NYSE Rule 123A.30 does require that all percentage orders received by a specialist be time-recorded at the post location. Additionally, as a matter of procedure, all orders directed to a specialist via the Exchange's Super Designated Order Turnaround ("SuperDOT") System have a time record.

[4] 15 U.S.C. 78s(b)(5) (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(e)(12) (1989).

[34-27296; File No. SR-OCC-89-11]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Changes Concerning Cross-Margining

September 26, 1989.

On January 23, 1989, the Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-89-1) under Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to establish procedures for cross-margining positions cleared by OCC with positions cleared by the Chicago Mercantile Exchange ("CME"). On March 14, 1989, the Commission published notice of the proposal in the **Federal Register** to solicit comments.[2] One comment letter was received.[3] OCC amended the proposal on June 8, 1989,[4] and July 10, 1989.[5]

[1] 15 U.S.C. 78s(b)(1) (1989).

[2] Securities Exchange Act Release No. 26607 (March 7, 1989), 54 FR 10608.

[3] *See* letter from Roger D. Rutz, President and Chief Executive Officer, Board of Trade Clearing Corporation ("BOTCC"), to Jonathan Katz, Secretary, Commission, dated June 30, 1989.

[4] OCC, among other things, amended Rule 602A to clarify that although settlement obligations resulting from the cross-netting of obligations to deliver and receive foreign currency arising from futures cleared by The Intermarket Clearing Corporation ("ICC") with obligations to deliver and receive foreign currency arising from the exercise of options cleared by OCC are subject to margin under Rule 602A, no other positions in futures cleared by ICC or settlement obligations arising from such futures are subject to margin under Rule 602A. OCC also filed amendments that were subsequently withdrawn, concerning the treatment of index participations. (See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, SEC, dated September 5, 1989.) Rule 707 was amended to eliminate any inconsistencies with Section 8 of the OCC-CME cross-margining agreement. Rule 701 was amended to state that members are not required to establish separate bank accounts for cross-margining settlements. They may use the same bank account used for other settlements so long as the bank account is maintained at a clearing bank that has been designated by OCC as a cross-margining clearing bank. OCC's By-laws, Article VIII, Section 8, were amended to state that OCC's clearing fund may be used to pay funds owed to the CME as the result of a deficiency resulting from the liquidation of paired cross-margining accounts pursuant to the OCC-CME cross-margining agreement.

[5] This amendment expanded the scope of data OCC and the CME will share concerning common and affiliated members using cross-margining accounts under the terms of the OCC-CME cross-margining agreement. This agreement also was amended to add choice of law and choice of venue provisions. In addition, the amendment contains revisions to the proposed super margins and revisions to the form of account agreement applicable to affiliated clearing members to provide that OCC and the CME may treat not only the margin deposits in respect of cross-margining accounts, but also the positions in the accounts, as the joint property of the affiliated clearing members.

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On September 5, 1989, OCC requested that the Commission defer consideration of the cross-margining pledge facility to permit OCC to complete discussions with pledgee banks, clearing members and other interested persons.[6] This Order approves all aspects of the proposal except the cross-margining pledge facility.

I. Description

A. Background

Securities exchanges and futures exchanges developed options and futures contracts on derivative products such as stock indexes to enable investors, among other things, to fix the price at which assets can be bought or sold in the future. One purpose of these derivative products is to provide methods to hedge exposure to certain economic risks.[7] As the number of derivative options and futures products has increased, so too have the opportunities for intermarket hedging. Intermarket hedging involves establishing a position in one market and a corresponding position in another market in the same or a similar instrument, so that a decrease in the value of one portion (*i.e.*, leg) of a hedged position is offset, to some extent, by a corresponding increase in value of the other portion (*i.e.*, leg) of the hedged position.[8] For example, a market participant with short option positions ("short calls") in the S&P 500 index, traded on the Chicago Board Options Exchange ("CBOE") and cleared at OCC, can hedge this position against loss by buying long S&P 500 futures contracts traded and cleared on the CME.[9]

Market participants must post margin with the OCC and the CME to trade in options and futures. In the example above, the OCC clearing member writer of the short call would have to post with OCC the premium plus an additional margin amount to protect OCC against adverse market movements. The writer also would have to post margin with the CME as a "good faith" deposit to secure the writer's performance on the S&P 500 futures contract. The writer also would be required to meet additional margin requirements at OCC each day that the market moved against its position,[10] and would be required to pay or receive (losses or profits) on the futures contracts because of any price movement.

B. The Cross-Margining System

1. Purpose and Operations

The proposed rule change is OCC's request for authorization to establish its second cross-margining system.[11] This proposal is designed to facilitate the cross-margining of positions in options cleared by OCC with positions in futures and commodity options cleared by the CEM.[12] OCC's current proposal would allow cross-margining of positions that qualify as "proprietary" positions under the rules of the CFTC [13] and as "non-customer" positions under the Act.[14]

OCC's cross-margining proposal is designed to address the problems members holding positions at OCC and CME face because each portfolio is margined separately without regard to the positions held in the other portfolio; thus, clearing members may be required to meet higher margin requirements than are warranted by the risk of the combined positions. To address this problem, OCC's proposal provides for the cross-margining of positions in options cleared by OCC with positions in options and futures cleared by the CME. To implement this proposal OCC and the CME have entered into a cross-margining agreement.

The agreement provides that firms would be permitted to elect cross-margining in two situations: (1) when a firm is a clearing member of both OCC and the CME and (2) when a pair of affiliated firms, one of which is an OCC clearing member and one of which is a CME clearing member, elect to use cross-margining.

In order to participate in cross-margining, eligible OCC/CME clearing members must establish cross-margining accounts ("x-m account") at each clearing orginization.[15] Each Joint Clearing Member and each pair of Affiliated Clearing Members must designate either OCC or the CME as its Designated Clearing Organization ("DCO"). For operational reasons, OCC initially will act as the DCO for all eligible clearing members.[16] The DCO will provide the Joint Clearing Member and each pair of Affiliated Clearing Members with a daily margin and settlement report and will perform settlement functions on behalf of itself and the other clearing organization in connection with the cross-margining accounts.[17]

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[6] See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, SEC, dated September 5, 1989. The cross-margining pledge facility, when approved and implemented, would enable a joint Clearing Member or a pair of Affiliated Clearing Members to grant a participating bank (secured party) a security interest in the positions held in the cross-margining pledge accounts, and their proceeds. OCC expected that clearing members would use this facility to borrow against the value of the options positions in the cross-margining pledge accounts to finance payment of variation margin with respect to the futures positions in the cross-margining pledge accounts. To protect OCC and the CME, the security interest of the secured party would be subordinate to that of OCC and the CME to the extent of obligations to the two clearing organizations arising from the cross-margining accounts. The Commission encourages OCC and the CME to continue to explore the possibility of providing pledge facilities in the future.

[7] See Board of Governors of the Federal Reserve System, CFTC, SEC, *A Study of the Effects on the Economy of Trading in Futures and Options* (December 1984).

[8] Intermarket hedges often are imperfect because the products used as hedges do not perfectly correlate with each other. For example, a hedge involving an S&P 100 option and an S&P 500 future may correlate closely, but not perfectly. The degree to which an options position is in- or out-of-the-money and its historical and implied volatility in large part determine the number of futures contracts necessary to hedge the options position.

[9] See Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127.

[10] See Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567.

[11] OCC's initial cross-margining system with the Intermarket Clearing Corporation ("ICC") was approved by the Commission in 1988. See Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567.

[12] The OCC-cleared contracts eligible for crossmargining are as follows: put and call options on the S&P 100 index, the S&P 500 index, the Major Market Index ("MMI"), the New York Exchange Composite Index ("NYSE Composite"), the Financial News Composite Index ("FNCI"), and the Institutional Index. Only two CME contracts are eligible for cross-margining, S&P 500 futures, and put and call options on S&P 500 futures.

[13] Use of the CME cross-margining account will be limited to proprietary transactions and positions of the clearing member and officers, directors, partners, and other related persons of the clearing member whose accounts on the records of the clearing member are "proprietary accounts" within the meaning of Section 1.3 (y) of the General Regulations promulgated by the CFTC under the Commodity Exchange Act.

[14] Use of the OCC cross-margining account will be limited to proprietary transactions and positions of the clearing member and officers, directors, partners, and other related persons of the clearing member which are not "customers" within the meaning of Rules 8c-1 or 15c2-1 under the Act.

[15] Each Joint Clearing Member or Affiliated Clearing Member is required to establish and maintain a cross-margining bank account at a clearing bank that has been designated by OCC and the CME as a cross-margining clearing bank. Members also will authorize the designated Clearing Organization to withdraw funds from this bank account in accordance with its rules for the purpose of making daily settlements.

[16] At such time as OCC and CME determine to permit clearing members to designate the CME as their DCO, the Commission expects OCC to file that change, for Commission review, under Section 19(b) of the Act. Such a change, however, may become effective on filing, if OCC determines, in accordance with Rule 19b-4(e) under the Act.

[17] The OCC and the CME have agreed to indemnify each other against claims incurred as the result of any action or failure to act by the other in connection with this service. Also, the OCC–CME cross-margining agreement provides that the agreement, and consequently the service, may be terminated without cause upon 30 days notice by either OCC or CME after the agreement has been in

Continued

effect for at least a year. The agreement also provides that after a default by either of the parties which is not promptly cured after written notice, the agreement may be terminted by the non-defaulting party after five business days notice. After termination, positions in each of the former cross-margining accounts in accordance with each clearing organizations rules and procedures.

[18] OCC and the CME will retain the authority to make intra-day margin calls for additional margin when necessary.

[19] A class group is a group of options which relates to the same underlying security. See Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567.

The DCO will calculate margin requirements for x-m accounts on a daily basis in consultation with the other clearing organization.[18] OCC and CME will swap data concerning the positions in the x-m account after processing all exercises, assignments, and opening and closing trades that may result in a change in the x-m account positions. OCC and CME each will calculate margin requirement on the x-m account positions including futures, options, and futures options ("tentative margin requirement"). The results of those calculations will be used, as described below and as detailed in the cross-margin agreement, to determine the clearing member's x-m account margin requirement and the clearing member's deficit, if any, for collection the next morning.

OCC and CME will use similar procedures to determine the tentative margin requirement. OCC will use its Non-Equity Option ("NEO") margin system to calculate the premium and additional margin requirement for x-m account positions, grouping all of the X-m account positions by series, class and product groups. Currently, the NEO margin system classifies within one product group options on the following indices: S&P 100, S&P 500, MMI, NYSE Composite, FNCI, and Institutional Index. Each of those options are treated as separate class groups.[19] In calculating x-m account margin requirements, OCC will add positions in the CME's S&P 500 futures and puts and calls to the F&P 500 class group. Each delivery month the S&P 500 future will be treated as a separate series within the S&P 500 class group; similarly, each S&P 500 futures put and call with different expiration dates and strike prices will be treated as different series within the S&P 500 class group.

In calculating both premium and additional margin requirements, OCC will recognize spreads across contract months in the S&P 500 future, and will net long and short positions in different contract months. Currently, OCC's proposed spread margin rate is $100 per spread. Thus, if the clearing member was long 20 S&P 500 December futures and short 20 S&P 500 February futures, the futures spread margin requirement for these positions would be $1000 (20 spread at $100 each). OCC examines historical price data for each of these contract months and reviews the adequacy of its spread margin rate in light of its calculation of price volatility. OCC reviews data for the previous year and three months, and uses a 95% confidence interval in setting spread margin rates.[20]

OCC will calculate the premium margin requirement for each series in which the clearing member has a net short position. Because the futures are marked to the market daily by the CME, OCC does not calculate a premium margin requirement for nonspread futures positions. For other positions, including stock index options and options on stock index futures, this amounts to the current cost of liquidating open positions, based on the highest bid, ask or closing quotation for options, futures, or futures options. Thus, for example, if a clearing member had 20 short December S&P 500 futures calls and the highest asked premium quotation was 5, the premium margin requirement would be $100. As it does today in the NEO margin system, OCC calculates premium margin for net long positions, if unsegregated, and allows a premium margin credit for long positions in one series to offset a premium margin obligation in another series.

OCC then calculates the additional margin requirement for positions in the x-m account. As described in greater detail in Securities Exchange Act Release No. 23167, OCC calculates the cost of liquidating the portfolio of positions in each class group using theoretical values at a range of underlying asset prices.[21] As noted above, net positions in S&P 500 futures (after accounting for spreads across contract months) and puts and calls on the S&P 500 future will be included as series within the S&P 500 class group together with S&P 500 options.

OCC calculates theoretical values for each series position across a range of potential underlying asset prices both above and below the closing price of the underlying asset—at an underlying price equal to its closing value plus the margin interval, at an underlying price equal to its closing value minus the margin interval, and equal to any strike prices that happen to fall within the range. At each of these potential underlying asset prices, series net positions are marked to the corresponding "theoretical market" which, after comparison with the premium margin requirement or credit, represents the "theoretical profit" (additional margin credit) or "theoretical loss" (additional margin requirement) on the positions. The largest additional margin requirement or credit for any underlying asset price below the closing price and the largest additional margin requirement or credit for any underlying asset price above the closing price are chosen as the downside additional margin requirement or credit and the upside additional margin requirement or credit, respectively, for the class group.

In determining the x–m account tentative margin requirement, OCC will total the premium margin requirement for the broad-based index product group and the additional margin requirement for that product group. For class groups within the broad-based index product group, class group premium margin requirements or credits are offset on a dollar-for-dollar basis to arrive at a product group premium margin requirement or credit, and upside and downside additional margin requirements and credits are offset, with any additional margin credits in a class group first reduced by a percentage (reflecting the historical price relationship between the two products), to arrive at an upside and a downside additional margin requirement or credit. In essence, OCC looks at the highest cost of liquidating the product group portfolio across the range of prices, and that cost becomes the additional margin requirement.

OCC will transmit the tentative margin requirement for each x–m account to the CME, and vice-versa. If the margin requirements as calculated

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[20] OCC uses the same methodology to calculate its spread margin rates as it uses to calculate its margin intervals. See *infra*, note 21.

[21] (April 22, 1986), 51 FR 16212. OCC calculates theoretical value for series net positions within a class. The variables used in the pricing model include: (1) the margin interval, which defines the range of underlying security prices over which theoretical values will be computed; (2) the current marking price for each series, which OCC uses to derive an implied volatility used in the calculation; and (3) the days to expiration, dividend information, and risk free rate of return.

Margin intervals are calculated as the result of ongoing statistical analysis. OCC collects daily close-to-close price changes for each underlying security for the most recent three months and one year. OCC computes a standard deviation, which measures the variation around the mean price change, for each class group within each of these time periods. Assuming a normal distribution (*i.e.*, a symmetrical spread of frequencies out from the mean price change), OCC calculates a margin interval equal to 1.96 times the greater of either the three-month or one-year standard deviation to provide a 95% level of confidence that observations will lie within plus or minus this margin interval. OCC adjusts the margin interval to account for non-normal price distributions.

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by the OCC and CME differ, the DCO will collect the average of the two requirements from the clearing member (*i.e.*, the DCO will add together the results of OCC's and CME's calculations and divide by two), unless the DCO, in consultation with the other clearing organization, determines to collect the higher of the two margin requirements.

OCC and CME also will collect from clearing members with x–m accounts "super-margin," if the positions in the x–m account, in essence, predominantly include only futures or options positions rather than inter-market hedge positions. The super margin requirement is based on the amount of a member's additional, or risk margin requirement. If the additional, or risk margin requirement exceeds certain levels, then a super margin requirement amount would be calculated by multiplying the incremental factor for the risk margin requirement by the risk margin requirement.[22] OCC and the CME developed the super margin requirement to discourage clearing members from maintaining positions in their cross-margining accounts that would generate large margin requirements, *i.e.*, maintaining large unhedged positions in their cross-margining accounts, so as the amount of unhedged positions increases above a threshold level, the super margin requirement increases. OCC and CME will retain authority to make intra-day margin calls for additional margin when necessary.

To satisfying their margin requirements with respect to x–m account positions, clearing members may deposit cash, U.S. Treasury securities, certain issues of common stock, and letters of credit. Each of these assets currently are accepted by either OCC or CME to satisfy margin requirements.

Clearing member deposits to satisfy margin requirements for x-m account positions will be held by OCC and CME, or their agents, subject to joint OCC–CME control. For example, cash deposits will be held by the DCO in the joint settlement account until returned to the clearing member and U.S. Treasury securities will be held in a joint custody account at a bank or securities depository. Common stock will be held in a joint account at the Depository Trust Company and letters of credit will be held by the DCO on behalf of both clearing organizations.[23] The DCO will value U.S. Treasury securities at the lesser of the value that would be given to them under either OCC or CME rules. Letters of credit must be in a form mutually acceptable to OCC and CME, OCC and CME must be joint beneficiaries, and any payment under the letter of credit must require the authorization of both OCC and CME. Issuers of approved letters of credit must meet the higher of OCC's or CME's standards under existing rules. Thus, for example, letters of credit on deposit for x-m accounts cannot be concentrated in one issuing institution.[24]

Settlement will occur on a daily basis through a joint OCC–CME settlement account.[25] OCC and the CME will exchange reports on positions and settlements early in the morning on each business day. After they exchange reports, OCC and the CME will calculate the members' margin requirements. The DCO for each Joint Clearing Member or pair of Affiliated Clearing Members would then issue a Margin and Settlement Report which would state the margin requirements and the netted settlement obligations. Joint Clearing Members and pair of Affiliated Clearing Members will conduct settlement activity through the OCC and the CME's joint settlement accounts.[26]

OCC and the CME have agreed to provide each other with information concerning their members participating in cross-margining. Each organization will notify the other if it: places a member under surveillance;[27] requires a member to provide more frequent reporting of financial information; requires a member to provide additional capital (and provide the other clearing organization with the deadline for meeting the requirement); requires a member to meet higher margin requirements; or issues a special intra-day margin call (and provide the other clearing organization with the amount of additional margin required). In addition, each clearing organization will provide the other (upon request) with information concerning the amount of margin any member must deposit and the dollar amount of the member's current settlement obligations (after considering the variation margin requirements, premiums, option exercises, and any other settlements).

Each clearing organization will notify the other of any disciplinary actions taken against a member involving non-compliance with financial or financial reporting requirements or violations of the clearing organization's rules. Each organization also will notify the other if a member defaults in any settlement obligation, other than routine delays of not more than 48 hours in the physical delivery of underlying interests. In addition, each organization will provide the other (upon request) with additional information concerning any of the conditions or requirements discussed above and notify the other of when any of the conditions or requirements listed above have ceased.

2. Protection Against Participant Defaults

In the event of a member's default, OCC and the CME will work together to resolve the situation and, as discussed below, have established procedures in the cross-margining agreement to provide a framework for taking the

[22] The super margin requirements are as follows: for clearing members with a base margin requirement of 0–$16 million, the increment factor is 0.00, for clearing members with a base margin requirement of over $16–$32 million, the incremental factor is 0.25, for clearing members with a base margin requirement of over $32 million—$48 million, the incremental factor is 0.50, for clearing members with a base margin requirement of over $48–$64 million, the incremental factor is 0.75, and for clearing members with a base margin requirement of over $64 million, the incremental factor is 1.00. *See*, Amendment No. 1 to the Cross-margining agreement. Exhibit F.

[23] Any common stock which has a market value greater than $10 per share and which is traded on a national securities exchange or is traded in the over-the-counter market and designated as a National Market System Security is eligible for deposit. Such stocks will be valued on a daily basis at not more than 50% of their current market values.

[24] Among other things, letters of credit accepted by OCC and the CME must permit the clearing organization (the beneficiary of the letter of credit) to draw on the letter of credit immediately. *See* OCC Rules 604 and 705.

[25] The OCC–CME cross-margining agreement defines the joint settlement accounts as bank accounts established in the names of both clearing organizations at the cross-margining clearing banks for the purpose of making daily money settlements and holding cash margin with respect to the cross-margining accounts. All transfers out of the joint settlement account require the approval of both the OCC and the CME.

[26] The following is an example of the settlement process. OCC will perform the margin as well as the pay and collect calculations to determine the net settlement instructions. OCC will transmit this information via computer to the CME for its review. OCC also will draft and sign payment instructions for the settlement banks and fax them to the CME for its review and signature. The CME will sign the settlement instruction and fax the signed copy to OCC, so that OCC will know that the CME agrees that the settlement instructions are correct. Then OCC will fax the document with both signatures to the settlement banks. (Either the OCC or the CME may submit the settlement instructions to the settlement banks providing the appropriate individuals' signatures from both organizations appear on the settlement instructions.) Settlement banks will receive debit and credit instructions before 5:40 a.m. Central Standard Time (CST). All members must pay their settlement banks by 6:40 a.m. (CST). Members receiving funds from OCC will receive credits from OCC by 10 a.m. (OCC's usual time for providing credits to its members) and the members receiving funds from the CME will receive credits by 6:40 a.m. CST (CME's usual time for providing credits to its members).

[27] The OCC will notify the CME if it places a member on its Watch Level III or Watch Level IV lists. The CME will notify the OCC if its Audit Department places a member on its high risk list.

appropriate actions. The primary protection against losses arising from a default in a cross-margining account is the OCC's and the CME's first priority lien and security interest in all positions in the cross-margining accounts, all funds and securities deposited to satisfy margin requirements, and all proceeds resulting from the liquidation of these accounts, as security for the obligations of the Joint Clearing Member or pair of Affiliated Clearing Members.

OCC may suspend an OCC member who defaults on a cross-margining settlement obligation or margin payment obligation.[28] After OCC or the CME suspends the member (and notifies the member of its suspension), the clearing organization initiating the suspension will notify the other clearing organization of the suspension.[29] Both OCC and the CME will liquidate the contracts in the suspended member's cross-margining account, (unless both clearing organizations agree to delay liquidation of some or all of those contracts).[30] OCC and the CME will coordinate the liquidation of the contracts so that both legs of any spread or hedged position can be closed out simultaneously to the extent possible. Both OCC and the CME will use the proceeds from the liquidation of the contracts to pay for liquidation expenses; the remaining funds will be deposited in a cross-margining liquidating account.[31] The two clearing organizations also will convert to cash the deposits in the suspended member's margin account and deposit the funds in the liquidating account.[32]

The funds in the cross-margining liquidating account will be applied first to offset any liquidating deficits in the cross-margining accounts at the OCC and the CME. If the cross-margining liquidating account funds are insufficient to offset the net liquidating deficit (*i.e.*, the liquidating deficit at one clearing organization plus any liquidating deficit or minus any liquidating credit at the other), OCC and the CME will share the shortfall equally (*i.e.*, the clearing organization with the smaller liquidating deficit or a liquidating credit will pay to the other clearing organization an amount sufficient to equalize the loss borne by each clearing organization at 50%).[33] OCC or the CME will next look to the defaulting member's cross-margining clearing fund to recover the loss.

If there is a surplus of funds in the cross-margining liquidating account after the OCC and the CME have been paid, each clearing organization will be entitled to retain or receive up to 50% of the surplus to satisfy losses it has incurred from the suspended member's other accounts.[34] If the losses OCC or the CME incurred as a result of the suspended member's other accounts are less than 50% of the surplus, then the clearing organization will be entitled to retain or receive an amount equal to these losses and the other clearing organization (which had losses in excess of 50% of the surplus) will retain or receive the balance of the surplus up to the amount of its other losses. If there are any funds left after all of the above claims have been satisfied, they will be provided to the defaulting member.

If a deficiency remains after OCC has suspended a member and had liquidated its accounts as discussed above, OCC may use its clearing fund to satisfy the loss; *i.e.*, this loss will be treated in the same manner as any other loss. Thus, to the extent OCC or the CME suffer losses in the cross-margining accounts that cannot be satisfied from cross-margining account assets, OCC may assess OCC clearing members *pro rata*, to cover those losses. The CME's rules also provide that the CME may use its clearing fund (called the pool of deposits) and assess its members in the same fashion to cover its share of the losses.[35] If an OCC member defaults on a non-cross-margining account, OCC may suspend the defaulting member, must notify the CME of its action, and may liquidate all of its accounts, including the cross-margining account (unless it decides to delay liquidation of some or all of those contracts).[36] OCC will apply the proceeds from the liquidation to pay for the liquidation expenses and to recover the loss. If a default remains, OCC will look to the defaulting member's clearing fund contribution to recover the loss. If a deficit still remains, OCC will look to its aggregate clearing fund (in accordance with its loss recovery procedures) to recover the loss. Because this loss originated from a non-cross-margining account, OCC may not look to the CME's guarantee fund to recover the loss. If a CME member suffered a loss in a non-cross-margining account, the CME would take the same steps described above to recover the loss. Because this loss originated from a non-cross-margining account, the CME may not look to the OCC's clearing fund to recover the loss.[37]

II. OCC's Rationale

OCC believes that the proposal is consistent with the Act because it implements a cross-margining system which would enhance the safety of the clearing system while providing lower clearing margin costs to OCC's Clearing Members. Lower clearing margin costs are imposed because cross-margining permits the clearing organization at which the "short" leg of an intermarket hedge position is held to accept the "long" leg as security for the short leg in place of conventional forms of margin. This enhances the security of the clearing system because when an obligation is hedged by a position on the other side of the market based on the same or a smaller underlying asset, an increase in the cost of liquidating the obligation should be offset by a corresponding increase in the value of

[28] According to OCC, the CME also will suspend a member for defaulting on its settlement or margin payment obligations. Section 8 of the OCC–CME cross-margining agreement provides that both organizations will take steps, described above, to deal with a member's default.

[29] *See* Section 8 of the cross-margining agreement which provides that if one clearing organization suspends a member, or its affiliated clearing member, the other clearing organization shall liquidate the suspended member's, or its affiliated clearing member's, contracts, unless the two clearing organizations agree not to liquidate some or all of the contracts.

[30] *See* Securities Exchange Act Release No. 27104 (August 8, 1989), 54 FR 33642 (August 15, 1989).

[31] The cross-margining liquidating account will be established by the OCC and the CME at a bank in both organizations' names.

[32] The OCC and the CME may elect not to convert letter of credit commitments to cash if the issuer agrees in writing to extend its irrevocable commitment in a manner satisfactory to both clearing organizations and to provide funds as needed (up to the limit on the letter of credit) to meet anticipated disbursements from the cross-margining liquidating account.

[33] Both the OCC's and the CME's rules provide that their respective clearing funds may be used for this purpose.

[34] The cross-margining agreement provides for this loss allocation scheme even in the unlikely event that the cross-margining account contains predominately options or futures positions. Because the cross-margining account is designed for intermarket hedge positions as opposed to predominately futures or options positions that could be maintained in other CME or OCC accounts, OCC and the CME anticipate that this event is unlikely. In addition, OCC and the CME will impose super margins on cross-margining accounts which have excessive unhedged positions (*see supra*, note 22) to discourage firms from using the cross-margining account for unhedged positions that could be maintained in other accounts. Moreover, OCC and the CME retain authority to require additional margin, if necessary, beyond original and super margin requirements.

[35] *See* CME Rule 802.

[36] *See* CME Rule 1102 and 1104.

[37] *See* OCC's By-laws, Article VIII, Section 5(b). This by-law does not authorize OCC to use its clearing fund to satisfy a CME member's loss obligations in non-cross-margining accounts which resulted from a loss other than the liquidation of paired cross-margining accounts.

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the hedge position. Cross-margining also has the potential for reducing clearing system exposure in the event of a clearing member default.

III. The Comment Letter and OCC's Response

As noted above, the Commission received one comment letter from the Board of Trade Clearing Corporation ("BOTCC"). In that letter, BOTCC urged the Commission to condition approval of OCC's cross-margining proposal on OCC's agreement to participate in the Intermarket Information Sharing System ("IISS") established to facilitate information sharing among members of the futures markets.

OCC and the CME have established an information sharing agreement which provides that each organization will notify the other if a member incurs financial difficulties or defaults on its settlement obligations.[38] In addition, each clearing organization has agreed to provide the other with additional information concerning members, including position information on the members' non-cross-margining accounts, upon request. Also, OCC has agreed to participate in the IISS upon full approval of the CME's proposal by the Commodity Futures Trading Commission ("CFTC") and to begin transmitting data to IISS within 30 days of the CFTC's approval of the CME's cross-margining proposal.[39] The Commission believes that, although the OCC and CME information sharing arrangements adequately address the needs of this proposed rule change, OCC's agreement to join IISS resolves the concerns of this commentator.

IV. Discussion

The Commission believes that the proposal is consistent with Section 17A of the Act. As discussed below, the Commission believes that the proposal is designed to assure the safeguarding of funds and securities in OCC's possession or for which it is responsible and will promote the prompt and accurate clearance and settlement of securities transactions.

The concept, costs and benefits of cross-margining systems has been the subject of considerable debate during the last three years, following OCC's initial proposal to establish intermarket cross-margining. On January 31, 1986, ICC and OCC petitioned the CFTC to amend customer segregation rules under the Commodity Exchange Act to permit, primarily, options market makers and other market professionals whose accounts are carried as "customers" on the books of futures commission merchants to participate in cross-margin systems. That petition was published in the **Federal Register** on November 13, 1988,[40] and drew substantial comment from boards of trade, clearing organizations, securities and commodities clearing members, and lawyers representing market professionals.

Support for cross-margining systems has been substantial. For example, *The Report of President's Task Force on Market Mechanisms* (the "Brady Report") noted that the absence of an effective cross-margining system for futures and securities options markets contributed to payment strains in October 1987. Accordingly, the Brady Report recommended that cross-margining be allowed, permitting market participants with an investment in futures to receive credit for a hedged investment in stocks or options.[41] The President's Working Group on Financial Markets in its Interim Report concurred, recommending that the SEC and CFTC not only approve the OCC/ICC cross-margining program but facilitate cross-margining among other clearing agencies.[42]

Supporters of cross-margining systems argue that cross-margining reduces market exposure to clearing organizations on open positions in clearing member accounts because it substitutes for cash margin deposits from clearing members assets that vary directly in value with those open positions. Because a cash deposit cannot appreciate in value, supporters argue, if the cost of liquidating an open short position increases precipitously, the clearing organization can protect itself only if it demands additional fixed assets to cover the increased cost of a potential liquidation. This, supporters argue, can exacerbate clearing member liquidity in volatile markets. Cross-margining advocates argue that cross-margining systems substitute an asset that either pays cash on a daily basis or appreciates in value (a long futures option or a futures contract that entitles the holder to receive cash profits on a daily basis or a non-equity option or futures option that can appreciate in value) in a predictably direct relationship to the increasing liability of an open short position, thereby reducing the market exposure of clearing corporations in volatile markets.[43]

Most commentators acknowledge that cross-margining systems can reduce risks to clearing organizations from member defaults by centralizing control over both legs of an inter-market, hedged portfolio. Several commentators, however, question whether cross-margining systems can substantially reduce cash flows during volatile markets.[44] In essence, these commentators focus on the need for cash to meet futures variation margin payments when it is the futures leg of an intermarket hedge that declines in value and the options leg apprciates in value. In that circumstance, because options contracts appreciate in value but do not pass through profits and losses on a daily basis, the clearing member holding the option must finance, from his own or borrowed funds, payment on the futures contract.

Cross-margining advocates counter with a two-pronged response. First, they note that the need for cash occurs only if the options leg increases in value. Second, they argue that establishing options pledge facilities to permit clearing members to borrow from third party lenders (using the appreciating options as collateral) can facilitate, significantly, clearing member ability to meet futures variation margin payment

[38] *See* text, *supra*, at note 27.

[39] *See* letter from Wayne P. Luthringshausen, Chairman of the Board, OCC and ICC, to Ms. Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC, dated September 5, 1989.

[40] 51 FR 41117.

[41] *See* Brady Report at 66 (January 1988).

[42] *See, Interim Report of the President's Working Group on Financial Markets*, Appendix D at 11 (May 1988).

[43] *See* Behof, John P., The Financial Markets Unit, Department of Supervision and Regulation, The Federal Reserve Bank of Chicago, *Issue Summary: Intermarket Cross-Margining for Futures and Options* at 1 (May 1989), which concluded that "[the OCC/CME and OCC/ICC cross-margining systems] are a step in the right direction in avoiding a liquidity crisis similar to the one experienced in October 1987."

[44] For example, Roger D. Rutz concluded, based on data on dollar settlements for joint clearing members of BOTCC and CME, that a linked settlement system such as cross-margining would not have reduced significantly bank transfers by joint members during the Market Break. *See* R. Rutz, *Clearance, Payment, and Settlement Systems in the Futures, Options, and Stock Markets* at 37 (February 1989). The Commission believes Rutz's study is inconclusive because it only includes intra-market (*i.e.*, futures and options on futures) rather than intermarket products. OCC conducted a study using securities products cleared by OCC and futures products cleared by ICC to determine whether cross-margining enhances liquidity. OCC concluded that, with cross-margining, one OCC/ICC joint member with large intermarket positions in late October 1987 would have experienced initial margin reductions ranging from 37–100% and total financing reductions ragning from 27–100 percent for positions held at OCC and ICC. OCC further concluded that if positions held by the member at CME and Chicago and Board of Trade were included, variation and initial margin requirements as well as financing needs would have been reduced further. *See Cross-Margining and Futures-Style Margining: The Facts*, Timothy F. Hinkes, Commodities Law Letter, Volume VIII No. 9 & 10 (November/December 1988).

obligations. Third, they argue that because cross-margining can reduce clearing member margin deposit requirements from 38–50%, these funds can be used (or the assets pledged) to satisfy a significant percentage of the variation margin payment obligation.

The Commission has been a strong supporter and proponent of the concept of cross-margining systems for the last three years. In its comments to the CFTC on ICC's cross-margining petition, the Commission noted that a well designed cross-margining system would free up capital through reduced margin requirements while maintaining or increasing clearing organization safeguards. The Commission further noted that cross-margining would reduce clearing costs by integrating clearing functions and reduce clearing organization risk by centralizing asset management. Furthermore, the Commission stated that cross-margining may promote harmonization of broker-dealer and futures commission merchant liquidation procedures.[45]

The Commission believes that the OCC-CME cross margin system will increase the safety and reliability of clearance and settlement systems. For many years, commodity clearing organizations have reduced clearing member margin requirements on the basis of options positions at OCC, even though those clearing organizations had no rights in those positions (*i.e.*, liens or perfected security interests) and would not realize any benefit from those positions in the event of a clearing member default. In many respects, the OCC–CME cross-marginig system provides greater safety for commodity clearing organizations for existing margin policies and practices, because it will provide the CME with a perfected security interest in OCC options in clearing member x-m accounts.

The Commission also believes that cross-margining can reduce clearing member cash-flows substantially, even if it is not a panacea for the liquidity crisis that occurred during October 1987. Other solutions to intermarket cash flows may exist, but cross-margining systems appear to offer a substantial improvement in the clearance and settlement of intermarket positions. Moreover, it appears that cross-margining systems can be established with substantially less structural and business changes than other proposed solutions, such as converting exchange-traded options margin systems to pass through daily profits and losses (commonly known as futures style margin).[46]

Commentators also question whether the historical price relationship between futures and options legs of an intermarket hedge will remain stable during volatile markets. The Commission recognizes that, even in normal market conditions, the prices of products that have moved in tandem historically may diverge, for a variety of reasons, such that the long and short legs of a cross-product hedge would be liquidated at such discrepant prices that a loss to the clearing organization could result. The Commission believes certain measures can ensure sufficient price correlations among Class Groups. For example, under the ICC/OCC cross-margining program, ICC reviews correlation coefficients for Product-Group components at least monthly.[47] ICC's Market Surveillance Group monitors the Product Group components daily and, in the event price correlations begin to break down, will institute a formal review more often than monthly when market conditions dictate. If the correlation changes, ICC adjusts Product Group percentage accordingly, or if the coefficient of determination falls below 70%, ICC changes the composition of the Product Group. Furthermore, ICC's margin system provides haircut for margin audits across product groups.

The Commission believes that the OCC's proposed cross-margining system recognizes these risks and that OCC has taken steps to address these risks. Among other things, OCC will establish haircuts (*i.e.*, deduct a percentage of the value) for class group margin credits inproduct groups when appropriate.[48] OCC will review the haircuts on a regular basis to ensure that the correlations are adequate and will change the composition of the product groups if the correlations diverge too much.[49]

The Commission has reviewed the adequacy of OCC's and CME's projections against a clearing member default and, in particular, whether OCC's and CME's liens will withstand judicial scrutiny in the event of a clearing member insolvency proceeding. The Commission is satisfied that OCC and CME rules require them to take reasonable precautions to assure that both clearing organizations will have perfected security interests in accounts, margin deposits, and other assets in their possession or control.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–89–1), with the exception of the proposed cross-margining pledge facility,[50] be and hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23482 Filed 10–4–89; 8:45 am]

BILLING CODE 8010-01-M

[45] *See* letter from Jonathan G. Katz, Secretary, Commission, to Jean A. Webb, Secretary, CFTC, dated May 5, 1987.

[46] Futures style margining for exchange-traded options likely would change the economics of options trading, among other things, by altering popular trading strategies such as covered call writing, and could increase systemic credit risks because clearing organizations must guarantee the clearing member payments.

[47] *See* Securities Exchange Act Release No. 28153 (October 3, 1988), 53 FR 39567.

[48] The margin system provides for a haircut according to the closeness of the correlation between the products within the product group over the most recent three-month or one-year period. OCC plans to impose a 90% haircut when cross-margining begins.

[49] OCC also plans to have its staff monitor the correlations among instruments on a daily basis, will formally review the appropriateness of the haircut at the regularly scheduled bi-monthly margin committee meetings and will call additional margin committee meetings to review the haircuts when necessary. In addition, either the Chairman of the President of OCC has the authority to change these haircuts when necessary, and when a margin committee meeting can not be convened. *See* OCC Rule 602A, Interpretation .01

[50] *See, supra*, note 6.

[1] 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b–4 (1988)

[Rel. No. 34-27291; File No. SR-PSE-89-20]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Eligibility of Certain Market Maker Transactions To Receive Good Faith Margin Treatment.

On August 8, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to incorporate into its rules a pre-existing Options Floor Procedure Advice ("OFPA") that describes which market maker transactions will be eligible to receive good faith margin treatment.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27154 (August

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21, 1989), 54 FR 35970 (August 30, 1989). No comments were received on the proposed rule change.

Currently, the Exchange permits only transactions that are initiated on the floor of the Exchange by market makers and floor brokers effecting transactions as market makers to be entitled to special margin treatment, pursuant to the net capital requirements of Rule 15c3–1 under the Act and Regulation T of the Board of Governors of the Federal Reserve System. Any position established for the account of a market maker which has been "entered from off the floor" must be placed in the market maker's investment account and be subject to applicable customer margin requirements. An exception to these requirements exists when an order is marked as a "good until cancelled" ("GTC") order. A market maker, while on the floor, may enter a GTC order with a floor broker and still receive special margin treatment when the order is executed. The order, however, must be a limit order where the quantity cannot be increased nor the limit changed.

The Exchange proposes to delete OFPA B–11, which currently contains the above-mentioned procedures regarding special margin treatment for market maker transactions, and redesignate it as Commentary .01 to PSE Rule VI, Secton 73. This change in format is part of the Exchange's initiative to replace the OFPA's with commentaries to the appropriate rule sections.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Secton 6.[3] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) and (5) of the Act. The Commission believes that placing PSE member obligations regarding the availability of special margin treatment for market maker transactions in an Exchange rule commentary, as opposed to an OFPA, is a proper administrative decision of the PSE and will not alter the substance and effect of the obligations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that proposed rule change (SR–PSE–89–20) is approved.

[5] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: September 26, 1989.

[FR Doc. 89–23489 Filed 10–4–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27277; File No. SR–PHLX–89–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Clocking of Transaction Tickets

On June 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt an equity floor procedure advice with respect to the clocking of transaction tickets.

The proposed rule change was noticed in Securities Exchange Act Release No. 27009 (July 10, 1989), 54 FR 29797 (July 14, 1989). No comments were received on the proposal.

The Phlx has proposed to adopt an equity floor procedure advice ("E–5 Clocked Tickets") which would set forth automatic sanctions for violations by floor brokers and specialists of their existing obligation to time stamp order memoranda and transaction tickets.[3] The floor procedure advice will state that floor brokers are responsible for recording the time of receipt on the front of the ticket for each order received on the floor and the time of execution on the reverse side of the ticket for each order they are representing in the crowd at the time of execution. Similarly, the advice will state that specialists are responsible for recording the time of execution on the reverse side of the ticket for each order executed off their book.

In addition, the floor procedure advice will set forth a fine schedule for violations by floor brokers and specialists of these responsibilities. A $50.00 fine will be imposed on a floor broker or specialist for the first occurrence of such a violation, a $100.00 fine for the second, and a $200.00 fine for the third. For any violation after the third occurrence, the Exchange's Business Conduct Committee will have discretion with respect to the fine to be imposed. In addition, the floor procedure advice states that violations compound only when they occur within one year of each other.

In its filing, the Phlx stated that the purpose of the proposed rule change is to set forth the aforementioned automatic sanctions as part of its on-going effort started earlier this year to develop a minor disciplinary infraction program. The program is intended to expedite the handling of routine, minor infractions on the Phlx equity floor similar to that of the Exchange's Floor Procedure Advices in place with respect to the options and foreign currency options floors at the Phlx.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 of the Act.[4] The Commission believes that the proposal is consistent with section 6(b)(1) of the Act because it will facilitate the enforcement by the Exchange of compliance with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange by Phlx members and persons associated with Phlx members. The Commission also believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the exchanges be ". . . designed to further promote the mechanism of a free and open market and to protect investors and the public interest." The Commission notes that the obligation of floor brokers and specialists to time stamp order memoranda and transaction tickets is part of the Exchange's on-going procedures to implement an effective surveillance program to ensure investor protection. Accordingly, the Commission believes that automatic sanctions for violations by floor brokers and specialists of their time stamp obligations is an appropriate addition to the Exchange's minor disciplinary infraction program. The Commission also finds that the proposed sanctions are consistent with section 6(b)(6) of the Act because the penalties set forth in the equity floor procedure advice are reasonable in relation to the infractions in question.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23490 Filed 10–4–89; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Phlx Rule 216 provides that "[e]very specialist shall keep a legible record of all orders placed with him in the securities in which he is registered as a specialist and of all executions, modifications and cancellations of such orders, and shall preserve such records and all memoranda relating thereto in accordance with Regulation 240.17a–4 of the Securities and Exchange Commission". Rule 17a–4(b) of the Act requires every member, broker, and dealer to preserve all records required to be made pursuant to, among other paragraphs, paragraph 6 Rule 17a–3 of the Act. Rule 17a–3(a)(6) of the Act requires every member of a national securities exchange to make and keep current a memoranda of each brokerage order, and any other instruction, given or received for the purchase or sale of securities, whether executed or not, showing, among other things, the time of entry and the time of execution or cancellation.

[4] 15 U.S.C. 78f (1982).

[Rel. No. 35–24959; 31–835 and 31–836; Administrative Proceeding File No. 3–7266]

ALLTEL Corp.; Order for Hearing on Application for Exemption

September 28, 1989.

ALLTEL Corporation ("ALLTEL"), 100 Executive Parkway, Hudson, Ohio 44236, has filed an application for exemption pursuant to section 3(a)(3) of the Public Utility Holding Company Act of 1935 ("Act").

The application for exemption was filed in anticipation of ALLTEL's acquisition of all of the common stock of CP National Corporation ("CPN"), which is, among other things, a gas utility company. The acquisition of CPN was effected on December 30, 1988, and ALLTEL thereupon became a public-utility holding company. The application was amended on February 6, 1989, to reflect the completed acquisition and to remove CPN as a co-applicant. Four amendments to the application have been filed, the last on July 12, 1989. Under section 3(c) of the Act, ALLTEL is exempt "until the Commission has acted upon such application."

The application states that ALLTEL is, and from the time of its inception in 1961 has always been, a telecommunications holding company. It has grown steadily since its organization as an Ohio holding company formed to own four relatively small Ohio telephone companies, and today it has twenty-eight telephone operating subsidiaries, exclusive of CPN. ALLTEL's growth has primarily been the result of acquisitions of other telecommunications related companies. It is a publicly owned company whose stock is traded on the New York Stock Exchange and other exchanges, and is a reporting company under the Securities Exchange Act of 1934. Its total operating revenues for 1988 were $842,942,000, its operating income was $204,368,000, and its net income after taxes was $121,063,000. At December 31, 1988, ALLTEL's total assets were $1,744,204,000.

CPN, on the other hand, is described in the application as a more diversified corporation than ALLTEL. Its holdings throughout the western United States include telephone operating properties and subsidiaries, communications-related manufacturing subsidiaries, and retail gas distribution properties. CPN also provides sophisticated communications and electronic products and services to domestic and international government and military customers.

The application states that CPN's telephone and gas utility services are provided in rural communities in Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas. In recent years, however, CPN has increased substantially its involvement in manufacturing, and it recently divested itself of its electric utility operations and increased its emphasis on telephone and telecommunications related businesses. CPN continues to provide retail natural gas distribution service in five counties of Oregon, in South Lake Tahoe and Needles, California, and in Henderson, Nevada. CPN's telephone and gas operations in each of these states are regulated by the relevant state public-utility commission and, in the case of its gas utility operations, by the Federal Energy Regulatory Commission. CPN does not have any gas reserves and is not involved in gas exploration or production. In 1988, CPN provided natural gas service to approximately 61,000 customers. For the year ended December 31, 1988, CPN derived total operating revenues of $42,183,000, operating income of $6,613,000, and net income after taxes of $3,267,000 from its gas operations. Its gas utility assets aggregated $78,197,000. CPN's total operating revenue for 1988 were $225,538,000, its operating income was $45,648,000, and its net income after taxes was $3,976,000. At December 31, 1988, CPN's total assets were $408,882,000.

The application states that any plan developed by ALLTEL and CPN reflecting an intent to dispose of the gas distribution properties of CPN would, under Accounting Principles Board Opinion No. 16, render pooling-of-interests accounting unavailable for the overall acquisition transaction and that, in addition, any plan or expression of intent to sell any significant part of the assets of CPN would jeopardize tax free reorganization treatment of the acquisition of CPN by ALLTEL.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a public hearing be held with respect to the application for exemption and that interested persons be afforded an opportunity to be heard at such hearing with respect to such matter. Accordingly,

It is ordered, pursuant to section 19 of the Act, That a hearing be held on the application under the applicable provisions of the Act and the rules of the Commission at a time and place to be fixed by further order, as provided by rule 6 of the Commission's Rules of Practice (17 CFR 201.6), and that an Administrative Law Judge, to be designated by further order, preside at said hearing. Any person, other than ALLTEL, desiring to be heard or otherwise wishing to participate in that proceeding is directed to file with the Secretary of the Commission, on or before October 30, 1989, an application, as provided by rule 9 of the Commission's Rules of Practice (17 CFR 201.9), setting forth the nature and extent of such person's interest in the proceeding and any issues deemed to be raised by this Notice and Order or by the application. A copy of that request shall be served personally upon ALLTEL at the address noted above, and proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or to be heard will receive notice of the date and place of the hearing and any adjournments thereof, as well as of other actions of the Commission involving the subject matter of this proceeding.

The Division of Investment Management has advised the Commission that it has examined the application and that, upon the basis thereof, the following questions are presented for consideration, without prejudice to the Commission's specifying additional questions upon further examination:

(1) Whether ALLTEL "is only incidentally a holding company" in light of the relationship between its utility business and its other business.

(2) Whether the size of ALLTEL's utility business precludes the requested section 3(a)(3) exemption.

(3) Whether the geographical separation of ALLTEL's retail gas

[5] 15 U.S.C. 78s (b)(2) (1982).

[6] 17 CFR 200.30-3 (a)(12) (1989).

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distribution operations is detrimental to the public interest or the interest of investors or consumers within the meaning of the "unless and except" clause of section 3(a) of the Act.

(4) Generally, whether the proposed exemption is in all respects compatible with the provisions and standards of the applicable sections of the Act and of the rules promulgated thereunder.

(5) What terms or conditions, if any, the Commission should impose if the exemption request is approved.

It is further ordered, That attention should be given to the foregoing questions at the hearing.

It is further ordered, That the Division of Investment Management shall be a party to the proceeding.

It is further ordered, That the Secretary of the Commission shall give notice of the hearing by mailing copies of this Notice and Order by certified mail to ALLTEL at the address noted above; that notice to all other persons be given by publication of this Notice and Order in the **Federal Register**; that a copy of this Notice and Order shall be published in the "SEC Docket"; and that an announcement of the hearing shall be included in the "SEC News Digest."

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23492 Filed 10-4-89; 8:45 am]

BILLING CODE 8010-01-M

(Rel. No. 35-24961)

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 28, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 23, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20459, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company (70-7676)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, a wholly owned electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42, 50 and 50(a)[5] thereunder.

SWEPCO proposes to issue and sell from time to time up to $75,000,000 aggregate principal amount of its First Mortgage Bonds ("New Bonds") through December 31, 1990. The New Bonds will have maturities of five to thirty years. Interest rates and the price to be paid to SWEPCO for the New Bonds will be determined by competitive bidding. If market conditions should be impractical or undesirable for the sale of the New Bonds on a competitive bidding basis, SWEPCO proposes, subject to further authorization by the Commission, to negotiate a private sale of the New Bonds through underwriters.

SWEPCO states that the proceeds from the sale of the New Bonds, possibly together with internally generated funds and available short-term borrowings, will be applied to the cost of, or the reimbursement of the treasury for, the acquisition of all or a portion of SWEPCO's First Mortgage Bonds Series S, 11⅜% Due August 1, 2015 ("Series S Bonds"). In the event that the proceeds from the issuance of the New Bonds are greater than the amount required for the tender of the Series S Bonds, the remaining proceeds will be used for the repayment of short-term debt or for other general corporate purposes.

Because the Series S Bonds may not be refunded with funds borrowed at a lower cost to SWEPCO than 11.55% per annum prior to August 1, 1990, SWEPCO proposes to acquire, through December 31, 1990, its outstanding Series S Bonds through a cash tender offer to the holders of the Series S Bonds. The tender offer prices will include a premium over the market price of the Series S Bonds. There are approximately $70,686,000 in aggregate principal amount of Series S Bonds outstanding.

SWEPCO proposes to acquire all or a portion of its outstanding Series S Bonds because the estimated present value savings (derived from the net difference between interest payments on a new issue of comparable bonds and the Series S Bonds proposed to be refunded), on an after-tax basis, would be greater than the present value of all refunding, tendering, and issuance costs, assuming an appropriate discount rate.

Columbia Gas Systems Service Corporation (70-7678)

Columbia Gas System Service Corporation ("Service"), 20 Montchanin Road, Wilmington, Delaware 19807, a wholly owned subsidiary of the Columbia Gas System, Inc. ("Columbia"), has filed a declaration pursuant to Section 12(c) of the Act and Rule 42 thereunder.

Service proposes to enter into a sale and leaseback arrangement for Columbia's corporate headquarters building and land which is located at 20 Montchanin Road, Wilmington, Delaware. The sales price is estimated to be approximately $20 milion, but not greater than $32 million. Service proposes to use 50% of the net after-tax proceeds to retire its common stock, par value $100 per share. Net proceeds from the sale which will be used to retire Service's common stock are expected to be approximately $13.5 million, but no more than $22 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23493 Filed 10-4-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6814; Amdt. 1]

Arkansas; Declaration of Disaster Loan Area

Newton County and the contiguous counties of Boone, Carroll, Johnson, Madison, Pope, and Searcy, in the State of Arkansas, constitute an Economic Injury Disaster Loan Area as a result of damages resulting from flooding caused by severe storms, including Tropical Storm Allison, beginning on May 4 and continuing through July 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on June 20, 1990 at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, TX 75051, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: September 20, 1989.

K. Bulow,

Acting Administrator.

[FR Doc. 89-23522 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2381]

California; Declaration of Disaster Loan Area

The Haciedna Heights area of Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino, and Ventura, in the State of California, constitute a disaster area as a result of damages from a wildfire which occurred on July 3 and July 4, 1989. Applications for loans for physical damage as a direct result of this wildfire may be filed until the close of business on November 20, 1989 and for economic injury as a direct result of this wildfire until the close of business in June 21, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95825, or other locally announced locations.

The interest rates are:	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 238106 and for economic injury the number is 685300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 26, 1989.

Kay Bulow,

Acting Administrator.

[FR Doc. 89-23524 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2385]

North Carolina; Declaration of Disaster Loan Area

Cumberland County and the contiguous counties of Bladen, Harnett, Hoke, Moore, Robeson, and Sampson, in the State of North Carolina, constitute a disaster area as a result of damages from heavy rains and flooding which occurred on September 15-16, 1989. Applications for loans for physical damage may be filed until the close of business on November 27, 1989 and for economic injury until the close of business on June 26, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 238105 and for economic injury the number is 684800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 21, 1989.

K.M. Bulow,

Acting Administrator.

[FR Doc. 89-23523 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2386]

North Carolina and Contiguous Counties in the State of South Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 25, 1989, I find that the Counties of Gaston, Lincoln, Mecklenburg, and Union, in the State of North Carolina, constitute a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21-22, 1989. Applications for loans for physical damage may be filed until the close of business on November 24, 1989, and for economic injury until the close of business on June 25, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

In addition, applications for economic injury from small businesses located in the contiguous counties of Anson, Burke, Cabarrus, Catawba, Cleveland, Iredell, and Stanly, in the State of North Carolina; and Chesterfield, Lancaster, and York Counties, in the State of South Carolina, may be filed until the specified date at the above location.

The interest rates are:	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage for the State of North Carolina is 238608, and for economic injury the numbers are 685400 for North Carolina and 685500 for the State of South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

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Dated: September 28, 1989.

Michael E. Deegan,

Acting Deputy Associated Administrator for Disaster Assistance.

[FR Doc. 89-23525 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2383]

Commonwealth of Puerto Rico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 21, 1989, I find that the municipalities, of Canovanas, Carolina, Ceiba, Culebra, Fajardo, Humacao, Juncos, Las Piedras, Loiza, Luquillo, Maunabo, Naguabo, Rio Grande, San Juan, Vieques, and Yabucoa, in the Commonwealth of Puerto Rico, constitute a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 17–18, 1989. Applications for loans for physical damage may be filed until such time as determined by the Federal Emergency Management Agency, and applications for loans for economic injury may be filed until the close of business on June 21, 1990, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

In addition, applications for economic injury from small businesses located in the continguous municipalities of Aguas Buenas, Caguas, Guaynabo, Curabo, Patillas, San Lorenzo, and Trujillo Alto, in the Commonwealth of Puerto Rico, may be filed until the specified date at the above location.

	Percent
The interest rates are:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 238308, and for economic injury the number is 685000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 25, 1989.

Michael E. Deegan,

Acting Deputy Associated Administrator for Disaster Assistance.

[FR Doc. 89-23526 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2384]

South Carolina And Contiguous Counties in the State of North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 22, 1989, I find that the Counties of Berkeley, Charleston, Dorchester, Georgetown, Horry, Orangeburg, and Sumter, in the State of South Carolina, constitute a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21–22, 1989. Applications for loans for physical damage may be filed until the close of business on November 20, 1989, and for economic injury until the close of business on June 22, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

In addition, applications for economic injury from small businesses located in the contiguous counties of Aiken, Bamberg, Barnwell, Calhoun, Clarendon, Colleton, Dillon, Florence, Kershaw, Lee, Lexington, Marion, Richland, and Williamsburg, in the State of South Carolina; and Brunswick, Columbus, and Robeson Counties, in the State of North Carolina, may be filed until the specified date at the above location.

	Percent
The interest rates are:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage for the State of South Carolina is 238408, and for economic injury the numbers are 685100 for South Carolina and 685200 for the State of North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 25, 1989.

Michael E. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-23527 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-0-M

[Declaration of Disaster Loan Area No. 2382]

U.S. Territory of the Virgin Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 20, 1989, I find that the Islands of St. Croix, St. John, and St. Thomas, in the U.S. Territory of the Virgin Islands, constitute a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 17–18, 1989. Applications for loans for physical damage may be filed until such time as determined by the Federal Emergency Management Agency, and applications for loans for economic injury may be filed until the close of business on June 20, 1990, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

	Percent
The interest rates are:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster for physical damage is 238208, and for economic injury the number is 684900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 22, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-23528 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[License Number: 06/06-0059]

Enterprise Finance Capital Development Corp.; Surrender of License

Notice is hereby given that Enterprise Finance Capital Development Corp., One East First Street, Suite 1100, Reno, Nevada 89501, has surrendered its License to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Enterprise Finance Capital Development Corp. was licensed by the Small Business Administration on December 29, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on September 20, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 25, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-23533 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 11:00 a.m., on Friday, October 27, 1989, at the Goldstreet Restaurant, Maine Street, South Paris, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, phone (207) 622-8382.

Dated: September 27, 1989.

Jean M. Nowak,

Director Office of Advisory Councils.

[FR Doc. 89-23529 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Casper, will hold a public meeting at 9:00 a.m., on Friday, October 27, 1989, at the Wort Hotel, 50 North Glenwood, Jackson, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, Casper District Office, Federal Building, Room 4001, 100 East "B" Street, P.O. Box 2839, Casper, Wyoming 82602-2839.

Dated: September 27, 1989.

Jean M. Nowak,

Director Office of Advisory Councils.

[FR Doc. 89-23530 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate," which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.301 (a) and (b) is 8.80 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 306(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-23532 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06/0294]

Revelation Resources, Ltd.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to section 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1989)) for Transfer of Control of Revelation Resources, Ltd. (Licensee), 2929 Allen Parkway, Suite 1705, Houston, Texas 77019, a small business investment company (SBIC) and a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*).

The Licensee is a limited partnership SBIC. The proposed transfer of control would result from the sale of the corporate general partner, Revelation Resources Management Corporation (RRMC), now owned by Michael Walker to American Capital Corporation (ACC), located at 218 East Saint. Mary's Street, Centerville, Texas 75833, and the elimination of the individual general partner (Michael Walker).

The Corporate General Partner is defined as a "Control Person" in Section 107.3 of the SBA Regulations. As such, a change in the ownership of the Corporate General Partner constitutes a change in control of the Licensee.

The Corporate General Partner and Limited Partners will be as follows:

Name	Title or relationship	Percentage of partnership interest (Percent)
Revelation Resources Management Corp. (RRMC).	General Partner.	1.00
Fairfield State Bank	Class A Ltd. Partner.	7.63
Centerville State Bank	Class A Ltd. Partner.	5.21
First Bank—Navasota	Class A Ltd. Partner.	13.72
D. Kent Anderson	Class B Ltd. Partner.	72.24

ACC owns Centerville State Bank, Fairfield State Bank, and First Bank—Navasota. Each is a limited partner of the Licensee. ACC is 85.3% owned by D. Kent Anderson, a limited partner of the Licensee.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new

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company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 29, 1989.

Robert G. Lineberry,

Deputy Associate Administrator, for Investment.

[FR Doc. 89-23531 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 02/02-0534]

Creditanstalt Capital Corporation; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Creditanstalt Capital Corporation (CCC), 245 Park Avenue, New York, New York 10167 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and major shareholders of the Applicant are as follows:

Frederick C. Hertel, 25 Wilton Road West, Ridgefield, Connecticut 06877.	Chairman.
Dennis C. O'Dowd, 51 Kent Street, Staten Island, New York 10306.	President.
Petrina Jones, 28 East 73rd Street, New York, New York 10021.	Vice President.
Andrew V. Fellingham, 154 Wellinton Road, Garden City, New York 11530.	Treasurer.
Raymond L. Herbert, 557 N. 12th Street, New Hyde Park, New York 11040.	Secretary.
Kathy L. Herbert, 20 West 64th Street, New York, New York.	Assistant Secretary.

Vienna Holdings, Inc., a wholly-owned subsidiary of Creditanstalt Bankverein of 245 Park Avenue, New York, New York 10167, will be the sole shareholder of Creditanstalt Capital Corporation.

The Applicant, CCC, a New York corporation, will begin operations with $1,000,000 in paid-in capital and paid-in surplus. CCC will conduct its activities primarily in the States of Connecticut, Massachusetts, New Jersey, and eastern Pennsylvania, but will consider investments in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 20, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-23537 Filed 10-4-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1134]

Determination to Waive the Transfer of Foreign Assistance Funds Under the Fishermen's Protective Act

Pursuant to the authority vested in me by Executive Order 11772, I hereby certify that it is in the national interest not to transfer to the account established in the Treasury pursuant to section 7(c) of the Fishermen's Protective Act (22 U.S.C. 1977(c)) or to the Fishermen's Protective Fund established by section 9 of the Fishermen's Protective Act (22 U.S.C. 1979) funds from the Foreign Assistance Act of 1961, as amended, programmed for Mexico, Brazil, Costa Rica, St. Vincent, Papua New Guinea, Solomon Islands, Kiribati, and Federated States of Micronesia or any funds which might be programmed for these countries, in the aggregate amount of $9,164,639.83. This amount is equal to the amounts specified in the attached list of previously unreported payments and certifications made prior to March 31, 1989 which have been reimbursed by the Secretary of State for fishing boat seizures in accordance with section 3 and section 7 of the Fishermen's Protective Act.

This determination, which shall satisfy the requirements of section 5(b) of the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1975(b)), shall be reported to the Congress immediately and shall be published in the **Federal Register.**

Dated: September 8, 1989.

James A. Baker, III,

Secretary of State.

Previously Unreported Amounts Under the Fishermen's Protective Act

	Sec. 3 amount	Sec. 7 amount	Total
Brazil	$19,407.02	$71,415.07	$90,822.09
Costa Rica	290,404.53	67,707.74	358,112.27
Cuba		34,102.68	34,102.68
Federated States of Micronesia	396,000.00	158,219.52	554,219.52
Kiribati	1,218,586.00		1,218,586.00
Mexico	75,968.41	296,937.08	372,905.49
Papua New Guines	280,860.00	198,434.46	479,294.46
St. Vincent	15,000.00		15,000.00

	Sec. 3 amount	Sec. 7 amount	Total
Solomon Islands	606,700.00	5,469,000.00	6,075,700.00
All countries	2,902,925.96	6,295,816.55	9,198,742.51

[FR Doc. 89-23462 Filed 10-4-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Committee Meeting.

SUMMARY: Notice is hereby given of the first meeting of the Aviation Security Advisory Committee.

DATE: The meeting will be held October 20, 1989, from 9 a.m. to 12 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II, notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held October 20, 1989, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A presentation of the Committee's scope and objectives and statements by the Chairperson and Executive Director on the Committee's role and activities. Members of the Committee will be introduced.

Attendance at the October 20 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-9863.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on October 2, 1989.

Raymond A. Salazar,

Director of Civil Aviotion Security.

[FR Doc. 89-23590 Filed 10-4-89; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

[CGD1 89-123]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 26, 1989, in the Conference Room, second floor, U.S. Coast guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Continuation of the Committee.
3. Update Kill Van Kull Dredging Project, proposed new navigation rules.
4. Update Newark Dredging Plan.
5. Update of Navy Homeport Project.
6. Topics from the floor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffice Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668-7834.

Dated: September 26, 1989.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-23629 Filed 10-4-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-076]

Rules of the Road Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given of a meeting of the Rules of the Road Advisory Council (RORAC). A meeting of the Rules of the Road Advisory Council will be held Wednesday thru Friday, November 1-3, 1989. The meeting will be held at the Holiday Inn/Crowne Plaza Hotel, 6th and Seneca, Seattle, Washington, and is scheduled to begin at 8:00 a.m. and end at 5:00 p.m. each day. The agenda for the meeting includes the following:

1. Committee meetings on Wednesday, November 1st and the morning of Thursday, November 2nd concerning the following:

a. Certificates of Alternative Compliance.

b. Placement of Combined Sidelights on vessels less than 20 meters in length.

c. Elimination of dayshape for sailing vessels also being propelled by machinery.

d. Seaplane Communications.

e. Brightness of Masthead Lights on tow vessels operating on Western Rivers/Inland Waterways.

f. Sidelight Placement and Masthead Light Placement.

g. Vertical Sector of Electric Lights Requirement for Unmanned Barges operating in COLREG waters.

h. Navigation Safety Advisory Council (NAVSAC). Pending legislation broadens the scope and changes the name of RORAC to the Navigation Safety Advisory Council (NAVSAC).

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This committee will recommend the framework and charter for NAVSAC.

2. Council to convene in plenary session on Thursday, November 2nd at 1:00 p.m. Agenda will include status reports and information items, reports by the committees noted in paragraph 1 above, and any matters properly brought before the Council.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting. Any members of the public may present a written statement to the Council at any time.

Additional information may be obtained from Commander Thomas J. Meyers, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone (202) 267–0357.

Dated: September 29, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Office of Navigation Safety and Waterway Services.

[FR Doc. 89–23630 Filed 10–4–89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Departmental Offices

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on October 31, and November 1, 1989, of the following debt management advisory committee: Public Securities Association, Treasury Borrowing Advisory Committee.

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on October 31 and the preparation of a written report to the Secretary of the Treasury on November 1, 1989.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives on the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: September 29, 1989.

David W. Mullins, Jr.,

Assistant Secretary, (Domestic Finance).

[FR Doc. 89–23570 Filed 10–4–89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Thursday October 12, 1989, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Voice of America, 330 Independence Avenue, SW., Washington, DC 20547. The meeting will begin at 9 a.m. on October 12 and will continue through 4 p.m. Point of contact for the meeting is Mrs. Helen Giles, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of negotiations with other governments and major construction projects, and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to negotiations with other governments will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive Order (12356) to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 USC 552b(c)(1)).

Dated: September 26, 1989.

Bruce S. Gelb,

Director.

Determination To Close Radio Engineering Advisory Committee Meeting

October 12, 1989.

I hereby determine that the meeting scheduled by the Radio Engineering Advisory Committee on Thursday, October 12, 1989, to discuss current operations and future plans of the Voice of America (VOA) may be closed to the public.

This meeting will concern issues relating to negotiations with other governments. The information relating to such negotiations is specifically authorized under criteria established by Executive Order to be kept secret in the interest of foreign policy and is properly classified pursuant to Executive Order.

I hereby determine, therefore, that the meeting scheduled by the Radio Engineering Advisory Committee on October 12, 1989, may be closed to the public (5 USC 552b(c)(1)).

Dated: September 26, 1989.

Bruce S. Gelb,

Director.

[FR Doc. 89–23521 Filed 10–4–89; 8:45 am]

BILLING CODE 8230-01-M

Corrections

Federal Register
Vol. 54, No. 192
Thursday, October 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0227]

Health Omnibus Extension Act; Establishment of Clinical Trial Data Bank

Correction

In notice document 89-17117 beginning on page 30612 in the issue of Friday, July 21, 1989, make the following correction:

On page 30613, in the third column, under "**Definition of an Efficacy Trial**", in the ninth line, "with" should read "when".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[332-278]

United States-Canada Free-Trade Agreement; Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Canada

Correction

In notice document 89-22347 appearing on page 38753, in the issue of Wednesday, September 20, 1989, the heading was incomplete and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 18334; Amdts. No. 1-36, et al.]
RIN 2120-AA13

Revision of General Operating and Flight Rules

Correction

In rule document 89-18775 beginning on page 34284, in the issue of Friday, August 18, 1989, make the following corrections:

§ 91.185 [Corrected]

1. On page 34303, in the second column, in § 91.185(c)(2), in the third line, "segment" was misspelled.

§ 91.323 [Corrected]

2. On page 34310, in the third column, in § 91.323(a)(2), in the fourth line, "fire 1 detection" should read "fire detection".

§ 91.409 [Corrected]

3. On page 34312, in the first column, in § 91.409(d)(2)(ii), in the third line, after "routine" insert "and detailed inspections will be performed and including".

§ 91.801 [Corrected]

4. On page 34322, in the first column, in § 91.801(b), in the 24th line, after "under" insert a comma.

Appendix F [Corrected]

5. On page 34328, in Appendix F, in the table, in the third column, in the sixth entry, "of 5%" should read "of ±".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-49]

State of Louisiana Application for Consistency Ruling

Correction

In notice document 89-22836 beginning on page 39622 in the issue of Wednesday, September 27, 1989, make the following correction:

On page 39622, in the third column, under "**FOR FURTHER INFORMATION CONTACT:**", in the sixth line, the phone number should read "202-366-4400".

BILLING CODE 1505-01-D

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federal register

Thursday
October 5, 1989

Part II

General Services Administration

41 CFR Part 101-6
Federal Advisory Committee Management; Final Rule

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Amdt. A-48]

Federal Advisory Committee Management

AGENCY: Office of Administration, GSA.

ACTION: Final rule.

SUMMARY: This final rule provides additional administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the **Federal Register**, GSA published an initial final rule on the management of Federal advisory committees (52 FR 45926, December 2, 1987). This new final rule revises the current rule to improve further the management and use of Federal advisory committees in the Executive Branch of the Federal Government. These revisions: (1) Clarify the guidelines applicable to achieving committee memberships which are balanced in a way that is fair and consistent with section 5(b) of the Act; (2) add new language which cross-references regulations relating to Federal conflict-of-interest statutes and standards of conduct within the final rule; (3) clarify the procedures for transmitting follow-up reports to the Congress as required by section 6(b) of the Act on Presidential advisory committee recommendations; and (4) provide that annual agency fiscal year reports to GSA shall also include information requested to carry out the annual comprehensive review required by section 7(b) of the Act. Corrections of minor, nonsubstantive errors in the text of the original final rule have also been made.

EFFECTIVE DATE: October 5, 1989.

ADDRESSES: General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of the two comments received are available for public inspection in Room 6206 of the General Services Building, 18th and F Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Senior Committee Management Specialist, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202) 523-4884.

SUPPLEMENTARY INFORMATION:

Background

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Discussion of Comments

GSA published a notice of proposed rulemaking in the **Federal Register** on the management of Federal advisory committees, with a 60-day comment period ending on February 28, 1989 (53 FR 53022, December 30, 1988). No Federal agency submitted substantive recommendations. Two non-Federal commenters responded in writing and were highly supportive of the proposed rule, stating, for example, that "The proposed rule provides greater guidance to agencies * * *" and, that "The changes proposed by GSA * * * represent a major improvement over the existing rules." Both commenters offered suggestions for improving two sections of the proposed rule, both of which pertained to provisions relating to balanced membership of advisory committees. These comments discussed three recommendations made in relation to § 101-6.1007(b)(2)(iii) and to § 101-6.1015(a)(1) of the proposed rule. The disposition of these recommendations is addressed as follows:

Require that Agencies Include in Their Balanced Membership Plans a Description of Plans To Attain and Maintain Fairly Balanced Membership

One commenter stated that the final rule should require agencies to describe plans to maintain fairly balanced membership, since * * * "advisory committees undergo changes from the initial composition through routine membership rotations or the resignation and replacement of members." GSA agrees that advisory committees often have changing membership composition.

However, section 14(a)(2)(A) of the Act provides that advisory committees established by agencies shall terminate after two years unless renewed by appropriate action. In § 101-6.1029(c) of the original final rule, GSA requires that an agency head who intends to renew a committee comply with the provisions of § 101-6.1007 of the final rule duplicating procedures for establishment. The renewing agency must provide a description of its plan to attain fairly balanced membership on a biennial basis and, therefore, must address at the time of renewal any changes to the composition of the committee which may have occurred since its establishment or last renewal. GSA recognizes the merit of this suggestion, but believes that the Act and existing rule already provide for agencies to accommodate the requirement for fairly balanced membership. GSA, therefore, has not adopted this recommendation.

Require that Agencies Consider and Select a Cross-Section of Certain Membership Categories

The other commenter was of the opinion that the language in the proposed rule requiring that an agency consider (only) certain categories of potential members seemed to suggest that * * * "so long as an agency has 'considered' a cross-section of views and interests in the course of putting a committee together, it can ultimately select any composition it wants, including one which is one-sided and imbalanced." GSA does not believe that the guidance provided in the rule necessarily will cause agencies to adopt this perceived course with regard to membership selection, leading to the results suggested by this commenter.

In any case, § 101-6.1015(a)(1) of the new final rule will now require the agency to publish in advance in the **Federal Register** its description of its plan to attain fairly balanced membership, allowing for public comments which could include those offered by any interested party who might disagree that the committee will be fairly balanced. Furthermore, since the eventual selection of members for the composition an advisory committee established under this provision rests with the agency head, GSA does not believe that the final rule can compel an agency to make any particular membership selection. GSA has, therefore, not adopted this recommendation.

Require that an Agency's **Federal Register** *Notice of Establishment Solicit the Proposal of Specific Nominees for Inclusion on a Committee*

With regard to the **Federal Register** notice of establishment required by § 101-6.1015(a)(1) of the final rule, the previous commenter also suggested further that * * * "by requiring agencies to give the public an opportunity to comment on the plan for attaining fairly balanced membership, including by proposing specific nominees for inclusion on the committee * * * (that) This would be invaluable to the public and would also be of great benefit to agencies, because it would ensure that they would have the most information possible about potential committee members."

For the following reasons, GSA has not adopted this suggestion. First, a notice of establishment normally contains the name and telephone number of the agency official responsible for responding to questions from, or for receiving comments provided by, any interested person. Such comments can include proposals for specific nominees for membership on a committee. Second, notices of establishment frequently are published by an agency prior to the selection of members, and the agency would have the opportunity to consider the commenter's suggestions of potential members. Even if an agency has chosen the members of a committee prior to the publication of the notice, it can make changes to the membership at any time during the life of the committee. Third, GSA is of the opinion that the overall purpose of the **Federal Register** notice of establishment, which in accordance with § 101-6.1015(a)(2) of the final rule shall appear at least 15 days before the filing of the committee's charter, is to provide the public an opportunity to comment on the necessity or any other aspect of the proposed committee.

Additional Information

The guidelines contained in this final rule with respect to § 101-6.1008(d), wherein GSA may solicit the assistance of the Office of Management and Budget in assuring the completion of follow-up reports required by section 6(b) of the Act, were developed by GSA after consultation with that agency.

Similarly, the guidelines contained in this final rule with respect to § 101-6.1009(j), wherein an agency head shall ensure that the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics, were developed by GSA after consultation with that agency.

Executive Order 12291

GSA has determined that this final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this final rule on adequate information concerning the need for and consequences of this final rule. GSA has also determined that the potential benefits to society from this final rule far outweight the potential costs, has maximized the net benefits, and has chosen the alternative involving the least cost to society.

Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects in 41 CFR Part 101-6

Civil Rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, 41 CFR part 101-6 is amended as follows:

PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR part 101-6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR 1977 Comp., p. 158.

2. Section 101-6.1001 is amended by revising paragraph (a) to read follows:

§ 101-6.1001 Scope.

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

* * * * *

3. Section 101-6.1002 is amended by revising paragraph (c) to read as follows:

§ 101-6.1002 Policy.

* * * * *

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

* * * * *

4. Section 101-6.1007 is amended by revising the introductory text of paragraph (b)(2) and paragraph (b)(2)(iii) to read as follows:

§ 101-6.1007 Agency procedures for establishing advisory committees.

* * * * *

(b) * * *

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

* * * * *

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

* * * * *

5. Section 101-6.1008 is amended by adding paragraph (d) to read as follows:

§ 101-6.1008 The role of GSA.

* * * * *

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

6. Section 101-6.1009 is amended by revising paragraphs (e), (h) and (i); and by adding paragraphs (j) and (k) to read as follows:

§ 101-6.1009 Responsibilities of an agency head.

* * * * *

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

* * * * *

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government

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Ethics in 5 CFR parts 734, 735, and 737, and additional requirements, if any, established by the sponsoring agency pursuant to Executive Order 12674, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

7. Section 101–6.1011 is amended by revising paragraphs (a) and (b); and by adding paragraph (c) to read as follows:

§ 101–6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

* * * * *

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of § 101–6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

6. Section 101–6.1015 is amended by revising paragraph (a)(1) to read as follows:

§ 101–6.1015 Advisory committee information which must be published in the Federal Register.

(a) * * *

(1) A notice in the **Federal Register** is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101–6.1007, the agency shall publish a notice in the **Federal Register** that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

* * * * *

9. Section 101–6.1035 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101–6.1008, detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRMR Subpart 201–45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304–GSA–XX.

* * * * *

Dated: August 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–23455 Filed 10–4–89; 8:45 am]
BILLING CODE 6820–34–M

federal register

Thursday
October 5, 1989

Part III

Environmental Protection Agency

40 CFR Parts 51, 52, and 81
Prevention of Significant Deterioration for Particulate Matter; Proposed Rule; Notice of Opportunity for Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 81

[AD-FRL-3519-2]

RIN 2060-AC33

Prevention of Significant Deterioration for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of opportunity for public hearing.

SUMMARY: The EPA is proposing to revise the maximum allowable increases (increments) for particulate matter under the requirements for prevention of significant deterioration (PSD) in 40 CFR 51.166 and 40 CFR 52.21. The revisions being proposed would replace the increments presently measured by the total suspended particulate (TSP) indicator with increments that are (1) measured by an indicator that focuses on particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and (2) generally equivalent to the current TSP increments.

The proposed increments would define maximum allowable increases in concentrations of PM_{10} as follows: 4 micrograms per cubic meter ($\mu g/m^3$) (annual arithmetic mean) and 8 $\mu g/m^3$ (24-hour maximum) for Class I areas; 17 $\mu g/m^3$ (annual arithmetic mean) and 30 $\mu g/m^3$ (24-hour maximum) for Class II areas; and 34 $\mu g/m^3$ (annual arithmetic mean) and 60 $\mu g/m^3$ (24-hour maximum) for Class III areas.

The EPA is proposing these changes because it believes that the particulate matter increments should be measured by the same indicator as the revised national ambient air quality standards (NAAQS) for particulate matter. The NAAQS were revised to replace the TSP indicator with the new PM_{10} indicator on July 1, 1987 (52 FR 24634).

Under this proposal, it is EPA's intent to continue the existing PSD program for particulate matter but to regulate maximum allowable increases expressed as concentrations of PM_{10} rather than TSP. For the purposes of analyzing and tracking the consumption of the PSD increments for particulate matter, EPA is proposing to (1) retain all existing consumption of the TSP increments (to be recalculated as an amount of PM_{10} increment consumed), and (2) require that all future determinations of increment consumption for particulate matter be based on PM_{10}, beginning on the implementation date of the PM_{10} increments. The TSP increments will remain in effect until the implementation date of the new PM_{10} increments under the applicable PSD requirements for each State.

The EPA is also proposing revisions to the PSD regulations to assure that the existing PSD program for particulate matter will continue in effect while operating in accordance with the proposed PM_{10} increments. The proposed revisions would affect the PSD requirements contained in 40 CFR parts 51 and 52. Part 51 establishes requirements for the preparation, adoption, and submittal of State implementation plans (SIP's); part 52 sets forth the Administrator's approval and promulgation of implementation plans, and establishes the regulations that operate in the absence of an approved SIP.

DATES: Comments on the proposed regulations must be received before December 4, 1989 a public hearing will be held if requested; requests to present oral testimony must be received on or before October 26, 1989. The date and time of the public hearing will be announced in a subsequent **Federal Register** notice. If no one has requested an opportunity to present oral testimony by October 26, 1989, then no hearing will be held. Supporting information used in developing the proposed rules is contained in Docket No. A-88-19. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday.

ADDRESSES: Comments should be mailed (in duplicate if possible) to: EPA Air Docket (LE-131), Attn: Docket No. A-88-19, Room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. The hearing, if requested, will be held in the auditorium at the EPA's Office of Administration, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: Dan deRoeck at (919) 541-5593. Persons interested in attending the hearing or wishing to present oral testimony should contact Mr. deRoeck, in writing at the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Noncriteria Pollutant Programs Branch, Mail Drop 15, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. PSD program
B. Baseline dates and baseline areas
C. PSD program status
D. Promulgation of PM_{10} NAAQS and implementation regulations
II. Establishing New Increments for Particulate Matter
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B. Legal authority to promulgate PM_{10} increments
C. Section 107 area designations
D. Selecting equivalent PM_{10} increments
III Description of Approach For Developing Equivalent PM_{10} Increments
A. Class II increments
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H. Paperwork Reduction Act

I. Background

A. PSD program

In 1977, Congress amended the Clean Air Act (Act), adding requirements for the prevention of significant deterioration of air quality as Part C of Title I of the Act. Under the PSD program, States are required to adopt a preconstruction review permit program for major new stationary sources and major modifications of stationary sources, and to prevent significant deterioration of existing air quality levels in areas that are in compliance with the NAAQS.[1]

The PSD program mandated by Congress is required to balance three primary goals, as specified by section 160 of the Act. The first of these goals is to protect public health and welfare.

[1] The PSD requirements apply to areas classified pursuant to section 107 of the Act as attainment or unclassifiable. For pollutants for which no NAAQS have been promulgated, and for pollutants not subject to the section 107 area designation process, the PSD requirements apply everywhere as long as an area is designated as attainment or unclassifiable for at least one pollutant for which NAAQS exist (i.e., for at least one "criteria" pollutant).

This goal includes the prevention of significant deterioration of air quality in all areas where the ambient pollutant concentrations required by the NAAQS are currently being achieved. The second goal emphasizes the protection of air quality in national parks, wilderness areas, and similar areas of special concern where air quality is considered particularly important. The third goal is to assure that economic growth in clean air areas occurs only after careful deliberation of the impacts of growth on air quality by the States and local communities.

The PSD program enacted by Congress is implemented in large part through the use of "increments" and area classifications that effectively define "significant deterioration" for individual pollutants. The program also includes a requirement that major new or modified sources of air pollution employ the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted in significant amounts.[2] In section 163 of the Act, Congress defined numerical increments for particulate matter and sulfur dioxide (SO_2) as the maximum allowable increases, above baseline levels in the ambient concentration of the pollutants in a PSD area. Thus, the section 163 increments limit the allowable increases in the ambient concentrations of particulate matter and SO_2 in any area that is in compliance with the NAAQS.[3] Congress determined that the particulate matter increment levels adopted in the Act provide for both protection of air quality and reasonable industrial and economic expansion in PSD areas.

The Act's area classification scheme for PSD establishes three classes of geographic areas and applies increments of different stringency to each class. Congress established Class I for areas of special national concern where the need to prevent significant deterioration in air quality is greatest. Consequently, the most restrictive increments apply in Class I areas. Class I areas include all international parks as well as national parks, national wilderness areas, and national memorial parks exceeding certain sizes and existing on the effective date of the 1977 amendments. Section 162(a) prohibits the States or EPA from redesignating these areas to other classifications.

Less restrictive increments apply in areas designated as Class II or Class III. Class II areas are, initially, all PSD areas that are designated as attainment or unclassifiable with respect to the NAAQS and that are not classified in the Act as Class I areas. Class II areas (except statutorily defined Class I areas) may be redesignated by the States to Class I or Class III under certain circumstances. The Class III area designation would permit more deterioration in air quality in specific areas designated by the States for higher levels of industrial development and emissions growth. There are as yet no Class III areas.

B. Baseline dates and baseline areas

In an increment system, the "baseline date" marks the date after which increases in the emissions of a pollutant from any source within a defined geographical "baseline area" will be counted in determining how much increment is available for further economic development, i.e., after this date, increases in emissions "consume" increment. Hence, both the baseline date and the associated baseline area are important factors. For the existing particulate matter increments specified in section 163 of the Act, the ambient air quality on the baseline date is the baseline concentration against which increment consumption is measured. All ambient concentrations resulting from (1) actual emissions from sources in existence on the baseline date, and (2) allowable emissions from major stationary sources permitted before January 6, 1975, but not yet in operation on the baseline date, are part of the baseline concentration for particulate matter.

The PSD definition of "baseline date" provides two reference points for purposes of determining increment consumption: (1) The "major source baseline date" and (2) the "minor source baseline date." [4] The major source baseline date is the date after which emissions changes resulting from construction at any new or modified major stationary source affect the amount of increment used. The Act established January 6, 1975 as the major source baseline date for the statutory increments for particulate matter and SO_2. The "minor source baseline" date is the date after August 7, 1977 on which the first complete PSD application for a major stationary source is submitted in a PSD area. Starting on this date, all emissions increases in the baseline area (including those from minor sources) affect the amount of increment available for future growth. For particulate matter and SO_2, the minor source baseline date has already been established in many PSD areas.

C. PSD program status

The PSD requirements have been incorporated into the Code of Federal Regulations (CFR) under both parts 51 and 52 of Title 40. In part 51, the PSD regulations at section 51.166 set minimum requirements for States for the preparation, adoption, and submittal of a PSD program as part of an approved SIP. In part 52, EPA promulgated PSD requirements at § 52.21 for direct implementation of a PSD program involving the Administrator's preconstruction review and approval of new or modified PSD sources in the absence of a State PSD program under an approved SIP.

Approximately one half of the States have EPA-approved PSD programs for particulate matter (pursuant to § 51.166) incorporated into their SIP's. The remaining States have not submitted approvable programs. The EPA has delegated its authority to issue PSD permits under section 52.21 to most of these States, but continues to issue PSD permits directly for the remaining States.

D. Promulgation of PM_{10} NAAQS and implementation regulations

On July 1, 1987 (52 FR 24634), the EPA adopted final regulations that revised the NAAQS for particulate matter. With these revisions, EPA eliminated TSP as the indicator for the NAAQS and replaced it with the PM_{10} indicator. Both the primary and secondary standards were revised taking into account the most recent scientific information available on the health and welfare effects associated with particulate matter, as well as the change in the ambient indicator for particulate matter.

In the same **Federal Register**, EPA adopted final regulations to implement the revised standards. Included in these final rules were amendments to the PSD requirements, in 40 CFR Parts 51 and 52, to address the new PM_{10} indicator as a regulated form of particulate matter. The EPA did not, however, revise the PSD

[2] The EPA has defined "significant" emissions increases (in tons per year) for pollutants subject to regulation under the Act [see the PSD regulations at 40 CFR 51.166(23)(i) and 52.21(23)(i)]. Using these significance levels, certain small modifications and emissions of certain pollutants at new sources could be exempted from PSD review on the grounds that such emissions would be insignificant, i.e., "de minimis."

[3] The increments for particulate matter enacted by Congress in 1977 and listed in section 163 were based on the NAAQS for particulate matter, which until last year used TSP as the unit of measurement (indicator) for ambient levels of particulate matter.

[4] The terms "major source baseline date" and "minor source baseline date" were added to the definition of "baseline date" when EPA promulgated new PSD increments for nitrogen dioxide (NO_2) on October 17, 1988. These terms clarified points to be used for major and minor sources. See preamble for final NO_2 increment regulations for further discussion of the adoption of these terms (53 FR 40656).

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increments for particulate matter at that time to account for the new PM_{10} indicator. Instead, EPA clarified that the existing statutory particulate matter increments were meant to be measured in terms of TSP because that was the indicator for the particulate matter NAAQS when Congress adopted the "particulate matter" increments in 1977. The EPA also announced its intention to promulgate increments based on the new PM_{10} indicator pursuant to section 166 of the Act (52 FR 24672).

The EPA had originally proposed to adopt PM_{10} primary NAAQS but to retain the TSP indicator for the secondary NAAQS [49 FR 10408]. The EPA, therefore, suggested that it might promulgate and implement new PM_{10} increments, and continue to require implementation of the statutory TSP increments as well [50 FR 13147]. The EPA received numerous comments expressing opposition to this "dual increment system" and to the retention of TSP as an indicator for measuring the particulate matter increments. On the other hand, comments received from some State and local air pollution control agencies and other commenters urged EPA to retain the existing TSP increments. Today's action proposes a single set of increments for particulate matter, which would be based on PM_{10}.

In order to implement the PM_{10} increments and to maintain a single increment system, the Administrator suggested that States could request elimination of the area designations within their jurisdiction, made under section 107 of the Act ("section 107 areas") with respect to attainment status relative to the old TSP NAAQS. Through this measure, the existing Class II and Class III particulate matter increments would be rendered inoperative,[8] and the increment program for particulate matter in these areas would be governed by the new PM_{10} increments.

Unlike the Class II and III areas, Federal mandatory Class I areas are defined in the Act without reference to the section 107 area designations. Consequently, EPA cannot redesignate or eliminate Federal mandatory Class I areas in order to render the Class I TSP increments inoperable. To avoid the burdens inherent to a dual increment system, EPA therefore suggested that it might develop PM_{10} increments that are "equivalent in effect" to statutory Class I TSP increments, and allow States to use these new Class I PM_{10} increments as surrogates for the TSP increments [52 FR at 24685–24686).

[8] Under section 163 of the Act, Class II increments apply to Class II areas, which are defined as areas that have been designated attainment or unclassifiable under section 107 of the Act. The EPA has previously indicated that section 107 areas are pollutant-specific (see 52 FR 24634, July 1, 1987; pp. 24701–2). Therefore, eliminating the section 107 area designation for particulate matter for a particular geographic area results in the existing particulate matter increments being inapplicable to that particular geographic area.

II. Establishing New Increments for Particulate Matter

A. Existing Section 163 Particulate Matter Increments

In the 1977 Amendments to the Act, as discussed above, Congress set numerical PSD increments in section 163 for both particulate matter and SO_2. In establishing the PSD increments for these two pollutants, Congress used the then existing NAAQS for each pollutant as the benchmark for determining what constitutes "significant deterioration." It set the increments as percentages of the NAAQS level for each pollutant, with the same percentage, 25 percent and 50 percent, respectively, for Class II and Class III. Congress also retained the same averaging times and units of measurement ($\mu g/m^3$) as the NAAQS. Although section 163 does not expressly define the particulate matter increments in terms of a specific indicator, EPA reasoned that Congress' knowledge that TSP was the indicator for the particulate matter NAAQS, and that the TSP standards were the starting point for the increment levels when the increments were established in 1977, meant that TSP was also the appropriate measure for the particulate matter increments in section 163 (52 FR at 24700–24701). As a consequence, EPA concluded that the statutory particulate matter increments could not simply be administratively redefined and considered to be PM_{10} increments following the revision of the particulate matter NAAQS; rather, EPA decided that is must promulgate new particulate matter increments, expressed in terms of the new PM_{10} indicator.

B. Legal Authority To Promulgate PM_{10} Increments

As previously described in the July 1, 1987 PM_{10} notice, EPA believes that it has the authority to promulgate new increments for particulate matter, measured by the new PM_{10} indicator, pursuant to section 166 of the Act (52 FR at 24700). Section 166(a) states that "[i]n the case of pollutants for which national ambient air quality standards are promulgated after the date of enactment of this part, [the Administrator] shall promulgate such regulations [to prevent the significant deterioration of air quality]." Under this authority, EPA recently promulgated PSD increments and associated regulations for NO_2 (53 FR 40656, October 17, 1988). It is not as clear from the face of the statute, however, how Congress intended section 166 to be applied to the circumstances here, where the particulate matter NAAQS and control strategy are redirected to an entirely new indicator (PM_{10}). The EPA, therefore, was faced with the questions of whether section 166 applies to the unique situation presented by PM_{10} and, if so, how it applies.

The EPA has concluded that the statute authorizes the Agency to promulgate new increments for a pollutant when it changes the NAAQS to a new indicator and sets new levels, as the July 1, 1987 revisions did. The PM_{10} NAAQS were not based on the preexisting TSP NAAQS. Instead, they represent a fundamental reexamination of the present understanding of the health and welfare effects associated with ambient particulate matter. Selection of the PM_{10} indicator was based on an abundance of scientific data demonstrating that those particles small enough to penetrate to the sensitive thoracic region of the respiratory tract posed the greatest risk to human health. In addition, EPA determined that the new PM_{10} standards provide sufficient protection for relevant welfare effects associated with ambient particulate matter [9] (52 FR at 24646). In short, the selection of a new indicator and new levels for the standards establishes a new NAAQS for particulate matter for purposes of section 166. The EPA, therefore, believes that with the promulgation of the new PM_{10} NAAQS, it has both the responsibility and authority under sections 166 and 301 of the Act to promulgate new particulate matter increments to be measured in terms of PM_{10}.

The EPA could promulgate new PM_{10} increments and simply add them to the existing TSP particulate matter increments set forth in section 163 of the Act. However, as indicated in the July 1, 1987 **Federal Register** notice, EPA believes that the resulting dual increment system would prove unnecessarily burdensome and cumbersome for permit applicants and for States that would implement it (52 FR at 24701). In addition, retaining the TSP increments after the transition period would appear to make little

[9] The EPA believes that large particles in sufficient concentrations could present some welfare concerns, but that the PM_{10} NAAQS as promulgated and the controls necessary to meet such NAAQS will adequately address any such concerns (52 FR at 24645–46, and 24700).

sense, because (1) both the primary and secondary particulate matter NAAQS will now be measured exclusively by the PM_{10} indicator, and (2) PM_{10} increments can serve to prevent significant deterioration of air quality for particulate matter as well as can increments measured by the TSP indicator. Thus, EPA believes that promulgating PM_{10} increments to replace, rather than supplement, the statutory TSP increments represents the most sensible approach.

C. Section 107 Area Designations

Section 107(a) of the Act required that each State be divided into air quality control regions (AQCR's). Section 107(d), added by the 1977 Act Amendments, directed each State to submit a list specifying all AQCR's, or portions thereof, as attainment areas (areas in which the NAAQS had been attained), nonattainment areas, or unclassifiable on the basis of available information. Together, these areas are commonly referred to as "section 107 areas." The PSD provisions in part C of the Act generally apply in all section 107 areas that are designated as attainment or unclassifiable (40 CFR 51.166(i)(3)). With respect to the increments for particulate matter, the existing Class II TSP increments (and Class III increments, if there were any) specifically apply to section 107 areas designated as either attainment or unclassifiable for TSP, as long as such areas are not classified as Class I PSD areas.

Because of the importance of the section 107 area designations to the applicability of the TSP increments, the EPA announced in the July 1, 1987 **Federal Register** its position to temporarily retain the TSP area designations beyond the date on which EPA approves a State's revised PM_{10} SIP.[7] This would protect the applicability of the TSP increments until a PM_{10} increment system could be established. The eventual replacement of the TSP increments with PM_{10} increments that operate independently from the section 107 TSP area designations would finally negate the need for EPA to require that these TSP area designations be maintained. Accordingly, in the same **Federal Register**, EPA described an approach whereby the Agency would approve State requests to delete section 107 area designations for TSP (in order to render the Class II and III TSP increments inoperable) simultaneously with its approval to each State's plan revision containing the PM_{10} increments (52 FR at 24701, middle column).

In giving this approach further consideration, EPA now believes that it is not necessary for States to request the deletion of their TSP designations. Instead, with today's notice of PM_{10} increments, EPA is proposing an alternative approach, whereby it would automatically delete the TSP designations from the listing for each State contained in subpart C of 40 CFR part 81. The actual deletion by EPA of the TSP designations for each State would occur at the same time that EPA either (1) approves a State's revised PSD plan containing the PM_{10} increments, (2) approves a State's request for delegation of PSD responsibility under 40 CFR 52.21(u), or (3) promulgates the PM_{10} increments into a State's SIP where a State chooses not to do so (see revised subpart C, 40 CFR part 81).[8] In all cases, it is EPA's intent via this approach that the TSP increments remain in effect until the PM_{10} increments replace them under the applicable PSD program.

As already noted, once the section 107 designations for TSP are deleted for a particular State, the statutory Class II and Class III TSP increments will no longer have any applicability, since those increments by definition apply only in Class II and Class III areas for TSP, respectively, i.e., section 107 areas designated as attainment or unclassifiable for TSP.

The Class I statutory increments are not similarly affected by the deletion of the section 107 area designations, since mandatory Class I areas are defined in the Act without reference to section 107 area designations. However, EPA believes that it can use its authority under sections 166 and 301 to develop Class I PM_{10} increments generally equivalent to the statutory Class I TSP increments, which could serve as surrogates for the statutory increments. With the surrogate PM_{10} increments in place, the statutory TSP increments would no longer be necessary, and would be dispensed with as a regulatory measure. Using the surrogate PM_{10} increments would provide generally equivalent prevention of significant deterioration of air quality in these Class I areas while avoiding the problems inherent to a dual increment system.

[7] When EPA adopted the final regulations under 40 CFR Part 51 for State implementation of the revised PM_{10} NAAQS, States were encouraged to request redesignation of their TSP nonattainment areas to "unclassifiable" when they submitted their revised implementation plan for attaining the PM_{10} NAAQS (52 FR at 24682). The discussion in today's **Federal Register**, concerning EPA's ultimate deletion of all TSP area designations when States adopt the PM_{10} increments, presumes that State plan revisions for attaining the revised PM_{10} NAAQS will have already been submitted to EPA and approved. If this is not the case, then deletion of the TSP nonattainment area designations will necessarily be delayed. See section IV.B for further discussion.

[8] It should be noted that while EPA intends to delete the TSP area designations, it will not delete the references to the defined geographic areas for which the attainment status designations have been made. This matter is discussed further in section IV.B., Baseline dates and baseline areas.

D. Selecting Equivalent PM_{10} Increments

In addition to the goals which Congress set forth for the PSD program, section 166(d) of the Act requires any increments or other measures that EPA promulgates under section 166(a) to be "at least as effective as the increments established in section 163" in preventing significant deterioration of air quality. The EPA has considered two approaches for the selection of PM_{10} increments that it believes could be considered to meet this test: (1) the "equivalent to statutory increments" approach, and (2) the "percentage of NAAQS" approach.

The increments derived by either of the two approaches would be expressed as numerical measures and could be implemented similarly to the statutory increments. Moreover, either set of increments would provide clean areas of the country with protection against significant deterioration of air quality, especially since both sets of increments could be implemented by retaining the baseline areas and baseline dates that have already been established for the statutory TSP increments (thereby taking into account the amount of increment already consumed under the existing PSD increments for particulate matter).

1. "Equivalent to statutory increments" approach

One approach is to set PM_{10} increments which will be as nearly equivalent as possible to the section 163 particulate matter increments in their effect on TSP increment "consumption," thereby retaining essentially the same limitations on future deterioration of air quality and economic growth as was allowed under the statutory TSP increments. The PM_{10} increments developed pursuant to this approach could then be regarded as reasonable surrogates for the statutory TSP increments. For this approach, the statutory TSP increments necessarily serve as the benchmark for developing new PM_{10} increments.

Accordingly, EPA considered the amount of TSP increment "consumed" by a sample population of PSD-permitted stationary sources since the

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commencement of the PSD system. The EPA then determined the PM_{10} increment value, for each area classification and averaging time, that would provide an "equivalent" amount of PM_{10} increment consumed for the particular population of sources examined.[9] For example, if a source in a Class II area causes a 24-hour concentration increase of 18.5 $\mu g/m^3$ of TSP over the baseline concentration, then that source consumes 50 percent of the Class II 24-hour increment for TSP (37 $\mu g/m^3$). Then, by estimating the ambient PM_{10} concentrations that such source would cause, a Class II, 24-hour PM_{10} increment could be selected that would result in 50 percent of that new increment being consumed.[10]

Because the annual increment levels derived using this approach were geometric mean values, a conversion factor (1.12) was used to adjust these increments to arithmetic mean values. The proposed Class I PM_{10} increments derived from this approach are 4 $\mu g/m^3$ (annual arithmetic mean) and 8 $\mu g/m^3$ (24-hour). The proposed Class II increments are 17 $\mu g/m^3$ (annual arithmetic mean) and 30 $\mu g/m^3$ (24-hour).

Class III increments were derived in a different manner because currently there are no Class III areas for particulate matter. The EPA, therefore, chose Class III PM_{10} increments that are double the levels of the Class II PM_{10} increments, using the precedent set by Congress in selecting Class III increments for particulate matter and SO_2 that were twice as large as the respective Class II increments.[11] Thus, the proposed Class III PM_{10} increments are 34 $\mu g/m^3$ (annual arithmetic mean) and 60 $\mu g/m^3$ (24-hour).

2. "Percentage of NAAQS" approach

A second approach would be for EPA to establish PM_{10} increments that bear the same percentage relationship to the new PM_{10} NAAQS as the section 163 TSP increments bear to the TSP NAAQ from which they were derived.[12] Thus, the percentage of NAAQS approach would define equivalent amounts of "significant deterioration" relative to the standards from which the increments are derived. The EPA considered this approach because the legislative history of the 1977 Clean Air Act Amendments demonstrates that Congress selected the various section 163 increment levels by using such an approach [see H.R. Rep. No. 95–564, 95th Cong., 1st Sess. (1977), reprinted in *3* A Legislative History of the Clean Air Act Amendments of 1977 ("Legislative History"), at 528–531; H.R. Rep. 95–294, 95th Cong., 1st Sess. at 153, reprinted in *4* Legislative History, at 2620]. For both TSP and SO_2, the two pollutants for which PSD increments were established in section 163, Congress chose Class II increments that were 25 percent of the lowest standard and Class III increments that were 50 percent of the lowest standard. For Class I areas, the TSP increments selected were 6.7 percent of the lowest standard, while the SO_2 increments selected were 2.5 percent of the lowest standard.

Congress established the original increment levels to provide an appropriate balance between protecting air quality and providing an adequate margin for industrial growth. The PM_{10} increment levels that would result from using this same percentage-based approach would reflect a similar balance, because industrial sources typically would not be prevented from constructing in an area where the full Class II increment is available. Also, since the new PM_{10} NAAQS are based on EPA's latest findings regarding harm to health and welfare posed by particulate matter, this approach reflects an equivalent evaluation for PM_{10} to that used by Congress in choosing the section 163 increments from the TSP standards.

The PM_{10} levels of both the primary and secondary NAAQS are 50 $\mu g/m^3$ for the annual standard; and 150 $\mu g/m^3$ for the 24-hour standard (40 CFR 50.6). Using the "percentage of NAAQS" approach, the Class I PM_{10} increments would be 3 $\mu g/m^3$ (annual arithmetic mean) and 10 $\mu g/m^3$ (24-hour). These values are 6.7 percent of the annual and 24-hour standards, respectively. The Class II PM_{10} increments would be 13 $\mu g/m^3$ (annual arithmetic mean) and 37 $\mu g/m^3$ (24-hour), i.e., 25 percent of the respective standards. The Class III PM_{10} increments would be 25 $\mu g/m^3$ (annual arithmetic mean) and 75 $\mu g/m^3$ (24-hour), i.e., 50 percent of the respective standards.

3. Comparison of increment levels

The EPA compared the PM_{10} increment levels derived from both the "equivalent to statutory increments" and "percentage of NAAQS" approaches. This comparison indicated that, for the annual averaging time, PM_{10} increments derived from the "percentage of NAAQS" approach would establish lower maximum allowable increases in concentrations of PM_{10} than would PM_{10} increments derived from the "equivalent to statutory increment" approach. The difference between the levels for the annual increments using the two independent approaches is lessened somewhat by taking into account the fact that the deterministic annual increments would possess lower levels if expressed as equivalent statistical annual increments.[13]

For the 24-hour averaging time, which is typically the more critical averaging time for source impact analyses, the differences in the numerical levels were more significant than were the annual increment differences. The numerical levels of the statistical PM_{10} increments (derived from the "percentage of NAAQS" approach) are larger than the levels of the deterministic PM_{10} increments (derived from the "equivalent to statutory increment" approach) and would appear to allow for considerably greater increases in concentrations of PM_{10}. However, to identify the actual difference between the two sets of 24-hour increments, they must be stated in the same form, i.e., either as statistical or deterministic increments.

The EPA assessed the general relationship between the statistical and deterministic forms for the 24-hour averaging time (Tikvart, 1989). Based on this analysis, the level of a statistical increment would be lower than the level of its equivalent deterministic counterpart. Thus, if the deterministic 24-hour increment levels derived from the "equivalent to statutory increments" approach were to be expressed as equivalent statistical increments, they would have lower numerical values. This would support the original finding that the 24-hour increments derived from the "percentage of NAAQS" approach would allow for greater increases in concentrations of PM_{10} than would the increments derived from the "equivalent to statutory increments" approach.

The EPA has already used the "percentage of NAAQS" approach, and believes that it is an appropriate approach to consider in general for setting PSD increments.[14] This approach is simple to implement and reflects the methodology which Congress used to establish the SO_2 and TSP increments in section 163 of the Act. However, EPA is today proposing to establish PM_{10} increments using the "equivalent to statutory increments" approach because it believes that PM_{10} increments derived from the statutory (TSP) increments better match congressional intent in the special case where the new increments for particulate matter are intended not only to prevent significant deterioration of PM_{10} air quality, but also to replace (rather than supplement) the existing section 163 increments for particulate matter.

Increments established under the "equivalent to statutory increments" approach preserve roughly the same growth opportunites and limitations on deterioration of air quality as that established by Congress in section 163. Although the numerical levels would be established to reflect the PM_{10} component of particulate matter, this approach would preserve to the greatest extent possible the effects of the increments established by Congress. In other words, the new PM_{10} increments would attempt to mirror the statutory paticulate matter increments and reflect, in the aggregate, the level of increment that would have been consumed if the PM_{10} increments (rather than TSP increments) has been in place since 1977. Therefore, EPA is proposing PM_{10} increments derived from the "equivalent to statutory increments" approach under today's notice.

The EPA solicits comment on today's proposal concerning new PM_{10} increments which would replace the existing TSP increments under section 163 of the Act. In particular, EPA invites commenters to respond to the following topics: (1) The rationale for proposing PM_{10} increments under the "equivalent to statutory increments approach"; (2) the rationale for not proposing PM_{10} increments under the "percentage of NAAQS" approach; (3) the numerical levels of the proposed PM_{10} increments; and (4) whether the proposed increments would serve as adequate surrogates for the TSP increments.

III. Description of Approach for Developing Equivalent PM_{10} Increments

This section describes the procedures that EPA followed in developing PM_{10} increments that it believes are generally equivalent to the statutory Class II, Class III, and Class I increments, respectively. As described in detail below, the development of these PM_{10} increments involved two important steps. The first step was to convert the levels of the TSP increments to equivalent PM_{10} levels. The second step was to convert the resulting levels of the equivalent PM_{10} annual increments from geometric means values (the basis for the TSP NAAQS) to arithmetic mean values (the basis for the PM_{10} NAAQS).

A. Class II Increments

For Class II increment selection, EPA based its proposed PM_{10} increment levels on information in an existing new source review (NSR) data base. The NSR data base, developed by EPA, consists of information from over 500 existing PSD/NSR permits issued nationwide for criteria pollutant emissions between 1977 and 1984. There were 249 permits issued for particulate matter emissions having sufficient information to estimate PM_{10} emissions and, subsequently, PM_{10} increment consumption from each source. The population of permits used is believed to be representative of most PSD/NSR applications.

First, EPA plotted a distribution of the predicted air quality impacts of TSP (taken directly from the NSR data base) for each of the 249 sources. By plotting the sources according to the magnitude of their TSP impacts, EPA could determine the number of sources (expressed as a percentage of the total number of sources) with predicted TSP impacts at or below a given value. A similar distribution of PM_{10} air quality levels was plotted using (1) the projected TSP air quality levels reported by the source, and (2) PM_{10} emission factors to estimate PM_{10} emissions for emission units at the source within the 249 sources. A detailed description of the methodology is presented in a report entitled "Technical Report—Equivalency of Alternative PM_{10} Increments" (Radian Corp., March, 1989). This document is available in the docket for public inspection.

Based on the predicted ambient TSP and PM_{10} impacts, EPA calculated the percent increment consumption (for the annual and 24-hour averaging periods) for each source based on the statutory TSP increments and various trial PM_{10} increments. The trial PM_{10} increment levels were 13, 14, 15, 17, and 18 $\mu g/m^3$ (annual geometric mean); and 28, 30, 33, and 37 $\mu g/m^3$ (24-hour maximum).

A comparison of the TSP and PM_{10} increment consumption data provided the basis for determining which of the alternative PM_{10} increment levels would result in the same average percent increment consumption as the existing TSP increment consumption. This comparison was performed by calculating the area under the curves representing the distributions plotted for each increment alternative. For each PM_{10} increment alternative, EPA calculated an "increment consumption index." This index represents the amount of PM_{10} increment consumed on a source-aggregated basis relative to the amount of TSP increment consumed on a source-aggregated basis. The increment consumption index value for each PM_{10} increment alternative is shown in Table 1.

TABLE 1—NATIONWIDE IMPACTS OF ALTERNATIVE CLASS II AREA PM_{10} INCREMENTS

Alternative class II PM_{10} increments[a] ($\mu g/m^3$)	Increment consumption index[b]/mean[c]
24-Hour average:	
PM_{10}–28	106
PM_{10}–30	100
PM_{10}–33	91
PM_{10}–34	88
PM_{10}–37	81
Annual average:	
PM_{10}–13	118
PM_{10}–14	110
PM_{10}–15	100
PM_{10}–17	90
PM_{10}–18	85

[a] M_{10}—28 refers to a PM_{10} increment alternative with a numerical value of 28 $\mu g/m^3$.
[b] The increment consumption index values are a relative indicator of nationwide increment consumption under the Class II increment PM_{10} alternatives. Each value is relative to the existing TSP increment baseline value which is normalized to a value of 100.
[c] Based on the mean PM_{10} air quality impacts distribution.

As Table 1 illustrates, the Class II PM_{10} increment levels of 15 $\mu g/m^3$ (annual geometric mean) and 30 $\mu g/m^3$ (24-hour maximum) are associated with an increment consumption index of 100. This means that these PM_{10} increment levels result in the same overall amount of increment consumption as the TSP increments on a source-aggregated basis. Selection of these PM_{10} increments should provide air quality

[9] Because stationary sources emit particulate matter with varying PM_{10}/TSP emissions ratios, it is not possible to select PM_{10} increments that represent the same percentage of TSP increment consumption for all stationary sources.

[10] The actual derivation of PM_{10} increments for Class I, II, and III areas using the "equivalent to statutory increments" approach is described more fully in section III and in the docket for this proposed action.

[11] Congress selected Class II increments that were 25 percent of the respective NAAQS, and Class III increments that were 50 percent of the respective NAAQS.

[12] Unlike the PM_{10} NAAQS, which provides for the same levels for both the primary and secondary standards, the TSP NAAQS has lower levels for the secondary NAAQS. The section 163 particulate matter increments were based on the lower secondary level for the 24-hour concentration, but relied on the annual primary value because the lower value associated with the secondary "standard" was regarded only as a guide for attainment purposes.

[13] In proposing the statistical form for the PM_{10} NAAQS, EPA assessed the relationship between statistical and deterministic forms of an annual standard. Based on this analysis EPA found that, on average, the level of an annual statistical standard equivalent to a deterministic standard would be approximately 0.9 times the level of that deterministic standard (49 FR 10408, March 20, 1984, p. 10413).

[14] The EPA followed the "percentage of NAAQS" approach in developing the NO_2 increments, promulgated on October 17, 1988 (53 FR 40657). In that case, however, there were no statutory increments for nitrogen oxides from which new NO_2 increments could be derived.

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protection that is roughly equivalent to the TSP increments.

The EPA recognizes, however, that individual sources could be affected differently with respect to the amount of "equivalent" PM_{10} increment that each would consume, depending on localized conditions and the PM_{10} emissions fraction for emission units at a given source. Consequently, EPA further examined the equivalent Class II PM_{10} increments to determine their impacts relative to several specific criteria. These criteria included the following: (1) The number of sources and source types with PM_{10} increment consumption above and below TSP increment consumption, (2) the extent to which a source's PM_{10} increment consumption exceeds or falls below TSP increment consumption, (3) the availability of control technology to bring new sources into compliance with the proposed PM_{10} increments, and (4) the cost of bringing new sources into compliance with the equivalent PM_{10} increments. The impacts associated with the equivalent PM_{10} increment levels of 15 $\mu g/m^3$ (annual geometric mean) and 30 $\mu g/m^3$ (24-hour maximum) are discussed below.

The EPA examined the 249 sources in the NSR data base in order to determine the difference between TSP increment consumption and PM_{10} increment consumption (based on the selected equivalent PM_{10} levels) for each individual source. The results of this analysis showed that some sources consume more of the available increment under the equivalent Class II PM_{10} increments than under the existing TSP increments, and some sources consume less. There was essentially no difference in the percentage of increment consumed (i.e., less than 5 percent difference) for about 91 percent of the 249 NSR data base sources. A detailed summary of this examination is presented in the referenced Technical Report available for public inspection in the docket.

Of the 249 individual sources that were examined, only four were projected to exceed the equivalent PM_{10} increment levels. These sources included: (1) A petroleum refinery located at a synthetic fuels plant, (2) a steel fabrication plant, (3) an electric utility, and (4) a food processing facility. This projection assumes that the sources would apply the same level of control as they applied to meet the TSP increments. Upon closer examination of these specific sources, EPA has determined that exceedances of the PM_{10} increment by sources of these types are not likely to occur. This judgment was based on (1) The unusual characteristics of three of the affected sources relative to other sources of these types (i.e., they were located in complex terrain); and (2) the availability of existing control technologies that could be applied to ensure that similar new sources would not exceed the PM_{10} increments.

For all four source types, control technology is available that can bring new sources of these types into compliance with the proposed PM_{10} increments. A cost and economic evaluation of these sources was performed as part of an impact assessment (described in Section V of this preamble). The evaluation showed that no unreasonable economic impacts would be imposed on future sources to achieve compliance with the proposed PM_{10} increments. Details on the cost and economic evaluation are presented in a report entitled "Cost and Economic Impact Assessment for PM_{10} Increment Options" (Radian Corp., April 1988). This report is available in the docket for public inspection.

B. Class III Increments

There are currently no Class III areas. For selection of equivalent Class III PM_{10} increments, EPA also followed the approach used by Congress to establish Class III TSP increments when it simply doubled the Class II increments. Using this approach, EPA proposes to establish the Class III PM_{10} increments at twice the level of the Class II PM_{10} increments. Consequently, the equivalent Class III PM_{10} increments would be 30 $\mu g/m^3$ (annual geometric mean) and 60 $\mu g/m^3$ (24-hour maximum).

C. Class I Increments

There have been relatively few major sources constructed in the vicinity of Class I areas, which emit significant amounts of particulate matter. Consequently, there is significantly less information available on current patterns of particulate matter increment consumption for Class I areas than is available for Class II areas. In selecting Class I increments, EPA did not attempt to compare the percentages of TSP increment and PM_{10} increment consumed on an aggregated basis, as was done for the Class II increment analysis. Instead, EPA examined directly the TSP and PM_{10} impacts of 16 sources in the NSR data base, with known Class I area TSP impacts.

For 12 of the 16 sources, EPA relied on the Class I area TSP impacts reported in the data base to estimate the maximum Class I area PM_{10} impacts. The estimated PM_{10} impacts were derived from the TSP impacts after first calculating a PM_{10}-to-particulate matter emissions ratio for each source. The resulting ratios were then applied to the known TSP impacts. For the remaining four sources, EPA modeled each one based on particulate matter emissions data and source characteristics contained in the NSR data base to project the TSP and PM_{10} ambient impacts. The referenced Technical Report provides the details of this analysis and is available for public inspection in the docket for this proposed rulemaking.

Based on its examination of the percentage of increment consumed by each of the 16 sources, the EPA believes that PM_{10} increments of 4 $\mu g/m^3$ (annual geometric mean) and 8 $\mu g/m^3$ (24-hour maximum) are the most appropriate PM_{10} levels to serve as surrogates for the existing TSP increments. For several of the sources, the selected PM_{10} levels would result in a greater portion of PM_{10} increment being consumed than of TSP increment. In no case, however, would a PM_{10} increment violation be predicted.

Although EPA believes that these PM_{10} increment levels will afford Class I area protection that is generally equivalent to the protection provided by the existing TSP increments, the relative stringency of the increments could vary by source type, depending on the PM_{10}-to-particulate matter emission ratios for individual sources. For example, a source that emits a small volume of PM_{10} relative to the entire volume of particulate matter emitted conceivably could comply with the PM_{10} Class I increments while still emitting more total particulate matter than would be allowed under the existing increment.

Recognizing the small data base that was available to develop the equivalent Class I PM_{10} increments, EPA sought another way to analyze the potential impacts of other sources on the selected PM_{10} increment levels. For the purposes of this additional analysis, it was assumed that the 249 particulate matter sources included in the NSR data base were located near enough to Class I areas so that the point of maximum impact would occur in the Class I area; although, in fact, this would only be true of 16 of those sources. Through this analysis, it was determined that only 2 of the 249 sources in the data base (or less than 1 percent) would exceed the existing Class I TSP increments while complying with the equivalent Class I PM_{10} incrementa. Based on this larger sample of sources, it would be expected that the number of sources whose impacts would potentially exceed the existing Class I TSP increments while complying with the PM_{10} increments, would be very small.

While EPA believes that the results of this analysis help to demonstrate that the selected PM_{10} increments can reasonably serve as surrogates to the statutory TSP increments, it is also important to recognize that, in Class I areas, the increments have a special function that does not apply to the increments in Class II and Class III areas. In Class I areas, increments are a means of determining which party (the applicant or the permitting agency) has the burden of proof with respect to demonstrating any specific adverse impacts of a proposed PSD source within a Class I area. Congress recognized that Class I areas tend to have unique air quality concerns and, in section 165 of the Act, set forth procedures to afford special provisions beyond the use of Class I increments.

The mechanism created by Congress for achieving the extra degree of protection for Class I areas relies on the authority vested in the Federal land managers (FLM's) who oversee Class I areas to review and comment on PSD permit applications that may show specific adverse impacts in a Class I area. Such specific adverse impacts are determined relative to air quality related values (e.g., visibility) which may be defined by the FLM.

Through this special procedure set forth by Congress, FLM's have the authority to request that a permit application for a new or modified source affecting Class I areas be denied or that additional controls be required, even if the source demonstrates that it will not cause or contribute to a violation of a Class I increment.

D. Selecting the Form for the PM_{10} Increments

The levels of the equivalent PM_{10} increments that result from the "equivalent to statutory increments" approach must initially bear the same deterministic form as the statutory TSP increments. This means that (1) for the annual increments, the values are expressed as mean concentrations which cannot be exceeded in a single year, and (2) for the 24-hour increments, the values are 24-hour average concentrations which cannot be exceeded more than one time in a single year. In addition, the annual increments are stated as geometric mean values.

In contrast, the PM_{10} NAAQS are expressed in a statistical form. That is, the PM_{10} annual NAAQS is an expected arithmetic mean concentration, while the PM_{10} 24-hour NAAQS is a 24-hour average concentration for which a single expected exceedance per year is allowed. In the statistical form, the expected value is actually an average value derived from several years of data, against which the annual or 24-hour NAAQS is compared. The prescribed method for calculating these expected values for the PM_{10} NAAQS is contained in 40 CFR Part 50 Appendix K.

In order to be completely consistent with the form of the PM_{10} NAAQS, three separate conversions, involving three different conversion factors, would need to be made. Two of these conversion factors would be used to adjust the annual and 24-hour increments to the statistical form (each averaging time requires its own independent adjustment). The third conversion factor would be used to adjust from an annual geometric mean value to an annual arithmetic mean value (for the annual averaging time only).

The EPA believes that either the deterministic or statistical form would be acceptable as long as the numerical levels of the increments could be adjusted accordingly to retain their equivalent relationship to the statutory TSP increments. The EPA has decided to propose the increments in the deterministic form in order to eliminate the need for applying two of the conversion factors. This decision was based primarily on the difficulty that EPA would experience in attempting to replicate the source-by-source equivalency analyses which were conducted using deterministic source impact data in the NSR data base.

The EPA does believe, however, that there is a practical need to establish the annual PM_{10} increments as arithmetic mean values instead of the geometric mean values. Current EPA models are designed to compute arithmetic means, rather than geometric means. Furthermore, EPA believes that most PSD applications received to date by the States and EPA contain increment analyses in which the modeled predictions of annual increases in concentrations of TSP are based on arithmetic mean concentrations, rather than geometric mean concentrations.

The use of an arithmetic mean value in predicting source impacts on air quality is generally acceptable, because it tends to yield a more conservative (higher) concentration estimate than the geometric mean concentration derived from the same set of data. However, over time, unless EPA makes the conversion to an arithmetic mean value, PSD applications eventually will find it necessary to calculate their predicted air quality impacts as a geometric mean concentration. That is, as less available increment remains for additional emissions growth, use of the more conservative approach will no longer suffice for making compliance demonstrations.

To adjust to an arithmetic mean value, EPA used information that was developed from an analysis of 11,541 site-years of TSP data (1975–1978) nationwide. The data were analyzed to determine, on a single year basis, the percent difference between the annual arithmetic mean and the annual geometric mean. The analysis indicated that the typical ratio (at the 50th percentile) was 1.12. In other words, the annual arithmetic mean was typically 12 percent higher than the annual geometric mean.

Accordingly, EPA is adjusting the equivalent annual PM_{10} increments, derived from the statutory annual TSP increments (geometric), to arithmetic mean values using the 50th percentile ratio of 1.12. The annual increments expressed as arithmetic means (rounded to the nearest whole number) are as follows (with the equivalent PM_{10} increment expressed as geometric means in parentheses): Class I—4 $\mu g/m^3$, PM_{10} annual arithmetic mean (5 $\mu g/m^3$, annual geometric mean); Class II—17 $\mu g/m^3$, PM_{10} annual arithmetic mean (15 $\mu g/m^3$, annual geometric mean); Class III—34 $\mu g/m^3$, PM_{10} annual arithmetic mean (30 $\mu g/m^3$, annual geometric mean).

IV. Implementation Issues.

A. Geographic Applicability of PM_{10} Increments

On the applicable implementation date (see section IV.D.), the proposed PM_{10} increments generally would apply everywhere. This is in accordance with 40 CFR 51.166(i)(3) [see also § 52.21(i)(3)] which stipulates that the PSD review applied to any new major stationary source or major modification that would propose to locate in an area designated as either attainment or unclassifiable for any pollutant.[15] Only in the case of an area designated as nonattainment for all pollutants would the PSD requirements fail to apply to PM_{10}. However, because no such complete nonattainment area status currently exists, EPA has chosen not to propose revisions to the regulatory framework applying PSD to PM_{10}.

The EPA intends for the PM_{10} increments to apply in a manner consistent with the latest PSD area

[15] In addition to the current area designations for TSP, States are required under section 107 of the Act to identify the attainment status for other criteria pollutants, including sulfur dioxide, nitrogen dioxide, ozone, and carbon monoxide. The EPA maintains a listing of all area designations in 40 CFR Part 81 Subpart C.

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classifications, i.e, Class I, II, and III, which apply to the TSP increments proposed to be replaced. However, where an area was previously designated as nonattainment for TSP, the Class II PM_{10} increments will apply unless the area is designated as a Class I area [see 40 CFR 51.166(e) and § 52.21(e)]. States may redesignate area classifications for PM_{10} in accordance with the redesignation procedures set forth under 40 CFR 51.166(g) [also § 52.21(g)].

B. Baseline Dates and Boseline Areos

Under today's action, EPA is proposing its intention to retain the existing baseline dates and baseline areas that have already been established for particulate matter. The EPA believes that it is necessary to provide continuity with respect to the starting date for measuring the particulate matter increments in order to asure the "equivalence" concept that EPA has selected for establishing the new PM_{10} increments. The major source baseline date, therefore, will continue to be January 6, 1975, and the minor source baseline date will be the earliest date after August 7, 1977, on which the first complete PSD application is submitted by a major source with significant particulate matter emissions.

The retention of existing baseline dates and baseline areas for particulate matter includes those established under EPA-approved State PSD programs, as well as the ones established under EPA's 40 CFR part 52 PSD regulations. Thus, once the new PM_{10} increments are approved by EPA as part of the States' PSD SIP's, the amount of PM_{10} increment already used (if the baseline date has already been established for TSP) must be calculated in accordance with the baseline date established under the original TSP increments. An established baseline date for TSP would remain in effect even if the PSD source would not have triggered such date based on its potential PM_{10} emissions [see proposed new paragraph (b)(14)(iv) under 40 CFR 51.166 and § 52.21].

Where the baseline date for particulate matter has not yet been established, it will be the date after the applicable PM_{10} increment implementation date on which the first complete PSD application is submitted by a major new source or major modification having the potential for significant amounts of PM_{10} emissions. That is, EPA's policy will be to require that any new baseline dates for particulate matter under the PM_{10} increments be established when the source or modification would have the potential to emit as least 15 tons per year or more of PM_{10} emissions, (i.e., the significant emission rate defined for PM_{10}), rather than 25 tons per year or more of particulate matter emissions. See further discussion of how the two different significant emission thresholds will be applied in the following section, "Source applicability."

Baseline areas that are established after the implementation date for the new PM_{10} increments must include the "PSD area" in which the proposed source or modification would be located and any other "PSD area" in which the source or modification would have an ambient PM_{10} impact of at laest $1\mu g/m^3$ (annual average). The PSD areas referred to would initally be circumscribed by the geographic boundaries which the States set forth to define the section 107 attainment designation status (including nonattainment) for TSP. These boundaries are listed as the "designated area" under Subpart C of 40 CFR part 81.

As mentioned earlier in this preamble, EPA plans to automatically delete the applicable attainment status designations for TSP when the equivalent PM_{10} increments are in place in a State's SIP. In doing so, EPA will retain references to the geographic boundaries ("designated areas") associated with the designations. These "designated areas," including the ones previously holding a TSP nonattainment designation, will then be listed in Subpart C as PSD areas for PM_{10}. It should be noted, however, that the "automatic" deletion of an area's TSP designation from 40 CFR part 81 will occur only after a PM_{10} SIP providing for implemention of the PM_{10} NAAQS has been approved, or EPA promulgates a substitute Federal plan. If such a revised PM_{10} SIP has not been approved, EPA will need to retain the TSP area designation, even though it is revising part 81, as described above, to list the area boundaries for purposes of identifying PM_{10} baseline areas. Ultimately, EPA anticipates that all TSP area designations will be removed and the "designated areas" associated with them will become PSD areas for determining PM_{10} increment baseline areas.

The EPA is also proposing to revise the definitions of "baseline area" and "baseline date" in parts 51 and 52 to account for the new PSD area listings for PM_{10}. Since the PSD areas for PM_{10} will have no direct linkage to the section 107 area process, language is proposed to be added to the definitions of "baseline date" and "baseline area" to refer specifically to the PSD areas for PM_{10} as they are listed in Subpart C of 40 CFR part 81 [see proposed revisions to 40 CFR 51.166(b) (14) and (15), and § 52.21(b) (14) and (15)].

C. Source Applicability

Only "major stationary sources" and "major modifications" (i.e., major stationary sources incurring a significant net increase in emissions) are subject to PSD review. A major stationary source is defined in 40 CFR 51.166(b)(1)(i) as any stationary source that emits, or has the potential to emit, a threshold amount of pollution for "any pollutant subject to regulation under the Act." For sources in any one of 28 specified source categories, that threshold is 100 tons or more per year; for all other sources, the threshold is 250 tons or more per year.

The EPA believes that the determination of whether a source is a major stationary source should continue to be based on potential "particulate matter emissions," [16] since particulate matter emissions continue to be regulated under a variety of section 111 new source performance standards. (See 40 CFR part 60 *et seq.*) For the reason, EPA does not intend to change the way in which a new source is determined to be "major" for particulate matter.

Similarly, EPA does not intent to make any changes to the emission rates which define "significant" for particulate matter. That is, significant amounts of particulate matter will continue to be calculated in terms of both particulate matter emissions and PM_{10} emissions. Accordingly, a new stationary source which has the potential to emit any pollutant in major amounts will be subject to PSD for particulate matter, if such major stationary source would emit significant amounts of either particulate matter emissions (25 tons per year) or PM_{10} emissions (15 tons per year). An existing major stationary source will also be subject to PSD review if, after accounting for creditable emissions increases and decreases caused by a modification, a significant net emissions increase of either particulate matter emissions or PM_{10} emissions is determined to result.

Under today's proposal, it will be EPA's policy to require any PSD source which would have the potential to emit significant amounts of either particulate matter emissions or PM_{10} emissions to undergo PSD review. However, in

[16] "Particulate matter emissions" are defined as all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified by EPA or by a test method in an approved SIP [40 CFR 51.100 (pp)].

completing this review, a PSD applicant would only be required to perform an ambient impact analysis (NAAQS and PSD increments) for particulate matter when the proposed new source or modification would have the potential to emit PM_{10} emissions in significant amounts.

D. Implementation Date

There are several important time periods specified by section 166(b) of the Act that will affect the implementation of the increments for PM_{10}. First, a 1-year time period is required by section 166(b) between the date of promulgation of section 166 regulations and the effective date of such regulations. Second, section 166(b) of the Act also provides States up to 9 months following the effective date of promulgation of the new regulations to prepare necessary amendments to SIP's, and an additional 4 months (13 months total) for EPA to review the proposed SIP revisions prior to determining their approvability. Consequently, a period of up to 25 months (12 months from promulgation to the effective date, plus 13 months for SIP approval) could elapse between the promulgation of these increments and their implementation. Until the actual implementation date of the new PM_{10} increments in any State's PSD SIP, the TSP increments will continue to apply.

The actual time that elapses between promulgation and implementation depends on two factors: (1) The mechanism by which the PSD program is implemented in an area, and (2) the action a State or area takes to enable it to implement the program. There are three mechanisms by which the PSD program is implemented. First, a State can have its own PSD permitting procedures that have been approved by EPA as meeting the requirements of 40 CFR 51.166; this is termed an EPA-approved PSD SIP program. Second, a State can receive a delegation of EPA's authority to issue PSD permits in accordance with the Federal PSD regulations in 40 CFR 52.21; this is termed a delegated PSD program. Finally, in a few areas of the country where States have neither submitted an approvable PSD SIP nor sought a delegation, and in Indian lands where States lack authority to administer the PSD requirements, EPA Regional Offices issued PSD permits pursuant to 40 CFR 52.21.

For EPA-approved programs, section 166(b) of the Act contemplated a 40 CFR 51.166 rule that would take effect 12 months after promulgation and allow States 9 months after that (21 months after promulgation) to submit revised SIP's incorporating the increments. The EPA was then expected to approve or disapprove the SIP revision within 4 months, so the maximum time anticipated for implementation in SIP-approved areas is 25 months. The EPA will follow this schedule for the PM_{10} increments. Each State or area with an EPA-approved PSD program will have until 21 months after promulgation of the increments to submit to EPA a SIP revision implementing them. Revised SIP's may, of course, be submitted earlier, but EPA cannot approve any such revisions until 12 months after the date of promulgation of the PM_{10} increments under § 51.166.

For States that currently lack approved PSD plans, and for Indian lands, EPA proposes a similar implementation schedule for the PM_{10} increments and associated regulations. The EPA believes that it should follow the language of section 166 to the greatest extent possible in establishing implementation dates for these areas. Specifically, section 166(b) provides up to 21 months from the date of promulgation of section 166 regulations for States to submit SIP revisions to EPA for approval. The EPA believes it appropriate to provide each State an opportunity to develop an EPA-approved PSD SIP program. For this reason, every State will be provided 21 months in which to develop and submit a revised SIP for PSD, including any PM_{10} increments ultimately promulgated pursuant to today's proposal. This approach should also minimize differences in implementation dates between the States due to differences in PSD program mechanisms. The EPA proposes to establish a general effective date of 25 months after publication of the final notice for the PM_{10} increments and associated regulations promulgated pursuant to § 52.21.

It should be noted, however, that as events actually unfold over that 25-month period, the implementation date for the PM_{10} increments could occur in some SIP's at times other than the generally applicable effective date. First, a State might adopt and submit the necessary SIP revisions (perhaps as part of a comprehensive PSD permitting program) and EPA might approve them, all between the 12-month and 25-month points. Second, EPA might advance the general effective date in the case where a State stipulates, in writing, that it does not intend to submit the necessary SIP revisions (thereby rejecting the 21-month SIP development time provided in the Act), and requests that EPA delegate to it (i.e., the State) the administration of the PM_{10} increments in lieu of the TSP increments currently contained in § 52.21.

Similarly, if an Indian tribe requests in writing an earlier effective date, EPA will consider advancing the effective date in accordance with the tribe's wishes. The EPA will make a case-by-case judgment based on all of the circumstances at the time of the request. The EPA would in no event make those amendments effective any earlier than the 12-month point established for the amendments to § 51.166.

E. Grandfathering Provisions

The EPA anticipates that the Agency and the States will receive numerous PSD permit applications, which contain a TSP increment analysis, before the applicable implementation date of the PM_{10} increments. In cases where these applications are considered to be complete based on the existing requirements on the date that they were submitted, yet a permit has not yet been issued by the reviewing authority, EPA believes that it would be appropriate to exempt the applications from any PM_{10} increment analysis and requirements. In order to provide for such exemptions, EPA is proposing to add grandfathering provisions to the PSD regulations under both part 51 and part 52. The new provision would apply only as to consideration of the PM_{10} increments. Any SIP requirements already in effect for PM_{10} (e.g., PM_{10} NAAQS compliance), before the implementation date of the PM_{10} increments must be met as provided for in the existing PSD program.

For applications submitted under EPA's part 52 PSD regulations, the Agency is proposing a grandfathering provision at § 52.21(i)(13). This paragraph states that the amendments requiring a PM_{10} increment analysis would not apply to any project for which a complete application has already been filed, including a project that has already received a permit before the implementation date of the relevant amendments to § 52.21. Instead, such projects would be reviewed only for their ability to demonstrate compliance with the original TSP increments.

The EPA is also proposing to add a parallel grandfathering provision under part 51 that would allow a State to enact a similar exemption under it's SIP-approved program. In the case of a State's own PSD requirements, the exemption would be based on the submission of a complete PSD permit application before the State's implementation date for the PM_{10} increments [see proposed new paragraph (i)(12) under § 51.166]. Of course, a State would be free to have a more restrictive exemption, or no

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exemption at all, if it deemed any such alternative course of action more appropriate.

F. Exclusions from Increment Consumption

Section 163(c)(1) of the Act provides that States with EPA approved PSD plans may "issue orders or promulgate rules" to exclude concentrations from certain emission-related activities in determining compliance with the PSD increments. When States revise their SIP's to adopt the new PM_{10} increments, they may adopt exclusions for certain concentrations of particular matter, which had not been previously considered for the TSP increments [see 40 CFR 51.166(f)]. "Prescribed burning" is an example of the types of activities for which an exclusion might be sought.

"Prescribed burning" is a term for a wide variety of silvicultural, agricultural, industrial, and commercial practices involving the burning of vegetative materials. Prescribed burning is done for a variety of reasons, including wildlife and vegetation management; fire suppression; disposal of logging, agricultural, and other wastes; site preparation; land clearing; timber stand management; and range (forage) management. Certain of these activities, such as the burning of debris to construct a highway (land clearing), might be considered to be temporary in that the emissions would only degrade air quality in any affected area for a short time (the duration of the construction project). However, certain other activities, which may represent common and routine practices, might not be considered to be temporary since they contribute to measured air quality levels on a regular basis. Such periodic burning might be considered an intermittent, but not necessarily temporary, activity.

Section 163(c)(3) of the Act calls for an EPA determination that any State rule or order providing for the exclusion of certain pollutant concentrations from PSD increment consumption complies with the statutory exclusion provisions. The EPA will give serious consideration to a State exclusion provision for specific temporary PM_{10} emission-related activities from PM_{10} increment consumption, provided that any such provision would not result in permanent or long-term deterioration of air quality in any affected area. For example, some logging, agricultural, and silvicultural activities could better be described as "itinerant" activities in that they may be temporary at a specific location, but move to nearby locations and still affect the air quality within the same air shed.

The EPA is also soliciting comments regarding (1) whether exclusions should be contingent upon the use of specific mitigation measures as "best management practices"; (2) what, if any, accountability measures should be required regarding the temporary nature of air quality deterioration resulting from excluded activities; and (3) whether excluded activities should be "coordinated" or "scheduled" when occurring in a common air shed to minimize the ambient impact from all excluded activities on a given day.

As stated above, the Act allows only those States with approved PSD plans to establish certain exclusions from increment consumption. While the types of exclusions that States may establish are described under paragraph (f) of § 51.166, EPA's current part 52 PSD Regulations also contain similar exclusion provisions [see § 52.21(f)]. The EPA originally allowed States to request the use of the exclusion provisions under EPA's part 52 PSD program while States were developing their own initial PSD regulations. But the EPA indicated that, after May 7, 1981, the exclusions would be unavailable unless a State submitted an approvable PSD plan to EPA (see 45 FR 52676, August 7, 1980; p. 52719). Paragraph (f) of § 52.21 is superfluous, since States may no longer request the exclusion of certain particulate matter concentrations from the PM_{10} increments under EPA's part 52 PSD regulations. Consequently, EPA plans to eliminate paragraph (f) altogether to avoid any confusion as to its future use by States without EPA-approved PSD plans. Accordingly, EPA is proposing to delete and reserve paragraph (f) of § 52.21.

EPA is also proposing to delete paragraph (f)(3) of § 51.166 which states: "No exclusion under paragraph (f) of this section shall occur later than 9 months after August 7, 1980, unless a SIP revision meeting the requirements of 40 CFR 51.166 has been submitted to the Administrator." The original purpose of this provision was to restrict the use of the exclusion provisions under EPA's Part 52 PSD regulations beyond May 7, 1981. Therefore, in order to avoid any confusion concerning the States' continuing authority to adopt new exclusion provisions pursuant to section 51.166, EPA is today proposing to delete paragraph (f)(3) of that section.

G. Area source impacts

After the baseline date, emissions from area sources must be considered in the increment consumption calculations. An analysis was conducted to determine the potential impact of emissions from area sources on the consumption (or expansion) of PM_{10} increments. A detailed report is provided in the docket for public inspection. Basically, this analysis focused on emissions from motor vehicles and residential wood combustion (RWC) in high growth urban areas. The potential impacts of other area sources on PM_{10} increments were determined to be less than their potential impact on the existing TSP increments, because their ratios of PM_{10} emissions to particulate matter emissions were sufficiently low.

If area sources make a significant contribution to ambient PM_{10} concentrations after the establishment of the baseline date, these sources would consume the PM_{10} increment and, consequently, constrain new or modified source growth in PSD areas. If, on the other hand, emission controls on area sources result in reductions in emissions of PM_{10}, these controls may effectively expand the increment and reduce the constraints posed by the PSD regulations on new and modified source growth.

H. Prevention of significant deteriorotion monitoring

In conjunction with EPA's proposed deletion of the TSP-based increments, EPA is also proposing to eliminate the requirement that PSD applicants submit preapplication monitoring data for TSP as part of their permit applications. This would be accomplished through the deletion of the significant ambient concentration defined for TSP [see revised paragraph (i)(8)(i)(c) of 40 CFR 51.166; also § 52.21(i)(8)(i)]. The existing significant ambient concentration of 10 $\mu g/m^3$ of TSP, 24-hour average, was originally established to help determine when a proposed PSD source must, prior to the submittal of its PSD application, collect and evaluate ambient TSP data in accordance with paragraph (m) of the PSD requirements under §§ 51.166 and 52.21.

When EPA amended the PSD requirements on July 1, 1987 to account for the revised PM_{10} NAAQS, it added a significant ambient concentration for PM_{10} (10 $\mu g/m^3$, 24-hour average). This significant ambient concentration is used to help determine when application monitoring data for PM_{10} must be gathered. The EPA indicated, however, that TSP monitoring would continue to be required under the PSD program (52 FR 24686). Once the TSP increments are deleted in accordance with the applicable implementation date for the PM_{10} increments, PSD programs will no longer require the regulation of TSP as an ambient indicator for particulate matter. Consequently, EPA will not require PSD applicants to submit preapplication monitoring data for TSP when today's proposed amendments become effective under the Part 52 PSD regulations; only PM_{10} monitoring data will be required where applicable. When today's proposed amendments become effective under 40 CFR part 51, the requirement for preapplication monitoring data for TSP will no longer exist in the Federal SIP requirements for PSD.

V. Summary of Proposed Changes to the Regulations

In order to incorporate the PM_{10} increments and other changes discussed above into the PSD regulations, EPA is proposing amendments to several provisions of the CFR. Most of the changes are to existing provisions under both part 51 and part 52 of Chapter 40 of the CFR, pertaining to requirements for State and Federal administration of the PSD program, respectively. The EPA is also proposing to add a new Subpart C under part 81 of Chapter 40, as further described below.

One important proposed revision to the PSD regulations is the establishment of PM_{10} increments and the deletion of the existing TSP increments. In accordance with today's proposal, the PM_{10} increments would be added to the tables in §§ 51.166(c) and 52.21(c) which define increments for Class I, II, and III areas. Similarly, EPA proposes to amend the tables in 40 CFR 51.166(p) and § 52.21(p) by adding new increments for PM_{10}. The increments contained in these latter tables apply in situations where the FLM determines that a source will exceed the PM_{10} Class I increments (in a Class I area) without adversely affecting the area's air quality-related values. In all of these tables, the TSP increments would be deleted upon the effective date of the amendments to the increments for particulate matter. Other changes to the PSD regulations are necessary to account for the new PM_{10} increments and the deletion of the TSP increments. First, a sentence is proposed to be added to §§ 51.166(b)(3)(iv) and 52.21(b)(3)(iv) to make it clear that only reductions in PM_{10} can be used to offset new emissions of PM_{10} in determining the net emissions increase created by a new or modified facility subject to the PSD program.

Second, EPA proposes to modify the definitions of "baseline date" and "baseline area" to make it clear that baseline dates and baseline areas will be retained under the PM_{10} program, just as they existed under the existing particulate matter PSD regulations. That is, if an area has a baseline date under the existing particulate matter (TSP) increment, that same area and baseline date will be applicable to the PM_{10} regulations. If an area has no existing baseline date for particulate matter, the first complete PSD application with significant PM_{10} emissions filed with the appropriate reviewing authority after the implementation date of the new PM_{10} increments will trigger the baseline date. Also, because requirements for designating area attainment status pursuant to section 107 of the Act do not apply to PM_{10}, the definitions of "baseline date" and "baseline area" are proposed to be amended to refer to the PSD areas for PM_{10} that will be listed in subpart C of 40 CFR part 81.

Paragraph (f)(3) of § 51.166 is proposed to be deleted and reserved in order to avoid confusion as to a State's authority to develop and request EPA approval for new exclusion procedures for PSD increments. The elimination of paragraph (f)(3) will clarify EPA's position that any State with an EPA-approved PSD plan may request exclusions. Also, the entire paragraph (f) of section 52.21 is proposed to be deleted and reserved because States are no longer able to request the exclusion of certain concentrations in determining compliance with the PSD increments under § 52.21.

The PSD requirement for preapplication monitoring for TSP is proposed to be eliminated by deleting the significant ambient concentration for TSP from the list of pollutants contained in §§ 51.166(i)(8)(i) and 52.21(i)(8)(i). Thereafter, the PSD monitoring requirement for particulate matter will apply only to the PM_{10} indicator.

A new grandfathering provision is being proposed under §§ 51.166(i)(12) and 52.21(i)(13) to enable certain permit applications, if submitted before the effective date of the amended regulations, to be exempted from the new requirement for a PM_{10} increment analysis.

Finally, Subpart C to 40 CFR part 81 is proposed to be amended. A new paragraph will be added to explain how the section 107 TSP area designations will be deleted from each State listing so that PM_{10} baseline areas can be established when the PM_{10} increments become operative in each SIP.

VI. Administrative Requirements.

A. Public Hearing

If requested, a public hearing will be held to discuss the proposed regulations in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket for this regulatory action is A–88–19. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials). [see section 307(d)(7)(A)]. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

C. Reference Documents

1. Radian Corporation. Technical Report—Equivalency of Alternative PM_{10} Increments. Prepared for U.S. Environmental Protection Agency. Office of Air Quality Planning and Standards. Research Triangle Park, NC. March, 1988.

2. Radian Corporation. Cost and Economic Impact Assessment for PM_{10} Increment Options. Prepared for U.S. Environmental Protection Agency. Office of Air Quality Planning and Standards. Research Triangle Park, NC. April, 1988.

3. Shumaker, J.L., Radian Corporation (1988). Evaluation of Source Impacts Associated with PM_{10} Increment Options. Memorandum to Daniel J. deRoeck. Feburary 15, 1988.

4. Pandullo, R.F. Radian Corporation (1988). Protection Against Adverse Class I TSP Impacts Afforded by PM_{10} Increments. Memorandum to Daniel J. deRoeck. September 28, 1988.

5. Frank, Neil H., U.S. EPA, Monitoring and Reports Branch. Difference Between Arithmetic Mean and Geometric Mean TSP. Memorandum to John Bachman and Henry Thomas. June 2, 1980.

6. Frank, Neil H., U.S. EPA, Data Analysis Section (1984). Update on the Difference Between Arithmetic and Geometric Means for TSP. Memorandum to John Bachman. September 1, 1983.

7. Tikvart, Joseph A., U.S. EPA, Source Receptor Analysis Branch (1989). Comparison of Model Estimates for Deterministic vs. Statistical Standards. Memorandum to Edward J. Lillis. April 4, 1989.

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8. Radian Corporation. PM_{10} Area Sources Paper. Prepared for U.S. Environmental Protection Agency. Office of Air Quality Planning and Standards. Research Triangle Park, NC. February 1988.

9. Revisions to the National Ambient Air Quality Standards for Particulate Matter (52 FR 24634).

10. Air Programs. Review of the National Secondary Ambient Air Quality Standards for Particulate Matter (52 FR 24670). July 1, 1987.

11. Regulations for Implementing Revised Particulate Matter Standards (52 FR 24672). July 1, 1987.

12. Proposed Regulations for Implementing Revised Particulate Matter Standards (50 FR 13130). April 2, 1985.

13. Proposed Revisions to the National Ambient Air Quality Standards for Particulate Matter (49 FR 10408).

14. Regulations for the Prevention of Significant Deterioration of Air Quality (45 FR 52676). August 7, 1980.

D. Office of Management and Budget (OMB) Review

Under Executive Order 12291 (E.O. 12291), EPA must judge whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. The EPA performed an economic impact assessment using conservative costing assumptions to assess whether the proposed PM_{10} increments would constitute a major rule. The results of this assessment indicate that the proposed regulation is not major, because it would result in none of the adverse economic effects set forth in section 1 of E.O. 12291 as grounds for finding a regulation to be major. The annualized costs in the fifth year after the proposed regulations would go into effect would be $5 million, well under the $100 million threshold established as the first criterion for a major regulation in E.O. 12291. Estimated price increases of 0.3 to 1.5 percent associated with the proposed regulations would not be considered a "major increase in costs or prices" specified as the second criterion in E.O. 12291. The economic analysis of the proposed regulations' effect on the industry did not indicate any significant adverse effect on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion of E.O. 12291).

This regulation was submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, will be included in Docket A–88–19.

No additional reporting and recordkeeping requirements will occur as a result of today's proposed regulatory revisions. The EPA previously addressed significant changes to the recordkeeping and reporting requirements, which resulted from new requirements for PM_{10} in the Federal PSD and NSR regulations, amended July 1, 1987 (52 FR 24672). Those changes were submitted to OMB for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Today's proposed revisions focus primarily on the replacement of the existing TSP increments with equivalent PM_{10} increments for the prevention of significant deterioration. There will not be a time when both sets of increments will be federally required simultaneously.

E. Federalism Implications

Under Executive Order 12612 (E.O. 12612), EPA must determine if a rule has federalism implications. Federalism implications refer to substantial direct effects on the States, on the relationships between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For those rules which have federalism implications, a federalism assessment is to be made.

E.O. 12612 also requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. E.O. 12612 provides for preemption of State law, however, if there is a clear congressional intent for EPA to do so. Any such preemption, however, is to be limited to the extent possible.

The development of section 166 regulations for PM_{10} is a statutory, nondiscretionary duty. However, States may adopt strategies other than increments for PM_{10} under section 166, if the strategies, taken as a whole, accomplish the statutory purposes. In addition, the regulations that EPA is proposing will allow States a full opportunity to develop their own approvable methods of implementing the proposed increments. Finally, the EPA will implement its own regulations only for those States that do not develop their own approvable regulations. Congressional intent for preemption of State law is clear in such cases.

State comments on the proposal will be fully considered prior to promulgation of final rules. For these reasons, a federalism assessment has not been prepared.

F. Economic Impact Assessment

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any regulations under part C of Title I (relating to PSD of air quality). An economic impact assessment was prepared for the proposed PM_{10} increment levels and also for other alternative levels. The requirements of this section were considered in the formulation of the proposed increments to ensure that they would represent the best system for the prevention of significant deterioration of air quality, considering costs. The economic impact assessment is included in the docket.

G. Regulatory Flexibility Act Compliance

Pursuant to the provisions of U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities (see 46 FR 8709).

List of Subjects

40 CFR Part 51

Air pollution control, Intergovernmental relations, Particulate matter, Total suspended particulate, PM_{10}.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35.01 et seq) Federal Agencies must obtain OMB clearance for collection of information from ten (10) or more non-federal respondents. This rule does not contain any collection information requirements.

40 CFR Part 52

Air pollution control, Particulate matter, Total suspended particulate, PM_{10}.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 22, 1989.

William K. Reilly,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

For the reasons set forth in the preamble, it is proposed that part 51, Chaper I, Title 40 of the Code of Federal Regulations, be amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act; 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. In § 51.166, paragraphs (b)(3)(iv), (b)(14)(iii)(*a*), and (b)(15)(i), the first part of paragraph (b)(15)(ii) ending with the word "which," paragraph (i)(8)(i)(c), the tables in paragraph (c) and paragraph (p)(4) are revised; paragraph (f)(3) is removed and reserved; and paragraphs (b)(14)(vi), (b)(15)(iii), and (i)(12) are added to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10}.

* * * * * *

(14) * * *

(iii) * * *

(*a*) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or is listed for PM_{10} under 40 CFR part 81 Subpart C, on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

* * * * * *

(iv) Any baseline date established for an increment for particulate matter shall remain in effect and shall apply to any change in the applicable ambient indicator for particulate matter.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) either designated as attainment or unclassifiable for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or listed for PM_{10} under 40 CFR part 81 Subpart C, in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $\mu g/m^3$ (annual average) of the pollutant(s) for which the baseline date is established.

(ii) The redesignation of an attainment or unclassifiable area for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or of an area listed for PM_{10} under 40 CFR part 81 Subpart C, cannot cause such redesignated area to intersect or be smaller than the area of impact of any major stationary source or major modification which:

* * * * * *

(iii) Any baseline area established for an increment for particulate matter shall remain in effect and shall apply to any change in the applicable ambient indicator for particulate matter, except that such area may be redesignated in accordance with paragraph (b)(15)(ii) of this section.

* * * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I:	
Particulate matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hr maximum	6
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II:	
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III:	
Particulate matter:	
PM_{10}, annual arithmetic mean	34
PM_{10}, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

* * * * * *

(f) * * *

(3) [Reserved]

* * * * * *

(i) * * *

(8) * * *

(*i*) * * *

(*c*) Particulate matter—10 $\mu g/m^3$ of PM_{10}, 24-hour average.

* * * * * *

(12) The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if

(i) the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved under the Act before the provisions embodying the maximum allowable increases for PM_{10} took effect as part of the plan, and

(ii) the permitting authority subsequently determined that the application as submitted before that date was complete.

Instead, the applicable requirements equivalent to paragraph (k)(2) of this section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

* * * * * *

(p) * * *

(4) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

* * * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, it is proposed that Part 52, Chapter I, Title 40 of the Code of Federal Regulations, be amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 52.21, paragraphs (b)(3)(iv), (b)(14)(iii)(*a*), (b)(15)(i), the first part of paragraph (b)(15)(ii) ending with the word "which," the tables in paragraph (c) and paragraph (p)(5), and the third item in paragraph (i)(8)(i) are revised; paragraph (f) is removed and reserved; and paragraphs (b)(14)(iv), (b)(15)(iii), and (i)(13) are added to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * * *

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, which occurs

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before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10}.

* * * * *

(14) * * *

(iii) * * *

(*a*) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or is listed for PM_{10} under 40 CFR part 81 subpart C, on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

* * * * *

(iv) Any baseline date established for an increment for particulate matter shall remain in effect and shall apply to any change in the applicable ambient indicator for particulate matter.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) either designated as attainment or unclassifiable for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or listed for PM_{10} under 40 CFR part 81 subpart C, in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the baseline date is established.

(ii) The redesignation of an attainment or unclassifiable area for sulfur dioxide or nitrogen dioxide under section 107(d)(1)(D) or (E) of the Act, or of an area listed for PM_{10} under 40 CFR part 81 Subpart C, cannot cause such redesignated area to intersect or be smaller than the area of impact of any major stationary source or major modification which:

* * * * *

(iii) Any baseline area established for an increment for particulate matter shall remain in effect and shall apply to any change in the applicable ambient indicator for particulate matter, except that such area may be redesignated in accordance with paragraph (b)(15)(ii) of this section.

* * * * *

(c) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Class I:	
Particulate matter:	
PM_{10}, annual arithmetic mean	4
PM_{10}, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hr maximum	2
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II:	
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur doxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III:	
Particulate matter:	
PM_{10}, annual arithmetic mean	34
PM_{10}, 24-hr maximum	60
Sulfur doxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

* * * * *

(f) [Reserved]

* * * * *

(i) * * *

(8) * * *

(i) * * *

Particulate matter—10 $\mu g/m^3$ of PM_{10}, 24-hour average;

* * * * *

(13) The requirements in paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if

(i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM_{10} took effect in an implementation plan to which this section applies, and

(ii) the Administrator subsequently determined that the application as submitted before that date was otherwise complete.

Instead, the requirements in paragraph (k)(2) of this section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

* * * * *

(p) * * *

(5) * * *

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

For the reasons set out in the preamble, subpart C of part 81, chapter I, title 40 of the Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for subpart C continues to read as follows:

Authority: Secs. 107, 301, Clean Air Act, as amended (42 U.S.C. 7407, 7601).

2. The heading of subpart C is revised to read as follows:

Subpart C—Section 107 Attainment Status Designations and PM_{10} Area Listings for Prevention of Significant Deterioration

3. In § 81.300, the undesignated paragraph is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 81.300 Scope.

* * * * *

(b) Designated areas which are listed below as attainment ("Better than national standards") or unclassifiable ("Cannot be classified") for total suspended particulate (TSP), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2), represent potential baseline areas or portions of baseline areas which are used in determining compliance with maximum allowable increases (increments) in concentrations of these respective pollutants for the prevention of significant deterioration of air quality (PSD). Areas listed in this subpart for PM_{10} are not subject to the attainment status designation requirements under section 107 of the Act. These areas are listed as PSD areas to identify potential baseline areas, or portions thereof, in determining compliance with the PM_{10} increments.

[FR Doc. 89-23339 Filed 10-4-89; 8:45 am]
BILLING CODE 6560-50-M

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October 5, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Student, Recreational, and Private Pilot Rules and Annual Flight Review Requirements; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 24695; Amdt. No. 61-86]

RIN 2120-AA54

Student, Recreational, and Private Pilot Rules and Annual Flight Review Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This amendment clarifies the meaning of the phrase "flight time" in the requirements for an annual flight review; clarifies the new annual flight review requirements for certain pilots who have recently met the biennial flight review requirements; clarifies new pre-solo requirements for student pilots with a recent solo endorsement; and modifies the pre-solo flight instruction and the annual flight review requirements for certain glider-rated private pilots.

These minor revisions are necessary to provide for transition to the new student, recreational, and private pilot rules and the annual flight review requirements. The revisions are intended to respond to comments raised but not resolved fully when the rules were being adopted.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Edna H. French, Manager, or John Lynch, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, ATTN: APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office Of Public Affairs at (202) 267-3484. Communications must identify the docket number (Docket No. 24695) of this final rule. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The rules establishing the requirements for an annual flight review were issued in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Flight Hours" Final Rule (54 FR 13028; March 29, 1989). That final rule resulted, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The final rule was based upon Notice of Proposed Rulemaking No. 85-13 (50 FR 26286; June 25, 1985).

In addition, a new requirement for student pilots was adopted in the final rule. That rule, § 61.87(b), modified the pre-solo requirements for all student pilots and required them to pass a written examination before being permitted to fly solo. NAFI recommended a pre-solo written examination as a tool to help ensure that student pilots have basic knowledge of the flight rules and operating parameters of their aircraft. The FAA developed and published an advisory circular that provides guidance to flight instructors for developing and administering the pre-solo written examination.

After publication of the final rule, a few questions were raised about the intent of the phrase "400 hours flight time" in § 61.56(d) and whether non-pilot flight time would suffice.

By letter dated May 22, 1989, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA to revise § 61.56 by deleting the annual flight review requirements for non-instrument-rated private pilots with less than 400 hours of flight time as a pilot. AOPA urges reconsideration of the annual flight review requirement for these pilots and provided additional data which the FAA is reviewing. AOPA also recommends the following sentence be added to the new § 61.87(a):

> All student pilots with medical certificates dated prior to August 31, 1989 must meet the new standards as outlined in § 61.87 by December 1, 1989.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement as it pertains to private pilots. This amendment responds, in part, to those petitions.

In addition, this amendment responds to a comment dated October 23, 1985, from the Soaring Society of America, Inc. (SSA) that the FAA did not address fully in the previous rulemaking action. SSA suggests revising § 61.56 to provide a more reasonable and equitable means for glider-qualified private pilots to comply with the 1-hour of flight instruction required by the annual flight review provisions of the final rule. SSA states, in effect, that compliance with this requirement for glider pilots is difficult because flight in gliders, as opposed to the other categories and classes of aircraft, is more dependent on winds aloft and the other weather phenomena. SSA states that it may take 3 or more flights to equal 1-hour of flight.

Although the FAA intended to do so, one commenter notes that the FAA has not specified in § 61.87(k) who is authorized to conduct pre-solo flight instruction for student pilots in gliders. This amendment responds to these comments regarding glider pilots.

General Discussion of the Final Rule

Since the publication of the final rule, the FAA has received several inquiries about the intent of the phrase "400 hours flight time" in § 61.56(d). These questions concern whether non-pilot time would suffice for the required 400 hours of flight time or only that time acquired as a pilot. As written, the phrase "400 hours flight time" could be misinterpreted, leading one to believe that any flight time would suffice. "Flight time" is defined in part 1 of the Federal Aviation Regulations as "the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing ('Block-to-block' time)." The definition does not address whether the time is acquired as a pilot or a non-pilot. The FAA intended the phrase "400 hours flight time" to mean that time acquired as a pilot and, therefore, this amendment rewords that phrase to read "400 hours of flight time as a pilot."

As a result of the petitions from AOPA and EAA, the FAA initiated an additional review of the findings that led to the establishment of § 61.56(d), the annual flight review requirements for non-instrument-rated private pilots with less than 400 hours of flight time as a pilot. When that review is completed, the FAA will determine whether the requirement should be deleted as requested.

However, the FAA agrees with AOPA and EAA that non-instrument-rated private pilots with less than 400 hours of flight time as a pilot, who satisfactorily complete a flight review on or before August 30, 1989, should be allowed to rely on the status of § 61.57 at the time of the flight review. These pilots expected that they would not be required to take another flight review for 24-calendar months. In adopting the new rule, the FAA intended to follow its customary practice of allowing persons

who have gained a privilege under one regulation to continue exercising that privilege for its expected duration after that regulation is amended or superseded. Therefore, this amendment allows pilots who have satisfactorily completed a flight review on or before August 30, 1989, to exercise their pilot-in-command privileges for the expected 24-calendar month period after that flight review.

Similarly, this amendment clarifies that student pilots who earned a solo endorsement prior to the effective date of the final rule are allowed to exercise their solo privileges for the expected 90-day duration of the solo endorsement. This amendment responds favorably to a part of AOPA's petition and, although different than what was requested, in effect, grants the same relief.

The FAA also agrees with SSA's requested revision that § 61.56 should provide a more reasonable and equitable means for glider-rated private pilots to comply with the 1-hour of flight instruction time required by the annual flight review provisions of the final rule. The FAA believes that the flight instruction requirement of the annual flight review for glider-rated private pilots, with less than 400 hours of flight time as a pilot, should provide the option of substituting a number of instructional flights for 1 hour of flight instruction. Therefore, this amendment permits a glider-rated private pilot who has logged fewer than 400 hours of flight time as a pilot the option of performing a minimum of 3 instructional flights, each of which has a 360-degree turn, and 1 hour of ground instruction in lieu of 1 hour of flight instruction and 1 hour of ground instruction.

The FAA agrees with the commenter who suggests that § 61.87(k) be clarified to specify who is authorized to conduct pre-solo flight instruction for student pilots in gliders. This oversight was unintentional and § 61.87(k) is amended to state that flight instructors with a glider rating are authorized to conduct pre-solo flight instruction in gliders for student pilots.

Reason for No Notice and Immediate Adoption

This amendment to the final rule is need to respond to issues that were raised during the notice and comment period in the previous rulemaking action but were not fully resolved. This amendment also clarifies the consequences of compliance with regulatory provisions that were amended or superseded by the final rule. The FAA intended that satisfactory compliance with the applicable regulation prior to the effective date of the final rule, would continue to be valid until its expected termination. This amendment also includes an editorial change to resolve ambiguity regarding the definition of flight time under the annual flight review requirements of the final rule.

This amendment is necessary to resolve ambiguity regarding the final rule, to avoid unintended consequences that could significantly burden the pilot community, and to make certain editorial changes. For these reasons, the FAA has determined that notice and public comment procedures are impracticable, unnecessary, and contrary to the public interest, and publication for prior comment would not reasonably be expected to result in the receipt of useful information on the amendment. Moreover, because this amendment is needed to ensure effective implementation of the final rule, the FAA has determined that good cause exists to make this amendment effective in less than 30 days.

Economic Assessment

This amendment is necessary to address comments submitted during the previous rulemaking action that were not resolved fully, to correct oversights that occurred during the promulgation of the final rule published on March 29, 1989, and to resolve ambiguities as to its implementation. The final rule makes only one minor substantive change to the annual flight review requirement as it applies to glider-rated private pilots who have less than 400 hours of flight time as a pilot. The amendment allows these pilots to meet the flight instruction requirement of the annual flight review by performing 3 instructional flights, each of which has a 360-degree turn, or 1 hour of flight instruction. The amendment will have minimal economic impact. This impact consists of the cost savings to those glider-rated pilots who perform 3 instructional flights during the annual flight review that do not total 1 hour. The FAA cannot readily identify these cost savings because the number of glider-rated private pilots that may exercise the option provided in this amendment is speculative. The FAA also cannot reasonably determine the number of additional flights that might be necessary, on average, to accumulate 1 hour of total flight time. Thus, while comprehensive and time-consuming analysis might result in an approximate figure showing the *de minimis* impact of this option, such as analysis is not warranted. The FAA believes that a glider-rated pilot's succcessful completion of the 3 instructional flights is adequate to demonstrate the required proficiency and is equivalent to 1 hour of flight instruction involving fewer than 3 flights. There is no economic impact associated with the other minor editorial changes and clarifications contained in this amendment. For these reasons, the FAA has determined that any expected economic impact is so minimal that preparation of a full regulatory evaluation is not warranted.

Trade Impact Assessment

The amendment primarily affects individual student, recreational, and private pilots operating domestically, not the activities of businesses involved in the sale of aviation products or services. Even if a pilot is the sole proprietor of a small business and exercises the privileges of a pilot certificate in operations incidental to that business, the cost impact, if any, to that business resulting from the amendment would be negligible. Therefore, the FAA has determined that the amendment will not have an impact on trade opportunities for U.S. firms doing business in foreign countries or foreign firms doing business in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not affected disproportionately by government regulations. The amendment contained in this notice primarily affects individual student, recreational, and private pilots operating domestically, not the activities of small businesses. In some cases, a pilot is the sole proprietor of a small business and exercises the privileges of a pilot certificate in operations incidental to that business. However, any individual cost of compliance to that business would be negligible and would fall well below the annual threshold cost level used to determine if a regulation has a significant economic impact on a small entity (FAA Order 2100.14 entitled "Regulatory Flexibility Criteria and Guidance"). The FAA expects that the number of small entities that might be affected by the amendment would not be substantial; however, even if a substantial number of small entities are affected by the amendment, any economic impact that might result would not be significant. Thus, in accordance with the Regulatory Flexibility Act, the FAA has determined that the amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Consequently, preparation of a regulatory flexibility analysis is not warranted.

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Paperwork Reduction Act Approval

The reporting requirements associated with the final rule published on March 29, 1989, were approved previously by the Office of Management and Budget (OMB) in accordance with the criteria of the Paperwork Reduction Act of 1980. OMB assigned Control Number 2120–0021 to its prior approval. This amendment does not change the reporting or recordkeeping requirements of the final rule, and therefore, the FAA is not required to submit the amendment to OMB for review and approval.

Conclusion

This amendment clarifies the manner of transition from regulations that were amended or superseded by the final rule, "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Pilots with Fewer than 400 Hours." This amendment also includes minor revisions to address issues related to gliders that were raised, but not fully resolved, in the prior rulemaking action and to ensure accurate interpretation of the annual flight review requirements. The amendment primarily affects individual student, recreational, and private pilots, not the activities of small businesses. Therefore, in accordance with the Regulatory Flexibility Act, it is certified that the amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities.

To the extent that this final rule will have any economic effect, the only impact is the minimal savings to glider-rated pilots who have less than 400 hours of flight time as a pilot and who perform 3 instructional flights, in lieu of 1 hour of flight instruction, as part of the annual flight review. There is no economic impact associated with the editorial corrections and clarifications contained in this final rule. For these reasons, the FAA has determined that the amendment is not major under the criteria of Executive Order No. 12291 and is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Because the expected economic impact of the amendment is so minimal, the FAA has determined that preparation of a full regulatory evaluation is not warranted.

List of Subjects in 14 CFR 61

Aviation Safety, Student pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross-country flight privileges, Limitations.

The Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is amended as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C 106(g) (Rev., Pub. L. 97–449; Jan. 12, 1983).

2. Section 61.56 is amended by revising paragraph (d) to read as follows:

§ 61.56 Flight review.

* * * * *

(d) Except as provided in paragraph (e) of this section—

(1) Each recreational pilot who has logged fewer than 400 hours of flight time as a pilot and each non-instrument-rated private pilot, other than a glider-rated private pilot, who has logged fewer than 400 hours of flight time as a pilot must have complied with the flight review requirements of this section since the beginning of the 12th calendar month before the month in which that pilot acts as pilot-in-command of an aircraft. The flight review required by this paragraph consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction.

(2) Each glider-rated private pilot who has logged fewer than 400 hours of flight time as a pilot must have complied with the flight review requirements of this section since the beginning of the 12th calendar month before the month in which the pilot acts as pilot-in-command of a glider. The flight review required by this paragraph consists of a minimum of—

(i) Three instruction flights in a glider, each of which includes a 360-degree turn, and 1 hour of ground instruction; or

(ii) One hour of flight instruction in a glider and 1 hour of ground instruction.

(3) Notwithstanding the requirements of subparagraphs (d)(1) and (d)(2) of this section, each non-instrument-rated private pilot, who has logged less than 400 hours of flight time as a pilot and who satisfactorily completes a flight review on or before August 30, 1989, may act as pilot-in-command of an aircraft until the 24th calendar month after the month in which that flight review was satisfactorily completed.

3. Section 61.87 is revised by removing the word "and" at the end of paragraph (k)(2); by replacing the period (.) at the end of paragraph (k)(3) with a semi-colon (;) and adding the word "and" after the semi-colon; by adding a new paragraph (k)(4); and by adding a new paragraph (n) to read as follows:

§ 61.87 Solo flight requirements for student pilots.

* * * * *

(k)* * *

(4) In gliders for gliders.

* * * * *

(n) Notwithstanding the requirements of paragraphs (a) through (m) of this section, each student pilot, whose student pilot certificate and logbook are endorsed for solo flight by an authorized flight instructor on or before August 30, 1989, may operate an aircraft in solo flight until the 90th day after the date on which the logbook was endorsed for solo flight.

Issued in Washington, DC on September 29, 1989.

James S. Busey,

Administrator.

[FR Doc. 89–23591 Filed 10–3–89; 1:09 pm]

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federal register

Friday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commodity Credit Corporation

7 CFR Parts 26 and 1427

Determination of World Price for Certain Commodities; Upland Cotton and Price Support and Production Adjustment Programs

AGENCY: Office of the Secretary and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations found at: (1) 7 CFR part 26 which set forth the formula which is used by the Secretary of Agriculture to determine and adjust the prevailing world market price for upland cotton; and (2) 7 CFR part 1427 with regard to the administration of the upland cotton price support loan program. These actions are initiated in accordance with section 103A of the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended. Implementation of the changes made by this rule will improve the effectiveness of the upland cotton program.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, room 3758 South Building, P.O. Box 2415, Washington, DC 20013, or call (202) 447–7954. 2412–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or price for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR part 26 was originally added to the Code of Federal Regulations adequately covers the amendments to 7 CFR part 26. In addition, neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of 7 CFR part 1427. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that these actions will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

A proposed rule was published in the **Federal Register** on May 25, 1989, at 54 FR 22600 which would amend regulations found at 7 CFR part 26 which set forth the formula used by the Secretary of Agriculture to determine and adjust the prevailing world market price for upland cotton, and 7 CFR part 1427 with regard to the administration of the upland cotton price support loan program. The proposed rule provided for a 30-day public comment period which ended June 26, 1989. The Department received a total of 288 comments. Respondents included 154 warehouses, compresses, gins and related associations, 96 individual producers, 17 Congressional responses, 8 producer associations, 4 Farm Bureau affiliates, 4 cotton cooperative associations, 3 shippers, 1 shipper association and 1 textile association.

Discussion of Comments

Seventy-six respondents commented on the proposal to permit the Secretary of Agriculture to make a further adjustment in the prevailing world market price if it is determined, after a review of various factors, that such an adjustment is necessary in order for the prevailing world market price to be adjusted to United States quality and location. The proposal further specified data to be considered in deciding whether to make a further adjustment in the adjusted world price, including the following, as available: (1) U.S. prices for Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 4.9) cotton as quoted in the designated U.S. spot markets relative to the formula-derived adjusted world price; (2) price quotations for the U.S. Memphis territory and California/Arizona territory as quoted for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe relative to price quotations for other growths as quoted for M 1 3/32 inch cotton C.I.F. northern Europe; (3) the level of sales of U.S. cotton for export as reported in the weekly U.S. Export Sales report; and (4) other relevant data, including, but not limited to, a comparison of available actual sales prices for grades of cotton and quoted prices for such grades and the estimated volume of cotton available for sale from competing foreign sellers of cotton.

All but two respondents supported the concept of an adjustment. Thirteen respondents expressed general support for discretionary authority to make the additional adjustment and another 40 favored such discretionary authority with a mechanism to trigger its use.

Two different methods for calculating the adjustment were proposed by the respondents as follows:

a. Base the adjustment on the share of U.S. cotton exports as compared to world cotton exports. If U.S. exports fall below 27 percent of world exports, the adjustment shall be up to the difference between the lowest-priced U.S. growth

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quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average of the five lowest-priced growths of similar-quality cotton quoted in northern Europe. If U.S. exports fall below 22 percent of world exports, the adjustment should be up to the difference between the lowest-priced U.S. growth quoted and the lowest-priced similar-quality growth quoted for northern Europe delivery.

b. When the price quotation for U.S. Memphis territory as quoted for M 1-3/32 inch cotton C.I.F. northern Europe is not one of the three lowest-priced growths quoted for similar-quality cottons, adjust the formula-derived adjusted world price by the difference between the representative Memphis Territory Spot quote landed northern Europe and the average of the three lowest-priced growths of similar-quality cottons C.I.F. northern Europe. The representative Memphis Territory Spot quote would be an average of U.S. spot market quotes for the Southeastern, North Delta, South Delta and East Texas/Oklahoma markets; and the cost to land would be taken from the current adjusted world price formula.

Fourteen respondents supported implementing either of the proposals or some combination of the two. However, one respondent stated that the derived adjustment should be treated as a minimum rather than a maximum adjustment. Five respondents specifically favored proposal (a) and one supported proposal (b). Another respondent supporting proposal (a) further added that when U.S. carryover stocks or projected stocks were excessive, the Secretary of Agriculture should have the authority to institute price-corrective measures before U.S. exports dropped to traditional levels. Another response favoring proposal (a) suggested that the adjustment operate through the issuance of first handler certificates rather than through a lowering of the adjusted world price in order to avoid penalizing producers prevented from participating in the upland cotton program due to the statutory maximum payment limitation provisions.

Only one other respondent offered a specific proposal for calculating the adjustment. That respondent recommended an adjustment of up to 50 points per week if U.S. export sales did not reflect an acceptable U.S. market share of world cotton trade.

One respondent did not specifically support or oppose the proposed rule with regard to the adjustment. Instead, the respondent pointed out the shortcomings and problems with the current formulas with formula proposed by other respondents and with the list of factors to be considered in determining the adjustment as set forth in the proposed rule. The respondent did not discuss any specific formula-related alternatives.

Another respondent did not specifically endorse discretionary authority but stated that any adjustment should be formula-derived, not based on subjective evaluation. Another respondent who supported discretionary authority stated that the adjustment should be based on a formula developed and approved ahead of time.

After reviewing the comments received on this issue, it has been determined that § 26.3(b) of the proposed rule should be changed to authorize an additional adjustment in the prevailing world market price whenever: (1) The formula-derived adjusted world price is less than 115 percent of the current marketing year loan level for SLM 1-1/16 inch, micronaire 3.5 through 4.9, cotton, and (2) the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1-3/32 inch cotton C.I.F. northern Europe is greater than the Northern Europe price. The amount of the additional adjustment may not exceed the difference between the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for M 1-3/32 inch cotton C.I.F. northern Europe and the Northern Europe price. Factors considered in determining the actual amount of the adjustment will include the U.S. share of world exports, the current level of U.S. cotton export sales and/or U.S. cotton export shipments, and other relevant data as available.

This procedure incorporates features both from the original proposal and from comments submitted by respondents. It limits the maximum adjustment and provides discretion in determining the amount of the adjustment within the maximum limit. It triggers an adjustment only when the U.S. is uncompetitive relative to the Northern Europe price, and when a lowering of the adjusted world price would likely be effective. The 115 percent trigger level would limit adjustments to those periods when such adjustments would affect the price at which producers repay price support loans.

All of the respondents commented on the proposed rule to reinstate, beginning with the 1989 crop, the assessment and payment of interest and warehouse storage charges during the 8-month loan extension period and to require, as a condition of approving the loan extension, that producers either prepay 8 months' storage charges to the warehouse or provide documentation from the warehouseman that CCC will not be held responsible for such storage charges. One hundred and fifty-seven respondents opposed either or both of these proposals. Reasons cited for their opposition included:

1. Issuing a statement that CCC is not responsible for the charges would eliminate the incentive for producers to market the cotton.

2. Warehouses need to maintain a lien on the cotton in order to borrow working capital.

3. Independent warehouses would be placed at a disadvantage relative to cooperative warehouses, since the latter can absorb the charges by discounting the members' distribution of earnings.

4. Because the long-standing industry practice is for the storage charges to follow the cotton, warehouses have traditionally accepted delivery of cotton from gins and charged buyers for storage at the time the cotton is shipped. Warehouses generally do not deal directly with producers. They would not know at what point buyers should assume responsibility for storage from the sellers. Warehouses would have particular difficulty processing unused balances of prepaid amounts in order to make refunds. Warehouse are not equipped to handle the paperwork involved in implementing the proposal.

The respondents suggested that, in the event prepayment of 8 months' storage charges is required, the responsibility for collecting the charges should rest with the Agricultural Stabilization and Conservation Service (ASCS) through its county office system.

Another 107 respondents opposed prepayment of 8 months' storage charges on the basis that such action would:

1. Lower the net loan to producers, causing financial hardship.

2. Virtually eliminate the 8-month loan extension as a producer option, effectively resulting in a 10-month loan and contributing to increased price volatility, exaggerated seasonal price variation, and increased forfeitures to CCC. Respondents commented that the 10-month loan had been tried and failed in the past and that the 18-month loan works well allowing producers to span two crop years and make available to the market adequate supplies of various cotton qualities.

3. Cause excessive paperwork.

One hundred and three respondents supported the concept that storage charges, starting in month 11 of the term of the loan, be paid by the person who redeems the loan collateral at the time of the redemption. Twenty respondents specifically opposed the requirement that warehouses provide documentation that CCC not be held responsible for storage charges.

Six respondents supported the proposed rule, with qualifications. Three viewed the proposed rule as only a partial solution urged additional but nonspecified measures. Two responses supported this aspect of the proposed rule and also suggested that CCC require prepayment of 10 months of storage charges when the cotton is initially pledged as collateral for the loan in order to "equalize" the redemption of cotton loan collateral with cash as compared to cotton which had been pledged as collateral for a price support loan and acquired through the use of commodity certificates, thereby facilitating the flow of cotton to the market.

After reviewing the comments received, it has been determined that § 1427.7(a)(2) of the proposed rule should be adopted as final with regard to reinstatement of interest and storage charges during the 8-month loan extension beginning with the 1989 crop. It has been determined that beginning with the 1989 crop, if a producer's price support loan is extended for 8 months and the loan collateral is there after forfeited to CCC, all storage costs associated with the storage of the forfeited cotton, beginning wih the first month of such extension, shall be paid to CCC by the producer. This action will encourage the timely movement of cotton into the market. In addition, the producer shall pay to CCC a handling fee of $1.00 per bale. This action will allow CCC to reduce the administrative costs which will be incurred due to CCC's payment of these storage charges as compared to having the producer make these payments directly to the storing warehouse.

One respondent commented on the procedure for redeeming unextended upland cotton price support loans with cash. The respondent recommended that the proposed rule be amended so that when the adjusted world price exceeds the loan level, carrying charges payable at redemption be determined by quality, including, when applicable, the coarse count adjustment.

The respondent's recommendation was not adopted. The proposed rule did not contain any changes relating to the coarse adjustment because the amount of any adjustment in the adjusted world price will also apply to coarse count qualities of cotton and the relationship between higher quality cottons and coarse count qualities of cotton should not be affected.

List of Subjects

7 CFR Part 26

Cotton, world market price.

7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, and Warehouses.

Final Rule

Accordingly, the regulations found at part 26 of title 7, subpart A and part 1427 of title 7 of the Code of Federal Regulations are amended as set forth below:

PART 26—[AMENDED]

1. The authority citation for part 26, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 1444-1.

2. Section 26.3(a) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (b) of this section (hereinafter referred to as the "adjusted world price"), shall be applicable to the programs of the Department of Agriculture for the 1986 through 1990 crops of upland cotton as provided in section 103A of the Act.

* * * * *

3. The introductory text of § 26.3(b) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) The adjusted world price for upland cotton shall equal the Northern Europe price as determined in accordance with § 28.2, adjusted as follows:

* * * * *

4. Section 26.3 is amended by adding a new paragraph (b)(4) as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) * * *

(4)(i) If it is determined that the prevailing world market price, as adjusted in accordance with paragraph (b)(1) through (b)(3) of this section, is less than 115 percent of the current crop year loan level for Strict Low Middling (SLM) 1 1/16 inch (micronaire 3.5 through 4.9) cotton, and that the Friday through Thursday average price quotation for the lowest-priced U.S. growth as quoted for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe is greater than the Northern Europe price, such price may be adjusted on the basis of some or all of the following data, as available:

(A) The U.S. share of world exports;

(B) The current level of cotton export sales and/or cotton export shipments; and

(C) Other data determined by the Secretary, or a designee of the Secretary, to be relevant in establishing an accurate prevailing world market price determination adjusted to United States quality and location.

(ii) The adjustment may not exceed the difference between the Friday through Thursday average price for the lowest-priced U.S. growth as quoted for Middling 1 3/32 inch cotton C.I.F. northern Europe and the Northern Europe price.

PART 1427—[AMENDED]

5. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423 and 1444-1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99-198.

6. Section 1427.7 is amended by designating the text of paragraph (a) beginning with the words "Loans on Form A" as paragraph (a)(1) and adding the following new paragraph (a)(2) to read as follows:

§ 1427.7 Maturity of loans.

(a) * * *

(2) Beginning with the 1989 crop of upland cotton, if a producer's price support loan is extended for 8 months in accordance with paragraph (a)(1) of this section and the loan collateral is thereafter forfeited to CCC:

(i) All storage costs associated with the storage of the forefeited cotton, beginning with the first month of such extension, shall be paid to CCC by the producer; and

(ii) The producer shall pay to CCC a handling fee of $1.00 per bale.

* * * * *

7. Section 1427.22(e)(2) is amended by designating the existing text as paragraph (e)(2)(i) and by adding a new paragraph (e)(2)(ii) to read as follows:

§ 1427.22 Repayment of loans.

(2)(i) * * *

(ii) Beginning with the 1989 crop of upland cotton, if a loan is repaid and such loan has not been extended in accordance with § 1427.7; the cotton pledged as collateral for such loan is not acquired by the producer through the use of commodity certificates in accordance with part 1470 of this chapter; and the adjusted world price determined in accordance with 7 CFR part 26 is:

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(A) Below the loan rate for base quality (Strict Low Middling 1 1/16 inch, micronaire 3.5 through 4.9) upland cotton, CCC will not require the payment of any interest which has accrued with respect to such loan and will pay all of the warehouse charges which have accrued with respect to the cotton pledged as collateral for such loan;

(B) Above the base loan rate by less than the sum of the accrued interest and warehouse charges, CCC will not require the payment of that portion of the accrued interest and will pay that portion of the accrued warehouse charges that are determined to be necessary to permit the loan collateral to be redeemed at the adjusted world price; or

(C) Above the base loan rate by as much as or more than the sum of the accrued interest and warehouse charges, CCC will require the payment of all accrued interest and will not pay any of the accrued warehouse charges. In such case, the loan may be repaid at the loan rate plus accrued interest and any warehouse charges previously paid by CCC.

* * * * *

Signed at Washington, DC, on October 2, 1989.

Jack C. Parnell,

Acting Secretary of Agriculture.

[FR Doc. 89-23669 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1065

[DA-89-032]

Milk in the Nebraska-Western Iowa Marketing Area; Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Nebraska-Western Iowa Federal milk order. Specifically, the action reduces the shipping standard for pool supply plants by 10 percentage points and increases by 20 percentage points the amount of milk that may be moved directly from farms to nonpool plants and still be priced under the order. The action was requested by Associated Milk Producers, Inc. (AMPI), which operates pool supply plants and represents a significant number of producers whose milk is pooled under the order. The revisions are needed to maintain the pool status for producers who have historically been associated with the market and to prevent uneconomic movements of milk.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Revision of Supply Plant Shipping Percentage and Diversion Limitation Percentage: Issued August 21, 1989; published August 25, 1989 (54 FR 35352).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action lessens the regulatory impact of the order on milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (54 FR 35352) concerning a proposed relaxation of the supply plant shipping percentage and the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The revisions were proposed to be effective for an indefinite period beginning with the month of September 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by September 1, 1989. No comments were received.

Statement of Consideration

This action revises the shipping standards set forth in § 1065.7(b) and the diversion limitations set forth in § 1065.13(d)(2) and (3) and is applicable to milk marketed on and after September 1, 1989. The revision reduces the supply plant shipping percentage by 10 percentage points, from the present 40 to 30 percent for the months of September through March. Also, the diversion limits on producer milk are increased by 20 percentage points, from 40 to 60 percent for the months of September through March, and from 50 to 70 percent during other months.

Sections 1065.7(b)(3) and 1065.13(d)(4) of the Nebraska-Western Iowa order allow the Director of the Dairy Division to increase or reduce the shipping percentage standard and the diversion limitation precentage by up to 20 percentage points. The adjustments can be made to help encourage additional shipments of milk or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Revision of the supply plant shipping standard and the diversion limitations was requested by Associated Milk Producers, Inc. (AMPI). AMPI operates supply plants that historically have been pooled under the order and represents a substantial number of the dairy farmers who supply the market.

AMPI requested that the revision be applicable during September 1989 through March 1990. AMPI indicates that for the first six months of 1989 producer milk on the market is about 5.9 percent above the same period of 1988, while Class I utilization is down by about one percent. In view of the supply/demand relationship, AMPI indicates that it would be very unlikely for the marketwide Class I utilization to be more than 35 percent during the fall of 1989 or the spring of 1990. As a result, AMPI contends that the supply plant shipping standard should be reduced and the diversion limits should be increased. Such revision, AMPI contends, will eliminate the need for unnecessary shipments of milk and provide for the efficient disposition of milk supplies that are in excess of fluid milk needs.

AMPI also requested that consideration be given to extending the revision for an indefinite period of time. Such an action would eliminate the need for repeating the revision process every spring and fall. AMPI indicates that such a process has been repeated to revise these standards over the past five years and that such a history of the actions provide a basis for longer term action.

In view of marketing conditions, the supply plant shipping and diversion limitation percentages should be relaxed. A reduction of the supply plant shipping percentage will eliminate the need for making unnecessary shipments of milk from supply plants to distributing plants. At the same time, an increase of the diversion limitation percentage will allow greater quantities of milk to be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. These revisions will allow handlers additional flexibility to efficiently market the supplies of milk that are associated with the market.

The supply plant shipping percentage has been reduced by 10 percentage points for the months of September through March since 1986. Also, with the exception of three months in 1987, the order's diversion limitations have been consistently revised since May 1986. In view of this history, both the supply plant shipping and diversion limitation percentages should be revised for an indefinite period as proposed.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No views were received.

Therefore, good cause exists for making this revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, that the following provisions §§ 1065.7(b) and 1065.13(d)(2) and (3) of the Nebraska-Western Iowa order are hereby revised.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority for 7 CFR part 1065 continues to read as follows:

Authority: Sections 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1065.7 [Amended in part]

2. In the introductory text of § 1065.7(b), the provision "40 percent" is revised to "30 percent".

§ 1065.13 [Amended in part]

3. In § 1065.13(d)(2) and (3), the provisions "40 percent" and "50 percent" are revised to "60 percent" and "70 percent", respectively.

Signed at Washington, DC, on: October 3, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89-23679 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1079

[DA-89-034]

Milk in the Iowa Marketing Area; Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rule.

SUMMARY: This action reduces the shipping percentage for pool supply plants under the Iowa Federal milk order for the months of September through November 1989. The shipping percentage is reduced by 5 percentage points, from 35 to 30 percent of milk receipts. The revision is made in response to a request by Beatrice Cheese, Inc., the operator of a supply plant who ships milk to distributing plants regulated by the order. The action is necessary to prevent uneconomic movements of milk.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-447-2089

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Revision of Supply Plant Shipping Percentage: Issued August 21, 1989; published August 25, 1989 (54 FR 35353).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from supply plants.

This final rule has been reviewed under Executive Order 12291 and Depa tmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1079.7(b)(1) of the Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (54 FR 35353) concerning a proposed decrease in the shipping percentage for pool supply plants for the months of September through November. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by September 1, 1989.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 5 percentage points from the present 35 percent to 30 percent for the months of September through November 1989.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

A reduction of 10 percentage points to the supply plant shipping percentage was requested by Beatrice Cheese, Inc., a handler who operates a pool supply plant under the order. The handler contends that the reduction is necessary to prevent uneconomic shipments from supply plants to distributing plants. The handler points out that receipts of producer milk under the order during the first six months of 1989 were up about 4.5 percent from the previous year. In addition, about 26.5 percent of producer milk pooled under the order was used in Class I during the first six months, compared to 27.3 percent the previous year. The handler also points out that receipts of milk at its supply plant during the first six months were about 3.4 percent greater than the previous year. Based on the relationship of fluid milk sales to the receipts of milk, the handler contends that a reduction of the supply plant shipping percentage is necessary to prevent uneconomic shipments during the month of September-November. Absent a reduction, the handler contends that it would have to engage in the uneconomic backhauling of 3.0 to 3.2 million pounds of milk per month in order to pool its supply of milk. The handler maintains that distributing plants would be adequately supplied with milk with a

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lowering of the supply plant shipping percentage by 10 percentage points.

The handler also requested that consideration be given to reducing the shipping percentage during the months of September through November for an indefinite period since the supply plant shipping percentage has been reduced by 10 percentage points during these months for the last four years.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market, in requesting a suspension action for September-November, cited similar marketing conditions to those expressed by Beatrice Cheese. AMPI projects that, based on the first six months of the year, about 30 percent of the market's milk supply will be needed for Class I use during the September-November period this year.

The National Farmers' Organization, Inc. (NFO), a cooperative association that represents producers who supply the market, and Kraft, Inc., a handler who operates a supply plant under the order, supported the request to reduce the shipping standard by 10 percentage points. NFO indicates that marketing conditions are essentially the same as those of a year earlier when an identical reduction of the supply plant shipping percentage was granted. Kraft, Inc., also indicated a belief that milk production for the remainder of the year would be at least equal to the prior year even though milk production has shown some mixed signals during recent months.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers under the order, filed comments opposing the requested action. Mid-Am expressed the view that a reduction of the shipping percentage could result in a shortage of milk for Class I use at distributing plants. Mid-Am contends that a review of the market's supply/demand relationship for the first six months of the year is not an appropriate basis for determining the supply plant shipping percentage for the months of September-November. Mid-Am notes that for the months of May through July of this year, producer receipts are approximately 0.2 percent greater than last year, while Class I milk usage is up by about 5.8 percent. In addition, Mid-Am notes that producer milk receipts in July 1989 were below those of the previous year, thus exhibiting a reversal of a trend of increased milk production from the same month of the previous year that has existed since February 1987. As a result of these conditions, and because of anticipated increases in fluid milk sales associated with school openings, and because of the uncertainties of the impact of the 1988 drought on milk production, Mid-Am contends that the proposed lowering of the shipping standard would be unjustified.

In view of the comments filed, it is obvious that there is an element of uncertainty and disagreement among market participants over the anticipated supply/demand relationship of the market during the September-November 1989 period. Data for the first six months of the year depict a marketing situation that is virtually the same as that of a year earlier while the most recent data indicate a tightening of the supply/demand relationship. As a result of the most recent marketing conditions, the supply plant shipping percentage should be reduced by 5 percentage points (to 30 percent of receipts) rather than by the 10-percentage-point reduction that was proposed. Furthermore, the reduction should be limited to September-November 1989 rather than being extended for an indefinite period as was proposed.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September through November 1989;

(b) this revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective upon publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, that the following provisions of § 1079.7(b), of the Iowa milk order are hereby revised for the months of September through November 1989.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR part 1079 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1079.7 [Temporarily amended in part]

2. In the introductory text of § 1079.7(b), the provision "35 percent" is revised to "30 percent" for the months of September, October and November 1989.

Signed at Washington, DC, on October 3, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–23660 Filed 10–5–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for water heaters will remain in effect until new ranges are published.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Water heaters are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including water heaters. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for water heaters have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on July 12, 1988.[4]

In consideration of the foregoing, the present ranges for water heaters will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988) 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Donald S. Clark,

Secretary.

[FR Doc. 89–23666 Filed 10–5–89; 8:45 am]

BILLING CODE 6750–01–M

[1] Public Law 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305.

[3] Reports for water heaters are due by May 1.

[4] 53 FR 26237.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 5h and 602

[T.D. 8267]

RIN 1545–AM7

Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations (T.D. 8267).

SUMMARY: This document contains a correction to the **Federal Register** publication for Friday, September 22, 1989, at 54 FR 38979. The temporary regulations related to the time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski, 202–323–2382 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 8267) that are the subject of this correction were added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR Part 5h).

Need for Correction

As published, the temporary regulations contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations which were the subject of FR Doc. 22351, is corrected as follows:

§ 5h.6 [Corrected]

Paragraph 1. On page 38984, second column, line 16 of § 5h.6(a)(4)(i), the language "26A(h)), 6026(b)(1) (Code section" is corrected to read "263A(h)), 6026(b)(1) (Code section".)

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–23771 Filed 10–5–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; partial stay of effective date for two substances.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989, at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until December 1, 1989.

DATE: These actions take effect on October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989, at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limites for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989, start-up day of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until October 1, 1989. See 54 FR 36765; September 5, 1989.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989, start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until December 1, 1989.

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It

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is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 9–83 (48 FR 35736).

Signed at Washington, DC, this 29th day of September, 1989.

Alan C. McMillan,

Acting Assistant Secretary.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as part as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1811.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. Section 1910–1000, the transitional limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR Part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

* * * * *

§ 1910.1000 [Amended]

2. Section 1910.1000, Table Z–1–A is amended by revising the note at the end of the table to read as follows:

Note: Pursuant to administrative stays effective September 1, 1989 and published in the **Federal Register** on September 5, 1989, and extended in part by a notice published in the **Federal Register** on October 6, 1989, the September 1, 1989 start-up date specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows: Until December 1, 1989 for nitroglycerin and ethylene glycol dinitrate in the explosives industry; until October 1, 1989 for perchloroethylene in the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of *Courtaulds Fibers, Inc.* v. *U.S. Department of Labor*, No. 89–7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the **Federal Register** notice of the termination of the carbon monoxide stay.

[FR Doc. 89–23658 Filed 10–5–89; 8:45 am]

BILLING CODE 4510–26–M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. A–33, Supp. 1]

Federal and State Tax Tables to be Used for Calculating 1989 Relocation Income Tax (RIT) Allowance Payments

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR Temporary Regulation A–33 implemented the Federal and State tax tables for calculating 1989 RIT allowance payments. Because these tax tables were published in appendixes A, B, and C 5 to 41 CFR part 302–11 of the Federal Travel Regulation (FTR) (see 54 FR 20344, 20348–20349, and 20350, May 10, 1989), this regulation is removed from the appendix at the end of subchapter A to title 41 of the Code of Federal Regulations.

DATES: *Effective date:* October 6, 1989.

Expiration date: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Sturdy, Travel Management Division, Regulations Branch (FBTR), Washington, DC 20406, telephone FTS 557–1253 or commercial 703–557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

By the Administrator's authority (5 U.S.C. 5724b; EO 11609, July 22, 1971; EO 12466, February 27, 1984), the appendix at the end of subchapter A in 41 CFR chapter 101 is amended by removing FPMR Temporary Regulation A–33.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–23459 Filed 10–5–89; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–47

[FPMR Amendment H–174]

Non-Federal Interim Use of Surplus Real Property

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the regulations concerning non-Federal interim use of surplus Federal real property to implement the provisions of section 4 of Public Law 100–612. Section 4 amends section 203(e)(6) of the Federal Property and Administrative Services Act of 1949, as amended, regarding Congressional review of certain negotiated lease disposals.

DATE: This regulation is effective October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Services, General Services Administration (202–535–7052).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus Government property, and Government property management.

Accordingly, 41 CFR part 101–47 is amended as follows:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–47.3—Surplus Real Property Disposal

2. Section 101–47.312 is revised to read as follows:

§ 101–47.312 Non-Federal interim use of property.

(a) A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property; *Provided*, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not to exceed 30 days' notice by the disposal agency: And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States. Any negotiated lease or permit under this section shall be subject to the applicable provisions of §§ 101–47.304–9 and 101–47.304–12, except that no explanatory statement to the appropriate committees of the Congress need to be prepared with respect to a negotiated lease or permit providing for an annual net rental of $100,000 or less, and termination by either part on 30 days' notice.

(b) [Reserved]

Dated: September 13, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–23458 Filed 10–5–89; 8:45 am]

BILLING CODE 6820–24–M

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Proposed Rules

Federal Register
Vol. 54, No. 193
Friday, October 6, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 32; Doc. No. 6965S]

General Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on tomatoes in an endorsement to the general crop insurance policy.

COMMENT DATE: Written comments, data, and opinions on this proposed rule should be received not later than November 6, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring tomatoes.

Upon publication of 7 CFR 401.139 as a final rule, the provisions for insuring tomatoes contained therein will supersede those provisions contained in 7 CFR part 444, the Fresh Market Tomato Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 444 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 444 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the general crop insurance policy. These changes do not affect the meaning or intent of the provisions. In adding the new Fresh Market Tomato (Dollar Plan) Endorsement to 7 CFR part 401, FCIC proposes to make other changes in the provisions for insuring tomatoes as follows:

1. Section 2—Add a provision to exclude losses due to failure to market the tomatoes unless the failure to market the tomatoes is due to physical damage from an insured cause.

2. Section 3—Stage guarantees are now included in the endorsement.

3. Section 7—Add unit division provisions in the endorsement with language providing that production evidence must be maintained and be made available to use.

4. Section 9—Change the language regarding the value of appraised production to count of tomatoes remaining after the second or third harvest to be the production in excess of 30 cartons. Change the value of appraised production to count for ground culture tomatoes to be the value remaining after the second harvest rather than the third harvest as is the case with staked tomatoes.

5. Section 13—Change the classification size of mature green and ripe tomato to 6 × 7 (2⅝₃₂ inch minimum diameter). Revise the definition of Acre", "Freeze", "Frost", and, "Tropical Cyclone" to clarify their meaning.

Recently, FCIC's Board of Directors adopted a change which allow a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for tomatoes appropriate explanatory language haa been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop Insurance; Fresh Market Tomato (Dollar Plan) Endorsement

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.139, Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and Succeeding Crop Years, to read as follows:

§ 401.139 Fresh market tomato (dollar plan) endorsement.

The provisions of the Fresh Market Tomato Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Fresh Market Tomato (Dollar Plan) Endorsement

1. Insured Crop.

a. The crop insured will be tomatoes (excluding plum and cherry-type tomatoes) planted for harvest as fresh market tomatoes.

b. In lieu of section 2.e.(11) of the general policy, we will insure newly cleared land planted to tomatoes.

c. In addition to the fresh tomatoes not insurable under Section 2 of the general crop insurance policy we do not insure any acreage grown by any entity if that entity had not previously:

(1) Grown tomatoes for commercial sale; or

(2) Participated in the management of the tomato farming operation.

d. We do not insure any acreage of tomatoes:

(1) Grown for direct consumer marketing;

(2) Which is not irrigated;

(3) Which are not grown on plastic mulch unless provided for by the actuarial table;

(4) On which tomatoes, peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly prepared before planting tomatoes;

(5) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed prior to reaching stage 2 production as defined in section 3 of this endorsement.

2. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(5) Tornado;

(7) Wind damage or excess precipitation occurring in conjunction with a tropical cyclone; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss specified in section 1 of the general policy as not insured, we will not insure against any loss of production due to:

(1) Disease or insect infestation; or

(2) Failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. Insurance Guarantees

a. The insurance guarantees per acre are by stages and increase at specified intervals, up to the final stage guarantee. The stages and guarantees are as follows:

(1) First stage is from planting until qualifying for stage 2. The first stage guarantee is 50 percent of the final stage guarantee.

(2) Second state is the earlier of stakes driven, on tie, and pruning or 60 days (30 days for transplants) after planting, and until qualifying for stage 3. The second stage guarantee is 75 percent of the final stage guarantee.

(3) The third stage is 90 days (60 days for transplants) after planting until qualifying for the final stage. The third stage guarantee is 90 percent of the final stage guarantee.

(4) The final stage begins the earlier of 105 days (75 days for transplants) after planting, or the beginning of harvest.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The insurance guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

4. Report of Acreage, Share, and Practice

In addition to the information required in section 3 of the general crop insurance policy, you must report the row width. You must report on or before the acreage reporting date for each planting period all the acreage of fall, winter, and spring-planted tomatoes in the county in which you have a share.

5. Annual Premium

The amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;

b. Discontinuance of harvest of tomatoes on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 140 days after the date of direct seeding, transplanting, or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

7. Unit Division

In addition to units defined in section 17 of the general crop insurance policy, insurable tomato acreage will contain units by planting period. Insurable tomato acreage which otherwise would be one unit as provided above, may be divided into two or more optional units. Written, verifiable records of planted and harvested acreage and production for each optional unit must be provided to us at our request. For optional unit division, acreage planted to the insured tomatoes must be located in separate, legally identifiable sections or, in the absence of section descriptions, on land identified by separate ASCS Farm Serial Numbers, *Provided:*

a. the boundaries of the section or farms designated by ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The tomatoes are planted in such a manner that the planting pattern does not continue into an adjacent section or farm designated by ASCS Farm Serial Number.

If you have a loss on any unit, preharvest appraisals for that loss unit and production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units may cause those units to be combined. If your tomato acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

8. Notice of Damage or Loss

a. If a loss is anticipated by you on any unit within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

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(4) 140 days after the direct seeding, transplanting, or replanting to the tomatoes (see section 6).

b. You must not destroy any tomato acreage within a unit until inspected by us if an idemnity is to be claimed or the unit.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance, times the percentage for the stage of production defined in section 3;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.b.); and

(3) Multiplying this result by your share.

b. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes harvested in the unit by $3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost set by the actuarial table (However, such price must not be less than zero for any carton).

(2) The value of appraised production to be counted will include:

(a) The value of the potential production (see subsection 13.k.) on tomato acreage that has not been harvested the second time for ground-cultured tomatoes (the third time for staked tomatoes);

(b) The value of unharvested potential production in excess of 30 cartons after the second harvest for ground culture tomatoes (third harvest for staked tomatoes);

(c) The value of the potential production lost due to uninsured causes; and

(d) An amount not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

c. A replanting payment is available under this endorsement. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand. The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $175.00 per acre by your share.

10. Cancellation and Termination Date

The cancellation and termination date is July 31.

11. Contract Changes

All contract changes will be available at your service office by April 30 preceding the cancellation date.

12. Production Reporting Dates

The production reporting provision found in section 4 of the eneral crop insurance policy does not apply to this contract.

13. Meaning of Terms

For the purpose of tomato crop insurance:

a. "*Acre*" means 43,560 square feet of land on which row widths do not exceed 6 feet, or if row width exceeds 6 feet, the land on which at least 7260 linear feet rows are planted.

b. "*Crop Year*", in lieu of the definition in the General Policy, means the period within which the tomatoes are normally grown beginning August 1 and continuing through harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

c. "*Direct consumer marketing*" means the method of selling tomatoes from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

d. "*Excessive rain*" means more than 10 inches of rain on the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

e. "*Freeze*" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit, and cause damage to plant tissue.

f. "*Frost*" means a deposition or covering by minute ice crystals formed from frozen water vapor, which causes damage to plant tissue.

g. "*Harvest*" means the picking of marketable tomatoes on the unit.

h. "*Mature green tomato*" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so that they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

i. "*Planting*" means transplanting the tomato plants into the field or direct seeding in the field.

j. "*Planting period*" means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, or spring-planted.

k. "*Plant stand*" means the number of live plants per acre before the plants were damaged due to insurable causes.

l. "*Potential production*" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6x7 (2⅝₂ inch minimum diameter) or larger, which the tomato plants would produce or, would have produced per acre, by the end of the insurance period.

m. "*Replanting*" means performing the cultural practices necessary to replant insured acreage to tomatoes.

n. "*Ripe Tomato*" means a tomato which has a definite break in color from green to tannish-yellow, pink or red.

o. "*Tomatoes grown for direct consumer marketing*" means tomatoes initially intended for direct consumer marketing.

p. "*Tropical cyclone*" means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

Done in Washington, DC, on September 20, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23705 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 55; Doc. No. 6943S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Canning and Processing Bean Endorsement (7 CFR 401.118) to provide for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania. The intended effect of this rule is to include these states among those identified in section 5 of the policy as states where unit division guidelines are permitted.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted no later than November 6, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agricuture, Washington, DC, 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Canning and Processing Bean Endorsement (7 CFR 401.118) to allow for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania.

Under the provisions of the Canning and Processing Bean Endorsement, unless states are specifically cited in section 5 of the policy as being states in which unit division guidelines by type are allowed, they will be placed in the same category as those states where the actuarial structure does not permit unit divison guidelines. Recent expansion of the canning and processing bean crop insurance program into Illinois, Indiana, Iowa, and Pennsylvania has created a condition whereby, unless the endorsement is amended to name these states, unit division guidelines by type in such states will not be permitted.

For this reason, FCIC proposes to amend the Canning and Processing Bean Endorsement to list Illinois, Indiana, Iowa, and Pennsylvania, as being states in which unit division guidelines are permitted.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the Federal Register.

Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Canning and processing bean.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Canning and Processing Bean Endorsement (7 CFR 401.118), is amended by revising the introductory language to section 5 to read as follows:

§ 401.118 Canning and processing bean endorsement.

* * * * *

5. Unit Division

In addition to units defined in section 17 of the General Crop Insurance Policy, canning and processing bean acreage will have units by type (snap or lima). For Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Oregon, Pennsylvania, Tennessee, Utah, Washington, and Wisconsin, bean acreage that would otherwise be one unit may be further divided if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

* * * * *

Done in Washington, DC on September 19, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23704 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 403

[Amdt. No. 2; Doc. No. 7495S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), effective for the 1990 crop year. FCIC has determined that there was insufficient time in which to issue a final rule amending the Peach (Fresh) Crop Insurance Regulations.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Tuesday, August 15, 1989, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 54 FR 33567 which proposed to amend the Peach (Fresh) Crop Insurance Regulations (7 CFR part 403), effective for the 1990 crop year, to provide that crop insurance will be available on peach orchards with a "pick your own" operation.

FCIC has determined that there was not sufficient time in which to publish a final rule before the August 31, 1990, date for filing contract changes.

For the reason stated above, FCIC has determined that the proposed rule published at 54 FR 33567 should be, and is hereby, withdrawn.

Done in Washington, DC on September 28, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-23706 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-89-100PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Proposed 1989-90 Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

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ACTION: Proposed rule.

SUMMARY: This rule proposes authorizing expenditures and establishing an assessment rate for the 1989–90 fiscal period for the Texas Valley Citrus Committee (committee), established under Marketing Order No. 906. This proposed action is needed by the committee to pay anticipated marketing order expenses and to collect assessments from handlers to pay those expenses. The proposed action would enable the committee to continue to perform its duties and the order to operate.

DATES: Comments must be received by October 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AM, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3918.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 115 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing order for Texas oranges and grapefruit, administered by the U.S. Department of Agriculture (Department), requires that the assessment rate for a particular fiscal period shall apply to all of the assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of Texas oranges and grapefruit. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of Texas oranges and grapefruit in 7/10-bushel cartons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, or during the season when changes are needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on September 5, 1989, and unanimously recommended approval of expenditures of $1,496,634 for the 1989–90 fiscal period. In comparison, budgeted expenditures were $1,376,634 for 1988–89. Major proposed expenditure items for 1989–90 compared with 1988–89 (in parentheses) are as follows: Program Administration—$150,000 ($153,000); Mexican Fruit Fly Program—$143,634 ($143,634); and Advertising and promotion—$1,203,000 ($1,080,000). The expenditures proposed for administration are generally comparable to those for the last fiscal period.

The committee also unanimously recommended approval of an assessment rate of $0.12 per 7/10-bushel carton of oranges and grapefruit shipped during the 1989–90 fiscal period. This same rate was in effect last period. Assessment income is estimated at $961,800 based on 8,015,000 cartons of assessable fruit shipped during the 1989–90. Interest income is estimated at $30,000 for 1989–90. Also, the committee has $126,000 in prepaid advertising available and it expects its promotion and advertising effort to generate $96,000 from sales of promotional material. In addition, the committee contemplates withdrawing $282,834 from its reserve.

The committee further unanimously recommended that unexpended funds from the 1988–89 fiscal period be placed in its reserve fund. The committee's current reserve, which amounted to $706,486 on August 1, 1989, is well within the maximum authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of less than 30 days is deemed appropriate for this action. Since committee expenses are incurred on a continuous basis during the entire fiscal period, approval of the expenditures and assessment rate must be expedited.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 906 be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 906.229 is added to read as follows:

§ 906.229 Expenses and assessment rate.

Expenses of $1,496,634 by the Texas Valley Citrus Committee are authorized, and an assessment rate of $0.12 per 7/10-bushel carton of assessable oranges and grapefruit is established for the fiscal period ending July 31, 1990. Unexpended funds from the 1988–89 fiscal period may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Director, Fruit and Vegetable Division.

[FR Doc. 89–23649 Filed 10–5–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 926

[Docket No. FV–89–104]

California Tokay Grapes; Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate under Marketing Order 926 (California Tokay grapes) for the 1989–90 fiscal period. Funds to administer this program would be derived from assessments on handlers.

DATE: Comments must be received by October 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of California Tokay grapes under this marketing order, and approximately 20 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Tokay Industry Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on an continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

On August 15, 1989, expenses of $13,575 by the Tokay Industry Committee were approved and an assessment rate of 6 cents per 23-pound lug of grapes was established for the fiscal period ending March 31, 1990 (54 FR 34483). The committee conducted a telephone poll on September 6, 1989, and unanimously recommended increasing the assessment rate established for the 1989–90 fiscal year from 6 cents to 7 cents per 23-pound lug. The reason for the assessment rate increased is that Tokay grape production for this season will be less than anticipated. Severe heat and heavy rains have contributed to a large number of Tokay grapes failing to meet fresh market requirements because of sunburn and decay. While fresh market shipments for the 1989 season were projected at 200,000 23-pound lugs, the estimate has been reduced to 175,000 lugs. The original assessment rate would have yielded $12,000 in assessment income if the level of expected fresh market shipments was achieved. With the reduced estimate, such income will fall about $1,500 short of the amount anticipated. Revenues would therefore be $3,075 less than the committee's budgeted expenses of $13,575. However, the committee does not have adequate funds in its reserve to meet this need. The assessment rate increase would yield $1,750 in additional income if the revised level of fresh market shipments is met. In accordance with marketing order requirements, the assessment rate increase would be retroactive to April 1, 1989, the start of the current fiscal period.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

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This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989 shipping season began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Tokay grapes handled during the fiscal period. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate increase for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

California, marketing agreements and orders, Tokay grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 926.228 is revised to read as follows:

§ 926.228 Expenses and assessment rate.

Expenses of $13,575 by the Tokay Industry Committee are authorized and an assessment rate of $0.07 per 23-pound lag of grapes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: October 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23661 Filed 10–5–89; 8:45 am]

BILLING CODE 3410–02

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7 CFR Part 955

[Docket No. FV–89–101]

Georgia Vidalia Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 955 for the 1989–90 fiscal period. Authorization of this budget would allow the Vidalia Onion Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by October 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USD, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 955 and Marketing Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 160 handlers and 260 producers of Vidalia onions in that portion of Georgia covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Vidalia Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Vidalia onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on August 31, 1989, and unanimously recommended a 1989–90 budget of $157,808. Last season's budget was $150,000. Major expense items include increases in committee staff salaries and marketing development and production research projects.

The committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag, the same rate as last season's. This rate, when applied to anticipated shipments of 1.5 million 50-pound bags of onions, would yield $150,000 in assessment revenue. This amount when added to $7,808 from the reserve fund would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in mid-September, and the marketing order requires that the rate of assessment apply to all assessable Vidalia onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 955

Georgia, Marketing agreements and orders, Vidalia onions.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 955 be amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 955.202 is added to read as follows:

§ 955.202 Expenses and assessment rate.

Expenses of $157,808 by the Vidalia Onion Committee are authorized and an assessment rate of $0.10 per 50-pound bag of Vidalia onions is established for the fiscal period ending September 15, 1990. Unexpended funds may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23650 Filed 10–5–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 966

[Docket No. FV–89–102]

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 966 for the 1989–90 fiscal period. Authorization of this budget would allow the Florida Tomato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by October 16, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers and 180 producers of Florida tomatoes covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on September 7, 1989, and unanimously recommended a 1989–90 budget of $1,613,500. Last season's budget was $1,537,000. The major expense allocation is for education and promotion projects, which at a total of $1,090,000 accounts for about 70 percent of the budget. Other major expense items include increases for production research projects, committee staff salaries, employee health insurance and retirement programs, office rent and social security taxes.

The committee also unanimously recommended an assessment rate of $0.025 per 25-pound container, the same rate as last year's. This rate, when applied to anticipated shipments of 58.2 million 25-pound containers, would yield $1,455,000 in assessment revenue. This amount when added to $45,000 of other income (e.g., interest revenue) and $113,500 from the reserve would be adequate to cover budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action would not have a significant economic impact on a substantial number of small entities.

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This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989-90 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 966

Florida, Marketing agreements and orders, Tomatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 966.227 is added to read as follows:

§ 966.227 Expenses and assessment rate.

Expenses of $1,613,500 by the Florida Tomato Committee are authorized and an assessment rate of $0.025 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: October 2, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-23648 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139

[DA-89-037]

Milk in the Great Basin Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of October 1989 through April 1990 a portion of the Great Basin milk order. The provision proposed to be suspended relates to a "touch base" requirement where a dairy farmer, who was not a producer under the Great Basin order in the previous month, would not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant. Suspension of this provision was requested by a cooperative association whose members supply a majority of the milk marketed under the Great Basin order.

DATE: October 13, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provision of the order regulating the handling of milk in the the Great Basin marketing area is being considered for October 1989 through April 1990:

Section 1139.13(d)(6)

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

A suspension of a "touch base" provision applicable to dairy farmers who were not producers the previous month was requested by Western Dairymen Cooperative, Inc. (WDCI) whose members supply a majority of the milk marketed under the Great Basin order. The requested suspension would remove the requirement that a dairy farmer, who was not a producer under the the Great Basin order in the previous month, will not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant.

WDCI states that this provision has caused considerable inconvenience and unnecessary expense in the movement of milk without any benefit to either the producer members of WDCI or the market in general and has caused the loss of pool participation by producers who are rightfully a part of the reserve supply of milk for the the Great Basin area.

WDCI states that it markets milk for its producer scattered over portions of eleven states under four different Federal milk marketing orders and to several fluid and ungraded milk plants throughout much of the western United States. This, WDCI says, causes them to spread their milk pickup routes over great distances and that these routes must be regularly adjusted for many changing circumstances such as volume, seasonal production variation, and changes in demand for milk at different plant. These factors, WDCI says, are making it next to impossible to follow the status of each dairy farmer that was not a producer the preceding month to make certain that their milk is qualified for diversion, and thus for pooling, as currently called for under the order.

Given the numerous variations in its milk movements, WDCI says that it does not know until the month is over which day's milk from any individual dairy farm was moved to a pool plant. Even if this information was available before a month's end, WDCI said ensuring delivery of at least one day's production to a pool plant before diverting it to a nonpool plant may not be feasible because of the expense involved.

Finally, WDCI states that this order provision discriminates against them because of the varied services performed for the many plants that WDCI supplies supplemental milk. The milk diverted in excess of fluid needs, or that is shifted from plant to plant, is an integral part of the market's Grade A milk supply and deserves to be pooled under the order, according to WDCI.

WDCI requested suspension at the earliest possible date through April 1990. Due to the administrative procedures that must be followed, it is unlikely that the provision could be suspended with regard to milk marketed prior to October 1, 1989, if it is determined that a suspension is warranted. Therefore, the suspension is being considered for the months of October 1989 through April 1990.

List of Subjects in 7 CFR Part 1139

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: October 3, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-23682 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R-0674]

RIN 7100-AB04

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment a revised Regulation C (Home Mortgage Disclosure). The revised regulation implements amendments to the Home Mortgage Disclosure Act (HMDA) contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The FIRREA amendments expand the coverage of HMDA to include mortgage lenders that are not affiliated with depository institutions or holding companies, and require covered institutions to report data regarding mortgage and home improvement loan applications they receive in addition to data regarding loan originations and purchases. Most institutions will now also be required to report the race, sex and income of mortgage and home improvement loan applicants and borrowers

The Board is proposing to adopt a "loan/application register" form for HMDA reporting, on which institutions would record the required information for applications completed, loans actually made, and loans purchased. In particular, the Board is seeking public comment on the layout and categories of the loan/application register and on the summary tables that would be produced by the Federal Financial Institutions Examination Council (FFIEC) from the data submitted.

The FIRREA amendments are effective on January 1, 1990, and the first set of reports in the new register format will be due in early 1991. Reports of 1989 loan data, which are due on March 31, 1990, remain subject to the existing provisions of the regulation; and institutions must use the current Form HMDA-1 or HMDA-2 as appropriate.

DATES: Comments must be received on or before November 3, 1989.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance on 20th Street, between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0674. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas J. Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202-452-2412 or 202-452-3667; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202-452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporations that have over $10 million in assets and have offices in metropolitan statistical areas (MSAs) or primary metropolitan statistical areas (PMSAs), to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made a number of significant amendments to HMDA. (FIRREA, Pub. L. No. 101-73, section 1211, 103 Stat. 183, 524-526 (1989).) First, the coverage of HMDA was expanded to include mortgage lenders that are not affiliated with depository institutions or holding companies. Second, the FIRREA amendments require that institutions report data regarding loan applications; currently, only data regarding loans originated or purchased are reported. Third, the FIRREA amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers; depository institutions with assets under $30 million are exempt from this particular requirement. Fourth, the FIRREA amendments require that lenders identify the class of purchaser for loans that they sell. Finally, the amendments permit lenders to explain the basis for their lending decisions to their supervisory agency.

The FIRREA amendments apply beginning with calendar year 1990, and data consistent with the new requirements will be due on the reports filed by institutions in early 1991. The FIRREA amendments do not affect the requirements for reports of calendar year 1989 data. The current provisions of Regulation C govern these reports, which are due by March 31, 1990; for these reports, institutions should use Form HMDA-1 or HMDA-2 as appropriate. (The current edition of *A Guide to HMDA Reporting*, published by the FFIEC in January 1989, provides guidance on complying with the current Regulation C and can be used in reporting on the 1989 data. The guide will be rewritten to reflect the FIRREA amendments.)

To implement the FIRREA amendments, the Board is publishing proposed revisions to Regulation C. The proposed revisions provide for a "register" form of reporting. Under the proposed arrangement, lenders would record data on a loan-by-loan and application-by-application basis and submit their registers to their supervisory agency. The Board believes

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that institutions would have to maintain detailed information, given the FIRREA requirements, under any reporting arrangement that the Board might adopt. Under the Board's proposal, however, institutions would not have to undertake the additional step and cost of cross-tabulating the data. The register should therefore keep the new reporting burden to a minimum.

The Board is publishing a revised regulation in its entirety in order to facilitate review by commenters. However, the major changes, aside from the expansion in coverage of lenders, affect the data to be collected and the form in which the data will be reported (see § 203.4 of the proposed regulation).

The format for data submission is being developed in consultation with the agencies responsible for enforcing HMDA, namely the Federal Deposit Insurance Corporation (FDIC), the Department of Housing and Urban Development (HUD), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Several of these agencies currently require use of a register. It is contemplated that adoption of the register approach under HMDA could lead to elimination of duplicative register requirements, although an agency might collect data, in addition to that required by HMDA, as an addendum to the HMDA register.

The comment period ends on November 3, 1989. Because prompt implementation of the statutory amendments is in the public interest, the Board has set this comment period in place of the 60 days normally called for in the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The Board believes an abbreviated comment period is necessary to ensure that a final rule is in place as quickly as possible to provide guidance to covered lenders.

The information that must be collected is mandated by the Congress. However, the Board does invite comment on the layout of the register and on whether additional or different categories and codes should be used to collect the required information. It also invites comment on the summary tables (discussed under "Aggregated data" below) that would be produced by the FFIEC from data submitted by covered institutions.

In accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, and 5 CFR 1320.13, the proposed revisions to the reporting form will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of the comments received during the public comment period.

(2) Section-by-Section Summary

The proposed changes to each section of the regulation are discussed below.

Section 203.1—Authority, Purpose, and Scope

A new paragraph in § 203.1(b) reflects the purpose of the expanded reporting requirements, stated in the FIRREA amendments, of identifying possible discriminatory lending patterns. Section 203.1 (c) and (d) have been revised to clarify the coverage and scope of the regulation and to set forth the role of the FFIEC in producing reports from data submitted by institutions.

Section 203.2—Definitions

Section 203.2 contains definitions of terms used in the regulation, and has been revised as follows.

Act. The definition of "act" in § 203.2(a) is unchanged.

Application. Under section 1211(c) of the FIRREA amendments, institutions are required to report data for completed loan applications, in addition to data for loans originated or purchased. A definition of "application" has been added as proposed § 203.2(b); succeeding provisions have been renumbered accordingly.

For purposes of coverage, an application results when an institution has collected the information normally obtained in evaluating borrowers for the type of credit requested. This treatment of "application" in the proposed regulation and of "completed application" in the Board's Regulation B (Equal Credit Opportunity) (12 CFR 202.2(f)) are similar. They differ in that the Regulation B definition requires that the institution have received all the information for evaluating applications for the amount and type of credit requested, including such items as credit reports and insurance approvals, while to meet the requirement for Regulation C, the application is to be treated as complete even if institution has not received reports or approvals by secondary market entities, government entities, or private mortgage insurers. (The treatment under Regulation C is in keeping with congressional intent as reflected in the legislative history.) A completed application would also exist for purposes of Regulation C in instances where, though the application is technically incomplete, the lender has a sufficient basis on which to approve or deny the request for credit. In addition, under Regulation B, an institution may in certain instances send the applicant a notice of incompleteness, and if the applicant fails to respond within a reasonable period stated in the notice, the institution has no further obligation to act on the crdit request. (Refer to Regulation B, § 202.9(c)(2).) The Board solicits comment on whether this situation should be deemed a withdrawn application for purposes of HMDA reporting (and identified as such on the register) or whether a separate category (such as "file closed for incompleteness") should be used.

Branch office. The branch office definition has several implications. First, institutions that do not have a home or branch office in an MSA are completely exempt from HMDA. Second, institutions must identify the census tract for loans on property located in any MSA in which the institution has a home or branch office. Third, loan data must be made available to the public at one branch office (or the home office) in each MSA where the institution has a home or branch office. Finally, the institution must post notices in all branch offices located in MSAs to inform the public of the availability of the HMDA data.

Section 203.2(c)(1) of the proposed regulation retains, for depository institutions, the branch office definition currently set forth in § 203.2(b)(1)(i) without substantive change. A branch office for banks, savings and loan associations, and credit unions is an office approved as a branch by a Federal or state supervisory agency.

Just last year, the Congress expanded HMDA coverage to institutions other than depository institutions, namely to mortgage banking subsidiaries of bank and thrift holding companies and to savings and loan service corporations. As discussed in more detail below, the FIRREA amendments further expand the coverage of HMDA to "other lending institutions." For all of these entities, designated as "mortgage lending institutions" in the proposed regulation, the Board proposes to retain the definition of branch office currently in § 203.2(b)(1)(ii), moving it to proposed § 203.2(c)(2). A branch office is any physical office of the institution that receives applications from the public for home purchase or home improvement loans.

In addition, under section 1211(f) of the FIRREA amendments, "other lending institutions"—which is to say any covered institution other than a bank, savings association, or credit union—are deemed to have a branch office in any MSA in which they receive applications for, originate, or purchase five or more home purchase or home improvement loans. Proposed § 203.2(c)(2)

incorporates this rule. The five-or-more-loan rule will apply for purposes of determining coverage and of geographic itemization, but it is contemplated that lending institutions will be required to make disclosure statements available and to post HMDA notices only in those MSAs where they have a physical presence.

Dwelling. In the current regulation, parenthetical material in the definitions of home purchase and home improvement loans indicates what is included in the term "dwelling." Proposed § 203.2(d) adds a definition of "dwelling" that consolidates this material as well as the definition of "state."

FHA, FmHA, and VA loans. The definition of these loans, currently contained in § 203.2(c), has been deleted from § 203.2 of the regulation and placed in the instructions for completing the reporting form (appendix A to the regulation).

Financial institution. Current § 203.2(e) defines the institutions subject to Regulation C as "financial institution[s]," which include depository institutions (banks, savings and loan associations, and credit unions and their majority-owned subsidiaries), mortgage banking subsidiaries of bank and savings and loan holding companies, and savings and loan service corporations.

In the proposed revision to § 203.2(e), the term "financial institution" is defined to refer to all institutions covered by the regulation. Included in the definition are banks, savings and loan associations, and credit unions as well as "mortgage lending institutions" (as discussed below, subsidiaries of depository institutions would fall in the latter category).

Under the current regulation, depository institutions such as banks and savings associations are covered provided they originate "federally related mortgages loans," defined in current § 203.2(d). The term "federally related mortgage loan" is relevant only for determining whether a depository institution is covered by HMDA. Proposed § 203.2(e)(1) combines, in substance, the definition of "financial institution" currently contained in § 203.2(e)(1)(i) and the current definition of "federally related mortgage loan." The Board has found that having separate definitions causes confusion regarding coverage. Accordingly, banks, savings associations, and credit unions are defined as financial institutions under § 203.2(e)(1) if they write home-purchase loans and are federally insured or regulated, or if they write home-purchase loans that are federally insured or supplemented or will be sold to FNMA, GNMA, or FHLMC. The Board seeks comment on whether this definition could be simplified by providing merely that federally insured institutions making home-purchase loans are covered.

In section 1211(d) of the FIRREA amendments, the Congress expanded the coverage of HMDA to include "other lending institutions." An "other lending institution" is defined in section 1211(e)(2) of the act as "any person engaged for profit in the business of mortgage lending." The proposed regulation refers to these entities as "mortgage lending institutions" in § 203.2(e)(2); the term also covers mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations (and, as discussed below, mortgage banking subsidiaries of depository institutions).

An entity is a "mortgage lending institution" under proposed § 203.2(e)(2) if, in the preceding calendar year, 10 percent or more of its loan volume consisted of home purchase loans. This threshold mirrors the rule currently used in § 203.2(e)(1)(ii) to define whether a holding company subsidiary is a "mortgage banking" subsidiary.

Under current § 203.2(e)(2), majority-owned subsidiaries of banks and savings associations are treated as part of their parent institution. Accordingly, data submitted by the parent institution currently include that of the subsidiary and are itemized by census tract only if the loans relate to property in an MSA where the parent has a home or branch office. In light of the definition of "other lending institution" contained in the FIRREA amendments, the Board believes this treatment is no longer appropriate.

Given the statute's five-or-more-loan rule for branch offices, discussed above, to continue the current reporting arrangement for subsidiaries of depository institutions would magnify the difference in treatment accorded to subsidiaries based on corporate structure. A holding company subsidiary would be required to provide census tract information for loans in MSAs where it took applications for, originated, or purchased five or more mortgage loans, while the data of bank subsidiaries, for example, would contain this information only for MSAs in which the parent institution has a physical branch location. The Board believes that a difference in corporate structure does not justify such markedly different results.

Consequently, the Board proposes to treat mortgage lending subsidiaries of depository institutions as independent corporate entities under the definition of "other lending institution." As such, they will comply with HMDA in their own right as mortgage lending institutions if they meet the 10 percent threshold, under proposed § 2032.(e)(2).

Home improvement and home purchase loans. Institutions are required to report data regarding home improvement and home purchase loans. The definitions of these terms are incorporated in proposed § 203.2(f) and § 203.2(g). With the added definition of "dwelling" in proposed § 203.2(d), the parenthetical references to condominiums, cooperatives, and mobile and manufactured homes have been deleted.

Metropolitan statistical area. Institutions are required to specify the location of the property to which a loan relates if the property is located in a Metropolitan Statistical Area (MSA) in which the institution has a home or a branch office. The definition of MSA in proposed § 203.2(j) is unchanged.

State. The definition of "state," currently contained in § 203.2(i), has been eliminated as unnecessary in light of its inclusion in the proposed definition of "dwelling."

Section 203.3—Exempt Institutions

Section 203.3 excludes from the coverage of the regulation small institutions, institutions that do not have offices in MSAs, and institutions that have been granted an exemption because they are subject to a similar state law. A new § 203.3(c)(2) has been added to provide that institutions which become subject to HMDA during the course of a given year—for example, by exceeding the 10 percent threshold for coverage as a "mortgage lending institution"—shall report data beginning with the following calendar year. Current § 203.2(c)(2) has been redesignated § 203.3(c)(3).

Section 203.4—Compilation of Loan Data

Section 203.4 sets forth the requirements for reporting of loan data and has been revised extensively. The FIRREA amendments require institutions to report data on all loan applications, not merely on originations and purchases of loans as is currently the case. The FIRREA amendments also require reporting of data of the race, sex, and income of applicants and borrowers, in addition to the geographic information that is currently required. In view of this increase in the data to be reported, the Board believes the cross-tabulated reporting format currently in

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use is impractical. The Board is proposing, instead, a register form of reporting.

Currently, institutions report data in a summary format, cross-tabulated by census tract and type of loan, and reflect the number and dollar amount of loans in five loan categories. For loans in MSAs where the institution has a home or a branch office, these data are subtotalled separately for each census tract in which loans are originated or purchased. If this summary format were to be rented, multiple reporting forms would be needed to capture all the data called for by the FIRREA amendments. Institutions would use one form to report loan originations, applications denied, and applications withdrawn within each census tract for the five loan categories. Another form would be required for data on loan purchases. Still another would identify the type of purchaser of loans that are sold. Finally, three sets of multiple forms—one page for each of the five loan categories—would be required for cross-tabulating the data on race, sex, and income with type of loan.

In reviewing the options, the Board has determined that continuing the cross-tabulated form of reporting currently in use would be extremely confusing and burdensome for reporting institutions. In the Conference Report to the FIRREA amendments, the Congress gave the Board flexibility to establish a reporting format that will maximize the utility of the data while minimizing, to the extent possible, the reporting burden for covered institutions. (H.R. Rep. No. 101–222, 101st Cong., 1st Sess. 459). Accordingly, the Board is proposing in § 203.4 that institutions report by means of a loan/application register, using a form like that set forth in appendix A of the proposed regulation. Under this arrangement, institutions would record data on a loan-by-loan and application-by-application basis and would submit the completed register to their supervisory agency. The FFIEC would produce individual reports for each institution and aggregate tables for each MSA using the data from the registers (see the discussions below under "Aggregated data").

The Board believes that the register approach presents a number of advantages. Institutions would collect the detailed information called for by the FIRREA amendments, but would not have to undertake the additional step of preparing cross-tabulated HMDA reports. The Board believes that a register is therefore easier and less costly for institutions to complete. In addition, many institutions are already familiar with the register format since they have complied with similar requirements of the OTS, the OCC, and the FDIC. These agencies are undertaking to review their current requirements to determine the extent to which the register called for by Regulation C could serve as a substitute for the ones they now require. And while the supervisory agencies would incur significant added costs in entering the increased amount of data that would be submitted, the burden on covered institutions would be eased. The reporting of raw data also would permit the FFIEC to produce reports based on a variety of different breakdowns of the data. The specific requirements for the register and the summary tables that the FFIEC would produce are discussed below in the sections on appendix A and "Aggregated data."

Proposed § 203.4(a) contains, among other things, a requirement that institutions collect data on the race and sex of applicants, and proposed § 203.4(b)(1) tells how race and sex information may be collected.

Section 203.13 of the Board's Regulation B (Equal Credit Opportunity) requires that data about race or national origin and sex be collected on applications for loans to finance the purchase of a principal residence; § 202.5(d) of Regulation B generally prohibits lenders from requesting it in other circumstances. One exception, under § 202.5(b)(2), is that lenders are permitted to request the information if they are required to do so by a Federal regulation. With the addition of § 203.4(b)(1) to Regulation C, lenders must collect this information for home improvement loans and home purchase loans on property not intended as the borrower's principal residence—loans not covered by § 202.13—without violating Regulation B. A form and instructions for collecting data on race and sex is contained in appendix B of the proposed regulation.

The FIRREA amendments require the reporting of data on race, sex, and income for applications and originations but not purchased loans. Despository institutions with assets of $30 million or less are not required to report this information. Proposed § 203.4(b)(2) provides for optional reporting of these data for loan purchases and by depository institutions with assets of $30 million or less. Under the FIRREA amendments, mortgage lending institutions do not qualify for the $30 million exception and hence must include data on race, sex, and income for all applications and loan originations, though not for purchased loans.

A new § 203.4(c) has been added to implement section 1211(b) of the FIRREA amendments, which permits institutions, at their option, to report reasons for their loan decisions. Proposed § 203.4(c) authorizes optional reporting of such data. Current § 203.4(c), relating to excluded data, has been redesignated § 203.4(d).

Proposed § 203.4(d) relates to data that is not to be reported. Two changes have been made to this provision. First, the Board proposes to eliminate the rule that mortgage banking subsidiaries of bank and savings and loan holding companies are not to report FHA loans, currently contained in § 203.4(c)(2). Data on FHA loans by these institutions was originally collected by HUD outside of HMDA. Now that HUD is a direct participant in the implementation of HMDA, it appears appropriate to collect and disclose these data on the HMDA reports. Dropping the current provision will also result in a uniform rule for reporting of these loans by all institutions and avoid confusion. Otherwise, data would be incomplete as to lending by nondepository institutions, a result that is inconsistent with the congressional intent reflected in the FIRREA amendments.

The exclusion for refinancings between the original parties, currently contained in § 203.4(c)(1)(iii), has been deleted. The Board proposes that refinancings of home purchase loans be treated as home purchase or home improvement loans, as applicable, even when they involve the original borrower and original lender. The Board has found that the exclusion of refinancings between original parties has been a source of confusion. While refinancings between original parties may not technically result in new money being disbursed into the community, the Board believes that these transactions do provide an indication of an institution's willingness to meet credit need. Accordingly, the current exclusion has been deleted and refinancings between the original parties, if they otherwise meet the definition of home purchase or home improvement loans, would be reported in full under the proposed regulation.

Section 203.5—Disclosure and Reporting

Section 203.5 sets the rules for making loan data available at offices of an institution and reporting the data to supervisory agencies. The Board proposes to require that institutions submit registers for a given calendar year to their supervisory agency by the following February 15. Currently, disclosure statements are due by March 31. An earlier reporting date is necessary to ensure that disclosure statements can be prepared by the FFIEC in a timely fashion. The Board also believes an earlier date is reasonable given that minimal processing on the part of institutions will be required. Also, the register format will not require institutions to cross-tabulate loan and application information for the entire calendear year in order to prepare their HMDA submissions, as is presently the case.

Section 203.5 of the proposed regulation also provides that institutions make available disclosure statements within 15 business days after receiving them from the FFIEC. As discussed below, the FFIEC will be producing the disclosure statements from the registers that are submitted and will provide those statements to the reporting institutions. The Board considered whether the registers themselves should be disclosed to the public. Currently, those agencies that require registers do not make the registers public, due to privacy and other concerns, and the Board proposes to follow this approach in Regulation C.

Other provisions in § 203.5, such as those concerning notices and times of availability, are unchanged.

Section 203.6—Enforcement

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The provisions of this section are essentially unchanged.

Appendix A—Forms and Instructions

Appendix A contains the loan/application register and instructions for its completion. Institutions must use the prescribed format but are not required to use the form itself. An institution may, for example, choose to produce a computer printout of its register instead. Due to the volume of data being submitted, the Board encourages covered institutions to develop computer programs that will enable them to submit the data in machine-readable format. The Board plans to publish standards to facilitate electronic submission when it publishes the amended regulation in final form.

The following is a summary of the information that would be provided on the register and the number of characters to be allotted for each data item. The instructions contained in proposed Appendix A provide guidance on the requirements for the register and answer more detailed questions.

Application or loan number. A unique number identifying the application or transaction. For FHA loans, it must be the FHA case number; otherwise any number the institution chooses to use. (25 characters)

Date of application. For applications, the date the application was submitted by year, month, and day. (6 characters)

Application or loan information. Codes indicating the type of loan, the purpose of the loan, and whether the property is owner-occupied, plus the amount of the loan (or the amount applied for) in thousands of dollars. (1 character each for type, purpose, and occupancy status; 5 characters for amount)

Action taken and date. A code indicating whether the entry relates to an approved, rejected, or withdrawn application, or to a loan purchase. Also, the date the action occurred. (1 character for action taken; 4 characters for month and day)

Location of the property. For loans written on property in MSAs where the institution has a home or branch office, the location of the property. (4 characters for MSA, 2 for state, 3 for county, and 6 for census tract)

Applicant characteristics. A code indicating the race and sex of the applicant and any coapplicant, and the income relied upon in thousands of dollars. This section need not be completed (by any institution) for loan purchases; and it need not be completed by any bank, savings and loan or credit union with $30 million or less in assets. (1 character each for race and sex of applicant and of coapplicant; 4 characters for income)

Type of purchaser. For loans that are sold, a code indicating the class of purchaser. (1 character)

Reason for denial. Up to two codes indicating the reasons for denial. This information is optional. (2 characters)

The Board is interested in receiving public comment on whether the number of reasons for denial should be expanded to be more specific, perhaps along the lines of the reasons identified in the model forms for adverse action contained in Regulation B.

Appendix B—Form and Instructions for Data Collection on Race and Sex

Appendix B of the current regulation prescribes the supervisory agencies to which institutions must submit their reports. This material has been incorporated into the instructions to the reporting form, in appendix A. Independent mortgage lending institutions will submit their registers to HUD while subsidiaries of depository institutions or their holding companies will submit their registers to the FDIC, Federal Reserve, or OTS.

Proposed appendix B contains a form that can be used to collect data on race and sex, and instructions for its use. It is identical to the form prescribed in Regulation B for data collection related to applications for home purchase loans, except for the added reference to HMDA.

(3) *Aggregated data.* The FFIEC (with support from each of the federal regulators with HMDA responsibilities) aggregates the loan data received from all reporting institutions in each MSA. The FFIEC also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with disclosure statements of the individual institutions, are sent to central data depositories in each MSA, where they are available to the public.

Under the Board's proposal, the FFIEC would generate disclosure statements from the register data submitted by institutions. These statements (in the form of summary tables) would be provided to the institutions, which would in turn make them available to the public. The FFIEC expects that these statements would be provided to institutions by October following submission of the register data on February 15. This timetable is dictated by the large volume of data to be processed. The supervisory agencies and the FFIEC will take appropriate steps, however, to ensure that both the individual disclosure statements and the aggregate tables become available to the public as early as possible. Reporting institutions will be encouraged, for example, to submit data in machine-readable form to facilitate earlier availability.

The FFIEC plans to produce summary tables annually for each institution, to show lending activity in each MSA for which the institution reports data. In addition, aggregate tables based on loan data from all covered institutions would be prepared for each MSA and sent to central data depositories. The Board emphasizes that these tables would be prepared by the FFIEC from register data submitted, and not by individual institutions.

BILLING CODE 6210-01-M

Loan Applications and Originations

(Loans made or applied for in 19__)

Name of Institution:_____ MSA:_____

Section 1 -- Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT AND DISPOSITION	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchase and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)
Census tract: _____										
Loans										
Applications denied										
Applications withdrawn										
Census tract: _____										
Loans										
Applications denied										
Applications withdrawn										
Census tract: _____										
Loans										
Applications denied										
Applications withdrawn										
Census tract: _____										
Loans										
Applications denied										
Applications withdrawn										
MSA/PMSA TOTAL										

Sample Table 1

To be produced by FFIEC

Section 2 -- Loans on property not located in MSAs/PMSAs where institution has home or branch offices

Loans										
Applications denied										
Applications withdrawn										

Loan Purchases

(Loans purchased in 19__)

Name of Institution:_____ MSA:_____ _____

Section 1 -- Loans on property located in MSA/PMSA where institution has a home or branch office

CENSUS TRACT (in numerical order)	Loans on 1-to-4 Family Dwellings						Loans on Multifamily Dwellings for 5 or More Families (home purchase and home improvement)		Nonoccupant Loans on 1-to-4 Family Dwellings from columns A, B and C	
	Home Purchase Loans				Home Improvement Loans					
	FHA, FmHA, and VA A		Conventional B		C		D		E	
	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)	No. of Loans	Amount ($000's)
MSA/PMSA TOTAL										

Section 2 -- Loans on property not located in MSAs/PMSAs where institution has home or branch offices

Sample Table 2

To be produced by FFIEC

Loans Sold
(Loans sold in 19__)

Name of Institution:_____

TYPE OF PURCHASER	Number of Loans	Total Dollar Amount (Thousands)
Federal National Mortgage Association		
Government National Mortgage Association		
Federal Home Loan Mortgage Corporation		
Farmer's Home Administration		
Commercial Bank		
Savings Bank or Savings and Loan Association		
Life Insurance Company		
Other Purchasers		

Sample Table 3

To be produced by FFIEC

Disposition of Loan Applications
Conventional Home Purchase Loans

Financial Institution: _____ MSA: _____

APPLICANT CHARACTERISTICS	Applications Received		Loans Granted			Applications Denied			Applications Withdrawn		
	(#)	($)	(#)	(%)	($)	(#)	(%)	($)	(#)	(%)	($)
Race of Applicants											
American Indian/Alaskan Native											
Asian/Pacific Islander											
Black											
Hispanic											
White											
Other											
Joint											
Sex of Applicants											
Male											
Female											
Joint											
Income of Applicants											
0-19,999											
20,000-29,999											
30,000-49,999											
50,000 or more											

Sample Table 4

To be produced by FFIEC

Disposition of Loan Applications
Conventional Home Purchase Loans

Financial Institution: _____ MSA: _____

INCOME AND RACE	Applications Received		Loans Granted			Applications Denied			Applications Withdrawn		
	(#)	($)	(#)	(%)	($)	(#)	(%)	($)	(#)	(%)	($)
0-19,999											
American Indian/Alaskan Native											
Asian/Pacific Islander											
Black											
Hispanic											
White											
Other											
Joint											
20,000-29,999											
American Indian/Alaskan Native											
Asian/Pacific Islander											
Black											
Hispanic											
White											
Other											
Joint											
30,000-49,999											
American Indian/Alaskan Native											
Asian/Pacific Islander											
Black											
Hispanic											
White											
Other											
Joint											
50,000 or more											
American Indian/Alaskan Native											
Asian/Pacific Islander											
Black											
Hispanic											
White											
Other											
Joint											

Sample Table 5

To be produced by FFIEC

Disposition of Loan Applications
Conventional Home Purchase Loans

Financial Institution: _____ MSA: _____

INCOME AND SEX	Applications Received		Loans Granted			Applications Denied			Applications Withdrawn		
	(#)	($)	(#)	(%)	($)	(#)	(%)	($)	(#)	(%)	($)
0-19,999											
Male											
Female											
Joint											
20,000-29,999											
Male											
Female											
Joint											
30,000-49,999											
Male											
Female											
Joint											
50,000 or more											
Male											
Female											
Joint											

Sample Table 6

To be produced by FFIEC

Disposition of Loan Applications
Conventional Home Purchase Loans

Financial Institution: _____ MSA: _____

TYPE OF CENSUS TRACT	Applications Received		Loans Granted			Applications Denied			Applications Withdrawn		
	(#)	($)	(#)	(%)	($)	(#)	(%)	($)	(#)	(%)	($)
Racial Composition											
Less than 15% minority											
15-29% minority											
30-49% minority											
50-64% minority											
65-79% minority											
80-100% minority											
Income Characteristics											
Low or moderate income											
Middle income											
Upper income											
Income and Racial Composition											
Low income, less than 15% minority											
15-29% minority											
30-49% minority											
50-64% minority											
65-79% minority											
80-100% minority											
Middle income, less than 15% minority											
15-29% minority											
30-49% minority											
50-64% minority											
65-79% minority											
80-100% minority											
Upper income, less than 15% minority											
15-29% minority											
30-49% minority											
50-64% minority											
65-79% minority											
80-100% minority											
All other tracts											
Small county											

Sample Table 7

To be produced by FFIEC

BILLING CODE 6210-01-C

Sample Tables 1 and 2 are similar to the current HMDA–1 Part A (Originations) and HMDA–1 Part B (Purchases) forms. Sample Table 1 would show the disposition of loan applications (granted, denied, or withdrawn) by loan category within each census tract. Sample Table 2 would show loans purchased by loan category within each census tract. These two tables would be produced for each MSA in which the institution has offices.

Under section 1211(b) of the FIRREA amendments, institutions are required to identify the class of purchaser of loans that are sold. Using these data from registers, the FIRREA plans to produce a report similar to that set forth as Sample Table 3. This sample table would indicate, for all loans sold by the institution, the number and dollar amount sold by class of purchaser. The table would reflect activity by the institution in all MSAs, and the classes would cover all major categories of purchasers.

The FIRREA also plans to produce four other tables to reflect the data on race, sex, and income that must be reported under section 1211(a) of the FIRREA amendments—Sample Tables 4, 5, 6, and 7. The FIRREA would prepare these tables for each loan category. Sample Table 4 would show dispostion of applciations by the race, sex and income of applicants or borrowers. Disposition cateogories would include the total number and dollar amount of applications received, loans granted, applications denied, and applications withdrawn. Sample Table 5 would show the disposition of applications broken down by the income and by the race of the applicant or borrower. Sample Table 6 would show disposition of applications by the income and sex of the applicant or borrower. Sample Table 7 would show the disposition of applications within groups of census tracts, categorized by their race and income characteristics.

(4) *Effective dates.* The FIRREA amendments apply to applications received, and loans originated or purchased, on or after January 1, 1990. Under the Board's proposal, institutions will be required to report data for calendar year 1990 in the revised format by February 15, 1991. The current requirements of Regualtion C apply to reports of data for calendar year 1989; accordingly, institutions will use current forms HMDA–1 or HMDA–2, as appropriate, for the reports that are due on March 31, 1990.

(5) *Economic impact statement.* The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), the Board proposes to revise 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.

203.1 Authority, purpose, and scope.
203.2 Definitions.
203.3 Exempt institutions.
203.4 Compilation of loan data.
203.5 Disclosure and reporting.
203.6 Enforcement.

Appendix A—Form and Instructions for Loan/Application Register

Appendix B—Form and Instructions for Data Collection on Race and Sex

Authority: 12 U.S.C. 2801–2810.

§ 203.1 Authority, purpose and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0090.

(b) *Purpose.* (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to any financial institution that had assets of more than $10,000,000 and had a home or branch office in a metropolitan statistical area (MSA) on December 31 of the year preceding. The regulation requires the institution to report data to its supervisory agency about home-purchase and home-improvement loans it originates, purchases, or for which it receives applications, and to disclose certain data to the public. "Financial institution" includes a bank, saving association, credit union, or other mortgage lending institution, as defined in § 203.2(e).

(d) *Loan aggregation and central data depositories.* Using the loan data submitted by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements for individual institutions and will aggregate loan data for each MSA, showing lending patterns by location, age of housing stock, income level, sex and racial characteristics. Loan data are available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.), as amended.*

(b) *Application* means a completed application for a home-purchase or a home-improvement loan that contains information the financial institution regularly obtains in evaluating applications for the amount and type of credit requested.

(c) *Branch office* means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines; and

(2) Any office of a mortgage lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home-purchase or home-improvement loans. A mortgage lending institution is also deemed to have a branch office in an MSA if, in the preceding calendar year, it received applications for, originated, or purchased five or more home-purchase or home-improvement loans on property located in that MSA.

(d) *Dwelling* means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit,

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cooperative unit, or mobile or manufactured home.

(e) *Financial institution* means: (1) A bank, savings association, or credit union that originated in the preceding calendar year a home-purchase loan (other than temporary financing such a construction loan) secured by a first lien on a one-to-four family dwelling if:

(i) The institution is federally insured or regulated; or

(ii) The loan is insured, guaranteed, or supplemented by any Federal agency; or

(iii) The institution intended to sell the loan to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) whose home-purchase loans equaled or exceeded ten percent of its loan volume, measured in dollars, in the preceding calendar year.

(f) *Home-improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home-improvement loan.

(g) *Home-purchase loan* means any loan secured by and made for the purpose of purchasing, or refinancing the purchase of, a dwelling.

(h) *Metropolitan statistical area* or *MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(1) Its total assets were $10,000,000 or less; or

(2) It had neither a home office nor a branch office in an MSA.

(b) *Exemption based on state law.* (1) A state-chartered financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency, for purpose of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on § 203.2(e)(1) or (2) shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(3) An institution losing an exemption that was based on state law under paragraph (b) of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall compile data regarding applications for, originations of, and purchases of home-purchase and home-improvement loans for each calendar year. These data shall be presented on a loan-by-loan basis in the loan/application register format prescribed in appendix A. The institution shall include the following:

(1) A number for the loan or loan application, and the date of application.

(2) The type and purpose of the loan.

(3) The owner-occupancy status of the property to which the loan relates.

(4) The amount of the loan or application.

(5) The type of action taken, and the date.

(6) The location of the property to which the loan relates, by MSA, state, county, and census tract, if the institution has a home or a branch office in that MSA.

(7) The race and sex of the applicant or borrower, and the income relied upon in processing the loan application.

(8) The type of entity purchasing a loan that was originated or purchased and then sold by the institution within the same calendar year.

(b) *Collection of data on race, sex, and income.* (1) Questions regarding the race and sex of the applicant or borrower may be listed on the loan application or on a separate form. If the applicant or borrower chooses not to provide the information, the lender shall obtain the data, to the extent possible, on the basis of visual observation or surname.

(2) Race, sex, and income data need not be reported for:

(i) Loans purchased by the financial institution; or

(ii) Applications received, or loans originated, by a bank, savings association, or credit union with assets on the preceding December 31 of $30,000,000 or less.

(c) *Optional data.* A financial institution may include in the loan/application register the reason it denied a loan application.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of mortgage loans (such as mortgage-participation certificates); or

(5) The purchase solely of the right to service loans.

§ 203.5 Disclosure and reporting.

(a) *Reporting requirements.* By February 15 following the calender year for which the loan data are compiled, a financial institution shall send two copies of its loan/application register to the agency office specified in appendix A of this regulation.

(b) *Disclosure to public.* A financial institution shall make its mortgage loan disclosure statements (to be prepared by the Federal Financial Institutions Examination Council) available to the public no later than 15 business days after the statements are received by the institution from its supervisory agency. The financial institution shall make these statements available to the public for a period of five years.

(c) *Availability of disclosure statements.* A financial institution shall make the disclosure statements available at its home office. If it has branch offices in other MSAs, it shall also make statements available in at least one branch office in each of those MSAs; the statements at branch offices need only contain data relating to property in the MSA where that branch office is located. The institution shall make the disclosure statements available for inspection and copying during the hours the office is normally open to the public for business. An institution that provides photocopying facilities may impose a reasonable charge for this service.

(d) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statements in the lobbies of its home office and any branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statements are available. At its option, an institution may include the location in its notice.

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in appendix A of this regulation.

(b) *Bona fide errors.* An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

Appendix A—Form and Instructions for Loan/Application Register

I. Loan/Application Register Form

Public reporting burden for this collection of information is estimated to vary from 4 to 100 hours per response, with an average of 30 hours per response, including time to gather and maintain the data needed to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Instructions to Lending Institutions

A. Who Must Use This Form

(1) Banks, savings associations, credit unions, and other mortgage lending institutions must complete this loan/application register to list data about loan applications received and loans originated and purchased for a calendar year if on the preceding December 31 the institution:

(a) Had assets of more than $10,000,000, and

(b) Had a home or a branch office in a metropolitan statistical area or a primary metropolitan statistical area (both referred to in these instructions by the term MSA).

Example: If on December 31, 1989, you had a home or a branch office in an MSA and your assets exceeded $10,000,000, you must complete a register listing all home-purchase and home-improvement loans you originate or purchase during calendar year 1990, and listing also any applications you receive on which final action was taken by year-end 1990.

(2) However, if your institution is a bank, savings association or credit union, you need not complete a register—even if the tests for asset size and location are met—if you made no first-lien mortgage loans on one-to-four family dwellings in the preceding calendar year.

(3) If your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union), you need not complete a register if your home-purchase loan originations in the preceding year totalled less than 10 percent of your loan volume, measured in dollars.

(4) You must complete a separate loan/application register even if you are a subsidiary of an institution that is also required to complete a register.

B. Who Must Use Other Forms

Institutions that have been exempted by the Federal Reserve Board from complying with Federal law because they are covered by a similar state law on mortgage-loan disclosures must use the disclosure form required by their state law.

C. Format

(1) You must use the format of this loan/application register, but you are not required to use the form itself. For example, you may produce a computer printout instead. But you must give all the identifying information asked for at the top of the form, use the prescribed column headings, provide the signature of a certifying officer, etc.

(2) If your register is more than one page, number the pages.

(3) At the top of the first page, type or print the name and telephone number of the office for your institution who will be certifying to the accuracy of the data, the name of your institution, and the mailing address. Your supervisory agency will use this name and address to send completed disclosure statements to your institution.

D. Submission of Register; Release of Disclosure Statements

(1) If you submit data in hard copy, you must send two copies of your loan/application register to the office specified by your Federal supervisory agency no later than February 15 following the calendar year for which the data are compiled. A list of agencies appears at the end of these instructions.

(2) If you submit your register in machine-readable form, you must obtain the required specifications from your regulatory agency.

(3) Submit only one report for each institution. The report may consist of separate registers from your individual branch offices. However, be certain that the loan numbers discussed under paragraph F(1) are unique within your institution (for example, you could use a letter or number code for different branches to avoid the possibility of duplicate loan numbers).

(4) The first page of the register must be signed by an officer of your institution, certifying to the accuracy of the data.

(5) The Federal Financial Institutions Examination Council will prepare disclosure statements from the data that you submit and will send you, through your supervisory agency, a copy for your institution to make available to the public. You must make these statements available for inspection by the public at your home office (and, if you have branch offices in other MSAs, at one branch office in each of these MSAs) within 15 business days of receiving them.

E. Data to Be Shown

(1) Show the data on home-purchase and home-improvement loans that you originated or purchased during the calendar year covered by the report. Report this data even if the loans were subsequently sold.

(2) Show data for applications received that your institution denied, or that the applicant withdrew, by the end of the calendar year. Report the required data even if the loan application was received in a preceding year, as long as the disposition was made during the year for which you are reporting.

F. Itemization of Data to be Shown

Your loan/application register must include the following.

(1) *Application or loan number.* If the loan is to be FHA insured, you must enter the FHA case number. Otherwise, you may enter any number not exceeding 25 characters (letters or numerals, or a combination of both) that would allow retrieval of the loan or application file to which the number refers. Make sure that loan or application numbers are unique within your institution. If your report contains data for branch offices, for example, you could add codes to identify the loans or applications of particular branches.

(2) *Date of application.* Enter the date the loan was applied for by year, month and day. For example, January 31, 1990, would be shown as "90-01-31." Enter "NA" for loans purchased by your institution.

(3) *Application or loan information.*—(a) *Type.* Indicate the type of loan (or application for a loan), by entering the applicable code, as follows:

1—Conventional (any loan other than FHA, VA or FmHA loans)
2—FHA (Federal Housing Administration) insured
3—VA (Veterans Administration) guaranteed
4—FmHA (Farmers Home Administration) insured

(b) *Purpose of loan.* Indicate the purpose of the loan by entering the applicable code as follows:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Multifamily dwelling (both purchase and improvement)

(c) *Explanation of loan purpose*—Code 1: *Home-purchase.*

(i) This code applies to loans made, or applications received, for the purpose of purchasing a residential dwelling for one-to-four families if the loan is secured by a lien.

(ii) At your option, you may use code 1 for loans that are made for home-improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home-purchase loans.

(iii) Use code 1 for refinancings of home-purchase loans on one-to-four family residential dwellings.

Code 2: *Home-improvement.* (i) Code 2 applies to loans and applications for loans that:

(A) The borrowers have said are to be used for repairing, rehabilitating, or remodeling one-to-four family residential dwellings, and;

(B) Are recorded on your books as home-improvement loans.

(ii) You must report both secured and unsecured loans.

(iii) At your option, you may use code 2 for home-equity lines of credit if the borrower or

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applicant indicates at the time of application or when the account is opened that a portion of the proceeds will be used for home-improvement. For such lines, under "Amount of loan" in paragraph (e) below, enter only that portion of the line which the borrower or applicant indicates will be for home-improvement purposes. Report only in the year the line is established.

Code 3: *Multifamily dwelling.* (i) This code applies to loans and applications on dwellings for five or more families, including home-purchase and home-improvement loans, and refinancings.

(ii) Do not use this code for loans or individual condominium or cooperative units; use codes 1 or 2 for such loans, as applicable.

(d) *Occupancy.* Use the applicable code to indicate whether the property to which the loan or loan application relates is to be owner-occupied:

1—Owner-occupied
2—Not owner-occupied
3—Not applicable

(i) Code 2 ("not owner-occupied") applies to home-purchase or home-improvement loans or applications on one-to-four family dwellings, located within an MSA in which your institution has a home or a branch office, that were made to borrowers or received from applicants who indicated at the time of the loan application that they did not intend to use the property as a principal dwelling.

(ii) Use code 3 ("not applicable") if you cannot determine from the load documents whether the property is to be owner-occupied, or if the property to which the loan relates:

(A) Is not located in an MSA, or is located in an MSA in which your institution has neither a home nor a branch office; or

(B) Is a multifamily dwelling.

(e) *Amount of loan.* Enter the amount of the loan or application. Round all dollar amounts to the nearest thousand ($500 should be rounded up to $1,000), and show in terms of thousands.

(i) For home-purchase loans that you originate "amount" means the original principal amount of the loan. For home-purchase loans that you purchase, "amount" means the unpaid principal balance of the loan at the time of purchase.

(ii) For home-improvement loans (both originations and purchases), you may include unpaid finance charges in the "amount" if that is how you record such loans on your books.

(iii) For home-equity lines of credit you may include in the amount only that portion of the line indicated by the applicant or borrower at the time the application is made or when the account is opened as being for the purpose of home-improvement. Report the line only in the year it is established.

(iv) In the case of a loan application that is denied or withdrawn, enter the amount of the loan applied for.

(f) *Action taken.* By using the following codes, indicate the type of action taken on the application or loan by the end of the calendar year for which you are reporting:

1—Loan granted
2—Application denied
3—Application withdrawn
4—Loan purchased by your institution

(g) *Type.* (i) Do not report any loan application that is still pending at the end of the calendar year for which you are reporting; instead, report it in the year a decision is made.

(ii) Indicate as withdrawn any application that the applicant has expressly withdrawn, or that meets the conditions specified in § 202.9(f) of Regulation B. Do not indicate as withdrawn any applications that are incomplete but do not meet the above conditions.

(h) *Date.* Enter the date (by month and day only) of approval, denial, or withdrawal of the loan application, or purchase of the loan, as applicable. For example, a loan application that was approved on January 31, 1990, would be entered as "01–31." (Because the register will only contain information for a given calendar year, you will not enter the year in this column.)

(5) *Property location.* In these columns you will enter the applicable codes for the MSA, state and county, and census tract locations for the property to which a loan relates.

(a) *MSA.* For each loan or application for a loan, indicate the location of the property by the MSA number, if you have a home or branch office in that MSA. (See paragraph (e) below for treatment of loans on property outside MSAs in which you have offices.) If you are a mortgage lending institution, you are also deemed to have a branch office in an MSA if in the previous year you received applications for, originated, or purchased five or more home-purchase or home-improvement loans on property located in that MSA. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting.

(b) *State and county.* Use the two-digit (state) and three-digit (county) numerical codes available from your regional supervisory agency. Use only these established codes. Do not use the standard U.S. Postal Service abbreviations for states.

(c) *Census tract.* Indicate the census tract in which the property is located. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph (d) below). You may enter either the tract number or the code "NA" if the property is located in a county that had a population of 30,000 or less in the 1980 census.

To determine population, use the Census Bureau's PC80–1–A population series even if the population has increased above 30,000 since 1980.

(d) *Census tract maps.* To determine the census tract number, consult the U.S. Census Bureau's census tract outline maps. You must use the maps of the appropriate MSAs in the Census Bureau's PHC80–2 series for the 1980 census, or equivalent census data from the Census Bureau (such as CBF/DIME files) or from a private publisher. Use the maps in the 1980 series even if more current maps are available.

(e) *Outside MSA.* For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), enter the code "NA" in the MSA, state, county, and census tract columns. However, remember that if you are a mortgage lending institution (other than a bank, savings association, or credit union) and you received five or more loan applications or originated or purchased five or more home-purchase loans in an MSA, you are deemed to have a branch office in that MSA, whether or not you have an actual building there.

(6) *Race, sex and income.* [See Appendix B of Regulation C for information on the collection of race and sex data, and for a sample data collection form.)

(a) You must report this information for loans originated and applications received by your institution only where the borrower or applicant is a natural person (and not a corporation or partnership, for example). Moreover, if your institution is a bank, savings association, or credit union with assets of $30,000,000 or less on the preceding December 31, you may but need not report information on race, sex and income. In addition, the reporting of this information is not required for loans purchased by your institution. If you are not reporting this information, enter the code numbers specified in the lists in paragraphs (c) and (d) below for "not applicable," and enter "NA" under income in paragraph (e).

(b) Race and sex data is not required for applications you receive by telephone or mail; however, you must enter this information if it is given to you. If this information is not obtained by you for telephone or mail applications, enter the code number for the appropriate "information not provided by applicant" code from the lists provided in paragraphs (c) and (d) below.

(c) *Race of borrower or applicant.* Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form.

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant; application made by mail or telephone
8—Not applicable

(d) *Sex of borrower or applicant.* Use the following codes to indicate the sex of the applicant or borrower under column "A." and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form:

1—Male
2—Female
3—Information not provided by applicant; application made by mail or telephone
4—Not applicable

(e) *Income.* Enter the annual income that your institution relied upon in processing the loan application. Round all dollar amounts to the nearest thousand ($500 should be rounded up to $1,000), and show in terms of thousands.

(7) *Type of purchaser of loan.* For loan originations and purchases, indicate the class of purchaser of the loan by use of one of the following codes:

1—Loan has not been sold within calendar year
2—FNMA (Federal National Mortgage Association)
3—GNMA (Government National Mortgage Association)
4—FHLMC (Federal Home Loan Mortgage Corporation)
5—FmHA (Farmers Home Administration)
6—Commercial Bank
7—Savings Bank or Savings Association
8—Life Insurance Company
9—Other type of purchaser

Use codes 2 through 9 to identify the class of purchaser only when you either originated or purchased a loan and then sold it within the same calendar year. If you originated or purchased a loan and did not sell the loan that same calendar year, enter code 1 instead. If you sell a loan in a year following the year in which it was originated or purchased, you need not report the sale.

(8) *Reason for denial.* At your option, you may enter up to two reasons a loan application was denied, using the following codes:

1—Income
2—Collateral
3—Credit history
4—Employment history
5—Other

G. Data to be Excluded

Do not report the following:

(1) Loans or applications for loans that, although secured by real estate, are made for purposes other than for home-purchase or home-improvement (for example, do not report a loan secured by residential real property for purposes of financing education, a vacation, or business operations);

(2) Loans made or applications for loans received in a fiduciary capacity (for example, by your trust department);

(3) Loans or applications for loans on unimproved land;

(4) Construction loans and applications, and other temporary financing loans and applications;

(5) The purchase of an interest in a pool of mortgage loans (such as mortgage-participation certificates); or

(6) The purchase solely of the right to service loans.

III. Where to send your register

Send your loan/application registers and direct any questions to the office of your federal supervisory agency specified below. If you are the subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution. Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statements.

National banks and their subsidiaries. District office of the Office of the Comptroller of the Currency serving the district in which the national bank or subsidiary is located.

State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies. Federal Reserve Bank serving the district in which the state member bank or subsidiary is located.

Nonmember insured banks (except for federal savings banks) and their subsidiaries. Regional Director of the Federal Deposit Insurance Corporation for the region in which the bank or subsidiary is located.

Savings Institutions Insured Under the Savings Association Insurance Fund of the FDIC, Federally-chartered Savings Banks Insured Under the Bank Insurance Fund of the FDIC (But Not Including State-chartered Savings Banks Insured Under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies. District Director of the Office of Thrift Supervision for the district in which the institution is located.

Credit unions. National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456.

Other Depository Institutions. Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

Other mortgage lending institutions. Regional office of the Secretary of Housing and Urban Development for the region in which the institution is located.

BILLING CODE 6210-01-M

BEST COPY AVAILABLE

Loan/Application Register

(Activity during 19__)

Name and address of institution:_____ Control Number: _____

Application or Loan Number	Date of Application	Application or Loan Information				Action Taken		Property Location				Applicant Information A-Applicant CA-Co-Applicant					Type of Purchaser of Loan	Reason for Denial (Optional)
												Race		Sex		Income		
		Type	Purpose	Occupancy	Amount ($000's)	Type	Date	MSA	State	County	Tract	A	CA	A	CA	($000's)		

Codes for Loan/Application Register

Application or Loan Information

Type:

1 -- Conventional
2 -- FHA
3 -- VA
4 -- FmHA

Purpose:

1 -- Home purchase (one-to four family)
2 -- Home improvement one-to-four family)
3 -- Multifamily dwelling (both purchase and improvement

Occupancy:

1 -- Owner-occupied
2 -- Not owner-occupied
3 -- Not applicable

Action Taken

1 -- Loan granted
2 -- Application denied
3 -- Application withdrawn
4 -- Loan purchased by institution

BILLING CODE 6210-01-C

Applicant Information

Race:

1 -- American Indian or Alaskan Native
2 -- Asian or Pacific Islander
3 -- Black
4 -- Hispanic
5 -- White
6 -- Other
7 -- Information not provided (mail or telephone
8 -- Not applicable or information not required

Sex:

1 -- Male
2 -- Female
3 -- Information not provided (mail or telephone application)
4 -- Not applicable

Type of Purchaser of Loan

1 -- Loan not sold within calender year
2 -- FNMA
3 -- GNMA
4 -- FHLMC
5 -- FmHA
6 -- Commercial bank
7 -- Savings Bank or Savings and loan Association
8 -- Life insurance company
9 -- Other type of purchaser

Reasons for Denial

1 -- Income
2 -- Collateral
3 -- Credit history
4 -- Employment history
5 -- Mortgage insurance not available
6 -- Other

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Appendix B—Form and Instructions for Data Collection on Race and Sex

(a) Instructions on Collection of Data on Race and Sex

You may list questions regarding the race and sex of the applicant on your loan application form, or on a separate form that refers to the application (see the sample form below for recommended language). You must ask for this information, but cannot require the applicant to provide it.

If the applicant chooses not to provide the information, note this fact on the form, and note the data, to the extent possible, on the basis of visual observation or surname.

Inform the applicant that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided, you are required to note the data on the basis of visual observation or surname.

If an application is made entirely by telephone, you need not request this information. Additionally, you need not provide the data when you take an application by mail, if the applicant fails to answer these questions on the application form. If it is not otherwise evident on the face of an application, you should indicate whether it was received by mail or telephone.

(b) Sample Race and Sex Data Collection Form

(b) Sample race and sex data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish the information, under federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

BORROWER:

I do not not wish to furnish this information ☐

RACE OR NATIONAL ORIGIN ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify) _____

SEX ☐ Female ☐ Male

CO-BORROWER:

I do not wish to furnish this information ☐

RACE OR NATIONAL ORIGIN ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander ☐ Black ☐ Hispanic ☐ White ☐ Other (specify) _____

SEX ☐ Female ☐ Male

By order of the Board of Governors of the Federal Reserve System, October 3, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-23772 Filed 10-5-89; 8:45 am]
BILLING CODE 6210-01-C

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 90802-9202]

RIN 0691—AA15

Direct Investment Surveys: BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989

AGENCY: Bueau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 4(b) of the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended) requires that a benchmark survey of U.S. direct investment abroad be conducted covering 1989 and every fifth year thereafter. These proposed rules will revise 15 CFR 806.16 to set forth reporting requirements for the survey covering 1989 and to delete the rules now in § 806.16, which were for the last benchmark survey covering 1982. They will alao amend 15 CFR 806.14 to change the year of coverage of this next benchmark survey from 1987, as was specified in the original legislation authorizing the survey, to 1989, as now specified by amendment to that legislation (see Pub. L. 97-33 and Pub. L. 97-70).

DATE: Comments on this proposed rulemaking will receive consideration if submitted in writing on or before November 20, 1989.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1008, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BD-5E), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: These proposed rules set forth the reporting requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that—

"• • • With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain: (A) Information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of reserach and development expenditures by each parent and affiliate, payments or other compensation for the tra sfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

The responsibility for conducting benchmark surveys of U.S. direct investment abroad has been delegated by the President to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of U.S. direct investment abroad in value terms. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an unincorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data from the survey are needed to measure the size of U.S. direct investment abroad, monitor change in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on U.S. direct investment abroad needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

As proposed, the survey will consist of an instruction booklet, a claim for not filing the BE-10, and the following report forms:

1. Form BE-10A for reporting by a U.S. Reporter that is not a bank;
2. Form BE-10A BANK for reporting by a U.S. Reporter that is a bank;
3. Form BE-10B(LF) (Long Form) for reporting "large" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative $15 million to positive $15 million);
4. Form BE-10B(SF) (Short Form) for reporting "small" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative $3 million to positive $3 million but *within* the range of negative $15 million to positive $15 million) and all nonbank affiliates of bank parents with assets, sales, or net income *outside* the range of negative $3 million to positive $3 million; and
5. Form BE-10B BANK for foreign affiliates that are banks and that have assets, sales, or net income *outside* the range of negative $3 million to positive $3 million.

Although the proposed survey is intended to cover the universe of U.S. direct investment abroad, in order to minimize the reporting burden, foreign affiliates with assets, sales, and net income *within* the range of negative $3 million to positive $3 million would not have to be reported on Form BE-10B(SF)

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or BANK (but would be listed on Form BE–10A SUPPLEMENT).

In designing the survey, BEA had extensive discussions with representatives of both survey respondents and data users. BEA held meetings with a Task Force of the Business Council on the Reduction of Paperwork (BCORP) on December 13, 1988 and March 31, 1989. It held meetings with interagency data users on December 8, 1988, and January 10, February 16, and March 13, 1989. In addition, it solicited input from other businesses and from nongovernment data users. The proposed draft incorporates the comments received. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (e.g., whether the data are readily available on respondents' books), and its experience in previous benchmark surveys.

Two change from the 1982 survey to the 1989 survey, which are reflected in these proposed rules, are:

1. To minimize the reporting burden on respondents and the processing burden on BEA, a short form for reporting "small" nonbank foreign affiliates of nohbank parents and all nonbank foreign affiliates of bank parents has been introduced. In the 1982 benchmark survey, all nonbank foreign affiliates had to be reported on what was the equivalent of the long form. Introduction of the short form will significantly reduce the burden of reporting smaller affiliates.

2. The due date for U.S. Reporters with 50 or more reportable foreign affiliates is June 29, 1990. The due date for all other U.S. Reporters is May 31, 1990. In the 1982 survey, three different due dates were used, depending on the number of foreign affiliates a U.S. Reporter had, and the dates were stretched out over a longer period. The need to compress, and reduce the number of, due dates reflects demands by data users for survey results to be available on a more timely basis. Several companies suggested that an early look at the survey questions would aid them in preparing for the benchmark survey. BEA plans to mail to all U.S. Reporters with 20 or more reportable foreign affiliates a draft copy of the BE–10 report forms as soon as possible after the forms have been approved by the Office of Management and Budget (OMB). This should be in early January 1990. Mailout of the printed forms is scheduled for March 1, 1990.

Other proposed changes in the survey from 1982 to 1989 include revision of the instructions—primarily for purposes of clarification—and modification, addition, deletion, or combination of some items on the forms. These changes, which, on balance, should result in a net reduction in reporting burden, do not require changes in the rules.

Copies of the proposed survey forms may be obtained from: Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

In addition to revising 15 CFR 806.16 to set forth the reporting requirements for the 1989 benchmark survey, this proposed rulemaking would amend 15 CFR 806.14 to change the year of coverage of this next benchmark survey from 1987 to 1989. The original legislation authorizing the survey required that a benchmark survey be conducted at least once every 5 years. Because a benchmark survey covering 1982 was conducted, the original legislation would have required that the next survey cover 1987. However, amendments to the original legislation made in 1981 (see Pub. L. 97–33 and Pub. L. 97–70) now require the conduct of "a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter."

The public reporting burden for this collection of information is estimated to vary from 14 to 8,500 hours per response, with an average of 156 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0049, Washington, DC 20503.

Executive Order 12291

BEA has determined that these proposed rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities because few, if any, small businesses are subject to the reporting requirements of this survey. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. If an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than $3 million (positive or negative), it must be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger.

Also, to minimize the reporting burden on small U.S. businesses, Form BE–10B(SF), the short form, has been introduced for reporting foreign affiliates with assets, sales, and net income of $15 million or less (but above $3 million). For these affiliates, far less information must be reported than for those with assets, sales, or net income of more than $15 million. Affiliates with assets, sales, and net income of $3 million or less do not have to be reported on Form BE–10B(SF), but must be listed on Form BE–10A Supplement.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Reporting and recordkeeping requirements.

Dated: August 25, 1989.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.14 [Amended]

2. Section 806.14(g)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1982, 1989, and every fifth year thereafter."

3. Section 806.14(g)(2) is revised as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(g) * * *

(2) BE–10—Benchmark Survey of U.S. Direct Investment Abroad: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad will be conducted in 1982, 1989, and every fifth year thereafter. The survey, referred to as the "BE–10," consists of a Form BE–10A or BE–10A BANK for reporting information concerning the U.S. Reporter and Form(s) BE–10B(LF), BE–10B(SF), or BE–10B BANK for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of coverage of, a given BE–10 survey may be found in § 806.16.

4. Section 806.16 is revised as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1989.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1989. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given below.

(a) *Response required.* Section 806.4 requires that all persons subject to the reporting requirements, contained herein, of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1989 respond, whether or not they are contacted by BEA. It also requires that a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them report forms or by written inquiry, must respond in writing. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the "BE–10 Claim for Not Filing" within 30 days of receipt of the BE–10 survey report forms; or

(3) Filing the properly completed BE–10 report by May 31, 1990, or June 29, 1990, as required.

(b) *Who must report.* (1) A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise— at *any* time during the U.S. person's 1989 fiscal year.

(2) If the U.S. person had *no* foreign affiliates during its 1989 fiscal year, a "BE–10 Claim for Not Filing" must be filed within 30 days of receipt of the BE–10 survey package. No other forms in the survey are required. If the U.S. person had *any* foreign affiliates during its 1989 fiscal year, a BE–10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 1989 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.* (1) Form BE–10A (Report for the U.S. Reporter)—A BE–A report must be completed by a U.S. Reporter that is not a bank. Note: If the U.S. Reporter is a corporation, Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If a nonbank U.S. Reporter had *any* foreign affiliates at any time during its 1989 fiscal year, whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (or loss) after provision for U.S. income taxes—was *outside* the range of negative $3 million to positive $3 million, the U.S. Reporter must file a complete Form BE–10A and, as applicable, a BE–10A SUPPLEMENT listing each, if any, exempt foreign affiliate. It must also file a Form BE–10B(LF), BE–10B(SF), or BE–10B BANK, as appropriate, for *each* nonexempt foreign affiliate.

(ii) If a nonbank U.S. Reporter had *no* foreign affiliates for which any of the three items listed in paragraph (c)(1)(i) of this section was *outside* the range of negative $3 million to positive $3 million, then only items 1–4 of Form BE–10A and the BE–10A SUPPLEMENT, listing all exempt foreign affiliates, must be completed.

(2) Form BE–10B(LT) or (SF) (Report for foreign affiliate).

(i) A BE–10B(LF) (Long Form) must be filed for each nonbank foreign affiliate to a nonbank U.S. Reporter, whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $15 million to positive $15 million.

(ii) A BE–10B(SF) (Short Form) must be filed (A) for each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which *any one* of the three items listed in (c)(2)(i) of this section was *outside* the range of negative $3 million to positive $3 million but for which all of these items were *within* the range of negative $15 million to positive $15 million and (B) for each nonbank foreign affiliate of a U.S. bank Reporter for which *any one* of the three items listed in (c)(2)(i) of this section was *outside* the range of negative $3 million to positive $3 million.

(iii) Notwithstanding (c)(2)(i) and (c)(2)(ii) of this section, a Form BE–10B(LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B(LF) or (SF) must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.* (1) For purposes of the BE–10 survey, "bank" means a business entity engaged in deposit banking, and Edge Act corporation engaged in international or foreign banking, a foreign branch or agency of a U.S. bank whether or not it accepts deposits abroad, and a bank holding company, i.e., a holding company for which over 50 percent of its total revenues is from banks which it holds. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the

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consolidated entity is deemed *not* to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) Form BE–10A BANK (Report for a U.S. Reporter that is a bank). A BE–10A BANK report must be completed by a U.S. Reporter that is a bank. Note: For purposes of filing Form BE–10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 1989 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $3 million to positive $3 million, the U.S. Reporter must file a complete Form BE–10A BANK and, as applicable, A BE–10A SUPPLEMENT listing each, if any, exempt foreign affiliate, whether bank or nonbank. It must also file a Form BE–10B(SF) for *each* nonexempt nonbank foreign affiliate and a Form BE–10B BANK for *each* nonexempt foreign bank affiliate.

(ii) If the U.S. bank Reporter had *no* foreign affiliates for which *any one* of the three items listed in paragraph (d)(2)(i) of this section was *outside* the range of negative $3 million and positive $3 million, then only items 1–4 of Form BE–10A BANK and the BE–10A SUPPLEMENT, listing all exempt foreign affiliates, should be completed.

(3) For BE–10B BANK (Report for a foreign affiliate that is a bank).

(i) A BE–10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which *any one* of three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $3 million to positive $3 million.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE–10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another *nonexempt* foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B BANK must be filed for all bank affiliates upward in a chain of ownership. However, a Form BE–10B BANK is not required to be filed for a foreign bank affiliate in which the U.S Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE–10A SUPPLEMENT.

(e) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A or 10A BANK, BE 10A SUPPLEMENT (as required), and Form(s) BE–10B(LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 1990 for those U.S. Reporters filing less than fifty, and June 29, 1990 for those U.S. Reporters filing fifty or more, Forms BE–10B(LF), (SF), or BANK.

[FR Doc. 89–23639 Filed 10–5–89; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 87–1, Notice No. 4]

RIN 2125—AB70

Truck Size and Weight; Reasonable Access

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); re-opening of comment period; request for comments.

SUMMARY: An NPRM, Notice No. 2, published on December 30, 1988, proposed to amend § 658.19 of 23 CFR part 658. This section governs reasonable access by commercial vehicles with lengths and widths authorized by the Surface Transportation Assistance Act of 1982 (STAA), as amended. Through this NPRM, the FHWA requested comments by May 1, 1989, regarding a proposed definition of "terminals." It also proposed to establish national minimum access requirements for operation of STAA-defined vehicles on the National Network in all States in a safe and efficient manner. Notice No. 3 was published in the **Federal Register** on May 4, 1989, (54 FR 19196) extending the comment period to September 1, 1989, at the request of those wanting to have the benefit of the results of the Transportation Research Board (TRB) study on "reasonable access" before commenting. On July 6, 1989, the TRB released a report addressing many of the issues involving reasonable access. This supplemental NPRM has been prepared to solicit comments on a third option based on recommendations in that report. The comment period is hereby reopened and extended to December 1, 1989. Commenters are invited to comment on the third option or on their preferences among the three options that have been published to date or on any other matters pertaining to rulemaking on reasonable access.

DATE: Comments must be received on or before December 1, 1989.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 87–1, Notice No. 4, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Office of Planning, (202) 366–2951, Mr. John F. Grimm, Office of Motor Carrier Information Management and Analysis, (202) 366–4039, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 336–1356, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1988, the FHWA published an NPRM in the **Federal Register** on "Truck Size and Weight; Reasonable Access" (53 FR 53006). Through this NPRM, the FHWA requested comments from all affected and interested parties regarding proposed changes that would define "terminals" and establish national minimum access requirements for STAA-defined commercial vehicles entering or leaving the National Network. The comment period, which was originally scheduled to close on May 1, 1989, was extended to September 1, 1989, by a notice published in the **Federal Register** on May 4, 1989 (54 FR 19196). The extension was intended to provide time for interested and affected parties to have the benefit of the results of the July 1989 TRB study on "reasonable access" before commenting.

Based on a review of the report, FHWA is now proposing a third option reflecting the TRB recommendations. This supplemental NPRM discusses the third option, and provides specific regulatory language for implementation, and reopens the comment period.

The NPRM published on December 30, 1988, was structured around a presumptive standard of reasonable access of 5 miles coupled with a certification process. The TRB report specifically rejects a mileage-based standard, deeming it "inappropriate" because it is unable to "take into account differences in local highway and traffic conditions." The TRB report recommends an approach which "would require the States to evaluate the adequacy of highways to accommodate STAA vehicles in relation to the performance and handling characteristics of these large vehicles."

The December 30, 1988, NPRM proposed two options. This supplementary notice adds a third option built on the TRB report. The TRB approach would require a process to evaluate proposed route requests, and access could only be denied through an affirmative demonstration of an existing or potential safety problem on the route.

The FHWA invites comments on whether this alternative is consistent with the statute, which requires States only to provide "reasonable access."

Option 3—Certification

Option 3 would be a certification-based approach. All States regulating access would be required to have their procedures certified by the FHWA. A State's procedures would be required to consider the characteristics of the class of STAA vehicles and the characteristics of the road on which access is being considered. Safety would be the sold basis for all determinations.

Several general approaches would comply with the TRB recommendations. One approach would be a test drive of a vehicle of the type in question on the route being evaluated. A number of States are using this approach very successfully. Second, templates could be used if adequate route inventories are available. In this case, a template is a device that measures off-tracking on road plans. The use of templates would assess off-tracking and possible lane encroachment. Third, a State's laws or regulations could grant access to any semitrailer with a kingpin setting of 41 feet or less.

The FHWA would review each State's reasonable access policy to determine if certification is warranted.

Kingpin Setting

The TRB report discusses the third general approach, using configurations of 41 feet from kingpin to rear axle or axles on STAA tractor-semitrailers as a basis for a State's reasonable access policy. "* * * A small majority of the committee further recommend that all States be encouraged to adopt a maximum kingpin setting of 41 feet (measured from the kingpin to the center of the rear trailer axle or group of axles) on their National Network highways and access routes * * *" The report added that, "* * * Several other committee members proposed stronger action, recommending that all States be required to adopt a maximum kingpin setting of 41 feet and that the FHWA be directed to include this setting in the final rulemaking on access. This kingpin setting should also be included in FHWA regulations that apply to National Network highways as well as access routes * * *"

The critical dimension for off-tracking, according to TRB's report, is the distance from the kingpin to the center of the rear axle or axles. The TRB report found that STAA tractor-semitrailers with a longer wheelbase present operational problems on certain interchange ramps and at intersections, particularly in urban areas. These problems reduce access for these vehicles to services and terminals.

In this supplemental NPRM, the FHWA is not proposing a maximum kingpin setting that would apply to the National Network itself. Such a change would go beyond the subject matter of the rule. However, the adoption of a kingpin-to-axle requirement for access would obviously have an effect on vehicles on the network. As the 1982 STAA clearly specified how length should affect the use of the network by STAA vehicles, the kingpin-to-axle settings cannot restrict use of the National Network by STAA vehicles. Option 3, however, would establish a certification criterion for roads providing reasonable access off the National Network. Under this option, a State could not impose maximum limits on kingpin settings of less than 41 feet. Higher maximum limits would remain a subject for State discretion.

The FHWA invites comments on using kingpin setting as a basis for determining the suitability of tractor-semitrailers for access. Comment and information are requested on the proposed minimum distance for State maximum kingpin setting limits and the method of measurement; the effects on safety of the overhang on the longer STAA semitrailers; and the practicality of law enforcement and compliance. The FHWA also requests information on the impacts this proposal may have on the productivity of shippers, carriers, and truck manufacturers; and the impact on existing and future STAA vehicles that do not conform to the proposed minimum 41 feet for State maximum kingpin settings and do not have rear axles that are adjustable.

Option 3—Width

The 1982 STAA increased the authorized vehicle width from 96 inches to 102 inches. The TRB report found that the increase "has only a minor effect on the safe operation of STAA vehicles, except on narrow lanes of 10 feet or less." In keeping with the TRB report, this option provides that no State may deny access to an STAA-defined vehicle based solely on the fact that a vehicle is 102 inches wide. To deny access on a particular route, a State would have to demonstrate that the added width degrades safety significantly on that route.

Option 3—Terminals

In defining "terminals," the NPRM of December 30, 1988, proposed three criteria. At least one of these criteria would have to be satisfied before a facility is considered a terminal for the purposes of reasonable access. Under one of the three criteria, a facility could be considered a terminal if STAA vehicles are completely loaded or completely unloaded. The FHWA also asked specific questions in the NPRM on possible alternative definitions, such as a more traditional definition of "terminal." The TRB report's definition does not use the completely loaded/unloaded criterion to define "terminal." It uses a much broader definition: "A terminal is any location where: (a) Freight either originates, terminates, or is handled in the transportation process or (b) carriers maintain operating facilities." The report goes on to state that "This definition is not intended to supersede existing bans or preclude new bans on combination truck travel, such as those on through travel on residential streets, weight-posted roads or bridges, or roads not deemed appropriate for access on the basis of safety and engineering considerations."

The FHWA would like comments on the TRB definition of "terminal." The definition appears to include almost any type of facility or destination with few limitations. Commenters should address how this definition comports with the statute.

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Federalism Impact on States

The FHWA has considered the "federalism" implications of this action in accordance with the principles and policymaking criteria of E.O. 12612, *Federalism*, of October 26, 1987. The NPRM of December 30, 1988, discussed the federalism implications in great detail. The alternative provisions included in this supplemental NPRM, based on the July 1989 TRB report, would impose more adverse impacts on the States and would intrude into State authority more than would provisions in the December 1988 NPRM.

Fifteen States allow unlimited access and thus will not be affected by this rulemaking in any of its options. Approximately 19 of the 35 States that regulate access have some form of route review for designating access. These reviews would be subject to the proposed criteria of Option 3. The remaining 16 States would be required to establish a review process or remove limits on access for STAA vehicles.

Under one of the options in the December 1988 proposal, any State providing access of 5 miles or greater as a standard for reasonable access would meet the reasonable access requirements, provided the State has some type of process to evaluate requests for access greater than 5 miles. Nine States of the remaining 16 States had such a provision and would have qualified. Thus, the number of States affected significantly by the earlier NPRM could have been as low as seven. As discussed in the preamble to the December 1988 NPRM, these numbers are approximate because categorizing the different States' access provisions is difficult. The TRB report contains a substantial, updated discussion of State access provisions.

Regulatory Impact

The FHWA has determined that this rulemaking is not a major rulemaking action within the meaning of Executive Order 12291. However, this rulemaking has been included in DOT's Regulatory Program for significant rulemakings. These determinations by the FHWA are based on the nature of the rulemaking. The FHWA proposes to amend the existing final rule, issued June 5, 1984, and amended April 13, 1988, by establishing minimum criteria and procedures for the implementation of the reasonable access provisions required by the STAA. The impacts of the three options addressed in the proposed rulemakings do not significantly alter the impacts initially projected in the June 1984 final rule. A Regulatory Impact Analysis was prepared for the June 1984 rulemaking and is available for inspection in FHWA's Headquarters Office 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained by contacting Mr. Kevin E. Heanue or Mr. John F. Grimm at the address provided under the heading **"FOR FURTHER INFORMATION CONTACT."** For the same reason, and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA proposes to amend chapter 1 of title 23, Code of Federal Regulations, by revising part 658 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 220.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultations on Federal programs and activities apply to this program.)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carriers—size and weight.

Issued on: September 29, 1989.

T. D. Larson,

Administrator.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127 and 49 U.S.C. app 2311, 2312, 2313, and 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315 and 49 CFR 1.48.

2. Section 658.19 is amended by adding new paragraphs (d), (e), (f), and (g) as follows:

§ 658.19 Reasonable access.

* * * * *

(d) *Options 1 and 2: Terminals.* The term "terminals" includes, at a minimum, facilities at which one or more of the following criteria apply:

(1) Freight enroute to other destinations is transferred, warehoused, or temporarily stored; or

(2) STAA vehicles are completely loaded or completely unloaded; or

(3) STAA vehicles are manufactured, stored, or maintained. States may define terminals to include additional facilities.

(d) *Option 3: Terminals.* The term "terminals" includes, at a minimum, facilities at which one or more of following criteria apply:

(1) Freight enroute to other destinations is transferred, warehoused, or temporarily stored; or

(2) Freight originates or terminates; or

(3) STAA vehicles are manufactured, stored, or maintained. States may define terminals to include additional facilities.

(e) *Options 1 and 2: Reasonable access—5 miles.* (1) Except as provided herein, reasonable access for a terminal or a facility for food, fuel, repairs, and rest includes, at a minimum, the use of the shortest feasible route up to 5 road miles from the National Network.

(2) States may prohibit the operation of STAA vehicles on particular roads for specific safety reasons. Such roads shall be clearly posted as being unavailable to STAA vehicles.

(3) States, at their option in lieu of posting, may elect to erect positive signing to delineate access for STAA vehicles.

(e) *Option 3:* [Reserved]

(f) *Option 1: reasonable access—beyond 5 miles.* In addition to reasonable access provided under paragraph (e) of this section (the 5-mile provision) or under general provision of State law, reasonable access includes a process for evaluating access requests for terminals beyond the established mileage limit from the National Network according to the following:

(1) Access routes shall not be prohibited for reasons other than safety.

(2) An access route request shall be deemed granted if no action is taken on the request within 90 days of its submittal.

(3) Access routes granted for any particular vehicle shall be available to all vehicles of the same type.

(f) *Option 2: Reasonable access—beyond 5 miles.* In addition to reasonable access provided under paragraph (e) of this section (the 5-mile provision) or under general provision of State law, reasonable access includes a process for evaluating access requests for terminals beyond the established mileage limit from the National Network.

(f) *Option 3: Reasonable access proccess.* In addition to reasonable access provided under general provision of State law, reasonable access includes a process for evaluating access requests for terminals not located on the National Network. The process shall assess the adequacy of requested access routes on the basis of safety and geometric considerations related to any increased dimensions of STAA vehicles.

(g) *Options 1 and 2: Reasonable access—alternate approach—certification.* Any State with reasonable access provisions in conflict with those contained in this section, but which actually provide for a substantially equivalent level of access, may petition FHWA for certification of its procedures as being in compliance with 23 CFR 658.19. The FHWA will approve all such petitions which demonstrate the State has a process that provides for rational accommodation of STAA vehicles and does not impose an unreasonable burden on carriers.

(g) *Option 3: Certification.* (1) A State will be deemed in compliance with 23 CFR 658.19 if its reasonable access process is certified by FHWA.

(2) The FHWA will certified State processes that include:

(i) One or more of the following:

(A) Analysis of specific proposed access routes by STAA vehicle test drive or observation; or

(B) Analysis of specific proposed access routes by application of STAA vehicle templates to route plans; or

(C) Semitrailer maximum kingpin distance (measured from the kingpin to the center of the rear axle or group of axles) that is not less than 41 feet; and

(ii) The following:

(A) Access denials based only on safety and review of the access route analysis.

(B) Access to service facilities (food, fuel, repairs, rest) limited to no less than 1 road-mile from the National Network, except for specific safety reasons on particular roads.

(C) Approval of a particular vehicle applies to all vehicles of the same type.

(D) Approval of an access request if not acted upon within 90 days of its submittal.

(E) All restrictions on 102-inch wide vehicles must be related to the characteristics of specific routes, in particular the lane width. No blanket restrictions are permitted.

(F) Distinctions between vehicle types based only on substantial differences in operating characteristics.

(G) Length limits, if any, that are no more restrictive than Federal requirements for the National Network.

(3) The FHWA will certify other State processes that provide for rational accommodation of STAA vehicles and do not impose an unreasonable burden on freight carriers, shippers, and receivers. The FHWA will consider the criteria of paragraph (g)(2) of this section and additional State criteria in reviewing a State's request for certification of its reasonable access process.

[FR Doc. 89-23647 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to general provisions; lands unsuitable for mining; surface coal mining operation permits; coal exploration procedures; bond and insurance requirements; permanent program performance standards for coal exploration; permanent program inspection and enforcement procedures; and training, examination, and certification of blasters. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t. November 6, 1989. If rqnested, a public hearing on the proposed amendment will be held on October 31, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t. on October 23, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program are in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas's program and program amendments can be found at 30 CFr 943.15 and 943.16.

II. Submission of Amendment

By letter dated September 22, 1988 (administrative record No. TX-458), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters, dated May 20, 1985, June 9, 1987, and October 20, 1988, that OSM sent to Texas in accordance with 30 CFR 732.17. The proposed amendments were also submitted to satisfy the required program amendment at 30 CFR 943.16(a). The regulations that Texas proposes to amend are: Subchapter A, General, parts 700 and 701; Subchapter F, Lands Unsuitable for Mining, part 762; Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System, parts 770, 771, 776, 778, 779, 780, 783, 784, 785, 786, and 795; Subchapter J, Bond and Insurance Requirements For Surface Coal Mining and Reclamation Operations, Parts 800, 806, and 807; Subchapter K, Permanent Program Performance Standards—Coal Exploration, parts 815, 816, 817, and 819; subchapter L, Permanent Program Inspection and Enforcement Procedures, parts 840, 843, and 845. In addition, Texas proposes to add a new part 850,

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for the training, examination, and certification of blasters.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., c.s.t. on October 23, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 1, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-23690 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-05-M

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AA29

Foreign Proposals to Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention of International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention. Any nation that is a Party to the Convention may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service (Service) on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered in October 1989 at the seventh regular meeting of the Conference of the Parties in Lausanne, Switzerland.

DATES: Proposals mentioned in this notice are scheduled to be discussed along with a preliminary vote by Party nations in committee on the weekdays from October 10 to October 18. A final vote in plenary session is presently scheduled for October 20, without discussion unless one third of the Parties support the reopening of discussion on specific proposals. Any of these proposals that are adopted will enter into effect 90 days afterwards (i.e., on January 18, 1990).

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 750, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless such trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Decisions

This notice announces the negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States for consideration af the forthcoming meeting of the Parties. The Service announced the proposals and invited comments on tentative negotiating positions in the August 23, 1989, **Federal Register** (54 FR 35013).

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions. However, decisions announced in this notice represent formal guidance to the delegation, which will seek to obtain agreement of the Conference of the Parties with these positions. Such positions will only be modified in the U.S. delegation finds it necessary to do so in response to new information presented or obtained during the meeting in Switzerland.

Comments Received

The Service received substantive written comments from 7 States, organizations, and individuals on species other than the African elephant or flying foxes. Approximately 86,000 and 60 comments on the African elephant and flying fox proposals respectively, were received from organizations and individuals after the U.S. proposals were submitted to the Convention's Secretariat. In addition, 4 persons expressed support or opposition for various proposals at a public hearing on September 8, 1989. These comments along with other information received by the Service were considered in the development of the final U.S. negotiating positions. Several of the tentative positions were modified or reversed. The rationale for these changes and modifications has been provided to those that submitted substantive comments and to other interested persons. The development of this separate "Assessment of Comments on Species Listing Proposals" represents a continuation of the Service's past procedures and allows for more timely and less expensive publication in the **Federal Register**. This "Assessment of Comments on Species Listing Proposals" is available from the Office of Scientific Authority.

Summary of Positions

Additional information has been obtained on several species other than those on which formal comments were received. However, unless revised below and commented upon in the "Assessment of Comments on Species Listing Proposals," the position remains the same as indicated also in the August 23, 1989, **Federal Register** notice. Final negotiating positions of the U.S. delegation on proposals by Parties other than the United States are summarized in the following table; clarification of the U.S. position on selected proposals is indicated by numbers which refer to footnotes after the table.

BILLING CODE 4310-55-M

Species	Proposed Amendment	Proponent	U.S. Position
MAMMALS			
Order Chiroptera			
Pteropus insularis (Truk flying fox)	Transfer from II to I	Sweden	Support (6,7)
Pteropus mariannus (Mariana flying fox)	do	do	do
Pteropus molossinus (Ponape flying fox)	do	do	do
Pteropus phaeocephalus (Mortlock flying fox)	do	do	do
Pteropus pilosus (Large Palau flying fox)	do	do	do
Pteropus samoensis (Samoan flying fox)	do	do	do
Pteropus tokudae (Little Mariana flying fox)	do	do	Oppose (8)
Pteropus tonganus (Insular flying fox)	do	do	Oppose (9)
Order Carnivora			
Melursus ursinus (Sloth bear)	Add to I	Federal Republic of Germany, India	Support (7)
Ursus americanus (Black bear)	Add to II	Japan	Oppose (1,9)
Ursus arctos (Brown bear)	Retain populations of Afghanistan, India, Mexico, Nepal, and Pakistan in I; include all other populations in II.	China, Denmark	Oppose (15)

Species	Proposed Amendment	Proponent	U.S. Position
Ursus arctos (Brown bear)	Inclusion in II	Japan	Oppose (1,14)
Aonyx cinerea (Asian small-clawed otter)	Transfer from II to I	India	Oppose (9,12)
Lutra perspicillata (Smooth-coated otter)	Transfer from II to I	India	Support (7)
Felis paradalis (Ocelot)	Transfer from II to I	Federal Republic of Germany	Support (21)
Felis tigrina (Little spotted cat)	do	do	Support (21)
Felis weidii (Margay)	do	do	Support (21)
Lynx pardinus (Iberian lynx)	Transfer from II to I	Portugal, Fed. Republic of Germany	Support (6,7)
Order Proboscidea			
Loxodonta africana (African elephant)	do	Austria, Gambia, Hungary, Kenya, Somalia, Tanzania	Support (6,7)
Order Artiodactyla			
Cephalophus jentinki (Jentink's duiker)	Transfer from II to I	Federal Republic of Germany	Support (22)
BIRDS			
Order Rheiformes			
Rhea americana (Rhea)	Add to II	Japan	Oppose (1)

Species	Proposed Amendment	Proponent	U.S. Position
Order Tinamiformes			
Rhynchotus rufescens (3 sspp.) (Rufous tinamous)	Remove from II	Uruguay	Support (3)
Order Ciconiiformes			
Ciconia ciconia (White stork)	Add to II	Federal Republic of Germany	Oppose (12)
Order Galliformes			
Francolinus ochropectus (Djibouti francolin)	Remove from II	Switzerland	Support (3,12)
Francolinus swierstrai (Swierstra's francolin)	do	do	Support (3,12)
Order Psittaciformes			
Agapornis cana (Grey-headed lovebird)	Remove from II (if accepted, Madagascar has indicated that they would include it in Appendix III).	Madagascar	Oppose (9)
Ara maracana (Illiger's macaw)	Transfer from II to I	Paraguay	Oppose (23)
Amazona tucumana (Tucuman amazon)	do	Denmark	Support (6,16)
Cacatua moluccensis (Moluccan cockatoo)	do	Switzerland	Support (6,7)

Species	Proposed Amendment	Proponent	U.S. Position
Order Coraciiformes			
Buceros bicornis (Great pied hornbill)	Remove from I	Switzerland	Support (3,12)
Buceros spp. (Hornbills)	Add to II	do	Support (10)
Buceros rhinoceros (Rhinoceros hornbill)	do	Belgium	Support (10)
Order Passeriformes			
Pitta gurneyi (Gurney's pitta)	Add to I	Thailand	Support (7)
Pitta guajana (Banded pitta)	Add to II	do	Oppose (9)
Pseudochelion sirintarae (White-eyed river martin)	Transfer from II to I	do	Support (17)
REPTILES			
Order Testudinata			
Chelonia mydas (Green sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	Indonesia	Oppose (9)
Eretmochelys imbricata (Hawksbill sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	do	Oppose (1)

Species	Proposed Amendment	Proponent	U.S. Position
Order Crocodylia			
Crocodylus cataphractus (African slender-snouted crocodile)	Transfer Congo's population from I to II, pursuant to resolution conf. 5.21 subject to an annual export quota of 600	Congo	Support (24)
Crocodylus niloticus (Nile crocodile)	Transfer Botswana's population from I to II, pursuant to Conf. 3.15 on ranching.	Botswana	Oppose (4)
Crocodylus niloticus (Nile crocodile)	Transfer the Congo's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 150	Congo	Support (24)
Crocodylus niloticus (Nile crocodile)	Transfer Ethiopia's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 2,845.	Ethiopia	Support (5)
Crocodylus niloticus (Nile crocodile)	Transfer Kenya's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 5,000 (with 1,000 from the wild).	Kenya	Oppose (1)
Crocodylus niloticus (Nile crocodile)	Transfer Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Madagascar	Oppose (8)
Crocodylus niloticus (Nile crocodile)	Transfer of Malawi's population from I to II, pursuant to Conf. 3.15 on ranching.	Malawi	Oppose (4)

Species	Proposed Amendment	Proponent	U.S. Position
Crocodilus niloticus (Nile crocodile)	Transfer of Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Mozambique	Oppose (4)
Crocodylus niloticus (Nile crocodile)	Transfer of Somalia's population from I to II, subject to an annual export quota of 2,000 specimens.	Somalia	Support (5)
Crocodylus niloticus (Nile crocodile)	Transfer of Tanzania's population in II, subject to an export quota of 3,500 specimens.	Tanzania	Support (5)
Crocodylus niloticus (Nile crocodile)	Transfer of Zambia's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Zambia	Support
Crocodylus porosus (Saltwater crocodile)	Transfer Indonesia's population from ! to II pursuant to resolution Conf. 5.21 with export quota of 5,000 specimens.	Indonesia	Support (5)
Order Squamata			
Dracaena paraguayensis (Caiman lizard)	Add to II	Paraguay	Support (7)
Shinisaurus crocodilorus (Chinese crocodile lizard)	do	Federal Republic of Germany	Support (7)
Varanus bengalensis (Bengal monitor)	Transfer from I to II	Japan	Oppose (1)
Varanus gravi (Gray's monitor)	Transfer from II to I	Federal Republic of Germany	Support (11)
Varanus griseus (Desert monitor)	Transfer from I to II	Japan	Oppose (1)
Naja naja (Cobra)	Add to II	India	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
Ophiophagus hannah (King cobra)	do	do	Support (7)
Ptyas mucosus (Oriental ratsnake)	do	do	Support (7)
FISHES (PISCES)			
Cynolebias spp. (Pearlfishes)	Remove from II	Switzerland	Support (3)
Latimeria chalumnae (Coelacanth)	Transfer from II to I	Federal Republic of Germany	Support (7,11)
Scleropages formosus (Asian bony-tongue)	Transfer from I to II, pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.	Indonesia	Oppose (1)
CORALS (CNIDARIA)			
Athecata spp.	Add to II	Israel, Philippines	Oppose (19)
Coenothecalia spp.	do	do	do
Scleractinia spp.	do	do	do
Stolonifera spp.	do	do	do
PLANTS			
Family Amaryllidaceae:			
Sternbergia spp. (sternbergias)	Add to II	United Kingdom	Support (7)
Family Apocynaceae:			
Rauvolfia serpentina (snake-root devil-pepper)	Add to II	India	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
Family Aristolochiaceae:			
Aristolochia indica (Indian birthwort)	Add to II	do	Oppose (9)
Family Berberidaceae:			
Podophyllum emodi (-P. hexandrum) (Himalayan may-apple)	Add to I	do	Oppose (9,18,20)
Family Droseraceae:			
Drosera burmannii (Burmann's sundew)	Add to II	do	Oppose (9)
D. indica (Indian sundew)	do	do	Oppose (9)
D. peltata (shield sundew)	do	do	Oppose (9)
Family Fagaceae:			
Quercus copeyensis (copey oak)	Remove from II	Switzerland	Support (3)
Family Gentianaceae:			
Gentiana kurroo (Indian gentian)	Add to II	India	Support (7,18)
Family Humiriaceae:			
Vantanea barbourii (caracolillo)	Remove from I	Switzerland	Oppose (2,16,18)

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Species	Proposed Amendment	Proponent	U.S. Position
Family Juglandaceae:			
Oreomunnea (=Engelhardia) pterocarpa (gavilán blanco)	do	do	Oppose (3,11)
Family Leguminosae (Fabaceae):			
Cynometra hemitomophylla (guapinol negro)	do	do	Oppose (2,18)
Platymiscium pleiostachyum (cristóbal)	do	do	Oppose (2,18)
Tachigali versicolor (cana fistula)	do	do	Oppose (2,18)
Family Liliaceae:			
Gloriosa superba (Malabar gloriosa-lily)	Add to II	India	Oppose (9)
Family Moraceae:			
Batocarpus costaricensis (ojoche macho)	Remove from I	Switzerland	Oppose (2,18)
Family Orchidaceae:			
Eriopsis biloba (Guatemalan pop.) (bilobed eriopsis)	Transfer from II to I	Guatemala	Support (7)
Lemboglossum (=Odontoglossum) majale (May lemboglossum)	do	do	Support (7)
L. uro-skinneri (Skinner lemboglossum)	do	do	Support (7)

Species	Proposed Amendment	Proponent	U.S. Position
Paphiopedilum spp. (Asian tropical lady-slipper orchids)	do	Netherlands	Support (7,13,18)
Phragmipedium spp. (New World tropical lady-slipper orchids)	do	Federal Republic of Germany	Support (7)
Rossioglossum (=Odontoglossum) williamsianum (Williams rossioglosum)	do	Guatemala	Support (7,18)
Family Podocarpaceae:			
Podocarpus costalis (coastal podocarp)	Remove from I	Switzerland	Support (3,20)
Family Podophyllaceae: see Family Berberidaceae			
Family Ranunculaceae:			
Aconitum deinorrhizum (then-rooted monkshood)	Add to II	India	Support (7,18)
Family Sterculiaceae:			
Pterygota excelsa (=Basiloxylon excelsum) (castano)	Remove from II	Switzerland	Support (3,12)
Family Valerianaceae:			
Nardostachys grandiflora (=N. jatamansi) (Indian nard)	Add to II	India	Support (7,18)

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The basis for the final U.S. negotiating position on each proposal:

(1) While this amendment to the appendices has been proposed, the CITES Secretariat had not received any supporting documentation as of September 9, 1989, and the U.S. position is to oppose all proposals without supporting documentation.

(2) Submitted as part of the 10-year review of listings for removal from the appendices because the species is believed to be more common and/or no trade has been documented. However, the species is sufficiently rare and/or the possibility of international trade sufficiently likely that our position is to oppose complete removal from the appendices, but to accept a downlisting of the species to Appendix II.

(3) Submitted as part of the 10-year review of listings for downlisting or removal from the appendices. The United States either supports the proposal believing the information presented to be an accurate interpretation of the likely effect of trade *or* oppose the proposal because the lack of reported trade for some species proposed for removal may be due to their rarity or lack of proper documentation or reporting of trade.

(4) Information for a ranching proposal does not appear to be adequate. Nevertheless, the United States would support some (perhaps more restrictive) continuation of the existing quota.

(5) Although the United States does not believe the information available is sufficient to support the proposal as submitted, the United States could support a proposal with a reduced quota.

(6) The intention of this proposal is to transfer the taxon from Appendix II to Appendix I since continued trade may threaten it with possible extinction.

(7) Listing of the taxon, as proposed, appears to be justified by information in the proposal or currently available.

(8) While this species is probably extinct, any trade is likely to be internal to the United States and its separate listing on Appendix I does not seem warranted.

(9) The population status (i.e., degree of threat of extinction of the entire species) does not appear to warrant listing, downlisting, or delisting as proposed.

(10) Listing of this species or other taxon appears justified because of its similarity of appearance to others that are subject to trade.

(11) The U.S. position is to support listing this taxon in Appendix I on the basis of resolution Conf. 2.19 (i.e., due to the taxon's rarity any trade in it would be detrimental) and trade has been documented and may increase.

(12) Available information suggests that there is little likelihood that there has been or will be any significant international trade in this species.

(13) About half of the species in this genus are believed to be threatened with extinction. Resolution Conf. 6.19 provides for the artificially propagated hybrids to be treated as if on Appendix II. As general matter, artificially propagated specimens of Appendix I species can be exported from the United States under a renewable export permit valid for multiple shipments for up to 6 months.

(14) While supporting documentation for this proposal has not been submitted by Japan, a portion of the proposed amendment submitted jointly by China and Denmark would achieve the same listing action, and the U.S. position is to support that portion of the latter proposal (see next item for U.S. position on the Appendix I aspect of that proposal).

(15) The listing of the taxa, as proposed, generally appears to be justified by the informetion in the proposal or currently available, *but* the proposal also transfers the Chinese and Russian populations of *Ursus arctos pruinosus* and *U. a. isabellinus* from Appendix I to II which does not appear to be warranted.

(16) Population information is limited although the information presented in the proposal suggests a small and declining population within its restricted range. Furthermore, trade appears sufficiently large to be affecting the survival of the species.

(17) This species appears to be sufficiently rare to be included in Appendix I under provisions of Conf. 2.19. Although no international trade has been recorded, the possibility of specimens being sought is probably sufficient to support this proposal.

(18) Population and international trade information need to be clarified, but information available suggests that trade should be curtailed.

(19) Biological and trade information presented on individual genera is not sufficient to meet the Berne criteria. However, we recognize that enough information may become available to support the addition of some genera to Appendix II.

(20) Biological and trade information presented do not appear to support listing in Appendix I. However, enough information may become available to support listing the species in Appendix II.

(21) Information on several populations does not appear to meet the Berne criteria for listing in Appendix I, but significant questions about taxonomic distinctiveness and enforcement concerns may warrant support. The U.S. will consider views presented by range States.

(22) Quantitative population and trend information is lacking and recent studies conducted in the species primary habitat indicate larger numbers than previously presumed. Furthermore, trade is limited and does not appear to threaten the survival of the species. Nevertheless, the principal range State supports the listing, the species is endangered, and there may be sufficient potential for trade so that it, in conjunction with other factors, may threaten the survival of the species.

(23) Quantitative population information is lacking, and trade is small. The species appears to be rare, but the U.S. delegation intends to consult further with the range States at the meeting of the Parties to determine whether trade, in conjunction with other factors, threatens the survival of the species.

(24) The proposals and supporting documentation on crocodile quotas for populations in the People's Republic of the Congo were received after the tentative negotiating positions were published in the **Federal Register**. However, the U.S. position is to support the requested quotas which are the same as those adopted at the sixth meeting of the Parties and which were supported at that time by the IUCN Crocodile Specialist Group. Furthermore, the People's Republic of the Congo has not requested renewal of their quota for the dwarf crocodile, *Osteoloemus tetraspis*.

Final negotiating positions given in this table are based upon the best available biological and trade information, taking into account comments received from the public and the criteria for listing species in the appendices (resolutions Conf. 1.1 and 1.2 of the first meeting of the Conference of the Parties to the Convention) and other provisions for listing species including Conf. 2.19 on extremely rare species, Conf. 2.23 and Conf. 3.20 on delistings under special 10-year review procedures. Conf. 3.15 on ranching, Conf. 5.14 on uplisting plant species, and Conf. 5.21 on special criteria for the transfer of taxa from Appendix I to Appendix II with concurrent establishment of export quotas. If further information is presented at the meeting in Switzerland, the U.S. delegation will take it into account in determining whether these positions remain appropriate. As indicated above, support or opposition to particular proposals may depend on whether questions about them are satisfactorily answered at the meeting. Furthermore, while the United States may not fully support a proposal, partial support has been discussed in the "Assessment of Comments on Species Listing Proposals" and noted in the footnotes to this table summarizing the U.S. negotiating positions.

This notice was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

(Notice of Decision: U.S. Negotiating Positions on Foreign Proposals to Amend CITIES)

Dated: October 3, 1989.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-23707 Filed 10-5-89; 8:45 am]

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50 CFR Part 24

RIN 1018-AB28

Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to amend the regulations concerning importation and exportation of some plants by designating Houston, TX, as an additional port for importing, exporting, and reexporting plants listed under the Endangered Species Act of 1973, as amended (the Act), or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is necessary to designate port for plants in order to implement provisions of the Act or CITES.

DATES: Comments must be submitted on or before December 5, 1989. Requests for a public hearing must be received by November 20, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Office of Management Authority, 4th Floor, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ronald Singer, Senior Staff Biologist, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, Virginia, 22203-3507, telephone (703) 358-2095.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538 (f)) provides for the designation of ports. Under section 9(f)(1) there is authority for the Secretary of the Interior (Secretary) to establish designated ports based on a finding that this action would facilitate enforcement and reduce the costs of enforcing the Act. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of listed plants. This program involves inspections and other enforcements activities concerning all types of speciments of listed terrestrial plants.

In an October 25, 1984, (49 FR 42938 **Federal Register** notice, the United States Fish and Wildlife Service (Service) designated 87 ports for the importation, exportation, and reexportation of plants under the Act. Houston, TX, is one of these ports. Of these 87 ports, 14 are also designated for the importation, exportation, or reexportation of any plants listed as endangered or threatened in 50 CFR 17.12 (listed plants) or in the appendices of CITES in 50 CFR 23.23 (listed plants). The USDA is now recommending that the port of Houston, TX, be designated as port number 15 for any such listed plants. Listed plants must be imported, exported, or reexported only through these specially designated ports or, under limited circumstances, at non-designated ports. This is to ensure that listed plants will be subject to a species-based inspection system.

For enforcement of the Act and CITES, ports designated for listed plants should have personnel with expertise in identifying listed plants.

Expertise in identification of listed plants is necessary for determining whether plants without documentation are actually listed plants required to be accompanied by documentation. Plant identification is also necessary to determine if the plant material being imported, exported, or reexported was legally acquired, is accurately identified by this documentation, and its origin as wild or artifically propagated is accurately stated. It is important that designated ports for listed plants have adequate facilities for holding live plants and plant material, since these plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. Further, these ports should coincide, as much as possible, with established patterns or plant trade in order to help reduce shipping costs.

Based on consultations between USDA and the Service, it appears that the port of Houston, TX, will have adequate personnel and facilities available for the importation, exportation, or reexportation of listed plants on a regular basis (see 54 FR 23989). It also appears that the proposed designated port of Houston, TX, coincides with established patterns of all plant trade.

For these reasons, it appears that the USDA recommendation would facilitate enforcement of the Act and CITES, and would also be cost effective, both to users of the port and the Government. In this connection, the Service has been advised by USDA that, to a significant extent, USDA would use the same Houston, TX, port facility and personnel proposed in 54 FR 23989 for enforcement activities under the Federal Plant Pest Act, the Plant Quarantine Act, the Act, and CITES.

Under these circumstances, the Service is proposing USDA's recommendation that the port of Houston, TX, be added to the list of ports designated under the Act for the importation, exportation, or reexportation of any listed plant.

Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary of the Interior confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. These requests should be sent to the Office of Management Authority address listed in the ADDRESSES section of this document.

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Determination of Effects of Rule

The Service has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. These regulations will not cause a significant impact on the import/export of plants as they would essentially add another port to facilitate the trade of listed plants. Additionally, almost all of the affected plants are presently imported through the designated ports because of USDA regultions in 7 CFR chapter III. Further, there is authority for the Secretary to allow the importation, exportation, or reexportation of plants at nondesignated ports under such terms and conditions as the Secretary may prescribe if it is determined that it would be in the interest of the health or safety of the plants, or if for other reasons, it is determined to be appropriate and consistent with the purpose of section 9(f)(1) of the Act.

Regulatory Flexibility Act

The addition of Houston, TX, as a designated port would facilitate the importation, exportation, or reexportation of listed plants as well as the other terrestrial plants proposed by USDA in 54 FR 23989. The Service believes the addition of this port would have a small but positive economic impact or importers, since Texas already has three ports that are designated for the importation, exportation, or reexporation of listed plants. The Service has no way of projecting how heavily the new port would be used, but USDA estimates that between 5 to 20 commercial exporters/importers, most of them small entities, would use this new facility for all plants on a regular basis. It is also estimated that an additional but unknown number of commercial exporters/importers would use the facility on an occasional basis. Most of these exporters/importers would realize small savings in transportation costs, since they would not have access to a fourth plant inspection station. The primary impact, however, would be the increased convenience of having another port in Texas through which to import, export, or reexport listed plants. Furthermore, travelers would also be able to move small quantities of listed plants through this new port. The Service has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

National Environmental Policy Act

An environmental assessment was prepared by the Animal and Plant Health Inspection Service of USDA. The Service is considering the adoption of USDA's assessment that this is not a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 which would significantly affect the quality of the human environment. The environmental assessment is on file in the Division of Law Enforcement, 4401 North Fairfax Drive, Room 500, Arlington, Virginia 22203 and may be examined during regular business hours.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials (see 7 CFR 3015, subpart V). Such consultation was conducted with the City of Houston's Division of Aviation Authority.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 24

Import, Export, Endangered and Theatened Plants, Treaties (Agriculture).

Accordingly, 50 CFR part 24 is proposed to be amended as follows:

PART 24—[AMENDED]

1. The authority citation for part 24 would continue to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

§ 24.12(a) [Amended]

* * * * *

2. Section 24.12(a) would be amended by adding "Houston, Texas" immediately under "El Paso, Texas."

Dated: August 30, 1989.

Richard N. Smith,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 89–23685 Filed 10–5–89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 265

[Docket No. 90805–9205]

RIN 0648–AA47

United States Standards for Grades of Fresh and Frozen Shrimp; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule with request for comments; correction.

SUMMARY: This document corrects a table in the regulatory text of the United States Standards for Grades of Fresh and Frozen Shrimp, proposed rule, published September 21, 1989 (54 FR 38885). The table was published with some incorrect percentages by weight of sample units of shrimp with shell-on and peeled. For clarification, the corrected table is being reprinted.

DATE: Comments must be received by November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards and Specifications Branch, NMFS, 508–281–9219.

In proposed rule document, FR Doc. 89–22209, beginning on page 38885 in the issue of September 21, 1989, make the following correction.

PART 265—[CORRECTED]

§ 265.103 [Corrected]

On page 38887, § 265.103(a)(2)(i), the table that appears at the bottom of column 2 extending to the top of column 3 is replaced with the following corrected table:

(A) Shell-on:	
Up to and including 70 count per pound (0.45 kg).	No more than 3 percent by weight.
Over 70 count per pound (0.45 kg).	No more than 7 percent by weight.
(B) Peeled:	
Up to and including 40 count per pound (0.45 kg).	No more than 4 percent by weight.
41–70 count per pound (0.45 kg).	No more than 6 percent by weight.
71–130 count per pound (0.45 kg).	No more than 7 percent by weight.
Over 130 count per pound (0.45 kg).	No more than 11 percent by weight.

Dated: September 29, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–23651 Filed 10–5–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR part 641

[Docket No. 90926–9226]

RIN 0648–AC16

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 1 to the Fishery Management Plant for the Reef Fish Resources of the Gulf of Mexico (FMP). This proposed rule would: (1) Require a permit for vessels harvesting reef fish for sale; (2) establish a 50 percent earned income criterion to qualify for a permit; (3) provide for the charging of fees to cover the administrative costs of issuing permits and trap tags; (4) require reporting by operators of charter vessels; (5) require permitted vessels to display identification numbers; (6) eliminate exemptions to the size limit for red snapper; (7) establish size limits for other major species; (8) prohibit sale of fish smaller than the size limits; (9) extend present boundary of the stressed area where certain gear is prohibited to include all waters off Texas out to the 30 fathom isobath and all waters off Louisiana out to the 10 fathom isobath; (10) prohibit use of longline and buoy gear for taking reef fish inside of 50 fathoms to the west and inside of 20 fathoms to the east of Cape San Blas, Florida; (11) establish bag limits for certain snappers, groupers, and amberjack; (12) provide for the possession of two days' bag limits for charter vessels and headboats on trips in excess of 24 hours; (13) restrict vessels with trawl or entangling net gear aboard to the bag limits; (14) establish annual commercial quotas for red snapper and deep- and shallow-water groupers; (15) prohibit fishing for and sale of reef fish when an annual quota for that species is reached; (16) reduce the number of traps that may be fished by a vessel; (17) make other technical changes to facilitate compliance; (18) establish a procedure for setting total allowable catch (TAC) and adjusting management measures annually; and (19) establish as long-term optimum yield (OY) the restoration of stocks to a 20 percent spawning stock biomass per recruit ratio (SSBR) level by the year 2000.

DATE: Written comments must be received on or before November 20, 1989.

ADDRESSES: Requests for copies of Amendment 1, which includes the draft regulatory impact review/regulatory flexibility analysis/environmental assessment (RIR/RFA/EA) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

Comments on the proposed rule should be sent to William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, attention: Paperwork Reduction Act Project 0648–XXXX.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813–893–3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 is a major revision of the FMP which, to the extent allowed by available data, addresses snappers, groupers, and other reef fish on a species basis. This change from the FMP's approach of addressing snappers and groupers as a single mixed species complex was made possible by an expanded reef fish data collection effort by NMFS and the states in recent years. Stock assessment analyses based on these data indicate red snapper are severely overfished and other species require reductions in fishing mortality to assure that the spawning stock biomass is maintained at a level adequate to prevent reductions in recruitment to those species or stocks. As a consequence of these analyses, Amendment 1 and these proposed implementing regulations would reduce fishing mortality largely by imposing measures such as bag limits, quotas, size limits, and gear restrictions. They also provide a procedure for setting TAC annually based on stock assessments and for adjusting the measures imposed to achieve TAC.

Three minority reports object to (1) the prohibition of the retention and sale of undersized fish in certain instances; (2) the bag limits being applied to shrimp vessels; (3) the geographical extension of stressed areas; (4) the maximum number of persons aboard charter and headboats to fish commercially; (5) the commercial quota on groupers; (6) the prohibition of entangling nets; or (7) the 20-inch minimum size limit for red grouper. A notice of availability summarizing Amendment 1 and the minority reports was published in the Federal Register on August 29, 1989 (54 FR 35707).

Background

In 1984, NMFS implemented, cooperatively with the States, a Trip Interview Program (TIP) which collected length-frequency and other biological and statistical information on landings of reef fish by species. Collection of landings data for groupers by species instead of by family was also initiated. These data sets along with similar information collected under the Marine Recreational Fishery Statistics Survey (MRFSS), initiated in 1979 and available by 1984, surveys of Gulf charter and headboat fisheries, and fishery independent information from the Southeast Area Monitoring and Assessment Program provided a data base that allowed stock assessments to be undertaken for major reef fish species.

The stock assessments for red snapper and other species were initiated by the Southeast Fisheries Center (SEFC) of NMFS in 1986 and were completed by SEFC and the Council in 1988. The stock assessments for red snapper concluded that the fishery was being subjected to recruitment overfishing and that the SSBR was likely no greater than 4.8 percent of the unfished level. This analysis and those for the dominant groupers indicated that to restore the spawning stocks to a 20 percent SSBR level, reductions in fishing mortality on the order of 60 to 70 percent would be necessary over the long-term (i.e., until the year 2000) for red snapper and on the order of 20 percent over the short-term for the groupers. Size limits, bag limits, and other reductions in harvest levels necessary to restore each species or species group to the 20 percent SSBR (i.e., the Council's goal for long-term OY from the fishery) and the supporting analyses are set forth in Amendment 1.

Problems in the Fishery

Problems affecting the fishery that resulted in the development of Amendment 1 by the Council are as follows:

1. The adult population of red snapper has declined since 1979, and this decline may be greater in the western Gulf. The current snapper fishery is supported primarily by younger fish, ages one to three;

2. Habitat loss is negatively affecting reef fish stocks in the Gulf of Mexico;

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3. Longline gear has been introduced in the fishery since the FMP was written; this gear needs to be recognized as a segment of the fishery. If longlines are used in areas where other gear have been used traditionally, an increase in the level of mortality and conflicts among user groups may result;

4. The geographic extent of and limitation on fishing effort within the stressed area require modification to address fishing mortality and user conflicts under current and potential use patterns;

5. Some reef fish species are growth and recruitment overfished;

6. Management measures specified in the FMP to establish a data base for management have not been implemented successfully. Statistical data for many species have been aggregated into genus or family groups which has made it impossible to assess the condition of specific stocks adequately. Biological profile data are needed throughout the Gulf of Mexico on a continuing basis; the present system of opportunistic dockside sampling of the commercial catch is not providing a representative characterization;

7. A significant portion of the catch in the reef fish fishery consists of species not included in the fishery management unit;

8. Present definition of OY for the reef fish fishery is an overestimate and does not provide adequate protection for the resource due to different vulnerabilities among reef fish species to overfishing;

9. Mortality of juvenile red snapper due to trawl bycatch reduces potential yield;

10. Fishing pressure has increased dramatically in the past decade due to increased number of vessels, greater use of sophisticated electronic equipment, and increased use of more efficient gear by all sectors of the fishery;

11. Definitive research is needed to determine whether artificial reefs contribute more to overfishing or to the rebuilding of the reef fish resource in the various Gulf of Mexico habitats;

12. The user groups utilizing and depending on the reef fish resources need to be identified and their socioeconomic and sociocultural characteristics delineated to enable analysis of their respective impacts on the resource and the differential impacts that alternative management measures may exert on the various user groups;

13. The stock boundaries of reef fish are unknown; and

14. Overfishing of the reef fish stocks is the result of directed and nondirected recreational and commercial fishing mortality.

Management Objectives

The management objectives of Amendment 1 are:

1. To stabilize long-term population levels of all reef fish species by establishing a certain survival rate of biomass into the stock at spawning age to achieve at least 20 percent SSBR (the primary objective);

2. To reduce user conflicts and nearshore fishing mortality;

3. To respecify the reporting requirements necessary to establish a data base for monitoring the reef fish fishery and evaluating management actions;

4. To revise the definitions of the fishery management unit and fishery to reflect the current species composition of the reef fish fishery;

5. To revise the definition of OY to allow specification at the species level;

6. To encourage research on the effects of artificial reefs; and

7. To maximize net economic benefits from the reef fish fishery.

Management Unit

Presently, snappers, groupers, and seabasses are managed under the FMP. Amendment 1 and the proposed implementing regulation would add the tilefishes, amberjacks, white grunt, red porgy, and gray triggerfish to the management unit. These species previously taken as incidental catch and frequently discarded are now being targeted in the fishery.

Optimum Yield

Amendment 1 and the proposed implementing regulations state OY as two components. The first is OY as a long-term goal, and the second is an annual specification of TAC for each species (stock) or species group (stock complex) that is designed to achieve the OY over time. The components are designed to bring the FMP into compliance with the provisions of 50 CFR part 602 in order to prevent overfishing or rebuild an overfished stock.

The statement of OY as a long-term goal contained in Amendment 1 is: "Optimum Yield is any harvest level for each species which maintains, or is expected to maintain, over time[,] a survival rate of biomass into the stock of spawning age to achieve at least a 20 percent Spawning Stock Biomass Per Recruit (SSBR) population level, relative to the SSBR that would occur with no fishing". The target date for achieving OY, as specified in the TAC procedure, is on or before January 1, 2000. The target date was selected in part to moderate the short-term impacts of the harvest restrictions required to achieve OY on users of the reef fish resources, particularly for red snapper. The procedure for specifying an annual TAC contains provisions that are designed to assure the goal will be met, provides safeguards to prevent irreversible overfishing, and will allow the rules to be modified annually based on the most recent information and analyses.

Definition of Overfishing

Overfishing is defined as:

1. A reef fish stock or stock complex is *overfished* when it is below the level of 20 percent of the [SSBR] that would occur in the absence of fishing.

2. When a reef fish stock or stock complex is overfished, *overfishing* is defined as harvesting at a rate that is not consistent with a program that has been established to rebuild the stock or stock complex to the 20 percent [SSBR] level.

e. When a reef fish stock or stock complex is not overfished, *overfishing* is defined as a harvesting rate that [,] if continued [,] would lead to a state of the stock or stock complex that would not at least allow a harvest of OY on a continuing basis.

The SSBR (reproductive potential) is determined by integrating or summing the multiple, for each age, or relative number of fish alive times the estimated fraction mature times the estimated weight of fish. The two models used to determine SSBR, both variants of yield per recruit models, are the Boverton-Holt continuous model and the Ricker discrete model. The total contribution of a cohort to the spawning stock biomass over its lifetime is found by summing the cohort's contribution at each age, which is then scaled to a per recruit basis to derive the theorethical SSBR measure. The SSBR measure can be used to evaluate alternative fishing mortality-scenarios without knowing actual levels of recruitment or spawning stock. Maximum SSBR is obtained by setting fishing mortality to zero.

In the Council's opinion, these definitions satisfy the 50 CFR part 602 Guidelines in that they have sufficient scientific merit; are likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status; provide a basis for objective measurement of the status of the stock against the definition; and are operationally feasible.

Procedure for Establishing an Annual TAC and Adjusting Management Measures (Procedure)

The Procedure provides for the Science and Research Director of SEC to prepare or update the stock assessment for each species (stock) or stock complex annually (i.e., prepare a Stock Assessment and Fishery Evaluation (SAFE) Report) as provided for in 50 CFR part 602. The Council would be required to appoint a scientific stock assessment panel (Panel) to review the SAFE Report and other relevant information and prepare a report (Report) specifying a range of acceptance biological catch (ABC) for each stock or stock complex. The ABCs would be calculated so as to achieve reef fish population levels at or above the 20 percent SSBR goal by January 1, 2000. The Panel would be required to include in the Report to the Council a risk analysis of probabilities of each level of an ABC attaining OY, economic and social impacts of the levels, and recommendations for management measures to attain the ABC. The Council, after holding a public hearing(s) and reviewing comments of the Scientific and Statistical Committee (SSC) and of the Reef Fish Advisory Panel (AP) of the Report, would be required to specify a TAC from within or below the range of ABC or a series of TACs (some of which may be higher than the ABC) to attain the selected level of ABC in not less than three years. It was judged that such gradual approach to reduction of fishing mortality may be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur, and that further adjustments to management measures will restore depleted stocks within a specified time frame and be based on progressively mroe precise and accurate information.

The Council would be required to subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishing to the nation and are based on percentages harvested by each sector during the period of 1979–87. If the harvest in any year exceeds the TAC because either the recreational or commercial user group exceeds its allocation, subsequent allocations to the exceeding group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass goal.

The Council would be required to provide to the NMFS Regional Director (RD) its recommendations for TACs for each species or species group, proposed regulations revising quotas and management measures necessary to attain each TAC, the Council's rationale, and analyses of impacts (EA and RIR) of the proposed regulations. A proposed rule containing the recommended TACs, quotas, and harvest restrictions will be published in the **Federal Register** for public comment. If the RD concludes after review of public comment that the proposed regulations are consistent with the FMP objectives and other applicable law, he will promulgate the regulations by final rule published in the **Federal Register** (see proposed § 641.27 for additional detail).

Permits and Reporting Requirements

Amendment 1 and the proposed implementing regulations require a permit in order to fish for reef fish in the exclusive economic zone (EEZ) under a commercial quota or to sell reef fish taken from the EEZ. To quality for permit, a person must derive more than 50 percent of his or her earned income from commercial or charter (for hire) fishing. Permits would have to be renewed annually and compliance with reporting requirements would be a condition for issuance, reissuance, or continuing validity of a permit.

The requirement that 50 percent of earned income be from commercial or charter fishing to qualify for a permit was proposed, in part, because of the severe restrictions on commercial harvest necessary to restore the principal species in the fishery. By including this requirement, recreational fishermen who previously sold their excess catch of reef fish would no longer be able to do so and would be excluded from participating under the commercial quotas for species for which quotas apply. Since there are likely several thousand of such persons, this reduces the impact of the harvest restrictions on full-time and many part-time commercial fishermen. Most retirement income is not considered earned income under this permit requirement.

The purpose of the permit requirements is to ensure allocations are distributed as set forth by the Council and to improve enforcement of the recreational and commercial catch limits. Without such delineation of these two major user groups, the catch limits proposed for the recreational sector will be unenforceable and recreational catch that is sold would be counted against the commercial quota.

In additional, the Council intends to develop in the future a limited access system for the commercial fishery that may reduce participation levels even further. The Council will submit for publication in the **Federal Register** a notice of a control date for entry into the fishery as the first step in developing such a system by subsequent amendment.

Compliance with the reporting requirements was made a condition of the issuance, reissuance, and continued validity of the permit because only about 15 percent of present permit holders (trap fishermen) have complied with the current reporting requirements. Sanctions for non-compliance are governed under 15 CFR part 904.

Amendment 1 and the proposed implementing regulations include reporting requirements for charter vessel operators. These requirements are generally identical to those currently applying to operators of headboats and are combined with those for the coastal migratory pelagics fishery under 50 CFR part 642. Amendment 1 and the proposed implementing regulations also require persons holding permits to file a report during months when no fishing occurs and also make other minor technical changes to reporting requirements to facilitate enforcement. The monthly report of no fishing is needed to ascertain periods when fishermen with permits are inactive and to facilitate compliance during active periods of fishing.

Vessel and Gear Identification

The proposed implementing regulation would require a vessel for which a permit has been approved to display its official number in a manner visible to both air and surface enforcement craft. Such an identification requirement currently applies to vessels with fish trap permits and would be extended to apply to other permitted commercial vessels. This identification requirement is necessary to allow aerial enforcement of closed areas (e.g., areas where longlining is prohibited) and closed seasons (i.e., periods when all commercial fishing is prohibited after quotas are reached).

Size Limits

Amendment 1 and the proposed implementing regulations retain 13 inches total length (TL) as the minimum size for possession of red snapper, but eliminate allowances for possession of undersized fish by fishermen (five per person) and for trawl vessels (unlimited) and prohibit sale of undersized red snapper. The allowances for possession and sale of undersized fish largely made the size limit ineffective (i.e., 39 percent of fish landed were undersized). This was especially true for recreational fishermen since typically 50 percent or more of their trips yielded five or less fish, all of which could legally be undersized. An effective size limit for red snapper would moderately increase yield per recruit (YPR) in terms of poundage available from the resource by about 5 percent, but initially (during first year) could reduce recreational landings by about 29 percent.

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Amendment 1 and the proposed implementing regulations also impose minimum size and possession limits for black sea bass, lane and vermilion snapper (8 inches TL); for gray, mutton, and yellow-tail snapper (12 inches TL); for red, Nassau, gag, yellowfin and black groupers (20 inches TL); for greater amberjack (28 nches fork length (FL) for recreational catch and 36 inches FL for commercial catch) and for jewfish (50 inches TL). All of these species are predominantly (up to 99 percent) harvested off Florida. Florida currently has size limits for most of these species that are identical, or slightly smaller, and is expected to adopt the same limits.

Since size limits increase YPR, models were prepared that allowed computation of percent reduction in fishing mortality necessary to reach a 20 percent SSBR level at each minimum size. These models and information on size at maturity were used in selecting the proposed size limits. For most of these species, including red snapper, bag limits and quotas are also imposed to attain the desired reduction in fishing mortality as a function of the minimum size selected. For some species (black sea bass, lane and vermilion snappers, and jewfish) the YPR from the size limit alone will be adequate to attain or maintain the 20 percent SSBR level. The larger size limit for commercially harvested amberjack eliminates the necessity to set a commercial quota on that species. In order to facilitate enforcement and make the size limits effective, fish would be required to be landed with heads and fins intact and sale of fish smaller than the minimum size would be prohibited.

Gear Restrictions

Amendment 1 and the proposed implementing regulations would reduce the number of fish traps that can be fished by each permitted vessel from 200 to 100. Trap fishermen fishing the Gulf of Mexico (Gulf) in 1986 used 30 traps per vessel whereas those fishing the Florida Straits generally utilize about 200 according to testimony presented to the Council. Since the reef fish resources of the Gulf are being overfished, the Council proposed reducing the allowable level of traps before trap levels reach those employed in the adjacent Florida Straits. The proposed rule also would limit degradable door hinges and fasteners to jute string or magnesium fasteners since, according to fishermen, other materials deteriorate too slowly.

Area Limitations

Amendment 1 and the proposed implementing regulations modify the boundary of the stressed area by including waters of the EEZ shoreward of the 10-fathom contour off Louisiana and shoreward of the 30-fathom contour off Texas. The FMP prohibits the use of fish traps, roller trawls; and powerheads for taking reef fish within the stressed area. The stressed area delineates the nearshore areas subject to the most intensive fishing pressure (primarily by recreational fishermen who generally lack the capability to travel further offshore), and use of more efficient and competing gear is, therefore, prohibited. The inclusion of these additional areas will reduce harvest on the overfished red snapper stock because red snapper is the predominant reef fish species off Louisiana and Texas. Access to the coast of Louisiana is much more restricted than to the coast of Texas, and consequently the nearshore waters are subject to less intensive fishing pressure; therefore, the proposed boundary is closer to shore (10 fathoms versus 30 fathoms) for Louisiana than for Texas.

Amendment 1 and the proposed implementing regulations would prohibit the use of longline and buoy gear for the directed harvest of reef fish in the EEZ inshore of the 50-fathom contour west of Cape San Blas, Florida (85°30' W. longitude) and inshore of the 20-fathom contour east of Cape San Blas. The western restricted area generally covers the range of red snapper as very few occur east of Cape San Blas or outside 50 fathoms. The prohibition will reduce the impact of those gears which typically have harvested large red snapper from the spawning stock and from areas (non-reef areas) where the catch per unit effort (CPUE) by other gear is too low to fish economically for the large spawners. Since fecundity for red snapper increases exponentially with increasing size, it is important to reduce catch of the larger fish in the depressed spawning stock. Since mortality of fish released at the water surface increases with water depth from which they are caught, implementation of a maximum size limit to preserve the larger spawners likely would be an ineffective alternative to the prohibition of buoy and longline gear from that area.

The eastern restricted area is generally located within the range of red grouper, the dominant species of shallow-water grouper. By expanding the restricted area, longline gear (the principal gear in the group fishery) and buoy gear could only be used outside of 20 fathoms. This will prevent harvest and subsequent release mortality of groupers smaller than the 20-inch minimum size which are common inside of 20 fathoms. Since all groupers reverse sex as they grow and the larger fish are all males, there is less concern over the efficiency of longline and buoy gear to harvest the larger fish.

Bag and Possession Limits, Allocations, and Closures

Bag limits are imposed to reduce fishing mortality by recreational fishermen and quotas are imposed to reduce fishing mortality by commercial fishermen. Sale of certain reef fish would be prohibited for the remainder of the fishing year when the quota for those species or species groups is reached. Exception would be made for fish held in cold storage by a dealer or processor. Sale of reef fish taken in the EEZ under a bag limit would be prohibited. Persons fishing under a commercial quota would have to possess vessel permits. Persons on charter vessels and headboats (when under charter) and on commercial vessels temporarily excluded from fishing under a vessel permit (i.e., vessels with trawl or net gear aboard and longline vessels fishing in the restricted area for species other than reef fish) would be limited to the bag limits, except that persons on charter vessels and headboats would be allowed to possess up to two daily bag limits for trips of more than 24 hours duration.

For red snapper, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of seven fish for recreational fishermen and a quota of 3.1 million pounds for commercial fishermen. This is equivalent to a 20 percent reduction from the 1985–1987 level of fishing mortality (harvest) for the initial fishing year. This percentage reduction will not restore the spawning stock to 20 percent SSBR by the year 200 (i.e., long-term OY goal). However, the Procedure for establishing an annual TAC and adjusting management measures allows an annual reassessment of progress made in achieving OY and adjustments to the bag limit and quota to reach that goal. The Council judged that a more gradual approach to reduction of fishing mortality would be less disruptive to the fishery and have less adverse impact on users. The Procedure provides the safeguards to assure that irreversible overfishing does not occur and that further adjustments to measures will be based on progressively more precise and accurate information.

For groupers, Amendment 1 and the proposed implementing regulations would impose a daily bag limit of five fish of all species in aggregate (except jewfish) and separate commercial quotas of 9.2 million pounds for shallow-water groupers and 1.8 million pounds for deep-water groupers (defined by species). This is equivalent to a 14 percent reduction from the 1985–1987 level of fishing mortality (harvest) for the initial fishing year. Since initial estimates of the percent reduction in fishing mortality necessary to attain 20 percent SSBR for groupers was approximately 20 percent, this level of reduction (14 percent) may or may not attain the OY goal by the year 2000. However, the Procedure will allow assessing this annually and adjusting the rules to attain that goal.

Amendment 1 and the proposed implementing regulations would impose an aggregate daily bag limit of 10 fish for all other snapper species, except for vermilion and lane snappers. This bag limit was proposed because restrictions placed on other reef fish species will result in transfer of effort toward harvest of these species, which are predominantly harvested by recreational fishermen. The measures that would be imposed under this proposed rule will be assessed annually under the Procedure. Vermilion and lane snapper were excluded from bag limits and allocations because they become sexually mature at a size smaller than the minimum size limit (e.g., vermilion mature at 6 inches TL) and are therefore protected from recruitment overfishing.

Amendment 1 and the proposed implementating regulations would impose a daily bag limit of three fish with a 28-inch FL minimum size and a larger commercial size limit (36-inch FL) for greater amberjack to reduce harvest equitably. The harvest of greater amberjack has been largely by recreational fishermen with the harvest level escalating in recent years as they become a targeted substitute for less abundant reef fish. Commercial harvest, while much less, has also increased. The recreational bag and the size limits will result in about a 60 percent reduction from the 1985–1987 harvest level in the initial years until the fish reach a larger size.

The bag limits are intended to reduce recreational harvest while spreading the reduced individual catch over the fishing year, whereas the quotas are intended to allow commercial harvest to be taken as efficiently as possible and to prohibit harvest for sale when the quota is taken during each fishing year. The possession of two days bag limits (of legal size fish) is proposed for charter vessels and headboats since many of these vessels traditionally have made multi-day trips to more distant reef complexes. In all other cases, the possession limits would be the bag limits.

The prohibition on sale of reef fish taken under a bag limit will prevent recreational harvest and bycatch from being counted in the commercial quotas and thereby intensify the impact of the reduced allocation level on that user group. Once a quota for a species or species group is reached, directed fishing and sale of that species or group would be prohibited for the remainder of the fishing year. This is necessary to assure that the allocation not be exceeded. After such a closure, all persons in the reef fish fishery would be subject to the possession limit or daily bag limit, which cannot be sold.

Additional Changes

In addition to the changes to the existing regulations necessary to implement Amendment 1, NOAA proposes other changes to facilitate enforcement and to make corrections and clarifications.

Revisions to the purpose and scope section (§ 641.1) are proposed to indicate the full geographical scope of the regulations by specifying those sections that apply in state waters adjoining the EEZ. NOAA believes the public is better served by a general expression of scope in this section with the specific scope of each general provision or management measure stated in that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and processors as to the scope of the regulations in this part. The definition and use of the term Management area would be removed. The term Exclusive economic zone (EEZ), defined at 50 CFR 820.2 and applicable to part 641, in the context of the geographical scope specified in § 641.1, adequately specifies the extent of each management measure.

The proposed regulations would prohibit the possession of dynamite or a similar explosive substance on board vessels in the reef fish fishery. The use of explosives, excluding those in powerheads, is currently prohibited. Nevertheless, there are persistent reports and indications of the illegal use of dynamite. Indications include underwater explosions not assocaited with sesmic testing or oil rig removal, the landing of reef fish by vessels without operable fishing gear aboard, and the presence ashore of reef fish without the typical markings associated with fish caught by hook, net, or fish traps. Enforcement of the prohibition on use of explosives in the reef fish fishery has been thwarted by the large area that constitutes the fishing grounds, the small number of available enforcement vessels, and the resultant difficulty of catching a person in the act of using explosives. NOAA is not aware of any legitimate use of dynamite or a similar explosive substance aboard a fishing vessel in the reef fish fishery. Enforcement of the basic prohibition would be enchanced since it will not be necessary to observe the use of dynamite in the fishery.

The gear restrictions applicable to fish traps would be reorganized for clarity into a single subsection (§641.22(b)). Other minor reorganizations and corrections are proposed for clarity and to conform the regulations to current usage.

NOAA expects the initial permit fee and the fee for fish trap identification tags proposed under §641.4(c) to be approximately $23 and $1 per tag, respectively.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, which this proposed rule would implement, is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a RIR which concludes that this rule will have the following economic effects: over the short-term, the economic output would

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be reduced by $35.9 to $55 million, income by $12.4 to $18.7 million and jobs by 903 to 1,364. These effects would be $15.6 million in output, $5.7 million in income, and 412 jobs for the commercial sector and $20.3 to $39.4 in economic output, $6.7 to $13 million in income, and 491 to 962 jobs for the recreational sector. Annual cost to the federal government for enforcement and administration is estimated to be $160,000. The overall long-term net effect will be positive for both commercial and recreational sectors through restoring the stocks over a ten-year period. Copies of the RIR may be obtained from the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared a Regulatory Flexibility Analysis (RFA) as part of the RIR which describes the effects this rule, if adopted, would have on small business entities. Based on the RFA, the Assessment Administrator for Fisheries, NOAA, concludes that this rule, if adopted, would have significant effects on small entities, summarized as follows: The prohibition on sale or reef fish taken as incidental catch by trawl vessels (6,000) from the EEZ will result in an annual exvessel loss of $7 per fisherman or $17.50 per vessel. According to the most recent available data, there are 931 commercial vessels in the directed fishery for reef fish. Since reef fish taken by entangling net vessels are almost all taken from state waters, the prohibition on sale of reef fish taken by this gear from the EEZ will have a little impact on the 29 commercial vessels that use this gear. There will be a short-term reduction of gross exvessel revenue on the other 902 commercial vessels in the fishery, primarily the result of increased size limits. In the intermediate- and long-term, this reduction will largely be restored as the fish grow to a larger size. The amount of the short-term reduction will be equivalent to $8,824 per vessel. Part of this impact will actually accrue to recreational and part-time fishermen (several thousand) who will be unable to obtain a permit and, thus, will be prohibited from selling reef fish, rather than to the commercial vessels. If the bag and size limits deter fishermen from fishing on the 920 charter vessels and headboats, the short-term annual reduction in revenue per vessel could range between $243 and $6,902. It is anticipated the impact will be at the low end of the range. The effects related to the size limits would be recovered in the following and subsequent years. Initial permit and fish trap identification tag costs would be $23 and $1, respectively. Permit costs for commercial vessels would be $23 and fish trap identification tags would cost $1. Over the ten-year horizon for rebuilding the stocks, the short-term losses affecting small business entities should be regained and positive benefits should occur after several years. Copies of the RFA may be obtained from the address listed above.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. Copies of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule contains two new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) a reporting system for charter vessels, and (2) an annual vessel permitting system. The public reporting burdens for these collections of information are estimated to average 3 and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Revision to the existing requirements will require (1) vessels fishing traps and (2) other commercial vessels to file monthly reports whether or not they fished and (3) headboats to submit monthly rather than quarterly reports and include the operator's U.S. Coast Guard license number. The public reporting burdens for these revised collections of information are estimated to average 3, 3, and 5 minutes respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments on these reporting burden estimates or any other aspect of the collection of information, included suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the EEZ of the Gulf of Mexico, except that §§ 641.5 and 641.25 also apply to fish from adjoining State waters.

3. In § 641.2, the definition for *Management area* is removed; Figures 1 and 2 are redesignated as appendix A, Figures 1 and 2; in the definition for *Fork length*, the parenthetical phrase "(See appendix A, Figure 1.)" is added after the period; in the definition for *Powerhead*, the word "which" is revised to read "that"; in the definition for *Statistical area*, the word, letter, and punctuation "appendix A," are added before the word "Figure"; in the definition for *Total length*, the word "when" is added before the word "depressed" and the parenthetical phrase at the end of the definition is revised to read "(See appendix A, Figure 1.)"; the definitions for *Charter vessel*, *Headboat*, *Reef fish*, and *Roller trawl* are revised; and new definitions for *Buoy gear* and *Trip* are added in alphabetical order to read as follows:

§ 641.2 Definitions.

* * * * *

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom, on which there is a hook or

hooks (usually six to 10) at or near the end, which is allowed to draft freely with periodic retrieval to remove catch and rebait hooks.

Charter vessel means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passenger fish for a fee. A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Headboat means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Reef fish refers to fish in the following two categories:

(a) *Management unit.* Species taken in the directed fishery include the following:

Snappers—Lutjanidae Family

Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechonus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy Grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

Sea Basses—Serranidae Family

Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*

Tilefishes—Malacanthidae Family

Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lophotatilus chamaeleonticeps*

Jacks—Carangidae Family

Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*

Grunts—Haemulidae Family

White grunt, *Haemulon plumieri*

Porgies—Sparidae Family

Red porgy, *Pagrus pagrus*

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capriscus*

(b) *Fishery.* Species taken incidental to the directed fishery include the following:

Wrasses—Labridae Family

Hogfish, *Lachnolaimus maximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*
Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Clamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivitatatum*
Sand perch, *Diplectrum formosum*

Triggerfishes—Balistidae Family

Queen triggerfish, *Balistes vetula*

* * * * *

Roller trawl means a trawl net equipped with a series of large solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. Section 641.4 is revised to read as follows:

§ 641.4 Permits.

(a) *Applicability.* (1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ or a person who fishers in the EEZ from a structure must obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to applicable bag limits when under charter or carrying a passenger who fishes for a fee.

(3) For a corporation to be eligible for a vessel permit, the statement required by paragraph (b)(2)(xi) of this section must be provided by a shareholder or officer of the corporation or the vessel operator.

(4) An owner or operator of a vessel using a fish trap in the EEZ or a person using a fish trap from a structure in the EEZ must obtain both a vessel permit and a color code from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when the person is the operator of the vessel.

(b) *Application for permit.* (1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel or by a person who fishes from a structure. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Permit applicants must provide the following information (a person fishing from a structure may omit vessel information):

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(iii) Social security number and date of birth of the applicant and the owner;

(iv) Name of the vessel;

(v) The vessel's official number;

(vi) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(vii) Engine horsepower and year the vessel was built;

(viii) Type of gear to be fished and other fisheries vessel is used for;

(ix) Passenger capacity and U.S. Coast Guard license number(s) of vessel operator(s) if the vessel also operates as a charter vessel or headboat during the year;

(x) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application;

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(xii) Proof of certification, as required by paragraph (b)(3) of this section;

(xiii) If fish traps will be used to harvest reef fish,

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations; and

(xiv) If fish traps will be used from a fixed structure,

(A) The name and number of the oil or gas structure or the most descriptive identification for other types of structures; and

(B) The location of the structure in latitude and longitude or distance and direction from a fixed point of land.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(xii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise sanctioned under paragraph (i) of this section.

(4) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a presumption that the information is still accurate and current.

(c) *Fees.* A fee will be charged for each permit issued under paragraph (a) of this section and a fee will be charged for each fish trap identification tag required under § 641.6(d). The amount of each fee will be specified on or with the permit application form. The appropriate fee must accompany each permit application or request for fish trap identification tags.

(d) *Insuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant. In addition, the Regional Director will issue a numbered tag for each fish trap that is used in the EEZ and will designate a color code to be used for the identification of each vessel and fish trap buoys when such vessel and buoys are used to fish with fish traps in the EEZ.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days, the application will be considered abandoned.

(e) *Permit condition.* Compliance with the reporting requirements of § 641.5 is a condition for the issuance, reissuance, or continuing validity of a permit issued under this section. Failure to comply with those requirements may result in the denial or sanction of a permit pursuant to subpart D of 15 CFR part 904.

(f) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a permit to fish for reef fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(h) *Display.* A permit issued under this section must be carried on board the fishing vessel or fixed structure, and such vessel or structure must be identified as provided for in § 641.6. The operator of a fishing vessel or person fishing fish traps from a fixed structure must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alternation.* A permit that is altered, erased, or mutilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

5. In § 641.5, in paragraph (b), the introductory text and paragraph (b)(2) are revised, in paragraphs (b)(1) and (b)(3) through (6), the semicolons are removed and periods are added in their place, and paragraphs (b)(7) and (8) are removed; in paragraph (c), the introductory text is revised, in paragraphs (c)(1) through (4), the semicolons are removed and periods are added in their place, and in paragraph (c)(5), the semicolon and the word "and" are removed and a period is added in their place; in paragraph (d), in the introductory text, the phrase "or parts thereof" is removed where it appears in two places and the commas preceding and following the second appearance are removed; in paragraph (g), the introductory text is revised, in paragraphs (g)(1) through (3), the semicolons are removed and periods are added in their place, in paragraph (g)(4), the semicolon and the word "and" are removed and a period is added in their place, and a new paragraph (g)(6) is added; in paragraph (h), in the introductory text, the words "or quarterly" are revised to read "or more frequent"; and paragraphs (f) and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting

* * * * *

(b) *Vessels and persons fishing with fish traps.* The owner or operator of a vessel or a person on a structure permitted under § 641.4 to fish with a fish trap in the Gulf of Mexico EEZ or who fishes in adjoining State waters must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than seven days after the end of each fishing trip or, in the case of a person fishing with fish traps from a structure, not later than seven days after the end of each month. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than seven days after the end of each month. If fishing occurred, the following information must be reported:

* * * * *

(2) Pounds of catch of reef fish by species for each type of gear used.

* * * * *

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel that is permitted under §641.4 to fish with gear other than fish traps in the Gulf of Mexico EEZ, or who fishes in adjoining State waters, and who is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

* * * * *

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director, and must submit the forms to the Science and Research Director

weekly within 7 days of the end of each week (Sunday). Information on the forms includes, but is not limited to the following:

(1) Name and official number of vessel.

(2) Operator's Coast Guard license number.

(3) Date and duration of fishing (hours) of each trip.

(4) Number of fishermen on trip.

(5) Fishing location, by statistical area.

(6) Fishing methods and type of gear.

(7) Species targeted.

(8) Number and estimated weight of fish caught by species.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least monthly within 7 days of the end of each month:

* * * * *

(6) Operator's U.S. Coast Guard license number.

* * * * *

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a person fishing traps from a structure, and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. Section 641.6 is revised to read as follows:

§ 641.6 Vessel and gear identification.

(a) *Vessels.* (1) A vessel for which a permit has been issued under § 641.4 must display its official number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In block arabic numerals in contrasting color to the background;

(iii) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(iv) Permanently affixed to or painted on the vessel.

(2) In addition, a vessel for which a permit has been issued under § 641.4 to fish with fish traps must display its color code—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(ii) In the form of a circle at least 20 inches in diameter; and

(iii) Permanently affixed to or painted on the vessel.

(b) *Structures.* A person fishing from a structure with a fish trap who has been issued a permit under § 641.4 must display his permit number and color code—

(1) So as to be clearly visible from an enforcement vessel or aircraft;

(2) With the permit number in block arabic numerals in contrasting color to the background;

(3) With the permit number at least 10 inches in height;

(4) With the color code in the form of a circle at least 20 inches in diameter; and

(5) Permanently affixed to or painted on the structure.

(c) *Duties of operator or person.* The operator of each fishing vessel specified in paragraph (a) or person specified in paragraph (b) of this section must—

(1) Keep the official number or permit number and color code clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel or structure, its ringing, fishing gear, or any other material aboard obstructs the view of the official number or permit number and color code from any enforcement vessel or aircraft.

(d) *Fish traps.* Each fish trap used or possessed in the EEZ must have affixed to it an indentification tag provided by the Regional Director that displays the assigned permit number, a number (normally 1–100) indicating the specific tag number for that trap, and the year for which the tag was issued. A tag for the current year must be affixed to a trap before its first use in a new year or, if in use on January 1, when it is first tended after January 1.

(e) *Buoys.* Each fish trap, or the ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. Each buoy used to mark fish traps must display the designated color code and permit number son as to be easily distinguished, located, and identified.

(f) *Preumption of ownership.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of an unmarked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

7. Section 641.7 is revised to read as follows:

§ 641.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify information specified in § 641.4(b)(2) on an application for vessel permit.

(b) Fail to display a permit, as specified in § 641.4(h).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 641.5(b) through (h).

(d) Fail to make reef fish or parts thereof available for inspection, as required by § 641.5(i).

(e) Falsify or fail to display and maintain vessel and gear identification, as required by § 641.6.

(f) Possess or purchase barter, trade, or sell a reef fish smaller than the minimum size limits, as specified in § 641.21(a) and (d).

(g) Possess a reef fish without its head and fins intact, as specified in § 641.21(b).

(h) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 641.22(a).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, degradable openings, and mesh sizes specified in § 641.22(b) (1), (2), and (3).

(j) Use in the EEZ shoreward of the 50-fathom isobath a fish trap that exceeds the maximum allowable size specified in § 641.22(b)(4).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel or structure, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii).

(m) Use a powerhead to take reef fish of the management unit in the stressed area, as specified in § 641.23(a)(1).

(n) Use of fish trap or a roller trawl in the stressed area, as specified in § 641.23(a)(2).

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(o) Use a longline or buoy gear to fish for reef fish in the longline and buoy gear restricted area, as specified in § 641.23(b).

(p) Exceed the bag and possession limits, as specified in § 641.24(a) through (d).

(q) Operate a vessel with reef fish aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 641.21(c) and 641.24(e).

(r) Transfer reef fish at sea, as sspecified in § 641.24(f).

(s) Purchase, barter, trade, or sell a reef fish taken by a vessel that does not have a permit or by a person fishing from a structure who does not have a permit, as specified in § 641.4(a), or taken under the bag limits, as specified in § 641.24(g).

8. In § 641.22, Figure 3 and Table 1 are removed; in § 641.24, Figure 4 is redesignated as appendix A, Figure 3; § 641.26 is redesignated as § 641.28; §§ 641.21 through 641.25 are revised; and new §§ 641.26 and 641.27 are added to read as follows:

§ 641.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of reef fish in or taken from the EEZ:

(1) Red snapper—13 inches total length.

(2) Gray, mutton, and yellowtail snappers—12 inches total length.

(3) Lane and vermilion snappers—8 inches total length.

(4) Jewfish—50 inches total length.

(5) Red, Nassau, yellowfin, and black groupers and gag—20 inches total length.

(6) Greater amberjack—28 inches fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches total length.

(b) *Head and fins intact.* A reef fish subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such reef fish taken from the EEZ must have its head and fins intact through landing. Such reef fish may be eviscerated but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that reef fish possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section and are maintained with head and fins intact as specified in paragraph (b) of this section.

(d) A reef fish smaller than the minimum sizes specified in paragraphs (a)(1) through (5) of this section and for greater amberjack, smaller than 36 inches fork length, may not be purchased, bartered, traded, or sold.

§ 641.22 Gear restrictions.

(a) *Paisons and explosives.* Poisons and explosives may not be used to take reef fish in the EEZ; however, powerheads may be used outside the stressed area. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substance.

(b) *Fish traps.* A fish trap used or possessed in the EEZ and a person using a fish trap in the EEZ are subject to the following requirements and limitations:

(1) *Escape windows.* Each trap must have at least two escape windows on each of two sides, excluding the bottom, (a total of four escape windows) that are 2 × 2 inches or larger.

(2) *Openings and degradable fasteners.* (i) A degradable panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches.

(iii) The hinges and fasteners of each degradable panel or access door must be constructed of one of the following panel or access door must be constructed of one of the following materials:

(A) Untreated jute string of 3/16-inch diameter or smaller; or

(B) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *Mesh sizes.* A fish trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see appendix A, Figure 3):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for the shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh.

(4) *Maximum allowable size.* The maximum allowable size for a fish trap fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel or from a structure is 100.

(6) *Tending traps.* (i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the structure or vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

§ 641.23 Area limitations.

(a) *Stressed area.* (1) A powerhead may not be used in the stressed area to take reef fish of the management unit. Possession of a powerhead and a multilated reef fish of the management unit is the stressed area or after having fished in the stressed area constitutes *primo facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A fish trap or a roller trawl may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including and authorized officer). If an owner of such fish trap can be ascertained, such owner is subject to appropriate civil penalties.

(3) The stressed area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in appendix A, Table 1. (See also appendix A, Figure 4.)

(b) *Longline and buoy gear restricted area.* (1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purposes of this paragraph (b), fishing for reef fish means possessing or landing reef fish—

(i) for which a bag limit is specified in § 641.24(b), in excess of that bag limit; or

(ii) For which no bag limit is specified, in excess of 5 percent by weight of all fish aboard or landed.

(2) A person aboard a vessel that uses on any trip longline or buoy gear in the longline and buoy gear restricted area to fish for species other than reef fish is limited on that trip to the bag limits specified in § 641.24(b) and, for other reef fish, to 5 percent by weight of all fish aboard the vessel or landed.

(3) The longline and buoy gear restricted area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 2. (See also Appendix A, Figure 5).

§ 641.24 Bag and possession limits.

(a) *Applicability.* Bag limits apply to a person who fishes in the EEZ—

(1) From a fixed structure without a permit specified in § 641.4;

(2) From a vessel—

(i) That does not have on board a permit specified in § 641.4,

(ii) With trawl gear or entangling net gear on board,

(iii) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b), or

(iv) That is carrying a passenger who fishes for a fee; or

(3) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(b) *Bag limits.* Daily bag limits are:

(1) Red snapper—7.

(2) Snappers, excluding red, lane, and vermilion snapper—10.

(3) Groupers—5.

(4) Greater amberjack—3.

(5) All others—unlimited.

(c) *Possession limits.* A person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits specified in paragraph (b) of this section, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(1) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(2) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to State waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of reef fish.* A person for whom a bag or possession limit specified in paragraph (b) or (c) of this section applies may not transfer at sea a reef fish—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such reef fish was taken.

(g) *Sale.* A reef fish taken under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold.

§ 641.25 Commercial quotas.

Persons who are fishing under a permit issued pursuant to § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to the following quotas each fishing year:

(a) Red snapper—3.1 million pounds.

(b) Yellowedge, misty, warsaw, and snowy grouper (deeper-water groupers), combined—1.8 million pounds.

(c) All other groupers, excluding jewfish, combined—9.2 million pounds.

(d) All others—unlimited.

§ 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register**, after the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the **Federal Register** and were held in cold storage by a dealer or processor.

§ 641.27 Procedure for specification of total allowable catch (TAC) and adjustment of management measures.

(a) Prior to April 1 each year, or such other time as agreed upon by the Gulf of Mexico Fishery Management Council (Council) and the Regional Director, the Science and Research Director will, as provided for in 50 CFR 602.12(e), update or complete a stock assessment and fishery evaluation (SAFE) report for red snapper and other reef fish stocks or stock complexes; assess the current spawning stock biomass per recruit ratio (SSBR) levels for each stock; estimate current fishing mortality (F) in relation to F(SSBR); estimate other population parameters; summarize statistics on the fishery; and analyze social and economic data.

(b) The Council will convene a scientific assessment panel (Panel) that will annually review the SAFE report and other relevant data, and will prepare a written report to the Council specifying a range of acceptable biological catch (ABC) for each stock or stock complex in the management unit identified by the Council, NMFS, or the Panel. The ABCs shall be calculated so as to achieve reef fish population levels at or above the 20 percent SSBR goal by January 1, 2000. Where data are inadequate to compute the SSBR model, the Panel will provide the best estimate of ABC that should result in at least 20 percent SSBR level. The ABC ranges will prevent an overfished stock from further decline. A risk analysis showing the probabilities of attaining the stock goal and the annual transitional yields will be calculated for each level of F within the ABC range. The Panel report will include recommendations on quotas, bag limits, size limits, specific gear limits, season closures, and other restrictions required to attain the management goal, along with the associated economic and social impacts.

(c) The Council will conduct a public hearing on the Panel report(s) at or prior to the time it is considered by the Council for subsequent action. Other public hearings may be held also. The Council will request review of the report(s) by its advisory panel and scientific and statistical committees and may convene these groups to provide advice before taking action.

(d) The Council in selecting a TAC level for each stock or stock complex for which an ABC range has been identified, in addition to taking into consideration the recommendations provided for in paragraphs (a), (b), and (c) of this section will:

(1) Set TAC within or below the ABC range or set a series of annual TACs that come within the ABC range within three years or less; and

(2) Subdivide the TACs into commercial and recreational allocations which maximize the net benefits of the fishery to the nation. The allocations will be based on historical percentages harvested by each user group during the base period of 1979–87. However, if the harvest in any year exceeds the allocation for either the recreational or commercial user group, subsequent allocations pertaining to the respective user group will be adjusted to assure meeting the January 1, 2000, spawning stock biomass per recruit goal.

(e) The Council will provide its recommendations to the Regional

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Director for implementing or changing TACs for each stock or stock complex, the quotas, bag limits, trip limits, size limits, closed seasons, and gear restrictions necessary to attain the TAC, along with the reports, a regulatory impact review and environmental assessment of impacts, and the proposed regulations, before October 15 of each year, or such other time as agreed upon by the Council and the Regional Director.

(f) Prior to each fishing year, or such other time as agreed upon by the Regional Director and the Council, the Regional Director will review the Council's recommendations and supporting information and, if he concurs that the recommendations are consistent with the objectives of the FMP, the national standards, and other applicable law, he shall forward for publication notice of proposed TACs and associted management measures (harvest restrictions) by November 1, of each year or such other time as agreed upon by the Council and the Regional Director, providing up to 30 days for additional public comment. The Regional Director will take into consideration all information received and will forward for publication in the **Federal Register** the notice of final rule by December 1 of each year, or such other time as agreed upon by theCouncil and the Regional Director.

(g) Appropriate management measures that may be implemented or modified by proposed and final rules include:

(1) The TACs for each stock or stock complex that are designed to achieve a specific level of ABC within the first year or annual levels of TAC designed to achieve the ABC level within three years.

(2) Bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas designed to achieve the TAC level.

9. A new appendix A is added to part 641 consisting of new Tables 1 and 2, newly redesignated Figures 1, 2, and 3, and new Figures 4 and 5 to read as follows:

Appendix A to Part 641—Tables and Figures

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No.	Reference location [1]	N. lat.	W. long.
1	Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5'	82°41.5'
2	North of Marquesas Keys	24°48.0'	82°06.5'
3	Off Cape Sable	25°15.0'	82°02.0'
4	Off Sanibel Island—Inshore	26°26.0'	82°29.0'
5	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
6	West of Egmont Key	27°30.0'	83°21.5'
7	Off Anclote Keys—Offshore	28°10.0'	83°45.0'
8	Off Anclote Keys—Inshore	28°10.0'	83°14.0'
9	Off Deadman Bay	29°38.0'	84°00.0'
10	Seaward limit of Florida's waters east of Cape St. George	29°35.5'	84°38.6'
	Thence westerly along the seaward limit of Florida's waters to		
11	Seaward limit of Florida's waters south of Cape San Blas	29°32.2'	85°27.1'
12	Southwest of Cape San Blas	29°30.5'	85°52.0'
13	Off St. Andrew Bay	29°53.0'	86°10.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Florida/Alabama border	29°34.5'	87°38.0'
16	Off Mobile Bay	29°41.0'	88°00.0'
17	South of Alabama/Mississippi border	30°01.5'	88°23.7'
18	Horn/Chandeleur Islands	30°01.5'	88°40.5'
19	Chandeleur Islands	29°35.5'	88°37.0'
20	Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3'	89°00.0'
	Thence southerly and westerly along the seaward limit of Louisiana's waters to		
21	Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3'	89°28.2'
22	Southeast of Grand Isle	29°09.0'	89°47.0'
23	Quick flashing horn buoy south of Isles Dernieres	28°32.5'	90°42.0'
24	Southeast of Calcasieu Pass	29°10.0'	92°37.0'
25	South of Sabine Pass—10 fathoms	29°09.0'	93°41.0'
26	South of Sabine Pass—30 fathoms	28°21.5'	93°28.0'
27	East of Arkansas Pass	27°49,0'	96°19.5'
28	East of Baffin Bay	27°12.0'	96°51.0'
29	Northeast of Port Mansfield	26°46.5'	96°52.0'
30	Northeast of Port Isabel	26°21.5'	96°35.0'
31	U.S./Mexico EEZ boundary	26°00.5'	96°36.0'
	Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No.	Reference location [1]	N. lat.	W. long.
1	Seaward limit of Florida's waters north of Dry Tortugas	24°48.0'	82°48.0'
2	North of Rebecca Shoal	25°07.5'	82°34.0'
3	Off Sanibel Island—Offshore	26°26.0'	82°59.0'
4	West of Egmont Key	27°30.0'	83°21.5'
5	Off Anclote Keys—Offshore	28°10.0'	83°45.0'
6	Southeast corner of Florida Middle Ground	28°11.0'	84°00.0'

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No.	Reference location [1]	N. lat.	W. long.
7	Southwest corner of Florida Middle Ground	28°11.0'	84°07.0'
8	West corner of Florida Middle Ground	28°26.6'	84°24.8'
9	Northwest corner of Florida Middle Ground	28°42.5'	84°24.8'
10	South of Carrabelle	29°05.0'	84°47.0'
11	South of Cape St. George	29°02.5'	85°09.0'
12	South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0'	85°30.0'
13	South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7'	85°30.0'
14	De Soto Canyon	30°06.0'	86°55.0'
15	South of Pensacola	29°46.0'	87°19.0'
16	South of Perdido Bay	29°29.0'	87°27.5'
17	East of North Pass of the Mississippi River	29°14.5'	88°26.0'
18	South of Southwest Pass of the Mississippi River	28°46.5'	89°26.0'
19	Northwest tip of Mississippi Canyon	28°38.5'	90°08.5'
20	West side of Mississippi Canyon	28°34.5'	89°59.5'
21	South of Timballer Bay	28°22.5'	90°02.5'
22	South of Terrebonne Bay	28°10.5'	90°31.5'
23	South of Freeport	27°58.0'	95°00.0'
24	Off Matagorda Island	27°43.0'	96°02.0'
25	Off Aransas Pass	27°30.0'	96°23.5'
26	Northeast of Port Mansfield	27°00.0'	96°39.5'
27	East of Port Mansfield	26°44.0'	96°37.5'
28	Northeast of Port Isabel	26°22.0'	96°21.0'
29	U.S./Mexico EEZ boundary	26°00.5'	96°24.5'
	Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

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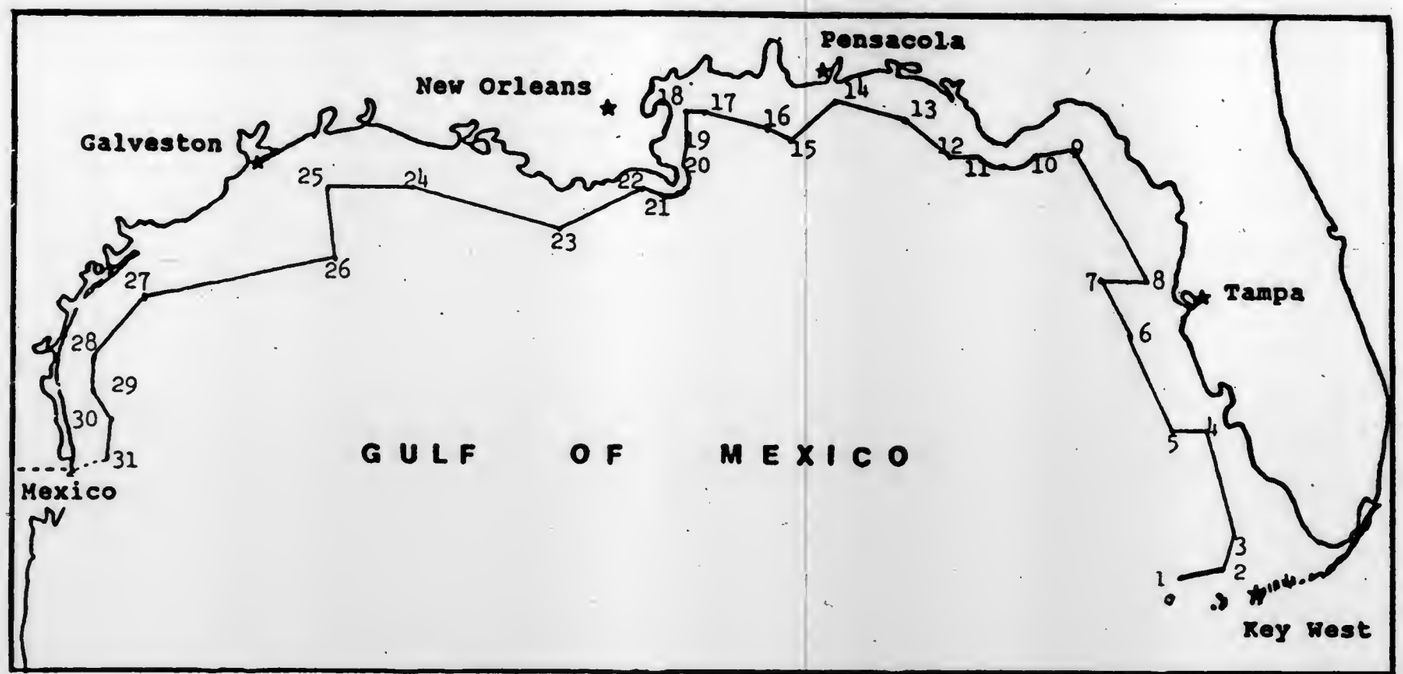


Figure 4. Seaward Limits of the Stressed Area.

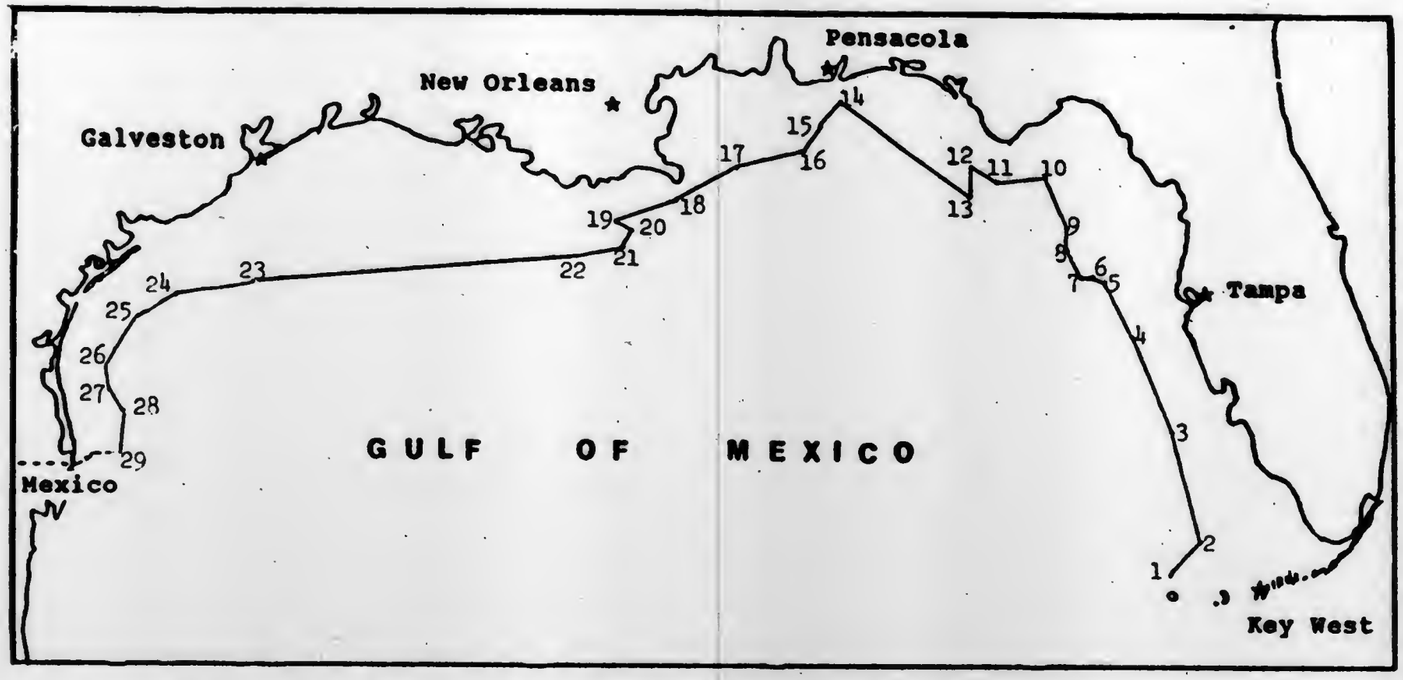


Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

[FR Doc. 89-23708 Filed 10-3-89; 2:27 pm]
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Notices

Federal Register
Vol. 54, No. 193
Friday, October 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-158]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in Yolo County, California, of tobacco plants genetically engineered to tolerate the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sally McCammon, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-136-04.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to tolerate the herbicide glyphosate. The field trial will take place in Yolo County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpruvyla-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into a tobacco chromosome. In nature, chromosomal genetic material of these plants can only be transfered to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is sufficiently distant from any sexually compatible plants susceptible to cross-pollination. In addition, no tobacco plant material will be allowed to survive.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene itself, not its gene product, confer on tobacco any plant pest characteristic. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The microorganism from which the 5-enoloyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco in the environment in this field test.

5. Select noncoding regulatory regions derived from plant pests have been incorporated into the chromosomal DNA but do not confer on tobacco any plant pest characteristics.

6. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to tobacco plants has been evaluted for its use in this this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

7. The vector agent, the bacterium that was used to deliver the vector DNA and 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed tobacco plants.

8. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

9. Glyphosate is one of the herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

10. The field test site is small (99,825 square feet).

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 3rd day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-23678 Filed 10-5-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

Agency: National Oceanic and Atmospheric Administration, Commerce
Title: Comparative Consumer Attitude Study—Seafood Advertising and Promotion Program
Form Number: None
Type of Request: New collection
Burden: 4500 respondents; 750 reporting hours; average hours per response—.16 hours
Need and Uses: The National Fish and Seafood Promotion Council is planning a seasfood promotion program. This study will measure the effectiveness of that program
Affected Public: Individuals or households
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 28, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23635 Filed 10-5-89; 8:45 am]

BILLING CODE 3570-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35)

Agency: National Oceanic and Atmospheric Administration, Commerce
Title: Coastal Zone Management Program Administrative Grants—Performance Reports
Form Number: None; OMB—0648-0119
Type of Request: Request for extension of OMB approval of a currently cleared collection
Burden: 29 respondents; 2,436 reporting hours; average hours per response—21 hours
Needs and Uses: States which have received grants to implement federally-approved coastal zone management plans must submit quarterly performance reports. The information is used to ensure that the activities being funded are meeting the objectives, and that the state is adhering to its approved plan
Affected Public: State or local governments
Frequency: Quarterly, semi-annually, and annually
Respondent's Obligation: Required to obtain or maintain a benefit
OMB Desk Officer: Russell Scarato, 394-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 29, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23636 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce
Title: Marine Mammal Mortality Reports
Form Number: Agency—None; OMB—0648-0099
Type of Request: Request for reinstatement of a previously approved collection for which approval has expired.
Burden: 1 respondent; .25 reporting hour; average hours per response—.25 hours
Needs and Uses: Commercial fishermen who have obtained a general permit or a certificate of exemption under the Marine Mammal Protection Act are required to report on marine mammals killed incidental to commercial fishing operations. The information is used by NOAA in determining the nature and extent of the interactions between marine mammals and commercial fishing vessels
Affected Public: Business or other for profit
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer,

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Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 29, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23637 Filed 10-4-89; 8:45 am]

BILLING CODE 3570-CW-M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held October 17, 1989 at 9:30 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed. The meeting is called on short notice because of COCOM deliberations which have just recently been scheduled.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Report of Committee's Working Group on MITAC Projects.
5. Briefing on 1989 Chairmen's Meeting.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th Street and Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: September 29, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89-23701 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 9110-01, 9110-02, 9110-03]

Decision and Order; In Re Wilfried Lange Purchasing Pool Company and PPC Computer Handles

Summary

Pursuant to the August 31, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles, (hereafter Respondent) and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of fifteen years from the date here of all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768-799).

Order

On August 27, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: September 28, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Wilfried Lange, Am Stelg 3, 8913 Schondorf, Federal Republic of Germany.

Appearance for Agency: Anthony K. Hicks, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 377-5311.

Preliminary Statement

On April 20, 1989, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH (Respondents), charging Respondents with violating the Export Administration Act III 1985)] and Section 787.5 of the Export Administration Regulation (the Regulations). The Respondents failed to answer.

Because of the failure to answer, this office issued an Order, dated June 6, 1989, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by July 6, 1989, pursuant to § 388.8 of the Regulations, which provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued folowing the disposition of contested charges.

Agency counsel filed the Motion for Default Judgment on June 29, 1989. The Agency also submitted documentary evidence to support allegations made in the charging letter. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on July 7, 1989, to which there has been no response.

Facts and Discussion

The charging letter, alleged that, on or about January 25, 1987, Lange falsified material facts in connection with five separate transactions. It is specifically alleged that, by so doing, Lange committed five violations of section 787.5 of the Regulations, each of which involves U.S.-origin commodities controlled under section 5 of the Act for national security reasons.[1]

The facts giving rise to the five charges are as follows: On or about November 25, 1986, an investigation was initiated under the Act, to ascertain the whereabouts of two DEC VAX 11/750 computers and certain other controlled U.S.-origin commodities that the Respondent Lange purchased during the years 1985 and 1986. Ex. 2. As a part of that investigation, Lange was asked to provide sales invoices identifying the persons to whom he had sold the two DEC VAX 11/750 computers and any other U.S.-origin commodities he has acquired during those years. Ex. 2.

In response to an Agency investigators request, on or about January 25, 1987, Lange provided five sales invoices, Ex. 3(a), representing that Lange's company, PPC, had sold certain U.S.-origin commodities to:

1. Multifunktion GmbH, Bad Honningen, West Germany (Multifunktion), under account number 113-85; the invoice is dated November 22, 1985 and the controlled commodity listed therein is a VAX 11/750 computer. Exs. 3(b) and 4;
2. Prosystem Vertriebs GmbH, Kelsterbach, West Germany (Prosystem) under account number 202-86; the invoice is dated January 17, 1986 and the controlled commodity listed therein is a VAX 11/750 computer Exs. 3(c) and 4;
3. Elba Electric GmbH, Altlupheim, West Germany (Elba), under account number 107-86; the invoice is dated May 6, 1986 and the controlled commodity listed therein is a CDC 9766 Disk Drive. Exs. 3(d) 5;
4. Peka GmbH, Hamburg, West Germany (Peka), under account number 118-86; the invoice is dated July 24, 1986 and the controlled commodity listed therein is an FP 750 Floating Point for a VAX 11/750 computer. Exs. 3(e) and 5; and
5. Prowie GmbH, Augsburg, West Germany (Prowie), under account number 126-86; the invoice is dated December 3, 1986 and the controlled commodity listed therein is an FP 750 Floating Point for a VAX 11/750. Exs. 3(f) and 5.

It was demonstrated that Lange had not in fact sold the above listed commodities to Multifunktion, Prosystem, Elba, Peka or Prowie. Exs. 6 and 2. In fact, the representations made on each of the five invoices that Lange provided to the Department were false.

Under section 787.5 of the Regulations, no person may falsify or conceal any material fact from the Office of Export Enforcement in the course of an investigation instituted under the authority of the Act.

The above-described evidence, established that during an investigation, Respondent Lange was asked to provide sales invoices that would identify the whereabouts of two DEC VAX 11/750 computers and certain other controlled U.S.-origin commodities.

The names of the persons to whom Lange had sold the two DEC VAX 11/750 computers and other U.S.-origin commodities he had acquired during ten years 1985 and 1986 were material facts because the DEC VAX 11/750 Floating Point for a VAX 11/750 computer are commodities that were controlled for reasons of national security. It was material, for the Agency to know the parties to whom those commodities had been sold in order for it to ensure that they had not fallen into the hands of those who were not entitled to receive such exports.

The evidence of record establishes that Respondent, during the course of an investigation provided five invoices, each of which contained false representations of material fact. By so doing, Lange falsified material facts in connection with five separate transactions and thereby committed five violations of Section 787.5 of the Regulations, each of which involved U.S.-origin commodities controlled under section 5 of the Act for national security reasons.

Conclusion

The evidence submitted by Agency Counsel supports the allegations made in the charging letter of April 20, 1989. The Respondent falsified material facts in connection with the five separate export transactions as alleged.

The pattern of conduct demonstrated by the violations show an intent to violate United States export laws and regulations. The further reexport of these restricted pieces of equipment is a factor in aggravation further indicating a deliberate illegal scheme. I find that, as requested, an Order denying export privileges for fifteen years from the date that a final order should be entered in this proceeding. Such action is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

Order

I. For a period of fifteen years from the date of the final Agency action, Respondents

Wilfried Lange individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR parts 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368-399 (1988).

The Regulations governing the violations at issue are found in the 1987 version of the Code of Federal Regulations. Those regulations are codified at 15 CFR parts 368-399 (1987) and, to the degree to which they pertain to this matter, are substantially the same as the 1988 version.

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IV. All outstanding individual validated export licenses in which Respondents appears on participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization from the Office of Export Licensing, shall, with respect to the U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. By order of April 20, 1988 (53 FR 15253, April 28, 1988), which was renewed on June 20, 1988 (53 FR 23294, June 21, 1988); August 19, 1988 (53 FR 32639, August 26, 1988); October 18, 1988 (53 FR 43249, October 26, 1988); December 17, 1988 (53 FR 52207, December 27, 1988) and on February 15, 1989, (54 FR 7459, February 21, 1989), Wilfried Lange, individually and doing business as Purchasing Pool Company and PPC Computer Handles GmbH, was temporarily denied export privileges. The final Order in this matter will conclude the administrative proceeding initiated against these Respondents as a result of the investigation which first gave rise to the April 28, 1988 Order. Accordingly, upon entry of the final Order in this proceeding, the Temporary Denial Order will be vacated without further action.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Dated: August 31, 1989.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30-day statutory review process which is amended by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985).

[FR Doc. 89-23638 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 18-89]

Foreign-Trade Zone 78—Nashville, TN; Application for Subzone: GM-Saturn Auto Plant, Maury County, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville Port Authority, grantee of FTZ 78, requesting special-purpose subzone status for the automobile manufacturing plant of Saturn Corporation (subsidiary of General Motors Corporation), located in Maury County, Tennessee, adjacent to the Nashville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 25, 1989.

The new Saturn plant (1,900 acres) is located on Highway 31, in Maury County, adjacent to the City of Spring Hill, Tennessee, some 32 miles south of Nashville. The plant is currently under construction. Production of automobiles (3,000 employees) is slated to begin in mid-1990. While most components will come from domestic suppliers, dutiable components from abroad will account for some 3 percent of vehicle value at the outset. The major foreign components will be: electronics, wiring harnesses, torque converters, starters, blocker rings, transmission bearings, timing chains, levers and instrument clusters.

Zone procedures would exempt Saturn from Customs duty payments on the foreign components used in its exports. On domestic sales, the company would be able to choose the duty rate on finished autos (2.5%) for the foreign-sourced components (average duty rate, 4.1%). The savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and, Colonel James T. King, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, Tennessee 37202-1070.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 17, 1989.

A copy of the application is available for public inspection at each of the following locations: U.S. Department of Commerce District Office, Parkway Towers, Suite 1114, 404 James Robertson Parkway, Nashville, TN 37219; Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: September 29, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-23641 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-016]

Choline Chloride from Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation.

SUMMARY: On August 10, 1989, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping duty order on choline chloride from Canada. The review covers Chinook Chemicals Co., Ltd and the period November 17, 1986 through January 8, 1988.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, Import Administration, Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 32838) the preliminary results of its administrative review and intent to revoke the antidumping duty order on choline chloride from Canada (49 FR 45469, November 16, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of choline chloride from Canada. Choline chloride is marketed in several forms including, but not limited to, a solution of 70 percent choline chloride in water (aqueous choline chloride) or in potencies of 50 to 60 percent dried on a cereal carrier. During the review period, such merchandise was classifiable under *Tariff Schedules of the United States Annotated* ("TSUSA") item number 439.5055 and is currently classifiable under HTS item number 2923.10.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States, and the period November 17, 1986 through January 8, 1988.

Final Results of Review and Revocation of Antidumping Duty Order

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results. We determine that the weighted-average dumping margin for Chinook is 0.0008 percent, a rate we consider *de minimis*.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

There is no evidence in the record indicating that there is any likelihood of the resumption of sales at less than fair value by Chinook Chemicals Co., Ltd., the only known manufacturer and/or exporter of Canadian choline chloride to the United States. Accordingly, we determine to revoke the antidumping duty order on choline chloride from Canada. The revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 8, 1988, the date of our tentative determination to revoke (53 FR 548).

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1986, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The administrative review, revocation, and notice are in accordance with section 741(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.22 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22). Because the tentative revocation was published (53 FR 548, January 8, 1988) prior to March 28, 1989, we are proceeding with the revocation pursuant to 19 CFR 353.54 (1988) of the Commerce Regulations.

Dated: September 29, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-23702 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than October 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceeding:	
Italy: Pressure Sensitive Plastic Tape (A-475-059)	10/01/88-09/30/89
Japan: Steel Wire Rope (A-588-045)	10/01/88-09/30/89
Japan: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 inches (A-588-604)	10/01/88-09/30/89
The People's Republic of China: Barium Chloride (A-570-007)	10/01/88-09/30/89
The People's Republic of China: Shop Towels of Cotton (A-570-003)	10/01/88-09/30/89
Countervailing Duty Proceeding:	
Brazil: Certain Agricultural Tillage Tools (C-351-406)	01/01/88-12/31/88
India: Certain Iron-Metal Castings (C-533-063)	01/01/88-12/31/88
Iran: Roasted In-Shell Pistachios (C-507-601)	01/01/88-12/31/88
New Zealand: Certain Steel Wire Nails (C-614-701)	01/01/88-12/31/88
Sweden: Certain Carbon Steel Products (C-401-401)	01/01/88-12/31/88

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	Period
Thailand: Certain Steel Wire Nails (C-549-701)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by October 31, 1989.

If the Department does not receive by October 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: September 29, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-23644 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-807]

Preliminary Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain residential door locks and parts thereof from Taiwan (hereinafter residential door locks) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of residential door locks from Taiwan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by December 18, 1989.

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Clapp or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 and 377-4103, respectively.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

We preliminarily determine that residential door locks from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 21999, May 22, 1989), the following events have occurred. On June 8, 1989, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of residential door locks (54 FR 25351, June 14, 1989).

On June 13, 1989, petitioners alleged that sales in the home market were being made at prices below the cost of production (COP). On June 27, 1989, we informed petitioners that their COP allegation was deficient and that additional information would be required in order to initiate a COP investigation. Petitioners filed additional information in support of their COP allegation on August 18, 1989. After careful analysis of petitioners' COP allegation, we determined that there was insufficient information on the record to provide a specific and objective basis to establish reasonable grounds to believe or suspect that any of the respondents are engaged in below cost sales. Accordingly, on September 1, 1989, we informed petitioners of our decision not to initiate a COP investigation.

On June 14, 1989, the Department presented sections A, B and C of its questionnaire to Taiwan Fu Hsing Industrial Co., Ltd. (Fu Hsing), Tong Lung Metal Industry Co., Ltd. (Tong Lung) and Posse Lock Manufacturing Co., Ltd. Posse). These three companies accounted for a substantial portion of exports of the subject merchandise from Taiwan to the United States during the period of investigation.

Responses to section A of the questionnaire were due on June 28, 1989, and responses to the remaining sections were due on July 14, 1989. At the request of the respondents, the response deadlines for Sections B and C of the questionnaire were extended to July 28, 1989. Responses to section A were received on June 28, 1989, and responses to Sections B and C were received July 28, 1989.

The Department issued deficiency letters to respondents on August 11 and August 23, 1989, the latter requesting that computer tapes with correct product comparisons be submitted no later than September 12, 1989. On August 31 and September 1, 1989, respondents submitted new computer tapes; however, respondents stated that these tapes did not contain the requested product comparisons.

On September 11, 1989, Tong Lung submitted a computer tape and stated that this tape now contained the correct product comparisons. On September 12, 1989, Fu Hsing and Posse advised the Department that the tapes submitted on August 31 and September 1, 1989, respectively, did, in fact, contain the revised similar product comparisons requested in the Department's August 23, 1989 deficiency letter. On September 21, 1989, Fu Hsing submitted an additional tape which purportedly contained the revised product comparisons and stated that the August 31 1989 tape, which was submitted in error, did not contain the revised product comparisons.

On September 25, 1989, upon realizing that respondents had misinterpreted our instructions for selecting product matches, we informed respondents that they would have one last opportunity to submit the correct product comparisons no later than October 2, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation include the following three categories of residential door locks: (1) Tubular or cylindrical knob-operated locksets with spring latches or dead latches, whether face-plated or drive-in type, including entry-handled sets; (2) dead locks, whether face-plated or drive-in type; and (3) lever-operated locksets, whether face-plated or drive-in type. All three categories are imported from Taiwan and sold in any of the following forms: Fully assembled partially assembled, unassembled, or parts relating hereto.

Pursuant to a request from the ITC, we have clarified the scope of the investigation to fully differentiate between residential and other door locks. This clarification, included in the ITC's preliminary determination, is described below.

Residential door locks are differentiated from other door locks (*i.e.*, those for commercial or other uses) by the size of the face-plate or housing assembly, as follows: (1) Face-plated spring lock/latch, dead latch or dead bolt units have (a) a face-plate size of 1 inch or less (plus a tolerance of + 1/16 inch) in width, regardless of length, or (b) an outside diameter of the latch or dead bolt housing assembly of 7/8 inch or less (plus a tolerance of + 1/16 inch) in outside diameter; and (2) drive-in type spring lock/latch, dead latch or dead bolt units have a housing assembly (including the sleeve retaining device) of 1 inch or less (plus a tolerance of + 1/16 inch) in outside diameter. These door locks are typically used in the construction of new one- and two-family dwellings, apartment buildings, condominiums, and mobile and prefabricated homes and in the replacement or retrofitting of existing locks in these dwellings. This merchandise is currently classifiable under HTS item 8301.40.6030. This category does not include door locks suitable for use with garage, overhead, or sliding doors.

Period of Investigation

The period of investigation is November 1, 1988 through April 30, 1989.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established three categories of "such or similar" merchandise consisting of: (a) Tubular and cylindrical locksets; (b) dead locks and dead bolts; and (c) sectional handled locksets and interconnected locksets.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance. For tubular and cylindrical locksets we used the following criteria: (1) Type of lock, whether tubular or cylindrical; (2) function of lock, whether entry, privacy or passage; (3) knob operated or lever operated locks; (4) knob type; (5) lock finish; and (6) standard latch or drive-in latch. For dead locks we considered: (1) Number of cylinders, whether single or double; (2) lock finish; and (3) standard latch or drive-in latch. For sectional handled locksets and interconnected locksets we considered: (1) Type of lockset, whether sectional handled or interconnected; (2) type of lock, whether tubular or cylindrical; (3) knob operated or lever operated lock; (4) knob or handle type; and (5) lockset finish.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

In order to determine whether there were sufficient sales of certain residential door locks in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales to the volume of third country sales within each such or similar category, in accordance with section 773(a)(1) of the Act. In accordance with § 353.48 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.48), where the volume of home market sales was at least 5 percent of the volume of third country sales, we used home market sales as the basis for foreign market value. Where the volume of home market sales was less than 5 percent of the volume of third country sales, we determined that home market sales did not constitute a viable basis for calculating foreign market value. In these instances, we used third country sales as the basis for foreign market value.

For Tong Lung, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for the such or similar category of tubular and cylindrical locksets. For the two such or similar categories of dead bolts and dead locks, and sectional handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We therefore used third country sales for those categories. We determined that for dead bolts and dead locks, sales to Canada and Australia were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries was the most comparable to that sold in the United States and was sold in sufficient quantities. For sectional handled and interconnected locksets, we determined that sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in Canada was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Posse, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for two such or similar categories: tubular and cylindrical locksets, and dead bolts and dead locks. For the such or similar category of sectional handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We determined that sales to Australia were the most appropriate basis for calculating foreign market value because the merchandise sold to Australia was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

Fair Value Comparisons

To determine whether sales of residential door locks from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with section 776(c) of the Act, where a company has submitted a response which we consider to be substantially deficient, or has submitted information too late to be considered for purposes of this preliminary determination, we relied on best information available. Those instances where we have used best information available are fully described below.

In the computer tapes submitted on July 28, 1989, all three respondents failed to make their identical and similar product comparisons in accordance with the instructions outlined in the

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Department's questionnaire. These tapes contained numerous incorrect product comparisons. In response to our August 23, 1989 deficiency letter requesting that respondents revise their product comparisons in strict accordance with the instructions outlined in the original questionnaire, Fu Hsing, Posse, and Tong Lung submitted computer tapes on August 31, September 1, and September 11, 1989, respectively. Respondents again failed to make their product comparisons in accordance with the instructions outlined in the questionnaire, and these tapes contained numerous incorrect product comparisons. From our analysis of respondents' submissions, it appeared that respondents had interpreted the "five percent adequate measure test" described in section B of the questionnaire to be applied to each specific product comparison. That is, respondents only compared a U.S. product to the identical or most similar home market product if the volume of sales of the home market product was at least five percent of the volume of sales of the U.S. product. In a meeting held on September 22, 1989, counsel for respondents confirmed that respondents had in fact applied the "five percent adequate measure test" on a product-by-product basis.

While respondents' incorrect product comparisons are not usable for purposes of this preliminary determination, we have granted respondents an opportunity to submit revised product comparisons for use in the final determination. Provided that the information is submitted in conformity with our instructions, and prior to our preliminary determination, we will verify the revised information.

For two of the respondents, Tong Lung and Posse, the data submitted, while containing numerous incorrectly matched products, also contains a significant number of correct matches to serve as a reliable basis for our fair value comparisons. Therefore, for purposes of this preliminary determination, we have used the information reported by Tong Lung and Posse for all fair value comparisons for which the product comparisons were correctly reported. However, because Tong Lung and Posse failed to follow our instructions, resulting in numerous incorrect product comparisons, we have used best information available for the incorrect comparisons, in accordance with section 776(c) of the Act. For fair value comparisons in which Tong Lung and Posse had incorrect product matches, we used the highest margin alleged in the petition as best information available. To calculate the weighted average margin listed in the "Suspension of Liquidation" section of this notice, we weighted by quantity the margins calculated using Tong Lung's and Posse's correctly reported sales information with the magin alleged by petitioners for the incorrectly reported product comparisons.

In the case of Fu Hsing, not only was there a limited number of correctly matched sales, but there was also a significant number of products sold in the United States for which no match was provided at all. Additionally, the recurring misstatements and apparent confusion concerning which submitted tape contained the correct revised product comparisons undermined the credibility of the submitted data. Furthermore, the computer tape submitted on September 21, 1989, only ten days before the preliminary determination, was received too late to analyze fully and use for purposes of this determination. For these reasons, we determined that the data Fu Hsing submitted do not provide a reliable basis for our fair value comparisons. Consequently, we used best information available in accordance with section 776(C) of the Act for all of Fu Hsing's sales. As best information available for Fu Hsing, we used the highest margin alleged in the petition. Where the petition did not contain a margin for a particular such or similar category, we used the average of the highest margins alleged in the petition for the other such or similar categories. To calculate the margin listed in the "Suspension of Liquidation" section of this notice, we weighted the margin for each such or similar category by the quantity of sales to the United States for that category.

United States Price

For both Tong Lung and Posse, where U.S. sales were reported with correct home maket product comparisons, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

A. *Fu Hsing:*

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

B. *Tong Lung:*

For Tong Lung, where U.S. sales were reported with correct product comparisons, we calculated purchased price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.&f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Tong Lung reported in its narrative response that harbor maintenance fees were 0.05 percent of gross unit price. Because the data in the computer tape did not correspond, we recalculated harbor fees based on the information in the narrative response. Tong Lung reported an adjustment to third country price for a surcharge. However, because no information describing this surcharge was submitted on the record, we disallowed the claimed adjustment.

We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to 772(d)(1)(C) of the Act we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

C. *Posse:*

For Posse, where U.S. sales were reported with correct product comparisons, we calculated purchase price based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, harbor maintenance fees, and containerization expenses. We recalculated harbor maintenance fees as described above for Tong Lung. We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we also added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value based on home market or third country sales, as appropriate.

A. *Fu Hsing:*

For Fu Hsing, we used best information available as described in the "Fair Value Comparisons" section of this notice.

B. *Tong Lung:*

For the such or similar category of tubular and cylindrical locksets, we used sales in the home market as the basis of foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs. We made an adjustment for home market indirect selling expenses, which included salesmen's salaries and transportation expenses. These expenses were offset by the amount of commission paid on U.S. sales, in accordance with § 353.41(e)(1) of the Department's regulations.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, pursuant to § 353.56 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar categories of dead bolts and dead locks, and sectional handled and interconnected locksets, we used sales to third countries as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, harbor maintenance fees and containerization expenses. We recalculated the harbor maintenance fee based on Tong Lung's narrative response. We deducted third country packing costs and added U.S. packing costs.

We made deductions, where appropriate, for differences in credit terms, including bank charges and transit interest, pursuant to § 353.56 of the Department's regulations. We added rebated duties and a special rebate from the China Steel Corporation pursuant to section 772(d)(1)(B) of the Act. Tong Lung reported an adjustment to third country price for a surcharge. However, because no information describing this charge was submitted on the record, we disallowed the claimed adjustment.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

C. *Posse:*

For the such or similar categories of tubular and cylindrical locksets, and dead bolts and dead locks, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, pursuant to § 353.56 of the Department's regulations.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax we computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category sectional handled and interconnected locksets, we used sales to the third country as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. Taiwan port prices to unrelated customers in the third country. We made deductions, where appropriate, for foreign inland freight and containerization expenses. We deducted third country packing costs and added U.S. packing costs. We made deductions, where appropriate, for differences in credit terms, including bank charges and transit interest. We added rebated duties and a special rebate from the China Steel Corporation to the third country price pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of residential door locks, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of residential door locks exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Fu Hsing	60.83
Tong Lung	30.31
Posse	25.41
All others	41.67

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the latter of 120 days after the date of this determination, or 45 days after the final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Commerce Department's regulations, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than November 28, 1989, and rebuttal briefs no later than December 4, 1989. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to

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comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10:00 a.m. on December 6, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: October 2, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-23703 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 89-224. *Applicant:* USDC, NOAA, National Marine Fisheries Service, 3209 Frederic Street, Pascagoula, MS 39568-1207. *Instrument:* Digital Fishing Measuring Board, Model FMB-IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used for investigating the length of individual specimens of fish, shrimp and other select marine species. The system will save considerable time in processing and editing data for analysis and make data available in a shorter time period. *Application Received by Commissioner of Customs:* September 9, 1989.

Docket Number: 89-225. *Applicant:* Research Triangle Institute, Office of Purchasing, P.O. Box 12193, Research Triangle Park, NC 27709-2193. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used to identify and characterize the six asbestos minerals in bulk and air samples (chryostile (serpentine), amosite (grunerite), anthophyllite, crocidolite (riebeckite), tremolite and actinolite). Additional uses include the identification of synthetic fibers used as asbestos substitutes, such as mineral wool, fiberglass and ceramic wool and microanalysis of various particulates related to indoor air quality. *Application Received by Commissioner of Customs:* September 12, 1989.

Docket Number: 89-226. *Applicant:* Texas A&M Research Foundation, University at Wellborn Road, College Station, TX 77843. *Instrument:* Whole Seedling Porometer, Model CS-102. *Manufacturer:* Micromet Systems, Canada. *Intended Use:* Studies of stomatal conductance and whole-seedling transpiration of planted loblolly pine seedlings. These studies will be conducted to determine the effects of a range of residual overstory densities on planted loblolly pine seedling water relations. *Application Received by Commissioner of Customs:* September 13, 1989.

Docket Number: 89-227. *Applicant:* University of San Diego, Alcala Park, San Diego, CA 92110. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, Inc., West Germany. *Intended Use:* The instrument will be used to teach Theory and Practice of Electron Microscopy to junior and senior undergraduate students. *Application Received by Commissoner of Customs:* September 13, 1989.

Docket Number: 89-228. *Applicant:* Alabama A&M University, Normal, AL 35762. *Intrument:* Structural Loading Frame & Experimental Set-ups. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the course Structural Analysis. The objective of this course is to understand structural response to loading- a prerequisite for Structural Design. *Application Received by Commissioner of Customs:* September 13, 1989.

Docket Number: 89-229. *Applicant:* Columbia University, Lamont-Doherty Geological Observatory, Route 9W, Palisades, NY 10964. *Instrument:* Atlas Hydrosweep DS System. *Manufacturer:* Krupp Atlas Elektronik, GmbH, West Germany. *Intended Use:* The instrument will be used to image features on the ocean floor at a resolution of 1-2 meters, allowing structural features to be clearly identified, and their origin and evolution to be understood. Experiments will include mapping selected areas of the seafloor from the shallow continental shelves, to deep water including mid-ocean ridges, fracture zones, submarine volcanoes and deep-sea trenches. *Application Received by Commissioner of Customs:* September 14, 1989.

Docket Number: 89-230. *Applicant:* Washington University School of Medicine, 660 South Euclid Avenue, St. Louis, MO 63110. *Instrument:* Isotope Ratio Mass Spectrometer, Model SIRA Series II. *Manufacturer:* VG Analytical, Ltd., United Kingdom. *Intended Use:* The instrument will be used to study stable isotope enrichment in various biochemical substrates, biological fluids, and excreted metabolic products during stable isotope tracer infusion studies of metabolism in humans. The experiments to be conducted involve infusion or injection of stable isotopically labeled substrates (e.g., [1-^{13}C] leucine, [U-^{13}C]glucose, [^{15}N]glycine) with subsequent collection of the appropriate biological samples for determination of isotope dilution. Material classes submitted for study include amino acids, body proteins, glucose and other carbohydrates, fatty acids of various chain length and saturation, urea, and ammonia. The enrichment data are used for standard kinetic calculations of metabolic fuel transport rates between body organs and for kinetic modeling of biochemical system dynamics in vivo. In addition, the instrument will be used to train pre- and post-doctoral students from a wide variety of disciplines, including chemistry, biochemistry, pharmacology, medicine and pediatrics. *Application Received by Commissioner of Customs:* September 14, 1989.

Docket Number: 89-231. *Applicant:* Health Research, Inc., 1683 Corning Tower, Empire State Plaza, Albany, NY 12237. *Instrument:* Stable Isotope Ratio Mass Spectrometer, Model PRISM Series II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* The instrument will be used for isotope ratio measurements of $^{13}C/^{12}C$, H/D, $^{15}N/^{14}N$, $^{18}O/^{16}O$, $^{36}Ar/^{40}Ar$, $^{38}Ar/^{40}Ar$ and additional isotopes in atmospheric gases such as O_2, N_2, CO_2, CH_4, Co, Ar as they are separated from natural environmental atmospheric samples taken at various locations and from preserved atmospheric samples obtained from air bubble inclusions found in polar ice recovered in deep ice cores. The objective of the research projects is to obtain a more complete understanding on the controls and changes in the atmospheric concentrations of methane and carbon dioxide as a function of time with regard to environmental and climate changes. *Application Received by Commissioner of Customs:* September 15, 1989.

Docket Number: 89-232. *Applicant:* University of Akron, 225 South Forge Street, Akron, OH 44325. *Instrument:* Electron Microscope, Model JEM-1200 EXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to further the study and understanding of polymer science: the characterization of the morphology of new and existing polymers, blends, and crystals. Experiments will be conducted to determine: (a) the effects of shadowing, or etching on single polystyrene molecules, surface replication of bulk crystalline and liquid crystal polymers, and (b) size/distribution data on latex, high contrast stained rubber blends, visual polymers by negative imaging. In addition the instrument will be used in courses to provide basic theory of biological and/or polymer TEM, to train students thoroughly in the operation of the instrument and prepare them for their individual pursuit of research. *Application Received by Commissioner of Customs:* September 18, 1989.

Docket Number: 89-233. *Applicant:* College of the Holy Cross, College Street, Worcester, MA 01610. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in Physical Chemistry Laboratory, a course designed to illustrate some of the principles of physical chemistry, to train in careful experimentation, to develop the habit of quantitative intrepretation of physical measurement and to encourage ability in research. *Application Received by Commissioner of Customs:* September 18, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-23643 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution avenue, NW., Washington, DC.

Docket Number: 89-153. *Applicant:* New York University Medical Center, New York, NY 10016. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 54 FR 24372, June 7, 1989. *Instrument Ordered:* October 21, 1988.

Docket Number: 89-165. *Applicant:* Southwest Foundation for Biomedical Research, San Antonio, TX 78284. *Instrument:* Electron Microscope, Model JEOL-1200EX. *Manufacturer:* JOEL, Ltd., Japan. *Intended Use:* See Notice at 54 FR 30788, July 24, 1989. *Instrument Ordered: March 23, 1989.*

Docket Number 89-167. *Applicant:* Brandeis University, Rosenstiel Basic Medical Sciences Research Center, Waltham, MA 02254-9110. *Instrument:* Electron Microscope, Model CM12. *Manufacturer: N.V. Philips, The Netherlands. Intended Use:* See notice at 54 FR 30788, July 24, 1989. *Instrument Ordered:* February 10, 1989.

Docket Number: 89-168. *Applicant:* University of Arkansas for Medical Sciences, Little Rock, Arkansas 72205-7199. *Instrument:* Electron Microscope, Model JEM-100CX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 54 FR 30788, July 24, 1989. *Instrument Ordered:* March 15, 1989.

Docket Number: 89-170. *Applicant:* New York State Department of Health, Albany, NY 12201. *Instrument:* Electron Microscope, Model H-7000, with Accessories. *Manufacturer:* Hitachi, Ltd., Japan. *Intended Use:* See notice at 54 FR 30789, July 24, 1989. *Instrument Ordered:* March 21, 1989.

Docket Number: 89-173. *Applicant:* Board of Trustees of Southern Illinois University, School of Medicine, Springfield, IL 62702. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Nissei Sangyo America, Ltd., Japan. *Intended Use:* See notice at 54 FR 30789, July 24, 1989. *Instrument Ordered:* May 1, 1989.

Docket Number: 89-180. *Applicant:* University of Cincinnati, Cincinnati, OH 45221-0012. *Instrument:* Electron Microscope, Model CM20T. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 54 FR 31721, August 1, 1989. *Instrument Ordered:* April 7, 1989.

Docket Number: 89-190. *Applicant:* Old Dominion University, Norfolk, VA 23529. *Instrument:* Electron Microscope, Model JEM-100CX II. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 54 FR 34542, August 21, 1989. *Instrument Ordered:* May 18, 1989.

Docket Number: 89-194. *Applicant:* Rensselaer Polytechnic Institute, Troy, NY 12180-3590. *Instrument:* Electron Microscope, Model CM12. *Manufacturer: N.V. Philips, The Netherlands. Intended Use:* See notice at 54 FR 34543, August 21, 1989. *Instrument Ordered:* June 9, 1989.

Comments: None received *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. REASONS: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 89-23642 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90892-9192]

Intentions To Adopt a Test Method and Establish a Validation Service for the Federal Information Processing Standard (FIPS) for Database Language SQL

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments on a test method and a validation service for a trial use period for the Federal Information Processing Standard (FIPS) 127, Database Language SQL.

SUMMARY: The NIST intends to adopt the SQL Test Suite as the test method to be used for validating SQL implementations for conformance to FIPS 127, Database Language SQL. This validation system will be used to assess the degree to which SQL implementations conform to FIPS 127.

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Beta testing with this software has been completed, and Version 1.2 is the current version of the software.

The NIST is providing a validation service for a trial use period to verify the accuracy and completeness of the SQL validation procedures. To assess the suitability of the test method for testing conformance to the FIPS, NIST solicits the views of industry, the public, and State and local governments.

DATE: The test service will start in April 1990 and will continue for the trial use period until a further notice is published in the Federal Register.

ADDRESS: Written comments concerning the SQL Test Service should be sent to: National Institute of Standards and Technology, ATTN: SQL Test Service, Technology Building, Room B154, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Joseph Collica, telephone (301) 975–3267, or Joan Sullivan, telephone (301) 975–3258, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION:

Background: The Federal Information Processing Standard Publication (FIPS PUB) 127, Database Language SQL, was approved on March 10, 1987, and became effective August 3, 1987. In accordance with FIPS PUB 127, relational database packages acquired for federal use after this date should implement the standard. The purpose of the SQL standard is to promote portability of relational databases applications for use with a variety of database implementations.

Federal Agencies should require conformance to FIPS 127 whether database implementations are developed internally, acquired as part of an ADP system procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. Testing should be required in order for agencies to determine if the SQL implementations conform to the FIPS PUB. The NIST SQL Test Suite and the test results provided from the NIST validation service are sources for federal agencies to use in making this determination.

Updates to the Test Method: The Test Suite will be periodically updated and used as the basis for validating FIPS 127 implementations. The update process will be used to correct errors identified in the SQL Test Suite and to introduce new or modified programs as appropriate. Modification to the Test Suite is also intended to ensure that implementations are being built according to the technical specifications of the standard. Should an interpretation of the FIPS be made that would affect the test suite, these changes would also be reflected during the update process.

Obtaining Validation Services: The NIST provides validation services on a cost-reimbursable basis. These services are available to both the producers and users of SQL implementations. Upon receipt of a request for validation, NIST will supply the client with a SQL Information Pack which will include a description of the test service and procedures, an Order Form, a Software License Agreement, and Scheduling Request. To obtain the SQL Test Suite and documentation the client must return a completed Order Form and Software License Agreement, along with proper payment to the NIST.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Dated: October 2, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–23670 Filed 10–5–89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Gulf of Mexico and South Atlantic Fishery Management Councils; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) will convene a series of public hearings on draft Amendment 5 to the Coastal Migratory Pelagic (Mackerel) Fishery Management Plan (FMP). Individuals and organizations may comment in writing to the Councils, at the addresses given below, if they are unable to attend the hearings.

DATES: Written comments will be accepted until November 20, 1989. See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the hearings.

ADDRESSES: Written comments should be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609–2486; or Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 813–228–2815; or Robert K. Mahood, 803–571–4366.

SUPPLEMENTARY INFORMATION: Draft Amendment 5 to the Coastal Migratory Pelagic FMP will address the following measures: (1) Extend the management area through the Mid-Atlantic Council's area of jurisdiction; (2) identify new problems in the fishery and revise objectives; (3) revise the fishing year for Gulf Spanish mackerel; (4) revise the definition of "overfishing"; (5) provide that the South Atlantic Council will be responsible for preseason adjustments of TACs and bag limits for the Atlantic migratory groups of mackerel while the Gulf Council will be responsible for Gulf migratory groups; (6) continue to manage the two recognized Gulf migratory groups of kind mackerel as one until management measures appropriate to the eastern and western groups can be determined; (7) reallocate Gulf Spanish mackerel between recreational and commercial fishermen; (8) redefine recreational bag limits as daily limits; (9) redefine qualifications to obtain a commercial permit; (10) prohibit the sale of king mackerel taken under a bag limit; (11) provide trip limits for commercial Spanish mackerel vessels; (12) specify that Gulf king mackerel may be taken only by hook-and-line and run-around gill nets; (13) impose a bag limit of two cobia per person per day; (14) establish a minimum size of 12-inch fork length or 14-inch total length for king mackerel; (15) provide management for dolphin; and (16) include a definition of "conflict" to provide guidance to the Secretary of Commerce.

All hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m., local time for each area. The hearings are scheduled as follows:

Sunday, October 22, 1989—
- Holiday Inn, Beachside, North Roosevelt Boulevard, Key West, Florida

Monday, October 23, 1989—
- Texas A&M Research and Extension Center, Highway 44 (four miles west of the airport), Corpus Christi, Texas
- Broward County Government Center, 115 South Andrews Avenue, Room 515, Ft. Lauderdale, Florida
- Holiday Inn, Sunshine Parkway, 7151 Okeechobee Road, Rooms A & B, Ft. Pierce, Florida

Tuesday, October 24, 1989—
- Riviera Utilities, Kilowatt Room, 413 East Laurel Avenue (Highway 98, Foley, Alabama
- Holiday Inn, Oceanfront, 1617 First Street North, Jacksonville, Florida

Wednesday, October 25, 1989—
- Best Western Bayside Inn, Bay Room, 711 West Beach Drive, Panama City, Florida
- Quality Inn, 490 New Jesup Highway, Brunswick, Georgia

Thursday, October 26, 1989—
- Holiday Inn, Downtown, 121 West Boundary Street, Savannah, Georgia

Friday, October 27, 1989—
- Holiday Inn, South Forest Beach Drive, Hilton Head Island, South Carolina

Saturday, October 28, 1989—
- Quality Royale Beach Cove Inn, 4800 South Ocean Boulevard, North Myrtle Beach, South Carolina

Monday, October 30, 1989—
- City Hall Auditorium, 300 Municipal Drive, Madeira Beach, Florida
- New Hanover County Courthouse, 320 Chestnut Street, Room 302, Wilmington, North Carolina

Tuesday, October 31, 1989—
- Duke Auditorium, Duke Marine Laboratory, Pivers Island, Beaufort, North Carolina

Wednesday, November 1, 1989—
- Nichols State University, Powell Auditorium, Thibodaux, Louisiana
- Marine Resource Center, Airport Road, Manteo, North Carolina

Thursday, November 2, 1989—
- Lake Wright Quality Inn, 6280 Northampton Boulevard, Room MR–1, Norfolk, Virginia.

Dated: October 2, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23652 Filed 10–5–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Exported From Indonesia

October 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: October 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Coverage of the export visa system between the Governments of the United States and Indonesia is being extended to include certain merged categories, produced or manufactured in Indonesia and exported from Indonesia on and after October 15, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 52 FR 20134, published on May 29, 1987.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1989

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. You were directed to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia for which the Government of Indonesia had not issued an appropriate export visa.

Effective on October 15, 1989, the directive of May 19, 1987 is amended further to include cotton and man-made fiber textile products in the following merged categories, produced or manufactured in Indonesia and exported from Indonesia on and after October 15, 1989:

Merged Categories: 334/335, 336/636, 351/651, 619/620, 625/626/627/628/629

Shipments entered or withdrawn from warehouse on or after October 15, 1989 and exported from Indonesia on and after October 15, 1989 which are not accompanied by an appropriate export visa shall be denied entry and a new visa or visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–23700 Filed 10–5–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 351/651 and 647/648 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49901, published on December 12, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1989

Commissioner of Customs,

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Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 4, 1989, the directive of December 6, 1988 is being amended to increase the limits for the following categories, under the terms of the current bilateral textile and apparel agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
351/651	168,371 dozen
647/648	1,085,964 dozen of which not more than 782,969 dozen shall be in Category 647-K [2] and not more than 782,969 dozen shall be in Category 648-K [3]

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 647-K, only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6103.23.0045, 6103.29.1030, 6103.43.1550, 6103.43.1570 and 6103.49.1060.

[3] In Category 648-K, only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1090, 6104.29.1040, 6104.29.2036, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2010, 6104.69.2020, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050 and 6117.90.0046.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23659 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

October 3, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United Mexican States requested increases in the current Special Regime limit for Categories 359-C/659-C and the designated consultation level for Category 359-O. The United States Government has agreed to the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 52461, published on December 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Choirman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1989

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns, among other things, imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 11, 1989, the directive of December 22, 1988 is amended further to increase the limit for Categories 359-C/659-C and 359-O, as follows:

Category	Amended twelve-month limit [1]
359-C/659-C [2]	1,400,000 kilograms
359-O [3]	1,100,000 kilograms
Non-special regime category sublimit 359-C/659-C	180,880 kilograms

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.30.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6109.23.0055, 6109.43.2020, 6103.49.2000, 6103.49.3038, 6104.62.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

[3] In Category 359-O, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23660 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to

Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodities

Strap, Webbing

5340-00-235-4432
5340-00-235-4434
5340-00-451-8157

Light, Damage Control Helmet

6230-01-285-4396

Compound, Water Displacing

6850-00-142-8389
6850-00-142-9409

Fluid, Deicing-Defrosting

6850-00-835-0484

Fluid, Penetrating

6850-00-508-0076
6850-00-973-9091
6850-00-985-7180

File, Work Organizer

7520-00-286-1724
7520-00-286-1725
7520-00-286-1726

Services

Commissary Warehouse Service
Nellis Air Force Base, Nevada

Publications Distribution, Pacific Northwest Research Station (PNW), Research Information Service, 319 SW Pine Street, Portland, Oregon.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-23663 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 6, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 14 and August 11, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 29788 and 33051) of proposed additions to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning cabability of qualified workshops to provide the services at a fair market price and impact of the additions on the current or more recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1989:

Services

Janitorial/Custodial, U.S. Border Station, International Bridge Plaza, Sault Ste.- Marie, Michigan.

Janitorial/Custodial, U.S. Army Reserve Center, DePace Building, Boot and Chestnut Streets, Downingtown, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, 1020 Sandy Street, Norristown, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, Potshop and Berks Road, Worcester, Pennsylvania.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following service is hereby deleted from Procurement List 1989:

Assembly, Food Packet, Assault Ration

8970-01-225-6504

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-23664 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

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(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 3, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: NEW.
Title: Title VII Bilingual Fellows Supply and Demand Study.
Frequency: One time.
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden:

Responses: 1,394
Burden Hours: 1,037

Recordkeeping Burden:

Recordkeepers: 0
Burden Hours: 0
Abstract: This study is designed to collect empirical data that will be used by the Department and the U.S. Congress to assess whether or not the number of fellowships awarded under the Bilingual Fellowship Program adequately meets the need for individuals trained in bilingual related fields of education. These data will assist the Department in formulating its recommendations to Congress with regards to the number of Fellows who should be supported on an annual basis to meet the need for well trained personnel.

[FR Doc. 89-23677 Filed 10-5-89; 8:45 am]

BILLING CODE 4000-1-M

Office of Postsecondary Education

Availability of the 1989-90 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of the 1989-90 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the 1989-90 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory) is now available at institutions of higher education participating in the Perkins Loan Program, State and Territory Departments of Education and the United States Department of Education. Under the National Defense, National Direct and Perkins Loan programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1989-90 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1989-90 school year to qualify for cancellation benefits.

DATE: The Directory is available.

ADDRESS: Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4651, ROB-3), Washington, DC 20202-5453, Telephone (202) 732-3730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools which qualify the borrower for cancellation under the procedures set forth in 34 CFR 674.53 and 674.54 of the National Defense, National Direct and Perkins Loan Program regulations.

The Secretary has determined that for the 1989-90 academic year, full-time teaching in the schools set forth in the 1989-90 Directory qualifies a borrower for cancellation.

The Secretary is providing the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1989-90 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all past and current Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense, National Direct and Perkins Loan Cancellations)

Dated: September 29, 1989.

William L. Moran,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-23676 Filed 10-5-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Finding of No Significant Impact; Gas Reburning-Sorbent Injection Project at Springfield City Water, Light, and Power Lakeside Station

AGENCY: U.S. Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA), DOE/EA-0381, for gas reburning-sorbent injection (GR-SI) at City Water, Light, and Power's Lakeside Station, Boiler No. 7. Based on the analyses in the EA, DOE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement is not required and the Department is issuing this Finding of No Significant Impact (FONSI).

COPIES OF THE EA ARE AVAILABLE FROM: Dr. Earl Evans, Office of Clean Coal Technology, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, Pennsylvania 15236-0940, 412-892-5709.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-4600.

PROPOSED ACTION: The proposed action is a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent injection at CWLP Lakeside Station, Boiler No. 7. The proposed action is part of DOE's Clean Coal Technology Program, which is designed to evaluate emerging technologies to displace oil and natural gas or to utilize coal more cleanly, efficiently, and economically than currently available technology. The Energy and Environmental Research Corporation (EER) would conduct the demonstration project at Lakeside Station, Springfield, Illinois Unit No. 7, a 33 MWe cyclone-fired boiler.

BACKGROUND: In December 1985, Congress made funds available for a Clean Coal Technology (CCT) Program in Public Law No. 99-190 "for the purpose of conducting cost-shared Clean Coal Technology projects for the construction and operation of facilities to demonstrate the feasibility for future commercial applications of such technology * * *," and authorized DOE to conduct the CCT program. DOE issued a Program Opportunity Notice (PON) on February 17, 1988, to solicit proposals for conducting cost-shared CCT demonstrations. The EER proposal for a gas reburning-sorbent injection (GR-SI) demonstration at Lakeside Station was one of nine selected by the DOE for negotiation. EER and DOE signed Cooperative Agreement No. DE-FC22-87PC79798 in June 1987. Co-funding for the project is being provided by the Gas Research Institute (GRI) and the Illinois Department of Energy and Natural Resources (ENR).

The combination of technologies to be demonstrated, gas reburning with sorbent injection, involves introduction of natural gas into the boiler above the main heat release zone. In the upper part of the furnace which is downstream of this zone, burnout air and calcium-based sorbent are injected into the gas stream. Gas reburning is effective in the reduction of NO_x emissions to molecular nitrogen (N_2). The sorbent injected into the flue gas stream reacts with gas phase SO_2/SO_3 to form calcium sulfate. The calcium sulfate is subsequently removed by the plant particulate control equipment.

The Lakeside Station and the adjacent Daliman Station occupy a 75-acre site on the northwest shore of Lake Springfield, in the Southeast section of the city of Springfield in Sangamon County, Illinois.

ENVIRONMENTAL IMPACTS: Potential environmental consequences of the proposed action were analyzed for both construction activities and plant operation.

Construction

Minor fugitive dust emissions from an 0.1 acre area, where equipment installation and minor landscaping are planned, is expected. Transportation effects would be negligible with an increase from the existing traffic of 120 to 121 trucks per day at the site. Construction noise would be short-term and characteristic of an already heavily industrialized site. There are a few residences near the plant. A 1400-foot natural gas pipeline would be built entirely on-site and would temporarily disturb approximately an acre of existing roadway and grass-covered property.

No increase in soil erosion is expected and there will be no adverse impacts to archaeological, cultural, or historical resources. Construction labor force requirements of less than 20 personnel would be provided from an ample local workforce.

Operation

Once operational, emission rates of NO_x and SO_2 are expected to decrease by 60 percent and 50 percent respectively. The particulate emission rate from Unit 7 is expected to remain unchanged but total particulate emissions will increase slightly due to a 1 percent higher capacity factor. Fugitive dust emissions from transportation and storage of sorbents will be controlled by a dustless, pneumatic handling system and fully enclosed tanker trucks. Coal pile runoff will be unchanged and there will be a small reduction in plant water use. The amount of bottom ash will be less and continue to be disposed in the ash pond, but the amount of GR-SI fly ash will increase so that there will be an increase in solid waste disposal. The fly ash wastes will be transported to a landfill permitted by the Illinois EPA to accept this waste type. The proposed action will not impact any federally-listed threatened or endangered species and no ecologically sensitive areas will be disrupted.

ALTERNATIVES CONSIDERED: An overall strategy for compliance with the National Environmental Policy Act (NEPA) was developed for the CCT Program consistent with the Council on Environmental Quality NEPA regulations (40 CFR parts 1500-1508) and the DOE guidelines for compliance with NEPA (52 FR 47662, December 15, 1987). This strategy includes both programmatic and project-specific environmental impact considerations, during and subsequent to the selection process.

This strategy has three major elements. The first involves preparation of a comparative programmatic environmental impact analysis, based on information provided by the offerors and supplemented by DOE, as necessary. This environmental analysis ensures that relevant environmental consequences of the CCT Program and reasonable programmatic alternatives are evaluated in the selection process.

The second element involves preparation of a pre-selection project-specific environmental review based on project-specific environmental data and analyses that offerors supplied as a part of their proposals. This analysis contained a discussion of the site-specific environmental, health, safety, and socioeconomics issues associated with the demonstration project. It included, to the maximum extent possible, a discussion of alternative sites and/or processes reasonably available to the offeror, a discussion of the environmental impacts of the proposed project and practical mitigating measures, and a list of permits, to the extent known, that must be obtained to implement the proposal. It also contained the strengths and weaknesses of each proposal relative to the demonstration project environmental and site-related criterion. The third element provides for preparation by DOE of site-specific documents for each project selected for financial assistance under the PON.

In the EA, DOE considered the following alternatives to the proposed action of a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent-injection and/or coal cleaning at CWLP Lakeside Station, Boiler No. 7: No action, alternative technologies, and alternative sites.

Under the no action alternative, the GR-SI technologies would not be installed at Lakeside Station. Environmental conditions would remain the same and the beneficial NO_x and SO_2 reductions would not be realized. DOE would be unable to evaluate GR-SI technology on a full-scale utility boiler and the goals of the Clean Coal Technology Program would not be advanced.

Likewise, installation of alternative emission control technologies would not provide DOE with information on the effectiveness of GR-SI. In particular, information would be lacking on the effect of GR-SI with a cyclone-fired boiler. Installing alternative technologies is not a practical option.

Two alternative sites, Edwards and Hennepin Stations, are considered by the applicant (EER) to be suitable for installation of GR-SI technologies. The environmental impacts of installing the GR-SI process at these alternative sites are evaluated in independent NEPA compliance actions. The units suitable for retrofit at these stations are front-wall-fired and tangentially-fired, respectively, and would not demonstrate the GR-SI technology, in a cyclone-fired unit.

Although Lakeside Station, Hennepin Station, and Edwards Station are located near the Illinois River, they are at a substantial distance from one another; therefore, cumulative impacts

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from development at two or even three locations is not expected.

FLOODPLAIN STATEMENT OF FINDINGS: The GR–SI project will be conducted in Unit 7 of Lakeside Station. Coal combustion and flue gas cleaning wastes are currently transported to an on-site waste disposal area which is within the 100-year floodplain. During the GR–SI project the bottom ash will continue to be sluiced to the ash pond but the amount of ash will be slightly less. However, the GR–SI fly ash will not be disposed in the ash pond, but will be disposed of in a permitted off-site landfill. A Floodplain/Wetlands Involvement Notice for the project was published in the **Federal Register**, Volume 54, Number 45, Thursday, March 9, 1989. No comments were received in reply to the notice. On the basis of the floodplain assessment in the Environmental Assessment (EA–0381), Appendix A, DOE has determined that there will be only a beneficial impact to the floodplain due to the decreased amount of waste that will be disposed of in the ash pond. All actions will be in conformity with local floodplain protection standards and the requirements of the Illinois Department of Transportation and the U.S. Army Corps of Engineers pertaining to floodplains.

Determination

The proposed action, a demonstration project involving co-firing pulverized coal with natural gas in combination with sorbent-injection and/or coal cleaning at CWLP Lakeside Station, Boiler No. 7, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act. This finding is based on the analysis in the EA. Therefore, an Environmental Impact Statement for the proposed action is not required.

Issued in Washington, DC, on September 28, 1989.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–23710 Filed 10–5–89; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Eklutna Project, Order Approving an Extension of Power Rates on a Temporary Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of an extension of power rates—Eklutna Project, Rate Schedules A–F9, A–N10, and A–W1.

SUMMARY: Notice is hereby given that the Deputy Secretary approved on September 26, 1989, Rate Order No. APA–8 which extends the present power rates for the Eklutna Project. This is a temporary rate action effective October 1, 1989, for a period of up to 12 months.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802–0050, (907) 586–7405.

SUPPLEMENTARY INFORMATION: On July 28, 1989, the Alaska Power Administration (APA) published a **Federal Register** notice of its intention to seek a 5-year extension of the present power rate for the Eklutna Project and included comments on the proposal. The present rates are 1.9 cents per kilowatthour for firm energy, 1.0 cents per kilowatthour for nonfirm energy, and 0.03 cents per kilowatthour for wheeling. The rates were approved by FERC in 1984 for a period ending September 30, 1989.

Significant objections to the 5-year extension were encountered on grounds that a rate reduction may be in order if APA's revenue and cost estimates are correct.

In view of these objections, APA proposed a temporary extension of the existing Eklutna rates to allow for additional studies and development of a new rate proposal. Authority for such temporary extensions is provided in 10 CFR 903.23(b).

Following review of APA's proposal within the Department of Energy, I approved on September 28, 1989, Rate Order No. APA–8 which extends the present Eklutna rates for up to 12 months beginning October 1, 1989.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,

Deputy Secretary.

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates

Order Approving Power Rate Extension on a Temporary Basis

[Rate Order No. APA–8]

This is a temporary rate extension. It is made pursuant to the authorities in 10 CFR 903.23(b).

Background

The Eklutna Project was completed by the U.S. Bureau of Reclamation in 1955. The Alaska Power Administration has operated and maintained the project since 1967. The Eklutna Project is a single-purpose project comprised of a dam, reservoir, 30,000–kw hydroelectric plant, 45 miles of 115–kV transmission lines, and three substations serving the Anchorage and Palmer areas. All project costs are allocated to power. The entire output of the project is under contract with three preference customers in the Anchorage-Palmer area, pursuant to a 1969 negotiated operating agreement with its three customers. Allocations are: 25,500,000 kWh to Matanuska Electric Association; 45,900,000 kWh to Chugach Electric Association; and the remaining 81,600,000 kWh to the Anchorage Municipal Light and Power. All allocations are on a take-or-pay basis. The allocations are subject to adjustment due to extended curtailment of service from uncontrollable forces, including inadequate supply of water for power generation.

Rate Schedules A-F9, A-N10 and A-W1 now in effect for Eklutna Project were confirmed and approved by order ot the Federal Energy Regulatory Commission, Docket No. EF84–1011–000 issued December 27, 1984. The rate schedules expire September 30, 1989.

Schedule A-F9 for wholesale firm power service, available to wholesales power customers, provides for a change of 19.0 mills/kWh for all firm energy with no capacity charge.

Schedule A-N10 for wholesale nonfirm power service, available to firm power customers, normally maintaining their own generating facilities, provides for a charge of 10.0 mills/kWh for all nonfirm energy, with no capacity charge.

Schedule A-W1 for wheeling power is a provision for a uniform wheeling charge of .3 mills/kWh for all three Eklutna Project customers.

Studies prepared by the Alaska Power Administration as required by DOE Order No. RA 6120.2 demonstrate that the present rates remain sufficient to meet revenue requirements for the next several years. On that basis, APA proposed a 5-year extension of the existing rates. That proposal encountered significant objections on grounds that a rate reduction may be in order as early as 1991 if APA's revenue and cost estimates are accurate.

To provide time for further studies and to develop a new rate proposal, APA requested a temporary extension of the existing rates for up to 12 months under the provisions of 10 CFR 903.23(b).

Availability of Information

Information regarding this rate extension, including study, comments, and other supporting material, is available for public review in the offices of the Alaska Power Administration.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby approve and extend on a temporary basis for a period of up to 12 months, effective October 1, 1989, Rate Schedules A-F9, A-N10, and A-W1.

Issued at Washington, DC, the 28th day of September 1989.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 89–23709 Filed 10–5–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, November 2, 1989, 1:30 p.m.–5:00 p.m.; Friday, November 3, 1989, 9:00 a.m.–3:00 p.m.

Place: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI72, Washington, DC 20585, Telephone: (202) 586–2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda: Thursday, November 2, 1989

A. Opening Remarks
B. Major Topics:
1. Report on National Energy Modeling System
2. Fuel Switching
3. The Energy Information Administration's International Data Program
(Public Comments)

Friday, November 3, 1989

4. New Sample Designs
a. Monthly Electricity Sales and Revenue
b. Coal Prices
5. Chlorofluorocarbons
6. New Quality Audits
(Public Coments)
C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Wanda Thompson at (202) 586–2222.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on October 2, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–23713, Filed 10–5–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–60–NG]

Northwest Pipeline Corp.; Application To Extend Existing Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to extend authority to import Canadian natural gas and request for an emergency order granting interim authority for such extension.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1989, of an application filed by Northwest Pipeline Corporation (Northwest) for authorization to extend Northwest's existing import authorization, which currently expires October 31, 1989, to allow continued importation of up to 152 MMcf per day of natural gas at Kingsgate, British Columbia for a primary term extending to October 31, 2004, and year and year thereafter.

Northwest further requests that in the event a permanent order cannot be issued by November 1, 1989, an emergency interim order pursuant to 10 CFR 590.403 be issued by that date authorizing Northwest's continued import of gas at Kingsgate so that it will be able to continue service to markets which are dependent upon the availability of gas at Kingsgate.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, notices of interventions, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 6, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Northwest currently is authorized, under DOE Opinion and Order No. 297, issued January 31, 1989, to import from Westcoast Energy, Inc. (Westcoast), up to 152 MMcf of natural gas per day for a term ending October 31, 1989, in accordance with the provisions of a September 23, 1960, Kingsgate Gas Sales Agreement, as amended. The gas imported by Northwest at Kingsgate is transported by Pacific Gas Transmission Company (PGT) for Northwest's account from Kingsgate to Northwest's sales delivery points located on PGT's pipeline and to the Starr Road (Spokane) interconnect between PGT's pipeline and Northwest's Spokane lateral. Historically, Northwest has relied upon the purchase of gas imported at Kingsgate to help meet its firm sales requirements under service agreements which were scheduled to terminate concurrently with Northwest's existing Kingsgate import authority on October 31, 1989. In the transition to becoming an open-access transporter of natural gas, Northwest states that it has completed negotiations for new firm sales agreements with its existing customers that extend Northwest's obligation to continue providing a significant volume of firm sales service through an initial term ending October 31, 2004.

Northwest and Westcoast have negotiated and executed a new amendment, dated August 15, 1989, to the Kingsgate gas sales agreement, a copy of which was appended to the application. The new agreement,

BEST COPY AVAILABLE

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proposed to be effective November 1, 1989, extends the primary term of the agreement from October 31, 1989 to October 31, 2004, consistent with Northwest's new sales agreements. The new agreement also increases the minimum take provision under the Kingsgate gas sales agreement to require Northwest to take or pay for a minimum annual volume of gas equal to 35 percent of its actual system gas sales during each contract year, without a sales displacement adjustment. Northwest's minimum annual volume obligation can increase from 35 percent to as high as 45 percent of its actual system gas sales if such actual system gas sales exceed a 58 percent annual load factor with respect to the total of contract demand under Northwest's firm sales agreements. That is, subject to a 45 percent maximum, the 35 percent take-or-pay obligation will increase by one-half of the percentage that Northwest's actual system gas sales exceed the described 58 percent load factor.

Deficiency volumes in excess of three percent must be paid for at the end of the contract year, but can be made up the following contract year after Northwest has first purchased its minimum annual volume for that contract year. However, if Northwest is deficient in its annual purchases by no more than three percent in a contract year, that deficiency volume simply will be added on to the minimum annual volume for the following contract year. Similarly, up to three percent of excess purchases in a contract year would be subtracted from the following year's minimum annual volume.

Further, although contract demand under the Kingsgate gas sales agreement remains 151,731 Mcf per day of natural gas, if Northwest's daily take nominations would exceed the volume committed to Westcoast under its upstream supply arrangement (Coleman Agreement) that supports the sales agreement, Westcoast is only obligated to use reasonable efforts to obtain and deliver any excess gas on an interruptible basis.

Northwest states that the August 15 amendment continues the two-part demand/commodity pricing provisions under the currently authorized import arrangement. The total monthly demand charge is the aggregate of the following three components: (1) The demand charge billed by Alberta Natural Gas Company Ltd. to Westcoast for transportation of gas that Westcoast sells to Northwest at Kingsgate, net of certain revenue credits for interruptible services provided by Alberta Natural and Westcoast; (2) the Kingsgate demand charge, which is comprised of Westcoast's fixed administrative costs allocated to sales to Northwest at Kingsgate, reduced by certain revenue credits for other Westcoast transportation and sales services to Kingsgate; and (3) the demand charge paid by Pan-Alberta Gas Ltd. (Pan-Alberta) to NOVA Corporation of Alberta (NOVA), which includes both the fixed cost component of the cost-of-service and the costs associated with interruptible charges paid by Pan-Alberta to NOVA for the transportation of gas sold by Pan-Alberta to Westcoast under the Coleman agreement for resale to Northwest at Kingsgate, less certain revenue credits to recognize the use of Pan-Alberta's transportation capacity on NOVA for other purposes. The total monthly demand charge is projected to be approximately seven million dollars (U.S.) annually.

The commodity charge for all volumes sold by Westcoast to Northwest at Kingsgate will be equal to the commodity price determined under the currently effective September 16, 1987, amendment to the Kingsgate gas sales agreement, subject to recalculation on January 1, 1990, and quarterly thereafter to maintain a market responsive price. The recalculation formula adjusts a base commodity charge of $1.50 to reflect changes to the September/October 1987 base period level by two factors, namely, Westcoast's sales price to B.C. Gas Inc. (formerly British Columbia Hydro and Power Authority) for residential and commercial customers and the price of Bunker C fuel oil in the Seattle and Portland areas, with the first factor weighted at 55 percent and the second at 45 percent. The June 1989 commodity rate was approximately $1.36 per MMBtu (U.S.). Northwest states however, that notwithstanding these pricing provisions, the annualized price of gas to Northwest shall not be less than the minimum price, if any, that may be prescribed for natural gas exports by Canada's National Energy Board.

According to the application, either party may initiate renegotiation of the commodity charge during calendar years 1991 and 1992 if, over a 12-month period ending July 1 of such calendar years, the total charge per MMBtu, calculated on a 100 percent load factor basis, paid by Northwest under the Kingsgate gas sales agreement is at least ten percent above or below the average price paid by Northwest for U.S. domestic market-out gas plus the average gathering and conditioning rates paid to Northwest by all shippers.

Commencing in 1993, either Northwest or Westcoast, prior to May 15 of any calendar year, may initiate renegotiation of the terms and conditions of the Kingsgate gas sales agreement. Additional renegotiation opportunities are triggered in the event of any of the following:

(1) Failure of Northwest to receive satisfactory regulatory approval for its new sales service agreements;

(2) Promulgation of Canadian gas export pricing policies that preclude the continuation of market-sensitive pricing of gas sold by Westcoast to Northwest;

(3) Issuance of Federal Energy Regulatory Commission orders, other than one denying flow through of gas costs on an as-billed basis, that effectively preclude Northwest from recovering in its regulated sales rates any portion of its Canadian gas costs; and

(4) Enactment of legislation or taking of other governmental or regulatory action beyond the reasonable control of either party that would be materially detrimental to either party's continued performance under the Kingsgate gas sales agreement.

In any of the foregoing renegotiation scenarios, if Northwest and Westcoast are unable to reach timely agreement on new terms and conditions, the Kingsgate gas sales agreement may be terminated.

To avoid a service disruption, Northwest requests an emergency interim import authorization in the event a permanent order cannot be issued prior to November 1, 1989. Since it is clear that the DOE cannot extend a full 30-day comment period and still issue a new decisional order in this docket by the end of October, the DOE may consider issuing an emergency interim order if such a measue is consistent with the public interest. However, DOE hereby places Northwest and other potential applicants on notice that failure to file an application in a timely fashion (in the case of a long-term import authorization at least four to six months before the need for the requested action) such to allow the regulatory process to proceed at a normal rate will not guarantee emergency treatment and may very well result in termination of import volumes during the regulatory review process.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issued of competitiveness, security of supply and need for the gas as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive, needed and its gas source will be secure. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motion to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for an oral presentation should identify the substantial question or fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying from the Office of Fuels Programs Docket Room, Room 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 29, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23711 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 89-22; Cert. Notice—48]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of a proposed new electric base load powerplant have filed a self certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following companies have filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Everett Energy Corporation	09-21-89	Combined cycle cogen	90	Everett, MA
North Falmouth, MA and				
EnDyna Power Corp., Hoboken, NJ				

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Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC, on September 28, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23712 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of June 12 Through June 16, 1989

During the week of June 12 through June 16, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Knolls Action Project, 6/12/89, KFA-0299

On May 12, 1989, the Knolls Action Project (KAP), filed an Appeal from a determination issued to it on April 7, 1989 by the Department of Energy's (DOE) Office of Naval Reactors (ONR). In that determination, the ONR denied portions of the KAP's request for 1 formation related to activities at the Knolls Atomic Power Laboratory (KAPL) pursuant to Freedom of Information Act (FOIA) Exemptions 1, 3, 4, 5 and 6. Since the names of individuals withheld pursuant to Exemption 6 were separate from the material currently classified, the OHA made an immediate determination on the ONR's withholding of these names. In considering the Appeal, the DOE found that the determination to withhold names of individuals pursuant to Exemption 6 was consistent with the FOIA and the DOE's implementing regulations. Accordingly, the DOE denied the KAP's Appeal.

Knolls Action Project, et al., 6/14/89, KFA-0284 et al.

Knolls Action Project and four other Appellants filed Appeals from partial denials by the Office of Naval Reactors of requests for information that they had submitted under the Freedom of Information Act. In considering Knolls Action Project's Appeal and the appropriate portions of the other Appeals, the DOE found that the deleted, non-classified portions of the requested document were properly withheld under Exemption 6. The remaining portions of the four other Appeals address the withholding of classified material under Exemptions 1 and 3, and will be determined in a separate Decision and Order.

Implementation of Special Refund Procedures

Elias Oil Company, 6/14/89, KEF-0022

The DOE issued a Decision and Order implementing a plan for the distribution of $90,000 (plus accrued interest) received pursuant to an agreement entered into between the U.S. Department of Justice and two individuals: F. Lee Thorne (of Elias Oil Company) and Charles Pabian (of CITCO) on August 17, 1983. The DOE determined that the settlement fund should be distributed to CITCO customers that purchased diesel fuel during the months of February 1974, April 1974, and June 1975. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

Atlantic Richfield Company/ D. Ciambelli or Marino Cuozzo, et al., 6/12/89, RF304-1605 et al.

The DOE issued a Decision and Order concerning forty-six applications for refund filed in the Atlantic Richfied Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers requesting refunds of $5,000 or less or end users. Therefore, each applicant was presumed injured. The refunds granted in this decision totaled $73,309, including $17,019 in accrued interest.

Atlantic Richfield Company/Zephyr, Inc., 6/14/89, RF304-2958

The DOE issued a Decision and Order concerning an Application for Refund filed by Zephyr, Inc. (Zephyr) from a consent order fund made available by Atlantic Richfield Company (ARCO). Zephyr elected to limit its refund to the 41 percent mid-level presumption of injury, and, thus, was determined to have been injured in its purchases made during the period June 14, 1973 through January 27, 1981. In addition, Zephyr documented its purchases from ARCO made between March 6, 1973 and June 13, 1973, and requested a full volumetric refund for those purchases. Under the procedures of the ARCO special refund proceeding, a reseller or retailer is not subject of any proof of injury requirements or presumption limits for purchases made during the period March 6, 1973 through June 13, 1973. Accordingly, the DOE concluded that Zephyr should receive its 41 percent presumption refund, plus a refund for the purchases it made during the March 6, 1973 through June 13, 1973 period. The total refund granted to Zephyr was $68,155, representing $52,333 in principal and $15,822 in accrued interest.

Crown Central Petroleum Corporation/ H. Brauns, Inc., et al., 6/13/89, RF313-112 et al.

The DOE issued a Decision and Order considering applications filed by eight purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988). The total amount of refunds approved in this Decision was $48,989, representing $41,798 in principal plus $7,190 in accrued interest.

Dorchester Gas Corp./Marion Corp., 6/15/89, RF253-61

The DOE issued a Decision concerning an application for refund in the Dorchester Gas Corporation refund proceeding submitted by the Marion Corp. Marion indicated that it purchased propane from Dorchester between August 18, 1973 and January 31, 1976. Marion did not attempt to demonstrate that it was disproportionately overcharged, but rather elected to base its refund on a presumption of injury. The refund granted in this Decision is $7,434.

Exxon Corporation/E.I. Dupont De Nemours and Company, 6/13/89, RF307-6646

The DOE issued a Decision and Order concerning an Application for Refund filed by E.I. Dupont de Nemours and Co. in the Exxon Corporation special refund proceeding. The Applicant is a chemical manufacturer which purchased Exxon petroleum products during the consent order period. Because the Applicant was an end-user, the DOE determined that it was eligible to receive its full allocable share. Consequently, DuPont was granted a refund of $111,152 ($93,429 in principal and $17,723 in interest).

Eastern Oil Co./Anthony Llanes, 6/14/89, RF308-5

The DOE issued a Decision and Order in the Eastern Oil Co. special refund proceeding to Anthony Llanes (Llanes), a reseller of Eastern refined petroleum products. Llanes was identified in the Remedial Order issued to Eastern as a purchaser of Eastern products and had an allocable share greater than $5,000. Llanes elected to limit his claim to the small claims threshold of $5,000 and therefore did not need to provide further evidence of injury other than a certification that he was a regular purchaser from Eastern. Accordingly, Llanes received a total refund of $6,137 ($5,000 principal and $1,137 interest). In this Decision, the DOE indicated that because a significant amount of time had passed since the commencement of the Eastern proceeding, it would no longer accept Applications for Refund in this proceeding after July 14, 1989.

Exxon Corporation/Frank Black's Exxon Service, Inc., et al., 6/15/89, RF307-6532 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $43,411 ($36,489 principal plus $6,922 interest).

Exxon Corporation/Harmon & Lord, Inc., 6/12/89, RF307-4968

The DOE issued a Decision and Order concerning an Application for Refund on behalf of Harmon & Lord, Inc., (Harmon) in the Exxon Corporation special refund proceeding. Harmon purchased directly from Exxon and was a reseller of Exxon products whose allocable share is less than $5,000. The firm's Application was filed by the current majority holder of Harmon's stock, although she did not become the majority stockholder until after the end of the consent order period. Since Harmon is the corporate "individual" entitled to claim a refund based upon its purchases from Exxon, the DOE determined that its current majority stockholder is the appropriate party to represent Harmon in this proceeding. Therefore, the DOE determined that Harmon is eligible to receive a refund equal to its full allocable share. The amount of the refund granted in this Decision is $5,493 ($4,617 principal plus $876 interest).

Exxon Corporation/Louis Exxon Service, et al, 6/16/89, RF307-6231 et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $17,001 ($14,290 principal plus $2,711 interest).

Exxon Corporation/Maple Hill Enco, et al., 6/13/89, RF307-1019 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased product directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $27,549 ($23,156 principal plus $4,393 interest).

Exxon Corporation/Metropolitan Fuels Co., 6/13/89, RF307-5851, RF307-8067

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were based on the purchases of Exxon products by Metropolitan Fuels Company. One application, filed by Steuart Petroleum Company, the currrent owner of Metropolitan, was denied because the right to a refund was not transferred to Steuart from the previous owners. James T. Curtis filed the other application on behalf of himself and three former co-owners. They were found eligible to receive the refund because they were the owners of Metropolitan during the consent order period. The sum of the refund granted was $5,997 ($5,000 principal plus $997 interest).

Exxon Corporation/Minisink Valley Cent. Schools, et al., 6/12/89, RF307-2726 et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $39,149 ($32,908 principal plus $6,241 interest).

Exxon Corp./Paul L. Picco, 6/13/89, RF307-7840, RF307-7888

The DOE issued a Decision and Order regarding two claims filed in the Exxon Corporation special refund proceeding for one refund with respect to purchases made by a former owner-operator of an Exxon service station. In accordance with the proposal of the attorneys for the parties, the refund of $1,171 ($976 principal and $195 interest) was granted jointly to the former Exxon dealer's widow and daughter.

Getty Oil Company/Ozark Truck Plaza, Inc. [Young], Ozark Truck Plaza [Easley], 6/12/89, RF265-1106, RF265-1109, RF265-1735, RF265-1736

The DOE issued a Decision and Order concerning applications filed in the Getty Oil Company Special Refund Proceeding by the present and prior owners of Ozark Truck Plaza (Ozark), a retailer of motor gasoline and diesel fuel. Because Ozark had been sold in a transaction involving the unqualified transfer of all its common stock, the DOE held that the present owner was the party entitled to apply for any refund on the basis of Ozark's purchases of Getty gasoline and diesel fuel. In analyzing the Ozark application, the DOE found that the firm had documented the volume of its Getty motor gasoline and middle distillates purchases which it had made indirectly through the Tri-County Oil Company, a Getty jobber. The Ozark-Young refund was calculated based upon mid-range presumptions of injury adopted in *Getty Oil Company*, 15 DOE ¶ 85,064 (1986) and the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986). The refund totaled $16,144 representing $7,811 in principal and $8,333 in interest. The application filed by the prior owner was dismissed.

Gulf Oil Corporation/Carr's Gulf Service Station, Roberson's Gulf, 6/14/89, RF300-7422, RF300-10637

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Federal Refunds, Inc. (FRI) on behalf of Carr's Gulf Service Station and Roberson's Gulf in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. On April 12, 1989, the OHA issued a Decision and Order which stated that it will send refund checks of claimants represented by FRI in the Gulf refund proceeding directly to

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the claimants, rather than to FRI. *See Gulf Oil Corporation/LeBlanc's Gulf Service*, 18 DOE ¶85,876 (1989) (*LeBlanc's*). In the present cases, the *DOE* found that FRI failed to provide any meaningful service to the applicants or to the refund process. Accordingly, for those reasons, as well as the reasons outlined in *LeBlanc's* the refund checks will be sent directly to the applicants considered in the Decision, rather than to FRI. The sum of the refunds granted in the Decision, which includes principal and interest is $5,223.

Gulf Oil Corporation/Eurico Candelario, et al., 6/13/89, RF300–8208 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest is $66,779.

Gulf Oil Corporation/Riverfront Gulf Service, Inc., et al., 6/15/89, RF300–307 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $14,546.

Gulf Oil Corporation/Rocket Supply Corporation, Satellite Petroleum Corp., Hicks Oils & Hicksgas, Inc., 6/13/89, RF300–8345, RF300–8346, RF300–8347.

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Rocket Supply Corporation, Satellite Petroleum Corp., and Hicks Oils & Hicksgas, Inc. Because the firms were under common ownership during the consent order period, and because their allocable share exceeds $5,000, their applications were consolidated to apply the presumptions of injury. The three firms collectively purchased 139,095,992 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest is $46,952.

Marathon Petroleum Co./Emerson Electric Co., 6/13/89, RF250–2742.

Emerson Electric Company filed an application for refund from a consent order fund made available by Marathon Petroleum Company. In considering that application, the DOE found that Emerson had not shown that any of the refined petroleum products upon which the application was based originated with Marathon. Accordingly, the DOE concluded that granting Emerson a refund would not constitute restitution for injury from alleged Marathon violations. The refund application was therefore denied.

Merle Oil Company, Inc., 6/14/89, RR272–34.

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Merle Oil Company, Inc. (Merle) in the Subpart V crude oil refund proceedings. As a reseller of refined petroleum products during the period August 19, 1973 through January 27, 1981, Merle was required to demonstrate that it had been injured by crude oil overcharges; that is, that it absorbed the crude oil overcharges. Merle did not demonstrate that it was injured and therefore its original Application was denied in a Decision and Order on February 2, 1989. *See Fuels, Inc.*, 18 DOE ¶ 85,582 (1989). In its Motion for Reconsideration, Merle asserts that it was injured by crude oil overcharges and that its original Application should have been granted. However, Merle failed to demonstrate that it absorbed the crude oil overcharges. Thus, its Motion for Reconsideration was denied.

Mobil Oil Corporation/Belle Vernon Oil Company, Suchko Gas & Oil, 6/13/89, RF225–5289 et al.

The Department of Energy issued a Decision and Order concerning the applications for refund filed by Belle Vernon Oil Company and Suchko Gas & Oil in the Mobil Oil Corporation special refund proceeding. *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1986). The firms were related through ownership during the Mobil consent order period and they shared a contractual relationship with Mobil. With regard to Belle Vernon's claim, the DOE found that it was not eligible to receive a refund on all the volumes of product it claimed since some of those purchases were made for and by Suchko Gas on the contract of Belle Vernon. Furthermore, the DOE found that it would be inequitable to apply the $5,000 small claims presumption separately on both claims because of the common ownership. The DOE determined that Paul Suchko, the part owner of one firm and the sole owner of the other, could not benefit from a refund in excess of $5,000 due to the unusual history of the relationship between the two firms. The total refund granted to Paul Suchko was $6,294 ($5,000 in principal plus $1,294 in interest). The total refund granted to his brother and part owner of Belle Vernon, Andrew Suchko, was $1,553 ($1,234 in principal plus $319 in interest).

Mobil Oil Corporation/Dorazio's Mobil Service Station, 6/13/89, RF225–10698

The DOE issued a Decision and Order granting the Application for Refund filed by Dorazio's Mobil Service Station in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in *Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985), Dorazio's a retailer of Mobil products, was found eligible for a refund based on the volume of gasoline it purchased from Mobil. The amount of the refund approved in this Decision and Order is $364, representing $289 in principal and $75 in interest.

Murphy Oil Corporation/Consumers Oil Co., 6/15/89, RF309–1310

The DOE issued a Supplemental Order in the Murphy Oil Corporation special refund proceeding, in which we granted a refund to Intercity Oil Co. based on Consumers Oil Co.'s purchases of petroleum products from Murphy. The DOE had previously granted a refund on these purchases to Arne Moores, the former owner of Consumers, but had rescinded it when it was discovered that Mr. Moore's sale of Consumers to Intercity had consisted of a sale of stock. Generally, the DOE has held that eligibility to receive a refund is transferred when a corporation is sold through a sale of stock. The DOE therefore granted a refund to Intercity, the purchase of Consumer's stock. As Intercity had already received a $5,000 refund in this proceeding based on its own purchases, it was not eligible to receive another small claims refund. Accordingly, its total refund was calculated under the 40% presumption, and it was granted an additional refund of $935 ($794 in principal plus $141 in interest).

Murphy Oil Corporation/West Metarie Spur, et al., 6/13/89, RF309–1009 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 33 claimants in the Murphy Oil Corporation special refund proceeding. Each applicant documented its purchases of regulated petroleum products from Murphy and was found to be eligible for a refund from the Murphy consent order fund according to the procedures established in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). The refunds approved in the Decision totaled $90,107 ($76,530 in principal plus $13,577 in interest).

Northeast Petroleum Industries, Inc./George E. Warren Corporation, et al., 6/15/89, RF264–01 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by resellers or retailers of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. Each applicant submitted information indicating the volume of its Northeast purchases. In nine of these claims, the applicants were eligible for a refund below the $5,000 small claims threshold. In the remaining 4 claims, each of the applicants elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $60,886, representing $34,213 in principal and $26,673 in accrued interest.

Shell Oil Company/Excelsior Auto Electric Shell, et al., 6/14/89, RF315–3502 et al.

The DOE issued a Decision and Order granting 103 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased +allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision Was $66,643 ($57,088 principal plus $9,555 interest).

Shell Oil Company/Hinkle Shell Service, et al., 6/14/89, RF315–3292 et al.

The DOE issued a Decision and Order granting 88 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $66,643 ($57,088 principal plus $9,555 interest).

Shell Oil Company/Pavia Shell Service, et al., 6/15/89, RF315–2600 et al.

The DOE issued a Decision and Order granting 126 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $114,492 ($96,073 principal plus $16,419 interest).

Shell Oil Company/Stanley Houston, et al., 6/15/89, RF315–2606 et al.

The DOE issued a Decision and Order granting 126 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $107,681 ($92,242 principal plus $15,439 interest).

Total Petroleum/Polcom Oil Company, 6/15/89, RF310–201

The DOE issued a Decision and Order concerning an Application for Refund filed by Palcom Oil Company in which the firm sought a portion of the settlement fund obtained by the DOE through a consent order entered with Total Petroleum, Inc. Palcom was a motor gasoline retailer which operated four outlets in the Detroit, Michigan metropolitan area during the Total consent order period. After consultations with Total officials and an evaluation of the firm's method of estimating its purchase volumes, the DOE determined that Palcom's claim was reasonable and did not overstate the firm's actual level of motor gasoline purchases. Applying the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE determined that Palcom was eligible for a refund of $9,009 ($7,617 principal and $1,392 interest).

Tuscan Dairy Farms, Inc. et al., 6/3/89, RF272–31823 et al.

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 48 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged overcharges. Each applicant submitted actual purchase volumes or reasonable estimates of its purchase volumes. The sum of the refunds granted in this Decision is $99,248.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicant	Total refund
C.R. & S. Construction et al	RF272-55800	6/14/89	146	$16,681
Harsy Mine Services et al	RF272-58200	6/14/89	145	$15,264
Jim Jauernig et al	RF272-57800	6/16/89	148	$21,741
Larkin Co., Inc. et al	RF272-54000	6/14/89	165	$17,444
Lee A. Hemmer et al	RF272-57401	6/14/89	153	$20,619
Leroy Myers et al	RF272-53000	6/14/89	121	$19,084
New Life Home/Youth for Christ et al	RF272-60600	6/16/89	121	$17,249
Paula K. Stevens et al	RF272-61201	6/14/89	121	$15,398
Robert F. Kibler Farm et al	RF272-60400	6/14/89	111	$14,434
San Tan Tillage et al	RF272-55200	6/14/89	143	$16,560

Dismissals

The following submissions were dismissed:

Name	Case No.
Abbott Oil Company	RF307-9820
Bean's Arco	RF304-3739
Binswanger Glass Company	RF272-75486
Bud Lord's Arco #1	RF304-9364
	RF304-9365
Donald's Service Station	RF307-9891
E.M. Haynes, Jr., Inc	RF313-44
Florida Center Gulf	RF300-10375
Forlani's Garage	RF307-9949
Habelt's Arco	RF304-9351
James R. Martin	RF272-1853
Mason's Exxon	RF307-9889
Mira Oil Company	RF304-5001
	RF304-5002
National Exxon	RF307-9831
Nott Company	RF272-53932
Parkway Gulf Service	RF272-71829
Ray's Arco	RF304-9363
Smith's Arco	RF304-9215

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Name	Case No.
University Corporation for Atmospheric Research.	RF272-68409
Vince's Tire Service	RF304-9384
40 West Gulf	RF300-157

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-23715 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of August 25 Through September 1, 1989

During the Week of August 25 through September 1, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 25 through September 1, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 31, 1989	Joe E. Smith, Washington, DC	KEF-0146	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a July 8, 1983 final Order of the Federal Energy Regulatory Commission.
Aug. 31, 1989	John R. Penley, New York, NY	KFA-0314	Appeal of an information request denial. If Granted: John R. Penley would receive access to information regarding protest activities at the Savannah River Plant.
Aug. 31, 1989	Meridian Oil, Santa Fe Energy & Samedan Oil Corporation, Washington, DC.	KEF-0143, KEF-0144, KEF-0145	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R Part 205, Subpart V, in connection with refunds of Tertiary Incentive Program revenues made by Meridian Oil, Santa Fe Energy & Samedan Oil Corporation.
Aug. 31, 1989	William Albert Hewgley, Kingston, Tennessee	KFA-0315	Appeal of an information request denial. If Granted: The August 18, 1989 Freedom of Information/Privacy Act Request Denial issued by the DOE Oak Ridge Operations Office would be rescinded, and William Albert Hewgley would receive access to information from Martin Marietta Energy Systems, Inc.

REFUND APPLICATIONS RECEIVED

[Week of August 25 to September 1, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/25/89 thru 9/1/89	Crude oil refund applications received	RF272-75611 thru RF272-75632
8/25/89 thru 9/1/89	Atlantic Richfield refund applications received	RF304-10277 thru RF304-10291
8/25/89 thru 9/1/89	Shell oil refund applications received	RF315-6922 thru RF315-7056
8/28/89	National Helium/California	RQ3-529
8/29/89	Vickers/Oklahoma	RQ1-530
8/30/89	AJO Trading Corporation	RC272-69
8/30/89	W.K. Phipps Exxon	RF307-10048
8/30/89	Warren J. Peake	RF307-10049
8/30/89	Carl Jaax, Jr.	RA272-12
8/30/89	Grand Ave. Spur	RF307-1370

[FR Doc. 89-23714 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement, Flatiron-Erie 115-Kilovolt Transmission Line Uprate Project, Colorado

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality regulations (40 CFR 1500-1508), the Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) on a proposed action to uprate the existing 31.5 mile-long Flatiron-Erie 115-kilovolt (kV) Transmission Line. The proposed project is located in Boulder, Larimer, and Weld Counties, Colorado, and passes through the city of Longmont. The proposed project consists of the replacement of approximately 50 existing wood pole H-frame structures with similar structures that would be 5- to 20-feet taller. The replacement of these structures would allow the Flatiron-Erie line to be operated at a maximum loading of 109 MVA (547 amperes). Presently, the line is limited to loadings of 66 to 85 MVA, depending on location. Little or no additional right-of-way (ROW) would be required for the transmission line, but additional ROW might be required for access roads.

The objective of the EIS and related studies will be to assess potential environmental impacts of the proposed project and alternatives. Alternatives to be investigated include, but are not limited to, no action, rerouting, undergrounding, and design options. Studies will include the assessment of possible impacts to vegetation and wildlife, threatened and endangered species, floodplains and wetlands, and critical habitats. Potential impacts to land uses, social and economic factors, and historic or prehistoric cultural resources will also be addressed.

A proposed Flatiron-Gunbarrel 230/115-kV Transmission Line Project, which included a portion of the Flatiron-Erie transmission line, was previously considered by Western. An environmental assessment (EA) was initiated for this proposed project. Public meetings held at that time identified a number of issues significant to area residents. These issues included potential health considerations from electric and magnetic fields, visual impacts, possible effects on property values, ROW encroachment, conflict with local construction ordinances, underground construction options, and additional routing options outside the city of Longmont. In order to more fully address these concerns and allow further public involvement in the planning process, Western suspended the EA process and began an EIS process.

Since that time, the entire project has been reassessed by Western and the participating utilities. Additional planning and system studies have resulted in the decision to delay the 230-kV portion of the previous proposed project. Western's 115-kV Flatiron-Erie line requires near-term work to maintain its viability as a critical link in the region's existing transmission system. Western proposes to uprate the existing line as outlined above to accomplish this goal and will prepare an EIS to address the issues which have been raised. The 230-kV transmission line link will continue to be an option in overall regional transmission system planning, and will be addressed in a separate NEPA process if and when it becomes a definite proposal.

DATES: Initial public scoping and information meetings were held in 1987 and 1988 as part of the EA process on the Flatiron-Gunbarrel project as then proposed. Landowners having an assessment associated with the existing line were contacted by letter to inform them of these meetings, and public meeting notices were placed in local newspapers. The mailing list developed during this process will be updated for the Flatiron-Erie project to include landowners along the Gunbarrel-Erie portion of the line, and continually throughout the EIS process as interested parties are identified. Further public input will be solicited in future public meetings and a public hearing to be held during the EIS process. Landowners and interested parties will again be notified by letter, and by notices published in local newspapers in advance of the meetings. Western will also ask Federal, State, and local agencies to provide issues and concerns for consideration in the EIS.

The first scoping meeting for the proposed Flatiron-Erie project will be held on November 15, 1989, at 7 pm. at: Raintree Plaza Hotel and Conference Center, Front Range Room, 1900 Diagonal Highway 119, Longmont, CO 80501.

Anyone interested in the proposed project is invited to attend this scoping meeting. Those interested in receiving further information during the course of project planning should provide their names and addresses to Western representatives at the scoping meeting, or send this information to the address given below. Written comments may be sent to this address at any time during the EIS process.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Weiss, Assistant Area Manager for Engineering, J2000, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7238.

Issued at Golden, Colorado, September 25, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-23716 Filed 10-5-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3669-1]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed September 25, 1989 Through September 29, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890267, Draft, FHW, PR, PR-3 Relocation, between the Municipalities of Fajardo, and Humacao, Funding, PR. Due: November 20, 1989, Contact: Juan O. Cruz (000) 766-5600.

EIS No. 890268, Draft, FHW, PA, Uniontown Bypass/PA-6040 (Section A04) Construction, US 40 in Hopwood to US 119 near Chadville, 404 Permit and Funding South Union Township, Fayette County, PA. Due: November 22, 1989, Contact: Manuel A. Marks (717) 782-3411.

EIS No. 890269, Final, FHW, MD, US 1 Improvements, Silver Spring Road to MD-152, Funding and 404 Permit, Baltimore and Harford Counties, MD, Due: November 6, 1989, Contact: Herman Rodrigo (301) 962-4132.

Dated: October 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-23697 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3669-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 18, 1989 through September 22, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact

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statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-BLM-K70004-NV, Rating EC2, Nellis Air Force Range Planning Area Resource Management Plan, Implementation, Nye, Lincoln and Clark Counties, NV.

Summary: EPA expressed environmental concerns because the proposed action may have adverse impacts on riparian areas and wildlife resources. EPA noted that the DEIS lacked sufficient information on mining, grazing, right-of-way, vegetation wildlife and wild horse management to fully assess potential environmental impacts. EPA asked that these activities and BLM management goals, objectives and actions for them should be more fully described in the FEIS.

ERP No. D-BOP-E40722-SC, Rating EC2, Estill Minimum Security Federal Prison Camp, Construction and Operation, Estill Hampton County, SC.

Summary: EPA believes that the proposed project has the potential to affect the hydrology of wetlands on and off the project site. EPA requests that the final EIS contain a stormwater runoff plan to minimize potential impacts.

ERP No. D-CGD-E40723-FL, Rating EC2, Miracle Parkway Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, US Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL.

Summary: EPA feels additional information on measures to mitigate existing potential impacts to wetlands and water quality from highway construction and potential noise impacts should be detailed in the final EIS.

ERP No. D-FHW-E40721-NC, Rating EO2, Northern Wake Expressway, Construction, NC-55 Near Morrisville to US 64 Near Knightdale, Funding and 404 Permit, Wake and Durham Counties, NC.

Summary: EPA expressed major objections regarding impacts to 140 acres of wetlands and 40 stream crossings. Additional impacts regarding air and noise were also noted. EPA requested that the final EIS contain both additional analysis and provide alternatives/mitigations to reduce these impacts.

ERP No. D-OSM-K01007, Rating EO2, Blac Mesa and Kayenta Coal Mines, Mining and Reclamation Operations Permit, Lif-of-Mine Mining Plan and 404 Permit, Hopi and Navajo Reservations, Navajo County, AZ.

Summary: EPA expressed environmental objections because the proposed project may result in significant adverse impacts to air quality and water quality, especially the use of regional aquifer resources. There was insufficient information on water, air and biotic resources to properly evaluate environmental impacts, alternatives and appropriate mitigation measures. EPA also expressed objections because the draft EIS lacked an alternative analysis to enable federal agencies and the public to consider less damaging actions than the proposed action. EPA recommended that serious consideration be given to the preparation of a supplemental EIS to analyze alternatives with less severe environmental impacts, particularly on regional aquifer resources and air quality due to particulates.

ERP No. D-UAF-K12006-CA, Rating EC2, Space Launch Compex 7 (SLC-7) Construction and Operation, South Vandenberg Air Force Base, Santa Barbara County, CA.

Summary: EPA expressed environmental concerns becasue the proposed project may have adverse impacts on wetlands and other special aquatic sites regulated under section 404 of the Clean Water Act. EPA requested that the final EIS discuss compliance with the 404(b) (1) Guidelines. EPA also asked that the final EIS contain more information on existing air quality conditions in Santa Barbara County and air quality modeling; compliance with the corrective action, underground storage tank and waste minimization provisions of the Resource Conservation and Recovery Act; and a commitment that project activities will not interfere with the assessment, identification and cleanup of hazardous substances if they are located on the project site.

Final EISs

ERP No. F-BOP-D81016-MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegany County, MD.

Summary: EPA concerns with the draft EIS were adequately addressed in the final EIS.

ERP No. F-FHW-E40710-NC, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC-3180 to I-85 near the US 29 Connector, Funding and 404 Permit, Mecklenburg County, NC.

Summary: EPA feels the success of the Water Level Management Plan is depended on control of non-point source pollutant loadings from the watershed. Agressive pursuit of the watershed area non-point source pollution mitigation proposals are necessary.

ERP No. F-FHW-K40160-CA, CA-52 Construction, Santo Road to CA-67, Funding and 404 Permit, San Diego and Santee Cities, San Diego County, CA.

Summary: EPA requested that the Record of Decision contain a commitment that mitigation measures to protect wetlands and endangered species are adopted by the Federal Highway Administration. Future Route 52 project planning should incorporate measures to help protect air quality, and the development of mitigation measures to control nonpoint source water pollution is closely coordinate with EPA and the State Water Pollution Control Agency.

ERP No. FS-IBR-J28007-CO, Rudi Reservoir Round II Water Sale Marketing Program, Fryingpan-Arkansas Project, Co.

Summary: EPA has no objections to the proposed action.

ERP No. F-SCS-C36064-NY, Virgil Creek Watershed Flood Prevention Plan, Funding and Implementation, Town of Dryden, Town of Harford and Village of Dryden, Tompkins and Cortland Counties, NY.

Summary: EPA has no objection to the implementation of the project.

ERP No. F-UMT-K54017-CA, Muni Metro System Turnaround Project, Facilities Construction, Embarcadero, Clay Street to Brannon, Funding, City and County of San Francisco, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comments were sent to the agency.

ERP No. F-USN-E10006-NC, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R-5306A Establishment, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC.

Summary: EPA has concerns about the lack of meaningful cumulative impact analysis of airspace utilization conflicts and noise effects on the area inhabitants. Several electromagnetic issues raised in the draft EIS also remain unresolved.

Dated: October 3, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-23698 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Employees' Profit-Sharing Plan of United States Trust Company of New York and Affiliated Companies, New York, New York; to acquire 14.16 percent of the voting shares of U.S. Trust Corporation, New York, New York, and thereby indirectly acquire United States Trust Company of New York, New York, New York.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Arnold B. Chace, Jr., Providence, Rhode Island, and Malcolm G. Chace, III, Providence, Rhode Island; to acquire 10.61 percent of the voting shares of Guaranty Bancshares Corporation, Shamokin, Pennsylvania, and thereby indirectly acquire Guaranty Bank, National Association, Shamokin, Pennsylvania, and Guaranty Bank of Princeton (in organization), Princeton, New Jersey.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lakeview, Inc. Omaha, Nebraska; to acquire an additional 6.89 percent of the voting shares of Sherman County Management, Inc., Loup City, Nebraska, for a total of 16.75 percent, and thereby indirectly acquire Sherman County Bank, Loup City, Nebraska.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23664 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

First Sioux Bancshares, Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-19938) published at page 35247 of the issue for Thursday, August 24, 1989.

Under the Federal Reserve Bank of Chicago, the entry for First Sioux Bancshares, Inc., is amended to read as follows:

1. First Sioux Bancshares, Inc., Sioux Center, Iowa; to engage *de novo* through its subsidiary, First Sioux Financial, Sioux Center, Iowa, in the combination of consumer financial counseling, securities brokerage and insurance annuity sales pursuant to § 225.25 (b)(15), (b)(20) and (b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Comments on this application must be received by October 20, 1989.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 23663 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

Southtrust Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh posible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 26, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to acquire 20.83 percent of the voting shares of Municipal Development Co. II, Ltd., Birmingham, Alabama, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted throughout the State of Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire The Securities First Corporation, Peoria, Illinois, and Taylor, Bean & Whitaker Mortgage Corporation, Ocala, Florida, and thereby engage in making, acquiring, and servicing loans and other extensions of credit relating to mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Bethalto, Illinois; Champaign, Illinois; Collinsville, Illinois; Moline, Illinois; Peoria, Illinois; Rockford, Illinois; Springfield, Illinois; and Ocala, Florida. Comments on this application must be received by October 20, 1989.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23661 Filed 10-5-89; 8:45 am]

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Weetamoe Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Boards approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 27, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Weetamoe Bancorp, Somerset, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Slade's Ferry Trust Company, Somerset, Massachusetts.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Marathon Financial Corporation, Stephens City, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Marathon Bank, Stephens City, Virginia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Buckley Bancorp, Inc., Buckley, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Buckley State Bank, Buckley, Illinois.

2. Hi-Bancorp, Inc., Highwood, Illinois; to acquire 25 percent of the voting shares of CNP Bancorp, Inc., Mundelein, Illinois, and thereby indirectly acquire New Century Bank, Mundelein, Illinois.

3. Mercantile Bancorp, Inc., Hammond, Indiana; to acquire 100 percent of the voting shares of Meadowview Bancorp Inc., Kankakee, Illiniois, and thereby indirectly acquire First National Bank of Kankakee County, Kankakee, Illinois.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Las Cruces B.R.G., Inc., Las Cruces New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Rio Grande, N.A., Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23662 Filed 10-5-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9206]

R.J. Reynolds Tobacco Company; Proposed Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a tobacco corporation from making representations identified in the complaint and from misrepresenting the results, design, purpose or content of any scientific test or study concerning any association between cigarette smoking and health effects.

DATE: Comments must be received on or before December 5, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/S-4002, Washington, DC 20580. (202) 326-3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The agreement herein, by and between R.J. Reynolds Tobacco Company, a corporation (hereafter referred to as "Reynolds" or "respondent"), by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Reynolds is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of New Jersey, with its office and principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101.

2. Reynolds has been served with a copy of the complaint issued by the Federal Trade Commission charging Reynolds with violations of section 5(a) of the Federal Trade Commission Act, and has filed its answer denying said charges.

3. While Reynolds believes that the advertisement attached to the complaint constitutes non-commercial speech, for purposes of this agreement, Reynolds (i) waives the right to assert that the advertisement is not commercial speech in any proceeding in enforcement facts set forth in the Commission's complaint in this proceeding. This agreement does not constitute waiver of Reynolds' right to assert that any other advertisement constitutes non-commercial speech under the First Amendment.

4. Respondent waives: (a) any further procedural steps; (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and (d) any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent of any liability or of any issue of law or fact except as provided in paragraph 3 above.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered, That respondent, R.J. Reynolds Tobacco Company, a corporation; its successors and assigns; and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising or promotion of cigarettes that constitutes commercial speech under the First Amendment of the U.S. Constitution, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that the MR FIT study was designed and/or performed to test whether cigarette smoking causes coronary heart disease.

B. Representing directly or by implication that the MR FIT study is credible scientific evidence that cigarette smoking is not as hazardous as the public or the reader had been led to believe.

C. Representing directly or by implication that the MR FIT study tends to refute the theory that smoking causes coronary heart disease.

D. Failing to disclose, in any discussion of the MR FIT study that questions the relationship between smoking and smokers' risk of coronary heart disease, that: (a) Men in the study who quit smoking had a significantly lower rate of coronary heart disease death than men who continued to smoke; or (b) that the MR FIT study results are consistent with previous studies showing that those who quit smoking enjoy a substantial decrease in coronary heart disease mortality.

E. Misrepresenting in any manner, directly or by implication, in any discussion of cigarette smoking and chronic or acute health effects, the results, design, purpose or content of any scientific test or study explicitly referred to concerning any claimed association between cigarette smoking and chronic or acute health; *except that* this paragraph shall not apply to (i) any scientific test or study concerning the amount of tar and nicotine in any cigarette; or (ii) claims phrased as opinions unless (a) they are not honestly held, (b) they misrepresent the qualifications of the holder or the basis of his opinion, or (c) reasonable consumers are likely to interpret them as implied statements of fact.

II.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

III.

It is further ordered, That respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the R.J. Reynolds Tobacco Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the Complaint issued by the Commission in this proceeding, R.J. Reynolds Tobacco Company ("Reynolds") published an advertisement entitled "Of cigarettes and science." This advertisement discussed in the context of a larger discussion about how science is supposed to work, a scientific study known as the Multiple Risk Factor Intervention Trial (MR FIT). According to the complaint, the advertisement invited consumers to consider and question the relationship that they had been told exists between smoking and heart disease. The complaint alleged that Reynolds' advertisement contained three false or misleading representations about the MR FIT study: (1) That MR FIT was designed and performed to test whether cigarette smoking causes coronary heart disease; (2) that MR FIT provides credible scientific evidence that smoking is not as hazardous as the public or the reader has been lead to believe; and (3) that MR FIT tends to refute the theory that smoking causes coronary heart disease. That complaint also alleged that, in light of the representations contained in the advertisement, it was a deceptive practice for Reynolds to fail to disclose certain facts about the study and the lower risk from coronary heart disease in men who quit smoking.

Under the terms of the proposed consent order, Reynolds must cease and desist from making the three representations identified in the complaint. Moreover, in any discussion of the MR FIT study that questions the relationship between smoking and smokers' risk of coronary heart disease, Reynolds must disclose that: (1) The men in the study who quit smoking had a significantly lower rate of coronary disease death than men who continued

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to smoke; or (2) the study results are consistent with previous studies showing that those who quit smoking enjoy a substantial decrease in death from coronary heart disease. Finally, Reynolds must cease and desist from misrepresenting the results, design, purpose or content of any explicitly referred to scientific test or study concerning any claimed association between cigarette smoking and chronic or acute health effects. This final provision does not apply to certain statements of Reynolds' opinion or to representations about the amount of tar and nicotine in cigarettes.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89-23665 Filed 10-5-89; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Consortium of Federal, Academic and Industry Logistics Experts

Meeting Notice: Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet October 25, 1989, from 10:00 a.m. to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101-6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for the meeting will include an update of fiscal year 1989 agenda topics, and Mr. Stan Duda (GSA/FSS) will report on Personal Property Tracking System (PPTS).

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: September 26, 1989.

Donald C. J. Gray,

Commissioner.

[FR Doc. 89-23667 Filed 10-5-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting:

Baltimore District Office, chaired by Leonard Genova, Consumer Affairs Officer. The topic to be discussed is food labeling.

DATES: Monday, October 16, 1989, 12 m.

ADDRESSES: University of West Virginia, Allen Hall, Rm. 511, Morgantown, WV 26502.

FOR FURTHER INFORMATION CONTACT: Leonard Genova, Consumer Affairs Officer, Food and Drug Administration, 900 Madison Ave., Baltimore, MD 21201, 301-962-3731.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 2, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23671 Filed 10-5-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 6, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) required HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067. (This is not a toll-free number.)

Dated: September 29, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Building (by State)

(Number of Properties [ ])

Oklahoma

Chimney Hill Radio Station [1]

Pontotoc County, OK

Landholding Agency: GSA.

Location:

GSA Property No. 7-B-OK-552 (Excess); Approx. 10 miles SW of Ada, OK in Pontotoc Co. on Highway 12.

Comment:

76.5 sq ft. on 2.61 acres; rural area; no utilities.

[FR Doc. 89-23554 Filed 10-5-89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-09-4121-09]

Extension of Comment Period on Draft Powder River I Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The comment period on the draft Powder River I Supplemental EIS (DEISS) has been extended by 30 days beyond the previously discussed 60-day comment period (July 26, 1989-September 26, 1989) to October 26, 1989. The DEISS addresses possible economic, social, and cultural impacts to the Northern Cheyenne and Crow Tribes from leasing up to 11 Powder River Round I federal coal tracts.

DATES: Written comments should be sent to: Loren Cabe, Project Manager, Powder River I Supplemental EIS, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107. All comments received during the review period, whether oral or written, concerning the adequacy of the draft Supplemental EIS will be considered in the preparation of the final Supplemental EIS.

FOR FURTHER INFORMATION CONTACT: Loren Cabe, Project Manager, Powder River I Supplemental EIS, BLM Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107, telephone (406) 255-2920.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 89-23640 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the bureau clearance officer and to the Office of Management and Budget, Paper Reduction Project (1006-0002), Washington DC, 20503, telephone 202-395-7340.

Title: Recreation and Wildlife Summary.

OMB approval number: 1006-0002.

Abstract: Recreation and Wildlife Summary data are needed to plan, develop, administer, and monitor recreation areas on Bureau of Reclamation projects. These data are used in making land management decisions and in responding to Congressional and public inquiries. Respondents are State and county government agencies and water user organizations that have recreation management agreements with the Bureau of Reclamation.

Bureau Form Number: None.

Frequency: Annual.

Description of Respondents: Non-Federal Public Bodies.

Annual Responses: 160.

Annual Burden Hours: 560.

Bureau Clearance Officer: Carolyn Hipps-303-236-6769.

Dated: September 14, 1989.

B.E. Martin,

Acting Deputy Commissioner Bureau of Reclamation.

[FR Doc. 89-23668 Filed 10-5-89; 8:45 am]

BILLING CODE 4310-09-M

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Fish and Wildlife Service

Conference of the Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Seventh Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the U.S. negotiating positions for the seventh regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

FOR FURTHER INFORMATION CONTACT: Arthur Lazarowitz, Chief Operations Branch, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION:

Background

In accordance with § 23.35 of 50 CFR part 23, subpart D, of the Fish and Wildlife Service's (Service) rules providing for public participation in the development of negotiating positions for meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), the Service publishes summaries of the United States' negotiating positions for the seventh regular meeting of the Conference of the Parties to CITES (COP7) to be held in Lausanne, Switzerland, October 9–20, 1989.

The Service published summaries of proposed negotiating positions for most of the matters to be addressed at the Meeting in the Federal Register of September 5, 1989 (54 FR 36905 *et seq*). That notice also requested information and comments from the public related to the proposed negotiating positions and announced a public meeting for the same purposes that was subsequently held on Friday, September 8, 1989, in Washington, DC.

What follows is a summary of U.S. negotiating positions on most of the items on the provisional agenda of the meeting, a summary of written information and comments received in response to the Federal Register notice of September 5, and the record of the public meeting of September 8, 1989, and summaries of the rationales for the negotiating positions which include where necessary, responses to the information and comments received. The words "change" and "no change" are used in parentheses before the summaries of the negotiating positions and rationales to indicate whether or not there has been a substantial deviation from the proposed negotiating positions and/or rationales as published in the September 5 Federal Register notice. Numbers and title correspond to those used in the September 5 notice.

Negotiating Positions (Summaries)

I. Officials Opening Ceremony

Negotiating Position: (No change) No position necessary.

Information and Comments: None received.

Rationale: Not necessary.

II. Welcoming Address

Negotiating Position: (No change) As chair of the Standing Committee, the United States will present a welcoming address that will emphasize the need for the Parties, the Secretariat and nongovernmental organizations to rededicate themselves and provide the leadership to make CITES one of the most important and effective conventions for conservation of wild fauna and flora.

Information and comments: One commenter stated that CITES, including the Secretariat, was not living up to its potential.

Rationale: (No change) It is believed that CITES has not lived up to its potential and that in light of renewed public concern for the environment the time is ripe to reinvigorate the implementation process.

III. Adoption of the rules of procedure

Negotiating Position: (Change) The United States will suggest that consideration be given to the admission of the press to the proceedings of Committees I and II in such a manner as not to disturb the normal functioning of these committees.

Information and Comments: One commenter supported public admittance, and another opposed because it would be disruptive.

Rationale: (Change) World attention will be focused on COP7 because of concern over the serious decline of African elephant populations. Public awareness of CITES will be enhanced by opening Committee I and Committee II meeting. However, limitations on public attendance may be necessary in order to ensure the normal functioning of these committees. Generally, the Plenary sessions shall be open to the public (Rule 21 of the provisional Rules of Procedure, Doc. 7.3). Sessions of Committees I and II are open to delegates and observers, but no mention is made of public attendance (Rule 22). Decisions taken in Committees I and II are not open for discussion in Plenary sessions unless one-third of the voting delegates support a motion to open debate (Rule 13 paragraph 6). In addition, before COP6, the Plenary sessions were open to debate and open to the public. At COP6 the Plenary sessions were generally closed to the public. Thus, the public was foreclosed from the debate of most of the issues at COP6 and will be so foreclosed unless the changes here proposed are adopted. This position will be asserted by the United States not as the Chair of the Bureau.

IV. Election of Chair and Vice-Chair of the Meeting and of Committees I and II

Negotiating Position: (No change) Support the election of Chair and Vice-Chair on the basis of capabilities and regional representation.

Information and comments: None received.

Rationale: (No change) CITES is a worldwide convention. CITES would benefit from use of human resources from every region of the world.

V. Adoption of Agenda and Working Programme

Negotiating position: (Change) The United States favors a full and fair hearing on the proposed uplisting of the African elephant from CITES' appendix II to appendix I. Any attempt to deny a full and fair hearing either by scheduling or by restrictions on debate will be vigorously opposed.

Information and comments: Four commenters opposed a so-called fast-tracking of the elephant uplisting issue whereby debate in Committee I would open on the first Tuesday of the meeting (October 10) and probably close the next day. The Plenary would then vote on the issue on Friday (October 13). One other commenter proposes that Committees I and II meet jointly to consider the uplisting and implementation issues related to the African elephant ivory trade.

Rationale: (Change) Conservation of the African elephant is related to the observation of other species of wildlife and plants in the African region. The uplisting issue and the ivory trade are a true test of the effectiveness of CITES as a world conservation agreement. The United States wants full and fair consideration of the information and issues and various opinions and proposals on resolving elephant issues before final votes are taken. While the United States is not prepared at this time to propose a joint session of Committees I and II on elephant issues, it may be a useful procedure to facilitate consideration of elephant issues if developments at the meeting warrant its use.

VI. Establishment of the Credentials Committee and Committees I and II

Negotiating position: (No change) Support the establishment of the Credentials Committee and Committees I and II.

Information and comments: None received.

Rationale: (No change) Establishment of the Credentials Committee is a *pro forma* matter. The United States supports the establishment of Committees I and II provided most Parties participating in COP7 have been able to send at least two delegates, or that the rules governing debate of Committee I and Committee II recommendations have been sufficiently relaxed to ensure that most delegations will have had an opportunity to debate such recommendations before a final decision is made.

VII. Report of the Credentials Committee

Negotiating position: (No change) Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status as under Article XI.7(a). If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered in order to permit clearly legitimate representatives to participate.

Information and comments: None received.

Rationale: (No change) Adoption of the report is usually *pro forma*. Exclusion of representatives whose credentials are in order could undermine cooperation among Parties which is essential to the effective implementation of CITES.

VIII. Admission of Observers

Negotiating position: The United States supports the admission as observers of all representatives which meet the requirements specified in CITES that they be technically qualified in protection, conservation or management of wild fauna and flora.

Information and comments: None received.

Rational: (No change) Participation of qualified nongovernmental organizations at COP's is specifically provided by Article XI of CITES. The United States has typically supported the opportunities of all technically qualified observers to participate to the maximum extent. Such wide participation has, on the whole, proven beneficial.

IX. Matters Related to the Standing Committee

1. Report by the Chairman

Negotiating position: (No change) As Chair, the United States will stress the leadership role of the Standing Committee as it relates to oversight of the development and execution of the Secretariat's budget and the provision of general policy and operational direction to the Secretariat concerning CITES implementation.

Information and comments: Three commenters stressed the necessity of oversight of the Secretariat by the Standing Committee. Two of the three pointed out the possibility of conflicts of interests when personnel secondments are made to the Secretariat from Parties that have substantial trade interests.

Rationale: (Change) The operations of the Secretariat would be more effective if guided by a set of long-term goals and objectives established by the Parties that could then be used to structure short-term work plans. The Secretariat's budget needs to be presented in a comprehensive, clear and concise fashion so that the Standing Committee and the Parties can better oversee the Secretariat's budget functions. The Secretariat staff must be given long-term contracts and full benefits as a matter of the highest priority. There was consensus at the eighteenth meeting of the Standing Committee that core positions would be better filled from the regular budget if possible.

2. Election of New Members

Negotiating position: (No change) Support the election of regional members that are willing and able to actively participate in Standing Committee activities.

Information and comments: None received.

Rationale: (No change) The Standing Committee has the potential to become a stronger leader in the development of CITES. Its mandate was substantially strengthened by COP6 and its review of the economy and efficiency of the Secretariat was a good start at using this expanded mandate. Capable and energetic regional members are essential to the development of the Standing Committee's leadership role. In keeping with the principle of rotation of office the United States will not be standing for re-election as North American regional member of the Standing Committee and will probably be replaced by Canada. New Representatives from Europe and Oceania will also be chosen to replace the Federal Republic of Germany and Australia.

3. Election of Alternate Regional Members

Negotiating position: (No change) Advocate the adoption of a U.S. proposal to amend the mandate of the Standing Committee to establish alternate regional members.

Information and comments: None received.

Rationale: (No change) Alternate regional members would attend Standing Committee meetings only in the absence of the member of the region to which the alternate belongs. Because of their representational function and authority to vote, attendance of regional members or their alternates is important to the effective functioning of the Standing Committee.

X. Report of the Secretariat

Negotiating position: (Change) The United States is willing to consider comments from the public and from other government with regard to the performance of the Secretariat of its responsibilities under CITES.

Information and comments: One commenter stressed the need for oversight of the Secretariat. Another asked whether the United States would entertain information on the Secretary General's failure "to provide the kind of leadership CITES needs." Another urged the United States, as Chair of the Standing Committee, to communicate any deficiencies of the Secretariat to UNEP. A fourth urged that a process of evaluating the Secretariat and the Secretary General of CITES (including standards of conduct) be adopted before long-term employment contracts are reestablished for the Secretariat, and that a memorandum of understanding between the Standing Committee and UNEP be drafted to settle any question of responsibility should evaluation of the Secretariat be negative. One commenter was satisfied with the Secretariat's performance on an overall basis.

Rationale: (Change) This agenda item enables the Secretariat to make a report to the COP of its activities in the immediately prior year. It usually contains such information as an accounting of CITES membership, reservations, Party submission of annual and biennial reports and the like. Normally, the Parties accept the report

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with little comment. The Secretariat's report has not been received by the Service as of this date. Full consideration will be given to any comments concerning the performance of the Secretariat. As noted under item IX.1, Report by the Chairman (of the Standing Committee), there are certain deficiencies in the operation of the Secretariat that need to be remedied. Secretariat staff members are employees of the United Nations Environment Programme (UNEP), which has the ultimate authority for personnel decisions. While the Executive Director of UNEP is responsible for providing the CITES Secretariat, it has recognized the need to consult with the Standing Committee regarding the appointment of the Secretary General.

XI. Financing and Budgeting of the Secretariat and Meetings of the Conference of the Parties

Negotiating position: (No change) Oppose any substantial increase in the Secretariat's budget representing an increase in its work program; recommend that the Secretariat continue to work with the Standing Committee to impose economies. Make clear the U.S. Government's position that its contributions under the financial amendment are voluntary. Continue to press for complete accounting of external revenues and expenditures and for a more transparent budget presentation.

Information and comments: One commenter suggested that fees for nongovernmental organization participation at COP's be raised, that a minimum annual contribution for Parties be set at $1000, and that document fees be charged for large Party delegations to COP's.

Rationale: (Change) A large part of the increase in the 1990–1991 budget flows from the Standing Committee's decision to transfer the ivory control unit's budget from external funding to the core budget in order to exercise closer oversight. UNEP's decision to reclassify most of the professional positions in the Secretariat also caused part of the increase. External funding still represents a large part of the Secretariat's budget, and the Parties still need a comprehensive accounting of those funds. The Standing Committee recently rejected a proposal for a $1000 minimum annual contribution and could not agree on increasing the participation charge from its current $150 level.

XII. Committee Reports and Recommendations

1. Animals Committee

Negotiating position: (No change) None necessary.

Information and comments: None received.

Rationale: The Animals Committee's report may contain information and/or recommendations on continuation of the review of significant trade in appendix II species, on the draft resolution on first breeding facility for bred-in-captivity criteria for a new species, a request for committee operating budget, and a summary of marking techniques. These issues are discussed separately elsewhere in this notice. The overall applicability of the Berne criteria may also be discussed but no conclusion/recommendation is expected to be presented.

2. Plants Committee

Negotiating position: (No change) Continue to encourage development of the committee, and accomplishment of its tasks identified in the report, to improve the effectiveness of CITES for plants. Tasks include: (1) Strengthen interaction with other (including regional) plant organizations and institutions; (2) publish identification Guide; (3) publish checklists and develop computerized databases on listed higher taxa; (4) study significant trade in orchids (and selected succulents); (5) assess trade in bulbs, timber, and possibly medicinal plants; (6) other stated (administrative) items to encourage or assist Parties in implementing CITES and to consistently interpret its provisions for plants; and (7) expand educational efforts.

Information and comments: None received.

Rationale: (No change) The United States has chaired the prior Plant Working Group and the Committee since 1983. Improving CITES effectiveness for the many listed (and the many possibly qualifying plants is a long-term undertaking. Consider request for operating budget.

3. Identification Manual Committee

Negotiating position: (No change) Continue to foster development of the animal and plant identification manuals and the plant guide for use by port and border enforcement officers and to seek information on their usefulness. Renew efforts to recruit a new chairman for the Committee, preferably one from the European region for the sake of continuity.

Information and comments: None received.

Rationale: (No change) The identification manuals are a long-term undertaking due to the large number of species controlled by CITES. The former chairman of the manual for animals, a Swiss Federal Government employee, resigned at COP6 and is acting as a caretaker until a successor can be found.

4. Nomenclature Committee

Negotiating postion: (No change) Encourage and support the development/adoption of checklists for all taxa. Support clarification of any taxa not adequately described by proponents at the time of listing in the Appendices.

Information and comments: (No change) One commenter raised several questions related to how the Parties should deal with listing status questions when an inadequate scientific description of a taxon was given at the time of the listing.

Rationale: (No change) Implementation of the Convention is strengthened by use of uniform names of listed species by all parties, and adopted checklists provide guidance. Furthermore, the Chairmen of the Nomenclature Committee has requested that the CITES Secretariat "prepare proposed 'procedures for action' of the Nomenclature Committee in cases requiring interpretation of the nomenclatural status of species in the absence of supporting documentation at the time the listing was adopted by the Parties." The Chairman of the Nomenclature Committee also requested the CITES Secretariat to "obtain an independent legal opinion of the limits of authority [that] permanent committees hold with regard to interpreting the intent of the Conference of the Parties (in relation to the preparation of the procedures for action)."

XIII. Interpretation and Implementation of the Convention

1. Report on National Reports Under Article VIII, Paragraph 7, of the Convention

Negotiating position: (No change) Support measures that would encourage or pressure Parties to submit their annual reports and that would upgrade their quality.

Information and comments: None received.

Rationale: (No change) Approximately 70 percent of the Parties are submitting an annual report, up from 58 percent in 1981. Accurate and complete report data are essential to

adequately measure the impact of international trade on the species and can be a useful enforcement tool.

2. Review of Alleged Infractions

Negotiating position: (Change) The United States would support necessary and appropriate recommendations designed to obtain wider compliance with the terms of CITES, including measures that would encourage Parties to submit complete, accurate and timely trade reports and to notify the Secretariat of the name of their Scientific Authority.

Information and comments: One commenter recommend that the United States should introduce or support resolutions on infractions including the failure to notify the Secretariat of the designation of a Scientific Authority. Another cited Spain, Italy, Japan and Singapore as problem countries and recommended that the Secretariat spend more time on infractions and provide the Parties with more notice of alleged infractions urging the Standing Committee to become involved in the process and Parties to take sanctions on Parties repeatedly cited as infractors. This Commenter also called on the Secretariat to include in its infractions review more information on shipments of live specimens and to review trade in species subject to reservations before each COP.

Rationale: (change) Article XIII provides for COP review of alleged infractions. A COP may make whatever recommendations it deems appropriate. The Service has received a first draft of the Secretariat's Infractions Report which covers the period July 1987–May 1989, and notes that 15 Parties have not identified a Scientific Authority and so notified the Secretariat. Inclusion of the Standing Committee in the infractions process may have merit.

3. Trade in Ivory from African Elephants

Negotiating Position: (Change) If the African elephant is listed on appendix I, with no populations excluded from such listing, oppose any move to allow counties to trade in stockpiles of African elephant ivory or other parts or derivatives for primarily commercial purposes. Support continuation of the trade in trophies with adequate trade and biological safeguards.

Information and comments: Three commenters opposed allowing trade in stockpiles. Two favored allowing such trade under tight controls because such trade funds some conservation programs and because not to allow trade would be an unnecessary waste. One commenter recommendded use of so-called Pelly Amendment sanctions on countries that take reservation or whose materials show a repeated patten of violations of CITES.

Rationale: (Change) Except for pre-Convention specimens, importation of appendix I specimens for primarily commercial purposes is not allowed under the terms of CITES. It is very doubtful that legal trade of ivory stocks could be accomplished without providing cover for illegal trade. In response to a 1981 request to allow commercial trade in appendix I flood-killed lizards, the Parties recommended they be saved in storage or destroyed (Conf. 3.14). Pelly Amendment sanctions are available if the activities of nationals of a foreign country diminish the effectiveness of CITES. Certainly, the applicability of such sanctions to the African elephant issue will be considered in the light of the results of COP7. Trophy hunting can provide a benefit to the species and is recognized for appendix I species (Conf. 2.11).

4. Trade in Rhinoceros Products

Negotiating position: (No change) Support reasonable proposals that would enhance interdiction of the illegal rhinoceros horn trade and rhinoceros protection in the wild.

Information and comments: None received.

Rationale: (No change) Illegal taking and trade of rhinoceros horn have been further depleting the already endangered species. Further measures need to be taken on the supply side and in the consumer countries.

5. Trade in Leopard Skins

Negotiating position: (Change) Advocate stricter controls if necessary to prevent quota violations. Oppose any further increases in quotas without adequate supporting data that includes well documented studies based on sound scientific principles. Oppose allowing exporting countries to set quotas without approval of the COP.

Information and comments: One commenter favored no increase in export quotas for leopard skins and recommended a study of the leopard trade to detect quota violations and stated that the Secretariat's leopard study was not subject to proper year review. Another commenter supported the present quota system and further studies to clarify the population status of the leopard.

Rationale: (Change) Trade of leopard skins for noncommercial purposes is allowed under CITES resolution Conf. 6.9. which recognizes killing in defense of life and property and to enhance the survival of the species. The leopard report produced for the Secretariat is inadequate. Thus far, no quota increases have been requested for consideration by COP7. The United States believes that the Secretariat's recommendation to remove the COP from the quota setting process is not supported by information sufficient to show that the biological and trade status of the leopard warrants such action.

6. Trade in Plant Specimens

Negotiating position: (No change) No draft resolutions or other documents are pending. The Plants Committee will hold its second meeting simultaneously with portions of COP7. Encourage and be generally supportive of recommendations and items presented at COP7 that would improve CITES effectiveness for plants. If an item on certification of orchid nurseries is presented, consider supporting it provided it remains within the existing CITES framework for issuance of certificates and permits for artificially propagated specimens of species.

Information and comments: None received.

Rationale: (No change) As no specific items have been presented, no firmer positions can be adopted. The Conservation Committee of the International Orchid Commission and the Orchid Specialist Group of the Species Survival Commission of the IUCN, are seeking ways to expedite trade in artificially propagated orchids, as discussed in the first meeting of the Plants Committee. Orchid specialists familiar with various countries may offer advice and assistance to Parties in reaching their decisions as to which nurseries propagate orchids artificially. So long as certification is based on species and certain knowledge of each facility (not just on general information and without first knowing the facility's full inventory), and so long as the Parties remain actively responsible in using the advice and assistance to issue certificates and permits, the effort should be encouraged.

7. Marking of Specimens

Negotiating position: (Change) Support continuing efforts to find new practical and effective methods of marking animals and plant specimens. Oppose any attempt to weaken current marking requirements for ranched, captive-bred and quota species.

Information and comments: One commenter was opposed, for "compelling practical reasons," to regulate marking beyond the current requirements.

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Rationale: (Change) Article VI provides that where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. The Animals Committee may present a paper at COP7 that describes and evaluates current marking systems for live animals and parts evaluates current marking systems for live animals and parts and derivatives and that questions the system of marking of ranched specimens recommended by resolution Conf. 5.16 (see also item XIII.18, Trade in ranched specimens between Parties, non-Parties and reserving Parties). That paper contains a draft resolution that would, in part, remove marking requirements for "very small parts and manufactured derivatives" and, contrary to Article XIV, paragraph 1, attempts to nullify stricter domestic marking requirements on specimens from other countries.

8. Significant Trade in Appendix II Species

Negotiating Position: (No change) Support expeditious completion on studies of significantly traded appendix II species. Support regular funding for the coordination of significant trade study projects.

Information and comments: Two commenters recommended a suspension of trade in possible problem species that are being significantly traded.

Rationale: (Change) It has been 6 years since the Parties recognized that some appendix II species may have been traded at levels detrimental to their survival and without sufficient information to know whether or not this was the case. Over 85 has been done. Without adequate biological data, the possibility that some of those species are being detrimentally affected by trade is rather high. The United States is willing to consider the possibility of imposing further requirements for trade in such species.

9. Sale of Confiscated Specimens of Species Included in Appendix II

Negotiating Position: (No change) Oppose any proposal that would give the Secretariat general authority to receive confiscated specimens for the purpose of auction and that would authorize the Secretariat to expend the proceeds of auction to establish a conservation program with the confiscating country to study the status of the species and/or assist the Management Authority of that country.

Information and comments: None received.

Rationale: (No change) The administration of such auctions and project development proposals would divert valuable resources of the Secretariat to activities best left to the individual Parties. While some governments may have problems assuring that the disposal of confiscated specimens and the disposition of the proceeds thereof is free from wrongdoing, the Secretariat should not be seen as a surrogate for such governments and, given the possibility of a large and continuing supply of such specimens, as a commercial establishment for the sale of appendix II specimens.

10. Export/Re-Export Permit/ Certificates

Negotiating Position: (No change) Support proposals that a security stamp must be authenticated on its face and its number printed on the face of the permit or certificate; that permits/certificates should be refused if modified without indication that modification was made by the appropriate authorities; that the date of issuance of the country of origin permit number be included on the reexport certificate (if available); that re-export certificates indicate country of last re-export with permit number and date of issuance in block 5 of the standardized permit; that validity of such documents be conditional on transport of live animals in accordance with IATA Live Animals Regulations; and that each Party send to the Secretariat three signature specimens of each official authorized to sign CITES export permits and re-export certificates.

Information and comments: None received.

Rationale: (No change) Printing the number of the security stamp on the face of the permit or certificate and cancelling the security stamp would mitigate against removal and reuse of security stamps. Modification of permits/certificates without official indication of the validity of such modification makes it difficult to distinguish between official and unofficial (sometimes fraudulent) modification. Inclusion of the date of issuance of the country of origin export permit in some instances would facilitate the search for the permit by the issuing authority. Inclusion of the last country of re-export's permit number and issuance date on the next re-export certificate would facilitate tracing back of a shipment of CITES specimens that has entered two or more countries. Current U.S. regulations under the Lacey Act requires shipping containers for live mammals and birds to meet, at a minimum, space and design guidelines of IATA's Live Animals Regulations (LAR). These regulations are a stricter domestic measure, permissible under Article XIV of CITES The Service has been conditioning its export permits/re-export certificates on compliance with LAR.

11. Treatment of Genuine Re-export Certificates for Illegal Specimens

Negotiating Position: (No change) Support the proposition that an importing country has the right to question the validity of a CITES document which on its face was appropriately issued, but which may not have been issued in accordance with all CITES requirements.

Information and comments: Two commenters supported the U.S. position as proposed.

Rationale: (No change) While substantial weight must be given to the official documents of another country, they should not be binding on the importing country (and exporting country if prospective trade involves appendix I species) if that country has good reason to believe that issuance was not in accordance with all CITES requirements. CITES does not state that the importing country must accept all official documents of the exporting country. CITES does provide that each Party may take stricter domestic measures regarding the conditions for trade or the complete prohibition thereof (Article XIV, paragraph 1(a)).

12. Transport of Live Animals

Negotiating Position: (No change) Support modification of resolution Conf. 6.24 if that modification would not weaken resolutions adopted at previous COP's.

Rationale: (Change) The United States will oppose any attempt to weaken resolution Conf. 6.24 or eliminate paragraph (d) of Conf. 4.24. These resolutions recommend, among other things, a continuing dialogue between CITES and IATA on the basis that CITES does not relinquish its authority to require humane air transport of wild fauna, and use of an effective, practical checklist for export/import inspectors to asure that transport is/was in keeping with CITES requirements.

13. Guidelines for Evaluating Marine Turtle Ranching Proposals

Negotiating position: (No change) Support the recommendations of a meeting convened by the International Union for the Conservation of Nature and Natural Resources (IUCN) relating to guidelines for evaluating marine turtle ranching proposals, provided they would promote protection of wild populations of marine turtles.

Information and comments: None received.

Rationale: (Change) While the Parties have considered several ranching proposals, none have been accepted. The meeting convened by IUCN in San Jose, Costa Rica in January of 1988 produced draft guidelines, but none have been finalized. The guidelines as proposed are extensive, leave unresolved several issues and may need further review before presentation to a COP.

14. Review of Resolution Conf. 5.21 on Special Criteria for the Transfer of Taxa from Appendix I to Appendix II

Negotiating position: (Change) Support the continuation of Conf. 5.21 (relaxation of the strict "Berne Criteria" for downlisting species) only for those species that have already been proposed for downlisting to appendix II by virtue of Conf. 5.21 but only for one or two more COP's, whereupon such species should only remain on appendix II on the basis of information that meets the Berne Criteria for downlisting to appendix II (See Conf. 1.2).

Information and comments: Alleging several flaws in the trade and administration of some crocodile populations on appendix II by virtue of Conf. 5.21, one commenter recommended that a four-year limit be placed on downlistings under Conf. 5.21 and imposition of a deadline for submission of new Conf. 5.21 quota proposals.

Rationale: (Change) Conf. 5.21 allows an exemption from the strict criteria for downlisting species placed on appendix I at COP1 or at the original negotiation meeting of CITES in 1973. Conf. 5.21 coupled downlisting with export quotas to reduce the possibilities that trade would be detrimental to the survival of the species. Since data were insufficient for meeting the Berne Criteria for downlisting, export quotas based on such data are not likely to provide assurance of nondetrimental trade over an extended period of time. Management of the species for export under the quota system should enhance the capabilities of Conf. 5.21 countries of origin to obtain the data necessary to meet the downlisting Berne Criteria. Conf. 5.21 was only supposed to be a "temporary mechanism" to allow species incorrectly listed on appendix I to be transferred to appendix II.

15. Consideration of Criteria and Applications for Inclusion of New Species in the "Register of Operations Which Breed Specimens of Species Included in Appendix I in Captivity for Commercial Purposes"

Negotiating position: (No change) Support the adoption of reasonable criteria designed to assure that breeding operations are not established or maintained in a manner detrimental to the survival of the species.

Information and comments: One commenter was critical of the current U.S. and Canadian proposed criteria for approval of the appendix I captive breeding operation to appear in the Register of Operations, because they allow reference to the status of other operations and populations in the wild and would discourage such operations.

Rationale: (Change) While resolution Conf. 2.12 defines the term "bred in captivity," the Animals Committee decided more definition was needed to enable Parties to feel more assured that the first breeding operation for a "new species" would meet or would continue to meet Conf. 2.12 criteria. The United States and Canada have submitted like proposals for COP7 consideration that would provide such assurance. The United States is willing to submit its proposal to further review at the Animals Committee meeting to take place on October 8, 1989, in Lausanne, Switzerland.

16. Exemption for Blood and Tissue Samples for DNA Studies from CITES Permit Requirements

Negotiating position: (No change) Oppose any exemption for blood and tissue samples that is not within the term of CITES and existing CITES resolutions.

Information and comments: Two commenters opposed any exemption, one stating that any exemption must be within the terms of CITES and that any other exemption should benefit the species involved in trade or its systematics. One commenter urged the United States to keep an open mind on this issue and expand any exemption to include tissue samples for physiological investigations, reproductive assays and artificial reproductive techniques.

Rationale: (No change) Presumably, a real problem exists in expediting CITES formalities to accommodate specimens subject to spoilage or high trade volume. All reasonable solutions should be explored to resolve the problem short of negating the requirements of CITES.

17. Return of Live Animals of Appendix II or III Specimens

Negotiating position: (No change) Oppose any recommendation that would favor return of live appendix II or III specimens accompanied by faulty documents to the country of export without penalty to the importer or exporter.

Information and comments: Two commenters opposed immediate return of live animals, one stating that punishment for violating CITES should be done in the normal fashion not imposing the expense of return on the exporter, the other stating that return would put the animals at risk of harm.

Rationale: (No change) The application of sanctions for illegal trade is essential to fostering compliance with CITES rules.

18. Trade in Ranched Specimens Between Parties, Non-Parties and Reserving Parties

Negotiating position: (No change) Oppose any substantial weakening of the marking and trade criteria of resolution Conf. 5.16.

Information and comments: None received.

Rationale: (No change) The marking and trade criteria of Conf. 5.16 were specifically tightly drawn to provide strong assurances that the wild appendix I populations related to ranched appendix II populations would not be impacted by trade in specimens from the ranching operations. Trade was limited to non-reserving Parties (non-Parties and reserving Parties could not participate in such trade), in part, to prevent the wild appendix I specimens from being traded as appendix II ranched specimens and probably as an inducement to reserving Parties and non-Parties to become Parties.

19. Amendments to Appendix III

Negotiating position: (No change) Oppose any move to restrict appendix III listings to coincide with meetings of COP.

Rationale: (No change) Article XVI allows any Party to unilaterally list a species in appendix III at any time. Presumably, this proposal is for purposes of administrative convenience, since it would enable regulatory agencies to adjust to new species listings all at one time—once every 2 years after each COP. However, it would work to postpone appendix III listings and the protection afforded thereby for up to two years. Perhaps a resolution could encourage Parties to consider deferring appendix III listings

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to COP's if to do so would not produce biological harm to the species.

XIV. Consideration for Amendment of Appendices I and II

(Information on negotiating positions for so-called species proposals for COP7 will soon appear or has recently appeared in a recent **Federal Register** notice originated by the Service's Office of Scientific Authority.)

XV. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties

Negotioting position: (No change) Favor holding COP8 in the Pacific area, provided adequate funding is available and all Parties will be admitted to the host country without political difficulties. Support the holding of COP's on a biennial basis.

Information and comments: None received.

Rationale: (No change) As yet, the Pacific area has not hosted a COP. It is an important wildlife and plant area with significant trade problems. Holding the COP there would help focus attention in that area on CITES and stimulate interest in its goals and activities. COP meetings energize govenmental and nongovernmental organizations concerned with CITES to reexamine its implementation. Studies have indicated that much needs to be done to bring implementation up to a satisfactory level. Stretching out meetings to 3-year intervals under these circumstances is not appropriate. It is likely that the apparent cost savings that would result from a 3-year interval would be reduced by an increase in committee meetings in the interim.

2. Closing Remarks

Negotioting position: (No change) No position necessary.

Information and comments: None received.

Rationole: The United States will make a determination at COP7 whether to make a closing statement, and the nature thereof based on the outcome of COP7.

This notice was prepared by Arthur Lazarowitz, Chief, Operations Branch, Office of Management Authority under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–43.

Dated: October 4, 1989.

Constance B. Harriman,

Assistant Secretary of Fish and Wilflife and Parks.

[FR Doc. 89–23788 Filed 10–5–89; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

National Outer Continental Shelf Advisory Board; Meeting

AGENCY: Department of the Interior, Minerals Management Service, Pacific OCS Region.

ACTION: National Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet November 2, 1989 from 9:00 a.m. to 5:00 p.m., at the Travelodge Hotel at Fisherman's Wharf, 250 Beach Street, San Francisco, California 94133.

The tentative Agenda for the meeting covers the following topics:

—Reports:

Review of OCS Policy Committee Meeting (October 1989)
Status of Presidential OCS Task Force Study

—Pacific OCS Issues and Updates:

Supplemental 5-Year Plan/Draft EIS
Pacific OCS Northwest Task Force
Office of Leasing and Environment
Office of Resource Evaluation
Office of Field Operations
FY 90–91 Environmental Studies

—Public Comment Period.

Minutes of the meeting will be available for public inspection and copying at the following location: Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Room 277, Los Angeles, CA 90017.

Dated: September 29, 1989.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 89–23657 Filed 10–5–89; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation, ADDCO Holding Co., 69 Empire Drive, St. Paul, MN 55103.

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

1. ADDCO Manufacturing Co., Inc.—A Minnesota Corp.
2. ADDCO Trucking Co., Inc.—A Minnesota Corp.
3. Nicholson Co., Inc.—A Minnesota Corp.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23686 Filed 10–5–89; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 1052(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland Chemical, Inc	Ohio
Ashland Development, Inc	Delaware
Ashland Ethanol, Inc	Delaware
Ashland Oil and Transportation Co.	Kentucky
Ashland Petroleum, Inc	Delaware
Ashland Pipeline Co	Ohio
Inland towing Co	Delaware
Mid-Valley Supply Co	Kentucky
Tri-State Marketing Services, Inc	Delaware
APAC-Alabama, Inc	Delaware
APAC-Arizona, Inc	Delaware
APAC-Arkansas, Inc	Delaware
APAC-Carolina, Inc	Delaware
APAC-Florida, Inc	Delaware
APAC-Georgia, Inc	Delaware
APAC, Inc	Delaware
APAC-Kansas, Inc	Delaware
APAC-Mississippi, Inc	Delaware
APAC-Oklahoma, Inc	Delaware
APAC-Tennessee, Inc	Delaware
APAC-Texas, Inc	Delaware
APAC-Virginia, Inc	Delaware
REG X Condor, Inc	Delaware
Scurlock Oil Company	Kentucky
TAP–CCI, Inc	North Carolina
Algonquin Pipe Line Co	Illinois
Ohio River Pipe Line Company	Delaware
Owensboro-Ashland Company	Delaware
Soco Pipeline Co	Texas
Transport Supply Co, Inc	Texas
Banton Marine Corp	Texas
Rich Oil, Inc	Delaware
Drew Chemical Corporation	Delaware
Warren Brothers Hauling, Inc	Delaware
IG–LO Transportation, Inc	Delaware
Tanner Southwest, Inc	Arizona
The Tanner Companies	Arizona
RCT Co., Inc	Arizona
Western Equipment Co	Arizona
SuperAmerica Group, Inc	Kentucky
Ashland Branded Marketing, Inc	Delaware

Subsidiary	Jurisdiction of incorporation
Valvoline, Inc	Kentucky
Ashland Industrial Products, Inc	Delaware
Carrollton Petroleum, Inc	Delaware
IG–LO Inc	Delaware
Mac's Oil & Chemicals, Inc	Delaware
Lexington Coating Technology, Inc.	Delaware
Valvoline Instant Oil Change, Inc	Delaware

B. 1. Parent corporation and address of principal office: Ludlow Corporation, One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation: Twitchell Corporation, 4031 Ross Clark Circle, Dothan, Alabama 36302, Incorporated in Alabama.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23687 Filed 10–5–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31493]

Blackstone Capital Partners L.P.; Control Exemption; CNW Corp. and Chicago and North Western Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343 the acquisition of control by Blackstone Capital Partners L.P. of CNW Corporation and its carrier subsidies—Chicago and North Western Transportation Company, Midwestern Railroad Properties, Inc., and Western Railroad Properties, Inc., subject to standard labor protective conditions.

DATES: The exemption will be effective on October 9, 1989. Petitions for reconsideration must be filed by October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

ADDRESSES: An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31493, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents must be sent to petitioner's representative: Betty Jo Christian, Timothy M. Walsh, STEPTOE & JOHNSON, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: September 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips. Commissioner Phillips commented with a separete expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression.

Noreta R. McGee,

Secretary

[FR Doc. 89–23728 Filed 10–5–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30553 (Sub–No. 1)]

Camp Lejeune Railroad Co., Renewal of Lease Exemption; a Rail Line in North Carolina

Camp Lejeune Railroad Company, a wholly owned subsidiary of Southern Railway Company, has leased and operated 5.6 miles of rail line in North Carolina owned by the United States of Department of the Navy under a lease originally authorized by the Commission in 1984.[1] The lease expired August 31, 1989. The parties have agreed to extend the lease until August 31, 1994.

This notice is filed under 49 CFR 1180.2(d)(4), which exempts renewal of leases and any other matters where the Commission has previously authorized the transaction and only an extension in time is involved. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any comments must be filed with the Commission and served on Thomas W. Ambler, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption any employees affected by the lease transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate,* 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Decided: September 26, 1989.

[1] *See* Finance Docket No. 30553, *Camp Lejeune Railroad Company—Lease Exemption* (not printed), served September 17, 1984.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23593 Filed 10–5–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31529]

Nimishillen & Tuscarawas Railway Co., Acquisition and Operation Exemption; Line of Mahoning Valley Railway Co.

Nimishillen & Tuscarawas Railway Company, a non-carrier, filed a notice of exemption to acquire and operate approximately 24.07 miles of rail line owned and operated by the Mahoning Valley Railway Company. The rail line consists of two segments. The first segment (the "Massillon Line") begins at a point about 2,300 feet south of Ordbrook Avenue, S.W., in the Township of Perry, Stark County, OH, and extends in a northeasterly direction to a point adjacent to the Consolidated Rail Corporation (Conrail) interchange yard, also in Perry. The second segment (the "Canton Line"), bounded on the north by the line of Conrail and on the south by the properties of Republic Engineered Steels, Inc. (Republic), begins at a point about 1,500 feet east of Trump Road in the Township of Canton, Stark County, OH, and extends in a southwesterly direction to a point about 750 feet from the western border of Republic's facilities, also in Canton. (The line then encircles Republic's facilities and merges back into itself.) This transaction is expected to be consummated on September 29, 1989.

Any comments must be filed with the Commission and served on: Peter F. Moriarty, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

Applicant may not engage in any activities that would jeopardize the potentially historic character of the line and related structures 50 years old or older until completion of the process under section 106 of the National Historic Preservation Act. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 28, 1989.

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By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23564 Filed 10-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 304X)]

CSX Transportation, Inc.—Abandonment Exemption—in Van Buren County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc. (CSXT), of 1.6 miles of rail line between mileposts 15.67 and 17.27 at Hartford, in Van Buren County, MI, subject to standard labor protective conditions, and the condition that CSXT continue service should its proposed sale of the line not be consummated.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 6, 1989. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 16, 1989, petitions to stay must be filed by October 16, 1989, and petitions for reconsideration must be filed by October 26, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 304X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concept, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4356/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: September 29, 1989.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR 89-23688 Filed 10-5-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Cancellation of Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, title III, Public Law 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment which was scheduled to meet on Wednesday, October 11, 1989, at 10:00 a.m., in the Secretary's Conference Room, S-2508, FPB has been cancelled. The Notice announcing the meeting was published on September 15, 1989 at 54 FR 38301.

Signed at Washington, DC, this 4th day of October, 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-23820 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-79-M

Mine Safety and Health Administration

[Docket No. M-89-13-M]

Aluminum Company of America; Petition for Modification of Application of Mandatory Safety Standard

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.13017 (compressor discharge pipes) to its Bayer Alumina Plant (I.D. No. 00320) located in Calhoun County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressor discharge pipes where carbon build-up may occur are required to be cleaned periodically as recommended by the manufacturer, but no less frequently than once every two years.

2. As an alternate method, petitioner proposes to use a specifically formulated fire-resistant hydraulic fluid, composed of butylated triphenyl phosphate (FYRQUEL 550 R&O) in the plant air compressors. The use of this fluid would eliminate the potential for carbon build-up and the necessity for cleaning the discharge pipes every two years.

3. In support of this request, petitioner states that—

(a) Continuous monitoring instrumentation with alarms would be installed on the R-110 and Building 51 air compressors; and

(b) Overheating air compressors would be taken out of service when the alarm sounds.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written coments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23693 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-145-C]

Carter-Roag Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Carter-Roag Coal Co., Inc., P.O. Box 2327, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mine No. 1A (I.D. No. 46-06715) located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground permanent pumps be housed in fireproof structures or areas, and air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. The pump is located in a sump area and contains a walkway used for pump inspection, a permanent overhead monorail used for pump installation, and limited space between the sump and the trolley wire.

3. These conditions would make permanent housing difficult and reduce the effectiveness of housing if installed.

4. Due to adverse water conditions, which have been a major problem, the pump is highly utilized and an important part of dewatering. An attempt to relocate the pump or alterations to the present area could alter the water flow.

5. As an alternate method, petitioner proposes to place a dry chemical fire extinguisher within the area. This would provide immediate firefighting equipment should a fire occur. The location of the pump is frequently passed by incoming and putgoing personnel, supply shipments, and routine man trips and any fire would be readily detected.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforeded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: October 2, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23694 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-14-M]

GREFCO, Inc.; Petition for Modification of Application of Mandatory Safety Standard

GREFCO, Inc., P.O. Box 308, Antonito, Colorado 81120 has filed a petition to modify the application of 30 CFR 56.13020 (use of compressed air) to its El Grande Openpit Mine (I.D. No. 29-00250) located in Taos County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that compressed air not be directed toward a person. When compressed air is use, all necessary precautions must be taken to protect persons from injury.

2. As an alternate method, petitioner proposes that employees be allowed to use compressed air regulated to a maximum of 30 psi, to blow dust from their clothing.

3. In support of this request, petitioner states that a PEM safety-type air blow gun has been installed. This type of air blow gun operates at less than 30 psi at the nozzle tip with 175 psi input pressure. It has a safety nozzle tip that expells air if the tip is blocked. The air blow gun meets OSHA's standards when used for cleaning needs.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23695 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-146-C]

Mine Hill Coal Co., No. 50; Petition for Modification of Application of Mandatory Safety Standard

Mine Hill Coal Company, No. 50, P.O. Box 819, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Buck Mountain Slope Mine (I.D. No. 36-07548) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 6, 1989. Copies of the petition are available for inspection at that address.

Dated: September 28, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23696 Filed 10-5-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

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Title: National Science Foundation Proposal/Award Information.

Affected Public: Individuals, state and local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

Responses/Burden Hours: 37,000 responses; 120 burden hours each.

Generic Clearance Request: The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, small business and other research organizations. These awards are based on proposals submitted to the Foundation in accordance with the requirements contained in NSF Publication "Grants for Research and Education in Science and Engineering, NSF 83–57." The provisions of this brochure apply to all NSF programs and related activities, such as foreign travel, conferences, symposia, and research or education equipment and facilities. Some programs operate from more specific program announcements or solicitations which elaborate on the provisions of this brochure.

Interested persons are invited to submit comments to the following individuals within 30 days of the published date of this notice.

1. *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or telephone (202) 357–7335.

2. *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Dated: October 3, 1989.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 89-23689 Filed 10-5-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-352/353]

Availability for Supplement to the Final Environmental Statement for Limerick Generating Station, Units 1 and 2

Notice is hereby given that a supplement to NUREG–0974, "Final Environmental Statement related to the operation of Limerick Generating Station, Units 1 and 2," has been prepared by the Nuclear Regulatory Commission. The supplement provides the NRC staff's evaluation of the alternative of facility operation with the installation of further mitigation design features. The Limerick Generating Station, Units 1 and 2 is located on the Schuylkill River, near Pottstown, in Limerick Township, Montgomery and Chester Counties, Pennsylvania.

Copies of the supplement are available for inspection by the public in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. The document is also being made available at the Pennsylvania Inter-Governmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108 and at the Delaware Valley Regional Planning Commission, Bourse Building, 21 South 5th Street, Philadelphia, Pennsylvania 19106.

Copies of the supplement may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

Dated at Rockville, Maryland, this 29th day of September 1989.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23674 Filed 10–5–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–324]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–62 issued to Corolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

The proposed amendment would waive the requirement to conduct a Type A Containment Integrated Leak Rate Test during the current refueling outage. This is requirement because the last two Type A tests were initially considered to be failures. The next Type A test would be conducted during the next refueling outage if the amendment is approved. A similar request was submitted May 23, 1989, as an exemption to 10 CFR part 50, appendix J.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By Novermber 6, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for heering and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 25555 and at the Local Public Document Room located at the William Madison Randall Library, University of North Carolina at Wilmington, 601, S. College Road, Wilmington, North Carolina 28403. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference of the following factors: (1) The nature of the pletitioner's right under the Act to be made a party to the preceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intevene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged or expect opinion which support the contention and on which the petitioner intends to rely or proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner mustr provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions ar filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam, Director; Project Directorate II–1; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consisteration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 14, 1989, as supplemented August 21, 1968, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilimington, North Carolina 28403.

Dated at Rockville, Maryland, this 27th day of September 1989.

For the Nuclear Reguarlory Commission.

Elinor G. Adensam,

Director Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23–675 Filed 10–5–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 7–5357]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Chicago Board Options Exchange, Inc.

October 2, 1989.

The Chicago Board Options Exchange, Inc. ("CBOE") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f–1 thereunder for unlisted trading privileges ("UTP") in Ryan's Family Steak Houses, Inc., and Harnischfeger Industries, Inc. for the purpose of trading the common stock of these securities as part of a market basket on the Standard & Poor's 500 and 100 Indexes ("Index").[1] As indicated in their application, Ryan's Family Steak Houses, Inc. is an over-the-counter ("OTC") security that is quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and that is not registered on any national securities exchange.[2] Last sale information in the stock is reported through NASDAQ facilities. Harnischfeger Industries, Inc. is listed and registered on the New York Stock Exchange, Inc. and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 11, 1989, written data, views and arguments concerning the above-referenced application.[3] Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C) of the Act. Under this Section the Commission can only approve the UTP application if it finds, after this notice and opportunity for hearing, that the extensions of

[1] See proposed rule filing SR–CBOE–88–20. The CBOE previously applied for UTP in the 500 stocks comprising the Standard and Poor's 500 Index to accommodate CBOE's proposal to trade market baskets. See Securities Exchange Act Release No. 27237, 54 FR 38475. After that application, however Standard & Poor's announced the two securities as replacement stocks for the Index.

[2] In its previous application the CBOE also registered UTP for 31 OTC stocks.

[3] Notice already has been sent to the issuer and the relevant markets.

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unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

Further, in considering the CBOE's application for extension of UTP in a stock not registered on another national securities exchange, section 12(f)(1)(C) of the Act requires the Commission to consider, among other matters, the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(2)(C) of the Act would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23691 Filed 10-5-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 1:00 p.m., Wednesday, November 8, 1989, in the Conference Room of the Thomas P. O'Neil Federal Building, 10 Causeway Street, room 265, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. McNally, District Director, U.S. Small Business Administration, 10 Causeway Street, room 265, Boston, Massachusetts 02222-1093.

Dated: September 27, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-23656 Filed 10-5-89; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 02/02-5533]

Cathay Capital Corp.; Application for a Small Business Investment Company License

Notice is hereby given that an applicaton has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Cathay Capital Corporation (CCC) of 17-23 E. Broadway, Fifth Floor, New York, New York 10002, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and major shareholders of the Applicant are as follows:

Name and address	Title	Percentage of ownership
Isaac Shih, 3804 Bailey Ave., E-1, Bronx, New York 10463.	Director and Chairman of the Board.	45
Joan Shih, 3804 Bailey Ave., E-1, Bronx, New York 10463.	Director, Secretary & Treasurer.	45
James Tong, 20 Confucius Plaza, New York, New York 10002.	Director, President	05

The Applicant, CCC, a New York Corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of New York, but will consider investments in other areas of the United States.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: September 29, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 89-23655 Filed 10-5-89; 8:45 am]

BILLING CODE 8075-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-Ap-No. 2924]

Southern Pacific Transportation Co.; Public Hearing

The Southern Pacific Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the automatic block signal system from Gazelle, California to Glendale, Oregon and from Cornutt, Oregon to Springfield Junction, Oregon. This proceeding is identified as FRA Block Signal Application Number 2924.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly a public hearing is hereby set for 10 a.m. on December 6, 1989, in room 227 of the Federal Office Building located at 211 E. 7th Street in Eugene Oregon.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on September 27, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-23653 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2588]

Southern Railway System; Public Hearing

The Southern Railway System has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the traffic control and automatic block signal systems between Edgewood, Georgia and Lee, Georgia, on the Central of Georgia Railway Company. This proceeding is identified as FRA Block Signal Application No. 2588.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

A public hearing in this proceeding was set for May 28, 1987 but, at the request of the carrier, the hearing was postponed. The Southern Railway has now petitioned the FRA to continue this proceeding.

Accordingly, a public hearing is hereby set for 10 a.m. on December 13, 1989, in Room 333 of the U.S. Post Office Building at 451 College Street in Macon, Georgia.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on September 27, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-23654 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Federal Deposit Insurance Corp.

[OTS No. 89-239]

Allocation of Regulations and Orders Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

Dated: October 3, 1989.

AGENCIES: Office of Thrift Supervision, Department of the Treasury; Federal Deposit Insurance Corporation.

ACTION: Notice of allocation of regulations and orders.

SUMMARY: Pursuant to sections 401(i) and 402(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, the Director of the Office of Thrift Supervision ("OTS") and the Chairperson of the Federal Deposit Insurance Corporation ("FDIC") (jointly the "Agencies") are to identify the regulations and orders of the former Federal Home Loan Bank Board ("Bank Board") and Federal Savings and Loan Insurance Corporation ("FSLIC") that relate to the conduct of conservatorships and receiverships, the provision, rates, or cancellation of insurance of accounts, and the administration of the FSLIC insurance fund and are to publish notice of the allocation of those regulations and orders between the Agencies. This Notice sets forth that allocation.

FOR FURTHER INFORMATION CONTACT: Office of Thrift Supervision: Deborah Dakin, Regulatory Counsel, (202) 906-6445, Regulations and Legislation Division, Office of the General Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Federal Deposit Insurance Corporation: Alan J. Kaplan, Counsel, (202) 898-3734, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FIRREA, signed into law on August 9, 1989, provided for a substantial reorganization of the regulation and insurance of savings associations. Functions formerly performed by the Bank Board and the FSLIC in these areas have now been divided between the OTS and the FDIC. Section 401(i) of the FIRREA provides that within sixty days of its enactment the Director of the OTS and the Chairperson of the FDIC shall "(1) identify the regulations and orders which relate to the conduct of conservatorships and receiverships in accordance with the allocation of authority between them under this Act and the amendments made by this Act; and (2) promptly publish notice of such identification in the Federal Register." Section 402(b), in conjunction with section 402(a), requires a similar identification, allocation, and publication for regulations and orders that relate to "(1) the provision, rates, or cancellation of insurance of accounts; or (2) the administration of the insurance fund of the Federal Savings and Loan Insurance Corporation."

This notice lists the regulations relating to these areas [1] in effect on August 9, 1989 and the disposition of those regulations upon transfer. In general, the rules relating to the authority to appoint conservators and receivers for savings associations are being transferred to the OTS, while those relating to the conduct and powers of conservatorships and receiverships, all aspects of insurance of accounts, the provision of financial assistance to institutions to prevent default, and administration of the deposit insurance fund are being transferred to the FDIC. Upon such transfer, such regulations will be part of the regulations of the appropriate agency, which may then modify, redesignate (*i.e.*, renumber) or repeal such regulations as it deems appropriate within the requirements of the FIRREA, the Home Owners' Loan Act (in the case of OTS), and the Federal Deposit Insurance Act (in the case of FDIC). The regulations of the OTS appear in 12 CFR chapter V and the regulations of the FDIC appear in 12 CFR chapter III.

This notice in and of itself does not have a substantive effect on the regulations or those subject to them; it merely provides a convenient reference source for the disposition of the affected regulations. Section 401(h) provides that, subject to section 402 (which contains special rules for the continuation and coordination of regulations relating to insurance of accounts and

[1] The regulations of the Bank Board and the FSLIC governing the chartering of Federal savings associations and the regulation of all savings associations and savings and loan holding companies have been transferred to the OTS and are neither addressed by sections 401(i) or 402 nor set forth in this Notice.

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administration of the FSLIC insurance fund), all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the FSLIC or the Bank Board that were in effect on the date of FIRREA's enactment continue in effect and are enforceable by the appropriate successor agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, any court or competent jurisdiction, or by operation of law.

Accordingly, the following listed rules of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation have been allocated between the Office of Thrift Supervision and the Federal Deposit Insurance Corporation as follows:

Title 12

Part or Section		Disposition
	Subchapter C—Federal Savings and Loan System	
Part		
547	Appointment of Conservators and Receivers	OTS
548	Powers of Conservator and Conduct of Conservatorships	FDIC
594	Powers of Receiver and Conduct of Receivership	FDIC
	Subchapter D—Federal Savings and Loan Insurance Corporation	
Part		
562	Application for Insurance of Accounts	FDIC
563	Operations:	
Sec.		
563.8–2	Corporation's right of purchase	FDIC
563.15	Premiums	FDIC
563.16	Premiums in mergers, consolidations, or purchases of bulk assets	FDIC
563.16–2	Secondary reserve	FDIC
563.28	Advertising of insurance of accounts	FDIC
563.29	Name of association	OTS
563.29–1	Continuation of insurance	FDIC
563.30	Reservation of right concerning advertising	FDIC
563.31	Other insurance or guaranty	FDIC
563.36	Equal opportunity in employment	FDIC
Part		
564	Settlement of insurance	FDIC
565	Termination of insurance	FDIC
569a	Receivers for insured institutions other than federal associations:	
Sec.		
569a.1	Grounds for appointment of receiver	OTS
569a.2	Appointment of receiver	OTS
569a.3	Notice of appointment	OTS
569a.4	Possession by receiver	FDIC
569a.5	Procedure on taking possession	FDIC
569a.6	Powers and duties as receiver	FDIC
569a.7	Priority of claims	FDIC
569a.8	Creditor claims	FDIC
569a.9	Claims of accountholders	FDIC
569a.10	Audits	FDIC
569a.11	Accounting practices, reports	FDIC
569a.12	Final discharge and release of receiver	FDIC
569a.13	Purchase and assumption transactions	FDIC
Part		
569c	Receivership rules	FDIC
570	Board rulings:	
Sec.		
570.12	Insurance of accounts evidenced by negotiable instruments	FDIC
570.13	Insurance of annuity accounts	FDIC
Part		
572	Net worth certificates	FDIC
572a	Voluntary assisted-merger program	FDIC
575	Procedures for the administration and determination of claims filed with the FSLIC as receiver	FDIC
575a	Presentment of claims to receiver prior to commencing litigation	FDIC
576	Procedures for the processing and determination on review of determinations of the FSLIC as receiver	FDIC
577	Procedures for the administration and determination of requests for expendited relief from decisions or threatened actions of the FSLIC as receiver.	FDIC
578	FSLIC financial operations	FDIC

All orders of the Federal Home Loan Bank Board appointing the federal Saving and Loan Insurance Corporation as conservator or receiver and all orders of the Federal Home Loan Bank Board or Federal Savings and Loan Insurance Corporation affecting the conduct or powers of a conservatorship or receivership, both as in effect as of August 9, 1989, are allocated to the FDIC, the Resolution Trust Corporation, or the FSLIC resolution Fund (which is managed by the FDIC), as appropriate. All order of the Federal Home Loan Bank Board approving applications for insurance of accounts, including all conditions contained therein, as in effect as August 9, 1989, are allocated to the OTS.

Dated: at Washington, DC, this 3rd day of October 1989.

Office of Thrift supervision.

M. Danny Wall,

Director.

Federal Deposit Insurance Corporation.

L. William Seidman,

Chairperson.

[FR Doc. 89–23864 Filed 10–5–89; 8:45 am]

BILLING CODE 6720–01–M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 193
Friday, October 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 16, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan Activities report by Executive Director.
3. Review of the Price Waterhouse report on "Review of Thrift Savings Plan Annuity Operations at the Thrift Investment Board and Metropolitan Life."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660

Dated: October 3, 1989.

Francis X. Cavanaugh,

Ececutive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89-23789 Filed 10-4-89; 11:34 am]

BILLING CODE 6760-01-M

Corrections

Federal Register
Vol. 54, No. 193
Friday, October 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1989 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

Correction

In notice document 89-21248 beginning on page 37491 in the issue of Monday, September 11, 1989, make the following corrections:

1. On page 37493, in the table, in the second and third columns, in the third entry, "106.7" and "105.2" should read "105.9" and "104.4", respectively.
2. On the same page, in the same table, insert "Virginia sun-cured, type 37"; "106.7"; and "105.2," in their respective columns, between the third and fourth entries.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89-136-011 and TM90-1-59-001]

Northern Natural Gas Co., Division of Enron Corp.; Filing

Correction

In notice document 89-22659 appearing on page 39465 in the issue of Tuesday, September 26, 1989, make the following corrections:

1. On page 39465, in the third column, the docket heading should read as set forth above.
2. On the same page, in the same column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-2062-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-22495 beginning on page 39224 in the issue of Monday, September 25, 1989, make the following correction:

On page 39225, in the second column, under "5. American Distribution Co. (Alabama Division)", the docket numbers should read "[Docket Nos. CP84-474-012 and CP86-263-004]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 87N-0246]

Certain Food, Cosmetic, and Miscellaneous Regulations; Editorial Amendments; Confirmation of Effective Date

Correction

In rule document 89-22051 appearing on page 38514 in the issue of Tuesday, September 19, 1989, make the following corrections:

1. On page 38514, in the first column, under "**FOR FURTHER INFORMATION CONTACT:**", in the fourth line, the phone number should read "301-443-2994".
2. On the same page, in the second column, in the second complete paragraph, in the 12th line, insert "21 CFR Parts" after "except for:".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 89-21871 beginning on page 38439 in the issue of Monday, September 18, 1989, make the following correction:

On page 38439, in the third column, in the first full paragraph, in the third line, "17509" should read "1750".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0303]

International Drug Scheduling; Convention on Psychotropic Substances; Certain Benzodiazepine Drugs; Propylhexedrine

Correction

In notice document 89-21948 beginning on page 38441 in the issue of Monday, September 18, 1989, make the following correction:

On page 38441, in the second column, under "II. Notification", in the second line of the reference citation, "HOW" should read "WHO".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

Correction

In proposed rule document 89-22382, beginning on page 39015 in the issue of Friday, September 22, 1989, make the following correction:

On page 39016, in the second column, in the **DATE** section the date should read "October 23, 1989".

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020-41-5410-10-ZAFH;AZA-23386]

Receipt of Conveyance of Mineral Interest Application

Correction

In notice document 89-18574 appearing on page 32698 in the issue of Wednesday, August 9, 1989, make the following correction:

On page 32698, in the second column, under "Gila and Salt River Meridian, Arizona", in the seventh line, "SE¼" should read "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-012A]

RIN 1218-AA53

Control of Hazardous Energy Sources (Lockout/Tagout)

Correction

In rule document 89-20574 beginning on page 36644 in the issue of Friday, September 1, 1989, the following file line was omitted:

[FR Doc. 89-20574 Filed 8-31-89; 8:45am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 171

[T.D. 89-86]

Seizure of Property for Possession of Controlled Substances

Correction

In rule document 89-21211 beginning on page 37600 in the issue of Monday, September 11, 1989, make the following corrections:

§ 171.12 [Corrected]

1. On page 37603, in the first column, in § 171.12(b), in the eighth line, insert "the" after "mailing of".

§ 171.51 [Corrected]

2. On the same page, in the same column, in § 171.51(a), in the ninth line, "or" should read "of".

3. On the same page, in the second column, in § 171.51(b)(5), in the eighth line, "of" should read "for".

4. On the same page, in the third column, in § 171.51(b)(6)(i), in the third line, "of" should read "or".

§ 171.52 [Corrected]

5. On page 37604, in the second column, in § 171.52(b), in the 20th line, "pursuant" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5h

RIN 1545-AM76

Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

Correction

In rule document 89-22350 beginning on page 38979 in the issue of Friday, September 22, 1989, make the following corrections:

§ 5h.6 [Corrected]

1. On page 38981, in § 5h.6(a)(1), in the fourth column of the table, in the third and fourth lines, "January 20, 1990" should read "January 22, 1990".

2. On page 38982, in the 4th column of the same table, in the 8th and 9th entries, in the 5th and 10th lines respectively, "January 20, 1990" should read "January 22, 1990".

3. On page 38984, in § 5h.6(a)(2)(i)(B) and (b), in the 1st and 16th lines respectively, "January 20, 1990" should read "January 22, 1990".

Note: For a Department of the Treasury/ Internal Revenue Service correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Friday
October 6, 1989

Part II

Department of Transportation

Coast Guard

33 CFR Parts 154, 155, and 156
46 CFR Parts 32, 35, and 39
Marine Vapor Control Systems; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, 156

46 CFR Parts 32, 35, 39

[CGD 88-102]

RIN 2115-AC65

Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to adopt new regulations for the safe design, installation, and operation of marine vapor control systems. Some states, in an attempt to meet the national ambient air quality standard for ozone set by the EPA under the Clean Air Act, have issued requirements for the control of volatile organic compound (VOC) emissions from tank vessels which carry oil and chemicals in bulk. Vapor emission control is also being considered as a means of reducing occupational exposure to toxic chemicals such as benzene. Unsafe vapor control system design or operation could result in fires and explosions, tank ruptures and oil spills. This rulemaking will not require the installation or use of vapor control systems.

DATE: Comments must be received on or before November 20, 1989.

ADDRESSES: Comments should be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 88-102), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-1477. Comments may also be delivered to and will be available for inspection and copying at the Marine Safety Council, room 3600, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC, between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security and Environmental Protection (G-MTH-1), room 1214, (202) 267-1217, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-102) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgement is desired, a stamped self-addressed post card or envelope should be enclosed.

The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held at a time and place to be set in a subsequent notice in the Federal Register if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Commander Robert H. Fitch, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

During loading or ballasting of bulk liquid cargo tanks, the liquid introduced into a tank displaces vapors within the tank, which in typical operations today are released to the atmosphere. The displaced vapors of certain cargoes contain VOC's which are a precursor to the formation of ozone, a major air pollutant in some areas. Several states, acting pursuant to their authority under the Clean Air Act of 1970, are considering requirements for the control of VOC emissions from the loading and ballasting of tankships and tank barges. Three states currently have regulations which will require the control of marine VOC emissions in the future.

Marine occupational exposure offers another reason for using vapor control systems. In a separate regulatory project (CGD 88-040), the Coast Guard is developing regulations requiring lower occupational exposure limits for benzene. In anticipation of these requirements, vessel and facility operators are considering the use of marine vapor control systems for the purpose of reducing occupational exposure to benzene and other hazardous chemicals.

In a typical vapor control system, vapors emitted from a tank vessel being loaded or ballasted are collected and piped ashore where they are destroyed through a process such as incineration, recovered through a process such as refrigeration/condensation, or returned to the shore tank being emptied (vapor balancing). When vapors are collected for purposes of reducing occupational exposure, and air pollution is not a factor, facility operators may choose to pipe the vapors to a remote location and disperse them to the atmosphere.

The use of marine vapor control systems introduces potentially significant new hazards to the loading and ballasting operations of tank vessels. The Coast Guard can best address these hazards through the development of safety regulations for tank vessels and facilities using vapor control systems. This rulemaking will not require the installation or use of vapor control systems.

The primary hazards associated with the use of vapor control equipment are: cargo tank over- or underpressurization; overfill and spillage; and fire, explosion, and detonation. The severity and likelihood of accidents which might result from the use of vapor control systems warrant Coast Guard measures to minimize the risk of such accidents. It is, for example, possible for a vapor control system pipeline interconnecting a tank on a tank vessel with a shoreside vapor processing system to be filled with a flammable vapor. An ignition of this vapor could initiate a detonation wave which would propagate along the pipeline in either direction at the speed of sound and would generate pressure exceeding 600 pounds per square inch. Such an ignition could originate in shoreside vapor processing units such as incinerators or flares which are likely to be the most commonly used vapor processing systems. In 1983, such a flare initiated casualty occurred in a marine vapor control system. As a result, two barges were totally destroyed and considerable damage was done to the facility. Review of the casualty indicates that additional safety features, routine inspections and better training of personel would have contributed to minimizing the likelihood of this casualty.

Present regulations do not address vapor control in the comprehensive manner considered necessary for safe operation of vapor control systems. There are currently no safety regulations applicable to facility vapor control system installations. In the case of tank vessels, while there are existing regulations for piping and electrical equipment which are applicable to vapor control equipment on vessels, the regulations are at this time inadequate in addressing all of the hazards associated with vapor control. Because of the complexities of vapor control systems, proper training of both ship and facility personnel is also considered essential to the safe operation of vapor control systems. At this time there are no Coast Guard requirements dealing with the training and qualifications of

personnel operating vapor control systems.

Recognizing the hazards associated with vapor control systems, the Coast Guard began to review proposed shoreside systems used in handling limited numbers of vessels in dedicated trade. While effective when vapor control system use was limited to a small number of dedicated trades, the case by case reviews fell short of providing a comprehensive safety check and providing the standardization considered necessary for widespread application of vapor control. Case by case review was also an inefficient means of conveying to Coast Guard field units and to industry the level of safety which must be provided.

The use of vapor control systems is expected to increase dramatically as states require their use to help achieve Clean Air Act standards for air quality and as industry increases its use of vapor control systems to meet new or proposed limits for occupational exposure to benzene and other carcinogenic chemicals carried in bulk. Given the anticipated increased use of vapor control systems, the Coast Guard can best ensure safety through regulations.

Because there was little historical experience to provide background data for vapor control systems and serious concerns existed over potential safety hazards introduced in implementing vapor control requirements, in 1986 the Coast Guard funded a National Research Council (NRC), Commission on Engineering and Technical Systems, Marine Board study to assess the technical, safety and economic aspects of vapor control systems. The NRC study was released in January, 1988 and concluded that control and recovery of hydrocarbon vapors from tankships and tank barges was feasible with available technology provided that national safety standards for vapor emission controls were developed and implemented.

In response to the NRC recommendation, the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control was formed to develop standards for the design and operation of vapor control systems. The Subcommittee held its first meeting in August 1987. Six Subcommittee and ten working group meetings were held to develop the standards. All meetings were open to the public and announced in the Federal Register. CTAC presented the recommendations to the Coast Guard in February 1989.

The Coast Guard funded a failure modes and effects analysis and a worst case scenario analysis on several hypothetical vapor control systems which included the safety provisions contained in draft recommendations prepared by CTAC. On basis of the analysis, the Coast Guard proposed changes to the CTAC draft recommendations. CTAC reviewed the Coast Guard recommendations and incorporated some of those recommendations in their final recommendations. The American Petroleum Institute (API) has funded a quantitative risk analysis (referred to as the API risk analysis) based upon the final CTAC recommendations. Some changes resulting from the API risk analysis have been incorporated in these proposed rules. Both the Coast Guard and the API studies are included in this rulemaking docket and are available for examination.

The CTAC recommendations were used as the basis for these proposed regulations. The recommendations were reorganized and revised as appropriate to conform with language required for regulations, and some recommendations were not included because they were outside the scope of this rulemaking. Specific technical deviations from the CTAC recommendations are discussed in the Discussion section that follows:

The objective of this regulatory proposal is to provide standards for the safe design and operation of vapor control systems and provide qualification requirements for personnel operating vapor control systems. The requirements would be applicable to vessels and facilities that use vapor control systems. This rulemaking will not require the installation or use of vapor control systems. The requirement to use a vapor control system will stem from a state requirement to control vessel emissions, or alternatively, as part of a vessel or facility operator's program for complying with personnel exposure requirements for hazardous chemicals.

Discussion of the Proposed Regulation

33 CFR Part 154

The Coast Guard has another regulatory project (CGD 88-034) which would change part 154 to apply existing requirements for bulk oil transfer facilities to facilities which transfer bulk liquid hazardous materials. A Notice of Proposed Rulemaking of this project was published in the Federal Register on June 13, 1988 at 53 FR 22116, and a Supplemental Notice of Proposed Rulemaking was published in the Federal Register on June 9, 1989 at 54 FR 24718. Some of the changes in that rulemaking are necessary to make this part applicable to facilities using vapor control. Changes to §§ 154.100, 154.105, and 154.106 included in that proposal are repeated in these proposed rules for the convenience of the reader. If CGD 88-034 becomes a final rule before this rulemaking, the proposed changes for those sections will be deleted from this rulemaking except for some additional incorporation by reference standards in § 154.106.

Section 154.100 Applicability

This section would amend the applicability of this part to include facilities which transfer bulk liquid hazardous materials.

Section 154.105 Definitions

This section would redefine "facility" to include facilities which transfer hazardous materials to or from a vessel.

Section 154.106 Incorporation by Reference

This section would list the materials which are incorporated by reference into this part.

Section 154.310 Operations Manual: Contents

This section would require operating procedures and a line diagram of a facility's vapor control system to be included in the facility's operations manual.

Section 154.740 Records

This section would require a facility to keep records of repairs to the vapor control system and all automatic shutdowns of the vapor control system. This was not part of the CTAC recommendations. However, the Coast Guard's position is that this is needed to indicate to the Coast Guard recurring problems which may require design changes.

33 CFR 154, Subpart E

A new subpart E would be added to part 154 entitled "Vapor Control Systems" which would include requirements for the safe design and operation of vapor control systems at facilities. The following sections would be included in the new subpart:

Section 154.800 Applicability

This section would describe the applicability of this subpart. The rules would be applicable to any facility which recovers flammable or combustible vapors from tank vessels. Recovery of vapors from liquefied flammable gases is exempted. The CTAC recommendations listed applicability only for vapors from crude oil, benzene, and gasoline cargoes. The

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Coast Guard anticipates that vapor control systems must be utilized in controlling emissions from a wider range of cargoes. The requirements developed by CTAC can apply equally to all cargoes listed in Table 30.25–1 of 46 CFR part 30 and to hydrocarbon compounds (i.e., only made up of hydrogen and carbon) listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153. Cargoes listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbons liquids, are given special consideration in § 154.803 of this subpart.

Section 154.802 Definitions

This section would give definitions of terms which are used in this subpart. Several terms were added to those provided by CTAC in order to define terms which may not otherwise be clear to people likely to use these rules. "Recognized industry standards" which was included in the CTAC recommendations, is not included in these proposed rules because the subject is dealt with in the section on "Incorporation by Reference". "Sources of ignition", which was included in the CTAC recommendations, is not included in these proposed rules because its primary usage in the CTAC recommendations is not contained in these proposed rules.

Section 154.803 Other Hazardous Materials

This section would require a facility which collects vapors of cargoes listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbons liquids, to meet the requirements in this subpart and any additional requirements which the Commandant (G–MTH) may prescribe. These cargoes may have unusual flammability characteristics or other particular hazards which are not adequately addressed by this subpart and must receive special consideration.

Section 154.804 Review of System Designs and Initial Inspection

This section describes the proposed process for review of a facility's vapor control system design. It includes provisions for review by a third party acceptable to the Coast Guard. All new and existing facility vapor control systems would be reviewed and certified by an entity acceptable to the Coast Guard, including these facility vapor control systems which were previously approved by the Coast Guard. Owners or operators of a facility with a previously approved vapor control system would have six months to make their submittal, twelve months to make modifications after notification by the certifying entity, and not more than two years total to come into compliance with the regulations. The CTAC recommendations called for previously approved existing systems to be accepted by the Coast Guard without formal review, however, the Coast Guard is proposing that formal review. When the Coast Guard previously reviewed the systems, the potential hazards were not fully understood, and they were not reviewed to the same standards of safety which would be required by these regulations.

This section would also require a qualitative failure analysis as part of the review process. It would require the analysis to show that the vapor control system has two means of protection to prevent an ignition in the facility's system from propagating to the vessel and to prevent an ignition on the vessel from propagating into the facility's system, and these means of protection must operate automatically, independent of human intervention. The CTAC recommendations called for three means of protection to prevent an ignition from propagating to the vessel, however, the first means of protection was intended to be good design which eliminates sources of ignition. The Coast Guard's position is that this good design means of protection is addressed throughout these proposed rules, would be difficult to demonstrate in a failure analysis, and therefore is not needed. Although not included in the CTAC recommendations, the Coast Guard is proposing to include in the definition of "means of protection" that these means of protection must operate without intervention, because an operator is not likely to be able to act with sufficient speed to prevent propagation of an ignition.

This section would authorize the certifying entity to conduct the initial inspection and testing of the installation to verify that the system conforms to the plans and specifications, and meets the requirements of this subpart. After the certifying entity certifies that the installation meets the requirments of this subpart, the Captain of the Port will endorse the facility's Letter of Adequacy that the facility is acceptable to collect vapors.

The CTAC recommendations did not address procedures relating to alterations to a vapor control system. The Coast Guard's position is that alterations involving any component required by this subpart must be approved and inspected by an approval entity. Therefore, this provision is included.

Section 154.806 Application for Acceptance as a Certifying Entity

This section would give the process and required qualifications for obtaining Coast Guard acceptance as a certifying entity. The CTAC recommendations provided for a professional engineer to perform the review. The Coast Guard's position is that persons other than professional engineers may be qualified to perform the review, and that additional criteria should be met to demonstrate acceptable qualifications. The Coast Guard wants certifying entities to be available when the final rules become effective. Entities may submit their applications based on these proposed rules, and the Coast Guard will begin to grant acceptances when the final rules are published. If there are no acceptable entities when the final rules become effective, the Commandant (G–MTH) will consider conducting the review and analysis required by § 154.804 of this subpart on an interim basis and Coast Guard field units will conduct the initial inspection.

Section 154.808 Vapor Control System, General

This section would give some general requirements for a facility's vapor control system. The proposed requirements would include provisions for elimination of potential sources of ignition, for vapor collection system components to meet ANSI Standard B31.3 with a design working pressure of at least 150 psig, for a means to drain and collect any liquid condensate in the vapor line, and for a liquid knockout vessel to protect the vapor compressor from liquid carryover. Based upon the results of the API risk analysis, this section would also require a high level alarm and overfill shutdown for the knockout vessel to prevent liquid carryover.

Section 154.810 Vapor Line Connections

This section would give requirements for the facility vapor connection, shutoff valves at the facility vapor connection, and vapor hoses and loading arms. A requirement for the automatic shutoff valve to close in five seconds, and to be located upstream of any vapor assist device and the point where inerting, diluting, or enriching gas is introduced into the system, has been included. The Coast Guard is proposing to require an isolation valve capable of manual operation in addition to the automatic shutoff valve called for in the CTAC recommendations. The Coast Guard's position is that the facility needs to be able to isolate its vapor collection system from the vessel manually, in case of failure of the automatic shutoff valve.

The requirements for vapor hoses and vapor loading arms would be expanded from the CTAC recommendations. The proposed rules would require that the hoses and loading arms have a maximum allowable working pressure of at least 25 psi pressure and 2.0 psi vacuum, require annual testing of hoses, and require specific types of connections. The rules would also require the last 1.5 meters of vapor piping or vapor loading arm to be painted a bright orange color (international orange), and all of the vapor hose to be that color in lieu of only the last two feet as specified in the CTAC recommendations. Although CTAC wanted a standard color to be used to distinguish vapor connections, it could not agree on a color. The Coast Guard is proposing to require orange because it is easily recognizable and will not conflict with existing piping color code systems.

Both the Coast Guard hazards analysis and the API risk analysis recognized the hazard involved in misconnecting a loading hose to the vessel vapor connection and recommended steps to prevent it from occuring. The Coast Guard's position is that this can best be handled by requiring some means of physically preventing misconnection. The Coast Guard proposes to require a lug with a corresponding hole on each flange to prevent misconnection. Suggestions of other physical means to prevent misconnection are solicited.

Section 154.812 Vessel Liquid Overfill Protection

This section would give requirements for facilities to prevent the overfill of tank barges. These requirements are needed because of the potentially increased hazards resulting from the closed loading of tank vessels associated with vapor control. The requirements would be applicable to facilities loading tank barges which use the overfill protection measures proposed in 46 CFR 39.20–9(b). It would give requirements for an overfill control panel located on the facility, which would receive a high level signal from sensors on the tank barge. Although the CTAC recommendations did not specify an automatic shutdown of cargo loading, the Coast Guard's position is that this should be required. The need for this automatic shutdown is indicated by the Coast Guard's hazards analysis and API's risk analysis. The Coast Guard is also proposing that the loading should automatically shut down when signal circuit continuity is lost.

Section 154.814 Vessel Vapor Overpressure and Vacuum Protection

This section would give requirements to prevent a facility from over or underpressurizing a tank vessel. The requirements would include maximum and minimum pressures at the facility vapor connection, and high and low pressure alarms and shutdowns. The CTAC recommendations specified a maximum pressure of 0.2 psig for inland tank barges and 0.3 psig for ocean tank barges. The Coast Guard's position is that the 0.1 psig pressure difference does not add any benefit, and therefore is proposing to require that the maximum pressure be 0.3 psig for all non-inerted vessels. The Coast Guard is proposing that the facility's vapor collection system have a capacity at least equal to 1.25 times the facility's maximum loading rate in order to reduce the possibility of overpressurizing a vessel. The 1.25 factor is used to account for vapor generation during loading.

This section would also include provisions for high/low pressure alarms and high/low pressure shutdowns of the vapor collection system and cargo loading when the high/low pressure levels are exceeded by a specific pressure. The CTAC recommendations did not include maximum/minimum settings for the alarms and shutdowns. The Coast Guard has decided that these maximum/minimum settings should be specified in order to ensure standard performance criteria.

The Coast Guard's hazards analysis recommended that the pressure sensing devices used to activate high pressure alarms and shutdowns be located in the vapor collection line as close to the tank vessel as possible, that is, upstream of the facility's first valve, so this provision has been included. The API risk analysis recommended that a liquid vacuum breaker to relieve excessive vacuum should be located in the vapor collection line if a device is used to assist drawing the vapors, so this has been included. Provisions are also included which would require the liquid vacuum breaker to be tested for capacity in accordance with API Standard 2000. The Coast Guard is proposing that a means of determining whether the maximum allowable loading rate is exceeded for a vessel must be provided.

Section 154.820 Fire, Explosion and Detonation Protection

This section would give requirements to prevent a fire, explosion, or detonation in a facility's vapor control system. The CTAC recommendations required three means of protection against flame propagation from any source of ignition in the vapor control system to the tank vessel, and two means of protection against flame propagation from the tank vessel to the facility. The Coast Guard's position is that this approach is too confusing, not sufficiently specific, and may result in some systems not having an adequate level of safety. This section would be more specific than the CTAC recommendations, yet still retain flexibility to allow operators to design any type of system which would provide for an adequate level of safety.

This section would require a two-way detonation arrester at the facility vapor connection. The CTAC recommendations identified this device as one of the means of protection. An ASTM specification for the testing of detonation arresters is under development, and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will provide in the final rule. A draft of this specification is included as Appendix A. Detonation arresters have not yet been tested to the requirements of this specification. The Coast Guard expects that due to the expense of the test, no company will want to perform the test until the standard is adopted. It is anticipated that some commercially available detonation arresters can meet the draft ASTM standard. API has expressed its intention to conduct tests after the standard is adopted.

This section would also require a means of maintaining the concentration of the vapor mixture outside the flammable range. The operator would have the option of using either air dilution, enrichment, or inerting. The proposed regulation would provide the acceptable range of hydrocarbon concentration or oxygen concentration based upon a percentage of either the upper or lower flammable limit. An alarm would be required when the mixture deviates from the acceptable concentration range and an automatic shutdown of the vapor collection system would be required when the concentration deviates even further from the acceptable range. The CTAC recommendations would require an inerting system to alarm when the oxygen content exceeded 7.0 percent and to shut down vapor transfer at 8.0 percent. Coast Guard regulations and requirements of the International Convention for the Safety of Life at Sea of 1974, as amended (SOLAS 74/83), require that the oxygen content in cargo

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tanks of certain oil tankers be maintained at 8.0 percent by volume or less. The Coast Guard's position is that this concentration provides an acceptable margin of safety for ships and that it will be equally appropriate for vapor control purposes. Therefore, these proposed regulations require an oxygen concentration of 8.0 percent for the alarm set point and 9.0 percent for the shutdown set point.

This proposed section goes into more detail on the means of analyzing the vapor stream than was recommended by CTAC, such as including provisions for the injection of a test span gas. The API risk analysis indicated that there was a danger of the cargo tanks being overpressurized by a blockage in the vapor collection line, or of the cargo tanks being overpressurized by the diluting, enriching or inerting gas system. Therefore, a provision was added to require a pressure relieving device in the facility vapor collection line.

The CTAC recommendations recognized an explosion suppression system as an acceptable fire protection measure. The Coast Guard has reservations on the effectiveness of an explosion suppression system for this application, and questions whether the design criteria for such a system have been adequately defined. Tests to demonstrate its effectiveness are now being planned. If these tests demonstrate the effectiveness of an explosion suppression system, design criteria will also be developed, and the Coast Guard will modify the final rule to allow the use of an explosion suppression system as a fire protection measure.

This proposed section requires a flame arrester at all outlets to the atmosphere of the vapor control system and at any incinerator or flare. Each flame arrester must meet an ASTM standard which is under development and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will be provided in the final rule. A draft of this specification is included as Appendix B.

The CTAC recommendations did not address all of the ignition hazards introduced by an incinerator or flare used to destroy the vapors or by a compressor or blower used to assist the movement of the vapors. This section would provide additional requirements to address these hazards.

If inerted vapors are handled by the vapor collection system, there may be a build-up of pyrophoric iron sulphide deposits in the system. If air is introduced into the system, there is a danger of heating by the pyrophoric iron sulphide. This section proposes a requirement for a facility to have provisions to reduce the risk of heating from pyrophoric iron sulfide deposits if the vapor control system handles inerted vapors.

Section 154.840 Personnel

Since few systems are currently installed, the Coast Guard is proposing that training be specifically tailored to a particular facility's installed vapor control system. The guidelines for a training program were developed by CTAC and are included as Appendix D. For personnel who have not previously received vapor control system training, the proposed rules would require a 40 hour course, with at least 8 hours of hands-on training in normal and emergency operating procedures. For personnel who have completed this training at another facility or similar training for vessel personnel, the training could be reduced to 24 hours, including 8 hours of hands-on training in normal and emergency operating procedures. Comments are specifically requested on the duration of the training and whether individual training courses should be approved by the Coast Guard.

Section 154.850 Operational Requirements

This section would detail operational requirements for a facility using a vapor control system. It would include limitations on the loading rate and verification that all necessary valves in the vapor control system are open. In addition to the CTAC recommendations, the Coast Guard is proposing that a facility shall only receive vapors from a vessel approved for vapor control, that all alarms and sensing devices must be tested not more than 24 hours prior to each loading operation, that both oxygen or hydrocarbon analyzers must be operable at the start of each loading operation, and that the cargo loading must be terminated whenever the vapor control system is shut down.

The CTAC recommendations did not address the size or the length of vapor hose which can be used. The proposed regulations assume that pressure drops through hoses will be minimal. The Coast Guard's position is that, in order for this to be a reasonable assumption, the length of vapor hose should be limited to 30 meters and the inside diameter to no less than that of the vessel's vapor collection system piping. Longer hose lengths may be used if provisions are made to account for the resistance of the additional vapor hose.

The Coast Guard hazard analysis and the API risk analysis brought out several other potential hazards which were not addressed in the CTAC recommendations. The following provisions to address these additional hazards were added to this proposed rulemaking: The initial loading rate to each cargo tank should be limited in order to reduce the possibility of generating static electricity; and vapors from an inerted vessel must be at a higher pressure than on the facility side of the isolation valve before the valve is opened, in order to prevent the possibility that non-inerted air will enter the vessel's vapor collection line and cause heating of pyrophoric iron sulphide deposits.

The CTAC recommendations did not address line clearing of the cargo loading line. The Coast Guard's position is that line clearing risks overpressurizing cargo tanks when a vessel is closed loading. Therefore, line clearing would be prohibited.

A damaged flame arrester at a flare contributed to a casualty with a vapor control system. The flame arrester had been damaged by a previous flare-back. Therefore, a provision is included to inspect the flame arrester prior to continuing transfer operations if a flame is detected on the flame arrester or if it is suspected that a flare-back has occurred.

33 CFR Part 155

Section 155.750 Contents of Oil Transfer Procedures

This section would require operating procedures and a line diagram of the vessel's vapor collection system to be included in the vessel's oil transfer procedures.

33 CFR Part 156

Section 156 120 Requirements for Oil Transfer

This section would require that certain operational conditions of the vapor control system be verified prior to conducting a transfer operation.

Section 156.170 Equipment Tests and Inspections

This section would require certain tests and inspections to be performed on a facility's or vessel's vapor control system. The CTAC recommendations did not include provisions for periodic testing and inspection other than tests prior to each transfer operation. The Coast Guard's position is that most components of the vapor control system which are not tested prior to each transfer operation should be tested annually. Although periodic inspection of detonation arresters is necessary, the Coast Guard does not have sufficient information to determine how often inspection should be required. Clogging of detonation and flame arresters varies with different cargoes. The Coast Guard proposes to require annual inspection of detonation and flame arresters, and requests information regarding the frequency of inspection considered necessary based on operational experience. The Coast Guard also proposes to require weekly calibration of hydrocarbon and oxygen analyzers.

46 CFR Part 32

Section 32.53–85 Instruction Manual—T/ALL

This section would require a vessel's inert gas instruction manual to be amended to include procedures relating to vapor control operations.

46 CFR Part 35

Section 35.35–20 Inspection Prior to Transfer of Cargo—TB/ALL

This section would require certain operational conditions of a tank vessel's vapor control system to be verified prior to conducting an oil transfer operation.

Section 35.35–30 "Declaration of Inspection" for Tankships—T/ALL

This section would require checks to a vessel's vapor control system prior to transfer to be added to the vessel's Declaration of Inspection as an appendix.

46 CFR Part 39

A new part 39 entitled "Vapor Control Systems" would be added which would include requirements for the safe design and operation of vapor control systems on tank vessels. The CTAC recommendations had separate requirements for tankships and tank barges. Because of the extent of overlap, the Coast Guard is proposing that these requirements should be combined, with differing requirements pointed out. The following sections would be included in the new part:

Section 39.10–1 Applicability—TB/ALL

This section would describe the applicability of this part. This part would be applicable to any tankship or tank barge which recovers hydrocarbon vapors. Because state requirements to control vapor emissions may require foreign vessels in U.S. ports to control vapor emissions, these safety regulations would apply to foreign vessels collecting vapor emissions. Recovery of vapors from liquefied flammable gases is exempted. The CTAC recommendations listed applicability only for vapors from crude oil, benzene, and gasoline cargoes. The Coast Guard anticipates that vapor control systems may be utilized in controlling emissions from a wider range of cargoes. The requirements developed by CTAC can apply equally to all cargoes listed in Table 30.25–1 of 46 CFR part 30 and to hydrocarbon compounds (i.e., only made up of hydrogen and carbon) listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153. Cargoes listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, are given special consideration in § 39.10–7 of this part.

Section 39.10–3 Definitions—TB/ALL

This section would give definitions of terms which are used in this part which may not otherwise be clear to people likely to use these rules. The CTAC recommendations did not include a definition section for tankships or tank barges.

Section 39.10–5 Incorporation by Reference—TB/ALL

This section would list the materials which are incorporated by reference into this part.

Section 39.10–7 Other Hazardous Materials—TB/ALL

This section would require a facility which collects vapors of cargoes listed in 46 CFR Table 151.01–10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, to meet the requirements in this subpart and any additional requirements which the Commandant (G–MTH) may prescribe. These cargoes may have unusual flammability characteristics or other particular hazards which are not adequately addressed by this subpart and must receive special consideration.

Section 39.10–9 Vessel Vapor Processing Unit—TB/ALL

Since a tank vessel with a vapor processing unit on board has hazards similar to a facility with a vapor control system, this section would require such a vessel to be reviewed to verify that the vessel provides an equivalent level of safety as required for a facility in proposed 33 CFR 154, subpart E. Although this requirement was not part of the CTAC recommendations, CTAC addressed this type of vessel assuming that it would meet the requirements for a facility. Therefore, this is consistent with the assumption and intent of the CTAC recommendations.

Section 39.10–11 Personnel—TB/ALL

Since few systems are currently installed, the Coast Guard is proposing that training be specifically tailored to a vapor control system installed on a particular vessel or class of vessels. The guidelines for a training program were developed by CTAC and are included as Appendix D. For personnel who have not previously received vapor control system training, the proposed rules would require a 40-hour course, with at least 8 hours of hands-on training in normal and emergency operating procedures. For personnel who have completed this training on another vessel or similar training for facility personnel, the training could be reduced to 24 hours, including 8 hours of hands-on training in normal and emergency operating procedures. Comments are specifically requested on the duration of the training and whether individual training courses should be approved by the Coast Guard.

Section 39.10–13 Submission of Vapor Control System Designs—TB/ALL

This section would specify the procedures for submitting vessel vapor control plans to the Coast Guard's Marine Safety Center (MSC) for review. The installation on a foreign flag vessel would be certified by the classification society which classes the vessel. All new and existing vessel vapor control systems would have to be reviewed and approved by the MSC. Owners or operators of a vessel with a previously approved vapor control system would have six months to make their submittal, twelve months to make modifications after notification by the Coast Guard, and not more than two years total to come into compliance with the regulations. The CTAC recommendations were that previously approved existing systems should not need further review. However, the Coast Guard's position is that further review is necessary. When the Coast Guard previously reviewed the systems the potential hazards were not fully understood, and they were not reviewed to the same standards of safety which would be required by these regulations.

Section 39.20–1 Vapor Collection System—TB/ALL

This section would give some general requirements for a tank vessel's vapor collection system. It would give requirements for the vessel vapor connection line and for vapor hoses. The CTAC recommendations did not require the vapor piping to be permanently installed. The Coast Guard is proposing that vapor piping should be permanently

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installed. However, the Coast Guard recognizes that there may be instances when the use of vapor hoses would be acceptable. Therefore, the proposed regulations allow for exceptions. The CTAC recommendations called for the vessel vapor connection to be in the vicinity of the loading manifold. The Coast Guard agrees that such a location is desirable. However, the recommendation provided by CTAC is vague and would do little to enhance safety. The API is presently developing a standard for manifold arrangements which will provide a more definitive description than the CTAC recommendation. When this standard is received, the Coast Guard may propose adopting it as a requirement. Comments are specifically requested on the need for specifying the location of the vapor connection and what this location should be.

The requirements for vapor hoses and vapor loading arms would be expanded from the CTAC recommendations. The proposed regulations would require that the hoses have a maximum allowable working pressure of at least 25 psig, be capable of withstanding a vacuum of 2.0 psi, and require specific types of connections. They would also require the last 1.5 meters of the vessel's vapor piping to be painted a bright orange color (international orange), and all of the vapor hose to be that color in lieu of only the last two feet as specified in the CTAC recommendations. As previously discussed, orange is proposed because it is easily recognizable and will not conflict with existing piping color code systems.

Both the Coast Guard hazards analysis and the API risk analysis recognized the hazard involved in misconnecting a loading hose to the vessel vapor connection and recommended steps to prevent it from occurring. The Coast Guard's position is that this can best be handled by requiring some means of physically preventing misconnection. The Coast Guard proposes to require a lug with a corresponding hole on each flange to prevent misconnection. Suggestions of other physical means to prevent misconnection are solicited.

Section 39.20–3 Cargo Gauging System—TB/ALL

This section would require a closed gauging system on a tank vessel which recovers hydrocarbon vapors in order to determine liquid level in the cargo tank, and gives the requirements for such a system. The CTAC recommendations for tank barges called for the gauging system to be permanently installed, while this was not included for tankships. The Coast Guard's position is that the gauging system should be permanently installed on all vessels.

This section would also require a secondary gauging system for the topping off range for tank barges which recover hydrocarbon vapors, because they will not normally have the high level and overflow alarms that tankships have. The CTAC recommendations did not specify the range for this secondary gauging system. The Coast Guard's position is that at least the cargo level in the top 1.5 meters of the tank should be indicated by this system. However, where a tank barge does have the same high level and overflow alarms that are required for tankships, the proposed regulations exempt them from the secondary gauging system requirements. Although not included in the CTAC recommendations, the Coast Guard is proposing that an exemption under these circumstances would be appropriate.

Section 39.20–7 Tankship Liquid Overfill Protection—T/ALL

This section would require a high level alarm and a tank overflow alarm on tankships which recover hydrocarbon vapors, and give the requirements for these alarms. The CTAC recommendations called for the high level alarm to be set at no less than 95 percent of the tank capacity and the overflow alarm to be set at no higher than 98.5 percent of tank capacity. The Coast Guard's position is that it is not appropriate to specify a lower limit for the high level alarm, but that tanks should not normally be filled over 97 percent capacity. Therefore, the proposed regulations require that the high level alarm set point be not higher than 97 percent capacity. The Coast Guard has decided that the set point for the overflow alarm should be given as a performance standard. Therefore, the proposed regulations require that the alarm should be set to go off at a level where the operator has sufficient time to shut down cargo loading before the cargo tank overflows. The requirements are intended to be similar to the requirements for high level and overflow alarms in 46 CFR part 153.

Section 39.20–9 Tank Barge Liquid Overfill Protection—B/ALL

This section would give the overfill protection requirements for tank barges which recover hydrocarbon vapors. The Coast Guard is proposing four different alternatives: dual high level alarms meeting § 39.20–7, an overflow control system which has sensors on the tank barge and electrical connection to an overflow control panel on shore, an acceptable spill valve, or an approved rupture disk. The CTAC recommendations called for a spill valve to limit the back pressure in the tank from reaching the design pressure of the tank. The Coast Guard's position is that it would create less confusion to specify a maximum back pressure of 3.0 psig for tankships and 2.0 psig for tank barges. An ASTM specification for spill valves is under development, and is expected to be published prior to the publishing of these requirements as a final rule. In these proposed rules, the number of this specification is left blank and will be provided in the final rule. A draft of this specification is included as appendix C.

The use of rupture disks introduces some additional concerns which are not present when spill valves are used. Spill valves resist passage of flame into a cargo tank in the case of a fire on deck. Rupture disk arrangements may not, since, when the disk ruptures, it leaves an open path into the tank. Alternatively, if a valve is provided to close off the rupture disk discharge, the valve may be left closed when the tank is loaded. These proposed rules require approval from the Commandant for rupture disk arrangements addressing these added concerns. The Coast Guard has already approved one such arrangement.

Section 39.20–11 Vapor Overpressure and Vacuum Protection—TB/ALL

This section would give requirements to prevent over- or underpressurizing a cargo tank on a vessel which recovers hydrocarbon vapors. The Coast Guard is proposing to require pressure relief devices with an adequate capacity to vent vapors at a rate at least 1.25 times the maximum loading rate without exceeding 3.0 psig for tankships or 2.0 psig for tank barges, and with a relief pressure of not less than 1.5 psig. Vacuum relief devices would be required which have an adequate capacity to vent air into the tank at a rate at least 1.25 times the maximum loading rate without exceeding 1.0 psi vacuum, and with a relief pressure of not less than 0.5 psi vacuum. The 1.25 factor is used to account for vapor generation during loading.

The CTAC recommendations did not specify the maximum back pressure or vacuum which can be reached in the tank. Also, the CTAC recommendations did not specify the minimum pressure or vacuum setting of the relief devices. The Coast Guard is proposing minimum relief settings and maximum tank pressure and vacuum to enhance

standardization of systems and, thereby, improve safety.

This section would require that a relief device installed after the effective date of these regulations have means to check that the device is operating freely. The CTAC recommendations for tank barges called for a delay in the implementation of this requirement until January 1, 1991. The Coast Guard's position is that this delay is unwarranted because the feature is currently available from most manufacturers of relief devices.

Although not part of the CTAC recommendations, the Coast Guard is proposing that the capacity of relief devices must be demonstrated through testing in accordance with API Standard 2000.

Section 39.20–13 High and Low Vapor Pressure Protection for Tankships—T/ALL

This would require sensors and alarms on tankships which recover hydrocarbon vapors to warn against over- or underpressurizing the tankship. The CTAG recommendations did not specify the number of pressure sensors or the location of the pressure sensors. The Coast Guard's position is that short of having a pressure sensor at each tank, a vessel should have two pressure sensors located at the forwardmost and aftermost tanks which are connected to the vapor collection system. If only one pressure sensor is provided, the operator of a vessel will not know the highest or lowest pressure reading on the vessel, particularly when multiple tanks forward and aft of the vessel vapor connection are being loaded. Provisions are included for arrangements which do not have tanks connected to the vapor collection system which are both forward and aft of the vessel vapor connection. Although not specified in the CTAC recommendations, the Coast Guard is proposing that the high pressure alarm be activated when the pressure reaches 50 percent of the lowest pressure relief device setting, and that the low pressure alarm be activated when the pressure falls to four inches water gauge (0.144 psig) for inerted tankships, or 0.5 psi vacuum for other tankships.

Section 39.30–1 Operational Requirements—TB/ALL

This section would detail operational requirements for a tank vessel using a vapor control system. Although not part of the CTAC recommendations, the Coast Guard is proposing that a tank vessel may only transfer vapors to a facility or vessel which is approved to receive the vapors.

This section would include limitations on the loading rate based upon the venting capacity of the pressure relief devices or the capacity of the vapor collection system, in both cases assuming that vapors are vented at 1.25 times the loading rate. The 1.25 factor is used to account for vapor generation during loading. The CTAC recommendations for tankships and tank barges differ in their approach to ensuring that the maximum allowable pressure in a cargo tank is not exceeded due to excessive loading rates. The tankship recommendations require the size of the vapor collection lines to be sufficient to prevent the back pressure in the tank from exceeding the tank's maximum operating pressure. The tank barge recommendations require the loading rate to be limited so that the pressure does not exceed any pressure relief device setting or the venting capacity of the pressure relief devices. The Coast Guard's position is that this would be best handled as an operational requirement, and that 50 percent of any pressure relief device setting should be specified as the maximum back pressure in order to provide a greater margin of safety. The Coast Guard is also proposing that the maximum pressure in the tank when venting vapors at 1.25 times the maximum loading rate be 3.0 psig for tankships and 2.0 psig tank barges. If the capacity of the tank vessel's vapor collection system is the limiting factor, the maximum loading rate will vary with the pressure at the facility's vapor connection. Information on the maximum loading rate would be provided as part of the vessel's oil transfer procedures required under proposed 33 CFR 155.750(d). The information may be provided as a table or graph giving the maximum allowable loading rate versus the pressure at the vessel's vapor connection.

This section would limit cargo tank filling to a capacity of 97 percent or the set point level for the high level alarm, whichever is lower. The CTAC recommendations called for a maximum filling limit of 98%. The Coast Guard's position is that filling a tank higher than 97% carries too high a risk that the person in charge will not be able to shut down loading in time and that the loading should not be continued after the high level alarm goes off. The 97% filling limit is consistent with the requirement in 46 CFR 153.409 for the setting of the high level alarm. Vessels with special circumstances would be able to request permission from the Commandant to fill higher than 97%.

This section would require certain operational conditions to be met in order to open gauge for cargo sampling or custody transfer. The International Safety Guide for Oil Tankers and Terminals recommends waiting at least 30 minutes after loading a tank before gauging or sampling the tank with metallic equipment, to allow static electricity accumulations to dissipate. This requirement is included in this section.

This section would limit the initial loading rate to each cargo tank to one meter per second linear velocity until the cargo level in the tank reaches one meter in height. This requirement is consistent with standard industry guidelines. The purpose is to minimize the risk of a vapor ignition due to static electricity. The CTAC recommendations for tank barges included a similar requirement, but they did not specify at what height of cargo the reduced loading rate could be increased. The CTAG recommendations for tankships did not include this requirement.

This section would also require the inert gas generator to be isolated from the vapor collection system while the vapors are being collected, and the pressure indicator required by § 39.20–13 of this part to be continuously monitored during the loading operation.

In addition to the CTAC recommendations, the Coast Guard is proposing requirements that an inerted tank vessel must be tested for oxygen content, and that each high level and overflow alarm must be tested prior to each loading operation.

The CTAC recommendations did not address the size or the length of vapor hose which can be used. The proposed regulations assume that pressure drops through hoses will be minimal. The Coast Guard's position is that, in order for this to be a reasonable assumption, the length of vapor hose should be limited to 30 meters and the inside diameter to no less than that of a vessel's vapor collection system piping. Longer hose lengths may be used if provisions are made to account for the resistance of the additional vapor hose.

Section 39.40–1 General Requirements for Vapor Balancing—TB/ALL

The CTAC recommendations did not include provisions for lightering. A lightering working group developed draft standards for lightering, but they have not yet been approved by CTAC. The provisions of subpart 39.40 of this proposed rulemaking are drawn from that working group's draft standards. This section would require tank vessels which control vapor emissions while lightering to meet all requirements in this part for a vessel with a vapor control system. It also requires special

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approval from the Commandant in order to use a method other than vapor balancing to control the vapors in a lightering operation.

Section 39.40-3 Design and Equipment for Vapor Balancing—TB/ALL

This section would give the design and equipment requirements for tank vessels which engage in vapor balancing during lightering operations. It would require a detonation arrester on at least one of the vessels. The working group recommended that a flame arrester could be used at this location. The Coast Guard's position is that a flame arrester would be inadequate because detonations are possible at this location. This section would also require that in order to have a device to assist the transfer or recovery of vapors, special approval must be received from the Commandant. This was not a part of the lightering working group's draft standards, because the working group assumed that no such device was necessary. The Coast Guard's position is that the Commandant's approval is necessary because vessels engaged in lightering normally would not have the same fire protection provisions as would be available at a facility.

This section would require a pressure indicator and high pressure alarm on the service vessel. This was not part of the lightering working group's draft standards. The Coast Guard's position is that this is necessary because the vessel will not have the overpressure protection it would have at a facility. This would only be a factor on tank barges, because § 39.20-13 of this chapter would require the indicator and alarm for tankships. Although not a part of the lightering working group's draft standards, the Coast Guard is proposing that, where the service vessel in a lightering operation is a tank barge which has an overflow control system in accordance with § 39.30-9(b) of this chapter, the vessel to be lightered must have an overflow control panel which meets 33 CFR 154.812.

When the service vessel or both vessels are inerted vessels, this section would require an oxygen sensor and alarm, normally located on the vessel to be lightered, which would alarm when the oxygen content in the vapor collection line exceeds 8 percent. It would also require provisions to be made to inert the vapor transfer hose between the vessels prior to the transfer of vapors. Although not part of the lightering working group's draft standards, it would require means to add span gas in order to test the oxygen sensors.

Section 39.40-5 Operational Requirements for Vapor Balancing—TB/ALL

This section would detail the operational requirements for tank vessels which engage in vapor balancing during lightering operations. It would require each cargo tank being loaded to be connected by the vapor collection system to a cargo tank which is being discharged. This was not part of the lightering working group's draft standards. The Coast Guard's position is that this is necessary because vessels which do not use a common vent line for the vapor collection system, or have a means of isolating individual tanks from the vapor collection system, could transfer vapors to a tank which is not being discharged and overpressurize the tank. It would also require that the pressure indicator be continuously monitored during the transfer operation. Although not a part of the lightering working group's draft standards, it would require that one of the vessel's provide an insulating flange at its vapor connection. This is similar to the requirement in 33 CFR 154.810(g) for a facility to provide an insulating flange.

If both vessels are inerted, this section would require all tanks on the service vessel to be tested for oxygen content prior to cargo transfer and to be continuously monitored during the transfer. It would require that the vessel to be lightered control the cargo transfer rate to ensure that the maximum allowable loading rate is not exceeded. Although not part of the lightering working group's draft standards, the Coast Guard is proposing that tank washing and cargo tank ballasting be prohibited during the loading operation.

If only the service vessel is inerted, this section would require the same operational requirements to be met as when both vessels are inerted. It would also require that the vapor collection system isolation valve on the service vessel not be opened until the pressure in the vapor collection system on the service vessel exceeds the pressure in the vapor collection system on the vessel to be lightered.

This section would require that, when neither vessel is inerted, the vessel to be lightered control the cargo transfer rate so that the maximum allowable loading rate is not exceeded.

This section would prohibit vapor balancing when only the vessel to be lightered is inerted. This requirement is consistent with the lightering working group draft standards, and was developed to prevent non-inerted vapors from entering an inerted tank.

Regulatory Evaluation

The proposed regulations are considered to be non-major under Executive Order 12291 and significant under Department of Transportation (DOT) regulatory policies and procedures (DOT Instruction 2100.5). A draft evaluation has been prepared and placed in the public docket. It may be inspected or copied at the Marine Safety Council, Room 3600, at the address listed above under "ADDRESSES." (Copies may also be obtained by contacting that office at (202) 267-1477.

The proposed rules, if adopted, would benefit industry by providing standards for the safe design and operation of vapor control systems. The rules would result in fewer vessels and facilities being damaged from fires and explosions, fewer vessels being damaged from overfilling and over- or underpressurization, fewer injuries/deaths from fires and explosions, and less oil spilled from overfilling or overpressurizing of tanks while loading with a vapor control system in use.

The proposed rules, if adopted, would also benefit the Federal and state governments. The standards promulgated would facilitate review and inspection of vapor control systems by the Coast Guard. State governments would not need to become involved in developing safety requirements when they impose vapor control requirements, and there will not be differing safety requirements between states.

Because the proposed rules would not require the installation of vapor control systems, the entire cost of installing vapor control systems should not be attributed to this rulemaking. The only costs which are properly attributable to this rulemaking are those which would be increased to meet standards in these rules which exceed normal industry practice. Since these rules have been developed in close cooperation with industry, the differences should be minimal. Estimated costs of installing vapor control systems were provided in the NRC Marine Board study. The study estimated that the cost to modify a typical 35,000 deadweight ton product tanker for vapor control would be $831,250. It estimated that the cost to modify a typical inland river barge for vapor control would be about $167,750. It also estimated that the cost to modify a typical product terminal for vapor control which serves ships and barges would be about $7,502,160.

Small entities would be affected by this rulemaking only if the state or local governments require the use of vapor control systems. These costs should be attributed to the state or local government rulemaking. Therefore, the Coast Guard certifies that, if adopted, the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Differing state requirements to control hydrocarbon emissions could adversely impact competition between states. Since this rulemaking addresses safety requirements for vapor control systems, it will ease the impact on competition between states by providing for nationwide safety requirements. It is possible that some owners of foreign tank vessels will not install vapor control systems on their vessels and withdraw them from U.S. trade, however, it is not expected that the overall pattern of oil importation will be significantly affected. In addition, the Coast Guard is working with the International Maritime Organization (IMO) to develop international safety requirements for the design and operation of vapor control systems.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2.c & 1 of Commandant Instruction (COMDTINST) M16475.1B. The environmental impact associated with vapor control systems is the direct result of state or local action requiring the use of such systems. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

Paperwork Reduction Act

This rule contains information collection requirements in 33 CFR 154.310, 154.804, 154.806, 154.814, 155.750, 156.120, and 156.170 and 46 CFR 32.53-85, 32.35-30, 39.10-13, and 39.20-11. These have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES."

Federalism

Based on the information currently available, the Coast Guard is unable to determine whether the proposed rule would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard's position at this time is that once a state requires vapor control, the discretion available to the state to modify the requirements, as they pertain to shoreside facilities, may be limited. For example, all flexible hoses used in vapor control systems and the last 1.5 meters (4.9 feet) of fixed piping leading to the facility vapor connection flange must be color coded bright orange (international orange). The vapor connection flanges are also of unique design to prevent cross-connection with other piping systems. These requirements, and others like them, could not be modified. Some standardization of equipment and procedures is necessary since affected vessels move from port to port in the national marketplace and excessive modification of the requirements would be burdensome and potentially unsafe. The Coast Guard specifically seeks public comment on the federalism implications of this proposal.

Appendices

Three draft ASTM specifications have been referenced in this rulemaking document. The draft specifications address: (1) The testing of detonation flame arresters, (2) the testing of flame arresters, and (3) specifications for spill valves. Since the information in the draft specifications may be helpful to the public in commenting on the proposed regulations, and since this rulemaking has a relatively short comment period, the draft specifications have been reproduced, respectively, as appendices A, B, and C.

CTAC developed recommended guidelines for vessel and facility personnel. The Coast Guard would use these guidelines in developing criteria for approval of industry training courses, if it is determined that courses should require Coast Guard approval. The CTAC guidelines have been reproduced as appendix D.

List of Subjects

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Seamen.

46 CFR Part 35

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 39

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Vapor control.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 33, chapter I, subchapter O, parts 154, 155, and 156, and title 46, chapter I, parts 32 and 35, and add new part 39 as set forth below.

TITLE 33—[AMENDED]

PART 154—[AMENDED]

1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 154.100 is revised to read as follows:

§ 154.100 Applicability.

This part applies to each facility or marina that transfers, in bulk, to or from any vessel with a capacity of 250 barrels or more, oil or any material, other than liquefied gases, determined to be hazardous under 46 CFR 153.40 (a), (b), (c) or (e) except that §154.735 applies to each facility or marina that—

(a) Transfers in bulk any quantity of these producing; or

(b) Has storage tanks containing these products, mixtures that include these products, or their residues.

Note: A storage tank that is not gas free and safe for entry is considered to have residues of these products or mixtures of these products.

3. Section 154.105 is amended by revising the definition for the word "facility" to read as follows:

§ 154.105 Definitions.

* * * * *

"Facility" means any structure on or in the navigable waters of the United States or any land structure or shore area immediately adjacent to such waters, used or capable of being used to transfer oil or hazardous materials to or from a vessel.

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4. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G-MTH), 2100 Second Street, SW., Washington, DC, 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the section affected are:

American Petroleum Institute (API), 2101 L Street NW., Washington, DC 20037:	
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), January 1982	154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 5—Oxygen Analyzers, Fourth Edition, August 1983.	154.820
American Society of Mechanical Engineers (ASME), United Engineering Center, 345 E. 47 Street, New York, NY 10017:	
ANSI B16.5—Steel Pipe Flanges and Flanged Fittings, 1981	154.500; 154.810
ANSI B16.24—Brass or Bronze Pipe Flanges, 1979	154.500; 154.810
ANSI B31.3—Chemical Plant and Petroleum Refinery Piping, 1987	154.510; 154.808
American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:	
ASTM ——Standard Specification for Tank Vent Flame Arresters	154.820
ASTM ——Standard Specification for Detonation Flame Arresters	154.820
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269:	
NFPA 70—National Electrical Code, 1987	154.735; 154.820
NFPA 85A—Standard for Prevention of Furnace Explosions in Fuel Oil- and Natural Gas-Fired Single Burner Boiler-Furnaces, 1987.	154.820
Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SWIE 5BH: International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988.	154.735

5. Section 154.310 is amended by redesignating existing paragraphs (b) and (c) as (c) and (d), respectively, and adding new paragraph (b) to read as follows:

§ 154.310 Operations manual: Contents.

* * * * *

(b) If a facility collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, the operations manual must contain a description of the vapor collection system at the facility which includes:

(1) A line diagram of the facility's vapor control system piping, including the location of each valve, control device, pressure/vacuum relieving device, pressure indicator, flame arrester, and detonation arrester; and

(2) A description of, and procedures for operating, the vapor control system including the:

(i) Vapor line connection;

(ii) Startup and shutdown procedures;

(iii) Steady state operating procedures;

(iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors);

(v) Alarms and shutdowns; and

(vi) Pre-transfer equipment inspection requirements.

* * * * *

6. Section 154.740 is amended by deleting the word "and" at the end of paragraph (e) and adding new paragraphs (g), (h), and (i) to read as follows:

§ 154.740 Records.

* * * * *

(g) A record of all repairs to any component, which is required by subpart E of this part, of the facility's vapor control system is to be kept for 3 years;

(h) A record of all automatic shutdowns of the facility's vapor control system is to be kept for 3 years; and

(i) Plans, calculations, and specifications of the facility's vapor control system, certified under § 154.804 of this part.

7. A new subpart E is added to read as follows:

Subpart E—Vapor Control Systems

154.800 Applicability.
154.802 Definitions.
154.803 Other hazardous materials.
154.804 Review of system designs and initial inspection.
154.806 Application for acceptance as a certifying entity.
154.808 Vapor control system, general.
154.810 Vapor line connections.
154.812 Vessel liquid overfill protection.
154.814 Vessel vapor overpressure and vacuum protection.
154.820 Fire, explosion and detonation protection.
154.840 Personnel.
154.850 Operational requirements.

§ 154.800 Applicability.

(a) This subpart applies to the following:

(1) Each facility which collects vapors of flammable or combustible liquids emitted from a tank vessel's cargo tanks for recovery, destruction, or dispersion, or other vapor control process.

(2) A vessel that is not a tank vessel but which has a vapor processing unit located on board for recovery, destruction, or dispersion of vapor of flammable or combustible liquids from a tank vessel.

(b) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10-39.

§ 154.802 Definitions.

As used in this subpart:

"Existing vapor control system" means a vapor control system which was approved by the Coast Guard prior to October 6, 1989.

"Facility vapor connection" means the point in the facility's vapor collection system where it interconnects with the vessel's vapor collection system.

"Inerted" means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500 or other inerting arrangements acceptable to the Commandant (G-MTH).

"Liquid knockout vessel" means a device to separate liquid out of the vapor stream.

"Maximum allowable loading rate" means the maximum volumetric rate at which a vessel may receive cargo or ballast. The criteria for determining this rate is given in 46 CFR 39.30-1(b).

"Means of protection" means a system or device which will prevent ignition from occurring or prevent flame propagation without human intervention.

"New vapor control system" means a vapor control system which is not an existing vapor control system.

"Vapor balancing" means the transfer of vapors displaced by incoming cargo from the tanks of the vessel receiving cargo into the tanks of the vessel or facility delivering cargo.

"Vapor collection system" means an arrangement of piping and hoses used to collect vapors emitted from a vessel's cargo tanks and transport the vapors to a vapor processing unit.

"Vapor control system" means an arrangement of piping and equipment used to control hydrocarbon vapor emissions collected from a vessel. It includes the vapor collection system and the vapor processing unit.

"Vapor dispersion system" means a vapor control system which releases vapors to the atmosphere through a venting system not located on the vessel which is collecting the vapors.

"Vapor processing unit" means the components of the vapor control system that recovers, destroys, or disperses vapors collected from the vessel.

"Vessel vapor connection" means the point in the vessel's fixed vapor collection system where it connects with the facility's vapor collection system or another vessel's vapor collection system (for lightering operations).

§ 154.803 Other hazardous materials.

A facility which collects vapors of flammable or combustible cargoes listed in 46 CFR Table 151.01-10(b) or Table 1 of 46 CFR part 153, which are not hydrocarbon liquids, must meet the requirements of this subpart and any additional requirements that the Commandant (G-MTH) may prescribe.

§ 154.804 Review of system designs and initial inspection.

(a) New vapor control system installation must be certified by an entity accepted under § 154.806 of this subpart as meeting the requirements of this subpart.

(b) Plans, calculations, and specifications for existing vapor control system installations must be submitted to an entity accepted under § 154.806 of this subpart within [insert date six (6) months after the effective date of these regulations]. Any modifications required to bring the installation into compliance shall be completed within twelve (12) months after receipt of notification by the approval entity of modifications to be required, but not later than [insert date twenty-four (24) months after the effective date of these regulations]. After completion of modifications and tests and inspections under paragraph (d) of this section, the installation must be certified by the certifying entity as meeting the requirements of this subpart. The certification and a copy of the plans, calculations, and specifications on which the system is based shall be maintained at the facility.

(c) Plans and information submitted to the certifying entity must include a qualitative failure analysis to demonstrate that the system's fire, explosion and detonation components provide the following:

(1) Two independent means of protection to prevent an ignition occurring anywhere in the facility's vapor control system from propagating to the tank vessel; and

(2) Two independent means of protection to prevent an ignition on the tank vessel from propagating into the facility's vapor control system.

(d) The certifying entity shall conduct all initial inspections and tests to demonstrate that the facility:

(1) Conforms to approved plans and specifications;

(2) Meets the requirements of this subpart; and

(3) Operates properly.

(e) Upon receipt of the certification required by paragraphs (a) and (b) of this section, the Captain of the Port shall endorse the letter of adequacy required by § 154.325 that the facility is acceptable for collecting vapors of flammable or combustible liquid.

(f) Any alteration involving any component required by this subpart must be reviewed by a certifying entity accepted under § 154.806 of this subpart. The certifying entity must conduct the tests and inspection in accordance with paragraph (d) of this section before certifying that the alteration meets the requirements of this subpart. A copy of the certification shall be submitted to the Captain of the Port.

§ 154.806 Application for acceptance as a certifying entity.

(a) Any entity seeking acceptance to certify facility vapor control systems shall apply in writing to the Commandant (G-MTH). Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization, and must include a letter of intent from a facility owner or operator to use the services of the entity to approve a vapor control system installation. Any false statement or representation, or the knowing and willful concealment of a material fact may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and denial or termination of acceptance.

(b) The applicant must possess the following minimum qualifications, and be able to demonstrate these qualifications to the satisfaction of the Commandant (G-MTH):

(1) The ability to review and evaluate design drawings, and qualitative failure analyses;

(2) A knowledge of the applicable regulations of this subpart, including the standards incorporated by reference in these regulations;

(3) The ability to conduct or monitor and evaluate test procedures and results;

(4) The ability to perform inspections and tests of bulk liquid cargo handling systems;

(5) Is not controlled by the owners or operators of the vessels or the facilities engaged in controlling vapor emission; and

(6) Is not dependent upon Coast Guard acceptance under this section to remain in business.

(c) Each application for acceptance must contain the following:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A statement that the applicant is not controlled by the owners or operators of vessels or facilities engaged in controlling vapor emissions, or a full disclosure of any ownership or controlling interest held by such owners or operators;

(3) A description of the experience and qualifications of the person(s) who would be reviewing or testing the system;

(4) A statement that the person(s) who would be reviewing or testing the systems is/are familiar with the regulations in this subpart; and

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the person(s) who would be reviewing or testing the systems to determine their qualifications.

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(d) The acceptance of an entity may be terminated by the Commandant if the entity fails to properly review or test systems in accordance with this subpart.

Note: A list of entities accepted to approve vapor control system installations is available from the Commandant (G–MTH).

§ 154.808 Vapor control system, general.

(a) The vapor control system design and installation must eliminate potential sources of ignition to the maximum practical extent. Each remaining ignition source which is not eliminated must be specifically addressed in the protection system design and operational requirements.

(b) The vapor collection system piping, valves, flanges, and fittings must be in accordance with ANSI Standard B31.3 and designed for a maximum allowable working pressure of at least 150 psig. This maximum allowable working pressure does not apply to the vapor processing unit equipment, loading arms, vapor hoses, compressors, blowers and liquid knockout vessels.

(c) A means must be provided to drain and collect any liquid condensate which may carry over from the vessel from each low point in the line.

(d) A liquid knockout vessel must be provided for compressor units to protect the compressor from liquid carryover, unless the manufacturer certifies that the compressor can safely handle flammable and combustible liquids. Any required liquid knockout vessel must have the following:

(1) Means to indicate the level of liquid in the device;

(2) Provisions to cause the automatic vapor shutoff valve required by § 154.810(b) of this subpart to automatically close prior to liquid carryover from the device to the compressor; and

(3) An audible and visible high level alarm which is activated at a liquid level lower than the level which will activate the automatic shutoff valve required by § 154.810(b) of this subpart.

§ 154.810 Vapor line connections.

(a) An isolation valve capable of manual operation must be provided at the facility vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position.

(b) In addition to the isolation valve required by paragraph (a) of this section, an automatically operated vapor shutoff valve must be installed which meets the following:

(1) The valve must close within five (5) seconds of detection of a shutdown condition by a component required by §§ 154.808(d)(2), 154.814(f), 154.814(g), 154.820(c)(3), 154.820(d)(4), 154.820(e)(3), 154.820(f)(5), or 154.820(k) of this subpart;

(2) An audible and visible alarm must warn the person in charge when a signal to shut down is received; and

(3) The valve must be located upstream of any device used to assist drawing vapors from the vessel, any liquid knockout vessel, and the point where inerting, enriching, or diluting gas is introduced into the vapor collection line.

(c) Vapor connection flanges and the last 1.5 meters (4.9 feet) of vapor piping from the facility vapor connection must be painted bright orange (international orange) and clearly marked with the words "VAPOR PIPING" in black letters 2½ inches high.

(d) Each facility vapor connection flange, vapor hose flange, vapor loading arm flange, and vapor line adapter flange must meet the following:

(1) Each flange must have a 0.5 inch diameter lug, which is at least 1.0 inch long, permanently attached to the flange;

(2) Each flange must have a 0.625 inch diameter hole in the flange located directly opposite the lug;

(3) The lug and hole must be located midway between bolt holes in line with the bolt hole pattern;

(4) The lug must be on the left hand side of the installed flange when looking at the open end of the flange; and

(5) Fixed flanges must be arranged such that the lug and hole line up horizontally.

(e) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 100 psig;

(2) Have a maximum allowable working pressure of at least 25 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Have flanges that meet ANSI Standard B16.5 or B16.24;

(5) Be electrically continuous with a maximum resistance of one million ohms (1 Mohm);

(6) Where two or more hoses are connected in series, have a maximum resistance between points of bonding to the vessel of 1 Mohm.

(7) Have an exterior coating which is bright orange (international orange) in color; and

(8) Be stenciled with the words "VAPOR HOSE" in black letters 2½ inches high.

(f) Fixed vapor loading arms must:

(1) Meet the requirements of § 154.810(e)(1) through (5) of this part;

(2) Have the last 1.5 meters (4.9 feet) of the arm painted bright orange (international orange); and

(3) Be clearly marked with the words "VAPOR RETURN LINE" in black letters 2½ inches high.

(g) An electrical insulating flange must be provided at the facility vapor connection.

§ 154.812 Vessel liquid overfill protection.

Each facility which serves a tank barge fitted with overfill protection in accordance with 46 CFR 39.20–9(b) must:

(a) Have an overfill control panel installed on the dock capable of receiving a shutdown signal from an intrinsically safe system aboard the tank barge;

(b) Have cargo pumps and cargo shutdown valves which automatically shut down upon receiving a shutdown signal from the tank barge without causing piping design pressure limits to be exceeded and without causing the barge tanks to become 100 percent liquid full;

(c) Have an alarm on the overfill protection control panel which;

(1) Is activated by the shutdown signal from the tank barge or by a high level signal set at a liquid level below the shutdown level, and

(2) Is visible and audible to vessel as well as facility personnel;

(d) Have means to electrically and mechanically test alarm and shutdown systems prior to each loading operation; and

(e) Have the shutdown system activate upon loss of continuity of the tank barge's overflow control system circuitry.

§ 154.814 Vessel vapor overpressure and vacuum protection.

(a) A facility's vapor collection system must have the capacity for collecting vapors at a rate not less than 1.25 times the facility's maximum design liquid loading rate.

(b) A facility's vapor collection system must be capable of maintaining the pressure at the facility vapor connection between 0.3 psi vacuum and 0.3 psig for a non-inerted tank vessel and between 0.2 psig and 1.0 psig for an inerted tank vessel. The specified pressures must be maintained at any loading rate less than or equal to the facility's maximum design loading rate.

(c) A pressure sensing device must be provided which actuates an alarm when the pressure at the facility vapor connection exceeds either the maximum pressure given in paragraph (b) of this section or a lower pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter.

(d) A pressure sensing device must be provided which actuates an alarm when the pressure at the facility vapor connection falls below either the minimum pressure given in paragraph (b) of this section or a higher level agreed upon at the pre-transfer conference.

(e) The pressure alarms required by paragraphs (c) and (d) of this section must be audible and visible at the facility at the place where cargo loading is controlled and from any point in the cargo deck area of the vessel as defined in 46 CFR 39.10–3.

(f) A pressure sensing device must be provided which causes automatic shutdown of the cargo transfer and closure of the automatic vapor shutoff valve required by § 154.810(b) of this subpart when the pressure exceeds the maximun level given in paragraph (b) of this section by 0.25 psi. The sensing device must be independent of the device used to activate the alarms referred to in paragraphs (c) and (d) of this section.

(g) A pressure sensing device must be provided which causes automatic shutdown of the cargo transfer and closure of the automatic vapor shutoff valve required by § 154.810(b) of this subpart when the pressure falls below the minimum level given in paragraph (b) of this section by 0.25 psi. The sensing device must be independent of the device used to activate the alarms referred to in paragraphs (c) and (d) of this section.

(h) The pressure sensing devices required by paragraphs (c), (d) (f), and (g) of this section must be located in the vapor collection line such that there are no valves between the facility vapor connection and the sensing devices.

(i) A pressure indicating device must be provided at the location where the cargo transfer and vapor control system are controlled which indicates the vapor pressure in the vapor collection line.

(j) If a device is installed to assist drawing vapors from the vessel (e.g. compressor or blower), a liquid vacuum breaker must be installed in the vapor collection line between the device and the facility vapor connection, which meets the following:

(1) The capacity of the liquid vacuum breaker must not be less than the capacity of the vapor assist device;

(2) The liquid vacuum breaker must relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 1.0 psi vacuum when the liquid vacuum breaker is venting at the capacity of the vapor assist device; and

(3) Each liquid vacuum breaker must be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000.

(k) A pressure relieving device must be installed which meets the following:

(1) The relieving capacity of the device must not be less than the greater of 1.25 times the facility's maximum design liquid loading rate or the maximum capacity of any inerting, enriching, or diluting gas source;

(2) The device must relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection when the device is venting at 1.25 times the facility's maximum loading rate or the capacity of the gas source, whichever is greater, does not exceed 2.0 psig.

(3) Each device must be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000; and

(4) The device must be located upstream of the detonation arrester required by § 154.820(a) of this subpart and the location where inerting, enriching, or diluting gas is introduced into the vapor collection line.

(l) Means must be provided to determine that the cargo loading rate does not exceed the maximum allowable loading rate given in the vessel's oil transfer procedures in accordance with § 155.750(e) of this chapter.

§ 154.820 Fire, explosion and detonation protection.

(a) Each facility vapor connection must be fitted with a detonation arrester which:

(1) Meets ASTM _____;

(2) Is capable of arresting a detonation from either side of the device; and

(3) Is installed within 6.0 meters (19.7 feet) of the facility vapor connection.

(b) Except as provided for in paragraph (g) of this section, the vapor control system must be fitted with a system which maintains the concentration of the vapor mixture outside the flammable range by one or a combination of the following methods:

(1) *Air dilution:* A system which meets paragraphs (c) and (f) of this section and supplies additional air to the vapor stream in sufficient quantities to insure that the hydrocarbon concentration of the vapor in the vapor control system is maintained below 30 percent by volume of the lower flammable limit;

(2) *Enrichment:* A system which meets paragraphs (d) and (f) of this section and supplies a compatible hydrocarbon gas to the vapor stream in sufficient quantities to insure that the hydrocarbon concentration of the vapor in the vapor control system is maintained above 170 percent by volume of the upper flammable limit; or

(3) *Inerting:* A system which meets paragraphs (e) and (f) of this section and supplies an inerting gas to the vapor stream in sufficient quantities to insure that the oxygen concentration of the vapor in the vapor control system is maintained below 8.0 percent by volume.

(c) An air dilution system must meet the following requirements:

(1) Have at least two sets of independent hydrocarbon analyzers with independent sensor taps;

(2) An alarm must be activated when the flammable vapor concentration exceeds 30 percent of the lower flammable limit; and

(3) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the flammable vapor concentration exceeds 50 percent of the lwer flammable limit.

(d) An enrichment system must meet the following requirements:

(1) Have at least two sets of independent hydrocarbon analyzers with independent sensor taps;

(2) In lieu of the hydrocarbon analyzers, two independent oxygen analyzers with independent sensor taps may be provided if the upper flammable limit for the enriching gas does not vary by more than 5 percent by volume;

(3) An alarm must be activated when the flammable vapor concentration falls below 170 percent of the upper flammable limit;

(4) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the flammable vapor concentration falls below 150 percent of the upper flammable limit; and

(5) If oxygen sensors are utilized, the alarm and shutdown set points must be calculated for an equivalent upper flammable limit based upon the enriching gas.

An inerting system must meet the following:

(1) The system must have at least two sets of independent oxygen analyzers with independent sensor taps;

(2) An alarm must be activated when the oxygen concentration exceeds 8.0 percent by volume;

(3) The automatic vapor shutoff valve required by § 154.810(b) of this subpart must automatically close when the oxygen concentration exceeds 9.0 percent by volume; and

(4) When a combustion device is used to produce the inerting gas, the flow of gas from the vapor collection system

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into the inert gas line must be prevented by a hydraulic seal and a non-return valve.

(f) An air dilution, enrichment, or inerting system, installed to meet the requirements of paragraph (b) of this section, must meet the following:

(1) The appropriate gas must be injected into the vapor control system at a point within 6.0 meters (19.7 feet) of the facility vapor connection;

(2) The design must provide for complete mixing of the gases within 20 pipe diameters of the injection point;

(3) Analyzers must have response times of no more than 30 seconds;

(4) Analyzers must sample the vapor concentration at a point where the vapor mixture is homogeneous, at least 20 but no more than 50 pipe diameters downstream from the point of gas injection;

(5) Analyzers must be designed such that the more severe concentration reading must be used to activate the required alarms and shutdowns;

(6) If a mixing device is installed between the injection point and the sampling point, the analyzers may be installed closer than 20 pipe diameters from the injection point, but must be after the point where a homogeneous mix of the vapor is achieved;

(7) Analyzers must be in accordance with API Recommended Practice 550;

(8) Oxygen analyzers of the zirconia electrochemical or thermomagnetic type must not be used;

(9) At least one connection for injecting zero gas and a span gas of known concentration into the system must be provided for testing and calibration of the analyzers;

(10) Systems must have the capability to dilute, enrich, or inert the shore vapor collection line prior to receiving vapors from a vessel;

(11) An indicator must be provided which indicates the oxygen or hydrocarbon (as appropriate) content and is located where the cargo transfer and vapor control systems are controlled; and

(12) For enrichment and inerting systems, the vapor collection piping must be operated at a positive gauge pressure after the injection point unless a means acceptable to Commandant (G-MTH) is provided which ensures that air is not drawn into the system.

(g) If a terminal serves only vessels whose cargo tanks are inerted, the following is applicable:

(1) An additional supply of inerting gas is not required, except for the provision to be capable of inerting the vapor line prior to the transfer in accordance with paragraph (f)(10) of this section;

(2) Paragraph (e) of this section must be met; and

(3) The analyzers required by paragraph (e) of this section must sample the vapor concentration within 3 meters (9.8 feet) of the facility vapor connection.

(h) Any alarm condition specified in this part must activate an audible and visible alarm which can be seen and heard where the cargo transfer and vapor control system are controlled, and from anywhere the operator may be reasonably expected to be located.

(i) If a vapor control system interconnects with more than one vapor collection system, it must meet the following:

(1) Only one of the methods of controlling the vapor mixture (air dilution, enrichment, or inerting) required by paragraph (b) of this section may be used at any one time;

(2) Each branch must be fitted with a detonation arrester that meets paragraph (a) of this section at the points of intersection; and

(3) Any branch shut down after loading ceases for that branch must be isolated near the junction point with other branches by double block and bleed valves, double shutoff valves, or a blind acceptable to the Commandant (G-MTH).

(j) The vapor control system must be separated or insulated from external heat sources to limit vapor control system piping surface temperature to 177 °C (350 °F) during normal operation.

(k) An incinerator or flare in the vapor control system must:

(1) Have two automatic quick acting stop valves installed in the vapor collection line upstream of the incinerator or flare which automatically close whenever the incinerator or flare shuts down or has a flameout condition;

(2) Be designed such that actuation of the automatic quick acting stop valves must also cause the automatic vapor shutoff valve required by § 154.810(b) of this subpart to close and cargo transfer to stop;

(3) Have a flame arrester that meets ASTM _____ installed in accordance with the manufacturer's instructions;

(4) Have a liquid seal flame arrester installed;

(5) Have a means of detecting a flame on the flame arrester which is closest to the incinerator or flare which will actuate the automatic quick acting stop valves, actuate the automatic vapor shutoff valve, and cause cargo transfer to stop; and

(6) Not be located within 30 meters (98.4 feet) of any tank vessel moored at the facility.

(l) An incinerator in the vapor control system must be designed in accordance with NFPA 85A.

(m) If a reciprocating or screw-type compressor is used to assist movement of vapors in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive discharge gas temperatures at each compressor chamber or cylinder;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperatures.

(n) If a centrifugal compressor or fan is used to assist movement of vapors in the vapor collection system, it must meet the following:

(1) Construction of the blades and/or housing must meet one of the following:

(i) Blades or housing of nonmetallic construction;

(ii) Blades and housing of nonferrous material;

(iii) Blades and housing of corrosion resistant steel;

(iv) Ferrous blades and housing with one-half inch or more design tip clearance; or

(v) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert ring at the periphery of the impeller;

(2) Any combination of an aluminum alloy or a magnesium alloy component and a ferrous component is prohibited, regardless of the material that is used as the fixed or rotating component; and

(3) All metal parts must be electrically bonded and grounded.

(o) If the facility handles inerted vapors, provisions must be made to control heating from pyrophoric iron sulphide deposits in the vapor collection line.

(p) All outlets of the vapor control system to atmosphere must have a flame arresting device located at the outlet. The device must meet ASTM _____ and be installed in accordance with the manufacturer's instructions.

(q) All electrical equipment used in the vapor control system must comply with NFPA 70.

§ 154.840 Personnel.

(a) The person in charge of the transfer operation utilizing a vapor control system must have completed a training program covering the particular system installed at the facility. For persons who have not previously received training under this section, there must be at least 40 hours of training with a minimum of 8 hours of drills or demonstrations, using the installed vapor control system, covering normal operations and emergency procedures. For persons who have previously received training under this section or training for vessel personnel under 46 CFR 39.10–11, there must be at least 24 hours of training with a minimum of 8 hours of drills or demonstration, using the installed vapor control system, covering normal operations and emergency procedures.

(b) The training course must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Coast Guard regulations in this subpart;

(3) Principles of vapor control systems;

(4) Hazards of vapor control systems;

(5) Components of a vapor control system;

(6) Operating procedures:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 154.850 Operational requirements.

(a) A facility shall receive vapors only from a vessel which has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.10–13(e).

(b) Whenever a condition results in a shutdown of the vapor control system, the person in charge shall immediately terminate cargo loading.

(c) Loading rate must not exceed the maximum allowable loading rate for the vessel.

(d) Loading rate must not exceed the facility's maximum design loading rate.

(e) The person in charge shall test all alarms, automatic shutdowns, and sensing devices required by § 154.820 (c), (d), and (e) of this subpart not more than 24 hours prior to each loading operation.

(f) If one of the oxygen or hydrocarbon analyzers required by § 154.820 of this subpart becomes inoperable during a loading operation, the operation may continue provided the remaining analyzer remains operational; however, no further loading operations may be started until the inoperable analyzer is replaced or repaired.

(g) The person in charge shall verify that all necessary valves in the vapor line between the vessel's tanks and the shore system are open prior to starting of the loading.

(h) The initial loading rate to each cargo tank shall be limited to one meter per second (3.28 feet per second) linear velocity until cargo level has exceeded one meter (3.28 feet) in height.

(i) The person in charge shall verify that normal vapor flow has been established once vapors are generated from loading.

(j) When vapors are being received from an inerted vessel, prior to opening the isolation valve the person in charge shall verify that the vessel side of the isolation valve is at a higher pressure than the shore side.

(k) No more than 30 meters (98.4 feet) of vapor hose may be used unless provisions are made to reduce the maximum allowable loading rate to account for the resistance of the additional vapor hose.

(l) The inside diameter of all vapor hoses connected to a tank vessel must not be less than the inside diameter of the vessel's vapor collection system piping.

(m) Line clearing of a cargo loading line is prohibited while transferring cargo to a vessel.

(n) If a flare in the vapor control system is suspected of having a flare-back, or a flame is detected on the flame arrester by the detection means required by § 154.820(k)(5) of this subpart, the transfer operation shall not be continued until the flame arrester has been inspected internally and found to be in satisfactory condition.

PART 155—[AMENDED]

8. The authority citation for part 155 is revised to read as follows and all other authority citations in the part are removed:

Authority: 33 U.S.C. 1321 (j)(1)(C), 1902(c) and 1903(b), E.O. 11735, 49 CFR 1.46.

9. Section 155.750 is amended by adding paragraph (d) to read as follows:

§ 155.750 Contents of oil transfer procedures.

* * * * *

(d) If a vessel is fitted with a vapor control system, the oil transfer procedures must contain a description of the vapor collection system on the vessel which includes:

(1) A line diagram of the vessel's vapor collection system piping, including the location of each valve, control device, pressure/vacuum relieving device, pressure indicator, and device to prevent the passage of flame;

(2) The location of spill valves and rupture disks if fitted;

(3) The maximum allowable loading rates as described in 46 CFR 39.30–1(b);

(4) A description of, and procedures for operating, the vapor collection system including the:

(i) Vapor line connection;

(ii) Closed gauging system;

(iii) High level alarm system;

(iv) Independent automatic shutdown system; and

(v) Pre-transfer equipment inspection requirements; and

(5) The relief settings of all spill valves, rupture disks, and pressure/vacuum relieving devices.

PART 156—[AMENDED]

10. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1321 (j)(1) (C) and (D); 46 U.S.C. 3715; E.O. 11735, 3 CFR, 1971–1975 COMP., p. 793; 49 CFR 1.46.

11. Section 156.120 is amended by adding paragraph (aa) to read as follows:

§ 156.120 Requirements for oil transfer.

* * * * *

(aa) A transfer operation which includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a venting system not located on the vessel must have the following verified by the person in charge:

(1) Each part of the vapor collection system is aligned to allow the flow of vapor to shore;

(2) Vapor recovery hoses or loading arms are connected to the vessel's vapor collection connection;

(3) The electrical insulating flange required by § 154.810(g) of this chapter or 46 CFR 39.40–5(c) is installed at the vapor connection;

(4) Maximum loading rate for the transfer is identified;

(5) Maximum and minimum operating pressures at the vessel/shore connection are identified;

(6) If installed, the overflow control system on a tank barge is properly connected to the facility and operating;

(7) All alarms and automatic shutdowns required by § 154.820 (c), (d) and (e) of this chapter and 46 CFR 39.20–7, 39.20–9, and 39.40–3(d) have been tested not more than 24 hours prior to the start of the transfer operation and are operating properly;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement.

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12. Section 156.170 is amended by adding new paragraph (g) to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(g) If a facility or vessel collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, no person may use any equipment in this paragraph for vapor control operations unless the vessel or facility operator, as appropriate, tests and inspects the equipment as follows:

(1) Each vapor hose, loading arm, pressure or vacuum relief device, and pressure gauge is tested and inspected in accordance with paragraphs (b), (c), and (f) of this section;

(2) Each remote operating or indicating equipment is tested for proper operation in accordance with paragraph (f) of this section; and

(3) Each detonation arrester required by § 154.820(a) of this chapter or 46 CFR 39.40–3(a), and each flame arrester required by § 154.820 (j) and (o) of this chapter, is inspected internally at least annually, or more frequently if operational shows frequent clogging or rapid deterioration.

(4) Each hydrocarbon and oxygen analyzer required by § 154.820 (c), (d) and (e) of this chapter and 46 CFR 39.40–3(d), is calibrated weekly.

TITLE 46—[AMENDED]

PART 32—[AMENDED]

13. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. Section 32.53–85 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 32.53–85 Instruction manual—T/ALL.

* * * * *

(b) If the tankship is fitted with a vapor control system to which part 39 of this subchapter is applicable, the instruction manual must include procedures relating to vapor control operations.

PART 35—[AMENDED]

15. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3706, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 35.35–20 is amended by adding paragraph (m) to read as follows:

§ 35.35–20 Inspection prior to transfer of cargo—TB/ALL.

* * * * *

(m) When the transfer operation includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a system other than the vessel's approved venting system:

(1) Each part of the vapor collection system is aligned to allow the flow of vapor to shore or, if lightering, to the other vessel;

(2) Vapor recovery hoses or loading arms are connected to the vessel's vapor collection connection;

(3) An electrical insulating flange is installed as required by 33 CFR 154.810(g) or § 39.40–5(c) of this subchapter as appropriate;

(4) Maximum loading rate for the tranfer is identified;

(5) Maximum and minimum operating pressures at the vessel/shore connection are identified;

(6) An overflow control system on a tank barge is properly connected to the facility and operating;

(7) All alarms required by §§ 39.20–7, 39.20–9 and 39.40–3(d) of this subchapter have been tested not more than 24 hours prior to the start of the transfer operation and are operating properly; and

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement.

17. Section 35.35–30 is amended by adding paragraph (c) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tankships—T/ALL.

* * * * *

(c) In addition to the requirements in paragraph (b) of this section, if the transfer operation includes collection of the vapors emitted from the vessel's cargo tanks for recovery, destruction, or dispersion through a vapor control system not located on the vessel, the Declaration of Inspection must include the following as an appendix:

(1) Is each part of the vapor collection system aligned to allow the flow of vapor to shore or, if lightering, to the other vessel?

(2) Are the vapor recovery hoses or loading arms connected to the vessel's vapor collection connection?

(3) Is an electrical insulating flange installed as required by 33 CFR 154.810(g) or § 39.40–5(c) of this subchapter as appropriate;

(4) Has the maximum loading rate for the transfer been identified?

(5) Have the maximum and minimum operating pressures at the vessel/shore connection been identified?

(6) Is the overflow control system on a tank barge properly connected and operating?

(7) Have all alarms required by §§ 39.20–7, 39.20–9 and 39.40–3(d) of this subchapter been tested not more than 24 hours prior to the start of the transfer operation and found to be operating properly?

(8) Is each vapor recovery hose free of unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and gouges, cuts, or slashes that penetrate the first layer of hose reinforcement?

18. A new part 39 is added to read as follows:

PART 39—VAPOR CONTROL SYSTEMS

Subpart 39.10—General

Sec.

39.10–1 Applicability—TB/ALL.
39.10–3 Definitions—TB/ALL.
39.10–5 Incorporation by reference—TB/ALL.
39.10–7 Other hazardous materials—TB/ALL.
39.10–9 Vessel vapor processing unit—TB/ALL.
39.10–11 Personnel—TB/ALL.
39.10–13 Submission of vapor control system designs—TB/ALL.

Subpart 39.20—Design and Equipment

39.20–1 Vapor collection system—TB/ALL.
39.20–3 Cargo gauging system—TB/ALL.
39.20–7 Tankship liquid overfill protection—TB/ALL.
39.20–9 Tank barge liquid overfill protection—B/ALL.
39.20–11 Vapor overpressure and vaccum protection—TB/ALL.
39.20–13 High and low vapor pressure protection for tankships—T/ALL.

Subpart 39.30—Operations

39.30–1 Operational requirements—TB/ALL.

Subpart 39.40—Lightering Operations With Vapor Balancing

39.40–1 General requirements for vapor balancing—TB/ALL.
39.40–3 Design and equipment for vapor balancing—TB/ALL.
39.40–5 Operational requirements for vapor balancing—TB/ALL.

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 39.10—General

§ 39.10–1 Applicability—TB/ALL.

(a) This part applies to all U.S. flag tank vessels, and foreign flag tank vessels operating in the navigable waters of the United States, when collecting vapors of a flammable or combustible liquid emitted from a vessel's cargo tanks for recovery, destruction, or dispersion through a venting system not located on the vessel, or other vapor control process.

(b) This part does not apply to the collection of vapors of liquefied flammable gases as defined in § 30.10–39 of this subchapter.

§ 39.10–3 Definitions—TB/ALL.

As used in this part:

"Cargo deck area" means that part of the weather deck that is directly over the cargo tanks.

"Existing vapor collection system" means a vapor collection system approved by the Coast Guard prior to [insert effective date of these rules].

"Facility vapor connection" means the point in a facility's vapor collection system where it connects with a vessel's collection system.

"Independent" as applied to two systems means that one system will operate with a failure of any part of the other system except power sources and electrical feeder panels. The electrical wiring for several independent systems may be carried in a single conduit or tray (for special requirements applicable to intrinsically safe systems, see § 111.105–15 of this chapter).

"Inerted" means the oxygen content of the vapor space in a cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of § 32.53 or § 153.500 of this chapter, or other inerting arrangements acceptable to the Commandant (G–MTH).

"Lightering" or *"lightering operation"* means the transfer of a flammable or combustible liquid from one vessel to another, except when that liquid is intended only for use as fuel or lubricant aboard the receiving vessel.

"Marine Safety Center" means Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590.

"Maximum allowable loading rate" means the maximum volumetric rate at which a vessel may receive cargo or ballast. The criteria for determining this rate is given in § 39.30–1(b) of this chapter.

"New vapor collection system" means a vapor collection system which is not an existing vapor collection system.

"Service vessel" means a vessel which receives a flammable or combustible cargo from another vessel in a lightering operation.

"Vapor balancing" means the transfer of vapors displaced from the tanks of the service vessel by incoming cargo into the tanks of the vessel to be lightered or the facility delivering cargo via a vapor collection system.

"Vapor collection system" means an arrangement of piping and hoses used to collect vapors emitted from a vessel's cargo tanks and to transport the vapors to a vapor processing unit.

"Vapor control system" means an arrangement of piping and equipment used to control vapor emissions collected from a vessel. It includes the vapor collection system and vapor processing unit.

"Vapor dispersion system" means a type of vapor control system which releases vapors to the atmosphere through a venting system not located on the vessel.

"Vapor processing unit" means the components of a vapor control system that processes, destroys, or disperses vapors collected from a vessel.

"Vessel to be lightered" means a vessel which transfers a flammable or combustible liquid to another vessel in a lightering operation.

"Vessel vapor connection" means the point in a vessel's vapor collection system where it connects with a facility's vapor collection system or, for lightering operations, to another vessel's vapor collection system.

§ 39.1.–5 Incorporation by reference—TB/ALL.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Petroleum Institute (API), 2101 L Street, NW., Washington, DC 20037:
- API Standard 2000—Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), January 1982 ..... 39.20–11

American Society of Mechanical Engineers, United Engineering Center, 345 E. 47 Street, New York, NY 10017:
- ANSI B16.5—Steel Pipe Flanges and Flanged Fittings, 1981 ..... 39.20–1
- ANSI B16.24—Brass or Bronze Pipe Flanges, 1979 ..... 39.20–1

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103:
- ASTM —Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications 39.20–9
- ASTM —Standard Specification for Detonation Flame Arresters 39.40–3

§ 39.10–7 Other hazardous material—TB/ALL.

A tank vessel which collects vapors of flammable or combustible cargoes listed in Table 151.01–10(b) or Table 1 of part 153 of this chapter, which are not hydrocarbon liquids, must meet the requirements of this part and any additional requirements that the Commandant (G–MTH) may prescribe.

§ 39.10–9 Vessel vapor processing unit—TB/ALL.

Each vessel which has a vapor processing unit located on board must submit plans, calculations, and specifications to the Marine Safety Center and meet the intent of 33 CFR 154, subpart E.

§ 39.10–11 Personnel—TB/ALL.

(a) The person in change of the transfer operation utilizing a vapor collection system must have completed a training program covering the particular system installed on the vessel. For persons who have not previously received training under this section, there must be at least 40 hours of training with a minimum of 8 hours of drills or demonstrations, using the installed vapor control system, covering normal operations and emergency procedures. For persons who have previously received training under this section or training for facility personnel under 33 CFR 154.840, there must be at least 24 hours of training with a minimum of 8 hours of drills or demonstration, using the installed vapor

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collections system, covering normal operations and emergency procedures.

(b) The training course must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Coast Guard regulations in this part;

(3) Principles of vapor control systems;

(4) Hazards of vapor control systems;

(5) Components of a vapor control system;

(6) Operating procedures:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 39.10-13 Submission of vapor control system designs—TB/ALL.

(a) Plans, calculations, and specifications for each new vapor collection system must be submitted in accordance with § 31.10-5(a) of this subchapter.

(b) Except as provided for in paragraph (c) of this section, existing vapor collection system installations must have plans, calculations, and specifications submitted in accordance with § 31.10-5(a) of this subchapter by April 6, 1990. In addition, modifications required to bring the installation into compliance must be completed within twelve (12) months after receipt of notification by the Coast Guard of modifications to be required, but not later than October 7, 1991.

(c) A tank vessel with an existing vapor collection system which will operate the system at a facility other than the facility for which it was originally approved to operate will be treated as a vessel with a new vapor collection system and must meet paragraph (a) of this section. The vapor collection system may not be operated at a facility other than the facility for which it was approved until approval to do so has been obtained.

(d) The owners/operators of a foreign flag vessel may submit certification by the classification society which classes the vessel that the vessel meets the requirements of this part as an alternative to meeting the requirements in paragraph (a) of this section.

(e) Upon satisfactorily completion of plan review and inspection of the vapor collection system or receipt of the certification provided for in paragraph (d) of this section, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels, that the vessel is acceptable for collecting vapors of flammable or combustible liquids.

Subpart 39.20—Design and Equipment

§ 39.20-1 Vapor collection system—TB/ALL.

(a) Each vapor collection system must meet the following requirements:

(1) Piping must be permanently installed, except as allowed by the Commandant (G-MTH);

(2) A means must be provided to drain and collect condensate from each low point in the vapor collection system;

(3) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous; and

(4) An inerted tankship must have a stop valve installed in the cargo deck area to isolate the inert gas supply from the vapor collection system.

(b) A vapor collection system must not interfere with the proper operation of any cargo tank pressure relief device.

(c) An isolation valve capable of manual operation must be provided at the vessel vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position.

(d) The last 1.5 meters (4.9 feet) of the vessel's vapor piping before the vessel vapor connection must be painted bright orange (international orange) and clearly marked with the words "VAPOR PIPING" in black letters 2½ inches high.

(e) Each vessel vapor connection flange, vapor hose flange, and vapor line adapter flange must meet the following:

(1) Each flange must have a 0.5 inch diameter lug, which is at least 1.0 inch long, permanently attached to the flange;

(2) Each flange must have a 0.625 inch diameter hole in the flange located directly opposite the lug;

(3) The lug and hole must be located midway between bolt holes in line with the bolt hole circle;

(4) The lug must be on the left hand side of the installed flange when looking at the open end of the flange; and

(5) On the vessel vapor connection, the lug and hole must line up horizontally.

(f) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 100 psig;

(2) Have a maximum allowable working pressure of at least 25 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Have flanges that meet ANSI Standard B16.5 or B16.24;

(5) Be electrically continuous with a maximum resistance of one million ohms (1 Mohm);

(6) Where two or more hoses are connected in series, have a maximum resistance between points of bonding to the vessel of 1 Mohm.

(7) Have an exterior coating which is colored bright orange (international orange); and

(8) Be stenciled with the words "VAPOR HOSE" in black letters 2½ inches high.

§ 39.20-3 Cargo gauging system—TB/ALL

(a) Each cargo tank of a tank vessel which is connected to a vapor collection system must be equipped with a permanently installed cargo gauging system which:

(1) Allows determination of the liquid level in the tank without opening the tank to the atmosphere (closed gauging system);

(2) Allows the operator to determine the liquid level in the tank for the full range of liquid levels in the tank;

(3) Indicates the liquid level in the tank at the cargo tank and, if the cargo loading is controlled at some point other than at the cargo tank, at the point where the cargo loading is controlled; and

(4) For a tank barge, has the maximum liquid level permitted under § 39.30-1(c) of this part at even keel conditions conspicuously and permanently marked on the cargo gauging system at each tank.

(b) Except when a tank barge complies with § 39.20-9(a) of this part, each cargo tank of a barge must have a device giving a visual indication of the liquid level in the cargo tank within 1.5 meters (4.9 feet) of the tank top. The indication must be visible from all points in the cargo deck area.

§ 39.20-7 Tankship liquid overfill protection—T/ALL.

(a) Each cargo tank of a tankship must be equipped with a high level alarm and a tank overflow alarm.

(b) The high level alarm and tank overflow alarm must:

(1) Be independent of one-another;

(2) Alarm in the event of loss of power to the alarm sytem or failure of electrical circuitry to the tank level sensor;

(3) Be able to be checked at the tank for proper operation prior to each loading;

(4) Have audible and visible alarm indications that can be seen and heard where cargo tansfer is controlled and in the cargo deck area; and

(5) For components of alarms located within cargo tanks, use only non-conductive material or conductive material bonded to the tank structure.

(c) The high level alarm must:

(1) Alarm before the tank overflow alarm, but no higher than 97 percent of tank capacity; and

(2) Be identified with the legend "HIGH LEVEL ALARM" in lettering as specified for the warning sign in § 153.955 of this chapter.

(d) The tank overflow alarm must:

(1) Be independent of the cargo gauging system;

(2) At the maximum allowable loading rate, alarm early enough to allow the person in charge to;

(i) Stop the loading operation before the cargo tank overflows, and

(ii) Avoid surge pressures that exceed the cargo piping's maximum working pressure; and

(3) Be identified with the legend "TANK OVERFLOW ALARM" in lettering as specified for the warning sign in § 153.955 of this chapter.

(e) If spill valves are fitted, they must meet § 39.20-9(c) of this part.

(f) Rupture disk installations must meet § 39.20-9(d) of this part.

§ 39.20-9 Tank barge liquid overfill protection—B/ALL

Each cargo tank of a tank barge must have one of the following liquid overfill protection arrangements:

(a) A system meeting the requirements of § 39.20-7 of this part;

(b) An overflow control system which:

(1) Is independent of the cargo gauging system required by § 39.20-3(a) of this part,

(2) Actuates a system onshore, or on the vessel to be lightered if a lightering operation, which automatically stops the flow of cargo to the tank barge before the tank becomes 100 percent liquid full; and

(3) Is able to be checked at the tank for proper operation prior to each loading;

(c) A spill valve which meets the following requirements:

(1) Relieves at a pressure higher than the pressure reached in the tank which the pressure relief device operates at the maximum anticipated loading rate, assuming a vapor rate of 1.25 times the liquid loading rate;

(2) Limits the maximum pressure at the cargo tank top during liquid overfill at the maximum anticipated loading rate to not more than 3.0 psig for tankships or 2.0 psig for tank barges;

(3) Is in accordance with ASTM Specification _____; and

(4) If the vessel is in ocean or coastwise service, has provisions to prevent opening of the spill valve due to sloshing loads; or

(d) A rupture disk arrangement which meets paragraphs (c) (1), (2) and (4) of this section and is approved by the Commandant (G-MTH).

§ 39.20-11 Vapor overpressure and vacuum protection—TB/ALL

(a) Each cargo tank must be protected by a pressure relief device which meets the following:

(1) Is capable of discharging saturated cargo vapors at 1.25 times the maximum anticipated loading rate such that the pressure in the cargo tank vapor space does not exceed 3.0 psig for tankships or 2.0 psig for tank bages, or if a spill valve is fitted, the pressure at which the spill valve will relieve; and

(2) Must not relieve at a pressure in the cargo tank vapor space of less than 1.5 psig.

(b) Each cargo tank must be protected by a vacuum relief device which meets the following:

(1) Prevents a vacuum in the cargo tank vapor space, whether generated by withdrawal of cargo or vapor at maximum rates, that exceeds 1.0 psi vacuum; and

(2) Relieves at not less than 0.5 psi below atmospheric pressure (0.5 psi vacuum) in the cargo tank vapor space.

(c) Each pressure/vacuum relief device must:

(1) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API Standard 2000; and

(2) Have mechanical means to check that it is operating freely if installed after [insert effective date of these rules].

§ 39.20-13 High and low vapor pressure protection for tankships—T/ALL

Each tankship vapor collection system must be fitted with a pressure sensing device which:

(a) Has a pressure indicator located where the cargo loading is controlled; and

(b) Has a high pressure and low pressure alarm that:

(1) Is audible and visible where cargo transfer is controlled and in the cargo deck area;

(2) Alarms at a high pressure of not more than 50 percent of the lowest pressure relief device setting in the vapor collection system;

(3) Alarms at a low pressure of not less than four inches water gauge (0.144 psig) for inerted tankships, or 0.5 psi vacuum for non-inerted tankships;

(4) If cargo tanks connected to the vapor collection system are located only forward of the vessel vapor connection, senses the pressure in the vapor collection line at the forwardmost cargo tank connected to the vapor collection system;

(5) If cargo tanks connected to the vapor collection system are located only aft of the vessel vapor connection, senses the pressure in the vapor collection line at the aftermost cargo tank connected to the vapor collection system;

(6) If cargo tanks connected to the vapor collection system are located forward and aft of the vessel vapor connection, senses the pressure in the vapor collection line at the forwardmost and the aftermost cargo tanks connected to the vapor collection system; and

(7) If only one cargo tank is connected to the vapor collection system, senses the pressure in the vapor collection line at the cargo tank.

Subpart 39.30—Operations

§ 39.30-1 Operational requirements—TB/ALL

(a) Vapors from a tank vessel may not be transferred to:

(1) A facility which does not have its letter of adequacy endorsed as meeting the requirements of 33 CFR 154, subpart E; or

(2) In the case of lightering operations, a vessel which does not have its certificate of inspection endorsed as meeting the requirements of subpart 39.40 of this part.

(b) The rate of cargo transfer must not exceed the maximum allowable loading rate specified in the oil transfer procedures required by 33 CFR 155.720. This rate is the lesser of the following:

(1) The rate at which the pressure relief devices in the vapor collection system or on any tank connected to the system are capable of venting vapors to atmosphere at 1.25 times the loading rate such that no cargo tenk pressure exceeds 3.0 psig for tankships or 2.0 psig for tank barges, or if a spill valve or rupture disk is fitted, the pressure at which the spill valve or rupture disk will relieve; or

(2) The rate based on calculation at which, for a given pressure at the vessel vapor connection, the pressure in any cargo tank connected to the vapor collection system is no more than 50 percent of any pressure relief device setting on any tank connected to the system, assuming a vapor flow rate of 1.25 times the loading rate.

Note: The maximum allowable loading rate will normally be given as a table or graph in the vessel's oil transfer procedures showing the maximum allowable loading rate versus the pressure at the vessel's vapor connection.

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(c) Unless exempted by the Commandant (G–MTH), a cargo tank must not be filled higher than the lesser of:

(1) 97 percent of the cargo tank volume; or

(2) The level at which the high level alarm complying with § 39.20–7 of this part is set.

(d) A cargo tank must not be opened to the atmosphere during cargo loading operations except as provided in paragraph (e) of this section.

(e) A cargo tank may be opened to the atmosphere for gauging or sampling while the tank vessel is connected to a vapor control system if the following conditiona are met:

(1) The tank is not being filled;

(2) Except if the tank is inerted, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the vapor control system;

(3) The cargo is not required to be closed or restricted gauged by Table 151.05 or Table 1 in part 153 of this chapter; and

(4) All metallic equipment used in sampling or gauging is electrically bonded to the vessel before it is put into the tank, remains bonded to the vessel until it is removed from the tank, and a period of 30 minutes has elapsed since loading of the tank was completed.

(f) The initial loading rate to each cargo tank must not exceed one meter per second (3.28 feet per second) average linear velocity through the cargo fill line until the cargo level in the tank exceeds one meter (3.28 feet) in height.

(g) If the emitted vapors are collected by a facility which requires the vapors from the vessel to be inerted in accordance with 33 CFR 154.820(g), the master shall ensure by measurement before loading or ballasting begins that the oxygen content in the vapor space of each cargo tank connected to the vapor collection system does not exceed 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the ullage space. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the area.

(h) If the vessel is equipped with an inert gas system, the stop valve required by § 39.20–1(a)(4) of this part must remain closed during vapor control operations.

(i) Each high level alarm and tank overflow alarm on all cargo tanks being loaded must be tested at the tank for proper operation prior to each loading operation.

(j) The pressure indicator required by § 39.20–13(a) of this part must be continuously monitored during the loading operation.

(k) No more than 30 meters (98.4 feet) of vapor hose may be used unless provisions are made to reduce the maximum allowable loading rate to account for the resistance of the additional vapor hose.

(l) The inside diameter of all vapor hoses must not be less than the inside diameter of the vessel's vapor collection system piping.

Subpart 39.40—Lightering Operations with Vapor Balancing

§ 39.40–1 General requirements for vapor balancing—TB/ALL.

(a) Except as provided in paragraph (b) of this section, each vessel which engages in a lightering operation while collecting flammable or combustible vapors emitted from a cargo tank for retention on the vessel to be lightered must be fitted with vapor balancing equipment that meets the requirements of this subpart in addition to the requirements of subparts 39.10, 39.20, and 39.30 of this part.

(b) An arrangement to control vapor emissions during lightering operations which does not use vapor balancing must receive specific approval from the Commandant (G–MTH).

§ 39.40–3 Design and equipment for vapor balancing—TB/ALL.

(a) A detonation arrester must be installed in the vapor collection system which:

(1) Meets ASTM _____;

(2) Is capable of arresting a detonation from either side of the device; and

(3) Is installed not more than 1.0 meter (3.28 feet) from the vessel vapor connection on at least one of the vessels involved in the lightering.

(b) A vapor collection system must not use a device to assist the transfer or recovery of vapors (e.g. a compressor or blower) without specific approval by the Commandant (G–MTH).

(c) If a tank barge which is the service vessel has a means of liquid overfill protection in accordance with § 39.20–9(b) of this part, the vessel to be lightered must have a power supply and overflow control panel which meets the requirements of 33 CFR 154.812.

(d) If the service vessel or both vessels involved in a lightering operation are inerted tank vessels, the following requirements must be met:

(1) An oxygen sensor and an oxygen alarm must be provided which meets the following:

(i) Are located at the vessel vapor connection on the vessel to be lightered, unless the Commandant (G–MTH) has approved alternative arrangements with the oxygen sensor and oxygen alarm on the service vessel;

(ii) Produce an audible and visible signal when the oxygen content in the vapor collection system exceeds 8 percent by volume;

(iii) Have a connection for injecting a span gas of known concentration for testing and calibration of the oxygen sensor; and

(iv) Have an indicator located where the cargo transfer is controlled which indicates the oxygen content.

(2) The vessel to be lightered must have a means to inert the vapor transfer hose between vessels prior to admitting any vapors into its vapor collection system.

§ 39.40–5 Operational requirements for vapor balancing—TB/ALL.

(a) During lightering operations, each cargo tank being loaded must be connected by the vapor collection system to a cargo tank which is being discharged.

(b) During lightering operations, the pressure indicator required by § 39.40–3(c) of this part on the service vessel must be continuously monitored.

(c) During lightering operations, an electrical insulating flange must be provided at the vessel vapor connection on either the vessel to be lightered or the service vessel.

(d) If both vessels involved in a lightering operation are inerted tankships, the following requirements must be met.

(1) All tanks on the service vessel which are connected to the vapor collection system must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space is not more than 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the ullage space. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and in the center of the area;

(2) The oxygen sensor must be tested for proper operation prior to the start of each transfer operation. The oxygen content of vapors being transferred must be continuously monitored during the transfer operation. Transfer of cargo must be terminated if the oxygen content exceeds 8 percent by volume and must not be restarted until the oxygen content is reduced to 8 percent by volume or less.

(3) The rate of cargo transfer must be controlled from the vessel to be lightered, and must not exceed the maximum allowable loading rate for either vessel.

(4) Tank washing on a vessel to be lightered shall not be conducted on any tank connected to the vapor collection system unless the isolation valve required by § 39.20–1 of this part is closed.

(5) Cargo tanks must not be ballasted during cargo transfer operations.

(e) If only the service vessel in a lightering operation is an inerted tankship:

(1) All requirements in paragraph (d) of this section must be met; and

(2) The service vessel isolation valve required by § 39.20–1(c) of this part must not be opened until the pressure in the vapor collection system on the service vessel exceeds the pressure in the vapor collection system on the vessel to be lightered.

(f) When neither vessel is an inerted tankship in a lightering operation, the rate of cargo transfer must be controlled from the vessel to be lightered, and must not exceed the maximum allowable loading rate for either vessel.

(g) Vapor balancing must not be utilized when only the vessel to be lightered is an inerted tankship.

Dated: July 21, 1989.

J.D. Sipes,

Chief, Office of Marine Safety, Security and Environmental Protection.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—Standard Specification for Detonation Flame Arresters

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of detonation flame arresters.

2. *Intent*

2.1 This standard is intended for detonation flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60 °C. For all tests, the test media defined in 14.1.1 can be used except where detonation flame arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Detonation flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in attachment 1 to Appendix A.

2.2 The tests in this standard are intended to qualify detonation flame arresters for all in-line applications independent of piping configuration provided the operating pressure is equal to or less than the maximum operating pressure limit specified in the manufacturer's certification and the diameter of the piping system in which the detonation arrester is to be installed is equal to or less than the piping diameter used in the testing.

Note: Detonation flame arresters meeting this standard as Type I devices, which are certified to be effective below 0 °C and which can sustain three stable detonations without being damaged or permanently deformed, also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev. 1).

3. *Applicable Documents*

3.1 ASTM Standards [1]: A395 Ferritic Ductile Iron Pressure-Retaining Castings For Use at Elevated Temperatures; F722 Welded Joints for Shipboard Piping Systems; F1155 Standard Practice for Selection and Application of Piping System Materials.

3.2 ANSI Standards [2]: B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code [3]: Section VIII, Division 1, Pressure Vessels; Section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee [3] MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission [4] Publication 79–1—Electrical Apparatus for Explosive Gas Atmospheres.

4. *Terminology*

4.1 $\Delta P/P_o$—The dimensionless ratio, for any deflagration and detonation test of 14.3, of the maximum pressure increase (the maximum pressure minus the initial pressure), as measured in the piping system on the side of the arrester where ignition begins by the device described in paragraph 14.3.3, to the initial absolute pressure in the piping system. The initial pressure should be greater than or equal to the maximum operating pressure specified in paragraph 11.1.7.

4.2 Deflagration—A combustion wave that propagates subsonically (as measured at the pressure and temperature of the flame front) by the transfer of heat and active chemical species to the unburned gas ahead of the flame front.

4.3 Detonation—A reaction in a combustion wave propagating at sonic or supersonic (as measured at the pressure and temperature of the flame front) velocity. A detonation is stable when it has a velocity equal to the speed of sound in the burnt gas or may be unstable (overdriven) with a higher velocity and pressure.

4.4 Detonation flame arrester—A device which prevents the transmission of a detonation and a deflagration.

4.5 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.6 Flame Passage—The transmission of a flame through a device.

4.7 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

5. Classification

5.1 The two types of detonation flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Detonation flame arresters acceptable for applications where stationary flames may rest on the device.

5.1.2 Type II—Detonation flame arresters acceptable for applications where stationary flames are unlikely to rest on the device, and further methods are provided to prevent flame passage when a stationary flame occurs. One example of "further methods" is a temperature monitor and an automatic shutoff valve.

6. Ordering Information

6.1 Orders for detonation flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the system and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation.

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the maximum design pressure drop for that maximum flow rate.

6.1.10 Maximum operating pressure.

7. Materials

7.1 The detonation flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code. Cast and malleable iron shall not be used; however, ductile cast iron in accordance with ASTM A395 may be used.

7.1.1 Arresters, elements, gaskets, and seals must be made of materials resistant to attack by seawater and the liquids

[1] Available for the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

[2] Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017

[3] Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

[4] Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland.

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and vapors contained in the system being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the detonation flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. Other Requirements

8.1 Detonation flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Detonation flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.

8.2.1 The net free area through detonation flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings, elements, and seal gasket materials shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14, and shall be capable of withstanding the hydrostatic pressure test of section 9.2.3.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

8.7 The design of detonation flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Detonation flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame. The housing may be fitted with one or more drain plugs for this purpose.

8.9 All fastenings shall be protected against loosening.

8.10 Detonation flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Detonation flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 Detonation flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.13 Detonation flame arresters shall be tested in accordance with section 9.

9. Tests

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test detonation flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the detonation flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained. This shall include the maximum temperature reached and the length of testing time in section 14.2 in the case of Type II detonation flame arresters.

9.1.1.3 Description of approved attachments (reference 9.2.6).

9.1.1.4 Types of gases of vapors for which the detonation flame arrester is approved.

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested detonation flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II detonation flame arrester shall be tested. Where approval of more than one size of a detonation flame arrester model is desired, only the largest and smallest sizes need be tested provided it is demonstrated by calculation and/or other testing that intermediate size devices have equal or greater strength to withstand the force of a detonation and have equivalent detonation arresting characteristics. A change of design, material, or construction which may affect the corrosion resistance, or ability to resist endurance burning, deflagrations or detonations shall be considered a change of model for the purpose of this paragraph.

9.2.1 The detonation flame arrester shall have the same dimensions, configuration, and most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete detonation flame arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 °C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 The detonation flame arrester shall be subjected to a hydrostatic pressure test of at least 350 psig for ten minutes without rupturing, leaking, or showing permanent distortion.

9.2.4 Flow characteristics as declared by the manufacturer, shall be demonstrated by appropriate tests.

9.2.5 Detonation flame arresters shall be tested for endurance burn and deflagration/detonation in accordance with the test procedures in section 14. Type I detonation flame arresters shall show no flame passage when subjected to both tests. Type II detonation flame arresters shall show no evidence of flame passage during the detonation/deflagration tests in section 14.3. Type II detonation flame arresters shall be tested for endurance burn in accordance with section 14.2. From the endurance burn test of a Type II detonation flame arresters, the maximum temperature reached and the test duration shall be recorded and provided as part of the laboratory test report.

9.2.6 Where a detonation flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.7 Detonation flame arresters which are provided with a heating arrangement designed to maintain the surface temperature of the device above 85 °C shall pass the required tests at the maximum heated operating temperature.

9.2.8 Each finished detonation arrester shall be pneumatically tested at 10 psig to ensure there are no defects or leakage.

10. Inspection

10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the device is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished detonation arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to the checking of welds and the proper fit-ups of joints (see sections 8.5 and 8.6).

11. *Certification*

11.1 Manufacturer's certification that a detonation flame arrester meets this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.6). Installation instructions to include the device's limitations.

11.1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, maximum temperature and time tested (Type II).

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.

Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.

11.1.7 The maximum operating pressure for which the device is suitable.

12. *Marking*

12.1 Each detonation flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the detonation flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the detonation flame arrester.

12.1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases that the detonation flame arrester is suitable for.

12.1.8 ASTM designation of this standard.

12.1.9 Ambient air operating temperature range.

12.1.10 Maximum operating pressure.

13. *Quality Assurance*

13.1 Detonation flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The detonation flame arrester manufacturer shall maintain the quality of the arresters that are designed, tested and marked in accordance with this standard. At no time shall a detonation flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Detonation Arresters*

14.1 *Medio/Air Mixtures*

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the deflagration/detonation tests in section 14.3 For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all section 14 tests.

14.1.2 Hexane, propane, gasoline and other test vapors shall be mixed with air to form the most easily ignitable mixture.[6]

14.2 *Endurance Burn Test Procedure*

14.2.1 An endurance burning test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the detonation flame arrester and a firing source in close proximity to the test device (see Figure 1). The detonation flame arrester shall be installed so that the mixture emission is vertically upwards, or installed in the position for which it is designed and which will cause the most severe heating of the device under the prescribed endurance burn conditions. In this position the mixture shall be ignited.

14.2.1.2 Endurance burn test shall start by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. The flammable mixture may be reignited as necessary in the course of the endurance burn.

14.2.1.3 Temperature measurement will be performed on the surface of the arrester element half way between the center and its edge.

14.2.1.4 By varying the proportions of the flammable mixture and the flow rate, the detonation flame arrester shall be heated by a stable flame on the surface of the arrester until the highest obtainable temperature is reached on the ignited side or until the temperature on the side which was not ignited (protected side) rises 100 °C.

14.2.1.5 The flammable mixture proportions will then be varied again until the conditions which result in the highest temperature on the protected side are achieved. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. The highest attainable temperature is considered to have been reached when any subsequent rise of temperature does not exceed 0.5 °C per minute over a ten minute period.

14.2.1.6 If difficulty arises in establishing the highest attainable temperature on the protected side, the following criteria shall apply. When the increase in temperature on the protected side occurs so slowly that its temperature does not rise 100 °C, the conditions which produced the highest temperature on the ignited side of the arrester will be maintained for two hours. For the condition in which the temperature on the protected side continues to rise at a rate in excess of 0.5 °C per minute for a 10 minute period, endurance burning shall be continued, using the most severe conditions of flammable mixtures and flow rate, for a period of two hours. In either of these cases, at the end of the two hour period, the flow shall be stopped and the conditions observed. The two hour interval shall be measured commencing with the setting of the conditions which produced the most severe conditions of mixture and flow rate. For Type I detonation flame arresters, flame passage shall not occur during this test. For Type II detonation flame arresters, the maximum temperature obtained, and the time elapsed from the time when the most severe conditions are set to when flame passage occurs, shall be recorded. However, for Type II detonation flame arresters the test may be terminated 15 minutes after setting the most severe conditions on the protected side.

14.3 *Deflagration/Detonotion Test Procedure*

14.3.1 A detonation flame arrester shall be installed at one end of a pipe of the same diameter as the inlet of the detonation flame arrester (see Figure 2). The length and configuration of the test pipe shall develop a stable detonation [6] at the device and shall be capable, by change in its length or configuration, of developing deflagrations and unstable (overdriven) detonations as measured on the side of the pipe where ignition occurs (run-up side). For deflagration testing, two test piping arrangements shall be used on the outlet side of the detonation flame arrester (the side which is not ignited). In both of the following end arrangements, the outlet side pipe diameter shall be equal to that on the run-up side. In one arrangement, the outlet side pipe shall be at least 10 pipe diameters long with a plastic bag over the free end. (Alternate end of pipe closures are also acceptable provided they easily give way during the course of the test, and the closure allows the required gas concentration to be maintained throughout the test piping arrangement.) In the other arrangement the outlet side pipe shall be fitted with a restriction located 0.6 meter from the outlet side arrester flange. The size of the restriction for each nominal size detonation flame arrester shall be as follows:

Nominal pipe diameter	Restriction diameter
3"	½"
4"	½"
6"	1"
8"	1½"
10"	1½"
12"	2"
18"	2"
24"	2"

The entire pipe shall be filled with the most easily ignitable vapor/air mixture to a pressure corresponding to or greater than the upper limit of the device's maximum operating pressure (see 11.1.7). The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. The vapor/air mixture shall then be ignited.

14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of +/− 5%. These devices shall be situated no more than 11.75 inches apart with one device no more than 4 inches from the end of the test pipe to which the detonation flame arrester is attached. In addition, each outlet arrangement described in paragraph 14.3.1 shall be fitted with an optical device located no more than 6 inches from the detonation flame arrester outlet.[7]

[6] See IEC Publication 79–1.

[6] Some data are available for the estimation of flame speeds in horizontal pipes without detonation flame arresters. Some data indicate that the presence of small obstacles, fittings or bends in the test pipe can accelerate the flame speeds appreciably.

[7] Other pressure and/or flame speed measuring techniques may be used if effective.

14.3.3 Explosion pressures within the pipe shall be measured by a high frequency transducer situated in the test pipe no more than 4 inches from the run-up side of the housing of the detonation flame arrester.

14.3.4 Using the first end arrangement (10 pipe diameter outlet) described in paragraph 14.3.1, a series of tests shall be conducted to determine the test pipe length and configuration that results in the maximum unstable (overdriven) detonation having the maximum measured flame speed at the detonation flame arrester. (These tests may also be carried out using a single length of pipe with igniters spaced at varying distances from the arrester.) The flame speeds, explosion pressures and test pipe configurations shall be recorded for each of these tests. The piping configuration that resulted in the highest recorded unstable (overdriven) detonation flame speed shall be used, and the device shall be subjected to at least four additional unstable (overdriven) detonations. In the course of testing, the device shall also demonstrate its ability to withstand five stable detonations, five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was less than 1 and five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was greater than 1 but less than 10. Deflagration tests using the restricted outlet arrangement described in paragraph 14.3.1 shall then be conducted. In these tests the device shall demonstrate its ability to stop five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being less than 1 during the deflagration tests which were conducted without the restricted end arrangements, and five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being greater than 1 but less then 10 during the deflagration tests which were conducted without the restricted end arrangements. No evidence of flame passage shall occur during these tests. The flame speeds and explosion pressures for each of these tests shall be recorded.

14.3.5 A device that successfully passes the tests of 14.3.4 shall be considered to be directional (suitable for arresting a detonation advancing only from the direction as tested) except;

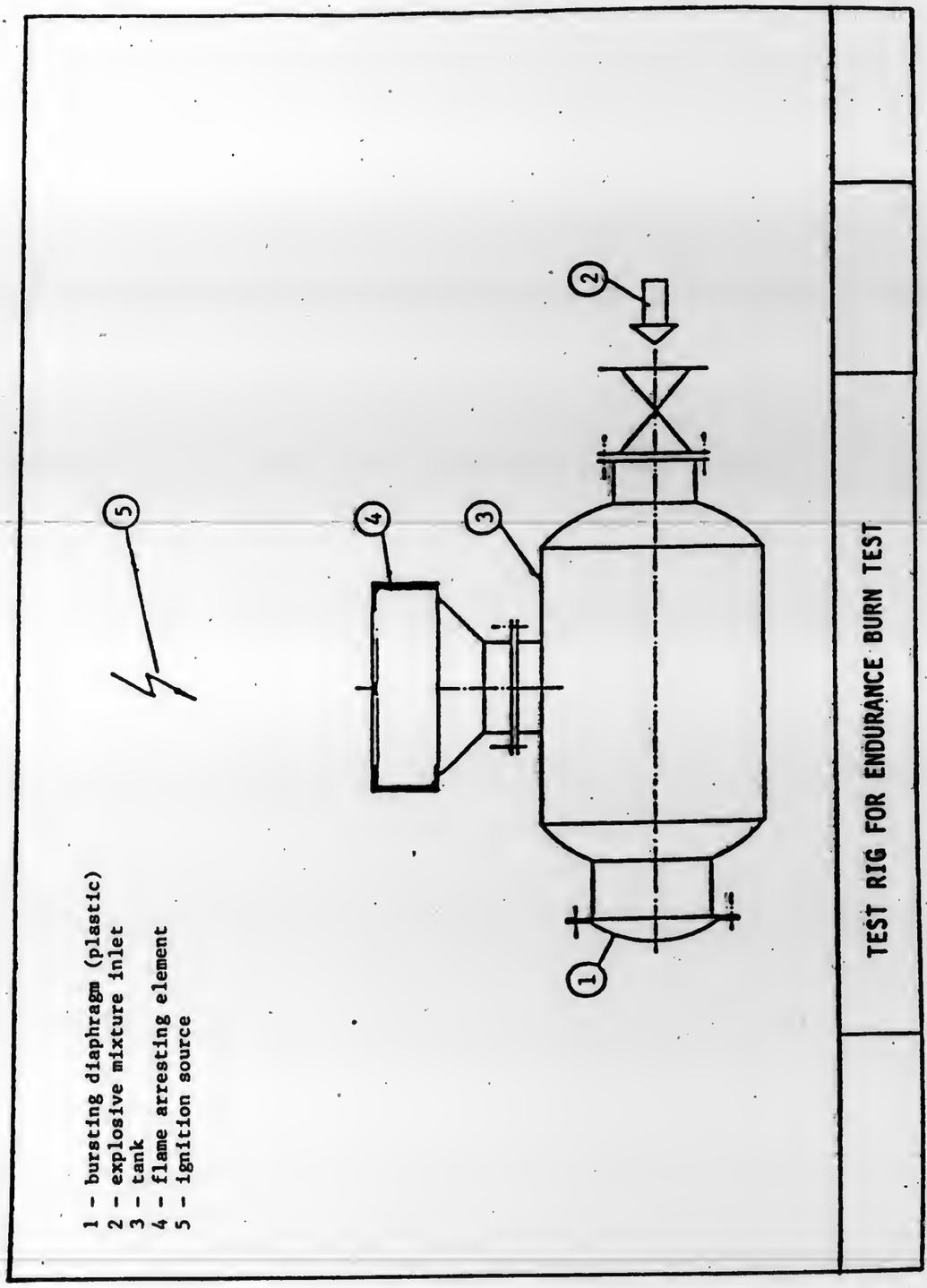
14.3.5.1 A device may be tested according to 14.3.4 for detonations approaching from either direction, or

14.3.5.2 The design of the device is symmetrical where each end may be considered to be identical when approached by a detonation from either direction.

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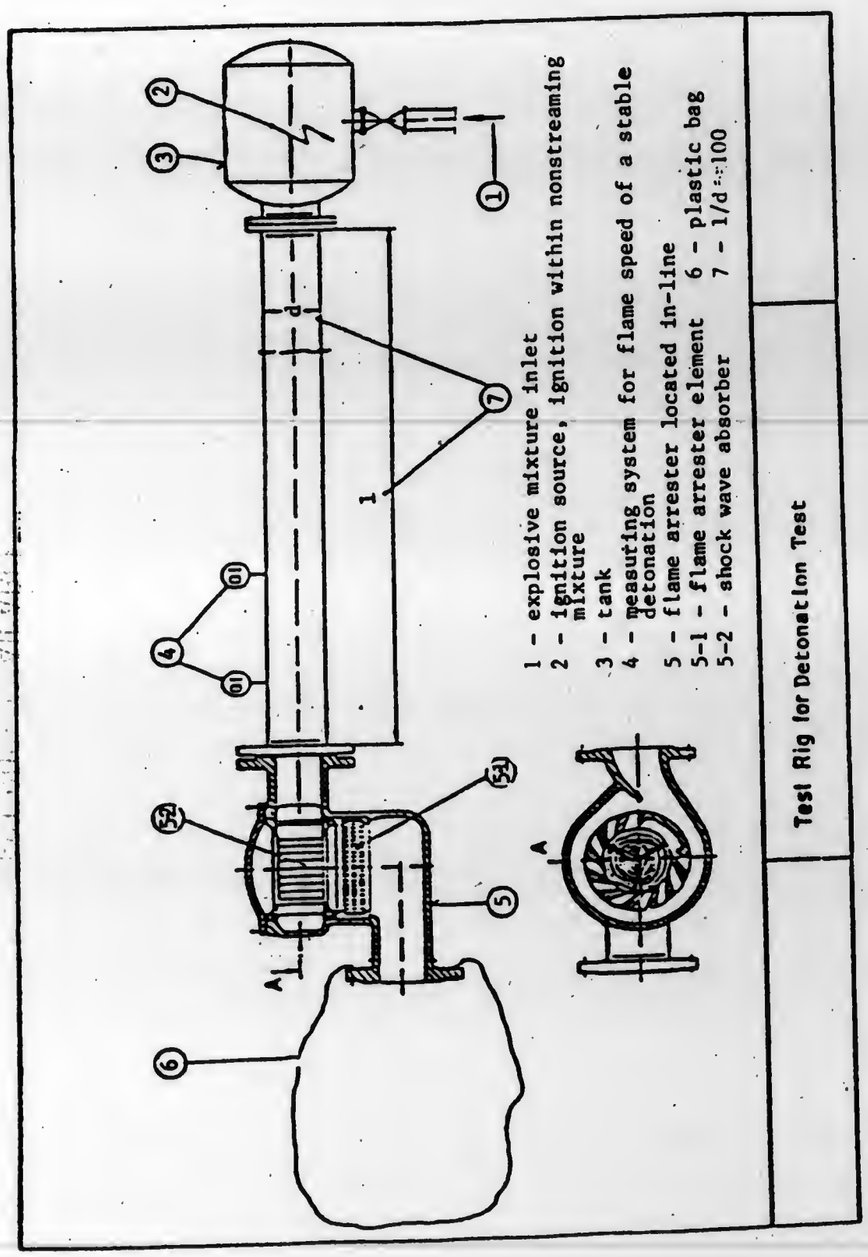
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FIGURE 1



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Figure 2



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Attachment 1 to Appendix A

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	3.33	0.133
Ethylene oxide	[1].65	[1] 0.026
Ethyl nitrite	0.922	0.038

[1] Approx.

Appendix B—Standard Specification for Tank Vent Flame Arresters

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of tank vent flame arresters.

2. *Intent*

2.1 This standard is intended for flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60°C. The text media defined in 14.1.1 can be used except where arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in Attachment 1 to Appendix B.

Note: Flame arresters meeting this standard also comply with the minimum requirements of the International Maritime Organization. Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev.1).

3. *Applicable Documents*

3.1 ASTM Standards [1]

F722 Welded Joints for Shipboard Piping Systems

F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards [2]

B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code [2]

Section VIII, Division 1, Pressure Vessels

Section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee [3]

MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission [4]

Publication 79-1—Electrical Apparatus for Explosive Gas Atmospheres.

4. *Terminology*

4.1 Flame arrester—A device to prevent the passage of flame in accordance with a specified performance standard. Its flame arresting element is based on the principle of quenching.

4.2 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.3 Flame passage—The transmission of a flame through a flame arrester.

4.4 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximately 65°C/75°C.

5. *Classification*

5.1 The two types of flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Flame arresters acceptable for end-of-line applications

5.1.2 Type II—Flame arresters acceptable for in-line applications.

6. *Ordering Information*

6.1 Orders for flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the tank being protected by the flame arrester, and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation (distance and configuration of pipe between the arrester, and the atmosphere or potential ignition source) (see section 9.2.1.2).

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the design pressure drop for that maximum flow rate.

7. *Materials*

7.1 The flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code.

7.1.1 Arresters, elements, gaskets, and seals must be of materials resistant to attack by seawater and the liquids and vapors contained in the tank being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. *Other Requirements*

8.1 Flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the elements and the housing.

8.2.1 The net free area through flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings and elements shall be of substantial construction and designed for the mechanical and other loads intended during service. In addition, they shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

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[1] Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103

[2] Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

[3] Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

[4] Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland

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8.7 The design of flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame.

8.8.1 Where the design does not permit complete drainage of condensate through its connection to the tank, the housing shall be fitted with a plugged drain opening on the side of the atmospheric outlet of not less than ½ inch nominal pipe size (NPS ½).

8.9 All fastenings shall be protected against loosening.

8.10 Flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 End-of-line flame arresters shall be so constructed as to direct the efflux vertifically upward.

8.13 Flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.14 Tank vent flame arresters shall show no flame passage when subjected to the tests in 9.2.4.

9. *Prototype Tests*

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained.

9.1.1.3 Specific advice on approved attachments (see section 9.2.4.1).

9.1.1.4 Types of gases or vapors for which the flame arrester is approved (see section 6.1.3).

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II flame arrester shall be tested. Where approval of more than one size of a flame arrester model is desired, the largest and smallest sizes shall be tested. A change of design, material, or construction which may affect the corrosion resistance, endurance burn, or flashback capabilities of the flame arrester shall be considered a change of model for the purpose of this paragraph.

9.2.1 The flame arrester shall have the same dimensions, configuration, and the most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 degrees C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 Performance characteristics as declared by the manufacturer, such as flow rates under both positive and negative pressure, operating sensitivity, flow resistance, and velocity, shall be demonstrated by appropriate tests.

9.2.4 Tank vent flame arresters shall be tested for endurance burn and flashback in accordance with the test procedures in section 14. The following constraints apply:

9.2.4.1 Where a Type I flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.4.2 Type II arresters shall be specifically tested with the inclusion of all pipes, tees, bends, cowls, weather hoods, etc., which may be fitted between the arrester and the atmosphere.

9.2.5 Devices which are provided with a heating arrangement shall pass the required tests at the heated temperature.

9.2.6 After all tests are completed, the device shall be disassembled and examined, and no part of the device shall be damaged or show permanent deformation.

10. *Inspection*

10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the material is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished flame arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to checking the proper fit-up of joints (see sections 8.5 and 8.6)

11. *Certification*

11.1 Manufacturer's certification that a flame arrester has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.4.1 and 9.2.4.2). Installation instructions to include manufacturer's recommended limitations based on all configurations tested.

11.1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when flame arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, including flow rates under both positive and negative pressures, operating sensitivity, flow resistance, and velocity.

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.

Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.

12. *Marking*

12.1 Each flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the flame arrester.

12.1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases for which the flame arrester is suitable for.

12.1.8 Ambient air operating temperature range.

12.1.9 ASTM designation of this standard.

13. *Quality Assurance*

13.1 Flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The flame arrester manufacturer shall maintain the quality of the flame arresters that are designed, tested and marked in accordance with this standard. At no time shall a flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Flame Arresters*

14.1 *Media/Air Mixtures*

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the flashback test in section 14.2. For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all section 14 tests.

14.1.2 Hexane, propane, gasoline and chemical vapors shall be mixed with air to form the most easily ignitable mixture.[5]

14.2 *Flashback Test*

14.2.1 A flashback test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the flame arrester, a plastic bag [6] and a firing source in three positions (see Figure 1).[7]

14.2.1.2 The tank, flame arrester assembly and the plastic bag enveloping the prototype flame arrester shall be filled so that this volume contains the most easily ignitable vapor/air mixture.[6] The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. Three ignition sources shall be installed along the axis of the bag, one close to the flame arrester, another as far away as possible therefrom, and the third at the midpoint between these two. These three sources shall be fired in succession, one during each of the three tests. Flame passage shall not occur during this test.

14.2.1.3 If flame passage occurs, the tank diaphragm will burst and this will be audible and visible to the operator by the emission of a flame. Flame, heat and pressure sensors may be used as an alternative to a bursting diaphragm.

14.3 *Endurance Burn Test*

14.3.1 An endurance burning test shall be carried out as follows:

14.3.1.1 The test rig as referred to in 14.2 may be used, without the plastic bag. The flame arrester shall be so installed that the mixture emission is vertical. In this position the mixture shall be ignited.

14.3.1.2 Endurance burning shall be achieved by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. By varying the proportions of the flammable mixture and the flow rate, the arrester shall be heated until the highest obtainable temperature on the cargo tank side of the arrester is reached. The highest attainable temperature may be considered to have been reached when the rate of rise of temperature does not exceed 0.5 °C per minute over a ten minute period. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. If difficulty arises in establishing the highest attainable temperature, the following criteria shall apply. When the temperature appears to be approaching the maximum temperature, using the most severe conditions of flammable mixtures and flow rate, but increases at a rate in excess of 0.5 °C per minute over a ten minute period, endurance burning shall be continued for a period of two hours after which the flow shall be stopped and the conditions observed. Flame passage shall not occur during this test.

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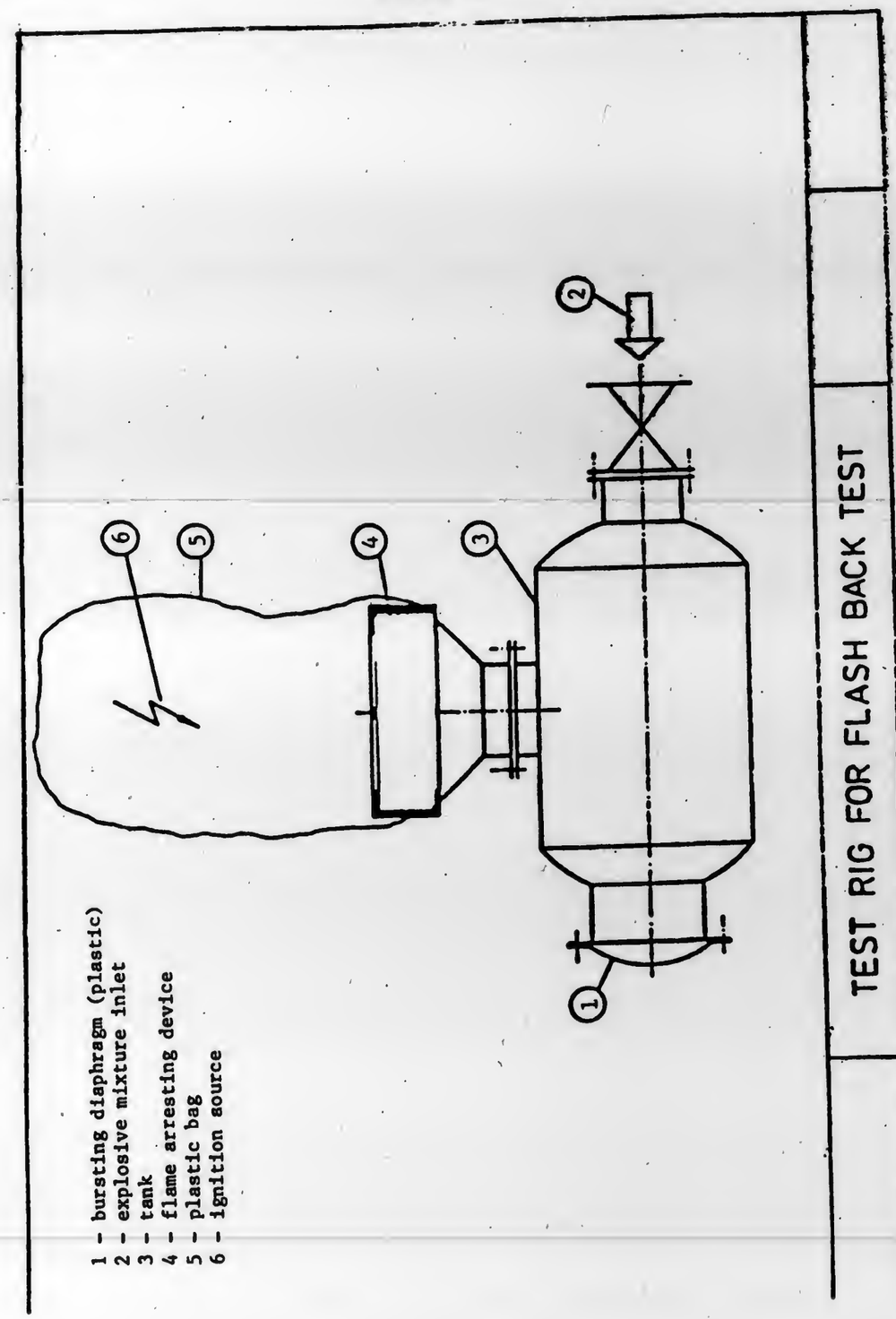
[5] See IEC Publication 79-1

[6] The dimensions of the plastic bag are dependent on those of the flame arrester. The plastic bag may have a circumference of 2 m, a length of 2.5 m and a wall thickness of .05 m.

[7] In order to avoid remnants of the plastic bag from falling back on to the flame arrester being tested after ignition of the fuel/air mixture, it may be useful to mount a coarse wire frame across the flame arrester within the plastic bag. The frame should be constructed so as not to interfere with the test result.

[8] See IEC Publication 79-1

FIGURE I



BILLING CODE 4910-14-C

Attachment 1 to Appendix B

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	3.33	0.133
Ethylene oxide	[1].65	[1]0.026
Ethyl nitrite	0.922	0.036

[1] Approx.

Appendix C—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications

1. *Scope*
   1.1 This standard provides the minimum requirements for design, construction, performance and testing of devices to prevent marine tank liquid overpressurization (hereafter called spill valves).
   1.2 The spill valves provided to this standard will satisfy Regulation 1I–2/59.1.6 of the 1981 and 1983 Amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) which states: "Provision shall be made to guard against liquid rising in the venting system to a height which would exceed the design head of the cargo tank. This shall be accomplished by high level alarms or overflow control systems or other equivalent means, together with gauging devices and cargo tank filling procedures."
   1.3 The spill valves are not intended for the venting of vapors or the relief of vapor overpressurization or underpressurization of marine tanks.
2 *Applicable Documents*
   2.1 ANSI Standards [1]
   B2.1 Pipe Threads
   B16.1 Cast Iron Pipe Flanges and Flanged Fittings.
   B16.3 Malleable Iron Threaded Fittings.
   B16.4 Cast Iron Threaded Fittings.
   B16.5 Steel Pipe Flanges and Flanged Fittings.
   B16.11 Forged Steel Fittings, Socket-Welding & Threaded.
   B16.15 Cast Bronze Threaded Fittings.
   B16.24 Bronze Pipe Flanges and Flanged Fittings.
   B31.1 Power Piping.
   B117 Standard Method of Salt Spray (Fog) Testing.
   2.2 Other Documents
   ASME Boiler and Pressure Vessel Code [1]
   Section VIII, Division 1, Pressure Vessels.
   Section IX, Welding and Brazing Qualifications.
3. *Terminology*
   3.1 Spill Valve—An independent device that automatically prevents liquid overpressurization of a tank by relieving liquid at a predetermined pressure set higher than the pressure reached in the tank when the tank vapor relieving device operates at its maximum design venting rate (based on a volumetric vapor volume 1.25 times the maximum design loading rate).
4. *Ordering Information*
   4.1 Orders for spill valves under this specification shall include the following information as applicable:
   4.1.1 Nominal pipe size and end connections.
   4.1.2 Product(s) in tank being protected by the spill valve.
   4.1.3 Inspection and tests other than specified by this standard.
   4.1.4 Required relieving pressure at maximum tank loading flow rate.
   4.1.5 Set (opening) pressure.
   4.1.6 Maximum tank design loading flow rate.
   4.1.7 Inlet pressure drop resulting from the maximum tank design loading flow rate.
   4.1.8 Back pressure of the spill valve discharge lines resulting from maximum tank design loading flow rate.
   4.1.9 Purchaser's inspection requirements (see section 9.1).
   4.1.10 Installation inclinations in excess of 2½ degrees (see section 6.6).
   4.1.11 Purchaser's specifications for preventing the valve from leaking due to cargo sloshing.
   4.1.12 Additional requirements or testing as contracted by the manufacturer and purchasers.
5. *Materials*
   5.1 All parts shall be constructed of materials suitable for the service intended. Table I of 46 CFR 153 specifies materials that may not be used in components that contact liquid or vapor of each hazardous liquid cargo.
   5.2 Housing of spill valves, and all other parts and/or bolting used for pressure retention, shall be constructed of materials having a solidus melting point of greater that 1700 °F and be listed in ANSI–B31.1, Power Piping, or Section VIII Division 1 of the ASME Boiler and Pressure Vessel Code, except as noted in section 5.5.
   5.3 Materials in contact with the liquid or the liquid's vapor shall be suitable for the service and resistant to attack by the liquid carried in the tank being protected (see section 4.1.2).
   5.4 Corrosion resistant materials shall be used for the following:
   5.4.1 Housings, discs, spindles and seats of valves.
   5.4.2 Springs that actuate discs of valves. Springs plated with corrosion resistant material are not acceptable.
   5.5 Nonmetallic materials shall not be permitted except for gaskets, seals, bushings in way of moving parts, and valve diaphragms.
   5.6 Bolting materials shall be at least equal to those listed in Table 1 of ANSI B16.5. Bolts, screws, and fasteners in contact with interior liquid shall be compatible with the liquid (see section 4.1.2).
6. *Other Requirements*
   6.1 Pressure retaining housings shall be designed to withstand a hydrostatic pressure of at least 125 pounds per square inch without rupturing or showing permanent distortion.
   6.2 Housing shall have suitable pipe connections for the removal, maintenance, and testing of the spill valve.
   6.2.1 Pipe and connections shall be in accordance with one of the standards listed in paragraph 2.1 or as agreed by the manufacturer and user (see 4.1.12).
   6.3 The design of spill valves shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the spill valve.
   6.4 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.
   6.5 Where welded construction is used, welded joint design details, welding and non-destructive testing shall be in accordance with Section VIII, Division 1, of the ASME Code. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.
   6.6 The spill valve shall be fully operable at static inclinations up to 2½ degrees unless otherwise specified by the ordering information of section 4.
   6.7 Spill valves shall allow for efficient drainage of moisture without impairing their proper operation.
   6.7.1 Where the design does not permit complete drainage of condensate through its connection to the tank, the housing shall be fitted with a plugged drain opening on the side of the atmospheric outlet of not less than nominal pipe size ½ (12mm).
   6.8 Housing, elements, and seal gasket materials shall be capable of withstanding the highest pressure and

[1] Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

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temperature to which the spill valve may be exposed under normal conditions.

6.9 Spill valves shall be vapor tight at pressures below the rated liquid relieving pressure.

6.10 Fastenings essential to the operation of the spill valve shall be protected against loosening.

6.11 Spill valves shall be designed and constructed to minimize the effect of fouling under normal conditions.

6.12 The spill valve shall not be provided with a means of positive closure. In installations where cargo sloshing is expected, the spill valve installation must be designed to preclude premature opening of the valve due to cargo sloshing. Also, spill valves shall be designed so that they comply with applicable Loadline and Subdivision requirements.

6.13 Spill valves shall be capable of operating in freezing conditions.

6.14 Each of the free areas through the valve seat and through the valve discharge at maximum lift shall not be less than the cross-sectional area of the valve inlet connection.

6.15 Means shall be provided to check that any valve opens freely and does not remain in the open position.

6.16 Valves discs.

6.16.1 Valve discs shall be guided by a ribbed cage or other suitable means to prevent binding and insure proper seating. Where valve stems are guided by bushings suitably designed to prevent binding and to insure proper seating, the valves need not be fitted with ribbed cages.

6.16.2 Valve discs shall close tight against the valve seat by metal to metal contact; however, resilient seating seals may be provided if the design is such that the disc closes tight against the seat in case the seals are destroyed or in case they carry away.

6.16.3 Valve discs may be solid or hollow. The pressure at which the valve discs open fully at maximum flow rating shall not exceed 120 percent of the set (opening) pressure.

6.17 Valves may be actuated by nonmetallic diaphragms.

6.17.1 Nonmetallic diaphragms are not allowed where failure results in unrestricted flow of flammable or toxic tank vapors to the atmosphere or in an increase in the pressure at which the valve normally releases.

6.18 Relief pressure adjusting mechanisms shall be permanently secured by lockwire, locknuts or other suitable means.

6.18.1 Hollow portions of the valve used to vary the relieving pressure by adding or removing weight shall be watertight.

6.1.19 Spill valves shall not permit entrance of water when exposed to boarding seas.

7. *Tests*

7.1 *Prototype Tests*

7.1.1 A prototype of the largest and smallest spill valve of each design, based on valve inlet connection size, shall be tested as specified below in 7.1.5 through 7.1.10.

7.1.2 The spill valve shall have the dimensions of and most unfavorable clearances expected in production units.

7.1.3 Tests shall be conducted by a laboratory capable or performing the tests.

7.1.4 A test report shall be prepared by the laboratory which shall include:

7.1.4.1 Detailed drawings of the spill valve.

7.1.4.2 Types of tests conducted and results obtained.

7.1.4.3 Specific advice on approved attachments.

7.1.4.4 Types of liquid for which the spill valve is approved.

7.1.4.5 Drawings of the test rig.

7.1.4.6 The pressures at which the spill valve opens and closes and the efflux flow rate at various inlet pressures.

7.1.4.7 Record of all markings found on the prototype spill valve.

7.1.4.8 A traceable report number.

7.1.5 *Corrosion Test:* A corrosion test shall be conducted in accordance with ANSI B117. The valve shall be subjected to the test for a period of 240 hours and allowed to dry for 48 hours. There shall be no corrosion deposits which cannot be washed off.

7.1.6 *Hydrostatic Test:* A hydrostatic pressure test shall be conducted to show compliance with section 6.1 The test shall be made with water or other liquid having a maximum viscosity of 40 SSU at 125 °F (52 °C) with a maximum pressure test tempesature of 125 °F (52 °C). Minimum duration of test shall be one minute.

7.1.7 *Performance Tests:* Performance characteristics, including flow rates under various positive pressures, operating sensitivity, flow resistance and velocity, shall be demonstrated by appropriate tests with a representative fluid.

7.1.8 *Freeze Test:* Simulate water sloshing on deck by spraying a prototype spill valve completely with water from all sides and below using a fully pressurized fire hose. Allow 3 minutes to drain off. Immediately immerse it in a freeze chamber precklled to 20°F. Hold in chamber for two hours at this temperature. Immediately test the valve as in 7.1.7 to determine opening pressure while frozen. The unit passes the test if it opens within 10% of its previously measured set (opening) pressure.

7.1.9 *Vapor Tightness Test:* Compliance with 6.9 shall be demonstrated by testing the spill valve with compressed air at 90% of the spill valve set (opening) pressure. The test apparatus shall have a total volume of air (in cubic feet) equal to 5 X D, where D is the seat diameter of the spill valve, in inches (test volume may vary by plus or minus 10%). The valve design shall be deemed satisfactory if the air leakage rate is such that the pressure drop is not more than 2% in two hours.

7.1.10 *Seaworthiness Test:* In a simulated installation, immerse the spill valve in 2.0 feet of water. Spray it for 10 minutes with a 2½ inch fire hose with a fully open 7/8 inch diameter nozzle at a pitot pressure of 80 psig measured at the open nozzle. Spray all parts of the valve, both immersed and non-immersed, from all angles. The hose nozzle shall not be located farther than 10 feet from the spill valve during the course of this test. The valve design is sufficient if leakage through the housing end/or past the disk is no more than 1 ounce.

7.2 *Production Tests*

7.2.1 Each finished spill valve is to be tested by a hydrostatic test conducted at 1½ times the rate relieving pressure of the spill valve, with the closure device secured. The test shall be made with water or other liquid having a maximum viscosity of 40 SSU at 125 °F (52 °C) with a maximum pressure test temperature of 125 °F (52 °C). Minimum duration of test shall be 1 minute. The purpose of this test is to detect leaks and structural imperfections. No visible leakage is permitted.

7.2.2 Before being shipped, each unit shall be tested as necessary to verify it will function at its set (opening) pressure and that the disc moves freely and fully.

8. *Workmanship, Finish, and Appearance*

8.1 Spill valves shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.2 Each finished spill valve shall be visually and dimensionally checked to ensure that the spill valve corresponds to this standard, is certified in accordance with Section 10 and is marked in accordance with Section 11.

9. *Inspection*

9.1 The manufacturer shall efford the purchaser's inspector all reasonable facilities necessary to satisfy him that the material is being furnished in accordance with this standard. Inspection by the purchaser shall not interfere unnecessarily with the manufacturer's operations. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10. *Certification*

10.1 Manufacturer's certification that a spill valve has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include:

10.1.1 Installation instructions, including size of the inlet and outlet, approved location for installation, and maximum or minimum length of pipe if any between the spill valve and the atmosphere.

10.1.2 Operating instructions.

10.1.3 Maintenance requirements.

10.1.3.1 Instructions on how to determine when spill valve cleaning is required and the method of cleaning.

10.1.4 Copy of prototype test report (see section 7.1).

10.1.5 Product(s) which the valve is designed for and/or restricted to.

11. *Marking*

11.1 Each spill valve shall be permanently marked indicating:

11.1.1 Manufacturer's name or trademark.

11.1.2 Style, type, model or other manufacturer's designation for the spill valve.

11.1.3 Direction of flow through the spill valve.

11.1.4 Maximum rated flow.

11.1.5 ASTM designation of this standard.

11.1.6 Relief pressure setting at full flow rating.

11.1.7 Set (opening) pressure.

11.1.8 Indication of proper orientation of valve, if critical.

12. *Quality Assurance*

12.1 Spill valves shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the prototype tested in accordance with this standard.

12.2 The spill valve manufacturer shall maintain the quality of the spill valves that are designed, tested and marked in accordance with this standard. At no time shall a spill valve be sold with this standard designation that does not meet the requirements herein.

Appendix D

Waterfront Facility Vapor Control Training Guidelines

A. Purpose
  1. Air Pollution
    a. State/Federal Requirements
  2. Toxicity
    a. OSHA/USCG Standards
B. Coast Guard Regulations
C. Vapor Collection and Processing System
  1. Explanation of the System
  2. Waterfront Facility Systems
  3. Waterfront Facility Interface
D. Hazards
  1. Explosion/Detonation/Fire
  2. Over/Under Pressurization
  3. Improper Shutdown
  4. Misconnection of Liquid and Vapor Lines
  5. Liquid/Condensation in Vapor Lines
  6. Static Electricity Discharge
  7. Auto-ignition
  8. Pyrophoric Iron Sulfide Deposits
E. Active Components
  1. Processing Unit
  2. Compressor/Blower (If Installed)
  3. Inerting/Dilution/Enrichment System and Analyzers
  4. Vapor Pressure Gauges and Alarms
  5. Automatic Shutdown (If Installed)
F. Passive Components
  1. Explosion Suppression System
  2. Detonation Arrestor
  3. P/V Valves
  4. Piping
G. Operating Procedures
  1. Testing and Inspection Requirements
  2. Additional Pre-transfer Conference Topics
    a. Maximum Cargo Transfer Rates
    b. Vapor Recovery Pressures
    c. Emergency Shutdown
  3. Hose Connection Sequence
  4. Start-up
    a. Proper Valve Alignment
    b. Check Operating Pressure During Initial Start-up
    c. Check That Vapor Processing Unit is Operating
    d. Check That Inerting/Dilution/Enrichment System is Operating
  5. Normal Operations
    a. Check Operating Pressures
    b. Check Processing Unit Operation
    c. Check Inerting/Dilution/Enrichment System Operation
H. Emergency Procedures
  1. Explosion/Detonation/Fire
  2. Over/Under Pressure
  3. Spill
  4. Ship/Barge Emergencies

Morine Vessel Vapor Control Training Guidelines

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[FR Doc. 89-23431 Filed 10-5-89; 8:45 am]

BILLING CODE 4910-14-M

VOL
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UMI

federal register

Friday
October 6, 1989

Part III

Environmental Protection Agency

40 CFR Parts 261, 271, and 302

Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment Methyl Bromide Production Wastes; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH-FRL-3626-5; EPA/OSW-FR-89-018]

RIN 2050-AC60

Hazardous Waste Management System: Identification and Listing of Hazardous Waste and CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment Methyl Bromide Production Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous two wastes generated during the production of methyl bromide. The effect of this regulation is that these wastes will be subject to regulation under 40 CFR parts 262 through 266, and parts 270, 271, and 124.

In addition, the Agency also is making final amendments to regulations promulgated under the Comprehensive Environmental Response and Liability Act (CERCLA) in 40 CFR part 302 that are related to today's hazardous waste listings. In particular, EPA is making final the designation as hazardous substances under sections 101(14) and 102 of CERCLA all of the wastes made final in today's rule, and designating under section 102(a) the final reportable quantities that would be applicable to those wastes.

EFFECTIVE DATE: This regulation becomes effective on April 6, 1990.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-89-LMBF-FFFFF and is located in the EPA RCRA docket, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Copies of the non-CBI version of the listing background document, the Health and Environmental Effects Profiles, and not readily available references are available for viewing and copying only in the OSW docket. Copies of materials relevant to the CERCLA portions of this rulemaking are contained in room 2427, U.S. EPA, 401 M Street SW., Washington, DC 20460. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday. The public may copy 100 pages from the docket at no charge; additional copies are available at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information, contact Dr. Cate Jenkins, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4786. For technical information on the CERCLA final rule, contact: Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. EPA, 401 M St. SW., Washington, DC 20460, (202) 382-2463.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

On April 25, 1985, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous two wastes generated during the production of methyl bromide.[1] (See 50 FR 16432-16436.) These wastes were proposed as: (1) Wastewater from the reactor and acid dryer from the production of methyl bromide (EPA Hazardous Waste No. K131), and (2) spent adsorbent and wastewater separator solids from the production of methyl bromide (EPA Hazardous Waste No. K132).

The hazardous constituents of concern in these wastes are methyl bromide and dimethly sulfate. Methyl bromide causes numerous acute and chronic effects. Acute effects include convulsions and seizures in humans, central nervous system depression, human fatalities due to pulmonary edema, and psychic, motor, and gastrointestinal disturbances. Chronic effects include hyperplasia of the forestomach of rats, direct damage to the brain cortex and peripheral axons of humans, and pathological changes in animal kidneys, parathyroid glands, and thyroid glands. Dimethyl sulfate is toxic and has been demonstrated to be carcinogenic in a variety of test animals.

Methyl bromide is found at levels up to 5% in waste K131 and at levels up to 1.5% in waste K132. Dimethyl sulfate is found at levels up to 0.5% in waste K131. Because of their moderate solubilities in water and high solubilities in organic solvents, these constituents are expected to migrate from the wastes and to be mobile in the environment. In addition, data are available which indicate that methyl bromide and dimethyl sulfate may persist in the environment and reach environmental receptors in harmful concentrations, thereby posing a significant hazard if these wastes are mismanaged. Furthermore, waste K131 is corrosive. (See the preamble to the proposed rule at 50 FR 16432-36 for a more detailed explanation of our basis for listing these wastes.)

After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), and for the reasons stated in the preamble to the proposed rule, EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The Agency received several comments on these proposed waste listings. We have evaluated these comments carefully, and conclude that they do not refute our justification for listing these wastes as hazardous. This notice makes final the regulation proposed on April 25, 1985, and provides EPA's response to the comments received on that proposal.

[1] It should be noted that the Hazardous and Solid Waste Amendments of 1984 require the Agency to make a determination as to whether wastes from organobromine manufacturing should be listed as hazardous. This regulation is promulgated in accordance with that requirement.

II. Response to Comments

This section presents the comments received on the proposed rule, as well as the Agency's response. Comments were received from a manufacturer of methyl bromide.

A. Comments on the Description of the Manufacturing Process

The commenter stated that the process described in the listing background document does not address the process they employ to produce methyl bromide. In particular, they argue that methyl bromide is produced at their plant as a co-product in the tetrabromobisphenol-A (TBBPA) process. In the commenter's process, hydrobromic acid (HBr) is produced as a co-product in TBBPA production and subsequently methylated to produce methyl bromide. They state that the hydrobromic acid is not produced *in situ* by reacting with either sulfur or sulfur dioxide as described in the listing background document.

The Agency disagrees with the commenter that their process is not described in the listing background document. The listing background document describes two typical production processes for methyl bromide. The first process described involves the reaction of methanol with hydrobromic acid. This is, in fact, the process used at the production facility of the commenter, where hydrobromic acid is produced as a by-product from the manufacture of another chemical, and then methylated to produce methyl bromide.

The Agency never intended to exclude from the listing wastes that are generated from methyl bromide production where it is produced along with another product, namely TBBPA. In fact, the listing background document clearly states, "Hydrobromic acid is often produced as a by-product of a different process at a plant so it can be added directly as feedstock to the reactor." We believe that the production of co-products along with methyl bromide does not alter the fact that the wastes generated by the process will still contain the toxic constituents at levels of concern. Analytical data submitted by this commenter and others who produce methyl bromide along with a co-product also supports our contention that these wastes contain significant concentrations of methyl bromide.

The background document has been revised to more clearly describe the different manufacturing processes for methyl bromide that are subject to the hazardous waste listing.

B. Comments on Individual Waste Streams

1. Wastewater From the Reactor

The commenter provided several rationales to support their claim that the wastewaters generated from their methyl bromide-TBBPA co-production process would not be covered by the K131 listing description. "Wastewater from the reactor * * * from the production of methyl bromide." The Agency's response to these comments is provided below.

a. *Generation source of wastewater.* The commenter claimed that their process wastewater is not discharged directly from the methyl bromide process reactor. Instead, their reactor wastewater is carried along through a precipitation and filtration step before it is removed from the process and sent to the distillation column for treatment. The commenter argued that the source of this wastewater, therefore, was not the methyl bromide reactor.

The Agency disagrees with the interpretation that the wastewater generated by the commenter's facility does not meet the listing description for "reactor wastewater." In the commenter's process, wastewater is generated in the methyl bromide production reactor. This wastewater, therefore, is properly designated as wastewater *from* the methyl bromide reactor. The additional product recovery steps described by the commenter through which this wastewater is carried does not alter the fact that the original source of the wastewater is the methyl bromide reactor. Furthermore, the commenter supplied information that this wastewater is removed from the process line prior to the production of any other product, such as the commenter's subsequent manufacture of TBBPA. As a result, the source of this wastewater cannot be claimed to be from a production process other than the methyl bromide process. The wastewater leaving the commenter's precipitation and treatment steps clearly meets the listing description, and full notice of this fact was provided.

b. *Effective treatment of wastewater.* The commenter further stated that they have a patented treatment process to remove hazardous constituents from their wastwater stream discussed above. In support of their position, the commenter provided a copy of an interoffice memorandum which stated that the wastewater stream after this treatment process contained 5 ppm or less methyl bromide, the detection limit of the analytical method used. As a result, the commenter contends that the wastewater no longer contained significant concentrations of toxic constituents, and suggests that their wastewater should be excluded from regulation as a hazardous waste.

The Agency does not consider the information submitted by the commenter to be adequate as a basis for excluding this waste, after such treatment, from the listing description. First, the actual concentration of methyl bromide remaining in the wastewater after treatment could have been as high as the detection limit, 5 ppm. Without more definitive analytical characterization of this waste, the Agency cannot make a determination as to whether or not it would present a potential hazard to human health and the environment. In addition, the Agency has inadequate information on the commenter's test methods, how the samples were collected, or the QA/QC used. If the commenter wishes to provide further evidence to demonstrate that their treated wastewater should be excluded from regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22. (See "Petitions to Delist Hazardous Wastes: A Guidance Manual," NTIS PB-85-194488, available from: NTIS, 5285 Port Royal Road, Springfield, VA 22161 (request by telephone at (703) 487-4650) for a detailed discussion on the type of information and data that should be included in the petition.)

c. *Reuse of wastewater after treatment in another process.* The commenter further argued that their methyl bromide process wastewater would be exempt from the K131 listing description since, after wastewater treatment, the wastewater is "recycled to process." In fact, the wastewater is injected into the ground to extract brine.

The Agency does not consider the reuse of the wastewater described by the commenter to be a reclamation or reuse activity subject to the exemption from regulation as a solid waste. The Agency notes that this form of "recycling" is use constituting disposal, and therefore not subject to the exemption from the definition of a solid waste. (See 40 CFR 261.2(c)(1)(A).)

2. Spent Sulfuric Acid

a. *Exemption of reclaimed sulfuric acid.* The commenter stated that their process does not produce a waste sulfuric acid stream as described in the listing background document. Instead, the acid is first stripped to remove methyl bromide, and then returned to the supplier to be used to produce virgin sulfuric acid. They argue, therefore, that this stream is not a solid waste by virtue of 40 CFR 261.4(a)(7), which excludes

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spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively.

Although the Agency agrees that the spent acid, after stripping, meets the description of 40 CFR 261.4(a)(7), the Agency notes that the commenter's spent sulfuric acid, which meets the K131 listing description as generated, is not used to produce virgin sulfuric acid until after treatment to remove methyl bromide. The Agency believes that such reclamation is treatment of a hazardous waste (*i.e.*, the spent sulfuric acid as generated).

The specific exemption for spent sulfuric acid was meant to apply only to spent sulfuric acid that is used as a feedstock ingredient in the production of virgin sulfuric acid, by introduction into the original sulfuric acid production process. (A discussion of the types of sulfuric acid reclamation processes intended for the exemption may be found in paragraph 6, column 1, of 50 *FR* 642.) In this case, the spent sulfuric acid is not exempt as generated since it is not suitable for feedstock in sulfuric acid production, *i.e.*, it must be stripped of methyl bromide prior to being suitable for introduction into the sulfuric acid production process. Thus, any time the spent sulfuric acid stream is generated, it is a hazardous waste until stripped to produce feedstock for virgin sulfuric acid production.

Also, the Agency clarifies that waste K131, as defined in the proposal, includes both the reactor wastewater stream and the acid dryer stream, either as separate wastes or combined. In order to clarify this point (*i.e.*, that waste K131 includes the sulfuric acid stream), however, we have modified EPA Hazardous Waste No. K131 to read, "Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide."

b. *Concentrations of dimethyl sulfate and methyl hydrogen sulfate.* In addition, the commenter states that this waste stream does not contain significant amounts of dimethyl sulfate, the hazardous constituent of this waste; it does, however, contain methyl hydrogen sulfate, which the commenter states is non-toxic, and is destroyed in the reclamation furnace.

The Agency does not believe that the commenter has supplied any evidence to sustantiate the contention that the sulfuric acid stream prior to stripping contains dimethyl sulfate at concentrations that would not be significant in terms of potential hazards to human health and the environment. If the commenter wishes to provide further evidence to demonstrate that their waste should be excluded from regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22.

Regarding the commenter's point about methyl hydrogen sulfate, the Agency agrees that there is insufficient evidence at this time to indicate that it is toxic. Therefore, it was not included as a constituent of concern for this waste. As we stated in the proposed rule, however, the waste does contain considerable amounts of methyl hydrogen sulfate (up to 25%). Since methyl hydrogen sulfate is an acid similar to sulfuric acid, this waste is expected to exhibit the corrosivity characteristic specified in 40 CFR 261.22.

3. Spent Alumina Adsorbent

The commenter stated that their spent alumina is steam-stripped to remove methyl bromide before the adsorbent is removed from the purification column. The spent alumina was analyzed after stripping and before landfilling, and no methyl bromide was detected (at a detection limit of 5 ppm). The commenter cited as evidence the same inter-office memorandum as was cited in their comment on wastewater from the reactor.

The Agency has reviewed the evidence submitted by the comments and has concluded that the spent alumina contains significant amounts of methyl bromide before steam-stripping. Insufficient data was provided to determine whether this procedure sufficiently cleans the alumina so that the waste leaving the column would contain insignificant concentrations of hazardous constituents so as to allow an exclusion of the stripped (derived from) waste from the regulation. In particular, the Agency has inadequate information on the commenter's test methods, how the samples were collected, or the QA/QC used. If the commenter wishes to provide further evidence to demonstrate that their waste should be excluded from regulation, they should submit a delisting petition pursuant to 40 CFR 260.20 and 260.22. (See "Petitions to Delist Hazardous Wastes: A Guidance Manual," NTIS #PB-85-194488, available from: NTIS, 5285 Port Royal Road, Springfield, VA 22161 (request by telephone at (703) 487-4650) for a detailed discussion of the type of information and data that should be included in the petition.) Because the stripped absorbants are landfilled, there is no question that the absorbants before such treatment (stripping) are solid wastes.

C. Mismanagement

The commenter believes that the listing background document is misleading, and that it implies that they mismanaged their methyl bromide wastes, resulting in air pollution incidents around its plant in Magnolia, Arkansas. The commenter stated that it did not begin producing methyl bromide at the Magnolia, Arkansas plant until December, 1983.

EPA had no intention of implying that mismanagement of methyl bromide wastes by the commenter resulted in air pollution incidents. It was stated that methyl bromide was found in trace quantities around several plants, one of which was the commenter's plant in Magnolia, Arkansas. In fact, the listing background document specifically states that the data cannot be directly correlated with industrial practices. Moreover, the Agency has concluded that the source of the methyl bromide could not be determined. To further clarify this point, however, we have moved this discussion from the mismanagement section to the environmental fate and transport section of the listing background document to show the persistance of methyl bromide.

III. Relation to Other Regulations

A. Proposed Toxicity Characteristic

As one of the mandates of HSWA, the Agency proposed to expand the toxicity characteristic (TC) by including additional chemicals. Once promulgated, the TC might capture wastes generated by the methyl bromide industry that are not covered by wastes K131 and K132. Such wastes could include wastewaters and wasterwater treatment sludges.

B. Land Disposal Restrictions

HSWA mandated the land disposal restrictions for waste listed prior to the enactment of HSWA under a specific schedule (see 3004(g)(4)(c)). If the Agency failed to prohibit the wastes within the period specified, the wastes were restricted from land disposal. HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984 within six months of the data of identification or listing (RCRC section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statue does not provide for an automatice prohibition of the land disposal of such wastes if EPA fails to meet this deadline. The Agency is evaluating treatment standards for newly listed wastes K131 and K132 and will propose such standard in the future.

IV. Test Methods for New Appendix VII Compounds

Appendix III of 40 CFR part 261 is a list of test methods that are approved for use in demonstrating that the constituents of concern in listed wastes are not present at concentrations of concern. The approved methods for methy bromide are 8010, 8240, and 8260.

The purposed listing (50 FR 16432) suggested use of Method 8250 for the analysis of dimethyl sulfate in Hazardous Waste No. K131. Because most commercial laboratories now prefer to use capillary column chromatography to improve the chromatographic resolution, we are also adding Method 8270 to the list of those suitable for analyzing dimethyl sulfate. The difference between these two methods is the use of a capillary column gas chromatography technique instead of a packed column technique.

Persons wishing to submit delisting petitions must use these methods to demonstrate the concentration of methyl bromide and/or dimethyl sulfate in their wastes. [2] (See 40 CFR 260.22(d)(1).) As part of their petitions, petitioners shall submit quality control data demonstrating that the methods they have used yield acceptable recoveries (*i.e.*, >80% recovery at concentrations above 1 ug/g) on spiked aliquots of their waste.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, 3rd Ed., available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238, Document Number: 055-002-81001-2.

V. CERCLA Designation and Adjustment

All hazardous wastes regulated under a RCRA hazardous waste number are hazardous substances under section 101(14)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Under section 103(a) of CERCLA, notification must be made to the Federal government of a release of any CERCLA hazardous substance in an amount equal to or greater than the reportable quantity (RQ) assigned to that substance. [3]

[2] Petitioners may use other test methods to analyze for methyl bromide or dimethyl sulfate if, among other things, they demonstrate the equivalency of these methods by submitting their quality control and assurance information along with their analysis data. (See 40 CFR 260.21.)

[3] See 40 CFR part 302 for the list of CERCLA hazardous substances and their RQs, as amended August 14, 1989, 54 FR 33418 and 54 FR 33426.

Pursuant to section 102(b) of CERCLA, all hazardous wastes newly listed under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation.

If the person in charge of a vessel or facility from which a RCRA hazardous waste containing CERCLA hazardous substances is released knows the percentage composition of the waste, then the "mixture rule" (40 CFR 302.6(b)) may be applied. Under the mixture rule, releases of mixtures and solutions are subject to CERCLA reporting requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its RQ (40 CFR 302.6(b)). If the concentrations of all of the hazardous constituents present in the mixture are not known, reporting is required if the total quantity released equals or exceeds the lowest RQ of any of the hazardous constituents.

Adjustments from the statutory RQs established under section 102 are based upon an adjustment methodology described in the final rule adjusting the RQs of 340 hazardous substances. (See 54 FR 33426 (August 14, 1989).) The adjusted RQs for newly listed wastes are based upon the RQs of the "hazardous constituents" identified under RCRA with respect to the new hazardous waste. Thus, if a newly listed hazardous waste has only one constituent of concern, the waste will have the same RQ as that of the constituent. If the waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste stream is the RQ assigned to the waste.

Under section 102 of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemaking with respect to new waste listings, the Agency proposed regulatory amendments under CERCLA authority in connection with listing to: (1) Designate wastes K131 and K132 as hazardous substances under section 102 of CERCLA; and (2) adjust the RQs of waste K131 to one pound (1 lb.) and waste K132 to one thousand pounds (1,000 lbs.), based on the application of the RQ adjustment methodology under section 102(a).

The RQs for each waste and for each of the hazardous constituents are identified in the table below. One of the constituents of concern, dimethyl sulfate, has an RQ that has now undergone adjustment since the April 25, 1985 proposed listing of methyl bromide production wastes, and was finalized in the August 14, 1989 final rulemaking (54 FR 33426). The final RQ of waste K131 has thus been changed based on the outcome of this rulemaking from one pound to 100 pounds.

The adjustment of the RQs of wastes K131 and K132 from the statutory one-pound level is based on the current RQs of the constituents in these listings. Because the constituent in waste K131 with the lowest RQ is dimethyl sulfate, with an RQ of 100 pounds, the RQ of waste K131 is 100 pounds. Because the constituent in waste K132 with the lowest RQ is methyl bromide, with an RQ of 1,000 pounds, the RQ of waste K132 is 1,000 pounds. These RQs will become effective on the effective date of today's action, when the wastes simultaneously become hazardous substances under CERCLA.

Hazardous substance	Constituent	RQ
Waste No. K131		100 lbs.
	Dimethyl sulfate	100 lbs.
	Methyl bromide	1,000 lbs.
Waste No. K132		1,000 lbs.
	Methyl bromide	1,000 lbs.

Finally, although each listed hazardous waste automatically becomes a hazardous substance under CERCLA section 101(14), the Agency also has authority to independently designate hazardous substances under section 102. In order to eliminate confusion over whether a released substance in a particular form is subject to CERCLA authority, the Agency designates under section 102 all hazardous substances designated under the other statutes listed in section 101(14). Accordingly, the Agency in today's rule also is designating wastes K131 and K132 as "hazardous substances" under CERCLA section 102.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection and enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

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Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. Therefore, it has been added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble. Because EPA promulgated rules regarding the timing for HSWA listings after this rule was proposed, the existing regulatory time frames supercede the discussions in the preamble to the proposed rule.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. State program modifications to conform to today's rule must be made by July 1, 1991, if only regulatory changes are necessary, or by July 1, 1992, if statutory changes are necessary. See 40 CFR 271.21(e)(2)(iv) and 271.21(e)(2)(v). These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e)(3).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards in their application. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Compliance Dates

A. Notification

Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96-452) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator.

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

B. Interim Status

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate K131 and K132 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States. Facilities that treat, store, or dispose of K131 and K132 but that have not received a permit pursuant to section 3005 of RCRA and are not operating pursuant to interim status, might be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, the eligible facilities are required to possess an EPA ID number pursuant to 40 CFR 270.70(a), and will be required to submit a part A permit application by April 6, 1990.

Under section 3005(e)(3), by April 6, 1991, land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) also are required to submit a part B permit application and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements. If the facility fails to do so, interim status will terminate on that date.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of K131 and K132 and that are currently operating pursuant to interim status under section 3005(e) of RCRA, will be required to file with EPA an amended part A permit application by April 6, 1990.

Under current regulations, a hazardous waste management facility that has received a permit pursuant to section 3005 is not able to treat, store, or dispose of K131 or K132 until a permit modification allowing such activity is approved in accordance with § 270.42.

Note that EPA has recently amended the permit modification requirements for newly listed or identified wastes. See 53 FR 37912 et seq. (September 28, 1988.)

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. In the proposed listing, EPA addressed this issue by citing the results of an economic analysis; the total additional incurred cost for managing these wastes as hazardous by the industry was estimated to be approximately $23,000. The Agency received no comments on this figure. Since that time, the Agency has re-evaluated the total additional costs that would be incurred for managing these wastes as hazardous by the industry as approximately $43,500.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, will result in a measurable increase in costs or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

X. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: September 29, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.32, add the following waste streams to the subgroup "Pesticides":

§ 261.32 Hazardous wastes from specific resources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C, T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)
*	*	*

Appendix VII to Part 261 [Amended]

3. Add the following entries in numerical order to Appendix VII of part 261:

Industry and EPA hazardous waste No.	Hazardous constituents for which listed
*	*
K131	Dimethyl sulfate, Methyl bromide.
K132	Methyl bromide.
*	*

Appendix III to Part 261 [Amended]

4. Add the following compounds and analysis methods in alphabetical order to Table 1 of Appendix III of part 261:

Compound	Method numbers
*	*
Dimethyl sulfate	8250, 8270
Methyl bromide	8010, 8240, 8260
*	*

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6937.

§ 271.1 [Amended]

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
October 6, 1989.	Listing Wastes from the Production of Methyl Bromide.	[insert Federal Register page numbers].	April 6, 1990.
*	*	*	*

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response.

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Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

8. Table 302.4 of 40 CFR 302.4 is amended by adding the following entries in numerical order:

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code	Waste number	Category	Pounds (kg)
K131			100	4	K131	X	100 (45.4)
Wastewater from the reactor and spent sulfuric acid from the acid dryer in the production of methyl bromide.							
K132			1000	4	K132	X	1000 (454)
Spent absorbent and wastewater solids from the production of methyl bromide.							

[FR Doc. 89-23584 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
October 6, 1989

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

VOL 54 ISS 193 OC 6 1989 UMI

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of The United States:

In accordance with the Impoundment Control Act of 1974, I herewith report seven deferrals of budget authority totalling $1,380,399,855.

The deferrals affect the International Security Assistance program, as well as programs of the Departments of Agriculture, Defense, Health and Human Services, State, and Transportation.

The details of these deferrals are contained in the attached report.

Dated: October 2, 1989.

George Bush,

The White House.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY*
	Funds Appropriated to the President:	
	International Security Assistance:	
D90-1	Economic support fund	271,000
	Department of Agriculture:	
	Forest Service:	
D90-2	Expenses, brush disposal	188,680
D90-3	Cooperative work	410,189
	Department of Defense, Civil:	
D90-4	Wildlife conservation	1,047
	Department of Health and Human Services:	
	Social Security Administration:	
D90-5	Limitation on administrative expenses (construction)	7,078
	Department of State:	
	Bureau for Refugee Programs:	
D90-6	United States emergency refugee and migration assistance fund	44
	Department of Transportation:	
	Federal Aviation Administration:	
D90-7	Facilities and Equipment, Airport and Airway Trust Fund	502,361
	Total, deferrals	1,380,400

* Detail does not add to totals due to rounding.

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1990
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
First special message:		
New items	---	1,380,400
Revisions to previous special messages	---	---
Effects of first special message	---	1,380,400
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	1,380,400
Amounts from previous special messages that are not changed by this message	---	---
Total amount proposed to date in all special messages	---	1,380,400

Deferral No: D90-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol:

Economic support fund [1]
119/01037
11X1037
110/11037

OMB identification code:
11-1037-0-1-152

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1990 / Sept. 30, 1991 (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L.)
Other budgetary resources. 271,000,000
Total budgetary resources. _____

Amount to be deferred:
Part of year..... $ 271,000,000
Entire year..... _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Economic support fund	11X1037	11-1037-0-1-152	$1,000,000
Economic support fund	119/01037	11-1037-0-1-152	270,000,000
Economic support fund	110/11037	11-1037-0-1-152	---
			271,000,000

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United

[1] These accounts were the subject of a similar deferral in 1989 (D89-1A).

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States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D90-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Expenses, brush disposal [1]
12X5206

OMB identification code:
12-9922-0-2-302
Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 64,662,000
(16 U.S.C. 490)
Other budgetary resources.. 188,680,298
Total budgetary resources.. 253,342,298

Amount to be deferred:
Part of year..... $_____
Entire year..... 188,680,298

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $64.7 million in 1990. The current fiscal year reserve of $188.7 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None

Outlay Effect: None

[1] This account was the subject of a similar deferral in 1989 (D89-3).

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Deferral No: D90-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Forest Service
Appropriation title and symbol:
Cooperative work [1]
12X8028

OMB identification code:
12-8028-0-7-302
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 315,117,000
(16 U.S.C. 576b)
Other budgetary resources.. 422,872,092
Total budgetary resources.. 737,989,092

Amount to be deferred:
Part of year..... $ _____
Entire year..... 410,189,092

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[1] This account was the subject of a similar deferral in 1989 (D89-4A).

Deferral No: D90-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Civil
Bureau: Wildlife Conservation, Military Reservations [1]
Appropriation title and symbol:
Wildlife Conservation, Army 21X5095
Wildlife Conservation, Navy 17X5095
Wildlife Conservation, Air Force 57X5095

OMB identification code:
97-5095-0-2-303
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $ 2,100,000
(16 U.S.C. 670f)
Other budgetary resources. $ 1,417,000
Total budgetary resources. $ 3,517,000

Amount to be deferred:
Part of year..... $ _____
Entire year..... $ 1,047,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	$638,000
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	129,000
Wildlife Conservation, Air Force....	57X5095	57-5095-0-2-303	280,000
			1,047,000

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being

[1] These accounts were the subject of a similar deferral in 1989 (D89-5A).

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deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D90-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $ _____ (P.L. _____)
Bureau: Social Security Administration	Other budgetary resources.. $ 7,456,461
Appropriation title and symbol:	Total budgetary resources.. $ 7,456,461
Limitation on administrative expenses (construction) [1] 75X8704	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 7,078,261
OMB identification code: 20-8007-0-6-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in fiscal year 1990 are for roof repair and replacement projects. It has been determined that obligational authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in fiscal year 1991 for roof repair and replacement. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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[1] This account was the subject of a similar deferral in 1989 (D90-7A).

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Deferral No: D90-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of State
Bureau:
Bureau for Refugee Programs
Appropriation title and symbol:
United States emergency refugee and migration assistance fund 1
11X0040

OMB identification code:
11-0040-0-1-151
Grant program: [ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____ (P.L._____)
Other budgetary resources. 44,000
Total budgetary resources. 44,000

Amount to be deferred:
Part of year..... $ 44,000
Entire year..... _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[X] Other Executive Order 11922

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: Section 501(a) of the Foreign Relations Authorization Act, 1976 (Public Law 94-141) and Section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund not to exceed $50,000,000 to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

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1 This account was the subject of a similar deferral in 1989 (D89-9A).

D90-6

Estimated Program Effect: None

Outlay Effect: None

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Deferral No: D90-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation **Bureau:** Federal Aviation Administration **Appropriation title and symbol:** Facilities and equipment (Airport and airway trust fund) [1] 69X8107 699/38107 697/18107 698/28107 696/08107 **OMB identification code:** 69-8107-0-7-402 **Grant program:** [ ] Yes [X] No	New budget authority..... $_____ (P.L.) Other budgetary resources. 1,297,197,198 Total budgetary resources. 1,297,197,198 **Amount to be deferred:** Part of year..... $_____ Entire year..... 502,361,204 **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual Sept. 30, 1990 Sept. 30, 1991 [X] Multiple-year Sept. 30, 1992 (expiration date) [X] No-Year Sept. 30, 1993	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Funds from this account are used to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion and improvement of navigational and landing aid systems. Funds to continue these activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress.

Because of the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these

[1] This account was the subject of a similar deferral in FY 1988 (D88-12A).

Deferral No: D90-7

projects. This deferral action is consistent with FAA's full funding approach and Congressional intent to provide resources for a project's total cost, and is taken under provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 89-23729 Filed 10-5-89; 8:45 am]
BILLING CODE 3110-01-C

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Part V

Commission on Civil Rights

Notice of Meeting

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 193
Friday, October 6, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 40238 (September 29, 1989).

TIME AND DATE: Friday, October 6, 1989, 8:00 a.m.—9:30 a.m. E.D.T.

CHANGES IN THE MEETING: Personnel evaluation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312

Jeffrey P. O'Connell,

Acting Solicitor.

October 5, 1989.

[FR Doc. 89–23938 Filed 10–5–89; 12:16 pm]

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S.J. Res. 146/Pub. L. 101-104
Designating the week of September 24, 1989, as "Religious Freedom Week". (Oct. 2, 1989; 103 Stat. 673; 2 pages) Price: $1.00

H.R. 419/Pub. L. 101-105
To provide for the addition of certain parcels to the Harry S Truman National Historic Site in the State of Missouri. (Oct. 2, 1989; 103 Stat. 675; 2 pages) Price: $1.00

H.R. 1529/Pub. L. 101-106
To provide for the establishing of the Ulysses S. Grant National Historic Site in the State of Missouri, and for other purposes. (Oct. 2, 1989; 103 Stat. 677; 2 pages) Price: $1.00

S.J. Res. 118/Pub. L. 101-107
Designating October 6, 1989, as "German-American Day". (Oct. 3, 1989; 103 Stat. 679; 1 page) Price: $1.00

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10-10-89
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federal register

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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: October 19; at 9:00 a.m.
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RESERVATIONS: 202–523–5240.

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WHEN: October 24; at 1:00 p.m.
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Presidential Documents

Title 3—

The President

Proclamation 6036 of October 4, 1989

Raoul Wallenberg Day, 1989

By the President of the United States of America

A Proclamation

In January 1944, the United States War Refugee Board asked Sweden to send a representative to Hungary in order to organize efforts to rescue the Jewish population of that country from annihilation by occupying Nazi forces. During the 6 months he spent in Budapest, that courageous Swedish envoy, Raoul Wallenberg, saved some 100,000 men, women, and children from the gas chambers and crematoria of the Nazi death camps.

Raoul Wallenberg risked his own life many times in defying the Nazi authorities who were systematically condemning thousands of innocent Jews to death. He tirelessly pleaded, schemed, maneuvered—and even threw himself before rifle-wielding Nazi guards—in order to rescue their prisoners from extermination. His efforts were truly selfless and heroic. Amidst the horrors of war and Nazi atrocities, Raoul Wallenberg represented the noble and decent conscience of humanity.

On January 13, 1945, in violation of international standards concerning diplomatic immunity, Raoul Wallenberg was taken into custody by Soviet forces occupying Hungary. The Soviet government initially denied having arrested him, but later stated that a prisoner named Wallenberg died in a Soviet prison on July 17, 1947. Since that date, numerous eyewitness accounts have indicated that Raoul Wallenberg may have survived long after 1947. There is no proof that he is not still alive and imprisoned in the Soviet Union. The Soviet Union has yet to produce any evidence of Mr. Wallenberg's death and has refused to investigate reports that he may still be alive.

On October 5, 1981, the President of the United States signed into law a joint resolution making Raoul Wallenberg an honorary citizen of the United States, which signified the American people's recognition of his heroism and our refusal to forget him or his bravery in the face of tyranny.

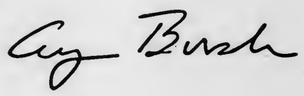
We welcome as a positive sign the Soviets' invitation to Raoul Wallenberg's relatives to meet with them in the Soviet Union later this year. It is our hope that this meeting will produce long-awaited answers to the questions surrounding the fate of Raoul Wallenberg. This great and selfless man—and the thousands of people whose lives he saved—deserve no less.

The Congress, by Public Law 101–63, has authorized and requested the President to proclaim October 5, 1989, as "Raoul Wallenberg Day."

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 5, 1989, as Raoul Wallenberg Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, and I urge them to reaffirm their devotion to the just aspirations of all peoples for liberty and peace.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-23983
Filed 10-5-89; 2:32 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6037 of October 5, 1989

German-American Day, 1989

By the President of the United States of America

A Proclamation

In 1683, a small group of men, women, and children set out from their homes in Germany in search of religious freedom in the New World. These 13 families, who came ashore near Philadelphia more than 3 centuries ago, were the first of seven million German immigrants to come to this country. Today, almost 60 million Americans are the descendants of these brave and industrious people. Their proud ethnic heritage represents not only a great treasure passed to each generation, but also a rich source of strength and pride for the entire United States.

Throughout our Nation's history, German immigrants and their descendants have stood on the front lines in the defense of freedom. From the heroic efforts of General Friedrich von Steuben during the Revolutionary War to the courageous leadership of General Eisenhower during World War II, their courage and patriotism have been unquestionable. In times of peace, as well as times of strife, generations of German-Americans have faithfully upheld the principles upon which this Nation was founded.

Following the Second World War, the United States, together with its allies, helped to restore the conditions in which German democracy, guided by leaders such as Konrad Adenauer, could take root and flourish. Today, there can be no doubt that Europe is stronger—and the world is safer—because the Federal Republic of Germany is free, sovereign, and democratic.

While we proudly acknowledge our friendship with the people of the Federal Republic of Germany, we also note with sadness that many Germans continue to be denied the right to self-determination. The United States thus remains firmly committed to promoting freedom and democratic government in all of Germany and all of Eastern Europe. We will not waver in our efforts to foster respect for human rights throughout Eastern Europe; to advance political reform; and to eliminate the barriers that still divide Berlin.

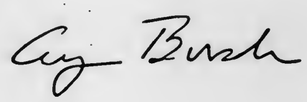
Our great Nation is strong because we Americans are united by our common belief in individual liberty and the rule of law, as well as by faith and family ties. Today, as we celebrate the many contributions that Americans of German descent have made to our country, let us rededicate ourselves to promoting that same kind of unity in their ancestral homeland.

In honor of all German-Americans, the Congress, by Senate Joint Resolution 118, has designated October 6, 1989, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of that day.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 6, 1989, as German-American Day. I urge all Americans to learn more about the contributions German-Americans have made to the life and culture of the United States and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-23984
Filed 10-5-89; 2:33 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of October 5 on signing Proclamation 6037, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 40).

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 686]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 686 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 278,589 cartons during the period October 8 through October 14, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 686 (7 CFR part 910) is effective for the period October 8 through October 14, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on October 3, 1989, in Ontario, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.986 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.986 Lemon Regulation 686.

The quantity of lemons grown in California and Arizona which may be handled during the period October 8, 1989, through October 14, 1989, is established at 278,589 cartons.

Dated: October 4, 1989.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-23865 Filed 10-6-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

[FV-89-051]

Kiwifruit Grown in California; Revision of Grade, Pack and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the minimum grade requirements for California kiwifruit by reducing the current allowance for misshapen fruit. It

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also establishes minimum weight requirements for tray-packed fruit; revises the tray equivalent size designations used in packing volume-filled containers and requires such containers to be marked with those designations; and reduces the allowable size variance for the two smallest size designations of packed fruit. Changes to definitions are also made. These actions will tend to result in better quality fruit being provided to consumers, and a reduction in buyer confusion caused by the lack of uniformity in current kiwifruit packing practices.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 920 and Marketing Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (FRA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1988 California kiwifruit fresh utilized production totaled 29,500 tons, 11 percent larger than 1987. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1989 to a total of about 10.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. About 60 percent of the fresh shipments is destined for domestic markets, and the remaining 40 percent is exported.

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [as amended at 53 FR 34035, September 2, 1988, and 53 FR 48513, December 1, 1988]. The current requirements specify that kiwifruit must meet a minimum size of 49 and contain at least 6.5 percent soluble solids at the time of inspection. Also included in the current handling regulation are a minimum grade requirement and a number of pack and container requirements. At a meeting held on April 7, 1989, the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order, recommended changes in the existing grade, pack and container requirements to become effective on or about October 1, when shipments of the 1989 crop are expected to begin.

Upon the basis of the committee's recommendation, this rule revises the current minimum grade requirement for fresh shipments of kiwifruit by eliminating the 7 percent tolerance provided for misshapen fruit. This rule also establishes minimum weight requirements for kiwifruit packed in trays, including containers with cell compartments, cardboard fillers, or molded trays. Additionally, it revises the tray equivalent size designations used in packing bags, volume-fill, and bulk containers; requires containers to be marked with those designations; and reduces the allowable size variance for the two smallest size designations of packed fruit. Finally, this rule deletes certain definitions from the handling regulation and adds a general definition.

The current minimum grade requirement specifies that fresh shipments of kiwifruit shall grade at least 85 percent U.S. No. 2. However, the allowance for defects other than shape is limited to 8 percent for those causing damage. Included in the 8 percent tolerance for defects other than shape is 4 percent for defects causing serious damage, and 1 percent for fruit affected by internal breakdown or decay. An additional 7 percent allowance is provided for fruit that fails to meet the shape requirements of a U.S. No. 2 grade. As a result, if no other defects are present in a given lot of kiwifruit, up to 15 percent of the fruit in that lot may be misshapen.

During the 1988–89 season, the committee examined sample trays packed with the maximum number of allowable defects. Based on this examination, it was determined that the current allowances for misshapen kiwifruit are excessive in view of current market demand for high quality kiwifruit. The committee therefore recommended, by a nine to one vote, that the current grade requirement be revised by eliminating the additional 7 percent tolerance provided for shape defects.

By far, the majority of the kiwifruit shipped from California exceeds a U.S. No. 2 grade. During the 1988–89 season, 52 percent of the total shipped was U.S. Fancy grade, and 44 percent was U.S. No. 1 grade. Only 4 percent graded U.S. No. 2. The committee attributes this small volume grading U.S. No. 2 to improved cultural techniques used by growers since the establishment of minimum quality standards under the marketing order. The committee has concluded that this action will result in further improvement in the quality of kiwifruit available from California, which is necessary to enable the industry to market additional volumes of fruit in the face of increasing competition.

About 77 percent of the 1988 crop was shipped to fresh market in trays, with the remainder packed in volume-filled containers, including bags (about 13 percent), volume-filled cartons (about 10 percent), and bulk containers or bins (less than 1 percent). While trays continue to be the dominant container used in packing kiwifruit, the use of volume-filled containers has increased in recent years.

Trays used to pack kiwifruit have cell compartments to hold individual pieces of fruit. All standard trays have the same dimensions, and the number of cell compartments varies according to the count being packed. The size of the fruit packed in these containers is denoted by count, i.e., the number of pieces of fruit packed in the tray. There are currently about 17 sizes packed in trays, ranging from Size 49 (the smallest size permitted to be shipped) to Size 21. The four most prevalent sizes are 33, 36, 39, and 42 which in 1988–89 accounted for about 84 percent of the trays packed.

The current requirements for fruit packed in trays specify that these types of containers be marked with a numerical count to designate size, and that the number of fruit in the tray conform to the marked count. In addition, the kiwifruit must be "fairly uniform in size," as defined in the U.S. Standards for Grades of Kiwifruit. Such uniformity is in terms of an allowable variance in diameter among the individual pieces of fruit in a given container. Larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter; intermediate size fruit (Sizes 31 to 38) may not vary by more than ⅜-inch in diameter; and smaller size fruit (Size 39 and smaller) may not vary by more than ¼-inch in diameter. Finally, fruit packed in trays must be of proper size for the cell compartments in which they are packed.

The committee has determined that these requirements do not result in sufficient uniformity in tray packs, and unanimously recommended that minimum tray weights be established for fruit packed in trays. In making this recommendation, the committee considered the results of weight surveys it has conducted over the past three seasons. These surveys have shown a variation in the weight of trays packed with the same size fruit of as much as 3.6 pounds. For example, trays containing Size 36 (the most widely packed size last season) ranged from 6.00 to 9.56 pounds, and averaged 7.33 pounds.

This variation has resulted in numerous complaints by buyers in the United States and abroad who received trays that were lighter than expected, and were concerned that they had not received full value for the fruit purchased. Because of this, these buyers were less inclined to make additional purchases of California kiwifruit, unless the fruit was offered at a discounted price. Following a California kiwifruit grower survey (in which 71 percent of those participating supported tray weight requirements), the committee agreed that establishing minimum weights for fruit packed in trays would offer the most effective solution to eliminate light trays and undersizing. The minimum tray weights vary with the size of fruit packed, with the smaller fruit having the lowest minimum net weight. For example, fruit of size 44 or smaller packed in trays are required to weigh at least 6½ pounds, and fruit of Size 34 and larger must weigh at least 7½ pounds. This change will contribute to orderly marketing by eliminating the current wide variance in size packaging and improving buyer satisfaction with the product. This requirement may result in slightly higher inspection costs because of the extra time it will take for inspectors to weigh the fruit packed in trays. However, the committee believes the added cost will be more than offset by improved returns resulting from increases in buyer satisfaction and sales.

Subsequent to the initial recommendation to establish minimum tray weight requirements, the committee met on July 19, 1989, to further discuss the implementation of this recommendation. At this meeting, the committee clarified its intent that the weight requirements be applied to trays of kiwifruit only at the time of initial inspection, and recommended a modification of the allowable tolerance for underweight trays.

Whenever grade, size, quality or maturity requirements are in effect for California kiwifruit, handlers are required to have their fruit inspected and certified as meeting those size and quality standards. Under the current inspection requirements (§ 920.155), the applicable inspection certificates are valid only until January 15 of each fiscal year or 21 days from the date of inspection, whichever is later. If a lot of kiwifruit is shipped after the applicable inspection certificate has become invalid, a second inspection is necessary. This requirement recognizes the fact that kiwifruit is perishable and may deteriorate in quality when stored for long periods of time. The second inspection is intended to assure the shipment of only acceptable quality fruit to consumers. The committee believes, however, that it is unnecessary to check the tray weights a second time, since studies indicate that kiwifruit gains weight in storage as starches convert to sugar. Section 920.302(a)(4)(ii) has therefore been revised to specify that trays are only required to be weighed once. This modification will reduce any additional inspection costs resulting from the establishment of this weight requirement.

The committee also recommended a modification of the allowance for underweight trays as an additional means of minimizing inspection costs. As proposed, fruit packed in an individual tray would not have been permitted to weigh more than 4 percent less than the specified minimum net weight. With this 4 percent tolerance, Size 38 fruit, with a required minimum net weight of 7 pounds, would have been required to weigh at least 6 pounds, 4.48 ounces. Since the scales currently utilized by the Federal-State Inspection Service do not measure fractions of an ounce, the 4 percent tolerance has been modified to provide that fruit may not weigh more than ¼-pound or 4 ounces less than the specified minimum net weight. Additionally, based upon information from the Federal-State Inspection Service, subparagraph (a)(4)(ii) of § 920.302 has been revised to provide that at least 90 percent of the sample units in a lot must meet the minimum net weight. This latter modification clarifies the method by which the minimum tray weight requirements will be applied, and is consistent with the current tolerance established in § 920.302(a)(4)(iv) with respect to pack requirements.

In addition to trays, kiwifruit is packed in volume-filled containers. The pack requirements established for fruit in such containers differ from those in effect for tray-packed fruit. Since volume-filled containers are not packed by count, the numerical size designations used for trays are not directly applicable to these containers. To provide a uniform basis for sizing fruit packed in these containers, the numerical counts used in tray packs have been translated into equivalent weight counts that can be applied to fruit in volume-filled containers. For example, fruit from 30-count trays were assembled into 8-pound samples. The number of pieces of fruit it took to form an 8-pound sample then became the criteria to determine the size of the fruit in containers other than trays. The current handling regulation includes a table which defines nine numerical count size designations in such a manner. If a volume-filled container is marked with a numerical count size designation, it must be packed in accordance with those definitions. However, marking the container with a size designation is not now required.

This rule revises these tray equivalency size designations, and requires that volume-filled containers be marked with an established size designation. These changes were recommended by the committee, by a nine to one vote.

At the present time, the labeling of volume-filled containers with respect to the size of the fruit is voluntary, and such labelling is far from uniform among handlers. Some handlers use the tray-equivalent count size designations, some use actual counts, and others do not label volume-filled containers with respect to size at all. Requiring the marking of tray equivalent sizes on volume-filled containers will serve to standardize packing practices and minimize confusion among buyers concerning the content of different packs.

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This rule also revises the table set forth in subparagraph (a)(4)(iii) of § 920.302 which defines the numerical count designations in terms of the maximum number of fruit per 8-pound sample. Over the past four seasons, the industry has conducted surveys of the average number of fruit per sample unit in each of the different size categories. The revision of the size designation table is necessary to provide more accurate tray equivalencies, reflecting current packing practices.

Kiwifruit packed in volume-filled containers must meet a size uniformity requirement similar to that established for tray-packed fruit. In the case of volume-filled containers, larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter, and fruit smaller than a Size 30 may not vary by more than ⅜-inch in diameter.

This rule revises the current size uniformity requirement by decreasing the allowable size variance for Sizes 45/46 and 49 (the two smallest sizes) from ⅜-inch to ¼-inch in diameter. Thus, the revision requires that larger size fruit (Size 30 and larger) may not vary by more than ½-inch in diameter, intermediate size fruit (Sizes 33 to 42) may not vary by more than ⅜-inch in diameter, and small sized fruit (Size 45/46 and smaller) may not vary by more than ¼-inch in diameter. This revision was recommended by the committee by an eight to two vote.

Reducing the allowable size variance makes the pack requirements for volume-filled containers more comparable to those established for trays. Therefore, this action will result in more uniform kiwifruit packing practices. By reducing the allowable variance for the smaller sized fruit, it will also provide a more uniform pack. This requirement could result in slightly higher packing costs because of the extra time required for sorting. However, the committee believes the added costs will be more than offset by improved returns resulting in increases in buyer satisfaction and sales.

Paragraph (b) of § 920.302 now includes definitions of Size 49 and Size 30 for volume-filled containers. Since all size designations are set forth in subparagraph (a)(4)(iii) of the regulation, and all sizes are defined in that subparagraph, all of these definitions should be referenced. Therefore the definitions for Size 49 and Size 30 are deleted from § 920.302(b), and a general definition referencing the table in paragraph (a)(4)(iii) is added.

In supporting its recommendation for a higher quality standard and more uniform packing requirements, the committee pointed to increasing world production of kiwifruit, which has resulted in added competition in both domestic and export markets. In order to improve grower returns, the committee believes it is necessary to improve buyer perceptions of California kiwifruit relative to kiwifruit from other countries. These changes should help to improve buyer impressions of the product, and make the California industry more competitive in both domestic and foreign markets.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Notice of this action in the form of a proposed rule was given in the July 26, 1989, issue of the **Federal Register** [54 FR 31042] affording interested persons until August 25, 1989, to file written comments. One written comment was received which was submitted on behalf of five kiwifruit growers and a kiwifruit handler. The comment opposed the changes set forth in the proposed rule because, in their view, the additional requirements would impose a financial hardship upon the California kiwifruit industry. While some of the changes in handling requirements may increase costs, any additional costs would be more than offset by improved returns resulting from increased sales for both producers and handlers. Accordingly, there would be no financial hardship imposed on the California kiwifruit industry by this action as suggested by the comment.

After consideration of all relevant information, including the proposal set forth in the notice and the comments filed with respect thereto, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act. It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (95 U.S.C. 553) because shipments of kiwifruit have already begun, and this rule should apply to as many shipments as possible in order to be of maximum benefit during the season.

List of Subjects in 7 CFR Part 920

California, Kiwifruit, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to reads as follows:

Authority: Secs. 1–19, 46 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraphs (a)(1) up to the proviso, (a)(4) (ii) and (iii) and (b) to read as follows:

Note: This section will be published in the *Code of Federal Regulations.*

§ 920.302 Grade, size, pack and container regulations.

(a) * * *

(1) *Grade requirements.* Fresh shipments of kiwifruit shall grade at least U.S. No. 2: * * *

* * * * *

(4) *Pack requirements.*

(i) * * *

(ii) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. When packed in closed containers, the size shall be indicated by marking the container with the numerical count, and the contents shall conform to the marked count. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Size designation of fruit	Minimum net weight of fruit (lbs.)
34 or larger	7.5
35 to 37	7.25
38 to 40	7.00
41 to 43	6.75
44 and smaller	6.50

At least 90 percent of the sample units, by count, in lot must meet the specified minimum net weight, but no sample unit may be more than ¼-pound or 4 ounces less than such weight.

(iii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) is Size 45/46 or smaller. Such containers shall be marked with a numerical count size designation as shown in Column 1 of the following table, and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	37
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

* * * * *

(b) *Definitions.* (1) The terms "U.S. No. 2," "fairly uniform in size," and "diameter" mean the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

(2) Size designations means the same as defined in the table in (a)(4)(iii) of this section.

Dated: October 3, 1989.

William J. Doyle,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23736 Filed 10–6–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1137

[DA–89–035]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of September 1989 through February 1990 the portion of the Eastern Colorado Federal milk order relating to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Suspended for the months of September 1989 through August 1990 is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant, and the percentage limits on diversions which will allow cooperative associations to divert to nonpool plants a volume of milk equal to the volume delivered to pool plants during the month. Through an inadvertent error, the notice of proposed suspension stated that this period should also be September 1989 through February 1990. The provisions being suspended have been suspended for the same period during the previous three years. A correction of the error appearing in the notice is therefore being made in this final rule. These actions were requested by a cooperative association that represents producers who supply a significant amount of milk for the market. The suspension action is necessary to assure that the association's member dairy farmers, who have regularly supplied the market's fluid needs, will continue to share in the market's fluid milk sales without incurring the expense of uneconomic and inefficient movements of milk.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 23, 1989; published August 28, 1989 (54 FR 35498).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 28, 1989 [54 FR 35498] concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. In addition to the proponents, one other dairy farmer cooperative submitted written comments in support of the proposed suspension action. The proponent cooperative also pointed out that the notice of proposed suspension published August 28, 1989 (54 FR 35498) contained an inadvertent error in that it indicated that a portion of § 1137.12(a)(1) was proposed to be suspended for the months of September 1989 through February 1990. The purpose of the proposal, as noted in written comments in support of this suspension action filed by Mid-Am and Western Dairymen Cooperative, Inc., was to have the dates of suspension for a portion of § 1137.12(a)(1) be from September 1989 through August 1990, as had been done for the past three years. This error is corrected in this action by making the suspension effective for September 1989 through August 1990. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1989 through February 1990:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a", and "of March through August"; and

2. For the months of September 1989 through August 1990:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of," and the word "distributing."

Statement of Consideration

This action suspends for the months of September 1989 through February 1990 the portion of the Eastern Colorado Federal milk order relating to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Suspended for the months of September 1989 through August 1990 is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. The suspension also relaxes the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants. Currently the limits are 30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months. The suspension allows up to 50

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percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool. The suspension action is necessary to assure that the association's member dairy farmers, who have regularly supplied the market's fluid needs, will continue to share in the market's fluid milk sales without incurring the expense of uneconomic and inefficient movements of milk. The suspended provisions were also suspended for the same period during the previous three years.

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. Information reviewed in connection with this request indicates that the volume of producer milk pooled on the Eastern Colorado order during the first seven months of 1989 increased 13.9 percent over year-earlier levels. During the same period, producer milk used in Class I increased only 0.7 percent over the previous year. Thus, there is less need for supply plant milk at pool distributing plants, and, therefore, less need to require each producer to "touch base" during the months that the suspension will be in effect. Moreover, Mid-Am has indicated that commitments have been made to make ample supplies of locally produced milk available to meet the fluid requirements of Eastern Colorado distributing plants.

Suspension of the order's "touch-base" delivery requirement and relaxing the limits of diversions to nonpool plants will not allow additional milk supplies to be pooled, but will provide for more efficient disposition on producer milk not needed for meeting the fluid requirements of Eastern Colorado distributing plants.

Comments filed by Western Dairymen Cooperative, Inc., a cooperative association representing a majority of the producers pooled under the order, supported the proposed suspension action.

Without the suspension action, Mid-Am would be required to ship milk from the western Nebraska and western Kansas area to Denver-area distributing plants, which would displace locally produced milk and would result in increased shipments from the Denver area to surplus handling plants.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**

List of Subjects in 7 CFR Part 1137

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1137.7(b) and § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of September 1989 through February 1990; and for the months September 1989 through August 1990, respectively.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In the second sentence of § 1137.7(b), the words "plant which was qualified as a", and "of March through August" are suspended.

§ 1137.12 [Suspended in part]

3. In the first sentence of § 1137.2(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of," and the word "distributing."

Signed at Washington, DC, on October 30, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–23839 Filed 10–6–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–23–AD; Amdt. 39–6351]

Airworthiness Directives; Beech Model 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Model 300 airplanes which requires inspection and adjustment of the upper aft cowling access door latches, modification of the latch striker plate, and modification of the aft cowlings to improve cowling door retention. The FAA has learned of several instances where upper aft cowling access doors have opened in flight and separated from the airplane. This action will preclude further cowling door loss and resultant airframe damage.

EFFECTIVE DATE: November 6, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Service Bulletin Number 2329, dated August 1989, and Beechcraft Safety Communique Number 300–75, dated January 1987, applicable to this AD, may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 681–9111. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: The FAA determined that there have been thirteen instances of the upper aft cowling access doors on certain Beech Model 300 airplanes opening and separating in flight. The separated cowling doors have struck the fuselage, wing, and empennage, resulting in depressurization, fuel leaks and structural damage. As a result, Beech released Beechcraft Safety Communique Number 300–75, dated January 1987, which recommended a one-time inspection of the upper aft cowling access door upper latches to determine the degree of engagement between the latch bolts and the striker plates. If inadequate engagement was discovered, a modified striker plate was to be installed prior to further flight.

Subsequently, other incidents of upper aft cowling access door separation occurred, and Beech has released Beechcraft Service Bulletin Number 2329, dated August 1989, which defines inspection of the aft cowl door upper latches to ensure they are in proper adjustment per the latch adjustment procedures of the Model 300 Maintenance Manual, chapter 71–10, and which specifies the latch engagement inspection/modification procedures of Safety Communique No. 300–75. Further, Service Bulletin No. 2329 specifies the modification of the cowling by the addition of nutplates and screws to provide more positive upper aft cowling access door retention.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued, applicable to certain Beech Model 300 airplanes, to require: (a) Inspection of the upper aft cowling access door latches and adjustment if necessary to provide proper tension, (b) inspection for total engagement between the latch adjusting bolts and striker plates, and modification of any striker plates with inadequate engagement, and (c) modification of the cowlings to provide positive upper aft cowling access door retention.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Model 300 (Serial Numbers FA–2 through FA–215, and FF–1 through FF–19) airplanes certified in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent the aft cowling doors from opening in flight and separating from the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the upper aft cowling access door latches, adjust if necessary and, if required, modify the striker plates, in accordance with the instructions in Part I of Beechcraft Service Bulletin No. 2329, dated August 1989. (Previous compliance with Beechcraft Safety Communique dated January 1987, does not constitute compliance with this paragraph.)

(b) Within the next 50 hours TIS after the effective date of this AD, modify the cowlings in accordance with the instructions in Part II of Beechcraft Service Bulletin No. 2329, dated August 1989.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 8, 1989.

Issued in Kansas City, Missouri, on September 27, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–23790 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 769

Restrictive Trade Practices or Boycotts

AGENCY: Bureau of Export Administration, Department of Commerce.

ACTION: Interpretation.

SUMMARY: Questions have arisen concerning the application of the prohibitions of the regulations and the reporting requirement to certain clauses appearing in various documents received from boycotting countries. The Department wishes to clarify the application of the foreign boycott prohibitions and reporting requirements to certain clauses appearing in various documents received from boycotting countries. These clauses involve (1) acknowledgements that the import, customs and boycott laws apply to goods imported into a boycotting country and (2) the removal of a blacklist certificate requirement when specified vessels are used.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Jon Paugh, Director of Compliance Policy, Office of Antiboycott Compliance, U.S. Department of Commerce (202–377–4550).

SUPPLEMENTARY INFORMATION: The antiboycott regulations prohibit certain actions or agreements related to unsanctioned foreign boycotts (§ 769.2). The regulations also require that certain boycott-related requests be reported (§ 769.6(a)(1)). The regulations apply only to conduct relating to activities in U.S. commerce (§ 769.1(d)). Questions

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have arisen concerning the application of the prohibitions of the regulations and the reporting requirement to certain clauses appearing in various documents received from boycotting countries. These clauses involve: (1) Acknowledgements that the import, customs and boycott laws apply to goods imported into a boycotting country; and (2) removal of a blacklist certificate requirement when specified vessels are used. The Department wishes to clarify how it treats these clauses under the law.

In addition, the Department wishes to clarify the circumstances in which the furnishing of information prohibited by § 769.2(c), (d) and (e) will be regarded as related to activities in U.S. commerce.

This rule is consistent with Executive Orders 12291 and 12661.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment and delay in effective date.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administration Procedure Act (5 U.S.C. 553,), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This interpretation involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0012.

The principal author of this interpretation is Jon Paugh, Director of Compliance Policy, Office of Antiboycott Compliance.

List of Subjects in 15 CFR Part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements, Restrictive trade practices, Trade practices.

For the reasons stated in the preamble, 15 CFR part 769 is amended as follows:

PART 769—[AMENDED]

1. The authority citation for part 769 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Supplement No. 15 is added to part 769 as follows:

Supplement No. 15

Interpretation

(a) *Contractual clause concerning import, customs and boycott laws of a boycotting country.* The following language has appeared in tender documents issued by a boycotting country:

Supplier declares his knowledge of the fact that the import, customs and boycott laws, rules and regulations of [name of boycotting country] apply in importing to [name of boycotting country].

Supplier declares his knowledge of the fact that under these laws, rules and regulations, it is prohibited to import into [name of the boycotting country] any products or parts thereof that originated in [name of boycotted country]; were manufactured, produced or imported by companies formed under the laws of [name of boycotted country]; or were manufactured, produced or imported by nationals or residents of [name of boycotted country].

Agreeing to the above contractual language is a prohibited agreement to refuse to do business, under § 769.2(a). The first paragraph requires broad acknowledgment of the application of the boycotting country's boycott laws, rules and regulations. Unless this language is qualified to apply only to boycott restrictions with which U.S. persons may comply, agreement to it is prohibited. See § 769.2(a), examples (v) and (vi) under "Agreement to Refuse to Do Business."

The second paragraph does not limit the scope of the boycott restrictions referenced in the first paragraph. It states that the boycott laws include restrictions on goods originating in the boycotted country; manufactured, produced or supplied by companies organized under the laws of the boycotted country; or manufactured, produced or supplied by nationals or residents of the boycotted country. Each of these restrictions is within the exception for compliance with the import requirements of the boycotting country (§ 769.3(a–1)). However, the second paragraph's list of restrictions is not exclusive. Since the boycott laws generally include more than what is listed and permissible under the antiboycott law, U.S. persons may not agree to the quoted clause. For example, a country's boycott laws may prohibit imports of goods manufactured by blacklisted firms. Except as provided by § 769.3(f), agreement to and compliance with this boycott restriction would be prohibited under the antiboycott law.

The above contractual language is distinguished from the contract clause determined to be permissible in Supplement 1, Part II, A, by its acknowledgment that the boycott requirements of the boycotting country apply. Although the first sentence of the Supplement 1 clause does not exclude the possible application of boycott laws, it refers only to the import and customs laws of the boycotting country without mentioning the boycott laws as well. As discussed fully in Supplement 1, compliance with or agreement to the clause quoted there is, therefore, permissible.

The contract clause quoted above, as well as the clause dealt with in Supplement 1, Part II, A, is reportable, under § 769.6(a)(1).

(b) *Letter of credit terms removing blacklist certificate requirement if specified vessels used.* The following terms frequently appear on letters of credit covering shipments to Iraq:

Shipment to be effected by Iraqi State Enterprise for Maritime Transport Vessels or by United Arab Shipping Company (SAB) vessels, if available.

If shipment is effected by any of the above company's [sic] vessels, black list certificate or evidence to that effect is not required.

These terms are not reportable and compliance with them is permissible.

The first sentence, a directive to use Iraqi State Enterprise for Maritime Transport or United Arab Shipping vessels, is neither reportable nor prohibited because it is not considered by the Department to be boycott-related. The apparent reason for the directive is Iraq's preference to have cargo shipped on its own vessels (or, as in the case of United Arab Shipping, on vessels owned by a company in part established and owned by the Iraqi government). Such "cargo preference" requirements, calling for the use of an importing or exporting country's own ships, are common throughout the world and are imposed for non-boycott reasons. (See § 769.2(a) example (vii), AGREEMENTS TO REFUSE TO DO BUSINESS.)

In contrast, if the letter of credit contains a list of vessels or carriers that appears to constitute a boycott-related whitelist, a directive to select a vessel from that list would be both reportable and prohibited. Where such a directive appears in conjunction with a term removing the blacklist certificate requirement if these vessels are used, the Department will presume that beneficiaries, banks and any other U.S. person receiving the letter of credit know that there is a boycott-related purpose for the directive.

The second sentence of the letter of credit language quoted above does not, by itself, call for a blacklist certificate and is not, therefore, reportable. If a term elsewhere on the letter of credit imposes a blacklist certificate requirement, then that other term would be reportable.

(c) *Information not related to a particular transaction in U.S. commerce.* Under § 769.2 (c), (d) and (e), U.S. persons are prohibited, with respect to their activities in U.S. commerce, from furnishing certain information. It is the Department's position that the required nexus with U.S. commerce is established where the furnishing of information itself occurs in U.S. commerce. Even where the furnishing of information is not itself in U.S. commerce, however, the necessary relationship to U.S. commerce will be established if the furnishing of information relates to particular transactions in U.S. commerce or to anticipated transactions in U.S. commerce. See, e.g., § 769.2(d), examples (vii), (ix) and (xii).

The simplest situation occurs where a U.S. person located in the United States furnishes information to a boycotted country. The transfer of information from the United States to a foreign country is itself an activity in U.S. commerce. See § 769.1(d)(1)(iv). In some circumstances, the furnishing of information by a U.S. person located outside the United States may also be an activity in U.S. commerce. For example, the controlled foreign subsidiary of a domestic concern might furnish to a boycotting country information the subsidiary obtained from the U.S.-located parent for that purpose. The subsidiary's furnishing would, in these circumstances, constitute an activity in U.S. commerce. See § 769.1(d)(8).

Where the furnishing of information is not itself in U.S. commerce, the U.S. commerce requirement may be satisfied by the fact that the furnishing is related to an activity in U.S. foreign or domestic commerce. For example, if a shipment of goods by a controlled-in-fact foreign subsidiary of a U.S. company to a boycotting country gives rise to an inquiry from the boycotting country concerning the subsidiary's relationship with another firm, the Department regards any responsive furnishing of information by the subsidiary as related to the shipment giving rise to the inquiry. If the shipment is in U.S. foreign or domestic commerce, as defined by the regulations, then the Department regards the furnishing to be related to an activity in U.S. commerce and subject to the antiboycott regulations, whether or not the furnishing itself is in U.S. Commerce.

In some circumstances, the Department may regard a furnishing of information as related to a broader category of present and prospective transactions. For example, if a controlled-in-fact foreign subsidiary of a U.S. company is requested to furnish information about its commercial dealings and it appears that failure to respond will result in its blacklisting, any responsive furnishing of information will be regarded by the Department as relating to all of the subsidiary's present and anticipated business activities with the inquiring boycotting country. Accordingly, if any of these present or anticipated business activities are in U.S. commerce, the Department will regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

In deciding whether anticipated business activities will be in U.S. commerce, the Department will consider all of the surrounding circumstances. Particular attention will be given to the history of the U.S. person's business activities with the boycotting country and others, the nature of any activities occurring after a furnishing of information occurs and any relevant economic or commercial factors which may affect these activities.

For example, if a U.S. person has no activities with the boycotting country at present but all of its other international activities are in U.S. commerce, as defined by the regulations, then the Department is likely to regard any furnishing of information by that person for the purpose of securing entry into the boycotting country's market as relating to anticipated activities in U.S. commerce and subject to the antiboycott regulations. Similarly, if subsequent to the furnishing of information to the boycotting country for the purpose of securing entry into its markets, the U.S. person engages in transactions with that country which are in U.S. commerce, the Department is likely to regard the furnishing as related to an activity in U.S. commerce and subject to the antiboycott regulations.

(Approved by the Office of Management and Budget under control number 0694–0012)

Dated: September 21, 1989.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 89–23259 Filed 10–6–89; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, 540, 544, and 555

[Docket No. 87N–0078]

Animal Drugs, Feeds, and Related Products; Chloramphenicol, etc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the regulations that reflect approval of new animal drug applications (NADA's) held by John D. Copanos & Co., Inc. FDA withdrew the NADA's for these products in a notice published in the **Federal Register** of August 6, 1987 (52 FR 29274), because the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of these products were inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of a written notice specifying the inadequacies.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1987 (52 FR 7311) FDA issued a notice of opportunity for hearing proposing to withdraw approval of new drug applications (NDA's) and NADA's for sterile injectable products manufactured by John D. Copanos & Co., Inc., Fort Lauderdale, FL 33334, and Kanasco, Ltd., Baltimore, MD 21225. The basis for the proposal was that new information, evaluated together with the evidence when the applications were approved, showed that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of such drugs were inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice from FDA specifying the inadequacies.

In a notice published in the **Federal Register** of August 6, 1987 (52 FR 29274), FDA withdrew approval of the NDA's and NADA's that had been the subject of the notice of opportunity for hearing. The agency withdrew approval of the following NADA's held by John D. Copanos & Co., Inc.:

NADA 12–571; Iron dextran; "Ferron-100"
NADA 12–627; Prednisolone; "Ramasone"
NADA 30–728; Iron dextran
NADA 47–648; Dexamethasone; "Dexasone"
NADA 49–554; Phenylbutazone; "Buta-Phen"
NADA 49–552; Oxytocin
NADA 65–105; Procaine penicillin G and dihydrostreptomycin sulfate; "Veticil"
NADA 65–120; Dihydrostreptomycin sulfate
NADA 65–136; Procaine penicillin G
NADA 65–144; Procaine penicillin G, dihydrostreptomycin sulfate, dexamethasone, and chlorpheniramine maleate; "Dexamycin"
NADA 65–277; Benzathene penicillin and procaine penicillin G; "Combipen"
NADA 65–365; Chloramphenicol; "Veticol"
NADA 93–578; Oxytetracycline
NADA 124–510; Dexamethasone

Upon withdrawal of approval of new animal drug applications, the agency is required by section 512(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(i)) to remove the regulations that reflect the approvals. This document amends 21 CFR 522.540(d)(2)(i) and (e)(2), 522.1182(a)(2), 522.1662a (f) and (j), 522.1680(b), 522.1720(b)(2), 540.255c(c)(2) (i) and (ii), 540.274b(c)(4), 544.275(c)(2) and (c)(4)(iii), and 555.210(c)(2) by removing those portions that reflect the approvals being withdrawn. Additionally, 21 CFR 510.600(c) (1) and (2) is amended to remove John D. Copanos & Co., Inc., from the list of sponsors of approved applications because the firm is no longer the sponsor of any approved NADA's.

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List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

21 CFR Part 544

Animal drugs, Antibiotics.

21 CFR Part 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 522, 540, 544, and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "John D. Copanos & Co., Inc.," and in the table in paragraph (c)(2) by removing the entry"010271".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. Section 522.540 is amended in paragraph (d)(2)(i) by removing ", 010271," and by revising paragraph (e)(2) to read as follows:

§ 522.540 Dexamethasone injection.

* * * * *

(e) * * *

(2) *Sponsor.* See No. 053617 in § 510.600(c) of this chapter.

* * * * *

§ 522.1182 [Amended]

5. Section 522.1182 *Iron dextran complex injection is* amended by removing and reserving paragraph (a)(2).

§ 522.1662a [Amended]

6. Section 522.1662a *Oxytetracycline hydrochloride injection* is amended by removing and reserving paragraphs (f) and (j).

§ 522.1680 [Amended]

7. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing "010271,".

§ 522.1720 [Amended]

8. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(2) by removing "010271,".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

9. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

10. Section 540.255c is amended in paragraph (c)(2)(i) by removing "010271," and by revising paragraph (c)(2)(ii) to read as follows:

§ 540.255c Sterile benzathine penicillin G and procaine penicillin G suspension.

* * * * *

(c) * * *

(2) * * *

(ii) See Nos. 000029 and 000856 in § 510.600(c) of this chapter for the conditions of use in paragraph (c)(4)(ii) of this section.

* * * * *

§ 540.274b [Amended]

11. Section 540.274b *Procaine penicillin G aqueous suspension* is amended by removing and reserving paragraph (c)(4).

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

12. The authority citation for 21 CFR part 544 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

13. Section 544.275 is amended by revising paragraphs (c)(2) and (c)(4)(iii) to read as follows:

§ 544.275 Dihydrostreptomycin-sulfate injection, sterile.

* * * * *

(c) * * *

(2) *Sponsor.* See Nos. 000069 and 010719 in § 510.600(c) of this chapter.

* * * * *

(4) * * *

(iii) *Limitations.* Administer by deep intramuscular injection only. Treatment should be continued for 3 to 5 days or until the urine is free of leptospira for at least 72 hours as measured by darkfield microscopic examination. Treatment with subtherapeutic dosages, excessive duration of therapy, or inappropriate use of this antibiotic may lead to the emergence of streptomycin or dihydrostreptomycin resistant organisms. The use of this drug must be discontinued for 30 days before treated animals are slaughtered for food. The drug is not for use in animals producing milk because use of the drug will result in contamination of the milk. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

14. The authority citation for 21 CFR part 555 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 555.210 [Amended]

15. Section 555.210 *Chloramphenicol injection* is amended in paragraph (c)(2) by removing ", 010271,".

Dated: September 28, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23777 Filed 10-6-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8265]

RIN 1545-AL16

Taxation of Gain or Loss From Certain Nonfunctional Currency Transactions (Section 988 Transactions); Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8265, which was published in the **Federal Register** for Thursday, September 21, 1989, (54 FR 38816). The temporary regulations relate to the taxation of gain or loss from certain foreign currency transactions.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Dorfman or Charles T. Plambeck, 202-566-6284 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of corrections implement section 988 of the Internal Revenue Code of 1986, which defines such financial transactions and provides rules for timing (in certain cases), character, and source of gain or loss that generally is due to fluctuations in exchange rates. The temporary regulations also provide rules for certain integrated hedging transactions. These provisions were amended or added by the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2085).

Need for Correction

As published, T.D. 8265 contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8265) which was the subject of FR Doc. 89-22017, is corrected as follows:

§ 1.267(f)-1T [Corrected]

1. On page 38823, column 2, § 1.267(f)-1T (h)(2), first and second line, the reference "paragraph (b)(2)(i) of this section" is removed and the reference "§ 1.988-2T (b)(2)(i)" is added in its place.

§ 1.988-1T [Corrected]

2. On page 38825, column 3, § 1.988-1T (a)(3) Example (11), seventh line, the reference "paragraphs (a)(1)(ii) and (iii)" is removed and the reference "paragraphs (a)(1)(ii) and (2)(iii)" is added in its place.

3. On page 38827, column 3, § 1.988-1T (a)(6)(ii) Example (1), eleventh line from the bottom of this paragraph, the date "January 3, 1983" is removed and the date "January 3, 1990" is added in its place.

§ 1.988-2T [Corrected]

4. On page 38838, column 3, § 1.988-2T (d)(4)(ii), fifth line from the bottom of this column, the words "on such date." is removed and a "." is added in its place.

§ 1.988-5T [Corrected]

5. On page 38844, column 2, § 1.988-5T (a)(5)(iv), second line, the reference "paragraph (a)(5)" is removed and the reference "paragraph (a)(5)(v)" is added in its place.

6. On page 38849, column 2, § 1.988-5T (b)(4)(iv), last line, the reference "paragraph (b)(4)(vi)" is removed and the reference "paragraph (b)(4)(vi)" is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-23719 Filed 10-6-89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3657-7]

Plan for Vulcan Materials Company Geismar Chemicals Plant, Geismar, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the Vulcan Materials Company Geismar Chemicals Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). The Bubble uses credits obtained from extra control of emissions from five volatile organic compound (VOC) storage tanks in lieu of controls on one process vent and one VOC storage tank. The emission reduction credits (ERCs) were determined to be valid consistent with the provisions for bubbles outlined in EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986 (51 FR 43814).

DATES: This rulemaking is effective November 9, 1989.

ADDRESSES: Copies of the submittal are available for public inspection during normal business hours at:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Building, 625 North 4th Street, P.O. Box 44096, Baton Rouge, Louisiana 70804-4096.

Public Information Reference Unit, Environmental Protection Agency, Library, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 6 Office, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan Section: Air Programs Branch: Air, Pesticides & Toxics Division: EPA Region 6 Office, 1445 Ross Ave., Dallas, Texas 75202, (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:

A. Background

A brief background of the Vulcan Bubble is provided here. For a more comprehensive description of the details of this Emissions Trade see the proposed approval, Plan for Vulcan Materials Company Geismar Chemicals Plant, Geismar, LA (54 FR 23672, June 2, 1989).

Vulcan Materials Company's Geismar Chemical Plant contains several chemical storage tanks regulated under Louisiana Air Quality Regulation (LAQR) 22.3 and waste gas vents under LAQR 22.8. The company has controlled five VOC storage tanks to a level beyond Reasonable Available Control Technology (RACT), as an alternative to placing controls on one other tank and one process vent. The credit the company is claiming results from the installation of a vapor recovery system on a tank farm. The entire trade is summarized below:

$$\frac{\text{Credits from control of tanks } (-163.26) \text{ TPY}}{} + \frac{\text{Noncompliance emissions } (117.78)(1.1) \text{ TYP}}{} = \frac{\text{Progress toward attainment } (-33.7) \text{ TPY}}{\text{(10 percent progress toward attainment)}}$$

Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
CCl_4 storage tank 4C	13.52	13.52	0	67.16	13.52	−53.64
EDC storage tank 3A	4.61	4.61	0	32.22	4.61	−27.61

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Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
EDC storage tank 3B	4.64	4.64	0	33.22	4.64	−28.58
EDC storage tank 3C	4.64	4.64	0	33.22	4.64	−28.56
EDC storage tank 3D	10.63	10.63	0	35.48	10.63	−24.85
HCl vent	113.80	113.80	0	0.00	113.80	113.80
CH_3OH storage tank 3–73	4.58	4.58	0	0.80	4.58	3.98
10 percent progress toward attainment						11.78
Total	156.42	156.42	0	201.9	156.4	−33.7

B. Discussion

The Bubble was reviewed for compliance with the requirements of Section 110 of the Clean Air Act, 40 CFR part 51, EPA's Proposed Emissions Trading Policy Statement (ETPS) published in the **Federal Register** on April 7, 1982 (47 FR 15076) and the Final ETPS published in the **Federal Register** on December 4, 1986 (51 FR 43814).

In the proposed approval for Vulcan, an extensive background discussion was given on pending bubbles. Vulcan is a case wherein the geographic location of the plant was changed from nonattainment with a demonstration of attainment to nonattainment without a demonstration of attainment while the Bubble was being processed. Special assurances are required from the State to process a trade like this under the "Treatment of Pending Bubble Applications" section (51 FR 43840) of the final ETPS. These were given in the proposal on 54 FR 23675. These three State assurances were provided to EPA by the State during the comment period.

The State issued a permit to Vulcan, #1829T(M–1), for the trade on April 9, 1987. As stated in the proposal (54 FR 23674), several points of enforceability needed to be included in a revised permit before EPA gave final approval to the Bubble. EPA received the revised permit issued by the LDEQ on July 29, 1989, with these points of enforceability included, as follows:

1. A test method to determine vapor condenser efficiency was included under Specific Condition 5. A test method for the HCl scrubber vent was included under Specific Condition 4.

2. A method to verify compliance with emissions from tanks using EPA publication AP–42 was included under Specific Condition 1.

3. The methanol tank (3–73) has been added to Specific Condition 1 for recordkeeping.

4. All attachments included with the revised permit (#1829T(M–2)) have been referenced in Specific Condition 3 of the permit as being enforceable components of the permit. All pages have been numbered (n of 17).

EPA received no public comments, beyond the responses from the State, on the June 2, 1989, proposed rulemaking.

C. Final Action

Because the State has fulfilled the requirements stipulated in the June 2, 1989, proposed approval, and because all other requirements have been met, EPA approves the Vulcan Materials Company Geismar Chemicals Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana SIP. The approved LDEQ permit for this trade is #1829T (M–2) dated July 28, 1989.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 3 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 8, 1989.

Joe D. Winkle,

Acting Regional Administrator (6A).

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

Subpart T—Louisiana

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.970 is amended by adding paragraph (c)(52) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(52) On October 31, 1983, the Governor submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan for the Vulcan Materials Company facility located at Geismar, Ascension Parish. A permit was issued by LDEQ on March 24, 1983 (#1829T), but after several revisions, the final permit for the trade is #1829T (M–2), issued July 28, 1989. This Bubble uses credits obtained from installation of a vapor recovery system on a tank farm of five VOC storage tanks in lieu of controls on one process vent and one VOC storage tank.

(i) Incorporation by reference.

(A) LDEQ Permit number 1829T (M–2), Revision of Bubble Permit—Vulcan Chemicals Company, Geismar, Ascension Parish, Louisiana, issued July 28, 1989.

(ii) Additional material.

(A) Letter dated June 28, 1989, from the Administrator of the Louisiana Office of Air Quality, giving assurances that the State has resources and plans necessary to strive toward attainment and maintenance of the NAAQS for ozone taking into account the influence of this Bubble on air quality.

[FR Doc. 89–23774 Filed 10–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–455, RM–6397]

Radio Broadcasting Services; Dora and Warrior, Alabama

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 254A to Warrior, Alabama, as that community's first local FM service, in response to a counterproposal filed by Billy G. Hogan d/b/a Hogan Broadcasting System. Coordinates used for Channel 254A at Warrior are 33–50–13 and 86–48–36. With this action, the proceeding is terminated.

DATES: Effective November 16, 1989; The window period for filing applications on Channel 254A at Warrior, Alabama, will open on November 17, 1989, and close December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window application filing process at Warrior, Alabama, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket 88–455 adopted September 18, 1989 and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended by adding Warrior, Alabama, Channel 254A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23795 Filed 10–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–55; RM–5161, RM–5400 and RM–5401]

Radio Broadcasting Services; Atmore, Chatom, and Bayou LaBatre, Alabama, and Pascagoula, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Atmore, Alabama, substitutes Channel 291C3 for Channel 291A at Chatom, Alabama, and substitutes Channel 290C3 for Channel 292A at Pascagoula, Mississippi. The reference coordinates for the Channel 290A allotment at Atmore, Alabama, are 30–55–05 and 87–26–47, for the Channel 291C3 allotment at Chatom, Alabama, 31–34–20 and 88–07–26, and for the Channel 290C3 allotment at Pascagoula, Mississippi, 30–22–05 and 88–44–35. This document also modifies the license of Station WGUD, Pascagoula, Mississippi, to specify operation on Channel 290C3. This document dismisses the counterproposal to allot Channel 292A to Bayou LaBatre, Alabama. With this action, this proceeding is terminated.

DATES: Effective November 17, 1989. The window period for filing applications for the Channel 290A allotment at Atmore, Alabama, and the Channel 291C3 allotment at Chatom, Alabama, will open on November 20, 1989, and close on December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 86–55, adopted September 18, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama by adding Channel 290A at Atmore.

3. Section 73.202(b), the Table of FM Allotments, is amended under Alabama by removing Channel 291A and adding Channel 291C3 at Chatom.

4. Section 73.202(b), the Table of FM Allotments, is amended under Alabama by removing Channel 292A and adding Channel 290C3 at Pascagoula.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23796 Filed 10–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–600, RM–6468]

Radio Broadcasting Services; Colorado City, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296C1 to Colorado City, Arizona, as that community's first local broadcast service, in response to a petition filed by Diana L. Le Baron. The coordinates for Channel 296C1 are 36–59–24 and 112–58–36. With this action, the proceeding is terminated.

DATES: Effective November 17, 1989; The window period for filing applications on Channel 296C1 at Colorado City, Arizona, will open on November 20, 1989 and close on December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window application filing process at Colorado City, Arizona should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

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and Order in MM Docket No. 88-600, adopted September 11, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of Allotments, is amended by adding Colorado City, Arizona, Channel 296C1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23797 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-185; RM-6288, RM-6499, RM-6747]

Radio Broadcasting Services; Montgomery, Dunbar and Mount Gay-Shamrock, West Virginia and Paintsville, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227A to Montgomery, West Virginia, as that community's first local FM service, at the request of Upper Kanawha Valley Broadcasters, Inc. [*See* 53 FR 17232, May 16, 1988; 54 FR 3627, January 25, 1989.] Additionally, this action allots Channel 234C3 to Paintsville, Kentucky, as that community's second local FM service at the request of Morehead State University. Also at the request of Mills Broadcasting Inc., this action substitutes Channel 233B1 for Channel 233A at Dunbar, West Virginia, and modifies its license for Station WBES-FM at Dunbar to specify operation on the higher class co-channel, as that community's first wide coverage area service; and deletes Mount Gay-Shamrock, West Virginia, Channel 234A from the Table of Allotments. Channel 234C3 can be allotted to Paintsville in compliance with the section 73.207 of the Commission's Rules, at the city reference coordinates, which are 37-48-48 and 82-48-00. A site restriction of 6.5 kilometers (4 miles) is required for Channel 227A at Montgomery. The coordinates are 38-00-47 and 81-23-40. Channel 233B1 at Dunbar requires a site restriction of 4.9 kilometers (3.1 miles) north of the city, at coordinates 38-27-17 and 81-43-52. With this action, this proceeding is terminated.

DATES: Effective November 17, 1989. The window period for filing applications on Channel 227A at Montgomery, West Virginia, and Channel 234C3 at Paintsville, Kentucky, will open on November 20, 1989, and close on December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-185, adopted September 18, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under West Virginia, by adding Montgomery, Channel 227A; by adding Channel 233B1 and removing Channel 233A at Dunbar; by removing Mount Gay-Shamrock, Channel 234A; under Kentucky, by adding Channel 234C3 at Paintsville.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23798 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-49; RM-6541]

Radio Broadcasting Services; Baton Rouge, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C for Channel 264C1 at Baton Rouge, Louisiana, and modifies the license for Station WTGE-FM at Baton Rouge to specify operation on the higher class co-channel, at the request of Vetter Communications Company, Inc. *See* 54 FR 1071, March 10, 1989. Channel 264C can be sited 16.3 kilometers (10.1 miles) southwest of the community consistent with section 73.207 of the Commission's Rules. The coordinates are 30-19-35 and 91-16-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-49, adopted September 13, 1989, and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 264C1 and adding Channel 264C at Baton Rouge.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23844 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule gives notice of the publication of the new May 1989 Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) replacing the May 1986 issue. The printing of the NTIA Manual is on a triennial basis and will cover all changes in various government policies relating to the United States Government use of the radio frequency spectrum. These changes have been adopted by the Interdepartment Radio Advisory Committee (IRAC) AND approved by the National Telecommunications and Information Administration.

EFFECTIVE DATE: November 9, 1989.

FOR FURTHER INFORMATION CONTACT: Edwin E. Dinkle, National Telecommunications and Information Administration, Department of Commerce, Room H1605, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 377-0599.

SUPPLEMENTARY INFORMATION: The President by Reorganization Plan No. 1 of 1977 and Executive Order 12046 of March 27, 1978, delegated to the Secretary of Commerce authority to act for the President or under the President's authority in the discharge of certain Presidential telecommunication functions under the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The Secretary of Commerce has delegated this Presidential authority to the Assistant Secretary of Commerce for Communications and Information (the Assistant Secretary). The Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) is issued by the Assistant Secretary, and is specifically designed to detail the Assistant Secretary's frequency management responsibilities.

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio telecommunications.

For the reasons set out in preamble, title 47, chapter III, part 300 of the Code of Federal Regulations is amended as set forth below.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: E.O. 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

2. Section 300.1(b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall meet the requirements set forth in the May 1989 edition of the NTIA Manual, which is incorporated by reference with the approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Richard D. Parlow,

Associate Administrator, Office of Spectrum Management.

[FR Doc. 89-23753 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF TRANSPORTAION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-202; Amdt. No. 171-106]

Standards for Construction of Fireworks and Novelties; Approval for Transportation; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct an inadvertent error in the document published on Monday, September 25, 1989 regarding standards for construction of fireworks and novelties, approval for transportation.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn F. Smith, Standards Division, Office of Hazardous Materials Transportation, 400 Seventh Street, SW., Department of Transportation, Washington, DC 20590, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: On September 25, 1989, RSPA published a final rulemaking in the **Federal Register** under Docket HM-202. An inadvertent error in the amendatory instructions and in § 171.7 of the rule document is corrected.

List of Subjects in 49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

In consideration of the foregoing, 49 CFR part 171 is corrected as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808, 49 CFR part 1, unless otherwise noted.

§ 171.1 [Corrected]

2. In rule document 89-22498, on page 39326 (September 25, 1989), in the second column, in amendatory instruction 2 and § 171.7, the paragraph designations (c)(33) and (d)(29) are correctly designated as (c)(35) and (d)(32).

Verdell Simpkins,

Regulatory Document Information Specialist.

[FR Doc. 89-23733 Filed 10-6-89; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 172

[Docket No. HM-189H, Amdt. No. 172-120]

Hazardous Materials Regulations; Editorial Correction and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct an inadvertent error in the document published on Friday, September 29, 1989 regarding hazardous materials regulations.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION: Jacquelyn F. Smith, Standards Division, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: On September 29, 1989, RSPA published a final rulemaking in the **Federal Register** under Docket HM-189H. An inadvertent error in the § 172.101 Table of the rule document is corrected.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Hazardous materials tables.

In consideration of the foregoing, 49 CFR part 172 is corrected as follows:

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PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR part 1.

§ 172.10 [Corrected]

2. In rule document 89–23086, on page 40068 (September 29, 1989), in the first column of the Hazardous Materials Table, the entry should be corrected to read: Sulfur, molten or Sulphur, molten.

Verdell Simpkins,

Regulatory Document Information Specialist.

[FR Doc. 89–23734 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Independence Valley Speckled Dace and Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the Clover Valley speckled dace (Rhinichthys osculus oligoporus) and the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*) to be endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The former is known from only three small springs in northeastern Nevada and the latter from only one spring in the same area. Both are in jeopardy because of their extremely limited distribution, the sensitivity of their habitats to perturbation by irrigation practices, and introductions of non-native aquatic species. These types of activities have negatively impacted populations of both subspecies of speckled dace and caused extinction of the Independence Valley tui chub (*Gila bicolor isolata*), formerly found in the spring inhabited by the Independence Valley speckled dace.

EFFECTIVE DATE: November 9, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Great Basin Complex, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Navarre, Complex Manager, at the above address (702/784–5227 or FTS 470–5227).

SUPPLEMENTARY INFORMATION:

Background

The Clover Valley speckled dace was first collected on September 14, 1934, by Dr. C. L. Hubbs and his family (Hubbs *et al.* 1974). It was not recognized as a unique form of speckled dace until 1972 when Drs. Hubbs and Miller described it as a subspecies endemic to two springs in Clover Valley, Elko County, Nevada (Hubbs and Miller 1972). The Independence Valley speckled dace was not collected until August 25, 1965. It was also described by Drs. Rubbs and Miller in 1972 as a distinct subspecies of speckled dace found only in Independence Valley (Hubbs and Miller 1972, Hubbs *et al.* 1974).

Speckled dace are members of the minnow family of fishes (Cyprinidae) that occupy many waters of western North America. They are able to occupy a wide variety of habitats ranging from cold streams and rivers with rocky substrates to small thermal springs with silt substrates. Their adaptability to a broad range of environments has allowed them to persist in habitats too harsh for the survival of many other fish species. Isolation of populations has permitted genetic divergence and resulted in a number of morphologically distinct forms recognized as subspecies. Their diet consists primarily of insects, and their maximum length rarely exceeds 4 inches.

Speckled dace are distinguished from other minnows by, among other characters, the shape and arrangement of pharyngeal teeth (usually slightly curved and hooked in a 1, 4–4, 1 formula) and the presence of well developed radii completely around the scales. Coloration is typically olive-green on the back fading to silver/gold on the abdomen. As the vernacular name suggests, black spots may be randomly arranged over the body. A distinct black lateral stripe usually extends from the forebody to the caudal fin.

The Clover Valley speckled dace and Independence Valley speckled dace are believed to be derived from an ancestral form of speckled dace similar to the Lahontan speckled dace *(Rhinichthys osculus robustus)* presently occupying the Humboldt River system in northern Nevada. Both of these speckled daces are distinguished from the Lahontan speckled dace by their less developed lateral line system on both the body the body and head. The Clover Valley speckled dace is further distinguished by the anterior location of its pectoral fins and a lower number of pelvic fin rays (8 versus typically 8 for speckled dace) (Hubbs and Miller 1972). The Independence Valley speckled dace is dwarfed with a more laterally compressed body than is characteristic of speckled dace. Its lateral line is less developed and its caudal peduncle is deeper and pectoral fin rays fewer than is typical of the Clover Valley speckled dace. It is also distinguished from the Clover Valley speckled dace by its straighter and more oblique mouth (Hubbs and Miller 1972).

Both of these speckled dace are restricted to small springs and their outflows. Vinyard (1984) and Hubbs *et al.* (1974) located the Clover Valley speckled dace in small irrigation impoundments and in ditches radiating from them into irrigated pasture land. Hubbs *et al.* (1974) also recorded the dace in isolated portions of spring-fed streams located upstream from these impoundments. Vinyard (1984) and Hubbs *et al.* (1974) recorded the Independence Valley speckled dace from shallow marshlands spreading away from deep pools associated with spring sources.

All habitats of both subspecies are situated on private land supporting ranch operations. Neither of these speckled dace have been widespread in historic times. Early (1934) collectors did not sample Independence Valley, and located only one Clover Valley speckled dace population (Hubbs *et al.* 1974). Subsequent surveys conducted in 1965, however, located the Independence Valley speckled dace and an additional population of Clover Valley speckled dace (Hubbs *et al.* 1974). Both dace were noticeably scarce when these surveys were conducted. In 1983, Vinyard (1984) located a third Clover Valley spring which contained speckled dace.

Hubbs *et al.* (1974) attributed the rarity of these speckled dace to habitat alterations to facilitate irrigation and the presence of rainbow trout (*Salmo gairdneri*) and largemouth bass (*Micropterus salmoides*) introduced for sport fisheries. Population sizes of these speckled dace have been known to fluctuate in response to the presence of these non-native fish species. For example, numerous Clover Valley speckled dace were present in a spring-fed impoundment in 1964 that had recently been stocked with rainbow trout; however, a subsequent survey of the same locality in 1965 found the dace scarce and restricted to a small portion

of stream near the spring source where they could best avoid rainbow trout (Hubbs *et al.* 1974). Vinyard (1984) failed to locate any dace at this site during several surveys in 1983, although a small number of dace were again observed in February 1988.

Hubbs *et al.* (1974) noted the scarcity of Independence Valley speckled dace in their sole habitat during 1965, the first time this dace was collected. Vinyard (1984) also observed their scarcity and recorded dace only in shallow water not inhabited by bass and bluegill (*Lepomis machrochirus*). That the presence of bass and bluegill threatens the Independence Valley speckled dace is evidenced by the extinction of the Independence Valley tui chub (*Gila bicolor isolata*) following introduction of these two sport fish. This chub was also endemic to this spring.

The Clover Valley speckled dace and Independence Valley speckled dace were included as Category 2 candidates for possible listing in a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454) published on December 30, 1982. Category 2 candidates are those for which additional status information is needed before their status can be evaluated. In an updated Notice of Review (50 FR 37958) published on September 18, 1985, the status of the two speckled dace was changed to Category 1 on the basis of new status information received. The category 1 classification means that sufficient status information is available to indicate the species may warrant listing. A proposed rule to list both subspecies as endangered was published in the **Federal Register** (52 FR 35282) on September 18, 1987.

Summary of Comments and Recommendations

In the September 18, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. On December 2, 1987, the original comment period, which closed on November 22, 1987, was extended to February 1, 1988 (52 FR 45976). Affected landowners and appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Elko Daily Freepress* on December 21, 1987, the *Ely Daily Times* on December 22, 1987, and the *High Desert Advocate* on December 30, 1987, which invited general public comment. Two requests for a public hearing were received and a separate meeting with two landowners was scheduled for February 26, 1988. To accommodate this meeting and to allow for scheduling a public hearing, the comment period was reopened for 60 days on February 24, 1988 (53 FR 5434). A public hearing was held on April 7, 1988, and newspaper notices of the public hearing date, place, and written comment deadline were were published in the *Elko Daily Freepress* on March 22, 1988, and in the *High Desert Advocate* on March 23, 1988. A total of 23 written comments were received and are discussed below. The nine comments received at the public hearing, held at Wells High School, 115 Lake Avenue, Wells, Nevada, on April 7, 1988, from 7:00 to 9:00 p.m., are also summarized.

A total of 23 written letters of comment were received. Of these, 11 comments of support were received, including the Nevada Department of Wildlife and 10 other individuals or groups. Letters voicing neither opposition nor support were received from 1 Federal Agency, 1 State Agency, a State Assemblyman, and 1 Nevada County. Eight written comment letters opposing listing, 3 of which were from affected landowners, and 5 from other individuals or groups, were received. All 9 speakers at the public hearing opposed listing.

An inquiry was received from Senator Chic Hecht concerning a letter he had received from a Clover Valley landowner who had recently purchased property which included one of the speckled dace localities. The landowner requested suggestions regarding the listing issue and the planned stocking of bass or catfish in the spring outflow. The Service responded by reiterating the reasons why the Clover Valley speckled dace was proposed for endangered status: limited distribution, vulnerability of habitat to change from irrigation or other water diversion practices, and its inability to persist in habitats where non-native species have been introduced. The Service's response also stated that the landowner should contact the Nevada Department of Wildlife for suggestions are assistance in establishing a fishery, that the Service did not normally provide direct assistance for such actions, and that it was hoped that such action would include measures to protect the dace.

Oral statements presented at the public hearing, and written comments received during the comment periods are covered in the following discussion. Comments of similar content are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below.

Issue 1: Both subspecies of speckled dace are thriving in their respective habitats because of agricultural practices by the private landowners.

Response: The construction of small reservoirs for agricultural purposes at the spring outflows has provided an environment where predatory and/or completing fishes persist and may become abundant. Several comment letters supporting listing (including the Desert Fishes Council) cited the disappearance and presumed extinction of the Independence Valley tui chub (*Gila bicolor isolata*) as an example of the threat caused by introduced fishes. In the case of the tui chub, construction of a reservoir inundated its habitat and permitted exotic fish species to persist that were predators on the chub.

Historical records and field investigations by eminent ichthyologists Carl L. Hubbs and Robert R. Miller (Hubbs and Miller 1972; Hubbs, *et al.* 1974) documented the rarity of both subspecies of speckled dace, and the detrimental effects of habitat alteration and introduction of non-native fishes. Vinyard's field studies in 1983 (Vinyard 1984) further indicated the low numbers of both subspecies and the detrimental effects of irrigation structures and introduced game fish on the native dace populations. Degradation of dace habitat at one Clover Valley site was documented by Hubbs *et al.* (1974) by noting the reservoir in 1934 was "* * * 3 masters deep * * * clear water; rather firm, whitish bottom * * *." By 1965, however the reservoir was "* * * largely silted in* * * very easily muddied; bottom now of deep mud * * *." Portions of the present ditched and impounded habitats vary from watered to dry depending on irrigation schedules, and provides only limited habitat during much of the year. Neither the dace nor extent of its habitats were known before widespread agricultural modifications were completed. It is probable, however, that they occupied all of the streams and wetlands maintained by local spring discharge. None of the agricultural modifications to habitats have been done to benefit the native speckled dace. The fish have persisted, not because of irrigation practices by landowners, but despite radical modifications to their habitats. Under current management practices the continued survival of the fish cannot be guaranteed.

Issue 2: Collections of speckled dace by researchers and/or Service biologists have been significant and have constituted a serious threat to population numbers.

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Response: Careful, scientific collection of some individual fish is required occasionally to document species occurrence and abundance. Several comment letters erroneously indicated that large numbers (up to 50) of dace from each of several different sites were collected and/or dissected during status survey field work in 1983. In fact, only a total of approximately 15 individuals were retained from all of the collection sites. These collections were important since almost 20 years had passed since the dace's occurrence had been documented in any habitats in Clover and Independence Valley. Small collections of this type are necessary on a periodic basis to document that the original native types are still present, and to determine whether any non-native types have been introduced. Based on the habitat areas actually sampled and the inherent difficulty of sampling marshes and swift streams using net and seines, researchers and Service personnel believe that there are several hundred dace present in each of three of the four localities sampled in the two valleys, and that the small number of dace retained for scientific purposes had no effect on population viability.

Issue 3: Listing the two speckled daces would constitute a violation of the 5th Constitutional Amendment prohibiting taking of property without due process and just compensation—(*i.e.*, condemnation of land).

Response: The constitutional issue raised by the commentors cannot be addressed in this final rule because the Service's determination on whether to list these species cannot be influenced by non-biological factors. The listing procedure provided by Congress in section 4 of the Act requires the Service to base its decision solely upon biological criteria and trade information. *See* H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 19 (1982). Once the listing process is completed, other procedures exist, either through section 7 or section 10 of the Act, to analyze impacts posed by economic activities to endangered or threatened species.

Issue 4: Because it has not been documented that numbers of dace have declined, there is no justification to list these species as endangered or threatened.

Response: Documentation of a decline in numbers of individuals or populations is not required for consideration of listing. The Service has reviewed prior scientific data and received comments which document that spring/marsh habitats where both dace subspecies occur have been radically altered by agricultural practices, and by introduction of predatory species of trout, bass, and sunfish. The Endangered Species Act requires that five specific factors, one of which is the "present or threatened destruction, modification, or curtailment of its habitat or range" be evaluated to determine whether listing is appropriate. The identified threats to the dace's habitat, inherent small population size, and the limited extent of natural habitat are sufficient justification under the Act to list the two subspecies as endangered.

Issue 5: The Service should have worked with affected landowners to develop a cooperative agreement that would protect the dace and allow agricultural practices to continue.

Response: A meeting was held between Service representatives and two of the affected landowners to discusss development of such an agreement. Both landowners refused to sign any type of agreement and requested the Service withdraw the listing proposal based on their promise to continue to provide for the dace's well-being. One of the two landowners stated that he would like to develop additional irrigation of his ranch and direct the spring flow into two old ditches, which could seriously impact the historical stream channel where dace were present in 1983. It is not known if the fish is still extant at this location. On the second landowner's property, the fishes do continue to survive under present agricultural management; however, it is apparent that the threats to the long-term survival of these fish must be addressed in making a decision on whether to list these subspecies as endangered or threatened. Another landowner has indicated an intention to introduce game fish into the spring system despite being informed of the threats that this action would pose to the native speckled dace. Thus, the Service believes that considerable efforts to date to work with the landowners has not resulted in any guarantees to eliminate long-term threats to the daces or their habitats that would justify a decision to withdraw the listing proposal.

Issue 6: The Service has plans (or should, or should not) to move the dace into other waters.

Response: At the present time, the Service has no plans to transplant dace into additional habitats. In 1984, when dace were believed to be absent from one historical site in Clover Valley, a researcher suggested that dace be reintroduced into this habitat from existing populations. Because small numbers of dace were again observed in this historical site in 1988, reintroduction of dace is no longer being considered. Transplanting dace into Snow Water Lake, as suggested by one commenter, would not provide any secure habitat since the lake occasionally dries completely. Additionally, the Act states that its purposes "* * * are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *." Thus the primary emphasis in conserving the Clover Valley and Independence Valley speckled daces should be directed at insuring the maintenance of natural spring flows and aquatic habitats.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Clover Valley speckled dace and the Independence Valley speckled dace should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and Regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and Independence Valley speckled dace (*Rhinichthys osculus lethoporus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As presented in the "Background" section, several factors have affected the decline of these speckled dace. Neither the daces nor their habitats were known before settlers moved into the area and began manipulating springs to facilitate irrigation. Therefore, precise limits of their historically occupied habitat are unknown. However, information gathered about other dace occupying other springs within northern Nevada indicates these speckled dace occupied all of the streams and wetlands maintained by local spring discharge. The quantity of habitat was probably never very large for these dace since the springs they inhabit are small; none of these habitats are supported by springs discharging more than 2,000 gallons per minute (Garside and Schilling 1979).

Manipulation of habitats downstream from reservoirs relegated dace populations to the reservoirs and the small section of stream between the impoundments and the springs. Initial surveys for the Clover Valley speckled dace in 1934 noted that springs occupied by the dace had been altered at a much earlier date. The outflows were impounded in small reservoirs prior to being distributed to various irrigated pastures (Hubbs *et al* 1974). The ditched habitats existing down gradient from these reservoirs varied from watered to dried depending on where irrigated lands were situated relative to the location of reservoirs. The variable water application regime which continues today (Vinyard 1984), prohibited the long term presence of dace and their habitat in areas downstream from the reservoirs and was probably responsible for the scarcity of dace in these streams.

Viability of dace populations has also been affected by introductions of non-native fishes. Hubbs *et al.* (1974) reported low dace populations when rainbow trout were introduced into reservoirs. Large dace populations were, however, reported at times when trout had not been stocked and were, therefore, scarce or absent. Courtenay and Stauffer (1984) reviewed the detrimental impacts of introduced fishes on native fish populations throughout the world.

The manipulation of reservoir levels may also adversely affect dace populations by effectively decreasing the amount of pond habitat and forcing the fish to take refuge in downstream irrigation ditches. While in these ditches dace are vulnerable to extirpation when their habitat is dried by water management practices that require continuous changes in the water flow in the ditches being used to irrigate different pastures.

The Clover Valley speckled dace presently occurs in three springs and outflows in Clover Valley (Hubbs *et al.* 1974, Vinyard 1984, McNatt 1988). Vinyard (1984) reported absence of dace at one site in 1983, but small numbers were again present by 1988. Existing populations are restricted to local habitats within impoundments and seasonally in their tributary streams (Vinyard 1984). The size of these populations is unknown, but two are believed to exceed several hundred individuals during the summer when they reach their maximum levels.

The Independence Valley speckled dace has never been known to be abundant and always has been known from a single spring system. Hubbs *et al.* (1974) reported the dace were so scarce during their attempts to collect it in 1965 that it was difficult to locate the number required for taxonomic analysis. Vinyard (1984) confirmed its existence in only one spring and noted that the dace were only in those areas not occupied by largemouth bass and bluegill. Therefore, the dace presently occupies less habitat than it did in 1965. The limited distribution in habitat occupied by this speckled dace implies that any increase in ranch operations, which adversely affects its habitat, is likely to cause the population to decline.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The small population size and limited distribution of these fishes makes them vulnerable to deleterious depletion by collection.

C. *Disease or predation.* Neither of these speckled daces have been examined for disease. A number of diseases are known to occur naturally in other speckled dace populations in the Great Basin; however, these are not believed to have a substantial impact on population viability. The establishment of non-native fishes in these habitats may have provided an avenue for foreign diseases to be introduced. Such introductions of disease have occurred in other portions of Nevada. Minckley and Deacon (1968) reported the introduction of foreign parasites into the Moapa River system in southern Nevada which apparently accompanied the establishment of exotic fishes in the local springs and streams. Analysis of native fishes in the Moapa Valley showed that these parasites have successfully infected the local fish community and may be depressing populations. No introduced parasites or diseases are known to infect these two speckled dace.

Sport fishes introduced into North America have frequently been reported as preying upon or competing with native fishes. In many instances, exotic species have caused the native fishes to be eliminated (Minckley 1973, Moyle 1976, Taylor *et al.* 1984). Extinction of the Independence Valley tui chub following introductions of largemouth bass and bluegill is strong evidence that such introductions have significantly impacted the native fishes occupying springs in northeastern Nevada. The presence of predatory species in springs occupied by these two speckled dace is noted as being a major factor depressing their populations (Hubbs *et al.* 1974, Vinyard 1984).

D. *The inadequacy of existing regulatory mechanisms.* These species are not protected by any known regulatory mechanism.

E. *Other natural or manmade factors affecting its continued existence.* Vandalous acts have never been known to affect rare aquatic species in Nevada; however, threats of vandalism were made that, if carried out, would have reduced or eliminated populations of rare species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to issue this final rule. Based on this evaluation, the preferred action is to list both the Clover Valley speckled dace and Independence Valley speckled dace as endangered. The restricted distribution of these species, and the immediate and potential problems affecting their continued existence, indicate that endangered, rather than threatened, is the appropriate classification. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. With regard to the two speckled dace, the Service finds that designation of critical habitat is not prudent at this time. As discussed under Factors A, B, and E, in the "Summary of factors affecting the species," these fishes are vulnerable to unlawful collection and vandalism acts. Designation of critical habitat would entail publication of precise habitat locations, delineating the distribution of these fishes and, therefore, would make the species more susceptible to unlawful collection and vandalism. All involved parties and landowners will be notified of the location and importance of protecting the habitat of these species. Protection of habitat will be addressed through the recovery process and through the section 7 consultation process, as explained below.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Recovery actions that may be beneficial to these species

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include: conservation easements and consequent effective management of the springs where the fish live, and protective measures to prevent vandalism, habitat disturbance, and introduction of predatory fish. Specific management actions that might be negotiated pursuant to conservation easements with private landowners would be leaving sufficient water in springs and outflows during irrigation work, maintaining some vegetation intact in the course of clearing irrigation canals, and not using herbicides. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The restriction of both dace species to private land indicates that the involvement of Federal activities regarding these species will be minimal. Prior to issuing a permit pursuant to section 404 of the Clean Water Act, the U.S. Army Corps of Engineers may be required to consult with the Service if there are proposed activities that will dredge and fill wetlands occupied by endangered or threatened species. No other potential Federal activities are known to be involved.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Courtenay, W.R., Jr. and J.R. Stauffer, Jr. (eds.). 1984. Distribution, biology, and management of exotic fishes. Johns Hopkins University Press, Baltimore.

Garside, L.J., and J.H. Schilling. 1979. Thermal waters of Nevada. Nevada Bureau of Mines and Geology, Bulletin 91.

Hubbs, C.L., and R.R. Miller. 1972. Diagnoses of new cyprinid fishes of isolated waters in the Great Basin of western North America. Transactions of the San Diego Society of Natural History, 7(8): 101–106.

Hubbs, C.L., R.R. Miller, and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north central Great Basin. Memoirs of the California Academy of Sciences, Volume VII.

McNatt, R.M. 1988. Field trip report on investigation of three speckled dace sites in Clover Valley, Nevada. U.S. Fish and Wildlife Service, Great Basin Complex, Reno, Nevada.

Minckley, W.L. 1973. Fishes of Arizona. Arizona Game and Fish Department. Phoenix, Arizona.

Minckley, W.L., and J.E. Deacon. 1968. Southwestern fishes and the enigma of "endangered species." Science, 159:1424–1432.

Moyle, P.B. 1976. Inland fishes of California. University of California Press. Berkeley, California.

Taylor, J.N., W.R. Courtenay, Jr., and J.A. McCann. 1984. Known impacts of exotic fishes in the continental United States. Pages 322–353, *In*: W.C. Courtenay, Jr., and J.R. Stauffer (eds)., Distribution, biology and management of exotic fishes. Johns Hopkins University Press, Baltimore.

Vinyard, G. L. 1984. A status report about the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*), Independence Valley tui chub (*Gila bicolor isolata*), and Clover Valley speckled dace (*Rhinichthys osculus oligoporus*); three fishes restricted to the northeastern portion of Nevada. Unpublished report to the U.S. Fish and Wildlife Service, Reno, Nevada.

Author

The primay author of this final rule is Dr. Randy M. NcNatt, U.S. Fish and Wildlife Service, Great Basin Complex, 4600 Kietzke Lane, Reno, Nevada 89502 (702/784–5227 or FTS 470–5227).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Dace, Clover Valley speckled	*Rhinichthys osculus oligoporus*	U.S.A. (Nevada)	Entire	E	369	NA	NA
Dace, Independence Valley speckled	*Rhinichthys osculus oligoporus*	U.S.A. (Nevada)	Entire	E	369	NA	NA

Dated: October 3, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23814 Filed 10–6–89; 8:45 am]

BILLING CODE 4310–55–M

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Proposed Rules

Federal Register
Vol. 54, No. 194
Tuesday, October 10, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R-0675]

RIN: 7100-AA72

Credit by Brokers and Dealers; Accommodation of Settlement and Clearance of Foreign Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing for public comment amendments to Regulation T to accommodate the increasing internationalization of the securities markets. The amendments, suggested by the Securities Industry Association (SIA), would: (1) Permit foreign "world-class" equity and debt securities to be eligible for margin at broker-dealers on the same basis as margin securities; (2) permit recognition and isolation of debt denominated in foreign currencies and allow the foreign world-class securities denominated in that currency to be used as margin for the debt without conversion into dollars; (3) ease restrictions on payment and settlement for foreign securities to accommodate the practices of the market where the trade occurs; and (4) allow a broker-dealer subject to Regulation T to arrange credit on non-United States securities.

DATE: Comments should be received on or before November 30, 1989.

ADDRESS: Comments, which should refer to Docket R-0675, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street & Constitution Avenue, NW., Washington, DC 20551, or delivered at the C Street Entrance between 8:45 a.m. and 5:15 p.m. weekdays to Room B-2223. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Marginability of Certain Foreign Securities

At present many foreign equity securities are marginable directly, through trading on national securities exchanges or on NASDAQ, or indirectly, through the use of American Depositary Receipts (ADRs). All of these foreign securities are priced in dollars for trading purposes. This proposal contemplates adding a limited number of foreign equity securities as eligible for margin credit. Any security to be placed on a list to be published by the Board must be certified by a U.S. self-regulatory organization (SRO), such as the New York Stock Exchage (NYSE), which has adopted procedures for determining eligibility that have been approved by the Board. The NYSE has agreed to consider the adoption of such procedures. The securities would be designated "world-class" securities. In general, the eligibility requirements, as proposed by the SIA and modified by the Board, include listing on a securities exchange outside the United States for at least six months; continuous availability from that exchange to U.S. creditors of quotations of both bid and asked or last sale prices through an electronic quotation system; an aggregate market value for the shares of $1 billion; a tradeable float of 1 million shares; an average weekly trading volume of either 200,000 shares or the equivalent of $1,000,000; and the existence of the issuer or a predecessor in interest for at least five years. Lower standards for market value and trading volume criteria would be permitted for retention on the list. Comment is requested on additional or alternate criteria for determining the eligibility of both foreign securities exchanges and specific issues of securities.

The proposal would also make foreign corporate debt securities marginable if the original issue had outstanding a principal amount of at least $100,000,000, the issue is not in default on interest or principal payments, and the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating service. The proposal also provides for the marginability of foreign debt unrated at the effective date of the proposed rule if a subsequent unsecured debt issue of at least $100,000,000 of the same issuer receives the required high rating. The SEC presently recognizes five statistical rating organizations: Duff and Phelps; Fitch Investor Services; Moody's Investor Services; McCarthy, Crisanti & Maffei; and Standard & Poor's. Comment is requested on alternate criteria for marginability of foreign corporate debt securities.

II. Use of Foreign Currency

The present regulation requires, in relevant part, that all debits and credits be expressed in dollars. Loan value of securities denominated in other currencies must be translated into dollars when they are used to contribute loan value in a margin account. If payment for a margin call is received in foreign currency, it must be converted into dollars before deposit into the margin account. Under the proposal, "dollars only" accounting would no longer be required and foreign currency could be deposited and maintained in a margin account. By the use of a subaccount or other methods of record-keeping in the margin account, the proposal would permit separate computations for all debits denominated in a specific foreign currency and secured by separately identified foreign world-class securities denominated in that currency. Under the current practice of denominating all transactions in dollars, an increase in the value of any collateral can be applied to any other securities transactions in the margin account. By insulating transactions denominated in foreign currencies, the proposal contemplates that no equity for Regulation T purposes could be realized from this foreign currency or foreign-currency-denominated security against dollar deficiencies or deficiencies in other foreign currencies. However, the proposal should not prevent the combination of the foreign and dollar currency positions for maintenance rules of the SROs. In addition, the segregation of all transactions in foreign marginable securities and attendant debt would be optional. The current practice of denominating all transactions and debt in dollars in the margin account would still be available. The SIA proposal also provides that foreign currency held in a bank account under the creditor's control could offset a debit or requirement denominated in such foreign currency. While the Board believes there should be no barrier to this procedure, the specific provision proposed by the SIA to clarify that foreign currency so held can be given value to reduce a foreign currency so held can be given value to reduce a foreign currency debit or requirement is not being proposed as the Board believes it is implicit in the regulatory language that is being proposed.

III. Settlement

There is a wide variety of settlement times and procedures throughout the financial markets of the world. In the United States the usual time for settling trades in equity securities under exchange rules is five business days. However, there are other settlement periods provided for trades in government securities and futures products. In the United Kingdom there is fortnightly settlement. In France a batch settlement system is used, with all trades on or after the beginning date of the month's settlement period due no later than the beginning date of the next month's published settlement date. Transactions on the Brussels Stock Exchange in Belgium are settled in a manner similar to the procedure in France. Most Japanese transactions settle on the third business day after execution.

An existing provision in Regulation T for cash transactions permits up to 35 days for settlement in a delivery against payment (DVP) system if the extra time is required because of the mechanics of the trade and is not related to the purchaser's willingness or ability to pay. This proposal contemplates cash settlement of all foreign securities transactions in a foreign market on the earlier of the date required by rules of a competent authority over that market or 35 days from trade date (which is the outside time for settlement in DVP transactions). It is expected that this proposal will accommodate the shortening of settlement periods for cash transactions (as has been suggested by most commenters in light of the implicit risks in the widely varying systems now in place in the world) without further amendment to the rule.

IV. Arranging

The "arranging" section of Regulation T, with several exceptions, prohibits a broker-dealer from arranging credit unless it is credit that the broker-dealer can itself extend. Since most foreign securities are not "margin securities" on which a broker-dealer can extend or maintain credit, U.S. brokers and their overseas branches are prevented from assisting U.S. and foreign customers in obtaining any credit for their purchase. Because the securities are non-U.S. securities a borrower is not regulated under Regulation X as to the amount of credit he or she can obtain from foreign broker-dealers or foreign banks. In addition, U.S. banks are free to lend a "good faith" amount on these non-margin securities and can also arrange the credit. United States brokers are thus competitively disadvantaged in serving customers who might wish to borrow. The proposal would permit broker-dealers to arrange credit for any customer with a foreign lender to purchase non-U.S. securities. While the SIA proposed placing on U.S. broker-dealers the burden of ascertaining the legality of the credit being extended abroad, the Board believes this is a responsibility that the foreign lender will meet.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended [15 U.S.C. 78c, 78g, 78h, 78q, and 78w], the Board proposes to amend 12 CFR part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

1. The authority citation for part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. In § 220.2, "or" is removed at the end of paragraph (o)(4); the period is removed at the end of paragraph (o)(5) and "; or" is added; and new paragraphs (o)(6), (r)(5), and (z) are added to read as follows:

§ 220.2 Definitions.

* * * * *

(o) "Margin security" means:

* * * * *

(6) Any world-class security.

* * * * *

(r) "OTC margin bond" means:

* * * * *

(5) A foreign debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an "OTC margin bond" if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

* * * * *

(z) "World-class security" means:

(1) An equity security that is neither a registered security nor an OTC margin stock and that appears on the Board's periodically published List of Marginable Foreign Stocks, based on a certification by a self-regulatory organization under procedures approved by the Board; or

(2) A debt security convertible into an equity security that appears on the Board's List of Marginable Foreign Stocks.

3. In § 220.4, a new sentence is added to the end of paragraph (c)(1) to read as follows:

§ 220.4 Margin account.

* * * * *

(c) *When additional margin is required*—(1) *Computing deficiency.* * * * To the extent that debits in a margin account are denominated in foreign currency secured by specifically identified foreign margin securities as provided in section 220.5(g), each foreign currency debit position shall be considered separately for purposes of computing a deficiency and no credit shall be given to such specifically identified foreign margin securities for purposes of computing equity in the margin account either in United States dollars or in any other specific foreign currency.

* * * * *

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4. In § 220.5, a new paragraph (g) is added to read as follows:

§ 220.5 Margin account exceptions and special provisions.

* * * * *

(g) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margins securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

5. In § 220.8, paragraph (b)(1) introductory text is revised; paragraphs (b)(1) (i) through (iv) are redesignated as shown below:

Old paragraph designation	New paragraph designation
(i)	(A)
(ii)	(B)
(iii)	(C)
(iv)	(D)
(A)	(*1*)
(B)	(*2*)
(C)	(*3*)

and new paragraphs (b)(1)(i) and (b)(1)(ii) are added to read as follows:

§ 220.8 Cash account.

* * * * *

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment.* A creditor shall obtain full cash payment for customer puchases—

(i) Within seven business days of the date:

* * * * *

(ii) In the case of purchase of a foreign security, on the earlier of:

(A) The date on which settlement is required to occur by the rules of the foreign securities exchange or the date by which local brokers and dealers in the foreign market are required to settle trades; or

(B) The maximum time permitted by this part for delivery against payment transactions.

* * * * *

6. In § 220.13, "or" is removed at the end of paragraphs (a) and (b); the period is removed at the end of paragraph (c) and "; or" is added; and new paragraph (d) is added to read as follows:

§ 220.13 Arranging for loans by others.

* * * * *

(d) Credit extended by a foreign person to purchase non-United States securities.

7. In § 220.17, the section heading and the headings to paragraphs (a) and (b) are revised; the reference to paragraph (d) in paragraphs (a) and (b) is changed to read paragraph (f); paragraphs (c), (d), and (e) are redesignated as paragraphs (e), (f), and (g) and revised; and new paragraphs (c) and (d) are added to read as follows:

§ 220.17 Requirements for lists of marginable OTC and foreign stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.*

* * * * *

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.*

* * * * *

(c) *Requirements for inclusion on the list of marginable foreign stocks.* Except as provided in paragraph (f) of this section, a marginable foreign stock shall meet the following requirements:

(1) The security is listed for trading on a foreign securities exchange and has been trading on such exchange for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign exchange on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) There are 1,000,000 or more shares of such security outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the shares outstanding;

(5) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(6) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of marginable foreign stocks.* Except as provided in paragraph (f) of this section, a marginable foreign stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or § 220.2(s).

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the lists of marginable OTC and foreign stocks any equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the lists of marginable OTC or foreign stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

8. In § 220.18, the phrase "or the percentage set by the regulatory authority where the trade occurs, whichever is greater" is added before the period at the end of paragraphs (a) and (b).

By order of the Board of Governors of the Federal Reserve System, September 29, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23773 Filed 10-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-24-AD]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that would require the removal of the Battery Bus Relay Diode on Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes. The proposed AD is needed to prevent deenergizing of the Battery Bus Relay, due to a defective or failed diode. which could result in unrecoverable loss of electrical power to the airplane.

DATE: Comments must be received on or before November 24, 1989.

ADDRESSES: Fairchild Service Bulletins SA226-24-032 and SA227-24-013, both dated August 7, 1989, applicable to this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 76279-0490. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-24-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Sam Lovell, Aerospace Engineer, Airplane Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193-0150; telephone (817) 624-5159.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-24-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

On February 8, 1988, a Fairchild Model SA227-AC airplane, flying near Dusseldorf, West Germany, sustained a lightning strike. After the lightning strike, the airplane was observed from the ground on two occasions without any lights. The airplane crashed shortly thereafter. Subsequent to the crash, it was discovered that the Battery Bus Relay Diode was shorted. The electrical system is designed so that if all electrical power is unavailable to the airplane, then the Battery Bus Relay must be energized by the battery circuit to restore electrical power to the airplane. A shorted Battery Bus Relay Diode would conduct current thus prohibiting the relay from being energized. Tests at the Fairchild Aircraft Corporation on June 2, 1989, demonstrated that in an electrical circuit that simulated the circuit found in the accident airplane, a shorted diode would conduct electrical current, therefore, the relay was not energized. The shorted diode did not burn in two, or open up while conducting electrical current, for 5 minutes. Due to the shorted diode, the Battery Bus Relay could not be energized and electrical power could not be restored to the airplane.

The FAA has determined that failure of the Battery Bus Relay Diode in combination with loss or interruption of electrical power could result in unrecoverable loss of electrical power to the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require the removal of the Battery Bus Relay Diode on Fairchild Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes.

The FAA has determined that there are approximately 682 airplanes affected by the proposed AD. The cost of modifying each airplane as specified in the proposed AD is estimated to be $8.00 per airplane. The total cost is estimated to be $5,456. This cost is so small that it will not be a significant burden on any small entities operating those airplanes. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Fairchild Aircraft Corporation (formerly Swearingen Aviation Corporation): Applies to Models SA226-T (Serial Numbers (S/N) T201 thru T275, and T277 thru T291), SA226-T(B) (S/N T(B)276, and T(B)292 thru T(B)417), SA226-AT (S/N AT001 thru AT074), SA226-TC (S/N TC201 thru TC419), SA227-TT (S/N TT421 thru TT541), SA227-AT (S/N AT423 thru AT695), SA227-AC (S/N AC406, AC415, AC416, AC420 thru AC705, and AC707 thru AC733) airplanes.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent an inadvertent deenergized battery bus relay, which could result in unrecoverable loss of the airplane's electrical power, accomplish the following:

(a) Modify the electrical system using the following procedures:

(1) Remove the access cover of the "J-Box", EP11.

(2) Locate Battery Bus Relay K40 and remove the diode from across X1 and X2 terminals.

(3) Reinstall the access cover.

(4) Using the Battery Switches, verify that battery voltage is present on the LH Essential, RH Essential, and Nonessential busses.

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Note 1.—Fairchild Service Bulletins SA226–24–032 and SA227–24–013, both dated August 7, 1989, pertain to the subject of this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Airplane Certification Office, Federal Aviation Administration, Forth Worth, Texas 76103–0150.

Note 2.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, Forth Worth, Texas.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 27, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 89–23791 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AEA–18]

Proposed Revocation of Control Zone; Fort Meade, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Tipton Army Air Field (AAF) located at Fort Meade, MD, has operated in the past with a part time Control Tower, associated Airport Traffic Area, and Control Zone. Effective October 1, 1989, the Control Tower will be closed. The weather observers at the Tipton AAF will also leave on October 1, 1989. Since communications and weather reporting are the requirements for the continued establishment of a control zone, the Federal Aviation Administration finds it necessary to revoke the Control Zone for the Tipton AAF, Fort Meade, MD.

DATE: Comments must be received on or before November 15, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA–530, Docket No. 89–AEA–18, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F . Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–18."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations to (14 CFR part 71) to revoke the Control Zone established for the Tipton AAF, Fort Meade, MD due to the fact that effective October 1, 1989, the Control Tower and weather observers for the airport will no longer be available. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E Dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationaly current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

By removing the description of the Fort Meade, MD Control Zone in its entirety as follows:

Fort Meade, MD [Remove]

Within a 5-mile radius of the center, lat. 39°05'04" N., long 76°45'37" N., of Tipton AAF, Fort Meade, and within 3 miles each side of a line bearing 091° from the Fort Meade RBN (lat. 39°05'37" N., 76°45'37" W.) extending from the 5-mile radius zone to 8 miles east of the RBN excluding that airspace that concides with the Baltimore, MD, Control Zone and a 1-mile radius center on Beltsville, MD, (USDA), Airport (lat. 39°01'37" N., long. 76°49'21" W.). This control zone is effective from 0700 to 1600 hours, local time, Monday, Tuesday, Thursday and Friday; and from 0700 to 2200 hours, local time, Wednesday; and from 0800 to 1600 hours local time Saturday; closed Sundays and Federal legal holidays; or during the specific dates and times established in advance by a Notice to Airmen.

Issued in Jamaica, New York, on September 19, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–23792 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 50

[Public Notice 1129; SD–226]

Overseas Citizens Services, Bureau of Counsular Affairs

Regulations Governing Procedures for the Issuance of a Consular Report of Birth as proof of the United States Nationality of a Person Abroad

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: Public Law 97–241 of August 24, 1982 (22 U.S.C. 2705) established the Consular Report of Birth Abroad of a Citizen of the United States of America as proof of U.S. citizenship. The Department of State proposes amendments to the regulations concerning the issuance of Consular Reports of Birth. This rule provides for issuance of Consular Reports of Birth as well as amended and replacement Consular Reports of Birth. It also shifts the responsibility for the issuance of the secondary document, formerly the "Certification of Birth Abroad" now entitled the "Certification of Report of Birth", to an Authentication Officer in the Department rather than our consular posts abroad. There are, at present, no written regulations permitting amendment or replacement of Consular Reports of Birth. The Department is proposing these changes based on its experience in registering the U.S. citizenship of a child born abroad and on subsequent requests for documentation of the citizenship registration.

DATE: Comments on this proposed rulemaking must be received on or before November 1, 1989 to be assured of consideration.

ADDRESS: Written comments on the proposal should be submitted to Overseas Citizens Services (CA/OCS/CCS), Attention: Carmen A. DiPlacido, room 4817 N.S., Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Carmen A. DiPlacido, (202) 647–3666.

SUPPLEMENTARY INFORMATION: Over the last 25 years the Department of State has received requests from U.S. citizen registrants and their parent(s) or guardian(s) for a simple but official-looking, error-free document attesting to a citizenship determination of the registrant. There have been requests for issuance of a "citizenship at birth" document when application is made more than 5 years after a child's birth, instead of the current policy of no issuance of a Consular Report of Birth after a child's fifth birthday. The Department also has received requests every year for amendment or replacement of the Department's Consular Report of Birth Abroad of a U.S. citizen.

To meet these needs, the Department has developed a new Consular Report of Birth that attests to a citizenship determination of the registrant. The following factors are reflected in this proposed rule:

1. Antifraud Features

To safeguard the document and minimize the potential for fraud, each Consular Report of Birth issued will be assigned an identifying number. It will be typed error-free on specially designed safety paper.

2. Documentation After Age 5

To maintain a child's right to a citizenship document when the birth is reported after the child's fifth birthday, usually for reasons over which the child has no control, the document may be issued until the child's eighteenth birthday. This will prevent short-changing the child for delays caused by others. The Report of Birth will have to be approved and issued by the consular post having jurisdiction over the place of the child's birth unless otherwise specified by the Department.

3. Certification of Report of Birth

The Department will also issue a Certification of Report of Birth upon request. The certification can be issued only when a Consular Report of Birth has been issued and will be issued at the Depatment, not abroad. This document, which can be issued in multiple copies, can be used for purposes of school registration and to support an application for local services and privileges (such as obtaining a driver's license, voting registration, and registration for the draft), thus avoiding unnecessary handling of the original consular report of birth.

4. Amendment and Replacement of the Consular Report of Birth

In addition, the Department has developed procedures for the amendment or replacement, by its Authentication Office, of the origin1 Report of Birth, incorporating the issuance number of the original document, but clearly showing that it is not the original document issued.

5. Requests for Copies of the Application

Any persons who require access to or copies of information not shown on the Consular Report of Birth, but included on the application to register the U.S. citizenship of a child born abroad, may be directed to request it under the Department's regulations governed by the Freedom of Information and Privacy Acts.

List of Subjects in 22 CFR Part 50

Citizenship and naturalization.

The Proposed Amendments

The Department proposes to amend title 22, Part 50, Code of Federal Regulations, as follows:

PART 50—[AMENDED]

1. The authority citation for part 50 is

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revised to read as follows:

Authority: 8 U.S.C. 1104, 22 U.S.C. 2658 and 22 U.S.C. 2705.

2. Section 50.5 is revised to read as follows:

§ 50.5 Application for consular report of birth abroad of a citizen of the United States of America.

Upon application of the parents or their legal guardian, a consular officer may, for the purpose of documenting a claim to U.S. citizenship, record the birth of a U.S. citizen child in his/her consular district. In specific instances, the Department may authorize such recordation outside the consular district wherein the child was born. The officer shall require the applicant to submit proof of the child's birth and citizenship meeting the evidence requirements of subpart C of part 51 of this chapter.

3. Section 50.7 is revised to read as follows:

§ 50.7 Consular report of birth abroad of a citizen of the United States of America.

(a) Upon submission of satisfactory proof of birth and citizenship, and at the time of the recording of the U.S. citizenship of a child born abroad, the consular officer may issue to the parents or legal guardian, upon payment of the prescribed fee, a Consular Report of Birth.

(b) Amended and replacement Reports of Birth may be issued by the Authentication Office of the Department of State upon written request and payment of the required fee. No fee will be charged for Reports of Birth amended due to Department error.

(c) When it issues a Report of Birth under § 50.6, the Department shall furnish the Report of Birth without fee to the parent or legal guardian.

4. Section 50.8 is revised to read as follows:

§ 50.8 Certification of birth.

At any time subsequent to the issuance of a Consular Report of Birth, when requested and upon payment of the required fee, the Authentication Officer of the Department of State may issue to the parent or person in interest certificates entitled "Certification of Report of Birth."

Dated: August 21, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89-22467 Filed 10-6-89; 8:45 am]

BILLING CODE 4710-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-370]

RIN 1218-AB15

Occupational Exposure to Bloodborne Pathogens

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of additional hearing site.

SUMMARY: With this notice, OSHA is adding a hearing site, Miami, Florida, to the bloodborne pathogens informal hearings schedule and changing the meeting room for the Chicago hearing.

DATES: The Miami hearing will commence on December 19, 1989. Notices of Intention to Appear at the Miami hearing must be postmarked on or before November 1, 1989. Statements and any documentary evidence to be presented at this hearing must be postmarked on or before November 15, 1989. Dates for submission of notices and evidence applicable to the other hearing sites are listed in the Federal Register at 54 FR 23133 and 54 FR 31858. The hearings will commence at 10 a.m. The beginning day and the location where each will be held are listed in the "SUPPLEMENTARY INFORMATION."

ADDRESSES: Notices of Intention to Appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-370, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8615. A Notice of Intention to Appear also may be transmitted by facsimile to (202) 523-5046 or, for FTS, to 8-523-5046, provided the original and 4 copies of the Notice are sent to the above address thereafter.

Notices of Intention to Appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Office of Public Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Date hearing begins	Location
1. Oct. 17, 1989	Indiana Room Auditorium, Amoco Building, 200 East Randolph Drive, Chicago, IL 60603.
2. Oct. 24, 1989	The Crystal Ballroom, San Franciscan Hotel, 1231 Market Street, San Francisco, CA 94103.
3. Nov. 13, 1989	The Oval Room, Roosevelt Hotel, 45 E. 45th Street, New York, New York 10017.
4. Dec. 19, 1989	The Sandringham/Windsor Room, Hotel Inter-Continental Miami, 100 Chopin Plaza, Miami, FL 33131.

Meeting Room Change

The location of the Chicago hearing has been changed to the Indiana Room Auditorium, Amoco Building, 200 East Randolph Drive, Chicago, Illinois.

Additional Hearing Site

On May 30, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) on Occupational Exposure to Bloodborne Pathogens in the Federal Register (54 FR 23042). Included in the Notice was the scheduling for public hearings. The locations announced for the hearings were Washington, DC, Chicago, IL, and San Francisco, CA. The selection of these sites was based primarily on geographical considerations. On August 2, 1989, an additional hearing was announced for New York City (54 FR 31858).

The South Florida Hospital Association and the American Nurses' Association have requested a hearing in the Miami area to facilitate participation of individuals in that vicinity. OSHA has agreed to this recommendation and is hereby announcing that a hearing will take place in Miami at the time and address indicated above. The purpose of this additional hearing is to allow persons who have not previously testified the opportunity to appear.

Notice of Intention to Appear

All persons desiring to participate at the Miami, Florida, hearing must file in quadruplicate a Notice of Intention to Appear, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-370, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8615.

The Notices of Intention to Appear, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed;

(6) Whether the party intends to submit documentary evidence, and if so a brief summary of that evidence; and

(7) The hearing site, in this instance Miami, Florida, where the party wishes to testify.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his or her testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed a proper Notice of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding. Information on the nature of the hearing is in the NPRM, 54 FR 23133.

Authority: Secs. 6(b), 8(c), and 8(g). Pub L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 9-83 (48 FR 35736).

Signed at Washington, DC this 3rd day of October 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89-23764 Filed 10-6-89; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1910

[Docket No. S-019]

RIN 1218-AA51

Permit Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal public hearing; extension of written comment period.

SUMMARY: This notice schedules informal public hearings concerning the notice of proposed rulemaking which OSHA issued on June 5, 1989 (54 FR 24080) on permit required confined spaces.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9:00 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: November 14, 1989.

Houston, TX: December 5, 1989.

OSHA is considering the utility of scheduling a third hearing in Los Angeles, CA for early in 1990. The Agency encourages interested parties to submit their views and suggestions regarding this matter. In the event that OSHA decides to hold a third hearing, in Los Angeles or elsewhere, the Agency will publish a notice which details the location, date, time and subject matters for that hearing. A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear, so parties will know more specifically when issues which concern them are to be raised at the hearing.

Notices of intention to appear at the informal public hearing must be postmarked by October 25, 1989. Testimony and all evidence which will be offered into the hearing record must be postmarked by November 1, 1989 for the Washington, DC hearing and by November 17, 1989 for the Houston, TX hearing. Written comments on the proposed standard must be postmarked by November 1, 1989.

ADDRESSES: Four copies of the notice of intention to appear, testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615. The locations of the informal public hearings are as follows:

Washington, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Houston, TX: Doubletree Hotel at Post Oak, 2001 Post Oak Boulevard, Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615. For additional information on how to submit notices of intention to appear, see the section on public participation, below.

Proposal and Hearing Issues: Mr James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On June 5, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed to supplement the safety standards in 29 CFR part 1910 for permit required confined spaces [54 FR 24080]. Interested persons were initially given until August 4, 1989, to comment on the proposal and to request a hearing.

The comment period and the time for requesting an informal public hearing has already been extended to October 4, 1989 [54 FR 30557]. OSHA has received several requests for an informal public hearing. Accordingly, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled informal public hearings to begin on November 14, 1989 in Washington, DC and on December 5, 1990 in Houston, TX. Through those hearings, the Agency expects to obtain testimony and other information pertinent to the issues which are raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, OSHA solicits testimony, with supporting information, on the issues presented below.

Issue #1: Regulation of Permit Spaces in Industries for which Industry-Specific Standards have been Issued

Certain commenters [Exs. 14-7 and 14-20] have stated that industry-specific standards which address permit space hazards would supersede the proposed generic standard. In particular, those commenters state that employers whose confined space entry operations are addressed by industry-specific standards, such as the telecommunications standard, should not be required to implement the permit system set out in the proposed generic standard. OSHA solicits testimony, with supporting information, on the extent to

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which the generic standard need not apply where industry-specific regulations (please identify) address permit space hazards. What provisions, if any, of the proposed standard should apply where OSHA has existing industry-specific standards? What criteria should OSHA use in determining where to apply the generic standard when the industry-specific standard has gaps in coverage for confined space entry? What would be the anticipated costs and benefits of applying the generic standard to employment otherwise regulated by industry-specific standards?

Issue #2: Coverage of Construction, Agriculture and Maritime Employment

Some commenters [Exs. 14–38 and 14–44] have suggested that the scope of the proposed rule be expanded to cover all construction, agriculture and maritime employment because, they state, employees in those industries are exposed to permit space hazards but are not protected from those hazards by the existing standards. OSHA solicits testimony and supporting information regarding the extent to which increased regulation of permit space work in construction, agriculture and maritime employment would be appropriate. Should any such additional protection be provided through this rulemaking or through separate rulemakings which cover the other industries? What criteria should OSHA apply in determining how to regulate confined space entry in those industries? What would be the anticipated costs and benefits of applying the provisions of the proposed standard to those industries? What provisions of the proposed standard should be applied to these industries? What provisions should not be applied?

Issue #3: Employee Participation

A commenter [Ex. 14–38] has requested that OSHA revise the proposed standard to require active employee participation in the design and implementation of permit space programs. OSHA seeks testimony and supporting information regarding this suggestion. The Agency is especially interested in information on those permit entry programs where employees have active roles in program design or implementation and in those programs which have procedures for taking into account employee feedback and suggestions. What mechanisms for employee participation seem to work? What is it about those employee participation programs that has made them successful? What has been the experience with employee participation in the development and implementation of confined space entry programs? What are the costs and benefits of employee participation programs?

Issue #4: Accuracy of Monitoring and Testing Devices

OSHA is concerned that the accuracy of atmospheric monitoring and testing devices may be adversely affected by humidity or other factors. The Agency seeks testimony, with supporting information, on the extent to which monitoring and testing devices have proven to be unreliable, or reliable, in adverse conditions. What types of devices pose the greatest difficulties? What are the specific problems and situations where those problems occur. What types of devices provide the best results when exposed to various adverse conditions? Which features cause those devices to be better? To what extent is operator training or skill a factor in monitoring and testing results? How can employers ensure that monitoring and testing devices are properly used, maintained and calibrated?

Issue #5 Permit Space Identification Guidelines

A commenter (Ex. 14–44) has suggested that OSHA provide nonmandatory guidelines which would help "small employers" to identify permit-required confined spaces, identify and evaluate hazards and either develop effective entry procedures, or decide to contract out permit space entry work. Should OSHA develop such guidelines? OSHA requests testimony with supporting information, on this question. In addition, OSHA requests that hearing participants who support the publication of guidelines submit testimony, with supporting information, which addresses what the contents of any such guidelines should be.

Issue #6 Review of Entry Permit Programs

As noted in the preamble to the proposed rule [54 FR at 24091 and 24092], OSHA anticipates that employers will generate information in the course of implementing their entry permit programs, and will revise their programs, based on that information, to ensure that entrants are protected appropriately. OSHA has not explicitly required that employers review their permit entry programs, because the Agency believes that compliance with the proposed rule will necessitate ongoing evaluation of program effectiveness. Should OSHA specifically require that employers review their programs and revise them, as necessary? Should the Agency set criteria for the review of entry permit programs? Should OSHA, for example, specify how frequently employers shall review their programs? Should the Agency require that employers implement administrative mechanisms for evaluation of programs? What criteria should OSHA set for the operation of those mechanisms?

Issue #7 Reevaluation of a Work Space

Based on concerns raised by a comment, (Ex. 14–45) OSHA is considering if it should provide guidelines (or examples of typical circumstances) which indicate when work spaces would be reevaluated to comply with proposed § 1910.146(c). OSHA seeks testimony, with supporting information, on this issue. In particular, the Agency would welcome examples of guidelines and suggested criteria for reevaluation. The Agency would be especially interested in receiving information about the circumstances which commenters expect would necessitate reevaluation of a space.

Issue #8 Number of Spaces or Entrants to be Monitored by a Single Attendant

Based on concerns raised by a comment (Ex. 14–15), OSHA is considering if it should limit the number of entrants, entry portals or permit spaces an employer may assign a single attendant to monitor, at any one time. OSHA seeks testimony, with supporting information, responding to the following questions: What limits would be appropriate? What criteria should OSHA set to guide employers in deciding how many attendants are needed to monitor entries and in determining where the attendant must be stationed in relation to the space monitored. How far should OSHA allow attendants to be from the entrant(s), entry portal(s) or space(s) they are monitoring?

Issue #9 Attendant Reliance on Remote Radios

A commenter [Ex. 14–34] has suggested that OSHA specifically permit the use of radios so that a single attendant could monitor as many as 32 entrants. OSHA notes that if attendants are not permitted to enter permit spaces for rescue purposes, an attendant's chief responsibility in a rescue situation could be to summon the rescue team. In that case, the Agency recognizes that the attendant's ability to detect that entrants need help and to summon the rescue team, not the attendant's proximity to the entrants, could be of critical importance. To what extent should OSHA permit reliance on monitoring equipment in place of direct observation of entrants by attendants? OSHA seeks testimony, with supporting information, responding to the following questions: In what circumstances should this equipment be allowed? How frequently should attendants be required to check with the entrants? How quickly should entrants be required to respond? Is television surveillance sufficiently protective? Would a Personal Alarm Safety System be sufficiently protective? What criteria should OSHA set for selection, use, maintenance, testing, repair or replacement of communication equipment?

Issue #10 Rescue by Attendant

Commenters [Ex. 14–47, 14–80] have stated that the proposed prohibition of attendants entering permit spaces to rescue entrants is "ill-advised" and "not realistic." The commenter notes that most rescuer-fatalities were due to "untrained, ill-prepared, emotional response on the part of by-standers, friends, etc." The commenter notes that an attendant trained and equipped in accordance with the standard is in the best position to rescue an entrant quickly and that "time is of the essence." Are there circumstances where OSHA should permit attendants to enter permit spaces for rescue purposes? OSHA seeks testimony, with supporting information, on this question.

Issue #11 Rescue Team Qualifications and Training

A commenter (Ex. 14–45) has suggested that at least two members of each rescue team be trained in First Aid and be CPR-certified, that entry not be allowed unless the in-house rescue is at full strength, and that an in-plant rescue team "should not be credited as available" if either member trained in first aid and CPR is unavailable. How many members of existing rescue teams have first aid and CPR training? What incremental burden would fire brigades bear in order to comply with the rescue team criteria under consideration by OSHA? How many members do outside or in-plant rescue teams have? How many members are available at any given time? To what extent are rescue team resources tied up by a single rescue? What criteria should OSHA set to indicate what a rescue team must do in order to function effectively?

Issue #12 Use of Outside Rescue Team

A commenter [Ex. 14–45] has stated that OSHA should not allow the use of outside rescue teams unless it can be demonstrated that an outside team can and does arrive at workplace within four minutes of being summoned. OSHA notes that atmospheric hazards which deprive entrants of a safe air supply generally pose life-threatening situations after about five minutes, though some hazards incapacitate or kill entrants even faster. OSHA seeks testimony, with supporting information, on the relative merits and disadvantages of using outside or in-plant rescue teams. What criteria should OSHA set to guide employers in choosing between use of outside rescue teams and in-plant rescue teams? What should an employer provide to an outside rescue team in the way of guidance, information, training, access to the workplace or resources so that the outside rescue team has the necessary familiarity with the employer's rescue needs and the ability to satisfy those needs? What kind of training should members of outside rescue teams have? How can the employer ensure that the outside rescue team's training, equipment and performance are adequate to satisfy the rescue provisions of the proposed standard? How quickly do outside rescuers generally arrive at accident scenes and begin rescue efforts? How do outside rescue team and in-plant rescue team reaction times compare? Is it reasonable to bar use of an outside rescue team which is more than four minutes away?

Issue #13 Low-Hazard Permit Spaces

Under proposed § 1910.146(i), employers can authorize employee entry into low hazard permit spaces without stationing an attendant outside the spaces. Based on concerns raised by a commenter (Ex. 14–45), OSHA seeks testimony, with supporting information, on how employers would document the decision that a certain permit space was a low-hazard space. OSHA also asks for testimony indicating where documentation would be kept, how long a period the documentation would cover, how long documentation would be kept and what provisions of proposed paragraphs (c) and (d) would apply to low-hazard permit spaces. What criteria should OSHA set to guide employers in determining if a given space could be treated as a low-hazard permit space? What are the costs and benefits of applying proposed paragraph (i)? To what extent do the burdens imposed by the proposed paragraph offset the advantage of dispensing with the use of an attendant?

Issue #14 Employee Information

Some commenters [Exs. 14–76, 14–77] have objected to the requirement in proposed § 1910.146(c)(4) that employers post informational signs near permit spaces because they consider such a requirement to be prohibitively expensive and an invitation to unauthorized entries, particularly by teenagers, and to vandalism. How should such spaces be identified to protect employees? OSHA solicits testimony, with supporting information, on this question. The Agency encourages hearing participants to submit suggestions and information on alternative approaches, as well as information on actual and projected costs of informing employees that a workplace contains permit spaces.

Issue #15 Access to MSDSs and Other Information

Based on concerns raised by a comment [Ex. 14–11], OSHA is considering if it should require that a copy of the MSDS for any chemical substance involved in employee injury accompany the injured permit space entrant who is given emergency medical service, in order to provide medical personnel with guidelines for proper care. Is such a requirement appropriate? The commenter has also suggested that permits contain the names and telephone numbers of responsible individuals who may be called on to make important decisions regarding a permit space rescue. What names and telephone numbers should be included in an entry permit?

OSHA solicits testimony, with supporting information, on these questions. The Agency would be especially interested in receiving examples of permits which contain MSDS data or which provide the names and telephone numbers (with back-ups) of "responsible individuals."

Public Participation-Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard, including economic and environmental impacts, will be provided at two informal public hearings scheduled to begin at 9:30 a.m. at places and on dates as follows:

Washington, DC: November 14, 1989. The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, DC 20210.

Houston, TX: December 5, 1989. Doubletree Hotel at Post Oak, 2001 Post Oak Boulevard, Houston, Texas 77056

Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before October 25, 1989, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket S–

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019, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523–8615. A notice of intention to appear also may be transmitted by facsimile to (202) 523–5046 or (for FTS) to 8–523–5046, provided the original and 4 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will apear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed;

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

(7) At which hearing or hearings the party wishes to testify.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by November 1, 1989, for the Washington, DC hearing and November 17, 1989, for Houston, TX hearing, and it will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear be may allowed to testify, as time permits, at the discretion of the Administration Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on November 14, 1989. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of the informal rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments

Interested persons are invited to submit written comments on the issues raised in the proposal. Written comments must be postmarked by November 1, 1989, and submitted in quadruplicate to the Docket Office, Docket Number S–019, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523–7894, and its hours of operation are 8:15 a.m. to 4:45 p.m. Monday through Friday except Federal holidays. Comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 523–5046 or (for FTS) to 8–523–5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing

Following the close of the hearing the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupatioanl Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR part 1911.

Signed at Washington, DC, on this 3rd day of October 1989.

Alan C. McMillan,

Acting Assistant Secretory of Labor.

[FR Doc. 89–23816 Filed 10–6–89; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[Gen. Docket No. 89–354]

Spread Spectrum Systems; Extension of Time

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Chief Engineer, in response to a request for an extension of time, grants a 10-day extension to the period for the filing of comments to the Notice of Proposed Rule Making (NPRM), published at 54 FR 35008, August 23, 1989 in Docket 89–354. The time for the filing of reply comments is extended 10 days also. These time extensions should give all interested parties sufficient time to file meaningful comments and reply comments to the NPRM.

DATES: Comments are to be filed on or before October 12, 1989 and reply comments are to be filed on or before October 27, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph F. McNulty, Engineering Evaluation Branch, Office of Engineering and Technology, (301) 725–1585.

SUPPLEMENTARY INFORMATION: The full text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the NPRM may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Order Extending Time to File Comments

In the matter of amendments of parts 2 and 15 of the rules with regard to the operation of spread spectrum systems; order extending time to file comments.

Adopted: September 29, 1989.

Released: October 2, 1989.

By the Chief Engineer:

1. A Notice of Proposed Rule Making (NPRM) in this proceeding, FCC 89–254, was adopted by the Commission on August 9, 1989 and released on August 16, 1989. Comments and reply comments to the NPRM were due on October 17, 1989, respectively.

2. On September 21, 1989, Metricom, Inc. (Metricom) and Southern California Edison Company (SoCal Edison) filed a joint petition with the Commission requesting that the time for the filing of comments to the NPRM be extended from October 2, 1989 to November 2, 1989. They request this extension of time to address the effects of the proposed rule changes on the systems which Metricom is currently developing for SoCal Edison.

3. The Commission recognizes that the issues involved in this proceeding are complex and highly technical. The Commission is also aware that several parties are in the process of developing spread spectrum systems and would desire early reolution of this proceeding. In order to balance these competing considerations we will provide an additional, but more limited, period of time for filing comments. Therefore, we will extend the time for filing comments and replies by 10 days.

4. Accordingly, *it is ordered*, pursuant to the delegated authority contained in 47 CFR 0.241(a)(5), That the period of time for the filing of comments in the above proceeding is extended until October 12, 1989, and the time for the filing of reply comments is extended until October 27, 1989.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89–23799 Filed 10–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–438, RM–6804]

Radio Broadcasting Services; Citronelle, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Fuller Broadcasting Company of Mobile County, Inc., permittee of Station WKQR(FM), Channel 270A, Citronelle, Alabama, seeking the substitution of FM Channel 271C3 for Channel 270A and modification of its license accordingly. Coordinates for this proposal are 31–06–08 and 88–22–28.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Catherine M. Grofer, Esqs., Gardner, Carton & Douglas, 1001 Penn. Ave., NW., Suite 750–N, Wash., DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–438, adopted September 18, 1989, and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23800 Filed 10–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–440, RM–6763]

Radio Broadcasting Services; Texarkana, Arkansas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by State Line County Broadcasting Company, seeking substitution of Channel 292C2 for Channel 292A, and modification of the station license to specify operation on the higher class channel. Reference coordinates used for the proposal are 33–18–05 and 93–57–10.

DATES: Comments must be filed on or before November 27, 1989 and reply comments on or before December 12, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel, or consultant, as follows: John A. Borsari, Esq., Borsari & Kump, 900 Seventeenth Street, NW., Suite 900, Washington, DC 20006.

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FOR FURTHER INFORMATION CONTACT: Ordee Pearson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 89-440 adopted September 18, 1989 and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Wshington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provision of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23845 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-484; RM-5948 and RM-6241]

Radio Broadcasting Services; Dennis Port and Harwich Port, Massachusetts

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses the petition filed by Brian Dodge to add Channel 230A to Dennis Port, Massachusetts, and substitute Channel 226A for Channel 228A, Harwich Port, Massachusetts. Petitioner did not state his willingness to reimburse the permittee for Channel 228A, Harwich Port, for reasonable expenses incurred in changing channels in his petition for rule making or in comments in response to the *Notice*. The counterproposal filed by Joan Orr and Marshfield Broadcasting, Inc. to add Channel 232A to Dennis or Dennis Port, substitute Channel 236B for Channel 235B at West Yarmouth, Massachusetts, and allot Channel 230A to Provincetown, Massachusetts, was withdrawn on November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-484, adopted September 12, 1989, and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23846 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-433, RM-6833]

Radio Broadcasting Services; Arthur, North Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Regina Timmerman and Valotta Hazel Seibel seeking the allotment of Channel 244A to Arthur, North Dakota, as the community's first local FM service. Channel 244A can be allotted to Arthur in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 47-06-24 and West Longitude 97-13-06. Canadian concurrence is required.

DATES: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Regina Timmerman and Valotta Hazel Seibel, P.O. Box 194, Arthur, North Dakota 58006 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-433, adopted September 12, 1989, and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23847 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-431, RM-6817]

Radio Broadcasting Services; Alamo, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Charles C. Allen, proposing the substitution of Channel 226C3 for Channel 226A at Alamo, Tennessee, and the modification of his construction permit for Station WNBE (FM) at Alamo to specify operation on the higher class co-channel. Channel 226C3 can be allotted to Alamo consistent with the Commission's minimum distance separation requirements at the station's current transmitter site. The coordinates are 35-43-31 and 89-03-25, which is 8.6 kilometers (5.4 miles) southeast of the city.

DATES: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street, SE., Washington, DC 20003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-433, adopted September 12, 1989, and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23848 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-430, RM-6778]

Radio Broadcasting Services; Lost Creek, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William and Patricia Allman, d/b/a AEL Broadcasting of West Virginia, proposing the allotment of Channel 242A to Lost Creek, West Virginia, as that community's first local FM service. The allotment can be made at the city reference coordinates, which are 39-09-36 and 80-21-06.

DATES: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Forbes W. Blair, Esquire, Marjorie K. Conner, Esquire, Blair, Joyce and Silva, 1825 K Street NW., Suite 510, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-430, adopted September 12, 1989, and released October 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23849 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-439, RM-6805]

Radio Broadcasting Services; Ozark, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Morgan Broadcasting Limited Partnership, licensee of Station WNER(FM), Ozark, Alabama, seeking the substitution of FM Channel 280C3 for Channel 280A and modification of its license accordingly. Coordinates for this proposal are 31-26-25 and 85-33-49.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard J. Braun and Shelley Sadowsky, Esqs., Rosenman & Colin, 1300—19th St., NW., Suite 200, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-439 adopted September 18, 1989, and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

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2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23802 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-436, RM-6784]

Radio Broadcasting Services; Chester and Shingletown, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Michael Robert Birdsill, permittee of Station KRKQ(FM), Channel 287C2, Chester, California, seeking to change the community of license for Channel 287C2 from Chester to Shingletown, California, and to modify his permit accordingly. Coordinates used for this proposal are 40-29-36 and 121-53-12.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael Robert Birdsill, P.O. Box 1921, Chico, CA 95927.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-436 adopted September 18, 1989, and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23803 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-127; RM-5674]

Radio Broadcasting Services; Mokelumne Hill, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of proposal.

SUMMARY: This document denies a petition filed by Eric R. Hilding (52 FR 18933, May 20, 1987), seeking the allotment of FM Channel 259A to Mokelumne Hill, California, for failure to establish its status as a community for allotment purposes. With this action, the proceeding is terminated.

DATES: Petition denied on September 18, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20556.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-127, adopted September 18, 1989, and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23804 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-434, RM-6866]

Radio Broadcasting Services; Naples, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sterling Communication Corp. requesting the substitution of Channel 276C3 for Channel 276A at Naples, Florida, and modification of its license for Station WSGL(FM) to specify the higher powered channel. Channel 276C3 can be allotted to Naples in compliance with the Commissions minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) east, and can be used at Station WSGL(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 26-07-34 and West Longitude 81-43-18. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Naples or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant as follows:

Chester F. Naumowicz, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-434, adopted September 13, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23805 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-435, RM-6810]

Radio Broadcasting Services; Fuquay-Varina, North Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cedar Raleigh Limited Partnership seeking the substitution of Channel 280C3 for Channel 280A at Fuquay-Varina, North Carolina, and the modification of its license for Station WNND to specify operation on the higher powered channel. Channel 280C3 can be allotted to Fuquay-Varina in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6.0 miles) east to avoid a short-spacing to Station WTQR, channel 281C, Winston-Salem, North Carolina. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 280C3 at Fuquay-Varina or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Esq., Robert Clifford Burns, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-435, adopted September 12, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23806 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-432, RM-6795]

Radio Broadcasting Services; Denmark, South Carolina

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Denmark Communications seeking the allotment of Channel 239A to Denmark, South Carolina, as the community's first local FM service. Channel 239A can be allotted to Denmark in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 33-19-24 and West Longitude 81-08-30.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Hugh David Jett, 243 Bayview Drive, Mt. Pleasant, South Carolina 29464 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-432, adopted September 12, 1989, and released October 3, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

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Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23807 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-437, RM-6803]

Radio Broadcasting Services; Jackson, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Radio Station WHOD, Inc., licensee of Station WHOD(FM), Jackson, Alabama, seeking the substitution of FM Channel 233C3 for Channel 233A and modification of its license accordingly. Coordinates for this proposal are 31-32-38 and 87-52-30.

DATES: Comments must be filed on or before November 24, 1989, and reply comments on or before December 11, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bennie E. Hewett, President, Radio Station WHOD, Inc., P.O. Box 518, Jackson, AL 36545.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-437, adopted September 18, 1989, and released October 2, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23801 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant, Isodendrion hosakae (Aupaka)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant, *Isodendrion hosakae* (aupaka), to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This species grows on three privately-owned cinder cones between 2,800 and 3,400 ft. (850 and 1040 m) in elevation in the Waikoloa area of the South Kohala District, Hawaii. The greatest immediate threats to the survival of this species are the destruction of the plant or the degradation of its habitat by domestic cattle grazing in the area, and the potential of fires during the dry season. A determination the *Isodendrion hosakae* is endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed for this plant. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 11, 1989. Public hearing requests must be received by November 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Isodendrion hosakae was first collected by Edward Y. Hosaka on November 4, 1984, near the summit of an unnamed cinder cone, Waikoloa, Hawaii. He made another collection from the same locality 3 months later. In 1952, Harold St. John published a revision of the genus in which he named the new species in honor of its discoverer (St. John 1952). The species was not seen again until 1980 when it was rediscovered on a cinder cone in the Waikoloa area. The species subsequently was found on two other cinder cones during surveys made in 1981 and 1982. Today the population is estimated at about 275 individuals growing on three privately-owned cinder cones in the Waikoloa area.

Isodendrion hosakae is a small, erect shrub about 18 to 30 inches (46 to 76 cm) tall. It has narrow, lance-shaped leaves about an inch (2.5 cm) long; the upper portion of the stem is nearly concealed by the persistent leaf stipules. The flowers are about ½ inch (1.3 cm) long and are yellowish-green to whitish in color. The fruit is a capsule, elliptical in shape, about ⅜ inch (1 cm) long and ¼ inch (0.6 cm) wide (Nagata 1982). Evidence suggests that it has always been highly restricted in distribution and small in numbers. *Isodendrion*, a genus of four species in the violet family, is endemic to the Hawaiian Islands. Probably the greatest immediate threat to the continued survival of this plant is predation and habitat disturbance by domestic cattle. The potential of destruction by range fires during the dry seasons also is a major threat. Low numbers of individuals also could be considered a potential threat through a reduction in reproductive vigor. A cooperative effort between Federal and State agencies and the private landower

is needed to protect the remaining plants and to provide for the conservation of the species.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including *Isodendrion hosakae*, which at that time was considered extinct. As a result of this review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Isodendrion hosakae* to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the Federal Register (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Isodendrion hosakae* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate.

Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act further requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Isodendrion hosakae* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, a further finding was made that listing of *Isodendrion hosakae* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. Publication of the present proposal constitutes the final 1-year finding.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Isodendrion hosakae* St. John are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Cattle have been responsible for the modification or destruction of much of the native vegetation in Hawaii. Disturbance by their trampling or grazing continues to exist as a potential threat to the integrity of the populations of *Isodendrion hosakae*. Feral pigs have been observed in the area and, although there is no documented evidence, disturbance by their rooting is a potential threat. Drought conditions exist throughout the area during much of the year and range fires have threatened the species in the past. On several occasions in the past, the entire area has been leased on a temporary basis to the U.S. military for ground troop training exercises. Disturbance by troop movement and other training activities and the subsequent possibility of fires also are potential threats to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Several cinder cones in the area, including one with a small population of *Isodendrion*, are being quarried for their cinder.

C. *Disease or predation.* Predation by cattle and feral pigs is probable.

D. *The inadequacy of existing regulatory mechanisms.* There are no existing regulatory mechanisms to protect this plant. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Funds for activities required for the conservation, management, enhancement, or protection of the species could be made available under section 6 of the Act (State Cooperative Agreements). Additional protection would be extended to the species by a 1988 amendment to the Act which prohibits removing, cutting, digging up, damaging, or destruction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small, extant populations remaining (estimated at 275 individuals) make *Isodendrion hosakae* vulnerable to any catastrophe, natural or man-caused, that may impact its habitat. Reduction of the gene pool and genetic variability, resulting from a small population size, potentially could have detrimental effects on the continued existence of the species. Although seedling are present within the population, seed production appears to be very nominal. The plant is reproducting successfully, but probably only marginally. However, evidence indicates that the taxon has always been highly restricted and small in numbers, so the low reproductive rate may not be due to repressed reproductive viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Isodendrion hosakae* as endangered. Only about 275 individuals remain in the wild, and these face threats from browsing by cattle, habitat degradation, and fires, as well as other lesser factors. Given these circumstances, the determination of endangered status seems warranted. Critical habitat is not being proposed for the reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Isodendrion hosakae* at this time. Such a determination would result in no known benefit and may be detrimental to the species. Publishing a detailed description and map of this species' habitat would stimulate public interest and make this species more vulnerable to vandalism and taking by collectors or curiosity seekers. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Consequently, no critical habitat is being proposed at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or

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threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since *Isodendrion hosakae* occurs on privately owned land, cooperation between Federal and State agencies and the private landowner is necessary to provide for its conservation. The protection required of Federal agencies and the prohibitions against trade and collecting are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a list species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The area that includes the habitat of *Isodendrion hosakae* has been leased to the U.S. military in the past for temporary use for ground troop training exercises. If the species is listed as endangered, the Department of Defense would be required to enter into consultation with the Service before undertaking or permitting any action that may affect the plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Isodendrion hosakae* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in cultivation nor in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Isodendrion hosakae;*

(2) The location of any additional populations of *Isodendrion hosakae* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Isodendrion hosakae.*

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register.** Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Nagata, K. 1982. Unpublished status survey of *Isodendrion hosakae* St. John (aupaka). U.S. Fish and Wildlife Service. 31 pp.

St. John, H. 1952. Monograph of the genus *Isodendrion* (Violaceae). Hawaiian plant studies 21. Pac. Sci. 6:213-255.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Violaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Violaceae—Violet family:						
Isodendrion hosakae	Aupaka	U.S.A. (HI)	E		NA	NA

Dated: September 13, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23724 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Aristida portoricensis (pelos del diablo)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Aristida portoricensis* (pelos del diablo) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Aristida portoricensis* is a grass endemic to serpentine slopes and red clay soils of southwestern Puerto Rico. It is presently found on only two sites in this area and is threatened by the expansion of residential and commercial development and by proposals for the mining of copper and gold. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Aristida portoricensis.* The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 11, 1989. Public hearing requests must be received by November 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Aristida portoricensis (pelos del diablo) was first collected in 1903 from Cerro Las Mesas, Mayaguez, in southwestern Puerto Rico. In 1927 this endemic grass was reported by José I. Otero from the nearby Guanajibo area and later from Hormigueros; however, these collection sites have not since been relocated. Both populations appear to have been eliminated as a result of urban and commercial development (Department of Natural Resources 1989, McKenzie et al. 1989).

Today *Aristida portoricensis* is known from only two locations on serpentine slopes and red clay soils of southwestern Puerto Rico: Cerro Las Mesas and the Sierra Bermeja. Recent expansion of residential areas has eliminated portions of the Cerro Las Mesas population and very few plants remain at this site. In both areas *Aristida portoricensis* is threatened by residential and agricultural expansion; however, in the Sierra Bermeja a proposal for the mining of copper and gold threatens the species as well. In the Sierra Bermeja, a small range of coastal hills in the extreme southwestern corner of the island, the species is scattered along the upper slopes where it is found growing on exposed rock crevices (Liogier and Martorell 1982; McKenzie et al. 1989).

The tufted culms of *Aristida portoricensis* may reach 30 to 50 centimeters (12 to 20 inches) in height. These culms occur in large bunches and are slender, erect or spreading at the base. The blades are involute, somewhat curved or flexuous and from 5 to 10 centimeters (2 to 4 inches) long and scarcely 1 millimeter (less than 1/16 inch) wide when rolled. The panicles, from 3 to 8 centimeters (1 to 3 inches) in length, are narrow, loose, and few-flowered. The few, distant branches are stiffly ascending and mostly floriferous from the base. The glumes are awn-pointed, the first about 7 millimeters (¼ inch) long, the second approximately 10 millimeters (⅜ inch) in length. The lemma is from 10 to 12 millimeters (⅜ to ½ inch) long, including the 1 millimeter (less than 1/16 inch) long callus and the 2 to 3 millimeters (1/16 to ⅛ inch) long, slightly twisted, scabrous neck. The awns are almost equal, divergent or horizontally spreading, 2 to 3 centimeters (¾ to 1¼ inches) long and slightly contorted at the base (Hitchcock 1936).

Aristida portoricensis was recommended for Federal listing by Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently made petition findings in each October from 1983 through 1988 that listing *Aristida portoricensis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with section 4(b)(3)(B)(iii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their

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application to *Aristida portoricensis* Pilger (pelos del diablo) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Destruction and modification of habitat have been, and continue to be, significant factors reducing the number of *Aristida portoricensis*. Once more widely distributed throughout the southwestern part of Puerto Rico, it is now known to occur on only two sites. The expansion of residential development threatens to eliminate the few remaining individuals on Cerro Las Mesas. The Sierra Bermeja area is one of several areas currently included in the copper and gold mining proposal under consideration by the Commonwealth of Puerto Rico. The area is also subject to intense pressure for residential development. Land clearing to enhance cattle grazing operations has already destroyed some habitat formerly occupied by *Aristida portoricensis* in the Sierra Bermeja (McKenzie et al. 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides some protection for certain Commonwealth listed species. However, *Aristida portoricensis* is not yet on the Commonwealth list. Federal listing would provide certain protection and, if the species is ultimately placed on the Commonwealth list, will further enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of *Aristida portoricensis* is its limited distribution. Only two populations are known to exist and one of these has been almost totally eliminated. Introduced grasses, widely planted for grazing purposes, may have excluded this endemic grass from parts of its past range (McKenzie et al. 1989).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Aristida portoricensis* as endangered. The species is restricted to only two locations in southwestern Puerto Rico, both of which are imminently threatened by habitat destruction and modification. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose ciritical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. The number of individual of *Aristida portoricensis* is sufficiently small that vandalism could seriusly affect the survival of the species. Publication of critical habitat discriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Aristida portoricensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Aristida portoricensis*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State (Commonwealth) law or regulation, including State (Commonwealth) criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Aristida portoricensis* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevent data concerning any threat (or lack thereof) to *Aristida portoricensis;*

(2) The location of any additional populations of *Aristida portoricensis;* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Aristida portoricensis.*

Final promulgation of the regulation on *Aristida portoricensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this propoal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Department of Natural Resources. 1989. Natural Heritage Program status information on *Aristida portoricensis*. San Juan, Puerto Rico.

Hitchcock, A.S. 1936. Manual of the grasses of the West Indies. U.S. Department of Agriculture, Miscellaneous Publication No. 243. Washington, D.C. 439 pp.

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Rio Piedras, Puerto Rico. 342 pp.

McKenzie, P.M., R.E. Noble, L.E. Urbatsch, and G.R. Proctor. 1989. Status of *Aristida* (Poaceae) in Puerto Rico and the Virgin Islands. In press.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Poaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Poaceae—Grass family:						
Aristida portoricensis	Pelos del diablo	U.S.A. (PR)	E		NA	NA

Dated: September 21, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-23725 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Parts 17 and 23

Proposed Panda Permit Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed panda import permit policy; extension of comment period.

SUMMARY: The Service extends for 30 days the public comment period on its proposed policy for issuance of permits for the import of giant pandas.

DATES: The Service now will consider comments received through November 5, 1989, before announcing a final decision on this proposed policy.

ADDRESSES: Comments may be submitted to the Office of Scientific Authority; Mail Stop: Arlington Square Building, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority; Arlington Square Building, Room 750; 4401 Fairfax Drive; Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: *Scientific Authority Findings*—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-2093.

Permit Issuance—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 5, 1989

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(54 FR 36823–36827), the Service announced a proposed policy for issuance of permits for the import of giant pandas. Existing regulations and guidelines would be clarified with respect to new information for situations involving issuance of permits for giant pandas. Specifically, restrictions on animals intentionally removed from the wild for exhibition loans would continue. Only female pandas 2 years to under 4 years and males 2 years to under 5 years at the start and conclusion of a loan period, respectively, and those over 18 years old would typically be considered for temporary exhibition loans, and then only if funds committed in the loan agreement are used for specific projects designed primarily to enhance the survival of the giant panda. The Service would be supportive of the use of captive animals when the loan or permanent transfer is likely to enhance the captive-breeding population. Furthermore, the basis for findings required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) on "primarily commercial purposes" and the "suitability of facilities" are clarified and conditioned in the proposed policy.

In its announcement of the proposed policy, the Service requested that all comments on the matter be submitted by October 5, 1989. However, in a letter of September 7, 1989, the American Association of Zoological Parks and Aquariums, which has considerable interest in the matter, stated that many of its members would be involved in meetings through late September, and therefore would not be able to prepare a substantive response to the Service by the original deadline. A 30-day extension of the comment period was requested. The Service considers this request reasonable, and therefore now announces that comments from any interested party will be accepted through November 5, 1989.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, and Mr. Marshall P. Jones, Chief, Office of Management Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 30, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89–23767 Filed 10–6–89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 194
Tuesday, October 10, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1990

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1990.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986–1990 not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks of dairy products, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or if the Secretary determines the restrictions in furnishing of commodities under section 416(b)(3) prevent the making available of commodities in such quantities.

Section 416(b) also requires the Secretary to estimate the expected year-end levels of CCC's uncommitted stocks of grains, oilseeds, and dairy products for each of the fiscal years 1986–1990.

The Secretary is required to publish in the Federal Register his determination of the quantities of commodities that shall be made available for each fiscal year, along with a breakdown by kind of commodity and the quantity of each commodity.

Determination

In accordance with section 416(b), I have determined that 2,000,000 metric tons of grains and 34,000 metric tons of butter (frozen form only) shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1990.

The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains and oilseeds:	
Corn	1,000,000
Sorghum	1,000,000
Total	2,000,000
Dairy products:	
Butter (frozen form only)	34,000
Total	34,000

Done at Washington, DC this 1st day of October 1989.

Clayton Yeutter,

Secretary.

[FR Doc. 89–23735 Filed 10–6–89; 8:45 am]

BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

[Docket No. 89–172

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIMES OF MEETING: The meeting will be held at the United States Department of Agriculture, Conference Room 4302, South Building, 14th and Independence Avenue SW., Washington, DC, on November 14, 1989, from 9 a.m. to 4 p.m. The meeting will reconvene the following day, November 15, from 9 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION: The General Conference Committee of the National Poultry Improvement Plan (Committee) makes recommendations to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR parts 145 and 147.

Tentative topics to be discussed at the meeting include:

1. Departmental Policy Concerning *Salmonella enteritidis.*
   (a) Role of the Agricultural Marketing Service.
   (b) Role of the Animal and Plant Health Inspection Service.
2. Status of *Salmonella enteritidis.*
   (a) Public health—1989 outbreaks summary.
   (b) Poultry and livestock—1989 summary.
   (c) Epidemiologic investigations summary.
3. Model State *Salmonella enteritidis* Quality Assurance Program Summary: Maryland, New York, and Pennsylvania Programs.
4. U.S. Sanitation Monitored Program Participation and Summary.
5. *Salmonella enteritidis* Research Update.
6. National Renderers' Animal Protein Products Industry Salmonella Education/Reduction Program: Status Report.
7. Food Safety and Inspection Service Activities.
8. Other Salmonella Programs on the National Poultry Improvement Plan.
   (a) U.S. Sanitation Monitored, Turkeys.

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(b) U.S. Pullorum-Typhoid Clean.
(c) U.S. Pullorum-Typhoid Clean State.
9. The Model State Poultry Disease Prevention Program.
10. Avian influenza and Exotic Newcastle Disease Surveillance.
(a) Emergency Programs Activities.
(b) Import/Export Activities.
11. Update: National Veterinary Services Laboratories.
12. Update: Biologics Activities within the Animal and Plant Health Inspection Service.
13. Plans for Biennial Conference.
14. Proposed Changes to the National Poultry Improvement Plan.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments, prior to or following the meeting, to Dr. Irvin L. Peterson at the address listed under "**FOR FURTHER INFORMATION CONTACT**". The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 89-172 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 771 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92-463).

Done in Washington, DC this 4th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-23813 Filed 10-6-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Intermountain Region; Exemption of Fire Recovery Projects from Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that certain fire recovery projects are exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement certain projects pertaining to recovery from the Uinta Flat fire on the Dixie National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR part 217.4(a)(11) as published January 23, 1989, in the Federal Register, Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Hugh C. Thompson, Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, UT 84721-0580.

Background

On July 15, 1989, lighting ignited the Unita Flat on the Cedar City Ranger District, Dixie National Forest. The fire burned 4050 acres of the National Forest System land before it was controlled on July 22, 1989.

In late July of 1989, an emergency rehabilitation interdisciplinary team surveyed much of the burned area to determine emergency rehabilitation needs. From this survey it was found that in many places, this fire burned hot enough to cause severe damage to vegetation, soil and water resources. The damage to soils is of greatest concern because this will affect the length of time necessary to achieve natural revegetation as well as quantity and quality of water run-off from the area.

The emergency rehabilitation interdisciplinary team concluded that there was a high risk of unacceptable levels of soil loss and reduced water quality that may be caused by this wildlife. If left "untreated", these problems would persist for several years allowing for unacceptable levels of soil loss and stream sedimentation within the watershed affected.

Immediately following the fire, the Forest Service accomplished watershed stabilization activities as recommended by the emergency rehabilitation interdisciplinary team. These activities included seeding a grass/forb mixture on areas determined to be high risk to erosion. It also included the construction and seeding of waterbars along firelines and roads within and adjoining the fire area. It was felt that these activities met the emergency need to stabilize the watershed within the shortest time possible. Monitoring of the success of these activities will be conducted on a continuous basis. If, through monitoring, it is determined that additional measures will be required they will be implemented immediately.

In August of 1989, the Forest Supervisor formed a second interdisciplinary team to determine additional short and long term recovery needs, as well as potential timber salvage opportunities within the Uinta Flat fire area. The team determined that that there was a need to continue with recovery efforts, primarily reforestation and revegetation. (It was determined that artificial tree planting was the best option on several acres within the burn to assure recovery of the forested habitat in the shortest time possible. Natural regeneration was only possible where a suitable seed source still remained. On most acres in this burn, trees that would have provided this seed source were destroyed.)

The team also determined that there was an opportunity to salvage some of the timber detroyed within the fire area. Priority for use of the burned timber was given to needs for site amelioration and watershed protection. After trees were reserved for these needs, the remainder was considered for salvage. Salvage within the burn would include the harvest of fire killed timber as well as some of the surviving trees within the fire that are of low vigor and health and not essential as a source of seed for natural regeneration.

In addition, the team determined that restrictions on use in the area would have to be implemented to assure the greatest potential for success of the grass seeding, the erosion control structures and the proposed reforestation. These restrictions would involve limitations placed both on public use as well as livestock use.

Because of the drought leading up to this fire in 1989, trees were damaged by the fire more than anticipated and are loosing their sawlog value quickly. Insects that attack both dead and live trees have moved into the area, causing a concern for a potential buildup and a threat to adjacent live trees, as well as causing the deterioration of wood product quality of the fire killed timber.

Due to the loss in wood product quality, as well as the need to assure that heavy equipment is off the site by early summer of 1990 when the grass seeding begins to germinate, salvage operations need to be completed before the summer of 1990. Other site amelioration, reforestation and watershed stabilization activities will begin during the summer of 1990 and continue for several years.

Planned Actions

In August of 1989, the Dixie National Forest Supervisor proposed the development of additional recovery activities and salvage of burned timber within the Uinta Flat fire area. The environmental analysis of this action was begun in August of 1989. The interdisciplinary team assigned to the analysis began with an initial scoping session on August 4, 1989. After public notification, press releases, and contacts with individuals and State and Federal agencies, nine major issues were identified. These were:

1. Soil stabilization.
2. Stream sedimentation in Asay and Mammoth Creek.
3. Revegetating/reforesting the burn area to species consistent with the appropriate Forest Plan management area.
4. Salvaging the valuable timber resource lost to the fire.
5. Reducing the risk of insect infestation in remaining live timber inside the fire perimeter and stands immediately surrounding the fire area.
6. Minimizing the negative impacts on the recreating public.
7. Minimizing any additional negative impacts on wildlife. The primary species of concern in this area are mule deer, Rocky Mountain elk, and Merriam's turkey.
8. Minimizing the negative economic impacts created by reduced productivity and subsequent grazing levels on the affected grazing permittees.
9. Minimizing adverse cumulative effects to all resources.

The interdisciplinary team developed five alternatives to analyze; including the No Action Alternative. The effects of these alternatives are disclosed in an Environmental Assessment which was prepared for the proposal.

Based on the analysis and evaluation in the Uinta Fire Rehabilitation Environmental Assessment (EA), Alternative D was determined to be the preferred alternative. Alternative D would: (1) Reforest an estimated 1500 acres; (2) Restrict livestock grazing for watershed restoration over the entire area burned on National Forest land for 1-3 years, or longer if the need is identified during monitoring; (3) Prohibit livestock grazing on 1500 acres of the burn for reforestation plantation protection for 5-7 years, or longer if the need is identified during monitoring; (4) Complete site amelioration activities over the 1500 acres to be reforested for seedling protection; (5) Complete additional watershed protection measures, as determined by monitoring needs; and (6) Salvage approximately 2900 MBF over an estimated 1160 acres.

To complete the salvage operations it is anticipated that 1.3 miles of new, permanent, road construction will be needed, 5.5 miles of reconstruction of existing roads will be needed, 1.0 mile of reconditioning of existing roads will be needed and 3.7 miles of local standard-long term intermittent use roads will be constructed. The local standard-long term intermittent use roads will be closed prior to the completion of the salvage sale contracts. Favorable long-term consequences of this activity include improved travel safety, access to National Forest land, road alignment and drainage. Mitigation measures will be placed in effect to minimize impacts to soil, watershed, and wildlife resources. These mitigation measures would include seeding, road closures and development of watershed structures to assure proper drainage and overland flow dispersal. With implementation of mitigation measures identified in the Environmental Assessment it was determined that no management activity implemented during salvage would significantly impact the resource.

Analysis shows that this alternative is the most cost effective for meeting the objectives of salvage and recovery when all resource needs were considered.

I have determined that good cause exists to exempt from appeal the proposed decision by the Forest supervisor to proceed with the Uinta Flat fire rehabilitation project, as defined by 36 CFR 217.4(a)11:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice in the Federal Register, implementation of the Uinta Flat Fire Rehabilitation project, including timber salvage, is authorized to proceed.

Dated: October 3, 1989.

Patrick J. Sheehan,

Acting Regional Forester.

[FR Doc. 89-23776 Filed 10-6-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-402]

Certain Dried Heavy Salted Codfish From Canada; Initiation and Preliminary Results of Changed Circumstances Administrative Review; Consideration of Revocation; and Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances administrative review; consideration of revocation; and intent to revoke antidumping duty order.

SUMMARY: We preliminarily determine that parties are no longer interested in the antidumping duty order on certain dried heavy salted codfish from Canada. We therefore intend to revoke the order. The revocation will apply to all shipments entered, or withdrawn from warehouse, for consumption on or after July 1, 1987, in addition to shipments of Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1988. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/1130.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1989, the Department of Commerce (the "Department") published in the Federal Register (54 FR 12467) the final results of the second administrative review of the antidumping duty order on certain dried heavy salted codfish from Canada (50 FR 27836, July 8, 1985).

By letter dated August 31, 1989, Codfish Corporation, the petitioner in this administrative proceeding, stated that it was no longer interested in maintaining the antidumping duty order covering the subject merchandise. Pursuant to sections 751(b) and (c) of the Tariff Act of 1930 (the "Tariff Act"), as well as § 353.25(d) of the Department's regulations, (54 FR 12780, March 28, 1989, to be codified at 19 CFR § 353.25(d)), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by this review are shipments of certain dried heavy salted codfish, including soft-dried codfish, from Canada. The term "certain dried heavy salted codfish" covers dried heavy salted codfish, including soft-dried, whole or processed by removal of heads, fins, viscera, scales, vertebral columns, or any combination thereof, but not otherwise processed, and not in airtight containers. During the review period, such merchandise was classified under item 111.2200 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classified under HTS items 0305.30.60 and 0305.51.00. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

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This "changed circumstances" administrative review covers all Canadian producers/exporters of the subject merchandise and all shipments of this merchandise entered on or after July 1, 1987, in addition to shipments of Bay Harbour entered on or after July 1, 1986.

Preliminary Results of Review and Intent To Revoke Antidumping Duty Order

We preliminarily determine that the petitioner's affirmative statement of no interest to continue the antidumping duty order covering certain dried heavy salted codfish from Canada provides the Department with a reasonable basis to suspend the current section 751(a) review and initiate a section 751(b) "changed circumstances" administrative review to revoke the order. Petitioner's affirmative statement of no interest also provides the Department with a reasonable basis to believe that the requirements for revocation, based on changed circumstances, have been satisfied. Therefore, we preliminarily determine to revoke the order covering certain dried heavy salted codfish from Canada.

This revocation will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 1987, in addition to shipments of Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986. We selected these dates as the effective dates of the revocation in accordance with section 751(c) of the Tariff Act (19 U.S.C. section 1675(c)), because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

We, therefore, intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 1987, in addition to shipments of Bay Harbour entered, or withdrawn from warehouse, for consumption on or after July 1, 1986, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no less than 44 days after the date of publication of this notice. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review and its decision on revocation, after the hearing, if any, and after its analysis of any written comments.

This review, intent to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. sections 1675 (b) and (c)) and §§ 353.22(f), and 353.25(d) of the Department's regulations (54 FR 12778–12781, 12784–12785, March 28, 1989, to be codified at 19 CFR 353.22(f), 353.25(d), and 353.38).

Dated: October 3, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–23842 Filed 10–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-601]

Tapered Roller Bearings From the People's Republic of China; Rescission of Initiation of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of rescission of initiation of administrative review.

SUMMARY: On July 25, 1989, the Department initiated an administrative review of the exports of tapered roller bearings ("TRB's") by China National Machinery and Equipment Import and Export Company ("CMEC") and nine Chinese factories that produced tapered roller bearings for CMEC (54 FR 30915). We are rescinding that initiation of administrative review because CMEC and the factories from which CMEC purchased TRB's are not covered by the antidumping duty order (52 FR 22667, June 15, 1987).

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–4195/1130.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1989, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on tapered roller bearings from the People's Republic of China (54 FR 30915). Included among the companies to be reviewed were China National Machinery and Equipment Import and Export Corporation ("CMEC") and nine factories: Harbin Bearing Factory, Luoyang Bearing Factory, Yantai Bearing Factory, Xiang Yang Bearing Factory, Guiyang Bearing Factory, Northwest Bearing Plant, Hai Lin Bearing Factory, Haihong Bearing Factory, and Yishan Bearing Factory.

In its initial investigation, the Department found that CMEC was not selling the subject merchandise to the United States at less than fair value, excluded that company from the antidumping duty order on TRB's and instructed Customs to liquidate CMEC's entries without regard to antidumping duties. (52 FR 19748, 19750, May 27, 1987). The Department's determination excluding CMEC from the order was appealed to the Court of International Trade ("CIT"), which remanded the determination back to the Department. Upon remand, the Department found a dumping margin for CMEC. However, the CIT's decision has been appealed to the United States Court of Appeals for the Federal Circuit. Therefore, pursuant to sections 516A (c) and (e) of the Tariff Act of 1930, as amended (19 U.S.C. section 1516a (c) and (e) (1988)), pending a final decision by the Federal Circuit, the original determination by the Department excluding CMEC must continue to govern the liquidation of entries of TRB's exported by CMEC.

Therefore, we are rescinding our initiation of administrative review with respect to CMEC because the Department currently lacks authority to conduct an administrative review. Section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. section 1675(a)(1)) and 19 CFR section 353.22(a), as amended, allow for an administrative review of an antidumping duty order, but the Department has not yet published an antidumping order regarding CMEC. In addition, we are rescinding our initiation of review of the nine factories because CMEC is by Chinese law the sole Chinese exporter of the merchandise produced by these factories.

This rescission of initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(c) of the Commerce Department's antidumping regulations

published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22(c)).

Dated: October 3, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–23843 Filed 10–6–89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Announcement of Washington State Nearshore (Northern Puget Sound) as an Active Candidate for National Marine Sanctuary Designation; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Intent To Hold Public Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: By direction of Congress (Pub. L. No. 100–627 section 205), NOAA is naming the Washington State Nearshore (Northern Puget Sound) as an Active Candidate for designation as a National Marine Sanctuary and will proceed with the subsequent steps in the evaluation process to prepare a Congressional prospectus. The proposed study area includes, in general, the waters surrounding the islands of San Juan County; waters off Cherry Point and Lummi Bay in Whatcom County; waters surrounding Cypress Island in Skagit County; waters surrounding Cypress Island in Skagit County; waters surrounding Smith and Minor Islands and Partridge Banks in Island County; waters surrounding Protection Island in Jefferson County; up to the high water mark in Discovery Bay, Sequim Bay and Dungeness Bay and surrounding Dungeness Spit in Clallum County; and a western boundary along longitude 123°10' to the Canadian border. All treaty rights, where applicable, will be respected.

Selection of a site as an Active Candidate formally begins the National Environmental Policy Act (NEPA) process; NOAA will prepare an environmental impact statement and management plan which will examine the management, boundary and regulatory alternatives associated with Sanctuary designation. To initiate this process, NOAA will hold scoping meetings in Washington State to solicit information and comments on the range and significance of issues related to Sanctuary designation and management. Individuals and representatives of interested organizations and government agencies, including Tribal governments, are invited and encouraged to attend.

Scoping meetings will be held on November 8, 9, 10, 13, 14, 15, 16, and 17, 1989. The first meeting will be held on November 8, 1989, at 7:00 p.m., in the County Commissioners Meeting Room, Courthouse Annex, 350 Court Street, Friday Harbor, San Juan Island, Washington. The second meeting will be held on November 9, 1989, at 10 a.m. at the Orcas Fire Hall, Eastsound, Orcas Island, Washington. The third meeting will be held on November 10, 1989, at 7 p.m. at the Bellingham Public Library, 210 Central Avenue, Bellingham, Washington. The fourth meeting will be held on November 13, 1989, at 7 p.m., at the City Hall Community Center, 6th and Q, Anacortes, Washington. The fifth meeting will be held on November 14, 1989, at 7 p.m. at the Hearing Room, Courthouse Annex, 7th and Main, Coupeville, Washington. The sixth meeting will be held on November 15, 1989, at 7 p.m., at the John Wayne Marina, Old Blynn Highway, East of town off Highway 101, Sequim, Washington. The seventh meeting will be held on November 16, 1989, at 7 p.m., at the City Council Chambers, City Hall, 540 Water Street, Port Townsend, Washington. The eighth meeting will be held on November 17, 1989, at 7 p.m., in the NOAA Auditorium, Conference Room A, 7600 Sand Point Way, N.E., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, or Franklin Christhilf, Pacific Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235, (202/673–5126).

SUPPLEMENTARY INFORMATION:

Selection Procedures

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431 *et seq.*, (the "Act") authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect their special conservation, recreational ecological, historical, research, educational, or esthetic qualities. The Act is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Marine and Estuarine Management Division (MEMD).

Public Law Number 100–627 (November 7, 1988) reauthorized, and amended, Title III of the Act. Section 205 of Public Law No. 100–627 directs the Secretary of Commerce to submit to Congress a prospectus pursuant to the requirements of section 304 (a)(1)(C), and (a)(5) of the Act (16 U.S.C. 1434 (a)(1)(c) and (a)(5)) with respect to the feasibility of designating Washington State Nearshore (Northern Puget Sound) as a National Marine Sanctuary not later than March 31, 1991. Selection of a site as an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process.

In preparing the prospectus, MEMD will develop a draft environmental impact statement and draft management plan which will include any proposed regulations needed to implement the terms of the proposed designation. Subsequent steps include public hearings; preparation of a final environmental impact statement, final management plan, and final regulations; preparation of Designation Documentation and Findings; and designation by the Secretary of Commerce. Opportunities for comment exist throughout this process and will be announced in the **Federal Register**, the local media, and other appropriate channels.

In the development of the Sanctuary designation materials, NOAA will evaluate the suitability of Northern Puget Sound as a National Marine Sanctuary in accordance with the criteria established by section 303(a) of the Act, 16 U.S.C. 1433(a), namely whether:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

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Further, pursuant to section 303(b) of the Act, 16 U.S.C. 1433(b) NOAA shall consider:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(2) The area's historical, cultural, archeological, or paleontological significance;

(3) The present and potential uses of the area that depend on meaintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in considerations number 1–3 listed above;

(5) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the Act;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources that generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and non-living resource development; and

(9) The socioeconomic effects of Sanctuary designation. NOAA will also include an assessment of it fiscal capability to manage the area as a National Marine Sanctuary.

In preparing the environmental impact statement and management plan (EIS/MP) to examine the management and regulatory alternatives associated with Sanctuary designation, NOAA will solicit comments from interested persons, groups and organizations, the appropriate Congressional committees, heads of interested Federal agencies, the responsible officials of the State, local and Tribal governments and the appropriate officials of the affected Regional Fisheries Management Council. This will be done during scoping meetings to be held in the State of Washington prior to preparation of the EIS/MP, during public hearings to receive comments on the draft EIS/MP, and throughout the EIS/MP preparation period.

History

The Washington State Nearshore (Northern Puget Sound) site was first recognized for its high natural resource potential and human-use values by placement on the National Marine Sanctuaries Program Site Evaluation List (SEL) on August 4, 1983 (48 FR 35575). In 1988, when Congress reauthorized and amended the Act, it specified in section 205 of Public Law No. 100–627 that NOAA submit, not later than March 31, 1991, a prospectus to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science and Transportation in the Senate with respect to the proposal to designate Northern Puget Sound as a National Marine Sanctuary.

Natural Resources

Oceanographic Characteristics

The Northern Puget Sound study area can be categorized as a two layered estuarine type circulation system. This system consists of a predominant upper layer of fresh water, reflecting major discharges from the Fraser and Skagit Rivers, as well as contributions from lesser rivers and streams in Puget Sound. The second bottom component is a denser more saline layer of water that flows landward from the Pacific Ocean through the Strait of Juan Du Fuca.

Other physical properties are then superimposed on this estuarine-type system and contribute to the complexity of the oceanographic characteristics of the area. The daily ebb and flow of the tides, and their associated tidal currents, add another dimension to the circulation pattern. Spring tide heights ranging from 10 to 13 feet and tidal currents of 1½ to 2½ knots are common in this area.

The combination of fresh and seawater causes turbulent mixing by the tidal currents found in the area. As a result, the net water found within the Sound is variable and is constantly seeking equilibrium from the fresh water input and ocean water supplies that change seasonally. Water in Puget Sound is most diluted in February, after the landward sources have received the maximum precipitation, and is most saline around late October when contributing river flow is at its lowest point.

While the oceanography of Northern Puget Sound will be dealt with as a defined unit, research shows that because of the complexity of the topographic and bathymetric features of this area, this water body can be divided into distinct water units depending on its location and the intended use within the system.

Geologic Features

Northern Puget Sound has been geologically defined by a combination of plate tectonic stresses and glacial processes that have occurred in the area over time. These geologic activities have created a series of deep U-shaped, interconnected channels such as the Haro and Rosario Channels that surround the San Juan Islands, and the Juan De Fuca and Georgia Straits which are typical of glacially scoured channels. The bathymetry of the deep water passages, that average 150 meters in depth within the study area, is characterized by shoals and banks.

Glacial activity is also responsible for the predominantly rounded shape of the San Juans and surrounding smaller islands and for the numerous rock deposits found along the shoreline of the Sound.

The shoreline of the study area also shows evidence of historical glacial activities with its combination of rocky shores, gravel, cobble and sand types as well as mudflats and mixed mud bottom areas.

Flora and Fauna

The study area lies within the transitional biogeographical zones of the Oregonian and Skatian sub-provinces with waters extremely rich in plant and animal life. As a result, Northern Puget Sound supports a wide selection of marine life that directly contributes to the complex foodweb and supports the economically and culturally important fisheries industries as well as the varied mammal and bird populations found within the area.

Several species of birds migrate through or reside permanently within the proposed study area. It is recognized as one of the most important wintering areas of the Pacific Flyway with over 100 species of birds identified. Marine bird species are also abundant within the area, with as many shorebirds repeatedly sited. Foremost among the bird population is the bald eagle. The area supports the largest concentration of bald eagles in the contiguous United Staes with several documented nesting sites and a wintering population of over 200 eagles. Other predominant bird species include the Rhinoceros Auklets, Ring-billed gulls, Caspian Terns, and American Black Oystercatchers.

Several hundred species of invertebrates and algae are abundant in the waters of Northern Puget Sound. This resource is a direct contributor to the productive fish and shellfish industry in the study area. Dominant migratory fish species include, but are not limited to, salmon, trout, anchovy, pollack, herring and halibut. Abundant resident species common to the area include the cabezon, lingcod and rockfish. The study area also sustains several species of crabs, clams and oysters, and a productive shellfish industry exists.

Marine mammals including seals, sea lions, porpoises, river otters and five types of whales, two of which are on the Federal endangered species list inhabit Northern Puget Sound at various times of the year.

As evidenced by the diversity of animals found in Northern Puget Sound, several species depend on this area as an important feeding and breeding site critical to their continued existence. Examples of these species include the harbor seal, river otter, false killer whale, herring, trout, and five species of salmon. In addition, Protection, Smith and Colville islands have been identified as three of the largest breeding locations for marine birds on the Pacific coast in North America.

Human use

The waters of Northern Puget Sound have traditionally supported multiple use activities. Currently, because of the size and number of population centers located on land surrounding the Sound, the study area is subjected to direct and secondary effects of these land based activities.

The natural beauty of Northern Puget Sound and surrounding waters is visited by thousands of tourists annually to enjoy the natural resources of the area. The proximity of this proposed sanctuary to Seattle, the fastest growing metropolitan city in Washington, has increased the demand for recreational facilities in Northern Puget Sound and as a result, boating, sport fishing, shellfish harvesting, whale watching tours, national historic parks, the Whale Museum, and the Padilla Bay National Estuarine Research Reserve all serve as recreational activities available to tourists in the area.

Commercial and subsistence fisheries also play a critical role in the economy and culture of Northern Puget Sound. Many Indian Tribes utilize the waters of the study area as part of their traditional fishing grounds. These tribes maintain and operate separate fishing industries, including aquaculture facilities, that are cooperatively managed with the State of Washington. Both Tribal and non-Tribal user groups depend on the clean waters of the Sound to continue commercial fishing activities and to support increasing aquaculture operations.

The diversity of species found in Northern Puget Sound has provided a natural laboratory for the scientific research conducted by the University of Washington's Friday Harbor Lab since 1904. Critical base line data and surveys have been compiled over the years and the Lab is internationally recognized for its research facilities and contributions to marine science.

Numerous archeological sites have been identified in Northern Puget Sound that are of historical value; evidence of past settlement including tools, harpoons, and shell middens have been found along coastal boundaries. Twenty-three historic shipwrecks have been identified in the waters of the study area. Work continues in the field to examine historical relics of past cultures.

Oil and gas exploration is prohibited within the proposed sanctuary under the provisions of the State Shoreline Act. However, the area is heavily utilized by oil tankers that enter the Sound from the Strait of Juan De Fuca to transfer oil products at the four refineries located landward of the study area.

The U.S. Navy maintains a military air base on Whidbey Island, landward of the study area and, as a result, continuous overflights occur within the range of the proposed sanctuary area.

Existing Protection of Marine Resources

Since this proposed marine sanctuary is located entirely within State controlled waters, Federal, State, Tribal and local agencies all have concurrent program responsibilities to manage and protect selected marine resources and to provide education and recreation opportunities within Northern Puget Sound. Only agencies with major marine protection responsibilities will be identified in this notice.

The San Juan County National Wildlife Refuge encompasses 83 refuge islands within the San Juan archipelago. It serves as a breeding ground and nesting colony for several species of seabirds, including puffins and winged gulls.

San Juan Island, Dungeness Spit and Protection Island National Wildlife Refuges are all managed by the U.S. Fish and Wildlife Service. These areas provide breeding and nesting colonies for several species of birds and mammals that inhabit the waters within the study area.

The waters surrounding San Juan County were designated a Biological Preserve by the State of Washington in 1923. This designation requires individuals to obtain collecting permits from the Director of the University of Washington's Friday Harbor Lab to remove biological materials, other than for personal use, from the waters of San Juan County and Cypress Island.

Both commercial and recreational fisheries are cooperatively managed by the Pacific Fisheries Management Council, the Treaty Tribes of Western Washington, the Pacific Salmon Commission, the Washington Department of Wildlife, the Department of Natural Resources, the National Marine Fisheries Service, and the Washington Department of Fisheries. Aquaculture within the study area is managed by the State of Washington Departments of Ecology, Fisheries, and Agriculture, as well as the Treaty Tribes of Western Washington. Water quality in Northern Puget Sound is monitored and managed by the Puget Sound Water Quality Authority, the U.S. Environmental Protection Agency and the Washington State Department of Ecology. The U.S. Coast Guard regulates vessel traffic, including boating safety, within the Sound. Scheduled maintenance of harbors, ports and channels, including dredge and fill disposal, is under the jurisdiction of the U.S. Army Corps of Engineers, Seattle District.

The Department of Commerce, NOAA, National Marine Fisheries Service, is responsible for the protection of whales, dolphins and other pinnipeds, while the U.S. Fish and Wildlife regulations provide protection for all other marine mammals within the study area.

The Designation Process

The draft management plan to be prepared for the proposed Sanctuary will specify the goals and objectives of Sanctuary designation and describe programs for resource protection, research, education, and interpretation. The various administrative and regulatory alternatives for sanctuary management will be analyzed in the draft environmental impact statement.

Opportunities for public participation in NOAA's development of a draft environmental impact statement and management plan will be provided through scoping meetings, solicitation of comments on the draft environmental impact statement/management plan and proposed regulations, and public hearings.

The November scoping meetings will identify issues regarding the designation of the Washington State Nearshore (Northern Puget Sound) National Marine Sanctuary and generate suggestions for

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addressing them. The following are examples of discussion topics:

(1) Boundary alternatives;
(2) Management alternatives;
(3) Resource protection;
(4) Research opportunities; and
(5) Interpretive opportunities.

Dated: October 3, 1989.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-23720 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of the Louisiana/Mississippi Habitat Protection Advisory Panel on October 26, 1989, from 9 a.m. to 4 p.m. The meeting will be held at the Sheraton Baton Rouge Hotel, 4728 Constitution Avenue, Baton Rouge, LA. The panel will discuss the Cameron Creole Watershed Project and its operation, the Cal-Sabine River Basin Study, Louisiana's coastal restoration efforts, Louisiana's oil spill emergency response regulations, the Louisiana Department of Natural Resources marsh management study, problems with oil field wastes and produced waters, effects of produced waters on wetlands, and problems with Gulfport Harbor, Mississippi, dredging.

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: October 3, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23759 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a public meeting on October 25-26, 1989, at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, VA; telephone: (804) 727-9700. The Council will begin the meeting on October 25 at 8 a.m., and will adjourn during the afternoon of October 26.

The Council will meet to adopt Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), the Bluefish FMP, and the optimum yield definition for the Surf Clam and Ocean Quahog and the Squid/Mackerel/Butterfish FMPs. It will also discuss other fishery management matters. The public meeting may be lengthened or shortened depending upon progress on the agenda. The Council may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: October 3, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23760 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Members of the Pacific Fishery Management Council's Salmon Advisory Subpanel (SAS), representing recreational and charter fishing interests north of Cape Falcon, OR, will hold a public meeting on October 23, 1989, at 9:30 a.m., at the Metro Center, Room 145, 2000 S.W. First Avenue, Portland, OR. The SAS will develop fishery management plan amendment alternatives for the geographic distribution of the recreational harvest allocation north of Cape Falcon. The amendment alternatives developed by the group will be reviewed by the Pacific Council in November 1989 and January 1990, and could be incorporated in the next annual amendment cycle, resulting in the implementation of a preferred alternative in 1991.

Comments pertaining to the geographic distribution of the recreational ocean salmon harvest allocation north of Cape Falcon will be accepted at appropriate times. If necessary, a second public meeting will be scheduled for November 6, 1989, at the Pacific Council's office (address below), to complete drafting of preliminary allocations.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: October 3, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Mangement, National Marine Fisheries Service.

[FR Doc. 89-23761 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Rescheduling of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The joint public meeting of the South Atlantic Fishery Management Council's Law Enforcement Committee and Advisory Panel, on September 20-21, 1989, in Savannah, GA, previously published at 54 FR 37966, was postponed due to the possibility of severe weather conditions resulting from Hurricane Hugo.

The meeting has been rescheduled for November 6-7, 1989, at the same location at the Club House Inn, 6800 Abercorn Street, Savannah, GA. The meeting will begin at 1 p.m., on November 6 and will adjourn at 5 p.m., on November 7.

The Committee/Advisory Panel will discuss Cooperative Law Enforcement Agreements between state agencies and the National Marine Fisheries Service. It will also discuss a permit requirement for spiny lobster, review and make recommendations for modifications of proposed regulations to implement Amendment #5 to the Coastal Migratory Pelagics (mackerels) Fishery Management Plan (FMP), and to implement Amendment #1 to the FMP for Atlantic Swordfish. A detailed agenda will be available to the public upon request.

For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: October 3, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23762 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Rescheduling of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on October 17-19, 1989. The meeting will begin at 1 p.m., on October 17 at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. The meeting will adjourn at noon on October 19.

The SSC will review the swordfish and red drum assessments, the Bluefish Fishery Management Plan, Mackerel Amendment #5, and the SEAMAP Shallow Water Trawl Study. A detailed agenda will be available to the public upon request.

For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: October 3, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23763 Filed 10-6-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 4, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group I and the Group III limit are being adjusted variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist ony in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 5, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category levels	Adjusted 12-Month limit [1]
Group I:	
239	2,548,110 kilograms.
300/301	2,641,126 kilograms.
313	33,546,221 square meters.
314	36,990,397 square meters.
317/326	13,839,913 square meters of which not more than 3,104,374 square meters shall be in Category 326.
341	477,682 dozen of which not more than 352,316 dozen shall be in Category 341-y. [2]
347/348	2,194,916 dozen.
410	1,697,591 square meters of which not more than 1,508,715 square meters shall be in Category 410-A [3] and not more than 1,501,593 square meters shall be in Category 410-B. [4]
613	5,546,200 square meters.
614	9,189,123 square meters.
615	16,501,304 square meters.
641	1,259,368 dozen.
659-C [5]	296,246 kilograms.
845	2,223,564 dozen.
Group III: 201, 220, 222-225, 229, 362, 369-O [6], 400, 414, 464-469, 600, 603, 604-O [7], 606, 618-622, 624-627, 628, 629, 665, 666, 669-O [8] and 670-O [9], as a group.	294,909,231 square meters. equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] In Category 410-A, only HTS numbers 5111.11.1000, 5111.11.6030, 5111.11.6060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6060, 5111.20.6000, 5111.30.6000, 5111.90.3000, 5111.90.6000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5518.33.0510, 5516.34.0510 and 6301.20.0020.

[4] In Category 410-B, only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.0030, 5112.11.0060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.29.6040, 5112.29.6050, 5112.19.6060, 5112.20.0000, 5112.30.0000, 5112.90.3000, 5112.90.6010, 5112.90.6090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516 34.0520

[5] In Category 659-C, only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] In Category 369-O, all HTS numbers except 6302.60.0010 6302.91.0005 and 6302.91.0045 in Category 369-D; 4202.22.4020, 4202.22.4500 and 4202.22.8030 in Category 369-H; 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369-L; and 6307.10.2005 in Category 369-S.

[7] In Category 604-O, all HTS numbers except 5509.32.0000.

[8] In Category 669-O, all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 in Category 669-P.

[9] In Category 670-O, only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 89-23784 Filed 10-6-89; 8:45 am]
BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

October 4, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Excutive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Groups I and II and the limit for Group II are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49345, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1989

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Efffective on October 5, 1989, the directive of December 2, 1988 is amended to adjust the limits for the following categories, as provided under the terms of current bilateral agreement of November 18, 1982, as amended and extended:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	585,033 kilograms.
218	17,246,128 square meters.
225/317/326	28,927,765 square meters.
229-F [2]	560,259 kilograms.
369-L [3]	1,260,192 kilograms.
604	244,010 kilograms.
613/614/615/617	16,185,450 square meters.
625/626/627/628/629	13,657,777 square meters.
670-H [4]	15,553,084 kilograms.
670-L [5]	36,259,335 kilograms.
Group II	
237, 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	619,316,677 square meters equivalent.
Sublevels in Group II	
239	2,503,769 kilograms.
338/339	794,572 dozen.
347/348	1,095,815 dozen of which not more than 540,353 dozen shall be in Category 347 and not more than 866,647 dozen shall be in Category 348.
351	361,416 dozen.
359-H [6]	2,142,916 kilograms.
631	4,445,453 dozen pairs.
632	4,842,427 dozen pairs.
636	366,058 dozen.
638	1,834,092 dozen.
639	5,019,161 dozen.
647	2,783,228 dozen.
648	3,236,296 dozen.
650	52,070 dozen.
651	453,241 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.
[2] In Category 229-F, only HTS numbers 5608.11.0000, 5608.19.1010 and 5608.19.1020.
[3] In Category 369-L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.
[4] In Category 670-H, only HTS numbers and 4202.22.4030 and 4202.22.8050.
[5] In Category 670-L, only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.
[6] In Category 359-H, only HTS numbers 6505.90.1530 and 6505.90.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 89-23841 Filed 10-10-89; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; and OMB Control 0704-0188.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 110 hours.

Frequency of Response: On occasion; Weekly; Monthly; Quarterly; Semiannually; Annually; and Biennially.

Number of Respondents: 763.

Annual Burden Hours: 133,029,050.

Annual Responses: 1,209,355.

Needs and Uses: DoD Standardization Area assignments provide an ongoing and continuing effort to purge duplicative information collection requests from the system. Since 1978, over 5,000 discrete information request have been deleted from the Acquisition Management Systems and Data Requirements Control List (AMSDL). The burden for FY 1990 has been reestimated due to significant decrease in the number of information collection request (ICR). The significant decrease in ICR's experienced in FY 1989 was the result of an intensive review by DoD of all ICR's listed in the AMSDL.

Affected Public: Individuals or households; Businesses or other for profit; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: October 2, 1989.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89-23747 Filed 10-6-89; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1990 under the CHAMPUS DRG-based payment system. It also describes the non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to the changes made to the Medicare Prospective Payment System.

EFFECTIVE DATE: The rates and weights contained in this notice are effective for admissions occurring on or after October 1, 1989.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this final rule, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "**ADDRESS**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331) and December 16, 1988 (53 FR 50515). An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS), and that, wherever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

We are not initiating any changes to the CHAMPUS DRG-based payment system, but this notice describes certain changes effective for the third year of its operation and which are necessary in order to conform to statutory or regulatory changes to the Medicare PPS which we have previously committed to follow. In addition, this notice updates the weights and rates in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS system. These are contained in HCFA's September 1, 1989 final rule (54 FR 36452).

A. Grouper Changes

The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper program with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1990 HCFA will implement a number of classification changes and coding changes in the Grouper. The CHAMPUS Grouper will duplicate all changes made to the Medicare Grouper.

B. Recalibration of Weights

For FY 1990 we will recalibrate the CHAMPUS weights just as HCFA has proposed to do with the PPS weights. This recalibration will be based on claims data for the period July 1, 1988, through June 30, 1989. There are several differences in this respect between the Medicare PPS and the CHAMPUS DRG-based payment system, and these differences will continue. That is, under the CHAMPUS DRG-based payment system, heart transplants (DRG 103) are exempt, and we will continue to reimburse kidney acquisition costs based on billed charges.

For any DRG (except neonatal DRGs) for which there are fewer than ten (10) occurrences in the CHAMPUS database, we will continue to use the Medicare weight.

HCFA will make an across-the-board reduction of 1.22 percent in the PPS weights to normalize for the increased case-mix index Medicare has experienced due to various Grouper changes. Since we have not analyzed CHAMPUS data to determine the effect of the Grouper changes, we will not make a similar reduction in CHAMPUS weights, although we will examine this aspect for applicability in future years. We welcome any comments in this regard.

C. Wage Index

The CHAMPUS DRG-based payment system will use the same wage index which HCFA included in its September 1, 1989, final rule (54 FR 36527).

D. Sole Community Hospitals

CHAMPUS will continue to recognize sole community hospitals which are designated as such under the Medicare PPS, including any changes implemented by HCFA. Our payment methodology for these hospitals also will remain unchanged—that is, they will continue to be exempt from the CHAMPUS DRG-based payment system.

E. Indirect Medical Education Adjustment Factor

The CHAMPUS DRG-based payment system will use the same formula for calculating these adjustment factors in FY 1990 as was used during FY 1989.

F. Annual Update Factor

Just as we have in the past, CHAMPUS will use the same annual update factors as are used for the Medicare PPS. According to HCFA's September 1, 1989, final rule the factor will be 5.5 percent based on the market basket. Of course, if this is legislatively changed for Medicare, we will duplicate any change.

G. Cost-to-Charge Ratio

In calculating the adjusted standardized amounts for FY 1990, we will use the same cost-to-charge ratio we used for FY 1989 (.63).

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II. Updated Weights and Rates

Tables 1 and 2 provide the weights and rates to be used under the CHAMPUS DRG-based payment system during FY 1990 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

III. Pediatric-Modified DRG Weights

The Weights we have been using for the PM–DRGs (DRGs 600–636) were not developed from CHAMPUS data, as explained in previous **Federal Register** notices (53 FR 20580 and 53 FR 50515). We are currently calculating updated PM–DRG weights from CHAMPUS data, and we will publish them within the next few weeks. In the meantime, we will make no change to the current PM–DRG weights. If the new weights indicate that the previous weights were unreasonably low, we will make the necessary retroactive adjustments to previously-paid claims.

Dated: October 2, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Editorial Note.—This table will not appear in the Code of Federal Regulations.

Table 1.—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost-Share Per Diem

Effective for admissions occurring on or after October 1, 1989.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

National Large Urban Adjusted Standardized Amount	$2,911.01
Labor portion	2,149.49
Nonlabor portion	761.52
National Other Urban Adjusted Standardized Amount	2,897.85
Labor portion	2,139.77
Nonlabor portion	758.08
National Rural Adjusted Standardized Amount	2,739.27
Labor portion	2,021.86
Nonlabor portion	717.41
Cost-Share per diem for beneficiaries other than dependents of active-duty members	235.00

Editorial Note.—This table will not appear in the Code of Federal Regulations.

Table 2—CHAMPUS Weights and Threshold Summary

Effective for admissions occurring on or after October 1, 1989.

The following summary shows the final CHAMPUS DRG weights as well as the arithmetic and geometric average lengths of stay and outlier thresholds for all CHAMPUS DRGs. Long stay threshold (A) is applicable to all hospitals except children's hospitals, and long stay threshold (B) is applicable to children's hospitals.

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
1 Craniotomy age >17 except for trauma	3.9117	14.5	10.7	1	38	27
2 Craniotomy for trauma age >17	4.9964	12.3	6.5	1	36	25
3 Craniotomy age 0–17	2.6625	9.5	5.8	1	33	22
4 Spinal procedures	2.0968	9.7	7.2	1	35	24
5 Extracranial vascular procedures	1.6369	5.4	4.6	1	24	13
6 Carpal Tunnel release	0.5914	2.4	1.8	1	13	6
7 Periph & cranial nerve & other nerv syst proc w cc	3.2575	16.2	9.1	1	37	26
8 Periph & cranial nerve & other nerv syst proc w/o cc	0.9754	4.1	2.6	1	30	14
9 Spinal disorders & injuries	2.2487	14.6	7.1	1	35	24
10 Nervous system Neoplasms w CC	1.4025	9.5	6.0	1	34	23
11 Nervous system Neoplasms w/o CC	0.9888	6.7	4.1	1	32	21
12 Degenerative nervous system disorders	1.6825	12.5	6.9	1	34	23
13 Multiple Sclerosis & Cerebellar Ataxia	1.0273	7.9	5.9	1	33	22
14 Specific cerebrovascular disorders except tia	1.4878	8.3	5.6	1	33	22
15 Transient schemic attack & precerebral occlusions	0.7480	4.0	3.1	1	25	12
16 Nonspecific cerebrovascular disorders w CC	1.6445	9.6	5.7	1	33	22
Nonspecific cerebrovascular disorders w/o CC	0.8949	5.4	3.5	1	31	19
18 Cranial & peripheral nerve disorders w CC	1.4896	7.8	5.0	1	32	21
19 Cranial & peripheral nerve disorders w/o CC	0.6348	4.5	3.0	1	31	15
20 Nervous system infection except viral meningitis	1.8521	9.7	7.5	1	35	24
21 Viral meningitis	0.6170	4.0	3.4	1	19	10
22 Hypertensive encephalopathy	0.6831	4.5	3.6	1	26	13
23 Nontraumatic stupor & coma	0.8234	4.2	2.7	1	30	15
24 Seizure & headache age >17 w CC	0.8411	4.8	3.6	1	31	14
25 Seizure & headache age >17 w/o CC	0.5553	3.7	2.8	1	24	11
26 Seizure & headache age 0–17	0.4841	3.0	2.3	1	17	8
27 Traumatic stupor & coma, coma >1 hr	2.7881	11.3	5.1	1	33	22
28 Traumatic stupor & coma <1 hr age >17 w CC	1.6164	8.0	4.8	1	32	21
29 Traumatic stupor & coma <1 hr age >w/o CC	0.6277	4.7	2.5	1	30	15
30 Traumatic stupor & coma, coma <1	0.5786	3.1	1.9	1	22	9
31 Concussion Age <17 W CC	0.6806	3.9	2.5	1	30	14
32 Concussion age 17 W/O CC	0.4362	2.5	1.8	1	14	7
33 Concussion age 0–17	0.2602	1.4	1.2	1	4	2
34 Other Disorders of Nervous system w CC	1.8872	10.8	5.3	1	33	22
35 Other disordes of nervous system w/o CC	0.7097	4.8	2.9	1	30	15
36 Retinal procedures	0.7870	2.6	2.2	1	11	6
37 Orbital procedures	0.9392	2.9	1.9	1	19	6
38 Primary iris procedures	0.6194	3.7	3.3	1	17	9
39 Lens procedures with or without vitrectomy	0.6393	1.5	1.3	1	4	3
40 Extraocular procedures except orgit age <17	0.6336	2.4	1.6	1	16	7
41 Extraocular procedures except orgit age 0–17	0.4961	1.6	1.3	1	6	3
42 Intraocular procedures except retina, iris & lens	0.6105	2.7	2.2	1	14	7
43 Hyphema	0.2842	3.8	3.2	1	16	9
44 Acute major eye infections	0.4809	3.9	3.4	1	17	9
45 Neurological eye disorders	0.5767	3.4	2.8	1	20	9
46 Other disorders of the eye age <17 w CC	0.8586	4.7	3.7	1	31	14
47 Other disorders of the eye age <17 w/o CC	0.5446	3.4	2.4	1	27	11

Table 2—CHAMPUS Weights and Threshold Summary—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
48 Other disorders of the eye age 0–17	0.4717	3.0	2.0	1	20	9
49 Major head & neck procedures	3.2054	11.2	7.9	1	35	24
50 Sialoadenectomy	0.6966	2.0	1.8	1	6	4
51 Salivary gland procedures except sialoadenectomy	0.5787	1.5	1.3	1	5	3
52 Cleft lip & palate repair	0.6767	2.7	2.3	1	13	7
53 Sinue & mastoid procedures age <17	0.6661	1.9	1.5	1	8	4
54 Sinue & mastoid procedures age 0–17	0.7697	2.3	1.6	1	13	6
55 Miscellaneous ear, nose, mouth & throat procedures	0.5387	1.5	1.3	1		3
56 Rhinoplasty	0.5274	1.6	1.4	1	6	3
57 T&A proc, except tonsillectomy &/94 adenoidectomy only, age <17	0.5810	2.2	1.7	1	11	5
58 T&A proc, except tonsillectomy &/or adenoidectomy only, age 0–17	0.3939	1.2	1.1	1	2	2
59 Tonsillectomy &/or adenoidectomy only, age <17	0.3741	1.3	1.1	1	3	2
60 Tonsillectomy &/94 adenoidectomy only, age 0–17	0.3387	1.1	1.1	1	2	1
61 Myringotomy w tibe insertion age <17	0.6280	1.8	1.4	1	8	4
62 Myringotomy w tobe insertion age 0–17	0.5400	2.1	1.5	1	12	5
63 Other ear, nose, mount & throat O.R. procedures	1.2236	4.2	2.7	1	30	12
64 Ear, nose, mouth & throat malignancy	1.4352	8.2	4.7	1	32	21
65 Dysequilibrium	0.4682	3.0	2.5	1	14	7
66 Epistaxis	0.5041	3.5	2.8	1	20	10
67 Epiglottitis	1.0445	4.1	3.5	1	21	11
68 Otitis media & uri age <17 w CC	0.6371	4.2	3.5	1	20	10
69 Otitis media <17 w/o CC	09.5444	3.7	3.0	1	19	10
70 Otitis media & uri age 0–17	0.3917	3.0	2.5	1	13	7
71 Laryngotracheitis	0.3474	2.4	2.0	1	11	6
72 Nasal trauma & deformity	0.4996	2.5	1.8	1	16	7
73 Other ear, nose, mouth & throat diagnoses age <17	0.6045	3.4	2.4	1	24	10
74 Other ear, nose, mouth & throat diagnoses age 0–17	0.5639	3.1	2.2	1	23	10
75 Major chest procedures	3.1904	11.5	9.5	1	37	26
76 Other resp system O.R. procedures w CC	2.3656	10.8	7.1	1	35	24
77 Othe resp system O.R. procedures w/o CC	1.2797	5.7	3.7	1	31	20
78 Pulmonary embolism	1.6438	9.2	6.3	1	36	21
79 Respiratory infections & inflammations age <17 w CC	2.6358	11.2	8.6	1	36	25
80 Respiratory infections & inflammations age <17 w/o CC	1.4651	8.3	6.5	1	34	22
81 Respiratory infections & inflammations age 0–17	2.4921	10.8	8.1	1	34	23
82 Respiratory neoplasms	1.5168	8.4	5.8	1	33	22
83 Major chest trauma w CC	1.6657	7.3	5.6	1	33	22
84 Major chest trauma w/o CC	0.6141	3.1	2.4	1	20	9
85 Pleural effusion w CC	1.7790	10.3	7.6	1	35	24
86 Pleural effusion w/o CC	0.8896	5.4	4.4	1	31	15
87 Pulmonary edema & respiratory failue	2.4140	8.7	6.5	1	34	23
88 Chronic obstructive pulmonary disease	1.2102	6.8	5.4	1	33	19
89 Simple pneumonia & pleurisy age <17 w CC	1.4117	7.3	6.1	1	34	19
90 Simple pneumonia & pleurisy age <17 w/o CC	0.8567	5.2	4.5	1	23	13
91 Simple pneumonia & pleurisy age 0–17	0.6132	4.0	3.4	1	17	9
92 Interstitial lung disease w CC	1.6444	7.8	5.5	1	33	22
93 Interstitial lung disease w/o CC	0.9309	5.0	3.4	1	31	19
94 Pneumothorax w CC	1.2767	6.8	5.4	1	33	20
95 Pneumothorax w/o CC	0.6444	5.0	4.2	1	27	14
96 Bronchitis & asthma age <17 w CC	1.1132	6.1	5.0	1	31	18
97 Bronchitis & asthma age 0–17	0.6968	4.3	3.6	1	22	11
98 Bronchitis & asthma age 0–17	0.5178	3.3	2.8	1	15	8
99 Respiratory signs & symptoms w CC	0.9284	4.5	3.4	1	29	13
100 Respiratory signs & symptoms w/o CC	0.5962	3.2	2.4	1	19	9
101 Other respiratory system diagnoses w CC	1.5720	7.1	4.9	1	32	21
102 Other respiratory system diagnoses w/o CC	0.7793	4.2	2.9	1	30	14
103 Heart transplant	---	---	---	---		
104 Cardiac valve procedure w pump & w cardiac cath	8.0735	16.0	13.7	2	41	30
105 Cardiac valve procedure w pump & w/o cardiac cath	6.4719	12.6	10.5	1	38	27
106 Coronary bypass w cardiac cath	5.9430	12.2	11.2	3	38	24
107 Coronary bypass w/o cardiac cath	4.8067	10.0	9.2	2	30	19
108 Other cardiothoractic or vascular procedures, w pump	5.2607	10.0	6.7	1	36	25
109 Other cardiothoracic procedures w/o pump	4.3247	10.5	7.5	1	35	24
110 Major reconstructive vascular proc w/o pump w cc	3.6828	11.2	9.5	1	37	26
111 Major reconstructive vascular proc w/o pump w/o cc	2.3330	7.9	7.1	1	26	17
112 Vascular procedures except major reconstruction w/o pump	2.1673	5.4	4.2	1	32	16
113 Amputation for circ system disorders except upper limb & toe	2.8657	15.6	12.9	2	40	29
114 Upper limb & toe amputation for circ system disorders	1.9071	12.5	7.7	1	35	24
115 Perm cardiac pacemaker implant w ami, heart failure or shock	6.5297	13.6	12.2	2	40	29
116 Perm cardiac pacemaker implant w/o ami, heart failure or shock	3.0127	5.3	4.0	1	32	16
117 Cardiac pacemaker revision except device replacement	2.5961	8.1	4.5	1	32	21
118 Cardiac pacemaker device replacement	2.3427	4.2	2.9	1	30	14
119 Vein ligation & stripping	0.7060	2.6	2.0	1	15	7
120 Other curculatory system O.R. procedures	3.0299	12.3	7.4	1	35	24
121 Circulatory disorders w ami & c.v. comp disch alive	2.1885	8.4	7.2	1	35	22
122 Circulatory disorders w ami w/o c.v. comp disch alive	1.5242	6.0	5.0	1	33	17
123 Circulatory disorders w ami, expired	2.1714	4.3	2.5	1	30	16
124 Circulatory disorders except ami, w card cath & complex diag	1.2640	4.6	3.4	1	31	15
125 Circulatory disorders except ami, w card cath w/o complex diag	0.8364	2.7	2.0	1	17	8
126 Acute & subacute endocarditis	2.8641	16.4	12.5	1	40	29

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TABLE 2—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
127 Heart failure & shock	1.3149	6.7	5.3	1	33	20
128 Deep vein thrombophlebitis	0.8735	7.5	6.4	1	34	19
129 Cardiac arrest, unexplained	2.5452	6.4	3.0	1	31	20
130 Peripheral vascular disorders w cc	1.0998	6.8	5.2	1	33	22
131 Peripheral vascular disorders w/o cc	0.7289	5.2	3.7	1	31	19
132 Atherosclerosis w cc	1.6897	5.4	3.8	1	31	20
133 Atherosclerosis w/o cc	1.2362	4.1	3.0	1	31	14
134 Hypertension	0.6438	3.8	3.0	1	24	11
135 Cardiac congenital & valvular disorders age >17 w cc	1.1477	4.5	3.0	1	31	15
136 Cardiac congenital & valvular disorders age >17 w/o cc	0.7167	3.6	2.1	1	18	6
137 Cardiac congenital & valvular disorders age 0–17	1.0744	3.3	2.1	1	21	9
138 Cardiac arrhythmia & conduction disorders w cc	0.9735	4.5	3.3	1	31	14
139 Cardiac arrhythmia & conduction disorders w/o cc	0.6282	3.1	2.4	1	17	8
140 Angina pectoris	0.7838	3.3	2.7	1	18	9
141 Syncope & collapse w cc	0.8712	3.7	2.9	1	23	11
142 Syncope & collapse w/o cc	0.5514	3.0	2.4	1	17	8
143 Chest pain	0.6135	2.8	2.2	1	12	6
144 Other circulatory system diagnoses w cc	1.4166	6.4	4.8	1	32	21
145 Other circulatory system diagnoses w/o cc	0.8218	3.8	2.8	1	26	11
146 Rectal resection w cc	3.1160	12.9	11.5	2	39	27
147 Rectal resection w/o cc	1.9060	9.2	8.4	2	31	19
148 Major small & large bowel procedures w cc	3.4971	13.5	11.5	2	39	26
149 Major small & large bowel procedures w/o cc	1.9871	9.4	8.3	1	36	21
150 Peritoneal adhesiolysis w cc	2.4178	11.7	9.8	1	37	26
151 Peritoneal adhesiolysis w/o cc	1.4153	7.3	6.2	1	34	20
152 Minor small & large bowel procedures w cc	2.0014	9.8	7.7	1	35	24
153 Minor small & large bowel procedures w/o cc	1.1077	6.4	5.6	1	31	17
154 Stomach, esophageal & duodenal procedures age >17 W cc	3.7402	12.8	10.2	1	38	27
155 Stomach, esophageal & duodenal procedures age >17 w/o cc	1.7192	7.8	7.1	1	25	16
156 Stomach, esophageal & duodenal procedures age 0–17	1.2039	6.6	4.9	1	32	20
157 Anal & stomal procedures w cc	0.9373	4.9	3.7	1	31	14
158 Anal & stomal procedures w/o cc	0.5714	2.8	2.3	1	14	7
159 Hernia procedures except inguinal & femoral age >17 w cc	1.3938	6.1	4.7	1	32	17
160 Hernia procedures except inguinal & femoral age >17 w/o cc	0.7490	3.3	2.7	1	17	9
161 Inguinal & femoral hernia procedures age >17 w cc	0.7323	3.0	2.4	1	17	8
162 Inguinal & femoral hernia procedures age >17 w/o cc	0.5269	1.9	1.6	1	7	4
163 Hernia procedures age 0–17	0.4705	1.6	1.4	1	6	3
164 Appendectomy w complicated principal diag w cc	1.9312	9.2	8.3	2	31	19
165 Appendectomy w complicated principal diag w/o cc	1.2479	6.4	5.8	1	22	13
166 Appendectomy w/o complicated principal diag w cc	1.2447	5.4	4.5	1	24	13
167 Appendectomy w/o complicated principal diag w/o cc	0.6733	3.2	2.9	1	10	6
168 Mouth procedures w cc	1.0559	4.9	3.4	1	31	19
169 Mouth procedures w/o cc	0.7599	3.1	2.1	1	21	9
170 Other digestive system o.r. procedures w cc	2.9512	13.4	9.4	1	37	26
171 Other digestive system o.r. procedures w/o cc	1.0061	5.1	3.8	1	31	17
172 Digestive malignancy w cc	1.5666	8.9	6.3	1	34	23
173 Digestive malignancy w/o cc	0.7991	6.0	3.9	1	31	20
174 G.I. hemorrhage w cc	1.0529	5.3	4.3	1	27	14
175 G.I. hemorrhage w/o cc	0.6544	3.8	3.0	1	17	9
176 Complicated peptic ulcer	0.9539	5.9	4.7	1	32	16
177 Uncomplicated peptic ulcer w cc	0.7943	4.4	3.6	1	24	12
178 Uncomplicated peptic ulcer w/o cc	0.6147	3.7	3.1	1	18	9
179 Inflammatory bowel disease	0.9787	6.7	5.3	1	33	19
180 G.I. obstruction w cc	1.0432	6.3	5.0	1	32	19
181 G.I. obstruction w/o cc	0.5774	4.1	3.3	1	24	11
182 Esophagitis, gastroent & misc digest disorders age >17 w cc	0.7193	4.4	3.5	1	27	13
183 Esophagitis, gastroent & misc digest disorders age >17 w/o cc	0.5410	3.4	2.7	1	20	9
184 Esophagitis, gastroent & misc digest disorders age 0–17	0.3578	2.9	2.4	1	15	7
185 Dental & oral dis except extractions & restorations, age >17	0.8427	4.1	3.1	1	29	13
186 Dental & oral dis except extractions & restorations, age 0–17	0.4307	3.3	2.5	1	21	10
187 Dental extractions & restorations	0.5572	2.0	1.6	1	10	5
188 Other digestive system diagnoses age >17 w cc	1.0530	5.7	4.0	1	32	19
189 Other digestive system diagnoses age >17 w/o cc	0.5618	3.5	2.6	1	24	11
190 Other digestive system diagnoses age 0–17	0.3999	2.3	1.7	1	12	6
191 Pancreas, liver & shunt procedures w cc	6.6447	18.3	14.0	1	42	31
192 Pancreas, liver & shunt procedures w/o cc	4.1148	13.9	11.0	1	38	27
193 Biliary tract proc except only tot cholecyst w or w/o c.d.e. wc	3.9654	13.5	11.0	1	39	28
194 Biliary tract proc except only tot cholecyst w or w/o c.d.e. w/o	2.1299	9.9	8.5	1	36	24
195 Total cholecystectomy w c.d.e. w cc	1.7854	8.2	7.4	1	29	18
196 Total cholecystectomy w c.d.e. w/o cc	1.3674	6.9	6.5	2	17	12
197 Total cholecystectomy w/o c.d.e. w cc	1.3811	6.5	5.8	1	23	14
198 Total cholecystectomy w/o c.d.e. w/o cc	0.9930	5.0	4.6	1	15	10
199 Hepatobiliary diagnostic procedure for malignancy	2.8350	12.2	9.8	1	37	26
200 Hepatobiliary diagnostic procedure for non-malignancy	2.1257	8.4	6.2	1	34	23
201 Other hepatobiliary or pancrease o.r. procedures	1.9588	7.7	5.4	1	33	22
202 Cirrhosis & alcoholic hepatitis	1.6444	9.1	6.5	1	34	23
203 Malignancy of hepatobiliary system or pancreas	1.3965	7.9	5.4	1	33	22
204 Disorders of pancreas except malignancy	1.1547	6.7	5.3	1	33	19
205 Disorders of liver except malig,cirr,alc hepa w CC	1.5825	8.1	5.5	1	33	22

TABLE 2—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
206 Disorders of liver except malig,cirr,alc hepa w/o CC	0.6766	4.5	2.7	1	30	16
207 Disorders of the biliary tract w CC	0.9314	5.3	4.0	1	32	17
208 Disorders of the biliary tract w/o CC	0.5752	3.3	2.6	1	19	9
209 Major joint & limb reattachment procedures	2.7755	9.9	9.3	2	29	19
210 Hip & femur procedures except major joint age >17 w CC	2.7846	13.1	11.2	2	39	28
211 Hip & femur procedures except major joint age >17 w/o CC	1.9229	9.3	7.1	1	35	24
212 Hip & femur procedures except major joint age 0–17	1.3735	6.9	4.8	1	32	21
213 Amputation for musculoskeletal system & conn tissue disorders	1.5458	9.8	5.5	1	33	22
214 Back & neck procedures w CC	2.1049	9.3	7.5	1	35	24
215 Back & neck procedures w/o CC	1.2199	5.9	5.1	1	25	14
216 Biopsies of musculoskeletal system & connective tissue	1.5363	8.6	5.0	1	32	21
217 Wnd debrid & skn grft except hand, for muscskelet & conn tiss dis	2.5842	11.3	8.3	1	34	23
218 Lower extrem & humer proc except hip, foot, femur age >17 w CC	1.7805	8.0	6.1	1	34	23
219 Lower extrem & humer proc except hip, foot, femur age >17 w/o CC	1.0219	4.3	3.5	1	23	11
220 Lower extrem & humer proc except hip, foot, femur age 0–17	0.8000	3.0	2.3	1	19	9
221 Knee procedures w CC	1.5756	6.1	4.4	1	32	21
222 Knee procedures w/o CC	0.9490	3.3	2.7	1	18	9
223 Major shoulder/elbow proc, or other upper extremity proc w CC	0.8474	3.3	2.6	1	18	9
224 Shoulder, elbow or forearm proc, exc major joint proc, w/o CC	0.7237	2.5	2.0	1	11	6
225 Foot procedures	0.7067	2.7	2.1	1	14	7
226 Soft tissue procedures w CC	1.0833	4.7	3.4	1	31	17
227 Soft tissue procedures w/o CC	0.7292	2.8	2.2	1	15	7
228 Major thumb or joint proc, or oth hand or wrist proc w CC	0.7723	2.3	1.9	1	10	5
229 Hand or wrist proc, except major joint proc, w/o cc	0.6612	2.4	1.7	1	13	6
230 Local excision & removal of int fix devices of hip & femur	0.8904	3.5	2.1	1	29	11
231 Local excision & removal of int fix devices except hip & femur	0.9305	3.8	2.4	1	30	12
232 Arthroscopy	0.9736	3.4	2.0	1	27	10
233 Other musculoskelet sys & conn tiss o.r. proc w CC	2.0303	11.0	9.3	1	37	26
234 Other musculoskelet sys & conn tiss o.r. proc w/o CC	1.9052	6.9	5.1	1	33	22
235 Fractures of femur	1.2251	13.0	6.7	1	34	23
236 Fractures of hip & pelvis	1.3313	10.7	7.4	1	35	24
237 Sprains, strains, & dislocations of hip, pelvis & thigh	0.7109	5.5	3.4	1	31	20
238 Osteomyelitis	1.5511	11.1	8.7	1	36	25
239 Pathological fractures & musculoskeletal & conn tiss malignancy	1.3387	9.0	6.2	1	34	23
240 Connective tissue disorder w CC	1.7277	8.7	5.9	1	33	22
241 Connective tissue disorders w/o CC	0.7982	5.9	4.0	1	32	20
242 Septic arthritis	1.1335	8.1	6.3	1	34	23
243 Medical back problems	0.6173	4.5	3.2	1	31	16
244 Bone diseases & specific arthropathies w CC	1.1070	6.2	4.4	1	32	21
245 Bone disease & specific arthropathies w/o CC	0.7033	4.8	3.5	1	31	17
246 Non-specific arthropathies	0.6759	4.6	3.8	1	26	13
247 Signs & symptoms of musculoskeletal system & conn tissue	0.5795	4.0	3.0	1	27	12
248 Tendonitis, myositis & bursitis	0.5531	3.8	2.8	1	25	11
249 Aftercare, musculoskeletal system & connective tissue	0.7241	5.0	2.8	1	30	19
250 Fx, sprn, strn & disl of forearm, hand, foot age >17 w CC	0.9518	4.5	3.4	1	31	15
251 Fx, sprn, strn & disl of forearm, hand, foot age >17 w/o CC	0.5489	2.5	1.9	1	15	7
252 Fx, sprn, strn & disl of forearm, hand, foot age 0–17	0.3787	1.8	1.3	1	6	3
253 Fx, sprn, strn & disl of uparm, lowleg ex foot age >17 w CC	1.0838	7.8	5.2	1	33	22
254 Fx, sprn, strn & disl of uparm, lowleg ex foot age >17 w/o CC	0.5401	3.6	2.7	1	25	11
255 Fx, sprn, strn & disl of uparm, lowleg ex foot age 0–17	0.4024	2.4	1.7	1	13	6
256 Other musculoskeletal system & connective tissue diagnoses	0.6493	3.6	2.5	1	27	11
257 Total mastectomy for malignancy w CC	1.0537	4.8	4.3	1	16	10
258 Total mastectomy for malignancy w/o CC	0.9254	4.0	3.6	1	15	9
259 Subtotal mastectomy for malignancy w CC	1.1262	4.0	3.0	1	28	12
260 Subtotal mastectomy for malignancy w/o CC	0.7141	2.7	2.3	1	12	6
261 Breast proc for non-malignancy except biopsy & local excision	0.8871	2.4	2.0	1	11	6
262 Breast biopsy & local excision for non-malignancy	0.5160	1.8	1.5	1	7	4
263 Skin graft &/or debrid for skn ulcer or cellulitis w CC	3.0046	17.9	11.8	1	39	28
264 Skin graft &/or debrid for skn ulcer or cellulitis w/o CC	1.3774	7.7	5.8	1	33	22
265 Skin graft &/or debrid except for skin ulcer or cellulitis w CC	2.2321	9.5	5.6	1	33	22
266 Skin graft &/or debrid except for skin ulcer or cellulitis w/o C	0.9031	3.8	2.7	1	30	13
267 Perianal & pilonidal procedures	0.4816	1.9	1.6	1	8	4
268 Skin, subcutaneous tissue & breast plastic procedures	0.7099	2.5	1.9	1	15	7
269 Other skin, subcut tiss & breast poroc w CC	1.7278	8.4	5.2	1	33	22
270 Other skin, subcut tiss & breast proc w/o CC	0.6845	3.1	2.3	1	21	9
271 Skin ulcers	0.9865	7.3	5.6	1	33	22
272 Major skin disorders w CC	1.5756	7.8	6.1	1	34	23
273 Major skin disorders w/o CC	0.6007	4.9	3.7	1	31	16
274 Malignant breast disorders w CC	1.3695	7.7	5.0	1	33	22
275 Malignant breast disorders w/o CC	0.8398	5.0	3.9	1	31	15
276 Non-malignant breast disorders	0.5911	3.2	2.5	1	20	9
277 Cellulitis age >17 w CC	1.0237	6.8	5.7	1	32	17
278 Cellulitis age >17 w/o CC	0.6316	4.7	3.9	1	23	12
279 Cellulitis age 0–17	0.4686	3.7	3.2	1	16	19
280 Trauma to the skin, subcut tiss & breast age >17 w CC	0.6941	4.1	2.8	1	30	14
281 Trauma to the skin, subcut tiss & breast age >17 w/o CC	0.4864	2.9	2.1	1	20	6
282 Trauma to the skin, subcut tiss & breast age 0–17	0.3919	2.2	1.7	1	12	6
283 Minor skin disorders w CC	0.7785	5.4	3.6	1	31	17
284 Minor skin disorders w/o CC	0.4708	3.3	2.5	1	23	10

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TABLE 2—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
285 Amputat of lower limb for endocrine, nutrit, & metabol disorders	3.0689	17.3	12.2	1	40	29
286 Adrenal & pituitary procedures	2.7767	10.2	8.6	1	36	25
287 Skin grafts & wound debrid for endoc, nutrit & metab disorders	2.9059	19.1	11.8	1	39	28
288 O.R. procedures for obesity	1.7049	5.7	5.3	1	15	10
289 Parathyroid procedures	0.8573	3.4	3.0	1	12	7
290 Thyroid procedures	0.7497	2.6	2.3	1	10	6
291 Thyroglossal procedures	0.4254	1.5	1.3	1	5	3
292 Other endocrine, nutrit & metab o.r. proc w CC	3.0042	13.4	10.1	1	38	27
293 Other endocrine, nutrit & metab o.r. proc w/o CC	1.3450	6.7	5.5	1	33	21
294 Diabetes age >35	0.7471	5.8	4.7	1	28	14
295 Diabetes age 0–35	0.6015	4.2	3.5	1	22	11
296 Nutritional & misc metabolic disorders age >17 w CC	1.0624	6.9	4.7	1	32	21
297 Nutritional & misc metabolic disorders age >17 w/o CC	0.6425	4.6	3.2	1	31	14
298 Nutritional & misc metabolic disorders age 0–17	0.4536	3.5	2.7	1	21	10
299 Inborn errors of metabolism	0.9071	5.9	4.3	1	32	21
300 Endocrine disorders w CC	0.8962	5.2	4.2	1	31	15
301 Endocrine disorders w/o CC	0.5547	3.5	2.5	1	24	10
302 Kidney transplant	6.1736	15.5	14.1	3	42	31
303 Kidney, ureter & major bladder procedures for neoplasm	2.5716	10.0	9.0	2	33	21
304 Kidney, ureter & major bladder proc for non-neopl w CC	2.0182	8.9	7.7	1	35	22
305 Kidney, ureter & major bladder proc for non-neopl w/o cc	1.3911	6.3	5.1	1	33	20
306 Prostatectomy w CC	1.2722	6.7	5.2	1	33	22
307 Prostatectomy w/o CC	0.7481	3.5	3.0	1	15	8
308 Minor bladder procedures w CC	1.7868	8.5	5.7	1	33	22
309 Minor bladder procedures w/o CC	0.8640	3.9	3.0	1	26	12
310 Transurethral procedures w CC	0.9821	3.8	3.0	1	21	10
311 Transurethral procedures w/o CC	0.7366	2.8	2.2	1	15	7
312 Urethral procedures, age >17 w CC	0.9134	4.0	2.8	1	30	15
313 Urethral procedures, age >17 w/o CC	0.5920	2.5	2.1	1	13	6
314 Urethral procedures, age 0–17	0.4592	1.7	1.3	1	8	4
315 Other kidney & urinary tract o.r. procedures	2.3145	9.3	6.2	1	34	23
316 Renal failure	1.7109	6.5	5.5	1	33	22
317 Admit for renal dialysis	0.3814*	0.0	2.3	1	22	22
318 Kidney & urinary tract neoplasms w CC	1.3417	7.3	4.7	1	32	21
319 Kidney & urinary tract neoplasms w/o CC	0.9732	5.6	3.3	1	31	19
320 Kidney & urinary tract infections age >17 w CC	0.9125	5.6	4.7	1	27	14
321 Kidney & urinary tract infections age >17 w/o CC	0.6104	4.2	3.6	1	18	10
322 Kidney & urinary tract infections age 0–17	0.5584	4.0	3.4	1	18	10
323 Urinary stones w CC, &/or esw lithotripsy	0.8311	2.9	2.1	1	17	8
324 Urinary stones w/o CC	0.4680	2.2	1.6	1	10	5
325 Kidney & urinary tract signs & symptoms age >17 w CC	0.9197	4.8	3.5	1	31	16
326 Kidney & urinary tract signs & symptoms age >17 w/o CC	0.5387	3.2	2.4	1	21	9
327 Kidney & urinary tract signs & symptoms age 0–17	0.4104	2.1	1.9	1	8	5
328 Urethral stricture age >17 w CC	0.6445*	0.0	3.9	1	32	32
329 Urethral stricture age >17 w/o CC	0.4020*	0.0	2.3	1	19	19
330 Urethral stricture age 0–17	0.2754*	0.0	1.6	1	9	9
331 Other kidney & urinary tract diagnoses age >17 w CC	1.2728	7.1	4.7	1	32	21
332 Other kidney & urinary tract diagnoses age >17 w/o CC	0.7069	4.1	2.9	1	30	13
333 Other kidney & urinary tract diagnoses age 0–17	0.6035	3.8	2.8	1	27	12
334 Major male pelvic procedures w CC	2.3332	9.9	9.1	2	30	19
335 Major male pelvic procedures w/o CC	1.8027	7.6	7.3	3	17	12
336 Transurethral prostatectomy w CC	1.0247	4.8	4.2	1	16	11
337 Transurethral prostatectomy w/o CC	0.7417	3.7	3.4	1	10	7
338 Testes procedures, for malignancy	0.7775	4.1	2.3	1	30	14
339 Testes procedures, non-malignancy age >17	0.5358	1.7	1.4	1	7	4
340 Testes procedures, non-malignancy age 0–17	0.5130	1.8	1.4	1	6	3
341 Penis procedures	0.9564	3.3	2.5	1	22	10
342 Circumcision age >17	0.4806*	0.0	2.1	1	23	23
343 Circumcision age 0–17	0.4398	1.3	1.2	1	3	2
344 Other male reproductive system o.r. procedures for malignancy	1.3390	6.1	5.3	1	29	16
345 Other male reproductive system o.r. proc except for malignancy	0.7572	4.6	3.5	1	31	14
346 Malignancy, male reproductive system, w CC	1.2368	8.0	5.4	1	33	22
347 Malignancy, male reproductive system, w/o CC	0.8627	4.6	3.1	1	31	16
348 Benign prostatic hypertrophy w CC	0.6226	3.1	2.6	1	20	9
349 Benign prostatic hypertrophy w/o CC	0.5178	2.3	1.9	1	12	6
350 Inflammation of the male reproductive system	0.6165	4.0	3.4	1	19	10
351 Sterilization, male	0.3293*	0.0	1.3	1	5	5
352 Other male reproductive system diagnoses	0.4838	3.3	2.1	1	26	11
353 Pelvic evisceration, radical hysterectomy & radical vulvectomy	1.7251	8.3	7.6	2	27	17
354 Uterine, adnexa proc for non-ovarian/adnexal malig w CC	1.4771	7.1	6.2	1	25	15
355 Uterine, adnexa proc for non-ovarian/adnexal malig w/o CC	0.9369	4.7	4.4	1	11	8
356 Female reproductive system reconstructive procedures	0.8560	4.4	4.1	1	15	9
357 Uterine & adnexa proc for ovarian or adnexal malignancy	1.6853	8.0	7.0	1	31	16
358 Uterine & adnexa proc for non-malignancy w CC	1.1804	5.4	5.0	1	15	10
359 Uterine & adnexa proc for non-malignancy w/o CC	0.9062	4.3	4.0	1	11	7
360 Vagina, cervix & vulva procedures	0.6711	3.0	2.2	1	21	9
361 Laparoscopy & incisional tubal interruption	0.6814	2.9	2.2	1	19	9
362 Endoscopic tubal interruption	0.3464	1.1	1.1	1	2	1
363 D&C, conization & radio-implant, for malignancy	0.6631	3.1	2.6	1	18	8

TABLE 2—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
364 D&C, conization except for malignancy	0.5004	2.0	1.6	1	9	5
365 Other female reproductive system o.r. procedures	1.1177	5.7	4.8	1	25	14
366 Malignancy, female reproductive system w CC	1.5648	9.1	4.8	1	32	21
36721 Malignancy, female reproductive system w/o CC	0.6546	3.5	2.5	1	28	11
368 Infections, female reproductive system	0.8109	4.0	3.5	1	15	9
369 Menstrual & other female reproductive system disorders	0.4448	2.7	2.2	1	15	7
370 Cesarean section w CC	0.9604	5.4	4.9	1	16	10
371 Cesarean section w/o CC	0.7595	4.2	4.0	1	9	6
372 Vaginal delivery w complicating diagnoses	0.5876	3.5	2.9	1	15	8
373 Vaginal delivery w/o complicating diagnoses	0.3892	2.3	2.1	1	6	4
374 Vaginal delivery w sterilization &/or D&C	0.6206	2.7	2.5	1	7	5
375 Vaginal delivery w o.r. proc except steril &/or d&c	0.6414	3.2	2.8	1	14	8
376 Postpartum & post abortion diagnoses w/o o.r. procedure	0.4266	3.0	2.5	1	14	7
377 Postpartum & post abortion diagnoses w o.r. procedure	0.6258	2.8	2.2	1	16	8
378 Ectopic pregnancy	0.7793	3.7	3.4	1	11	7
379 Threatened abortion	0.3361	2.7	2.0	1	17	7
380 Abortion w/o d&c	0.2981	1.6	1.4	1	6	3
381 Abortion w d&c, aspiration curettage or hysterotomy	0.3935	1.3	1.2	1	4	2
382 False labor	0.1574	1.4	1.2	1	4	2
383 Other antepartum diagnoses w medical complications	0.3452	3.1	2.5	1	16	8
384 Other antepartum diagnoses w/o medical complications	0.3253	2.6	1.9	1	16	7
385 No longer valid						
386 No longer valid						
387 No longer valid						
388 No longer valid						
389 No longer valid						
390 No longer valid						
391 Normal newborn	0.1246	2.5	2.2	1	8	5
392 Splenectomy age >17	3.2732	10.5	8.6	1	36	25
393 Splenectomy age 0–17	2.0851	8.9	6.7	1	34	21
394 Other o.r. procedures of the blood and blood forming organs	1.2115	5.0	3.3	1	31	18
395 Red blood cell disorders age >17	0.8802	5.4	3.9	1	31	19
396 Red blood cell disorders age 0–17	0.6442	4.1	2.9	1	30	14
397 Coagulation disorders	0.9506	4.9	3.3	1	31	16
398 Reticuloendothelial & immunity disorders w CC	1.4610	7.3	5.7	1	33	22
399 Reticuloendothelial & immunity disorders w/o CC	0.7966	5.0	3.8	1	31	15
400 Lymphoma & leukemia w major o.r. procedure	3.6818	11.9	7.8	1	35	24
401 Lymphoma & non-acute leukemia w other o.r. proc w CC	2.5169	10.3	8.2	1	36	25
402 Lymphoma & non-acute leukemia w other o.r. proc w/o CC	1.1690	4.7	3.3	1	31	17
403 Lymphoma & non-acute leukemia w CC	2.1872	10.6	6.9	1	34	23
404 Lymphoma & non-acute leukemia w/o CC	1.1867	6.1	4.1	1	32	21
405 Acute leukemia w/o major o.r. procedure age 0–17	2.8535	9.3	5.6	1	33	22
406 Myeloprolif disord or poorly diff neopl w maj o.r. proc w CC	2.7943	11.7	8.7	1	36	25
407 Myeloprolif disord or poorly diff neopl w maj o.r. proc w/o CC	1.9628	8.8	7.3	1	35	24
408 Myeloprolif disord or poorly diff neopl w other o.r. proc	1.0927	4.8	3.4	1	31	15
409 Radiotherapy	0.8663	6.4	3.9	1	31	30
410 Chemotherapy	0.6762	2.9	2.4	1	16	8
411 History of malignancy w/o endoscopy	0.5547	2.3	1.9	1	11	6
412 History of malignancy W endoscopy	0.4046*	0.0	2.1	1	20	20
413 Other Myeloprolif Dis or poorly diff neopl diag w cc	1.8943	9.5	5.9	1	33	22
414 Other myeloprolif dis or poorly diff neopl diag w/o cc	1.1732	7.6	4.5	1	32	21
415 O.R. procedure for infectious & parasitic diseases	3.0686	13.6	9.0	1	36	25
416 Septicemia age >17	1.9942	8.6	6.6	1	34	23
417 Septicemia age 0–17	0.8230	5.6	4.5	1	32	16
418 Postoperative & post-traumatic infections	0.9547	5.9	4.8	1	32	17
419 Fever of unkonwn origin >17 w cc	1.1020	6.3	5.3	1	28	15
420 Fever of unknown origin age >17 w/o cc	0.8086	4.8	3.9	1	28	13
421 Viral illness age >17	0.5673	3.6	3.0	1	20	10
422 Viral illness & fever of unknown origin age 0–17	0.4254	3.1	2.7	1	12	7
423 Other infectious & parasitic diseases diagnoses	1.4709	8.6	5.4	1	33	22
424 O.R. procedure w principal diagnoses of mental illness	1.7427	13.8	9.7	1	37	26
425 Acute adjust react & disturbances of psychosocial dysfunction	0.7532	6.1	3.5	1	31	20
426 Depressive neuroses	1.9986	12.0	7.0	1	34	23
427 Neuroses except depressive	1.6716	11.2	6.2	1	34	23
428 Disorders of personality & impulse control	3.3955	16.6	11.3	1	39	28
429 Organic disturbances & mental retardation	1.5729	14.5	8.5	1	36	25
430 Psychoses	1.7922	13.5	9.3	1	37	26
431 Childhood mental disorders	4.2143	20.2	13.3	1	41	30
432 Other mental disorder diagnoses	2.4544	24.9	16.6	1	44	33
433 Alcohol/drug abuse or dependence, left ama	0.7675	8.5	5.5	1	33	22
434 Alc/drug abuse or depend, detox or oth sympt treat w cc	1.1937	12.2	7.1	1	35	24
435 No longer valid	–	–	–	1	–	–
436 Alc/drug dependence w rehabilitation therapy	1.8675	25.2	23.1	5	51	40
437 Alc/drug dependence, combined rehab & detox therapy	1.6302	23.4	21.9	6	49	38
438 No longer valid	-	-	-	1	-	-
439 Skin grafts for injuries	2.0342	9.7	6.5	1	34	23
440 Wound debridement for injuries	1.9284	8.2	4.8	1	32	21
441 Hand procedures for injuries	0.7090	2.6	2.0	1	17	8
442 Other O.R. procedures for injuries w cc	2.5272	9.4	6.1	1	34	23

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TABLE 2—CHAMPUS WEIGHTS AND THRESHOLD SUMMARY—Continued

CRG Description	CHAMPUS Weight	Arithmetic Mean LOS	Geometric Mean LOS	Short Stay Threshold	Long Stay Threshold (A)	Long Stay Threshold (B)
443 Other O.R. procedures for injuries w/o cc	1.1303	4.4	2.6	1	30	16
444 Multiple trauma age >17 w cc	1.1584	6.0	3.8	1	31	20
445 Multiple trauma age >17 w/o cc	0.7573	4.9	3.1	1	31	17
446 Multiple trauma age 0–17	0.4830	2.7	2.1	1	16	8
447 Allergic reactions age >17	0.4310	2.6	2.0	1	15	7
448 Allergic reactions age 0–17	0.2338	1.8	1.5	1	8	4
449 Poisoning & toxic effects of drugs age >17 w cc	0.9356	4.6	2.9	1	30	16
450 Poisoning & toxic effects of drugs age >17 w/o cc	0.5260	3.2	2.0	1	24	10
451 Poisoning & toxic effects of drugs age 0–17	0.4302	2.5	1.7	1	15	7
452 Complications of treatment w cc	1.0013	5.6	3.9	1	31	19
453 Complications of treatment w/o cc	0.5541	3.5	2.3	1	26	11
454 Other injury, poisoning & toxic effect diag w cc	1.2067	4.7	2.7	1	30	17
455 Other injury, poisoning & toxic effect diag w/o cc	0.3595	1.8	1.4	1	7	4
456 Burns, transferred to another acute care facility	3.1114*	0.0	5.8	1	34	34
457 Extensive Burns w/o O.R. procedure	3.6851	11.7	6.2	1	34	23
458 Non-extensive burns w skin graft	3.5459	16.4	11.2	1	39	26
459 Non-extensive burns w wound debridement or other O.R. proc	1.7181	9.4	6.5	1	34	23
460 Non-extensive burns w/o O.R. procedure	1.3197	6.8	4.3	1	32	21
461 O.R. proc w diagnoses of other contact w health services	0.9221	4.8	2.4	1	30	16
462 Rehabilitation	2.9942	23.6	16.4	1	44	33
463 Signs & symptoms w cc	1.0092	7.1	4.3	1	32	21
464 Signs & symptoms w/o cc	0.5286	3.6	2.8	1	21	10
465 Aftercare w history of malignancy as secondary diagnosis	0.3282*	0.0	1.8	1	12	12
466 Aftercare w/o history of malignancy as secondary diagnosis	0.6294	3.8	2.3	1	30	13
467 Other factors influencing health status	0.4149	2.6	1.9	1	15	7
468 Extensive O.R. procedure unrelated to principal diagnosis	2.2076	8.9	5.1	1	33	22
469 Principal diagnosis invalid as discharge diagnosis	-	-	-	-	-	-
470 Ungroupable	-	-	-	-	-	-
471 Bilateral or multiple major joint procs of lower extremity	4.8580	13.3	12.3	3	40	27
472 Extensive burns w O.R. procedure	12.7129*	0.0	19.1	1	47	47
473 Acute Leukemia w/o major O.R. procedure age <17	4.6535	16.9	9.9	1	37	26
474 Respiratory system diagnosis with tracheostomy	10.4534	25.5	19.3	1	47	36
475 Respiratory system diagnosis with ventilator support	4.2176	12.9	9.0	1	36	25
476 Prostatic O.R. procedure unrelated to principal diagnosis	2.5507	12.6	10.1	1	38	27
477 Non-extensive O.R. procedure unrelated to principal diagnosis	1.1686	6.5	3.7	1	31	20
600 Neonate, died w/in one day of birth	0.2046#	0.0	2.2	1	1	1
601 Neonate, transferred >5 days old	0.2136#	0.0	1.4	1	1	1
602 Neonate, birthwt >750G, discharged alive	6.6400#	0.0	52.0	4	69	69
603 Neonate, birthwt >750g, died	2.2736#	0.0	7.4	1	24	24
604 Neonate, birthwt 750–999G, discharged alive	6.0740#	0.0	71.2	20	88	88
605 Neonate, birthwt 750–999G, died	2.9237#	0.0	9.3	1	26	26
606 Neonate, birthwt 1000–1499G, w signif or proc, discharged alive	5.8513#	0.0	62.7	14	80	60
607 Neonate, birthwt 1000–1499G, w/o signif or proc, discharged alive	3.0242#	0.0	42.8	12	80	60
608 Neonate, birthwt 1000–1499G, died	2.8813#	0.0	9.4	1	26	26
609 Neonate, birthwt 1500–1999G, w signif or proc, w mult major prob	4.7487#	0.0	40.9	8	58	58
610 Neonate, birthwt 1500–1999G, w signif or proc, w/o mult major pr	1.8088#	0.0	19.8	3	37	37
611 Neonate, birthwt 1500–1999G, w/o signif or proc, w mult major pr	2.1175#	0.0	24.8	6	42	42
612 Neonate, birthwt 1500–1999G, w/o signif or proc, w major prob	1.1013	0.0	18.5	4	36	36
613 Neonate, birthwt 1500–1999g, w/o signif or pro, w minor prob	0.7344#	0.0	15.8	3	33	33
614 Neonate, birthwt 1500–1999G, w/o signif or proc, w other prob	0.7344#	0.0	15.8	3	33	33
615 Neonate, birthwt 2000–2499G, w signif or proc, w mult major prob	3.7853#	0.0	28.2	6	45	45
616 Neonate, birthwt 2000–2499G, w signif or proc, w/o mult major pr	1.671#	0.0	14.2	4	31	31
617 Neonate, birthwt 2000–2499G, w/o signif or proc, w mult major pr	1.4389#	0.0	13.5	3	31	31
618 Neonate, birthwt 2000–2499G, w/o signif or proc, w major prob	0.7488#	0.0	10.5	3	26	26
619 Neonate, birthwt 2000–2499G, w/o signif or proc, w minor prob	0.4699#	0.0	8.4	1	25	25
620 No longer valid	-	-	-	-	-	-
621 Neonate, birthwt 2000–2499G, w/o signif or proc, w other prob	0.3532#	0.0	5.7	1	19	19
622 Neonate, birthwt >2499G, w signif or proc, w mult major prob	2.9785#	0.0	19.2	4	36	36
623 Neonate, birthwt >2499G, w signif or proc, w/o mult major prob	0.8844#	0.0	8.9	2	26	26
624 Neonate, birthwt >2499G, w minor abdom procedure	0.1987#	0.0	2.8	1	8	8
625 No longer valid	-	-	-	-	-	-
626 Neonate, birthwt 2499G, w/o signif or proc, w mult major prob	1.3401#	0.0	9.4	1	26	26
627 Neonate, birthwt 2499G, w/o signif or proc, w major prob	0.5166	0.0	5.8	1	20	20
628 Neonate, birthwt 2499G, w/o signif or proc, w minor prob	0.2347#	0.0	3.8	1	10	10
629 No longer valid	-	-	-	-	-	-
630 Neonate, birthwt 2499G, w/o signif or proc, w other prob	0.1364#	0.0	3.2	1	7	7
631 BPD and OTH chronic respiratory diseases arising in perinatal pe	-	-	-	-	-	-
632 Other respiratory problems after birth	-	-	-	-	-	-
633 Multiple, other and unspecified congenital anomalies, w cc	-	-	-	-	-	-
634 Multiple, other and unspecified congenital anomalies, w/o cc	-	-	-	-	-	-
635 Neonatal aftercare for weight gain	-	-	-	-	-	-
636 Neonatal diagnosis, age >28 days	1.7778#	0.0	3.9	1	20	20
900 ALC/Drug abuse or depend, detox or oth sympt treat w/o cc age<	2.2317	25.2	18.4	1	46	35
901 ALC/Drug abuse or depend, detox or oth sympt treat w/o cc age>	1.3593	15.4	9.9	1	37	26

NOTE: Long stay threshold 8 is used for childrens hospital discharges.
* CHAMPUS weight is the same as the Medicare weight due to a low number of observations.
CHAMPUS weights for these DRG's may be revised.

[FR Doc. 89-23749 Filed 10-6-89; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B-2

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the B-2 will meet in closed session on October 16–17, 1989 at Edwards Air Force Base, California; November 7, 1989, December 6, 1989, and January 18, 1990, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the B-2 program with emphasis on the flight test program and reductions of program costs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: October 2, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23748 Filed 10-6-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 2, 1989.

The USAF Scientific Advisory Board Munition Systems Division Advisory Group will meet on 31 Oct 89 from 8:00 a.m. to 5:00 p.m. at Eglin AFB, Florida.

The purpose of this meeting is to review developments in the field of tactical missiles. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-23785 Filed 10-6-89; 8:45 am]
BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

October 3, 1989.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Aeronautical Systems Division (ASD) will meet on 6 November 89 from 8:00 a.m. to 5:00 p.m. and on 7 November 89 from 8:00 a.m. to 3:00 p.m. at Wright-Patterson AFB, OH, Area B, Building 14, Conference Rooms 222 and 203.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force Programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-23786 Filed 10-6-89; 8:45 am]
BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

October 3, 1988.

The USAF Scientific Advisory Board Fall General Board Meeting will meet on 26-27 October 1989, from 8:00 a.m. to 5:00 p.m., at Ft. Lesley J. McNair, Washington, DC.

The purpose of this meeting is to provide briefings on the results of the SAB studies conducted in fiscal year 1989. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-23787 Filed 10-6-89; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Proposed New Record System

AGENCY: Department of the Navy, DOD.

ACTION: Notice of new system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to add a system of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice on or before November 9, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (202) 697-1459, Autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

51 FR 12908 Apr. 16, 1986
51 FR 18086 May 16, 1986 (Compilation, changes follow)
51 FR 19884 June. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan. 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22671 Jun. 15, 1987
52 FR 45846 Dec. 2, 1987
52 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 22028 Jun. 13, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988
53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14377 Apr. 11, 1989
54 FR 32682 Aug. 9, 1989

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 27, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: October 2, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NO4600-1

SYSTEM NAME:

Portable Asset Control Environment (PACE).

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SYSTEM LOCATION:

Commander, Naval Supply Systems Command (Code 05, Washington, DC 20376–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and reserve naval personnel, Department of the Navy civilian employees, contractor personnel, or foreign nationals transiting an airhead during a military exercise or deployment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain name, rank, Social Security Number, pieces of baggage, baggage weight, passenger weight, and comments (if any).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

To maintain a data base to track the passengers moving in and out of the mobile airhead. As part of this system, an automated passenger manifest is produced for each flight. The manifest provides the names of passengers and weight and cubic dimensions of their baggage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Maintained on computer disk or on hard copy.

RETRIEVABILITY:

PACE users retrieve information by name, rank, and Social Security Number.

SAFEGUARDS:

The user ID/password for access control to the PACE system limits access to authorized users with a need to know. Marking and labeling of media/output products is accomplished. Security Standard Operating Procedures are established and followed as part of PACE.

RETENTION AND DISPOSAL:

The records are maintained during the accomplishment of a particular mission or exercise. Once completed, the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Supply Systems Command, Deputy Commander for Transportation (Code 05A1), Washington, DC 20376–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Supply Systems Command, Deputy Commander for Transportation (Code 05A1), Washington, DC 20376–5000.

Requests should contain the name, rank, Social Security Number, date of mission, and address of the individual concerned.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Supply Systems Command, Deputy Commander for Transportation (Code 05A1), Washington, DC 20376–5000.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's travel orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–23746 Filed 10–6–89; 8:45 am]

BILLING CODE 3810–01

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching Board; Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 19, 1989, 9:00 a.m.–5:30 p.m October 20, 1989, 9:00 a.m.–12:00 noon.

ADDRESS: U.S. Department of Education, 555 New Jersey Avenue NW., Room 326, Washington, DC 20208–5524.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. Law 100–297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund. On October 19, 1989 the Board will introduce its new Board members, have a briefing on the Department's standards of conduct and committee management, approve the minutes of the July meeting, and discuss any subcommittee activities. The Board will also have a presentation of projects funded for fiscal year 1990, discuss the process for monitoring those projects, discuss the process for disseminating whatever results there are from the funded projects, and determine the agenda for and date of the next meeting.

On October 19, 1989 and again on October 20, the Board will be discussing priorities for the 1990 competitions of the Family-School Partnership Program and the Schools and Teachers Program. Individuals or groups unable to attend the meeting are encouraged to request a summary of the activities at this meeting.

A summary of the activities at the meeting and related matters, which are informative to the public consistent with policy of title 5 U.S.C. 552b will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue NW., Room 522, Washington, DC 20208–5524 from the hours of 8:30 a.m. to 5:00 p.m.

Bruno V. Manno,

Acting Assistant Secretary, Educational Research and Improvement.

[FR Doc. 89–23965 Filed 10–6–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 17, 1989.

Time: 11:00 a.m. (EDT) until adjournment.

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provision Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title 2111–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); (20 USC 1221E–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee on the National Assessment governing Board will meet via teleconference in Washington, DC on October 17, 1989 from 11:00 a.m. EDT until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes a discussion of the following issues: NAGB/NCES Press Conference to release the Reading and Writing reports; proposed NAGB meeting dates; post Summit review; update on appropriations—NAGB budget; public hearings report; personnel matters; and procedures for Board member nominations.

Records are kepy of all Board proceedings, and are available for public inspection at the National Assessment Governing Board office, U.S. Department of Education, Suite 4060, Mary E. Switzer Buildings, 330 C Stteet, Washington, DC 20202–7583, from 8:30 a.m. to 5:00 p.m.

Dated: 3 October 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–23726 Filed 10–6–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Analysis and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 23, 1989.

Time: 10:00 a.m. (EDT) until adjournment.

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street SW., Washington, DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provision Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title 2111–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); (20 USC 1221E–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Analysis and Dissemination Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on October 23, 1989 from 10:00 a.m. EDT until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes a discussion of NAGB's role in the NAGB/NCES Press Conference which is tentatively scheduled for December 5, 1989 for release of the Reading and Writing trend reports.

Records are kept of all Board proceedings, and are available for public inspection at the National Assessment Governing Board office, U.S. Department of Education, Suite 4060, Mary E. Switzer Buildings, 330 C Street SW., Washington, DC 20202–7583, from 8:30 a.m. to 5:00 p.m.

Dated: October 3, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educationol Research and Improvement.

[FR Doc. 89–23727 Filed 10–6–89; 8:45 am]

BILLING CODE 4000–01–M

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3669-6]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Science Advisory Board's Environmental Engineering Committee (EEC), will meet October 24-25, 1989 in the North Conference Room number 1 of the Waterside Mall, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9:00 a.m. on Tuesday and 8:30 a.m. on Wednesday and adjourn no later than 5:00 p.m. on Tuesday and 12:30 p.m. on Wednesday.

The purpose of the meeting is to review several draft reports, discuss progress with on-going projects and to develop the Fiscal 1990 meeting schedule of the EEC. The draft reports in progress include the SAB comments on EPA's research in progress for toxics treatability and toxicity reduction research for wastewater, the SAB comments on the EPA's Office of Solid Waste Saturated Zone Model for surface impoundments and the SAB comments on the EPA's research in progress on the municipal waste combustion ash solidification/stabilization program. Other topics include the following as time permits: a recap of the SAB's recently completed comments on EPA's draft pollution prevention research plan, and a follow-up action strategy to the SAB recommendations on pollution prevention, a recap of the SAB's recently completed comments on EPA'S sludge incineration regulation, and discussion of a recently prepared general guide by the EEC for conducting research-in-progress reviews. Planned future studies for Fiscal Year 1990 will be discussed. In particular, these will include upcoming additional reviews on the waste combustion ash research program, an upcoming municipal solid waste research review, discussion of a committee-generated resolution on generic leachability issues, asbestos engineering research, an upcoming review of cleanup models for soils, and overview of the risk reduction strategies effort of the SAB. As time permits, other emerging issues will be discussed.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Executive Secretary, or Mrs. Marie Miller, Secretary, Science Advisory Board, (A101-F), U.S. Environmental Protection Agency, Washington, 20460, at 202/382-2552 by October 13, 1989. Seating at the meeting will be on a first come basis.

Dated: September 29, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-23835 Filed 10-6-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3669-8]

Science Advisory Board Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on October 26-27, 1989 in the Versailles 1 room at the Holiday Inn, 8120 Wisconsin Ave., Bethesda MD 20814. The hotel telephone number is (301) 652-2000.

The meeting will start at 9:00 a.m. on October 26, and will adjourn no later than 5 p.m. October 27, and is open to the public. The main purpose of this meeting is to review revisions to the Developmental Toxicological Guidelines developed by the Agency's Office of Research and Development, to discuss the use of uncertainty and modifying factors in developing reference dose estimates, and to review and comment on the operations of the Agency Integrated Risk Information System (IRIS).

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202-383-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. October 16, 1989. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: September 29, 1989.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 89-23836 Filed 10-6-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3669-7]

Open Meeting Technical Steering Committee Gulf of Mexico Program

Dote: October 18, 1989 (8:30 a.m.-5:30 p.m.)

Place: Mote Marine Laboratory, 1600 City Island Park, Sarasota, FL 34236.

Agenda Items

—Gulf Program Committee and Subcommittee Reports
—Federal/State Coordinating Workshop Report
—1990 Status-of-the-Gulf Symposium
—Technical Steering Committee Bylaws
—Long-Range Goals and Planning
—Coastal Erosion Task Force Report
—Oil Spill Response in the Gulf
—National Estuary Programs in the Gulf

Contract: William R. Whitson, Assistant Director for Operations, Gulf of Mexico Program, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529, (601) 688-3726.

Al J. Smith,

Acting Director, Water Management Division.

[FR Doc. 89-23834 Filed 10-6-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 2, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0022
Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Form No.: FCC 610-A
Action: Revision
Respondents: Individual or households
Frequency of Response: On occasion
Estimated Annual Burden: 2,000 Responses; 166 Hours
Needs and Uses: The FCC 610-A must be filed with the Commission by aliens who hold an amateur operator and station license issued by his/her government and who wish to apply for a permit to operate an amateur radio station in the United States. The data is used by FCC personnel to determine eligibility for radio station authorization and to issue a radio station/operator permit. The data is also use in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

FR Doc. 89-23850 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

October 3, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0174
Title: Section 73.1212—Sponsorship identification; list retention; related requirements
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annuol Burden: 13,070 recordkeepers; 52,280 hours total annual burden; 4 hours average burden per recordkeeper
Needs and Uses: The information is used by members of the public to help them identify who is sponsoring an announcement or advertisement.

OMB Number: 3060-0216
Title: Section 73.3538, Application to make changes in an existing station
Action: Extension
Respondents: Businesses (including small businesses) and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 85 responses; 409 hours total annual burden; 4.81 hours average burden per response
Needs and Uses: Broadcast station licensees must file information applications to specify new AM sttion directional antenna field monitoring points or to modify or discontinue the obstruction marking or lighting of antenna supporting structures. This information is used by Commission staff to establish monitoring points or to ensure that there is no menance to air naviation.

OMB Number: 3060-0211
Title: Section 73.1940, Broadcasts by candidates for public office
Action: Extension
Respondents: Businesses (including small businesses) and non-profit institutions
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 13,070 recordkeepers; 81,688 hours total annual burden; 6.25 hours average burden per recordkeepers
Needs and Uses: Licensees of broadcast stations are required to keep complete records of all requests for broadcast time made on behalf of political candidates, together with a notation showing disposition of request, and must also allow public inspection of these records. This imformation is used by the public to access money expended, time alloted to political candidates, and to ensure equal access was afforded to other qualified candidates.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-23851 Filed 10-6-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1798]

Petitions for Reconsideration and Application for Review and Petition for Stay in Rulemaking Proceedings

October 4, 1989.

Petitions for reconsideration, application for review and petition for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Scottsboro, Alabama, Trenton, Georgia, Signal Mountain Tennessee) (MM Docket No. 87-591, RM Nos. 5845, 5935 & 5992), Number of Petitions Received: 1

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Gosnell and Osceola, Arkansas, Germantown, Tennessee) (MM Docket No. 87-619, RM Nos. 5907, 6132, & 6322) Number of Petitions Received: 1

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Fort Valley and Wrightville, Georgia) (MM Docket No. 88-221, RM-6177) Number of Petitions Received: 1

Subject: Amendment of part 90 of the Commission's Rules to Permit Business Radio Use of Certain Channels in the 150 MHz Band. (PR Docket No. 88-373, RM-6276) Number of Petitions Received: 3

Subject: Amendment of part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations. (MM Docket No. 88-375, RM Nos. 6236 & 6237) Number of Petitions Received: 2

Application for Review

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Corinth, Hadley and Queensbury, New York. (MM Docket No. 86-331, RM Nos. 5471 & 5614) Number of Petitions Received: 1

Petition for Stay

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Scottsboro, Alabama, Trenton, Georgia, Signal Mountain, Tennessee) (MM Docket No. 87-591, RM Nos. 5845, 5935 & 5992) Number of Petitions Received: 1

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Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-23808 Filed 10-6-89; 8:45 am]
BILLING CODE 6712-01-M

Comments Invited on Colorado Regional Public Safety Plan

October 3, 1989.

The Commission has received the public safety radio communications plan for the Colorado area (Region 7).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. [See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 7 consists of the State of Colorado. General Docket No. 87-112, 3 FCC Rcd 2113 (1988).

Comments should be clearly identified as submissions to General Docket 89-452, Colorado Area—Region 7, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497 or Fred Thomas, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-23852 Filed 10-6-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011051-001

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA); Guthrie Latex, Inc. (GL).

Synopsis: The Agreement amends the basic agreement (Agreement No. 224-011051). The amendment provides GL with an additional 945 square feet of shed space at MPA's North Locust Point Marine Terminal.

Agreement No.: 224-200290

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Italia S.p.A. di Navigazione and d'Amico Societa di Navigasione per Azioni operating as a joint service under the name of Italia—d'Amico Line (Italia/d'Amico).

Synopsis: The Agreement provides Italia/d'Amico the nonexclusive right to certain premises at the Port's Seventh Street Public Container Terminal for the berthing of its vessels and the loading and discharging of cargo and related operations. Italia/d'Amico will use the Port as its regularly scheduled Northern California port of call and pay the Port reduced dockage and wharfage charges. The Agreement will terminate September 30, 1994.

By Order of the Federal Maritime Commission.

Dated: October 3, 1989.

Joseph C. Polking,
Secretary.
[FR Doc. 89-23751 Filed 10-6-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed; Maryland Port Administration Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW. Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200293

Title: Maryland Port Administration Terminal Agreement.

Parties: Maryland Port Administration (MPA); Hale Container Line, Inc. (Hale).

Synopsis: The Agreement provides for Hale to use the Dundalk Marine Terminal for its liner barge service at the Port of Baltimore. Hale with pay dockage at a flat rate of $100 per barge call per twenty four hour day and wharfage at twenty five percent of MPA's tariff wharfage rates.

Agreement No: 224-010684-001

Title: Port Authority of New York & New Jersey Terminal Agreement.

Parties: Port Authority of New York & New Jersey; Maher Terminals, Inc.

Synopsis: The agreement extends the terms of the basic lease agreement for terminal premises at Port Newark to March 31, 1990. The Agreement provides for the parties' right to terminate the lease and its extended term under certain conditions. All other terms and provisions of the basic lease remain unchanged.

Agreement No: 224-004161-005

Title: San Francisco Port Commission Terminal Agreement.

Parties: San Francisco Port Commission; Marine Terminals Corporation.

Synopsis: The Agreement extends the term of the parties Non-Exclusive Management Agreement (Agreement No. 224-004161) for one month from September 30, 1989 through October 31, 1989.

Agreement No: 224-010774-008

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority; Evergreen Marine Corporation (Taiwan), Ltd.; Costa Container Line SPA (Costa); Italia di Navigazion S.P.A.; Compagnie General Maritime.

Synopsis: The Agreement amendment adds four additional services to the field services consolidated rate applicable to Costa only.

By Order of the Federal Maritime Commission.

Dated: October 4, 1989.

Joseph C. Polking,
Secretary.
[FR Doc. 89-23769 Filed 10-6-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed; Port of Anacortes Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200291

Title: Port of Anacortes Terminal Agreement.

Parties: Port of Anacortes (Port); Dakota Creek Industries (DCI).

Synopsis: The Agreement provides for the Port to grant DCI, a nonexclusive right to use certain premises at Pier I for its berth operation. The Port retains control, use and operation of the premises for the berthing of vessels and for the handling of lumber and general cargo. Wharfage, dockage, and service and facilities charges will be assessed and retained by the Port.

Agreement No.: 224-200292

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey Sea-Terminal, Inc. (STI)

Synopsis: The Agreement provides STI with a 15 year lease of a 58 acre terminal facility at the Howland Hook Marine Terminal to be used for the berthing of vessels and the handling, loading, unloading and storage of cargo. STI has the exclusive right to collect dockage and wharf usage charges subject to the terms of the Agreement.

Agreement No.: 224-010677-003

Title: Tampa Port Authority Terminal Agreement.

Parties: Tampa Port Authority; Tampa Bay International, Inc. (TBIT).

Synopsis: The Agreement provides that if the basic agreement's final three year option to renew is exercised by TBIT, an amendment to the basic agreement must be filed with the Commission.

By Order of the Federal Marine Commission.

Dated: October 3, 1989.

Joseph C. Polking,
Secretary.
[FR Doc. 89-23752 Filed 10-6-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed; Spain-Italy/Puerto Rico Island Pool Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011213-010

Title: Spain-Italy/Puerto Rico Island Pool Agreement

Parties: Compania Trasatlantica Espanola, S.A. Nordana Line AS Sea-Land Service, Inc.

Synopsis: The proposed modification would postpone the pending resignation of Nordana Line AS as a party to the agreement from October 14, 1989, to November 13, 1989.

By Order of Federal Maritime Commission.

Dated: October 4, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 23770 Filed 10-6-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fulton Financial Corp., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Riggs National Corporation*, Washington, D.C.; to engage *de novo* in making or acquiring commercial loans and participation interests therein such as would be made by a commercial financial company pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-23660 Filed 10-6-89; 11:15 am]
BILLING CODE 6210-01-M

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 09-18-89 AND 09-29-89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
John W. Kluge, c/o Metromedia Company, NAC Re Corporation, NAC Re Corporation	89-2576	09/18/89
John J. Rigas, Joseph S. Gans, Sr. and Irene F. Gans, Joseph S. Gans, Inc.	89-2606	09/18/89
Glenn R. Jones, Cable TV Joint Fund 11, Total TV of Kenosha	89-2619	09/18/89
Bowater Industries plc, The Mead Corporation, Mead Release Products, Inc.	89-2637	09/18/89
Oy Wartsila AB, PacifiCorp, Cardkey Systems Inc. and Cardkey Government Sys. Inc.	89-2638	09/18/89
The Berkshire Fund, A Limited Partnership, Dayton Hudson Corporation, Lechmere, Inc.	89-2656	09/18/89
Berkshire Hathaway Inc., The Coca-Cola Company, The Coca-Cola Company	89-2661	09/18/89
Shoji Kanazawa, Charter Communities-Hacienda De Monterey, Charter Communities-Hacienda De Monterey	89-2667	09/18/89
LDI, Ltd., Robert A. Nickell, Ed Tucker Distributor, Inc.	89-2681	09/18/89
Masaru Tsuzuki, Fieldcrest Cannon, Inc., Swift Spinning Mills Division	89-2683	09/18/89
Alexander & Baldwin, Inc., Thomas B. Crowley, SS Atlantic Spirit	89-2691	09/18/89
Triton Group Ltd., Liquor Barn Northern CA, Inc. & Southern CA, Inc., LBI Holdings, Inc., a Delaware Corporation	89-2692	09/18/89
Carena Holdings Inc., JC Penney Company, Inc., Ridgmar Associates	89-2725	09/18/89
Rosenkranz and Company, Dresser Industries, Inc., Reliance Standard Life Insurance Company	87-2232	09/19/87
Michael George DeGroote, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2533	09/19/88
General Electric Company, Lear Siegler Holdings Corporation, Lear Siegler Seating Corp., et. al.	88-2541	09/19/88
Commercial Credit Group, Inc., Primerica Corporation, Primerica Corporation	88-2548	09/19/88
General Electric Company, LSS Holdings Corp., LSS Holdings Corp	88-2556	09/19/88
Pennsylvania Blue Shield, Plan Investment Fund, Inc., Plan Investment Fund, Inc.	88-2570	09/19/88
Kenneth E. Behring, Professional Football Limited Partnership, The Seattle Professional Football Club	88-2602	09/19/88
Kenneth E. Behring, Seattle Seahawks, Inc., Seattle Seahawks, Inc.	88-2608	09/19/88
Philips N.V., Island Settlement Trust, Island Entertainment Group, Inc.	89-2578	09/19/89
Corporate Capital Limited, Carvel Corporation, Carvel Corporation	89-2684	09/19/89
Jungfrau Trust, R & J Realty Corp. Modernage Furniture, Inc.	89-2703	09/19/89
Aon Corporation, Adams & Porter International, Inc., Adams & Porter International, Inc.	87-2387	09/1w/87
Household International, Inc., Gulf & Western Inc., Associates Financial Services Company of Oregon, Inc.	87-2255	09/20/87
Fiat S.p.A., INCSTAR Corporation, INCSTAR Corporation	89-2549	09/20/89
David P. Miller, c/o Columbia National Corporation, LeeMar Steel Co., Inc., LeeMar Steel Co., Inc.	89-2571	09/20/89
Jeffrey H. Smulyan, George L. Argyros, Seattle Mariners	89-2690	09/20/89
Robert A. Kathary, USX Corporation, Marathon Properties, Inc.	88-2390	09/21/88
The Neiman-Marcus Group, Inc., Mr. S. Roger Horchow, Horchow Mail Order, Inc.	88-2467	09/21/88
Siemens AG, Allied-Signal, Inc., Bendix Electronics Division of Allied-Signal, Inc	88-2468	09/21/88
Dietrich M. Gross, Winton M. Blount, Kramo Corp. & Washington Steel Corp	88-2479	09/21/88
Norwest Corporation, General Electric Company, Gelco Corporation/Gelco Payment System Division	88-2525	09/21/88
Alberto-Culver Company, Windmere Corporation, Windmere Corporation	88-2538	09/21/88
Fuddruckers, Inc., daka, Inc., daka, Inc.	88-2557	09/21/88
The Fulcrum III Limited Partnership, Foodmaker, Inc., Foodmaker, Inc	88-2561	09/21/88
The Fulcrum III Limited Partnership, Foodmaker, Inc., Foodmaker, Inc	88-2562	09/21/88
daka, Inc., Fuddruckers, Inc., Fuddruckers, Inc.	88-2563	09/21/88
Brunswick Corporation, Starcraft Corporation, Starcraft Power Boat Corporation	88-2567	09/21/88
Wingate Partners, L.P., Redman Industries, Inc., Redman Industries, Inc.	88-2587	09/21/88
Mobil Corporation, Newmont Mining Corporation, Newmont Oil Company	88-2603	09/21/88
Colonial Commercial Corp., Ronald O. Perelman, Devon Capital Corp	88-2605	09/21/88
David B. McKane, c/o McKane Robbins & Co., Frye Acquisition Partners, Frye Acquistion Inc	89-2585	09/21/89
Peter G. Robbins, c/o McKane Robbins & Co., Frye Acquisition Partners, Frye Acquisition Inc	89-2586	09/21/89
PPG Industries, Inc., the Clorox Company, Olympic HomeCare Products Company, Lucite HomeCare	89-2597	09/21/89
Wellman, Inc., Fiber Industries, Inc., Fiber Industries, Inc	89-2617	09/21/89
UCC Investors Holding, Inc., Avery, Inc., Uniroyal Chemical Hokding Company	89-2630	09/21/89
Lafarge Coppee S.A., Standard Slag Holding Company, Standard Slag Holding Company	89-2671	09/21/89
David F. Bolger, Cleveland-Cliffs Inc., Cleveland-Cliffs Inc	87-2287	09/22/87
Texas Eastern Corporation, Arthur M. Goldberg, TPG, Inc	88-2480	09/22/88
Leucadia National Corporation, Seven Oaks International, Inc., Seven Oaks International, Inc	88-2545	09/22/88
The Dow Chemical Company, Essex Chemical Corporation, Essex Chemical Corporation	88-2568	09/22/88
H. Wayne Huizenga, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2596	09/22/88
BankAmerica Corporation, Mobil Corporation, Clayton Bank and Trust Company	88-2600	09/22/88
Unilever N.V. and Unilever PLC, Alco Industries, Inc., Alco Chemical Corporation	89-2556	09/22/89
Chiyoda Fianance, Inc. The Park at Coronado, Ltd., The Park at Coronado Ltd	89-2559	09/22/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 09-18-89 AND 09-29-89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Frontenac Venture V Limited Partnership, Marks Bros. Jewelers, Inc., Marks Bros. Jewelers, Inc	89-2610	09/22/89
Marks Bros. Jewelers, Inc., Frontenac Venture V Limited Partnership, Marks Holding Company	89-2611	09/22/89
Daniel J. Sullivan, United Video, Inc., United Video, Inc.	89-2631	09/22/89
John J. Rigas, Centel Corporation, Centel Cable Television Company	89-2662	09/22/89
MAPCO Inc., Robert E. Perkinson, Sr., REP Sales, Inc	89-2676	09/22/89
MAPCO Inc., Jno. McCall Coal Company, Inc., Jno. McCall Coal Export Corp., Frazee-McCall Joint	89-2677	09/22/89
Tele-Communications, Inc., Heritage Cablevision Associates of Dallas, L.P., Heritage Cablevision Associates of Dallas, L.P.	89-2687	09/22/89
Bowater Industries plc, Norton Opax plc, Norton Opax plc	89-2710	09/22/89
NCNB Corporation, First RepublicBank Corporation, First RepublicBank Trust Company	89-2711	09/22/89
John J. Rigas, Jack Kent Cooke, Cooke Communications of Syracuse, Inc., Cooke	89-2715	09/22/89
Westinghouse Electric Corporation, Goldome, Goldome Strategic Investments & Coast Manufacturing, Inc.	89-2717	09/22/89
Daniel J. Sullivan, Howard Burch, Manhattan Transfer/Edit, Inc.	89-2721	09/22/89
Marriott Corporation, Bank of Boston Corporation, BOCA 106 Corporation	89-2723	09/22/89
Carena Holdings, Inc., Whitemak Associates, Whitemak Associates	89-2726	09/22/89
Carena Holdings Inc., Kravco Management, Inc., Kravco Company (a partnership)	89-2728	09/22/89
Carena Holdings Inc., Kravco, Inc., Kravco Company (a partnership)	89-2729	09/22/89
The Toldo Marine and Fire Insurance Co., Ltd., Legend Capital Group, L.P., Delaware Management Holdings, Inc.	89-2730	09/22/89
Masami Kato, Caroline Hunt Trust Estate, Rosewood Property Company	89-2731	09/22/89
SunGard Data Systems Inc., Dyatron Corporation, Dyatron Corporation	89-2732	09/22/89
Vendex International N.V., Bookstop, Inc., Bookstop, Inc.	89-2736	09/22/89
Michael C. Hall, Don Tyson, Dixie Portland Flour Mills, Inc., Diana Fruit	89-2740	09/22/89
Citation Investment Trust, Mobil Corporation, Mobil Exploration and Producing North America Inc.	89-2744	09/22/89
Leonard Riggio, Bookstop, Inc., Bookstop, Inc.	89-2746	09/22/89
Helmerich & Payne, Inc., Freeport-McMoRan Inc., FMP Operating Company, LP	89-2754	09/22/89
Giant Group, Ltd, Aspen Airways, Inc., Aspen Airways, Inc.	89-2762	09/22/89
John W. Kluge, Benale Holdings Corporation, Benale Holdings Corporation	89-2767	09/22/89
Ohbayashi Corporation, Erik Sande, E.W. Construction Group, Inc.	89-2788	09/22/89
Integrated Resources, Inc., The Gates Corporation, Gates Learjet Corporation	87-2205	09/23/87
National Education Corporation, Mr. Kamal Alsultany, SCS Business & Technical Institute, Inc.	87-2321	09/23/87
GATX Corporation, Mobil Corporation, Wyco Pipe Line Company	87-2322	09/23/87
North American Housing Corp., Marley Company The, Continental Home Division of The Marley Company	87-2370	09/23/87
Exxon Corporation, Mesa Limited Partnership & Mesa Operating Ltd. Ptnrship, Mesa Limited Partnership & Mesa Operating Ltd. Ptnrship,	88-2299	09/23/88
United Cable Television Corporation, Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2463	09/23/88
Integrated Resources, Inc., Philips N.V., The Selmer Company	88-2497	09/23/88
Pearson plc, TRW Inc., Reda Pump Division and the Ottwell Cable Division	88-2518	09/23/88
The Stateman Group, Inc., Castle & Cooke, Inc., C & C—Kohala	88-2526	09/23/88
Pacific Telesis Group, ABI American Businessphones, Inc., ABI American Businessphones, Inc.	88-2537	09/23/88
Jeffrey H. Smulyan, Milton Maltz, Malrite Communications Group, Inc.	88-2612	09/23/88
Nestle S.A., The Prudential Insurance Company of America, The Prudential Insurance Compnay of America	88-2621	09/23/88
The Quaker Oats Company, Sysco Corporation, Continental Coffee Company of Houston	88-2623	09/23/88
Presidio Oil Company, The British Petroleum Company plc, Sohio Petroleum Company, d/b/a/ Standard Oil Prod. Comp	88-2627	09/23/88
IFINT S.A., Fireman's Fund Corporation, Fireman's Fund Corporation	88-2630	09/23/88
Lomas & Nettleton Financial Corporation, Bright Banc Savings Association, Bright Banc Savings Association	88-2640	09/23/88
Tele-Communications, Inc., Blockbuster Entertainment Corporation, Blockbuster Entertainment Corporation	88-2658	09/23/88
Cargill, Incorporated, The Quaker Oats Company, ACCO Feeds Holding Corp., ACCO Feeds, Inc	87-2279	09/24/87
N.V. Koninklije Nederlandsche Petroleum Maatschappij, General Bio-Synthetics B.V., General Bio-Synthetics B.V	87-2315	09/24/87
Koninklijke Giet-brocades, N.V., General Bio-Synthetics B.V., General Bio-Synthetics B.V.	87-2316	09/24/87
American Home Products Corporation, VLI Corporation, VLI Corporation	87-2318	09/24/87
Kubota, Ltd., Dana Computer, Inc., Dana Computer, Inc.	87-2332	09/24/87
Crossland Savings, Donald L. Modglin, SMS Entities, The	87-2345	09/24/87
K Mart Corporation, American Stores Company, Osco Drug, Inc.	87-2366	09/24/87
Tonka Corporation, Kenner Parker Toys Inc., Kenner Parker Toys Inc	87-2386	09/24/87
Tonka Corporation, Kenner Parker Toys Inc., Kenner Parker Toys Inc	87-2388	09/24/87
BBA Group Plc., Joy Technologies Inc., Ozone Industries Division	87-2393	09/24/87
Ronald O. Perelman, Medical Laboratory Associates, Inc., Medical Laboratory Associates, Inc.	87-2394	09/24/87
Kirk Kerkorian, Estate of Howard R. Hughes, Jr,. The, Estate of Howard R. Hughes, Jr., The	87-2396	09/24/87
Hooker Corporation Limited, Domenico De Sole, B.A. Holdings, Inc.	87-2398	09/24/87
Mellon Bank Corporation, American Savings and Loan Association of Florida, American Savings and Loan Association of Florida	87-2402	09/24/87
Prudential-Bache Energy Income Ltd. Partnership VP-18, Edwin L. Cox, Sr., Edwin L. Cox, Sr	87-2404	09/24/87
Canadian National Railway Company, Alco Standard Corporation, Relco Financial Corp	87-2410	09/24/87
Warburg, Pincus Capital Company, L.P., Herbert N. Somekh and Denise D. Somekh, Hosiery Manufacturing Corp. of Morgantown	87-2415	09/24/87
General American Life Insurance Company, Sanus Corp. Health Systems, Sanus Health Plan, Inc.	87-2421	09/24/87
New York Life Insurance Company, Sanus Corp. Health Systems, Sanus Corp. Health Systems	87-2422	09/24/87
Grolier Incorporated, Lawrence A. Kramer, M.D., Kramer Communications	87-2430	09/24/87
Warburg, Pincus Capital Company, L.P., Communications Satellite Corporation, Communications Satellite Corporation	87-2297	09/25/87
IC Industries, GenCorp Inc., RKO Enterprises, Inc.	87-2335	09/25/87
Macro 4 plc, The Atlantic Foundation, Gosl Systems International, Inc.	87-2341	09/25/87
"Investing In Success" Equities PLC, Munford, Inc., Munford, Inc.	87-2376	09/25/87
Konishiroku Photo Industry Co., Ltd., Powers Chemco, Inc., Powers Chemco, Inc.	87-2389	09/25/87
718107 Ontario Limited, Cadillac Fairview Corporation Limited, The, Cadillac Fairview Corporation Limited, The	87-2397	09/25/87
Landis & Gyr AG, Mark Controls Corporation, Mark Controls Corporation	87-2399	09/25/87
Prudential-Bache Energy Income Ltd. Partnership VP-19, Mr. Edwin L. Cox, Sr., Mr. Edwin L. Cox, Sr.	87-2403	09/25/87
Trafalgar House Public Limited Company, NHP, Inc., Capital Homes, Inc	87-2439	09/25/87
F.W. Woolworth Co., Armel, Inc., Armel, Inc	87-2448	09/25/87
Meredith Corporation, Garrett Scollard, MMT Sales, Inc	87-2461	09/25/87
F.W. Woolworth Co., Armel, Inc., Armel, Inc	87-2466	09/25/87
Dowty Group PLC, CASE Group plc, CASE Group plc	88-2448	09/25/88
Wyman-Gordon Company, Allied-Signal Inc., KDI Composite Technology, Inc.	89-2668	09/25/89
Robert Bosch Industrietreuhand KG, Joint Venture Corporation, Joint Venture Corporation	89-2707	09/25/89

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 09-18-89 AND 09-29-89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Nippondenso Co., Ltd., Joint Venture Corporation, Joint Venture	89-2706	09/25/89
The Penn Central Corporation, Tyco Laboratories, Inc., Allied Tube Conduit Corporation	88-2498	09/26/88
W.R. Grace Co., Canonie Environmental Services Corp., Canonie Environmental Services Corp	88-2559	09/26/88
AMAX Inc., Quantum Chemical Corporation, SPG Exploration Corp	88-2569	09/26/88
Columbia Pictures Entertainment, Inc., J.F. Theatres, Inc., J.F. Theatres, Inc	88-2579	09/26/88
Damson Income Energy Limited Partnership, Crescent Master Limited Partnership, Crescent Master Limited Partnership	88-2597	09/26/88
Damson Energy Company, L.P., Crescent Master Limited Partnership, Crescent Master Limited Partnership	88-2598	09/26/88
INFINT S.A., General Electric Company, LSS Holdings Corporation	88-2631	09/26/88
Healthcare,Services Group, Inc., Southmark Corporation, American Services Company	88-2635	09/26/88
Vincent J. Ryan, Bell & Howell Company, Bell & Howell Records Management, Inc	88-2642	09/26/88
Pitney Bowes Inc., Pandick Holding, Inc., Pandick Technologies, Inc	89-2645	09/26/89
Mitsui Co., Ltd., Michael W. Wilsey, Wilsey Foods, Inc	89-2648	09/26/89
Generale Occidentale S.A., James River Corporation of Virginia, James River Timber Corporation	89-2649	09/26/89
Paramount Communications Inc., Allen J. Becker, SRO/Pace Promotions	89-2659	09/26/89
Asahi Glass Company, Ltd., Asahi Glass Company, Ltd., AP Technoglass Co	89-2685	09/26/89
Thomas Schmidheiny, Newell Co., Anchor Hocking Corporation	89-2694	09/26/89
St. Ives Group plc, Eagle-Picher Industries, Inc., A.D. Weiss Lithograph Company, Inc	89-2698	09/26/89
General Electric Company, Telefonaktiebolaget L.M. Ericsson, Ericsson North America Inc	89-2699	09/26/89
Telefonaktiebolaget L.M. Ericsson, General Electric Company, General Electric Company	89-2700	09/26/89
Markel Corporation, Rhulen Agency, Inc., Rhulen Agency, Inc	89-2702	09/26/89
Mr. Nelson Peltz, Avery Inc., Avery Inc	89-2704	09/26/89
Mr. Peter W. May, Avery Inc., Avery Inc	89-2705	09/26/89
Esterline Corporation, Charles H. and Margaret M. Dyson, Korry Electronics Co., TA Mfg Co	89-2735	09/26/89
Bessemer Securities Corporation, Zapata Gulf Marine Corporation, Zapata Gulf Marine Corporation	89-2752	09/26/89
James H. Possehl, Gibraltar Financial Corporation, GFC Leasing Corporation	89-2763	09/26/89
Mitsubishi Kasei Corporation, Boston University, Seradyn, Inc	89-2772	09/26/89
Kohler Co., USG Corporation, USG Industries, Inc	88-2369	09/27/88
Johnson Controls, Inc., Nelson Peltz, American National Can Company	88-2543	09/27/88
Johnson Controls, Inc., Peter W. May, American National Can Company	88-2544	09/27/88
PepsiCo, Inc., UniBev Inc., UniBev Inc	88-2549	09/27/88
PepsiCo., Inc., John A. Robertshaw, Jr., Laurel Group Limited	88-2550	09/27/88
PepsiCo, Inc., John E. Britton, Erie Botling Corporation	88-2551	09/27/88
PepsiCo, Inc., Wilchart, Ltd., Wilchart, Ltd	88-2552	09/27/88
PepsiCo, Inc., Richard H. Confair, Confair Bottling Co., Inc	88-2553	09/27/88
James M. Goldsmith, c/o General Oriental Investment Ltd, James M. Goldsmith, c/o General Oriental Investment Ltd, GU Acquisition Corporation	88-2580	09/27/88
American Continental Corporation, James M. Goldsmith, General Oriental Investment Limited	88-2581	09/27/88
The Laird Group Public Limited Company, Panel Prints, Inc., Panel Prints, Inc	88-2582	09/27/88
Steven M. Rales, GenCorp, Inc., GRADH-104 Inc	88-2613	09/27/88
Mitchell P. Rales, GenCorp, Inc., GRADH-104 Inc	88-2614	09/27/88
Merrill Lynch & Co., Inc., Bain Capital Fund Limited Partnership, Calumet Acquisition Corp	88-2632	09/27/88
Gerald Tsai, Jr., Commercial Credit Group, Inc., Commercial Credit Group, Inc	88-2644	09/27/88
Columbus Holdings Limited, Stone Container Corporation, Stone Container Corporation	89-2633	09/27/89
SouthernNet, Inc., Southland Communications Corporation, Southland Communications Corporation	87-2306	09/28/872306
Holmes Protection Group, Inc., Sovereign Group, Inc., Guardian Industries, Inc	88-2511	09/28/88
Ladbroke Group PLC, Pacific Racing Association, Pacific Racing Association	88-2622	09/28/88
Weiss, Peck & Greer Corporate Development Assoc., LP, Baker Industries Corp., Baker Industries Corp	88-2654	09/28/88
The Sherwin-Williams Company, Whittaker Corporation, Whittaker Corporation	89-2636	09/28/89
AGA Aktiebolag, UGI Corporation, AmeriGas, Inc	89-2701	09/28/89
Magna Copper Company, Addington Resources, Inc., Addwest Gold, Inc	89-2733	09/28/89
MA Associates, L.P., McGraw-Hill, Inc., Electrical Group of McGraw-Hill Inc	89-2771	09/28/89
Mr. Alan Bond, Fluor Corporation, St. Joe Gold Corporation, et.al	87-2299	09/29/87
General Investments Australia Limited, Forstmann & Company, Inc., Forstmann & Company, Inc	87-2334	09/29/87
Nitto Electric Industrial Co., Ltd., Rohm & Haas Company, Hydranautics	87-2367	09/29/87
Weyerhaeuser Company, Timberland Industries, Inc., Timberland Industries, Inc	87-2392	09/29/87
Cook Inlet Region, Inc., Richard E. and Nancy P. Marriott, First Media Corporation	87-2420	09/29/87
Trust created under Article Seven-John Hay Whitney The, Richard E. and Nancy P. Marriott, First Media Corporation	87-2426	09/29/87
Laird Group P.L.C. The, Bailey Corporation, Bailey Corporation	87-2429	09/29/87
Arthur Goldberg, Timpte Industries, Inc., Timpte Industries, Inc	88-2433	09/29/88
McDonnell Douglas Corporation, Frank Giordano, Emerald Industrial Leasing Corp	88-2535	09/29/88
McDonnell Douglas Corporation, Harold Neiman, Emerald Industrial Leasing Corp	88-2536	09/29/88
Houston Industries, Incorporated, Edward S. Rogers, RCA Cablesystems Holdings Co	88-2554	09/29/88
Stoneridge Resources, Inc., Stoneridge Resources, Inc., Orange-co, Inc	88-2577	09/29/88
Sophus Berendsen A/S, Gerard F. Leider, The Leider Companies, Inc	88-2610	09/29/88
Sophus Berendsen A/S, M. James Leider, The Leider Companies, Inc	88-2611	09/29/88
The Walt Disney Company, James M. Henson, Henson Associates, Inc	89-2759	09/29/89
Atlas Copco AB, PACCAR, Inc., Wagner Mining Equipment Co. and Russel Brothers	89-2775	09/29/89
The Retail Property Trust, British Coal Staff Superannuation Scheme Trustees Ltd., Pan-American Properties, Inc	89-2777	09/29/89
The Retail Property Trust, Cmte. of Management of the Mineworkers Pension Scheme, Pan-American Properties, Inc	89-2778	09/29/89
Colorado National Bankshares, Inc., Central Bank, Cenval of Colorado Corporation d/b/a Cenval Leasing Co	89-2781	09/29/89
Pearson plc, WH Smith Group plc, WH Smith Publishers, Inc	89-2791	09/29/89
Jon M. Huntsman, Hoechst Aktiengesellschaft, Hoechst Celanese Corporation	89-2794	09/29/89
Elders IXL Limited, Thinking Machines Corporation, Thinking Machines Corporation	89-2795	09/29/89
Joseph J. Zilber, Everything's A Dollar, Inc., Everything's A Dollar, Inc	89-2798	09/29/89
Charles H. & Margaret M. Dyson, The Dyson-Kissner, Muncy Homes, Inc., Muncy Homes, Inc., Muncy Homes Corp.,	89-2803	09/29/89
Colorado National Bankshares, Inc., Western Savings and Loan Association, F.A., Western Savings and Loan Association, F.A	89-2810	09/29/89
W.R. Grace & Co., Gulf Resources & Chemical Corporation, Pend Oreille Oil & Gas Company	89-2812	09/29/89
Paul Schutt, Helix Limited, General Homes Corporation, GHX, Inc	89-2818	09/29/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-23809 Filed 10-6-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0395]

E.I. Du Pont De Nemours and Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours and Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N, N'*-dioleoylethylenediamine as a release agent in films made of ethylene-vinyl acetate copolymers and certain ionomeric resins for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D.Anand, Center for Food safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. Sw., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 9B4170) has been filed by E.I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898, proposing that § 178.3860 *Release agents* (21 CFR 178.3860) be amended to provide for the safe use of *N, N'*-dioleoylethylenediamine as a release agent in films of ethylene-vinyl acetate copolymers complying with § 177.1350 (21 CFR 177.1350) and certain ionomeric resins (polymers of ethylene and methacrylic acid and their partial metal salts) complying with § 177.1330 (21 CFR 177.1330) for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 29, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-23778 Filed 10-6-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0396]

Milliken and Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Milliken and Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of di(*p*-tolylidene) sorbitol as a clarifying agent for propylene homopolymer and copolymers intended for used in contact with food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4167) has been filed by Milliken and Co., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of di(*p*-tolylidene) sorbitol for use as a clarifying agent in propylene homopolymer and copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in accordance with 21 CFR 25.40(c).

Dated: September 29, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-23779 Filed 10-6-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meetings: Batimore District Office, chaired by Leonard Genova, Consumer Affairs Officer. The topic to be discussed is food labeling.

DATES: Once each week beginning October 10, 1989, for 3 consecutive weeks at a site selected for a meeting of the Eating Together Program (for the elderly and disabled). Contact Leonard Genova for the date, time, and place of each meeting.

ADDRESSES: Sites to be selected for the Eating Together Program in the Baltimore metropolitan area.

FOR FURTHER INFORMATION CONTACT: Leonard Genova, Consumer Affairs Officer, Food and Drug Administration, 900 Madison Ave., Baltimore, MD 21201, 301-962-3731.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 3, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23780 Filed 10-6-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HFCA).

ACTION: Notice of proposed new routine uses for existing systems of records.

SUMMARY: One of the top priorities of the Department of Health and Human Services is to assure high quality and effective health care while pursuing strategies to contain or moderate health care costs and Medicare program expenditures. One such program to limit Medicare programs expenditures was the Medicare Secondary payer (MSP) provisions (42 U.S.C. 1395y(b)).

The purpose of this routine use is to enable HCFA and other "entities responsible for payment" to engage in exchanges of information concerning primary or secondary responsibility for

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a Medicare beneficiary's health care expenses. This notice is not the basis for a mandatory reporting requirement for "entities responsible for making payment" as required by 42 U.S.C. 1395y(b). Currently no statute mandates this type of exchange of information, therefore, these exchanges of information are strictly voluntary.

The Health Care Financing Administration (HFCA) is amending systems notices for (1) Carrier Medicare Claims Records HHS/HCFA/BOP No. 09-70-0501; (2) Health Insurance Master Record HHS/HCFA/BOP No. 09-70-0502 and (3) Intermediary Medicare Claims Records HHS/HCFA/BPO No. 09-70-0503, to add a new routine use. The proposed routine use will enhance our capability for identifying Medicare Secondary payer situations where Medicare can assume a position of reduced liability due to the presence of other entities responsible for making primary payment in accordance with 42 U.S.C. 1395y(b).

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice November 9, 1989, unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to: Richard A. Demeo, HCFA Privacy Act Officer, Health Care Financing Administration, G-M-1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Herb Shankroff, Division of Operational Initiatives, 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-7171.

SUPPLEMENTARY INFORMATION: The notice for Carrier Medicare Claims Records, HHS/HCFA/BPO No. 09-07-0501, was most recently published at 53 FR 52792, December 29, 1988; for Health Insurance Master Record, HHS/HCFA/BPO No. 09-07-0502, was most recently published at 54 FR 1000, January 11, 1989; and for Intermediary Medicare Claims Records, No. 09-07-0503, was most recently published at 53 FR 52792, December 29, 1988, System notice No. 09-07-0501, Carrier Medicare Claims Records, contains records of beneficiaries who have submitted claims for Supplementary Medical Insurance Benefits (Medicare Part B); system notice No. 09-07-0502, Health Insurance Master Record, contains a record of each individual who is, or has been, entitled to health insurance benefits under title XVIII of the Social Security Act; and system notice No. 09-07-0503, Intermediary Medicare Claims Records, contains records of beneficiaries on whose behalf providers have submitted claims for payment under the Prospective Payment System or on a reasonable cost basis under Medicare Parts A and B. Data in these files are used to administer the Medicare program and for research and statistical purposes. Please note that the categories of individuals and records in the system remain unchanged.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. We disclose information for "routine uses" when it is necessary to carry out our programs. We may also routinely disclose information to Federal, State or local or private agencies or individuals for purposes that are compatible with the purposes of our programs when the benefit of the proposed use outweighs the effect, or risk of an effect, on the privacy of individuals.

The Medicare Act at 42 U.S.C. 1395y(b) creates circumstances where the Medicare program no longer has primary liability for the medical expenses an individual incurs. It is necessary for Medicare to be able to identify those Medicare beneficiaries who have other coverage and to demonstrate to the other involved insurer or other type of payer their primary liability.

To comply with the technical requirements of the Privacy Act, HCFA is proposing to amend three systems of records by adding a new routine use to each. The affected systems of records and proposed new routine use for each system is as follows:

(1) No. 09-70-0501 (Routine use No. 24)
(2) No. 09-70-0502 (Routine use No. 16)
(3) No. 09-70-0503 (Routine use No. 22)

To insurers, underwriters, Third Party Administrators (TPAs), self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefits funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or TPA, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (or example, a State Medicaid Agency, State Worker's Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment

To administer the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b)(2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, TPAs, self-insureds, etc. concerning potentially affected individuals:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive to the extent that it is available) and may disclose the following information concerning potentially affected individuals.

- Benficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer name and Address
- Type of coverage: automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only)

*Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 U.S.C. 1395y(b);

b. to safeguard the confidentiality of the data and to prevent unauthorized access to it.;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. The agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases wher Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since it is compatible with the purposes for which the information is collected. Providing these organizations with information concerning the Medicare status of individuals will enable the proper implementation of the Medicare Secondary Payer provisions of the Social Security Act, realize the substantial program savings envisioned by Congress, and will save the entities listed above significant administrative costs in complying with Federal law.

This can be accomplished with no reduction in a beneficiary's privacy. Release of this information is already a general condition of payment in the insurance industry and the other entities will agree in writing to protect the data from unauthorized access and use.

Because the addition of this new routine use will not change the purposes for which the information is to be used or otherwise significantly after the system, this action does not require a report of altered system under 5 U.S.C. 552a(o). We are publishing below the affected system notices in their entirety, with the proposed changes incorporated.

Dated: October 2, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0501

SYSTEM NAMES:

Carrier Medicare Claims Records, HHS, HCFA, BPO

SECURITY CLASSIFICATIONS:

None

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration (see Appendix A, Section 4)

Federal Records Centers.

Bureau of Quality Control, HCFA Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland 21207.

HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries who have submitted claims for Supplementary Medical Insurance (Medicare Part B), or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for Payment: Provider Billing for Patient services by Physician; Prepayment Plan for Group Medicare Practices dealing through a Carrier, Health Insurance Claim Form, Request for Medical Payment, Patient's Request for Medicare Payment, Request for Medicare Payment—Ambulance, Explanation of Benefits, Summary Payment Voucher, Request for Claim Number Verification; Payment Record Transmittal; Statement of Person Regarding Medicare Payment for Medical Services Furnished Deceased Patient; Report of Prior Period of Entitlement; itemized bills and other similar documents from beneficiaries required to support payments to beneficiaries and to physicians and other suppliers of part B Medicare services; medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1842, 1862(b) and 1874 of title XVIII of the Social Security Act (42 U.S.C. 1395u, 1395y(b) and 1395kk).

PURPOSE:

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) Claimants, their authorized representatives or representatives payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare)

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following; the individual's eligibility to benefits under the Medicare program: the amount of reimbursement: any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

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(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices of nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of Title XIX charges and payments.

(15) The Department of Justice to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereon; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other supplies of services who are attempting to validate individual items on which the amounts include in the annual Physician/Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(21) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlements data. In order to receive the information the entity must agree to the following conditions:

a. To certify that the individual on whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of

health care services provided in the State, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purpose that are not related to the evaluation of cost, quality and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(24) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment

To administer the Medicare Secondary payer provisions at 42 U.S.C. 1395y(b)(2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured *
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only)

* Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. The agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, tape, disc, and punchcards.

RETRIEVABILITY:

System is indexed by health insurance claim number. The record is prepared by the beneficiary and is used by carriers

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to determine amount of Part B benefits. The bills are retained by the carriers.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. Disclosure is limited. Physical safeguards related to the transmission and reception of data between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RETENTION AND DISPOSAL:

Records are closed at the end of the calendar year in which paid, held two additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Md 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance claim number and the name as shown on social security records. An individual who requests notification of or access to a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

The data contained in these records is either furnished by the individual or, in the case of some Medicare secondary payer situations, through third party contacts. In most cases, the identifying information is provided to the physician by the individual. The physician then adds the medical information and submits the bill to the carrier for payment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 10, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Seguros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico, 00936–3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083–3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 54713

09–70–0502

SYSTEM NAME:

Health Insurance Master Record, HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207.

Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1614, 1633 and 1862(b) of title XVIII of the Social Security Act (42 U(.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquires from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Depoartment of Health and Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosured to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individuals is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity,

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or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficairy's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds:

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determine that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained:

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plans (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

(16) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has asumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), mutliple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 USC 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 USC 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment

To administer the Medicare Secondary payer provisions at 42 U.S.C. 1395y(b) (2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation only)

* Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. The agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems securities are established in accordance with DHHS ADP Systems Manual. Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. [These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).])

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

90-70-0503

SYSTEM NAME:

Intermediary Medicare Claims Records, HHS, HCFA, BPO.

SECURITY CLASSIFICATIONS:

None.

SYSTEM LOCATIONS:

Intermediaries under contract to the Health Care Financing Administration and the Social Security Administration (See Appendix A, Section 3.)

Federal Records Centers

Bureau of Quality Control, HCFA, Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland, HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare parts A and B, or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing for Medical and Other Health Services: Uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number, address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty

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information when pacemakers are implanted or explanted, date of admission and discharge, other health insurance, diagnoses, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilities, hospital outpatient departments, and home intravenous drug providers and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name
- HI number
- Admission data to provider
- Place treatment rendered
- Number of visits since start of care
- Diagnosis
- Diagnosis requiring treatment
- Onset of condition for which treatment is being sought
- Dates of previous therapy for same diagnosis
- Other therapy outpatient is currently receiving
- Observations
- Precautions and medical equipment
- Functional status immediately prior to this therapy
- Types of treatment—modalities
- Frequency of treatment
- Expected duration of treatment
- Rehabilitation potential
- Level of communication potential
- Average time per visits
- Goals
- Statement of problem at beginning of billing period
- Changes in problem at end of billing period
- Signature of therapist
- Certification and recertification by physician that services are to be provided from an established plan of care
- Tests results
- Biopsy reports
- Methods of administration, e.g., pill vs. injection
- Physician's orders
- Procedure codes
- Charges
- Weekly progress notes
- National Drug Code (NDC)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h, 1395y(b) and 1395kk).

PURPOSE(S):

To process and pay Medicare benefits to or on behalf of eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts without the consent of the individual to whom the information pertains in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide to the individual), or

(b) The data are needed to establish the vadility of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of systems activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiations of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statues as they pertain to Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit. or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by the provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under Section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicaid eligibility considerations.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHE employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in such case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Senior citizen volunteers working in the intermediaries' and carriers' offices to assist Medicare beneficiaries' in response to beneficiaries requests for assistance.

(17) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(18) State and other governmental Workers' Compensation Agencies working with the Heatlh Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(19) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Heatlh Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(20) To a contractor for the purpose of collating, analyzing aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(21) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of heatlh care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the date for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(22) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 USC 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or

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Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 USC 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment

To administer the Medicare Secondary payer provisions at 42 USC 1395y(b) (2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 USC 12395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only)

* Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program in accordance with 42 USC 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits between the recipient organization and the Medicare program. The agreement would allow the entities to use the information to determine cases where they have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: creation of a mailing list, sale or transfer of data.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms, magnetic tape and microfilm.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy. Baltimore, Md., where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. The file area is closed to unauthorized personal. Physical safeguards related to the transmission and reception of the data between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration Director, Division of Provider Procedures, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for systems records should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance number and name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is entered by the provider of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCPA Central Office (see section 1 below for the address). Health insurance records of the Medicare program can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance program. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program. See section 3 below for addresses for intermediaries and section 4 addresses for carriers.

1. Central Office Addresses:

Bureau of Program Operations, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45.

Bureau of Data Management and Strategy, HCFA, Office of Health Program Systems, Room 1705, Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45.

2. HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30–5:00

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
26 Federal Plaza—Room 715, New York, New York 10007. Office Hours: 8:30–5:00

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30–5:00

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 702, Atlanta, Georgia 30223. Office Hours: 8:00–4:30

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A—824, Chicago, Illinois 60604. Office Hours: 8:15–4:35

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Dallas, Texas. Office Hours: 8:30–4:30

KANSAS CITY REGION— Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8:30–4:45

DENVER REGION—Colorado, Montana, North Dakokta, South Dakota, Utah, Wyoming
Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8:00–4:30

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada
Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8:00–4:30

SEATTLE REGION—Alaska, Idaho, Oregon, Washington
1321 Second Avenue—Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours: 8:00–4:30

3. Intermediary Addresses (Hospital Insurance):

Medicare Coordinate, Blue Cross/Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Medicare Coordinator, Blue Cross of Arizona, Inc., P.O. Box 13466, Phoenix, Arizona 85002

Medicare Coordinator, Arkansas Blue Cross/Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, Blue Cross of Southern California, P.O. Box 700000, Van Nuys, California 91470

Medicare Coordinator, Blue Cross of Northern California, 1950 Franklin Street, Oakland, California 94659

Medicare Coordinator, Kaiser Foundation Health Plan, Inc., 1956 Webster Street, Room 310A, Oakland, California 94612

Medicare Coordinator, Rocky Mountain Hospital and Medical Service, 700 Broadway, Denver, Colorado 80203

Medicare Administrator, Aetna Life & Casualty, 151, Farmington Avenue Hartford, Connecticut 06156

Medicare Coordinator, Blue Cross/Blue Shield Connecticut, 370 Bassett Rd., North Haven, Connecticut 06473

Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06115

Triage, Inc. 719 Middle Street, Bristol Connecticut 06019

Medicare Coordinator, Blue Cross/Blue Shield of Delaware, Inc., 201 West 14th Street, Wilmington, Delaware 19899

Medicare Coordinator, Group Hospitalization, Inc., 550 12th Street, S.W., Washington, D.C. 20024

Medicare Coordinator, Blue Cross of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32201

Medicare Coordinator, Blue Cross of Georgia/Columbus, P.O. Box 7368, Columbus, Georgia 31908

Medicare Coordinator, Blue Cross of Georgia/Atlanta, P.O. Box 4445, Atlanta, Georgia 30302

Medicare Coordinator, Hawaii Medical Service Association, P.O. Box 860, Honolulu, Hawaii 96808

Medicare Coordinator, Blue Cross of Idaho, Inc., P.O. Box 7460, Boise, Idaho 83707

Medicare Coordinator, Health Care Service Corp., 233 North Michigan Avenue, Chicago, Illinois 60601

Medicare Coordinator, Mutal Hospital Insurance, Inc., 120 West Market Street, Indianapolis, Indiana 46204

Medicare Coordinator, Blue Cross of Iowa, Ruan Building, 636 Grant Avenue, Station 28, Des Moines, Iowa 50307

Medicare Coordinator, Blue Cross of Western Iowa and S. Dakota, Third and Pierce Street, Sioux City, Iowa 51102

Medicare Administrator, Kansas Hospital Service Association, Inc., P.O. Box 239, Topeka, Kansas 66601

Medicare Coordinator, Blue Cross and Blue Shield of Kentucky, Inc., 9901 Linn Station Road, Louisville, Kentucky 40223

Medicare Coordinator, Louisiana Health Service and Indemnity Company, 2718A Wooddale Blvd., Baton Rouge, Louisiana 70805

Medicare Coordinator, Associated Hospital Service of Maine, 110 Free Street, Portland, Maine 04101

Medicare Coordinator, Maryland Blue Cross, Inc., 700 East Joppa Road, Baltimore, Maryland 21204

Medicare Coordinator, Part A. Blue Cross of Mass., Inc., 100 Summer Street, Boston, Massachusetts 02106

Medicare Coordinator, Blue Cross of Michigan, 600 Lafayette East, Detroit, Michigan 48226

Medicare Coordinator, Blue Cross of Minnesota, 3535 Blue Cross Road, St., Paul, Minnesota 55765

Medicare Coordinator, Blue Cross of Miss., P.O. Box 1043, Jackson, Mississippi 39205

Medicare Coordinator, Blue Cross Hospital Service of Missouri, 4444 Forest Park Boulevard, St. Louis, Missouri 63108

Medicare Coordinator, Blue Cross of Montana, P.O. Box 5017, Great Falls, Montana 59403

Medicare Coordinator, Mutual of Omaha Ins. Co., Box 456 Downtown Station, Omaha, Nebraska 68101

Medicare Coordinator, Blue Cross of Nebraska, P.O. Box 3248, Main Post Office Station, Omaha, Nebraska 68103

Medicare Coordinator, New Hampshire Vermont Health Service, 2 Pillsbury Street, Concord, New Hampshire 03306

Medicare Coordinator, Hospital Service Plan of New Jersey, 33 Washington Street, Newark, New Jersey 07102

Medicare Coordinator, Prudential Ins. Co. of America, Drawer 471, 1 Millvelle, New Jersey 08332

Medicare Coordinator, New Mexico Blue Cross Inc., 12800 Indiana School Rd., N.E., Albuquerque, New Mexico 87112

Medicare Coordinator, B/C–B/S of New York, 622 Third Avenue, New York, New York 10017

Medicare Coordinator, North Caroline B/C–B/S, P.O. Box 2291, Durham, North Carolina 27702

Medicare Coordinator, Blue Cross of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121

Medicare Coordinator, B/C of N.W. Ohio, P.O. Box 943, Toledo, Ohio 43601

Medicare Coordinator, B/C of N.E., Ohio, 2066 East Ninth Street, Cleveland, Ohio 44115

Medicare Coordinator, Hospital Care Corporation, 1851 William Howard Taft Road, Cincinnati, Ohio 45206

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 1625, Columbus, Ohio 43216

Medicare Coordinator, B/C of Central Ohio, P.O. Box 16526, Columbus, Ohio 43216

Medicare Coordinator, Blue Cross of Oklahoma, 1215 South Boulder, Tulsa, Oklahoma 74119

Medicare Coordinator, Northwest Hospital Service, P.O. Box 1271, Portland, Oregon 97201

Medicare Coordinator, Blue Cross of Greater Philadelphia, 1333 Chestnut Street, Philadelphia, Pennsylvania 19107

Medicare Coordinator, Blue Cross of Western Pennsylvania. One Smithfield Street, Pittsburgh, Pennsylvania 15222

Medicare Coordinator, B/C of N.E. Pennsylvania, 70 North Main Street, Wilkes-Barre, Pennsylvania 18711

Medicare Coordinator, Hospital Service Plan of Lehigh Valley, 1221 Hamilton Street, Allentown, Pennsylvania 18102

Medicare Coordinator, Capital Blue Cross, 100 Pine Street, Harrisburg, Pennsylvania 17101

Cooperative de Seguros de Vida de Puerto Rico, G.P.O. Box 3428, San Juan, Puerto Rico 00936

Blue Cross of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901

Medicare Coordinator, Blue Cross of S.C., Columbia, South Carolina 29219

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Medicare Coordinator, Blue Cross of Tennessee, Blue Cross Bldg., Chattanooga, Tennessee 37402
Medicare Coordinator, Group Hospital Service, Inc., P.O. Box 22146, Dallas, Texas 75222
Medicare Coordinator, B/C of Utah, P.O. Box 30270, Medicare A, Salt Lake City, Utah 84130
Medicare Coordinator, B/C of S.W. Virginia, P.O. Box 13047, 3959 Electric Rd., Roanoke, Virginia 24045
Medicare Coordinator, Blue Cross of Virginia, P.O. Box 27401, Richmond, Virginia 23261
Medicare Coordinator, B/C of Washington/Alaska, Inc., 15700 Dayton Avenue, North, P.O. Box 327, Seattle, Washington 98111
Medicare Coordinator, Parkersburg Hosp. Serv., Inc., P.O. Box 1948, Parkersburg, West Virginia 26101
Medicare Coordinator, Blue Cross Hospital Service Inc., P.O. Box 1353, City Center West Charleston, West Virginia 25325
Medicare Coordinator, Blue Cross of Northern West Virginia Inc., 20th and Chaplin Streets, Wheeling, West Virginia 26003
Medicare Coordinator, Blue Cross/Blue Shield United of Wisconsin, Milwaukee, Wisconsin 53201
Medicare Coordinator, Blue Cross/Blue Shield of Wyoming, P.O. Box 2266, Cheyenne, Wyoming 8200
Health Care Financing Administration, Bureau of Program Operations, Office of Prepaid Operations Staff, 6325 Security Boulevard, Baltimore, Maryland 21207
Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611

Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250-0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator, Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Seguros de Servicio de Salud de Puerto Rico 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

[FR Doc. 89-23775 Filed 10-6-89; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1989:

Name: Advisory Commission on Childhood Vaccines, HRSA, HHS.

Date and Time: November 1-2, 1989, 9:00 a.m.-5:00 p.m.

Place: Hubert H. Humphrey Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: status report on the Vaccine Injury Compensation Program (VICP); update on VICP technical amendments; discussion on MMR vaccine and excise tax; discussion on safer vaccine issues; report on the Centers for Disease Control's August 28-30 Workshop on Vaccine Injury Material Distribution; review of evaluation proposal of the VICP; and a visit to the U.S. Claims Court. Transportation will NOT be provided to the public.

Public comment will be permitted on at the end of each meeting day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by October 20th to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in the HHH auditorium before 10:00 a.m., November 1 and 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Agenda Items are subject to change as priorities dictate.

Dated: October 3, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-23781 Filed 10-6-89; 8:45 a.m.]
BILLING CODE 4160-15-M

Subcommittee on Physician Manpower of the Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1989:

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: November 1, 1989, 2:00 p.m.-6:00 p.m.

Place: Parklawn Conference Center, Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Introduction of contractor for project to reexamine the adequacy of physician personnel supply made in 1980 by GMENAC for six physician specialties. Presentation on expanding the capability of the Bureau of Health Professions' requirements model. In addition, the Subcommittee will hold a panel discussion on the geographic distribution of physicians.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443-6328.

Name: Council on Graduate Medical Education, HRSA, HHS.

Time: November 2-3, 1989, 8:30 a.m.-5:00 p.m.

Place: Parklawn Conference Center, Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive legislative updates from HRSA, HCFA, and the VA. On November 2, the Council will focus on "The Financial Status of Teaching Hospitals." There will be a presentation on discussion by Lewin/ICF, Inc., as well as a panel discussion with representatives from provider, educator, and payer groups. The Council will receive comments from the Prospective Payment Assessment Commission and a perspective from Frank A. Sloan, Ph.D., Vanderbilt University. There will be a report from the Physician Manpower Subcommittee as well.

On November 3, the Council will focus on "Medicine and Minorities in the United States." The Council will hear presentations on the progress of minorities through the educational system; data and issues on the entry of minorities into medicine; improving minority recruitment in graduate medical education; the experience of traditionally black medical schools; the progress of Hispanic Americans through the educational system; Native Americans in medicine; and broad-based activities for minorities in education.

Anyone requiring information regarding the subject Council should contact Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6190.

Agenda Items are subject to change as priorities dictate.

Dated: October 3, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-23782 Filed 10-6-89; 8:45 a.m.]
BILLING CODE 4160-15-M

National Advisory Council on the National Health Service Corps Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1989:

Name: National Advisory Council on the National Health Service Corps.

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Date and Time: October 29–31, 1989, 8:30 a.m.

Place: Radisson Park Terrace Hotel, 1515 Rhode Island Avenue NW., at Scott Circle, Washington, DC 20005.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and Division update. Indepth discussions will be held on the future directions for the National Health Service Corps.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: October 3, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–23783 Filed 10–6–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, October 12–13, 1989, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 12 from 8:30 a.m. to approximately 5:30 p.m., and again on October 13 from 9:30 a.m. until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), title 5, U.S.C. and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 13 from 8:30 a.m. to approximately 9:30 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of commitee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23940 Filed 10–6–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets, or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 421A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7583

Dates of Meeting: November 16–17, 1989

Place of Meeting: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814

Open: November 16, 7:00 p.m.–7:30 p.m.

Closed: November 16, 7:30 p.m. to recess; November 17, 8:00 a.m. to adjournment

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C

Executive Secretary: Tommie Sue Tralka, Westwood Building, Room 404B, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–8830

Date of Meeting: November 3, 1989

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814

Open: November 3, 8:30 a.m.–9:30 a.m.

Closed: November 3, 9:30 a.m. to adjournment

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D

Executive Secretary: Ann A. Hagan, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7841

Date of Meeting: October 13, 1989

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852

Open: October 13, 8:30 a.m.–9:00 a.m.

Closed: October 13, 9:00 a.m. to adjournment

Dated: October 4, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23939 Filed 10–6–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–09–4333–12]

Ely District; Closure of Public Lands

ACTION: Notice is hereby given that effective immediately all public lands in the following legal locations are closed to off road vehicle use. Vehicle use will be limited to existing roads:

Mount Diablo Meridian, Nevada

T. 5 N., R. 69 E.,
Sec. 1, all,
Sec. 2, E ½,
Sec. 12, all,
Sec. 13, NE ¼.
T. 5 N., R. 70 E.,
Sec. 2, NW ¼,
Sec. 3, all,
Sec. 4, all,
Sec. 5, all,
Sec. 6, all,
Sec. 7, all,
Sec. 8, all,
Sec. 9, NW ¼,
Sec. 17, N ½,
Sec. 18, all.
T. 6 N., R. 69 E.,
Sec. 24, S ½,
Sec. 25, all,
Sec. 26, E ½,
Sec. 35, all,
Sec. 36, all.
T. 6 N., R. 70 E.,
Sec. 19, W ½,
Sec. 31, all,
Sec. 32, all,
Sec. 33, S ½,
Sec. 34, W ½.
Containing 11,680 acres.

SUMMARY: The purpose of this closure is to protect the fragile watershed and rehabilitation efforts on the burned acreage following the Delmue Fire which occurred on 7/13/89.

The authority for this closure is 43 CFR 8341:2. The closure will remain in effect until 10/31/91 when rehabilitation efforts will be complete.

ADDRESS: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Shaaron Netherton, (702) 289–4865.

Dated: September 22, 1989.

Kenneth G. Walker,

District Manager.

[FR Doc. 89–23823 Filed 10–6–89; 8:45 am]

BILLING CODE 4310–HC–M

[CO–920–00–4120–14; COC 49465]

Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery and Fair Market Value; Application for Competitive Coal Lease COC 49465; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of Federal coal to be offered. An application for coal lease was filed by Blue Flame Coal Company requesting the Bureau of Land Management to offer for competitive lease 193.08 acres of Federal coal in La Plata County, Colorado, outside established coal production regions.

DATES: The public hearing will be held at 7 p.m., October 25, 1989. Written comments should be received no later than November 13, 1989.

ADDRESSES: The public hearing will be held in the GSA Conference Room, Federal Building, 701 Camino del Rio, Durango, Colorado. Written comments should be addressed to the Bureau of Land Management, San Juan Basin Resource Area Office, Attention: Robert Kershaw, Room 203, Federal Building, 701 Camino del Rio, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Robert Kershaw, Geologist, San Juan Basin Resource Area Office, at the address above, or telephone 303–247–4082.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on October 25, 1989, at 7 p.m. in the GSA Conference Room, Federal Building, 701 Camino del Rio, Durango, Colorado. Sally Wisely, San Juan Basin Resource Area Manager, will be the hearing officer.

An application for coal lease was filed by Blue Flame Coal Company requesting the Bureau of Land Management to offer for competitive lease the Federal coal in the lands outside established coal production regions hereinafter described. The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) Methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the October 25, 1989, public hearing should be received at the San Juan Basin Resource Area Office prior to the close of business October 25, 1989. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource,

2. The price that the mined coal would bring in the market place,

3. The cost of producing the coal,

4. The interest rate at which anticipated income streams would be discounted,

5. Depreciation and other accounting factors,

6. The mining method or methods which would achieve maximum economic recovery of the coal,

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the San Juan Basin Resource Area Office at the above address prior to close of business on November 13, 1989.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by underground mining methods from the Upper Menefee (coal bed 1) in the following lands located adjacent the King Coal Mine near Hesperus, Colorado:

BEST COPY AVAILABLE

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New Mexico Principal Meridian

R. 35 N., R. 11 W.,
sec. 31, lot 4, SW¼NE¼, SE¼SW¼, and W½SE¼.

The land described contains 193.08 acres.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the San Juan Basin Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado.

Dated: October 3, 1989.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 89-23837 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-JB-M

[CO-010-4322-09]

Colorado; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearings on and availability of, the Craig District (White River and Kremmling Resource Areas) Draft Wilderness Environmental Impact Statement (EIS). The EIS also serves as a plan amendment for the affected land use plans.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared and invites comments on the Craig District (White River and Kremmling Resource Areas) Draft Wilderness Environmental Impact Statement. The EIS analyzes the environmental, social, and economic effects of designation or nondesignation as wilderness for each of 6 WSAs in the White River and Kremmling Resource Areas of the Bureau of Land Management's (BLM) Craig District. The WSAs are located in Jackson, Moffat, and Rio Blanco County, Colorado, and Uintah County, Utah. The study areas are Bull Canyon (12,297 acres), Willow Creek (13,368 acres), Skull Creek (13,740 acres), Black Mountain (9,932 acres), Windy Gulch (12,274 acres), Oil Spring Mountain (17,740 acres), Troublesome (8,250 acres), and Platte River Contiguous (30 acres). BLMs proposed action is to recommend the Bull Canyon, Willow Creek, Skull Creek, and Platte River Contiguous WSAs as suitable for wilderness designation. The other WSAs are proposed as nonsuitable for wilderness designation. This analysis also serves as a plan amendment for the affected land use plans.

ENVIRONMENTAL IMPACT STATEMENT: Oral comments will be accepted at the hearings, all other comments must be in writing. Written and oral comments will receive equal consideration.

DATE: Comments must be received by January 12, 1990.

ADDRESS: Comments should be sent to: Wilderness EIS Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129.

PUBLIC HEARINGS: The public hearings have two objectives: (1) To obtain the views of the interested public on the wilderness recommendations for consideration by the BLM, the Secretary of the Interior, the President, and the Congress; and (2) to obtain the views from public on the draft environmental impact statement. Public hearings to receive oral and/or written comments on this Draft Wilderness EIS will be held at 7 p.m. as follows:

Monday, December 4, 1989
Rodeway Inn, Foothills, 11595 West 6th Avenue (6th Avenue and Simms), Lakewood, Colorado
Tuesday, December 5, 1989
Howard Johnson's, 752 Horizon Drive, Grand Junction, Colorado
Wednesday, December 6, 1989
Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, Utah
Monday, December 11, 1989
Bureau of Land Management, White River Resource Area Office, 2 miles west of Meeker on Colorado, Highway 64, Meeker, Colorado
Tuesday, December 12, 1989
Grand County Community Building, at the Fairgrounds (Extension Buildings), Kremmling, Colorado
Wednesday, December 13, 1989
Holiday Inn, 300 Colorado Highway 13 (Highways 13 and 40), Craig, Colorado

A time limit may be placed on oral comments depending on the number of people who wish to make a statement. Written and oral comments will receive equal consideration.

SUPPLEMENTARY INFORMATION: The size, location, and affected land use plan are shown in the following table:

WSA, SIZE, LOCATION, AND AFFECTED LAND USE PLAN

Name	Size (acres)	Location	Affected land use plan
Bull Canyon—CO-010-001, UT-060-419.	12,297	Moffat County, Colorado and Uintah County, Utah. Approximately 4 miles north of Dinosaur, (Utah) Colorado, White River Resource Area.	White River MFP.[1] (Colo.) Bookcliffs RMP.[2]
Willow Creek—CO-010-002	13,368	Moffat County, Colorado Approximately 7 miles northeast of Dinosaur, Colorado, White River Resource Area.	White River MFP.
Skull Creek	13,740	Moffat County, Colorado Approximately 7 miles northeast of Massadona, Colorado, White River Resource Area.	White River MFP.
Black Mountain CO-010-007A	9,932	Rio Blanco County, Colorado. Approximately 7 miles west of Meeker, Colorado, White River Resource Area.	White River MFP.
Windy Gulch CO-010-007C	12,274	Rio Blanco County, Colorado. Approximately 10 miles northwest of Meeker, Colorado, White River Resource Area.	White River MFP.
Oil Spring Mountain CO-010-046.	17,740	Rio Blanco County, Colorado. Approximately 25 miles southwest of Rangely, Colorado, White River Resource Area.	White River MFP.
Troublesome CO-010-155	8,250	Grand County, Colorado. Approximately 16 miles north of Kremmling, Colorado, Kremmling Resource Area.	Kremmling RMP.
Platte River Contingous—CO-010-104.	30	Jackson County, Colorado. Approximately 16 miles north of Walden, Colorado Kremmling Resource Area.	Kremmling RMP.

[1] MFP Management Framework Plan
[2] RMP Resource Management Plan
These acreages are taken from the original WSA inventory boundary.

The Bull Canyon, Willow Creek, Skull Creek, and Platte River Contiguous WSAs are recommended as suitable for wilderness designation under BLM's proposed action alternatives. The other WSAs are recommended as nonsuitable for wilderness designation.

This Draft EIS replaces and supersedes the Draft Environmental Impact Statement for the White River Resource Area Wilderness Planning Amendment (USDI, BLM, 1983) and the wilderness analysis in the Kremmling Resource Area Resource Management Plan/Environmental Impact Statement (USDI, BLM< 1984). This analysis also serves as a land use plan amendment for the land use plans covering the WSAs.

AVAILABILITY: Single copies of the Craig District (White River and Kremmling Resource Areas) draft Wilderness Environmental Impact Statement are available from the address listed above, or from the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 81625-7075.

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Telephone: (303) 824-8261.

Dated: October 2, 1989.

William J. Pulford,

District Manager.

[FR Doc. 89-23838 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-JB-M

[AK-060-00-4230-13; F-061149]

Realty Action: Noncompetitive Sale of Public Lands at Wiseman, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described land has been found to be suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713.), at not less than the fair market value (FMV). The lands will not be offered for sale until at least 60 days after the date of this notice and will be offered to the individuals indicated below.

Applicant	USS 5276 lot No. and acreage	Appraised fair market value
Mr. & Mrs. George H. Lounsbury, P.O. Box 983, Fairbanks, Alaska 99707	Lot 1, 0.32 acres	$700
Ms. Cora P. Chappel, 423 2nd Avenue, Fairbanks, Alaska 99701	Lot 2, 0.88 acres	1,925
Mr. Henry Leonard, 2221 Eagan, Fairbanks, Alaska 99701	Lot 24, 1.01 acres	2,225
Ms. Ann Dolney, 780 Sheep Creek Road, Fairbanks, Alaska 99709-6128	Lot 4, 0.99 acres	2,175
Ms. Peggy A. Harry, c/o Katy Burke, Wiseman via Bettles Field, Alaska 99726	Lot 5, 0.87 acres	1,925
Mr. James W. Pitts, P.O. Box 80989, Fairbanks, Alaska 99708	Lot 6, 1.46 acres	3,200
Mr. Joseph V. Strunka, P.O. Box 550, Fairbanks, Alaska 99707	Lot 9, 1.25 acres	2,750
Dr. and Mrs. Robert L. Rausch, Box 85447, University Station, Seattle, Washington 98105	Lot 8, 0.32 acres	650
Mr. and Mrs. Pete Pasquali, III, P.O. Box 275 Placerville, Idaho 83666	Lot 7, 2.67 acres	5,350
Mr. Burton E. Stearns, Route 1, Box 97A, Eastsound, Washington 98245	Lot 10, 1.79 acres	1,317
Mr. Clinton E. Stearns, P.O. Box 3495, Palmer, Alaska 99645	Lot 10, 1.79 acres	1,317
Mr. George Carrol, 617 Santa Monica, Corpus Christi, Texas 78411	Lot 10, 1.79 acres	1,317
The Wiseman Trading Company, Dr. M. Walter Johnson, 1521 G Street, Anchorage, Alaska 99501	Lot 11, 2.87 acres	3,163
Mr. William D. English, c/o Dr. M. Walter Johnson, 1521 G Street, Anchorage, Alaska 99501	Lot 11, 2.87 acres	3,163
Mrs. Tishu V. Ulen, 401 7th Avenue, Apt. 214, Fairbanks, Alaska 99701	Lot 21, 0.65 acres	1,300
Mr. Charles H. Breck, 330 3rd Avenue, Apt. 216, Fairbanks, Alaska 99701	Lot 22, 1.96 acres	3,950
Mr. and Mrs. Rick Reakoff, Wiseman Village, Wiseman, Alaska 99701-9998	Lot 19, 0.32 acres	650
Mrs. Patrick Burroughs, Wiseman via Bettles Field, Alaska 99726	Lot 20 & 25, 0.42 acres	840
Ms. Linda Dolney, 780 Sheep Creek Road, Fairbanks, Alaska 99709-6128	Lot 26, 0.15 acres	300
Mr. James C. Tomsich Jr., P.O. Box 82023, Fairbanks, Alaska 99708	Lot 17, 0.42 acres	650
Mr. Jack L. Reakoff, Wiseman Village, Wiseman, Alaska 99726	Lot 16, 0.28 acres	550
Mr. Rose C. Brockman, Denali Center, 1949 Gillam Way, Fairbanks, Alaska 99701	Lot 14, 0.70 acres	1,550
Mr. and Mrs. Clinton E. Stearns, P.O. Box 3495, Palmer, Alaska 99645	Lot 15, 0.82 acres	1,800
Mr. and Mrs. Richard J. Henderson, 572 Line Drive, Fairbanks, Alaska 99701	Lot 12, 0.73 acres	1,600
Mr. James Johnson, Box 2699, Fairbanks, Alaska 99707	Lot 13, 0.45 acres	1,000
Mr. and Mrs. Timothy R. McKay, 2552 Steese Highway N., Fairbanks, Alaska 99712	Lot 3, 0.90 acres	2,000

The land described is hereby segregated from appropriation under the public land laws, including the mining laws pending disposition of this action or 270 days from the publication of this notice, whichever comes first.

The land is being offered for direct sale to the applicants to protect equities arising from inadvertent unauthorized use.

The sale is consistent with the Utility Corridor Management Framework Plan (MFP). The land conveyance will accommodate the subject inadvertent trespass upon public land.

It has been determined that the subject parcels do contain known mineral values; therefore, mineral interests shall not be conveyed in the patents.

The patents, when issued, will contain reservations for all minerals to the United States and will be subject to a right-of-way for ditches and canals. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Arctic District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Arctic District Office, at the above address. Objections will be reviewed by the Alaska State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

M. Thomas Dean,

Arctic District Manager.

[FR Doc. 89-23825 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-84-JA

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

September 27, 1989.

AGENCY: Bureau of Land Management, Interior.

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ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 328-6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on September 22, 1989.

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.—Corrective Dependent Resurvey

T. 18 S., R. 63 E.—Supplemental Plats for Sections 5, 8, 15, 17, 18, 19, 20, and 22.

The corrective dependent resurvey for T. 11 N., R. 21 E. was accepted on September 7, 1989; the supplemental plats for T. 18 S., R. 63 E. were accepted on September 11, 1989. The surveys were executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed surveys are now the basic record for describing the land for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-23824 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Mount Rainier National Park, WA; Exclusive Jurisdiction

AGENCY: National Park Service, DOI.

ACTION: Notice.

SUMMARY: Acceptance by the Regional Director, Pacific Northwest Region, National Park Service of the Department of the Interior of exclusive jurisdiction over certain lands and waters at Mount Rainier National Park, Washington.

EFFECTIVE DATE: June 15, 1989.

ADDRESSES: National Park Service, Pacific Northwest Region, 83 South King Street, Suite 212, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, Washington 98304, phone (206) 569-2211.

SUPPLEMENTARY INFORMATION:

* * * * *

Take notice that effective as of the fifteenth day of June 1989, at 12 midnight, Pacific Daylight Time, the United States accepted exclusive jurisdiction over those portions of Mount Rainier National Park added thereto by the Act of November 16, 1988, 102 Stat. 3961, 16 USC 1131 et seq., and subject to certain reservations contained in the act of the legislature of the State of Washington ceding jurisdiction to the United States over said lands, approved March 16, 1901, Chapter 92, Laws of Washington-1901, page 192. This acceptance was effected by notifying the Governor of the State of Washington by letter dated May 26, 1989, and signed by the Superintendent, Mount Rainier National Park.

* * * * *

Charles H. Odegaard,

Regional Director.

[FR Doc. 89-23766 Filed 10-6-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31530]

Wilmington Terminal Railroad, Inc.—Purchase and Lease—CSX Transportation, Inc. Line Between Savannah and Rhine, and Vidalia and Macon GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application, filed September 5, 1989, by Wilmington Terminal Railroad, Inc. (WTR) and CSX Transportation, Inc. (CSXT), for the purchase and lease by WTR of two connected lines of CSXT railroad, totalling 224.19 miles, between: (1) Savannah and Rhine, GA; and (2) Vidalia and Macon, GA. The Commission finds that this is a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 6, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by November 21, 1989. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. Applicant's reply is due by December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31530, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh St., SW., Washington, DC 20590

Attorney General of the United States, Washington, DC 20530

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201

Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036

SUPPLEMENTARY INFORMATION: Wilmington Terminal Railroad, Inc. (WTR) and CSX Transportation, Inc. (CSXT), collectively referred to as applicants, seek approval under 49 U.S.C. 11343, *et seq.*, for WTR to acquire, by purchase and lease, two connected CSXT lines, totalling 224.19 miles, between: (1) Savannah and Rhine, GA; and (2) Vidalia and Macon, GA. Applicants contend that this is a minor transaction under 49 CFR 1180.2 and submitted their application in accordance with the railroad consolidation regulations at 49 CFR 1180.

WTR is a Class III railroad common carrier operating approximately 4 miles of line in Wilmington, NC. Its stock is owned by K. Earl Durden, WTR's president, and controlled by Southtrust Bank of Dothan, AL, under a voting trust arrangement under the provisions of 49 CFR 1013.1 *et seq.* Durden also controls the Galveston Railroad, Inc., a Class III railroad operating in and around the Port of Galveston, TX. Applicants state that this transaction will have no effect on this carrier and that Durden's control authority will not be expanded or affected. Durden's ownership of WTR raises the question whether Durden should be required to participate as a party to this proceeding. We will use the term "applicants" to embrace WTR and CSXT only.[1]

CSXT, a subsidiary of CSX Corporation, is a Class I common carrier conducting operations in 19 States, the District of Columbia, and Ontario, Canada. It transported about 33,800 originating and terminating carloads on the two lines at issue in 1987 and about 31,700 carloads in 1988. The lines carry some overhead traffic, which will be rerouted via alternate interchange points.

The lines to be purchased total 165.45 route miles. They extend: (1) From Savannah (milepost SL 499.13) to Rhine (milepost SL 629.25), in Chatham, Bryan, Evans, Tattnall, Toombs, Montgomery, Wheeler, Telfair and Dodge Counties, GA; and (2) from Vidalia (milepost SK 92.33) to East Dublin (milepost SK 58.00) in Toombs, Montgomery, Treutlen, and Laurens Counties, GA. The assets to be purchased also include Track No. 1 (about .71 mile) at milepost SL 499.28 near Savannah, and Track No. SV 189 (about .47 mile) at milepost SH 512.62, also near Savannah.

The line to be leased extends 57.92 route miles from Macon (milepost SK 0.08) to East Dublin (milepost SK 58.00), in Bibb, Twiggs and Laurens Counties, GA. WTR will also lease the "Old Yard" at Savannah. CSXT will retain trackage rights, which can be exercised under certain circumstances, over WTR between Savannah (milepost SL 499.13) and Vidalia (milepost SL 576.80) and between Vidalia (milepost SK 92.33) and East Dublin (milepost SK 58.00). CSXT will grant WTR trackage rights over its line at Savannah between milepost SL 449.13 and milepost 499.03, and between milepost SH 513.07 and milepost SH 511.35 (about 1.82 miles).

Applicant states that the proposed transaction will permit WTR to expand into new markets and secure a larger traffic and revenue base. CSXT will be relieved of the inefficiencies inherent in operating what are for it marginal lines. Both carriers will accordingly realize operating efficiencies.

[1] Durden does not need, as a technical matter, to be formally styled as an applicant, because we can obtain sufficient information from the above numerated applicants. *See* Finance Docket No. 32000, *Rio Grande Industries, Inc., SPTC Holding Inc., and the Denver and Rio Grande Western Railroad Company—Control—Southern Pacific Transportation Company*, Decision No. 3 (not printed), served January 22, 1988, in which under similar circumstances, the Anschutz Corporation was not required to be a co-applicant. *See also* Finance Docket No. 31522, *Rio Grande Industries, Inc., et al.—Purchase and Trackage Rights—Chicago, Missouri & Western Railway Company Between St. Louis, MO and Chicago, IL* (not printed), served August 18, 1989.

Since WTR's existing line will not connect with the lines involved in this application, applicants argue that WTR's new opeation will have to depend on traffic generated by the lines to be acquired. Thus, WTR will have a strong incentive to provide service closely tailored to the needs of the lines' shippers. They expect that WTR's provision of good locally tailored service will enhance its financial viability by increasing its revenue base. WTR anticipates effecting economies by sharing administrative, insurance and operating costs with the new lines. It also anticipates that its provision of effective competition and efficient service will enable it to divert traffic from truck to rail on both lines.

Applicants contend that the proposed transactions will not reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. As applicants do not compete for traffic on the line, the transaction will merely substitute one rail carrier for another on an existing line. The line is parallel to an interstate highway, and the area is served by motor carriers. Applicants state that, if anything, the transaction should enhance intermodal competition by allowing the rail mode to compete more effectively with other modes.

The lines to be purchased connect with CSXT at Savannah, and WTR will be able to interchange at that point. Those lines also connect with the Southern Railway Company (or its subsidiaries) at Helena, GA, and with the South Carolina Central Railroad Company, Inc. at Rhine, GA, and interchange can be effected at both points. The line to be leased connects with Southern Railway Company (or its subsidiaries) at Macon and Dublin, GA, and interchange can be effected at either point.

WTR now operates three locomotives and employs four people. After this transaction is completed, it will operate 18 locomotives, own 195 railcars, and employ between 40 and 50 people. WTR will operate the lines to be purchased and leased exclusively with its own additional employees working under rates of pay, rules and working conditions that it will establish. Accordingly, the proposed transaction will have no effect on WTR's existing employees. The transaction will result in the abolition of 53 CSXT positions. CSXT states that it has not yet negotiated employee protection agreements with affected employees pursuant to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) and *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). However, it intends to do so prior to consummating the transaction.

Under the consolidation regulations, we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposed transaction, involving Class I and Class III railroads, has no regional or national significance and will neither result in a major market extension nor reduce the present level of competition. Accordingly, we find the proposal is a minor transaction under § 1180.2(c). Since the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including governmental entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(iii) written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

If desired, a request for an oral hearing with reasons supporting the request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

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This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application in Finance Docket No. 31530 is accepted for consideration.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on October 5, 1989. Decided: October 2, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23986. Filed 10-6-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,908]

Shure Electronics of Arizona, Inc., Phoenix, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 1989 applicable to all workers of Shure Electronics of Arizona. The notice was published in the **Federal Register** on July 19, 1989 (54 FR 30291).

Based on new information from the company, additional workers were retained for close down operations beyond the June 30, 1989 termination date. All production of the subject firm has been transferred to Mexico and the subject company's market is totally serviced by imports. The amended notice applicable to TA-W-22,908 is hereby issued as follows:

All workers of Shure Electronics of Arizona, Inc., Phoenix, Arizona who became totally or partially separated from employment on or after May 1, 1989 and before October 1, 1989 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of September 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-23822 Filed 10-6-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Access to Health Care of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held at 10:00 a.m., Friday, November 3, 1989, in Suite N-3437B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to access to health care.

On September 11, 1989, the Work Group on Access to Health Care met, reviewed its activities in 1988, and engaged in discussion with respect to areas of concern pertaining to regulatory governance under ERISA that arise from proposed access to health care legislation. The Work Group determined that it would proceed to identify issues and possible options for solution in connection with potential governmental jurisdictional conflicts and duplication with respect to the enforcement of access to health care legislation, including the continued appropriateness of ERISA benefit claims dispute procedures with respect to health benefit claims arising directly from mandated statutory provisions. At its November 3, 1989 meeting, the Access to Health Care Work Group will endeavor to determine the key issues and options for solution in the above respects. For purposes of assisting the group to formulate issues and potential options for solution, a preliminary discussion paper, similar in nature to the discussion paper previously released to the Advisory Council by the Work Group in 1988 regarding the scope of federal preemption under mandatory employment-related health plan legislation, will be presented for consideration by the Work Group.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before November 1, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1, 1989.

Signed at Washington, DC, this 3rd day of October, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89-23754 Filed 10-6-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Ballroom South, at the Annapolis Hilton Inn in Annapolis, Maryland.

DATE: Monday, October 30, 1989, 8:30—4:30, Tuesday, October 31, 1989, 8:30—12:30.

Status: The meeting is to be open to the public.

Matters to be discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting and other documents will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 3rd day of October 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-23821 Filed 10-6-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 3, 1989.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC, on November 6-7, 1989.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 6-9, 1989, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 6, 1989, will be as follows:

Committee Meetings

8:30-9:00 a.m.	Coffee for Council Members—Room 527 (Open to the Public).
9:00-10:00 a.m.	Committee Meetings—Policy Discussion. Education Programs—Room M-14. Fellowship Programs—Room 316-2. General Programs—Room 415. Research Programs/Preservation Grants—Room 315. State Programs/Challenge Grants—Room M-07.
10:00 a.m. until Adjourned	(Closed to the Public for the reasons stated above)—Consideration of specific applications.

The morning session on November 7, 1989, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Conflict of Interest Policy

E. Final Fiscal Year Reports: Applications; Matching; and Obligations

F. Fiscal Year 1990 Appropriations

G. Election of Council Vice Chairman

H. Committee Reports on Policy and General Matters

1. Fellowship Programs
2. General Programs
3. Research Programs
4. Preservation Grants
5. State Programs
6. Challenge Grants
7. Jefferson Lecture
8. Education Programs

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-23815 Filed 10-6-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological, Behavioral, and Social Sciences; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS).

Date and Time: October 23, 1989; 9:00 a.m. to 5:00 p.m., October 24, 1989; 9:00 a.m. to 12:00 p.m.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357-9854, Room 506, National Science Foundation, Washington, DC 20550.

Summary of Minutes: May be obtained from the contact person.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda: Long-range planning; and review of the issues/problems of human resources development in the BBS disciplines.

Dated: October 3, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-23750 Filed 10-6-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point 3 Nuclear Generating Unit No. 3 in Westchester County, New York.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications

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(TS) and would authorize an increase of the storage capacity of the spent fuel pool from 840 fuel assemblies to 1345 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated May 9, 1988, as supplemented June 9, 1988, December 20, 1988, May 26, 1989 and September 15, 1989. The Commission's staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. DPR-64, Power Authority of the State of New York, Docket No. 50-286 dated September 15, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansion on a case-by-case basis.

For Indian Point Nuclear Generating Unit No. 3, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects on non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is well within regulatory limits and is not significant. The occupational radiation dose for the proposed operation of the expanded spend fuel pool is estimated to be less than five percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affect by the spend fuel pool expansion is the waste heat rejected. The increase in total plant waste heat is insignificant. There is no significant environmental impact attributed to the waste heat from the plant due to the spent fuel pool expansion.

Finding of No Significant Impact

The staff has reviewed the proposed spend fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated May 9, 1988, as supplemented June 9, 1988, December 20, 1988, May 26, 1989 and September 15, 1989, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Environmental Statement for Indian Point 3 dated February 1975, and (4) the Environment Assessment dated October 4, 1989.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23819 Filed 10-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Exemption; Power Authority of the State of New York

In the Matter of Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant).

I.

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all the rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II.

Section IV.A. of Appendix J to 10 CFR Part 50 requires that a Type A, Type B, or Type C Leak Rate Test (as applicable) be performed following any major modification or replacement of a component which is part of the primary containment boundary.

As part of the Inservice Inspection Program conducted during the current mid-cycle maintenance outage, the licensee discovered the presence of a slag inclusion within Weld No. 10-14-884A on the "B" Core Spray System test return pipe (10"-W23-152-9B) to the primary containment suppression chamber. In accordance with the requirements of ASME section XI and ASME B-31.1-1967 the weld has been repaired and reinspected. The weld is located on a section of piping between the Core Spray Test return valve 14MOV-26B and the primary containment pressure suppression chamber shell and is part of the primary containment pressure boundary.

Although this type of repair to the containment pressure boundary is not specifically discussed in Appendix J to 10 CFR Part 50, the licensee considers, and the staff agrees, that the intent of the regulation requires that a Type A, Type B, or Type C leak rate test, as applicable, be conducted. However, because of the location of the weld repair, a Type B or C test are not applicable. Also, because of the setup and testing time involved and the significant delay it would have on plant startup, a Type A Primary Containment Integrated Leak Rate Test is not feasible.

In lieu of a Type A, Type B, or Type C Leak Rate Test, the licensee has, by letter dated September 28, 1989, requested an exemption from the Appendix J criteria and submitted an alternate testing program. This testing program consists of 100 percent radiography, surface examination and an inservice flow test which will be conducted in accordance with the applicable ANSI and ASME codes.

The staff have reviewed the licensee's exemption, request and prepared a safety evaluation. This safety evaluation determined that the licensee's alternate testing program provides comparable level of safety to that provided by section IV.A of Appendix J to 10 CFR part 50.

Our Safety Evaluation supporting this Exemption is dated October 3, 1989.

III.

The underlying purpose of the requirements of section IV.A of Appendix J to 10 CFR part 50 is to ensure that the primary containment integrity is not compromised or that repairs do not result in unacceptable leakage when replacing components which form part of the boundary. In the case of the Core Spray System weld repair, this is achieved and served by the non-destructive tests which were performed.

In this case, the licensee's examinations of the weld repair for the "B" Core Spray System full flow test pipe (Weld No. 10-14-884A), consisting of radiography, surface examinations and flow test, will provide the equivalent level of protection as that provided by the Type A, Type B, or Type C Leak Rate Tests. Therefore, application of the rule in these circumstances is not necessary to achieve the underlying purpose of the rule and the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR part 50.12(a)(2)(ii). Additionally, imposition of the leak rate testing requirement would involve procurement and setup of additional test equipment, establishment of a complex test environment and boundary conditions, and a significant delay in the planned plant startup date. Therefore, the staff also finds that there are special circumstances in this case which also satisfy the standards of 10 CFR part 50.12(a)(2)(iii).

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption as described in section III, is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and special circumstances are present for the exemption, in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purposes of section IV.A of Appendix J to 10 CFR part 50. Therefore, the Commission hereby grants the exemption from section IV.A to allow the satisfactory results from the non-destructive tests conducted on the weld repair on the "B" Core Spray System full flow test return line to fulfill the requirements of a Type A, Type B, or Type C Test.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting this Exemption will have no significant impact on the environment (54 FR 40759).

For further details with respect to this action, see the licensee's request dated September 28, 1989, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York, 13126.

This Exemption is effective upon issuance and is applicable for the operating cycle following startup from the 1989 maintenance outage.

Dated at Rockville, Maryland, this 3rd day of October 1989.

For the Nuclear Regulatory Commission.

Gus Lainas,

Acting Director, Director of Reactor Projects—I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 89-23818 Filed 10-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket 70-25; ASLBP No. 89-594-01-ML]

Rockwell International Corp.; Limited Time Within Which to Petition to Intervene

In the matter of Rockwell International Corp.; Rocketdyne Division (Special Material License Number SNM-21). Request to Renew for Ten Years.

Since three petitions to intervene were granted last Friday, September 29, this notice is required to be published pursuant to subpart L of our procedural regulations, 10 CFR 2.1205(i). The following information is required to be published:

(1) *Time, place and nature of the hearing.* Pursuant to the schedule adopted on September 29, this informal proceeding, intended to be largely in writing, shall begin through the filing of initial written presentation of a party so that it is *received* by the other parties on or before January 3, 1990 (*see* 10 CFR 2.1203(e) concerning service; 54 FR 8269). Other phases of the hearing have been fixed, pursuant to the suggestions of the existing parties, so that the written proceeding may be concluded by July 10, 1990. All of the phases of the hearing will be in writing unless the presiding officer is persuaded that witnesses need to be called to appear in person.

(2) *The authority under which the hearing is to be held.* The hearing is to be held pursuant to the delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721 and 2.1207 (54 FR 8269 (1989)) of the Commission's regulations and to a *Designation of Presiding Officer* served August 22, 1989.

(3) *The matters of fact and law to be considered.* We shall consider concerns properly raised by peopie who submit requests to appear that are approved by the presiding officer, thus granting the requesters the status of parties. Matters of concern to existing parties include:

(a) Alleged "radioactive contamination" on the site, including excessive radiation exposure of nuclear workers in the 1960s, two subsequent overexposure events, and litigation settlements in which three workers allegedly had radiation-caused cancer;

(b) The safety of emergency evacuation plans;

(c) Population growth in Rocketdyne's immediate vicinity makes renewal of its license unsafe;

(d) Potential toxic or radioactive contamination at the affected facility and the possible long-term cancer threat from these conditions;

(e) That the Sodium Burn Pit, used until 1978 for the disposal of chemical and "some" radioactive wastes, contains unauthorized radioactively contaminated equipment and toxic wastes and that there are "deteriorated" and allegedly ineffective berms that were designed to prevent rain water from running from the pit to Simi Valley;

(f) That rainwater apparently seeped into Building 059, where radioactive material and equipment remain, and may have transported some of the radioactive material out of the building and into the soil;

(g) That Applicants permitted a Leach Field, or pit, to be so badly contaminated in 1975 (by accident) that cleanup efforts were not completed before they were discontinued in 1978;

(h) That Applicants' testing and sampling for radioactive and toxic substances have been inadequate to assure the safety of surrounding communities;

(i) That Applicants' application for renewal of its license is inaccurate; and

(j) That Applicants' management is untrustworthy, in part because of suspected criminal conduct of Rockwell in handling wastes at Rocky Flats, near Denver.

It should be noted that in pursuing these concerns in their written filings, parties have been required to refer to the licensing criteria in 10 CFR part 70, so that the relevance of each concern to licensing will be apparent. (Concerns not explicitly related to criteria may be disregarded by the presiding officer.) In addition, written presentations shall comply with 10 CFR 2.1223, governing written presentations and written questions.

(4) *Time.* Any petition for leave to intervene must be filed within thirty (30) days of the date of publication of this notice of hearing. The petition must set forth the interest of the requestor in the proceeding, how the interest may be affected by the results of the proceeding, and areas of concern that are germane to the subject matter of the proceeding. *See* 10 CFR 2.1205.

(5) *Request to Participate.* The representative of an interested State, county, municipality or an agency thereof may request an opportunity to participate under 10 CFR 1.1211(b) within thirty (30) days of the date of publication of this notice of hearing. The request should include a statement of areas of concern germane to the license renewal application.

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Respectfully Ordered,
Peter B. Bloch,
Administrative Judge.
[FR Doc. 89-23817 Filed 10-6-89; 8:45 am]
BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 848; Docket No. N89-1]

Request for an Advisory Opinion on a Change in First-Class Delivery Standards and Order Fixing Date for Intervention and Designating Officer of the Commission

Issued October 3, 1989.

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W. H. "Trey" LeBlanc, III; Patti Birge Tyson.

On September 29, 1989, the United States Postal Service filed a Request for an Advisory Opinion that has been docketed as N89-1. The Request, accompanied by supporting testimony and one library reference, accompanied by supporting testimony and one library reference, stems from a Postal Service determination that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis within the meaning of 39 U.S.C. 3661(b).

The Postal Service intends to change delivery standards for First-Class Mail. The Service is conducting a nationwide examination of delivery standards with a view toward aligning these standards more closely with the needs of postal customers.

Studies performed to date by the Postal Service indicate that, within certain limits, consistency of First-Class Mail delivery is of greater importance to the postal customer than speed of delivery. Furthermore, the geographic area within which customers need overnight and two-day delivery is smaller than the current areas receiving such delivery. Consistent with this market analysis, the Service proposes to issue guidelines to its divisions for the purpose of evaluating and realigning First-Class delivery standards. The Service plans to begin implementation of the resulting adjustments to First-Class delivery standards on February 10, 1990.

Intervention

Persons desiring to participate as a party should file a notice of intervention with the Secretary of the Commission or before October 23, 1989, in accordance with section 20 of the rules of practice (39 CFR 3001.20). Notices of intervention shall affirmatively state whether the person filing requests a hearing, or in lieu thereof, a conference; whether such person intends to participate actively in a hearing; and shall set forth the nature of such person's interest in the issues, to the extent such interest is known. Persons seeking limited participating but not party status may, on or before October 23, 1989, file a written notice of intervention as a limited participator, pursuant to section 20a of the rules of practice (39 CFR 3001.20b). In addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to section 20b of the rules of practice (39 CFR 3001.20b).

Officer of the Commission

Pursuant to 39 U.S.C. 3661(c) the officer of the Commission charged with representing the interests of the general public in this docket is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The Office of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

The Officer of the Commission shall be separately served with three copies of all filings in this case, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice (39 CFR 3001.10(c)).

The Commission Orders

(A) Notices of Intervention as full or limited participators in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001 on or before October 23, 1989.

(B) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission who shall separately be served three copies of all documents.

(C) The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

By the Commission.
Charles L. Clapp,
Secretary.
[FR Doc. 89-23766 Filed 10-6-89; 8:45 am]
BILLING CODE 7710-FN-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 6c-6, File No. 270-160
Rule 10f-3, File No. 270-237
Rule 17j-1, File No. 270-239
Rule 34b-1, File No. 270-305
Rule 1(c) and Form U5S, File No. 270-168
Part 257, File No. 270-252

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 6c-6, 10f-3, 17j-1 and 34b-1 under the Investment Company Act of 1940. Notice is also given that the Securities and Exchange Commission has submitted for extension of OMB approval Rule 1(c), Form U5S and part 257 under the Public Utility Holding Company Act of 1935.

Rule 6c-6 continues exemptive relief received by Commission order to certain investment companies that responded to Revenue Ruling 81-225 by organizing new investment companies and substituting them for existing companies without prior Commission approval. All of the respondents, together, incur an estimated one burden hour annually complying with the rule.

Rule 10f-3 permits, under certain conditions, purchases of securities from underwriting syndicates whose members include affiliated persons of the purchasing investment company. Each of the 600 respondents spends about 2 hours per year complying with the rule.

Rule 17j-1 furthers the objective set forth in section 17(j) of the Investment Company Act of 1940, which makes it unlawful for any affiliated person of a registered investment company to engage in certain types of fraudulent practices. The rule requires that companies adopt codes of ethics designed to prevent such fraudulent practices. The 3512 recordkeepers each incur an estimated 6 hours, annually, complying with the rule.

Rule 34b-1 requires that all investment company sales literature that contains any performance information also contain certain performance information computed in a standardized manner, and include certain disclosure. The rule imposes an estimated annual reporting burden of 3444 hours on about 287 respondents.

Rule 1(c) and Form U5s implement section 14 of the Public Utility Holding Company Act of 1935, which requires registered public utility holding companies to file such annual and other periodic and special reports as the Commission may prescribe to keep current information relevant to compliance with substantive provisions of that Act. Each of the 13 respondents annually incurs an estimated 8.46 burden hours to comply with this requirement.

The rules under 17 CFR part 257 implement sections of the Public Utility Holding Company Act of 1935 that require registered holding companies and their subsidiary service companies to preserve records for periods specified by Commission rule. The 12 recordkeepers, together, incur about one annual burden hour to comply with the requirements.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey of study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Projects 3235-0245 (Rule 6c-6), 3235-0226 (Rule 10f-3), 3235-0224 (Rule 17j-1), 3235-0346 (Rule 34b-1], 3235-0164 (Rule 1(c) and Form U5S), and 3235-0306 (part 257), Room 3208 NEOB, Washington, DC 20503.

Dated: September 25, 1989.
Jonathan G. Katz,
Secretary.
FR Doc. 89-23741 Filed 10-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27325; International Series Release No. 113]

List of Foreign Issuers Submitting Information Required by the Exemption Relating to Certain Foreign Securities

September 29, 1989.

Foreign private issuers with total assets in excess of $5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*, as amended by Public Law No. 94-29 (June 4, 1975) (the "Act").[1]

Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) provides an exemption from registration under section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3-2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on NASDAQ.[2] Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October, 1983 and quoted in NASDAQ on that date were grandfathered indefinitely.[3] However, the exemption was extended to Canadian securities only until January 1986.

When it adopted Rule 12g3-2 and other rules relating to foreign securities,[4] the Commission indicated that from time to time it would issue lists showing those foreign issuers that have obtained exemptions from the registration provisions of section 12(g) of the Act. The purpose of the present release is to call to the attention of brokers, dealers, and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.[5] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[6] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.[7] Any questions regarding Rule 12g3-2 or the list included herein should be directed to Anita Klein, Attorney-Adviser, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549 ((202) 272-3246). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549, (202) 272-7450.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Dated: September 29, 1989.
Jonathan G. Katz,
Secretary.

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.* as amended by Pub. L. No. 94-29 (June 4, 1975)].

[2] Securities Exchange Act Release No. 20264 (October 6, 1983).

[3] If, however, the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the requirements of the exemption, the grandfather provision will cease to apply.

[4] Securities Exchange Act Release No. 8066 (April 28, 1967).

[5] Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of the exemption provided by Rule 12g3-2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission.

[6] Paragraph (a)(4) of Rule 15c2-11 [17 CFR 240.15c2-11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3-2(b) since the beginning of the issuer's last fiscal year.

[7] *See, e.g., Honly* v. *SEC.* 415 F.2d 589 (2nd Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

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Company	File No.	Country
A.A.A. Stamp Coin Bullion Inc	82-2112	Canada.
Abstract Enterprises Corp	82-2594	Do.
Ace Developments Ltd	82-2383	Do.
Acorn Securities Ltd	82-1676	Australia.
Acquisicorp Capital Ltd	82-1466	Canada.
Adagio Investment Inc	82-2060	Do.
Adastral Resources Ltd	82-2124	Do.
Afrikander Lease, Ltd., The	82-245	South Africa.
Afro West Mining Ltd	82-1821	Australia.
AGA AB	82-800	Canada.
Agarwal Resources Ltd	82-2562	Do.
AISI Research Corp	82-2555	Do.
Akers Medical Technology Ltd	82-160	Do.
Alban Exploration Ltd	82-1941	Do.
Albert Fisher Group PLC, The	82-1020	United Kingdom
Alexa Ventures Inc	82-2224	Canada.
Algemene Bank Nederland N.V	82-2492	Netherlands.
Algonquin Minerals Inc	82-2151	Canada.
All Nippan Airways Co., Ltd	82-1569	Japan.
All North Resources Ltd	82-1646	Canada.
All Star Resources Ltd	82-1633	Do.
Almaden Resources Corp	82-2118	Do.
Alpine Exploration Corp	82-1856	Do.
Alta Explorations Ltd	62-695	Do.
Altero Technologies Inc	82-2176	Do.
Amada Resources Ltd	82-2361	Do.
Amazon Petroleum Corp	82-1410	Do.
American Canadian Systems Inc	82-2449	Do.
American Pacific Mining Co. Inc	82-2265	Do.
American Platinum Inc	82-1204	Do.
American Reserve Mining Corp	82-1567	Do.
American Ventures Inc	82-2263	Do.
Amerital Management Inc	82-1398	Do.
Amsterdam-Rotterdam Bank N.V	82-1157	Netherlands.
Anglo American Corp. of South Africa Ltd	82-97	South Africa.
Anglo American Gold Investment Co. Ltd	82-146	Do.
Anglo American Resources Inc	82-2490	Canada.
Anooraq Resource Corp	82-1917	Do.
Antelope Resources Ltd	82-2581	Do.
Applied International Holding Ltd	82-1667	Hong Kong.
Approach Resources Inc	82-2406	Canada.
Aqua 1 Beverage Co. Inc	82-2315	Do.
Aqua Pura Technologies Inc	82-2025	Do.
Arakis Mining Corp	82-2279	Do.
Aranlee Resources Ltd	82-2569	Do.
Arapohoe Mining Corp	82-1450	Do.
Argenta Resources Inc	82-1320	Do.
Argyle Ventures Inc	82-2047	Do.
Arizona Star Resource Corp	82-1491	Do.
Ark La Tex Industries Ltd	82-2240	Do.
Armada Gold and Minerals Corp	82-2347	Do.
Armenian Express Canada Inc	82-966	Do.
Armada Resources B.C. Ltd	82-2443	Do.
Arrow Business Corp	82-1558	Do.
Asea, AB	82-756	Sweden.
Asia Pacific Capital Corp	82-2022	Canada.
Asia Pacific Resources Ltd	82-2663	Do.
Asitka Resource Corp	82-934	Do.
Astra Holding PLC	82-2538	United Kingdom.
Ateba Mines Inc	82-2078	Canada.
Athena Gold Corp	82-2226	Do.
Athlone Resouces Ltd	82-2464	Do.
Atlantis Enterprises International Ltd	82-2163	Do.
Attwood Gold Corp	82-2239	Do.
Au Resources Ltd	82-2239	Do.
Augmitte Explorations Ltd	82-1242	Do.
Auridian Consolidated N.L	82-1939	Australia.
Auspharm International Ltd	82-2388	Do
Australia and New Zealand Banking Group Ltd	82-2294	Do.
Australia Wide Industries Ltd	82-1664	Canada.
Automated Security (Holdings) PLC	82-2352	United Kingdom.
Avater Resources Corp	82-2166	Canada.
Avenue Resources Inc	82-1585	Do.
Baha Resources Ltd	82-1085	Do.
Bakra Resources Ltd	82-2378	Do.
Balance Resources Ltd	82-2276	Do.
Ballatar Explorations Ltd	82-2237	Do.
Baloil Lasalter Petroleum Ltd	82-1955	Do.
Banbury Gold Mines Ltd	82-828	Do.
Bank of Fukuoka, The	82-1117	Japan.

Company	File No.	Country
Bank of Montreal	82-126	Canada.
Bank of Nova Scotia	82-132	Do.
Bar Resources Ltd	82-1047	Do.
Barrack Energy Ltd	82-1361	Australia.
Barrack Mines Ltd	82-1362	Do.
Barrack Technology Ltd	82-1360	Do.
Barrier Technology Inc	82-1999	Canada.
Barris Klein Holdings Inc	82-2010	Do.
Barytex Resources Corp	82-1104	Do.
Basaba Enterprises Inc	82-2074	Do.
Bat Industries Ltd	82-33	United Kingdom.
Bateaux Resources Inc	82-2243	Canada.
Battery One-Stop Inc	82-2231	Do.
Bavarian Lion Industries Ltd	82-2483	Do.
Bay Resources Ltd	82-2559	Do.
Bayaura Mines Ltd	82-2658	Do.
Bear Lake Resources Ltd	82-1373	Do.
Beatrix Mines Ltd	82-1054	South Africa.
Beau Val Mines Ltd	82-2242	Canada.
Beaufield Resources Inc	82-1557	Do.
Bellabon Resources Corp	82-2113	Do.
Bellwether Resources Ltd	82-2436	Do.
Beltec Enterprises Ltd	82-2229	Do.
Bema Gold Corp	82-1070	Do.
Benton Resources Ltd	82-2650	Do.
Benz Gold Resources Ltd	82-2491	Do.
Bergesen d.y. A/S	82-1697	Norway.
BHP Gold Mines Ltd	82-2189	Australia.
Bi-Petro Resources	82-2048	Canada.
Big Strike Resources Inc	82-2532	Do.
Billikin Resources Inc	82-1375	Do.
Bio Met Technology Inc	82-2293	Do.
Black Hill Minerals Ltd	82-729	Australia.
Black Label Resources Inc	82-1435	Canada.
Blue Circle Industries PLC	82-927	United Kingdom.
Blue Emerald Resources Inc	82-2532	Canada.
Blyvooruitzicht Gold Mining Co. Ltd	82-89	South Africa.
BMR Gold Corp	82-2246	Canada.
Bond Corp. Holdings Ltd	82-998	Australia.
Bondell Industries	82-2037	Canada.
Booker Gold Explorations Ltd	82-1984	Do.
Bougainsville Copper Ltd	82-1133	New Guinea.
Bowater Industries PLC	82-3	United Kingdom.
Bracken Mines Ltd	82-219	South Africa.
Bradbury International Equities Ltd	82-2273	Canada.
Braner Resources Inc	82-2519	Do.
Brascan, Ltd	82-4	Do.
Bravo Resources Inc	82-2560	Do.
Breakwater Resources Ltd	82-653	Do.
Bren-Mar Resources Ltd	82-2143	Do.
Bresea Resources Ltd	82-1377	Do.
Bridge Oil Ltd	82-2187	Australia.
Bridgestone Corp	82-1264	Japan.
Bridgedan Equities Inc	82-2327	Canada.
Britannia Security Group PLC	82-2013	United Kingdom.
British Medical Services LTD	82-1994	Canada.
Brooks Resources Ltd	82-2434	Do.
Brunswick N.L	82-410	Australia.
Bryndon Ventures Inc	82-1363	Canada.
BTR, PLC	82-898	United Kingdom.
Buffelsfontein Gold Mining Co., Ltd	82-302	South Africa.
Bullion Range Exploration Corp. Ltd	82-2140	Canada.
Burdett Resources Ltd	82-1967	Do.
Burmah Oil PLC, The	82-5	Scotland.
Burro Creek Minerals Ltd	82-2593	Canada.
Burton Group PLC, The	82-1498	United Kingdom.
B.Y.G. Natural Resources Inc	82-2036	Canada.
Caddev Industries Inc	82-1974	Do.
Calnor Resources Ltd	82-2230	Do.
Camborne Resources Ltd	82-2210	Do.
Cambridge Resources Ltd	82-2526	Canada.
Camino Resources Ltd	82-2137	Do.
Can-Am Industries	82-1965	Do.
Can Mac Exploration Ltd	82-2447	Do.
Canada Orient Resources Inc	82-2269	Do.
Canada Tungsten Mining Corp. Ltd	82-290	Do.
Canadian Crew Energy Corp	82-2460	Do.
Canadian Conquest Explorations Inc	82-2473	Do.
Canadian Fibre Foods Inc	82-1945	Do.
Canadian Imperial Bank of Commerce	82-103	Do.

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Company	File No.	Country
Canadian Marconi Co	82-86	Do.
Canadian Spooner Resources Inc	82-112	Do.
Canadian Star Industries Inc	82-2141	Do.
Canadian Transtech Industries Ltd	82-2117	Do.
Canal +	82-2270	France.
CanAlaska Resources Ltd	82-2131	Canada.
Canarc Resources Corp	82-2098	Do.
Canusa Financial Corp	82-2186	Do.
Capricorn Resources Ltd	82-1996	Do.
Captive Air International Inc	82-2367	Do.
Care Veterinary Pharmaceuticals	82-2158	Do.
Carlin Gold Co. Inc	82-1770	Do.
Carlsbad Ventures Inc	82-2312	Do.
Carmel Resources Ltd	82-2517	Do.
Castle Minerals Inc	82-2472	Do.
Catear Resources Ltd	82-1615	Do.
Cathay Pacific Airlines Ltd	82-1390	Hong Kong.
Cathedral Gold Corp	82-1990	Canada.
Cazador Explorations Ltd	82-2409	Do.
CCL Industries Inc	82-2549	Do.
Celanese Canada Ltd	82-171	Do.
Centaur Mining & Exploration Ltd	82-1930	Australia.
Centaur Resources Ltd	82-2097	Canada.
Central Crude Ltd	82-1933	Do.
Central Pacific Minerals N.L	82-354	Australia.
Chalice Mining Inc	82-1304	Canada.
Champagne Capital Corp	82-2153	Do.
Charter Consolidated PLC	82-233	United Kingdom.
Charter Minerals Inc	82-938	Canada.
Charter Mining N.L	82-431	Australia.
Chase Resource Corp	82-1976	Canada.
Chelik Resources Inc	82-2094	Do.
Chelsea Resources Ltd	82-1949	Do.
Cheryl Resources Ltd	82-1424	Do.
Choice Foods Corp	82-2430	Do.
Christian Salvesen PLC	82-1691	United Kingdom.
Christina Exploration Ltd	82-2219	Canada.
City Resources Ltd	82-1301	Australia.
Claimer Resources Inc	82-2336	Canada.
Claude Resources Inc	82-1742	Do.
Claw Resources Ltd	82-2267	Do.
Coast Industrial Hi Tech Fabricating Ltd	82-2524	Do.
Coats Viyella PLC	82-1751	United Kingdom.
Colby Resources Corp	82-417	Canada.
Colchis Resources Ltd	82-1437	Do.
Coldspring Resources Ltd	82-1944	Do.
Colin Energy Corp	82-2552	Do.
Colony Pacific Explorations Ltd	82-1115	Do.
Colray Resources Inc	82-1536	Do.
Cominco, Ltd	82-107	Do.
Commander Resources Ltd	82-2630	Do.
Commerzbank Aktiengesellschaft	82-2523	Germany.
Commonwealth Richmond Properties Inc	82-2215	Canada.
Company's Coming Snack Bars Ltd	82-2456	Do.
Compass Resources Ltd	82-2041	Do.
Comp-U-Test Software Ltd	82-2537	Do.
Concert Industries Ltd	82-1003	Do.
Condor Precious Metals Inc	82-2014	Do.
Coniagas Mines, Ltd	82-166	Do.
Conisil Resources Inc	82-2135	Do.
Consolidated Andex Resources Ltd	82-2255	Do.
Consolidated-Bathurst Ltd	82-172	Do.
Consolidated Boulder Mountain Resources Ltd	82-1139	Do.
Consolidated Churchill Enterprises Inc	82-2106	Do.
Consolidated Exploration Ltd	82-1839	Australia.
Consolidated Gold Fields Ltd	82-251	United Kingdom.
Consolidated Gold Mining Areas N.L	82-413	Australia.
Consolidated Heron Resources Ltd	82-765	Canada.
Consolidated Nirvana Industries Ltd	82-1079	Do.
Consumer General Inc	82-2445	Do.
Continental Pacific Resources Inc	82-1803	Do.
Contour Blind & Shade (Canada) Ltd	82-1283	Do.
Coopers Resources N.L	82-444	Australia.
Copeland Resources Ltd	82-2203	Canada.
Cordialle Resources Inc	82-2012	Do.
Corning Resources Ltd	82-2438	Do.
Corolla Resources Ltd	82-2565	Do.
Corporacion Mapfre SA	82-1967	Spain.
Coseka Resources Ltd	82-295	Canada.
Cove Resources Corp	82-803	Do.

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CRA Ltd	82-1101	Australia.
Crack Resources Ltd	82-2455	Canada.
Creative Products Inc	82-1476	Do.
Crew Natural Resources Ltd	82-2662	Do.
CRH PLC	82-1333	Ireland.
Crisan Resources Ltd	82-2597	Canada.
Cross Canada Resources Ltd	82-2095	Do.
CSK Corp	82-781	Japan.
Cultor Ltd	82-1643	Finland.
Cumulus Technology Ltd	82-1553	Canada.
Curlew Lake Resources Inc	82-1978	Do.
Current Technology Corp	82-2404	Do.
Dab Investments Ltd	82-1245	South Africa.
Dai'ei Inc., The	82-230	Japan.
Daiwa Danchi Co., Ltd	82-1218	Japan.
Dalmation Resources Inc	82-1663	Canada.
D.A.S. Electronics Industries Inc	82-2167	Do.
Dasher Resources Ltd	82-1185	Do.
Dateland Capital Group Inc	82-2058	Do.
Davic Enterprises Inc	82-2591	Do.
Davy Corporation PLC	82-2558	United Kingdom.
Dawson Eldorado Mines Ltd	82-1818	Canada.
Dayton Developments Corp	82-2461	Do.
De Beers Consolidated Mines, Ltd	82-91	South Africa.
Death Valley Resources Ltd	82-1982	Canada.
Defiant Minerals Inc	82-2043	Do.
Del Norte Chrome Corp	82-1584	Do.
Del Rio International	82-1983	Do.
Dellaterra Resources Ltd	82-2235	Do.
Delta Gold N.L	82-1221	Australia.
Den Danske Bank af 1871 Aktieselskab	82-1263	Denmark.
Denehurst Ltd	82-2334	Australia.
Desert Resources Inc	82-1958	Canada.
Deutsche Bank A.G	82-334	Germany.
Dexx Energy Corp	82-1638	Canada.
Diasyn Technologies Ltd	82-2295	Do.
Digital Composition Ltd Systems Ltd	82-2400	Do.
Dimension House International Inc	82-1199	Do.
Diversified Entertainment Inc	82-2079	Do.
Dominco Industries Corp	82-2101	Do.
Domini Sportswear Ltd	82-2066	Do.
Dominion Mining Ltd	82-433	Australia.
Doornfontein Gold Mining Co. Ltd	82-213	South Africa.
Doromin Resources Ltd	82-2566	Canada.
Doron Explorations Inc	82-2004	Do.
Draco Gold Mines Inc	82-2321	Do.
Dragon Fly Distributors Inc	82-2358	Do.
Dragoon Resources Ltd	82-1658	Do.
Dresdner Bank A.G	82-229	Germany.
Drexore Development Inc	82-1401	Canada.
Driefontein Consolidated Ltd	82-124	South Africa.
Dual Resources Ltd	82-1299	Canada.
Dundee Resources Corp	82-2417	Do.
Durga Resources Ltd	82-2467	Do.
Dutch Creek Resources Ltd	82-2110	Do.
Eagle Corp. Ltd	82-476	Australia.
Eagle Industries Ltd	82-1397	Canada.
East Daggafontein Mines Ltd	82-42	South Africa.
East Rand Gold & Uranium Co. Ltd	82-289	Do.
East Rand Proprietary Mines, Ltd	82-239	United Kingdom.
East West Resources Corp	82-787	Canada.
Eastfield Resources Ltd	82-1929	Do.
Ecos Resources Ltd	82-2463	Do.
Egerton Trust PLC	82-1948	United Kingdom.
Elan Industries Inc	82-2160	Canada.
Elandesrand Gold Mining Col. Ltd	82-266	South Africa.
Emerald Star Mining Exploration Ltd	82-2199	Canada.
Emfax International Ltd	82-2149	Do.
Emperor Mines Ltd	82-969	Australia.
Empire Gold Resources Ltd	82-2035	Canada.
Enexco International Ltd	82-684	Do.
Enterprise Gold Mines N.L	82-1807	Australia.
Enterprise Resources Inc	82-2249	Canada.
ENVIPCO Canada Western Inc	82-2068	Do.
Epic Resources (B.C.) Ltd	82-1010	Do.
Equinox Resources Ltd	82-1152	Do.
Equus Petroleum Corp	82-1302	Do.
E.R.G. Australia Ltd	82-2372	Australia.
Eridania Z.N., S.P.A	82-902	Italy.
Eros Resources Ltd	82-2306	Canada.

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Etruscan Enterprises Ltd	82-1576	Do.
Eureka Resources Inc	82-1031	Do.
Even Resources Ltd	82-2493	Do.
Fair Harbour Mining Corp	82-2638	Do.
Fairhaven International Ltd	82-650	Bermuda.
Fairway Automotive Industries Ltd	82-1962	Canada.
Falcon Point Resources Ltd	82-1713	Do.
Faraway Gold Mines Ltd	82-1426	Do.
Fargo Resources Ltd	82-2081	Do.
FCA International Ltd	82-1310	Do.
Federation Resources N.L	82-931	Australia.
Fenway Resources Ltd	82-2303	Canada.
Fest Resources Corp	82-2161	Do.
Fifth Avenue Ventures Corp	82-1428	Do.
Fircrest Resources Ltd	82-2157	Do.
Fireball Resources Ltd	82-2339	Do.
First Commercial Financial Group Inc	82-1601	Do.
First Guardian Petroleum Corp	82-2354	Do.
First Medical Management Ltd	82-1957	Do.
First Pacific Co. Ltd	82-836	Hong Kong.
First Star Energy Ltd	82-2253	Canada.
First Tridon Industries Inc	82-2209	Do.
Fisons PLC	82-202	United Kingdom.
FKB Group PLC	82-2318	Do.
Flash Pack Ltd	82-2251	Canada.
Fleetwood Petroleum Corp	82-1420	Do.
Fletcher Challenge Canada Ltd	82-868	Do.
Fletcher Challenge Ltd	82-1438	New Zealand.
Footwall Explorations Ltd	82-2177	Canada.
Formosa Resources Corp	82-1367	Do.
Fortress Resources Inc	82-2611	Do.
Forum Beverages Inc	82-2431	Do.
Foseco Minsep PLC	82-952	United Kingdom.
Foundation Resources Ltd	82-1992	Canada.
Foxx Industries Inc	82-2355	Do.
F.P. Special Assets Ltd	82-1757	Hong Kong.
Franz Capital Corp	82-2574	Canada.
Free State Consolidated Gold Mines	82-44	South Africa.
Freedom Marine Ltd	82-1330	Canada.
Freemont Gold Corp	82-1580	Do.
Freeport Resources Inc	82-1131	Do.
Friedrich Technologies Inc	82-1138	Do.
Frost Resources Inc	82-2045	Do.
Frozya Industries Inc	82-2614	Do.
FTI Foodtech International Inc	82-1628	Do.
Fuji Photo Film Co., Ltd	82-78	Japan.
Gamin Resources Inc	82-1021	Canada.
G.B. Holdings Ltd	82-2192	Singapore.
GBX Resources Corp	82-2519	Canada.
Genbal Investments Ltd	82-235	South Africa.
Genco Industries Inc	82-2389	Canada.
General Mining Union Corp. Ltd	82-311	South Africa.
Genprobe Technologies Ltd	82-2150	Canada.
Geo-Data International Ltd	82-2115	Do.
Goetech Capital Corp	82-2264	Do.
Gerle Gold Ltd	82-1209	Do.
Getchell Resources Inc	82-2049	Do.
Giant Resources Ltd	82-1951	Australia.
GKN PLC	82-1042	United Kingdom.
Gladstone Resources Ltd	82-2055	Canada.
Glencar Explorations PLC	82-1421	Ireland.
Glendale Resources Inc	82-2353	Canada.
Glider Developments Inc	82-2596	Do.
Glimmer Resources Inc	82-1970	Do.
Globex Biotechnologies Inc	82-2300	Do.
GMN The Gospel Music Network Ltd	82-2042	Do.
Golconda Minerals N.L	82-1233	Australia.
Gold Fields of South Africa Ltd	82-204	South Africa.
Gold and Minerals Explorations N.L	82-849	Australia.
Gold Mines of Kalgoorlie Ltd	82-2078	Do.
Gold Ridge Resources Inc	82-1903	Canada.
Gold Spring Resources Ltd	82-2200	Do.
Goldcorp Investments Ltd	82-1106	Do.
Golden Adit Resources Ltd	82-1632	Do.
Golden Arrow Resources	82-2602	Do.
Golden Chance Resources Inc	82-1464	Do.
Golden Crown Resources Ltd	82-2518	Do.
Golden Exodus Ventures	82-1207	Do.
Golden Kootney Resources Inc	82-2546	Do.

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Golden Myra Resources Inc	82-2201	Do.
Golden Pheasant Resources Ltd	82-2152	Do.
Golden Pool Resources Ltd	82-2420	Do.
Golden Seville Ltd	82-1497	Do.
Golden Sitka Resources Inc	82-2040	Do.
Golden Valley Mines N.L	82-2102	Australia.
Golden Winner Resources Inc	82-2212	Canada.
Goldenrod Resources & Technology Inc	82-1674	Do.
Goldenev Resources, Inc	82-1080	Do.
Goldsil Resources Ltd	82-2380	Do.
Goldsmith Minerals Ltd	82-2551	Do.
Goldways Resources Inc	82-2345	Do.
Gonzales Gold Mines Ltd	82-2238	Do.
Goodman Fielder Wattie Ltd	82-2009	Australia.
Government of Canada	82-2475-S	Canada.
Gracefield Explorations Inc	82-2217	Do.
Granada Exploration Corp	82-1863	Do.
Grand Metropolitan PLC	82-1247	United Kingdom.
Grand National Resources Inc	82-1100	Canada.
Grandma Lees Inc	82-542	Do.
Gratium Resources Inc	82-2539	Do.
Great Canadian Cider Exporters Ltd	82-2221	Do.
Great Central Mines Ltd	82-1211	Do.
Great Eastern Mines Ltd	82-732	Australia.
Great Fingall Mining Co. N.L	82-2533	Do.
Great Pacific Resources Inc	82-2425	Canada.
Great World Resources Ltd	82-1581	Do.
Green Lake Resources Inc	82-2547	Do.
Greystoke Explorations Ltd	82-2259	Do.
Grootvlei Proprietary Mines Ltd	82-222	South Africa.
Grupo Sidek, S.A. de C.V.Y	82-2598	Mexico.
Guardian Resource Corp	82-857	Canada.
Guinness PLC	82-1478	United Kingdom.
Guld Resources Corp	82-1499	Canada.
Gulf International Minerals Ltd	82-2029	Do.
Gulf Titanium Ltd	82-455	Do.
Gwalia Resources (International) Ltd	82-2125	Australia.
Gwalia Resources Ltd	82-2126	Do.
G.W.R. Resources Inc	82-2258	Canada.
Gyspy Resources Ltd	82-2120	Do.
Haglund Industries International Inc	82-1709	Do.
Hang Lung Development Co. Ltd	82-1439	Hong Kong.
Nang Seng Bank Ltd	82-1747	Do.
Hanna Pacific Steel Co. Ltd	82-2435	Canada.
Harmony Gold Mining Co. Ltd	82-238	South Africa.
Harrisburg-Dayton Resource Corp	82-2171	Canada.
Hawk Resources Inc	82-1339	Do.
Hedley-Sterling Exploration Inc	82-1935	Do.
Helix Biotech Corp	82-1044	Do.
Henderson Land Development Co. Ltd	82-1561	Hong Kong.
Henlys Group Ltd	82-1278	Canada.
Hennessy Resource Corp	82-1334	Do.
Hermes Ventures Ltd	82-2260	Do.
H.E.R.O. Industries Ltd	82-2462	Do.
Hestair PLC	82-1873	United Kingdom.
Hidden Valley Mines Ltd	82-1652	Canada.
High Level Resources Ltd	82-1035	Do.
High River Gold Mines Ltd	82-1238	Do.
Highgrade Ventures Ltd	82-2257	Do.
Highveld Steel & Vanadium Corp. Ltd	82-596	South Africa.
Hildon Mining Explorations Ltd	82-2378	Canada.
Hillsdown Holdings PLC	82-1407	United Kingdom.
Hilton Resource Corp	82-1979	Canada.
Hino Motors Ltd	82-1388	Japan.
HK-TVB Ltd	82-1072	Hong Kong.
Hokuriku Bank Ltd., The	82-1045	Japan.
Hong Kong China Gas Co. Ltd	82-1543	Hong Kong.
Hopewell Holdings Ltd	82-1547	Do.
Horizon Village Corp., Canada	82-2332	Canada.
Horsham Corp., The	82-194	Do.
Hovik Medical Corp	82-2132	Do.
H.Q. Minerals Ltd	82-2002	Do.
Hudson Resources Ltd	82-2093	Do.
Huntington Resources Inc	82-1374	Do.
Huron Star Resources Ltd	82-2218	Do.
Hysan Development Co. Ltd	82-1617	Hong Kong.
IEM, S.A. de C.V	82-2337	Mexico.
Imasco Ltd	82-118	Canada.
Impala Platinum Holdings Ltd	82-359	South Africa.
Imperial Metals Corp	82-1032	Canada.

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Independent Resources Ltd	82-1417	Australia.
Indian River Resources Inc	82-997	Canada.
Info-Stop Communications Inc	82-2245	Do.
Inova Optics Inc	82-2282	Do.
Insulblock Systems	82-2577	Do.
Integrated Resources	82-2576	Do.
Intercontinental Ventures Ltd	82-2197	Do.
Interfirst Resources Inc	82-2302	Do.
International Baron Resources Ltd	82-2225	Do.
International Butec Industries Corp	82-2609	Do.
International Cablecasting Technologies Inc	82-1519	Do.
International Coast Minerals Corp	82-2091	Do.
International Cruiseshipcenter Corp	82-2159	Do.
International Curator Resources Ltd	82-1540	Do.
International Data Service Corp	82-2161	Do.
International Delta Resources Ltd	82-1535	Do.
International Destron Technologies Inc	82-1953	Do.
International Hard Suits Inc	82-1950	Do.
International Mahogany Corp	82-2375	Do.
International Message Centre Inc	82-2342	Do.
International Mining Corp., N.L	82-813	Australia.
International Mitek Computer Inc	82-876	Canada.
International Pacific Cypress Ltd	82-2527	Do.
International PLC Autopark Inc	82-2522	Do.
International Powerteck Systems Inc	82-1340	Do.
International Praxis Corp	82-2114	Do.
International Retail Systems Inc	82-2206	Do.
International Shasta Resources Ltd	82-2154	Do.
International Texcan Technology Corp	82-945	Do.
International Turbomist Inc	82-2639	Do.
Interstate Energy Corp	82-2269	Do.
Iota Explorations Ltd	82-2426	Do.
IPC International Prospector Corp	82-1969	Do.
Iron Lady Resources Inc	82-2348	Do.
Iron River Resources Ltd	82-1872	Do.
I.S.G. Technologies	82-2147	Do.
Iskut Gold Corp	82-2534	Do.
I.T.D. International Technology Development Inc	82-2608	Do.
IXORA Communication Systems Inc	82-1591	Do.
Izone International Ltd	82-782	Do.
J. Sainsbury PLC	82-913	United Kingdom.
Jack the Gripper Inc	82-2001	Canada.
Jacqueline Gold Corp	82-2374	Do.
Jaguar Equities Inc	82-2070	Do.
James Hardie Industries Ltd	82-972	Australia.
Japan Air Lines	82-122	Japan.
Jason Mining Ltd	82-1257	Canada.
Jazzman Resources Inc	82-2457	Do.
JC Smith Marketing Corp., The	82-1934	Do.
Jefferson Smurfit Group PLC	82-1311	Ireland.
Jem Group Productions Inc	82-2415	Canada.
Jentech Ventures Corp	82-1864	Do.
Jewett-Cameron Trading Co. Ltd	82-2357	Do.
Jilbey Industries Ltd	82-1629	Do.
Jingellic Minerals N.L	82-1806	Australia.
John Labatt Ltd	82-1103	Canada.
Johnson Matthey PLC	82-2272	United Kingdom.
Jonpol Explorations Ltd	82-1969	Canada.
Joutel Resources Ltd	82-502	Do.
Jupitor Resources Ltd	82-2333	Do.
Kaaba Resources Inc	82-1049	Do.
Kali Venture Corp	82-2433	Do.
Kancana Ventures Ltd	82-336	Do.
Kap Resources Ltd	82-2319	Do.
Kappa Resources Corp	82-2129	Do.
Karonie Gold N.L	82-2620	Australia.
Kassan Resources Inc	82-2290	Canada.
Keefer Resources Inc	82-2228	Do.
Kelan Resources Inc	82-2268	Do.
Kelso Resource Ltd	82-2441	Do.
Kemgas Sydney Inc	82-2075	Do.
Kenton Natural Resources Corp	82-1455	Do.
Keppel Corp. Ltd	82-2564	Do.
Kettle River Resources Ltd	82-666	Do.
Key Anacon Mines Ltd	82-23	Do.
Kidston Gold Mines Ltd	82-2351	Do.
King Jack Resources Ltd	82-2109	Do.
Kingfisher, PLC	82-968	United Kingdom.
Kingswood Explorations 1985 Ltd	82-2371	Canada.
Kinross Mines Ltd	82-220	South Africa.

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Kirin Brewery Co. Ltd	82-188	Japan.
Kloof Gold Mining Co., Ltd	82-205	South Africa.
Kobold Resources Ltd	82-1786	Canada.
Koninklijke Ahold N.V	82-2575	Netherlands.
Koninklijke Wessanen N.V	82-1306	Do.
Kootenay King Resources Inc	82-1997	Canada.
Koss Resources Ltd	82-2627	Do.
K.T. Capital Corp	82-2103	Do.
Kyber Resources Inc	82-2451	Do.
Kyle Resources Ltd	82-2198	Do.
Ladbroke Group PLC	82-1571	United Kingdom.
L'Air D'Or Corp	82-2401	Canada.
Landmark Corp	82-176	Do.
Lanpar Technologies Inc	82-2087	Do.
Lansco Resources Ltd	82-1562	Do.
Laura Ashley Holdings PLC	82-1356	United Kingdom.
Legion Resources Ltd	82-2556	Canada.
Lemming Resources Ltd	82-1727	Do.
Lennard Oil, N.L	82-298	Australia.
Leslie Gold Mines Ltd	82-223	South Africa.
Libra Industries Inc	82-2485	Canada.
Lifequest International Inc	82-2310	Do.
Link Resources Inc	82-2024	Do.
Little Abitibi River Resources Inc	82-2296	Do.
Little Bear Resources Ltd	82-1365	Do.
LMX Resources Ltd	82-2139	Do.
Locke Rich Minerals Ltd	82-2465	Do.
Lode Resources Corp	82-1004	Do.
Lollipop Daycare Ltd	82-2250	Do.
London & Scottish Marine	82-2571	United Kingdom.
London International Group PLC	82-1468	Do.
Lonrho PLC	82-191	Do.
Lotus Resources Ltd	82-2535	Canada.
Louisiana Mining Corp	82-1926	Do.
Lucas Gold Resources Corp	82-2297	Do.
Lucky Bay Mines Inc	82-2034	Do.
Lydenburg Platinum Ltd	82-312	South Africa.
Lysander Gold Corp	82-1938	Canada.
MacNeill Industrial Inc	82-2277	Do.
Madrona Resources Inc	82-2236	Do.
Maestral Group Inc	82-2578	Do.
Magellan Resources Corp	82-2379	Do.
Magenta Development Corp	82-1422	Do.
Magnet Group Ltd	82-299	Do.
Mai, PLC	82-1940	United Kingdom.
Malayan United Industries Berhad of Malaysia	82-2586	Malaysia.
Mango Resources Ltd	82-2454	Canada.
Marian Minerals Corp	82-2414	Do.
Marietta Resource Corp	82-1040	Do.
Marks and Spencer PLC	82-1961	United Kingdom.
Marling Industries PLC	82-2318	Do.
Marubeni Corp	82-616	Japan.
Mawson Pacific Ltd	82-1467	Australia.
Mayne Nickless Ltd	82-1530	Do.
MBS Software Inc	82-2285	Canada.
McConnell-Peel Resources Ltd	82-1577	Do.
MDE Explorations Ltd	82-2405	Do.
Medical Research International Ltd	82-2026	Australia.
Med-Tech Systems Inc	82-834	Canada.
Megastar Ventures Corp	82-2553	Do.
Memtec Ltd	82-2172	Australia.
Menika Mining Ltd (N.P.L.)	82-1248	Canada.
Merlin Hygenic Products Ltd	82-2077	Do.
Meridian Oil N.L	82-397	Australia.
Merit Technologies Ltd	82-1414	Canada.
Merlin Mining N.L	82-1972	Australia.
Merlin Resources Ltd	82-2514	Canada.
Mesa Resources Ltd	82-2442	Do.
Metana Minerals N.L	82-2175	Australia.
Metina Developments Inc	82-2387	Canada.
M.I. Software Corp	82-1954	Do.
Micham Exploration	82-2146	Do.
Microfuel Systems Inc	82-2328	Do.
Micronesian Mineral Resource Co. Ltd	82-2256	Do.
Microstat Development Corp	82-1764	Do.
Midas Minerals Inc	82-2335	Do.
Mikado Resources Ltd	82-1298	Do.
Millennium Resources Inc	82-2271	Do.
Minefinders Corp. Ltd	82-2227	Do.
Minerex Resources Ltd	82-946	Do.

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Company	File No.	Country
Minorco Minerals & Resources Corp. Ltd	82-206	Bermuda.
Minotaur Explorations Ltd	82-2448	Canada.
Miramar Energy Corp	82-1566	Do
Mitsubishi Kasei Corp	82-1191	Japan.
Modatech Systems Inc	82-2006	Canada.
Mode Products Inc	82-467	Do.
Mohave Gold Inc	82-940	Do.
Mondavi Resources Ltd	82-1993	Do.
Moneywise Resources Inc	82-2384	Do.
Mono Gold Mines Inc	82-1029	Do.
Montello Resources Ltd	82-1812	Do.
Montreux Development Corp	82-2288	Do.
Monument Resources Inc	82-2349	Do.
Morfee Wheel Manufacturing Inc	82-2437	Do.
Morning Star Resources Ltd	82-2480	Do.
Morocco Explorations Inc	82-2138	Do.
Mount Burgess Gold Mining Co., N.L	82-1235	Australia.
Mountain Frontier Explorations Ltd	82-2214	Canada.
Mountain Province Mining Inc	82-2540	Do.
Multinational Resources inc	82-1095	Do.
Murex Clinical Technologies Corp	82-2311	Do.
Mutual Resources Ltd	82-1171	Do.
Mytec Technologies Inc	82-2582	Do.
National Fuelcorp Ltd	82-1893	Do.
National Quick Lube Ltd	82-2052	Do.
NDU Resources Ltd	82-2292	Do.
Neighbors Resources Inc	82-2216	Do.
Nepheline Resources Ltd	82-1814	Do.
Neptune Orient Lines Ltd	82-2605	Singapore.
Nesmont International Corp., The	82-2346	Canada.
Nestle S.A	82-1252	Switzerland.
New Australian Resources	82-2069	Australia.
New Dimensions Technologies Ltd	82-2089	Canada.
New Fibers International Ltd	82-411	Do.
New Japan Securities Co. Ltd	82-1813	Japan.
New Nadina Explorations Ltd	82-2054	Canada.
New Privateer Mine Ltd	82-1406	Do.
New Spirit Resources and Developments Inc	82-2220	Do.
Newgate Resources Ltd	82-2133	Do.
Newhawk Gold Mines Ltd	82-739	Do.
Newtec Industries Ltd	82-926	Do.
Nexus	82-679	Do.
Nic-Nik Resources Ltd	82-2459	Do.
Nik Ventures Inc	82-2144	Do.
Ninetendo Co. Ltd	82-2544	Japan.
Nippon Shokubai Kagaku Kagyo Co. Ltd	82-1484	Do.
Nissan Motor Co., Ltd	82-207	Do.
Niugini Mining Ltd	82-1230	New Guinea.
Nixdorf Computer AG	82-1739	Germany.
NMC Group PLC	82-2448	United Kingdom.
Noble Mines & Oils Ltd	82-509	Canada.
Nokia Corp	82-1490	Finland.
Nora Industrier A.S	82-1613	Norway.
Noram Environmental Solutions Inc	82-1076	Canada.
Noramex Minerals Inc	82-939	Do.
Noranda Mines, Ltd	82-158	Do.
Norgold Resources Inc	82-2130	Do.
Nori-Aquafood Systems Inc	82-2654	Do.
Normandy Resources N.L	82-1975	Australia.
Noront Resources Ltd	82-2304	Canada.
Norra Corp	82-2590	Canada.
North American Ventures Ltd	82-2205	Do.
North Broken Hill Peko Ltd	82-2531	Australia
North Coast Industries	82-2073	Canada.
North Kalgurli Mines Ltd	82-2085	Australia.
North Queensland Resources N.L	82-1749	Do.
Northair Mines Ltd	82-305	Canada.
Northern Dynasty Explorations Ltd	82-1295	Do.
Northern Platinum Ltd	82-2383	Do.
Norton Group PLC	82-2011	United Kingdom.
N-Tone International Ltd	82-2248	Canada.
Nu-Crown Resources	82-2071	Do.
Nu-Lady Gold Mines Ltd	82-2466	Canada.
Nuspar Resources Ltd	82-464	Do.
Oil City Lubricants Ltd	82-1260	Do.
Omega Gold Corp	82-2646	Do.
Omni Resources Inc	82-385	Do.
On Wah Investments Corp	82-2599	Do.
Onlex Resources Ltd	82-2100	Do.
Optima Energy Corp	82-2542	Do.

Company	File No.	Country
Orange Free State Investments Ltd	82-1220	South Africa.
Orbex Industries Inc	82-478	Canada.
Oregon Resources Corp	82-2317	Do.
Oriole Communications Inc	82-474	Do.
Ortho-Tronics Medical Technologies Ltd	82-2479	Do.
Ossa Resources Inc	82-2062	Do.
Oy Wartsila AB	82-933	Finland.
Pachena Industries Ltd	82-1989	Canada.
Pacific Asia Technologies Inc	82-2190	Do.
Pacific Minesearch Ltd	82-947	Canada.
Pacific Sentinel Gold Corp	82-2007	Do.
Pact Resources N.L	82-1386	Australia.
Pak-Man Resources Inc	82-1186	Canada.
Palomar Capital Corp	82-2252	Do.
Pan Australian Mining Ltd	82-1753	Australia.
Pan Canadian Petroleum Ltd	82-265	Canada.
Pan Pacific Petroleum Inc	82-2155	Do.
Panarim Resources Inc	82-2402	Do.
Panorama Resources Ltd	82-1965	Do.
Pantan Resources Ltd	82-2195	Do.
Paracorp Technologies	82-2051	Do.
Paragon Resources N.L	82-1963	United Kingdom.
Parallax Development Corp	82-1854	Canada.
Paramount Ventures and Finance Inc	82-2207	Do.
Pathfinder International Recretional Corp	82-2185	Do.
Pathtechnics Ltd	82-1904	Do.
PBX Resources Ltd	82-2635	Do.
PC Ventures Ltd	82-1566	Do.
Pelsart Resources N.L	82-484	Australia.
Pentland Industries PLC	82-1219	United Kingdom.
Pentos PLC	82-2582	Do.
Peralto Resources Corp	82-1447	Canada.
Performance Minerals of Canada Ltd	82-1345	Do.
Petrolia Oil & Gas Ltd	82-2053	Do.
Pezgold Resources Corp	82-2121	Do.
Phoenix Global Capital Inc	82-359	Do.
PIC Prospectors International Corp	82-2039	Do.
Picosec Technology Ltd	82-2286	Do.
Pierce Mountain Resources Ltd	82-2148	Do.
Pine Channel Gold Corp	82-2583	Do.
Pineridge Resources Ltd	82-2232	Do.
Pinetree Software Canada Ltd	82-1213	Do.
Pink Pages Publications Inc	82-1964	Do.
Pioneer Metals Corp	82-1018	Do.
Placer Pacific Ltd	82-1952	Australia.
Plaser Light Corp	82-2107	Canada.
Platinum Communications Systems	82-2129	Do.
PLC Systems	82-2072	Do.
Polly Peck International PLC	82-1161	United Kingdom.
Porta-Lube Automatives Inc	82-2368	Canada.
Poseidon Limited	82-2134	Australia.
Positive Energy Products Inc	82-2512	Canada.
Power Corp. of Canada	82-137	Do.
Power Financial Corp	82-1716	Do.
President Mines Ltd	82-959	Do.
Prime Resources Corp	82-1503	Do.
PRO-C.I.R. Property Improvements Ltd	82-2377	Do.
Procom Emerald Company Inc	82-2344	Do.
Progressive Minerals Ltd	82-1971	Do.
Prometek Industries Ltd	82-1351	Do.
Prominent Resources Corp	82-2568	Do.
Pulse Resources Ltd	82-2543	Do.
Pyng Technologies Corp	82-2173	Do.
PyroAir Technology Inc	82-2018	Do.
Q.P.X. Minerals Inc	82-2291	Do.
Quality Quest Systems Inc	82-2324	Do.
Quartz Creek Gold Mines Inc	82-1937	Do.
Queenstake Resources Ltd	82-565	Do.
Quilto Resources Inc	82-1960	Do.
Quinto Mining Corp	82-475	Do.
RGV Resources Inc	82-2607	Do.
Racal Electronics PLC	82-481	United Kingdom.
Radcliffe Resources Ltd	82-2088	Canada.
Ranchmen's Resources Ltd	82-2015	Do.
Rand Mines Ltd	82-304	South Africa.
Randfontein Estates Gold Mining Co., Witwatersrand Ltd	82-267	Do.
Rank Organisation Ltd., The	82-17	United Kingdom.
Rapid Resource Corp	82-2005	Canada.
Ravenroc Resources Ltd	82-493	Do.
Reako Explorations Ltd	82-1286	Do.

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Company	File No.	Country
Real de Minas Mining Inc	82-2033	Do.
Real Turismo S.A. de C.V	82-2557	Mexico.
Red Fox Minerals Ltd	82-2274	Canada.
Rede-Pak Fine Foods Ltd	82-2432	Do.
Redfern Resources Ltd	82-1824	Do.
Redland PLC	82-2156	United Kingdom.
Reed Lake Exploration Ltd	82-2254	Canada.
Regional Yellow Directories PLC	82-2044	United Kingdom.
Rembrandt Gold Mines Ltd	82-1762	Canada.
Republic Aircraft Manufacturing Inc	82-2633	Do.
Resolute Resources Ltd	82-2169	Do.
Reymont Resources Ltd	82-2301	Do.
Rhino Resources Inc	82-2193	Do.
Rhys Ventures Ltd	82-1936	Do.
Rockford Minerals Inc	82-2266	Do.
Rockford Technology Corp	82-2223	Do.
Rockingham Resources Inc	82-2064	Do.
Rockridge Mining Corp	82-1842	Do.
Rockspan Resources Ltd	82-863	Do.
Roddy Resources Ltd	82-899	Do.
Ronrico Exploration Ltd	82-2092	Do.
Roper Resources	82-2020	Do.
Rosenthal A.G	82-1648	Germany.
Rossal Resources Ltd	82-2567	Canada.
Rothmans International Ltd	82-84	United Kingdom.
Royal Nedlloyd Group N.V	82-1056	Netherlands.
RPV Industries (Canada) Inc	82-2162	Canada.
RTZ Corp. PLC, The	82-1141	United Kingdom.
Ruby Mountain Mines	82-2484	Canada.
Rustenburg Platinum Holdings Ltd	82-241	South Africa.
Rutland Biotech Ltd	82-1526	Canada.
Ryde Industries Inc	82-2326	Do.
Safety-Ject Medical Products Ltd	82-2341	Do.
Saga Resources Ltd	82-2275	Do.
Saint Helena Gold Mines Ltd	82-232	South Africa.
Samantha Explorations N.L	82-323	Australia.
Samos Resources Ltd	82-2027	Canada.
San Miguel Corp	82-306	Philippines.
Sanderson Technologies Inc	82-2080	Canada.
Santos Ltd	82-34	Australia.
Sanyo Electric Co. Ltd	82-264	Japan.
Sarich Technologies Trust	82-1515	Australia.
Sartigan Granite Corp	82-2023	Canada.
Sasol Ltd	82-631	South Africa.
Savanna Resources Ltd	82-1258	Canada.
Savoy Minerals Ltd	82-1968	Do.
Schellex Gold Corp	82-2261	Do.
Scottish Heritable Trust	82-2083	Scotland.
S.E. Storage Express (International) Ltd	82-1699	Canada.
Secret Pass Minerals Corp	82-2422	Do.
Sedona Industries Ltd	82-2299	Do.
Seguro Resources Ltd	82-1995	Do.
Senn D'Or Inc	82-2178	Do.
Shannock Corp., The	82-1782	Do.
Shelling Industries Inc	82-2222	Do.
Sherritt Gordon Mines Ltd	82-29	Do.
Shilling Resources Inc	82-2017	Do.
Shoshoni Gold Inc	82-2331	Do.
Siebe PLC	82-2142	United Kingdom.
Siemens Aktiengesellschaft	82-73	Germany.
Siemont Resources Ltd	82-1876	Canada.
Sierra Madre Resources Inc	82-2350	Do.
Sierra Nevada Gold Ltd	82-894	Do.
Sikaman Gold Resources Ltd	82-1651	Do.
Silkridge Resources Ltd	82-2233	Do.
Silver Drake Resources Ltd	82-2618	Do.
Silver Eagle Resources Ltd	82-2450	Do.
Silver Falls Resources Ltd	82-1125	Do.
Silverquest Resources Ltd	82-1661	Do.
Simplon Resources Ltd	82-2515	Do.
Singapore Land Ltd	82-2194	Singapore.
Sino Business Machines Inc	82-1510	Canada.
Sino Land Co. Ltd	82-1868	Hong Kong.
Sirius Corp. N.L	82-1147	Australia.
Sirius Resource Corp	82-1575	Canada.
Skandia International Holding A.B	82-1574	Sweden.
SKF	82-139	Do.
Skukum Gold Inc	82-2370	Canada.
Slumber Magic Adjustable Bed	82-2057	Do.
Snowwater Resources Ltd	82-1616	Do.

Company	File No.	Country
Societe Nationale Elf Aquitane	82-2046	France.
Solo International Resources Ltd	82-2000	Canada.
Solo Petroleum Ltd	82-2016	Do.
Solomon Pacific Resources N.L	82-2021	Australia.
Sonatel Telecommunications Corp	82-1416	Canada.
Sons of Gwalia N.L	82-1039	Australia.
Soocana Explorations Ltd	82-2202	Canada.
Sound Ideas Inc	82-2338	Do.
South African Breweries Ltd	82-303	South Africa.
South African Land & Exploration Co., Ltd	82-59	Do.
South Pacific Gold Corp	82-2287	Canada.
South Roodepoort Main Reefs Area Ltd	82-930	South Africa.
Southern Goldfields Ltd	82-852	Australia.
Southern Pacific Petroleum N.L	82-353	Do.
Southvaal Holdings Ltd	82-197	South Africa.
Springer Resources Ltd	82-2610	Canada.
Springfield Resources Ltd	82-1142	Do.
Spur Ventures Inc	82-2520	Do.
Stacia Ventures Inc	82-2613	Do.
Star One Resources Inc	82-2122	Do.
Star Valley Resources Corp	82-2418	Do.
Steelhawk Resources Ltd	82-2165	Do.
Steico Inc	82-141	Do.
Stellar Resource Corp	82-1206	Do.
Stelway Food Services Inc	82-2309	Do.
Stilfontein Gold Mining Co. Ltd	82-310	South Africa.
Stina Resources Ltd	82-2062	Canada.
Stonewall Resources Inc	82-2603	Do.
Strategic Communications Ltd	82-1778	Do.
Strike Energy Inc	82-2659	Do.
Stryker Resources Ltd	82-883	Do.
Sukuma Explorations Ltd	82-2458	Do.
Summer International	82-2111	United Kingdom.
Sun-Gold Development International Corp	82-1966	Canada.
Sun Hung Kai Properties Ltd	82-1755	Hong Kong.
Sun River Gold Corp	82-1349	Canada.
Suntac Minerals Corp	82-2406	Do.
Suntree Investment International Corp	82-2031	Do.
Supreme Resources Inc	82-1249	Do.
Surf Inlet Mines Ltd	82-2067	Do.
Sutton Resources Ltd	82-910	Do.
Swan Resources Ltd	82-477	Australia.
Swift Minerals Ltd	82-2119	Canada.
Swire Pacific Ltd	82-2184	Hong Kong.
Synex International Inc	82-862	Canada.
SZL Sportsight Inc	82-2284	Do.
T&N PLC	82-1011	United Kingdom.
Tajen Resources Corp	82-2356	Canada.
Takla Gold Mines Ltd	82-2529	Do.
Talemon Investments Ltd	82-1296	Do.
Tamara Resources Ltd	82-1214	Do.
Tansy Resources Inc	82-2550	Do.
Tarn Pure Technology Corp	82-1145	Do.
Taro-Vit Industries Ltd	82-210	Israel.
Tarzan Gold Inc	82-2145	Canada.
Tatlar Resources Ltd	82-2003	Do.
Techniscope Development Corp	82-2513	Do.
Teeshin Resources Ltd	82-891	Do.
Teijin Seiki Co Ltd	82-1493	Japan.
Telefonos de Mexico S.A	82-332	Mexico.
Tele-Talk Inc	82-2247	Canada.
Tempo Resources Ltd	82-2428	Do.
T.E.N. Private Cable Systems Inc	82-1563	Do.
Tenajon Silver Corp	82-2032	Do.
Terracamp Developments Ltd	82-1946	Do.
Terrace Industries Ltd	82-1261	Do.
Terrawest Industries Ltd	82-2296	Do.
Terrex Resources N.L	82-846	Australia.
Teryl Resources Corp	82-2026	Canada.
Teuton Resources Corp	82-1394	Do.
Texas Northern Minerals, Ltd	82-1843	Do.
Thitec Recovery Systems Ltd	82-2305	Do.
Thorn EMI Ltd	82-373	United Kingdom.
Thunder Engines Corp	82-1052	Canada.
Thunder Valley Resources Ltd	82-2373	Do.
Tigris Minerals Corp	82-2196	Do.
Tiphook PC	82-1678	United Kingdom.
Tobex Resources Ltd	82-2385	Canada.
Toburn Gold Mines Ltd	82-2307	Do.
Toronto Dominion Bank	82-142	Do.

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Company	File No.	Country
Torrez Resources Ltd	82-2612	Do.
Torvalon Corp	82-2314	Do.
Toyobo Co. Ltd	82-1172	Japan.
Toyota Motor Co., Ltd	82-206	Do.
Trac Industries Inc	82-1098	Canada.
Trade Winds Resources Ltd	82-2595	Do.
Trans Asian Resources Ltd	82-2204	Do.
Transgold Resources Inc	82-2281	Do.
Trend-Set Industries International Inc	82-2419	Do.
Trimin Resources Inc	82-1833	Do.
Trinity Resources Ltd	82-610	Do.
Trionics Technology Ltd	82-2283	Do.
Triple Star Resources Corp	82-2168	Do.
Trove Resources Ltd	82-2476	Canada.
Trust Company of Australia Ltd	82-1443	Australia.
Twin Star Energy Corp	82-2213	Canada.
Tyme Resources Ltd	82-2589	Do.
Tyrae Resources Inc	82-2606	Do.
U-Save Foods Ltd	82-1898	Do.
Ultramar PLC	82-871	United Kingdom.
Umbertos Restaurants, Inc	82-1324	Canada.
Unique Resources Ltd	82-1927	Do.
Unisel Gold Mines Ltd	82-236	South Africa.
Unitech PLC	82-2412	United Kingdom.
United Global Petroleum Inc	82-2528	Canada.
United Keno Hill Mines Ltd	82-61	Do.
United Oversees Land Ltd	82-2180	Singapore.
United Rayore Gas Ltd	82-747	Canada.
Universal Genetics Ltd	82-2651	Do.
Univex Mining Corp. Ltd	82-1805	Do.
U S Ammunition Co. Ltd	82-1509	Do.
Val D'Or Reaources Inc	82-2587	Do.
Valentine Gold Corp	82-1959	Do.
Valerie Gold Resources Ltd	82-2323	Do.
Valley Oil & Gas Corp	82-1991	Do.
Valpar Resources Ltd	82-2136	Do.
Vancouver Venture Corp	82-1998	Do.
Vandorex Energy Corp	82-2439	Do.
Vanguard Ventures Corp	82-2554	Do.
Veitscher Magnesitwerke AG	82-1573	Austria.
Velcro Industries, N.V	82-145	Netherlands Antilles.
Venga Aerospace Systems Inc	82-2164	Canada.
Venturex Resources Ltd	82-1527	Do.
Vestronix	82-2545	Do.
Verdstone Gold Corp	82-1735	Do.
Veto Resources Ltd	82-2116	Do.
Vidatron Resources Ltd	82-2066	Do.
Virita Explorations Ltd	82-2325	Do.
Vishnu Resources Inc	82-2241	Do.
Visible Gold Inc	82-2019	Do.
Voicecall Ltd	82-1189	Australia.
Volcano Resources Corp	82-2170	Canada.
Volkswagen AG	82-2188	Germany.
VTL Venture Corp	82-1419	Canada.
Wace Group PLC	82-2369	United Kingdom.
Wall Street Ventures Inc	82-2090	Canada.
Wampum Resources Ltd	82-2469	Do.
War Eagle Mining Co. Inc	82-2008	Do.
Waterloo Resources Inc	82-2391	Do.
Waybo Resources Ltd	82-768	Do.
Wedgewood Resources Ltd	82-2191	Do.
Welkom Gold Holdings Ltd	82-57	South Africa.
Wencarro Resources Ltd	82-2099	Canada.
West Pride Industries Corp	82-2329	Do.
West Rand Consolidated Mines Ltd	82-314	South Africa.
West Sea Development Corp	82-2096	Canada.
Westek Communications Inc	82-2468	Do.
Western Areas Gold Mining Co. Ltd	82-268	South Africa.
Western Deep Levels, Ltd	82-58	Do.
Western Mining Corp	82-2628	Australia.
Westerra Resources Ltd	82-2585	Canada.
Westlake Industries Ltd	82-821	Do.
Westley Mines Ltd	82-1088	Do.
Westview Resources Inc	82-2601	Do.
Wilanour Resources Ltd	82-2163	Do.
Wild Horse Industries Inc	82-2179	Do.
Wild Rose Resources Ltd	82-2536	Do.
Williams Holdings PLC	82-1889	United Kingdom.
Windarra Minerals Ltd	82-561	Canada.

Company	File No.	Country
Winkelhaak Mines Ltd	82-221	South Africa.
Winspear Resources Ltd	82-2429	Canada.
Winters Gold Hedley Ltd	82-2244	Do.
Wolf River Resources Ltd	82-1482	Do.
Wonder Marine Resources Ltd	82-1787	Do.
Woodside Petroleum Ltd	82-2280	Australia.
World Wide Minerals Ltd	82-2444	Canada.
Wydmar Development Corp	82-2056	Do.
X-Cal Resources Ltd	82-1655	Do.
Yukon Minerals Corp	82-1635	Do.
Zaba Lee Enterprises Inc	82-2340	Do.
Zurfund International Ltd	82-2050	Do.

[FR Doc. 89-23811 Filed 10-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27329; File No. SR-AMEX-89-11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change by the American Stock Exchange Relating to Transaction Charge Waivers for Orders up to 599 Shares in Selected Stocks

On May 12, 1989, the American Stock Exchange ("Amex") or "Exchange") submitted a proposed rule change (File No. SR-AMEX-89-11) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to implement a pilot program for the use of AUTO-EX (a feature of the Exchange's PER/AMOS order routing system) for the automatic execution of select Amex equities. The Exchange also requested that transaction charges for the selected stocks be waived, whether or not executed through AUTO/EX.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27013 (July 19, 1989), 54 FR 30298. The Commission received no comments on the proposal. This order grants partial approval of the proposal.

In 1977, the Exchange introduced the Post Execution Reporting ("PER") system that electronically routes public customer orders of up to 2099 shares to the post where the order is automatically printed on an order ticket and given to the specialist for execution. In 1984, the PER system was enhanced by the introduction of AUTOPER, which bypasses the printed order and allows the specialist to automatically execute the order displayed on a "touch screen" located at the post. In its filing with the Commission, the AMEX proposed to further enhance the PER system by introducing AUTO-EX features to selected Amex equities. The Commission continues to consider this aspect of the proposal. In the meantime, Amex requested that the Commission approve the transaction charge waiver proposed in the original filing. The Commission believes that it is appropriate to grant approval to the portion of the filing that proposes to allow the Exchange to waive transaction charges for orders up to 599 shares in twenty of the most actively traded stocks, which are routed through the Exchange's PER system. This waiver of transaction fees will allow the Amex to compete more effectively for order flow and will result in cheaper executions for customers. For these reasons, the Commission finds that partial approval of the proposed rule change is reasonable and consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations, particularly Section 6(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the transaction waiver be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23810 Filed 10-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27307; File No. SR-CBOE-88-24]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Concentration of Options Market Maker Business

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 21, 1989 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 4.10 as set forth below to establish authority in its Office of the Chairman to review transactions of clearing firms which could increase market maker concentration and to impose financial or operational requirements if warranted. (Brackets indicate language to be deleted, italics indicates new language).

[Other Restrictions on Members] *Financial or Operational Problems*

Rule 4.10. *(a)* In General. Whenever the Chairman or President shall find, on the basis of a report of the Department of Compliance or otherwise, that a member has failed to perform his contracts or is insolvent or is in such financial or operational condition or is otherwise conducting his business in such a manner that he cannot be permitted to continue in business with safety to his customers or creditors or the Exchange, the Chairman or the President may summarily suspend the member in accordance with Chapter XVI or may impose such conditions and restrictions upon his membership as he considers reasonably necessary for the protection of the Exchange and the customers of such member.

(b) Firms Clearing Market Maker Trades.

(1) A member that clears market maker trades must give fifteen (15) calendar days written notice to the President of the Exchange, or his designee, concerning any proposed Significant Business Transaction ("SBT") (as herein defined). A Significant Business Transaction shall mean: (i) the direct or indirect combination or affiliation with another person engaged in the business of clearing market maker trades, (ii) the entry into the business of clearing market maker trades by an affiliate of the member, (iii) the transfer from another person of market maker accounts which are significant in size or number to the business of the

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member, (iv) a merger or consolidation between the member and another person, (v) the assumption or guarantee by the member of the liabilities of another person otherwise than in the ordinary course of business, (vi) the sale by the member of a significant part of its assets to another person, (vii) a change in the identity of any general partner or a change in the beneficial ownership of 10% of any class of the outstanding stock of any corporate general partner (if the member is a partnership), (viii) a change in the beneficial ownership of 20% of any class of the outstanding stock of the member or the issuance of any capital stock of the member (if the member is a corporation), or (ix) the acquisition by the member of assets of another person that would constitute a "business" that is "significant," as those terms are defined in Section 11–01 of Regulation S–X.

(2) A proposed SBT of a member is subject to the prior approval of the Exchange's Office of the Chairman ("OOC") when the member's market maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters: (i) 15% of cleared Exchange market maker contract volume for the most recent three (3) months; (ii) an average of 15% of the number of Exchange registered market makers as of each month end for the most recent three (3) months, or (iii) 25% of the market maker gross deductions (haircuts) defined by SEC Rule 15c3–1 (a)(6) or (c)(2)(x) carried by the clearing member(s) in relation to the aggregate of such haircuts carried by all other market maker clearing organizations for any month end within the most recent three (3) months. The Exchange shall notify in writing each member that clears market maker trades within ten (10) business days from the close of each month of that member's proportion of the market making clearing business, whether or not such business exceeds the parameters described in (i), (ii), and (iii) of this subsection (b)(2). Members subject to this subsection (b)(2) must provide thirty (30) calendar days notice of the proposed SBT to the President or his designee. The OOC may disapprove a member's proposed SBT, or approve such SBT subject to certain conditions, within the thirty (30) day period. The OOC may disapprove or condition a member's SBT if the OOC determines that such SBT has the potential to threaten the financial or operational integrity of Exchange market maker transaction.

(3) In addition, at any time, the OOC may impose additional financial and/or operational requirements on a member that clears market maker trades when the OOC determines that the member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange market maker transactions.

(4) A member that clears market maker trades must give thirty (30) calendar days written notice to the President of the Exchange, or his designee, of any proposal to terminate such business or any material part thereof.

(5) A member subject to this rule must provide promptly, in writing, all information reasonably requested by the Exchange. Until such information, and any other information provided pursuant to this subsection (b), is otherwise publicly disclosed, the information shall be kept confidential, except that such information may be disclosed to members of the staff and other agents of the Exchange who are engaged in reviewing the proposed transaction, but such employees and agents shall keep such information confidential and use it only for purposes of reviewing the proposal.

(6) In considering a proposed SBT, the OOC may consider, among other relevant matters, the following criteria:

(a) The effect of the proposed SBT on (i) the captial base of the resulting clearing member organization(s); (ii) the potential for financial failure, and the consequences of any such failure on the market maker system as a whole; and (iii) the potential for increased or decreased operational efficiencies arising from the proposed transaction.

(b) The effect of the proposed SBT upon overall concentration of options market makers, including a comparison of the following measures before and after the proposed transaction:

(i) proportion of exchange market makers cleared; (ii) proportion of exchange market maker contract volume cleared; and (iii) proportion of market maker gross deductions (haircuts) as defined by SEC Rule 15c3–1(a)(6) or (c)(2)(x) carried by the clearing member(s) in relation to the aggregate of such deductions carried by other market maker clearing organizations.

(c) The regulatory history of the affected member organization(s), specifically as it may indicate a tendency to financial/operational weakness.

(d) The history of the affected member organization(s) with respect to late trade match input or other operational deficiencies as determined by the Clearing Procedures Committee.

(7) In the event the OOC determines, prior to the expiration of the thirty (30) day period set forth in subsection (1) hereof, that a proposed SBT may be approved without conditions, the OOC shall promptly so advise the member. All OOC decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof or to impose extraordinary requirements pursuant to subsection (b)(3) hereof shall be in writing, shall include a statement setting forth the grounds for the OCC's decision, and shall be served on the member. Notwithstanding any other provisions of the Rules of the Exchange, the member may appeal such decision directly to the Board of Directors of the Exchange by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. The application for review shall be in the form prescribed by Rule 19.5(a), and the Board's review shall be conducted in the manner prescribed by Rule 19.5(b), except that the member may waive the making of a record. Review by the Board shall be the exclusive method of reviewing a decision of the OOC pursuant to this subsection (b). The appeal to the Board of a decision of the OOC shall not operate as a stay of that decision during the pendency of the appeal. The Exchange shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Securities Exchange Act of all final decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof, or to impose extraordinary requirements pursuant to subsection (b)(3) hereof.

(8) The provisions of subsection (b) of this rule do not preclude (i) summary Exchange action under subsection (a) above or under Chapter XVI of the Rules or (ii) other Exchange action pursuant to the Rules of the Exchange.

(9) The OOC may exempt a member from the requirements of subsection (b)(1) hereof, either generally or in respect of specific types of transactions, based on the limited proportion of market maker trades on the Exchange that are cleared by the member or on the limited importance that the clearing of market maker trades bears to the total business of the member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The addition of a new paragraph (b) to Exchange Rule 4.10 is proposed to deal with concerns raised by a concentration of options market maker business cleared through a limited number of member organizations (clearing firms). The failure, or even temporary suspension, of a major clearing firm's ability to clear its market maker customers, could impair the Exchange's ability to maintain a liquid options market and might possibly cause irreparable injury to the options market as a whole. For this reason, the Exchange proposes to establish authority in its Office of the Chairman ("OOC") to review transactions of clearing firms which could increase market maker concentration and to impose financial or operational requirements if they are warranted.

Proposed subparagraph (1) provides that all member organizations which clear market maker transactions must give prior notice to the Exchange of proposals for certain significant business transactions. The rule attempts to define as significant all transactions that could impact control of the market maker clearance business on the Exchange, such as consolidations, mergers, purchases, etc., and could increase the concentration of market makers in a single clearing firm. Subparagraph (2) requires that member organizations with market maker business in excess of certain levels submit such proposals to the Exchange for prior approval. Further, subparagraph (3) provides that the Exchange may impose additional financial and/or operational requirements upon a market maker clearing firm at any time when such requirements are deemed necessary. These are not emergency actions as contemplated in the existing language of Rule 4.10, but instead provide for reasonable preventive measures.

The OOC may take action under subparagraphs (2) and (3) of the proposed rule when it determines that a situation has the potential to threaten the financial or operational integrity of Exchange market maker transactions. Subparagraph (6) outlines the criteria the OOC shall consider in its review of any significant business transactions.

The remaining paragraphs of the rule provide for confidential treatment, prompt Exchange response, written decisions, Board appeal, filing of decisions with the SEC, and an exemptive process in cases in which a clearing firm's proportion of the market maker clearance business is not significant.

This proposed rule addition applies to a limited number of Exchange member organizations which are crucial to the continued viability of the Exchange's markets. At present there are seventeen options market maker clearing firms operating on the Exchange, fourteen of which are designated to the Exchange for financial/operational oversight. The Exchange believes that it needs the ability to add conditions to transactions or to require additional financial or operational measures in order to prevent an adverse effect upon the market maker clearance system before emergency measures are required.

Clear precedent exists in the rules of numerous self-regulatory organizations wherein additional financial and/or operational undertakings may be required of any member in such fashion and at such time as the self-regulatory body determines. Examples of such rules are NYSE Rule 325(d), and Article III, section 38 of NASD's Rules of Fair Practice. The criteria established for the OOC review of significant business transactions is similar to that in use by the NYSE in policies approved upon a pilot basis in Securities Exchange Act Release No. 24411 [File No. SR–NYSE–86–37; 52 FR 17870, May 12, 1987], which provides for the review of specialist concentration. Interpretations .02 and .04, respectively, to NYSE Rules 342 and 401 also provide for NYSE review of changes to its members' business activities.

The Exchange believes this rule proposal is consistent with section 6(b)(5) of the Act in that it serves to protect investors and the public interest through the maintenance of a strong financial and operational system for the clearance of market maker transactions, and in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange generally views the combination of market maker clearing firms as beneficial to the effective clearance of market maker transactions, especially in those situations where a lesser capitalized firm is severely limited in its financing abilities. However, the Exchange has become increasingly dependent upon a smaller number of clearing firms, where continued financial and operational soundness of any one "concentrated" entity could have an inordinate impact upon the Exchange's ability to insure the continuous clearance of market maker transactions. The proposal attempts to appropriately balance the potential harm from undue concentration in the clearing business and the benefits from increased capital and operational efficiencies which may result from combinations of clearing firms. Although this rule may impede the ability of certain competitors to expand, on the whole the rule is designed to increase competition among all clearing members by avoiding concentration of that business in a few. The Exchange believes that this rule change will not impose a burden upon competition inconsistent with section 6(b)(8) of the Act, and in fact will foster an environment where competition is encouraged.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A letter dated October 11, 1988, from Jim R. Porter, Chairman of First Options to the Board of Directors expresses disagreement with the approach taken in proposed CBOE Rule 4.10. No additional written comments were received, although discussions were held with the other clearing firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 27, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23743 Filed 10–6–89; 8:45 am]

BILLING CODE 8010–01–M

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[34-27312; [File No. SR-DTC-89-19]

September 28, 1989.

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Company Relating to the Payment of Cash in Lieu of Baby Bonds

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 19, 1989 the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-DTC-89-19) described in Items I., II., and III. below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments by interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) DTC hereby designates that the proposed rule change is a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of DTC's existing procedures for the processing of dividend and interest distributions.

(b) Since DTC does not process physical deliveries with due bills attached, DTC's interim accounting procedures are applied to all book-entry deliveries made between record date and due bill redemption date for all securities on deposit, where applicable. Under these procedures the deliverer is charged, and the receiver is credited, with the amount of the dividends or interest payable. DTC's systems do not account for shares in denominations less than one share ("fractional shares") nor for bonds in denominations less than $1000 principal amount ("baby bonds"). Because, therefore, for stock dividend distributions DTC cannot maintain and report Participants's positions in fractional shares resulting from the application of interim accounting procedures, under DTC's dividend allocation procedures DTC distributes cash in lieu of fractional shares. The purpose of the proposed rule change is to make clear that, for the same reasons, in processing interest distributions on PIK Bonds DTC will distribute cash in lieu of baby bonds.

(c) The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, in that it promotes the prompt and accurate clearance and settlement of transactions in PIK Bonds.

II. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

III. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been solicited or received on the proposed rule change. The subject procedure has been discussed with, and its implementation recommended by, a subcommittee of the Dividend Division of the Securities Industry Association.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [2] and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. Solicitation of Comments

You are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at DTC's principal office. All submissions should refer to File number SR-DTC-89-19 and should be submitted by October 31, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23744 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] 15 U.S.C. 78s(b)(3) (1981).

(Release No. 34-27320; File No. SR-NASD-89-38)

Self-Regulatory Organizations; Granting of Accelerated Approval to the National Association of Securities Dealers, Inc. Relating to the Quotation Linkage With the International Stock Exchange of the United Kingdom and the Republic of Northern Ireland, Ltd

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on September 8, 1989, and amended on September 21, 1989, the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE") for a pilot term of two years.[1] This experimental linkage permits an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and ISE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and ISE dealer systems ("common issues") may access linkage information without paying a separate charge to receive it.

The October 1987 Order authorized operation of the linkage on a pilot basis for a two-year term, which expires on October 2, 1989. In making this filing, the NASD seeks accelerated Commission approval of an extension of the pilot period through December 1, 1989. During this extension, the NASD/ISE linkage will continue to operate in accord with the terms of File No. SR-NASD-87-20, which filing was approved by the October 1987 Order.

[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (the "October 1987 Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extension of the Commission's temporary approval of the pilot linkage through December 1, 1989. Absent such an extension, the NASD's link with the ISE will terminate October 2, 1989. During the requested extension period, the NASD will formulate and submit a more comprehensive Rule 19b-4 filing to obtain Commission authorization for future operation of the NASD/ISE pilot linkage. Commission approval of File No. SR-NASD-89-38 will provide additional time for the NASD to finalize its presentation of certain cost information that was requested in the October 1987 Order. Because that information is essential to the Commission's deliberations on the future operation of the NASD/ISE linkage, the NASD wishes to ensure that its cost information is both accurate and complete. This information will be incorporated into another Rule 19b-4 filing that will contain the proposed terms for continuation of the NASD/ISE pilot linkage beyond December 1, 1989. Therefore, approval of the instant filing should facilitate the Commission's subsequent consideration of substantive issues related to future operation of the NASD/ISE pilot linkage.

The statutory bases for the NASD/ISE pilot linkage and the requested extension thereof are found in sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * * *" Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/ISE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.[2] In response, the NASD, after consultation with the ISE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the October 1987 Order. Nonetheless, the Commission stated in the October 1987 Order that it "[was] not reaching any final determination with respect to the issues raised by Instinet * * *." Further, the Commission committed to "monitor carefully the impact of the quotation exchange on vendors" during the pilot operation contemplated by File No. SR-NASD-87-20. In that regard, the Commission requested that the NASD compile certain cost information relative to the linkage's operation during the two-year term authorized by the October 1987 Order. As noted in the preceding section, the necessary cost information is now being finalized for inclusion in a more comprehensive Rule 19b-4 filing that will address the future operation of the informational linkage sponsored by the NASD and ISE.

The NASD submits that the proposed extension of the linkage pilot will not create any competitive burden *vis-a-vis* Instinet or any other vendor of securities market information. The linkage will continue to operate in accord with the terms of the October 1987 Order. Moreover, Instinet and other interested parties will have ample opportunity to comment when the NASD submits the next Rule 19b-4 filing on the linkage, which will include the cost information requested in the Commission's October 1987 Order. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an inter-market, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received on this rule filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and in any event by September 29, 1989, the last business day before the NASD/ISE linkage's authorization expires. The NASD believes that a 60-day extension of the pilot program will enable the finalization of certain cost information relative to the linkage's operation. Because this information is essential to the Commission's deliberations on the future operation of the NASD/ISE linkage, the NASD wishes to ensure that its submission is fully responsive to the Commission's needs. At the same time, no regulatory or policy objective would be served by interrupting the pilot linkage's operation pending the Commission's review of the cost information that the NASD will shortly file. Accordingly, the NASD submits that good cause exists to accelerate the effectiveness of the rule change to a date no later than September 29, 1989 and thereby maintain continuity in the operation of the transatlantic linkage.

The Commission finds that the proposed rule change is consistent with

[2] *See* Securities Exchange Act Release No. 23156 (April 21, 1986), 51 FR 15699 (April 28, 1986). *See also* letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, Securities and Exchange Commission, dated April 14, 1988.

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the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD to finalize certain data required by the Commission's October 1987 Order. The Commission has requested that the NASD gather and analyze the relevant data as a precondition of the Commission's re-evaluation of the linkage's access terms in conjunction with a determination on the linkage's future operation. Accordingly, the Commission does not believe that the linkage should be terminated while these efforts are ongoing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 31, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of 60 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23742 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

[34-27323; File No. SR-NSCC-89-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Concerning Fees for the PC Access System

September 29, 1989

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") [1] notice is hereby given that on September 18, 1989, the National Securities Clearing Corporation ("NSCC"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I thru VII below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC hereby submits as a proposed rule change pursuant to Rule 19b-4 of the Act, establishment of a fee structure for NSCC's PC Access System.[2]

The proposed rule change would amend NSCC's fee structure as follows:

PC Data Entry
Either
a (i) The first application: $50.00 per month
and
a (ii) Each subsequent application: $30.00 per month
or
b. RECAPS application only: $200.00 per year

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. The purpose of the proposed rule change is to establish fees for NSCC's PC Access System. This system has been described in NSCC's proposed rule filing 89-10 as well as proposed rule filing 89-14.

NSCC will be charging $50.00 per month for the PC platform software.[3] Each service will require development of a specific application. The charge for the first application will be included in the $50.00 fee and each additional application will be an additional $30.00 per month. Charges for the RECAPS application will be distinct from other services because RECAPS will be offered quarterly (as described in proposed rule filing 89-10). If a member only uses the RECAPS application it will be charged $200.00 per year. If the Member subsequently adds one or more other applications, the $50.00 and $30.00 fees would apply, and a credit would be given for any unused portion of the $200.00 fee.

B. NSCC believes that the proposed rule filing provides for the equitable allocation of reasonable fees among NSCC participants for the PC Access System and, therefore, is consistent with the requirements of the 1934 Act, as amended and the rules and regulations thereunder applicable to NSCC.

III. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may, within 60 days of the filing date, summarily abrogate the rule change if it appears to the Commission that abrogation is necessary to serve the interest of the public, for the protection of investors, or in furtherance of the purposes of the Act.

V. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others:

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

IV. Proposed Rule Change Based on Rules of Another Self Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of either another self-regulatory organization or of the Commission.

VII. Solicitation of Comments

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from public under 5 U.S.C.

[1] 15 U.S.C. 78(b)(1).

[2] *See* Securities Exchange Act Release No. 27230 (September 7, 1989) (Notice of Filing of Proposed Rule Change SR-NSCC-89-10) 54 FR 34845.

[3] NSCC's PC Platform Software enabls NSCC's services to be accessed via PC's.

552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of NSCC. All submissions should refer to File No. NSCC-89-15 and should be submitted by October 31, 1989.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23745 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-5356]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; New York Stock Exchange, Inc.

October 2, 1989.

The New York Stock Exchange, Inc. ("NYSE") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 thereunder for unlisted trading privileges ("UTP") in Ryan's Family Steak Houses, Inc., for the purpose of trading this security as part of the NYSE's Exchange Stock Portfolio ("Stock Portfolios") which is based on the Standard & Poors 500 Portfolio Index ("Index").[1]

As indicated in its application for UTP, Ryan's Family Steak Houses, Inc. is an over-the-counter security ("OTC") that is quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") and is not registered on any national securities exchange.[2] Last sale information on the stock is reported through NASDAQ facilities.

Interested persons are invited to submit on or before October 16, 1989, written data, views and arguments concerning the above-referenced application.[3] Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(1)(C) of the Act. Under this section the Commission can only approve the UTP application if it finds, after this notice and opportunity for hearing, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

Further, in considering the NYSE's application for extension of UTP in a security that is not traded on another national securities exchange, section 12(f)(1)(C) of the Act requires the Commission to consider, among other matters, the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under section 12(f)(2)(C) of the Act would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[1] *See* proposed rule filing SR-NYSE-89-05. The NYSE previously submitted an application for UTP in 205 stocks to accommodate Stock Portfolio trading. That application did not include Ryan's Family Steak Houses, Inc., which was picked as a replacement stock in the Index. *See* Securities Exchange Act Release No. 27246, September 18, 1989, 54 FR 38778.

[2] The NYSE's previous application also included 107 OTC stocks that are not registered on another securities exchange and that are quoted on NASDAQ.

[3] Notice has already been sent to the issuer and relevant market.

September 20, 1989.

Ms. Colette Clark,

Securities and Exchange Commission, Division of Market Regulation, 450 Fifth Street NW., Washington, DC 20549.

Dear Ms. Clark: Pursuant to sections 12(f)(1) (B) and (C) of the Securities Exchange Act of 1934, as amended, and Rule 12f-1 [17 CFR 240.12f-1], the New York Stock Exchange, Inc., hereby applies for unlisted trading privileges in the security listed below:

Symbol	Ryan.
Issuer	Ryan's Family Steak Houses, Inc.
Class	Common.
Listed	OTC.
Reported[1]	NASDAQ.

[1] This item refers to last sale information for single-stock executions.

If granted, the NYSE will use the unlisted trading privileges for the limited purpose of trading this security as part of the NYSE's Exchange Stock Portfolio,[2] and only to the extent this security is included in the Exchange Stock Portfolio.

Copies of this application have been sent to the issuer, to the Midwest Stock Exchange, Inc., and to the National Association of Securities Dealers, Inc.

Sincerely,

J.E. Bush,

cc: Mr. Howard Kramer,
Division of Market Regulation.

[FR Doc. 89-23812 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17152; (811-4505)]

Government Securities Zero Coupon Trust; Application

September 25, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Government Securities Zero Coupon Trust ("Applicant").

RELEVANT 1940 ACT SECTION: Deregistration under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

FILING DATE: The Application was filed on July 10, 1989 and a supplemental letter was submitted on September 21, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on October 19, 1989, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Government Securities Zero Coupon Trust, 99 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202)

[2] "Exchange Stock Portfolio" is a service mark of the New York Stock Exchange, Inc.

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272–2856 or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300.

Applicant's Representations

1. Applicant, organized as a Massachusetts Business Trust, is registered under the 1940 Act as an open-end, diversified management investment company.

2. On November 27, 1985, Applicant registered under the 1940 Act and filed a registration statement for an indefinite number of shares of beneficial interest without par value. The registration statement became effective on August 7, 1986. Applicant issued five series of shares: MMS 1991, MMS 1993, MMS 1996, MMS 1998, and MMS 2001. Only MMS 1991 and MMS 1996 series were offered for sale. Applicant began offering its shares on August 12, 1986 to insurance company separate accounts (shareholders) in connection with the insurance of certain variable life insurance and variable annuity contracts. Applicant served as an underlying investment for insurance company separate accounts of Keystone Provident Life Insurance Company ("KPLIC").

3. Effective December 31, 1988, KPLIC became a wholly-owned subsidiary of Liberty Mutual Insurance Company. At a meeting on December 15, 1988, the Board of Trustees of the Applicant voted to authorize the dissolution of Applicant, effective Janaury 1, 1989. On December 31, 1988, there were 12,519 shares of MMS 1991 series outstanding. The aggregate net asset value of those shares was $114,323 and the per share value was $9.13. On the same date there were 23,589 shares of beneficial interest of MMS 1996 series outstanding. The aggregate net asset value of those shares was $201,979 and the per share value was $8.56. Applicant redeemed in kind all of its assets, in the aggregate amount of 316,302, and KPLIC, the sole shareholder of Applicant, transferred all of Applicant's assets to a SteinRowe Variable Investment Trust ("SteinRoe Trust"). SteinRoe Trust is a series company advised by Stein Roe & Farnham Incorporated, an indirect subsidiary of Liberty Mutual Insurance Company.

4. To effectuate the dissolution, Applicant's Board of Trustees by unanimous written consent, dated September 13, 1988, authorized the filing of an application with the SEC for an order pursuant to Sections 6(c), 17(b) and 26(b) of the 1940 Act and Rule 17d–1 thereunder. On December 30, 1988, Applicant received an order (Investment Company Act Release No. 16728) approving a redemption in kind of shares of certain funds, including Applicant, the redemption of cash of certain shares of the Public Mutual Funds, and the purchase with the redemption proceeds of shares of the portfolios of the SteinRoe Trust.

5. At the time of dissolution, Applicant's MMS 1991 series had $557 in unamortized expenses and Applicant's MMS 1996 series had $558 in unamortized expenses. Applicant's MMS 1991 and MMS 1996 series were reimbursed the unamortized organizational expenses by KPLIC.

6. No brokerage commissions were paid in connection with the transaction. No expenses were incurred in connection with the liquidation of the Applicant.

7. At the time of the filing of the application, Applicant had no securityholders and there were no existing shareholder balances or claims. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed a Form N–SAR for the period ending December 31, 1988. If a Form N–SAR is required for any period from December 31, 1988 through the date Applicant is deregistered, Applicant undertakes to file such form promptly after the earlier of the due date of the form or the issuance of the requested order.

9. Applicant filed with the Commonwealth of Massachusetts and the City of Boston, Massachusetts a Secretary's Certificate certifying that the Applicant's Board of Trustees approved the dissolution of the Massachusetts Business Trust creating the Applicant, effective January 1, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23738 Filed 10–6–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17157; 812–7260]

The Horizon Funds, et al.; Application

September 29, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act" or the "Act").

APPLICANTS: The Horizon Funds ("Horizon"), Pacific Horizon Funds, Inc. ("Pacific Horizon"), and Pacific Horizon Tax-Exempt Money Market Portfolio, Inc. ("Pacific Horizon Tax-Exempt") (each individually an "Applicant" or collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order amending a prior order (Investment Company Act Release No. 16111, November 4, 1987) ("Prior Order") which permits the issuance and sale of separate classes of shares that represent interests in the same investment portfolio and that are identical in all respects except for class designation and the allocation of certain expenses and voting rights. The amended order would permit the issuance and sale of classes of additional securities representing interests in Applicants' daily dividend investment portfolios pursuant to a plan or reorganization.

FILING DATES: The application was filed on February 24, 1989, and amended on September 8 and September 22, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, Attn: Thomas M. Collins, President, 156 West 56th Street, 19th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Max Berueffy, branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

APPLICANT'S REPRESENTATIONS:

1. Each Applicant is registered under the 1940 Act as an open-end management company. Horizon maintains three money market portfolios, the Prime, Treasury and Tax-Exempt Money Market Portfolios, which commenced operations in July, 1987. Pacific Horizon maintains two money market portfolios, the Money Market and Government Money Market Portfolios, and two non-money market portfolios, each of which commenced operations in March, 1984. Pacific Horizon Tax-Exempt maintains one money market portfolio, which also commenced operations in March, 1984. The investment adviser for each Applicant is Security Pacific National Bank ("Security Pacific"). Concord Financial Group, Inc. ("CFG") and Concord Holding Corporation ("Concord") serve as the distributor and administrator, respectively, of each Applicant.

2. Shares in Horizon's portfolios are sold solely to institutional investors, such as banks, insurance companies, investment counselors and brokers, acting on behalf of their customers or for their own accounts. Pursuant to the Prior Order, Horizon currently offers for sale two classes of shares ("Horizon Shares" and "Horizon Service Shares") in each of its portfolios. The two classes are substantially identical except that Horizon Service Shares are issued pursuant to a shareholder service plan under which institutions enter into agreements with respect to the provision of certain support services to their customers who are beneficial owners of Horizon Service Shares and the Horizon Service Shares bear the fees paid by Horizon to such institutions for their services. Otherwise, all expenses of each Horizon portfolio are borne pro rata by the portfolio's shareholders, regardless of class.

3. Unlike shares in the Horizon portfolios, shares in each of the Pacific Horizon and Pacific Horizon Tax-Exempt portfolios are sold to investors generally. Pacific Horizon and Pacific Horizon Tax-Exempt offer one class of shares in each of their portfolios. As a result, all expenses of a portfolio of Pacific Horizon or Pacific Horizon Tax-Exempt are borne pro rata by the shareholders of the portfolio based on the number of outstanding shares held by them.

4. Shares in each of the Applicant's money market portfolios are sold and redeemed daily at net asset value without a sales or redemption charge imposed by Applicants. The net asset value per share in each money market portfolio is calculated based on the amortized cost method of valuation pursuant to Rule 2a–7 under the 1940 Act. The net investment income of each portfolio is declared daily and paid monthly as a dividend to shareholders.

5. Applicants propose to consolidate their money market portfolios by transferring the assets of Horizon and Pacific Horizon Tax-Exempt to Pacific Horizon as follows: Substantially all of the assets of the Horizon Prime Portfolio would be sold to the Pacific Horizon Money Market Portfolio and assets of the Horizon Treasury Portfolio would be sold to the Pacific Horizon Government Money Market Portfolio (the resulting combined Portfolios are hereafter referred to as the "Combined Money Market Portfolio" and the "Combined Government Money Market Portfolio"). In addition, Pacific Horizon would organize a new portfolio. Assets of the Horizon Tax-Exempt Money Market Portfolio and Pacific Horizon Tax-Exempt would be sold to this new portfolio to effect their consolidation (the resulting combined Portfolio is hereafter referred to as the "Combined Tax-Exempt Money Market Portfolio"). Pacific Horizon's Combined Money Market, Combined Government Money Market and Combined Tax-Exempt Money Market Portfolios, together with any other investment portfolio of Pacific Horizon that declares dividends in the future on a daily basis, are sometimes referred to as the "Daily Dividend Portfolios." Applicants believe that consolidation will reduce significantly their aggregate non-management expenses by reducing the repetitive costs of custody, legal, audit and other services and activities that are presently required by Applicants because of their status as unconsolidated entities.

6. Applicants seek to amend the Prior Order to permit Pacific Horizon to offer three classes of shares in each of its proposed Combined Money Market, Combined Government Money Market and Combined Tax-Exempt Money Market Portfolios that would correspond to the three classes now offered by Applicants. One class (the "Institutional Shares") would be sold to institutions now holding Horizon Shares, as well as to other institutional investors which, but for the consolidation, would have qualified to invest in Horizon Shares. Similarly, the second class (the "Institutional Service Shares") would be sold to institutions now holding Horizon Service Shares, as well as to other institutional investors which would have qualified to invest in Horizon Service Shares. The third class (the "Pacific Horizon Shares") would be sold to existing investors in the Pacific Horizon and Pacific Horizon Tax-Exempt money market portfolios, as well as to other investors who would have otherwise invested in Pacific Horizon or Pacific Horizon Tax-Exempt.

7. All shares in Pacific Horizon's Combined Money Market, Combined Government Money Market and Combined Tax-Exempt Money Market Portfolios (regardless of class) would be the same in all material respects except for the allocation of certain expenses, class designations and voting rights as described below. In this regard, all shares in a portfolio would bear equally, on a pro rata basis, the fees paid on behalf of the portfolio to Security Pacific and Concord under the respective Investment Advisory Agreement and Basic Administrative Services Agreement. Services provided under the Investment Advisory and Basic Administrative Services Agreements would include those services that benefit all investors in a portfolio, such as investment advice, portfolio management and securities execution; fund accounting services, including the daily calculation of the portfolio's net asset value and dividends per share, income, expenses and yield; preparation of financial statements and maintenance of financial books and records; internal legal and accounting compliance functions; and maintenance of Applicants' principal office. The proposed investment advisory agreement for the three daily dividend portfolios provides for payment of advisory fees to Security Pacific at the maximum annual rate of .10 percent of each portfolio's average daily net assets. The proposed basic administrative services agreement for the three portfolios provides for the payment of administrative fees to Concord at the same maximum annual rate of .10 percent. These fees will be subject to scheduled decreases as specific breakpoints are reached in the aggregate assets of a portfolio. All shares in a portfolio, regardless of class, would also bear other expenses that benefit the portfolio generally.

8. In addition to fees borne by all classes of shares, each portfolio's Institutional Service Shares would bear

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shareholder servicing fees under a shareholder service plan ("Plan") (at an annual rate not to exceed .25 percent of the average daily net asset value of such shares) that would not be borne by either the portfolio's Institutional or Pacific Horizon Shares. These fees would be for shareholder support services that are currently provided with respect to the existing Horizon Service Shares. Similarly, each portfolio's Pacific Horizon Shares would bear the fees payable to Security Pacific and Concord under a Special Management Services Agreement (at an annual rate not to exceed .35 percent of the average daily net asset value of such shares) that would not be borne by the portfolio's Institutional or Institutional Service Shares. Only holders of Institutional Service Shares would be entitled to vote on matters pertaining to the Special Management Services Agreement. In no event, would Institutional or Pacific Horizon Shares bear, under the proposed arrangement, the shareholder servicing fees payable by the Institutional Service Shares, nor would the Institutional or Institutional Service Shares bear any portion of the fees payable under the Special Management Services Agreement. The provision of shareholder support services under the Plan and the Special Management Services Agreement would not duplicate the services provided by Security Pacific and Concord under their respective Investment Advisory Agreement and Basic Administrative Services Agreement.

Applicants' Legal Analysis:

1. Applicants are requesting an amendment to the Prior Order to permit the proposed issuance and sale of Institutional Shares, Institutional Service Shares and Pacific Horizon Shares representing interests in Pacific Horizon's Daily Dividend Portfolios to the extent that such issuance and sale might be deemed to result in a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1) of the 1940 Ac. The creation of the Institutional Shares, Institutional Service Shares and Pacific Horizon Shares in a Daily Dividend Portfolio may result in stock of a class having "priority over (another) class as to * * * payment of dividends" and having unequal voting rights, because under the proposed arrangement the respective classes of Shares would bear certain expenses not borne by the other classes in the same Daily Dividend Portfolio. Applicants also request this amendment because the creation of the three classes of shares might also violate the equal voting provisions of section 18(i) of the 1940 Act to the extent that the Institutional Service Shares and Pacific Horizon Shares would enjoy exclusive voting rights with respect to matters concerning the Plan and Special Services Agreement.

2. In support of the relief requested, Applicants contend that the proposed allocation of expenses and voting rights is equitable and will not discriminate unfairly against any group of shareholders. Under the proposed arrangement each class of shares in a Daily Dividend Portfolio would bear the expenses of Pacific Horizon that are incurred with respect to that class but would not bear expenses that are incurred with respect to the other classes. Moreover, all shareholders of a Daily Dividend Portfolio are expected to benefit under the proposed arrangement since the portfolio's common expenses would be spread over a greater number of shareholders.

3. Applicants also submit that the proposed arrangements do not involve borrowings and do not affect Applicants' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of any shares in a Daily Dividend Portfolio of Pacific Horizon, because all shares in a Daily Dividend Portfolio will participate pro rata in all of the portfolio's income and expenses, with the exception of payments under the Plan and Special Services Agreement. Accordingly, Applicants assert that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any other of the Commission granting the requested relief:

1. The Institutional, Institutional Service and Pacific Horizon Shares in each Daily Dividend Portfolio will each represent interests in the same portfolio of investments of the Portfolio, and will be identical in all respects, except as set forth below. The only differences between the Institutional, Institutional Service and Pacific Horizon Shares of the same Portfolio will relate solely to: (a) Priorities with respect to the payment of dividends and such priorities will reflect only the impact of payments made under the Shareholder Services Plan (the "Plan") and Special Services Agreement and any other incremental expenses which are subsequently identified and which should be properly allocated to one class and which are approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to the Plan and Special Services Agreement, (c) the different exchange privileges of the Institutional, Institutional Service and Pacific Horizon Shares as described in the prospectuses (and statements of additional information) of the Daily Dividend Portfolios and consistent with any order granted pursuant to this application and (d) the designation of each class of shares of a Daily Dividend Portfolio.

2. The Plan and Special Services Agreement will be approved annually by the Directors, including a majority of the independent Directors, only after thorough examination of all relevant facts. In evaluating the Plan and Special Services Agreement, the Directors will specifically consider whether (a) the Plan and Special Services Agreement are in the best interest of the Daily Dividend Portfolios/share classes and their respective shareholders, (b) the services to be performed pursuant to the Plans and the Special Services Agreement are required for the operations of the Daily Dividend Portfolios, (c) Service Organizations can provide services the nature and quality of which are at least equal to those provided by others, including the Daily Dividend Portfolios, offering the same or similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality. In addition, the Directors who vote to approve the Plan and Special Services Agreement will do so, exercising reasonable business judgment and in light of their fiduciary duties under state law and under Sections 36 (a) and (b) of the Act. The minutes of the meetings of the Directors regarding such deliberations and approvals will describe the factors considered and the basis for their decisions. The minutes will be available for inspection by the Commission's staff, and any Plan and Special Services Agreement will be preserved for a period of not less than six years from the date of such Plan or Special Services Agreement, the first two years in an easily accessible place.

3. The Directors will receive quarterly and annual statements of the amounts received and expended under the Plan and Special Services Agreement and the purposes for which such expenditures were made. In the statements, only service expenditures properly attributable to the servicing of shares of a particular class will be used to justify

the Plan's and the Special Services Agreement's fees. Neither the Plan nor the Special Services Agreement will be operated in such a manner as to cause payments under the Plan or Special Services Agreement to subsidize the servicing of the shares of any other class of the same portfolio.

4. On an ongoing basis, the Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Daily Dividend Portfolio for the existence of any material conflicts between the interests of the different classes of shares. The Directors, including a majority of the independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Applicants agree to take the actions necessary to ensure that Pacific Horizon's adviser, distributor and Service Organizations will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the adviser and distributor will remedy, at their own cost, such conflict up to and including establishing new and separate registered management investment companies.

5. The conditions pursuant to which the exemptive order is granted, and the duties and responsibilities of the Directors with respect to the multi-class system, will be set forth in guidelines which will be furnished to the Directors.

6. Any dividends paid by the Daily Dividend Portfolio with respect to a class of shares in the portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by the portfolio with respect to each other class of shares in the same portfolio, except that any payments made by a class under the Plan or Special Services Agreement will be borne exclusively by that class.

7. Each prospectus relating to a class of shares that is offered in connection with the Plan or the Special Services Agreement will describe both the distinct expenses with respect to the class of shares and the related services provided to that class. In addition, each Plan or agreement adopted or entered into by each Daily Dividend Portfolio will contain a representation by the Institutional investor involved that any compensation payable to the institution in connection with the investment of the institution's customers' assets in the Daily Dividend Portfolio (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the institution.

8. Pacific Horizon will operate a Daily Dividend Portfolio issuing Institutional Shares, Institutional Service Shares and Pacific Horizon Shares only when and for so long such Daily Dividend Portfolio declares a daily dividend, accures its payments under the Plan and the Special Services Agreement (if any) daily, and has received undertakings from the persons that are entitled to receive payments under the Plan and the Special Services Agreement waiving such portion of any such payments to the extent necessary to assure that the payments (if any) required to be accured by any class of shares on any day do not exceed the income to be accured to such class on that day. In this manner, the net asset value per share for all shares in a Daily Dividend Portfolio will remain the same.

9. Each of the Daily Dividend Portfolios will clearly disclose the difference in the respective yields of the different classes of shares of a portfolio in the prospectuses, shareholder reports and any advertising materials, including newspaper advertisements. For instance, the supplementary financial information, including the per share table in the prospectuses or statements of additional information, will be separately presented for the different classes. Also the prospectuses and statements of additional information will disclose the exchange privilege applicable to the different classes of shares. The net asset value of a portfolio's Institutional, Institutional Service and Pacific Horizon Shares will not vary.

10. The prospectuses of the Daily Dividend Portfolios will include a statement to the effect that any person entitled to receive any portion of a servicing fee may receive different compensation with respect to one particular class of shares over another in the same portfolio.

11. Applicants acknowledge that the grant of the exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that the Daily Dividend Portfolios may make pursuant to the Plan and the Special Services Agreement in reliance on the exemptive order.

12. The methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the Commission's staff, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Applicants that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by Pacific Horizon which Pacific Horizon agrees to provide, will be available for inspection by the Commission staff upon written request by a senior member of the Division of Investment Management or of a regional office of the Commission. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Regional Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in Condition 12 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

14. All purchases of shares of the Applicants by the Directors made after the issuance of a second class of shares will be equally divided among the various classes. Over time, the actual

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holdings of the various classes of shares will differ to a minor degree if a Director elected to have dividends reinvested.

15. Any servicing agreement between Pacific Horizon and an institution shall provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, the institution shall vote Institutional Service Shares held for its own account in the same proportion as the vote of the Institutional Service Shares held for its customers' benefit.

For the SEC, by the Division of Investment Management, purusant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23739 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17158; File No. 812-7376]

Standard Security Life Insurance Co. of New York, et al.

September 29, 1989.

AGENCY: The Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Standard Security Life Insurance Company of New York ("Standard Security"), Standard Security Knox Funds Separate Account B of Standard Security Life Insurance Company of New York (the "Account"), and Directed Services, Inc ("DSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account under a deferred variable annuity contract (the "Deferred Annuity") and an immediate variable annuity certain contract (the "Annuity Certain") (collectively, the "Contracts") and to permit the deduction of a guaranteed minimum death benefit charge from the accumulation value in the Account under the Deferred Annuity.

FILING DATE: The application was filed on August 11, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the reequested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on October 24, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants c/o Standard Security Life Insurance Company of New York, c/o the Golden Financial Group, Inc., 909 Third Avenue, 19th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, at (202) 272-2058 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Standard Security is a stock life insurance company organized under the laws of the State of New York. The Account is a separate investment account of Standard Security established to act as a funding vehicle of variable annuity contracts. The Account is registered with the Commission as a unit investment trust and a registration statement on Form N-4 has been filed with the Commission.

2. The Account is divided into divisions, each division investing in shares of a designated investment portfolio ("Funds") of the Knox Funds (the "Trust"). The Trust is registered with the Commission as an open-end management investment company and has filed a registration statement on Form N-1A. The Trust is a series-type mutual fund that contains four Funds, each of which will pursue different investment objectives and policies.

3. Pursuant to a Distribution Agreement between DSI and Standard Security, DSI will acts as Principal Underwriter and Distributor of the Contracts. DSI is a wholly owned subsidiary of the Golden Financial Group, Inc. ("GFG") and was registered with the Commission as a broker/dealer on May 16, 1988. DSI is a member of the National Association of Securities Dealers, Inc. ("NASD"). DSI will enter into sales agreements with other broker/dealers to solicit for the sale of the Contracts through registered representatives who are licensed to sell securities and variable insurance products including variable annuities. The registered representatives will be appointed by Standard Security to sell the Company's Contracts. The offering of the Contracts will be continuous. The writing agent will receive commission of up to 1.5% of any initial, single, or additional premium payments made.

4. The Contracts provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division of the general account. Payment of annuity benefits will be on a fixed or variable basis. The variable aspects of the Contracts differ significantly from the fixed aspects in that the Contracts Owner and the Annuitant assume the risk of investment gain or loss under a Contract rather than Standard Security. A Contract Owner directs the allocation of premium payments and accumulation value to the Account.

5. The Deferred Annuity is a flexible premium payment contract which provides for an initial premium payment and for subsequent premium payments, if desired. In the Deferred Annuity, Standard Security guarantees a minimum death benefit payable to the beneficiary if the Contract owner or the Annuitant (when there is no Contingent Annuitant) dies prior to the annuity commencement date. Standard Security will pay the greater of either the accumulation value or the guaranteed minimum death benefit which is the sum of the premiums paid less the sum of partial withdrawals taken. The minimum guaranteed death benefit charge is a rate of 0.6 percent per $1,000 of guaranteed minimum death benefit per year. In the future, the Account may offer other variable annuity contracts that may include a higher guaranteed minimum death benefit with a charge of up to $1.20 per $1,000 of guaranteed minimum death benefit per year. This charge is not an asset-based charge. Rather it is a contract charge imposed to compensate Standard Security for the risk that the minimum guaranteed death benefit due under a Deferred Annuity when the annuitant dies during the accumulation phase may exceed the normal death benefit otherwise payable. Expressed as an asset charge (assuming a hypothetical gross return of 5 percent), it would effectively increase the mortality and expense risk charge by approximately 0.1 percent. For higher hypothetical gross returns, this charge, when expressed as an asset charge, would be less; and for lower hypothetical gross returns, it would be more. In the Applicants' view, assessment of this risk charge in this manner will benefit Contract Owners because it provides a better match of the charge and the risk than does assessing it as a daily percentage of assets charged against assets in each division of the Account.

6. The Annuity Certain is an immediate annuity which provides for a single premium payment and variable annuity payments to be paid to the Annuitant over a fixed period of time (the "certain period").

7. Sales loading at a maximum rate of 1.5 percent of each premium is deducted from each premium payment. This charge is allocated to cover distribution expenses. All sales loading applicable to initial, single or additional premium payments is deducted by Standard Security at the time of payment.

8. The Contracts provide that a maximum mortality and expense risk charge equal to 0.002477 percent of the asset values in each division of the Account will be deducted on a daily basis (equivalent to an annual charge of 0.90 percent). In the Deferred Annuity, approximately 0.55% of the maximum charge is for assuming the mortality risk and 0.35% is for assuming the expense risk. In the Annuity Certain, approximately 0.45% of the maximum charge is for assuming the mortality risk and 0.45% is for assuming the expense risk. The mortality risk assumed by Standard Security arises from its obligations to continue to make annuity payments under the Contracts or income plan provisions of the Contracts, determined in accordance with the guaranteed annuity tables and other provisions of the Contracts, regardless of how long each annuitant lives and regardless of how long all payees as a group live. The particular mortality risk assumed by Standard Security under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will live longer than Standard Security's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. The particular mortality risk assumed by Standard Security under the Annuity Certain relates to the fact that, at all times, Standard Security will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more annuity contracts that provide for payments based on life contingencies. The mortality risk assumed by Standard Security is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than Standard Security's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, Standard Security assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses. In the Deferred Annuity, Standard Security also assumes a risk to pay out a guaranteed minimum death benefit in excess of the accumulation value. Standard Security is compensated for this risk by the guaranteed minimum death benefit charge. The guaranteed minimum death benefit charge is based on the amount of the guaranteed minimum death benefit and is less than 0.10% of net assets (assuming a hypothetical gross return of 5%).

9. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed minimum death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. Applicants do not believe that the sales loading imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which includes amounts derived from risk charges. Standard Security has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Account and the Contract owners. Standard Security will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

11. Applicants further represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of such funds, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23740 Filed 10-6-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1135]

Fishermen's Protective Act Procedures; Fee

ACTION: Notice of fees for the agreement year from October 1, 1989 through September 30, 1990.

SUMMARY: Section 7 of the Fishermen's Protective Act of 1967, as amended, requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees partially fund a program which compensates fishing vessel owners for certain losses they have incurred when their vessels have been seized by foreign nations. This notice establishes the fee for fiscal year 1990 (October 1, 1989 through September 30, 1990) at $8.00 per gross vessel ton, payable in full on October 1, 1989, for those vessels licensed to fish under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and $16.00 per gross vessel ton for all other vessels, payable either in full on October 1, 1989, or in two equal payments on October 1, 1989 and May 1, 1990.

EFFECTIVE DATE: October 1, 1989–September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. H. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, Telephone number (202) 647-2009.

SUPPLEMENTARY INFORMATION: The Fishermen's Guaranty Fund, under Section 7 of the Fishermen's Protective Act (22 U.S.C. 1971-1980), (the "Act"), compensates U.S. fishing vessel owners who have entered into guaranty agreements for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on claims to jurisdiction not recognized by the United States or exercised in a manner inconsistent with international law as recognized by the United States. The fee

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established for the next agreement year (October 1, 1989 through September 30, 1990) of $8.00 per gross vessel ton for those vessels licensed to fish under the Treaty and $16.00 per gross vessel ton for all other vessels, is predicated on several factors.

First, it is logical to set a fee at a level which will encourage participation and, at the same time, raise the required revenue. Recent experience would indicate that a fee in excess of $30 has the effect of decreasing participation in the program. In 1986, when the fee was set at $30, there were only 28 agreement holders and not all of these paid the full fee. The previous year when the fee was set at $16, there were 87 agreement holders. Because of the timing of the transfer of the Fund from the Department of Commerce to the Department of State (the transfer was not fully implemented until the middle of fiscal year 1987) and because of a legal challenge to the 1986 fee structure, only 22 vessels participated in the 1987 program. In this regard, 1987 was not a typical year. Participation in the Fund increased to 51 vessels in fiscal year 1988, when the fee was set at $22.00.

Second, on March 23, 1989, the United States District Court for the Southern District of California, in the Memorandum Decision *M/V Brenda Jolene et al.* v. *United States of America*, found that the amount of the fee should be based on a percentage of what the U.S. Government seeks in appropriations for the Fund rather than based solely on what the demands against the Fund are anticipated to be. This finding has been considered in the formulation of the Department's fiscal year 1990 budget. In fiscal year 1990, the Fund is expected to receive appropriations in the amount of $450,000 and collect fees in an amount equal to or less than $450,000. Therefore, a fee of $8.00 for those vessels licensed to fish under the Treaty and $16.00 per gross vessel ton for all other vessels has been set for fiscal year 1990, anticipating that 40 vessels will participate in the Fund. It is estimated that based on the above, approximately $425,000 will be collected. This will be under the $450,000 ceiling imposed on the Fund by the Office of Management and Budget.

Third, the ten year average disbursement for the Fund is approximately $1.47 million annually. In recent years, there has been a noticeable decrease in the number of claims. The average annual disbursement for the past five years has been approximately $1.59 million. At the same time, it appears that the demands on the Fund are cyclical in nature. For example, despite a high level of demand against the Fund in fiscal year 1986, there were no claims filed against the Fund in fiscal year 1987, two claims in fiscal year 1988, and no claims in fiscal year 1989.

A final factor involved in determining the fee level is the entry into force of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) on June 15, 1988. The Treaty has dramatically reduced the risk of seizures in that part of the Pacific Ocean.

Fees are established by publication of notices in the **Federal Register**. Agreement holders for the fiscal year, October 1, 1988 through September 30, 1989, may review their agreements by sending in a signed guaranty agreement form and the first installment of the fee now being set. U.S. fishing vessel operators who did not participate last year may send in two signed Application for Agreement forms, two signed Guaranty Agreement forms (page one left blank), a U.S. Coast Guard form CG–1330, "Certificate of Ownership of Vessel," along with the year's fee, in order to enter into a guaranty agreement for the fiscal year 1990.

The program fee for the fiscal year 1990 (October 1, 1989 through September 30, 1990) agreement year is hereby established at $8.00 per gross vessel ton for those vessels licensed to fish under the Treaty and $16.00 per gross vessel ton for all other vessels.

The fee is due on the date this notice is published in the **Federal Register**, and due no later than October 1, 1989 for those vessels licensed to fish under the Treaty. For all other vessels, the full fee is due no later than October 1, 1989, but is optionally payable in two equal installments, the first due no later than October 1, 1989, and the second due no later than May 1, 1990. In the event of a late fee payment, program coverage will commence one day after the postmark date of the fee payment. No seizure which occurs after September 30, 1989, but before one day after the postmark date of fee payment, will be eligible for compensation. Coverage may be obtained at any time during the fiscal year for the balance of that year upon payment of the full fee. Coverage will commence as above, however. Fees will not be prorated for coverage during fractional parts of the year.

For the purpose of this notice, postmark means the date and time at which the U.S. Postal Service cancels postage. Use of certified mail is encouraged. If fees are delivered by uncertified metered mail or by any means other than U.S. Mail, the actual date and time of receipt will determine the effective date.

Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency * * * contracts," this notice is exempt for the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act is not required.

For the Secretary of State.

Dated: September 28, 1989.

Frederick M. Bernthal,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 89–23826 Filed 10–6–89; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 29, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46511
Date Filed: September 25, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 23, 1989
Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations requests an amendment of its certificate of public convenience and necessity for Route 557 to engage in the foreign air transportation of property and mail between Buffalo, New York and Hamilton, Ontario, Canada and between Louisville, Kentucky and Hamilton, Ontario, Canada.

Docket Number: 46513
Date Filed: September 26, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 24, 1989
Description: Application of Trans Continental Airlines, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations requests that, pursuant to 14 CFR 204.4, the Department grant its application for certificate authority to engage in interstate and overseas scheduled air transportation of persons and their accompanying baggage by October 25, 1989

Docket Number: 46515
Date Filed: September 27, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 25, 1989
Description: Application of Millon Air pursuant to section 401 of the Act and subpart Q of the Regulations, requests amendment of its certificate of public convenience and necessity so as to authorize passenger charter service worldwide.

Docket Number: 45704
Date Filed: September 28, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 1989
Description: Application of Swissair, Swiss Air Transport Company, Ltd., pursuant to section 402 of the Act and subpart Q of the Act request amendment of its foreign air carrier permit so as to engage in foreign air transportation of (1) persons, property, and mail between a point or points in Switzerland and (a) Altanta, Georgia, and (b) Los Angeles, California; and (2) persons between Anchorage, Alaska and Tokyo, Japan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–23755 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–62–M

Order to Show Cause; Portland-Vancouver Service Case

AGENCY: Office of the Secretary, DOT.

ACTION: Order 89–10–1, statement of tentative findings and conclusions and order to show cause, *Portland-Vancouver Service Case*, Docket 46135.

SUMMARY: By order 89–10–1, the Department proposes to select Horizon Air Industries, Inc., d/b/a Horizon Air, as the primary U.S. carrier for endorsement to operate commuter service on a nonstop basis between Portland, Oregon, and Vancouver, British Columbia. We further propose to transmit for Canadian Government approval the applications of Horizon Air and NPA, Inc., d/b/a United Express with the United States Government's endorsement as the primary and secondary U.S. carriers, respectively, pursuant to the 1984 United States-Canada Exchange of Notes on Regional, Local and Commuter Services.

DATES: Comments on, or objections to, the Department's tentative findings and conclusions are due October 16, 1989. Answers are due not later than October 23, 1989.

ADDRESS: Comments and objections should be filed in Docket 46135 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all persons listed in ordering paragraph 8 of Order 89–10–1.

Dated: October 1, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–23756 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–62–M

Order Adjusting International Cargo Rate Flexibility Level

Policy statement PSA–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraofdinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 89–4–10, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1989, we have projected nonfuel costs based on the year ended June 30, 1989, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 89–10–4 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic	1.0517
Western Hemisphere	1.1151
Pacific	1.3340

For further information contact: Keith A. Shangraw, (202) 366–2439. By the Department of Transportation: October 2, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–23757 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–62–M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–7–53 set the currently effective two-month SFFL applicable through September 30, 1989.

In establishing the SFFL for the two-month period beginning October 1, 1989, we have projected nonfuel costs based on the year ended June 30, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89–10–5 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2231
Latin American	1.3316
Pacific	1.6315
Canada	1.3636

For further information contact: Keith A. Shangraw, (202) 366–2439.

By the Department of Transportation: October 2, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–23758 Filed 10–6–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–89–37]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part

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11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 30, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviaiton Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 867-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 29, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 019NM.
Petitioner: Aerospatible.
Regulations Affected: 14 CFR 25.785(h).
Description of Relief Sought: To permit certification of the ATR-72 combi configurations with more than 50 passengers without requiring a significant change in the installation of the second flight attendant seat.

Docket No.: 25192.
Petitioner: Eastern Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.665 and 121.697 (a) through (d).
Description of Relief Sought/Disposition: To extend Exemption No. 4847 that allows petitioner to use computerized load manifests bearing the printed name of the employee of the petitioner who has the duty of supervising the loading of the airplane and preparing the load manifest forms, or another qualified person authorized by the petitioner to substitute a computer application signature for the signed load manifest.

Grant, September 20, 1989, Exemption No. 4847A

Docket No.: 25289.
Petitioner: Tempelhof Airways USA.
Sections of the FAR Affected: 14 CFR 135.429 and 135.435.
Description of Relief Sought/Disposition: To extend and amend Exemption No. 4866 that allows certain uncertificated foreign maintenance facilities located in France and England to repair and overhaul the airframes, engines, propellers, and associated component parts of two Nord 262A aircraft operated by the petitioner. The amendment would identify a specific foreign maintenance facility authorized for use by the petitioner that was previously identified as its parent company.

Grant, September 20, 1989, Exemption No. 4866A

Docket No.: 25310.
Petitioner: John Wayne Stanis.
Sections of the FAR Affected: 14 CFR 61.151(a) and (b); 61.155(a) and (b)(1) and (2); 63.37(a)(1) and (2) and (b)(1-7).
Description of Relief Sought/Disposition: Petition for reconsideration of a denial of exemption. If granted, the exemption would: (1) excuse petitioner from the good moral character eligibility requirement for an airline transport pilot (ATP) certificate; (2) relieve petitioner of the obligation to comply with the aeronautical experience and skill requirements for an ATP certificate and a flight engineer (FE) certificate; (3) reinstate the private pilot certificate held by petitioner that he surrendered to the FAA on August 14, 1985, pursuant to an emergency order of revocation; (4) extend the August 31, 1986, expiration date of the ATP written examination that petitioner took on August 9, 1984; (5) enable petitioner to take an ATP flight test; and (6) release an FE written examination, taken by petitioner on December 21, 1985, for grading by the FAA.

Denial, September 20, 1989, Exemption No. 5101

Docket No.: 25863.
Petitioner: Department of Defense.
Regulations Affected: 14 CFR 91.70(a) and (b), 91.73(a), 91.85(b), and 91.109(a).
Description of Relief Sought/Disposition: To allow petitioner to conduct air operations in support of drug law enforcement and drug traffic interdiction.

Partial grant, September 18, 1989, Exemption No. 5100

Docket No.: 25903.
Petitioner: Falcon Jet Corporation.
Sections of the FAR Affected: 14 CFR 47.9(b)(2).
Description of Relief Sought/Disposition: To allow petitioner to extend the initial reporting period for foreign-owned corporations from every 6 months after registration to an initial reporting period of 12 months after registration and every 6 months thereafter.

Denial, September 15, 1989, Exemption No. 5098

Docket No.: 25951.
Petitioner: Mid Pacific Air Corporation.
Sections of the FAR Affected: 14 CFR 121.343(b).
Description of Relief Sought/Disposition: To delay the installation of new digital flight recorders in three YS-11A aircraft for 75 days and to use aircraft foil-type recorders on a temporary basis during the time period requested.

Grant, September 21, 1989, Exemption No. 5051

Docket No.: 072CE.
Petitioner: Beech Aircraft.
Sections of the FAR Affected: 14 CFR 23.207(c).
Description of Relief Sought/Disposition: To permit type certification of the Beech Model 2000 airplane with a stall warning beginning at airspeeds greater than 10 knots or 15 percent above the stall speed, as required by § 23.207(c).

Grant, September 8, 1989, Exemption No. 5094

[FR Doc. 89-23793 Filed 10-6-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 162—Aviation Systems Design Guidelines for Open Systems Interconnection (OSI); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the ninth meeting of RTCA Special Committee 162, Aviation Systems Design Guidelines for Open Systems Interconnection (OSI), to be held November 1-3, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the eight meeting held August 1-3, 1989, RTCA Paper No. XXX-89/SC-162-XXX (enclosed); (3) Reports of related activities being conducted by other organizations; (4) report of the Internetworking Working Group; (5) review the third draft of the Guidelines Document, RTCA Paper No. XXX-89/SC162-XXX (enclosed); (6) report of the Upper Layers and Applications Working Group; (7) review of the outline for Part 2 of the Guidelines Document; (8) preparation of plan for completing the remaining parts of the Guidelines Document; (9) review of the Committee Working Group Structure; (10) other business; and date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 3, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-23794 Filed 10-6-89; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP89-08; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Marmon Motor Co.

Marmon Motor Company (Marmon) of Garland, Texas, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.121, Federal Motor Vehicle Safety Standard (FMVSS) No. 121, "Air Brake System," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 121 requires that a warning signal be given to the driver when the pressure in the service reservoir system is below 60 psi. Marmon produced approximately 280 Class 8 trucks and truck/tractors from July 11, 1988, through July 24, 1989, which may not activate the warning signal on descending pressure until 55 psi. Marmon supports its petition which the following:

(1) The trucks are equipped with two (2) air reservoir pressure gauges, a visible low air warning light and an audible low air alarm.

(2) The warning system does function properly—only the setpoint is incorrect.

(3) The (incorrect) pressure switch used has a trip point of a minimum of 55 psi. Because of manufacturing tolerances on this switch, activation is typically at 55 to 61 psi. Those that activate at 60 psi or higher are in compliance.

(4) The warning system is "dual" in that there are two check-separated reservoirs, each with a pressure switch to activate the warning system. The alarm activates at the point when either system drops to a pressure sufficient to trip its pressure switch.

(5) Adequate air pressure for braking is still present when the alarm does go off. Adequate pressure to release the parking/emergency brakes is also available. The required accuracy of the system gauges is 7 percent of the compressor cut-in pressure (85 psi) or approximately 6 psi. The pressure switches are within this tolerance of the requirement.

Interested persons are invited to submit written data, views and arguments on the petition of Marmon Motor Company, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 9, 1989.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: October 3, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23732 Filed 10-6-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 26-89]

Treasury Notes, Series AE-1991

September 27, 1989.

The Secretary announced on September 26, 1989, that the interest rate on the notes designated Series AE-1991, described in Department Circular—Public Debt Series—No. 26-89 dated September 21, 1989, will be 8⅜ percent. Interest on the notes will be payable at the rate of 8⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-23717 Filed 10-6-89; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 27-89]

Treasury Notes, Series Q-1993

September 28, 1989.

The Secretary announced on September 27, 1989, that the interest rate on the notes designated Series Q-1993, described in Department Circular—Public Debt Series—No. 27-89 dated September 21, 1989, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-23716 Filed 10-6-89; 8:45 am]
BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Faberge: The

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Impartial Eggs" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the San Diego Museum of Arts, Balboa Park, San Diego, California, beginning on or about October 22, 1989 to on or about January 7, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 6, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-24034 Filed 10-6-89; 11:22 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 194
Tuesday, October 10, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Tuesday, October 31, 1989

PLACE: Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. 1990-91 Goldwater Scholarship Program.

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755-2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 89-23990 Filed 10-5-89; 3:27 pm]

BILLING CODE 4738-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, October 6, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Legislative Issues.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23889 Filed 10-4-89; 4:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 10, 1989.

PLACE: 2033 K St., NW, Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23890 Filed 10-4-89, 4:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 24, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23891 Filed 10-4-89; 4:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, October 24, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23892 Filed 10-4-89; 4:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 31, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23893 Filed 10-4-89; 4:45 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 31, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application submitted by the Chicago Mercantile Exchange to trade One-Month LIBOR (London Interbank Offered Rate) futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-23894 Filed 10-4-89; 4:45 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:23 p.m. on Tuesday, October 3, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr., (Appointive), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in my Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 4, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-23900 Filed 10-5-89; 9:17]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:26 p.m. on Tuesday, October 3, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session

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to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the mattters on less than seven day's notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to the public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: October 4, 1989.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 89-23901 Filed 10-05-89; 9:17 p.m.]

BILLING CODE 6714-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on October 2, 1989, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 6, 1989, in Washington, DC. The meeting will involve discussion of possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, de Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under Chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to disclose information, the premature disclosure of which is likely to frustrate significantly proposed Postal Service action.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 410(c)(3) of title 39, United States Code, and section 552b(c)(3) and (9)(B) of title 5, United States Code, and § 7.3(c) and (i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-23979 Filed 10-5-89; 2:15 pm]

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federal register

Tuesday
October 10, 1989

Part II

Environmental Protection Agency

National Oil and Hazardous Substance Pollution Contingency Plan: Applicability of RCRA Land Disposal Restrictions to CERCLA Response Actions; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 121RA-LDR; FRL-3625-9]

National Oil and Hazardous Substance Pollution Contingency Plan: Applicability of RCRA Land Disposal Restrictions to CERCLA Response Actions

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is soliciting comment on certain issues concerning the application of the Resource Conservation and Recovery Act (RCRA) land disposal restrictions to response actions conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), and the Resource Conservation and Recovery Act (RCRA). In particular, the Agency is soliciting comment on the interpretation of the RCRA term "land disposal" as it applies to certain actions involving the excavation, treatment, and redeposition of hazardous wastes. Although the recent proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (53 FR 51394, December 21 1988) discussed this subject, EPA is soliciting additional comment on this issue for consideration in finalizing the NCP. This interpretation will apply to waste management at RCRA facilities, as well as CERCLA and RCRA remedial actions, and CERCLA removal actions.

DATES: Comments on this supplemental notice must be submitted on or before November 9, 1989.

ADDRESSES: Written comments on today's supplemental notice should be submitted, in triplicate, to the Superfund Docket, located in Room 2427 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Specific questions about the issues discussed in this supplemental notice should be directed to David M. Fagan, Office of Solid Waste and Emergency Response (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel. (202) 382-4497.

SUPPLEMENTARY INFORMATION:

I. Introduction

The preamble to the proposed National Contingency Plan (NCP) (53 FR 51435) explains that CERCLA remedial and response actions must comply with Federal and State environmental requirements that are legally applicable or relevant and appropriate requirements (ARARs). These ARARs are identified on a site-specific basis. The preamble discussion included an explanation of certain ARARs which are of particular significance in evaluating and selecting remedies at CERCLA sites. Specifically, the Agency explained at 53 FR 51443-45 its proposed interpretation of when Resource Conservation and Recovery Act (RCRA) requirements will be potential ARARs, and of particular significance, when land disposal restrictions (LDRs) under RCRA may be applicable or relevant and appropriate to CERCLA remedies. EPA explained that placement of hazardous waste into a land based unit constitues land disposal, making the waste subject to applicable LDRs. The discussion further proposed that land disposal would also be considered to occur in situations where wastes, such as contaminated soil and debris, are excavated, treated in another unit, and subsequently redeposited in the land-based unit.

The Agency received a substantial number of comments on this interpretation of "land disposal." Many commenters expressed strong concerns regarding this particular interpretation and its implications for the CERCLA program, as well as for RCRA Subtitle C corrective actions, State remedial programs and RCRA Subtitle C closures. In essence, commenters argued that under this interpretation, options for treating and managing wastes (such as contaminated soil and debris) with technologies that do not meet the standard of BDAT, but which are effective, protective and less costly, would not be available to remedial decision makers. Similar concerns have also been raised by EPA Regional staff involved with implementation of the CERCLA and RCRA programs. In addition, a recent comprehensive management review of the Superfund program, conducted by a special Agency Task Group, identified as an important policy issue for the Agency the effects of the RCRA LDRs on CERCLA remedies.

In light of this, the Agency has concluded that this issue—the interpretation of "land disposal" as related to removal, treatment and redeposition of hazardous wastes—is in fact a very substantial issue for the CERCLA program, one which may potentially have significant impacts on a large number of remedial actions. The Agency is also aware that similar impacts are being experienced within the RCRA program, in the context of land disposal units undergoing closure, as well as corrective action remedies.

In enacting the RCRA LDRs, it appears that Congress considered their applicability to remediation activities under CERCLA and RCRA; sections 3004 (d) and (e) of RCRA specifically provide a four-year exemption from the LDRs for soil and debris from RCRA and CERCLA cleanups. However, it is not clear that the LDR statutory provisions, and the definition of "land disposal", were intended to create these particular effects on these programs. The following discussion describes these effects, and some of their implications. In any case, in view of the many Superfund RODs and other actions that are now proceeding to final decisions and which may invoive redeposition-type scenarios, EPA believes that there is an urgent need to resolve this issue as soon as possible. This supplemental notice therefore is intended to provide a more thorough discussion of the issue, and solicit comment on possible alternative interpretations of land disposal" that were not identified in the proposed NCP. The Agency will consider the comments received on this supplemental notice in finalizing the NCP.

It should be noted that although this is an important and immediate issue for CERCLA and other programs, in EPA's view it is only a part of what is a much broader issue; that is, how should RCRA Subtitle C requirements differentiate between ongoing management of newly generated process wastes, and standards for cleanup of contaminated media. In order to provide for a thorough and focused discussion of this more fundamental question, EPA plans to convene a series of informal "forum" meetings with a range of interested parties in the near future.

II. Discussion

The criteria for remedy selection under CERCLA are in Section 121, which requires that Superfund remedial actions: (1) Be protective of human health and the environment, (2) comply with applicable or relevant and appropriate requirements (ARARs), (3) be cost effective, and (4) use permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable.

The RCRA land disposal restrictions (LDRs) are potential ARARs at many CERCLA sites. The RCRA LDRs prohibit, with certain exceptions, the land disposal of hazardous wastes, unless the wastes are first treated to standards established by EPA (RCRA section 3004(d)). Exceptions to these standards may be available if the wastes are disposed of in units

satisfying the statutory "no migration" criteria (RCRA section 3004 (d), (e), and (g)), or if a "capacity extension" (i.e., an extension to the effective date of the LDRs) has been given for the wastes (RCRA section 3004(h)). For some wastes, whose physical or chemical characteristics differ significantly from the wastes analyzed in developing the treatment standard, a variance mechanism ("treatability variance") may be available in setting LDR treatment standards for those specific wastes.

EPA has promulgated regulations for implementing the LDRs in 40 CFR part 268. These regulations specify the standards to which wastes that are subject to the restrictions ("restricted waste") must be treated before being land disposed. The standards are based on what can be achieved using best demonstrated available technology (BDAT). The BDAT standards typically are expressed as concentrations of waste constituents that may remain after the waste has been treated, but in some cases are expressed as a specific technology. In establishing the BDAT standards, technologies are considered "demonstrated" for a specific waste by studying available data on the type of treatment (including recycling methods) currently used to treat a representative sample of wastes falling within a waste treatability group. Technologies are considered "available" if they meet the following criteria: (1) The technology does not present a greater total risk than land disposal; (2) if the technology is a proprietary or patented process it can be purchased from the proprietor; and (3) the technology provides substantial treatment.

At the present time, BDAT for contaminated soil and debris is typically established on a site-specific basis through a treatability variance mechanism (40 CFR 268.44). However, the Agency is developing regulations that will establish a more tailored set of LDR standards for contaminated soil and debris. For this rulemaking, EPA will be examining alternative ways of setting LDR standards for soil and debris, recognizing that the characteristics of soils, as well as the contaminants that may be present in them, are highly variable.

The basis for establishing BDAT as the treatment standard for the LDR program was discussed in detail in the preamble to the LDR "framework" regulations (51 FR 40578, November 7, 1986). As explained therein, a primary reason for adopting BDAT as the LDR standard was the effect such a stringent standard would have in creating economic incentives to minimize the generation of wastes by regulated industries. Waste minimization is a key objective of the 1984 Hazardous and Solid Waste Amendments to RCRA. It should be noted, however, that for most CERCLA or RCRA remedies, this incentive does not operate in the same way, since such remedies typically address existing contamination problems, rather than ongoing waste generation.

One of the key issues associated with the RCRA LDRs centers on when "land disposal" of hazardous waste occurs, thus triggering the applicability of BDAT treatment standards to the wastes. RCRA section 3004(k) defines "land disposal" for the purposes of the land disposal restrictions to include ". . . any placement of . . . hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave." As stated in the preamble to the proposed NCP (53 FR 51444), land disposal occurs when a RCRA hazardous waste is placed into one of these land-based units, which are defined under the RCRA regulations. However, as the preamble also noted, movement of wastes entirely within a unit would not be considered placement . . . in a land-based unit for purposes of the land disposal restrictions. The LDRs would thus not be applicable to such wastes. As mentioned in the preamble, this is of particular significance at many CERCLA sites which contain broad areas of contamination. These broad areas may constitute units (usually landfill units) under RCRA.

The preamble further identified several scenarios involving movement of hazardous wastes into and out of units at a site, in terms of whether such actions would be considered land disposal. (Note that the terms "placement . . . in" a land-based unit and "land disposal" are synonymous for purposes of this discussion.) Activities that were identified as constituting "land disposal" included 1) consolidation of wastes from several different units into one land-based unit; 2) waste removal and treatment in a unit located outside the land-based unit, with the wastes redeposited into the same or another unit; and 3) excavation of waste from a land-based unit, treatment of the waste in another unit such as an incinerator, surface impoundment, or tank that is located within the unit or area of contamination, and subsequent redeposition into the unit.

The particular issue that generated a significant number of comments, and which is the focus of this supplemental notice, concerns EPA's proposed interpretation of the term "land disposal" in the proposed revisions to the NCP, i.e., that land disposal includes the re-depositing of treated hazardous waste into the same land-based unit from which it was removed for purposes of treatment in a separate unit. Even though the statute defines land disposal to include "placement" of hazardous wastes in a land-based unit, the statutory language does not state whether the re-depositing of hazardous waste after treatment in a separate unit constitutes "placement". In reevaluating the interpretation of "placement," the Agency believes that the initial interpretation presented in the proposed NCP may have been unnecessarily restrictive.

The resolution of this issue has important implications at a number of CERCLA sites, as well as at many facilities undergoing RCRA closure or corrective action, and sites being addressed under State cleanup authorities. In effect, the initial interpretation as proposed in the NCP would require that whenever restricted wastes, including soils or debris contaminated with restricted wastes, were excavated and treated in another unit at the site, such treatment would have to meet the standard of best demonstrated available technology for each restricted waste.

It should be understood that in many cases, particularly when dealing with highly toxic or highly mobile wastes, treatment of wastes using the same technologies that were used to establish BDAT (and treatment to BDAT-equivalent levels), may be selected by the Agency for CERCLA remedies, since maximum treatment may be the best means of achieving site-specific remedial objectives. However, EPA's experience with the CERCLA program has shown that for some wastes in some remedial situations, treatment of the wastes using best demonstrated available technology may provide only marginal environmental benefits over other treatment measures, at a very high cost.

At a given Superfund site, a variety of technical options will typically be assessed, often involving a variety of different treatment technologies in combination with different containment systems or other engineering controls for the waste residuals. Often, a combination of alternative treatment (that does not meet BDAT) and containment may be the preferred

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option for achieving a highly effective and protective long-term remedial solution for the site.

To illustrate, it is not uncommon for Superfund sites to have large quantities of soils contaminated with heavy metals, as well as low concentrations of organic hazardous constituents. An environmentally protective and cost-effective remedial solution for such soils could be to excavate them, treat them with stabilizing agents in a treatment unit, and redeposit the treated material into the excavated area with liners and caps engineered as required for site specific conditions.[1] These techniques could provide a protective and effective long-term environmental solution for the site. This type of remedial approach would also be consistent with the CERCLA mandate for remedies that are cost effective, since the costs of applying more elaborate treatment technologies, such as incineration or other thermal technologies, can be exceedingly high when dealing with the large volumes of contaminated soils that are often found at Superfund sites.

Although the type of remedy described above could be the preferred solution for a number of CERCLA sites, it would generally not be available as an option given the interpretation of the term "land disposal" outlined in the proposed NCP. Redepositing the treated material would be considered "placement . . . in" a land based unit, and the material would thus have to be treated to BDAT standards before it could be redeposited. Often, additional expensive treatment of the soils such as incinceration to address the low-level organic constituents would be required to meet an LDR standard for organics. It should be noted, however, that if in the above scenario the same treatment were to occur *in situ*, the LDRs would not apply.

EPA is concerned that this interpretation may cause several harmful effects on CERCLA, as well as on other environmental remediation programs. For wastes potentially subject to the LDRs, essentially only two options will generally be available—treatment to BDAT standards, or containment (including containment of wastes treated *in situ*). The range of treatment technologies between these two extremes that may be practical and cost-effective, and yield highly protective environmental results, would not be available to decision makers. In some cases, given only these two remedial choices, decision makers may be pressured to select containment remedies that offer less permanence than treatment options that might otherwise be selected if the LDRs were not applicable.

Part of this problem lies in the fundamental differences between the land disposal restrictions as they have developed in RCRA regulations, and the remedial objectives of CERCLA. It should be understood that the BDAT treatment standard is a technology-based standard; the treatment levels achieved through treatment by BDAT reflect the efficiency of technologies as they are applied to treating certain wastes. In contrast, remedial decisions under CERCLA are highly site specific, and are based on the risks posed at a site and the degree of long-term risk reduction required to ensure protection of human health and the environment. From this perspective, BDAT treatment will sometimes result in residuals that would still pose human health or environmental exposure risks, while in other cases the concentration levels of constituents may be far below the levels deemed adequate for protection of human health.

As mentioned previously, in many cases treatment of wastes at CERCLA sites with BDAT techniques will be necessary and appropriate for meeting the remedial objectives for the site. However, EPA's experience with the CERCLA program has shown that many sites will have large quantities—in some cases, many thousands of cubic meters—of soils that are contaminated with relatively low concentrations of hazardous wastes. These soils often should be treated, but treatment with the types of technologies that would meet the standard of BDAT may yield little if any environmental benefit over other treatment based remedial options. As explained above, EPA believes that, in many cases, alternative treatment technologies and other remedial techniques can achieve results that are effective and fully protective of human health and the environment.

EPA, in addition, believes that cost is a legitimate concern as it pertains to the application of BDAT to the remedial situations described above. In dealing with very large volumes of contaminated soil and debris, as is common at many CERCLA sites, the cost differential between using BDAT treatment for the soils, as opposed to other techniques which can achieve effective and protective remedies, may often be very substantial. Requiring these considerable additional expenditures to achieve a level of treatment that provides little or no incremental environmental benefit is not, in the Agency's opinion, consistent with the CERCLA provision that remedies be cost effective.

In addition to the effects on remedial-type actions as described above, the interpretation of "land disposal" as it applies in the context of RCRA closures is also of particular importance, and raises similar issues. Under RCRA, owner/operators of hazardous waste surface impoundments and landfills have two options for closure—"clean closure", which involves removal of all wastes and contaminated liners and subsoils, and landfill closure, in which the wastes are capped, with continued ground water monitoring at the unit. For many landfill closures, a sensible and effective approach will be to treat the wastes that will remain in the unit prior to the closure, in order to stabilize them or otherwise reduce the potential for future releases from the unit. This would often involve excavating the wastes, treating them in a treatment unit, and redepositing the treated wastes back into the landfill or impoundment. Such an approach, however, would be considered land disposal under the proposed NCP interpretation, and thus the wastes would generally have to be treated to BDAT before being redeposited into the unit. Obviously, the cost of BDAT treatment for the wastes will usually be much higher than using other, less rigorous treatment technologies. EPA's experience with the RCRA closure program has shown that owner/operators, faced with the choice of using BDAT treatment, or no treatment (or *in situ* treatment), have a strong incentive to choose the less costly option. The actual effect, therefore, of the NCP "land disposal" interpretation on RCRA closures is to create disincentives for waste removal and treatment, which may actually result in less effective long-term performance for many closed units.

It should be understood that in some cases, certain statutory waiver provisions in CERCLA could be used on a site-specific basis to provide relief from some of the negative effects (as described above) which could be caused by the interpretation of "land disposal" as outlined in the proposed NCP. Likewise, provisions under RCRA could provide relief in certain, very limited situations; for example, a "no migration" waiver (40 CFR 268.6), or delisting of the hazardous waste (260.22) could be available. However, EPA does not believe that widespread use of these statutory and regulatory waiver mechanisms is a practical or desirable means of addressing this fundamental problem. Moreover, the CERCLA waivers are not available to other remedial programs such as RCRA closure and corrective action, or State remedial authorities.

[1] There are a number of technical issues associated with the use of stabilization or solidification technologies for soils containing organic constituents; one such issue is the potential for air emissions during treatment. EPA expects to examine these issues in developing the BDAT standards for soil and debris.

III. Request for Comment

In consideration of these issues, EPA has carefully evaluated alternative interpretations of the term land disposal as related to the types of CERCLA and RCRA activities described in this notice. These alternatives are described below.

Under one alternative interpretation, excavation, treatment and redeposition of hazardous wastes in the same unit or area of contamination would not constitute land disposal. Treatment and/or storage of the excavated waste could occur within the unit or area of contamination, or alternatively, somewhere else at the site. If the wastes were placed into a different unit at the site, however, the restrictions would be applicable to those wastes.

This interpretation would assume that since the same wastes will remain in the same unit, disposal has not occurred in the sense that it would if "new" wastes were placed in the unit. In other words, disposal has already occurred, and removal, treatment, and replacement simply serve to improve the characteristics of the disposed waste to ensure long-term environmental protection. This interpretation thus would remove the existing artificial distinction between treatment that occurs *in situ*, and treatment that takes place in an engineered device.

EPA believes that this interpretation may have merit, in that it would allow considerably more flexibility for decision makers to design sensible, protective remedies that are tailored to fit site-specific conditions.

Several commenters on the proposed NCP suggested a variation on the above alternative, which would allow hazardous wastes to be excavated, treated, and redeposited either within the original unit or area of contamination, or elsewhere on the site in a different new or existing unit. This would in effect recognize a CERCLA site to be essentially one large "unit" for the purpose of making remedial decisions. LDRs would still be triggered if hazardous wastes from outside the site were deposited on the site, or conversely, if hazardous wastes from the site were transported to another site for disposal. Although this interpretation would provide even greater flexibility for remedial decision making, it raises significant concerns regarding the amount of latitude it would provide in allowing wastes—that would not be subject to the LDRs—to be disposed anywhere, including perhaps at uncontaminated areas, on what may be very large sites.

EPA recognizes that both of the alternative interpretations described above raise significant policy and legal issues. Comments are specifically requested on these interpretations, the interpretation outlined in the proposed NCP, and on the other issues discussed in this notice.

Dated: September 28, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-23721 Filed 10-5-89; 8:45 am]

BILLING CODE 6560-50-M

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Part III

The President

Proclamation 6038—Veterans Day, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6038 of October 5, 1989

Veterans Day, 1989

By the President of the United States of America

A Proclamation

Each year, on November 11, we Americans pause to express our respect and gratitude for the millions of men and women who have served our Nation as members of the United States Armed Forces. On that day, 71 years ago, the Armistice marking the end of World War I was signed. It is fitting that we choose the anniversary of "Armistice Day"—a day dedicated to peace—to honor those who have helped keep our Nation strong and our freedom secure. America's veterans have been steadfast guardians of peace and liberty not only here at home, but also around the world.

The selflessness and valor of the 2,000,000 American servicemen who fought in Europe during World War I were essential in bringing that bitter conflict to a conclusion in 1918. In the Argonne Forest, Belleau Wood, Chateau-Thierry, and in other less celebrated but no less decisive confrontations on land and sea, American "Doughboys," Marines, and sailors demonstrated extraordinary courage and skill. The anniversary of the signing of the Armistice for "The War to End All Wars" shall always remind us of their heroic efforts and unfailing patriotism.

Only 23 years after the signing of the Armistice, members of the United States Armed Forces were called again to the battle-scarred fields of Europe. During the Second World War, American military personnel fought—and helped defeat—the tyrannical forces of Nazi Germany and its allies. Many other World War II veterans made their stand for freedom in the Pacific and in North Africa. Thousands of American service men and women later returned to East Asia and the Pacific during the Korean and Vietnam Wars.

Each American veteran is a source of strength and pride for our country. As members of the Armed Forces, these courageous individuals not only protected the national security interests of the United States, but also upheld the principles upon which this great Nation was built. Americans—and millions of people around the world as well—enjoy the blessings of freedom, peace, and representative government because our veterans were willing to risk their lives for them. We are forever grateful to these selfless individuals, especially those who have given "the last full measure of devotion" for our well-being.

Today, the United States continues to look to its veterans as leaders. They have carried their patriotism and concern for others far beyond the battlefield, participating in all levels of government, community groups, charitable organizations and voluntary service programs. Across the country, individual veterans and veterans associations are helping to provide health care for ill and disabled colleagues. They are rallying to join the war on drugs and the campaign for better schools. And they are helping to foster in young people a genuine love of country and a profound sense of personal duty, honor, and civic responsibility.

We Americans owe a great debt to all our military veterans, who have shown us—in peacetime as well as times of strife—the value of individual liberty and free and democratic government. Today, let us renew our determination to keep faith with those who have so faithfully served and defended us. We can

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begin by remembering the cause for which they have labored and by working hard to ensure that their efforts have not been made in vain.

In order that we may pay due tribute to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Saturday, November 11, 1989, as Veterans Day. I urge all Americans to honor the courage and sacrifice of our veterans through appropriate public ceremonies and private prayers. I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, churches, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24017
Filed 10-6-89; 10:40 am]
Billing code 3195-01-M

federal register

Tuesday
October 10, 1989

Part IV

Department of Commerce

International Trade Administration

Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-506]

Oil Country Tubular Goods From Canada; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of second amendment to final determination of sales at less than fair value and antidumping duty order in accordance with decision upon remand.

SUMMARY: As a result of a remand and the stipulation of dismissal from the United States Court of International Trade (the Court) in *Sonco Steel Tube Division, Ferrum, Inc.* v. *United States, et al, (Sonco* v. *United States)* Court No. 86-07-00899 (September 26, 1989), the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping duty order and is directing the U.S. Customs Service to adjust the cash deposit for Sonco Steel Tube Division, Ferrum, Inc. (Sonco) from 3.48 percent to 3.18 percent *ad valorem.*

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 377-4087.

SUPPLEMENTAL INFORMATION:

Background

On August 18, 1988, the Court issued a decision in *Sonco* v. *United States* and ordered the Department to reconsider its allocation of production costs between two types of oil country tubular goods (OCTG) known as limited service pipe and prime quality pipe. In addition, the Department was asked to explain its treatment of certain sales in the ordinary course of trade and of early payment discounts, 644 F.Supp. 959 (1988). The Department filed the required remand results with the Court of November 1, 1988. The Department adhered to its final determination with regard to early payment discounts and the treatment of limited service OCTG and prime OCTG in its calculation of constructed value. However, the Department recalculated the margin based upon its determination that certain U.S. sales that were originally used in determining U.S. price were not representative of Sonco's U.S. business practices. On May 18, 1989 the Court upheld Commerce's procedures in treating early payment discounts as reductions in price as opposed to circumstance of sale adjustments and approved the Department's exclusion of certain sales not representative of Sonco's business practice from the calculation of U.S. price. In addition, it instructed Commerce to use a cost allocation methodology to account for substantial differences in value of limited service and price products in its determination Slip Op. 89-66 (1989).

On September 26, 1989, the Court advised the Department that is had dismissed Sonco's complaint, based upon a stipulated dismissal entered into by the parties in this case. Accordingly, the Court's decision with regard to that part of the November 1, 1988 remand determination approved by the Court is final. Consequently, we are amending our final determination for Sonco and revising the weighted-average margin from 3.48 percent to 3.18 percent.

Suspension of Liquidation

In accordance with the Court's order of May 18, 1989, we are directing the U.S. Customs Service (Customs), on or after the date of publication of this notice in the **Federal Register**, to suspend liquidation of all entries of the subject merchandise produced by Sonco and to collect a cash deposit equal to the weighted-average margin of 3.18 percent. This amendment of the weighted-average margin for Sonco has no effect on the margins applicable to entries of OCTG from Canada by other manufacturers, producers, and exporters.

Remand Results

The remand final determination and antidumping duty order are hereby amended to incorporate the above changes.

Dated: October 5, 1989.

Eric Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24037 Filed 10-6-89; 11:56 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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10-11-89
Vol. 54 No. 195

federal register

Wednesday
October 11, 1989

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VOL
54

ISS
195

OC
11

1989

UMI

10-11-89
Vol. 54 No. 195
Pages 41577-41616

federal register

Wednesday
October 11, 1989

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The President

Proclamation 6039 of October 5, 1989

National Children's Day, 1989

By the President of the United States of America

A Proclamation

Children are a great and precious blessing. Parents have no greater responsibility than to ensure that the young stranger God brings into their lives is welcomed, loved, nourished, and protected. As a Nation, we have no greater obligation than to help provide every child with the opportunity to grow up healthy, safe, and well-educated.

Children not only bring joy to their families; they also bring a sense of hope and purpose to the entire Nation. Parents, grandparents, and all adults can, and do, learn a great deal from the young. As we assist a child who is struggling to complete the tasks we take for granted, we are reminded of the importance of being gentle and patient. Fascinated by the countless little miracles of creation, which we grown-ups so often overlook as we rush to meet the demands of the adult world, children help us to see the world around us as if it were fresh and new. Filled with imagination and dreams, they take us into the future—and inspire us to be responsible for it.

As a Nation, we owe it to our children to encourage and help parents and families. Family life is important in promoting not only each child's spiritual, social, and intellectual growth, but also the strength of our Nation. When the hope and trust of a child are violated or destroyed, so, too, is a portion of the promise that he or she holds for our country's future. Because parents are a child's first and best friends, and because home is his or her first school, we must remain committed to policies and programs that recognize and reinforce the family as the primary source of the love and support that every child needs.

Children in the United States have the opportunity to grow up in a land of unparalleled prosperity and freedom. However, we must remember that our children need much more than material goods. We must also remember the importance of teaching them the difference between liberty and license, for one is rooted in respect for human dignity, while the other only diminishes it. Children need attention and affection and positive role models. It is important that parents take the time not only to give their children guidance, but also to listen to them. The greatest gifts we can share with our little ones are a love of learning, an appreciation for the power of faith and hard work, and a sense of personal responsibility and concern for others.

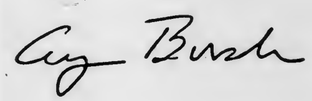
Children both affirm and inspire their parents' faith in the future. As parents, teachers, neighbors, and as a Nation, we must make every effort to ensure that young people's own faith is not jaded by abuse or neglect or simple indifference. So, today, as we honor children, let us also renew our determination to ensure that they receive all the love, protection, and encouragement they need and deserve.

The Congress, by House Joint Resolution 132 (Public Law 101–52), has designated the second Sunday in October 1989 as "National Children's Day" and has authorized and requested the President to issue a proclamation in observance of that day.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 8, 1989, as National Children's Day. I call upon the American people to observe that day with appropriate programs, ceremonies, and activities designed to honor children and to emphasize the importance of their well-being to our entire Nation. I also urge all Americans to reflect upon the importance of children to our families, as well as the importance of strong families to our children.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-24096
Filed 10-6-89; 2:18 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6040 of October 6, 1989

Columbus Day, 1989

By the President of the United States of America

A Proclamation

On Columbus Day, we pause as a Nation to honor the skilled and courageous navigator who discovered the Americas and, in so doing, brought to our ancestors the promise of the New World. In honoring Christopher Columbus, we also pay tribute to the generations of brave and bold Americans who, like him, have overcome great odds in order to chart the unknown.

For nearly half a millennium, Americans have followed the example of this great explorer, challenging the frontiers of knowledge. Throughout our Nation's history, the spirit of discovery has been demonstrated by scholar and student, expert and novice, alike. While the efforts of men such as Lewis and Clark, Thomas Edison, Eli Whitney, and Alexander Graham Bell are well known, we should also remember the thousands of pioneers who quietly tamed the American wilderness. With courage, ingenuity, hard work, and sacrifice, these men and women helped to build a Nation.

Generations of American entrepreneurs and business people have likewise accepted great risks in order to pursue their dreams. Their vision and initiative, allowed to flourish in this land of liberty, have helped the United States grow strong and prosperous.

From test pilots and astronauts to scientists and researchers in virtually every field of endeavor, Americans have continued to explore not only the wonders of our planet, but also the great mysteries of space. Like Christopher Columbus, all of these Americans have faced the unknown, not with a reckless sense of adventure, but with a great sense of purpose and opportunity.

Just a few years from now, in 1992, the United States will commemorate the 500th anniversary of the arrival of Columbus on these shores and proudly participate in events honoring this great explorer. A number of educational and commemorative events and programs are also being planned by the members of the Christopher Columbus Quincentenary Jubilee Commission, which was established by the Congress in 1984.

Americans of Italian and Spanish descent will have special reason to join in this quincentenary celebration. As we reflect on the achievements of this famous son of Genoa, and the generous support he received from Spanish monarchs Ferdinand V and Isabella I, we are also reminded of the many contributions that men and women of Italian and Spanish descent have made and continue to make to our Nation.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution of April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1989, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24154
Filed 10-6-89; 4:46 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6041 of October 6, 1989

Leif Erikson Day, 1989

By the President of the United States of America

A Proclamation

Each year, we Americans pause on Leif Erikson Day to commemorate the life and legacy of this courageous Norse missionary and explorer. In remembering the young Viking who travelled to North America nearly a millennium ago, we also celebrate our Nation's Nordic heritage.

Son of "Erik the Red," who led the first group of Europeans to colonize Greenland, Leif Erikson returned to his native Norway in the year 1000. A year after his conversion to Christianity there, Erikson was commissioned by King Olaf Tryggvason (Olaf I) to return to Greenland as a missionary. During his lengthy travels, the young navigator visited new, unknown lands. Calling the places he discovered Helluland, Markland, and Vinland, Erikson described their pristine beauty in his journal. Centuries later, other European explorers, inspired by Erikson's account, decided to pursue his exciting discovery and journeyed to these shores.

Although American history is filled with testaments to the faith and courage of many a missionary and explorer, Leif Erikson has remained a beloved symbol of valor. Displaying the same vision and daring embodied by "Leif the Lucky," generations of Scandinavian immigrants have since followed his path to North America. Leif Erikson Day provides an opportunity to pay tribute to those industrious and determined Nordic peoples who have settled in the United States, and to honor them for their many contributions to our Nation. On this special occasion, we also celebrate the close relations between the people of the United States and our friends in all the Nordic countries.

In honor of Leif Erikson and the heritage of America's Nordic people, the Congress, by joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1989, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also invite the people of the United States to honor Leif Erikson and our Nordic-American heritage by holding appropriate exercises and ceremonies in suitable places throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24155
Filed 10-6-89; 4:47 pm]
Billing code 3195-01-M

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Vol. 54, No. 195
Wednesday, October 11, 1989

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-89-095IR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Relaxation of Minimum Size Requirements for Texas Grapefruit and Container Requirements for Texas Oranges and Grapefruit—M.O. 906

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action delays the effective date of a final rule tightening minimum size requirements for fresh Texas grapefruit shipments until the 1990–91 shipping season and each season thereafter. Under the final rule, the minimum size requirements for grapefruit were to be tightened by prohibiting the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season, beginning in 1989. However, this delay in the effective date of that rule reflects current crop and marketing conditions which make implementation of the final rule impracticable. This action also authorizes Texas orange and grapefruit handlers to use two additional containers for shipping fresh fruit to market in order to provide Texas citrus handlers more flexibility in packing and shipping their fruit. This rule is expected to help the Texas citrus industry successfully market the 1989–90 orange and grapefruit crops.

DATES: Container requirements for Texas oranges and grapefruit become effective October 11, 1989. The effective date of the January 24, 1989 (54 FR 3420) rule tightening minimum size requirements for Texas grapefruit is delayed until February 1, 1990. Comments which are received by November 13, 1989 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of oranges and grapefruit subject to regulation under the marketing order for oranges and grapefruit grown in Texas. In addition, there are approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Section 906.365 (7 CFR 906.365) of the order specifies minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas. The current minimum size requirements require fresh grapefruit to be at least pack size 96 (3 3/16 inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if they are at least pack size 112 (3 3/16 inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed. Under a final rule (54 FR 3420, January 24, 1989), minimum size requirements for fresh Texas grapefruit were tightened to prohibit shipment of size 112 grapefruit during the period November 16 through January 31 each season, effective November 16, 1989. This action delays the effective date of that rule until February 1, 1990 to permit the shipment of pack size 112 grapefruit grading at least U.S. No. 1 throughout the 1989–90 season. In addition, miscellaneous changes to § 906.365 to delete obsolete language and to update references to the standards also would be delayed.

The Texas Valley Citrus Committee (committee), which administers the program locally, expects good marketing opportunities for size 112 grapefruit this season due to a reduced supply of smaller sized Texas grapefruit due to winter freeze damage. The committee also expects that an increased volume of smaller sized Florida grapefruit will be shipped to Canada this year. In addition, the committee expects that the juice market, the major alternative outlet for small Texas grapefruit, will be depressed this season.

Allowing the use of smaller size 112's in fresh markets this entire season will provide handlers and growers in the

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production area the opportunity of obtaining greater returns. The committee believes that the 1990–91 season growing and marketing conditions will have returned to normal, and thus, the tighter requirements should become effective during the November 16 through January 31 period during the 1990–91 season and each season thereafter.

Section 906.340 (7 CFR 906.340) of the order specifies container, pack, and container marking requirements on a continuous basis for fresh shipments of oranges and grapefruit grown in Texas. The current container requirements require Texas oranges and grapefruit handlers to use specific containers for shipping fresh fruit to market. This action authorizes handlers to use two additional containers, both of which were used on an experimental basis last season and found to be suitable for shipping fresh citrus to market. These containers should provide Texas citrus handlers with more flexibility in packing and shipping their fruit. One of these containers is a poly or vexar bag with a capacity of four pounds of fruit. Only orange shipments will be permitted in this container, and this container must be packed in the master container specified in paragraph (a)(1)(iii) of this section. The other container is a mesh type bag with a capacity of ten pounds of fruit to be used only when packed in the master container specified in paragraph (a)(1)(iii) of this section.

This action also makes conforming changes necessary in paragrpah (a)(1)(iii) to permit the master container authorized under that paragraph to be used for the two newly authorized containers. In addition, a change is made for clarity to paragraph (a)(1)(ix) which is redesignated as paragraph (a)(1)(xi). Container requirements are designed to ensure that fresh citrus is packed in suitable containers, so that it arrives in the marketplace in good condition.

The committee met August 1, 1989, and unanimously recommended these relaxations. The committee meets prior to and during each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the order's current 400 pound minimum quantity exemption provisions, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they met the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more current marketing orders regulate a single commodity produced in different areas of the United States, the Secretary shall determine which area produces the commodity in most direct competition with the imported commodity. Imports anywhere in the United States must then meet the quality standards set for that particular area.

Minimum grade and size requirements for grapefruit imported into the United States are specified in § 944.106 [7 CFR part 944], and are effective under Section 8e of the Act. These import requirements are based upon Florida grapefruit requirements issued under M.O. 905 [7 CFR Part 905], and require imported grapefruit to meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Accordingly, the findings and determinations for imported grapefruit in Part 944 would not be changed by this action and no change in the provisions of Part 944 is necessary. Thus, import requirements would continue to be based upon Florida grapefruit requirements under M.O. 905.

This action reflects the committee's and the Department's appraisal of the need to issue the relaxed requirements. The Department's view is that this action will have a beneficial impact on producers and handlers because it will permit 1989–90 grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the past several years has been beneficial to the Texas citrus industry in marketing their crop.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements for Texas citrus; (2) Texas citrus handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they need no additional time to comply with the relaxed requirements; (3) shipment of the 1989–90 season Texas citrus crop has begun, and these changes should be in effect as soon as possible to be of maximum benefit to the industry; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Texas.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The effective date of the final rule (54 FR 3420, January 24, 1989), amending § 906.365 effective November 16, 1989, is hereby delayed until February 1, 1990.

3. Section 906.340 is amended by revising paragraph (a)(1)(iii), redesignating paragraph (a)(1)(ix) as (a)(1)(xi) and revising new paragraph

(a)(1)(xi), and adding new paragraphs (a)(1)(ix) and (a)(1)(x) to read as follows:

(Note: This action will be published in the Code of Federal Regulations).

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) * * *

(iii) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and a depth from 9¾ to 10¾ inches: *Provided,* That the container has a Mullen or Cady test of at least 250 pounds: *Provided further,* That the container is used only for the shipment of eight five-pound bags or five eight-pound bags of fruit authorized in paragraph (a)(1)(iv), or for the shipment of the four pound bag authorized in paragraph (a)(1)(ix), or for the ten pound bag authorized in paragraph (a)(1)(x);

* * * * *

(ix) Poly or vexar bag having capacity of four pounds of fruit: *Provided,* That only oranges are to be packed in this bag, and these bags shall only be shipped in the container specified in paragraph (a)(1)(iii);

(x) Mesh type bag having a capacity of ten pounds of fruit: *Provided,* That fruit packed in such bags shall be handled only when packed in the container specified in paragraph (a)(1)(iii);

(xi) Such types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

* * * * *

Dated: October 5, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–23925 Filed 10–10–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 946

[Docket No. FV–89–084]

Irish Potatoes Grown in Washington; Amendment to Handling Regulation to Exempt Handlers From Reinspection of U.S. No. 1 Grade Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule exempts from reinspection requirements U.S. No. 1 grade or better potatoes that are resorted or repacked within 72 hours of the original inspection. Currently all inspected potatoes which are repacked must be reinspected. Exempting high quality potatoes from reinspection under specified conditions will lessen the regulatory requirements on handlers and help to reduce operating costs.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 477–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 475 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

On June 21, 1989, the State of Washington Potato Committee (committee) met and unanimously recommended amending the handling regulation to exempt previously inspected and certified U.S. No. 1 grade or better potatoes from reinspection after resorting or repacking if such potatoes are repacked in the State of Washington within 72 hours of the original inspection.

The handling regulation effective under Marketing Order No. 946 specifies the quality and other requirements that must be met in order for potatoes to be handled. For example, all varieties must be at least U.S. No. 2 grade. Also, round types must be at least 1⅞ inches in diameter except that round reds or yellow fleshed potatoes must be at least one inch in diameter. Sections 946.60 and 946.336(g) (53 FR 8144) require potatoes handled in the State of Washington to be inspected and certified as meeting these requirements. Section 946.60(b) of the marketing order further requires that potatoes that are regraded, resorted or repackaged be reinspected prior to shipment.

Potatoes are customarily packed in a number of different containers of varying size, type and construction. The actual container used is usually determined by many market factors, including the preference of the buyer. Potatoes that are graded and packed in a specific container are sometimes repackaged in different containers in response to changes in these market requirements.

The purpose of reinspection is to ensure that the minimum quality requirements are met. This action is limited to U.S. No. 1 or better potatoes which should assure a high quality pack. Requiring reinspection of these potatoes is unnecessary to accomplish the above stated purpose and therefore constitutes an undue hardship on handlers under § 946.60(a) of the order. The committee therefore recommended that U.S. No. 1 grade or better potatoes that have been previously inspected be exempt from the reinspection requirements of § 946.60(b), if repacked by a handling facility in the State of Washington within 72 hours of the original inspection. A maximum time limit of 72 hours will help to ensure that the quality of repackaged potatoes does not significantly deteriorate prior to shipment.

The committee believes that a lot of U.S. No. 1 grade or better potatoes, when repacked, will not be of significantly different quality when resorted or repacked within 72 hours of the original inspection. The committee did not, however, recommend permitting U.S. No. 2 grade potatoes that are resorted or repackaged to be shipped without being reinspected. If lots of U.S. No. 2 grade potatoes were resorted, the

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better quality potatoes in the lot could be segregated and sold as a higher grade, while those lower quality potatoes sorted out of the lot could fail marketing order requirements even though officially covered by an original inspection and certification. The committee further believes that, in order to maintain control of regraded potatoes, this rule should apply only to potatoes handled by Washington shippers.

Permitting handlers to repackage No. 1 or better grade potatoes within 72 hours of the original inspection without requiring reinspection will have a positive impact on them by decreasing inspection costs. Moreover, reducing these costs to handlers should tend to increase returns to growers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given of this action by a proposed rule published in the August 18, 1989, issue of the **Federal Register** (54 FR 34184) which provided interested persons until September 5, 1989, to file written comments. None were received.

After consideration of all relevant matters, including the information set forth in the proposal, it is hereby found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season has begun and this regulation should apply to as many shipments as possible to be of maximum benefit to industry.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by designating the existing text of paragraph (g), which begins "Except when relieved", as paragraph (g)(1) and by adding a new paragraph (g)(2) as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 946.336 Handling regulation.

* * * * *

(g)(1) * * *

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

* * * * *

Dated: October 5, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23926 Filed 10–10–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

[Docket No. FV–89–057FR]

Raisins Produced From Grapes Grown in California; Deletion of Conversion Factors for Partially Reconditioned Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule deletes weight conversion factors that are applied when handlers partially recondition raisins. This action was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the order. The change reflects current industry operations.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms (handlers) are defined as those whose gross annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule deletes certain weight conversion factors under the federal marketing order for California raisins. This action will delete the conversion factors that are applied when handlers partially recondition raisins.

When handlers acquire raisins from producers, all payments are made on the basis of the creditable weight of the lot of raisins. The creditable weight is based on the net natural condition weight, adjusted for the presence of substandard raisins and the maturity of the raisins in the lot. Paragraph (d) of § 989.58 of the marketing order requires the federal inspection of raisins acquired or received by handlers. Inspectors determine if the raisins meet minimum grade and condition requirements established under the marketing order. Determining the maturity of the raisins and the presence of substandard raisins are part of the inspection process.

In order to convert the net weight of reconditioned or partially reconditioned raisins to a natural condition weight, factors have been established, in § 989.601, for several varietal types of raisins. The natural condition weight is obtained by dividing the net weight of the raisins by the conversion factor.

Two sets of conversion factors have been established to convert the weight of reconditioned raisins to a natural condition weight. There is one factor for partially reconditioned raisins (weight taken after passing through a stemmer or blower) and one for fully processed raisins (weight taken after completion of processing). This final rule will delete the conversion factors for partially reconditioned raisins. The factors for fully processed raisins will remain unchanged. The conversion factors apply to Natural (sun-dried) Seedless raisins, Golden Seedless raisins, Dipped Seedless raisins, Muscats, Sultanas, Zante currants, and Oleate and Related Seedless raisins.

Partial or dry reconditioning consists of passing the raisins through a vacuum or blower mechanism to remove substandard raisins, foreign material, large stems, and other debris.

As improvements in the minimum grade and condition standards for raisins have been implemented in recent seasons, producers have done more to prepare their raisins for delivery to handlers. More producers have purchased and are using shakers, some of which have vacuums or blowers installed, to assist in removing substandard raisins, foreign material, and large stems. Due to the cost of these investments, there are situations where producers with this equipment are "shaking" other producers' raisins for a fee before the raisins are delivered to a handler.

The industry is of the opinion that this activity should not be discouraged. Generally, producers can improve the maturity of the raisins delivered to a handler by removing substandard and very low maturity raisins.

Presently, if a producer delivers to a handler raisins which fail due to substandard or foreign material, the producer has three options: (1) Take the raisins back and recondition them or have another producer recondition them; (2) leave the raisins at the handler's premises and have the handler recondition them; or (3) have the raisins delivered to a dehydrator for reconditioning. The reconditioning process at the handler's or dehydrator's premises is performed under the surveillance of the Federal inspectors. If a handler reconditions the raisins by dry reconditioning or partially reconditioning the raisins, the handler is required to convert the weight of the raisins to a natural condition weight by applying a conversion factor.

For example, a handler receives from a producer 100 tons of natural (sun-dried) seedless raisins and partially reconditions them. After partial reconditioning, the lot of raisins weighs 80 tons. To determine the equivalent natural condition weight of the raisins, a conversion factor of 0.94 would be applied to the 80 tons. Eighty tons divided by 0.94 equals roughly 85.1 tons. Therefore, the producer would be credited with delivering 85.1 tons of natural condition raisins to the handler.

However, if a producer delivers 80 tons of partially reconditioned raisins to a handler, the conversion factor would not be applied. Thus, in this situation, the producer would receive credit for delivering only 80 tons of raisins.

The dry reconditioning or partial reconditioning procedure used by handlers and dehydrators is virtually the same as the shaker systems with vacuums or blowers used by many producers, and no conversion factors are applied to such producer processes. Whether raisins are subject to shakers or vacuums by handlers or producers, there is still some loss (shrinkage) when the raisins are ultimately processed by handlers.

In addition, handlers who are required to apply a conversion factor to raisins are refusing to accept raisins for reconditioning since they must pay for more raisins after application of the conversion factors than they actually have available after reconditioning. Thus, if the conversion factors for partially reconditioned raisins are not deleted, producers may lose a reconditioning source, have to pay extra handling costs, and need to seek alternative sources to remove the substandard raisins or foreign material which caused the raisins to fail the minimum grade and condition standards.

To correct the situation, the RAC has recommended that the conversion factors no longer be applied to the weight of raisins partially reconditioned by handlers. This action will delete those factors and bring the regulation into line with current industry operations.

Notice of this action was published in the **Federal Register** on August 21, 1989 (54 FR 34525). Written comments were invited from interested persons until September 5, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the RAC's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action deletes weight conversion factors applied to partially reconditioned raisins. It should be effective as soon as possible since August 1 was the beginning of the 1989–90 crop year and producers have begun delivering new crop raisins to handlers. This rule should be in effect for as much of the remainder of this crop year as possible as well as for subsequent crop years.

List of Subjects in 7 CFR part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 989.601 is revised to read as follows:

§ 989.601 Conversion factors for raisin weight.

The following factors for the named varietal types of raisins shall be used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to natural condition weight. The net weight of the raisins after the completion of processing shall be divided by the applicable factor to obtain the natural condition weight: *Provided*, That the adjusted weight does not exceed the original weight of the raisins prior to reconditioning; and *Provided further*, That, if the adjusted weight exceeds the original weight, the original weight will be used.

Varietal type	Conversion factor
Natural (sun-dried) seedless	0.92
Golden seedless	.95
Dipped seedless	.95
Muscats (including raisins with seeds):	
Seeded	.80
Unseeded	.92
Sultana	.92
Zante currant	.91
Oleate and Related Seedless	.92

Dated: October 5, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23927 Filed 10–10–89; 8:45 am]

BILLING CODE 3410-02-M

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Commodity Credit Corporation

7 CFR Parts 1434 and 1435

Price Support and Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The regulations at 7 CFR Parts 1434 and 1435 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support loan programs for honey and sugar, respectively. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs, and eliminate obsolete provisions.

DATE: Effective: October 11, 1989. Comments must be received by November 13, 1989.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Wolf, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–4229.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major". It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The proposed reporting and record keeping requirements of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

In order to more effectively administer its commodity price support programs, over the past year CCC has reviewed various program regulations and program contracts in order to develop more uniform program provisions. Accordingly, this interim rule amends the honey price support program regulations at 7 CFR part 1434 to delete obsolete provisions and make changes to conform to the CCC price support loan agreement. This interim rule also amends the sugar price support program regulations at 7 CFR part 1435 in order to make similar changes and to make revisions for clarity.

Since producers are currently pledging honey as collateral for CCC price support loans, and sugar processors will shortly begin to obtain sugar price support loans, this interim rule needs to be made effective upon publication in the **Federal Register**. Comments are requested and will be taken into consideration when developing the final rule.

List of Subjects

7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs.

7 CFR Part 1435

Sugar, Loan programs—agriculture, Price support programs.

Accordingly, title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1434—[AMENDED]

1. The authority citation for 7 CFR part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c

2. Section 1434.1 is revised to read as follows:

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1989 and subsequent crops of extracted honey. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive price support.

(b) The forms for use in connection with this program shall be prescribed by CCC. The forms may be obtained in State and county ASCS offices.

3. Section 1434.2 is revised to read as follows:

§ 1434.2 Administration.

(a) The price support program which is applicable to a crop of honey shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

3. Section 1434.21(b) is revised to read as follows:

§ 1434.21 Loss or Damage.

* * * * *

(b) The physical loss or damage resulting solely from an external cause such as fire which is not the result of improper storage of the commodity; windstorm; or flood. CCC will not assume any loss or damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft;

* * * * *

4. Section 1434.28 is removed and reserved.

§ 1434.28 [Removed and reserved]

PART 1435—[AMENDED]

5. Sections 1435.300 and 1435.301 are revised to read as follows:

§ 1435.300 Applicability.

(a) The regulations of this subpart are applicable to the 1989 and subsequent crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC") with eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which must be executed by a processor in order to receive such a loan. The collateral for such a loan must be eligible sugar which is stored in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery by CCC in settlement of the loan.

(b) Price support loan rates and the forms which are used in administering the price support program for a crop of sugar beets or sugarcane are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

§ 1435.301 Administration.

(a) The price support program which is applicable to a crop of sugar beets or sugarcane shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1435.303 [Amended]

6. Section 1435.303 is amended by removing "1986" each place it appears and adding in lieu thereof "1989".

7. Section 1435.305(c) is revised to read as follows:

§ 1435.305 Availability, disbursement, and maturity of loans.

* * * * *

(c) *Disbursement of loans.* Disbursement will be made by means of checks drawn on the account of CCC. Disbursements shall be made without regard to the actual polarity of the sugar pledged as collateral for the price support loan but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope. Adjustments for polarity will be made at the time of the settlement of the loan.

* * * * *

8. Section 1435.307(b)(5)(ii) is revised to read as follows:

§ 1435.307 Loan maintenance and liquidation.

* * * * *

(b) * * *

(5) * * *

(ii) The physical loss or damage resulted solely from an external cause such as fire which is not the result of improper storage of the sugar; windstorm; or flood. CCC will not assume any loss of damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft;

* * * * *

9. Section 1435.310(b) is revised to read as follows:

§ 1435.310 Fees, charges, interest, and bonding.

* * * * *

(b) *Interest.* Interest which accures with respect to a loan shall be determined in accordance with part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accure interest in accordance with part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accure in accordance with part 1403 of this chapter beginning on the required settlement date.

* * * * *

10. Section 1435.311(d) is revised to read as follows:

§ 1435.311 Miscellaneous provisions.

* * * * *

(d) *Liens.* If there are any liens or encumbrances on sugar pledged as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

* * * * *

Signed at Washington, DC, on October 4, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–23977 Filed 10–10–89; 8:45 am]

BILLING CODE 3410–05–M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26028; Amdt. No. 1410]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on September 30, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 16, 1989*

El Dorado, AR—Goodwin Field, LOC RWY 22, Amdt. 5
Panama City, FL—Panama City-Bay County, NDB RWY 14, Amdt. 4
Panama City, FL—Panama City-Bay County, ILS RWY 14, Amdt. 14
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 14L, Amdt. 28
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 14R, Amdt. 29
Pekin, IL—Pekin Muni, VOR-A, Amdt. 5
Pekin, IL—Pekin Muni, RNAV RWY 9, Amdt. 4
Paducah, KY—Farrington Airpark, VOR/DME-B, Amdt. 3
Sanford, ME—Sanford Muni, VOR RWY 07, Amdt. 3
Sanford, ME—Sanford Muni, VOR RWY 25, Amdt. 13
Beatrice, NE—Beatrice Municipal, VOR RWY 35, Amdt. 4
Minden, NE—Pioneer Village Field, VOR RWY 34, Orig.
Newburgh, NY—Stewart Intl, ILS RWY 9, Amdt. 5
Clemson, SC—Clemson-Oconee County, VOR/DME RWY 25, Orig.
Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 8
Nashville, TN—Nashville International, LDA/DME RWY 2C, Amdt. 2
Nashville, TN—Nashville International, NDB RWY 2C, Amdt. 5
Nashville, TN—Nashville International, NBD RWY 2L, Amdt. 5
Nashville, TN—Nashville International, ILS RWY 2L, Amdt. 6
Nashville, TN—Nashville International, ILS RWY 2R, Orig.
Nashville, TN—Nashville International, ILS RWY 20L, Orig.
Nashville, TN—Nashville International, ILS RWY 20R, Amdt. 5
Nashville, TN—Nashville International, ILS RWY 31, Amdt. 6
Richland, WA—Richland, VOR RWY 25, Amdt. 6
Richland, WA—Richland, VOR/DME-A, Amdt. 5
Richland, WA—Richland, LOC RWY 19, Amdt. 5
Richland, WA—Richland, NDB RWY 19, Amdt. 5

** * * Effective October 19, 1989*

DuBois, PA—DuBois-Jefferson County, VOR/DME RWY 7, Amdt. 3
DuBois, PA—DuBois-Jefferson County, ILS RWY 25, Amdt. 7
DuBois, PA—DuBois-Jefferson County, RNAV RWY 7, Amdt. 1

** * * Effective August 29, 1989*

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 5

** * * Effective September 23, 1989*

Temple, TX—Draughon-Miller Muni, VOR RWY 15, Amdt. 15
Temple, TX—Draughon-Miller Muni, VOR RWY 33, Amdt. 1
Temple, TX—Draughon-Miller Muni, LOC/DME BC RWY 33, Amdt. 2
Temple, TX—Draughon-Miller Muni, ILS RWY 15, Amdt. 9

** * * Effective September 22, 1989*

Provincetown, MA—Provincetown Muni, NDB RWY 25, Amdt. 2
Provincetown, MA—Provincetown Muni, NDB-A Amdt. 7
Provincetown, MA—Provincetown Muni, ILS RWY 7, Amdt. 3
Kalispell, MT—Glacier Park Intl, VOR RWY 30, Amdt. 8

** * * Effective September 21, 1989*

Tipton, IA—Mathews Memorial, VOR RWY 11, Amdt. 1
Islip, NY—Long Island MacArthur, ILS RWY 24, Amdt. 1

** * * Effective September 18, 1989*

Guymon, OK—Guymon Muni, NDB RWY 18, Amdt. 5

** * * Effective September 15, 1989*

Denver, Co—Stapleton Intl, LOC RWY 18, Amdt. 4

[FR Doc. 89-23918 Filed 10-10-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of (1) the treaty Indian ocean salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Point Chehalis, Washington, at midnight, September 5, 1989; (2) the commercial salmon fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 10, 1989; and (3) the commercial salmon fishery in the EEZ from Sisters Rocks to Mack Arch, Oregon, at midnight, September 14, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that the closure is necessary to conform to the preseason notice of 1989 management measures. This action is intended to ensure conservation of chinook and coho salmon.

EFFECTIVE DATES: (1) 2400 hours local time, September 5, 1989, for the closure of the treaty Indian fishery from the U.S.-Canada border to Point Chehalis, Washington; (2) 2400 hours local time, September 10, 1989, for the closure of the commercial fishery from Leadbetter Point, Washington, the Cape Falcon, Oregon; and (3) 2400 hours local time, September 14, 1989, for the closure of the commercial fishery from Sisters Rocks to Mack Arch, Oregon. Actual notice to affected treaty Indian fishermen of the closure of the Indian fishery was provided by the treaty tribes and by tribal regulations. Actual notice to affected fishermen of the non-Indian closures was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comments are invited until October 20, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1989 management measures (54 FR 19798, May 8, 1989), NOAA announced that the treaty Indian ocean fishery for all salmon species except coho salmon would begin May 1 and continue through the earlier of June 30 or the attainment of the chinook quota, and the treaty Indian ocean fishery for all salmon species would begin on July 1 and continue through the earliest of September 30 or the attainment of either the chinook or coho salmon quota. The overall treaty Indian ocean quotas are 32,000 chinook and 77,000 coho salmon. Inseason adjustments to the season were imposed by treaty Indian tribal regulations.

Based on the best available information, the treaty Indian ocean fishery was projected to reach the overall quota of 77,000 coho salmon by midnight, September 5, 1989. Therefore, the treaty Indian ocean salmon fishery

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between the U.S.-Canada border and Point Chehalis (46°53'18" N. latitude) was closed to further fishing effective 2400 hours local time, September 5, 1989. Actual notice to affected treaty Indian fishermen of this closure was provided by the treaty tribes and by tribal regulations.

The 1989 commercial fishery for all salmon species in the subarea from the Red Buoy Line to Cape Falcon, Oregon, commenced on August 21, then closed as regularly scheduled for two days on August 22–23. When the fishery reopened on August 24, the northern boundary was moved northward to Leadbetter Point, Washington. This fishery was scheduled to continue through the earliest of October 31 or the attainment of a chinook or coho salmon quota.

Based on the best available information, the commercial fishery catch in the subarea was projected to reach the overall 300,000 coho salmon quota for non-treaty troll and recreational ocean fisheries north of Cape Falcon, Oregon, by midnight, September 10, 1989. Therefore, the commercial fishery in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, was closed to further fishing effective 2400 hours local time, September 10, 1989.

The 1989 commercial fishery for all salmon species except coho salmon in the subarea from Sisters Rocks to Mack Arch, Oregon, commenced on September 1, and was scheduled to continue through the earlier of September 15 or the attainment of a subarea quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea was projected to reach the subarea quota of 7,500 chinook salmon by midnight, September 14, 1989. Therefore, the commercial fishery in this subarea was closed to further fishing effective 2400 hours local time, September 14, 1989.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and affected treaty Indian tribes regarding these closures. The States of Washington and Oregon will manage the commercial fisheries in state waters adjacent to the affected areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of the non-Indian closures was given prior to the times listed above by telephone hotline number (206) 525–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 20, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1989.

David S. Crestin,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-23896 Filed 10-5-89; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment, reopening, and closure.

SUMMARY: NOAA announces adjustment to the ocean salmon management measures in the exclusive economic zone (EEZ) as follows: (1) For the commercial fishery in the subarea from the Red Buoy Line to Cape Falcon, Oregon, the northern boundary at the Red Buoy Line is moved northward to Leadbetter Point, Washington, Conservation Zone 1 (Columbia River mouth) is closed, and all salmon must be delivered in the area from Westport, Washington, to Cape Falcon, Oregon, beginning August 24, 1989; (2) for the commercial fishery in the revised subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, the ratio restriction is modified so that a single daily landing limit per vessel of 40 coho and 8 chinook is permitted, beginning August 29, 1989; and (3) the quota for coho salmon in the recreational fishery from the Queets River to Leadbetter Point, Washington, is decreased from 91,100 to 86,200 fish.

NOAA announces the closure of (1) the commercial fishery in the EEZ from the U.S.-Canada border to Carroll Island, Washington, at midnight, August 18, 1989, and (2) the recreational fishery in the EEZ from the Queets River, to Leadbetter Point, Washington, at midnight, August 30, 1989. NOAA also announces the reopening of (1) the commercial fishery in the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, beginning August 22, 1989, and (2) the recreational fishery in the EEZ from Cape Falcon to Orford Reef Red Buoy, Oregon, on September 2–4, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that this action is necessary to conform to the preseason notice of 1989 management measures. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season and to ensure conservation of coho salmon.

EFFECTIVE DATES: (1) 2400 hours local time, August 18, 1989, for the closure of the commercial fishery from the U.S.-Canada border to Carroll Island, Washington; (2) 0001 hours local time, August 22, 1989, for the reopening of the commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California; (3) 0001 hours local time, August 24, 1989, for the adjustment to the commercial fishery from the Red Buoy Line to Cape Falcon, Oregon, and the closure of Conservation Zone 1; (4) 0001 hours local time, August 29, 1989, for the adjustment to the commercial fishery from Leadbetter Point, Washrintton, to Cape Falcon, Oregon, and for the revised quota in the recreational fishery from the Queets River to Leadbetter Point, Washington; (5) 2400 hours local time, August 30, 1989, for the closure of the recreational fishery from the Queets River to Leadbetter Point, Washington; and (6) 0001 hours local time, September 2, 1989, through 2400 hours local time, September 4, 1989, for the reopening of the recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comments are invited until October 20, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The following adjustments to the management measures are authorized by the ocean salmon regulations at 50 CFR 661.21(b)(1)(i)–(v).

Adjustment to Commercial Fishery From the Red Buoy Line to Cape Falcon, Oregon

The 1989 commercial fishery from the Red Buoy Line to Cape Falcon, Oregon, opened for one day on August 21, 1989, then closed as regularly scheduled for two days on August 22–23. Based on the best available information, the Regional Director determined that when the fishery reopened on August 24, commercial fishermen should be given additional opportunity to maximize the harvest of the chinook salmon quota. Therefore, the northern boundary of this fishery, the Red Buoy Line, was moved northward to Leadbetter Point, Washington. In accordance with this modification, Conservation Zone 1 at the Columbia River mouth was closed (defined in the preseason notice at 54 FR 19805, note C–3). Furthermore, the northern boundary for the landing requirement that "all salmon must be delivered in the area from Leadbetter Point to Cape Falcon" as announced in the preseason notice at 54 FR 19802 also was moved northward so that deliveries could be made at Westport, Washington. All modifications were effective 0001 hours local time, August 24, 1989.

Adjustment to Commercial Fishery From Leadbetter Point, Washington, to Cape Falcon, Oregon

Upon further evaluation of chinook salmon landings in the expanded commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon (revised above), the Regional Director determined that the landing ratio restriction (ratio of coho to chinook salmon which can be landed) should be liberalized for chinook salmon.

The preseason notice at 54 FR 19802 announced that "A single daily landing limit per vessel of 40 coho and 4 chinook is permitted." The best available information indicates that increasing the chinook portion of the ratio to 8 fish would provide fishermen additional opportunity to maximize the harvest of the allowable chinook quota. Therefore, effective 0001 hours local time, August 29, 1989, the landing restrictions for the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, are as follows: "A single daily landing limit per vessel of 40 coho and 8 chinook is permitted. Chinook must be delivered with the coho and all salmon must be delivered in the area from Westport, Washington, to Cape Falcon, Oregon."

Adjustment to Recreational Fishery From the Queets River to Leadbetter Point, Washington

The 1989 recreational salmon fisheries from the U.S-Canada border to Cape Falcon, Oregon, are managed not to exceed an overall quota of 225,000 coho salmon. This overall quota is partitioned into three subarea quotas and seasons. Impacts from quota overages or underages from each fishing period or subarea are subtracted from or added to later fishing periods of the same user group or transferred between the recreational and commercial fisheries in accordance with the framework allocation.

The recreational fisheries for two subareas have been completed. According to the best available information, the fishery in the subarea from Leadbetter Point, Washington, to Cape Falcon Oregon, which closed on August 17, 1989 (54 FR 37110, September 7, 1989), exceeded its subarea coho quota by about 4,900 fish. The Salmon Technical Team analyzed the impacts from this quota overage to determine the amount to fish that should be subtracted from the subarea coho quota for the remaining open recreational fishery from the Queets River to Leadbetter Point, Washington. Accordingly, the subarea coho quota for the recreational fishery from the Queets River to Leadbetter Point, Washington, was decreased by 4,900 fish, from 91,100 to 86,200 coho salmon, effective 0001 hours local time, August 29, 1989.

Reopenings

Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(2) state that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is not less than 24 hours."

Reopening of Recreational Fishery From Humbug Mountain, Oregon, to Punta Gorda, California

The commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, was closed at midnight, August 20, 1989, upon the projected attainment of a subarea quota of 9,200 chinook salmon (54 FR 37110, September 7, 1989). Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, 1,000 chinook salmon were harvested by this fishery, leaving 8,200 fish unharvested in the subarea quota. This amount has been determined to be sufficient for reopening of the fishery beginning August 22, 1989.

This action was taken in as timely a manner as possible for all of the remaining original season which is scheduled to end on August 31, 1989. Reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea.

Reopening of Recreational Fishery From Cape Falcon to Orford Reef Red Buoy, Oregon

The recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, was closed at midnight, August 20, 1989, upon the projected attainment of an overall recreational quota of 285,000 coho salmon in the area from Cape Falcon to the U.S.-Mexico border (54 FR 37110, September 7, 1989). (The recreational fishery from Orford Reef Red Buoy, Oregon, to the U.S.-Mexico border remains open as regularly scheduled.) Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, recreational catches of coho salmon south of Cape Falcon totaled 275,900 fish through August 27, 1989. An estimated 2,100 coho salmon are projected to be harvested in the recreational fishery south of Orford Reef Red Buoy, Oregon, during the remaining open period from August 28 through September 30, 1989. Therefore, 7,000 coho salmon remain unharvested in the overall recreational coho quota. This

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amount has been determined to be sufficient for additional open period of three days in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon. Therefore, this fishery was reopened on September 2–4, 1989.

This action was taken in as timely a manner as possible for a part of the remaining original season which would be ended no later than September 15, 1989. Reopening of the recreational fishery in this subarea is consistent with the management objectives for coho salmon south of Cape Falcon, Oregon.

Closures

Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Closure of Commercial Fishery From the U.S.-Canada Border to Carroll Island, Washington

The 1989 commercial fishery for all salmon species in the subarea from the U.S.-Canada border to Carroll Island, Washington, commenced on August 7, 1989, and was scheduled to continue through the earliest of August 31, 1989, or the attainment of either a subarea quota of 40,000 coho salmon or an overall commercial quota of 47,500 chinook salmon north of Cape Falcon, Oregon.

As indicated in the preseason notice, the Fraser River Panel of the Pacific Salmon Commission maintained jurisdiction over the ocean commercial troll harvest of pink salmon during the 1989 fishing season. The Fraser River Panel promulgated regulations which superseded the preseason regulations between 48° N. lat. (approximately Carroll Island, Washington) and the U.S.-Canada border as follows. The fishery opened for 4 days from 0001 hours local time August 7, 1989, through 2400 hours local time August 10, 1989. The fishery was then reopened for 4 days from 0001 hours local time August 16, 1989, through 2400 hours local time August 19, 1989.

Based on the best available information, the commercial fishery catch in the subarea from the U.S.-Canada border to Carroll Island, Washington, was projected to reach the subarea quota of 40,000 coho salmon by midnight, August 18, 1989. Therefore, the fishery in this subarea ways closed to further fishing effective 2400 hours local time, August 18, 1989.

Closure of Recreational Fishery From the Queets River to Leadbetter Point, Washington

The 1989 recreational fishery for all salmon species in the subarea from the Queets River to Leadbetter Point, Washington, commenced on June 26, 1989, and was scheduled to continue through the earliest of September 28, 1989, or the attainment of either a subarea quota of 86,200 coho salmon (revised above) or an overall recreational quota of 47,500 chinook salmon north of Cape Falcon.

Based on the best available information, the recreational fishery catch in the subarea was projected to reach the revised 86,200 coho salmon quota by midnight, August 30, 1989. Therefore, the recreational fishery in this subarea was closed to further fishing effective 2400 hours local time, August 30, 1989.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Fraser River Panel of the Pacific Salmon Commission regarding these inseason adjustments, reopenings, and closures. The states of Washington, Oregon, and California will manage the commercial and recreational fisheries in State waters adjacent to the affected areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 20, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1989.

David S. Crestin,

Acting Director of Office, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23897 Filed 10–5–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

50 CFR Part 663

[Docket No. 81130–9265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing in the groundfish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan. These actions (1) remove the overall poundage and trip frequency limits for the deepwater complex (sablefish, Dover sole, thornyheads, and arrowtooth flounder) taken with trawl gear and (2) relax the trip limit for sablefish caught with nontrawl gear, effective on October 4, 1989. These actions are necessary because neither the trawl quota, nontrawl quota nor optimum yield for sablefish has been reached, nor are they expected to be reached before the end of the year, and greater levels of harvest can be allowed.

DATES: Effective 0001 hours, local time, October 4, 1989 until modified, superseded, or rescinded. Comments will be accepted through October 20, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140 or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION: The following actions modify fishing restrictions for sablefish that were established earlier in the year. These actions, in conjunction with the management measures imposed earlier in the year (at 54 FR 299, 54 FR 18658, and 54 FR 30046), are part of a management regime designed to prevent biological stress, to avoid exceeding gear quotas, to minimize discards, and to provide for equitable use of the sablefish resource by the trawl and nontrawl fleets.

According to current regulations, if a gear quota (trawl or nontrawl) is reached before the end of the year, all further landings of sablefish by that gear type must be prohibited for the rest of the year. If the 11,000 mt optimum yield quota (OY) for sablefish is reached before the end of the year, all further landings of sablefish by all gear types must be prohibited for the remainder of 1989.

Deepwater Complex (Including Sablefish)—Trawl Gear

At its April 1989 meeting, the Pacific Fishery Management Council (Council) recommended that the Secretary of Commerce (Secretary) impose trip poundage and frequency limits on landings of the deepwater complex (sablefish, Dover sole, thornyheads, and arrowtooth flounder) in order to conserve sablefish. It also recommended that the overall poundage and frequency limits on the deepwater complex be removed during the last quarter of the year if it is determined that the trawl quota or the OY for sablefish has not been reached or is not imminent. However, the separate trip limit for sablefish would remain in effect during the last quarter of the year. The Secretary published a notice of fishing restrictions on May 2, 1989 (54 FR 18658), which announced concurrence with the Council's recommendations including potential removal of the trip limits on the deepwater complex during the last quarter of the year. The effective date of October 4 was chosen because it is the first day following the last fishing week of the third quarter. No comments relevant to this issue were received during the fifteen day public comment period after publication of that notice.

The best available information on August 29, 1989 based on past and projected landings data, indicates that neither the trawl quota nor OY for sablefish has been reached and their achievement is not expected before the end of the year. Fifty-three percent of the 6,397 metric ton (mt) trawl sablefish quota and sixty-nine percent of the 11,000 mt OY for sablefish remained to be harvested as of August 12, 1989.

Therefore, on October 4, 1989, the poundage and frequency limits on the deepwater complex will be removed in accordance with the Council's recommendation. These limits restricted landings of the deepwater complex to one landing a week above 4,000 pounds, not to exceed 30,000 pounds, and provided for biweekly and twice-weekly trip limit options. As a result, the trip frequency limits for sablefish also are removed, and weekly, biweekly, and twice-weekly trip limits and notification procedures will no longer apply. However, the separate trip limit for sablefish in paragraph 4(a)(i) (1,000 pounds or 25 percent of the deepwater complex, whichever is greater, per vessel per fishing trip), and the sablefish size limit in paragraph 4(a)(iv) (which limits landings to no more than 5,000 pounds of sablefish smaller than 22 inches) published on May 2, 1989 (54 FR 18658), and all other provisions pertaining to sablefish caught with trawl gear that were announced in that notice, will remain in effect until modified, superseded, or rescinded. The states of Washington, Oregon, and California are implementing this action concurrently.

Secretarial Action: The Secretary concurs with the Council's recommendation, and has determined that neither the trawl quota not the OY for sablefish has been reached and is not expected to be reached before the end of the year. Consequently, the restrictions for trawl-caught sablefish at 54 FR 18658 (May 2, 1989) are replaced with the following:

(4) Trip and size limits.

(a) Trawl gear.

(i) No more than 1,000 pounds or 25 percent (by weight) of all legal fish on board in the deepwater complex (including sablefish), whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip.

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of all legal fish on board in the deepwater complex other than sablefish.

(A) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus spp.*), and arrowtooth flounder (*Atheresthes stomias*).

(B) Percentages apply only to legal groundfish on board. Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) Of those sablefish taken with trawl gear under paragraph 4(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

Sablefish—Nontrawl Gear

As announced at 54 FR 18658 (May 2, 1989), the Secretary implemented a 100 pound trip limit for sablefish caught with nontrawl gear when it was projected that approximately 200 mt of the 4,581 mt nontrawl quota of sablefish was remaining, which occurred on July 17, 1989 (54 FR 30046, July 18, 1989). The purpose of the 100 pound trip limit was to eliminate target fishing for sablefish with nontrawl gear, thereby drastically slowing the fishery and providing sablefish for small fisheries that occur later in the year. According to current regulations, if the nontrawl quota is reached, all further landings of sablefish by that gear must be prohibited for the rest of the year.

At its September 20–21, 1989, meeting, the Council was advised by its Groundfish Management Team (GMT) that nontrawl landings of sablefish had been slowed considerably and that the nontrawl quota would not be reached in 1989 if current landing rates continued. The best available information on August 29, 1989, based on past and projected landings data, indicates that 389 mt of the nontrawl quota still remained as of August 12, 1989. The Council also heard testimony that the 100 pound trip limit did not adequately allow for incidental catches of sablefish taken in the longline fishery for rockfish and that, as a result, sablefish were being discarded.

Consequently, the Council recommended that the Secretary replace the 100 pound trip limit for nontrawl caught sablefish with a new trip limit of 2,000 pounds or 20 percent (by weight) of all groundfish on board, whichever is less, to be applied if more than 100 pounds of sablefish are on board. All weights are round weights or round weight equivalents. The trip limit does not apply if fewer than 100 pounds of sablefish are on board. In addition, there will continue to be no size limit for nontrawl caught sablefish.

Although landings may increase under this larger trip limit, the nontrawl quota is not expected to be reached before the end of the year. Targeting on sablefish will continue to be discouraged, and small nontrawl fisheries that operate later in the year will be allowed to land their small and often unavoidable catches of sablefish. Furthermore, the

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new trip limit will minimize discards while enabling full utilization of the nontrawl quota.

Only the provisions announced in paragraph 4(b)(i) at 54 FR 30046 (July 18, 1989) are changed. All other provisions for sablefish caught with nontrawl gear announced in the notice at 54 FR 18658 (May 2, 1989), (except for the size limit at paragraph 4(b)(ii) which was removed by 54 FR 30046 (July 18, 1989)), including the provision for inseason adjustments and the application of this limit to other fisheries, remain in effect.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein revises the trip limit for sablefish caught with nontrawl gear at 54 FR 30046 (July 18, 1989) by replacing paragraph 4(b)(i) with the following:

(b) Nontrawl gear.

(i) No more than 2,000 pounds, or 20 percent (by weight) of all legal groundfish on board, whichever is less, may be taken and retained, possessed, or landed per vessel per fishing trip. This provision applies only when more than 100 pounds (round weight) of sablefish are onboard.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to change these restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region (see Addresses) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this notice are not significantly different than those considered in the EIS for the FMP. Therefore these actions are categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives manual 02-10 because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. These actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice. These actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If the current restrictions on the deepwater complex fishery and the nontrawl fishery for sablefish are not relaxed, both the trawl and nontrawl sablefish quotas are not expected to be taken before the end of 1989. The lessening of these restrictions will not only allow the full utilization of the OY for sablefish, but it will reduce discards of unavoidably caught sablefish, and minimize disruption of multispecies fisheries involving sablefish. Consequently, further delay of these actions is impracticable and contrary to the public interest, and for good cause these actions are taken in final form effective October 4, 1989.

The public has had the opportunity to comment on these actions. The public participated in the Groundfish Select Group, Groundfish Management Team, and Council meetings in November 1988, April and September 1989 that generated the recommendation to remove the trip limit on the deepwater complex which was endorsed by the Council and the Secretary. A public comment period followed publication of the May 2, 1989, notice (54 FR 18658) announcing the intent to take this action, but no comments relevant to this action were received. The public also participated in the Groundfish Select Group and Council meetings in September 1989 during which the recommendation was made to relax the nontrawl trip limit for sablefish. Further public comments will be accepted for 15 days after date of filing with the Office of the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1989.

David S. Crestin,

Acting Director of Office Fisheries Conservation and Management, Notional Marine Fisheries Service.

[FR Doc. 89-23895 Filed 10-4-89; 4:59 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 51

[Docket No. FV-88-206]

Papayas; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would establish voluntary U.S. Standards for Grades of Papayas. The Papaya Administrative Committee, a group of Hawaiian papaya producers, has requested that standards be developed to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be postmarked or courier dated on or before December 11, 1989.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, at the above address or call (202) 447-2093.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the critieria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule for establishment of U.S. Standards for Grades of Papayas will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, application of the standards is voluntary, so members of the papaya industry need not have their product certified under these standards, thereby incurring no costs at all.

In April 1984, the Hawaii Board of Agriculture, on behalf of the Papaya Administrative Committee, made a formal request of the Agency's Fresh Products Branch to develop a U.S. Standard for Grades of Papayas. A market survey was drafted by the Fresh Products Branch and sent to industry personnel and other interested parties for comments in May of 1985. No industry comments were received and all activity concerning standards development was suspended.

Hawaii is the major commercial producer of papayas in the United States and the papaya industry is one of the largest and most rapidly growing sectors of Hawaiian agriculture. According to data from the Papaya Administrative Committee, papaya production for 1986-87 was 58.8 million pounds and for 1987-88 was 65.5 million pounds. Committee estimates for 1988-89 are 79.5 million pounds and for 1989-90, 93.0 million pounds. In addition, in recent years the import of papayas into the United States from foreign sources has been increasing. Accordingly, the papaya industry felt that the adoption of U.S. grade standards would give the industry a uniform basis for trading. Therefore in August 1988, the Papaya Administrative Committee made another request for the development of U.S. standards. The Department is authorized under the Agricultural Marketing Act of 1946 to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

The proposed standards will include three grades: U.S. Fancy, U.S. No. 1, and U.S. No. 2, with basic requirements listed for each. These include reference to variety, maturity, cleanliness, smoothness, soluble solids, and shape. In addition, the standards include provisions for: size, tolerances and their application, soluble solids requirements, classification of defects, and definitions.

Accordingly, it is proposed that U.S. Standards for Grades of Papayas be established and codified as 7 CFR 51.725 thru 51.732 and to read as follows:

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products. (Inspection, certification, and standards.)

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. By adding a new subpart, Subpart—United States Standards for Grades of Papayas to read as follows:

Subpart—United States Standards for Grades of Papayas

Sec.

51.725 General.
51.726 Grades.
51.727 Size.
51.728 Tolerances.
51.729 Application of tolerances.
51.730 Soluble solids requirements.
51.731 Definitions.
51.732 Classification of defects.

Subpart—United States Standards for Grades of Papayas

§ 51.725 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

§ 51.726 Grades.

(a) "U.S. Fancy" consists of papayas which meet the following requirements:

(1) Basic Requirements:

(i) Similar varietal characteristics;

(ii) Mature, but not overripe, soft, or shriveled;

(iii) Clean;

(iv) Well formed;

(v) Smooth; and,

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(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730).
(2) Free from:
(i) Decay;
(ii) Internal hard spots;
(iii) Scalding;
(iv) Cuts or punctures;
(v) Catfaces; and,
(vi) Cercospora spots.
(3) Free from injury by:
(i) Scars;
(ii) Bruises;
(iii) Disease;
(iv) Insects; and,
(v) Mechanical or other means.
(4) Tolerances. (See § 51.728)
(b) "U.S. No. 1" consists of papayas which meet the following requirements:
(1) Basic Requirements:
(i Similar varietal characteristics;
(ii) Mature, but not overripe, soft, or shriveled;
(iii) Clean;
(iv) Fairly well formed;
(v) Fairly smooth; and,
(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730)
(2) Free from:
(i) Decay;
(ii) Internal hard spots;
(iii) Fresh cuts or punctures.
(3) Free from damage by:
(i) Scars;
(ii) Bruises;
(iii) Disease;
(iv) Insects;
(v) Catfaces;
(vi) Scalding;
(vii) Healed cuts or punctures;
(viii) Cercospora spots; and,
(ix) Mechanical or other means.
(4) Tolerances. (See § 51.728)
(c) "U.S. No. 2" consists of papayas which meet the following requirements:
(1) Basic Requirements:
(i) Similar varietal characteristics;
(ii) Mature, but not overripe, soft, or shriveled;
(iii) Fairly clean;
(iv) Not badly misshapen;
(v) Not excessively rough; and,
(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730)
(2) Free from:
(i) Decay;
(ii) Fresh cuts or punctures; and,
(iii) Internal hard spots.
(3) Free from serious damage by:
(i) Scars;
(ii) Bruises;
(iii) Disease;
(iv) Insects;
(v) Catfaces;
(vi) Scalding;
(vii) Healed cuts or punctures;
(viii) Cercospora spots; and,
(ix) Mechanical or other means.
(4) Tolerances. (See § 51.728)

§ 51.727 Size.

(1) Papayas packed in any container shall be fairly uniform in size.
(2) "Fairly uniform in size" means the difference in weight between the largest and the smallest papaya in any container does not exceed 8 ounces.
(3) In order to allow for variations incident to proper packing, based on sample inspection, up to, but not more than 5 percent of the containers in any lot may fail to meet the size requirement.

§ 51.728 Tolerances.

Based on sample inspection, in order to allow for variations incident to proper grading and handling in the foregoing grades, the following tolerances, by count, are provided:

(a) *U.S. Fancy.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount for more than 5 percent shall be allowed for serious damage, including in this latter amount not more than 1 percent for fruit affected by decay at shipping point and an additional 1 percent, or a total of not more than 2 percent, shall be allowed for papayas affected by decay en route or at destination.

(b) *U.S. No. 1.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount not more than 5 percent shall be allowed for serious damage, including in this latter amount not more than 1 percent for fruit affected by decay at shipping point and an additional 1 percent, or a total of not more than 2 percent, shall be allowed for papayas affected by decay en route or at destination.

(c) *U.S. No. 2.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount not more than 1 percent shall be allowed for fruit affected by decay at shipping point and an additional 1 percent, or a total of 2 percent, shall be allowed for papayas affected by decay en route or at destination.

§ 51.729 Application of tolerances.

The contents of individual containers in a lot, based on sample inspection, are subject to the following limitations:

(a) Individual samples shall not have more than double any specified tolerance except that at least two defective specimens may be permitted in any container: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

§ 51.730 Soluble solids requirements.

(a) The soluble solids for any lot of papayas, unless otherwise specified, shall average not less than 10 percent. Soluble solids shall be determined by an approved temperature compensating hand refractometer using the combined juice extraced from the edible portion of 8 papayas chosen at random.

§ 51.731 Definitions.

"Similar varietal characteristics" means that the papayas are similar in shape, size, and color of flesh.

"Mature" means the papaya has reached the stage of development which will ensure completion of the ripening process. This is characterized by a tinge of yellow color on the blossom end of the fruit.

"Overripe" means dead ripe with soft flesh, and past commercial use.

"Clean" means practically free from dirt, dust, spray residue, staining, latex or other foreign material.

"Fairly clean" means reasonably free from dirt, dust, spray residue, staining, latex or other foreign material.

"Well formed" means the papaya is not lopsided or elongated and that the sides are not noticeably flattened.

"Fairly well formed" means the papaya may be moderately lopsided, flattened, elongated or otherwise lacking symmetry, but the fruit shall not be sufficiently misshapen to materially detract from its appearance.

"Not badly misshapen" means the papaya is more than moderately lopsided, flattened, or elongated but not to the extent that its appearance is seriously affected.

"Catfaces" means structural deformities of the papaya characterized by a scar, usually sunken, which extends downward from the stem on one side of the fruit and causes slight to serious malformation.

"Scalding" means the injury characteristic of exposure to extreme temperatures or chemical injury.

"Internal hard spots" means hard tissue masses in the flesh of the papaya.

"Cercospora spots" means spots which are black and usually raised, with corky tissue beneath in latter stages. This is not scored as decay.

"Injury" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which more than slightly detracts from the appearance, or the edible or marketing quality of the fruit.

"Damage" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which materially detracts from the appearance, or the edible or marketing quality of the fruit.

"Serious damage" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.732 Classification of defects.

Factor	Injury[1]	Damage[1]	Serious damage [1]
Bruises	When affecting an aggregate area more than ½ inch in diameter.	When affecting an aggregate more than 1½ inches in diameter.	When affecting an aggregate area more than 2½ inches in diameter with the underlying flesh discolored and/or soft to the depth of ½ inch or more.
Scars	When deep, scaly and cracked, or not smooth and aggregating an area more than ½ inch in diameter, or smooth and aggregating an area more than 1 inch in diameter.	When deep and aggregating an area more than ¾ inch in diameter; or scaly, cracked, or not smooth and aggregating an area exceeding 5 percent of fruit surface; or smooth and aggregating an area exceeding 10 percent of fruit surface.	When deep and aggregating an area of more than 5 percent of fruit surface; cracked or not smooth and aggregating an area more than 10 percent of fruit surface; or smooth and aggregating an area more than 20 percent of fruit surface.
Catfaces	Any amount.	When any catface is more than 1 inch in length, or depressed or rought..	When extending more than ½ the length of the fruit or excessively deep, wide, or rough
Healed cuts or punctures.		When one is conspicuous and exceeds ½ inch in depth and ¾ inch in length, or so numerous and conspicuous as to materially affect appearance..	When one is conspicuous and exceeds 1 1/16 inch in depth and 1¼ inch in length, or so numerous and conspicuous as to seriously affect appearance.
Cercospora spots.		When more than 5 are present	When more than 7 are present.

[1] Defect Classifications are based on a 1 pound or size 10 papaya. Smaller or larger fruit shall be allowed proportionately less or more area affected relative to their size.

Dated: September 29, 1989.
Daniel Haley,
Administrator.

[FR Doc. 89-23928 Filed 10-10-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 51

[Docket No. FV-88-204]

Snap Beans; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; modified.

SUMMARY: This action is a modification of the proposed rule published in the Federal Register on March 8, 1989. This action would revise the voluntary U.S. Standards for Grades of Snap Beans. The South Florida Vegetable Exchange (the Exchange), which represents the majority of snap bean growers in South Florida, has requested the standards be revised to bring them into conformity with current cultural and harvesting practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be postmarked or courier dated on or before December 11, 1989.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during business hours.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol at the above address, or call (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the criteria therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the standards for snap beans will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

The United States Standards for Grades of Snap Beans were last revised on August 1, 1936. A previous proposal to revise the U.S. Standards for Grades of Snap Beans (7 CFR 51.3830-51.3844) was published in the **Federal Register** on March 8, 1989 (54 FR 9824-9825), and invited interested persons to submit written comments.

The proposal was developed at the request of the South Florida Vegetable Exchange, which represents the majority of snap bean growes in South Florida. It was their contention that the revisions were necessary to reflect current cultural and marketing practices.

The original 60-day comment period ended May 8, 1989, and a total of 36 comments were received concerning the proposal.

Twenty-four comments were in favor of the proposal. These comments were from growers and shippers of snap and pole beans in Florida. Seven of these comments were identical.

Six comments received were opposed to any changes in the current standard. These comments were from growers, shippers, and retailers of snap beans, all in States other than Florida. Their opposition was mainly directed at the proposed increase in the tolerances which would allow more broken beans in both the U.S. No. 1 and U.S. No. 2 grades. Their suggestions include either slowing mechanical harvesters down whereby fewer beans would break or devising new machinery that could handle the increased speed of harvesting.

Six comments received were generally in favor of the proposed revisions, but suggested minor changes for the sake of

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clarity. All of these comments were from Federal-State Inspection Supervisors.

The Agricultural Marketing Service, in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The standards have been reviewed for need, currentness, clarity, and effectiveness as part of a periodic review.

The Agency has decided to modify the proposed rule to clarify any misunderstood issues contained in the first proposal by establishing definitions for damage and serious damage by broken beans. It is the intent of this modified proposed rule to alleviate any misunderstanding among industry and other interested persons as to what actually constitutes damage and serious damage by broken beans. The Agency believes that the proposal of higher tolerances for broken beans in the U.S. No. 1 and U.S. No. 2 grades, as originally proposed, without a further definition for what actually constitutes damage and serious damage by broken beans, has led to some confusion and therefore opposition within the industry.

Those revisions originally requested by the Exchange, with minor nonsubstantive changes made for clarity, i.e. adding the term "damage" to the U.S. No. 1 grade, are proposed herein:

First, a general section would be added specifying the types of beans covered by the standard. Although the current standards apply to snap, pole and wax beans, according to the Exchange there exists some confusion in the industry as to what types of beans may be certified by the U.S. Standards for Grades of Snap Beans.

Next, the U.S. Combination and Unclassified grades would be eliminated because they are rarely used and may create some confusion in the marketplace.

With the majority of beans now being mechanically harvested rather than handpicked, the Exchange indicated that the industry is finding that with the newer, more tender varieties of beans, it is increasingly difficult to meet the requirements of the grade due to the higher percentages of broken beans in any lot resulting from the harvesting process. The current standards for U.S. Fancy and U.S. No. 1 grades allow ten percent total defects, including not more than 5 percent serious damage, including therein not more than 1 percent soft rot. For the U.S. No. 2 grade, ten percent total defects are allowed including not more than 1 percent soft rot. The new standards as originally proposed would provide for the following:

(a) *U.S. Fancy:* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1:* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent damage by grade defects other than damage by broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2:* Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent serious damage by grade defects other than serious damage by broken beans, including therein, not more than 1 percent for beans affected by soft rot.

Therefore, the proposal would lessen the restriction for broken beans only in the U.S. No. 1 and U.S. No. 2 grades, while further restricting the percentage of broken beans allowed in the U.S. Fancy grade. This further restriction would allow growers who "hand-pick" beans to market their product under a grade that reflects the quality difference due to harvesting and packing techniques.

Currently, the maximum tolerance for defects permitted in any grade is ten percent and individual packages may contain up to one and one-half times this amount. The proposal would allow maximum defects of thirteen percent and fifteen percent in the U.S. No. 1 and U.S. No. 2 grades respectively. Therefore, it would be necessary to revise the application of tolerances whereby individual packages may contain up to one and one-half times the thirteen percent tolerance or the fifteen percent tolerance, provided that the average for the entire lot averages within the maximum tolerance specified for the grade. Thus, paragraph (a) of § 51.3836, Application of tolerance, would be revised to read as follows: For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerance specified. Provided, that the average for the entire lot is within the tolerance specified for the grade.

Finally, the original proposal provided that the definition for "Similar Varietal Characteristics" be updated and simplified. The current definition references specific varieties that are not among those that are being widely grown. In addition, since varieties change in popularity over time, the Exchange stated that a revised definition should provide that beans of different colors or types shall not be mixed within the same container.

In addition to the changes originally proposed, this modified proposal also would establish definitions as to what constitutes damage and serious damage by broken beans. The current standard does not reference this defect. There has been confusion and disagreement within the industry on what a "broken bean" truly is and how much of a break should be allowed before a bean is considered defective by this factor. This modified proposal attempts to alleviate this confusion by providing in the definitions when broken beans will be considered as damaged or seriously damaged. In addition to those defects already referenced under § 51.3841 Damage, it is proposed that a broken snap bean shall be considered as damage when (a) There is one break present in the thick portion of the bean or one break at each end in the thin portion of the bean; (b) Any break that is materially affected by dirt or discoloration; (c) Any break that is ragged and materially detracts from the appearance; or (d) Unless otherwise specified, the remaining portion of the bean is less than 3½ inches in length (5½ inches for pole type beans).

Furthermore, under § 51.3844 Serious Damage, it is proposed that a broken snap bean shall be considered as serious damage when (a) There is a break on each end in the thick portion of the bean; (b) Any break is seriously affected by dirt or discoloration; (c) Any break that is ragged and seriously detracts from the appearance, or exposes a seed; or (d) Unless otherwise specified, the remaining portion of the bean is less than 3 inches in length (5 inches for pole type beans).

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that the subpart—United States Standards for Grades of Snap Beans, 7 CFR part 51, be amended as follows:

1. The authority citation of 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In subpart—United States Standards for Grades of Snap Beans, Section 51.3829 is added to read as follows:

§ 51.3829 General.

These standards can be applied to all beans used in their entirety rather than shelled beans, and includes types such as snap, pole, and wax beans. These standards do not apply to types such as fava, Lima, pinto or calico beans.

§§ 51.3832 and 51.3834 [Removed and Reserved]

3. Sections 51.3832 and 51.3834 are removed and reserved.

4. Paragraphs (a), (b), and (c) of § 51.3835 are revised to read as follows:

§ 51.3835 Tolerances.

* * * * *

(a) *U.S. Fancy.* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1.* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent damage by grade defects other than damage by broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2.* Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent serious damage by grade defects other than serious damage by broken beans, including therein, not more than 1 percent for beans affected by soft rot.

5. Paragraph (a) of § 51.3836 is revised to read as follows:

§ 51.3836 Application of tolerances.

* * * * *

(a) For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerances specified: Provided, that the average for the entire lot is within the tolerance specified for the grade.

* * * * *

6. Section 51.3837 is revised to read as follows:

§ 51.3837 Similar varietal characteristics.

"Similar varietal characteristics" means that the beans are of the same color and general type. For example, wax and green beans, or Snap and Pole beans may not be mixed.

7. Section 51.3841 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 51.3841 Damage.

* * * * *

(b) Broken beans shall be considered as damage when:

(1) There is one break present in the thick portion of the bean or one break at each end in the thin portion of the bean;

(2) Any break that is materially affected by dirt or discoloration;

(3) Any break that is ragged and materially detracts from the appearance; or

(4) Unless otherwise specified, the remaining portion of the bean is less than 3½ inches in length (5½ inches for pole type beans).

8. Section 51.3844 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 51.3844 Serious damage.

* * * * *

(b) Broken beans shall be considered as serious damage when:

(1) There is a break on each end in the thick portion of the bean;

(2) Any break is seriously affected by dirt or discoloration;

(3) Any break is ragged and seriously detracts from the appearance or exposes a seed; or

(4) Unless otherwise specified, the remaining portion of the bean is less than 3 inches in length (5 inches for pole type beans).

Dated: September 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-23929 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 968

[Docket No. AO F&V 68-1; FV-88-110]

Seedless European Cucumbers Grown in the United States; Recommended Decision and Opportunity to File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of seedless European cucumbers, more commonly known as "greenhouse cucumbers", grown in the United States of America. The order would authorize the establishment of grade, size, quality, maturity, container and pack regulations to promote the quality and standardize the pack of greenhouse cucumbers shipped to fresh markets. In addition, it would authorize production research and marketing research and development activities to improve production practices, reduce costs and increase the consumption of greenhouse cucumbers. Consumers would benefit by being provided with a reliable supply of good quality product, and producers and handlers would benefit from the resulting consumer confidence and increased acceptance and sales of the product. The program would be administered by an eleven member committee consisting of seven producers, three handlers and a public member, and would be financed by assessments levied on greenhouse cucumber handlers.

DATE: Written exceptions to this recommended decision must be received by November 13, 1989.

ADDRESS: Four copies of written exceptions should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250-9200. All written exceptions will be available for public inspection at the office of the Hearing Clerk during regular business hours [7 CFR 1.27(b)].

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 475-3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued June 22, 1988, and published in the Federal Register on June 27, 1988 (53 FR 24070).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of greenhouse cucumbers grown in the fifty States of the United States of America and the District of Columbia, hereinafter referred to as the proposed order. This

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notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR part 900].

The proposed order was formulated on the record of a public hearing held in Sacramento, California, on July 26–28, 1988. Notice of the hearing was published in the June 27, 1988, issue of the **Federal Register**. The notice set forth a proposed order submitted by the American Greenhouse Vegetable Growers Association (AGVGA) which represents a sizable portion of the greenhouse cucumber industry. At the hearing, a number of witnesses, including producers, handlers, a scientific researcher, a consumer, and an economist, testified in support of the order. Proponents emphasized that greenhouse cucumber producers need a marketing order if they are to continue to operate viable businesses and expand markets. They offered evidence in support of their position.

In general, witnesses testified that a marketing order for greenhouse cucumbers that allows the establishment of grade, size, quality, maturity, container, and pack regulations would improve the quality and standardize the pack of greenhouse cucumbers in the marketplace. The proposed order would enable the establishment of programs and projects relating to production and marketing research, consumer education, promotion, and market development which could result in reduced costs and increased sales.

In addition, one brief was filed by George H. Soares on behalf of the AGVGA. The brief in general reaffirmed the testimony presented at the hearing in support of the proposed marketing order with regard to such issues as: (1) Industry support for the proposed order; (2) the basis used in formulating the proposed production area; (3) eligibility requirements for producers; (4) the impact of the proposed order on small entities; and (5) the most appropriate method for assessing greenhouse cucumbers. Also, the brief included several proposed amendments to the order, which are discussed herein, as appropriate.

Small Business Consideration: In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et. seq.*], the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small business entities. Interested persons were invited to present evidence at the hearing on the reporting requirements and probable economic impact that the proposed order would have on small businesses.

The record indicates that there are approximately 250 handlers of greenhouse cucumbers in the United States, with all but about 20 also in the business of growing greenhouse cucumbers. During the 1987–88 season, U.S. production of greenhouse cucumbers was estimated to be about 38 million pounds, or the equivalent of 2.4 million 16-pound boxes. Testimony indicates that in recent seasons, f.o.b. prices have averaged about $8.00 per box, which would yield a total value of about $19 million. While there is a great variance in size of individual handler operations, the record indicates that most of the handlers that would be regulated under the proposed order would qualify as small firms under SBA's definition.

The record also indicates that there are between 250 and 300 greenhouse cucumber producers in the United States. The largest greenhouse cucumber producer has 22-acres of growing area, but all others operate substantially smaller greenhouses. The record indicates that the average size of a greenhouse cucumber growing operation is about 18,500 square feet or four-tenths of an acre. With gross annual receipts of $175,000 to $250,000 per acre, the record indicates that the vast majority of these producers could be classified as small businesses.

Witnesses testified that because most greenhouse cucumber producers and handlers are small businesses, a marketing order program is necessary to provide a means for these entities to pool their resources and work together to solve common problems. Witnesses testified that such action is necessary for the greenhouse cucumber industry to provide a uniform, quality product to consumers and expand markets.

The proposed order would authorize a number of requirements that may be imposed upon handlers. Principal requirements which could impact handlers include: standardized container and pack specifications; minimum standards of quality and size; mandatory inspection; payment of assessments; and associated reporting and recordkeeping.

Container and pack specifications could be used to limit the types of containers which may be used by handlers to ship greenhouse cucumbers, and how those greenhouse cucumbers must be packed. Quality and size restrictions could be established to remove from fresh market channels less desirable grades and sizes of greenhouse cucumbers. The establishment of these types of regulations would likely require the mandatory inspection of greenhouse cucumbers destined for fresh market with costs paid by handlers. The potential impacts of these requirements are discussed in detail elsewhere in this decision. In summary, the record evidence indicates that in any consideration of regulatory requirements, the committee should give due consideration to the impacts those requirements would have on small businesses and report the expected impacts to the Secretary and the industry. In the event it is deemed necessary to provide relief from certain requirements, the proposed order authorizes a number of exemptions. For example, provision has been made to allow small quantities of greenhouse cucumbers to be marketed without regard to the regulatory requirements that may be in effect. Additionally, waivers from the inspection requirement could be obtained when it was determined that inspection would not be practicable.

The order would be administered by a committee of greenhouse cucumber growers and handlers, and all recommendations for handling requirements would require the review and approval of the Secretary. The burden of these regulatory requirements should not be significant compared to the benefits which should accrue to the regulated businesses. For example, it was testified that uniform pack and container requirements should result in cost savings and reduced confusion on the part of buyers. If lower quality and smaller sizes were eliminated from fresh market channels, demand for higher quality and preferred sizes should increase.

The program would be financed by assessments paid by greenhouse cucumber handlers. While the assessment rate that may be levied is not specified in the proposed order, it would have to be established at a rate sufficient to generate adequate revenue to cover the operating costs of a national program such as that proposed herein. Expenses would include committee staff salaries and travel expenses for committee members and staff, as well as other administrative expenses relating to establishing and equipping an office such as rent, utilities, postage and office equipment. Additionally, assessment funds would be used to fund any production research projects and promotion activities undertaken by the committee and to establish and maintain an effective program for assuring compliance with program requirements.

While the rate of assessment is not specified in the proposed order, testimony indicates that an assessment in the range of .5 to 1.5 cents per greenhouse cucumber may be an appropriate and acceptable amount to accomplish the purposes of the order. At these rates, the estimated 38 million pounds of greenhouse cucumbers produced in 1987–88 would have generated total assessment income of $190,000 to $570,000. With wholesale prices averaging about 50 cents per greenhouse cucumber (or approximately 50 cents per pound) nationwide, handlers testified that a .5 to 1.5 cent assessment would not be burdensome and would not represent a significant financial burden on handler operations. Further, the benefits of reduced costs and increased sales that would result from the contemplated research and promotion programs should outweigh assessment costs.

Handlers testified that the recordkeeping and reporting requirements that may be imposed under the proposed order would not be a burden on their businesses because they already maintain the necessary types of records, or could easily compile them from current records used in the normal operation of their businesses. The reporting and recordkeeping requirements that may be established under the proposed order are likely to be comparable to those issued under similar marketing order programs, which are not considered burdensome on handlers regulated under those orders. Therefore, the reporting and recordkeeping requirements would not be expected to impose any significant additional costs on handlers.

The terms of the proposed order should be administered in an efficient and economical manner in order to effectuate the declared policy of the Act. All entities, small and large, should be subject to minimal regulatory requirements as a result of the proposed order.

In determining that the proposed order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to minimize any unnecessary costs or other requirements on handlers. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the program under the proposed order would help to increase demand for greenhouse cucumbers. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the provisions of the proposed order would not have a significant impact on small handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the reporting and recordkeeping provisions that may be imposed by the proposed order would be submitted to the Office of Management and Budget (OMB) for review. They would not become effective prior to OMB approval. Any requirements imposed would be evaluated against potential benefits to be derived, and any added burden resulting from increased reporting or recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden may be imposed under this proposed order on the estimated 250 handlers of greenhouse cucumbers.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they approve the order. The ballot material that would be used in conducting any referendum on this proposed marketing order has been submitted to and approved by OMB (OMB No. 0581–0161). It has been estimated that it would take an average of 10 minutes for each of the approximately 250 greenhouse cucumber producers to participate in a voluntary referendum balloting. Additionally, it has been estimated that it would take approximately 5 minutes for each of the 250 greenhouse cucumber handlers to complete the proposed marketing agreement. And finally, should the order be approved, it has been estimated that it would take approximately 10 minutes for each of the 22 committee member nominees to complete a background statement to ascertain their eligibility to serve on the Cucumber Administrative Committee.

In accordance with Executive Order 12612, consideration has been given as to whether the proposed order would have substantial direct effects on the 50 United States of America, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for greenhouse cucumbers grown in the United States was provided to all governors, as well as to the Mayor of the District of Columbia, and to the Commissioners of Agriculture of all 50 States. No evidence was received indicating that the proposed order would create any burdens, financial or otherwise, on any of the States or the District of Columbia. Further, the proposed order would cover all greenhouse cucumbers grown in the U.S. Thus, any marketing orders, or their equivalent, authorized under State statutes could not achieve the same results as an alternative to a Federal marketing order program. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Material Issues

The material issues presented on the record of the hearing are as follows:

1. Whether the handling of greenhouse cucumbers grown in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which will tend to effectuate the declared policy of the Act;

3. What the specific terms and provisions of the proposed order should be including:

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(a) The definition of terms used therein which are necessary to attain the objectives of the order and the Act;
(b) The establishment, composition, maintenance, powers and duties of a committee which shall be the administrative agency for assisting the Secretary in the administration of the marketing order;
(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;
(d) The authority to establish, or provide for the establishment of, production and marketing research and market development projects;
(e) The method of regulating the handling of greenhouse cucumbers grown in the production area;
(f) The authority for inspection and certification of shipments;
(g) The establishment of requirements for handler reporting and recordkeeping;
(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and
(i) Additional terms and conditions as set forth in §§ 968.82 through 968.91 of the Notice of Hearing published in the Federal Register of June 27, 1988 [53 FR 24070] which are common to all marketing agreements and marketing orders, and other terms and conditions published as §§ 968.97 through 968.99 which are common to marketing agreements only.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

1. The Handling of Greenhouse Cucumbers is in the Current of Interstate or Foreign Commerce or Directly Burdens, Obstructs or Affects Such Commerce

The record evidence indicates that approximately 38 million pounds of greenhouse cucumbers were produced in the United States in 1987–88. These cucumbers, which are grown in greenhouses, are known to be commercially produced in at least 30 States. California, Florida and Ohio are the top three greenhouse cucumber producing States, with about 77 percent of the total national production. The remaining 23 percent is grown in geographic locations dispersed throughout the country, mostly near major population centers. Because these cucumbers are grown in greenhouses, they can be grown in any of the 50 States and in the District of Columbia.

The record indicates that greenhouse cucumbers are marketed not only within the State where grown, but also outside that State. Greenhouse cucumber shipments frequently move from one State to another, and sometimes are transported across the entire United States. For example, witnesses representing handlers from California, Ohio and Florida all indicated that they sold greenhouse cucumbers in the New York City market. Additionally, a Colorado handler testified that he shipped greenhouse cucumbers to markets in California, Texas and Illinois. A small volume of greenhouse cucumbers is exported to eastern and western Canada during Canada's low production periods.

Testimony indicates that although greenhouse cucumbers are produced twelve months of the year, production levels vary from month to month, depending on the geographic location of the greenhouse, climate, and anticipated availability of competing commodities. Almost all shipments are destined for fresh market sales and few, if any, are intended for processing. Greenhouse cucumbers are transported primarily by truck to local markets and to major cities across the United States. Air transport is seldom used, due primarily to cost considerations. The record evidence indicates that greenhouse cucumbers lose their identity once they leave their point of origin, and in the marketplace consumers cannot distinguish between a greenhouse cucumber produced in one area and one produced in another area.

Witnessed testified that greenhouse cucumbers are imported primarily from Canada, although imported supplies are also available from the Netherlands, Spain, Honduras, Colombia, Costa Rica, the Canary Islands and Mexico. These imported greenhouse cucumbers compete directly in the same markets with available domestic supplies.

Testimony indicates that when low prices are received in one market, prices and sales at other markets throughout the U.S. are affected. This is particularly noticeable when one seller offers fruit at less than the prevailing market prices. When this occurs, the effect may be to depress market prices elsewhere. Witnesses indicated that, in general, price changes are known by most buyers, and often immediately affect prices in other markets, which is indicative of the very competitive wholesale market for greenhouse cucumbers.

The record evidence shows that the handling of greenhouse cucumbers in any one market exerts an influence on the handling of such greenhouse cucumbers in all other markets. As with other commodities, sellers of greenhouse cucumbers conduct their businesses so as to obtain maximum returns for the product they have for sale. Shippers and other sellers such as brokers, commission agents, and wholesalers therefore continually survey all accessible markets so that they may take advantage of the best possible prices available. Further, they constantly attempt to develop demand and seek new markets for their product, and all markets provide an opportunity for individual sellers to increase sales. Likewise, greenhouse cucumber buyers consider prices and availability of greenhouse cucumbers from all sources in making their purchasing decisions. For this reason, greenhouse cucumber supplies and prices in any one location are promptly known elsewhere and have a direct effect on supplies and prices in all other locations.

Therefore, it is hereby found that all handling of greenhouse cucumbers grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, all handling of greenhouse cucumbers grown in the production area should be covered by the proposed order.

2. Economic and Marketing Conditions Justify a Need for a Federal Marketing Order

The record indicates that greenhouse cucumbers originated in Holland where they are grown and consumed extensively. Witnesses testified that the seedless European cucumber was brought to the North American continent after World War II by Dutch immigrants. A large majority of these immigrants settled in the Canadian provinces of Ontario, Alberta, and British Columbia. The Canadian government imported specialists from England and Holland to assist its own greenhouse vegetable growers in the culture of greenhouse cucumbers.

Testimony indicates that commercial production of greenhouse cucumbers in the United States began more than 40 years ago, in northern States such as Ohio. Commercial production of greenhouse cucumbers in California, now the leading domestic producing State, began in the late 1960's. Historic production and price information is limited, since no known private or public entity in the U.S. collected such data in the past. However, witnesses indicated that production of and prices for greenhouse cucumbers rose steadily from about 1975 to 1986. Acreage and production increased about 10 percent in 1986–87, but declined slightly in 1987–88.

In 1987–88, the three major producing States were California, Florida, and Ohio. There were about 40 acres of greenhouse cucumbers in California, 35 acres in Florida and 20 acres in Ohio. These States combined represented 95 acres of an approximate U.S. total of 120 acres. Thus, these three States accounted for about 80 percent of the national total acreage. While production is currently concentrated in three States, there are greenhouse cucumber producers dispersed throughout the country. These growers are presently located in at least 30 different States including Alaska and Hawaii.

Total U.S. greenhouse cucumber production in 1987–88 was estimated to be about 38 million pounds. California produced approximately 33 percent of the total volume, followed by Florida with 27 percent and Ohio with 17 percent. The record indicates that acreage and production in these States is expected to remain relatively stable in the near future. Witnesses testified that future growth will likely be greatest in other eastern, southern and western locations in the United States. The areas with the most growth potential are those located closer to certain major population centers than current production areas in California, Ohio, and Florida, which now serve these markets.

Witnesses projected different rates of future growth in greenhouse cucumber production. One witness, for example, estimated that 1988–89 production would be up about 15 percent from the previous year. Over the long term, the consensus is that the growth rate is likely to be at least 10 percent a year. However, witnesses indicated that the actual rate of growth is heavily dependent upon the industry's ability to expand current markets and find new ones. An organized marketing research and promotion program, conducted under the proposed order, would be instrumental in accomplishing this objective.

Testimony indicates that the seedless European cucumber is unique from other cucumbers in that it cannot be grown outdoors. Greenhouse cucumbers produce fruit without pollination and therefore are seedless. If pollination occurred, the resulting fruit would have seeds. Also, the fruit would swell and become gourd-like, rather than long and narrow, and would be unmarketable. Greenhouse cucumbers are grown indoors to prevent bees from spreading pollen.

In addition, a greenhouse environment is necessary because the underside of the leaves, stems and suckers of the greenhouse cucumber plant have millions of needle sharp "prongs." The record indicates that even a mild breeze would cause these prongs to scar the fruit and reduce its marketability.

According to record evidence, most of the greenhouse cucumber varieties currently grown in the U.S. are hybrids produced by seed companies in Holland. They vary somewhat in vigor, disease resistance, fruit size, and other fruit characteristics, such as color, ribbiness and neck length. Although many tested varieties produce good yields and fruit quality, most growers tend to favor one of five varieties: Sandra, Toska 70, Farabio, Daleva, and Corona. All of these hybrids are resistant to some diseases such as leaf spot and downy mildew, but lack resistance to powdery mildew and to viruses such as cucumber mosaic, watermelon mosaic, and beet pseudo yellows.

Under optimum conditions, fruit production begins 60 to 70 days after seeding. Daytime temperatures of 70 to 80 degrees Fahrenheit (F) are desirable. While higher temperatures are tolerable, prolonged periods of high temperatures adversely affect fruit quality. Nighttime temperatures no lower than 65 degrees F allow a rapid growth rate and earliest fruit production. Savings in fuel costs may be significant at lower temperatures, but the growth rate would be slower and harvest would be delayed.

The record indicates that greenhouse cucumbers should be harvested after they have reached a uniform diameter and before any yellowing appears at the blossom end. If fruit is left on the plant after it has reached marketable size, development of younger fruit is retarded. Greenhouse cucumbers are typically harvested every one to three days.

According to the record, since it typically takes two months after seeding for a greenhouse cucumber plant to produce fruit, and harvest takes place over a 10 to 12 week period, more than one crop can be planted in a year. Most greenhouse cucumber growers plant two or three crops per year, although some plant a single greenhouse cucumber crop in rotation with other vegetable crops.

The record indicates that after harvest, the thin-skinned fruit is highly susceptible to softening due to moisture loss. Therefore, growers typically wrap greenhouse cucumbers individually in shrink-wrap film as soon as possible after harvest to maintain quality. The wrapped fruit is then packed in cartons and stored at a temperature of about 55 degrees with a relative humidity of 80 to 90 percent. Storage at lower temperatures results in chilling injury, which reduces quality and shelf life.

Record evidence indicates that yields vary considerably among greenhouse cucumber growers. Actual yields depend upon numerous variables, including the length of the harvest period, plant spacing, pruning practices, available light, prevailing temperatures, variety, and nutrition and pest management. One producer witness estimated yields to average between seven and nine pounds of fruit per square foot per year if production is continued a full 12 months (i.e., if three crops were planted). This would produce about 300,000 to 400,000 pounds per acre per year. A second producer estimated yields to range between eight and 10 pounds per square foot, and another producer reported yields of nine pounds per square foot.

Testimony indicates that the cost of producing greenhouse cucumbers differs between States as well as within each State. One witness indicated that total production costs range from $.35 to $.60 per pound (or $5.60 to $9.60 per 16-pound carton) depending on the time of year, age and location of the greenhouse, climate, yield and cultural practices.

One grower witness indicated that the cash cost (which excludes interest on investment, depreciation and operator's wage allowance) of producing one carton of greenhouse cucumbers was about $6.90 in 1986–87, up from $6.60 the previous year. Costs have increased steadily since 1970–71, when it cost about $3.20 to produce a carton of greenhouse cucumbers. Labor is consistently the highest cost component, averaging about 33 percent of the total in recent years. Another major expense is the cost of heating the greenhouse, which accounts for 20 to 25 percent of total cash costs.

The record indicates that per carton production costs are generally highest in the winter, because yields are lower due to less daylight and heating costs are incurred. For example, it was testified that the total cost of production for one winter crop in California per 1,000 square feet of greenhouse in 1986–87 was $1,716. At an average yield of three pounds per square foot for the winter crop, the cost of production per carton was about $9.30. In general, costs can be expected to be even higher in northern growing States.

The record indicates that currently there is little research being done in the U.S. on producing greenhouse vegetables. While some limited research has been conducted on pest control with chemical company grants, other cultural research has not been done due to lack of funds. In contrast, large sums of money are spent each year in other

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countries such as Holland and Canada on marketing and production research for greenhouse vegetables. Although some of the research results become available to U.S. growers, not all of the information is immediately available to U.S. growers or is applicable to growing conditions in the U.S. Witnesses testified that certain viruses that can seriously affect greenhouse cucumber production are unique to the United States such as cucumber mosaic, watermelon mosaic, and beet pseudo yellows virus. No variety of greenhouse cucumber is currently available that is resistant to any of these diseases to any great extent. Currently, almost all seed used to produce greenhouse cucumbers in the U.S. are acquired from seed-producing companies in Holland because the Dutch have ownership rights to the parent plants from which the seeds originate.

Testimony indicates that greenhouses are not pest-free and that the greenhouse environment is attractive to pests such as the white fly, vegetable leaf miner, and cabbage looper. These pests gain entrance into greenhouses in many ways including through vents, fan housings, open doorways and on clothes and equipment. Testimony indicated that much research is needed on the issue of pest control. In addition, production research to develop domestic seed sources and to address the unique problems facing U.S. growers would help to reduce production costs and increase productivity.

As previously indicated, the cost of producing greenhouse cucumbers has increased steadily since 1970–71. According to record evidence, at the same time that costs are increasing, prices received for greenhouse cucumbers are declining. The record indicates that f.o.b. prices averaged about $9 per carton in 1983–84 and $8 per carton in 1984–85 and 1985–86. The difference between the highest and lowest prices received in 1985–86 was $14.37 per carton with prices ranging from $5.97 to $20.34 per carton. Record evidence shows that prices received can be less than production costs. Prices are typically at their lowest levels during the spring and early summer, when both greenhouse and field-grown cucumber supplies are at peak levels. In general, prices received during the winter months, when the volume of shipments is low, are higher.

Proponents testified that the annual per capita consumption of greenhouse cucumbers in the U.S. is about .16 pounds, which is significantly below the annual per capita consumption of other salad vegetables such as tomatoes (17 pounds). It is also far less than the annual per capita consumption of greenhouse cucumbers in Canada, which is estimated at 2.4 pounds. Witnesses attributed this difference in large part to Canada's established promotion programs for greenhouse cucumbers. Canada produces about 62 million pounds of greenhouse cucumbers annually, substantially more than is produced in the U.S. Almost all Canadian production is in the three provinces of Ontario, British Columbia and Alberta. Growers in these provinces assess themselves $.19, $.31 and $.03 per box, respectively, to finance promotion programs. A variety of activities have been undertaken, most of them designed to inform the consumer of the product. These activities include providing point-of-purchase materials to retailers, supplying camera-ready art work to magazines and newspapers, attending trade shows, obtaining free promotional space in trade magazines, producing promotional video spots, and conducting in-store demonstrations. Recipes, point-of-sale posters, price cards and banners are also provided to participating retailers. The record indicates that these types of promotion activities have resulted in substantial increases in weekly sales in many Canadian markets.

The record indicates that as a result of these promotion programs, Canadian consumers are far more familiar with greenhouse cucumbers than consumers in the U.S. and purchase them much more frequently. Witnesses testified that a major problem facing the U.S. greenhouse cucumber industry is that most U.S. consumers do not know that greenhouse cucumbers exist, and therefore, what they taste like. Also, many are unaware of the unique characteristics of greenhouse cucumbers, such as being burpless. The record indicates that in consumer surveys conducted in the United States for the industry over the last five years, less than ten percent of those polled had ever eaten a greenhouse cucumber or even knew of them. Those that were aware of greenhouse cucumbers did not know of the differences between them and field-grown cucumbers other than the higher retail price, larger size and that they are wrapped in cellophane. Witnesses testified that once a consumer tries a greenhouse cucumber, there is a very good chance that consumer will make repeat purchases. Therefore, the record indicates that the industry needs to establish a promotion program to educate consumers and encourage them to try greenhouse cucumbers. Such a program would benefit producers and handlers.

Testimony further indicates that the industry needs to better inform produce managers of ways to merchandise and handle greenhouse cucumbers. Due to the limited consumer demand, many produce managers are not inclined to promote greenhouse cucumbers. In addition, many produce managers themselves may not be aware of the differences between greenhouse and field-grown cucumbers. Further, many are unfamiliar with the proper way to handle and store the product. Testimony indicates that there needs to be an industry wide program to educate consumers and produce managers alike, and that a marketing order would provide the necessary means to develop such a program.

Witnesses also testified that market research, in the form of data collection and analysis, would be an essential part of the overall marketing and promotion strategy. Currently, limited data is gathered with respect to greenhouse cucumbers. To effectively promote and market greenhouse cucumbers, proponents testified that additional knowledge of supplies and market conditions and more complete data is necessary to make prudent decisions for focusing promotional efforts and promoting the efficient allocation of resources. The record further indicates that market research could be used to determine the specific type of product consumers prefer and to what extent this product is demanded in different markets. Such information would facilitate efficient distribution which in turn would lower the costs of marketing greenhouse cucumbers to the benefit of growers, handlers and consumers.

Accordingly, the record supports the need for provisions in the proposed marketing order for production research and marketing research and development activities to assist, improve or promote the production, marketing, distribution and consumption of greenhouse cucumbers.

Record evidence indicates that in September 1985, at the request of the industry, the USDA revised the U.S. Standards for Grades of Greenhouse Cucumbers, which appear at 7 CFR Part 51 at sections 51.3855 to 51.3863. These Standards define three grades of greenhouse cucumbers: U.S. Fancy, U.S. No. 1, and U.S. No. 2. One major difference in the requirements for each of the grades relates to the shape of the greenhouse cucumber. The most desirable and highest grade greenhouse cucumbers are fairly straight and only slightly tapered at either end. Other grade requirements pertain to color and allowable defects such as bruises and scars. The use of the U.S. Grade Standards is voluntary.

The record indicates that most greenhouse cucumber handlers do not have their product graded in accordance with the U.S. Standards. Rather than using the three grades that are specifically defined in the Standards to denote quality, shippers customarily refer to greenhouse cucumbers as being Fancy, Commercial or Salad grade. As generally used, these terms are comparable to the U.S. grades (i.e., a Commercial grade greenhouse cucumber is roughly equivalent to a U.S. No. 2 grade greenhouse cucumber). However, since these terms have not been specifically defined, their use in describing quality is not uniform among handlers. Testimony indicates that what some handlers pack as Fancy fruit, others would consider to be Commercial, and vice versa. Due to the inconsistent application of these terms in marketing greenhouse cucumbers, buyers have no assurance of the quality of the product they are purchasing. When a load of "Fancy" greenhouse cucumbers are received that do not meet a buyer's expectations, future sales to that buyer may be jeopardized. Also, if one shipper chooses to label what is commonly regarded as Commercial grade fruit as Fancy, other shippers of Fancy greenhouse cucumbers would be hurt if this lesser quality offered as top grade fruit resulted in reduced prices. The record indicates that this problem could be resolved under the proposed order by establishing requirements that uniform standards be applied in the labelling of greenhouse cucumbers for shipment to fresh market. Such uniformity could reduce confusion and promote orderly and efficient marketing of the product.

The record further indicates that the packaging of greenhouse cucumbers is not uniform and causes confusion among wholesale buyers. In California and other parts of the western U.S., the most commonly used box to pack greenhouse cucumbers has dimensions of 4½ inches × 13½ inches × 16½ inches, and generally has a net weight of about 16 pounds. This single box is used to pack all sizes of fruit, with a typical pack containing 12, 14, 16 or 18 greenhouse cucumbers. When packing this way, the count is used to denote size.

In Ohio, two box sizes are most commonly used to pack greenhouse cucumbers, each of which differs in size from the single box used in the western U.S. One box, with dimensions of 4¾ inches × 11 inches × 16 inches is used to pack Small greenhouse cucumbers (11 to 12 inches in length) and Medium greenhouse cucumbers (12 to 14 inches). The other box (4¾"×11"×19") is used to pack Large (14 to 16 inches) and Extra Large (16 inches and longer) greenhouse cucumbers.

In Florida and other southeastern States, four different boxes are most commonly used which separate Small, Medium, Large, and Extra Large greenhouse cucumbers. In these States, greenhouse cucumbers are generally packed 12 to a carton. The size of the fruit is indicated by the terms Small, Medium, Large, and Extra Large, which is comparable to the customary practice in the Ohio area.

According to record evidence, while there are seven different boxes most commonly used by greenhouse cucumber shippers, there are an undetermined number of other containers also being used to pack greenhouse cucumbers. Further, the arrangement of the fruit in the box is not uniform. Greenhouse cucumbers may be packed lengthwise or crosswise or, in some cases, a combination of the two. Additionally, there are no requirements that a box contain greenhouse cucumbers of a uniform size, and at times various sizes are packed in a single box. Some producers and handlers are very discriminating about the specific arrangement and sizes they pack. They select and arrange the pack of greenhouse cucumbers to produce a box whose contents are uniform and attractive and do not rattle. Other packers are far less particular, and pack with little regard to uniformity. Typically, a broker never personally sees or inspects the greenhouse cucumbers that have been purchased for various accounts. Therefore, a buyer that has been receiving boxes containing 12 greenhouse cucumbers may suddenly find himself or herself with a certain lot of greenhouse cucumbers that are packed 18 or 16 per container. Since there are no specific requirements, greenhouse cucumbers are sometimes sold below, or above, the prevailing market price level because of the different counts in the various containers. Witnesses testified that the proposed order could benefit the industry by ensuring uniformity through standardization.

Testimony indicates that the multiplicity of containers used in packing greenhouse cucumbers causes confusion in the marketing of the product. The proliferation of container types and sizes also creates inventory problems for purchasers, and often makes the palletization of containers difficult. Handlers frequently encounter difficulty palletizing a variety of container sizes on the same pallet. The record indicates that the industry needs to develop more uniformity in the container sizes that are used by all greenhouse cucumber handlers, and recognized by receivers and distributors. This would provide for more efficient handling of the product.

Taken together, the lack of standardization and uniformity in packing greenhouse cucumbers tends to undermine trade confidence. According to the record, specifications of the size, capacity, dimensions, markings, and pack of the containers that may be used in marketing greenhouse cucumbers would provide a means of maintaining trade confidence, establishing orderly marketing, and improving returns to producers.

The record indicates that in addition to regulations which have as their objective standardizing the pack of greenhouse cucumbers, there is a need to establish minimum standards of size and quality. Several witnesses testified that buyers are often unwilling to pay prices appropriate for good quality greenhouse cucumbers and to increase purchases because they have previously received low quality product. The evidence of record indicates that consumers who purchase greenhouse cucumbers in supermarkets and chain stores, as well as food service and restaurant trade buyers, generally demand reliable supplies of a high quality product. In response, the wholesale trade is demanding a supply of good quality greenhouse cucumbers with standardized characteristics as a condition of future sales.

Therefore, in order to maintain and expand the market for greenhouse cucumbers, authority should be provided to the committee to recommend regulations with respect to grade, size and quality requirements which will promote orderly marketing conditions as will be in the public interest. The testimony is that while there may be a market for some low quality greenhouse cucumbers, the presence of that product in the marketplace, except in certain designated outlets (e.g., farmers' markets and flea markets), generally contributes to disorderly marketing conditions because it lowers the price received for all greenhouse cucumbers and discourages increased consumer acceptance and purchase of the product. Moreover, prices received for those greenhouse cucumbers are substantially less than those received for the higher

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quality product. Thus, it is unlikely that most producers could sustain their businesses if a large portion of their returns were derived from the sale of low quality greenhouse cucumbers. Authorizing grade, size and quality regulations would tend to effectuate the declared policy of the Act and would be in the interest of both producers and consumers, as well as be in the public interest.

Exercise of the authority to regulate the quality of fresh market shipments and to establish uniform containers could assure the availability of good quality fruit, strengthen demand, and expand markets for greenhouse cucumbers. Growers would benefit from increased returns, and consumers would benefit by having additional supplies of acceptable quality product available in the marketplace.

In view of the foregoing, it is concluded that there is a need for a marketing order for greenhouse cucumbers grown in the United States, including the District of Columbia. The proposed order would meet the needs of the industry and would tend to effectuate the declared policy of the Act.

3. Specific Terms and Provisions of the Proposed Order

(a) Certain terms should be defined in the order for the purpose of designating specifically their applicability and limitations whenever they are used. The definition of terms discussed below is necessary to attain the objectives of the order and the Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

The term "production area" should be defined in the order to delineate the area in which greenhouse cucumbers must be grown before the handling thereof is subject to the provisions of the order. Such term should be defined to include all fifty States of the United States of America and the District of Columbia.

The record evidence indicates that greenhouse cucumbers are known to be currently commercially produced in at least 30 States. They can be grown in any part of the country since they are grown in greenhouses, which may be constructed anywhere. While there are some differences in production practices among the various geographical locations due to climate and other factors, greenhouse cucumbers grown in any given area cannot be readily distinguished from those grown in another area. The record indicates that greenhouse cucumbers from all areas compete in the same markets, and buyers do not make a distinction among greenhouse cucumbers based upon where they were grown. Moreover, greenhouse cucumbers from all locations are commingled on the retail shelf, and consumers do not buy greenhouse cucumbers from one region to the exclusion of those grown in another area. Thus, the marketing of greenhouse cucumbers from one area directly affects the marketing of greenhouse cucumbers grown in another area.

A primary objective of the proposed order is to establish standardized requirements to provide a uniform basis for trading greenhouse cucumbers. Establishing separate regional marketing orders applicable to different parts of the country would prevent attainment of this objective. Further, witnesses testified that any one region is insufficiently large to individually finance the types of research and promotion projects needed by the industry. For example, in California, the largest producing State, there are only about 30 greenhouse cucumber growers and production totals about one million 16-pound cartons. Witnesses indicated that this base is insufficient to support a marketing order program of the type needed. Production research, and market research and development projects contemplated under the proposed order would benefit all U.S. producers.

Accordingly, it is reasonable and necessary for all production to be covered by the proposed order. Further, the issuance of several marketing orders applicable to regional production areas would not effectively carry out the declared policy of the Act.

It is therefore concluded that the production area as defined in the order constitutes the smallest geographic area to which the order may be applied, consistent with carrying out the declared policy of the Act.

The term "cucumbers" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the order would be applicable. The record indicates that "cucumbers" should be defined to mean predominately gynoecious cultivars of Cucumis sativus L., commonly known as seedless European cucumbers, greenhouse cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, that are grown by producers in greenhouses in the production area. These greenhouse cucumbers are readily distinguishable from field-grown cucumbers, and the term has a specific meaning to all producers and handlers. The proposed order has been revised to specify that the cucumbers are to be grown by producers in greenhouses in the production area.

A definition of the term "varieties" should be included in the order to mean and include all classifications or subdivisions of greenhouse cucumbers. The definition would allow for authority for different regulations for different varieties of greenhouse cucumbers in the event such different regulations are deemed appropriate.

The term "producer" should be synonymous with "grower" and should be defined in the proposed order to identify those persons who are eligible to vote for, and serve as, producer members or alternates on the committee and to vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of greenhouse cucumbers for fresh market within the production area.

The record indicates that the term "producer" should not include persons who grow greenhouse cucumbers in an area of 2,500 square feet or less of climate-controlled, weather-protected growing area devoted to greenhouse cucumber production. Record evidence indicates that producers growing greenhouse cucumbers on such a small scale can be considered "hobbyists". Testimony indicates that the industry believes this level of production represents a fair distinction between commercial producers and "hobbyists", particularly since the average size of a commercial greenhouse cucumber operation is 17,000 to 20,000 square feet. The record indicates that "hobbyists" would not be eligible to vote for or serve as committee members or vote in referenda. Testimony was presented that their interests differ considerably from those of commercial growers. Most of those persons who grow greenhouse cucumbers on such a small scale typically do not sell their product in commercial markets. Rather, they grow greenhouse cucumbers primarily for their own personal consumption, and perhaps for their neighbors as well. As such, these greenhouse cucumbers would be exempt from the handling requirements that may be imposed under the order. The proposed definition of cucumbers has been revised accordingly to specify that the term cucumbers applies only to cucumbers grown by producers, as defined in the proposed order.

Each business unit (such as a corporation or partnership) should be considered a single producer and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of greenhouse cucumbers.

The term "handler" is synonymous with "shipper" and should be defined to identify the persons who would be subject to regulation under the proposed order. Such term should apply to any person, except a common or contract carrier transporting greenhouse cucumbers owned by another person, who performs any of the activities within the scope of the term "handle", as hereinafter defined. The definition identifies persons who would be responsible for meeting the requirements of the order, including paying assessments, complying with any grade, size, pack, quality, and inspection requirements, and submitting reports.

The record indicates that the greenhouse cucumber industry is unique in that many producers also handle their own production. These persons should also be considered handlers when performing handling activities as defined in the order.

Common or contract carriers transporting greenhouse cucumbers which are owned by another person should not be considered as handlers, even though they transport greenhouse cucumbers, because such carriers do not have control over the product being transported. Nor are they the persons who cause the introduction of such greenhouse cucumbers into the channels of commerce. The only interest of common or contract carriers in greenhouse cucumbers is to transport them for a service charge to destinations determined by others.

The term "handle" should be defined to identify those activities which would make a person a handler, and thereby subject to regulation under the marketing order. Except as exempted, such activities should include all phases of selling and transporting greenhouse cucumbers which place them in the channels of commerce. The handling of greenhouse cucumbers can begin with the movement of such cucumbers from the greenhouse where grown and continue until they reach their final destination. The performance of one or more activity such as selling, consigning, delivering or transporting by any person, either directly or through others, should constitute handling. "Handle" and "ship" are used synonymously and the definition should so indicate.

The record indicates that greenhouse cucumbers move to market in several ways. Most growers perform the initial activities which constitute preparing greenhouse cucumbers for market. Subsequent to harvest, these growers clean the fruit, wrap it, sort it by grade, size and other market factors, and pack it in containers. These activities should be included as handling functions, and the person who performs them should be considered a handler since that person would be responsible for the size and quality packed as well as the type of container in which the greenhouse cucumbers are placed.

Some growers sell their product directly to wholesalers or retailers, which is clearly an activity that should be included in the definition of handle. In other cases, a broker is paid a fee or commission to act as an agent in arranging for the sale of the greenhouse cucumbers. A person who retains a broker to act as that person's sales agent should be considered to be performing a handling function.

The record indicates that a number of growers utilize a marketing organization to arrange for the transportation and sale of their greenhouse cucumbers. Customarily, these growers deliver their product to a central facility operated by the marketing organization for assembly into full loads prior to sale and shipment. The delivery of packed fruit to such a location should be considered to be handling.

With the exception of the process specifically excluded from the term "handle", all activities performed after a greenhouse cucumber is harvested and until it is offered for sale at retail, should be included as a handling function.

The record indicates that a specific exception to the term "handle" should be the movement of greenhouse cucumbers from the greenhouse where grown to a handler facility in the production area for preparation for market. Testimony indicates that while most growers sort and pack their fruit, others deliver their greenhouse cucumbers in bulk to a handler facility for such preparation for market. In this case; the greenhouse cucumbers are not being transported to market for immediate consumption, nor are they in the appropriate form for commercial sale since they have not yet been sorted or packed. This exemption should be provided subject to such rules and regulations as the committee may prescribe, with the approval of the Secretary. The proposed order has been revised to reflect this proviso. The record indicates that since the production area includes the entire United States, for compliance purposes it may be necessary to prescribe the specific circumstances under which such movement must occur before it would be considered to be exempt from the term "handle".

The term "committee" should be defined to mean the administrative agency known as the Cucumber Administrative Committee established under the provisions of the marketing order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name of the committee each time a reference to it is made.

The term "fiscal period" should be synonymous with "fiscal year" and should be defined to mean the annual period for which the committee would plan the use of its funds. This period should be defined to mean the twelve month period beginning January 1 and ending December 31. Since cucumbers are shipped year-round and some handlers keep records on a calendar year basis, this period is reasonable. However, if necessary to improve the committee's management or for other reasons based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on December 31. Thus, authority should be included in the order to provide for the establishment of a different fiscal period if recommended by the committee and approved by the Secretary. It should be recognized that if at some future date there is a change in the fiscal period, such change would result in a transition period being more or less than 12 months. Additionally, the initial fiscal year should commence on the date the order becomes effective and should continue through the following December 31.

The term "district" should be defined as set forth in the order to provide a basis for the nomination and selection of committee members. The record indicates that the establishment of four districts would be appropriate and would assure adequate regional representation of producers on the committee. District 1 should be comprised of the western part of the

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country and should include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington. District 2 should be defined to include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. District 3 should encompass the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. District 4 should comprise the southeastern part of the country and should include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the District of Columbia. These districts are the same as those proposed in the Notice of Hearing, with one exception. The notice proposed including the District of Columbia in District 3. However, since the surrounding States of Virginia and Maryland are included in District 4, it would be more appropriate to include the District of Columbia in that district. Section 968.12 of the proposed order has been revised accordingly.

The record indicates that these four districts were established based on the most recent data available on the distribution of greenhouse cucumber acreage and greenhouse cucumber production throughout the United States. However, the order should authorize the reestablishment of these districts based on committee recommendation with the approval of the Secretary to reflect future shifts in greenhouse cucumber production and other relevant factors.

"Container" should be defined to mean any receptacle used in the packaging or handling of greenhouse cucumbers. It would include any box, bag, crate, lug, basket, carton, or any other package. A definition of this term is needed to serve as a basis for differentiation among the various receptacles in which greenhouse cucumbers are shipped to the fresh market which could be used in conjunction with the proposed authority to regulate containers.

The term "pack" should be defined to mean the specific arrangement, size, weight, count, or grade of greenhouse cucumbers in a particular type and size of container, or combination of the above. Typical examples of packs currently in use are 12-count, 14-count, 16-count and 18-count packs. Other packs include Small, Medium, Large and Extra Large. Packs are also identified by quality, such as U.S. No. 1, Fancy, Commercial or Salad grade. Often, packs of greenhouse cucumbers are identified by both size and quality (e.g., a 14-count pack of Fancy grade). It is essential that this term be defined in the proposed order so that appropriate regulations may be tailored to particular packs.

The terms "part" and "subpart" should be defined in the order. "Part" means the Order Regulating the Handling of Seedless European Cucumbers Grown in the United States and all rules, regulations, and supplementary orders issued thereunder. The Order shall be a "subpart" of such "part."

(b) In accordance with the Act, a committee should be established to administer the provisions of the order and to provide for effective and efficient operation of the order. The Cucumber Administrative Committee should therefore be established and consist of 11 members, including seven producer members, three handler members, and one public member. The record indicates that a committee composed of 11 members, with a like number of alternates, would provide adequate representation and would provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties.

The record indicates that it is appropriate that a majority of the committee members be producers. Seven of the 11 committee members should therefore be greenhouse cucumber producers. Since the program would be financed by handlers, and handlers would be responsible for complying with the terms of the marketing order, however, it would be reasonable to provide for handler representation on the committee as well. For this reason, proponents proposed that three of the 11 members on the committee be handlers.

The record indicates that producer membership should be allocated among the four established geographic districts to ensure adequate representation from all parts of the production area. Accordingly, two producer members should be selected from District 1, one producer member should be selected from District 2, two producer members should be selected from District 3, and two producer members should be selected from District 4.

Testimony reveals that the division of the production area into districts for the purpose of producer representation on the committee, and the number of producer members to be appointed from each district were given thorough consideration by proponents of the proposed order. In determining the number of producer representatives from each of the districts, consideration was given to the relative greenhouse cucumber production and acreage in each of the districts. Thus, the number of grower members from each district is related to that district's portion of the total greenhouse cucumber acreage in the production area. The record indicates that approximately 38 percent of the current greenhouse cucumber acreage is located in District 1, approximately seven percent in District 2, approximately 21 percent in District 3, and approximately 34 percent in District 4. Accordingly, of the seven producer members, two should represent District 1, one should represent District 2, two should represent District 3, and two should represent District 4.

Each person selected to serve as a producer member or alternate should be an individual who is a producer in the district that person is selected to represent, or an officer or employee of a corporate producer or other type of business unit engaged in producing greenhouse cucumbers in that district. Producer members and alternates should also be residents of the district they are elected to represent. Such persons would be expected to have a strong interest in the effects of committee decisions on greenhouse cucumber producers. As a resident of the district a member represents, such person would be familiar with the problems and concerns of producers in that district.

The record indicates that in order to provide for maximum participation, no single growing entity should be permitted to have more than one producer member seat on the committee. However, this restriction should not apply to alternate members. Therefore, a single grower should be able to have both a member and an alternate member seat on the committee. However, the suggestion in proponents, brief that both grower and handler alternates be required to be from the same organization as the respective members is not adopted because it would limit participation on the committee.

The record indicates that since handlers typically market greenhouse cucumbers on a national basis, there is no need to apportion handler membership among the districts. The three handler members should therefore be selected to represent the production area at large. However, no more than two handlers should be selected from any one district. This was supported by

testimony and proponents' brief. The proposed order has been revised accordingly. Additionally, a single handler entity should not be permitted to hold more than one handler member position (not including alternate positions) on the committee.

Each person selected to serve as a handler member or alternate should be an individual who is a handler, or an officer or employee of a corporate handler or other type of business unit, engaged in handling greenhouse cucumbers grown in the production area. Handler members would therefore be familiar with the supply and demand factors affecting the sale of greenhouse cucumbers and the effect of regulation upon such sales.

Record evidence supports public representation on the administrative committee. While the influence of consumers would be implicitly present in the deliberations of the producer and handler committee members and all committee meetings would be public, the appointment of a public member would offer many advantages. One would be the direct communication between industry members and the public member, who would have no connection with the industry and whose opinions on regulatory standards would represent the general public. Another would be to afford the industry an opportunity to discuss their problems and concerns with someone who would view these problems and concerns from outside the greenhouse cucumber industry.

The public representative and that person's alternate should not be permitted to have a direct financial interest in the production, processing, financing, buying, packing, or marketing of greenhouse cucumbers except as a consumer, nor be a director, officer, or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry. The provisions of the proposed order, as set forth in the Notice of Hearing, specified no qualifications for the public member. Section 968.20 of the proposed order has been revised to include such qualifications, reflecting the record evidence.

Each member of the committee, including the public member, should have an alternate. This would ensure that all segments of the industry and all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted. The order should provide that alternate members should meet the same qualifications for membership as their respective members. They would act in the place and stead of their respective members during temporary absences. Additionally, in the event of the death, removal, resignation or disqualification of a member, the alternate should serve as member until a new member is nominated and selected. Also, since an alternate may be more familiar with a particular issue before the committee than the alternate's respective member, the proposed order should provide that a member may designate that member's alternate to serve as member at such meeting notwithstanding the presence of the member.

If both the member and alternate for a particular committee position are absent from a meeting, the member, the alternate, or the committee, in that order, should be empowered to designate another alternate from the same group (i.e., producer or handler) and district (in the case of producer representatives) to act in the place of the absent member. Only the alternate public member should be able to serve in the absence of the public member, however. This procedure would further insure the proper and efficient operation of the committee.

With the exception of initial members, the term of office of committee members and their respective alternates should be for three years and should begin on January 1 and end on December 31, or for such other three-year period as the committee may recommend and the Secretary approve. The record indicates that a three-year term is appropriate because it would give members sufficient time to become familiar with committee operations and enable them to make meaningful contributions at committee meetings.

The effective date of the order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the terms of office of the initial members and alternates shall begin as soon as possible after the effective date of the order.

In the event that the initial members are selected prior to January 1, 1990, the initial one-year term would not end on December 31, 1989, but would continue until December 31, 1990. Similarly, the two-, and three-year terms would end on December 31, 1991, and 1992, respectively. If these members were selected after December 31, 1990, that remaining portion of the calendar year would not be considered the initial one-year terms and similarly for the first year of the two-year or three-year terms. For the purposes of applying the tenure requirements of the proposed order, each of these initial terms would be considered as a one-, two-, or three-year term even though the actual period of the appointment may be several months longer or shorter, as the case may be.

While it is important to provide a constant infusion of new members to the committee, it is equally important to provide continuity and experience. For these reasons the terms of office should be staggered, with about one-third of the membership to be nominated and selected each year. To begin this process, about one-third of the initial members shall serve one-year terms; about one-third of the initial members shall serve two-year terms; and about one-third of the initial members shall serve three-year terms. Thus, eight of the 11 initial committee members nominated would be appointed for shortened terms. Each subsequent year, about one-third of the positions on the committee would be filled.

The record indicates that it would be preferable to stagger the terms of the initial handler members so that one serves an initial term of one year, one serves an initial term of two years, and one serves an initial term of three years. It follows that of the producer members, two should serve one year terms, two should serve two year terms, and three should serve three year terms. The record further indicates that the term of office of the initial public member should be for two years. The proponents' brief supported this procedure, and the proposed order has been revised accordingly.

The record indicates that the initial terms of office of individual grower and handler members should be determined on a random basis. For example, it was suggested at the hearing that initial nominees draw lots to determine the length of their appointments. As later described, industry committee members would be nominated at meetings held throughout the U.S. Therefore, it would not be possible to draw lots to determine the initial terms at the time nominations are made. Nor would it be desirable to assemble nominees for the purpose of drawing lots prior to selection due to the expense that would be entailed. Therefore, the Secretary shall determine, on a random basis, which of the industry members would be appointed to serve initial terms of one, two and three years. Such a procedure would be practical and consistent with the record evidence.

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The record indicates that to provide a continual turnover in membership and infusion of new ideas, the order should provide that no member may serve more than two full consecutive terms on the committee. Any member serving on the committee for two full consecutive terms would not be eligible for renomination as a member for a period of one year. The record indicates that the limitation on tenure should not apply to alternate members. Alternates would be eligible for nomination as members or renomination as alternates at the end of their terms as alternates. It would therefore be possible for an alternate to serve as an alternate and then serve two full consecutive terms as a member of the committee before being ineligible for renomination as a member for one year. Such person would be eligible to serve in an alternate position, however. It appears reasonable that the period of ineligibility for retiring committee members be one year because the pool from which the committee membership is derived may be limited by the number of qualified producers and handlers willing to serve. Also, retiring committee members may provide a level of expertise and advisory talent that cannot be replaced over an extended period of time.

In applying the tenure requirements to initial committee members, the record indicates that the initial members serving a one-year term would be eligible to serve two additional terms. The initial members serving two- and three-year terms would be eligible to serve only one additional term.

Testimony and the proponents' brief supported revising section 968.22 of the proposed order to provide for procedures for nominations of initial Board members. However, the suggestion that nominations be made in meetings conducted by proponents is not adopted. The order should provide that the Secretary conduct meetings for the purpose of nominating initial industry committee members and has been revised accordingly. At least one meeting should be held in each of the four districts. All producers and handlers of record should receive notice of such meetings in sufficient time to enable them to attend. Nominations would be received and voted upon at these meetings. Those persons receiving the highest number of votes for each of the positions to be filled would be considered the nominee for that position.

The record indicates that the committee should be responsible for conducting subsequent nominations. The order should provide that such nominations may be conducted by mail or at district meetings. In the event it is deemed desirable to conduct mail nominations, the committee should recommend procedures to be followed, which would be subject to the Secretary's approval.

If nominations are conducted at meetings, at least one meeting should be held in each district. The precise number, dates and locations of such meetings should be determined by the committee so as to provide all producers and handlers with the greatest opportunity to participate in the process. The testimony indicates that the committee, because of its knowledge of the industry, would be in the best position to select the most advantageous times to conduct such nomination meetings.

Nominations should be supplied in such manner and form as the Secretary may prescribe not later than October 15 of each year, or such other date as may be specified by the Secretary. At least one nominee should be designated for each position which is to be filled the following January 1. Sufficient information about each nominee should be provided so the Secretary is able to determine if the nominees are qualified to serve in the positions for which nominated.

The proposed order should provide that only producers, including duly authorized officers or employees of producers, may participate in the nomination of producer committee members and their alternates, and only handlers, including duly authorized officers or employees of handlers, should participate in designating handler nominees. If nominations are conducted at meetings, only those qualified voters attending the meeting would be eligible to vote. In the case of producer member nominations, such persons should be producers in the district in which they so participate. If a person produces greenhouse cucumbers in more than one district, such person should elect the district in which such person wishes to participate in electing nominees for committee members and alternates. Likewise, a person who both produces and handles greenhouse cucumbers should choose whether to participate in nominations for producer or handler representatives. Each person would thereby be allowed to cast only one vote in the nomination process. This limitation, however, is construed to mean that one vote may be cast for each member and alternate member position which is to be filled in the district and classification that person has chosen to participate.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that the public member and alternate should be nominated by the producer and handler members on the committee at the first committee meeting following the selection of members for a new term of office. It is reasonable to require that the names of nominees for the initial public member and alternate be submitted to the Secretary as soon as possible after the first regular meeting of the initial producer and handler members of the committee.

The record indicates that a person nominated to serve on the committee should qualify by filing with the Secretary a written statement of that person's willingness to serve. This would prevent the appointment of any member not wanting to serve, and would preclude the need to conduct additional nominations. Testimony and proponents' brief recommended revision of section 968.23 to delete reference to the term "acceptance" as confusing. Section 968.23 of the proposed order has been revised accordingly, and in addition the reference to a 15-day period for filing the statement has been deleted to provide flexibility in the order provisions.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from other qualified persons. Each person selected would serve in such capacity and for such term of office as appointed, or until a successor has been selected. In the event nominations are not made within the time and in the manner specified in the order, the Secretary may select members and alternates without regard to nominations. Such selection should be on the basis of representation provided in the order so that the composition of the committee will at all times be consistent with the requirements specified in the order.

The order should provide a method for promptly filling any vacancies on the committee for unexpired terms of office. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The record indicates that successors may be nominated in the same manner as provided for nominating all other members and alternates (i.e., at district meetings or by mail ballot), or in such other methods as may be recommended by the committee and approved by the Secretary.

Committee members and alternates will necessarily incur some expense while on committee business.

Reasonable expenses, which may include travel, meals and lodging, should be reimbursed to members while attending committee meetings or performing other duties under the order. Therefore, the order should provide that members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses as are authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order. Since the committee should be authorized to request the attendance of alternate members at meetings, even though the members may be present, the order should also authorize the committee to pay their expenses.

The order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee shall be necessary to constitute a quorum and to pass any motion or approve any committee action. Accordingly, six of the eleven committee members must be present to constitute a quorum and enable the committee to conduct a meeting. Six affirmative votes would be required to pass any motion or approve any committee action. In testimony and proponents' brief, it was recommended that a quorum should be present at the beginning of a meeting, but a quorum should not be required to exist at the time of voting. This recommendation is denied because it would frustrate the underlying need for a provision requiring a quorum. In addition, the proponents' brief indicated that a suggestion was made at the hearing that a quorum vote should include at least one person from each district. The brief went on to state that such a change was unnecessary because the probability of dominance of any two districts was remote. Accordingly, no change to the proposed order concerning this matter is adopted.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. In addition, there may be situations in which committee action is necessary on minor issues that do not justify the expense of holding an assembled meeting. Therefore, the order should authorize committee members, and alternate members when acting as members, to vote by mail, telegraph, telephone or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person. When voting takes place at other than an assembled meeting, a reasonable effort should be made to contact each member or alternate. If a vote is conducted by mail, telegraph, telephone or other means of communication, seven concurring votes will be required for any committee action.

The committee should be given those specific powers which are set forth in section 608(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Cucumber Administrative Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating greenhouse cucumber marketing conditions, and to the general operation of the order including hiring staff and selecting officers. The duties listed are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the proposed order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties which the committee may need to perform which are incidental to, and not inconsistent with, these specified duties.

As is discussed further under material issue (3)(h), the committee should develop a specific procedure to enable it to ascertain whether handlers are in compliance with the provisions of the marketing order. Such a procedure could entail hiring an adequate number of fieldpersons to travel throughout the country to visit handler premises and audit handler records.

The record indicates that the committee should be required to consider the reestablishment of districts and the reapportionment of producer membership among the districts at least every five years. Redistricting authority is necessary in the proposed order to enable the committee and the Secretary to consider from time to time whether the basis for representation needs to be changed based on shifts in greenhouse cucumber production and acreage in the United States. As a result of such shifts, the number of producer members allocated to a given district may be disproportionate to the relative acreage or production in that district. Therefore, it is desirable to provide flexibility of operations so that if it would be in the best interests of the industry to reestablish districts or reapportion producer membership, the committee may so recommend and the Secretary may approve such action.

The record indicates that producer membership needs to be allocated on a geographic basis to provide adequate representation of growers throughout the country. While the committee is authorized to recommend changes in the district boundaries, authority should not be provided to reduce the number of districts initially established. For the same reason, each established district shall be entitled to at least one producer representative on the committee. The proposed order has been revised to reflect such provisos.

Any recommendation for changes in district boundaries or reallocation of producer membership should be made well in advance of the beginning of a new term of office. These changes should be made effective sufficiently in advance of the date on which new terms of office begin, so that producers and handlers may be informed of any redistricting or reapportionment of producer membership prior to nominations.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee as well as to finance production research and marketing research and development programs, and any other committee activities as the Secretary may determine to be appropriate. Necessary expenses would include, but would not be limited to, such items as employee salaries and benefits; establishment of at least one office and equipping such office; telephone and mail services; and business related transportation for the committee staff. Another expense would be the cost of reimbursing committee members and alternates for expenses incurred when they attend committee meetings. All such expenses may be incurred on an ongoing basis. The testimony indicated that in an effort to minimize expenses, the committee should investigate the possibility of contracting with another organization for management services to determine whether such an arrangement would be cost effective. This could include shared office space and equipment and the joint employment of staff. Entering such an arrangement would require a written agreement between the committee and

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the other organization, which would be subject to the Secretary's approval.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal year to provide for the Secretary's review and approval. Testimony and proponents' brief recommended that the reference in section 968.32 to "marketing year" be changed to "fiscal period" or "fiscal year" for consistency with section 968.11. Accordingly, the proposed order has been revised to make this change.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their share of such expenses based on the amount of product handled by each handler. Each budget submission should therefore include a recommendation to the Secretary of a rate of assessment designed to secure the income required to pay such expenses during the fiscal year.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve an assessment rate increase, and such increase would be applicable to all greenhouse cucumbers handled during the fiscal year to which that assessment rate applies.

No limitations on the annual budget of expenses or rate of assessment are specified in the proposed order, and the level of each would be based upon the committee's recommendation and the Secretary's approval. For illustrative purposes, however, witnesses at the hearing indicated that an initial budget of $320,000 would be reasonable. About 70 percent of the total expenses was earmarked for promotion and research activities. In this sample budget, only $50,000 was allocated for "Administration" (which presumably includes staff salaries and office rent) and $12,000 for travel. Given the national scope of this proposed program, it would appear that the actual expenses to operate this program could be well above the $320,000 discussed at the hearing. It would follow that the assessment rate of one cent per pound (based on estimated 1987–88 production of 38 million pounds) discussed at the hearing could be inadequate to finance this program.

The assessment rate would be approved by the Secretary, based on recommendation of the committee. The committee would not be able to expend funds or assess handlers until the Secretary approved the budgeted expenses and assessment rate for the fiscal year.

Although testimony generally supported levying assessments on a per cucumber basis, some questions were raised as to whether a per cucumber basis would be equitable, because greenhouse cucumbers vary considerably in size, generally ranging from 10 to 18 inches in length. One witness testified that a single container may be packed with a different number of greenhouse cucumbers dependent upon the size of the fruit. On a per cucumber basis, a case packed with 18 greenhouse cucumbers would be assessed 50 percent more than the same case packed with 12 larger greenhouse cucumbers, even though both cases may weigh about the same. Also, different sized containers could be packed with the same number of greenhouse cucumbers. For instance, 12 large greenhouse cucumbers could be packed in one container and 12 small greenhouse cucumbers could be packed in a smaller container. While the weight and volume of the two containers could vary, both would be assessed the same amount.

Although several witnesses indicated that another method of establishing any assessment rate might be preferable (i.e., on a per pound basis), proponents' brief indicated that the proponents strongly believed that assessments computed in any manner other than on a per count basis would lead to inequities. In addition, the brief noted that greenhouse cucumber containers are marked as to count but not as to weight.

Section 968.41 of the proposed order, as it appeared in the Notice of Hearing, provided that each handler's pro rata share of expenses shall be the fixed rate of assessment multiplied by the quantity of greenhouse cucumbers handled. Consistent with the testimony and proponents' brief, this quantity could be defined by count (i.e., the number of greenhouse cucumbers handled). The quantity handled could, however, also be defined in other terms (e.g., the weight of cucumbers handled). This section, as proposed, would provide flexibility to determine the most appropriate quantity basis upon which to levy assessments. Several minor revisions have been made in section 968.41 for clarity.

The order should provide for payment of assessments by first handlers of greenhouse cucumbers for maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative. For example, should a significant loss of a particular crop occur due to a plant virus, planned market support activities may be curtailed or cancelled. The committee should be able to continue levying assessments to pay other approved expenses incurred for other purposes.

If a handler does not pay an assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment or interest charge at a rate recommended by the committee and approved by the Secretary. These charges would represent normal, good business practice. This authority is intended to encourage prompt payments by handlers, and to compensate the committee for the loss of assessment funds when they are not paid on time.

The committee should be authorized to accept advanced payments of assessments so that it may pay expenses which may become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before sufficient assessment funds are received. Such advanced assessment payments should be based on the first handler's best estimates of future shipments, and should, for accounting purposes, be limited to the current fiscal year's shipments. The committee should also be authorized to borrow money on a short-term basis to meet administrative expenses that may be incurred before assessment income is sufficient to defray expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in committee reserve funds or in other committee accounts.

The committee should be authorized to receive voluntary contributions from persons other than those assessed under the order for the payment of production research or marketing research and development activities as described in § 968.50 of the proposed order. The record reflects that such contributions should be received by the committee free from any encumbrances by the donor. The expenditure of such funds should be under the complete control of the committee and subject to the provisions of the order. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest. The proposed order has been revised to reflect all such provisos.

With the approval of the Secretary, the committee should be authorized to carry over any excess assessment funds into the following fiscal year as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately one fiscal year's expenses. This limit on the amount in the reserve was supported by testimony, and the three-year limitation contained in section 968.43 as it appeared in the Notice of Hearing has been revised accordingly.

One purpose of the reserve fund would be for stability in the administration of the order during years of low production. Also, establishing a reserve should minimize the necessity of the committee borrowing money at the beginning of a fiscal year or raising an assessment rate during a season of less than anticipated production. Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

The record indicates that funds collected through assessments or any other provision of the order should be used only for the purposes set forth in the proposed order. The Secretary should at all times have the authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for which such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or becomes inoperative, the committee should appoint, with the approval of the Secretary, one or more trustees for holding records, funds, or other property of the committee.

(d) The marketing order should authorize the committee to establish and provide for the establishment of production research and marketing research and development activities designed to assist, improve or promote the efficient production, marketing, distribution and consumption of greenhouse cucumbers. Funding for such programs should come from any authorized receipts of the committee, including assessment income, voluntary contributions, and miscellaneous income such as interest. The committee should have the authority to initiate new projects as well as to contribute funds to research which may currently be taking place.

Witnesses testified that public funds for research are scarce and difficult to obtain. Proponents of the marketing order believe that the greenhouse cucumber industry therefore needs to finance production research, especially in the areas of proper chemical usage, disease control and pest management. Potential research topics include control of cucumber mosaic which seriously affects greenhouse cucumber production; powdery mildew which seriously affects plant growth and fruit quality; post-emergence damp-off which retards growth; and crooking, a serious physiological disorder which decreases yields and reduces quality. Further, proponents testified that there are no varieties available which are resistant to these diseases, and research under the marketing order could be undertaken to develop varieties specifically suited to growing conditions in the United States.

The record indicates that any patents, plant materials, copyrights or trademarks which are obtained as a result of research funded under the order should be the property of the U.S. Government as represented by the committee. The committee should be authorized, with the approval of the Secretary, to grant shared rights to the appropriate research institutions for any rents, royalties, residual payments, or income from the rental, sale, leasing, franchising, or other uses of such patents, plant materials, copyrights, inventions or publications. The terms of any research agreement between the committee and any research organization should specify the conditions applicable to the use and ownership of such patents, plant materials, copyrights, trademarks, inventions or publications. Such agreements would require the Secretary's approval.

Witnesses testified that currently there is little statistical information available on a regional or national basis regarding the production and sales of greenhouse cucumbers. The marketing research authority contained in the proposed order would enable the greenhouse cucumber industry to collect the types of data needed to identify and analyze current markets and find ways of expanding current markets and developing new ones.

The committee should be authorized to establish, or provide for the establishment of, marketing research and market promotion and development programs designed to assist, improve or promote the marketing, distribution and consumption of greenhouse cucumbers grown in the production area. Witnesses testified that one current marketing problem is the lack of consumer awareness of the unique characteristics and the uses of greenhouse cucumbers. The order would enable the establishment of an industry-wide program to acquaint wholesalers, retailers and consumers with the greenhouse cucumber and the proper way of handling the product.

The committee should have the authority to enter into contracts with trade or promotional firms or organizations to carry out such market research and promotion programs. Market development activities should focus on consumer education and improving the marketing and distribution of greenhouse cucumbers. The committee should distinguish between promotional programs which are allowed under the Act, and paid advertising, which is not authorized for cucumbers. No funds collected under the order could be used to finance paid advertising.

Market promotion programs for greenhouse cucumbers carried out with funds collected under the order must be generic in nature and should not use particular brand names, handler or producer names, or favor any particular region of the production area. In addition, promotional material may not make false or unwarranted claims about greenhouse cucumbers or include statements which disparage other agricultural commodities.

All research and promotion projects to be conducted under the order in a given fiscal period should be submitted to the Secretary for approval. No funds shall be expended for such projects until they are approved by the Secretary. This would ensure that all projects are appropriate, given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should have the responsibility for reporting at the conclusion of such production research and marketing research and promotion programs. It should also report, at least annually, on the progress of such programs. Such reports should be made

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available to growers and handlers and to the Secretary.

The record does not indicate the amount of assessment funds that would be allotted for production research and market development programs. The committee should have the responsibility to determine the amount of funds to be spent on each program each year. Such determination should be based on the needs of each program each year. The amount of funds to be spent on research and development programs would be included in the annual budget required to be submitted to the Secretary prior to each fiscal period for the Secretary's review and approval.

(e) The marketing order should authorize the regulation of the handling of greenhouse cucumbers by quality, size, pack or container, to establish and maintain orderly marketing conditions for greenhouse cucumbers.

In order to provide the Secretary with the information necessary to consider and appraise any recommendation for the establishment or continuation of any handling regulation, the committee should be required to prepare a marketing policy prior to each season. The policy should provide the committee's overall assessment of the upcoming season and should be submitted by the committee prior to or at the same time any recommendations are made relative to regulations for such season. It should include information relative to the type of regulations expected to be recommended during the marketing season. In developing its marketing policy, the committee should give consideration to factors which affect the production and marketing of greenhouse cucumbers, and the policy should provide a comprehensive evaluation of current and prospective supply and market conditions. Included in the marketing policy should be an appraisal of the expected volume of available supplies, including the anticipated quality and sizes of the forthcoming crop, since these factors would influence any committee recommendation for regulation. The committee should consider expected overall demand conditions for greenhouse cucumbers, including demand in different outlets, since different handling requirements may be appropriate for the various markets. The committee should evaluate current and prospective supplies of competing commodities such as field-grown cucumbers, imported supplies, and other vegetables. It would also be appropriate that the marketing policy discuss the trend and level of consumer income as they relate to demand for greenhouse cucumbers. Finally, the committee should include in its marketing policy any other factors which have a bearing on the marketing of greenhouse cucumbers.

The committee's marketing policy should be written in report form and include not only the committee's proposals for the marketing season and why it has arrived at such conclusions, but also appropriate statistical data and other facts which it considered in arriving at its recommendations. Such report should be as complete as possible so that the Secretary and the industry may know what considerations were involved in the preparation of the marketing policy. The committee's marketing policies should be submitted to the Secretary and made available to producers and handlers in the production area as a means of keeping them informed of committee considerations.

The committee, as a representative body of the industry, should be authorized to recommend such grade, size, quality, pack and container regulations as are authorized by the proposed order, and as would tend to effectuate the declared policy of the Act. In making its recommendations, the committee should give consideration to current information with respect to factors affecting the supply and demand for greenhouse cucumbers during the period or periods when it is proposed that regulations be made effective. With each such recommendation for regulation, the committee should submit to the Secretary the data and information on which such recommendation is predicated and such other information as the Secretary may request. At a minimum, such information should include a clear definition of the marketing problem(s) or condition(s) the committee's recommendation is intended to address; a discussion of the conditions that created or led up to that problem or condition; and an analysis of how the recommended action would serve to correct the existing problem or condition. Additionally, the committee should submit information as to whether there are viable alternative courses of action that could be taken to solve the problem or condition, and what the expected impacts and results of the chosen course of action would be, including an assessment of the probable impact of the recommendation on small businesses. Finally, the committee should recommend the specific period of time the recommended regulation should be effective and why that time period is appropriate, and an indication as to whether the action is controversial or would raise any special problems, including the committee's vote on the recommendation and a discussion of the reasons for any dissenting votes. Any recommendation for regulation should be made in sufficient time for the Secretary to implement such recommendation by means of informal rulemaking.

The marketing order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, maturity, pack and container regulations which are necessary for the improvement of marketing conditions for greenhouse cucumbers grown in the U.S. Such regulations could: (1) Limit the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of greenhouse cucumbers; (2) Establish, in terms of grades, sizes or both, minimum standards during any period when season average prices are expected to exceed the parity price level; and (3) Fix the size, capacity, weight, materials, dimensions, markings, or pack of the container or containers that may be used in handling greenhouse cucumbers.

The record indicates that the grade, size, and quality, of greenhouse cucumbers which are shipped at any particular time have a direct effect on returns to growers. Sales of poorer grades and less desirable sizes return lower prices than do the better grades and sizes. It was testified that second quality fruit sells at a significantly lower price than first quality, and in some years, prices for second quality product are less than the cost of production and packing, with no return to the grower. Further, the presence of low quality greenhouse cucumbers on the market decreases overall demand for the product, resulting in lower returns for even the better grades. A restriction under the marketing order of the shipment of greenhouse cucumbers of such low quality could result in higher returns for the better grades marketed by eliminating the price-depressing effect of poor quality.

The record indicates that there are many factors used to determine the relative quality of greenhouse cucumbers. One important factor is the shape of the fruit. Top quality greenhouse cucumbers are those that are straight, and fruit that is curved or otherwise misshapen is considered to be of lower quality. Shape is an important factor not only because the straighter greenhouse cucumbers result in a more uniform and appealing pack, but

because they can be wrapped more effectively. Although it is possible to shrink-wrap curved fruit, the wrapping generally does not seal properly, allowing air to enter the wrapping. This results in accelerated deterioration of the greenhouse cucumbers.

Other factors relating to quality include color, with uniformly dark green fruit considered the highest quality. In addition, better grade greenhouse cucumbers are those that are clean, firm, free from decay, cuts or mechanical injury, and free from injury by scars, freezing, disease, insects, or other means. Any or all of these factors, as well as others, could be used to prescribe minimum quality standards under the proposed order.

The record indicates that a minimum grade requirement could be established under the proposed order. Such a requirement could be in terms of one of the grades defined in the U.S. Standards for Grades of Cucumbers [7 CFR Part 51], (e.g., U.S. No. 1 or U.S. No. 2). A grade requirement could also be in terms of a modification or variation of a U.S. grade. For example, a regulation could specify that greenhouse cucumbers be at least U.S. No. 2 grade, but an additional tolerance for a specific defect could be allowed. Likewise, a grade regulation could vary the terms in the standards by prescribing, for example, a percentage of the grade that is required (e.g., 85% U.S. No. 1).

The record indicates that the percentage of top quality greenhouse cucumbers produced varies considerably among growers. One reason is that cultural practices directly affect the quality of production. For example, testimony indicates that crooked fruit can be detected very early in the growing phase. If misshapen fruit is pruned when first observed, the energy of the greenhouse cucumber plant then goes into producing additional fruit, increasing the percentage of straight cucumbers. Likewise, a grower's pest management practices can affect the quality of that grower's output. The record indicates that the establishment of quality regulations under the order could result in improved cultural practices among greenhouse cucumber growers. Further, the research authority under the proposed order could be used to determine the production practices that optimize fruit quality.

The record indicates that authority should be included in the proposed order for different regulations for different varieties of greenhouse cucumbers. While those varieties currently being grown have generally similar characteristics, there may be varieties produced in the future for which different standards may be appropriate. For example, one witness indicated that testing is being conducted on a new variety which looks promising, but which tends to be shorter in length than currently available greenhouse cucumbers.

The record evidence supports providing the authority to establish pack requirements for greenhouse cucumbers. As discussed earlier, greenhouse cucumber shippers tend not to grade their product in accordance with the U.S. Standards, but use undefined terms (such as "Commercial") to designate quality. Further, some packers do not sort their supplies by quality and size, and pack fruit of varying sizes and quality in a single container. The record indicates that the authority for pack requirements could be used to define the packs which may be used in shipping greenhouse cucumbers. Such requirements could, for example, specify that greenhouse cucumbers be packed in accordance with the U.S. Standards and that each grade be packed separately. Likewise, the committee could recommend that packed fruit be uniform in size, by establishing maximum and minimum sizes or setting an acceptable variance. An example of a pack requirement exists in the U.S. Standards for Greenhouse Cucumbers. The standard pack requirements specified therein state that each piece of fruit be wrapped; that the fruit be packed fairly tight in layers; and that the cucumbers in any given container vary by not more than two inches in length. The testimony was that such uniform packing standards could reduce buyer confusion and contribute to more orderly marketing conditions and higher demand for greenhouse cucumbers.

The record indicates that the committee should be authorized to recommend, and the Secretary establish, such minimum standards of grade and size during any period when greenhouse cucumber prices are above parity as will be in the public interest. Some fruit is of such low quality that it does not give consumer satisfaction. Because of the large amount of waste, consumers may not receive proper value for their expenditures, and it therefore would not be in the public interest to permit shipments of such low quality. The shipment of substandard product also tends to disrupt general market conditions for greenhouse cucumbers and the discounted prices received adversely affect grower returns. The order should therefore authorize the establishment or maintenance of minimum standards of grade and size in above-parity situations.

The marketing order should also authorize the Secretary to fix the size, capacity, weight, materials, dimensions, markings or pack of the container or containers that may be used in the handling of greenhouse cucumbers. Such requirements would tend to promote orderly marketing conditions by standardizing the containers used by greenhouse cucumber shippers. This authority could be used to reduce the number of containers currently in use, to establish specific weight requirements, or to require that, for example, each container be marked with the count and grade of its contents.

The order should provide for the modification, suspension, or termination of any regulation whenever such action would tend to advance the objectives of the Act and the order. The order should authorize such action based upon recommendation of the committee, or other information available to the Secretary. This authority would provide flexibility for times when, due to changes in circumstances, a given regulation is no longer appropriate for prevailing market conditions, and thus, should be modified, suspended, or terminated, as applicable.

The record evidence indicates that the handling of greenhouse cucumbers for certain uses should be exempt from any handling requirements imposed under the order, including payment of assessments, quality regulations, and inspection and certification requirements. The record indicates that shipments of greenhouse cucumbers for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products do not materially affect the marketing of greenhouse cucumbers in commercial fresh market channels. Thus, such shipments should be exempt from most handling requirements.

Similarly, exemptions from regulations or modifications of those regulations should be authorized for the handling of greenhouse cucumbers to designated markets. Such authority could provide a vehicle for developing markets that are not now available to the industry and to recognize other situations in which regulation may be unnecessary. Thus, the committee should have the flexibility to recommend exemptions for shipments to certain markets (e.g., farmers markets) from any or all regulatory requirements. The record indicates, for example, that foodservice operators may accept lower quality fruit than do other buyers. If such is deemed to be true, such shipments could be subject to lower

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minimum quality standards or exempt from such standards altogether.

To prevent possible abuse of the exemption provisions, the committee should have the authority, upon approval by the Secretary, to prescribe appropriate rules, regulations, and safeguards to prevent greenhouse cucumbers handled under an exemption from entering fresh commercial channels or from being used for some purpose other than the specific purpose authorized.

(f) The record evidence is that inspection and certification of greenhouse cucumbers shipments are necessary, and are the most practicable way to assure that the handling of greenhouse cucumbers complies with the regulations that may be issued pursuant to the order. The Federal-State Inspection Service has inspectors throughout the United States. At the hearing, a representative of that agency indicated that it would be able to provide any necessary mandatory inspection and certification which may be required for greenhouse cucumbers. Thus, any inspections required under the marketing order should be conducted by the Inspection Service in accordance with its accepted procedures, including those relating to positive lot identification, if required.

Promptly after inspection and certification, each handler would submit, or cause to be submitted, to the committee a copy of the inspection certificate issued with respect to such greenhouse cucumbers. The certificate would verify that the greenhouse cucumbers meet the order requirements. The testimony is that it would be the handler's responsibility to see that the certificate is submitted to the committee. However, the handler may arrange with the Inspection Service for it to send in the certificates on behalf of the handler.

The record indicates that the proper time for the required inspection under the proposed order would be just prior to shipment when a true appraisal of a lot can be made. Since greenhouse cucumbers are highly perishable and deteriorate over time, the order should authorize establishment of a maximum time for which an inspection certificate is valid. Such authority could be used as necessary to require that greenhouse cucumbers be inspected within a specified time prior to the time it moves into the channels of commerce. It follows that if the greenhouse cucumbers are not shipped within such time, they would be subject to reinspection. The committee should submit to the Secretary for approval any recommendation concerning the length of time the certificate is valid.

Responsibility for obtaining inspection would generally fall on the person who first handles greenhouse cucumbers since that handler is usually responsible for the grade, size, quality and pack of the greenhouse cucumbers being shipped. However, there may be instances when it could be determined that inspection would not be practicable. Subject to approval of the Secretary, the committee could prescribe rules and regulations governing the issuance of waivers of inspection. Moreover, any such waiver would not relieve the handler from complying fully with any other order requirements.

The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service to collect from handlers the costs of inspection which would then be paid by the committee to the Inspection Service. The record indicates that such an arrangement could serve to reduce overall inspection costs, to the benefit of greenhouse cucumber producers and handlers.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. The record indicates that in the normal course of business, greenhouse cucumber handlers collect and record information that may be needed by the committee. Handler witnesses expressed the belief that the reporting requirements that may be imposed under the order would not constitute an undue burden on their businesses.

Reports could be needed by the committee for such purposes as: collecting assessments; compiling statistical data for use in evaluating market development projects; making recommendations for production research; and determining whether handlers are complying with order requirements. The record evidence indicates that to the extent necessary for the committee to perform its functions, handlers would likely be required to provide information on the quantity of greenhouse cucumbers handled each year. This information could include such items as the quantities of greenhouse cucumbers received and disposed of by the handler, the date of each such receipt and disposition, and the destination of such shipments. This should not be construed as a complete list of information the committee might require, nor should it be assumed that all of the above will necessarily be required of handlers. There may be other reports or kinds of information which the committee may find necessary for the proper conduct of its operations under the proposed order. Therefore, the committee should have the authority, with the Secretary's approval, to require each handler to furnish such information as it finds necessary to perform its duties under the proposed order.

Each handler should be required to maintain such records of greenhouse cucumbers received and disposed of as may be necessary to verify the reports that the handlers submit to the committee. All such records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

The order should provide that the Secretary and the committee, through authorized employees, shall have access to handlers' premises to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the order. The proposed order has been revised to specifically refer to the Secretary.

All reports and records submitted for committee use by handlers would be required to be kept confidential and the contents disclosed to no one other than persons authorized by the Secretary, except as required by law. However, the committee should be authorized to release composite information compiled from many or all reports. Such composite information could be helpful to the committee and to the industry in planning operations under the order or in promoting the industry as a whole. Any release of such information should not disclose the identity of the person furnishing the information or such person's individual operation.

(h) No handler should be permitted to handle greenhouse cucumbers, except in conformance with the provisions of the marketing order. The record indicates that if the program is to operate effectively, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to other handlers who are in compliance with the order and could impair the effective operation of the program.

Proponent witnesses indicated that this program would be self-policing because handlers throughout the country are familiar with each others' operations. However, leaving the function of ensuring compliance to individual handlers would not be practicable especially in view of the size

of the production area and the scattered locations of handlers. Accordingly, it is unlikely that compliance could be assured by the self-policing method espoused by proponents. Additionally, some handlers ship directly to the end-user (i.e., the retailer), bypassing the terminal markets where violations are often easily detected.

Based on the record evidence, the proposed order provides as one of the committee's duties that it should investigate compliance with the provisions of the order. The committee should develop a plan to determine compliance with any regulation issued under the order, which could include provision for an adequate committee field staff to oversee compliance of this program. The functions of this staff could entail travelling throughout the country to audit handlers' books. It is necessary that the committee maintain an adequate staff to carry out a responsible and credible compliance effort.

(i) The provisions of sections 968.82 through 968.99 of the order, as contained in the Notice of Hearing and hereinafter set forth, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act, and are necessary to effectuate the other provisions of the marketing order and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading, are as follows: § 968.82 Right of the Secretary; § 968.83 Termination; § 968.84 Proceeding after termination; § 968.85 Effect of termination or amendment; § 968.86 Duration of immunities; § 968.87 Agents; § 968.88 Derogation; § 968.89 Personal liability; § 968.90 Separability; and § 968.91 Amendments. Those provisions applicable to the marketing agreement only are: § 968.97 Counterparts; § 968.98 Additional parties; and § 968.99 Order with marketing agreement.

The Secretary is charged with oversight of the proposed order, and must ensure that such administration effectuates the declared policy and provisions of the Act. The order should therefore contain a provision that states that the Secretary shall have the continuing right to disapprove any committee action.

The order should provide that the Secretary shall terminate the marketing order when termination is favored by a majority of producers who, during a representative period as determined by the Secretary, produced more than 50 percent of the volume of greenhouse cucumbers which were produced within the production area.

The order should also provide that the Secretary conduct a continuance referendum among greenhouse cucumber producers within five years after the effective date of the marketing order. Subsequent continuance referenda should be scheduled every five years thereafter. Such referenda would provide an effective means of ascertaining whether producers favor continuance of the program. Continuance referenda would ensure that the marketing order is operated in a manner that is acceptable to growers and would allow producers the opportunity to evaluate the program periodically. Testimony and proponents' brief recommended that section 968.83 be revised to provide for the same voting requirements for termination and continuance referenda. With regard to termination, the voting percentages are the same as those provided for termination in the Act. However, since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, authority for continuance referenda should be included. Continuance should be based upon the affirmative vote of two-thirds of the producers voting or producers of two-thirds of the volume of greenhouse cucumbers represented in the referendum.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda requirements are based on the same standard of industry support. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of greenhouse cucumbers represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum, but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means. Accordingly, this recommendation is denied. However, a change to § 968.83(c)(1) is made to more closely reflect the language in the Act.

Committee members and employees should not be held personally responsible for honest mistakes or errors of judgement that were unintentionally committed during the time of their service on the committee. However, committee members, alternates or employees should be accountable for intentional acts of willful misconduct. The record shows that the committee should report any known, intentional acts of willful misconduct of committee members or employees to the Secretary for appropriate action.

Miscellaneous changes have been made in the proposed provisions of the marketing order for clarity and to make them consistent with the evidence of record.

Ruling on briefs of interested parties

At the conclusion of the hearing the Administrative Law Judge fixed November 1, 1988, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. One brief was filed by George H. Soares on behalf of the proponent group. In summary, the brief reaffirmed the testimony presented at the hearing in support of the proposed marketing order and recommended several amendments to the proposed marketing order.

Each point included in the brief was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions set forth in this recommended decision. To the extent that any suggested findings or conclusions contained in the brief are inconsistent with the findings and conclusions of this recommended decision, the request to make such findings or to reach such conclusions are denied.

General Findings

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of seedless European cucumbers grown in

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the United States. Upon the basis of the record of the hearing, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The said marketing agreement and order regulate the handling of greenhouse cucumbers grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of greenhouse cucumbers produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of greenhouse cucumbers grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 968

Cucumbers, Marketing agreements and orders, United States.

Recommended Marketing Agreement and Order

The following marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out.

It is proposed that Title 7, Chapter IX be amended by adding Part 968 to read as follows:

PART 968—SEEDLESS EUROPEAN CUCUMBERS GROWN IN THE UNITED STATES

Definitions

Sec.
968.1 Secretary.
968.2 Act.
968.3 Person.
968.4 Production area.
968.5 Cucumbers.
968.6 Varieties.
968.7 Producer.
968.8 Handler.
968.9 Handle.
968.10 Committee.
968.11 Fiscal period.
968.12 District.
968.13 Container.
968.14 Pack.
968.15 Part and subpart.

Administrative Body

968.20 Establishment and membership.
968.21 Term of office.
968.22 Nomination.
968.23 Qualifications.
968.24 Selection.
968.25 Failure to nominate.
968.26 Alternate members.
968.27 Vacancies.
968.28 Powers.
968.29 Duties.
968.30 Procedure.
968.31 Expenses and compensation.
968.32 Annual report.

Expenses and Assessments

968.40 Expenses.
968.41 Assessments.
968.42 Delinquent assessments.
968.43 Accounting.

Research and Development

968.50 Research and promotion.
968.51 Patents, copyrights, inventions, trademarks, and publications.

Regulation

968.60 Marketing policy.
968.61 Recommendations for regulation.
968.62 Issuance of regulations.
968.63 Modification, suspension, or termination of regulations.
968.64 Special purpose shipments.
968.65 Inspection and certification.
968.66 Minimum quantities.

Reports and Recordkeeping

968.70 Reports and records.

Compliance

968.80 Compliance.

Miscellaneous Provisions

968.82 Right of the Secretary.
968.83 Termination.
968.84 Proceedings after termination.
968.85 Effect of termination or amendment.
968.86 Duration of immunities.
968.87 Agents.
968.88 Derogation.
968.89 Personal liability.
968.90 Separability.
968.91 Amendments.

Marketing Agreement

968.97 Counterparts.
968.98 Additional parties.
968.99 Order with marketing agreement.

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

Definitions

§ 968.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom has been delegated, or to whom may hereinafter be delegated, the authority to act for the Secretary.

§ 968.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 968.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 968.4 Production area.

"Production area" means the fifty States of the United States of America and the District of Columbia.

§ 968.5 Cucumbers.

"Cucumbers" means predominately gynoecious cultivars of *Cucumis sativus L.*, commonly known as seedless European cucumbers, greenhouse cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, grown by producers in greenhouses in the production area.

§ 968.6 Varieties.

"Varieties" means and includes all classifications of cucumbers according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 968.7 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of cucumbers grown in a greenhouse exceeding 2500 square feet of climate-controlled, weather-protected growing area devoted to cucumber production.

§ 968.8 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting cucumbers owned by another person) who handles cucumbers, or causes cucumbers to be handled.

§ 968.9 Handle.

"Handle" is synonymous with "ship" and means to sell, consign, deliver, or transport cucumbers, or to cause cucumbers to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That under such rules and regulations as the committee, with the approval of the Secretary may prescribe, that the term handle shall not include the transportation within the production area of cucumbers from the greenhouse where grown to a handling facility for preparation for market.

§ 968.10 Committee.

"Committee" means the Cucumber Administrative Committee established pursuant to § 968.20.

§ 968.11 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and means the 12-month period beginning on January 1 and ending December 31, or such other period as the committee, with the approval of the Secretary, may prescribe: *Provided*, That the initial fiscal period shall begin on the effective date of this subpart.

§ 968.12 District.

"District" means each of the geographic divisions of the production area initially established pursuant to this section, or as reestablished pursuant to § 968.29(n).

(a) District 1 shall include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington.

(b) District 2 shall include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

(c) District 3 shall include the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin.

(d) District 4 shall include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia.

§ 968.13 Container.

"Container" means any type of receptacle used in the packaging or handling of cucumbers.

§ 968.14 Pack.

"Pack" means the specific arrangement, size, weight, count, grade, or any combination of these, of cucumbers in any type of container.

§ 968.15 Part and subpart.

"Part" means the Order Regulating the Handling of Seedless European Cucumbers Grown in the United States and all rules, regulations, and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Seedless European Cucumbers Grown in the United States shall be a "subpart" of such "part."

Administrative Body

§ 968.20 Establishment and membership.

(a) The Cucumber Administrative Committee is hereby established, consisting of eleven members, to administer the terms and provisions of this part. Seven of the members shall be producers, or officers or employees of producers; three of the members shall be handlers, or officers or employees of handlers; and one shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate.

(b) Two producer members shall be from District 1; one producer member shall be from District 2; two producer members shall be from District 3; and two producer members shall be from District 4. Handler members shall be selected from the production area at large: *Provided*, That no more than two handlers shall be selected from any one district.

(c) No producer or handler shall have more than one member on the committee.

(d) The public member shall be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of cucumbers, except as a consumer, nor be a director, officer or employee of any firm so engaged.

§ 968.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December, three years hence, or for such other three-year period as the committee may recommend and the Secretary approve: *Provided*, That the members of the initial committee shall begin their term of office upon appointment by the Secretary and that if the initial committee is appointed after the beginning of a fiscal year, that portion of the fiscal year shall not be counted in calculating terms of office. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their successors are selected.

(b) The terms of office shall be staggered so that approximately one-third of the total committee membership shall terminate each year. Two producer members and one handler member shall serve an initial term of one year; two producer members, one handler member and the public member shall serve initial terms of two years; and three producer members and one handler member shall serve initial terms of three years.

(c) The consecutive terms of office of members shall be limited to two terms, except for those three initial members who serve for one year shall be eligible for renomination for two full terms at the end of their initial one-year term. Any member serving on the committee for two full consecutive terms shall not be eligible for renomination to the committee for a period of one year. Alternate members shall be eligible for renomination at the end of their respective terms.

§ 968.22 Nomination.

(a) *Initial Members.* Nominations for the initial producer and handler members shall be conducted by the Secretary. Nominations for producer and handler members and alternates shall be conducted at a meeting or meetings of producers and handlers in each district. A nomination for the public member, together with a nomination for the alternate public member, shall be made by the initial producer and handler members of the committee as soon as possible after their selection.

(b) *Successor Members.* The committee shall hold or cause to be held a meeting or meetings of producers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee: *Provided*, That the committee may conduct nominations of producers and handlers by mail in a manner recommended by the committee and approved by the Secretary. One nominee shall be submitted for each member position on the committee and one nominee for each alternate member position. Such nominations shall be submitted to the Secretary by the committee not later than October 15 of each year, or such other date as may be specified by the Secretary. The committee may prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nominations.

(c) Only producers may participate in the nomination of producer members and their alternates. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district in which such producer produces cucumbers. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(d) Only handlers, including a duly authorized officer or employee of handlers, may participate in the nomination and election of nominees for

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handler members and their alternates. Each handler shall be entitled to cast only one vote for each handler nominee.

(e) Any person who is engaged in both producing and handling cucumbers shall elect the classification in which to participate in designating nominees.

(f) The committee members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office.

§ 968.23 Qualifications.

Any person nominated to serve on the committee shall, prior to selection as a member or alternate member of the committee, qualify by filing with the Secretary a written statement indicating that person's willingness to serve.

§ 968.24 Selection.

From the nominations made pursuant to § 968.22 of this subpart, or from other qualified persons, the Secretary shall select committee members and alternates on the basis of representation provided for in § 968.20 or as modified pursuant to § 968.29.

§ 968.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 968.22 of this subpart, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 968.20 of this subpart or as modified pursuant to § 968.29.

§ 968.26 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate in the member's absence, or when designated to do so by such member. In the event both a member and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order may designate another alternate from the same district and the same group (handler or producer) to act in the place of such member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor for the member's unexpired term is selected. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 968.27 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to fill the unexpired term of such member or alternate member of the committee shall be nominated in the manner specified in § 968.22 or by such other method as may be recommended by the committee and approved by the Secretary.

§ 968.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this subpart.

§ 968.29 Duties.

The committee shall have, among others, the following duties:

(a) To select, from among its membership, such officers as may be necessary, and to define the duties of such officers, and to adopt such rules or by-laws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees and agents, as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To appoint such subcommittees as it may deem necessary;

(d) To submit to the Secretary, at least 90 days prior to the beginning of each new fiscal period, or such other date as may be specified by the Secretary, a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year, or at such times as the Secretary may request; to submit copies of each audit report to the Secretary; and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers.

(h) To act as intermediary between the Secretary and any producer or handler;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cucumbers;

(j) To investigate compliance with the provisions of this part;

(k) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken;

(l) To submit to the Secretary such available information as may be requested or that the committee may deem desirable and pertinent;

(m) To provide to the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members; and

(n) At least once every five years, to review the geographic distribution of cucumber acreage and production in the production area and, if warranted, recommend to the Secretary the reapportionment of producer members among the districts, or the reestablishment of districts within the production area: *Provided,* That the number of districts shall not be less than four and that each district shall be entitled to at least one producer representative on the committee. Any such changes would require the Secretary's approval.

§ 968.30 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and six members of the committee shall constitute a quorum. Decisions of the committee shall require the concurring vote of at least six members.

(b) The committee may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes shall be required for approval of a committee action by such method.

§ 968.31 Expenses and compensation.

Members of the committee and alternates, when serving as members, shall serve without compensation but shall receive reimbursement for necessary expenses incurred by them in attending committee meetings and in performing their duties, as may be approved by the committee. The committee may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members, and may pay the expenses of such alternates.

§ 968.32 Annual report.

The committee shall, as soon as is practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each producer and handler who requests a copy of the report.

Expenses and Assessments

§ 968.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 968.41, and from such other funds which may accrue to the committee as authorized in this subpart.

§ 968.41 Assessments.

(a) *Requirements for Payment.* Each person who first handles cucumbers shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary multiplied by the quantity of cucumbers which the handler handled as the first handler thereof. The payment of assessments for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Rate of Assessment.* Assessments may be levied upon handlers at rates established by the Secretary upon the basis of the committee's recommendation or other available information. At any time during or after a given fiscal year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all cucumbers which were handled during the applicable fiscal year.

(c) *Advance Assessments and Authority to Borrow.* In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the fiscal year.

§ 968.42 Delinquent assessments.

The committee may impose a late payment or interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 968.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each handler entitled to a proportionate refund of any excess assessments shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands repayment thereof, in which event it shall be paid to the handler: *Provided,* That any sum paid by a handler in excess of that handler's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

(2) The committee, with the approval of the Secretary, may carry over such excess funds into subsequent fiscal periods as an operating monetary reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's operational expenses. Funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to this subpart.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to any provision of this subpart shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee, its members, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible.

(c) Whenever any person ceases to be a member or alternate member of the committee, such person shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in such member's possession, to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of its members, or any other person, to act as a trustee for holding records, funds or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

Research and Development

§ 968.50 Research and promotion.

(a) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of cucumbers. In a similar manner any such project may be modified, suspended, or terminated. The expenses of such projects shall be paid from funds collected pursuant to § 968.41 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: *Provided,* That

(1) Such contributions shall be free from any encumbrances by the donors;

(2) The committee shall retain complete control over their use; and

(3) The committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions could constitute a conflict of interest.

(b) In recommending marketing research and development projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of cucumbers in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The need for marketing research with respect to any market development activity; and

(4) The anticipated benefits from such projects in relation to their costs.

(c) If the committee should conclude that a program of production or marketing research or market

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development should be undertaken or continued in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 968.41 or from voluntary contributions;

(2) Its recommendations as to any production or marketing research projects;

(3) Its recommendations as to market development activity; and

(4) Any other information requested by the Secretary.

(d) Upon conclusion of each project, and at least annually, the committee shall report the results of the projects to the Secretary, producers and handlers.

§ 968.51 Patents, copyrights, inventions, trademarks, and publications.

(a) Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee.

(b) Funds generated by such patents, plant materials, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the committee.

(c) Upon termination of this subpart, the committee shall transfer custody of all patents, plant materials, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided in § 968.84 of this subpart.

Regulation

§ 968.60 Marketing policy.

Each fiscal period prior to or simultaneous with making any recommendations pursuant to § 968.61, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of cucumbers within the production area;

(b) The expected general quality and size of cucumbers in the production area and in other areas;

(c) The expected demand conditions for cucumbers in different market outlets;

(d) The expected shipments of cucumbers produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cucumbers; and

(h) The type of regulations expected to be recommended during the fiscal period.

§ 968.61 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of cucumbers in the manner provided in §§ 968.62, 968.63 or 968.64 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information including but not limited to the factors affecting the supply and demand for cucumbers during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request, including the following:

(1) A clear definition of the problem;

(2) The conditions that led to the problem;

(3) How the recommendation will address or correct the problem;

(4) Whether there are viable alternatives to address the problem;

(5) What the expected results of the regulation would be; and

(6) An assessment of impact on small business.

§ 968.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cucumbers whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the Act. Such regulations may:

(1) Limit, during any period or periods, the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cucumbers grown in the production area.

(2) Limit the handling of cucumbers by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(3) Fix the size, capacity, weight, materials, dimensions, markings, or pack of the container, or containers, or coverings which may be used in the packaging or handling of cucumbers.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 968.63 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 968.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cucumbers in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

§ 968.64 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of § 968.41, § 968.62, § 968.63, and § 968.65, and the regulations issued thereunder, handle cucumbers:

(1) For consumption by charitable institutions;

(2) For distribution by relief agencies; or

(3) For commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may modify or relieve from any or all requirements, under or established pursuant to § 968.41, § 968.62, § 968.63, or § 968.65, the handling of cucumbers:

(1) To designated market areas;

(2) For such specified purposes as, but not limited to:

(i) Sales or deliveries of cucumbers by a producer to a handler within any area.

(ii) Sales by the producer to the final consumer and not for resale;

(iii) Sales by the producer to food service establishments;

(iv) Packaging cucumbers for others;

(v) Receipts, sales, or shipments of cucumbers already handled by another person; and

(vi) Shipments for research and development projects, as may be designated by the committee, with the approval of the Secretary; or,

(3) In such minimum quantities as may be prescribed.

(c) The committee may, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent cucumbers handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules and regulations may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cucumbers pursuant to this section, and that such applications be accompanied by a certification by the purchaser or receiver that the cucumbers were not used for any purpose not authorized by this section.

§ 968.65 Inspection and certification.

(a) Whenever the handling of any variety of cucumbers is regulated pursuant to § 968.62 or § 968.63 no handler shall handle cucumbers unless cucumbers are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements under §§ 968.64, 968.65 or 968.66.

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When cucumbers are inspected pursuant to the requirements of this section, each handler shall promptly submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cucumbers.

(e) The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not practicable: *Provided*, That all shipments made under such waiver shall comply with all other regulations in effect.

(f) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

§ 968.66 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which handling will be free from regulations issued or effective pursuant to § 968.41, § 968.62, § 968.64, § 968.65, or any combination thereof.

Reports and Recordkeeping

§ 968.70 Reports and records.

(a) Each handler shall furnish to the committee, at such times and for periods as the committee may designate, with the approval of the Secretary, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of cucumbers as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the cucumbers;

(6) The destination; and

(7) Identification of the inspection certificate or waiver pursuant to which the cucumbers were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the cucumber received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

(e) For the purpose of checking and verifying reports filed by handlers' the Secretary and the committee, through duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any cucumbers held by such handler, and any and all records of the handler with respect to the handler's acquisition, sales, uses and shipments of cucumbers. Each handler shall furnish all labor and equipment necessary to make such inspections.

Compliance

§ 968.80 Compliance.

No person shall handle cucumbers except in conformity with the provisions of this part.

Miscellaneous Provisions

§ 968.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any employees or agents thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 968.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c)(1) The Secretary shall terminate, in accordance with Section 8(c)(16)B of the Act, the provisions of this order at the end of any fiscal period in which the Secretary has found by referendum or otherwise that such termination is favored by a majority of the producers, who during a representative period as

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determined by the Secretary, have been engaged in the production of cucumbers for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such cucumbers produced for market, and that such termination shall be effective only if announced on or before the end of the then current fiscal period.

(2) The Secretary shall conduct a continuance referendum every fifth fiscal period with the first such referendum to be conducted within five years from the effective date of this subpart, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of cucumbers in the production area. Such termination of the order shall be effective only if announced on or before the end of the then current fiscal period.

(d) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 968.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee members shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary.

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 968.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or

(b) Release or extinguish any violation of this part or of any regulation issued under this part, or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 968.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 968.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 968.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or the United States

(a) To exercise any powers granted by the act or otherwise, or

(b) In accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 968.89 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 968.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 968.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

§ 968.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 968.98 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 968.99 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of cucumbers in the same manner as is provided for in the agreement.

Dated: September 29, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-23737 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1948

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration is proposing to amend the regulations for the Intermediary Relending Program (IRP). This action is needed to correct miscellaneous minor problems that have been observed during initial implementation of the program. The intended effect is to help to distribute limited funds among applicants in a more equitable manner and allow loan processing to proceed more smoothly.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475-3819.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program will be listed in the Catalog of Federal Domestic Assistance under number 10.439. It is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

The Intermediary Relending Program was placed in operation on August 15, 1988, when the regulations were published as a final rule in the **Federal Register** (53FR30643). FmHA now proposes to make some revisions, based on its experience with implementation of the program, to enhance the program. The primary changes proposed include the following:

1. The limitation on maximum loans to one intermediary is reduced from $3 million to $2 million.

2. The limitation on maximum loans to one intermediary and the limitation on maximum loans to one ultimate recipient are revised to limit IRP loans only, rather than all FmHA loans.

3. The requirements for financial projections from applicant intermediaries are revised to clarify that there should be one set of projections for the intermediary relending fund alone and another set of projections for all of the intermediary's operations combined.

4. New loan priorities are provided, with a point system for establishing a priority score. Items to be considered in awarding points include non-Federal funding to supplement the IRP funds, low income service areas, high unemployment service areas, jobs for low income people, intermediary contribution to the IRP revolving funds, lending experience of the intermediaries and local community representation in the intermediaries.

5. The previous time limitations for application processing are removed and applications will be reviewed and ranked quarterly.

6. The discontinuing of loan processing due to failure of the applicant to meet conditions promptly will be a matter of FmHA discretion, rather than automatic.

7. A requirement is added for post closing review by the Office of the General Counsel (OGC).

8. A requirement for intermediaries to report opportunities provided to farm families is removed.

List of Subjects in 7 CFR part 1948

Business and industry, Community development, Community facilities, Loan programs—business, Loan programs—housing and community development, Rural areas.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for Part 1948 continues to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.101 [Amended]

2. Section 1948.101 is amended by deleting the last sentence of paragraph (b).

3. Section 1948.103 is amended by revising paragraph (c)(4) to read as follows:

§ 1948.103 Eligibility requirements.

* * * * * *

(c) * * *

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing IRP loan(s) will not exceed $2,000,000 per intermediary.

* * * * * *

4. Section 1948.110 is amended by revising paragraphs (a)(7) and (a)(9) to read as follows:

§ 1948.110 Ineligible loan purposes.

(a) * * *

(7) For a loan to an ultimate recipient which has an application pending or has received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) * * *

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipients plus the total outstanding balance of any existing loans from IRP funds will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

* * * * *

5. Section 1948.118 is amended by revising paragraph (b)(4)(iii) to read as follows:

§ 1948.118 Loan agreements between FmHA and the intermediary.

* * * * * *

(b) * * *

(4) * * *

(iii) An annual report on the extent to which increased employment, income and ownership opportunitites are provided to low-income persons, for each loan made by such intermediary.

* * * * * *

6. Section 1948.122 is amended by revising paragraph (f) to read as follows:

§ 1948.122 Application.

* * * * * *

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(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP fund only and a separate set of projections that shows the applicant organization's total operations.

* * * * *

7. Section 1948.123 is amended by revising paragraphs (b) and (c) and removing paragraph (d), to read as follows:

§ 1948.123 Filing and processing applications for loans.

(a) * * *

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be reviewed and ranked quarterly and funded in the order of priority ranking. At the intermediary's direction FmHA may retain unsuccessful applications for consideration in subsequent reviews in the same fiscal year.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries based on the following factors. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of FmHA, provide assurance that the items have a high probability to be accomplished. The points awarded will be as specified in each paragraph or subparagraph. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph should be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—10 points.
(B) At least 25% but less than 50% of the total project cost—20 points.
(C) 50% or more of the total project cost—30 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-FmHA derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project cost—10 points.
(B) At least 25% but less than 50% of the total project cost—20 points.
(C) 50% or more of the total project cost—30 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in consumer price index (CPIU). The poverty line used will be as defined in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)). Unemployment data used will be that published by The Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of 4:

(A) At least 100% but less than 110%—5 points.
(B) At least 80% but less than 100%—10 points.
(C) Below 80%—15 points.

(ii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points.
(B) At least 125% but less than 150%—10 points.
(C) 150% or more—15 points.

(iii) The intermediary will require as a condition of eligibility for a loan to an ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points.
(B) At least 20% but less than 30% of the workforce—10 points.
(C) 30% of the workforce or more—15 points.

(3) *Equity.* All assets of the IRP fund will serve as security for the IRP loan and the intermediary will contribute funds not derived from FmHA into the IRP fund along with the proceeds of the IRP loan. The amount of non-FmHA derived funds contributed to the IRP fund will equal the following percentage of the FmHA IRP loan:

(i) At least 5% but less than 15%—15 points.
(ii) At least 15% but less than 25%—30 points.
(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points.
(ii) At least 3 but less than 5 years—10 points.
(iii) At least 5 but less than 10 years—20 points.
(iv) 10 or more years—30 points.

(5) *Community Representation.* The service area is not more than 10 counties and the intermediary utilizes local opinions and experience by including community representatives on its Board of Directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives or bankers, who reside in the service area and are not employees of the intermediary.

(i) At least 10 percent but less than 40 percent of the board members are community representatives—5 points.
(ii) At least 40 percent but less than 75 percent of the board members are community representatives—10 points.
(iii) At least 75 percent of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters. An assignment of points by the Administrator will be by memorandum stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file.

8. Section 1948.124 is amended by revising paragraph (c)(2) to read as follows:

§ 1948.124 FmHA evaluation of application.

* * * * *

(c) * * *

(2) The letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project or intermediary, including equal opportunity and nondiscrimination policy, must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discountinuing process of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

The intermediary must certify at loan closing that since FmHA's issuance of the letter of conditions there has been no material adverse change(s) in its financial condition nor any other material adverse change in the intermediary.

The loan will be considered approved on the day a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA reserves the right to discontinue the processing of the application. The intermediary will be notified, in writing, by the Administrator or designee of any such discontinuance.

* * * * *

9. Section 1948.126 is amended by adding a new paragraph (f) to read as follows:

§ 1948.126 Loan closing.

* * * * *

(f) When the loan has been closed, the administrator or designee will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

10. Section 1948.149 is amended by adding paragraph (d) to read as follows:

§ 1948.149 Exhibits.

* * * * *

(d) Exhibit IV, "Priority Scoresheet"

Dated: September 22, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-23640 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 310, 314, and 320

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 9, 1990. The comment period for the proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (July 10, 1989 (54 FR 28872)). The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products.

DATE: Comments by January 9, 1990.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 10, 1989 (54 FR 28872), FDA issued a proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products. These new provisions are intended to benefit consumers by making generic drug products available more quickly. The proposal gave interested persons an opportunity to submit written comments for 90 days (by October 10, 1989).

In response to the proposal, the Generic Pharmaceutical Industry Association has requested a 30- to 60-day extension of the comment period, the National Association of Pharmaceutical Manufacturers has requested a 60-day extension and Parke-Davis has requested a 120-day extension. These organizations requested additional time to adequately respond to the proposal because of its extraordinary length and because of complex issues and questions that need careful analysis and evaluation. FDA has carefully considered the request and has determined that a 90-day extension to the comment period for the preparation and submission of meaningful comments to a very detailed and complex proposed rule is in the public interest. A longer extension is not warranted because the proposal provided an extended comment period and because many of the procedures contained in the proposal were made available by FDA in a series of letters offering interim guidance to new drug application and abbreviated new drug application holders and applicants. Accordingly, the comment period for submissions by any interested person is extended to January 9, 1990.

Interested persons may, on or before January 9, 1990, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 6, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-24030 Filed 10-6-89; 11:31 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM609VA; FRL-3670-7]

Approval of Revisions to the Virginia State Implementation Plan With Regard to Regulations for Aluminum Rolling Mill Operations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On December 17, 1987, Virginia submitted a request to EPA to add Reasonably Available Control Technology (RACT) requirements, in the form of Consent Orders, for major sources (>100 tons of volatile organic compounds (VOC) per year) in the Richmond ozone nonattainment area for which EPA has not published a Control

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Technique Guideline (CTG). These major non-CTG sources were previously identified by Virginia in accordance with EPA's requirements for areas unable to attain the ozone National Ambient Air Quality Standard (NAAQS) by December 31, 1982. EPA required, in post-82 nonattainment areas, that RACT regulations must be adopted and implemented for non-CTG sources emitting >100 TPY VOC emissions. Virginia's December 17, 1987 submittal requested EPA's approval of requirements for aluminum rolling mills (pertaining to Reynolds Metals-Foil Plant), tobacco processing (pertaining to Philip Morris) and synthetic fiber manufacture (pertaining to DuPont Company's Nomex fiber process). This Notice will only address the proposed approval of requirements for aluminum rolling mills. The regulations for tobacco processing and synthetic fiber manufacture will be addressed in separate Notices.

This Notice proposes approval of the non-CTG RACT requirements for aluminum rolling mills for Reynolds Metals-Foil Plant in Richmond, VA. This proposed approval is based on a determination that this requirement represents RACT for this source category.

DATES: Comments must be submitted on or before November 13, 1989.

ADDRESSES: Copies of this document and accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.

Virginia Department of Air Pollution Control, Room 801, Ninth Street Office Building, P.O. Box 10089, Richmond, VA 23240.

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, Program Planning Section, at the above EPA Region III address. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On December 17, 1987, Virginia submitted a request to EPA to add RACT requirements, in the form of Consent Orders, applicable to aluminum rolling mills, tobacco processing and synthetic fiber manufacturing. As mentioned earlier, the requirements for tobacco processing and synthetic fiber manufacturing will be addressed in separate Notices. The RACT requirements pertaining to aluminum rolling mills are applicable to Reynolds Metals-Foil Plant, located in Richmond, VA. The Richmond ozone nonattainment area, which currently includes Richmond City, and Chesterfield and Henrico Counties, received a State Implementation Plan (SIP) call on September 28, 1984. A SIP call is a finding made by EPA under section 110(a)(2)(H) of the Clean Air Act that the State's plan for attainment and maintenance of the NAAQS is substantially inadequate to attain and maintain that standard. Virginia was required to submit, as part of its compliance with the SIP call, RACT requirements for any non-CTG sources which have the potential to emit >100 TPY VOC emissions. One of the sources which Virginia identified is the Reynolds Metals-Foil Plant. This is the only source in the Richmond nonattainment area which has been identified in the aluminum rolling source category and is the only source which will be affected by the adoption of the aluminum rolling mills requirements.

The aluminum rolling mills requirement is in the form of a Consent Order for the Reynolds Metals-Foil Plant, dated December 21, 1987, and requires the Company to use a normal paraffin lubricant containing a minimum of 88 percent saturated aliphatic compounds or carbon range of C12 and above. Compliance is determined by a gas chromatograph analysis of a grab sample taken at any rolling mill at the plant and compared to a copy of a gas chromatograph submitted to Virginia and incorporated as part of this Order. In addition, the temperature of the normal paraffin lubricant is required to be controlled and maintained at or below 150 °F. Recordkeeping by the Company is required in order to show that the lubricant temperature is maintained daily and that the gas chromatograph analysis of the lubricant is performed each month. These records are required to be maintained for two years. The Reynolds Metals-Foil Plant had previously been using kerosene as a lubricant in its rolling mills. Kerosene is more volatile than the proposed substitute lubricant. Reynolds Metals has conducted its own tests to show that the lubricant substitute will make an acceptable product and has committed to making the change in its process.

While the information provided by Virginia has not excluded carbon adsorption or incineration as RACT for other similar metal rolling operations, EPA believes that the documentation provided by Virginia and Reynolds Metals regarding lubricant substitution sufficiently supports a RACT determination for aluminum rolling at the Reynolds Metals-Foil Plant in Richmond. Carbon adsorption, oil absorption, incineration, and lubricant substitution were all shown to be technically and economically feasible. The cost per ton VOC removed among the four control options varied by a factor of 10. While this variation in cost did not exclude any of the control options, lubricant substitution would provide the most continuous and dependable control of VOC compared with the other options. Lubricant substitution offers the ability to minimize the VOC emissions of the process at the outset rather than to abate the VOC emissions after it is already produced.

In the cold (temperatures below 100°C) aluminum rolling process, several factors in the choice of the lubricant are important. These include the requirement that the lubricant should have a high specific heat to cool the metal being rolled to the maximum extent, that the heat of vaporization and the flash point are high to minimize evaporation of emissions and fires, respectively, and that the vapor pressure of the lubricant should be low to minimize emissions. With regard to lowering VOC emissions, only the vapor pressure and heat of vaporization of the proposed lubricant substitute (C_{12} or greater normal paraffin (high-purity linear paraffin)) directly indicate the advantage of using the paraffin versus using kerosene. The vapor pressure of a compound is the pressure of its aqueous vapor over water in millimeters of mercury (Hg). The higher the vapor pressure, the more volatile the compound and the more VOC emissions it generates. When kerosene is used in aluminum rolling, the temperature at which the metal is rolled is 180°F. At this temperature, the vapor pressure of kerosene is 20 mm Hg. When a C_{12} normal paraffin is used in aluminum rolling, the temperature at which the metal is rolled is 150°F. At this temperature, the vapor pressure of the C_{12} normal paraffin is 8 mm Hg. The heat of vaporization is the amount of heat needed to change one gram of the liquid compound to vapor without changing the temperature. The higher the heat of vaporization, the more heat it takes to change the liquid compound to vapor at the same temperature. The heat of vaporization is 139 Btu/lb for a high-purity linear paraffin compared with 110 Btu/lb for kerosene. The other properties of the proposed lubricant substitute illustrate why this lubricant substitute will work in the aluminum rolling process. These other properties are the specific heat and the flash point of the compound. The specific heat of a compound is the amount of heat that a compound can hold compared with water at 15°C. A compound with a higher specific heat than another compound has more heat capacity than that other compound. The specific heat of a high-purity linear paraffin is 0.55 Btu/lb-°F compared with 0.50 Btu/lb-°F for kerosene. The flash point of a compound is the temperature at which a compound ignites. The higher the flash point of a compound, the greater degree of safety is provided. The flash points of C_{12}–C_{15} normal paraffins range for from 156°F for a C_{12} normal paraffin to 244°F for a C_{15} normal paraffin compared with 130°F for kerosene. The amount of VOC emissions reduced due to the substitution of the C_{12} paraffin for the kerosene lubricant is estimated at 10–50%.

Using lubricant substitution as the emission control method provides an added advantage not available if add-on control devices are chosen as the method of control. Any add-on control device's emission control efficiency must be determined by knowing both the capture efficiency and the destruction efficiency. Capture efficiency is the amount of emissions which are delivered to the control device divided by the total amount of emissions entering the system (e.g., coating line). Destruction efficiency is the amount of emissions destroyed by the control device divided by the amount of emissions entering that control device. The overall control efficiency of the add-on control device is calculated by multiplying the capture and destruction efficiencies. The capture and destruction efficiencies in any system must be determined by actual testing in the system because there are many variables which influence the final result. This is particularly true of capture efficiency. Determining actual capture efficiency involves the construction of a temporary or permanent enclosure around the system and determining such factors as air flow rates, among other variables. Estimates for an adsorption system have been made and an overall control efficiency of 63%, with an assumed capture efficiency of 70% and a removal efficiency of 90%, might be expected. This 63% control efficiency uses an assumed capture efficiency which would not be acceptable for a source to use when determining compliance. Therefore, the use of a control method which lowers VOC emissions by preventing the generation of those emissions provides the added advantage of not having to test for and determine capture and destruction efficiencies. Consequently, EPA is proposing that lubricant substitution as stipulated by the Consent Order for Reynolds Metals-Foil Plant in Richmond, Virginia, dated December 21, 1987, represents RACT for this aluminum rolling source.

Conclusion: EPA's decision to propose approval of the SIP revision regarding non-CTG regulations for aluminum rolling mill operations is based on a determination that this SIP revision is consistent with section 110 and part D of the Clean Air Act.

The public is invited to submit comments, to the Region III address above, on whether or not this revision should be approved.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control Hydrocarbons, Intergovernmental relations, ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 29, 1989.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 89–23964 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6956]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 2150 on May 10, 1989. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Nolan County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Nolan County, previously published at 54 FR 20161 on May 10, 1989, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 20161, in the May 10, 1989 issue of **Federal Register**, the entry under Nolan County (Unincorporated Areas) for Wolf Hollow is correctly revised to read as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
• • • • • •	
Wolf Hollow:	
At confluence with Santa Fe Lake	*2,066
At corporate limits	*2,083
• • • • • •	

Issued: October 2, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–23949 Filed 10–10–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-16; Notice 2]

RIN 2127-AC38

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to permit three new items of glass-plastic glazing. Item 15, Annealed glass-plastic glazing, is proposed to be used anywhere in a motor vehicle except the windshield. Item 16A, Annealed glass-plastic glazing, and Item 16B, Tempered glass-plastic glazing, are proposed to be used in areas not requisite for driving visibility. These three new items of glazing are less restrictive versions of existing Item 14 glass-plastic glazing, which may be used anywhere in a motor vehicle including the windshield. The agency hopes that with the approval of the three new types of glazing, manufacturers will have greater incentive to utilize glass-plastic glazing in all glazing locations in a motor vehicle. The agency encourages greater use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes. Certain technical changes to Standard 205 are also proposed.

DATES: Comments must be received on or before November 27, 1989. Proposed effective date: If enacted, the final rule would become effective upon issuance.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366-4915).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates, by reference, American National Standard Institute (ANSI) Standard Z26.1, "Safety Code For Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amened through 1980 (Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in the standard.

To ensure the safety performance of vehicle glazing, FMVSS 205 includes a total of 31 specific tests. Each item of glazing is subjected to a selected group of these tests appropriate for that material. It is the particular combination of tests that dictates the requisite properties of a particular item of glazing, and where in a motor vehicle it may be utilized. For example, three-ply laminated windshield glazing, Item 1, to be used anywhere in a vehicle including the windshield, is subjected to 9 tests.

Item 14 (glass-plastic glazing) was added to FMVSS No. 205 by NHTSA in 1983 (See 48 FR 52061), without limitation as to the location of its use in a motor vehicle. Item 14 glazing was anticipated to be used primarily in vehicle windshields. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface, facing the interior of the vehicle. However, the item may be manufactured with or without laminated glass. For example, it could consist of the current high penetration resistant (HPR) three-ply glazing to which one or more layers of plastic have been added to create a windshield of four or more plies. Alternatively, Item 14 glazing could simply be two-ply, consisting of a single sheet of glass to which a layer of plastic has been added to the inside surface.

Currently, Item 14 is the only category of glass-plastic glazing allowed. In order to be used anywhere in a motor vehicle, glass-plastic material must meet all the test requirements of Item 14 glazing. These tests include: Test 1- Light stability, Test 2- Luminous transmittance, Test 3- Humidity, Test 4- Boil test, Test 9- Dart impact, Test 12- Ball impact, Test 15- Optical deviation and visibility distortion, Test 16- Weathering, Test 17- Abrasion resistance (plastics), Test 18- Abrasion resistance (glass), Text 19- Chemical resistance, Test 24- Flammability, Test 26- Penetration resistance, and Test 28- Resistance to temperature change. Therefore, designers intending to use glass-plastic glazing in an area not requisite for driving visibility would have to use Item 14 glazing, even though the visibility and penetration resistance requirements for Item 14 exceeded the safety requirements for the glazing area.

Although there are currently no items of glass-plastic glazing allowed only in areas other than the windshield, there are two main items of glazing allowed for use in these areas. Item 2 glazing may be used anywhere in a motor vehicle except windshields. The windows to the left and right of the driver in all vehicles and rearward windows in passenger cars can be made of Item 2 glazing. Item 3 glazing may be used anywhere in a motor vehicle except windshields and other areas requisite for driving visibility. Item 3 is used as side-facing rearward windows of light trucks, vans, and multipurpose passenger vehicles and also for sun roofs and T-tops. Both Items 2 and 3 may be manufactured in one of four types of construction: laminated glass, tempered glass, and 2 classes of multiple glazing units. The primary difference between Item 2 and Item 3 glazing is that Item 3 does not have any luminous transmittance requirements.

By letter dated August 11, 1987, the Taliq Corporation (petitioner), petitioned the agency to amend Standard 205 by creating a category of glass-plastic glazing without the visibility requirements or the stringent-anti-penetration requirements of Item 14. Specifically, the petitioner requested that the agency create a new category, to be called Item 15, which would be a glass-plastic version of Item 3, which could be used anywhere in a motor vehicle except for the windshield and other areas requisite for driving visibility. The agency has granted this petition and in this notice of proposed rulemaking will expand upon petitioner's request. The agency proposes to create three new items of glass-plastic glazing, to be used in the same locations in vehicles that are currently allowed for Items 2 and 3. Rather than the item-numbering system proposed in the petition, the agency proposes to designate the two glass-plastic versions of Item 3 as Items 16A and 16B, to designate a glass-plastic version of Item 2 as Item 15. This would keep the two types of glazing in the same numerical order as Items 2 and 3, based on locations in motor vehicles were these items of glazing may be placed.

II. Need for Items 15, 16A, and 16B

The agency initially permitted the use of Item 14 glass-plastic glazing in motor vehicle windshields because glass/plastic glazing can potentially reduce by two thirds the number of lacerative injuries resulting from passenger contact with windshields in crashes. At the time glass-plastic glazing was approved, the agency believed that laminated glass-plastic eventually might fill all vehicle glazing needs, including front, side and rear locations. Initially, various manufacturers, such as Porsche and General Motors (GM), took advantage of the rule change and provided four or five-ply glass plastic glazing in the windshields of some of their automobile models. However, the user of the largest amount of glass-plastic glazing, GM, decided to discontinue use of the glazing after the 1987 model year because of warranty problems and consumer allegations that the plastic inner layer was too easily scratched.

Subsequently, designers have created prototypes for two-ply glass-plastic side windows for a variety of purposes. NHTSA has tested tempered two-ply glass-plastic for the purpose of ejection mitigation through side-door windows. The Taliq Corporation has combined liquid crystal technology with the glass-plastic concept and developed two-ply glazing that can electronically switch the amount of light transmissibility through the glazing between opaque and "transparent." Be requiring all glass-plastic to conform to the test requirements for Item 14, FMVSS 205 hinders design flexibility. Vehicle manufacturers intending to use glass-plastic in areas not requisite for driving visibility, must still comply with the optical quality test requirement. Item 14 glass-plastic also requires penetration resistance beyond the level needed for side and rear glazing.

By permitting these new items of glazing, the agency hopes manufacturers would be encouraged to use glass-plastic glazing at locations other than the windshield in motor vehicles. Greater use of glass-plastic at side and rear locations would result in ejection mitigation and laceration reduction, in the event of crashes. In the Side Impact Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 31712 and 31716, August 19, 1988), the agency discussed adding a plastic layer to existing glazing as a means of reducing ejections. That rulemaking estimated 2160 side window ejection fatalities in 1990. The agency estimates that overall, ejection quadruples an occupant's chance of fatal injury. In a rollover, it increases an occupant's chances of severe injury by a factor of 8.4. In a nonrollover crash, the chances of injury are 9.4 times greater. Glass-plastic glazing will also protect vehicle occupants from flying pieces of glass.

The type of glass utilized in glass-plastic glazing may also have a significant effect on safety and visibility. There are basically two types of glass that are used in motor vehicle glazing—annealed glass and tempered glass. The difference between annealed and tempered glass arises during the production process, when the glass that goes into motor vehicle glazing is formed into sheets. In the final process, the glass is either reheated and cooled slowly, creating "annealed" glass or is toughened thermally or chemically, creating "tempered" glass. Tempered glass, when broken, shatters into small, generally granular pieces, an effect called dicing, rather than large shards. The safety feature of tempered glass is that, when broken, it produces no large, sharp pieces. The design advantage is that it is stronger, requiring less material for the same level of strength. However, when shattered, the dicing effect of tempered glass in glass-plastic glazing tends to obstruct vision, since the plastic tends to hold the diced pieces in place. This adversely affects safety when used in windows that are requisite for driving visibility.

"Laminated glass" consists of one or more sheets of glass held together by an intervening layer or layers of plastic. The glass will crack and break under sufficient load, but the pieces of glass tend to adhere to the plastic. When broken, the edges are likely to be less jagged than would be the case with ordinary glass. Plastic is laminated with annealed glass to retain control of the large sharp pieces that occur when this type of glass breaks. Laminated glass is most typically used in motor vehicle windshields. Item 1 glazing, to be used anywhere in a motor vehicle, is made up of two sheets of annealed glass with a layer of plastic in between, forming laminated glass. Item 14 laminated glass-plastic glazing may be four or five layers (plies), consisting of two sheets of glazing with an intermediate layer of plastic plus one or two inner layers of plastic facing the inside of the vehicle.

The Taliq Corporation's petition for a glass-plastic version of Item 3 laminate did not specify whether the glass utilized was to be annealed or tempered. When asked to clarify its petition, Taliq could not definitively answer which type of glass was to be used. However, Taliq had dealt with several automotive companies on the design of the proposed glass-plastic. There were prototypes constructed of annealed glass, and the production units constructed of tempered glass-plastic. To allow both types of glass-plastic glazing, annealed and tempered, in areas not requisite for driving visibility, the agency proposes two new categories: Item 16A, annealed glass-plastic and Item 16B, tempered glass-plastic. These materials should fulfill the needs of the Taliq petition and the general needs of future designers.

Along with the proposal that tempered glass-plastic not be allowed in glazing areas requisite for driving visibility (i.e., no Item 15 Tempered), the agency requests comment on a reasonable method of defining "tempered" glass-plastic. Several options have been considered. First, a fragmentation test may prove the tested glazing is partially or highly tempered, if glass dicing occurs. Second, Test 9, the dart impact test may discriminate against tempered glass, for it may not easily pass this test. Third, since tempered glass is stronger than annealed glass, there may be a strength test that will discriminate between tempered and annealed glass. Fourth, and least feasible, tempered glass may be defined as having internal stress greater than 10,000 pounds per square inch. Theoretically, measuring this pressure could define whether the glass is tempered. Comments on each of these suggested approaches, and any others defining "tempered" glass-plastic, is requested.

In a companion notice of proposed rulemaking, issued in today's Federal Register, the agency has also proposed to amend Standard 205 by prohibiting certain uses of tempered glass plastic. Proposed as new Section S5.1.2.6, the wording is: "Glass that is strengthened by any method may not be used in glass-plastic glazing in any windshield or other location requisite for driving visibility."

In summary, this notice proposes to create a glass-plastic version of Item 2 glazing, and two glass-plastic versions of Item 3 glazing. The new glass-plastic designated as Item 15–Annealed Glass-Plastic, would meet the same requirements as Item 2, with the addition of requirements applicable to plastics. The agency proposes that new Item 15 be permitted for use in the locations specified for Item 2, that is, in all locations except the windshield. The agency does *not* propose a tempered version of Item 15, because of the potential visibility problems noted previously. Public comment is solicited on whether the agency should allow

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tempered glass to be used in glass-plastic glazing in areas requisite for driving visibility. In particular, comment is sought on whether the extra protection offered by tempered glass in side-impact situations would outweigh visibility impairment created when tempered glass fragments are held in position on the plastic layer, blocking the driver's sideward vision. Comment is also sought on whether prohibition of tempered glass-plastic glazing would unnecessarily hinder innovation or design flexibility.

The agency also proposes that Items 16A—Annealed Glass-Plastic and 16B—Tempered Glass-Plastic be allowed in the locations specified for Item 3, that is, in all locations not requisite for driving visibility. Both annealed and tempered glazing would be allowed for Item 16 since laminated tempered glass-plastic would not present a visibility problem upon breakage in areas not requisite for driving visibility.

III. Proposed Rulemaking for New Items of Glass-Plastic Glazing

A. Creation of Item 15—Annealed Glass-Plastic

The agency proposes to create performance specifications for Item 15—Annealed Glass-Plastic by adopting the tests for Item 2 and adding the tests from Item 14 that are applicable to the interior, plastic side of the glazing. This philosophy was successfully used in the creation of the first category of glass-plastic, Item 14. The agency has considered the stated purpose of each test; whether its use is appropriate, given the material to be tested and the uses to which the material will be put; and whether it has safety benefits. The agency proposes permitting only one material within Item 15: Annealed glass-plastic.

The tests recommended for Item 15 Annealed Glass-Plastic consist of all of the current tests for Item 2 plus the applicable tests for the plastic side of Item 14, as follow:

Test 1	Light stability
Test 2	Luminous transmittance
Test 3	Humidity
Test 4	Boil
Test 9	7 oz. Dart Impact from 30 ft.
Test 12	8 oz. Ball Impact from 30 ft.
Test 16	Weathering
Test 17	Abrasion resistance (plastics)
Test 18	Abrasion resistance (glass)
Test 19	Chemical resistance
Test 24	Flammability
Test 28	Temperature change

The agency believes that the proposed Item 15 glazing will have several desirable features. It will provide vision quality sufficient for side and rearward viewing, protection from laceration, adequate strength, and long-term stability.

B. Creation of Item 16A—Annealed Glass-Plastic

The agency proposes to create performance specifications for Item 16A—Annealed Glass-Plastic by adopting the tests for Item 3 Laminated and adding the tests from Item 14 that are applicable to the interior (plastic) side of the glazing. Item 3 and the proposed Item 16 glazing have no need for any measurements of optical quality since they are permitted for use only in locations not requisite for driver visibility. Item 3 currently requires Test 1, light stability. This has no apparent safety need, but has never been deleted. The agency proposes that Test 1 for Item 3 be deleted and that only those tests that relate to the physical properties plus flammability be applied to Item 16A.

The following tests would be applicable to Item 16A—Annealed Glass-Plastic:

Test 3	Humidity
Test 4	Boil
Test 9	7 oz. Dart Impact from 30 ft.
Test 12	8 oz. Ball Impact from 30 ft.
Test 16	Weathering
Test 19	Chemical resistance
Test 24	Flammability
Test 28	Temperature change

C. Creation of Item 16B—Tempered Glass-Plastic

The agency proposes creating performance specifications for Item 16B—Tempered Glass-Plastic. Item 16B is proposed to be differentiated from laminated glass by the drop tests for tempered glass. The agency believes it is necessary to use the tests designed for tempered glass, to assure that the glazing has at least minimum ability to resist impact by a large yielding object. Proposed Item 16B glazing has no safety need for any measurements of optical quality. Therefore, it is proposed that Item 16B—Tempered Glass-Plastic be subjected to the following tests:

Test 3	Humidity
Test 4	Boil
Test 6	8 oz. Ball Impact from 10 feet
Test 8	Shot bag Impact from 8 feet
Test 16	Weathering
Test 19	Chemical resistance
Test 24	Flammability
Test 28	Temperature change

IV. Additional Proposals

A. Deletion of Test 1, Luminous Transmittance, for Item 3

Test 1 is currently required for Item 3 glazing. The test, as indicated earlier, is intended to measure the reduction of luminous transmittance after the material is exposed to simulated sunlight and moisture. The agency sees no safety need to include this requirement for Item 3 glazing, since that glazing is permitted for use only in areas not requisite for driving visibility. Therefore, the agency proposes deleting this requirement for Item 3.

B. Modification of Fragment Size in Test 7, Fracture

Currently, Test 7 measures the fragment size of tempered glass after it has been fractured. FMVSS 205 currently allows fragments weighing up to 0.15 ounce. There is no restriction on the size or shape of the fragment. The agency has been advised that tempered glass can break into long, thin needles. A typical shape can be a pointed 7.5 *cm* by 2 *mm* fragment. These pieces may weigh less than the required maximum. The agency has already received one report of an injury caused by a narrow piece of tempered glass. The definition of tempered glass in ANS Z26 describes the proper failure mode of the glass as "granular, usually with no large jagged edges". But the current measure of fragment weight does not provide a viable test procedure to prevent dangerous, pointed needle-like fragments. Therefore the agency proposes to modify the test requirements to include a maximum length of 2 inches and a maximum length-to-width ratio of 3 to 1.

Domestic glazing manufacturers are currently producing glazing that breaks into small "granular" pieces. Glass that breaks into larger pieces may be poorly tempered. It is believed that proper tempering will routinely produce glazing that breaks as intended by FMVSS 205.

C. Clarification of the Chemical Definition of Gasoline

The chemical test in FMVSS 205 includes submersion in "gasoline". This term is not defined. The composition may vary greatly from refinery to refinery. There is a need to define a substance for enforcement purposes.

In FMVSS 108, "Lamps, Reflective Devices and Associated Equipment," several chemicals, including gasoline, were redefined (53 FR 31007). In that rulemaking, the agency decided to adopt American Society for Testing and Materials (ASTM) reference Fuel C as a definition for gasoline. This liquid consists of 50 percent toluene and 50 percent isooctane. The composition is similar to typical 89 octane unleaded gasoline, but with the elimination of benzene. Benzene is toxic fluid, determined to be a carcinogen. Reference Fuel C is a standard solvent used for testing the effect of liquids on rubber. An octane number is irrelevant for this use. Aromatic hydrocarbons (which include both toluene and benzene) are the active ingredients of gasoline which are likely to attack plastic materials under exposure. The percentage (by volume) of aromatic hydrocabons in Reference Fuel C corresponds approximately to the maximum percentage found in commercially available unleaded high octane gasoline.

The ASTM Reference Fuel C is specified in ASTM D 471–79, "Standard Test Method for Rubber Property—Effect of Liquids" used as specified in Annex 2 to Motor Fuels Section 1, "Test Methods for Rating Motor, Diesel, Aviation Fuels," *1985 Annual Book of ASTM Standards.*

V. Regulatory Impacts

1. Cost and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency estimates that the introduction of the new items of glazing would impose no new costs for each of the approximately ten testing companies or laboratories throughout the United States because each item of glazing would utilize tests that are already established in ANS Z26, which these laboratories are equipped to conduct. Public comment is invited on the likely costs and benefits that would be associated with the proposed addition of the three new items of glazing.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would have no significant effect even if all of the approximately ten testing entities for glazing in the United States were small businesses or other small entities (defined in 13 CFR 121.2 under SIC 8734 "Testing Laboratories" as those entities grossing less than $3.5 million a year.). The rationale for this certification is that this proposed rule, if adopted, would introduce no new testing procedures, and the testing entities would not need to buy new equipment to test the new items of glazing.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidental information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business informaton regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant informaton as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postacard in the envelope with their comments. Upon receiving the comments. The docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideraton of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. S5.1.1.1(d) would be revised to read as follows:

(d) Gasoline, ASTM Reference Fuel C, which is composed of Isooctane 50 volume percentage and Toluene 50 volume percentage. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the *1985 Annual Book of ASIM Standards.* Vol. 05.04, and Toluene must conform to ASTM specification D362–84, *Standard Specification for Industrial Grade Toluene.* ASTM Reference Fuel C must be used as specified in:

(1) Paragraph A2.3.2 and A2.3.3 of Annex 2 of Motor Fuels, Section 1 in the *1985 Annual Book of ASTM Standards;*

(2) OSHA Standard 29 CFR 1910.106—"Handling Storage and Use of Flammable Combustible Liquids."

3. Section S5.1.1.7 would be revised to read as follows: S5.1.1.7 Test No. 17 is deleted from the list of tests specified in ANS Z26 for Item 5 glazing material and Tests Nos. 1 and 18 are deleted from the lists of tests specified in ANS Z26 for Item 3 and Item 9 glazing material.

4. The first sentence of subparagraph S5.1.2.5(a) would be revised to read as follows:

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Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 shall affix a label, removable by hand without tools, to each item of such glazing material * * *

5. Subparagraph S5.1.2.5(b) would be revised to read as follows:

(b) Each manufacturer of glazing material designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than ¼ inch high, the following words, "GLASS PLASTIC MATERIAL-SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS."

6. The following subparagraph would be added after S5.1.2.6 to read as follows:

S5.1.2.7 *Item 15—Annealed Glass-Plastic For Use in All Positions In A Vehicle, Other Than The Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24 and 28, may be used anywhere in a motor vehicle except windshields. Tests Nos. 9, 12, 16 and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

7. The following subparagraph would be added after S5.1.2.7 to read as follows:

S5.1.2.8 *Item 16A—Annealed Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 9, 12, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Test Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

8. The following subparagraph would be added after S5.1.2.8 to read as follows:

S5.1.2.9 *Item 16B—Tempered Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 6, 8, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Tests Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

9. A new paragraph S5.3 would be added to read as follows:

S5.3 In addition to the results specified in S5.7.3 of ANS Z26, no individual fragment produced during Test No. 7 shall have an overall length greater than 2 inches or a length-to-width ratio of greater than 3 to 1.

10. The second sentence of Paragraph S6.1 would be revised to read as follows:

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8 and S5.1.2.9 shall be identified by the marks "AS 11C," "AS 12," "AS 13," "AS 14," "AS 15," "AS 16A" and "AS 16B," respectively.* * * * * * * * *

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23867 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 89-16; Notice 1]

RIN 2127-AC14

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to require specimen clamping of Item 14 glass-plastic glazing (glazing with one or more layers of glazing and a layer of plastic on the surface facing the vehicle interior) for Test 26. In Test 26, a 5 pound ball is dropped onto ten individual specimens of glazing to determine whether the glazing material has satisfactory penetration resistance. No clamping is proposed in conducting Test 26 on Item 1 glazing. Item 1 is similar to Item 14, except Item 1 has no plastic layer on the inside surface. Comment is requested on the advisability of extending the clamping procedure to two other drop tests, Test 9 (that determines the behavior of the safety glazing under impact from a small, hard object) and 12 (that determines whether the safety glazing has a certain minimum strength and whether it is properly made), in measuring the performance of Item 14 glazing. The agency also proposes to prohibit tempered glass-plastic glazing in windshields and other locations requisite for driving visibility.

DATES: Comments must be received on or before November 27, 1989. Proposed effective date: If adopted, the new test procedure would be effective upon issuance of the final rule.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4916.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference, American National Standard Institute (ANSI) standard Z26.1, "Safety Code For Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in the standard.

The standard includes 31 specific tests. Each item of glazing material is subjected to a selection group of these tests, as appropriate for the general use of the material. For example, 3-ply laminated windshield glazing, Item 1, is subject to 9 tests.

The only current items of glazing that may be used in the windshield of a motor vehicle are Item 1, Safety Glazing Material for Use Anywhere in a Motor Vehicle, Item 10, Bullet Resistant Glass for Use Anywhere in a Motor Vehicle, and Item 14, Glass-Plastic.

Item 14 (glass-plastic glazing) was added to FMVSS No. 205 by NHTSA in 1983 (See 48 FR 52061), without limitation as to the location of its use in a motor vehicle. This item consists of glass on the outside surface and plastic on the inside surface. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface. However, it is possible to manufacture the item with or without laminated glass. For example, it could consist of the current high penetration resistant (HPR) three-ply glazing to which one or more layers of plastic have been added to create a windshield of four or more plies, or it may simply consist of a single sheet of glass to which a layer of plastic has been added to the inside surface.

By letter dated July 24, 1986, General Motors Corporation (GM) wrote to the agency, noting that the addition of Item 14 to FMVSS No. 205 allows the use of two-ply glazing in windshields. GM stated that the advantages of the two-ply configuration over the conventional high penetration resistant three-ply (HPR) windshields include reduction of weight, lower cost, improved optical quality, more design flexibility, and less windshield breakage. GM questioned whether the current test procedure for penetration resistance is a relevant method for two-ply glazing. This test, known as Test 26, is intended to be used in determining whether laminated glass (used predominantly in windshields) has sufficient penetration resistance from a moderate-sized object. It consists of dropping a 5 pound steel ball into a 12 inch by 12 inch glass sample from a point 12 feet above the sample. The sample is centered on the top of a 17⅜ inch square wooden frame with a 11⅜ inch square opening. The test is deemed a failure if the ball passes "through" the sample. The five pound ball penetration resistance test accurately measures penetration resistance of Item 1 glazing and five-ply HPR Item 14 (glass-plastic) glazing. However, because two-ply glass-plastic glazing is much more flexible, during the test, the steel ball will break the glass and force the entire specimen through the frame without testing penetration resistance. Clamping will correct this test ambiguity.

Three-ply Item 1 glazing and five-ply glass-plastic glazing have different results for the five pound ball penetration resistance test, compared to the two-ply glass-plastic glazing, in the following respect. The traditional three-ply HPR windshield glazing is laminated glazing consisting of a sheet of plastic bonded between two sheets of glass. Five-ply glass-plastic glazing consists of the sheet of plastic bonded between two sheets of glass plus two layers of plastic on the inside of the vehicle facing the occupants. When the test ball for Test 26 drops onto a horizontal three-ply specimen, radial and circumferential cracks develop about the point of impact. The cracks have an appearance similar to a spider web. While both the upper and lower sheets crack, the cracks on the upper sheet of glass do not necessarily coincide with the cracks on the lower one. Due to the difference in the patterns of cracks, the cracks in one sheet are normally adjacent to unbroken glass in the other sheet, and vice versa. This unbroken glass provides a localized rigidity. The cumulative effect of this characteristic is that the three-ply glazing sample retains sufficient rigidity so that the sample does not fall through the test fixture during Test 26. The tensile strength of the layer of plastic provides the penetration resistance.

On the other hand, GM stated that the two-ply version of glass-plastic glazing, which is more flexible than three-ply or five-ply glazing, flexes when struck by the ball, which forces the glazing through the frame, without the ball penetrating the sample. GM asserted therefore that the test does not adequately test the ability of the two-ply sample to resist penetration of the ball. Since there is no specific prohibition of clamping the sample, GM requested an interpretation of FMVSS No. 205 to allow restraint of the test sample in the test fixture for Test 26.

By letter dated May 27, 1987, NHTSA responded that the agency could not adopt such a change in the test procedure by an interpretation letter. The agency stated that in order to address the problem and to ensure objectivity, it was necessary to issue a proposal to amend the standard to establish uniform requirements for providing additional support to two-ply glazing materials during Test 26. Therefore, the agency treated the GM letter as a petition for rulemaking.

NHTSA proposes modification of FMVSS No. 205 to require clamping of glass-plastic glazing, both laminated and non-laminated versions, for drop Test 26. No clamping is proposed for Test 26 for the non-glass-plastic version, Item 1. For reasons explained in Part VII of this preamble, public comment is also requested on the advisability of extending the clamping procedure to Test 9 and 12.

II. Need for the Change in Test Procedure

Every year, hundreds of thousands of American motorists suffer pain, disfigurement and unquantifiable psychological trauma from lacerative injuries caused by motor vehicle windshields. The HPR windshield, which has been standard in American motor vehicles since 1966, reduces the likelihood that occupants penetrate the windshield during a crash, and is very effective in preventing serious lacerative injuries. However, nearly 200,000 minor lacerations still occur annually due to occupant contact with the windshield. As noted above, the traditional HPR windshield consists of a sheet of plastic bonded between two sheets of glass. When a standard HPR windshield is struck, both the inner and outer glass layers tend to break, thus setting up edges of broken glass on the inner surface.

In 1983, NHTSA amended FMVSS No. 205 to permit the use of glass-plastic glazing. The agency hoped that use of glass-plastic glazing in windshields would reduce lacerative injuries by approximately two-thirds. The agency anticipated that laminated glass would be used in the production of glass-plastic glazing. The various manufacturers which took advantage of this amendment did, in fact, use four and five-ply anti-lacerative windshields. The most extensive user of the anti-lacerative glazing, GM, decided to discontinue use of the glazing after the 1987 model year. It reported that its decision was based on handling problems with the inner plastic surface, that apparently was too easily scratched, deliberately or inadvertently, resulting in warranty claims and consumer dissatisfaction.

If manufacturers such as GM had some additional incentive to offer the anti-lacerative windshield, that type of glazing might become more widely used and lacerations could be reduced. An incentive that would encourage its use would be the opportunity to reduce the cost and weight of windshield glazing. Use of a two-ply, instead of four or five-ply, version of glass plastic glazing could permit a reduction in materials of approximately 15 percent and a corresponding cost reduction.

There is an apparent impediment, however, to the use of two-ply glass-plastic glazing. Glass-plastic glazing must meet Test 26, but, as noted above, during Test 26, the two-ply glass-plastic glazing simply falls through the frame after impact from a five pound steel ball. It is unclear in those circumstances whether the sample of glazing has passed or failed the test. In a sense, the sample could be said to have passed the test since the ball does not actually penetrate or pass through the sample. However, since the sample falls through the frame, the penetration resistance ability of the glass-plastic, the reason for the test, is not really assessed.

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NHTSA tentatively concludes that the current test procedure is not appropriate for the more flexible two-ply glass-plastic glazing. The shortcoming of the test procedure arises from the fact that Test 26 was designed for three-ply laminated glass (Item 1), which is heavier and more rigid than two-ply glass-plastic glazing. In this rulemaking, the agency is proposing to modify Test 26 so that it is appropriate for use in testing both types of glass-plastic glazing.

The proposed change in the test procedure would make clear whether a tested sample of two-ply glass-plastic glazing does in fact possess the requisite penetration resistance. Further, with this adjustment in the test procedure to allow two-ply glass-plastic glazing, manufacturers would be provided with an incentive to conduct further research into two-ply glazing, to produce lighter and more cost effective windshields, and in other ways improve the state of glazing technology.

III. GM Test Data on Injury Criteria During Crash Tests

NHTSA has evaluated the following available test data, provided by GM, to determine the potential effect on safety, if manufacturers were to use 2-ply glass-plastic glazing as opposed to the traditional three-ply high penetration resistant (HPR) glazing. The test data compared two-ply and three-ply laminated glazing in five measures of injury criteria during crash tests. These results showed lesser injury when the two-ply windshield was tested compared to the traditional three-ply HPR windshield. This held true both for windshields that were secured into position in the motor vehicle by clamping and for those bonded into position.

By letter dated October 24, 1986, GM submitted a summary of data on sled tests of unrestrained dummies at 30 miles per hour. Their tests compared five measures of injury criteria: head injury criteria (HIC), peak head deceleration, chest deceleration, neck moments and facial lacerations. In tests where the windshields were held in position by mechanical clamps to the frames, the injury criteria are reduced by the use of the two-ply windshield compared to the traditional three-ply HPR windshield. In more advanced design tests, where the windshields were bonded into position, HIC was decreased almost 25 percent, but the chest deceleration (G's) increased approximately 5 percent. In a demonstration film produced by Saint Gobain Vitrage (SGV), a comparison of clamped 12 inch by 12 inch specimens of the traditional three-ply HPR glazing and the two-ply Securiflex-2 glazing revealed significant advantages of the two-ply design. For a 28 mile per hour sled test, these benefits include a HIC reduction form 656 to 415, reduced neck moments, reduction of lacerations and no glass in the passenger compartment.

IV. Comparison of the Effects of Current and Proposed Test Procedures on Safety

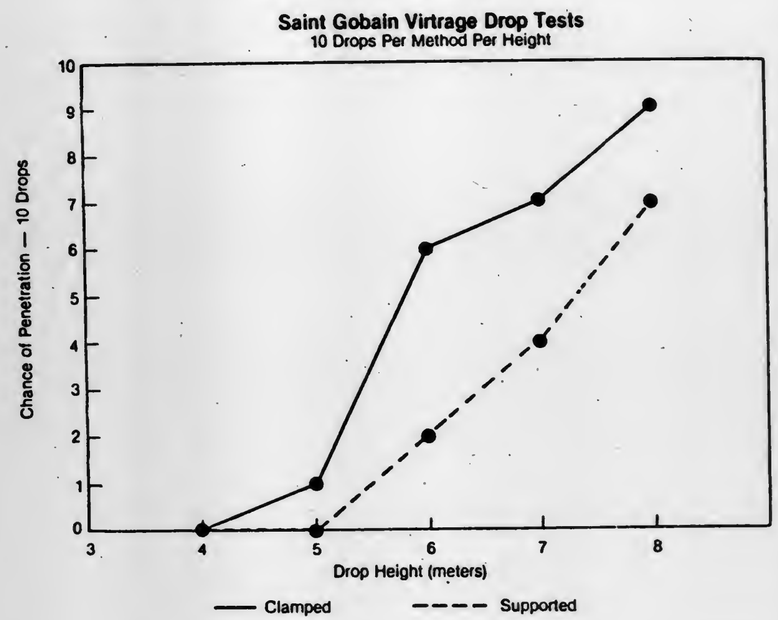
In the context of deciding whether clamping test samples in the five pound ball penetration resistance test would produce more objective results for two-ply glass-plastic glazing, the agency has examined the effects that clamping of test samples would have on compliance with Standard 205, and on occupant safety.

In order to quantify the difference in Test 26 results for clamped and unclamped test samples, the agency reviewed tests by two glazing manufacturers and an independent testing laboratory. Data submitted by a major glazing manufacturer, Libbey-Owens-Ford (LOF), as part of the GM information, indicated that for a given size and type windshield, clamping a standard three-ply windshield would cause the test samples to fail the 5 pound drop test at a lower height than when unclamped. In other words, the LOF data indicated that clamping created a more stringent test. Next, in the Saint Gobain Vitrage (SGV) film, more test failures were experienced with the clamped 12 inch by 12 inch test samples of laminated three ply HPR glazing than with the unclamped samples.

Finally, information was solicited by the agency from the German test facility, Staatliches Materialprufungsamt Nordheim-Westfalen (MPA). By letter dated March 16, 1987, Dr. K. Preusser provided three supporting documents related to the clamping issue. These included the German proposal for amendment of the Economic Commission of Europe (ECE) Regulation 43 international standard, a test protocol in which they studied the behavior of clamped samples, and a report of headform drop tests conducted on oversize samples. The German proposal recommended that the test samples be placed between two steel frames, with pressure applied, and movement of the test piece should not exceed 2 millimeters (mm). A 2260 grams (5 pounds) ball would be dropped onto the specimens from a height of four meters. The test report concludes that "Concerning the penetration of the ordinary laminated glass there is no decisive difference in the results of the 2260 gram (5 pounds) ball test between clamping the test piece or only laying it on the support." In the head form drop test report, the writer concludes that the use of unclamped samples (in this case, specifically, windshields) will produce erratic results, due to the non-uniform contact of the sample to the frame. Therefore, clamping would be a preferable procedure for these oversize samples.

NHTSA has evaluated the objectivity of the clamping procedure that it is proposing in this notice of proposed rulemaking. In this evaluation, NHTSA has reviewed the data from the 120 drop tests conducted by SGV in their video that involved the use of clamped specimens on a modified version of the current ANS Z26 fixture. There appeared to be no problem conducting the test. The SGV testing demonstrated the repeatability of the proposed test procedure. The testing showed clamping will result in a greater number of failures with increased drop height. This is because with increased height, the force with which the steel ball drops onto the glazing becomes greater. The testing also showed a consistent difference between the failure rate of clamped and unclamped samples. The results of this testing are presented in the following graph.

Saint Gobain Vitrage (SGV) Drop Tests



NHTSA tentatively concludes that requiring glass-plastic glazing to pass Test 26 while clamped is practicable based on the agency's consideration of the tests conducted by SGV and LOF and on the fact that both companies have already produced two-ply glazing and are waiting to begin mass production and market the product. Further, the agency believes that addition of clamping of glass-plastic glazing during Test 26 would not preclude use of the current five-ply design since five-ply glazing is basically Item 1 laminated glazing plus an inner layer of plastic and there have been no problems with Item 1 glazing passing the 5 pound ball drop test. Additionaly, the agency infers from the facts that ECE 43 currently requires clamping of glass-plastic specimens using the fixture in Figure 1 and that the Europeans have conducted extensive testing under that test procedure that the procedure is reliable for regulatory purposes.

V. Selection of a Revised Test Procedure

For the following reasons, it is proposed that NHTSA adopt a modified version of the clamping procedure in the current Economic Commisison of Europe (ECE) regulation on testing glass-plastic specimens. A discussion of procedures, utilized by the International Standards Organization (ISO), which are proposed to be incorporated into the clamping procedure also follows.

Currently, clamping is required in the most recent version of Economic Commission of Europe (ECE) Regulation 43 "Uniform Provisions Concerning the Approval of Safety Glazing and Glazing Materials." In ECE Regulation 43, the 2260 gram (g) (5 pound) ball penetration drop test procedure, as described in annex 3, states, "In the case of glass-plastics glazing the test piece shall be clamped to the support." The description of the device in the regulation is as follows:

> Supporting fixture, such as shown in figure 1, composed of two steel frames, with machined borders 15 mm wide, fitting one over the other and faced with rubber gaskets about 3 mm thick and 15 mm wide and of hardness 50 IRHD. The lower frame rests on a steel box about 150 mm high. The test piece is held in place by the upper frame, the mass of which is about 3 KG. The supporting frame is welded onto a sheet of steel of about 3 KG. The supporting frame is welded onto a sheet of steel of about 12 mm thick resting of the floor with an interposed sheet of rubber about 3 mm thick and of hardness 50 IRHD.

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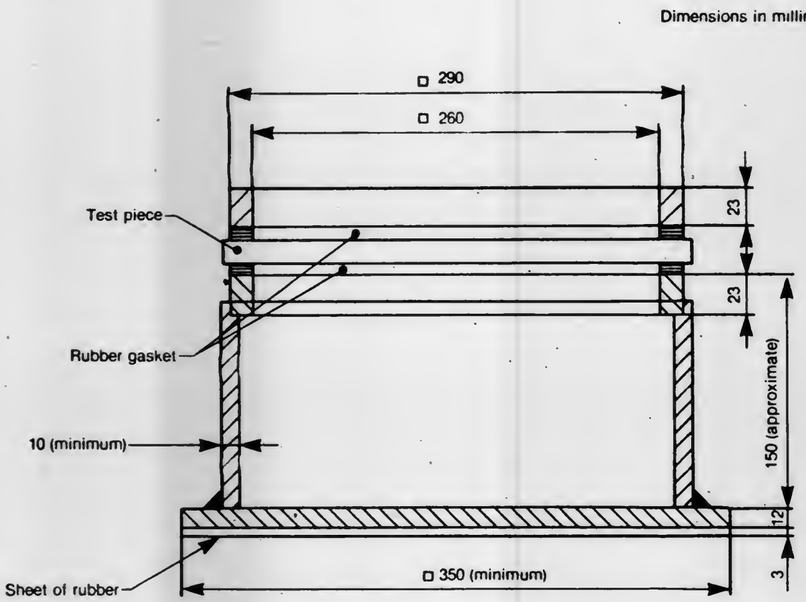


Figure 1 — Test Fixture For Clamped Specimens

A similar test setup is described in the International Standards Organization (ISO) proposed revision of Standard 3537–1975 (E) "Road Vehicles—Safety Glasses—Test Methods for Mechanical Properties". The ISO proposal includes an additional requirement that the test piece not move more than 2 millimeters (mm) at any point along the inside periphery of the fixture. Though not specifically explained, the 2 mm criterion was apparently selected as an additional requirement to minimize slippage during the test procedure.

The test data provided by SGV appeared to utilize a test setup similar to the one depicted in Figure 1 above, including the rubber gasket below the test sample. In selecting a test frame, NHTSA was concerned whether the rubber below the test sample, as specified in the ISO and the ECE test holding fixtures, would absorb energy to the extent that it would significantly alter the test. The current wooden holding fixture for drop tests specified in ANS Z26 has no rubber gasket. In an effort to determine the effects of the rubber under the test samples, NHTSA initiated a dialog with Dr. Siegfried H. Herliczek, of LOF, who had been involved in the technical support of GM's petition. Dr. Herliczek ran four test samples in the LOF clamping fixture to determine the difference in test results between the test with and without the rubber gasket. For the comparison , he ran standard three-ply glazing (.090-.030-.090 inch) and two-ply (.125 glass-.030 inch PVB-.004 inch polyester) test samples, once each with a rubber gasket on either side and once without a rubber gasket (specifically, with a hard Bakelite-type material as a hard gasket). The heights form which the 5 pound ball has to be dropped to get it to pass through the test specimens were similar for the samples with gaskets and without gaskets, within expected error. For the two-ply samples, they were not able to achieve failures; there was no penetration. It was reported that the glass on both the three-ply and two-ply samples mounted on the hard gasket broke as the pressure was applied, prior to the actual drop test. The LOF test fixture was designed with uniform pressure distribution using hydraulics. Therefore, the agency believes that glass failures would be even more prevalent with the more traditional mechanical clamping methods, due to load concentrations without the lower rubber gasket.

For these reasons, the agency concludes that clamping of glass-plastic samples of Item 14 glazing in Test 26, is a more realistic and practical test procedure for penetration resistance than the current procedure. Although the clamping will result in a more stringent test for penetration resistance of glass-plastic glazing, the resultant materials have the potential of having less perpendicular rigidity and therefore less injury causing potential than the now common HPR windshield.

It is also proposed that the rule should specify rubber gaskets above and below the test sample. The agency proposes the same type of rubber specified by the ECE, that is, rubber with a hardness of 50 IRHD (International Rubber Hardness Degrees). The 50 IRHAD is proven and is radily available. To allow for normal stock variance and material aging, the agency is proposing a tolerance of the rubber hardness of plus or minus 5 degrees. This is the same amount of tolerance used elsewhere in this standard and in FMVSS 116, "Motor Vehicle Brake Fluids". The agency is also proposing that the gaskets have the same thickness as those in the ECE procedure, i.e., 1/8 inch.

The agency considered whether to attempt to modify the existing test frame used under FMVSS No. 205 or to propose use of the ECE 43 clamping procedure. The agency tentatively concluded for several reasons that the current FMVSS 205 wooden frame would require extensive modification to become a functional clamping frame. First, the recessed ridge for holding the glass during testing is so deep, that even with the 1/8 inch gasket above and below the test sample, the 1/8 to 1/4 inch thick specimens may not be elevated enough to contact the flat upper surface that would be used to apply the clamping pressure. The lower frame would have to be modified to add a hard gasket as a spacer. Second, the wooden frame has no provisions for clamping. The frame would have to be modified in additional ways, such as drilling holes or adding clamps. Based on these considerations, the agency tentatively concluded the best alternative is to adopt the ECE test frame for clamping glass-plastic glazing for Test 26. A preliminary sketch of the fixture is provided in Figure 1.

VI. Comments on Clamping for Tests 9 and 12

Proposing to specify clamping for Test 26 raises the related question of whether clamping should be specified for other drop tests for Item 14 glazing. The agency is tentatively inclinded not to do so. In addition to Test 26, FMVSS No. 205 uses impact Tests 9 and 12, as identified in ANS Z26, to test Item 14 glass-plastic glazing. NHTSA notes that the objects dropped in those tests are considerably lighter than the 5 pound object used in Test 26 and therefore are less likely to create the problem experienced in conducting test 26. Test 9 is a 7-ounce dart/drop test from 30 feet to determine the behavior of safety glass under impact from small hard objects. Test 12 is an 8 ounce (0.5 pound) steel ball drop test from 30 feet to determine whether the safety glass has a minimum strength and is properly made.

Further, NHTSA notes that ECE R43 appears to be consistent with its judgment about the need for clamping since that regulation requires clamping only for its equivalent of Test 26. Addendum 42 of ECE Regulation 43, Revision 1, (24 February, 1988), Annex 3, section 2.2, indicates the 2260 gram (4.98 pounds) ball drop test requires clamping of glass-plastic samples. Section 2.1, which describes a 227 gram (g) (0.5 pound) ball drop test, does *not* require clamping of the sample. Additionally, there is no ECE equivalent test to Test 9, the dart test. Consequently, Test 26 is the only FMVSS 205 test that would have to add clamping of the test sample to harmonize with the clamping procedure in ECE R43.

The agency notes also that requiring clamping for Tests 9 and 12 might pose a problem by making it easier for two-ply glazing to pass Tests 9 and 12, thus allowing tempered glass-plastic windshields. This would pose a problem for the following reasons.

As a beginning point, as used in Standard 205, "laminated" glass is an ambiguous term. The term refers to the way the final glazing is assembled, not to the way the glass itself is finally processed. Laminated glass consists of one or more sheets of glass held together by an intervening layer or layers of plastic. After the glass is formed into sheets, it is finally processed in one of two ways. It is either reheated and cooled slowly, creating "annealed glass" or is toughened thermally or chemically creating "tempered glass."

The two-ply annealed glazing will apparently pass Tests 9 and 12 unclamped. The agency has come to this tentative conclusion because the petitioner, GM, has not indicated a need for clamping the specimen in Tests 9 and 12.

By clamping specimens in Tests 9 and 12, tempered glass-plastic also may pass all the AS 14 tests and thereby be certified for use in areas requisite for driving visibility. Currently, tempered glass-plastic windshields are in effect precluded by the existing tests in ANS Z26 that windshield glass must pass. The agency is concerned about the possibility enabling tempered glass plastic to pass those tests because of risk of reduced visibility through broken tempered glass-plastic. Tempered glass is normally single ply, toughened either thermally or chemically. Highly tempered glass, when broken, shatters into small cubes, an effect called dicing. This characteristic is preferable in single ply glazing to prevent lacerations. But when this dicing occurs on a laminate, the cracks of the dicing lines around the cubes will obscure vision, especially in glare conditions. Stone strikes are common on windshields. A shattered tempered glass windshield would instantly obscure forward vision. For these reasons, if the agency were to require clamping for Tests 9 and 12, it might also amend S5.1.2.5 of Standard 205 to ensure that tempered glass-plastic would not be used in windshields, and/or any other location requisite for driving visibility.

Although the agency is not inclined to specifying clamping for Tests 9 and 12, it nevertheless requests responses to the following questions to aid the agency in considering the merits of requiring such clamping:

1. Is clamping of the test specimens in Tsts 9 and/or 12 necessary?
2. What would be the effects on the specimen design if Tests 9 and/or 12 required clamping?
3. Would modifying Test 26 inadvertently permit use of tempered glass-plastic in windshields?
4. What are the advantages or disadvantages of tempered glass-plastic in windshiels, or the side and rear windows?

Depending on the public comments, the agency may, in the final rule, require the clamping procedure for Test 9 (the 7-ounce dart/drop test to determine the behavior of safety glass under impact from small hard objects) and Test 12 (the 8 ounce steel ball drop test to determine whether the safety glass has a minimum strength and is properly made). Wording for the clamping procedure for Tests 9 and 12 would be similar to the description for the procedure in Test 26, the 5 pound ball penetration resistance test. If the clamping procedure for Tests 9 and 12 is adopted, language prohibiting use of tempered Item 14 glass-plastic in windshields may also be included in the final rule.

VIII. Implementation Date

Because this rulemaking is to correct a problem in the existing test procedure for AS 14 glass-plastic glazing, it is proposed that the rule become effective upon issuance. The agency believes that due to the relatively simple and inexpensive nature of the additional clamping procedure for the 5 pound ball drop test, immediate effectiveness of this new procedure would not present a problem to testers. The agency is unaware of circumstances that would necessitate a phase in period for impiementation of the new testing procedure. Public comment is invited on

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this aspect of the rulemaking. If the commenter wishes to recommend a phase in period for the new procedure, a recommend time period is requested.

IX. Regulatory Impacts

1. Cost and other impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency estimates that the new Test 26 clamping procedure for two-ply glass-plastic glasing, if adopted, would require an expenditure of less than $200 in test equipment for fabricating a new test fixture, for each of the approximately ten testing companies or laboratories throughout the United States. The clamping procedure would add less than five minutes to the length of time needed to conduct each test. Public comment is invited on the likely costs and benefits that would be associated with the proposed changes in Test 26.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant ecoomic impact on a substantial number of small entities. This proposed rule would have no significant effect even if all of the approximately 10 testing entities for glazing in the United States were small businesses or other small entities (defined in 13 CFR 121.2 under SIC 8734 "Testing Laboratories" as those entities grossing less than $3.5 million a year). The rationale for this certification is that this proposed rule, if adopted, would require the purchase of less than $200 in new test equipment for each of the affected testing companies or laboratories that test motor vehicle glazing.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

IX. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follow:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. The introductory text to existing paragraph § S5.1.2.4 would be revised to read as follows:

S5.1.2.4 *Item 14—Glass-Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.5 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in (a), (b), (c), (d), and (e) of this paragraph, may be used anywhere in a motor vehicle, except that it may not be used in convertibles, in vehicles that have no roof or in vehicles whose roofs are completely removable.

3(a). Alternative 1. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test No. 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gaskets shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber hardness Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece, beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

3(b). Alternative 2. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test Nos. 9, 12 or 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gasket shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber Hardness Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

4. Section 5.1.2. would be amended by adding Section S5.1.2.6 after Section 5.1.2.5 as follows:

S5.1.2.6 *Tempered Glass-Plastic Prohibition.* Glass that is strengthened by any method may not be used in glass-plastic glazing in any windshield or other location requisite for driving visibility.

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23866 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331

[Ex Parte No. 55 (Sub-No. 73)]

Practice and Procedure; Miscellaneous Amendments; Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing to revise the above-numbered Parts of Title 49, Code of Federal Regulations as part of an effort to streamline and update its regulations. By this means, we intend to make our rules more understandable and easier to use.

DATE: Comments are due November 13, 1989.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 73) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275-7615, or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The vast majority of these revisions involve editing to remove obsolete, unnecessary, or redundant material from Parts that are being retained. These changes are too numerous to detail here. All interested parties are encouraged to study the appendix, which contains all the proposed changes, and compare them to the current rules. We will highlight some of the more significant changes.

Part 1136 requires that rail and motor carriers give advance notice and justification for commutation or suburban passenger fare increases. Notice to the public of such increases is already required by 49 CFR 1312.5(c) The Commission may not investigate, suspend, revise, or revoke a rate proposed by a motor passenger common carrier, acting independently, on the ground that such rate is unreasonable. 49 U.S.C. 10708(e). However, the Commission, on complaint, may review rates established by independent action. *Procedures—Complaints Against Bus Car. Rate & Fares,* 133 M.C.C. 240 (1983); 49 CFR part 1142. An independently established motor passenger carrier rate may become effective after only 1 day's notice. 49 CFR 1312.39(i) Independently established passenger carrier rates (motor and rail) have been challenged on only three occasions during the last 5 years (none on the motor side). Similarly, there have been no complaints or protests stemming from collective ratemaking activity by passenger carriers. For these reasons, we proposed to retain part 1136 only as it pertains to rail passenger carriers.

We propose to revise 49 CFR 1331.5 in substantial part. Part 1331 governs applications by rate bureaus seeking immunity from the antitrust laws to negotiate collective rates. The Motor Carrier Act of 1980 changed approval standards considerably by narrowing the range of actions that could be immunized. Section 5 of part 1331 was added to provide guidance for rate bureaus seeking approval of amended agreements filed under the mandate of the Act. Not until 1986, however, did the Commission give priority to reviewing existing agreements for compliance. Now, we have given final approval to about two thirds of the agreements, and have provisionally approved most others. Viewed in this context, 49 CFR 1331.5, as it currently reads, has served its purpose. To make part 1331 more meaningful, we propose: (1) Revising the title of section 5 to clarify that it governs all rate bureaus, not just motor passenger carrier bureaus; and (2) prescribing rules on retaining antitrust immunity to replace the rules on seeking approval of agreements since we have approved most agreements.

Finally, we propose to remove parts 1080, 1083, and 1085 in their entirety. Part 1080 covers the contents and filing of contracts between household goods freight forwarders and motor carriers. Part 1083 concerns the filing of contracts between household goods freight forwarders for joint loading and terminal services and facilities. Removal of these Parts is consistent with the relaxation of contract filing requirements and our experience that filing these contracts is not necessary to enfore the statute. Part 1085 requires that a household goods freight forwarder (HHGFF) give shippers certain information, including Commission office locations where complaints may be filed. The Part does not apply where the HHGFF has actual notice that the shipper has already received the information. Much of the traffic moves in foreign commerce and involves personnel relocations by the Department of Defense or by internationl corporations in the private sector. The Commission has received few complaints under this part. The opportunity for abuse is minimal, has not arisen, and does not warrant retention of Part 1085.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pickup in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Environmental and Energy Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not have a significant effect on a substantial number of small entities. Either they contain no substantive change from the existing regulations or they delete and remove obsolete or unnecessary material, and thus reduce the regulatory burden. The revised Parts should provide information that is both more accessible and understandable, and to that extent our action should benefit small entities.

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Decided: September 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

For the reasons stated in the preamble, title 49, chapter X, parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331 of the Code of Federal Regulations are proposed to be amended as follows:

1. Part 1022 is proposed to be revised to read as follows:

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.

1022.1 Eligibility
1022.2 Extent of agreement.
1022.3 Cancellation.
1022.4 Exchange of information.
1022.5 Requests for assistance.
1022.6 Joint investigation or inspection.
1022.7 Joint administrative activities.
1022.8 Supplemental agreements.

Authority: 49 U.S.C. 10101, 10321, and 11502.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of that State and the United States concerning highway transportation.

§ 1022.2 Extent of agreement.

The written agreement, signed by a competent State authority and filed with the Commission's Office of the Secretary, shall specify the extent of the State's participation, as described below. The Commission will reciprocate to that extent.

§ 1022.3 Cancellation.

Either party may cancel or withdraw from all or part of a cooperative agreement by written notice indicating the effective date of such action.

§ 1022.4 Exchange of information.

Information acquired by a State agent, in his official duties, regarding violation of the economic laws of the United States concerning highway transportation or of the Commission's regulations, shall be communicated to the Regional Director of the Commission's Office of Compliance and Consumer Assistance.

§ 1022.5 Requests for assistance.

Either party to a cooperative agreement may request, in writing the other's assistance in obtaining evidence to enforce the economic laws and regulations governing highway transportation. Such evidence, obtained as time, personnel, and funds permit, shall be transmitted to the State authority or Regional Director, as the case may be, together with the name and address of any agent or personnel available to testify in an enforcement action.

§ 1022.6 Joint investigation or inspection.

The Regional Director and appropriate State authority may agree to conduct a joint inspection or investigation of the property, equipment, or records of motor carriers or others, to enforce the pertinent economic laws and regulations. They shall decide the location, time, and objectives of the joint effort, and shall select the persons who will supervise it and make the necessary decisions. Any agent or personnel of either agency having knowledge of the facts shall be made available to testify in an enforcement action.

§ 1022.7 Joint administrative activities.

To facilitate the interchange of information and evidence, and the conduct of the joint effort and any ensuing administrative action, the Regional Director and appropriate State authority shall, when warranted, schedule joint conferences. They shall inform each other of their enforcement capabilities and of any changes in their regulations.

§ 1022.8 Supplemental agreements.

The Commission and State may agree to supplement their agreement to further implement 49 U.S.C. 11502.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

2. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; 5 U.S.C. 553.

3. Paragraph (a) of § 1043.10 is proposed to be revised to read as follows:

§ 1043.10 Fiduciaries.

(a) *Definitions.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term "fiduciary" means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

* * * * *

4. Part 1044 is proposed to be revised to read as follows:

PART 1044—DESIGNATION OF PROCESS AGENT

Sec.

1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

Authority: 49 U.S.C. 10329, 10330, and 11705.

§ 1044.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 1043.10(a)).

§ 1044.2 Form of designation.

Designations shall be made on Form BOC–3, *Designation of Agent for Service of Process.* Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined at 49 U.S.C. 10102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§ 1044.4 Required states.

(a) *Motor Carriers.* Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

§ 1044.5 Blanket designations.

Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by

_____

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including states traversed during such operations, except those States for which individual designations are named.

§ 1044.6 Cancellation or change.

A designation may be cancelled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 1044.4 in whole or in part for 1 year, designation is no longer required and may be cancelled without making another designation.

PART 1047—EXEMPTIONS

5. The authority citation for part 1047 continues to read as follows:

Authority: 49 U.S.C. 10525, 10526, and 10931.

6. The title of the last center heading of part 1047, where it appears both in the table of contents and immediately before § 1047.45, is proposed to be revised to read as follows:

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

* * * * *

7. Part 1051 is proposed to be revised to read as follows:

PART 1051—RECEIPTS AND BILLS

Sec.

1051.1 Bills of lading.
1051.2 Expense bills.
1051.3 Low value packages.

Authority: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

§ 1051.1 Bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names or consignor and consignee.
(b) Origin and destination points.
(c) Number of packages.
(d) Description of freight.
(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a copy of the receipt or bill of lading as prescribed in 49 CFR part 1220.

§ 1051.2 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).
(2) Date of shipment.
(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).
(4) Number of packages.
(5) Description of freight.
(6) Weight, volume, or measurement of freight (if applicable to the rating of freight).
(7) Exact rate(s) assessed.
(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.
(9) Route of movement and name of each carrier participating in the transportation.
(10) Transfer point(s) through which shipment moved.
(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 1220. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.
(2) Name of carrier.
(3) Names of payor and organization, if any, for which transportation is performed.
(4) Date(s) transportation was performed.
(5) Origin, destination, and general routing of trip.
(6) Identification and seating capacity of each vehicle used.
(7) Number of persons transported.

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(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§ 1051.3 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of "low value" packages. This includes the option of shipping such packages under the released rates provisions at 49 U.S.C. 10730. The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less than or equal to the costs of preparing a loss or damage claim.

8. Part 1058 is proposed to be revised to read as follows:

PART 1058—IDENTIFICATION OF VEHICLES

Sec.
1058.1 Applicability.
1058.2 Method of identification.
1058.3 Size, shape, and color.
1058.4 Driveaway service.

Authority: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

§ 1058.1 Applicability.

These rules govern all for-hire motor carriers except those providing: (a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers.

§ 1058.2 Method of identification.

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-_____" but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

§ 1058.3 Size, shape, and color.

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehile is stationary.

§ 1058.4 Driveaway service.

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

9. Part 1061 is proposed to be revised to read as follows:

PART 1061—LIMITATION OF SMOKING ON INTERSTATE BUSES

Authority: 49 U.S.C. 10521, 11101, and 11701.

§ 1061.1 Separate seating for smokers and nonsmokers.

(a) If otherwise permitted by law, motor common carriers of passengers may permit smoking of cigars, cigarettes, or pipes only in a smoking section, consisting of seats in the rear of the vehicle up to 30 percent of its capacity. This section does not apply to passenger carriers conducting charter operations.

(b) In unusual circumstances, the driver of the vehicle (or other carrier personnel) may make reasonable, minor modifications to assure passengers' comfort and safe, adequate, and expeditious transportation service.

10. Part 1063 is proposed to be revised to read as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.
1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility
1063.7 Equipment.
1063.8 Accommodations for handicapped disabled, blind, and elderly
1063.9 Identification—bus and driver
1063.10 Relief from provisions.

Authority: 49 U.S.C. 10102, 10321, 10701, 10702–10705, 10708, 10721, 10722, 10724, 10730 10741, 10761, 10762, 10764, 10922, 11101, 11141–11145, 11701, 11702, 11707 11708, 11901, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C 553 and 559.

§ 1063.1 Applicability.

These rules govern only motor passenger common carriers conducting regular-route operations.

§ 1063.2 Definitions.

(a) "Carrier" means a motor passenger common carrier.

(b) "Bus" means a passenger-carrying vehicle, regardless of design or seating capacity, used in a carrier's authorized operations.

(c) "Facility" means any structure provided by or for a carrier at or near which buses pick up or discharge passengers.

(d) "Terminal" means a facility operated or used by a carrier chiefly to furnish passengers transportation services and accommodations.

(e) "Station" means a facility, other than a terminal, operated by or for a carrier to accommodate passengers

(f) "Service" means passenger transportation by bus between authorized points or over authorized routes.

(g) "Commuter service," notwithstanding 49 CFR 1312.1(b)(33), means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations.

(h) "Baggage" means property a passenger takes with him for his personal use or convenience.

(i) "Restroom" means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebasket, and toilet paper.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During business hours at each terminal or station, information shall be provided as to schedules, tickets, fares, baggage, and other carrier services.

(2) Carrier agents and personnel who sell or offer to sell tickets, or who provide information concerning tickets and carrier services, shall be competent and adequately informed.

(b) *Telephonic information service.* Every facility where tickets are sold shall provide telephonic information to the traveling public, including current bus schedules and fare information, when open for ticket sales.

(c) *Schedules.* Printed, regular-route schedules shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the carrier's route(s) where facilities are located or where bus trips originate or terminate, and each schedule shall indicate the arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall refund unused tickets upon request, consistent with its governing tariff, at each place where tickets are sold, within 30 days after the request.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement of the departure and boarding point has been given. The announcement shall be given at least 5 minutes before the initial departure and before departures from points where the bus is scheduled to stop for more than 5 minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked baggage.

(2)(i) If baggage checking service is not provided at the side of the bus, all baggage checked at a baggage checking counter at least 30 minutes but not more than 1 hour before departure shall be transported on the same schedule as the ticketed passenger.

(ii) If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination. All baggage checked at the side of the bus during boarding, or at alternative locations provided for such purpose, shall be transported on the same schedule as the ticketed passenger.

(b) *Baggage security.* All checked baggage shal be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* (1) No carrier may totally exempt its liability for articles offered as checked baggage, unless those articles have been exempted by the Commission. (Other liability is subject to 49 CFR Part 1064.) A notice listing exempted articles shall be prominently posted at every location where baggage is accepted for checking.

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(iii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission exempts upon petition by the carrier.

(3) Carriers need not offer excess value coverage on articles of extraordinary value (including, but not limited to, negotiable instruments, papers, manuscripts, irreplaceable publications, documents, jewelry, and watches).

(d) *Express shipments.* Passengers and their baggage always take precedence over express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time, not to exceed 30 minutes, afer arrival at the passenger's destination. If not, the carrier shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage that cannot be located within 1 hour after the arrival of the bus upon which it was supposed to be transported shall be designated as lost. The carrier shall notify the passenger at that time and furnish him with an appropriate tracing form.

(2) Every carrier shall make available at each ticket window and baggage counter a single form suitable both for tracing and for filing claims for lost or misplaced baggage. The form shall be prepared in duplicate and signed by the passenger and carrier representative. The carrier or its agent shall receive the signed original, with any necessary documentation and additional information, and the claim check, for which a receipt shall be given. The passenger shall retain the duplicate copy.

(3) The carrier shall make immediate and diligent efforts to recover lost baggage.

(4) A passenger may fill out a tracing form for lost unchecked baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and shall notify the passenger that the baggage will be held on a will-call basis.

(g) *Settlement of claims.* Notwithstanding 49 CFR 1005.5, if lost checked baggage cannot be located within 15 day, the carrier shall immediately process the matter as a claim. The date on which the carrier or its agent received the tracing form shall be considered the first day of a 60-day period in which a claim must be resolved by a firm offer of settlement or by a written explanation of denial of the claim.

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.

(b) *Outside facilities.* At terminals and stations that are closed when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.

(c) *Maintenance.* Terminals shall be clean.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules that can be reasonably met, including connections at junction points, to serve adequately all authorized points.

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first filing a written notice with the Commission's appropriate Regional Office(s). The carrier shall display conspicuously a copy of such notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

(c) *Trip interruptions.* A carrier shall mitigate, to the extent possible, any passenger inconvenience it causes by disrupting travel plans.

(d) *Seating and reservations.* A carrier shall provide sufficient buses to meet

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passengers' normal travel demands, including ordinary weekend and usual seasonal or holiday demand. Passengers (except commuters) shall be guaranteed, to the extent possible, passage and seating.

(e) *Inspection of rest stops.* Each carrier shall inspect periodically all rest stops it uses to ensure that they are clean.

§ 1063.7 Equipment.

(a) *Temperature control.* A carrier shall maintain a reasonable temperature on each bus (except in commuter service).

(b) *Restrooms.* Each bus (except in commuter service) seating more than 14 passengers (not including the driver) shall have a clean, regularly maintained restrooms, free of offensive odor. A bus may be operated without a restroom if if makes reasonable rest stops.

(c) *Bus servicing.* Each bus shall be kept clean, with all required items in good working order.

§ 1063.8 Accommodations for handicapped, disabled, blind, and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance. A guide dog shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers, whenever possible and on request, shall assist handicapped, disabled, blind, and elderly passengers in boarding buses (including advance boarding and seating) and using terminal accomodations and baggage service. A notice indicating where and from whom such assistance may be obtained shall be displayed prominently at all terminals.

(c) *Terminal accommodations.* (1) All terminals shall be constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminal construction or substantial renovation shall conform to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1–1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus and driver providing service shall be identified in a manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* Where compliance with any rule would impose an undue burden on a carrier, it may petition the Commission either to treat it as though it were conducting a commuter service or to waive the rule. The request for relief must be justified by appropriate verified statements.

(b) *Notice to the public.* The carrier shall display conspicuously, for at least 30 days, in each facility and on each bus affected, a notice of the filing of any petition. The notice shall contain the carrier's name and address, a concise description of and reasons for the relief sought, and a statement that any interested person may file written comments with the Commission (with one copy mailed to the carrier) on or before a specific date that is at least 30 days later than the date the notice is posted.

11. Part 1067 is proposed to be revised to read as follows:

PART 1067—FITNESS PROCEDURES

Sec.
1067.1 Definition.
1067.2 Intervention by the Department of Transportation.
1067.3 Effect of adverse fitness finding on subsequent application.

Authority: 49 U.S.C. 3102, 10922, 10923, and 10927; 5 U.S.C. 552, 553, and 559.

§ 1067.1 Definition.

Fitness means an applicant's willingness or ability to conform to the Interstate Commerce Act and the regulations of the Interstate Commerce Commission and the Department of Transportation (DOT). (*See* 49 CFR 1160.5(a)(3).)

§ 1067.2 Intervention by the Department of Transportation.

(a) DOT may participate in application proceedings on the issue of fitness [by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2] by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the *ICC Register.* Applicant may reply within 15 days of such filing. If DOT has not petitioned to intervene, its subsequent participation may be authorized at the Commission's discretion.

(b) This rule does not alter DOT's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding regarding a regulated carrier's practices.

§ 1067.3 Effect of adverse fitness finding on subsequent application.

An administratively final adverse fitness determination is not necessarily fatal to a subsequent application, which shall be considered on the same basis as that of any applicant not found unfit. Prior adverse findings may be officially noticed and may be found to bear on applicant's fitness.

PART 1070—HARBORS

12. Part 1070 is proposed to be amended as follows:

a. The authority citation for Part 1070 is revised to read as follows:

Authority: 49 U.S.C. 10541, 10543, 10544, and 10929.

b. Section 1070.1 is proposed to be amended by revising the introductory text and the introductory text of paragraphs (a) and (b) to read as follows:

§ 1070.1 Harbor limits.

The following harbors, within which transportation in interstate commerce by water is not part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, are exempt from regulation under 49 U.S.C. 10544(a):

(a) *New York, NY.* The waters within the area over which the Port of New York Authority has jurisdiction as shown by the heavy black line in the following map:

* * * * *

(b) *Philadelphia, PA.* The waters within the area enclosed by the heavy black line in the following map:

* * * * *

13. The title for parts 1080–1089 is proposed to be revised to read as follows:

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1080—[REMOVED]

14. Part 1080 is proposed to be removed.

15. Part 1081 is proposed to be revised to read as follows:

PART 1081—BILLS OF LADING

Authority: 49 U.S.C. 10701, 10702, 10730, 10741, 10766, 10927, 11101, and 11707.

§ 1081.1 Bills of lading.

Every household goods freight forwarder (HHGFF) shall issue the shipper through bills of lading, covering transportation from origin to ultimate destination, on each shipment for which

it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the HHGFF's name, the HHGFF, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the carrier receives the shipment.

PART 1083—[REMOVED]

16. Part 1083 is proposed to be removed.

17. Part 1084 is proposed to be revised to read as follows:

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.
1084.1 Definitions.
1084.2 General requirements.
1084.3 Limits of liability.
1084.4 Surety bonds and certificates of insurance.
1084.5 Insurance and surety companies.
1084.6 Qualifications as a self-insurer and other securities or agreements.
1084.7 Forms and procedure.
1084.8 Acceptance and revocation by Commission.
1084.9 Fiduciaries.

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

§ 1084.1 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to Commission jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle: (1) A tractor that draws a trailer or semitrailer; and (2) a truck and trailer bearing a single load.

§ 1084.2 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 1043.2(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

§ 1084.3 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 1043.2.

§ 1084.4 Surety bonds and certificates of insurance.

(a) The limits of liability under § 1084.3 may be provided by aggregation under the procedures at 49 CFR Part 1043.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the Commission shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized to issue such bonds or underlying insurance policies: (a) In each State in which the HHGFF is authorized to operate; or (b) in the State in which the HHGFF has its principal place of business or domicile, and will designate in writing upon request by the Commission a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the HHGFF operates, or (c) in any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

§ 1084.6 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will approve the application of a freight forwarded to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The Commission will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 10927(c).

§ 1084.7 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 1043.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the Commission receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the Commission.

§ 1084.8 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

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§ 1084.9 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 1043.10(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the Commission for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the Commission receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 1084.7(d).

PART 1085—[REMOVED]

18. Part 1085 is proposed to be removed.

19. Part 1091 is proposed to be revised to read as follows:

PART 1091—ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.
1091.1 Definition.
1091.2 Tariff information and election of service method.

Authority: 49 U.S.C. 10101–10103, 10301, 10306, 10311, 10321, 10502, 10521, 10561, 10562, 10701–10705, 10708, 10721–10724, 10741–10744, 10761–10763, 10766, 10921, 10922, 10928, 11101, 11102, 11108, 11349, 11501, 11502, 11701, 11702, 11705, 11706, 11708, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1091.1 Definition.

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a water common carrier subject to the Shipping Act, 1916, as amended, by an irregular-route motor common carrier authorized by the Interstate Commerce Commission to transport property in interstate or foreign commerce between points in Alaska, on the one hand, and, on the other, any point in the contiguous United States, for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and, on the other, a seaport on the West Coast of the contiguous United States.

§ 1091.2 Tariff information and election of service method.

Motor carriers using AMOM Service may publish tariffs setting forth different charges for AMOM and all-highway services. The tariff publications must allow the shipper to choose whether AMOM or all-highway service shall be used, and that, absent an election, the shipment will be transported over the lower-cost service. Tariffs embracing AMOM Service charges, including substituted service directories, if used, shall also set forth the underlying operating rights (overhead) relied upon, the service covered by the published charges, the points of substitution between modes of transportation, and the names of the participating carriers.

20. The heading of part 1104 is proposed to be revised to read as follows:

PART 1104—FILING WITH THE COMMISSION—COPIES—VERIFICATION—SERVICE—PLEADINGS, GENERALLY

21. Part 1136 is proposed to be revised to read as follows:

PART 1136—RAIL PASSENGER CARRIER COMMUTATION OR SUBURBAN FARE INCREASES

Authority: 49 U.S.C. 10321, 10707, 10708; 5 U.S.C. 559.

§ 1136.1 Filing and service requirements.

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

22. Part 1143 is proposed to be revised to read as follows:

PART 1143—PREEMPTION OF STATE JURISDICTION: PASSENGER RATES

Sec.
1143.1 Applicability.
1143.2 Commission jurisdiction.
1143.3 Petition.
1143.4 Notification procedures.
1143.5 Opposition; deadlines.
1143.6 Rebuttal.

Authority: 49 U.S.C. 10321 and 11501(e); 5 U.S.C. 553.

§ 1143.1 Applicability.

These rules govern petitions for review, under 49 U.S.C. 11501, of State regulation of rates, rules, and practices of interstate passenger carriers providing intrastate service. (Commission preemption of State jurisdiction over passenger exit is covered at 49 CFR part 1169.)

§ 1143.2 Commission jurisdiction.

If an interstate passenger carrier has requested of a proper State authority permission to establish an increased intrastate rate, rule, or practice and all or part of the request has been denied, or the State has not taken final action (in whole or in part) on the request within 120 days, the carrier may petition the Interstate Commerce Commission for review.

§ 1143.3 Petition.

A petition for review shall include the following.

(a) A cover sheet indicating that the filing is authorized under 49 U.S.C. 11501 and that a decision must be made within 60 days.

(b) A copy of the entire State record, if available, and other new, relevant evidence. (If the basis for the petition is State inaction, petitioner shall also submit a statement by counsel or a verified statement by a competent witness that the State has not acted within 120 days after the request.)

(c) Written argument detailing reasons for review.

(d) Certification that the notification procedures at § 1143.4 have been met.

§ 1143.4 Notification procedures.

The petition for review shall be served, no later than its filing date, on the State Governor, the State authority, and on all parties to the State proceeding.

§ 1143.5 Opposition; deadlines.

Opposition statements may be filed as a matter of right by the Governor, the State authority, or by any party to the State proceeding within 15 days after the petition is filed. All others wishing to participate shall file a petition for leave to intervene within 15 days after the filing. Opposition statements and petitions to intervene shall include argument establishing that the State action was reasonable and may also address any new evidence submitted by petitioner. Petitions to intervene shall also explain why an appearance was not entered in the State proceeding but is appropriate in the Commission proceeding.

§ 1143.6 Rebuttal.

Rebuttal to an opposition statement shall be filed within 20 days after the petition is filed. Rebuttal to an intervention petition shall be filed within 10 days after such petition is filed.

23. Part 1161 is proposed to be revised to read as follows:

PART 1161—ISSUANCE UNDER 49 U.S.C. 10931 OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS

Sec.
1161.1 Applicability.
1161.2 Notice.
1161.3 State application proceedings.
1161.4 Application for Certificate of Registration.
1161.5 Appeal of State decision.

Appendix—Form of Notice of Filing State Application

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Applicability.

These rules govern applications for Certificates of Registration based on intrastate certificates issued by a State that concurrently find that the public convenience and necessity require operations in interstate and foreign commerce.

§ 1161.2 Notice.

An applicant for a Certificate of Registration shall notify the appropriate State authority of such filing consistent with its rules. Notice to interested persons will be given by publishing in the *ICC Register* a summary of the authority sought (prepared by the State in the form described in the appendix). The summary must be sent to the Interstate Commerce Commission sufficiently in advance of any State hearing on the application to afford interested persons a reasonable opportunity to be heard. No other notice is necessary, unless required by the State.

§ 1161.3 State application proceedings.

State rules govern the conduct of the State proceeding. Protests and requests for information will be directed to the State. The record in the State proceeding will be made available to the parties upon payment of costs prescribed by the State.

§ 1161.4 Application for Certificate of Registration.

(a) *Time for filing.* Within 30 days after service of the State certificate (containing the recitations required by 49 U.S.C. 10931), applicant shall file with the Commission an Application for Motor Certificate of Registration, Form OP–OR–100. Except for cause shown, failure to file an application within the 30-day period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* The Commission will give notice of the application's filing date and docket number to the applicant and to all interested persons in the State proceeding.

(c) *Parties.* Any party that opposed the authorization of operations in interstate or foreign commerce in the State proceeding will be considered a party in the Certificate of Registration proceeding. Other persons may participate only upon a showing of good cause.

§ 1161.5 Appeal of State decision.

Any opposing party may file an appeal with the Commission within 30 days after the application for a Certificate of Registration is filed. The appeal should include a certified copy of the complete record made before the State (including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing, unless the record has already been filed by another party). Applicant may file a reply to an appeal within 20 days. Copies of each appeal and reply shall be served on the State Commission and on all parties to the State proceeding. The filing of an appeal will not affect the institution of intrastate operations under the State certificate. Failure to file an appeal waives further participation in the Certificate of Registration proceeding. The application and related appeals will be handled in a single proceeding. A Commission decision is final.

Appendix—Form of Notice of Filing State Application

Part I

(To be completed by applicant)
Notice is given that applicant has filed with

_____
(Name of State Authority)
an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

_____
1. (Name and business address of applicant)

_____
(Street) (City) (State)

_____
2. (Name and address of applicant's representative, if any)

_____
(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

_____
(Signature)

_____
(Title)
Date _____, 19____.

Part II

(To be completed by State Authority)
Date of filing application _____
Docket number assigned _____
Date, time, and place application has been assigned for hearing, if known
_____

_____
(Signature)

_____
(Title)

_____
(Name of State Authority)
Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, _____, 19____.

24. Part 1167 is proposed to be revised to read as follows:

PART 1167—COMPENSATED INTERCORPORATE HAULING

Sec.
1167.1 Applicability.
1167.2 Notification.
1167.3 Change in participation.

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.1 Applicability.

Compensated transportation service by a member of a corporate family for other members of the same family (Compensated Intercorporate Hauling or CIH) is exempt from Interstate Commerce Commission regulation if proper notice is given. To qualify for the exemption, the participants must be members of a corporate family in which the parent owns, either directly or indirectly, a 100 percent interest in the subsidiaries. However, no corporation operating chiefly as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b) to transport freight tendered to it as a carrier.

§ 1167.2 Notification.

(a) *General requirements.* The corporate parent seeking to initiate CIH must submit a **Federal Register** notice is follows:

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling

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operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(b) *Affidavit and declaration.* The notice shall include the following affidavit and declaration (which need not be notarized) by a person legally qualified to act for the parent:

I, _____, affirm that _____ is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

_____
(Signature and date)

(c) *To whom notice sent.* The original and one copy of the notice of intent to engage in CIH shall be sent to the Commission in an envelope marked: "CIH Notice." The Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and giving a projected publication date. CIH operations may commence as soon as the required notice is placed in the mails or, if hand-delivered, upon receipt at the Commission's office.

(d) *Cover letter requirement.* Where the office that has prepared a notice for a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(e) *Miscellaneous.* The filing of a CIH notice does not initiate a proceeding before the Commission. Publication of a notice is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation nor does it create a right of protest.

(f) *Fees.* All required filings shall include the appropriate fee. *See* 49 CFR part 1002.

§ 1167.3 Change in participation.

(a) If the parent intends that an additional subsidiary participate in CIH, it shall file un updated notice.

(b) Whenever the corporate parent's interest in a subsidiary participating in CIH become less than 100 percent, operations under 49 U.S.C. 10524(b) by or for that subsidiary shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices shall be submitted in the format required by § 1167.3(a), and will be published in the **Federal Register.**

(d) An updated notice need not be filed where an action by a corporate family affects the status of a member participating in CIH, but the scope of the operations remains unchanged—*e.g.*, absorption of a subsidiary into a parent resulting in extinction of its separate corporate status. However, name changes require an updated notice.

25. Part 1169 is proposed to be revised to read as follows:

PART 1169—PREEMPTION OF STATE JURISDICTION: PASSENGER EXIT

Sec.
1169.1 Applicability.
1169.2 Petition.
1169.3 Objections.
1169.4 Commission action.
1169.5 Offers of subsidies; continuation of service.

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.1 Applicability.

These rules govern petitions by motor passenger common carriers to discontinue regular-route service over any route in a State, or to reduce the level of service over a route to less than one trip per day (excluding Saturdays and Sundays). (Commission preemption of State jurisdiction over passenger rates is covered at 49 CFR part 1143.)

§ 1169.2 Petition.

The petition shall contain the following information:

(a) On a cover page: (1) Petitioner's name, "MC" number, and mailing address; (2) the words "Exit Petition:", followed by the affected State (a separate petition must be filed for each such State); and (3) the termini of the route(s) on which petitioner proposes to discontinue or reduce service.

(b) Verified statement(s) containing the following information: (1) Description of petitioner's pertinent operations and how they would be affected by the proposed discontinuance or reduction in service (petitioner must hold both interstate and intrastate authorities over the route(s); copies of such authorities, showing service dates, must be attached);

(2) Certification that petitioner requested the State's approval for the proposed discontinuance or reduction in service (indicating the date of such request), and the State either failed to act within 120 days or denied all or part of the request (a copy of the State decision must be attached); the petition shall be filed within 90 days after the final State action or inaction;

(3) Certification that petitioner is not controlled by a State or local government;

(4) Annual interstate and intrastate passenger and package express revenues generated by the service to be discontinued or reduced (but not including revenues which petitioner expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculation;

(5) Description of the rates and pricing practices applicable to the affected service;

(6) Variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumptions should be consistent with those used to estimate revenue);

(7) Description of any current operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions concerning operating subsidies or financial assistance during the year preceding the filing of the petition; and

(8) Description of other passenger transportation available on the affected route(s).

(c) If petitioner proposes to discontinue service, a request for revocation of its pertinent interstate authority; and

(d) Certification that copies of the petition have been served on: (1) The Governor of the State in which the transportation is provided; (2) the appropriate State regulatory body; (3) local governments in the affected areas; and (4) each party to any related State proceedings.

§ 1169.3 Objections.

(a) The Commission must receive an objection within 20 days after the petition is filed.

(b) The objection must contain at least the following information:

(1) Description of any operating subsidies or financial assistance known to have been offered petitioner to continue the involved service;

(2) Description of the adverse effect the proposed discontinuance or reduction in service would have on the traveling public, on the communities served, or on others; and

(3) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service.

(c) Within 15 days after an objection is filed, petitioner must furnish to the Commission and to each objector an estimate of, and data necessary to determine the amount of, any annual subsidy or financial assistance required to continue the service. At the same time, petitioner may file rebuttal.

§ 1169.4 Commission action.

The Commission must take final action on a petition within 90 days after it is filed. The 90-day period will not begin to run until the petition is complete. If no objections are received within 20 days after a complete petition is filed, the Commission will grant the petition and revoke any pertinent interstate authority. The effective date will be 30 days after the decision is served. If timely objections are filed, the Commission will consider the evidence on the written record. There will be no oral hearing. Appeals are governed by 49 CFR 1115.3(b).

§ 1169.5 Offers of subsidies; continuation of service.

(a) Any financially responsible person who intends to offer petitioner an operating subsidy or financial assistance so it may continue providing the service, must notify the Commission and petitioner within 50 days after the petition is filed.

(b) The Commission may order petitioner to continue the affected service for 165 days after the petition is filed—even if permission to discontinue or reduce service is otherwise granted, but before it has become effective—if there is a responsible offer of subsidy or financial assistance that is reasonably likely to induce petitioner to continue the service voluntarily, or if additional time is needed to allow another carrier to take over the involved operations.

26. Part 1170 is proposed to be revised to read as follows:

PART 1170—EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Sec.
1170.1 Applicability.
1170.2 Application.
1170.3 Opposition.
1170.4 Commission ection.
1170.5 List of available jobs.

Authority: 49 U.S.C. 10321; 5 U.S.C. 553; and Pub. L. 97–261, sec. 27.

§ 1170.1 Applicability.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must have worked for a bus company on or before September 20, 1980, and have been fired after September 20, 1982 because of a reduction or discontinuance of regular-route bus operations. Furloughed personnel who have a right of recall by their employer are not eligible.

§ 1170.2 Application.

(a) The application shall contain the following information:

(1) The caption "Bus Employment Protection Application", at the top of page one;

(2) The individual's name and address;

(3) The full name and "MC" number of the carrier by whom the individual was employed;

(4) The dates on which the individual's employment with that carrier began and terminated;

(5) The reason(s) for the termination;

(6) The specific discontinuance or reduction of service that caused the termination; and

(7) The individual's occupational specialty.

(b) The lower left corner of the envelope should be marked: "Bus Employment Protection Application:", followed by applicant's full name. (If there is more than one applicant, list only one name and indicate the number of others.)

(c) A copy of the application must be sent to the carrier by whom the individual was employed.

§ 1170.3 Opposition.

(a) Any interested person may contest the application within 20 days after its filing.

(b) A letter or other written statement contesting an application shall include evidence showing that discontinuance or reduction in service was not a contributing factor to the termination of applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) The lower left corner of the envelope should be marked: "Bus Employment Protection Opposition:", followed by the applicant's name as prescribed at § 1170.2(b).

(d) Applicant may reply to any opposition within 15 days after it is filed. A motion must be filed within 15 days after the pleading it addresses is filed.

§ 1170.4 Commission action.

A decision disposing of an unopposed application will be served within 30 days after the application is filed. If the application is contested, a decision will be served within 60 days after the application is filed. Appeals are governed by 49 CFR 1115.2.

§ 1170.5 List of available jobs.

(a) Every carrier having annual gross revenues of over $3,000,000 derived from motor passenger common carrier operations shall, and any other motor passenger common carrier may, furnish to any Commission regional office a monthly list of available jobs, unless the carrier has no new job openings. The list must include a job description, job location, and the skills required for each available position.

(b) The Commission will publish and make available at all its offices a comprehensive list of available jobs, entitled *Jobs Available From Class I Motor Passenger Carriers.* A copy of the list will be mailed to each applicant, and to each eligible individual for 6 months following the Commission's determination of his eligibility, subject to renewal at his request. Additional copies will be available by paid subscription. Information may be obtained from the Office of the Secretary, Public Records Section, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

27. Part 1331 is proposed to be revised to read as follows:

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 TO ESTABLISH OR CONTROL AGREEMENTS BETWEEN OR AMONG CARRIERS

Sec.
1331.1 Form and content of application.
1331.2 Required exhibits.
1331.3 Procedure.
1331.4 New parties to an agreement.
1331.5 Retaining antitrust immunity.

Authority: 49 U.S.C. 10706 and 10321.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR Part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or

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express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization: (1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1; (2) as Exhibit 3, an organization chart; and (3) as Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been served.

(b) The Commission will publish in the **Federal Register** a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR Part 1104.

(d) The Commission's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at § 1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49 U.S.C. 10706(d)).

§ 1331.5 Retaining antitrust immunity.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Commission. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Commission approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis; the Commission will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are: (i) A fare for unlimited passenger travel; and (ii) an experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A "promotional fare" generally has three characteristics: (i) Limited duration; (ii) attractive price or level of service quality; and (iii) some added feature in addition to those normally offered.

[FR Doc. 89-23827 Filed 10-10-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 90880-9180]

RIN 0648-AD02

Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins in the Mid-Atlantic

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: Based on a review of the best available information on the status of the coastal-migratory stock of bottlenose dolphins in the U.S. mid-Atlantic, the National Marine Fisheries Service (NOAA Fisheries) is considering publication of a proposed rule designating this population stock as depleted under the Marine Mammal Protection Act (MMPA). This section is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). If this population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation, and the preparation and implementation of a conservation plan to restore the sock to OSP. NOAA Fisheries is also requesting any additional scientific information on this action that may be available from interested parties, as required by the MMPA Amendments of 1988.

DATE: Comments or additional scientific information must be submitted on or before December 11, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 301-427-2289.

SUPPLEMENTARY INFORMATION:

Background

During the summer and fall of 1987 and early 1988, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) were found dead and washed ashore (stranded) along the U.S. east coast from New Jersey to central Florida. A number of state and Federal agencies investigated the causes and effects of this mass mortality event (die-off). The following report on the cause of the die-off is available by writing to the **ADDRESS** listed above.

Geraci, J.R. 1989. Clinical investigation of the 1987-88 mass mortality of bottlenose dolphins along the U.S. central and south Atlantic coast. Final Report to the National Marine Fisheries Service, U.S. Navy, Office of Naval Research, and the Marine Mammal Commission, April, 1989.

Dr. Geraci's report describes the evidence implicating a biological toxin as the proximate cause of the die-off. The dolphins were apparently poisoned by brevetoxin, a neurotoxin produced by the dinoflagellate *Ptychodiscus brevis*, Florida's red tide organism. Contributing to the ultimate demise of the animals was a host of microbial and environmental factors. Dr. Geraci also noted the possibility that high contaminant levels found in the dolphins' tissues (e.g., organochlorines) may have affected their resilience and rendered them more susceptible either to the toxin or to the microorganisms that eventually killed them.

NOAA's Southeast Fisheries Center reports on stock structure and abundance of the Atlantic bottlenose dolphin and has assessed the impact of the dolphin die-off. Copies of the following publications, which form the basis of our discussion of bottlenose dolphin status under the MMPA, are available by writing to the Coastal Resources Division, Southeast Fisheries Center, NOAA Fisheries, 75 Virginia Beach Drive, Miami, FL 33149:

Scott, G.P., D.M. Burn and L.J. Hansen. 1988a. The dolphin die-off: Long-term effects and recovery of the population. Proceedings of the Oceans '88 Conference. Baltimore, MD. October 31-November 2, 1988. pp. 819-823.

Scott, G.P., L.J. Hansen and D.M. Burn. 1988b. Preliminary report: status of the bottlenose dolphin stocks in the US Gulf of Mexico and US Atlantic Ocean. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD-87/88-23.

Burn, D.G. and G.P. Scott. 1986. Synopsis of available information on marine mammal-fisheries interactions in the southeastern United States: Preliminary Report. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD-87/88-26.

Hersh, S.L. 1988a. Age class distribution of bottlenose dolphins stranded during the east coast die-off of 1987/88. NOAA Fisheries/Southeast Fisheries Center Contract Report. 45-WCNF-800633.

Hersh, S.L. 1988b. Analysis of skull and body morphometrics of bottlenose dolphins stranded during the 1987/1988 east coast die-off. NOAA Fisheries/SEFC Contract Report. 45-WCNF-800633.

Hersh, S.L. 1987. Stock structure of bottlenose dolphins (Genus *Tursiops*) in the southeastern U.S.: a review and management considerations. Final Report to NOAA Fisheries, Southeast Fisheries Center. Contract No. 40GF700715.

Rulemaking petition

The Center for Marine Conservation (CMC; formerly Center for Environmental Education) petitioned NOAA Fisheries, on November 11, 1988, to begin informal rulemaking to list the U.S. mid-Atlantic, coastal-migratory stock of bottlenose dolphins as depleted under the MMPA. On December 10, the CMC amended its petition with additional information and concerns regarding stock differentiation. CMC noted the scientific debate on the geographic "distinctness" of the coastal population and stated that all dead animals cannot with certainty be assigned to a coastal stock. In re-stating its position, the CMC recommended that NOAA Fisheries proceed with a depletion designation until such time as the question of stock differentiation is resolved. As discussed below, NOAA Fisheries believes that the stranded animals were primarily from a separate, coastal stock that migrates between Florida and New Jersey. Copies of the CMC's rulemaking petitions are available from the Information Contact listed above.

The MMPA Amendments of 1988 (Public Law 100-71) added a new section 115 to provide specific timetables and procedures for conducting status reviews, for rulemaking on depletion, and for preparing conservation plans for marine mammals. In this instance, no petition for a status report was received since the report was already completed and available in June, 1988 (Scott et al. 1988b). Based on information provided in the status report, CMC petitioned NOAA Fisheries to begin rulemaking procedures necessary to designate this stock as depleted under the MMPA. Before rulemaking can begin, however, new subsection 115(a)(2) requires publication in the **Federal Register** of a call to assist the Secretary [of Commerce] in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent feasible, informal working groups of interested parties and other methods to gather the necessary information.

NOAA Fisheries finds that CMC's petition has substantial merit and is giving serious consideration to proposing this stock for depleted status. This advance notice of proposed rulemaking incorporates the "call for assistance" required by section 115(a)(2) and a summary review of the 1988 status report. Based on a review of any scientific submissions received as a result of this notice, and all comments received on our proposal, NOAA Fisheries will determine, prior to publication of any proposed rule, whether there is a need for informal working groups to gather additional information.

Status Report Summary

1. Stock Structure

Bottlenose dolphins are found in the U.S. Gulf of Mexico and in U.S. Atlantic waters. In the U.S. Atlantic, this species is found from Long Island, NY to the Florida Keys. North of Cape Hatteras, NC, bottlenose dolphins have a disjunct distribution with concentrations along the coast (in embayments and within several kilometers of the coast) and offshore near the continental shelf margin (from 60 to 200 kilometers from the coast). South of Cape Hatteras, the coastal/offshore distribution is less distinct.

During summer in the U.S. Atlantic, bottlenose dolphins are distributed along the coast as far north as Long Island, NY and offshore as far north as Nova Scotia, Canada. The main summertime, coastal bottlenose dolphin concentration is from North Carolina to New Jersey. During autumn, density distribution patterns observed from population surveys suggest that coastal animals migrate south to Florida. During winter, bottlenose dolphins in coastal U.S. Atlantic waters are distributed from south of Cape Hatteras to the northern and central Florida coast, but concentrate at the southern end of this range. During spring, concentrations shift northward along the coast to complete a hypothesized migratory cycle. It is not clear whether the offshore population follows a similar north-south pattern.

There appear to be both near-shore (coastal) and offshore stocks of bottlenose dolphins along the U.S. Atlantic coast and in other ocean areas. There are apparent morphological and biochemical differences between the coastal and offshore stocks found in South Africa, the eastern North Pacific and in the southeastern United States. For example, offshore animals are generally larger and have higher

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concentrations of hemoglobin than coastal or warmer-water stocks. Some animals with intermediate blood characteristics have been found in the wild, suggesting some, probably low, frequency of genetic exchange between stocks. Within the coastal population there are probably local, resident stocks in certain embayments (e.g., near Savannah, GA) and a stock that migrates into and out of these embayments on a seasonal basis (coastal-migratory stock). The stranding data collected during 1987 and 1988, and the observed density distribution patterns along the U.S. Atlantic coast, support the hypothesis of a single coastal-migratory stock of bottlenose dolphins that ranges seasonally as far north as Long Island, NY and as far south as central Florida.

Both coastal-migratory and offshore stocks may have been affected by the die-off. The likelihood of an animal dying offshore, however, and then being stranded onshore is expected to be considerably less than for an animal dying near the coast. Thus, reported strandings may not include offshore animals that did not come ashore. Of 36 blood samples taken from affected animals, 35 exhibited coastal hemoglobin characteristics. One sample showed hybrid coastal/offshore characteristics. Resident, local stocks were apparently unaffected by the die-off. Best available information suggests that the observed mortality may have primarily affected the coastal-migratory stock of dolphins that ranges between Florida and New Jersey.

2. Population Abundance

Historically, about 15,000 bottlenose dolphins are thought to have lived in mid-Atlantic coastal waters (including coastal-migratory and resident stocks) based on records from the turn of the century. In 1979–81, the estimated average mid-Atlantic summer abundance of bottlenose dolphins is believed to have ranged from 4,300 to 12,900 animals (95% confidence level) including both coastal and offshore stocks, i.e., the total U.S. mid-Atlantic population. The best available information suggests that, in recent times, coastal North Carolina and Virginia supported 1,200 or more dolphins during part of the spring and summer. This number may have represented a substantial portion of the mid-Atlantic, coastal-migratory stock prior to the die-off. Population surveys of August, 1987 resulted in estimates of 350 to 1,300 animals in the coastal mid-Atlantic. Recent estimates may be conservative and represent surface abundance only.

The most direct way to assess the effect of the 1987–88 die-off on the dolphin population is to compare pre- and post die-off population abundance. In this case, consistent population abundance indices are not yet available; and, additional population survey data collection is needed from the northern and southern range of the stock. Consequently, potential impact of the die-off was estimated by comparing stranding rates reported during the die-off period to the prior 3-year average reported stranding rate. Inherent in this method of assessment is the assumption that reported stranding rate is a consistent index of stock mortality rate for the period of analysis.

During the 11 month period from June, 1987 through April, 1988, 742 stranded bottlenose dolphins were reported to the Smithsonian Institution's marine mammal stranding events program. This represents 10.11 times the average annual number of dolphins reported stranded during the previous three years. Assuming that the natural annual mortality rate is 7% (or 6.42% for 11 months), based on previously published reports, and assuming further that the rate of stranding is proportional to the mortality rate, the total mortality (m) during the 11 month period of the die-off can be estimated as $10.11 \times 6.42 = 64.9\%$. An annual birth rate (b) on the order of 11.5% has been estimated based on observations of the percent of calves in the coastal mid-Atlantic stock of dolphins affected by the die-off. Thus, a potential decline for this stock since early 1987 is estimated as $b\text{-}m = -53.4\%$

Higher assumed rates of natural mortality imply larger decreases in stock abundance. A review of the scientific literature suggests that rates of 5–10% may reasonably reflect the likely range of natural mortality in captive bottlenose dolphins. The relationship between captive dolphin natural mortality rates and wild population rates is unknown. Natural mortality rates in wild populations could be higher than in captive dolphins if (1) The risks of death due to natural causes such as disease, predation, and starvation are reduced in the captive environment, or (2) age classes with high rates of natural mortality in natural populations are under-represented in captive populations.

There are no available data to test the hypothesis that increased public awareness increases the probability of detection and reporting of stranded animals, nor to estimate the possible magnitude of change, especially along densely populated coastlines. Increases in this probability of more than 4-times over a 5–10% natural mortality range can result in estimates of population increase due to the die-off. An assumed doubling of the probability results in estimates of decline of 11.7%, 20.9%, and 34.8% for assumed annual natural mortality rates of 5%, 7%, and 10%, respectively. Alternate analysis of the stranding-rate data, stratifying over portions of the coast most densely populated, and for which increased public awareness would have the smallest expected impact on the probability of detecting and reporting strandings, consistently results in estimates of reduction greater than 40% over the 5–10% natural mortality rate range.

There is a large degree of uncertainty in the estimated magnitude of reduction in the dolphin population due to a lack of data and imprecision in estimates of natural mortality rates. Further data collection on population abundance levels and stock discreteness may reduce these uncertainties. On the basis of the best available information, however, NOAA Fisheries concludes that the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic probably declined by more than 50% as a result of the 1987–88 die-off.

3. Optimum Sustainable Population

The MMPA states that marine mammal species and population stocks should not be permitted to diminish below their OSP. NOAA Fisheries has defined OSP, in 50 CFR 216.3, as a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction and growth, less losses due to natural mortality. MNP is often represented as a percentage of carrying capacity. For example, in northern fur seals MNP occurs when the population is at about 60% of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50% of carrying capacity.

By analogy with other large mammal populations, the population level expected to result in MNP for bottlenose dolphins is greater than 50% of carrying capacity. However, because of uncertainties regarding abundance estimates, carrying capacity has not been estimated for Atlantic or Gulf stocks of this species. Although there remain a number of uncertainties, including total mortality during the die-off, available information for the mid-Atlantic coastal-migratory stock suggests that this stock may have been reduced by more than 50% due to the die-off. Assuming this level of stock reduction and a stable but unknown carrying capacity, NOAA Fisheries believes that this stock is likely to be below OSP and, thus, depleted under the MMPA.

A significant reduction in food availability or major changes in physical environmental factors, i.e., atmospheric or oceanographic conditions, if demonstrated, could be evidence of a change in carrying capacity for bottlenose dolphins in the coastal mid-Atlantic. But, relatively short-term, natural or man-induced mortality factors, such as increases in naturally-occurring biotoxins, would not necessarily be of such a sustained or widespread occurrence as to constitute a change in the carrying capacity of this environment for this species. We have no evidence of significant, permanent changes in this ecosystem that might prevent bottlenose dolphins from eventually attaining pre die-off levels.

The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under * * * this Act, determines that a species or population stock is below its [OSP]." NOAA Fisheries will request consultation and concurrence by the Marine Mammal Commission before publishing a proposed rule regarding depletion of the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic.

Consequences of a Depletion Designation

The MMPA Amendments of 1988 included a new section 114 which replaces most earlier provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The purpose of the new system is to provide better information on interactions between commercial fisheries and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' inability to make OSP determinations for all species affected by the fisheries. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries after October 1, 1993.

Depleted stocks may be taken under the interim exemption incidental to commercial fishing operations; however, no intentional lethal takes of depleted stocks or any cetaceans are authorized. Thus, a depletion finding for the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic will not necessarily affect commercial fisheries at least until 1993. If incidental take in a fishery is found to have a significant impact on a marine mammal population, NOAA Fisheries may issue emergency rules or conditions on exemptions under section 114 to mitigate adverse impacts.

Under the MMPA, small incidental takes that have a negligible impact on depleted stocks may be authorized for certain activities other than commercial fishing; and permits may be issued authorizing taking of depleted species for research purposes. The MMPA requires, however, that, when issuing a permit for research involving lethal taking from a depleted stock, NOAA Fisheries first determine that the research will directly benefit the stock, or that the research fulfills a critically important research need.

Depleted stocks may not be taken for public display purposes; however, the mid-Atlantic, coastal-migratory stock is not a source of public display animals. In recent years, permanent removals form the wild of bottlenose dolphins for public display have been authorized from Gulf of Mexico stocks and from the local population in the Indian-Banana River area on Florida's east coast. The status of these stocks relative to OSP has not yet been determined.

If the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic is designated as depleted, NOAA Fisheries will prepare a Conservation Plan, as required by section 115(b) of the MMPA, for the purpose of conserving and restoring the stock to its OSP. In addition to the status of the stock and the cause of its decline, the Plan will include: (a) An assessment of the existing and possible threats to this population such as pollution and commercial fishing, (b) a discussion of critical information needs such as post die-off abundance indices and stock differentiation, (c) a description of research and management objectives, and (d) a schedule for implementation.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries

[FR Doc. 89-23898 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

San Bernardino National Forest, Indian Vista Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to manage the vegetation in the vicinity of Highway 243, north of Idyllwild, CA, where bark beetles have caused wide spread mortality in Coulter pine. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 15, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Douglas Pumphrey, District Ranger, San Jacinto Ranger District, P.O. Box 518, Idyllwild, CA 92349, Telephone: (714) 659–2117.

SUPPLEMENTARY INFORMATION: The San Bernardino National Forest Land and Resource Management Plan was completed in January 1989. The management direction in the Plan called for watershed emphasis with the specific prescriptions being dispersed recreation/watershed in conifer on slopes less than 30% and custodial on slopes from 30% to 50%.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no treatment. Other alternatives will consider treatment of the site to reestablish conifer vegetation with and without the use of herbicides. The project is designed to reforest conifers, in the chaparral/conifer transition zone. Conifers are critical to a variety of wildlife species.

Charles H. Irby, Forest Supervisor, San Bernardino National Forest, San Bernardino, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping processing includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential project area.

The District Ranger will hold a public scoping meeting in the Idyllwild Town Hall, 25925 Cedar Street, Idyllwild, California at 1 p.m., Wednesday, November 1, 1989. The meeting will include a trip to a location to overlook the project site.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1990. At that time EPA will publish a notice of availability of the DEIS is the **Federal Register.**

The comment period on the draft environmental impact statement will be 30 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Indian Vista Project participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978), and the environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.3 (**Federal Register,** Vol. 54 No. 13, January 23, 1989, pages 3357 to 3362).

Dated: October 4, 1989.

Charles H. Irby,
Forest Supervisor.

[FR Doc. 89–23947 Filed 10–10–89; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

McElmo Creek Unit, Salinity Control Study, Colorado; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Sheldon G. Boone, responsible Federal official for projects administered under the provisions of Public Law 93–320, 43 U.S.C. 1592 in the State of Colorado, is hereby providing notification that a record of decision to proceed with the installation of the McElmo Creek Unit, Salinity Control Program is available. Single copies of this record of decision may be obtained from Sheldon G. Boone at the address shown below.

FOR FURTHER INFORMATION CONTACT: Sheldon G. Boone, State Conservationist, Soil Conservation Service, 655 Parfet Street, Rm E200C, Lakewood, CO 80215–5517, telephone (303) 236–2886.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.070—Colorado River Salinity Control—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: October 2, 1989.

Sheldon G. Boone,
State Conservationist.

[FR Doc. 89–23903 Filed 10–10–89; 8:45 am]
BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Cancellation of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission scheduled to convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky, has been cancelled. The purpose of the meeting was to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities. The notice of the meeting was published at 54 FR 40903 (October 4, 1989).

Persons desiring additional information should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009).

Dated at Washington, DC, October 4, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89–23858 Filed 10–10–89; 8:45 am]
BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission, originally announced for October 12, 1989, at the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts, has been postponed. The new date is Thursday, November 2, 1989, from 1:30 to 4:00 p.m., and the new location is Conference Room 1008 of the Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts. The purpose of the meeting remains the same as previously published at 54 FR 39218 (September 25, 1989).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Dororthy S. Jones (617/498–9238) or John I. Binkley, Director of the Eastern Regional Division, at (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, October 4, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89–23859 Filed 10–10–89; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.
Title: Sea Grant Project Summary.
Form Number: NOAA Form 90–2; OMB—0648–0019.
Type of Request: Request for extension of OMB approval of a currently cleared collection.
Burden: 40 respondents; 240 reporting hours; average hours per response—.33 hours.
Needs and Uses: Applicants for Sea Grants must supply information on their proposed project. The information is used to evaluate whether funding should take place.
Affected Public: Non-profit institutions.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–23871 Filed 10–10–89; 8:45 am]
BILLING CODE 3510–CW–M

[Docket No. 951–193]

Hearing in the Matter of Gary Gentile, Respondent

The informal hearing provided for in § 924.8(c) of the regulations (15 CFR 924.8(c)) relating to the denial of appellant's request to conduct underwater photography or similar activities within the Monitor National Marine Sanctuary, will be held in Hearing Room 2409 at 401 M Street,

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SW., Washington, DC at 10 a.m. on October 18, 1989.

Dated: October 4, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89-23971 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-GF-M

Bureau of Export Administration

[OEE-1-89]

Order Renewing Temporary Denial of Export Privileges; Franciscus Govaerts et al.

In the matter of

Franciscus B. Govaerts, individually and doing business as Printlas Europa Torenakker 8-5731 CC, Mierlo, Netherlands and

Goris Christiaan Grandia, individually and doing business as Grandia Project Services with addresses at Laurierstraat 59 1016 PH, Amsterdam, Netherlands and Gudrunstrasse 121 A 1100, Vienna, Austria and

Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., Sijpstraat 6, 9101 Lokeren, Belgium, and

Roger Van Alphen, Populieresloantje 8, Huizen, Netherlands: Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR parts 768-799) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. Sections 2401-2420 (1982 and Supp. III 1985), as amended by Public Law 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act), has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Franciscus B. Govaerts (Govaerts), individually and doing business as Printlas Europa (Printlas Europa); Goris Christiaan Grandia (Grandia), individually and doing business as Grandia Project Services; Marcel Sanders (Sanders), individually and doing business as Belgium Trading Company Lokeren S.A. (Belgium Trading), and Roger Van Alphen (Van Alphen) (collectively referred to as respondents). The initial order was issued on April 6, 1989 (54 FR 14667, April 12, 1989).

[1] Effective October 1, 1988, the Regulations were redesignated as 15 CFR 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368-399 (1988).

In its renewal request of September 14, 1989, the Department states that it continues to have reason to believe that an order temporarily denying the export privileges of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as Belgium Trading, and Van Alphen is necessary in the public interest to prevent an imminent violation of the Regulations.

In its initial request, the Department stated that, as a result of an investigation conducted by the Department and the U.S. Customs Service (Customs), it had reason to believe that from a date unknown to on or about December 9, 1988, Govaerts, Grandia, Sanders and Val Alphen, while doing business under the names of their respective companies, sought to obtain U.S.-origin equipment, controlled for reasons of national security, and to export that equipment from the United States to Bulgaria, knowing that the Department would not likely authorize the export of the equipment to Bulgaria.

The investigation had revealed that, on or about December 9, 1988, Govaerts, with the aid of Grandia, Sanders and Van Alphen, in fact attempted to export the equipment from the United States through the Netherlands to Bulgaria, by falsely declaring that the country of ultimate destination was the Netherlands and that the equipment could be exported under general license G-DEST. Each of those individuals had been indicted for his respective role in this matter.

The investigation also had given the Department reason to believe that Govaerts, Grandia, Sanders and Van Alphen have access to large sums of money and that, given the opportunity, they would use that money in the near future to acquire U.S.-origin equipment similar to that which Govaerts attempted to export in December 1988, and export that equipment to Bulgaria. Moreover, the Department had reason to believe that, if necessary, Govaerts, Grandia, Sanders and Van Alphen would use Belgian contacts to effect the export of that equipment to Bulgaria.

Since its initial request, there have been several developments. On June 28, 1989, Govaerts plead guilty to several counts and was sentenced to time served; he has since returned to Western Europe. On August 16, 1989, Sanders plead guilty to several counts and is in prison awaiting sentencing. While in prison, and before he plead guilty, Sanders was indicted for trying to bribe Govaerts, who was also in prison, by offering Govaerts $400,000 not to testify against him. To date this indictment has not been resolved.

As for Grandia, the Department states that he remains in Italy, released on bail, pending his extradition to the United States. Van Alphen remains at large, although on June 22, 1989, Van Alphen appealed the imposition of the initial temporary denial order; on July 18, 1989, the Acting Under Secretary for Export Administration denied that appeal (54 FR 30913, July 25, 1989).

Since the initial request, the Department continues to believe that, viewed as a whole, the past activities of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as Belgium Trading, and Van Alphen demonstrate that they are involved in a scheme to obtain controlled U.S.-origin commodities, and to export that equipment from the United States to Bulgaria.

Opposition to the renewal of the request for temporary denial was filed in a timely manner by Govaerts, individually and doing business as Printlas Europa, in a letter dated September 20, 1989. Govaerts states that while he had no intention to violate any export regulations in any country, he was encouraged by several parties to pursue the transaction that is the subject of investigation. Govaerts states that he made a mistake and has paid for it. He further states that he has cooperated with Customs since his arrest, and that this cooperation has been noted both by Customs and by the Assistant District Attorney in this matter.

The Department did not file a response to Govaerts' opposition. However, in its renewal request the Department did state that it expects to take administrative action against Govaerts in the not too distant future. It believes that a temporary denial order naming Govaerts is necessary, until that action is taken and a final Order issued, because, in the Department's view, Govaerts continues to present a threat to the national security of the United States.

Given that Govaerts admits his direct involvement in this matter and provides no support of his assertion of cooperation, and given the Department's statement that Govaerts continues to present a threat to national security, I am compelled to renew the temporary denial order with regard to Govaerts and his firm, Printlas Europa, at least until administrative action is complete. Should such action be taken prior to expiration of this order, the necessity of maintaining this order with regard to Govaerts and Printlas Europa shall be considered.

No other opposition was filed in response to the Department's request for renewal. Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokersen S.A., and Roger Van Alphen appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Govaerts, Grandia, Sanders, Van Alphen or any of their respective companies is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, respondents may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: October 4, 1989.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 89-23924 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificate of Review; Correction

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review; Correction.

SUMMARY: On September 21, 1989, the Agency published the Notice of Application for an Amendment to an Export Trade Certificate of Review (FR 54 38954). This document corrects various errors that appeared in the Notice.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

Appendix A (corrected)

On page 38955 of FR 54 (September 21, 1989), third column, the entry for "Texas Enterprise Manufacturing &" should read "Texas Enterprise Manufacturing & Machine, Inc."

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Appendix B (corrected)

On page 38956 of FR 54 (September 21, 1989), third column, the entry for "Excel Tech Machine Repair &" should read "Excel Tech Machine Repair & Scraping, Inc."

Dated: September 30, 1989.

Douglas J. Aller,

Office of Export Trading Company Affairs.

[FR Doc. 89-23863 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review of final determinations respecting new steel rail from Canada made by the U.S. International Trade Commission, which was filed by the Sydney Steel Corporation with the United States section of the Binational Secretariat on October 2, 1989.

SUMMARY: On October 2, 1989, the Sydney Steel Corporation filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determinations made by the U.S. International Trade Commission (ITC) respecting new steel rail from Canada, ITC file numbers 701-TA-297 and 731-TA-422, and published in 54 FR 38751 on September 20, 1989. The Binational Secretariat has assigned Case Number USA-89-1904-09 to this Request for Panel Review. In addition, the Algoma Steel Corporation, Limited also filed a Request for Panel Review of the same final determinations on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for raplacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binotional Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on October 2, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 1, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 3, 1989

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-23923 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-DAM

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for CHAMPUS Benefits Under the Program for the Handicapped; DD Form 2532 (formerly CHAMPUS Form 190a) and Request for CHAMPUS Benefits Under the Basic Program; DD Form 2533 (formerly CHAMPUS Form 190), OMB Control Number 0704-0099.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 30 Minutes.

Frequency of Response: Varies with the patient but for the majority is once annually.

Number of Respondents: 18,000.

Annual Burden Hours: 9,000.

Annuol Responses: 18,000.

Needs and Uses: The Request for CHAMPUS Benefits Under the Program for the Handicapped and the Request for CHAMPUS Benefits Under the Basic Program are official applications for CHAMPUS benefits. They are used to ensure that CHAMPUS benefits are being provided only to those persons entitled to CHAMPUS benefits and that the requested benefits are appropriate and necessary. The form requests pertinent sponsor/beneficiary information necessary for issuing authorization for payment and the necessary information for issuing certification of the necessity and/or appropriateness of care.

Affected Public: Individuals or households, businesses or other for-profit institutions, non-profit institutions and small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: October 4, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23959 Filed 10-10-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Overseas Dependents Schools; National Advisory Panel on the Education of Handicapped Dependents

The National Advisory Panel on the Education of Handicapped Dependents will meet in open session from 9:00 a.m. to 4:00 p.m., October 12-13, 1989, at the Holiday Inn, 2460 Eisenhower Avenue, Alexandria, Virginia.

The mission of the Panel is to advise the Director, DoD Dependents Schools (DoDDS), of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by the Office of Dependents Schools (ODS) concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of his responsibilities under section 618 of Public Law 94-142.

The Panel will review the following: The status of special education in DoDDS; DoDDS's response to Advisory Panel recommendations, personnel development, parent education, intradepartmental cooperation, administration, and the budget.

This meeting is open to the public, due to space constraints, anyone wishing to attend should contact the ODS coordinator, Trudy Paul, Special Education Coordinator, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-1100, (202) 325-7810.

Dated: October 5, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23960 Filed 10-10-89; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on October 27, 1989, from 1:00 p.m. to 4:00 p.m., at the U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street NW., Washington, DC. This is the fifth meeting of the advisory committee. The meeting is open to the public.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Public Law 100-456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues:

(A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations;

(B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and

(C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301-1900, telephone (202) 695-7249, not later than October 25, 1989.

Dated: October 5, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89-23961 Filed 10-10-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching Board; Open Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice supersedes the notice published Tuesday, October 10, 1989, and sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: October 19, 1989, 9:00 a.m.-5:30 p.m., October 20, 1989, 9:00 a.m.-12:00 noon.

ADDRESS: The Bellevue Hotel, 15 E Street, NW., The Lexington Room, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, (202) 357-6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Admendments of 1988 (Public Law 100-297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund. On October 19, 1989 the Board will introduce its new Board members, have a briefing on the Department's standards of conduct and committee management, approve the minutes of the July meeting, and discuss any subcommittee activities. The Board will also have a presentation of projects funded for fiscal year 1990, discuss the process for monitoring those projects, discuss the process for disseminating whatever results there are from the funded projects, and determine the agenda for and date of the next meeting.

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On October 19, 1989 and again on October 20, the Board will be discussing priorities for the 1990 competitions of the Family-School Partnership Program and the Schools and Teachers Program. Individuals or groups unable to attend the meeting are encouraged to request a summary of the activities at this meeting.

On October 19, 1989, the Board will hold a joint meeting with the Fund for the Improvement of Postsecondary Education (FIPSE) Board from 4:00 p.m. to 5:30 p.m. at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting will involve discussion of possible joint activities related to partnerships between schools and universities or colleges.

The session on Thursday, October 19, from 9:00 a.m. to 4:00 p.m., and the session on Friday, October 20 from 9:00 a.m. to 12:00 noon, will both be held at the Bellevue Hotel at the above address.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for Improvement and Reform of Schools and Teaching, U.S. Department for Education, 555 New Jesey Avenue, NW., Room 522, Washington, DC 20208–5524 from the hours of 8:30 a.m. to 5:00 p.m.

Richard T. LaPointe,

Director, Fund for the Improvement and Reform of Schools and Teaching.

[FR Doc. 89–24014 Filed 10–10–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Conference Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of acceptance of noncompetitive financial assistance application for a conference grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 2 month Conference Grant to the Virginia Coal Council, 1901 Front Street, Richland, Virginia 24641, in the amount of $15,000. The DOE will fund approximately 40% of the allowable costs. The pending award is based on an unsolicited application for a Conference Grant for the "1989 Eleventh Annual Conference & Exhibition, Appalachian Coal: The Clean Fuel Choice For Today's Needs and Tomorrow's Growth." The application proposes to print and publish conference proceedings. This conference is aimed at updating the scientific, business and government communities of current activities concerning coal technology reserach, specifically clean coal technology. Whether or not the individual research topics covered have been directly sponsored by DOE, the results are of interest to the Department as well as to the scientific community.

FOR FURTHER INFORMATION CONTACT: Michael P. Nolan, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4149, Cooperative Agreement No. DE–FC21–89MC26387.

Dated: September 29, 1989.

Louis L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–23973 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–59–NG]

Amoco Energy Trading Corp.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1989, of an application filed by Amoco Energy Trading Corporation (AETC) requesting blanket authorization to export from the United States to Mexico up to 200,000 Mcf of natural gas per day or up to 73 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. AETC intends to transport the gas through existing pipeline facilities and will advise the DOE of the date of first delivery. AETC intends to submit quarterly reports detailing each transaction.

The application is filed with the Office of Fossil Energy under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 e.d.t., November 12, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: AETC, a Delaware corporation with its principal place of business in Chicago, Illinois, is a wholly-owned subsidiary of Amoco Production Company, which is a wholly-owned subsidiary of Amoco Company, which is wholly-owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in the exploration, production, refining, transportation, and marketing of oil, natural gas and other hydrocrabons. AETC intends to sell natural gas produced in the Southwest, including the states of New Mexico and Texas, pursuant to freely negotiated contracts at competitive prices. AETC cannot at this time identify the parties purchasing the natural gas that AETC proposes to export because no sales contracts have been executed.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border point where existing transmission facilities are located. In addition, the total amount of authorized volumes may be designated for the term rather than a daily or yearly limit, in order to provide the applicant with maximum flexibility of operations.

AETC indicates in its application that it may request confidential treatment of the quarterly reports that DOE requires importers to file if the application is granted. All parties should be aware that the DOE's disclosure policy and regulations in 10 CFR part 1004 implementing the Freedom of Information Act require information in the possession of the Department to be made available to the fullest extent possible. The DOE also emphasizes that public participation has been a cornerstone of the Department's import and export policy and program, and lack of access to transaction details would seriously impair the public's ability to comment on the public interest. While the DOE examines requests for confidentiality on a case-by-case basis, the burden of justifying confidential treatment is heavy and, to date, the DOE has denied all such requests made in connection with this program. In the case of blanket arrangements such as AETC proposes, some limited confidentiality is afforded by the quarterly reporting requirements since transaction information is not required to be filed until 30 days after the end of each calendar quarter.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed at the above address. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AETC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 3, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23854 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–56–NG]

Exxon Corp.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 14, 1989, of an application filed by Exxon Corporation (Exxon) for blanket authorization to import up to 36.5 Bcf of Canadian natural gas per year, not to exceed 100,000 Mcf daily, over a two-year period beginning on the date of the first delivery. Exxon intends to use existing pipeline facilities for transportation of the volumes imported and proposes to submit reports to FE within 45 days after the end of each calendar quarter detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–055B, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1789.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

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SUPPLEMENTARY INFORMATION: Exxon is a New Jersey corporation with offices in Houston, Texas. Under the blanket authority sought, Exxon would import natural gas from Canada for its own account or as agent for U.S. purchasers. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions. In support of its application, Exxon asserts that its transactions would be premised upon the imported gas being competitive with other supply alternatives, and that, if not, there would be no imports. Exxon rquests that an import authorization be granted on an expedited basis.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. In addition, a total amount of authorized volumes may be designated for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, he DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above no later than 4:30 p.m., e.d.t., November 13, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Exxon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23855 Filed 10-10-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-669-000, et al.]

Connecticut Light & Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings September 29, 1989.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light & Power Company

[Docket No. ER89-669-000]

Take notice that on September 22, 1989, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light & Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) collectively referred to as the NU Companies) tendered for filing rate schedules with various materials pertaining to the following Agreements:

Sales Agreement with Respect to the Retirement Package (Agreement A) dated as of May 1, 1987, between NU Companies and Canal Electric Company;

Supplemental Sales Agreement with Respect to the Retirement Package (Agreement B), dated as of May 1, 1988, between the NU Companies and Commonwealth Electric Company (Comm Elec);

Supplemental Sales Agreement with Respect to the Retirement Package (Agreement C), dated as of November 1, 1988, between the NU Companies and Canal;

Sales Agreement with Respect to the Retirement Package (Agreement D), dated as of March 1, 1987, between the NU Companies and New England Power Company (NEP);

Sales Agreement with Respect to the Retirement Package (Agreement E), dated May 1, 1987, between NU Companies and Green Mountain Power Corporation (GMP);

Sales Agreement with Respect to the Retirement Package (Agreement F), dated as of November 1, 1987, with Letter Amendment dated as of August 14, 1989, between the NU Companies and Boston edison Company (BE);

Sales Agreement with Respect to the Retirement Package (Agreement G), dated as of November 1, 1987, between the NU Companies and Central Maine Power Company (CMP);

Sales Agreement with Respect to Retirement Package (Agreement H), dated as November 1, 1987, between the NU Companies and Montaup Electric Company (Montaup).

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company, PacifiCorp, PC/UP&L Merging Corporation

[Docket No. EC88-2-004

Take notice that on September 8, 1989, PacifiCorp, in accordance with the Federal Energy Regulatory Commission's Opinion No. 318, 45 FERC ¶ 61,095 (1988), Opinion No. 318-A, 47 FERC ¶ 61,209 (1989), and Opinion 318-B, FERC ¶ 61,035 (1989), filed its Announcement of Remaining Existing Capacity Allocation.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric Company

[Docket No. ER89-668-000]

Take notice that Kansas Gas and Electric Company (KG&E) on September 22, 1989 tendered for filing a proposed Generating Municipal Electric Service Agreement (Agreement) superseding FERC Electric Service Tariff No. 128.

KG&E states that the filing assures continued service to the City of Chanute, Kansas (City).

This filing is necessary because KG&E desires to cancel its existing Electric Interconnection Contract but desires to continue to serve the City. Incorporated into this Agreement is a separately negotiated and Commission-authorized facilities use agreement which became effective on February 6, 1987. KG&E has requested an effective date on January 1, 1990.

Copies of the filing were served upon the City of Chanute, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: Octber 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER89-673-000]

Take notice that on September 26, 1989, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve-month period ending December 31, 1988. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1987.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utitlites.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Potomac Electric Power Company

[Docket No. ER89-674-000]

Take notice that on September 26, 1989, Potomac Electric Power Company (PEPCO) and Virginia Electric & Power Company (Virginia Power) tendered for filing rate schedule supplements to their 1983 interconnection agreement and their 1965 facilities agreement (PEPCO FERC Rate schedules No. 35 and 20 respectively), to be effective December 1, 1989, to permit small boundary customer services at distribution voltages in order to provide service connections from existing facilities of either party which may be more accessible to the other party's small customer, provided that such services to either party are not in the aggregate greater than 1 megawatt. The rate for such service will be the same for existing wholesale service by PEPCO to Virginia Power for a larger boundary coustomer nearby.

Comment dote: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Power and Light Company

[Docket No. ER89-671-000]

Take notice that on September 22, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing two service schedules, identified as Service Schedule A and Service Schedule B, to supersede the schedules attached to the Facilities Agreement between Iowa Power and N.W. Electric Power Cooperative, Inc. (N.W.) dated June 24, 1970). The new service schedules are dated January 18, 1989.

Iowa Power states that the new service schedules represent negotiated agreements to reflect the installation of a larger transformer at the Hamburg Substation; that the new service schedules supersede the existing Service Schedules A and B; and that N.W. and the Iowa State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests and effective date of January 18, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pfizer Inc.

[Docket No. QF89-350-000]

On September 22, 1989, Pfizer Inc. (Applicant), of Eastern Point Road, Groton, Connecticut 06340, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's chemical manufacturing plant at Eastern Point Road, in Groton, Connecticut. The facility will consist of oil fired boilers and nine back pressure and/or extraction steam turbine generators. The thermal output of the facility, in the form of exhaust heat and/or extraction steam, will be used in chemical manufacturing processes. The primary energy source of the facility will be fuel oil. The maximum net electric power production capacity of the facility will be 28.25 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ES89-38-000]

Take notice that on September 27, 1989, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission

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("Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue not more than 500,000 shares of comon stock, stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Savings Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: October 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Oklahoma

[Docket No. EL89-49-000]

Take notice that on August 16, 1989, as completed on September 21, 1989, Public Service Company of Oklahoma (PSO) filed a request for a declaratory order approveing PSO's proposed accounting for the compensation that PSO will pay to purchase power for Mid-Continent Power Company, Inc., PSO also seeks waiver, if necessary, of the Commission's fuel adjustment clause (FAC) regulations to permit PSO to recover such payments through its FAC.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Department of the Navy v. Pacific Gas and Electric Company

[Docket No. EL89-54-000]

Take notice that on September 27, 1989, the Department of the Navy (Navy) filed a complaint against Pacific Gas and Electric Company (PG&E). The Navy states that is owns and operates Hunters Point Annex (Shipyard). The Navy further states that it purchases its total electric requirements for the Shipyard from PG&E, and that most of the electric energy purchased for the Shipyard from PG&E is resold by the Navy to government and private tenants at the Shipyard.

In its complaint the Navy alleges that PG&E refuses to render service to the Navy at the Shipyard other than on a retail basis. The Navy further alleges that PG&E's refusal to render service to the Navy at a wholesale rate and it sale of electricity to the Navy in interstate commerce for resale without having a rate on file therefore with the Commission are in violation of section 205 of the Federal Power Act.

The Navy requests that the Commission make a determination as to the wholesale character of the sales of electric energy from PG&E to the Shipyard and to institute proceedings to determine a just and reasonable rate to be charged for such service.

Comment date: October 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23874 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

October 4, 1989

Take notice that on September 29, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Thirteenth Revised Sheet No. 4 to be effective November 1, 1989.

The proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. A copy of this filing is being mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23875 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

Energy Information Administration

Forms CE-63A/B, "Solar Thermal Collector Manufacturers Survey"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed extension of the Forms CE-63A/B, "Solar Thermal Collector Manufacturers Survey" and "Photovoltaic Module Manufacturers Survey" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension to Form CE-63A/B, "Solar Thermal Collector Manufacturers Survey" and "Photovoltaic Module Manufacturers Survey."

DATE: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Theresa Payne, EI-531, Energy Information Administration, U.S. Department of Energy, Mail Stop 2G-090, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-1018.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the forms should be directed to Theresa Payne at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resources reserves, production, demand, and technology, and related economic and statistical information. The program will also include data and information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Form CE-63A collects data on company shipments, manufacturing, importing, and exporting of solar thermal collectors. Manufacturers of solar thermal collectors are requested to report their annual shipments in terms of square feet of collectors shipped whether manufactured or imported. Respondents are also requested to indicate prototype development, note other related activities in which they are engaged, and provide information concerning market sector and end-use breakdowns, as well as information on company size. All appropriate data is disaggregated by type of solar collector.

Manufacturers of photovoltaic modules are asked to provide similar data on Form CE-63B indicating production in terms of electrical capacity expressed in peak kilowatts.

II. Current Actions

The EIA is proposing a three-year extension and possible modifications to Forms CE-63A/B. The EIA is planning to meet with solar industry personnel, DOE personnel, and other interested parties to discuss changes to Forms CE-63A/B. Proposed changes include combining specific questions where confidentiality and public disclosure problems exist. A detailed analysis of Forms CE-63A/B will be done to determine which questions are possible candidates for modification.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed forms and the proposed extension. The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate to which form your comment applies.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average less than 2 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detailed indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the "Solar Thermal Collector Manufacturers Survey" and the "Photovoltaic Module Manufacturers Survey."

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of the form; they also will become a matter of public record.

Authority: Sec. 5(a), 5(b), 13(b) and 52 of Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC October 5, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-23976 Filed 10-10-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-57-NG]

Enron Gas Marketing, Inc., Application to Import Natural Gas From Canada and to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 16, 1989, of an application filed by Enron Gas Marketing, Inc. (EGM), for blanket authorization to import up to 300 Bcf a year of Canadian natural gas and to export up to 300 Bcf a year of domestic natural gas to Mexico over a term of ten years. If a ten-year term is not approved, EGM requests a term of not less than two years beginning the later of January 1, 1990, or the date of first delivery. EGM now holds blanket authority to import up to 250 Bcf a year of Canadian natural gas through December 31, 1989.

EGM intends to utilize existing pipeline facilities to transport the proposed volumes to be imported and exported, and indicates that it would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address below no later than 4:30 p.m. e.d.t., November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room, 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: EGM, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of Enron Corp. EGM's existing two-year blanket authorization was granted in DOE/ERA Opinion and Order No. 153, issued November 6, 1986. First delivery of imported gas began on January 1, 1988.

EGM, a marketer of natural gas, requests authority to continue to import natural gas for short-term sales to

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interstate pipelines, intrastate pipelines, local distribution companies, cogeneration facilities and industrial end-users. The applicant also requests authority to export domestic natural gas for sale to industrial users in the area of Monterrey, Mexico. According to EGM, the specific terms of each import/export would be negotiated on an individual basis, including price and volumes, to reflect the current market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that, in accordance with its present policy and past practice, if FE approves the blanket authorization, it may limit the term to two years. This limitation, if imposed, presumes imports and exports would take place under contracts with terms of two years or less. In addition, all parties should take note that if this blanket import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23974 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–71–NG]

Intalco Aluminum Corp.; Application to Amend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application to amend conditional order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on August 31, 1989, of an application filed by Intalco Aluminum Corporation (Intalco) for an amendment to the conditional authorization, DOE/FE Opinion and Order No. 302 (Order 302) (February 28, 1989, 1 FE Para. 70,215), granting blanket authorization to import up to 2 Bcf of Canadian natural gas per year for two years, for use as fuel in its aluminum smelting plant located in Ferndale, Washington. The final approval of this import was conditioned on completion of the environmental review of a proposed new pipeline, known as the Ferndale Pipeline System. Intalco now proposes to import Canadian natural gas using existing facilities and is seeking to have its conditional authorization amended accordingly. Intalco states that it will file quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Under Intalco's original proposal, the gas, to be purchased from various Canadian suppliers, would be transported from a point of importation at the international border near Sumas, Washington, through new pipeline facilities to be jointly owned and operated by Intalco and Atlantic Richfield Company (ARCO). The amendment requested would grant Intalco final blanket authorization to import up to 2 Bcf of gas per year over a two-year period beginning on the date of first delivery using existing facilities rather than the date the proposed new pipeline is built and operable.

Intalco currently receives gas which is acquired on the spot market in Canada and imported on its behalf by Cascade Natural Gas Corporation (Cascade) and transported through the pipeline facilities of Northwest Pipeline Corporation (Northwest Pipeline) and Cascade. The requested amendment would enable Intalco to directly import this natural gas from Canadian sources using the existing facilities of Northwest Pipeline and Cascade until such time as the Ferndale Pipeline System is completed.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Based on the application, the only change represented by this amendment request is the proposed use of existing facilities. Order 302 made a preliminary finding that the underlying arrangement, like other, previously authorized blanket imports, is inherently competitive. Order 302 also made preliminary findings that Intalco has demonstrated a need for the gas and that the security of supply for each purchase is assured by its short term and the number of term and the number of potential suppliers. Those preliminary findings are not expected to be changed by the proposed use of existing facilities. Parties, especially those that may oppose this requested amendment, should address the impact of the use of existing facilities on the consistency of this proposal with DOE policy guidelines.

NEPA Compliance

The DOE has determined that in cases not involving major new construction its compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE with regard to existing facilities. This exclusion is not relevant to the proposed Ferndale Pipeline System.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Intalco's request to amend Order 302. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Section 590.316.

A copy of Intalco's amendment application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–23975 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

BEST COPY AVAILABLE

VOL 54 ISS 195 OC 11 1989 UMI

Federal Energy Regulatory Commission

[Docket No. TQ90-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 29, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989:

One hundred and thirty-ninth Revised Sheet No. 16
Twenty-seventh Revised Sheet No. 16A2
Forty-first Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and thirty-ninth Revised Sheet No. 16 reflect an overall increase of 4.18¢ per Dth in the Commodity rate, and decreases of $.347 per Dth in the Demand-1 rate and 1.05¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-seventh Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .11¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) An Unrecovered Purchased Gas Cost Surcharge to be effective during the period November 1, 1989 through April 30, 1990;

(3) A continuation of certain other surcharges which were accepted by the Commission on April 27, 1989 to be effective during the 12-month period of May 1, 1989 through April 30, 1990;

(4) A Transportation Fuel Charge Adjustment; and

(5) A proposal for interim PGA treatment of certain reservation charges incurred by Columbia in connection with its conversion from firm sales entitlements to firm transportation services with Tennessee Gas Pipeline Company and Texas Gas Transmission Corporation as well as a proposal for the inclusion of certain storage costs associated with East Ohio Gas Company.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23876 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

October 4, 1989.

Take notice that on September 29, 1989, MIGC, Inc. (MIGC) tendered for filing Fifty-fifth Revised Sheet No. 32 to its FERC Gas Tariff Original Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its scheduled quarterly purchased gas cost adjustment (PGA) filing pursuant to the Commission's revised PGA regulations and the revised PGA provisions of MIGC's tariff, as provided in Docket No. RP88-143-000. The revised tariff sheet is proposed to become effective November 1, 1989.

Fifty-Fifth Revised Sheet No. 32 included in the filing reflects a $.0000 per MMBtu quarterly PGA adjustment. MIGC states that the proposed quarterly PGA adjustment reflects no change in the current adjustment to be effective November 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23878 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-15-003]

MID Louisiana Gas Co.; Filing

September 29, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 27, 1989 tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective October 1, 1989:

Second Substitute Seventieth Revised Sheet No. 3a

Superseding

First Substitute Seventieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Second Substitute Seventieth Revised Sheet No. 3a is to correct a typographical error contained on First Substitute Seventieth Revised Sheet No. 3a.

Mid Louisiana requests that Second Substitute Seventieth Revised Tariff Sheet No. 3a be accepted and allowed to become effective October 1, 1989.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426 in accordance with § 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before October 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23877 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-10-000]

Morgas Co.; Petition for Adjustment

September 29, 1989.

Take notice that on September 1, 1989, Morgas Company (Morgas) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(ii) of the Commission's regulations to permit Morgas to use its current, Texas-intrastate rate for NGPA section 311(a) transportation services. Morgas, an intrastate pipeline having no city-gate rate, proposes transportation services for interstate pipelines and local distribution companies. Morgas states that granting its petition is consistent with Commission precedents and will enable it to avoid an inequity.

The procedures applicable to this proceeding are in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23879 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-73-000]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

October 4, 1989.

Take notice that Ozark Gas Transmission System ("Ozark") on September 27, 1989, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 5

The proposed effective date is October 1, 1989.

Ozark states that it is amending its transporatation rate schedule to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0017. Ozark states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23880 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-136-013]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 28, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 25, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 317
Second Revised Sheet No. 318
Second Revised Sheet No. 319
Second Revised Sheet Nos. 320-325
Fourth Revised Sheet No. 502

Texas Eastern states that the purpose of this filing is to incorporate as part of Texas Eastern's firm transportation Rate Schedule FT-1 a new Section 16 which sets forth the terms and conditions of Texas Eastern's transportation assignment program, as approved by the Commission's August 22, 1989 order (August 22 order) in *Texas Eastern Transmission Corporation*, Docket No. CP88-136-007.

Texas Eastern states that on June 28, 1989, it filed in Docket No. CP88-136-007 an application seeking authorization to implement a transportation assignment program for its shippers under Rate Schedule FT-1. As part of such Application, Texas Eastern filed as Exhibit P a pro forma copy of Section 16. By its order issued August 22, 1989 in Docket No. CP88-136-007, the Commission authorized a transportation assignment program, subject to certain conditions and modifications, for a limited term of ten years.

Texas Eastern states that in compliance with the August 22 order, it submits the above referenced tariff sheets which reflect the Commission's changes to the pro forma tariff sheets filed as part of the application. In particular these changes are as follows:

(1) Section 16.1(a) of Rate Schedule FT-1 on Sheet Nos. 317 and 318 was revised to permit multiple assignments of transportation service rights under Rate Schedule FT-1;

(2) Section 16.2(b) of Rate Schedule FT-1 on Sheet No. 318 deletes language that restricted the assignment of transportation service rights under Rate Schedule FT-1; and

(3) Paragraph (3) of the Transportation Assignment Notice on Sheet No. 502 incorporates language that reflects the multiple assignment of transportation service rights.

Texas Eastern states that the tariff sheets filed herewith comply with the modifications required by the August 22, 1989 order.

The tariff sheets listed above are proposed to be effective as of November 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23881 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-99-001]

Transwestern Pipeline Co.; Sale of Natural Gas

September 29, 1989.

Take notice that on September 20, as further supplemented on September 29, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transwestern's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP88-99-000 issued

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May 11, 1988 (43 FERC ¶ 61,240). Transwestern proposes to initiate the sale on October 1, 1989.

(1) *Name of Buyer:* Enron Gas Marketing, Inc. (EGM).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Transwestern and Buyer:* Transwestern is a wholly-owned subsidiary of Houston Pipeline Company. Both Houston Pipeline Company and EGM are wholly-owned subsidiaries of Enron Corp.

(4) *Nature of involvement of affiliate:* Brokerage.

(5) *Term of Sale:* October 1, 1989, and month to month thereafter.

(6) *Estimated Total and Maximum Daily Quantities:*

Maximum Daily Quantity: 200,000 MMBtu.

Estimated Total: 5 Bcf per month.

(7) *Rates: Maximum:* $2.4474/dth.

Minimum: Deliveries West of Roswell, NM $1.6990/dth; Deliveries East of Roswell, NM $1.6417/dth.

To be Charged During Billing Period: $1.80/dth.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transwestern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23882 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-99-002]

Transwestern Pipeline Co.; Sale of Natural Gas

September 29, 1989.

Take notice that on September 20, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transwestern's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP88-99-000 issued May 11, 1988 (43 FERC ¶ 61,240). Transwestern proposes to initiate the sale on October 1, 1989.

(1) *Name of Buyer:* Enron Gas Marketing, Inc. (EGM).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation Between Transwestern and Buyer:* Transwestern is a wholly-owned subsidiary of Houston Pipeline Company. Both Houston Pipeline Company and EGM are wholly-owned subsidiaries of Enron Corp.

(4) *Nature of Involvement of Affiliate:* Brokerage.

(5) *Term of Sale:* October 1, 1989, and month to month thereafter.

(6) *Estimated Total and Maximum Daily Quantities:*

Maximum Daily Quantity: 200,000 MMBtu.

Estimated Total: 5 Bcf per month.

(7) *Rates: Maximum:* $2.4474/dth.

Minimum: Deliveries WEST of Roswell, NM $1.6990/dth; Deliveries East of Roswell, NM $1.6417/dth.

To Be Charged During Billing Period: Spot price as indexed in *Inside FERC* plus 3 cents/dth, but not above or below the maximum or minimum, respectively.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transwestern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23883 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2191-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

October 4, 1989.

Take notice that on September 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2191-000 a request pursuant to §§ 156.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Victoria Gas Corporation (Victoria), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 103,000 MMBtu of natural gas on a peak day, 103,000 MMBtu on an average day and 37,595,000 MMBtu on an annual basis for Victoria. United states that it would perform the transportation service for Victoria under United's Rate Schedule ITS. United indicates that it would transport the gas from numerous receipt points in Louisiana, Texas, Mississippi to various delivery points specified in the application.

It is explained that the service commenced July 16, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4461. United indicates that no new facilities would be necessary to provide the subject service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23884 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2193-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

October 4, 1989.

Take notice that on September 28, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-2193-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Texican Natural Gas Company (Texican). United explains that service commenced August 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4585-000. United explains that the peak day quantity would be 318,270 MMBtu, the average daily quantity would be 318,270 MMBtu, and that the annual quantity would be 116,168,550 MMBtu. United explains that it would receive natural gas for Texican's account at a receipt point in Livingston Parish, Louisiana and redeliver the gas at points in St. Mary Parish and St. Martin Parish, Louisiana.

Any person or the Commission's staff may, within 45 days after issuance of the instaant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23885 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3670-3]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Implementation Plan Preparation

The Living Resource Subcommittee of the Chesapeake Bay Program announces the beginning of Implementation Plan preparation for the following 1987 Chesapeake Bay Agreement commitments:

1. Baywide Fishery Management Plans for Alosid, Blue Crab and Oysters
2. Wetlands Policy
3. Submerged Aquatic Vegetation Policy (SAV) for the Chesapeake Bay and Tidal Tributaries

Individuals interested in the preparation of any of these plans may obtain additional information by contacting: Pete Jensen (Fishery Management Plans) 301/974-3558, Larry Lower (Wetlands Policy) 301/962-4905, Linda Hurley (SAV Policy) 301/224-2732.

Patricia Bonner,

Acting Director, Chesopeake Bay Liaison Office.

[FR Doc. 89-23965 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3669-8]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Radian Corporation, and their subcontractors, Versar, Inc.; Alliance Technologies, Inc.; Metcalf & Eddy, Inc.; John Zink Company; ICF, Inc.; ECOVA Corporation; Resource Applications, Inc.; and the University of Dayton's Research Institute information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68-W9-0072, Radian Corporation and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Radian Corporation and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Radian Corporation and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89-23966 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3670-1]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Versar, Inc., and their

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subcontractors, Radian Corporation; Eastern Research Group, Inc.; C–E Environmental, Inc.; ECOVA Corporation; and Kerr & Associates, Inc.; information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68–W9–0068, Versar and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Versar and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials, submitted, the contractors will return all such materials to EPA.

Versar and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89–23967 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3670–2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Radian Corporation, and their subcontractors, Alliance Technologies, Inc.; Four Nines, Inc.; Resource Applications, Inc.; Sobotka & Company, Inc.; Systems Applications, Inc. and Louisiana State University's Mechanical Engineering Department information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data.".

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68–W9–0069, Radian Corporation and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Radian Corporation and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Radian Corporation and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89–23968 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3670–4]

Stratospheric Ozone Protection Advisory Committee

ACTION: Announcement of Advisory Committee Meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has established an Advisory Committee under the Federal Advisory Committee Act (FACA), and has solicited nominations of persons to serve as the representatives on that committee, (54 FR 31879, August 2, 1989). The purpose of the committee, known as the Stratospheric Ozone Protection Advisory Committee, is to provide advice and assistance on technical and policy issues that relate to the domestic and international aspects of the Montreal Protocol on Substances That Deplete the Ozone Layer (Montreal Protocol). The Advisory Committee will also assist the Agency in serving the public interest during the transition to substitutes for ozone depleting chemicals.

Nominations have been received and committee members have been selected. The membership of the committee represents a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the committee. They have been chosen to be representative of business and industry; educational and research institutions; nongovernmental organizations, public interest groups and environmental organizations; and international organizations.

The purpose of this notice is to announce that the first meeting of this committee will be held October 26, 1989. The meeting will examine issues related to upcoming activities related to strengthening the Montreal Protocol. The meeting is open to the general public; seating will be limited and therefore, will be available on a first come, first served basis.

TIME AND LOCATION: The meeting will take place from 8:30 a.m. to 1:00 p.m., on Thursday, October 26, 1989 at Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karla Perri, at (202) 382–7750 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Dated: October 5, 1989.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 89–24071 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100089; FRL–3658–4]

Systems Integration Group, Inc. and Automated Sciences Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Systems Integration Group, Inc. (SIG) and its subcontractor, Automated Sciences Group, Inc. (ASG) will be awarded a contract to perform work for EPA's Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SIG and ASG in accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable SIG and ASG to fulfill the obligations of the contract and serves to notify affected persons.

DATE: SIG and ASG will be given access to this information no sooner than October 16, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

SUPPLEMENTARY INFORMATION: Under the contract (currently RFP No. D901450LI) SIG and ASG will receive and screen information submitted to EPA in support of the registration of pesticide products. The information gained from this screening will be entered into the Pesticide Document Management System (PDMS) and the corresponding microfilm collection. From this system, retrievals are run and bibliographies produced to support the registration, tolerance, and special review programs, and other data-dependent activities of the pesticide registration program. SIG and ASG will provide support in maintaining the PDMS index, cataloguing and indexing of newly accepted documents, maintaining the PDMS microfilm file and providing retrieval and reproduction services on request.

The Office of Pesticide Programs has determined that access by SIG and ASG to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2) and 40 CFR 2.308(i)(2), the contract with SIG and ASG prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SIG and ASG are required to submit for EPA approval a security plan in accordance with the FIFRA Information Security Manual under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and its subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SIG and ASG by EPA for use in connection with this contract will be returned to EPA when SIG and ASG have completed their work.

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Dated: October 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-23969 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Alexander, Brunswick, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Iredell, and Wilkes for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23950 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Alleghany, Ashe, Avery, Surry, and Watauga for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23951 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Anson, Montgomery, Richmond, Rowan, and Stanly for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23952 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-842-DR]

Puerto Rico; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-842-DR), dated September 21, 1989, and related determinations.

DATED: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 21, 1989:

The municipios of Adjuntas, Aibonita, Aguas Buenas, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Catano, Cayey, Ciales, Cidra, Coamo, Comerio, Corozal, Dorado, Florida, Guayama, Guaynabo, Gurabo, Hatillo, Jayuya, Lares, Manati, Morovis, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, and Villalba for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23953 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Chester from Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 89-23954 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Chesterfield, Colleton Darlington, Marion, and Richland for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 89-23955 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Dillon and Marlboro for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23956 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Fairfield, Kershaw, Lancaster, and Williamsburg for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23957 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Cardinal Bancshares, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under seciton 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

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Governors not later than November 1, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cardinal Bancshares, Inc.*, Lexington, Kentucky; to engage *de novo* in providing management consulting advice to non-affiliated bank and non-bank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Kentucky.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23905 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

ComSouth Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to became a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 30, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *ComSouth Bankshares, Inc.*, Columbia, South Carolina; to acquire 100 percent of the voting shares of Bank of Charleston, National Association (in organization), Charleston, South Carolina, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta Georgia 30303:

1. *Charter Banking Corp.*, formerly First Gulf Banking Corp., St. Petersburg, Florida; to acquire 65.02 percent of the voting shares of Southern Exchange Bank, Tampa, Florida.

2. *Drummond Banking Company*, Chiefland, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Drummond Community Bank, Chiefland, Florida, a *de novo* bank.

3. *Village Bankshares, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The Village Bank of Florida, formerly the Village Bank of Hillsborough County, Tampa, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Oak Brook Bancshares, Inc.*, Oak Brook, Illinois; to acquire First Oak Brook Bank, Chicago, Illinois, a *de novo* bank.

2 *Firstar Corporation* Milwaukee, Wisconsin, and Firstar Corporation of Illinois, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Park Forest Holdings, Inc., Omaha, Nebraska; Park Forest Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire Bank of Park Forest, Park Forest, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Republic Bancshares, Inc.*, Neosho, Missouri, and Security State Bank of Republic, Republic, Missouri; to merge with Marionville Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire First State Bank of Marionville, Marionville, Missouri.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *West Central Banque Shares, Inc.*, Hancock, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Hancock State Bank, Hancock, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancshares of McLouth*, McLouth, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of McLouth, McLouth, Kansas.

2. *Southern Bancorp, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Southern National Bank, Tulsa, Oklahoma.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *El Capitan Bancshares, Inc.*, Sonora, California; to become a bank holding company by acquiring 100 percent of the voting shares of El Capitan National Bank, Sonora, California.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23906 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 30, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation*, Rocky Mount, North Carolina; to acquire Watauga Savings and Loan Association, Inc., Boone, North Carolina, and thereby engage in owning and operating a state-chartered savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Randall-Story Bancshares, Inc.*, Story City, Iowa; to acquire Kinseth Insurance Agency, Randall, Iowa, and thereby engage in general insurance in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23907 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket R-0676]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposal to establish a uniform deadline for all third-party Fedwire funds transfers. In addition, Board requests comment on whether restricting the last 15 minutes of the final half-hour settlement period to funds transfers sent to receiving institutions for their own accounts (and not for the accounts of respondent institutions) would be desirable to facilitate reserve account management. The Board also requests comment on (1) whether the closing of the book-entry securities wire in the Twelfth District should be made consistent with the closing time observed in the other districts; and (2) whether the Federal Reserve should establish uniform times at which Reserve Banks begin processing funds and book-entry securities transfers. The Board believes that these changes would promote competitive equity among depository institutions and support efficient financial markets.

DATE: Comments must be submitted on or before December 8, 1989.

ADDRESS: Comments, which should refer to Docket No. R-0676, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public comments file, and may be inspected in Room B-1122 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding Fedwire funds transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Louise L. Roseman, Assistant Director (202/452-3674), or Tina G. Slater, Senior Financial Services Analyst (202/452-2539), Division of Federal Reserve Bank Operations. For information regarding Fedwire book-entry securities transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Gerald D. Manypenny, Manager (202/452-3954), or Lisa Hoskins, Senior Financial Services Analyst (202/452-3437), Division of Federal Reserve Bank Operations. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Uniform Third-Party Transfer Deadline

The current Fedwire operating schedule provides some level of uniformity to the closing times of the funds transfer service across Federal Reserve districts. Specifically, the schedule provides for an interdistrict third-party transfer deadline of 5:00 p.m.[1]; and an intradistrict and interdistrict bank-to-bank transfer [2] deadline of 6:30 p.m.

This schedule gives Federal Reserve Banks the flexibility to permit depository institutions to send intradistrict third-party transfers as late as 6:00 p.m., which results in disparities between the intradistrict and interdistrict third-party transfer deadlines in some districts. Five districts have intradistrict third-party transfer deadlines of either 5:30 p.m. or 6:00 p.m., thereby permitting institutions within their districts to exchange third-party transfers after the uniform 5:00 p.m. interdistrict third-party transfer closing. The table below shows the current closing times for the Fedwire funds transfer service.

CURRENT FEDWIRE FUNDS TRANSFER CLOSING TIMES

[Eastern Time]

District	Third-party transfers		Settlement transfers
	Interdistrict	Intradistrict	
Boston	5:00 p.m	5:30 p.m.	6:30 p.m.
New York	6:00		
Philadelphia	6:00		
Cleveland	6:00		
Richmond	5:00		
Atlanta	5:00		
Chicago	5:00		
St. Louis	5:00		
Minneapolis	5:00		
Kansas City	5:00		
Dallas	5:00		
San Francisco	6:00		

The Board proposes to establish a uniform 6:00 p.m. deadline for the processing of all third-party Fedwire funds transfers.[3] A number of depository institutions have indicated that later intradistrict third-party transfer deadlines in some parts of the nation have led to artificial restrictions on the flow of funds that put them at a competitive disadvantage. For example, Second District institutions continue to originate and receive third-party transfers among themselves totaling approximately $60 billion after the close of interdistrict third-party transfer traffic, but institutions in other districts are precluded from exchanging third-party transfers with New York institutions. Since New York is the nation's most active money center, some institutions in other districts perceive their inability to participate in the New York market on the same basis as Second District institutions as a significant competitive disadvantage. This proposed change should reduce competitive inequity among depository institutions by eliminating the

[1] All times referenced in this notice are Eastern Time, unless otherwise specified

[2] Bank-to-bank transfers are transfers that do not involve a non-depository institution third party either as sender or beneficiary.

[3] The objective of this proposal is to achieve consistency across Federal Reserve districts with respect to the Fedwire funds transfer third-party transfer deadline. Board and Reserve Bank staff are conducting a longer-term study to assess whether further modifications to Fedwire operating hours are required based on the continuing evolution of the payments system and financial markets. The proposals discussed in this notice do not anticipate the results of this study.

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distinction between interdistrict and intradistrict third-party transfers.

West Coast depository institutions view the current third-party interdistrict deadline as especially restrictive, because it occurs relatively early in their business day. A uniform 6:00 p.m. third-party transfer deadline would provide West Coast institutions, which today must compete processing of interdistrict third-party transfers by 2:00 p.m. Pacific Time, with a deadline that is more consistent with the business day in the Pacific time zone.

Further, expanding the interdistrict third-party transfer processing hours should result in a reduction in the number of extensions to the third-party deadline, since more time would be available to handle peak volumes and to recover from midday outages. Finally, standardizing the Fedwire third-party transfer deadline nationwide would facilitate the operations of banking organizations that have offices across Federal Reserve district boundaries.

While there are clear benefits to this proposal, a later third-party transfer deadline could adversely affect reserve account management and result in increased extensions of the final Fedwire close. Today, institutions in seven districts have one and one-half hours between the close of both the interdistrict and intradistrict third-party wire and the final 6:30 p.m. Fedwire close in which to calculate and adjust reserve positions. By extending the deadline for interdistrict third-party transfers, the settlement period [4] for depository institutions in these seven districts would be reduced to one-half hour. An unanticipated last minute receipt of a third-party transfer could complicate reserve account management by contributing to a reserve excess. The need to adjust to such last minute changes in position could result in more frequent requests for extensions of the final Fedwire closing time. Moreover, given the narrower settlement window, any extension of the third-party deadline would always result in an extension of the final Fedwire closing time, in order to provide a 30 minute bank-to-bank settlemnt period. Extensions require additional operational support and management attention and are costly to both Reserve Banks and depository institutions.

In addition, a later interdistrict third-party transfer deadline could result in revised patterns of funds transfer volume that would result in some institutions receiving transfers later in the day. In five Federal Reserve districts, depository institutions can send funds transfers to in-district receiving institutions after the close of the interdistrict third-party wire. Consequently, a number of institutions in these districts, including the large New York banks, currently manage outgoing third-party transfers in the late afternoon so that their interdistrict transfers are sent prior to the 5:00 p.m. deadline, with the remaining transfers sent prior to the district's later intradistrict deadline. If the Federal Reserve adopts a uniform third-party transfer deadline, there would no longer be a reason to assign priority to interdistrict transfers, with the result that some institutions could receive transfers from certain out-of-district institutions later than they generally receive these transfers today.

Although the proposed third-party deadline would require Reserve Banks to provide funds transfer services later in the day, the proposal would not require depository institutions to remain open for funds until 6:00 p.m. Institutions in districts that currently have earlier third-party deadlines, however, may feel obligated to extend their internal operating hours in order to post incoming transfers to their customers' accounts on a timely basis and to facilitate their reserve account management.

In order to achieve the benefits of the proposed changes to the Fedwire operating hours, while being sensitive to its potential adverse effects, the Board proposes that the new deadline, if adopted, be implemented in two phases. During a six month transition, the nationwide interdistrict third-party deadline would be extended from 5:00 p.m. to 5:45 p.m., and districts with an intradistrict third-party transfer deadline earlier than 5:45 p.m. would move their deadline to that time. Districts that now have an intradistrict third-party deadline of 6:00 p.m. would maintain this deadline during the transition period. Six months following the implementation of the transition phase, the Federal Reserve Banks would establish a 6:00 p.m. uniform interdistrict and intradistrict third-party deadline, unless experience showed that the later third-party transfer deadline would hinder reserve account management, result in a significant increase in requests to extend the final Fedwire closing time, or otherwise significantly disrupt depository institutions' operations.

The Board requests comment on whether a 60-day period from final adoption of the revised third-party deadlines to the implementation of the six-month transition phase would provide adequate lead time for depository institutions. In addition, the Board requests comment on whether a six-month transition period is sufficient to determine whether the later third-party deadline would have any adverse effects. Finally, if experience during the transition phase indicates that a 6:00 p.m. third-party deadline would be disruptive to depository institutions' operations, the Board requests comment on whether a uniform 5:45 p.m. intradistrict and interdistrict deadline should be established, or whether districts with 6:00 p.m. intradistrict deadlines should be permitted to retain these later deadlines.

Segmented Settlement Period

Some depository institutions have suggested that a more orderly settlement of end-of-day reserve positions could be facilitated, especially in connection with a later interdistrict third-party transfer deadline, by restricting the last 15 minutes of the final one-half hour settlement period to transfers sent to receiving institutions for their own accounts (and not for the accounts of respondent institutions). Transfer received by an institution for its own account are generally known to the institution in advance. Whereas an institution can control the timing of transfers sent on behalf of respondent institutions by establishing a deadline for these transfers prior to the Fedwire closing time, last minute transfers received on behalf of respondent institutions may not be anticipated or controlled by the receiving correspondent institution, complicating the correspondent's reserve account management. Restricting transfers that are sent during the last 15 minutes of Fedwire operations to those for which the receiving account-holding institution, and not its respondent, is the beneficiary could facilitate the receiving institution's reserve account management. Segmenting the settlement period into two parts may require new funds transfer type codes and operating changes by both depository institutions and the Reserve Banks.

The Board requests comment on the benefits of a segmented settlement period, as well as any adverse effects it may have on institutions that maintain balances at correspondents. In addition, the Board requests comment on whether, if a segmented settlement period were desirable, the last 15 minutes be further restricted to exclude transfers originated by an institution on behalf of a respondent. Some banks have indicated that because competitive pressure would preclude them from imposing a deadline for the origination of transfers on behalf of respondents that is earlier than the Fedwire deadline, the advantages of a segmented settlement period would not be realized without restrictions on both the origination and receipt of respondent transfers.

If a segmented settlement period were adopted, the Board requests comment on whether it should be implemented concurrent with that 6:00 p.m. third-party deadline; that is, after the six-month transition phase, or whether an alternate implementation schedule would be preferable. Finally, the Board requests comment on how the Federal Reserve should manage extensions of the Fedwire final closing time under a segmented settlement period, e.g., should extensions of the final closing time involve discrete extensions of the two segmented period.

Book-Entry Securities Closing Time

Currently, the book-entry securities transfer wire is scheduled to close nationwide at 2:30 p.m. for interdistrict and intradistrict transfers, at 2:45 p.m. for dealer turnaround, and at 3:00 p.m. for reversal transactions.[5] The Twelfth District remains open, however, for intradistrict transfer until 5:30 p.m., with a 6:00 p.m. close for intradistrict reversals. These later operating hours are more consistent with West Coast business hours, and enable Twelfth District institutions to transfer book-entry securities among themselves after the securities transfer system is closed for the rest of the country. The dollar volume of Twelfth District securities transfers processed after the actual national closing time is relatively insignificant. The Board requests comment on whether the later Twelfth District closing times create competitive inequities with institutions in other districts; whether the closing of the book-entry securities transfer system should be uniform nationwide; and if so, what the impact of an earlier intradistrict closing time would be on Twelfth District institutions.

Uniform Opening Time

The Board's recent proposal to price daylight overdrafts [6] may have implications for Fedwire opening times. The Fedwire funds transfer operating schedule currently provides that each district open for processing no later than 9:00 a.m.; eight districts begin funds transfer operations between 8:00 a.m. and 8:45 a.m. The opening times for the Federal Reserve's book-entry securities service are even more disparate, ranging from 7:45 a.m. to 11:00 a.m. The current opening times for the funds transfer and book-entry securities transfer services are shown in the table below.

CURRENT FEDWIRE OPENING TIMES

[Eastern Time]

District	Funds Transfer	Book-Entry Securities Transfer
Boston	8:45 a.m.	8:00 a.m.
New York	8:00–8:30	8:00–8:30
Philadelphia	8:15–8:30	8:00–8:45 [a]
Cleveland	8:00	8:00
Richmond	8:30	8:30 [b]
Atlanta	8:30	7:45–8:00
Chicago	8:00–9:00	8:45–9:00
St. Louis	8:30	9:00
Minneapolis	9:00	8:15–8:30
Kansas City	9:00	9:00
Dallas	9:00	9:00
San Francisco	9:00	10:00 [c]

[a] Philadelphia opens at 8:00 a.m. for intradistrict securities transfer processing, and at 8:45 a.m. for interdistrict securities transfer processing.

[b] The Charlotte Branch opens at 8:00 a.m. for securities transfer processing.

[c] The San Francisco Head Office and the Salt Lake City Branch open at 10:00 a.m. for securities transfer processing; the Portland, Seattle, and Los Angeles Branches open at 11:00 a.m. for securities transfer processing.

Differences in Fedwire opening times among Reserve Banks may inhibit the efficient movement of funds, especially in an environment where intraday balances have real economic value. For example, if the Board's recent proposal to price daylight overdrafts is adopted, it is possible that institutions may contract to buy and return Federal funds at specified times during the day. Inasmuch as the market for Federal funds is a national market, differences in Fedwire opening times could artificially constrain private contracting among buyers and sellers of Federal funds.

On a more technical level, under the Board's proposal, pricing would apply to average daylight overdrafts, which would be calculated using the period of time that Fedwire is open. Thus, differences in operating hours across Federal Reserve districts could result in differences in the fee assessed for a given quantity of daylight overdrafts.

An objective of the Board's recent proposal regarding the measurement of intraday reserve and clearing account balances is to eliminate Federal Reserve intraday float. National uniformity in Fedwire operating hours supports this objective because different opening times among Reserve Banks can contribute to intraday Federal Reserve float. Accounts of institutions originating funds or book-entry securities transfers are debited or credited at the time the originating institution's Reserve Bank processes the transfer. If the receiving Reserve Bank had not yet begun processing for the day, the offsetting entry to the account of the receiving institution would not be posted until that Reserve Bank processes the transfer, creating Federal Reserve intraday credit float (in the case of funds transfers) or debit float (in the case of book-entry securities transfers). Establishment of uniform opening, as well as closing, times would reduce the amount of intraday float generated by the Federal Reserve's Fedwire services.

Five Federal Reserve districts currently start book-entry securities transfer processing earlier than funds transfer processing. If the Board prices book-entry securities daylight overdrafts and includes these overdrafts within an institution's net debit cap, depository institutions may seek to avoid incurring a daylight overdraft from the purchase of a book-entry security by arranging for covering funds prior to the receipt of the incoming security. A uniform opening time for the funds transfer and securities transfer services, or a uniform book-entry securities transfer opening time that is slightly later than that for the funds transfer service, would provide institutions the opportunity to fund their accounts to cover anticipated securities purchases.

The Board requests comment on whether the Federal Reserve should adopt a uniform opening hour of 8:30 a.m. for the Fedwire funds and book-entry securities transfer services, or whether the book-entry securities transfer service opening time should be later than that for the funds transfer service. In addition, the Board requests comment on whether there are reasons other than the Board's risk reduction proposals to establish uniform funds and securities transfer opening times.

By order of the Board of Governors of the Federal Reserve System, October 4, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23904 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

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[4] The settlement period is used for bank-to-bank settlemnt transfers, including correspondent/respondent transfers as well as transfers between banks on their own behalf.

[5] These closing times are routinely extended to accommodate peak afternoon securities transfer volume. The actual average reversal closing time to date in 1989 is 4:20 p.m. This proposal would not affect the Federal Reserve's book-entry securities transfer extension policy.

[6] See 54 FR 28094, June 21, 1989.

First Sioux Bancshares, Inc.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-

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19938) published at page 35247 of the issue for Thursday, August 24, 1989, and supersedes the correction notice published at page 41341 on Friday, October 6, 1989.

Under the Federal Reserve Bank of Chicago, the entry for First Sioux Bancshares, Inc., is amended to read as follows:

1. First Sioux Bancshares, Inc., Sioux Center, Iowa; to engage *de novo* through its subsidiary, First Sioux Financial, Sioux Center, Iowa, in the combination of consumer financial counseling, investment advice, securities brokerage and insurance annuity sales pursuant to §§ 225.25 (b)(15), (b)(4), (b)(20) and (b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Comments on this application must be received by October 26, 1989.

Board of Governors of the Federal Reserve System, October 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24090 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Minor Alteration to an Existing System of Records

AGENCY: Office of the Assistant Secretary for Public Affairs, HHS.

ACTION: Notification of minor revisions to a Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Assistant Secretary for Public Affairs (OASPA) is publishing a notice of minor revisions to system of records 09-90-0058, "Freedom of Information Case Files and Correspondence Control Log, HHS/OS/ASPA/FOIA." System of records 09-90-0058 is being revised to make minor editorial changes, update addresses and telephone numbers of system managers, and to reflect more accurately current procedures followed by staff personnel in processing FOIA requests and disposing of case files and correspondence control logs. In addition, the language of the fourth routine use (litigation) has been altered to reflect OMB guidance about disclosures to the Department of Justice, courts, or tribunals for litigation purposes.

DATES: HHS invites interested parties to submit comments on the amended routine use on or before November 13, 1989. The amendment will become effective 30 days after publication unless HHS receives comments which would result in a contrary determination.

ADDRESS: Comments should be addressed to: HHS Privacy Act Officer, Room 645-F Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments will be available for inspection in room 645-F at the above address, Monday through Friday, between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas E. Donnelly, HHS Privacy Act Officer, Room 645-F Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone: (202) 472-7453.

SUPPLEMENTARY INFORMATION: This system notice was last published in the Federal Register, Vol. 47, No. 198, p. 45534 on Octoer 13, 1982. For convenience and clarity, HHS is publishing the entire text of this notice.

Dated: October 2, 1989.

Mariam Bell,

Deputy Assistant Secretary for Public Affairs.

09-90-0058

SYSTEM NAME:

Freedom of Information Case Files and Correspondence Control Log, HHS/OS/ASPA/FOIA.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION:

Freedom of Information/Privacy Act Division, Room 645F Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201 (see Appendix I, following, for additional locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or organizations requesting access to inspect and/or copy records of the Department under provisions of the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other individually identifying information about the requester, the request, and records reflecting processing of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552.

PURPOSE:

Records are used by the Freedom of Information staff involved in FOIA correspondence and processing, as well as by appeals officials and members of the Office of General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed from this system for routine uses to:

1. The Department of Justice for the purpose of obtaining advice as to whether or not the records should be disclosed.

2. A contractor for the purpose of collating, aggregating, analyzing, or otherwise refining records in this system. The contractor shall be required to maintain Privacy Act safeguards in working with such records.

3. A congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Justice, or to a court or other tribunal or to another party before such tribunal, when (a) HHS, or any component of HHS; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The original, or a copy, of the incoming request and the written response are maintained in case file folders and stored in metal file cabinets. Cross-reference data is maintained in a correspondence control log stored in a personal computer and printed as hard copy on paper as needed.

RETRIEVAL:

Records are almost always retrieved by the name of the individual who made the FOIA request during a given calendar year. In addition, each request is assigned a case file number that identifies the year in which the request was made and the number of the request. For example, 89-432. Records also can be retrieved by this case file number.

SAFEGUARDS:

1. Authorized Users: Access is limited to involved program officials, FOIA staff, appeals officials, and members of the Office of General Counsel who are involved in the processing of FOIA requests and appeals.

2. Physical Safeguards: The case file folders are stored in file cabinets in secure areas that are either occupied by staff personnel involved in processing FOIA requests and appeals or locked up during non-working hours, or whenever staff are not present in these areas. In addition, entrance to the buildings where case files are maintained is controlled by security guards.

3. Procedural Safeguards: Access to records is limited to those staff members who are familiar with both the FOIA and the Privacy Act. System Managers are held responsible for safeguarding the records under their control.

RETENTION AND DISPOSAL:

The National Archives and Records Administration issues General Records Schedules that provide disposition authorization for records common to several or all agencies of the Federal Government. Schedule 14 (June 1988) sets forth detailed disposition requirements for FOIA records.

1. Case files are retained for two years and then destroyed when access to all requested records is granted.

2. Case files are destroyed after six years when access to all or part of the records is denied.

3. In the event of an appeal, the files are destroyed six years after final determination by the Department, or three years after final adjudication by the courts, or six years after the time at which a requester could file suit, whichever is later.

4. Correspondence control logs are destroyed six years after the date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information/Privacy Act Division, 645F Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (See Appendix I, following, for additional system managers.)

NOTIFICATION PROCEDURES:

System managers. Addresses same as above.

RECORD ACCESS PROCEDURES:

A person may request access to these records in writing, in person, or by telephone to the system managers listed above and in Appendix I. The managers may require proof of identity whenever they are in doubt about the identity of the person making the request.

CONTESTING RECORD PROCEDURES:

A person may contest information in these records by contacting the system managers listed above and in Appendix I, and by identifying the information contested; the corrective action sought; and reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals and organizations making requests under the FOIA, and components of the Department and other agencies that search for and provide the records and related correspondence that are maintained in the case files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Appendix I

HHS Freedom of Information Officer, Room 645F Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Tel: (202) 472-7453.

SSA Freedom of Information Officer, Room 4-H-8 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Tel: (301) 965-3962.

HCFA Freedom of Information Officer, Room 100 Professional Building, Office of Public Affairs, 6660 Security Blvd, Baltimore, Maryland 21207. Tel: (301) 966-5352.

PHS Freedom of Information Officer, Room 13-C-24 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-5252.

FDA Freedom of Information Officer, HFW-35, Room 12A16 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-1813.

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B39, 9000 Rockville Pike, Bethesda, Maryland 20892. Tel: (301) 496-5633.

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Tel: (404) 639-2388.

HRSA Freedom of Information Officer, Room 1443 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-2086.

ADAMHA Freedom of Information Officer, Room 12-C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-3783.

IHS Freedom of Information Officer, Room 5-A-39 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443-3593.

[FR Doc. 89-23886 Filed 10-10-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Consumer Participation; Open Meeting; Boston District Office

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward McDonnell, District Director. The topic to be discussed is food labeling.

DATES: Wednesday, November 15, 1989, 9:30 a.m. to 11 a.m.

ADDRESSES: Food and Nutrition Consignments, 55 State St., Springfield, MA 01103.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymakers decisions on vital issues.

Dated: October 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-23921 Filed 10-10-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting; Los Angeles District Office

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Los Angeles District Office, chaired by George Gerstenberg, District Director. The topic to be discussed is food labeling.

DATE: Thursday, October 26, 1989, 10 a.m. to 12:30 p.m.

ADDRESS: Maricopa County Office Bldg., University of Arizona, 4341 East Broadway, Phoenix, AZ 85040.

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FOR FURTHER INFORMATION CONTACT: Irene Caro, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7597.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–23922 Filed 10–10–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (301–496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B.

Executive Secretary: Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Date of Meeting: October 31, 1989.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: 8:30 a.m. to 9:00 a.m.

Closed: 9:00 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretaries: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Dates of Meeting: November 29–30—December 1, 1989.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 29, 8:30 a.m.–9:00 a.m.

Closed: November 29, 9:00 a.m. to recess. November 30, 8:30 a.m. to recess. December 1, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C.

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes.of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Date of Meeting: November 2–3, 1989.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 2, 8:30 to 9:00 a.m.

Closed: November 2, 9:00 a.m. to recess. November 3, 9:00 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23945 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 17, 1989, Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland. The meeting will be open to public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance wth the provisions set forth in secs. 52b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C27, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon requst.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89–23944 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Federick Cance Research Facility (FCRF) Advisory Committee, National Cancer Institute, November 29, 1989, Building 549, Executive Board Room, at the NCI Federick Cancer Research Facility, Frederick, Maryland 21701–1013.

The meeting will be open to the public on November 29 from 8:30 a.m. to approximately 11:00 a.m. to discuss administrative matters, future meetings, concept review of collaborative research by an FCRF contractor, and status of activities of the Crystallography Laboratory. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 29 from approximately 11:00 a.m. to adjournment for discussions of previous site visit reports of research being conducted by the Basic Research Program's Laboratory of Chemical and Physical Carcinogenesis and the Mammalian Genetics Laboratory. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lunsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496–5708), will provide summaries of the meeting and rosters of committee members, upon request. Dr. Cedric W. Long, Executive Secretary, Federick Cancer Research Facility Advisory Committee, National Cancer Institute Fredericak Cancer Research Facility, Building 427, Frederick, Maryland 21701–1013 (301, 698–1108) will provide substantive program information upon request.

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23942 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 30, 1989, Executive Plaza North, Conference Room G, 6120 Executive Boulevard, Rockville Maryland 20852.

This meeting will be open to the public on October 30 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 30 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7030) will provide substantive program information, upon request.

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23943 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), October 25–26, 1989, at the Holiday Inn, Georgetown, Canal Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

The meeting will be open to the public on October 25 from 8:30 a.m. to 10 a.m. during which time there will be comments by the Acting Director, DRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, DRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 25 from 10 a.m. to 6 p.m., and on October 26 from 8 a.m. to 4 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, NIH, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, (301) 496–9971, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23941 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for November through December 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that

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anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	November-December 1989 meeting	Time	Loation
Behavioral and Neurosciences-1, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	Nov. 15-17	9:00	The Savory Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	Nov. 9	8:30	The Savory Suites Hotel, Washington, DC.
Biological Sciences-1, Dr. James R. King, Rm. A22, Tel. 301-496-1067.	Nov. 29-Dec. 1	8:30	St. James Hotel, Washington, DC.
Biological Sciences-2, Dr. Syed Amir, Rm. 326, Tel. 301-496-3117.	Nov. 9-11	8:30	Holiday Inn, Houston TX.
Biological Sciences-3, Mr. Gene Headley, Rm. A27, Tel. 301-496-7287.	Nov. 13-14	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150.	Nov. 27-29	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Clinical Sciences-1, Ms. Jo Pelham, Rm. 319, Tel. 301-496-7477.	Nov. 16-17	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-2, Ms. Jo Pelham, Rm. 319, Tel. 301-496-7477.	Dec. 4-5	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Rm. A20, Tel. 301-496-7510.	Nov. 15-17	8:30	Holiday Inn Crown Plaza, Rockville, MD.
International & Cooperative Projects, Dr. Sandy Warren, Rm. A27, Tel. 301-496-7600.	Nov. 29-Dec. 1	8:30	The Savoy Suites Hotel, Washington, DC.
Physiological Sciences, Dr. Nicholas Mazarella, Rm. A25, Tel. 301-496-1069.	Nov. 16-17	8:30	Holiday Inn Crown Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health HHS).

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-23946 Filed 10-10-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2064]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extention, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Survey of Tenants in Certain Properties with HUD-Held and Foreclosed Mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information will help the Department determine how many units must be made available for low- and moderate-income tenants after the mortgage is assigned by HUD. This data collection effort is required by Section 181 of the 1987 Housing and Community Development Act, as amended.

Form Number: HUD-9934, 9934A, and 9934B.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organization.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respond-ents	×	Fre-quency of re-sponse	×	Hours per re-sponse	=	Burden hours
One-Time Burden in 1989 for Currently HUD-Held Inventory							
Project Owners							
HUD-9934	724		1		4		2,896
HUD-9934A	724		1		.25		181
HUD-9934B	724		1		1.5		1,086
Subtotal							4,163
Tenants							
HUD-9934	86,913		1		.066		5,736
Total							9,899

Proposal: Section 8 Housing Assistance Payments Program for the Disposition of HUD-Owned Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under the Housing Assistance Program (HAP), Section 8 owners will notify each family, at least 90 days before the expiration of the contract term, that they will no longer receive assistance and of the increased rental they will be required to pay.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respond-ents	×	Fre-quency of re-sponse	×	Hours per re-sponse	=	Burden hours
HAP Contract Certification	486		1		1		486

Total Estimated Burden Hours: 486.

Status: New.

Contact: Donald Myers, HUD, (202) 755-7374, John Allison, OMB, (202) 395-6880.

Dated: October 4, 1989.

[FR Doc. 89-23972 Filed 10-10-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2061]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 2, 1989.

John T. Murphy,

Director, Information Policy and Mangement Division.

Proposal: Rent Increase Budget Worksheet

Office: Housing

Description of the Need for the Information and Its Proposed Use: Owners of certain subsidized, cooperative, and Section 202 projects will be required to submit a Budget Worksheet annual. The Department will use the worksheet to evaluate owner expense estimates and calculate allowable rents and utility allowance.

Form number: None

Respondents: Businesses or Other For-Profit and Federal Agencies or Employees

Frequency of Submission: Annually

Reporting Burden:

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	Number of Respondents	X	Frequency of Response	X	Hours per Response	=	Burden Hours
Budget Worksheet	12,500		1		2		25,000

Total Estimated Burden Hours: 25,000
Status: Reinstatement
Contact: James J. Tahash, HUD, (202) 426-3970. John Allison, OMB, (202) 395-6880.

Dated: October 2, 1989.

Proposal: Title I Property Improvement and Manufactured Home Programs (24 CFR Part 201).
Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected is in association with HUD requirements and customary industry practices regarding loans for improvement of property and purchase of manufactured housing as reflected in HUD regulations codified at 25 CFR Part 201. These information collections are necessary to make loans and to administer the Title I programs.
Form number: HUD-92802, 56001, 56001(MH), 56004, 55083, FH-1(HP), HUD-55013.
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of Respondents	X	Frequency of Response	X	Hours per Response	=	Burden Hours
Prior Approval	50		1.00		0.5		25
HUD-92802	2,600		1.00		.25		650
HUD-55014	30		533		7.098		113,500
Notification of Warranty Problems	15		1.00		.25		4
HUD-56001	200,000		1.00		.5		100,000
HUD-56001(MH)	25,000		1.00		.5		12,500
FH-1	100		1.00		.5		50
Manufactured Home Loans	200		1.00		.25		50
HUD-55013	5,300		1.00		1.0		5,300
Requirements for Dealer Loans	50		1.00		.25		13
Requirements for Dealer Loans	100		1.00		.25		25
HUD-56004	200,000		1.00		.10		20,000
Post-Disbursement Loan Requirement	50		1.0		.5		25
HUD-55083	9,000		1.0		.3		2,700
Reports on Property Condition	6,011		1.00		1.0		6,011
Extension of Claim Period	9,000		1.00		.10		900
Recordkeeping	30		1.5		36		1,620

Total Estimated Burden Hours: 263,373.
Status: Extension.
Contact: Lana McKee, HUD, (202) 755-6360. John Allison, OMB, (202) 395-6880.

Dated: October 2, 1989.

[FR Doc. 89-23887 Filed 10-10-89; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-89-2062]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 3, 1989.

John T. Murphy,
Information Policy and Management Division.

Proposal: Minimum Property Standards—Request for Local Code Review
Office: Housing

Description of the Need for the Information and Its Proposed Use: The information is needed to determine if state and local codes are comparable to national model codes. If the state and local codes have been approved in the past, the information will determine if there have been changes. If the information is not collected about the state or local codes, parties would have to comply with both state or local codes and HUD standards (model codes).
Form Number: None
Respondents: Businesses or Other For-Profit and Small Businesses or Organizations
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual review	1,350		1		8		10,800
Recordkeeping	1,350		1		1		1,350

Total Estimated Burden Hours: 12,150
Status: Extension
Contact: Henry Omson, HUD, (202) 755-5798. John Allison, OMB, (202) 395-6880.

Dated: October 3, 1989.

[FR Doc. 89-23888 Filed 10-10-89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-09-4410-10]

Initiation of Resource Management Plan (RMP) and Environmental Impact Statement (EIS) and Invitation To Identify Issues, for the Owyhee Resource Area in Idaho

AGENCY: Bureau of Land Management.
ACTION: Notice of intent to initiate a resource management plan (RMP) and prepare an environmental impact statement (EIS) for the Owyhee Resource Area in Southwestern Idaho and invitation to participate in the identification of issues (Scoping).

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Boise District will prepare a land use plan (RMP) and an environmental impact statement (EIS) for the Owyhee Resource Area in Owyhee County, Idaho. The (RMP) land use plan will guide resource management in the Owyhee Resource Area over the next 20 years. The RMP will be prepared under guidance provided at 43 CFR 1600 (BLM Planning Regulations).

DATES: Any public meetings pursuant to 40 CFR 1501.7 (NEPA regulations) and 43 CFR 1610.2 (BLM planning regulations) to help identify and determine the issues to be addressed and the scope of the EIS and RMP will be announced in the local media and through a mailing list. Specific dates and locations for meetings have not yet been determined.

ADDRESS: Comments should be sent to: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

SUPPLEMENTARY INFORMATION: The Owyhee Resource Area located in southwestern Idaho's Owyhee County encompasses approximately 1,014,000 acres administered by BLM. The area is bounded on the west by Oregon, on the south by Nevada, on the north by the Snake River and on the east by Castle Creek, Deep Creek, the Owyhee River, and the Duck Valley Indian Reservation. The planning process (which will include the NEPA process) will evaluate a range of alternative resource uses for this area and will address issues identified during the scoping process.

Potential issues to be addressed during the process include, but are not limited to, land tenure adjustments, vegetation management (including needs for livestock grazing, wildlife, wild horses, riparian values, threatened and endangered species, watershed protection, and fire management), and special management areas (including wilderness, areas of critical environmental concern, and wild and scenic rivers).

The RMP and EIS will be prepared by an interdisciplinary team primarily from the Owyhee Resource Area. Team disciplines will include rangeland management, wildlife, soils, realty, minerals, recreation, vegetation, fire, cultural resources, and economics. Additional technical support and expertise will be available as needed. Public participation will occur throughout the planning process. The public will be specifically invited to participate during four steps in the planning process: (1) Identification of Issues, (2) Review of Proposed Planning Criteria, (3) Review of Draft RPM/EIS, and (4) Review of Proposed Plan/Final EIS. Invitations for public participation will be announced through the local media and our mailing list. The planning process is currently scheduled for completion in about three years.

Dated: September 25, 1989.

J. David Brunner,
Boise District Manager.

[FR Doc. 89-23908 Filed 10-10-89; 8:45 am]
BILLING CODE 4310-GG-M

National Park Service

Development of the South Denali Visitor Center, Denali State Park, Alaska

SUBJECT: Amended Notice of Intent to Prepare an Environmental Impact Statement.

ACTION: Draft Environmental Impact Statement for Proposed Development of the South Denali Visitor Center, Denali State Park, Alaska.

SUMMARY: National Park Service cooperation with the State of Alaska in the development of a new visitor center for Denali State Park was one of the actions contained in the 1985 General Management Plan for Denali National Park. A notice of intent to prepare an Environmental Impact Statement (EIS) appeared in 51 FR 4243-4244 (February 3, 1986).

Preparation of the EIS was deferred until an updated Denali State Park Master Plan could be completed in July 1986. Extensive scoping and public involvement, including 32 public meetings, were conducted as part of the state planning process for this area. Issues and concerns for the State plan concept of a proposed visitor destination complex, of which the visitor center is one part, were identified. Those issues and concerns relating to the construction of a visitor center will be fully taken into account in the National Park Service EIS. Nevertheless,

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additional opportunity to participate in scoping is noticed below.

The National Park Service is now preparing a draft EIS that evaluates three alternatives for proposed Federal development of a visitor center at the northern end of South Denali State Park: (1) High lands alternative for a region centering on High Lake; (2) a low lands alternative in the region extending along the park's highway and west to the Chulitna River from mile 163 north to the state park boundary; and (3) no action.

The EIS will address major issues and concerns raised through both the State and this newly announced scoping process. In addition to the proposed Federal action, the EIS will also evaluate the secondary and cumulative environmental effects of other non-Federal developments that may be associated with the visitor center, which includes a lodge, campground, trails, hostel, employee housing, and related parking, access, circulation and utilities.

A more indepth discussion of issues identified to date is contained in the Denali State Park Master Plan. The plan is available from the Alaska Division of Parks and Outdoor Recreation, P.O. Box 107001, Anchorage, Alaska 99510–7001.

This amendment is notification of an additional opportunity for participation in the scoping of this EIS. Additional comments on the scope of the draft EIS for this proposed visitor center project are hereby invited. It is anticipated that the draft will be ready for public review in 1990.

DATES: Written comments should be received no later than Monday, November 13, 1989, however, comments received after that date will be considered to the extent possible.

ADDRESS: Comments should be sent to: Janet McCabe, National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892.

James W. Stewart,

Acting Associate Director, Planning and Development.

[FR Doc. 89–23861 Filed 10–10–89; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting; Lake Clark National Park

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of Lake Clark National Park Subsistence Resource Commission announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of Guests.

(2) Review of minutes from last meeting.

(3) Old business.

(4) Notice of upcoming Chairman's meeting.

(5) Review draft regulation for subsistence hunting roster plan.

(6) Review progress on preparation of rosters for Iliamna, Newhalen, Nondalton, Port Alsworth.

(7) New business.

DATE: The meeting will begin at 10:00 a.m. on November 6, 1989 and conclude that evening.

ADDRESS: The meeting will be held at Pedro Bay School, Pedro Bay, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Hutchison, Superintendent, Lake Clark National Park and Preserve, 222 W. 7th Ave., #61, Room 543, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: The Lake Clark National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

David B. Ames,

Acting Regional Director.

[FR Doc. 89–23860 Filed 10–10–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 30, 1989. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 26, 1989.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

El Paso County

Carlton House, Pine Valley, US Air Force Academy, Colorado Springs vicinity, 89001785

IOWA

Black Hawk County

Weis, Henry, House, 800 W. Fourth St., Waterloo, 89001779

Dubuque County

Loetscher, T. Ben, House, 160 S. Grandview Ave., Dubuque, 89001777

Floyd County

Suspension Bridge, Over the Big Cedar River at end of Clark St., Charles City, 89001778

Jackson County

Village of St. Donatus Historic District, Jct. of US 52/Main St. and First St., St. Donatus, 89001870

Mahaska County

Rock Island Passenger Depot, Rock Island Ave. between 1st and 2nd Sts., Oskaloosa, 89001780

Polk County

Chatauqua Park Historic District (Suburban Development in Des Moines between the World Wars, 1918—1941 MPS), Roughly bounded by 16th St., Hickman Rd., and Chautauqua Pkwy., Des Moines, 89001776

LOUISIANA

Caddo Parish

Forest Home, Jct. Johns Rd. and Johns Gin Rd., Four Forks vicinity, 89001873

Calcasieu Parish

Lake Charles City Hall, Old, Ryan St. at Kirby St., Lake Charles, 89001872

Catahoula Parish

Wildwood, Off LA 15, Sicily Island vicinity, 89001874

Iberia Parish

Romero, Andrew, House, 310 Marie St., New Iberia, 89001855

Iberville Parish

Plaquemine Historic District, Roughly Church St., Court St., Railroad Ave., and Main St., Plaquemine, 89001791

MASSACHUSETTS

Hampshire County

Hollis, Thomas, Historic District, Washington St. from Winter to Highland Sts., Holliston, 89001786

Worcester County

Harvard Shaker Village Historic District, Roughly Shaker Rd., S. Shaker Rd., and Maple Ln., Harvard, 89001871

MINNESOTA

Beltrami County

Nymore Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), First St. over Mississippi River, Bemidji, 89001849

Blue Earth County

Kennedy Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 167 over LeSueur River, Mankato vicinity, 89001832

Zieglers Ford Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 96 over Big Cobb River, Good Thunder Vicinity, 89001830

Fillmore County

Bridge No. L4770 (Minnesota Masonry-Arch Highway Bridges MPS), Twp. Rd. 213 over Mahoney Creek Fountain vicinity, 89001827

Goodhue County

Bridge No. 12 (Iron and Steel Bridges in Minnesota MPS), Twp Rd. 43 over Bullard Creek, Red Wing vicinity, 89001837

Third Street Bridge (Iron and Steel Bridges in Minnesota MPS), Third St. over Cannon River, Cannon Falls, 89001836

Hennepin County

Cedar Avenue Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Tenth Ave. over Mississippi River, Minneapolis, 89001845

Interlachen Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), William Beery Dr. over Minnesota Transportation Museum street railway track in William Beery Park, Minneapolis, 89001840

Queene Avenue Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), W. Lake Harriet Blvd. over Minnesota Transportation Museum street railway track, Minneapolis, 89001847

Lac Qui Parle County

Yellow Bank Church Campground Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 76 over Yellow Bank River, Odessa vicinity, 89001831

Pipestone County

Split Rock Bridge, (Minnesota Masonry-Arch Highway Bridges MPS) Co. Rd. 54 over Split Rock Creek, Ihlen vicinity, 89001823

Ramsey County

Bridges No. L–5853 and 92247 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Lexington Ave. in Como Park, St. Paul, 89001842

Intercity Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Ford Pky. over Mississippi River, St. Paul, 89001838

Mendota Road Bridge (Minnesota Masonry-Arch Highway Bridges MPS), Water St. over Pickerel Lake Outlet, St. Paul, 89001825

Robert Street Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Robert St. over Mississippi River, St. Paul, 89001846

Selby Avenue Bridge (Iron and Steel Bridges in Minnesota MPS), Selby Ave. over Soo Line railroad tracks, St. Paul, 89001833

Seventh Street Improvement Arches (Minnesota Masonry-Arch Highway Bridges MPS), E. 7th St. over Burlington Northern right-of-way, St. Paul vicinity, 89001828

Wabasha Street Bridge (Iron and Steel Bridges in Minnesota MPS), Wabasha St. over Mississippi River, St. Paul, 89001834

Rice County

Dump Road Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 45 over Straight River, Faribault vicinity, 89001835

Faribault Viaduct (Reinforced-Concrete Highway Bridges in Minnesota MPS), Division St. over Straight River, Faribault, 89001848

Rock County

Bridge No. L–2162 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Co. Rd. 15 over Split Rock Creek, Jasper vicinity, 89001839

Bridge No. L–2315 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Twp. Rd. 89 over Rock River, Luverne vicinity, 89001841

Bridge No. L–2316 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Twp. Rd. 89 over Rock River, Luverne vicinity, 89001843

Bridge No. L–4646 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Sixth St. over Spring Brook, Beaver Creek, 89001844

St. Louis County

Bridge No. L6007 (Minnesota Masonry-Arch Highway Bridges MPS), Skyline Pky. over Stewart Creek, Duluth, 89001826

Scott County

Bridge No. L3040 (Minnesota Masonry-Arch Highway Bridges MPS), Co. Rd. 51, N of MN 19, Belle Plain vicinity, 89001829

Wabasha County

Zumbro Parkway Bridge (Minnesota Masonry-Arch Highway Bridges MPS), Co. Rd. 68 over Zumbro River, Zumbro Falls vicinity, 89001824

NEW YORK

Cayuga County

Lakeside Park, NY 38A at Owasco Lake, Owasco, 89001790

NORTH CAROLINA

Lenoir County

Atlantic and North Carolina Railroad Freight Depot (Kinston MPS), E. Blount St. between N. Queen and N. McLewean Sts., Kinston, 89001788

Baptist Parsonage (Kinston MPS), 211 S. McLewean St., Kinston, 89001787

Blalock, Robert L., House (Kinston MPS), 300 S. McLewean St., Kinston, 89001772

Canady, B. W., House (Kinston MPS), 600 N. Queen St., Kinston, 89001771

Hill—Groinger Historic District (Kinston MPS), Roughly bounded by Summit Ave., N. East St., E. & W. Vernon Ave., and N. Heritage St., Kinston, 89001764

Hotel Kinston (Kinston MPS), 503 M. Queen St., Kinston, 89001770

Kinston Baptist—White Rock Presbyterian Church (Kinston MPS), 516 Thompson St., Kinston, 89001773

Kinston Fire Station—City Hall (Kinston MPS), 118 S. Queen St., Kinston, 89001769

Mitchelltown Historic District (Kinston MPS), Roughly bounded by W. Vernon Ave., N. Heritage St., W. Blount St., College St., Atlantic Ave., and Rhem St., Kinston, 89001766

Peoples Bank Building (Kinston MPS), 242 S. Queen St., Kinston, 89001774

Queen—Gordon Streets Historic District (Kinston MPS), Roughly N. Queen and Gordon Sts., Kinston, 89001765

Trianon Historic District (Kinston MPS), Roughly E. Gordon St. from N. Tiffany to N. Orion Sts. and Water St. from N. Vance to N. Orion Sts., Kinston, 89001763

Onslow County

Bank of Onslow and Jacksonville Mosonic Temple (Onslow County MPS), 214–216 Old Bridge St., Jacksonville, 89001850

Catherine Lake Historic District (Onslow County MPS), Jct. SR 1001 and 1211, Catherine Lake, 89001853

Futral Family Farm (Onslow County MPS), SR 1210, 1 mi. SE of jct. with SR 1209, Fountain vicinity, 89001851

Pelletier House and Wantland Spring (Onslow County MPS), Old Bridge St. at New River, Jacksonville, 89001852

Southwest Historic District (Onslow County MPS), NC 53 and SR 1217, Waltons Store vicinity, 89001854

OREGON

Baker County

Clark, Robert F. and Elizabeth, House, 1522 Washington Ave., Baker, 89001857

Clackamas County

Ladd Estate Company Model House, 432 Country Club Rd., Lake Oswego, 89001859

Shindler, William, House, 3235 SE. Harrison St., Milwaukie, 89001867

Coos County

Coos Bay National Bank Building, 201 Central Ave., Coos Bay, 89001868

Hood River County

Davidson—Childs House, 725 Oak St., Hood River, 89001864

Hartley, Orrin B., House, 1029 State St., Hood River, 89001860

Klamath County

Klamath Falls City Hall, 226 S. 5th St., Klamath Falls, 89001861

Klamath Falls City Library, Old, 500 Klamath Ave., Klamath Falls, 89001863

Lane County

Beta Theta Pi Fraternity House, Old, 379—381 E. 12th Ave., Eugene, 89001858

Multnomah County

Bader, Louis J., House and Garden, 3604 SE. Oak St., Portland, 89001856

MacMaster, William and Annie, House, 1041 SW. Vista Ave., Portland, 89001862

Menefee, L. B., House, 1634 SW. Myrtle St., Portland, 89001866

Miller, Henry B., House, 2439 ME. 21st St., Portland, 89001865

Shriners Hospital for Crippled Children, 8200 ME. Sandy Blvd., Portland, 89001869

PENNSYLVANIA

Berks County

Dreibelbis, Joel, Farm, PA 143, Virginville, 89001820

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Huntingdon County

Greenwood Furnace (Industrial Resources of Huntingdon County, 1780—1939 MPS), PA 305 in Greenwood Furnace State Park, McAlevys Fort vicinity, 89001819

Monroe Furnace (Industrial Resources of Huntingdon County, 1780—1939 MPS), Jct. PA 26 and Legislative Rt. 31078, 6 mi. NW of McAlevys Fort, McAlevys Fort vicinity, 89001818

Lancaster County

Bowmansville Roller Mill, Jct. of PA 625 and Von Nieda St., Bowmansville, 89001821

VERMONT

Addison County

Shard Villa, Jct. Shard Villa and Columbus Smith Rds., Salisbury, 89001789

Caledonia County

Thurston, Phineas, House, Barnet Town Hwy. 12, Barnet, 89001788

Rutland County

Mountain View Stock Farm, VT 22A, N of Lake Rd., Benson, 89001817

VIRGINIA

Augusta County

Mt. Pleasant, VA 732 N of Staunton, Staunton vicinity, 89001792

Montgomery County

Alleghany Springs Springhouse (Montgomery County MPS), VA 637, Alleghany Springs, 89001807

Amiss—Palmer House (Montgomery County MPS), Mountain View Dr. and Penn St. off Eakin St., Blacksburg, 89001804

Barnett House (Montgomery County MPS), U.S. 460/11, 0.3 mi. S of jct. with VA 631, Elliston vicinity, 89001810

Bornett, William, House (Montgomery County MPS), Off VA 637, 0.1 mi. N of VA 638, Alleghany Springs vicinity, 89001806

Big Spring Baptist Church (Montgomery County MPS), VA 631, 0.1 mi. E of US 460/11, Elliston, 89001809

Bishop House (Montgomery County MPS), 0.1 mi. N of jct. of VA 693 and 813, Graysontown vicinity, 89001812

Blankenship Farm (Montgomery County MPS), 0.4 mi. S of jct. of VA 733 and 603, Ellett vicinity, 89001808

Bridge over North Fork of Roanoke River (Montgomery County MPS), S of jct. of VA 637 and 603 over North Fork of Roanoke River, Ironto vicinity, 89001802

Collaway, Pompey, House (Montgomery County MPS), VA 754, 0.2 mi. E of US 460, Elliston vicinity, 89001811

Charlton, James, Farm (Montgomery County MPS), VA 666, 1.3 mi SW of VA 724, Radford, 89001816

Crockett Springs Cottage (Montgomery County MPS), 1 mi. S of jct. of VA 637 and 609, Piedmont vicinity, 89001814

Earhart House (Montgomery County MPS), VA 723, 0.3 mi. W of VA 603, Ellett vicinity, 89001801

Gordon, Nealy, Farm (Montgomery County MPS), Off VA 637, 0.5 mi. S of jct. with VA 603, Brush Harbor vicinity, 89001805

Grayson—Gravely House (Montgomery County MPS), VA 613 at Little River Bridge, Graysontown vicinity, 89001813

Guerrant House (Montgomery County MPS), VA 612 at VA 615, Pilot, 89001815

Montgomery Primitive Baptist Church (Montgomery County MPS), VA 624, SW of jct. with US 460/11, Merrimac vicinity, 89001803

Prince Edward County

Formville Historic District, Roughly bounded by Main, Venable, High, Ely, School, First Ave., Irving, Second Ave., Oak, W. Third St., and Mill, Farmville, 89001822

Prince William County

Davis—Beard House, 10726 Baristow Rd., Bristow, 89001794

Effingham, 14103 Aden Rd., Aden vicinity, 89001793

Lawn, The, 15027 Vint Hill Rd./VA 215, Nokesville vicinity, 89001798

Locust Botto, 2520 Logmill Rd., Haymarket vicinity, 89001796

Mt. Atlos, 4105 Mt. Atlas Ln., Haymarket vicinity, 89001799

Pilgrim's Rest, 14102 Carriage Ford Rd., Nokesville vicinity, 89001797

White House, 12320 Bristow Rd., Brentsville, 89001795

WEST VIRGINIA

Kanawha County

Edgewood Historic District, Roughly bounded by Edgewood Dr., Highland, Beech, Chester, and Lower Chester, Charleston, 89001800

St. John's Episcopal Church, 11105 Quarrier St., Charleston, 89001782

Mercer County

Hancock House, 300 Sussex St., Charleston, 89001783

Randolph County

Butcher Hill Historic District, E of Beverly, Beverly vicinity, 89001784

Wirt County

Buffolo Church, Jct. Co. Rts. 28 and 14, Palestine vicinity, 89001781

The 15-day comment period has been waived on the following property:

PENNSYLVANIA

Fayette County

Linden Hall at Saint James Park, RR 26051, NW of Dawson, Dawson vicinity, 89001787

A proposed move is being considered for the following property:

PENNSYLVANIA

Lancaster County

Stoever, John Casper, Log House, 200 W. Main St., New Holland, 86003561

[FR Doc. 89–23862 Filed 10–10–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 193X)]

Chicago and North Western Transportation Company—Abandonment Exemption—in Cook County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 3.3-mile line of railroad between milepost 9.3, near River Junction, and milepost 12.6, near Oakton Street, in Skokie, Cook County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protests affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 31, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23828 Filed 10–10–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–43 (Sub-No. 151X)]

Illinois Central Railroad Company—Abandonment Exemption—in Adams County, MS

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 2.6 miles of railroad line between milepost 91.91 and 94.48, northeast of Natchez, in Adams County, MS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 31, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23829 Filed 10–10–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA in United States v. Browning Ferris, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 27, 1989, a proposed Consent Decree in *United States* v. *Ferris Industries, et al.*, Civil Action No. B–89–859 was lodged with the United States District Court for the Eastern District of Texas.

The Complaint in this enforcement action was filed on Sept. 27, 1989, against Browning Ferris Chemical Services Inc., Chevron Chemical Company, E. I. DuPont De Nemours, French Limited, French Ltd. of Houston, Luther P. Hendon, George A. Whitten, Gulf States Utilities Company, Owens-Illinois, Inc., Phillips Petroleum Company, Sun Refining and Marketing Company, Inc., Texaco Chemical Company, and The Uniroyal Goodrich Tire Company under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Bailey Waste Disposal Site located in Bridge City, Texas.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning Ferris Industries et al.*, D.J. No. 90–11–2–390.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Texas, 700 North Street, Suite 102, Beaumont, Texas 77701 and the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $17.00 payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23909 Filed 10–10–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to CERCLA; United States v. Jefferson Pilot Corp. et al.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9607(a), notice is hereby given that a proposed consent decree in *United States* v. *Jefferson Pilot Corporation and the City of Sanford*, Civil Action No. C–89–642–D, was lodged with the United States District Court for the Middle District of North Carolina, Durham division on September 22, 1989. This agreement resolves a judicial enforcement action brought by the United States against the defendants seeking recovery of response costs incurred by the United States in excavating a disposal pit at a former manufacturing facility in Sanford, North Carolina to remove discarded electronic capacitors that were leaking hazardous substances into the environment.

The proposed consent decree provides for recovery of response costs of $250,000 from Jefferson Pilot Corporation and $100,000 from the City of Sanford in settlement of the action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jefferson Pilot Corporation, et al.*, D.J. Ref. 90–11–3–484.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of North Carolina, 328 Federal Bldg. & P.O. Bldg., 324 West Market Street, Greensboro, NC 27402. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section of the Department of Justice. In requesting a copy, please enclose a check in the amount of ninety (90) cents (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23910 Filed 10–10–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; U.S. v. USX Corp.

In the matter of lodging of consent decree regarding the performance of remedial activities and the recovery of certain response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 to 9675

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *USX Corporation*, was lodged with the United States District Court for New Jersey on September 19, 1989. The proposed Decree, if entered will resolve the liability of USX Corporation under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), if USX satisfactorily performs the remedial work outlined in the Decree at the Tabernacle Drum Dump Site in Tabernacle Township, Burlington County, New Jersey. The Decree will also resolve the liability of USX Corporation for certain costs which have been or will be incurred in connection with EPA's oversight of the remedial activities performed by USX Corporation as well as for costs expended to perform health studies carried out by the Agency for Toxic Substances and Disease Registry under section 104(i) of CERCLA, 42 U.S.C. 9604(i), in connection with the site. The Decree reserves the United States' right to sue USX Corporation, and any other potentially responsible parties, for other response costs not previously recovered, including without limitation, the costs incurred by the United States to perform a remedial investigation and feasibility study to monitor, assess, and evaluate releases at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, D.J. Ref. No. 90–11–2–138A.

The proposed Decree may be examined at the office of the United States Attorney, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, Room 311, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $12.60 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23911 Filed 10–10–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; U.S. v. Borough of Bellefonte

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 2, 1989 a proposed Consent Decree in *United States* v. *Borough of Bellefonte, Pennsylvania* (M.D. Pa), Civil Action No 3:CV–89–1421 was lodged with the United States District Court for the Middle District of Pennsylvania. The Consent Decree concerns violations of sections 307(d), 309 (b), (d) and 402 of the Clean Water Act, 33 U.S.C. 1317(d), 1319 (b), (d) and 1342. Defendant Borough of Bellefonte ("Bellefonte") has violated its National Pollutant Discharge Elimination System ("NPDES") permit by consistently exceeding its permit limits for phosphorous, ammonia-nitrogen and total suspended solids at its Publicly Owned Sewage Treatment Plant ("POTW"). Also, Bellefonte has consistently failed to enforce its Pretreatment Program. The Consent Decree requires defendant to remedy these violations through upgrade and expansion of the POTW. Further, the Decree requires Bellefonte to correct the deficiencies in its Pretreatment Program by revising the Program, inspecting its significant industrial users, and submitting monitoring reports to EPA. Bellefonte is required to pay a civil penalty of $64,000 for its violations of the Clean Water Act and the Pennsylvania Clean Streams Act: $35,000 to the United States and $29,000 to the Commonwealth of Pennsylvania. The consent decree is backed by stipulated penalties and is consistent with EPA's guidelines and policies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borough of Bellefonte, Pennsylvania*, D.J. No. 90–5–1–1–2772.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Pennsylvania, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania 18501, and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23912 Filed 10–10–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Departmental Management, Office of the Solicitor;

Equal Access to Justice;

1225–0013;

On occasion;

Individuals or households; State or local governments; Businesses and other for-profit; Non-profit institutions; Small Businesses or organizations;

10 respondents; 50 hours; 5 hours per response;

The Equal Access to Justice Act provides for the payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and regulations require the filing of an application.

Employment Standards Administration;

Request for Examination and/or Treatment;

1215–0066; LS–1

On occasion;

Individuals or households;

16,500 respondents; 178,200 total hours; 1.08 hours per response, 1 form

Form is used by employers to authorize medical treatment for injured workers and by physicians to report findings of physical examinations and treatment recommended.

Employment and Training Administration;

Title 29 CFR part 29—Labor Standards for the Registration of Apprenticeship Programs;

1205–0223;

On occasion;

Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations;

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Reg section	Affected public	Respondents	Frequency	Average time per response
29.3 & 29.6	92,000	Apprentices	One-time	15 minutes.
29.3 & 29.6	97,000	Apprentices	One-time	50 minutes.
29.5	3,000	Apprentices	One-time	2 hours.
29.7	40	State agencies	One-time	50 minutes.
37,086 total hours				

Needed by employers, apprentices and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Employment and Training Administration;

Title 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

1205–0224;

On occasion;

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations;

Reg section	Affected public	Respondents	Frequency	Average time per response
30.3	Apprentices	2,700	One-time	30 minutes.
30.4	Apprentices	300	One-time	1 hour.
30.5	Apprentices	5,000	One-time	30 minutes.
30.6	Apprentices	50	One-time	5 hours.
30.8	Apprentices	50,000	One-time	1 minute.
30.8	State agencies	30	One-time	5 minutes.
7,316 total hours				

This information is required to promote and ensure equality of opportunity with sponsors of apprenticeship programs registered with recognized State Apprenticeship Agencies.

Revision

Employment and Training Administration;

Benefits Rights and Experience;

1205–0177; ETA 218;

Quarterly;

State or local governments;

53 respondents; 106 total hours; ½ hour per response; 1 form Provides information for solvency studies, in budgeting projections and for evaluation of adequacy of benefit formals to analyses effects of proposed changes in State law.

Signed at Washington, DC this 5th day of October, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–23958 Filed 10–10–89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–70]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Cockpit Technology.

DATES: October 30, 1989, 8:30 a.m. to 4:30 p.m. (to be held at Douglas Aircraft Company); October 31, 1989, 8 a.m. to 5 p.m. (to be held at Ames Research Center); and November 1, 1989, 8:30 a.m. to 5 p.m. (to be held at Boeing Commercial Airplane Company).

ADDRESSES: Douglas Aircraft Company, Building 75, Room 3C, 3855 Lakewood Boulevard, Long Beach, CA 90846; and National Aeronautics and Space Administration, Ames Research Center, Building 200, Room 213, Moffett Field, CA 94035; and Boeing Commercial Airplanes, Building 1060, Room 27J3, Seattle, WA 98124.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Morello, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2745.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Cockpit Technology, chaired by Mr. John K. Lauber, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

October 30, 1989

8:30 a.m.—Opening Remarks.
9 a.m.—Flight Deck Automation.
10:30 a.m.—Facility Tour.
1:30 p.m.—Advanced Programs at Douglas Aircraft.
4:30 p.m.—Adjourn.

October 31, 1989

8 a.m.—Current Research on Intelligent Cockpit Systems, and Aircrew Information Requirements.
10 a.m.—Future Research Ideas.
1 p.m.—Simulation Facility Needs.
2 p.m.—Group Discussion.
4 p.m.—Facility Tour.
5 p.m.—Adjourn.

November 1, 1989

8:30 a.m.—Opening Remarks.
9:30 a.m.—Aircraft Cockpit Requirements in the 21st Century.
1 p.m.—Discussion on Research Direction.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–23914 Filed 10–10–89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89–69]

NASA Advisory Council Exploration Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council Exploration Task Force.

DATES AND TIME: October 30, 1989, 8:30 a.m. to 5 p.m.; October 31, 1989, 8:30 a.m. to 4:30 p.m.; and November 1, 1989, 9 a.m. to 1 p.m.

ADDRESS: The Gant Hotel, Conference Room A, 610 West End Street, Aspen, CO 81611.

FOR FURTHER INFORMATION CONTACT: Ms. Charlotte G. Kea, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–9182.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Exploration Task Force was established to provide strategy guidelines for a comprehensive program of human exploration of the solar system; and report to the Council the results of its study. The Task Force is chaired by Robert McC. Adams and is composed of nine members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including Task Force Members and other participants.

Type of Meeting: Open.

Agenda:

October 30, 1989

8:30 a.m.—Introductory Remarks.
8:40 a.m.—Office of Exploration Program Status.
10:20 a.m.—General Discussion.
1 p.m.—A Geologist's Perspective on Exploring Mars.
1:30 p.m.—International Considerations.
3 p.m.—Discussion/Review of Task Force Benefits.
5 p.m.—Adjourn.

October 31, 1989

8:30 a.m.—A Biologist's Perspective on Exploring Mars.
9 a.m.—Discussion on Exploring the Moon.
9:30 a.m.—Group Discussion.
1:30 p.m.—Task Force Draft Paper Development.
4:30 p.m.—Adjourn.

November 1, 1989

9 a.m.—Discussion on Benefits of Education, Manpower, and Technology.
10 a.m.—Review of Draft Report.
12 noon—Concluding Remarks.
1 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–23915 Filed 10–10–89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89–71]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee (CISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and Information Systems Subcommittee.

DATES: October 24, 1989, 8:30 a.m. to 5 p.m., and October 25, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue SW., Room 226 Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Subcommittee will meet to review Program Status and Plans, and discuss response to the July Subcommittee Recommendations. The Subcommittee is chaired by Dr. Robert T. Filep and is composed of 7 members. The meeting will be open to the public up to the capacity of the room (approximately 12 people including members of the Subcommittee).

Type of Meeting: Open.

Agenda:

Tuesday, October 24, 1989

8:39 a.m.—Review Communications and Information Systems Program Status and Plans.
5 p.m.—Adjourn.

Wednesday, October 25, 1989

8:30 a.m.—Communication and Information Systems Response to July Subcommittee Recommendations.
11:30 a.m.—Subcommittee Wrap-Up with Director.
12:30 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–23916 Filed 10–10–89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89–68]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

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DATE AND TIME: October 17, 1989, 8:30 a.m. to 5 p.m. and October 18, 1989, 8:30 a.m. to 2 p.m.

ADDRESSES: Capital Gallery, 600 Maryland Avenue SW. Suite 300, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees. This meeting will be open to the public up to the seating capacity of the room, (which is approximately 40 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

October 17, 1989

8:30 a.m.—Administrative Items.
9 a.m.—Program Update. NASA Organization. Congressional.
9:30 a.m.—Program Rephasing.
11:30 a.m.—International.
1 p.m.—Exploration Initiative.
3:30 p.m.—Discussion.
5 p.m.—Adjourn.

October 18, 1989

8:30 a.m.—Reports. Space Station Science and Applications Advisory Committee (SSSAAS). Aerospace Medicine Advisory Committee (AMAC). Systems Engineering and Integration (SE&I). Station Institution.
10 a.m.—Open Items.
2 p.m.—Adjourn.

Dated: October 2, 1989.

John Gaff,

Advisory Committee Management Officer.

[FR Doc. 89-23917 Filed 10-10-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Literature Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 30, 1989, from 9:00 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 4, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-23970 Filed 10-10-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Chemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry, NSF.

Date and Time: October 26-27, 1989; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. K.N. Houk, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7947.

Summary Minutes: May be obtained from Dr. K.N. Houk.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-23868 Filed 10-10-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Economics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, NSF.

Date/Time: Friday November 3, 1989—8:30 a.m. to 5:00 p.m., Saturday November 4, 1989—9:00 a.m. to 3:00 p.m.

Place: Lombardy Hotel, 2019 I St., NW.

Type of Meeting: Closed, (except for Executive Session with NSF officials on November 3, from 12:15 to 1:00).

Contact Person: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow, or Dr. Ivy Broder, Program Directors, Division of Social and Economic Science, Room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357-9674.

Purpose of Meeting: To provide advice and recommendations concerning support for research in economics.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c) Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 89-23869 Filed 10-10-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Materials Research Advisory Committee

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee (MRAC), NSF.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Date: Thursday, November 2, and Friday, November 3, 1989.

Time: 8:30 a.m.-5:00 p.m. (Thursday), 8:30 a.m.-5:00 p.m. (Friday).

Type of Meeting: Open.

Contact Person: Dr. A. I. Schindler, Division Director, Division of Materials Research (DMR); Room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9794

Minutes: May be obtained from the Contact Person, Dr. A. I. Schindler, at the above stated address.

Purpose of Committee: To provide advice and recommendations concerning support of materials research.

Agenda:

Thursday, November 2, 1989

8:30 a.m. Introductory Remarks and Adoption of Minutes
9:00 a.m. DMR Status Reports and Budget Briefing
12:00 Noon Working Lunch
1:00 p.m. Discussion of Proposed DMR Reorganization
3:00 p.m. Discussion of Possible Responses to the NRC Materials Science and Engineering Study
5:00 p.m. Adjourn

Friday, November 3, 1989

8:30 a.m. Meeting with Acting Assistant Director, MPS
9:30 a.m. Discussion of Preliminary Conclusions of the DMR Undergraduate Curriculum Development Workshop
10:30 a.m. Discussion of Possible new DMR Initiatives
12:00 Noon Working Lunch
1:00 p.m. Statements by Departing Committee Members
2:00 p.m. Meeting with Erich Bloch, Director, NSF
3:00 p.m. Further Discussion and Future MRAC Activities
5:00 p.m. Adjourn

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-23870 Filed 10-10-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-22 issued to Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action

In accordance with the licensee's application for amendment dated March 31, 1989, the proposed amendment would revise the Technical Specifications to: (1) Revise the reactor vessel pressure vs. temperature (P/T) curves for consistency with Revision 2 of Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Coolant Materials," (2) add requirements, consistent with Generic Letter 88-01, for augmented inservice inspection of piping susceptible to intergranular stress corrosion cracking (IGSCC); and (3) revise the requirements for the periodic Type A containment integrated leak rate test (CILRT) to permit the use of the mass point test method approved by the Commission in a recent change to 10 CFR 50, Appendix J, published in the **Federal Register** on November 15, 1988 (53 FR 45891).

The Need for the Proposed Action

The proposed amendment is needed in order to bring the requirements of the facility Technical Specifications into consistency with the current regulatory requirements of 10 CFR 50, Appendix J, and the Commission's positions of Generic Letters 88-01 and 88-11. The CILRT change is necessary to bring the Technical Specifications into consistency with current regulations and an exemption issued to the licensee on October 21, 1988.

Environmental Impacts of Proposed Action

The Commission has completed its evaluation of the proposed amendment to the Technical Specifications. The proposed amendment would implement procedural, testing and administrative changes for which the Commission has previously concluded, as demonstrated through the issuance of Regulatory Guides and an Exemption, would not increase the probability or consequences of accidents, change the types of quantities of radiological or nonradiological effluents that may be released offsite, or significant increase the individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 1, 1989 (54 FR 23553). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

The Commission has concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation, which have been previously considered by the Commission in the Final Environmental Statement dated November 22, 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's analysis supporting the proposed amendment. The staff did not consult with other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated March 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 28th day of September 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23930 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors (GE ABWR); Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors (GE ABWR) will hold a meeting on October

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31, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 1989—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the NRC staff's SER on Module One of GE ABWR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 3, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-23931 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 1); Exemptions

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR-77 which authorizes operation of the Sequoyah Nuclear Plant, Unit 1. This license provides that, among other things, Unit 1 is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (Commission) now or hereafter in effect.

The Sequoyah Nuclear Plant, Unit 1, is one of the two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II

General Design Criterion (GDC) 52 of Appendix A to 10 CFR part 50 requires that each reactor containment be designed so that periodic integrated leakage rate testing can be conducted to assure containment isolation integrity. Section III.D.1(a) of Appendix J to 10 CFR part 50 requires (1) that a set of three Type A tests shall be performed at approximately equal intervals during each 10-year service period and (2) the third Type A test in a 10-year service period shall be conducted when the unit is shutdown for the 10-year unit inservice inspection (ISI). The staff has determined that the approximately equal intervals for Type A tests during each 10-year service period is 40±10 months.

The Type A tests are conducted to measure the primary reactor containment integrated leakage rate. They are also known as the containment integrated leak rate tests. These tests are required by Appendix J to assure that the containment leakage following a large break loss-of-coolant accident is less than the maximum allowable leak rate assumed in the accident analysis. For Unit 1, the maximum allowable leak rate is 0.25 percent of the containment volume per day.

In addition to the Type A tests, Appendix J requires Type B and Type C tests of leakage through containment penetrations and containment isolation valves to also assure containment integrity during an accident. These requested exemptions do not affect the requirements on (1) the Type B and Type C tests in Appendix J or (2) the maximum allowed containment leakage rate in Appendix J and the Unit 1 Technical Specifications.

The containment is required to be operable when the unit is at reactor system conditions above cold shutdown and refueling. The containment is not required for cold shutdown or refueling.

By letter dated May 1, 1989, the licensee requested a temporary exemption from the interval requirements for Type A testing in Appendix J. The licensee proposed that the interval between the second and third Type A tests for Unit 1 be extended on a one-time basis beyond the 50 months allowed to coincide with the Unit 1 Cycle 4 refueling outage. This one-time extension would require that Unit 1 shutdown no later than May 1, 1990 and that the Type A test would be completed before the restart of Unit 1 from its Cycle 4 refueling outage when containment integrity was again required. The licensee contends that an exemption for Unit 1 is warranted on the basis that the containment will have experienced no operational loading for 35 of the 53 months to May 1, 1990 since the last Type A test, no modifications have been made to the containment boundary since the last type A test, the first and second Type A tests had very leakage rates, and the likely leakage paths, the containment penetrations, have recently been acceptably leak tested.

Unit 1 entered its Cycle 3 refueling outage on August 22, 1985 and the second test of the first 10-year service period was conducted on December 15, 1985. The second test was significantly less than the maximum allowable leak rate of 0.25 percent per day for Unit 1. TVA stated that since August 22, 1985 Unit 1 was in an extnded shutdown until its restart in November 1988 and no modifications were made on the containment pressure boundary. In addition, the local leak tests on all penetrations and valves requiring Appendix J, Type B and Type C testing were conducted in 1988 before the restart of Unit 1 in November 1988 and are acceptable. The surfaces on the containment liner and shield building were inspected for abnormal degradation before the restart of Unit 1 and none was found. Therefore, the leak rate for the Unit 1 containment should remain within the maximum allowed leak rate in the not more than three months of additional plant operation before the shutdown of Unit 1 for the Unit 1 Cycle 4 refueling outage to conduct the third Type A test.

The staff has considered the temporary Appendix J exemption request for the extension of the Type A test interval and concludes it is justified on the grounds that (1) there should be no significant increase in the Type A test leak rate for the Unit 1 containment when the Type A test interval is extended beyond the 50 months allowed to the Unit 1 Cycle 4 refueling outage which is to begin no later than May 1, 1990 and (2) the results of this Type A test should be below the maximum allowed leak rate.

By letter dated May 5, 1989, the licensee requested a second exemption from the Type A testing requirements in Appendix J. This is a permanent exemption from conducting the third Type A test in a 10-year service period during the unit shutdown for the 10-year inservice inspection (ISI). The licensee contends that since the 10-year ISI has been extended approximately three years, the inspection is not required for the Unit 1 Cycle 4 refueling outage and, therefore, must be uncoupled from the Third Type A test in each 10-year service period which is required by Appendix J.

The 10-year ISI is not related to the integrity of the containment pressure boundary and is scheduled for 1994 in accordance with Section XI of the American Society of Mechanical Engineers (ASME) Code and with 10 CFR 50.55a(g)(4). The first 10-year ISI for Unit 1 is, therefore, scheduled for a future refueling outage other than the upcoming Unit 1 Cycle 4 refueling outage which is scheduled for 1990. The extension of the 10-year ISI is necessary in order for the plant to accumulate sufficient operating time to conduct the 10-year ISI because of the extended 35-month outage of Unit 1 from 1985 to 1988. In accordance with the provisions of Section XI, Article I WA-2400(c), of the ASME Code, the licensee extended the Sequoyah Unit 1 10-year ISI by 34 months to 1994. The ASME Code allows the 10-year ISI to be postponed if the time the plant has operated is significantly less than the 10-year inspection cycle which is true for Sequoyah because of its extended outage.

The staff has considered the Appendix J exemption request for uncoupling the third Type A test of each 10-year service period from the 10-year unit ISI and concludes it is justified on the grounds that the third Type A test within each 10-year service period and the 10-year ISI must be scheduled separately for Unit 1. The licensee is still required to conduct the 10-year ISI in accordance with Section XI of the ASME Code.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are (1) authorized by law, (2) will not present an undue risk to public health and safety, and are (3) consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption—namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the Unit 1 containment will continue to provide a reliable and acceptable means of containment isolation integrity within the leakage requirements of Appendix J and the Unit 1 Technical Specifications. Also, compliance with the rule would result in the expenditure of resources which are not consistent with the licensee's long-term plan for Unit 1 and which could be better utilized elsewhere for safety improvements to the plant.

Unit 1 entered its Cycle 3 refueling outage on August 22, 1985, and successfully completed its second periodic Type A test on December 15, 1985. Unit 1 remained in shutdown for approximately three years before returning to power operation on November 10, 1988. This unusually long outage has resulted in a hardship for the licensee to comply with the Type A test interval requirement in Appendix J. Compliance with Appendix J requires the licensee to either schedule a forced Unit 1 outage for the sole purpose of performing a Type A test or conduct a Type A test during the ice condenser flow passage inspection outage projected to start on October 1, 1989. A forced outage would require 22 days to conduct the Type A test and the estimated cost to the licensee is $2.5 million in replacement power costs. Inclusion of a Type A test during the ice condenser flow passage inspection (eight-day duration) would add an additional 22 days to the outage and the replacement power costs would be the same.

When Appendix J was adopted, the end of the 10-year service period and the 10-year inservice inspection outage were contemplated to be concurrent milestones; however, these milestones are unrelated within the meaning of containment integrity and Appendix J would require that the Unit 1 10-year ISI would have to be rescheduled to coincide with the Unit 1 Cycle 4 refueling outage. This option would result in significant excess costs to the licensee because of the increased outage time. The 10-year inservice inspection for Unit 1 is currently scheduled for 1994 in accordance with Section XI of the ASME Code and 10 CFR 50.55a(g)(4) and early performance of the 10-year ISI with the associated hardships and cost was not intended by the rule when it was originally adopted. Performing the 10-year ISI early would also provide little or no compensating increase in the level of quality or safety at Unit 1.

Accordingly, the Commission hereby grants two exemptions from the requirements of Section III.D.1(a) of Appendix J to 10 CFR Part 50 to the licensee for operation of the Sequoyah Nuclear Plant, Unit 1, as described above. The exemption to uncouple the third Type A test of each 10-year service period from the 10-year inservice inspection is granted permanently. The exemption to allow the licensee to conduct the third Type A test for Unit 1 during the Unit 1 Cycle 4 refueling outage is temporary and is granted only for this third Type A test provided:

(1) The Unit 1 Cycle 4 refueling outage begins no later than May 1, 1990, and

(2) The Type A test for Unit 1 is conducted prior to the restart of Unit 1 from its Cycle 4 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of these exemptions will have no significant impact on the environment. This was noticed in the **Federal Register** (54 FR 39829, September 28, 1989).

For further details with respect to this action, see the requests for exemptions dated May 1, and 5, 1989, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1989.

For the Nuclear Regulatory Commission.

B. D. Liaw,

Director, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23932 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied in part a request by the Washington Public Power Supply System (WPPSS or licensee) for an amendment to Facility Operating License No. NPF-21 for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington. The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on November 30, 1988 (53 FR 48340).

The licensee proposed to amend the technical specifications related to radiation monitoring of control room

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ventilation air to remove the requirement for an automated trip of air intakes upon a high radiation signal. Arguments were presented to support this action; and it was reviewed and approved.

In the same application, several other changes to the affected section were proposed but were not supported. Specifically, NRC staff did not review the footnote which was proposed to be added to page 3/4 3-58 or review the proposed changes to statement 70 on page 3/4 3-59 specifying times to restore the monitors to operable status because the licensee did not (1) indicate any need for the changes, (2) present a safety analysis, instead arguing that the proposed wording would be consistent with wording used in unrelated sections of the technical specifications, or (3) provide a "no significant hazards consideration analysis" addressing these changes. Therefore, these proposed changes have been denied.

By November 9, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Regulatory Publications Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorneys for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 24, 1988 (2) Amendment No. 74 to License No. NPF-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of October, 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23933 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Public Access to the Federal Information Locator System

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is announcing public access to the Federal Information Locator System (FILS). OMB is making available a document composed of an indexed summary of data on collections of information from the public for which individual Federal agencies have sought and received prior approval from OMB, as required by the Paperwork Reducation Act. FILS can serve as a guide for identifying sources of information within the Federal government on subject areas of interest to researchers or other users of information.

FOR FURTHER INFORMATION CONTACT: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395-7316.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act requires the establishment and operation of FILS to serve as an authoritative register of all collections of information sponsored by Federal agencies (44 U.S.C. 3511). One of the purposes of FILS is to assist the public, as well as individual Federal agencies, in locating existing government sources of information. OMB Circular No. A-130, Management of Federal Information Resources requires that agencies provide adequate public notice when initiating significant information products. This notice is issued pursuant to that policy.

Construction of FILS

Under the Paperwork Reduction Act, agencies proposing to collect information from the public are required to obtain approval from OMB prior to conducting such an activity. In the case of ongoing information collections, such as applications for benefits, OMB approval is required at least once every three years. As part of the process of obtaining OMB approval, agencies submit information to OMB describing the nature of the data collection, the respondents to the collection, and the paperwork burden imposed on the public. Some of this information is stored in a computerized database designed for internal OMB use to keep track of agency requests and OMB approvals. FILS is generated from that database.

FILS contains the following information about each information collection in the database:

—An eight-digit OMB approval number;
—Title of the information collection;
—Name of sponsoring department/agency;
—Affected public (i.e., individuals or households, State or local government, farms, businesses non-profit institutions);
—Purpose (i.e., application for benefits, program evaluation, general purpose statistics, regulatory or compliance, program planning or management, research, audit);
—Frequency (i.e., on occasion, weekly, monthly, annually, biennially, other);
—Number of respondents;
—Total hours of burden imposed on the public;
—Keywords; and
—Abstract describing the data collection.

Organization of FILS Data File Document

The FILS data file document is comprised of several section. The first section is a textual introduction explaining the background of the data file and containing much of the information in this Notice. Following the introduction, the user will find the main body of the FILS data file—a sequential listing (by OMB approval number) of currently approved data collections. Next, the user will find an index of "keywords" in alphabetical order. The index is followed by a table of agency codes for each Federal agency. (These codes are used as the first four digits of the eight-digit OMB approval number assigned to each information collection.) The last section of the file contains the names, addresses and telephone numbers of Federal agency officials the public may contact for further details regarding particular information collections, including requests for copies of specific form or reports of results.

Public Access

OMB is enabling public access to FILS in several ways:

(1) The Government Printing Office is distributing the FILS data file document through the Federal Despository Library program. Under this program microfiche of the document will be available for free public use in approximately 525 libraries located thoughout the country.

(2) Copies of the FILS data file document may be purchased from the Department of Commerce's National technical Information Service (NTIS). It may be purchased from NTIS in paper, microfiche or diskette format for: $91.50 in paper, $25.50 in microfiche, and $275.00 in IBM PS2 diskette format. The NTIS document numbers for these formats are PB89-221808 for paper or microfiche and PB89-211816 for diskettes. The document may be ordered from NTIS by calling the NTIS sales desk at (703) 487-4650 or by writing to National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161.

(3) The FILS data file document may be used without charge by the public at the Office of Management and Budget in Washington, DC by calling the Office of Information and Regulatory Affairs Docket Library at (202) 395-6880.

S. Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-24080 Filed 10-10-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27330; File No. SR-MSRB-89-5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting Assessment Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Board has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Board is filing herewith a proposed amendment to rule A-13 increasing the underwriting assessment fee from $.01 to $.02 per $1,000 par value for all new issue municipal securities sold on or after October 1, 1989, having an aggregate par value of $1,000,000 or more and a maturity date of not less than two years from the date of the securities (hereinafter referred to as the "proposed rule change"). The revised fee will take effect on October 1, 1989, to ensure that the industry receives ample notification of the revision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule A-13 requires each broker, dealer, and municipal securities dealer to pay to the Board a fee based on its placements of new issue municipal securities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities. Brokers, dealers, and municipal securities dealers are required to pay the underwriting assessment fee on all new issues purchased by or through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. Prior to the proposed rule change, the fee was calculated at the rate of $.01 per $1,000 of the par value of such securities. The proposed rule change modifies rule A-13 to provide that the fee payable with respect to new issues which a municipal securities dealer has contracted on or after October 1, 1989 to purchase from an issuer shall be calculated at the rate of $.02 per $1,000.

The Board has not changed the underwriting assessment fee rate since the rate was decreased from $.02 to $.01 per $1,000 on July 1, 1987. In light of the Board's declining fund balance and the expected expenses relating to the development of an electronic repository for official statements and refunding documents, it has adopted an amendment to rule A-13 increasing the underwriting assessment fee rate from $.01 to $.02 per $1,000, effective October 1, 1989.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of brokers, dealers, and municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Particpants, or Others

Comments have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

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rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-MSRB-89-5 and should be submitted by November 1, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23872 Filed 10-10-89; 8:45 am]

BILLING CODE 8010-11-M

[Release No. 34-27321; File No. SR-NASD-89-43]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Capabilities for the Association's Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend until November 30, 1989 the Securities and Exchange Commission's temporary approval of the limit order capabilities of the Association's Small Order Execution System which was approved for a ninety day period on January 19, 1989, and extended until September 30, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend the Commission's temporary approval of the SOES limit order system until November 30, 1989. This extension will allow the NASD to continue to monitor utilization of the system and will provide an opportunity for the NASD to address concerns as to the operation of the system raised by the Commission in the temporary approval order [1] relating to possible crossing or matching of limit orders resident in the system and to provide the Commission with a definite proposal relating to this issue. To date, the system has been functioning as anticipated. As of March 20, 1989, the NASD completed the phase in of all securities and the system is currently carrying approximately 1,250 open limit orders. The NASD has experienced no system related problems and no capacity problems during the implementation phase of the SOES limit order file.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1)(B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Securities Exchange Act of 1934. Sections 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

[1] Securities Exchange Act Release No. 26476 (January 19, 1989), 54 FR 3681

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register** and in any event before September 30, 1989 the date on which the temporary approval for the SOES Limit Order processing function expires. The Association believes that the enhancement to the SOES system is benefitting members and their public customers by providing an automated method of processing limit orders for all SOES participants. The NASD believes that the extension will provide the NASD with the opportunity to consider concerns relating to matching of orders at prices between the spread which were raised in the Commission's temporary approval order.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(5) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof in that accelerated approval will benefit public investors by continuing to provide limit order storage and execution capabilities which can result in more efficient handling of customer orders. The Commission believes that the benefits of extending the temporary rule change until November 30, 1989 outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by November 1, 1989.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23873 Filed 10-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27324; File No. SR-NSCC-89-13]

Self-Regulatory Organizations; National Securities Clearing Corp.; Order Granting Accelerated Approval and Approving a Proposed Rule Change on a Temporary Basis Concerning the Automated Settlement of Mutual Fund Dividends

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change with the Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The rule change would modify the Networking aspect of NSCC's Fund/Serv to provide for the automated settlement of mutual fund dividends. Notice of this proposal was published in the **Federal Register** on September 8, 1989, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal on a temporary basis.

[1] 15 U.S.C. 78s(b) (1982).

I. Description of the Proposal

The rule change would amend NSCC's Rule 52, section 17 (captioned "Networking").[3] Rule 17 currently authroizes NSCC's broker-dealer and Fund members to use Networking for the transmission between themselves of mutual fund customer account data. NSCC notes that Networking's initial phase has provided NSCC members with a centralized data communications system for the exchange of customer information and securities positions.[4]

The proposed amendments to Rule 17 (which NSCC terms Networking's "second phase") will provide for the automated settlement of cash dividends paid by mutual funds for share positions maintained in Networking accounts. While dividend information on mutual funds currently is passed through Networking, the actual payment of the mutual fund distributions still occurs directly between the Fund member and each broker that holds units of the mutual fund. The proposed rule change will enable a Fund member to make only one distribution payment to NSCC, which then will be distributed via Networking to the brokers.[5]

Under the proposal, NSCC will provide broker-dealer and Fund members using Networking a new file termed the Networking Settlement Summary File ("Summary File"). The Summary File will consist of two sub-files: (1) The Networking Settlement Summary Detail Output Record ("Output Record"), and (2) the Networking Settlement Summary Trailer Record ("Trailer Record").

The Output Record will detail on a daily basis for each Fund member and each broker as of the day before a distribution's payable date ("Payable-1"): (1) The payable and settlement dates,[6] (2) the settlement amounts, and (3) all dividend updates (*i.e.*, additions and corrections) up to and including Payable-1. The Trailer Record will detail the identical information on a daily basis as of settlement date. NSCC will make the Summary File available at approxiamtely 11:00 a.m. (EST) daily.

Fund members must pay their cash dividend settlement figures in same-day funds, via Fedwire,[7] no later that 1:00 p.m. (EST) on the payable date. NSCC will pay its broker members in next-day funds at approximately 3:00 p.m. Inasmuch as NSCC will be paid in same-day funds but will pay its members in next-day funds, it will credit its broker members with interest earned on those funds.

The Fund members' dividend payments will constitute independent obligations. Accordingly, they ordinarily will not be netted with the Fund members' other settlement balances. If, however, as a result of Networking dividend corrections and reversals, a Fund member's settlement figure results in a credit balance, NSCC will repay the balance in next-day funds.[8]

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change would be consistent with section 17A of the Act inasmuch as automating the settlement of mutual fund dividends would promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission notes, moreover, that section 17A(a)(1) of the Act expressly encourages the use of automated systems to make the processing of

[2] *See* Securities Exchange Act Release No. 27199 (August 30, 1989), 54 FR 37395.

[3] "Networking" is an NSCC service, provided on a subscription basis, that permits automated transmission of mutual fund data between NSCC members and Fund/Serv. *See* Securities Exchange Act Release No. 26378 (December 20, 1988), 53 FR 52544 [File No. SR-NSCC-88-06].

"Fund/Serv"is a more basic NSCC mutual fund service. Participating mutual funds are known as "Fund members." The service is available to all NSCC broker-dealer members for subscription and service fees. The acronym "Serv" of Fund/Serv refers to the services of mutual fund "settlement, entry, and registration verification," services which, among others, are provided by NSCC to the Subscribing members. *See, e.g.*, Securities Exchange Act Release Nos. 26377 (December 20, 1988, 53 FR 52546; 24088 (December 20, 1988, 53 FR 52546; 24088 (February 10, 1988), 52 FR 5228 [File Nos. SR-NSCC-87-12, SR-NSCC-86-05]

[4] *See* NSCC Important Notice No. A3232, dated August 15, 1989.

[5] NSCC states in its filing that a valid payable date for this purpose will be defined as a date on which New York banks are open for business.

[6] Under the proposal, payable dates and settlement dates ordinarily will be the same. But a Fund member could report its dividend payable information after the payable date. In that case, the settlement date would be the date on which the information was reported. *See* NSCC's Important Notice No. A3232, dated August 10, 1989.

[7] "Fedwire" is an acronym for the Federal Reserve System wire facility which provides a system for transferring funds among all 12 Federal Reserve Banks, their 24 branches, the Federal Reserve offices in Washington, D.C. and Chicago, and the Commercial Credit Corporation. *See* Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break*, at 1-12 (1988).

[8] NSCC notes in its filing that the dividend payments will not be a guaranteed service. If NSCC were to credit a broker with a dividend and not receive the corresponding debit from the Fund member, the credit would be subject to reversal.

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securities transactions more prompt and more efficient.

The Commission understands that the implementation of this proposal will permit the automated settlement of mutual fund distributions. That is, for a mutual fund participating in NSCC's Fund/Serv, dividend payments to many broker-dealers can be reduced to only one dividend payment to a clearing agency, NSCC, and NSCC would then distribute the dividends to the brokers via its Networking system in next-day funds.

In order to assess the benefits, costs and risks associated with this service, the Commission is approving the proposal on a temporary basis for three months. Within 60 days from the date of this order, NSCC has represented that it will provide a report setting forth: (1) The number of dividends paid through the service, (2) the dollar amounts paid, (3) the number and value of payments that are not received by 1:00 p.m.; and (4) the time and date when such payments are received.

The Commission finds good cause under section 19(b)(2) of the Act for approving this proposal on a temporary accelerated basis prior to the statutory thirtieth day after the notice of the filing in the **Federal Register**. This is because NSCC has represented to the Commission that its Fund members have equipment in place, have administered training, and are scheduled to commence operations with the new system on Friday, September 29, 1989, and that, accordingly, it would be burdensome to require them to stand down and renew their phase-in operations at a later time.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–89–13) be, and hereby is, approved on a temporary basis through December 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23948 Filed 10–10–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is nine (9) percent for the fiscal quarter beginning October 1, 1989.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–1 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1989, this rate will be eight-and-one-eighth (8⅛).

Charles R. Hertzberg,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 89–23899 Filed 10–10–89; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Nos. 301–26 and 301–71]

Termination of Section 302 Investigations; Compliance with Trade Agreement Obligations by the European Community with Respect to Processing Subsidies on Canned Fruit

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigations under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has decided to terminate two investigations initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) with respect to processing subsidies granted by the European Community (EC) on canned fruit, having reached a satisfactory resolution of the issues under investigation.

DATES: These investigations are terminated effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, Director, European Community Affairs, USTR, (202) 395–3074.

SUPPLEMENTARY INFORMATION: On December 10, 1981, in response to a petition filed by the California Cling Peach Advisory Board and others, the USTR initiated an investigation on certain subsidy practices of the European Community with respect to production of canned fruit (Docket No. 301–26, 46 FR 61358). After consultations under the General Agreement on Tariffs and Trade (GATT) on February 25, 1982, the United States requested a GATT dispute settlement panel on March 31, 1982. On August 17, 1982, the President directed USTR to expedite dispute settlement (47 FR 36403).

After several GATT panel meetings and report revisions, a final panel report favorable to the United States was issued on July 20, 1984. The panel found that the production aids granted to processors of canned fruit nullified and impaired tariff concessions granted by the EC on those products, and the panel suggested that the EC restore the competitive relationship between imported U.S. and domestic EC canned fruit. The United States requested adoption of the panel report in GATT Council meetings of April 30, May 29, June 4 and July 16, 1985, but Council action was deferred because the EC was not prepared to accept adoption of the report.

On September 7, 1985, the President directed USTR to recommend section 301 retaliation unless this case was resolved by December 1, 1985. On November 30, 1985, the U.S. and the EC reached a settlement under which, in addition to subsidy reductions already implemented on canned pears, the EC agreed to eliminate the canning element of its processing subsidies for canned peaches. USTR closely monitored implementation of this agreement from 1986–1988.

In August 1988, the United States informed the EC Commission that new subsidy levels implemented in July 1988 exceeded allowable levels under the agreement. Since October 1988 USTR had been consulting with the EC regarding both the new subsidy levels and the methodology for calculation of its subsides, but the EC continued to subsidize at levels which are inconsistent with the agreement.

Pursuant to section 302(b)(1)(A) of the Trade Act, the USTR determined on May 8, 1989, that an investigation under section 302 should be initiated with respect to the EC policy and practice in this matter, in order to determine whether it was actionable under section 301 (54 FR 20219). A public hearing regarding this matter was held June 9, 1989, where testimony of interested persons was heard.

Consultations with the EC on this matter resulted in a resolution that includes three elements. First, beginning July 1, 1989, the EC lowered its 1989/90 subsidy rates for canned peaches and pears to comply with the terms of the 1985 Canned Fruit Agreement. Second, U.S. and EC officials clarified their interpretation of that Agreement to forestall future disputes. Finally, the EC Commission has modified its regulations to limit canned peach and pear subsides in future years.

In accordance with the GATT panel report, the Trade Representative determined pursuant to section 304 of the Trade Act that rights of the United States under the GATT were being denied by EC processing subsidies, but the Trade Representative has determined, under section 301(a)(2), that the EC is taking satisfactory measures to grant the rights of the United States under the GATT. Accordingly, the two investigations arising from the EC practices with respect to canned fruit production subsidies are terminated.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89–23935 Filed 10–10–89; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–89–38]

Petition for Exemption, Summary, and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 31, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part II of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 3, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel

Petitions for Exemption

Docket No.: 25276
Petitioner: Crew Pilot Training
Sections of the FAR Affected: 14 CFR 61.63(d) (2) and (3) and 61.157(d) (1) and (2), and portions of Appendix A of Part 61
Description of Relief Sought: To extend Exemption No. 5011 that allows petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the Federal Aviation Regulations

Docket No.: 25898
Petitioner: John H. Bell
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to continue service as a check pilot past his 60th birthday.

Docket No.: 25967
Petitioner: Judith A. Myers
Sections of the FAR Affected: 14 CFR 61.129(b)(ii)
Description of the Relief Sought: To allow petitioner to work toward her commercial rating while flying her husband to business appointments in her own airplane, one not equipped with retractable gear as specified in the Federal Aviation Regulations.

Docket No.: 25993
Petitioners: Frederick W. Arndt, et al.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioners to work beyond age 60 as airline pilots in operations under Part 121.

Docket No.: 25757
Petitioner: Skywing Flight Training
Regulations Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To allow petitioner to exercise examining authority for flight instruction and air transport pilot written tests. *DENIAL, September 20, 1989, Exemption No. 5102.*

Docket Nos.: 25835, 25871, 25872, 25906, 25911
Petitioners: Rhoades Aviation, Inc.; Amerijet International, Inc.; Renown Aviation, Inc.; Lincoln Airlines, Inc.; Braniff, Inc.
Regulations Affected: 14 CFR 121.343(b)
Description of Relief Sought/ Disposition: To extend Exemption No. 5051 for a maximum of 90 days after the September 26, 1989, termination date of the exemption. Exemption No. 5051 permits the operation of airplanes without complying with the flight data recorder requirements. *GRANT, September 26, 1989, Exemption No. 5051A.*

Docket No.: 25876
Petitioner: Stephen A. Micks
Regulations Affected: 14 CFR 61.39(a)(1)
Description of Relief Sought/ Disposition: To relieve the petitioner of the requirement to pass the written test since the beginning of the 24th month before the month in which the flight test was taken. *DENIAL, September 27, 1989, Exemption No. 5103.*

[FR Doc. 89–23919 Filed 10–10–89; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular 121.XX on Flightcrew Sleeping Quarters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 121.XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to adequate flightcrew sleeping quarters on aircraft. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 11, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Aircraft Evaluation Group (AEG) Standards Staff, ANM–271, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy M. Golder, ANM–271, at the address above, telephone (206) 431–2273.

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SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 121.XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Aircraft Evaluation Group Standards Staff before issuing the final AC.

Background

The proposed AC sets forth acceptable means of compliance with the requirement for adequate flightcrew sleeping quarters of §§ 121.485(a) and 121.523(b) of the Federal Aviation Regulations. With the advent of longer range turbojet transport airplanes, not only three- and four-engine airplanes but also two-engine airplanes as well, the requirement for adequate sleeping facilities for flight crewmembers on board the airplane needs to be addressed. Based on current available data, the guidance set forth in this advisory circular provides an adequate and favorable environment that would enable sleep to occur and provide reasonable assurance that relief crewmembers will be rested and alert when their duty time begins. The Federal Aviation Administration and the National Air and Space Agency are continuing studies of the human factors associated with flightcrew sleeping quarters. Criteria established as a result of these studies will be incorporated into later Advisory Circular revisions.

Issued in Washington, DC, on September 11, 1989.

Raymond E. Ramakis,

Acting Director, Flight Standards Service.

[FR Doc. 89-23920 Filed 10-10-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Assistant Commissioner (Inspection) are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson
Robert P. Cesca, Deputy Inspector General, Department of the Treasury
Peter K. Scott, Deputy Chief Counsel

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive Appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-23856 Filed 10-10-89; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners and senior executives in the Office of the Commissioner are as follows:

Teddy R. Kern, Assistant Commissioner (Inspection)
Charles H. Brennan, Deputy Commissioner (Operations)
Peter K. Scott, Deputy Chief Counsel
Richard J. Mihelcic, Associate Chief Counsel (Finance and Management)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-23857 Filed 10-10-89; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[No. 89-245]

Addition of Senior Executive Officer or Director

Date: October 2, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision has submitted a request for a new information collection entitled "Notice of Addition of Senior Executive Officer or Director," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the Office of Thrift Supervision to comply with the requirements of Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The information will be used to evaluate an individual's competence, experience, character or integrity in order to make the necessary determination of agency disapproval required by Section 914. We estimate it will take approximately 2 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before October 23, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Office of Thrift Supervision.

The Office of Thrift Supervision would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below: Director, Information Service Division, Communications Service, Office of Thrift Supervision, 1700 G. Street, NW. Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Kathleen O. Willard, (202) 906-6789, Office of Thrift Supervision, 1700 G. Street NW., Washington, DC 20552.

By The Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-23934 Filed 10-10-89; 8:45 am]

BILLING CODE 6720-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 5, 1989.

TIME AND DATE: 10:00 a.m., Thursday, October 5, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Clinchfield Coal Company v. Secretary of Labor and United Mine Workers of America*, Docket No. VA 89-67-R. (Issues include consideration of petitions for discretionary review.)

It was determined by a unanimous vote of Commissioners that a closed meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay 800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89-24075 Filed 10-6-89; 1:38 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

TIME AND DATE: 11:00 a.m., Monday, October 16, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 6, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board
[FR Doc. 89-24105 Filed 10-10-89; 8:45 am]
BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-33]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 39496—dated September 26, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Thursday, October 5, 1989.

ADDITIONAL MEETING SCHEDULED FOR: 10:00 a.m., Friday, October 6, 1989.

Notice is given that the Commission meeting previously announced for Thursday, October 5, 1989, was recessed and an additional meeting will take place on Friday, October 6, 1989. In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Eckes, Rohr, Cass, and Newquist voted to reschedule the meeting. Commissioner Lodwick disapproved. It was affirmed that no earlier announcement of the additional meeting was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000

Dated: October 5, 1989

Kenneth R. Mason,
Secretary
[FR Doc. 89-24102 Filed 10-6-89; 2:58 p.m.]
BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction - Telephone Program

Correction

In rule document 89-22282 beginning on page 39262 in the issue of Monday, September 25, 1989, make the following correction:

On page 39280, in the signature block, the title should read "Acting Administrator".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 89-22158 beginning on page 38645 in the issue of Wednesday, September 20, 1989, make the following correction:

On page 38646, in the first column, in the signature line, the title should read,"Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-19]

Proposed Alteration of VOR Federal Airways; Texas

Correction

In proposed rule document 89-20852 beginning on page 36997 in the issue of Wednesday, September 6, 1989, make the following correction:

§ 71.123 [Corrected]

On page 36998, in the second column, under **§ 71.123 [Amended]**, the heading **V-575 [Amended]** should read **V-574 [Amended]**.

BILLING CODE 1505-01-D

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federal register

Wednesday
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Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al.

Medicare; Secondary Payer and Recovery Against Third Parties; Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 411, 412 and 489

[BPD-302-F; RIN 0938-AC05]

Medicare as Secondary Payer and Medicare Recovery Against Third Parties

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These rules—

1. Update and revise policies dealing with Medicare as secondary payer;
2. Revise policy on the exclusion of services of immediate relatives of the beneficiary or members of the beneficiary's household;
3. Revise policy on the exclusion of services furnished outside the United States;
4. Clarify policy on the "no legal obligation to pay" exclusion as it applies to services furnished to prisoners; and
5. Reflect a recent statutory amendment that provides an additional exception to the exclusion of services that are "not reasonable and necessary".

The changes in the Medicare secondary payer provisions reflect amendments made to section 1862(b) of the Social Security Act (the Act) by section 2344 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), section 9201 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), and section 4036(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). Separate regulations will be issued to implement section 9319 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), which made Medicare secondary payer for certain disabled Medicare beneficiaries under age 65 who are covered under a large group health plan.

EFFECTIVE DATE: These rules are effective November 13, 1989.

FOR FURTHER INFORMATION, CONTACT:

Herbert Shankroff, (301) 966-7171; Identification and billing of other primary payers by providers; prompt reimbursement to Medicare when providers or suppliers receive payment from other primary payers.

Herbert Pollock (301) 966-4474; All other provisions.

SUPPLEMENTARY INFORMATION:

I. Background

During the first 15 years of the Medicare program, Medicare was primary payer for all services to Medicare beneficiaries, with the sole exception of services covered under workers' compensation. It was not until 1980 that Congress began to amend section 1862 of the Act to make Medicare secondary, first to no-fault and liability insurance, and later to employer group health plans that cover end-stage renal disease (ESRD) patients and that cover employed aged and aged spouses of employed individuals. Despite regulations and instructions, implementation has fallen short of expectations. It is hospitals that are most directly affected by these changes because it is primarily hospital services that are covered by private insurance.

Experience has been that many "Medicare secondary payer" (MSP) claims are not identified for MSP processing and that hospitals do not have procedures to identify other insurance that the beneficiary may have. This situation has been documented by—

- A Bureau of Quality Control study (summer of 1984), which found that up to 90 percent of all working aged claims were billed to Medicare rather than the other insurer because the hospital did not ask the beneficiary for information on other insurance or did not follow through on that information.
- Bureau of Program Operations (BPO) on-site review of hospitals, which revealed that hospitals did not have procedures to use at the time of admission to identify other insurers.
- BPO investigation of hospital software vendors, which revealed that the standard software packages for hospital admission routines do not include sufficient questions about insurers other than Medicare.

As a result, the claims that would properly be billed to another payer are sometimes mistakenly billed to Medicare. In some instances, the intermediary is able to identify the claim as an MSP claim and, at considerable expense, follow through to achieve the MSP savings. In many other instances, there is no way for the intermediary to know that a particular beneficiary has other insurance. In those cases, the claim is paid mistakenly and MSP savings are lost unless the situation is later identified and recovery made.

This problem is particularly acute when the health insurance policyholder is not the Medicare patient, but his or her spouse. There is no way of identifying this person (who may be under 65 years of age) through HCFA/SSA records. Only the hospital can identify this type of MSP case.

A second observation on program experience was made by the Office of the Inspector General (OIG) in a memorandum dated March 18, 1985. The OIG review of hospitals indicates that some hospitals bill both Medicare and the other insurer (which is contrary to Medicare program instructions) and, instead of refunding Medicare's payment, retain it, unless Medicare requests that it be refunded. The hospital has no incentive to refund the money. Since it is unlikely that the intermediary will find the case and ask for the refund, the hospital keeps a credit balance on the patient account and holds the payment.

Mistaken payments must be recovered. Medicare conditional payments, made when a claim against the other insurer is contested or payment is otherwise delayed, are also subject to recovery. Recent legislation has a direct bearing on this aspect of the program, as explained below.

Statutory Changes

A. Deficit Reduction Act of 1984

Section 2344 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended sections 1862(b)(1), 1862(b)(2)(B), and 1862(b)(3)(A)(ii) of the Act as follows:

1. Makes explicit the Federal government's right to recover from—
   - Third parties that are required to pay before Medicare; and
   - Any entity (such as a beneficiary, provider, physician or State agency) that has received payment from a third party that is required to pay before Medicare.
2. Provides that the government—
   - Is subrogated to the right of any individual or other entity to receive payments from a third party payer to the extent of Medicare payment; and
   - May join or intervene in any action related to the events that gave rise to the need for the items or services for which Medicare paid.
3. Adds the word "promptly" to section 1862(b)(1), thus providing that Medicare payments are limited to the extent that payment has been made or can reasonably be expected to be made "promptly" by workers' compensation, or automobile, liability, or no-fault insurance. Medicare makes conditional primary payments only if the other insurer will not pay promptly.
4. Adds the phrase "or could be" to sections 1862 (b)(1), (b)(2)(B), and (b)(3)(A)(ii), thus providing that Medicare conditional payments are subject to recoupment when information is received that primary payment "could be" made by a workers' compensation plan, an automobile, liability, or no-fault insurer, or an employer group health plan, even though payment has not yet been made. This change reinforces Medicare's position as secondary payer, that is, it expressly permits HCFA to pursue recovery of conditional or mistaken payments as soon as HCFA learns that another insurer is liable for the payment.

The provisions of section 2344 were self-implementing. A notice to that effect was published on July 17, 1985 at 50 FR 28988.

B. Consolidated Omnibus Budget Reconciliation Act of 1985

Section 9201 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272 enacted April 7, 1986) eliminated the age 70 upper limit for individuals subject to the working aged provision, effective May 1, 1986. This amendment makes Medicare secondary payer to employer group health plan coverage for employed individuals age 65 or over and spouses age 65 or over of employed individuals of any age. Previously, Medicare was secondary for these individuals only until they attained age 70.

C. Omnibus Budget Reconciliation Act of 1987

1. *Section 4036(a).* Section 4036(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), enacted December 22, 1987, provides that Medicare may not make conditional primary payments on behalf of an ESRD beneficiary who is covered by an employer group health plan if the plan "can reasonably be expected" to pay. Under previous law, Medicare could make conditional primary payments if the Secretary determined that the plan would not pay as promptly as Medicare. This change makes the conditional payment criteria for ESRD beneficiaries the same as for working aged beneficiaries who are covered by employer group health plans. This change is effective for services furnished on or after January 21, 1988. The section 4036(a) provision supersedes HCFA's implementation of a court order that was issued in 1984 and is summarized below.

In *National Association of Patients on Hemodialysis* v. *Heckler* (Civil Action No. 83-2210 (D.D.C.)), the district court for the District of Columbia held that HCFA's existing regulations, dealing with conditional primary Medicare payments when Medicare is secondary to employer group health plans for ESRD beneficiaries, were not consistent with the statute. Those regulations provided that Medicare could pay conditional primary benefits only if the Medicare contractor knew from experience or ascertained that the employer plan payments in general were substantially less prompt than Medicare's. The court held that the regulations were not consistent with the statutory language which directed the Secretary to deny primary Medicare benefits only if—

- The employer group health plan has paid; or
- The Secretary has determined that the employer plan will pay as promptly as Medicare.

Manual instructions implementing the court decision were issued in 1985. They stipulated that providers and suppliers were no longer required to bill the employer plan first in ESRD cases; they had the option to bill Medicare first. Contractors were instructed to pay conditional Medicare benefits if billed first and to attempt to recover later from the employer plan.

2. *Section 4085(i)(15).* Section 4085(i)(15) of Pub L. 100-203 provides a fourth exception to the exclusion of services that are not reasonable and necessary "for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member". Under this amendment, Medicare payment is available for services that are reasonable and necessary to carry out the purpose of the patient outcome assessment program established under section 1875(c) of the Act.

Notice of Proposed Rulemaking (NPRM)

On June 15, 1988, we published a notice (53 FR 22335) proposing to redesignate Subpart C of Part 405 of the Medicare rules as a new Part 411, and to revise the rules to reflect the statutory changes discussed above and to provide the greatest possible uniformity in the policies applicable to third party payer situations.

II. Summary of Analysis and Responses to Comments

We received 51 timely letters of comment from hospitals and medical centers, religious organizations, insurance companies and carriers, health organizations, law firms, individuals, a hospice, a medical society, a veterans' organization, and a State agency. The changes proposed in the NPRM, the comments received on the proposals, and our responses to those comments are discussed below.

General Comments

Comment: The commenter suggested that, in the definitions of "secondary" and "secondary payments," the term "insurance" be replaced with the more generic "coverage", which would include self-funded plans.

Response: We accepted this comment and revised § 411.21 accordingly.

Comment: The commenter believes that the provisions of these regulations should not apply to hospice patients, because it is a disservice to discuss private insurance benefits, copayments, and noncoverage with terminal patients and their families. Also, the commenter believes it is discriminatory to deny Medicare benefits because Medicare beneficiaries have insurance that is primary to Medicare. The commenter believes that involving private insurance can cause billing problems that will create hardships for hospice patients.

Response: There is no provision in the Medicare law that permits HCFA to exempt hospice patients from Medicare secondary provisions. If a Medicare beneficiary has hospice coverage through an insurance plan that is primary to Medicare, the law requires that the private insurance plan pay first. Also, the hospice, as a Medicare participating provider, is obligated to elicit information from patients and their families regarding insurance that is primary to Medicare. Hospices, not patients, are responsible for billing the other insurance.

Comment: The commenter believes that the rules limiting Medicare payments when no fault insurance, a workers' compensation plan, liability insurance, or employer group health plans are primary to Medicare are detrimental to small rural hospitals that are without staff attorneys and lack employees with legal backgrounds. Also, these rules and the rules for calculating Medicare secondary payment amounts are much more complicated than necessary.

Response: Hospitals need not have staff attorneys or personnel with legal backgrounds in order to comply with these regulations. Rural hospitals, like other Medicare participating providers, are required to elicit information from patients regarding insurance that may be primary to Medicare and to bill third party payers that are primary to Medicare. This workload is necessitated by the law that makes certain third party payers primary to Medicare. We do not believe that these rules and the rules for calculating Medicare secondary payment amounts are excessively complicated.

Comments: One commenter considered that §§ 411.43, 411.65, and 411.75, which preclude Medicare conditional payments when a beneficiary fails to file a proper third party claim, are inconsistent with the intent of the law in that they place health care providers at risk of nonpayment for a beneficiary's lack of diligence, a factor over which providers have no control. The commenter believes that the regulations should

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clarify whether a provider may proceed against the beneficiary when it was the beneficiary's responsibility to file a claim and the beneficiary failed to do so.

Another commenter objected to § 411.24(l), which allows HCFA to recover a conditional payment from a provider if a provider fails to file a proper claim for third party benefits. This commenter believes this provision is inappropriate when beneficiaries fail to give a provider information about other insurance coverage.

A third stated that § 411.24(l) should contain a definition of "proper claim" and indicate how to determine the amount a primary insurer would reimburse a provider on the basis of a proper claim.

Response: The statute would be circumvented if Medicare assumed financial liability for services for which a third party payer would pay, except for the fact that someone failed to file a proper claim. Providers and beneficiaries could place primary liability on Medicare simply by failing to bill third party payers properly. Accordingly, the general rule is that Medicare will not make conditional payments when—

- A provider responsible for filing a third party claim on behalf of the beneficiary fails to file a proper claim; or
- A beneficiary responsible for filing a third party claim fails to file a proper claim for any reason other than physical or mental incapacity.

However, in response to the first two comments, this final rule makes the following changes:

Revises § 411.24(l) to specify that Medicare will not recover from the provider if the provider can show that the beneficiary gave erroneous information about other insurance coverage, such as denying the employer group health plan coverage that he or she has. (In such cases, the beneficiary is responsible for repayment.)

Revises proposed § 489.20(i) to make clear that, under specified circumstances, a provider may charge the beneficiary the amount of the third party payment reduction attributable to failure to file a proper claim. This rule applies if the provider can show that—

- It failed to file a proper claim solely because the beneficiary, for any reason other than physical or mental incapacity, failed to give the provider the necessary information; or
- The beneficiary, who was responsible for filing a proper claim, failed to do so for any reason other than physical or mental incapacity.

"Proper claim" is defined in § 411.21. Providers can obtain information from primary insurers with respect to the amount they would have paid the provider on the basis of a proper claim. Accordingly, we have not adopted the third suggestion.

Comment: Several commenters suggested that HCFA make conditional payments when a group health plan that is primary to Medicare refuses to pay primary benefits. The commenters consider that the proposed rules, by barring such payments, place the burden on health care providers to enforce the MSP provisions against recalcitrant employer group health plans. Commenters believe that Congress intended that HCFA pursue these claims.

The commenters also believe that the conditional payment policy for group health plans that are primary to Medicare, should be based on the same "promptness" criterion that is applicable when a workers' compensation plan, or no-fault or liability insurance is primary to Medicare.

Response: In the case of workers' compensation and no-fault or liability insurance, Congress included the word "promptly", indicating that Medicare should make conditional payments when payment by a third party payer could not "reasonably be expected to be made promptly". In contrast, Congress did not include a "promptness" criterion in provisions regarding employer health plans: "Payment under this title may not be made * * * to the extent that payment * * * has been made, or can reasonably be expected to be made under a group health plan."

The statute thus indicates that Medicare should not pay when it is "reasonable" to expect an employer group health plan to pay. If an employer plan is primary to Medicare under the law, it is reasonable to expect the plan to comply with the law. When a plan fails to comply with the law, it is the provider's responsibility to pursue collection from the plan, just as it is the provider's responsibility to pursue collection in any other situation in which a third party is responsible for payment. The statute clearly does not provide that Medicare assume the financial burden of recovering from employer plans that fail to meet their obligations under the law. Moreover, section 9319 of OBRA '86 amended section 1862(b) of the Act to add a subsection (b)(5) to create a private right of action with double damages if a responsible third party fails to pay primary benefits. It should be noted that in these situations, providers are prohibited from billing Medicare beneficiaries.

Comment: Two commenters expressed general concern that HCFA has been negligent in communicating with providers and group health plans about their role in the Medicare secondary payer (MSP) program. One commenter stated that insurers and group health plans are hindered by lack of HCFA guidance with respect to coordination of benefits with Medicare and that the proposed regulations are inadequate in this respect.

Response: HCFA recognizes that it is necessary to keep the community at large informed about the MSP program. In an effort to increase public awareness, since 1986 HCFA has engaged in a public information program about MSP. This program has been targeted to reach employers, insurers, providers of services, and beneficiaries. Medicare contractors and others have been meeting with the various target groups to provide the MSP message.

However, we agree that the regulations ought to provide more specific guidance for all third party payers with respect to coordination of benefits. Accordingly, we have added a new § 411.25 to delineate the responsibilities of a third party payer when it discovers that HCFA has made a primary Medicare payment in a situation in which the third party payer should have made, or did make, a primary payment. In summary, the third party must inform HCFA of the specific situation, and describe the circumstances (such as type of coverage and MSP category), and specify the time period during which it is the primary payer.

In making this change, we discovered that we had inadvertently failed to include in § 411.21 a general definition of "plan" applicable to all categories of third party payers under section 1862(b) of the Act. We have corrected this oversight.

Comment: One commenter was concerned that unpaid claims were returned to providers inappropriately because erroneous data was included in HCFA's regional data exchange system.

Response: HCFA is continually improving the regional data exchange system to eliminate erroneous data. Erroneous or outdated information is corrected upon receipt and verification.

Comment: The proposed rules require that the beneficiary must cooperate in HCFA's action to recover benefits from a primary payer. The commenter believes that HCFA should provide due process rights for beneficiaries and advise beneficiaries via published guidelines exactly the duties that are imposed on them by the word "cooperate."

Response: HCFA has enumerated the conditions of beneficiary responsibility in §§ 411.43, 411.51, 411.65, and 411.75. Essentially, beneficiaries are responsible for filing claims with a third party payer or informing providers of coverage that is primary to Medicare so that providers may bill the third party payers on their behalf. Standard due process provisions apply to recovery of conditional payments from beneficiaries.

To Implement Statutory Amendments

A. Prompt Payment

1. *Proposal.* To implement the statutory amendment that added the word "promptly" to section 1862(b)(1) of the Act, we proposed that Medicare make conditional primary payments when the workers' compensation carrier or the no-fault insurer will not pay promptly, that is, within 120 days after receipt of the claim.

We did not propose to change the existing rules for liability insurance. Medicare makes conditional primary payments if the beneficiary has filed or has a right to file a liability claim. However, because of a court decision, a special rule applies in Oregon. Under this rule, the "promptness" criterion applies to liability claims involving Oregon hospitals. This is discussed under section G.3., of this preamble.

2. *Comments and responses.*

Comment: Several commenters expressed concern that the definition of "promptly", as applied to conditional payment, requires a provider to wait for payment for an excessive period of time after the potential primary payer has denied the claim. One commenter suggested that when there are multiple payers that are primary to Medicare the promptness period should not apply to each payee individually.

Response: The 120 days is the maximum amount of time a provider might have to wait for a third party payment before billing Medicare. If the provider can document that a potential primary payer will not pay the claim—for example, with a written rejection of the claim, it can submit the bill to Medicare without further delay. Since a payer that is primary to Medicare cannot pay until it is billed, the 120-day period must apply to each payer. If the provider receives a partial payment or a denial of payment from one primary payer and then bills another, the 120-day period would apply in the case of the second billing as well.

B. Authority to Recover as Soon as Liability Is Known to Exist, Subrogation, and Right to Intervene

1. *Proposal.* As discussed above under "Statutory Changes", the addition of the phrase "or could be" makes explicit that HCFA can seek recovery of conditional primary payments when it learns that another party is primary payer, without waiting for the other party to actually pay (411.24(b)). If HCFA is unable to recover conditional Medicare payments from a beneficiary or other party that receives payment from an entity that is primary to Medicare, HCFA has the right to recover its payment from that entity in spite of the fact that the entity has already reimbursed the beneficiary or other party (§ 411.24(i)). Therefore, entities that are primary to Medicare should ensure that Medicare has no claim against payments they plan to make to individuals who are entitled to Medicare benefits.

HCFA's clarified recovery rights, including subrogation and the right to intervene, apply to all payers that are primary to Medicare. These rights are set forth in § 411.24 and § 411.26.

In view of the clarified recovery rights, we proposed to remove the requirement (in § 405.319(b) of the current rules) for obtaining a repayment agreement from the beneficiary as a prerequisite for Medicare conditional payment in workers' compensation cases.

2. *Comments and responses.*

Comment: Several commenters objected to § 411.24(b), which pertains to HCFA's authority to recover any conditional payment made to a provider even if the provider has not received any payment from a third party payer. The commenters believe that HCFA should recoup conditional payments only after a primary payer has actually made payment, not when payment "could be made". If HCFA recovers when payment "could be made", HCFA should pay interest of 12 percent per annum if the third party is ultimately determined not to be primary to Medicare.

Response: Under the law, HCFA has the right to recoup conditional Medicare payments from a provider or other person when it learns that payment "could be made" to the provider or other person by a third party payer. However, it is HCFA's policy to first attempt to recover from the third party payer. Thus, as a practical matter, HCFA does not recover from a provider that has not received a third party payment. HCFA may request a provider to bill a designated primary payer. In such cases, HCFA's request notifies the provider that HCFA will recover its conditional payment.

There is no provision in the Medicare law that would permit Medicare to pay interest in the event that an insurer, which HCFA believes to be a primary payer, ultimately is determined not to be primary to Medicare. In this situation, the provider or other person must resubmit its claim to Medicare.

Comment: One commenter believes that the use of the term "entity" in § 411.24(d) (which states: "HCFA may recover by direct collection or by offset against monies HCFA owes the entity responsible for refunding the conditional payment") is an attempt to include employer group health plans and insurers in the application of this section. Group health plans and insurers would never be in receipt of conditional Medicare payment and would therefore not be responsible for refunding this payment.

Response: Under the law, conditional Medicare payments may be recovered from any entity responsible for primary payment, for example, employers, insurers, underwriters, and third party administrators, as well as from any entity that received a conditional payment, such as a provider or beneficiary. The liability of entities responsible for payment is more directly addressed in section 411.24(e), which states: "HCFA has a direct right of action to recover from any entity responsible for making primary payment. This includes an employer, an insurance carrier, plan, or program, and a third party administrator."

Comment: Several commenters objected to §§ 411.24 (e) and (g), which respectively reflect HCFA's right to recover from any entity responsible for paying primary benefits for services or any entity that has been paid by a third party payer. One commenter believes statutory liability for payment is imposed only on an employer group health plan and cannot be extended to insurers or administrators of the plan. The commenter suggested that the regulation be amended to reflect that an insurer or administrator cannot be liable to HCFA if it has not assumed the liability in its contract with the employer or plan. Another commenter said that HCFA should recover from either the employer or the employer's insurance carrier. Otherwise, the commenter believes that HCFA can receive "double recovery" under § 411.24(e) because this provision does not provide for return of monies collected to either the insurer or employer.

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Response: Sections 411.24 (e) and (g) reflect statutory authority. Sections 1862(b) (2) and (3) of the Social Security Act both state, in part: "In order to recover payment made under this title [title XVIII] for an item or service, the United States may bring an action against *any entity* which would be responsible for payment with respect to such item or service (or any portion thereof) *under such a plan,* or against any entity * * * which has been paid with respect to such item or service under such plan, * * *" (Emphasis added.) Employers, insurers, underwriters and third party administrators are responsible for making payments "under such a plan" in accordance with the coverage provisions of the group health plan and in accordance with the law that makes group health plan coverage primary to Medicare. In cases in which the Medicare provisions conflict with a health plans, party administrators, Medicare law must prevail. (*Colonial Penn Insurance Co.* v. *Heckler,* 721, F 2d 431 (3rd Cir. 1983) and *Abrams* v. *Heckler,* 582 F. Supp. 1115 (S.D.N.Y. 1984). Accordingly, Medicare has the right to recover from any of those entities.

Third party administrators, insurers and underwriters hold themselves out as having expertise in health plan administration and being knowledgeable about the various legal and other requirements applicable to health plans. party administrators, insurers, and underwriters submit claims and make payment decisions on a day-to-day basis, often without direct involvement of the entity (such as the employer) that may *ultimately* be responsible for payment. Accordingly, it is appropriate for Medicare to recover directly from the third party administrator or insurer, and leave that entity to seek whatever recourse is available to it under its contract or other arrangement.

Also, as stipulated in the law, HCFA may recover from any entity that has received payment with respect to a service. HCFA will not pursue duplicate recoveries. Once HCFA recovers its benefits on any particular claim, it will not seek to recover the same benefits from another entity. We have amended proposed § 411.24(e) to make clear that third party administrators are among the entities responsible for refunding conditional Medicare payments.

Comment: Several commenters objected to § 411.24(f), which states that HCFA may recover without regard to any claims filing requirements imposed by the insurance program or plan, and applicable to the beneficiary, such as a time limit for filing a claim or a time limit for notifying a plan or program about the need for, or receipt of, services. The commenters believe that HCFA should be required to comply with the claims filing requirements of all insurers and health care coverage benefit plans. Also, HCFA should be required to make a claim within 1 year after a service has been furnished. The commenters believe that this section appears to unconstitutionally infringe upon contractual rights and obligations and purports to give HCFA greater rights than are afforded a person or group to whom an insurer issues a particular contract. Some contract provisions include specific time limits for filing and/or a reduction or complete loss of benefits for services that are not pre-approved. One commenter also stated that these contract provisions would also apply to services furnished by non-participating providers to an HMO member in a non-emergency situation without approval by the HMO. This would significantly affect participation in current Medicare risk-based HMO contracts. This proposal would also abrogate contract provisions establishing timely filing and other procedural requirements.

Response: This comment is acceptable in part. HCFA cannot be bound by the insurer's time frames for filing claims because those periods begin with the date of service. Under such a rule, HCFA would be unable to recover its benefits if it did not learn that the particular insurer is primary to Medicare until after the claim filing period expired.

This would conflict with the Medicare law. Congress expressly provided a direct right of recovery which begins "when notice or other information is received" (Section 1862(b) (1), (2), and (3)). Although Medicare's separately articulated subrogation rights, also contained in these sections, may be affected by a beneficiary's awareness of a claims filing limitation, Medicare's direct right of recovery is clearly unaffected by the concerns that the commenters express. Moreover, Federal law would overcome conflicting contractual or State law provisions. (See *Colonial Penn Insurance Co.* v. *Heckler* 721 F.2d 431 (3rd Cir. 1983) and *Abrams* v. *Heckler,* 582 F.Supp. 1155 (S.D.N.Y. 1984).)

We agree, however, that HCFA should observe some reasonable timeframe for filing claims—one that is similar to the timeframe for filing Medicare claims. Specifically, HCFA will file its claim by the end of the year following the year in which the Medicare contractor that paid the claim has notice that the insurer or other third party is primary payer for the particular services, and that Medicare's primary payment is, therefore, recoverable. (Notices received during the last three months of a year are considered to have been received in the following year.)

This timeframe has the advantage of being familiar to individuals involved in the Medicare claims process. As we have stated, under the law, the date HCFA receives such notice is the day that HCFA's claim arises. HCFA cannot be responsible for filing a claim within a period that starts before the Medicare intermediary or carrier that paid the claim has notice that provides the basis for recovery. We have revised proposed § 411.24(f) accordingly.

We do not see how § 411.24(f) would adversely affect HMOs because the regulations applicable to HMOs are at § 417.528 of the Medicare rules. In addition, in the case of risk-basis HMOs—

- Payment is on a prospective capitation basis and the payment is not reduced retroactively; and
- Medicare does not make any payments if a Medicare beneficiary goes outside an employer group prepaid health plan (such as an HCPP or HMO), when the same type of services could have been obtained or can be paid for by the HMO. This means that if Medicare pays in error, the entire payment is an overpayment.

Furthermore, under § 417.528, both cost and risk HMOs may charge an employer group health plan or another organization that is a primary payer for covered services that were furnished by the HMO.

Comment: Several commenters suggested deleting the rule (§ 411.24(i)), which provides that if HCFA is unable to recover from a party that received a third party payment, HCFA may recover from the third party payer even though it has already reimbursed the beneficiary or other party. The commenters believe that there is no justification for compelling a third party payer to pay the same claim twice.

Response: This comment is acceptable in part. Third party payers are responsible for reimbursing the proper party. Under section 1862(b) of the Act, HCFA is subrogated to "any right of an individual or any other entity to payment." The statute clearly gives the Medicare program a priority right of recovery. It is reasonable to expect a primary payer to take steps to ensure that it pays the proper party.

We agree that when an employer group health plan (EGHP) or no-fault insurer routinely pays primary benefits on behalf of a Medicare beneficiary without knowledge of Medicare's primary payment, the insurer has acted responsibly and should not be liable for reimbursing HCFA if HCFA is unable to recover from the party that received the insurer's primary payment. However, if a third party pays an entity other than Medicare even though it was, or should have been, aware that Medicare had made a conditional primary payment, the third party must reimburse Medicare.

We have modified the proposed § 411.24(i) so that it applies only to these circumstances and to liability insurance settlements and disputed EGHP and no-fault claims.

Liability insurers should be aware of Medicare involvement, and therefore should not pay a claim without first checking to find out if Medicare has made conditional payments. The EGHP or no-fault insurer should be aware that, if the claim was disputed, Medicare may have made a conditional payment. Accordingly, if the insurer later decides to pay the claim, it should contact Medicare to determine Medicare's claim and obtain advice regarding reimbursement.

Comment: One commenter stated that § 411.24(k), which permits recovery of conditional payments from a Medicare intermediary or carrier by offsetting funds due the intermediary or carrier, is contrary to the Administrative Procedures Act and in violation of a contractor's agreement.

Response: The Federal Claims Collection Act (FCCA) regulations require government agencies to pursue aggressively collection of a debt due the United States (4 CFR 102.1). If the debtor refuses to pay, offset against any amount owed by the government is one recommended method of collection. Authority to offset is well established under common law and is also found in § 401.607(a)(2) of the Medicare regulations and in Departmental regulations at 42 CFR 30.15(c)(5). The FCCA does not preclude a debtor from pursuing applicable administrative or judicial remedies if offset is applied. We have broadened the provision to apply to contractors, including intermediaries and carriers, as authorized under the law.

Comment: One commenter expressed the view that the proposed rules would place unreasonable burdens on physicians because it would be necessary for physicians to become expert in insurance rules, particularly the rules that govern primary and secondary payments. The commenter argues that physicians cannot be expected to acquire such knowledge, and, therefore, the rules would inappropriately put physicians at financial risk.

Response: These regulations do not place unreasonable burdens on physicians or put physicians "at risk." Physicians who accept assignment are responsible under the regulations to attempt to identify, and file a proper claim with, any third party that is primary to Medicare. If physicians follow this procedure and bill primary insurers first, Medicare will be billed only as secondary payer. A physician who follows the proper procedures but is unable to identify a third party that is primary to Medicare may bill Medicare in the usual manner, and would not be at risk.

Comment: One commenter believes that the proposed rule does not clearly state that Medicare is primary payer with respect to Medicaid. The commenter suggested that the final rule clearly state that Medicaid is an exception to the rules for Medicare as secondary payer.

Response: The proposed rule did not, and this final rule does not, change the order of payment between Medicare and Medicaid. It is not necessary for the regulations to state that Medicare is primary payer with respect to Medicaid. The law dealing with Medicare as secondary payer makes Medicare secondary only to workers' compensation, no-fault insurance, liability insurance, and certain group health plans. Since the regulations do not state that Medicaid pays before Medicare, the existing order of payment remains unchanged, that is, Medicare is primary; Medicaid is the payer of last resort.

However, § 411.26(a) provides that Medicare has a right to recover before Medicaid from any third party entity that, under section 1862(b) of the Act, is primary to both Medicare and Medicaid. Thus, if both Medicare and Medicaid have paid for services covered by such a third party payer and the amount payable by the third party is insufficient to reimburse both programs in full, Medicare must recover first. Medicare's priority right of recovery is appropriate and does not violate the concept of Medicaid being the payer of last resort. Under section 1862(b) of the Act, the Medicare program (1) may recover its benefits from a third party payer, (2) is subrogated to the right of a Medicare beneficiary and the right of *any other* entity to payment by a third party payer, and (3) may recover its payments from *any* entity that has been paid by a third party payer. Medicare's ultimate statutory authority is not to pay at all (with a concomitant right to recover any conditional benefits paid) if payment can reasonably be expected by a third party that is primary to Medicare. If a third party pays, Medicare makes no payment to the extent of the third party payment. Delay of a third party payment does not change Medicare's ultimate obligation to pay the correct amount, if any, regardless of any Medicare payments conditionally made. Thus, if a third party pays less than the charges, Medicare may be responsible for paying secondary benefits. If a third party pays the charges, Medicare may not pay at all.

Pro-rata or other sharing of recoveries with Medicaid would have the effect of creating a Medicare payment when none is authorized under the law or improperly increasing the amount of any Medicare secondary payment.

C. Self-implementing Statutory Changes

The following changes were based on self-implementing provisions of the statute that did not require us to exercise any discretion in implementing the corresponding regulation changes. We received no public comments on these provisions.

1. Removal of upper age limit for working aged. This change is reflected in § 411.70 of these final regulations.

2. Coverage of services that are reasonable and necessary to carry out the purposes of the patient outcome evaluation program. This change is reflected in § 411.15(k)(4) of these final regulations.

To Implement Policy Changes

A. To Ensure Identification of Other Payers that Are Primary to Medicare and Prompt Reimbursement When the Beneficiary, Provider, or Supplier Receives Payment from these Payers

1. *Background.* a. Part 489 of the Medicare rules deals with provider agreements. Section 489.20, which sets forth the commitments that a provider must make when it executes a provider agreement, did not include any requirement that the provider identify other insurance, bill primary payers before billing Medicare or refund Medicare payments that duplicate payments by a payer that is primary to Medicare. Previous rules did not expressly address HCFA's right to obtain information from another payer with whom a claim had been or could have been filed. Although the changes in the law have clarified HCFA's ability to recover conditional payments, it is

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obvious that there can be no recovery without identification of other insurers that are primary to Medicare.

Furthermore, in order to determine Medicare's proper payment under the law, it may be necessary for HCFA to contact other payers that may be primary to Medicare with regard to benefit coordination.

2. *Proposal.* We proposed to amend § 489.20 to require providers to make four additional commitments, as follows:

a. To maintain a system for identifying, during the admission process, other payers that are primary to Medicare.

b. Except in the case of liability insurance, to bill the other insurer first.

c. When it receives payment from both Medicare and another payer that is primary to Medicare, to reimburse Medicare within 30 days of receipt of the duplicate payment (Section 411.24, which deals with HCFA's recovery rights, would also require beneficiaries and other parties that receive duplicate payments to reimburse HCFA within 30 days of receipt of the duplicate payment.)

d. If it receives, from a payer that is primary to Medicare, a payment that is reduced because the provider failed to file a proper claim with that payer—

- To bill Medicare only to the extent that secondary benefits would have been payable if the primary insurer had reimbursed the provider on the basis of a proper claim; and
- To charge the beneficiary no more than it would have been entitled to charge if it had filed a proper claim with the primary insurer.

(This fourth commitment is discussed under section H of this preamble, which deals with Medicare Secondary Payments.)

We proposed to stipulate, in § 411.24(a), that the filing of a Medicare claim, by or on behalf of the beneficiary, expressly authorizes the third party payer to release any information pertinent to the Medicare claim.

3. *Comments and responses.*

Comment—One commenter objected to the requirement that would be added to the provider agreement with respect to primary payments reduced because of failure to file a proper claim. Under the new requirement, a provider who had received a reduced payment from a primary insurer because it had not filed a proper claim with that insurer would be permitted—

- To bill Medicare only to the extent that secondary benefits would have been payable if the primary payer had not reduced its payment because of the lack of a proper claim; and
- To charge the beneficiary no more than it would have been entitled to charge if it had filed a proper claim.

The commenter stated that, under contract law, the beneficiary should be responsible to pay the hospital the difference in payment that is attributable to the provider's failure to bill properly.

Response: The changes to § 489.20 require the provider to maintain a system to identify other primary payers and to bill them before billing Medicare, except in the case of liability insurance. The provider must, needless to say, submit a proper bill to the primary payer in order to obtain the payment due.

The Secretary establishes the conditions for participation in the Medicare program. A provider, if it wishes to participate in Medicare, must agree to comply with these conditions. We believe that neither the beneficiary nor Medicare should be responsible for reimbursing a provider for a primary payer's reduction of payment when that reduction is the result of the provider's failure to submit a proper claim as required. As discussed earlier in this preamble, we would make an exception if the provider can show that its failure to file a proper claim was solely the beneficiary's fault.

Comment: Several commenters were concerned with the provision of § 489.20(h), which requires the refund of any Medicare payment within 30 days of receipt of the duplicate third party payment. One commenter stated that duplicate payments are entered into a credit balance account, which is reviewed monthly, but frequently it takes longer than 30 days to identify the party to whom the refund is due.

Response: Many providers do not refund credit balances until those balances are identified and reported by HCFA auditors. Accordingly, we believe it is necessary to require that providers regularly review those accounts and make refunds to Medicare as may be appropriate. In view of the difficulty some providers may encounter, we will change the time limit for refunds from 30 days to 60 days of receipt of the subsequent payment.

Comment: Several commenters objected to the requirement that hospitals maintain a system which, during the admissions process, identifies any primary payers other than Medicare. Some of these commenters envision detailed and costly data processing systems.

Response: Section 489.20(f) incorporates into regulations a required practice that is currently found in the provider manuals. This requirement is that providers question beneficiaries during the admissions process to identify potential other party payers. This is not a new requirement and has not been found to be costly or burdensome.

Comment: One commenter expressed concern that § 411.24(a), (which states that the filing of a claim by or on behalf of a beneficiary constitutes an express authorization for release to Medicare of any information pertinent to the Medicare claim) may violate the National Association of Insurance Commissioners (NAIC) Model Insurance Privacy and Confidentiality Act.

Response: Authorization to release information necessary to process the claim is part of the Medicare claims filing procedures. This rule gives notice to third party insurers and other entities (including State Medicaid and workers' compensation agencies, and data depositories) that anyone filing a Medicare claim has authorized Medicare to obtain information relevant to that claim.

We recognize that Medicaid programs are not third party payers, that is, are not primary to Medicare. However, a Medicaid agency may have information that is relevant to a Medicare claim against a third party. A State Medicaid agency must release any information pertinent to a Medicare claim on request. HCFA will use the information for Medicare claims processing and coordination of benefits purposes only.

B. To Reflect a Changed Interpretation of the "Immediate Relative" Exclusion

1. *Background.* a. Section 1862(a)(11) of the Act precludes payment for expenses that "constitute charges imposed by an immediate relative of the beneficiary or a member of the beneficiary's household". Previous § 405.315, which implemented what is commonly referred to as the "immediate relative exclusion"—

(1) Referred only to Medicare Part B;

(2) Barred payment for charges other than actual costs incurred by the physician or other person (hereafter referred to as "out-of-pocket expenses") for items furnished to relatives or household members;

(3) Defined "immediate relative" and "member of household";

(4) Noted that the person who imposes the charges may be a person other than the one who furnished the services;

(5) Exempted from the exclusion—

(a) Charges imposed by a partnership except when all the partners bear the excluded relationship to the patient; and

(b) Charges imposed by a corporation, regardless of the beneficiary's relationship to the directors, officers, and stockholders of the corporation; and

(6) Made the exclusion applicable to charges imposed by an individual proprietorship if the individual who owns and operates the business is an immediate relative or member of the beneficiary's household.

b. Reexamination of § 405.315 led us to conclude that our previous interpretation of section 1862(a)(11) of the Act was inconsistent with the purpose of that provision, namely—

(1) To bar Medicare payment for items and services that would ordinarily be furnished gratis because of the relationship of the provider or physician to the beneficiary; and

(2) To avoid payment for medically unnecessary services.

c. Congress recognized that, in family situations, it is difficult to differentiate between medically necessary services and those that are furnished because of affection or concern. Thus, the exclusion was also intended to guard against potential program abuse.

The prohibition is unqualified. Neither the statutory language nor the legislative history support certain of our previous interpretations under which we—

(1) Limited the exclusion to services of physicians and suppliers, payable on a charge basis under Medicare Part B, while continuing to pay for services payable under Medicare Part A, and for actual out-of-pocket expenses incurred by physicians or suppliers to furnish their relatives items such as drugs or prosthetic devices; and

(2) Exempted from the exclusion physicians who are members of a partnership or corporation.

d. We have concluded that Congress intended to exclude the following:

(1) Services furnished under Medicare Part A as well as under Medicare Part B.

(2) All charges imposed by persons having an excluded relationship, including out-of-pocket expenses.

(3) Services furnished by physicians who are immediate relatives or household members, regardless of whether they work within a partnership or a professional corporation, or as individual practitioners.

2. *Proposal.* We proposed to revise § 405.315 (redesignated as § 411.12) to—

a. Remove the reference to Medicare Part B, so that the exclusion applies to both parts of the Medicare program;

b. Remove the exemption of out-of-pocket expenses;

c. Amend the definition of "immediate relative" to include adoptive sibling and spouse of grandparent or grandchild, which were omitted inadvertently; and

d. Specify that the exclusion applies to the following:

(1) Physician services and services furnished incident to those services if the physician who furnished the services or who ordered or supervised services incident to his or her services has an excluded relationship to the beneficiary, even if the bill or claim is submitted by a nonrelated individual or by an entity such as a partnership or a professional corporation.

(2) Services other than physician services when charges are imposed by—

(a) An individually owned provider or supplier, if the owner has an excluded relationship to the beneficiary; or

(b) A partnership, if any of the partners has an excluded relationship to the beneficiary.

Charges imposed by a corporation other than a professional corporation would not be excluded.

3. *Comments and responses.* We received no comments on these proposals.

C. To Clarify the "No Legal Obligation to Pay" Exclusion as It Applies to Services Furnished to Prisoners

1. *Background.* Section 405.311, which implemented section 1862(a)(2) of the Act, precludes Medicare payment for services when—

- The individual who receives the services has no legal obligation to pay for them; and
- No other person has a legal obligation to provide or pay for those services.

Prisoners generally have the status of public charges and as such, have no obligation to pay for the medical care they receive. Under those circumstances, previous § 405.311 barred Medicare payment. However, § 405.311 was not clear concerning the applicalion of the exclusion when a prisoner received services and is legally obligated to pay for the services. General instructions issued by HCFA provide for payment in the latter circumstances. Under those instructions, the fact that State law or regulation provides that certain prisoners or groups of prisoners may be charged for medical care is not enough to establish legal obligation. It is necessary to show that the State regularly enforces the legal obligation by routinely billing and seeking collection from all these prisoners for medical care they receive.

2. *Proposal.* We proposed to specify in the pertinent rule (now § 411.4) that Medicare payment for services to prisoners may be made—

- Only if State law requires prisoners to repay the cost of the services; and
- Only if the State actually enforces the requirement by billing and pursuing collection of amounts owed in the same way and with the same vigor that it pursues the collection of other debts.

3. *Comments and responses.*

Comment: The commenter believes that State and local officials try to avoid paying for medical care furnished to persons in their custody but who are not formally charged with a crime. For Medicare to benefit from the provision in § 411.4 relating to prisoners, the commenter believes that local officials would have to be held responsible for anyone in their custody whether or not they have been charged.

Response: Section 411.4 provides that Medicare will not pay for services furnished to persons in the custody of State and local officials under a penal statute whether or not they have been formally charged with a crime. The regulation is in accord with State law and legal precedents that require State and local penal officials to provide persons in their custody with a reasonable level of medical care. It is unnecessary for the regulation to hold officials so responsible, even if that could be done by Federal regulation. If a provider encounters an official that disclaims responsibility for furnishing care to a beneficiary in custody, the provider may enlist the aid of its Medicare intermediary to inform the official that Medicare will not pay in these cases. The intermediary may also explain the circumstances under which the regulations allow Medicare payment when State law and practice hold individuals responsible for paying for medical care furnished by the State.

D. To Clarify the Rules on the Exclusion of Services Furnished Outside the United States

1. *Background.* Section 405.313 of the previous rules, based on section 1862(a)(4) of the Act—

- Excluded services that are not furnished within the United States; and
- Defined the "United States" to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

General instructions issued by HCFA further specify that—

- U.S. territorial waters are part of the United States; and
- Shipboard services furnished in a U.S. port or on the same day the ship arrived at, or departed from, that port are considered as furnished in U.S. territorial waters.

There were three reasons for revising this rule:

- The definition of "United States" needed to be expanded to include the Northern Mariana Islands. Under the Covenant to establish the

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Commonwealth of the Northern Mariana Islands (Pub. L. 94-241), effective January 9, 1978, "those laws which provide Federal services and financial assistance programs * * *" apply to the Marianas as they do to Guam.

• The "same day" rule was too vague and too broad to be satisfactory. It could result in claims for services furnished in a foreign port (for example, in the Bahamas) that is less than 24 hours sailing distance from a U.S. port.

• Despite the specific language of the current definition of "United States", people tended to think that facilities owned and operated by the U.S. government are part of the United States, no matter where in the world they are located. As a result of this misconception, we frequently received claims for services furnished in U.S. Army hospitals in Europe, the Canal Zone, etc., and requests for hearings on the denial of benefits for those services.

2. *Proposal.* Consistent with the preceding discussion, we proposed to—

• Add the Northern Mariana Islands and U.S. territorial waters to the definition of the United States;

• Specify that shipboard services are considered furnished in U.S. territorial waters if they are furnished while a ship is in a U.S. port or within 6 hours before arrival at, or after departure from, a U.S. port; and

• Specify that a hospital that is not located within the United States as defined, is not part of the United States even though it is owned or operated by the U.S. government.

3. *Comments and responses.* We received no comments on these proposals.

E. To Update and Clarify Policies on Services Covered under Workers' Compensation

1. *Background.* The workers' compensation rules needed revision to remove outdated content and to make them consistent with the rules pertaining to other types of insurance that are primary to Medicare.

Some of the rules had become obsolete because workers' compensation laws and plans and medical care delivery systems have changed. For example, the laws and plans have fewer limitations on number of days of care and amounts payable, and ward accommodations are no longer used.

2. *Proposal.* In the NPRM, we proposed to—

• Delete obsolete provisions, including those that deal with limitations in workers' compensation laws regarding the number of days of care or the amount payable, and payment for ward accommodations.

• Delete the provision dealing with Medicare payment for ancillary services not payable by workers' compensation. These cases would be covered by §§ 411.32 and 411.33, which set forth the basis and amounts of Medicare secondary payments when a third party payer does not pay in full.

• Stipulate that the beneficiary must cooperate in any action HCFA takes against a workers' compensation carrier. Since this rule applies to all entities that are primary to Medicare, it would be set forth in § 411.23.

• Apply workers' compensation payments toward Medicare deductible amounts (§ 411.30).

• Specify different policies for lump sum workers' compensation payments that are commutations of future benefits (§ 411.46), and those that are compromise settlements (§ 411.47).

• Make clear that Medicare does not pay for services for which payment would have been made under the Federal Black Lung Program administered by the Department of Labor (DOL) if the DOL fails to pay solely because the provider did not obtain a provider number that must be included with the claim for DOL payment (§ 411.40(b)).

3. *Comments and responses.*

Comment: Section 411.40 makes a provider responsible for the payment of services if payment could have been made under the Black Lung Program, but is precluded because the provider failed to obtain a provider number from the DOL. A commenter suggested that this provision ignores normal contract law, which holds a patient responsible for the services.

Response: While it is true that a Medicare beneficiary is ultimately responsible for services that are not payable by Medicare, providers also have obligations to their patients and to the Medicare program under their provider agreements. Provider numbers are routinely issued by the DOL and are needed in order for Black Lung claims to be processed. We do not believe that it is unreasonable for Medicare as the secondary payer to require a provider to comply with a routine obligation of this nature.

F. To Incorporate Changed Policy on No-fault Insurance

1. *Background.* With respect to no-fault insurance, current rules—

• Applied only to *automobile* no-fault, not to other kinds of no-fault insurance such as homeowners;

• Provided for Medicare conditional payment if the no-fault insurance payment will be delayed "for any reason";

• Did not address the beneficiary's responsibility for obtaining payment under no-fault insurance; and

• Did not permit third party payments to be credited against the Medicare deductibles. (This limitation also applied to payments under workers' compensation, automobile medical and liability insurance.)

We believe that—

• Medicare should be secondary payer to all types of no-fault insurance, not just automobile no-fault, since the law is not limited to automobile no fault.

• Medicare should not make a conditional payment when a no-fault insurer refuses to pay primary benefits on the grounds that it is secondary to Medicare.

• Beneficiaries should be responsible for taking necessary action to obtain any payments that can reasonably be expected under no-fault insurance as they are required to do in the case of workers' compensation.

• All third party payments should be credited against the Medicare deductibles. (The more recent amendments provide for employer plan payments to be credited.)

2. *Proposal.* We proposed the following changes:

• In § 411.50(b), to expand the definition of "no-fault insurance" to include all other types of no-fault insurance, in addition to automobile no-fault.

• In § 411.53, to provide that Medicare conditional payment will not be made if the no-fault insurance payment will be delayed because the insurer claims that its benefits are secondary to Medicare benefits.

• In § 411.51, to require that beneficiaries take any necessary action to obtain payment under no-fault insurance, and specify the circumstances under which Medicare does or does not pay.

• In § 411.30, to provide that all third party payments are credited towards the Medicare deductibles.

3. *Comments and responses.*

Comment: One commenter objected to the expanded definition of no-fault insurance in section 411.50, which provides that Medicare is secondary to non-automobile no-fault insurance such as home owners and commercial insurance. The commenter stated that "no-fault" insurance is unique to automobile insurance and, therefore, the term should not be defined to include non-automobile insurance.

Response: The expanded definition of no-fault insurance is based on the language of section 1862(b)(1) of the Act, which reads, in part:

"Payment under this title may not be made with respect to any item or service to the extent payment has been made, or can reasonably be expected to be made promptly * * * under a workmen's compensation law or plan * * * or under an automobile *or* liability insurance policy or plan (including a self insurance plan) *or* under no-fault insurance." (Emphasis added.)

The disjunctive "or" in the statutory language, which twice separates the word "automobile" from the expression "no-fault insurance", indicates that Congress intended that the term "no fault insurance" encompass any type of insurance payments made without regard to who may have been responsible for the injury, not just automobile no-fault insurance.

Comment: A commenter believes that § 411.53(a) should be amended to exclude from Medicare coverage cases when a no-fault insurer has made only a partial payment. It would then be possible for providers to collect their full charges. The commenter stated that certain no-fault insurers are denying full payment alleging that hospitals are entitled to receive no more than the Medicare DRG payment for Medicare beneficiaries who are involved in automobile accidents, even though the no-fault insurer is billed. The commenter proposes to remedy this situation by having the final regulations state that when a no-fault insurer makes only a partial payment, the services should be excluded from Medicare coverage. This would allow the provider to be able to enforce collection of the amount due that exceeds the Medicare DRG payment.

Response: Under section 1862(b) of the Act, responsibility for payment for Medicare covered services is shifted from Medicare to certain third party insurers. The fact that Medicare is not the primary payer does not affect the status of the services as covered services under the Medicare law. Section 1862(b) is a nonpayment rather than a noncoverage provision. Thus, when a private insurer is a primary payer, Medicare may still be obligated to pay secondary benefits up to the DRG amount in accordance with the law. To amend Medicare regulations as the commenter wishes would be contrary to the law. However, we have included a new section 411.31 entitled, "Authority to bill third party payers for full charges", which states that providers may bill third party payers (except liability insurers) and expect their full charges to be paid, unless this would specifically contravene a law or an agreement with the insurer.

There is no action that HCFA can take to force a third party payer to pay in excess of the DRG amount. However, if a third party payer pays the DRG amount when charges exceed the DRG, but pays charges when the DRG is greater, a provider may have a basis for prevailing on a third party payer to change its method of reimbursement. This could be accomplished either through the Office of the State Insurance Commissioner (or other appropriate State authority) or through the courts.

Comment: One commenter proposed that the provision for Medicare conditional payments when the workers' compensation or no-fault payment will not be made promptly (§§ 411.45 and 411.53) be modified to include HMOs, health and medical care corporations, commercial health insurance, Taft-Hartley Plans, and other self-funded arrangements. The basis for the suggestion is that all these carriers and employers have an obligation to assume liability for payment.

Response: We do not agree that these classes of possible third party payers should be mentioned since payments made by them as a class may not always be primary to Medicare. To the extent that individual payers are primary to Medicare, they are already included in the provision. Furthermore, it would not be correct to say that conditional payments may be made when an *employer plan* does not pay promptly. Section 1862(b)(1) of the Medicare law states that when workers' compensation or no-fault insurance does not pay promptly, Medicare may pay conditional benefits. The provisions dealing with employer group health plans (sections 1862(b) (2) and (3)) do not include the term "promptly". If these payers were included as a class, it would appear to create this improper result.

G. To Clarify Policies on Liability Insurance

1. *Background.* With respect to liability insurance, current rules—

a. Left the way open for an insured individual or other entity to avoid use of its liability coverage by paying out-of-pocket instead of reporting the incident to the liability insurer.

b. In defining terms, under § 405.322—

(1) Included self-insured plans within the definition of liability insurance;

(2) Included, within the definition of "self-insured plan", a statement that it is a plan under which an entity is "authorized by State law to carry its own risk";

(3) Did not specify that, for purposes of the Medicare Act, payments under the Federal Tort Claims Act (FTCA) are a type of liability payment under a self-insured plan; and

(4) Did not specify that payments made by an insured party to cover deductibles imposed by the liability insurance policy are considered to be liability insurance payments.

c. Did not clearly state that a provider has no right to charge a liability insurer or a beneficiary who has received a liability insurance payment;

d. Provided that Medicare will make a conditional payment if the beneficiary has filed or has a right to file a liability claim; and

e. Did not specifically include underinsured motorist insurance (except as a type of uninsured motorist insurance) in the definition of liability insurance.

In the situation noted under the above paragraph a, HCFA was paying for services covered by liability insurance, with no opportunity to recover from the insurer. The omissions from the definitions aggravated the problem.

As explained in the preamble to the NPRM, providers should not be permitted to bill a liability insurer or to place a lien against a liability settlement for the following reasons:

• With respect to Medicare covered services, sections 1866(a) and 1842(b)(3)(B)(ii) of the Act permit providers, and suppliers who have accepted assignment, to bill the beneficiary only for applicable deductible and coinsurance amounts.

• Services for which liability insurance payments have been made or can reasonably be expected do not lose their identity as covered services. Since the amounts a beneficiary receives or is due to receive from a liability insurer are his or her own funds, billing the liability insurer or the beneficiary or filing a lien against the settlement would violate the statutory prohibition.

• In the case of liability insurance, the provider or supplier has no standing to sue or send a bill to the insurer. Since only the beneficiary—not the provider or supplier—has a right to sue the liability insurer, a bill to the liability insurer or a lien against the settlement would, in effect, be a bill to the beneficiary.

• Bills to liability insurers or beneficiaries or liens against liability settlements, if effectuated, reduce the beneficiary's recovery from the insurer unduly, since liability payments include compensation for damages other than medical expenses.

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The restriction does not apply to providers and suppliers that furnish services to individuals enrolled—

• In a health maintenance organization (HMO) or a competitive medical plan (CMP) that has a contract with the Secretary under section 1876 of the Act; or

• In a health care prepaid plan (HCPP) that is paid in accordance with section 1833(a)(1)(A) of the Act.

(The rules applicable to HMOs and CMPs are set forth in § 417.528 of the Medicare regulations, and those rules, through cross-references in Subpart D of Part 417, are made applicable to HCPPs.)

Although it is necessary to limit provider charges, we believe that, because of HCFA's clarified recovery rights, no limitations need be placed on making Medicare conditional payments in liability insurance cases.

2. Proposal.

In the NPRM, we proposed to make the following changes:

a. In § 411.50(b), to—

(1) Expand the definition of "liability insurance payment" to include out-of-pocket payments by entities that carry liability insurance, including payments by the insured party to cover deductibles required by the liability policy; and

(2) Revise the definition of "self-insured plan" to include the FTCA and to remove the statement "authorized by State law".

b. Under § 411.54, to specify that providers, and suppliers who have accepted assignment, are precluded from billing liability insurers, from billing beneficiaries who have received liability insurance payments, and from filing liens against liability settlements.

c. In § 411.52, to specify that a conditional payment may be made when Medicare benefits are claimed for treatment of an injury or illness allegedly caused by another party.

d. In § 411.50(b), to clarify the definition of "liability insurance" by specifying that underinsured motorist insurance is an example of liability insurance.

3. *Comments and responses.*

Comment: Several commenters believe that the MSP statutory provisions allow hospitals to recoup, from a beneficiary's liability recovery, up to the full amount of the hospital's charges, even though the lower prospective payment system (PPS) amount would constitute payment in full if the services were paid for by Medicare. The commenters believe that Medicare program instructions and the proposed conforming regulations are unconstitutional and invalid in limiting hospitals to the PPS amount. The commenters also believe that the regulations are contrary to the statute (§ 1862(b)(1)), which they assert excludes from Medicare coverage any services for which payment has been made or can reasonably be expected to be made promptly under liability insurance.

Response: Allowing hospitals to file liens and bill liability insurers for the hospitals' full charges (rather than billing Medicare) would violate the participating hospitals' commitment not to bill Medicare beneficiaries for covered services. As noted above—

• Services that are payable under liability insurance are still Medicare covered services; and

• Allowing hospitals to file liens and to bill liability insurers for their full charges could result in out-of-pocket losses for beneficiaries. If the hospital's charges were more than the liability insurance payment, the hospital could take the beneficiary's entire recovery.

Comment: A commenter questioned whether or not § 411.54 of the proposed regulations, which prohibits hospitals from billing liability insurance, applies to hospitals affiliated with health maintenance organizations (HMOs) and health care prepayment plans (HCPPs).

Response: As noted above, § 417.528 of the current Medicare rules applies to HMOs with contracts under section 1876 of the Act whether paid on a cost or capitation basis and to HCPPs. HMOs are permitted to bill liability insurance because the statute explicitly instructs them to do so. HCPPs, although paid under section 1833(a)(1)(A) of the Act, are subject to the same rules as HMOs as provided in § 417.802 of the Medicare regulations. In these final rules, § 411.54(d)(2) is revised to reflect this policy.

Comment: A commenter asked if the standard provider agreement will be modified to recognize that HMO-affiliated hospitals that treat beneficiaries enrolled under a risk-basis contract are permitted, under § 417.528(b) to bill liability insurers.

Response: HMO affiliated hospitals do not bill on behalf of the HMO. HMOs do their own billing, and may bill liability insurers under § 417.528(b). There is no need to modify the provider agreement.

Comment: An organization that enrolls some Medicare beneficiaries under a risk-basis HMO contract with Medicare and also enrolls other Medicare beneficiaries under an HCPP arrangement asked whether for the beneficiaries under a risk-basis HMO contract it could charge a liability insurer on the basis of hospital charges or was limited to the Medicare DRG amount.

Response: Section 417.528(b) authorizes an HMO to "charge the insurance carrier, employer, or other entity * * * or the Medicare enrollee. * * *" This regulation does not specify the basis for the charge because the law does not authorize HCFA to require a particular billing method or basis (The law provides that HMOs are to charge "in accordance with the charges allowed under such law or policy", but makes no mention of the Medicare DRG amount.) We expect an HMO to use a uniform method and basis for billing all enrollees.

Comment: Since HCFA pays HCPPs on an aggregate cost (rather than service-by-service) basis, the commenter asked how the Medicare carrier can determine how much to recover from a liability insurer for Part B services for which the HCPP is not allowed to bill the liability insurer. The commenter argued that the HCPP should be permitted to bill the liability insurer for Part B services, and include as an offset on its cost report, any sums thus obtained from the insurer.

Response: As noted above, we have revised § 411.54 to permit HCPPs to bill liability insurers just as HMOs and CMPs with contracts under section 1876 of the Act.

Comment: The commenter asked whether (in cases involving liability insurance) a hospital that must bill Medicare and accept the DRG payment amount, must comply with a beneficiary's request for a statement of billed charges rather than the DRG amount.

Response: It is common practice (and may be required under State law) for hospitals to furnish patients with a statement of billed charges even though the hospital may have been paid less by a third party, for example, because of a discount agreed to by the hospital with an insurer, or under a State program. There is no reason to treat a Medicare beneficiary's request differently.

We believe that any patient has a right to know the charges for the services he or she received. Moreover, hospital charges are the standard measure of damages applied in tort recovery actions that involve liability insurance. A patient who is denied information on the amount of the hospital charges would find it very difficult to prove the nature and extent of his or her injuries. Accordingly, we have added this requirement at § 411.54.

Comment: The commenter is not clear as to whether or not the proposed regulations, particularly the prohibition against billing liability insurance (§§ 411.54(c) and 489.20(g)), apply to outpatient hospital and physician services.

Response: The regulations state that they apply to providers of services and suppliers. We generally define terms at the beginning of the Code of Federal Regulations that applies to the Medicare and Medicaid programs (§§ 400.200 through 400.203). In § 400.202, the term "provider" is defined as including entities that furnish outpatient hospital services; the term "supplier" is defined as including physicians. The meaning of these terms is the same throughout the regulations, unless some other meaning is stated. The term "Medicare payment" used here means payment for any type of covered service, including hospital outpatient services.

Comment: The commenter believes that the regulations should make clear whether Medicare is the primary payer when the person presumed to have caused the injury has no liability insurance.

Response: We agree that clarification is needed. We have modified the definition of "self-insured plan" in section 411.50(b) so that it does not imply that self-insured plans are *limited* to entities that engage in a business, trade or profession. The revised definition cites such entities, along with nonprofit organizations, as examples of entities that may have self-insured plans. We note that the mere absence of insurance purchased from a carrier does not necessarily constitute a "plan" of self-insurance. If HCFA determines that the absence of insurance purchased from a carrier does not constitute a "self-insured plan" in a particular case, HCFA will not attempt to recover its payments from the entity that lacks insurance coverage. Section 411.50(b) also defines "liability insurance payment" as including "out-of pocket payments" and payments made under a self insured plan. Under these definitions, payments made by the self-insured individual or entity are primary to Medicare.

Comment: The commenter questioned if a provider that has been paid part of its charges by a no fault automobile insurer can bill Medicare for its regular DRG payment when liability insurance may also be available but cannot be billed because of the prohibition against billing liability insurance. The commenter believes that permitting the provider to bill for the entire DRG payment would not adversely affect the amount of the settlement or judgment the beneficiary would otherwise receive.

Response: Sections 411.32 and 411.33(e) make clear that when a provider has received a portion of its charges from a third party payer, that provider may bill Medicare only for secondary payment. Although the commenter's suggestion would not, it is true, disadvantage the beneficiary seeking a liability payment, it would be inconsistent with the statutory provisions which require that Medicare pay only to the extent that payment has not been made by the third party. Thus, Medicare may make only a secondary payment.

Comment: Several hospitals commented that being paid by Medicare an amount based on a DRG rather than their charges shortchanges them. They consider that, since liability insurers pay all the beneficiary's accident-related medical expenses based either on charges or on what Medicare has paid, payment of the DRG amount either enriches the beneficiary or saves the insurer money. Further, the commenters believe that limiting hospitals to the PPS amount would cause financial hardship, because the cost of treating the traumatic injuries typical in liability insurance cases is much greater than the amount allowed under Medicare PPS. The commenters suggest that they be permitted to collect their full charges from liability insurance.

Response: HCFA's policy of requiring providers to bill Medicare in liability insurance situations reflects Congressional intent. The legislative history of section 1862(b)(1) of the Act states that Medicare would "pay for the beneficiary's care in the usual manner and then seek reimbursement from the private insurance carrier after, and to the extent that, such carrier's liability under the private policy for the services has been determined". H.R. Rep. No. 96–1167, 96th Cong., 2d Sess. 389 (1980). The Senate history reflects similar intentions. Staff of the Senate Committee on Finance, 96th Congress 2d Session, *Spending Reductions: Recommendations of the Committee on Finance Required by the Reconciliation Process in Section 3(a)(15) of H. Con. Res. 307, the First Budget Resolution for Fiscal Year 1981* 42 (Committee Print 1980). Additionally, there are programatic reasons for HCFA's policy.

Payment of full charges would enable hospitals to profit at the expense of Medicare beneficiaries. Hospitals are allowed to collect their charges when insurance other than liability is primary under the MSP provisions because that procedure does not disadvantage beneficiaries. Insurers other than liability pay according to the terms of the coverage *for which the beneficiary has contracted.* The amounts paid are for express losses such as medical expenses, lost wages, etc. When a hospital collects from such insurers, it is *not* collecting from the beneficiary's personal funds. Liability insurance is different. It is not a contractual arrangement between a beneficiary and an insurer; it is a contractual arrangement between a policyholder (i.e., the tortfeasor) and an insurer, which is intended to protect the *policyholder* from potential financial loss resulting from a tort for which he or she is responsible. As noted above, and in the preamble to the proposed rule, a provider or supplier has no standing to sue or send a bill to the insurer. Since only the beneficiary (i.e., the injured party)—not the provider or supplier—has a right to sue the liability insurer, collecting from a beneficiary's liability insurance settlement is tantamount to collecting from the beneficiary's personal funds.

Moreover, liability insurance is unlike other insurances which specify the amounts or percentages payable for various medical procedures and whether or not such procedures are covered by the insurer. Liability insurance generally provides a lump sum coverage amount for all liability, including any unspecified medical damages. Thus, in liability insurance contexts all allocations are subject to negotiation or court order. If more is paid for medical expenses, the insurer will try to pay less for other losses or to compensate the injured party less for intangibles like pain and suffering, which never apply in non-liability insurance contexts.

When the amount of liability insurance is small in relation to the amount of a hospital's charges because the limits of the policy are low, or because the insurer offers a small amount to settle a case of questionable liability, the hospital may collect the entire liability payment remaining after payment of the beneficiary's attorney's fees. That would leave the beneficiary nothing for pain and suffering, etc., and could leave Medicare liable for the beneficiary's other covered medical expenses.

HCFA's policy, therefore, does not serve to enrich beneficiaries at the expense of hospitals. Rather, it protects beneficiaries from being disadvantaged in liability insurance cases. HCFA's policy does not save liability insurers money, since their payments are generally based on the injured person's medical *bills,* not on amounts paid by the person's insurers, including Medicare, which may be less than the billed amounts. In many States, evidence of insurance is not admissible in tort actions, or is admitted only for

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limited purposes. In addition, under the commonly applicable "collateral source" rule, insurance that may cover medical expenses collateral to the defendant's obligation to pay, such as disability or health insurance, is not considered in determining amounts a person receives from the defendant.

Furthermore, the Medicare statute establishes the methodology to be used in paying for hospital services. When hospitals are paid in accordance with that methodology, they are getting amounts which, on average, reflect the cost of furnishing services economically and efficiently. They are not getting less than Congress mandated. While they may get less than their charges in a particular case, in other cases they may get more.

Comment: A commenter believes that existing regulations (§ 405.324(a)(3)(ii)) clearly recognize that hospitals would be permitted to collect liability insurance for services to Medicare patients.

Response: Section 405.324(a)(3)(ii) recognizes that hospitals might collect from liability insurers. However, that regulation works in the context of the whole body of regulations and the statute itself. Other regulations make clear that the Medicare beneficiary is to be protected from having to pay anything for covered services except certain specified amounts. The overriding principle is that the beneficiary is to be no worse off because of a particular provision than without it. That is why hospitals were once permitted to bill *willing* liability insurers. This was expected to occur after a relatively minor injury when the responsible party was anxious to settle the matter and the beneficiary asked for little more than that his medical care be paid for by the responsible party or its insurer.

Hospitals were never authorized to file liens against potential liability payments. Liens, by their very nature, smack of compulsion, rather than volition. When it came to HCFA's attention that hospitals were filing liens, and in light of 1984 changes in the statute making it clear that Medicare payment could be denied only if a liability insurance payment could be expected to be made *promptly*, the policy was changed to prohibit hospitals from billing liability insurers in any case. For the following reasons, the clarified and revised policy is the only one in keeping with the letter and spirit of current law:

1. Only rarely can liability insurance be expected to pay "promptly".

2. Hospitals had misused their option to bill "willing" liability insurers by—

- Billing when the beneficiary had filed suit and liability was being disputed; and
- Filing liens.

The prohibition against billing liability insurers will apply nationwide except in the State of Oregon. In *Oregon Association of Hospitals et. al. v. Sullivan* (Case No. CV 88-625 FR), the United States District Court for the District of Oregon has ruled that hospitals have the right "to recover up to their total charges from a liability insurer that is a primary payer and can reasonably be expected to pay promptly". HCFA is appealing this ruling. However, while HCFA's appeal is proceeding, HCFA will comply with the court's ruling in the State of Oregon. Accordingly, unless the ruling is reversed on appeal, or overturned by a statutory clarification, a special rule applies. In Oregon, hospitals may, as an alternative to billing Medicare, collect up to their full charges from a liability insurer that pays "promptly". For general purposes, § 411.21 defines "promptly" with respect to third party payments as payment made within 120 days after receipt of a claim. For the special Oregon situation, with respect to liability insurers, § 411.50 defines "prompt" payment as payment within 120 days from the earlier of the following:

- The date a claim, or lien against a potential liability settlement, is filed.
- The date a service was furnished, or, in the case of inpatient hospital services, the date of discharge.

If the liability insurer does not pay within the applicable 120-day period, the hospital may not collect from the liability insurer because the payment cannot "reasonably be expected to be made promptly". In such case, the hospital must withdraw its claim or its lien against a potential liability settlement, or be subject to HCFA sanctions, such as termination of its right to participate in the Medicare program. Sections 411.54(d) and 489.20(g) of the proposed rules are revised to reflect application in the State of Oregon.

H. To Provide Uniform Rules for Computing the Amount of Medicare Secondary Payment, and to Limit Charges When a Proper Claim Is Not Filed

1. *Background.* Under previous rules applicable to employer group health plans—

a. The Medicare secondary payment was computed on the basis of the amount of the third party payment, without reference to situations in which the latter was reduced because of failure to file a proper claim.

b. For services paid on a reasonable charge basis, the methods for computing the Medicare secondary payment differed in a way that could result in lower payments for assigned than for unassigned claims.

c. For services paid on other than a reasonable charge basis, the Medicare secondary payment was computed on the basis of the Medicare payment rate, which could be more than the charges.

In the situation noted under the above paragraph a, we believe that providers and suppliers, and beneficiaries who are not physically or mentally incapacitated, are responsible for filing proper claims and for any third party payment reduction that results from their failure to file proper claims. Therefore—

- Medicare should not have to increase its secondary payment when the primary insurer pays less because a proper claim was not filed; and
- The beneficiary should not be subject to higher charges because the provider or supplier fails to file a proper claim.

In the situations noted in paragraphs b. and c. above, we believe that—

- Lower payments for assigned claims are unfair and could discourage acceptance of assignment, which is desirable for beneficiaries; and
- The law intends that Medicare supplement the amount paid by the primary payer only in an amount that, combined with the primary payment, equals the charges for the services, or the amount the provider or supplier is obligated to accept as full payment. (When a provider or supplier is obligated to accept as full payment an amount less than its charges, HCFA considers that lower amount to be the provider's or supplier's charges.)

2. *Proposal.* To deal with the problems noted above, we proposed that—

a. When a primary insurer pays less because a proper claim was not filed—

(1) The Medicare secondary payment will be no greater than it would have been if the primary insurer had paid on the basis of a proper claim; and

(2) A provider may charge Medicare and the beneficiary no more than it would be entitled to charge if it had filed a proper claim (§§ 411.32(c) and 489.20(i)).

b. For services paid for on a reasonable charge basis (or on a monthly capitation basis that is now used for certain ESRD services), the computation method is the same for assigned as for unassigned claims (§ 411.33).

c. For services paid on other than a reasonable charge basis, a revised formula ensures that the Medicare secondary payments are not greater than the excess of the charges over the primary payments (§ 411.33(e)).

3. *Comments and responses.*

Comment: Two commenters objected to § 411.33(e), which addresses the amount of Medicare secondary payment for providers paid on a basis other than reasonable charge or capitation. They believe that it does not take into account the legislative provisions for provider payment under PPS. The commenters believe that the proposal limits payment to the provider's charges even when the PPS payment may exceed charges. The commenters believe that this provision is contrary to the PPS provisions, which provide payment based on a DRG, in that it permits HCFA to ignore the PPS rate and limit the combined third party payment and Medicare secondary payment to the provider's charges. The commenters suggested that the Medicare secondary payment be calculated by subtracting the third party payment from the gross amount payable by Medicare.

Response: As was pointed out in the Notice of Proposed Rulemaking published on June 15, 1988 (53 FR 22340), § 1862(b)(3)(B) of the Act permits Medicare secondary payments only if the employer group health plan pays less than the charges. We therefore feel that the intent of the law is for Medicare to supplement the amount paid by a primary payer up to the provider's charges. If HCFA were to base Medicare secondary payment on a PPS amount that is greater than the charges, HCFA's secondary payment policy would be anomalous. For instance, if a provider charged $10,000 for services for which the Medicare PPS rate is $18,000, and the primary payer paid $10,000, Medicare would make no payment, since the statute does not permit Medicare secondary payments where a third party payer pays the charges in full. Yet, if the third party payer paid one dollar less than the charges ($9,999), Medicare would have to pay $8,001 (the difference between the $18,000 PPS amount and the $9,999 paid by the third party payer). We have chosen a policy that does not lead to this anomalous result.

I. To Clarify Interpretation of the Working Aged Provisions.

1. *Background.* Previous rules—

a. Did not specify what is meant by "employed"

b. Did not clearly interpret how the statutory language "by reason of such employment" applies in the case of reemployed retirees and annuitants.

c. Did not specify that employer group health plans include "employee-pay-all" plans.

d. Made Medicare primary for members of a multiemployer plan whom the plan identifies as employees of employers of fewer than 20 employees (§ 405.340(b)(1)(ii)).

e. Provided (in § 405.341(d)) that an individual who was receiving employer disability payments was not considered to be employed if that individual was not receiving remuneration subject to taxation under the Federal Insurance Contributions Act (FICA), or before attaining age 65, was entitled to disability benefits under title II of the Act.

f. Provided (in § 405.341(c)(2)) that Medicare would pay primary benefits for Medicare-covered services that were not covered under the employer plan; and could make a Medicare conditional payment when employer plan payment was denied "for any reason" (§ 405.344(a)).

We considered it necessary to—

- Correct the omissions noted under paragraphs a through c above;
- Eliminate the exemption under the above paragraph d, for consistency with more recent legislation on large group health plan coverage of disabled active individuals (which does not exempt employees of employers of less than 100 employees in a multiemployer plan);
- Apply to the working aged the principle established by that same legislation, that "disabled" individuals may be considered "employed"; and
- Establish more reasonable limits with respect to the provisions noted under the above paragraph f.

2. *Proposal.* In the NPRM, we proposed to—

a. Make clear that the Medicare working aged provisions apply not only to employees but also to the self-employed, such as owners of businesses or independent contractors, and to members of the clergy and of religious bodies (§ 411.70(d)).

b. Make clear that a reemployed annuitant or retiree who is covered by an employer group health plan is considered covered "by reason of employment", even if—

(1) The plan is the same plan that previously provided coverage to that individual when he was a retiree or annuitant; or

(2) The premiums for the plan are paid from a retirement pension or fund (§ 411.72(c)).

c. Modify the definition of "employer group health plan" to make clear that it includes plans under the auspices of employers that make no financial contribution, the so-called "employee-pay-all" plans.

d. Remove from the definition of "employer group health plan" (§ 411.70(d)), the statement that a multiemployer plan does not have to pay primary benefits for individuals whom it can identify as employed by employers of less than 20 employees. (This requirement previously appeared in § 405.340(b)(1).)

e. Specify that, effective July 17, 1987, individuals who receive employer disability payments that are subject to taxation under FICA are considered employed (for purposes of the working aged provisions), even if they received social security disability benefits before attaining age 65. (July 17, 1987 is the effective date of HCFA general instructions issued under section 9319 of Pub. L. 100-203.)

f. Make clear, in § 411.75, the circumstances under which HCFA does or does not make Medicare primary payments and conditional primary payments.

3. *Comments and responses.*

Comment: Fourteen commenters opposed defining "employed" to include members of the clergy and religious orders who are paid for their services by a religious body or other entity. Most commenters stressed the disproportionate harmful effect on members of religious communities and the insufficiency of funds to pay for their medical expenses. They also considered that there is no statutory authority for the definition. They noted that the status of the clergy is not specifically addressed in section 1862(b)(3), and expressed their belief that section 210(a)(8)(A) of the Social Security Act (which defines the term "employment" for social security coverage purposes) specifically excludes the services of members of the clergy and religious orders from the term "employment".

Response: For purposes of 1862(b)(3) of the Act, the term "employed" includes not only employees, but self-employed persons such as directors of corporations and owners of businesses, as well as individuals who are engaged in "employment" as defined in section 210(a) of the Act. Contrary to the commenters' belief, section 210(a)(8) of the Act provides that, for social security purposes, the term "employment" includes service performed by members of the clergy and religious orders if an election of coverage under section 3121 of the Internal Revenue Code of 1954 is in effect. It is precisely because of this provision that members of electing orders qualify for Medicare benefits. It would be entirely inconsistent with the

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statute to hold that the very employment which qualifies a person for Medicare benefits is not employment for purposes of determining that Medicare is secondary payer with respect to that person's group health plan. As with other workers covered under section 1862(b)(3) of the Act, when a member of the clergy or a religious order retires, Medicare becomes primary payer and the employer group health plan may make secondary payments. We have revised the proposed definition of "employed" to make clear that a member of a religious order is considered employed only if the religious order pays FICA taxes on behalf of the member.

Comment: Two commenters objected to including the self-employed within the definition of the term "employed." They expressed the view that self-employed individuals do not receive pay from employers and therefore should not be considered "employed." They asked which self-employed individuals are included in the definition of employed and whether employers must offer EGHP coverage to all individuals age 65 and over who are self-employed.

Response: There is nothing in section 1862(b)(3) of the Act that limits its application to "employees." This statutory provision requires that the individual be "employed" and have the group health coverage "by reason of such employment". This includes self-employment activity that is related to the entity that provides the group health coverage.

Under this provision, Medicare is secondary to employer group health plan coverage provided to a self-employed individual because of his or her self-employment activity. Although employers are not required to provide group health plan coverage to self-employed individuals, many of them do. If an employer chooses to provide coverage to self-employed individuals who are also Medicare beneficiaries, that coverage is primary to Medicare.

Self-employed persons pay taxes on self-employment income under the Self-Employment Contributions Act of 1954 and on that basis receive social security quarters of coverage for purposes of qualifying for social security benefits. Once they have earned the required quarters of coverage they are treated the same as employees for benefits under the Act, including Medicare. It would be inconsistent to hold that employment which counts toward Medicare entitlement under Title II of the Social Security Act does not count as employment for purposes of the "working aged" secondary payer provision under title XVIII of the Act. However, we recognize that section 211(b)(2) of the Act currently defines the term "self-employment income" for social security coverage as net earnings from self-employment of $400 or more. We believe that a person should not be considered self-employed for purposes of the "working aged" provision if his earnings from self-employment are less than the amount specified in section 211(b)(2). Therefore, we have revised the proposed definition of "employed" in section 411.70 to provide that a self-employed individual is considered employed for Medicare secondary payer purposes during a particular tax year only if, during the preceding tax year, the individual's net earnings from self-employment activity related to the entity that offers the group health coverage, equals or exceeds the amount specified in section 211(b)(2) of the Act.

The second part of the question relates to the Age Discrimination in Employment Act (ADEA). This Act requires employers to offer health coverage under the same terms and conditions to older and younger employees. Since the ADEA uses the term "employee", it does not apply to the self-employed.

Comment: Two commenters requested revision of section 411.72 to clarify that a reemployed individual who is a retiree or annuitant is covered by an employer group health plan "by reason of employment" only if the individual would be covered by the employer group health plan if he were a currently working nonretired person.

Response: We are clarifying the term "by reason of employment" in section 411.72. The employer must offer the same coverage to actively working former retirees and annuitants as is offered actively working non-retired individuals. If the employer does not offer group health coverage to a particular category of non-retired employee, e.g., employees hired on a contingency basis only, then the employer is not required to offer group health coverage to a former retiree who works on a contingency basis only. Coverage provided to such individuals is not considered coverage "by reason of employment," and therefore may be secondary to Medicare.

Comment: One commenter pointed out that employers and temporary employees have difficulties in adjusting to changes in Medicare's status as primary or secondary when retirees return to work on a temporary basis. Retirees may be discouraged from taking temporary jobs, particularly if they have to pay all or a portion of the premiums for insurance provided through their employers (which is primary to Medicare) instead of lower premiums for their retirement-based health insurance (which is secondary to Medicare). The commenter suggests that once an employee retires and Medicare becomes the primary payer, Medicare continue as primary until the retiree has been reemployed for at least 12 months.

Response: The law requires Medicare to be secondary payer whenever an individual has group health plan coverage "by reason of employment". The term "by reason of employment" applies to periods of temporary employment, and thus precludes Medicare from making primary payments during any period (no matter how brief) in which the individual is covered by the employer plan "by reason of employment". We recognize that there may be administrative difficulties in processing some claims when Medicare status changes from primary to secondary and back again. HCFA has instituted significant improvements in its data collection system to facilitate processing of claims in which third party payers are involved.

Comment: Several commenters objected to our proposed removal of the provision that makes Medicare primary payer for enrollees of a multiemployer plan whom the plan can identify as employed by employers of fewer than 20 employees. Some of those commenters thought that we proposed to make this change retroactive to January 1, 1983, and were particularly concerned about the impact of this retroactive change on health resources, as HCFA moved to recoup Medicare primary payments made in those circumstances. They also noted that neither the statute nor the legislative history authorized the proposed change. Congress stipulated that the working aged provisions did not apply to employers of fewer than 20 employees and did not qualify this exemption for employers that use a multiemployer plan.

Response: We did not intend to make the change retroactive and have decided not to make the change. In § 411.72 of the final rule we have restored the provision that we proposed to remove. Our decision was based on the above comments and also on—

- Comments from the religious community and others expressing concern about the disproportionate impact on small employers; and
- An opinion expressed by the Equal Employment Opportunity Commission in its Notice N-915-028 of May 12, 1988, that section 4(g) of the Age Discrimination in Employment Act (ADEA) does not require employers of fewer than 20 employees who participate in a multiemployer plan to provide the same health insurance coverage under the same circumstances to older and younger employees. Since section 4(g) of the ADEA was enacted primarily to serve as an enforcement mechanism for the working aged provision, the two provisions should be interpreted as consistently as possible.

J. To Provide Uniform Rules for Determination of the Amount of Medicare Recovery from a Party that has Incurred Costs to Obtain a Judgment or Settlement that Resulted in a Third Party Payment

1. *Background.* Under § 405.324(b) of the previous rules, when a beneficiary received a liability insurance payment as a result of a judgment or settlement, Medicare reduced its recovery to account for the procurement costs, that is, costs such as attorney fees that the beneficiary incurred in order to obtain the judgment or settlement.

Although procurement costs are generally incurred by a beneficiary in connection with liability insurance, occasionally they may be incurred by another party or in connection with other types of insurance that are primary to Medicare.

We believe that, as a matter of equity, procurement costs should also be considered when another party has incurred such costs and when the judgment or settlement is obtained under other types of insurance primary to Medicare.

However, there need to be some exceptions and limitations. HCFA should not allow for procurement costs that do not reduce the amount of a judgment or settlement payment that is actually available to the party. This is the case, for instance, under the many workers' compensation laws that provide separate awards for attorney fees.

Furthermore, there should be a special rule for a situation in which HCFA itself incurs procurement costs, for example, when the government must file suit because the party that received payment opposes HCFA's recovery.

2. *Proposal.* We proposed to broaden the current rules, as noted under the above discussion and include them in Subpart B, which is of general applicability, as a new § 411.37 that specifies the amounts of Medicare recovery under different circumstances:

a. If the Medicare payment is less than the judgment or settlement payment, HCFA would share proportionately in the party's procurement costs.

b. If Medicare payment equals or exceeds the judgment or settlement payments, HCFA would recover only the amount that remains after subtracting the party's total procurement costs.

c. If HCFA incurs procurement costs of its own because the party that received payment opposes HCFA's recovery, the recovery amount would be the lower of the following:

(1) The Medicare payment.

(2) The total judgment or settlement amount, minus the party's total procurement costs.

3. *Comments and responses.* We received no comments on these proposals.

K. Clarifying Changes

1. *Proposal.* Of the clarifying changes that were proposed in the NPRM, and are retained in the final rule, one elicited comment as shown below.

a. In § 411.6 (which excludes from Medicare payment services furnished by a Federal provider), we added a paragraph (b)(4) to make clear that services of a Federal provider (for example, a Veterans Administration (VA) hospital) are not excluded if they are furnished under arrangements made by a participating hospital. This ensures that a participating hospital can secure for its patients necessary services that it cannot itself provide.

b. Consistent with Departmental rules (45 CFR 30.15) and other HCFA rules (42 CFR 401.607), § 411.24(d) makes clear that HCFA may recover by offset against any monies it owes to the entity responsible for refunding the Medicare conditional primary payment.

c. In § 411.35, we have clarified the limits on the amounts that a provider or supplier may charge the beneficiary (or someone on his or her behalf) when workers' compensation, no-fault insurance, or an employer plan is primary to Medicare.

2. *Comments and responses.*

Comment: The commenter believes that current regulations give veterans the impression that they must receive all care at a VA facility. Specifically, the commenter suggested that we revise § 411.6 to indicate that veterans who choose not to use VA benefits are entitled to use their Medicare coverage; and § 411.8 to make clear that veterans are entitled to primary Medicare benefits when the VA neither furnishes nor authorizes non-VA physicians or suppliers to furnish the services.

Response: There is nothing in the regulations to suggest that veterans entitled to receive care at a VA facility, or from private sources at VA expense, are not entitled to use Medicare instead. We believe that the concerns expressed by the commenter are more properly addressed through administrative processes rather than regulations. The Medicare contractor manuals and *The Medicare Handbook* clearly indicate that veterans have the option to use either their Medicare or their VA entitlement. An individual's entitlement to Medicare is not circumscribed because of eligibility under another entitlement program. The Medicare contractor manuals clearly state that an individual's entitlement to VA benefits is *not* a basis for denying a Medicare claim.

L. Organization Change.

In order to eliminate needless repetition, Subpart B of the new part 411 sets forth those definitions and rules that apply equally to all or most of the types of insurance that are primary to Medicare. These include definitions of "conditional payment", "secondary payment", "third party payment", and "proper claim", the rules on recovery of conditional payments, and the effect of third party payment on benefit utilization and deductibles.

M. Other Changes.

1. *Definition of "multiemployer plan".* It has been brought to our attention that the health insurance industry distinguishes between "multiple employer plans"—which are sponsored by employers only, and "multi-employer plans"—which are sponsored jointly by employers and unions.

In § 411.70(d), we have added a definition of "multiemployer plan" specifying that it includes both of the kinds of plans identified above.

2. *Correction of an oversight: Indemnification of beneficiaries.* In developing the proposed rules published on June 15, 1988, we overlooked the fact that section 4096 of the Omnibus Budget Reconciliation Act of 1987 amended section 1879(b) of the Social Security Act to change indemnification policy. Under this policy, a beneficiary is indemnified for payments he or she made to a provider for services which the provider knew (but the beneficiary did not know) were excluded from coverage as "not reasonable and necessary" or as custodial care. Before the section 4096 change, deductible and coinsurance amounts were excluded from the indemnification amount. Under the amended law, the beneficiary is also indemnified for deductible and coinsurance payments.

We revised proposed § 411.402 (which redesignates previous § 405.332) to conform it to the changes in the law.

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3. *Conforming changes required by the Medicare Catastrophic Coverage Act of 1988 (MCCA) and the establishment of part 411.* Subpart G of Part 405 of the Medicare rules, which deals with beneficiary appeals under Medicare Part A, contains numerous references to "posthospital" SNF care, and to § 405.310 (g) and (k). Conforming changes in the subpart are required because—

• The MCCA removed the requirement that SNF care be for a condition that was previously treated in a hospital; and

• Section 405.310 has been redesignated under the new part 411 as § 411.15.

We also took advantage of this opportunity to substitute lists of designated items for some excessively long sentences and to provide paragraph headings to guide the reader.

4. *Additional clarifying change.* We have added a new § 411.32(a)(1) to make clear that Medicare benefits are secondary to benefits payable by entities that are primary to Medicare even when State law or the payer that is primary to Medicare states that its benefits are secondary to Medicare's or otherwise limits its payments to Medicare beneficiaries. This rule was stated in §§ 411.50(c)(2) and 411.62(a)(4) of the NPRM. Since this rule applies generally to Subparts C through F, it is being placed in Subpart B and replaces §§ 411.50(c)(2) and 411.62(a)(4).

III. Redesignation

As part of the overall plan to reorganize the Medicare rules and provide adequate room for expansion, most of subpart C of part 405 is redesignated under a new part 411—Exclusions from Medicare, with a separate subpart for each type of third party payer. A redesignation table is presented at the end of this preamble to help the reader locate specific content under the new numbers.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule", that is, a rule that is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For the purposes of the RFA, we treat all providers and third party insurers as small entities. Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if this rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must also conform to provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

Many provisions of this rule either conform to recent statutory changes or reflect current HCFA operating policies as expressed in program instructions and manuals. These regulatory provisions, of themselves, will not affect Medicare program expenditures. The other provisions of this rule will correct overly narrow interpretations of existent statutory authority, extend statutory precedents applying to some third party payers to additional categories of payers, or clarify and increase the consistency of our MSP rules. Of these rule changes, we anticipate that all but one will have a negligible impact upon program expenditures.

The change at § 411.50(b), under which the definition of "no fault insurance" is extended to include all types of no fault insurance, brings our regulations into line with the intended scope of section 1862(b)(1) of the Act. The enacting legislation (section 953 of the Omnibus Reconciliation Act of 1980) clearly does not limit Medicare's secondary status to automobile no fault situations. However, previous regulations at § 405.322 (published on April 5, 1983 at 48 FR 14810) only partially implemented the statute by making Medicare the secondary payer to automobile no fault medical coverage only. We did not consider other forms of no fault liability insurance. Because of this oversight, our intermediaries and carriers have been precluded from pursuing Trust Fund savings that would otherwise be available. This rule change allows us to maximize Trust Fund savings to the extent permitted by law. While we cannot at this time produce a precise estimate of the savings that will be achieved by this change, we expect that the maximum available savings will fall significantly short of the E.O. 12291 thresholds specified above.

We expect that implementation of these rule changes will not have a significant economic impact on a substantial number of small entities. For example, amending § 489.20 to require certain additional commitments in all provider agreements serves largely to highlight the importance of identifying MSP claims. Our intermediary and provider instructions already require hospitals and other providers to systematically identify and, where appropriate, bill payers that are primary to Medicare first.

Subsequent to the OIG study, discussed under "Background" above, we instituted a computerized cross reference system to identify claims that should have been billed to payers primary to Medicare. Once these payers are identified by the computer tracking system, the claims are referred back to the provider responsible for initial billing. Under this system, Medicare no longer pays such bills automatically.

This computerized cross reference system may eventually bring about some administrative cost savings, to the extent that intermediaries may not be required to process claims that providers properly charge to third party payers. Providers may also reap several benefits once they take advantage of the fact that, in many circumstances, Medicare is the secondary payer. Current manuals instruct hospitals and other providers on how to identify payers that are primary to Medicare. The marginal advantages for providers would be savings on the administrative costs of billing Medicare, and additional income when the third party payer pays a higher rate than Medicare would normally pay as primary payer. These benefits are already available to providers under current instructions, and will not be altered by these proposed rules.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. We have therefore not prepared a regulatory flexibility analysis.

V. Paperwork Reduction Act

Sections 405.702, 405.710(b)(1), 411.25, 411.32(c) (last sentence), 411.54(c)(1), 411.65(b)(2), 411.75(c)(2), and 489.20(f), contain information collection, recordkeeping and reporting requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have sent these requirements to OMB for review. When they approve them we will publish a notice to that effect in the Federal Register.

If you comment on these requirements, please send a copy of that comment directly to: Attention: Allison Herron, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503.

VI. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 489

Health facilities, Medicare.

REDESIGNATION TABLE FOR 42 CFR PART 405, SUBPART C

Old section	New section
405.308(a)	Removed as duplicative of § 412.42.
405.308(b)	489.34.
405.310	411.15.
405.310–1	411.2.
405.311	411.4.
405.311a	411.6.
405.311b	411.7.
405.312	411.8
405.313	411.9.
405.314	411.10
405.315	411.12.
405.316	411.40.
405.317(a)–(c)	411.30.
405.317(d)–(f)	Removed as inconsistent with current policy.
405.3*B	411.43.
405.319(a)	Removed for inclusion in instructions.
405.319(a)	411.45.
405.320 and 321(a)	411.46.
405.321(b)	411.47.
405.322(a)–(d)	411.50.
405.322(e)	411.26.
405.323(a)	411.26.
405.323(a)	Removed as outdated.
405.323(b)	411.50.
405.323(c)(1)	411.53.
405.323(c)(2)	411.23.
405.323(c)(3) and (4)	411.24.
405.323(c)(5)	Removed as meaningless.
405.324(a)	411.52.
405.324(b)	411.37.
405.325	411.30.
405.326	411.60.
405.327	411.62.
405.328(a)–(d)	411.33.
405.328(e) and (f)	411.20.
405.329	411.65.
405.330	411.400.
405.332	411.402.
405.334	411.404.
405.336	411.406.
405.340	411.70.
405.341	411.72.
405.342(a) and (b)	411.33.
405.342(c) and (d)	411.30.
405.343	411.35.
405.344(a)	411.75.
405.344(b)	411.24.
405.376	Interest charges on overpayments and underpayments to providers and suppliers.

42 CFR chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart C of part 405 is amended as follows:

Subpart C—Exclusions, Recovery of Overpayments, Liability of a Certifying Officer and Suspension of Payment

1. The subpart title, the table of contents, and the authority citation are revised to read as follows:

Subpart C—Recovery of Overpayments and Suspension of Payment

Sec.
405.301 Scope of subpart.

Liability for Payments to Providers and Suppliers, and Handling of Incorrect Payments

405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.
405.351 Incorrect payments for which the individual is not liable.
405.352 Adjustment of title XVIII incorrect payments.
405.353 Certification of amount that will be adjusted against individual title II or railroad retirement benefits.
405.354 Procedures for adjustment or recovery—title II beneficiary.
405.355 Waiver of adjustment or recovery.
405.356 Principles applied in waiver of, adjustment or recovery.
405.359 Liability of certifying or disbursing officer.

Suspension of Payment to Providers and Suppliers and Collection and Compromise of Overpayments

405.370 Suspension of payments to providers of services and other suppliers of services.
405.371 Proceeding for suspension.
405.372 Submission of evidence and notification of administrative determination to suspend.
405.373 Subsequent action by intermediary or carrier.
405.374 Collection and compromise of claims for overpayments.
405.375 Withholding Medicare payments to recover Medicaid overpayments.

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, and 1879 of the Social Security Act; 42 U.S.C. 1302, 1395g, 1395(l) 1395u, 1395cc, 1395gg, 1395hh, and 1395pp, and 31 U.S.C. 3711.

2. Section 405.301 is revised to read as follows:

§ 405.301 Scope of subpart.

This subpart sets forth the policies and procedures for handling of incorrect payments and recovery of overpayments.

§§ 405.308 through 405.344 [Removed]

3. Sections 405.308 through 405.344 are removed.

B. Subpart G of part 405 is amended as set forth below:

1. The subpart heading is revised to read as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

2. Section 405.701 is amended to revise the section heading, provide paragraph headings, and add a new paragraph (d), to read as follows:

§ 405.701 Basis and scope.

(a) *Statutory basis.* * * *

(b) *Scope.* * * *

(c) *Applicable social security regulations.* * * *

(d) *Other applicable Medicare regulations.* Part 411 of this chapter (Exclusions from Medicare and Limitations of Medicare Payment), and Part 424 of this chapter (Conditions for Medicare Payment) also contain provisions pertinent to the determinations covered under this subpart.

3. Section 405.702 is revised to read as follows:

§ 405.702 Notice of initial determination.

(a) In all cases, with respect to services for which Medicare Part A payment has been claimed by or on behalf of an individual, the Medicare intermediary—

(1) Determines whether the services are covered under Medicare Part A;

(2) Determines whether payment is due and if so, the amount of payment due;

(3) Pays the amount due, if any; and

(4) Gives the individual written notice of the initial determination on the claim.

(b) The intermediary also notifies the provider if—

(1) The services are not covered because they constitute "custodial care"

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or are "not reasonable and necessary"; and

(2) Payment cannot be made because the provider or the individual or both knew, or could reasonably have been expected to know, that the services were not covered.

(c) The notice states in detail the reasons for the determination and informs the individual and the provider of their right to reconsideration if they are dissatisfied with the initial determination.

(d) The intermediary mails the notice to the individual and the provider at their last known addresses.

4. Section 405.704 is updated and revised to read as follows:

§ 405.704 Actions that are initial determinations.

(a) *Determinations that pertain to individual application and entitlement.* Actions subject to this subpart include the following determinations:

(1) Whether the individual is entitled to Medicare Part A or Medicare Part B benefits.

(2) A disallowance of an individual's application for entitlement to hospital or supplementary medical insurance, if the individual fails to submit evidence requested by SSA to support the application. (SSA specifies in the initial determination the conditions of entitlement that the applicant failed to establish by not submitting the requested evidence.

(3) A denial of a request for withdrawal of an application for Medicare Part A or Part B.

(4) A denial of a request for cancellation of a "request for withdrawal".

(5) A determination that an individual, previously determined to be entitled to Medicare benefits is no longer entitled to those benefits, including a determination based on nonpayment of premiums.

(b) *Determinations pertaining to requests for payment under Medicare Part A.* Actions subject to this subpart include determinations with respect to the following:

(1) The coverage of services furnished.

(2) The amount of an applicable deductible.

(3) The application of the coinsurance feature.

(4) The number of days of inpatient care used in relation to the psychiatric hospital 190-day life-time maximum.

(5) [Reserved]

(6) The number of days of SNF care used in the calendar year.

(7) [Reserved]

(8) The physician certification requirement.

(9) The request for payment requirement.

(10) [Reserved]

(11) The medical necessity of services (See Parts 466 and 473 of this chapter for provisions pertaining to initial and reconsidered determinations made by a PRO.

(12) When services are excluded from coverage as custodial care or as not reasonable and necessary, in accordance with Subpart K of part 411 of this chapter, whether the individual or the provider who furnished the services, or both, knew or could reasonably have been expected to know that the services were excluded from coverage.

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under Medicare Part A, including a determination as to whether there has been an overpayment or underpayment of Part A benefits, and if so, the amount.

(14) Whether a waiver of adjustment or recovery under Subpart C of Part 405 of this chapter is appropriate when an overpayment of Medicare Part A benefits has been made with respect to an individual.

5. Section 405.708 is revised to read as follows:

§ 405.708 Effect of initial determination.

An initial determination under § 405.704(b) is final and binding upon the individual on whose behalf Part A payment has been requested or, if that individual is deceased, upon the representative of the individual's estate, unless the determination is reconsidered in accordance with §§ 405.710 through 405.717, or revised in accordance with § 405.750. The individual or the individual's representative is the party to the initial determination.

6. Section 405.710 is revised to read as follows:

§ 405.710 Right to reconsideration.

(a) *Individual's right to reconsideration.* (1) An individual who is a party to an initial determination and who is dissatisfied with the determination may request reconsideration in accordance with § 405.711, regardless of the amount in controversy.

(2) If the individual is deceased, the representative of the estate may request reconsideration.

(b) *Provider's right to reconsideration.* A provider that is a party to an initial determination on a request for payment, and that is dissatisfied with the determination, may request reconsideration in accordance with § 405.711, regardless of the amount in controversy, but only if both of the following conditions are met:

(1) The individual on whose behalf the provider requested payment has indicated in writing that he or she does not intend to request reconsideration.

(2) The intermediary has determined that—

(i) The services are excluded from coverage as custodial care or as not reasonable and necessary; and

(ii) The individual or the provider, or both knew or could reasonably have been expected to know that the services were excluded under subpart K of part 411 of this chapter.

§ 405.715 [Amended]

7. In § 405.715, in paragraph (b), "405.704(a)(12)" is changed to "§ 405.704(b)(12)".

8. Section 405.740 is amended to revise paragraphs (e), (f) and (h) to read as follows:

§ 405.740 Principles for determining the amount in controversy.

* * * * *

(e) Any series of home health visits shall be considered collectively in determining the amount in controversy.

(f) Appeals from determinations pertaining to Part A benefits are not ordinarily additive except when the same factor is at issue in more than one claim.

* * * * *

(h) If payment is made for services that are ordinarily excluded from coverage as custodial care or not reasonable and necessary, the amount in controversy is the amount that the individual would have been charged for the services (less any applicable deductible and coinsurance amounts) if payment had not been made for the services in accordance with Subpart K of Part 411 of this chapter.

II. A new part 411 is added, to redesignate, revise, and amplify the content removed from part 405, Subpart C of this chapter, to read as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

Subpart A—General Exclusions and Exclusion of Particular Services

Sec.
411.1 Basis and scope.
411.2 Conclusive effect of PRO determination on payment of claims.
411.4 Services for which neither the beneficiary nor any other person is legally obligated to pay.
411.6 Services furnished by a Federal provider of services or other Federal agency.

Sec.
411.7 Services that must be furnished at public expense under a Federal law or Federal Government contract.
411.8 Services paid for by a Government entity.
411.9 Services furnished outside the United States.
411.10 Services required as a result of war.
411.12 Charges imposed by an immediate relative or member of the beneficiary's household.
411.15 Particular services excluded from coverage.

Subpart B—Insurance Coverage That Limits Medicare Payment: General Provisions

411.20 Basis and scope.
411.21 Definitions.
411.23 Beneficiary's cooperation.
411.24 Recovery of conditional payments.
411.25 Third party payer's notice of erroneous Medicare primary payment.
411.26 Subrogation and right to intervene.
411.28 Waiver of recovery and compromise of claims.
411.30 Effect of third party on benefit utilization and deductibles.
411.31 Authority to bill third party payers for full charges.
411.32 Basis for Medicare secondary payment.
411.33 Amount of Medicare secondary payment.
411.35 Limitations on charges to a beneficiary or other party when a worker's compensation plan, a no-fault insurer, or an employer group health plan is primary payer.
411.37 Amount of Medicare recovery when a third party payment is made as a result of a judgment or settlement.

Subpart C—Limitations on Medicare Payment for Services Covered Under Workers' Compensation

411.40 General provisions.
411.43 Beneficiary's responsibility with respect to workers' compensation.
411.45 Basis for conditional Medicare payment in workers' compensation cases.
411.46 Lump-sum payments.
411.47 Apportionment of a lump-sum compromise settlement of a workers' compensation claim.

Subpart D—Limitations on Medicare Payment for Services Covered Under Liability or No-Fault Insurance

411.50 General provisions.
411.51 Beneficiary's responsibility with respect to no-fault insurance.
411.52 Basis for conditional Medicare payment in liability cases.
411.53 Basis for conditional Medicare payment in no-fault cases.
411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

Subpart E—Limitations on Payment for Services Furnished to End-Stage Renal Disease Beneficiaries Who Are Also Covered Under an Employer Group Health Plan

411.60 Scope and definitions.
411.62 Medicare benefits secondary to employer group health plan benefits.
411.65 Basis for conditional Medicare payments.

Subpart F—Limitations on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals Who Are Also Covered Under an Employer Group Health Plan

411.70 General provisions.
411.72 Medicare benefits secondary to employer group health plan benefits.
411.75 Basis for Medicare primary payments.

Subparts G–J—[Reserved]

Subpart K—Payment for Certain Excluded Services

411.400 Payment for custodial care and services not reasonable and necessary.
411.402 Indemnification of beneficiary.
411.404 Criteria for determining that a beneficiary knew that services were excluded from coverage as custodial care or as not reasonable and necessary.
411.406 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

Authority: Secs. 1102, 1862 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

§ 411.1 Basis and scope.

(a) *Statutory basis.* Sections 1814(c), 1835(d), and 1862 of the Act exclude from Medicare payment certain specified services. The Act provides special rules for payment of services furnished by Federal providers or agencies (sections 1814(c) and 1835(d)), by hospitals and physicians outside the United States (sections 1814(f) and 1862(a)(4)), and by hospitals and SNFs of the Indian Health Service (section 1880).

(b) *Scope.* This subpart identifies:

(1) The particular t ypes of services that are excluded;

(2) The circumstances under which Medicare denies payment for certain services that are usually covered; and

(3) The circumstances under which Medicare pays for services usually excluded from payment.

§ 411.2 Conclusive effect of PRO determinations on payment of claims.

If a utilization and quality control peer review organization (PRO) has assumed review responsibility, in accordance with Part 466 of this chapter, for services furnished to Medicare beneficiaries, Medicare payment is not made for those services unless the conditions of Subpart C of Part 466 of this chapter are met.

§ 411.4 Services for which neither the beneficiary nor any other person is legally obligated to pay.

(a) *General rule.* Except as provided in § 411.8(b) (for services paid by a governmental entity), Medicare does not pay for a service if—

(1) The beneficiary has no legal obligation to pay for the service; and

(2) No other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.

(b) *Special conditions for services furnished to individuals in custody of penal authorities.* Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:

(1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.

(2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.

§ 411.6 Services furnished by a Federal provider of services or other Federal agency.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, Medicare does not pay for services furnished by a Federal provider of services or other Federal agency.

(b) *Exceptions.* Payment may be made—

(1) For emergency hospital services, if the conditions of § 424.103 of this chapter are met;

(2) For services furnished by a participating Federal provider which HCFA has determined is providing services to the public generally as a community institution or agency;

(3) For services furnished by participating hospitals and SNFs of the Indian Health Service; and

(4) For services furnished under arrangements [as defined in § 409.3 of

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this chapter) made by a participating hospital.

§ 411.7 Services that must be furnished at public expense under a Federal law or Federal Government contract.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, payment may not be made for services that any provider or supplier is obligated to furnish at public expense, in accordance with a law of, or a contract with, the United States.

(b) *Exception.* Payment may be made for services that a hospital or SNF of the Indian Health Service is obligated to furnish at public expense.

§ 411.8 Services paid for by a Government entity.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, Medicare does not pay for services that are paid for directly or indirectly by a government entity.

(b) *Exceptions.* Payment may be made for the following:

(1) Services furnished under a health insurance plan estabilished for employees of the government entity.

(2) Services furnished under a title of the Social Security Act other than title XVIII.

(3) Services furnished in or by a participating general or special hospital that—

(i) Is operated by a State or local government agency; and

(ii) Serves the general community.

(4) Services furnished in a hospital or elsewhere, as a means of controlling infectious diseases or because the individual is medically indigent.

(5) Services furnished by a participating hospital or SNF of the Indian Health Service.

(6) Services furnished by a public or private health facility that receives government funds under a health support program that requires the facility to seek reimbursement, for services not covered under Medicare, from all available sources such as private insurance, patients' cash resources, etc.

(7) Rural health clinic services that meet the requirements set forth in Part 491 of this chapter.

§ 411.9 Services furnished outside the United States

(b) *Basic rule.* Except as specified in paragraph (b) of this section, Medicare does not pay for services furnished outside the United States. For purposes of this paragraph (a), the following rules apply:

(1) The United States includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, The Northern Mariana Islands, and for purposes of services rendered on board ship, the territorial waters adjoining the land areas of the United States.

(2) Services furnished on board ship are considered to have been furnished in United States territorial waters if they were furnished while the ship was in a port of one of the jurisdictions listed in paragraph (a)(1) of this section, or within 6 hours before arrival at, or 6 hours after departure from, such a port.

(3) A hospital that is not physically situated in one of the jurisdictions listed in paragraph (a)(1) of this section is considered to be outside the United States, even if it is owned or operated by the United States Government.

(b) *Exception.* Under the circumstances specified in Subpart H of Part 424 of this chapter, payment may be made for covered inpatient services furnished in a foreign hospital and, on the basis of an itemized bill, for covered physicians's services and ambulance service furnished in connection with those inpatient services, but only for the period during which the inpatient hospital services are furnished.

§ 411.10 Services required as a result of war.

Medicare does not pay for services that are required as a result of war, or an act of war, that occurs after the effective date of a beneficiary's current coverage for hospital insurance benefits or supplementary medical insurance benefits.

§ 411.12 Charges imposed by an immediate relative or member of the beneficiary's household.

(a) *Basic rule.* Medicare does not pay for services usually covered under Medicare if the charges for those services are imposed by—

(1) An immediate relative of the beneficiary; or

(2) A member of the beneficiary's household.

(b) *Definitions.* As used in this section—"*Immediate relative*" means any of the following:

(1) Husband or wife.

(2) Natural or adoptive parent, child, or sibling.

(3) Stepparent, stepchild, stepbrother, or stepsister.

(4) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(5) Grandparent or grandchild.

(6) Spouse of grandparent or grandchild.

"*Member of the household*" means any person sharing a common abode as part of a single family unit, including domestic employees and others who live together as part of a family unit, but not including a mere roomer or boarder.

"*Professional corporation*" means a corporation that is completely owned by one or more physicians and is operated for the purpose of conducting the practice of medicine, osteopathy dentistry, podiatry, optometry, or chiropractic, or is owned by other health care professionals as authorized by State law.

(c) *Applicobility of the exclusion.* The exclusion applies to the following charges in the specified circumstances:

(1) *Physicians's services.*

(i) Charges for physicians' services furnished by an immediate relative of the beneficiary or member of the beneficiary's household, even if the bill or claim is submitted by another individual or by an entity such as a partnership or a professional corporation.

(ii) Charges for services furnished incident to a physician's professional services (for example by the physician's nurse or technician), only if the physician who ordered or supervised the services has an excluded relationship to the beneficiary.

(2) *Services other than physicians' services.*

(i) Charges imposed by an individually owned provider or supplier if the owner has an excluded relationship to the beneficiary; and

(ii) Charges imposed by a partnership if any of the partners has an excluded relationship to the beneficiary.

(d) *Exception to the exclusion.* The exclusion does not apply to charges imposed by a corporation other than a professional corpration.

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as*—

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury; or

(2) Examinations required by insurance companies, business establishments, government agencies, or other third parties.

(b) *Eyeglasses or contact lenses, except for* post-surgical customarily used during convalescence from eye surgery in which the lens of the eye was removed (e.g., cataract surgery); or prosthetic lenses for patients who lack the lens of the eye because of congential absence or surgical removal.

(c) *Eye examinations* for the purpose of prescribing, fitting, or changing eyeglasses or contact lenses for refractive error only and procedures performed in the course of any eye examination to determine the refractive state of the eyes, without regard to the reason for the performance of the refractive procedures. Refractive procedures are excluded even when performed in connection with otherwise covered diagnosis or treatment of illness or injury.

(d) *Hearing aids* or examination for the purpose of prescribing, fitting, or changing hearing aids.

(e) *Immunizations, except for*—

(1) Vaccinations or inoculations directly related to the treatment of an injury or direct exposure such as antirabies treatment, tetanus antitoxin, or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin; and

(2) Pneumococcal vaccinations that are reasonable and necessary for the prevention of illness.

(f) *Orthopedic shoes* or other supportive devices for the feet, *except when* shoes are integral parts of leg braces.

(g) *Custodial care, except as necessory* for the palliation or management of terminal illness, as provided in Part 418 of this chapter. (Custodial care is any care that does not meet the requirements for coverage as SNF care as set forth in §§ 409.30 through 409.35 of this chapter.)

(h) *Cosmetic surgery and related services,* except as required for the prompt repair of accidental injury or to improve the functioning of a malformed body member.

(i) *Dental services* in connection with the care, treatment, filling, removal, or replacement of teeth, or structures directly supporting the teeth, *except for* inpatient hospital services in connection with such dental procedures when hospitalization is required because of—

(1) The individual's underlying medical condition and clinical status; or

(2) The severity of the dental procedures.[1]

(j) *Personal comfort services, except* as necessary for the palliation or management of terminal illness as provided in Part 418 of this chapter. The use of a television set or a telephone are examples of personal *comfort* services.

(k) *Any services that are not reasonable and necessary* for one of the following purposes:

(1) For the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(2) In the case of hospice services, for the palliation or management of terminal illness, as provided in Part 418 of this chapter.

(3) In the case of pneumococcal vaccine for the prevention of illness.

(4) In the case of the patient outcome assessment program established under section 1875(c) of the Act, for carrying out the purpose of that section.

(l) *Foot care*—(1) *Basic rule.* Except as provided in paragraph (1)(2) of this section, any services furnished in connection with the following:

(i) *Routine foot care,* such as the cutting or removal of corns, or calluses, the trimming of nails, routine hygienic care (preventive maintenance care ordinarily within the realm of self care), and any service performed in the absence of localized illness, injury, or symptoms involving the feet.

(ii) *The evaluation or treatment of subluxations of the feet* regardless of underlying pathology. (Subluxations are structural misalignments of the joints, other than fractures or complete dislocations, that require treatment only by nonsurgical methods.

(iii) *The evaluation or treatment of flattened arches* (including the prescription of supportive devices) regardless of the underlying pathology.

(2) *Exceptions.* (i) Treatment of warts in not excluded.

(ii) Treatment of mycotic toenails may be covered if it is furnished no more often than every 60 days or the billing physician documents the need for more frequent treatment.

(iii) The services listed in paragraph (l)(1) of this section are not excluded if they are furnished—

(A) As an incident to, at the same time as, or as a necessary integral part of a primary covered procedure performed on the foot; or

(B) As initial diagnostic services (regardless of the resulting diagnosis) in connection with a specific symptom or complaint that might arise from a condition whose treatment would be covered.

(m) *Services to hospital inpatients* (1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.

(2) *Exceptions.* Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis, and services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4) of this chapter, are not excluded.

(Services subject to exclusion under this paragraph include, but are not limited to, clinical laboratory services, pacemakers, artificial limbs, knees, and hips, intraocular lenses, total parenteral nutrition, and services incident to physicians' services.)

[1] Before July 1981, inpatient hospital care in connection with dental procedures was covered only when required by the patient's underlying medical condition and clinical status.

Subpart B—Insurance Coverage That Limits Medicare Payment: General Provisions

§ 411.20 Basis and scope.

(a) *Statutory basis.* (1) Section 1862(b)(1) of the Act precludes Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made promptly under any of the following:

(i) Workers' compensation.

(ii) Liability insurance.

(iii) No-fault insurance.

(2) Sections 1862 (b)(2) and (b)(3) of the Act (omitting the word "promptly") preclude Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made under an employer group health plan, with respect to a beneficiary who is under age 65 and entitled to Medicare solely on the basis of ESRD or who is age 65 or over and either employed, or the spouse of an employed individual of any age.

(b) *Scope.* This subpart sets forth the rules that are applicable to all or several of the types of insurance coverage that are the subject of Subparts C through F of this part.

§ 411.21 Definitions.

As used in this subpart and Subparts C through F of this part—"*Conditional payment*" means a Medicare payment for services for which another insurer is primary payer, made either on the bases set forth in Subparts C through F of this part, or because the intermediary or carrier did not know that the other coverage existed.

"*Coverage*" or "*covered services*", when used in connection with third party payments, means services for which a third party payer would pay if a proper claim were filed.

"*Plan*" means any arrangement, oral or written, by one or more entities, to provide health benefits or medical care or assume legal liability for injury or illness.

"*Prompt*" or "*promptly*", when used in connection with third party payments, except as provided in § 411.50, for payments by liability insurers, means

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payment within 120 days after receipt of the claim.

"Proper claim" means a claim that is filed timely and meets all other claim filing requirements specified by the plan, program, or insurer.

"Secondary", when used to characterize Medicare benefits, means that those benefits are payable only to the extent that payment has not been made and cannot reasonably be expected to be made under other coverage that is primary to Medicare.

"Secondary payments" means payments made for Medicare covered services or portions of services that are not payable under other coverage that is primary to Medicare.

"Third party payer" means an insurance policy, plan, or program that is primary to Medicare.

"Third party payment" means payment by a third party payer for services that are also covered under Medicare.

§ 411.23 Beneficiary's cooperation.

(a) If HCFA takes action to recover conditional payments, the beneficiary must cooperate in the action.

(b) If HCFA's recovery action is unsuccessful because the beneficiary does not cooperate, HCFA may recover from the beneficiary.

§ 411.24 Recovery of conditional payments.

If a Medicare conditional payment is made, the following rules apply:

(a) *Release of information.* The filing of a Medicare claim by on or behalf of the beneficiary constitutes an express authorization for any entity, including State Medicaid and workers' compensation agencies, and data depositories, that possesses information pertinent to the Medicare claim to release that information to HCFA. This information will be used only for Medicare claims processing and for coordination of benefits purposes.

(b) *Right to initiate recovery.* HCFA may initiate recovery as soon as it learns that payment has been made or could be made under workers' compensation, any liability or no-fault insurance, or an employer group health plan.

(c) *Amount of recovery.* HCFA may recover an amount equal to the Medicare payment or the amount payable by the third party, whichever is less. (The "amount payable by the third party" does not include the doubled portion of damages the third party may have paid under section 1862(b)(5) of the Act or any other punitive damages.)

(d) *Methods of recovery.* HCFA may recover by direct collection or by offset against any monies HCFA owes the entity responsible for refunding the conditional payment.

(e) *Recovery from third parties.* HCFA has a direct right of action to recover from any entity responsible for making primary payment. This includes an employer, an insurance carrier, plan, or program, and a third party administrator.

(f) *Claims filing requirements.* (1) HCFA may recover without regard to any claims filing requirements that the insurance program or plan imposes on the beneficiary or other claimant such as a time limit for filing a claim or a time limit for notifying the plan or program about the need for or receipt of services.

(2) However, HCFA will not recover its payment for particular services in the face of a claims filing requirement unless it has filed a claim for recovery by the end of the year following the year in which the Medicare intermediary or carrier that paid the claim has notice that the third party is primary to Medicare for those particular services. (A notice received during the last three months of a year is considered received during the following year.)

(g) *Recovery from parties that receive third party payments.* HCFA has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, State agency or private insurer that has received a third party payment.

(h) *Reimbursement to Medicare.* If the beneficiary or other party receives a third party payment, the beneficiary or other party must reimburse Medicare within 60 days.

(i) *Special rules.* (1) In the case of liability insurance settlements and employer group health plan and no-fault insurance claims that are disputed, the following rule applies: If Medicare is not reimbursed as required by paragraph (h) of this section, the third party payer must reimburse Medicare even though it has already reimbursed the beneficiary or other party.

(2) The provisions of paragraph (i)(1) of this section also apply if a third party payer makes its payment to an entity other than Medicare when it is, or should be, aware that Medicare has made a conditional primary payment.

(3) In situations that involve procurement costs, the rule of § 411.37(b) applies.

(j) *Recovery against Medicaid agency.* If a third party payment is made to a State Medicaid agency and that agency does not reimburse Medicare, HCFA may reduce any Federal funds due the Medicaid agency (under title XIX of the Act) by an amount equal to the Medicare payment or the third party payment, whichever is less.

(k) *Recovery against Medicare contractor.* If a Medicare contractor, including an intermediary or carrier also insures, underwrites, or administers as a third party administrator, a program or plan that is primary to Medicare, and does not reimburse Medicare, HCFA may offset the amount owed against any funds due the intermediary or carrier under title XVIII of the Act or due the contractor under the contract.

(l) *Recovery when there is failure to file a proper claim*—(1) *Basic rule.* If Medicare makes a conditional payment with respect to services for which the beneficiary or provider or supplier has not filed a proper claim with a third party payer, and Medicare is unable to recover from the third party payer, Medicare may recover from the beneficiary or provider or supplier that was responsible for the failure to file a proper claim.

(2) *Exceptions:* (i) This rule does not apply in the case of liability insurance nor when failure to file a proper claim is due to mental or physical incapacity of the beneficiary.

(ii) HCFA will not recover from providers or suppliers that are in compliance with the requirements of § 489.20 of this chapter and can show that the reason they failed to file a proper claim is that the beneficiary, or someone acting on his or her behalf, failed to give, or gave erroneous, information regarding coverage that is primary to Medicare.

§ 411.25 Third party payer's notice of mistaken Medicare primary payment.

(a) If a third party payer learns that HCFA has made a Medicare primary payment for services for which the third party payer has made or ought to have made primary payment, it must give HCFA notice to that effect.

(b) The notice must describe the specific situation and the circumstances (such as the type of insurance coverage) and, if appropriate, the time period during which the insurer is primary to Medicare.

(c) In the case of plan that is not a self-insured or self-administered plan, the requirements of this section apply to the insurer, underwriter, or third party administrator.

§ 411.26 Subrogation and right to intervene.

(a) *Subrogation.* With respect to services for which Medicare paid, HCFA is subrogated to any individual, provider, supplier, physician, private insurer, State agency, attorney, or any other entity entitled to payment by a third party payer.

(b) *Right to intervene.* HCFA may join or intervene in any action related to the events that gave rise to the need for services for which Medicare paid.

§ 411.28 Waiver of recovery and compromise of claims.

(a) HCFA may waive recovery, in whole or in part, if the probability of recovery, or the amount involved, does not warrant pursuit of the claim.

(b) General rules applicable to compromise of claims are set forth in Subpart F of Part 401 and § 405.374 of this chapter.

(c) Other rules pertinent to recovery are contained in Subpart C of Part 405 of this chapter.

§ 411.30 Effect of third party payment on benefit utilization and deductibles.

(a) *Benefit utilization.* Inpatient psychiatric hospital and SNF care that is paid for by a third party payer is not counted against the number of inpatient care days available to the beneficiary under Medicare Part A.

(b) *Deductibles.* Expenses for Medicare covered services that are paid for by third party payers are credited toward the Medicare Part A and Part B deductibles.

§ 411.31 Authority to bill third party payers for full charges.

(a) The fact that Medicare payments are limited to the DRG amount, or the reasonable charge, reasonable cost, capitation or fee schedule rate, does not affect the amount that a third party payer may pay.

(b) With respect to workers' compensation plans, no-fault insurers, and employer group health plans, a provider or supplier may bill its full charges and expect those charges to be paid unless there are limits imposed by laws other than title XVIII of the Act or by agreements with the third party payer.

§ 411.32 Basis for Medicare secondary payments.

(a) *Basic rules.* (1) Medicare benefits are secondary to benefits payable by a third party payer even if State law or the third party payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries.

(2) Except as provided in paragraph (b) of this section, Medicare makes secondary payments, within the limits specified in paragraph (c) of this section and in § 411.33, to supplement the third party payment if that payment is less than the charges for the services and, in the case of services paid on other than a reasonable charge basis, less than the gross amount payable by Medicare under § 411.33(e).

(b) *Exception.* Medicare does not make a secondary payment if the provider or supplier is either obligated to accept, or voluntarily accepts, as full payment, a third party payment that is less than its charges.

(c) *General limitation: Failure to file a proper claim.* When a provider or supplier, or a beneficiary who is not physically or mentally incapacitated, receives a reduced third party payment because of failure to file a proper claim, the Medicare secondary payment may not exceed the amount that would have been payable under § 411.33 if the third party payer had paid on the basis of a proper claim.

The provider, supplier, or beneficiary must inform HCFA that a reduced payment was made, and the amount that would have been paid if a proper claim had been filed.

§ 411.33 Amount of Medicare secondary payment.

(a) *Services reimbursed by Medicare on a reasonable charge basis.* Except as specified in paragraph (c) of this section, the Medicare secondary payment will be the lowest of the following:

(1) The actual charge by the supplier minus the amount paid by the third party payer.

(2) The amount that Medicare would pay if the services were not covered by a third party payer.

(3) The higher of the Medicare reasonable charge or other amount which would be payable under Medicare (without regard to any applicable Medicare deductible or coinsurance amounts) or the third party payer's allowable charge (without regard to any deductible or co-insurance imposed by the policy or plan) minus the amount actually paid by the third party payer.

(b) *Example:* An individual received treatment from a physician for which the physician charged $175. The third party payer allowed $150 of the charge and paid 80 percent of this amount or $120. The Medicare reasonable charge for this treatment is $125. The individual's Part B deductible had been met. As secondary payer, Medicare pays the lowest of the following amounts:

(1) Excess of actual charge minus the third party payment: $175−120=$55.

(2) Amount Medicare would pay if the services were not covered by a third party payer: .80×$125=$100.

(3) Third party payer's allowable charge without regard to its coinsurance (since that amount is higher than the Medicare reasonable charge in this case) minus amount paid by the third party payer: $150−120=$30.

The Medicare payment is $30.

(c) *Exception.* When an employer plan is primary to Medicare for ESRD beneficiaries, for services paid on a reasonable charge or monthly capitation rate basis, the Medicare secondary payment amount is the lowest of the following:

(1) The actual charge by the supplier, minus the amount paid by the employer plan.

(2) The amount that Medicare would pay if the services were not covered by the employer plan.

(3) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer, minus the amount actually paid by the employer plan as primary payer.

(d) *Example:* Using the amounts specified in paragraph (b) of this section, the Medicare secondary payment for services furnished to an ESRD beneficiary is the lowest of the following:

(1) Excess of actual charge over the employer plan's payment: $175−$120=$55.

(2) Amount Medicare would pay if the services were not covered by employer plan: .80×$125=$100.

(3) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer, minus the amount actually paid by the employer plan as primary payer ($100+75=$175−$120=$55. The Medicare payment is $55.

(e) *Services reimbursed on a basis other than reasonable charge or monthly capitation rate.* The Medicare secondary payment is the lowest of the following:

(1) The gross amount payable by Medicare (that is, the amount payable without considering the effect of the Medicare deductible and coinsurance or the payment by the third party payer), minus the applicable Medicare deductible and coinsurance amounts.

(2) The gross amount payable by Medicare, minus the amount paid by the third party payer.

(3) The provider's charges (or the amount the provider is obligated to accept as payment in full; if that is less than the charges), minus the amount payable by the third party payer.

(4) The provider's charges (or the amount the provider is obligated to accept as payment in full if that is less than the charges), minus the applicable Medicare deductible and coinsurance amounts.

(f) *Examples:*

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(1) A hospital furnished 7 days of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totaled $2,800. The third party payer paid $2,360. No part of the Medicare inpatient hospital deductible of $520 had been met. If the gross amount payable by Medicare in this case is $2,700, then as secondary payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare inpatient hospital deductible:
$2,700−$520=$2,180.

(ii) The gross amount payable by Medicare minus the third party payment: $2,700−$2,360=$340.

(iii) The provider's charges minus the third party payment:
$2,800−$2,360=$440.

(iv) The provider's charges minus the Medicare deductible:
$2,800−$520=$2,280. Medicare's secondary payment is $340 and the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $2,700. The $520 deductible was satisfied by the third party payment so that the beneficiary incurred no out-of-pocket expenses.

(2) A hospital furnished 1 day of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totalled $750. The third party payer paid $450. No part of the Medicare inpatient hospital deductible had been met previously. The third party payment is credited toward that deductible. If the gross amount payable by Medicare in this case is $850, then as secondary payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare deductible: $850−$520=$330.

(ii) The gross amount payable by Medicare minus the third party payment: $850−$450=$400.

(iii) The provider's charges minus the third party payment: $750−$450=$300.

(iv) The provider's charges minus the Medicare deductible: $750−$520=$230. Medicare's secondary payment is $230, and the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $680. The hospital may bill the beneficiary $70 (the $520 deductible minus the $450 third party payment). This fully dischargea the beneficiary's deductible obligation.

(3) An ESRD beneficiary received 8 dialysis treatments for which a facility charged $160 per treatment for a total of $1,280. No part of the beneficiary's $75 Part B deductible had been met. The third party payer paid $1,024 for Medicare-covered services. The composite rate per dialysis treatment at this facility is $131 or $1,048 for 8 treatments. As secondary payer, Medicare pays the lowest of the following:

(i) The gross amoung payable by Medicare minus the applicable Medicare deductible and coinsurance:
$1,048−$75−$194.60=$778.40. (The coinsurance is calculated as follows:
$1,048 composite rate−$75 deductible=$973×20=$194.60).

(ii) The gross amount payable by Medicare minus the third party payment: $1,048−$1,024=$24.

(iii) The provider's charges minus the third party payment:
$1,280−$1,024=$256.

(iv) The provider's charges minus the Medicare deductible:
$1,280−$75=$1,205. Medicare pays $24. The beneficiary's Medicare deductible and coinsurance were met by the third party payment.

(4) A hospital furnished 5 days of inpatient care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services were $4,000 and the gross amount payable was $3,500. The provider agreed to accept $3,000 from the third party as payment in full. The third party payer paid $2,900 due to a deductible requirement under the third party plan. Medicare considers the amount the provider is obligated to accept as full payment ($3,000) to be the provider charges. The Medicare secondary payment is the lowest of the following:

(i) The gross amount payable by Medicare minus the Medicare inpatient deductible: $3,500−$520=$2,980.

(ii) The gross amount payable by Medicare minus the third party payment: $3,500−$2,900=$600.

(iii) The provider's charge minus the third party payment:
$3,000−$2,900=$100.

(iv) The provider's charges minus the Medicare inpatient deductible:
$3,000−$520=$2,480. The Medicare secondary payment is $100. When Medicare is the secondary payer, the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $3,000. The beneficiary has no liability for Medicare-covered services since the third party payment satisfied the $520 deductible.

§ 411.35 Limitations on charges to a beneficiary or other party when a workers' compensation plan, a no-fault insurer, or an employer group health plan is primary payer.

(a) *Definition.* As used in this section. "Medicare-covered services" means services for which Medicare benefits are payable or would be payable except for the Medicare deductible and coinsurance provisions and the amounts payable by the third party payer.

(b) *Applicability.* This section applies when a workers' compensation plan, a no-fault insurer or an employer group health plan is primary to Medicare.

(c) *Basic rule.* Except as provided in paragraph (d) of this section, the amounts the provider or supplier may collect or seek to collect, for the Medicare-covered services from the beneficiary or any entity other than the workers' compensation plan, the no-fault insurer, or the employer plan and Medicare, are limited to the following:

(1) The amount paid or payable by the third party payer to the beneficiary. If this amount exceeds the amount payable by Medicare (without regard to deductible or coinsurance), the provider or supplier may retain the third party payment in full without violating the terms of the provider agreement or the conditions of assignment.

(2) The amount, if any, by which the applicable Medicare deductible and coinsurance amounts exceed any third party payment made or due to the beneficiary or to the provider or supplier for the medical services.

(3) The amount of any charges that may be made to a beneficiary under § 413.35 of this chapter when cost limits are applied to the services, or under § 489.32 of this chapter when the services are partially covered, but only to the extent that the third party payer is not responsible for those charges.

(d) *Exception.* The limitations of paragraph (c) of this section do not apply if the services were furnished by a supplier that is not a participating supplier and has not accepted assignment for the services or claimed payment under § 424.64 of this chapter.

§ 411.37 Amount of Medicare recovery when a third party payment is made as a result of a judgment or settlement.

(a) *Recovery against the party that received payment.*—(1) *General rule.* Medicare reduces its recovery to take account of the cost of procuring the judgment or settlement, as provided in this section, if—

(i) Procurement costs are incurred because the claim is disputed; and

(ii) Those costs are borne by the party against which HCFA seeks to recover.

(2) *Special rule.* If HCFA must file suit because the party that received payment opposes HCFA's recovery, the recovery amount is as set forth in paragraph (e) of this section.

(b) *Recovery against the third party payer.* If HCFA seeks recovery from the third party payer, in accordance with

§ 411.24(i), the recovery amount will be no greater than the amount determined under paragraph (c) or (d) or (e) of this section.

(c) *Medicare payments are less than the judgment or settlement amount.* If Medicare payments are less than the judgment or settlement amount, the recovery is computed as follows:

(1) Determine the ratio of the procurement costs to the total judgment or settlement payment.

(2) Apply the ratio to the Medicare payment. The product is the Medicare share of procurement costs.

(3) Subtract the Medicare share of procurement costs from the Medicare payments. The remainder is the Medicare recovery amount.

(d) *Medicare payments equal or exceed the judgment or settlement amount.* If Medicare payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs.

(e) *HCFA incurs procurement costs because of opposition to its recovery.* If HCFA must bring suit against the party that received payment because that party opposes HCFA's recovery, the recovery amount is the lower of the following:

(1) Medicare payment.

(2) The total judgment or settlement amount, minus the party's total procurement cost.

Subpart C—Limitations on Medicare Payment for Services Covered under Workers' Compensation

§ 411.40 General provisions.

(a) *Definition "Workers' compensation plan of the United States"* includes the workers' compensation plans of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands, as well as the systems provided under the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act.

(b) *Limitations on Medicare payment.* (1) Medicare does not pay for any services for which—

(i) Payment has been made, or can reasonably be expected to be made promptly under a workers' compensation law or plan of the United States or a State; or

(ii) Payment could be made under the Federal Black Lung Program, but is precluded solely because the provider of the services has failed to secure, from the Department of Labor, a provider number to include in the claim.

(2) If the payment for a service may not be made under workers' compensation because the service is furnished by a source not authorized to provide that service under the particular workers' compensation program. Medicare pays for the service if it is a covered service.

(3) Medicare makes secondary payments in accordance with § 411.32 and § 411.33.

§ 411.43 Beneficiary's responsibility with respect to workers' compensation.

(a) The beneficiary is responsible for taking whatever action is necessary to obtain any payment that can reasonably be expected under workers' compensation.

(b) Except as specified in § 411.45(a), Medicare does not pay until the beneficiary has exhausted his or her remedies under workers' compensation.

(c) Except as specified in § 411.45(b), Medicare does not pay for services that would have been covered under workers' compensation if the beneficiary had filed a proper claim.

(d) However, if a claim is denied for reasons other than not being a proper claim. Medicare pays for the services if they are covered under Medicare.

§ 411.45 Basis for conditional Medicare payment in workers' compensation cases.

A conditional Medicare payment may be made under either of the following circumstances:

(a) The beneficiary has filed a proper claim for workers' compensation benefits, but the intermediary or carrier determines that the workers' compensation carrier will not pay promptly. This includes cases in which a workers' compensation carrier has denied a claim.

(b) The beneficiary, because of physical or mental incapacity, failed to file a proper claim.

§ 411.46 Lump-sum payments.

(a) *Lump-sum commutation of future benefits.* If a lump-sum compensation award stipulates that the amount paid is intended to compensate the individual for all future medical expenses required because of the work-related injury or disease, Medicare payments for such services are excluded until medical-expenses related to the injury or disease equal the amount of the lump-sum payment.

(b) *Lump-sum compromise settlement.* (1) A lump-sum compromise settlement is deemed to be a workers' compensation payment for Medicare purposes, even if the settlement agreement stipulates that there is no liability under the workers' compensation law or plan.

(2) If a settlement appears to represent an attempt to shift to Medicare the responsibility for payment of medical expenses for the treatment of a work-related condition, the settlement will not be recognized. For example, if the parties to a settlement attempt to maximize the amount of disability benefits paid under workers' compensation by releasing the workers' compensation carrier from liability for medical expenses for a particular condition even though the facts show that the condition is work-related, Medicare will not pay for treatment of that condition.

(c) *Lump-sum compromise settlement: Effect on services furnished before the date of settlement.* Medicare pays for medical expenses incurred before the lump-sum compromise settlement only to the extent specified in § 411.47.

(d) *Lump-sum compromise settlement: Effect on payment for services furnished after the date of settlement.*—(1) *Basic rule.* Except as specified in paragraph (d)(2) of this section, if a lump-sum compromise settlement forecloses the possibility of future payment of workers' compensation benefits, medical expenses incurred after the date of the settlement are payable under Medicare.

(2) *Exception.* If the settlement agreement allocates certain amounts for specific future medical services, Medicare does not pay for those services until medical expenses related to the injury or disease equal the amount of the lump-sum settlement allocated to future medical expenses.

§ 411.47 Apportionment of a lump-sum compromise settlement of a workers' compensation claim.

(a) *Determining amount of compromise settlement considered as a payment for medical expenses.* (1) If a compromise settlement allocates e portion of the payment for medical expenses and also gives reasonable recognition to the income replacement element, that apportionment may be accepted as a basis for determining Medicare payments.

(2) If the settlement does not give reasonable recognition to both elements of a workers' compensation award or does not apportion the sum granted, the portion to be considered as payment for medical expenses is computed as follows:

(i) Determine the ratio of the amount awarded (less the reasonable and necessary costs incurred in procuring the settlement) to the total amount that would have been payable under workers' compensation if the claim had not been compromised.

(ii) Multiply that ratio by the total medical expenses incurred as a result of

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the injury or disease up to the date of the settlement. The product is the amount of the workers' compensation settlement to be considered as payment for medical expenses.

Example: As the result of a work injury, an individual suffered loss of income and incurred medical expenses for which the total workers' compensation payment would have been $24,000 if the case had not been compromised. The medical expenses amounted to $18,000. The workers' compensation carrier made a settlement with the beneficiary under which it paid $8,000 in total. A separate award was made for legal fees. Since the workers' compensation compromise settlement was for one-third of the amount which would have been payable under workers' compensation had the case not been compromised ($8,000/$24,000 = ⅓), the workers' compensation compromise settlement is considered to have paid for one-third of the total medical expenses (⅓ × $18,000 = $6,000).

(b) *Determining the amount of the Medicare overpayment.* When conditional Medicare payments have been made, and the beneficiary receives a compromise settlement payment, the Medicare overpayment is determined as set forth in this paragraph (b). The amount of the workers' compensation payment that is considered to be for medical expenses (as determined under paragraph (a) of this section) is applied, at the workers' compensation rate of payment prevailing in the particular jurisdiction, in the following order.

(1) First to any beneficiary payments for services payable under workers' compensation but not covered under Medicare.

(2) Then to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part B. (These include deductible and coinsurance amounts and, in unassigned cases, the charge in excess of the reasonable charge.)

(3) Last to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part A. (These include Part A deductible and coinsurance amounts and charges for services furnished after benefits are exhausted.

The difference between the amount of the workers' compensation payment for medical expenses and any beneficiary payments constitutes the Medicare overpayment. The beneficiary is liable for that amount.

Example: In the example in paragraph (a) of this section, it was determined that the workers' compensation settlement paid for $6,000 of the total medical expenses. The $18,000 in medical expenses included $1,500 in charges for services not covered under Medicare, $7,500 in charges for services covered under Medicare Part B, and $9,000 in hospital charges for services covered under Medicare Part A. All charges were at the workers' compensation payment rate, that is, in amounts the provider or supplier must accept as payment in full.

The Medicare reasonable charge for physicians' services was $7,000 and Medicare paid $5,600 (80 percent of the reasonable charge). The Part B deductible had been met. The Medicare payment rate for the hospital services was $8,000. Medicare paid the hospital $7,480 ($8,000—the Part A deductible of $520).

In this situation, the beneficiary's payments totalled $3,920:

Services not covered under Medicare	$1,500
Excess of physicians' charges over reasonable charges	500
Medicare Part B coinsurance	1,400
Part A deductible	520
Total	3,920

The Medicare overpayment, for which the beneficiary is liable, would be $2,080 ($6,000–$3,920).

Subpart D—Limitations on Medicare Payment for Services Covered Under Liability or No-Fault Insurance

§ 411.50 General provisions.

(a) *Limits on applicability.* The provisions of this Subpart C do not apply to any services required because of accidents that occurred before December 5, 1980.

(b) *Definitions.*

"Automobile" means any self-propelled land vehicle of a type that must be registered and licensed in the State in which it is owned.

"Liability insurance" means insurance (including a self-insured plan) that provides payment based on legal liability for injury or illness or damage to property. It includes, but is not limited to, automobile liability insurance, uninsured motorist insurance, underinsured motorist insurance, homeowners' liability insurance, malpractice insurance, product liability insurance, and general casualty insurance.

"Liability insurance payment" means a payment by a liability insurer, or an out-of-pocket payment, including a payment to cover a deductible required by a liability insurance policy, by any individual or other entity that carries liability insurance or is covered by a self-insured plan.

"No-fault insurance" means insurance that pays for medical expenses for injuries sustained on the property or premises of the insured, or in the use, occupancy, or operation of an automobile, regardless of who may have been responsible for causing the accident. This insurance includes but is not limited to automobile, homeowners, and commercial plans. It is sometimes called "medical payments coverage", "personal injury protection", or "medical expense coverage".

"Prompt" or *"promptly"*, when used in connection with payment by a liability insurer means payment within 120 days after the earlier of the following:

(1) The date a claim is filed with an insurer or a lien is filed against a potential liability settlement.

(2) The date the service was furnished or, in the case of inpatient hospital services, the date of discharge.

"Self-insured plan" means a plan under which an individual, or a private or governmental entity, carries its own risk instead of taking out insurance with a carrier. The term includes a plan of an individual or other entity engaged in a business, trade, or profession, a plan of non-profit organization such as a social, fraternal, labor, educational, religious, or professional organization, and the plan established by the Federal government to pay liability claims under the Federal Tort Claims Act.

"Underinsured motorist insurance" means insurance under which the policyholder's level of protection against losses caused by another is extended to compensate for inadequate coverage in the other party's policy or plan.

"Uninsured motorist insurance" means insurance under which the policyholder's insurer will pay for damages caused by a motorist who has no automobile liability insurance or who carries less than the amount of insurance required by law, or is underinsured.

(c) *Limitation on payment for services covered under no-fault insurance.* Except as provided under §§ 411.52 and 411.53 with respect to conditional payments, Medicare does not pay for the following:

(1) Services for which payment has been made or can reasonably be expected to be made promptly under automobile no-fault insurance.

(2) Services furnished on or after (effective date of final regulations) for which payment has been made or can reasonably be expected to be made promptly under any no-fault insurance other than automobile no-fault.

§ 411.51 Beneficiary's responsibility with respect to no-fault insurance.

(a) The beneficiary is responsible for taking whatever action is necessary to obtain any payment that can reasonably be expected under no-fault insurance.

(b) Except as specified in § 411.53, Medicare does not pay until the beneficiary has exhausted his or her remedies under no-fault insurance.

(c) Except as specified in § 411.53, Medicare does not pay for services that would have been covered by the no-fault insurance if the beneficiary had filed a proper claim.

(d) However, if a claim is denied for reasons other than not being a proper claim, Medicare pays for the services if they are covered under Medicare.

§ 411.52 Basis for conditional Medicare payment in liability cases.

If HCFA has information that services for which Medicare benefits have been claimed are for treatment of an injury or illness that was allegedly caused by another party, a conditional Medicare payment may be made.

§ 411.53 Basis for conditional Medicare payment in no-fault cases.

A conditional Medicare payment may be made in no-fault cases under either of the following circumstances:

(a) The beneficiary, or the provider or supplier, has filed a proper claim for no-fault insurance benefits but the intermediary or carrier determines that the no-fault insurer will not pay promptly for any reason other than the circumstances described in § 411.32(a)(1). This includes cases in which the no-fault insurance carrier has denied the claim.

(b) The beneficiary, because of physical or mental incapacity, failed to meet a claim-filing requirement stipulated in the policy.

§ 411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

(a) *Definition.* As used in this section, *"Medicare-covered services"* means services for which Medicare benefits are payable or would be payable except for applicable Medicare deductible and coinsurance provisions. Medicare benefits are payable notwithstanding potential liability insurance payments, but are recoverable in accordance with § 411.24.

(b) *Applicability.* This section applies when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer for injuries or illness allegedly caused by another party.

(c) *Basic rules*—(1) *Itemized bill.* A hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

(2) *Specific limitations.* Except as provided in paragraph (d) of this section, the provider or supplier—

(i) May not bill the liability insurer nor place a lien against the beneficiary's liability insurance settlement for Medicare covered services.

(ii) May only bill Medicare for Medicare-covered services; and

(iii) May bill the beneficiary only for applicable Medicare deductible and coinsurance amounts plus the amount of any charges that may be made to a beneficiary under § 413.35 of this chapter (when cost limits are applied to the services) or under § 489.32 of this chapter (when services are partially covered).

(d) *Exceptions*—(1) *Nonparticipating suppliers.* The limitations of paragraph (c)(2) of this section do not apply if the services were furnished by a supplier that is not a participating supplier and has not accepted assignment for the services or has not claimed payment for them under § 424.64 of this chapter.

(2) *Prepaid health plans.* If the services were furnished through an organization that has a contract under section 1876 of the Act (that is, through an HMO or CMP), or through an organization that is paid under section 1833(a)(1)(A) of the Act (that is, through an HCPP) the rules of § 417.528 of this chapter apply.

(3) *Special rules for Oregon.* For the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, there are the following special rules:

(i) The limitations of paragraph (c)(2) of this section do not apply if the liability insurer pays within 120 days after the earlier of the following dates:

(A) The date the hospital files a claim with the insurer or places a lien against a potential liability settlement.

(B) The date the services were provided or, in the case of inpatient hospital services, the date of discharge.

(ii) If the liability insurer does not pay within the 120-day period, the hospital must withdraw its claim or lien and comply with the limitations imposed by paragraph (c)(2) of this section.

Subpart E—Limitations on Payment for Services Furnished to End-Stage Renal Disease Beneficiaries Who Are Also Covered Under an Employer Group Health Plan

§ 411.60 Scope and definitions.

(a) *Scope.* This Subpart E sets forth the policies and procedures for payment for services furnished to beneficiaries who are entitled to Medicare solely on the basis of end-stage renal disease (ESRD) and who are also covered under an employer group health plan.

(b) *Definitions.* As used in this Subpart E—

"Employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the District of Columbia, and the agencies, instrumentalities, and political subdivisions of these governments.

"Employer group health plan" or *"employer plan"* means a group health plan that—

(1) Is of, or contributed to by, an employer; and

(2) Provides medical care directly or through other methods such as insurance or reimbursement, to current or former employees, or to current or former employees and their families.

It includes a plan that is under the auspices of an employer who makes no financial contribution, a so-called "employee-pay-all" plan.

"Monthly capitation payment" means a comprehensive monthly payment that covers all physician services associated with the continuing medical management of a maintenance dialysis patient who dialyzes at home or as an outpatient in an approved ESRD facility.

§ 411.62 Medicare benefits secondary to employer group health plan benefits.

(a) *General rules.* (1) Medicare benefits are secondary to benefits payable under an employer plan, for services furnished to an ESRD beneficiary during a period of up to 12 consecutive months as specified in paragraphs (b) and (c) of this section.

(2) If the individual becomes entitled to Medicare after the 12-month period has begun, as set forth in paragraph (c) of this section, Medicare benefits are secondary only for that portion of the 12-month period that begins with the month of entitlement.

(3) During the period in which Medicare benefits are secondary, the following rules apply:

(i) Medicare makes primary payments only for Medicare covered services that are—

(A) Furnished to Medicare beneficiaries who are not enrolled in the employer plan;

(B) Not covered under the employer plan; or

(C) Covered under the employer plan but not available to particular enrollees

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because they have exhausted their benefits.

(ii) Medicare makes secondary payments, within the limits specified in §§ 411.32 and 411.33, to supplement the amount paid by the employer plan if that plan pays only a portion of the charge for the services.

(b) *Beginning of 12-month period.* The period of 12 consecutive months specified by law begins with the earlier of the following months:

(1) The month in which the individual initiates a regular course of renal dialysis.

(2) In the case of an individual who receives a kidney transplant, the first month in which the individual could become entitled to Medicare if he or she filed a timely application, that is, the earliest of the following:

(i) The month in which the transplant is performed.

(ii) The month in which the individual is admitted to the hospital in preparation for, or anticipation of, a transplant that is performed within the next two months.

(iii) The second month before the month the transplant is performed, if performed more than 2 months after admission.

(c) *Beginning of period in which Medicare is secondary payer.* The period in which Medicare is secondary payer begins later than the beginning of the 12-month period (and therefore lasts less than 12 months) if the individual—

(1) Is subject to the 3-month waiting period for individuals who initiate renal dialysis but do not begin training for self-dialysis during the first 3 months of dialysis; or

(2) Files the application for Medicare entitlement more than 12 months after the month in which a 12-month period begins. (Under the Act, an application may not be retroactive for more than 12 months).

(d) *Examples.* The following examples illustrate how to determine, in different situations, the number of months during which Medicare is secondary payer.

(1) *Individual filed a timely application and became entitled without a waiting period.* In October 1981, John began a regular course of dialysis and filed an application for Medicare. In December 1981, John began training for self-dialysis. Since John initiated self-dialysis training during the first 3 months of dialysis, he is exempt from the waiting period and becomes entitled as of October 1981, the first month of dialysis. In this situation, the month of entitlement coincides with the beginning of the 12-month period and Medicare is secondary payer during the entire period.

(2) *Individual filed a timely application and became entitled to Medicare after a waiting period.* (i) Janice started a regular course of renal dialysis in October 1981 and filed an application in the same month. The 12-month period begins with October 1981, but the 3-month waiting period doesn't end until December 1981. The month of entitlement for Janice is January 1982. Medicare is secondary payer from January through September 1982.

(ii) Peter started a regular course of dialysis in January 1982, and was hospitalized and received a kidney transplant in March 1982. The 12-month period begins with January 1982. The kidney transplant cuts short the dialysis waiting period so that Peter becomes entitled in March 1982. Medicare is secondary payer from March through December 1982.

(3) *Individual did not file a timely application.* In January 1982, Katherine suffered kidney failure and received a kidney transplant but did not apply for Medicare until July, 1983. Since the application is retroactive for only 12 months, Katherine becomes entitled to Medicare in July 1982. The 12-month period begins in January 1982, the month in which Katherine could have been entitled if she had filed a timely application. Medicare is secondary payer from July through December 1982.

(e) *Effect of changed basis for Medicare entitlement.* If the basis for an individual's entitlement to Medicare changes from ESRD to age 65 or disability, the 12-month period terminates with the month before the month in which the change is effective.

(f) *Determinations for subsequent periods of ESRD entitlement.* If an individual has more than one period of entitlement based solely on ESRD, a period during which Medicare may be secondary payer will be determined for each period of entitlement, in accordance with this section.

§ 411.65 Basis for conditional Medicare payments.

(a) *General rule.*[2] Except as specified in paragraph (b) of this section, the Medicare intermediary or carrier may make a conditional payment if—

(1) The beneficiary, the provider, or the supplier that has accepted assignment files a proper claim under the employer plan and the plan denies the claim in whole or in part; or

(2) The beneficiary, because of physical or mental incapacity, fails to file a proper claim.

[2] For services furnished before January 21, 1986, conditional Medicare payments were made unless HCFA determined that the employer plan would pay the particular claims as promptly as Medicare.

(b) *Exception.* Medicare does not make conditional primary payments under either of the following circumstances:

(1) The claim is denied for one of the following reasons:

(i) It is alleged that the employer plan is secondary to Medicare.

(ii) The employer plan limits its payments when the individual is entitled to Medicare.

(iii) Failure to file a proper claim if that failure is for any reason other than the physical or mental incapacity of the beneficiary.

(2) The employer plan fails to furnish information requested by HCFA and necessary to determine whether the employer plan is primary to Medicare.

Subpart F—Limitations on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals Who Are Also Covered Under an Employer Group Health Plan

§ 411.70 General provisions.

(a) *Basis and scope.* This Subpart F implements section 1862(b)(3) of the Act. It sets forth the limitations that apply to Medicare payment for services furnished to employed aged and to aged spouses of employed individuals who are covered under an employer group health plan of an employer who employs at least 20 employees.

(b) *Applicability.* The rules of this subpart apply only to services furnished after December 1982.

(c) *Determination of "aged".* (1) An individual attains a particular age on the day preceding the anniversary of his or her birth.

(2) The period during which an individual is considered to be "aged" begins on the first day of the month in which that individual attains age 65.

(3) For services furnished before May 1986, the period during which an individual is considered "aged" ends as follows:

(i) For services furnished before July 18, 1984, it ends on the last day of the month in which the individual attains age 70.

(ii) For services furnished between July 18, 1984 and April 30, 1986, it ends on the last day of the month *before* the month the individual attains age 70.

(4) For services furnished on or after May 1, 1986, the period has no upper age limit.

(d) *Definitions.* As used in this subpart—

"*Employed*" encompasses not only employees but also, subject to the provisions of paragraph (f) of this section, self-employed persons such as consultants, owners of businesses, and directors of corporations, and members of the clergy and religious orders who are paid for their services by a religious body or other entity.

"Employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the District of Columbia, and the agencies, instrumentalities and political subdivisions of these governments.

"*Employer group health plan*" or "*employer plan*" means a group health plan that provides medical care, directly or through other methods such as insurance or reimbursement, to current or former employees or to employees and their families, and meets one of the following conditions:

(1) Is of, or contributed to by, a single employer of at least 20 employees.

(2) Is a multiemployer group health plan that includes at least one employer of 20 or more employees.

The term includes a plan that is under the auspices of an employer who makes no financial contribution, a so-called "employee-pay-all" plan.

"*Multiemployer group health plan*" or "*multiemployer plan*" means a "multiple employer plan", which is a plan sponsored by more than one employer, or a "multi-employer plan", which is a plan sponsored jointly by employers and unions.

(e) *Referral of cases to the Equal Employment Opportunity Commission (EEOC).* HCFA refers to the EEOC cases of apparent noncompliance with the Age Discrimination in Employment Act (29 U.S.C. 623). That Act requires employers to provide the same health benefits under the same conditions, to aged employees and their spouses as they provide to younger employees and their spouses.

(f) *Special rules applicable to the self-employed and to members of religious orders.* (1) A self-employed individual is considered "employed" during a particular tax year only if, during the preceding tax year, the individual's net earnings, from work related to the employer that offers the group health coverage, are at least equal to the amount specified in section 211(b)(2) of the Act, which defines "self-employment income" for social security purposes.

(2) A member of a religious order is considered employed if the religious order pays FICA taxes on behalf of that member.

§ 411.72 Medicare benefits secondary to employer group health plan benefits.

(a) *Conditions the individual must meet.* Medicare Part A and Part B benefits are secondary to benefits payable by an employer plan for services furnished during any month in which the individual—

(1) Is aged:

(2) Is entitled to Medicare Part A benefits under § 406.10 of this chapter;

(3) Is not entitled, and could not upon filing an application become entitled, to Medicare on the basis of end-stage renal disease as provided in § 406.13 of this chapter; and

(4) Meets one of the following conditions:

(i) Is employed and covered, by reason of that employment, under an employer plan.

(ii) Is the aged spouse 3 of an employed individual who—

(A) For services furnished before January 1985 was, at the time the services were furnished, age 65 through 69;

(B) For services furnished from January 1, 1985 through April 30, 1986 was, at the time the services were furnished, any age through 69; or

(C) For services furnished after April 30, 1986 was, at the time the services were furnished, any age.

(b) *Exception for multiemployer plans.* If a multiemployer plan can identify particular enrollees as employees of an employer of fewer than 20 employees, Medicare is primary for those enrollees and their spouses.

(c) *Refusal to accept employer plan coverage.* An employee or spouse may refuse the health plan offered by the employer. If the employee or spouse refuses the plan—

(1) Medicare is primary payer for that individual; and

(2) The plan may not offer that individual coverage complementary to Medicare.

(d) *Coverage of reemployed retiree or annuitant.* A reemployed retiree or annuitant who is covered by an employer group health plan is considered covered "by reason of employment".

if the employer provides the same group coverage to retirees as to other employees in the same category. This rule applies even if—

(1) The plan is the same plan that previously provided coverage to that individual when he was a retiree or annuitant; or

(2) The premiums for the plan are paid from a retirement pension or fund.

(e) *Secondary payments.* Medicare pays secondary benefits, within the limitations specified in §§ 411.32 and 411.33, to supplement the primary benefits paid by the employer plan if that plan pays only a portion of the charge for the services.

(f) *Disabled aged individuals who are considered employed.* (1) For services furnished on or after November 12, 1985, and before July 17, 1987, a disabled, nonworking individual age 65 or older was considered employed if he or she—

(i) Was receiving, from an employer, disability payments that were subject to tax under the Federal Insurance Contributions Act (FICA); and

(ii) For the month before the month of attainment of age 65, was not entitled to disability benefits under title II of the Act and 20 CFR 404.315 of the SSA regulations.

(2) For services furnished on or after July 17, 1987, an indivudual is considered employed if he or she receives, from an employer, disability benefits that are subject to tax under FICA, even if he or she was entitled to Social Security disability benefits before attaining age 65.

§ 411.75 Basis for Medicare primary payments.

(a) *General rule.* Medicare makes primary payments only for Medicare covered services that are—

(1) Furnished to employed individuals or spouses who are not enrolled in the employer plan;

(2) Not covered for any of the employed individuals or spouses who are enrolled in that plan; or

(3) Covered under the plan but not available to particular employed individuals or spouses because they have exhausted their benefits.

(b) *Conditional primary payments: Basic rule.* Except as provided in paragraph (c) of this section. Medicare may make a conditional primary payment if—

(1) The beneficiary, the provider, or the supplier that has accepted assignment has filed a proper claim under the employer plan and the plan has denied the claim in whole or in part; or

(2) The beneficiary, because of physicial or mental incapacity, failed to file proper claim.

(c) *Conditional primary payments: Exceptions.* Medicare does not make conditional primary payments under either of the following circumstances:

(1) The claim is denied for one of the following reasons:

(i) It is alleged that the employer plan is secondary to Medicare.

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(ii) The plan limits its payments when the individual is entitled to Medicare.

(iii) The services are covered by the employer plan for younger employees and spouses but not for employees and spouses age 65 or over.

(iv) Failure to file a proper claim if that failure is for any reason other than physical or mental incapacity of the beneficiary.

(2) The employer plan fails to furnish information requested by HCFA and necessary to determine whether the employer plan is primary to Medicare.

Subparts G–J—[Reserved]

Subpart K—Payment for Certain Excluded Services

§ 411.400 Payment for custodial care and services not reasonable and necessary.

(a) *Conditions for payment.* Notwithstanding the exclusions set forth in § 411.15 (g) and (k), Medicare pays for "custodial care" and "services not reasonable and necessary" if the following conditions are met:

(1) The services were furnished by a provider or by a practitioner or supplier that had accepted assignment of benefits for those services.

(2) Neither the beneficiary nor the provider, practitioner, or supplier knew, or could reasonably have been expected to know, that the services were excluded from coverage under § 411.15 (g) or (k).

(b) *Time limits on payment.*—(1) *Basic rule.* Except as provided in paragraph (b)(2) of this section, payment may not be made for inpatient hospital care, posthospital SNF care, or home health services furnished after the earlier of the following:

(i) The day on which the beneficiary has been determined, under § 411.404, to have knowledge, actual or imputed, that the services were excluded from coverage by reason of § 411.15(g) or § 411.15(k).

(ii) The day on which the provider has been determined, under § 411.406 to have knowledge, actual or imputed, that the services are excluded from coverage by reason of § 411.15(g) or § 411.15(k).

(2) *Exception.* Payment may be made for services furnished during the first day after the limit established in paragraph (b)(1) of this section, if the PRO or the intermediary determines that the additional period of one day is necessary for planning post-discharge care. It the PRO or the intermediary determines that yet another day is necessary for planning post-discharge care, payment may be made for services furnished during the second day after the limit established in paragraph (b)(1) of this section.

§ 411.402 Indemnification of beneficiary.

(a) *Conditions for indemnification.* If Medicare payment is precluded because the conditions of § 411.400(a)(2) are not met. Medicare indemnifies the beneficiary (and recovers from the provider, practitioner, or supplier), if the following conditions are met:

(1) The beneficiary paid the provider, practitioner, or supplier some or all of the charges for the excluded services.

(2) The beneficiary did not know and could not reasonably have been expected to know that the services were not covered.

(3) The provider, practitioner, or supplier knew, or could reasonably have been expected to know that the services were not covered.

(4) The beneficiary files a proper request for indemnification before the end of the sixth month after whichever of the following is later:

(i) The month is which the beneficiary paid the provider, practitioner, or supplier.

(ii) The month in which the intermediary or carrier notified the beneficiary (or someone on his or her behalf) that the beneficiary would not be liable for the services.

For good cause shown by the beneficiary, the 6-month period may be extended.

(b) *Amount of indemnification.*[4] The amount of indemnification is the total that the beneficiary paid the provider, practitioner, or supplier.

(c) *Effect of indemnification.* The amount of indemnification is considered an overpayment to the provider, practitioner, or supplier, and as such is recoverable under this part or in accordance with other applicable provisions of law.

§ 411.404 Criteria for determining that a beneficiary knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A beneficiary who receives services that constitute custodial care under § 411.15(g) or that are not reasonable and necessary under § 411.15(k), is considered to have known that the services were not covered if the criteria of paragraphs (b) and (c) of this section are met.

(b) *Written notice.* Written notice has been given to the beneficiary, or to someone acting on his or her behalf, that the services were not covered because they did not meet Medicare coverage guidelines. A notice concerning similar or reasonable comparable services furnished on a previous occasion also meets this criterion. For example, program payment may not be made for the treatment of obesity, no matter what form the treatment may take. After the beneficiary who is treated for obesity with dietary control is informed in writing that Medicare will not pay for treatment of obesity, he or she will be presumed to know that there will be no Medicare payment for any form of subsequent treatment of this condition, including use of a combination of exercise, machine treatment, diet, and medication.

(c) *Source of notice.* The notice was given by one of the following:

(1) The PRO, intermediary, or carrier.

(2) The group or committee responsible for utilization review for the provider that furnished the services.

(3) The provider, practitioner, or supplier that furnished the service.

§ 411.406 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A provider, practitioner, or supplier that furnished services which constitute custodial care under § 411.15(g) or that are not reasonable and necessary under § 411.15(k) is considered to have known that the services were not covered if any one of the conditions specified in paragraphs (b) through (e) of this section is met.

(b) *Notice from the PRO, intermediary or carrier.* The PRO, intermediary, or carrier had informed the provider, practitioner, or supplier that the services furnished were not covered, or that similar or reasonably comparable services were not covered.

(c) *Notice from the utilization review committee or the beneficiary's attending phyician.* The utilization review group or committee for the provider or the beneficiary's attending physician had informed the provider that these services were not covered.

(d) *Notice from the provider, practitioner, or supplier to the beneficiary.* Before the services were furnished, the provider, practitioner or supplier informed the beneficiary that—

(1) The services were not covered; or

(2) The beneficiary no longer needed covered services.

(e) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider, practitioner, or supplier could have been expected to have known that the services were excluded from coverage on the basis of—

(1) Its receipt of HCFA notices, including manual issuances, bulletins or other written guides or directives from intermediaries, carriers or PROs, including notification of PRO screening criteria specific to the condition of the beneficiary for whom the furnished services are at issue and of medical procedures subject to preadmission review by PRO; or

(2) Its knowledge of what are considered acceptable standards of practice by the local medical community.

[4] For services furnished before 1968, the indemnification amount was reduced by any deductible or coinsurance amounts that would have been applied if the services had been covered.

III. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1864, 1866 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc and 1395hh), unless otherwise noted.

2. Section 489.20 is amended as set forth below:

§ 489.20 [Amended]

a. The undesignated introductory statement is revised to read:

"The provider agrees to the following:"

b. Periods are substituted for the semicolons at the end of paragraphs (a) through (c) and for the "; and" at the end of paragraph (d).

c. New paragraphs (f) through (j) are added to read as follows:

(f) To maintain a system that, during the admission process, identifies any primary payers other than Medicare, so that incorrect billing and Medicare overpayments can be prevented.

(g) To bill other primary payers before billing Medicare except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section.

(h) If the provider receives payment for the same services from Medicare and another payer that is primary to Medicare, to reimburse Medicare any overpaid amount within 60 days.

(i) If the provider receives, from a payer that is primary to Medicare, a payment that is reduced because the provider failed to file a proper claim—

(1) To bill Medicare for an amount no greater than would have been payable as secondary payment if the primary insurer's payment had been based on a proper claim; and

(2) To charge the beneficiary only: (i) The amount it would have been entitled to charge if it had filed a proper claim and received payment based on such a claim; and

(ii) An amount equal to any third party payment reduction attributable to failure to file a proper claim, but only if the provider can show that—

(A) It failed to file a proper claim solely because the beneficiary, for any reason other than mental or physical incapacity, failed to give the provider the necessary information; or

(B) The beneficiary, who was responsible for filing a proper claim, failed to do so for any reason other than mental or physical incapacity.

(j) In the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, hospitals may bill liability insurers first. However, if the liability insurer does not pay "promptly", as defined in § 411.50 of this chapter, the hospital must withdraw its claim or lien and bill Medicare for covered services.

3. A new § 489.34 is added, and the table of contents is amended to reflect the addition:

§ 489.34 Allowable charges: Hospitals participating in State reimbursement control systems or demonstration projects.

A hospital receiving payment for a covered hospital stay under either a State reimbursement control system approved under 1886(c) of the Act or a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)) and that would otherwise be subject to the prospective payment system set forth in Part 412 of this chapter may charge a beneficiary for noncovered services as follows:

(a) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42(c)(1) through (c)(4) are met; and

(b) For all other services in accordance with the applicable rules of this Subpart C.

IV. Technical Amendment

§ 412.42 [Amended]

In paragraph (c) of § 412.42, "§ 405.310(g)" is changed to "§ 411.15(g)", and "§ 405.310(k)" is changed to "§ 411.15(k)".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; and No. 13.773, Medicare—Hospital Insurance.)

Dated: September 22, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–23902 Filed 10–10–89; 8:45 am]

BILLING CODE 4120–01–M

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federal register

Wednesday
October 11, 1989

Part III

Congressional Budget Office

Final Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

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CONGRESSIONAL BUDGET OFFICE

Final Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the final sequestration report for Fiscal Year 1990 to the Office of Management and Budget and the Congress in accordance with the procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100-119.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1450-01-M

[FR Doc. 89-24220 Filed 10-10-89; 3:16 pm]

BILLING CODE 1450-01-C

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A Congressional Budget Office Report to the Congress and the Office of Management and Budget

October 10, 1989

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NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as Gramm-Rudman-Hollings) is referred to in this report more briefly as the Balanced Budget Act.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Darman:

I herewith submit to you my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The Congressional Budget Office estimates that laws enacted and regulations promulgated since August have reduced the projected 1990 deficit by $0.2 billion. Under the same economic and technical assumptions used in CBO's initial sequestration report, the projected 1990 deficit now stands at $141.3 billion, which exceeds the Balanced Budget Act target by $41.3 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide you with any assistance that you may require in preparing your own final sequestration report.

Sincerely yours,

Robert D. Reischauer
Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Dan Quayle
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I herewith submit to the Congress my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The act specifies a 1990 deficit target of $100 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on our updated economic and technical assumptions and on budgetary policies in effect on October 6, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.3 billion, which exceeds the target by $41.3 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the final report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

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CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I herewith submit to the Congress my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

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This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the final report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

October 10, 1989

SUMMARY

On August 21, 1989, the Congressional Budget Office (CBO) transmitted its initial sequestration report for fiscal year 1990 to the Office of Management and Budget (OMB) and the Congress. The report was published in the *Federal Register* on August 22 (pages 34908-34968). Following the specifications provided by the Balanced Budget Act, CBO projected a fiscal year 1990 federal budget deficit of $141.5 billion.

CBO now estimates that laws enacted and regulations promulgated since August have reduced projected 1990 spending by $0.2 billion. The projected 1990 deficit is $141.3 billion--$41.3 billion above the statutory target of $100 billion. If CBO's estimates were controlling, and if no further changes were made in taxing and spending policies, across-the-board reductions of 10.7 percent in defense and 15.6 percent in nondefense programs would be required to achieve the target.

On October 16, 1989, OMB will issue a final independent estimate of the projected deficit and will determine the necessity of across-the-board spending cuts. OMB's final estimate is likely to differ little from its initial projection of $116 billion. In that case, the President will issue a final sequestration order permanently canceling the budgetary resources necessary to reduce 1990 outlays by about $16 billion.

The Congress is currently considering appropriation and reconciliation legislation that could, using OMB estimates, reduce the projected 1990 deficit below $110 billion--the level at which sequestration is triggered. While enactment of a reconciliation bill after October 16 would not automatically cancel a sequestration order, a provision restoring the sequestered funds could be included in the reconciliation bill, as it was in the Omnibus Budget Reconciliation Act of 1987.

INTRODUCTION

The Balanced Budget Act became law in December 1985 and established a series of annual budget deficit targets for the federal government that would lead to a balanced budget over five years. As amended in 1987, the Balanced Budget Act eased these annual targets and delayed the attainment of a balanced budget by two years, to fiscal year 1993. The deficit targets specified by the act are (in billions of dollars):

Fiscal Year	Maximum Deficit	Sequestration Threshold
1990	100	110
1991	64	74
1992	28	38
1993	0	0

For the years 1989 through 1992, the deficit projection may exceed the target by as much as $10 billion. If the Administration's deficit projection exceeds the target by more than this $10 billion margin, the act provides a procedure--known as sequestration--to cut federal spending automatically. For 1993, sequestration would be triggered if any deficit is estimated in the Administration's October 15, 1992, report.

Sequestration involves the permanent cancellation of new budget authority and other authority to obligate and expend funds, except for special and trust funds, where the sequestered amounts of spending authority remain in the funds. The sequestration of budgetary resources is designed to achieve outlay reductions sufficient to reach the annual deficit targets.

The Balanced Budget Act specifies roles for the Congressional Budget Office, the Office of Management and Budget, and the Comptroller General. CBO's role is to advise OMB and the Congress, while the Director of OMB must determine whether or not sequestration is necessary and, if so, the amount of reductions in budgetary resources and outlays

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TABLE 1. CBO ESTIMATES OF BUDGET BASELINE TOTALS FOR FISCAL YEAR 1990
(In billions of dollars)

Budget Aggregates	Baseline			Differences		
	As of January 1	As of August 15	As of October 6	January-August	August-October	January-October
Revenues	1,070.8	1,071.4	1,071.4	0.6	0.0	0.6
Outlays	1,206.9	1,213.0	1,212.8	6.1	-0.2	5.9
Deficit	136.0	141.5	141.3	5.5	-0.2	5.3

required to achieve the deficit target. Each year, CBO and OMB are required to prepare independently two sets of sequestration reports. The CBO reports, which are transmitted to the Director of OMB and to the Congress, are a benchmark against which the Congress and others may assess the OMB reports. The OMB reports, which are made to the President and to the Congress, provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is shown on page 3.

The initial CBO and OMB sequestration reports are based on laws that are enacted and regulations that are final at the time of a common snapshot date, August 15. The revised reports, however, must be based on laws enacted and regulations promulgated by the latest possible date before they are issued. This report has used a snapshot date of October 6, 1989. Because the snapshot date may be different in the two agencies' final reports, some legislation and regulations reflected in one report may not be reflected in the other.

The role of the Comptroller General under the amended Balanced Budget Act is threefold: to prepare a report each year to the Congress and the President that certifies whether the final sequestration order issued by the President complies with the requirements of the Balanced Budget Act; to assess the compliance and accuracy of the OMB sequestration reports; and to make recommendations for improving sequestration procedures. The Comptroller's report is due on November 15.

This document is the final CBO report for 1990. The report:

- Estimates budget baseline levels as of January 1, 1989; August 15, 1989; and October 6, 1989; the amount of net deficit change that has occurred between those dates; and the outlay reductions required for 1990;
- Provides CBO economic assumptions used for the baseline estimates; and
- Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required outlay reductions.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1990 are shown in Table 1. Separate budget baseline estimates are provided for laws and regulations in effect on January 1, 1989; August 15, 1989; and October 6, 1989. The economic and technical assumptions used for these budget baseline estimates are identical. The differences between the estimates, therefore, result only from laws enacted and final regulations promulgated since January 1.

These estimates are made in accordance with the specifications set forth in the Balanced Budget Act. CBO's October 6 baseline includes the enacted spending amounts from the energy and water development appropriation for fiscal year 1990, which was signed by President Bush on September 29. For discretionary spending controlled by the 12 other appropriation bills, the baseline estimates are based on the 1989 appropriation, with an adjustment for inflation and increased pay costs. The Balanced Budget Act provides that, after October 1, the inflation factor for 70 percent of personnel costs must reflect any pay raise established by law for the new fiscal year. The updated baseline therefore incorporates a 3.6 percent pay raise in January 1990 for military and civilian employees, as announced by the President on August 28 pursuant to Title V of the United States Code. The inflation factor is increased to allow for higher agency retirement costs and for pay absorption in the previous fiscal year, and is reduced to account for pay absorption in the upcoming fiscal year.

For nonappropriated spending accounts and revenues, the baseline estimates assume that current laws and regulations will continue unchanged, and that expiring provisions of law will terminate as scheduled. The Balanced Budget Act, however, provides an exception to the general treatment of expiring provisions in the cases of excise taxes dedicated to trust funds, Commodity Credit Corporation agricultural price support programs, and contract authority for transportation trust funds. As required by the act, the budget baseline estimates include the receipts and outlays of the Social Security trust funds, even though they are legally off-budget.

The Balanced Budget Act provides that asset sales and loan prepayments shall neither be included in the budget baseline estimates nor count toward any net deficit reduction. The act makes an exception for asset sales and loan prepayments that are routine and ongoing according to the practices followed in fiscal year 1986 and for asset sales mandated by law as of September 17, 1987. The budget baseline estimates may not, however, assume or reflect an acceleration of routine asset sales or loan prepayments. The CBO baseline therefore excludes $0.5 billion in prepayments of Rural Electrification Administration loans, which are expected in fiscal year 1990.

The act also prohibits the inclusion of savings resulting from the transfer of outlays, receipts, or revenues from one year to an adjacent year, except for certain types of transfers identified in law. No such savings apply to fiscal year 1990. The prohibition of timing shifts does not apply to the advancing of certain farm deficiency payments into 1989 or to the shifting of the October 1, 1989, military pay date to September 29, because these actions did not result from new laws or regulations.

Under these specifications, CBO's estimate as of October 6, 1989, of the budget baseline deficit for 1990 is $141.3 billion.

Laws enacted and regulations promulgated since August 15 have reduced the projected 1990 deficit by $0.2 billion, as shown in Table 2. The energy and water development appropriation has increased outlays by $0.8 billion, primarily for atomic energy defense activities. Disaster assistance for the victims of Hurricane Hugo, included in the resolution providing continuing appropriations for fiscal year 1990, adds another $0.5 billion. Incorporation of the final pay raise amount reduces projected spending by $0.8 billion, because the actual increase is less than what was previously assumed. New regulations lower Medicare outlays by $0.6 billion. Other legislation, as well as the resulting change in debt service costs, reduces the deficit by $0.1 billion.

Snapshot date for initial CBO and OMB reports	August 15
Initial CBO report	August 21[a]
Initial OMB report	August 25
Initial sequestration order	August 25
Revised CBO report	October 10
Revised OMB report	October 16[a]
Final sequestration order	October 16[a]

a. The statutory dates for the initial CBO report and the revised OMB report are August 20 and October 15, respectively; both dates fall on Sundays in 1989. The reports will therefore be submitted on the following Mondays.

TABLE 2. CBO ESTIMATES OF DEFICIT CHANGES FOR FISCAL YEAR 1990, AUGUST 15 THROUGH OCTOBER 6, 1989
(In billions of dollars)

Budget Baseline Deficit as of August 15, 1989	141.5
Effect of New Laws and Regulations	
Enacted Legislation	
Continuing Appropriations for Fiscal Year 1990 (P.L. 101-100)	0.5
Energy and Water Development Appropriation (P.L. 101-101)	0.8
Performance Management and Recognition System Reauthorization (P.L. 101-103)	-0.1
Final Medicare Regulations	-0.6
Establishment of Fiscal Year 1990 Pay Raise	-0.8
Debt Service	a
Total, New Laws and Regulations	-0.2
Budget Baseline Deficit as of October 6, 1989	141.3

a. Less than $50 million.

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ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the CBO budget baseline estimates for fiscal year 1990 are shown in Table 3. The Balanced Budget Act requires the Directors of OMB and CBO to estimate the rate of real economic growth for the fiscal year covered by their reports, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, the Congress and the President may suspend many of the provisions of the act. Table 3 provides the CBO estimates for the rate of real economic growth and other economic variables for fiscal year 1990. As discussed in CBO's initial report, CBO does not project real economic growth to be less than zero in any quarter during fiscal year 1990.

TABLE 3. CBO ECONOMIC ASSUMPTIONS FOR FISCAL YEAR 1990

Gross National Product:	
Billions of current dollars	5,463
Percent change, year over year	6.3
Billions of constant (1982) dollars	4,158
Percent change, year over year	1.9
GNP Implicit Price Deflator (Percent change, year over year)	4.4
CPI-U (Percent change, year over year)	4.9
Civilian Unemployment Rate (Percent, fiscal year average)	5.5
Interest Rates (Fiscal year average):	
91-day Treasury bills	7.3
10-year Treasury notes	8.2

REQUIRED OUTLAY REDUCTIONS

Sequestration of budgetary resources will be necessary for 1990 if the deficit estimated by OMB exceeds the $100 billion target by more than the $10 billion margin. Once sequestration is triggered, budget outlays must be reduced by the entire amount by which the deficit exceeds $100 billion. One-half of the required outlay reduction must be taken from defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half from nondefense programs. CBO's deficit projection of $141.3 billion would call for outlay reductions of $41.3 billion in 1990. Table 4 shows how budget outlays in defense and nondefense programs would be cut back to achieve this reduction.

TABLE 4. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1990
(In millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	20,652	20,652
Savings from Eliminating Automatic Spending Increases	0	47
Savings from the Application of Special Rules:		
Guaranteed student loans	0	26
Foster care and adoption assistance	0	4
Medicare	0	1,776
Other health programs	0	204
Remaining Reductions Required	20,652	18,595
Estimated Sequestration Outlay Base	193,821	119,525[a]
Uniform Reduction Percentage	10.7	15.6

a. Includes $6,274 million in estimated 1991 outlays for the Commodity Credit Corporation that can be affected by a 1990 sequestration (see discussion of special rule for CCC). Also includes an estimated $1,943 million in outlays from the spending of offsetting collections.

If sequestration is required, the law provides that the automatic spending increases in three programs--the National Wool Act, the special milk program, and vocational rehabilitation--be eliminated and the resulting savings be applied to the required reduction in outlays for nondefense programs. According to CBO estimates, only the vocational rehabilitation program will receive an automatic spending increase in fiscal year 1990; eliminating this increase would produce $47 million in outlay savings in 1990. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs, and are described in a later section of this report. Applying the special rules to these programs would achieve $2 billion in outlay savings in 1990.

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TABLE 5. COMPOSITION OF BASELINE OUTLAYS FOR FISCAL YEAR 1990

Category	Estimate (In billions of dollars)	Percentage of Total
Defense Programs[a]		
Subject to across-the-board reduction	193.8	16.0
Exempt from sequestration[b]	106.8	8.8
Subtotal, defense programs	300 6	24.8
Nondefense Programs		
Subject to sequestration:		
Certain programs with automatic spending increases[c]	1.6	0.1
Certain special rule programs[d]	128.4	10.6
Subject to across-the-board reduction[e]	113.3	9.3
Subtotal, subject to sequestration	243 2	20.1
Exempt from sequestration:		
Social Security	247.6	20.4
Federal Retirement, disability, and workers compensation	65.8	5.4
Earned income tax credit	4.1	0.3
Low-income programs[f]	83.0	6.8
Veterans compensation and pensions	15.0	1.2
State unemployment benefits	14.6	1.2
Offsetting receipts	-59.3	-4.9
Net interest payments	179.8	14.8
Other	117.9	9.7
Subtotal, exempt from sequestration	668.4	55.1
Subtotal, nondefense programs	911.7	75.2
Total	1,212.2	100.0

a. Budget function 050, excluding Federal Emergency Management Agency programs.
b. Outlays from obligated balances.
c. National Wool Act, special milk, and vocational rehabilitation programs.
d. Guaranteed student loans, foster care and adoption assistance, Medicare, veterans medical care, and other health programs.
e. Excludes 1991 outlays for the Commodity Credit Corporation.
f. Family Support payments, child nutrition, Medicaid, Food Stamps, Supplemental Security Income, the Women, Infants, and Children's program, Commodity Supplemental Food program, and Nutrition Assistance to Puerto Rico.

The outlay reductions of $20.7 billion in defense programs and the remaining reductions of $18.6 billion in nondefense programs must be taken as a uniform percentage of all sequesterable budgetary resources in each category. The uniform reduction percentages are computed from outlay estimates: the required outlay savings to be achieved through across-the-board reductions are divided by the total estimated outlays from sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

According to CBO estimates, the 1990 outlays associated with sequesterable budgetary resources for defense programs are $193 8 billion. From this base amount, $20.7 billion in across-the-board outlay reductions must be made. The uniform percentage to be applied to sequesterable defense budgetary resources is 10.7 percent, as shown in Table 4. The Balanced Budget Act allows the President to exempt military personnel spending from sequestration, which would reduce sequesterable outlays by about $75 billion; an exemption has not been issued this year. If the President had exempted military personnel spending from sequestration, the required reduction in other defense spending would have been 17.4 percent.

The 1990 outlays associated with budgetary resources for nondefense programs subject to across-the-board reduction are estimated to be $119.5 billion. To achieve $18.6 billion in nondefense outlay

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reductions, a 15.6 percent across-the-board reduction in nondefense sequesterable resources is required.

Table 5 lists budget baseline outlays for 1990. Defense outlays total $300.6 billion, of which $193.8 billion is subject to sequestration. In defense programs, unlike nondefense programs, the law specifies that spending from unobligated balances is subject to sequestration. Since the President has decided not to exempt military personnel spending, the only defense outlays that are not subject to sequestration are those resulting from previously appropriated budget authority that has already been obligated.

Nondefense baseline outlays for 1990 total $911.7 billion. Of this amount, only $113 3 billion is subject to across-the-board reduction. An additional $6.3 billion in 1991 Commodity Credit Corporation (CCC) outlays is counted under Balanced Budget Act specifications; together, these amounts yield the nondefense outlay base of $119.5 billion shown in Table 4. As Table 5 shows, a large percentage of nondefense outlays is exempted by law from the sequestration process. Social Security benefits, net interest payments, certain low-income programs, most federal retirement and disability benefits, veterans compensation and pensions, and regular state unemployment insurance benefits account for the largest exemptions. Outlays from appropriations for nondefense programs made in previous years are also not subject to sequestration.

The calculations in this report generally assume that all nonexempt budgetary resources can be sequestered in order to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriation process. An exception is made for the administrative expenses of the Postal Service. While more than $1 billion of budgetary resources of the Postal Service is sequesterable under CBO estimates, no outlay savings are attributed by CBO to this sequestration because the Administration appears to have no mechanism for enforcing a sequestration order on the Postal Service. The Congress is currently considering legislation that would remove the Postal Service from federal budget totals and exempt it from sequestration calculations.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget Act are listed in Table 6. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases. According to CBO, only the vocational rehabilitation program will receive an automatic spending increase in 1990.

TABLE 6. AUTOMATIC SPENDING INCREASES FOR FISCAL YEAR 1990 SUBJECT TO SEQUESTRATION

Program	Scheduled Increase (Percent)	Outlay Reduction (Millions of dollars)
National Wool Act	a	a
Special Milk Programs	b	b
Vocational Rehabilitation[c]	4.2	46.9
Total		46.9

a. No 1990 payment increase is expected for this program, based on declining wool support price levels in marketing year 1989.
b. Benefits are indexed to the producer price index for fresh processed milk. This index is not projected to increase between May 1989 and May 1990.
c. This program is indexed to the change in the consumer price index (CPI-U) from October of the previous year.

SPECIAL RULES

The Balanced Budget Act provides special rules for the sequestration of budgetary resources for certain federal programs. This section describes these special rules and their application to the 1990 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 4. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Balanced Budget Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage point or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0 25 percentage point. Second, a student's origination fee will increase by 0.50 percentage point. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1990, these changes are estimated by CBO to reduce outlays by $26 million.

Foster Care and Adoption Assistance Programs

The Balanced Budget Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the amounts are limited to the extent that the reduction can be made by reducing federal matching payments by a uniform percentage across states. The increases in payment rates for these programs are made by the states and localities. Any increases planned by the states for fiscal year 1990 were included in the CBO calculations for sequestration reductions. The estimated outlay savings in 1990 from sequestration are $4 million.

Medicare

The sequestration reductions in the Medicare program are to be achieved by reducing payment amounts for covered services. No changes in coinsurance or deductible amounts are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during the fiscal year would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under Medicare laws and regulations. According to CBO estimates, the outlay savings to be achieved in 1990 by applying this special rule are $1.8 billion.

Veterans Medical Care and Other Health Programs

The Balanced Budget Act limits reductions in budget authority for the nonadministrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1990 and any subsequent year. The estimated outlay savings to be achieved in 1990 by applying this special rule to these programs are $204 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Balanced Budget Act provides that sequestration of entitlement payments to states is to be accomplished by reducing the federal matching rates for state administrative expenses. For 1990, the federal matching rates on most expenditures under CBO estimates would be reduced from 66 percent to 55.7 percent, and the rate for computer-related and laboratory expenditures would be reduced from 90 percent to 76 percent. These reductions in the matching rates are necessary to achieve the same 15.6 percent reduction applied to other nondefense programs.

If states increase their share of CSE spending to maintain total program spending at the expected 1990 level, this reduction in the federal matching rate will lower federal outlays by the same percentage as other nondefense programs. If states do not increase their 1990 budgeted amounts to compensate for lower matching rates, however, the lower federal matching rate would result in a larger percentage reduction in federal spending than the act requires. The estimated outlay savings that are to be achieved in 1990 by applying this special rule are $200 million.

Unemployment Compensation Programs

The Balanced Budget Act provides that the following items are not to be sequestered: regular state unemployment benefits, the state share of extended unemployment benefits, unemployment benefits paid to former federal employees and former members of the armed services, and loans and advances to the state and federal unemployment accounts. The federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and state and federal administrative expenses are subject to sequestration.

Both the federal and state shares of extended unemployment benefits are paid from the Unemployment Trust Fund--the federal share from a federal account and the state share from each state's account. State law sets the amount of each weekly extended benefit. The Balanced Budget Act permits any state to reduce the weekly extended benefit amount by a percentage equal to the uniform reduction in the federal share. If states do not change their laws to provide for such a reduction, the weekly benefit payments will not be reduced, the state share will increase by the amount of the decrease in the federal share, and total budget outlays that include both federal and state benefits will not be changed by the sequestration. No states are currently paying extended benefits.

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Commodity Credit Corporation

Under the Balanced Budget Act, payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year are subject to a percentage reduction. The act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within the CCC's jurisdiction. The act further stipulates that outlay reductions in the post-sequestration year that are the result of contract adjustments in the sequestration year should be credited to the overall outlay reduction required in the sequestration year. The outlay savings to be achieved by applying this special rule are estimated by CBO to be $1.0 billion in 1990, and $1.0 billion in 1991. The actual amount of savings realized in each year will depend upon how the sequestration is carried out for the various CCC programs. In accordance with the act, however, all $2.0 billion of these estimated outlay savings are credited toward the $20.7 billion reduction in nondefense spending required for 1990.

Federal Pay

The Balanced Budget Act provides that rates of pay or any scheduled pay increases may not be reduced following a sequestration order. For members of the armed services, this provision applies to rates of basic pay, basic subsistence allowances, and basic quarter allowances. Budgetary resources available for federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses, which include travel, printing, supplies, and other services. The total amount of government-wide savings to be achieved in 1990 from employee compensation cannot be estimated because program managers are expected to be urged not to resort to personnel furloughs and reductions in force until other administrative expenses are reduced as much as possible.

CONCEPTUAL ISSUES

In preparing its initial sequestration report for 1990, CBO has identified a few areas of ambiguity in the interpretation of the Balanced Budget Act. Some of these uncertainties affect the computation of the baseline deficit, while others involve the determination of whether or not a particular budget account is subject to sequestration.

Baseline Issues

In developing the 1990 baseline estimates for national defense, CBO has taken as its starting point the 1989 budget authority figures shown in the Administration's *Mid-Session Review of the 1990 Budget*. These figures reflect expected transfers of budget authority from one account to another, which the Secretary of Defense can make under existing legislative authority. The OMB estimate of the Balanced Budget Act baseline is predicated on 1989 budget authority figures that do not reflect expected transfers. CBO's assumption adds $0 9 billion to 1990 defense outlays and the deficit because the transfers are, on balance, from slow-spending to fast-spending accounts.

CBO and OMB also make different assumptions about pay absorption--the portion of the January 1989 pay raise that was not reflected in 1989 appropriations and that agencies had to accommodate through reductions in other spending. CBO assumes that the 1989 pay raise for civilian agency employees was fully absorbed, and that the Department of Defense absorbed 42 percent of the pay raise for civilian personnel and 7 percent of the military pay raise. CBO bases its assumption on language in the 13 appropriation bills and the accompanying conference reports for 1989. OMB, however, assumes that there was no pay absorption in fiscal year 1989. CBO's assumption adds $0 2 billion to defense spending and $1.0 billion to nondefense outlays.

Although not affecting the 1990 deficit estimate, several issues involving expiring entitlement programs merit clarification if the Congress considers modifications to the Balanced Budget Act. While entitlements and other mandatory spending are generally projected in accord with current laws, the act provides that agricultural price support programs are to be continued at current rates. The meaning of the term "current rates," however, should be clarified. It has been interpreted both as a constant level of target prices and as a constant rate of decline in target prices. Also, the act does not provide for the continuation of the Food Stamp program (even though it is authorized by the same law that authorizes farm price supports), guaranteed student loans, or trade adjustment assistance. If one of these programs were to expire in the budget year, as Food Stamps will do at the beginning of fiscal year 1991, the baseline estimate would be sharply reduced and sequestration would be unlikely. Such circumstances would limit the realism and usefulness of the baseline.

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Sequestration Issues

One problematic area is the treatment of three entitlement programs created by the Family Support Act of 1988. The three new programs are designed to benefit families receiving Aid to Families with Dependent Children (AFDC)--the Job Opportunities and Basic Skills training program (JOBS), child care for families who are in the JOBS program, and extended child care for families who cease to receive AFDC. Pending clarification of their treatment, both CBO and OMB have assumed that the JOBS program is subject to sequestration and that the two child care programs are exempt. The child care funds are authorized under the same part of the Social Security Act (Title IV-A) that authorizes AFDC, which is exempt from sequestration. The JOBS program, however, is distinct from AFDC. Many of its requirements are set out in a different part of the law (Title IV-F), a separate state plan is required, and funding is separate.

CBO and OMB differ with respect to the treatment of the administrative expenses of the vaccine improvement program trust fund. Section 2115(f)(3) of the Public Health Service Act exempts from sequestration any payments of vaccine injury compensation. Because no explicit exemption is provided for administrative expenses, CBO regards them as sequesterable, although OMB treats the entire program as exempt. If such ambiguities are to be avoided, as CBO and OMB have previously noted, exempting programs from sequestration should be accomplished by amending the specifications for the sequestration report contained in the Balanced Budget Act.

CBO and OMB continue to disagree over the treatment of the Treasury's payments to the Farm Credit System Financial Assistance Corporation for interest and the Railroad Retirement Board's supplemental annuity pension fund. In conformance with the opinion of the General Accounting Office, CBO regards these programs as exempt from sequestration.

SEQUESTRATION REDUCTIONS

A summary of CBO's calculations for the sequestration of budgetary resources and the estimated outlay savings for 1990 is provided for national defense programs in Table 7 and for nondefense programs by function in Table 8. The tables show CBO's budget baseline estimates for new budget authority and outlays, reductions in outlays caused by sequestration, and post-sequestration spending levels. In most instances, additional outlay savings would be gained in 1991 and later years as a result of the cancellation of 1990 budget authority. Interest costs would also be permanently lowered as a result of reduced federal borrowing needs. Savings in later years have not been estimated for this report. A detailed list of the sequestration base and reductions by agency and budget account by type of spending authority is provided as Appendix A of this report.

The Balanced Budget Act requires that the revised sequestration reports (but not the initial reports) contain a listing of the sequestration base and reductions for defense programs, projects, and activities. Appendix B provides such a listing for defense budget accounts contained in the energy and water development appropriation. The report does not contain a listing of sequestration reductions by program, project, and activity for other defense accounts, because the defense and military construction appropriation bills for 1990 have not been enacted.

The CBO sequestration calculations and post-sequestration spending levels are advisory only. OMB will determine whether a sequestration is triggered and, if so, the actual sequestration amounts. OMB's final determination will be issued on October 16, 1989.

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TABLE 7. DEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990
(In billions of dollars)

Budget Function 050	October Budget Baseline[a]	CBO Estimated Sequestration[b]	Post-Sequestration
Department of Defense-Military:			
Military personnel			
Budget authority	79 2	8.5	70.7
Outlays	76.3	8.0	68.3
Operation and maintenance			
Budget authority	89.5	9.6	79.9
Outlays	88.3	7.5	80.8
Procurement			
Budget authority	82.7	8.9	73 9
Outlays	80.5	1.7	78.8
Research, development, test, and evaluation			
Budget authority	39.2	4.2	35.0
Outlays	37.3	2.4	34.9
Military construction and other			
Budget authority	9.4	1.1	8.3
Outlays	8.9	0 5	8.5
Subtotal, DoD--military			
Budget authority	299 9	32.2	267.8
Outlays	291.3	20.1	271.3
Atomic Energy Defense Activities			
Budget authority	9.7	1.0	8.6
Outlays	9.0	0.7	8.4
Other Defense-related Activities[c]			
Budget authority	0.5	0.1	0 5
Outlays	0 5	[d]	0 5
Total			
Budget authority	310 2	33 3	276.9
Outlays	300 9	20 8	280.2

a. Does not include an estimated $39.6 billion in unobligated balances subject to sequestration.

b. Does not include $4.2 billion in unobligated balances that would be sequestered.

c. Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

d. $50 million or less.

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TABLE 8. NONDEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990 BY FUNCTION (In billions of dollars)

Budget Function		October Budget Baseline	CBO Estimated Sequestration	Post-Sequestration
150	International Affairs			
	Budget authority	19.0	2.9	16.1
	Outlays	17.2	1.6	15.6
250	General Science, Space, and Technology			
	Budget authority	13.5	2.1	11.4
	Outlays	13.7	1.3	12.4
270	Energy			
	Budget authority	5.6	1.2	4.4
	Outlays	4.0	0.7	3.3
300	Natural Resources and Environment			
	Budget authority	17.6	3.2	14.4
	Outlays	18.1	2.0	16.1
350	Agriculture[a]			
	Budget authority	19.5	1.5	18.0
	Outlays	16.2	1.6	14.6
370	Commerce and Housing Credit			
	Budget authority	25.6	0.4	25.2
	Outlays	23.1	0.6	22.4
400	Transportation			
	Budget authority	30.2	4.6	25.5
	Outlays	29.2	1 7	27.6
450	Community and Regional Development			
	Budget authority	8.2	1.0	7.2
	Outlays	7.3	0.3	7.0
500	Education, Training, Employment, and Social Services			
	Budget authority	39.7	4.9	34.8
	Outlays	38.5	1.8	36.7
550	Health			
	Budget authority	57.2	2.7	54.5
	Outlays	55.8	1.1	54.7
570	Medicare			
	Budget authority	123.4	0.0	123.4
	Outlays	99.5	2.1	97.4
600	Income Security			
	Budget authority	184.5	2.4	182.2
	Outlays	145.6	1.3	144.3
650	Social Security			
	Budget authority	313.9	0.0	313.9
	Outlays	249.2	0.3	249.0
700	Veterans Benefits and Services			
	Budget authority	31.5	0.7	30.8
	Outlays	30.7	0.5	30.2
750	Administration of Justice			
	Budget authority	10.3	1.7	8.5
	Outlays	10.1	1.4	8.7
800	General Government			
	Budget authority	10.4	1.6	8.7
	Outlays	10.3	1.5	8.9
900	Net Interest[b]			
	Budget authority	179.8	1·7	178.1
	Outlays	179.8	1 7	178.1
950	Undistributed Offsetting Receipts			
	Budget authority	-36.5	0 0	-36.5
	Outlays	-36.5	0.0	-36.5
	Total			
	Budget authority	1,053.4	32.7	1,020.7
	Outlays	911.8	21.4	890.4

a. Excludes $1.0 billion in estimated 1991 outlay savings for programs of the Commodity Credit Corporation that are credited toward the 1990 sequestration (see discussion of special rule for the CCC).

b. Includes $1.7 billion savings in debt service costs as a result of 1990 outlay reductions through sequestration.

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APPENDIX A

SEQUESTRATION REDUCTIONS

BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990, in thousands of dollars)

Percentages used:

Defense 10.7 percent

Nondefense 15.6 percent

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER A-1
Legislative Branch			
Senate			
Salaries, officers and employees			
00 0110 0 1 801	Budget Authority	370,165	57,746
	Outlays	350,045	54,607
House of Representatives			
Mileage of Members			
00 0208 0 1 801	Budget Authority	219	34
	Outlays	110	17
Salaries and expenses			
00 0400 0 1 801	Budget Authority	541,701	84,505
	Outlays	510,282	79,604
Congressional use of foreign currency, House of Representatives			
00 0488 0 1 801	401(C) Authority	3,360	524
	Outlays	3,360	524
Joint Items			
Capitol Guide Service			
00 0170 0 1 801	Budget Authority	1,316	205
	Outlays	1,184	185
Joint Committee on Printing			
00 0180 0 1 801	Budget Authority	1,233	192
	Outlays	1,144	178
Joint Economic Committee			
00 0181 0 1 801	Budget Authority	3,593	561
	Outlays	3,413	532
Joint Committee on Inaugural Ceremonies of 1989			
00 0186 0 1 801	Budget Authority	823	128
	Outlays	823	128
Office of the Attending Physician			
00 0425 0 1 801	Budget Authority	1,476	230
	Outlays	592	92
Joint Committee on Taxation			
00 0460 0 1 801	Budget Authority	4,655	726
	Outlays	4,422	690
Salaries, Capitol Police			
00 0474 0 1 801	Budget Authority	56,732	8,850
	Outlays	54,917	8,567
General expenses, Capitol police			
00 0476 0 1 801	Budget Authority	1,970	307
	Outlays	1,673	261
Statements of appropriations			
00 0499 0 1 801	Budget Authority	21	3
Official mail costs			
00 0825 0 1 801	Budget Authority	56,299	8,783
	Outlays	56,299	8,783
Congressional Budget Office			
Salaries and expenses			
08 0100 0 1 801	Budget Authority	19,643	3,064
	Outlays	17,679	2,758
Architect of the Capitol			
Office of the Architect of the Capitol: Salaries			
01 0100 0 1 801	Budget Authority	7,048	1,099
	Outlays	6,421	1,002
Contingent expenses			
01 0102 0 1 801	Budget Authority	104	16
	Outlays	104	16
Capitol buildings			
01 0105 0 1 801	Budget Authority	16,387	2,556
	Outlays	13,192	2,058
Capitol grounds			
01 0106 0 1 801	Budget Authority	4,028	628
	Outlays	3,351	523
Senate office buildings			
01 0123 0 1 801	Budget Authority	25,690	4,008
	Outlays	18,908	2,950
House office buildings			
01 0127 0 1 801	Budget Authority	30,783	4,802
	Outlays	21,887	3,414
Capitol Power Plant			
01 0133 0 1 801	Budget Authority	25,993	4,055
	401(C) Authority - Off. Coll.	253	39
	Outlays	22,607	3,526
Structural and mechanical care, Library buildings and grounds			
01 0155 0 1 801	Budget Authority	7,940	1,239
	Outlays	6,384	996

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-2
Capitol Preservation Fund				
01 8888 0 7 801	Budget Authority	500	78	
Library of Congress				
Salaries and expenses				
03 0101 0 1 503	Budget Authority	158,161	24,673	
	401(C) Authority - Off. Coll.	5,060	789	
	Outlays	134,752	21,021	
Copyright Office: Salaries and expenses				
03 0102 0 1 376	Budget Authority	12,526	1,954	
	401(C) Authority - Off. Coll.	8,144	1,270	
	Outlays	18,791	2,931	
Congressional Research Service: Salaries and expenses				
03 0127 0 1 801	Budget Authority	47,957	7,481	
	Outlays	43,353	6,763	
Books for the blind and physically handicapped: Salaries and expenses				
03 0141 0 1 503	Budget Authority	38,232	5,964	
	Outlays	19,116	2,982	
National Film Preservation Board,Salaries and expenses				
03 0143 0 1 503	Budget Authority	261	41	
	Outlays	261	41	
Furniture and furnishings				
03 0146 0 1 503	Budget Authority	3,533	551	
	Outlays	2,000	312	
Gift and trust fund accounts				
03 9971 0 7 503	401(C) Other - incl. ob. limit	328	51	
	Outlays	328	51	
Government Printing Office				
Office of Superintendent of Documents: Salaries and expenses				
04 0201 0 1 808	Budget Authority	14,422	2,250	
	Outlays	8,956	1,397	
Congressional printing and binding				
04 0203 0 1 801	Budget Authority	75,168	11,726	
	Outlays	60,134	9,381	
Government Printing Office revolving fund				
04 4505 0 4 808	401(C) Authority - Off. Coll.	38,383	5,988	
	Outlays	38,383	5,988	
General Accounting Office				
Salaries and expenses				
05 0107 0 1 801	Budget Authority	371,184	57,905	
	Outlays	341,489	53,272	
United States Tax Court				
Salaries and expenses				
23 0100 0 1 752	Budget Authority	31,141	4,858	
	Outlays	24,913	3,886	
Tax courts independent counsel, U.S. Tax Court				
23 5023 0 2 752	401(C) Authority	10	2	
	Outlays	10	2	
Legislative Branch Boards and Commissions				
Prescription Drug Payment Review Commission				
03 8880 0 1 570	Budget Authority	264	41	
	Outlays	224	35	
Commission on Security and Cooperation in Europe: Salaries and expenses				
09 0110 0 1 801	Budget Authority	795	124	
	Outlays	715	112	
Botanic Garden: Salaries and expenses				
09 0200 0 1 801	Budget Authority	2,703	422	
	Outlays	2,433	380	
Copyright Royalty Tribunal: Salaries and expenses				
09 0310 0 1 376	Budget Authority	131	20	
	Outlays	118	18	
Biomedical Ethics: Salaries and expenses				
09 0400 0 1 801	Budget Authority	254	40	
	Outlays	183	29	
International conferences and contingencies: House and Senate expenses				
09 0500 0 1 801	401(C) Authority	340	53	
	Outlays	340	53	
National Commission on Children				
09 1050 0 1 801	Budget Authority	842	131	
	Outlays	738	115	
United States Bipartisan Commission on Comprehensive Health Care				
09 1100 0 1 801	Budget Authority	1,105	172	
	Outlays	928	145	
Commission on Railroad Retirement Reform				
48 0850 0 1 801	Budget Authority	1,031	161	
	Outlays	1,031	161	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-3
Office of Technology Assessment				
Salaries and expenses				
09 0700 0 1 801	Budget Authority	19,105	2,980	
	Outlays	14,329	2,235	
John C. Stennis Center for Public Service Training and Development				
Payment to the John C. Stennis Center				
09 1200 0 1 801	Budget Authority	7,830	1,221	
	Outlays	7,830	1,221	
John C. Stennis Center for Public Service Development trust fund				
09 8275 0 7 801	401(C) Authority	564	88	
	Outlays	564	88	
TOTAL FOR Legislative Branch				
	Budget Authority	1,964,964	306,530	
	401(C) Authority	4,274	667	
	401(C) Authority - Off. Coll.	51,040	8,086	
	401(C) Other - incl. ob. limit	328	51	
	Outlays	1,820,716	284,030	
The Judiciary				
Supreme Court of the United States				
Salaries and expenses				
10 0100 0 1 752	Budget Authority	15,875	2,477	
	Outlays	12,700	1,981	
Care of the buildings and grounds				
10 0103 0 1 752	Budget Authority	2,253	351	
	Outlays	1,690	264	
United States Court of Appeals for the Federal Circuit				
Salaries and expenses				
10 0510 0 1 752	Budget Authority	7,533	1,175	
	Outlays	6,780	1,058	
United States Court of International Trade				
Salaries and expenses				
10 0400 0 1 752	Budget Authority	7,568	1,181	
	Outlays	6,811	1,063	
Courts of Appeals, District Courts, and other Judicial Services				
Salaries and expenses				
10 0920 0 1 752	Budget Authority	1,152,811	179,639	
	401(C) Authority - Off. Coll.	3,500	544	
	Outlays	1,064,086	165,907	
Defender services				
10 0923 0 1 752	Budget Authority	115,784	18,062	
	Outlays	57,892	9,031	
Fees of jurors and commissioners				
10 0925 0 1 752	Budget Authority	51,249	7,994	
	Outlays	46,124	7,195	
Court security				
10 0930 0 1 752	Budget Authority	43,266	6,749	
	Outlays	28,123	4,387	
Registry administration				
10 5101 0 2 752	401(C) Authority	21,000	3,276	
	Outlays	21,000	3,276	
Administrative Office of the United States Courts				
Salaries and expenses				
10 0927 0 1 752	Budget Authority	35,913	5,602	
	Outlays	32,322	5,042	
Federal Judicial Center				
Salaries and expenses				
10 0928 0 1 752	Budget Authority	11,861	1,850	
	Outlays	9,489	1,480	
Judiciary Retirement Funds				
Payment to judicial officers' retirement fund				
10 0941 0 1 752	Budget Authority	4,000	624	
Judicial officers' retirement fund				
10 8122 0 7 602	401(C) Other - incl. ob. limit	4,000	624	
	Outlays	4,000	624	
TOTAL FOR The Judiciary				
	Budget Authority	1,448,113	225,904	
	401(C) Authority	21,000	3,276	
	401(C) Authority - Off. Coll.	3,500	546	
	401(C) Other - incl. ob. limit	4,000	624	
	Outlays	1,291,017	201,398	
Executive Office of the President				
The White House Office				
Salaries and expenses				
11 0110 0 1 802	Budget Authority	29,778	4,645	
	Outlays	26,800	4,181	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-4
Executive Residence at the White House				
Operating expenses				
11 0210 0 1 802	Budget Authority	6,093	951	
	401(C) Authority - Off. Coll.	853	133	
	Outlays	6,641	1,036	
Official Residence of the Vice President				
Operating expenses				
11 0211 0 1 802	Budget Authority	270	42	
	Outlays	238	37	
Special Assistance to the President				
Salaries and expenses				
11 1454 0 1 802	Budget Authority	2,335	364	
	Outlays	2,055	321	
Council of Economic Advisers				
Salaries and expenses				
11 1900 0 1 802	Budget Authority	2,979	465	
	Outlays	2,592	404	
Council on Environmental Quality and Office of Environmental Quality				
Council on Environmental Quality and Office of Environmental Quality				
11 1453 0 1 802	Budget Authority	909	142	
	Outlays	864	135	
Office of Policy Development				
Salaries and expenses				
11 2200 0 1 802	Budget Authority	3,203	500	
	Outlays	2,787	435	
National Security Council				
Salaries and expenses				
11 2000 0 1 802	Budget Authority	5,432	847	
	Outlays	4,346	678	
National Critical Materials Council				
Salaries and expenses				
11 0111 0 1 802	Budget Authority	241	38	
	Outlays	220	34	
Office of Administration				
Salaries and expenses				
11 0038 0 1 802	Budget Authority	19,380	3,023	
	Outlays	13,954	2,177	
Office of Management and Budget				
Office of Federal Procurement Policy: Salaries and expenses				
11 0201 0 1 802	Budget Authority	2,518	393	
	Outlays	2,269	354	
Salaries and expenses				
11 0300 0 1 802	Budget Authority	42,313	6,601	
	Outlays	37,616	5,868	
Office of National Drug Control Policy				
Salaries and expenses				
11 1457 0 1 802	Budget Authority	3,672	573	
	Outlays	3,290	513	
Office of Science and Technology Policy				
Salaries and expenses				
11 2600 0 1 802	Budget Authority	1,686	263	
	Outlays	1,012	158	
Office of the United States Trade Representative				
Salaries and expenses				
11 0400 0 1 802	Budget Authority	16,211	2,529	
	Outlays	13,779	2,150	
TOTAL FOR Executive Office of the President				
	Budget Authority	137,020	21,376	
	401(C) Authority - Off. Coll.	853	133	
	Outlays	118,463	18,481	
Funds Appropriated to the President				
Unanticipated Needs				
Unanticipated needs				
11 0037 0 1 802	Budget Authority	855	133	
	Outlays	823	128	
Investment in Management Improvement				
Investment in management improvement (Executive direction and management				
11 0061 0 1 802	Budget Authority	1,044	163	
	Outlays	783	122	
International Security Assistance				
Peacekeeping operations				
11 1032 0 1 152	Budget Authority	33,083	5,161	
	Outlays	25,375	3,959	
Economic support fund				
11 1037 0 1 152	Budget Authority	3,401,874	530,692	
	Outlays	1,901,648	296,657	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-S
Military assistance				
11 1080 0 1 152	Budget Authority	488,303	76,175	
	Outlays	95,707	14,930	
International military education and training				
11 1081 0 1 152	Budget Authority	49,486	7,720	
	Outlays	24,743	3,860	
Foreign military sales financing				
11 1082 0 1 152	Budget Authority	4,460,751	695,877	
	Direct Loan Limitation	428,040	66,774	
	Outlays	1,879,200	293,155	
Multilateral Assistance				
Contribution to the International Development Association				
11 0073 0 1 151	Budget Authority	1,038,780	162,050	
Contribution to the Asian Development Bank				
11 0076 0 1 151	Budget Authority	159,097	24,819	
Contribution to the International Bank for Reconstruction and Developmen				
11 0077 0 1 151	Budget Authority	52,201	8,143	
	Outlays	5,220	814	
Contribution to the International Finance Corporation				
11 0078 0 1 151	Budget Authority	5,107	797	
	Outlays	5,107	797	
Contribution to the African Development Fund				
11 0079 0 1 151	Budget Authority	109,620	17,101	
Contribution to the African Development Bank				
11 0082 0 1 151	Budget Authority	7,668	1,196	
	Outlays	7,668	1,196	
International organizations and programs				
11 1005 0 1 151	Budget Authority	236,064	36,826	
	Outlays	175,091	27,314	
Agency for International Development				
Operating expenses Agency for International Development				
11 1000 0 1 151	Budget Authority	444,530	69,346	
	Outlays	334,461	52,175	
Operating expenses of the Agency for International Development Office of				
11 1007 0 1 151	Budget Authority	30,200	4,711	
	Outlays	22,650	3,533	
American schools and hospitals abroad				
11 1013 0 1 151	Budget Authority	36,540	5,700	
	Outlays	12,168	1,898	
Sub-Saharan Africa, development assistance				
11 1014 0 1 151	Budget Authority	574,200	89,575	
	Outlays	48,807	7,614	
Functional development assistance program				
11 1021 0 1 151	Budget Authority	1,266,249	197,535	
	Outlays	107,631	16,790	
International disaster assistance				
11 1035 0 1 151	Budget Authority	29,232	4,560	
	Outlays	7,250	1,131	
Housing and other credit guaranty programs				
72 4340 0 3 151	401(C) Authority - Off. Coll.	6,895	1,076	
	Guaranteed Loan Limitation	130,500	20,358	
	Outlays	6,736	1,051	
Private sector revolving fund				
72 4341 0 3 151	Budget Authority	8,874	1,384	
	Direct Loan Limitation	12,528	1,954	
	Guaranteed Loan Limitation	52,200	8,143	
	Outlays	920	144	
Trade and Development Program				
Trade and development program				
11 1001 0 1 151	Budget Authority	26,144	4,078	
	Outlays	5,412	844	
Peace Corps				
Peace Corps				
11 0100 0 1 151	Budget Authority	162,802	25,397	
	401(C) Authority - Off. Coll.	440	69	
	Outlays	134,021	20,907	
Overseas Private Investment Corporation				
Overseas Private Investment Corporation				
71 4030 0 3 151	401(C) Authority - Off. Coll.	12,030	1,877	
	Direct Loan Limitation	24,012	3,746	
	Guaranteed Loan Limitation	182,700	28,501	
	Outlays	14,359	2,240	
Inter-American Foundation				
Inter-American Foundation				
11 4031 0 3 151	Budget Authority	17,392	2,713	
	401(C) Authority - Off. Coll.	13,277	2,071	
	Outlays	12,268	1,914	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-6
African Development Foundation				
African Development Foundation				
11 0700 0 1 151	Budget Authority	8,403	1,311	
	Outlays	4,622	721	
Military Sales Programs				
Special defense acquisition fund				
11 4116 0 3 155	Obligation Limitation	247,287	38,577	
	Outlays	2,473	386	
Foreign military sales trust fund				
11 8242 0 7 155	401(C) Authority - Off. Coll.	263,000	41,028	
	Outlays	244,590	38,156	
Special Assistance for Central America				
Central American reconciliation assistance				
11 1038 0 1 152	Budget Authority	54,492	8,501	
	Outlays	33,458	5,219	
TOTAL FOR Funds Appropriated to the President				
	Budget Authority	12,702,991	1,981,664	
	401(C) Authority - Off. Coll.	295,642	46,121	
	Direct Loan Limitation	464,580	72,474	
	Guaranteed Loan Limitation	365,400	57,002	
	Obligation Limitation	247,287	38,577	
	Outlays	5,113,191	797,655	
Department of Agriculture				
Office of the Secretary				
Office of the Secretary				
12 0115 0 1 352	Budget Authority	6,544	1,021	
	Outlays	6,145	958	
Departmental Administration				
Rental payments and building operations				
12 0117 0 1 352	Budget Authority	73,969	11,539	
	Outlays	63,539	9,912	
Advisory committees				
12 0118 0 1 352	Budget Authority	1,577	246	
	Outlays	1,145	179	
Departmental administration				
12 0120 0 1 352	Budget Authority	27,767	4,332	
	Outlays	18,659	2,911	
Hazardous waste management				
12 0500 0 1 304	Budget Authority	5,220	814	
	Outlays	2,610	407	
Working capital fund				
12 4609 0 4 352	Budget Authority	4,965	775	
	Outlays	3,907	609	
Office of Governmental and Public Affairs				
Office of Governmental and Public Affairs				
12 0130 0 1 352	Budget Authority	9,454	1,475	
	Outlays	7,185	1,121	
Office of the Inspector General				
Office of the Inspector General				
12 0900 0 1 352	Budget Authority	53,951	8,416	
	Outlays	48,232	7,524	
Office of the General Counsel				
Office of the General Counsel				
12 2300 0 1 352	Budget Authority	22,332	3,484	
	Outlays	20,166	3,146	
Agricultural Research Service				
Agricultural Research Service				
12 1400 0 1 352	Budget Authority	598,228	93,324	
	401(C) Authority - Off. Coll.	3,200	499	
	Outlays	472,211	73,665	
Buildings and facilities				
12 1401 0 1 352	Budget Authority	16,726	2,609	
	Outlays	2,509	391	
Cooperative State Research Service				
Cooperative State Research Service				
12 1500 0 1 352	Budget Authority	353,165	55,094	
	401(C) Authority	2,850	445	
	Outlays	188,615	29,424	
Extension Service				
Extension Service				
12 0502 0 1 352	Budget Authority	377,580	58,902	
	401(C) Authority - Off. Coll.	380	59	
	Outlays	292,627	45,650	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-7
National Agricultural Library				
National Agricultural Library				
12 0300 0 1 352	Budget Authority	14,061	2,194	
	Outlays	10,616	1,656	
National Agricultural Statistics Service				
Salaries and expenses				
12 1801 0 1 352	Budget Authority	67,571	10,541	
	401(C) Authority - Off. Coll.	1,200	187	
	Outlays	60,054	9,368	
Economic Research Service				
Salaries and expenses				
12 1701 0 1 352	Budget Authority	52,757	8,230	
	Outlays	43,630	6,806	
World Agricultural Outlook Board				
World agricultural outlook board				
12 2100 0 1 352	Budget Authority	1,946	304	
	Outlays	1,514	236	
Foreign Agricultural Service				
Foreign Agricultural Service				
12 2900 0 1 352	Budget Authority	100,758	15,718	
	Outlays	58,540	9,132	
Office of International Cooperation and Development				
Scientific activities overseas (foreign currency program)				
12 1404 0 1 352	Budget Authority	1,044	163	
	Outlays	833	130	
Salaries and expenses				
12 3200 0 1 352	Budget Authority	5,647	881	
	Outlays	5,641	880	
Foreign Assistance Programs				
Expenses, Public Law 480, foreign assistance programs, Agriculture				
12 2274 0 1 151	Budget Authority	996,049	155,384	
	Direct Loan Limitation	825,700	128,809	
	Obligation Limitation	1,567,100	244,548	
	Outlays	1,407,844	219,627	
Agricultural Stabilization and Conservation Service				
Salaries and expenses				
12 3300 0 1 351	Budget Authority	345	54	
	401(C) Authority - Off. Coll.	19,954	3,113	
	Outlays	19,954	3,113	
Dairy indemnity program				
12 3314 0 1 351	Budget Authority	95	15	
	Outlays	95	15	
Agricultural conservation program				
12 3315 0 1 302	Budget Authority	184,720	28,816	
	Outlays	84,971	13,255	
Emergency conservation program				
12 3316 0 1 453	Budget Authority	5,220	814	
	Outlays	2,349	366	
Colorado river basin salinity control program				
12 3318 0 1 304	Budget Authority	5,692	888	
	Outlays	2,846	444	
Conservation reserve program				
12 3319 0 1 302	Budget Authority	1,603,158	250,093	
	Outlays	873,859	136,322	
Water Bank program				
12 3320 0 1 302	Budget Authority	9,396	1,466	
	Outlays	1,400	218	
Forestry incentives program				
12 3336 0 1 302	Budget Authority	12,994	2,027	
	Outlays	5,016	782	
Federal Crop Insurance Corporation				
Administrative and operating expenses				
12 2707 0 1 351	Budget Authority	211,893	33,055	
	Outlays	120,143	18,742	
Commodity Credit Corporation				
Temporary emergency food assistance program				
12 3635 0 1 351	Budget Authority	172,200	26,863	
	Outlays	156,488	24,412	
Commodity Credit Corporation Fund				
12 4336 0 3 351	401(C) Authority	12,812,000	1,998,672	
	Direct Loan Limitation	10,251,000	1,599,156	
	Guaranteed Loan Limitation	5,742,000	895,752	
	Outlays	12,812,000	1,998,672	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-8
Rural Electrification Administration				
Salaries and expenses				
12 3100 0 1 271	Budget Authority	33,311	5,197	
	Outlays	30,047	4,687	
Reimbursement to the Rural electrification and telephone revolving fund				
12 3101 0 1 271	Budget Authority	356,004	55,537	
Purchase of Rural Telephone Bank capital stock				
12 3102 0 1 452	Budget Authority	29,973	4,676	
	Outlays	29,973	4,676	
Rural electrification and telephone revolving fund				
12 4230 0 3 271	Direct Loan Limitation	3,492,796	544,876	
	Direct Loan Floor	1,867,944	291,399	
	Outlays	85,904	13,401	
Rural telephone bank				
12 4231 0 3 452	Direct Loan Limitation	219,804	34,289	
	Direct Loan Floor	184,834	28,834	
	Outlays	8,141	1,270	
Farmers Home Administration				
Salaries and expenses				
12 2001 0 1 452	Budget Authority	443,810	69,234	
	Outlays	394,991	61,619	
Rural housing for domestic farm labor				
12 2004 0 1 604	Budget Authority	9,932	1,549	
	Outlays	397	62	
Mutual and self-help housing				
12 2006 0 1 604	Budget Authority	8,352	1,303	
	Outlays	668	104	
Very low income housing repair grants				
12 2064 0 1 604	Budget Authority	13,050	2,036	
	Outlays	12,398	1,934	
Rural development grant program				
12 2065 0 1 452	Budget Authority	6,786	1,059	
	Outlays	1,697	265	
Rural water and waste disposal grants				
12 2066 0 1 452	Budget Authority	122,038	19,037	
	Outlays	2,441	380	
Rural community fire protection grants				
12 2067 0 1 452	Budget Authority	3,227	503	
	Outlays	1,452	227	
Rural housing preservation grants				
12 2070 0 1 604	Budget Authority	19,982	3,117	
	Outlays	1,199	187	
Compensation for construction defects				
12 2071 0 1 371	Budget Authority	522	81	
	Outlays	522	81	
Agricultural credit insurance fund				
12 4140 0 3 351	401(C) Authority - Off. Coll.	115,000	17,940	
	Direct Loan Limitation	1,637,619	255,469	
	Guaranteed Loan Limitation	3,471,414	541,541	
	Outlays	1,240,084	193,453	
Rural housing insurance fund				
12 4141 0 3 371	401(C) Authority - Off. Coll.	17,000	2,652	
	Direct Loan Limitation	1,926,170	300,483	
	Obligation Limitation	286,600	44,710	
	Outlays	1,240,290	193,485	
Rural development insurance fund				
12 4155 0 3 452	401(C) Authority - Off. Coll.	2,000	312	
	Direct Loan Limitation	447,354	69,787	
	Guaranteed Loan Limitation	308,711	48,159	
	Outlays	24,774	3,865	
Self-help housing land development fund				
12 4222 0 3 371	Direct Loan Limitation	521	81	
	Outlays	340	53	
Rural development loan fund				
12 4233 0 3 452	Direct Loan Limitation	14,616	2,280	
	Outlays	1,359	212	
Soil Conservation Service				
Conservation operations				
12 1000 0 1 302	Budget Authority	498,342	77,741	
	401(C) Authority - Off. Coll.	9,527	1,486	
	Outlays	468,931	73,153	
Resource conservation and development				
12 1010 0 1 302	Budget Authority	26,674	4,161	
	401(C) Authority - Off. Coll.	4,600	718	
	Outlays	20,551	3,206	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-9
Watershed planning				
12 1066 0 1 301	Budget Authority	9,256	1,444	
	401(C) Authority - Off. Coll.	213	33	
	Outlays	8,229	1,283	
River basin surveys & investigations				
12 1069 0 1 301	Budget Authority	12,887	2,010	
	401(C) Authority - Off. Coll.	166	26	
	Outlays	12,228	1,908	
Watershed and flood prevention operations				
12 1072 0 1 301	Budget Authority	181,527	28,318	
	401(C) Authority - Off. Coll.	11,849	1,848	
	Outlays	133,835	20,878	
Great plains conservation program				
12 2268 0 1 302	Budget Authority	21,588	3,368	
	401(C) Authority - Off. Coll.	41	6	
	Outlays	9,820	1,532	
Miscellaneous contributed funds (Water resources)				
12 8210 0 7 301	401(C) Authority	481	75	
	Outlays	481	75	
Miscellaneous contributed funds (Conservation and land management)				
12 8210 0 7 302	401(C) Authority	100	16	
Animal and Plant Health Inspection Service				
Salaries and expenses				
12 1600 0 1 352	Budget Authority	351,584	54,847	
	401(C) Authority - Off. Coll.	17,434	2,720	
	Outlays	310,655	48,462	
Buildings and facilities				
12 1601 0 1 352	Budget Authority	2,658	415	
Federal Grain Inspection Service				
Salaries and expenses				
12 2400 0 1 352	Budget Authority	8,678	1,354	
	Outlays	7,472	1,166	
Inspection and weighing services				
12 4050 0 3 352	401(C) Authority - Off. Coll.	36,856	5,750	
	Outlays	36,856	5,750	
Agricultural Marketing Service				
Marketing services				
12 2500 0 1 352	Budget Authority	35,607	5,555	
	401(C) Authority - Off. Coll.	37,278	5,815	
	Outlays	47,355	7,387	
Payments to States and possessions				
12 2501 0 1 352	Budget Authority	983	153	
	Outlays	153	24	
Perishable Agricultural Commodities Act fund				
12 5070 0 2 352	401(C) Authority	5,500	858	
	Outlays	4,131	644	
Funds for strengthening markets, income, and supply (section 32)				
12 5209 0 2 605	401(C) Authority	522,744	81,548	
	Outlays	191,000	29,796	
Milk market orders assessment fund				
12 8412 0 8 351	401(C) Authority - Off. Coll.	38,709	6,039	
	Outlays	38,709	6,039	
Miscellaneous trust funds				
12 9972 0 7 352	401(C) Authority	85,979	13,413	
	Outlays	55,673	8,685	
Office of Transportation				
Office of Transportation				
12 2800 0 1 352	Budget Authority	2,567	400	
	Outlays	2,115	330	
Food Safety and Inspection Service				
Salaries and expenses				
12 3700 0 1 554	Budget Authority	433,289	67,593	
	401(C) Authority - Off. Coll.	46,384	7,236	
	Outlays	440,677	68,746	
Expenses and refunds, inspection and grading of farm products				
12 8137 0 7 352	401(C) Authority	1,150	179	
	Outlays	986	154	
Food and Nutrition Service				
Cash and commodities for selected groups				
12 3503 0 1 605	Budget Authority	207,909	32,434	
	401(C) Authority	40,000	6,240	
	Outlays	212,564	33,160	
Food stamp program				
12 3505 0 1 605	401(C) Authority	54,089	8,438	
	Outlays	21,636	3,375	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-10
Food program administration				
12 3508 0 1 605	Budget Authority	95,495	14,897	
	Outlays	82,126	12,812	
Supplemental feeding programs				
12 3510 0 1 605	Budget Authority	3,000	468	
	Outlays	3,000	468	
Child nutrition programs				
12 3539 0 1 605	401(C) Authority	6,935	1,082	
	Outlays	6,935	1,082	
Human Nutrition Information Service				
Salaries and expenses				
12 3501 0 1 352	Budget Authority	9,329	1,455	
	Outlays	4,021	627	
Packers and Stockyards Administration				
Packers and Stockyards Administration				
12 2600 0 1 352	Budget Authority	10,232	1,596	
	Outlays	9,373	1,462	
Agricultural Cooperative Service				
Salaries and expenses				
12 3000 0 1 352	Budget Authority	4,968	775	
	Outlays	3,115	486	
Forest Service				
Construction				
12 1103 0 1 302	Budget Authority	238,194	37,158	
	401(C) Authority - Off. Coll.	2,835	442	
	Outlays	141,702	22,105	
Forest research				
12 1104 0 1 302	Budget Authority	147,184	22,961	
	401(C) Authority - Off. Coll.	1,262	197	
	Outlays	112,092	17,486	
State and private forestry				
12 1105 0 1 302	Budget Authority	91,045	14,203	
	401(C) Authority - Off. Coll.	550	86	
	Outlays	67,650	10,554	
National forest system				
12 1106 0 1 302	Budget Authority	1,528,031	238,373	
	Outlays	1,324,802	206,669	
Land acquisition				
12 5004 0 2 303	Budget Authority	67,094	10,467	
	Outlays	26,838	4,187	
Range betterment fund				
12 5207 0 2 302	Budget Authority	4,700	733	
	Outlays	3,760	587	
Acquisition of lands for national forests, special acts				
12 5208 0 2 302	Budget Authority	1,010	158	
	Outlays	851	133	
Acquisition of lands to complete land exchanges				
12 5216 0 2 302	Budget Authority	1,070	167	
	Outlays	949	148	
Operations and maintenance of quarters				
12 5219 0 2 302	401(C) Authority	6,064	946	
	Outlays	4,869	760	
Resource management-timber receipts				
12 5220 0 1 302	Budget Authority	104,062	16,234	
	Outlays	83,250	12,987	
Cooperative work trust fund				
12 8028 0 7 302	401(C) Authority	315,117	49,158	
	Outlays	265,959	41,490	
Highway Construction: Mount St. Helens National Monument				
12 8029 0 7 401	Budget Authority	5,573	869	
	Outlays	1,115	174	
Gifts, donations and bequests for forest and rangeland research				
12 8034 0 7 302	Budget Authority	94	15	
	Outlays	94	15	
Other appropriations				
12 9911 0 1 302	Budget Authority	38,101	5,944	
	Outlays	35,053	5,468	
Forest Service permanent appropriations				
12 9921 0 2 806	401(C) Authority	307,430	47,959	
	Outlays	230,880	36,017	
Forest Service permanent appropriations				
12 9922 0 2 302	Budget Authority	21,129	3,296	
	401(C) Authority	140,747	21,957	
	Outlays	122,939	19,178	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-11
Reforestation trust fund				
20 8046 0 7 302	401(C) Other - incl. ob. limit	30,000	4,680	
	Outlays	30,000	4,680	
TOTAL FOR Department of Agriculture				
	Budget Authority	10,207,871	1,592,428	
	401(C) Authority	14,301,186	2,230,986	
	401(C) Authority - Off. Coll.	366,436	57,164	
	401(C) Other - incl. ob. limit	30,000	4,680	
	Direct Loan Limitation	18,815,580	2,935,230	
	Direct Loan Floor	2,052,778	320,233	
	Guaranteed Loan Limitation	9,522,125	1,485,452	
	Obligation Limitation	1,833,704	286,058	
	Outlays	24,457,470	3,815,362	
Department of Commerce				
General Administration				
Salaries and expenses				
13 0120 0 1 376	Budget Authority	43,027	6,712	
	Outlays	40,876	6,377	
Grants and loans administration				
13 0125 0 1 452	Budget Authority	26,383	4,116	
	Outlays	23,164	3,614	
Economic development assistance programs				
13 2050 0 1 452	Budget Authority	190,037	29,646	
	Guaranteed Loan Limitation	195,750	30,537	
	Outlays	19,004	2,965	
Bureau of the Census				
Salaries and expenses				
13 0401 0 1 376	Budget Authority	102,511	15,992	
	401(C) Authority - Off. Coll.	8,000	1,248	
	Outlays	90,009	14,041	
Periodic censuses and programs				
13 0450 0 1 376	Budget Authority	592,711	92,463	
	Outlays	576,115	89,874	
Economic and Statistical Analysis				
Salaries and expenses				
13 1500 0 1 376	Budget Authority	35,137	5,481	
	401(C) Authority - Off. Coll.	395	62	
	Outlays	32,018	4,995	
International Trade Administration				
Operations and administration				
13 1250 0 1 376	Budget Authority	178,310	27,816	
	401(C) Authority - Off. Coll.	15,960	2,490	
	Outlays	140,777	21,961	
Export Administration				
Operations and administration				
13 0300 0 1 376	Budget Authority	42,581	6,643	
	Outlays	29,807	4,650	
Minority Business Development Agency				
Minority business development				
13 0201 0 1 376	Budget Authority	41,731	6,510	
	Outlays	12,519	1,953	
United States Travel and Tourism Administration				
Salaries and expenses				
13 0700 0 1 376	Budget Authority	14,570	2,273	
	401(C) Authority - Off. Coll.	1,450	226	
	Outlays	12,669	1,976	
National Oceanic and Atmospheric Administration				
Operations, research, and facilities				
13 1450 0 1 306	Budget Authority	1,339,044	208,891	
	401(C) Authority - Off. Coll.	11,434	1,784	
	Outlays	921,402	143,739	
Coastal energy impact fund				
13 4315 0 3 452	401(C) Authority - Off. Coll.	5,200	811	
	Outlays	5,200	811	
Federal ship financing fund, fishing vessels				
13 4417 0 3 376	401(C) Authority - Off. Coll.	7,300	1,139	
	Guaranteed Loan Limitation	480,000	74,880	
	Outlays	7,300	1,139	
Fisherman's contingency fund				
13 5120 0 2 376	Budget Authority	752	117	
	Outlays	714	111	
Foreign fishing observer fund				
13 5122 0 2 376	Budget Authority	2,023	316	
	Outlays	1,942	303	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-12
Fisheries promotional fund				
13 5124 0 2 376	Budget Authority	3,135	489	
	Outlays	1,724	269	
Promote and develop fishery products and research pertaining to American				
13 5139 0 2 376	401(C) Other - incl. ob. limit	4,591	716	
	Outlays	2,468	385	
Aviation weather services program				
13 8105 0 7 306	Budget Authority	29,981	4,677	
	Outlays	29,981	4,677	
Patent and Trademark Office				
Salaries and expenses				
13 1006 0 1 376	Budget Authority	115,102	17,956	
	401(C) Authority - Off. Coll.	180,032	28,085	
	Outlays	162,324	25,323	
Technology Administration				
Information products and services				
13 8546 0 7 376	401(C) Authority	49,429	7,711	
	Outlays	33,760	5,267	
National Institute of Standards and Technology				
Scientific and technical research and services				
13 0500 0 1 376	Budget Authority	167,123	26,071	
	Outlays	129,116	20,142	
Working capital fund				
13 4650 0 4 376	Budget Authority	1,601	250	
	Outlays	801	125	
National Telecommunications and Information Administration				
Salaries and expenses				
13 0550 0 1 376	Budget Authority	14,527	2,266	
	Outlays	11,622	1,813	
Public telecommunications facilities, planning and construction				
13 0551 0 1 503	Budget Authority	20,910	3,262	
	Outlays	2,426	378	
TOTAL FOR Department of Commerce				
	Budget Authority	2,961,196	461,947	
	401(C) Authority	49,429	7,711	
	401(C) Authority - Off. Coll.	229,771	35,845	
	401(C) Other - incl. ob. limit	4,591	716	
	Guaranteed Loan Limitation	675,750	105,417	
	Outlays	2,287,738	356,888	
Department of Defense--Military				
Military Personnel				
Military personnel, Marine Corps				
17 1105 0 1 051	Budget Authority	5,771,660	617,568	
	Outlays	5,483,077	586,689	
Reserve personnel, Marine Corps				
17 1108 0 1 051	Budget Authority	310,379	33,211	
	Outlays	266,926	28,561	
Reserve personnel, Navy				
17 1405 0 1 051	Budget Authority	1,563,538	167,299	
	Outlays	1,407,184	150,569	
Military personnel, Navy				
17 1453 0 1 051	Budget Authority	19,262,472	2,061,085	
	Outlays	18,299,348	1,958,030	
Military personnel, Army				
21 2010 0 1 051	Budget Authority	24,787,845	2,652,299	
	Outlays	23,424,514	2,506,423	
National Guard personnel, Army				
21 2060 0 1 051	Budget Authority	3,238,829	346,555	
	Outlays	2,914,946	311,899	
Reserve personnel, Army				
21 2070 0 1 051	Budget Authority	2,174,299	232,650	
	Outlays	2,022,098	216,364	
Military personnel, Air Force				
57 3500 0 1 051	Budget Authority	20,449,248	2,188,070	
	Outlays	19,426,786	2,078,666	
Reserve personnel, Air Force				
57 3700 0 1 051	Budget Authority	644,829	68,997	
	Outlays	593,243	63,477	
National Guard personnel, Air Force				
57 3850 0 1 051	Budget Authority	1,008,226	107,880	
	Outlays	938,658	100,436	
Operation and Maintenance				
Operation and maintenance, Marine Corps				
17 1106 0 1 051	Budget Authority	1,897,109	202,991	
	Outlays	1,403,861	150,213	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-13
Operation and maintenance, Marine Corps Reserve				
17 1107 0 1 051	Budget Authority	81,056	8,673	
	Outlays	52,119	5,577	
Operation and maintenance, Navy				
17 1804 0 1 051	Budget Authority	26,262,788	2,810,118	
	Outlays	19,697,091	2,107,589	
Operation and maintenance, Navy Reserve				
17 1806 0 1 051	Budget Authority	1,021,346	109,284	
	Outlays	735,369	78,684	
National Board for the Promotion of Rifle Practice, Army				
21 1705 0 1 051	Budget Authority	4,486	480	
	Outlays	4,374	468	
Operation and maintenance, Army				
21 2020 0 1 051	Budget Authority	23,265,084	2,489,364	
	Outlays	18,612,067	1,991,491	
Operation and maintenance, Army National Guard				
21 2065 0 1 051	Budget Authority	1,875,873	200,718	
	Outlays	1,538,216	164,589	
Operation and maintenance, Army Reserve				
21 2080 0 1 051	Budget Authority	828,666	88,667	
	Outlays	730,055	78,116	
Operation and maintenance, Air Force				
57 3400 0 1 051	Budget Authority	22,872,145	2,447,320	
	Outlays	17,840,273	1,908,909	
Operation and maintenance, Air Force Reserve				
57 3740 0 1 051	Budget Authority	1,077,254	115,266	
	Outlays	951,215	101,780	
Operation and maintenance, Air National Guard				
57 3840 0 1 051	Budget Authority	2,053,255	219,698	
	Outlays	1,786,332	191,138	
Operation and maintenance, Defense agencies				
97 0100 0 1 051	Budget Authority	8,014,468	857,548	
	Outlays	6,892,442	737,491	
Court of Military Appeals, Defense				
97 0104 0 1 051	Budget Authority	3,656	391	
	Outlays	3,144	336	
Drug interdiction, Defense				
97 0105 0 1 051	Budget Authority	219,240	23,459	
	Outlays	164,430	17,594	
Goodwill games				
97 0106 0 1 051	Budget Authority	5,220	559	
	Outlays	2,297	246	
Foreign currency fluctuations, Defense				
97 0801 0 1 051	Unobligated Balances - Defense	414,152	44,314	
Humanitarian assistance				
97 0819 0 1 051	Budget Authority	10,440	1,117	
	Outlays	6,139	657	
Procurement				
Procurement, Marine Corps				
17 1109 0 1 051	Budget Authority	1,348,681	144,309	
	Unobligated Balances - Defense	266,802	28,548	
	Outlays	109,853	11,754	
Aircraft procurement, Navy				
17 1506 0 1 051	Budget Authority	9,723,508	1,040,415	
	Unobligated Balances - Defense	1,865,544	199,613	
	Outlays	1,274,796	136,403	
Weapons procurement, Navy				
17 1507 0 1 051	Budget Authority	6,358,973	680,411	
	Unobligated Balances - Defense	2,295,631	245,633	
	Outlays	952,007	101,865	
Shipbuilding and conversion, Navy				
17 1611 0 1 051	Budget Authority	9,951,878	1,064,851	
	Unobligated Balances - Defense	9,802,211	1,048,837	
	Outlays	1,027,212	109,911	
Other procurement, Navy				
17 1810 0 1 051	Budget Authority	4,828,908	516,693	
	Unobligated Balances - Defense	1,804,590	193,091	
	Outlays	669,984	71,688	
Aircraft procurement, Army				
21 2031 0 1 051	Budget Authority	2,998,147	320,802	
	Unobligated Balances - Defense	555,538	59,443	
	Outlays	543,713	58,178	
Missile procurement, Army				
21 2032 0 1 051	Budget Authority	2,706,056	289,548	
	Unobligated Balances - Defense	779,755	83,434	
	Outlays	209,148	22,379	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-14
Procurement of weapons and tracked combat vehicles, Army				
21 2033 0 1 051	Budget Authority	2,944,449	315,056	
	Unobligated Balances - Defense	1,303,644	139,490	
	Outlays	195,413	20,910	
Procurement of ammunition, Army				
21 2034 0 1 051	Budget Authority	2,093,424	223,996	
	Unobligated Balances - Defense	168,801	18,062	
	Outlays	565,556	60,514	
Other procurement, Army				
21 2035 0 1 051	Budget Authority	4,864,989	520,554	
	Unobligated Balances - Defense	1,602,125	171,427	
	Outlays	375,092	40,135	
Aircraft procurement, Air Force				
57 3010 0 1 051	Budget Authority	16,306,743	1,744,822	
	Unobligated Balances - Defense	6,053,661	647,742	
	Outlays	1,475,787	157,909	
Missile procurement, Air Force				
57 3020 0 1 051	Budget Authority	7,433,693	795,405	
	Unobligated Balances - Defense	2,758,717	295,183	
	Outlays	2,537,911	271,557	
Other procurement, Air Force				
57 3080 0 1 051	Budget Authority	8,512,255	910,811	
	Unobligated Balances - Defense	2,139,693	228,947	
	Outlays	5,219,454	558,482	
Procurement, Defense agencies				
97 0300 0 1 051	Budget Authority	1,233,541	131,989	
	Unobligated Balances - Defense	349,815	37,430	
	Outlays	443,339	47,437	
National guard and reserve equipment				
97 0350 0 1 051	Budget Authority	1,188,908	127,213	
	Unobligated Balances - Defense	442,388	47,336	
	Outlays	97,877	10,473	
Defense production act purchases				
97 0360 0 1 051	Budget Authority	34,974	3,742	
	Unobligated Balances - Defense	45,850	4,906	
Chemical agents and munitions destruction, Defense				
97 0390 0 1 051	Budget Authority	187,397	20,051	
	Unobligated Balances - Defense	31,788	3,401	
	Outlays	132,872	14,217	
Research, Development, Test, and Evaluation				
Research, development, test, and evaluation, Navy				
17 1319 0 1 051	Budget Authority	9,730,714	1,041,186	
	Unobligated Balances - Defense	482,879	51,668	
	Outlays	5,413,467	579,241	
Research, development, test, and evaluation, Army				
21 2040 0 1 051	Budget Authority	5,343,007	571,702	
	Unobligated Balances - Defense	395,274	42,294	
	Outlays	3,098,672	331,558	
Research, development, test, and evaluation, Air Force				
57 3600 0 1 051	Budget Authority	15,324,408	1,639,712	
	Unobligated Balances - Defense	1,708,045	182,761	
	Outlays	8,686,551	929,461	
Research, development, test, and evaluation, Defense agencies				
97 0400 0 1 051	Budget Authority	8,540,712	913,856	
	Unobligated Balances - Defense	629,063	67,310	
	Outlays	4,859,980	520,018	
Developmental test and evaluation, Defense				
97 0450 0 1 051	Budget Authority	155,890	16,680	
	Unobligated Balances - Defense	34,398	3,681	
	Outlays	57,086	6,108	
Operational test and evaluation, Defense				
97 0460 0 1 051	Budget Authority	74,080	7,927	
	Unobligated Balances - Defense	20,694	2,214	
	Outlays	41,984	4,492	
Military Construction				
Military construction, Navy				
17 1205 0 1 051	Budget Authority	1,645,993	176,121	
	Unobligated Balances - Defense	374,393	40,060	
	Outlays	585,912	62,692	
Military construction, Naval Reserve				
17 1235 0 1 051	Budget Authority	63,580	6,803	
	Unobligated Balances - Defense	10,927	1,169	
	Outlays	11,176	1,195	
Military construction, Army				
21 2050 0 1 051	Budget Authority	1,194,170	127,776	
	Unobligated Balances - Defense	437,348	46,796	
	Outlays	489,455	52,372	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-15
Military construction, Army National Guard				
21 2085 0 1 051	Budget Authority	239,241	25,599	
	Unobligated Balances - Defense	44,743	4,788	
	Outlays	34,078	3,646	
Military construction, Army Reserve				
21 2086 0 1 051	Budget Authority	89,744	9,603	
	Unobligated Balances - Defense	21,950	2,349	
	Outlays	27,924	2,988	
Military construction, Air Force				
57 3300 0 1 051	Budget Authority	1,279,867	136,946	
	Unobligated Balances - Defense	649,510	69,498	
	Outlays	559,519	59,868	
Military construction, Air Force Reserve				
57 3730 0 1 051	Budget Authority	73,706	7,887	
	Unobligated Balances - Defense	23,702	2,536	
	Outlays	10,909	1,167	
Military construction, Air National Guard				
57 3830 0 1 051	Budget Authority	165,482	17,707	
	Unobligated Balances - Defense	53,309	5,704	
	Outlays	21,879	2,341	
Military construction, Defense agencies				
97 0500 0 1 051	Budget Authority	689,024	73,726	
	Unobligated Balances - Defense	356,803	38,178	
	Outlays	292,832	31,333	
Foreign currency fluctuations, construction				
97 0803 0 1 051	Unobligated Balances - Defense	195,814	20,952	
North Atlantic Treaty Organization infrastructure				
97 0804 0 1 051	Budget Authority	513,648	54,960	
	Unobligated Balances - Defense	133,905	14,328	
	Outlays	51,804	5,543	
Family Housing				
Family housing, Navy and Marine Corps				
17 0703 0 1 051	Budget Authority	834,199	89,259	
	Unobligated Balances - Defense	173,606	18,576	
	Outlays	564,370	60,387	
Family housing, Army				
21 0702 0 1 051	Budget Authority	1,594,168	170,576	
	Unobligated Balances - Defense	120,034	12,844	
	Outlays	959,953	102,715	
Family housing, Air Force				
57 0704 0 1 051	Budget Authority	950,964	101,753	
	Unobligated Balances - Defense	105,938	11,335	
	Outlays	591,865	63,330	
Family housing, Defense agencies				
97 0706 0 1 051	Budget Authority	21,611	2,312	
	Unobligated Balances - Defense	176	19	
	Outlays	12,201	1,306	
Revolving and Management Funds				
Navy stock fund				
17 4911 0 4 051	Budget Authority	192,827	20,632	
	Outlays	19,476	2,084	
Army stock fund				
21 4991 0 4 051	Budget Authority	304,744	32,608	
	Outlays	17,675	1,891	
Air Force stock fund				
57 4921 0 4 051	Budget Authority	195,124	20,878	
	Outlays	19,708	2,109	
National defense stockpile transaction fund				
97 4555 0 3 051	Budget Authority	34,974	3,742	
	Unobligated Balances - Defense	460,973	49,324	
	Outlays	34,974	3,742	
Defense stock fund				
97 4961 0 4 051	Budget Authority	26,100	2,793	
	Outlays	5,716	612	
TOTAL FOR Department of Defense--Military				
	Budget Authority	300,697,912	32,174,679	
	Unobligated Balances - Defense	39,114,189	4,185,221	
	Outlays	187,495,384	20,062,003	
Department of Defense--Civil				
Cemeterial Expenses, Army				
Salaries and expenses				
21 1805 0 1 705	Budget Authority	13,908	2,170	
	Outlays	9,824	1,533	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-16
Corps of Engineers--Civil				
Inland waterways trust fund				
20 8861 0 7 301	Budget Authority	119,000	18,564	
	Outlays	98,770	15,408	
Flood control, Mississippi River and tributaries				
96 3112 0 1 301	Budget Authority	336,000	52,416	
	401(C) Authority - Off. Coll.	195	30	
	Outlays	275,715	43,011	
General investigations				
96 3121 0 1 301	Budget Authority	131,086	20,449	
	Outlays	90,974	14,192	
Construction, general				
96 3122 0 1 301	Budget Authority	1,099,200	171,475	
	401(C) Authority - Off. Coll.	250	39	
	Outlays	382,528	59,674	
Operation and maintenance, general (Water resources)				
96 3123 0 1 301	Budget Authority	1,193,504	186,187	
	401(C) Authority - Off. Coll.	3,500	546	
	Outlays	966,228	150,732	
Operation and maintenance, general (Recreational resources)				
96 3123 0 1 303	Budget Authority	20,000	3,120	
	Outlays	15,600	2,434	
General expenses				
96 3124 0 1 301	Budget Authority	128,800	20,093	
	Outlays	103,040	16,074	
Regulatory program				
96 3126 0 1 301	Budget Authority	69,427	10,831	
	Outlays	65,956	10,289	
Revolving fund				
96 4902 0 4 301	Budget Authority	10,000	1,560	
	Outlays	8,000	1,248	
Rivers and harbors contributed funds				
96 8862 0 7 301	401(C) Authority	169,465	26,437	
	Outlays	105,068	16,391	
Harbor maintenance trust fund				
96 8863 0 7 301	Budget Authority	164,000	25,584	
	Outlays	164,000	25,584	
Permanent appropriations (Water resources)				
96 9921 0 2 301	401(C) Authority	7,000	1,092	
	Outlays	4,508	703	
Permanent appropriations (Other general purpose fiscal assistance)				
96 9921 0 2 806	401(C) Authority	5,000	780	
Soldiers' and Airmen's Home				
Operation and maintenance				
84 8931 0 7 705	Budget Authority	39,819	6,212	
	401(C) Authority - Off. Coll.	144	22	
	Outlays	34,986	5,457	
Capital outlays				
84 8932 0 7 705	Budget Authority	15,472	2,414	
	Outlays	464	72	
Forest and Wildlife Conservation, Military Reservations				
Wildlife conservation				
97 5095 0 2 303	401(C) Authority	2,100	328	
	Outlays	1,260	197	
TOTAL FOR Department of Defense--Civil				
	Budget Authority	3,340,216	521,075	
	401(C) Authority	183,565	28,637	
	401(C) Authority - Off. Coll.	4,089	637	
	Outlays	2,326,921	362,999	
Department of Health and Human Services, except Social Security				
Food and Drug Administration				
Program expenses				
75 0600 0 1 554	Budget Authority	546,275	85,219	
	Outlays	447,945	69,879	
Buildings and facilities				
75 0603 0 1 554	Budget Authority	25,004	3,901	
	Outlays	2,000	312	
Revolving fund for certification and other services				
75 4309 0 3 554	401(C) Authority - Off. Coll.	3,187	497	
	Outlays	3,187	497	
Health Resources and Services Administration				
Vaccine improvement program trust fund				
20 8175 0 7 551	Budget Authority	1,566	244	
	Outlays	783	122	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-17
Health resources and services (Health care services)				
75 0350 0 1 551	Budget Authority	987,543	154,057	
	Budget Authority - Spec. Rules	10,063	10,063	
	401(C) Authority - Off. Coll.	365	57	
	Direct Loan Limitation	522	81	
	Outlays	598,929	98,529	
Health resources and services (Education and training of health care wor				
75 0350 0 1 553	Budget Authority	207,436	32,360	
	Outlays	124,462	19,416	
Indian Health Service				
Tribal health administration				
75 0390 0 1 551	Budget Authority	79,741	12,440	
	Budget Authority - Spec. Rules	19,957	19,957	
	401(C) Authority - Spec. Rules	60	60	
	Outlays	74,810	24,334	
Indian health facilities				
75 0391 0 1 551	Budget Authority - Spec. Rules	1,291	1,291	
	Outlays	258	258	
Centers for Disease Control				
Disease control, research, and training (Health care services)				
75 0943 0 1 551	Budget Authority	903,481	140,943	
	401(C) Authority - Off. Coll.	800	125	
	Outlays	506,749	79,053	
Disease control, research, and training (Health research)				
75 0943 0 1 552	Budget Authority	124,681	19,450	
	Outlays	83,536	13,032	
National Institutes of Health				
National Library of Medicine (Health research)				
75 0807 0 1 552	Budget Authority	26,587	4,140	
	Outlays	16,484	2,572	
National Library of Medicine (Education and training of health care work				
75 0807 0 1 553	Budget Authority	51,063	7,966	
	Outlays	31,659	4,939	
John E. Fogarty International Center				
75 0819 0 1 552	Budget Authority	16,640	2,596	
	Outlays	8,819	1,376	
Buildings and facilities				
75 0838 0 1 552	Budget Authority	40,227	6,275	
	Outlays	20,114	3,138	
National Institute on Aging (Health research)				
75 0843 0 1 552	Budget Authority	224,119	34,963	
	Outlays	69,477	10,838	
National Institute on Aging (Education and training of health care work				
75 0843 0 1 553	Budget Authority	8,890	1,387	
	Outlays	3,645	569	
National Institute of Child Health and Human Development (Health researc				
75 0844 0 1 552	Budget Authority	428,413	66,832	
	Outlays	137,092	21,386	
National Institute of Child Health and Human Development (Education and				
75 0844 0 1 553	Budget Authority	16,562	2,584	
	Outlays	1,656	258	
Office of the Director (Health research)				
75 0846 0 1 552	Budget Authority	68,948	10,756	
	Outlays	42,748	6,669	
Office of the Director (Education and training of health care work force				
75 0846 0 1 553	Budget Authority	7,162	1,117	
	Outlays	4,297	670	
Research resources (Health research)				
75 0848 0 1 552	Budget Authority	371,804	58,001	
	Outlays	185,902	29,001	
Research resources (Education and training of health care work force)				
75 0848 0 1 553	Budget Authority	2,374	370	
	Outlays	119	19	
National Cancer Institute (Health research)				
75 0849 0 1 552	Budget Authority	1,608,958	250,997	
	Outlays	740,121	115,459	
National Cancer Institute (Education and training of health care work fo				
75 0849 0 1 553	Budget Authority	34,759	5,422	
	Outlays	1,043	163	
National Institute of General Medical Sciences (Health research)				
75 0851 0 1 552	Budget Authority	635,173	99,087	
	Outlays	254,069	39,635	
National Institute of General Medical Sciences (Education and training o				
75 0851 0 1 553	Budget Authority	77,331	12,064	
	Outlays	28,612	4,463	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-18
National Institute of Environmental Health Sciences (Health research)				
75 0862 0 1 552	Budget Authority	224,360	35,880	
	Outlays	136,860	21,350	
National Institute of Environmental Health Sciences (Education and train				
75 0862 0 1 553	Budget Authority	9,827	1,533	
	Outlays	4,914	767	
National Heart, Lung and Blood Institute (Health research)				
75 0872 0 1 552	Budget Authority	1,049,299	163,691	
	Outlays	398,734	62,203	
National Heart, Lung and Blood Institute (Education and training of heal				
75 0872 0 1 553	Budget Authority	43,692	6,816	
	Outlays	1,748	273	
National Institute of Dental Research (Health research)				
75 0873 0 1 552	Budget Authority	131,045	20,443	
	Outlays	66,833	10,426	
National Institute of Dental Research (Education and training of health				
75 0873 0 1 553	Budget Authority	5,957	929	
	Outlays	3,276	511	
National Institute of Diabetes and Digestive and Kidney Diseases (Health				
75 0884 0 1 552	Budget Authority	562,181	87,700	
	Outlays	202,385	31,572	
National Institute of Diabetes and Digestive and Kidney Diseases (Educat				
75 0884 0 1 553	Budget Authority	23,017	3,591	
	Outlays	6,215	970	
National Institute of Allergy and Infectious Diseases (Health research)				
75 0885 0 1 552	Budget Authority	760,335	118,612	
	Outlays	220,497	34,398	
National Institute of Allergy and Infectious Diseases (Education and tra				
75 0885 0 1 553	Budget Authority	15,339	2,393	
	Outlays	2,301	359	
National Institute of Neurological Disorders and Stroke (Health research				
75 0886 0 1 552	Budget Authority	489,219	76,318	
	Outlays	181,011	28,238	
National Institute of Neurological Disorders and Stroke (Education and t				
75 0886 0 1 553	Budget Authority	12,928	2,017	
	Outlays	3,749	585	
National Eye Institute (Health research)				
75 0887 0 1 552	Budget Authority	235,517	36,741	
	Outlays	77,721	12,124	
National Eye Institute (Education and training of health care work force				
75 0887 0 1 553	Budget Authority	6,212	969	
	Outlays	559	87	
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H				
75 0888 0 1 552	Budget Authority	160,839	25,091	
	Outlays	57,902	9,033	
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E				
75 0888 0 1 553	Budget Authority	6,261	977	
	Outlays	1,816	283	
National Center for Nursing Research (Health research)				
75 0889 0 1 552	Budget Authority	26,454	4,127	
	Outlays	7,407	1,155	
National Center for Nursing Research (Education and training of health c				
75 0889 0 1 553	Budget Authority	4,002	624	
	Outlays	1,001	156	
National Institute of Deafness and Other Communication Disorders (Health				
75 0890 0 1 552	Budget Authority	87,871	13,708	
	Outlays	32,512	5,072	
National Institute of Deafness and Other Communication Disorders (Educat				
75 0890 0 1 553	Budget Authority	2,524	394	
	Outlays	732	114	
Alcohol, Drug Abuse, and Mental Health Administretion				
Federal subsidy for Saint Elizabeths Hospital				
75 1300 0 1 551	Budget Authority	24,755	3,862	
	Outlays	24,755	3,862	
Alcohol, drug abuse, and mental health (Health care services)				
75 1361 0 1 551	Budget Authority	1,161,371	181,174	
	Outlays	661,981	103,269	
Alcohol, drug abuse, and mental health (Health research)				
75 1361 0 1 552	Budget Authority	719,959	112,314	
	Outlays	597,566	93,220	
Alcohol, drug abuse, and mental health (Education and training of health				
75 1361 0 1 553	Budget Authority	46,896	7,316	
	Outlays	34,703	5,414	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-19
Office of Assistant Secretary for Health				
Public health service management (Health care services)				
75 1101 0 1 551	Budget Authority	46,034	7,181	
	Outlays	26,239	4,093	
Public health service management (Health research)				
75 1101 0 1 552	Budget Authority	27,106	4,229	
	Outlays	18,161	2,833	
Health Care Financing Administration				
Federal supplementary medical insurance trust fund				
20 8004 0 7 571	401(C) Other - incl. ob. limit	57,920	9,036	
	401(C) Authority - Spec. Rules	601,000	601,000	
	Obligation Limitation	1,167,748	182,169	
	Outlays	1,735,705	778,014	
Federal hospital insurance trust fund				
20 8005 0 7 571	401(C) Other - incl. ob. limit	206,142	32,158	
	401(C) Authority - Spec. Rules	1,133,000	1,133,000	
	Obligation Limitation	995,663	155,324	
	Outlays	2,139,041	1,289,943	
Federal catastrophic drug insurance trust fund				
20 8183 0 7 571	401(C) Authority - Spec. Rules	2,000	2,000	
	Outlays	2,000	2,000	
Federal supplementary medical insurance trust fund, catastrophic				
20 8184 0 7 571	401(C) Authority - Spec. Rules	40,000	40,000	
	Obligation Limitation	126,261	19,697	
	Outlays	165,002	59,500	
Program management (Health care services)				
75 0511 0 1 551	Budget Authority	87,363	13,629	
	Outlays	74,259	11,584	
Program management (Health research)				
75 0511 0 1 552	Budget Authority	10,349	1,614	
	Outlays	8,279	1,292	
Social Security Administration				
Supplemental security income program				
75 0406 0 1 609	Budget Authority	845,738	131,935	
	Outlays	845,738	131,935	
Special benefits for disabled coal miners				
75 0409 0 1 601	401(C) Authority	7,000	1,092	
	Outlays	7,000	1,092	
Family Support Administration				
Program administration				
75 1500 0 1 609	Budget Authority	86,562	13,504	
	401(C) Authority - Off. Coll.	450	70	
	Outlays	65,372	10,198	
Family support payments to States				
75 1501 0 1 609	401(C) Authority	1,279,000	199,524	
	Outlays	1,279,000	199,524	
Low income home energy assistance				
75 1502 0 1 609	Budget Authority	1,444,061	225,274	
	Outlays	1,314,096	204,999	
Refugee and entrant assistance				
75 1503 0 1 609	Budget Authority	399,180	62,272	
	Outlays	259,467	40,477	
Community services block grant				
75 1504 0 1 506	Budget Authority	397,344	61,986	
	Outlays	273,373	42,646	
Work incentives				
75 1505 0 1 504	Budget Authority	95,463	14,892	
	Outlays	89,735	13,999	
Interim assistance to States for legalization				
75 1508 0 1 506	401(C) Other - incl. ob. limit	895,000	139,620	
	Outlays	225,000	35,100	
Payments to states for AFDC work programs				
75 1509 0 1 609	401(C) Other - incl. ob. limit	465,000	72,540	
	Outlays	465,000	72,540	
Human Development Services				
Social services block grant				
75 1634 0 1 506	401(C) Authority	2,700,000	421,200	
	Outlays	2,565,000	400,140	
Human development services				
75 1636 0 1 506	Budget Authority	2,688,760	419,447	
	Outlays	1,479,230	230,760	
Payments to States for foster care and adoption assistance				
75 1645 0 1 506	401(C) Authority - Spec. Rules	5,000	5,000	
	Outlays	3,750	3,750	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-20
Departmental Management				
General Departmental management				
75 0120 0 1 609	Budget Authority	71,738	11,191	
	Outlays	50,217	7,834	
Policy research				
75 0122 0 1 609	Budget Authority	8,209	1,281	
	Outlays	3,284	512	
Office of the Inspector General				
75 0128 0 1 609	Budget Authority	48,950	7,636	
	Outlays	36,713	5,727	
Office for Civil Rights				
75 0135 0 1 751	Budget Authority	17,098	2,667	
	Outlays	15,559	2,427	
Office of Consumer Affairs				
75 0137 0 1 506	Budget Authority	1,811	283	
	Outlays	1,449	226	
TOTAL FOR Department of Health and Human Services, except So				
	Budget Authority	18,580,363	2,898,540	
	Budget Authority - Spec. Rules	31,311	31,311	
	401(C) Authority	3,986,000	621,816	
	401(C) Authority - Off. Coll.	4,802	749	
	401(C) Other - incl. ob. limit	1,624,062	253,354	
	401(C) Authority - Spec. Rules	1,781,060	1,781,060	
	Direct Loan Limitation	522	81	
	Obligation Limitation	2,289,672	357,190	
	Outlays	19,263,363	4,525,173	
Department of the Interior				
Department of the Interior				
Oil Spill Emergency Fund				
14 0119 0 1 306	Budget Authority	7,621	1,189	
	Outlays	3,811	595	
Bureau of Land Management				
Management of lands and resources				
14 1109 0 1 302	Budget Authority	527,277	82,256	
	Outlays	460,313	71,809	
Construction and access				
14 1110 0 1 302	Budget Authority	11,738	1,831	
	Outlays	2,935	458	
Payments in lieu of taxes				
14 1114 0 1 806	Budget Authority	109,620	17,101	
	Outlays	109,620	17,101	
Oregon and California grant lands				
14 1116 0 1 302	Budget Authority	63,895	9,968	
	Outlays	47,282	7,376	
Special acquisition of lands and minerals				
14 1117 0 1 302	401(C) Authority	1,300	203	
	Outlays	1,300	203	
Service charges, deposits, and forfeitures				
14 5017 0 2 302	Budget Authority	6,345	990	
	Outlays	4,492	701	
Land acquisition				
14 5033 0 2 302	Budget Authority	14,884	2,322	
	Outlays	7,443	1,161	
Operation and maintenance of quarters				
14 5048 0 2 302	401(C) Authority	261	41	
	Outlays	217	34	
Range improvements				
14 5132 0 2 302	Budget Authority	8,406	1,311	
	Outlays	5,313	829	
Miscellaneous permanent appropriations (Conservation and land management				
14 9921 0 2 302	401(C) Authority	7,308	1,140	
	Outlays	7,045	1,099	
Miscellaneous permanent appropriations (Other general purpose fiscal ass				
14 9921 0 2 806	401(C) Authority	81,291	12,681	
Miscellaneous trust funds				
14 9971 0 7 302	Budget Authority	106	17	
	401(C) Authority	626	98	
	Outlays	372	58	
Minerals Management Service				
Leasing and royalty management				
14 1917 0 1 302	Budget Authority	181,113	28,254	
	Outlays	117,723	18,365	
Payments to States from receipts under Mineral Leasing Act				
14 5003 0 2 806	401(C) Authority	372,996	58,187	
	Outlays	343,156	53,532	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-21
Office of Surface Mining Reclamation and Enforcement				
Regulation and technology				
14 1801 0 1 302	Budget Authority	108,087	16,862	
	Outlays	63,015	9,831	
Abandoned mine reclamation fund				
14 5015 0 2 302	Budget Authority	202,092	31,526	
	Outlays	54,969	8,575	
Bureau of Reclamation				
Loan program				
14 0667 0 1 301	Budget Authority	34,122	5,323	
	Direct Loan Limitation	31,992	4,991	
	Outlays	20,985	3,274	
Construction program				
14 0684 0 1 301	Budget Authority	662,120	103,291	
	401(C) Authority - Off. Coll.	4,000	624	
	Outlays	560,181	87,388	
Lower Colorado River Basin development fund				
14 4079 0 3 301	401(C) Authority - Off. Coll.	95,456	14,891	
	Outlays	95,456	14,891	
Upper Colorado River Basin fund				
14 4081 0 3 301	401(C) Authority - Off. Coll.	32,375	5,051	
	Outlays	32,375	5,051	
Working capital fund				
14 4524 0 4 301	Budget Authority	8,500	1,326	
	Outlays	6,800	1,061	
Emergency fund				
14 5043 0 2 301	Budget Authority	1,000	156	
	Outlays	605	94	
General investigations				
14 5060 0 2 301	Budget Authority	11,530	1,799	
	401(C) Authority - Off. Coll.	75	12	
	Outlays	7,500	1,170	
Operation and maintenance				
14 5064 0 2 301	Budget Authority	212,287	33,117	
	401(C) Authority - Off. Coll.	10,136	1,581	
	Outlays	175,083	27,313	
General administrative expenses				
14 5065 0 2 301	Budget Authority	47,983	7,485	
	Outlays	43,185	6,737	
Colorado River dam fund, Boulder Canyon project				
14 5656 0 2 301	401(C) Authority	45,100	7,036	
	Outlays	25,842	4,031	
Reclamation trust funds				
14 8070 0 7 301	401(C) Authority	52,217	8,146	
	Outlays	49,293	7,690	
Miscellaneous permanent appropriations (Other general purpose fiscal ass				
14 9922 0 2 806	401(C) Authority	282	44	
	Outlays	226	35	
Geological Survey				
Surveys, investigations and research				
14 0804 0 1 306	Budget Authority	480,893	75,019	
	401(C) Authority	250	39	
	401(C) Authority - Off. Coll.	75,405	11,763	
	Outlays	532,491	83,068	
Operation and maintenance of quarters				
14 5055 0 2 306	401(C) Authority	75	12	
	Outlays	40	6	
Bureau of Mines				
Mines and minerals				
14 0959 0 1 306	Budget Authority	168,987	26,362	
	Outlays	114,911	17,926	
Helium fund				
14 4053 0 3 306	401(C) Authority - Off. Coll.	3,453	539	
	Outlays	3,453	539	
United States Fish and Wildlife Service				
Resource management				
14 1611 0 1 303	Budget Authority	383,296	59,794	
	401(C) Authority - Off. Coll.	5,776	901	
	Outlays	312,966	48,822	
Construction				
14 1612 0 1 303	Budget Authority	49,760	7,763	
	Outlays	9,952	1,553	
Land acquisition				
14 5020 0 2 303	Budget Authority	78,209	12,201	
	Outlays	31,284	4,881	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-22
Operation and maintenance of quarters				
14 5050 0 2 303	401(C) Authority	1,736	271	
	Outlays	1,215	190	
National wildlife refuge fund				
14 5091 0 2 806	Budget Authority	6,965	1,087	
	401(C) Other - incl. ob. limit	6,040	942	
	Outlays	9,387	1,465	
Migratory bird conservation account				
14 5137 0 2 303	401(C) Authority	33,340	5,201	
	Outlays	23,338	3,641	
Sport fish restoration				
14 8151 0 7 303	401(C) Authority	162,606	25,367	
	Outlays	56,912	8,878	
Contributed funds				
14 8216 0 7 303	401(C) Authority	4,165	650	
	Outlays	2,916	455	
Miscellaneous permanent appropriations				
14 9923 0 2 303	401(C) Authority	128,200	19,999	
	Outlays	64,100	10,000	
National Park Service				
Operation of the national park system				
14 1036 0 1 303	Budget Authority	793,288	123,753	
	401(C) Authority - Off. Coll.	2,800	437	
	Outlays	600,501	93,679	
John F. Kennedy Center for the Performing Arts				
14 1038 0 1 303	Budget Authority	5,492	857	
	Outlays	3,570	557	
Construction				
14 1039 0 1 303	Budget Authority	206,738	32,251	
	401(C) Authority - Off. Coll.	11,000	1,716	
	Outlays	42,011	6,553	
National recreation and preservation				
14 1042 0 1 303	Budget Authority	15,571	2,429	
	Outlays	12,457	1,943	
Illinois and Michigan canal national heritage-corridor Commission				
14 1043 0 1 303	Budget Authority	263	41	
	Outlays	132	21	
Land acquisition				
14 5035 0 2 303	Budget Authority	65,474	10,214	
	401(C) Authority	30,000	4,680	
	Outlays	33,416	5,213	
Operation and maintenance of quarters				
14 5049 0 2 303	401(C) Authority	8,632	1,347	
	Outlays	6,474	1,010	
Historic preservation fund				
14 5140 0 2 303	Budget Authority	31,842	4,967	
	Outlays	12,737	1,987	
Miscellaneous permanent appropriations				
14 9924 0 2 303	401(C) Authority	953	149	
	Outlays	324	51	
Bureau of Indian Affairs				
Operation of Indian programs (Conservation and land management)				
14 2100 0 1 302	Budget Authority	162,984	25,426	
	Outlays	135,440	21,129	
Operation of Indian programs (Area and regional development)				
14 2100 0 1 452	Budget Authority	608,415	94,913	
	401(C) Authority - Off. Coll.	4,000	624	
	Outlays	498,641	77,788	
Operation of Indian programs (Elementary, secondary, and vocational educ				
14 2100 0 1 501	Budget Authority	283,534	44,231	
	Outlays	241,004	37,597	
Construction				
14 2301 0 1 452	Budget Authority	99,343	15,498	
	Outlays	22,849	3,564	
Revolving fund for loans				
14 4409 0 3 452	Direct Loan Limitation	13,000	2,028	
	Outlays	13,000	2,028	
Indian loan guaranty and insurance fund				
14 4410 0 3 452	Budget Authority	5,259	820	
	Guaranteed Loan Limitation	41,470	6,469	
	Outlays	3,015	470	
Operation and maintenance of quarters				
14 5051 0 2 452	401(C) Authority	7,448	1,162	
	Outlays	5,958	929	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-23
Cooperative fund (papago)				
14 8366 0 7 452	401(C) Authority	1,353	211	
Miscellaneous permanent appropriations (Area and regional development)				
14 9925 0 2 452	401(C) Authority	55,797	8,704	
	Outlays	26,894	4,195	
Miscellaneous permanent appropriations (Other general government)				
14 9925 0 2 808	401(C) Authority	1,000	156	
	Outlays	1,000	156	
Territorial and International Affairs				
Administration of territories				
14 0412 0 1 808	Budget Authority	54,983	8,577	
	Outlays	30,571	4,769	
Trust Territory of the Pacific Islands				
14 0414 0 1 808	Budget Authority	29,685	4,631	
	Outlays	15,733	2,454	
Compact of free association				
14 0415 0 1 808	Budget Authority	13,029	2,033	
	401(C) Authority	13,000	2,028	
	Outlays	26,029	4,061	
Office of the Secretary				
Salaries and expenses				
14 0102 0 1 306	Budget Authority	52,196	8,143	
	Outlays	44,367	6,921	
Construction management				
14 0103 0 1 306	Budget Authority	1,905	297	
	Outlays	1,716	268	
Office of the Solicitor				
Office of the Solicitor				
14 0107 0 1 306	Budget Authority	26,386	4,116	
	Outlays	23,747	3,705	
Office of Inspector General				
Office of Inspector General				
14 0104 0 1 306	Budget Authority	20,034	3,125	
	Outlays	18,031	2,813	
TOTAL FOR Department of the Interior				
	Budget Authority	5,863,257	914,672	
	401(C) Authority	1,009,936	157,552	
	401(C) Authority - Off. Coll.	244,476	38,139	
	401(C) Other - incl. ob. limit	6,040	942	
	Direct Loan Limitation	44,992	7,019	
	Guaranteed Loan Limitation	41,470	6,469	
	Outlays	5,229,119	815,747	
Department of Justice				
Department of Justice				
Emergency Drug Funding				
15 0331 0 1 751	Budget Authority	75,577	11,790	
	Outlays	67,717	10,564	
General Administration				
Salaries and expenses				
15 0129 0 1 751	Budget Authority	91,432	14,263	
	Outlays	81,923	12,780	
Office of the Inspector General				
15 0328 0 1 751	Budget Authority	9,688	1,511	
	Outlays	8,680	1,354	
United States Parole Commission				
Salaries and expenses				
15 1061 0 1 751	Budget Authority	11,597	1,809	
	Outlays	9,973	1,556	
Legal Activities				
Salaries and expenses, Foreign Claims Settlement Commission				
15 0100 0 1 153	Budget Authority	502	78	
	Outlays	364	57	
Salaries and expenses, General Legal Activities				
15 0128 0 1 752	Budget Authority	262,213	40,906	
	Outlays	228,125	35,588	
Fees and expenses of witnesses				
15 0311 0 1 752	Budget Authority	54,500	8,502	
	Outlays	38,150	5,951	
Salaries and expenses, Antitrust Division				
15 0319 0 1 752	Budget Authority	47,834	7,462	
	Outlays	39,224	6,119	
Salaries and expenses, United States Attorneys				
15 0322 0 1 752	Budget Authority	490,819	76,568	
	Outlays	431,921	67,380	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-24
Salaries and expenses, United States Marshals Service				
15 0324 0 1 752	Budget Authority	218,677	34,114	
	401(C) Authority - Off. Coll.	4,108	641	
	Outlays	200,917	31,343	
Independent counsel				
15 0327 0 1 752	401(C) Authority	6,000	936	
	Outlays	6,000	936	
Salaries and expenses, Community Relations Service				
15 0500 0 1 752	Budget Authority	29,264	4,565	
	Outlays	20,485	3,196	
Support of United States prisoners				
15 1020 0 1 752	Budget Authority	114,944	17,931	
	Outlays	63,219	9,862	
Assets forfeiture fund				
15 5042 0 2 752	Budget Authority	338,014	52,731	
	Outlays	135,206	21,093	
United States trustees system fund				
15 5073 0 2 752	Budget Authority	50,438	7,868	
	Outlays	42,872	6,688	
Federal Bureau of Investigation				
Salaries and expenses				
15 0200 0 1 751	Budget Authority	1,534,141	239,326	
	401(C) Authority - Off. Coll.	24,354	3,799	
	Outlays	1,251,667	195,260	
Drug Enforcement Administration				
Salaries and expenses				
15 1100 0 1 751	Budget Authority	567,488	88,528	
	401(C) Authority - Off. Coll.	1,500	234	
	Outlays	427,116	66,630	
Immigration and Naturalization Service				
Salaries and expenses				
15 1217 0 1 751	Budget Authority	875,617	136,596	
	401(C) Authority - Off. Coll.	3,817	595	
	Outlays	704,311	109,872	
Immigration legalization				
15 5086 0 2 751	401(C) Authority	54,792	8,548	
	Outlays	49,313	7,693	
Immigration user fee				
15 5087 0 2 751	401(C) Authority	105,000	16,380	
	Outlays	99,750	15,561	
Immigration examinations fee				
15 5088 0 2 751	401(C) Authority	54,000	8,424	
	Outlays	51,300	8,003	
Federal Prison System				
Buildings and facilities				
15 1003 0 1 753	Budget Authority	312,719	48,784	
	Outlays	31,272	4,878	
National Institute of Corrections				
15 1004 0 1 754	Budget Authority	10,082	1,573	
	Outlays	4,033	629	
Salaries and expenses				
15 1060 0 1 753	Budget Authority	1,011,708	157,826 *	
	401(C) Authority - Off. Coll.	12,746	1,988	
	Outlays	923,283	144,032	
Federal Prison Industries, Incorporated				
15 4500 0 4 753	Budget Authority	20,880	3,257	
	Obligation Limitation	2,509	391	
	Outlays	2,509	391	
Office of Justice Programs				
Justice assistance				
15 0401 0 1 754	Budget Authority	331,451	51,707	
	Outlays	122,741	19,148	
Crime victims fund				
15 5041 0 2 754	401(C) Authority	125,000	19,500	
	Outlays	62,500	9,750	
TOTAL FOR Department of Justice				
	Budget Authority	6,459,585	1,007,695	
	401(C) Authority	344,792	53,788	
	401(C) Authority - Off. Coll.	46,525	7,257	
	Obligation Limitation	2,509	391	
	Outlays	5,104,571	796,314	
Department of Labor				
Employment and Training Administration				
Program administration				
16 0172 0 1 504	Budget Authority	75,526	11,782	
	Outlays	59,741	9,320	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-25
Training and employment services				
16 0174 0 1 504	Budget Authority	3,903,761	608,987	
	Outlays	148,343	23,142	
Community service employment for older Americans				
16 0175 0 1 504	Budget Authority	358,952	55,997	
	Outlays	65,688	10,247	
State unemployment insurance and employment service operations (Training				
16 0179 0 1 504	Budget Authority	23,552	3,674	
	Outlays	5,912	922	
Federal unemployment benefits and allowances (Training and employment)				
16 0326 0 1 504	Budget Authority	80,000	12,480	
	Outlays	47,854	7,465	
Federal unemployment benefits and allowances (Unemployment compensation)				
16 0326 0 1 603	401(C) Authority	166,000	25,896	
	Outlays	166,000	25,896	
Unemployment trust fund (Training and employment)				
20 8042 0 7 504	Obligation Limitation	1,092,587	170,444	
	Outlays	458,023	71,452	
Unemployment trust fund (Unemployment compensation)				
20 8042 0 7 603	401(C) Other - incl. ob. limit	105,800	16,505	
	Obligation Limitation	1,753,356	273,524	
	Outlays	1,859,156	290,029	
Labor-Management Services				
Salaries and expenses				
16 0104 0 1 505	Budget Authority	76,713	11,967	
	Outlays	65,053	10,148	
Pension Benefit Guaranty Corporation				
Pension Benefit Guaranty Corporation fund				
16 4204 0 3 601	401(C) Other - incl. ob. limit	13,900	2,168	
	Obligation Limitation	57,600	8,986	
	Outlays	71,500	11,154	
Employment Standards Administration				
Salaries and expenses				
16 0105 0 1 505	Budget Authority	225,932	35,245	
	401(C) Authority - Off. Coll.	1,500	234	
	Outlays	195,350	30,475	
Special workers' compensation expenses				
16 9971 0 7 601	Obligation Limitation	543	85	
	Outlays	543	85	
Black lung disability trust fund				
20 8144 0 7 601	Budget Authority	60,003	9,360	
	Outlays	60,003	9,360	
Occupational Safety and Health Administration				
Salaries and expenses				
16 0400 0 1 554	Budget Authority	262,203	40,903	
	Outlays	233,360	36,404	
Mine Safety and Health Administration				
Salaries and expenses				
16 1200 0 1 554	Budget Authority	173,855	27,121	
	Outlays	158,208	24,680	
Bureau of Labor Statistics				
Salaries and expenses				
16 0200 0 1 505	Budget Authority	198,632	30,987	
	401(C) Authority - Off. Coll.	1,100	172	
	Outlays	170,136	26,542	
Departmental Management				
Office of the Inspector General				
16 0106 0 1 505	Budget Authority	42,020	6,555	
	Outlays	36,599	5,709	
Salaries and expenses				
16 0165 0 1 505	Budget Authority	127,782	19,934	
	Outlays	105,817	16,508	
TOTAL FOR Department of Labor				
	Budget Authority	5,608,931	874,992	
	401(C) Authority	166,000	25,896	
	401(C) Authority - Off. Coll.	2,600	406	
	401(C) Other - incl. ob. limit	119,700	18,673	
	Obligation Limitation	2,904,086	453,039	
	Outlays	3,907,286	609,538	
Department of State				
Department of State				
FHS interest buydown				
11 8802 0 1 152	401(C) Authority	270,000	42,120	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-26
Administration of Foreign Affairs				
Salaries and expenses				
19 0113 0 1 153	Budget Authority	1,897,322	295,982	
	Outlays	1,555,804	242,706	
Protection of foreign missions and officials				
19 0520 0 1 153	Budget Authority	9,500	1,482	
	Outlays	2,850	445	
Emergencies in the diplomatic and consular service				
19 0522 0 1 153	Budget Authority	4,698	733	
	Direct Loan Limitation	626	98	
	Outlays	3,223	503	
Payment to the American Institute in Taiwan				
19 0523 0 1 153	Budget Authority	11,369	1,774	
	Outlays	7,390	1,153	
Acquisition and maintenance of buildings abroad				
19 0535 0 1 153	Budget Authority	250,724	39,113	
	401(C) Authority - Off. Coll.	4,900	764	
	Outlays	52,538	8,196	
Representation allowances				
19 0545 0 1 153	Budget Authority	4,792	748	
	Outlays	4,116	642	
International Organizations and Conferences				
Contributions for international peacekeeping activities				
19 1124 0 1 153	Budget Authority	30,276	4,723	
	Outlays	30,276	4,723	
International conferences and contingencies				
19 1125 0 1 153	Budget Authority	6,268	978	
	Outlays	4,262	665	
Contributions to international organizations				
19 1126 0 1 153	Budget Authority	507,321	79,142	
	401(C) Authority - Off. Coll.	40	6	
	Outlays	481,995	75,191	
International Commissions				
Salaries and expenses, IBWC				
19 1069 0 1 301	Budget Authority	10,965	1,711	
	Outlays	9,430	1,471	
Construction, IBWC				
19 1078 0 1 301	Budget Authority	3,313	517	
	Outlays	663	103	
American sections, international commissions				
19 1082 0 1 301	Budget Authority	4,586	715	
	Outlays	3,100	484	
International fisheries commissions				
19 1087 0 1 302	Budget Authority	11,012	1,718	
	Outlays	11,001	1,716	
Other				
United States emergency refugee and migration assistance fund				
11 0040 0 1 151	Budget Authority	52,200	8,143	
International narcotics control				
11 1022 0 1 151	Budget Authority	105,567	16,468	
	Outlays	36,948	5,764	
Anti-terrorism assistance				
19 0114 0 1 152	Budget Authority	10,273	1,603	
	Outlays	6,164	962	
Soviet-East European research and training				
19 0118 0 1 153	Budget Authority	4,802	749	
	Outlays	240	37	
Payment to the Asia Foundation				
19 0525 0 1 154	Budget Authority	14,303	2,231	
	Outlays	12,158	1,897	
Migration and refugee assistance				
19 1143 0 1 151	Budget Authority	482,520	75,273	
	Outlays	330,526	51,562	
U.S. bilateral science and technology agreements				
19 1151 0 1 153	Budget Authority	2,088	326	
	Outlays	2,088	326	
Fishermen's guaranty fund				
19 5121 0 2 376	Budget Authority	1,803	281	
	Outlays	1,803	281	
International Center, Washington, D.C.				
19 5151 0 2 153	401(C) Authority	1,284	200	
	Outlays	1,223	191	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-27
TOTAL FOR Department of State				
	Budget Authority	3,425,702	534,410	
	401(C) Authority	271,284	42,320	
	401(C) Authority - Off. Coll.	4,940	770	
	Direct Loan Limitation	626	98	
	Outlays	2,557,798	399,018	
Department of the Treasury				
Departmental Offices				
Salaries and expenses				
20 0101 0 1 803	Budget Authority	61,839	9,647	
	401(C) Authority - Off. Coll.	5,123	799	
	Outlays	58,614	9,144	
International affairs				
20 0171 0 1 803	Budget Authority	24,662	3,847	
	Outlays	21,333	3,328	
Federal Law Enforcement Training Center				
Salaries and expenses				
20 0104 0 1 751	Budget Authority	36,751	5,733	
	Outlays	33,076	5,160	
Acquisitions, construction, improvements, and related expenses				
20 0105 0 1 751	Budget Authority	20,880	3,257	
	Outlays	8,770	1,368	
Financial Management Service				
Salaries and expenses				
20 1801 0 1 803	Budget Authority	291,917	45,539	
	Outlays	253,968	39,619	
St Lawrence Seaway toll rebate program				
20 8865 0 7 808	Budget Authority	11,176	1,743	
	Outlays	11,176	1,743	
Federal Financing Bank				
Federal Financing Bank				
20 4521 0 4 803	401(C) Authority - Off. Coll.	2,000	312	
	Outlays	2,000	312	
Bureau of Alcohol, Tobacco and Firearms				
Salaries and expenses				
20 1000 0 1 751	Budget Authority	257,086	40,105	
	Outlays	223,665	34,892	
United States Customs Service				
Salaries and expenses				
20 0602 0 1 751	Budget Authority	1,103,055	172,077	
	401(C) Authority	116,584	18,187	
	Outlays	1,036,693	161,724	
Operation and maintenance, air interdiction program				
20 0604 0 1 751	Budget Authority	155,830	24,309	
	Outlays	85,707	13,370	
Customs forfeiture fund				
20 5693 0 2 803	Budget Authority	10,440	1,629	
	401(C) Authority	20,000	3,120	
	Outlays	30,440	4,749	
Customs services at small airports				
20 5694 0 2 808	Budget Authority	1,705	266	
	Outlays	1,705	266	
Refunds, transfers and expenses, unclaimed, abandoned and seized goods				
20 8789 0 7 803	401(C) Authority	18,560	2,895	
	Outlays	18,560	2,895	
Bureau of Engraving and Printing				
Bureau of Engraving and Printing fund				
20 4502 0 4 803	401(C) Authority - Off. Coll.	333,809	52,074	
	Outlays	333,809	52,074	
United States Mint				
Salaries and expenses				
20 1616 0 1 803	Budget Authority	50,169	7,826	
	401(C) Authority - Off. Coll.	112,170	17,499	
	Outlays	154,814	24,151	
Bureau of the Public Debt				
Administering the public debt				
20 0560 0 1 803	Budget Authority	230,592	35,972	
	Outlays	184,474	28,778	
Internal Revenue Service				
Salaries and expenses				
20 0911 0 1 803	Budget Authority	93,211	14,541	
	Outlays	72,705	11,342	
Processing tax returns				
20 0912 0 1 803	Budget Authority	1,837,199	286,603	
	Outlays	1,469,759	229,282	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-28
Examinations and appeals				
20 0913 0 1 803	Budget Authority	2,079,620	324,421	
	Outlays	1,913,250	298,467	
Investigation, collection and taxpayer service				
20 0914 0 1 803	Budget Authority	1,530,298	238,726	
	Outlays	1,377,268	214,854	
Federal tax lien revolving fund				
20 4413 0 3 803	401(C) Authority - Off. Coll.	8,451	1,318	
	Outlays	8,451	1,318	
United States Secret Service				
Contribution for annuity benefits				
20 1407 0 1 751	401(C) Authority	18,792	2,932	
	Outlays	18,792	2,932	
Salaries and expenses				
20 1408 0 1 751	Budget Authority	380,390	59,341	
	Outlays	323,332	50,440	
TOTAL FOR Department of the Treasury				
	Budget Authority	8,176,820	1,275,582	
	401(C) Authority	173,936	27,134	
	401(C) Authority - Off. Coll.	461,553	72,002	
	Outlays	7,642,361	1,192,208	
Department of Health and Human Services, Social Security				
Social Security				
Federal old-age and survivors insurance trust fund				
20 8006 0 7 651	Obligation Limitation	1,638,298	255,574	
	Outlays	1,209,040	188,610	
Federal disability insurance trust fund				
20 8007 0 7 651	Obligation Limitation	546,163	85,202	
	Outlays	431,425	67,302	
TOTAL FOR Department of Health and Human Services, Social Se				
	Obligation Limitation	2,184,461	340,776	
	Outlays	1,640,465	255,912	
Department of Education				
Office of Elementary and Secondary Education				
Indian education				
91 0101 0 1 501	Budget Authority	74,767	11,664	
	Outlays	10,841	1,691	
Impact aid				
91 0102 0 1 501	Budget Authority	765,352	119,395	
	Outlays	609,220	95,038	
Compensatory education for the disadvantaged				
91 0900 0 1 501	Budget Authority	4,780,620	745,777	
	Outlays	573,674	89,493	
School improvement programs				
91 1000 0 1 501	Budget Authority	1,270,651	198,222	
	Outlays	152,478	23,787	
Office of Bilingual Education and Minority Languages Affairs				
Bilingual, immigrant, and refugee education				
91 1300 0 1 501	Budget Authority	206,079	32,148	
	Outlays	24,729	3,858	
Office of Special Education and Rehabilitative Services				
Education for the handicapped				
91 0300 0 1 501	Budget Authority	2,052,961	320,262	
	Outlays	252,514	39,392	
Rehabilitation services and handicapped research				
91 0301 0 1 506	Budget Authority	224,420	35,010	
	401(C) Authority - Spec. Rules	60,921	60,921	
	Outlays	219,713	73,866	
Payments to institutions for the handicapped (Elementary, secondary, and				
91 0600 0 1 501	Budget Authority	5,570	869	
	Outlays	5,570	869	
Payments to institutions for the handicapped (Higher education)				
91 0601 0 1 502	Budget Authority	34,792	5,428	
	Outlays	34,792	5,428	
Payments to institutions for the handicapped (Higher education)				
91 0602 0 1 502	Budget Authority	68,902	10,749	
	Outlays	64,768	10,104	
Promotion of education for the blind				
91 8893 0 7 501	401(C) Authority	10	2	
	Outlays	5	1	
Office of Vocational and Adult Education				
Vocational and adult education				
91 0400 0 1 501	Budget Authority	1,120,699	174,829	
	401(C) Authority	7,148	1,115	
	Outlays	135,342	21,114	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-29
Office of Postsecondary Education				
Student financial assistance				
91 0200 0 1 502	Budget Authority	6,070,150	946,943	
	Outlays	1,125,827	175,629	
Higher education				
91 0201 0 1 502	Budget Authority	590,621	92,137	
	Outlays	88,690	13,867	
Guaranteed student loans				
91 0230 0 1 502	401(C) Authority - Spec. Rules	41,120	41,120	
	Outlays	26,130	26,130	
College housing and academic facilities loans				
91 0242 0 1 502	Budget Authority	37,148	5,795	
	Direct Loan Limitation	30,944	4,827	
	Outlays	6,204	968	
Howard University				
91 0603 0 1 502	Budget Authority	186,848	29,148	
	Outlays	178,066	27,778	
College housing loans				
91 4250 0 3 502	401(C) Authority - Off. Coll.	650	101	
	Outlays	650	101	
Office of Educational Research and Improvement				
Libraries				
91 0104 0 1 503	Budget Authority	143,237	22,345	
	Outlays	50,563	7,888	
Education research and statistics				
91 1100 0 1 503	Budget Authority	81,642	12,736	
	Outlays	35,106	5,477	
Departmental Management				
Office for civil rights				
91 0700 0 1 751	Budget Authority	44,575	6,954	
	Outlays	36,997	5,772	
Program administration (Research and general education aids)				
91 0800 0 1 503	Budget Authority	266,427	41,563	
	Outlays	221,134	34,497	
Office of the Inspector General				
91 1400 0 1 751	Budget Authority	19,901	3,104	
	Outlays	16,518	2,577	
TOTAL FOR Department of Education				
	Budget Authority	18,045,362	2,815,078	
	401(C) Authority	7,158	1,117	
	401(C) Authority - Off. Coll.	650	101	
	401(C) Authority - Spec. Rules	102,041	102,041	
	Direct Loan Limitation	30,944	4,827	
	Outlays	3,869,731	665,325	
Department of Energy				
Atomic Energy Defense Activities				
Atomic energy defense activities				
89 0220 0 1 053	Budget Authority	7,920,026	847,443	
	Unobligated Balances - Defense	471,675	50,469	
	Outlays	5,202,855	556,706	
Atomic energy defense activities				
89 0221 0 1 053	Budget Authority	1,736,008	185,753	
	Outlays	1,076,324	115,167	
Energy Programs				
Geothermal resources development fund				
89 0206 0 1 271	Budget Authority	75	12	
	Outlays	75	12	
Federal Energy Regulatory Commission				
89 0212 0 1 276	Budget Authority	116,550	18,182	
	Outlays	99,068	15,455	
Fossil energy research and development				
89 0213 0 1 271	Budget Authority	398,459	62,160	
	Outlays	159,384	24,864	
Energy conservation				
89 0215 0 1 272	Budget Authority	389,433	60,752	
	Outlays	97,358	15,188	
Energy information administration				
89 0216 0 1 276	Budget Authority	66,360	10,352	
	Outlays	43,134	6,729	
Economic regulation				
89 0217 0 1 276	Budget Authority	22,752	3,549	
	Outlays	14,334	2,236	
Strategic petroleum reserve				
89 0218 0 1 274	Budget Authority	181,252	28,275	
	Outlays	99,689	15,551	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-30
Naval petroleum and oil shale reserves				
89 0219 0 1 271	Budget Authority	193,373	30,166	
	Outlays	116,024	18,100	
General science and research activities				
89 0222 0 1 251	Budget Authority	1,114,431	173,851	
	Outlays	789,017	123,087	
Energy supply, R&D activities				
89 0224 0 1 271	Budget Authority	1,941,672	302,901	
	Outlays	970,836	151,450	
Energy supply, R&D activities				
89 0225 0 1 271	Budget Authority	273,794	42,712	
	Outlays	136,897	21,356	
Uranium supply and enrichment activities				
89 0226 0 1 271	Budget Authority	1,364,800	212,909	
	Outlays	1,187,376	185,231	
Plant and capital equipment				
89 0227 0 1 271	Budget Authority	66,200	10,327	
	Outlays	57,594	8,985	
SPR petroleum				
89 0233 0 1 274	Budget Authority	161,093	25,131	
	401(C) Authority	91,555	14,283	
	Outlays	189,486	29,560	
Emergency preparedness				
89 0234 0 1 274	Budget Authority	6,559	1,023	
	Outlays	5,247	819	
Clean coal technology				
89 0235 0 1 271	401(C) Authority	710,000	110,760	
	Outlays	8,450	1,318	
Isotope production and distribution fund				
89 4180 0 3 271	Budget Authority	16,243	2,534	
Payments to states under Federal Power Act				
89 5105 0 2 806	401(C) Authority	2,446	382	
	Outlays	2,446	382	
Nuclear waste disposal fund				
89 5227 0 2 271	Budget Authority	346,000	53,976	
	Outlays	173,000	26,988	
Power Marketing Administration				
Operation and maintenance, Southeastern Power Administration				
89 0302 0 1 271	Budget Authority	932	145	
	Outlays	848	132	
Operation and maintenance, Southwestern Power Administration				
89 0303 0 1 271	Budget Authority	8,196	1,279	
	Outlays	4,713	735	
Operation and maintenance, Alaska Power Administration				
89 0304 0 1 271	Budget Authority	763	119	
	Outlays	366	57	
Bonneville Power Administration fund				
89 4045 0 3 271	401(C) Authority - Off. Coll.	45,800	7,145	
	Outlays	45,800	7,145	
Colorado river basins power marketing fund, Western Area Power Administr				
89 4452 0 3 271	401(C) Authority - Off. Coll.	7,668	1,196	
	Outlays	7,668	1,196	
Construction, rehabilitation, operation and maintenance, Western Area Po				
89 5068 0 2 271	Budget Authority	41,376	6,455	
	Outlays	14,234	2,221	
Departmental Administration				
Departmental administration				
89 0228 0 1 276	Budget Authority	351,783	54,878	
	Outlays	211,070	32,927	
Departmental administration				
89 0229 0 1 276	Budget Authority	3,273	511	
	Outlays	1,963	306	
Office of the Inspector General				
89 0236 0 1 276	Budget Authority	22,959	3,582	
	Outlays	19,515	3,044	
TOTAL FOR Department of Energy				
	Budget Authority	16,744,362	2,138,977	
	401(C) Authority	804,001	125,425	
	401(C) Authority - Off. Coll.	53,468	8,341	
	Unobligated Balances - Defense	471,675	50,469	
	Outlays	10,734,771	1,366,947	
Environmental Protection Agency				
Environmental Protection Agency				
Hazardous substance superfund				
20 8145 0 7 304	Budget Authority	1,475,762	230,219	
	401(C) Authority - Off. Coll.	13,200	2,059	
	Obligation Limitation	198,930	31,033	
	Outlays	426,413	66,520	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-31
Leaking underground storage tank trust fund				
20 8153 0 7 304	Budget Authority	52,324	8,163	
	Obligation Limitation	5,235	817	
	Outlays	10,465	1,633	
Construction grants				
68 0103 0 1 304	Budget Authority	2,035,800	317,585	
	Outlays	71,253	11,115	
Research and development (Energy supply)				
68 0107 0 1 271	Budget Authority	52,463	8,184	
	Outlays	15,214	2,373	
Research and development (Pollution control and abatement)				
68 0107 0 1 304	Budget Authority	158,947	24,796	
	Outlays	55,631	8,678	
Abatement, control, and compliance				
68 0108 0 1 304	Budget Authority	751,289	117,201	
	Outlays	334,754	52,222	
Buildings and facilities				
68 0110 0 1 304	Budget Authority	8,352	1,303	
	Outlays	1,420	222	
Salaries and expenses				
68 0200 0 1 304	Budget Authority	868,342	135,461	
	401(C) Authority - Off. Coll.	3,808	594	
	Outlays	741,325	115,647	
Payment to the hazardous substance superfund				
68 0250 0 1 304	Budget Authority	157,104	24,508	
Reregistration and expedited processing revolving fund				
68 4310 0 3 304	401(C) Authority - Off. Coll.	14,500	2,262	
	Outlays	14,500	2,262	
Revolving fund for certification and other services				
68 4311 0 3 304	401(C) Authority - Off. Coll.	1,200	187	
	Outlays	1,200	187	
TOTAL FOR Environmental Protection Agency				
	Budget Authority	5,560,383	867,420	
	401(C) Authority - Off. Coll.	32,708	5,102	
	Obligation Limitation	204,165	31,850	
	Outlays	1,672,175	260,859	
Department of Transportation				
Federal Highway Administration				
Access highways to public recreation areas on certain lakes				
69 0503 0 1 401	Budget Authority	1,348	210	
	Outlays	270	42	
Motor carrier safety				
69 0552 0 1 401	Budget Authority	28,712	4,479	
	Outlays	22,970	3,583	
Railroad-highway crossings demonstration projects				
69 0557 0 1 401	Budget Authority	2,631	410	
	Outlays	526	82	
Trust fund share of other highway programs				
69 8009 0 7 401	Budget Authority	5,262	821	
	Outlays	1,052	164	
Baltimore-Washington Parkway				
69 8014 0 7 401	Budget Authority	13,389	2,089	
	Outlays	2,678	418	
Highway safety research and development				
69 8017 0 7 401	Budget Authority	6,348	990	
	Outlays	1,270	198	
Highway-related safety grants				
69 8019 0 7 401	401(C) Authority	10,000	1,560	
	Obligation Limitation	9,819	1,532	
	Outlays	1,963	306	
Motor carrier safety grants				
69 8048 0 7 401	401(C) Authority	60,000	9,360	
	Obligation Limitation	62,640	9,772	
	Outlays	21,924	3,420	
Federal-aid highways				
69 8083 0 7 401	401(C) Authority	14,103,000	2,200,068	
	401(C) Authority - Off. Coll.	1,500	234	
	Obligation Limitation	12,535,000	1,955,460	
	Outlays	2,531,500	394,914	
Right-of-way revolving fund (trust revolving fund)				
69 8402 0 8 401	Direct Loan Limitation	48,024	7,492	
	Outlays	48,024	7,492	
Miscellaneous appropriations				
69 9911 0 1 401	Budget Authority	57,029	8,897	
	Outlays	11,406	1,779	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-32
Miscellaneous highway trust funds				
69 9972 0 7 401	Budget Authority	65,900	10,280	
	Outlays	13,180	2,056	
National Highway Traffic Safety Administration				
Operations and research				
69 0650 0 1 401	Budget Authority	71,570	11,165	
	Outlays	46,521	7,257	
Operations and research (trust fund share)				
69 8016 0 7 401	Budget Authority	32,405	5,055	
	Outlays	21,063	3,286	
Highway traffic safety grants				
69 8020 0 7 401	401(C) Authority	126,000	19,656	
	Obligation Limitation	131,544	20,521	
	Outlays	52,618	8,209	
Federal Railroad Administration				
Northeast corridor improvement program				
69 0123 0 1 401	Budget Authority	20,462	3,192	
	Outlays	2,046	319	
Office of the Administrator				
69 0700 0 1 401	Budget Authority	22,030	3,437	
	Outlays	20,929	3,265	
Railroad safety				
69 0702 0 1 401	Budget Authority	29,679	4,630	
	Outlays	23,743	3,704	
Grants to National Railroad Passenger Corporation				
69 0704 0 1 401	Budget Authority	609,696	95,113	
	Outlays	548,726	85,601	
Freightline rehabilitation				
69 0713 0 1 401	Budget Authority	6,264	977	
	Outlays	3,758	586	
Railroad research and development				
69 0745 0 1 401	Budget Authority	9,718	1,516	
	Outlays	5,831	910	
Conrail commuter transition assistance				
69 0747 0 1 401	Budget Authority	4,698	733	
	Outlays	517	81	
Urban Mass Transportation Administration				
Administrative expenses				
69 1120 0 1 401	Budget Authority	34,029	5,309	
	Outlays	30,626	4,778	
Research, training, and human resources				
69 1121 0 1 401	Budget Authority	10,440	1,629	
	Outlays	2,088	326	
Interstate transfer grants-transit				
69 1127 0 1 401	Budget Authority	208,800	32,573	
	Outlays	4,176	651	
Washington metro				
69 1128 0 1 401	Budget Authority	175,392	27,361	
	Outlays	3,508	547	
Formula grants				
69 1129 0 1 401	Budget Authority	1,675,620	261,397	
	Outlays	632,716	98,704	
Discretionary grants				
69 8191 0 7 401	401(C) Authority	1,300,000	202,800	
	Obligation Limitation	1,190,160	185,665	
	Outlays	28,658	4,471	
Federal Aviation Administration				
Operations				
69 1301 0 1 402	Budget Authority	3,137,836	489,502	
	401(C) Authority - Off. Coll	14,650	2,285	
	Outlays	2,715,524	423,621	
Headquarters administration				
69 1302 0 1 402	Budget Authority	39,008	6,085	
	Outlays	34,327	5,355	
Aircraft purchase loan guarantee program				
69 1399 0 1 402	Budget Authority	150	23	
	Outlays	150	23	
Trust fund share of FAA operations				
69 8104 0 7 402	Budget Authority	503,509	78,547	
	Outlays	503,509	78,547	
Grants-in-aid for airports (Airport and airway trust fund)				
69 8106 0 7 402	Budget Authority	104	16	
	401(C) Authority	1,700,000	265,200	
	Obligation Limitation	1,461,600	228,010	
	Outlays	233,960	36,498	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-33
Facilities and equipment (Airport and airway trust fund)				
69 8107 0 7 402	Budget Authority	1,446,550	225,662	
	401(C) Authority - Off. Coll.	45,327	7,071	
	Outlays	218,913	34,150	
Research, engineering and development (Airport and airway trust fund)				
69 8108 0 7 402	Budget Authority	168,096	26,223	
	401(C) Authority - Off. Coll.	500	78	
	Outlays	101,358	15,812	
Coast Guard				
Operating expenses				
69 0201 0 1 403	Budget Authority	2,067,030	322,457	
	401(C) Authority - Off. Coll.	5,181	808	
	Outlays	1,700,146	265,223	
Acquisition, construction, and improvements				
69 0240 0 1 403	Budget Authority	402,985	62,866	
	Outlays	44,329	6,915	
Retired pay				
69 0241 0 1 403	401(C) Authority	37,463	5,844	
	Outlays	37,463	5,844	
Reserve training				
69 0242 0 1 403	Budget Authority	71,391	11,137	
	Outlays	62,110	9,689	
Research, development, test, and evaluation				
69 0243 0 1 403	Budget Authority	19,765	3,083	
	Outlays	6,720	1,048	
Alteration of bridges				
69 0244 0 1 403	Budget Authority	14,096	2,198	
	Outlays	3,242	505	
Coast Guard shore facilities				
69 0246 0 1 403	Budget Authority	52,581	8,203	
	Outlays	5,784	902	
Offshore oil pollution compensation fund				
69 5167 0 2 304	Obligation Limitation	62,640	9,772	
Pollution fund				
69 5168 0 2 304	401(C) Authority	5,700	889	
	Outlays	1,710	267	
Deepwater port liability fund				
69 5170 0 2 304	Obligation Limitation	52,200	8,143	
Boat safety				
69 8149 0 7 403	Budget Authority	63,102	9,844	
	Obligation Limitation	31,350	4,891	
	Outlays	36,387	5,676	
Maritime Administration				
Ready reserve force				
69 1710 0 1 403	Budget Authority	115,624	18,037	
	Outlays	70,562	11,008	
Operations and training				
69 1750 0 1 403	Budget Authority	70,005	10,921	
	Outlays	59,504	9,283	
Federal ship financing fund				
69 4301 0 3 403	401(C) Other - incl. ob. limit	3,820	596	
	Outlays	3,438	536	
Saint Lawrence Seaway Development Corporation				
Saint Lawrence Seaway Development Corporation				
69 4089 0 3 403	401(C) Authority - Off. Coll.	1,000	156	
	Outlays	1,000	156	
Operations and maintenance				
69 8003 0 7 403	Budget Authority	11,807	1,842	
	Outlays	11,807	1,842	
Office of the Inspector General				
Salaries and expenses				
69 0130 0 1 407	Budget Authority	31,005	4,837	
	Outlays	26,974	4,208	
Research and Special Programs Administration				
Research and special programs				
69 0104 0 1 407	Budget Authority	15,706	2,450	
	Outlays	10,366	1,617	
Pipeline safety				
69 5172 0 2 407	Budget Authority	9,783	1,526	
	Outlays	9,294	1,450	
Office of the Secretary				
Salaries and expenses				
69 0102 0 1 407	Budget Authority	58,124	9,067	
	Outlays	52,312	8,161	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-34
Transportation, planning, research and development				
69 0142 0 1 407	Budget Authority	5,920	924	
	Outlays	2,368	369	
Payments to air carriers, DOT				
69 0150 0 1 402	Budget Authority	32,990	5,147	
	Outlays	30,351	4,735	
Working capital fund				
69 4520 0 4 407	Budget Authority	3,351	523	
	Outlays	3,351	523	
TOTAL FOR Department of Transportation				
	Budget Authority	11,431,938	1,783,383	
	401(C) Authority	17,342,163	2,705,377	
	401(C) Authority - Off. Coll.	68,158	10,632	
	401(C) Other - incl. ob. limit	3,820	596	
	Direct Loan Limitation	48,024	7,492	
	Obligation Limitation	15,536,953	2,423,766	
	Outlays	10,071,246	1,571,112	
General Services Administration				
Real Property Activities				
Federal buildings fund				
47 4542 0 4 804	401(C) Authority - Off. Coll.	4,900	764	
	Outlays	4,900	764	
Personal Property Activities				
Federal supply service				
47 0116 0 1 804	Budget Authority	50,169	7,826	
	Outlays	48,664	7,592	
Expenses of transportation audit contracts				
47 5250 0 2 804	401(C) Authority	15,000	2,340	
	Outlays	2,945	459	
Information Resources Management Service				
Operating expenses, information resources management service				
47 0900 0 1 804	Budget Authority	33,881	5,285	
	Outlays	22,023	3,436	
Federal Property Resources Activities				
Operating expenses, federal property resources service				
47 0533 0 1 804	Budget Authority	11,488	1,792	
	Outlays	7,410	1,156	
Real property relocation				
47 0535 0 1 804	Budget Authority	4,176	651	
	Outlays	2,088	326	
Expenses, disposal of surplus real and related personal property				
47 5254 0 2 804	401(C) Authority	3,829	597	
	Outlays	2,297	358	
General Activities				
Allowances and office staff for former Presidents				
47 0105 0 1 802	Budget Authority	1,507	235	
	Outlays	1,356	212	
Expenses, presidential transition				
47 0107 0 1 802	Budget Authority	3,915	611	
	Outlays	3,915	611	
Office of Inspector General				
47 0108 0 1 804	Budget Authority	26,729	4,170	
	Outlays	22,853	3,565	
General management and administration, salaries and expenses				
47 0110 0 1 804	Budget Authority	128,703	20,078	
	Outlays	90,092	14,054	
Consumer information center fund				
47 4549 0 3 376	Budget Authority	1,421	222	
	401(C) Authority - Off. Coll.	536	84	
	Outlays	749	117	
TOTAL FOR General Services Administration				
	Budget Authority	261,989	40,870	
	401(C) Authority	18,829	2,937	
	401(C) Authority - Off. Coll.	5,436	848	
	Outlays	209,292	32,650	
Department of Housing and Urban Development				
Housing Programs				
Housing counseling assistance				
86 0156 0 1 506	Budget Authority	3,654	570	
Subsidized housing programs (Community development)				
86 0164 0 1 451	Budget Authority	5,220	814	
Subsidized housing programs (Housing assistance)				
86 0164 0 1 604	Budget Authority	7,490,960	1,168,589	
	Outlays	17,690	2,760	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-35
Congregate services program				
86 0178 0 1 604	Budget Authority	5,638	880	
Transitional and supportive housing demonstration program				
86 0188 0 1 604	Budget Authority	83,520	13,029	
	Outlays	1,670	261	
Rental housing assistance fund				
86 4041 0 3 604	401(C) Authority - Off. Coll.	50,000	7,800	
	Outlays	50,000	7,800	
Nonprofit sponsor assistance				
86 4042 0 3 604	Direct Loan Limitation	1,000	156	
	Outlays	236	37	
Federal Housing Administration fund				
86 4070 0 3 371	401(C) Other - incl. ob. limit	398,315	62,137	
	Direct Loan Limitation	107,897	16,832	
	Guaranteed Loan Limitation	100,224,000	15,634,944	
	Outlays	336,576	52,506	
Housing for the elderly or handicapped fund				
86 4115 0 3 371	Direct Loan Limitation	499,790	77,967	
Interstate land sales				
86 5270 0 2 376	401(C) Authority	626	98	
	Outlays	626	98	
Manufactured home inspection and monitoring				
86 5271 0 2 376	401(C) Authority	7,642	1,192	
	Outlays	6,259	976	
Public and Indian Housing Programs				
Payments for operation of low income housing projects				
86 0163 0 1 604	Budget Authority	1,780,550	277,766	
	Outlays	819,050	127,772	
Government National Mortgage Association				
Guarantees of mortgage-backed securities				
86 4238 0 3 371	401(C) Authority - Off. Coll.	5,588	872	
	Guaranteed Loan Limitation	149,942,000	23,390,952	
	Outlays	4,868	759	
Community Planning and Development				
Community development grants				
86 0162 0 1 451	Budget Authority	2,766,600	431,590	
	Guaranteed Loan Limitation	150,336	23,452	
	Outlays	110,664	17,264	
Urban homesteading				
86 0171 0 1 451	Budget Authority	13,781	2,150	
	Outlays	13,781	2,150	
Emergency shelter grants program				
86 0181 0 1 604	Budget Authority	48,546	7,573	
	Outlays	9,709	1,515	
Rental rehabilitation grants				
86 0182 0 1 451	Budget Authority	156,600	24,430	
	Outlays	15,660	2,443	
Rehabilitation loan fund				
86 4036 0 3 451	401(C) Authority - Off. Coll.	13,567	2,116	
	Direct Loan Limitation	70,000	10,920	
	Outlays	34,567	5,392	
Nehemiah housing opportunity program				
86 8888 0 1 451	Budget Authority	20,880	3,257	
	Outlays	2,088	326	
Policy Development and Research				
Research and technology				
86 0108 0 1 451	Budget Authority	17,957	2,801	
	Outlays	5,387	840	
Fair Housing and Equal Opportunity				
Fair housing activities				
86 0144 0 1 751	Budget Authority	10,440	1,629	
	Outlays	3,132	489	
Management and Administration				
Salaries and expenses, Including transfer of funds (Community developmen				
86 0143 0 1 451	Budget Authority	179,341	27,977	
	Outlays	149,750	23,361	
Salaries and expenses, Including transfer of funds (Housing assistance)				
86 0143 0 1 604	Budget Authority	162,592	25,364	
	Outlays	140,967	21,991	
Salaries and expenses, Including transfer of funds (Federal law enforcem				
86 0143 0 1 751	Budget Authority	15,567	2,428	
	Outlays	11,862	1,850	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-36
TOTAL FOR Department of Housing and Urban Development				
	Budget Authority	12,761,846	1,990,847	
	401(C) Authority	8,268	1,290	
	401(C) Authority - Off. Coll.	69,155	10,788	
	401(C) Other - incl. ob. limit	398,315	62,137	
	Direct Loan Limitation	678,687	105,875	
	Guaranteed Loan Limitation	250,316,336	39,049,348	
	Outlays	1,734,542	270,590	
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and program management (Space flight)				
80 0103 0 1 253	Budget Authority	982,651	153,294	
	401(C) Authority - Off. Coll.	5,000	780	
	Outlays	846,149	132,000	
Research and program management (Space science, applications, and techno				
80 0103 0 1 254	Budget Authority	640,574	99,929	
	Outlays	548,331	85,540	
Research and program management (Supporting space activities)				
80 0103 0 1 255	Budget Authority	76,032	11,861	
	Outlays	65,083	10,153	
Research and program management (Air transportation)				
80 0103 0 1 402	Budget Authority	351,760	54,875	
	Outlays	301,107	46,972	
Space flight, control, and data communications				
80 0105 0 1 250	401(C) Authority - Off. Coll.	8,368	1,305	
	Outlays	8,368	1,305	
Space flight, control, and data communications (Space flight)				
80 0105 0 1 253	Budget Authority	3,668,512	572,288	
	Outlays	2,586,301	403,463	
Space flight, control, and data communications (Supporting space activit				
80 0105 0 1 255	Budget Authority	811,414	126,580	
	401(C) Authority	47,935	7,478	
	Outlays	494,213	77,097	
Construction of facilities (Space flight)				
80 0107 0 1 253	Budget Authority	76,630	11,954	
	Outlays	4,981	777	
Construction of facilities (Space science, applications, and technology)				
80 0107 0 1 254	Budget Authority	11,902	1,857	
	Outlays	774	121	
Construction of facilities (Supporting space activities)				
80 0107 0 1 255	Budget Authority	143,863	22,443	
	Outlays	9,351	1,459	
Construction of facilities (Air transportation)				
80 0107 0 1 402	Budget Authority	54,810	8,550	
	Outlays	3,563	556	
Research and development (Space flight)				
80 0108 0 1 253	Budget Authority	1,643,256	256,348	
	401(C) Authority - Off. Coll.	5,781	902	
	Outlays	796,187	124,206	
Research and development (Space science, applications, and technology)				
80 0108 0 1 254	Budget Authority	2,281,036	355,841	
	Outlays	1,163,328	181,479	
Research and development (Supporting space activities)				
80 0108 0 1 255	Budget Authority	19,627	3,062	
	Outlays	12,620	1,969	
Research and development (Air transportation)				
80 0108 0 1 402	Budget Authority	454,036	70,830	
	Outlays	232,012	36,194	
Science, space, and technology education trust fund				
80 8978 0 7 503	401(C) Authority	1,000	156	
	Outlays	1,000	156	
TOTAL FOR National Aeronautics and Space Administration				
	Budget Authority	11,216,103	1,749,712	
	401(C) Authority	48,935	7,634	
	401(C) Authority - Off. Coll.	19,149	2,987	
	Outlays	7,073,368	1,103,447	
Office of Personnel Management				
Office of Personnel Management				
Salaries and expenses				
24 0100 0 1 805	Budget Authority	115,172	17,967	
	Outlays	109,413	17,068	
Government payment for annuitants, employees health benefits				
24 0206 0 1 551	401(C) Authority	3,780,169	589,706	
Government payment for annuitants, employee life insurance benefits				
24 0500 0 1 602	Budget Authority	2,700	421	
	Outlays	2,100	328	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-37
Civil service retirement and disability fund				
24 8135 0 7 602	Obligation Limitation	69,450	10,834	
	Outlays	69,450	10,834	
Employees life insurance fund				
24 8424 0 8 602	401(C) Other - incl. ob. limit	772	120	
	Outlays	772	120	
Employees health benefits fund				
24 8440 0 8 551	Obligation Limitation	10,650	1,661	
	Outlays	10,650	1,661	
Retired employees health benefits fund				
24 8445 0 8 551	Obligation Limitation	130	20	
	Outlays	130	20	
TOTAL FOR Office of Personnel Management				
	Budget Authority	117,872	18,388	
	401(C) Authority	3,780,169	589,706	
	401(C) Other - incl. ob. limit	772	120	
	Obligation Limitation	80,230	12,515	
	Outlays	192,515	30,031	
Small Business Administration				
Small Business Administration				
Salaries and expenses				
73 0100 0 1 376	Budget Authority	242,562	37,840	
	Outlays	245,317	38,270	
Disaster loan fund				
73 4153 0 3 453	Direct Loan Limitation	323,000	50,388	
	Outlays	138,000	21,528	
Business loan and investment fund				
73 4154 0 3 376	Direct Loan Limitation	94,000	14,664	
	Guaranteed Loan Limitation	3,910,000	609,960	
	Outlays	53,000	8,268	
Surety bond guarantees revolving fund				
73 4156 0 3 376	Guaranteed Loan Limitation	1,301,000	202,956	
TOTAL FOR Small Business Administration				
	Budget Authority	242,562	37,840	
	Direct Loan Limitation	417,000	65,052	
	Guaranteed Loan Limitation	5,211,000	812,916	
	Outlays	436,317	68,066	
Department of Veterans Affairs				
Veterans Benefits Administration				
Readjustment benefits				
36 0137 0 1 702	401(C) Authority	212,119	33,091	
	Outlays	196,352	30,631	
Burial benefits and miscellaneous assistance				
36 0155 0 1 701	401(C) Authority	138,120	21,547	
	Outlays	138,118	21,546	
Veterans Health Services and Research Administration				
Grants to the Republic of the Philippines				
36 0144 0 1 703	Budget Authority	522	81	
	Outlays	26	4	
Medical administration and miscellaneous operating expenses				
36 0152 0 1 703	Budget Authority	51,060	7,965	
	Outlays	37,784	5,894	
Medical care				
36 0160 0 1 703	Budget Authority	950,692	148,308	
	Budget Authority - Spec. Rules	212,863	212,863	
	401(C) Authority - Spec. Rules	408	408	
	Outlays	1,056,906	318,712	
Medical and prosthetic research				
36 0161 0 1 703	Budget Authority	224,279	34,988	
	Outlays	174,938	27,290	
Departmental Administration				
Construction, major projects				
36 0110 0 1 703	Budget Authority	373,841	58,320	
	Outlays	12,337	1,924	
Construction, minor projects				
36 0111 0 1 703	Budget Authority	102,099	15,927	
	Outlays	52,946	8,259	
General operating expenses				
36 0151 0 1 705	Budget Authority	831,256	129,677	
	Outlays	748,130	116,709	
Office of the Inspector General				
36 0170 0 1 705	Budget Authority	21,851	3,409	
	Outlays	19,666	3,068	
Grants for construction of state extended care facilities				
36 0181 0 1 703	Budget Authority	43,848	6,840	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-38
Grants for the construction of State veterans cemeteries				
36 0183 0 1 705	Budget Authority	9,396	1,466	
Parking garage revolving fund				
36 4538 0 3 703	Budget Authority	27,144	4,234	
	401(C) Authority - Off. Coll.	647	101	
	Outlays	2,004	313	
TOTAL FOR Department of Veterans Affairs				
	Budget Authority	2,635,988	411,215	
	Budget Authority - Spec. Rules	212,863	212,863	
	401(C) Authority	350,239	54,638	
	401(C) Authority - Off. Coll.	647	101	
	401(C) Authority - Spec. Rules	408	408	
	Outlays	2,439,207	534,350	
Other Independent Agencies				
Other Independent Agencies				
Space Council				
11 0020 0 1 802	Budget Authority	193	30	
	Outlays	174	27	
White House Conference on Library and Information Sciences				
95 2701 0 1 503	Budget Authority	1,864	291	
	Outlays	1,633	255	
ACTION				
Operating expenses				
44 0103 0 1 506	Budget Authority	179,201	27,955	
	Outlays	108,954	16,997	
Administrative Conference of the United States				
Salaries and expenses				
95 1700 0 1 751	Budget Authority	1,989	310	
	Outlays	1,591	248	
Advisory Committee on Federal Pay				
Salaries and expenses				
95 1800 0 1 805	Budget Authority	219	34	
	Outlays	208	32	
Advisory Council on Historic Preservation				
Salaries and expenses				
95 2300 0 1 303	Budget Authority	1,899	296	
	Outlays	1,709	267	
American Battle Monuments Commission				
Salaries and expenses				
74 0100 0 1 705	Budget Authority	16,127	2,516	
	Outlays	13,708	2,138	
Architectural and Transportation Barriers Compliance Board				
Salaries and expenses				
95 3200 0 1 751	Budget Authority	2,014	314	
	Outlays	1,551	242	
Arms Control and Disarmament Agency				
Arms control and disarmament activities				
94 0100 0 1 153	Budget Authority	32,881	5,129	
	Outlays	21,800	3,401	
Barry Goldwater Scholarship and Excellence in Education Foundation				
Barry Goldwater Scholarship and Excellence in Education Foundation				
95 8281 0 7 502	401(C) Other - incl. ob. limit	1,307	204	
	Outlays	1,307	204	
Board for International Broadcasting				
Grants and expenses				
95 1145 0 1 154	Budget Authority	203,501	31,746	
	Outlays	195,361	30,476	
Israel relay station				
95 1146 0 1 154	Budget Authority	34,462	5,376	
	Outlays	10,339	1,613	
Commission of Fine Arts				
Salaries and expenses				
95 2600 0 1 451	Budget Authority	507	79	
	Outlays	464	72	
National capital arts and cultural affairs				
95 2602 0 1 503	Budget Authority	5,220	814	
	Outlays	5,220	814	
Commission on Civil Rights				
Salaries and expenses				
95 1900 0 1 751	Budget Authority	6,087	950	
	Outlays	5,174	807	
Committee for Purchase from the Blind and other Severely Handicapped				
Salaries and expenses				
95 2000 0 1 505	Budget Authority	919	143	
	Outlays	872	136	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-39
Commodity Futures Trading Commission				
Commodity Futures Trading Commission				
95 1400 0 1 376	Budget Authority	37,079	5,784	
	Outlays	32,259	5,032	
Consumer Product Safety Commission				
Salaries and expenses				
61 0100 0 1 554	Budget Authority	36,806	5,742	
	401(C) Authority - Off. Coll.	10	2	
	Outlays	31,295	4,882	
Corporation for Public Broadcasting				
Public broadcasting fund				
20 0151 0 1 503	401(C) Authority	232,648	36,293	
	Outlays	232,648	36,293	
Court of Veterans Appeals				
Salaries and expenses				
95 0300 0 1 705	Budget Authority	3,309	516	
	Outlays	2,978	465	
District of Columbia				
Federal payment to the District of Columbia				
20 1700 0 1 806	Budget Authority	561,578	87,606	
	Outlays	561,578	87,606	
Equal Employment Opportunity Commission				
Salaries and expenses				
45 0100 0 1 751	Budget Authority	192,701	30,061	
	Outlays	170,155	26,544	
Export-Import Bank of the United States				
Export-Import Bank of the United States				
83 4027 0 3 155	Budget Authority	114,840	17,915	
	Direct Loan Limitation	725,580	113,190	
	Guaranteed Loan Limitation	10,648,800	1,661,213	
	Obligation Limitation	21,900	3,416	
	Outlays	128,400	20,030	
Farm Credit Administration				
Revolving fund for administrative expenses				
78 4131 0 3 351	Obligation Limitation	39,776	6,205	
	Outlays	39,776	6,205	
Farm Credit System Financial Assistance Corporation				
Farm credit assistance fund				
78 4133 0 3 351	401(C) Authority	500,000	78,000	
	Outlays	475,000	74,100	
Federal Communications Commission				
Salaries and expenses				
27 0100 0 1 376	Budget Authority	106,599	16,629	
	Outlays	100,203	15,632	
Federal Election Commission				
Salaries and expenses				
95 1600 0 1 808	Budget Authority	16,725	2,609	
	Outlays	15,053	2,348	
Federal Emergency Management Agency				
Salaries and expenses (Defense-related activities)				
58 0100 0 1 054	Budget Authority	73,485	11,464	
	Outlays	66,137	10,317	
Salaries and expenses (Disaster relief and insurance)				
58 0100 0 1 453	Budget Authority	73,385	11,448	
	Outlays	66,047	10,303	
Emergency management planning and assistance (Defense-related activities				
58 0101 0 1 054	Budget Authority	267,529	41,735	
	Outlays	147,141	22,954	
Emergency management planning and assistance (Disaster relief and insura				
58 0101 0 1 453	Budget Authority	27,336	4,264	
	Outlays	15,035	2,345	
Emergency food and shelter program				
58 0103 0 1 605	Budget Authority	131,544	20,520	
	Outlays	131,544	20,520	
Disaster relief				
58 0104 0 1 453	Budget Authority	1,365,552	213,026	
	Outlays	83,760	13,067	
National insurance development fund				
58 4235 0 3 451	401(C) Authority	220	34	
	Outlays	220	34	
Federal Labor Relations Authority				
Salaries and expenses				
54 0100 0 1 805	Budget Authority	18,753	2,925	
	Outlays	17,253	2,691	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-40
Federal Maritime Commission				
Salaries and expenses				
65 0100 0 1 403	Budget Authority	14,517	2,265	
	Outlays	13,065	2,038	
Federal Mediation and Conciliation Service				
Salaries and expenses				
93 0100 0 1 505	Budget Authority	27,569	4,301	
	Outlays	25,060	3,909	
Federal Mine Safety and Health Review Commission				
Salaries and expenses				
95 2800 0 1 554	Budget Authority	4,305	672	
	Outlays	4,004	625	
Federal Trade Commission				
Salaries and expenses				
29 0100 0 1 376	Budget Authority	70,753	11,037	
	Outlays	65,093	10,155	
TOTAL FOR Other Independent Agencies				
	Budget Authority	3,631,448	566,502	
	401(C) Authority	732,868	114,327	
	401(C) Authority - Off. Coll.	10	2	
	401(C) Other - incl. ob. limit	1,307	204	
	Direct Loan Limitation	725,580	113,190	
	Guaranteed Loan Limitation	10,648,800	1,661,213	
	Obligation Limitation	61,676	9,621	
	Outlays	2,793,769	435,824	
Other Independent Agencies				
Other Independent Agencies				
Defense Nuclear Safety Board				
31 8880 0 1 053	Budget Authority	7,000	749	
	Outlays	6,650	712	
Harry S Truman Scholarship Foundation				
Harry S Truman memorial scholarship trust fund				
95 8296 0 7 502	401(C) Other - incl. ob. limit	3,061	478	
	Outlays	3,053	476	
American Revolution Bicentennial Administration				
American Revolution Bicentennial Administration				
76 1900 0 1 806	Budget Authority	5,053	788	
	Outlays	4,548	709	
Christopher Columbus Quincentennary Jubilee Commission				
Salaries and expenses				
76 0800 0 1 376	Budget Authority	225	35	
	Outlays	203	32	
Commission on the Bicentennial of the U.S. Constitution				
Salaries and expenses				
76 0054 0 1 808	Budget Authority	7,294	1,138	
	Outlays	6,309	984	
Franklin Delano Roosevelt Memorial Commission				
Salaries and expenses				
76 0700 0 1 808	Budget Authority	29	5	
	Outlays	24	4	
Institute of American Indian and Alaska Native Culture and Arts Developm				
Salaries and expenses				
95 2900 0 1 502	Budget Authority	3,230	504	
	Outlays	3,230	504	
Intelligence Community Staff				
Intelligence community staff				
95 0400 0 1 054	Budget Authority	25,161	2,692	
	Outlays	16,355	1,750	
Advisory Commission on Intergovernmental Relations				
Salaries and expenses				
55 0100 0 1 808	Budget Authority	1,112	173	
	Outlays	946	148	
Appalachian Regional Commission				
Appalachian regional development programs				
46 0200 0 1 452	Budget Authority	150,000	23,400	
	Outlays	41,945	6,543	
Delaware River Basin Commission				
Salaries and expenses				
46 0100 0 1 301	Budget Authority	214	33	
	Outlays	199	31	
Contribution to Delaware River Basin Commission				
46 0102 0 1 301	Budget Authority	345	54	
	Outlays	345	54	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-41
Interstate Commission on the Potomac River Basin				
Contribution to Interstate Commission on the Potomac River Basin				
46 0446 0 1 304	Budget Authority	300	47	
	Outlays	300	47	
Susquehanna River Basin Commission				
Salaries and expenses				
46 0500 0 1 301	Budget Authority	200	31	
	Outlays	189	29	
Contribution to Susquehanna River Basin Commission				
46 0501 0 1 301	Budget Authority	276	43	
	Outlays	276	43	
International Trade Commission				
Salaries and expenses				
34 0100 0 1 153	Budget Authority	38,317	5,977	
	Outlays	32,991	5,147	
Interstate Commerce Commission				
Salaries and expenses				
30 0100 0 1 401	Budget Authority	46,109	7,193	
	Outlays	41,498	6,474	
James Madison Memorial Fellowship Foundation				
James Madison Memorial Fellowship Trust Fund				
95 8282 0 7 502	401(C) Other - incl. ob. limit	500	78	
	Outlays	250	39	
Japan-United States Friendship Commission				
Japan-United States friendship trust fund				
95 8025 0 7 154	Budget Authority	1,482	231	
	Outlays	1,482	231	
Legal Services Corporation				
Payment to the Legal Services Corporation				
20 0501 0 1 752	Budget Authority	322,131	50,252	
	Outlays	283,475	44,222	
Marine Mammal Commission				
Salaries and expenses				
95 2200 0 1 302	Budget Authority	1,017	159	
	Outlays	903	141	
Merit Systems Protection Board				
Salaries and expenses				
41 0100 0 1 805	Budget Authority	21,884	3,414	
	Outlays	18,601	2,902	
Office of the Special Counsel				
41 0101 0 1 805	Budget Authority	5,352	835	
	Outlays	4,918	767	
National Archives and Records Administration				
Operating expenses				
88 0300 0 1 804	Budget Authority	129,022	20,127	
	Outlays	103,218	16,102	
National archives trust fund				
88 8436 0 8 804	401(C) Authority - Off. Coll.	10,555	1,647	
	Outlays	10,555	1,647	
National Capital Planning Commission				
Salaries and expenses				
95 2500 0 1 451	Budget Authority	3,166	494	
	Outlays	2,913	454	
National Commission on Libraries and Information Science				
Salaries and expenses				
95 2700 0 1 503	Budget Authority	791	123	
	Outlays	633	99	
National Commission on Migrant Education				
Salaries and expenses				
95 0600 0 1 501	Budget Authority	2,080	324	
	Outlays	166	26	
National Council on Disability				
Salaries and expenses				
95 3500 0 1 506	Budget Authority	1,229	192	
	Outlays	983	153	
National Endowment for the Arts				
National endowment for the arts: Grants and administration				
59 0100 0 1 503	Budget Authority	176,898	27,596	
	Outlays	59,615	9,300	
National Endowment for the Humanities				
National endowment for the humanities: Grants and administration				
59 0200 0 1 503	Budget Authority	160,080	24,972	
	Outlays	72,036	11,238	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-42
Institute of Museum Services				
Institute of Museum Services: Grants and administration				
59 0300 0 1 503	Budget Authority	23,272	3,630	
	Outlays	6,004	937	
National Labor Relations Board				
Salaries and expenses				
63 0100 0 1 505	Budget Authority	146,586	22,867	
	Outlays	137,937	21,518	
National Mediation Board				
Salaries and expenses				
95 2400 0 1 505	Budget Authority	5,924	1,080	
	Outlays	5,290	825	
National Science Foundation				
Research and related activities				
49 0100 0 1 251	Budget Authority	1,692,189	263,981	
	Outlays	824,035	128,549	
Science and engineering education activities				
49 0106 0 1 251	Budget Authority	178,524	27,850	
	Outlays	26,600	4,150	
U.S. Antarctic program				
49 0200 0 1 251	Budget Authority	136,764	21,335	
	Outlays	67,698	10,561	
National Transportation Safety Board				
Salaries and expenses				
95 0310 0 1 407	Budget Authority	27,062	4,222	
	Outlays	24,356	3,800	
Neighborhood Reinvestment Corporation				
Payment to the Neighborhood Reinvestment Corporation				
82 1300 0 1 451	Budget Authority	20,352	3,175	
	Outlays	20,352	3,175	
Nuclear Regulatory Commission				
Salaries and expenses				
31 0200 0 1 276	Budget Authority	442,100	68,968	
	Outlays	331,575	51,726	
Office of the Inspector General				
31 0300 0 1 276	Budget Authority	2,900	452	
	Outlays	2,465	385	
TOTAL FOR Other Independent Agencies				
	Budget Authority	3,786,670	589,141	
	401(C) Authority - Off. Coll.	10,555	1,647	
	401(C) Other - incl. ob. limit	3,561	556	
	Outlays	2,165,121	336,434	
Other Independent Agencies				
Occupational Safety and Health Review Commission				
Salaries and expenses				
95 2100 0 1 554	Budget Authority	6,245	974	
	Outlays	5,746	896	
Pennsylvania Avenue Development Corporation				
Salaries and expenses				
42 0100 0 1 451	Budget Authority	2,485	388	
	Outlays	2,013	314	
Public development				
42 0102 0 1 451	Budget Authority	3,318	518	
	Outlays	2,489	388	
Land acquisition and development fund				
42 4084 0 3 451	403(C) Authority - Off. Coll.	10,000	1,560	
	Outlays	10,000	1,560	
Postal Service				
Payment to the Postal Service fund				
18 1001 0 1 372	Budget Authority	455,619	71,077	
	Outlays	455,619	71,077	
Postal Service				
18 4020 0 3 372	401(C) Other - incl. ob. limit	1,097,124	171,151	
Railroad Retirement Board				
Railroad social security equivalent benefit account				
60 8010 0 7 601	Obligation Limitation	28,123	4,387	
	Outlays	28,123	4,387	
Rail Industry Pension Fund				
60 8011 0 7 601	Obligation Limitation	33,625	5,246	
	Outlays	33,625	5,246	
Supplemental Annuity Pension Fund				
60 8012 0 7 601	Obligation Limitation	2,300	359	
	Outlays	2,300	359	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-43
Securities and Exchange Commission				
Salaries and expenses				
50 0100 0 1 376	Budget Authority	152,098	23,727	
	Outlays	138,409	21,592	
Selective Service System				
Salaries and expenses				
90 0400 0 1 054	Budget Authority	28,046	3,001	
	Outlays	23,026	2,464	
Smithsonian Institution				
Salaries and expenses				
33 0100 0 1 503	Budget Authority	225,275	35,143	
	Outlays	198,918	31,031	
Construction and improvements, National Zoological Park				
33 0129 0 1 503	Budget Authority	5,538	864	
	Outlays	2,492	389	
Repair and restoration of buildings				
33 0132 0 1 503	Budget Authority	21,647	3,377	
	Outlays	8,659	1,351	
Construction				
33 0133 0 1 503	Budget Authority	9,036	1,410	
	Outlays	3,614	564	
Salaries and expenses, National Gallery of Art				
33 0200 0 1 503	Budget Authority	40,469	6,313	
	Outlays	34,682	5,410	
Repair, restoration, and renovation of buildings				
33 0201 0 1 503	Budget Authority	784	122	
	Outlays	188	29	
Salaries and expenses, Woodrow Wilson International Center for Scholars				
33 0400 0 1 503	Budget Authority	4,486	700	
	Outlays	2,754	430	
Payment to the endowment challenge fund				
33 0401 0 1 503	Budget Authority	313	49	
	Outlays	157	24	
Endowment challenge fund				
33 8188 0 7 503	401(C) Authority	270	42	
	Outlays	270	42	
Canal Zone biological area fund				
33 8190 0 7 503	401(C) Authority	150	23	
	Outlays	135	21	
TOTAL FOR Other Independent Agencies				
	Budget Authority	955,359	147,663	
	401(C) Authority	420	65	
	401(C) Authority - Off. Coll.	10,000	1,560	
	401(C) Other - incl. ob. limit	1,097,124	171,151	
	Obligation Limitation	64,048	9,992	
	Outlays	953,218	147,574	
Other Independent Agencies				
Other Temporary Commissions				
State Justice Institute: Salaries and expenses				
48 0052 0 1 752	Budget Authority	11,485	1,792	
	Outlays	3,101	484	
Commission on Agricultural Workers: Salaries and expenses				
48 0057 0 1 352	Budget Authority	532	83	
	Outlays	479	75	
National Commission on Responsibilities for Financing Postsecondary Educ				
48 0400 0 1 502	Budget Authority	826	129	
	Outlays	617	96	
Nuclear Waste Technical Review Board: Salaries and expenses				
48 0500 0 1 271	Budget Authority	2,000	312	
	Outlays	1,700	265	
Office of the Nuclear Waste Negotiator: Salaries and expenses				
48 0700 0 1 271	Budget Authority	2,000	312	
	Outlays	1,700	265	
Navajo and Hopi Indian Relocation Commission: Salaries and expenses				
48 1100 0 1 808	Budget Authority	28,649	4,469	
	Outlays	18,049	2,816	
Interagency Council on the Homeless				
48 1300 0 1 604	Budget Authority	1,145	179	
	Outlays	678	106	
Commission for the Study of International Migration and Cooperative Econ				
48 1400 0 1 153	Budget Authority	1,363	213	
	Outlays	818	128	
National Commission to Prevent Infant Mortality				
48 1500 0 1 808	Budget Authority	688	107	
	Outlays	550	86	

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AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-44
International Cultural and Trade Center Commission: Salaries and expense				
48 1800 0 1 804	Budget Authority	845	132	
	Outlays	423	66	
National Economic Commission: Salaries and expenses				
48 2100 0 1 802	Budget Authority	735	115	
	Outlays	674	105	
Tennessee Valley Authority				
Tennessee Valley Authority fund (Energy supply)				
64 4110 0 3 271	401(C) Authority - Off. Coll.	73,500	11,466	
	Outlays	64,680	10,090	
Tennessee Valley Authority fund (Area and regional development)				
64 4110 0 3 452	Budget Authority	121,000	18,876	
	Outlays	29,767	4,644	
United States Holocaust Memorial Council				
Holocaust Memorial Council				
95 3300 0 1 808	Budget Authority	2,372	370	
	Outlays	1,876	293	
United States Information Agency				
Salaries and expenses				
67 0201 0 1 154	Budget Authority	658,382	102,706	
	Outlays	519,464	81,036	
East West Center				
67 0202 0 1 154	Budget Authority	20,880	3,257	
	Outlays	19,732	3,078	
Radio construction				
67 0204 0 1 154	Budget Authority	67,842	10,586	
	Outlays	38,138	5,950	
Radio broadcasting to Cuba				
67 0208 0 1 154	Budget Authority	11,861	1,850	
	Outlays	9,489	1,480	
Educational and cultural exchange programs				
67 0209 0 1 154	Budget Authority	156,642	24,436	
	Outlays	71,272	11,118	
National Endowment for Democracy				
67 0210 0 1 154	Budget Authority	16,495	2,573	
	Outlays	6,598	1,029	
United States Institute of Peace				
United States Institute of Peace				
95 1300 0 1 153	Budget Authority	7,280	1,136	
	Outlays	5,824	909	
United States Sentencing Commission				
Salaries and expenses				
10 0938 0 1 752	Budget Authority	5,508	859	
	Outlays	4,957	773	
TOTAL FOR Other Independent Agencies				
	Budget Authority	1,118,550	174,494	
	401(C) Authority - Off. Coll.	73,500	11,466	
	Outlays	800,586	124,892	
REPORT TOTAL				
	Budget Authority	470,085,373	58,123,824	
	Budget Authority - Spec. Rules	244,174	244,174	
	401(C) Authority	43,604,454	6,802,297	
	401(C) Authority - Off. Coll.	2,060,465	321,430	
	401(C) Other - incl. ob. limit	3,293,620	513,804	
	401(C) Authority - Spec. Rules	1,883,589	1,883,509	
	Direct Loan Limitation	21,226,535	3,311,338	
	Direct Loan Floor	2,052,778	320,233	
	Guaranteed Loan Limitation	276,780,881	43,177,817	
	Guaranteed Loan Floor	0	0	
	Obligation Limitation	25,408,791	3,963,775	
	Unobligated Balances - Defense	39,585,864	4,255,690	
	Outlays	315,401,721	41,441,827	

APPENDIX B

ATOMIC ENERGY DEFENSE SEQUESTRATION

REDUCTIONS BY PROGRAM, PROJECT, AND ACTIVITY

(Fiscal year 1990, in thousands of dollars)

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APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE BA	BASE Unob. Bal.	SEQUESTRATION BA	SEQUESTRATION Unob. Bal.	SEQUESTRATION Outlays
ATOMIC ENERGY DEFENSE ACTIVITIES					
I. WEAPONS ACTIVITIES					
A. Research and development					
1. Research and development - Core					
Operating expenses	802,770	15	85,896	2	53,257
Capital equipment	93,875	92	10,045	10	6,234
Construction:					
90-D-101 General plant projects, various locations	20,730	10	2,218	1	1,376
90-D-102 Nuclear weapons research, development, & testing facilities revitalization, Phase III, various locations	1,000		107		66
89-D-101 General plant projects,					
88-D-105 Special nuclear materials R&D laboratory replacement, LANL, Los Alamos, N	44,000		4,708		2,919
88-D-106 Nuclear weapons research, development, & testing facilities revitalization, Phase II, various locations	75,400		8,068		5,002
85-D-102 Nuclear weapons research, development, and testing facilities revitalization		54		6	4
2. Nuclear directed energy weapons					
Operating expenses	97,000		10,379		6,435
Capital equipment	6,000	177	642	19	410
Construction:					
88-D-106 Nuclear weapons research, development and testing facilities revitalization, Phase II, (NDER facility at LLNL)	19,000		2,033		1,260
3. Inertial fusion					
Operating expenses	165,200	1	17,676	0	10,959
Capital equipment	8,740		935		580
4. Environment, safety & health					
Construction:					
90-D-103 ES&H Improvements various locations	10,700		1,145		710
88-D-102 Sanitary wastewater systems consolidation, LANL, Los Alamos, NM	3,100		332		206
86-D-103 Decontamination and waste treatment facility, LLNL, Livermore, CA	5,200	11,900	556	1,273	1,134
5. Safeguards & security					
Construction:					
88-D-104 Safeguards and security upgrade, Phase II, LANL, Los Alamos, NM	1,000		107		66
87-D-104 Safeguards and security enhancement II, LLNL, Livermore, CA	7,000	1,000	749	107	531
B. Testing					
1. Testing - Core					
Operating expenses	421,700	201	45,122	22	27,989
Capital equipment	40,420		4,325		2,681
Construction:					
90-D-101 General plant projects, various locations	7,400		792		491
89-D-101 General plant projects, various					
2. Nuclear directed energy weapons					
Operating expenses	90,000		9,630		5,971
Capital equipment	8,000		856		531
3. Safeguards & security					
Construction:					
85-D-105 Combined device assembly facility, Nevada Test Site, NV	9,460		1,012		628
C. Production and surveillance					
Operating expenses	2,100,000	148	224,700	16	139,324
Capital equipment	125,600		13,439		8,332
Construction:					
Decision costs - construction:					
90-D-122 Production capabilities for the nuclear depth/strike bomb (ND/SB), various locations	8,000		856		531
90-D-123 Follow on to lance warhead missile (SICBM) warhead production facs,					
87-D-122 Short-range attack missile II (SRAM II) warhead production facilities, various locations	41,200		4,408		2,733

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE BA	BASE Unob. Bal.	SEQUESTRATION BA	SEQUESTRATION Unob. Bal.	SEQUESTRATION Outlays
Production base - construction:					
Facilities capability assurance program:					
88-D-122 Facilities capability assurance program (FCAP), various locations	83,099		8,892		5,513
Production support facilities:					
90-D-121 General plant projects, various locations	30,850		3,301		2,047
90-D-124 High explosives (HE) synthesis facility, Pantex Plant, Amarillo, TX	1,800		193		119
89-D-121 General plant projects,					
89-D-122 Production waste storage facility, Y-12 Plant, Oak Ridge, TN	9,200		984		610
89-D-125 Plutonium recovery modification project (Bldg. 371), Rocky Flats Plant, Golden, CO	45,000		4,815		2,985
88-D-125 High explosive machining facility, Pantex Plant, Amarillo, TX	36,000		3,852		2,388
86-D-130 Tritium loading facility replacement, Savannah River Plant, Aiken, SC	24,025		2,571		1,594
85-D-112 Enriched uranium recovery improve-					
Environment, safety & health:					
90-D-125 Steam plant ash disposal facility, Y-12 Plant, Oak Ridge, TN	1,500		161		100
90-D-126 ES&H Enhancements various locations	26,700		2,857		1,771
89-D-126 Environmental, safety, & health upgrade, Phase II, Mound Plant, Miamisburg, OH	3,500		375		232
88-D-124 Fire protection upgrading, various locations	5,400		578		358
88-D-126 Personnel radiological monitoring					
86-D-123 Environmental hazards elimination,					
84-D-124 Environmental improvements, Y-12					
Safeguards & security:					
88-D-123 Security enhancement, Pantex Plant, Amarillo, TX	5,500		589		365
84-D-211 Safeguards and site security					
D. Program direction					
Operating expenses		1,278		137	85
1. Weapons program	88,853		9,507		5,895
2. Community assistance	9,050		968		600
Capital equipment	1,735		186		115
II. MATERIALS PRODUCTION					
A. Reactor operations					
Operating expenses	578,049	4,500	61,851	482	38,646
Construction:					
Environment, safety & health projects:					
90-D-142 Coal storage facility environmental upgrade, Feed Materials Production Center, Fernald, OH	920		98		61
90-D-150 Reactor safety assurance, Savannah River, SC	12,700		1,359		843
89-D-141 M-Area waste disposal, Savannah River, SC	7,800		835		517
89-D-142 Reactor effluent cooling water thermal mitigation, Savannah River, SC	40,000		4,280		2,654
89-D-148 Improved reactor confinement system Savannah River, SC	7,100		760		471
86-D-152 Reactor electrical distribution system, Savannah River, SC	3,164		339		210
B. Processing of nuclear materials					
Operating expenses	589,609	5	63,088	1	39,115
Construction:					
Programmatic projects:					
86-D-148 Special isotope separation project, Idaho Falls, ID	40,000		4,280		2,654
Environment, safety & health projects:					
90-D-141 Idaho chemical processing plant fire protection, Idaho Falls, ID	3,500		375		232
90-D-143 Plutonium finishing plant fire safety and loss limitation, Richland, WA	800		86		53
C. Supporting services					
Operating expenses	282,868	60	30,267	6	18,769

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APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE BA	BASE Unob. Bal.	SEQUESTRATION BA	SEQUESTRATION Unob. Bal.	SEQUESTRATION Outlays
Construction:					
Programmatic projects:					
90-D-146 General plant projects, various locations	36,802		3,938		2,441
90-D-151 Engineering Ctr, Savannah River, SC	7,000		749		464
89-D-146 General plant projects, various					
86-D-149 Productivity retention program, Phase I, II, III, IV and V, various location	81,780		8,750		5,425
85-D-139 Fuel processing restoration, Idaho Fuel Processing Facility, INEL, ID	75,000		8,025		4,976
82-D-124 Restoration of production capabilities, Phases II, III, IV, & V,					
Environment, safety & health projects:					
90-D-149 Plantwide fire protection, phase I, Savannah River, SC	4,900		524		325
87-D-152 Environmental protection plantwide,					
87-D-159 Environmental, health, and safety improvements, Phases I, II, III, & IV, Feed Materials Production Center, Fernald, OH	55,111		5,897		3,656
Safeguards & security projects:					
89-D-140 Additional separations safeguards, Savannah River, SC	10,300		1,102		683
88-D-153 Additional reactor safeguards, Savannah River, SC	6,400		685		425
86-D-156 Plantwide safeguards systems, Savannah River, SC	6,181		661		410
84-D-134 Safeguards and security improve-					
D. Enriched material	168,900		18,072		11,205
E. Capital equipment	104,425	25	11,173	3	6,929
F. Program direction	35,265	1,050	3,773	112	2,409
III. DEFENSE WASTE AND ENVIRONMENTAL RESTORATION					
A. Environmental restoration - operating expenses	572,000	10	61,204	1	37,947
B. Waste operations and projects					
Operating expenses	699,696	43,005	74,867	4,602	49,271
Construction					
Programmatic projects:					
90-D-170 GPP, various locations	29,036		3,107		1,926
89-D-170 General plant projects, waste operations and projects, and waste research and					
89-D-171 INEL road renovation, ID	7,400		792		491
89-D-174 Replacement high level waste evaporator, Savannah River, SC	9,360		1,002		621
88-D-173 Hanford waste vitrification plant (HWVP), Richland, WA	29,100		3,114		1,930
87-D-173 242-A Evaporator crystallizer upgrade, Richland, WA	700		75		46
87-D-180 Burial ground expansion, Savannah					
87-D-181 Diversion box and pump pit containment buildings, Savannah River, SC	2,790		299		185
81-T-105 Defense waste processing facility,					
Environment, safety & health projects:					
90-D-171 Laboratory ventilation and electrical system upgrade, Richland, WA	1,100		118		73
90-D-172 Aging waste transfer line, Richland, WA	1,300		139		86
90-D-173 B-plant canyon crane replacement, Richland, WA	1,500		161		100
90-D-174 Decontamination laundry facility, Richland, WA	2,800		300		186
90-D-175 Landlord program safety compliance-I, Richland, WA	4,200		449		279
90-D-176 Transuranic (TRU) waste facility, Savannah River, SC	3,100		332		206
90-D-177 RWMC Transuranic (TRU) waste treatment and storage facility, Idaho	5,000		535		332
90-D-178 TSA retrieval containment building, Idaho	6,000		642		398
89-D-172 Hanford environmental compliance, Richland, WA	27,600		2,953		1,831
89-D-173 Tank farm ventilation upgrade, Richland, WA	15,400		1,648		1,022

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE BA	BASE Unob. Bal.	SEQUESTRATION BA	SEQUESTRATION Unob. Bal.	SEQUESTRATION Outlays
89-D-175 Hazardous waste/mixed waste disposal facility, Savannah River, SC	6,440		689		427
87-D-177 Test reactor area liquid radioactive					
83-D-148 Non-radioactive hazardous waste management, Savannah River, SC	14,140		1,513		938
Safeguards & security projects:					
C. Waste research and development	115,225	6	12,329	1	7,644
D. Hazardous waste and compliance technology	40,163		4,297		2,664
E. Transportation management	11,841		1,267		786
F. Capital equipment	50,126		5,363		3,325
G. Program direction	2,950		316		196
IV. NEW PRODUCTION REACTORS					
A. New production reactor support					
Operating expenses	203,500		21,775		13,500
Construction:					
88-D-154 New production reactor capacity, various locations (design only)	100,000		10,700		6,634
V. NAVAL REACTORS DEVELOPMENT					
A. Plant development					
Operating expenses	87,000	415	9,309	44	5,799
B. Reactor development					
Operating expenses	245,300		26,247		16,273
C. Reactor operation and evaluation					
Operating expenses	217,000		23,219		14,396
D. Capital equipment	54,000		5,778		3,582
E. Construction:					
90-N-101 General plant projects, various locations	8,500		910		564
90-N-102 Expended core facility dry cell project, Naval Reactors Facility, ID	3,600		385		239
90-N-103 Advanced test reactor off-gas treatment system, INEL, ID	200		21		13
90-N-104 Facility renovations, Knolls Atomic Power Laboratory (KAPL), Niskayuna, NY	3,900		417		259
89-N-101 General plant projects,					
89-N-102 Heat transfer test facility, KAPL, Niskayuna, NY	6,500		696		431
89-N-103 Advanced test reactor modifications Test Reactor Area, INEL, ID	3,100		332		206
89-N-104 Power system upgrade, Naval Reactors Facility, Idaho Falls, ID	6,400		685		425
88-N-102 Expended core facility receiving station, Naval Reactors Facility, ID	3,000		321		199
88-N-103 Material handling and storage					
88-N-104 Prototype availability facilities,					
F. Program direction	13,500		1,445		896
VI. OTHER NATIONAL SECURITY PROGRAMS					
A. Verification and control technology					
Operating expenses	159,146	52	17,029	6	10,561
Capital equipment	9,732		1,041		646
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WHEN: October 24; at 1:00 p.m.
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By the President of the United States of America

A Proclamation

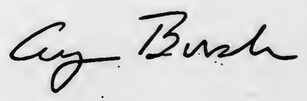
For more than 4 decades, the National School Lunch Program has helped to promote the health and well-being of the Nation's schoolchildren. Since 1946, the cooperative efforts of State governments and local communities have brought needed Federal food assistance to children throughout the United States. Each day, more than 22 million students in over 90,000 schools receive nutritious, well-balanced lunches through this effective program.

Parents, teachers, school officials, community leaders, food service specialists, and the students themselves have all played important roles in supporting the program and contributing to its improvement. National School Lunch Week provides all of us with the opportunity to acknowledge their efforts, as well as the vision and concern of the many persons associated with the program throughout the years. Their dedication and cooperation have been vital to the program's success.

By joint resolution approved October 9, 1962 (Public Law 87–780), the Congress designated the week beginning on the second Sunday of October in each year as "National School Lunch Week" and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 8, 1989, as National School Lunch Week, and I call upon all Americans to recognize those individuals at the State and local levels whose efforts contribute so much to the success of this valuable program.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-24306
Filed 10-10-89; 4:39 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 54, No. 196
Thursday, October 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final Rule (Technical Amendment).

SUMMARY: This final rule adds a technical amendment to 7 CFR Part 701 to codify the Office of Management and Budget (OMB) control number for the information collection requirements of that Part.

EFFECTIVE DATE: October 12, 1989.

SUPPLEMENTARY INFORMATION: The information requirements of 7 CFR Part 701 have been approved by OMB under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0078, 0560–0079, and 0560–82. This rule adds a reference to those numbers to that Part.

The titles and numbers of the Federal Assistance Programs to which this rule applies are: Title—Agricultural Conservation Program, Number—10.063; Title—Emergency Conservation Program, Number—10.054; Title—Forestry Incentives Program, Number 10.064; as found in the Catalog of Federal Domestic Assistance.

Technical Amendment

Accordingly, 7 CFR Part 710 is amended to read as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

Authority: Pub. L. 74–76, secs. 5, 7–15, 16(a), 16(f), 16A, 17, 49 Stat. 163, as amended (16 U.S.C. 590d, 590g–590o, 590p(a), 590q; Pub. L. 93–86, secs. 1001–1009, 87 Stat. 241 (16 U.S.C. 1501–1510); Pub. L. 95–313, secs. 4, 8(a), 10, 92 Stat. 365 (16 U.S.C. 1510, 1606, 2101–2111); Pub. L. 95–334, secs. 401–405, 92 Stat. 433 (16 U.S.C. 2201–2205); Pub. L. 99–500 and Pub. L. 99–591.

2. Section 701.86 is added to read as follows:

§ 701.86 Information collection requirements.

Information collection requirements contained in this Part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0078, 0560–0079, and 0560–0082.

Signed at Washington, DC, October 4, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89–24063 Filed 10–11–89; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AD11

Palladium-103 for Interstitial Treatment of Cancer

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the medical uses of byproduct material to add palladium-103 as a sealed source in seeds to the list of brachytherapy sources permitted for use in the treatment of cancer. Under current NRC regulations, users must have their licenses amended before they use palladium-103. This amendment, promulgated in response to a petition for rulemaking (PRM–35–7), will reduce the regulatory burden on medical use licensees who plan to use the sealed source. An evaluation of the potential radiation hazards to hospital personnel and the public showed that there would be minimal risk if the sealed source is used in accordance with the manufacturer's radiation safety and handling instructions.

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492–3797.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

On November 30, 1988, Theragenics Corporation submitted a petition for rulemaking, PRM–35–7, which was docketed on December 9, 1988. The petitioner requested that the NRC amend its regulations to add palladium-103 as a sealed source in seeds for the interstitial treatment of cancer to the list of sealed sources currently permitted in 10 CFR 35.400 for use in brachytherapy. The petitioner stated that, under current NRC regulations, licensees who are users of palladium-103 must go through the cumbersome process of having their licenses amended before using the product and that amending 10 CFR 35.400 in the manner suggested would eliminate this cumbersome process.

In supporting the petition, the petitioner submitted several documents, including a letter from the FDA, a safety evaluation report from the State of Georgia, the package insert, and product literature.

The letter from the FDA stated that, under section 510(k) of the Federal Food, Drug, and Cosmetic Act, as amended, marketing the device (palladium-103 as a sealed source in seeds) would be permitted subject to the general controls provisions of the Federal Food, Drug, and Cosmetic Act until such time as the device has been classified as either a Class I, II, or III device under section 513. Class I devices require general controls, that is, registration and good manufacturing practices. Class II devices require performance standards in addition to general controls. Class III devices require prior FDA approval of a Pre-Market Approval application, performance standards, and general controls. In January 1988 (53 FR 1554), FDA classified radionuclide brachytherapy sources as Class II devices. This permits Theragenics to continue marketing the palladium-103 seeds.

In March 1988, Theragenics, an "Agreement State" licensee of the State of Georgia, submitted information on the radiation safety properties of palladium-103 to Georgia in order to obtain a

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"Certificate of Registration." Such a certificate is necessary for Theragenics to manufacture and distribute palladium-103 seeds to specific licensees. The information on these safety properties included the design and construction, prototype testing, conditions of normal use, labeling, external radiation levels, solubility in body fluids, and quality control and assurance. After reviewing the information and determining the adequacy of the radiation safety properties of the source, the State of Georgia issued a Certificate of Registration to Theragenics on September 22, 1986. This certificate summarized the submitted radiation safety information and specified additional limitations and conditions on the use of the source. This certificate was amended in its entirety on June 6, 1988, to include a minor design improvement made by Theragenics.

Following its determination that the radiation safety properties of the source are adequate, the State of Georgia sent NRC a copy of the certificate to include in the Registry of Source and Device Designs that is maintained by the NRC. The NRC reviewed the certificate for consistency with other certificates in the Registry and added palladium-103 to the Registry on October 29, 1986, and again in June 1988 to cover the minor design improvement. This action, in effect, granted a premarketing approval of the sealed source and permitted the use of palladium-103, provided the user's license was amended to include that sealed source.

Proposed Amendment and Public Comment

After considering the petition, the NRC published a proposed amendment granting the petition for a 30-day public comment period (54 FR 13892, April 6, 1989). One comment letter was received. The comment letter, submitted by a medical professional organization, supported the petition. The letter stated that "this would indeed alleviate burdensome current NRC regulations that require users to amend their licenses before using palladium-103."

Conclusion

The NRC has determined that the addition of palladium-103 as a sealed source in seeds to the list of sealed sources specified in § 35.400 will not cause additional risk to hospital personnel or the public because the radiation safety and handling instructions to be used for palladium-103 are the same as the instructions used currently for the brachytherapy sources listed in § 35.400. This action will reduce the regulatory burden to the users of palladium-103 seeds (about 700 potential users) as well as to the NRC staff. Most users will not have to follow the present requirement of submitting individual license amendment applications in order to use palladium-103 as a sealed source in seeds for the interstitial treatment of cancer (if their license permits the use of any brachytherapy sources specified in § 35.400). A user whose license only permits the use of specified brachytherapy sources will still be required to submit a license amendment application. But for most licensees this rule will eliminate the license amendment application process and the review and approval process for the NRC. Thus, the NRC is amending § 35.400 to add palladium-103 as a sealed source in seeds for the interstitial treatment of cancer.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final amendment is the type of action described in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this amendment.

Paperwork Reduction Act Statement

This final amendment does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0010.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this amendment. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis concludes that the adoption of the amendment will not increase the risk to the public health and safety but will reduce the cost to the medical use licensees who plan to use palladium-103 sealed sources. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis may be obtained from Dr. Anthony N. Tse (See **FOR FURTHER INFORMATION CONTACT** heading).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this amendment does not have a significant economic impact on a substantial number of small entities. This amendment adds the use of palladium-103 as a sealed source in seeds in 10 CFR 35.400. This action will reduce the regulatory burden on medical use licensees planning to use the sealed source by eliminating the requirement of submitting a license amendment application. The NRC has adopted size standards that classify a hospital as a small entity if its annual gross receipts do not exceed $3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts are $1.0 million or less. Although some NRC medical use licensees could be considered "small entities," the number that would fall into this category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this amendment because the action does not constitute a backfit as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.49, 35.50 (a)–(d), 35.51 (a)–(c), 35.53 (a) and (b), 35.59 (a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)–(f), 35.75, 35.80 (a)–(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204 (a) and (b), 35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)–(f), 35.634 (a)–(e), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.33 (a)–(d), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(f), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

2. In § 35.400, paragraph (g) is added to read as follows:

§ 35.400 Use of sources for brachytherapy.

* * * * *

(g) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer.

Dated at Rockville, MD, this 26th day of September 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89-24040 Filed 10-11-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-194-AD; Amdt 39-6353]

Airworthiness Directives; Boeing Model 747-100 and -200 Series Airplanes Equipped With General Electric CF6-45/50 or Pratt and Whitney JT9D-70 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-100 and -200 series airplanes, which requires inspection for potential crossed plumbing in the engine fire extinguishing system, and correction of any discrepancies, if necessary. This amendment is prompted by recent reports of crossed plumbing in the engine fire extinguishing system. This condition, if not corrected, could result in severe damage to an airplane in the event of an engine fire.

EFFECTIVE DATE: October 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Dostert, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On May 1, 1989, the FAA issued AD 89-03-51, Amendment 39-6213 (54 FR 20118; May 10, 1989), to require inspections and/or functional checks for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems on various Boeing Model airplanes. The checks and inspections are also required to be performed following any maintenance action which could cause mis-wiring or mis-plumbing. That action was prompted by numerous reports of improperly installed plumbing or wiring on several airplanes. This condition, if not corrected, could have resulted in severe damage to an airplane in the event of an engine fire.

AD 89-03-51 is applicable only to airplanes manufactured after December 31, 1980. In analyzing the previous reports received of incorrect wiring/plumbing installations, the earliest prouction date of airplanes reported with these problems was 1982. Therefore, the FAA determined that these conditions were likely to exist on other airplanes manufactured within that time period and, as a precautionary measure, required that the checks be performed on airplanes manufactured after December 31, 1980. As stated in the preamble to that AD, however, the FAA indicated that it would consider additional rulemaking if similar problems were subsequently reported on airplanes manufactured prior to that date.

Since issuance of that AD, one operator has reported finding crossed plumbing at Inboard Leading Edge Station (ILES) 630 on a Boeing Model 747 series airplane manufactured prior to December 31, 1980. This airplane had previously been inspected in accordance with Boeing Alert Service Bulletin 747-26A2094, dated December 20, 1982, (which describes procedures of a one-time inspection for proper configuration of the engine fire extinguishing lines), and found to be properly configured. The FAA has determined that subsequent maintenance action on the fire extinguishing system may have inadvertently caused the crossed plumbing at ILES 630.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-26A2094, Revision 1, dated March 25, 1983, which describes procedures for inspection and rework of the fire extinguisher discharge tubing installation on Model 747-100 and -200 airplanes powered by General Electric CF6-45/50 or Pratt and Whitney JT9D-70 series engines. The engine fire extinguishing system design on these airplane/engine configurations is unique; therefore, inspection of the engine fire extinguishing plumbing connections located in the left and right wing inboard leading edge applies only to Model 747 airplanes of this configuration.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires an inspection for improperly installed plumbing in the engine fire extinguishing system of Boeing Model 747-100 and 747-200 series airplanes that were manufactured prior to December 31, 1980. The inspection, and correction of any discrepancies found, must be accomplished in accordance with Boeing Service Bulletin 747-28A2094, Revision 1, and must be repeated following any maintenance action which may disturb the fire extinguisher plumbing and inadvertently cause mis-plumbing.

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been

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further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-100 and -200 series airplanes, manufactured prior to January 1, 1981, equipped with either General Electric CF6-45/50 or Pratt and Whitney JT9D-70 series engines, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished, and thereafter, immediately following any maintenance action which could cause mis-plumbing.

To detect incorrectly installed fire protection system plumbing, accomplish the following:

A. Conduct an inspection of the engine fire extinguishing system plumbing in accordance with Boeing Service Bulletin 747-28A2094, Revision 1, dated March 25, 1983.

B. Before further flight, correct any discrepancy detected during the functional tests required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 24, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24009 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-29]

Establishment of Transition Area; Spearfish, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Spearfish, SD, transition area to accommodate a new NDB-A Standard Instrument Approach Procedure (SIAP) to Black Hills-Clyde Ice Field Airport, Spearfish, SD. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 23, 1989, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Spearfish, SD (54 FR 3078).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area airspace near Spearfish, SD.

The development of a new NDB-A SIAP requires that the FAA designate airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Spearfish, SD [New]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Black Hills-Clyde Ice Field Airport (lat. 44°49'00" N., long. 103°47'00" W.).

Issued in Des Plaines, Illinois, on September 29, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-24008 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436, 442, 453, and 455

[Docket No. 89N-0322]

Antibiotic Drugs; Updatings and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by updating and making noncontroversial technical changes in accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective November 13, 1989; written comments, notice of participation, and request for hearing by November 13, 1989; data, information, and analyses to justify a hearing by December 11, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by updating and making noncontroversial technical changes in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use.

1 In 21 CFR 436.524(b)(2), the preparation of the dissolution medium for the acid resistance/dissolution test for enteric-coated erythromycin pellets is amended by revising the amount of 0.2*N* sodium hydroxide added from 190 milliliters to 109 milliliters.

2. In 21 CFR 442.20a(a)(1)(vi), the limit for specific rotation is revised from "−40°±5°" to "−42°±5°" to reflect the improved purity of the drug. The sole manufacturer has submitted adequate data to support this revision.

3. In 21 CFR 442.104b(a)(1), the description of cefaclor monohydrate for oral suspension is revised to provide for 37.5 and 75 milligrams-per-milliliter dosage strengths. The sole manufacturer has submitted adequate data to support this revision.

4. In 21 CFR 453.120(a)(1), the description of clindamycin hydrochloride capsules is revised to provide for a 300 milligram strength capsule. The sole manufacturer has submitted adequate data to support this revision.

5. In 21 CFR 455.204, paragraphs (a)(1) and (3)(i)(*a*) are revised to provide accepted standards for aztreonam for injection produced by a lyophilization process. The sole manufacturer has submitted adequate data to support this revision.

6. In 21 CFR 455.204(b)(1)(iv)(*a*)(*3*), the formula for calculating the micrograms of aztreonam per milligram is revised to state the correct formula.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact assessment nor an environmental statement is required.

Submitting Comments and Filing Objections

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. This final rule, therefore, becomes effective November 13, 1989. However, interested persons may, on or before November 13, 1989, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals my submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 13, 1989, a written notice of participation and request for hearing, and (2) on or before December 11, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 436, 442, 453, and 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 436, 442, 453, and 455 are amended as follows:

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PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 436.542 [Amended]

2. Section 436.542 *Acid resistance/dissolution test for enteric-coated erythromycin pellets* is amended in the second sentence in paragraph (b)(2) by removing "190 milliliters" and replacing it with "109 milliliters".

PART 442—CEPHA ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 442.20a [Amended]

4. Section 442.20a *Steril cefonicid sodium* is amended in paragraph (a)(1)(vi) by removing "−40° to ±5°" and replacing it with "−42° ±5°".

5. Section 442.104b is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 442.104b Cefaclor monohydrate for oral suspension.

(a) * * *

(1) * * * When reconstituted as directed in the labeling, each milliliter contains cefaclor monohydrate equivalent to 25 milligrams, 37.5 milligrams, 50 milligrams, or 75 milligrams of cefaclor. * * *

* * * * * *

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

6. The authority citation for 21 CFR part 453 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

7. Section 453.120 is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 453.120 Clindamycin hydrochloride hydrate capsules.

(a) * * *

(1) * * * Each capsule contains clindamycin hydrochloride hydrate equivalent to 75, 150, or 300 milligrams of clindamycin. * * *

* * * * * *

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

8. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

9. Section 455.204 is amended by revising the last sentence in paragraph (a)(1), by revising paragraph (a)(3)(i)(*a*), and by revising the formula in paragraph (b)(1)(iv)(*a*)(*3*) to read as follows:

§ 455.204 Aztreonam for injection.

(a) * * *

(1) * * * The aztreonam used conforms to the standards prescribed by § 455.4a(a)(1), except if the aztreonam for injection is manufactured by lyophilization, in which case the aztreonam need not be sterile.

* * * * * *

(3) * * *

(i) * * *

(*a*) The aztreonam used in making the batch for potency, sterility, pyrogens, moisture, residue on ignition, heavy metals, and identity. If the aztreonam for injection is made by lyophilization, the aztreonam need not be tested for sterility.

* * * * * *

(b) * * *

(1) * * *

(iv) * * *

(*a*) * * *

(*3*) * * *

$$\text{Micrograms of aztreonam per milligram (corrected)} = \frac{\text{Micrograms of aztreonam per milligram (uncorrected)} \times 1{,}000}{1{,}000 - [\text{Micrograms of Arginine per milligram} + (\text{Percent Moisture}) \times 10]}$$

Dated: September 27, 1989.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 23982 Filed 10–11–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Coal Preparation Plants

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of an amendment to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns the regulation of coal preparation plants and is intended to revise the Indiana program to be consistent with the corresponding Federal regulations and to improve the clarity of the rules.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room 300, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204. Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information regarding the general background on the Indiana program, including the Secretary's findings, the disposition of comments and a detailed explanation of conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107–32108). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of Amendment

By letter dated August 13, 1987 (Administrative Record No. IND–0502), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12–1–3; 310 IAC 12–3–104; 310 IAC 12–3–104.1; 310 IAC 12–5–155; and 310 IAC 12–5–156. The changes are briefly summarized below:

(1) Amendment to 310 IAC section 12–1–3 adds and defines the term "Coal preparation"; changes the term "Coal processing plant" to read "Coal preparation plant" and modifies its definition; modifies the definition of "Surface coal mining operations"; and

makes less significant typographical and style changes to other definitions.

(2) Amendment to 310 IAC 12–3–104 clarifies that the rule applies to the operation of coal preparation plants, deletes references to "associated support facilities" and makes less significant style and wording changes.

(3) Amendment to 310 IAC 12–3–104.1 adds the requirement that existing coal preparation plants located outside the permit area of a specific mine and which were not subject to 310 IAC 12 before the effective date of this rule shall not operate for more than 240 days beyond the effective date of the rule unless the operator applies for a permit within 60 days of the effective date of the rule.

(4) Amendment to 310 IAC 12–5–155 changes the words "coal processing" to read "coal preparation", deletes the phrase "or support facility," and makes less significant style changes to the rule.

(5) Amendment to 310 IAC 12–5–156 changes the words "coal processing" to read "coal preparation"; deletes the phrase "coal processing waste disposal area and water treatment facilities" from the signs and markers provision at 12–5–156(a); adds and deletes references to other rules; deletes references to "associated facilities" and "associated structures;" and makes less significant style changes to the rule.

OSM published a notice in the **Federal Register** on September 23, 1987, announcing receipt of the proposed program amendment and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (52 FR 35733). The public comment period ended October 23, 1987. There was no request for a public hearing and the hearing scheduled for October 19, 1987, was not held.

During review of the amendment, OSM identified some concerns related to the proposed definition of "coal preparation plant" at 310 IAC 12–1–3 and the proposed rules at 310 IAC 12–3–104.1 concerning coal preparation plants not located within the permit area of a specific mine which was not regulated prior to the effective date of the rule. OSM's concerns regarding the definition of "coal preparation plant" are fully explained in its letters to the State dated January 19, 1988 (Administrative Record number IND–0546), April 18, 1988 (Administrative Record number IND–0564), and September 22, 1988 (Administrative Record number IND–0604). Indiana responded to OSM's letters on February 19, 1988 (Administrative Record number IND–0557), June 10, 1988 (Administrative Record number IND–0591), and on April 21, 1989 (Administrative Record number IND–0642). OSM's concerns regarding the regulation of coal preparation plants not located within the permit area of a specific mine are fully explained in its letter dated March 20, 1989 (Administrative Record number IND–0635). Indiana responded to OSM's letter on May 3, 1989 (Administrative Record number IND–0648).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Indiana program. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes and do not adversely affect other aspects of the program.

1. 310 IAC 12–1–3—Definitions

The amendment to this section adds and changes definitions.

(a) The term "Coal preparation" has been added and defined. The new definition states that coal preparation means "leaching, chemical, processing, physical processing, cleaning, concentrating or any other method for processing or preparing coal." This definition is similar to the counterpart Federal definition at 30 CFR 701.5 with the exception of the apparent typographical error of the comma which follows the word "chemical." The Director is approving the proposed definition with the understanding that the definition is interpreted to read "chemical processing, rather than "chemical, processing."

(b) The term "Coal processing plant" has been changed to read "Coal preparation plant." The definition has been amended to delete reference to "run of the mine coal" and to replace those and other words with a reference to the term "coal preparation." Indiana now defines "Coal preparation plant" to mean "a facility or collection of facilities which perform coal preparation. A coal preparation plant includes associated support facilities and consists of, but is not limited to, the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments, coal processing and other waste disposal areas; roads, railroads, and other transport facilities." With these changes, the definition is substantively identical to and no less effective than the corresponding Federal definition of this term at 30 CFR 701.5. However, Indiana has added the following exemption statement to the definition: "Exempted from the meaning of coal preparation plant is an operation which: [a] loads coal; [b] does not separate coal from its impurities; and [c] is not located at or near the mine site."

On May 11, 1987, OSM promulgated a final rule that revised the Federal definitions of "coal preparation" and "coal preparation plant" (52 FR 17724). The new definitions were adopted as a result of a challenge to the existing definitions in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action No. 79–1144 (D.D.C. 1984). In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that OSM's rule was improperly narrow in contrast to the regulatory scope of the Act. Specifically, the Court held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities.

In order to implement the Court's order concerning off site coal preparation plants, OSM adopted an interim final rule which became effective on September 9, 1985 (50 FR 28186, July 10, 1985). The interim final rule revised the definition of "surface coal mining operations" in order to clarify that chemical or physical processing of coal would be regulated whenever they were in connection with coal mining. The rule also removed the definition of "coal processing or coal preparation" and adopted new definitions of "coal preparation" and "coal preparation plants" which include crushing, screening and sizing operations as well as other coal processing. On January 29, 1988, the U.S. Court of Appeals upheld the decision in *In Re: Permanent (II)* affirming the Secretary's jurisdiction to regulate off site processing plants. (*NWF* v. *Hodel*, 839 F.2d 694, 742–745 (D.C. Cir., 1988) ("NWF")).

In the preamble to the May 11, 1987, final rule, the Director stated that some of the commentors to the proposed rule apparently were unsure of whether coal crushing, screening and sizing operations were considered to be surface coal mining operations. In response, the Director stated that facilities operated in connection with a coal mine which do not separate coal from its impurities but which otherwise engage in physical or chemical processing (i.e.: crushing, screening, and

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sizing) will be regulated as coal preparation plants. The Director also stated that a loading facility which is not associated with any coal processing or preparation operation (such as crushing, screening, and sizing), would not be part of a coal preparation plant. Loading facilities which are operated as part of coal preparation operations, however, would be part of a coal preparation plant, and thus, be regulated under the Act.

The proposed Indiana exemption to the definition of "coal preparation plant" fails to make it clear that only those facilities which load coal and which are not associated with any other coal processing or preparation, such as crushing, screening, and sizing, could be exempted from the meaning of coal preparation plant. Following receipt of the proposed amendment, OSM sent a letter to Indiana dated January 19, 1988 (Administrative Record number IND–0546), expressing concern about the lack of specificity in the proposed exclusion statement. OSM stated that Indiana should clarify that only those loading facilities which are not associated with coal processing or preparation can be exempted from the definition of coal preparation plant.

In a letter dated February 19, 1988, Indiana acknowledged that the explanatory language used by OSM in the **Federal Register** on July 18, 1986 (51 FR 26005–6) concerning a proposed Kentucky amendment must also apply to and control the proposed Indiana language. The Kentucky amendment contained language similar to the proposed exemption to the Indiana definition of coal preparation plant. In that notice, OSM stated that the exemption (to the definition of coal preparation plant) may only pertain to facilities which are used strictly to load or unload coal and do not process or prepare coal, and which are not located at or near a minesite or coal preparation or processing plant and are not associated with a coal preparation or processing plant. In a letter dated August 29, 1989, (Administrative Record Number IND–0677), Indiana stated that Indiana Administrative Cause No. 88–266R was filed on October 7, 1988 to amend the exemption language to specifically apply only to operations that do not crush, size or screen coal. Indiana also stated that upon approval by OSM of Indiana's coal preparation plant amendment, the State of Indiana will apply the offsite coal preparation regulations to operations that crush, screen or size coal.

The Director finds as discussed below that the definition of "coal preparation plant" is substantively identical to and no less effective than the counterpart Federal definition of "coal preparation plant" at 30 CFR 701.5. The Director is approving Indiana's proposed definition of coal preparation plant with the understanding that the definition includes crushing, screening, and sizing facilities and that these facilities will be regulated as coal preparation plants whenever they are operated in connection with a coal mine. However, the wording of the proposed exemption statement which reads "Exempted from the meaning of coal preparation plant is an operation which: (a) loads coal; (b) does not separate coal from its impurities; and (c) is not located at or near the mine site," does not make it clear that facilities operated in connection with a coal mine which do not separate coal from its impurities but which otherwise engage in physical or chemical processing (i.e. crushing, screening, and sizing) will be regulated as coal preparation plants. Therefore, the Director is requiring that Indiana further amend the language of the exemption statement which has been added to Indiana's proposed definition of coal preparation plant to make clear that crushing, screening, and sizing operations, which are operated in connection with a coal mine, are not exempt from the meaning of coal preparation plant.

(c) The definition of "Surface coal mining operations" has been amended by adding to the list of activities at paragraph (a) which exemplify surface coal mining operations the term "coal preparation" and by deleting and rearranging other parts of paragraph (a). Paragraph (c) has been added and contains language concerning activities which are exempted from the meaning of surface coal mining operations, and which were deleted from paragraph (a). The Director finds that the amended definition is substantively identical to and no less effective than the counterpart Federal definition at 30 CFR 700.5.

2. 310 IAC 12–3–104—Preparation plants not located within the permit area of a specific mine

This section has been amended to change the term coal "processing" to read coal "preparation," the term used in the counterpart Federal regulations at 30 CFR 785.21. The amendment also deletes references to "support facilities" from the provision. The deletion of the term "support facilities" from the provision is consistent with the counterpart Federal regulations at 30 CFR 785.21 and 827 which do not include references to "support facilities" in the provisions which concern coal preparation plants not located within the permit area of a mine.

On November 22, 1988, the Federal rules at 30 CFR 785.21(a) and 827.1 were amended to clarify the circumstances under which coal preparation plants located outside of the permit area of a mine are subject to the performance standards and permitting requirements of SMCRA (53 FR 47384). The first sentence of section 785.21(a), which specifies the requirements for permits for coal preparation plants not located within the permit area for a mine, previously read, "This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of ultimate coal use." The amended Federal rule now reads, "This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine." The amended Federal rule is intended to clarify that the performance standards in 30 CFR 827, concerning coal preparation plants not located within the permit area of a mine, are applied only to facilities conducting coal preparation "in connection with" a coal mine. The limitation to coal preparation conducted "in connection with" a coal mine is necessarily implied in 30 CFR Parts 785 and 827 because of the statutory and regulatory use of that phrase in the definition of the term "surface coal mining operations." OSM amended the definition at 30 CFR 785.21(a) to explicitly reference the phrase "in connection with" to help ensure that the provisions are not misconstrued.

The first sentence of the amended rule at 310 IAC 12–3–104 reads, "This section applies to a person who operates or intends to operate a coal preparation plant outside the permit area of a specific mine." Although not explicitly stated in the rule, the Indiana rule applies to coal preparation plants which are operated "in connection with" a coal mine because of the use of that phrase in the statutes (IC 13–4.1–1–3) and the regulations (310 IAC 12–1–3). Further, the Indiana rule includes the phrase "a specific mine" which was added to the Federal rules to further clarify that the rule relates to coal preparation plants that are operated in connection with a coal mine. With the proposed modifications, 310 IAC 12–3–104 is substantively identical to and no less effective than the Federal regulations.

3. 310 IAC 12–3–104.1—Preparation plants not regulated prior to the effective date of this rule

This new rule applies to persons who operate or intend to operate a coal preparation plant outside the permit area of a specific mine and who were not subject to 310 IAC 12 before the effective date of this rule.

Paragraph (b) states that no person shall operate a coal preparation plant more than 240 days after the effective date of the rule, unless that person applies for a permit under 310 IAC 12–3–104 within 60 days after the effective date of the rule.

Paragraph (c) states that, except as prohibited under IC 13–4.1—14–1 or 310 IAC 12–2–1, a person who operates a coal preparation plant that was not subject to 310 IAC 12 before the effective date of the rule may continue to operate without a permit for not more than 240 days from the effective date of the rule or beyond that date where: (1) a permit application is timely filed under subsection (b); and (2) the commission has not entered a final agency action under IC 4–21.5–1–6 with respect to issuance or denial of a permit.

The counterpart Federal rules which regulate coal preparation plants not located within the permit area of a mine are located at 30 CFR 785.21. The Federal rule at 30 CFR 785.21(a) requires that any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine shall obtain a permit from the regulatory authority. The Federal rule at 30 CFR 785.21(d)(2)(i) states that State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSM not later than November 7, 1985, and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. This schedule was to be submitted to OSM for approval no later than December 9, 1985. 30 CFR 785.21(d)(2)(ii) states that any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSM. For a complete discussion of these rules, see the **Federal Register** notice published on May 11, 1987 (52 FR 17724–30).

Indiana informed OSM, in accordance with the Federal rules at 30 CFR 785.21(d)(2)(i), that Indiana needed to amend the Indiana program to regulate the coal preparation plants. Subsequently, Indiana's proposed rules to regulate the coal preparation plants were submitted to OSM on August 13, 1987 (Administrative Record number IND–0502).

In a letter dated March 20, 1989 (Administrative Record number IND–0635), OSM expressed concern that Indiana's proposed rules did not make it clear that the interim program performance standards are applicable to the coal preparation plants prior to the time a permit is issued under 310 IAC 12–3–104.1. Indiana responded by letter dated May 3, 1989 (Administrative Record number IND–0648). Subsequently, meetings were held between OSM and Indiana to discuss the enforcement of interim program performance standards (Administrative Record numbers IND–0655, IND–0669). On June 8, 1989 (Administrative Record number IND–0655), OSM stated to Indiana that if the State regulatory authority does not enforce interim program performance standards, OSM will do so. Interim program performance standards are standards keyed to direct enforcement not based upon the existence of a permit. As the permits are issued, operators will become subject to the Indiana permanent program performance standards.

The Director finds that the proposed rule at 310 IAC 12–3–104.1 is no less effective than the Federal rules at 30 CFR 785.21 concerning coal preparation plants not located within the permit area of a mine. The Director is making this finding with the understanding that persons operating or who have operated coal preparation plants after July 6, 1984, and who were not subject to 310 IAC 12 before the effective date of this rule shall comply with the applicable interim program performance standards (52 FR 17724–30).

4. 310 IAC 12–5–155—Preparation plants; Applicability of special performance standards

The amendment to this section changes the term coal "processing" to read coal "preparation," the term used in the counterpart Federal regulations at 30 CFR 785.21 and 827. The amendment also deletes the phrase "or support facility." This deletion is consistent with the counterpart Federal regulations at 30 CFR 827 where there is no reference to support facilities. The deletion of the term "support facility" from this section does not create any substantive changes in Indiana's performance standards. The approved Indiana performance standards for support facilities are covered under 310 IAC 12–5–71. The Director finds, therefore, that the amended provisions are no less effective than the Federal regulations at 30 CFR 785.21 and 827.

5. 310 IAC 12–5–156—Preparation plants; Special performance standards

The amendment to this section deletes the phrase "coal processing waste disposal area, and water treatment facilities" from the signs and markers requirement at subsection (a). The revised subsection (a) now reads as follows: "Signs and markers for a coal preparation plant shall comply with 310 IAC 12–5–6." The amended rule at 310 IAC 12–5–156(a) concerning the signs and markers requirement still applies to coal processing waste disposal areas and water treatment facilities, however, because those facilities are included by reference in the Indiana definition of coal preparation plant at 310 IAC 12–1–3. Therefore, the Director finds that the amended provision at 12–5–156(a) is no less effective than the Federal counterpart at 30 CFR 827.12(a).

IV. Summary and Disposition of Comments

As discussed in the section of this notice entitled "SUBMISSION OF AMENDMENT," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public in response to the Director's request for comments.

Pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments were received.

V. Director's Decision

Based upon finding (1), the Director is approving the Indiana amendment to section 310 IAC 12–1–3. In addition, the Director is requiring that Indiana further amend section 310 IAC 12–1–3 concerning the exclusion to the definition of "coal preparation plant" and which states "Exempted from the meaning of coal preparation plant is an operation which: (a) loads coal; (b) does not separate coal from its impurities; and (c) is not located at or near the mine site." Indiana must amend this statement to make it clear that crushing, screening, and sizing facilities will be regulated as coal preparation plants wherever they are operated in connection with a coal mine. The Director is also approving the amended rule at 310 IAC 12–3–104; 12–3–104.1; 12–5–155; and 12–5–156.

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The Federal rules at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 3, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*)

2. Paragraph (c) of § 914.10 is revised to read as follows:

§ 914.10 State regulatory program approval.

* * * * *

(c) Copies of the approved program are available for review at:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street NW., Room 5131, Washington, DC 20005

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Administrative Record, Minton-Capehart Federal Building, Room 300, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204

Indiana Department of Natural Resources, Division of Reclamation, 309 W. Washington Street, Suite 201, Indianapolis, Indiana 46204.

3. In § 914.15, a new paragraph (v) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(v) The following amendment to the Indiana permanent regulatory program, as submitted by letter dated August 13, 1987, is approved effective October 11, 1989: Revisions to the Indiana Surface Coal Mining Rules concerning coal preparation plants at Sections 310 IAC 12–1–3 (also see section 914.16(a)), 310 IAC 12–3–104, 310 IAC 12–3–104.1, 310 IAC 12–5–155, and 310 IAC 12–5–156.

4. In § 914.16, paragraph (a) is revised to read as follows:

§ 914.16 Required program amendments.

(a) By February 15, 1990, Indiana shall amend the exclusion statement associated with the definition of "coal preparation plant" at 310 IAC 12–1–3 to make it clear that crushing, screening, and sizing facilities will be regulated as coal preparation plants whenever they are operated in connection with a coal mine.

* * * * *

[FR Doc. 89–24026 Filed 10–11–89; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment changes Indiana's definition of "cemetery," and changes from forty-five days to thirty days the time that the State is allowed for determining the completeness of a lands unsuitable petition. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 914.10, 914.15 and 914.16.

II. Submission of Amendment

By letter dated June 12, 1989 (Administrative Record No. IND–0649), the Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) IAC 23–1–3 and 310 IAC 12–2–7. The proposed changes are briefly summarized below: The amendment to 310 IAC 12–1–3 changes the definition of "cemetery" from "any land dedicated to and used for the interment of human remains pursuant to the Indiana General Cemetery Act (IC 23–14–1–1)" to "any area of land where human remains are interred." This revision is made in response to an OSM notification to the State dated June 9, 1987, specifying the need to change the State's definition of "cemetery."

The amendment to 310 IAC 12–2–7 changes from forty-five (45) to thirty (30) the number of days the State is allowed for determining the completeness of a lands unsuitable petition. This amendment is intended to bring the Indiana rule into conformance with the counterpart Federal regulation. Other changes to 310 IAC 12–2–7 are stylistic or involve the correction of typographical errors.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the director's findings concerning the proposed amendment. Only those revisions of particular interest are discussed below. Any revisions not revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below concern nonsubstantive wording changes or revise cross-reference and paragraph notations to reflect organizational changes.

1. 310 IAC 12–1–3 Definitions

Indiana proposes to revise the definition of "cemetery" from "any land dedicated to and used for the interment of human remains pursuant to the Indiana General Cemetery Act (IC 23–14–1–1)" to "any area of land where human remains are interred."

On February 10, 1987, OSMRE, promulgated revised regulations concerning the consideration which must be accorded historic properties during the permitting of surface coal mining operations (52 FR 4244–4263). These rules respond to the decisions rendered by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144), facilitate implementation of OSMRE's responsibilities under the National Preservation Act of 1966 (NHPA), as amended, and clarify the responsibilities of OSMRE, State regulatory authorities and applicants for permits to conduct surface coal mining operations and coal exploration. In keeping with the July 15, 1985, decision in *In re: Permanent II*, OSMRE revised the definition of cemetery at 30 CFR 761.5 to include "any area of land where human bodies are interred." The previous definition excluded private family burial grounds.

The current Indiana regulations at 310 IAC 12–1–3 define a cemetery as being "and land dedicated to and used for the interment of human remains pursuant to the Indiana General Cemetery Act." Several commenters on the proposed Federal definition stated that the definition of cemetery should include the concepts of dedication or recognition of lands specifically set aside for a cemetery. However, as discussed in the preamble to the Federal definition as finally promulgated (52 FR 4254, February 10, 1987), OSMRE did not adopt these comments because they improperly limit the Congressional intent to protect human remains from disturbance by surface coal mining operations. Also, any such definition would require the regulatory authority to make a judgment, often in the absence of any relevant information, concerning the intent of the individual who originally interred the remains.

The Federal rules at 30 CFR 732.17(d) require that OSMRE notify State regulatory authorities of all changes in Federal regulations which will necessitate State program changes. OSMRE informed Indiana on June 9, 1987, that the State needed to revise its definition of cemetery or otherwise amend its program to be no less effective than the revised Federal definition. The proposed amendment to the definition of cemetery is intended to address this concern. The Director finds that the proposed definition of "cemetery" is no less stringent than SMCRA and is identical to and no less effective than the counterpart Federal definition at 30 CFR 761.5.

2. 310 IAC 12–2–7 EM Lands Unsuitable Petitions

Indiana has amended the language of its approved regulations at 2310 IAC 12–2–7 concerning initial processing, recordkeeping and notification of lands unsuitable petitions. Specifically, at 310 IAC 12–2–7(a)(1) Indiana has changed from forty-five days to thirty days the number of days the State is allowed for determining the completeness of a lands unsuitable petition. The counterpart Federal regulation at 30 CFR 764.15(a)(1) also requires that such a determination be made within thirty days. The proposed amendment, therefore, is no less stringent than SMCRA and is no less effective than the Federal rules. Also included in the Indiana rule 310 IAC 12–2–7(a)(1) is language which states that "for good cause the director may extend the time for making these determinations for an additional fifteen (15) days." While this provision is part of the approved Indiana program and is not being amended here, OSM will, through its normal oversight of the Indiana program, monitor Indiana's use of the 15-day provision to assure that it is not abused.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 24, 1989, **Federal Register** ended on August 23, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. No substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the Indiana program as submitted by Indiana on June 12, 1989. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, prusuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements

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established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 3, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (u) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(u) The following amendments to the Indiana regulatory program, as submitted to OSM on June 12, 1989, are approved effective October 11, 1989. Amendments to the Indiana regulations at 310 IAC 12–1–3 concerning the definition of "cemetery," and 310 IAC 12–2–7 concerning lands unsuitable petitions.

[FR Doc. 89–24027 Filed 10–11–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3669–4]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving today a revision to the Oregon State Implementation Plan (SIP) as submitted by the Oregon State Department of Environmental Quality (ODEQ) on February 24, 1989. This revision includes minor modifications to OAR 340–24–300 through 350 [Vehicle Inspection Operating Rules, Test Procedures and Licensed Exhaust Analyzer]. These changes are based upon the need to update provisions of the operating rules to keep them current and provide for continued operation of the motor vehicle inspection program into the 1990's.

EFFECTIVE DATE: This action will be effective on December 11, 1989 unless notice is received before November 13, 1989 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period.

ADDRESSES: Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Air Programs Branch, Environmental Protection Agency, Docket #10A–89–4, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Michael Lidgard, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4233, FTS: 399–4233.

SUPPLEMENTARY INFORMATION:

I Background

On June 24, 1980, EPA published in the **Federal Register** (45 FR 42265) final rulemaking on Part D revisions to the Oregon State Implementation Plan (SIP). As part of that action, EPA approved the ongoing Portland motor vehicle inspection and maintenance (I/M) program on the condition that Oregon Department of Environmental Quality (ODEQ) submit adequate operating rules for this program by July 26, 1980. ODEQ submitted a SIP revision which included regulations OAR 340–24–300 through 340–24–350. On January 2, 1981, EPA approved this revision (46 FR 35). On October 9, 1985 and supplemented with technical appendices on February 13, 1986, ODEQ submitted a revision which added a mandatory vehicle inspection and maintenance program to the existing Medford carbon monoxide plan. EPA approved this revision on February 13, 1987, (52 FR 4620).

On February 24, 1989 ODEQ submitted amendments to the vehicle inspection program operating rules. These revisions are as follows:

OAR 340–24–310(2): Correct a typographical error which modifies the description of the Medford-Ashland Air Quality Maintenance Area. Motor vehicles which are registered in this area are subject to I/M requirements.

OAR 340–24–310(6): Changes the rule so that vehicles which fail the tampering inspection are tested for exhaust emissions and a report issued to the driver. Previously, vehicles which failed the tampering check did not receive an exhaust check.

OAR 340–24–320(3)(a): Revises the tampering inspection requirements for 1975 to 1979 model year for light and heavy duty vehicles. Prior to the revision, the State of Oregon inspected nearly every pollution control system on motor vehicles for model years 1975 and newer including: positive crankcase ventilation system, air injection system, catalytic converter system, exhaust gas recirculation system, evaporative control system, fuel filler inlet restrictor and other systems. The revision retains all of the inspections for 1980 and newer vehicles but limits the inspection of 1975 through 1979 model year vehicles to the catalytic converter system and the fuel inlet restrictor. This amendment will have a minor effect on mobile source emissions control.

An analysis to quantify the impact of this revision on motor vehicle emissions was conducted by EPA. The modeling found this program change would have a minimal effect on overall emissions (percent reduction of hydrocarbon emissions decreased by 0.4, and carbon monoxide percent reduction decreased by 0.1). The effect on emissions is small since the catalyst and fuel inlet checks are retained for 1975 to 1979 vehicles and inspections are not affected for 1980 and newer models.

The State of Oregon officials cite increased difficulty of obtaining replacement parts as the basis for eliminating the underhood inspections on older vehicles, as well as improving lane throughput. Given the historically low tampering rates in Oregon, EPA has determined that this is a reasonable program change that will have a minimal effect on emission reduction benefits. Furthermore, a recent I/M program audit conducted by EPA in October 1988 (after the implementation of these revised rules) indicated that Oregon's inspection program exceeded approved State Implementation Plan emission reduction credits.

OAR 340–24–320(3)(b)(4), OAR 340–24–320(5), OAR 340–24–320(6)(a), OAR 340–24–325(3)(a), (4), and (5): Revises the method of applying test standards to pre-1980 vehicles equipped with other than the original engine. These vehicles are now classified, for the purpose of determining test standards, by the vehicle's original model year classification and current fuel system.

OAR–24–330(3): Deletes the specific standards for vehicle emission control cutpoints (or standards) for 1972 to 1974 model years. ODEQ regulations had specified cutpoints by vehicle model year. To simplify the method, all 1972–1974 vehicles must now meet a single model year cutpoint.

OAR 340–24–350 (1)(a)(C), (1)(a)(E), and (1)(c): Clarifies the exhaust gas analyzer license requirements.

II. EPA Action

Today EPA is approving the amendments to OAR–340–24–Section 300 through 350 [Vehicle Inspection Program Operating Rules, Test Procedures and Licensed Exhaust Analyzer] as revisions to the Oregon SIP because these changes will improve the operation and efficiency of the vehicle emission testing program in Portland and Medford.

III. Administrative Review

The public is advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on the revisions and another will begin a new rulemaking by announcing a proposal of EPA's action on these revisions and establish a comment period.

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 11, 1989. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 4, 1989.

Robert S. Burd,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c)(86) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(C) * * *

(86) Revisions to the Oregon State Implementation Plan were submitted by the Director of the Department of Environmental Quality on February 24, 1989. The revision is to OAR–340–24–300 through 350 (Vehicle Inspection Program Operating Rules, Test Procedures and Licensed Exhaust Analyzer).

(i) Incorporation by Reference.

(A) Letter dated February 24, 1989, from the Director of the Department of Environmental Quality to EPA Region 10.

(B) OAR 340–24–301 [Boundary Designations] (2); OAR 340–24–310 [Light Duty Motor Vehicle Emission Control Test Method] (6); OAR 340–24–320 (Light Duty Motor Vehicle Emission Control Test Criteria) (3)(a) introductory text, (3)(b)(4), (5), and (8)(a); OAR 340–24–325 [Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria] (3)(a) introductory text, (4), and (5); OAR 340–24–330 (Light Duty Motor Vehicle Emission Control Cutpoints or Standards) (3); and OAR 340–24–350 (Gas Analytical System Licensing Criteria) (1)(a)(C), (1)(a)(E), and (1)(c) as adopted by the Environmental Quality Commission on September 9, 1988.

[FR Doc. 89–23853 Filed 10–11–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[TN–037; FRL–3670–6]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Two Ozone Nonattainment Areas in Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today granting a request by Tennessee that Bradley County and Hamilton County be redesignated from nonattainment to attainment for ozone. The redesignation of these counties to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and full implementation of EPA-approved control strategies.

DATE: This action will become effective on November 13, 1989.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

FOR FURTHER INFORMATION CONTACT: Diane T. Altsman, Air Programs Branch, EPA, Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, **Federal Register** (43 CFR 8962), EPA designated Bradley County and Hamilton County as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Bradley County and Hamilton County had experienced oxidant violations. Several areas in Tennessee were designated nonattainment for ozone and the State was therefore required to revise their state implementation plan (SIP) for ozone. Tennessee drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II Reasonably Available Control

BEST COPY AVAILABLE

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Technology (RACT) VOC regulations, Tennessee demonstrated attainment of the ozone standard in Bradley County and Hamilton County. EPA approved Tennessee's ozone SIP on August 13, 1980 (45 FR 53813). Tennessee has requested that EPA change the attainment status of Bradley County and Hamilton County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. Tennessee has submitted ambient air quality data collected at the Bradley County monitoring site and the Volunteer Army Ammunition Plant (VAAP) and Sequoyah sites in Hamilton County. The most recent three years of air quality data available (1983, 1984, and 1985 for Bradley County and 1986, 1987, and 1988 for Hamilton County) for each county show the number of expected exceedances to be less than or equal to 1.0 per year. The Bradley County Site was a special purpose monitoring site. Following the conclusion of the site's monitoring purpose, the site was shut down thereby rendering no further ambient air quality data since 1985. On June 2, 1988, EPA proposed to approve the request to redesignate Bradley County and Hamilton County to attainment for ozone. At that time the public was invited to submit written comments on the proposed action. No comments were received.

However, evidence submitted by the State and the Region IV Air Compliance Branch files were again reviewed to determine if the sources in Bradley County and Hamilton County to which the VOC regulations apply were in fact fully implementing the EPA-approved control strategy. This review revealed that several miscellaneous metal parts coaters located in Hamilton County had neither installed a RACT level of control nor had emissions appropriately limited below the applicability level of 25 tons of VOC emissions per year. However, on May 16, 1989, Tennessee submitted to EPA permits for each affected facility which either assure a RACT level of control, or limit the annual VOC emissions below the 25 tons per year applicability level. EPA is approving these permits in a separate notice. Additionally the most recent air quality data available in both counties show the number of expected exceedances to be less than or equal to 1.0 per year. On the basis of the monitoring data and the permits submitted by TN, EPA finds that the State's SIP is being fully implemented in Bradley and Hamilton Counties. For more information, please refer to the Technical Support Document (TSD).

This document is available for inspection at the EPA Region IV office.

Final Action

Therefore, on the basis of the most recent three years of air quality data available, showing attainment and evidence of an implemented EPA-approved control strategy, EPA today redesignates Bradley County and Hamilton County from ozone nonattainment to attainment.

Today's action is contingent upon the State and/or county maintaining an adequate ozone ambient air quality monitoring network and continuing full implementation of their nonattainment plan. Under the reasoning of *Bethlehem Steel Corp* vs. *EPA*, 723 F. 2d 1304 (7th Cir. 1983), EPA believes that it may not have the authority to redesignate an area to nonattainment without first receiving a request to do so from the affected state. Therefore EPA anticipates that should violations of the ozone NAAQS occur in the future, the state will request that EPA redesignate the area nonattainment. Also, this redesignation does not in any way relieve sources from their obligation to meet all applicable requirements of the approved ozone nonattainment plans (SIPs), nor does it authorize the State and/or the county to delete or relax RACT emission limiting regulations. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [Section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to Section 110(a)(2)(H) of the Clean Air Act.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 11, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 4, 1989.

William K. Reilly,

Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 81.343 is amended by revising the attainment status designation table for ozone (O_3) to read as follows:

§ 81.343 Tennessee

* * * * *

TENNESSEE—OZONE (O_3)

Designated Area	Does not meet primary standards	Cannot be classified or better than national standards[2]
Nashville Area—Davidson, Sumner, Rutherford, Wilson and Williamson Counties.	x[1]	
Shelby County	x[1]	
Roane County	x[1]	
Rest of State		X

[1] EPA designation replaces State designation.
[2] Designations of "Cannot be classified or better than national standards" were reaffirmed on July 23, 1982.

* * * * *

[FR Doc. 89-24072 Filed 10-11-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42085D; FRL 3659-1]

Diethylene Glycol Butyl Ether and Diethylene Glycol Butyl Ether Acetate; Amendments to Pharmacokinetics Test Standard and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the pharmacokinetics test standard in 40 CFR 795.225 by revising the dose occlusion requirements for diethylene glycol butyl ether (DGBE) and diethylene glycol butyl ether acetate (DGBA) in the conduct of the study, reducing the dermal exposure time of the test animals to DGBA and DGBE from 96 to 24 hours, and adding a requirement to administer a neat low dose of DGBE to an additional group of animals. EPA is also amending the associated test rule in 40 CFR 799.1560 by modifying the submission of the progress and final pharmacokinetics test reports to EPA. These amendments are in response to the test sponsor's request to amend the rules because of documented difficulties encountered in attempting to perform the pharmacokinetics test.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on October 26, 1989. This amendment to the final rule shall become effective on November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is amending the dermal pharmacokinetics test standard and final rule for DGBE and DGBA by reducing the exposure time to the test substance in the pharmacokinetics test and extending the reporting deadlines.

I. Background

EPA issued a final rule under TSCA section 4(a)(1)(A) and (B), published in the **Federal Register** of February 26, 1988 (53 FR 5932), that established health effects testing requirements for DGBE and DGBA. The rule required dermal pharmacokinetics testing in rats to determine the absorption and biotransformation of DGBE administered dermally, and the dermal absorption of DGBA. The test standard, in 40 CFR 795.225(b)(2)(iv)(E), required that rats be dosed once dermally, that the dosed area be occluded with an aluminum patch, and that the dose be kept on the skin for the duration of the study (96 hours). After dosing, the animals were to be placed in metabolism cages for excreta collection for at least 96 hours and, if necessary, daily thereafter until at least 90 percent of the dose had been excreted, or until 7 days after dosing. The final rule required completion of this test and submission of a final report by April 11, 1989, 12 months after the effective date of the final rule, 40 CFR 799.1560(c)(4)(ii).

Shortly after initiating the pharmacokinetics test, the test sponsor, Eastman Kodak, notified EPA via its representative, the Chemical Manufacturers Association (CMA) of technical difficulties encountered in trying to performthe test as required (Refs. 1 through 3, and 5). Specifically, Eastman Kodak could not prevent leakage from the dosed area by using the required aluminum patch, and a glass cell occlusion device developed by Eastman Kodak to remedy the problem could not be kept on the animals' backs for longer than 24 to 48 hours. Despite several pilot studies to find an occlusion method which could be maintained for 96 hours, none was found (Refs. 2, 4, 6, and 7 through 10). Therefore, on behalf of Eastman Kodak, CMA requested modifications of the pharmacokinetics test requirement which would delete the requirement to use the aluminum patch, reduce the dose occlusion time from 96 hours to 24 hours, and extend the reporting deadline for the pharmacokinetics test to 10 months after EPA notified industry of its decision (Ref. 2). CMA also notified EPA that Eastman Kodak would add an extra group of animals to the study so that the absorption of a neat, low dose of DGBE could be compared with the required absorption study of an aqueous low dose and a neat, high dose of DGBE (Ref. 2).

EPA believed that the requested modifications were reasonable, however, it considered a 10-month extension excessive to complete the test and submit results due to the considerable prior experience of the laboratory in attempting to perform the test.

Therefore, EPA proposed to modify the pharmacokinetics test for DGBA and DGBE and to grant an 8-month extension in the **Federal Register** of March 31, 1989 (54 FR 13202).

II. Public Comments

Comments on the proposed modifications were submitted by CMA (Ref. 11). CMA clarified their intention, stated in aprotocol amendment, to apply DGBA neat (undiluted) to the low dose group and not an aqueous solution as EPA thought. EPA agrees that this approach will allow better comparability with the high dose group and stated this in the proposed rule.

CMA also repeated its request to have 10 months to complete the test and submit results because an additional dose group has been added. EPA still believes that even with the additional dose group 8 months is sufficient time because certain study phases can be run concurrently and Eastman Kodak has had considerable experience in attempting to perform this test.

III. Modifications

Based on the difficulties encountered and documented by Eastman Kodak in attempting to perform the pharmacokinetics test of DGBE and DGBA as required by the section 4 test rule, EPA is modifying the pharmacokinetics test standard as follows:

Section 795.225(b)(2)(iv)(E) will require that the test substance be kept on the animal for 24 hours instead of 96 hours. After 24 hours, any test material remaining on the skin will be washed off and the containment cell removed. Radiolabeled material in the wash will be accounted for in the total recovery. Urine and feces will be collected at 8, 24, 48, 72, and 96 hours after dosing, and, if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

Under § 795.225(b)(2)(ii)(B), EPA is eliminating the requirement to occlude the dosed area with an aluminum foil patch secured in placed with adhesive tape.

To produce better data, CMA has volunteered to test two low doses of DGBE, one neat and one a 10 percent aqueous solution. EPA, therefore, is modifying § 795.225(b)(2)(ii)(A) accordingly.

IV. Extensions

Due to the need to suspend pharmacokinetics testing because of technical problems, EPA is modifying the reporting deadlines under § 799.1560(c)(4)(ii)(A) and (B) to allow 8 months from the effective date of this amendment for the completion of the test and submission of final results. One progress report will be due 6 months after the effective date of the amendment.

V. Economic Analysis

The modifications granted in this amendment will not significantly alter the cost of testing. Thus, the economic analysis for the final test rule for DGBE and DGBA is unchanged.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42085D). This record includes information considered by EPA in developing this proposed amendment and appropriate **Federal Register** notices.

This record includes the following information:

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A. Supporting Documentation

(1) **Federal Register** notices consisting of:

(a) Notice of proposed test rule for DGBE and DGBA (51 FR 27880, August 4, 1986).

(b) Notice of final test rule for DGBE and DGBA (53 FR 5932, February 26, 1988).

(c) Notice of proposed amendments to the pharmacokinetics test standard and reporting requirements (54 FR 13202, March 31, 1989).

(2) Communications consisting of:

(a) Letters.

(b) Contact reports of telephone conversations and meetings.

B. References

(1) USEPA. Contact report of phone conversation between Fred DiCarlo, Health and Environmental Review Division, Office of Toxic Substance (OTS), and Dr. Carol Stack, Chemical Manufacturers Assoc. (CMA), Washington, DC (July 25,1988).

(2) CMA. Letter from Dr. Geraldine Cox, CMA, to the Director, Office ofCompliance Monitoring, Office of Pesticides and Toxic Substances, USEPA. (September 8,1988).

(3) USEPA. Contact report of phone conversation between Catherine Roman, Test Rules Development Branch (TRDB), and Dr. Carol Stack, CMA (August 3, 1988).

(4) USEPA. Contact report of phone conversation between Catherine Roman, TRDB, and Dr. Carol Stack (CMA). (August 29, 1988).

(5) USEPA. Contact report of phone conversation between Catherine Roman, TRDB, and Dr. Carol Stack, CMA. (August 5, 1988).

(6) USEPA. Contact report of meeting between EPA officials and Dr. Carol Stack, CMA, and Dr. Derek Guest, Eastman Kodak. (August 23, 1988).

(7) Notice of final test rule for 2-Ethylhexanoic Acid (51 FR 40318, November 6, 1986).

(8) Southern Research Institute, Birmingham, Alabama 35255-5305. "Absorption and Disposition of 2-mercapto- benzothiazole-Ring-UL-^{14}C and 2-Mercapto- benzothiazole Disulfide-Ring-UL-^{14}C in Fischer 344 Male and Female Rats and Female Guinea Pigs Dosed Topically." SoRI-86-1200, Report 5873-V, Contract RA-4.0-SRI PHARM. Contracted by CMA, Washington, DC (May 27, 1987).

(9) USEPA. Letter from Richard Troast, TRDB, to Dr. Carol Stack, CMA. (October 19, 1988).

(10) CMA. Letter and attachments from Dr. Carol Stack, CMA, to the Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances, USEPA (November 16, 1988).

(11) CMA. Letter from Dr. Geraldine Cox, CMA, to TSCA Public Docket Office, Office of Toxic Substances, USEPA (May 1, 1989).

VII. Other Regulatory Requirements

A. Executive Order 12291

EPA judged that the final test rule was not subject to the requirement of a Regulatory Impact Analysis under Executive Order 12291. EPA has determined that the modifications to the rule do not alter this determination.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (5 U.S.C. 601 et seq., Pub. L. 96-354, September 19, 1980), EPA certified that the final test rule would not have a significant impact on a substantial number of small businesses. The modifications to the final rule made in this rule do not change this determination.

C. Paperwork Reduction Act

The information collection requirements associated with this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and have been assigned OMB control number 2070-0033.

EPA has determined that this rule does not change existing recordkeeping or reporting requirements nor does it impose any additional recordkeeping or reporting requirements on the public.

Send comments regarding this rule to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, and Testing.

Dated: September 22, 1989.

Linda F. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter R, is amended as follows:

PART 795—[AMENDED]

1. In part 795:

a. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By revising § 795.225 (b)(2)(ii)(A), (B), and (iv)(E) to read as follows:

§ 795.225 Dermal pharmacokinetics of DGBE and DGBA.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Two doses of DGBA shall be used in the study, a "low" dose and a "high" dose. Three doses of DGBE shall be used in the study, a neat "low" dose, an aqueous "low" dose, and neat "high" dose. When administered dermally, the "high" dose level should ideally induce some overt toxicity such as weight loss. The "low" dose level should correspond to a no observed effect level.

(B) For dermal treatment, the doses shall be applied in a volume adequate to deliver the prescribed doses. The backs of the rats should be lightly shaved with an electric clipper shortly before treatment. The dose shall be applied with a micropipette on a specific area (for example, 2 cm^2) on the freshly shaven skin.

* * * * *

(iv) * * *

(E) The high and low doses of ^{14}C-DGBE and ^{14}C-DGBA shall be kept on the skin for 24 hours. After application, the animals shall be placed in metabollsm cages for excreta collection. After 24 hours, any test material remaining on the skin will be washed off and the containment cell removed. Radiolabeled material in the wash will be accounted for in the total recovery. Urine and feces shall be collected at 8, 24, 48, 72, and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

* * * * *

PART 799—[AMENDED]

2. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2063, 2611, 2625.

b. By revising § 799.1560 (c)(4)(ii)(A) and (B), and (e) to read as follows:

§ 799.1560 Diethylene glycol butyl ether and diethylene glycol butyl ether acetate.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) The pharmacokinetics tests shall be completed and the final reports submitted to EPA within 8 months of the effective date of the final amendment.

(B) A progress report shall be submitted to EPA 6 months from the effective date of the final amendment.

* * * * *

(e) *Effective dates.* (1) 40 CFR 799.1560 is effective on April 11, 1988, except for the provisions of paragraphs (c)(4)(ii)(A) and (B) which are effective on November 27, 1989.

(2) The guidelines and other test methods cited in this section are referenced as they exist on April 11, 1988, except that § 795.225 of this chapter, originally effective April 11, 1988, is referenced to include amendments to paragraph (b)(2)(ii)(A) and (B) and (iv)(E) of that section, effective as they exist on November 27, 1989.

[FR Doc. 89-24036 Filed 10-11-89; 8:45 am]

Billing Code 6560-50-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 89-008]

RIN 2115-AD30

Documentation of Vessels; Recordation of Instruments

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The U.S. Coast Guard is issuing this interim final rule to amend its vessel documentation regulations to implement a newly enacted statute which codifies and amends the Ship Mortgage Act of 1920. The new legislation made substantive changes to the laws governing the recordation of instruments. The Coast Guard's existing regulations are at variance with some of those changes, and therefore must be amended to implement legislative intent. The intended effect of this rulemaking is to conform the Coast Guard's regulations to those aspects of the new statute which are considered unequivocal and are currently effective, and to provide for uniform application of the law by the Coast Guard's Vessel Documentation Offices.

DATES: This interim final rule is effective October 12, 1989. Comments must be received by December 11, 1989.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 89-008), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments will be available for examination or copying at, and may be delivered to, Room 3600 at the above address, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Willis, Chief, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this rulemaking. In accordance with 5 U.S.C. 553(b), the Coast Guard finds that notice and opportunity for comment are unnecessary and contrary to the public interest. This rulemaking merely implements new statutory requirements affecting the filing and recordation of various commercial instruments related to vessels. Because this rulemaking merely implements the statutory changes already in effect, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d) for making this rulemaking effective in less than 30 days after publication in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Thomas L. Willis, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

On November 23, 1988, Congress enacted Public Law 100-710 ("the Act"), which amended and codified the Ship Mortgage Act of 1920 into 46 U.S.C. Chapter 313. The Act introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes are unequivocal and are being implemented in final form by this rulemaking. Other changes, some of which became effective on January 1, 1989, and others which will become effective on January 1, 1990, require a more considered approach, including the opportunity for public comment. These latter changes will be the subject of separate rulemaking action.

This interim final rule, which is effective upon publication, is intended to minimize transitional uncertainty, while permitting an opportunity for public comment.

Discussion of Regulation

Every section in subparts 67.29, 67.31, 67.33, 67.35, 67.37, and 67.39 is revised to provide for the filing of instruments.

Section 67.01 is amended to add definitions of Secretary and acknowledgment.

Section 67.17-3(c) is a new section added to provide for loss of registry privileges during any period when the vessel is mortgaged to a person other than a State, the United States Government, a federally insured depository institution which has not been disapproved by the Secretary, an individual who is a citizen of the United States, a person qualifying as a citizen of the United States under Section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), or other person approved by the Secretary of Transportation.

Sections 67.17-5(d) and 67.17-7(d) are amended to provide for loss of coastwise and Great Lakes license privileges during any period when the vessel is mortgaged to a person other than a State, the United States Government, a federally insured depository institution which has not been disapproved by the Secretary, an individual who is a citizen of the United States, a person qualifying as a citizen of the United States under Section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), or other person approved by the Secretary of Transportation.

Section 67.23-1(a) is amended to reflect the fact that the license(s) endorsed upon the Certificate must be renewed annually, even though the Certificate of Documentation remains valid until surrendered with the consent of the Secretary.

Section 67.23-3(b) is removed. Section 67.23-5 is amended to reflect the new statutory requirement for consent by a chattel mortgagee prior to surrender of a Certificate of Documentation under certain circumstances. This is a change from the Ship Mortgage Act, 1920, which provided for such consent only for preferred mortgages.

Section 67.23-9(c) is amended to reflect the fact that a Certificate of

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Documentation which is subject to deletion remains valid for purposes of sections 9 and 37(b) of the Shipping Act, 1916, section 902 of the Merchant Marine Act, 1920, instruments filed or recorded before the date of invalidation, and assignments filed after that date.

Section 67.23–11(c) is amended to reflect the fact that a Certificate of Documentation subject to cancellation remains valid for purposes of sections 9 and 37(b) of the Shipping Act, 1916, Section 902 of the Merchant Marine Act, 1920, instruments filed or recorded before the date of invalidation, and assignments filed after that date.

Section 67.25–3 is amended to reflect the new requirement for consent of a chattel mortgagee before the name of a vessel may be changed.

Section 67.29–1 is amended to eliminate the reference to Abstracts of Title as recordable instruments.

Section 67.29–3 is amended to reflect the changes made to section 9 of the Shipping Act, 1916, eliminating the need for approval of the Secretary of Transportation to permit transfers of fishing industry vessels and recreational vessels to persons who are not citizens of the United States.

Section 67.29–5 is amended to clarify the requirements for identification of vessels specified in recorded instruments. The section is further amended to provide that all instruments, not merely bills of sale or deeds of gift, covering vessels not previously documented may identify the vessel by some means other than name and official number.

Section 67.29–7 is amended to eliminate the reference to Abstracts of Title as recorded instruments.

Section 67.27–11 is amended to clarify the requirement for declarations about citizenship precedent to filing and recordation. It also specifies the instruments to which the requirement applies.

Section 67.29–13 specifies the place(s) for filing and recordation. It makes clear that while filing in connection with either the initial documentation of a vessel or any transaction which brings about a change in documentation may be made at a documentation office in a port other than the vessel's home port, all recordation is done by the documentation office at the home port of the vessel.

Section 67.29–15 is amended to reflect the fact that an instrument is recordable if it is in substantial compliance with applicable requirements.

Section 67.29–17 is a new section. All instruments are considered to be filed upon receipt. Although filed, some instruments may not be recorded, either because recordation depends upon documentation or the instrument is determined not to be in substantial compliance with the applicable regulations and statutes. In such cases, the filing must be terminated. This section sets forth when filing will be deemed terminated, and the disposition of the instruments upon termination of filing.

Section 67.31–1 is amended by eliminating the requirement for a declaration of citizenship which is now set forth in § 67.29–11 of this part.

Section 67.31–5 is amended to state the requirement to include the addresses of parties to instruments submitted for filing and recordation.

Section 67.33–1 is amended by eliminating the requirement for a declaration of citizenship which is now set forth in § 67.29–11 of this part.

Section 67.33–5 is amended to state the requirement to include the addresses of parties to instruments submitted for filing and recordation. In addition, the requirement to state the interest in the vessel held by each mortgagee, a requirement which is not found in law, is eliminated. Paragraph (c) of this section is amended by eliminating the requirement for a maturity date, and by adopting language to permit the statement of the amount of mortgage in one or more units of account.

Section 67.33–11 is amended to state the requirement to include the addresses of parties to instruments submitted for filing and recordation.

Section 67.33–13 is amended to eliminate the requirement that the assuming party hold legal title to the vessel covered by the assumption at the time of execution and filing of the assumption.

Section 67.33–17 is amended to state the requirement to include the addresses of parties to instruments submitted for filing and recordation.

Section 67.33–23 is amended to state the requirement to include the addresses of parties to instruments submitted for filing and recordation.

Sections 67.33–25, 67.33–27, and 67.33–29 are new sections describing the general requirements, required signatures, and required recitations, respectively, for agreements subordinating chattel mortgages.

Subpart 67.35 is being revised to include filing and recordation information for preferred mortgages and related instruments. Generally, the revision eliminates the following: (1) Reference to endorsement and the requirement for presentation of the Certificate of Documentation for endorsement of the mortgage; (2) the requirement that the vessel covered by the mortgage be documented at the time the mortgage is made; (3) the requirement for an affidavit of good faith; (4) the requirement that a mortgage covering a vessel of less than twenty-five (25) gross tons be accompanied by a statement that the vessel is not a towboat, barge, scow, lighter, car float, canal boat or tank vessel; and (5) the requirement that a mortgage securing property in addition to a vessel identify that other property and provide for separate discharge of that property.

Section 67.35–3 eliminates the restriction against recordation of a preferred mortgage if it contains language which constitutes a waiver of its preferred status. The restriction against recording as preferred a mortgage on a vessel to a person other than a citizen of the United States as defined in 46 U.S.C. App. 802 has been clarified to reflect the long-standing policy of also recording qualified preferred mortgages which have as the mortgagee a State, the United States Government, or an individual who is a citizen of the United States. In addition, that same restriction has been modified to permit recording of preferred mortgages if the mortgagee is a federally insured depository institution which has not been disapproved by the Secretary of Transportation, even if that institution is not a citizen as defined in 46 U.S.C. App. 802. The Secretary of Transportation may also approve any other person as a preferred mortgagee. The responsibility for disapproval of financial institutions or approval of other persons as preferred mortgagees is within the purview of the Maritime Administration which administers the provisions of Section 9 of the Shipping Act of 1916. The section also states that the restrictions against certain persons holding preferred mortgages do not apply to a vessel which has been operated only as fishing, fish processing, or fish tender vessel, or for pleasure.

Section 67.35–7 provides for filing and recordation of instruments subordinating or waiving the preferred status of the mortgage.

Section 67.35–9 reflects the new provisions of § 67.35–3 describing persons permitted to be preferred mortgagees and eliminates the prohibition against language which would constitute a waiver of preferred status.

Subpart 67.37 is revised to include information concerning filing and recordation of notices of claim of lien.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation has been found to be so minimal that further evaluation is unnecessary. The regulation merely provides for filing of instruments and simplifies perfection of liens against documented vessels.

Regulatory Flexibility Act

Since the impact of this regulation is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities are involved in vessel operations within the ambit of this regulation, the provisions of this regulation simplify the requirements for compliance and reduce the possibility of rejection of instruments submitted for filing and recordation.

Paperwork Reduction Act

This rulemaking imposes no new paperwork burden on the public. It reduces the number of types of instruments which must accompany instruments submitted for filing and recordation.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with Section 2–B–3.h. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination Statement has been prepared and included in the rulemaking docket.

Federalism

These regulations have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, the Coast Guard amends Part 67 of Chapter 1, Title 46, Code of Federal Regulations, as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for Part 67 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103; 46 U.S.C. App. 841a, 876; 49 U.S.C. 322; 49 CFR 1.46.

2. Section 67.01–1 is amended by adding the following definitions, in alphabetical order, to read as follows:

§ 67.01–1 Definitions of terms used in this part.

* * * * *

Acknowledgment means (a) an acknowledgment or notarization, which is in substantial compliance with the Uniform Acknowledgments Act, the Uniform Recognition of Acknowledgments Act, or the Uniform Law on Notarial Acts, before a notary public or other public official authorized by a law of a State or the United States to take acknowledgment of deeds; or (b) a certificate issued under the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961.

* * * * *

Secretary means the Secretary of Transportation.

* * * * *

3. Section 67.17–3 is amended by adding paragraph (c), with the existing note to follow paragraph (c), to read as follows:

§ 67.17–3 Registry.

* * * * *

(c) A vessel otherwise eligible for a registry endorsement under paragraph (b) of this section loses that eligibility during any period in which it is mortgaged to a person which does not meet the requirements of § 67.35–3 of this part.

* * * * *

4. Section 67.17–5 is amended by revising paragraph (d) to read as follows:

§ 67.17–5 Coastwise license.

* * * * *

(d) A vessel otherwise eligible for a coastwise license endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by a corporation which does not meet the requirements of § 67.03–9(b) of this part, or it is mortgaged to a person which does not meet the requirements of § 67.35–3 of this part.

5. Section 67.17–7 is amended by revising paragraph (d) to read as follows:

§ 67.17–7 Great Lakes license.

* * * * *

(d) A vessel otherwise eligible for a Great Lakes license under paragraph (b) of this section loses that eligibility during any period in which it is owned by a corporation which does not meet the requirements of § 67.03–9(b) of this part, or it is mortgaged to a person which does not meet the requirements of § 67.35–3 of this part.

6. Section 67.23–1 is revised to read as follows:

§ 67.23–1 Requirement for renewal.

Except as provided in this subpart, each license endorsed upon a Certificate of Documentation is valid for one year. Upon expiration of that year, the owner must apply for renewal of each license in accordance with § 67.25–1 of this part.

§ 67.23–3 [Amended]

7. Section 67.23–3 is amended by removing paragraph (b) and redesignating existing paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively.

8. Section 67.23–5 is revised to read as follows:

§ 67.23–5 Restrictions on surrender; mortgagee consent.

(a) A Certificate of Documentation issued to a vessel which is the subject of an outstanding mortgage of record may not be surrendered for a cause arising under § 67.23–3(a) (1) through (9) of this subpart without consent of the mortgagee.

(b) When the consent of the mortgagee is required under paragraph (a) of this section, the owner must comply with the provisions of § 67.25–9 of this part.

9. Section 67.23–7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 67.23–7 Requirement for replacement.

(a) Certificates of Documentation must be replaced when lost, mutiliated, or wrongfully withheld from the vessel owner.

(b) When a Certificate is replaced because it is mutilated; the existing Certificate must be physicially given up to the documentation officer to whom application is made

* * * * *

10. Section 67.23–9 is amended by revising the introductory text of paragraph (a), paragraph (a)(4), paragraph (c), and the note following paragraph (d) to read as follows:

§ 67.23–9 Requirement for deletion.

(a) Except as provided in paragraph (c) of this section, a Certificate of Documentation issued to a vessel is

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subject to deletion from the roll of documented vessels when: * * *

(4) The owner fails to renew the license(s) as required by § 67.23–1 of this part.

* * * * *

(c) A Certificate of Documentation issued to a vessel which is the subject of an outstanding mortgage recorded in accordance with Subpart 67.33 or 67.35 of this part remains valid for the purpose of Chapter 313, Title 46 U.S.C., sections 9 and 37(b) of the Shipping Act. 1916 (46 U.S.C. App. 808, 835(b)), and section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242).

* * * * *

Note: Certificates for vessels which have been deleted are filed at the last home port of record.

11. Section 67.23–11 is amended by revising paragraph (c) and the note following paragraph (c) to read as follows:

§ 67.23–11 Requirement for cancellation.

* * * * *

(c) A Certificate of Documentation issued to a vessel which is the subject of an outstanding mortgage recorded in accordance with Subpart 67.33 or 67.35 of this part remains valid for the purpose of Chapter 313, Title 46 U.S.C., sections 9 and 37(b) of the Shipping Act, 1916 (46 U.S.C. App. 808, 835(b)), and section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242). Such a Certificate may, however, be subject to surrender to correct the error which would normally give rise to cancellation.

Note: Certificates for vessels which have been deleted are filed at the last home port of record.

§ 67.27–5 [Removed]

12. Section 67.27–5 is removed.

13. Subpart 67.29 is revised to read as follows:

Subpart 67.29—Filing and Recordation of Instruments—General Provisions

Sec.

67.29–1 Instruments eligible for filing and recordation.
67.29–3 Restrictions of filing and recordation.
67.29–5 Requirement for vessel identification.
67.29–7 Requirement for date and acknowledgment.
67.29–9 Required number of copies.
67.29–11 Requirement for citizenship declaration.
67.29–13 Place of filing and recordation.
67.29–15 Date and time of filing and recordation.
67.29–17 Termination of filing and disposition of instruments.

§ 67.29–1 Instruments eligible for filing and recordation.

The following instruments, and no others, are eligible for filing and recordation:

(a) Bills of sale and instruments in the nature of bills of sale;

(b) Deeds of gift;

(c) Chattel mortgages, and assignments, assumptions, supplements, amendments, satisfactions, and releases thereof;

(d) Preferred mortgages, and assignments, assumptions, supplements, amendments, satisfactions, and releases thereof; and

(e) Notices of claim of lien, assignments, amendments, and satisfactions and releases thereof.

§ 67.29–3 Restrictions on filing and recordation.

(a) An instrument otherwise eligible for filing and recordation under § 67.29–1 (a) or (b) of this part may not be filed and recorded if any vendee or transferee under the instrument is not a citizen of the United States as defined in 46 U.S.C. App. 802 unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument. This restriction does not apply to an instrument conveying an interest in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in 46 U.S.C. 2101) or a vessel that has been operated only for recreation.

(b) The restriction imposed by paragraph (a) of this section does not apply to a bill of sale or deed of gift conveying an interest in a vessel which was neither documented nor was last documented pursuant to these regulations or any predecessor regulations thereto, at the time the instrument was executed.

(c) An instrument otherwise eligible for filing and recordation under § 67.29–1(c) of this part may not be recorded if the mortgagee or assignee is not a citizen of the United States as defined in 46 U.S.C. App. 802 or a trustee as defined in 46 U.S.C. 31328, unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument. This restriction does not apply to an instrument conveying an interest in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in 46 U.S.C. 2101) or a vessel that has been operated only for recreation.

(d) An instrument otherwise eligible for filing and recordation under § 67–29–1(d) of this part may not be recorded if the mortgagee or assignee is not a person described in 46 U.S.C. 31322(a)(1)(d). This restriction does not apply to an instrument conveying an interest in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in 46 U.S.C. 2101) or a vessel that has been operated only for recreation.

(e) An instrument otherwise eligible for filing and recordation under § 67.29–1 of this part may not be filed and recorded if it bears a material alteration.

§ 67.29–5 Requirements for vessel identification.

(a) Every instrument presented for filing and recordation must contain sufficient information to clearly identify the vessel.

(b) Instruments pertaining to vessels which have been documented must contain the vessel's name and official number, or other unique identifier.

(c) Vessels which have never been documented must be identified by one of the following:

(1) The vessel's Hull Identification Number assigned in accordance with 33 CFR 181.25; or

(2) Other descriptive information, which clearly describes the vessel. Such information may include length, breadth, depth, year of build, name of manufacturer, and any numbers which may have been assigned in accordance with 33 CFR part 173.

§ 67.29–7 Requirement for date and acknowledgment.

(a) Every instrument presented for filing and recordation must:

(1) Bear the date of its execution; and

(2) Contain an acknowledgment.

(b) No officer or employee of the Coast Guard is authorized to take such acknowledgments.

§ 67.29–9 Required number of copies.

Except as provided in § 67.35–5 of this part, with respect to preferred mortgages, all instruments presented for filing and recordation must be presented in duplicate; at least one copy must bear original signatures.

§ 67.29–11 Requirement for citizenship declaration.

(a) Instruments in the nature of a bill of sale or deed of gift, mortgages, and assignments of mortgages, are not eligible for filing and recordation unless accompanied by a properly executed declaration stating information about the citizenship of the grantee or other information to show that the transaction does not violate sections 9 or 37 of the Shipping Act, 1916 (46 U.S.C. App. 808, 835).

(b) The requirement for presentation of a citizenship declaration does not apply to instruments in which the grantee is a government of the United States or a political subdivision thereof or a corporate entity which is an agency of such governments.

(c) Citizenship declarations must be executed on the form prescribed by the Maritime Administration at 46 CFR 221.5. These forms are available from documentation officers at all ports of documentation or from the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

§ 67.29–13 Place of filing and recordation.

(a) Filings made at the same time as application is made for issuance of or a change to a Certificate of Documentation are made at the port where such application is made; mortgages filed in conjunction with such applications may be filed at the same port at any time prior to the time when the Certificate of Documentation has been issued or changed. All other filings must be made at the home port of the vessel.

(b) No filing may be made unless:

(1) The vessel has a valid Certificate of Documentation; or

(2) An application for documentation which is in substantial compliance with the applicable regulations has been made at the port where the filing is made.

(c) All recordations are made at the documentation office at the home port(s) or the vessel(s) affected by the instrument.

(d) Where the home port of a vessel is being changed, recordation is effected at the new home port.

§ 67.29–15 Date and time of filing and recordation.

(a) The date and time of filing of an instrument is the actual date and time at which the instrument is delivered to the documentation officer at the port where the filing is made.

(b) The date and time of recordation is the actual date and time at which the recording documentation officer designates the book into which the instrument will be placed and the page it will occupy in that book. The designation of book and page is not made until the documentation officer is satisfied that the instrument is in substantial compliance with all requirements for recordation.

§ 67.29–17 Termination of filing and disposition of instruments.

(a) A filing will be deemed terminated if:

(1) It is determined that the instrument cannot be recorded because the instrument itself is not in substantial compliance with the applicable regulations in this part;

(2) The filing was not made in compliance with the requirements of § 67.29–13 of this subpart; or

(3) The application for issuance of or change to a Certificate of Documentation was not made in substantial compliance with the applicable regulations of this part.

(b) If the filing of an instrument is terminated, the instrument will be returned to either:

(1) The applicant for documentation, if a bill of sale, instrument in the nature of a bill of sale, or a deed of gift;

(2) The mortgagee or assignee, if a mortgage or assignment or amendment thereof; or

(3) The claimant, if a notice of claim of lien.

14. Subpart 67.31 is revised to read as follows:

Subpart 67.31—Filing and Recordation of Instruments—Bills of Sale, Etc.

Sec.

67.31–1 General requirements.
67.31–3 Required signatures.
67.31–5 Required recitations.
67.31–7 When filing permitted.

§ 67.31–1 General requirements.

An instrument in the nature of a bill of sale or a deed of gift must meet all of the requirements of subpart 67.29 of this part, in addition to the requirements of this subpart.

§ 67.31–3 Required signatures.

An instrument presented for filing and recordation under this subpart must be signed by or on behalf of all the seller(s) or donor(s).

§ 67.31–5 Required recitations.

An instrument presented for filing and recordation under this subpart must recite:

(a) The name(s) and address(es) of the seller(s) or donor(s) and the interest in the vessel held by the seller(s) or donor(s); and

(b) The name(s) and address(es) of the buyer(s) or donee(s) and the interest in the vessel held by each buyer or donee.

§ 67.31–7 When filing permitted.

An instrument presented for filing and recordation under this subpart must be filed in conjunction with either an application for initial documentation or redocumentation of the vessel or a change to the vessel's outstanding Certificate of Documentation.

15. Subpart 67.33 is revised to read as follows:

Subpart 67.33—Filing and Recordation of Instruments—Chattel Mortgages and Related Instruments

Sec.

67.33–1 General requirements.
67.33–3 Required signatures.
67.33–5 Required recitations.
67.33–7 General requirements for assignments of chattel mortgages.
67.33–9 Required signatures for assignments of chattel mortgages.
67.33–11 Required recitations for assignments of chattel mortgages.
67.33–13 General requirements for assumptions of chattel mortgages.
67.33–15 Required signatures for assumptions of chattel mortgages.
67.33–17 Required recitations for assumptions of chattel mortgages.
67.33–19 General requirements for amendments of or supplements to chattel mortgages.
67.33–21 Required signatures for amendments of or supplements to chattel mortgages.
67.33–23 Required recitations for amendments of or supplements to chattel mortgages.
67.33–25 General requirements for instruments subordinating chattel mortgages.
67.33–27 Required signatures for instruments subordinating chattel mortgages.
67.33–29 Required recitations for instruments subordinating chattel mortgages.

§ 67.33–1 General Requirements.

(a) A chattel mortgage presented for filing and recordation must meet all the requirements of §§ 67.33–3 and 67.33–5 of this subpart.

(b) An instrument which meets the requirements of paragraph (a) of this section is nonetheless not eligible for filing and recordation if the mortgagor did not actually hold legal title to the interest in the vessel being mortgaged at the time of filing of the mortgage.

§ 67.33–3 Required signatures.

A chattel mortgage presented for filing and recordation must be signed by or on behalf of the mortgagor(s).

§ 67.33–5 Required recitations.

A chattel mortgage presented for filing and recordation must recite:

(a) The name(s) and address(es) of the mortgagor(s) and the interest in the vessel held by the mortgagor(s);

(b) The name(s) and address(es) of the mortgagee(s) and the individual interest in the vessel held by each mortgagee; and

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(c) The amount of the direct or contingent obligations that is or may become secured by the mortgage, excluding interest, expenses, and fees. The amount may be recited in one or more units of account as agreed to by the parties.

§ 67.33–7 General requirements for assignments of chattel mortgages.

An assignment of a chattel mortgage presented for filing and recordation must meet all the requirements of subpart 67.29 of this part and the requirements of §§ 67.33–9 and 67.33–11 of this subpart.

§ 67.33–9 Required signatures for assignments of chattel mortgages.

An assignment of chattel mortgage presented for filing and recordation must be signed by or on behalf of the assignor(s).

§ 67.33–11 Required recitations for assignments of chattel mortgages.

An assignment of chattel mortgage presented for filing and recordation must recite:

(a) The name(s) and address(es) of the assignor(s) and the interest in the mortgage held by the assignor(s);

(b) The name(s) and address(es) of the assignee(s) and the individual interest in the mortgage held by each assignee; and

(c) Information which clearly identifies the mortgage being assigned. Such information will normally consist of the book and page where that mortgage is recorded, and the date and time of recordation. If the assignment is being submitted prior to recordation, the information should include the names of all parties to the mortgage, the date of the mortgage, and the amount of the mortgage.

§ 67.33–13 General requirements for assumptions of chattel mortgages.

(a) An assumption of chattel mortgage presented for filing and recordation must meet all the requirements of subpart 67.29 of this part, and the requirements of §§ 67.33–15 and 67.33–17 of this subpart.

(b) An instrument which meets the requirements of paragraph (a) of this section is nonetheless not eligible for filing and recordation if the assuming party(ies) did not actually hold legal title to the interest in the vessel covered by the assumption at the time of filing of the assumption.

§ 67.33–15 Required signatures for assumptions of chattel mortgages.

An assumption of chattel mortgage presented for filing and recordation must be signed by or on behalf of the original mortgagor(s), the mortgagee(s), and the assuming party(ies).

§ 67.33–17 Required recitations for assumptions of chattel mortgages.

An assumption of chattel mortgage presented for filing and recordation must recite:

(a) The name(s) and address(es) of the original mortgagor(s) and the interest in the vessel mortgaged by the original mortgagor(s);

(b) The name(s) and address(es) of the assuming party(ies) and the individual interest in the mortgage assumed by each party; and

(c) Information which clearly identifies the mortgage being assumed. Such information will normally consist of the book and page where that mortgage is recorded, and the date and time of recordation. If recording information cannot be provided because the assumption is presented prior to recordation of the original mortgage, the instrument must recite the amount of the mortgage and other such information as to clearly identify the mortgage being assumed.

§ 67.33–19 General requirements for amendments of or supplements to chattel mortgages.

An amendment of or supplement to a chattel mortage presented for filing and recordation must meet all the requirements of subpart 67.29 of this part and the requirements of §§ 67.33–21 and 67.33–23 of this subpart.

§§ 67.33–21 Required signatures for amendments of or supplements to chattel mortgages.

An amendment of or supplement to a chattel mortgage presented for filing and recordation must be signed by or on behalf of the mortgagor(s) and the mortgagee(s).

§ 67.33–23 Required recitations for amendments of or supplements to chattel mortgages.

An amendment of or supplement to a chattel mortgage presented for filing and recordation must recite:

(a) The name(s) and address(es) of the mortgagor(s) and mortgagee(s);

(b) The nature of the change effected by the instrument; and

(c) Information which clearly identifies the mortgage being amended or supplemented. Such information will normally consist of the book and page where that mortgage is recorded, and the date and time of recordation. If recording information cannot be provided because the amendment or supplement is presented prior to recordation of the original mortgage, the instrument must recite the amount of the mortgage and other such information as to clearly identify the mortgage being amended or supplemented.

§ 67.33–25 General requirements for instruments subordinating chattel mortgages

An instrument subordinating a chattel mortgage presented for filing and recordation must meet all the requirements of subpart 67.29 of this part and the requirements of §§ 67.33–27 and 67.33–29 of this subpart.

§ 67.33–27 Required signatures for instruments subordinating chattel mortgages.

An instrument subordinating a chattel mortgage presented for filing and recordation must be signed by or on behalf of the mortgagee whose mortgage is being subordinated.

§ 67.33–29 Required recitations for instruments subordinating chattel mortgages.

An instrument subordinating a chattel mortgage presented for filing and recordation must recite:

(a) The name(s) and address(es) of the mortgagee(s) whose mortgage is being subordinated and the name(s) and address(es) of the parties holding the mortgage to which it is made subordinate; and

(b) Information which clearly identifies the mortgage being subordinated and the mortgage to which it is subordinated. Such information will normally consist of the book and page where that mortgage is recorded, and the date and time of recordation. If recording information cannot be provided because the subordination instrument is presented prior to recordation of the original mortgage, the instrument must recite the amount of the mortgage and other such information as to clearly identify the mortgage being subordinated.

16. Subpart 67.35 is revised to read as follows:

Subpart 67.35—Filing and Recordation of Instruments—Preferred Mortgages and Related Instruments

Sec.

67.35–1 General requirements for preferred mortgages.
67.35–3 Restrictions on filing and recordation.
67.35–5 Required number of copies.
67.35–7 Requirements for instruments supplemental to preferred mortgages.
67.35–9 Restrictions on filing and recordation.

§ 67.35–1 General requirements for preferred mortgages.

(a) A mortgage presented for filing and recordation as a preferred mortgage must:

(1) Meet all of the requirements for filing and recordation of a chattel mortgage contained in subpart 67.29 of this part, and the requirements of §§ 67.33–1, 67.33–3, and 67.33–5 of this part; and

(2) Cover the whole of a vessel.

(b) A mortgage which secures more than one (1) vessel may, at the option of the parties, provide for separate discharge of such vessels.

§ 67.35–3 Restrictions on filing and recordation.

An instrument which meets the requirements of § 67.35–1 of this subpart is not eligible for filing and recordation if the mortgagee is not:

(a) A State;

(b) The United States Government;

(c) A federally insured depository institution, unless disapproved by the Secretary;

(d) An individual who is a citizen of the United States;

(e) A person qualifying as a citizen of the United States as defined in 46 U.S.C. App. 802; or

(f) A person approved by the Secretary.

Note: Disapproval of a federally insured depository institution as a preferred mortgagee under § 67.35–3(c) of this subpart, and approval of a person as a preferred mortgagee under § 67.35–3(f) of this subpart is determined by the Maritime Administration pursuant to regulations in 46 CFR part 221.

§ 67.35–5 Required number of copies.

(a) Except as provided in paragraph (b) of this section, each filing of a preferred mortgage must consist of an original, a copy to be retained by the home port, a copy to be certified for the owner, and a copy to be certified for each vessel covered by the mortgage. The original mortgage and the mortgage copy retained by the home port must bear original signatures.

(b) A copy for certification is not required for a non-self-propelled vessel.

§ 67.35–7 Requirements for instruments supplemental to preferred mortgages.

An assignment, assumption, instrument waiving the preferred status of or subordinating a preferred mortgage, amendment or supplement to a preferred mortgage presented for filing, recordation, and indexing must:

(a) Meet the recordation requirements of equivalent instruments in Subpart 67.33 of this part; and

(b) Be filed in the number of copies required by § 67.35–5 of this part.

§ 67.35–9 Restrictions on filing and recordation.

An assignment, amendment, or supplement to a preferred mortgage is not eligible for filing and recordation if it results in a mortgage interest being held by a person which does not meet the criteria of § 67.35–3 of this subpart.

17. Subpart 67.37 is revised to read as follows:

Subpart 67.37—Filing and Recordation of Instruments—Notices of Claim of Lien

Sec.

67.37–1 General requirements.
67.37–3 Required signatures.
67.37–5 Required recitations.
67.37–7 Restriction on filing and recordation.

§ 67.37–1 General requirements.

A notice of claim of lien presented for recordation must meet all the requirements of subpart 67.29 of this part and the requirements of this subpart.

§ 67.37–3 Required signatures.

A notice of claim of lien presented for filing and recordation must be signed by or on behalf of the claimant.

§ 67.37–5 Required recitations.

A notice of claim of lien presented for filing and recordation must recite:

(a) The name and address of the claimant;

(b) The nature of the lien claimed;

(c) The date on which the lien was established; and

(d) The amount of the lien claimed.

§ 67.37–7 Restriction on filing and recordation.

A notice of claim of lien is not entitled to filing and recordation unless the vessel against which the lien is claimed is covered by a preferred mortgage filed or recorded with the Secretary.

18. Subpart 67.39 is revised to read as follows:

Subpart 67.39—Removal of Encumbrances.

Sec.

67.39–1 General requirements.
67.39–3 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.
67.39–5 General requirements for instruments evidencing satisfaction or release.
67.39–7 Required signatures for instruments evidencing satisfaction or release.
67.39–9 Required recitations for instruments evidencing satisfaction or release.

§ 67.39–1 General requirements.

A chattel mortgage, notice of claim of lien, or preferred mortgage of record against a vessel may be removed from that record by the filing of:

(a) A court order, affidavit, or Declaration of Forfeiture described in § 67.39–3 of this subpart; or

(b) A recordable satisfaction or release instrument described in §§ 67.39–5 through 67.39–9 of this subpart.

§ 67.39–3 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.

The encumbrances described in § 67.39–1 of this subpart are removed from the record upon filing of:

(a) A certified copy of an order from a court of competent jurisdiction declaring title to the vessel to be free and clear, or declaring the encumbrance to be of no effect, or ordering the removal of the encumbrance from the record;

(b) A certified copy of an order from a federal district court in an *in rem* action requiring the free and clear sale of the vessel at a marshal's sale accompanied by a certified copy of the order confirming such sale, where issued under local judicial procedures;

(c) A certified copy of an order from a federal district court declaring the vessel itself to be forfeit, or the proceeds of its sale to be forfeit to the government of the United States for a breach of its laws; or

(d) Where the vessel was forfeited to the government of the United States under an administrative forfeiture action, an affidavit from an officer of the agency which performed the forfeiture, who has personal knowledge of the particulars of the vessel's forfeiture, or a Declaration of Forfeiture issued by the agency which performed the forfeiture.

§ 67.39–5 General requirements for instruments evidencing satisfaction or release.

An instrument satisfying or releasing a chattel mortgage, a notice of claim of lien, or a preferred mortgage, which is presented for filing and recordation must meet all the requirements of subpart 67.29 of this part and the requirements of §§ 67.39–7 and 67.39–9 of this subpart.

§ 67.39–7 Required signatures for instruments evidencing satisfaction or release.

(a) A satisfaction or release of a chattel mortgage must be signed by or on behalf of the mortgagee(s).

(b) A satisfaction or release of a notice of claim of lien must be signed by or on behalf of the claimant(s).

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§ 67.39-9 Required recitations for instruments evidencing satisfaction or release.

A satisfaction or release instrument presented for filing and recordation must recite:

(a) The name(s) of the mortgagor(s) if any and the name(s) of the mortgagee(s) or claimant(s);

(b) The amount of the mortgage or lien; and

(c) Information which clearly identifies the mortgage or claim being satisfied or released. Such information will normally consist of the book and page and date where that mortgage is recorded, and the date and time of recordation.

* * * * *

Dated: September 18, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23998 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74 and 76

[MM Docket 85-349, GEN Docket No. 87-107, RM-6152; DA 89-915]

Carriage of TV Signals on Cable Systems and Input Selector Switches Used in Conjunction With Cable Television Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission is correcting oversights to rule changes that were adopted in the *Order* in MM Docket No. 85-349 and GEN Docket 87-107, 54 FR 25715 (June 19, 1989). That *Order*, among other things, redesignated the paragraph sequence in 47 CFR 76.5. After the redesignation of these paragraphs, several of the paragraphs contained incorrect references to other paragraphs within this section. A rule section in 47 CFR 74 and several other rule sections in 47 CFR 76 also contained incorrect references to paragraphs within this section. Corrections to these errors are contained herein, and also in the Commission's erratum, DA 89-915, released October 6, 1989.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: The following corrections are made to the rule changes as adopted in the *Order* in MM Docket No. 85-349 and GEN Docket 87-107, published in the **Federal Register** on June 19, 1989, 54 FR 25715 (FR Doc. 89-14425).

List of Subjects

47 CFR Part 74

Television broadcasting.

47 CFR Part 76

Cable television.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 74.801 is amended by revising the first definition to read as follows:

§ 74.801 Definitions.

Cable television system operator. A cable television operator is defined in § 76.5(cc) of the rules.

* * * * *

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 521.

4. Section 76.5 is amended by revising paragraphs (k), (o) and (q) to read as follows:

§ 76.5 Definitions.

* * * * *

(k) *Partial network station.* A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) of this section.

* * * * *

(o) *Cablecasting.* Programming (exclusive of broadcast signals) carried on a cable television system. See paragraphs (y), (z) and (aa) (Classes II, III, and IV cable television channels) of this section.

* * * * *

(q) *Legally qualified candidate.* (1) Any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(iii) Has met the qualifications set forth in either paragraphs (q)(2), (3) or (4) of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (q)(1) of this section, that person:

(i) Has qualified for a place on the ballot, or

(ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (q)(1) and (2) of this rule; except that any such person who has met the requirements set forth in paragraphs (q)(1) and (2) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (q)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination; except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition meeting the requirements set forth in paragraph (q)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary of Presidential preference ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory of the District of Columbia; except that such person meeting the requirements set forth in paragraph (q) (1) and (4) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of the Act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraph (q) (2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

* * * * *

5. Section 76.33 paragraph (a)(1) is revised to read as follows:

§ 76.33 Standard for rate regulation.

(a) * * *

(1) Only basic cable service as defined in § 76.5(gg) may be regulated;

* * * * *

6. Section 76.66, paragraph (c)(6) is revised to read as follows:

§ 76.66 Input selector switches and consumer education.

* * * * *

(c) * * *

(6) Identify for their subscribers, by call sign and channel number, any full service broadcast signals not carried on the cable system whose predicted Grade B contour covers any portion of the cable community or that are "significantly viewed" in the cable community, as defined § 76.5(i) of the rules (the list of stations must be current to within one month of the distribution of the information required pursuant to this paragraph);

* * * * *

7. Section 76.67 paragraph (a) is revised to read as follows:

§ 76.67 Sports broadcasts.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

* * * * *

8. Section 76.400 is amended by revising paragraph (a) to read as follows:

§ 76.400 Operator, mail address, and operational status changes.

* * * * *

(a) The legal name of the operator and whether the operator is an individual, private association, partnership or corporation. See § 76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commisson shall be supplied;

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-24082 Filed 10-11-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

Vehicle Identification Number; Content Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the applicability section of part 565 to substitute a reference to part 591 of this title for a reference to 19 CFR 12.80. This amendment conforms part 565 with the requirements of amendments made to the National Traffic and Motor Vehicle Safety Act by Public Law 100-562.

DATE: The effective date of the rule is January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: The National Traffic and Motor Vehicle Safety Act was amended by the Imported Vehicle Safety Compliance Act of 1988 (Public Law 100-562). Those amendments were enacted on October 31, 1988, and will become effective January 31, 1990. The amendments revoke the joint authority previously provided by 15 U.S.C. 1397(b)(3) under which motor vehicles subject to the Federal motor vehicle safety standards are admitted into the United States pursuant to joint regulations issued by the Departments of Treasury and Transportation. Instead, the Vehicle Safety Act, as amended, vests the primary importation regulatory authority in the Department of Transportation.

The existing joint vehicle importation regulation is 19 CFR 12.80. The forthcoming importation regulation of this agency is 49 CFR part 591. Paragraph S2, Applicability of 49 CFR Part 565, *Vehicle Identification Number—Content Requirements* exempts "Vehicles imported into the United States under 19 CFR 12.80(b)(1)(iii), other than by a corporation which was responsible for assembly of that vehicle or a subsidiary of such a corporation * * *." This relates to the importation of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards. The section of the new importation regulation that corresponds to 12.80(b)(1)(iii) is 49 CFR 591.5(f). This notice amends part 565 to delete reference to the old authority and to add reference to the new one.

Since the amendment substitutes one authority for another and is procedural in nature, it is hereby found that notice and public comment thereon is unnecessary.

List of Subjects in 49 CFR Part 565

Imports, Motor vehicle safety, motor vehicles.

In consideration of the foregoing, part 565 is amended to read as follows:

PART 565—VEHICLE IDENTIFICATION NUMBER—CONTENT REQUIREMENTS

1. The authority citation for part 565 continues to read as follows:

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Authority: 15 U.S.C. 1395, 1397, 1401, 1407, and 1412; delegation of authority at 49 CFR 1.50.

§ 565.2 [Amended]

2. In § 565.2, the citation "19 CFR 12.80(b)(1)(iii)" is changed to read "§ 591.5(f) of this chapter."

Issued on: October 5, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-24006 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Vehicle Identification Number—Basic Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the applicability section of Motor Vehicle Safety Standard No. 115 to substitute part 591 of this title for 19 CFR 12.80, to conform the regulation with the requirements of Public Law 100-562.

DATE: The effective date of the rule is January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: Public Law 100-562 The Imported Vehicle Safety Compliance Act of 1988 was enacted on October 31, 1988. It will become effective January 31, 1990. The Act revokes the joint authority previously provided by 15 U.S.C. 1397(b)(3) under which motor vehicles subject to the Federal motor vehicle safety standards are admitted into the United States pursuant to joint regulations issued by the Departments of Treasury and Transportation. Instead, it vests the primary importation regulatory authority in the Department of Transportation.

The existing joint vehicle importation regulation is 19 CFR 12.80. The forthcoming importation regulation of this agency is 49 CFR part 591. Paragraph S2, Application of 49 CFR part 571.115, Motor Vehicle Safety Standard No. 115, *Vehicle Identification Number—Content Requirements*, exempts from certain of its requirements "Vehicles imported into the United States under 19 CFR 12.80(b)(1)(iii), other than by a corporation which was responsible for assembly of that vehicle or a subsidiary of such a corporation * * *." This relates to the importation of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards. The section of the new importation regulation that corresponds to 12.80(b)(1)(iii) is 49 CFR 591.5(f), and it is necessary to amend Standard No. 115 to delete the old authority and to add the new one.

Because the amendment substitutes one authority for another and is procedural in nature, it is hereby found that notice and public comment thereon is unnecessary.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR 571.115, Motor Vehicle Safety Standard No. 115 is amended to read as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, and 1407; delegation of authority at 49 CFR 1.50.

§ 571.115 [Amended]

2. In paragraph S2 the citation "19 CFR 12.80(b)(1)(iii)" is changed to read "§ 591.5(f) of this chapter."

Issued on: October 5, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-24007 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 196
Thursday, October 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 86-005]

Paratuberculosis in Domestic Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: A document published in the Federal Register on September 17, 1985, proposed to remove the paratuberculosis regulations and thereby delete Federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. This document withdraws the proposal. This action is warranted in order to help prevent the interstate spread of paratuberculosis.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Essey, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 733, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 80 and certain regulations in 9 CFR part 71 (referred to below as the regulations) contain provisions concerning the interstate movement of domestic animals affected with paratuberculosis. Paratuberculosis, also known as Johne's disease, is a chronic infectious disease of cattle and other ruminants.

A document published in the **Federal Register** on September 17, 1985 (50 FR 37673-37674, Docket Number 85-019), proposed to remove 9 CFR part 80, "Paratuberculosis in Domestic Animals," and certain regulations in 9 CFR part 71, thereby deleting Federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. This document withdraws the proposal.

The proposal invited the submission of written comments on or before November 18, 1985. In a document published in the **Federal Register** on December 6, 1985 (50 FR 49937, Docket Number 85-121), the comment period was reopened and extended until January 6, 1986. Comments were received from State Departments of Agriculture, a veterinary association, two farm bureaus, and several individuals. Two commenters supported the proposed removal of the paratuberculosis regulations; five commenters opposed it. The comments have been carefully considered and are discussed below.

One commenter indicated support for the proposed removal of the paratuberculosis regulations, but did not state any rationale. A second commenter apparently opposes the existing regulations concerning paratuberculosis, asserting that they discriminate against herd owners who are trying to free their herds of paratuberculosis because they discourage herd owners from attempting to detect and treat paratuberculosis.

The five other commenters opposed the proposed removal of the paratuberculosis regulations. One of these commenters asserted that the existence of Federal regulations enhances the efforts of the individual States to control the spread of the disease. Another elaborated that deletion of the paratuberculosis regulations would subvert State paratuberculosis programs because the action would be interpreted to mean that paratuberculosis is unimportant or impractical to attempt to control. The commenters suggested further that Federal regulations contribute to the conformity of movement restrictions.

Generally, commenters who opposed removal of the paratuberculosis regulations were of the opinion that any effective control program would have to be national and mandatory, and they urged that Federal restrictions be maintained and strengthened.

After further review, we have determined that the regulations should remain in effect. We believe that those comments urging withdrawal of the proposal have merit and that maintaining the regulations in place would help restrict the interstate spread of paratuberculosis. Therefore, the proposal of September 17, 1985, is withdrawn.

Authority: 21 U.S.C. 111-113, 114a, 114a-1, 115-117, 120-126, 127, 134b, 134c, 134e, 134f, 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24067 Filed 10-11-89; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 94

[Docket No. 89-183]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of comment period for proposed rule.

SUMMARY: We are extending the comment period for a proposed rule to amend the regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease, and also to add Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. Extending the comment period will give interested persons additional time to prepare comments.

DATES: Consideration will be given only to comments received on or before November 15, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-216. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753,

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Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7885.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and other animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and viscerotropic velogenic Newcastle disease.

On August 17, 1989, we published in the **Federal Register** (54 FR 33918–33920, Docket No. 88–216) a proposed to amend the regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease, and also to add Chile to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions of the importation of their meat and other animal products into the United States. Our proposal invited the submission of written comments, which were required to be received on or before October 16, 1989.

We have received requests from the United States Animal Health Association (USAHA), a milk producers federation, and three State departments of agriculture to extend the comment period until after the annual meeting of the USAHA in early November. We have also received a request from a law firm representing the International Llama Association to extend the comment period until November 27, 1989. In response to these requests, we are extending the comment period for an additional 30 days. We believe this would allow participants at the USAHA meeting, as well as other interested persons, to further discuss the proposed rule and formulate comments concerning it, including its impact on small entities under the Regulatory Flexibility Act. We will consider all written comments received on or before November 15, 1989.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1308; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–24066 Filed 10–11–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–148–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 747 Series airplanes, which currently requires the installation of placards; inspections and repair, if necessary; mechanical and/or electrical tests and repairs, if necessary; special interim operating procedures; and modification of forward and aft lower lobe cargo doors. This action would also require modification of the visual warning systems for the forward and aft lower lobe cargo doors and for the side main deck cargo door, if installed. This proposal is prompted by an accident in which the forward lower lobe cargo door may have opened in flight, resulting in the uncontrolled decompression of the airplane. The FAA has determined that design changes are necessary to ensure that the cargo door warning system detects cargo doors that are not fully closed, latched, and locked.

DATES: Comments must be received no later than December 27, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–148–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airlines, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 431–1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–148–AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

On March 14, 1989, the FAA issued AD 89–05–54, Amendment 39–6166 (54 FR 11937; March 23, 1989), to require installation of placards; inspections and repair, if necessary; mechanical and/or electrical tests and repair, if necessary; special interim operating procedures; and reduction of the compliance time for the modification of the forward and aft lower lobe cargo doors. That action was prompted by an accident in which a Boeing Model 747 airplane experienced an uncontrolled decompression, which may have been caused by the forward lower lobe cargo door opening in flight and subsequently being torn from the airplane.

Since issuance of that AD, the FAA has determined that the current cargo door warning system may be inadequate under some circumstances. That system currently monitors the door locking mechanism, but does not monitor whether the door is closed or latched. Therefore, it is possible that the system would indicate that the doors are properly closed, latched, and locked when the locks have been actuated but the doors have not been properly closed and latched. This condition, if not corrected, could result in the uncontrolled decompression of the airplane.

Since this condition is likely to exist on other airplanes of this type design, an AD is proposed which would revise AD–89–05–54 to require modification of the warning systems for the forward and aft lower lobe cargo doors, and for the side main deck cargo door, if installed. The modification must provide visual warning signals to flight crewmembers and ground crew personnel when cargo doors are not fully closed and the latch cams are not rotated to the closed position. The visual warning signal for flight crewmembers must be located on a forward panel. The latch cam mechanism must be monitored directly. The design must be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

The manufacturer is currently developing a modification to the cargo door warning systems. If this modification is developed, approved, and available in the near future, the FAA may consider referencing it in the final rule for this AD action.

The requirements of paragraphs A. through D. of AD 89–05–54, Amendment 39–6166, would not be changed by this proposed rule.

Since issuance of AD 89–05–54, Boeing has issued Revision 5 to Service Bulletin 747–52A2206, dated March 30, 1989, and Revision 2 to Service Bulletin 747–52A2209, dated March 30, 1989. The revised service bulletins are merely clarifying in nature. The FAA has reviewed and approved these revisions and has determined that compliance may also be made with the procedures as specified in the revisions. Paragraph D. of this proposal includes a reference to these later revisions.

There are approximately 780 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 140 airplanes of U.S. registry would be affected by this AD; of this number, it is estimated that 20 airplanes have the side main deck cargo door installed. It would take approximately 90 manhours per airplane to accomplish the required actions; those airplanes with the side main deck cargo door installed would require an additional 30 manhours. The average labor cost would be $40 per manhour. Parts are estimated at $1,700 per airplane. Parts for airplanes with the side main deck cargo door installed are estimated to be an additional $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $774,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "Major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regualtory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89–05–54, Amendment 39–6166 (54 FR 11937; March 23, 1989), as follows:

Boeing: Applies to Model 747 series airplanes, line number 001 and subsequent, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of lower lobe forward and aft cargo doors and the main deck side cargo door, if installed, accomplish the following. (paragraph A. through D. apply to lower lobe cargo doors only):

A. Within the next 10 days after April 3, 1989 (the effective date of Amendment 39–6166), install Boeing placards, P/N 27EBY115 for hook operation, and P/N 27EBY114 for latch operation, or equivalent, adjacent to the respective drive ports.

B. Except for airplanes that have been modified in accordance with Boeing service bulletins specified in paragraph D., below, or on which a production equivalent has been installed, within the next 10 days after April 3, 1989, accomplish the following:

1. Visually inspect for broken, bent, or otherwise damaged lock sectors which could affect the integrity of the door locking mechanism, and repair or replace damaged sectors prior to further flight, in accordance with FAA-approved procedures. This inspection must be repeated at intervals not to exceed 30 days, and after the next door opening following each manual operation of the door.

2. Conduct the mechanical and electrical system tests specified in Boeing Service Bulletin 747–52A2206, Revision 3, Revision 4, or Revision 5, paragraphs III.A and B. Airplanes which fail mechanical and/or electrical tests must be repaired prior to further flight, in accordance with FAA-approved procedures. Repeat these tests at intervals not to exceed 30 days and repeat the electrical test after restoration of electrical power following manual operation.

C. Within the next 14 days after April 3, 1989, change the operating procedures for the lower lobe cargo door to include the requirements specified below, and thereafter comply with those revised procedures.

The procedures required by this paragraph must be accomplished by qualified and trained mechanics, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI). Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

1. Prior to takeoff following each operation of the door, conduct a visual verification, through the external viewports, to ensure proper engagement of the latching cams to ensure the door is fully latched closed. This information must be relayed to and acknowledged by the flight crew.

2. When operating the door manually, the cranking torque shall not exceed 70 inch-pounds, and power tools shall not be used to operate latch and hook mechanisms in the manual mode.

D. Within the next 30 days after April 3, 1989, accomplish the following:

1. For those airplanes specified in Boeing Alert Service Bulletin 747–52A2206, Revision 3, dated August 27, 1987; Revision 4, dated April 14, 1988; or Revision 5, dated March 30, 1989: Modify the doors in accordance with paragraphs III.H. through III.O. of the applicable revision of the service bulletin.

2. For those airplanes specified in Boeing Alert Service Bulletin 747–52A2209, dated August 27, 1987; Revision 1, dated April 14, 1988; or Revision 2, dated March 30, 1989: Modify the doors in accordance with paragraphs III.E. through III.L. of the applicable revision of the service bulletin.

Accomplishment of these modifications constitutes terminating action for the repetitive requirements of paragraph B., above.

E. Within the next 12 months after the effective date of this Amendment, install a system which provides visual warning signals

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to alert flight crewmembers and ground crew personnel when forward and aft lower lobe cargo doors, and side main deck cargo door, if installed, are not fully closed, the latch cams are not rotated to the closed position, or the locks are not in the locked position. The warning system must monitor the door closed, latched, and locked condition directly. A red visual warning signal for flight crewmembers must be located on a forward panel. Incorrect indication, either open or closed, must be improbable. The modification must be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Accomplishment of this modification constitutes terminating action for the special operating procedure required by paragraph C.1., above.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24010 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 19

[Docket No. 90913-9213]

RIN 0692-AA07

Metric Conversion Policy for Federal Agencies

AGENCY: Office of the Secretary, Under Secretary for Technology, Commerce.

ACTION: Proposed rule.

SUMMARY: The Department has previously chosen 15 CFR part 19 subpart B as the place for Federal agency policy on the voluntary use of the metric system of measurement by agencies, industry and the public. This revision to the rule removes the voluntary aspect of metric transition for Federal agencies, as mandated by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, sec. 5164).

The policy set out below was stated in a prior notice: "Metric Conversion Policy for Federal Agencies," 50 FR 27577, July 5, 1985. The basic statement of policy has been taken directly from the prior notice. However, this proposed rule amends the earlier policy to bring the references and text up-to-date. The policy clarifies and strengthens Federal program requirements. Implementing agency initiatives are expected.

DATE: Commments should be submitted on or before November 13, 1989.

ADDRESS: Written comments should be sent to the U.S. Department of Commerce, Metric Programs Office, Room 4841, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: G.T. Underwood, Metric Programs Office, Room 4841, U.S. Department of Commerce, Washington, DC 20230; Phone (202) 377-0944.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 5164) declares the metric system to be the "preferred measurement system for U.S. trade and commerce." Federal agencies are also now required to use the metric system in procurement, grants and other business-related activities, by a date certain and to the extent economically feasible by the end of fiscal year 1992. These vital declarations and the accompanying report of the Congressional conferees require this updating of the existing Federal policy document.

Rulemaking Requirement

Under Executive Order 12291 the Department must judge whether a regulation is major within the meaning of section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This policy statement is not a major rule because it is not likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis will not be prepared.

These proposed guidelines do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This action is exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for this policy statement by section 553 of the Administrative Procedure Act of any other law. Therefore, no initial or final regulatory flexibility analysis will be prepared.

This policy statement does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 19

Science and technology; Metric system.

For the reasons set out in the preamble, part 19 of title 15 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority for 15 CFR part 19 is revised to read as follows:

Authority: 15 U.S.C. 1512 and 3710, 15 U.S.C. 205a *et seq* and DOO 10-17.

2. Subpart B is revised to read as follows:

Subpart B—Metric Conversion Policy for Federal Agencies

Sec.
19.20 Purpose.
19.21 Definition.
19.22 General policy.
19.23 Guidelines.
19.24 Recommendations for agency organizations.

Subpart B—Metric Conversion Policy for Federal Agencies

§ 19.20 Purpose.

This provides policy direction for Federal agencies as they change to the use of the metric system of measurement.

§ 19.21 Definition.

The term "metric system", as used in this document, means the International System of Units established by the General Conference of Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under the authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978. (The last revision as of the date of this publication may be found in National Institute of Standards and Technology (formerly the National Bureau of Standards) Special Publication 330, 1986 Edition, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

§ 19.22 General policy.

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 5164) amended the Metric Conversion Act of 1975 to, among other things, require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

(a) Federal agencies shall coordinate and plan for the use of the metric system in their procurements, grants and other business-related activities consistent with the requirements of the Metric Conversion Act as amended. Federal agencies shall encourage and support an environment which will facilitate the transition process. When taking initiatives, they shall give due consideration to known effects of their actions on State and local governments and the private sector, paying particular attention to effects on small business.

(b) Each Federal agency shall be responsible for developing plans, establishing necessary organizational structure, and allocating appropriate resources to carry out this policy.

§ 19.23 Guidelines.

(a) Coordinate and plan for metric conversion, taking into account the interests, views and conversion plans of other Federal agencies, State and local governments and the private sector;

(b) Identify areas where metrication is dependent upon agency initiative, and take action that reflects the needs of the United States. Such action should not unduly restrict competition, or cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units or where the change would otherwise place U.S. firms at a competitive disadvantage;

(c) Assist in resolving metric-related problems brought to the attention of the agency that are associated with agency actions, activities or programs undertaken in compliance with these guidelines or other laws or regulations;

(d) Identify measurement-sensitive agency policies and procedures and ensure that regulations, standards, specifications procurement policies and appropriate legislative proposals encourage private sector transition to the metric system;

(e) Consider cost effects of metric use in setting agency policies, programs and actions and determine criteria for the assessment of their economic feasibility. Such criteria should appropriately weigh both agency costs and national economic benefits related to changing to the use of metric;

(f) Provide for full public involvement and timely information about significant metrication policies, programs and actions;

(g) Seek out ways to increase understanding of the metric system of measurement through educational information and guidance and in agency publications;

(h) Consider particularly the effects of agency metric policies and practices on small business; and

(i) Consistent with the Federal Acquisition Regulations System (48 CFR), accept, without prejudice, metric goods and services when they are offered at competitive cost and meet the needs of the Government.

§ 19.24 Recommendations for agency organization.

Each agency shall:

(a) Participate, as appropriate, in the Interagency Committee on Metric Policy (ICMP), and/or its working committee the Metrication Operating Committee (MOC) in coordinating and providing policy guidance for the U.S. Government's transition to use of the metric system.

(b) Designate a senior official to be responsible for agency metric policy and to represent the agency on the ICMP.

(c) Designate an appropriate official to represent the agency on the Metrication Operating Committee (MOC), an interagency committee reporting to the ICMP.

(d) Maintain liaison with private sector groups (such as the American National Metric Council and the U.S. Metric Association) that are involved in planning for or coordinating National use of the metric system.

(e) Provide for internal guidelines, training and documentation to assure employee awareness and understanding of agency metric policies and programs.

Dated: October 2, 1989.

Lee W. Mercer,

Deputy Under Secretary for Technology.

[FR Doc. 89-24016 Filed 10-11-89; 8:45 am]

BILLING CODE 3510-18-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

[RIN 0596-AA42]

Land Exchanges; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On August 18, 1989, at 54 FR 34368, part IV, the Chief of the Forest Service published a notice of proposed rulemaking to complement the Federal Land Exchange Facilitation Act. The public was invited to comment on the rules by October 2, 1989. A number of organizations have indicated that the 45-day review period was not sufficient time to review and analyze the complex new rules and the impacts on their organizations and have requested additional time to prepare comments on this rulemaking. In response, the Forest Service has decided to extend the comment period an additional 60 days to December 1, 1989.

DATE: Comments must be received in writing and postmarked no later than December 1, 1989.

ADDRESS: Send comments to F. Dale Robertson, Chief, (5430), Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090..

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Assistant Director of Lands. (703) 235-8212, or James M. Dear, Land Specialist, (703) 235-2493.

Dated: October 5, 1989.

James C. Overbay,

Deputy Chief.

[FR Doc. 89-24064 Filed 10-11-89; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3670-5]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from October 16, 1989, to November 15, 1989, the deadline for receiving written comments on the Agency's proposed approval of the amendments to the Alaska "State Air Quality Control Plan" as a revision to the Alaska State Implementation Plan.

DATES: Comments must be received or postmarked on or before November 15, 1989.

ADDRESSES: Comments should be addressed to: Laurie Kral, Air Programs Branch AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION: On September 14, 1989 (54 FR 37948), EPA solicited public comment on its proposal to approve a revision to the Alaska State Implementation Plan. Specifically, revision is to section IV.F "Project Review Procedures" and title 18, chapter 50, section 300 "Permit to Operate" of the Alaska Administrative Code (18 AAC 50) which requires fugitive emissions to be included when determining whether certain sources are subject to permit review but allows fugitive emissions to be excluded for all other source categories. EPA is also proposing to approve a number of other revisions to 18 AAC 50 which relate to the Alaska permit to operate regulations and to the emission limitations for asphalt plants.

As a result of a request to extend the public comment period, EPA is granting a 30-day extension. A copy of this request has been placed into the docket along with the State submittal and may be reviewed during normal business hours at the following location: Air Programs Branch AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

Dated: October 4, 1989.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 89-24073 Filed 10-11-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-2, 201-6, 201-7, 201-8, 201-11, 201-16, 201-17, 201-18, 201-19, 201-20, 201-21, 201-22, 201-23, 201-24, 201-26, 201-30, 201-31, 201-33, 201-34, 201-38, 201-39, 201-41, and 201-44

Implementation of Second Phase of the Federal Information Resources Management Regulation Improvement Project

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: This NPR announces the availability of a proposed Federal Information Resources Management Regulation (FIRMR) that is the second phase of the FIRMR Improvement Project to reorganize and replace the current FIRMR. The initial phase of this project consolidated FIRMR contracting policies and procedures in a new FIRMR part 201-39 issued as a separate proposed rule dated February 6, 1989 (54 FR 5904). The intent of this NPR is to present regulatory policy coverage concerning the acquisition, management, and use of automatic data processing (ADP) and telecommunications resources in a life cycle format. This phase of the FIRMR Improvement Project establishes Subchapter C of the replacement FIRMR and implements laws, executive orders, and responsibilities assigned to GSA concerning information resources management within the Federal Government. It includes a new part 201-24 covering the use of mandatory GSA services. This NPR also includes a revision to FIRMR section 201-39.803, regarding the use of GSA nonmandatory schedule contracts. The revision requires contracting officers to provide prompt notification of award to firms that respond to a CBD synopsis.

This NPR uses an umbrella term, Federal information processing (FIP) resources, to identify ADP and telecommunications resources that are subject to GSA's exclusive procurement authority under Public Law 99-500.

ADDRESSES: To request a copy or to submit comments on this proposed rule contact the General Services Administration (KMPP), Project 89-1, Washington, DC 20405.

DATES: Comments must be received no later than December 11, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Whitson, David Mullins, Patricia Phillips, or Jack Stewart, GSA, Office of Information Resources Management Policy, telephone (202) or FTS 535-7462.

SUPPLEMENTARY INFORMATION:

(a) In the January 11, 1988, Federal Register, GSA announced the FIRMR Improvement Project and sought agency comments on a proposed new FIRMR structure. A proposed rule dated February 6, 1989 (54 FR 5904) sought public comment on a new FIRMR part 201-39, Acquisition of Federal Information Processing Resources by Contracting.

(b) This NPR will establish a new FIRMR subchapter C, consisting of parts 201-17 through 201-24, covering the life cycle of FIP resources. It will replace 17 existing FIRMR parts that cover all aspects of the management and use of ADP and telecommunications resources. Subchapter C covers such phases of the information resources life cycle as planning and budgeting, acquisition, operations, review and evaluation, and disposition. The Subchapter begins with a brief overview of the most important policies regarding the management and use of FIP resources and ends with the rules for using GSA mandatory programs, such as telecommunications.

(c) GSA plans to issue FIRMR subchapters A and B for public comment later this year. FIRMR part 201-39 (FIRMR subchapter D) is expected to be issued as a final rule in the first quarter of fiscal year 1990; Subchapters A, B, and C will be issued as a final rule in the second quarter resulting in the replacement of the entire current FIRMR. The new FIRMR will then consist of the following subchapters:

Subchapter A, General (Consisting of four parts)

Subchapter B, Management and Use of Information and Records (four parts)

Subchapter C, Management and Use of Federal Information Processing Resources (seven parts)

Subchapter D, Acquisition of Federal Information Processing Resources by Contracting (one part)

(d) Substantial guidance and procedures contained in the current FIRMR will be transferred to new FIRMR bulletins that are included with this proposed rule. Current FIRMR bulletins will be cancelled or revised and incorporated into new bulletins. A summary of the new FIRMR subchapter C follows:

(1) Part 201-17, "Predominant Considerations," provides a brief overview of policies that must be addressed by senior-level officials responsible for the management of agency information resources.

(2) Part 201-18, "Planning and Budgeting," prescribes policies for multi-year IRM planning. It describes how GSA uses agency planning in the delegation process and includes a requirement for agencies to submit copies of their planning documents to GSA.

(3) Part 201-19, is reserved.

(4) Part 201-20, "Acquisition," prescribes policies and procedures key to the acquisition of FIP resources. It covers requirements analysis, analysis of alternatives, and such implementation activities as delegation of procurement authority and implementation of standards. (Acquisition by contracting is covered in new part 201-39.) FIRMR section 201-20.305 explains the authorities and conditions under which GSA delegates its exclusive procurement authority for FIP resources to agencies. The section continues GSA's current practice, and clarifies the manner in which that practice implements section 111(b)(3) of the Federal Property and Administrative Services Act of 1949 (the Property Act) (40 U.S.C. 759(b)(3)), which was added in 1986 by Public Law 99-500. That section of the law authorizes GSA to make delegations under certain conditions directly to the agency designated senior official (DSO) as provided for in the Paperwork Reduction Act of 1980 (44 U.S.C. 3506(b)). The delegations of procurement authority granted by GSA to a DSO may be redelegated to qualified officials. However, the DSO remains responsible for the conduct of and accountability for the acquisitions made under that authority. Furthermore, a delegation of procurement authority from GSA does not make the DSO a contracting officer. Contracting officers are appointed under authority vested in agency heads, and via procedures established by agency heads under FAR subpart 1.6.

(5) Part 201-21, "Operations," prescribes policies for the operation of FIP resources, including policies regarding security, sharing, personal telephone calls, and restrictions on listening-in to or recording telephone conversations.

(6) Part 201-22, "Review and Evaluation," prescribes each Federal agency's responsibility for the continuous evaluation of its information resources management program and addresses GSA's two Governmentwide review programs: The Federal Information Resources Management Review Program (triennial review) and The Information Resources Procurement and Management Review Program.

(7) Part 201-23, "Disposition," contains policies for reuse or disposal of Government-owned FIP equipment, including procedures for reporting excess equipment, with an original acquisition cost of over $1 million, to GSA for interagency screening.

(8) Part 201-24, "GSA Services and Assistance," describes policies and procedure for using GSA mandatory programs. FIRMR coverage on the use of FTS2000 services will ultimately appear in part 201-24. However, the section that would contain FTS2000 coverage is reserved in this proposed regulation. It will appear in FIRMR Interim Rule 2. Interim Rule 2 is scheduled to be issued soon after this NPR, and it will request public comment on its FTS2000 FIRMR coverage. The final version of FIRMR subchapter C will codify Interim Rule 2 and will contain GSA's final coverage on FTS2000.

(e) In addition to the new FIRMR parts described above, this NPR includes:

(1) Twenty-one new FIRMR bulletins that supersede 38 current bulletins. These new FIRMR bulletins also cover guidance and procedures transferred from the current FIRMR. FIRMR bulletins are not regulatory.

(2) A revised set of definitions of terms relating to subchapter C.

(f) This NPR amends the current FIRMR by removing or redesignating the following parts:

(1) Part 201-2, "Definitions," only definitions relating to subchapter "C" are included in this package. All FIRMR definitions will be consolidated in a new part 201-4 at the completion of the FIRMR Improvement Project.

(2) Part 201-6 "Protection of Personal Privacy"

(3) Part 201-7 "Security of Information Resources Systems"

(4) Part 201-8 "Implementation of Federal Standards"

(5) Part 201-11 "Competition"

(6) Part 201-16 "Planning and Budgeting for Information Resources Activities"

(7) Part 201-19 "Information Resources Management Reviews"

(8) Part 201-20 "ADP Management Programs"

(9) Part 201-21 "Telecommunications Management Programs"

(10) Part 201-23 "Delegations of Authority"

(11) Part 201-24 "Acquisition Policies"

(12) Part 201-26 "Reporting Requirements"

(13) Part 201-30 "Information Resources Operations"

(14) Part 201-31 "Sharing of ADP Resources"

(15) Part 201-33 "Reuse of ADP Equipment"

(16) Part 201-34 "Supporting ADP Activities"

(17) Part 201-38 "Management of Information Resources"

(18) Part 201-41 "Routine Changes and Use of the Federal Telecommunications System"

(g) This NPR redesignates part 201-22, "Records Management Programs" as part 201-44.

(h) The NPR includes a change to the new FIRMR section 201-39.803 on the use of GSA nonmandatory schedule contracts. The revision implements a ruling by the General Services Board of Contract Appeals (GSBCA) case No. 9793-P covering notification of award to respondents of a CBD notice. The full text of 201-39.803 and subpart 201-39.5, Publicizing Contract Actions, is included to help the reviewer see the proposed change in context. FIRMR changes that included 201-39.5 and 201-39-803 were provided for public comment with the NPR published February 6, 1989. The text provided with this NPR reflects the reconciliation of the comments received on that proposed rule plus incorporation of the GSBCA ruling.

(i) The General Services Administration (GSA) has determined that the proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-et seq.)

List of Subjects in 41 CFR Parts 201-2, 201-6, 201-7, 201-8, 201-11, 201-16, 201-17, 201-18, 201-19, 201-20, 201-21, 201-22, 201-23, 201-24, 201-26, 201-30, 201-31, 201-33, 201-34, 201-38, 201-39, 201-41, and 201-44

Competition, Computer technology, Contracting, Federal Telecommunications System, Information resources activities, Privacy, Standards for information resources, Telecommunications.

Dated: October 5, 1989.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89-24012 Filed 10-11-89; 8:45 am]

BILLING CODE 6820-25-M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-429,RM-6874]

Radio Broadcasting Services; Wellington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Johnson Enterprises, Inc., proposing the substitution of FM Channel 230C2 for Channel 228A at Wellington, Kansas, and modification of the license for Station KZED(FM) accordingly. The coordinates for Channel 230C2 are 37-17-00 and 97-32-00. The allotment of Channel 230C2 at Wellington is contingent on Station KSPI-FM, Stillwater, Oklahoma, being licensed on Channel 229C2 in lieu of Channel 230C2.

DATES: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Comunications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Richard R. Zaragoza, John J. McVeigh, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037-1125.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-429, adopted September 12, 1989, and released October 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commissioin proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24084 Filed 10-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-428, RM-6872]

Radio Broadcasting Services; Winona, MN.

AGENCY: Federal Communications Commissions.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KAGE, Inc., proposing the substitution of FM Channel 237C3 for Channel 237A at Winona, Minnesota, and modification of its license for Station KAGE-FM to specify Channel 237C3. The coordinates for Channel 237C3 are 44-03-00 and 91-42-00.

DATE: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David E. Hilliard, Edward A. Yorkgitis, Jr., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC. 20006 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-428, adopted September 12, 1989, and released October 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in proceedings, such as this one, which involve channel allotments. See 47 CFR section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24085 Filed 10-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-427, RM-6914]

Radio Broadcasting Services; Canton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bick Broadcasting Company proposing the substitution of FM Channel 272C3 for Channel 272A at Canton, Missouri. Petitioner also requests modification of its license for Station KQCA(FM) to specify operation on the higher class channel. The coordinates for Channel 272C3 are 40-16-13 and 91-33-04.

DATES: Comments must be filed on or before November 27, 1989, and reply comments on or before December 12, 1989.

ADDRESSES: Federal Comunications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James E. Janes, President, Bick Broadcasting Company, 119 North Third St. Box 711, Hannibal, Missouri 63401.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-427, adopted September 12, 1989, and released October 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24086 Filed 10-11-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-742; DA 89-1279]

Broadcast Services; Abuse of License Renewal Process

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period in the above-captioned proceeding. The Docket's *Third Further Notice of Inquiry and Notice of Proposed Rule Making (Third Further Notice)*, 54 FR 35357 (Aug. 25, 1989), solicited comment on an additional proposal for determining how an incumbent licensee may obtain a renewal expectancy in a comparative renewal hearing. The deadlines for filing such comments were established as October 10, 1989, for initial comments and October 25, 1989, for reply comments. These deadlines are extended as requested by the National Association of Broadcasters because of the Commission's desire to develop as complete a record as possible on which to base a decision in this proceeding, and because of the complexity of the issues involved. The action is taken to provide commenters with the additional time necessary to analyze these issues and provide the Agency with accurate, complete information.

DATES: Comments are now due on November 9, 1989, and reply comments on December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

In the matter of formulation of policies and rules relating to broadcast renewal applicants, competing applicants, and other participants to the comparative renewal process and to the prevention of abuses of the renewal process.

Order Granting Motion for Extension of Time for Filing Comments and Reply Comments

Adopted: October 4, 1989.
Released: October 5, 1989.

By the Chief, Mass Media Bureau:

1. On August 16, 1989, the Commission released a *Third Further Notice of Inquiry and Notice of Proposed Rule Making ("Third Further Notice")* in the above-captioned proceeding, soliciting comment on an additional proposal for determining how an incumbent licensee may obtain a renewal expectancy in a comparative renewal hearing.[1] The Commission proposes to continue to award a renewal expectancy based upon an incumbent licensee's past meritorious service, but adopt a new order of proof to apply this standard. The deadlines for filing comments and reply comments in response to the *Third Further Notice* are currently October 10, 1989, and October 25, 1989, respectively.

2. On September 25, 1989, a motion for extension of time for filing comments and reply comments was filed by the National Association of Broadcasters ("NAB"). The motion requests that the deadline for filing comments be extended by 30 days to November 9, 1989, and that the deadline for filing replies be extended by 37 days to December 1, 1989.

3. NAB contends that the extension of time is necessary because of the complexity and importance of the issues raised in the *Third Further Notice*. It notes that the *Third Further Notice* raises questions such as the workability of the proposal, its consistency with the Communications Act, and its compatibility with other renewal expectancy reforms proposed in this proceeding. NAB believes that such an analysis requires an in-depth consideration of the many facets of this proceeding, taken as a whole, and thus necessitates a greater amount of time to prepare comments than has been provided. NAB alleges that, by granting the requested extension, the Commission will facilitate commenters in making a thorough analysis, thereby resulting in the development of a more complete and accurate record in this proceeding.

4. Although § 1.46(a) of the Commission's Rules provides that extensions of time should not be routinely granted, we believe that, in this case, NAB has presented valid reasons for granting the requested extensions. In particular, we agree that it is of the utmost importance to develop a complete record on the question of how to award renewal expectancies in comparative renewal hearings. Indeed, even after proffering further proposals in the *Second Further Notice of Inquiry and Notice of Proposed Rule Making* (53 FR 31894, August 22, 1988) and considering the comments filed in response thereto, we determined that further study was necessary.[2] We also acknowledge that devising a meaningful renewal expectancy standard and method for applying it is a complex and difficult task. Given the importance of this issue, we believe that an additional amount of time to respond to the latest proposal is warranted.

5. Accordingly, *It is ordered*, That the motion for extension of time filed by the National Association of Broadcasters IS GRANTED and that the time for filing comments and reply comments in BC Docket No. 81-742 IS HEREBY EXTENDED to November 9, 1989, and December 1, 1989, respectively.

6. This action is taken pursuant to authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45-46 of the Commission's Rules.

[1] 4 FCC Rcd 6363 (1989), *summorized* at 54 Fed. Reg. 35357 (Aug. 25, 1989).

[2] *See Third Further Notice*, 4 FCC Rcd at 6304-65.

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Federal Communications Commission.
Roy J. Stewart,
Chief, Mass Media Bureau.
[FR Doc. 89-24083 Filed 10-11-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Battery Explosions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Dr. C.J. Abraham and Dr. Malcolm Newman of Inter-City Testing and Consulting Corporation to require a protective shield on wet cell automotive batteries. The agency is denying the petition because the accident data indicate that the vast majority of these injuries are not severe. The agency further notes that there has been a significant and continuing downward trend in injuries from battery explosions which we believe is the result of safety-related design improvements associated with batteries. In addition, the agency believes that the shield may be ineffective in many real-world settings. For these reasons, requiring such a device would increase consumer costs without a corresponding increase in safety.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-5271.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) has promulgated Federal motor vehicle safety standards at 49 CFR part 571 that set forth performance and labeling requirements related to motor vehicles and certain items of motor vehicle equipment. The agency presently does not have any safety standard directly related to automotive batteries.

At the request of the United States Consumer Product Safety Commission (CPSC), NHTSA began investigating injuries resulting from the explosion of motor vehicle batteries in 1976. On August 31, 1981, NHTSA issued a notice terminating a rulemaking in which it had considered establishing performance and labeling requirements for batteries (46 FR 43718). The agency based its decision to terminate that rulemaking on the following reasons: (1) A study conducted by the Society of Automotive Engineers (SAE) indicated that over 70 percent of the ignition sources leading to battery explosions started outside the battery; (2) manufacturers were designing safer "maintenance free" batteries and batteries whose vents contain flame attenuator devices; and (3) the CPSC already requried warning labels on all wet cell storage batteries, the type used in motor vehicles. NHTSA noted that it would continue to monitor any incidents of battery explosions to evaluate the safety of the new types of batteries.

Petition

On January 21, 1988, Dr. C.J. Abraham and Dr. Malcolm Newman of Inter-City Testing and Consulting Corp. (Inter-City) petitioned NHTSA to reopen rulemaking related to battery explosions claiming that "the number of injuries due to battery explosions continues to maintain epidemic proportions." The petitioner stated that it had identified fesible performance requirements and standards that would reduce the incidence of wet cell battery explosion injuries. In particular, it requested that all batteries be required to have the plastic shielding device that it had developed. The petitioner claimed that this shield would redirect battery explosion by-products (e.g., acid spray and solid fragments) away from the upper torso and eyes of bystanders. Inter-City claimed that requiring the battery shield would virtually eliminate any significant injuries from battery explosions. It supplied laboratory test data in support of these claims.

Inter-City also requested that pursuant to NHTSA's information gathering powers at 49 CFR Part 510, the agency subpoena documents related to battery explosions from Johnson Controls, a battery manufacturer. The agency notes that its subpoena authority is discretionary in nature, and that in the rulemaking at hand, the agency has sufficient information from the petitioner, the CPSC, the battery manufacturers, and other sources to determine whether to grant or deny the petition. Therefore, NHTSA has declined to subpoena the documents requested by the petitioner.

NHTSA Determination

In response to Inter-City petition, NHTSA reexamined the problem of battery explosions in general and the effectiveness of battery explosions in general and the effectiveness of the petitioner's shield in particular. The agency has decided to deny the petition for the reasons set forth below.

A. Battery Explosions

Inter-City claimed that that there were more than 100,000 injuries due to battery explosions in the years from 1981 to 1986. These injuries typically involve the upper torso, eyes, head, and face. The petitioner further stated that in 1982 there were approximately 21,000 battery explosion injuries and that these injuries were "on the increase." The petitioner also claimed that in 1986 there were more than 6,400 battery-related eye injuries reported to the CPSC. Additionally, the petitioner submitted data indicating that there were 692 such injuries in California and 118 such injuries in Ohio between 1981 and 1988. Finally, in a supplemental submission, Inter-City cited a study by the Greater Detroit Society for the Blind which predicted that there may have been as many as 46,513 injuries related to battery explosions over an eight year period or an annual average of approximately 5,800.

NHTSA analyzed the accident data to determine whether there was a significant safety problem related to injuries caused by exploding batteries. The agency obtained data from the CPSC's National Electronic Injury Surveillance System (NEISS), a program through which the CPSC monitors injuries treated in hospital emergency rooms and then extrapolates the number of accidents nationwide. The CPSC data estimated that the number of injuries from wet cell battery explosions was 9,343 in 1983, 7,136 in 1984, 6,711 in 1985, 5,359 in 1986, 5,385 in 1987 and 4,423 in 1988. This was an average of 6,393 battery explosion injuries per year. The agency notes that a significant number of battery-related injuries cited by the petitioner involve skin or eye irritation from acid vapors, spillage, and splashing during ordinary battery handling and servicing, and not from battery explosions. In addition, the agency received accident information from the Battery Council, a manufacturer's organization that monitors litigation related to battery explosions. This information indicated that, in recent years, there was an annual average of 150 battery explosions that resulted in litigation and thus were presumably serious.

NHTSA notes that the number of battery explosion injuries reported by the CPSC is significantly lower than the number claimed by the petitioner. Further, the CPSC data indicates that 98 percent of the battery explosions

resulted in injuries that were "not severe" (i.e., those injured were treated and released from a hospital without requiring additional hospital care), and the number of reported "severe" cases ranged from a high of 354 in 1983 to zero cases in 1986 and 1988. Similarly, the agency is not aware of any fatalities from battery explosions. Contrary to the petitioner's assertion that battery explosions continue at "epidemic" levels, the CPSC data reveals a significant and continual downward trend in these accidents.

NHTSA believes that the major reasons for this downward accident trend are improved battery design and warning labels. For instance, motor vehicles are increasingly being manufactured with a solid state electronic voltage regulator, which helps prevent battery explosions by reducing battery overcharging, and the ensuing concentration of explosive gases. Other design improvements incorporated in virtually all new automotive batteries include stronger and more durable plastic (polypropylene) battery containers in place of rubber containers, non-removable flame arresters to reduce ignition from external sources, lead calcium terminals in place of anitmony to reduce gassing, improved welding and plate connections to reduce internal ignition sources, hot sealed covers and elimination of filler caps to prevent consumer access, improved hydrogen gas venting systems, and improved plate material to reduce gassing and sparks. In addition, a significant proportion of new batteries are designed with side terminals that divert potential sparks away from the explosive gas which collects at the top of the battery, large flat cover sections on top of the battery which provide fewer small sharp projectiles, and built in hydrometers which indicate the battery's condition. The agency further notes that battery and automotive manufacturers continue to develop other designs to reduce battery explosions such as using absorbing materials to fill the ullage space and designing a pressurized system to reduce the amount of hydrogen emissions. Based on CPSC statistics and these design innovations that appear to reduce a battery's potential to explode, NHTSA anticipates that the number of injuries from exploding batteries will continue to decrease.

B. Analysis of Safety Shield

Inter-City requested that NHTSA issue a safety standard to require a protective safety shield for automotive batteries. It stated that the shield would act to eliminate injuries from battery explosions by directing the by-products from an exploding battery away from the torso and face. In support of its request, the petitioner submitted laboratory tests of controlled explosions.

In deciding whether to require a battery shield, NHTSA reviewed the petitioner's product and the supporting data. The agency notes that there are serious shortcomings with the battery shield. The shield might hinder the dissipation of the explosive gases away from the battery. It also might interfere with the attachment and removal of jumper cables and battery cables, impede the servicing of traditional non-maintenance free batteries, and interfere with the shortest routing of heavy battery cables. Finally, the presence of a shield on replacement batteries would hamper the replacement of OEM batteries for the existing vehicle population.

NHTSA further believes that the petitioner's test data, which were generated in a controlled laboratory environment, do not adequately reflect the typical real world events surrounding battery explosions. For instance, despite the petitioner's claim that battery servicing or jump starting could be achieved with the shield in place, the agency believes that this would be highly impracticable because the shield makes it difficult for a servicer to see and to have access to the battery connectors and terminals. Therefore, the agency anticipates that the servicer would typically have to remove the shield during the time that a battery explosion injury is most likely to occur, thus losing the benefit of the shield. Therefore, NHTSA believes that while the battery shield might be effective in a controlled test environment, the benefits from mandating its use are much more doubtful in real world situations.

NHTSA notes that the overall costs associated with the request would be large. While the petitioner claimed the cost would be less than $0.50 cents per battery, NHTSA believes that a more realistic cost to the consumer is $1.25 per battery. NHTSA has calculated the overall costs as follows. Since there are approximately 10 million batteries for new passenger cars and 65 million replacement batteries sold each year, the annual cost to require the battery shield is estimated to be ($1.25) X (75 million) or $93.75 million per year. The agency further notes that as a result of this requirement, over 50 different size covers would have to be developed to accommodate all the different battery sizes. In addition, a vehicle manufacturer might have to devote more space to the battery possibly affecting a vehicle's aerodynamic styling and hence fuel efficiency, and might also have to modify the hold-down designs.

In conclusion, given the fact that 98 percent of injuries related to battery explosions are not severe, that the safety problem is much smaller than the petitioner alleges, that there has been a significant downward trend in the injuries from battery explosions, that there have been improvements in wet cell battery designs, that there are practical shortcomings with the protective shield in real world situations, and that there are large costs related to this device, NHTSA has determined that requiring the petitioner's shield would result in increased costs without a sufficient corresponding improvement in safety. NHTSA notes that even though the agency has decided not to require the battery shield, a manufacturer may use this device at its discretion.

For the reasons set forth in this notice, NHTSA has concluded that there is no reasonable possibility that a rule requiring a battery shield in accordance with Inter-City's petition would be issued at the conclusion of the requested rulemaking proceeding. Therefore, the petition is denied.

Authority: 15 U.S.C. 1392, 1407, 1410a, delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on October 5, 1989.

Barry Felrice
Associate Administrotor for Rulemaking.
[FR Doc. 89-24005 Filed 10-11-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 90756-9156]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed modification to area of foreign fishing and inseason adjustment to specifications, and request for comments.

SUMMARY: NMFS announces and requests comments on two proposed actions: (1) Authorization to allow foreign vessels to operate south of 39° N. latitude, under special conditions, and receive U.S.-caught shortbelly rockfish; and (2) an inseason adjustment to

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increase the optimum yield for shortbelly rockfish caught in the ocean off Washington, Oregon, and California from 10,000 to 13,000 metric tons. These actions are authorized under the Pacific Coast Groundfish Fishery Management Plan. The purpose of these actions is to encourage utilization of shortbelly rockfish, which currently are underutilized, and to provide new business opportunities for U.S. fishermen.

DATES: Comments on these proposed actions will be accepted until October 27, 1989. The proposed action to allow foreign vessels south of 39° N. latitude, in finalized, will remain in effect through December 31, 1990, unless modified, superseded, or rescinded. The proposed increase to OY, once finalized, would apply only to the 1989 season unless continued under 50 CFR 663.24.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140; or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION: At its April 1989 meeting, the Pacific Fishery Management Council (Council) recommended that the Northwest Regional Director, NMFS, issue experimental fishing permits to authorize U.S. fishing vessels to use smaller mesh than currently is allowed to harvest shortbelly rockfish in joint venture fishing operations. Because shortbelly rockfish are found in fishable concentrations only south of 39° N. latitude, fishing must occur in this area to be commercially viable. However, current regulations prohibit foreign processing vessels from receiving fish south of 39° N. latitude.

To facilitate the development of a joint venture for shortbelly rockfish, the Council recommended that the Secretary of Commerce (Secretary) authorize foreign processing and support vessels to operate as far south as 35° N. latitude. More restrictive areas are proposed in this notice, however, resulting from concerns raised by NMFS and other concerns expressed by the Department of the Navy (Navy) after the April Council meeting.

Current regulations at 50 CFR 611.70(d)(3)(i) provide the procedure by which the Secretary may authorize foreign processing vessels to operate south of 39° N. latitude. In this notice, NMFS proposes to authorize foreign vessels to operate no further south than 36°38', the same southern boundary established for experimental joint venture fisheries for shortbelly rockfish in 1982. NMFS also proposes in this notice to prohibit foreign processing vessels from operating in and around the environmentally sensitive marine sanctuary in the Gulf of Farrallons. Juvenile shortbelly rockfish provide food for many species of seabirds and marine mammals in this area. The area also is proposed to be closed to prevent conflicts with the large recreational salmon fishery operating out of the San Francisco area. The marine sanctuary is proposed to be no larger than the area east of 123°40' W. longitude and between 38°20' an 37°30' N. latitude. The exact dimensions of the sanctuary will be determined after the public comment period following publication of this proposal to allow foreign vessels south of 39° N. latitude.

The regulations at 50 CFR 611.3(1)(1) provide for the imposition of additional restrictions for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Consequently, additional area closures south of 37°30' N. latitude, will apply to all foreign vessels and include the area fished in the experimental joint venture in 1982. The closure specified by the Navy includes the area eastward of 123°20' W. longitude to shore and would be bordered to the north and south respectively by 37°30' and 36°45' N. latitudes.

It is possible that these closures will not provide enough area to support a viable joint venture fishery for shortbelly rockfish. If impiemented, authorization for foreign vessels to operate south of 39° N. latitude would remain in effect through December 31, 1990, unless modified, superseded, or rescinded.

To provide the amount of harvest requested by U.S. fishermen, the Council also recommended that the Secretary increase the optimum yield (OY) for shortbelly rockfish by 30 percent, from 10,000 metric tons (mt) to 13,000 mt, as provided for at 50 CFR 663.22(b) and 663.23. The criteria that the Secretary must consider before increasing an OY inseason also are addressed in this notice.

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs groundfish fisheries in the exclusive economic zone (EEZ) 3–200 nautical miles offshore of Washington, Oregon, and California.

Authorizing Foreign Fishing Vessels South of 39° N. Latitude

The foreign fishing regulations of 50 CFR 611.70(d)(3) provide the procedure by which, at any time during the year, the Secretary may establish or modify seasons or areas for either directed foreign fisheries or joint venture fisheries for species other than Pacific whiting. The procedures require the Secretary not only to consult with the Council, but also to consider the factors addressed below.

(1) *Observed rates of incidental catches in previous foreign directed fishery or joint venture operations.* Shortbelly rockfish are caught fairly selectively. A small joint venture operation for shortbelly rockfish conducted in October 1982 caught 638 mt of shortbelly rockfish and 77 mt of incidental species, of which 75 mt were Pacific whiting, 1 mt was rockfish excluding Pacific ocean perch, 1 mt was sablefish, with trace amounts of flatfish and other fish. No salmon or Pacific halibut were taken. There has been no directed foreign fishery for shortbelly rockfish.

(2) *Current estimates of the relative abundance and availability of species caught or received incidentally.* Pacific whiting was the dominant incidental (bycatch) species taken in the 1982 joint venture for shortbelly rockfish, with a bycatch rate of 11 percent. The Council recommended a 15 percent incidental retention limit for the purpose of this experimental fishery in 1989. As an extreme example, if the OY for shortbelly rockfish is increased 30 percent to 13,000 mt as proposed in this notice, the OY is designated entirely for joint ventures, and the full 15 percent is taken, then approximately 2,000 mt of Pacific whiting would be caught. This amount would be subtracted from the 1989 JVP for Pacific whiting (currently 207,000 mt), reducing the amount available to the target fishery for that species by about 2,000 mt. Requests substantially exceed the 207,000 mt JVP for Pacific whiting.

Incidental catches of other species are expected to be negligibie. The council recommended an incidental retention allowance of 2 percent for all other groundfish species combined. In the 1982 joint venture, the bycatch of other species was less than 0.5 percent of the total catch.

(3) *Ability of the foreign fishery to attain the total allowable level of foreign fishing (TALFF) or JVP.* Because this is an experimental fishery to develop processing techniques and markets, it is not known whether the full JVP for shortbelly rockfish will be taken. Foreign processing capacity to utilize all of it clearly exists if given adequate time to deploy vessels.

(4) *Post and projected foreign and U.S. fishing efforts.* Domestic landings of shortbelly rockfish have been below 100 mt annually. The only joint venture for this species occurred in 1982; 638 mt of shortbelly rockfish and 77 mt of incidental species were taken. Although TALFF has been designated for shortbelly rockfish in the past, there has been no interest in a directed foreign fishery for this species.

The joint venture companies have asked to participate in the experimental fishery in 1989 and have requested 13,000–15,000 mt. The experimental joint venture fishery will not occur unless foreign processing vessels are authorized to operate south of 39° N. latitude.

(5) *Status of the stock.* Shortbelly rockfish virtually is unexploited. The most recent estimate of the maximum sustainable yield (MSY) is 44,250 mt, the amount that can be harvested annually over a long period of time without jeopardizing the resource.

(6) *Impact on domestic industry.* The joint venture is considered a domestic fishery, and thus the domestic industry will be enhanced if the experiment is successful. Shore-based processing plants also may benefit if new markets develop for this species. However, the joint venture fishery for Pacific whiting could be reduced by as much as 2,000 mt because the incidental catch of whiting taken in the shortbelly joint venture would count against the JVP for Pacific whiting. No other U.S. fishery is expected to be adversely affected.

The joint venture would be conducted by approximately 10 to 12 U.S. catcher vessels delivering to approximately four foreign processing vessels. Gear conflicts or preemption of fishing grounds are not expected with these few vessels. However, heavy vessel traffic occurs off San Francisco in Cordell Banks and the Gulf of Farallons, where substantial domestic commercial and recreational fisheries operate. The area which would remain closed to foreign processing vessels would include the waters around Cordell Banks and in the Gulf of Farallons in order to minimize the probability of gear conflicts and preemption of fishing grounds.

(7) *Other relevant scientific information.* There is evidence that shortbelly rockfish is a major source of food for salmon, adult rockfish, marine mammals and seabirds. Natural mortality, including the needs of other species preying on shortbelly rockfish, was a factor in the determination of the acceptable biological catch (ABC) of 10,000 mt for shortbelly rockfish. The prohibition of joint venture operations in the Cordell Banks and the Gulf of Farallons which are home to many predator species should diminish the effect on these species of the increase in OY to 3,000 mt over ABC. It is believed that this increase will not have a significant adverse impact upon predator-prey relationships. Even if the OY were increased to 13,000 mt, it would remain considerably lower than the estimated level of maximum sustainable yield (MSY) of 44,250 mt. Thus, harvests at this level are not expected to have a noticeable impact on any resource.

Proposed Action

In light of these factors, the Secretary proposes to allow foreign processing and support vessels to operate in joint venture operations for shortbelly rockfish in the EEZ as far south as 36°38' N. latitude, excluding the area around Cordell Banks and in the Gulf of Farallons that is no larger than the area enclosed by a line drawn due west at 38°20' N. latitude to 123°40' W. longitude, south to 37°30' N. latitude, then due east to shore. The closure specified by the Navy includes the area eastward of 123°20' W. longitude to shore and would be bordered to the north and south respectively by 37°30' and 36°45' N. latitude. Authorization to operate south of 39°, if granted, and any area restrictions, will appear in the additional restrictions attached to foreign vessel permits.

Increosing the OY for for Shortbelly Rockfish

The implementing regulations for the FMP at 50 CFR 663.22(b) provide for inseason increases to OY that cumulatively do not exceed the OY set at the beginning of the current fishing year by more than 30 percent. At its April 1989 meeting, the Council recommended increasing the 1989 coastwide OY for shortbelly rockfish by 30 percent, from 10,000 mt to 13,000 mt. There is no new stock assessment for this species so the ABC estimate would remain at 10,000 mt. The council recommended the maximum inseason increase th OY for shortbelly rockfish to accommodate the requests of the joint venture companies. The Council hoped to promote development of the fishery for this under-utilized species and to establish new markets.

The regulations at 50 CFR 662.22(b) require that the Council be consulted and that the factors addressed below be considered before determining the increase an OY during the fishing year.

(1) *Exploitable biomass and spawning biomass relative to MSY levels.* Data are inadequate to determine the relationship between the exploitable biomass, the spawning biomass, and the MSY.

(2) *Fishing mortality rate relative to MSY levels.* The most recent estimate of MSY is 44,250 mt. Fishing mortality of 13,000 mt is not expected to jeopardize the shortbelly rockfish resource.

(3) *Magnitude of incoming recruitment.* The magnitude of incoming recruitment is unknow. However, insofar as this is virtually a virgin biomass that has been lightly exploited, the level of incoming recruitment is not a critical factor at this time.

(4) *Projected effort and corresponding catches relative to ABC.* The ABC remains at 10,000 mt because a new stock assessment for shortbelly rockfish is not yet available. Catches might reach the proposed OY of 13,000 mt only if the experimental fishing permits are issued and foreign processing vessels are allowed to operate in the joint venture for shortbelly rockfish south of 39° N. latitude. As stated in paragraph (3) of this section, catches of 13,000 mt are expected to pose no risk to the shortbelly rockfish resource.

(5) *In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch.* Shortbelly brockfish are caught fairly selectively. See paragraph (1) under "Authorizing Foreign Fishing Vessels South of 39 Degrees N. Latitude."

(6) *The Impact, if any, of the proposed increase in OY on other species.* The effect of the proposed increase in OY from 10,000 mt to 13,000 mt would have little or no effect on other species. As discussed above, the amount of shortbelly needed as forage for other species already has been considered in the determination of ABC. Also, the target fishery for Pacific whiting may be reduced by as much as 2,000 mt to compensate for incidental catches of Pacific whiting in a joint venture for shortbelly rockfish. However, the total amount of Pacific whiting harvested would not change.

Proposed Action

After consultation with the Council, and in light of the above findings indicating that incresing the OY for shortbelly rockfish from 10,000 mt to 13,000 mt would not cause biological stress to shortbelly rockfish or any other species and would promote full utilization for the groundfish resource, the Secretary herein proposes increasing the OY for shortbelly rockfish for 10,000

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mt to 13,000 mt, and requests public comment on this proposed action.

Because domestic shore-based processors and joint venture operations intend to use all available shortbelly rockfish, none of the proposed increase would be made available for foreign fishing. Therefore, the proposed 3,000 mt increase would be divided 600 mt for the reserve (which would equal 2,600 mt, 20 percent of the proposed 13,000 mt OY), and 2,400 mt for JVP, increasing the 1989 JVP from 5,000 mt to 7,400 mt. Because the estimate of domestic annual processing (DAP) remains at 1,000 mt, the estimated domestic annual harvest (DAH), DAP plus JVP, would also be increased by 2,400 mt, from 6,000 mt to 8,400 mt. The total allowable level of foreign fishing (TALFF) remains unchanged at 2,000 mt.

Table 2 (published at 54 FR 32, January 3, 1989) is proposed to be revised as indicated below. Only the portions that pertain to shortbelly rockfish are revised and printed here. All other portions remain unchanged.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1989

[In thousands of metric tons]

	Total OY	DAP	JVP	DAH	Reserve	TALFF
Shortbelly rockfish	13.0	1.0	7.4	8.4	2.6	2.0

The estimates of DAP, JVP, DAH, and TALFF may be modified later in the year subsequent to an inseason survey of the domestic fishing industry's needs, according to the foreign fishing regulations at 50 CFR 611.70(d).

Classification

These proposed actions are based on the most recent data available. During the public comment period, the aggregate data upon which these proposed actions are based will be available for public inspection at the Regional Offices during business hours. (See ADDRESSES.)

These proposed actions are taken under the authority of 50 CFR 611.7(d) to allow for foreign vessels south of 39° N. latitude, and 50 CFR 663.22 and 663.23 to increase the OY for shortbelly rockfish. These actions comply with Exective Order 12291, and are covered by the regulatory flexibility analysis prepared for the implementing regulations.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

List of Subjects in 50 CFR Parts 611 and 663

Administrative practice and procedure, Fisheries, Fishing, Foreign relations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 89–23997 Filed 10–11–89; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 196
Thursday, October 12, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Adjudication, Administration, and Governmental Processes; Public Meetings

Committee on Adjudication

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss a report on the Social Security Administration (SSA) Administrative Appeals Process prepared for ACUS at SSA's request by Professor Frank S. Bloch of Vanderbilt University. The Committee will discuss whether to take any action on the report's recommendations.

Date: Friday, November 3, 1989, 10:00 a.m.

Location: Administrative Conference Library, 2120 L Street NW., Suite 500.

For Further Information Contact: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254–7020.

Committee on Administration

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to consider a proposed recommendation on improved use of medical decisionmakers in social security disability determinations in light of comments received from the public.

Date: Friday, November 3, 1989, 2:00 p.m.

Location: Administrative Conference Library, 2120 L Street NW., Suite 500.

Committee on Governmental Processes

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The Committee will discuss possible recommendations on federal personnel complaint, appeal and grievance procedures. The Conference's consultant for this project is William V. Luneburg of the University of Pittsburgh School of Law.

Date: Wednesday, October 18, 1989, 12:15 p.m.–2:30 p.m.

Location: Covington & Burling, 1201 Pennsylvania Avenue NW., Conference Room 1118, Washington, DC.

For Further Information Contact: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500 (202) 254–7020.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: October 6, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–24149 Filed 10–11–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–168]

National Boll Weevil Cooperative Control Program Environmental Impact Statement, Extension of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of comment period.

SUMMARY: We are extending the comment period for the draft environmental impact statement prepared by the Animal and Plant Health Inspection Service for the National Boll Weevil Cooperative Control Program. This action is needed to allow interested persons adequate time in which to prepare comments.

DATE: Consideration will be given only to comments received on or before November 3, 1989.

ADDRESSES: To help ensure that you written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that you comments refer to Docket 89–134. Comments we receive may be inspected at USDA, 14th and Independence Avenue SW., Room 1141, South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Copies of the draft environmental impact statement (DEIS) are available for review at the following locations: Southeastern Boll Weevil Eradication Program, USDA–APHIS–PPQ, 2119 East South Boulevard, Medical Plaza Building, Suite 204, Montgomery, Alabama 36116, (205) 288–0237; USDA–APHIS–PPQ, 611 East 6th Street, Room 202, Austin, Texas 78701, (512) 482–5241; Southwest Boll Weevil Eradication Program, USDA–APHIS–PPQ, 4320 East Broadway, Phoenix, Arizona 85040, (602) 261–3670; and the APHIS Reading Room, USDA, Room 1141 South Building, 14th and Independence Avenue SW., Washington, DC 20250.

Interested persons may obtain a copy of the DEIS by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1989, we published in the **Federal Register** (54 FR 31710–31711, Docket No. 89–134) a document announcing the availability of a draft

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environmental impact statement for the National Boll Weevil Cooperative Control Program. The document also requested comments on or before October 2, 1989, and gave notice of meetings by the Animal and Plant Health Inspection Service to allow public involvement in the development of the final environmental impact statement (FEIS) for the National Boll Weevil Cooperative Control Program. We have received notice from interested parties that they did not receive copies of the National Boll Weevil Cooperative Control Program Draft Environmental Impact Statement in time for adequate review and preparation of comments prior to the October 2 closing date. These persons have requested an extension of the comment period. Therefore, we are extending the comment period to allow adequate time for the preparation of comments. Accordingly, additional comments must be received on or before November 3, 1989.

Following the comment period, a FEIS will be prepared. A "Notice of Availability" of the FEIS will be published in a subsequent Federal Register notice.

Done in Washington, DC, this 6th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24065 Filed 10-11-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Middle Road Critical Area Treatment; RC&D Measure, New York; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Noice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (42 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Middle Road Critical Area Treatment RC&D Measure, Essex County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for stabilization of an eroding roadbank adjacent to Middle Road. Sediment and boulders dislodged from the eroding bank come to rest on the road surface creating a severe safety hazard to users of the highway. Much of the sediment produced enters Putnam Creek, impairing the water quality. The integrity of the roadbank will be assured through the installation of project measures. The planned works of improvement include installation of gabion baskets, shaping of the bank above the gabions, and seeding and fertilizing the site to establish vegetation.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

[This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901-Resource Conservation and Development-and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials]

Dated: September 28, 1989.

Paul A. Dodd,

State Conservationist.

[FR Doc. 89-24041 Filed 10-11-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration, Commerce.

Title: Marketing and Capacity Information Report; and Primary Beneficiary Marketing and Capacity Information Report.

Form Number: Agency Form ED-220 and ED-220PB; OMB-0610-0082.

Type of Request: Extension of the expiration date.

Burden: 40 respondents; 80 hours.

Average Hours per Response: 2 hours.

Needs and Uses: To determine competitive impact of EDA financial assistance to increase production capacity/service delivery by a particular firm/industry as required by 13 CFR 309.2, entitled "Unfair Competition".

Affected Public: Enterprises benefitting solely or primarily from proposed EDA grant or loan assistance.

Frequency: Once during application process.

Respondents's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Oficer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-24015 Filed 10-11-89; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-223-401]

Final Negative Countervailing Duty Determination: Portland Hydraulic Cement from Costa Rica

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that the manufacturers, producers, or exporters or portland hydraulic cement ("the subject merchandise"), as described in the "Scope of Investigation section of this notice, from Costa Rica did not export to the United States during the review period, calendar year 1988. Therefore, our determination in this investigation is negative.

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Carole A. Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-3217.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that the manufacturers, producers, or exporters of the subject merchandise from Costa Rica did not export to the United States during the review period, calendar year 1988.

Case History

On June 21, 1984, we received a petition from the Puerto Rican Cement Co., Inc. and the San Juan Cement Co., Inc. on behalf of the U.S. industry, and on July 11, 1984, we initiated our investigation of portland hydraulic cement from Costa Rica. We issued an affirmative preliminary determinatin on September 14, 1984 (49 FR 37134, September 21, 1984). We preliminarily determined that there was a reasonable basis to believe or suspect that certain benefits which constitute boundaries or grants within the meaning of the Act were being provided to Industria Nacional de Cemento, S.A. (INCSA), the only cement manufacturer to export cement from Costa Rica to the United States during the review period, calendar year 1983, and that the net boundary or grant was 15 percent *ad valorem*. On October 29, 1984, we initiated a proposed suspension agreement pursuant to section 704 of the Act. In accordance with section 704(g) of the Act, the Department will continue the investigation if a request is received within 20 days after the date of publication of our notice of suspension agreement. We did not receive such a request; therefore we issued no final determination.

On July 11, 1989, the suspension agreement was cancelled and we resumed our investigation of portland hydraulic cement from Costa Rica. [See, "Portland Hydraulic Cement from Costa Rica; Final Results of Countervailing Duty Administrative Review, Determination To Cancel Suspension Agreement, and Resumption of Investigation" (54 FR 29078, July 11, 1989).] On July 24, 1989, we informed all interested parties of our resumption of the investigation. As discussed in the "Review Period" section below, we determined that our review period in this resumed investigation would be calendar year 1988, and therefore on July 27, 1989, we sent a questionnaire to the Government of Costa Rica in Washington, DC. On August 11, 1989, we received certifications of non-exportation of the subject merchandise from the Government of Costa Rica, INCSA, and Cementos del Pacifico, S.A. From August 24 through August 25, 1989, we conducted verification of the government and companies certifications of non-exportation in San Jose, Costa Rica. On September 20, 1989, we received a case brief filed on behalf of the petitioner.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The product covered by this investigation is portland hydraulic cement, other than white non-staining portland cement, from Costa Rica. This merchandise is currently classifiable under HTS item number 2523.29.00.

Review Period

At the time of the resumption of this investigation, the information on the record covered the review period, calendar year 1983. We determined that this information did not reflect current importing trends of the subject merchandise. Therefore, for the purposes of this final determination, calendar year 1988 was determined to be the most accurate review period by which to measure whether benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to the manufacturers, producers, or exporters in Costa Rica of the subject merchandise.

Interested Party Comment

Petitioners contend that the Department should issue a final affirmative determination and that a countervailing duty of 15 percent *ad valorem* should be assessed against any imports of portland hydraulic cement from Costa Rica to the United States. Petitioners argue that substantial amounts of cement from Costa Rica were being imported into the United States at the time of the filing of the petition and at the time the investigation was originally initiated in 1984. Petitioners further argue that portland hydraulic cement from Costa Rica was being imported into the United States at the time of the suspension agreement and at the time of the Department's review of the agreement. In addition, the Government of Costa Rica has admitted that, and the Department has found that, countervailable subsidies have been and are available to exporters of portland hydraulic cement from Costa Rica to the United States during the most recent review period. The decision of the Costa Rican cement producers to stop exporting to the United States should be disregarded by the Department and should not constitute a basis for reaching a negative final determination.

DOC Position

As discussed in "Portland Hydraulic Cement From Costa Rica; Final Results of Countervailing Duty Administrative Review, Determination to Cancel Suspension Agreement, and Resumption of Investigation" (54 FR 29078, July 11, 1989), we resumed our investigation on the date of publication of this notice of final results of the review. We determined that in order to measure whether the manufacturers, producers, or exporters of portland hydraulic cement from Costa Rica are being provided benefits which constitute bounties or grants within the meaning of section 303 of the Act, the review period should reflect the most recently completed fiscal or calendar year.

The Department's official import statistics do not list any exports of the subject merchandise from Costa Rica to the United States from 1987 through the present. Based on verification of the certifications of non-exportation submitted for the purposes of this investigation, we have determined that the manufacturers, producers, or exporters of portland hydraulic cement from Costa Rica did not export to the United States during the review period, calendar year 1988. Therefore, we determine that subsidized imports of portland cement did not enter the United States during the review period.

Verification

We verified the information used in making our final determination in

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accordance with section 776(b) of the Act. During verification we followed standard verification procedures including meeting with government and company officials, examining relevant documents and accounting records, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Dated: September 25, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-23980 Filed 10-11-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 28, 1989, the Government of the United States requested with the Government of the United Arab Emirates regarding Categories 336/636 and 342/642, produced or manufactured in the United Arab Emirates.

The United States Government has decided to establish a twelve-month limit on Categories 336/636 and 342/642 for the period June 28, 1989 through June 27, 1990.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 27547, published on July 21, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 6, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 16, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period which began on June 28, 1989 and extends through June 27, 1990, in excess of the following restraint limits:

Category	Restraint Limit [1]
336/636	48,501 dozen.
342/642	96,768 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 27, 1989.

Textile products in Categories 336/636 and 342/642 which have been exported to the United States prior to June 28, 1989 shall not be subject to the limits established in this directive.

Textile products in Categories 336/636 and 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also, you are directed to charge the following amounts to the limits established in this directive for Categories 336/636 and 342/642. These charges are for goods imported during the period June 28, 1989 through July 31, 1989.

Category	Amount to be charged [1]
336	874 dozen.
342	800 dozen.
636	935 dozen.
642	3,734 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-24018 Filed 10-11-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

October 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 29, 1989, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding man-made fiber textile products in Categories 638/639 and 647/648, produced or manufactured in the United Arab Emirates.

The United States Government has decided to control imports in Categories 638/639 and 647/648 for the twelve-month period which began on July 29, 1989 and extends through July 28, 1990.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 33592, published on August 15, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 6, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 16, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period which began on July 29, 1989 and extends through July 28, 1990, in excess of the following restraint limits:

Category	Restraint Limit [1]
638/639	76,052 dozen.
647/648	54,207 dozen.

[1] The limits have not been adjusted to account for any imports exported after July 28, 1989.

Textile products in Categories 638/639 and 647/648 which have been exported to the United States prior to July 29, 1989 shall not be subject to this directive.

Textile products in Categories 638/639 and 647/648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-24019 Filed 10-11-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Science Board; Partially Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 30 October-2 November 1989

Time: 0800-1700 hours each day

Place: Fort Benning, Georgia

Agenda: The 1989 Army Science Board Fall General Membership Meeting will include:

30 October, 0800-1630—Closed
31 October, 1015-1545—Closed
1 November, 0840-1145—Closed, 1545-1700—Closed
2 November, 0745-1130—Closed

Subjects to be discussed include briefings on "Maintaining State of the Art in ATCCS", "International R&D", Army Science Board Functional Subgroup Reports, and briefings will be presented by personnel from Fort Benning. Those portions of the meeting indicated above will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-24002 Filed 10-11-89; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF ENERGY

Savannah River Operations; Financial Assistance Award; Intent To Award a Noncompetitive Cooperative Agreement

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Cooperative Agreement.

SUMMARY: The Department of Energy (DOE) announces that it plans to award a Cooperative Agreement to the University of South Carolina at Aiken (USC-A) in the amount of $334,583 over a five year period beginning October 28, 1989. This Cooperative Agreement is in support of USC-A's maintenance and operation of a Public Reading Room which houses DOE documents available to the general public in accordance with (a) the Freedom of Information Act, 5 U.S.C. 552(a)(2); (b) the Environmental Protection Agency's (EPA) requirement to establish an information repository at all remedial action sites and any removal sites likely to extend beyond fifteen days; and (c) EPA's requirement that an information repository be established for administrative records which are required by the Superfund established for administrative records which are required by the Superfund Amendments and Reauthorization Act (SARA). Pursuant to Subpart 600.7(b)(2)(i)(A&D) of the DOE Assistance Regulations (10 CFR Part 600), DOE has determined that eligibility for this Cooperative Agreement award shall be limited to the USC-A.

PROCUREMENT REQUEST NUMBER: 09-89SR18117.

PROJECT SCOPE: The University of South Carolina at Aiken has provided facilities and services to DOE since September 1984 by operating a Public Reading Room containing DOE documents available to the general public. Under the proposed five-year Cooperative Agreement, USC-A will continue to provide facilities and services, including staff expertise; space to house 8,000 plus documents; computerized indexing and filing system; a document security tag system; maintenance and updates of documents as appropriate; the indexing and filing of approximately 400 new documents per quarter; preparation and maintenance of a document master file; assistance to users in locating documents; recommendations for operation improvements; reproduction services; and an account of all requests for documents. In order to insure effective dissemination of DOE documents, the Department of Energy has determined that this Cooperative Agreement award to the University of South Carolina at Aiken on a noncompetitive basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Contracts & Services Division, U.S. Department of

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Energy, P.O. Box A, Aiken, SC 29802, (803) 725-2096.

Issued at Aiken, South Carolina on October 3, 1989.

John D. Wagoner,

Deputy Manager, Head of the Contracting Activity, Savannah River Operations Office.

[FR Doc. 89-24068 Filed 10-11-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Noncompetitive Financial Assistance Award Resource for the Future

October 5, 1989.

SUMMARY: The Federal Energy Regulatory Commission announces that pursuant to 10 CFR 600.6(a)(2), discretionary award of a cooperative agreement resulting from a unsolicited proposal will be awarded to Resource For The Future (RFF). The FERC is conducting negotiations with RFF for suport of joint in-depth policy research and analysis on immediate and long-term issues in the area of energy economics, regulatory economics and environmental economics, relevant to FERC's regulatory responsibilities in meeting statutory obligations. These neogiations are expected to result in the issuance of Cooperative Agreement Number DE-FC39-89RC90024, in which FERC will provide $225,000 of the total estimated cost of $250,000 for a performance period of five years estimated to begin November 1, 1989.

OBJECTIVE. The objective of the proposed agreement is for RFF and FERC to work cooperatively to perform timely independent and objective research on economic and regulatory issues facing the FERC.

FOR FURTHER INFORMATION CONTACT: Federal Energy Regulatory Commission, Division of Procurement, ED-33, ATTN: Charlotte A. Greenwell, Contract Specialist, 941 North Capitol Street, NE, Washington, DC 20428, Telephone Number (202) 357-5620.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23994 Filed 10-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2175-000, et al.]

Paiute Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Paiute Pipeline Company

[Docket No. CP89-2175-000]

September 28, 1989.

Take notice that on September 27, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-2175-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Westar Marketing Company (Westar), a marketer, under the blanket certificate issued in Docket No. CP87-309-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated June 1, 1989, under its Rate Schedule IT-1, it proposes to transport up to 13,750 MMBtu per day equivalent of natural gas for Westar. Paiute states that it would transport the gas through its system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and would redeliver the gas to Westar at the delivery points identified in the transportation service agreement.

Paiute advises that service under § 284.223(a) commenced July 20, 1989, as reported in Docket No. ST89-4457-000 (filed August 11, 1989). Paiute further advises that it would transport 1 MMBtu on an average day and 365 MMBtu annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-2154-000]

September 28, 1989.

Take notice that on September 22, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-2154-000 a request, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain facilities in Jersey City, New Jersey, under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is alleged that Transco and Public Service Electric and Gas Company (PSE&B) are parties to gas service agreements under Transco's Rate Schedules CD, FT, IT, PS, GSS, LSS, LG-A, S-2, WSS, and X-222 pursuant to which Transco delivers certain quantities of natural gas to PSE&G at several delivery points on Transco's system including the West End Gas Plant, located at St. Pauls and Duffield Avenues in Jersey City, New Jersey (West End Delivery Point). The West End Delivery Point consists of a metering and regulating station and a twelve-inch pipeline of approximately one thousand twenty-five feet connecting Transco's pipeline system to PSE&G facilities.

Transco avers that the construction and operation of the West End Delivery Point was authorized by the Commission in Docket No. G-2075. Transco contends that the West End Delivery Point facilities are no longer being utilized and that PSE&G has consented to the abandonment. Transco, therefore, proposes to abandon such facilities and the related gas services provided through the West End Delivery Point facilities. It is alleged that there would be no change in the maximum contract quantities of the underlying service agreements as a result of the proposed abandonment.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of the notice.

3. United Gas Pipe Line Company

[Docket No. CP89-2163-000]

September 28, 1989.

Take notice that on september 25, 1989, United Gas Pipe line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2163-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Graham Energy Marketing Corporation, a marketer of natural gas, under United's blanket certificate issued in docket No. CP88-6-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the interruptible gas transportation agreement, dated November 9, 1989, as amended on June 27, 1989, proposes to transport a maximum daily quantity of 123,600 MMBtu, 45,114,000, and that service commenced on July 24, 1989, as reported in docket No. ST89-4493-000, pursuant to § 284.223(a) of the Commission's Regulations.

United further states that existing facilities would be used to provide this transportation service.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89-2107-000]

September 28, 1989.

Take notice than on September 15, 1989, Arkla Energy Resources, a division of Arkla, Inc., (AER) P.O. Box 21734, Shreveport Louisiana 71151, filed herein an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for a blanket certificate of public convenience and necessity authorizing AER: (a) To sell natural gas for resale on an interruptible basis in accordance with a new Interruptible Sales Service Rate Schedule; (b) to transport natural gas in interstate commerce for interruptible direct sale to end-users; and (c) upon termination of the service agreements underlying individual interruptible sales, to abandon such sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that it proposes to charge a negotiated rate for sales under the proposed Rate Schedule ISS ranging between a maximum rate equal to AER's 100 percent load factor rate found in its Rate Schedule CD and a minimum rate equal to AER's actual weighted cost of gas (WACOG), for the month in which gas is delivered adjusted for a representative amount for out-of-period adjustments, plus fuel, the variable costs of delivering the gas and other applicable charges. AER implies that the proposed service would be made with existing facilities.

Comment date: October 19, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP89-2181-000]

September 28, 1989.

Take notice that on September 27, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2181-000 a request pursuant to § 157.205 of the Commissions Regulations under the Natural-Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Gulf Ohio Corporation (Gulf Ohio), a marketer, under the blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated July 20, 1989, under its Rate Schedule IT, it proposes to transport up to 550 MMBtu per day equivalent of natural gas for Gulf Ohio. Southern states that it would transport the gas from various receipt points in Texas, Louisiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to various points in Georgia.

Southern advises that service under § 284.233(a) commenced August 1, 1989, as reported in Docket No. ST89-4636. Southern further advises that it would transport 293 MMBtu on an average day and 107,000 MMBtu annually.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Equitrans, Inc.

[Docket No. CP89-2160-000]

September 28, 1989.

Taken notice that on September 25, 1989, Equitrans, Inc. (Equitrans), 4955 Steubenville Pike, Pittsburgh, Pennsylvania 15205, filed in Docket No. CP89-2160-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Consolidated Fuel Corporation (Consolidated), under Equitrans' blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to transport on a firm basis 4,613 Mcf of natural gas on a peak day, 4,707 Mcf on an average day and 1,718,055 Mcf on an annual basic for Consolidated Equitrans states that it would perform the transportation service for Consolidated under Equitrans' Rate Schedule FTS. Equitrans indicates that it would transport the gas from an interconnection with Tennessee Gas Pipeline in Allegheny County, Pennsylvania to three delivery points in Allegheny County, Pennsylvania.

It is explained that the service commenced September 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4746. Equitrans indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Texas Gas Transmission Corporation

[Docket No. CP89-2166-000]

September 28, 1989.

Take notice that on September 26, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2166-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of EnTrade Corporation (EnTrade), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport, on an interruptible basis, up to a maximum to 50,000 MMBtu of natural gas per day for EnTrade from receipt points located in Louisiana, offshore Louisiana, Indiana, Kentucky, Texas, Tennessee, Illinois, Arkansas and Ohio to delivery points located in Louisiana. Texas Gas anticipates transportating an annual volume of 18,200,000 MMBtu.

Texas Gas states that the transportation of natural gas for EnTrade commenced August 11, 1989, as reported in Docket No. ST89-4685-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Gas in Docket No. CP88-686-000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89-2180-000]

September 29, 1989.

Take notice that on September 27, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP89-2180-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Phibro, a marketer of natural gas, pursuant to a service agreement dated July 25, 1989, under Southern's Rate Schedule IT (Service Agreement No. 851220). It is stated that the term of the service agreement is effective from July 25, 1989,

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and shall be in full force and effect for a primary term of one month and shall continue and remain in force and effect for successive terms of one month thereafter until cancelled by either party giving five days written notice to the other party. Southern proposes to transport on a peak day up to 100,000 MMBtu; on an average day 100,000 MMBtu; and on an annual basis 36,500,000 MMBtu of natural gas for Phibro. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to various points in Georgia and South Carolina. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service to Phibro pursuant to its Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on August 1, 1989, as reported in Docket No. ST89-4637-000.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Forest Oil Corporation

[Docket No. CP89-2158-000]

September 29, 1989.

Take notice that on September 22, 1989, Forest Oil Corporation (Forest), 1500 Colorado National Building, 950 Seventeenth Street, Denver, Colorado 80202, filed in Docket No. CP89-2158-000 a petition for a declaratory order requesting that certain offshore facilities that Forest intends to construct constitute production and gathering facilities and are therefore exempt from the Commissions' Natural Gas Act (NGA) jurisdiction. In the alternative, Forest seeks a certificate of public convenience and necessity authorizing it to undertake construction and operation of the proposed offshore facilities, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Forest states that the proposed facilities consist of three pipelines in the offshore federal domain to be used for gathering natural gas from wells attached to offshore production platforms and delivering it to subsea taps with the jurisdictional interstate transmission lines offshore. Forest requests expeditious disposition of its petition.

Forest states that the largest of the three lines will consist of 5.4 miles of 12¾-inch pipe running from a production platform in Eugene Island Block 366 to an existing subsea tap located on TGPL Ship Shoal Eugene Island Block 349 Line (referred to as TTT) in Eugene Island Block 342. Forest states that near its terminus, the proposed line will cross transmission lines owned by Tarpon Gas Pipeline Company, Tennessee Gas Pipeline Company, and Northern Natural Gas Company. Inasmuch as interconnection with any of these three other pipelines would not have materially shortened the proposed line, and interconnection with these other lines was not feasible due either to economic or engineering constraints, Forest states that its proposal represents the shortest line suitable for gathering production from the Block 366 platform for the purpose of delivery to an interstate pipeline.

Forest further states that initially, two wells connected to the Block 366 platform will be brought on line with an initial combined daily deliverability of 90 MMcf per day (MMcfd) and operating pressures of about 1100 psig. Forest states that its present plans include the drilling of two additional wells on this platform, which will be developed on a schedule intended to increase deliverability from the platform to a level approximating the 100 MMcfd design capacity of the proposed gathering line. Forest avers that therefore, the 12¾ inch line is sized no greater than necessary to gather the anticipated production from the block 366 platform for delivery into an interstate pipeline.

Forest states it does not intend to install compression on the Block 366 platform in conjunction with construction of the 12¾ inch line. Compression may be installed at some date in the future, but, according to Forest, only if declines in reservoir pressure necessitate compression to maintain deliverability or to meet pipeline operating pressures.

Forest adds that no gas processing will take place on the platform. Forest states it will flow the gas through a separator on the platform, measure the stream's condensate and water content, and reinject the liquids into the gas stream. Any processing will occur at some point onshore.

Forest states that its second proposed line will consist of 1.44 miles of 10¾ inch pipeline running from Forest's production platform in Eugene Island Block 325 to an interconnection at an existng subsea tap with TTT in Eugene Island Block 320. Forest states that this line will not cross any other transmission lines. According to Forest, TTT is the nearest interstate pipeline to the Block 325 platform, and the subsea tap Forest proposes to employ is the nearest feasible point of interconnection with TTT.

Forest states that initially, four wells will be brought on line with a combined daily deliverability of 65 MMcfd. Forest states it presently has plans to drill five more wells on this platform, which will be developed on a schedule that will increase deliverability to a level approximating the 100 MMcfd design capacity of the proposed gathering line. Forest states that thus, the proposed 10¾ inch line is the shorest possible line suitable and is sized no greater than necessary for gathering production from the Block 325 platform for delivery into an interstate pipeline.

Forest also states that as with the 12¾ inch line, the gas will flow at operating wellhead pressures of about 1100 psig, without compression. Compression would only be added at some later date if declining reservoir pressures necessitate compression to maintain deliverability or to meet TTT's operating pressures. Forest states that liquids resulting from the operation of a separator to be located on the platform will be transported onshore via an oil pipeline that will originate on the Block 325 platform. Forest states that further processing, if any, will occur onshore.

Forest states that the third proposed line will consist of 0.34 mile of 4½ inch pipe running from Forest's production platform in Ship Shoal Block 277 to an interconnection with ANR Pipeline Company (ANR) in Ship Shoal Block 276. According to Forest, the 4½ inch line will not cross any other transmission lines, and the ANR interconnection represents the nearest feasible point at which Forest's production can be injected into an interstate pipeline. Forest states that initially, it will bring on line three oil wells, from which the casinghead gas production will amount to approximately 8 MMcfd. After initial deliveries commence, Forest states it will develop a fourth well, and it is expected that this well will increase the total casinghead deliverability to approximately the 20 MMcfd capacity of the line. Forest states that the 4½ line is no larger than necessary to gather Forest's anticipated production from this platform for delivery into an interstate pipeline.

Because of the lower operating pressures of the oil wells connected to the Block 277 platform, Forest states that compression will be necessary from the outset to deliver the casinghead gas that will flow from this line into ANR's transmission line. Forest states that the Block 277 platform will contain a separator for the separation of gas from the oil stream and a dehydrator to meet the gas specification requirements of ANR's transmission line. Forest adds that all other processing of the gas stream will occur onshore.

Forest states that the proposed facilities should be found to be nonjurisdictional. However, because time is of the essence and Forest must begin construction in October 1989 if gas is to begin flowing December 1 as planned, Forest alternatively seeks a certificate of public convenience and necessity authorizing construction in the event the Commission determines that the proposed facilities are subject to NGA jurisdiction. Forest states that it wished to make clear that its request for alternative relief is made for the purpose of expediting disposition of this petition and does not constitute acknowledgment that these proposed facilities require certification under the NGA.

Additionally, Forest seeks waiver of such Commission Regulations as are necessary to accept its petition as an application for a certificate. Forest specifically seeks waiver of §§ 157.14(a)(6)(D), (14), (17) and (18) of the regulations. To the extent that the Commission deems any of the omitted material indispensable to the issuance of a certificate, Forest requests that the Commission issue a certificate conditioned upon Forest's submitting the essential data in a form acceptable to the Commission prior to acceptance of any certificate.

Comment date: October 20, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP89-2166-000]

September 29, 1989

Take notice that on September 26, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2166-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu of natural gas for American Central, with an estimated average daily quantity of 50,000 MMBtu. On an annual basis, American Central estimates a volume of 18,250,000 MMBtu.

Transportation service for American Central commenced August 15, 1989, under the 120-day automatic provisions of Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4520.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Tennessee Gas Pipeline Company

[Docket No. CP89-1511-001]

September 29, 1989

Take notice that on September 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP89-1511-001 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to amend its transportation service for Chevron USA, Inc. (Chevron), a natural gas producer, under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes to amend its offshore transportation service for Chevron, as authorized in Docket No. CP89-1511-000, by transporting an additional 19,500 dekatherms (dth) equivalent per day of natural gas for a daily total of 21,500 dth. Tennessee also proposes, pursuant to § 157.211 of the Regulations and under the blanket certificate issued in Docket No. CP82-413-000, to construct six hot tap delivery points in order to deliver Chevron's gas. Tennessee proposes to construct these delivery points in West Delta 27, Main Pass Block 35, West Cameron Block 20, South Pass Block 55, Sabine Pass Block 13, and South Tambalier Block 37, offshore Louisiana.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Williston Basin Interstate Pipeline Company

[Docket No. CP89-2183-000]

September 29, 1989

Take notice that on September 27, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89-2183-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place three sales taps and appurtenant facilities under the blanket authorization issued in Docket Nos. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to abandon three Washakie County, Wyoming, sales taps and appurtenant facilities located on its natural gas transmission system. It is stated that the customers, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., and Wyoming Gas Company no longer require service through these taps. Williston Basin estimates that the total cost of the abandonment is approximately $959 and states that the original cost of the respective facility was borne by the customer.

Comment date: November 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

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required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23987 Filed 10-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-676-000]

Centel Corp.; Filing

October 3, 1989.

Take notice Centel Corporation (Centel) on September 28, 1989 tendered for filing the following Contracts: Full Requirements Contract between Centel and each of the following individual municipals: Cawker City, Glasco, Glen Elder, Lucas and Mankato; Municipal Interconnection Contract between Centel and each of the following individual municipals: Ashland, Beloit, Lincoln Center, Osborne and Stockton; Transmission Service Contract between Centel and the following municipal: Lindsborg. These Contracts and the applicable Service Schedules are intended to supersede Centel's existing service agreements with those municipal wholesale customers who have made arrangements to receive entitlements of Western Area Power Administration (WAPA) Capacity and Associated Energy to supplement their own general supply requirements. It also allows for the transmission of the WAPA Capacity and Associated Energy over the Centel transmission system. Additionally, Lincoln Center and Lindsborg will become new customers of Centel. While the Contracts and Service Schedules provide for new and supplemental services including the transmission of WAPA entitlements, all rates include in the applicable Service Schedules are the same as Centel's currently effective transmission and wholesale rates that were approved by the Commission in Docket No. ER88-261-000 by letter dated December 1, 1988. Waiver of the notice has been respectfully requested and an effective date of this filing has been requested for October 1, 1989.

Copies of the filing were served upon the Municipal's agent, Kansas Municipal Energy Agency (KMEA) and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23995 Filed 10-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing October 4, 1989.

Take notice that on September 28, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1
- Nineteenth Revised Sheet No. 10
- Fourth Revised Sheet No. 97;

Original Volume No. 1-A
- Fifteenth Revised Sheet No. 11
- Eighteenth Revised Sheet No. 12
- Eighth Revised Sheet No. 97A;

Original Volume No. 1-B
- Eighth Revised Sheet No. 10
- Eighth Revised Sheet No. 11;

Original Volume No. 2
- Twenty-first Revised Sheet No. 10
- Thirteenth Revised Sheet No. 11B.

The Company requests an effective date for the tariff sheets of November 1, 1989.

Nineteenth Revised Sheet No. 10 (First Revised Volume No. 1) and twenty-first Revised Sheet No. 10 (Original Volume No. 2) reflect an increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1 of 19.541 cents per dkt as compared to that contained in the Company's June 1, 1989 PGA filing in Docket No. TA89-1-49-000, effective August 1, 1989.

Pursuant to the Commission's Interim Rule (Order No. 514) in Docket No. RM 89-13-000, issued June 8, 1989, Williston Basin also submitted Fourth Revised Sheet No. 97 (Original Volume No. 1), reflecting a revision to the formula for computing monthly carrying charges in PGA filings.

The remaining tariff sheets submitted in the instant filing reflect an increase of 0.639 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's June 1, 1989 filing in Docket No. TA89-1-49-000, effective August 1, 1989. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23996 Filed 10-11-89; 8:45 am]

BILLING CODE 6717-01-M

[ERA DOCKET NO. 89-64-NG]

Office of Fossil Energy

Boundary Gas, Inc.; Application to Amend a Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend a long-term authorization to import natural gas from Canada

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 12, 1988, of an application filed by Boundary Gas, Inc. (Boundary), to amend its authorization to import Canadian natural gas. Boundary requests that its authorization be amended to allow it to import up to 92,500 Mcf per day through January 15, 2003. Boundary would purchase the natural gas from TransCanada PipeLines Limited (TransCanada) and resell the gas to the 15 stockholders of Boundary. Tennessee Gas Pipeline Company (Tennessee) will transport the gas in the U.S. for all the stockholders except National Fuel Gas Supply Corporation, which will transport its own volumes. No new facilities will be needed for the importation and transportation of gas under the proposed amendment.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, National Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Boundary is a closed corporation under the laws of Delaware and is wholly owned by the 15 stockholders of Boundary (the Repurchasers), all of which are local distribution companies or natural gas pipelines primarily serving affiliated distribution companies located in the northeastern United States. The Repurchasers are: the Brooklyn Union Gas Company, Granite State Gas Transmission, Inc., New Jersey Natural Gas Company, Boston Gas Company, the Connecticut Light and Power Company, Consolidated Edison Company of New York, Inc., National Fuel Gas Supply Corporation, Long Island Lighting Company, Connecticut Natural Gas Corporation, Essex County Gas Company, Manchester Gas Company, Gas Service, Inc., Valley Gas Company, Berkshire Gas Company, and Fitchburg Gas and Electric Light Company.

On August 9, 1982, the Administrator of the Economic Regulatory Administration (ERA) issued DOE/ERA Opinion and Order No. 45 (Order No. 45), 1 ERA Para 70,539 conditionally authorizing Boundary to import natural gas for service into the northeastern United States. Final authority was conditioned upon completion of the appropriate environmental analyses. The gas was to be purchased from TransCanada. Boundary was authorized to import a total of 675.25 Bcf of natural gas, up to 185,000 Mcf of gas per day, for a period not to exceed ten years from the date deliveries commenced or from November 1, 1982, whichever occurred first, plus one year for receipt of make-up gas.

Subsequent to the issuance of Order. No. 45, Boundary reduced the scope of its original import proposal as a result of the Canadian National Energy Board's (NEB) January 27, 1983, omnibus export decision in which TransCanada was authorized to export and sell to Boundary less than half of its requested volumes. Because of the limitations on pipeline capacity in Canada and the U.S. at the time the natural gas sales were to begin, TransCanada and Boundary agreed to divided the reduced Boundary project into two phases. The first phase, termed Boundary Phase I, involved importing 40,000 Mcf of gas per day over existing facilities commencing November 1, 1984, until facilities were available for Boundary Phase II, at which time the full 92,500 Mcf per day authorized by the NEB would be imported. On February 8, 1984, DOE/ERA Opinion and Order No. 45B (1 ERA Para. 70,560) was issued authorizing the importation of the Boundary Phase I volumes.

On March 5, 1985, Boundary, pursuant to DOE's new natural gas import policy guidelines (49 FR 6684, February 22, 1984), submitted, for informational purposes, an amendment to its gas purchase contract with TransCanada (Phase I contract). The Phase I contract, as amended, featured a two-part demand/commodity rate structure with monthly adjustments, an annual renegotiation provision, an arbitration clause and elimination of take-or-pay requirements. On December 17, 1985, Boundary submitted an informational filing enclosing the gas purchase contract between Boundary and TransCanada for the Boundary Phase II volumes (Phase II contract). The relevant pricing, arbitration and take-or-pay terms of the Phase II contract were essentially the same as those contained in the amended Phase I contract.

In its current application, Boundary is seeking authorization to amend and extend its import authorization in accordance with the provisions of the August 31, 1988, Precendent Agreement to First Amendment to Phase II Gas Purchase Contract (precendent agreement) and the form of the First Amendment to Phase II Gas Purchase Agreement (Phase II amendment). The Phase II amendment will be entered into by Boundary and TransCanada as soon as the conditions of the precendent agreement have been met.

The Phase II contract currently provides for a total contract quantity of 330,070 MMcf of natural gas with daily contract quantities (DCQ) of 92,500 Mcf from November 1, 1988 through October 31, 1994, which then decrease until end of the contract term on November 1, 1996. The Phase II amendment would increase the total contract quantity to 552,716 MMcf and extend the contract through January 15, 2003. The DCQ would be 92,500 Mcf for the term of the contracts. The Phase II amendment would conform the Phase II contract with the terms of the gas transportation contracts between Tennessee and the Repurchasers.

In addition to extending the term and increasing the contract quantities of the Phase II contract, the Phase II amendment would eliminate the producer fixed cost component from the Phase II demand charge and would further amend the demand charge provision to reflect the adoption of a two-part rate by NOVA, an Alberta corporation. The Phase II amendment also contains a revised gas supply provision that would provide Boundary with specific assurances regarding the deliverability of the gas over the term of the contract, including a commitment by TransCanada to indemnify Boundary for any increased costs incurred as a result of a deliverability shortfall.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that

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may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the amended Phase II contract is fully consistent with the gas import policy guidelines and thus is consistent with the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this request is granted, the authorization would be conditioned on the filing of quarterly reports to facilitate monitoring of the operation and effectiveness of DOE's import program.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (52 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If any additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Boundary's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24069 Filed 10–11–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Technical Subgroup of Radio Advisory Committee; Meeting

October 5, 1989.

The Technical Subgroup of the Advisory Committee on Radio Broadcasting will reconvene at 10 a.m. on Wednesday, October 25, 1989, in the McCollugh Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

As decided and announced at the October, 3, 1989 meeting of the Subgroup, this next session will be a continuation of that meeting, and will address the same agenda; which is set out below.

As the forthcoming October 25, 1989 session, the Subgroup will continue its consideration of:

Adjacent channel interference standards for AM stations, including the report of the working party presented at the July 13, 1989 Technical Subgroup meeting;

Proposed US/Mexican expanded AM band agreement; and

Other business relating to radio broadcasting.

The Subgroup's meetings are continuing ones, and may be resumed after each session as decided by the participants. All meetings of the Radio Advisory Committee and the Technical Subgroup, are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824–5660.

Federal Communications Commission.

Donna R. Searcy,

Secrtary.

[FR Doc. 89–24087 Filed 10–11–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Home Savings & Loan Association, New Orleans, LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Home Savings & Loan Association, New Orleans, Louisiana on August 3, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc 89–24049 Filed 10–11–89; 8:45 am]

BILLING CODE 6720–01–M

South Savings and Loan Association, Slidell, LA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for South Savings and Loan Association, F.A., Slidell, Louisiana, on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–24050 Filed 10–11–89; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; Home Savings & Loan Association, New Orleans, LA

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Home Savings & Loan Association, New Orleans, Louisiana on August 3, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–24046 Filed 10–11–89, 8:45 am]

BILLING CODE 6720–01–M

South Savings and Loan Association, Slidell, LA; Replacement of Conservator with Receiver

Notice is hereby given that pursuant to the authority contained in § 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for South Savings and Loan Association, Slidell, Louisiana ("Association"), with the FSLIC as sole Receiver for the Association on August 7, 1989.

Dated: August 8, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–24057 Filed 10–11–89; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 89–21]

Filing of Complaint and Assignment

October 4, 1989.

In the matter of *Resources Trucking, Inc.* v. *Evergreen Marine Corp., Evergreen Handt Corp. and Evergreen International (USA) Corp.*

Notice is given that a complaint filed by Resources Trucking, Inc. ("Complainant") against Evergreen Marine Corp. ("EMC"), Evergreen Handt Corp. ("EHC"), and Evergreen International (USA) Corp. ("EIC") was served October 4, 1989. Complainant alleges that EMC engaged in violations of sections 10(b) (1), (2), (3), (4), (6), (8), (10), and (12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b) (1), (2), (3), (4), (6), (8), (10) and (12), and that respondents EHC and EIC violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by improperly and unlawfully seeking per diem charges, and cancelling an equipment interchange agreement with Complainant as a result of Complainant's refusal to pay the per diem charges.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 4, 1990, and the final decision of the Commission shall be issued by February 4, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 89–23978 Filed 10–11–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Constitution Bancorp, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 1, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Constitution Bancorp, Inc.*, Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Constitution Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Estes Park Bank Restated Employee Stock Ownership 401(k) Plan*, Estes Park, Colorado; to become a bank holding company by acquiring 30 percent of the voting shares of Estes Bank Corporation, Estes Park, Colorado, and thereby indirectly acquire The Estes Park Bank, Estes Park, Colorado.

Board of Governors of the Federal Reserve System, October 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24088 Filed 10–11–89; 8:45 am]

BILLING CODE 6210–01–M

The Fuji Bank, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities.

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

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holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Limited,* Tokyo, Japan; to acquire 75.1 percent of Kleinwort Benson Government Securities, Inc., Chicago, Illinois, and thereby engage in (1) underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by a bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks (such obligations being "eligible securities"), pursuant to § 225.25(b)(16) and activities incidental thereto, including repurchase and reverse repurchase transactions on such securities, collateralized borrowing and lending of such securities, clearing, settling, accounting, record keeping and other ancillary services pursuant to § 225.21(a)(2) of Regulation Y; (2) engaging in futures, forward and options contracts on eligible securities for hedging purposes in accordance with 12 CFR 225.142; (3) providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies in connection with, and as an incident to, the proposed eligible securities activities, pursuant to § 225.25 (b) (4) (iii) and (iv); (4) acting as a future commission merchant ("FCM") for affiliated and nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, and providing investment advice to institutional customers in conjunction therewith, pursuant to § 225.25 (b) (18); and (5) providing investment advice including counsel, publication, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures contracts, pursuant to § 225.25 (b) (19) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24089 Filed 10-11-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunication Standard (FED-STD). FED-STD 1023, "Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice Utilized with 25 KHZ Channel FM Radios Operating Above 30 MHZ" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of telecommunication standards for NCS interoperability and the non-computer communication interface.

2. On January 26, 1988, a notice was published in the **Federal Register** (53 FR 2111) that a proposed draft Federal Telecommunications Standard entitled "Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice Utilized with 25 KHZ Channel FM Radios Operating Above 30 MHZ" was being proposed for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. The approved standard contains four sections. Sections 1 and 2 provide information regarding description, objectives, application, definitions and referenced documents. Sections 3 and 4 provide the technical requirements of the standard.

5. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), Room 6039, 7th and D Streets SW., Washington, DC 20407; telephone (202) 472-2205.

Dated: September 22, 1989.

Richard H. Hope III,

Acting Commissioner, Information Resources Management Service.

Attachment.

[FED-STD-1023]

Federal Standard Telecommunications: Interoperability Requirements for Encrypted, Digitized Voice With 25 kHz Channel FM Radios Operating Above 30 MHz

This standard is issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended

1. Scope

1.1 *Description.* This standard establishes interoperability requirements regarding the analog to digital conversion, encryption (with related synchronization), and

modulation of encrypted voice associated with Frequency Modulation (FM) radio systems employing 25 kHz channels and operating above 30 MHz. In this standard, voice is digitized using 12 kbit/s Continuously Variable Slope Delta-modulation (CVSD) and then encrypted using a National Security Agency (NSA) Commercial COMSEC Endorsement Program (CCEP) Type I encryption algorithm.

1.2 *Purpose.* This standard is to facilitate interoperability between telecommunication facilities and systems of the Federal Government.

1.3 *Application.* This standard shall be used by all Federal departments and agencies in the design and procurement of digitized voice Type I encryption equipment for use with nominal 25 kHz channel FM radio systems that operate above 30 MHz and digitize voice at greater that 4.8 kbits/s and less that is kbits/s. All such equipment must be capable of digitizing voice using 12 kbits/s Continuously Variable Slops Delta-modulation (CVSD).

Note: This standard applies only to Type I (i.e., protection of classified information) systems and does not restrict the use of other systems, such as Data Encryption Standard (DES) encryption or analog and quasi-analog scrambling systems.

2. Referenced Documents

a. NSA Specification 86-33, INDICATOR Interface Control Document (FOUO)

b. NSA Specification 86-32, WINDSTER Interface Control Document (FOUO)

c. Communications Security Equipment System Document 14, TSEC/KY-57/58 (CONFIDENTIAL)

Note: All references to the above document assume the KY-57/58 has been modified to operate at 12 kbits/s (i.e., 75 percent normal clock rate).

The above three documents are published by the National Security Agency (NSA), Fort Meade, MD 20755, and can be made available to Government departments and agencies and to manufactures participating in the NSA Commercial COMSEC Endorsement Program (CCEP).

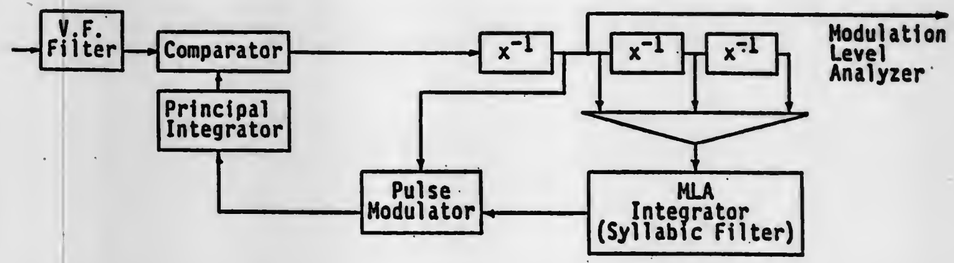
3. Requirements

3.1 *Overview.* This standard describes interoperability-related requirements for the conversion of analog voice to digital form (section 3.2), its encryption and related synchronization (section 3.3), and subsequent frequency modulation (section 3.4).

3.2 *Analog to Digital Conversion*

3.2 ' Digital Rate. Voice shall be converted, using Continuously Variable Slope Delta-modulation (CVSD), to a 12,000 bit/s +.018 percent digital stream.

3.2.2 Block Diagram and General Description. The following diagram is a typical representation of the CVSD analog-to-digital conversion process.



In the typical CVSD representation above, the incoming analog voice signal is passed through a Voice Frequency (V.F.) Filter and then compared, by a Comparator, with the output of the Principal Intgrator. The previous bit output of this Comparator is used: (1) As the digital output of the CVSD encoder, (2) to determine the polarity of the pulse by the Pulse Modulator, and (3) as input of the Modulation Level Analyzer. The Modulation Level Analyzer provides indication to the MLA Integrator whenever the last and previous two bits from the Comparator are either all ONEs or all ZEROs. (This is referred to as run-of three coincidence coding). The MLA Integrator determines the step size, which is variable and based upon the MLA output, and provides this pulse amplitude information to the Pulse Modulator. The Pulse Modulator provides pulses to the Principal Integrator as the Principal Integrator attempts to follow the shape of the input voice waveform.

3.2.3 V.F. Filter. The V.F. Filter should have an attenuation at 6 kHz and higher frequencies relative to frequencies between 300 and 3,000 Hz of at least 20 dB. It is recommended that the filter be essentially flat (i.e., +3 dB) between 300 and 3,000 Hz.

3.2.4 Comparator. The binary digital output of the Comparator shall be either ONE or ZERO, depending upon whether the amplitude of the input voice signal is greater than or less than the output of the Principal Integrator.

3.2.5 Modulation Level Analyzer. The Modulation Level Analyzer (MLA) shall charge the MLA Integrator whenever the last and two immediately preceding bits from the Comparator are either all ONEs or all ZEROs (i.e., there is run-of-three coincidence).

3.2.6 MLA Integrator. The MLA Integrator (often called Syllabic Filter) provides pulse amplitude from one bit time to the next (i.e., quantizing step size) should vary, in a linear manner, from a run-of-three coincidence rate of 0 percent to a rate of 50 percent by a voltage ratio of approximately 10 to 1 (i.e., 20 dB). The time constant of the MLA Integrator shall be 6+2 ms.

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3.2.7 Pulse Modulator. The pulse modulator shall create pluses using amplitude information from the MLA Integrator and polarity information form the Comparator.

3.2.8 Principal Integrator. The Principal Integrator shall have a time constant of 1+.25 ms.

3.3 *Encryption*

3.3.1 Encryption Algorithm. Encryption of the digitized voice shall be accomplished with the encryption algorithm used in the INDICATOR and WINDSTER COMSEC Modules (see references a and b) using the cryptographic mode that has cryptographic compatibility with the KY–57/58. (Other compatible implementations may be substituted.)

3.3.2 Encryption Operating Mode. The encryption process shall use the cryptographic operating mode of the Indicator and Windster COMSEC Modules designated for compatibility with the KY–57/58. (Other compatible implementations may be substituted.)

3.3.3 Cryptographic Synchronization

3.3.3.1 Synchronization Check Bits. Transmitting radios shall predictably force synchronization check bits in the unencrypted digitized voice, prior to encryption, as is done by the KY–57/58 (see reference a section 5.3, paragraph 2) and reference C). Receiving radios shall utilize these predictable synchronization check bits to determine whether cryptographic synchronization has been lost (see reference a, section 5.3.3, paragraph 3).

3.3.3.2 Alternating ONE/ZERO pattern. Continuously Variable Slope Delta-modulation (CVSD) should inherently produce an alternating binary ONE/ZERO pattern during the idle condition (i.e., pauses in speech). In order to promote rapid initial synchronization and resynchronization, transmitting radios shall ensure that a segment of alternating ONE/ZERO pattern at least 95 percent the length of the segment produced by the KY–57/58 (see reference c) is produced in the encrypted bit stream, prior to encryption, at least once every two seconds. All receiving radios shall be capable of initial synchronization and subsequent resynchronization (after detecting absence of synchronization check bits) utilizing segments of alternating ONE/ZERO pattern in the decrypted bit stream.

3.3.4 End-of-Message Sequence. Radios shall transmit the same encrypted End-of-Message sequence used by the KY–57/58, with a duration between 60 and 120 percent of that transmitted by the KY–57/58, at the end of each half-duplex transmission, followed by 160+10 ms of unencrypted alternating ONE/ZERO pattern, to mark the end of a transmisison. (Note: this is to assist encryption equipment and repeaters of distinguishing between a fade condition and an actual end of transmission.)

3.3.5 Additional Non-voice Sequences. Radios may employ additional, unspecified, non-voice sequences at the start of transmissions (e.g. KY–57/58 initial synchronization). However, use of these additional sequences shall not impair interoperations with radios not utilizing such additional sequences.

3.4 *Modulation Deviotion and Coding.* Transmitter deviation shall be +4 kHz (+10 percent) from the carrier frequency. Receiving radios shall operate satisfactorily regardless of whether transmitted binary ONEs (or ZEROs) were coded as positive or negative 4 kHz shifts in carrier frequency.

3.5 *Spectrum Standards.* Applicable spectrum standards for Federal Government radiocommunication systems are given in Chapter 5 of the National Telecommunications and Information Administration's (NTIA) "Manual of Regulations and Procedures for Radio Frequency Managements"

4. *Effective Date.* The use of this standard by U.S. Government departments and agencies is mandatory effective 180 days following the date of this standard.

5. *Changes.* When a Government department or agency considers that this standard does not provide for its essential needs, a statement citing specific requirements shall be sent in duplicate to the General Services Administration (K), Washington, DC 20405, in accordance with the provisions of Federal Property Management Regulation 41 CFR 101–29.403–1. The General Services Administration will determine the appropriate action to be taken and will notify the agency.

Preparing Activity

National Communication System, Office of Technology and Standards, Washington, DC 20305–2010

[FR Doc. 89–24013 Filed 10–11–89; 8:45 am]
BILLING CODE 6820–25–M

General Services Administration Order; GSA Metric Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: This notice invites comments on a proposed order that will establish the metric system of measurement within the General Services Administration. The Omnibus Trade and Competitiveness Act of 1988, which amended the Metric Conversion Act of 1975, requires that each agency of the Federal Government establish guidelines to carry out the policy set forth in the law. This order will meet that requirement within the General Services Administration.

DATE: Comments are due in writing on or before November 13, 1989.

ADDRESS: Comments should be addressed to the GSA Metric Steering Group, Office of Acquisition Policy (V), 18th and F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Rizzi, GSA Office of Acquisition Policy, (202) 566–1043.

SUPPLEMENTARY INFORMATION:

A. Background

Sec. 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. The law requires Federal agencies to use the metric system in procurements, grants, and other business-related activities by a date certain and to the extent economically feasible by the end of fiscal year 1992. The law also requires Federal agencies to establish implementing guidelines as soon as possible. This order will establish the required guidelines within the General Services Administration.

B. Executive Order 12291

This order is exempt from the requirements of E.O. 12291 because the order relates to agency organization and management (section 1.(a)(3)).

C. Regulatory Flexibility Act

This action is exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for this policy statement by section 553 of the Administrative Procedure Act or any other law. Therefore, no initial or final regulatory flexibility analysis will be prepared.

D. Paperwork Reduction Act

This order does not contain a collection of information for purposes of the Paperwork Reduction Act.

For the reasons set out in the preamble, it is proposed to issue GSA Order ADM 8000.1A as follows:

Authority: 40 U.S.C. 486(c).

Dated: October 4, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

GSA Order

Subject: GSA Metric Program

1. *Purpose.* This order establishes policies and assigns responsibilities for implementing the metric system of measurement within the General Services Administration.

2. *Cancellation.* ADM 8000.1 is canceled.

3. *Background.*

a. The Metric Conversion Act of 1975 (Pub. L. 94–168) stated that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States.

b. On August 23, 1988, the President signed the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164), which amended the Metric Conversion Act of 1975 to declare:

(1) That the metric system of measurement is the preferred system of weights and measures for United States trade and commerce:

(2) That each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurements, grants and other business-related activities (unless metric usage is impractical or would have an adverse impact on the market share of U.S. firms); and

(3) That agencies seek out ways to increase understanding of the metric system of measurement through educational information and guidance in government publications.

4. *Applicability.* This order applies to all Central Office services and staff offices and regional offices.

5. *Definitions.*

a. *Metrication.* Any act that increases the use of the metric system including metric training and initiation or conversion of measurement-sensitive processes and systems to the metric system.

b. *Metric system.* The International System of Units (Le Systeme International d'Unites (SI)) of the International Bureau of Weights and Measures. The units are listed in Federal Standard 376A, Preferred Metric Units for General Use by the Federal Government.

c. *Hard metric.* The use of standard metric (SI) measurements only in specifications, standards, supplies, and services.

d. *Soft metric.* The result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

e. *Dual systems.* The use of both inch-pound and metric systems. For example, an item is designed, produced, and described in inch-pound values with soft metric values also shown for information or comparison purposes.

f. *Hybrid systems.* The use of both inch-pound and hard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

6. *Policies.*

a. GSA will implement the metric system in a manner and on a schedule consistent with Pub. L. 100–418.

b. GSA will support Federal transition and National conversion to the metric system through participation on the interagency Committee on Metric Policy and on Government/industry subcommittees, working panels, and groups.

c. Central Office services and staff offices and regional offices will use the metric system in all procurement and other business-related activities consistent with security, operational, economic, technical, logistical, training, and safety requirements.

d. GSA will encourage industry in the change to the metric system by acquiring commercially available metric products and services that meet the functional requirements of GSA and its customers, so long as competition is maintained.

e. Specifications and standards for Federal or GSA procurement will be developed in metric when metric is the accepted industry system. Commercially developed metric specifications and internationally developed voluntary standards using metric will be adopted whenever possible. When metric is not the accepted industry system, soft metric, hybrid, or dual systems may be used during transition. As soon as practical, soft, dual, and hybrid English/metric measurements will be replaced with hard metric measurements.

f. Existing specifications and standards in inch-pound units need not be converted, unless conversion is necessary or advantageous.

g. The measurement units in which a system is originally designed may be retained for the life of that system, unless conversion is necessary or advantageous.

h. Bulk (loose, unpackaged) materials normally will be specified and accepted in metric units. Measuring devices, shop, and laboratory equipment should be procured in metric or dual units when possible.

i. Metric conversion costs will be handled in GSA as normal operating expenses rather than as special one time costs. However, these costs are to be identified to the extent feasible. This includes the cost of metric aids, tools, equipment, and training.

j. GSA will establish training plans and practices that increase employee awareness and understanding of metric system conversion.

7. *Interagency coordination.* Interagency coordination of metrication activity within the United States is the function of the following organizations:

a. *Interagency Committee on Metric Policy (ICMP).* The ICMP provides for high-level coordination of metric policy between Federal agencies. The Associate Administrator for Acquistion Policy (V) represents GSA on this Committee.

b. *ICMP Metrication Operating Committee (MOC).* The MOC coordinates appropriate interagency metrication activities and is composed of Federal agency metric coordinators. The MOC undertakes tasks assigned by the ICMP.

c. *MOC Functional Area Subcommittees.* Subcommittees are formed by the MOC to coordinate in specific functional areas and to keep agency officials informed of metric progress being made by industry in those functional areas as it affects Federal activities. MOC subcommittes exist in such functional areas as construction, procurement and supply, transportation, and consumer affairs. GSA is represented on the subcommittees by individuals from the services and staff offices having direct interest in their activities.

d. *American National Metric Council (ANMC).* Because the private sector has an essential role in the transition to the use of metric measurements, its needs and capabilities must be considered along with those of the Federal Government. The ANMC has traditionally been regarded as the principal representative of private sector metric interests, plans, and conversion actions. Federal agencies, including GSA, work closely with the ANMC to aid in exchanging ideas, plans, and methods needed to fulfill the intent of Publ. L. 100–418.

8. *Responsibilities.*

a. The Associate Administrator for Acquisition Policy will:

(1) Ensure GSA's implementation of Pub. L. 100–418.

(2) Represent GSA on the ICMP.

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(3) Establish GSA policy for use of the metric system of measurement and approve or disapprove deviations from that policy.

(4) Ensure appropriate GSA office representation on MOC subcommittees.

(5) Appoint the GSA Metric Coordinator to serve on the MOC and its Executive Committee and to chair the GSA Metric Steering Group.

b. The GSA Metric Steering Group will formulate metric policy for the approval of the Associate Administrator for Acquisition Policy.

c. The Associate Administrator for Administration (C) will identify and coordinate appropriate metrication training programs for GSA employees.

d. The Associate Administrator for Public Affairs (X) will:

(1) Advise, clear, coordinate, and assist in the production of all publications and audiovisuals proposed by GSA services and staff offices to inform other Federal agencies or the public of new uses of the metric system in GSA programs. Projects must be coordinated and cleared, in the proposal stage, with the Publications Division (XSP), Office of Communications (XS), Office of the Associate Administrator for Public Affairs (X), by means of a GSA Form 3375, Proposal Brief for Publications and Audiovisuals. Procedures and applicabilities are detailed in GSA Order, Clearance and Coordination of GSA Publications and Audiovisuals (ADM 1035.6B).

(2) Devise and implement economical, effective means for informing GSA employees of new uses of the metric system within the agency and for increasing employee understanding of the metric system of measurement.

e. The Comptroller (B) will include in annual budget submissions to the Congress GSA's progress in implementing the metric system pursuant to section 12 of Public Law 100–418 (see paragraph 9).

f. Central Office services and staff offices regional offices will:

(1) Designate an organizational element to monitor metric conversion activities for which they are responsible;

(2) Appoint an individual as their Metric Coordinator; and

(3) Develop metric guidelines applicable to their specific mission and responsibility. Guidelines will be consistent with this order, the "Metric Handbook for Federal Officials" (available from the National Technical Information Service #PB89–226922) regarding the selection of proper metric units and symbols, and guidelines and interpretations developed by the GSA Metric Steering Group (see paragraph 10.b.).

9. *Reporting.*

a. Central Office services and staff offices and regional offices shall submit to the Office of Acquisition Policy, not later than November 1 of each year, a report for the past fiscal year including:

(1) Significant metric information, milestones, or accomplishments;

(2) Significant problems encountered in metric conversion;

(3) Any recommendations regarding GSA Metric Program policy or activities including actions planned for the current fiscal year to further implement the metric system; and

(4) Other relevant information. Such reporting shall cease in the year after full implementation.

b. The GSA Metric Coordinator shall consolidate the above reports into an annual GSA Metric Report. This report shall be submitted for approval to the Associate Administrator for Acquisition Policy by December 1 of each year. The Associate Administrator for Acquisition Policy shall present the final report to the Administrator by January 1 of each year for submission to Congress as part of the annual budget pursuant to section 12 of Public Law 100–418.

10. *Program operation.*

a. The GSA Metric Program will be operated through a Metric Steering Group, chaired by the GSA Metric Coordinator, and shall include a Metric Coordinator from each affected Central Office service and staff office. General guidance for the GSA Metric Steering Group will be provided by the Associate Administrator for Acquisition Policy as necessary.

b. The GSA Metric Steering Group will meet as necessary to assist in achieving a uniform and coordinated approach to implementing the requirements of Pub. L. 100–418. Guidelines and interpretations will be developed by the Group.

11. *Report.* Report control number _____ is assigned to this order.

12. *Forms.* This order provides for the use of GSA Form 3375, Proposal Brief for Publications and Audiovisuals. Additional forms should be obtained by forwarding an original and two copies of GSA Form 49, Requisition for Equipment, Supplies, or Services, to: General Services Administration, National Forms and Publications Center, Warehouse 4, Dock No. 1, 4900 South Hemphill Street, Forth Worth, TX 76115.

13. *Implementing actions.* Heads of Services and Staff Offices and Regional Administrators, in coordination with appropriate officials, shall initiate all actions necessary to implement this order.

[FR Doc. 89–24020 Filed 10–11–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities for Grants for Geriatric Education Centers

The Health Resources and Services Administration announces the acceptance of applications for Fiscal Year 1990, Grants for Geriatric Education Centers under the authority of section 789(a) of the Public Health Service Act, as amended by Public Law 100–607. Applications for this purpose are also being accepted under the authority of section 301 of the Act. Comments are being invited on the proposed funding priorities stated below.

To be eligible for a grant under section 789(a) of the PHS Act, the applicant must meet the requirements of a health professions school as defined by section 701(4), program for the training of physicians assistants as defined by section 701(8), or a school of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of public and nonprofit private entities may be considered for geriatric education center grants under section 301 of the PHS Act dependent upon appropriation and authorization. Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

The Administration's budget request for Fiscal Year 1990 does not include funding for the program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Grants may be awarded to support the improvement and development of collaborative arrangements involving several health professions. These arrangements, called Geriatric Education Centers (GEC's) are established to facilitate training of

medical, dental, optometric, pharmacy, podiatric, nursing, clinical psychology, health administration and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combinations of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several educational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic ara defined by the applicant.
- Institutions with limited geriatric education resources and traditional linkages with geographic areas with substantial geriatric education needs may seek to establish Geriatric Education Centers designed to enhance and expand the capability of collaborating professional schools to serve as a geriatric education resource for such areas.
- Projects may support the development of Geriatric Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

Review Criteria

The following criteria will be considered in the review of applications:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.3904;

(2) The adequacy of the qualifications and experience of the staff and faculty;

(3) The administrative and managerial ability of the applicant to carry out the proposal in a cost-effective manner; and

(4) The potential of the project to continue on a self-sustaining basis.

The following mechanisms may be applied in determining the funding of approved applications:

(1) Funding preference—funding of a specific category or group of approved applications ahead of other categories of groups of applications, such as competing continuations ahead of new projects.

(2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

(3) Special Consideration—enhancement of priority scores by individual merit reviewers of approved applications which address special areas of concern. Special consideration will be given when the special area being addressed is a matter of subjective professional judgment and generally not amenable to the application of a funding priority.

Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference is proposed to be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

This funding preference was implemented in FY 1989 and the Administration is extending it in FY 1990.

Proposed Funding Priorities for Fiscal Year 1990

It is proposed to give a funding priority to:

1. Applications which identify minority faculty or scholars with substantial roles in carrying out the project and who have expertise in minority aging. (Only individuals already employed or recruited may be included). Minority faculty or scholars with expertise in minority aging may enhance program content, serve as role models and mentors, and through their leadership roles in the Geriatic Education Center program encourage health professions faculty who are minority group members to avail themselves of the opportunity for short-term training in geriatrics.

2. Applications documenting formal linkages (such as subcontracts, clinical teaching affiliation agreements, etc.) with predominantly minority education institutions or health facilities to accomplish specific aspects of the project protocol (e.g., involving minority faculty, students, or practitioners, developing curricula or expanding teaching concerning minority elderly, providing trainees with experience in caring for minority elderly, etc.) Formal affiliations with predominantly minority educational institutions and health care facilities provide an opportunity to familiarize trainees with culturally-sensitive educational approaches, to strengthen their understanding of distinctive health care needs of minority group members, and to acquaint trainees with appropriate ways of addressing those needs.

3. Projects which currently have or plan to provide for a high degree of area wide collaboration. Area-wide collaboration is emphasized in order to encourage efficiencies through resource sharing, notably optimal use of existing education and clinical resources.

Special Consideration

The Administration does not intend to apply any special considerations in the review of applications for Fiscal Year 1990.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before November 13, 1989 will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Acting Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–103, Rockville, Maryland 20857.

All comments received will be available for public inspection and

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copying at the Division of Associated and Dental Professions, Bureau of Health Professions, at the above address, weekdays (Federal Holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Questions concerning the programmatic aspects of grants should be directed to: Chief, Geriatric Education Section, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8-103, Rockville, Maryland 20857, Telephone: (301) 443-6887.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-31), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be returned to the Grants Management office at the above address.

The standard application, form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement of this program, have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline is December 11, 1989. Applications shall be considered as meeting the deadline if they are either:

1. *Received on* or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant. This program is listed at 13.969 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: September 13, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-24032 Filed 10-11-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-2065

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Christy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Supportive Housing Demonstration Program.

The information collection requirements in this package are the result of amendments to the Supportive Housing program contained in the Stewart B. Mckinney Homeless Assistance Amendments Act of 1988, Public Law 100-628 (approved November 7, 1988). The Department is requesting emergency review in order to be ready to announce the competition for the Transitional Housing component of the Supportive Housing program at such a time that will give applicants maximum time to become familiar with the revised regulations and to prepare applications accordingly. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Supportive Housing notice to OMB for regular paperwork review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1989.

Anna Kondratas,

Assistant Secretary for Community Plonning and Development.

Submission of Proposed Information Collection to OMB

Proposal: Supportive Housing Demonstration Program (FR-2581).

Office: Community Planning and Development

Description: The application and environmental impact statement are necessary to allow HUD to determine the eligibility of private non-profit organizations or governmental entities to receive funding under the demonstration program, to assess the relative capability of these organizations to operate housing and support services for the homeless population, and to determine whether any adverse impact for the environment will result.

Form Number: None

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of Respondents	x	Frequency of Response	x	Hours per Response	=	Burden Hours
Permanent Housing	102		1		42		4,284
Environmental Assessment	75		1		14		1,050
Transitional Housing	400		1		42		16,800
Recordkeeping							200

Total Estimated Burden Hours: 22,334

Status: Revision

Contact: James N. Forsberg HUD, (202) 755-6300, John Allison, OMB, (202) 395-6880

Dated: October 4, 1989.

[FR Doc. 89-24004 Filed 10-11-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Deletion of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two and revising three notices describing systems of records maintained by the Minerals Management Service (MMS). Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other minor administrative changes which have occurred since the previous publication of the material in the Federal Register. The three revised notices are published in their entirety below.

Two systems of records notices are being deleted from the Department's compilation of systems notices describing records subject to the Privacy Act. A review was recently conducted by the MMS of its Privacy Act records concerning information being maintained on entrepreneurs. The review was prompted by an opinion issued by the General Counsel, Office of Management and Budget (OMB), on August 30, 1988, affirming OMB's 1975 guidelines which interpreted the statutory term "individual" to exclude natural persons acting in an entrepreneurial capacity from the coverage of the Privacy Act. In a memorandum dated March 8, 1989, the Department's Office of the Solicitor affirmed the opinion's applicability within the Department and clarified the extent of coverage under the Privacy Act of information maintained on entrepreneurs.

MMS's review indicated that two of its systems of records contain only information about persons in their entrepreneurial capacity and not in their capacity as individuals. Therefore, the two notices listed below are being deleted from the Department's compilation of Privacy Act systems of records notices.

1. Mineral Lease and Royalty Accounting Files—Interior, MMS-1 (previously published on March 17, 1986; 51 FR 9122).

2. Procurement Network System (PRONET)—Interior, MMS-10 (previously published on September 29, 1988; 53 FR 38088).

The notice titled "Minerals Management Service (MMS) Personnel Security System—Interior, MMS-4" (previously published on September 29, 1988; 53 FR 38088) is revised to clarify that the system includes information on building passes and keys issued to MMS employees. Appropriate revisions have been made to the sections of the notice describing the categories of records and individuals, and authority. Organization and address changes are made in the location and system manager sections of the notice.

In the notice titled "Advanced Budget/Accounting Control and Information System (ABACIS)—Interior, MMS-8" (previously published on March 10, 1987; 52 FR 7322 as amended on December 21, 1988; 53 FR 51325) address and organization changes are made in the location and system manager sections of the notice. Also, references to entrepreneur and business information in the section describing categories of individuals have been deleted.

The location and system manager sections of the notice titled "Lessee/Operator Training Files—Interior, MMS-12" (previously published on September 24, 1987; 52 FR 35968) are updated to reflect organization and address changes. The categories of records section of the notice is revised to provide a more detailed description of the information being maintained.

Since the foregoing revisions do not involve any new or intended uses of the information in the systems of records, the changes shall be effective on October 12, 1989.

Additional information regarding these revisions may be obtained from the Privacy Act Officer, Minerals Management Service, Mail Stop 631, U.S. Department of the Interior, 381 Elden Street, Herndon, Virginia 22070.

Dated: September 29, 1989.

Oscar W. Mueller, Jr.,

Director, Officer of Management Improvement.

INTERIOR/MMS-4

SYSTEM NAME:

Minerals Management Service (MMS) Personnel Security Sytem-Interior, MMS-4.

SYSTEM LOCATION:

Department of Interior, Minerals Management Service (MMS), Office of Administrative, Security Office, Mail Stop 630, 381 Elden Street, Herndon, Virginia 22070.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Minerals Management Service (MMS) employees and contract employees working for the MMS who: (1) Have been subject to personnel security investigations to determine suitability for placement in sensitive positions, require access to national security information, and/or require ADP access authorization; and/or (2) require access to MMS buildings or individual offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, sensitivity type, date of birth, place of birth, social security number, organization code, position title, grade, duty station, Office of Personnel file folder location (OPF), clearance, clearance date, access, clearance termination date, ADP type, grant date, ADP termination date, briefing information, suitability date, investigation basis, Agency conducting investigation, investigation completion dat, investigation update and upgrade information, MMS termination date, pending code, remarks. For building passes and keys the height, weight, hair and eye color and employment status information is required. The automated portion of this system is only a compilation of records manually maintained.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10501; 40 U.S.C. 486(c); 41 CFR 101–20.103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records is to: (1) Ensure that investigative requirements of Federal Personnel Manual 731 are satisfied and to provide a current record of MMS employees with clearance and ADP access authorizations; and (2) provide access cards and keys to MMS buildings and offices. Disclosure outside of the Department may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation; and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contract, grant or other benefit; and, (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit; (6) to the Office of Personnel Management for matters concerned with oversight activities necessary for the Office to carry out its legally authorized Governmentwide personnel management programs and functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems are maintained in locked GSA approved security containers. Automated data base system maintained on hard disk with password entry required. Backup disks maintained and stored in locked GSA approved security containers.

RETRIEVABILITY:

Indexed by individual name or social security number.

SAFEGUARDS:

Maintained within the Security Office meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

These records are maintained in accordance with the General Records Schedule Number 18, Item Number 23.

SYSTEM MANAGER AND ADDRESS:

Security Officer, Office of Administration, Minerals Management Service, Mail Stop 630, 381 Elden Street, Herndon, Virginia 22070.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the Security Officer. A signed request is required if an individual would like information concerning his/her records. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the Security Officer. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the Security Officer and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/MMS–8

SYSTEMS NAME:

Advanced Budget/Accounting Control and Information System (ABACIS)—Interior, MMS–8.

SYSTEM LOCATION:

Department of the Interior, Minerals Management Service, Office of Administration, Financial and Administrative Management Division, Mail Stop 632, 381 Elden St., Herdon, Virginia 22070.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All debtors including employees, former employees, persons paying for goods or services, returning overpayments, or otherwise delivering cash, business firms, private citizens and institutions. Some of the records in the system pertain to individuals and may reflect personal information. Only the records reflecting personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, address, amount owed by or to, goods or services purchased, overpayment, check number, date and treasury deposit number, awards, advances, destination, itineraries, modes and purposes of travel, expenses, amount claimed and reimbursed, travel orders, vouchers, and information pertaining to an amount owed on an outstanding or delinquent travel advance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 5 U.S.C. 5514 (2) 31 U.S.C. 3511(3) 5 U.S.C. 5701–09 (4) 31 U.S.C. 3701, 3711, 3717, 3718, (5) U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to account for monies paid and collected by the Minerals Management Service, Financial and Administrative Management Division, and for billing and followup (b) to account for travel advances; (c) to compute vouchers to determine amounts claimed and reimbursed; (d) to account for travel orders, maintain records of modes and purposes of travel and itineraries. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (4) to the Department of the Treasury to effect payment of Federal, State, and local government agencies, nongovernmental organizations, and individuals; (5) to the Federal Agency for the purpose of collecting a debt owed the Federal Government through administrative or salary offset; (6) to other Federal Agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (7) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; and (8) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retenton of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (9) to disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax results.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer media with input forms and printed output in manual form and on microfilm.

RETRIEVABILITY:

Indexed by name, social security number, travel order number, data, appropriations, or fund to be audited.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with General Records Schedule No. 7, Item Nos. 1–4 and in accordance with GSA Federal Travel Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial and Administrative Management Division, Minerals Management Service, Mail Stop 632, 381 Elden St., Herndon, Virginia 22070.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of a record should be addressed to the System Manager. A written signed request stating that the individual seeks information concerning his/her records is required (43 CFR 2.60).

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Debtor, accounting records, individual remitters, supervisors and standard office references.

SYSTEM NAME:

Lessee/Operator Training Files—MMS–12.

SYSTEM LOCATION:

Inspection and Training Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service (MMS), 381 Elden Street, Herndon, Virginia 22070

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel who have participated in well control, safety device, workover and well completion training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of student certification consist of the name, social security number, job certification, blowout preventor stack qualification, test score, course type, completion date, school name, school location, and instructor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1332(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for training and certification pertaining to the structure, management and operation of the drilling well control, safety device, and workover and well completion/well control training programs. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computerized form

RETRIEVABILITY:

Indexed by social security number or MMS identifier.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

RETENTION AND DISPOSAL:

Determination of the disposition is pending approval of the archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Inspection and Training Branch, Offshore Inspection and Enforcement Division, Offshore Minerals Management, Minerals Management Service, Mail Stop 647, 381 Elden Street, Herndon, VA 22070

NOTIFICATION PROCEDURE:

A written request addressed to the System Manager stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

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CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Training organizations.

[FR Doc. 89-23988 Filed 10-11-89; 8:45 am]

BILLING CODE 4310-RF-M

Bureau of Indian Affairs

Information Collection Submitted for Review

August 7, 1989.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1706-0004), Washington, DC 20503, telephone (202) 395-7340.

Title: 25 CFR, Part 125, Payment of Sioux Benefits

Abstract: Prescribes the eligibility criteria and application procedure governing payment of "Sioux Benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act: and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). The data on this form is used by the BIA to determine the applicant's eligibility for Sioux Benefits.

Note: This is not a new program or a new information collection by BIA.

Bureau Form Number: BIA-4210

Frequency: Nonrecurring.

Description of Respondent: Eligible Cheyenne River Sioux Indians of the Cheyenne River Reservation, South Dakota.

Estimated Completion Time: 30 minutes

Annual Responses: 260

Annual Burden Hours: 130

Bureau Clearance Officer: Cathie Martin (202) 343-3577

Walter R. Mills,

Acting Deputy to the Assistant Secretary—Indian Affairs (Operations)

[FR Doc. 89-23991 Filed 10-11-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

California Desert Plan; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the preplanning analysis for the 1989 Amendments to the California Desert Conservation Area Plan is available for public review and comment.

Nineteen proposed amendments have been accepted for consideration in the 1989 amendment review of the plan. The proposed amendments consist of a wide variety of actions, including designation of a new Area of Critical Environmental Concern (ACEC), adjustment of the boundaries of two existing ACECs, reclassification of six Special Areas to ACEC status, deletion of two ephemeral grazing allotments, changes in motorized vehicle access, changes in multiple-use class designations, definition of three categories of desert tortoise habitat, review of grazing restrictions in desert tortoise habitat, adjustment of multiple-use class designations for consistency with tortoise habitat categories, and modification of the Barstow to Las Vegas motorcycle race course.

The pre-plan describes the following topics:

1. Purpose and need for action;
2. Geographic setting;
3. Scope and level of analysis planned;
4. Significant Resource values and issues;
5. Alternatives;
6. EIS preparation schedule; and
7. Public participation schedule.

Comments are being accepted for the public until 30 days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507.

Dated: October 5, 1989.

Ron Yokota,

Acting District Manager.

[FR Doc. 89-24001 Filed 10-11-89; 8:45 am]

BILLING CODE 4310-40-M

Preparation of an Amendment to the California Desert Conservation Area Plan To Designate the Santa Rosa Mountains as a National Scenic Area.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 43 CFR 1610.5-5, notice is hereby given that the Palm Springs Resource Area of the California Desert District, Bureau of Land Management, will prepare an amendment to the California Desert Conservation Area Plan. The purpose is to evaluate the effect of designating a portion of the Santa Rosa and San Jacinto Mountains, in Riverside County, California as a National Scenic Area.

DATES: Written comments on this proposed amendment will be accepted for thirty days from the date of publication of this Notice.

ADDRESS: Comments should be sent to the Area Manager, Bureau of Land Management, 400 S. Farrell Drive, Suite B-205, Palm Springs, California 92262, ATTN: Santa Rosa Amendment.

FOR FURTHER INFORMATION CONTACT: Russell Kaldenberg or James Abbott at the aforementioned address or call (619) 323-4421.

SUPPLEMENTARY INFORMATION: It has been determined from new data and an alteration in circumstances that an amendment to the California Desert Conservation Area (CDCA) Plan be initiated. The purpose is to evaluate the effect of designating a portion of the Santa Rosa and San Jacinto Mountains, in Riverside County, California as a National Scenic Area. Generally, resources will be managed and new uses allowed with full consideration given to mitigating any adverse effect on the scenery and current activity levels within the area.

However, the outcome may result in a change in the terms, conditions and decisions of the approved CDCA Plan, as it applies to this area, so as to not threaten the numerous unique values through overuse. An Environmental Assessment (EA) will be prepared to evaluate the effect of this amendment. General issues identified by the California Desert District staff involved visual resources, wildlife, cultural resources, watershed, recreation, and land use. An interdisciplinary team, consisting of specialists in the aforementioned disciplines, will complete the EA for this proposed amendment. The Bureau of Land Management's scoping process for this EA will include: (1) Identification of specific issues and defining exact boundaries of the area; (2) identification of variable alternatives; and (3) notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained. The scoping process is hereby initiated and a scoping document, which further clarifies the proposed action, alternatives and significant issues being considered, will be prepared at the close of this comment period. Copies of this scoping document will be available upon request.

Dated: October 5, 1989.

Ron Yokota,

Acting District Manager.

[FR Doc. 89-24000 Filed 10-11-89; 8:45 am]

BILLING CODE 4352-40-M

[FY0-00151; OR-050-4320-02; GPO-003]

Oregon; Prineville District Grazing Advisory Board Meeting

October 2, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: There will be a Prineville District Grazing Advisory Board meeting on Thursday, November 16, 1989. The meeting will be held at 10:00 a.m. at the Bureau of Land Management conference room, 185 East Fourth Street, Prineville, Oregon.

SUMMARY: Topic to be discussed will include:

1. Allotment evaluation results.
2. Brothers Rangeland Program Summary.
3. Advisory Board expenditures.
4. Allotment management plans completed in 1989 and planned for 1990.
5. Rangeland development completed in 1989 and planned for 1990.

James L. Hancock,

District Manager.

[FR Doc. 89-24021 Filed 10-11-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ-920-09-4212-14; AZA-21619]

Arizona; Notice of Conveyance of Public Land in Pinal County

October 3, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the conveyance of public land to Margaret Campbell.

FOR FURTHER INFORMATION CONTACT: John Gaudio, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713, 1719), Margaret Campbell has purchased, by modified competitive sale for $22,800.00, the following described land:

Gila and Salt River Meridian

T. 1 N., R. 8 E.,
sec 27, S½NE¼SW¼SE¼.

The area described contains 5.00 acres in Pinal County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of this land out of Federal ownership.

Marsha L. Luke,

Chief, Branch of Lands Operations.

[FR Doc. 89-24022 Filed 10-11-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-00-4212-14; N-50469]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 202 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
sec. 13, N½, NE¼SW¼, SE¼;
sec. 14, N½;
sec. 15;
sec. 16;
sec. 17;
sec. 18;
sec. 19, Lots 1, 2, 3, E½, E½NW¼, NE¼SW¼;
sec. 20;
sec. 21, N½;
sec. 23, N½NE¼, SW¼NE¼, E½NW¼;
sec. 24, N½, NE¼SW¼, N½SE¼, SW¼SE¼.
T. 19 S., R. 62 E.,
sec. 18;
sec. 19;
sec. 20.

Aggregating 7,470 acres (gross)

This parcel of land, situated in Clark County is being offered as a direct sale to the City of North Las Vegas.

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interest being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contained the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, potassium and saleable minerals. And will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. Nev-061985 and Nev-067348 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959.

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

A portion of the subject lands were segregated by classification N-43395 for recreation and public purposes and a lease was issued. By letter dated September 24, 1989, the lessee relinquished the following described lands from their lease in favor of the sale to the City of North Las Vegas: sec. 20, T. 19 S., R. 62 E. M.D.M.

Additional a portion of the subject lands were segregated for airport lease purposes by airport lease application N-30864. By letter dated July 6, 1989, the applicant withdrew the application in favor of the sale to the City of North Las Vegas.

Upon publication of this notice in the Federal Register the following will take place:

1. Recreation and Public Purposes Classification N-43395 is vacated and the segregated effect terminated as it

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applies to sec. 20, T. 19 S., R. 62 E., M.D.M.

2. The segregated effect of airport lease application N–39864 is terminated.

3. All the lands identified for sale to the City of North Las Vegas in this Notice of Realty Action are segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance on a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws.

Dated: October 2, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–24023 Filed 10–11–89; 8:45 am]

BILLING CODE 4310–HC

Minerals Management Service

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5748, 5064, 7844, and 5071, Blocks 863, 864, 907, and 908, respectively, Mobile Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 29, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources in reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: October 2, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–24024 Filed 10–11–89; 8:45 am]

BILLING CODE 4310–MR–M

Receipt of Outer Continental Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Pacific Resources Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8644, Block 106, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 29, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: October 2, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–24025 Filed 10–11–89; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Pollution Control Consent Decree; Bedford, NY

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. § 9622(d)(2), notice is hereby given that on September 29, 1989, a proposed Consent Decree in *United States* v. *Town of Bedford*, 89 Civ. 6461, was lodged with the United States District Court for the Southern District of New York. The Complaint filed by the United States alleged violations of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* Defendant Town of Bedford is a political subdivision of the State of New York located in Westchester County, New York. The Town of Bedford operates and, at all relevant times, operated one or more facilities at or near the site known as the Katonah Municipal Well Site (the "Site"), which is located in the Hamlet of The Site is a Municipal well field which was used for the disposal of hazardous wastes and is registered on the National Priorities List, 40 CFR part 300, appendix B.

The Consent Decree provides that the defendant shall design and perform the clean-up of the Site. This clean-up shall include installation of a new production well and a new water treatment facility, implementation of a monitoring program and a general clean-up of the peninsula area of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Town of Bedford*, D.J. No. 90–11–2–310.

The proposed Consent Decree may be examined at the Office of the United States Attorney, One St. Andrew's Plaza, New York, New York 10007, at the Region II office of the Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York, New York 10278, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Town of Bedford*, D.J. No. 90–11–2–310 and include a check for $8.00 (10 cents per page reproduction charge) payable to the United States Treasury.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–23913 Filed 10–11–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Committee on Special Minimum Wages; Renewal

Notice is given that after consultation with the General Services Administration (GSA), it has been determined that the Advisory Committee on Special Minimum Wages whose charter expires October 11, 1989 is hereby renewed for the period October 11, 1989 to October 11, 1991. This action is necessary and in the public interest.

The Committee will advise the Secretary on issues concerning the application of the Fair Labor Standards Act, the McNamara-O'Hara Service Contract Act, and the Public Contracts Act to workers with impaired productive capacity.

Committee membership is designed to ensure that all major groups affected by the Acts and the regulations issued thereunder are represented. The members are selected on the basis of their expertise and serve in their individual capacities, not as representatives of their organizations.

The Committee shall consist of 23 members selected to represent the respective viewpoints of the following groups: One each from labor, industry (other than workshops), the public, a State rehabilitation agency and a State labor agency; 9 consumer members (workers with disabilities or representatives of organizations representing such workers with disabilities or the parents or guardians of such workers); and 9 officials representing workshops, hospitals, or institutions or organizations of workshops, hospitals, or institutions. Committee members shall not be employees of the Government by virtue of their nomination to the Committee, except those who are compensated by the Department of Labor for their services on the Committee. The Committee may establish subcommittees from among its members as may be necessary.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The charter will be filed with GAS and the appropriate Congressional Committees.

Further information may be obtained from: Paula V. Smith, Administrator, Wage and Hour Division, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210, phone 202–523–8305.

Signed at Washington, DC, this 5th day of October 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–24078 Filed 10–11–89; 8:45 am]

BILLING CODE 4510–27–M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' employment was established under section 308, title III, Public Law 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Wednesday, November 1, 1989, at 10:00 a.m., in the Secretary's Conference Room, S–2508, Frances Perkins, Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

Written comments are welcome and may be submitted by addressing them to: Veterans' Employment and Training, U.S. Department of Labor, 200

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Constitution Avenue NW., Washington, DC 20210.

The primary item on the agenda is implemention of Public Law 100-323, the Veterans' Employment, Training and Counseling Amendments of 1988.

The public is invited.

Signed at Washington, D.C. this 6th day of October, 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-24079 Filed 10-11-89; 8:45 am]

BILLING CODE 4510-79-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences, NSF.

Date & Time: October 26, 1989, 8:30 a.m.-10:00 p.m.; October 27, 1989, 8:30 a.m.-5:00 p.m.

Place: National Science Foundation, Room 540.

Type of Meeting: October 26, & 27, 1989, Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda:

Thursday, October 26

Long-Range Planning. Reports of Subcommittees on Optical/Infrared Astronomy; Radio Astronomy; Theoretical, Experimental and Laboratory Astophysics; and Education and Human Resources. National Academy of Sciences' Study of Solar Physics. FY 1990 Budget.

Friday, October 27

Continuation of Discussion of Topics from Previous Day.

Dated: October 5, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-23992 Filed 10-11-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-171]

Philadelphia Electric Co.; Consideration of Issuance of Amendment to Possession-Only License and Opportunity for Hearing Peach Bottom Atomic Power Station, Unit 1

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to License No. DPR-12, issued to Philadelphia Electric Company (the licensee), for the Peach Bottom Atomic Power Station, Unit 1 (Peach Bottom 1) located in York County, Pennsylvania. The amendment would involve revision of the Peach Bottom 1 License and associated Technical Specifications (TS) and a renewal of License No. DPR-12.

On October 31, 1974 Peach Bottom 1 was permanently shutdown. All spent fuel has been removed from the reactor site and License No. DPR-12 was amended to possession-only status on July 14, 1975. This amendment would accomplish the following:

(1) Revision of License No. DPR-12 to delete provisions of the license relating to fuel, sources and the fission product trapping system since these materials and the trapping system have been removed from the site.

(2) Revision of the TS to reflect the long term storage of residual radioactivity onsite. The TS requirements would be revised to reflect current licensee organization, to delete sections not applicable to SAFSTOR status, to add requirements for access control and inspections and to make TS consistant with current NRC record keeping and reporting requirements.

(3) Renewal of Possession-Only License No. DPR-12 for 40 more years to December 24, 2015 as requested by licensee.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility license and any person who interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, at 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Troy B. Conner, Jr., Esquire, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment for Items 1 and 2 above after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. Issuance of the license renewal, Item 3, would require the completion of any required hearing regardless of the outcome of a no significant hazards consideration finding.

For further details with respect to this action, see the licensee's application dated November 24, 1975 as revised March 4, 1987, December 16, 1988, July 12, 1989 and August 23, 1989, which is available for public inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555 and at the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24039 Filed 10-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272/311]

Public Service Electric & Gas Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-70 and DPR-75, issued to Public Service Electric and Gas Company (the licensee), for operation of the Salem Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The amendments would revise the implementation schedule for License Amendment Nos. 101 and 78 for Salem, Units 1 and 2, respectively. As issued on August 28, 1989, these license amendments were to be implemented within 45 days after issuance. By letter dated October 4, 1989, the licensee proposes that License Amendments Nos. 101 and 78 be implemented prior to the respective reactor startup following the next plant shutdown to Mode 3, Hot Standby.

Soon after its receipt of License Amendment Nos. 101 and 78, the licensee discovered that one of its surveillance provisions could not be satisfied without incurring a shutdown of the Salem units. Upon discovery, the licensee promptly informed the staff of the circumstance and then filed the subject request for license amendments so that an unnecessary shutdown of the Salem units need not be incurred.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated because the vent system was used during the most recent refueling at each of the Salem units. The valves in question were verified open using an approved valve checklist prior to plant startup. Therefore, there is a high level of assurance that the reactor vessel head vent systems are functional.

The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated because the operation of the Salem units with or without implementation of License Amendments Nos. 101 and 78 was acceptable and was authorized.

The proposed amendments would not involve a significant reduction in a margin of safety for the same reasons as detailed above.

The licensee has concluded and the staff agrees that the proposed amendments involve no significant hazards consideration.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

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The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commissioner or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceedng on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 4, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 5th day of Octobr 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–24038 Filed 10–11–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Withdrawal of Petition Under the 1989 Annual Review

This publication provides notice that the Producers Cotton Oil Company, California Oils Corporation, and Oilseeds International Limited have withdrawn their petition (Case number 89–HS–6) concerning Harmonized System subheading 1512.11.00.00. This case was being considered in the 1989 Annual Review of the GSP. The TPSC had formally initiated the review of these casea in a notice of August 10, 1989 (54 FR 32891). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 89–24028 Filed 10–11–89; 8:45 am]

BILLING CODE 3190–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday, October 24, 1989, at the Madison Hotel, 15th & M Streets NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Drawing Rooms I and II, second floor at 9 o'clock, October 24, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting at 9 o'clock, October 24, 1989 in Executive Chambers 1, 2 and 3.

The Full Commission will convene at 1:30 o'clock p.m. on October 24, 1989 in Executive Chambers 1, 2 and 3 on the second floor.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 89–23989 Filed 10–11–89; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27322; File No. SR–CBOE–89–08]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Index Hedge Exemption Pilot

On June 5, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Extend an Exchange pilot program that exempts public customers from established position limits for broad-based index options if those customers hold pre-approved portfolios of long positions in common stocks; (2) expand the scope of the hedge exemption to permit an exemption for short stock positions; and (3) expand the securities eligible to serve as the underlying basis of the hedging stock portfolio position.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26992 (June 29, 1989), 54 FR 29125 (July 11, 1989).[3] No comments were received on the proposed rule change.

In 1988, the Commission approved a CBOE proposal for a one year pilot program that allows public customers [4] to apply for a "Hedge exemption" from broad-based index option position limits.[5] Specifically, the approved pilot program permits the CBOE to exempt from its position limits any positions in broad-based index options traded on the Exchange that are hedged against qualified long portfolios of stock.[6] The maximum size of an exempted position, however, cannot exceed the unhedged value of the qualified stock portfolio, and no exempted position can exceed 75,000 contracts, regardless of the size of the stock portfolio.

The CBOE proposed to extend a revised pilot program for one year.[7] Specifically, the CBOE proposes to expand the scope of the exemption to permit public customer accounts with short stock positions in a diversified portfolio to utilize the hedge exemption.[8] The Exchange proposes that qualified public customer accounts with a short stock position could hedge their position with long calls or short puts, and receive the same hedge exemption that a qualified portfolio with a net long position in common stock would.

In addition, the Exchange proposes to include in qualified stock portfolios securities readily convertible into stock and, in the case of convertible bonds, those that are economically convertible

[1] 15 U.S.C. 78s(b)(12) (1988).

[2] 17 CFR 240.19b–4 (1988).

[3] The CBOE filed with the Commission a proposed rule change to extend the pilot program on April 24, 1989. The CBOE withdrew this filing on May 15, 1989 and replaced it with the current proposal filed on June 5, 1989. Currently, only three public customers have applied for the hedge exemption and no customers have utilized the exemption.

[4] The exemption is limited to public customers *i.e.* those customers whose trades would be eligible for placement on the public limit order book under CBOE Rule 7.4.

[5] *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988).

[6] Under the pilot, the options positions that can be used to hedge against long stock positions are short calls or long puts, combinations thereof, or such equivalent positions as are approved by the Exchange in advance.

[7] The amended pilot program retains all the safeguards of the original pilot program that are designed to prevent exempted positions from being used to disrupt or manipulate the market. For example, among other things, the exemption may not be used for arbitrage in stock baskets. In addition, options orders subject to the hedge exemption must be designated "hedge" and customers must notify the CBOE of any material change in the stock portfolio or stock index futures positions which materially affect the unhedged value of the qualified portfolio. Moreover, a public customer with a hedge exemption must initiate and liquidate stock and option positions in an orderly manner.

[8] To be qualified, a public customer must hold a net long or short position in a portfolio consisting of at least four industry groups and contain at least 20 stocks, none of which accounts for more than 15% of the value of the portfolio.

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into common stock. Currently, the pilot program, in establishing the value of the qualified stock portfolio available for hedging, only considers the value of the common stock held in the public customer's portfolio. The Exchange believes that these "equivalent" positions also should be eligible to serve as the underlying basis of a hedge exemption.

The Exchange believes that the proposed modifications to the pilot program will result in increased usage of the exemption. Additionally, the Exchange believes that by expanding the strategies that can utilize the exemption, customers will be more willing to apply for and use the exemption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[9] The Commission concludes, as it did with the original CBOE pilot program and a similar American Stock Exchange pilot program,[10] that the amended pilot program will allow more effective hedging of stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the stock market. Specifically, the Commission believes the amended proposal will enable public customers that have a short stock portfolio to utilize the hedge exemption. The Commission notes that, at present, institutions with significant short stock portfolios are generally constrained in their ability to hedge such positions with index options by current position limits. As a result, many institutions utilize financially equivalent index futures products to the competitive disadvantage of the options exchanges. Extending the public customer hedge exemption to institutions with short stock portfolios should provide such institutions with an alternative hedging technique. The Commission also notes that the CBOE's surveillance procedures will monitor unusual customer activity and take steps to withdraw exemptions if violations are found. Moreover, the Exchange has proposed the revised pilot program for one year and the CBOE and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.

Additionally, the Commission believes that it is appropriate for the Exchange, on a case-by-case basis, to include economically convertible bonds and readily convertible securities to determine the underlying basis for the hedge exemption. In this regard, the Commission notes that the Exchange's Surveillance staff will review the application of this provision to specific corporate instruments and monitor the position and dollar value of all the instruments that comprise the basis for the hedge.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–89–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24060 Filed 10–11–89; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f (1982).

[10] *See* Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 25938 (July 29, 1988).

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1988).

[Rel. No. 34–27335; File No. SR–NASD–89–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to its Informational Linkage with the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 29, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a rule proposal to extend for one year its pilot program consisting of an informational linkage with the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE"). On October 2, 1987, the Commission issued an order authorizing operation of the linkage on a pilot basis for two years.[1] The NASD requests that the Commission approve the filing to extend the pilot program for an additional year, commencing from the date of the Commission's approval order.

The NASD's linkage with the ISE was the first transatlantic market linkage authorized by the Commission. In its present form, the NASD/ISE linkage provides for an electronic interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"). Of that total, each marketplace has designated approximately half as its "pilot group" of securities. NASD and ISE members that function as market makers in any linkage securities traded in both the NASDAQ and ISE dealer markets ("common issues") may access linkage information without paying a separate charge for it.[2] Because the linkage will remain a pilot operation during the one-year extension, no change is proposed in the access terms applicable to participating NASD and ISE market makers. Nonetheless, the NASD and ISE may mutually agree to expand their pilot groups of securities during the one-year extension.[3] No modification in the

[1] Release No. 34–24979 (October 2, 1987) (the "October 1987 Order"). In Release No. 34–26710 (April 11, 1989), the Commission affirmed the October 1987 Order, which had been issued by the staff pursuant to delegated authority, and thus disposed of a petition for review filed by Instinet Corp. On September 9, 1989, the NASD submitted File No. SR–NASD–89–38 to obtain an interim extension of the current authorization through December 1, 1989. Accelerated approval of the interim extension was granted in Release No. 34–27320 (September 29, 1989).

[2] Thus, NASDAQ market maker in a common issue can receive linkage information on the ISE's pilot group of securities (*i.e.*, approximately 390 issues) at no added cost, on each of the firm's terminal devices or NASDAQ Workstation™ units authorized for Level 3 NASDAQ service. Similarly, ISE members that function as market makers in one or more common issues can receive linkage information on the NASD's pilot group of securities at no added cost. ISE members obtain access to linkage information through TOPIC terminals located in the dealing areas of the participating ISE firms. ("TOPIC" is an acronym for Teletext Output of Price Information by Computer.) ISE dealers use separate terminal devices enabled for SEAQ and SEAQ International service to enter quote updates in U.K. domestic and foreign securities, respectively, in which they make markets. SEAQ/SEAQ International terminals do not display linkage information.

[3] In the original filing on the linkage, File No. SR–NASD–86–4, the NASD and ISE sought approval to operate the linkage with a maximum of 1,000 securities consisting of approximately 500 designated by each sponsoring market. Since the Commission order approving File No. SR–NASD–86–4 did not alter that proposed limit, it remains the applicable ceiling for the pilot operation. *See* Release No. 34–23158 (April 21, 1986). The NASD

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linkage's operational features is being proposed at this time.

The sponsoring markets envision maintaining the linkage in its present form to provide eligible market makers with current market information on a limited group of linkage securities. A market-making commitment will continue to be required for NASD and ISE dealers to receive linkage information at no cost. Thus, during the proposed extension, the pilot program will remain an informational linkage between two market centers that utilize a system of competing dealers. The cost of the pilot program will continue to be borne jointly by the linked markets without the imposition of separate user charges on participating market makers or reciprocal billings between the sponsors based upon detailed cost allocations. In all materials respects, the NASD/ISE linkage will closely approximate the operation of other informational linkages that the Commission has approved between domestic and foreign securities exchanges. [4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places sepcified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purposes of File No. SR–NASD–89–44 are threefold: (i) To extend the pilot phase of the NASD/ISE linkage for one year; (ii) to allow additional time to assess the results of the pilot project in relation to the business objectives of the sponsoring markets; and (iii) to allow the sponsoring markets to evaluate the feasibility of enhancing the linkage to include automated order routing and execution capabilities as well as more efficient automated procedures for clearance and settlement of international securities transactions.

Since the inception of the NASD/ISE linkage, the objectives underlying its operation have essentially remained the same. Specifically, the linkage was designed to promote the ongoing process of internationalization of securities trading by providing an electronic interchange of quotation information on selected securities quoted in the sponsors' dealer markets. Further, it was believed that the linkage's implementation would foster closer cooperation between the NASD and the ISE in dealing with the internationalization process, promote the development of more efficient systems to process international securities transactions, and encourge expansion of market making commitments in linkage securities. The agreement betwen the NASD and ISE governing operation of the linkage also includes mutual commitments to share market regulatory information as needed. The linkage thereby contributes to strengthening the NASD's ties with U.K. self-regulators to facilitate the exchange of regulatory information.[5]

Many potential benefits of the linkage experiment remain unrealized, however; because of an unforeseeable event, the October 1987 market break. That event led to a substantial and prolonged dedication of NASD and ISE resources (as well as the resources of every other major market) to address the regulatory and operational concerns that were raised. The NASD's efforts in this regard extended into the latter half of 1988. Thus, the sponsoring markets have not had sufficient opportunity to operate, or consider enhancements to, the pilot linkage under more normal market conditions. Likewise, the 1987 market break has been followed by a period of reduced trading volumes in most markets and a contraction of broker-dealer operations, including international trading operations. Given these factors, the NASD believes that it is appropriate to extend its experimental linkage with the ISE for one year. If any operational enhancement of the linkage is developed during this interval, its implementation would require Commission approval via another Rule 19b–4 filing. At the end of the one-year period, the sponsoring markets should have sufficient information and experience to judge the feasibility of making the linkage permanent. Such a decision will also involve the sponsors' definition of future enhancements and the allocation of resources to implement those enhancements. Alternatively, the sponsors may determine to terminate the linkage altogther.

The Commission's previous deliberations of the NASD/ISE pilot linkage have focused mainly on issues raised by Instinet Corp. ("Instinet"), a commercial vendor of market information. Through counsel, Instinet has repeatedly objected to the NASD and ISE furnishing linkage information at no cost to their respective members who act as market makers in common issues. Instinet has argued that this aspect of the linkage places it at a competitive disadvantage in attempting to market its commercial quotation services to NASD and ISE member firms.[6] Despite the experimental character of the NASD/ISE linkage, Instinet has asserted that the Commission should require, as a condition for the pilot's operation, the imposition of user charges on ISE and NASD market makers eligible to receive linkage information. Alternatively, Instinet suggested that the NASD and ISE isolate their respective costs for operating the linkage and bill one another to recover those costs. The NASD notes that the Commission has

acknowledges that any expansion of the universe of linkage securities beyond 500 issues per market would require another Rule 19b–4 filing.

[4] *See* Release No. 34–23075 (March 28, 1986), approving a linkage between the Midwest Stock Exchange, Inc. and the Toronto Stock Exchange; Release Nos. 34–21499 (November 1, 1984) and 21925 (April 8, 1985) approving, respectively, Phases I and II of a linkage between the Boston Stock Exchange, Inc. and the Montreal Stock Exchange; and Release No. 34–22442 (September 20, 1985) approving a linkage between the American Stock Exchange, Inc. and the Toronto Stock Exchange.

[5] As a separate matter unrelated to the linkage, the NASD applied for and received recognition as a registered overseas investment exchange under the Financial Services Act of 1986. This status involves an ongoing commitment by the NASD to cooperate with U.K. regulators of the securities industry. In this regard, the NASD has entered into an agreement with The Securities Association ("TSA"), a major self-regulatory body in the U.K., to provide on-line access to final disciplinary information captured in the Central Registration Depository system. TSA provides reciprocal access to comparable disciplinary information on firms and individuals authorized to do business in the U.K.

[6] The National Quotation Data Service ("NQDS") is a data stream of market maker quote updates for all NASDAQ securities that the NASD supplies to Instinet for distribution to its subscribers. NQDS subscribers pay the NASD a monthly charge of $8.75 for access to all NASDAQ market makers' bids/offers on approximately 5,000 securities included in the NASDAQ market. (In contrast, ISE market makers in common issues receive no-cost access to linkage information on about 350 NASDAQ issues covered by the pilot program.) NASDAQ market makers currently pay $150/month for NASDAQ Level 3 service (exclusive of equipment and communications charges), which includes the capacity to access the current quotes of all registered market makers in any NASDAQ security and the ability to enter quote updates in those NASDAQ issues in which the Level 3 subscriber makes a market. Subscribers paying for the ISE's TOPIC service can receive access to ISE market makers' quotations in approximately 3,300 equities that are quoted either through SEAQ or SEAQ International. Hence, the ISE's component of linkage information on approximately 390 issues is a small fraction of the quotation information available to TOPIC subscribers paying for TOPIC service.

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never required either method of cost recovery as a condition of its approval of similar linkage between certain U.S. and foreign securities exchanges.[7]

In approving the two year pilot for the NASD/ISE linkage, the Commission directed the sponsoring markets to assemble certain data regarding market maker participation, utilization of linkage information, and the costs of operating the linkage. It appears that the Commission sought this information in anticipation of receiving a filing for permanent approval of the NASD/ISE linkage before expiration of the current phase of the pilot program. On May 31, 1989, the NASD made a submission containing information on the number of common issues, the levels of market maker participation, aggregate monthly trading volumes in common issues, and query traffic emanating from participating NASDAQ market makers during the period from October, 1987 through early March, 1989 (the "May submission"). On September 11, 1989, the NASD also submitted information on its costs respecting operation of the linkage (the "September submission").[8] Both submissions are hereby incorporated by reference.

The May submission reveals several positive trends respecting the linkage's operation during the 18 months following issuance of the October 1987 Order. For example, the number of common issues rose from 41 to 65, and the number of NASD firms that were registered market makers in common issues increased from 98 to 114 firms through March 6, 1989. A subsequent review on May 5, 1989 revealed that 131 member firms [9] qualified for no-cost access to linkage information via 1,889 terminal devices/workstations authorized for NASDAQ market making (*i.e.*, Level 3 NASDAQ Service). These devices are located in members' trading rooms, which are not accessible to the general public. The May submission likewise included monthly statistics on queries entered by NASD market makers in common issues to access linkage information provided by the ISE. These monthly figures ranged from 17,017 (February 1988) to 35,630 queries (March 1989). The query figures suggest that qualifying NASD firms were actively utilizing linkage information in conjunction with their market making activities. They further support characterization of this pilot program as a marketplace-to-marketplace linkage, and not a commercial venture in competition with private vendors. Finally, the May submission includes monthly figures on the aggregate NASDAQ trading volume in each common issue for the eighteen-month peiod following the October 1987 Order. The NASD was unable to quantify impact of the linkage's operation on the monthly volume for any particular common issue.

The May submission also contained selected statistics furnished by the ISE regarding its members use of linkage information provided by the NASD. Based on a survey of one day per week over a six-month period, the ISE found that TOPIC queries for NASD linkage information ranged up to 2,000 requests per day.[10] Such requests emanated from a total of 51 users with 226 authorized terminals. The ISE reported 24 market maker firms with 133 terminals that qualified for no-cost access to linkage information (via the TOPIC service) because of their market making commitments in common issues.[11] The ISE also provided volume information on common issues during the period covered by the October 1987 Order. On their face, the latter figures did not exhibit any particular trend or correlation with the operation of the pilot linkage.

It should be noted that the absolute number of ISE market makers qualifying for no-cost access to linkage information is considerably smaller than the corresponding NASD number. This can be explained by the fact that the ISE's dealer markets consist of approximately 67 market maker firms that display quotes in SEAQ, SEAQ International, or in both systems. The subset of 24 ISE firms eligible for no-cost access represents about 36% of the ISE's universe of market makers while the NASD's subset of 131 firms comprises about 23% of all NASDAQ market makers. Hence, the two subsets of market makers qualifying for no-cost access to linkage information are roughly comparable portions of their respective market maker populations. This degree of equivalence supports the notion that the sponsoring markets are receiving offsetting benefits in return for absorbing the costs of maintaining the linkage.

With regard to linkage costs, the NASD's September submission revealed total costs (actual) of $230,347 for fiscal year 1988 and $252,940 (forecast) for fiscal year 1989. These aggregate figures reflect the following cost allocations by the NASD.

	Forecast FY 1989	Actual FY 1988
Shared satellite cost	$15,000	$15,000
Shared communications link to satellite	26,271	26,874
NASDAQ network allocation (.12%)	17,368	18,761
Tandem PC allocation (2.93%)	106,713	97,621
System development and maintenance	35,000	35,600
General and administrative overhead	50,588	38,391
Total	252,940	230,347

By any measure, these costs represent a very small percentage of the total costs of operating the NASDAQ market. For example, the 1989 total of $252,940 is less than 1% of the combined 1989 budgets of the NASD's operating subsidiaries, NASDAQ, Inc. and NASD Market Services, Inc.

Statutory Bases

The NASD submits that the statutory bases for this filing are found in sections 11A(a) (1)(B) and (C), 15A(b)(6), and 17A(a)(1) (B) and (C) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of new data processing and communcations techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. . . ." Section 17A(a)(1) expresses the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through the use of new data processing and communications techniques.

The NASD believes that Commission approval of a one-year extension of the NASD/ISE pilot linkage is fully consistent with the above-mentioned statutory provisions. It must be emphasized that continuation of the linkage in its present form is not the central purpose of the proposed extension. Rather, it is the task of defining the linkage's evolutionary path—including possible applications of advanced technology to order routing and clearance/settlement functions—that must be addressed by the sponsoring markets during the extension period. If the extension is not approved, the linkage's potential benefits to the linked markets and the constituencies that they serve may never be realized.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition *vis-a-vis* Instinet or any other party, that is not necessary or appropriate in furtherance of the Act. This belief is grounded on several factors: (i) The limited number of linkage securities; (ii) the limited scope of linkage information; (iii) the restriction of no-cost access to linkage information to qualifying market makers and the devices supporting their market making activities; (iv) the relatively small numbers of ISE and NASD members qualifying for no-cost access; (v) the inter-market character of the linkage's operation; and (vi) the pilot status of the linkage itself. Collectively, these factors justify recognition of the NASD/ISE linkage as an inter-market enhancement being operated experimentally to assess whether it can provide a sufficient range of benefits to warrant permanent status and added features. It is inappropriate, therefore, to view the linkage's delivery of limited data to firms accepting the responsibility of market making—and thereby creating the market—as a service competing against the more expansive data feeds marketed by Instinet (and other vendors) to a much broader base of end users. Instead, it is critical to view the linkage as an experiment undertaken to facilitate development of marketplace systems capable of supporting international transactions more efficiently. If this experiment proves successful, it will likely yield advances in computerized surveillance of international trading as well.

The NASD respectfully suggests, on its own as well as the ISE's behalf, that the proper time to focus on service charges for receipt of linkage information would be when the Commission considers a request for related system enhancements such as automated order routing/execution capabilities. At that point, the sponsoring markets will have completed their evaluation of the pilot program's benefits and determined to move forward with permanent enhancements to accommodate international trading more efficiently. Because that process will entail another Rule 19b-4 filing, all interested parties will have a further opportunity to comment on the applicable access terms and fees.

So long as the NASD/ISE linkage remains in an experimental mode with access to linkage information restricted in accord with the October 1987 Order, the linkage's operation for an additional year should not materially impact Instinet's commercial interests, or its competitive posture *vis-a-vis* the sponsoring markets. Accordingly, the NASD believes that it is appropriate for the Commission to approve the instant filing without the rigorous cost allocations and subscriber charge that normally accompany the proposal of a permanent service.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 2, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24061 Filed 10-11-89; 8:45 am]

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[7] *See* note 4 *supra.*

[8] The ISE has declined to submit internal cost information relative to its operation of the pilot linkage. *See* letter dated June 1, 1989 from Peter Cox, Director–International Equity Market, ISE, to Robert E. Aber, Vice President and Deputy General Counsel, NASD. A copy of this letter was submitted to the Commission and is hereby incorporated by reference.

[9] At year-end 1988, the NASDAQ system encompassed 570 market maker firms. Based on that figure, the 131 market makers qualifying for no-cost access to linkage information in May constitute 23% of universe of NASDAQ market makers.

[10] During the survey period, the ISE reported that the daily totals of all TOPIC queries ranged between 5 and 6 million. It should be noted that the TOPIC service includes a large variety of financial data besides quotations on equities traded in the ISE's market.

[11] Of the 51 users there were 27 users with 50 terminals who pay the ISE a charge to receive linkage information because they do not satisfy the market-making requirement for no-cost access. The NASD understands that this revenue offsets the ISE's costs in providing linkage information to those TOPIC subscribers that are ineligible for no-cost access. Additionally, the ISE reported a total of 43 internal TOPIC terminals that are capable of accessing linkage information without charge. The bulk of these terminals are located at ISE sites where systems engineering and various administrative functions are performed.

[Release No. 34-27333; File No. PHLX-89-44]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Revised Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") Limit Order Execution Criteria

On July 10, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") a proposed rule change revising the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") limit order execution criteria. The Commission published notice of the proposal on August 14, 1989, in Securities Exchange Act Release No. 27141, 54 FR 34847. No comments were received regarding the proposal.

The PACE system provides to Phlx member organizations a cost efficient, competitive order delivery and execution system for public customer orders. In the years prior to 1983, the PACE system was considered to be a system for the delivery and execution of small orders, *e.g.*, 1 to 599 shares.

On May 17, 1983, the Securities and Exchange Commission ("SEC") approved a Phlx rule change (SR-PHLX-83-5) which permitted use of PACE

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computer facilities to enable member organizations to electronically transmit, directly to the specialist post, orders in issues and of order size designated by the specialist, with a minimum order size of 600 shares.

On September 17, 1986, the SEC approved a Phlx rule change (SR–PHLX–86–30) which increased PACE order size eligibility from 599 to 1099 shares. Orders up to 599 shares continued to be executed in accordance with Phlx Rule 229. Orders of 600 to 1099 shares were not subject to the execution parameters of Rule 229 and such orders were executed in accordance with other applicable rules of the Phlx.

On May 19, 1988, the SEC approved a Phlx rule change (SR–PHLX–87–30) which provided for a professional execution for limit orders of 600 shares or greater routed to specialists over PACE as well as guidance to Phlx specialists, by identifying the types of trades that constitute a professional execution of this class of limit orders. Such standards imposed a number of trading obligations upon Phlx specialists when executing PACE limit orders of 600 shares or more.

By specifying the execution standards set forth in SR–PHLX–87–30, the Exchange provided for increased consistency in the execution of limit orders on the floor and, at the same time, provided notice to PACE users of the kind of execution they can expect for larger limit orders delivered over the PACE system. Such standards are reflected in Commentary .10(b) of Phlx Rule 229.

The purpose of the instant proposed rule change is to simplify and improve the standards approved on May 19, 1988, based upon experience gained during the approximately one year of their use. Under the proposed rule change, both market and limit orders up to 599 shares will continue to be executed in accordance with the current provisions of Rule 229 and its accompanying Commentary .01 through and including .10(a).

Prior to this amendment, paragraph .10(b) dealt only with orders delivered after the opening. The present proposal adds a standard of guaranteeing the opening price on orders entered at least three (3) minutes prior to the opening. In the case of orders received by the specialist less than three (3) minutes prior to the opening, a reasonable effort will be made to execute such orders at the opening price.

The standard under Circumstance 1 has been amended to delete reference to the New York market since both New York and American Stock Exchange issues are traded through PACE. The reference to New York caused confusion. Thus Phlx changed the reference to "primary market." In addition, reference to execution of marketable limit orders has been deleted because such standard applies to all orders, whether or not delivered through the PACE system and, therefore, it is confusing and redundant.

Circumstance 2 has been broadened to include a limit order price which is outside the PACE quote when received by the specialist. Under the revised rule, when the limit order price is away from (*i.e.*, outside) the PACE quote when received by the specialist or when the limit order price is on the PACE quote when received by the specialist, after ascertaining the primary market quotation size ("reference quote"), the specialist would be obligated to execute the limit order when the primary market prints a trade that is equivalent to the limit price and aggregates to the size of the reference quote.

Old Circumstance 3, which dealt with a limit order price which is outside the PACE quote when received by the specialist, has been deleted in its entirety and such orders have been included in the execution criteria of Circumstance 2. The previously established standard for execution of this type of order was confusing and difficult to administer. The new execution criteria improves and simplifies executions and provides better service to retail users of the PACE system.

New Circumstance 3 has been established to afford specialists the opportunity to seek execution of orders in other markets by means of the Intermarket Trading System ("ITS"). By the terms of Phlx rules, members must avoid trading through a superior bid or offer of another market which is an ITS participant. In order to avoid such an occurrence, a Phlx specialist may choose to send a commitment to trade to such other market against the superior bid or offer. Since the receiving market has up to two (2) minutes to respond to the commitment, at least that much time is required of the Phlx specialist to make such effort and receive a response prior to the close.

Old Circumstance 4, which dealt with a limit price traded through by a transaction reported on a market eligible to compose the PACE quote, has been deleted in its entirety because such standard applies to all orders whether or not delivered through the PACE system and, therefore, is confusing and redundant.

New Circumstance 4 provides that execution of an order under the conditions set forth in this proposal will not breach the existing primary market high or low. In other words, the order will be executed at or within the primary market high-low range existing at time of execution.

Equity specialists and member organizations may choose to participate in trading on the PACE system or they may choose not to do so. To the extent a specialist chooses to accept orders through the PACE system as described herein, such orders are entitled to an execution under the terms of the proposed rule.

Phlx stated that because each stock has unique depth, liquidity, volatility and other trading characteristics, not every stock may be suitable for a program involving execution of larger orders on the basis of predetermined execution criteria. Because of this, and in the interest of administrative ease, the Phlx rules will permit specialists to choose to participate in the program and will permit them to establish an order eligibility size of either 2500 shares or 5000 shares on a stock-by-stock basis. Orders up to either size will be executed under the terms of the proposed rule. Except under unusual circumstances, the specialist must remain committed to his order size eligibility elections for at least six months thereby proving stability and continuity to the list of issues in the program. The Rules provide, however, that under exceptional or extraordinary circumstances, the Floor Procedure committee may grant a specialist's withdrawal from the program.

The Commission believes that the proposal will lead to increased consistency in the overall execution of limit orders on the Exchange. The proposal will also facilitate the oversight of specialist performance and give investors adequate notice of how their orders will be executed.

The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Phlx and, in particular, section 6(b)(5) of the Act in that it will promote just an equitable principles of trade, facilitate transactions in securities and protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24062 Filed 10–11–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Colonial Intermarket Income Trust I
Shares of Beneficial Interest, No Par Value (File No. 7–5358)
Central Newspapers, Inc.
Class A Common Stock, No Par Value (File No. 7–5359)
Austria Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5360)
Putnam Dividend Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7–5361)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24058 Filed 10–11–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ashland Coal, Inc.
Common Stock, $0.01 Par Value (File No. 7–5362)
British Petroleum Company plc
American Depositary Shares "Warrants" (File No. 7–5363)
Chemical Banking Corporation
Adjustable Rate Cum. Pfd. Series C (File No. 7–5364)
Harcourt Brace Javanovich, Inc.
12% Preferred Stock (File No. 7–5365)
Nichols Institute
Common Stock, $0.10 Par Value (File No. 7–5366)
Sealed Air Corporation
Common Stock, $0.01 Par Value (File No. 7–5367)
Whittaker Corp.
Common Stock, $.01 Par Value (File No. 7–5368)
Americus Trust for American Express Shares
Score Component (File No. 7–5369)
Americus Trust for AT&T Shares
Series 2 Score Component (File No. 7–5370)
Americus Trust for Arco Shares
Score Component (File No. 7–5371)
Americus Trust for Chevron Shares
Score Component (File No. 5372)
Americus Trust for Coca Cola Shares
Score Component (File No. 7–5373)
Americus Trust for Dow Shares
Score Component (File No. 7–5374)
Americus Trust for Kodak Shares
Score Component (File No. 7–5375)
Americus Trust for Ford Shares
Score Component (File No. 7–5376)
Americus Trust for Dupont Shares
Score Component (File No. 7–5377)
Americus Trust for Hewlett-Packard Shares
Score Component (File No. 7–5378)
Americus Trust for Merck Shares
Score Component (File No. 7–5379)
Americus Trust for Mobil Shares
Score Component (File No. 7–5380)
Americus Trust for Sears Shares
Score Component (File No. 7–5381)
Hanson PLC
Warrants (File No. 7–5382)
Hannaford Bros. Co.
Common Stock, $0.75 Par Value (File No. 7–5383)
Synovus Financial Corp.
Common Stock, $1 Par Value (File No. 7–5384)
Central Newspapers, Inc.
Class A Common Stock, No Par Value (File No. 7–5385)
Putnam Diversified Premium Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–5386)
Putnam Dividend Income Fund
Common Shares of Beneficial Interest, No Par Value(File No. 7–5387)
Tasty Baking Company
Common Stock, $0.50 Par Value (File No. 7–5388)
The Austria Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5389)
Allergran, Inc.
Common Stock, $0.01 Par Value (File No. 7–5390)
Smithkline Beecham plc
American Depositary Shares (representing A Ordinary Shares) (File No. 7–5391)
Smithkline Beecham plc
American Depositary Shares (Equity Units) (File No. 7–5392)
Airgas, Inc.
Common Stock, $0.01 Par Value (File No. 7–5393)
Alliance Capital Management LP
Units of Limited Partnership Interest (File No. 7–5394)
Cable & Wireless plc
American Depositary Shares (File No. 7–5395)
Franklin Universal Trust
Shares of Beneficial Interest (File No. 7–5396)
Wallace Computer Services, Inc.
Common Stock, $1 Par Value (File No. 7–5397)
Tosco Corporation
Common Stock, $0.75 Par Value (File No. 7–5398)
Tredegar Industries, Inc.
Common Stock, No Par Value (File No. 7–5399)
Vivra Incorporated
Common Stock, $0.01 Par Value (File No. 7–5400)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 26, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for

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hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24059 Filed 10-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1136]

Certain Nonimmigrant Visas; Validity

Public Notice 1114 of July 3, 1989 authorized consular officers to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of the countries listed in that Notice which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice adds Argentina to the list contained in Public Notice 1114 in order to conform with present reciprocal or more liberal treatment accorded United States nationals in a similar class.

This Notice amends Public Notice 1114 of July 3, 1989 (54 FR 27969).

Dated: October 5, 1989.

Harry L. Coburn,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 89-24031 Filed 10-11-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-082]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). The objectives and mission of the Committee are to provide advice and consultation to the Office of Marine Safety, Security and Environmental Protection with respect to water transportation of hazardous materials in bulk. Members of the Committee serve without compensation from the Federal Government.

Applications will be considered for nine expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1989.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Dawn Anderson at the above mailing address, or telephone (202) 267-1217.

Dated: October 4, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23999 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Termination of Review of Noise Compatibility Program; Colorado Springs Municipal Airport, Colorado Springs, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program, at the request of the Director of Aviation of the Colorado Springs Municipal Airport, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150.

EFFECTIVE DATE: The effective date of the FAA's termination of its review of the Colorado Springs Municipal Airport noise compatibility program is September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM-611; 17900 Pacific Highway South; C-68966; Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the FAA determined that the noise exposure maps submitted by the Director of Aviation under part 150 were in compliance with applicable requirements and began its review of the noise compatibility program. On September 11, 1989, the City of Colorado Springs requested FAA to suspend its review and processing of the noise compatibility program pending a re-examination of various issues associated with the proposed new runway and resulting aircraft noise. When the FAA has received revised documentation, FAA will reissue appropriate notice establishing new review and approval periods in accordance with § 150.33(e) of 14 CFR part 150.

Questions may be directed to the individual named above under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle Washington on September 25, 1989.

James R. Houghton,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 89-24011 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: October 5, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0086.
Form Number: Form 1040C.
Type of Review: Revision.
Title: U.S. Departing Alien Income Tax Return.
Description: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—2 hours, 5 minutes
Learning about the law or the form—37 minutes
Preparing the form—1 hour, 55 minutes
Copying, assembling, and sending the form to IRS—59 minutes
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 11,220 hours.
OMB Number: 1545-0971.
Form Number: Form 1041-ES.
Type of Review: Revision.
Title: Estimated Income Tax for Fiduciaries.
Description: Form 1041-ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—20 minutes
Learning about the law or the form—10 minutes
Preparing the form—1 hour, 10 minutes
Copying, assembling, and sending the form to IRS—20 minutes
Frequency of Response: Quarterly or Annually.
Estimated Total Recordkeeping/Reporting Burden: 2,391,000 hours.
OMB Number: 1545-1032.
Form Number: 8689.
Type of Review: Revision.
Title: Allocation of Individual Income Tax to the Virgin Islands.
Description: Form 8689 is used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 800.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—33 minutes
Learning about the law or the form—17 minutes
Preparing the form—55 minutes
Copying, assembling, and sending the form to IRS—20 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 1,672 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-23993 Filed 10-11-89; 8:45 am]

BILLING CODE 4810-25-M

Senior Executive Service; Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service.

FOR FURTHER INFORMATION CONTACT: Eugene H. Essner, Deputy Director of the Mint, 633 3rd Street, NW., Washington, DC; Telephone (202) 376-0434.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4313(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service are listed below. This Board reviews the performance of career senior executives below the level of bureau head and principal deputy in the five bureaus. At least three voting members constitute a quorum.

(INSERT ATTACHED CHART)

This notice does not meet the Department's criteria for significant regulation.

Andrew Cosgarea, Jr.,

Associate Director for Operations.

Bureau	Primary	Alternate
SB	Jerrold B. Speers, Executive Director	W. Lorn Harvey, Deputy Executive Director for Savings Bonds Division.
PD	Kenneth W. Rath, Assistant Commission (Administration)	Eleanor J. Holsopple, Assistant Commission (Securities and Accounting Services).
E&P	L. Paul Blackmer, Jr., Assistant Director (Administration)	Carl V. D'Alessandro, Assistant Director (Operations).
Mint	Eugene H. Essner, Deputy Director	Andrew Cosgarea, Jr., Associate Director for Operations.
FMS	Michael T. Smokovich, Assistant Commissioner, Federal Finance	Michael D. Serlin, Assistant Commissioner, Field Operations.
FMS	Diane E. Clark, Assistant Commissioner, Administration	Bland T. Brockenborough, Assistant Commissioner, Headquarters Operations.

[FR Doc. 89-24003 Filed 10-11-89; 8:45 am]

BILLING CODE 4810-37-M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order of comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of

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the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Dated: October 3, 1989.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 89-24033 Filed 10-11-89; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

American Home Savings and Loan Association, Edmond, Oklahoma; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for American Home Savings and Loan Association, Edmond, Oklahoma ("Association") on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24042 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

American Home Savings and Loan Association, F.A., Edmond, Oklahoma; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Home Savings and Loan Association, F.A., Edmond, OK ("Assocation") with the Resolution Trust Corporation as sole Receiver for the Association on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24051 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

Family Federal Savings Bank, Sapulpa, Oklahoma; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for the Family Federal Savings Bank, Sapulpa, Oklahoma ("Savings Bank") on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24043 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

Family Savings Bank, F.S.B. Sapulpa, Oklahoma, Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Family Savings Bank, F.S.B., Sapulpa, Oklahoma ("Savings Bank") with the Resolution Trust Corporation as sole Receiver for the Association on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24052 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Brenham, Brenham, Texas; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings and Loan Association of Brenham, Brenham, Texas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on September 21, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24054 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

First Garland Savings Association, Garland, Texas; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Garland Savings Association, Garland, Texas ("Association") on September 20, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24044 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

First Garland Savings and Loan Association Garland, Texas; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Garland Federal Savings and Loan Association, Garland, Texas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24055 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

First Savings Association of Brenham Brenham, Texas; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Association of Brenham, Brenham, Texas ("Association") on September 21, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24045 Filed 10-11-89, 8:45 am]

BILLING CODE 6720-01-M

Savers Federal Savings and Loan Association, Little, Rock, Arkansas, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Savers Federal Savings and Loan Association, Little Rock, Arkansas ("Association") on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24047 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

Seabank Savings, FSB Myrtle Beach, South Carolina; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Seabank Savings, FSB, Myrtle Beach, South Carolina ("Savings Bank") on September 20, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24048 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

Savers Savings Association, a Federal Savings and Loan Association, Little Rock, Arkansas; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Savers Savings Association, a Federal Savings and Loan Association, Little Rock, Arkansas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on October 5, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24053 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

Seabank Federal Savings Bank, Myrtle Beach, South Carolina; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for SeaBank Federal Savings Bank, Myrtle Beach, South Carolina ("Savings Bank") with the Resolution Trust Corporation as sole Receiver for the Association on September 20, 1989.

Dated: October 6, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24056 Filed 10-11-89; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 3, 1985), I hereby determine that the objects to be included in the exhibit "Masterworks in Metal: A Millennium of Treasures from the State Art Museum of Georgia, USSR" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the B Street Pier Exhibit Hall, B Street Pier, San Diego, California beginning on or about October 29, 1989 to on or about January 7, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: October 6, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-24035 Filed 10-11-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

VOL 54 ISS 196 OCT 12 1989 UMI

Sunshine Act Meetings

Federal Register
Vol. 54, No. 196
Thursday, October 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 17, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 19, 1989, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-17
Mr. Dan Messamore on behalf of Ford Bank Group, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 89-24281 Filed 10-10-89; 3:40 pm]
BILLING CODE 6715-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, March 8, 1990, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, March 8, from 10:00 a.m. to 5:30 p.m., on Friday, March 9, from 9:00 a.m. to 5:30 p.m., and on Saturday, March 10, from 9:00 a.m. to 1:00 p.m.

PLACE: The New Otani Kaimana Beach Hotel, 2863 Kalakaua Avenue, Honolulu, Hawaii 96815.

STATUS: The executive session will be closed to the public. At it, matters to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include high seas driftnet fisheries, domestic and international aspects of the tuna-porpoise problem, the Hawaiian monk seal program, the humpback whale recovery plan, the West Indian manatee, and implementation of the 1988 amendments to the Marine Mammal Protection Act.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653-6237.

Dated: October 9, 1989.

John R. Twiss, Jr.,
Executive Director.
[FR Doc. 89-29189 Filed 10-10-89; 11:06 pm]
BILLING CODE 6820-31-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, October 17, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Minutes.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Fiscal Year 1990 Overhead Transfer Rate.
6. Regulatory Review, NCUA's Rules and Regulations, Final Amendments to:
   a. Section 701.21(f), 15-Year Loans.
   b. Section 701.31, Nondiscrimination Requirements.
   c. Part 708, Ballot Box Provisions Regarding Voluntary Termination or Conversion of Federal Share Insurance.
7. Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Amendments to NCUA's Rules and Regulations:
   a. Proposed Rule: Part 747, Establishing Rules and Procedures Applicable to Conduct of Investigations.
   b. Final Rule: Part 747, Administrative Action, Adjudicative Hearings, and Rules of Procedure and Practice.
   c. Proposed Rule: Part 745, Payment of Insurance and Insurance Appeals.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Tuesday, October 17, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 120 of the Federal (9)(A)(ii), and (9)(B).
3. Appeal by a Federal Credit Union of a Field Of Membership Amendment Resulting in an Overlap. Closed pursuant to exemptions (8) and (9)(B).
4. Semiannual Report on ADP Long Range Plan. Closed pursuant to exemption (2).
5. Personnel Actions. Closed pursuant to exemptions (2) and (8).

FOR MORE INFORMAITON CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.
[FR Doc. 89-24256 Filed 10-10-89; 3:05 pm]
BILLING CODE 7535-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, November 8, 1989.

PLACE: Board Hearing Room Eighth Floor, 1425 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of October, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: October 6, 1989.

Charles R. Barnes,
Executive Director, National Medication Board.
[FR Doc. 89-24255 Filed 10-10-89; 3:04 pm]
BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 9, 16, 23, and 30, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 9

Thursday, October 12

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 16—Tentative

Thursday, October 19

10:00 a.m.
Briefing of Status of Comanche Peak (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 23—Tentative

Wednesday, October 25

10:00 a.m.
Briefing on Emerging Technical Issue (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 30—Tentative

Tuesday, October 31

8:30 a.m.
Collegial Discussion of Items of Commission Interest (Public Meeting)

Wednesday, November 1

10:00 a.m.
Briefing by General Electric on the Advanced BWR Standard Plant Review (Public Meeting)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing by Combustion Engineering on Advanced LWR Standard Plant (Public Meeting)
2:30 p.m.
Briefing by Westinghouse on Advanced LWR Programs (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

Dated: October 5, 1989.

Andrew L. Bates,
Office of the Secretory.
[FR Doc. 89-24222 Filed 10-10-89; 1:32 am]
BILLING CODE 7590-01-M

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Corrections

Federal Register
Vol. 54, No. 196
Thursday, October 12, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524-9228]

RIN 0648-AC44

Atlantic Sea Scallop Fishery

Correction

In proposed rule document 89-23116 beginning on page 40463 in the issue of Monday, October 2, 1989, make the following corrections:

1. On page 40463, in the second column, in the first line of text, "shall" should read "shell".

2. On the same page, in the same column, under **DATE:**, in the second and third lines, the date should be "November 13, 1989."

3. On page 40464, in the first column, under **Proposed Action**, in the second paragraph, in the fourth line; in the second column, in the third complete paragraph, in the 10th line; and in the third column, in the first complete paragraph, in the third line, "(176.2 l)" should read "(176.2 L)".

4. On page 40465, in the third column, in the authority citation, "1081" should read "1801".

§ 650.7 [Corrected]

5. On page 40466, in the first column, in § 650.7(b), in the third line, "(176.1)" should read "(176.2 L)".

§ 650.21 [Corrected]

6. On the same page, in the same column, in § 650.21(c), in the third line, "(176.21)" should read "(176.2 l.)".

7. On the same page, in the second column, in the table, in the second line, "JN" should read "NJ".

§ 650.25 [Corrected]

8. On the same page, in the same column, in § 650.25, the second paragraph should be designated "(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-03-4214-11; NM NM 010925]

Proposed Continuation of Withdrawal and Reservation of Land; New Mexico

Correction

In notice document 89-22369 beginning on page 39054 in the issue of Friday, September 22, 1989, make the following corrections:

1. On page 39054, in the third column, in the land description for **New Mexico Principal Meridian**, under "T. 12 N., R.4 E.," the third line should read "S½NW¼ SE¼SE¼,S½N½NW¼SE¼SE¼,N½ SE¼SE¼SE¼".

2. On the same page, in the same column, in the land description for **La Cueva Recreation Area**, under "T. 11 N., R. 4 E.," the second line should read "SE¼SE¼SW¼,E½SW¼SE¼ SW¼,E½".

3. On the same page, in the same column, under the same heading, in the third line, delete the comma between "W½" and "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Progams Administration

49 CFR Part 177

[Docket No. HM-164C; Notice No. 89-7]

Direct Route Transportation of Radioactive Materials

Correction

In proposed rule document 89-22987 beginning on page 40272 in the issue of Friday, September 29, 1989, make the following corrections:

1. On page 40272, in the second column, in the first complete paragraph, in the first line, "propose" should read "proposed".

2. On the same page, in the same column, in the second complete paragraph, in the 13th line, "then" should read "than".

3. On the same page, in the same column and paragraph, in the 18th line, "state" should read "stated".

4. On page 40273, in the first column, in the first paragraph, in the 12th line, "following" was misspelled.

5. On the same page, in the same column, in the second paragraph, in the 10th line, "addition" was misspelled.

6. On the same page, in the second column, in the second complete paragraph, in the fifth line, "registered" was misspelled.

7. On the same page, in the same column and paragraph, in the ninth line, "alternate" was misspelled.

8. On the same page, in the same column and paragraph, in the 14th line, "improve" was misspelled.

9. On the same page, in the third column, in the first complete paragraph, sixth line, "alternate" was misspelled.

10. On page 40274, in the second column, in the second complete paragraph, in the fourth line, "rule" was misspelled.

§ 177.825 [Corrected]

11. On page 40275, in the first column, in the 12th line, insert "a" between "unless" and "State".

12. On the same page, in the same column, in § 177.825(b)(1), in the first line "preferred" was misspelled and "of" should read "or".

13. On the same page, in the second column, in § 177.825(b)(1)(ii), in the fifth line, "Systems" should read "System".

14. On the same page, in the same column, in § 177.825(b)(iii), in the seventh line, "Administration" was misspelled.

15. On the same page, in the same column, in § 177.825(b)(2), in the first line, "operate" should read "operated".

16. On the same page, in the same column, in § 177.825(b)(2)(i), in the third line, remove "of".

BILLING CODE 1505-01-D

federal register

Thursday
October 12, 1989

Part II

Environmental Protection Agency

40 CFR Part 370

Community Right-to-Know Reporting Requirements; Interim Final Rule and Supplemental Notice to Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[FRL-3621-4]

RIN 2050-AC34

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of Title III. EPA previously established reporting thresholds for the first two years of reporting (52 FR 38344; October 15, 1987). EPA also promulgated zero thresholds in that rulemaking to become effective in the third year of reporting, but stated in the preamble that it would conduct further studies of all reporting threshold alternatives and would propose final reporting thresholds before the beginning of the third year of reporting.

After completing its study of alternative thresholds, EPA published a Notice of Proposed Rulemaking (NPRM) proposing final reporting thresholds (54 FR 12992; March 29, 1989). Because of the time required to address the comments received on the NPRM and to promulgate a final rule, today EPA is publishing an Interim Final Rule extending, for manufacturing facilities, the reporting thresholds established for the first two years of reporting under the October 15, 1987 rule. For manufacturers, promulgation of the Interim Final Rule, therefore, limits, for one more year from the current effective date (i.e., October 17, 1989), the hazardous chemicals that must be reported under sections 311 and 312 to those which are present in an amount equal to or greater than 10,000 pounds, or which are extremely hazardous substances (EHSs) present in an amount greater than or equal to 500 pounds (or 55 gallons) or the threshold planning quantity (TPQ), whichever is lower.

DATES: *Effective date:* Although EPA is soliciting comments until November 13, 1989, and will change this Interim Final Rule if necessary, the Interim Final rule is being promulgated as a final rule requiring no further EPA action before becoming effective on October 17, 1989. Today's rule is being issued as an Interim Final Rule because EPA believes that it is impracticable to solicit comments, respond to such comments, and issue a final rule on the changes in today's Interim Final Rule before the October 17, 1989 reporting deadline for manufacturing facilities.

Comments: Written comments on the Interim Final Rule should be submitted on or before November 13, 1989.

ADDRESSES: Comments may be mailed or delivered to the Superfund Docket clerk. Attn: Docket Number 300RR-IF, Superfund Docket Room 2427 (OS-240), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please send four copies of comments.

Copies of materials relevant to this rulemaking are contained in the Superfund Docket—Room 2427, 401 M Street SW., Washington, DC 20460. The docket may be inspected by appointment between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Brody, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202, or in the Washington, DC metro area and Alaska at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of This Rulemaking
II. Interim Final Rule
  A. Extension of the Two-year Thresholds for Manufacturers
IV. Regulatory Analyses
  A. Regulatory Impact Analyses
  B. Regulatory Flexibility Act Analysis
  C. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

These regulations are issued under sections 311, and 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986

B. Background of This Rulemaking

Section 311 of Title III applies to the owner or operator of a facility where there are hazardous chemicals present for which the owner or operator must prepare or have available a Material Safety Data Sheet (MSDS) under the Hazard Communication Standards (HCS) (29 CFR 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of Title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have MSDSs, to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS, is one that poses either a physical or health hazard. The tens of thousands of chemicals covered by the HCS include petroleum products, explosives, and carcinogens.

The HCS regulations were restricted initially to facilities in Standard Industrial Classification (SIC) codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). A challenge to the revised standards by several industrial groups resulted in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA notified EPA that all provisions of the HCS were in effect for all segments of industry, including the construction industry, as of January 30, 1989 (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department by October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS, as specified in 40 CFR 370.20(b)). Facilities in the construction industry were required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS in a quantity at or above the reporting thresholds, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or correct information within three months to the appropriate SERC, LEPC, and local fire department (40 CFR 370.21(c)).

Under section 312 of Title III, owners and operators covered by section 311 of Title III are required to submit additional information on the presence and location of hazardous chemicals at their facilities. Beginning March 1, 1988 for manufacturers, March 1, 1989 for non-manufacturers, March 1, 1990 for the construction industry, and annually thereafter, all facilities affected by the HCS that have hazardous chemicals at or above the reporting thresholds must submit a "Tier I" inventory form and may be required to submit a "Tier II" inventory form to SERCs, LEPCs, and fire departments.

Tier I forms require general information on the amount and location of hazardous chemicals by category; Tier I forms must be submitted annually. Tier II forms require more detailed information on individual chemicals and must be submitted on request. Facilities may submit Tier II forms in lieu of Tier I forms.

Title III (section 311(b)) states that the EPA Administrator may establish reporting thresholds (i.e., quantities of hazardous chemicals) such that if the hazardous chemical subject to the HCS is present at a facility in a quantity that is below the reporting threshold, the facility is not required to report the presence of that chemical under the provisions of section 311 and 312 of Title III. On October 15, 1987, EPA promulgated regulations (52 FR 38334) establishing reporting thresholds under section 311(b) of Title III for facilities subject to the OSHA HCS. The reporting threshold established for the first two years was 10,000 pounds, except for EHSs, which must be reported at the lower of 500 pounds or the TPQ. Access to information below these thresholds was preserved in that facilities must provide any such information when requested in accordance with 40 CFR 370.20(b)(3).

A threshold of zero pounds is currently in effect for the third year of reporting; that is, there is no threshold as of the third year. For manufacturers, the third year of reporting begins on October 17, 1989; for non-manufacturers, the third year begins on September 24, 1990; and for the construction industry, the third year begins on April 30, 1991. In the final rule on thresholds, however, EPA intends to eliminate the different effective dates for various industry sectors and to establish uniform effective dates for all facilities subject to reporting requirements under sections 311 and 312. The uniform effective dates are described and explained in detail in a Supplemental Notice published elsewhere in today's Federal Register.

EPA stated in the October 15, 1987 final rule that because of the substantial number and variety of comments received on the final threshold issue and uncertainty over the impact of the requirements on the recipients of the reports and ultimately on the effectiveness of the program, it would conduct further studies of alternative thresholds and propose final reporting thresholds before the beginning of the third year of reporting. On March 29, 1989 (54 FR 12992), EPA published an NPRM proposing final reporting thresholds based on analyses conducted since the promulgation of the October 15, 1987 final rule. EPA received 167 comment letters addressing issues raised in the NPRM; 138 of the letters contained comments on the selection of final threshold levels. Many commenters supported maintaining the current reporting thresholds (i.e., 10,000 pounds for non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs) as proposed in the NPRM, and some suggested alternative thresholds. EPA believes that it is not feasible to consider properly and respond thoroughly to all the comments, and to finalize and promulgate final reporting thresholds before the zero pound threshold for manufacturers automatically goes into effect on October 17, 1989. EPA believes that it is prudent, therefore, and in the public interest to extend the current reporting thresholds for manufacturers for one additional year. This short extension of current reporting thresholds for the manufacturing sector will provide EPA additional time to evaluate the comments received on the NPRM and to promulgate final reporting thresholds for all facilities subject to reporting under sections 311 and 312 and EPA's implementing regulations.

Although EPA is soliciting comments until November 13, 1989, and will change this Interim Final Rule if necessary, the Interim Final rule is being promulgated as a final rule requiring no further EPA action before becoming effective October 17, 1989. Today's rule is being issued as an Interim Final Rule because EPA believes that it is impracticable to solicit comments, respond to such comments, and issue a final rule on the changes in today's Interim Final Rule before the October 17, 1989 reporting deadline for manufacturing facilities. Also, today's Interim Final Rule does not make substantive changes in the reporting requirements under sections 311 and 312 and EPA's implementing regulations. EPA is merely extending the thresholds already in existence for these provisions. Finally the extension promulgated is of limited duration as it extends current deadlines for just one additional year.

Without the changes made by today's Interim Final Rule, the zero threshold would go into effect automatically on the dates currently specified in 40 CFR 370.20. EPA does not believe that it is in the public interest to allow the zero threshold to go into effect for the short time required to promulgate final reporting thresholds that may differ from the zero threshold. Allowing the zero threshold to go into effect for the short time necessary to complete the evaluation of the comments and alternative thresholds would impose a substantial burden on the regulated community, SERCs, LEPCs, and local fire departments without a commensurate public benefit.

Neither does EPA want to promulgate final reporting thresholds without thoroughly reviewing and evaluating all comments and the many issues raised by the commenters. Today's Interim Final Rule will allow the time necessary for EPA to evaluate and address all comments on the March 29, 1989 NPRM without imposing any additional burden on the regulated community, SERCs, LEPCs, and local fire departments. The Interim Final Rule will also enable the Agency to promulgate a final rule giving the regulated community ample time to prepare and submit required reports in accordance with the finalized thresholds.

The promulgation of today's rule should not be construed, however, to imply any evaluation of either the zero threshold or the 10,000 pound level as final reporting thresholds. All alternative thresholds will be discussed fully in the final rule, as will any additional issues raised by comments. EPA is aware that for non-manufacturers the zero threshold for reporting under section 311 will go into effect on September 24, 1990, unless a final rule is promulgated before that date. EPA intends to promulgate the final reporting thresholds, however, well in advance of September 24, 1990, in order to give the regulated community ample time to prepare and submit the first reports required to be submitted in accordance with the final thresholds. In addition EPA is proposing to extend the current second-year threshold for non-manufacturers from September 24, 1990 to October 17, 1990 in a Supplemental

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Notice published elsewhere in today's **Federal Register.**

II. Interim Final Rule

A. Extension of the Two-Year Thresholds for Manufacturers

By extending the current reporting thresholds for manufacturers, today's Interim Final Rule limits for an additional year the hazardous chemicals that must be reported by facilities in SIC codes 20 through 39 under sections 311 and 312 to those that are present at the facility in an amount equal to or greater than 10,000 pounds, or at which EHSs are present in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is lower. Accordingly, the following changes are made in 40 CFR 370.20: (1) the date specified at 40 CFR 370.20(b)(1)(ii) for reporting all hazardous chemicals present at a manufacturing facility in quantities between 10,000 and zero pounds for which an MSDS has not yet been submitted is changed from October 17, 1989 to October 17, 1990; (2) the amounts specified at 40 CFR 370.20(B)(2)(iii) for the third year of Tier I reporting for all hazardous chemicals present at a manufacturing facility during the preceding calendar year is changed to amounts equal to or greater than 10,000 pounds or extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) whichever is lower; and (3) the date specified at new section, 40 CFR 370.20(b)(2)(iv), is March 1, 1991, for reporting under the current final threshold for all hazardous chemicals and all extremely hazardous substances present at a manufacturing facility during the preceding calendar year in amounts equal to or greater than zero pounds.

IV. Regulatory Analyses

A. Regulatory Impact Analysis

A Regulatory Impact Analysis is not necessary for today's Interim Final Rule because it makes no change in current reporting thresholds but merely extends those currently in effect for one additional year. Costs and benefits associated with reporting requirements under the thresholds specified at 40 CFR 370.20 will remain unchanged.

B. Regulatory Flexibility Act Analysis

A Regulatory Flexibility Act Analysis is not necessary for the Interim Final Rule because the impact of the current third-year reporting thresholds was analyzed for the October 15, 1987 final rule and today's Interim Final Rule makes no change in the reporting thresholds or their impact on small businesses.

C. Paperwork Reduction Act

Office of Management and Budget approval is not necessary for this Interim Final Rule because it has no effect on the reporting burden imposed by 40 CFR 370.

List of Subjects in 40 CFR Part 370

Chemicals, Hazardous substances, Extremely hazardous substances, Intergovernmental relations, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: September 29, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 370 of subtitle J of title 40 of the Code of Federal Regulations is amended as follows:

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for part 370 continues to read as follows:

Authority: 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

2. Section 370.20 is amended by revising paragraph (b)(1)(ii) by redesignating paragraph (b)(2)(iii) as paragraph (b)(2)(iv), by revising the newly redesignated paragraph (b)(2)(iv) and by adding a new paragraph (b)(2)(iii) to read as follows:

Subpart B—Reporting Requirements

§ 370.20 Applicability.

* * * * *

(b) * * *

(1) * * *

(ii) On or before October 17, 1990 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) (or 2 years and 3 months after the facility first becomes subject to this Subpart for non-manufacturing facilities), for all hazardous chemical present at the facility between 10,000 and zero pounds for which MSDS has not yet been submitted.

(2) * * *

(iii) On or before March 1, 1990 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is less.

(iv) On or before March 1, 1991 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) (or March 1 of the third year after the facility first becomes subject to this Subpart for non-manufacturing facilities), and annually thereafter, covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than zero pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ whichever is less.

* * * * *

[FR Doc. 89-23831 Filed 10-11-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 370

[FRL-3657-9]

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice to proposed rule; notice of availability.

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of Title III. EPA previously established reporting thresholds for the first two years of reporting (52 FR 38344; October 15, 1987). EPA also promulgated zero thresholds in that rulemaking to become effective in the third year of reporting, but stated in the preamble that it would conduct further studies of all threshold alternatives and would propose final reporting thresholds before the beginning of the third year of reporting.

After completing its study of alternative thresholds, EPA published a Notice of Proposed Rulemaking (NPRM) proposing final reporting thresholds (54 FR 12992; March 29, 1989). Also as part of the NPRM, EPA proposed to eliminate the language in 40 CFR 370.20 that established the three-year phased-in reporting requirements established by the October 17, 1987 final rule, intending to subject all sectors of industry to the same final reporting thresholds on the same effective dates. In today's Supplemental Notice, EPA is clarifying and soliciting comments on its intent to establish, in the final rule on reporting thresholds, uniform effective dates for final reporting thresholds for all facilities required to submit reports under sections 311 and 312, regardless of the threshold option selected in the final rule. In this Supplemental Notice, EPA is using the term "final" rather than "permanent" threshold to avoid the misapprehension that no changes in the thresholds could ever be made in the future.

Also, EPA is today announcing the availability of the results of an analysis of reporting thresholds under State Right-to-Know laws.

Elsewhere in today's **Federal Register**, EPA is promulgating an Interim Final Rule extending, for manufacturing facilities, the reporting thresholds established for the first two years of reporting under the October 15, 1987 rule.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Comments may be mailed or delivered to the Superfund Docket clerk. Attn: Docket Number 300RR-IF, Superfund Docket Room 2427 (OS-240), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please send four copies of comments.

Copies of materials relevant to this Supplemental Notice and to the March 29, 1989 NPRM are contained in the Superfund Docket—Room 2427, 401 M Street SW., Washington, DC 20460. The Docket may be inspected by appointment between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Brody, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202, or in the Washington, DC metro area and Alaska at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's Supplemental Notice are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background
  C. Proposed Uniform Effective Dates for Compliance with Reporting Thresholds under SARA sections 311 and 312
II. Notice of Availability.

I. Introduction

A. Statutory Authority

This Supplemental Notice is issued under sections 311 and 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 311 of Title III applies to the owner or operator of a facility where there are hazardous chemicals present for which the owner or operator must prepare or have available a Material Safety Data Sheet (MSDS) under the Hazard Communication Standards (HCS) (29 CFR 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of Title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have MSDSs, to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS, is one that poses either a physical or health hazard. The tens of thousands of chemicals covered by the HCS include petroleum products, explosives, and carcinogens.

The HCS regulations were initially restricted to facilities in Standard Industrial Classification (SIC) codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). A challenge to the revised standards by several industrial groups resulted in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA notified EPA that all provisions of the HCS were in effect as of January 30, 1989 for all segments of industry, including the construction industry (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department by October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS, as specified in 40 CFR 370.20(b)). Facilities in the construction industry were required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS in a quantity at or above the reporting threshold, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or correct information within three months to the appropriate SERC, LEPC, and the local fire department (40 CFR 370.21(c)).

Under section 312 of Title III, owners and operators covered by section 311 of Title III are required to submit

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additional information on the presence and location of hazardous chemicals at their facilities. Beginning March 1, 1988 for manufacturers, March 1, 1989 for non-manufacturers, March 1, 1990 for the construction industry, and annually thereafter, all facilities affected by the HCS that have hazardous chemicals at or above the reporting thresholds must submit a "Tier I" inventory form and may be required to submit a "Tier II" inventory form to SERCs, or LEPCs, and fire departments.

Tier I forms require general information on the amount and location of hazardous chemicals by category; Tier I forms must be submitted annually. Tier II forms require more detailed information on individual chemicals and must be submitted on request. Facilities may submit Tier II forms in lieu of Tier I forms.

Title III (section 311(b)) states that the EPA Administrator may establish reporting thresholds (i.e., quantities of hazardous chemicals) such that if the hazardous chemical subject to the HCS is present at a facility in a quantity that is below the reporting threshold, the facility is not required to report the presence of that chemical under the provisions of sections 311 and 312 of Title III. On October 15, 1987, EPA promulgated regulations (52 FR 38334) establishing reporting thresholds under section 311(b) of Title III for facilities subject to the OSHA HCS regulations. The reporting threshold established for the first two years was 10,000 pounds, except for EHSs, which must be reported at the lower of 500 pounds or the TPQ. Access to information below these thresholds was preserved in that facilities must provide any such information when requested in accordance with 40 CFR 370.20(b)(3).

A threshold of zero pounds is currently in effect for the third year of reporting; that is, there is no threshold as of the third year. In the preamble to the October 15, 1987 final rule, however, EPA stated its intention to reevaluate the reporting thresholds and, if appropriate, to promulgate final reporting thresholds different from zero prior to the beginning of the third year of reporting.

On March 29, 1989 (54 FR 12991), EPA published an NPRM in which it proposed to maintain the current reporting thresholds through and beyond the third year of reporting (i.e., final reporting thresholds would be established at 10,000 pounds for all non-EHS hazardous chemicals and 500 pounds or the TPQ, whichever is lower, for EHSs). In the proposed regulatory language in 40 CFR 370.20, EPA eliminated the terminology providing for three-year phased-in reporting that was established by the October 15, 1987 final rule. Today's Supplemental Notice clarifies that in the final rule, EPA intends to eliminate phased-in reporting, and to establish uniform effective dates for all facilities reporting under sections 311 and 312 and EPA's implementing regulations, regardless of the threshold option that is selected for promulgation. Under the proposed provisions, therefore, for all facilities subject to reporting under sections 311 and 312, including facilities in the construction industry and facilities newly subject to the reporting requirements, October 17, 1990 will be the effective date for final reporting thresholds for reports submitted under section 311; March 1, 1991 will be the effective date for final reporting thresholds for reports submitted under section 312.

EPA believes that today's clarification is necessary to allow the public to understand fully the implications of all of the proposed threshold options. Regardless of the threshold option promulgated in the final rule, the effective date will be the same. This issue was not addressed in the NPRM because the proposed final reporting thresholds simply extended current reporting levels and, therefore, the issue of a phase-in was moot. EPA wants to ensure with today's clarification, however, that all commenters understand EPA's intent to eliminate the phase-in.

EPA established the three-year phase-in reporting requirements in the October 15, 1987 final rule to address several concerns. First, because the Title III reporting requirements were new and unfamiliar to many facilities, especially smaller facilities more likely to have smaller inventories of chemicals, and because many State and local governments needed time to obtain funding and to establish the organizations and information management systems necessary to process reported information, EPA believed that phase-in reporting thresholds for facilities in all industrial sectors, including the manufacturing sector, were necessary to minimize the possibility of overwhelming the SERCs, LEPCs, and local fire departments during the initial implementation of the reporting requirements and to allow time for facilities with smaller chemical inventories to learn about and become familiar with the reporting requirements.

Second, EPA was aware that the OSHA HCS requirements were likely to be extended beyond the manufacturing sector. The OSHA extension to the non-manufacturing sector would result in a very large increase in the number of facilities that would be subject to the requirements of sections 311 and 312 of Title III. To facilitate compliance by these non-manufacturing facilities at a time when they were first becoming familiar with the HCS regulations, EPA believed it was most prudent to phase-in the lower reporting thresholds.

These purposes for phase-in reporting are no longer valid. State and local governments have improved their data management capabilities and all industry sectors have been required to submit at least initial reports under section 311 and have some knowledge and understanding of the reporting requirements. In addition, EPA has participated in extensive outreach activities, helping both large and small facilities to understand the Title III reporting requirements. EPA believes, therefore, that eliminating phased-in reporting and establishing uniform effective dates for compliance with final reporting thresholds will not impose a significant burden on the regulated community or on the SERCs, LEPCs, and fire departments.

For non-manufacturing facilities, other than the construction industry, the deadline for compliance with the final reporting thresholds under section 311 would actually be extended several weeks from September 23, 1990 to October 17, 1990. For section 312 reporting, the effective date for compliance with the final threshold would remain March 1, 1991.

EPA acknowledges that these changes would shorten the phase-in period for facilities in the construction industry. Instead of having to comply with the third-year reporting thresholds for section 311 on April 30, 1991 and for section 312 on March 1, 1992, facilities in the construction industry would have to comply with the third-year reporting thresholds on October 17, 1990 for section 311 and March 1, 1991 or section 312. EPA expects to promulgate the final rule well before the third-year reporting deadlines become effective, however, providing the construction industry ample time to prepare and submit reports in compliance with the final thresholds. Also, although EPA is aware that under the proposed uniform dates, new facilities must comply with the final thresholds without a phase-in period, EPA believes that the number of these facilities will not be large and that the impact of compliance will be mitigated by the simplification of the reporting requirements.

In fact, uniform effective dates will simplify reporting requirements and lessen the likelihood of reporting errors across all industry sectors by requiring that all facilities report under the same thresholds on or before the same dates. As a result, State and local authorities will receive information in compliance with consistent reporting thresholds at consistent times during the year. EPA believes that the importance of receiving information on chemical inventories and the inherent simplicity associated with the uniform reporting dates more than justify the additional burden on the construction industry and newly-affected facilities. EPA believes, therefore, that the overall effect of the changes clarified in today's Supplemental Notice will be to reduce the effort required to prepare, submit, and evaluate reports under section 311 and 312. EPA solicits comments on the clarification in today's Supplemental Notice.

C. Proposed Uniform Effective Dates for Compliance with Reporting Thresholds under SARA sections 311 and 312

Establishing uniform effective dates for all sectors of industry subject to reporting requirements under sections 311 and 312 would result in the following changes in the reporting requirements under 40 CFR 370.20: (1) For non-manufacturing facilities other than in the construction industry, the effective date for final reporting thresholds under section 311 would be extended from September 24, 1990 to October 17, 1990; for section 312 reporting, the effective date for final thresholds would remain March 1, 1991; (2) For facilities in the construction industry, the effective date for final reporting thresholds under section 311 would be changed from April 30, 1991 to October 17, 1990; for section 312 reporting, the effective date would be changed from March 1, 1992 to March 1, 1991; and (3) For facilities newly subject to the reporting requirements of sections 311 and 312, final reporting thresholds for sections 311 and 312 would become effective on October 17, 1990 and March 1, 1991, respectively. The manufacturing sector would not be affected by this clarification.

II. Notice of Availability.

In response to comments received on the March 29, 1989 NPRM, EPA conducted an analysis of State Right-to-Know laws to determine the reporting thresholds imposed by State regulatory programs. The results of the analysis are available in the docket for this rulemaking (Docket Number 300RR-IF, Superfund Docket Room 2427 (OS-240), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460).

Dated: September 29, 1989.

Johathan Z. Cannon,

Acting Assistant Administrator.

[FR Doc. 89-23833 Filed 10-11-89; 8:45 am]

BILLING CODE 6560-50-M

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UMI

federal register

Thursday
October 12, 1989

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 195

Transportation of Carbon Dioxide by Pipeline; Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-112; Notice 1]

RIN 2137-AB72

Transportation of Carbon Dioxide by Pipeline

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes new regulations to provide for the safe transportation of carbon dioxide by pipeline facilities. Section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100-561) requires that the DOT regulate such pipelines under the hazardous liquid pipeline safety regulations.

DATE: Comments must be received by December 11, 1989. Late filed comments will be considered so far as is practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366-1640, regarding changes to safety standards: or the Dockets Unit, (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The regulations in part 195 currently prescribe safety standards and accident reporting requirements for pipeline facilities used in the transportation of hazardous liquids. Hazardous liquid is defined to include petroleum, petroleum products, or anhydrous ammonia. Therefore, part 195 does not currently apply to the transportation of carbon dioxide (CO_2) by pipeline.

Physical Properties of CO_2

At normal temperatures and atmospheric pressure, CO_2 is an odorless and colorless gas, not flammable, with a density 1.5 times the density of air. It will not support combustion nor will it sustain life if inhaled.

Carbon dioxide may exist simultaneously as a gas, liquid, and solid at its triple point which is −69 °F and 60.43 psig. Below the triple point, it may be either a solid or gas depending on temperature and pressure. Dry ice for refrigeration is a common use of CO_2 in solid form. Dry ice at a temperature of −109 °F and atmospheric pressure will sublime, that is, pass to the gas phase without going through the liquid state. The critical temperature of CO_2 is 87.8 °F. When pressure reaches 1,200 psig, CO_2 enters what is called the supercritical phase (also referred to as a dense vapor phase). Pipeline transportation in the supercritical phase is more desirable than transportation in the gaseous phase.

Carbon dioxide as a gas is considered to be inert and does not easily react with other gases in the atmosphere. Carbon dioxide's chemical reaction with water is most significant in pipeline transportation, since it forms carbonic acid, which has a pH of 3 and is corrosive to metals, including steel pipe, valves, and fittings. Because of this chemical reaction, it is essential that a CO_2 pipeline be dried out completely after a hydrostatic test.

Carbon Dioxide Pipelines

Gases have been used for many years to aid in the production of crude oil. They were initially used as a cap on the oil, injected into oil reservoirs to slow down the pressure decline from production. The displacement during production of crude oil by these gases was principally of the immiscible (not capable of mixing) type.

Research in the 1950s and 1960s was conducted into the use of gas which would mix with the crude oil and displace it in the formation. Because of its high degree of solubility in crude oil and abundance from natural sources, CO_2 became a natural candidate for use in enhanced oil recovery (EOR) projects.

Carbon dioxide extracts crude oil from the formation. Under favorable conditions of pressure, temperature, and composition, the CO_2 mixes with the crude oil. The CO_2 that dissolves in the crude oil increases the volume and decreases the viscosity making the oil more mobile. It also exerts an acidic effect on some types of reservoir rocks and vaporizes some of the oil.

There are a number of sources of CO_2 for EOR projects. It can be produced commercially in natural gas plants, ammonia plants, and recovered from power plant stack gas. These sources generally require a considerable amount of energy to compress CO_2 for introduction into a pipeline. A better source is from undergound reservoirs where CO_2 under pressure occurs naturally. The reported location and size of the largest such reservoirs are presented in Table 1.

TABLE 1.—CO_2 FIELDS IN THE U.S. AND THEIR RESERVES 1987

Field	Location (state)	Proven reserves (TCF)
Jackson Dome	Mississippi	3
Paradox Basin	Utah	1
Farnam Dome	Utah	1.5-2.2
LaBarge-Big Piney	Wyoming	20-55
Doe Canyon/ McElmo Dome.	Colorado	10-12
Sheep Mountain	Colorado	1-2
Bravo Dome	New Mexico	6-8

There are various modes of transportation for CO_2, but for the large volumes required in EOR projects, pipeline transportation is the most reliable and economical. A paper by Dwight L. Recht titled "Carbon Dioxide Pipeline Design Considerations" presented at Interpipe 85 in Houston, Texas, in 1985 describes the design of pipelines for transporting CO_2. The most significant points concerning the design of CO_2 pipelines are:

- Pipeline transportation in the supercritical phase (where pressure exceeds 1,200 psig at any temperature) is more desirable than transportation in the gaseous phase. When transporting CO_2 in the gaseous phase at pressures above 700 psig in winter conditions, two-phase flow may occur, resulting in excessive pressure losses in hilly terrain and requiring the installation of expensive liquid separation equipment at booster stations.
- The pressure at which CO_2 will mix with crude oil (its miscibility pressure) can be as high as 3,000 psig, necessitating very high design pressures for pipelines.
- To minimize the formation of carbonic acid, CO_2 gas should be dehydrated to a water dewpoint below the minimum CO_2 service temperature.
- Temperature variations during pipeline transportation produce nonlinear fluctuations in hydraulic characteristics of the CO_2, requiring design by short sections, particularly in hill terrain.
- Supercompressibility must be considered in design, even in the supercritical phase. This results in negligible pressure surges caused by valve closings or the starting/shutdown of pumps.

- The refrigeration effects when pressures are reduced from 1200 psig or higher to atmospheric during initial fill of a pipeline or during blow down during operation results in very low temperatures so that steel pipe and components must be chosen with suitable properties to prevent brittle fracture failures.

The discussion above indicates that CO_2 pipelines require certain special design considerations in addition to those used for most natural gas or hazardous liquid pipelines that the Department currently regulates.

Table 2 lists a summary of existing CO_2 pipelines.

TABLE 2—SUMMARY OF EXISTING CO_2 PIPELINES

Pipeline	Operator	Length (miles)	Diameter (inch)	Location
Cortez Pipeline Co	Shell Pipeline Corp	500	30	Colorado to Texas.
Bravo Pipeline Co	Amoco Pipeline	218	20	New Mexico to Texas.
Sheep Mt. Pipeline	ARCO Pipeline	408	24, & 20	Colorado to Texas.
Central Basin Pipeline	Enron Corp	144	26, 24, 20, & 16	Texas.
West Texas Carbon Dioxide Pipeline	Big Three Industries, Inc.	125	12, 10, & 8	Texas.
Choctaw Pipeline	Shell Pipeline Corp	140	20 & 10	Mississippi.
Raven Ridge Pipeline	Chevron Pipeline Co.	129	16	Wyoming to Colorado.
Pecos Pipeline	Marathon Pipeline	26	8	Texas.
Canyon Reef Carrier Pipeline (Sacroc Pipeline).	Chevron U.S.A.	180, 40	16, 12	Northern Texas.
Texas Tertiary Ventures	Production Operators, Inc.	110	8	Texas.
Ranger Carriers	Production Operators, Inc.	15	6	California.
Shute Creek—Rock Springs	Exxon Company, USA	48	24	Wyoming.
Bairoil Pipeline	Exxon Company, USA	112	20	Wyoming.
Seminole to Means Pipeline	Exxon Company, USA	25	12	Texas.
Denver City to Cornell	Exxon Company, USA	4	6	Texas.
Denver City to Shell Tie-In	Exxon Company, USA	4	6	Texas.

Generally these pipelines originate in the reservoirs of the Four Corners area and terminate in the Permian Basin oil field in Texas where most of the EOR projects exist. An exception is the Choctaw Pipeline which originates near Jackson, Mississippi, and terminates near McComb, Mississippi.

Pipeline Safety Reauthorization Act of 1988

There have been Congressional concerns regarding the transportation of CO_2 by pipeline over a number of years. The report on the Pipeline Safety Reauthorization Act of 1988 from the House Committee on Energy and Commerce in the 1987 session of the 100th Congress points out that "* * * The Committee has for sometime recommended the safety regulation and inspection of CO_2 pipelines." The Committee further notes that:

> * * * The CO_2 pipeline industry has a good safety record and performs an essential service for enhanced oil recovery, but it is a very new industry. It is not a question of its safety record that caused the requirement for safety regulation, but rather the unique potential for disaster if there were ever a break in a CO_2 pipeline.
>
> Despite its pervasive nature and absolute necessity to life, CO_2 has the potential to be as lethal as any other gas when it is present in concentrations greater than 10 percent. This could happen if a CO_2 pipeline ruptured. Water is equally benign, but in a flood it can kill. CO_2 is similar; in concentrations over 10% it is deadly.
>
> The industry suggested that since they have a good safety record, they do not need safety inspection under the HLPSA or any other appropriate statute. When DOT asked for industry comments on the need for CO_2 safety regulations, a typical industry comment was, "CO_2 is not a toxic substance * * *." By strict definition, this is correct; CO_2 is not toxic substance. Rather CO_2 causes death by asphyxiation.
>
> A recent event demonstrated just how lethal CO_2 can be. On August 21, 1986, a catastrophic release on gas dissolved in Lake Nyos in Cameroon, Africa, killed 1,700 people. At the time, the news media characterized the gas as "toxic," "poisonous" and "lethal." Subsequent investigation proved the gas was carbon dioxide.
>
> As far as the source of the carbon dioxide is concerned, the Lake Nyos incident bears no relation to a pipeline. The CO_2 in Lake Nyos was derived from volcanic sources. The result of this CO_2 release from the lake could be similar to the results if a CO_2 line under 3000 psi were to rupture. The quantity of CO_2 released at Lake Nyos, however, was approximately eight times greater than the volume would be released from any existing pipeline.
>
> The Committee recognizes the role CO_2 will play in expanding the enhanced oil recovery industry. It is for this very reason additional CO_2 lines are likely to be constructed. The Committee does not want to limit the future construction of CO_2 pipelines because of unnecessary safety regulations. None-the-less the Committee believes that since CO_2 is deadly, CO_2 pipelines should have appropriate Federal safety regulations.

The requirement to issue regulations for the pipeline transportation of carbon dioxide was included in section 211 of title II of the Pipeline Safety Reauthorization Act of 1988. That section added section 219 to the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 *et seq.*) as follows:

Section 219—Carbon Dioxide

(a) *General Rule.* In addition to hazardous liquids, the Secretary shall regulate under this title carbon dioxide which is transported by pipeline facilities.

(b) *Regulations.* The Secretary, as necessary and appropriate, shall amend regulations issued with respect to hazardous liquids under this title and shall issue new regulations to ensure the safe transportation of carbon dioxide by pipeline facilities.

Discussion of Proposed Revisions

On March 16, 1989, the American Petroleum Institute (API) petitioned the Department to amend part 195 to include the regulation of pipelines that transport CO_2. The recommendations contained in this petition are the product of a task force formed under API auspices, consisting of representatives of nine companies that own or operate CO_2 pipelines. The participating companies were Amerada Hess Corporation, Amoco Pipeline Company, ARCO Pipeline Company, Chevron Pipe Line Company, Enron Corporation, Exxon Pipeline Company, Mobil Pipe Line Company, Production Operators, Inc., and Shell Pipe Line Corporation.

The API recommended that OPS amend existing part 195 rather than attempt to write a new part for CO_2

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pipelines only. API felt the addition of a new set of regulations specific to CO_2 pipelines would complicate matters unnecessarily for both pipeline operators and OPS alike. OPS has adopted this approach, noting that it is consistent with the requirements of section 219(b) of the HLPSA.

The API stated that the hazard of CO_2 is significantly different from that of hazardous liquids subject to part 195. The term "hazardous liquid" is defined in part 195 as petroleum, petroleum product, or anhydrous ammonia. All of these substances are flammable or toxic or both, while CO_2 is not flammable, nor is it toxic. The primary hazard of CO_2 is the potential for asphyxiation if a high concentration of CO_2 is accidentally released from a pipeline.

Because of this difference in hazards, API considers it inappropriate to include CO_2 as another substance under the definition of "hazardous liquid." API argued that the two terms should not be confused to prevent the possibility of indiscriminate future application to CO_2 pipelines of regulations suited for hazardous liquid pipelines, and vice versa. OPS has no good reason to dispute this notion, especially since Congress distinguished the terms in the Reauthorization Act. Thus, part 195 would be applied to CO_2 pipelines without calling CO_2 a hazardous liquid.

API recognized that some of the requirements in part 195 are not appropriate for CO_2 pipelines. OPS agrees that CO_2 pipelines need to be exempt from certain parts of the existing regulations. In other instances new regulations need to be applied to CO_2 pipelines, but not to the other pipelines regulated under part 195. In addition, revisions have been proposed to those sections that need to be amended to make those regulations compatible with the pipeline transportation of CO_2.

The following is a discussion of the proposed changes to part 195:

Title

API's petition suggested that the title be changed to "Transportation of Hazardous Liquids and Carbon Dioxide by Pipeline." While OPS agrees that carbon dioxide should not be included in the definition of "hazardous liquids," the current title of part 195 would not be amended to include CO_2, because it would result in an awkward title. Similarly, Congress did not see fit to change the title of the statute which authorizes the regulation of CO_2 pipelines; it remains "Hazardous Liquid Pipeline Safety Act of 1979."

Subpart A—General

Section 195.0 General

This section would be amended to make part 195 applicable to the transportation of carbon dioxide by pipeline.

Section 195.1 Applicability

Section 195.1(a) would be amended to state that part 195 applies to the pipeline transportation of CO_2 in or affecting interstate or foreign commerce (covering both interstate pipelines and intrastate pipelines), with the exceptions noted below.

Section 195.1(b)(5) would be revised to exclude from regulation the transportation of CO_2 in offshore pipelines that are located upstream from the outlet flange of each facility on the Outer Continental Shelf where carbon dioxide is produced. This change is consistent with the existing jurisdictional limit of part 195 regarding offshore pipelines under the jurisdiction of the Department of the Interior.

Sections 195.1(b) (6) and (7) would be revised to exclude from regulation transportation of CO_2 through onshore production, refining, and manufacturing facilities, and transportation by modes of transit other than pipelines. Again, this is consistent with the jurisdictional limits of the HLPSA.

The exemption under § 195.1(b)(6) would exclude from the regulations CO_2 production facilities over reservoirs and other facilities where CO_2 is produced. In these facilities carbon dioxide is prepared for pipeline transportation by removal of water, methane, and other hydrocarbons or elements. This is similar to the exemption that currently applies to petroleum production facilities and other facilities used in the production of hazardous liquids. Also, excluded under this section would be CO_2 recycling systems. These are used to reprocess CO_2 after injection into a petroleum reservoir. They are more in the nature of a petroleum production facility than CO_2 pipeline transportation.

A proposed § 195.1(b)(8) would exclude from regulation the transportation of carbon dioxide through CO_2 distribution systems in petroleum production fields. This exemption would apply downstream from the first flange, or other connection, where carbon dioxide is delivered to a CO_2 distribution system. The CO_2 pipeline facilities that would be included in this exemption typically are located in rural areas away from the general public. The HLPSA exempts onshore petroleum production facilities from regulation, and since CO_2 distribution lines in a petroleum production field are closely involved with petroleum production, OPS believes the CO_2 distribution systems are exempt from regulation under this statutory provision.

Section 195.2 Definitions

"*Carbon dioxide*" has been defined to provide a means of distinguishing facilities that transport this fluid from facilities that transport hazardous liquids.

The definition of "production facility" would be changed to include piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of carbon dioxide, or associated storage or measurement. The revision is needed in order to include those facilities used in the process of extracting carbon dioxide from the ground and preparing it for transportation by pipeline. A provision would be added to specifically include piping between treatment plants that extract carbon dioxide, and facilities utilized for the injection of carbon dioxide for recovery operations.

In addition to the revision to the definition of "production facility," "carbon dioxide" has been added to the definitions of "interstate pipeline," "pipe," "pipeline," and "pipeline facility" to assure that these terms include carbon dioxide as a necessary component of those definitions.

Section 195.4 Compatibility Necessary for Transportation of Hazardous Liquids or Carbon Dioxide

It is important to recognize the importance of the chemical compatibility of carbon dioxide to the pipeline system in which it is being transported. OPS believes the inclusion of carbon dioxide in this paragraph and § 195.418, Internal corrosion control, would address any corrosivity questions properly. This paragraph would require that carbon dioxide be chemically compatible with the pipeline, including all components, and any other commodity with which it may come into contact.

Section 195.8 Transportation of Hazardous Liquids or Carbon Dioxide in Pipelines Constructed With Other Than Steel Pipe

This proposed revision would require that the Department be notified before operators transport carbon dioxide in pipelines constructed of material other than steel.

Subpart B—Reporting Accidents and Safety-Related Conditions

Section 195.50 Reporting Accidents

Accident and safety-related condition reporting for carbon dioxide pipelines would be subject to the same criteria that apply to non-HVL hazardous liquids. An appropriate change would be made to § 195.52 to require the telephonic reporting of certain carbon dioxide releases. Report Form 7000–1, or a facsimile, would be used for reporting CO_2 pipeline accidents, even though the title of the form bears the name hazardous liquid pipelines.

Subpart C—Design Requirements

Section 195.102 Design Temperature

Low temperatures produced by pressure reduction situations or during the initial fill of the pipeline are important considerations when designing a carbon dioxide pipeline. OPS believes the language of existing § 195.102 should be revised to assure that materials for carbon dioxide are chosen properly for the low temperatures encountered during these situations. The proposed revision is not limited to problems that may arise from the cold nature of carbon dioxide, but recognizes that other commodities may also expose the pipeline to similar problems.

Section 195.111 Fracture Propagation

A new section is proposed to be added to account for the potential problem of a propagating fracture in a carbon dioxide pipeline. Because they operate at such high pressures, CO_2 pipelines contain a great amount of stored energy, much more than in a gas transmission pipeline. Performance language has been chosen for this new requirement to allow the operator of the pipeline system to determine the best method to mitigate a propagating fracture. Available methods include installation of heavy walled pipe or a mechanical device on the exterior of the pipe wall. It should be noted that some carbon dioxide pipelines with line pipe of adequate toughness may not require any additional special methods.

Section 195.116 Valves

Material compatibility of pipeline components and the commodity being transported is always a concern of an operator, regardless of the commodity involved. The proposed addition of carbon dioxide to the scope of this section would clearly indicate this concern for carbon dioxide pipelines.

Subpart D—Construction

API thought that due to the nonpolluting nature of carbon dioxide, valves located on either side of a water crossing should not be required. The OPS does not agree. While CO_2 may not be of a polluting nature, carbon dioxide bubbling through water can result in an asphyxiating cloud formation if carbon dioxide is released in large quantities as shown by the release of carbon dioxide in Lake Nyos in Cameroon, Africa. While it appears that a pipeline could not release sufficient quantities of carbon dioxide under a water crossing to create a problem, there is insufficient evidence to determine the quantity of a carbon dioxide release that would result in an unsafe condition. The OPS believes that placing valves on each side of a water crossing that is more than 100-feet wide is not an onerous requirement. Some current carbon dioxide pipelines have been constructed with valves on each side of major water crossings. If an operator finds this requirement to be significantly burdensome because the pipeline is located in swamps or crosses numerous times in meandering streams, the operator can petition for a finding that valves are not justified (an option that is available under § 195.260(e), and has been used by operators of hazardous liquid pipelines).

Subpart E—Hydrostatic Testing

Section 195.306 Test Medium

This section is proposed to be revised to allow inert gas or carbon dioxide to be used as a test medium instead of water in carbon dioxide pipelines. This is desirable to reduce the potential for internal corrosion problems caused by the mixing of water and carbon dioxide to form carbonic acid. The use of inert gas or carbon dioxide offers particular advantages to facilities that have areas that are difficult to dry, such as meter stations with several branch connections or fittings.

Subpart F—Operation and Maintenance

Section 195.401 General Requirements

Revisions are proposed to distinguish between hazardous liquid pipelines and carbon dioxide pipelines regarding the applicability dates of the design and construction requirements.

Section 195.402 Procedural Manual for Operations, Maintenance, and Emergencies

Revisions are proposed to include carbon dioxide pipelines in the requirements for a procedural manual for operations, maintenance, and emergencies.

Section 195.403 Training

Revisions are proposed to include carbon dioxide pipelines in the requirements for establishing and conducting a continuing training program.

Section 195.410 Line Markers

The term "carbon dioxide pipeline" is proposed for use in carbon dioxide pipeline markers.

Section 195.414 Cathodic Protection

The proposed revisions would require that carbon dioxide pipelines be cathodically protected similarly to hazardous liquid pipelines. Carbon dioxide pipelines must be protected against corrosion to assure the integrity of the pipeline. However, the proposed rules require that the carbon dioxide pipelines be cathodically protected in a shorter period than was provided for the hazardous liquid pipelines because most of the existing CO_2 pipelines are already cathodically protected.

Section 195.418 Internal Corrosion Control

Carbon dioxide pipelines have a unique internal corrosion potential. Water can combine with carbon dioxide to form a compound that may be corrosive under pipeline operating conditions. The addition of the words "carbon dioxide" to this paragraph would require operators to investigate this corrosive effect and take adequate steps to mitigate such corrosion.

Section 195.440 Public Education

Revisions are proposed to require CO_2 pipeline operators to establish a continuing education program to enable the public to recognize a carbon dioxide pipeline emergency.

Paperwork Reduction Act

This proposed rulemaking contains collection of information requirements in §§ 195.5(c), subpart B, 195.266, 195.310, 195.402, and 195.404. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chap. 35) and 5 CFR 1320. Persons desiring to comment on these proposed information collection requirements should submit their comments to: Desk Officer, Research and Special Programs Administration, Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.

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Persons submitting comments to OMB are also requested to submit a copy of their comments to OPS, as indicated above under **ADDRESS**.

Impact

The proposed rules would extend the part 195 pipeline safety regulations to pipelines that transport CO_2, which are few in number. Pipelines under construction before the effective date of the final rule would be subject only to the accident reporting and operation and maintenance requirements of these regulations. Because almost all the proposals follow industry recommended practices, the fiscal impact of the proposed rules should be small. Therefore, this proposal is considered to be nonmajor under Executive Order 12291, and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the proposed rule should require minimal compliance expense, it does not warrant preparation of a Draft Evaluation. Also, based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that it would not if adopted as final, have a significant economic impact on a substantial number of small entities. This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685) and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Pipe, Pipeline safety.

In consideration of the foregoing, OPS proposes to amend 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53.

2. Section 195.0 would be revised to read as follows:

§ 195.0 Scope.

This part prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

3. In § 195.1, paragraphs (a) and (b) (5), (6), and (7) would be revised, and paragraph (b)(8) would be added to read as follows:

§ 195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf.

(b) * * *

(5) Transportation of a hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons or carbon dioxide is produced or where produced hydrocarbons or carbon dioxide is first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(6) Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining or manufacturing facilities, or storage or implant piping systems associated with such facilities;

(7) Transportation of a hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids or carbon dioxide between such modes of transportation.

(8) Transportation of carbon dioxide downstream from the first outlet flange or other connection, where carbon dioxide is delivered to a production field distribution system.

4. In § 195.2, a definition of "carbon dioxide" would be added nd definitions of the following terms would be revised to read as follows:

§ 195.2 Definitions.

* * * * *

"*Carbon dioxide*" means a fluid consisting predominately of carbon dioxide molecules compressed to a supercritical state.

* * * * *

"*Interstate pipeline*" means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids or carbon dioxide in interstate or foreign commerce.

* * * * *

"*Pipe*" or "*line pipe*" means a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another.

"*Pipeline*" or "*pipeline system*" means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"*Pipeline facility*" means new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.

"*Production facility*" means piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum or carbon dioxide from the ground and preparing it for transportation by pipeline. This includes piping between treatment plants which extract carbon dioxide and facilities utilized for the injection of carbon dioxide for recovery operations.)

* * * * *

5. Section 195.4 would be revised to read as follows:

§ 195.4 Compatibility necessary for transportation of hazardous liquids or carbon dioxide.

No person may transport any hazardous liquid or carbon dioxide unless the hazardous liquid or carbon dioxide is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.

6. Section 195.8 would be revised to read as follows:

§ 195.8 Transportation of hazardous liquid or carbon dioxide in pipeline constructed with other than steel pipe.

No person may transport any hazardous liquid or carbon dioxide through a pipe that is constructed after October 1, 1970, for hazardous liquids or (the effective date of this regulation) for carbon dioxide of material other than steel unless the person has notified the Secretary in writing at least 90 days before the transportation is to begin. The notice must state the chemical name, common name, properties and characteristics of the hazardous liquid or carbon dioxide to be transported and the material used in construction of the pipeline. If the Secretary determines that the transportation of the hazardous liquid or carbon dioxide in the manner proposed would be unduly hazardous, he will, within 90 days after receipt of the notice, order the person that gave the notice, in writing, not to transport the hazardous liquid or carbon dioxide in the proposed manner until further notice.

7. The introductory text and paragraph (b) of § 195.50 would be revised to read as follows:

§ 195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

* * * * *

(b) Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

* * * * *

8. The introductory text of § 195.52(a) would be revised to read as follows:

§ 195.52 Telephonic notice of certain accidents.

(a) At the earliest practical moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in paragraph 195.50, the operator of the system shall give notice, in accordance with paragraph (b) of this section, of any failure that:

* * * * *

9. Section 195.102 would be revised to read as follows:

§ 195.102 Design temperature.

Material for components of the system must be chosen for the temperature environment in which the components will be used so that the pipeline will maintain its structural integrity. Materials for pipelines transporting commodities in a highly pressurized supercritical state must be chosen for the low temperatures that can be produced during rapid reduction of pressure or during the initial fill of the line.

10. A new § 195.111 would be added to read as follows:

§ 195.111 Fracture propagation.

A carbon dioxide pipeline system must be designed to mitigate the effects of fracture propagation.

11. Section 195.116(c) would be revised to read as follows:

§ 195.116 Valves.

* * * * *

(c) Each part of the valve that will be in contact with the carbon dioxide or hazardous liquid stream must be made of materials that are compatible with carbon dioxide or each hazardous liquid that it is anticipated will flow through the pipeline system.

12. In § 195.306, paragraph (a) would be revised and paragraph (c) would be added to read as follows:

§ 195.306 Test medium.

(a) Except as provided in paragraphs (b) and (c) of this section, water must be used as the test medium.

* * * * *

(c) Carbon dioxide pipelines may use inert gas or carbon dioxide as the test medium if—

(1) The entire pipeline section under test is outside of cities and other populated areas;

(2) Each building within 300 feet of the test section is unoccupied while the test pressure is equal to or greater than a pressure that produces a hoop stress of 50 percent of specified minimum yield strength;

(3) The maximum hoop stress during the test does not exceed 80 percent of specified minimum yield strength;

(4) Continuous communication is maintained along entire test section; and

(5) The pipe involved is new pipe having a longitudinal joint factor of 1.00.

13. Section 195.401(c) would be revised to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided by § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid.

(2) An interstate offshore gathering line, on which construction was begun after July 31, 1977, that transports hazardous liquid.

(3) An intrastate pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid.

(4) A pipeline, on which construction was begun after (day before effective date), that transports carbon dioxide.

14. In § 195.402, paragraphs (c) (7), (9), and (12) and (e) (2), (4), (5), and (7) would be revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by paragraph 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.

* * * * *

(9) In the case of facilities not equipped to fail safe that are identified under § 195.402(c)(4) or that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.

* * * * *

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

* * * * *

(e) * * *

(2) Prompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidential release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.

* * * * *

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid or carbon dioxide that is released from any section of a pipeline system in the event of a failure.

(5) Control of released hazardous liquid or carbon dioxide at an accident scene to minimize the hazards, including possible intentional ignition in the cases of flammable highly volatile liquid.

* * * * *

(7) Notifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid.

* * * * *

15. In § 195.403, paragraphs (a) (2), (3), and (4) would be revised to read as follows:

§ 195.403 Training.

(a) * * *

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in the case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

(3) Recognize conditions that are likely to cause emergencies, predict the

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consequences of facility malfunctions or failures and hazardous liquid or carbon dioxide spills, and to take appropriate corrective action;

(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage;

* * * * *

18. Section 195.410(a)(2) would be revised to read as follows:

§ 195.410 Line markers.

(a) * * *

(2) The marker must state at least the following: "Warning" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline" or "Carbon Dioxide Pipeline" (in lettering at least 1 inch high with an approximate stroke of one-quarter inch on a background of sharply contrasting color), the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * * * *

17. Section 195.414 would be revised to read as follows:

§ 195.414 Cathodic protection.

(a) No operator may operate a hazardous liquid interstate pipeline after March 31, 1973, a hazardous liquid intrastate pipeline after October 19, 1988, or a carbon dioxide pipeline after (2 years less one day after the effective date of this regulation), that has an effective external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping. For the purposes of this subpart, a pipeline does not have an effective external coating and shall be considered bare, if its cathodic protection current requirements are substantially the same as if it were bare.

(b) Each operator shall electrically inspect each bare hazardous liquid interstate pipeline before April 1, 1975, each bare hazardous liquid intrastate pipeline before October 20, 1990, and each bare carbon dioxide pipeline before (3 years after the effective date of this regulation) to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on hazardous liquid interstate pipelines before April 1, 1973, on hazardous liquid intrastate pipelines before October 20, 1988, and on carbon dioxide pipelines before (3 years after the effective date of this regulation) as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

18. Section 195.418(a) would be revised to read as follows:

§ 195.418 Internal corrosion control.

(a) No operator may transport any hazardous liquid or carbon dioxide that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid or carbon dioxide on the system and has taken adequate steps to mitigate corrosion.

* * * * *

19. Section 195.440 would be revised to read as follows:

§ 195.440 Public education.

Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

Issued in Washington, DC, on October 5, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 89-23961 Filed 10-11-89; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
October 12, 1989

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for June 1989

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS–53120; FRL–3650–9]

Premanufacture Notices; Monthly Status Report for June 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for June 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS–53120]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during JUNE; (b) PMNs received previous and still under review at the end of JUNE; (c) PMNs for which the notice review period has ended during JUNE; (d) chemical substances for which EPA has received a notice of commencement to manufacture during JUNE; and (e) PMNs for which the review period has been suspended. Therefore, the JUNE 1989 PMN Status Report is being published.

Date: September 14, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report, June 1989

I. 99 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.

P 89–0769	P 89–0770	P 89–0771	P 89–0772
P 89–0773	P 89–0774	P 89–0775	P 89–0776
P 89–0777	P 89–0778	P 89–0779	P 89–0780
P 89–0781	P 89–0782	P 89–0783	P 89–0784
P 89–0785	P 89–0786	P 89–0787	P 89–0788
P 89–0789	P 89–0791	P 89–0792	P 89–0793
P 89–0794	P 89–0796	P 89–0797	P 89–0798
P 89–0799	P 89–0800	P 89–0801	P 89–0802
P 89–0803	P 89–0804	P 89–0805	P 89–0806
P 89–0807	P 89–0808	P 89–0809	P 89–0810
P 89–0811	P 89–0812	P 89–0813	P 89–0814
P 89–0815	P 89–0816	P 89–0817	P 89–0818
P 89–0819	P 89–0820	P 89–0821	P 89–0822
P 89–0823	P 89–0824	P 89–0825	P 89–0826
P 89–0827	P 89–0828	P 89–0829	P 89–0830
P 89–0831	P 89–0832	P 89–0833	P 89–0834
P 89–0835	P 89–0836	P 89–0837	P 89–0838
P 89–0839	P 89–0840	P 89–0841	P 89–0842
P 89–0843	P 89–0844	P 89–0845	P 89–0846
P 89–0847	P 89–0848	P 89–0849	P 89–0850
P 89–0851	P 89–0853	P 89–0855	P 89–0856
P 89–0858	P 89–0859	P 89–0860	Y 89–0134
Y 89–0135	Y 89–0136	Y 89–0137	Y 89–0138
Y 89–0139	Y 89–0140	Y 89–0141	Y 89–0142
Y 89–0143	Y 89–0144	Y 89–0145	

II. 297 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 85–0216	P 85–0535	P 85–0536	P 85–0619
P 85–0718	P 86–0294	P 86–0295	P 86–1189
P 86–1602	P 86–1603	P 86–1604	P 86–1607
P 87–0057	P 87–0058	P 87–0059	P 87–0105
P 87–0197	P 87–0198	P 87–0199	P 87–0200
P 87–0201	P 87–0323	P 87–0770	P 87–0794
P 87–0963	P 87–1028	P 87–1066	P 87–1104
P 87–1192	P 87–1226	P 87–1227	P 87–1273
P 87–1337	P 87–1379	P 87–1417	P 87–1542
P 87–1546	P 87–1547	P 87–1548	P 87–1549
P 87–1555	P 87–1759	P 87–1872	P 87–1881
P 87–1882	P 88–0049	P 88–0063	P 88–0156
P 88–0157	P 88–0195	P 88–0225	P 88–0275
P 88–0319	P 88–0320	P 88–0353	P 88–0387
P 88–0393	P 88–0468	P 88–0515	P 88–0522
P 88–0576	P 88–0622	P 88–0658	P 88–0671
P 88–0701	P 88–0726	P 88–0836	P 88–0864
P 88–0884	P 88–0888	P 88–0889	P 88–0890
P 88–0894	P 88–0898	P 88–0918	P 88–0972
P 88–0981	P 88–1005	P 88–1020	P 88–1021
P 88–1035	P 88–1063	P 88–1168	P 88–1189
P 88–1211	P 88–1212	P 88–1240	P 88–1271
P 88–1272	P 88–1273	P 88–1274	P 88–1303
P 88–1377	P 88–1443	P 88–1446	P 88–1473
P 88–1529	P 88–1543	P 88–1567	P 88–1568
P 88–1618	P 88–1619	P 88–1620	P 88–1621
P 88–1622	P 88–1630	P 88–1631	P 88–1632
P 88–1647	P 88–1648	P 88–1658	P 88–1682
P 88–1690	P 88–1691	P 88–1730	P 88–1739
P 88–1740	P 88–1748	P 88–1753	P 88–1761
P 88–1763	P 88–1774	P 88–1783	P 88–1807
P 88–1809	P 88–1811	P 88–1823	P 88–1844
P 88–1850	P 88–1856	P 88–1889	P 88–1896
P 88–1937	P 88–1938	P 88–1956	P 88–1980
P 88–1982	P 88–1984	P 88–1985	P 88–1995
P 88–1999	P 88–2000	P 88–2001	P 88–2002
P 88–2069	P 88–2100	P 88–2160	P 88–2169
P 88–2177	P 88–2179	P 88–2180	P 88–2181
P 88–2188	P 88–2196	P 88–2204	P 88–2210
P 88–2212	P 88–2213	P 88–2228	P 88–2229
P 88–2230	P 88–2231	P 88–2236	P 88–2237
P 88–2271	P 88–2275	P 88–2293	P 88–2341
P 88–2343	P 88–2344	P 88–2349	P 88–2367
P 88–2380	P 88–2389	P 88–2434	P 88–2435
P 88–2436	P 88–2437	P 88–2469	P 88–2470
P 88–2473	P 88–2484	P 88–2518	P 88–2529
P 88–2530	P 88–2536	P 88–2540	P 88–2562
P 88–2563	P 88–2564	P 88–2566	P 88–2568
P 88–2575	P 88–2582	P 88–2631	P 88–2632
P 89–0030	P 89–0031	P 89–0073	P 89–0077
P 89–0078	P 89–0089	P 89–0090	P 89–0091
P 89–0097	P 89–0116	P 89–0122	P 89–0184
P 89–0194	P 89–0195	P 89–0225	P 89–0234
P 89–0254	P 89–0268	P 89–0279	P 89–0292
P 89–0301	P 89–0303	P 89–0321	P 89–0326
P 89–0336	P 89–0344	P 89–0380	P 89–0383
P 89–0384	P 89–0385	P 89–0386	P 89–0387
P 89–0396	P 89–0413	P 89–0422	P 89–0423
P 89–0424	P 89–0427	P 89–0448	P 89–0474
P 89–0475	P 89–0476	P 89–0483	P 89–0506
P 89–0507	P 89–0520	P 89–0538	P 89–0539
P 89–0540	P 89–0576	P 89–0577	P 89–0583
P 89–0589	P 89–0596	P 89–0604	P 89–0613
P 89–0614	P 89–0617	P 89–0620	P 89–0626
P 89–0632	P 89–0641	P 89–0648	P 89–0650
P 89–0651	P 89–0653	P 89–0655	P 89–0657
P 89–0658	P 89–0659	P 89–0660	P 89–0661
P 89–0670	P 89–0672	P 89–0676	P 89–0687
P 89–0690	P 89–0694	P 89–0697	P 89–0698
P 89–0701	P 89–0703	P 89–0708	P 89–0711
P 89–0713	P 89–0714	P 89–0715	P 89–0721
P 89–0726	P 89–0728	P 89–0736	P 89–0739
P 89–0742	P 89–0749	P 89–0750	P 89–0755
P 89–0756	P 89–0760	P 89–0764	Y 89–0115
Y 89–0124			

III. 156 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended Durino the Month. (Expiration or the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN No.

P 85–0619	P 86–1235	P 87–0963	P 87–1028
P 88–0997	P 88–0998	P 88–0999	P 88–1275
P 88–1277	P 88–1686	P 88–1807	P 88–1809
P 88–1811	P 88–1956	P 88–1958	P 88–2212
P 88–2213	P 88–2228	P 88–2229	P 88–2293
P 88–2328	P 88–2334	P 88–2405	P 88–2484
P 88–2587	P 89–0066	P 89–0117	P 89–0279
P 89–0298	P 89–0321	P 89–0340	P 89–0341
P 89–0450	P 89–0452	P 89–0453	P 89–0455
P 89–0456	P 89–0457	P 89–0458	P 89–0459
P 89–0460	P 89–0461	P 89–0462	P 89–0463
P 89–0464	P 89–0465	P 89–0466	P 89–0467
P 89–0468	P 89–0469	P 89–0471	P 89–0472
P 89–0473	P 89–0474	P 89–0475	P 89–0476
P 89–0477	P 89–0478	P 89–0479	P 89–0480
P 89–0481	P 89–0482	P 89–0484	P 89–0485
P 89–0486	P 89–0487	P 89–0488	P 89–0489
P 89–0490	P 89–0491	P 89–0492	P 89–0493
P 89–0494	P 89–0495	P 89–0496	P 89–0497
P 89–0498	P 89–0499	P 89–0500	P 89–0501
P 89–0502	P 89–0503	P 89–0504	P 89–0505

P 89–0506	P 89–0509	P 89–0510	P 89–0511	P 89–0533	P 89–0534	P 89–0535	P 89–0536	P 89–0550	P 89–0560	P 89–0561	P 89–0562
P 89–0512	P 89–0513	P 89–0514	P 89–0515	P 89–0537	P 89–0540	P 89–0541	P 89–0542	P 89–0563	P 89–0564	P 89–0565	P 89–0566
P 89–0516	P 89–0517	P 89–0518	P 89–0519	P 89–0543	P 89–0544	P 89–0545	P 89–0546	P 89–0567	P 89–0568	P 89–0569	P 89–0570
P 89–0521	P 89–0522	P 89–0523	P 89–0524	P 89–0547	P 89–0548	P 89–0549	P 89–0550	P 89–0571	P 89–0572	P 89–0573	P 89–0578
P 89–0525	P 89–0526	P 89–0527	P 89–0528	P 89–0551	P 89–0552	P 89–0553	P 89–0554	Y 89–0130	Y 89–0131	Y 89–0132	Y 89–0133
P 89–0529	P 89–0530	P 89–0531	P 89–0532	P 89–0555	P 89–0556	P 89–0557	P 89–0558	Y 89–0134	Y 89–0135	Y 89–0136	Y 89–0137

IV. 395 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Identity/generic name	Date of commencement
P 79–0034	Amido amine	Sept. 19, 1989.
P 80–0008	G Substituted-N-alkylquinoline	Sept. 14, 1987.
P 80–0230	G Fatty acid ester	June 16, 1983.
P 81–0204	G Aliphatic alcohol	Dec. 1, 1987.
P 82–0573	G Pentasubstituted pentanamide salt	Apr. 18, 1988.
P 83–0090	G Polymer of polysubstituted alkyl acrylates	Jan. 31, 1983.
P 83–0121	Polymer of diethylene glycol, polyethylene glycol, dimethylene phthalate, isophthalic acid, 5-sulfoisophthalic acid, dimethyl ester sodium salt.	July 15, 1988.
P 83–0453	G Polymer of mixed alkane diols, alkanetriol, propylene oxide, alkanoic acid, aliphatic isocyanate, and isopherone diisocyanate.	Dec. 22, 1986.
P 83–0474	2-Propenoic acid, (2,4,6-trioxo-1,3,5-triazine-1,3,5(2h,4h,6h)-triyl) tri-2,1-ethanediyl ester	Oct. 9, 1984.
P 83–0513	G Polymer of isophorone diisocyanate, alkanoic acid, mixed alkane diols, alkane triol, oxo-hetero-polycycle; and neopentyl glycol.	Dec. 22, 1986.
P 83–0538	G Polymer of diethylenetriamine and higher polyamine with dibasic esters	July 20, 1983.
P 83–0543	G Polymer of diethylenetriamine and higher polyamine with dibasic esters, reacted with epichlorohydrin	July 20, 1983.
P 83–0904	G 4,4'-Thiodiether dianhydride	Nov. 13, 1985.
P 84–0031	G Modified polyethylene ionomer	Feb. 19, 1987.
P 84–0112	G Substituted aromatic polymer	July 24, 1987.
P 84–0191	G Polymer of laurolactam, caprolactam, alkanedioic acids and alkanediamines	Nov. 17, 1987.
P 84–0310	G Amine salt of a substituted organic acid	Aug. 14, 1987.
P 84–0347	G Fluorinated polyamide	Oct. 17, 1986.
P 84–0361	G Substituted cyclohexane	May 1, 1984.
P 84–0461	Copper ferrocyanide salt of CI basic blue 11	May 26, 1987.
P 84–0502	G Modified epoxy based resinous product	Oct. 10, 1986.
P 84–0527	G Unsaturated amino alkyl ester salt	Apr. 8, 1988.
P 84–0722	1-Naphthalenesulfonic acid, 4-2-(hydroxy-1-naphthalenyl)azo)-, barium salt (2:1)	Jan. 27, 1987.
P 84–0724	1-Naphthalenesulfonic acid 2-hydroxy-6-sulfo-1-naphthalenyl)azo salt (1:1)	Jan. 27, 1987.
P 84–0812	G Acrylourethane	Feb. 16, 1987.
P 84–0834	G Trisazo dye	Apr. 17, 1986.
P 84–0836	G Trisazo dye	Apr. 17, 1986.
P 84–0960	G Complex polyurethane	Jan. 20, 1987.
P 84–1167	G Epoxy ester	Feb. 16, 1985.
P 85–0080	3-Dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione	June 16, 1988.
P 85–0090	G Polymer of dimethyl terephthalate; ethylene glycol; dimethyl-5-sulfoisophthalate, sodium salt; and polyethylene glycol.	June 17, 1985.
P 85–0203	G Sulfur-containing polyalkylene oxides	Dec. 1, 1987.
P 85–0300	G Bis-arylmethyleneaminobutene, nickel complex	July 6, 1987.
P 85–0303	G Aliphatic polyester urethane	Apr. 20, 1987.
P 85–0367	G Haloalkyl substituted cyclic ether	May 20, 1989.
P 85–0368	G Haloalkyl substituted cyclic ether	May 30, 1989.
P 85–0433	1-Propanol,3-mercapto-	Apr. 20, 1987.
P 85–0522	G Polymer of functional acrylates and methacrylates	June 2, 1988.
P 85–0672	G Thionocarbamate derivative	Jan. 4, 1988.
P 85–0724	G Ethoxylated thiol ether	Jan. 27, 1987.
P 85–0729	G Acrylate/methacrylate polymer with styrene	Jan. 19, 1987.
P 85–0792	G Indole	Nov. 7, 1985.
P 85–1155	Benzene, methyl-,mono-C18-alkyl derivatives	Jan. 21, 1988.
P 85–1200	1,3-Bis-(dimethyl stearyl ammonium chloride)-2-propanol	Nov. 9, 1983.
P 85–1220	G Chlorinated fatty acids, polyoxy alkylene esters	Aug. 20, 1987.

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IV. 395 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 85-1306	G Substituted isothiazolanthracene	Nov. 1, 1986.
P 85-1316	G 2-Naphthalenesulfonic acid, 6-acetamido-4-hydroxy-(substituted)azo, 1:2 metal complex, trisodium salt	June 9, 1987.
P 85-1331	Naphthalene, 1,2,3,4-tetrahydro(1-phenylethyl)	June 19, 1987.
P 85-1332	Polymer of mixture of diphenyl methane diisocyanate 2,4 and diphenyl methane diisocyanate 4,4; and trimethylol propane.	Aug. 1, 1987.
P 85-1338	G Acrylate-terminated polyurethane	Nov. 5, 1987.
P 85-1360	G Esterified polyamic acid	Nov. 1, 1986.
P 85-1370	G Alkyl(heterocyclicyl)pheny azo-heteromonocyclicpolyone	Dec. 1, 1987.
P 85-1386	Polymer of styrene; acrylonitrile; and maleic anhydride	Jan. 18, 1988.
P 85-1403	G Substituted phenylazo disubstituted naphthalenesulfonic acid, substituted alkylamine salt	Dec. 22, 1987.
P 85-1436	G Amine-boronhalide complex	Jan. 7, 1988.
P 85-1466	G (Dialkyl)phenyloxy, (n-dialkylamino and alkyl)aryl and (cyanophenylureido)aryl substituted hexanamide	May 21, 1986.
P 85-1468	G Hydroxylated resin	Aug. 10, 1987.
P 86-0008	Polymer of: terephthalic acid; isophthalic acid; adipic acid; 2,2-dimethyl-1,3-propanediol; ethylene glycol; and trimethylolpropane.	May 20, 1987.
P 86-0013	G Polyarylether ketone	July 29, 1987.
P 86-0028	G Aliphatic, aromatic copolyester	Jan. 14, 1987.
P 86-0077	G C9-11 Linear primary alcohol ethoxysulfate, ammonium salt	Sept. 8, 1988.
P 86-0090	G Poly(vinyl ester co-unsaturated dicarboxylic acid ester co-olefin)	Feb. 16, 1987.
P 86-0104	1-(3'-Chloro-5'-(P-ethyl sulfonyl sulfuric ester sodium salt phenylamino)-5-triazinylamino)-5-(2''-naphthylazo-1''5''-disulfonic acid disodium salt)-6-hydroxy-4-naphthalene sulfonic acid sodium salt.	Feb. 10, 1988.
P 86-0105	G Dimer acids, dicarboxylic acid, ethylenediamine, diamine polyamide resin	Dec. 13, 1986.
P 86-0136	G Alkyl unsubstituted spiro heterocyclic	June 9, 1987.
P 86-0206	G Unsaturated isophthalic polyester acrylate copolymer	Feb. 20, 1986.
P 86-0226	G Monosubstituted carboxy benznesulfonamide	Dec. 5, 1986.
P 86-0233	G Hydroxy functional acrylic copolymer	Nov. 20, 1987.
P 86-0238	G Functional aliphatic ester	July 28, 1987.
P 86-0248	G Mixed polyol ester of normal and branched chain monocarboxylic acids	Aug. 14, 1987.
P 86-0257	G Substituted heterocycle azo naphthalenesulfonic acid, salt	Feb. 10, 1988.
P 86-0262	2,5-Dimethyl-2,5-hexanediamine	Mar. 1, 1988.
P 86-0293	G Alkyl oligoglycoside	Feb. 9, 1987.
P 86-0299	1-H-Pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-((4-sulfophenyl)azo)-, mixed salt	Apr. 15, 1987.
P 86-0301	G Ammonium carboxylate-containing fluorochemical urethane	June 15, 1989.
P 86-0302	Silica, ((dimethylhydrogensilyl)ox) and ((trimethylsilyl)oxy) modified	Dec. 15, 1987.
P 86-0323	G Acrylourethane	Aug. 10, 1987.
P 86-0334	G Aromatic amino compound	May 4, 1987.
P 86-0336	G Aromatic polyamide	June 1, 1987.
P 86-0348	G Sulfurized alkene	Mar. 4, 1987.
P 86-0352	G Zirconium IV neoalkoxy trisneodecanoato-o	Sept. 13, 1986.
P 86-0353	G Zirconium-IV neoalkoxy tris dodecylbenzene sulfonato-o	Dec. 3, 1986.
P 86-0356	G Zirconium-IV neoalkoxy, bis(diisooctyl)pyrophophato adduct with 2 moles of a methacrylamido amine	Dec. 8, 1986.
P 86-0357	G Zirconium IV neoalkoxy tris isooctanolato	Dec. 18, 1986.
P 86-0396	G Aromatic polyamide	Aug. 20, 1987.
P 86-0397	G Substituted sodium benzoate	Dec. 5, 1986.
P 86-0424	Mixed thiodiphenol oligomers, sodium salts	Oct. 15, 1986.
P 86-0425	Mixed thiodiphenol oligomers, ammonium salts	Oct. 15, 1986.
P 86-0438	G Silyl ketene acetal	Nov. 18, 1986.
P 86-0439	G Acrylic silicon oligomer	May 20, 1989.
P 86-0440	G Acrylic silicon oligomer	May 20, 1989.
P 86-0441	G Acrylic silicon oligomer	May 20, 1989.
P 86-0443	G Acrylic silicon oligomer	May 20, 1989.
P 86-0444	G Acrylic silicon oligomer	May 20, 1989.
P 86-0494	G Aryl alkyl ketone	Oct. 13, 1986.
P 86-0495	G Aryl alkyl ketone	Oct. 7, 1987.
P 86-0513	G Substituted nitrogen heterocycle	June 15, 1987.
P 86-0525	G Vinyl resin or vinyl chloride-acrylic acid ester copolymer with oh-functional sites	Feb. 10, 1987.
P 86-0565	Urethane—modified polyester—acrylic copolymer	Apr. 29, 1987.
P 86-0566	1-Decanamine,N-decyl-N-methyl-n-oxide	June 10, 1988.
P 86-0576	G Aryl alyl oxime	Oct. 20, 1987.
P 86-0586	G Substituted naphthalene carboxamide	July 7, 1988.
P 86-0609	Benzenediazonium, 4,4'-bis(3-chloro)-, coupling product with N-(2,4-dimethylphenyl)-3-oxobutanamide and N-(4-chloro-2,5-dimethoxyphenyl)-3-oxobutanamide.	Oct. 27, 1987.
P 86-0650	G Methacrylic ester	Dec. 8, 1986.
P 86-0665	N-Methyl-benzene sulfonamide sulfur	Aug. 12, 1987.
P 86-0667	N,N-Di(phenylsulfonyl) methaneamine; 2532-06-1 n,n-dimethyl benzene sulfonamide 14417-01-7	July 8, 1987.
P 86-0690	G Maleic modified rosin ester, amino alcohol salt	May 22, 1987.
P 86-0711	G Heteropolycycle compound, with organic acid salt	Dec. 7, 1987.
P 86-0817	G Copolyamide from dicarbonic acid, diamine and lactames	Feb. 27, 1987.
P 86-0822	3-Pentenal, 2-methyl-2-(2-propenyl)-2,4-heptadienal, 2,4-dimethyl-cg-isomers of dimethylheptadiene	May 17, 1987.

IV. 395 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-0843	G Substituted phenylamino substituted carbopolycyclesulfonic acid salt	Sept. 18, 1987.
P 86-0844	G Substituted phenylamino substituted carbopolycyclesulfonic acid, salt	Sept. 26, 1987.
P 86-0854	G Alkylene polyether alkylate	Aug. 7, 1987.
P 86-0857	G Amine functional polyamide	Dec. 10, 1986.
P 86-0861	G Terminated polyester prepolymer	Apr. 22, 1987.
P 86-0890	G Polymer of acrylic and aromatic vinyl monomer, and a nitrile monomer	Apr. 24, 1987.
P 86-0892	G Aminophenyl-(substituted)carbomonocycli sulfonamide	Apr. 1, 1987.
P 86-0899	G Calcium sulfonate	Feb. 2, 1987.
P 86-0909	G Alkylated aromatic compound	May. 22, 1987.
P 86-0920	G Substituted-3-sulfoalkylenzothiazole, salt	June 14, 1988.
P 86-0947	G Perfluoralkyl propoxy polyalkethers	Dec. 17, 1986.
P 86-0987	G Alkyl alcohol, alkoxylated	Sept. 9, 1987.
P 86-1012	Mixed C5-C7 dimer and C5-C6 ethers; (gases, extractive, C4-C6, amylene rich, reaction products with olefins, and methanol, distillation residues).	Oct. 3, 1986.
P 86-1039	G Polyurethane	Feb. 3, 1987.
P 86-1051	G Polyether urethane polymer	Dec. 10, 1986.
P 86-1054	G Substituted polyacrylamide	Dec. 22, 1987.
P 86-1075	G Sulfated oil, sodium salts	June 4, 1987.
P 86-1077	Alkyl esters, sulfated, sodium salts	June 5, 1987.
P 86-1098	G Substituted nitrobenzoic acid, derivative	Feb. 9, 1987.
P 86-1104	Toluene isopropanol	Jan. 23, 1987.
P 86-1107	Substitued naphthalene	Aug. 28, 1986.
P 86-1116	G Polyurethane	Aug. 20, 1987.
P 86-1138	Substituted naphthalene bisazo dye	Jan. 23, 1987.
P 86-1139	G Substituted naphthalene trisazo dye	Jan. 23, 1987.
P 86-1149	G Styrenated acrylic polymer	Apr. 13, 1987.
P 86-1154	G Acrylated polyester	Dec. 22, 1987.
P 86-1193	Montanic acid	Feb. 20, 1987.
P 86-1197	G Alkyl amine	Aug. 4, 1987.
P 86-1198	Alkyl quaternary ammonium salt	Oct. 12, 1987.
P 86-1199	G Alkyl amine	Aug. 3, 1987.
P 86-1205	G Substitued aniline	Sept. 22, 1986.
P 86-1209	G Trisubstituted-ethoxylatedan ilineazo-substituted-benzoheterocycle	Sept. 22, 1986.
P 86-1211	G Substitued polyoxyethyleneaniline, carboxylic acid ester	Sept. 22, 1986.
P 86-1223	G Ethoxypropene derivative	Feb. 19, 1987.
P 86-1227	Chlorinated aromatic azo anthraquinone pigment	Dec. 1, 1986.
P 86-1236	G Phenolic polyester resin	Oct. 10, 1986.
P 86-1247	G Amino amido silicone	July 8, 1987.
P 86-1252	Boron ester	June 26, 1987.
P 86-1256	G Orthosilicate	Dec. 15, 1987.
P 86-1259	G Ethoxy propene derivative	Jan. 30, 1987.
P 86-1275	G Mixed polyol ester of normal and branched chain monocarboxylic acids	Oct. 17, 1986.
P 86-1292	G Polymer of acrylic acid esters, a vinyl monomer, and a methacrylic acid ester	Dec. 11, 1986.
P 86-1308	G Substituted aromatic alcohol	Oct. 28, 1986.
P 86-1322	G Aromatic diamine, thio-methylated	June 3, 1987.
P 86-1339	G Mercapto-functional paintable silicone fluid	July 2, 1987.
P 86-1415	G Epoxy resin	Mar. 3, 1987.
P 86-1417	G Epoxy modified polyester resin	Mar. 3, 1987.
P 86-1421	G Modified epoxy resin	Mar. 8, 1987.
P 86-1482	G Polyurethane	Aug. 20, 1987.
P 86-1493	G Substituted alkyl peroxyhexane carboxylates (mixed isomers)	Sept. 22, 1987.
P 86-1495	G Unsaturated organic substitued siloxane	Aug. 14, 1987.
P 86-1526	N,n-Octyl-2-pyrrolidone	May 22, 1989.
P 86-1531	G Silyated carboxylic acid	Feb. 3, 1987.
P 86-1538	Isophthalic, nonanic acid, isophorandiamine, triamine, trimethylolpropane, ester-amide polymer	Mar. 2, 1987.
P 86-1542	Mixture of: 3-methyl-2-(2-propenyl) phenol and 5-methyl-2-(2-propenyl) phenol	Mar. 13, 1987.
P 86-1592	G Halogenated substituted ethylene copolymer	Apr. 25, 1989.
P 86-1605	G N-Alkylaminoacrylamide quaternary salt	Mar. 25, 1987.
P 86-1616	G S-Alkenyl-O,O-Dialkyl dithiophosphate	Dec. 9, 1987.
P 86-1617	G Dialkyl dithiophosphoric acid	Dec. 9, 1987.
P 86-1634	G Azolactone	Nov. 4, 1987.
P 86-1667	G Pentacosapolyunsaturated acid	Jan. 23, 1987.
P 86-1668	G Aliphated polyether polyurethane	Feb. 19, 1987.
P 86-1669	G Aliphatic polyether polyurethane	Feb. 19, 1987.
P 86-1674	G Aliphatic, cycloaliphatic polymer	Jan. 14, 1987.
P 86-1675	G Blocked polyol-urethane	Jan. 14, 1987.
P 86-1676	G Aliphatic polyol-urethane	Jan. 14, 1987.
P 86-1691	G Substituted polystyrene	Feb. 4, 1987.
P 86-1692	G Aryloxy substituted alkyl aryloxyate	Nov. 30, 1987.

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IV. 395 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-1700	G Brominated vinylic aromatic hydrocarbon	June 10, 1987.
P 86-1714	G Carbonylacrylic resins solution	May 21, 1987.
P 86-1719	G Polycyclic organic pigment	June 26, 1987.
P 86-1720	Mixture of: 4-(1,5-dimethylhexylidene)-1-methylcyclohexene 1; 4-(1-methylene-5-methylhexyl)-1-methylcyclo-hexene 1; and 4-(1,5-dimethyl-1-hexenyl)-1-methylcyclo-hexene 1	Dec. 29, 1986.
P 86-1734	G Aliphatic polyester urethane	Apr. 30, 1987.
P 86-1737	G A Polyamino-amide solution	May 30, 1987.
P 86-1750	G Maleic modified rosin ester	June 24, 1987.
P 86-1770	G Alkyd resin	Apr. 3, 1987.
P 87-0003	G Polymer of styrene with substituted acrylate and methacrylate	Feb. 10, 1988.
P 87-0106	G Mixture of 2-(4-hydroxy-phenyl)-2-(4-hydroxy-3-sulfophenyl)propane; 2,2-bis(4-hydroxy-3-sulfophenyl) propane; 2,2-bis(4-acetoxy-phenyl) propane; 2-(4-acetoxy-phenyl)-2-(4-acetoxy-3-sulfophenyl) propane; and 2,2-(bis(4-acetoxy-3-sulfophenyl) propane	Jan. 29, 1987.
P 87-0195	G Silyl ketene acetal	Oct. 21, 1987.
P 87-0205	G Polyurethane polymer	May 24, 1989.
P 87-0243	G Substituted polyacrylates	Apr. 23, 1987.
P 87-0368	G Diaminostilbene disulfonic acid derivation	Apr. 23, 1987.
P 87-0549	G Substituted naphthylazo substituted benzene	Sept. 9, 1988.
P 87-0581	G Tetraalykylammonium organoborate	May 31, 1989.
P 87-0664	G Substituted ethylene copolymer	May 4, 1989.
P 87-0667	Bis(phthalic anhydride) dianhydride	May 4, 1989.
P 87-0777	G 4,4'-bis(substituted)stilbene	July 30, 1987.
P 87-0778	G 2,5-Bis(substituted)-1,3,4-oxadiazole	July 30, 1987.
P 87-0779	G Pyrene derivative	July 30, 1987.
P 87-0780	G Phthalocyanine colorant	July 30, 1987.
P 87-0781	G Carbazole derivative	July 30, 1987.
P 87-0782	G Benzoic acid derivative	July 30, 1987.
P 87-0783	G 1,1'-Bis(substituted)-3-substituted-1-propane	July 30, 1987.
P 87-0784	G 2,5-Bis(substituted)-1,3,4-oxadiazole	July 30, 1987.
P 87-0785	G Carbazole derivative	July 30, 1987.
P 87-0886	G Aromatic Polyester polyol	May 27, 1989.
P 87-0958	G Substituted phenyl substituted naphthalene, metal complex, salt	May 30, 1989.
P 87-1034	G Octyl iminodipropionate	Sept. 8, 1987.
P 87-1039	G Polyurethane polymer	Sept. 1, 1987.
P 87-1046	N,N'-Dibutyl-2-(1-oxodecyl-amino) pentadiamide	Aug. 5, 1987.
P 87-1054	G Catalyst	Oct. 7, 1987.
P 87-1055	G Catalyst	Oct. 7, 1987.
P 87-1056	G Catalyst	Oct. 7, 1987.
P 87-1060	Mixture of pyroxenes, quartz, asbestiform tremolitefeldspars, & magnetite	Aug. 3, 1989.
P 87-1064	G Amino functional zircoaluminate chloride hydroxide polymer	Aug. 3, 1987.
P 87-1079	Nylon 22 polycondensate based on ethylene diamine and oxalic acid	Aug. 24, 1989.
P 87-1082	G Substituted azo naphtalenedisulfonic acid	Feb. 25, 1988.
P 87-1085	G Isocyanate terminated urethane propolymer	Aug. 8, 1987.
P 87-1089	G Substituted diazo sulfonyl naphthalene sulfonic acid	Feb. 25, 1988.
P 87-1094	G (Substituted phenol) substituted alkanamide	Nov. 30, 1987.
P 87-1096	G Modified acrylic resin	Aug. 15, 1987.
P 87-1099	G Ester of 4-methoxyphenol-2-propenoic acid	Aug. 17, 1987.
P 87-1256	G Glycol bis (cycloaliphatic acid ester)	Sept. 6, 1987.
P 87-1257	G Styrenated acrylic polymer	Aug. 19, 1988.
P 87-1258	G Aliphatic polyol polyester	Sept. 17, 1987.
P 87-1263	G Fluorinated polyol	Oct. 22, 1987.
P 87-1268	G Polyether	Oct. 5, 1987.
P 87-1270	G Arylaliphatic polyamine epoxy adduct	Oct. 9, 1987.
P 87-1271	2-Naphthalenecarboxamide, 3-hydroxy-N-phenol-	Dec. 17, 1987.
P 87-1275	G Acrylate acrylonitrile copolymer	Oct. 16, 1987.
P 87-1276	G Polyacrylate	Oct. 29, 1987.
P 87-1279	G Acrylate acrylonitrile copolymer	Oct. 15, 1987.
P 87-1283	G Fatty alcohol ester	Sept. 20, 1987.
P 87-1284	G Fatty alcohol ester	Sept. 20, 1987.
P 87-1285	G Fatty alcohol ester	Sept. 20, 1987.
P 87-1286	G Polyester resin of aryl & fatty acids w/alkane diols	Mar. 23, 1988.
P 87-1289	G Phenylated rosin ester	Dec. 27, 1987.
P 87-1293	9-Octadecen-1-amine oleate 1-hexadecanamine oleate unknown alkyl fatty amine oleates	Nov. 3, 1987.
P 87-1296	G Melamine-cured acrylated resin	Dec. 21, 1987.
P 87-1297	G Alkoxysilane	Dec. 4, 1987.
P 87-1299	G Alkoxysilane	Dec. 4, 1987.
P 87-1304	G Crosslinked ethylene interpolymer	Oct. 30, 1987.
P 87-1321	G Disubstituted quinoline bisulfate	Sept. 28, 1987
P 87-1322	G Substituted thioxotetrazole salt	Oct. 2, 1987.

IV. 395 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-1331	G Polymer from reactants including tert-butylphenol & isophoronediamine	Sept. 30, 1987.
P 87-1332	G Substituted azo triazine naphthalenedisulfonic acid	Mar. 14, 1988.
P 87-1340	G Xanthene dye	Oct. 20, 1987.
P 87-1343	G Substituted benzoxazine	Oct. 22, 1987.
P 87-1350	G Alkylamine alkanoate	Oct. 15, 1987.
P 87-1351	Tert—decanoic acid, zinc salt	Feb. 5, 1988.
P 87-1352	G Sodium fluorosilanolate	Nov. 6, 1987.
P 87-1357	G Poly(oxyalkylene-ethylene acrylonitrile styrene) polyol	Dec. 13, 1987.
P 87-1372	G Polycarboxylate, aqueous solution	Nov. 16, 1987.
P 87-1432	G Alkylbenzene sulfonic acid, calcium salt	May 24, 1989.
P 87-1433	Xanthylium, 9-(2-(methoxy carbonyl)phenyl)-3,6-bis(ethylamino)-2,7-dimethyl-,salt with 2 (or 5)-dodecyl-5 (or 2)-(sulfophenoxy) benzensulfonic acid (2:1).	Nov. 20, 1987.
P 87-1456	Polyamine urea-formaldehyde condensate	Aug. 12, 1987.
P 87-1503	G Alkyl aryl phosphonium halide	Dec. 1, 1987.
P 87-1504	G Urethane modified water reducible alkyd resin	Oct. 29, 1987.
P 87-1569	Acrylonitrile methacrylic acid ammonium sulfate	June 14, 1988.
P 87-1595	G Dibasic acid/glycol ester	Dec. 8, 1987.
P 87-1669	G Substituted Terpene resin	Nov. 11, 1987.
P 88-0061	G Organopolysiloxane containing metals	June 27, 1988.
P 88-0073	Polyethylene terphthalate; diethylene glycol; tetrabutyl titanle	Jan. 8, 1988.
P 88-0076	G Isocyanate terminated urethane prepolymer	Jan. 18, 1988.
P 88-0091	G Heteromonocyclic methylene derivative of a heteropolycyclic-indenone	Apr. 19, 1988.
P 88-0092	G Polyampholyte	June 16, 1988.
P 88-0112	G Organopolysiloxane	Aug. 19, 1988.
P 88-0239	Bisphenol—a reaction product with formaldehyde	Mar. 14, 1988.
P 88-0291	G Unsaturated acidic polycarboxylic acid ester	May 4, 1988.
P 88-0334	G 1,2-Epoxyhexane	June 13, 1989.
P 88-0343	G Silylated polystyrene sulfonate	Mar. 9, 1988.
P 88-0346	G Substituted naphthalene sulfonic acid	June 23, 1988.
P 88-0358	G Silylated cationic acrylate polymer	Mar. 9, 1988.
P 88-0397	G Polyester acetate	Apr. 18, 1988.
P 88-0410	G Reaction product of alkanolamine and dicarboxylic acid	Nov. 14, 1988.
P 88-0427	G Substituted naphthalene sulfonic acid	May 4, 1989.
P 88-0447	G Substituted benzene sulfonic acid	May 25, 1988.
P 88-0555	G Aliphatic polyurethane	June 17, 1989.
P 88-0562	G Water-reducible alkyd resin	Mar. 20, 1988.
P 88-0626	G Alkylalkoxysilane	May 25, 1989.
P 88-0636	G Perfluoroalkylacrylate copolymer	July 20, 1988.
P 88-0637	G Perfluoroalkyl acrylate copolymer	July 20, 1988.
P 88-0647	G Oxime-blocked polyurethane polymer, waterborne	Apr. 29, 1988.
P 88-0675	G Organosilane	Aug. 24, 1988.
P 88-0683	G Organopolysiloxane	Aug. 3, 1988.
P 88-0756	Dicyclopentadiene, rosin, dimer fatty acid resin	June 15, 1989.
P 88-0768	2-((2-(2-(dimethylamino)ethoxyl)methylamino)ethanol	May 17, 1988.
P 88-0792	G Polyol acetal	Oct. 28, 1988.
P 88-0800	G Poly(vinyl ester counsaturated dicarboxylic acid ester co-olefin)	July 26, 1988.
P 88-0819	G Ethylene interpolymer	June 16, 1988.
P 88-0964	G Diphenol dicyanate	June 20, 1989.
P 88-1002	G Aromatic, acrylic ester polymers with monocarboxylic acids	May 3, 1989.
P 88-1010	G Polyether-modified organopolysiloxane	Aug. 3, 1988.
P 88-1226	G Sulfonated polyacrylated ammonium salt	Apr. 21, 1989.
P 88-1258	G Fluoroelastomer	June 14, 1989.
P 88-1315	4-(((2-Chloro-4-nitro)phenyl)azo)-(N-2-cyanoethyl,N-2-acetoxy ethyl)aniline	Nov. 11, 1988.
P 88-1375	Dimethyl octenes mixture and 2-methyl-6-methyleneoctane	Nov. 11, 1988.
P 88-1404	G Polymer alkyl poly (ethoxethyl) ester of monoethylenically carboxylic acid, mono-ethylenically unsaturated carboxylic acid, and alkyl ester of monoethylenically unsaturated carboxylic acid.	May 25, 1989.
P 88-1441	G Aromatic, polyether urethane	May 2, 1989.
P 88-1491	G Alkyl aryl polymercaptan	May 20, 1989.
P 88-1603	G Vinyl acrylic copolymer	Sept. 26, 1988.
P 88-1624	G Alkylheteromonocyclic derivatives of dialkyl-dihalo-heteropolycyclic-phenodioxaine	May 10, 1989.
P 88-1628	G Di(substituted) alkyl hydrogen acid phosphite	Dec. 6, 1988.
P 88-1642	G Perfluoroalkyl substituted acrylate polymer	May 24, 1989.
P 88-1735	G Modified epoxy resin	June 15, 1989.
P 88-1817	G Aliphatic polyester polyurethane-polyacrylate	May 16, 1989.
P 88-2087	G Derivative of copper phthalocyanine	May 30, 1989.
P 88-2154	G Urethane modified polyester	May 30, 1989.
P 88-2373	G Isooctyl acrylate containing terpolymer	May 5, 1989.
P 88-2417	G Epoxy/amine adduct	Apr. 21, 1989.
P 88-2430	Bis(3-trimethoxysilylpropyl)poly sulfane	May 9, 1989.

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IV. 395 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-2539	G Acrylic copolymer	May 30, 1989.
P 88-2556	G Epoxy triazine	May 15, 1989.
P 88-2557	G Modified aromatic polyether condensed with epoxy triazine	May 15, 1989.
P 88-2558	G Aromatic polyether copolymer with polyester	May 19, 1989.
P 89-0025	G Aryl bisphosphite	June 5, 1989.
P 89-0038	G Oxime-capped aromatic polyester urethane	May 1, 1989.
P 89-0064	G Aluminum oxide sulfate blend with aluminum sulfate	June 8, 1989.
P 89-0093	G Functionalized acrylate methacrylate	May 4, 1989.
P 89-0114	G Dithiocarbamate	May 18, 1989.
P 89-0170	G Alkylated aromatic diamine	May 12, 1989.
P 89-0177	G Aqueous dispersion of polyurethane use	Mar. 13, 1989.
P 89-0196	G Alkyl glyceryl ethers and condensates	Apr. 11, 1989.
P 89-0205	G Styrene containing acrylate polymer	May 1, 1989.
P 89-0249	G Acrylic solution polymer	May 20, 1989.
P 89-0261	Monoisopropanol amine; isophthalic acid; cyclohexane dimethanol; phosphorus acid	May 23, 1989.
P 89-0263	G Ethylene copolymer	May 15, 1989.
P 89-0266	G Ethylene polymer	May 14, 1989.
P 89-0271	G Acrylic polymer	Apr. 27, 1989.
P 89-0282	G Epoxy/amine adduct	May 31, 1989.
P 89-0283	G Epoxy/amine resin	May 21, 1989.
P 89-0288	G Modified alkyl alkoxy silane	May 15, 1989.
P 89-0289	G Acrylourethe	Sept. 9, 1989.
P 89-0338	Dicyclopentadiene; hydrocarbon resin intermediate; hydrocarbon resin, intermediate	May 12, 1989.
P 89-0370	G Fluorinated polyurethane	May 9, 1989.
P 89-0371	G Substituted dicarboxylic acid	May 15, 1989.
P 89-0382	G Aliphatic dione	May 30, 1989.
P 89-0418	G Haloalkyl sulfonic acid salt	May 30, 1989.
P 89-0428	G Blocked aromatic isocyanate	June 1, 1989.
P 89-0429	G Blocked aromatic isocyanate	May 30, 1989.
P 89-0436	G Blocked aromatic isocyanate	June 1, 1989.
P 89-0438	G Polymethylene polyphenyl isocyanate	June 1, 1989.
P 89-0441	Ethanol, 2(Bis-2-hydroxpypropyl) amine	June 12, 1989.
P 89-0447	G Styrene acrylic peroxide copolymer	June 10, 1989.
Y 85-0032	G Terpolyamide (polymer)	Dec. 12, 1988.
Y 86-0001	G Polymer partial ester	Jan. 15, 1988.
Y 86-0092	G Tall oil fatty acid modified alkyd resin	Mar. 31, 1989.
Y 86-0102	G Alkyd resin	May 13, 1987.
Y 86-0185	G Hydroxy functional acrylic copolymer	Nov. 24, 1986.
Y 86-0187	G Acrylic resin	Sept. 24, 1987.
Y 86-0217	G Polystyrene acrylate	May 1, 1987.
Y 87-0079	G Polyester resin of aryl dicarboxylic acids, alkane diols and ester	Mar. 24, 1987.
Y 87-0081	G Modified polyamide	Feb. 9, 1987.
Y 87-0086	G Water-reducible methacryl-styrene copolymer	Apr. 20, 1987.
Y 87-0093	G Polyester resins of an alkyl dicarboxylic acid and alkyl diols	Mar. 13, 1987.
Y 87-0094	G Alkyd	Feb. 12, 1987.
Y 87-0127	G Unsaturated polyester resin	July 1, 1987.
Y 87-0129	Polymer of vegetable oil fatty acid; 1,2-benzendicarboxylic acid; benzoic acid; 2,2-dimethyl-1,3-propanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.	Aug. 1, 1987.
Y 87-0141	G Vinyl/acrylate polymer	May 19, 1987.
Y 87-0143	G Rosin modified alkyd resin	Aug. 23, 1987.
Y 87-0144	G Aliphatic polyester urethane	June 4, 1987.
Y 87-0145	G Short oil alkyd resin	Aug. 26, 1987.
Y 87-0146	G Polyester of carbomonocyclic diacid and alkylene glycols	June 5, 1989.
Y 87-0156	G Butadiene acrylate polymer	July 20, 1988.
Y 87-0163	Ethanol perioxic acid; 9-octadecenoic acid; 9,12,15-octadecenoic acid; eicosanoic acid; octadecanoic acid water	July 1, 1987.
Y 87-0170	Ethenylbenzene polymer with butyl-2-methyl-2-propenoate, butyl-2-propenoate, octadecyl-2-methyl-2-propenoate and 2-methyl-2-propenoic acid.	Aug. 17, 1987.
Y 87-0171	Ethenylbenzene polymer with butyl-2-methyl-2-propenoate and butyl-2-propenoate	Aug. 17, 1987.
Y 87-0172	Ethenylbenzene polymer with butyl-2-methyl-2-propenoate, octadecyl-2-methyl-2-propenoate and 2-methyl-2-propenoic acid.	Aug. 17, 1987.
Y 87-0177	G Acrylic resin	Aug. 13, 1987.
Y 87-0179	G Poly-alpha-alkenes	Aug. 25, 1987.
Y 87-0193	G Ethylene acrylic copolymer	Apr. 15, 1989.
Y 87-0194	G Alkyd	Apr. 17, 1989.
Y 87-0202	G Medium molecular weight saturated polyester	Aug. 26, 1987.
Y 87-0203	G Uralkyd resin	Aug. 11, 1987.
Y 87-0220	G High molecular weight linear saturated polyester	Sept. 17, 1987.
Y 87-0222	G Polyester	Oct. 22, 1987.
Y 87-0226	G Alkyd resin	Nov. 16, 1987.

IV. 395 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
Y 87-0228	G Linseed modified tall oil alkyd resin	Sept. 15, 1987.
Y 87-0229	G Linseed modified tall oil alkyd resin	Sept. 15, 1987.
Y 87-0230	G Linseed modified tall oil alkyd resin	Sept. 15, 1987.
Y 87-0231	G Linseed modified tall oil alkyd resin	Sept. 15, 1987.
Y 87-0232	G Linseed modified tall oil alkyd resin	Sept. 15, 1987.
Y 87-0233	G Modified polymer of bisphenol a derivative and benzene di- and tri- carboxylic acid derivatives	Dec. 24, 1987.
Y 88-0100	G Modified acrylic copolymer	Feb. 23, 1988.
Y 88-0243	4-Methyl-1-pentene; hydrogen	May 9, 1989.
Y 88-0251	G Saturated polyester	May 25, 1989.
Y 88-0263	G Polyester resin	Oct. 19, 1988.
Y 89-0018	G Acrylic alkyd copolymer	June 1, 1989.
Y 89-0066	G Styrene acrylic polymer salt	April 1, 1989.
Y 89-0072	G Chain terminated alkyd resin	May 15, 1989.
Y 89-0081	G Polyester resin solution	June 12, 1989.
Y 89-0082	Aliphatic polyester urethane	May 15, 1989.
Y 89-0087	G Oil modified polyester	May 26, 1989.
Y 89-0115	G Acrylic resin solution	May 24, 1989.
Y 89-0118	G Polyurethane	June 1, 1989.

V. 25 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.

P 88-1740 P 88-2231 P 88-2237 P 88-2341
P 88-2587 P 89-0292 P 89-0326 P 89-0427
P 89-0483 P 89-0506 P 89-0507 P 89-0520
P 89-0538 P 89-0539 P 89-0648 P 89-0655
P 89-0657 P 89-0658 P 89-0659 P 89-0660
P 89-0736 P 89-0750 P 89-0760 P 89-0830
P 89-0831

[FR Doc. 89-22579 Filed 10-11-89; 8:45 am]

BILLING CODE 6560-50-M

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federal register

Thursday
October 12, 1989

Part V

Environmental Protection Agency

40 CFR Part 260

Hazardous Waste Management System; Use of Ground-Water Data in Delisting Decisions; Proposed Rule and Request for Comments

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[SW-FRL-3552-9]

RIN 2050-AC65

Hazardous Waste Management System; Use of Ground-Water Data in Delisting Decisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) to clarify the Agency's authority to consider ground-water monitoring data in the evaluation of delisting petitions (submitted under 40 CFR 260.20 and 260.22), and also to clarify the ability of the Agency to require such data from petitioners. Accordingly, this proposal provides that petitions for wastes managed in a hazardous waste unit must include ground-water monitoring information, if a ground-water monitoring system for the unit is required under 40 CFR part 264 or 265, or equivalent authorized State requirements. Such petitioners should have adequate ground-water monitoring systems in place and should be conducting regular ground-water monitoring, except as specifically provided otherwise in 40 CFR part 261, 264, or 265. Facilities will be required to provide the following information as part of their petitions: A description of site geology and hydrology; a description of the ground-water monitoring systems for the units in which the petitioned waste is managed; the results obtained from the analysis of ground-water samples collected pursuant to 40 CFR part 264 or 265 or authorized State equivalent; a discussion of sampling and analytical procedures followed; and an interpretation of the information and data presented. The petitioner must also submit any additional ground-water information necessary to characterize the petitioned waste's impact on ground-water quality, including the analyses of ground water for any constituent deemed necessary by EPA. Alternatively, the petitioner may specify the titles of reports containing this information and identify the State or EPA Regional authority which has possession of the submitted reports. The Agency has in the past evaluated and will continue to evaluate ground-water monitoring data, where appropriate, as well as other factors (*e.g.*, waste constituent concentrations, mobility, pH, and reactivity) during the delisting petition review process.

DATE: EPA will accept public comments on this proposed rule until November 27, 1989. Comments postmarked after the close of the comment period may not be considered. Any person may request a hearing on this proposed rule by filing a request with Joseph S. Carra whose address appears below, by October 27, 1989.

ADDRESSES: The public must send an original and two copies of their comments to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number "F-88-GWRP-FFFF".

Requests for a hearing should be addressed to Joseph S. Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room 2427, Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll free at (800) 424-9346 or at (202) 382-3000. For technical information, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Overview of Ground-water Monitoring Requirements under 40 CFR Parts 264 and 265
IV. Use of Ground-water Monitoring Data in Delisting Decisions
  A. Incomplete Delisting Information
  B. Non-compliant Monitoring Systems
  C. Identification of Ground-water Contamination
  D. Impact on Future Hazardous Waste Generators
  E. Impact on Facilities Planning to Treat Stored Wastes
V. Effective Date
VI. State Authority
  A. Applicability of Rules in Authorized States
  B. Effect on State Authorizations
VII. Regulatory Analysis
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
VIII. List of Subjects.

I. Authority

This regulation is issued under the authority of sections 2002(a) and 3001 of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a) and 6921).

II. Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from nonspecific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. The petitioner makes this demonstration by submitting manufacturing and treatment process information, raw materials lists, analytical data, mass balance arguments, and other administrative information.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the

hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous wastes, generators remain obligated to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

In the past, the Agency requested that petitioners submit ground-water monitoring data for the waste management units which contained the petitioned waste. This ground-water monitoring information was evaluated as part of the submitted petition on a case-by-case basis. In April 1985, the Agency published a guidance manual to assist facilities in preparing delisting petitions. See "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985. This manual informed petitioners that ground-water monitoring data would be collected, if available, from State and EPA Regional offices for consideration during petition reviews.

The Agency has also used (and currently uses, where appropriate) analytical models, such as the vertical and horizontal spread (VHS) model and the Land Treatment Model (LTM), to evaluate the mobility of toxicants from land-disposed wastes. See 50 FR 48896, November 27, 1985; 50 FR 48961, November 27, 1985; and 51 FR 41095, November 13, 1986. The Agency has relied, and currently relies where appropriate, on these models to quantify the potential hazards of a petitioned waste.

For wastes that contain toxic constituents (*i.e.*, constituents listed in 40 CFR part 261, Appendix VIII), the listing criteria require the Agency to consider a number of factors in determining if the waste poses a "substantial present or potential hazard to human health or the environment." 40 CFR 261.11(a)(3). These factors include the "potential of the constituent to migrate from the waste into the environment." 40 CFR 261.11(a)(3)(iii). In delisting evaluations, the Agency normally assesses the potential for migration from the waste into the ground water. Although EPA uses models to predict the movement of waste constituents, EPA views ground-water monitoring data from an adequate well system as important information in determining that the petitioned waste has not had or could not have an adverse impact on ground water. Therefore, the Agency routinely evaluates ground-water monitoring data for petitions involving on-site and dedicated off-site land-based hazardous waste units.

The Agency recognizes that modelling, by definition, is less accurate in predicting hazards at a particular site than data that reflect hazards posed by the actual disposal of a specific wastestream at that particular site. However, wastes which have been delisted may be disposed of at numerous locations where the hydrogeological and other conditions may vary substantially. Predictive models, therefore, are necessary to evaluate the hazards posed by disposal of specific wastestreams.

When data can be obtained to characterize the effects of past disposal practices for a given wastestream, the Agency believes this data will complement the use of predictive models. Such waste-specific data provide significant additional information that the Agency believes is important to characterize fully the hazards posed by disposal of a particular waste. For example, ground-water monitoring data from a particular site at which a specific waste was disposed may reflect contamination (*e.g.*, exceedance of health-based levels). Such data clearly indicate that the specific waste is hazardous at one location, and thus is potentially hazardous at many other locations.

EPA is proposing today's amendments to 40 CFR 260.22 to clarify the authority of the Agency to consider ground-water monitoring data as part of the evaluation of delisting petitions, and also to clarify the ability of the Agency to require such data from petitioners. (EPA is not soliciting, and will not respond to, comments on other existing elements of the delisting program or regulations.) EPA will require petitioners to submit, as part of delisting petitions, ground-water monitoring data sufficient to characterize the effects on underlying aquifers of waste disposed of at on-site and dedicated off-site hazardous waste units, if such units are required to have a ground-water monitoring system under 40 CFR part 264 or 265. EPA will not require such ground-water monitoring data from nondedicated off-site hazardous waste units for delisting petitions, because the ground-water data from such units would not provide useful information about the petitioned waste. In other situations, EPA will not require petitioners to provide this additional data, because ground-water monitoring data cannot be obtained (*e.g.*, in cases where petitioners have requested upfront delistings).

III. Overview of Ground-Water Monitoring Requirements Under 40 CFR Parts 264 and 265

Facilities that have not yet received final administrative disposition of their Part B permit application (*i.e.*, facilities with interim status) are required to comply with 40 CFR part 265. All other regulated subtitle C facilities managing hazardous wastes in on-site land disposal units are required to comply with a permit issued under 40 CFR part 264. As explained below, subpart F in both part 264 and part 265 generally require facilities that treat, store, or dispose of hazardous wastes in on-site surface impoundments, waste piles (40 CFR part 264 only), landfills, or land treatment facilities to implement a ground-water monitoring program that evaluates the ground-water quality in the uppermost aquifer underlying the facility. (See 40 CFR 264.90(a), 265.90(a)).

Interim status facilities are required under 40 CFR part 265, subpart F, to install a ground-water monitoring system capable of determining the facility's impact on the quality of ground water in the uppermost aquifer. Under 40 CFR 265.92 and 265.93, facilities are required to sample ground water at specified time intervals and to determine whether statistically significant increase (or for pH, increases and decreases) of indicator parameters (*e.g.*, specific conductance, pH, total organic carbon, total organic halogen) over background have occurred. If a statistically significant increase (or for pH, an increase or decrease) of an indicator parameter over its background level occurs, then the facility must develop and implement a ground-water assessment plan approved by the EPA Regional Office or the authorized State.

RCRA-permitted facilities are required under 40 CFR part 264, subpart F, to install a ground-water monitoring system capable of detecting hazardous constituents that have entered the uppermost aquifer. RCRA-permitted

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facilities must sample ground water at specified time intervals and determine whether the levels of constituents or parameters specified in their permit have increased (or for pH, increased or decreased) statistically over background. If a statistically significant increase (or for pH, an increase or decrease) in a constituent or parameter is detected, the facility must develop and implement a compliance monitoring program (including immediate testing for constituents listed in Appendix IX to part 264 and, thereafter, an annual scan for all Appendix IX constituents) meeting the requirements of 40 CFR 264.99. If the levels of any constituent being monitored are found to exceed the concentration limits specified in the facility permit, the facility must prepare and implement a corrective action program in accordance with 40 CFR 264.100.

IV. Use of Ground-Water Monitoring Data in Delisting Decisions

Today's proposed amendment to 40 CFR 260.22 codifies the Agency's policy to require individuals who submit delisting petitions (under 40 CFR 260.20 and 260.22) for wastes managed in on-site (or off-site dedicated) hazardous waste management units to provide ground-water monitoring information as part of their petitions, if the units of concern are required to have ground-water monitoring systems under 40 CFR part 264 or 265. Generally, facilities that have submitted delisting petitions for waste managed in land-based hazardous waste management units already are required to monitor ground water under 40 CFR part 264 or 265, subpart F. Thus, ground-water information and analytical data should be readily available and can be provided for use in the delisting evaluation without any significant cost to petitioners. Petitioners will be required to provide the following information as part of their petitions: A description of site geology and hydrology; a description of the ground-water monitoring systems for the units in which the petitioned waste is managed; the results obtained from the analysis of ground-water samples collected pursuant to 40 CFR part 264 or 265, subpart F; a discussion of sampling and analytical procedures followed; and an interpretation of the information and data presented. The petitioner must also submit any additional information necessary for evaluating the petitioned waste's impact on ground-water quality, including the analyses of ground water for any constituent deemed necessary by EPA. EPA will consider failure to submit any of the above information as grounds for denial or dismissal of the delisting petition.

Facilities that have submitted delisting petitions for wastes managed in dedicated off-site units are also required to provide the above ground-water monitoring information, if these units are required to have a ground-water monitoring system under 40 CFR part 264 or 265. A dedicated off-site unit is a hazardous waste management unit, located apart from the facility proper, in which no hazardous waste other than the petitioned waste is managed. If the dedicated off-site unit is not under the petitioner's control, the petitioner must arrange to provide the required information. The Agency is not requiring ground-water monitoring information from nondedicated off-site units because such data would likely reflect constituent concentrations from numerous, codisposed hazardous waste streams. Thus, this data would have little value to the Agency's evaluation of the petitioned waste.

The Agency will, however, require the petitioner to submit ground-water data for all on-site units that contain the petitioned waste, including those units that also contain other wastes (i.e., nondedicated units) if the unit is subject to RCRA ground-water monitoring requirements. The Agency believes that such data may provide useful information for delisting because the petitioned waste is often a significant component of the waste contained in on-site, nondedicated units. As noted above, off-site nondedicated units are more likely to be large facilities that accept a wide variety of wastes. EPA will evaluate the importance of ground-water and other information for on-site nondedicated units on a case-by-case basis.

In general, the petitioner is required to submit ground-water monitoring information and analytical data for all ground-water wells that monitor the unit(s) in which the petitioned waste is managed. All available analytical results for upgradient and downgradient monitoring wells should be submitted. The Agency will normally require at least four rounds of monitoring data collected over the course of one year unless, in the judgment of EPA, data from a shorter time period are adequate to evaluate the impact of the petitioned waste on the ground water. The submitted data must represent any expected seasonal variation in ground-water quality. If the petitioner has previously submitted ground-water information in response to RCRA subpart F requirements, the petitioner may either resubmit the information in the delisting demonstration, or specify the titles of the reports containing the required information and identify the State or EPA Regional contact who has possession of the submitted reports. The Agency will coordinate with State and EPA Regional contacts to obtain this information, when appropriate. The Agency retains the authority to request the petitioner to submit additional information necessary for the delisting evaluation, if the reports submitted to the State or EPA Region are not adequate for this purpose.

This proposal also explains how the Agency intends to use the submitted ground-water monitoring information to support delisting decisions. Ground-water monitoring data from EPA Region or State-approved RCRA monitoring systems that show no unacceptable toxicant levels (*e.g.*, hazardous constituent concentrations above health-based levels) may support the Agency's decision to grant an exclusion. However, because the monitoring data from a particular site do not reflect the potential to contaminate other sites, these data alone are not sufficient evidence to grant an exclusion. The evaluation of many factors (*e.g.*, waste constituent concentrations, pH, and reactivity) and the Agency's evaluation of toxicant mobility from wastes using ground-water transport models (*e.g.*, the VHS model) may contribute to the final delisting decision. If the Agency believes that under reasonable worst-case conditions a waste will leach unacceptable levels of toxicants, then the Agency may consider the waste to be hazardous and subject to subtitle C control even though ground-water monitoring data may not indicate ground-water contamination. Ground-water monitoring data showing no contamination indicate that either contamination has not yet occurred or has not been detected, but do not indicate whether the waste will cause ground-water contamination in the future at the site assessed or at other potential sites. In addition, because wastes may be moved to a different location following exclusion, the evaluation of ground-water monitoring data from the current location will have no direct bearing on possible migration from a similar unit at a different waste management site which may have different hydrogeological conditions.

On the other hand, ground-water monitoring data that show ground-water contamination may support the Agency's decision to deny a petition, even when leachate test results and modeling evaluations would not indicate potential ground-water contamination.

The Agency intends to use results of ground-water monitoring data evaluations as a check on the reasonable worst-case evaluations performed in order to provide an additional level of confidence in its delisting decisions. Because ground-water monitoring data are descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst-case assumptions, the Agency believes that evidence of ground-water contamination originating from the unit(s) of concern may be a sufficient basis for petition denial.

A. Incomplete Delisting Information

The Agency's policy to dismiss incomplete petitions by letter is explained in detail in 53 FR 6822, March 3, 1988. Petitions that are substantially incomplete may be dismissed upon receipt. Facilities with petitions that are partially deficient will have a maximum of 6 months to submit the information necessary to complete their delisting petitions. In the event that the 6-month deadline passes without full submittal of the requested information, the Agency may dismiss the petition by written notice to the facility. The effect of the dismissal is to remove the petition from the petition review process and to close the petition file. The facility may submit a new petition with updated and complete information at any time.

Pursuant to this policy, the Agency will notify facilities when submitted ground-water monitoring information is insufficient to complete their petitions. Such incomplete petitions may be dismissed upon receipt or the facility may be given a maximum of six months within which to provide the necessary ground-water monitoring information.

B. Non-compliant Monitoring Systems

In most cases, the Agency will dismiss petitions for wastes in on-site and dedicated off-site waste management units if ground-water monitoring is not in compliance with the applicable 49 CFR part 264 or 265, subpart F ground-water monitoring regulations and such lack of compliance, in EPA's discretion, renders the ground-water monitoring data insufficient to properly characterize the impact of the petitioned waste on ground water. Compliance with supart F regulations will be determined after consultation with the appropriate State or EPA Regional offices. Such petitions generally will be dismissed upon finding the system out of compliance, because more than six months will typically be required to bring the monitoring system into compliance and/or to collect the requisite ground-water monitoring data. A facility may submit a new petition with updated and complete ground-water monitoring information after the ground-water monitoring system is brought into compliance and the required sampling information has been obtained.

If data submitted from non-compliant monitoring systems indicate that the petitioned waste may have caused ground-water contamination, the Agency may use this information to support a denial of the petition. The Agency believes that these data may be used as a separate basis to deny the petition because the ground-water monitoring results, even though the monitoring system is not in compliance, may indicate that the petitioned waste has adversely affected ground-water quality at the site. The petitioner may submit a new petition if the monitoring system is brought into compliance with the appropriate regulations and may attempt to provide sufficient information to demonstrate that the petitioned waste has not contributed to ground-water contamination.

In most cases, ground-water monitoring systems approved by the EPA Region or State will provide the data necessary for evaluating the impact of the petitioned waste on ground-water quality. In a few cases, however, a petitioner's approved ground-water monitoring system may not be adequate for determining the impact of only the petitioned waste on ground-water quality. For example, the EPA Region or State may have granted approval of a single ground-water monitoring system for a waste management area. A waste management area is defined by an imaginary line circumscribing more than one regulated unit. A well system which monitors several regulated units within a single waste management area may be inadequate for determining the petitioned waste's impact on ground-water quality where, for example, the petitioned waste is found only in one unit. Such situations will be evaluated on a case-by-case basis.

Other cases in which data from an approved ground-water system will not be adequate may arise for units that are subject only to the monitoring requirements in subpart F of 40 CFR part 265. The list of analytes required under part 265 is limited in scope and often will not include constituents that are of concern to EPA in evaluating delisting petitions. Therefore, EPA will require that petitioners provide ground-water analyses for any constituents that the Agency believes may be derived from the petitioned waste and might adversely affect ground-water quality.

C. Identification of Ground-water Contamination

1. Evaluation of Hazardous Constituent Concentrations

In evaluating a delisting petition, the Agency will consider to be unacceptable ground-water contamination that exceeds health-based levels in wells that monitor the units containing the petitioned waste. The health-based levels are Agency-reviewed levels of regulatory concern proposed for use in delisting decisions (see "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket). These levels include Maximum Contaminant Levels (MCLs) developed for drinking water, as well as Reference Doses (for noncarcinogens) and Risk Specific Doses (for carcinogens). Health-based levels are intended to protect humans from the possible adverse effects of chronic, low level exposure to hazardous constituents.

The Agency is aware that the ground-water monitoring regulations in subpart F to 40 CFR part 264 appear to take a somewhat different approach in evaluating contamination. Under part 264, detection of hazardous constituents in the ground water above certain concentration limits (ground-water protection standards) triggers the requirement for corrective action. These concentration limits are based on: (1) Maximum concentration limits for drinking water specified in part 264, (2) alternate concentration limits (ACLs) established in a permit to protect human health and the environment, or (3) background levels. (Subpart F to part 265, unlike part 264, does not provide any specific mechanism for corrective action. The focus of the part 265 regulations is on determining the extent and nature of ground-water contamination, not on its removal or treatment. The use of health-based levels in delisting ground-water evaluations is not inconsistent with subpart F to part 265, because part 265 does not contain procedures for evaluating what levels of constituents are unacceptable and require corrective action.)

The use of health-based levels (including MCLs) in evaluating ground water for delisting is clearly consistent with the use of MCLs and ACLs as ground-water protection standards in part 264, subpart F. (ACLs are site-specific limits developed from health-based levels similar to the levels used in delisting decision-making.) For delisting purposes, however, the Agency

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generally will not use constituent levels above background as a sole basis for petition denial. EPA believes that health-based levels are more relevant to the delisting decision process; the delisting process determines which wastes are hazardous to human health and the environment, whereas subpart F is designed to protect human health and the environment by detecting and addressing releases from regulated and solid waste management units that could contaminate ground water.

Furthermore, this apparent difference of approach with part 264 subpart F has little practical impact. If increases above background are detected in ground water, the Agency's delisting program will await the submittal of the further ground-water date required under subpart F (i.e., Appendix IX to part 264) before determining if health-based levels are exceeded for any constituents of concern to delisting. In addition, today's proposed rule will require petitioners to analyze the ground water for any constituent deemed necessary by EPA for the delisting evaluation. If significant ground-water contamination exists at a site, it seems highly unlikely that no constituents of concern would be found above health-based levels. Finally, as noted previously, EPA Headquarters plans to coordinate closely with EPA Regional and State permitting authorities to ensure that any evidence that the petitioned waste has caused a ground-water problem is evaluated prior to delisting.

The exceedance of the health-based levels in ground-water samples collected from monitoring wells located hydraulically downgradient from a regulated unit in which the petitioned waste is managed indicates that the petitioned waste may be leaching constituents at levels of concern to the delisting program. Ground-water contamination in exceedance of health-based levels may provide grounds to deny a petition unless the petitioner can demonstrate one of the following: (1) The petitioned waste has not contributed to the contamination (*e.g.*, contamination is the result of other on-site sources), (2) the exceedance is due to an error in sampling or analysis or other factors not associated with the petitioned waste, or (3) the exceedance, although greater than the health-based levels, is not statistically significant. The Agency will review these demonstrations on a case-by-case basis.

(1) If the evaluation of ground-water monitoring information shows that constituent concentrations in the background (or upgradient) wells designated by the facility also exceed health-based levels, the petitioner will be required to demonstrate that the constituent concentrations in the background (or upgradient) wells are the result of a contaminant source other than the petitioned waste, and are not in fact related to factors such as inappropriate well construction or placement, ground-water mounding effects, or site-specific hydrogeologic factors that might cause background (or upgradient) wells to intercept flow from the petitioned unit.

If contamination is indicated in a downgradient well, a facility may attempt to demonstrate to the Agency's satisfaction that a source other than the petitioned waste caused the contamination. Such a demonstration may require that petitioners perform sampling and analyses in addition to 40 CFR part 264 or 265, subpart F requirements. This demonstration may include information such as background ground-water quality, waste composition data, mass balance demonstrations, results of the chemical analysis of other potential contaminant sources, and process and treatment information.

(2) The Agency also will consider a facility's claim that an exceedance is the result of an error in sampling or analysis. The petitioner must provide an explanation of why the error has occurred and sufficient data to show the exceedance is not representative of actual ground-water quality. Such a demonstration may include the presentation of field and laboratory QA/QC data (*e.g.*, equipment blanks, trip blanks, laboratory blanks, replicates).

(3) A facility may show that a constituent concentration, which is above a health-based level, is not a statistically significant exceedance. The Agency has approved the use of a variety of statistical methods for evaluating ground-water monitoring data from hazardous waste facilities. However, the appropriateness of a given procedure is governed by specified performance standards which require that the use of a statistical test be determined on a case-by-case basis. See the **Federal Register**, October 11, 1988, 53 FR 39720. Examples of accepted statistical procedures are an analysis of variance (ANOVA), a tolerance or prediction interval procedure, and control charts. Guidance materials are being developed that will discuss the tolerance interval method and an alternative confidence interval method of analysis that may be used in certain circumstances.

2. Evaluation of Indicator Parameters and Constituents

The results of indicator parameter analyses (*e.g.*, pH, specific conductance, total organic carbon, or total organic halogen) submitted in support of a facility's delisting demonstration, and any indicator parameter analyses obtained from State and EPA Regional offices, will be evaluating according to statistical procedures set forth in 40 CFR part 264 or 265 as appropriate. If this evaluation shows that there has been a statistically significant increase (or for pH, an increase or decrease) over background levels of an indicator parameter, the RCRA regulations require that the facility submit additional ground-water monitoring data to determine the concentrations of hazardous waste constituents in ground water (see 40 CFR parts 264 and 265, subpart F).

Part 264 also requires that facilities sample for constituents specified in their permit, and for all part 264 Appendix IX constituents if an exceedance of the specified constituents or parameters occurs. For delisting purposes, the Agency will require the submittal of this constituent data in order to demonstrate that levels of hazardous constituents in ground water are not exceeding health-based levels. In addition, today's proposed amendments to the delisting regulations require that petitioners submit ground-water data for any constituent deemed necessary by EPA (see § 260.22(i)(13)). EPA will usually require ground-water monitoring data (to include hazardous constituent analyses) collected over the course of at least one year.

If an evaluation of indicator parameter analyses shows that a statistically significant increase (or for pH, an increase or decrease) over background concentrations in the level of an indicator parameter has not occurred, the Agency may still require, for delisting purposes, that a petitioner perform additional sampling and analyses for one or more hazardous constituents. Similarly, the Agency may require analyses for constituents not specified in the permit, even without an exceedance for specified constituents or parameters. The request for additional information would be made when the Agency has sufficient reason to suspect that such constituents in the waste could have an adverse effect on ground-water quality. EPA Headquarters will coordinate with appropriate State and EPA Regional offices in determining the adequacy of existing ground-water monitoring data in demonstrating that the petitioned waste has not adversely affected ground-water quality.

3. Evaluation of Vadose Zone Monitoring Data

In some instances a petitioner may be monitoring the vadose zone (i.e., the unsaturated zone between the waste and the ground water) in order to detect hazardous constituents migrating from a waste management unit before ground water has been adversely affected. Such a program is particularly advantageous and necessary when a waste management unit is located in a region where depth to ground water is substantial. The Agency intends to use vadoze zone monitoring data, when it is available from the petitioner or is required by EPA Regional or State authorities, to support the evaluation of a waste's potential impact on ground water and the environment. Should an analysis of vadose zone monitoring data indicate that contamination of the vadose zone has occurred or is occurring, the Agency may determine that the petitioned waste could cause ground water contamination if it were to migrate to ground water, or if, once excluded, the waste was transported to a disposal site with different hydrogeologic properties (*e.g.*, a shallow water table). The Agency will coordinate with appropriate State and EPA Regional offices in determining whether vadose zone monitoring data demonstrate that the petitioned waste is capable of adversely impacting ground water and the environment.

D. Impact on Future Hazardous Waste Generators

The Agency recognizes that some petitioners may be planning to generate new wastestreams that would be listed in 40 CFR 261.31 and 261.32 once generated. These petitioners may request an "upfront" delisting, submit pilot-scale waste constituent data, process descriptions, and other information in support of their delisting demonstrations prior to full operation of the new process. If these data and the information in the remainder of the petition demonstrate that the waste is not hazardous, the Agency may grant an upfront exclusion. Obviously, ground-water monitoring data for such wastes are not physically obtainable.

For an upfront delisting, the conditions of the exclusion will set maximum allowable constituent levels in the waste and will require the facility to submit representative sampling and analytical results from the full-scale process to verify that the allowable levels have been met in the generated waste. Such upfront delisting will be granted only when the Agency has sufficient reason to conclude, based upon information submitted about the process and waste and upon the conditions of the exclusion, that nonhazardous wastes will be generated.

E. Impact on Facilities Planning To Treat Stored Wastes

The Agency has received and currently is reviewing a number of petitions from facilities that are using various procedures (*e.g.*, stabilization, incineration, leachate treatment) to treat and to reduce constituent mobility in appropriate waste matrices. In a typical case, a petitioner may stabilize wastes contained in a land-based hazardous waste management unit. In all cases, petitioners must demonstrate that the treatment procedures are effectively reducing constituent mobility and/or concentrations to levels that are below regulatory concern.

Ground-water monitoring information from units used to store wastes prior to treatment will not be required for petitions for treated waste because the treatment process is expected to alter the chemical composition of the waste and/or the mobility of the waste constituents. Ground-water monitoring for the original unit, therefore, generally will not provide useful information on the impact of the treated waste on ground-water quality. If a petition for treated wastes is submitted on an upfront basis (*i.e.*, before the waste is treated), ground-water monitoring data from the treated wastes will not be physically obtainable. For wastes that have already been treated and placed in a new unit, ground-water monitoring data from the new unit will be required for delisting purposes, if the Agency believes that such data would be useful in evaluating the hazards of the treated waste.

EPA's decisions to delist a waste are generally retrospective and typically remove the waste management units holding the delisted waste from control under subtitle C of RCRA. In effect, the Agency has decided that these units have not received a hazardous waste. However, if waste from a hazardous waste management unit is treated and subsequently delisted, the unit in which the untreated waste was managed is not necessarily removed from regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR parts 270. Delistings also may be prospective and remove from subtitle C control only the waste sampled or newly disposed/generated waste. The Agency believes that the unit from which the untreated waste was removed should remain regulated until any hazardous residues remaining from disposal of the original (untreated) waste are managed to meet applicable requirements under RCRA (*e.g.*, clean closure requirements), or until these residues receive an exclusion based on a separate delisting petition. Before the unit itself could be removed from regulation, the petitioner must demonstrate (through ground-water monitoring and other data) that residues remaining at the unit that contain or are derived from the original (untreated) waste are not hazardous and that past waste management practices at the unit have not caused ground-water contamination.

V. Effective Date

This rule, when promulgated, will be effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. Because today's rule merely clarifies the Agency's existing authority to require any additional information needed to evaluate a petition (see 40 CFR part 260.22(j)), the Agency believes that a six-month delay is unnecessary. In addition, a six-month deadline is not necessary to achieve the purpose of section 3010 and good cause exists to make the rule effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendment (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no

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longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

At this time, only a few States are authorized to administer the RCRA delisting program. EPA currently administers the RCRA delisting program in other States and territories.

Today's announcement proposes standards that would not be effective in authorized States because the requirements would not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be immediately applicable upon promulgation only in those States that do not have authorization. In authorized States, the requirements will not be applicable unless the States revises its program to adopt equivalent regulations under State law and the State revisions are authorized. If a State is authorized for delisting, its program must be no less stringent than that of the Federal Program for the State to obtain and keep final authorization. Today's rule proposes to clarify EPA's exercise of its existing authority by codifying specific requirements to consider ground-water monitoring data as part of the Agency's evaluation of delisting petitions. EPA believes that this additional specificity of delisting regulations makes the delisting process more stringent. Therefore, the State program must include equivalent regulations in order for the State to obtain and to keep final authorization, upon promulgation of these requirements.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs already may have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State will not be authorized to carry out these requirements upon their promulgation in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that today's proposal is not a major rule. If promulgated, this proposal would not significantly increase cost to the petitioner because the information requested in today's proposal generally should be available from facilities in compliance with 40 CFR part 264 or 265, subpart F. In addition, facilities have been given the option of specifying the titles of reports containing the requested information and identifying the State or EPA Regional contact who has possession of such reports, in lieu of resubmitting this information as part of the delisting application. Finally, EPA could require submission of this information under existing authority, so no significant cost of providing this information will be attributable to this proposed rule.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This amendment will not have an adverse impact on a substantial number of small entities, since the information requested in today's proposal generally is already required of petitioners under 40 CFR part 264 or 265, subpart F and 40 CFR part 270, subpart B, and can be requested under existing delisting authority. Accordingly, I hereby certify that this regulation upon promulgation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The Information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Reporting and recordkeeping burden on the public for this collection is estimated to be 1,550 hours for the 50 respondents per year, with an average of 31 hours per petition. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1189), contact Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202–382–2745), and Paperwork Reduction Project 2050–0053, Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VIII. List of Subjects in 40 CFR Part 260

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: October 4, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Amend paragraphs (a)(2), (c)(2), (d)(4), and (e)(4) of § 260.22 by replacing the ending period with a semicolon followed by the word "and".

3. Amend § 260.22(b) by adding to the end of the paragraph the sentence "During the review of the complete application, the Administrator will consider the ground-water monitoring information collected under paragraph (i)(13) of this section and evaluate the impact of a petitioned waste on ground water."

4. Amend § 260.22 by adding paragraphs (a)(3), (c)(3), (d)(5), (e)(5), and (i)(13) to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

(a) * * *

(3) During the review of the complete application, the Administrator will consider the ground-water monitoring information collected under paragraph (i)(13) of this section and evaluate the impact of a petitioned waste on ground water.

* * * * * *

(c) * * *

(3) During the review of the complete application, the Administrator will consider the ground-water monitoring information collected under paragraph (i)(13) of this section and evaluate the impact of a petitioned waste on ground water.

(d) * * *

(5) During the review of the complete application, the Administrator will consider the ground-water monitoring information collected under paragraph (i)(13) of this section and evaluate the impact of a petitioned waste on ground water.

(e) * * *

(5) During the review of the complete application, the Administrator will consider the ground-water monitoring information collected under paragraph (i)(13) of this section and evaluate the impact of a petitioned waste on ground water.

* * * * * *

(i) * * *

(13) Ground-water monitoring information for a petitioned waste that is managed in a unit for which a ground-water monitoring system is required under 40 CFR part 264 or 265. The ground-water monitoring information to be submitted includes: a description of site geology and hydrology; a description of the ground-water monitoring systems for the units in which the petitioned waste is managed; the results obtained from the analysis of ground-water samples collected pursuant to 40 CFR part 264 or 265 or authorized State equivalent; a discussion of sampling and analytical procedures followed; and an interpretation of the information and data presented. The petitioner must also submit any additional ground-water information deemed necessary by the Administrator to characterize the petitioned waste's impact on ground-water quality including, but not limited to, the analysis of ground water for any constituents deemed necessary by the Administrator. In lieu of submitting this information as part of the application, a facility may specify the titles of reports containing this information and identify the State or EPA Regional authority who has possession of the submitted reports. The Agency retains the authority to request the petitioner to submit additional information on ground-water monitoring necessary for the delisting evaluation, if the reports submitted to the State or EPA Region are not adequate for this purpose.

* * * * * *

[FR Doc. 89–24074 Filed 10–11–89; 8:45 am]
BILLING CODE 6560–50–M

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 37 and 52
Federal Acquisition Regulation (FAR); Continuity of Services Clause; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 37 and 52

Federal Acquisition Regulation (FAR); Continuity of Services Clause

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to FAR 37.110 to revise the prescription for the clause at 52.237–3, Continuity of Services, to limit its use and to provide examples of proper usage.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 11, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–68 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed rule will not have a significant effect beyond the internal operating procedures of contracting agencies or a significant cost or economic impact on contractors or offerors, because the rule is intended to clarify proper usage of the Continuity of Services clause. Consequently, the solicitation of public comments is not required and the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 37 and 52

Government procurement.

Dated: October 5, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 37 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 37 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 37—SERVICE CONTRACTING

2. Section 37.110 is amended by revising paragraph (c) to read as follows:

§ 37.110 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer may insert the clause at 52.237–3, Continuity of Services, in solicitations and contracts for services, when (1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them and (2) the Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances. The 60-day period in paragraph (b) of the clause may be varied from 30 to 90 days.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.237–3 is amended by revising the introductory text to read as follows:

§ 52.237–3 Continuity of Services.

As prescribed in 37.110(c), insert the following clause:

* * * * *

[FR Doc. 89–24070 Filed 10–11–89; 8:45 am]

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H.R. 2835/Pub. L. 101–108
To provide for the relocation of certain facilities at the Gateway National Recreation Area, Sandy Hook, New Jersey, and for other purposes. (Oct. 6, 1989; 103 Stat. 680; 1 page) Price: $1.00

S. 85/Pub. L. 101–109
To authorize the acceptance of certain lands for addition to Harpers Ferry National Historical Park, West Virginia. (Oct. 6, 1989; 103 Stat. 681; 1 page) Price: $1.00

S. 1709/Pub. L. 101–110
To provide interim extensions of Department of Veterans Affairs programs of respite care for certain veterans, community-based residential care for homeless, chronically mentally ill veterans, State home construction grants, and leave transfers for certain health-care professionals, and of Department of Veterans Affairs home-loan fees. (Oct. 6, 1989; 103 Stat. 682; 2 pages) Price: $1.00

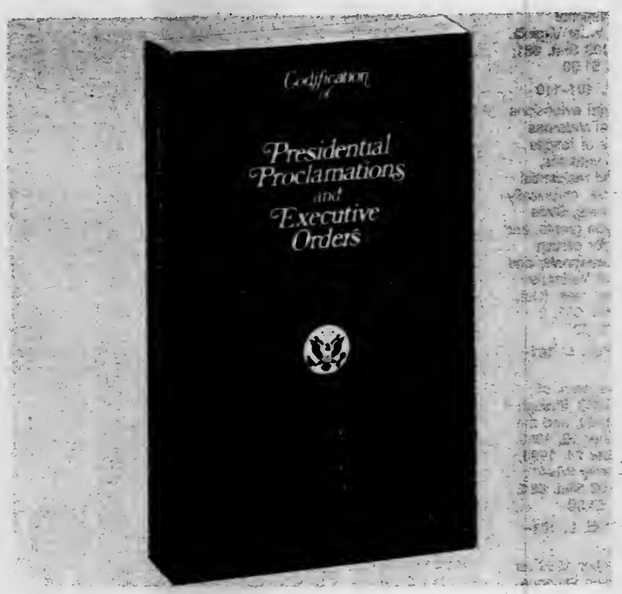
S.J. Res. 117/Pub. L. 101–111
To designate the week of November 19, 1989, through November 25, 1989, and the week of November 18, 1990, through November 24, 1990, as "National Family Week". (Oct. 6, 1989; 103 Stat. 684; 1 page) Price: $1.00

S.J. Res. 133/Pub. L. 101–112
Designating October 1989 as "National Domestic Violence Awareness Month". (Oct. 6, 1989; 103 Stat. 685; 2 pages) Price: $1.00

S.J. Res. 138/Pub. L. 101–113
Designating October 16, 1989, and October 16, 1990, as "World Food Day". (Oct. 6, 1989; 103 Stat. 687; 3 pages) Price: $1.00

S.J. Res. 148/Pub. L. 101–114
To designate the week of October 8, 1989, through October 14, 1989, as "National Job Skills Week". (Oct. 6, 1989; 103 Stat. 690; 1 page) Price: $1.00

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WASHINGTON, DC

WHEN: October 19; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A, 26 Federal Plaza, New York, NY.

RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

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Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Revised Policy on Objective Merit Review of Discretionary Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy today is revising subparts A and B of the Financial Assistance Rules, 10 CFR part 600, to establish standards for program offices to follow in conducting the objective merit review of discretionary financial assistance applications, to provide authority for program assistant secretaries to issue general solicitations covering broad areas of research for which financial assistance is being made available, and to establish a requirement whereby applicants may receive an evaluation of their submission. In addition, this revision gives recipients of financial assistance research awards expanded authority to rebudget among categories and authority to carry over funds from one funding period to the next, to incur preaward costs, and to extend project periods without prior approval under certain circumstances. These changes will maintain the Federal stewardship over the funds being awarded while simultaneously allowing research to be done more efficiently and productively.

EFFECTIVE DATE: Effective November 13, 1989.

FOR FURTHER INFORMATION CONTACT:
Edward F. Sharp, Business and Financial Policy Division (MA–422), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–8192.
Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585 (202) 586–1526.

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VIII. Review Under Executive Order 12612

I. Introduction

With this final rule, the Department of Energy (DOE) is amending its Financial Assistance Rules to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications. The changes also allow recipients of financial assistance research awards authority, without obtaining prior approval from the Contracting Officer, to (1) rebudget among categories; (2) carry over funds from one funding period to the next; (3) incur limited preaward costs; and (4) extend project periods without additional funds.

Also, today's rule establishes an outline for a Department-wide process for the review of applications for financial assistance. Requests for financial assistance funds are to be reviewed and evaluated by the DOE based on scientific merit of the project, applicant's qualifications, adequacy of applicant's facilities and resources, project appropriateness to the mission of the DOE, and other appropriate factors established and set forth by the cognizant program office. The DOE review process is to consist of review by DOE personnel for scientific and technical merit and program policy matters and may include external review by Federal (including DOE) and non-federal personnel either as part of a standing committee, ad hoc committee, or field reader review for scientific and technical merit. The Federal/non-Federal composition of the review groups may vary, as long as objective review standards are maintained.

Additionally, this rule allows the issuance of general solicitations such that applications which are in the subject area of one of the programs listed in the solicitation may be treated as having been in response to the general solicitation.

Finally, a provision regarding evaluations of applications provides that, upon request, the applicant will receive a written summary of the evaluation.

The DOE has concluded that the other changes regarding prior approvals, carryovers, preaward costs and project extensions (which are the DOE's implementation of recommendations stemming from the Federal Demonstration Project) will provide additional flexibility to financial assistance recipients and reduce the work involved in managing financial assistance awards without adversely affecting appropriate Federal oversight of certain awards.

II. Changes to 10 CFR Part 600

Section 600.3 is amended by inserting in alphabetical order definitions for "ad hoc committee," "field readers," "objective merit review," "responsible official," and "standing committee," and changing the definition of "research."

Section 600.9 is amended by revising paragraph (a)(1) to provide authority for program assistant secretaries to issue general solicitations. Paragraph (c)(10) is amended to allow program offices to establish due dates or periods appropriate for the receipt of applications. Multiple receipt dates throughout the year may be established which would permit applications to be "bunched" and reviewed in comparison to each other. Paragraph (c)(12)(vi) is changed to provide that solicitations must contain specific requirements for non-statutory cost sharing when cost sharing is to be considered in the selection process.

Section 600.16 is amended by revising paragraph (a) to establish the responsibility of the program office for setting up an objective merit review system and ensuring its satisfactory functioning. A new paragraph (b) is added to set out basic review requirements, including the goal to normally obtain review by at least three individuals who have no other responsibilities concerning the financial assistance applications being reviewed.

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A new paragraph (c) has been added to outline requirements for comparative review. A new paragraph (d) has been added to describe the types of review processes which may be used, which include field readers, standing committees, and ad hoc committees. A new paragraph (e) has been added establishing a requirement for providing the applicant with an evaluation of his/her application. A new paragraph (f) has been added to address situations in which the reviewer has an interest in the application being reviewed. A new paragraph (g) has been added to establish deviation procedures from this part of the rule. Existing paragraphs (b) and (c) have been redesignated paragraphs (h) and (i).

Section 600.31 is amended by including a provision allowing recipients of financial assistance research awards to extend the final year of a project period without receiving the prior approval of the DOE. Recipients must take this action prior to the originally established expiration date and notify the DOE within ten days of the extension.

Section 600.32 is amended to allow recipients of financial assistance research awards to carry over unexpended funds in a continuation award without the prior approval of the DOE.

Section 600.103 is amended to eliminate all Federal prior approval requirements for a recipient of financial assistance research awards (including those in OMB Circulars A–21 and A–110) except for change in objective or scope, temporary replacement or change of principal investigator, change of key personnel, and change of the institution to which the award is made. It is also amended to establish the authority of these recipients to incur pre-award costs of up to 90 days prior to a new or renewal award. The section also provides that, if a recipient takes such an action, the DOE is not, therefore, obligated to issue an award.

III. Discussion of Comments on Proposed Rule

On March 15, 1989 (54 FR 10670), DOE published a proposed rule to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications, and to implement the provisions of the Federal Demonstration Project (FDP) which would allow recipients of financial assistance research awards expanded authority to act in several areas without obtaining prior approval from the Contracting Officer. Written comments were to be submitted by April 14, 1989.

Three institutions of higher education submitted comments.

All three commenters requested that DOE change its proposal which limits the recipient's ability to extend the length of the project period without additional funds to the last budget period of a project period. They assert that the proposed provision (600.31(d)(1)) is contrary to what is being permitted in the FDP which, they contend, allows any budget period to be extended. They also view reserving the extension without additional funds authority to the last budget period to be an unnecessary restriction.

DOE has reviewed the applicable provision in the FDP and determined the limitation in the proposed rule is not inconsistent with that provision. DOE has also verified with other Federal participants in the FDP that the intention and implementation of the applicable provision have been to limit that authority to the final budget period of the project period. Additionally, it is noted that if recipients did have the authority to extend earlier budget periods, funding needs for the project might well extend into a later fiscal year than the federal agency had anticipated, thereby complicating its budget planning.

For the reasons stated in the previous paragraph, DOE will continue to limit the provision regarding extensions without additional funds to the final budget period as provided in the proposed rule.

The three commenters also requested that DOE change the provision in the proposed rule that permits DOE tc adjust the amounts awarded in future budget periods based on the amount the recipient estimates is remaining in the previously completed year (§ 600.32(c)(2)). They noted that this is not consistent with the similar provision in the FDP concerning carryover and that such adjustments would have to rely on an estimate that would be of questionable reliability as it would be made well in advance of the end of the budget year.

DOE agrees with these comments and has changed the final rule to conform with the provision regarding carryover in the FDP. The recipient will have the ability to carryover funds without the approval of DOE, but will be required to report to DOE the amount of funds unobligated in the Financial Status Report to be submitted after the budget period is over. A sentence has been added which permits DOE to request recipients to provide information in the progress report regarding budget expenditures.

One commenter stated that the words "* * * the costs must be otherwise in accordance with these rules" in § 600.103(g)(2)(iii) are confusing and unneeded. After careful consideration of the comment, DOE has concluded that while some readers may see the phrase as simply expressing a truism (that is, a recipient may not do what it is not permitted to do), it is important to retain the phrase so that the removal of prior approval requirements in the proposed rule not be interpreted as a general waiver of other portions of DOE's financial assistance rules and the applicable OMB circulars. For example, a cost would still have to be allowable to be incurred, even if agency prior approval were not needed to incur it.

One commenter stated that Contracting Officers should have the authority to approve pre-award costs retroactively. DOE's financial assistance rules currently provide that the Contracting Officer may approve pre-award costs prior to incurrence. Retroactive approval would require a deviation under § 600.4. DOE did not propose to change the retroactive approval requirement in the proposed rule and still does not see a reason to do so.

As a result of comments by DOE staff, the following clarifying changes have been made to the proposed rule.

The role of field readers acting as a standing committee in § 600.16(d)(iii) is clarified to emphasize that even though geographically dispersed, they should operate as if they were a standing committee to the degree possible.

In § 600.31(d)(1), the apostrophe after "recipients" and the word "award" have been deleted to remove an awkward phrasing.

In § 600.31(d)(2), the introductory clause is moved to the middle of the sentence and the word "other" is deleted. In § 600.31(d)(2)(i), the references to "research" and "non-research" are eliminated. These changes retain the authority of a Contracting Officer to authorize extensions without additional funds for all types of financial assistance. This authority currently exists in DOE's financial assistance rules and was inadvertently limited in the proposed rule.

In § 600.32(c)(2), the sentence "The recipient shall not be entitled to reimbursement if a continuation award is not made" has been relocated in the section to make its meaning clearer.

Section 600.103(g) is changed to drop the phrase "in the absence of appropriations". Absence of appropriations is envisioned to be already covered by the next clause "if an award is not subsequently made" and raised the concern that a Contracting Officer might be giving approval for pre-award costs even though funds have not been appropriated.

IV. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291 (February 17, 1981). The DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

V. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 USC 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

VII. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VIII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulatory amendments will have some direct effect on State recipients of financial assistance who receive research awards. The number of awards affected is very small, however, and thus there will be insufficient direct effect to warrant the preparation of a federalism assessment by DOE.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Nonprofit organizations, Reporting requirements, Small businesses.

In consideration of the foregoing, the DOE hereby amends chapter II of title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC October 6, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, part 6500 of chapter II, title 10 of the Code of Federal Regulations is amended as follows:

PART 600—[AMENDED]

1. The authority citation for part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6306), unless otherwise noted.

2. Section 600.3 is amended by adding new definitions for "Ad hoc committee," "Field readers," "Objective merit review," "Responsible official," and "Standing committee" in alphabetical order and by revising the definition of "Research" as follows:

§ 600.3 Definitions

Ad hoc committee means a temporary committee established to perform a single, specific short-term task, after which the committee disbands.

* * * * *

Field readers means persons with expertise to evaluate a specific application or category of applications. Field readers may act as independent individuals or as members of a group with the review generally being done by mail.

* * * * *

Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. This sort of review is conducted to provide advice to selecting officials based on an evaluation of the scientific or technical merit. The reviewers themselves may be engaged in comparable efforts in institutions or organizations similar to the applicant's or have in the past been directly involved in such activities.

* * * * *

Research means any scientific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need; and/or (3) applies such knowledge toward the production of useful methods, including design, development and improvement of prototypes and new processes to meet established requirements.

Responsible official means the Head of a Departmental Element or a Program Assistant Secretary. These individuals are responsible for the system of objective merit review of financial assistance applications funded by their program or department element. The functions associated with the objective merit review may be delegated, but only to the level specified in the relevant sections of this part. The responsible official, however, remains ultimately responsible for the execution of these functions.

* * * * *

Standing committee means a long-term committee established to review applications and may be used when

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required by legislation or when significant numbers of applications on specific topics are received periodically.

3. Section 600.9 is amended by revising paragraphs (a)(1) and (c)(8), (10), and (12)(vi) as follows:

§ 600.9 Solicitation.

(a) *General.* * * *

(1) A Program Assistant Secretary may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations (other than a program rule which serves to solicit applications), e.g., PONS and PRDAS, may be issued only by a DOE Contracting Officer.

* * * * *

(c) * * *

(8) The name of the responsible DOE Contracting Officer (or, for program notices, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

* * * * *

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

* * * * *

(12) * * *

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, unless the cost sharing expectation is addressed in the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

4. Section 600.16 is amended by revising paragraph (a), redesignating paragraphs (b) and (c) as (h) and (i), and by adding new paragraphs (b) through (g) as follows:

§ 600.16 Reviewer affiliation.

(a) *General.* (1) Each responsible official must establish and publish in the **Federal Register** the details of the system of objective merit review which covers the financial assistance program administered by each cognizant program office within his or her jurisdiction within 120 days of the issuance of this rule for existing programs and prior to the review of applications for new programs. More than one program may adopt the same system. If a program wants to review an application or group of applications using the criteria and procedures of an already established review system other than its own, it may do so by following the deviation procedure described in paragraph (g) of this section. DOE employees designated by responsible officials to carry out the review process shall ensure that the evaluation of applications is conducted in a fair and objective manner.

(2) Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer (scientific monitor) who normally also reviews the proposals for technical/scientific merit, will, additionally, review it from a program policy perspective. Nevertheless, the objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection when an adverse recommendation has been received through the objective merit review process.

(3)(i) This section applies to all new and renewal applications (except applications for conferences/symposia and for awards which come under the criteria of paragraph (a)(3)(ii) of this section) in programs which make discretionary financial assistance awards and to any other financial assistance programs in which objective merit review is required by the authorizing legislation.

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points in the overall project period. A determination that a project need not be reviewed at each renewal shall be made in writing by the project officer at the time the initial award is issued, or at least one year prior to the date a renewal award would be issued, and concurred in by an official at least one level above the official responsible for selecting the application for award. The determination shall also indicate the reports required under the award. The criteria on which the determination that a project need not be reviewed at each renewal is based shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a) (1) and (2) of this section.

(4) Each responsible official shall insure consistency among DOE field offices in the implementation of the review system(s) for his/her program area.

(5) Each formal review system must contain the elements listed in paragraphs (b) through (e) of this section.

(b) *Basic review standards.* (1) Each application may be assessed from a policy/programmatic perspective prior to undergoing merit review. Those that meet policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(2) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except as indicated otherwise below (see paragraphs (b)(3), (5) and (d)(2)(ii) of this section). The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise in the field of research.

(3) In selecting persons in accordance with § 600.16(b) (1) and (2) to review applications, such selection of additional reviewers shall not include, to the extent possible, anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications:

(i) Providing substantive technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the project officer or otherwise monitoring or evaluating the recipient's programmatic performance;

(iv) Serving as the Contracting Officer (CO), or performing business management functions for the project; or

(v) Auditing the recipient or the project.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer.

(4) It may occasionally be necessary, after the fact, to change project officer designation, thereby resulting in an individual who participated in the review of an application being appointed as the project officer. This will not be considered a violation of this policy of objective merit review provided the assignment was not expected when the review was conducted.

(5) Persons outside the cognizant program office must not have been employees of that office, including having line authority over that office, for one year prior to participation as a reviewer in the objective merit review process for the program.

(c) *Comparative review.* (1) In order to enhance the validity of the evaluation and rating process, applications can be evaluated in comparison to each other.

(2) If a program area has issued a program notice, the responsible official may implement review procedures which will result in applications being evaluated in comparison to each other. Applications in response to that notice may be assigned to a group of field readers, to a standing committee, or to an ad hoc committee, as discussed below, which is capable of reviewing them, and may be considered along with other applications which were submitted in response to the program notice. Such an application may also be eligible for review under an applicable program announcement. For solicitations, review procedures may also permit comparative evaluation with field readers, a standing committee, or an ad hoc committee being used as appropriate.

(d) *Types of review groups*—(1) *Field readers.* (i) Objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

(ii) Safeguards should be instituted to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications are to be evaluated.

(iii) For those situations in which a standing committee is the appropriate review mechanism (see paragraph (d)(2) of this section), but a group of field readers must be used instead, it should function as nearly like a committee as possible. For example, if all members of the standing committee were to evaluate all of the applications under review, then all field readers must receive all of the applications to be reviewed even though they are in geographically separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications.

(2) *Standing committees.* (i) Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(A) A sufficient number of applications on specific topics to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(B) There are a sufficient number of persons with the required expertise who are willing and able to (*1*) accept appointments, (*2*) serve over reasonably protracted periods of time, and (*3*) convene at regularly scheduled intervals or at the call of the chairperson; and

(C) The legislative authority for the particular program(s) involved extends for more than one year.

(ii) Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved under § 600.16(g) below.

(3) *Ad hoc committees.* (i) Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(A) A small number of applications is received on an intermittent basis;

(B) The program is one of limited duration, usually less than one year;

(C) The applications to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(D) The volume of applications received necessitates convening an additional committee(s) of available reviewers; or

(E) It is determined that the applications submitted have special review requirements, e.g., construction of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

(ii) Ad hoc committees may not be used for reviewing financial assistance applications for any program for which a standing committee has been established (except for paragraph (d)(3)(i)(D) of this section) unless a deviation is approved under § 600.16(g) below.

(e) *Review summary.* Upon request, applicants are to be provided with a written summary of the evaluation of their application.

(f) *Reviewers with interest in application being reviewed.* Reviewers must comply with the requirements for the avoidance of conflict of interest established in § 600.17. In establishing a system of objective merit review required in § 600.16(a)(1), the responsible official shall develop procedures which will permit DOE to evaluate whether a conflict of interest exists. A committee or group of field readers which includes as objective merit reviewers any individuals who cannot meet the requirements of § 600.17 or the program's review procedures, with regard to a particular application being reviewed, e.g., officials mentioned in paragraphs (b) (3) and (5) of this section, shall operate as follows:

(1) These individuals or officials may not review, discuss, and/or make a recommendation on an application(s) in which they have a conflict of interest.

(2) In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s) in which he/she has a conflict of interest.

(g) *Deviations.* (1) In any instance in which a program's pre-established review system is not to be used to review an application, group of applications, or class of applications, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to objective merit review, must be obtained from the responsible official or his or her designee.

(2) If the deviation sought applies to a class of applications and constitutes a deviation from the requirements of this part, approval for deviation must be obtained in accordance with § 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

* * * * *

5. Section 600.31 is amended by revising paragraph (d) to read as follows:

§ 600.31 Funding.

* * * * *

(d) *Extensions.* (1) Recipients of research awards may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the

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funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

(2) DOE may extend any budget period of any type of financial assistance without the need for competition or a justification of restricted eligibility if:

(i) In the case of the final budget period of a project period, the additional time necessary is 16 months or less in total, or for all other budget periods, the additional time necessary is 6 months or less in total; and

(ii) The grantee submits a written request for an extension before the expiration date of the budget period in process and includes a justification for the extension along with an expenditure plan for the use of any additional funds requested. An expenditure plan need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

* * * * *

6. Section 600.32 is amended by revising paragraph (c)(2), removing paragraph (d), redesignating paragraphs (e) and (f) as (d) and (e) and revising newly redesignated paragraphs (d) and (e) as follows:

§ 600.32 Calculation of award.

* * * * *

(c) *Unobligated balances*— * * *

(2) *Research grants.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project period, may be carried over to the next funding period, and may be used to defray costs of the period into which it is carried over. The recipient shall not be entitled to reimbursement if a continuation award is not made. Recipients may be requested to provide information with regard to expenditures in the progress report covering the previously completed period. The recipient shall also include in the Financial Status Report, for the previously completed period, the amount of the unobligated balance as of the end of the funding period.

(d) *Added funding not required.* Nothing in paragraph (c) of this section shall in any way require the DOE to increase the total amount obligated for the project.

(e) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

7. Section 600.103 is amended by revising paragraphs (b)(6) and (g) to read as follows:

§ 600.103 Cost determinations.

* * * * *

(b) *Cost principles.* * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required: (i) Changes in objectives or scope, (ii) temporary replacement or change of principal investigator or change of key personnel, and (iii) change of the institution to which the award is to be made. All other Federal prior approval requirements, including those in OMB Circulars A–21 and A–110, are waived for research awards. The recipient may maintain such internal prior approval systems as it considers necessary.

* * * * *

(g) *Preaward costs*—(1) *All Awards.* Any preaward expenditures are made at the recipient's risk. Approval of preaward costs by the Contracting Officer or incurrence by the recipient does not impose any obligation on DOE if an award is not subsequently made, or if an award is made for a lesser amount than the recipient expected.

(2) *Research awards only.* (i) For new or renewal research awards, recipients may incur preaward costs up to ninety (90) days prior to the effective date of the award. Preaward costs for periods preceding 90 days prior to the effective date of the award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(ii) For continuation awards within a multiple year project, prior to receipt of continuation funding, preaward expenditures by recipients are not subject to the limitation or approval requirements of paragraph (g)(2)(i) of this section.

(iii) Preaward costs, as incurred by the recipient, must be necessary for the effective and economical conduct of the project, and the costs must be otherwise in accordance with these rules and may not include those specific costs for which agency prior approval is required under the circulars. In any instance in which the circulars permit the agency to grant prior approval to the recipient, it is the Department's intention to do so.

(3) *Other than research awards.* All other financial assistance recipients may incur preaward costs only if the expenditure is approved in writing, prior to incurrence, by the Contracting Officer. In the case of governmental entities, the approval must additionally be reflected on the award notice.

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[FR Doc. 89–24243 Filed 10–12–89; 8:45 am]
BILLING CODE 6450–01–M

OVERSIGHT BOARD

12 CFR Parts 1510 and 1511

The Resolution Funding Corporation—Operations

AGENCY: Oversight Board.

ACTION: Final rule.

SUMMARY: The Oversight Board has adopted final regulations for the Resolution Funding Corporation. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Act"), established the Resolution Funding Corporation and the Resolution Trust Corporation. The Resolution Funding Corporation is required by the Act to provide funds to the Resolution Trust Corporation to enable it to carry out its purposes under the Act. These regulations prescribe the manner in which the Resolution Funding Corporation will operate and clarify the manner in which assessments will be made to capitalize the Resolution Funding Corporation.

EFFECTIVE DATE: These regulations are effective September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bradford B. Baker, Acting Executive Secretary, or Robert Frierson, attorney, at (202) 387–7575.

SUPPLEMENTARY INFORMATION:

A. General

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was enacted into law. Among other things, the FIRREA added section 21B to the Federal Home Loan Bank Act (the "Act") which established a corporation known as the Resolution Funding Corporation ("Funding Corporation") to provide funds necessary for the Resolution Trust Corporation ("RTC") to carry out its purpose under the FIRREA. The Funding Corporation will issue bonds, notes, debentures, or similar obligations, and with the net proceeds thereof, it will purchase capital

certificates to be issued by the RTC. Pursuant to the provisions of FIRREA, the Federal home loan banks ("banks"), among others, are to provide funds to capitalize the Funding Corporation. The Oversight Board, established by title V, section 501(a)(1) of the FIRREA ("Board"), has general oversight over the Funding Corporation and Directorate of the Funding Corporation ("Directorate"), which is subject to such regulations, orders, and directions as the Board may prescribe.

The Board shall ensure that the aggregate amount of funds to capitalize the Funding Corporation is sufficient to purchase noninterest bearing instruments that are direct obligations of the United States and which, at maturity, will equal the aggregate amount of principal on the obligations of the Funding Corporation. The banks are also required to pay the administrative expenses, including custodian fees, of the Funding Corporation. To the extent that the Funding Corporation has not obtained funds sufficient to pay the interest due on its obligations from first, the earnings on certain assets of the Funding Corporation and, second, proceeds from the RTC, the banks shall pay each calendar year a certain amount to the Funding Corporation, less the amounts required in such year by the Financing Corporation, chartered pursuant to section 21 of the Act, and the Funding Corporation Principal Fund, to pay such interest expenses. To the extent the foregoing amounts are insufficient to cover interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the RTC. Finally, the Secretary of the Treasury shall pay to the Funding Corporation such amounts necessary to cover any remaining shortfalls in interest payments.

B. Administrative Expenses Assessments for the Funding Corporation

Pursuant to new section 21B of the Act, the banks are required to pay the administrative expenses, including custodian fees, of the Funding Corporation. Each bank is required to pay an amount determined by multiplying the total administrative expenses for any period by the percentage calculated by dividing—

(i) The aggregate amount each bank is required to invest in the Funding Corporation pursuant to sections 21B(e)(4) and (5) of the Act; by,

(ii) The aggregate amount the Board has required all banks to invest as of the date of the determination under such sections.

This determination will not take into account amounts invested in the Funding Corporation by certain banks pursuant to section 21B(e)(6) of the Act for a bank whose investment was in excess of the limitation set forth in section 21B(e)(3) of the Act.

In order for the banks to be able to budget for anticipated administrative expenses, including custodian fees, the regulations enacted today provide that, on an annual basis, the banks will receive, from the Directorate, an approved budget of the Funding Corporation, detailing such expenses. Further, the Directorate will perform the calculation, based upon a method approved by the Board, and in accordance with section 21B(c)(7) of the Act, of each bank's pro rata share and will collect such expenses from the banks. Each bank will be required to forward its pro rata share of such expenses within ten (10) business days after receipt of notice from the Directorate of its pro rata share.

Section 21B provides that the Funding Corporation shall have no paid employees. However, the statute authorizes the Directorate, with the approval of the Federal Housing Finance Board, to authorize the officers, employees, or agents of the banks to act on behalf of the Funding Corporation.

C. Assessments of the Federal Home Loan Banks for the Funding Corporation

The regulations promulgated today clarify the manner in which the banks will be assessed in order to capitalize the Funding Corporation, and thereby fund the Funding Corporation Principal Fund, and also clarify the manner in which the banks will be assessed for interest payments on the outstanding obligations of the Funding Corporation when certain other sources of funds have been exhausted. Pursuant to the regulations promulgated today, the Directorate will coordinate the assessment of the banks. Such coordination will require receipt of earnings projections from the banks and funding projections from the Directorate, reviewed by the Board. On the basis of these projections, the Directorate shall calculate the amount of available bank funds and forward such calculation to the banks. Thereafter, the Directorate shall advise the banks at least fifteen (15) days in advance of the due date of the amount of funds actually required by the Funding Corporation. In calculating the limit pursuant to sections 21B(e)(3)(B) and (C) of the Act, if the amount invested in the Financing Corporation and the Funding Corporation exceeds $300,000,000 in the aggregate in any one year, the excess amount shall be credited in the following year or years, as the case may be. The Financing Corporation and the Funding Corporation shall coordinate the capital contribution demands of the respective entities.

D. Establishment, Maintenance and Funding of Reserve Accounts

The amount of any bank's allocation of the funds required to be provided to capitalize the Funding Corporation may exceed the maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act. In such instances, such bank will become a "deficient bank" and the "remaining banks" will be required to pay, in addition to the amount required under section 21B(e)(5) of the Act, a prorated portion of the deficient bank's excess amount. A remaining bank's prorated portion of the excess amount will be included in the maximum amount limitation for that bank under section 21B(e)(3) of the Act so that a remaining bank will not also become a deficient bank because of its contribution on behalf of a deficient bank. Banks may also become deficient through the payment of interest expenses, and the regulations provide a mechanism for the payment of such deficiencies.

The regulations promulgated today also clarify that a bank which becomes deficient, with respect to interest payments or capital contributions, is required to set funds aside in separate reserve accounts, available only to reimburse the remaining banks for investments or interest payments made on behalf of the deficient bank. A deficient bank must set aside, on a quarterly basis, in the aggregate, twenty percent (20%) of its net earnings (as defined in section 21B(k)(6) of the Act) in any year, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of its net earnings. Such amounts will continue to be set aside each quarter until such deficiency is repaid. Interest shall begin to accrue two (2) years after the investments under section 21B(e)(6) of the Act are made on behalf of a deficient bank. Finally, the Directorate is to direct the disbursement of funds set aside in the reserve accounts to the remaining banks on an annual basis.

E. Industry Assessments

In addition to bank contributions through the purchase of Funding Corporation stock, in order to obtain additional funding for the Funding Corporation Principal Fund, section 21B authorizes the Funding Corporation, with the approval of the Board of

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Directors of the FDIC, to collect assessments from Savings Association Insurance Fund ("SAIF") members. Such assessments may be in an amount up to the maximum amount which may be assessed against SAIF members under section 7 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*, ("FDIA"). However, in making such assessments, the Funding Corporation must deduct from the maximum assessment allowed, the amount of an assessment which may be made by the Financing Corporation which has first priority on all such assessments.

To the extent that capital contributions from the banks and industry assessments are insufficient to capitalize the Funding Corporation Principal Fund, the Directorate shall request that the FDIC transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund, established pursuant to section 11A of the FDIA, from receiverships.

F. Authorization of Establishment of Investment Policies and Procedures

The regulations authorize the Directorate with Board approval to establish investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be transferred to the RTC. Such policies and procedures are to be consistent with the provisions of section 21B(g) of the Act.

G. Federal Reserve Banks as Depositaries and Fiscal Agents

The regulations provide that the Federal Reserve banks are to be used as depositaries, fiscal agents and custodians of the Funding Corporation.

H. Book-Entry Procedures

The Funding Corporation is authorized pursuant to section 21B(f) of the Act to issue bonds, notes, debentures, and similar obligations. These regulations establish book-entry procedures for the obligations issued by the Resolution Funding Corporation. This part provides that the Federal Reserve banks may issue, service and maintain Resolution Funding Corporation obligations in book-entry form. In addition, this part sets forth the book-entry procedures including the transfer, pledge, and servicing of book-entry Funding Corporation obligations.

I. Procedural Requirements

The Board is adopting these regulations as a final rule effective September 21, 1989. The Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), notice and public procedure and a delayed effective date are impracticable, unnecessary, and contrary to the public interest.

The Board finds that it is in the public interest for the Funding Corporation to be able to issue its obligations at the earliest possible opportunity and that the Funding Corporation will be unable to commence its operations until these operational rules are adopted. In connection with this finding, the Board notes that funds raised by the Funding Corporation will be transferred to the RTC to resolve cases, pursuant to section 21A of the Act, involving depository institutions previously insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") and placed into conservatorship or receivership between January 1, 1989, and the date of enactment of the FIRREA, and the three-year period beginning on the date of enactment. The Funding Corporation's transfer of funds to the RTC will permit the maintenance of public confidence in the nation's depository institutions and will enable the RTC to meet its responsibilities under the Act. Accordingly, the Board finds that it is contrary to the public interest to delay the adoption of the rules in order to provide for such notice and public procedure.

Moreover, the Board is of the view that notice and public procedure are unnecessary, because the rules set forth in part 1510 generally only codify the statutory rules already applicable under section 21B of the Act. Therefore, the new rules impose no new legal burden on insured institutions or the banks. Similarly, providing notice and public procedure and a delayed effective date would be contrary to the public interest because the Board could not immediately discharge its statutory responsibilities.

Finally, the Board finds that these regulations relate to agency organization, procedure, or practice within the meaning of 5 U.S.C. 553, and are therefore exempt from notice and public procedure provisions pursuant to 5 U.S.C. 553(a)(2).

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Similarly, it has been determined that these regulations do not constitute a major rule for purposes of Executive Order 12291.

List of Subjects in 12 CFR Parts 1510 and 1511

Federal home loan banks, Federal Reserve System, Financing Corporation, Resolution Funding Corporation, Resolution Trust Corporation, Securities.

Accordingly, the Board hereby amends title 12, chapter XV, Code of Federal Regulations, as set forth below.

Subchapter B and parts 1510 and 1511 are added to chapter XV to read as follows:

SUBCHAPTER B—RESOLUTION FUNDING CORPORATION

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

1510.1 Definitions.
1510.2 General authority.
1510.3 Authorization of establishment of investment policies and procedures.
1510.4 Authority to issue obligations.
1510.5 Federal Reserve banks as depositories and fiscal agents.
1510.6 Budget and expenses.
1510.7 Billing of administrative expenses.
1510.8 Issuance expenses.
1510.9 Capitalization of Funding Corporation.
1510.10 Funding Corporation Principal Fund Reserve Account.
1510.11 Interest payments and interest reserve account.
1510.12 Request for funds for interest payments.
1510.13 Reports to Board.
1510.14 Reports to Congress.
1510.15 Review of books and records.

Authority: Sec. 511, Pub. L. 101-73, 103 Stat. 394 (1989) (12 U.S.C. 1441b).

§ 1510.1 Definitions.

General. Unless another definition is provided in this subchapter, the following definitions will apply to terms used in this subchapter.

"Act" means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

"Administrative expenses" means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees; but does not include any interest on, or redemption premium with respect to, any obligation of the Funding Corporation or any issuance costs.

"Bank or banks" means a Federal home loan bank or all the Federal home loan banks.

"Board" means the Oversight Board established in section 21A(a)(1) of the Act.

"Custodian fees" means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

"Deficient bank" means a bank whose allocation under section 21B(e)(5) of the Act exceeds the amount applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"Directorate" means the Directorate of the Funding Corporation.

"Excess amount" means the amount by which a bank's required contribution pursuant to section 21B(e)(5) of the Act exceeds the maximum amount limitation applicable to such Bank pursuant to section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"FDIC" means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*

"Financing Corporation" means the Financing Corporation established pursuant to section 21(a) of the Act.

"FSLIC Resolution Fund" means the FSLIC Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act, as amended 12 U.S.C. 1811, *et seq.*

"Funding Corporation" means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

"Funding Corporation Principal Fund" means the separate account established under section 21B(g)(2) of the Act.

"Issuance costs" means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation, and includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Funding Corporation in connection with the issuance of any obligation.

"Net earnings" means net earnings without reduction for chargeoffs or expenses incurred by a bank for the purchase of capital stock of the Financing Corporation or payments relating to the Funding Corporation required by the Board under sections 21B (e) and (f) of the Act.

"Remaining bank" means a bank that is not allocated an amount under section 21B(e)(5) of the Act that exceeds its maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"RTC" means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act.

§ 1510.2 General authority.

The Funding Corporation may exercise all authority granted to it by the Act and by its bylaws, whether or not specifically implemented by Board regulations, subject to the limitations and interpretations contained in this part and such regulations, orders and directions as the Board may prescribe.

§ 1510.3 Authorization of establishment of investment policies and procedures.

The Directorate may establish from time to time, with the approval of the Board, investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be invested in the capital certificates issued by the RTC and are not needed for current interest payments. These investment policies and procedures shall be consistent with the provisions of section 21B(g) of the Act.

§ 1510.4 Authority to issue obligations.

(a) Upon direction by the Board, the Directorate is authorized to cause the Funding Corporation to create and issue in one or more issues, one or more series of Funding Corporation bonds, notes, debentures or similar obligations in an aggregate principal amount up to the maximum permissible from time to time under section 21B(f)(1) of the Act and having such other terms and conditions as may be specified by the Directorate at the time or times of their issuance. Before any issue is offered for sale, the approval of the Department of Treasury shall be obtained pursuant to section 21B(h)(3) of the Act and 31 U.S.C. 9106.

(b) The net proceeds of each obligation issued by the Funding Corporation shall be used in accordance with the provisions of section 21B(f)(4) of the Act.

§ 1510.5 Federal Reserve bank to be depositaries and fiscal agents.

The Federal Reserve banks are to act as depositaries for or fiscal agents or custodians of the Funding Corporation. Subject to approval by the Oversight Board, the Directorate may also authorize establishment of demand deposit accounts at one or more financial institutions.

§ 1510.6 Budget and expenses.

(a) The Funding Corporation shall annually submit to the Directorate by November 15, a budget of its proposed expenditures, including administrative expenses for the following year.

(b) By December 1 of each year the Directorate shall submit an approved budget to the Board for final approval.

(c) After such budget has been approved by the Board, the Directorate shall transmit a copy of the budget to each bank president.

(d) In the event that the Funding Corporation projects or anticipates incurring expenses which exceed its approved budget, then an amended budget shall be submitted for approval by the Board in the same manner as the original budget.

§ 1510.7 Billing of administrative expenses.

(a) All administrative expenses of the Funding Corporation shall be paid by the banks.

(b) The amount each bank shall pay shall be determined in the manner provided in section 21B(c)(7)(B) of the Act.

(c) On a periodic basis but not less than semiannually, the Directorate shall determine, based upon a method approved by the Board and in accordance with section 21B(c)(7)(B) of the Act, each bank's pro rata share of the Funding Corporation's administrative expenses, as approved by the Board pursuant to § 1510.6 of this part, and the Directorate shall bill each bank accordingly.

(d) Each bank shall remit its pro rata share of the administrative expenses within ten (10) business days after receipt of the bill as provided by paragraph (c) of this section.

(e) The aggregate amount of administrative expenses for which the banks may be billed for any period, under a budget approved pursuant to § 1510.6 of this part, shall be adjusted as necessary to reflect any differences between such aggregate expenses projected for the period and those actually incurred in prior periods during the calendar year or to reflect any changes in the estimate of such aggregate expenses expected to be incurred in the coming period; however, in no event shall the aggregate of all bills issued to the banks exceed the budget, or the amended budget approved pursuant to section 1510.6 of this part.

§ 1510.8 Issuance expenses.

After receipt of the proceeds (less any discount, plus any premium) of any obligation issued by the Funding Corporation and prior to the purchase of capital certificates issued by the RTC, pursuant to section 21A of the Act, or refunding any previously issued obligation, pursuant to section 21B(f)(1)

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of the Act, the Funding Corporation shall deduct its issuance costs as budgeted in the budget approved by the Board.

§ 1510.9 Capitalization of Funding Corporation.

(a) *Funding projections.* (1) Not later than December 15 and June 15 of each year, the Directorate shall project how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Not later than March 15, June 15, September 15, and December 15 of each year, the Directorate shall update its projections for the remainder of the year and confirm the dollar amount raised and the settlement dates and amount of interest paid in the preceding period.

(2) Not later than December 15 of each year, each bank shall submit to the Directorate a statement prepared by an officer at such bank containing such bank's earning projections for the following year. Not later than March 15, June 15, September 15 and December 15 of each year, such officer shall provide to the Directorate an updated report containing the previous quarter's earnings and updating the projections for the remainder of the year.

(3) Not later than each December 20 and June 20, the Directorate shall submit the funding projections to the Board for review. Not later than March 20, June 20, September 20 and December 20 of each year, the Directorate shall submit the updated projections to the Board for review.

(4) Not later than December 31 and June 30, the Directorate shall notify each bank of the amount of projected funds needed by the Directorate from the banks, the aggregate amount available from all the banks and each bank's projected pro rata share calculated in accordance with the provisions of section 21B of the Act. In no event shall the amount projected to be requested from the banks in any given calendar year exceed the three hundred million dollar ($300,000,000) maximum amount limitation set forth in sections 21B(e)(3)(B) and (C) of the Act, plus applicable amounts in section 21B(e)(3)(A) of the Act.

(5) Once the funding projections are approved by the Board, not later than December 31 and June 30 of each year, the Directorate shall provide the banks with projections of how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Once the updated projections are approved by the Board, not later than March 31, June 30, September 30, and December 31 of each year, the Directorate shall provide the banks with a report updating its projections for the remainder of the year and confirming the dollar amount raised and the settlement dates and amount of interest paid in the preceding quarter.

(6) The projections required by this subsection shall not apply to amounts required to capitalize the Funding Corporation prior to October 31, 1989.

(b) *Capital assessments of Federal home loan banks*—(1) *General.* (i) Upon direction by the Board, the Directorate shall require each bank to invest in nonvoting capital stock of the Funding Corporation so that the Funding Corporation may defease its obligations proposed to be issued pursuant to section 21B of the Act.

(ii) The banks collectively are directed to purchase, when and as instructed by the Directorate, in one or more issues, Funding Corporation nonvoting capital stock at a purchase price of $1.00 per share. Such stock shall be subject to such terms and conditions as are prescribed in the bylaws of the Funding Corporation, as the same may be amended from time to time. The amount of stock which each bank shall be required to purchase within each issue shall be:

(A) as to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, up to the initial one billion dollars ($1,000,000,000) in accordance with the ratios prescribed in section 21B(e)(4) of the Act.

(B) as to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, in excess of one billion dollars ($1,000,000,000), in accordance with the ratios prescribed in section 21B(e)(5) of the Act.

(iii) (A) If the amount any bank is required to invest in capital stock of the Funding Corporation exceeds its maximum investment limitation as determined pursuant to section 21B(e)(3) of the Act, the Directorate is authorized to require each remaining bank to invest in such additional capital stock of the Funding Corporation as provided for in section 21B(e)(6) of the Act.

(B) The amount of Funding Corporation stock required to be purchased by the banks shall be determined by deducting, pursuant to sections 21B(e)(3)(A) and (B) of the Act, the amount of Financing Corporation capital stock that the banks are required to purchase pursuant to section 21 of the Act. If the amount of Financing Corporation capital stock that the banks are required to purchase exceeds the annual three hundred million dollar ($300,000,000) limitation on purchases of Funding Corporation capital stock prescribed by sections 21B(e)(3)(B) and (C) of the Act, then the amount of Financing Corporation capital stock purchased in excess of such limitations shall be credited in the following year or years, as the case may be.

(iv) The shares shall have a par value of $1.00 per share and may be transferable at not less than par value only among the banks.

(v) Shares of Funding Corporation stock shall be issued in certificate or in book entry form. The Directorate shall establish procedures for appointing a registrar and a transfer agent.

(2) *Request for funds to capitalize the Funding Corporation.* (i) Approximately forty-five (45) days in advance of the date that funds are needed by the RTC, the Board shall advise the Directorate in writing of the amount of funds required and the due date.

(ii) The Directorate shall determine, according to a method approved by the Board, and in accordance with sections 21B(e)(4) and (5) of the Act, each bank's pro rata share of the amount needed to defease the obligations issued by the Funding Corporation in accordance with the provisions of section 21B of the Act. The Directorate shall notify each bank, in writing, at least 15 days in advance of the amount and due date of its pro rata share.

(iii) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

(iv) The time for the notice requirements shall not apply to requests for funds to capitalize the Funding Corporation made prior to October 31, 1989.

(c) *Industry assessments.* (1) The Funding Corporation is authorized to collect, with the approval of the Board of Directors of the FDIC, the assessments of SAIF members, pursuant to section 21B(e)(7)(A) of the Act, through a joint collection agent.

(2) The Funding Corporation, based upon projections of the amount needed for the Funding Corporation Principal Fund and projections of the amounts

available from the banks and from SAIF members' assessments, shall determine the amount of available bank funds pursuant to sections 21B(e) (3), (4), (5), and (6) of the Act and shall also determine the percentage of assessments on SAIF members needed, if any, to fund the Funding Corporation Principal Fund. In making the determination of the percentage of assessments needed from SAIF members, the Funding Corporation shall deduct the amount assessed, if any, by the Financing Corporation, pursuant to section 21B(e)(7)(A)(iii) of the Act and the limitations prescribed in section 21B(e)(7)(A) of the Act.

(3) Based upon the determination made under paragraph (c)(2) of this section, the Funding Corporation shall notify the FDIC, the Financing Corporation and the joint collection agent of the percentage of assessments from SAIF members it needs.

(d) *Receivership proceeds.* To the extent the amounts available pursuant to paragraphs (b) and (c) of this section are insufficient to fund the Funding Corporation Principal Fund, upon written request from the Directorate, the FDIC shall transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships. Such written request shall state the amount of funds needed and the date by which the funds are needed.

§ 1510.10 Funding Corporation Principal Fund Reserve Account

(a) Upon becoming a deficient bank, a bank shall set aside in a reserve account the amounts required by section 21B(e)(6)(D) of the Act.

(b) The balance, if any, in the reserve account shall be available for the sole purpose of purchasing such capital stock from the remaining banks as was purchased on behalf of a deficient bank.

(c) Each quarter each deficient bank shall, prior to the payment of dividends, if any, set aside in the reserve account twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to make the purchases of stock required under section 21B(e)(6)(C) of the Act. Notwithstanding the foregoing, the amount set aside in the reserve accounts pursuant to this paragraph (c) and pursuant to § 1510.11 of this part and pursuant to section 21(d) of the Act, in the aggregate, is not required to exceed twenty percent (20%) of the net earnings of the deficient bank.

(d) Interest shall begin to accrue two (2) years after the investments under section 21B(e)(6) of the Act are made on behalf of a deficient bank. Interest shall accrue quarterly on the deficient amount at a rate equal to the annual average cost of funds of the banks in the most recent year. Interest payments shall be set aside quarterly by a deficient bank into the reserve account and such interest payments are not included in the twenty percent (20%) of net earnings amount set forth in paragraph (c) of this section.

(e) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the remaining banks in the amounts determined by the Directorate, in accordance with a method approved by the Board and in accordance with section 21B of the Act, and shall be remitted in the order that each investment was made on behalf of a deficient bank.

(f) When appropriate, the Directorate shall direct a remaining bank to transfer the necessary shares of Funding Corporation stock to a deficient bank upon receipt of funds disbursed from the deficient bank's reserve account.

§ 1510.11 Interest payments and interest reserve account.

(a) The Directorate shall make a written request for funds to pay interest on obligations of the Funding Corporation from the following sources and in the following order:

(1) Earnings of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) Proceeds from: (i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and (ii) Warrants and participations acquired by the RTC.

(3) To the extent funds from paragraphs (a)(1) and (a)(2) of this section are not sufficient to cover the amount of interest payments due on obligations of the Funding Corporation, the banks shall pay the Funding Corporation each calendar year the aggregate amount as set forth in section 21B(f)(2)(C) of the Act.

(i) Each bank's individual share of such amount shall be as prescribed in sections 21B(f)(2)(C) (i) and (ii) of the Act. In instances where any bank(s) is (are) unable to fund interest payments in the amounts prescribed by section 21B(f)(2)(C)(ii) of the Act, out of retained earnings, the banks which have no such deficiency shall fund the amount of the aggregate deficiencies in accordance with the calculation set forth in sections 21B(f)(2)(C)(ii) (I) and (II) of the Act. Notwithstanding the preceding sentence, a bank's contributions for such interest payments on behalf of other bank(s) shall not be made to the extent it causes such bank to have deficit retained earnings.

(ii) Any bank on whose behalf interest payments were made under paragraph (a)(3)(i) of this section shall quarterly, prior to the payment of dividends, and after making the payments required by § 1510.10, excluding any interest payments made pursuant to § 1510.10(d), set aside in a reserve account separate from the reserve account required for reimbursements of capital contributions to the Funding Corporation, twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to reimburse the banks that made payments on behalf of the bank(s) which was unable to fund its interest payments. Until such time as the deficiency amount has been repaid, the bank on whose behalf interest payments were made shall continue to set aside twenty percent (20%) of net earnings on a quarterly basis. Notwithstanding the foregoing, the amounts set aside in the reserve account pursuant to this paragraph (a)(3)(ii) and § 1510.10 of this part and pursuant to section 21(d) of the Act, in the aggregate, are not required to exceed twenty percent (20%) of net earnings.

(iii) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the banks that made interest payments on behalf of another bank(s) in amounts determined by the Directorate. Banks which have made interest expense payments on behalf of other banks shall receive reimbursement in the order of the interest expense contributions made by such banks. In determining the amount due to each bank for interest payments made on behalf of another bank, the Directorate shall multiply the available funds in the reserve account by the percentage arrived at by dividing, for each separate deficiency—

(A) The cumulative amount of interest expenses paid by a bank on behalf of such bank; by

(B) The cumulative amount of interest expenses paid by all the banks on behalf of such bank for that deficiency.

(4) Any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(b) To the extent that the funds from the sources identified in paragraph (a) of this section are insufficient, the Department of Treasury shall pay to the Funding Corporation such additional

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amounts as may be necessary to pay such interest, upon receipt of a certification from the Directorate, in a form satisfactory to the Department of the Treasury. The certification at a minimum shall state the total amounts paid by the Funding Corporation from the sources listed in paragraph (a) of this section and the amounts necessary to make up the deficiency. Any amount paid by the Department of Treasury shall become a liability of the Funding Corporation to be repaid to the Department of Treasury upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.12 Request for funds for interest payments.

(a) At least 30 days in advance of the date that funds are needed by the Funding Corporation for interest payments pursuant to section 21B(f)(2) of the Act, the Directorate shall determine each bank's pro rata share in accordance with the provisions of section 21B(f)(2) of the Act and a methodology approved by the Board. The Directorate thereafter shall notify each bank, in writing, and at least 15 days in advance of such date, of the amount and due date of its pro rata share.

(b) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

§ 1510.13 Reports to Board.

Within ten (10) business days of the close of each calendar quarter commencing with the quarter ended September 30, 1989, the Directorate shall submit to the Board a report for the previous calendar quarter stating:

(a) The number of shares of the capital stock of the Funding Corporation which the banks were required to purchase and the dates of the purchases;

(b) The types and amounts of securities purchased pursuant to section 21B(g) of the Act;

(c) The amount of any obligations issued during the quarter pursuant to section 21B(f)(1) of the Act and the basic terms and conditions of such obligations; the amount of any obligations proposed to be issued during the current quarter and any anticipated significant differences in the basic terms and conditions of those obligations from previously issued obligations; and the aggregate amount of obligations issued as of the end of the last quarter and the maximum amount of obligations which the Funding Corporation was permitted to issue as of that date pursuant to section 21B(f)(1) of the Act;

(d) The amount of capital certificates purchased from the RTC during the last quarter and the aggregate amount purchased during all previous quarters and the percentage of all proceeds from obligations which the Funding Corporation had invested in the RTC as of the end of the last quarter;

(e) The aggregate amount assessed against the banks, the aggregate amount assessed against the SAIF members, and the aggregate amounts collected from the other specified sources;

(f) Any significant changes in the Funding Corporation's investment policies or any other developments that the Directorate deems significant which occurred during the last quarter or are expected to occur during the current quarter;

(g) The amount of funds distributed to remaining banks from the reserve accounts established pursuant to sections 1510.10 and 1510.11 of this part; and

(h) Such other information as the Board may require.

§ 1510.14 Reports to Congress.

The Directorate and the Board shall prepare such reports as are necessary to enable the Board to comply with the reporting requirements set forth in section 21B(i) of the Act for submission of the reports to Congress and the President.

§ 1510.15 Review of books and records.

An office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and this part.

PART 1511—BOOK-ENTRY PROCEDURE

Sec.

1511.1 Definitions.
1511.2 Authority of Reserve banks.
1511.3 Transfer or pledge.
1511.4 Federal Reserve bank liability.
1511.5 Servicing book-entry Funding Corporation securities; payment of interest, payment at maturity or upon call.

Authority: Sec. 511, Pub. L. 101–73, 103 Stat. 394 (1989) (12 U.S.C. 1441b).

§ 1511.1 Definitions.

In this part, unless the context otherwise requires or indicates:

"Act" means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

"Reserve bank" means a Federal Reserve bank and its branches acting as Fiscal Agent of the Resolution Funding Corporation and when indicated acting in its individual capacity.

"Funding Corporation" means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

"Funding Corporation security" means a Funding Corporation bond, note, debenture and similar obligations issued under Section 21B of the Act.

"Pledge" includes a pledge of, or any other security interest in, Funding Corporation securities as collateral for loans or advances or to secure deposits of public monies or the performance of an obligation.

§ 1511.2 Authority of Reserve banks.

Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue Funding Corporation securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date;

(b) Otherwise service and maintain Funding Corporation securities; and

(c) Issue a confirmation or transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred and the date of the transaction.

§ 1511.3 Transfer or pledge.

(a) A transfer or a pledge of Funding Corporation securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this part, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(1) Have the effect of a delivery in bearer definitive form of Funding Corporation securities;

(2) Have the effect of a taking of delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder; and

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of Funding Corporation securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of Funding Corporation securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the Funding Corporation) in a book-entry account under this part is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Funding Corporation securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, Funding Corporation securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining Funding Corporation securities either in its individual capacity or as fiscal agent of the Funding Corporation is not a bailee for purposes of notification of pledges of those securities under this section, or a third person in possession for purposes of acknowledgment of transfers thereof under this subsection. Where Funding Corporation securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business Funding Corporation securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this subsection, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this section.

(c) No filing or recording with a public recording office or office shall be necessary or effective with respect to any transfer or pledge of Funding Corporation securities or any interest therein.

(d) A transfer of Funding Corporation securities within a Reserve bank shall be made in accordance with procedures established by the bank not inconsistent with this part. The transfer of Funding Corporation securities by a Reserve bank may be made through a telegraphic transfer procedure.

(e) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 1511.4 Federal Reserve bank liability.

A Reserve bank which has received Funding Corporation securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities.

§ 1511.5 Servicing book-entry Funding Corporation securities; payment of interest, payment at maturity or upon call.

Interest becoming due on Funding Corporation securities shall be charged in the account of the Resolution Funding Corporation on the interest-due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed on the date of maturity or call, using the proceeds of the noninterest bearing instruments maintained by Funding Corporation for such purpose, and the redemption proceeds, principal and interest, shall be credited in accordance with the depositor's instructions.

Daniel P. Kearney,

President and Chief Executive Officer.

[FR Doc. 89–24209 Filed 10–12–89; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 064CE, Special Conditions 23–ACE–45]

Special Conditions; Caproni Model C22J Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Model C22J Series Airplane. These airplanes will have novel or unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commmuter category airplanes. These novel and unusual design features include the use of advanced composite materials, pressurized fuel tanks, and electronic engine control system protection from lightning and high energy radio frequency, for which the regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1983, Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Vizzola Ticino (Varese), Italy, filed an application to the FAA Brussel's Office for U.S. type certification for its Model C22J airplane. They made a new application for U.S. type certificate on October 29, 1986. The Caproni Model C22J airplane is a small, two-place, twin-engine jet airplane with a maximum takeoff weight (with tip tanks) of 2,767 pounds. Two Microturbo TRS–18 turbojet engines are installed side-by-side in the fuselage aft of the cockpit. The airplane is fully aerobatic and has a maximum operating altitude of 25,000 feet.

Type Certification Basis

The type certification basis for the Caproni Model C22J airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, including amendments 23–1 through 23–33; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; SFAR 27 effective February 1, 1974, as amended by amendments 27–2 through 27–5; exemptions, if any; and special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the

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type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Caproni Model C22J airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model C22J airplane.

Landing Gear

The Model C22J airplane landing gear structure is made of composite material. This material and its assembly is completely different from the typical material in landing gear structures that have been predominant since the early 1940's. Composite materials of the type used on the Model C22J airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of part 23 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in the landing gear structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the type certification basis for the Model C22J airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from bonded composite materials equivalent to those existing part 23 airplanes.

This special condition will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. When damage tolerance is shown to be impractical, this special condition is worded to permit approval, based on safe-life testing. The damage tolerance consideration applies to the landing gear structure, since failure of this structure could have catastrophic results. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material landing gear structure used in the Model C22J airplane equivalent to that required by the airworthiness standards of part 23.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to assure an appropriate level of safety for the Model C22J landing gear structure. This special condition is intended to require: (1) Accounting for environmental effects, i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventive maintenance and inspection procedures different from those commonly utilized for existing landing gear structure, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Lightning Protection

The regulations incorporated by reference include standards for protection from damage to the structure of the airplane by lightning (§ 23.867) and from ignition of fuel vapor (§ 23.954). These standards do not provide the level of safety for the electronic system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck. The forward fuselage of the Model C22J airplane, though not a primary structure, is made of composite material. Electronic systems need additional protection when installed in composite airframe structure, which provides less shielding. For airplanes employing the use of composite materials, the lightning produced voltages and currents could increase substantially and additional protecting design features should be installed.

The Model C22J airplane with the Microturbo TRS-18 turbojet engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being issued which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Protection From Unwanted Effect of High Energy Radio Frequency (HERF)

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been less susceptible to the effects of RF energy from ground-based transmitters. There is a trend toward increased use of composite structures that do not provide the HERF shielding normally provided by metal skins and electrical and electronic command systems to perform critical airplane functions such as engine control. Therefore, the effective measures against the effects of high energy radio frequency fields must be provided for by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical and essential functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the number and power of radio frequency emitters increases and expected future increases.

In showing compliance with the regulations for protection against hazards caused by the exposure to high energy radio frequency fields, electrical and electronics systems which perform critical and essential functions must be considered. The hazards addressed include those which would result in a catastrophic failure condition to the airplane. Failures that would be a hazard to the airplane, but not catastrophic, are considered under § 23.1309. To prevent this occurrence, airplane systems which perform critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy radio fields. Airplane systems which perform essential functions must be protected to ensure that essential functions can be recovered after the airplane has been exposed to the high energy radio frequency fields. Manual mode reversion is considered an acceptable method of retaining the essential functions. Reliance on redundancy as a means of protection against the effects of external RF fields is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy level representative of that to which the airplane will be exposed in service. This special condition requires that the airplane be evaluated under an interim standard for the protection of the electronic system and its associated wiring harness.

Electronic Engine Control System

The applicable airworthiness requirements for the engine installation do not contain adequate standards by which to determine an acceptable level of safety for an electronic engine control system installed on a part 23 airplane. Therefore, special conditions are required to establish that the overall electronic engine control system exhibits an acceptable level of system integrity and reliability equivalent to a hydromechanical system meeting current airworthiness standards.

Pressurized Fuel Tanks

The applicable airworthiness requirements for the pressurized fuel tanks installations do not contain adequate standards by which to determine an acceptable level of safety on a part 23 airplane. Therefore, special conditions are required which are based on § 25.965(d) pressurized fuel tanks requirements.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. SC-23-ACE-45, Docket 064CE, was published in the **Federal Register** on March 10, 1989 (54 FR 10160) and the comment period closed July 10, 1989. The FAA received no comments in response to Notice No. SC-23-ACE-45; therefore, these special conditions are adopted as proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Caproni Model C22J Series airplanes:

1. Evaluation of Composite Structures (Landing Gear)

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603, 23.613, and 23.723, the landing gear composite structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (h) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with criteria of paragraphs (a) and (i) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic effects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the structure must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight and landing loads considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight and landing must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical bonded joint.

(h) The effects of material variability and environmental conditions must be accounted for in the damage tolerance evaluations and in the residual strength tests; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the

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damage tolerance evaluations and in the residual strength tests.

(i) For those landing gear structures where damage tolerance method is shown to be impractical, the strength of such landing gear structure must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Protection of Systems From Lightning and High Energy Radio Frequency (HERF) Fields

(a) Each system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical functions.* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential functions.* Functions whose failure would contribute to or would cause a hazardous failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

3. Electronic Engine Controls

In addition to the requirements of §§ 23.901(b) and 23.903(c), the components of the electronic engine control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

4. Pressurized Fuel Tanks

In addition to the requirements of § 23.965, it must be shown by analysis or tests that the pressurized fuel tanks can withstand the maximum pressure likely to occur on the ground or in flight.

Issued in Kansas City, Missouri on September 27, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24164 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-209-AD; Amendment 39-6355]

Airworthiness Directives; Boeing Models 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-100, -200, and -200C series airplanes, which requires inspection of the lower row of fasteners at the Stringer 14 lap joint in the vicinity of Body Station 727, and repair, if necessary. This action is prompted by a report of a 33.5 inch crack in the Stringer 14 fuselage skin lap joint. This condition, if not corrected, could lead to rapid decompression and the inability of the fuselage to support flight loads.

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 20, 1989, the manufacturer informed the FAA of a report from an operator of a Boeing Model 737 series airplane who had discovered a crack in the Stringer 14 lap joint fuselage skin approximately 33.5 inches long, extending aft from Body Station 727. The crack has been attributed to fatigue. Presently, however, it is not clear whether crack initiation was due to diagonal tension shear wrinkling, or to stress caused by heavy skin spliced to thin skin surfaces. (The latter condition is the subject of AD 89-20-04, Amendment 39-6328 (54 FR 39342; September 26, 1989), applicable to Boeing Model 727 series airplanes.) The FAA has determined that such cracking, if not detected and corrected, could lead to rapid decompression and the inability of the fuselage to support flight loads.

The FAA has reviewed Boeing Alert Service Bulletin 737-53A1135, dated September 26, 1989, which describes procedures for inspections for cracks of the Stringer 14 lap joint at Body Station 727 and 60 inches aft, and procedures for necessary repairs if cracks are found.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection of Boeing Model 737-100, -200, -200C series airplanes, line numbers 1 to 920, for cracks in the lower fuselage skin at the Stringer 14 lap joint at the lower row of fasteners and one inch below, and repair of cracks, if necessary. (Airplanes manufactured subsequent to line number 920 were changed during production to include a different design in this area and, therefore, are not subject to the unsafe condition addressed by this action.)

As explained above, it is not clear whether crack initiation is due to diagonal tension shear wrinkling or heavy skin spliced to thin skin. Therefore, this action requires operators to submit a report to the FAA of any findings of cracks and the compliance status of the airplane with the modification described in Boeing Service Bulletin 737-53-1065 (which adds panel stiffeners to the skin below the Stringer 14 lap joint). The data obtained from these reports will assist the FAA in determining whether additional rulemaking is necessary.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -200C series airplanes, line number 1 to 920, with more than 40,000 total landings, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression and the inability of the fuselage to support flight loads, accomplish the following:

A. Within 10 days after the effective date of this AD, unless the interior inspections and repairs described in paragraph B., below, has been accomplished within the last 60 days, perform a one-time external close detailed visual inspection for evidence of cracking of the fuselage Stringer 14 lap joint, left and right, at Body Station 727 and aft therefrom for a distance of 60 inches. If cracks are found, conduct the inspections defined in paragraph B., below, and repair prior to further flight, in accordance with the repair procedure specified in Boeing Alert Service Bulletin 737-53A1135, dated September 26, 1989.

B. Within 30 days after the effective date of this AD, perform an internal detailed visual inspection of the fuselage Stringer 14 lap joint, left and right, and an internal high frequency eddy current inspection at Body Station 727 and aft therefrom for a distance of 60 inches, in accordance with Boeing Alert Service Bulletin 737-53A1135, dated September 26, 1989, for cracks in the lower skin at the lower row of fasteners and one inch below the center line of the lower row of fasteners. If cracks are found, repair prior to further flight, in accordance with the repair procedure defined in that service bulletin.

C. Within 15 days after the completion of the inspections required in paragraph B., above, where cracking was detected, submit a report to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, through the Principal Maintenance Inspector (PMI). The report must include the line number of the airplane inspected, the number of cycles, the inspection method used, the size and location of the crack, and the status of compliance with Boeing Service Bulletin 737-53-1065, dated January 4, 1985, or later revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 23, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24161 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-25-AD; Amendment 39-6354]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Lockheed Model L-1011 series airplanes, which currently requires extending and rerouting overheat sensors for the air conditioning bleed air ducts located below the Mid-Electric Service Center (MESC) floor, removing excess flow sensors, modifying structure, and installing isolation barriers. This amendment requires a further modification to the previously mandated rework, and the installation of additional overheat sensors and improved isolation barriers. This amendment is prompted by reports of an incident where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 85-07-05, Amendment 39-5028 (50 FR 13014, April 2, 1985), applicable to certain Lockheed Model L-1011 series airplanes, to require installation of additional overheat sensors and improved isolation barriers, was published in the **Federal Register** on June 6, 1989 (54 FR 24188).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America requested that the compliance time for accomplishment of the modification be extended from the proposed 1,800 flight hours to 3,600 flight

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hours. ATA stated that four of its affected member operators were advised by Lockheed that the required modification parts will necessitate a lead time of 28 to 32 weeks to obtain. Considering that these airplanes are utilized a minimum of 9 hours per day, the ATA suggested that the proposed compliance time be extended so that sufficient time is allowed for operators to schedule this modification after their part kits were received. The FAA concurs with this request. Contrary to information previously received, the FAA has verified that the lead time for obtaining the required modification parts will exceed the proposed compliance time of 1,800 flight hours. In light of this situation, and in consideration of the Model L-1011 service history, the FAA has determined that extending the compliance time to the suggested 3,600 flight hours will accommodate the time necessary for affected operations to order, obtain, and install the modification, without adversely affecting safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 249 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 91 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour, with parts costing $13,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,208,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-5028 (50 FR 13014, April 2, 1985), AD 85-07-05, as follows:

Lockheed Aeronautical Systems Company: Applies to Model L-1011 series airplanes, Serial Numbers -1002 through -1221 that have not been modified in accordance with Lockheed Service Bulletin 093-21-184, dated November 21, 1983, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend and reroute Fenwall thermal overheat sensors below the Mid-Electrical Service Center (MESC) floor, remove excess flow sensors, and modify the structure below the MESC floor in accordance with the Lockheed Service Bulletin 093-21-214, Revision 1, dated December 9, 1983; Revision 2, dated September 10, 1984; Revision 3, dated April 21, 1986; or Part 1 of the Accomplishment Instructions of Revision 4, dated August 15, 1988.

B. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend the duct isolation barrier in accordance with Lockheed Service Bulletin 093-21-222, Basic Issue, dated January 9, 1984; Revision 1, dated April 30, 1984; or Revision 2, dated August 15, 1988.

C. Within 3,600 flight hours after the effective date of this amendment, further extend the duct isolation barrier, add overheat sensors, and revise the insulation blanket retention, in accordance with Lockheed Service Bulletin 093-21-227, Basic Issue dated August 15, 1988.

D. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199, to operate to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39-5028, AD 85-07-05.

This amendment becomes effective November 13, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24162 Filed 10-12-89; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-206-AD; Amendment 39-6356]

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 series airplanes, which requires replacement of the eight motor-to-valve body screws of the power transfer unit shut off (PTU S/O) valve. This amendment is prompted by two reports of dual hydraulic system failure in flight. This condition, if not corrected, could result in a landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems.

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801; attn: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: There have been two recent incidents of McDonnell Douglas Model DC-9-82 (MD-82) series airplanes experiencing dual hydraulic system failures in flight. This limited the airplanes to the hydraulic power stored in the wheel brake accumulators and the thrust reverser accumulators. In one case, the airplane landed and sustained minor damage to the main landing gear door. In the second failure, the airplane drifted off the runway and the nose landing gear collapsed. It has been determined that, in both cases, the power transfer unit shut off (PTU S/O) valve, Whittaker Controls part number (P/N) 240695, failed. Two adjacent motor-to-valve attach screws also failed due to fatigue, causing the valve body to separate and hydraulic fluid to be lost in that one system. The valve jammed in the open position, depressurizing the remaining hydraulic system. Four other instances of screw failure have been found during maintenance or preflight inspections. This condition, if not corrected, could lead to landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the PTU S/O valve motor-to-valve screws at intervals not to exceed 2,000 landings. In addition, this AD provides an optional terminating action for the repetitive screw replacements by replacing PTU S/O valve P/N 240695 with PTU S/O valve P/N 240695-1, which has been FAA-approved and incorporated in production. The FAA considers the requirements of this AD as interim action and may consider further rulemaking to require further corrective action to ensure that Model DC-9 PTU S/O valve will not cause dual hydraulic system failure.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 series airplanes, equipped with Whittaker Controls power transfer unit shut off (PTU S/O) valve, part number (P/N) 240695, certificated in any category. Compliance required as indicated.

To prevent dual hydraulic system failure, accomplish the following:

A. Prior to the accumulation of 2,000 landings, or within 200 landings after the effective date of this AD, whichever occurs later, unless accomplished within the last 1,800 landings, replace the PTU S/O valve motor-to-valve attach screws, P/N NAS 1101E4-14, with new screws of the same part number, in accordance with the installation instructions of McDonnell Douglas Telex MD-80-COM-24/JCR, dated September 18, 1989. Thereafter, replace the screws at intervals not to exceed 2,000 landings.

B. Replacement of Whittaker Controls PTU S/O valve, P/N 240695, with PTU S/O valve, P/N 240695-1, constitutes terminating action for the requirements of paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801; ATTN: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 23, 1989.

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Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24163 Filed 10-12-89; 8:45am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8264]

RIN 1545-AK26

Temporary Regulations Under Section 383 of the Internal Revenue Code of 1986; Use of Pre-Change Attributes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8264, which was published Wednesday, September 20, 1989, (54 FR 38664). The temporary regulations relate to the use of certain corporate tax attributes under section 383 of the Internal Revenue Code of 1986 that are attributable to the period preceding an ownership change of the corporation.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones, 202-566-3205 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections provide guidance under section 383 relating to the manner and method of absorbing the section 383 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

Need for Correction

As published, T.D. 8264 contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8264) which was the subject of FR Doc. 89-22108, is corrected as follows:

1. On page 38664, column 2, in the heading, the RIN number "1545-AK26" is removed and the RIN number "1545-AK28" is added in its place.

2. On page 38664, column 3, the first paragraph under the caption "Paperwork Reduction Act", fifth line from the bottom of this paragraph, the OMB number "1545-0123" is removed and the OMB number "1545-1120" is added in its place.

§ 602.101 [Corrected]

3. On page 38671, column 1, § 602.101, Par. 6., last two lines of this instructional paragraph, the OMB number "1545-0123" is removed and the OMB number "1545-1120" is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-24103 Filed 10-12-89; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1989, to December 31, 1989.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 10½ percent, which will be effective from October 1, 1989, through December 31, 1989. This rate represents a decrease of ½ percent from the rate in effect for the third quarter of 1989. See 54 27872 (July 3, 1989). This rate is based on the prime rate in effect on September 15, 1989.

Beginning with this amendment for the fourth quarter of 1989, the PBGC will publish this quarterly interest rate on the 15th of the first month of the quarter (or, if the 15th falls on a weekend or Federal holiday, on the last regular business day preceding the 15th). We are doing this as a convenience to the public, so that all PBGC interest rates will be published on (or immediately preceding) the 15th day of a month. The PBGC does not believe that moving publication of this part 2644 interest rate from the first day of the quarter to the 15th day is likely to cause any significant inconvenience for multiemployer plans.

The appendix to 29 CFR part 2644 does not precribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy or $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
•	•	•	•
10/01/89	12/31/89	09/15/89	10.50

Issued at Washington, DC, on this 6th day of October, 1989.

James B. Lockhart, III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-24236 Filed 10-12-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1989.

EFFECTIVE DATE: November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§2676.15 Interest

• • • • • •

(c) *Interest rates.*

• • • • • •

For valuation dates occurring in the month—	The values of i_t are:—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
November 1989	.06875	.06625	.06375	.06	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

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Issued at Washington, DC, on this 6th day of October 1989.

James B. Lockhart, III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-24235 Filed 10-12-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 89-119]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Town of Dartmouth, the Coast Guard is issuing temporary regulations governing the Padanaram (Gulf Road) drawbridge across the Apponagansett River, at mile 1.0, at Dartmouth, Massachusetts commencing October 1 through November 30, 1989 to provide that the draw need open on signal on the hour and half hour from 5 a.m. to 9 p.m. At all other times the draw shall open on signal if at least six hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible. The temporary regulation is being made to examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, and still provide for the reasonable needs of navigation.

DATE: This temporary regulation becomes effective on October 1, 1989, and terminates on November 30, 1989. Comments must be received by November 30, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668-7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulations is issued under 33 CFR 117.43 to evaluate suggested changes in the drawbridge regulations to reduce vehicular and marine traffic congestion. Statistics provided by the bridge owner and harbormaster show that traffic density averages between 400 and 900 cars per hour across the two lane bridge between 8 a.m. and 10 p.m. during the boating season. Because of congestion in the lower harbor and a lack of moorings, the harbormaster has had to place an increasing number of moorings for sailboats on the north side of the bridge. Additionally, the primary hauling and launching facilities are also north of the bridge. Thus, the regulation which frequently allows the bridge to remain closed for up to two hours during the morning, noon, and evening rush hours creates safety problems for mariners. When the bridge finally opens, the extensive number of vessels requiring passage cause long and frequent openings during off periods.

Persons affected by these temporary regulations may comment on their impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestion for changes. Persons submitting comments should include their name and address, identify the bridge, and give reasons for support of or opposition to these temporary regulations. Persons desiring acknowlegment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and LT. Robert E. Korroch, project attorney.

Discussion of Regulations

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these temporary regulations is necessary to evaluate their effect during a period when both boating and vehicular traffic are in conflict. Additionally, strong public interest supports this action.

Economic Assessment And Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations accommodate vehicular and marine traffic. The scheduled openings will permit more uniform, frequent, and established opening times to permit both vehicular and marine traffic to utilize the bridge with minimum disruption to the other mode of transportation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that the impacts will not have a significant economic effect on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations: In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.587 is revised to read for the period of October 1, 1989 through November 30, 1989 as follows:

§ 117.587 Apponagansett River.

(a) The following requirements apply to all bridges across the Apponagansett River:

(1) Public vessels of the United States and State and Local vessels used for public safety shall be passed as soon as possible.

(2) Mooring facilities shall be maintained on bridge piers or fenders for vessels to make fast to while waiting for the draw to open.

(3) The bridge owners shall provide and keep in good legible condition clearance gauges with figures not less than 10 inches high designed, installed and maintained in accordance to the provisions of 118.160 of this chapter.

(b) The draw of the Padanaram Highway (Gulf Road) drawbridge, mile 1.0 at South Dartmouth, shall open as follows:

(1) From 1 October to 30 November 1989 from 5:00 a.m. to 9:00 p.m. need open on signal only on the hour and half hour.

(2) At all other times, on signal if at least six hours notice is given.

Dated: October 4, 1989.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District

[FR Doc. 89-24247 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD09 89-07]

Drawbridge Operation Regulations; Portage River, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Ottawa County Engineer, the Coast Guard is amending regulations governing the Monroe Street highway bridge at mile 0.4 across the Portage River in Port Clinton, Ohio. The periods of time during which the draw opens on a regulated schedule will be extended. Also, the category of commercial vessels entitled to priority passage through the draw during regulated periods will be limited to commercial vessels of ten gross tons or more, or carrying fifteen passengers or more. This change is being made because of vehicular traffic tie-ups, caused by an increase in recreational vessel traffic during periods when the draw is required to open on signal at the beginning and end of the navigation season. Also, an increase in the number of charter vessels licensed to carry fifteen passengers or less and vessels of ten gross tons or less is causing additional vehicular traffic tie-ups because these commercial vessels were exempt from the regulated periods, causing the bridge to open within short periods of time before and after a scheduled opening. Other minor adjustments are being made to the restricted periods. The Monroe Street bridge will now be subject to two different periods during the year, instead of the four different periods currently in effect, and these two new periods will be consistent with the two periods currently in effect for the Conrail Railroad bridge, mile 1.5, at Port Clinton. As before, both bridges will always open as soon as possible for special category vessels. These actions will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., telephone number (216) 522-3993.

SUPPLEMENTARY INFORMATION: On May 26, 1989, the Coast Guard published proposed rules Vol. 54, No. 101, FR 22785 and FR 22786 concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice dated June 12, 1989. Interested persons were given until July 10, 1989, and July 11, 1989, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard project attorney.

Discussion of Comments

No comments were received as a result of publication in the **Federal Register** and Public Notice.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Extending the time that the bridge will open on the hour and half-hour to include the periods of May 1 through May 14 and November 1 through November 30 will relieve vehicular traffic tie-ups due to random bridge openings. Previously, the bridge opened on signal during these two periods of time. Also, requiring vessels of less than ten gross tons and vessels licensed to carry less than fifteen passengers to comply with the hour and half-hour openings will relieve additional vehicular traffic tie-ups caused by random bridge openings for the passage of these vessels. Additionally, removing bridgetenders from the Monroe Street highway bridge, and Conrail railroad bridge starting on December 1 instead of December 2, allows the owners of both bridges to begin winter operation of the bridges one day earlier during a time when there is little or no vessel traffic on the river. Since the impact of these regulations is expected to be so minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g); 33 CFR 117.43.

2. Section 117.851 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 117.851 Portage River.

(a) Public vessels of the United States, State or local government vessels used for public safety, vessels in distress and vessels seeking shelter from rough weather shall be passed through the draws listed in this section as soon as possible. Except as provided in paragraph (c)(1)(ii) with respect to the Monroe Street bridge, commercial vessels shall be passed through the draws of this section as soon as possible.

* * * * *

(c) The draw of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From May 1 through November 30—

(i) Between the hours of 12 midnight and 6 a.m., the draw shall open on signal.

(ii) Between the hours of 6 a.m. and 12 midnight, the draw shall open on signal. However, the draw need not open on signal during this time for recreational craft and commercial vessels licensed to carry fifteen or less passengers, or less than ten gross tons, unless in distress or seeking shelter from rough weather. For these vessels, the draw need open only from three minutes before to three minutes after the hour and half-hour.

(2) From December 1 through April 30, the draw shall open on signal if at least 24 hours' notice is given.

(d) The draw of the Conrail bridge, mile 1.5 at Port Clinton, shall open on signal. However, from December 1

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through April 30, the draw shall open on signal if at least 24 hours' notice is given.

Dated: September 28, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Commander, 9th Coast Guard District, Acting.

[FR Doc. 89-24248 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-59-FC]

RIN 0938-AA63

Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

AGENCY: Health Care Financing Administration (HCFA), DHHS.

ACTION: Final rule with comment period.

SUMMARY: We are making a number of revisions to regulations concerning mechanized claims processing and information retrieval systems ("system" or "systems"). We are revising definitions to show that we will not make available Federal funding at 75 and 90 percent of State Medicaid agency expenditures for eligibility determination systems because they do not meet the definition of a "mechanized claims processing and information retrieval system" or of an enhancement to that system. We are also conforming our regulations to changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99-272), which involve technical changes. One change affects the frequency and scope of our system reviews, and the other involves the date by which States that are not exempt by law must have an operating system.

DATES: The rule is effective November 13, 1989.

To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on December 12, 1989.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Rick Friedman, 301-966-3292.

SUPPLEMENTARY INFORMATION:

I. Background

Basis of the System

A Medicaid management information system (commonly known as the MMIS or referred to as "the system") is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system, originally authorized by section 1903(a)(3) of the Act, is used to process Medicaid claims from providers and to retrieve and produce utilization data and management information about medical care and services furnished to recipients. Each State (with some exceptions) is required by section 1903(r) of the Act to have in place an operational and approved system or be subject to reductions of Federal financial participation (FFP).

Section 1903(a)(3) of the Act authorizes FFP at 90 percent of the sums a State Medicaid agency expends for the design, development, or installation of a mechanized claims processing and information retrieval system that the Secretary determines is likely to provide more efficient, economical and effective administration of the program and at 75 percent for the operation of these systems. (Hereafter, we will refer to 90 percent and 75 percent FFP as "enhanced" FFP since it is greater than the 50 percent FFP authorized for most Medicaid administrative expenses.)

Current Regulations

Our regulations concerning mechanized claims processing and information retrieval systems are at 42 CFR part 433, subpart C. Section 433.111 defines terms used in obtaining enhanced Federal funding for mechanized claims processing and information retrieval systems. A State agency's system must comply with the requirements in § 433.112 through § 433.122 to enable the agency to obtain enhanced funding for the design, development, installation or enhancement of a system. These sections discuss the availability of enhanced FFP, identify the conditions a system must meet for approval and reapproval and specify that an agency must meet system requirements and performance standards if it is to continue to receive enhanced funding. The sections also explain that enhanced funding for automated eligibility systems is not available as such systems are not part of mechanized claims processing and information retrieval systems nor are they enhancements to such systems. Section 433.123 describes procedures we follow to ensure that we inform interested parties adequately before we make changes in conditions of approval or reapproval and in system requirements for required systems eligible for enhanced funding.

A State that chooses to develop, enhance or replace its required system or subsystems must first submit for approval an advanced planning document (APD). The general HHS requirements for approval of APDs are found at 45 CFR part 95, subpart F, which prescribe the conditions under which HHS will approve FFP at applicable rates for costs of automated data processing for the Medicaid program and for the Aid to Families with Dependent Children (AFDC) and the Child Support Enforcement program (titles IV-A and IV-D of the Act, respectively). On December 18, 1986, HHS revised 42 CFR 433.111 by removing the content of the definitions of all the terms found there previously (except that of "mechanized claims processing and information retrieval system") and cross-referring the reader to 45 CFR 95.605 for definitions of the other terms. The term "improvement" was replaced by "enhancement" in §§ 433.111 and 433.112. See 45 CFR 95.625(b).

II. Proposed Changes to Regulations

On August 11, 1988, we published a notice of proposed rulemaking (53 FR 30317). We proposed to change our rules so that we would approve an APD as being likely to provide more efficient, economical and effective administration of the State plan only for a mechanized claims processing and information retrieval system that consists of the federally required, or core, subsystems of that system, which we describe in part 11 of the State Medicaid Manual or federally required changes to the system or subsystem.

A. "Mechanized Claims Processing and Information Retrievol System"

We proposed in the notice of proposed rulemaking to revise the current definition of "mechanized claims processing and information retrieval system" in 42 CFR 433.111 so that it consists of the HCFA-required, or core, subsystems specified in the State Medicaid Manual. We proposed that if a State were to initiate changes to its system as likely to provide more efficient, economical and effective administration of the State plan and HCFA approved the changes, they would be funded at the regular matching rate of 50 percent in accordance with § 433.15(b)(7) and 45 CFR part 95, subpart F.

Under the proposed revised definition, "mechanized claims processing and information retrieval system" would be the six Statewide core subsystems of software and hardware used (1) to process claims by providers of medical care and services for items and services furnished to eligible recipients under the Medicaid program and (2) to retrieve and produce service utilization and management information that is required by the Medicaid single State agency and Federal government for Medicaid program administration and audit purposes. The system would be used to process claims only for items and services covered under the State plan.

B. Enhancements

We also proposed to delete the term "enhancement" found in current § 433.111. Neither the term "enhancement" nor "improvement", as enhancement was formerly called, appear in the statute. Under our proposal, we would fund only HCFA-approved core systems and subsystems and HCFA-required changes at the enhanced funding rates. Conversely, we proposed that any modification suggested by a State that is not approved by HCFA as a core system requirement would not be viewed by HCFA as an "improvement" for purposes of enhanced FFP.

Under our proposal, the only changes for which we had planned to allow 75 or 90 percent funding would be HCFA-required changes to the required core system or subsystems. We proposed to fund any other system design and development changes that were approved at the regular 50 percent matching rate.

Under § 433.112, we proposed to approve 90 percent FFP only when the requirements published in the Federal Register and in Part 11 of the State Medicaid Manual for the system being designed, developed, or installed are met. Approval of a system for 75 percent FFP for operation continued to depend on that system meeting the published requirements as required by § 433.116.

C. Technical Clarifications

We also proposed to revise § 433.112(a) to read as it did from July 30, 1985 to December 18, 1986, except that it would not include the term "improvement". When this section was revised on December 18, 1986, the language that was in the Code of Federal Regulations before July 30, 1985 was inadvertently used. Since there was no intention to change the substance of this paragraph in December, 1986, we proposed to restore the earlier language.

D. Use of "System" Instead of "MMIS"

We also proposed to change the references in the regulations from "MMIS" (which appear in §§ 433.121, 433.130 and 433.131), to "system," which is the short form for the term "mechanized claims processing and information retrieval system" and is currently in use in all sections in part 433, subpart C except § 433.131. We have not defined "MMIS" in regulations and would make the change for consistency.

III. Proposed Revisions to Implement Public Law 99-272

We also proposed revising our regulations to implement section 1903(A) of the Act to conform with changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), Pub. L. 99-272, as enacted April 7, 1986.

Section 9503(b)(2)(A) of COBRA amends section 1903(r)(4)(A) of the Act by requiring the Secretary to review each approved system at least once every three years, instead of once a year. Section 9503(b)(2)(B) amends section 1903(r)(4)(A) of the Act to permit the Secretary, at his discretion, to review either the entire system of a system State agency or only those standards, system requirements and other conditions demonstrating weakness in previous reviews.

Section 9518 of COBRA amends section 1903(r)(1)(B) of the Act so that State agencies must have had an approved system no later than September 30, 1985, instead of September 30, 1982. The amendment applies to payment made under section 1903(a) of the Act for calendar quarters beginning on or after October 1, 1982.

We proposed to revise § 433.119, conditions for yearly approval; notice of decision, to show that we would review each system operation at least once every three years and to indicate that we would not have to review the entire system but we would, at a minimum, have to review parts of the system operation that showed weaknesses in the previous review.

We would revise § 433.122 to delete the references to "yearly" review.

We proposed to revise § 433.113, reduction of FFP for failure to operate a system and obtain initial approval, to change the deadline by which an agency must have an approved system to September 30, 1985.

IV. Funding For Optional Systems and Subsystems

In the proposed rule, we discussed funding for third party liability and for eligibility determination systems.

A. Third Party Liability

We interpret section 9503(a) of COBRA as requiring State Medicaid agencies to have an approved plan of action for third-party liability (TPL) and to use the system to carry out the plan of action. We currently require these statutory TPL changes as part of the core system by regulation (42 CFR 433.122(b)(2)). If these requirements are not currently part of any system approved for enhanced matching, they should be implemented as system requirements to all approved systems for which enhanced matching is claimed. If system modifications are required in some States to meet COBRA requirements, we will continue to make enhanced FFP available for modifications to those TPL systems that are part of the required core system.

B. Eligibility Determination Systems

1. Background

Since 1977, HCFA has made available 90 percent FFP for the design, development, installation or improvement of eligibility determination systems, subject to approved APDs, and 75 percent FFP for the subsequent operation of these systems, on the basis that applications for eligibility were "claims" and that a system processing these "claims" was a part of the mechanized claims processing and information retrieval system.

In 1981, section 403(a)(3)(B) of the Act was added by section 406 of Public Law 96-265; it requires the Secretary to provide 90 percent FFP for the design,

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development and installation of a mechanized eligibility determination system that meets the requirements of section 402(a)(30) of the Act for Aid to Families with Dependent Children (AFDC). In addition, the section requires the Secretary to determine that the systems are "likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX * * *." SSA published an interim final rule (45 CFR 205.35 through 205.38) on September 30, 1981 (46 FR 47784) to implement this provision, and a final rule on April 17, 1986 (51 FR 13001). The 90 percent FFP has been available for quarters beginning on and after July 1, 1981.

2. Proposal

AFDC agencies now receive 90 percent FFP for implementing eligibility determination systems. An automated eligibility determination system such as the AFDC Family Assistance Management Information System (FAMIS), is in reality not part of a mechanized claims processing and information retrieval system for Medicaid.

Congress purposely required that 90 percent FFP be made available for AFDC eligibility determination systems by adding section 403(a)(3)(B) of the Act, effective July 1, 1981, and did not do so for Medicaid. Any incentive provided by partial title XIX enhanced funding before 1981 has been superseded by the explicit funding authority under section 403(a)(3) of the Act. This authority has encouraged 44 States to design eligibility determination systems, principally with title IV funding. Because there is no explicit statutory funding authority under title XIX, HCFA is not required to make enhanced FFP available for eligibility determination system. In addition, there is no further need to do so.

As a result, we proposed that eligibility determination systems would no longer be eligible for any enhanced FFP for Medicaid purposes under the proposed definition of mechanized claims processing and information retrieval systems, since enhanced FFP would be available only for costs directly attributable to approved Medicaid systems. Because eligibility determination systems would not be used to process claims by "providers of medical care and services for the medical care and services furnished to the recipients", we would not require their implementation or operation, as part of the core subsystems.

3. FFP for an Eligibility Determination System

We proposed that, in order to receive any FFP for Medicaid purposes for an eligibility determination system after the effective date of the final rule, a State agency would have to submit an APD in accordance with the requirements of 45 CFR part 95, subpart F, for funding. If we approve the APD, the State agency would receive 50 percent FFP for administrative costs under section 1903(a)(7) of the Act for the system's design, development, installation, and operation.

We proposed that a State Medicaid agency with a currently approved APD for a mechanized eligibility determination system would receive Medicaid enhanced funding at 90 percent under paragraph 1903(a)(3)(A) of the Act until the effective date of these final regulations. Once these regulations are effective, all Medicaid enhanced funding would terminate after the effective date and Medicaid funding for operation of mechanized eligibility determination systems would be reduced to the 50 percent rate under section 1903(a)(7) of the Act at that time. Any APDs approved by HCFA for eligibility determination systems after the effective date of the final rule would be reduced to the 50 percent rate at that time. Eligibility determination system operations being funded at the enhanced operations rate of 75 percent before the effective date of the final regulation would be funded by HCFA at the 50 percent rate after the effective date.

We proposed to add a paragraph to § 433.112 to exclude eligibility determination systems specifically from funding at enhanced rates.

V. Comments and Responses

We received comments from 29 commenters: 24 Medicaid agencies, one computer company, one group for promoting technology to improve delivery of human services, a State Medicaid directors' association, a health center association and the systems technical advisory group. Below we state their comments and our responses to them.

Comment: Almost all of the commenters disagreed with our proposal to stop paying enhanced FFP for State-initiated "enhancements" (or improvements) because they believed lack of enhanced FFP will prevent States from making changes, which contribute to the efficiency, effectiveness and economy of the program, to their systems. One of these commenters was also concerned about a drop in funding for APDs that are already approved. Three commenters believed the change would affect Federal-State relationships; one commenter thought that the ability of States to share innovations would be hampered, thus reducing further chances at economy, efficiency and effectiveness.

Response: We agree that lack of enhanced FFP for State-initiated enhancements may prevent some States from making important enhancements that will improve the effectiveness, efficiency and economy of their systems. Therefore, we will not delete the term "enhancement" found in § 433.111. Likewise, we will continue to fund enhancements based on APDs approved by HCFA at enhanced funding levels, although we are considering additional options for matching rates paid for enhancements. (See section VIII below.) However, after the effective date of this regulation, enhanced funding will not be available for eligibility determination systems, as these systems are not part of mechanized claims processing and information retrieval systems.

With respect to APDs for eligibility determination systems approved before the effective date of this final regulation, in the interest of fairness, the 90-percent FFP rate will continue to be available for design, development, installation or enhancement of a system or subsystem up to the approved expenditure ceiling. However, FFP at 50 percent, not at 75, will be paid for operation of eligibility determination systems after the effective date of the final regulation regardless of when the APD or system was approved. Any APDs or revisions to APDs approved after the effective date of the final regulation will be funded at the revised rate of 50 percent described in the final regulation.

We do not expect States to welcome a reduction of FFP rates for automated eligibility determination systems under Medicaid. However, the Secretary is obligated to interpret the statute and review and revise policy periodically if necessary. We do not believe that State staff reductions or increased error rates can be directly attributed to this regulation or to the reduced FFP rates, particularly because the AFDC program will continue to fund the development of automated eligibility systems at 90 percent FFP.

Comment: One commenter noted that a special HCFA work group is developing basic requirements for an MMIS that will replace the general systems design and result in the removal from the State Medicaid Manual of the six core subsystems as they are known today: this activity is moving away from the subsystem model while the proposed rule emphasizes the six subsystems exclusively.

Response: While it is true that a work group is developing basic requirements that will replace the general systems design and result in the removal of the six core subsystems from the State Medicaid Manual, none of its work is final and we are not yet ready to propose such replacement. When any change is made in the MMIS, as a result of the work group's efforts, the requirements will be announced through appropriate documents.

Comment: Two commenters believed that we should add a definition of "maintenance" to the rules; otherwise, the States and HCFA will continually disagree as to whether a change is maintenance or an enhancement.

Response: We consider maintenance to be the routine operational exercising and functioning of the system to keep it ready and fit for performing at the standard and condition for which it was approved. Enhancements advance the system performance beyond its original condition. As defined in Departmental regulations (45 CFR part 95, subpart F), enhancement means modifications that change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies that may have been present in the software or hardware, or to improve the operational performance of the software or hardware. We are not revising our regulations to reflect this explanation but will incorporate it into appropriate instructions in the State Medicaid Manual. Furthermore, we will continue to pay enhanced FFP for State-initiated and Federally required enhancements to approved MMIS systems.

Comment: Ten commenters were concerned about funding for system changes required by statute that are not required by HCFA in regulation. Of special concern to several commenters was the fact that 90% FFP is available only after we have published the change in the Federal Register and the State Medicaid Manual, which creates a lengthy delay in implementation because we do not retroactively approve system changes.

Response: We agree with these commenters. We will fund at 90 percent FFP any enhancements to the required system that the statute requires, whether self-implementing or not. The State should implement any statutory requirements in the absence of implementing regulations. To the extent that a State agency has to enhance the system again after we issue implementing regulations or instructions, we will also pay for those enhancements to the required system at the 90 percent level. We are revising the definition of "Mechanized claims processing and information retrieval system" in § 433.111(b) to accommodate the changes.

Comment: Eight commenters disagreed with the revisions to reduce funding to 50 percent based on the idea that Congress intended us to make funding available at enhanced rates. (Three of the commenters were specifically addressing the revisions concerning eligibility determination systems.) The commenters contended either that we have not been authorized to discontinue enhanced funding or that the statute mandates implicitly enhanced FFP for system improvements, including eligibility determination systems. One of the commenters making the latter point indicated that we are required to pay enhanced FFP for costs that are attributable to the design, development or installation or to the operation of a mechanized claims processing system. Some commenters argued that if we had the authority originally to fund enhancements and eligibility determination systems, we cannot now say we do not have the authority to so fund.

Response: We do not agree with these commenters. Congress has provided the Secretary with discretionary authority to fund such mechanized claims processing and information retrieval systems "as the Secretary determines" are likely to provide more efficient, economical, and effective administration of the State plan (section 1903(a)(3) of the Act.) This same discretionary authority exists under sections 403(a)(3) and 1903(a)(3) of the Act for the Secretary to define limits of the system and fund accordingly. The Secretary has determined that almost all State Medicaid programs have realized a substantial benefit by initially implementing required MMISs.

Congress has not provided explicit funding authority to Medicaid for eligibility determination systems. Congress did provide explicit statutory authority to title IV (section 403(a)(3) of the Act) and has required certain AFDC and Child Support Enforcement systems to be compatible with Medicaid systems. Title IV regulations (45 CFR 205.36) explicitly provide requirements for funding and compatibility of the systems with Medicaid systems. Within his discretionary authority the Secretary has now determined that title IV should fund these eligibility determination systems, not title XIX. Title XIX will provide 50-percent FFP for any Medicaid costs associated with eligibility determination.

Comment: Two commenters were concerned with the system performance review (SPR) process and its relationship to noncore subsystems. They wondered whether future SPRs will be limited to core subsystems since the noncore systems are not considered critical enough to be integral to the MMIS.

Response: System performance review for reapproval is a review of the entire system for which FFP at any rate is claimed to determine if the system is likely to provide improved administration of the State plan. In many States the required subsystems make up the system. We expect that any additional parts of the system, including those not required, will also be subject to review and reapproval to assure that Federal funds are being properly claimed and spent and to assure that all parts of the system are cost beneficial and contributing to the proper and efficient administration of the Medicaid program, as required by section 1902(a)(30) of the Act and other parts of State plan requirements. In addition, Departmental requirements at 45 CFR part 95, subpart F, are applied during all system reviews. However, we will not review automated Medicaid eligibility determination systems as part of system performance review as these are not part of mechanized claims processing and information retrieval systems.

Comment: Three commenters were concerned about the effect of the revisions on the third party liability (TPL) subsystem. They wanted to know if the system will be eligible for enhanced funding, including both HCFA-mandated and State-proposed enhancements to the subsystem.

Response: Because of State comments on our proposal we will continue to offer enhanced funding for the design, development, installation or enhancement of the required system. Any State-initiated changes approved after this regulation becomes final will be funded at 90 percent for design, development and installation and at 75 percent for operations.

Comment: One commenter had several specific questions concerning expansion of current MMISs: (1) Would HCFA approve an APD requesting enhanced FFP for the enhancement/expansion of the core subsystems, yet disapprove such requests for the development of new and separate subsystems, keeping in mind that several States would incorporate a prior approval component into their claims

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processing subsystem and that a Risk Underwriting component could be included into the management and administrative reporting subsystem? (2) Will the operation of subsystems revised with 50 percent FFP be funded at 75 percent or at 50 percent? (3) Would HCFA approve an APD for system changes to support a DRG reimbursement methodology at 90 or 50 percent FFP? (4) Will APDs for equipment or services where the total estimated Federal and State funding for the acquisition is less than (a) $200,000 over a twelve month period, (b) $300,000 for the total acquisition, or (c) $25,000, where the equipment/services are acquired noncompetitively, continue to be exempt from prior federal approval if the State claims 50 percent FFP?

Response: In response to the first two questions, all enhancements to the required approved system will be funded at enhanced rates. States may, based on an approved APD, install features that go beyond the defined MMIS and receive enhanced FFP for them. However, automated eligibility determination systems will not be considered enhancements to the mechanized claims processing and information retrieval system. We expect States to identify capabilities that uniquely serve that State and to reap administrative and program savings from such optional capabilities. We are willing to share in and support unique capabilities at the enhanced FFP rates for both installation and operation of such optional capabilities.

However, APDs for eligibility determination systems approved before the effective date of the final regulation will be funded at the rates for design, development or installation in effect before the final regulation is effective. After the effective date of the regulations, APDs for eligibility determination systems and all operations of those systems will be funded by title XIX at the regular FFP rate of 50 percent. The title XIX cost of projects for eligibility determination that are approved and begun after the regulation is effective will be shared equally by the States and by the Federal Government.

With respect to the third question, HCFA will pay for system changes to support a DRG reimbursement methodology at enhanced rates.

The fourth question concerned thresholds and requirements for APD approvals that are in regulations, at 45 CFR part 95, subpart F.

Comment: Three commenters were concerned about the use of the MMIS for another program such as title XX and Medicare cross-over claims.

Response: We did not intend to imply nor to propose that information retrieved through the MMIS be used solely for Medicaid purposes. We meant that payment of FFP is related to the extent the system is used solely for Medicaid purposes. If a system is used for title XX or XVIII purposes as well as title XIX, the cost of its operation would be prorated to each program.

Comment: Three commenters believed that the MMIS should not be limited to six core subsystems, as to do so hampers the ability of the State to administer its program effectively and efficiently. One commenter thought it unfair that the State had implemented and operated an EPSDT subsystem at enhanced rates but now would receive only 50 percent FFP.

Response: We have changed our proposal and will continue enhanced funding for EPSDT system functions if EPSDT subsystem functions are part of an approved system. The claims processing and followup portions of the EPSDT subsystem may be funded as part of an approved system, but not those case management functions that go beyond the concept of claims processing and information retrieval.

Comment: One commenter stated that our proposed revisions limiting 75 percent FFP only to "costs directly attributable to approved systems" conflict with the Grant Appeals Board decision that allowed for "attributable indirect costs".

Response: The Department Appeals Board (DAB) decision No. 648, based on AT-78-33 and Transmittal 1 of the State Medicaid Manual (SMM), required payment of indirect costs not directly attributable to MMIS. Transmittal No. 8 of the SMM (1986) rescinded AT-78-33 and superseded Transmittal No. 1. The DAB decision No. 1023, March 13, 1989, upheld and confirmed the policy expressed in Transmittal No. 8 of the SMM. This regulation merely codifies our policy of paying enhanced FFP only for costs directly attributable to systems approved under section 1903(a)(3) and (r).

Comment: One commenter objected to the failure of the proposed rule to define the six required core subsystems; they should have been set forth in the proposed rule instead of defined in the SMM.

Response: We do not believe it is necessary or practical to name the subsystems in regulations, rather than in the SMM. Without changing substantive system requirements, we are in the process of considering a future conceptual revision of the MMIS to depart from the concept of subsystem and to include only two parts of a system as stated in the statute: namely, claims processing and information retrieval. These two parts would continue to contain all of the substantive content of the current six subsystems with the first four: Recipient, Provider, Claims Processing and Reference comprising the claims processing part and the other two reporting subsystems: Management and Administrative Reporting and Surveillance and Utilization Review comprising the other part called information retrieval. This permits abandoning the outmoded concept of "subsystem" without substantive change to the system requirements. Any substantive change in the requirements would be published in the Federal Register.

Comment: One commenter believed that we should define "MMIS" in regulations, rather than changing reference to it to "system".

Response: "MMIS" is the popular name for the system; the statutory name for it is "mechanized claims processing and information retrieval system", so we chose the more formal designation to parallel the law.

Comment: Six commenters had comments about APDs and paperwork burden. One commenter thought that States should not have to obtain HCFA approval on enhancements. The commenters disagreed that our revisions would reduce the number of APDs generated, as the States would still have to complete APDs to determine whether a change is eligible for enhanced FFP; one commenter considered this illegal. One of the commenters disagreed that preparing an APD is a waste of time, stating that it helps define projects for both the State and HCFA Regional Office.

Response: The commenters are correct in stating that our revisions do not reduce the number of APDs generated and that the prepartion of an APD is not a waste of time. However, we do not agree that requiring an APD is illegal or that States should not have to obtain our approval on enhancements. An APD is required by 45 CFR part 95, subpart F for any expenditure for systems regardless of matching rates if the amount is at or above a specified threshold; the submission and approval of an APD is a requirement without regard to the matching rate.

Comment: Seventeen commenters disagreed with our decision to reduce funding for eligibility determination systems for one or more of the following reasons:

• They believed the statement HCFA made that a State Medicaid agency's involvement in eligibility determinations is minimal is not true, and becomes even less true as more and more legislation is passed that increases the number of Medicaid-only individuals. In their opinion, many "Medicaid-only" determinations are not and will never be included under one of the integrated systems with another agency. Estimated costs of eligibility determinations for Medicaid-only individuals ranged from 20 to 30.25 percent of the cost of all eligibility determinations.

• They believed that the eligibility determination system is an integral part of a mechanized claims processing and information retrieval system without which opportunities for abuse and errors increase and delays in payment may result. They felt it is also essential to or indistinguishable from the recipient subsystem.

• In their opinion, there will be no incentive to develop the system where it does not yet exist (in some States) and systems will take longer to develop because of scarce resources.

• It was the view of some that some MMIS functions may be accomplished more efficiently and at less cost in the eligibility determination system than in the MMIS; however, they furnished no data to substantiate their view.

• Although Congress did not explicitly authorize enhanced rates for a Medicaid eligibility determination system as it does for title IV, the commenters questioned whether Congress did not feel it was necessary, in view of the fact that we were already funding these systems at 90 percent.

• They noted that title IV significantly limits costs that are reimbursable at 90 percent, whereas under existing regulations HCFA authorized all costs attributable to MMIS installation or design to be reimbursable at 90 percent.

• They cited, in accordance with federal circular A-87, "a cost is allocable to a particular cost objective to the extent of benefits received by such objective", and concluded that HCFA cannot cogently maintain that costs for eligibility determination systems should be funded under title IV-A.

Response: The commenters are correct that the enactment of several laws during the last few years has added new groups of Medicaid eligibles and that determination of eligibility for some of these groups is more complex than simply accepting the determinations of the AFDC and SSI programs that make the determinations for the large majority of Medicaid eligibles. However, the legislation that added the new eligibles did not provide enhanced FFP for the determination of eligibility within the title XIX program for these most recent groups of eligibles. As a result, title XIX can offer only 50-percent FFP or regular administrative FFP for the cost of eligibility determination for applicants. Once eligibility determinations are made the input and use of data on the recipients by the approved MMIS system may be funded at an enhanced matching rate.

We do not agree with commenters who believe abuse and errors will increase under the proposed revisions to the rules. The accuracy of eligibility determinations is exclusively measured by the Medicaid eligibility quality control (MEQC) program and not by MMIS or SPR reviews. Congress set a 3 percent threshold error rate for MEQC and the national average error rate was 2.3 percent before eligibility determination systems began to be implemented. Few States exceed the threshold, and we expect this to continue. Also, there is no evidence that MMIS recipient eligibility files are updated more frequently or more quickly or accurately after an automated eligibility determination system has been installed.

We do not believe that incentives would no longer exist for States to develop eligibility determination systems where they do not now exist. In 1981, Congress offered incentive funding under title IV for such systems, and the need for Medicaid funding diminished, although the importance of the function and activity did not. (The incentive to design these systems is now in title IV funding exclusively.) We now are withholding our former stopgap funding because enhanced funding under title IV is available. Title IV systems are being installed in most States and are required to be compatible with title XIX systems.

As we noted in the preamble to the proposed rule, in the absence of enhanced funding for eligibility determination systems in the late 1970's, we offered partial Medicaid funding to support the development of such systems. Although some commenters believe that this may have influenced Congress to not enact legislation on this subject, we disagree. We believe that if it had been Congress' intent to have funding under both titles IV and XIX, they would have so provided. Rather, our interpretation is that there is little point in having two programs pay for the same activity.

Commenters are correct in their observation that having two agencies address the same issue sometimes results in one limiting activities more than another. Under these rules, consistency will be achieved within the Department and the title IV position will prevail. Since 1986 title IV has substantially limited enhancements or system changes for eligibility determination systems to those required by statute or by the Secretary in regulations.

Contrary to the view of the commenters, the Department does not expect costs to shift between title IV and title XIX. Cost allocation methods will remain the same. Under the current cost allocation plan title XIX pays only for functions that exclusively benefit the Medicaid program. Most State eligibility determination systems send data to MMIS recipient subsystems on a regular basis. Few if any MMIS systems gain access to the eligibility determination systems directly during the processing of each claim. (One State was of the opinion that an eligibility determination is unrelated to MMIS.) After this regulation is effective, a State with direct access to an integrated eligibility system for purposes of processing Medicaid claims will receive an FFP rate of 75 percent (if the State has an approved MMIS system) for the cost of gaining access to or obtaining these data. There may be some Medicaid functions that are not related directly to the MMIS that will be funded at 50-percent FFP, such as the determination of eligibility for medically needy only.

Comments: Ten commenters objected to the reduction of FFP for eligibility determination systems on the basis that their States have substantial sums invested in developing the systems and for which there is an approved APD.

Response: In response to the commenters' concerns about the proposed rule, we are revising the regulations as proposed at § 433.112(b)(6) to offer 90 percent FFP for developing an integrated eligibility determination system when the APD was approved before the effective date of these final rules, November 13, 1989. Any APDs or revisions to APDs approved after November 13, 1989, will be funded at 50 percent. We are not, however, making any revisions to our proposal to not offer 75 percent FFP for operating an eligibility determination system after November 13, 1989, regardless of the date the APD was approved.

Comment: Two commenters wanted to know whether the State AFDC and Food Stamp programs agree that it is their almost exclusive responsibility to make Medicaid eligibility determinations and whether the U.S. Department of Agriculture and the Family Services Administration are willing to provide enhanced

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reimbursement for the full cost of all eligibility determination functions.

Response: The interagency agreements between HCFA and FSA and HCFA and USDA are not affected by this rule. The agreements establish a uniform cost allocation system for use by States when apportioning the cost of their eligibility determination systems to a particular government agency. The FSA and USDA agree with this regulation, which affects only the amount allocated to HCFA. This rule will not affect the FSA or USDA.

Comment: One commenter thought that we should continue yearly reviews rather than once-every-three-years reviews as permitted by statute.

Response: Section 1903(r)(4) of the Act was amended to permit reduction of yearly reviews for reapproval of systems to at least once every three years. HCFA proposed this reduction because State systems had shown reduced deficiencies in reviews over the years, and because of reduced resources in HCFA and in the States for performing the reviews.

VI. Revisions to Regulations

We are adopting as final the revisions we proposed, with two exceptions. As a result of comments received, we are making the following changes:

A. In § 433.111, we are revising the definitions to clarify that all enhancements to the required approved MMIS system are eligible for enhanced FFP. We are also clarifying that Medicaid eligibility determination systems are not enhancements.

B. We are revising § 433.112 so that APDs for eligibility determination systems that we have approved before the effective date of the regulations remain eligible for any promised 90 percent. However, all 75 percent FFP for operations of such systems will end on the effective date of the regulation.

C. As a technical change, we are revising the proposed § 433.119(c) to omit reference to the fiscal year as a review period. The initial purpose of the revisions to § 433.119 was to allow for a review period longer than one year; the inclusion of "fiscal year" in paragraph (c) was inadvertent.

D. As further technical changes, we conform the wording of § 433.110 to the statute and correct the name of the Departmental Appeals Board wherever it appears.

VII. Notice

HCFA has issued a Program Memorandum (PM 88-14, December 1988) and Transmittal 10 to part 11 of the State Medicaid Manual (SMM) that offer enhanced funding for eligibility determination systems. This final regulation rescinds both the provision of enhanced funding for eligibility determination systems and any other conflicting policy, such as that contained in part 15 of the SMM.

VIII. Request for Comments

Apart from excluding eligibility determination systems from the definition of mechanized claims processing and information retrieval systems, we are not changing FFP rates for approved system enhancements from those currently in the CFR. However, in August 1989, after the end of the NPRM's comment period, the General Accounting Office issued a report entitled "ADP Systems: Better Control Over States' Medicaid Systems Needed." The GAO believes that enhancements are activities attributable to the operation of a system. The GAO thus recommended that 75%, rather than 90%, FFP should be provided to States for all approved enhancements to their systems. In light of the GAO report, we are studying its recommendations carefully. Given the recommendations, we may consider further options to change matching rates paid for enhancements and we solicit further comment on this issue.

We are publishing this as a final rule with comment in order to solicit comments only on the GAO recommendation and its ramifications. If the GAO recommendation is adopted, current regulations need to be changed to provide for 75% FFP for approved enhancements. In addition, HCFA would have to consider what MMIS expenditures would remain eligible for 90% FFP. One interpretation of section 1903(a)(3) of the Social Security Act to be considered is that 90% FFP is available only for the initial "design, development, or installation" of a mechanized claims processing and information retrieval system. This interpretation would make 90% FFP available only for a State's initial establishment of such a system and not for subsequent modification of a system or replacement of complete system. We solicit comments on this interpretation of the statute.

IX. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are currently 46 States and the District of Columbia that have a certified mechanized claims processing and information retrieval system in operation. These States and the District of Columbia will not receive enhanced FFP for those parts of their systems that do not fit the new definition of "mechanized claims processing and information retrieval systems".

The provisions of this final rule differ from the proposed in that systems approved for 90 percent FFP before the effective date of these regulations will continue to be eligible for this enhanced rate. In addition, these final regulations provide for continued funding at 90 and 75 percent for State-initiated as well as Federally-mandated enhancements.

We expect that some States will bear an increased share of data processing costs, but we believe the increase will be a minimal burden to any single State. This final rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, States are not considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Since this rule will affect States, which are not considered small entities, we have determined, and the Secretary certifies, that this final rule will not be likely to have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

In addition, we are not preparing an analysis regarding small rural hospitals since we have determined, and the Secretary certifies, that this final regulation will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VIII. Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3601 et seq.).

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (Agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR part 433 is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433, Subpart C continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for part 433 is amended by revising the titles of §§ 433.120, and 433.121 as follows:

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

* * * * *

433.120 Procedures for reduction of FFP after reapproval review.
433.121 Reconsideration of the decision to reduce FFP after reapproval review.

* * * * *

3. Section 433.110(a)(2)(ii) is revised to read as follows:

§ 433.110 Basis, purpose and scope.

* * * * *

(a) * * *

(2) * * *

(ii) Requires a Federal performance review at least every three years of the mechanized claims processing and information retrieval systems; and

* * * * *

4. In § 433.111, paragraph (b) is revised to read as follows:

§ 433.111 Definitions.

* * * * *

(b) "Mechanized claims processing and information retrieval system" or "system" means the system of software and hardware used to process Medicaid claims from providers of medical care and services furnished to recipients under the medical assistance program and to retrieve and produce service utilization and management information required by the Medicaid single State agency and Federal Government for program administration and audit purposes. The system consists of

(1) Required subsystems specified in the State Medicaid Manual;

(2) Required changes to the required system or subsystem that are published in accordance with § 433.123 of this subpart and specified in the State Medicaid Manual; and

(3) Approved enhancements to the system. Eligibility determination systems are not part of mechanized claims processing and information retrieval systems or enhancements to those systems.

* * * * *

5. In § 433.112, paragraph (a) is revised, the introductory language of paragraph (b) is republished for the convenience of the reader, paragraph (b)(6) is revised, and paragraph (c) is added to read as follows:

§ 433.112 FFP for design, development, installation or enhancement of mechanized claims processing and information retrieval systems.

(a) FFP is available at the 90 percent rate in State expenditures for the design, development, installation or enhancement of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditures of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

* * * * *

(6) The Department has a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, for Federal Government purposes, software, modifications to software, and documentation that is designed, developed, or installed with 90 percent FFP.

* * * * *

(c) Eligibility determination systems are not part of mechanized claims processing and information retrieval systems and are not eligible for 75 percent FFP under this subpart. These systems are also not eligible for 90 percent FFP for any APD approved after November 13, 1989.

* * * * *

§ 433.114 [Amended]

6. In § 433.114(b)(2), the word "Grant" is removed.

7. In § 433.113, the introductory language of paragraph (a) is republished for the convenience of the reader and paragraph (a)(2) is revised as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

* * * * *

(2) The system is operational by September 30, 1985; and

* * * * *

8. Section 433.119 is revised as follows:

§ 433.119 Conditions for reapproval; notice of decision.

(a) HCFA will review at least once every three years each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116 (d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in part 11 of the State Medicaid Manual as periodically amended.

(4) Automated eligibility determination systems approved or operating on or before November 13, 1989, will not qualify for FFP at 75 percent of expenditures after November 13, 1989.

(b) HCFA may review an entire system operation or focus its review on parts of the operation. However, at a minimum, HCFA will review standards, system requirements and other conditions of reapproval that have demonstrated weakness in a previous review or reviews.

(c) HCFA will issue to each Medicaid agency, by the end of the first quarter after the review period, a written notice informing the agency whether its system is reapproved or disapproved. If the

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system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calender quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

9. Section 433.120 is amended by revising the title and paragraph (a) to read as follows:

§ 433.120 Procedures for reduction of FFP after reapproval review.

(a) If HCFA determines after the reapproval review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

* * * * *

10. Section 433.121 is amended by revising the title and paragraphs (a) and (b) to read as follows:

§ 433.121 Reconsideration of the decision to reduce FFP after reapproval review.

(a) The agency may appeal to the Departmental Appeals Board under 45 CFR part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's system. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Departmental Appeals Board under 45 CFR part 16.

* * * * *

11. Section 433.122 is revised as follows:

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent review that the system meets all current performance standards, system requirements and other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the review determination that the system again meets conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which HCFA issues the determination (as part of the review process) stating that the system is reapproved.

§§ 433.130 and 433.131 [Amended]

12. Sections 433.130 and 433.131 are amended by replacing the term "MMIS" wherever it appears with the word "system".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: August 7, 1989.

Louis B. Hays,

Acting Administration, Health Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-24305 Filed 10-12-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[DA-89-1201]

Waiver of Part 2 of the Commission's Rules To Permit an International Fixed Public Radiocommunications Link Between Gambell, AK, and Provideniya, Magadan, U.S.S.R.; Alascom Inc.

AGENCY: Federal Communications Commission.

ACTION: Rule waiver.

SUMMARY: This item waives § 2.106 of the Commission's Rules with regard to an application by Alascom, Inc. (Alascom), to establish an international fixed public radiocommunication (IFPR) link between Gambell, Alaska, and Provideniya, Magadan, U.S.S.R. This action results in the first direct point-to-point terrestrial telecommunications service between the U.S. and the U.S.S.R. in the Arctic region.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, Office of Engineering and Technology, FCC, (202) 653-8117.

Memorandum Opinion and Order

[File No. C4-89-003-P/L DA 89 1201]

Adopted: August 31, 1989.

Released: October 5, 1989.

By the Commission:

1. Alascom, Inc. (Alascom), requests a waiver of § 2.106 of the Commission's Rules to establish an international fixed public radiocommunication (IFPR) link between Gambell, Alaska, and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz frequency band. This frequency band is allocated domestically to the land mobile service.

2. According to Alascom, the 450-460 MHz band was chosen because the availability of equipment necessary to efficiently provide this service is limited and also because this frequency band is within the range of frequencies that have been negotiated with Soviet officials. Alascom advises that this will be the first direct point-to-point, terrestrial telecommunications service between the U.S. and the U.S.S.R. in the Arctic region. Alascom states that the proposed IFPR link will extend about 60 miles across the Bering Strait between the United States and the Soviet Union. Alascom points out that this area, slightly south of the Arctic Circle, is one of the most isolated and desolate on earth and the probability of the proposed link causing interference to other stations is extremely remote.

3. Alascom states that there is ample precedent for granting the requested waiver. On October 9, 1974, the Commission granted a similar authorization to RCA Alaska Communications, Inc., a predecessor of Alascom. That license authorized the provision of temporary fixed service throughout the state of Alaska on several frequencies, including some in the 450-460 MHz range. Therefore, Alascom contends that the Commission has waived its Rules, when there is sufficient cause, in order to foster common carrier service in remote locations.

4. The U.S. State Department, on April 3, 1989, approved the telephone interconnection between the two countries contingent upon satisfaction of any Coordination Committee on Export Control (COCOM) requirements; completed coordination with the Department of Commerce; and, compliance with appropriate FCC rules.

On July 27, 1989, the Common Carrier Bureau issued a Special Temporary Authority to construct the proposed link.

5. We note that the proposed IFPR link will improve radiocommunications between the U.S. and the U.S.S.R. We agree with Alascom that it is extremely unlikely that any other users of the spectrum will be affected by granting the waiver due to the orientation of the link over water and due to the desolate environment. We note that no objections to Alascom's application were filed. We also are cognizant of the special circumstances in coordinating frequencies and suitable equipment with the U.S.S.R. We agree that precedent exists for such a waiver. In light of these factors, we conclude that the waiver is in the public interest and we are granting the waiver as requested.

6. Accordingly, *it is ordered,* that the Table of Frequency Allocations, § 2.106 of the Commission's Rules, *Is Waived,* to permit Alascom, Inc. to establish an IFPR link between Gambell, Alaska, U.S.A. and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz band. This action is taken pursuant to the authority of 47 U.S.C., 154(i), 302 and 303, and pursuant to authority delegated to the Chief Engineer in § 0.241 of the Commission's Rules, 47 CFR 0.241

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 89-24096 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90772-9172]

RIN 0648-AC26

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice; Interpretive rule for requirements for stowage of nets.

SUMMARY: NOAA issues this notice pursuant to authority of 50 CFR 651.20(f)(3) which authorizes the Director, Northeast Region, NMFS, (Regional Director) to specify alternative methods of net storage by notice in the Federal Register. This notice provides guidance for proper stowage of small mesh nets under the two approved alternatives at 50 CFR 651.20(f) (1) and (2). This guidance will provide flexibility for fishermen while promoting compliance and will maintain reasonable enforceability.

EFFECTIVE DATE: October 6, 1989 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Management Specialist, 508-281-9273.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared and submitted Amendment 2 to the Fishery Management Plan for the Northeast Multispecies Fishery. The amendment was approved and a rule implementing that part of the amendment that authorizes the Regional Director to specify alternative methods of net stowage by notice in the Federal Register was published on January 31, 1989 (54 FR 4796). Section 651.20(f)(3) of the multispecies regulations authorizes this guidance for stowing nets. The Northeast Region, NMFS, worked with the Council's Groundfish Committee and the U.S. Coast Guard to develop this guidance for stowing nets on reels in a manner that complies with 50 CFR 651.20(f)(2).

Classification

This action is authorized by 50 CFR part 651, and is taken in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, has determined that because this action is an interpretive rule, notice and opportunity to comment, and 30-day delay of its effective date, are not required pursuant to section 553(b)(A) and (d)(2) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: October 5, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR Part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.20 is amended by adding the following note at the end of the section to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

* * * * *

Note to § 651.20:

For guidance concerning the manner of securing nets, see appendix A of this part.

PART 651—[AMENDED]

3. Part 651 is amended by adding an appendix following § 651.20 to read as follows:

Appendix A to § 651.20—Guidance on Securing Nets

Guidance on securing nets: A net is considered to be stored below deck if it is located below the main working deck from which the net is deployed and retrieved. Towing wires (any wires including the "leg" wires), must be detached from the net.

A net is considered to be stowed and lashed down on deck if it is fan folded and bound around its circumference and securely fastened to the deck or the rail of the vessel. The towing wires (any wires including the "leg" wires) must also be detached from the net.

A net on a reel is considered to be "stowed and lashed down on deck" only if the entire surface of the net on the reel is covered with canvas or similar material which is securely bound, the towing wires (any wires including the "leg" wires) are detached from the net, and the cod end is removed from the net and stored below deck or stowed in accordance with §§ 651.20(f)(1) and 651.20(f)(2) as interpreted in the first two paragraphs of this Appendix.

[FR Doc. 89-24091 Filed 10-6-89; 3:58 pm]

BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 90775-9215]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; corrections.

SUMMARY: This document corrects the effective dates for a paragraph suspended and a paragraph added to 50 CFR 662.20 relating to harvest quotas that was implemented in the emergency interim rule for the Northern Anchovy Fishery, published September 29, 1989 (54 FR 40112).

EFFECTIVE DATES: The emergency rule is effective from 0001 hours Pacific Daylight Time (PDT) September 25, 1989, until 2400 hours PDT December 23, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213-514-6667.

In FR Doc. 89-22979 beginning on page 40112 in the issue of September 29, 1989, make the following corrections.

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PART 662—[CORRECTED]

On page 40113, column two, immediately under the authority citation, instruction paragraph 2 is revised to read as follows:

§ 662.20 [Corrected]

"2. In § 662.20, paragraph (b)(1) is suspended from September 25, 1989, to December 23, 1989, and a new paragraph (b)(3) is added to be effective from September 25, 1989, to December 23, 1989, to read as follows:"

Dated: October 6, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-24144 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 90775-9225]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA announces the final estimated spawning biomass and determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1989–90 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. Those regulations require this announcement to be made on or about August 1 each year. The optimum yield (OY) is set at 4,900 metric tons (mt) plus an unspecified amount for use as live bait; there is no U.S. harvest quota for reduction fisheries. There is no allocation for joint venture processing (JVP), nor for total allowable level of foreign fishing (TALFF).

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213–514–6667.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region (Regional Director) has made a final determination that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax* is estimated to be 237,000 mt. The biomass estimate is derived from, and is equivalent to, the Egg Production Method of measurement, but is based on the Stock Synthesis Model. Documentation of the spawning biomass estimate is contained in Administrative Report LJ–89–17, published by the Southwest Fisheries Center, NMFS. As required by the FMP and its implementing regulations, the Regional Director calculated preliminary determinations of harvest quotas for the 1989–1990 anchovy fishing season, which were published with a request for comments in the **Federal Register** on August 22, 1989 (54 FR 34800). No public comments were received during the comment period. The preliminary determinations were discussed at a public meeting of the Pacific Fishery Management Council (Council) on July 13, 1989. Based on calculations called for by the FMP and Council discussion, the Regional Director establishes the preliminary determinations as final harvest quotas, as follows:

1. The total U.S. harvest quota or OY of northern anchovy is 4,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes resulting from the annual process specified in the FMP is zero. This process provides no reduction harvest allocation when the spawning biomass is below 300,000 mt. As is explained below, a limited reduction fishery for the 1989–1990 fishing season has instead been authorized by emergency rule.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt.

4. The domestic annual processing capacity (DAP) is 1,468 mt. The FMP states that this amount equals the maximum level of reduction plus non-reduction processing during the previous 3 years.

5. There is no U.S. harvest limit for the live bait fishery.

6. The amount allocated to JVP is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 1,468 mt. This is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. When the spawning biomass is below 300,000 mt, there is no allocation for foreign fishing.

As mentioned in the **Federal Register** announcement of August 22, 1989, estimated northern anchovy total biomass is high and spawning biomass is low; final figures are 1,008,000 mt and 237,000 mt respectively. The unusually low spawning biomass relative to the total biomass is primarily due to the effects of cold water and is not due to recruitment failure or overfishing. The Council, noting the high anchovy standing stock abundance and seeing no reason to rule out all reduction fishing, decided at the July 13, 1989, meeting to request that the Secretary of Commerce issue an emergency rule to permit a 5,000 mt reduction fishery during the 1989–1990 season to accommodate the unusual stock conditions caused by unusually low sea surface temperatures. The Council also decided to prepare an amendment to the FMP to provide for a minimum reduction quota based on total biomass. The Secretary published an emergency rule authorizing a 5,000 mt reduction fishery for the 1989–1990 season in the **Federal Register** (54 FR 40112, September 29, 1989). The quotas published in this notice do not affect that emergency rule in any way.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 6, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-24145 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the Southwest Outside/East Yakutat districts of the Eastern Regulatory Area of the Gulf of Alaska will be taken by October. 7, 1989. The Secretary of Commerce (Secretary) is prohibiting retention of sablefish by longline vessels fishing in these districts from 12:00 noon, Alaska daylight Time (A.d.t), on October 7, 1989, through December 31, 1989

DATES: Effective from 12:00 noon, A.d.t., on October 7, 1989, until midnight, Alaska Standard Time, December 31, 1989. Comments will be accepted until October 23, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service P.O. Box 21668, Juneau, Alaska 99802–1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Southeast Outside/East Yakutat districts of the Eastern Regulatory Area to 95 percent of the TAC. The 1989 TAC specified for sablefish in these districts is 5,980 mt (54 FR 6524, February 13, 1989); the portion of the TAC allocated to hook-and-line gear is 5,680 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish started April 1, 1989, in the Gulf of Alaska. The Southeast Outside/East Yakutat districts hook-and-line fishery for sablefish was closed on April 17, 1989 (54 FR 16126, April 21, 1989), and that notice was subsequently modified to allow retention of sablefish as bycatch while fishing for other groundfish species, effective May 3, 1989 (54 FR 19375, May 5, 1989). The Regional Director reports that vessels using hook-and-line gear have landed 5,666 mt of sablefish through September 16, 1989, in the Southeast Outside/East Yakutat districts. The balance of the TAC of 5,680mt allocated to hook-and-line gear is expected to be harvested by October 7, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting retention of sablefish caught with hook-and-line gear in the Southeast Outside/East Yakutat districts of the Eastern Regulatory Area effective 12:00 noon, A.d.t., October 7, 1989.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Southeast Outside/East Yakutat districts, will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on this notice of closure may be submitted to the Regional Director at the address above until October 23, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the **Federal Register** a notice that either continues effectiveness of the closure, responding to comments received, or that modifies or rescinds the closure.

Classification

This action is taken under § 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 6, 1989.

David S. Crestin,

Acting Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24146 Filed 10-13-89; 4:41 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaskan groundfish to the domestic annual processing (DAP) and to the joint venture processing (JVP) portions of the domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective October 6, 1989. Comments will be accepted through October 21, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Initial specifications of DAH, DAP, and JVP for groundfish of the Bering Sea and Aleutian Islands for 1989 were published on January 25, 1989 at 54 FR 3605. The same notice established a 15-percent non-specific reserve and then apportioned additional amounts from that reserve to JVP for squid, arrowtooth flounder, and "other species" in order to provide bycatch amounts for other targeted JVP fisheries.

Many of the JVP amounts were revised on September 3, 1989 (54 FR 37112, September 7, 1989) based on new information about DAP potential. This information indicated some amounts excess to DAP needs in 1989, as well as DAP amounts that could require supplementation. Amounts that may be needed to supplement DAP were retained in the non-specific reserve, to be apportioned to DAP if the need arose later in the year. Amounts in DAP and reserve in excess of DAP requirements were apportioned to JVP.

On September 16, 1989 (54 FR 38686, September 20, 1989), the DAP for Atka mackerel was supplemented by 3,043 metric tons (mt) of the non-specific reserve.

Reapportionment

The following actions are taken by this notice to reapportion groundfish from the non-specific reserve.

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TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[Values are in metric tons]

		Current	This action	Revised
Greenland turbot				
TAC=8,000; ABC=20,300	DAP	6,600	+1,200	7,800
	JVP	200	0	200
Arrowtooth flounder				
TAC=5,100; ABC=163,700	DAP	5,100	0	5,100
	JVP	700	+2,000	2,700
Total (TAC=2,000,000)	DAP	1,348,357	+1,200	1,349,557
	JVP	602,089	+2,000	604,089
	Reserves	49,554	−3,200	46,354

To the BSAI DAP

Domestic processors have reported higher than anticipated catches of Greenland turbot during September. At recent catch rates, the current quota (6,600 mt) will be reached shortly. In order to extend the DAP fishing season and allow full use of the available Greenland turbot TAC, 1,200 mt is apportioned from the non-specific reserve to DAP for Greenland turbot. This apportionment does not result in overfishing of Greenland turbot, as the resulting total allowable catch amount is less than its acceptable biological catch (ABC).

To the BSAI JVP

JVP fisheries have experienced higher than anticipated catches of arrowtooth flounder. Rather than require arrowtooth flounder to be discarded, as would occur if the JVP quota were reached, the JVP for arrowtooth flounder is increased by 2,000 mt. This amount is in excess of DAP needs.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would be required to terminate a fishery earlier than necessary. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 6, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24148 Filed 10-6-89; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 981

[AMS-FV-89-090PR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to change the administrative rules and regulations established under the Federal marketing order for California almonds to allow handlers to receive credit against their assessments for payments for color advertisements enclosed in frames mounted on fixtures outside and in front of retail food stores. This proposed change is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information. The change would give handlers additional flexibility in obtaining credit against their advertising assessments under the marketing order for California almonds.

DATES: Comments must be received by November 13, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20250-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 674), hereinafter referred to as the "Act."

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the FRA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the almond marketing order. The proposed change would give handlers an additional opportunity to receive credit against the creditable portion of their annual assessments. It is the view of AMS that the change would allow almond handlers greater flexibility in the advertising methods for which they may receive credit while it would not impose any additional costs on handlers.

This action proposes to revise § 981.441 of subpart—Administrative Rules and Regulations and is based on a recommendation of the Board and other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against that portion of such handlers' assessment obligations which is designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) further provides that before crediting is undertaken, and after recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer the order provisions for crediting handler marketing promotion and paid advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion, including paid advertising. Section 981.441(c) prescribes requirements which specifically apply to crediting for paid advertising. This action proposes to revise § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for processed color advertisements of almonds enclosed in frames mounted on fixtures outside and in front of retail food stores. This action also proposes to revise § 981.441(c)(6)(v) to require handlers desiring to receive credit for this type of advertising to submit documentation to the Board to verify that such advertising was conducted and payments were made. Handlers would be required to submit a copy of the supermarket invoice to the advertising agency, a copy of the actual advertisement, a published rate card from a nationally recognized firm, and a copy of the agency invoice to the handler.

Handlers would have to conduct this type of advertisng through an

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advertising firm. The advertising firm would pay the retail food store for displaying the advertisement. Therefore, the payment to the retail food store would not come directly from the handler. The required documentation would allow the Board to readily differentiate payments for this type of creditable advertising from other types of payments often may by handlers to retail food stores, such as payments for shelf space, which are not creditable expenditures. This is necessary as both payments for advertising and for shelf space are customarily consolidated under the general heading "advertising" on invoices from retailers to handlers.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have been added to the order's rules and regulations. The Board has attempted to add new activities which benefit a wide range of handlers who market their almonds in different types of outlets. This action could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments and increase almond sales through additional promotion for the benefit of all handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations proposed to be revised by this action have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0071.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 981 is proposd to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–74.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraphs (c)(3)(i) and (c)(6)(v) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium: (A) For a genetic advertisement of California almonds; (B) for an advertisement of the handler's brand of almonds; (C) when either of these advertisements includes reference to a complementary commodity or product; (D) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler; (E) for in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm: (*1*) Fixed position advertisements must include at least two of the following: (*i*) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts; (*ii*) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (*iii*) processed color advertisements enclosed in frames and mounted on a supermarket shelf; (*2*) Video advertisements must be shown on a fixed video monitor running television commercials or infomercials for specific products on a rotating basis; or (F) for processed color displays enclosed in frames mounted on fixtures outside and in front of retail food stores when payments are made through an advertising firm.

* * * * *

(6) * * *

(v) For in-store supermarket advertising and for mounted advertising enclosed in frames outside and in front of retail food stores, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

* * * * *

Dated: October 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–24151 Filed 10–13–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD04

Nuclear Power Plant License Renewal; Public Workshop on Technical and Policy Consideration

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) has been considering what requirements should be placed on nuclear power plants in granting licenses to operate beyond the term of the initial 40-year license. Public comments on license renewal requirements have been solicited twice through the **Federal Register**. The first solicitation on seven major license renewal issues was published on November 6, 1986. The second solicitation was part of an advanced notice of proposed rulemaking published on August 29, 1988. The advance notice requested comments on NUREG–1317, "Regulatory Options for Nuclear Plant License Renewal," August 1988. Comments were summarized and analyzed in NUREG/CR–5332, "Survey and Analysis of Public Comments on NUREG–1317: Regulatory Options for Nuclear Plant License Renewal," March 1989. The NRC staff has now completed development of a tentative statement of regulatory requirements for license renewal. The staff wishes to receive comments on a number of specific technical and policy issues prior to drafting a proposed rule and draft regulatory guides for license renewal. In order to solicit information and comments on these issues from the public and regulated industry, the staff plans to conduct a workshop. Written comments on the material covered in the workshop will also be welcome. Advance notification of desire to make statements during the workshop is requested.

DATES: Notification of intent to attend the workshop, concurrent session preferences, and desire to make a statement during a specific session should be received by the staff no later than November 1, 1989. More detailed information on each session will be available after October 31, 1989. This information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it. The workshop will be held on November 13 and 14, 1989. Written comments on matters covered by the workshop received by December 1, 1989, will be considered along with comments made during the workshop when drafting a proposed rule and draft regulatory guides.

ADDRESSES: The workshop will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 22091. Notification of intent to attend, desire to make a statement during a specific session, and written comments should be sent to Donald Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Donald Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3936.

SUPPLEMENTARY INFORMATION:

Introduction

The workshop has been arranged for the purpose of eliciting information and views on the approach to license renewal rulemaking summarized in this notice. Special emphasis will be placed on substantive technical issues. The scope includes a broad range of regulatory issues, identification and bounding of the significant technical issues bearing on safety, the need for standards, and the appropriate role and scope of deterministic and probabilistic risk assessments in the safety evaluations involved. Views on the schedule for the rulemaking and alternatives for addressing National Environmental Policy Act (NEPA) issues are also included. The workshop will not deal with the numerous procedural issues which are central to the specification of a license renewal rule. Public comments have been solicited previously on two occasions. A solicitation for comments on seven major procedural and technical issues was published on November 6, 1986, "Request for Comments on Development of Policy for Nuclear Power Plant License Renewal," (51 FR, Vol. 51, pages 40334–40335). On August 29, 1988, an advanced notice of proposed rulemaking was published (53 FR, Vol. 53, pages 32919–32920). This notice solicited comments on NUREG–1317, "Regulatory Options for Nuclear Plant License Renewal," August 1988. Comments on the full range of procedural as well as technical and policy issues will be solicited again when a proposed license renewal rule is published about late May 1990.

The following material includes a tentative workshop agenda, discussion of how the workshop will be organized and conducted, and information on issues and questions that will be covered in the workshop. Following the discussion of the workshop organization and conduct, a discussion is provided of the staff's preliminary regulatory philosophy and guiding principles for developing a proposed rule on license renewal. This discussion is followed by an outline of a conceptual approach to a license renewal rule, which illustrates how a rule embodying these principles might be structured. The primary technical focus of the workshop will be on sections XX.9, XX.19 and XX.25 of the rule outline. More detailed information on each session will be available after October 31, 1989. This information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it. The workshop discussion and comments will assist the staff in developing the elements of a proposed license renewal rule.

Tentative Agenda

November 13, 1989

7:30 am Registration
8:30 am Introduction
8:45 am Regulatory Philosophy and General Approach
9:30 am Session 1—Overview of Conceptual Approach to a License Renewal Rule
10:00 am Break
10:15 am Session 1 Continued
12:00 pm Lunch
1:15 pm Concurrent Sessions (with one 20-minute break); Session 2—Reactor Pressure Boundary; Session 3—Fluid and Mechanical Systems; Session 4—Screening Systems, Structures and; Components Important to Safety; Session 5—Continuation of Session 1
5:00 pm Adjourn

November 14, 1989

8:00 am Registration
8:30 am Concurrent Sessions (with one 20-minute break); Session 6—Containments; Session 7—Electrical Systems; Session 8—Environmental Effects
11:45 am Lunch
1:15 pm Summary of Breakout Sessions
2:45 pm Break
3:00 pm Comments and Discussion
4:00 pm Recap and Conclusions
4:30 pm Adjourn

Workshop Content and Structure

The workshop has been designed to elicit information and views on the policy and substantive technical issues involved in the nuclear power plant license renewal rulemaking and regulatory guide development. The scope of issues to be covered by the workshop is broadly defined in the subsequent sections, "Preliminary Regulatory Philosophy and Approach for License Renewal Regulation" and "Outline of a Conceptual Approach to a License Renewal Rule." Discussion of the substantive technical requirements will be guided by sections XX.9 Content of Application—Technical Information, XX.19 Standards for Issuance of Renewal License, and XX.25 Additional Records and Recordkeeping Requirements in the outline of a conceptual approach.

The opening presentation on the staff preliminary regulatory philosophy and approach for license renewal is intended to provide an overview of the regulatory philosophy that the staff proposes as a basis for developing policy, technical, and legal positions regarding a license renewal rule. No comments will be taken at this point in the program. Opportunity for comment on issues raised in the opening presentation will be available as the issues are discussed in Sessions 1 and 5.

In Session 1 the staff will systematically review the spectrum of policy and technical issues that must be dealt with in developing a rule and regulatory guidance. The session will result in a common framework of information and understanding to be taken into the remainder of the sessions. Also the range of attendee views on various issues will begin to emerge through their comments. Areas to be covered include overall approach to formulating a rule, licensing basis for renewal, screening methodology, content of application, trending and recordkeeping, and National Environmental Policy Act (NEPA) requirements.

In Session 1 the staff will review and explain the requirements proposed in the outline and current thining on the scope and content of regulatory guides. The staff is considering two key regulatory guides to accompany the rulemaking.

1. Guidance for Developing Technical Information for Nuclear Power Plant Operating License Renewal Applications. The scope of this guide will include:

- Methodology for selection of systems, structures, and components
- Identification of stressors and environment
- Identification of degradation sites at the installed location
- Aging mechanisms
- Tracking and recordkeeping

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- Maintenance, refurbishment, replacement

2. Screening and Selection of Important-to-Safety Systems, Structures, and Components. The scope of this guide will include:

- Deterministic approach
- Probabilistic risk method
- Hybrid approach involving deterministic and probabilistic methods

Two additional topics also have been identified for potential regulatory guides useful for implementing the rule.

1. Recordkeeping and Trending
2. Symbols and Criteria for Fatigue Analysis

The following set of general questions are offered to aid in moving discussion from the general requirements stated in the outline to a more detailed evaluation of the technical issues that must be resolved in order to develop the concrete regulatory language of a proposed rule and draft regulatory guides.

- To what extent is it clear how each individual requirement in sections XX.9, XX.19, and XX.25 might be fulfilled?
- To what extent might there be a redundancy with existing regulations?
- What are problems and uncertainties in fulfilling each requirement?
- To what extent can these problems and uncertainties be dealt with in a rule?
- To what extent should these problems and uncertainties be dealt with in staff guidance documents? What guidance documents should be developed?
- To what extent should the license renewal process rely upon probabilistic risk assessment (PRA) insights, and what value might be associated with the conduct of a Level 3 PRA?

In Sessions 2, 3, 4, 6, and 7 the issues developed in Session 1 will be examined by applying these questions to four system, structure, and component groupings and to the screening of systems, structures, and components important to safety. In Session 5 the policy issues identified in Session 1 will be examined in greater depth.

Session 7 on environmental effects will explore the scheduling and merits of preparing a generic environmental assessment or impact statement, the findings of which could be codified in 10 CFR part 51. This would generically consider and bound to the extent possible the environmental effects of license renewal, thereby limiting the scope of effects that need to be evaluated in individual license renewal actions. Issues to be addressed include:

- Sources of initiators of environmental effects
- Scope and magnitude of potential effects
- Scope of severe accident analyses
- Spent fuel storage considerations
- Alternative sources of energy, scope of treatment
- Experimental knowledge, environmental studies, analyses and data sources
- Potential effectiveness of a generic environmental impact statement in bounding future plant-specific environmental impact statements

At each session the staff will first make a presentation then comments will be taken from parties in the order in which they notified the staff of their intent to comment in a specific session. The order for comment will be:

1. Parties who notified the staff by November 1, 1989
2. Parties registering to comment prior to 8:30 a.m. the day of the session
3. Parties who have not given prior notice

Comments will be limited to 15 minutes for those representing organizations and 5 minutes for individuals. These limits may be adjusted up or down based on the number of commenters. A transcript will be made of the complete workshop.

Preliminary Regulatory Philosophy and Approach for License Renewal Regulation

The following discussion presents a general overview of the regulatory philosophy which the staff proposes be used in developing the policy, technical, and legal positions regarding a license renewal rule.

The regulatory policy that the staff proposes for license renewal is founded on two key principles. The first principle is that the "current licensing basis" at a specific reactor provides and maintains a level of safety for operation during the initial term that is sufficient to provide adequate assurance of the public health and safety and common defense and security, and that the same level of safety is also adequate for continued operation during any renewal period. The second and equally important principle is that any license renewal policy must provide assurance that the level of safety provided by a nuclear power plant's current licensing basis will not degrade during the renewal period.

The first principle is founded on the Commission's initial finding of adequate protection for the initial design and construction of a nuclear power plant, as well as the Commission's continuing oversight and regulatory actions with respect to nuclear power plants. The Commission may issue an operating license to a utility only if it can make the findings required by 10 CFR 50.57. More specifically, the Commission must conclude that the facility will operate in compliance with the application as amended and the rules and regulations of the Commission. Further, the Commission must conclude that the authorized activities can be conducted without endangering the health and safety of the public and that the issuance of an operating license will not be inimical to the common defense and security or the public health and safety. Thus, when the Commission issues a [illegible] initial operating license, it has determined that the design, construction, and proposed operation of the facility satisfies all of the Commission's requirements and provides adequate protection of the public health and safety and common defense and security.

However, the licensing basis upon which the Commission found adequate protection does not remain fixed for the term of the operating license. Rather, the licensing basis continues to evolve and expand during the term of operation, in part because of the continuing regulatory activities of the Commission. These include research, inspections, and the identification and resolution of potential safety concerns. New regulations are promulgated by the Commission that may require plant modifications on a plant-specific basis; generic and unresolved safety issues are resolved that may recommend that licenses evaluate and modify their designs; and additional evaluations are routinely required as the Commission identifies areas of plant operation that require additional understanding. Thus, the Commission-required changes to a plant's licensing basis provides ongoing assurance that the original Commission conclusion of adequate protection of the health and safety and common defense and security continue to remain valid throughout the remaining term of the facility's operating license.

The second principle follows from the first: if the current licensing basis provides adequate assurance to public health and safety and common defense and security, then licensees must continue to comply with the current licensing basis as it evolves in order for the Commission to have continued assurance of adequate protection. The staff believes that assurance of such compliance into the renewed period of operation rests on two factors: licensee programs for ensuring continued safe operation of the plant, and the Commission's regulatory oversight programs. The licensee programs include self-inspection, maintenance, and surveillance programs that monitor and test the physical condition of plant equipment as the plant operates. Through these programs, licensees identify the degradation of components to a number of different environmental stressors and are, in general, able to replace or refurbish their equipment so that the necessary safety features would work when actually called upon under transient or accident conditions.

The Commission employs an oversight role in ensuring that the licensees programs are effective. During the [illegible] inspection program. The NRC inspection program historically has been constructed around a series of inspection procedures that provide for the routine examination of activities at an operating nuclear facility on a recurring schedule. The NRC inspection program employs a balanced look at a cross section of plant activities considered important to maintaining safety. It has the specific purpose of obtaining sufficient information on licensee perfomance, through direct observation and verification of licensee activities, to determine whether the facility is being operated safely; whether the licensee management control program is effective; and whether the regulatory requirements are being met. The program includes inspection of the licensee's performance in functional technical disciplines such as operations, radiological controls, maintenance, surveillance, environmental protection, physical security, and engineering. It is important to note, however, that implementation of the Commission inspection program does not supplant the licensee's programs or responsibilities. Rather, it provides a feedback mechanism and an independent verification of the effectiveness of the licensee's implementation of its programs to ensure that operations are being conducted safely and in accordance with applicable NRC requirements.

The staff is currently developing an approach for license renewal that embodies the principles outlined above. It is the staff's intention that the license renewal rule and accompanying regulatory materials will clearly define the safety requirements that the licensee must address in order for the Commission to approve the licensee's renewal application. The staff's current effort is focusing on two areas: (1) The definition of and regulatory requirements relative to the "current licensing basis," and (2) defining the technical requirements necessary to ensure continued assurance of adequate protection during the renewed term of operation, with emphasis on degradation and aging.

With regard to the "current licensing basis," the staff intends to propose that the license renewal rule require the renewal application to contain a summary of all regulatory requirements and commitments so that the "current licensing basis" for the plant will be clearly understood and located in one document—the renewal application (which would be updated to the date of issuance of the renewal license). The staff is presently working to define the [illegible] currently being developed by the staff, it would include all the information and commitments contained in the current FSAR, as well as other docketed correspondence.

With respect to degradation and aging in the renewed term of operation, the staff is working to determine what licensee actions are required to provide assurance that systems, structures, and components important to continued safe plant operation will not be degraded by aging mechanisms such as fatigue, erosion, thermal or radiation-induced embrittlement, corrosion, service wear, and chemical effects. Those structures, systems, and components that are effectively covered by existing ongoing NRC requirements and/or licensee programs, or are not subject to aging mechanisms need not be addressed in the application (and need not be within the scope of the hearing process). While not completely developed at the moment, the scope of structures, systems and components (SSCs) to be addressed will probably be similar to that identified in the rulemaking for environmental qualification of electrical equipment. Licensees would then be required to identify where in existing plant programs, the degradation mechanisms are being monitored to provide reasonable assurance that replacement or refurbishment schedules for degrading equipment are being developed or service lifetime for equipment established. The staff is also considering whether additional recordkeeping requirements should be developed that would require retention of documentation regarding the design and environmental conditions for which the equipment must function, and the degradation mechanisms that might exist at the installed equipment location. A trending system of performance and key parameters may also be required to be instituted.

The staff is considering requirements related to severe accidents that must be satisfied as a precondition to submission of a renewal application. In summary, the staff would propose that a renewal applicant have completed both the IPE and Accident Management programs. Further, the renewal applicant should have completed or have scheduled all planned plant modifications that were identified through these severe accident programs. The focus of this requirement would be to ensure that closure of the severe accident issues have been reached for the plant under its initial license prior to applying for the renewed license. The staff intends to propose that the burden continue to be on the facility provides adequate protection to the public health and safety and common defense and security, based upon the following factors: (1) Whether the current licensing basis has been accurately described, (2) whether the licensee has described an adequate program to address degradation or aging of SSCs that are important to safety, and (3) whether severe accident issues have been adequately addressed and resolved. Certain issues would not have to be addressed in the renewal application, although the description of "current licensing basis" for the facility would include the regulatory requirements and licensee commitments with respect to these issues, for purposes of having a legal basis for enforcement action during the renewed term. Issues likely to be excluded from the scope of the renewal decision include staffing, training program, organizational structure, operation QA program, health physics/ALARA programs, security program, procedures, structures, systems, and components covered under the inservice inspection (ISI) and inservice testing (IST) programs, containment testing and periodic surveillances specified in the technical specifications, emergency planning and EQ matters addressed by § 50.49, as well as others. Any lack of compliance by a licensee with these requirements is more appropriately the subject of a § 2.206 petition, and the circumstance of a renewal application should not provide a forum for assessing compliance with requirements that do not form the basis for the Commission's renewal decision. The license renewal rule, together with the recent changes to Part 2, will provide a framework for focusing any necessary hearings on the safety issues relevant to the license renewal decision.

The staff intends to propose that no application for renewal will be accepted more than 20 years before the expiration of the current operating license. In addition, it would propose that the

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renewal term of a renewed license be limited to the balance of years remaining on the license currently in effect plus no more than an additional 20 years. The staff has not identified a firm technical concern that would justify this limitation; however, the staff wishes to proceed cautiously when projecting the remaining useful life of present reactors.

The staff believes that the timely renewal provision of 10 CFR 2.109 must be revised. Various estimates have been made concerning what is a reasonable time period for the review of a renewal application. Estimates by both the Commission and the industry suggest that a 2-to-3-year period (including hearings) may be necessary to approve a renewal of an operating license. Provided that a sufficient application is made in accordance with the timely renewal provisions of the revised § 2.109, plant operation under the provisions of the prexisting license may continue while the renewal application is under review. Recognizing that there is not a strong basis for selecting a particular cutoff time, the staff intends to propose that a sufficient application for renewal of an operating license should be received no later than 3 years prior to the expiration of the operating license in effect for the timely renewal provision to apply.

The staff will propose that the renewal license be a type of license that would become effective immediately and would void the license previously in effect. This license, termed a "supersession license," would remove any ambiguity that would otherwise exist concerning the conditions under which a licensee would operate a plant during any period that may overlap the issuance of the renewal license and the term of the pre-existing license.

Under §§ 50.54(bb) and 50.75, licensees are required to submit a funding plan for disposal of irradiated fuel and a funding plan for decommissioning. One year before the operating license is to expire, licensees are required by § 50.82 to file an application for termination of the operating license together with a decommissioning plan. The staff is considering exempting plants that have submitted acceptable renewal applications from these requirements while the applications are under staff review, but in no case more than 1 year after the expiration of the original operating license. If submission of the materials required by §§ 50.75(f), 50.54(bb), and 50.82 has been postponed and the license should withdraw its renewal application, or if the application is denied, the staff believes that the licensee should provide the necessary plans no more than 6 months later.

With regard to compliance with the requirements of the National Environmental Policy Act (NEPA), the staff has determined that an environmental assessment is required at minimum to support the license renewal rulemaking. Apart from this task, the staff is considering two changes to the current regulations. First, the staff is evaluating whether the requirement in 10 CFR 51.20(b)(2) that an EIS be prepared for every license renewal application should be modified to allow the NRC the option of preparing an environmental assessment for the prupose of determining whether an EIS should be prepared. Second, the staff is considering whether either a generic assessment or a generic environmental impact statement (GEIS) should be prepared to describe and evaluate, on a generic basis, any environmental impacts that are common to, or may be enveloped by, all (or a significant number of) nuclear power plants. It is the staff's intention that if such a generic evaluation is prepared, its substantive findings would be adopted as a rule. The findings so codified could not be challenged in any individual license renewal proceeding unless an intervenor could show, on the basis of new information, that the evaluation and conclusions set forth in the rule were incorrect for the particular facility.

The staff does not intend to revise part 51's requirement that a renewal applicant submit a supplement to the existing environmental report prepared in connection with the initial licensing. Some clarifying changes in part 51 may be necessary to make clear that the supplemental environment report (ER) in support of a license renewal application should address those changes that have occurred since the initial licensing. In addition, if the Commission determines that a generic assessment or generic statement should be prepared, part 51 would be amended to specify that the ER provide a comparison of the plant-specific site parameters to those used in the generic document to identify environmental issues outside the scope of the generic evaluation. It would be necessary to compare the existing plant data with those used generically to ensure that the plant conditions were bounded by the generic evaluation.

The staff intends to propose a change to the Backfit Rule, 10 CFR 50.109, to specifically designate the issuance of a renewal license as an event after which the requirements of the Backfit Rule would apply. As presently written, the Backfit Rule does not specifically refer to renewed licenses. The proposed change would remove any ambiguity in this regard.

Outline of a Conceptual Approach to a License Renewal Rule

XX.1 Purpose and Scope

This subpart governs the issuance of renewed operating licenses for nuclear power facilities licensed pursuant to sections 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

XX.3 Definitions

As used in this part,

(a) "Current licensing basis" means the original licensing basis as described in the licensee's Final Safety Analysis Report (FSAR) at the time the initial license was granted plus those additional requirements that have been imposed and those commitments that have been made by the licensee during the period of plant operation up to the time of application for license renewal. This includes, but is not limited to, plant-specific compliance with the Commission regulations as prescribed in parts 2, 19, 20, 21, 30, 40, 50, 51, 55, 72, 73, 100 and the appendices thereto of title 10 of the Code of Federal Regulations; orders; license conditions; exemptions, except for those which have time dependence based on the expected plant life or whose technical evaluation would be affected by aging degradation; adjudicatory decisions; and technical specifications. In addition, the current licensing basis would include written commitments made in docketed correspondence such as responses to NRC bulletins and generic letters and other licensee correspondence.

(b) "Degradation mechanisms" means the aging phenomena identified in paragraph XX.9(c)(3) of this subpart.

(c) "Systems, structures, and components (SSCs) important to safety" means the purposes of this subpart:

(1) Safety-related SSCs, which are those relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it is a safe shutdown condition, and the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the part 100 guidelines. Design basis events are defined the same as in 10 CFR 50.49(b)(1).

(2) Non-safety-related SSCs whose failure under postulated environmental conditions could prevent satisfactory accomplishment of safety functions specified in subparagraphs ( ) through ( ) of paragraph ( ) of this definition by the safety-related SSCs.

(3) Certain post-accident monitoring equipment.

(d) "Nuclear power facilities" means a commercial nuclear power facility of a type described in 10 CFR 50.21(b) or 50.22.

(e) "Renewal term" means the period of time which is the sum of the remaining number of years on the operating license currently in effect, plus the additional amount of time beyond the expiration of the operating license (not to exceed 20 years) which is requested in the renewal application. The total number of years for any renewal term shall not exceed 40 years.

(f) All other terms in this part have the same meaning set out in 10 CFR 50.2 or section 11 of the Atomic Energy Act, as applicable.

XX.5 Filing of Application

(a) The filing of an application for a renewed license shall be in accordance with subpart A, part 2, and §§ 50.4 and 50.3 of this part.

(b) An application for a renewed license shall not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.

(c) An applicant may combine an application for a renewed license with applications for other kinds of licenses.

(d) An application may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission, provided that such references are clear and specific.

(e) Applications shall be prepared such that all Restricted Data and other defense information are separated from unclassified information, in accordance with § 50.33(j).

(f) Notwithstanding § 2.109 of this title, a sufficient application for renewal of a nuclear power plant operating license must be filed no later than 3 years prior to expiraton of the existing operating license for the timely renewal provision of that section to apply.

XX.7 Contents of Application—General Information

(a) Each application shall provide the information specified in § 50.33 (a) through (e), (h), (i) of part 50.

XX.9 Contents of Application—Technical Information

Each application for a renewed license shall include a Final Safety Analysis Report (FSAR). The FSAR shall include information that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components as a whole. Each FSAR shall include the following information:

(a) *Identification of Current Licensing Basis*—A description of the current licensing basis for the facility, including all regulations and exemptions therefrom, orders, license conditions, regulatory guides, and commitments made by the licensee in response to bulletins and generic letters.

(b) *Compliance with Current Licensing Basis*—[Certification that/ description and analysis of how] the facility complies with the current licensing basis.

(c) *Degradation*—An evaluation demonstrating that degradation of the facility's structures, systems, and components have been identified, evaluated, and properly accounted for to ensure that the current licensing basis, including margins of safety inherent in the facility's licensing basis, will be maintained throughout the term of the renewed license. This evaluation shall:

(1) Identify, using an acceptable methodology, all systems, structures, and components important to safety;

(2) Identify the design requirements and functions and environmental conditions under which the equipment must operate, such as stress and loan allowables, temperature, pressure, humidity, radiation, and chemistry at the installed location and under all design basis events;

(3) Determine which of the following degradation mechanisms may affect the systems, structures, and components identified in paragraph (c)(1) above:

(i) Fatigue/Vibration
(ii) Corrosion
(iii) Erosion
(iv) Service wear
(v) Thermal embrittlement
(vi) Radiation embrittlement
(vii) Chemical and biological effects
(viii) Creep/shrinkage
(ix) Degradation due to operational environment

(4) Describe, with appropriate technical bases, what will ensure that the systems, structures, and components identified in paragraph (c)(1) will continue to maintain the design, functional, and environmental requirements identified in paragraph (c)(2) throughout the term of the renewed license, for each of the degradation mechanisms determined to be relevant under paragraph (c)(3).

(5) A description and technical basis for a program of identifying, evaluating, and trending of the effects of all relevant degradation mechanisms for all SSCs important to safety.

(d) *Severe Accident Outliers Resolutions*—Sufficient documentation showing that the Individual Plant Examination (IPE) required by Generic Letter 88–20 has been completed and approved by the NRC staff, and a description and technical basis for all staff-approved corrective actions, including an Accident Management Program, which have been or will be implemented because of the results of the IPE. For those corrective actions that have not yet been implemented, a staff-approved schedule shall be provided showing the date of completion.

(e) *Technical Specifications*—A list of, and technical bases for, all technical specifications, which shall be prepared in accordance with the requirements of § 50.36 and shall properly account for any plant modifications and the degradation mechanisms and necessary activities identified in XX.9(c) above. Revisions made pursuant to the renewal application shall be clearly identified and annotated to show their relationship to previously approved technical specifications.

XX.11 Contents of Application—Environmental Information

(a) Each license renewal application shall include a supplement to the licensee's existing environmental report that complies with the requirements of subpart A of part 51 of this title.

XX.13 Postponement of Compliance with Requirements on Decommissioning and Irradiated Fuel Management

(a) If a sufficient application for a renewed license has been submitted in a timely manner and has not been denied, the submission of a preliminary decommissioning plan required by § 50.75(f), the notification and report required by § 50.54(bb), and submission of an application for termination of license under § 50.82 shall be postponed for that period of time until a final determination of the renewal application has been made by the Commission but no later than 1 year after the expiration date of the operating license currently in effect.

(b) If submission of the materials required by §§ 50.75(f), 50.54(bb), and 50.82 has been postponed pursuant to the section above and the application for a renewed license has been denied,

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the licensee shall submit the required reports within 6 months of the disapproval.

XX.15 Report of the Advisory Committee on Reactor Safeguards

Each renewal application shall be referred to the Advisory Committee on Reactor Safeguards for a review and report. Any report shall be made part of the record of the application and made available to the public, except to the extent that security classification prevents disclosure.

XX.17 Hearings

A notice of an opportunity to request a hearing will be published in the Federal Register, in accordance with 10 CFR 2.105 of part 2. In the absence of a request therefor filed within 30 days by a person whose interest may be affected, the Commission may issue a renewed operating license without a hearing.

XX.19 Standards for Issuance of Renewed License

A renewed operating license may be issued by the Commission, up to the full term authorized by Section XX.21(b), upon finding on the basis of compliance with the standards set forth below, that there is reasonable assurance that the facility can be operated for the term of the license without endangering the public health and safety or the common defense and security:

(a) The current licensing basis for the facility has been completely and accurately described;

(b) All systems, structures, and components for the facility that are important to safety have been identified;

(c) All applicable degradation mechanisms have been identified for those structures, systems, and components;

(d) Appropriate actions have been or will be taken with respect to degradation of those systems, structures, and components, such that there is reasonable assurance that the activities authorized by the renewed operating license can be conducted in accordance with the current licensing basis;

(e) An acceptable program of identifying, evaluating and trending the effects of all relevant degradation mechanisms for all SSCs important to safety will be implemented at the plant.

XX.21 Issuance of Renewed License

(a) A renewed license shall be of the class for which the operating license currently in effect was issued.

(b) A renewed license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from the date of issuance. The term of a renewal license will be equal to the period of time remaining on the operating license currently in effect at the time of the approval of the application plus the additional period of time requested by the licensee (but no longer than 20 years), but not to exceed the estimated useful life of the facility.

(c) The renewed license shall become effective immediately upon its issuance, thereby superseding the operating license previously in effect.

(d) Each renewed license shall include appropriate provisions with respect to any uncompleted items of plant modification, and such limitations or conditions as are required to ensure that operation during the period of completion of such items will not endanger public health and safety.

XX.23 Requirements During Term of Renewed License

During the term of a renewed license, licensees shall continue to comply with all Commission regulations (including 10 CFR 50.59, 50.70, 50.71, 50.72, 50.73, 50.74, 50.75, and 50.78).

XX.25 Additional Records and Recordkeeping Requirements

A record of the documentation required by, or otherwise necessary to document compliance with the provisions of this subpart must be retained by the licensee in an auditable and retrievable form for the term of the renewed operating license.

Dated in Rockville, Maryland, this 10th day of October, 1989.

For the Nuclear Regulatory Commission

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89-24328 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket Nos. 26018 and 26019; Notice Nos. 89-26 and 89-27]

Airworthiness Standards; New Rotorcraft One-Engine-Inoperative Power Ratings and Rotorcraft Engine Type Certification Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to discuss two associated notices of proposed rulemaking (NPRM) dealing with (1) proposed new one-engine-inoperative (OEI) power ratings for multiengine, turbine-powered rotorcraft; and (2) proposed new OEI ratings for rotorcraft engines.

DATES: The public meeting will begin at 9 a.m. on November 16, 1989.

ADDRESSES: The meeting will be held at the Holiday Inn North/Conference Center, 2540 Meacham Blvd., Fort Worth, Texas 76106; telephone (817) 625-9911.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Twa, Rotorcraft Standards Staff, ASW-110, FAA, Forth Worth, Texas 76193-0110, telephone (817) 624-5158, or Mr. Donald F. Perrault, Engine and Propeller Standards Staff, ANE-110, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7081.

SUPPLEMENTARY INFORMATION: Notice No. 89-26 (54 FR 39086) was published in the Federal Register on September 22, 1989. This notice proposes to amend parts 27 and 29 of the Federal Aviation Regulations (FAR) to incorporate new one-engine-inoperative (OEI) power ratings for multiengine, turbine-powered rotorcraft.

A corresponding notice, Notice No. 89-27, was also published in the Federal Register (54 FR 39080) on September 22, 1989. Notice No. 89-27 proposes correlating changes to parts 1 and 33 of the FAR to provide new OEI ratings for rotorcraft engines.

Both notices respond to a petition for rulemaking from Aerospace Industries Associations of America, Inc. (AIA), to amend parts 1, 27, 29, and 33 of the FAR to establish new 30-second, 2-minute, and continuous OEI power ratings. For administrative reasons, two notices were issued; however, both notices will be jointly discussed at the public meeting.

Copies of both notices are being mailed to all interested parties. Any interested party who has not received a copy of the notices by November 1, 1989, may contact Debra H. Myers, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, TX 76193-0110, telephone (817) 624-5118.

Issued in Fort Worth, Texas, on September 28, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-24167 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-192-AD]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This action would revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Comments must be received no later than November 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-192-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-192-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 15, 1989, the FAA issued AD 89-07-16, Amendment 39-6170 (54 FR 11940; March 23, 1989), to incorporate into the FAA-approved Maintenance Inspection Program, items defined in the Fokker Structural Integrity Program (SIP) Document No. 28438, Part I, including revisions up through March 20, 1986. That action was prompted by a structural reevaluation, which had identified certain significant structural components where fatigue damage is likely to occur. The AD requires inspections for fatigue cracks, and repair or replacement, as necessary, to assure continued airworthiness. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction in the structural integrity of these airplanes.

Since issuance of that AD, Fokker SIP document No. 28438, Part I, has been revised to add or revise items for inspection, repair, or replacement. These additional or revised items were included as a result of (1) fatigue analysis and tests, (2) service experience, (3) follow-up action to an airworthiness directive that required a one-time inspection and report of findings to the manufacturer, and (4) in some cases, an interim repair.

Fokker has issued Fokker Document No. 28438, Part I, including revisions up through November 1, 1988, which adds or revises items for inspection, and repair or replacement as necessary. The Rijksluchtvaartdienst, which is the airworthiness authority of the Netherlands, has classified this revised Fokker document as mandatory.

The airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same design registered in the United States, and AD is proposed which would revise AD 89-07-16 to require incorporation of the latest revisions of Fokker SIP Document No. 28438, Part I, revised up through November 1, 1988, into the FAA-approved maintenance program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD. Implementation of the inspections, repairs, or replacements specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 103 manhours per airplanes per year, at an average labor cost of $40 per manhour (approximately $4,120 per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $197,760 the first year and annually thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-07-16, Amendment 39-6170 (54 FR 11940, March 23, 1989) as follows:

Fokker: Applies to Model F-28 Mark 1000, 2000, 3000 and 4000 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs or replacements defined in the Fokker Structural Inspection Program (SIP) Document No. 28438, Part I, including revisions up through November 1, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document proivde acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced prior to further flight, in accordance with the instructions in SIP Document No. 28438, revised November 1, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate serivce documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24166 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-191-AD]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This action would revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Comments must be received no later than November 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-191-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way Sough, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-191-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 15, 1989, the FAA issued AD 89-07-11, Amendment 39-6168 (54 FR 11939, March 23, 1989), to incorporate into the FAA-approved Maintenance Inspection Program items defined in Fokker Structural Integrity Program (SIP) Docket No. 27438, Part I, including revisions up through February 1, 1987. That action was prompted by a structural reevaluation, which had identified certain structural components where fatigue damage is likely to occur. The AD requires inspections for fatigue cracks, and repair, or replacement, as necessary, to assure continued airworthiness. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

Since issuance of that AD, Fokker SIP Document No. 27438, Part I, has been revised to add or revise items for inspection, repair, or replacement. These additional or revised items were included as a result of (1) fatigue analysis and tests, (2) service experience, (3) follow-up action to an airworthiness directive that required a one-time inspection and report of findings to the manufacturer, and (4) in some cases, an interim repair.

Fokker has issued Fokker Document No. 27438, Part I, including revisions up through August 15, 1988, which adds or revises items for inspection, and repair or replacement, as necessary. The Rijksluchtvaartdienst, which is the airworthiness authority of the Netherlands, has classified the Fokker Document as mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 89-07-11 to require incorporation of the latest revision of Fokker SIP Document No. 27438, Part I, revised up through August 15, 1988, into the FAA-approved maintenance program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD. Implementation of the inspections, repairs, or replacement specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 50 manhours per airplane per year, at an average labor cost of $40 per manhour (approximately $2,000 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $66,000 the first year and annually thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-07-11, Amendment 39-6168 (54 FR 11939, March 23, 1989), as follows:

Fokker: Applies to Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Document No. 27438, Part I, including revisions up through August 15, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 27438, including revisions up through August 15, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24165 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 221

[OST Docket No. 41034; Notice No. 89-20]

RIN 2105-AA39

Airline Time and Mileage Guides

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department has decided to solicit additional comments before finalizing a rulemaking issued by the Civil Aeronautics Board (Board) in 1982. The Board's rulemaking proposed to remove airline tariff requirements for statements of fares or rates based upon units of distance or time. These provisions appeared to be unnecessary, since the Board encouraged innovation in air carrier pricing methods. The change was proposed at the Board's own initiative to remove superfluous regulation.

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DATE: December 12, 1989.

ADDRESS: Five (5) copies of any comments should be sent to the Documentary Services Division, C–55, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Comments should refer to Docket 41034. Persons wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The Docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Tariffs Division, Office of International Aviation, P–44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2414.

SUPPLEMENTARY INFORMATION:

Background

By the Notice of Proposed Rulemaking issued October 27, 1982 (47 FR 47599) (NPRM) the Civil Aeronautics Board tentatively concluded that the regulations which prohibited air carriers from filing tariffs which contained statements of fares or rates based upon units of distance or time were unnecessary. The Board noted that such regulations appeared to apply only to charter tariffs which were no longer required to be filed, and therefore appeared to serve no useful purpose.

The Board also stated that under the proposal, carriers would in most cases be permitted to file tariffs that state fares or rates by any reasonable methods. The comment period on the NPRM closed on December 13, 1982.

Comments

Comments on the proposed rulemaking were received from Transámerica Airlines, Inc. (Transamerica). Transamerica stated that it had no objection to the adoption of the rulemaking, provided that the removal of the regulations would not present a barrier to their reintroduction if the Board required charter tariffs to be filed in the future.

Disposition of Rulemaking

In view of the elapsed time since the rulemaking, we are requesting whether there is any additional information that we should consider before finalizing this rulemaking.

Executive Order 12291, Regulatory Flexibility Act, Paperwork Reduction Act, and Federalism Assessment

The Department certifies that this rule is not a major rule as defined by Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more. There would be no increase in production costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions. Furthermore, it would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Similarly, the Supplemental Notice of Proposed Rulemaking is not significant under the Department's regulatory policies and procedures. Furthermore, no regulatory evaluation is necessary because the economic impact of the proposal would be minimal.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Public Law 96–511, this rule contains no new information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act.

Issued in Washington, DC on October 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–24142 Filed 10–12–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[CO–69–87]

RIN 1545–AK26

Use of Pre-Change Attributes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (CO–69–87), which was published Wednesday, September 20, 1989, (54 FR 38695). The proposed regulations relate to the use of certain corporate tax attributes under section 383 of the Internal Revenue Code of 1986 that are attributable to the period preceding an ownership change of the corporation.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones, 202–566–3205 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections provide guidance under section 383 relating to the manner and method of absorbing the section 383 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

Need for Correction

As published, the proposed regulations (CO–69–87) inadvertently omitted language and contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (CO–69–87) which was the subject of FR Doc. 89–22107, is corrected as follows:

1. On page 38695, column 2, first paragraph under the caption "Paperwork Reduction Act", fifth line from the bottom of this paragraph, the OMB number "(1545–1120)" is added following the language "Budget, Paperwork Reduction Project". On the second line from the bottom of this paragraph, the language "IRS Reports Clearances Officer TR:FP" is removed and the language "IRS Reports Clearance Officer T:FP" is added in its place.

2. On page 38695, column 3, fourth line, the language "burden: 247,500 hours." is removed and the language "burden: 22,500 hours." is added in its place.

3. On page 38695, column 3, beginning a new paragraph on the fifth line, add the language "Estimated total annual recordkeeping burden: 225,000 hours.".

4. On page 38695, column 3, third paragraph, first line, the language "Estimated number of respondents:" is removed and the language "Estimated number of respondents/recordkeepers:" is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89–24104 Filed 10–12–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89–06]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: At the request of the City of Seattle (City), the Coast Guard is considering a change to the regulations governing operation of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.4, at Seattle, Washington. The proposal is being made because tests conducted by the City and the results of a 60-day trial regulation indicate that the change will relieve vehicular traffic congestion attributable to openings of the Montlake Bridge. This action should accommodate the needs of vehicular traffic and should still provide for the needs of navigation. The proposed rule would be a continuation of the temporary rule currently in effect. It extends the weekday afternoon closed period by one half hour (3:30 p.m. to 6:00 p.m. instead of the present 4:00 p.m. to 6:00 p.m.) and allows openings only on the hour and half hour Monday through Friday, from 12:30 p.m. to 3:30 p.m. and from 6:00 p.m. to 6:30 p.m.

DATE: Comments should be received on or before November 27, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting comments on the feasibility and impact of the rule on both marine and vehicular traffic. Comments should include observed effects, both beneficial and detrimental, and any suggestions for changes. Persons submitting comments should include their names and addresses, Identify the bridge, and give reasons for concurrence with, opposition to, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Proposed Regulations

On June 8, 1989, at the request of the City of Seattle, the Coast Guard published a temporary rule (54 FR 24555). The Commander, Thirteenth Coast Guard District, also published information concerning the change in Public Notice 89–N–04, dated June 14, 1989. Interested parties were given until September 8, 1989 to submit comments. The temporary change served as a trial period to evaluate the effects of requested changes to drawbridge operating regulations for the Lake Washington Ship Canal, 33 CFR 117.1051. We received a total of seven comments concerning the change: four from boaters, two from concerned citizens, and one from a federal governmental agency. The boaters objected to the change, the concerned citizens were in favor of the change, and the governmental agency had no objection to the change. The primary concern of the boaters was the danger of waiting for bridge openings while maneuvering within the Montlake Cut. As the trial period period progressed, most boaters either planned their trips to arrive at the scheduled opening time, or waited outside the Montlake Cut until it was time for an opening. Extending the temporary change while the proposed change is being processed should avoid confusion and allow additional time for comment and evaluation.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Preliminary evaluation of the trial change indicates that the temporary regulation will relieve vehicular traffic congestion in the Montlake Corridor without causing unnecessary delays to navigation.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

LIST OF SUBJECTS in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g); 33 CFR 117.43.

2. Section 117.1051 is amended by revising paragraph (d) introductory text and adding paragraph (e) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and University Bridge, mile 4.3, shall open on signal, except that:

* * * * *

(e) The draw of the Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draw need not open for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draw shall open without delay, when requested by vessels engaged in towing operations.

(2) Monday through Friday, except Federal Holidays, for any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over:

(i) The draw need not open from 7 a.m. to 9 a.m. and 3:30 p.m. to 6 p.m.

(ii) From 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m., the draw need open only on the hour and half hour. (3) Between the hours of 11 p.m. and 7 a.m. the draw shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Freemont Bridge.

Dated: October 10, 1989.

R. E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 89–24249 Filed 10–12–89; 8:45 am]

BILLING CODE 491–014–M

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46 CFR Part 67

[CGD 88-031]

RIN 2115-AC99

Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard published a notice of proposed rulemaking on October 20, 1988 (53 FR 41211), proposing to amend the vessel documentation regulations to implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (the "Anti-Reflagging Act"). The rulemaking also proposed to conform controlling interest requirements for partnerships to the Anti-Reflagging Act's requirements for corporations. Based on comments received in response to the notice of proposed rulemaking, and the Coast Guard's own administrative experience, the Coast Guard has determined that a complete revision of the regulations concerning citizenship requirements for vessel documentation is needed. This supplemental notice of proposed rulemaking proposes to revise these citizenship regulations, which set out the standards for determining what foreign participation in the control of vessel owning entities will disqualify those entities from documenting a vessel under U.S. law, or result in the loss of eligibility to obtain a coastwise or fishery license endorsement. The proposed revisions will result in regulations that are more informative and uniform.

DATE: Comments must be received on or before December 12, 1989.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600)(CGD 88-031), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

Comments will be available for examination or copying at, and may be delivered to, the Marine Safety Council (G-LRA-2), Room 3600, at the above address, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Bruce, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-1492. Normal office hours are between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 20, 1988 (53 FR 41211), followed by a comment period through November 21, 1988. Seven comments were received and based on those comments, and a thorough review of the regulations explaining citizenship requirements for documentation, the Coast Guard proposes to extensively revise 46 CFR subpart 67.03. The public is invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-031) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed. The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant Commander Robert Bruce, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in specified trades. The evidence of nationality is the Certificate of Documentation. One or more endorsements on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in the specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the endorsement or endorsements requested; and (c) issues Certificates of Documentation to eligible vessels.

Eligibility requirements for documentation are set out at 46 U.S.C. 12102, as amended. One of the eligibility requirements for documentation is United States citizenship. For corporations, partnerships, and associations, citizenship requirements include certain American control provisions. For example, the earliest American control provision applied to corporations, partnerships, and associations seeking to document vessels for coastwise trade. The requirement that at least a 75 percent interest in the entity be owned by U.S. citizens, found in 46 U.S.C. App. 802, was made applicable to such corporations, partnerships, and associations by 46 U.S.C. App. 883. Coastwise trade is, more or less, domestic transportation of passengers and merchandise.

Until 1982, this American control requirement had little practical effect on partnerships because unless all of the partners, general or limited, were U.S. citizens the partnership was not eligible to document vessels. This requirement was relaxed by section 10 of the Coast Guard Authorization Act of 1982 which amended 46 U.S.C. 12102(a)(3), permitting partnerships to document vessels if all general partners were U.S. citizens and the controlling interest in the partnership was owned by U.S. citizens. The 75 percent American control requirement for a coastwise license remained, and to this extent the American control requirements for corporations and partnerships were already alike. As a matter of administrative practice, the Coast Guard took the position that, when it was reasonable to do so, the same meaning would be given to "controlling interest" in both the corporate and partnership contexts. On May 17, 1988, a final rule was published revising 46 CFR 67.03-5 to implement the American control requirements for partnerships of 46 U.S.C. 12102(a)(3).

On January 11, 1988, the President signed into law the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)). Among other things, this law adds a new American control provision for corporations seeking to document fishing vessels. The new requirement is retroactively effective from July 28, 1987, but includes savings provisions exempting many vessels operating, or under contract for purchase, as fishing industry vessels prior to that date. The statute superseded certain regulations in 46 CFR part 67 that were directly in conflict with it and, to carry out the purpose of the statute, the Coast Guard has been applying the standards in the statute as a matter of administrative practice. All of the changes to documentation regulations mandated by the Anti-Reflagging Act, not relating to controlling interest, have been implemented by prior rulemaking (53 FR 41166, October 20, 1988).

Discussion of Comments

Five comments regarding the NPRM were received during the comment period. Two comments were received after the comment period closed, but have been considered nevertheless. Comments were received from United States Senators, law firms, an industry association, a company with a financial interest in fishing industry vessels and individual attorneys interested in maritime law. One comment expressed general agreement with the Coast Guard's interpretation of the American control provisions and the procedures for enforcing them. Another generally encouraged the implementation of regulations addressing controlling interest requirements for partnerships. Otherwise, the comments were focused more narrowly on the basis for changes to the American control regulations for partnerships, the lack of a regulation implementing the Anti-Reflagging Act's controlling interest savings clause, the Coast Guard's interpretation of the Anti-Reflagging Act's controlling interest savings clause, and the lack of more complete guidance detailing all the factors the Coast Guard may consider in arriving at a determination regarding American control. Six of the comments suggested changes. The changes suggested and the Coast Guard's position concerning each follows.

a. Three comments stated that the proposed regulations should have included regulations implementing the Anti-Reflagging Act's controlling interest savings provisions. A law firm, writing on behalf of clients who are fishing industry companies, expressed the view that the Anti-Reflagging Act created two classes of fishing industry vessels; those subject to the new American control provisions, and those that qualify under the savings clause for exemption from the new requirements—including virtually the entire commercial fishing industry fleet as of July 28, 1987. They stated that regulations implementing the savings provisions are needed because theere are so many "grandfathered" vessels and because the absence of implementing regulations implies that the new controlling interest requirements apply to all fishery vessels. The comment suggested language for a regulation implementing the savings clause which closely followed the statutory language. However, it addressed only corporations. Under the Coast Guard's administrative practice both corporations and partnerships need to be addressed. Finally, the comment agreed with the Coast Guard's position that the savings provisions' protection runs with a qualifying vessel, regardless of ownership.

A company with a financial interest in fishing industry vessels also commented on the lack of an implementing regulations for the controlling interest savings clause. This comment assumed that without an implementing regulation no fishing industry vessel owner could benefit from the savings clause. The comment stated that this constituted an unfair taking of an owner's right to sell its interest in the vessels to whomever it wished and would reduce the potential demand for the vessels, with a corresponding loss in market value.

The third comment, from an association representing the domestic tug and barge industry, stated that the controlling interest savings clause was very extensive and should be addressed by rulemaking. This comment disagreed with the Coast Guard's position that the savings provisions run with a qualifying vessel, regardless of ownership; arguing that "grandfathering" should be lost at the first sale of the vessel to a new owner. In support of its position, this comment cited language in the report of the House Merchant Marine and Fisheries Committee, House Report 100-423, November 5, 1987, at page 17, indicating that the savings clause does not apply once ownership or the vessel changes.

The Coast Guard agrees with the comments that implementing regulations for the controlling interest savings clause should be included in the proposed rules. Therefore, a new § 67.03-15 has been included in this supplemental notice of proposed rulemaking. This new section largely adopts the language suggested by one comment and closely follows the statute. However, language has been added to make the regulation applicable to qualifying vessels whether owned by partnerships or corporations. This is consistent with the Coast Guard's administrative practice of giving the same meaning to controlling interest in both the partnership and corporate contexts, to the extent reasonable. A partnership which wants to document a vessel will still have to meet previously existing American control requirements, including the requirement that no more than 50 percent of the equity of the partnership be owned by non-citizens, even if its vessel qualifies under the regulation for exemption from the controlling interest requirements for fishing vessels.

Proposed § 67.03-15, no less so than the statute, makes clear it is the vessel that qualifies for protection under the savings clause. Therefore, the exemption from the new American control requirement runs with the vessel, regardless of ownership. As has been previously stated, two of the comments agreed with the Coast Guard's position that the savings clause's protection runs with the vessel and one did not. The Coast Guard has adhered to its position because the language of the statute is clear and unambiguous in this regard; it does not require interpretation.

There is strong support for the position that the literal language of the statute should guide our implementation of the law. When Title 46 was partially codified in 1983—a codification that included Chapter 121 governing the documentation of vessels—the Report of the House Merchant Marine and Fisheries Committee, House Report No. 98-338, August 1, 1983, stated, at page 120, that the Committee intended that "the interpretation of the maritime safety laws as codified and enacted by this bill will be based on the language of the bill itself." Moreover, it stated, "the literal language of the statute should control *** [t]here is no mandate in logic or in case law for reliance on legislative history to reach a result contrary to the plain meaning of the statute, particularly where that plain meaning is in no way unreasonable."

The same rule of construction ought to be applied to statutes, such as the Anti-Reflagging Act, which subsequently amend the "maritime safety laws as codified" in title 46. The continuing validity of this rule of construction is demonstrated by the recent inclusion of almost identical language in House Report No. 100-918, September 15, 1988, dealing with the codification of the Ship Mortgage Act as Chapter 313 of Title 46. Accordingly, it would be incorrect for the Coast Guard to base its regulation—as one comment urged—on the statement in House Report 100-423 that the savings clause's protection should end when a vessel is sold.

The Anti-Reflagging Act also contains savings clauses with respect to its rebuilding requirements, which were the subject of earlier rulemaking. Under those regulations the protection of the rebuilding savings provisions run with the vessel. The rebuilding savings clauses are indistinguishable from the controlling interest savings clause in terms of their applicability to qualifying

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vessels, without regard for ownership. Based on their language, there is no reason to interpret these savings provisions in different ways when it comes to determining if sale of a vessel should end its protection. An examination of the legislative history, for purposes of interpreting the rebuilding savings clauses, reveals nothing to support the conclusion that a qualifying vessel should lose its protection it it is sold.

The savings clauses are meant to fully protect the financial interests of vessel owners. As one comment pointed out, these financial interests are not fully protected if the vessel loses fishing privileges when it is sold. The value of a vessel would certainly be less if, for example, as a foreign rebuilt fishing vessel it would permanently lose entitlement to engage in the U.S. fisheries when it was sold. Some financial harm could similarly befall the owner of a vessel that, once sold, could only be operated as a fishing vessel under the new American control requirements.

b. Two comments questioned the authority for revision of the controlling interest requirements for partnerships. They noted that the Anti-Reflagging Act did not specifically address American control requirements for partnerships, and stated that the Anti-Reflagging Act provides no basis for applying its American control requirement for corporations to partnerships. A third comment stated that although the Anti-Reflagging Act did not address partnerships, this should not be viewed as an indication that Congress opposed regulations addressing controlling interest requirements for partnerships based on other authority.

While the notice of proposed rulemaking stated that the Coast Guard would implement a more than 50 percent controlling interest test for partnerships documenting fishing vessels, no implementing language was included. This supplemental notice of proposed rulemaking includes amendments to § 67.03–5 needed to carry out this previously stated inention.

The comments are concurred with only to the extent that they assert the Anti-Reflagging Act does not require a controlling interest test for partnerships. However, there is authority for the proposed amendments to § 67.03–5 revising the American control requirements for partnerships. Authority to issue regulations addressing controlling interest in partnerships is based on section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97–136), which amended 46 U.S.C. 12102(a)(3). That provision permits partnerships to document vessels if "the controlling interest in the partnership is owned by citizens of the United States." The Coast Guard published a final rule, on May 17, 1988, amending § 67.03–5 to give more meaning to the phrase "controlling interest in the partnership." That rulemaking was based solely on our interpretation of 46 U.S.C. 12102(a)(3), as amended in 1982. Work on those regulations commenced long before passage of the Anti-Reflagging Act. Those regulations describe equity and control tests applicable to partnerships seeking documentation with any type of endorsement, including a fishery endorsement. Among those tests is a requirement that at least 50 percent of the equity in the partnership be owned by partners who are U.S. citizens. Those regulations were not based on the Anti-Reflagging Act.

When 46 U.S.C. 12102(a)(3) was amended in 1982, the Coast Guard took the position that, so far as was reasonable, the same meaning would be given to "controlling interest" in both the partnership and corporate contexts. The Anti-Reflagging Act has mandated a more than 50 percent controlling interest test for corporations seeking to document vessels for the fisheries, without addressing partnerships. Since, under current regulations, at least 50 percent of the equity in a partnership must be owned by U.S. citizens for it to document a vessel for any purpose, the Coast Guard's position is that it is reasonable to follow its administrative practice by conforming the regulations for partnerships documenting fishing vessels with the regulations for corporations doing the same; making both meet a more than 50 percent American control test. This less than 1 percent change in the American control requirements for partnerships is a result of the Anti-Reflagging Act only to the extent that its new American control requirement for corporations caused the Coast Guard to consider and propose a conforming change to the existing American control requirements for partnerships, in accordance with past administrative practice.

c. One comment correctly observed that the new paragraph to be added to § 67.17–9 should be paragraph (d), since another paragraph (c) already exists. This correction has been made in this supplemental notice of proposed rulemaking. This comment also suggested that § 67.17–9 should state that fishing privileges are temporarily lost while the vessel's owner fails to meet the citizenship requirements of new § 67.03–9(d), rather than any section of subpart 67.03. Section 67.03–9(d) contains only the stock interest requirements for qualification as a corporation entitled to document vessels for the fisheries. While it is true that a vessel would lose its entitlement to engage in the fisheries for as long as its owner fails to meet the requirements of § 67.03–9(d), failure to meet any of the citizenship requirements for documenting vessels in the fisheries, wherever found in subpart 67.03, will similarly result in a loss of entitlement. For instance, a partnership with a non-citizen general partner is ineligible to document vessels for any purpose. If such a partnership owned a vessel otherwise eligible for a fishery license, the vessel would suffer a loss of that eligibility until its owner met the citizenship requirements.

Finally, this comment stated that the proposed rule does not fully address all the factors the Coast Guard may consider in making determinations about American control. The comment specifically raised issues about the meaning of "voting shares" and "aggregation" as those terms are used in the Anti-Reflagging Act, and 46 U.S.C. 12102 (b)(1) and (b)(2). Another issue raised was whether the Coast Guard would look beyond the ownership of voting shares and consider the other restrictions on controlling interest in 46 U.S.C. App. 802(b).

For purposes of documenting fishing vessels, 46 U.S.C. 12102(b)(2) leaves no doubt that the Coast Guard must apply the restrictions on controlling interest in 46 U.S.C. App. 802(b), in addition to the requirement that U.S. citizens own a majority of voting shares. However, the prominence of the requirement that a majority of voting shares be owned by U.S. citizens indicates that that is intended to be the primary means of determining American control. Other factors to be considered under 46 U.S.C. App. 802(b) generally do not permit such a straightforward finding that the requirement has been met or not. They usually require case-by-case analysis to resolve the ultimate question of whether an impermissible degree of control over the corporation is being exercised by non-citizens.

The Coast Guard's documentation offices have never had the resources to completely analyze every aspect of the American control issue for every owner seeking to document vessels for coastwise and fisheries trades. In accordance with 46 U.S.C. 12122, an owner who knowingly falsifies or conceals a material fact, or makes a false statement or representation about the documentation of a vessel, makes its vessel subject to forfeiture. Since American control is a material fact

about documentation with a coastwise or fisheries endorsement, an owner who fails to provide information about a disqualifying factor is liable for this severe penalty. Therefore, as a matter of administrative practice the Coast Guard has specifically requested from owners only information about broad ranges of stock ownership; i.e. 100 percent U.S. owned, 75–50 percent U.S. owned, etc. Naturally, if there is reason to suspect that a particular vessel owner is violating the American control provisions the Coast Guard will investigate and require the owner to provide information sufficient to demonstrate that it qualifies to document its vessel with the endorsement obtained or requested.

The Coast Guard's administrative practice in this regard is in keeping with the design of the documentation laws in general. Documents and endorsements are usually issued on the basis of self-certification by the applicant, subject to severe penalties for making false representations or concealing material facts. In view of this policy, it would be an unwarranted burden on the public to require all owners applying for a coastwise or fisheries license to supply detailed information about every fact that might be considered under 46 U.S.C. App. 802(b) in determining if there is American control.

The Coast Guard usually does not make further inquiries about controlling interest without reasonable suspicion of a problem with compliance, Moreover, resolution of American control issues under 46 U.S.C. App. 802(b) often depends upon unique factual circumstances. Therefore, detailed rules addressing specific factual situations would be of limited value to the general public and probably could not improve on the statute itself in terms of informing interested parties of what the law requires in any particular case. Providing more detailed guidance about specific terms such as "voting shares", as the comment suggests, poses the same problems. No regulation could possibly encompass every conceivable application of these terms to the virtually endless variety of situations which present themselves.

Although regulations providing the kind of detailed guidance the comment suggested are impractical, the Coast Guard has determined that a thorough revision of subpart 67.03 is needed to better explain the American control requirements. Accordingly, this supplemental notice of proposed rulemaking includes an extensive revision of subpart 67.03.

A newly proposed § 67.03–2 collects general guidance regarding the stock or equity interest requirements of subpart 67.03. Section 67.03–2(b) explains the Coast Guard's administrative practice regarding the citizenship requirements for entities which own a stock or equity interest in a vessel owning entity, such as a corporation or partnership, comprised of other entities. This is a longstanding rule of administrative practice, based on the Coast Guard's interpretation of the citizenship requirements of 46 U.S.C. App. 833 and 46 U.S.C. 12102. This rule applies to all stock or equity interest requirements, including the requirement for 75 percent ownership by U.S. citizens to qualify for documenting vessels for coastwise trade, the Anti-Reflagging Act's requirement for more than 50 percent ownership by U.S. citizens to qualify for documenting vessels for fisheries, and the equity interest requirements for documentation of vessels owned by partnerships.

The Coast Guard has not fully developed its interpretation of the "aggregation" requirement included in 46 U.S.C. 12102(b)(1) by the Anti-Reflagging Act, and has not proposed an implementing regulation in this rulemaking. Comments from the public regarding how the aggregation requirement should be interpreted are particularly desired.

Although no implementing regulation is proposed, at this time, the statutory aggregation requirement cannot be ignored. This rulemaking is not intended to preclude the Coast Guard from requiring vessel owners to provide information needed to determine that they are qualified to document their vessels with a fisheries endorsement, if there is reason to suspect that they do not meet the aggregation requirement. However, as with the other American control requirements discussed above, requiring every owner of a fishing vessel to provide information showing that it meets the aggregation requirement would be an unwarranted burden on the public. Where appropriate, the Coast Guard will apply the aggregation requirement, on a case-by-case basis, to determine if a vessel owner is qualified to document vessels with a fisheries endorsement.

The administrative practice reflected in proposed § 67.03–2(b), like the aggregation requirement, is intended to ensure that if a vessel owning entity is owned by other entities there is American control among those entities, and if those entities, in turn, are owned by other entities there is American control among them, and so on. The aggregation requirement is, therefore, likely to be largely duplicative of the requirements of § 67.03–2(b). Unlike § 67.03–2(b), however, the aggregation requirement applies only to the documentation of fishing vessels.

Discussion of the Proposed Rule

The authority citation for 46 CFR part 67 is amended to remove 46 U.S.C. App. 927 and 983, and 46 U.S.C. 12121, which were repealed by Public Law 100–710. Those statutes, which authorized regulations relating to documentation, and recording of ship mortgages and maritime liens, were repealed because Congress found them to be redundant with authority contained in 46 U.S.C. 2103 and 49 U.S.C. 322. The authority citation is also amended to add 46 U.S.C. 2103 and 49 U.S.C. 322. Other authorities are unchanged.

Subpart 67.03 is extensively revised. Section 67.01–1 states that only vessels owned by United States citizens can qualify for Certificates of Documentation. That section is unchanged.

Section 67.03–2 is new. It collects general guidance regarding stock or equity interest requirements for citizenship. Current paragraphs (d) and (e) of § 67.03–5, which include some of the same guidance, but apply only to partnerships, are superseded by § 67.03–2. Since the stock or equity interest requirements apply to corporations, as well as partnerships, these provisions are placed in § 67.03–2 as rules of general applicability. Paragraph (a) explained the interests encompassed by the American control requirements. These include title to all classes of stock as a whole, title to voting stock or ownership of equity. Additional factors are described which can cause a corporation or partnership, which otherwise qualifies, to fail to meet stock or equity interest requirements for citizenship.

Paragraph (a) is based on 46 U.S.C. App. 802, which is made applicable to documentation of vessels for coastwise trade by 46 U.S.C. App. 883, and to documentation of vessels for fisheries trade by 46 U.S.C. 12102. The Coast Guard considers the American control requirements to 46 U.S.C. App. 802 and the American control requirements for partnerships in 46 U.S.C. 12102(a)(3) to be provisions which must be construed with reference to each other and, when reasonable, given the same interpretation. Therefore, paragraph (a) also applies to the American control requirements for documentation of vessels, for any purpose, by partnerships.

Paragraph (a)(1) explains the Coast Guard's interpretation of control, as the term is used in § 67.03–2(a) in

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connection with non-citizen control of a corporation or partnership. A similar provision, now at § 67.03–5(e), but applicable only to partnerships, is superseded by § 67.03–2(a)(1). Paragraph (a)(1) explains that the Coast Guard does not interpret restrictions on non-citizen control to prohibit all participation in the activities of the corporation or partnership, or prohibit non-citizens from making loans and receiving interest in transactions that do not involve control of the corporation or partnership.

Paragraph (b) explains the Coast Guard's administrative practice in applying American control requirements to a vessel owning entity which is owned, in turn, by other entities which are not individuals. A similar provision, previously proposed as § 67.03–1(b), is superseded by § 67.03–2(b). In keeping with longstanding Coast Guard practice, the American control provisions are interpreted to require American control among all the entities which have an ownership interest in a vessel owning entity. The purpose to be achieved by this rule is basically the same as that which apparently underlies the aggregation requirement of 46 U.S.C. 12102(b)(1). By requiring that each entity contributing to the stock or equity interest requirements of the vessel owning entity be a citizen eligible to document vessels in its own right with the type of license sought, the Coast Guard assures that the vessel owning entity is effectively controlled by entities which meet the applicable standard of American control.

Section 67.03–2(b) achieves its purpose, without being overly restrictive, by taking account of the practical limitations that ownership structures place on entities having a minority interest in the ownership of another entity, such as a vessel owning corporation or partnership. Such a structure generally prevents parties with a minority interest in an entity from exercising any greater control over other participating entities than they exercise within their own entity. Parties which do not have control within their own entity usually have no effective means of exercising control through that entity's ownership of stock or equity in the vessel owning entity. They generally have no effective means of combining with minority interests in other participating entities to enhance their power within the vessel owning entity. Accordingly, if each entity contributing to the stock or equity interest requirements of the vessel owning entity is American controlled, the vessel owning entity will be American controlled. Minority foreign interests within those American controlled entities will not be able to control the vessel owning entity. Similarly, entities with too small a stock or equity interest in the vessel owning entity to exercise control, even if they are wholly foreign controlled, will not jeopardize American control. The theoretical possibility that minority foreign interest might overcome the limitations of the ownership structure and combine to exercise control, does not justify a more onerous rule because § 67.03–2(b) is applied along with, rather than in place of, the restriction against non-citizen control of § 67.03–2(a).

Section 67.03–3 states the requirements and individual must meet to be a citizen eligible to document vessels. That section is unchanged.

Section 67.03–5 states the requirements a partnership, association or joint venture must meet to be a citizen eligible to document vessels. Paragraphs (b) and (c), dealing with associations and joint ventures, are unchanged. As discussed above, former paragraphs (d) and (e) have been superseded by rules of general applicability in § 67.03–2. Paragraph (a), dealing with partnerships, has been revised. In accordance with 46 U.S.C. 12102(a)(3), paragraph (a) initially requires that all general partners be citizens for the partnership to be eligible to document vessels for any purpose. Based on the same statute, paragraph (a)(1) also requires that at least 50 percent of the equity in the partnership be owned by citizens for the partnership to be eligible to document vessels for any purpose. In accordance with 46 U.S.C. App. 802, which is made applicable here by 46 U.S.C. App. 883, paragraph (a)(2) states that for a partnership to be eligible to document vessels with a coastwise of Great Lakes endorsement, all of the general partners must be citizens and at least 75 percent of the equity in the partnership must be owned by citizens. Paragraph (a)(2) states that for a partnership to be eligible to document vessels with a fisheries endorsement, all of the general partners must be citizens and more than 50 percent of the equity in the partnership must be owned by citizens. As discussed above, the paragraph implements the intention stated in the original notice of proposed rulemaking, to conform the citizenship requirements for partnerships eligible to document vessels with a fishery endorsement to the citizenship requirements for corporations enacted by the Anti-Reflagging Act. This conforming change requires a change of less than one percent in the equity interest requirement for partnerships eligible to document vessels for fisheries. All of the equity interest requirements in § 67.03–5(a) are subject to the requirements of § 67.03–2. The requirement that all general partners be citizens is not an equity interest requirement, it is a distinct citizenship requirement for documenting vessels.

Section 67.03–9 states the requirements a corporation must meet to be a citizen eligible to document vessels. In accordance with 46 U.S.C. 12102(a)(4), paragraph (a) states the requirements a corporation must meet to be eligible to document vessels for any purpose. It is unchanged except that fisheries endorsements are not covered by paragraph (d) and "recreational license" has been substituted for "pleasure license" to conform to current terminology. Paragraph (a)(1) has been revised to make clear that the requirement is met by incorporation under the laws of a State of the United States and to remove the phrase "including and federal scheme of incorporation", which is redundant. In accodance with 46 U.S.C. App. 802, which is made applicable here by 46 U.S.C. App. 883, paragraph (b) states that for a corporation to be eligible to document vessels with a coastwise or a Great Lakes endorsement, it must meet the requirements of paragraph (a) and at least 75 percent of the stock interest in the corporation must be owned by citizens. This paragraph is unchanged except "citizen" is substituted for "United States citizen" and the parenthetical reference to 46 U.S.C. App. 802 has been removed. In subpart 67.03, "citizen" and "United States citizen" are equivalent terms having the specific meaning given than in § 67.03–1. The reference to 46 U.S.C. App. 802 is no longer necessary because its citizenship requirements have been incorporated into § 67.03–2, and the stock interest requirements of § 67.03–8 are subject to the requirements of § 67.03–2.

Paragraph (c) refers to regulations in 46 CFR part 68 which implement 46 U.S.C. App. 883–1. That statute permits certain corporations that do not otherwise qualify as a citizen eligible to document vessels for coastwise trade to qualify for limited coastwise trading privileges. Paragraph (c) is unchanged.

Proposed paragraph (d) is new. In accordance with 46 U.S.C. 12102(b)(1), paragraph (d) states that for a corporation to be eligible to document vessels with a fisheries endorsement, it must meet the requirements of paragraph (a) and more than 50 percent of the stock interest in the corporation must be owned by citizens. A smilar provision was proposed in the original notice of proposed rulemaking. That provision indicated that more than 50 percent of the voting stock, rather than more than 50 percent of the stock interest as described in § 67.03–2, had to be owned by citizens. The change incorporated in the present rule was made to comply with 46 U.S.C. 12102(b)(2). The requirement that a majority of voting shares must be owned by citizens is still emphasized, but the stock interest requirement in subject to all of the requirements of § 67.03–2.

Paragraph (e) is similar to current paragraph (d). It states that where Maritime Administration approval is required for a corporation to acquire a vessel the Coast Guard will not document the vessel, even though the corporation is otherwise eligible to document the vessel in accordance with paragraph (a), unless the corporation provides evidence of Maritime Administration approval. Paragraph (f) implements an exemption to paragraph (e) for vessels that have been operated exclusively as recreational and fishing industry vessels. The new exemption was added to comply with a recent amendment to 46 U.S.C. App. 808 is Public Law 100–710, November 23, 1988.

Section 67.03–11 states the requirements a governmental entity must meet to be a citizen eligible to document vessles. That section is unchanged.

Section 67.03–13 states the rule that an original form CG–1258, the application for documentation form, establishes a rebuttable presumption of citizenship. That section is unchanged.

Section 67.03–15 is new. It implements the Anti-Reflagging Act's American control savings provisions. As discussed above, this proposed rule has been added because of comments received in response to the original notice of proposed rulemaking. The proposed rule closely follows the statutory language, but since the Coast Guard has conformed the American control requirements for partnerships to the Anti-Reflagging Act's requirements for corporations, language has been added to exempt partnerships from those American control requirements in circumstances where a corporation would similarly be exempt pursuant to the savings provisions. Under the proposed rule, a corporation of partnership that meets citizenship requirements for documenting a vessel for the fisheries, except for the specific stock or equity requirement for fisheries (i.e. more than 50 percent), may nonetheless be eligible to document a vessel for the fisheries if before July 28, 1987, the vessel was documented and operating as a fishing industry vessel in the United States fisheries, or was contracted for purchase for use as a fishing industry vessel in the United States fisheries. Even if this section applies, at least 50 percent of the equity in a partnership must be owned by citizens for it to be eligible to document vessels for any purpose. This rule applies to qualifying vessels without regard to changes in ownership.

Sections 67.17–5(c)(1) and 67.17–7(c)(1) are unchanged except for a conforming change to their references to § 67.03–5, required by the proposed amendments to § 67.03–5.

Section 67.17–9 is amended by adding a new paragraph (d). A similar rule was proposed in the original notice of proposed rulemaking. The proposed rule explains that a vessel temporarily loses its eligibility to engage in the fisheries trade during any period it is owned by an entity that fails to meet citizenship requirements. However, a vessel which qualifies for exemption from the specific stock or equity interest requirements for a fisheries endorsement in accordance with § 67.03–15, will not lose its eligibility for a fisheries endorsement because it is owned by an entity which fails to meet those specific stock or equity requirements, if its owner otherwise qualifies as a citizen.

Section 67.23–9(a)(3) is unchanged except for a conforming change to its references to § 67.03–5, required by the proposed amendments to § 67.03–5.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The only significant substantive changes proposed in this rulemaking are changes in American control requirements for vessel documentation mandated by statute.

Federalism

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these proposed rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this rulemaking is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of these regulations. There is no significant economic impact, however, because the proposed rulemaking implements the Anti-Reflagging Act's American control savings provisions. The savings provisions protect those who were operating fishing industry vessels under documentation in the United States fisheries, or who made verifiable commitments to purchase vessels for use as fishing industry vessels in the United States fisheries, based on the laws and regulations in existence prior to enactment of the Anti-Reflagging Act.

Paperwork Reduction Act

This rulemaking imposes no new paperwork burden on the public.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concludes that under the categorical exclusion provision in § 2–B–3.1. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR part 67 is proposed to be amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is amended to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103; 46 U.S.C. App. 841a, 876, 49 U.S.C. 322; 49 CFR 1.46.

2. Subpart 67.03 is revised to read as follows:

SUBPART 67.03—CITIZENSHIP REQUIREMENTS FOR VESSEL DOCUMENTATION

§ 67.03–1 Requirement for citizen owner.

Certificates of Documentation are available only to vessels which are wholly owned by United States citizens. For purposes of obtaining a Certificate of Documentation, the persons and

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entities discussed in §§ 67.03–3 through 67.03–9 of this subpart are citizens.

§ 67.03–2 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: title to all classes of stock as a whole; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: stock is subject to trust or fiduciary obligations in favor of non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(1) For the purpose of this section, control includes an absolute right to direct corporate or partnership business, to limit the actions of or replace the chief executive officer, a majority of the board of directors or any general partner, to direct the transfer or operations of any vessel owned by the corporation or partnership, or otherwise to exercise authority over the business of the corporation of partnership, but not the right to simply participate in these activities or the right to receive a financial return, i.e., interest or the equivalent of interest, on a loan or other financing obligations.

(b) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the license sought.

§ 67.03–3 Individual.

An individual is a citizen if he is a native-born, naturalized, or derivative citizen of the United States, or otherwise qualifies as a United States citizen.

§ 67.03–5 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or a recreational license, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise of Great Lakes license, at least 75 percent of the equity interest in the partnership is owned by citizens;

(3) For the purpose of obtaining a fishery license, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

§ 67.03–7 Trust.

A trust arrangement fulfills the citizenship requirements if each of its trustees and each of its beneficiaries is a citizen.

§ 67.03–9 Corporation.

(a) A corporation is a citizen for the purposes of obtaining a registry or a recreational license if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) A corporation is a citizen for the purposes of obtaining a coastwise or Great Lakes license endorsement if:

(1) It meets all the requiremets of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the requirements of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of subpart 68.01 of this subchapter.

(d) A corporation is a citizen for the purpose of obtaining a fishery license endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

(e) Although a corporation meets the requirements of paragraph (a) of this section, if a majority of the stock interest in the corporation is not held by U.S. citizens it may not document a vessel, except as permitted by paragraph (f) of this section, which it acquired from a U.S. citizen owner, as defined in 46 U.S.C. App. 802, and which is documented under the laws of the United States, unless it evidences that the Maritime Administration approved that corporation's acquisition of the vessel. (See 46 U.S.C. 802, 808).

(f) A corporation prohibited from documenting a vessel by paragraph (e) of this section may document a vessel that has been operated only as a fishing vessel, fish processing vessel, fish tender vessel or for recreation.

§ 67.03–11 Governmental entity.

A governmental entity is regarded as a citizen if it is a government of the United States as defined in § 67.01–1 of this part.

§ 67.03–13 Evidence.

An original form CG–1258 established a rebuttable presumption that the applicant is a United States citizen.

§ 67.03–15 Citizenship savings provision for fishing vessels.

A corporation that meets the requirements of paragraph (d)(1) of § 67.03–9 of this subpart but does not meet the requiremets of paragraph (d)(2) of that section, or a partnership that meets the requirements of paragraph (a)(1) of § 67.03–5 of this subpart but does not meet the requirements of paragraph (a)(3) of that section, may nonetheless be eligible to obtain a fishery license endorsement for a vessel if, prior to July 28, 1987, the vessel:

(a) Was documented under chapter 121 of title 46, U.S.C., and operating as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a); or

(b) Was contracted for purchase for use as a fishing, fish tender or fish processing vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a), if the purchase is shown by the contractor similarly reliable evidence to have been made for the purpose of using the vessel in the fisheries.

3. Section 67.17–5 is amended by revising paragraph (c)(1) to read as follows:

§ 67.17–5 Coastwise license.

* * * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as defined in §§ 67.03–3; 67.03–5 (a)(1), (b), (c); 67.03–7; 67.03–9(a); or 67.03–11 of this part;

* * * * *

4. Section 67.17–7 is amended by revising paragraph (e)(1) to read as follows:

§ 67.17–7 Great Lakes license.

* * * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as defined in §§ 67.03–3; 67.03–5 (a)(1), (b), (c); 67.03–7; 67.03–9(a); or 67.03–11 of this part;

* * * * *

5. Section 67.17–9 is amended by adding a new paragraph (d) to read as follows:

§ 67.17–9 Fishery license.

* * * * *

(d) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of subpart 67.03 of this part, except that a vessel eligible for a fishery license endorsement in accordance with § 67.03–15 of this part does not lose its eligibility for a fishery license endorsement during any period it is owned by an entity that fails to meet the stock or equity interest requirements of §§ 67.03–5(a)(3) or 67.03–9(d)(2) of this part but otherwise qualifies as a citizen.

6. Section 67.23–9 is amended by revising paragraph (a)(3) to read as follows:

§ 67.23–9 Requirement for deletion.

(a) * * *

(3) Any owner of the vessel ceases to be a citizen within the meaning of §§ 67.03–3; 67.03–5 (a)(1), (b), (c); 67.03–7; 67.03–9(a); or 67.03–11 of this part;

* * * * *

Dated: September 28, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-24251 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-14-M

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Notices

Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 6, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- Farmers Home Administration

7 CFR 1980-E Business and Industrial Loan Program
FmHA 449-2, -4, -22; 1980-68, -70, -71, -73
Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 18,222 responses; 73,567 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

- Agricultural Marketing Service

Dried Prunes Produced in California-Marketing Order No. 993
None
Recordkeeping; On occasion; Monthly; Annually;
Businesses or other for-profit; 36,012 responses; 6,173 hours; not applicable under 3504(h)
Virginia M. Olson (202) 475-3930

Extension

- Federal Crop Insurance Corporation

Standard Reinsurance Agreement
None
On occasion; Weekly; Monthly; Annually
Businesses or other for-profit; 1,480 responses; 15,600 hours; not applicable under 3504(h)
Thomas Riley (202) 475-4405

- Agricultural Marketing Service

7 CFR Part 55, Regulations for Voluntary Inspection of Egg Products and Grading
None
On occasion; Weekly; Monthly; Daily
Businesses or other for-profit; Small businesses or organizations; 4,798 responses; 810 hours; not applicable under 3504(h)
Merlin L. Nichols, Jr. (202) 447-3506

- National Agricultural Statistics Service

Stock Reports
None
Quarterly; On occasion
Farms; Businesses or other for-profit; 54,530 responses; 16,315 hours; not applicable under 3504(h)
Larry Gambrell (202) 447-7737

New Collection

- Office of Public Affairs

Survey of Broadcasters (Radio & TV)
On occasion; Annually
Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,000 responses; 167 hours; not applicable under 3504(h)
Marci Hilt (202) 447-6445

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 89-24150 Filed 10-12-89; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Gillibrand Mining Plan of Operation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to develop a mining operation for the extraction of anorthosite ore in the Soladad Canyon area of the Tujunga Ranger District, Angeles National Forest, Los Angeles County, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by January 15, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to George A. Roby, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. Charles K. McDonald, Environmental Coordinator, at the above address or phone (818) 574-5257, FTS 799-0257.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents discuss the proposed project in a general manner. This EIS will concentrate on site specific activity areas. In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for methods of extracting the ore, access routes, and mill site locations.

George A. Roby, Forest Supervisor, Angeles National Forest, Arcadia, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Supervisor will hold the following public scoping meeting:
Date: November 13, 1989
Time: 7 pm-10 pm
Location: Church of the Canyons, 28050 Sand Canyon Rd., Canyon Country, CA 91350

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 10, 1990. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 90 days form the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the mining operation participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3) In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by November 10, 1990. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: October 3, 1989.

George A. Roby,
Forest Supervisor.
[FR Doc. 89-24168 Filed 10-12-89; 8:45 am]
BILLING CODE 3410-11-M

Oil and Gas Leasing; Little Missouri National Grasslands; Custer National Forest; McKenzie, Billings, Golden Valley and Dunn Counties, ND

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, as lead agency, and the USDI, Bureau of Land Management will cooperatively participate in the preparation of an environmental impact statement (EIS) to disclose the environmental effects of oil and gas leasing and reasonably foreseeable actions resulting from subsequent exploration and development, as well as interconnected actions on a portion of the Little Missouri National Grasslands, involving the McKenzie Ranger District and a portion of the Medora Ranger District of the Custer National Forest.

The Custer National Forest Management Plan and Record of Decision made the decision on which lands on the Forest are available for oil and gas leasing. This EIS will disclose the site specific analysis conducted to make the decision of whether or not to consent or "not object" to leasing at this time and if the decision is to lease, with what stipulations, consistent with the Federal Offshore Oil and Gas Leasing Reform Act of 1987. This analysis will be tiered to the Forest Plan and associted EIS, and will not reconsider the decisions made in the Forest Plan Record of Decision.

DATE: Comments concerning the scoping to identify issues should be received in writing by January 1, 1990.

ADDRESSES: Written comments concerning the analysis should be sent to Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

FOR FURTHER INFORMATION CONTACT: Norman B. Smyers, Minerals Staff Officer, Custer National Forest, Phone (406) 657-6361.

SUPPLEMENTARY INFORMATION: This analysis will address oil and gas leasing and the site specific application of lease stipulations on a portion of the Little Missouri National Grasslands on Forest System lands from approximately Township 139 North to the northern boundary of the McKenzie Ranger District which extends to Lake Sakakawea. This area is interspersed with private and state ownership of both surface and mineral estates and involves approximately 675,000 acres of Forest System lands.

The area to be included in this analysis is located in the central portion of the Williston Basin, and oil and gas has been produced from the area since the early 1950's. Currently there are approximately 61 producing oil fields within the area.

The environmental impact statement (EIS) will address the environmental effects of leasing in the various management areas defined in the Custer National Forest Land and Resource Management Plan that was approved June 19, 1987. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plan.

The decision to be made is whether or not to issue oil and gas leases, and if so, what stipulations are necessary to protect other resource values. The Bureau of Land Management is responsible for the actual issuance of these leases, but the Forest Service, as the surface management agency must consent to the issuance of a lease on Acquired lands under the Mineral Leasing Act of 1947, or not object to leasing of Public Domain lands under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This consent or no objection can be conditioned by requiring certain stipulations to be attached to the leases.

The decision to be made based on this analysis will not include decisions related to possible future site specific

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proposals for exploration or development of the oil and gas resources. When such a proposal is submitted that involves surface disturbance, a separate analysis will be conducted and disclosed in an appropriate NEPA document.

This analysis will address oil and gas leasing in the following Management Areas as described in the Custer Forest Plan:

Management area	Resource emphasis
B	Range/Minerals/Wildlife.
C	Wildlife (Key habitats).
D	Wildlife.
E	Minerals.
F	Developed Recreation.
J	Low Development (roadless).
K	Cultural and Scenic.
L	Research Natural Areas.
M	Riparian.
N	Woody Draws.

Federal, state, and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. Input to identify the issues to be addressed in the conducting of this analysis will be gathered from the public through mailing of scoping information to all known interested publics. Similar information will be distributed through the local media. No public meetings are scheduled at this time.

Based on comments made by the public on past proposals or actions the following list of preliminary issues to be addressed has been identified. This list will be verified, expanded or modified based on public scoping for this proposal.

1. The effects of leasing and subsequent actions on wildlife habitat.
2. The effects of leasing and subsequent actions on woody draws and riparian areas.
3. The effect of leasing and subsequent actions on the roadless resource.
4. The effect on the scenic values of the area.

Alternatives to be considered in this analysis will depend on the comments received during scoping, but the following have been identified as preliminary alternatives: (1) No Action (no leasing at this time), (2) Issue leases with the stipulations identified as standards and guidelines in the Custer Forest Plan, and (3) Issue leases with standard lease terms (no additional sitpulations).

In addition to the Bureau of Land Management as a cooperating agency, the North Dakota Geological Survey will cooperate in the development of this analysis by providing geological and historical information related to oil and gas development and potential.

The draft environmental impact statement is scheduled for release to the public for comment on or about September 30, 1990 and the final statement being filed by April 1, 1991. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. The Forest Service beleives it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435* U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.8 in addressing these points).

The responsible officials for this EIS and these decisions are John W. Mumma, Regional Forester, USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula, Montana 59807; and Marvin LeNoue, State Director, Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107–6800.

Dated: October 3, 1989

Bob Castaneda,

Deputy Forest Supervisor.

[FR Doc. 89–24212 Filed 10–12–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Giga Control, Inc.; Order

In the matter of: Giga Control, Inc., 2336 B Walsh Avenue, Santa Clara, California 95051, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Giga Control, Inc. (hereinafter referred to as Giga) of its intention to initiate an administrative proceeding against it pursuant to the Export Administration Regulations (currently codified at 15 C.F.R. parts 768–799) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended 50 U.S.C.A. app. sections 2401–2420 (Supp. 1989)) (the Act), by issuing a charging letter alleging that Giga violated the provisions of section 787.3(b) of the Export Administration Regulations by conspiring with Wide Trade Foundation, Ltd., National Electronics, Thomas Lee (also known as Yuk Sang Lee), Paul Wu (also known as Po Yip Wu), and others to bring about acts that constituted violations of the Act and the Regulations. The purpose of this conspiracy was to export U.S.-origin oscilloscopes, computers, electronic equipment and other commodities from the United States to Hong Kong, without obtaining from the Department of the validated export licenses required by § 772.1(b) of the Regulations;

The Department and Giga have entered into a Consent Agreement whereby the Department and Giga have agreed that this matter will be settled by Giga's paying to the Department a civil penalty in the amount of $35,000, and a denial of all of Giga's U.S. export privileges for 10 years; and

The terms of the Consent Agreement having been approved by me;

[1] Effective October 1, 1988, the Regulations were redesignated as parts 768–799 of title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368–399 (1988).

Therefore, it is ordered:

First, a civil penalty in the amount of $35,000 is assessed against Giga. Giga shall pay the civil penalty to the Department in the manner specified in the attached instructions within 30 days of the entry of this Order.

Second, that Giga Control, Inc., whose last known address was 2336 B Walsh Avenue, Santa Clara, California 95051 (hereinafter referred to as Giga), and all its successors, assignees, officers, partners, representatives, agents and employees, is denied, for a period of 10 years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Giga appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Giga's privileges of participating, in any manner or capacity, in any special licenses, procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Giga is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Giga or any related person, or whereby Giga or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Giga or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

Third, that the proposed Charging Letter, the Consent Agreement and this order shall be made available to the public.

This Order is effective immediately will be published in the **Federal Register.**

Dated October 4, 1989.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 89–24169 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 8:30 a.m., at the Oregon Advanced Computer Institute (OACIS), 19500 NW. Gibbs Drive, Building E–3, Beaverton, Oregon. The committee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status on array processor foreign availability study.
4. Workstation working group report.
5. LAN Proposal Review.
6. Discussion of AT decontrol definitional issues.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA-BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377–2583.

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–24200 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 10:00 a.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW., Gibbs Drive, Building E–3, Beaverton, Oregon. The Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers of comments by the public.
3. Status items.
4. Recommendations on treatment of finite element analysis software.
5. Initial work on CCL 1566 for 1990 List Review.

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The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377–2583.

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–24201 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 1:00 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E–3, Beaverton, Oregon. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department on licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of revised definition proposal and preparation of comments.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377–2583.

Dated: October 6, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–24202 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures & Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 2:30 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E–3, Beaverton, Oregon. The Committee was formed to review the procedural aspects of export licensing and recommend areas where improvement can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Review of Computer Systems Technical Advisory Committee response to action items

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–24203 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 4:00 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E–3, Beaverton, Oregon. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Scheduling of future meetings.
4. Miscellaneous items (other meeting reports and status items).

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377–2583.

Computer Export Forum

On November 2, 1989, 9:00 a.m.–12:30 p.m., the Computer Systems Technical Advisory Committee will present a public forum on computer export issues for 1990. The forum will be held at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E–3, Beaverton, Oregon. Time for questions and discussion will be made available during the forum.

Speakers

1. Recent Changes to CCL 1565
   Joe Young, Engineer, Computer Systems Technical Center, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce
2. 6031P Final Form
   Ed McClain, Branch Chief, Computer Systems, Individual Validated Licensing Division, Office of Export Licensing, Bureau of Export Administration, U.S. Department of Commerce
3. Emerging Technology Issues
   Joe Pumphrey, Engineer, Office of the Undersecretary of Defense (Acquisitions), Industrial and International Programs, International Technology and Trade, U.S. Department of Defense
4. Renewal of the Export Administration Regulations
   Roundtable with senior Congressional staff (to be announced)
5. 1990 List Review
   Roundtable (Participants to be announced)

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–24204 Filed 10–12–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–475–084]

Spun Acrylic Yarn From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on spun acrylic yarn from Italy. The review covers five manufacturers/exporters of this merchandise to the United States and the period April 1, 1986 through March 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and two respondents, we held a hearing on June 8, 1989. We received comments from the petitioner and three respondents. Based on the comments received, we have changed the final results for two respondents from those presented in the preliminary results of review.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 17803) the preliminary results of its administrative review of the antidumping duty order on spun acrylic yarn from Italy (45 FR 23684, April 8, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of worsted spun acrylic plied yarn for machine knitting, excluding four-ply craft yarn and certain brushed yarns. During the review period, such merchandise was classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item 5509.3200. The HTS item number(s) are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers five manufacturers/exporters of spun acrylic yarn from Italy and the period April 1, 1986 through March 31, 1987. Only three manufacturers/exporters with shipments during the period responded adequately to our requests for information. Turriddo Torracchi did not respond to our questionnaire. Mister Joe's response to the Department's questionnaire was inadequate because it provided self-selected home market sales and did not provide any adjustments to U.S. or home market sales. Therefore, the Department used the best information available for these two firms, which was the rate published in the antidumping duty order (45 FR 23684, April 8, 1980). While the petitioner had requested that the Department conduct a review of an additional firm, that firm had no shipments during the period, and we have no evidence that it is a manufacturer or exporter of the subject merchandise.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Yarn Spinners Association, Inc., and two respondents, International Fibre Industries Ltd. ("IFI") and Gruppo Bertrand (a.k.a. Fantasia), we held a hearing on June 8, 1989. We received comments from the petitioner and three respondents.

Analysis of Comments

Comment 1: The petitioner argues that the Department erred in basing the foreign market value ("FMV") calculations for some of IFI's United States sales on sales to the United Kingdom ("UK") because these sales are not of such or similar merchandise. Petitioner contends that the type C yarn exported to the UK is substantially different from the type A and B yarns exported to the United States. First, the type C yarn is fundamentally different "in component material". That is, the type A and B yarns IFI exported to the United States are both double-ply, 24 count, high bulk yarns. By contrast, the type C yarn sold in the UK is a single-ply, 40-count yarn that is not bulked at all. Therefore, the type C yarn is so fundamentally different from the type A and B yarns that type C yarn is not even in the class or kind of yarn covered by the antidumping order.

Second, the type C yarn is used in very different applications. Type C yarn results in a much lighter knit that is used for the assembly of "cut-to-sew" fabric parts for slacks and dresses, as opposed to "knit-to-shape" sweater parts for which the type A and B yarns are used.

Further, the type D yarn exported to the UK cannot be described reasonably as "such or similar" to the type A and B yarns exported to the United States. Although type D yarn, like type A and B yarns, is a double-ply, high bulk yarn, type D yarn is a 34 count yarn that is much finer than the 24 count type A and B yarns sold to the United States. Unlike the type A yarn, the type D yarn is dyed, rather than raw white, and is put up on skeins rather than cones.

Because of these physical differences, type D yarn has markedly different uses than type A and B yarns. That is, type A and B are typically used for knitting sweaters, whereas type D yarn is used to produce finer knit fabrics.

Therefore, petitioner concludes that the Department should not make any third country comparisons using IFI's sales to the UK. Instead, the Department should use IFI's sales of the comparable type A and A–1 yarns to Spain for any third country comparisons, and should use constructed value calculations when no Spanish sales contemporaneous to the United States sales are available.

IFI contends that petitioner's arguments concerning yarn type comparisons or the "third country market" issue are untimely. Further, IFI argues the yarn types exported to the UK are such or similar merchandise as defined by law. This is supported by the fact that all yarn types are made with

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100 percent acrylic fiber. Thus, they are all "like" each other in component material.

The component material for both fixed and high bulk yarns is 100 percent acrylic fiber. The fact that type C and type E yarns are single-ply while type A, B, and D are double-ply has nothing to do with component material, but rather is the result of the way in which the component material is spun into yarn. Nor does fixed versus high bulk distinguish the yarns in terms of component material, because such distinctions are attributable to the way in which the component material is processed by the spinner.

IFI further argues that the yarns are "like" one another in the purpose for which they are used. All are worsted spun acrylic yarns used for knitting. While different types may result in knitted products of differing weights or textures, this does not affect the use made of the merchanise, *i.e.*, the yarn. In addition, types C and D yarns are such or similar merchandise, in the same general class or kind as type A and B exported to the United States, because all are spun acrylic yarns and all are used for knitting.

Department's Position: For the final results of review, the Department has used constructed value as the basis of comparison where we determined that the cost differences for type C arid D yarns sold to the UK were of such a magnitude as to preclude a reasonable comparison. As the Department stated in the Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan:

> [I]t is the Department's practice to disregard home market sales as the basis for foreign market value when the difference in merchandise adjustments claimed are of such a magnitude as to lead us to question whether the home market sales reported can serve as an appropriate measure of foreign market value. There are two basic reasons for this practice: (1) in determining whether U.S. sales are being made at less than fair value, we do not want the difference in merchandise adjustment either to falsely create dumping margins or to mask them; and (2) large difference in merchandise adjustments may indicate that the home market sale is not similar to the U.S. sale, thus, warranting a new comparison (53 FR 12552, 12567, April 15, 1988).

Because of the magnitude of the cost differences between the yarns sold in the U.K. (type C and D) and yarns sold in the United States (A & B), we have concluded that the yarns sold in the U.K. are not such or similar merchandise under section 771(16) of the Tariff Act.

Petitioner timely submitted its legal arguments on comparison of merchandise in its pre-hearing brief. However, as we stated above, we used constructed value as the basis of comparison where there were signficant cost differences.

Comment 2: The petitioner argues that the Department should revise the calculations of IFI's selling, general and administrative ("SG&A") expenses for the constructed value calculations to use the 10 percent statutory minimum rather than IFI's actual allocated SG&A expenses, because the actual allocated expenses are slightly lower than the statutory minimum.

IFI argues that the petitioner's methodology is incorrect because it would result in an overstatement of general expenses. Further, IFI argues that the Department overstated SG&A expenses by computing the expense on a weighted-average basis. Instead, it should be calculated on a contract-by-contract basis.

Department's Position: Section 773(e)(B)(i) of the Tariff Act states that the amount for general expenses shall not be less than 10 percent of the cost of the materials and fabrication. Calculated SG&A was less than 10 percent. Consequently, for these final results we have used the statutory minimum.

IFI's argument that the Department overstated SG&A expenses by computing the expense on a weighted-average basis is moot. Even if we had computed SG&A using IFI's method, we would have applied the statutory minimum.

Comment 3: The petitioner argues that the Department should not have used the U.S. interest rates to calculate IFI's imputed credit expenses for third country sales. The Department should have used the applicable "prime" rate prevailing in the Eurodollar market, the London Interbank Offer Rate, instead of the U.S. prime rates.

IFI contends that the Department is correct in using its U.S. interest rates rather than an imputed interest rate in the credit expense calculations because this rate reflects its actual cost of borrowing.

Department's Position: Consistent with current Departmental practice, when computing imputed credit costs, we conclude that it is more reasonable to use IFI's actual short-term borrowing experience rather than a theoretical rate as suggested by petitioner.

Comment 4: The petitioner contends that the Department should impute an inventory carrying cost in the constructed value calculations for IFI and Gruppo Bertrand. The imputed interest expense should be calculated on the value of the inventory from the date of production to the date of sale (*see* All-Terrain Vehicles from Japan, 54 FR 4864, January 31, 1989).

IFI argues that it is inappropriate to impute inventory carrying charges as was done in All-Terrain Vehicles from Japan because that determination involved ESP sales. IFI's sales are purchase price sales.

Gruppo Bertrand contends that adding imputed inventory carrying costs might be appropriate where such an addition would raise a respondent's actual SG&A expenses above the statutory 10 percent minimum, or where its SG&A expenses are already higher than the 10 percent level. In Gruppo Bertrand's case, however, the SG&A expenses are below 10 percent, and the statutory 10 percent used in the CV calculation can be presumed to include any additional hypothetical costs.

Department's Position: In All-Terrain Vehicles from Japan, an amount representing inventory carrying cost was included in general expenses. However, in this case, we have not made such an adjustment to constructed value because for both IFI and Gruppo Bertrand inventory carrying expenses are accounted for in the SG&A as part of the indirect selling expenses.

Comment 5: The petitioner argues that the Department should verify IFI's and Gruppo Bertrand's response before the final determination in this administrative review.

IFI contends that the Department effectively has verified its cost of production ("COP") because IFI has supplied detailed and complete data with supporting documentation. It further contends that this review performed by the Department was more thorough than the normal on-site verification because the Department examined all of the cost of production documentation for all contracts.

Gruppo Bertrand also requests that we verify prior to the final results of our review.

Department's Position: Neither the petitioner nor the respondent Gruppo Bertrand made a timely request for verification under section 776(a) of the Tariff Act. These requests were received after publication of the notice of preliminary results of administrative review. In section 751 reviews the Department generally conducts verification prior to publishing the preliminary results. We do this so that parties to the proceeding will have access to all information on which our determinations are based in order that they may make meaningful comments on our preliminary results. In this case, the parties have not shown "good cause" for departing from our general practice.

Comment 6: IFI argues that the Department made a computational error in the calculation of COP for contract S-00820-06 which resulted in an incorrect cost adjustment for differences in merchandise. Ultimately, this computational error created dumping margins on deliveries under this contract.

Department's Position: We agree and have corrected the computational error.

Comment 7: IFI claims that its third country sales generally were made in lira. However, nine of the deliveries under contract S-00822-06 were invoiced on a split basis, partly in dollars and partly in lira. In calculating FMV for this contract, the Department did not include the dollar portion of the invoicing on these nine deliveries and, therefore, the data input error should be corrected for the final results of the review.

Department's Position: Although IFI is correct, this issue is moot because contract S-00822-06 was not used in our calculation of FMV.

Comment 8: IFI argues that the Department's conclusion that no dates of sale were provided for Sample A sold to Spain and Sample B sold to the United States, thus warranting the use of best information available ("BIA"), is incorrect. Sample A was filled with yarn produced under a contract for another order. If date of sale must be based on written documentation, then the Department should use October 14, 1988, the date of the invoice to the customer as the sale date.

Sample B was a resale of a yarn sample purchased by IFI. The Department incorrectly used the date of the invoice from the yarn producer to IFI as the date of sale.

Department's Position: We disagree. The Department requested copies of the documents associated with all of IFI's sales contracts covered by the review. IFI failed to substantiate that the reported dates of sale for Sample A and Sample B were correct. Consequently, we used the date of the purchase order for the fiber as best information available.

Comment 9: IFI argues that the amount for profit should be calculated on the basis of the company-wide profit of IFI's yarn sales.

Department's Position: We disagree that the overall company average profit should be used in the CV calculation. For the preliminary results, we used the United States profit by yarn type. However, we now believe that using the U.S. profit in the CV calculation would not permit correct comparison for dumping purposes insofar as U.S. profit would be compared with U.S. profit. Therefore, we have for the final results, recalculated profit based on third country sales to the UK because we are using such UK sales as the basis for our FMV determinations where such determinations are based upon prices. See Strontium Nitrate from Italy; Final Determination of Sales at Less Than Fair Value, 46 FR 25496 (May 7, 1961). We found that the profit sales to the UK was less than the statutory minumum; therefore, we used the statutory minimum of eight percent.

Comment 10: Gruppo Bertrand argues that the Department erred in using CV as the basis for foreign market value. The Department's determination that its sales in the home market and in France were at prices below its COP is entirely attributable to the use of BIA for SG&A expenses. Had the Department used the SG&A data supplied by Gruppo Bertrand, most of the sales in both markets would have been found to be above cost.

Further, Gruppo Bertrand argues that the Department's use of BIA for SG&A is based on unsupported assumptions and misunderstandings as to the nature of the data supplied. The Department's assumption that Gruppo Bertrand split manufacturing costs between manufacturing and operating is incorrect. As Gruppo Bertrand explained in its March 13, 1989 letter, it "independently" determined the overall cost of operating the acrylic yarn activity of the company. The figure arrived at was found to represent 50 percent of the total manufacturing costs of the company.

The petitioner argues that the Department correctly used the BIA for Gruppo Bertrand's SG&A expenses because Gruppo Bertrand has not addressed the Department's concern that its method of determining these expenses failed to include all such properly allocable expenses.

Department's Position: The Department used CV as FMV because we determined that Gruppo Bertrand had no sales in its home market or to France at or above the COP. The calculation for the COP consisted of the cost of materials, labor, and factory overhead as provided by Gruppo Bertrand. For the SG&A expenses, used in both the CV and COP calculations, we used BIA which was the statutory minimum of 10 percent.

In reviewing Gruppo Bertrand's allocation of the SG&A expense, we determined that the allocation was not supported, nor fully explained. That is, in support of its reported SG&A expense, Gruppo Bertrand only stated that it "* * * first took the overall cost of operating the acrylic yarn activity of the company. This turned out to be 50 percent of the total turnover (manufacturing costs) of the company * * *" And as Gruppo Bertrand stated above, "it independently" determined the overall cost of operating the acrylic yarn activity of the company.

Nowhere in any of Gruppo Bertrand's responses did it provide specific data concerning the first allocation in its calculation of SG&A. That is, Gruppo Bertrand never provided values for the first allocation and it never explained the origin of the values that were used. As a result, we determined that Gruppo Bertrand's calculation of SG&A was inadequate.

Comment 11: Gruppo Bertrand argues that before resorting to CV, the Department must determine that sales made at less than COP have been made over an extended period of time, in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time in the normal course of trade. Even with the use of a 10 percent BIA for SG&A, the margins by which its sales in Italy and France were below the calculated COP were extremely low. Under these circumstances, it is not unreasonable to assume that the prices at which Gruppo Bertrand sold in its home market and to France are such that costs will eventually be recovered. Furthermore, in the letter dated February 17, 1989, data was provided to show that its sales in Italy and France during the review period were at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

The petitioner argues that the Department properly disregarded these sales as inadequate, since they were all below cost and were not shown to be at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of business.

Department's Position: Gruppo Bertrand's initial questionnaire response showed that the costs for the differences in merchandise adjustments were greater than some of the unit prices in the home market, which caused us to conclude that there were sales below cost. We then asked Gruppo Bertrand to demonstrate whether or not its prices would permit recovery of all costs within a reasonable period in the normal course of trade. Gruppo Bertrand's response dated February 17, 1989, simply stated: "* * * As to your inquiry or (*sic*) capitalization of new equipment or buildings, etc. during the period * * * Fantasia responds that there were no such purchases in that period * * *" No

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other explanations or information were provided concerning recovery of costs which might lead us to conclude that costs could be recouped. Because of Gruppo Bertrand's failure to provide us with information indicating that costs could be recouped, we determined that Gruppo Bertrand's costs could not be recouped within a reasonable period in the normal course of trade. Consequently, we determined that there were no sales in the home market or to France that were sold at or above its COP. Absent sufficient sales in either market to be used as a basis for FMV, we used CV.

Comment 12: Gruppo Bertrand argues that before resorting to CV, the Department must find that the above-cost sales that remain are inadequate as a basis for the determination of foreign market value.

Department's Position: We determined that no sales were made above cost. (*See* our position on Comment 11.)

Comment 13: Gruppo Bertrand argues that the Department misidentified Exhibit 9 to its original response because the response inadvertently included a reference to Exhibit 9 (a worksheet for type 2/27/22 yarn and is titled "Cost of Product Bought in Italy (2/27/22)" and provides two columns of COP data: The left column is cost data for the yarn dyed and wound on cones, the right column shows cost data for this yarn if not dyed and not wound on cones) at the end of the paragraph discussing duty drawback. As a result, the Department used the wrong COP to compute the constructed value for raw white on hanks yarn sold to the United States because the Department did not realize that the right column on Exhibit 9 provides separate cost data for this yarn type. This was an inadvertent error that would have been clarified had there been a verification in this review.

Department's Position: Although the Department did not misidentify Exhibit 9, which is described in the response as a worksheet showing the difference in the COP on some of the merchandise sold to the United States, we have recalculated the constructed value based on the clarification made by Gruppo Bertrand. We do not however, that the purpose of verification is not to correct a response but rather to test its accuracy and completeness.

Comment 14: Gruppo Bertrand argues that the Department's determination not to adjust United States price by the amount of the duty drawback is the result of the Department's misunderstanding of Exhibit 9. Because of the misunderstanding, the Department should allow the addition to U.S. price.

Department's Position: We did not make this adjustment to U.S. price because Gruppo Bertrand did not provide us with the information to enable us to make this adjustment. Gruppo Bertrand did not specify which sales were entitled to the duty drawback.

Comment 15: Gruppo Bertrand argues that the Department's determination not to allow a circumstance of sale adjustment, on the basis that the currency hedging proceeds are not directly related to its U.S. sales, is directly at odds with the decision in Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (54 FR 18992, May 3, 1989). This adjustment should be allowed for the final results.

The petitioner argues that Gruppo Bertrand failed to demonstrate that the currency gains were directly related to its United States sales during the period.

Department's Position: In Antifriction Bearings we state that we made a circumstance of sale adjustment to reflect hedging profits or losses accurately, where these profits or losses were properly documented and were demonstrated to be directly tied to sales during the period of investigation. Gruppo Bertrand has not documented that this claimed adjustment is directly related to its sales to the United States. Gruppo Bertrand (Cofisa) purchased lira with borrowed U.S. dollars on September 18, 1985, in anticipation of a decline in the value of the dollar vis-a-vis the lira. In the response Gruppo Bertrand identified certain sales with purchase dates from 6 months to 1 year after the date of the currency gain. We conclude that this is mere financial speculation which was not directly tied to the sales identified in the response. Consequently, we have not allowed the adjustment.

Comment 16: Mr. Joe argues that the merchandise sold to the United States during the period of review is outside the scope of the antidumping duty order because the yarn is 50 percent natural fibre with very low levels of synthetic fibre. Therefore, its shipments should be excluded.

Department's Position: Mr. Joe provided an incomplete response to the Department's questionnaire. As a result, we used BIA. Mr. Joe had provided information concerning the fibre content of the yarn for the June 6, 1989 hearing. We have rejected this information as untimely because it was submitted after the preliminary determination. (*See Rhone Poulenc, Inc.* v. *United States*, 13 CIT ___, Slip Op. 89-38 (March 23, 1989); (Final Determination of Sales at Less Than Fair Value in Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from Japan (54 FR 19034, May 3, 1989.)

Final Results of the Review

As a result of our review of the comments received and the correction of certain clerical errors, we have determined that the following margins exist for the period April 1, 1986 through March 31, 1987.

Manufacturer/Exporter	Margin (percent)
Maniffattura Emmepi S.p.A.	
Gruppo Bertrand (a.k.a. Fantasia, Cofisa, and Saberfil)	14.06
Lanificio DiNervesa Della Battaglia S.p.A./International Fibre Industries, Ltd.	0.80
Turriddo Torracchi	48.05
Mister Joe	48.05

We are not covering Enichem Fibre S.p.A. (a.k.a Ancifibre S.p.A.) in this review because this firm is not known to be a manufacturer or exporter of the subject merchandise. If the firm should begin to export the subject merchandise, we will treat it as a new exporter.

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage stated above.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable for each of those firms (47 FR 5280, February 4, 1982; 48 FR 37682, August 19, 1983; and, 50 FR 35849, September 4, 1985).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after March 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of 14.06 percent shall be required. These deposit requirements are effective for all shipments of Italian spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: October 5, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24107 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-804]

Postponement of Preliminary Countervailing Duty Determination: Certain Computer Aided Software Engineering Products From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, Visible Systems Corporation, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigation of certain computer aided software engineering (CASE) products from Singapore. The preliminary determination will be made on or before January 8, 1990.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3534 or 377-3217.

SUPPLEMENTARY INFORMATION: On August 29, 1989, the Department initiated a countervailing duty investigation of CASE software from Singapore. In our notice of initiation we stated that we would issue our preliminary determination on or before November 2, 1989 (54 FR 37013, September 6, 1989).

On October 4, 1989, the petitioner filed a request that the preliminary determination in this investigation be postponed for 65 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in this investigation, the Department is postponing its preliminary determination until no later than January 8, 1990.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: October 6, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24106 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Rescheduling of Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meetings of the Caribbean Fishery Management Council, and the Council's Administrative Committee, on September 26-28, 1989, in Lajas, Puerto Rico, previously published at 54 FR 36849, were cancelled due to Hurricane Hugo.

The public meetings have been rescheduled for October 23-25, 1989, at the same location at the Hotel Villa Parguera, La Parguera, Lajas, Puerto Rico. On October 24 the Caribbean Council will begin its 67th meeting at 9 a.m., and recess at 5 p.m. On October 25 the Council will reconvene at 9 a.m., and adjourn at noon. The Council's Administrative Committee will meet on October 23 from 2 p.m., to approximately 5 p.m.

The purpose of the meetings is to discuss, among other Council matters, issues pertaining to Amendment #1 of the Shallow-water Reef Fish Fishery Management Plan (FMP), and the draft Queen Conch FMP. The public meetings will be conducted in English; however, simultaneous English/Spanish translations of the proceedings also will be conducted. For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone; (809) 766-5926.

Dated: October 6, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24093 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 9, August 11 and 18, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 24733, 33051 and 34213) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Case, Revolver
1095-00-491-8487
Shampoo, Medicated
6508-00-116-1362
6508-00-116-1367

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Service

Administrative Services
Department of Transportation
Library and Distribution Services
400 7th Street SW
Washington, DC

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-24226 Filed 10-12-89; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: November 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Marker, Tube Type

7520-01-159-1585
7520-00-460-7598
7520-01-166-0682

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-24282 Filed 10-12-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Follow-on Forces Attack (FOFA)

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for September 14, 1989 as published in the **Federal Register** (Vol. 54, No. 172, Page 37146, Thursday, September 7, 1989, FR Doc 89-20941) has been cancelled.

Dated: October 10, 1989.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89-24215 Filed 10-12-89; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA)

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on November 6, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 10, 1989.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24216 Filed 10-12-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-2194-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

October 3, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89-2194-000]

Take notice that on September 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2194-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of OXY USA, Inc. (Oxy), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 20,600 MMBtu of natural gas per day for Oxy from a receipt point located in South Marsh Island Block 155, Offshore Louisiana to a delivery point also located in South Marsh Island Block 155, Offshore Louisiana. United anticipates transporting an annual volume of 7,519,000 MMBtu.

United states that the transportation of natural gas for Oxy commenced August 1, 1989, as reported in Docket No. ST89-4607-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Co.

[Docket No. CP89-2198-000]

Take notice that on September 29, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-2198-000 an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing "open access", self-implementing transportation of natural gas for others, and pre-granted authorization to abandon such self-implementing transportation services, in accordance with the provisions of § 284.221(d) of the Commission Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes seeks authorization to offer open access transportation services to firm and interruptible shippers in accordance with the provisions of its proposed new Rate Schedules FT and IT. Great Lakes states that these open access services would be offered on a non-discriminatory basis as required and defined by § 284.8 and 284.9 of the Commission's Regulations, and would be subject to the operation provisions reflected in Great Lakes' proposed General Terms and Conditions as set forth in the application as *pro forma* tariff sheets. It is asserted that after the issuance of the blanket certificate by the Commission, Great Lakes intends to file the open access tariff under section 4 of the Natural Gas Act, and the rates to be charged for new firm and interruptible transportation services under Great Lakes' general rate proceeding. Great Lakes states that it would comply with the conditions in § 284.221(c) of the Commission's Regulations.

Great Lakes requests pregranted abandonment authorizing the suspension and/or termination of transportation services authorized under the service agreements, which are subject to Rate Schedules FT and IT, under their terms and conditions, and in accordance with other applicable provisions of Great Lakes' *pro forma* tariff.

Great Lakes asserts that it is not proposing to offer its remaining sales customers the option, under § 284.10 of the Commission's Regulations, to convert a portion of their sales entitlements to an equal amount of firm transportation service. Great Lakes alleges that for more than four years, its sales customers have negotiated pricing arrangements directly with Great Lakes' sole supplier, TransCanada Pipelines Limited (TransCanada). Great Lakes states that the Commission has determined that these resale customers should be treated as direct purchasers from TransCanada and that Great Lakes is a conduit with regard to their purchasers. It is alleged that the Commission has determined that Great Lakes is, in substance a transporter. Great Lakes asserts that it has unbundled all but two of its sales customers, ANR Pipeline Company and Natural Gas Pipeline Company of America. Great Lakes contends that it would cease its limited merchant function in the near future.

Great Lakes is proposing that shippers using Rate Schedules FT and IT provide gas for Transporter's use, in addition to shippers' scheduled daily deliveries. It is asserted that this provision reflects the concept embodied in Great Lakes' current PGA provisions, which were first approved by the Commission in 1980. Great Lakes would determine the percentage of Transporter's use gas to be provided by the shippers in accordance with the methodology stated in section 4.3 of Rate Schedules FT and IT. Quarterly changes to these percentages, if any, would be communicated to Great Lakes' customers by means of an electronic bulletin board, which would be activated concurrently with the implementation of Great Lakes' open access program.

Comment date: October 18, 1989, in accordance with Standard Paragraph F at the end of the notice.

Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-2182-000]

Take notice that on September 27, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-2182-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Apache Corporation (Apache), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to transport on a firm basis up to 20,000 MMBtu of natural gas equivalent per day on behalf of Apache pursuant to a transportation agreement dated August 24, 1989, between Northern and Apache. Northern would receive the gas at an existing receipt point in Oklahoma and redeliver equivalent volumes, less fuel used, at existing delivery points in Texas.

Northern further states that the estimated average daily and annual quantities would be 15,000 MMBtu and 7,300,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 24, 1989, as reported in Docket No. ST89-4748-000, it is stated.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Paiute Pipeline Co.

[Docket No. CP89-2176-000]

Take notice that on September 27, 1989, Paiute Pipeline Company (Paiute), P.O. Box 941897, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-2176-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for R.R. Donnelley & Sons Company (Donnelley), an end-user, under its blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation, agreement dated November 14, 1988, under its Rate Schedule IT-1, it would transport up to 400 MMBtu per day of natural gas for Donnelley from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute further states that it would transport and redeliver the natural gas to Sierra Pacific Power Company, a local distribution company, for the account of Donnelley at the Sierra Pacific City Gate No. 1 delivery point located in Washoe County, Nevada. Paiute indicates that it would transport approximately 1 MMBtu on an average day and approximately 365 MMBtu on an annual basis for Donnelley.

Paiute advises that it commenced the transportation of natural gas for Donnelley on August 6, 1989, as reported in Docket No. ST89-4557-000, for a 120-day period pursuant to section 284-223(a) of the Commission's Regulations (18 CFR 284.223(a))

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-2177-000]

Take notice that on September 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-2177-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Energy Marketing Company (Shipper) under the blanket certificate issued in Docket No. CP88-328-000, pursuant to

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section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Shipper. Transco states that it would transport the gas from receipt points located offshore and onshore Louisiana, onshore and offshore Texas; Alabama, Georgia, Pennsylvania, and in New Jersey and would deliver the gas at a delivery point in onshore Louisiana.

Transco advises that service under § 284.223(a) commenced August 8, 1989, as reported in Docket No. ST89–4731. Transco further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP89–2155–000]

Take notice that on September 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–2155–000 a request pursuant to §157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 515,000 MMBtu equivalent of natural gas on a peak and average day, and 187,975,000 MMBtu equivalent on an annual basis. It is explained that the transportation service commenced August 9, 1989, as reported in Docket No. ST89–4424.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williston Basin Interstate Pipeline Co.

[Docket No. CP89–2185–000]

Take notice that on September 27, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89–2185–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for permission and approval to abandon four sales taps and appurtenant facilities in South Dakota under Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the sales taps and appurtenant facilities, which are located in Pennington County, South Dakota, because they are no longer used by Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota) to serve end-use customers. It is stated that Montana-Dakota has consolidated its metering facilities. It is asserted that the taps will be abandoned in place. It is further asserted that no customers would lose service as a result of the abandonment.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Co., Division of Enron

[Docket No. CP89–2170–000]

Take notice that on September 26, 1989, Norther Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–2170–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205) for authorization to operate and maintain an existing delivery point and appurtenant facilities or a jurisdictional sales facility to accommodate natural gas deliveries to Clausen Koch Corporation and a residential trailer park in Haskell County, Kansas to be served by Peoples Natural Gas Company (Peoples) under the blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to request authority for sales service to an existing delivery point for Peoples. The volumes delivered to the delivery point will be served from existing firm entitlement of the Argus, Rural Sales Tap.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williston Basin Interstate Pipeline Co.

[Docket No. CP89–2184–000]

Take notice that on September 27, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP89–2184–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for permission and approval to abandon two Montana sales taps under its blanket certificate authorization issued in Docket No. CP82–487–000, *et al.*, pursuant to section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon sales taps and appurtenant facilities on its transmission system in Dawson County and Rosebud County, Montana. Williston Basin states that its customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., no longer requires service via these sales taps. Williston Basin also proposes to abandon these sales taps on its existing transmission right-of-way.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Co.

[Docket No. CP89–2199–000]

Take notice that on September 29, 1989, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89–2199–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Air Products and Chemicals, Inc. (Air Products). United explains that service commenced July 21, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4425–000. United explains that the peak day quantity would be 36,050 MMBtu, the average daily quantity would be 36,050 MMBtu, and that the annual quantity would be 13,158,250 MMBtu. United explains that it would receive natural gas for Air Products account at receipt points in the States of Louisiana, Texas, Mississippi and Alabama, and Offshore Louisiana and redeliver the gas at points in the States of Florida and Louisiana.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24108 Filed 10–12–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–251–000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on September 29, 1989, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for these tariff sheets is November 1, 1989. The proposed changes would increase revenues from jurisdictional sales and service by $3,528,817 based on the 12-month period ending May 31, 1989, as adjusted for known and measurable changes and would permit Alabama-Tennessee to revise the computation of its purchased gas cost adjustment from a unit-of-purchase method to a unit-of-sale method.

In addition, Alabama-Tennessee has tendered for filing FT and IT Rate Schedules, new Forms of Service Agreements, and revisions to its General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. Alabama-Tennessee states that these Rate Schedules and other changes to its FERC Gas Tariff would enable it to implement open access transportation service under part 284 of the Commission's Rules and Regulations. As part of the implementation of open access on its system, Alabama-Tennessee states that it has also made certain changes to its G and SG Rate Schedules and with the Form of Service Agreement thereunder. The changes are subject to approval of an application for blanket certificate for part 284 transportation which was filed concurrently.

Copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 285.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24109 Filed 10–12–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–2–20–000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 5, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 29, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed To Be Effective September 1, 1989

Substitute Thirty-first Revised Sheet No. 204

Proposed To Be Effective October 1, 1989

Substitute Thirty-sixth Revised Sheet No. 203

Thirty-second Revised Sheet No. 204

Substitute Twenty-ninth Revised Sheet No. 205

Twenty-second Revised Sheet No. 211

Eighteenth Revised Sheet No. 214

Algonquin states that it is filing Substitute Thirty-first Revised Sheet No. 204 and Thirty-second Revised Sheet No. 204 to concurrently track rate changes made by National Fuel Gas Supply Corporation ("National") in the service underlying Algonquin's Rate Schedule F–3. The effect of National's change in rates being tracked in Substitute Thirty-first Revised Sheet No. 204 is to reduce the commodity rate by 9.22 cents per MMBtu to be effective for the month of September, 1989. The effect of National's changes in rates being tracked in Thirty-second Revised Sheet No. 204 is to decrease the demand charge by 8.0 cents per MMBtu while increasingly the commodity charge by 91.33 cents per MMBtu from the September, 1989 rates.

Algonquin states that it is filing the remaining tariff sheets to flow-through the incorporation of the Commission's Fiscal Year 1989 Annual Charge Adjustment Surcharge by its other pipeline suppliers and transporters, (Texas Eastern Transmission Corporation, CNG Transmission Corporation, and Transcontinental Gas Pipe Line Corporation) into the services underlying Algonquin's Rate Schedules F–2, F–3, F–4, STB and SS–III.

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Algonquin states that the effect of the flow through of the FY 1989 ACA Surcharge represents: (i) under Rate Schedule F-2, a 0.03 cent per MMBtu reduction in the commodity rate, (ii) under Rate Schedule F-3, a 0.02 cent per MMBtu reduction in Transco's ACA Surcharge, (iii) under Rate Schedule F-4, a 0.01 cent per MMBtu reduction in the commodity rate, (iv) under Rate Schedule STB, a 0.02 cent per MMBtu reduction in the withdrawal rate and (v) under Rate Schedule SS-III, a 0.02 cent per MMBtu reduction in both the firm and non-firm withdrawal rates.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24120 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that ANR Pipeline Company ("ANR"), on September 29, 1989, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective November 1, 1989.

Substitute Original Sheet No. 19

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Substitute Original Sheet No. 19 reflects a 16.52¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates in effect on October 1, 1989. The tariff sheet contains a monthly demand rate of $10.095, applicable to the DC-1/MC-1 Rate Schedules. The insant filing further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS-1 of 20.40¢ per dth.

This filing incorporates ANR's implementation of a one-part demand rate design and a change in the method by which it measures BTU content from a saturated basis to a dry basis, pursuant to provisions of ANR's rate proceeding at Docket No. RP89-161-000. In addition, ANR has utilized from the same rate proceeding the as filed, fixed transmission cost of service as a basis to allocate its Canadian gas costs to the appropriate, demand and commodity, Modified Fixed Variable ("MFV") components. ANR has also restated its volumetric buyout buydown surcharges, relating to Docket Nos. RP89-127 and RP89-193, *et al.*, to reflect the throughput quantities underlying ANR's general rate filing at Docket No. RP89-161-000. The Commission's Order in Docket No. RP89-161-000, dated May 31, 1989, Accepted and Suspended ANR's rates until November 1, 1989, Subject to Refund and Conditions.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24116 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-253-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on September 29, 1989, tendered for filing proposed Second Revised Volume No. 1 to its FERC Gas Tariff. Carnegie states that this filing should not affect the rate levels or revenues applicable to Carnegie's services, and that its currently effective rates are not changed by this filing. Carnegie requests that Second Revised Volume No. 1 become effective on November 1, 1989.

Carnegie states that the filing is designed primarily to reorganize and restructure Volume No. 1 of its FERC Gas Tariff in light of numerous and significant changes affecting Carnegie over the past few years. In addition to reorganizing the tariff, and proposing corrections and clarifications to terms and provisions in the existing volume, Carnegie proposes the addition of: (i) An imbalance provision to section 5.2 of its FTS and ITS Rate Schedules; (ii) UGI Corporation to Carnegie's list of curtailment priorities; (iii) a delivery nominations/delivery sequencing provision; and (iv) a gas inventory charge mechanism designed to flowthrough any gas inventory charges incurred by Carnegie from Texas Eastern Transmission Corporation.

Carnegie submits that the substantive additions to its tariff are necessitated by the Commission's open access policies, and similar provisions in effect on the Texas Eastern Transmission Corporation system, which currently is Carnegie's sole pipeline supplier. Carnegie states that the proposed substantive additions are based on related provisions in Texas Eastern's tariff.

Copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions in Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24113 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-249-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume 2, with a proposed effective date of November 1, 1989; however, Columbia Gulf requests that the rates be suspended for the full statutory period so that they become effective on April 1, 1990.

Columbia Gulf states that the purpose of the filing is to provide for the level of rates and charges required to cover its costs. When compared to the pending settlement rates filed with the Stipulation and Agreement on June 29, 1989 (Stipulation), at Docket No. RP86-167 *et al.* the proposed change in rates shows an annual revenue increase of approximately $12.1 million. Columbia Gulf reserves the right to withdraw or amend the filing in the event the Stipulation does not become effective.

Columbia Gulf states that the proposed rates reflect the cost functionalization, cost classification, cost allocation and rate design agreed to in the pending settlement, and a projected level of transportation volumes and revenues.

Also included are tariff sheets reflecting the decreases in Columbia Gulf's offshore depreciation rate from six percent to four and one-half percent.

Columbia Gulf also proposes certain changes to the tariff provisions governing open-access transportation services which it states will improve the efficiency with which it renders such service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24117 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-250-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2 (identified in appendix A hereto), with a proposed effective date of November 1, 1989. Columbia requests that the Commission suspend the rates and tariff sheets for the full statutory period so that they become effective on April 1, 1990.

Columbia states that the purpose of the filing is to propose a general rate increase under section 4(e) of the Natural Gas Act so as to provide for the level of rates and charges required to recover its costs, and to reflect the new services and levels of service contemplated by the Stipulation and Agreement filed on June 29, 1989, with the Offer of Settlement in Docket No. RP86-168-000, *et al.* (Stipulation). When compared to the settlement rates proposed to become effective on November 1, 1989, pursuant to the Stipulation, Columbia states that the proposed rates reflect an annual revenue increase of approximately $36 million, after certain adjustments to reflect costs temporarily absorbed by Columbia under the terms of the Stipulation. Columbia states that it reserves the right to withdraw or amend the filing in the event the Stipulation is not implemented in accordance with its terms.

Columbia states that the instant filing reflects the following primary changes:

(1) Revised non-gas sales, transportation and storage service rates based upon a cost of service for the twelve months ended May 31, 1989, adjusted for known and measurable changes anticipated to occur on or before February 28, 1990;

(2) Use of the cost classification, cost alloation and rate design methodology established in the Stipulation, and no change in the cost functionalization utilized in Docket No. RP86-168, in accordance with Article I, Section F of the Stipulation;

(3) Implementation of a Transportation Cost Recovery Adjustment Mechanism to adjust rates at such time as Columbia's Account No. 858 costs change, in compliance with Article III, Section G of the Stipulation;

(4) The reflection of a representative level of revenue attributable to discounted transportation;

(5) Adjustments to test year PGA rates and tariff revisions as necessary to implement changes as follows:

(a) A change in the PGA from a two-part demand to a one-part demand structure;

(b) A switch from a 12-month to a 3-month demand PGA;

(c) Elimination of storage costs from PGA demand rates;

(d) Elimination of Account No. 858 reservation charges from the PGA;

(e) A projected level of demand gas costs from pipeline suppliers to take into account the effect of restructured pipeline supplier contracts;

(f) Elimination of Columbia LNG Corporation billings to Columbia effective January 1, 1990;

(g) An amendment to the assessment test to bring it into compliance with Commission orders;

(h) Elimination of the segregation between demand and commodity costs in Account No. 191 effective April 1, 1990, for purposes of developing its Account No. 191 surcharge; and

(6) Revised tariff provisions governing open-access transportation services in order to improve the efficiency with which Columbia provides such service.

Copies of the filing were served upon Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

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become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24110 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-244-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

October 5, 1989.

Take notice that on September 27, 1989, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to its FERC Gas Tariff, to be effective November 1, 1989:

Fifty-third Revised Sheet No. 4
Eighth Revised Sheet No. 119
Seventh Revised Sheet No. 120
Thirteenth Revised Sheet No. 122
Fifth Revised Sheet No. 122A
Third Revised Sheet No. 278

East Tennessee states that this filing is being made to reduce the rate charges under its AOS Rate Schedule and to revise the Index of Annual Entitlements.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected stated regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene: *Provided, however,* That any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2411 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC gas Tariff, to be effective November 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

Eleventh Revised 37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

Tenth Revised 59th Revised Sheet No. 128

The above-referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ89-4-34-000 effective August 1, 1989.

FGT states that the effect of the purchased gas cost increase being filed represents an increase of 1.574 cents/therm for Rate Schedules G and I and .44 cents/Mcf for Rate Schedule T-3 as measured against FGT's Quarterly PGA filing in Docket No. TQ89-4-34-000 effective August 1, 1989.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24118 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 5, 1989

Take notice that K N Energy, Inc. ("K N") on October 3, 1989, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1-B to reflect changes in the Current Adjustment and the Surcharge Rate Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR-1 and IOR-2, by 10.29¢ per Mcf, of which 4.20¢ per Mcf represents the increase in the Current Adjustment and 6.09¢ per Mcf represents the increase in the Surcharge Rate Adjustment. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 10.69¢ per Mcf and 10.27¢ per Mcf, respectively. K N states that the filing reflects revision to its tariff rates reflecting "as-billed" costs and that the result is a decrease in the demand rate applicable to some rate schedules and an increase in the demand rates for other rate schedules. The proposed effective date for the rate changes is December 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before October 26, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24119 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-248-000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Mississippi River Transmission Corporation (MRT) filed pursuant to section 4 of the Natural Gas Act (NGA) and the regulations of the Federal Energy Regulatory Commission (Commission) thereunder changes in its FERC Gas Tariff which are proposed to become effective November 1 and December 1, 1989, as more fully described in its rate increase application which is on file and available for public inspection.

MRT notes that this filing constitutes its first general NGA section 4 rate filing since the issuance of the Commission's Orders on pipeline rate design policy in Docket Nos. PL89-2-000, *et al.* and the issuance of a blanket open access transportation certificate to MRT. Consequently, MRT states that the purpose of the filing is not only to permit its recovery of various increases in its cost of service, but also to modify MRT's rates and charges consistent with the goals and objectives expressed in the Commission's policy statement, and better adapt the MRT system to its new mode of operation as an open access transporter.

In addition to revised jurisdictional sales rates, the filing proposes new transportation rates pursuant to part 284 of the Commission's Regulations which will supersede the initial rates approved in Docket No. CP89-1121-000. MRT states that principal factors necessitating the filing of its proposed rate increase include increases in costs resulting from the installation of new facilities, an increase in rate of return, general increases in various administrative and other expenses, and the need to recover costs associated with a remediation program concerning polychlorinated byphenals (PCBs).

Copies of the filing have been served upon MRT's jurisdictional customers, and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214 (1986). All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Mississippi's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24121 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-247-000]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Mississippi River Transmission Corporation ("MRT") tendered for filing the tariff sheets listed in appendix A to its FERC Gas Tariff. A November 1, 1989 effective date is proposed.

MRT states that the primary purpose of the instant filing is to restate and reflect MRT's jurisdictional sales rates on a thermal basis, instead of on their present volumetric basis, by changing the unit of measurement for such rates from an "Mcf" to an "MMBtu" basis. MRT states that while this unit of measurement change will require a translation of MRT's present volumetrically stated sales rates, Contract Demands, and Index of Rate Design Sales ("D-2 Entitlements") to thermally equivalent quantities, the change will not affect either MRT's customers' existing levels of service, the amounts paid by such customers for such services, or the total amount of revenue collected by MRT for such services. MRT states that the instant tariff filing will result in neither an enlargement nor an abandonment of service and is being submitted pursuant to § 154.63(a)(1) of the Commission's Regulations as a "Change Other Than In Rate Level."

MRT states that conversion of its sales tariffs to an MMBtu basis will provide a uniform means for billing and measurement of both sales and transportation services on MRT's system. MRT notes that on September 18, 1989 the FERC issued an order in Docket No. CP89-1121 granting MRT an open access blanket transportation certificate, and approving open access tariff provisions reflecting an MMBtu unit of measurement as contemplated by the Commission's open access regulations. MRT claims that while it historically has relied on Btu measurements taken at its Meramec Measuring Station for customer billings, the more recent installation of sophisticated measuring equipment throughout its system will allow a more accurate reading of MMBtu's being delivered to each customer.

MRT states that in accordance with the September 18, 1989 order in Docket No. CP89-1121-000, it also filed on September 29, 1989 proposed tariff changes pursuant to section 4 of the Natural Gas Act. MRT claims that because several tariff sheets included in the instant filing will be the same as those contained in the section 4 filing, it is important that the instant filing be processed expeditiously to avoid conflict with § 154.66 of the Commission's Regulations. MRT requests that in the event that the instant tariff filing has not been approved and placed into effect prior to any suspension period concerning MRT's section 4 rate change filing, that the Commission waive § 154.66 of its Regulations to the extent necessary to allow the instant filing to be processed and approved during the suspension period of the section 4 filing.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sale for resale customers, and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-24122 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TC89-11-000 et al.]

Mississippi River Transmission Corp., et al; Tariff Sheet Filings

October 5, 1989.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1989, pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Pipeline and docket No.	
(1) Mississippi River Transmission Corporation, TC89-11-000; Filed: September 15, 1989.	Fourteenth Revised Sheet No. 75. Twelfth Revised Sheet No. 76. Fifteenth Revised Sheet No. 78. Thirteenth Revised Sheet No. 79, of FERC Gas. Tariff, Second Revised, Volume No. 1. Eleventh Revised Sheet No. 3E, to FERC Gas. Tariff, First Revised, Volume No. 1.
(2) Arkla Energy Resources—a division of Arkla, Inc., TC89-9-000; Filed: September 15, 1989.	Ninth Revised Sheet No. 44. Tenth Revised Sheet No. 45. Seventh Revised Sheet No. 46. Eighth Revised Sheet No. 47, of FERC Gas. Tariff, First Revised, Volume No. 1
(3) South Georgia Natural Gas Company, TC89-12-000; Filed: September 15, 1989.	Fourteenth Revised Sheet No. 61. Fifth Revised Sheet No. 61A. Thirteenth Revised Sheet No. 62. Fifth Revised Sheet No. 62A. Sixteenth Revised Sheet No. 63. Eighth Revised Sheet No. 63. Fifteenth Revised Sheet No. 64. Seventh Revised Sheet No. 64A. Fourteenth Revised Sheet No. 65. Ninth Revised Sheet No. 65A. Sixteenth Revised Sheet No. 66. Tenth Revised Sheet No. 66A. Seventeenth Revised Sheet No. 67. Ninth Revised Sheet No. 67A. Seventh Revised Sheet No. 68. Fifth Revised Sheet No. 68A.
(4) Southern Natural Gas Company, TC89-13-000; Filed: September 15, 1989.	Ninth Revised Sheet No. 69. Fourth Revised Sheet No. 69A. Ninth Revised Sheet No. 70. Fourth Revised Sheet No. 70A. Sixteenth Revised Sheet No. 71. Eighth Revised Sheet No. 71A. Thirteenth Revised Sheet No. 72. Fifth Revised Sheet No. 72A. Twelfth Revised Sheet No. 73. Fifth Revised Sheet No. 73A. Fifteenth Revised Sheet No. 74. Eighth Revised Sheet No. 74A. Fourteenth Revised Sheet No. 75. Seventh Revised Sheet No. 75A. Fourteenth Revised Sheet No. 76. Ninth Revised Sheet No. 76A. Seventeenth Revised Sheet No. 77. Tenth Revised Sheet No. 77A. Seventeenth Revised Sheet No. 78. Ninth Revised Sheet No. 78A. Seventh Revised Sheet No. 79. Fifth Revised Sheet No. 79A. Ninth Revised Sheet No. 80. Fourth Revised Sheet No. 80A. Ninth Revised Sheet No. 81. Fourth Revised Sheet No. 81A. Sixteenth Revised Sheet No. 82. Eighth Revised Sheet No. 82A.

[1] Addresses of the pipelines are listed in the Appendix hereto.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 16, 1989, filed with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois Cashell,

Secretary.

Appendix

Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124
Arkla Energy Resources, P.O. Box 21734, Shreveport, Louisiana 71151
South Georgia Natural Gas Company, P.O. Box 2563, Birmingham AL 35202 2563
Southern Natural Gas Company, P.O. Box 2563, Birmingham AL 35202 2563

[FR Doc. 89-24126 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-55-000]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Questar Pipeline Company (Questar Pipeline) tendered for filing the following tariff sheets to revise First Revised Volume No. 1 of its FERC Gas Tariff to be effective as noted:

August 1, 1989

First Revised Substitute Twenty-Second Revised Sheet No. 12
First Revised Sheet No. 17-D

September 1, 1989

Substitute Twenty-Third Revised Sheet No. 12

October 1, 1989

Substitute Twenty-Fourth Revised Sheet No. 12

Questar Pipeline states that these tariff sheets are being filed to reflect the revised take-or-pay buyout-buydown costs assigned and billed to it by Northwest Pipeline Corporation (Northwest) pursuant to Northwest's filing in Docket No. RP89-219-000 and Docket No. TM90-1-37-000. Questar Pipeline states that its Utah pipeline supplier charge will be revised from $88,513 to $87,299 for August and September 1989. Effective October 1, 1989, the pipeline supplier charge will be revised to $174,260. The Wyoming Pipeline Supplier Charge will be revised from $5,314 to $5,241 for August and September 1989; and effective October 1, 1989, it will be revised to $10,462.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24123 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-255-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 29, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 468
Second Revised Sheet No. 613
Second Revised Sheet No. 625
Third Revised Sheet No. 677

Texas Eastern states that the purpose of this filing is to (1) revise the definition of GSI Credits as contained in Texas Eastern's Gas Supply Inventory Reservation Charge and (2) delete the phrase "Seller and Buyer further agree that Seller may at its sole discretion terminate this Agreement at any time if Seller also terminates like service for others on a non-discriminatory basis which is consistent with applicable regulatory law and regulations" from Texas Eastern's Rate Schedule FT-1 Form of Service Agreement.

Texas Eastern states that as approved by the Commission by its September 29, 1988 order in Docket Nos. RP85-177 and CP88-136, a Gas Supply Inventory Reservation Charge is included in the service agreements underlying Rate Schedules CD-1 and CD-2 and in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff applicable to Rate Schedules DCQ and GS. As currently structured, customers purchasing below their nominations can utilize accumulated GSI credits to reduce or avoid paying a Gas Supply Inventory Reservation Charge during any given month. As a result of the current definition of the term "GSI Credits", the impact of a customer purchasing below its monthly inventory determinants in a particular month affects each month thereafter until rectified in an annual reconciliation at the end of a contract year.

Texas Eastern states that by this instant filing, Texas Eastern is proposing a new definition of GSI Credits which is more beneficial, from a customer viewpoint, than the currently effective definition. In particular, Texas Eastern proposes the following changes:

(1) Section 28.2(d) of Texas Eastern's General Terms and Conditions on Sheet No. 468 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to Rate Schedules DCQ or GS, applicable, plus (2) the quantity of gas purchased in prior months in the Contract Year under Rate Scheduled DCQ or GS as applicable in excess of the aggregate Monthly Inventory Determinants under Rate Schedules DCQ or GS as applicable for said prior months, if any, in the Contract year.

(2) Article IV(A)(d) of the Form of Service Agreement of Rate Schedule CD-2 on Sheet No. 613 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to this Agreement, plus (2) the quantity of gas purchased in prior months in the Contract Year pursuant to this Agreement and Rate Schedule DCQ in excess of the aggregate Monthly Inventory Determinants for said prior months, if any, in the Contract Year.

(3) Article IV(A)(d) of the Form of Service Agreement of Rate Schedule CD-2 on Sheet No. 625 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to this Agreement, plus (2) the quantity of gas purchased in prior months in the Contract Year pursuant to this Agreement and Rate Schedule GS in excess of the aggregate Monthly Inventory Determinants for said prior months, if any, in the Contract Year.

Texas Eastern states that these foregoing changes have been discussed with Texas Eastern's sales customers. Texas Eastern believes these changes are supported by its customers.

Texas Eastern states that in conjunction, therewith, Texas Eastern is also modifying its Rate Schedule FT-1 Form of Service Agreement to reflect Texas Eastern's acceptance of an open-access blanket transportation certificate under Order No. 500. In particular, Article II of the Form of Service Agreement for Rate Schedule FT-1 on Sheet No. 677 is proposed to be revised to delete the following phrase:

Seller and Buyer further agree that Seller may at its sole discretion terminate this Agreement at any time if Seller also terminates like service for others on a non-discriminatory basis which is consistent with applicable regulatory law and regulations.

Texas Eastern has also discussed this change with its Rate Schedule FT-1 customers and believes this change is also supported by the customers.

The proposed effective date of the above tariff sheets is November 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capritol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24114 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TQ90-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 29, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twentieth Revised Sheet No. 10
Twentieth Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective November 1, 1989. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.1929 per MMBtu, a D-1 demand rate increase of $.02 per MMBtu, and a D-2 demand rate increase of $.0009 per MMBtu from the rates set forth in the quarterly PGA filed June 30, 1989 (Docket No. TQ89-3-18). The instant filing reflects a $.3840 per MMBtu

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commodity rate increase from the proposed rates effective October 1, 1989 (Docket No. TF90-1-18).I11Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.I11Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24124 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TO90-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes

October 5, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 3, 1989 the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such tariff sheets and proposed to be effective November 1, 1989.

Sixty-Second Revised Sheet No. 12
Fifty-Ninth Revised Sheet No. 15
Sixteenth Revised Sheet No. 15-A

Transco states that the proposed tariff sheets reflect no change in sales rate compared to the sales rates reflected in Transco's supplemental compliance filing of September 19, 1989 in docket No. RP82-55. The instant PGA filing reflects an average cost of gas of 250.77¢ per dt for the quarterly period November 1, 1989 through January 31, 1990.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24125 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-254-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on September 29, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

70th Revised Sheet No. 5
38th Revised Sheet No. 6
3rd Revised Sheet No. 24
5th Revised Sheet No. 25
2nd Revised Sheet No. 25A
2nd Revised Sheet No. 28
5th Revised Sheet No. 29
1st Revised Sheet No. 29B
5th Revised Sheet No. 30
4th Revised Sheet No. 31
6th Revised Sheet No. 32
3rd Revised Sheet No. 32A
1st Revised Sheet No. 32B
4th Revised Sheet No. 33
4th Revised Sheet No. 128
1st Revised Sheet No. 140

Transwestern states that these tariff sheets are filed to revise Rate Schedules FTS-2, ITS-1, and TF-1 to permit Transwestern to recover fuel costs through its transportation commodity rates, rather than on an "in kind" basis or as a percentage of the gas costs underlying sales rates. In addition, Transwestern seeks to increase, through the transportation commodity rates proposed herein, the 4% transmission fuel component for deliveries West of Roswell, New Mexico to 6.46%, and the 2.2% transmission fuel component for deliveries East of Roswell, New Mexico to 3.55%, to account for actual fuel use, actual company use gas, and actual lost and unaccounted for gas.

Transwestern, herein respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on November 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24115 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-003]

Trunkline Gas Co.; Compliance Filing

October 5, 1989.

Take notice that on September 29, 1989, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets as listed on the appendices A and B, attached to the filing.

Trunkline states that by order issued May 31, 1989, in the above-captioned proceeding, Trunkline Gas Company (Trunkline) is authorized to place into effect, as of November 1, 1989, certain tariff sheets referenced in appendix A to that order.

Trunkline further states that the revised tariff sheets listed on the attached appendices A and B to be effective November 1, 1989, also reflect (1) the regularly scheduled Annual PGA filing to be effective September 1, 1989, in Docket No. TA89-1-30-000; and (2) the Annual Charge Adjustment (ACA) filing to be effective October 1, 1989, in Docket No. TM90-2-30-000.

Trunkline states that these primary tariff sheets reflect, among other things, the classification of Trunkline LNG Minimum Bill costs to the demand component of sales rates. This is done in light of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Trunkline Gas Company* v. *FERC* (Case No. 88-1437, July 25, 1989). In the event the Commission declines to observe that decision, Trunkline requests that the Alternate Second Substitute Sixty-Ninth Revised Sheet No. 3-A of Trunkline's filing be substituted for Second Substitute Sixty-Ninth Revised Sheet No. 3-A. The alternate tariff sheet reflects the classification of the Trunkline LNG Minimum Bill costs to the commodity component. Such action shall be without prejudice to Trunkline's right to surcharge, direct bill or to otherwise collect deficiencies in these costs.

Trunkline further states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Orders dated May 31, 1989, in this proceeding is without prejudice to Trunkline's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

Copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24112 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of July 24 through July 28, 1989

During the week of July 24 through July 28, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Adrian Supply Company, 7/26/89, KFA-0304

The Adrian Supply Company filed an Appeal from the partial denial by the Albuquerque Operations Office of a request that it had filed pursuant to the Freedom of Information Act. Adrian had sought the abstract of bids received in a procurement action. The DOE found that the Albuquerque Operations Office had correctly withheld portions of the abstract pursuant to Exemption 4 of the FOIA, because the release of the material could cause the submitting firms a competitive disadvantage by allowing their competitors to predict their likely pricing behavior in future procurements. The DOE rejected Adrian's contention that a provision of the Federal Acquisition Regulations, which required that abstracts of bids be made public, mandated the release of the abstract in this case. The DOE noted that the present procurement involved a subcontract between a DOE contractor and a third party to which the Federal Acquisition Regulations do not apply. Accordingly, this claim was rejected, and the Appeal was denied.

The Albuquerque Journal, 7/25/89, KFA-0303

The DOE issued a Decision and Order denying a Freedom of Information Act (FOIA) Appeal filed by The Albuquerque Journal. The DOE determined that the document requested by The Albuquerque Journal, a report entitled "Profile of Espionage Penetration," was properly withheld from disclosure under the "high 2" standard of Exemption 2, *i.e.*, the document is primarily internal and disclosure would significantly risk circumvention of agency regulations of statutes.

Supplemental Order

Texaco, Inc., 7/25/89, KFX-0066

The DOE issued a Decision and Order implementing procedures for the distribution of the $1.078 billion crude oil portion of the total funds to be received as a result of a consent order executed between the DOE and Texaco, Inc. (Texaco). The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds are currently available for distribution, and 80 percent of all future payments from Texaco are to be divided equally between the States and the Federal government. Twenty percent of the funds are to be reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR Part 205, Subpart V. The specific information to be included in the applications for refunds, which must be submitted by October 31, 1989, is included in the Decision. However, applications need not be filed by firms that have previously filed refund claims in the Crude Oil Subpart V Refund Proceeding.

Refund Applications

Atlantic Richfield Company/Argentieri Fuels, et al., 7/27/89, RF304-2759, et al.

The DOE issued a Decision and Order concerning forty-two Applications for Refund filed in the Atlantic Richfield Company (ARCO) Special Refund Proceeding. All of the applicants documented the volume of their ARCO purchases and were either end-users or resellers/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $81,342, including $19,326 in accrued interest.

Atlantic Richfield Company/Aspen Oil Company, et al., 7/24/89, RF304-2980, et al.

The DOE issued a Decision and Order concerning 66 Applications for Refund filed by 62 claimant from a consent order fund made available by the Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling $105,658, representing $80,547 in principal and $25,111 in accrued interest.

Atlantic Richfield Company/Payless Drug Northwest, et al., 7/26/89, RF304-6300, et al.

The DOE issued a Decision and Order concerning 58 Applications for Refund filed by 54 claimants from a consent order fund made available by the Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive funds totalling $68,166, representing $51,964 in principal and $16,202 in accrued interest.

Dewey Clark, 7/24/89, RA272-10

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The DOE issued a Supplemental Order to Dewey Clark, modifying the determination in *L. W. Honey Farm*, 19 DOE ¶ _____, Case No. RF272–64800 (July 11, 1988). Specifically, the DOE modified the amount of the refund previously granted to Dewey Clark to the proper figure of $238.

Farmers Cooperative Oil & Supply, 7/26/89, RC272–57

The DOE issued a Supplemental Order rescinding the refund granted to Farmers Cooperative Oil and Supply in *Wayne Sinclair*. 19 DOE ¶ _____, Case No. RF272–67600 (July 10, 1989). The amount of the refund rescinded was $13.

Exxon Corporation/Glenn Wilcher, 7/28/89, RF307–4535

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation Special Refund Proceeding. The applicant, a reseller, purchased petroleum products directly and indirectly from Exxon during the consent period. The applicant disagreed with the gallonage information recorded on his printout sheet and submitted alternative gallonage figures, which he requests that the OHA accept in lieu of Exxon's figures. The OHA agreed to accept the applicant's figures because the former were obtained from the applicant's actual records from the consent order period. The applicant also submitted monthly figures for a period in which he was an indirect purchaser and which was not listed on his printout sheet. Because the applicant demonstrated that his indirect purchases originated with Exxon, and because the DOE had made no determination as to whether the intermediate supplier absorbed the alleged overcharges, the applicant was eligible for a full volumetric refund for the indirect purchases. The DOE determined that the applicant should receive a refund equal to his full allocable share. The refund granted in this decision was $516 ($427 principal plus $89 interest).

Exxon Corporation/Murphy's Exxon, et al., 7/26/89, RF307–812, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed in the Exxon Corporation Special Refund Proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $22,265, including $3,701 in accrued interest.

Exxon Corporation/Robert J. Capuzziello, et al., 7/24/89, RF307–1234, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed in the Exxon Corporation Special Refund Proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $13,358, including $2,303 in accrued interest.

Exxon Corp./Tunnel Plaza East Exxon, Inc., Tunnel Plaza East, Inc., 7/28/89, RF307–5422, RF307–4868

The Department of Energy issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation Special Refund Proceeding on behalf of a retail service station that had changed its name during the Exxon consent order period. The firm's allocable share, based upon its documented total purchase volume from Exxon, exceeded $5,000. However, rather than document injury, the firm elected to receive a medium range presumption refund or a small claims refund of $5,000, whichever was larger. The applicant was granted a small claims refund of $6,142, including $1,042 in accrued interest.

Gulf Oil Corporation/Curtis Gulf Station, et al., 7/28/89, RF300–8863, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $37,313.

Gulf Oil Corporation/Darlington Propane Gas Company, Darlington Propane Gas Company, 7/28/89, RF300–1934, RF300–10829

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. One was submitted by the current owner of Darlington Propane Gas Company (RF300–1934), while the second was filed by the widow of the individual that owned Darlington Propane Gas during the consent order period (RF300–10829). The OHA determined that the widow of the owner during the consent order period was the proper recipient of any refund granted on the basis of the purchases of Gulf products made by Darlington Propane Gas during the consent order period. Accordingly, the OHA denied Case No. RF300–1934 and approved Case No. RF300–10829 under the small claims presumption of injury. The total refund granted in this Decision, including accrued interest, is $1,527.

Gulf Oil Corporation/Dempsey P. Albritton, 7/24/89, RF300–5323

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Dempsey P. Albritton, a consignee and reseller of Gulf refined products. Albritton's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Albritton in this Decision is $1,108.

Gulf Oil Corporation/Flame-Rite Gas, Inc., Flame-Rite Gas, Inc., 7/28/89, RF300–33, RF300–7798

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. One was submitted by the current owner of Flame-Rite Gas, Inc. (RF300–7798), while the second was submitted by the owner of Flame-Rite Gas, Inc. during the consent order period (RF300–33). The OHA determined that the current owner of Flame-Rite's stock was the proper applicant for a refund based upon Flame-Rite's purchases from Gulf during the consent order period. The total refund granted in this Decision, including accrued interest, is $6,641.

Gulf Oil Corporation/Grider & Pearl Auto Service, et al., 7/28/89, RF300–6148, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $33,439.

Gulf Oil Corporation/Holiday Inn Gulf, 7/24/89, RF300–5317

The DOE issued a Decision and Order concerning an application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Holiday Inn Gulf, a consignee and reseller of Gulf refined products. Holiday Inn Gulf's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Holiday Inn Gulf in this Decision, including accrued interest, is $4,664.

Gulf Oil Corporation/John S. Causey Dist., Inc., 7/2/89, RF300–5327

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by John S. Causey Dist., Inc., a consignee and reseller of Gulf refined products. Causey's allocable share as a reseller is less than $5,000, and its total principal refund is less than $5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Causey in this Decision, including accrued interest, is $5,913.

Gulf Oil Corporation/Lou's Gulf Service, 7/26/89, RF300–7270

The DOE issued a Decision and Order concerning an Application for Refund submitted on behalf of Lou's Gulf Service in the Gulf Oil Corporation Special Refund Proceeding by Federal Refunds, Inc. (FRI). FRI was unable to demonstrate that Lou's purchased Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Paul Jay Haight & Co., Inc., 7/24/89, RF300–4985

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation Special Refund Proceeding. Because the indirect purchaser's supplier has not filed an Application in this proceeding, the indirect purchaser's Application was approved under the same procedure as direct purchasers using a presumption of injury. The total refund granted in this Decision, which includes both principal and interest, is $5,219.

Gulf Oil Corporation/Reit Fuel Oil Company, Point Boy Fuel, Inc., F.C. Haab Company, Inc., 7/27/89, RF300–8431, RF300–8432, RF300–10822

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Reit Fuel Oil Company, Point Bay Fuel, Inc., and F.C. Haab Company, Inc. Because the firms are under common ownership, they are treated as a single firm. In addition, because the firm's full allocable refund exceeded $5,000, the claim was approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $38,582.

Gulf Oil Corporation/Rupp Oil Company, Inc., Frankenmuth Oil Company, Frankenmuth Oil Company. 7/26/89, RF300–4101, RF300–4172, RF300–4267

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Rupp Oil Company, Inc. (Rupp), Frankenmuth Oil Company (Frankenmuth), and Frankenmuth Oil Company (Frankenmuth). One of the Frankenmuth claims was filed by Harold Abraham who owned the firm from 1973 through February 1975. The second was filed by Rupp who owned Frankenmuth during the remainder of the consent order period. The two owners were granted separate refunds for Gulf products purchased by Frankenbuth during the respective periods of ownership. Rupp also filed a claim based upon products purchased from Gulf for its own account. Because Rupp commonly owned and operated the two firms during the consent order period, the Rupp claims were considered to be from a single firm for purposes of calculating Rupp's claims in the Gulf proceeding. Because their collective total maximum refund exceeded $5,000 and no demonstration of injury was made, the Rupp applications were approved under the 40 percent presumption of injury. Mr. Abraham's application was approved under the small claims presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $8,643.

Gulf Oil Corporation/T.C. Rowan, et al., 7/24/89, RF300–6179, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $115,159.

Gulf Oil Corporation/W.C. Cullipher & Son, et al., 7/27/89, RF300–6499, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted by applicants in the Gulf Oil Corporation Special Refund Proceeding. Two of the applicants were resellers of Gulf products, one applicant was a consignee, and four applicants were claiming purchases as both a reseller and consignee. The DOE approved all of the applications by utilizing the appropriate presumption of injury. One of the applicants that claimed gallons purchased as a consignee as well as gallons purchased as a reseller was seeking a refund larger than $5,000. The DOE held that the applicant was unable to simultaneously elect both the claims presumption of injury and the 10 percent presumption of injury for consignees but rather would have its refund calculated by utilizing either the $5,000 small claims presumption, or the sum of the 40% presumption (for gallons purchased as a retailer) and the 10% consignee presumption, depending on which formula produced the largest refund. In this instance, the applicant received a larger refund by utilizing the $5,000 small claims presumption. The sum of the refunds granted in this Decision is $20,717.

Hyman Litsky, 7/28/89, RC272–58

The DOE issued a Supplemental Order concerning an application for Refund filed by Hyman Litsky (Case No. RF272–48118) in the Subpart V Crude Oil Refund Proceeding. A supplemental refund check issued to Mr. Litsky was returned unclaimed. The OHA was unable to contact Mr. Litsky. Accordingly, the OHA rescinded the refund.

Manson-Osberg-Ghemm Osberg Construction Company, 7/27/89, RF272–75483, RF272–75484

The DOE issued a Decision and Order concerning Applications for Refund filed by two end-users of refined petroleum products in the Crude Oil Subpart V Refund Proceeding. Both applicants submitted material documenting the volume of their purchases of motor gasoline, middle distillates, motor oil, and grease during the crude oil price control period. The total refund approved in this Decision is $1,495.

Morse Bros., Inc., 7/28/89, RF272–31817, RD272–31817

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Morse Bros., Inc. (Morse), a construction company principally involved in asphalt production and road construction/paving. In reaching its determination, the DOE rejected the Objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for end-users. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely, in fact, to have pass through overcharges.

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Accordingly, Morse was granted a refund of $40,021.

Northeast Petroleum Industries, Inc./ Best Petroleum Co., Inc., 7/27/89, RF264-09

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. The applicant submitted information documenting the volume of its purchases of Northeast motor gasoline and elected to limit its claim to $5,000. The total refund approved in this Decision is $8,938, including $3,938 in accrued interests.

ONEOK, Inc., 7/28/89, RF272-18967

The Office of Hearings and Appeals granted an Application for Refund filed by ONEOK, Inc., a utility, in the Crude Oil Subpart V Refund Proceeding. The DOE determined the ONEOK as an end-user applying for refunds on behalf of its members and customers, and the firm certified that it will pass through the entirety of any refund to its members and customers. The total volume for which refunds were approved in this Decision was 11,127,990 gallons, and the sum of the refund granted was $8,902.

Shell Oil Company/Totten Pond Shell Station, et al., 7/24/89, RF315-1701, et al.

The DOE issued a Decision and Order granting 157 Applications for Refund filed in the Shell Oil Company Special Refund Proceeding. Each of the Applicants purchased directly from Shell and was either an end-user or a reseller of Shell products whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to it's full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $123,958, including $17,773 of accrued interest.

Standard Oil Co. (Indiona)/Wisconsin Standard Oil Co. (Indiona)/ Wisconsin National Helium Corp./ Wisconsin Vickers Energy Corporation/Wisconsin, 7/28/89, RM21-154, et al.

The DOE isssued a Decision and Order granting a Motion for Modification filed by the State of Wisconsin in four refund proceedings: Standard Oil Co. (Indiana) (Amoco I); Standard Oil Co. (Indiana); National Helium Corp; and Vickers Energy Corp. refund proceedings. In *National Helium Corp./Wisconsin*, 15 DOE ¶ 85,324 (1987), the OHA approved a program to provide rebates to rental property owners to make energy efficiency improvements to their buildings. The original program directed the rebate to the participant's bank to reduce the principal amount of a loan taken out for this purpose. Wisconsin wished to modify the program so that the rebate would go directly to the rental property owner. OHA determined that the modified program was restitutionary in nature and approved the modification.

Sterling Drug, Inc., Wood County Electric Cooperative, Inc., 7/24/89, RF272-3392, RF272-3404

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. One applicant, Sterling Drug, Inc., used its petroleum products for various commercial activities and documented its purchases through contemporaneous purchase records and an estimate based on fuel consumption records. Wood County Electric Cooperative, Inc. (Wood County), the second applicant, documented its claim through contemporaneous purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. Wood County was required to pass its refund through to its members. The total refund granted in this Decision is $14,645.

Totol Petroleum, Inc./Farmers Petroleum Cooperative, Inc., 7/28/89, RF310-252

The DOE issued a Decision and Order concerning an Application for refund filed by Farmers Petroleum Cooperative, Inc. (FPC) in the Total Petroleum, Inc. Special Refund Proceeding. In the Decision, the DOE found that as an agricultural cooperative, FPC need not make a demonstration of injury with respect to the portion of its claim that is based upon volumes purchased from Total and resold to FPC'S member-patrons. The DOE also found that FPC was entitled to a medium range presumption of injury refund for purchases from Total made for resale to the general public. The DOE granted FPC a refund of $314,168 ($264,517 principal and $49,651 interest).

Western Farmers Electric Cooperative, et al., 7/28/89, RF272-14143, et al.

The Office of Hearings and Appeals granted five Applications for Refund filed by five utilities under the Crude Oil Subpart V Refund Proceeding. The DOE determined that each was an end-user applying for refunds on behalf of their members and customers. Each applicant was required to certify that it will pass through to its members and customers the entire refund amount. The total volume for which refunds were approved in this Decision was 96,769,337 gallons, and the sum of the refunds granted was $77,416.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders.

Name	Case No.	Date	No. of Applicants	Total Refund
City of Villisca, et al	RF272-72466	7/27/89	78	$10,376
Mrs. Frank J. Overlaur, et al	RF272-66600	7/27/89	153	$16,977

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Liner Exxon Station	RF307-985
Anderson Motor Sales	RF307-9747
Buck's Exxon	RF307-9740
Earnheart's Interstate Exxon	RF307-155
F.C. Haab Company	RF300-10514
Frank's Grocery	RF309-1260
Kavanaugh & Van Fleet, Inc	RF300-687
Leggett & Platt, Inc	RF272-75514
Liner Exxon	RF307-983
Liner Exxon Station	RF307-988
Matt's Auto Service, Inc	RF309-1343
Matthews Exxon Service Station	RF307-9982
Maylair Fuel Oil Company	RF304-8326
Meenan Oil Co., Inc	RF300-8022
Noodle Store	RF307-987
Ray's Arco 59	RF304-9297
Ray's Spur Go Shop	RF309-1356
Seymour Kleiman	KFA-0306
Tandem Oil Company	RF304-7444
Trade, Inc./Marachowsky's A.M. Oil Co	RF309-450
Wadsworth Oil Company, Inc	RF309-1282

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 2, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-24244 Filed 10-12-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Loveland Area Projects; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Initial Firm Electric Service Rate for the Loveland Area Projects: Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project.

SUMMARY: Notice is given of a Rate Order No. WAPA-40 by the Deputy Secretary of the Department of Energy for placing the initial rate for new service for the Loveland Area Projects (LAP) into effect in accordance with 10 CFR 903.21(b) on an interim basis beginning on the first day of the October 1989 billing period, for firm power marketed by the Western Area Power Administration (Western), Loveland Area Office (LAO).

The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division (Criteria) was published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria contractually integrated the resources of the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and Fryingpan-Arkansas Project (Fry-Ark), both commonly referred to as the LAP, and called for the establishment of a blended rate for LAP power.

To establish the LAP rate, Western's LAO developed the revenue requirements for the LAP from the fiscal year (FY) 1987 power repayment studies (PRS) for both the Pick-Sloan Missouri Basin Program (P-SMBP) and Fry-Ark. The proposed initial LAP rate schedule in Rate Order No. WAPA-40 will yield adequate revenue to meet the P-SMBP-WD revenue requirement and satisfy the cost-recovery criteria for the Fry-Ark. The proposed initial blended rate for firm power is $1.84 per kilowatt-month (kW-month) and 7.15 mills per kilowatthour (kWh).

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, Telephone: (303) 490-7201;

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303) 231-1545;

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G-061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On September 20, 1989, the Secretary issued a notice SEN-10A-89, which has the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. Existing Department of Energy procedures for public participation in power and transmission rate adjustments (10 CFR 903) became effective on September 18, 1985 (50 FR 37835).

The firm electric service rate for the LAP was established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485(c); and the Flood Control Act of 1944, 58 Stat. 887; and other acts specifically applicable to the project system involved.

The FY 1987 PRS for P-SMBP and the FY 1987 PRS for Fry-Ark indicate that the existing rates do not yield sufficient revenues to satisfy the cost-recovery criteria through the study periods. The proposed P-SMBP-Eastern Division rate schedules, which are in Rate Order No. WAPA-35 along with the P-SMBP-WD revenue requirement, will yield adequate revenue to satisfy the cost-recovery criteria for the P-SMBP (Rate Order WAPA-35 has been previously forwarded to the FERC for approval). Rate Order WAPA-40 includes the revenue requirement for the P-SMBP-WD that was discussed in WAPA-35 and will also satisfy the cost-recovery criteria for the Fry-Ark.

The January 1989 Customer Brochure explaining the background for the LAP and for the rate design concept for a $2.26 per Kw-month and 5.5 mills per kWh rate was distributed to all LAP customers and other interested parties. Public information and public comment forums were held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following review and consideration of public comments received during the consultation and comment period, Western developed this rate order to respond to the comments and redesigned the power rate. Western has concluded that an initial rate of $1.84 per kW-month and 7.15 mills per kWh as developed in Rate Order No. WAPA-40 will meet the cost-recovery criteria for the P-SMBP and the Fry-Ark.

Therefore, Rate Order No. WAPA-40 confirming and approving the initial LAP firm electric service rate on an interim basis is hereby issued, and the new rate schedule will be promptly submitted to FERC for confirmation on a final basis.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,

Deputy Secretary.

Order Confirming, Approving, and Placing in Effect on an Interim Basis the Loveland Area Projects Initial Firm Electric Service Rates

[Rate Order No. WAPA-40]

September 28, 1989.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and

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particularly by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin Program (P–SMBP) and the Fryingpan-Arkansas Project (Fry-Ark), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On August 3, 1989, the Secretary of Energy issued a notice, SEN–10–89, which has the effect of amending Delegation Order No. 0204–108 by transferring authority to place rates into effect on an itnerim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This rate order is issued pursuant to such delegations to the Administrator and the Deputy Secretary, and the procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

Effective Date

The initial rates for new service will become effective in accordance with 10 CFR 903.21(b) on the first day of the October 1989 billing period and will remain in effect until superseded.

Description of Rates

The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division (Criteria) was published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the P–SMBP-Western Division (P–SMBP–WD) and Fry-Ark, both commonly referred to as the Loveland Area Projects (LAP), and called for the establishment of a blended rate for LAP power. Because of the blended rate, P–SMBP–WD rate schedules were not submitted under Rate Order No. WAPA–35 and the Fry-Ark rate schedule was not developed.

The fiscal year (FY) 1987 P–SMBP power repayment study (PRS) reflects the pre-1989 marketing criteria, along with an increase in the average annual generation for the P–SMBP–WD sales. The pre-1989 marketing included firm-power sales and peaking-capacity sales, which are combined into a single firm electric service for the post-1989 period. The P–SMBP–WD revenue requirement for the firm-power sales and the peaking capacity sales is as follows:

Present Revenue Requirement $0.00854 × 2,035,841,000	=	$17,386,082
Proposed Increase from Rate Order WAPA–35: $0.00088 × 2,035,841,000	=	1,791,540
Proposed Firm Revenue Requirement		$19,177,622
Peaking Capacity Revenue $1.65 × 12 × 72,000 kilowatts (kW)	=	1,425,600
Total Proposed P–SMBP–WD Revenue Requirement		20,603,222

The FY 1987 Fry-Ark PRS showed that the present capacity rate of $3.75 per kilowatt-month (kW-month) is not sufficient to meet the repayment criteria, and that the revenue requirement from capacity sales must increase by $242,000 annually. The total Fry-Ark revenue requirement is as follows:

Present Revenue Requirement $3.75 × 12 months × 200,000 kW	=	$9,000,000
Proposed Increase		242,000
Total Proposed Fry-Ark Revenue Requirement		9,242,000

To establish the LAP rate, Western developed the revenue requirements for LAP from the FY 1987 PRS for both the P–SMBP and Fry-Ark, as shown above. The revenue requirements from both projects were combined to develop the LAP revenue requirements of $29,845,222. To meet the LAP revenue requirements, the rates for firm capacity and energy of $2.26 per kW-month and 5.5 mills per kilowatthour (kWh) were developed and published in the "January 1989, Customer Brochure, Loveland Area Projects." This brochure explains the background for the LAP and how the rate design concept was developed. The brochure was distributed to all LAP customers and other interested parties. Subsequently, in response to customer comments, Western developed the firm capacity and energy rates of $1.84 per kW-month and 7.15 mills per kWh for LAP firm electric service.

The proposed initial LAP rate schedule for new service is to become effective in accordance with 10 CFR 903.21(b) on an interim basis on the first day of the October 1989 billing period.

Statement of Revenue and Related Costs

This initial rate schedule would produce average annual power revenues of $29,845,222 for LAP. This is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2. A breakdown of costs by class of service is not available. The following table provides revenue data for firm-power, peaking, and firm-capacity sales through the proposed rate-schedule period. As prepared, the FY 1987 PRS for both P–SMBP and Fry-Ark reflect the pre-1989 marketing program for all future years.

Year	Western Division Firm Sales	Western Division Peaking Sales	Fry-Ark Firm Capacity Sales	Total Lap
1988	$17,386,082	$0	$8,208,000	$25,594,082
1989	17,386,082	0	9,000,000	26,386,082
1990	19,177,622	1,425,600	9,242,000	29,845,222
1991	19,177,622	1,425,600	9,242,000	29,845,222
1992	19,177,622	1,425,600	9,242,000	29,845,222
1993	19,177,622	1,425,600	9,242,000	29,845,222
1994	19,177,622	1,425,600	9,242,000	29,845,222

The data shown above reflects estimates used in the FY 1987 PRSs for this proposed initial rate-approval period. It should be noted that each PRS contains only one variable. The single variable for the P–SMBP PRS is the composite rate in mills per kWh for future firm power (capacity and energy) sales. In the Fry-Ark PRS, the capacity rate in dollars per kW-year is the single variable. The PRS adjusts the single variable until sufficient revenues are generated to meet the cost-recovery requirement. The actual rate design to yield these revenues is determined after the PRSs are completed.

Chronological Discussion and Explanation of Rate Development Process and Supporting Documents

Proceedings on the proposed initial rate were initiated on November 18, 1988, when a letter was mailed announcing a December 8, 1988, informal customer meeting. At this meeting, Western explained the philosophy used in the development of the rate design. On December 29, 1988, the formal comment and consultation period began with the publication in the **Federal Register** of the Loveland Area Projects; Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project; Proposed Initial Blended Rate (53 FR 52781), which officially announced the initial rate and the procedures for public participation. On January 3, 1989, the customer brochure was mailed to each of the firm power customers, along with a copy of the rate procedures. A public information forum was held on January 31, 1989, in Northglenn, Colorado. The public comment forum was also held in Northglenn on March 7, 1989. The comment and consultation period ended on April 11, 1989. During this period interested parties made comments to Western concerning the proposed initial rate.

Project History

P–SMBP

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, Pub. L. 534, 78th Congress, 2nd session), thereby approving the general comprehensive plan set forth in Senate Document 191 and House Document 475, as revised and coordinated by Senate Document 247, 78th Congress. The comprehensive plan has been funded through numerous appropriation acts with the intention of providing multipurpose development of the water resources in the Missouri River Basin. The Missouri River Basin Project, later renamed Pick-Sloan Missouri Basin Program, encompasses a plan of flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the Missouri River and its tributaries in Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. The Colorado-Big Thompson, Kendrick, and Shoshone Projects were administratively combined with the P–SMBP in 1954, followed by the North Platte Project in 1959.

These projects are known as the Integrated Projects of the P–SMBP. The Riverton Project was also combined with the P–SMBP in 1954 and then reauthorized as a unit of the P–SMBP in 1970.

The planning, development, and operation of the P–SMBP are carried out by Reclamation, the Corps of Engineers (Corps), and Western. All functions of the P–SMBP are maximized within the water resource with some functions assisting other functions with repayment of costs beyond the ability of the beneficiaries to repay. An innovative feature of the P–SMBP is its basin-wide (rather than individual units, divisions, or projects) financial management mandate, which affected the scope of financial assistance to irrigation and established that repayment of all features be based on ultimate development of the P–SMBP. The success of the P–SMBP can be attributed to sound financial management, wherein power rates and costs have been monitored and adjusted to meet repayment obligations.

There are two large power systems in the P–SMBP. The Eastern Division, administered by Western's Billings Area Office (BAO), markets power in western Iowa and Minnesota, eastern Montana and Nebraska, North Dakota, and South Dakota. The Western Division, administered by Western's Loveland Area Office (LAO), markets power in northeastern Colorado, northern and western Kansas, western Nebraska, and eastern Wyoming.

Fry-Ark

The Fry-Ark is a transmountain diversion development in southeastern Colorado, authorized by the Fyringpan-Arkansas Projects Acts [Pub. L. 87–590, 76 Stat. 399 (August 16, 1962), and Pub. L. 93–493, 88 Stat. 1486 (October 27, 1974)].

Studies by Reclamation on a transmountain diversion project began in 1936. Intensive investigation started in 1941, which resulted in a potential planning report in 1947 and 1948. This was followed by a special report in 1949 and official recommendations in 1951. In 1953, a revised planning report under the project name Fry-Ark led to congressional authorization of the project in 1962.

Construction began on Ruedi Dam and Reservoir in 1964. Initial project water for irrigation and municipal and industrial use was available in September 1975. Contracts for commercial sale of power became effective in October 1982.

Power Repayment Study

General History

The PRS for P–SMBP is prepared annually by Western's BAO with the cooperation of Reclamation and the Corps. Basic river basin hydrology, water depletions, power generation, project-development data, and cost information are among the many items Reclamation and the Corps contribute to the studies. For the Fry-Ark, Western's LAO prepares the PRS in cooperation with Reclamation.

All PRSs are prepared in accordance with authorizing legislation and DOE Order No. RA 6120.2 on Power Marketing Administration Financial Reporting. The PRSs array historic income, expenses, and investment to be repaid from power revenues, along with estimates for future years. They also portray the annual repayment of production and transmission costs of the power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The PRSs show, among other items, estimated revenues and expenses, the estimated amount of Federal investment which will be repaid, and the total estimated amount of Federal investment remaining to be repaid over the repayment period or service life. The PRSs do not deal with rate design.

General Description of PRS

The PRSs are conducted to assure that projected revenues will balance projected expenses and investment repayment. There are currently eight different groups of revenue in the P–SMBP PRS. The revenue groups are Irrigation Pumping, Firm Commercial, Western Division Project Use, Eastern Division Peaking Energy, Eastern Division Peaking-Winter, Eastern Division Peaking-Summer, Western Division Peaking, and Other Revenue. Other revenue, such as that from Rocky Mountain Generation Cooperative, Inc., is shared by P–SMBP and Fry-Ark and is based upon the ratio of the individual project capacity to the total marketable capacity in the Criteria. Other revenue that is project specific is only credited to that project. For example, the transmission revenue received for the transmission of energy over the P–SMBP–WD transmission system is credited to the P–SMBP. Operations and maintenance (O&M) expenses and interest expenses are found in each PRS,

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and are only debited to that specific project that has incurred the expenses. Purchase-power expense is currently only debited to the P-SMBP PRSs; however, in FY 1990 purchase-power expense will be debited to each project on the capacity ratio described above because of the integrated nature of the marketed resource. Most of the transmission expense goes to the P-SMBP-WD; however, any transmission expense related to operational use of the Mt. Elbert pumped-storage powerplant will be debited to Fry-Ark. Repayment of replacement and project-investment impact the revenues in both PRSs, while the P-SMBP PRS also has to consider the repayment of irrigation costs.

Basis for Rate Development as Published in the Customer Brochure

The revenue requirements that are needed for the repayment of the total power obligations fo the two projects are as follows:

P-SMBP-WD Revenue Requirement	$20,603,222
Fry-Ark Revenue Requirement	9,242,000
Total Revenue Requirement	29,845,222

The proposed rate development as published in the customer brochure tied the historical revenue collection to the component of the resources marketed under the Criteria. As described in the brochure, the P-SMBP-WD maintained the historical split to yield approximately 40 percent of P-SMBP-WD firm revenue requirements from the capacity component, and approximately 60 percent of the P-SMBP-WD firm revenue requirements from the energy component. The current P-SMBP-WD excess capacity (XCAP) sales revenue and the Fry-Ark revenue requirement were to be returned under the capacity component. This rate design concept resulted in a rate structure, which would return the necessary revenue requirements to both the P-SMBP-WD and the Fry-Ark. The following table portrays these concepts numerically.

	Capacity	Energy	Total
P-SMBP-WD	$7,671,049	$11,506,573	$19,177,622
P-SMBP-WD-XCAP	1,425,600	1,425,600	
Fry-Ark	9,242,000	0	9,242,000
Total	18,338,649	11,506,573	29,845,222

The capacity component of the proposed rate schedule was based upon monthly billing on the seasonal contract rate of delivery. The energy component was based upon the annual marketable energy as identified in the Criteria.

Capacity:

$$\frac{\$18,388,649}{(716.5\ \text{MW} + 638.5\ \text{MW})\ (6)\ (1,000)} = \$2.26/\text{kW-month}$$

Energy:

$$\frac{\$11,506,573}{2,087,841\ \text{MWh}} = 5.5\ \text{mills/kWh}$$

The proposed rate as published in the customer brochure was $2.26 per kW-month and 5.5 mills per kWh. However, Western later developed revised rates for firm capacity and energy of $1.84 per kW-month and 7.15 mills per kWh, as a result of comments received during the public involvement process.

Discussion of Comments

Most of the written comments received revolved around two major themes. They are P-SMBP-WD peaking sales and a traditional capacity and energy-rate split in the LAP rate design. Comments were also received about the treatment of Fry-Ark energy and P-SMBP O&M expenses. The remaining comments dealt with marketing and reallocation procedures, which were earlier addressed during the public process that lead to adoption of the final post-1989 marketing criteria.

Comments

The P-SMBP excess capacity process ceases to exist in the post-1989 marketing period, but the projected revenues from the sale of the P-SMBP excess capacity were incorrectly included in the PRS for the P-SMBP beyond September 30, 1989.

Response

The FY 1987 PRS reflects the actual (through 1987) and projected (1988 and beyond) revenues and expenses that are based on pre-1989 marketing criteria. This is to establish the basis for future PRSs, which will use the Criteria. In future PRSs, the P-SMBP-WD total revenue requirements will be used in the development of the LAP rates rather than in the development of specific P-SMBP-WD rates.

The P-SMBP-WD peaking sales do cease to exist after October 1989; however, neither the resource nor the revenue requirement associated with the resource ceases to exist. The revenue requirements of the P-SMBP-WD peaking sales are being combined with the P-SMBP-WD firm electric service and the Fry-Ark revenue requirements in the LAP rate design. The marketable resource in the Criteria will be reflected in the FY 1988 and future P-SMBP PRSs; P-SMBP-WD peaking sales will no longer be shown. Therefore, the inclusion of the revenue associated with current excess capacity sales in the future revenue requirement is appropriate.

In the PRS projections, the P-SMBP resources (both the Eastern and Western Divisions) have shown a split between firm electric service and peaking service since the mid 1950's. The peaking sales were shown as nonfirm sales until the FY 1980 PRS. Beginning with the FY 1980 PRS, the P-SMBP-WD peaking sales were considered firm excess capacity sales. However, actual revenues from peaking sales for the P-SMBP-WD have historically been recorded with the firm sales revenues; therefore, there is no historical record of P-SMBP-WD peaking sales in the PRSs.

Since the pre-1989 P-SMBP-WD resources (firm power and peaking capacity) were marketed separately, and because of the number of years that peaking-sales revenues have been included in the PRSs, Western does not believe that it is appropriate to drop the peaking-sales revenue as a Western Division responsibility. Additionally, the change in marketing criteria from pre-1989 (separable marketable resources) to post-1989 (single marketable resource) should not financially impact the P-SMBP-Eastern Division customers. If Western's LAO dropped the peaking-revenue requirement as suggested, Western's BAO would be required to increase P-SMBP-Eastern Division rates to recover the revenue which historically has been recovered from the P-SMBP-WD customers.

Comment

The LAP rate should be designed to yield approximately 50 percent of the revenue requirement from the capacity charge and 50 percent from the energy charge to be consistent with Western's rate designs for the Boulder Canyon Project (BCP) and the Colorado River Storage Project (CRSP).

Response

Several comments were received on this issue. The majority of the letters received desired a 50-percent return of revenue from each of the capacity and energy components. The bases for their comments were the rate design decisions for the sale of power from the BCP (51 FR 43124) and the CRSP rate design. In light of these comments and upon review of the BCP ruling and the CRSP rate design, Western proposes the following rate, which is based upon a 50/50 percentage capacity and energy split. That is, the proposed LAP rates for firm capacity and energy are $1.84 per kW-month and 7.15 mills per kWh. The LAP rates are developed by the following calculation:

Capacity:

$$\frac{(\$29,845,222)\ (0.5)}{(716.5\ \text{MW} + 638.5\ \text{MW})\ (6\ \text{months})\ (1,000)} = \$1.84/\text{kW-month}$$

Energy:

$$\frac{(\$29,845,222)\ (0.5)}{2,087,841\ \text{MWh}} = 7.15\ \text{mills/kWh}$$

Comment

The Fry-Ark energy should not be included in the P-SMBP PRS.

Response

The LAP marketable energy is approximately 2,088 gigawatthours (GWh). The P-SMBP-WD share, 2,036 GWh, is included in the FY 1987 P-SMBP PRS. The Fry-Ark share, 52 GWh, is not included in the FY 1987 P-SMBP-PRS nor is Fry-Ark energy included in the Fry-Ark PRS because the pre-1989 marketing and the revenue requirement is based upon capacity only as the energy delivered must be returned by the contractor. Therefore, the exclusion of Fry-Ark energy in the PRSs will not impact the revenue requirements. However, as shown above, the total LAP energy of 2,088 GWh and the annual revenue requirements from both projects are used in the development of the proposed rate design, and Fry-Ark energy is allocated after 1989. Future Fry-Ark PRSs will include the 52 GWh of generation, which is available from average flow-through water.

Comment

Concern was expressed regarding the treatment of O&M expenses as given.

Response

The characterization of the budget year and 4 outyears of budget projections as a given in the PRS is misleading. The budget year is the 1 year that has been approved by Congress. The 4 outyears have varying degrees of flexibility, prior to those years becoming finalized. The O&M expenses of the Corps and Reclamation are not approved by Western. However, the outyear estimates provided by these agencies are evaluated for reasonableness. Because of customer interest concerning the matter of budgeting and projecting O&M expenses, we expect that there will be additional discussions and explanations from these agencies concerning the items in their respective O&M budgets that are used in future PRSs.

The remaining comments received dealt with marketing and reallocation procedures, topics which were earlier addressed during the public process leading to the adoption of the final post-1989 marketing criteria.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and DOE Guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western conducted an environmental evaluation of this proposed rate adjustment.

The proposed rate is an initial rate formulated under the new Post-1989 General Power Marketing Criteria and Allocation Criteria (Criteria) for the Loveland Area Office. The Criteria were the subject of an environmental assessment (EA) prepared by Western in 1985, for which DOE issued a finding of no significant impact on June 11, 1985 (DOE/EA-0266). Under the proposed rate, the 29 existing customers which were selected for analysis would, on the average, experience a composite rate decrease of about 0.3 mill per kWh. Section D of the DOE guidelines cited above states that rate increases which do not exceed the rate of inflation in the period since the last rate increase normally do not require the preparation of an EA or an environmental impact statement (EIS).

Since the proposed rate action was generally addressed in a previous EA, and results in an average rate decrease, Western determined that neither an EA or an EIS was required.

Availability of Information

All studies, comments, letters, memorandums, and other documents, made or kept by Western for the purpose of developing the power rate, will be available for inspection at the Loveland Area Office, Western Area Power Administration, 5555 East Crossroads, Boulevard, Loveland, Colorado.

Submission to FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the October 1989 billing period, Rate Schedule L-F1. This rate shall remain in effect on an interim basis pending the FERC confirmation and approval of it or a substitute rate on a final basis, or until it is superseded.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Schedule L-F1 (Supersedes Rate Schedules FA-C1, P-S, WD-F2 and P-S WD-FP2]

Loveland Area Projects—Schedule of Rates for Firm Electric Service

Effective

The first day of the October 1989 billing period.

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Available

To the customers within the marketing area served by the Loveland Area Office.

Applicable

To wholesale power customers for general power service supplied through each meter at each point of delivery.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity Charge: $1.84 per kilowatt of contract rate of delivery for firm electric service as defined by the firm electric service contract.

Energy Charge

7.15 mills per kWh for all energy delivered as firm electric service as provided in the firm electric service contract.

Billing For Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage, but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

[FR Doc. 89-24245 Filed 10-12-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3671-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 25, 1989 through September 29, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J61071-UT, Rating E02, Seven Peaks All Season Ski Resort, Development and Management, Special Use Permit, Provo Peak Basin Area, Uinta National Forest, Utah County, UT.

Summary

EPA has environmental objections to the project's potential to exacerbate existing carbon monoxide and particulate matter (PM10) air quality problems in the Utah County airshed and questions the dependability of drinking water supplies. Additionally, the draft EIS contains insufficient information on potential impacts to wetlands, wildlife, and air quality.

ERP No. D-AFS-L61183-WA, Rating EC2, White Pass Ski Area Expansion, Special Use Permit, Wenatchee and Gifford Pinchot National Forests, Lewis and Yakima Counties, WA.

Summary

EPA's environmental concerns are based on potential air quality effects and the effects from induced growth and cumulative activities. Additional information and clarification are needed on air quality, water quality, wildlife, mitigation, cumulative and secondary growth effects.

ERP No. D1-AFS-L65099-ID, Rating EC2, Cuddy Mountain Roadless Area Timber Sale and Road Construction, Payette National Forest Land and Resource Management Plan, Implementation, Washington and Adam Counties, ID.

Summary

EPA has environmental concerns on the effects of sediment generated by road construction and timber harvest on fishery beneficial uses. Additional information is needed on the magnitude of fishery impairment and water quality and fishery monitoring.

ERP No. DS-BLM-J01038-MT, Rating LO, Powder River I Regional Federal Coal Tracts, Leasing, Assessment of Economic, Social and Cultural Impacts on the Northern Cheyenne and Crow Indian Tribes, Yellowstone, Big Horn and Rosebud Counties, MT.

Summary

EPA has no objections to the information presented in the draft supplemental EIS. The document could be improved by clearly identifying the preferred action.

Final EISs

ERP No. F-AFS-E65037-00, Appalachian Mountains National Forests Vegetation Management Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV.

Summary

EPA remains concerned about the proposal increase in herbicides use over current levels and urges frequent monitoring of soils, water, and biological systems to determine the impacts of herbicide use.

ERP No. F-AFS-G60006-NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM.

Summory

EPA has no objections to the proposed action as described.

ERP No. F-COE-K32045-HI, Kahului Harbor Light Draft Navigation Improvement, Implementation, Island of Maui, Hawaiian Archipelago, HI.

Summary

Review of the final EIS was not deemed necessary.

ERP No. F-FAA-J51006-CO, New Denver Airport Development, Construction and Operation Plan for Replacement of the Stapleton International Airport, Approval and Funding, Denver County, CO.

Summary

EPA expressed concern that in order to ensure that the new airport remain in conformance with the SIP that the City of Denver needs to continue to investigate and plan for techniques that would reduce potential pollution emissions.

ERP No. F-FHW-D40232-MD, MD-100 Extension, US 29 to I-95, Funding and 404 Permit, Howard County, MD.

Summary

EPA reiterated earlier comments concerning this project and recommended that where avoidance of wetlands is not feasible, impacts should be minimized or appropriate mitigation measures should be applied.

ERP No. F-FHW-E40710-NC, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC-3180 to I-85 near the US 29 Connector, Funding and 404 Permit, Mecklenburg County, NC.

Summary

EPA expressed concerns over loss of wetland areas are encouraged further investigation of ways to minimize impacts. EPA also requested that all possible measures be taken to reduce noise impacts. (*Note:* The above summary is a correction—published FR 10-6-89)

ERP No. F-FHW-L40159-AK, Glenn Highway Improvement, Village of Eklutna to Parks Highway, Funding and Section 404/10 Permit, Muncipality of Anchorage, Matanuska-Susitna Borough, AK.

Summary

EPA continues to have environmental concerns about the preferred alternative identified in this document. Although the mitigation discussion in the final EIS has been improved, EPA remains concerned about potential adverse effects to Spring Creek and adjacent wetlands.

ERP No. FS-SCS-J31020-CO, McElmo Creek Unit, Salinity Control Study, Onfarm Irrigation Improvements, Additional Water Delivery and Management Improvements, Funding and Implementation, Montezuma County, CO.

Summary

EPA has environmental concerns with several aspects of the final supplemental EIS. These include: 1) HEP models need to be finalized before the ROD is issued, 2) the choice of indicator species used in determining wildlife values, 3) the Monitoring and Evaluation System and the Wetlands Evaluation System should be submitted to the EPA for review, and 4) EPA does not accept SCS wetland type exchange valuation proposal.

ERP No. F-SFW-E39034-00, Reelfoot Lake Water Level Management Plan, Implementation, Fulton County, KY and Lake and Obion Counties, TN.

Summary

EPA feels the success of the Water Level Management Plan is dependent on control of non-point source pollutant loading from the watershed. Aggressive pursuit of the watershed area non-point source pollution mitigation proposals are necessary.

Dated: October 6, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-24254 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3670-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed October 2, 1989 Through October 6, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890270, Draft, BLM, CO, UT, Craig District Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, Oil Spring Mtn, Windy Gulch, Black Mtn, Willow Creek, Skull Creek, Bull Canyon, Troublesome/Platte River Contiguous WSAs, White River/Kremmling Resource Areas, Jackson, Moffat, and Rio Blanco Counties, Co and Uintah County, UT, Due: January 12, 1990, Contact: Greg Goodenow (303) 824-8261.

EIS No. 890271, Final, FHW, WA, I-90 Improvements, Four Lakes to the Idaho State Line, Funding and 404 Permit, Spokane County, WA, Due: November 13, 1989, Contact: B.F. Morehead (206) 753-2120.

EIS No. 890272, Draft, FHW, AL, Finley-East Lake Boulevard Extension, 26th Street North to Carson Road, Funding and 404 Permit, City of Birmingham, Jefferson County, AL, Due: December 11, 1989, Contact: Joe D. Wilkerson (205) 832-7370.

EIS No. 890273, Draft, FAA, MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding Wayne County, MI, Due: November 27, 1989, Contact: Ernest Gubry (313) 484-4040.

EIS No. 890274, Final, FHW, CA, CA-71 Improvements, Holt Avenue Interchange near CA-10 to CA-91, Right-of-Way Acquisition, Funding and 404 Permit, Los Angeles, San Bernardino, and Riverside Counties, CA, Due: November 13, 1989, Contact: Susan Klekar (916) 551-1307.

EIS No. 890275, Draft, NOA, MD, Chesapeake Bay National Estuarine Research Reserve Management Plan, Otter Point Creek and Jug Bay Designation Site, Implementation, Harford, Prince Georges, Anne Arundel and Somerset Counties, MD, Due: November 27, 1989, Contact: Joseph Uravitch (301) 974-3041.

EIS No. 890276, Draft, SFW, CA, Stephen's Kangaroo Rats Incidental Take, Permit, Cities of Riverside, Moreno Valley, Lake El Sinore Hermet and Perris, Riverside County, CA, Due: December 12, 1989, Contact: Jackie Campbell (503) 231-6150.

Amended Notices

EIS No. 890267, Draft, FHW, PR, PR-3 Relocation, between the Municipalities of Fajardo, and Humacao, Funding, PR, Due: November 20, 1989, Contact: Juan O. Cruz (809) 766-5600. Published FR 10-6-89 - Incorrect phone number.

Dated: October 10, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-24253 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL: 3671-2]

Workshop on Methods for Studies of Male Reproductive Effects of Toxicants

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scientific workshop, co-sponsored by the Environmental Protection Agency (EPA) for analysis and review of issues relating to studies of male reproductive effects in humans. The meeting will be held at the Ramada Seminary Plaza, Alexandria, Virginia.

DATES: The workshop will begin on Wednesday, October 18, at 8:30 a.m. and end on Friday, October 20 at approximately 1:00 p.m. Members of the public may attend as observers.

FOR FURTHER INFORMATION CONTACT: Sherry G. Selevan, Ph.D., U.S. Environmental Protection Agency, RD-689, 401 M. St., SW., Washington, DC, 20460, telephone: (202) 382-2604, for information about the workshop and to apply as an observer. Space is limited.

SUPPLEMENTARY INFORMATION: EPA is assembling a panel of scientifically qualified persons to consider issues relating to the study of reproductive effects of toxicants in human males. Workshop panelists will address technical issues related to study design, laboratory analyses, and statistical techniques. This information will be used to improve study design and interpretation of data for risk assessment.

Dated: October 6, 1989.

Erich W. Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-24241 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-30000/57A; FRL-3659-4]

2,4-D, 2,4-DB, 2,4-DP; Status of Consideration for Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; status of consideration for a special review.

SUMMARY: This Notice reports the status of EPA's consideration for Special Review of 2,4-D, 2,4-DB, and 2,4-DP based on carcinogenicity. EPA issued a proposed decision not to initiate a Special Review of these pesticides in the **Federal Register** on March 23, 1988. Since that time, EPA has become aware of two epidemiologic studies, due to be released within the next 7 months, that could significantly contribute to EPA's decision regarding the carcinogenicity of 2,4-D. This Notice announces the intent of EPA to defer a final determination on the initiation of a Special Review until after these studies have been evaluated. EPA has concluded that available information indicates continued registration of 2,4-D, 2,4-DB and 2,4-DP does not pose an unacceptable risk during the time it will take EPA to receive and evaluate the new studies.

FOR FURTHER INFORMATION CONTACT: By Mail:

Jill Bloom, Special Review Branch, Special Review and Registration Division (H7508C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office Location and Telephone Number:

Room 1006, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-1787.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice provides a status report on EPA's consideration of 2,4-D, 2,4-DB, and 2,4-DP for Special Review, and describes the method EPA intends to use in reaching a final determination on whether or not to initiate a Special Review based on carcinogenicity. In summary, EPA has evaluated data from currently available epidemiologic and laboratory studies, and concluded that two new epidemiologic studies, which will be available by March 1990, should be considered along with existing epidemiologic, toxicologic, and other supporting data before making a determination on whether or not to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP.

A. Regulatory Background

The common name for the herbicide 2,4-dichlorophenoxyacetic acid is 2,4-D. The herbicides 2-(2,4-dichlorophenoxy) butyric acid (2,4-DB) and 2-(2,4-dichlorophenoxy) propionic acid (2,4-DP) are structural analogs of 2,4-D. There are over 1000 registered pesticide products that contain one or more of these three phenoxy acids, or a salt, ester or amine derivative of the acids. The active ingredient 2,4-D acid was one of the first pesticides to be registered in the United States, and is a commonly used herbicide for controlling broadleaf weed. The majority of 2,4-D (and its derivatives) is used to control weeds in wheat, field corn, grain sorghum, sugarcane, rice, barley, rangeland, and pasture land. It is also used for residential and aquatic weed control, in forest management, and as a growth regulator on crops including citrus, filberts and potatoes. The acid and derivatives of 2,4-DB are used primarily to control broadleaf weeds in alfalfa, soybeans and peanuts. The major uses of 2,4-DP, and its amines and esters, are for weed control in turf, on non-bearing citrus, on rights-of-way, and in forestry.

In August 1980, EPA required the registrants of 2,4-D to perform a number of toxicology studies, including oncogenicity testing in the rat and mouse, pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). All of these data have been received and reviewed by EPA.

In addition to these required studies, EPA also reviewed a number of epidemiologic studies on the phenoxy herbicides (a group which includes 2,4-D, 2,4-DB, 2,4-DP, silvex, 2,4,5-T and MCPA). One of these was a study conducted by the National Cancer Institute (NCI) and the University of Kansas, published in 1986 (Journal of the American Medical Association, Vol. 256, No. 9, pp. 1141-1147). This study reported an association between the use of the phenoxy herbicides, including 2,4-D, and non-Hodgkin's lymphoma (NHL), a type of cancer which originates in the lymph system.

Based on the epidemiologic evidence, EPA issued a preliminary notification of Special Review to the registrants of 2,4-D on September 22, 1986. Preliminary notifications of Special Review were issued to the registrants of 2,4-DB and 2,4-DP on December 3, 1986, because EPA believed their structural similarity to 2,4-D warranted a simultaneous review. Since that time, EPA has decided to regulate the three chemicals individually based on information specific to each, because of their different data requirements and use patterns. However, because the initial Special Review concern was for all three active ingredients, EPA will continue this simultaneous evaluation of whether or not to initiate a Special Review.

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2 (bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time EPA determines that a pesticide no longer meets this standard for registration, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process is a mechanism by which EPA collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. Prior to initiating a Special Review, pursuant to 40 CFR 154.21, EPA must notify affected registrants and applicants of its concerns and give them an opportunity to dispute the validity of EPA's conclusions or to present information in response to the notification. EPA then reassesses its preliminary decision in light of these comments. If EPA preliminarily decides not to initiate a Special Review, notice of this proposed decision must be published for public comment in the **Federal Register**. After reviewing any comments received, EPA's final decision regarding the initiation of a Special Review must be published in the **Federal Register** with a Statement of reasons.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154.7. Through the Special Review process, EPA (1) announces and describes EPA's risk concerns regarding pesticide use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory action; (4) solicits comments from the public on the proposed decision and issues

concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the SAP; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

In the case of 2,4-D, after the preliminary notifications were issued to the registrants, risk concerns were evaluated in depth and determined not to meet or exceed criteria for initiating a Special Review. EPA published a proposed decision not to initiate a Special Review based on the opinion of scientists in EPA's Office of Pesticide Programs (OPP), toxicology and epidemiology experts, and the FIFRA Scientific Advisory Panel (SAP) that existing epidemiologic and laboratory data were inadequate or insufficient to assess the carcinogenic potential of 2,4-D. The proposed decision was published in the **Federal Register** on March 23, 1988 (53 FR 9590), and a docket was established for the receipt of comments on the proposal. EPA has decided not to make its final decision before examining the forthcoming epidemiologic information, and believes it approriate to inform concerned parties of this development, given the widespread use of these pesticides.

II. Data to Be Used in the Weight-of Evidence Evaluation of Carcinogencity for 2,4-D

A. Epidemiologic Evidence

A preliminary notification of Special Review was issued to the registrants of 2,4-D, 2,4-DB, and 2,4-DP in 1986 largely because of EPA concerns regarding carcinogenicity raised by the findings of a population-based, case-control epidemiologic study of pesticide use in Kansas. The study was based on telephone intrviews with individuals diagnosed with any of three cancer types (or their next-of-kin). The interviewers attempted to corroborate information obtained about farming practices and pesticide usage with records of local suppliers of pesticides. The study found an association between herbicide use and non-Hodgkin's lymphoma (NHL), with frequent users of phenoxy herbicides having up to eight times the risk of developing NHL as that of the control population. The study was reviewed by EPA and consultant epidemiologists and found to be well-designed and executed. However, after an in-depth evaluation, EPA concluded the study did not provide sufficient evidence of a link between 2,4-D and NHL to pursue regulatory action at that time

Other epidemiologic studies that relate to the phenoxy herbicides as a group, but do not provide specific information regarding 2,4-D, are available. EPA has decided that further evaluation of epidemiologic evidence is needed to form a consensus of opinion about the association between 2,4-D and cancer.

B. Laboratory Evidence

In response to the requirement of data under FIFRA section 3(c)(2)(B) in 1980, the Industry Task Force on 2,4-D Research Data (ITF) sponsored subchronic and oncogenicity testing in the rat and mouse. In the subchronic tests, male and female rats were fed 0, 1, 5, 15, 45, 60, 100, or 150 mg/kg/day; and male and female mice were fed 0, 5, 15, 45 or 90 mg/kg of the 2,4-D acid each day for 13 weeks. Doses for the oncogenicity tests were selected by the ITF based mainly on the results of the subchronic tests. These results were interpreted by the ITF as showing kidney pathology to a degree that indicated the Maximum Tolerated Dose (MTD) for the chronic study would be reached at 45 mg/kg/day for both sexes of both species. The MTD, usually the highest dose in an oncogenicity study, is defined in the Office of Science and Technology Policy guidance for Federal carcinogenic risk assessment (50 FR 10372) as the dose "which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's lifespan due to effects other than carcinogenicity".

In the oncogenicity studies, 97.5 percent pure 2,4-D acid was fed to both sexes of rat at 0, 1, 5, 15, or 45 mg/kg/day and both sexes of mouse at 0, 1, 15, or 45 mg/kg/day for a period of 24 months. The results of these studies were submitted to EPA in 1986. Although there appeared to be a slight, treatment-related increase in the incidence of astrocytomas (brain tumors) in the male rat, two different statistical evaluations found no strong statistical evidence of oncogenicity in the rat. There were no oncogenic effects attributable to the test material in the female rat, or either sex of the mouse.

In 1985, pathologists from the National Institutes of Health's National Toxicology Program (NTP) reviewed an undetermined number of kidney tissue slides from the subchronic studies used to determine proper dose levels for the chronic studies. The scientists concluded that the kidney lesions observed in the preliminary tests were minimal in severity, indicating that the MTD had not been reached even at the highest level tested in the subchronic studies. In addition to viewing the slides, the NTP personnel were shown interim data from the ongoing chronic tests by representatives of the ITF. The NTP concluded from this presentation that there was even less kidney pathology seen at 45 mg/kg after 52 weeks in the chronic studies than after 13 weeks in the subchronic studies. EPA, after receipt of the final reports from the rat and mouse studies, agreed with the determinations of the NTP and concluded that the MTD was not achieved for either species in the chronic testing, based on observation of kidney effects.

Subsequent to the publication of the **Federal Register** notice announcing the proposed decision not to initiate a Special Review of 2,4-D, EPA received a comment from the ITF stating that a complete review of the kidney lesion slides from all the toxicity studies had not been performed. NTP scientists did not conduct a complete evaluation when they viewed the slides in 1985, having had access only to some of the slides from the subchronic studies. This situation has been remedied by a complete review of slides from the subchronic and chronic studies of both species by an independent pathology laboratory. A consulting pathologist for EPA reviewed the final reports from the private laboratory and found the kidney lesions described in those reports "not biologically important" with respect to the animals' consumption of 2,4-D. The rat kidney slides showed lesions that were "consistent with those found in aging rats". In addition, biochemical data from the tests were reviewed by the consulting pathologist and an EPA toxicologist. These data also do not indicate adverse effects from the ingestion of the 2,4-D acid by the test animals.

EPA has concluded that the insufficiency of the rodent studies for oncogenicity necessitates their repetition. Consequently, EPA has required, under the authority of FIFRA section 3(c)(2)(B), new rat and mouse oncogenicity studies which comply with EPA testing guidelines and the accepted definition of MTD. The registrants are allowed 50 months from the date of receipt of the letter requiring these studies to submit the required data. These studies will be reviewed upon their receipt, as part of the continuous evaluation of new data that EPA maintains for all registered pesticides, and will be used to support new regulatory action if such action is indicated.

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C. Forthcoming Data

EPA is awaiting the release of two epidemiologic studies to be considered in EPA's comprehensive weight-of-evidence evaluation for carcinogenicity of 2,4-D. The two are NCI case-control studies of the relationship between the use of agricultural chemicals, including 2,4-D, and cancer. The first study, from eastern Nebraska, has been completed, but the results will not be released to EPA until the end of 1989. Statistical analysis of the second study, from Iowa and Minnesota, is in progress, with release anticipated in March 1990. Other epidemiologic studies which may provide some information about 2,4-D are being performed or are planned by NCI.

III. Conclusion

EPA has determined that the analysis of two forthcoming epidemiologic studies will allow EPA to better evaluate the weight of evidence for the carcinogenic potential of 2,4-D. EPA plans to have a panel of independent experts from outside EPA conduct a formal review of all epidemiologic, toxicologic, genotoxic, and supporting data relating to carcinogenicity of 2,4-D after the receipt of the two studies. This evaluation will include analysis of the Kansas study which prompted EPA consideration for a Special Review in 1986, and data from other relevant epidemiologic studies that have become available since that time. The conclusions of the panel will be used by EPA in its determination of whether a Special Review of 2,4-D, 2,4-DB and 2,4-DP is necessary. If the epidemiologic studies are received on schedule, the panel could convene in the Spring of 1990. An EPA decision on whether or not to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP could be finalized by Fall 1990. EPA has recently required repeat rodent oncogenicity testing. However, waiting for data from these studies would delay this determination on whether to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP beyond reasonable limits. These or any future studies which yield relevant information will be considered appropriately in supporting a Special Review if one is initiated, or in making a new determination on whether to initiate a Special Review. In making the determination to defer its decision on initiation of a Special Review, EPA has concluded that continued registration of 2,4-D, 2,4-DB and 2,4-DP does not pose an unacceptable risk during the time it will take to receive the new studies and make a comprehensive evaluation.

IV. The Public Docket

EPA has established a public docket for the 2,4-D, 2,4-DB, and 2,4-DP pre-Special Review materials. The public docket includes this Notice, the previous **Federal Register** notice announcing the proposal not to initiate a Special Review, the public comments received in response to the proposed decision, and other communications pertinent to EPA's decision on a Special Review of these chemicals. The docket is available for public inspection in Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Dated: October 3, 1989.

Linda, J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-24213 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-JO-M

[OPTS-44539; FRL 3658-2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on diethylene glycol butyl ether (CAS No. 112-34-5), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Test data was also received on 4-nitroaniline (CAS No. 100-01-6), 2-nitroaniline (CAS No. 88-74-4) and methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4) submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for diethylene glycol butyl ether was submitted by Chemical Manufacturers Association on behalf of the Dow Chemical Company pursuant to a test rule at 40 CFR 799.1560. It was received by EPA on September 18, 1989. The submission describes: (1) An acute study of potential effects of diethylene glycol butyl ether on behavior in rats; and (2) a 3-month study of the potential effects of diethylene glycol butyl ether on behavior and neuromorphology in rats. Neurotoxicity/behavioral effects testing is required by this test rule.

Test data for 4-nitroaniline and 2-nitroaniline were submitted by Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of Monsanto Company, pursuant to a consent order at 40 CFR 799.5000. The studies were received by EPA on September 20, 1989. Both submissions describe in vivo bone marrow cytogenetics: micronucleus assay. Micronucleus testing is required by this consent order.

Test data for MTBE was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of the sponsoring companies or record pursuant to a consent order at 40 CFR 799.5000. The study was received by EPA on September 27, 1989. The submission describes: (1) A MTBE repeated (13 week) vapor inhalation study in rats with neurotoxicity evaluation; and (2) a MTBE single exposure vapor inhalation neurotoxicity study in rats. Inhalation toxicity and neurotoxicity testing are required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44539). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 4, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-24214 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 89-284]

FCC Votes to Hold En Banc Hearing on AM Improvement Issues

September 29, 1989.

For more than a decade, AM radio has experienced a steady decline in its aggregate share of the nation's listening audience, in part due to decisions dating from the 1950's which fostered the development of a high-fidelity, FM broadcast service. Comparable AM improvements, however, were not undertaken. AM radio, nevertheless, traditionally has played an important role in ensuring service to the communities which comprise the United States, and a strengthened AM radio service could make a significant contribution to the national welfare. Most importantly, it would broaden listener choices. It would also increase advertiser options and competition in radio and associated markets, thereby enhancing the responsiveness and vigor of those markets. A significant portion of a national resource, the radio spectrum, moreover, has been allocated to AM, and it is important that maximum public dividends be secured from that resource allocation decision.

The Commission believes that the public interest in AM improvement and the future of the service will be served by our convening a special *En Banc* hearing on November 16, 1989. The purpose of this hearing would be to review the situation concerning the service, examine its prospects for improvement and ensure that the Commission, the broadcast industry and the public are of similar mind concerning the key issues related to AM improvement and the most appropriate means of their resolution.

General matters to be considered at the *En Banc* hearing would include, but not be limited to, the following:

1. AM improvement and the future of AM radio;
2. Uses of the AM expanded band (1605 kHz-1705 kHz);
3. AM technical improvements and station assignment policies;
4. AM stereophonic transmission and its impact on AM technical criteria and assignment policies;
5. The importance of receiver quality to the future of the AM service.

We encourage participants to incorporate in their remarks cost/benefit analyses, as well as specific examples and suggestions. We specifically invite commenters to evaluate the Commission's ongoing AM improvement efforts in terms of their cost-effectiveness and to identify any AM improvement options the Commission may have overlooked.

The Commission has recently initiated an array of proceedings aimed at strengthening and improving AM radio service to the American people. These include MM Docket No. 88-376, Amendment of the Commission's Rules to improve the quality of the AM Broadcast Service by reducing adjacent channel interference and by eliminating restrictions pertaining to the protected daytime contour, MM Docket No. 88-506, Improved Methods for calculating skywave field strength in the AM Broadcast Band, MM Docket No. 88-509, Nighttime operation for Class II-S and Class III-S AM radio broadcast stations, MM Docket No. 88-510, Improved methods for calculating groundwave field strength in the AM Broadcast Band, MM Docket No. 88-511, Review of the methods for calculating nighttime protection for stations in the AM Broadcast Service, and MM Docket No. 89-46, Policies to encourage interference reduction between AM Broadcast Stations. All of these proceedings have been derived from the initial Notice of Inquiry in MM Docket No. 87-267, which addressed various matters pertaining to technical improvements in the AM broadcast service. Additionally, the Commission has under consideration comments and reply comments in General Docket No. 84-467, which concerns expanding the upper limit of the AM band from 1605 khz to 1705 khz. Additional proceedings may be initiated in the future, dealing with such topics as review of protected contours and protection ratios for the AM broadcast service, reclassification of AM stations, possible restrictions on permissible modifications of Class I stations, changes in the permissible power levels of AM stations and regulations pertaining to use of advanced AM station antenna technology.

Comments filed in the ongoing proceedings generally affirm the desirability of the various proposals and encourage us that an orderly transition can and should be made to a technically improved AM service. However, representatives of the broadcast industry have expressed some legitimate concern about whether the anticipated outcome of some of the individual proceedings will have the intended beneficial effect. The Commission has also received a letter from the National Association of Broadcasters Radio Board of Directors asking us to convene a special meeting at which critical AM-related issues can be discussed.

It appears appropriate to address these several distinct aspects of the overall AM improvement process and to pose these pertinent questions which may elicit responses that are beneficial to our formulation of sound approaches to improving the AM broadcast service. By taking this approach, we believe that the Commission will be able to move forward, both rapidly and coherently, in an effort to improve AM broadcasting.

In addition, we would note that our system of AM broadcast assignments is based on both technical criteria and assignment policies. The technical criteria are, or should be, objective and accurate, reflecting our current knowledge of scientific principles and developments in telecommunications systems. The assignment policies are essentially judgmental; they are intended to permit coverage areas to be large enough so that stations may fulfill their functions and yet small enough so that an adequate number of assignments can be made. We recognize that an effort to update the technical criteria may, depending on circumstances, lead to an unanticipated result. Rather than disregard refinements of a technical nature, we would prefer to prevent any untoward outcome by modifying our policies. Furthermore, we urge the parties to address the individual AM proceedings as components of our overall AM inquiry and not as isolated matters.

The Commission solicits comments on these and any other matters relevant to AM improvement. Comments of a general or policy nature may be submitted in writing or by oral testimony at the *En Banc* hearing. Highly detailed comments, particularly those of a technical nature, would be more properly submitted in writing. We do not encourage submissions that duplicate the existing record. Rather, we wish to focus primarily on the above questions and on specific interdependency aspects in order to clarify our ultimate objectives in AM improvement.

Information submitted at the *En Banc* hearing, whether presented orally or in writing, will be included as a matter of public record in the MM Docket No. 87-267 proceeding, which is captioned Review of the technical assignment criteria for the AM Broadcast Service. Comments will also be accepted on all

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of the pending AM improvement proceedings listed in this Public Notice. Such written comments may be filed either in MM Docket No. 87-267 or in the particular docketed proceeding to which they relate. At the *En Banc* hearing, the Commission will set a date by which reply comments must be filed.

The specific format of the *En Banc* hearing, the selection of representative witnesses from among those expressing an interest in participating and the arrangement of such other administrative matters as may be necessary will be addressed in future Public Notices.

For further information on this matter contact William Hassinger at (202) 632-6460.

News Media contact: Rosemary Kimball at (202) 632-5050.

Action by the Commission September 29, 1989, by Public Notice (FCC 89-284). Commissioners Sikes (Chairman), Quello, Dennis, Marshall and Barrett.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-24205 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

En Banc Hearing on AM Improvement

October 5, 1989.

The Federal Communications Commission announced on September 29, 1989, that it will convene a special *En Banc* hearing on the matter of the AM Broadcast Service. The hearing, scheduled for Thursday, November 16, 1989, is intended to review the situation concerning the service and examine its prospects for improvement.

Parties wishing to make oral presentations should submit written requests by close-of-business, Monday, October 16, 1989 to the Mass Media Bureau, 1919 M Street, NW., Room 314, Washington, DC, 20554, Attention: William Hassinger. Such requests should clearly identify the speaker, the organization represented (if any), experience and training relevant to AM broadcasting, and the particular topic or topics to be discussed. Depending on the number of requests if may be necessary to limit the number of presenters. If so, we will endeavor to select them so as to obtain a broad and informed viewpoint.

All interested parties masy submit wirtten comments. An original and 9 copies of comments and draft testimony should be submitted by November 6, 1989 to: Office of the Secretary Federal, Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554, Ref: MM Docket No. 87-267.

This hearing will be open to the public. The precise format and speaker schedule will be specified in a Public Notice to be released on or about October 20, 1989. For further information please contact William Hassinger at (202) 632-6460. The contact for media coverage is Maureen Peratiano or Sally Lawrence at 632-5050.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 89-24206 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted on OMB Review

The Federal Maritime Commission hereby gives notice that the following has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review; 46 CFR Part 581—Service Contracts

(Definition of a Shipper and Availability of Mixed Commodity Rates—Docket 89-20)

FMC requests clearance of an amendment to 46 CFR part 581 which would (1) amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier (NVOCC), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The Commission estimates the filing burden to implement the proposed rule's provisions to be 2700 hours. There will be no additional cost to the Federal Government for this amendment. Estimated cost to respondents for this amendment is $13,500.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24218 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Philadelphia Part Corporation Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200233-005.

Title: Philadelphia Port corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)

Holt Cargo Systems, Inc. (Holt)

Synopsis: The Agreement amends the basic agreement to provide for the lease of Berth 6, including all buildings, fixtures and structures located thereon, to Holt. It also provides for an additional annual guarantee in the amount of $300,000.

Agreement No.: 224-200294.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (GPA)

Mitsui O.S.K. Lines, Ltd.

Nippon Yussen Kaisha

Nippon Liner System, Ltd.

Synopsis: The agreement provides that GPA performs certain terminal services for the carrier parties at a consolidated rate based upon an agreed upon unit rate per container. The Agreement's term is for three years.

By Order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24095 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Settlement of the Port of Greater New York and New Jersey Assessment Agreement; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on October 3, 1989, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224-000086-003.

Title: Settlement of the Port of Greater New York and New Jersey Assessment Agreement.

Parties:

New York Shipping Association, Inc.

International Longshoremen's Association AFL-CIO

Synopsis: The Agreement extends through November 30, 1990, the prior Port of New York Agreement with certain modifications.

By Order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24094 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Transpacific Westbound Rate Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-037.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment eliminates the "rate initiative" procedures of the agreement and makes other administrative changes in regard to the elimination of the "rate initiative" procedures. The amendment also modifies Article 14 to allow other members the opportunity to meet existing grandfathered service contracts.

Agreement No.: 202-010776-049.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit a party to the Agreement to disclose its own position on a matter or the status of a matter before the Agreement only to the extent that such matter either had been made public by the Agreement or had been previously known to the shipper or consignee by virtue of its having requested that the matter be considered by the Agreement.

Agreement No.: 202-011102-07

Title: U.S Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties:

Costa Container Line
Farrell Lines, Inc.
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Compania Trasatlantica Espanola, S.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
Lykes Lines (Likes Bros. Steamship Co., Ltd.)
Zim Israel Navigation Company, Ltd.
Compagnie Generale Maritime

Synopsis: The proposed modification would clarify existing agreement authority by specifying that two or more of the members may agree to and implement proposals concerning independent action initiated by another member or members.

Agreement No.: 212-011234-002.

Title: U.S.A./South Europe Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Line
Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Lines (Lukes Bros. Steamship Co., Ltd.)
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would exclude noncontainerized shipments of iron and steel articles moving in lots of over 1,500 tons per call from the definition of pool cargo and would provide that the revenues from such shipments are not subject to the Pool Agreement.

Agreement No.: 217-011252.

Title: Topgallant Lines, Inc. and Sea-Land Service, Inc. Space Charter Agreement.

Parties:

Topgallant Lines, Inc.
Sea-Land Service, Inc.

Synopsis: Agreement No. 217-011252 proposes to establish a space charter arrangement between Topgallant Lines, Inc., and Sea-Land Service, Inc., in the U.S. Atlantic/Europe trades. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24135 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. 6486]

Goodyear Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 consent order as to the Atlantic Refining Co. ("Arco"), thus removing all

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requirements and prohibitions, because Arco has shown that significant changes of law make it unlikely that the practices prohibited by the order would be found unlawful were the original case brought today.

DATES: Consent order issued March 9, 1961. Set aside order issued June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/S–2115, Washington, DC 20580 (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the matter of Goodyear Tire & Rubber Co., et al. The prohibited trade practices and/or corrective actions, as codified, as set forth at 26 FR 4886, are deleted.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

In the Matter of Goodyear Tire & Rubber Co. a corporation, and Atlantic Refining Co. a corporation.

Order Reopening and Setting Aside Final Order

Issued on March 9, 1961.

On February 3, 1989, the Atlantic Richfield Company ("Arco") filed a request to reopen and set aside the Final Order that was entered in the proceeding on March 9, 1961, or in the alternative to modify the order. The request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51.

Arco seeks to have set aside or modified the order issued in Docket No. 6486 which prohibits the Atlantic Refining Company ("Atlantic") from entering into certain kinds of contracts with the Goodyear Tire and Rubber Company ("Goodyear") and other of its suppliers. Arco was formed as a result of the merger of Atlantic with other oil companies. Arco is the successor to Atlantic and bound by the terms of the order in Docket No. 6486.

Arco asserts that, since the adjudication of this order, there have been changes of fact and of law that warrant reopening the order and setting it aside, in whole or in part, and that the public interest requires termination or modification of the order. Arco's central contention is that it ought to be allowed to negotiate with suppliers of tires, batteries and other automotive accessories ("TBA") concerning the terms of sale of those items to Arco franchisees that sell Arco petroleum products. Arco asserts that it could negotiate for its franchisees cooperative advertising and other promotional activities that are sponsored by TBA manufacturers. Obtaining such promotional benefits would eliminate a restriction that Arco alleges unnecessarily places Arco and its petroleum franchisees at an unwarranted disadvantage.

The Commission has considered Arco's request and has concluded that Arco has made a showing that warrants setting aside the entire order in Docket No. 6486. Significant changes of law since the order was entered warrant setting aside the order.

Background

On March 9, 1961, the Commission held that the TBA sales commission agreement between Atlantic and Goodyear and another between Atlantic and the Firestone Tire and Rubber Company ("Firestone") constituted unfair methods of competition and violated section 5 of the Federal Trade Commission Act. 58 F.T.C. 309. The Court of Appeals and the United States Supreme Court upheld the Commission's decision and order. 331 F.2d 394 (7th Cir. 1964), 381 U.S. 357 (1965).

Prior to 1951, Atlantic had acquired TBA products and resold them to its petroleum franchisees. In 1951, it switched to a system under which Atlantic selected manufacturers of TBA to supply its franchisees. Atlantic entered into "best efforts" contracts with Goodyear and Firestone. Under these contracts Atlantic agreed that it would exert its best efforts to promote Goodyear products to all of its franchisees within a designated geographic area and Firestone products within another area. In return those companies agreed to limit TBA sales to Atlantic franchisees within the designated areas and to pay Atlantic a commission on all their sales to the franchisees. Under the sales commission plan, designated Goodyear and Firestone wholesalers were allocated geographical regions. In each region, one wholesaler was to be the sole source of TBA supplies to each Atlantic franchisee.

The Commission's decision stated this arrangement was unlawful because it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." 58 F.T.C. at 367. The Commission found that Atlantic had "sufficient economic power" to reduce competition that would have existed from suppliers of other TBA products. *Id.* at 364.

Atlantic was found to have successfully implemented its sales commission program through the use of threats and coercion. *Id.* at 347. The decision stated that Atlantic threatened, explicitly and implicitly, to cancel franchises of gas stations that did not buy the TBA products that Atlantic recommended. *Id.* at 343–47. The gas station franchise agreements were subject to annual review and could be cancelled by Atlantic on a number of subjective grounds. *Id.* at 356.

The Hearing Examiner found that sales of TBA were vital to service station owners. TBA provided both the product for the full services expected by customers and additional revenues that made the stations profitable. 58 F.T.C. at 313.

The Commission entered an order that prohibits Atlantic from promoting or coordinating the sale of TBA products from any TBA vendor other than itself to Atlantic franchisees. In summary, the six paragraphs forbid Atlantic from:

1. Entering into agreements with Goodyear or other TBA suppliers in connection with sales by those suppliers to Atlantic franchisees.

2. Accepting anything of value for promoting the sale of any vendor's TBA products.

3. Using contracts, economic incentives and other means to encourage its franchisees to acquire any vendor's TBA products other than Atlantic's.

4. Monitoring the sale of any vendor's TBA products other than its own.

5. Intimidating or coercing its franchisees to acquire TBA products.

6. Preventing or attempting to prevent its franchisees from buying the TBA products of their choice.

The Hearing Examiner's proposed order, in effect, would have imposed only the restrictions of paragraphs 5 and 6. The Commission appears to have added paragraphs 1–4 because it believed the sales commission plans could persist "even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic." 58 F.T.C. at 364–5.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[1] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986) at 4. See, S. Rep. No. 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); see *Phillips Petroleum Co.*, Docket No. C–1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C–3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); see also *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that have eliminated reasons for order or such that the order causes unanticipated hardship).

The language of Section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. See also *Gautreaux* v. *Pierce*, 535 F. Sup. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing; by means other than conclusory statements, why an order should be modified.[2] If the Commission

[1] Section 5(b) provides, in part: "[T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part."

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codifie[d] existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made." S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

[2] The legislative history of amended section 5(b), S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979), states: "Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions require the requested modification of the order."

determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in respose and the finality of Commission orders. See *Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc.* v. *Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp.* v. *FTC*, 656 F.2d 718; 721–22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Changed Conditions of Law Warrant Reopening the Order

Arco has requested that the Commission set aside the order because of changed conditions of fact and law or, absent changed conditions, because of the public interest. For the reasons described below, changes of law warrent reopening the order against Atlantic. Having reopened and set aside the order on the basis of changes of law, the Commisson does not reach the issue of whether the changes of fact or public interest considerations warrant reopening.

In finding a violation, the Commission considered Atlantic's sales commission plan to be in the nature of a tying restriction and that it had unlawful vertical restraint aspects. Arco asserts that in 1961 the Commission did not consider fundamental issues necessary under current legal standards to find that the sales commission plan would be unlawful. Arco also asserts that practices prohibited by the order are now unlikely to be unlawful. These assertions are of the types that warrant reopening an order and considering appropriate modifications.

1. The Tying Rationale

The Commission's decision was, to a large extent, based on the similarity of this case to a tying restriction where the sale of one product is conditioned on the agreement to buy another. While the opinion did not classify the matter as a tying case, that appears to be because the Atlantic franchise was not explicitly conditioned on the purchase of Goodyear or Firestone products. Nevertheless, the mode of analysis and source of precedent was that of tying cases. 58 F.T.C. at 363–4. The opinion stated, for example, this is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." *Id.* at 367.

Arco points out that the typing concept used by the Commission in this case relies on the Supreme Court's approach to tying in *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1 (1958) and related decisions. That line of cases bases illegality on the finding of a tie and the foreclosure of a substantial volume of commerce. Those cases do not require and the Commission did not find that Atlantic had market power in the tying product (franchises for gas stations).

The approach of *Northern Pacific* to unlawful tying was ended in 1977 by the Supreme Court's decision in *United States Steel Corp.* v. *Fortner Enterprises*, 429 U.S. 610 (1977). In that case, the Court determined that a precondition to finding unlawful tying was establishing that the seller had market power in the tying product (i.e., franchises). It required a finding that the seller have the power to raise price above a competitive level or impose other burdensome terms that could not be imposed in a competitive market. See also, *Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2 (1984).

Despite language in the Commission's opinion about Atlantic's power in the gasoline market, the Commission made no inquiry into the question of whether it had the power to raise price above a competitive level. And, in view of the fact that Atlantic had a market share of less than 7 percent of its gasoline market, it seems unlikely that there would have been a basis for such a finding if the inquiry had been made. The Commission's discussion of economic power concerned Atlantic's total assets and the disparity of wealth between Atlantic and its franchisees. 58 F.T.C. at 356, 364.

For purposes of reopening the order, the important point is that the Commission made no inquiry concerning the market power of Atlantic and that today such an inquiry would be mandatory. In addition, Arco has shown that under current law a finding of unlawful restraints is unlikely. *Fortner* and subsequent cases established criteria that changed the law of tying in ways that are central to the determination of this case. Accordingly, there has been a change of law that warrants reopening this order.

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2. The Vertical Restraints Rationale

Although the Commission relied on *Northern Pacific*, 356 U.S. 1, and used a tying rationale for its decision, it did not explicitly characterize the case as an unlawful tie-in. Indeed, the Supreme Court, in affirming, suggests the Commission found something other, perhaps more, than an unlawful tie. 361 U.S. 357, 369–70 (1965). If the Commission's finding was not that the sale commission plan was an unlawful tie, the plan was, nevertheless, held to be a *per se* unlawful vertical restraint of some other type. Since the Supreme Court's decision in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), it has been clear that non-price vertical restraints generally are to be evaluated under a rule of reason standard. That standard requires consideration of whether interbrand competition may be enhanced by efficiencies resulting from vertical restraints. But as the Supreme Court noted in reviewing this case, the Commission refused to consider "evidence of economic justification" or to analyze "the competitive effect of the sales commission plan, examining the entire market in tires, batteries and accessories." 381 U.S. 357 at 371 (1965). Thus, to the extent the Commission's decision rests on an analysis of non-price vertical restraints, it appears that this change of law also warrants reopening the order.

The Order Will be Set Aside

An order is not automatically set aside on the grounds that the law has changed, even if, as here, the Commission refused to consider issues that later become mandatory. Having satisfied itself on a record of adequate proof under then prevailing standards, the Commission does not have to reprove its case to maintain a final order. The order will remain in force unless the requester can show that there is no basis in current law on which such a case could be brought and either that there is no need for the order or that the current effect of the order is detrimental to competition.

In this request, Arco has satisfied this standard for modification. Arco has presented persuasive evidence that Atlantic probably lacked the "economic power" (as that term has been understood since *Fortner*, 429 U.S. 610) to effect an unlawful tie. Arco has also shown that there is no need for the order by presenting evidence that gas stations as a group, and Arco in particular, probably have too small a market share to produce substantial competitive effects on TBA distribution.[3]

Furthermore, there is some danger that paragraphs 5 and 6, the core provisions of this order, might have anticompetitive effects by deterring efficient conduct if they remained in force. They prohibit the use of coercion or intimidation as means of marketing TBA products, and preventing franchisees from buying or displaying TBA products of their choice. The coercive use of economic power certainly can be illegal, but the disparity of bargaining power that the Commission identified in this case does not imply coercion. Under today's legal standards, even if Arco wished to require its franchises to carry certain other branded products as a condition of obtaining or maintaining its franchise, the requirement would not constitute coercion and would be legal under a rule of reason in the absence of proof that it injured consumers. In view of these considerations, it appears that continuing the order in this case is unwarranted.

Accordingly, *it is ordered*, That this matter be reopened and that the Commission's order in Docket No. 6486 issued on March 9, 1961, be set aside as to Atlantic Refining Co. as of the date of this Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–24197 Filed 10–12–89; 8:45 am]

BILLING CODE 6750–01–M

[Docket 8560]

Ronby Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies the Commission's order issued on March 12, 1964 (29 FR 4083), with Fred Astaire Dance Studios Corp., the corporate predecessor to the Ronby Corp., by providing students with absolute cancellation and refund rights.

DATES: Order issued March 12, 1964. Modifying Order issued April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Wallace Witkowski or George O'Brien, FTC/S–4631, Washington, DC 20580. (202) 326–3015 or 326–2972.

SUPPLEMENTARY INFORMATION: In the Matter of Ronby Corporation. The prohibited trade practices and/or corrective actions, as set forth at 29 FR 4083, remains unchanged.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Order Modifying Order to Cease and Desist

The Commission on January 26, 1989, issued its order to show cause why this proceeding should not be reopened and its order of March 12, 1964 ("the Commission order of 1964"), modified.

Ronby Corporation, Chester F. Casanave and Charles L. Casanave having consented to the reopening of this proceeding, to being added as parties respondent thereunder and to the modification of the Commission order of 1964, as set forth in the show cause order, and the Commission having placed the show cause order on the public record for thirty (30) days and no comments having been filed by interested persons.

Now, therefore, it is hereby ordered, That the Commission order of 1964 be, and it hereby is, modified, as follows:

(1) By inserting a Roman numeral one (I) before the *It is ordered* preamble of the 1964 order;

(2) By substituting revised language in the *It is ordered* preamble of the 1964 order, as provided below;

(3) By substituting revised language in numbered paragraphs 1., 4., 5., 7. and 9. of the newly designated Part I of the order, as provided below;

(4) By deleting paragraphs 3. and 8. thereof;

(5) By renumber paragraphs 4., 5., 6., 7. and 9. thereof as paragraphs 3., 4., 5., 6. and 7., respectively; and

(6) By adding new Parts II, III, IV, V, VI and VII, as provided below.

It is further ordered, That Ronby Corporation, a corporation, Chester F. Casanave and Charles L. Casanave be, and they hereby are, joined as respondents in this matter.

It is further ordered, That this matter be styled as the Matter of Ronby Corporation, et al.

Order

I

It is ordered, That respondents Ronby Corporation, a corporation, and Chester F. Casanave and Charles L. Casanave, individually, and as officers of said corporation, thier successors and assigns, and their officers, agents, representatives, and employees, directly or through any area franchisor, franchisee, or licensee, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in or affecting commerce, as "commerce" is defined in teh Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a course of dancing instruction or a specified number of dancing lessons, or a dance instruction service or any other service or thing of value, will be furnished, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented;

2. Refusing to honor the terms and provisions of any offer or promise;

3. Requesting any student or prospective student to sign an uncompleted contract or agreement, or misrepresenting to any student or prospective student what is or will be due or payable;

4. Using in any single day "relay salesmanship," that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction;

5. Representing in any manner that a dancing instructor job is obtainable at a studio where the purpose of such a representation is to induce an applicant to purchase a course of instruction, or misrepresenting what such an instructor will be paid;

6. Falsely assuring or representing to any student or prospective student that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency;

7. Using any technique or practice similar to those set out in paragraphs 3 through 6 thereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction or dance instruction service.

II

It is further ordered, That respondents Ronby Corporation, a corporation, it successors and assigns, and its officers, agents, representatives and employees, directly or through any area franchisor, franchisee, or license, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in commerce, as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from:

1. Failing to disclose, clearly and conspicuously, in each dance instruction contract or dance instruction service contract, the following statement:

Definitions

For purposes of this contract the following definitions apply:

"*Total contract price*" shall mean the total cash price paid or to be paid by the student or prospective student for the dance instruction or dance instruction service which is the subject of the contract or written agreement.

"*Notice of cancellation*" shall be deemed to have been provided by a student or prospective student by mailing or delivering to the studio a written notification cancelling the contract or written agreement.

"*Reasonable and fair service fee*" shall mean no more than 10% of the total contract price for contracts of up to $1,000. For contracts over $1,000, "reasonable and fair service fee" shall mean no more than $100 plus an amount equal to 5% of the contract price over $1,000. "Reasonable and fair service fee" shall not exceed $250 in total.

"*Dance instruction service*" shall mean any service or a thing of value, including a contest or a competition, other than dance instruction, sold, organized, sponsored or promoted by any dance studio, or by its employee or agent, including any person or organization associated or affiliated with the franchise operation, franchisee, employee or agent.

Student Cancellotion and Refund Right

You, the student, have the right to cancel this contract at any time by a notice in writing mailed or delivered to the studio. If the studio refuses or fails to give you the refund, or the studio closes, you should mail a copy of the cancellation notice to the area franchisor whose full name and address are

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and to Ronby Corporation, the national licensor of the trade name Fred Astaire Dance Studios, at 11945 Southwest 140th Terrace, Miami, Florida 33186. No special format or notarization is necessary.

This contract is invalid if the full name and address of the area franchisor are not provided.

If this agreement is cancelled within three business days, the studio will refund within not more than (30) days all payments made under the agreement.

After three business days, the studio will only charge you for the dance instruction and dance instruction service received under the agreement, or prearranged but not attended before the day you cancel, plus a reasonable and fair service fee, as defined above, and refund the balance in three (3) equal monthly installments, within not more than ninety (90) days.

Provided, however, That a departure from this exact language to afford a greater right to a student than any right under this order, or to correcity provide the name and address of the national licensor or its equivalent, shall not be deemed a violation of this requirement of the order.

2.a. Entering into a contract or other written agreement for any dance instruction or dance instruction service unless the contract or other written agreement contains the definitions, terms, and conditions recited in paragraph 1., above, in the exact language mandated by said paragraph and unless the contract or written agreement discloses clearly and conspicuously the rate charged per lesson for each type of dance instruction selected and the length of each lesson;

b. Failing to refund a student or prospective student who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed all payments made by the student or prospective student. Such refunds shall be provided, and any evidence of indebtedness canceled and returned, within 30 days after receiving notice of cancellation.

c. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a student or prospective student cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement; and failing to refund the balance in three (3) equal monthly installments, within not more than ninety (90) days after receiving notice of cancellation, or failing to cancel that portion of the student's or prospective student's indebtedness that exceeds the amount due;

The pro rata portion shall be calculated in the following manner:

(1) For the time period preceding notice of cancellation, total the number of hours or lessons of dance instruction that were received, or prearranged but not attended, by the student pursuant to the contract written agreement,

(2) Divide this number by the total number of hours or lessons of dance instruction which are the subject of the contract or written agreement,

(3) Apply the resulting percentage against the total contract price.

(4) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion;

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[3] Gas stations nationwide sold 3 percent of replacement batteries and 6 percent of replacement tires in 1987. Request at 19.

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Provided, however, That this modified order does not create any private right of action against Ronby Corporation, Chester F. Casanave or Charles L. Casanave, by any student under any student contract.

d. Misrepresenting in any manner to any student or prospective student any of the provisions of this consent order.

3. Failing to subject any promissory note, instrument or evidence of indebtedness, given by a student pursuant to any contract for dance instruction or dance instruction services, to the students' concellation and refund rights provided in paragraph 2. above, in such a manner that such student rights are legally binding on any third person who may acquire any right under any such note, instrument or evidence of indebtedness.

4. Attempting to obtain or obtaining from a student a waiver of the student's cancellation or refund right.

5. Failing to discontinue dealing with or terminate the use or engagement of any area franchisor who (1) continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order, or (2) fails to discontinue dealing with or terminate the use or engagement of any franchisee or licensee who continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order;

Provided, however, That Ronby Corporation and area franchisors may effect such termination in accordance with applicable law.

6. Failing to implement, within one hundred twenty (120) days from the date of service of this order, a program of surveillance adequate to reveal whether the business operation of each license or area franchisor conforms to the requirements of the modified order, and failing to maintain records of such surveillance program which shall be made available for inspection and copying to the Commission, upon reasonable notice and at reasonable times.

7.a. Failing to deliver a copy of this modified order to each present and future area franchisor and franchisee, with directions that each such person promulgate and enforce the terms of the modified order in the operations of each studio, including the sales efforts of any independent contractor engaged by the studio for the selling of dance instruction or dance instruction service;

b. Failing to obtain from each person described in subsection 7.a. above, a signed statement setting forth his or her intention to conform his or her business practices to the requirements of this modified order;

c. Failing to notify the Commission of the name and address of any person from whom respondent is unable to obtain such a signed statement; and

d. Failing to keep each such agreement for a period of five (5) years after the termination of any such relationship; and failing to transmit to the Commission or its designated staff complete and legible copies of the same within fourteen (14) business days of receiving a request for copies thereof;

III

It is further ordered, that respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, shall report the discontinuance of their present business or their affiliation with any other business offering any dance instruction or service, such notice to include a description of respondent's new business or employment; and should either Chester F. Casanave or Charles L. Casanave create or become affiliated in any way with any corporation, partnership or other venture or business offering any dance instruction or service, such a corporation, partnership, venture or business shall be bound by the provisions of this modified order.

IV

It is further ordered, that respondent Ronby Corporation shall notify the Commission at least thirty (30) days prior to any proposed or contemplated reorganization, dissolution, assignment or sale, resulting in the emergence of a succsessor corporation, the creating or dissolution of a subsidiary or any other change in the corporate structure of such corporate respondent that may affect compliance obligations arising out of this order.

V

It is further ordered, that respondents Chester F. Casanave and Charles L. Casanave each shall be relieved from any further obligation under Parts I and III of this order upon completely ceasing his involvement with any dance instruction, or dance instruction service, including licensing or franchising of the same, until such time as he resumes such activity in the future.

VI

It is further ordered, that respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, within one hundred twenty (120) days after the date of service upon each of them of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

VII

It is further ordered, that respondent Ronby Corporation shall file or cause to be filed one (1) year after the date of service of this order a further detailed report on measures undertaken to protect the prepaid moneys of students.

By direction of the Commission, Commissioner Strenio dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 24198 Filed 10-12-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-12]

Request for Comments on Hazardous Substances Nominated for Toxicological Evaluation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for Comments.

SUMMARY: On July 11, 1989, the Hazardous Waste Information Evaluation Subcommittee (HWIES) of the PHS Committee to Coordinate Environmental Health and Related Programs met to review six hazardous substances for possible toxicology studies by the National Toxicology Program (NTP) under funding from ATSDR. These six hazardous substances have been tested for toxicity, by the NTP, under prechronic conditions and are being considered for placement on a list for possible long-term testing. With this notice, ATSDR solicits public comments on the six hazardous substances listed herein.

DATE AND ADDRESS: Written comments bearing docket control number ATSDR-12 should be submitted by January 11, 1990 to: Dr. Barry L. Johnson, Assistant Administrator, Agency for Toxic Substances and Disease Registry, and Chairman, Hazardous Waste Information Evaluation Subcommittee, 1600 Clifton Road, NE., E-28, Atlanta, Georgia 30333. (404) 639-0700.

All written comments on this notice will be available for public inspection at ATSDR, Building 37, Executive Park Drive, NE., Atlanta, Georgia, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 104(i)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), requires ATSDR to conduct health assessments of sites on or proposed for inclusion on, the National Priorities List established by the Environmental Protection Agency (EPA). ATSDR's health assessments involve the evaluation of environmental contamination and of toxicological, demographic, and human health data in order to characterize public health implications of individual hazardous waste sites. Where gaps in toxicological information exist, ATSDR sponsors studies at the NTP to address the gaps. ATSDR seeks advice and recommendations from HWIES on which hazardous substances should be studied and the types of studies to be performed by NTP. Hazardous substances are nominated to HWIES by agencies with statutory responsibilities under CERCLA. Each substance is reviewed by HWIES and recommendations are provided to ATSDR concerning the need for toxicological testing.

Nominated hazardous substances are published with request for comments in the **Federal Register** to encourage public participation in the HWIES evaluation process. Through this process, HWIES can make better informed decisions whether to select, defer, or reject hazardous substances for toxicology study. Comments and secondary data submitted in response to this request are reviewed and summarized by HWIES and forwarded to ATSDR and NTP for further evaluation.

On July 11, 1989, HWIES evaluated six chemicals nominated by EPA for toxicology studies. The following table lists the chemicals and their Chemical Abstract Service (CAS) registry numbers.

Chemical	CAS No.
1,2-Dichloroethane	107-06-2
n-Hexane	110-54-3
Acetone	67-64-1
Hexachloro-1,3,-butadiene	87-68-3
Pentachlorobenzene	608-93-5
1,2,4,5-Tetrachlorobenzene	95-94-3

Interested parties are requested to submit pertinent information and data. The following types of data and information are of particular relevance:

(1) Mode of production, current production levels, and environmental exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicological testing in the private sector including detailed experimental protocols and results in the case of completed studies; and

(4) Results of toxicological studies of structurally related compounds.

Dated: October 5, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry

[FR Doc. 89-24196 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in November

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of November 1989.

The National Advisory Mental Health Council, NIMH, will discuss policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

The initial review groups will be performing review of applications for Federal assistance and the Board of Scientific Counselors will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-436.

Committee Name: Services Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH
Date and Time: November 1-3: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: Open—November 1 9:00-10:00 a.m. Closed—Otherwise
Contact: Gloria Yockelson, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.
Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA
Date and Time: November 4-6: 9:00 a.m.
Place: Sheraton Phoenix, 111 North Central Avenue, Phoenix, AZ 85001
Status of Meeting: Open—November 4: 9:00-10:00 a.m. Closed—Otherwise
Contact: Samir Zakhari, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 29857, (301) 433-6106
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.
Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH
Date and Time: November 6-7: 9:00 a.m.
Place: Governors House Holiday Inn, 1615 Rhode Island Avenue, Washington, DC 20036
Status of Meeting: Open—November 6: 9:00—10:00 a.m. Closed—Otherwise
Contact: Frances Smith, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 29857, (301) 433-4868
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH
Date and Time: November 6-8: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: Open-November 6: 9:00-10:00 a.m. Closed-Otherwise
Contact: Gloria Yockelson, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367

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Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA
Date and Time: November 14–16: 9:00 a.m.
Place: Holiday Inn Crowne Plaza, Rockville Room, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open–November 14: 9:00–9:30 a.m. Closed–Otherwise
Contact: Iris W. O'Brien, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Research Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA
Date and Time: November 14–16: 9:00 a.m.
Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, MD 20852
Status of Meeting: Open–November 14: 9:00–9:30 a.m. Closed–Otherwise
Contact: H. Noble Jones, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Board of Scientific Counselors, NIMH
Date and Time: November 16–18: 9:00 a.m.
Place: Building 36, Room 1B–07, National Institutes of Health, Bethesda, MD and NIMH Neuroscience Center at St. Elizabeths, Room 536, Washington, DC
Status of Meeting: Open–November 16: 8:30–9:00 a.m. Closed–Otherwise
Contact: Steven M. Paul, Building 10, Room 4N–224, National Institute of Mental Health, Bethesda, MD 20892, (301) 496–3501
Purpose: The Board of Scientific Counselors provides expert advice to the Acting Director of Intramural Research and the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: National Advisory Mental Health Council, NIMH
Date and Time: November 30 and December 1: 9:00 a.m.
Place: Building 31C, NIH Campus; Conference Room #10, 9000 Rockville Pike, Bethesda, MD 20892
Status of Meeting: Open
Contact: Eleanor C. Friedenberg, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367
Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20, (301) 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer Room 10–42, (301) 443–2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 6, 1989.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 89–24097 Filed 10–12–89; 8:45 am]
BILLING CODE 4160–20–M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announced the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC)
Time and Date: 8:30 a.m.–4:30 p.m., November 2, 1989, 8:30 a.m.–12 noon, November 3, 1989.
Place: Appalachian Laboratory for Occupational Safety and Health, Conference Room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.
Status: Open to the public, limited only by the space available.
Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.
Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; NIOSH respirator programs; NIOSH respiratory disease program; National Occupational Health Survey of Mining; NIOSH policy update; review of the 1990 mining program; and National Traumatic Occupational Facility and mining. Agenda items are subject to change as priorities dictate.
Contact person: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, Bldg. 1, Room 3069, D–37, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: Commercial: (404) 639–2376, FTS: 236–2376.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 6, 1989.
Glenda S. Cowart,
Director, Office of Program Support, Centers for Disease Control.
Robert L. Foster,
Assistant Director, Office of Program Support, Centers for Disease Control.
[FR Doc. 89–24159 Filed 10–12–89; 8:45 am]
BILLING CODE 4110–19–M

National Institute for Occupational Safety and Health; Methods for Assessing Reproductive Potential in Females; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Methods for Assessing Reproductive Potential in Females
Time and date: 10:00 a.m.–4:00 p.m.—October 17, 1989
Place: Robert A. Taft Laboratories, Room B–32, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
Status: Open to the public, limited only by the space available.
Purpose: To convene an expert review panel to evaluate results obtained from a NIOSH developmental study entitled, Methods for Assessing Reproductive Potential in Females, and develop recommendations for future research.
Contact person: James S. Kesner, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, (C23), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533–8208, FTS: 684–8208.

Dated: October 6, 1989.
Glenda S. Cowart,
Director, Office of Program Support, Centers for Disease Control.
Robert L. Foster,
Assistant Director, Office of Program Support, Centers for Disease Control.
[FR Doc. 89–24158 Filed 10–12–89; 8:45 am]
BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 89P–0391]

Canned Tuna Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to StarKist Seafood Co. to market test canned smoke-flavored tuna products. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

EFFECTIVE DATE: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 11, 1990.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0122.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of food deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Starkist Seafood Co., 180 East Ocean Blvd., Long Beach, CA 90802.

The permit covers limited interstate marketing tests of three tuna products (solid white tuna in spring water, chunk light tuna in spring water, and chunk light tuna in vegetable oil) that deviate from the standard of identity for canned tuna (21 CFR 161.190) in that the products contain added natural smoke flavor in an amount not in excess of 0.5 percent of the weight of the food. The test products meet all requirements of §161.190 with the exception of this deviation.

The permit provides for the temporary marketing of 300,000 cases of the products containing 48 6-ounce cans each.

The test products will be manufactured at the Starkist production facilities located in Mayaguez, Puerto Rico, and Pago Pago, Tutuila, American Samoa, and distributed in cities throughout the United States.

The principal display panel of the label includes "Hickory smoke flavor" as part of the product name ("Hickory smoke flavor chunk light tuna in vegetable oil," "Hickory smoke flavor solid white tuna in spring water," "Hickory smoke flavor chunk light tuna in spring water"), and each of the ingredients used in the food is stated on the label as requried by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 11, 1990.

Dated: October 4, 1989.
Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 89–24199 Filed 10–12–89; 8:45 am]
BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Service Administration announces the final funding priority for Grants for Predoctoral Training in Family Medicine for Fiscal Year 1990 authorized under section 786(a), title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Public Law 100–607, title VI.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

The Administrator's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this prpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

2. The degree to which the proposed project adequately provides for the project requirements;

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3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In determining the order of funding of approved applications, a funding priority will be given to:

Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center of PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

An additional funding priority was published in the Federal Register of June 12, 1989 (FR 54 24954) for public comment. No comments were received during the 30 day comment period.

The funding priority as proposed will be retained as follows:

Funding Priority for Fiscal Year 1990

An additional funding priority will be given to:

Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees).

Special Consideration

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 6, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-24211 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 22, 1989. (Call PHS Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Application for Exemption from Pre-emption of Medical Device Requirements—0910-0129—A State or local government must apply for exemption from pre-emption if it wishes to enforce any medical device requirement that is different from, or in addition to, a Federal requirement. The information in the application will be used to determine whether the requirement neets the criteria for exemption. Respondents: State or local governments; Number of Respondents: 3; Number of Responses per Respondent: 1; Average Burden per Response: 100 hours; Estimated Annual Burden: 300 hours.

2. National Heart, Lung, and Blood Institute Vietnam Era Twin Study—NEW—This questionnaire will provide data to enhance an existing data base for studies on genetic and environmental aspects of cardiovascular and other diseases. The Vietnam Era Twin Registry is a racially-mixed population of over 7,000 male monozygotic and dizygotic twin pairs who served in the U.S. military during the Vietnam era. Eleven thousand individuals for whom current addresses are available will be surveyed. Respondents: Individuals or households; Number of Respondents: 10,000; Number of responses per Respondent 1; Average Burden per Response: 0.5 hours; Estimated Annual Burden: 5,000 hours.

3. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs Promissory Notes—0915-0074—The reporting requirements provide the school with the legal documentation of loans awarded from HPSL and NSL funds, and provide the student with the legally binding terms of the loan. The promissory notes reflect the revised deferment provisions and interest rates chargeable to borrowers specified by PL 100-607. Respondents: Individuals or households, non-profit institutions.

	No. of respondents	No. of hrs. per response	No. of responses per respondent
HPSL notification	300	.017 hr.	61.6
NSL Notification	550	.017 hr.	36.3

Total Annual Burden: 741 Hours

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 6, 1989.

Phyllis M. Zucker,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-24160 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 13, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405 (202) 535-7067; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342. (These are not toll-free numbers.)

Dated: October 5, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Building (by State)

(Number of Properties [ ])

Arkansas

Hot Springs National Park [4], see location below, Hot Springs, AR.
Landholding Agency: GSA
Location: 120 Sleepy Valley Road, 115 Daley Drive, 309 Terryland Drive, 303 Terryland Drive (GSA # 7-I-AR-415-T (excess).
Comment: From 429 to 1475 sq ft/off-site use only.

Colorado

Naval Reserve Center [2], 801 Prospect Drive, Colorado Springs, CO.
Landholding Agency: GSA
Location: GSA # 7-N-CO-599 (excess).
Comment: 20,580/1055 sq. ft./Land City Owned/Other Information Incomplete.

Pennsylvania

Marine Corps Reserve Center [1], RR2, Box 569B, New Castle, PA.
Landholding Agency: Navy
Location:
Comment: 17541 sq. ft. on 1.61 Acres, Possible Asbestos.

[FR Doc. 89-24279 Filed 10-12-89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-930-0-4410-13]

Notice of Intent, Pacific Ocean Rocks and Islands, Plan Analysis, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent—planning analysis for the California Islands Wildlife Sanctuary.

SUMMARY: Pursuant to 43 CFR 1601.0-3 and 40 CFR 1501.7, notice is hereby given that the California State Office, Bureau of Land Management will prepare a planning analysis for the California Islands Wildlife Sanctuary.

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The analysis will consider Areas of Critical Environmental Concern designation for certain rocks and islands which are within the three mile limit, above mean high tide, and were withdrawn for a wildlife Sanctuary by Public Land Order 6369 on April 11, 1983.

The Public Land Order of 1983 withdrew the subject rocks, pinnacles and reefs off the coast of California from Oregon to the Mexican Border from surface entry, mining, and mineral leasing and from settlement, sale, location, or entry under the general land laws to protect the islands for the establishment of the California Islands Wildlife Sanctuary. Present management is the responsibility of the California Department of Fish and Game pursuant to a Memorandum of Understanding between the Bureau and the Department signed in May, 1983. The withdrawal is for a period of 50 years and encompasses an estimated 1,000 acres, more or less.

The main issue involved is an additional Bureau designation (ACEC) to focus attention on the wildlife resource. Planning criteria for this analysis consists of the need for any decision to be in conformance with the existing Public Land Order and withdrawal for a Wildlife Sanctuary. Two alternatives will be addressed (1) No action or present management and (2) present management with an ACEC designation. The interdisciplinary team, which will complete the analysis, will consist of specialists in wildlife biology, recreation, and land use planning.

DATES: The preparation of the environmental assessment will be completed by December, 1989, and the amendment, including public and State Governor's review is scheduled for completion in February, 1990.

PUBLIC PARTICIPATION: Opportunities for public input and comment will be announced through the media, a mailing list, and personal contacts. Comments on this notice will be entertained for 30 days after date of publication.

FOR FURTHER INFORMATION CONTACT: Robert A. Barney, Land Use Planner, Bureau of Land Management, 2800 Cottage Way, Room E–2841, Sacramento, California 95825. Telephone (916) 978–4722.

Dated: October 6, 1989.

Richard F. Johnson,

Acting State Director.

[FR Doc. 89–24170 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–40–M

[WY–030–00–4320–12]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given of a meeting of the Rawlins District Grazing Advisory Board. The meeting will be held in accordance with the Taylor Grazing Act of 1934, the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, and the Executive Order 12548 of February 14, 1986.

DATE/TIME: November 16, 1989; 10:00 a.m.

ADDRESS: Bel Air Inn, 23rd and Spruce Street, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, or Grant Petersen, Public Affairs Specialist, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, (307) 324–7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Review of FY 89 range improvements, range improvement checklist.
2. Discussion of FY 90 range improvements.
3. Muddy Creek riparian demonstration area presentation.
4. Rangeland program summary update.

Dated: October 6, 1989.

Richard Bastin,

District Manager.

[FR Doc. 89–24171 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–22–M

[WY–010–00–4830–12]

Worland District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM).

ACTION: Meeting of the Worland District (Wyoming) Advisory Council.

SUMMARY: This notice provides the schedule and agenda of a meeting of the Worland District Advisory Council.

DATE: Wednesday, October 25, 1989, 9:00 a.m. until 4:00 p.m.

ADDRESS: The meeting will be held at the Bureau of Land Management's Worland District Office, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347–9871.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opening remarks, introductions;
2. Review of minutes from the last meeting;
3. Review of the proposal by the BLM to acquire the Girl Scout National Center West;
4. Initial scoping of major issues for consideration in the Grass Creek Resource Management Plan;
5. Briefing on the status of oil and gas exploration activities in the upper Owl Creek drainages of Hot Springs County;
6. Briefing on the status of the Cody Resource Management Plan;
7. Briefing on the status of wilderness study reports and wilderness environmental impact statements in the Worland District;
8. Briefing on the Altamont natural gas transmission pipeline proposal;
9. Statements from the public, if any.

The meeting will be open to the public. Interested persons may make oral statements to the Council during the public comment period or may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the Worland District Manager in writing by October 20, 1989.

Dated: October 29, 1989.

Darrell C. Barnes,

District Manager.

[FR Doc. 89–24172 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–09–4111–15; WYW96667]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 5, 1989.

Pursuant to the provisions of Public Law 97–451, 96, Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW96667 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW96667 effective June 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Doris M. Miller,

Acting Supervisory Land Law Examiner.

[FR Doc. 89–24173 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–09–4214–11; MTM 17093]

Proposed Continuation of Public Land Order 5062 and Opening of Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Department of the Interior proposes that the withdrawal of 3,639.24 acres of land for Bear Trap Recreation Area be continued for an additional 20 years. The segregation from public land laws and the mineral leasing laws created by PLO 5062 would be terminated. Approximately 3,470.48 acres would remain segregated from mining, mineral leasing, and operation of the public land laws as part of the Lee Metcalf Wilderness Area.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Department of the Interior, proposes that the existing land withdrawal made by Public Land Order 5062 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. The lands are described as follows:

Principal Meridian

T. 3 S., R. 1 E.,
- Sec. 10, lots 3, 5, 7, and 9;
- Sec. 11, NW¼NW¼;
- Sec. 15, lots 1 to 10, inclusive, E½NW¼; SW¼SW¼, and NW¼SE¼;
- Sec. 21, lots 3 and 6, E½NE¼;
- Sec. 22, lots 1 to 9, inclusive, SW¼NE¼, and E½SW¼;
- Sec. 27, lots 1 to 8, inclusive, SW¼SW¼ and W½SE¼;
- Sec. 32, SE¼SE¼;
- Sec. 33, lots 1 to 4, inclusive, E½SW¼, SW¼SW¼, SE¼NE¼, and NW¼SE¼;
- Sec. 34, lots 1 to 6, inclusive, NW¼NE¼, NW¼NW¼, E½SW¼, and SW¼SW¼.

T. 4 S. R. 1 E.,
- Sec. 4, lots 1 to 8, inclusive, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
- Sec. 5, lots 1, 2, 5, 6, and 7, S½NE¼, and W½SE¼;
- Sec. 8, lots 1 to 8, inclusive, SE¼NE¼, E½NW¼, W½SW¼, E½SE¼, and SW¼SE¼;
- Sec. 17, lots 1 and 2, N½NE¼, and NW¼NW¼.

The areas described aggregate approximately 3,639.24 acres in Madison County.

The purpose of the withdrawal is to protect the Bear Trap Recreation Area. The withdrawal segregates the lands from appropriation under the public land laws, including the mining laws, and from leasing under the mineral leasing laws. The segregation from public land laws and mineral leasing laws created by PLO 5092 would be terminated. The lands lying within the Lee Metcalf Wilderness Area would remain segregated from mining, mineral leasing, and operation of the public land laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation and opening order may present their views in writing to the Chief, Branch of Land Resources at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 5, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–24174 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–DN–M

[NV–930–09–4212–13; N–42355]

Issuance of Conveyance Document and Order Providing for Opening of Public Land; Nevada

September 27, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested parties of the consummation of an exchange of land and the opening of the land acquired by the United States to the operation of the public land laws.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–328–6326.

SUPPLEMENTARY INFORMATION: The United States issued an exchange document to Tracy Company on September 26, 1989, for the following described lands under section 206 of the Federal Land and Management Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian

T. 20 N., R. 22 E., Nevada
- Sec. 28, N½, N½S½;
- Sec. 30, E½W½SE¼, E½SE¼.

comprising 600 acres of public land in Washoe county.

In the exchange for these lands, the United States acquired the following described lands from the Tracy Company:

Mount Diablo Meridian, Nevada

T. 20 N., R. 21 E.,
- Secs. 13, 23, and 25, all;
- Sec. 35, N½N½, SE¼NE¼.

T. 20 N., R. 22 E.,
- Sec. 19, all.

comprising 2,762.40 acres of private lands in Washoe county.

The purpose of this exchange was to acquire the non-Federal lands for additional acreage with value for wildlife habitat, increased forage for livestock grazing and possible cultural values. The exchange consolidated areas of public and private lands creating more efficient manageable land areas. The public interest was served through completion of this exchange. The values of the Federal public land and the non-Federal land in the exchange were appraised equally at $360,000. The minerals on both sides were exchanged. Upon acceptance of title to the lands acquired by the United States, the lands became part of the public lands administered by the Bureau of Land Management. At 10:00 a.m. on November 13, 1989, the lands shall be open to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications received at or prior to 10:00 a.m. on November 13, 1989, shall be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing. At 10:00

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a.m. on November 13, 1989, the land acquired by the United States will be open to location under the United States mining laws and to applications under the mineral leasing laws. Appropriation of any of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89–24152 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–HC–M

[CO–932–00–4212–24; C–47720]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands, Colorado

October 6, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and Opening of reconveyed land.

SUMMARY: This action informs the public and interested State and local officials of the conveyance of 320 acres of public lands out of Federal ownership, the reconveyance of 332.12 acres of land into Federal ownership, and the opening of the 332.12 acres of reconveyed lands to operation of the appropriate public lands laws. This exchange enabled private parties to obtain title of lands that were needed by them for use with contiguous lands they owned, and enabled the United States to obtain title to lands containing high multiple resource values. This action was based on equal value of the properties exchanged and the public interest was well served by this action.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office 303 236–1752.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange of land between the United States and a private party.

1. The Bureau of Land Management issued a patent to David R. and Jane E. Hall for the following described land under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Colorado

T. 16 S., R. 68 W.,
Sec. 5, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 6, NE¼SE¼;
Sec. 8, E½NW¼,
Containing 320.00 acres in Teller County.

2. In exchange for these lands, the United States obtained title to the land listed below.

Sixth Principal Meridian, Colorado

T. 16S., R. 68 W.,
Sec. 7, lots 2, 3, 4, SE¼NW¼, and NE¼SE¼;
Containing 172.12 acres in Teller County.
Sec. 20 E½NE¼, and NE¼SE¼;
Sec. 21, NW¼SW¼,
Containing 160.00 acres in Fremont County.

3. At 10:00 a.m. on November 20, 1989, the land described in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on November 20, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10:00 a.m. on November 20, 1989, the land described in paragraph 2 will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for determination in local courts.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89–24175 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–JB–M

Bureau of Land Management Montana

[MT–070–09–4050–91–43H: M46269]

Realty Action; Recreation and Public Purposes (R&PP) Act Conveyance; Lewis and Clark County, MT

AGENCY: Interior, Bureau of Land Management, Butte District.

SUMMARY: This notice amends the original Notice of Realty Action for M46269 published on September 15, 1989 (Vol. 54 No. 178 page 38292). The lands described in that Notice have been under lease to the Montana Department of Fish, Wildlife and Parks since 1980 pursuant to the Recreation and Public Purposes Act for the Black Sandy State Recreation Area. Those lands have now been found suitable for classification for conveyance to the State of Montana under the same Act. In the absence of any adverse comments, the lands will be classified for disposal by Recreation and Public Purposes Act conveyance 60 days from the date of publication of this Notice.

Dated: October 2, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89–24176 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–DN–M

[NM–010–10–4212–13/GPO–0001]

Albuquerque District, NM; Realty Action on Proposed Land Exchange in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action On proposed land exchange NM NM 77281.

SUMMARY: This notice is to advise that the following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 27, N½NW¼NW¼SW¼, 5.0 acres
S½NW¼SW¼SW¼, 5.0 acres
Sec. 34, W½NW¼NW¼NW¼, 5.0 acres
comprising 15.0 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Kenneth W. Larsen:

New Mexico Principal Meridian

T. 31 N., R. 7 W.,
Sec. 29, S½WN¼NE¼, 20.0 acres
N½NE¼NE¼, 20.0 acres
T. 32 N., R. 6 W.,
Sec. 20, NW¼NW¼, 40.0 acres
T. 32 N., R. 7 W.,
Sec. 19, SW¼NW¼SE¼SE¼, 2.5 acres
SW¼SE¼SE¼, 10.0 acres
Sec. 20, W½E½SE¼, 40.0 acres
Sec. 29, W½NW½NW¼SW¼, 5.0 acres
SE¼SE¼SW½SW¼, 2.334 acres
Sec. 31, W½NW¼SE¼NE¼, 5.0 acres
Sec. 32, E½E½W½NW¼, 18.652 acres
E½NW¼SW¼, E½W½SW½SW¼, 18.426 acres
E½SW¼SW½, 27.71 acres

comprising 209.62 acres of private lands. The exchange will only involve the surface estates of the described lands.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for recreation, wildlife habitat and rangeland resources.

Acquisition of these lands is part of the management prescriptions established in the Farmington Resource Management Plan (RMP—1988). This acreage is a portion of the private lands targeted for exchange within the Wildlife/Range/Outdoor Recreation zone. The RMP also adopted other resource specific activity plans that would benefit from the "blocking-up" of public lands within this zone. They include the Pump Mesa and Middle Mesa Allotment Management Plans and the Rosa/Middle Mesa Habitat Management Plan. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Kenneth W. Larsen of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. Reservation of ditches and canals;

2. Reservation of all minerals, together with the right of ingress and egress to prospect for, mine and remove the same under applicable law; and

3. Subject to valid existing rights including any rights-of-way, easements, and leases of record.

Publication of this notice segregates the public lands from the operation of the public land laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, for a period of two years from the date of first publication.

Further information concerning the exchange, including the environmental analysis is available for review at the Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, NM 87401.

For a period of 45 days from the date of first publication, interested parties may submit comments to Bureau of Land Management, Albuquerque District Manager, 435 Montano Road, NE, Albuquerque, NM 87107

Dated: October 5, 1989.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89–24177 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–09–4212; N–51436]

Corrected and Amended Notice of Realty Action: Exchange of Public Lands, Clark County, Nevada

This notice corrects and amends the Notice of Realty Action issued for the Exchange of Public Lands, Clark County, Nevada, N–51436, published in Volume 54, Number 172, page 37159 of the **Federal Register** on September 7, 1989. That notice is hereby corrected by modifying the legal descriptions listed below to read as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.
Sec. 5, lot 3, NW¼NW¼, S½NW¼;
Sec. 6, lots 1–5, 7–11, S½NE¼, SE¼NW¼, NE¼SW¼, W½E½NW¼SW¼, E½SE¼SW¼, SE¼;
Sec. 7, lots 1–4, NE¼, E½W½, W½SE¼.

That notice is hereby amended to include the following described public lands:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.
Sec. 23, N½NE¼NE¼NE¼, SW¼NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, NE¼NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, N½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼SE¼NE¼NE¼, NW¼SE¼NE¼, N½S½SE¼NE¼, SW¼SW¼SE¼NE¼, SW¼SE¼SE¼NE¼, N½N½SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼, SW¼NW¼SE¼, E½SE¼NW¼SE¼, W½NE¼SW¼SE¼, S½SW¼SE¼, W½NE¼SE¼SE¼, NW¼SE¼SE¼, E½SE¼SE¼SE¼;
Sec. 26, N½N½NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼, S½SW¼NW¼NE¼, NE¼SW¼NE¼, S½SW¼SW¼NE¼, N½SE¼SW¼NE¼, S½NE¼SE¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, E½SE¼, N½NW¼SE¼, S½SW¼NW¼SE¼, N½SE¼NW¼SE¼, NE¼SW¼SE¼, N½S½SW¼SE¼;
Sec. 34, S½NE¼NE¼NW¼, S½NE¼NW¼, S½NE¼NW¼NW¼, W½NW¼NW¼, SE¼NW¼NW¼, SW¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼, S½SE¼NW¼, N½N½N½SW¼, S½NE¼NE¼SW¼, SW¼NE¼SW¼, N½SE¼NE¼SW¼, S½NE¼NW¼SW¼, S½NW¼SW¼, N½N½SW¼SW¼, S½SW¼SW¼, SE¼SW¼, S½N½NE¼SE¼, S½S½NE¼SE¼, N½NE¼NW¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, N½N½SW¼SE¼, S½SW¼SW¼SE¼, SE¼SW¼SE¼, N½SE¼SE¼, S½SW¼SE¼SE¼, SE¼SE¼SE¼.

containing 862.5 acres.

The new total acreage of the public land involved, including the correction and amendment, is approximately 3141.81 acres.

These additional lands shall be segregated to the same extent, manner and degree and specified in the original publication. In addition, the name of the proponent has been changed from Metroplex Properties to Olympic Management Inc. or their nominee. All other conditions set forth in the original notice remain unchanged.

For a period of forty-five days, interested parties may submit comments to the District Manager, Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada 89126.

Dated: October 5, 1989.

Ben Collins,

District Manager, Las Vegas District, Nevada.

[FR Doc. 89–24207 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–942–00–4730–12]

Arizona State Office; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, P.O. Box 16563, Phoenix, Arizona, 85011 on the dates indicated:

A supplemental plat showing amended lottings of previously segregated mining claims in sections 5, 18, 19 and 30, Township 10 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted September 6, 1989, and was officially filed September 7, 1989.

A plat representing a dependent resurvey of a portion of the Fourth Standard Parallel North (south boundary) and a portion of the subdivisional lines; and metes-and-bounds surveys in section 21 and 27, Township 17 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted August 7, 1989, and was officially filed August 8, 1989.

A supplemental plat showing amended lottings for lots 1 and 5 in section 21 and lot 6 in secton 27, Township 17 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted August 29, 1989, and was officially filed August 30, 1989.

These plats were prepared at the request of the Bureau of Land Management, Lands Operations.

2. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the

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open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 89-24178 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-32-M

[ES-940-00-4520-13; ES-041464, Group 184]

Florida; Filing of Plat of Dependent Resurvey and Subdivision of Sections 20, 21, 26, 28, 29, 30, 31 and 32

October 4, 1989.

1. The plat, in nine sheets, of the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, the reestablishment of a portion of the adjusted original meander lines, and the survey of the subdivision of sections 20, 21, 26, 28, 29, 30, 31 and 32, West of the St. Johns River, and the metes-and-bounds survey of certain parcels in sections 26, 28 and 30, Township 12 South, Range 26 East, Tallahassee, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on November 20, 1989.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 20, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Corwyn J. Rodine,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-24210 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-930-09-4214-11; A-12997]

Proposed Modification and Continuation of Withdrawal; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of Secretarial Order (SO) of October 26, 1906, as subsequently modified on September 26, 1907. These orders withdrew land in the Kaibab and Coconino National Forests, however; this notice pertains only to the land located within the Kaibab National Forest. Another notice will be published for the land located within the Coconino National Forest.

The land was withdrawn for Ranger Station and administrative site purposes. It continues to be utilized for such purposes with the exception of 30 acres located in T. 22 N., R. 2 E., sections 31 and 32. This land has been transferred to private ownership via forest exchange. It is anticipated that there will be no additional changes in land use. The Forest Service proposes that the land withdrawn for the Spring Valley Ranger Station and the Camp Clover Administrative Site be continued and segregated from operation of the mining laws only.

DATE: Comments to this notice should be received on or before January 11, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5531.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that SO of October 26, 1906, as modified, withdrawing the land from appropriation and use of all kinds under the public land laws for an indefinite period of time be modified and continued for 20 years as it pertains to 110 acres of the Spring Valley Ranger Station and 190 acres of the Camp Clover Administrative Site. Both sites contain improvements valued at $8,000 and $116,000 respectively. The order will be terminated on 30 acres of the Camp Clover Administrative Site. Actions are taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Gila and Salt River Meridian

Continue

T. 23 N., R. 4 E.,
- Sec. 22, E½SW¼ .....
- Sec. 27, N¼NE¼NW¼, NE¼NW¼NW¼ ..... 110 acres

T. 22 N., R. 2 E.,
- Sec. 31, E½SE¼SW¼SE¼ .....
- Sec. 32, S½SW¼NW¼, W½SW¼ .. 190 acres

Terminate

T. 22 N., R. 2 E.,
- Sec. 31, W½W½SW¼SE¼ ..... 10 acres
- Sec. 32, S½SW¼NW¼ ..... 20 acres

The areas described contain 300 acres, on which the withdrawal will be continued and 30 acres on which it will be terminated, all located in Coconino County.

The purpose of the withdrawal is for the administration and protection of two administrative sites. The continued portion of the orders will now be closed to operations of the mining laws only. Terminating the withdrawal on the subject 30 acres is simply for record clearing purposes as the land has already been transferred into private ownership via forest exchange.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Beaumont C. McClure,

DSD, Lands and Renewable Resources.

[FR Doc. 89-24179 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-09-4214-11; A-12973]

Proposed Modification and Continuation of Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Secretarial Order of October 23, 1907, which withdrew 120.00 acres in the Coconino National Forest for use as the Moqui Administrative Site.

The site was renamed in 1915 to the Blue Ridge Administrative Site. In 1963 the Blue Ridge Campground was constructed on the site and use as an administrative site discontinued. The Forest Service proposes to continue the withdrawal for campground purposes for 20 years, it does not anticipate any additional changes in land use. The land will remain closed to operation of the mining laws only.

DATE: Comments to the notice should be received by January 11, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order dated October 23, 1907, withdrawing the land from all forms of use for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona. Additionally it is proposed the authorized land use change from an administrative site to use for campground purposes.

Gila and Salt River Meridian

T. 14 N., R. 11 E.,
- Sec. 21, N½NW¼, SW¼NW¼.

The area described contains 120.00 acres in Coconino County.

The purpose of the withdrawal is to protect a 10 unit campground valued at $15,000 from prospecting and disturbance caused by mining operations. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 89-24180 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-43-7122-08-DO63; CACA 23486]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Los Angeles District, Corps of Engineers, has filed an application to withdraw approximately 265,700 acres of public lands to expand the Army's National Training Center at Fort Irwin. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a meeting should be received on or before January 11, 1989.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

SUPPLEMENTARY INFORMATION: On August 19, 1988, the U.S. Department of the Army filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 31 S., R. 46 E.,
- Sec. 1, lots 1 and 2 of NE¼, and SE¼;
- Sec. 2, lots 1 and 2 of NE¼;
- Sec. 3, W½ lot 1 of NW¼ and W½ lot 2 of NW¼;
- Sec. 4;
- Sec. 5, lot 1 of NE¼, lot 2 of NE¼, lot 1 of NW¼, lot 2 of NW¼, and SW¼;
- Sec. 8;
- Sec. 9, S½;
- Sec. 10, SE¼;
- Sec. 11;
- Sec. 12, N½ and SW¼;
- Sec. 13, NW¼ and SE¼;
- Sec. 14, N½ and S½SE¼;
- Secs. 15 and 17;
- Sec. 20, W½E½;
- Sec. 21, NE¼;
- Sec. 22, NE¼SW¼ and W½SE¼;
- Sec. 23, SW¼;
- Sec. 25, N½ and N½S½;
- Sec. 26, NE¼ and S½;
- Sec. 27, NE¼ and N½SE¼;
- Sec. 28, S½;
- Sec. 29, N½;
- Secs. 32 and 34.

T. 32 S., R. 46 E.,
- Secs. 2, 4, 8, 10, 12, 14, 20, and 22, secs. 24 to 28, inclusive, and secs. 32 to 35, inclusive.

T. 31 S., R. 47 E.,
- Sec. 3;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and SE¼;
- Sec. 5, lots 1 to 4, inclusive, S½N½, and N½S½;
- Sec. 6, lots 1 to 5, inclusive, SE¼NW¼, and S½NE¼;
- Sec. 7, SE¼SW¼ and SE¼;
- Sec. 8, NW¼ and S½;
- Sec. 9, NE¼ and S½;
- Sec. 10, secs. 15 to 22, inclusive, secs. 27 to 30, inclusive, and secs. 32 and 34.

T. 32 S., R. 47 E.,
- Sec. 3, lot 7 and SE¼NW¼;
- Sec. 4, 8, and 8;
- Sec. 9, SW¼SW¼;
- Sec. 10;
- Sec. 15, lots 3 and 4, and SW¼;
- Secs. 18, 20, 21, 22, 27, and 28;
- Sec. 29, N½NE¼, NE¼NW¼, SW¼NE¼ SW¼, SE¼NW¼SW¼, NE¼SW¼ SW¼, and NW¼SE¼SW¼;
- Secs. 30, 31, and 32;
- Sec. 33, SE¼;
- Sec. 34;

San Bernardino Meridian

T. 11 N., R. 1 E.,
- Secs. 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 22, 23, and 24;

T. 12., R. 1 E.,
- Sec. 1, lots 1 to 4, inclusive, S½N½, and SE¼;
- Secs. 2, 4, 6, 8, 10, and 12;
- Sec. 13, NE¼NW¼NE¼, NW¼NE¼NE¼, and S½SW¼SE¼;
- Secs. 14, 16, 19, 20, and 22;
- Sec. 23, lot 2;
- Secs. 24, 26, 27, and 28;
- Sec. 29, SW¼;
- Secs. 30, 31, 32, 34, and 35.

T. 13 N., R. 1 E.,
- Sec. 1;
- Sec. 2, excluding patented land;
- Sec. 3, excluding patented land;
- Secs. 4 to 9, inclusive;
- Sec. 10, excluding patented land;
- Sec. 11, excluding patented land;
- Secs. 12 to 15, inclusive;
- Secs. 17 to 30, inclusive, partly unsurveyed;
- Sec. 32;
- Sec. 33, N½ and N½S½;
- Secs. 34, 35, and 36, partly unsurveyed.

T. 14 N., R. 1 E.,
- Sec. 15, secs. 17 to 22, inclusive, and secs. 25 to 35, inclusive.

T. 11 N., R. 2 E.,
- Secs. 2, 3, 4, 6, and 7;
- Sec. 8, N½;
- Secs. 10, 11, 12, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28, 32, and 34;
- Sec. 35, W½.

T. 12 N., R. 2 E.,
- Sec. 6, unsurveyed;
- Sec. 7, lots 1, 2, and 3, and W½NE¼;
- Secs. 9 and 10;
- Sec. 13, N½;
- Sec. 14;
- Sec. 15, N½NE¼;
- Secs. 18, 20, 22, 24, and 26;
- Sec. 28, N½ and N½S½;
- Sec. 32, SW¼;
- Sec. 34.

T. 11 N., R. 3 E.,
- Sec. 1, S½SW¼, excluding patented land;
- Sec. 2, excluding patented land;
- Secs. 4, 6, 7, 8, and 10;
- Sec. 11, excluding patented land;
- Sec. 12, excluding patented land;
- Secs. 14, 15, 16, and 19;
- Sec. 20, N½;
- Secs. 22, 23, 24, 26, 27, and 28;
- Sec. 30, lot 1 of SW¼ and lot 2 of SW¼;
- Sec. 31.

T. 12 N., R. 3 E.,

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Secs. 20 and 22;
Sec. 23, N½;
Secs. 24 and 26;
Sec. 27, lots 7 and 9, and NW¼SW¼;
Secs. 28, 30, 32, and 34.
T. 11 N., R. 4 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, 19, 20, and 22;
Sec. 24, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, NW¼SW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, and NW¼NW¼SW¼;
Sec. 27, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, NW¼SW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, and SW¼SE¼NW¼;
Sec. 28, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, NW¼SE¼, and N½NE¼ SE¼;
Sec. 30
T. 12 N., R. 4 E.,
Sec. 19, lots 1 to 5, inclusive, SE¼NW¼, S½NE¼, and SE¼;
Secs. 20 to 24, inclusive, partly unsurveyed;
Sec. 25, N½ and SE¼;
Sec. 26;
Sec. 27, lots 1 and 2, W½NE¼, and NW¼;
Secs. 28, 30, 32, and 34.
T. 11 N., R. 5 E.,
Sec. 2, lot 2 of NW¼ and W½ lot 1 of NW¼;
Secs. 4, 6, and 8;
Sec. 10, N½NW¼NW¼ and SW¼NW¼ NW¼;
Sec. 18, lot 1 of NW¼, lot 2 of NW¼, lot 1 of SW¼, lot 2 of SW¼, NE¼, NW¼ SE¼, NW¼SW¼SE¼, N½NE¼SE¼, and SW¼NE¼SE¼.
T. 12 N., R. 5 E.,
Sec. 1 to 4, inclusive, secs. 9 to 15, inclusive, sec. 17, secs. 19 to 30, inclusive, and secs. 32 and 34;
Sec. 35, N½.
T. 13 N., R. 5 E.,
Sec. 13, 24, 25, 26, 34, and 35.
T. 12 N., R. 6 E.,
Secs. 5 to 8, inclusive, and secs. 18 and 20;
Sec. 30, lot 1 of NW¼, lot 2 of NW¼, lot 1 of SW¼, lot of 2 SW¼, NE¼, N½SE¼, and N½SW¼SE¼.
T. 13 N., R. 6 E.,
Sec. 1 to 5, inclusive, secs. 7 to 15, inclusive, secs. 17 to 24, inclusive, and secs. 27 to 34, inclusive, partly unsurveyed.
T. 14 N., R. 6 E.,
Secs. 1, 2, and 11, partly unsurveyed;
Sec. 12, excluding patented land, partly unsurveyed;
Sec. 13, excluding patented land, partly unsurveyed;
Sec. 14, secs. 23 to 26, inclusive, and secs. 33, 34, and 35, partly unsurveyed.
T. 15 N., R. 6 E.,
Secs. 1 and 2;
Secs. 11, lots 1, 2, and 3, NE¼NE¼, W½ NE¼, W½, and W½SE¼;
Sec. 12, lots 1, 3, 4, 5, and 6, E½, and N½ NW¼;
Sec. 13, lots 3, 4, and 5, E½, SW¼SW¼, and E½SW¼;
Sec. 14, lots 1, 2, and 3, W½NE¼, W½, W½SE¼, and SE¼SE¼;
Secs. 23 to 26, inclusive, and sec. 35.
T. 13 N., R. 7 E.,
Secs. 5 to 8, inclusive, partly unsurveyed.
T. 14 N., R. 7 E.,
Secs. 1 to 9, inclusive, secs. 17 to 21, inclusive, and secs. 28 to 33, inclusive.
T. 15 N., R. 7 E.,
Secs. 1 to 15, inclusive;
Sec. 17;
Sec. 18, excluding patented land;
Sec. 19, excluding patented land;
Secs. 20 to 35, inclusive.
T. 11 N., R. 1 W.,
Secs. 2, 3, 4, 6, 7, 8, 10, 11, and 12.
T. 12 N., R. 1 W.,
Secs. 31, 32, 34, and 35.
T. 11 N., R. 2 W.,
Secs. 2 and 3;
Sec. 10, N½, NE¼SW¼, N½SE¼, and N½ S½SE¼;
Sec. 11, E½, NW¼, N½SW¼, and N½S½ SW¼;
Sec. 12.
T. 12 N., R. 2 W.,
Secs. 34 and 35.

The areas described aggregate approximately 265,700 acres in San Bernardino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of the Army.

Dated: October 5, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-24181 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-00-4214-10; CACA-24047]

California; Partial Termination of Proposed Withdrawal and Reservation of Land; Correction

In notice document 89-23407 beginning on page 40915 of the issue of October 4, 1989, add the following information:

On page 40915 in the first column, line 42 from the top which reads "California 95825, (916) 978-4820.", add the following paragraphs:

At 10 a.m. on November 14, 1989, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 14, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on November 14, 1989, the lands will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 4, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-24182 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-40-M

[MT-930-09-4214-11; MTM 41514]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Department of the Interior, proposes that the withdrawal of 9,017 acres of land for Reservior Site Reserve No. 4 continue until such time that the lands are no longer valuable for reservoir purposes. These lands will remain closed to surface entry and nonmetalliferous mining, but have been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: Comments should be received on or before January 11, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

Pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, the Bureau of Land Management proposes that the existing withdrawal made by Executive Order dated July 12, 1911, be continued until such time that the lands are no longer valuable for reservior purposes insofar as it affects the following described land:

Principal Meridian

T. 13 S., R. 5 W.,
Sec. 32, S½;
Sec. 33, W½SW¼.
T. 13 S., R. 6 W.,
Sec. 32, lot 1, a portion of lot 3, and that portion of Lima Reservoir lying within the E½SW¼ (formerly described as E½SW¼), lot 4, NW¼SE¼, and that portion of Lima Reservoir lying within the W½SE¼ (formerly described as W½SE¼), lot 5 and that portion of Lima Reservoir lying within the SE¼SE¼ (formerly described as SE¼SE¼), and S½NW¼;
T. 14 S., R. 4 W.,
Sec. 1, SW¼NW¼ and NW¼SE¼;
Sec. 2, SE¼NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 3, N½SW¼;
Sec. 5, NW¼SW¼, and SE¼SW¼;
Sec. 6, N½SE¼ and SW¼SE¼;
Sec. 7, lot 1, NE¼NW¼ (formerly described as N½NW¼), lot 2 (formerly described as SW¼NW¼), lot 3 (formerly described as NW¼SW¼), Nw¼NE¼, and SE¼NE¼;
Sec. 8, SW¼NW¼ and N½S½;
Sec. 9, SW¼;
Sec. 12, N½NE¼;
Sec. 17, NE¼NE¼.
T. 14 S., R. 5 W.,
Sec. 1, lot 2, SW¼NE¼ (formerly described as W½NE¼), lot 3 (formerly described as NE¼NW¼, SE¼NE¼, S½, NW¼, and N½SW¼;
Sec. 2, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 3, S½NW¼ and NW¼SW¼;
Sec. 4, lot 2, SW¼NE¼ (formerly described as W½NE¼), lots 3, 4, S½NW¼, SW¼ (formerly described as W½), SE¼NE¼, and N½SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½ (formerly described as N½), N½S½, and S½SE¼;
Sec. 6, lots 1 to 5, inclusive, S½NE¼, SE¼NW¼ (formerly described as N½), lot 8, NE¼SW¼, N½SE¼ (formerly described as N½S½), and SE¼SW¼.
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, NE¼ and S½NW¼;
Sec. 9, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 10, SW¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 11, S½NE¼ and SE¼NW¼;
Sec. 12, NE¼, S½NW¼, and E½SE¼;
Sec. 17, S½NW¼;
Sec. 18, lots 1 and 2, NE¼, E½NW¼ (formerly described as N½), lots 3 and 4 (formerly described as W½SW¼), NE¼SW¼, and NW¼SE¼;
T. 14 S., R. 6 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½ (formerly described as N½), and SW¼;
Sec. 2, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 4, SW¼NW¼, NE¼SW¼, and S½SE¼;
Sec. 5, lot 1 (formerly described as NE¼NE¼);
Sec. 9, SW¼NW¼, NW¼SW¼, and SE¼SW¼;
Sec. 10, SE¼NE¼ and N½NW¼;
Sec. 11, SW¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 12, N½N½;
Sec. 13, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 14, S½N½ and S½;
Sec. 15, NW¼NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, and S½SE¼;
Sec. 23, NW¼NW¼;
Sec. 24, NE¼NE¼.

The areas described contain 9,017.85 acres in Beaverhead County.

The purpose of the withdrawal is to protect Reservior Site Reserve No. 4.

The withdrawal segregates the land from operation of the public land laws generally and nonmetalliferous mining, but not from metalliferous mining or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 3, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-24183 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-00-4214-10; GPO-005; WASH-02428, WASH-03125, OR-22020(WASH), OR-22069(WASH), OR-22070(WASH), OR-22072(WASH), OR-22111(WASH)]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of seven separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Gifford Pinchot National Forest

1. WASH-02428, Public Land Order No. 3360 dated April 2, 1964. Tower Rock Recreation Area, 7.55 acres. Located in Lewis County, 6 miles southeast of Randle.

T. 11 N., R. 7 E., W.M.,
Sec. 12.

Lower Cispus Recreation Area, 31.85 acres. Located in Lewis County, 7 miles south of Randle.

T. 11 N., R. 7 E., W.M.,
Sec. 18.

Silver Creek Recreation Area, 38.99 acres. Located in Lewis County, 1 mile east of Randle.

T. 12 N., R. 7 E., W.M.,
Sec. 10.

2. OR-22020(WASH), Executive Order No. 5244 dated December 23, 1929. Sunset Falls Administrative Site, 40 acres. Located in Clark County, 19 miles northwest of Stevenson.

T. 4 N., R. 4 E., W.M.,
Sec. 24.

3. OR-22069(WASH), Secretarial Order dated December 13, 1906. Oklahoma Administrative Site, 86.68 acres. Located in

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Skamania County, 12 miles north of Stevenson.

T. 4 N., R. 9 E., W.M.,
Sec. 1.

T. 5 N., R. 9 E., W.M.,
Sec. 36.

Little White Salmon Administrative Site, 50 acres. Located in Skamania County, 14 miles northeast of Stevenson.

T. 4 N., R. 9 E., W.M.,
Sec. 35.

Panther Creek Administrative Site, 135.65 acres. Located in Skamania County, 8 miles north of Stevenson.

T. 4 N., R. 7½ E., W.M.,
Sec. 24.

Randle Station (Silver Creek Station), 62.50 acres. Located in Lewis County, 1 mile northeast of Randle.

T. 12 N., R. 7 E., W.M.,
Sec. 9.

Skate Creek Administrative Site. Located in Lewis County, 2 miles north of Packwood.

T. 13 N., R. 9 E., W.M., Secs. 10 and 15.

4. OR–22070(WASH), Secretarial Order dated February 8, 1908. Hemlock Administrative Site, 160 acres. Located in Skamania County, 8 miles north of Stevenson.

T. 4 N., R. 7 E., W.M.,
Sec. 27.

5. OR–22072(WASH), Secretarial Order dated March 6, 1907. Nisqually Administrative Site, 40 acres. Located in Lewis County, 13 miles north of Randle.

T. 14 N., R. 7 E., W.M.,
Sec. 6.

6. OR–22111(WASH), Secretarial Order dated May 13, 1908. Tower Rock Administrative Site, 61.50 acres. Located in Lewis County, 9 miles southeast of Randle.

T. 11 N., R. 8 E., W.M.,
Sec. 17, unsurveyed.

Kaniksu National Forest

7. WASH–03125, Public Land Order No. 2305 dated March 14, 1961. Browns Lake Recreation Area, 45 acres. Located in Pend Oreille County, 19 miles northwest of Newport.

T. 34 N., R. 44 E., W.M.,
Secs. 23 and 24.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 4, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–24184 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Proposed Issuance of a Permit to Allow Incidental Take of the Endangered Stephens' Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement on the proposed issuance of a permit to allow incidental take of endangered Stephens' kangaroo rats in Riverside County, California under section 10(a) of the Endangered Species Act is available for public review. Comments and suggestions are requested. The allowed take would be in association with various proposed public and private development projects. Three alternatives are being considered. The proposed action would allow for development to occur on up to 4000 acres of occupied Stephens' kangaroo rat habitat and would be mitigated by the acquisition of up to 4000 acres of occupied habitat on private lands to be placed into public owership for the managment of the species.

DATE: Written comments are requested by December 12, 1989.

ADDRESS: Comments should be addressed to: Peter Stine, U.S. Fish and Wildlife Service, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677.

FOR FURTHER INFORMATION CONTACT: Peter Stine at the above address, telephone (714) 643–4270 or FTS 8–796–4270. Individuals wishing copies of this EIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Service issued a final rule which determined that the Stephens' kangaroo rat to be an endangered species (53 FR 38465). This regulation became effective on October 31, 1988. Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Act's prohibition against "taking" (16 U.S.C. 1538).

The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

The County of Riverside and the cities of Riverside, Moreno Valley, Lake Elsinore, Hemet, and Perris have submitted an application to the Service for a permit to incidentally take Stephens' kangaroo rat in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include the majority of the historical range of the Stephens' kangaroo rat within the County and would allow taking, for a period of two years, resulting from the development of up to 4,000 acres (20 percent) of the 22,000 acres of remaining occupied habitat known for the species.

Under the proposed conservation plan for the incidental take permit, up to 4,000 acres (private lands) of occupied habitat adjacent to lands currently in public ownership would be acquired and managed for the long-term benefit of the species. Comparable acreages of land would be acquired prior to issuance of County or city permits to destroy similar acreages of habitat. The acquisition of the private lands would be funded, in part, from mitigation fees ($1,950 per acre) collected by the County and cites.

The County or cities would approve the issuance of land development permits, subsequent to California Environmental Quality Act-mandated review of potential impacts to other environmental resources, for otherwise lawful public and private project proponents in specified portions of the

County during the two-year period in which the proposed Federal permit would be in effect.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

The underlying need for the proposed action is to allow for otherwise lawful private and public improvement projects compatible with the continued existence of the Stephens' kangaroo rat under limitations and constraints imposed by the Endangered Species Act and other applicable laws.

Three alternatives are under consideration. The proposed action is discussed above. The acquisition of up to 400 acres of private land would be within study areas under consideration for establishment of reserves. All occupied habitat within the study areas would be protected from private development for the duration of the two-year permit. During this two-year period the permit applicants intend to conduct further biological, economic, and land use studies to determine the precise boundaries of a recommended, long-term reserve system. At the conclusion of these studies the permit applicants are considering applying for a long-term permit. A modified study area alternative and the no/action alternative are also discussed.

The primary author of this notice is Jackie Campbell, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232–4181, (503) 231–6131 or FTS 429–6131.

Dated: October 6, 1989.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89–24232 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Concession Contract Negotiations; Leeks Lodge Marina

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Rex G. Maughan and Ruth G. Maughan dba Leeks Lodge Marina authorizing it to continue to provide marina, boating, and food facilities and services, for the public at Leeks Lodge in Grand Teton National Park, Wyoming for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: November 13, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy, P.O. Box 25287, Denver, CO 80225–0287, for information as to the requirements of the proposed contract.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. Sec. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Dated: September 25, 1989.

Homer L. Rouse,

Acting Regional Director Rocky Mountain Region.

[FR Doc. 89–24246 Filed 10–12–89; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–292]

Certain Methods of Making Carbonated Candy Products; Commission Decision not To Review an Initial Determination Rejecting as a Matter of Law Respondents Zeta and Confex's Affirmative Defenses Involving Process Patent Legislation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 19) issued by the presiding administrative law judge (ALJ). That ID rejected as a matter of law respondents' affirmative defenses asserting that the Process Patent Legislation of the Omnibus Trade and Competitiveness Act of 1988 excepts an importer who has continuously made substantial sales in the United States prior to January 1, 1988, from exclusion orders issued under section 337 (a)(1)(B) (ii) of the Tariff Act of 1930.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 202–252–1069.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On August 17, 1989, complainants General Foods Corporation, Carbonated Candy Ventures, and Pop Rocks, Inc. moved the ALJ for a partial summary determination that the Commission deny, as a matter of law, respondents Zeta Espacial, S.A. and Confex Inc.'s affirmative defenses asserting that even if the Commission were to determine that respondent Zeta does infringe complainants' valid U.S. process patents, section 9006(b) of the Process Patent Legislation, found in the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, sections 9001–9007, 102 Stat. 1563 (1988), would except respondents from a Commission exclusion order because they had continuously made substantial sales in the United States prior to January 1, 1988, of carbonated candy made by a process covered by the claims of a U.S. patent. On September 1, 1989, the ALJ issued an ID granting complainants' motion. The ALJ found that the 1988 Process Patent Legislation does not eliminate any preexisting process patent remedy found in section 337. Instead, it affords process patent holders an additional remedy against process patent infringement.

The action of the Commission is not reviewing the subject ID should not be interpreted as holding that the Process Patent Legislation can never be applicable to section 337 investigations.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of

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Practice and Procedure (53 FR 33070 (Aug. 29, 1988)).

By Order of the Commission.

Issued: October 2, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24100 Filed 10-12-89 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-301]

Certain Artificial Breast Prostheses; Commission Decision Not to Review an Initial Determination Substituting Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 1) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID amends the complaint and notice of investigation by substituting Coloplast A/S and Coloplast S.A.R.L. (Coloplast) for Prometel S.A.R.L. (Prometel) as respondents.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988) and in Commission interim rule 210.22(a) (53 FR 33070 (Aug. 29, 1988), to be codified at 19 CFR 210.22(a).

On September 1, 1989, Coloplast, complainant Amoena Corporation, and the Commission investigative attorney jointly moved the Commission to amend the complaint and notice of investigation to substitute Coloplast for Prometel as respondents. On September 7, 1989, the presiding ALJ issued an ID (Order No. 1) granting the joint motion to substitute Coloplast for Prometel as respondents. No petitions for review or agency or public comments were received. Under Commission interim rule 210.22(a), there is good cause to amend the notice and complaint in order to substitute the real party in interest.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: October 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24099 Filed 10-12-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Elswood Investment Corporation, Post Office Box 49100, Four Bentall Centre, Vancouver, British Columbia, Canada V7X 1H3.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) American Maywood Corporation, incorporated in the state of Washington;

(ii) General Hardwood Company, d/b/a/ Hardwoods, Inc., incorporated in the State of Washington;

(iii) Hardwoods, Inc., Alaska, incorporated in the State of Alaska;

(iv) Hardwoods, Inc., California, incorporated in the State of California

(v) Hardwoods, Inc., Colorado, incorporated in the State of Colorado;

(vi) Hardwoods, Inc., Utah, incorporated in the State of Utah;

(vii) Sauder Door Corporation, Incorporated in the State of Washington;

(viii) Sauder Exterior Building Products, Inc., incorporated in the State of Washington;

(ix) Sauder Industries Limited, incorporated in the Province of British Columbia;

(x) Sauder Woodcraft Corporation, incorporated in the State of Washington;

(xi) Seattle Gypsum, Inc., incorporated in the State of Washington;

(xii) Siteline Exterior Corporation, incorporated in the State of Washington;

(xiii) Takahashi Industries Limited, incorporated in the Province of British Columbia, Canada;

(xiv) Wellington Investment Corporation, incorporated in the State of Washington;

(xv) Sauder Transport, Inc., incorporated in the State of Washington, the transporting entity.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23936 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 22); Finance Docket No., 29430 (Sub-No. 20)]

CSX Corporation—Control—Chessie Systems Inc. and Seaboard Coast Line Industries, Inc.; Norfolk Southern Corporation—Control—Norfolk & Western Railway Company and Southern Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file pleadings and denial of petition for other relief.

SUMMARY: The Commission is granting the request for oral argument but otherwise denying a petition filed by the Railway Labor Executives Association and, on its own motion, is extending the time for comments in this proceeding.

DATES: Comments from all parties are due by November 13, 1989. Replies to the comments are due by December 4, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 28905 (Sub-No. 22) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: By decision served and published in the **Federal Register** on September 20, 1989, 54 FR 38754, we reopened these proceedings for further comment in light of the recent decision in *Brotherhood of Ry. Carmen* v. *ICC*, _____ F. 2d. _____ (D.C. Cir. July 25, 1989) (*Carmen*). We explained in detail the issues we believe to be relevant to the court's remand in *Carmen* and encouraged the parties to these proceedings as well as all other interested parties to participate.

On October 2, 1989, the Railway Labor Executives' Association (RLEA) filed a petition contesting the Commission's jurisdiction to take any action in these cases until such time as the court issues its mandate in *Carmen*. In the alternative, RLEA asked the Commission either to grant "full briefing," oral hearing and oral argument on the issue of the Commission's jurisdiction prior to the mandates being issued or adopt the same procedures for developing the record on the substantive issues. Since the court has now remanded the proceedings to the Commission, the question of our jurisdiction is moot and there is no need to consider the relief RLEA seeks in this regard.

As to RLEA's request that we hold full briefing, oral hearing and oral argument on the substantive issues, we see no need for oral hearing in this matter, as primarily legal issues are involved. They can adequately be handled on a written record. We have decided to hold an oral argument in this proceedings and will announce the date for that argument after the record has closed.

RLEA also stated in its petition that the comment and reply periods were not sufficient for the parties to advise the Commission on the questions raised in this case. It notes that we stated an intent to "to conduct a comprehensive examination of our authority" under the statute and the employee protective conditions we impose. We are persuaded that additional time is warranted to permit the parties to develop more extensive comments. We have thus extended the comment and reply period on our own motion to the dates set forth above.

Decided: October 6, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley, in light of the DC Circuit's remand and its decision in *RLEA* v. *ICC* (No. 88-1391) (August 29, 1989), would grant and schedule oral hearing and argument.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24240 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub- 73X)]

Central of Georgia Railroad Co.; Abandonment Exemption in Jefferson County, AL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 5.31-mile line of railroad between milepost P-425.78, at Central Junction, and milepost P-431.09, at McCombs, in Jefferson County, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 12, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 18, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR 89-23830 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Microfab, Inc. et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Microfab, Inc., et al.* Civil Action No. 87-2362N, has been lodged with the United States District Court for the District of Massachusetts.

This is an action brought against Microfab, Inc. and its parent corporation, Semicon, Inc., for violations of the Clean Water Act as a result of discharges of pollutants in excess of limitations in Microfab, Inc.'s National Polluntant Discharge Elimination System ("NPDES") permit. The consent decree provides that Semicon, Inc. shall pay the United States $55,000 in settlement of the United States' claims against Semicon, Inc. in that action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assisant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Microfab, Inc., et al.*, D.J. Reference No. 90-5-1-2872.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Fed. Bldg., USPO & Courthouse, Boston, Massachusetts 02109 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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Kennedy Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24185 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Milprint, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 28, 1989, a proposed consent decree in *United States* v. *Milprint, Inc.*, Civil Action No. 88-C-589, was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed consent decree resolves a judicial enforcement action brought by the United States against Milprint, Inc. for violations of the Clean Air Act (the "Act").

The proposed consent decree provides that Milprint discontinue operation of each printing, extruding and laminating machine at its facility in Milwaukee, Wisconsin. The consent decree also provides that if Milprint installs any printing, extruding or laminating machine at the Milwaukee facility after January 1, 1989, Milprint shall certify to the United States Environmental Protection Agency and the Wisconsin Department of Natural Resources compliance with all federal, state and local laws and regulations applicable to such machines, including achieving, demonstrating, and maintaining compliance with all conditions and requirements of the Clean Air Act and any applicable SIP.

The consent decree further requires Milprint to pay a civil penalty of $80,000. The decree provides that Milprint is to pay $40,000 to the United States and $40,000 to the State of Wisconsin.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Milprint, Inc.*, D.J. 90-5-2-1-890.

The proposed consent decree may be examined at the office of United States Attorney, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24186 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; R.E.A.G. et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 26, 1989 a proposed consent decree in *United States* v. *R.E.A.G. et al.*, Civil Action No. B-87-24 (TFGD), was lodged with the United States District Court for the District of Connecticut. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 112 of the Clean Air Act, 42 U.S.C. 7412 and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Asbestos, 40 CFR part 61, subpart M during the renovation of the former Beverly Theater in Bridgeport, Connecticut. The complaint alleged that defendant NAACO, Inc. ("NACO"), as well as other defendants R.E.A.G., Cristwood Associates, Inc., and AA Building Wrecking Co., Inc., violated the asbestos NESHAP during the building renovation. The complaint sought injunctive relief to require compliance with the asbestos NESHAP and civil penalties for past violations. The proposed consent decree involves only the claims against defendant NAACO. The decree requires the defendant NAACO to pay a civil penalty of $17,500 and requires NAACO to take affirmative measures to prevent future violations of the NESHAP for asbestos. These measures include employee training, designation of certain employees to be responsible for regulatory compliance, inspections of job sites, and assessment of removal projects. The consent decree only resolves the liability of NAACO and does not address the portions of the complaint against the other defendants. A consent decree with defendant AA previously was lodged with the court on August 15, 1989.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *R.E.A.G. et al.*, D.J. Ref. 90-5-2-1-1076 and specify the NAACO decree.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, Room 309, Federal Building and Courthouse, 915 Lafayette Blvd., Bridgeport, CT. 06604 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA. 02203-2211. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24187 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 35-89]

Privacy Act of 1974 Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A-130, the Department has completed a review of its Privacy Act systems of records to identify minor changes that will more accurately describe these records. As a result, five Department components are republishing systems of records to make minor changes.

The systems notices are reprinted below following a table of contents, and changes to the systems of records have been italicized for public convenience. Included, for example, are editorial revisions which clarify system descriptions, together with changes to the system location, system manager(s) and address, safeguards, and storage sections of the notices. In addition, each of the following organizations is reprinting a revised appendix of system locations: The Executive Office for United States Attorneys (EOUSA), the Federal Bureau of Investigation, and the United States Marshals Service. Finally, pursuant to 44 U.S.C. 2102, the EOUSA is modifying a routine use. The routine use was originally drafted to permit records disclosure to the National Archives and Records Service (NARS), General Services Administration (GSA), during records management inspections. However, the statute renamed NARS as the "National Archives and Records Administration" (NARA), and established it as a separate agency which nonetheless shares its records management inspection responsibilities with GSA. The routine use has been modified to show that NARA and GSA are separate agencies which continue to share access to records during these inspections. Comments on the routine use may be addressed to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue, NW., Washington, D.C. 20530. Please submit any comments by November 13, 1989.

Date: October 2, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

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SYSTEM NAME:

Antitrust Division Expert Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have served in the capacity of an expert" for the Department of Justice in Connection with civil or criminal antitrust litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the names of persons used by the Antitrust Division in an expert capacity and also indicates the area of their specialty, the type of service rendered, the fees paid, and the dates on or during which such services were performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is routinely used by trial attorneys of the Antitrust Division when considering the selection of experts as witnesses for the development or presentation of specific antitrust cases. The system also serves as a reference resource for Division personnel in compiling statistical information or reports regarding the actual or anticipated costs of litigation.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably releveant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news medias and the public pursuant to 28 CFR 50.2 may be made available from systems of records

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maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is contained in documents organized in individual file folders.

RETRIEVABILITY:

Information is retrieved primarily by using the name of the individual called as an expert witness for the Government in antitrust cases brought by the Department.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to that area are locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Antitrut Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue NW., Washington, DC 20530.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Including in the request should be the name of the person presented as an expert witness for the Government and the name of the case in which such services were rendered. The requester should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager and state clearly and concisely when information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in this system are those records reflecting the commitment between the individual and the Department of Justice (including matters of compensation etc.) and staff attorneys or other employees directly involved with the individual in the preparation or conduct of the litigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress, and citizens whose correspondence is referred by *members of Congress or* Congressional or White House staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exist under 44 U.S.C. 3101 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is maintained as a record of inquires or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or identifying other material related to such inquiries or referrals.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Divison is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to ligitation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration *(NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to NARA *and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in *loose-leaf binders and* file folders; abbreviated or summarized information is stored *in a computerized tracking system.*

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc. Summary data on inquiries received pror to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of informaton maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI 001

SYSTEM NAME:

National Crime Information Center (NCIC)

SYSTEM LOCATIONS:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Wanted Persons: 1. Individuals for whom Federal warrants are outstanding.

2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdictions originating the entry and felony or misdemeanor warrant has been issued for the individual with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria.

3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictionary boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the initial entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were issued. *Juveniles who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who have fled from the state where the act was committed.*

5. Individuals who have committed or have been identified with an offense committed in a foreign country, which would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding and for which act an extradition treaty exists between the United States and that country.

6. Individuals who have committed or have been identified with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184.

B. Individuals who have been charged with serious and/or significant offenses.

C. Missing Persons: 1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.

2. A person of any age who is missing under circumstances indicating that his disappearance was not voluntary.

3. A person of any age who is missing under circumstances indicating that his physical safety is in danger.

4. A person who is missing and declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

D. Individuals designated by the U.S. Secret Service *as* posing a potential danger to the President *and/or* other authorized protectees.

E. Unidentified Persons: 1. Any unidentified deceased person. 2. Any person who is living and unable to ascertain his/her identity (e.g. infant, amnesia victim). 3. Any unidentified catastrophe victim. 4. Body parts when a body has been dismembered.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Stolen Vehicle File: 1. Stolen vehicles. 2. Vehicles wanted in conjunction with felonies or serious misdemeanors. 3. Stolen vehicle parts, including certificates of origin or title.

B. Stolen License Plate File: 1. Stolen or missing license plate.

C. Stolen/Missing Gun File: 1. Stolen or missing guns. 2. Recovered *guns, when* ownership of which has not been established.

D. Stolen Article File.

E. Wanted Persons File: Described in *"CATEGORIES OF INDIVIDUALS*

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COVERED BY THE SYSTEM: A. Wanted Persons."

F. Securities File: 1. Serially numbered stolen, embezzled, counterfeited, missing securities.

2. "Securities" for present purposes of this file are currenty (e.g., bills, bank notes) and those documents or certificates which generally are considered to be evidence or debt (e.g., bonds, debentures, notes) or ownership of property (e.g., common stock, preferred stock), and documents which represent subscription rights, warrants) and which are of those types trades in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. *Stolen* Boat File

H. Computerized Criminal History File: A cooperative federal-State program for the interstate exchange of criminal history record information for the purpsoe of facilitating the interstate exchange of such information among criminal justice agencies.

I. Missing Person File: Described in *"CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: C. Missing Persons."*

J. U.S. Secret Service Protective File: Described in *"CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: D."*

K. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses: Described in *"CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM; B."*

L. Foreign Fugitive File: Identification data regarding persons who are fugitives from foreign countries, who are described in "CATEGORIES OF INDIVIDUALS COVERED BY *the* SYSTEM: A. Wanted Persons, 5."

M. Canadian Warrant File: Identification data regarding Canadian wanted persons who are described in "CATEGORIES OF INDIVIDUALS COVERED BY *the* SYSTEM: A. Wanted Persons, 6."

N. Unidentified Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: E. Unidentified Persons."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 534; Department of Justice Appropriation Act, 1973, Pub. L. 92–544, 86 Stat. 1115, Securities Acts Amendment of 1975 Pub. L. 94–29, 89 Stat. 97; and Exec. Order No. 10450, 3 CFR (1974).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in NCIC files is exchanged with and for the official use of authorized officials of the Federal Governemnt, the States, cities, penal and other institutions, and certain foreign governments. The data is exchanged through NCIC lines to Federal criminal justice agencies, criminal justice agencies in the 50 States, the District of Columbia, Puerto Rico, U.S. Possessions and U.S. Territories. Additionally, data contained in the various "want files," i.e., the stolen vehicle file, stolen license plate file, stolen missing gun file, stolen article file, wanted person file, securities file and boat file may be accessed by the Royal Canadian Mounted Police. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only *where* such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States.

Data in NCIC files, other than the Computerized Criminal History File, is disseminated to (1) a nongovernmental agency or subunit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regularly employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute; (2) a noncriminal justice governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicles registration and driver record information to criminal justice agencies; (3) a governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communications services to criminal justice agencies; and (4) the national Automobile Theft Bureau, a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or similar criminal justice objectives.

Information on missing children, missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a nongovernmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing and exploited children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2, may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise requested to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf whom the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration *(NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

RETRIEVABILITY:

On-line access to data in NCIC is achieved by using the following search descriptors 1. Vehicle file:

(a) Vehicle identification number;

(b) License plate number;

(c) NCIC number (unique number assigned by the NCIC computer to each NCIC record). 2. License Plate file: (a) License plate number: (b) NCIC number. 3. Gun file: (a) Serial number of gun: (b) NCIC number. 4. Article File: (a) Serial number of article: (b) NCIC number. 5. Wanted Person File U.S. Secret Service Protective File, Foreign Fugitive File, and Canadian Warrant File: (a) Name and one of the following numerical identifiers, date of birth, FBI Number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record). Social Security number (It is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system). Operator's license number (drivers number). Miscellaneous identifying number (military number or number assigned by Federal, state, or local authorities to an individual's record). Origination agency case number. (b) Vehicle or license plate known to be in the possession of the wanted person. (c) NCIC number (unique number assigned to each NCIC record). 6. Securities File: (a) Type, serial number, denomination of security; (b) Type of security and name of owner of security; (c) Social Security number of owner of security; (d) NCIC number. 7. Boat File: (a) Registration document number; (b) Hull serial number: (c) NCIC number. 8. Computerized Criminal History File: (a) Name, sex, race and date of birth: (b) FBI number: (c) State identification number; (d) Social Security number; (e) Miscellaneous number. 9. Missing Person File: Same as "Wanted Person" File, *plus the age, sex, race, height and weight, eye and hair color, of the missing individual.*

10. Unidentified Person File: Age, sex, race, height and weight, eye and hair color, of the unidentified individual.

SAFEGUARDS:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized criminal justice agencies. The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC.

Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center: a. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. b. Since personnel at these computer centers can have access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a stated control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel. c. All visitors to these computer centers must be accompanied by staff personnel at all times. d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals. e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history filed in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data. f. Each State Control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications: a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels. b. Physical security of the lines/channels must be protected to guard against clandestine devices being utilized to intercept of inject system traffic.

3. Terminal Devices Having Access to NCIC: a. All agencies having terminals on the system must be required to physically place these terminals in secure locations within the authorized agency. b. The agencies having terminals with access to criminal history must have terminal operators screened and restricted access to the terminal to a minimum number of authorized employees. c. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of the data. d. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notations of individual making request for record (90 days).

RETENTION AND DISPOSAL:

Unless otherwise removed, records will be retained in files as follows:

1. Vehicle File: a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) therein, will be purged from file 90 days after *date of entry.* Unrecovered stolen vehicle records (including snowmobile records) which contain VIN's will remain in file for the year of entry plus 4. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered. c. Unrecovered stolen VIN plates, certificates or origin or title, and serially numbered stolen vehicles engines or transmissions will remain in file for the year of entry plus 4.
(Job No. NC1–65–82–4, Part E. 13 h.(1))

2. License Plate File: Unrecovered stolen license plates not associated with a vehicle will remain in file for one year after the end of the plate's expiration year as shown in the record.
(Job No. NC1–65–82–4, Part E. 13 h.(2))

3. Gun file: a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record. b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2.
(Job No. NC1–65–82–4, Part E. 13 h.(3))

4. Article File: Unrecovered stolen articles will be retained for the balance of the year entered plus one year.
(Job No. NC1–65–82–4, Part E. 13 h.(4))

5. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from the file after 48 hours).
(Job No. NC1–65–87–114, Part E. 13 h.(7))

6. Securities File: Unrecovered, stolen, embezzled, counterfeited or missing securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2.
(Job No. NC1–65–82–4, Part E. 13h. (5))

7. Boat File: Unrecovered stolen boats will be retained in file for the balance of

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the year entered plus 4. *Unrecovered stolen boat records which do not contain a hull serial number will be purged from file 90 days after date of entry.*
(Job No. NC1–65–82–4, Part E. 13h. (6))
6. Missing Persons File: Will remain in the file until the individual is located or, in the case of unemancipated persons, the individual reaches the age of emancipation as defined by law of his state.
(Job No. N 1–65–87–11, Part E. 13h. (8))
9. Computerized Criminal History File: When an individual reaches age of 80.
(Job No. NC1–65–76–1)
10. U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.
11. Foreign Fugitive File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record.
12. Canadian Warrant File: Person and located will remain in file indefinitely until action is taken by the originating agency to clear the record.
13. Unidentified Person File: Will be retained for the remainder of the year of entry plus 9.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 9th and Pennsylvania Avenue NW., Washington, D.C. 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURE:

It is noted the Attorney General is exempting this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to requester. The procedures by which an individual may obtain a copy of his computerized Criminal History are as follows:
If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification and in accordance with applicable State and Federal administrative and statutory regulations.
Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.
Procedure 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.
2. If the cooperative law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individuals's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C. by mail. The individual will then be afforded the opportunity to see that record.
3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or possibly, in the State's central identification agency.

CONTESTING RECORD PROCEDURES:

The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

RECORD SOURCE CATEGORIES:

Information contained in the NCIC system is obtained from local, State, Federal and international criminal justice agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/FBI—002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535; b. 57 field divisions (see Appendix); c. 16 Legal Attachés (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to *subjects*, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.
b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or *other* personnel matters.
c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.
d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, *and* contacts with other agencies, businesses, institutions, clubs; the public and the news media.
e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.
(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.
The FBI has 266 classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 266 classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters; FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.
2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958–962; Title 22, United States Code, Sections 1934 and 401.
3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.
4. National Firearms Act; Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code, Sections 1201–1203.
5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.
6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.
7. Kidnapping. Title 18, United States Code, Sections 1201 and 1202.
8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.
9. Extortion. Title 18, United States Code, Sections 876, 877, 875, and 873.
10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.
11. Tax (Other than Income). This classification covers complaints concerning violations of Internal Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.
12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.
13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles Of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.
14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.
15. Theft from Interest Shipment. Title 18, United States Code, Section 659; Title 18, United States Code, Section 660; Title 18, United States Code, Section 2117.
16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".
17. Fraud Against the Government—Veterans Administration, Veterans Administration Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001; and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.
18. May Act. Title 18, United States Code, Section 1384.
19. Censorship Matter (obsolete). Pub. L. 354, 77th Congress.
20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.
21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.
22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act; Automobiles seized by Prohibitions Agents.
23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.
24. Profiteering 1920–42. (obsolete) Subjects are possible violaters of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.
25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50, United States Code, Section 459.
26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.
27. Patent Matter. Title 35, United States Code, Sections 104 and 105.
28. Copyright Matter, Title 17, United States Code, Sections 104 and 105.
29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).
30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.
31. White Slave Traffic Act. Title 18, United States Code, Section 2421–2424.
32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.
33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.
34. Violation of Lacy Act. 1922–43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.
35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.
36. Mail Fraud. Title 18, United States Code, Section 13341.
37. False Claims Against the Government. 1921–22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.
38. Application for Pardon to Restore Civil Rights. 1921–35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.
39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections *911* and 1015(a)(b).
40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.
41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

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42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government: (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Dependent Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; *Unemployment* Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Section 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. *Bankruptcy Fraud.* Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum # 781, dated 11/9/72. These investigations can be conducted only up-on such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, *and 591–607*; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections *431–437*, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89–77th Congress.

58. Bribery; Conflict of Interest. Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust. Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States, Code, Sections 321, 322, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the pubic which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code, Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations; Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code, Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and requests for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner, Escape and Rescue; Probation Violator, Parole Violator; Parole Violator; Mandatory Release Violator. Title 18, United State Code, Sections 751–757, 1072; Title 18, United States Code, Sections 3651–3656; and Title 18, United States Code, Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, *Crimes Against Family Members*, Congressional Assassination Statute. Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code, Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act, Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field, e.g., Smith Act violations.

101. Hatch Act (obsolete). Pub. L. 252, 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Section 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L. 625, 77th Congress, Sections 116–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944–55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

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109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 36. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Pub. L. 93–438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, Sections 261–270.

120. Federal Tort Claims Act. Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Section Inquiry, State Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program (International Cooperation Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program, Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act. Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741–752 and 781–799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act. Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Stategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contacts with American Legion officers.

137. Informants. Other Than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transportation of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464 and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 857, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft of Motor Vehicles. Title 18, United States Code, Sections 31–35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the *International* Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241–1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Sections 1231–1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211–1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Pub. L. 86–257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code, Sections 501, 503, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House, Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1064.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87–637.

170. Extremist Informants (obsolete) This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 224.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education; Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly, Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harrassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Section 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act, Title 15, United States Code, Section 1611.

182. Illegal Gambline Business: Illegal Gambling Business, Obstruction; Illegal Gambling Business, Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duly constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and *1201.*

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Action of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions; Armored Carrier. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

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199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for a statutory authority for this and the four following classifications.)

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code. Section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215)

230. thru 240. FBI Training Matters.

241. DEA Applicant Investigations.

242. Automation Matters.

243. Intelligence Identities Protection Act of 1982.

244. Hostage Rescue Team.

245. Drug Investigative task Force.

246. thru 248. Foreign Counterintelligence Matters. (Same authority as 215)

249. *Environmental Crimes*—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, Section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

258. Credit Card Fraud Act of 1984 (Title 18, United States Code, Section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215)

260. Industrial Security Program. (Same authority as 215)

261. Security Officer Matters. (Same authority as 215)

262. Overseas Homicide/Attempted Homicide—International Terrorism.

Title 18, United States Code, Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code, Section 2701.

265. Acts of Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classificotion.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these listes is necessitated by the needs of the Division to have immediate access of pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime.

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950. December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special indices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collage, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that all investigative information, which is placed in computerized form, is actually extracted from the main files and that the duplicative computerized information is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e. FBI Headquarters and/or Field Office. The number in parentheses in the field office column indicates the number of field offices which maintain these indices. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX)	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, in was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. The index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive	Yes	Yes (29).
Anonymous Letter File	Consists of photographs of anonymous communications and extorionate credit transactions, kidnapping, extortion and threatening letters.	Active	Yes	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active	Yes	Yes (59).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position.	Active	Yes	No.

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Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname Index	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The role is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.
Bank Robbery Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fradulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitous. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Check Circular File	Consists of fliers filed numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The fliers which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antitracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (59).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No.
False Identities List	Consists of a listing a names of deceased individuals whose birth certificates have been obtained after the person's death, ands thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.

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Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI).	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program..	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid..	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes..	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3).
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).
Informant Index	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (59).
Informants in Other Field Offices, Index of..	Consists of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid.	Active	No	Yes (1).
IRS Wanted List	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11).
Kidnapping Book	Consists of data, flied chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was not fully retrievable, the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. Tha index is used solely by FBI agents for assistance in investigating organized crime matters.	Active	Yes	Yes (55).
Leased Line Letter Request Index.	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is a used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject, FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File	Contains photographs of the signatures on stolen and counterfeit checks. It is filed alphabetically but there is a no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.
National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	*Inactive*	Yes	No.
Night Depository Trap index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Organized Crime Photo Album	Consists of photos and background information on individuals involved in orgzanized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).

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Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Police (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17).
Security Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1).
Security Telephone Number Index.	Contains cards with telephone subscriber information subpenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1).
Selective Service Violators Index.	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of Information Index	Consists of cards on individuals and organizations such as banks, motels, local governments that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards and filed by the last three digits of the telephone number. The index in used in gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index.	Contains cards with information on persons identified as the result of a formal request or subpena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves, Couriers and Fences Photo Index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Toll Record Request Index	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index.	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive on the top 10 usually assures a greater national news coverage as well as nationwide circulation of the flier.	Active	Yes	Yes (44).
Top Thief Program Index	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (27).
Truck Hijack Photo Album	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album.	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (1).
Traveling Criminal Photo Album	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administration (VA)/ Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid.	Active	No	Yes (1).
Wanted Fliers File	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).
Wheeldex	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required.	Active	Yes	No.
Witness Protection Program Index.	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authority, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcenemt function of the recipient agency e.g. in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enfcrcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards reponsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affeced by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interst, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes. Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in this system, the release of which is required by the Freedom of Information-Privacy Acts, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extend that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices has been under way for approximately five years; completion is anticipated during FY 1988. This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is elecronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia. Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1–65–82–4 and amendments)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the

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reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions; Justice/FBI–999

5th Floor, 445 Broadway, Albany, NY 12201.
POB 25186, Albuquerque, NM 87125.
POB 100560, Anchorage, AK 99510.
POB 1683, Atlanta, GA 30370.
7142 Ambassador Road, Baltimore, MD 21207.
2121 Building, Birmingham, AL 35203.
John F. Kennedy Federal Office Building, Boston, MA 02203.
111 West Huron Street, Buffalo, NY 14202.
6010 Kenley Lane, Charlotte, NC 28217.
219 S. Dearborn St., Chicago, IL 60604.
POB 1277, Cincinnati, OH 45201.
1240 E. 9th St., Cleveland, OH 44199.
POB 137, Columbia, SC 29202.
1801 W. Lamar, Dallas, TX 75202.
POB 1229, Denver, CO 80201.
POB 2118, Detroit, MI 48231.
700 E. San Antonio Ave., El Paso, TX 79901.
POB 50164, Honolulu, HI 96850.
POB 61369, Houston, TX 77208.
POB 1186, Indianapolis, IN 46206.
100 W. Capitol St., Jackson, MS 39269.
POB 8928, Jacksonville, FL 32239.
POB 2449, Kansas City, MO 64142.
POB 10368, Knoxville, TN 37919.
POB 16032, Las Vegas, NV 89101.
POB 21470, Little Rock, AR 72221–1470.
11000 Wilshire Blvd., Los Angeles, CA 90024.
POB 2467, Louisville, KY 40201.
167 N. Main St., Memphis, TN 38103.
POB 592418, Miami, FL 33159.
POB 2058, Milwaukee, WI 53201.
392 Federal Building, Minneapolis, MN 55401.
POB 2128, Mobile, AL 36652.
POB 1158, Newark, NJ 07101.
POB 2058, New Haven, CT 06521.
POB 51930, New Orleans, LA 70151.
POB 1425, New York, NY 10008.
POB 3828, Norfolk, VA 23514.
POB 54511, Oklahoma City, OK 73154.
POB 548, Omaha, NE 68101.
600 Arch St., Philadelphia, PA 19106.
201 E. Indianola, Phoenix, AZ 85012.
POB 1315, Pittsburgh, PA 15230.
POB 709, Portland, OR 97207.
POB 12325, Richmond, VA 23241.
POB 13130, Sacramento, CA 95813.
POB 7251, St. Louis, MO 63177.
125 S. State St., Salt Lake City, UT 84138.
POB 1630, San Antonio, TX 78296.
880 Front St., San Diego, CA 92188.
POB 36015, San Francisco, CA 94102.
POB BT, San Juan, PR 00936.
POB 22758, Savannah, GA 31403.
915 2nd. Ave., Seattle, WA 98174.
POB 3646, Springfield, IL 62708.
POB 172177, Tampa, FL 33602.
Washington Field Office, Washington, DC 20535.
Federal Bureau of Investigation Academy, Quantico, VA 22135.
Legal Attaches: (Send c/o the American Embassy for the Cities indicated):.
Bern, Switzerland.
Bogota, Colombia (APO, Miami 34038).
Bonn, Germany (Box 310, APO, New York, 09080).
Bridgetown, Barbados (Box B, FPO, Miami 34054).
Brussels, Belgium (APO, New York 09667).
Canberra, Australia (APO San Francisco 96404–0001).
Hong Kong, B.C.C. (FPO, San Francisco 96659–0002).
London, England (Box 2, FPO, New York 09509).
Manila, Philippines (APO, San Francisco 96528).
Mexico City, Mexico (POB 3087, Laredo, TX 78044–3087).
Montevideo, Uruguay (APO, Miami 34035).
Ottawa, Canada.
Panama City, Panama (Box E, APO, Miami 34002).
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).

JUSTICE

SYSTEM NAME:

Electronic Surveillance (Elsur) Indices.

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Bldg., 10th and Pennsylvania Ave., NW., Washington, DC 20535. Those field offices which have *sought* conducted electronic surveillances also maintain *an* index. See appendix to System 002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the targets of direct electronic surveillance coverage by the FBI *in a court order; those whose communications have been monitored/intercepted by an FBI electronic surveillance installation; those who own, lease, or license premises subjected to electronic surveillance coverage sought by the FBI in a court order.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Index is comprised of three types of 3 x 5 cards: 1. Principal cards identify, by true name or best known name, all interceptees (targets) indentified in an application filed by the FBI in support of an affidavit seeking a court order to conduct an electronic surveillance; 2. Proprietary Interest cards indentify entities and/or individuals who own, lease, license or otherwise hold a possessory interest in locations subjected to an electronic surveillance sought by the FBI in a court order; and, 3. Overhear cards indentify, by true name or best known name, individuals and/or entities who have been reasonably identified by a first name or initial and a last name as being a party to a communication monitored/intercepted by the FBI.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The *ELSUR Index was* initiated in October, 1966, at the *recommendation* of the Department of Justice *and relates to electronic surveillances conducted/sought by the FBI since 1/1/60.* The authority for the maintenance of these records is Title 5, Section 301, USC, whch grants the Attorney General the authority to issue rules and regulations prescribing how Department of Justice information can be employed. Title 18, USC, Section *3504,* also sets forth recordkeeping requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Elsur Indices are utilized: (1) To respond to judicial inquiries about possible electronic surveillance coverage of witnesses, defendants, or attorneys involved in Federal court proceedings, and (2) To enable the Government to certify whether a person regarding whom court-order authority is being sought for elect·onic coverage has ever been so covered in the past. The actual users of the indices are always employees of the FBI.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): Record from a system of records many be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained manually on 3 x 5 cards.

RETRIEVABILITY:

Names/facilities are indexed and filed alphabetically. Telephone numbers and other such serial or identification numbers targeted are indexed and filed numerically. Locations targeted are indexed by address and filed by street name.

SAFEGUARDS:

The index is maintained in a restricted access room at all times. The entrance is equipped with a special locking device and alarm system for off-duty hours when the index is not in use.

RETENTION AND DISPOSAL:

Until advised to the contrary by the Department, the courts or Congress, these indices will be maintained indefinitely. The indices have been declared permanent by NARA. (Job No. NC1–65–82—4, Part E. 2 t.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Inquiry addressed to Director, FBI, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Category of Individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4)(G), and (H), (e) (5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/FBI–008

SYSTEM NAME:

Personnel Information Network System (PINS).

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Building, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Bureau of Investigation employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel information which includes information set forth on (1) Standard Form 50—Notification of Personnel Action, (2) SF 176–T–Federal Employee Group Life Insurance Plan, (3) FBI form 12–60 in lieu of SF 1126—Notification of Pay Change, (4) SF 2801 and CSC 1084—Application for and additional information in support of retirement, respectively, (5) SF 2809—Federal Employment Health Benefit Plan and (6) various intra-agency forms and memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to regulations set forth in the Federal Personnel *Manual.* Title 5, U.S. Code, Section *801* and Title 44, U.S.Code, Section 9101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The PINS is used (1) to prepare the Notification of Personnel Action, copies of which are furnished to the *Office of Personnel Management,* (2) to prepare *Standard From 52B—Request for Personnel Action,* (3) to generate lists of employees which are used internally by authorized personnel for record keeping, planning, and decision making purposes, and (4) as a source for the dissemination of information (A) to federal, state and local agencies and to private organizations pursuant to service record *inquiries* and (B) pursuant to credit *inquiries.* In response to proper credit *inquiries* from credit bureaus and financial institutions, the FBI will verify employment and furnish salary and length of service).

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives the Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in PINS is stored by disc and magnetic tape.

RETRIEVABILITY:

Information is retrieved (1) on-line through *intelligent workstations and terminals* by keying the name or Social Security Number of the employee and (2) off-line *through dota base retrievals.*

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(It is noted the authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)-2(b).)

SAFEGUARDS:

Areas housing the system and access terminals are located in secure buildings available to authorized FBI personnel and escorted maintenance and repair personnel only. Access terminals are operational only during normal daytime working hours at which time they are constantly attended.

RETENTION AND DISPOSAL:

Electronically stored records for employees and former employees are maintained indefinitely in a vault under the control of a vault supervisor. Pursuant to regulations set forth in the Federal Personnel Manual a copy of the Notification of Personnel Action is made a part of the employees' personnel file.

The automated records are disposable when administrative needs have expired. (Job No. NC1-65-82-4, Part E. 13c. (1)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, John Edgar Hoover Building, 10th Street and Pennsylvania Avenue, NW., Washington, DC, 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and return address of the requestor. Access requests will be directed to the Director, Federal Bureau of Investigation.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Director, FBI stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are present and former FBI employees and employee personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20537-9700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to all individuals whose fingerprints are maintained in the system. The criminal records and the civil records are maintained in separate files and each file has an alphabetical name index related to the data contained therein.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, 15 U.S.C. 78q, 7 U.S.C. 12a, and Pub. L. 92-544 (86 Stat. 1115), and Pub. L. 99-399. The authority is also codified in 28 CFR 0.85 (b) and (j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions, for Federal, State, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, State statute pursuant to Pub. L. 92-544 (86 Stat. 1115), *Presidential* executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

Release of information to the news media: Guidelines applicable for the release of information to the news media and the public are set forth in 28 CFR 20.33(a)(4), 20.33(c), and 50.2.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be dislosed as a routine use to NARA and GSA in records management and inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored in computerized data storage devices.

RETRIEVABILITY:

(1) All information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of the unique identifying characteristics appearing in fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical name indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals technical fingerprint classification and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon

authentication and verification of the right to access the system by such persons and agencies. The physical security and *maintenance* of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicate individuals have reach 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age. (Job. No. NC1-65-76-1 and NN-171-160)

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose records is maintained in the system. (Job No. 351-S190)

(3) Fingerprint cards submitted by State and local criminal justice agencies are *either returned or destroyed* upon the request of the submitting agencies. The return *or destruction* of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the *Identification* Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and State courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, *either returns or destroys* fingerprint cards and related arrest data to local and State criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and State courts when accompanied by necessary identifying informations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The Attorney General has exempted the Identification *Division* Records System from compliance with subsection (d) of the Act. However, pursuant to 28 CFR 16.30-34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 FR 22114 (Section 20.34) for Criminal Justice Information Systems, an individual is permitted access to his *identification* record maintained in the *Identification Division* Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/JMD-001

SYSTEM NAME:

Background Investigation Check-off Card.

SYSTEM LOCATION:

U.S. Department of Justice, *633 Indiana Avenue, NW., Suite 402,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Offices, Boards, and Divisions except employees in the *U.S. Attorneys Offices, and the Executive Office for U.S. Attorneys, for whom the U.S. Office of Personnel Management conducts background investigations.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index card for each employee of the Offices, Boards, and Divisions, except those excluded in Categories of Individuals above, on whom a name and fingerprint or background investigation has been initiated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in order to fulfill the requirements of Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The index cards are used to annotate and monitor the progress of the name and fingerprint checks and the full field character investigations of the employee. The completed cards are used to develop a variety of workload and timeframe data concerning the initiation and completion of these investigations to ensure that the requirements of Executive Order 10450 and Department of Justice Order *2610.2* are being effectively and efficiently met.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 502 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is subject to the record.

Release of Information to the National Archives and Records:
ADMINISTRATION (NARA) AND TO THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and Practices for Storing, Accessing, Retaining, and Disposing of Records in the System:

STORAGE:

Information maintained in the system is manually stored in the boxes.

RETRIEVABILITY:

Information is retrieved manually by reference to the name of the employee on whom the investigation is being conducted.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Personnel *Service* policies and procedures.

RETENTION AND DISPOSAL:

When a full-field background investigation or National Agency Check is initiated, the background investigation check-off card is

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forwarded to the Justice Management Division Security Staff where it is ultimately merged in system Justice/JMD–008, Security Clearance Information System.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Personnel *Service*, Justice Management Division, U.S. Department of Justice, *Suite 402, IND Building, Washington, D.C.*

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

Same as the System Manager.

CONTESTING RECORD PROCEDURES:

Same as the System Manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are those Personnel *Service* employees authorized to annotate these cards. Information reported is extracted from personnel documents initiating the various investigations and the resulting reports of completion.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/JMD–005

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATIONS:

Records relating to grievances originating in an office, board or division (defined in 28 CFR 0.1) *except for the Executive Office for United States Attorneys, are located in the Office of the Assistant Director for Personnel Service. Records relating to grievances originating in the Executive Office for United States Attorneys or in a United States Attorney's office are located in the office of the Personnel Officer, Executive Office for United States Attorneys.* Records relating to grievances originating in a particular bureau (defined in 28 CFR 0.1) are located in the central personnel office of the bureau where the grievance originated, except for the Federal Bureau of Investigation (FBI) which is excluded from coverage of the Agency Administrative Grievance System by 5 CFR 771.206(a). (See caption "System managers and addresses.")

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Department of Justice employees, except for employees of the FBI, who have submitted grievances in accordance with 5 CFR Part 771 (Office of Personnel Management (OPM) regulations) and the Department's grievance procedures, or in accordance with a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by the agency employees under 5 CFR Part 771 and the Department's grievance procedures, or under a negotiated grievance procedure. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, *or arbitration award,* and a copy of any original and final decision and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(f); 5 CFR Part 771; 5 U.S.C. 1032, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to another appropriate Federal, State, or local agency, responsible for investigating, prosecuting, enforcing, or implementing a statute rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to another Federal agency (in response to its request) for its use in the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security and/or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit to the extent that the information is relevant and necessary to its decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2908.

g. By the Department or OPM in the production of summary descriptive statistics, if available, and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of data elements included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board; the Special Counsel; the Federal Labor Relations Authority and its General Counsel; the Equal Employment Opportunity Commission; or, the OPM when requested to perform their authorized duties.

i. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To provide information to labor organization officials recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

a. Offices, Boards and Divisions. *Assistant* Director *for* Personnel *Service,* U.S. Department of Justice, *633 Indiana Avenue,* NW., Washington, D.C. 20530.

b. Bureau of Prisons. Personnel *Director,* Bureau of Prisons, HOLC Building, 320 First Street, NW., Washington, D.C. 20534.

c. Drug Enforcement Administration. *Deputy Assistant Administrator for* Personnel, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537.

d. Immigration and Naturalization Service. Assistant Commissioner for Personnel *and Training,* Immigration and Naturalization Service, CAB Building, 425 I Street, NW., Washington, D.C. 20530.

e. Office of Justice *Programs. Director, Office of* Personnel, Office of Justice *Programs,* 633 Indiana Avenue, NW., Washington, D.C. 20530.

f. United States Marshals Service. Personnel Officer, U.S. Marshals Service, *600 Army-Navy Dr., Arlington, VA 22202.*

g. Executive Officer for United States Attorneys. Personnel Officer, 601 D Street, NW., Patrick Henry Building, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Individuals *who have filed* grievances may contact the appropriate personnel office (named under the caption "System managers" and addresses" above) where the action was processed regarding the existence of such records on them. They must furnish the following information for the records to be located and identified:

a. Name.

b. Approximate date of closing of the case and *the subject matter of the grievance.*

c. Organization component involved.

RECORD ACCESS PROCEDURES:

Individuals *who have filed* grievances may request access to the official copy of the grievance file by contacting the appropriate personnel office (named under the caption "System managers and addresses" above) where the action was processed. Individuals must provide the information listed under the caption "Notification procedures" for their records to be located and identified. Individuals requesting access must also follow the Department's Privacy Act regulations (28 CFR 16.41) regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to the records to correct factual errors should contact the personnel office (named under the caption "System managers and addresses" above) where the grievance was processed. Individuals must furnish the information listed under the caption "Notification procedures" for their records to be located and identified.

Individuals requesting amendment must also follow the office's Privacy Act regulations (28 CFR 16.41) regarding amendment to records and verifications of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By Department officials.

d. From related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/JMD–018

SYSTEM NAME:

Delegations of Procurement Authority, Justice/JMD–018.

SYSTEM LOCATION:

Office of the Procurement Executive, Department of Justice, *Indiana* Building, Room *542, 633 Indiana Avenue,* NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED:

All Department of Justice procurement personnel in the GS/GM 1102 and other series who are actively engaged in the acquisition process and who are or will be designated as contracting officers, or are authorized to obligate the Government contractually.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual delegations of procurement authority files will contain information on the employees grade/series, job title, employing bureau location, education, procurement experience and procurement training, type of delegation, level of signatory authority, effective date of entry into the program and experience code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507, 509 and 510; 41 U.S.C. 257; 5 U.S.C. 301; 28 CFR 0.75(d) and 0.75(j); and Executive Order 12352.

PURPOSE OF THE SYTEM:

Individual delegations of procurement authority files will be used to support a newly established Contracting Officer Standards Program which will serve as a basis to establish Department-wide training and experience standards for issuing contracting officer delegations and to ensure the standards are met. In addition, the files will be used by the Procurement Executive to manage and enhance career development of the Department's procurement work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department, or any of the Department's components or its subdivisions; any Department employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or its subdivisions.

(2) Records or information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(3) Records or information may be disclosed as is necessary to respond to congressional inquiries on behalf of constituents.

(4) Records may be disclosed to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of Title 44 U.S.C. 2904 and 2906.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records are kept in standard file cabinets. Duplicates of original paper records will be stored electronically in the Department's main frame computer.

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RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Paper records are stored in metal filing cabinets and electronic records are stored on the Department's main frame computer. Access to the *Indiana* Building is protected by 24-hour guard service and is restricted to employees with official identification. Access to records is restricted to authorized personnel with official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the Department at which time paper records are destroyed and electronic records erased.

SYSTEM MANAGERS AND ADDRESS:

The system manager is the Procurement Executive, Justice Management Division, Department of Justice, *Indiana* Building, Room *542, 633 Indiana Avenue,* NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Direct inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/ Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate date(s) of the record(s); and, provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention FOI/PA Officer; and, provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in the system is collected from the individual, training personnel, and general personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USA-003

SYSTEM NAME:

Citizen Complaint Files.

SYSTEM LOCATION:

U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th St. NW.,* Washington, D.C. 20001; Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on *whom* records are maintained in this system may be broadly classified in four categories. (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) those individuals about whom complaints have been made on upon whom investigations were conducted, but no prosecution was initiated; and (4) complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

A file may consist of a single sheet of paper describing briefly the nature of a complaint and its disposition or it may consist of a more comprehensive file containing the results of a hearing, depending on the complexity or seriousness of the complaint. If the complaint results in criminal charges being *preferred,* the contents of the file are transferred to the appropriate criminal file system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcement or implementing such laws;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a *triol* or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to case matters or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local or foreign court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter than has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual, concerned with the custody maintenance, transportation, or release of such person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance; the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(*12*) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(*13*) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record *and;*

(*14*) Release of information to the National Archives and Records *Administrtion (NARA) and the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Citizen complaint files are maintained in one of two ways; either on a single sheet which is a record of the complaint and disposition thereof or in complaints which result in further proceedings, a file folder would be established. *Some material is recorded and stored on magetic tape, card or other data processing type storage matter for reproduction later into conventinal formats and for management information purposes.*

RETRIEVABILITY:

Information is retrieved either by the name of a complainant, the name of a person about whom a complaint is registered or by a complaint number. If further proceedings are conducted with respect to a citizen's complaint and the complaint materializes into a criminal action, the file folder will become part of the criminal files and then is retrievable in the same manner as any criminal file is retrieved. *Information may be accessed by means of cathode-ray tube terminals (CRT'S).*

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected by being maintained in files at the Citzens Complaint Center, and the Legal Services section of the Executive Office for United States Attorneys, which is manned at all times when it is open and at other times is locked. More sensitive files that materialize into hearings or require further action by the Misdemeanor Trial Section of the Superior Court Division, or the Executive Office for United States Attorneys, are maintained by the Chief of the Misdemanor Trial Section in his office in Building B of the Superior Court, or the Assistant Director for legal Services, Executive Office for United States Attorneys in his safe. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys require user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with Title *3, U.S. Attorney's Manual.*

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Misdemeanor Trial Section: U.S Attorney's Office; Superior Court. *Operations, 555 4th St. NW. Washington, DC 20001;* Director, Excecutive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The major part of these systems are exempt from this requirement under 5 U.S.C. 552a (j)(2),(k)l1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major parts of these systems are exempt from this requirement under 5 U.S.C. 552a (j)(2),(k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system come primarily from citizens walking into this unit to register complaints. Sources also include but are not limited to investigative reports of federal, state and local law enforcement agencies, forensic reports, statements of witnesses and parties, as well as verbatim transcripts for grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and the work product of Assistant United States Attorneys and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b),(c) and (e) and have been published in the Federal Register.

JUSTICE/USA—004

SYSTEM NAME:

Citizen Correspondence Files.

SYSTEM LOCATION:

Executive Office for United States Attorneys, U.S. Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who write to the Executive Office for United States Attorneys, its Director or a member of his staff.

(b) Individuals who write to the Attorney General or the Department of Justice and whose letter is referred to

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the Executive Office of United States Attorneys.

(c) Individuals whose letter has been referred to the Executive Office of United States Attorneys for a response by the White House, Executive Agencies or Members of Congress.

In all of the above categories, the individuals include only those who express general views or seek information or assistance. Freedom of Information requests are not indexed in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters or notes concerning the subject of the correspondence and copies of any enclosures. The system is arranged alphabetically by the last name of the original correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

(*a*) Information from the responses may be provided to the *referrer* of the original correspondence. All other uses are internal within the Department.

(*b*) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(*c*) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record *and;*

(*d*) Release of information to the National Archives and Records *Administration (NARA) and the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored within manila file folders, within metal file cabinets. *Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats and for management information purposes.*

RETRIEVABILITY:

The system is indexed by name, arranged alphabetically. *Information may be accessed by means of cathode-ray tube terminals.*

SAFEGUARDS:

The correspondence is maintained in a room which is occupied by office personnel during the day and locked at night. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department retention plans.

SYSTEM MANAGER(S) AND ADDRESS:

Director: Executive Office of United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 25030.

NOTIFICATION PROCEDURE:

Same as the above.

RECORDS ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and address as included in the original letter, together with the current address if different, the date of the letter and to whom it was addressed. Requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Any request for correction should also be directed to the System Manager and should indicate the exact correction required.

RECORD SOURCE CATEGORIES:

Sources of information in this system are the actual letter received, the response and any transmitted information and enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USA—006

SYSTEM LOCATION:

Consumer Complaints.

U.S. Attorney's Office: **Judiciary Center Bldg., 555 4th St. N.W.; Washington, D.C. 20001.**

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system may be broadly classified in four categories: (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) Those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) Those individuals upon whom investigations were conducted, but no prosecution was initiated; and (4) Complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contained allegations of consumer fraud by citizens of the District of Columbia Metropolitan area. It includes names, addresses, and the substance of the complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.28 U.S.C. 547.23 D.C. Code 101(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in the system of records may be disseminated as a routing use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records of extracts thereof relating to a case or matter may be disseminated

to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an acutal or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local or foreign prison, probation parole, ball or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty of convention entered into or ratified by the United States;

(9) A record may be disseminated to federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(*12*) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(*13*) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record *and;*

(*14*) Release of information to the National Archives and Records *Administration (NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is stored in the Fraud Section of the U.S. Attorney's Office.

RETRIEVABILITY:

Information is retrieved via a cross-index by complainant and potential defendant.

SAFEGUARDS:

Information contained in this system is unclassified. It is protected in accordance with Departmental rules and is safeguarded in the U.S. Attorney's Office in the Fraud Section.

RETENTION AND DISPOSAL:

The records are stored for a period of at least the statute of limitations for the offense charged.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fraud Division, U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th Street,* NW., Washington D.C. 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are complaints referred to the U.S. Attorney's Office by citizens and consumer protection agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exampted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USA-008

SYSTEM NAME:

Freedom of Information Act/Privacy Act Files.

SYSTEM LOCATION:

Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530; *U.S. Attorney's Office for the District of Columbia, 555 4th St. N.W., Washington, D.C. 20001; Ninety-three* United States Attorney's Offices (see attached Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who write to the Executive Office for United States

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Attorneys, its Director or a member of his staff, or a U.S. Attorney's office.

(b) Individuals who write to the Attorney General or the Department of Justice or the FOI/PA Unit and whose letter is referred to the Executive Office for United States Attorneys.

(c) Individuals whose letter has been referred to the Executive Office for United States Attorneys for a response by the FOI/PA Unit or Appeals Unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters or notes concerning the subject of the request and copies of any enclosures. The system is arranged alphabetically by the last name of the original requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101 and the provisions of the Freedom of Information Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Information from the responses may be provided to the referrer or the original request of the requester. All other uses are internal within the Department.

(b) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record *and;*

(d) A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration and to the General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored within manila file folders, within metal file cabinets. *Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats and for management information purposes.*

RETRIEVABILITY:

The system is indexed by name *of the requester,* arranged alphabetically. Information may be accessed by means of cathode-ray tube terminals (CRT's).

SAFEGUARDS:

The correspondence is maintained in a room which is occupied by office personnel during the day and locked at night. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department retention plans.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530; *Chief, Civil Division, Office of the U.S. Attorney for the District of Columbia, 555 4th St. N.W. Washington, D.C. 20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Managers listed above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information" or "Privacy Access Request." Include in the request the name and address as included in the original letter, together with the current address if different, the date of the letter and to whom it was addressed. Request should be directed to the system managers listed above.

CONTESTING RECORD PROCEDURES:

Any requests for correction should also be directed to the System Managers and should indicate the exact correction required.

RECORD SOURCE CATEGORIES:

Sources of information in this system are the actual letter received, the response and any transmitted information and enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in this system from subsection (c)(3), (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register.**

JUSTICE/USA-009

SYSTEM NAME:

Kline—District of Columbia and Maryland—Stock and Land Fraud Interrelationship Filing System.

SYSTEM LOCATION:

U.S. Attorney's Office; *Judiciary Center Bldg., 555 4th Street, NW.; Washington, DC 20001.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system may be broadly classified in three categories: (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) Those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) Those individuals upon whom investigations were conducted, but no prosecution was initiated. These include but are not limited to possible witnesses, corporate entities, corporate employees, business contacts, financial institutions and governmental contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index record for individual names and types of transactions with named individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case of matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiations or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency, or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record *and;*

(14) Release of information to the National Archives and Records *Administration (NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored electronically in the Department of Justice Juris System.

RETRIEVABILITY:

Information is retrieved primarily by referencing the individuals' names who participated in the business transactions.

SAFEGUARDS:

Information contained in this system is protected as though it was classified as confidential. It is accessible only to holders of the entry code: the only holders of the code are the U.S. Attorney's Offices for the District of Columbia and Maryland.

RETENTION AND DISPOSAL:

The records are to be retained for the period of usefulness as determined by the U.S. Attorney's Office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fraud Division; U.S. Attorney's Office; *Judiciary Center Bldg. 55 4th Street* NW; Washington D.C. 20001.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a. (j)(2), (k)(l), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for success to a record from this system shall be made in writting, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information contained in this system are individuals who have cooperated with the U.S. Attorney's Office in the investigation of criminal activity.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), and (H), (e)(5), and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/USA—010

SYSTEM NAME:

Major Crimes Division Investigative Files.

SYSTEM LOCATION:

U.S. attorney's Office; *Judiciary Center Bldg., 555 4th St.*, N.W., Washington, D.C. 20001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in the Major Crimes Division Investigative Files may be broadly classified in four categories: (1) Those individuals who have been charged with Federal and D.C Code violations; (2) those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) those individuals upon whom investigations were conducted, but no prosecution was initiated; and (4) other informants.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the standard files maintained in accordance with the U.S. Attorney's Manual and the Department of Justice Docket and Reporting System, there are also maintained in the Major Crimes Division of this office certain investigative and intelligence files. The type of information maintained is identifying data, criminal records, intelligence compiled for the purpose of investigation of criminal offenses, criminal investigative reports, informant debriefing summaries, and information provided in confidence during investigative and prosecutive states of criminal cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301, 28 U.S.C. 547.23 D.C. Code 101(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(14) Release of information to the National Archives and Records *Administration (NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained in memorandum form in file folders.

RETRIEVABILITY:

Information is retrieved primarily by the name of a person, complaint number, court docket number, FBI number, Metropolitan Police Department identification number and District of Columbia Department of Corrections number.

SAFEGUARDS:

Information contained in the system is both unclassified and classified and is safeguarded and protected by being maintained in tumbler locked file safes in the Major Crimes Division which is manned during all times that it is open and at other times is locked. This room is located in the U.S. Courthouse which is guarded by the Federal Protective Service twenty four hours a day with roving patrols during non-working hours.

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with Title 8, U.S. Attorney's Manual, pages 70–77.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Major Crimes Division; U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th Street, NW.*, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manger listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendments to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are investigative reports of federal, state and local law enforcement agencies, statement of witnesses, informants and parties, as well as verbatim transcripts of grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and the work product of Assistant United States Attorneys and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA—011

SYSTEM NAME:

Prosecutor's Management Information System (PROMIS).

SYSTEM LOCATION:

U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th Street*, NW., Washington, D.C. 20001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in PROMIS are as follows: (1) Those individuals who have been charged with criminal violations: (2) those individuals who are currently under investigation for criminal violations: (3) those individuals upon whom criminal investigations were conducted, but no prosecution was initiated; and (4) the names and addresses of all witnesses and arresting police officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data in PROMIS fall into six major categories.

1. Information about the accused or defendant. This includes name, alias, sex, race, date of birth, address, facts about prior arrest and convictions, and employment status. If judged appropriate, additional data could be added, such as information about alcohol or drug abuse. Some of this information is used to rate the gravity of the case in terms of the defendant's criminal history.

2. Information about the crime. The date, time, and place of the crime; the number of persons involved in the crime; and a numerical rating reflecting the gravity of the crime in terms of the amount and degree of personal injury, property damage or loss, and intimidation.

3. Information about the arrest. The date, time, and place of the arrest, the type of arrest and identity of the arresting officers.

4. Information about criminal charges. The charges originally placed by the police against the arrestee the charges actually filed in court against the defendant, the reasons for changes in the charges by the prosecutor, the penal statute for the charge, the FBI Uniform Crime Report Code for the charge, and the Project SEARCH Code for the charge.

5. Information about court events. The dates of every court event in a case from arraignment through motion hearing, continuance hearing, final disposition, and sentencing; the names of the principals involved in each event, including the defense and prosecution attorneys and judge; the outcomes of the events and the reasons therefor.

6. Information about witnesses. The names and addresses, the prosecutor's assessment of whether the witnesses are essential to the case, and any indications of reluctance to testify by the witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use by such records as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation,

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trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings, or to the Public Defender Service in connection with caseload management of other purposes;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made or to assist in eliciting additional information;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(*12*) This office utilizes it to track the workload of the criminal court process from three separate vantage points. First, the workload is tracked from the vantage point of the crime or criminal incident. This is accomplished by including in PROMIS the complaint number which the police department assigns to a reported crime. With this number, prosecutors can follow the full history of the court actions arising from the crime even though those actions may involve multiple defendants, multiple cases, and multiple trials and dispositions.

(*13*) PROMIS tracks the court workload from the vantage point of the accused or defendant. This is achieved by incorporating in PROMIS the fingerprint-based number the police department assigns to the individual following his or her arrest. This identfication number is used again by the department if the same individual is subsequently arrested. Through this number, prosecuting attorneys accumulate criminal history files on offenders and note incidents of recidivism.

(*14*) PROMIS tracks from the vantage point of the court proceedings. This is accomplished by including in PROMIS the docket number the Court assigns to the case pending before it. With this number, prosecutors trace the history of any formal criminal action from arraignment through final disposition and sentencing, and account for the separate fate of each count or charge.

The inclusion of these three numbers is significant. The numbers provide a capability to track the criminal incident, the defendant, or the court actions and provide the basis for the routine communication among the various Federal, state, local, and foreign law enforcement agencies.

(*15*) PROMIS generates, on a recurring basis, five categories of reports: Misdemeanor calendars, felony calendars, case status reports, workload reports, and special reports. These reports are prepared from information contained in the data base both by persons employed by this office, the Justice Department and persons under contract to the Department for this purpose.

(*16*) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of the particular case would constitute an unwarranted invasion of personal privacy.

(*17*) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and

(*18*) Release of information to the National Archives and Records *Administration (NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored on magnetic tapes and discs at the District of Columbia Metropolitan Police Department Computer Center. Printouts from the terminals are stored with case jackets. Status, calendars, and statistical reports are stored in the files and offices of supervisory attorneys.

RETRIEVABILITY:

This system has an on-line data retrieval capability with respect to certain information continued in the data base. These subsets of information are retrieved on data display terminals which are located at various work stations throughout the office. Certain of these terminals have a printout capability. All information on these subsets is a matter of public record. The system also has the capability for the production of periodic reports. Both the periodic reports and the on-line displays are utilized in accordance with the above listed routine uses.

SAFEGUARDING:

The magnetic tapes and discs are maintained in a secure vault at the Metropolitan Police Department Computer Center. In addition to the physical security safeguards, there is a twenty-four hour patrol. The data display terminals are located in semi-public areas of the office (i.e., administrative work stations through which the public must pass on official business). However, only trained operators may retrieve the information, which is of public record. The terminals are not open to the public after working hours.

RETENTION AND DISPOSAL:

The files are retained and disposed of in accordance with Title 8, U.S. Attorney's Manual, pages 70–77.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant: United States Attorney; *Judiciary Center Bldg., 555 4th St. NW.,* Washington, DC. *20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (j)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

About 80 percent of the data contained in PROMIS is obtained at the intake and screening stage as the by-product of the case documentation process. Carbon copies of various forms completed immediately before or during the case screening stage serve as input documents for PROMIS.

As a case moves through the subsequent proceedings, additional information about its status is fed to PROMIS. This is achieved through turnaround documents—forms generated by PROMIS in advance of a court event—on which the results of a given processing (e.g., preliminary hearing, sentencing, etc.) are recorded and then entered in PROMIS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the. **Federal Register.**

JUSTICE/USA—013

SYSTEM NAME:

U.S. Attorney, District of Columbia Superior Court *Operations,* Criminal Files, including but not limited to the following subsystems: (a) Criminal File Folder (USA–S1), (b) Criminal File Folder (USA–33), (c) Criminal Docket Card (USA–T7), and (d) Index.

SYSTEM LOCATION:

U.S. Attorney's Office *Judiciary Center Bldg., 555 4th St.* NW.; Washington, D.C. 20001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained may be broadly classified in three categories (1) Those individuals who have been charged with criminal violations; (2) those individuals who are currently under investigation for criminal violations; and (3) those individuals upon whom criminal investigations were conducted, but no prosecution was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records, consisting of numbered Criminal File Folders, (USA–S1 and USA–33), contains criminal investigative reports about named individuals submitted to this office by federal, state, local and foreign law enforcement agencies involved with the investigation of suspected violations as well as by complaints made by private parties. Those matters which become cases either by way of indictment or information in addition to the data contained in the investigative reports, also contain copies of indictments, informations, complaints, and all pleadings submitted to the court in connection with the actual prosecution of the case. These files also contain communications between the Court and agencies thereof, and the United States Attorney, and all correspondence relative to the case or matter. The files further contain psychiatric, chemical and other forensic reports, documentary evidence and the work product and internal memoranda of the Assistant United States Attorney in charge of the investigation compiled in preparation for the prosecution of each case. In those cases which have gone through trial and appeal, the file would further reflect transcripts of the trial, all pleadings and correspondence between the attorneys and the Court of Appeals, and copies of briefs submitted in the prosecution of the Appeal.

A *synopsis* record of a matter or case is maintained by means of a criminal docket card (USA–T7), for all actions through sentencing. A synopsis record of a case on appeal is maintained on an Appellate Docket Card (USA–9X–199), Appellate Proceedings). All of these subsystems comprise an internal cross-reference record keeping system of the criminal business at the office. Through the medium of forms and on-line data input, certain of this information is conveyed to a computer center for inclusion in the Prosecutor's Management Information System (a system which will be reported on separately), from which status and statistical reports are issued and distributed back to this office either in the form of computer printouts or on data display terminals which contain much of the same information as the files in different format.

Because of the number of diverse functions which must be performed with respect to each case; and because of the large volume of cases and because operations are conducted in three separate buildings, there are a number of file folder locator mechanisms and cross references utilized to constantly track a file folder when it is not physically located in file control. These indexes or locators are maintained in the form of 'out cards,' log books index card files, etc. They are referenced by name, number, and other identifiers. In themselves, they are not separate systems of records, but indexes or references to the primary system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

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(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trail or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made or to assist in eliciting additional information;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody, maintenance, transportation or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be assessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available for systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests for information on behalf of and at the request of the individual who is the subject of the record; and

(14) Release of information to the National Archives and Records *Administration (NARA) and to the General Services Administration (GSA):* A record from a system of records may be disclosed as a routine use to *NARA and GSA* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the various indexes is maintained on index cards, log books, out cards, etc. The criminal files themselves are maintained in criminal file folders (USA–S1 and USA–33). The synopsis information is maintained on a Criminal Docket Card (USA–T7) and Appellate Proceedings (USA–9X–199).

RETRIEVABILITY:

Information is retrieved primarily by the name of a person, complaint number, court docket number, FBI number, Metropolitan Police Department identification number and District of Columbia Department of Corrections number.

SAFEGUARDS:

Information contained in the system is both unclassified and classified and is safeguarded and protected by being maintained in filerooms which are manned during all times that they are open and at other times are locked. These rooms are located in the Superior Court for the District of Columbia, Buildings B and G which are guarded by the federal protective service twenty-four hours a day with roving patrols during non-working hours. Files which are not in the filerooms but which are checked out to attorneys are maintained in locked offices after working hours.

RETENTION AND DISPOSAL:

The files are retained and disposed of in accordance with Title 8, U.S. Attorney's Manual, pages 70–77.

SYSTEM MANAGER(S) AND ADDRESS:

Administtrative Officer; U.S. Attorney's Office; Superior Court *Operations, 555 4th Street. NW.*, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the latter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include but are not limited to investigative reports of federal, state and local law enforcement agencies, forensic reports, statements of witnesses and parties, as well as verbatim transcripts of grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and work product of Assistant United States Attorney and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 533 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA-999

SYSTEM NAME:

Appendix of United States Attorney Office locations: (Written requests for access to records in any of the following U.S. Attorney's offices except the District of Columbia may be addressed to:

FOIA/Privacy Unit, Patrick Henry Building, 601 D Street NW., Room 6410, Washington, D.C. 20530.

Requests for access to records in the District of Columbia may be addressed to:

FOIA/Privacy, United States Attorney's Office, for the District of Columbia, Judiciary Center Building, 555 4th Street NW., Washington, D.C. 20001.

Systems are located as listed below:

Alabama, N.
200 Federal Building
1800 Fifth Avenue North
Birmingham, Alabama 35203

Alabama, M.
306 U.S. Post Office & Courthouse Building
15 Lee Street
Montgomery, Alabama 36104

Alabama, S.
Rm. 305, U.S. Courthouse Bldg. 113 St. Joseph Center Mobile, Alabama 36602–3685

Alaska
Fed. Bldg. & U.S. Courthouse
Rm. C–252, Mail Box 9
701 C Street
Anchorage, Alaska 99513

Arizona
4000 U.S. Courthouse
230 North First Avenue
Phoenix, AZ 85025

Arkansas, E
331 P.O. & Courthouse Bldg.
600 West Capitol
Little Rock, Arkansas 72201

Arkansas, W
6th & Rogers
U.S. Post Office & Courthouse Bldg.
Fort Smith, Arkansas 72901

California, N
450 Golden Gate Avenue
San Francisco, Calif. 94102

California, E
3305 Federal Building
650 Capitol Mall
Sacramento, Calif. 95814

California, C
312 N. Spring Street Los Angeles, Calif. 90012

California, S
940 Front Street
Rm. 5–N–19
U.S. Courthouse
San Diego, Calif. 92189

Colorado
1961 Stout Street
Suite 1200—Drawer 3615
Federal Office Bldg.
Denver, Colorado 80294

Connecticut
United States Courthouse
141 Church Street
New Haven, Connecticut 06510

Delaware
J. Caleb Boggs Fed. Bldg.
844 King Street, Rm. 5110
Wilmington, Del. 19801

D.C.
Judiciary Center Bldg.
555 4th Street NW.
Washington, D.C. 20001

Florida, N
227 N. Bronough Street
Suite 4014
Tallahassee, Florida 32301

Florida, M
Robert Timberlake Bldg., Rm. 410
500 Zack Street
Tampa, Florida 33602

Florida, S
155 South Miami Avenue
Miami, Florida 33130

Georgia, N
Suite 1600 Richard Russell Bldg.
75 Spring Street, SW.
Atlanta, Georgia 30335

Georgia, M
Old. P.O. Bldg., Rm 303
Mulberry & 3rd Streets
Macon, Georgia 31202

Georgia, S
U.S. Courthouse, Room 237
125 Bull Street
Savannah, Georgia 31412

Guam
Suite 502–A, PDN Bldg.
238 O'Hara Street
Agana, Guam 96910

Hawaii
Rm. C–242, PJKK Federal Bldg.
Box 50183, 300 Ala Moana Blvd.
Honolulu, Hawaii 96850

Idaho
Rm. 328 Federal Building
Box 037, 550 W Fort Street
Boise, Idaho 83724

Illinois, N
Everett McKinley Dirksen Bldg.
Rm. 1500 S, 219 S. Dearborn Street
Chicago, Illinois 60604

Illinois, S
Rm. 330
750 Missouri Avenue
East St. Louis, Illinois 62201

Illinois, C
Rm. 312, USPO & Federal Bldg.
600 East Monroe Street
Springfield, Illinois 62705

Indiana N
4th Floor, Federal Building
507 State Street
Hammond, Ind 46320

Indiana, S
274 U.S. Courthouse
46 E. Ohio Street
Indianapolis, Ind 46204

Iowa, N
425 2nd Street, Suite 950
The Center
Cedar Rapids, Iowa 52401

Iowa, S
115 U.S. Courthouse
E 1st & Walnut Streets
Des Moines, Iowa 50309

Kansas
385 Federal Building
444 Quincy Street
Topeka, Kansas 66683

Kentucky, E
Fourth Floor
Federal Building
Limestone & Barr Streets
Lexington, Kentucky 40507

Kentucky, W
Bank of Louisville Bldg.
510 West Broadway, 10th Floor
Louisville, Kentucky 40202

Louisiana, E
Hale Boggs Fed. Bldg.
500 Camp Street
New Orleans, LA 70130

Louisiana, M
352 Florida Street
Baton Rouge, LA 70801

Louisiana, W
Rm. 3B12, Fed. Bldg.
500 Fannin Street
Shreveport, LA 71101

Maine
East Tower—6th Floor
100 Middle Street Plaza
Portland, Maine 04101

Maryland
8th Floor, U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201

Massachusetts
1107 John W. McCormack Fed. Bldg.
USPO & Courthouse
Boston, Mass 02109

Michigan, E
817 Federal Building
231 W. Lafayette

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Detroit, Michigan 48226
Michigan, W
399 Federal Building
Grand Rapids, Michigan 49503
Minnesota
234 U.S. Courthouse
110 South 4th Street
Minneapolis, Minn. 55401
Mississippi, N
Rm. 255 Federal Building
911 West Jackson Avenue
Oxford, Miss. 38655
Mississippi, S
245 East Capitol St., Rm. 324
Jackson, Miss. 39205
Missouri, E
Rm. 414, U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101
Missouri, W
549 U.S. Courthouse
811 Grand Avenue
Kansas City, MO 64106
Montana
5043 Federal Building
26th Street & 3rd Avenue, N
Billings, Montana 59103
Nebraska
Room 8000, USPO & Courthouse
215 N 17th Street
Omaha, Nebraska 68101
Nevada
Phoenix Bldg., Seventh Floor
330 South Third Street
Las Vegas, Nevada 89101
New Hampshire
55 Pleasant Street, Rm. 439
Fourth Floor, Federal Bldg.
Concord, New Hampshire 03301
New Jersey
Federal Building
970 Broad Street, Rm. 502
Newark, N.J. 07102
New Mexico
U.S. Courthouse, Rm. 12020
500 Gold Avenue, S.W.
Albuquerque, New Mex. 87103
New York, N
Rm. 369 U.S. Courthouse & Fed. Bldg.
100 South Clinton Street
Syracuse, N.Y. 13260
New York, S
One St. Andrews Plaza
New York, N.Y. 10007
New York, E
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201
New York, W
502 U.S. Courthouse
Court & Franklin Streets
Buffalo, N.Y. 14202
N. Carolina, E
874 Federal Building
310 New Bern Avenue
Raleigh, N.C. 27611
N. Carolina, M
326 Federal Bldg., & P.O. Bldg.
324 West Market Street
Greensboro, N.C. 27402
N. Carolina, W
Rm. 306, U.S.P.O. & Courthouse
Post & Otis Streets
Asheville, N.C. 28802
N. Dakota
219 Federal Building
655 1st Avenue, North
Fargo, N.D. 58108
Ohio, N
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114
Ohio, S
200 U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215
Oklahoma, N
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Okla 74103
Oklahoma, E
333 Federal Courthouse & Office Bldg.
Fifth & Okmulgee
Muskogee, Okla 74401
Oklahoma, W
Room 4434
U.S. Courthouse & Fed. Office Bldg.
Oklahoma City, Okla 73102
Oregon
312 U.S. Courthouse
620 S.W. Main Street
Portland, Oregon 97205
Penn. E
3310 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106
Penn. M
Suite 309, Federal Building
Washington & Linden Streets
Scranton, PA 18501
Penn. W
633 U.S.P.O. & Courthouse
7th Avenue & Grant Street
Pittsburgh, PA 15219
Puerto Rico
Rm. 101, Fed. Office Bldg.
Carlos E. Chardon Avenue
Hato Rey, P.R. 00918
Rhode Island
Westminster Square Building
10 Dorrance Street
Providence, R.I. 02903
South Carolina
Federal Building
1100 Laurel Street
Columbia, S.C. 29201
S. Dakota
135 Fed. Bldg., & U.S. Courthouse
400 S. Phillips Avenue
Sioux Falls, S.D. 57102
Tennessee, E
509 Main Street
Knoxville, TN 37901
Tennessee, M
Room 879, U.S. Courthouse
801 Broadway
Nashville, TN 37203
Tennessee, W
1026 Fed. Office Bldg.
167 North Main Street
Memphis, TN 38103
Texas, N
310 U.S. Courthouse
10th & Lamar Streets
Ft. Worth, TX 76102
Texas, S
Courthouse & Federal Bldg.
515 Rusk Avenue, 3rd Floor
Houston, TX 77002
Texas, E
700 North Street, Suite 600
Beaumont, TX 77701
Texas, W
727 E. Durango Blvd.
Suite A-601
San Antonio, TX 78206
Utah
U.S. Courthouse, Room 466
350 South Main Street
Salt Lake City, UT 84101
Vermont
Federal Building
11 Elmwood Avenue, 6th Floor
Burlington, VT 05401
Virgin Islands
Federal Bldg., & U.S. Courthouse
Veterans Drive, Rm. 260
Charlotte Amalie
St. Thomas, V.I. 00802
Virginia, E
1101 King Street
Suite 502
Alexandria, VA 22314
Virginia, W
Room 456, Poff Federal Bldg.
210 Franklin Road, SW.
Roanoke, VA 24011
Washington, E
851 U.S. Courthouse
West 920 Riverside
Spokane, WA 99201
Washington, W
3600 Seafirst 5th Ave., Plaza
800 Fifth Avenue
Seattle, WA 98104
West Virginia, N
Room 247, Federal Building
1125-1141 Chapline Street
Wheeling, WV 26003
West Virginia, S
Room 4106, Federal Building
500 Quarrier Street
Charleston, WV 25301
Wisconsin, E
330 Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202
Wisconsin, W
120 N. Henry Street, Room 420
Madison, WI 53703
Wyoming
J.C. O'Mahoney Fed. Building
Room 2141, 2120 Capitol Avenue
Cheyenne, WY 82001
North Mariana Islands
c/o U.S. Attorney's Office
6th Floor, Naura Bldg.
P.O. Box 377
Saipan, CM 96950

JUSTICE/USM-001

SYSTEM NAME:

U.S. Marshals Service Badge & Credentials File.

SYSTEM LOCATION:

Property Management Division, U.S. Marshals Service; *600 Army Navy Drive, Arlington, Virginia 22202-4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Marshals Service (USMS) Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to USMS personnel which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file serves as a record of issuance *of credentials. Information from this file may be disclosed (o) to* various law enforcement agencies, e.g., FBI, Secret Service, states, county and Municipal police.

(b) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwaranted invasion of personal privacy.

(d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard file folders.

RETRIEVABILITY:

Indexed by name of individual and numerical order of badges and credentials.

SAFEGUARDS:

Access restricted to personnel of the Property Management Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Division; United States Marshals Service, U.S. Department of Justice; *600 Army Navy Drive, Arlington, Virginia 22202-4210.*

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requester shall also Provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service Personnel Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-002

SYSTEM NAME:

Internal Inspections System.

SYSTEM LOCATION:

United States Marshals Service: Department of Justice: *600 Army Navy Drive, Arlington, Virginia 22202-4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service (USMS) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal Inspections System contains reports prepared by the Office of Internal Inspections. United States Marshals Service on findings of alleged misconduct of U.S. Marshals, Service employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of information may be disclosed (a) to U.S. Marshals Service *personnel* in disciplinary proceedings against employees. *(b) to the* extent that investigations reveal actual or potential violations of criminal or civil laws, to other Federal law enforcement agencies for further investigations.

(c) in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(f) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals stored in standard file folders.

RETRIEVABILITY:

Information is retrieved by name of employee.

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SAFEGUARDS:

Records are stored in locked safe.

RETENTION AND DISPOSAL:

Records are retained for 24 months and then referred to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Internal Inspections U.S. Marshals Service; U.S. Department of Justice, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURE:

Same as the System Manager.

RECORD ACCESS PROCEDURE:

To the extend that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above. Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information derived from investigation of alleged malfeasance, by U.S. Marshals Service Office of Internal Inspections.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM–003

SYSTEM NAME:

U.S. Marshals Service Prisoner Transportation System.

SYSTEM LOCATION:

Prisoner Transportation Division, U.S. Marshals Service (USMS), Department of Justice; *911 Walnut Street,* Kansas City, Missouri 64106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

D.J. 100's Compilation of identifying information for each prisoner taken into U.S. Marshal custody, when and where the prisoner is taken into custody, what he is charged with and where he is moved to. These files provide a ready reference source on the prisoner for purposes of arranging prisoner transportation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(k).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used in the transporting of prisoners, by USMS, Bureau of Prisons and other federal, state and local law enforcement officials.

Records or information may be disclosed as a routine use as *follows: (a)* in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to a Member of Congress or staff acting upon the Member's behalf where the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(d) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets. *Duplicate copies of paper records are stored on magnetic discs.*

RETRIEVABILITY:

Information is retrieved by name of prisoner and number.

SAFEGUARDS:

Access restricted to Operations Personnel. File cabinets are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are disposed of after 24 months.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Prisoner Transportation Division, United States Marshals Service U.S. Department of Justice, *911 Walnut Street,* Kansas City, Missouri 64106.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Identifying material of each prisoner taken into custody by the U.S. Marshal.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM–004

SYSTEM NAME:

Special Deputy File.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Deputies, who are selected law enforcement officers or employees of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputization file contains oath of office of persons utilized as deputy marshals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR Subpart T. Section 0.112, 28 U.S.C. 562.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed (a) to Federal agencies for whom the Marshals Service has deputized employees.

(b) in a proceeding before a Court or adjudicated body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed in standard file cabinets. *Duplicate copies of paper record are stored on magnetic discs.*

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, U.S. Marshals Service, U.S. Department of Justice, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Federal agencies requesting special deputations provide all necessary information required by the Marshals Service in making the special deputations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM–006

SYSTEM NAME:

United States Marshals Service Training Files (Justice/USM–006).

SYSTEM LOCATION:

a. Primary system: Associate Director for Administration, U.S. Marshals Service (USMS), *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under "Category of Records in the System," are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program (See Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan: (2) Skills files identify languages and other special skills possessed by the individual USMS employee: and (3) individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF–78) is maintained in the primary system at USMS Headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE OF THE SYSTEM

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to

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examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files are used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed as a routine use *(a)* in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to congressional *members or staff* on behalf of constitutents.

(d) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of Title 44 of the United States Code.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during nonduty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/ employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the USMS at which time paper records are shredded and magnetic discs are erased.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Associate Director for Administration, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURES:

Direct inquires to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/ Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information Act/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention; FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM–007

SYSTEM NAME:

Warrant-Information System.

SYSTEM LOCATION:

Primary System: Enforcement Operations Division, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202–4210.

Decentralized Segments: Each district office of the U.S. Marshals Service (USMS) maintains their own files. See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals for whom Federal warrants have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

The warrant and other court records and internal correspondence related to the warrant; biographical data including physical description, photograph and criminal history; wanted flyers/posters and investigative reports reflecting patterns of activity, leads developed, statements of witnesses and other persons cooperating with USMS fugitive investigations. Investigative reports and criminal record information from other Federal, State, local and foreign law enforcement agencies participating in or cooperating with USMS fugitive investigations and apprehension efforts are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 USC 509, 510 and 569; 28 CFR 0.111(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records of information may be disclosed *(a)* to public and private organizations, individuals, and Federal, State, local, and foreign agencies to the extent necessary to obtain information or cooperation in USMS fugitive investigations and apprehension efforts. *(b)* upon request, to the appropriate Federal, State, local, or foreign law enforcement agency responsible for investigating, prosecuring, enforcing, defending, or implementing a status, rule, regulation, or order, to the extent that the information is relevant to the recipient's function. *(c)* without a request, to an appropriate Federal, State or local law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency. *(d)* in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(e) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) to a Member of Congress of staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(g) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on Roladex Cards and in standard file folders. *Duplicate copies of paper records are stored on magnetic discs.*

RETRIEVABILITY:

Records are retrieved by individual names.

SAFEGUARDS:

Access is restricted to personnel in *the Enforcement Operations Division and in* each district's U.S. Marshals office. Records are maintained in metal file cabinets within supervised areas of the U.S. Marshal's Offices. District Offices are locked during working and non-duty hours and entry is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records are kept in operating file until warrant is executed and then transferred to closed files, where they are indefinitely kept.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Enforcement Operations Division; U.S. Marshals Service; U.S. Department of Justice; *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

RECORD SOURCE CATEGORIES:

Information is obtained from the courts. Federal, State, local and foreign law enforcement agencies, public and private organizations, witnesses, informants and other persons interviewed during the course of the fugitive investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). (2) Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USMS–008

SYSTEM NAME:

Witness Security Files Information System.

SYSTEM LOCATION:

Witness Security Division, United States Marshals Service (USMS), Department of Justice, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses who are participants in the Federal Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Request to enter program; (2) background information (education, experience, medical history, names, relatives, etc); (3) funding information; (4) moving information; (5) documentation of all the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the Witness Security Program is 28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 28 U.S.C. 524; 18 U.S.C. *3521.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used by U.S. Marshals Service personnel as working files to plan and accomplish major functions of witness security e.g. protection of government witnesses and their families. *Records or information may be disclosed as follows: (a)* in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(d) the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Filed according to ID special number.

SAFEGUARDS:

Locked files limited access—(Witness Security Personnel).

RETENTION AND DISPOSAL:

All records at this time are being indefinitely maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Witness Security Division; U.S. Marshals Service, U.S. Department of Justice, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual; (1) education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM–009

SYSTEM NAME:

U.S. Marshals Service Threat Analysis Information System.

SYSTEM LOCATION:

Threat Analysis, *Division,* U.S. Marshals Service (USMS), *600 Army*

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Navy Drive, Arlington, Virginia 22202–4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have directly threatened or pose a violent threat to Government witnesses, U.S. Attorneys and their assistants, Federal jurists and other court officials, U.S. Marshals, deputies and other law enforcement officers; to courtroom security; and to Federal property and buildings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name, social security number, known aliases, address, telephone number, descriptive physical data, an indication of the means by which the threat was issued, and the date of the threat. In addition to the abbreviated data named above, the complete file may contain criminal record information—in particular, known history of violence and skills related to the nature of the threat, associations with dangerous/outlaw gangs or violent extremist groups; and threat-related, investigative information furnished by other Federal, State and local law enforcement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USMS officials responsible for conducting threat analysis and for planning and carrying out security operations access this information. Records or information may be disclosed *(a)* to other appropriate Federal, State and local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency, or to the extent that disclosure is necessary to obtain additional threat-related information or to develop protective measures. *(b)* To other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat. *(c)* In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation; the USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) As is necessary to appropriately respond to congressional inquiries on behalf of constituents.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic disks. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name.

SAFEGUARDS:

Access to computerized records is restricted to Threat Analysis *Division* personnel by assigned code. In addition, records are stored in locked metal filing cabinets during off-duty hours. The records are located in a restricted area and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by MARA and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Threat Analysis *Division*, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURE:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.4(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USMS–010

SYSTEM NAME:

Judicial Facility Security Index System.

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS), *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed, or offered employment as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in Federal courthouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

An alphabetical index contains the name, date of birth and social security number of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment; dates contract performance started and ended, posts and hours of duty and the status of

employment, i.e., active or inactive. For inactive CSO's; the index contains the reason for inaction, e.g. CSO resigned; applicant rejected based on the preliminary records check; CSO removed base of Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated data, the index assists in locating records on the court security officer related to the initial screening process for eligibility, e.g., application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists in locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by the categories "active" and "inactive."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111 (c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Contracting personnel and court security program officers within the USMS use this system to make security/suitability determinations in the hiring of contract court security officers, to monitor orientation completed, to track costs related to background investigations and attendance at Government-sponsored orientation, to monitor orientation completed, and to monitor contractor performance. Records may be disclosed as follows: Individual cost data may be disclosed to the contractor (employer) in connection with billing and recovering reimbursable costs. *In addition, records or information also may be disclosed as follows: (a) to* an appropriate Federal, State or local law enforcement agency to the extent necessary to obtain information on arrests, or to the extent relevant to an actual or potential, criminal or civil investigation, litigation or enforcement proceedings of that agency. (*b*) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(*c*) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. *(d)* to congressional *members or staff* on behalf of constituents.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract court security officer.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the NARA and the USMS.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia.*

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM, and from the contractor (employer).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM–011

SYSTEM NAME:

Judicial Protection Information System

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS), *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by *virtue* of their responsibilities within the judicial system, e.g., U.S. Attorneys and their assistants, Federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name of protectee, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, e.g., individual practices and *routines*, including associational memberships. Information regarding the expenditure of funds and allocation of

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resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed (a) to USMS officials responsible for planning and carrying out security operations *(b) to* other Federal, State and local law enforcement agencies to the extent that disclosure is necessary to develop and/or implement protective measures. *(c)* in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following in a party to litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) congressional *members or staff* on behalf of constituents.

(f) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name of protectee.

SAFEGUARDS:

Access to computerized records is restricted to Court Security Division personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARA and the USMA.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURE:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from individual protectees. Where information is maintained in this system on identified threat sources to a particular protectee, such information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies, and is not retrievable by name or other identifying particular assigned to the threat source.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM–012

SYSTEM NAME:

U.S. Marshals Service Freedom of Information Act/Privacy Act (FOIA/PA) Files.

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service, *600 Army Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request disclosure of U.S. Marshals Service (USMS) records pursuant to the Freedom of Informations Act (FOIA); individuals who request access to or correction of records maintained in USMS systems of records pursuant to the Privacy Act (PA); and individuals whose FOIA or PA requests have been referred to the USMS by another Department of Justice component or another agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical and chronological indices are maintained to aid in the orderly processing of requests and to compile statistical data for annual reports. Indices include such data items as the name and address of the requester; the type of requests; dates on which the request was received, acknowledged and answered; type or final responses; and exemptions used to deny access to records, when applicable. Identifying data, i.e., date and place of birth and social security number, is maintained on PA requesters to verify their identity and ensure proper disclosure. Files contain a record of the FOIA/PA request, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use:

(a) To any Department of Justice component for consideration in connection with an FOIA or PA request, appeal, or civil suit pursuant to the Acts,

(b) To a Federal, State or local agency which furnished the record to permit that agency to make a decision as to access or correction, or to consult with that agency to enable the USMS to determine the propriety access or correction.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions. In addition, records or information which is relevant to the subject matter involved in a pending judicial or administrative proceeding may be disclosed in response to a request for discovery or for appearance of a witness.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To congressional *members or staff* on behalf of constituents.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Requests files are stored in standard cabinets. *Duplicate copies of paper records are maintained on magnetic discs.*

RETRIEVABILITY:

Records are retrieved by name of requester.

SAFEGUARDS:

Access to computerized records is restricted to Office of Legal Counsel personnel. In addition, request files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters is controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Records are destroyed 6 years after final response or appeal determination by the Department of Justice. Office of Information and Privacy; or 3 years after final adjudication by the courts.

SYSTEM MANAGER AND ADDRESS:

General Counsel, Office of Legal Counsels, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above. Attention: FOIA/PA Officer. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests and other agencies who have referred to the USMS those requests for access to or correction of USMS records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5). The system is exempted pursuant to subsections (j)(2) and (k)(2) only to the extent that the records there reflect criminal and civil law enforcement and investigative information. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect confidential sources. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM–013

SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files.

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service (USMS), *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; and individuals named as defendants in Federal Court actions initiated by the USMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the titles of cases, index cards contain certain summary data, e.g.; a summary of correspondence and pleadings received in a case, names of parties involved; name of attorney handling the case or matter, court in which action is brought, civil action number, and an indication of whether the case is open or closed, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action e.g., criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from non-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in this system of records may be disseminated as follows:

(a) To any component of the Department of Justice for consideration in connection with the case or matter to which the record relates; (b) To the appropriate Federal, State or local agency responsible for investigating, prosecuting or defending an action where there is an indication of actual or potential violation of criminal or civil laws or regulations or civil liability of any government action; (c) To any Federal, State or local agency, organization or individual to the extent necessary to elicit information or witness cooperation if there is reason to believe the recipient possesses information related to the case or matter; (d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions; (e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (f) To respond to a request for discovery or for appearance of a witness when the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To congressional *members or staff* on behalf of constituents.

(i) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Administrative claim appeal and litigation files are stored in standard file cabinets. *Duplicate copies of paper records are stored on magnetic discs.*

RETRIEVABILITY:

Records are retrieved by name of claimant or litigant, or by caption of civil action or administrative proceeding.

SAFEGUARDS:

Access to computerized records is restricted to Office of Legal Counsel personnel. In addition, files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters in controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Index cards are retained indefinitely. Claim files are destroyed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of Legal Counsel, U.S. Marshals Service, *600 Army Navy Drive, Arlington, Virginia 22202–4210.*

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4); (d); (e) (2) and (3); (e)(4) (G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

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Appendix to U.S. Marshals Service Systems of Records, Official Addresses of United States Marshals.

Northern Alabama
1729 5th Avenue, North, Room 240, Birmingham, Alabama 35203
Middle Alabama
P.O. Drawer 4249, Montgomery, Alabama 36103
Southern Alabama
P.O. Box 343, Mobile, Alabama 36601
District of Alaska
U.S. Courthouse & Federal Building, 222 W. 7th Avenue, #28, Anchorage, Alaska 99513–7568
District of Arizona
8204 U.S. Courthouse, 230 North First Avenue, Phoenix, Arizona 85025
Eastern Arkansas
P.O. Box 8, Little Rock, Arkansas 72203
Western Arkansas
P.O. Box 2625, Fort Smith, Arkansas 72902
Northern California
20005 U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102
Eastern California
1020 U.S. Courthouse, 750 Capitol Mall, Sacramento, California 95814
Central California
U.S. Courthouse, 312 North Spring Street G–23, Los Angeles, California 90012–4798
Southern California

LLB–71 U.S. Courthouse, 940 Front Street, San Diego, California 92189
District of Colorado
Drawer 3599, Denver, Colorado 80294
District of Connecticut
P.O. Box 904, New Haven, Connecticut 06504
District of Delaware
4311 U.S. Courthouse, 844 King Street, Wilmington, Delaware 19801
District of Columbia
1103 U.S. Courthouse, 3rd & Constitution Avenue, N.W., Washington, D.C. 20001
District of Columbia Superior Court
Superior Courthouse, 500 Indiana Avenue, N.W., Room C–250, Washington, D.C. 20001
Northern Florida
P.O. Box 10229, Tallahassee, Florida 32302
Middle Florida
P.O. Box 2907, Tampa, Florida 33601–2907
Southern Florida
205 Federal Courthouse Square, 301 North Miami Avenue, Miami, Florida 33216–7765
Northern Georgia
1669 Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303
Middle Georgia
P.O. Box 7, Macon, Georgia 31202
Southern Georgia
P.O. Box 9765, Savannah, Georgia 31412
District of Guam
507 Pacific News Building, 238 Archbishop Flores Street, Agana, Guam 96910
District of Hawaii
P.O. Box 50184, Honolulu, Hawaii 96850
District of Idaho
741 U.S. Courthouse, 550 West Fort Street, Boise, Idaho 83724
Northern Illinois
219 S. Dearborn Street, Room 2444, Chicago, Illinois 60604
Southern Illinois
127 U.S. Courthouse, 750 Missouri Avenue, East St. Louis, Illinois 62201
Central Illinois
P.O. Box 156, Springfield, Illinois 62705
Northern Indiana
233 Federal Building, 204 South Main Street, South Bend, Indiana 46624
Southern Indiana
P.O. Box 44803, Indianapolis, Indiana 46244
Northern Iowa
320 Federal Building, 101 1st Street SE, Cedar Rapids, Iowa 52401
Southern Iowa
208 U.S. Courthouse, East First & Walnut Streets, Des Moines, Iowa 50309
District of Kansas
456 Federal Building, 444 Southeast Quincy, Topeka, Kansas 66683
Eastern Kentucky
P.O. Box 30, Lexington, Kentucky 40501
Western Kentucky
114 U.S. Courthouse, 601 West Broadway, Louisville, Kentucky 40202
Eastern Louisiana
C–600 U.S. Courthouse, 500 Camp Street, New Orleans, Louisiana 70130
Middle Louisiana
P.O. Box 3653, Baton Rouge, Louisiana 70821
Western Louisiana
P.O. Box 53, Shreveport, Louisiana 71161–0053
District of Maine
P.O. Box 349 DTS, Portland, Maine 04112
District of The Northern Mariana Islands
P.O. Box 570, Susupe, Saipan 96950
District of Maryland
605 U.S. Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201
District of Massachusetts
P.O. Box 352, Boston, Massachusetts 02101
Eastern Michigan
120 Federal Building, 231 West Lafayette Street, Detroit, Michigan 48226
Westen Michigan
514 Federal Building, 110 Michigan Avenue, Grand Rapids, Michigan 49503
District of Minnesota
523 U.S. Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401
Northern Mississippi
P.O. Box 867, Oxford, Mississippi 38655
Southern Mississippi
P.O. Box 959, Jackson, Mississippi 39205
Eastern Missouri
108 U.S. Courthouse, 1114 Market Street, St. Louis, Missouri 63101
Western Missouri
509 U.S. Courthouse, 811 Grand Avenue, Kansas City, Missouri 64106
District of Montana
5110 Federal Building, 316 North 26th Street, Billings, Montana 59101–1362
District of Nebraska
P.O. Box 1477, Omaha, Nebraska 68101
District of Nevada
P.O. Box 16039, Las Vegas, Nevada 89101
District of New Hampshire
P.O. Box 1435, Concord, New Hampshire 03302
District of New Jersey
P.O. Box 186, Newark, New Jersey 07101
District of New Mexico
P.O. Box 444, Albuquerque, New Mexico 87103
Northern New York
213 Federal Building, 10 Broad Street, Utica, New York 13501
Eastern New York
172 U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201
Southern New York
114 U.S. Courthouse Annex, 1 St. Andrew's Plaza, New York, New York 10007
Western New York
129 U.S. Courthouse, 68 Court Street, Buffalo, New York 14202
Eastern North Carolina
P.O. Box 25640, Raleigh, North Carolina 27611
Middle North Carolina
P.O. Box 1528, Greensboro, North Carolina 27402
Western North Carolina
P.O. Box 710, Asheville, North Carolina 28802
District of North Dakota
P.O. Box 2425, Fargo, North Dakota 58108–2425
Northern Ohio
B–1 U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio 44114
Southern Ohio
P.O. Box 688, Cincinnati, Ohio 45201
Northern Oklahoma
P.O. Box 1097, Tulsa, Oklahoma 74101
Eastern Oklahoma
P.O. Box 738, Muskogee, Oklahoma 74402
Western Oklahoma
P.O Box 886, Oklahoma City, Oklahoma 73101
District of Oregon
420 U.S. Courthouse, 620 Southeast Main Street, Portland, Oregon 97205–3067
Eastern Pennsylvania
2110 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106
Middle Pennsylvania
P.O. Box 310, Scranton, Pennsylvania 18501
Western Pennsylvania
539 U.S. Courthouse, 7th & Grant Streets, Pittsburgh, Pennsylvania 15219
District of Puerto Rico
P.O. Box 3746, San Juan, Puerto Rico 00904
District of Rhode Island
P.O. Box 1524, Providence, Rhode Island 02901
District of South Carolina
P.O. Box 1774, Columbia, South Carolina 29202
District of South Dakota
P.O. Box 1193, Sioux Falls, South Dakota 57101
Eastern Tennessee
P.O. Box 551, Knoxville, Tennessee 37901
Middle Tennessee
866 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203
Western Tennessee
1029 Federal Building, 167 North Main Street, Memphis, Tennessee 38103
Northern Texas
1100 Commerce Street, 16F47 Federal Building, Dallas, Texas 75242
Eastern Texas
P.O. Box 299, Tyler, Texas 75710
Southern Texas
P.O. Box 61606, Houston, Texas 77208
Western Texas
235 U.S. Courthouse, 655 East Durango Boulevard, San Antonio, Texas 78206
District of Utah
P.O. Box 1234, Salt Lake City, Utah 84110
District of Vermont
621 Federal Building, Elmwood Avenue & Pearl Street, Burlington, Vermont 05402
Eastern Virginia
104 Federal Building, P.O. Box 20227–22320, 200 South Washington Street, Alexandria, Virginia 22312
Western Virgina
P.O. Box 2280, Roanoke, Virginia 24009
District of the Virgin Islands
P.O. Box 9018, St. Thomas, Virgin Islands 00801
Eastern Washington
P.O. Box 1463, Spokane, Washington 99210
Western Washington
300 U.S. Courthouse, 1010 5th Avenue, Seattle, Washington 98104–1188
Northern West Virginia
P.O. Box 1454, Elkins, West Virginia 26241
Southern West Virginia
P.O. Box 2867, Charleston, West Virginia 25330
Eastern Wisconsin
310 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202
Western Wisconsin
440 Federal Courthouse, 120 N. Henry Street, Madison, Wisconsin 53703–2559
District of Wyoming

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P.O. Box 768, Cheyenne, Wyoming 82003

[FR Doc. 89-24076 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Construction of a Federal Metropolitan Detention Center, Brooklyn, NY

AGENCY: Federal Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Metropolitan Detention Center is needed in its system. An existing eight-story structure known as Federal Building 1 located on the East River (Gowanus Bay) bounded by 29th Street to the north, 30th Street to the south 3rd Avenue to the east and 2nd Avenue to the west in Brooklyn, New York will be evaluated. This building occupies the majority of the site and fronts onto 3rd Avenue. The proposal calls for the construction of a 1000 bed facility to house individuals in a full range of security levels (i.e., minimum, medium, maximum) who are awaiting trial or sentencing by the Federal Courts.

Additionally the site would be used for road access, inmate housing, administration, programs and services, parking and support facilities.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Brooklyn. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders, officials and citizens.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: William J. Patrick, Chief, Facilities Development and Operations, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272-6535.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 89-24188 Filed ; 8:45 am]

BILLING CODE

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume III

Montana, MT89-5 ..... p. 222e, pp. 222e-222f

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut, CT89-1 (Jan. 6, 1989). p. 61, p. 62, 64-65
District of Columbia, DC89-1 (Jan. 6, 1989). pp. 77, pp. 82
Kentucky:
KY89-3 (Sept. 29, 1989)..... p. 289, p. 290
KY89-7 (Jan. 6, 1989)..... p. 311, p. 312
KY89-29 (Jan. 6, 1989)..... p. 370a, p. 370b
Maryland, MD89-19 (Jan. 6, 1989). p. 456c, pp. 456c-456d
New York:
NY89-2 (Jan. 6, 1989)..... p. 683, pp. 686-688
NY89-3 (Jan. 6, 1989)..... p. 701, pp. 702-703
NY89-4 (Jan. 6, 1989)..... p. 709, p. 710
NY89-7 (Jan. 6, 1989)..... p. 737, p. 739
NY89-8 (Jan. 6, 1989)..... p. 755, pp. 757, 761
NY89-9 (Jan. 6, 1989)..... p. 767, 768
NY89-10 (Jan. 6, 1989)..... p. 769, p. 771
NY89-12 (Jan. 6, 1989)..... p. 789, pp. 791, 795
NY89-13 (Jan. 6, 1989)..... p. 799, p. 801
NY89-14 (Jan. 6, 1989)..... p. 807, p. 808
NY89-15 (Jan. 6, 1989)..... p. 811, p. 812
NY89-17 (Jan. 6, 1989)..... p. 817, pp. 818, 821
Pennsylvania:
PA89-1 (Jan. 6, 1989)..... p. 837, p. 840
PA89-7 (Jan. 6, 1989)..... p. 905, pp. 906-908, p. 911
PA89-8 (Jan. 6, 1989)..... p. 915, pp. 916-916
PA89-15 (Jan. 6, 1989)..... p. 957, p. 958
Rhode Island, RI89-1 (Jan. 6, 1989). p. 1023, pp. 1024-1026
West Virginia, WV89-3 (Jan. 6, 1989). p. 1233, p. 1236

Volume II

Iowa:
IA89-3 (Jan. 6, 1989)..... p. 33, p. 34
IA89-4 (Jan. 6, 1989)..... p. 37, p. 38
IA89-5 (Jan. 6, 1989)..... p. 41, pp. 45, 46
Missouri, MO89-2 (Jan. 6, 1989). p. 647, pp. 649-650
Ohio:
OH89-1 (Jan. 6, 1989)..... p. 773, pp. 774-775
OH89-3 (Jan. 6, 1989)..... p. 809, p. 810
OH89-28 (Jan. 6, 1989)..... p. 863, p. 864
OH89-29 (Jan. 6, 1989)..... p. 869, pp. 870-906
Texas, TX89-15 (Jan. 6, 1989). p. 1021, p. 1022
Wisconsin:
WI89-7 (Jan. 6, 1989)..... p. 1161, p. 1162
WI89-8 (Jan. 6, 1989)..... p. 1165, pp. 1167, 1177
WI89-10 (Jan. 6, 1989)..... p. 1187, pp. 1180, 1193
WI89-15 (Jan. 6, 1989)..... p. 1215, p. 1216

Volume III

California, CA89-2 (Jan. 6, 1989). p. 43, pp. 44-46, 48, pp. 52-55
Montana, MT89-5 (Jan. 6, 1989). p. 222e, pp. 222e-222f
North Dakota, ND89-3 (Jan. 6, 1989). p. 235, p. 236
Oregon, OR89-1 (Jan. 6, 1989). p. 307, pp. 309, 315
Washington:
WA89-2 (Jan. 6, 1989)..... p. 389, pp. 390-392, 394
WA89-3 (Jan. 6, 1989)..... 401, p. 402
WA89-5 (Jan. 6, 1989)..... p. 411, p. 412
WA89-6 (Jan. 6, 1989)..... p. 415, p. 416
WA89-7 (Jan. 6, 1989)..... p. 417, p. 418
WA89-8 (Jan. 6, 1989)..... P. 423, p. 424

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of October 1989.

Ethel P. Miller,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-24306; Filed 10-12-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 2d day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

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APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
AT&T Microelectronics (IBEW)	Union, NJ	10/02/89	09/21/89	23,436	Microelectronics.
AT&T Microelectronics (Workers)	Richmond, VA	10/02/89	09/19/89	23,437	Microelectronics.
AT&T Microelectronics (IBEW)	Clark, NJ	10/02/89	09/19/89	23,438	Microelectronics.
AT&T Microelectronics (IBEW)	Allentown, PA	10/02/89	09/08/89	23,439	Microelectronics.
Bluebonnet Savings Bank (Workers)	Colorado City, TX	10/02/89	09/20/89	23,440	Savings Bank.
Commodore Semiconductor (Workers)	Norristown, PA	10/02/89	09/06/89	23,441	Integrated Circuits.
Corlett-Turner Co., (Company)	Holland, MI	10/02/89	09/22/89	23,442	Journal Roller Bearings, Motor Shafts.
Ellwood City Iron & Wire Co (USWA)	Ellwood City, PA	10/02/89	09/19/89	23,443	Fabricated Steel.
General Motors Corp., BOC Janesville (UAW)	Janesville, WI	10/02/89	09/18/89	23,444	Automobiles.
Hercules Engines (UAW)	Canton, OH	10/02/89	09/20/89	23,445	Gasoline & Diesel Engines.
Kerr-McGee Corp (Workers)	Midland, TX	10/02/89	08/11/89	23,446	Crude Oil & Natural Gas.
Lee C. Moore Corp. (Iron Workers)	Tulsa, OK	10/02/89	09/18/89	23,447	Oilfield Machinery.
Mari Leather Works (Workers)	Hialeah, FL	10/02/89	08/31/89	23,448	Leather & Vinyl Car Products.
North American Cerutti Corp. (USWA)	Pittsburgh, PA	10/02/89	09/06/89	23,449	Printing Presses & Parts.
Palace Knitting Mills (Workers)	Brooklyn, NY	10/02/89	09/18/89	23,450	Knitted Fabrics.
Robinson Thread Co. (Workers)	Worcester, MA	10/02/89	09/19/89	23,451	Shoe Thread.
Rooster, Inc. (Workers)	Philadephia, PA	10/02/89	09/22/89	23,452	Men's Ties.
Ship 'N Shore (ILGWU)	Baxley, GA	10/02/89	09/20/89	23,453	Ladies Sportswear.
Tubulart, Inc. (Workers)	Youngstown, OH	10/02/89	09/20/89	23,454	Exercise Equipment
Wella Corp. (Workers)	Englewood, NJ	10/02/89	09/21/89	23,455	Hair Care Products.
Western Cutlery (Company)	Longmont, CO	10/02/89	09/19/89	23,456	Sporting Knives.

[FR Doc. 89-24249 Filed 10-12-89 8:45 am]
BILLING CODE 4510-30-M

[TA-W-23,001]

Getter Trucking, Inc., Corporate Headquarters, Billings, Montana and Operating at Various Locations in the Following States

In the matter of:

TA-W-23,001A Montana
TA-W-23,001B North Dakota
TA-W-23,001C Oklahoma
TA-W-23,001D Texas
TA-W-23,001E Wyoming
TA-W-23,001F Utah

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 28, 1989 applicable to all workers of Getter Trucking, Inc.

Based on new information from the company, additional workers were separated from Getter Trucking in the State of Utah. The notice for Getter Trucking, therefore is amended by including all locations in the State of Utah. The amended notice applicable to TA-W-23,001 is hereby issued as follows:

All workers of Getter Trucking, Inc., headquartered in Billings, Montana (TA-W-23,001) and operating at various locations in the States of Montana, North Dakota, Oklahoma, Texas, Wyoming and Utah who became totally or partially separated from employment on or after May 12, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of October 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-24228 Filed 10-12-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,630]

Imprimis Technology, Inc., Bloomington, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Imprimis Technology, Inc., Bloomington, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,630; Imprimis Technology, Inc. Bloomington, Minnesota (September 29, 1989).

Signed at Washington, DC this 5th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-24227 Filed 10-12-89; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-15-M]

Aluminum Co. of America; Petition for Modification of Application of Mandatory Safety Standard

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.14130 (roll-over protection structures (ROPS) and seat belts) to its Bayer Alumina Plant (I.D. No. 41-00320) located in Calhoun County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that scale haulage vehicles be equipped with roll-over protective structures (ROPS).

2. The use of ROPS on the scale haulage vehicles in the Precipitation Department would result in diminution of safety to the employees affected because the ROPS would:

(a) Interfere with process piping, hose connections, and other process equipment which could result in damage creating both thermal and chemical burn hazards; and

(b) Reduce visibility and creates head and neck pinch points between the ROPS and steel columns due to close clearances and congestion.

3. Elimination of the use of the scale haulers would greatly increase the physical demands for the employees and represent a serious potential for increased debilitating back injuries.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1989. Copies of this petition are available for inspection at that address.

Dated: October 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24230 Filed 10-12-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-16-M]

Aluminum Co. of America; Petition for Modification of Application of Mandatory Safety Standard

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77979 has filed a petition to modify the application of 30 CFR 56.14131 (seat belts for haulage trucks) to its Bayer Alumina Plant (I.D. No. 41-00320) located in Calhoun County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seat belts are required to be provided and worn in haulage trucks.

2. In a separate petition (M-89-15-M), petitioner proposes to operate scale haulage vehicles without roll-over protective structures (ROPS).

3. The use of seat belts on the scale haulage vehicles in the Precipitation Department would result in a diminution of safety to the employees affected. The mobile equipment operator, if required to wear seat belts without ROPS being provided, would be restrained to a seat that has no additional zone of safety during a lateral overturn or rollover.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1989. Copies of the petition are available for inspection at that address.

Dated: October 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24231 Filed 10-12-89; 8:45 am]
BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Wednesday, November 1, 1989, in Room C-5521, Seminar Room #4, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to enforcement for employee welfare plans covered by ERISA.

The purpose of the meeting will be for the Working Group to consider and discuss testimony received at the September 12, 1989 meeting, as well as other developments relating to the Department's ERISA enforcement program.

The Working Group will take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 27, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations wil be limited to ten mintues, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 27, 1989.

Signed at Washington, DC, this 6th day of October, 1989.

[FR Doc. 89-24242 Filed 10-12-89; 8:45 am]
BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before November 27, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what

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happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Defense Logistics Agency (N1–361–89–4). Procurement records.

2. Department of Commerce, Patent and Trademark Office (N1–241–89–1). Records of the Patent Cooperation Treaty Program.

3. Department of Commerce, Patent and Trademark Office (N1–241–89–2). Reocrds of the Office of Legislation and International Affairs.

4. Department of the Interior, Office of the Secretary (N1–48–89–1). Solid Fuels Administration for War employee clearance forms.

5. Department of Justice, Federal Bureau of Investigation (N1–65–89–8). Records whose destruction has been mandated by Court Order.

6. Department of Labor, Bureau of Labor Statistics (N1–257–89–1). Records concerning consumer expenditure surveys, 1928–72.

Dated: October 5, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–24190 Filed 10–12–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Subcommittee to the National Council on the Arts will be held on November 2, 1989, from 2:30 p.m.–4:30 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue N.W., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 5, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–24191 Filed 10–12–89; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Advancement Section) to the National Council on the Arts will be held on November 13–16, 1989, from 9:00 a.m.–9:00 p.m. and November 17, 1989, from 9:00 a.m.–5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 5, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, Notional Endowment for the Arts.

[FR Doc. 24192 Filed 10–12–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 31, 1989, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to the following individuals on October 4, 1989:

Albert Bennett
Paul Dayton
Cornelius Sullivan

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89–24156 Filed 10–12–89; 8:45 am]

BILLING CODE 7555–01–M

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 15, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the Federal Register on July 17, 1989.

The applications received are as follows:

1. *Applicant*
Jonathan H. Berg
Department of Geology
Northern Illinois University
DeKalb, Illinois 60115

Activity for Which Permit Requested

Enter Specially Protected Areas, enter Sites of Special Scientific Interest. The applicant is conducting geological research and requests permission to enter protected areas to collect rock samples.

Location

Specially Protected Areas No. 5 (Beaufort Island) and No. 7 (Cape Hallett); Sites of Special Scientific Interest No. 3 (Barwick Valley), No. 12 (Taylor Valley), No. 16 (White Island), No. 19 (Linnaeus Terrace).

Dates

November 1989–February 1990.

2. *Applicant*
Mark D. Kurz
Woods Hold Oceanographic Institution
Woods Hole, Massachusetts 02543

Activity for which permit requested

Enter Site of Special Scientific Interest. The applicant is conducting geological research and requests permission to enter protected areas to collect rock samples.

Location

Sites of Special Scientific Interest No. 1 (Cape Royds), No. 4 (Cape Crozier), No. 19 (Linnaeus Terrace).

Dates

December 1989–January 1991.

3. *Applicant*
Malcolm Browne
Science News Department
The New York Times
229 West 43rd Street
New York, New York 10036
Michael D. Lemonick
Associate Editor
TIME
Time and Life Building
Rockefeller Center
New York, New York 10020
John Fanshaw
WETA/TV
P.O. Box 2626
Washington, DC 20013
David Baron
WBUR
630 Commonwealth Avenue
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39th Floor
McGraw Hill Building
1221 Avenue of the Americas
New York, New York 10020
Ellen Hale
Gannett News Service
10th Floor
1000 Wilson Boulevard
Arlington, Virginia 22209

Activity for which permit requested

Taking.

The applicants are members of the news media who are in Antarctica to report on the U.S. Antarctic Program. They request permission to observe at close range scientists working with protected species of birds and mammals. Some members of the news media may enter Cape Royds site of Special Scientific Interest to observe scientists at work.

Location

McMurdo Station and vicinity, Antarctica.
Cape Royds Site of Special Scientific Interest.

Dates

November 1989–February 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89–24157 Filed 10–12–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–603–OM/SC, 50–604–OM/SC; ASLBP No. 87–596–01–OM/SC]

Atomic Safety and Licensing Board; Hearing

October 6, 1989.

Before Administrative Judges: Morton B. Margulies, Chairman; Oscar H. Paris; Frederick J. Shon.

In the matter of All Chemical Isotope Enrichment, Inc. (Construction Permit Nos. CPEP–1 and CPEP–2).

Please take notice that a hearing will be conducted in the captioned proceeding in response to a request made by All Chemical Isotope Enrichment, Inc., pursuant to an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated August 8, 1989, entitled "Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked."

The order, published in the Federal Register (54 FR 35544–46, August 28, 1989), in summary alleges:

(1) All Chemical Isotope Enrichment, Inc. (AlChemIE or licensee) is the holder of Construction Permits CPEP–1 and CPEP–2, issued February 10, 1989, by the Nuclear Regulatory Commission pursuant to 10 CFR part 50. CPEP–1 authorizes AlChemIE to modify the existing Centrifuge Plant Demonstration Facility at the Department of Energy's Oak Ridge Tennessee Gaseous Diffusion Plant. CPEP–2 authorizes the licensee to construct a new facility at Oliver Springs, Tennessee. Both plants are to be used for the enrichment of stable isotopes, using classified gas centrifuge machines capable of enriching uranium, that are contracted to be acquired from the Department of Energy. The permits provide for the implementation of security and safeguard measures by the licensee;

(2) AlChemIE, in applying to the Nuclear Regulatory Commission for

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permits, failed to fully and accurately disclose its true financial condition during the licensing review period that if the Staff had known the licensee's true financial conditions, it would not have issued construction permits to AlChemIE.

(3) AlChemIE has not demonstrated that it is financially qualified to conduct the activities under the licenses.

(4) The issuance of the construction permits to AlChemIE was based upon the licensee taking possession of the classified gas centrifuge equipment under the sales agreement. AlChemIE has failed to take possession of the equipment and the Department of Energy will not provide AlChemIE with the opportunity to take possession. Without possession of the gas centrifuge machines the projected activities cannot occur and there is no longer any purpose for the construction permits.

Because of the foregoing, the Deputy Executive Director for Nuclear Materials Safety Safeguards, and Operations Support, in the order, pursuant to Sections 103, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954 and 10 CFR 2.204 and 10 CFR part 50, modified the permits, effective immediately, so as to require 30 days notice to the Nuclear Regulatory Commission prior to the licensee's taking possession of the classified equipment.

Furthermore, AlChemIE was ordered, pursuant to Section 188 of the Act, 10 CFR 2.202(b) and 10 CFR part 50 to show cause why its licenses should be revoked. Licensee was advised that it could request a hearing. Also, notice was given that if a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by the order and address the criteria set forth in 10 CFR 2.714(d).

AlChemIE submitted a response to the Nuclear Regulatory Commission on September 13, in which it answered the order and requested a hearing.

AlChemIE asserts, among other things, that:

(1) It has not at any time deceived or intended to deceive the Nuclear Regulatory Commission in furnishing information pertaining to its corporate financial status.

(2) It is financially qualified to proceed with its planned scope of operation in a fashion that offers adequate protection for the common defense and security and fully effectuates security plans and arrangements.

(3) The contract with the Department of Energy has been satisfied by the licensee but the Department of Energy has taken actions beyond the licensee's control, actions which have impeded and interfered with AlChemIE's ability to perform. The issue of the transfer of equipment is yet to be resolved.

Licensee consents to providing notice to the Nuclear Regulatory Commission prior to taking possession of the classified equipment. However, it states that in the event the 30 day notice requirement should negatively impact on AlChemIE's ability to proceed with the project, it would request that the Commission review the circumstances and make such modifications as would be appropriate under the circumstances.

AlChemIE requested that its construction permits should not be suspended or revoked and that it should be given a full and fair hearing on the issues. No person other than the licensee requested a hearing.

The licensee shall be granted a hearing on the issues raised, as is provided for by law. The time and place of the hearing will be noticed by further order.

It is so Ordered. Bethesda, Maryland, October 6, 1989.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 89-24221 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electrical Illuminating Co., et al.—Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 23 to Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, Duguesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), which revised Attachment 1 to the Facility Operating License for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment modified Attachment 1 to the license to incorporate by reference the licensees' reassessment of human engineering deficiencies (HED's) identified during their detailed control room design review (DCRDR) required by item I.D.1 of NUREG-0737. The new reference documents revised commitments for resolution of the HED's previously identified in the DCRDR summary reports and supplements which are also referenced in Attachment 1 of the Facility Operating License.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 21, 1989 (54 FR 11598). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated February 10, 1989, (2) Amendment No. 23 to Facility Operating License No. NPF-58, (3) the Commission's related Safety Evaluation dated July 6, 1989, and (4) the Environmental Assessment dated June 26, 1989. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.

Thomas V. Wambach,

Acting Director, Project Directorate 111-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24224 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN-50-363]

Order Revoking Construction Permits; GPU Nuclear Corp.

In the matter of GPU Nuclear Corp., Forked River Nuclear Plan, Unit 1.

I

On July 10, 1973, the United States Nuclear Regulatory Commission (Commission) issued Construction Permit CPPR-96 to GPU Nuclear Corporation (GPUN), authorizing construction of the Forked River Nuclear Plant, Unit 1, a pressurized water reactor, at a site in Ocean County, New Jersey. The latest construction completion date set forth in the permit was February 1, 1983. GPUN submitted a timely request, by letter dated August 31, 1978, to extend the latest construction completion date to February 1, 1985. By letter dated July 30, 1979, in the aftermath of the TMI-2 event, the licensee requested that the NRC defer any action on their August 31,1978 request.

II

By letter dated July 12, 1988, GPUN requested that the construction permit for Forked River be withdrawn. The letter stated that construction activity at Forked River was suspended in 1979. A site stabilized plan summary was also transmitted by the July 12, 1988, letter.

III

The site stabilization plan provides for the stabilization of the site by grading, revegetation and the use of holding ponds to limit erosional runoff until revegetation is completed. The plan will remain in effect until the long-term use of the site is implemented, at which time it will be incorporated into that use. Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of this construction permit will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 4, 1989 (54 FR 4093).

The applicant's letter dated July 12, 1988, and the NRC staff's letter and evaluation of the request for withdrawal of the permit, and the staff's evaluation of the Site Stabilization Plan, dated September 27, 1989, are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

It is hereby ordered, That Construction Permit CPPR-96 is revoked.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24223 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket 70-25]; Special Material License Number SNM-2]

Rockwell International Corp., Rocketdyne Division; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this special material license proceeding: Christine N. Kohl, Chairman, G. Paul Bollwerk, III, Howard A. Wilber.

Dated: October 5, 1989.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 89-24092 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (this Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station (Rowe), located in Franklin County, Massachusetts.

The amendment, in accordance with the licensee's application for amendment dated September 14, 1989, revises the Yankee Rowe Technical Specifications with respect to eliminating cycle-specific parameter limits from technical specifications and placing them in a Core Operating Limits Report. This report is referenced in the technical specifications.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a part in the proceeding must file a written petition for leave to invervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and the Local Public Document Room located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safey and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

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intervene, which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to a least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the oportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02111, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 14, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 6th day of October, 1989.

For the Nuclear Regulatory Commission.

Richard H. Wessman, Director,

Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–24225 Filed 10–12–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. N89–1]

Change in Service, 1989 First-Class Delivery Standards Realignment Prehearing Conference

October 6, 1989.

Notice is hereby given that pursuant to Presiding Officer's Notice, Dated October 6, 1989, a Prehearing Conference has been scheduled in the above-referenced proceeding, to be held on October 25, 1989, at 9:30 a.m., in the Commission's Conference Room, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC.

Charles L. Clapp,

Secretary.

[FR Doc. 89–24127 Filed 10–12–89; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request:

Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC. 20549–1002

Extension: Form S–18, File No. 270–119; Form 15, File No. 270–170; Industry Guides, File No. 270–69

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms S–18, 15, and The Industry Guides For The Preparation And Filing Of Registration Statements ('Industry Guides'). The first, Form S–18, is used by any business not filing reports with the Commision that wants to sell its securities publicly. The second, Form 15, is needed by the Commission in order to fulfill the statutory responsibility of determining whether to accelerate the effective date of the termination of registration and to apprise investors that periodic reports concerning the affected issuer no longer will be filed with the Commission, and why. The third, the 'Industry Guides', is used by registrants in specified industries as guidelines to be followed in disclosing information to investors in registration statements filed pursuant to the 1933 Act.

Each of the estimated 632 respondents using Form S–18 incurs an average estimated 1280 burden hours to comply with the Form requirements. Each of the 1096 respondents using Form 15 incurs an average 1.5 burden hour to comply with the Form. The sole respondent using the 'Industry Guide' incurs an average of one burden hour.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commision's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project 3235–0101– Form S–18, 3235–0167–Form 15, and 3235–0069—Industry Guides, Room 3208 New Executive Building, Washington, DC 20543.

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24128 Filed 10–12–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27326; File No. SR–AMEX–89–20]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to an Index Hedge Exemption

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1989 the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, Commentary .01 to Rule 904(C) provides for a hedge exemption from broad-based index options positions limits for holders of stock portfolios that meet criteria established by the Exchange. That provision is the subject of a one-year pilot program which is scheduled to expire on July 22, 1989. The Exchange requests approval of (1) an extension of the pilot program, and (2) expansion of the securities positions eligible for the hedge exemption as set forth in Exhibit 1 herein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 22, 1988, the Commission granted approval of a pilot program which permits the Exchange to exempt from position limits established for broad-based index options customers who hold pre-approved portfolios of long positions in common stocks. The Exchange is proposing to expand the scope of the exemption to include short stock positions as well as the securities eligible as the underlying basis of the hedge.

While the current exemption is available only to accounts with long positions in a diversified portfolio of stock who plan to hedge by selling calls or buying puts, the Exchange believes it can be equally useful to accounts with short stock positions in a diversified portfolio who seek to offset economic risk by buying calls or selling puts on a broad-based stock index. Accordingly, as more fully described in Exhibit 1, the Exchange intends to allow the following hedges:

—Long stock or its equivalent, short calls/long puts;

—Short stock or its equivalent, long calls/short puts.

In addition, the Exchange believes the types of "equivalent" positions that may be eligible to serve as the underlying basis of the exemption should be expanded to include convertible instruments such as convertible bonds. In all instances, the Exchange's surveillance staff will continue to review each application to determine a position's eligibility and track the positions and dollar values of the instruments. The expansion of the scope of the hedge exemption in this manner should give institutions greater flexibility in portfolio management.

The AMEX believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it is designed to give investors with large portfolios the ability to hedge those portfolios while increasing the depth and liquidity of index option trading without increasing the risk of market manipulation or disruption.

Therefore, the AMEX believes the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission concludes, as it did with the original pilot program and a similar Chicago Board Options Exchange, Inc. ("CBOE") pilot program [1] that the amended pilot program will allow more effective hedging of stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the stock market. Specifically, the Commission believes the amended proposal will enable public customers that have a short stock portfolio to utilize the hedge exemption. The Commission notes that, at present, institutions with significant short stock portfolios are generally constrained in their ability to hedge such positions with index options by current position limits. As a result, many institutions utilize financially equivalent index futures products to the competitive disadvantage of the options exchanges. Extending the public customer hedge exemption to institutions with short stock portfolios should provide such institutions with an alternative hedging technique. The Commission also notes that the AMEX's surveillance procedures will monitor unusual customer activity and take steps to

[1] *See* Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 25938 (July 29, 1988) and Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988).

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withdraw exemptions if violations are found. Moreover, the Exchange has proposed the revised pilot program for one year and the AMEX and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.

Additionally, the Commission believes that it is appropriate for the Exchange, on a case-by-case basis, to include economically convertible bonds and readily convertible securities to determine the underlying basis for the hedge exemption. In this regard, the Commission notes that the Exchange's Surveillance staff will review the application of this provision to specific corporate instruments and monitor the position and dollar value of all the instruments that comprise the basis for the hedge.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because the proposal is substantially identical to another proposal submitted by the Chicago Board Options Exchange that was noticed for the full thirty-day period and recently approved by the Commission.[3]

IV Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 3, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [3], that the proposed rule change (SR-AMEX-89-20) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[4]

Dated: October 2, 1989.

Jonathan G. Katz,

Secretary.

Exhibit 1—Position Limits—Hedge Exemption for Broad-Based Index Options

A customer may receive an exemption from broad-based index options position limits if the following procedures and criteria are met.

(a) The customer must receive Exchange approval for the hedge exemption which will specify the maximum number of contracts which may be exempt. A customer so approved is hereinafter referred to as a "hedge exemption customer". The hedge exemption customer may apply from time to time for an increase in the maximum number of contracts exempt from position limits.

(b) The hedge exemption customer must provide all information required on Exchange-approved forms and keep such information current.

(c) The customer holds a net long or short position in each of the stocks in a portfolio which has been previously established or in securities readily convertible into or economically equivalent to a portfolio of stocks. The hedge position must be carried in an account with an Exchange member.

(d) The stock portfolio or its equivalent is composed of net long or short positions in common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks or their equivalents.

(e) The exemption [only] applies to [short call and long puts in] broad-based index options dealt in on the Exchange [, a combination thereof or such equivalent positions as are approved in advance by the Exchange,] to the extent the underlying value of such position does not exceed the value of the qualified portfolio. The value of the portfolio is:

(1) The total value of the net [long] stock position and/or its economic equivalent less;

(2) The value of any economically off-setting positions in (a) [any short calls and long puts in] broad-based stock index options, (b) [any short positions in] stock index futures, and (c) [any economically equivalent positions in] options on stock index futures [stock idnex options or futures]. In no event may exempted positions exceed 75,000 XII contracts for options and 50,000 contracts for XMI options.

(f) The hedge exemption customer shall agree to promptly provide the Exchange with any information requested concerning the dollar value and composition of the customer's stock portfolio, and/or equivalent, the current hedged and aggregate option position, and any stock index futures or options on stock index futures positions.

(g) The hedge exemption customers and any member carrying an account for the customer shall:

(1) Comply with all Exchange rules and regulations;

(2) Liquidate and establish options, [and] stocks and their equivalent positions in an orderly fashion, not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes, and not initiate or liquidate a stock or its equivalent position with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overflying stock index option;

(3) Liquidate any options prior to or contemporaneously with a decrease in the [value] size of the qualified portfolio;

(4) Promptly notify the Exchange of any material change in stock or its equivalent positions [portfolio] or stock index futures positions which materially affects the value of the qualified portfolio;

(5) Cause all options orders subject to this exemption on the floor to be designated "hedge";

(6) Abide by prevailing exercise limits allowed pursuant to Rule 905C, without regard to this exemption provision, except in expiring series exercised on the last business day prior to expiration.

(h) If any member carrying an account for a hedge exemption customer with broad-based index options positions dealt in on the Exchange has reason to believe that as a result of an opening transaction the customer would, acting alone or in concert with others, directly or indirectly, violate this hedge option position exemption, [and such opening transaction occurs,] then the member has violated Exchange Rule 904C.

(i) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the hedge exemption and may form the basis for subsequent denial of an application for a hedge exemption hereunder.

[FR Doc. 89-24133 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27334; File No. GSCC-89-10]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Notice of Filing of Proposed Rule Change Making Various Changes to GSCC's Rules

October 3, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1989, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by

[3] *See* Securities Exchange Act Release No. 27322 (September 29, 1989).

[3] 15 U.S.C. 78s(b) (1982).

[4] 17 CFR 200.30(a)(12) (1988).

GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes

The proposed rules changes would modify GSCC's Rules as in Exhibit A of the filing which may be examined at the places specified in item IV.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

(a) The purpose of this rule filing is to make various changes to the current GSCC rules that are now appropriate in view of the changes to the GSCC rules that were approved on July 7, 1989 with regard to the commencement of the netting operation and in view of GSCC's experience to date with netting.

1. Resived Rule 3 (Lists to be Maintained)

The current section 1 of Rule 3 refers to "Cleared Securities", which is no longer a defined term in Rule 1. The section is amended to refer to "Eligible Securities" and "Eligible Netting Securities", which are now defined terms in Rule 1. The section also is amended to make clear that each Member is entitled to (and, indeed, GSCC will endeavor to make readily available) a copy of the lists of eligible securities and eligible netting securities maintained by GSCC.

The current section 2 of Rule 3 is amended to reflect the three categories of Members of GSCC that are now provided for in Rule 2 and the fact that there is now a netting service also being provided by GSCC, and to make clear that each Member is entitled to (and, again, GSCC will endeavor to make readily available) a copy of the lists of GSCC Members. Moreover, certain language is deleted because there no longer is good reason to maintain a list of brokers and dealers on whose behalf Members have indicated they will act in comparing trades.

2. Revised Rule 13 (Funds-Only Settlement)

The first and second paragraphs of section 5 are revised by deleting the references to 10:00 a.m. and 11:00 a.m. and substituting references to one-and-a-half hours and two-and-a-half hours after the opening of the cash FedWire. The latter references are more appropriate because, while the cash FedWire ordinarily opens at 8:30 a.m., at times it opens later than that. Such delayed openings, which may even be later than 10:00 a.m., may result in insufficient time for the making of a payment by or to a Netting Member; such a scenario is not sufficiently provided for in the current rule. It was the intention of GSCC to provide its Netting Members (assuming no delay in the normal early morning availability of the report of funds-only payment obligations) with a one-and-a-half hour period after the opening of the cash FedWide to make requisite funds-only settlement amount payments to GSCC, and to provide GSCC with an additional hour thereafter within which to make any requisite funds-only payments to Netting Members. The revised language makes clear that a Netting Member has up to one-and-a-half hours after the opening of the cash FedWire to make a required funds-only payment to GSCC, and that GSCC's obligation to make required funds-only payments to Netting Members need be fulfilled no earlier than two-and-a-half hours after the opening of the cash FedWire.

3. Revised Rule 26 (Bills Rendered)

Rule 26 is revised to reflect the current billing practices of GSCC, which take into account the ability of GSCC to collect charges owed it by Netting Members as a part of the daily funds-only settlement with each such Member. GSCC believes that its billing procedures provide Members with sufficient time to review charges to their account and to inform GSCC of any errors or problems with regard thereto.

4. Revised Rule 37 (Hearing Procedures)

The revisions to this Rule reflect the recent additions of Rules 18 (Ceasing to act for a Member) and 20 (Insolvency of a Member), and the proposed deletion, discussed below, of current Rule 46 (Restrictions on Access to Services).

5. Revised Rule 45 (Notices)

The revisions to the first two sections of this Rule are proposed in order to provide for notice to be given by GSCC to a Netting Member, and vice versa, by facsimile machine. The revisions to the third section result from the need to reflect the recent additions of Rules 18 and 20, and the proposed deletion of current Rule 46.

6. Deleted Rule 46 (Restrictions on Access to Services)

In view of the addition of Rules 18 and 20, which provide GSCC with the flexibility to cease to act for a Member in varying manners and under a number of circumstances, and the proposed changes to rule 45, it is GSCC's view that current Rule 46 is now redundant and unnecessary, and should be deleted.

(b) The proposed rules changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder aplicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC dos not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules changes have not yet been solicited from all Members. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rules Changes and Timing and Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to (File No. SR-GSCC-89-10) and should be submitted by November 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24129 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27341; File No. SR-MSRB-88-5]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Partial Approval to a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

I. Introduction and Background

The Municipal Securities Rulemaking Board ("MSRB" or "Board") has submitted to the Securities and Exchange Commission ("Commission" or "SEC") [1] proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 thereunder [3] to amend its current rules for administering arbitration proceedings. The filing is similar to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock Exchange ("AMEX") that were approved by the Commission on May 10, 1989,[4] and by the Chicago Board Options Exchange ("CBOE") approved on August 2, 1989,[5] and by the Midwest Stock Exchange ("MSE") approved on August, 1989.[6]

The proposed rule changes would amend the Board's rules for administering arbitration proceedings and address many issues regarding the fairness and efficiency of the arbitration process administered by the Board, as well as institute new requirements applicable to Board members' use of predispute arbitration clauses in customer agreements.

The Board developed these proposed rule changes through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The self-regulatory organizations ("SROs") have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is composed of representatives of the Board, nine other SROs, four public members, and the Securities Industry Association.[7]

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent a letter to SICA that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[8] The Commission also sent letters to the SROs on July 8, 1988 requesting that they review the issues raised by their member firms' current use of mandatory predispute arbitration agreements.[9] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the MSRB's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters. Other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs. The proposals in SR-MSRB-88-5 related to the definitions of public and industry arbitrators under MSRB section 12, and related to challenges for cause under sections 8(c) (ii) and (iii) are not included in this approval order. These particular proposals differ from comparable rules developed by SICA and adopted by the other SROs, and the MSRB has agreed to consider amending these provisions.

In its May 10, 1989 Order approving the NYSE, NASD, and AMEX filings, the Commission addressed fully the significant public dialogue and comment that preceded its action. This order, granting partial approval of the proposed rule changes contained in SR-MSRB-88-5 and its amendments, is consistent with the substance of the May 10, 1989 Order, and the discussion set out in that order is fully applicable to the MSRB rules approved herein.

Notice of the proposed rule changes together with the terms of substance of the proposals was given by the issuance of a Securities Exchange Act release and by publication in the **Federal Register**.[10] One comment letter was received regarding the MSRB's proposals. The Commission has reviewed the filing and has determined that the proposed rule changes are consistent with the Act, including the requirements set forth in sections 15B(b)(2) (C) and (D) of the Act.

II. Description of the Proposals and Analysis

A. Arbitrator Disclosure and Background Information to be Supplied to the Parties

The MSRB has proposed changes to its rules dealing with disclosures to be made by arbitrators, and with supplying arbitrator disclosures to the parties. Under the current rules, parties are provided only with the names and current business affiliations of the arbitrators proposed for their cases. The Board's proposed rule changes would provide the necessary guidance to arbitrators about the types of relationships that may create conflicts of interest and that are likely to preclude the arbitrator from rendering an objective and impartial determination. The Board's proposed rule change would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote informed use of challenges.

Accordingly, proposed MSRB section 13 establishes specific disclosure obligations of arbitrators. Section 13(a)(2) requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party or its counsel, or with any individual whom they have been told will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

MSRB section 13(b) admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a). Section 13(c) advises arbitrators that the obligation to disclose under paragraph (a) of the section is a continuing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration any such interests or relationships that arise, or that are recalled or discovered. Also, under section 13(d), the MSRB has clarified that prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator who discloses such information. Parties are to be informed of any information disclosed pursuant to the rule if the arbitrator has not been removed.[11]

In addition, section 8(b) provides that parties will be informed of the names and employment histories of the arbitrators for the past ten years, as well as any information disclosed pursuant to section 13, at least eight days prior to the date fixed for the initial hearing session. Under section 8(b), a party may make further inquiry of the Director of Arbitrator concerning any arbitrator's background.

B. Appointment of Replacement Arbitrators on a Panel

The MSRB also proposed two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the Director of Arbitration to replace an arbitrator who becomes unavailable to serve after appointment and prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator is disqualified, resigns, dies, withdraws, refuses, or is otherwise unable to perform or discharge his duties, section 14(a) authorizes the Director of Arbitration to appoint a replacement arbitrator. While section 8(b) requires that parties be notified of the initial appointment of arbitrators at least eight days prior to the initial hearing session, section 14(a) permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator is disqualified, resigns, dies, or is unable to perform or discharge his duties as an arbitrator after the commencement of the first hearing session. Under the MSRB's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to MSRB section 14(b) permits the remaining arbitrator(s) to continue with the hearing and determination of the controversy unless a party objects to such continuation within five days of notification of the arbitrator's disqualification. Under the proposal, if a party objects, a replacement arbitrator would be appointed by the Director of Arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, the arbitrators may use their judgment and authority in determining whether to require the rehearing of part or all of the case or to withdraw from the case, thereby effectively requiring the appointment of another panel. A party, however, may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator is unexpectedly unable to continue hearing a case.

C. Availability of Small Claims Procedures and the Number of Arbitrators Required to Hear a Claim

The MSRB proposes to amend section 34 to increase to $10,000 from $5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a case based upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the costs of arbitration.[12] The proposed amendments to section 34 would also increase the dollar amount for intra-industry small claims to $10,000.

MSRB section 12(a) would change the number of arbitrators generally used for large cases from five to three. The rule currently provides for the appointment of five arbitrators in cases brought by public customers in which the claim exceeds $500,000. In order to alleviate administrative delays and costs encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the Director of Arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the MSRB's simplified arbitration procedures.

The MSRB also proposed a technical amendment to MSRB section 34(f)

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[1] SR-MSRB-88-5 was submitted on November 23, 1988 and amended on March 3, 1989 and June 13, 1989.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b-4 (1987).

[4] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approving File Nos. SR-NYSE-88-8, SR-NYSE-88-29, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-19, and SR-AMEX-88-29) ("May 10, 1989 Order").

[5] Securities Exchange Act Release No. 27093 (August 2, 1989), 54 FR 32731 (August 9, 1989).

[6] Securities Exchange Act Release No. 27187 (August 25, 1989), 54 FR 36026 (September 5, 1989).

[7] The SROs that administer arbitration programs are the MSRB, CBOE, NYSE, NASD, Amex, MSE, Pacific Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

[8] *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

[9] *See* letter from David S. Ruder, Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE, dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[10] *See* Securities Exchange Act Release No. 26465 (January 17, 1989), 54 FR 3705 (January 25, 1989).

[11] Once the arbitration panel is sworn, it controls all of the procedural aspects of the hearings. Accordingly, under the Uniform Code and the MSRB's Arbitration Code, the Director of Arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes ("ABA AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. *See* Canon II, E.(2) of the ABA AAA Code.

[12] Section 34(c) would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

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regarding single arbitrators used in cases administered under the simplified procedures. The amendment codifies the existing practice of appointing a public arbitrator as the single arbitrator in the case.

D. Discovery

The MSRB is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current MSRB rules, parties are expected to exchange documents informally and voluntarily. Parties may also request documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The MSRB's proposed changes to its discovery rule expand party access to prehearing discovery and provide specific time frames for parties to request information from parties and for responding to such an information request. The rule changes also establish a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the MSRB's proposed rule changes, arbitrators may also order depositions when appropriate.

Proposed section 22(a) continues the policy established under existing rules for parties to cooperate to the fullest extent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, the rule establishes a clear framework for document production and information requests.

Proposed MSRB section 22(b)(1) provides that a party may serve a written request for information or documents twenty days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be objected to within fifteen calendar days or satisfied within thirty calendar days from the date of service.[13] The party who made an information request has ten days from receipt of the objection to respond to the objection.

Under proposed MSRB section 22(d), a party may request that the Director of Arbitration schedule a prehearing conference to help the parties reach agreement on such matters as the exchange of information, exchange or production of documents, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings. Prehearing conferences would be scheduled upon the request of an arbitrator or at the discretion of the Director of Arbitration.[14]

Under proposed MSRB section 22(b)(4), a party whose information request has not been satisfied is entitled to have the matter referred to either the full panel of arbitrators or to a single arbitrator pursuant to procedures set out in MSRB section 22(e) for resolution at least ten days prior to any hearing on the substantive issues.[15] Proposed section 22(e) reserves for the arbitration panel the decision as to whether the full panel or a single arbitrator should consider the discovery dispute. Proposed section 22(e) also provides that with the consent of the majority of the panel the Director of Arbitration may appoint a single arbitrator to resolve any other unresolved prehearing issues. The section allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions,[16] and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. MSRB section 22(e) provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

Other amendments to the prehearing provisions require parties to serve on one another at least ten days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed section 22(c), arbitrators may exclude from the arbitration those documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the MSRB is proposing to amend its rules regarding subpoenas. In MSRB section 23(a), the Board proposes to require all parties to provide a copy of any subpoena to all other parties.

E. Preservation of a Record

The MSRB is amending its arbitration rules to assue that records of arbitration proceedings are made and preserved. These records are necessary for courts to use in conjunction with any review of the proceedings they may make. MSRB section 27 would require that a verbatim record by stenographic reporter or tape recording of all arbitration hearings be maintained. The rule further provides that, if a party to a dispute elects to have a record transcribed, the cost of such transcription shall be borne by that party unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

F. Content and Public Availability of Arbitration Awards

The MSRB's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD and NYSE, and prior to the submission of the proposal made in this filing, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to particular arbitrators' awards. The MSRB's proposal affords substantially more public access to the results of the dispute resolution process.

Proposed MSRB section 31 provides that awards shall contain the names of the parties, a summary by the arbitrators of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), and the signatures of those arbitrators concurring in the award. Awards involving public customers, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of arbitrators will not be disclosed and the names of customer parties to the arbitration will not be made public unless the customer agrees to the disclosure of his identity. A party to an arbitration involving a public customer may review prior awards rendered by the arbitrators assigned to the party's current case.

G. Arbitration Fees

MSRB Rule A-16 currently provides that a $25 administrative fee is to be retained in an arbitration case that is settled or withdrawn prior to the commencement of the first session. Such fees assist in defraying certain administrative costs associated with processing arbitration claims. The proposed rule change would increase the fee retained to $50, due to increasing costs of the Board's arbitration program. This fee would not apply to customers' small claims so that the entire fee for those claims may be returned upon settlement of such disputes.

H. Predispute Arbitration Clauses

The MSRB also has proposed two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Proposed section 36 would require MSRB members that employ predispute arbitration clauses to highlight such clauses and to place introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery in arbitration is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed MSRB section 36 also would require that the disclosure language be highlighted in four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause, and where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agreement containing a predispute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

Additionally, proposed MSRB section 36 prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.[17]

III. Conclusion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act,[18] which require that the Board's rules be designed to promote just and equitable principles of trade, and provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities.[19]

The Commission believes that the proposed rule changes strike an appropriate balance between the need to strengthen investor confidence in the SRO arbitration systems, and the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice. The proposed rules improve the procedures for administering arbitration and create clear obligations regarding the use by SRO members of predispute arbitration clauses. In particular, the rule changes affecting arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration clauses advance the public interest in SRO arbitration. Likewise, the MSRB's initiatives with respect to the appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency of arbitration, thus maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and dealers, the Commission concludes that these rules are designed to promote just and equitable principles of trade, and provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities, consistent with sections 15B(b)(2)(C) and 15B(b)(2)(D).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the above-mentioned proposed rule changes be, and hereby are, approved.[21]

For the Commission, by the Division of Market Regulation, purusant to delegated authority.[22]

Dated: October 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24134 Filed 10-12-89; 8:45 am]

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[13] Proposed MSRB section 22(b)(2) differs from the Uniform Code provision adopted by the NYSE, NASD, AMEX, CBOE and MSE. Under the Uniform Code, the party receiving an information request has thirty days, rather than fifteen days under the MSRB proposal, to file an objection to an information request. The MSRB proposal represents an attempt to impose tighter discipline on prehearing activities.

[14] The prehearing conference provision of proposed MSRB Section 22(d) differs from the comparable provision in the Uniform Code adopted by the other SROs. The MSRB proposal retains for the arbitrators and the Director of Arbitration the discretion to schedule prehearing conferences, while under the other SROs' rules, parties are entitled to a prehearing conference upon written request.

[15] In a letter to the Commission, dated September 25, 1989, the MSRB confirmed that ordinarily such referrals of unresolved information requests to the arbitrators would be made as soon as practicable, and that the ten day period is intended only as the latest time that such a resolution would be made.

[16] The Securities Industry Association submitted a comment letter on February 16, 1988, commenting on the rule proposals of the MSRB and AMEX. In its letter, the SIA stated that the proposed rules provided the arbitrators with the flexibility to request depositions and are sufficient to permit parties to develop fully their cases.

[17] The Commission's approval of MSRB section 36, and the comparable rules of the NYSE, NASD, AMEX, CBOE and MSE, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in Roney v. Goren, No. 88-1674 (May 26, 1989), that the Commission has the authority to assure customer choice among SRO arbitration forums.

[18] 15 U.S.C. 78o-4(b)(2) (C) & (D).

[19] The MSRB's proposed rule changes in File No. SR-MSRB-88-5 related to the definitions of public and industry arbitrators under MSRB section 12, and related to challenges for cause under sections 8(c) (ii) and (iii), are not included in this approval order. The MSRB has agreed to consider amending these provisions. Pending the amendment of these provisions, the existing rules that require that a majority of the arbitrators not be associated with a broker, dealer or municipal securities dealer will continue to apply.

[20] 15 U.S.C. 78s(b)(2).

[21] The proposed rule changes to MSRB sections 5, 8, 12, 13, 14, 22, 23, 27, 31, 34, 35, and 36 of Rule G-35 are effective on December 1, 1989. The proposed rule change to Rule A-16 is effective for cases filed with the MSRB after November 30, 1989.

[22] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 34-27338; File No. SR-NYSE-89-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to an Examination Administration Fee for the Compliance Official Qualification Examination

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of adoption of a $200 examination administration fee in connection with the new Compliance Official Qualification (Series 14) Examination to be given by the Exchange.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed fee of $200 for the new Compliance Official Qualification (Series 14) Examination is to offset the costs associated with development, implementation and administration of that examination by the Exchange. These costs include manpower, automation, travel, printing and proctoring costs already incurred or to be incurred in designing and implementing the Series 14 examination.

Pursuant to Rule 342.13(b), the examination will generally be required of (1) Exchange members not associated with a member organization and (2) the person or persons designated by a member organization as having day-to-day compliance responsibilities or who supervise ten (10) or more people engaged in compliance activities.

(2) Basis Under the Act for the Proposed Rule Change

The statutory basis for the proposed rule change is section 6(b)(4) of the Act which permits the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments from members or other interested parties regarding the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-89-27 and should be submitted by November 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24131 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The Compliance Official Qualification (Series 14) Examination was created by the Exchange in order to ensure the fulfillment of compliance obligations by Exchange members and member organizations. Individuals who are Compliance Supervisors, as defined in NYSE Rule 342.13(b), must take and pass the Series 14 examination within six(6) months of the date of the first administration of the examination.

[Rel. No. 34-27339; File No. SR-PSE-89-23]

Self-Regulatory Organizations; Proposed Rule changes by the Pacific Stock Exchange Incorporated relating to Board of Governor Liability

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18,1989, the Pacific Stock Exchange Incorporated ("PSE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 under the Act, hereby proposes the following changes to the Certificate of Incorporation and the Rules of the Board of Governors of the PSE. (Italics indicate new language.)

Certificate of Incorporation, Ninth Article

* * * * *

Ninth. The Corporation may provide indemnification for members of its Board of Governors and of committees of the Board of Governors and of other committees of the Corporation, its officers, agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, within the limits permitted by Delaware law, to safeguard such persons from expense and liability for actions they take in any such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the Corporation and its members. *To the fullest extent permitted by Delaware law, or any other applicable laws, the members of the board of Governors shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor.*

Rules of the Board of Governors, Rule XXIII

* * * * *

Any provision of the certificate of Incorporation, the Constitution, or the Rules of the Exchange that provides or purports to provide that the members of the Board of governors shall not be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Rule Filing SR-PSE-88-01 proposed an amendment to the PSE Certificate of Incorporation which would exempt PSE Governors, committee members, and employees from monetary damages for breach of fiduciary duty. This amendment was removed from SR-PSE-88-01 and is being resubmitted here. In addition, the proposed amendment to the PSE Rules introducing the limitation language is being added pursuant to a recommendation by the Commission.

The proposed amendment to the PSE Certificate of Incorporation is based on a change in the law of Delaware, the state in which the PSE is incorporated. Delaware Corporations Code, section 102(b)(7), (added 1986), states that a Certificate of Incorporation may include a provision eliminating or limiting a director's personal liability to the corporation for monetary damages for breach of fiduciary duty as a director. Many Boards of Delaware Corporations adopted similar provisions in 1987. The new law:

(a) Does *not* permit the elimination or limitation of a director's liability for breach of its duty of loyalty, for acts or omissions not in good faith, for intentional misconduct, or for any transaction from which the director derived an improper personal benefit,

(b) Does *not* eliminate the fiduciary duty, it merely prevents the imposition of monetary damges in the event of breach. Other legal remedies such as rescission and injunction remain available,

(c) Applies to a breach of fiduciary duty (standard of care) only, and does not extend to other duties owned by the directors to the Corporation (standard of loyalty).

The proposed rule change is consistent with Section 6(b) of the Act and furthers the objective of Section 7(b)(3) by providing liability protections which will attract competent Governors, thereby helping to assure a fair representation of the PSE members in the selection of its directors and administration of its affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed change of the Certificate of Incorporation was sent to each member and approved by over a ⅔ majority vote of the general membership at the annual meeting on January 28, 1988 and the proposed limitation language was approved by the PSE Board of Governors on July 29, 1988 after a recommendation by the SEC to add such. The PSE is adding the limitation language to the Rules of the Board of Governors.

Comments on the amendment to the PSE Rules were neither solicited nor received from members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved such proposed rule change; or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequesnt amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-23 and should be submitted by November 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24132 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17162; File No. 812-7377]

Fidelity and Guaranty Life Insurance Co. et al.

October 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Fidelity and Guaranty Life Insurance Company ("Company"), F&G Life Variable Annuity Account ("Variable Account") and F&G Securities, Inc. ("F&G Securities") (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit the assessment of the mortality and expense risk charges from the assets of the Account.

Filing Date: The application was filed on August 11, 1989; an amended and

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restated application was filed on September 7, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Applicants, c/oBrian E. Bayus, Esq., Fidelity and Guaranty Life Insurance Company, 100 Light Street, Baltimore, Maryland 21202. Copies to Joan E. Boros, Esq., Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue, NW., Suite 825, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2026, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland, (301) 258–4300).

Applicants' Representations

1. The Company is a stock life insurance company incorporated in the State of Maryland. It markets, issues and services a variety of life insurance and annuity products. The Company is the depositor of the Variable Account.

2. The Variable Account, registered as a unit investment trust under the Act, was established to fund variable annuity contracts, including an individual flexiable premium deferred variable annuity contract ("Contract" or "Contracts"), to be offered by the Company. The Variable Account is currently divided into nine divisions ("Division" or "Divisions") which will invest solely in the shares of a corresponding series ("Series") of the American Eagle Fund, inc. ("Fund").

3. F&G Securities is the principal distributor of the Contracts. F&G Securities is 50% owned by the Company and 50% owned by USF&G Financial Services Corporation. F&G Securities is a registered broker-dealer under the Securities and Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. The Contract is designed to provide fixed and variable benefits under retirement plans that qualify for favorable Federal income tax treatment under the Internal Revenue Code of 1986, as amended, and under retirement arrangements that do not so qualify.

5. Contract owners ("Owners") will be able to allocate premium payments to one or more Divisions of the Variable Account, which will invest in shares of a corresponding Series of the Fund. Premium payments allocated to the Variable Account will be used to acquire accumulation units of a Division as instructed by the Owner. Owners also will be able to allocate premium payments to certain general account investment options that provide for guarantees of principal and interest. These include "General Account Option A," which provides such guarantees for single calendar year periods, and "General Account Option B," which provides such guarantees for "Guarantee Periods" under "Durations" of two or more years. General Account Option A and General Account Option B are collectively referred to as the "General Account Options". The Divisions, General Account Option A and the respective Durations under General Account Option B are sometimes referred to, individually, as the "Account" and, collectively, as the "Accounts".

6. Amounts held under a Contract may be transferred from one Division to another or into the General Account Options at any time prior to to the annuity date. Prior to the annuity date, Owners will be able to make up to four partial withdrawals in each Contract year, after the first Contract year. The Contract may also be surrendered in full, at any time prior to the annuity date, for its "Surrender Value", which is the Account Value less any surrender and withdrawal charges, maintenance charges and any premium taxes.

7. For assuming the mortality and expense risks associated with the Contract, the Company will make a daily charge, at the annual rate of 1.25% (consisting of .55% for mortality risks and approximately .70% for expense risks), against the assets held in each Division under the Contracts. This charge is assessed during the accumulation and annuity periods.

8. The Company bears a mortality risk because of its contractural obligation to continue to make annuity payments under annuities with life contingencies regardless of how long all annuitants, or any individual annuitant, might live, and regardless of the sufficiency of the funds accumulated and remaining under a contract. The Company also bears a mortality risk from a death provided under the Contract. The death benefit is payable in the event of the death of an annuitant prior to the annuity date. No surrender and withdrawal charge is imposed upon the payment of a death benefit. This places a further mortality risk on the Company. The expense risk the Company assumes is that expenses actually incurred by the Company in issuing and administering the Contract will exceed the administration and maintenance charges imposed under the Contract. In that event, the loss would be borne by the Company.

9. If longevity among annuitants and/or Contract expenses are lower than anticipated, the Company may realize a gain from the mortality and expense risk charge. The Company expects a profit from this charge. To the extent that the surrender and withdrawal charge is insufficient to cover the actual costs of distribution, the expenses will be paid from the Company's general account assets, which will include profit, if any, derived from the mortality and expense risk charge.

10. A daily charge, at the annual rate of .15% will be made against the assets held in each Division under the Contract to reimburse the Company for administrative expenses associated with the Contracts. This charge is imposed during both the accumulation and annuity periods. Also, a $30 Contract maintenance charge will be deducted on a pro-rata basis from each of the Accounts, including Guarantee Periods, in which amounts are held under the Contract. The charge is imposed on each anniversary date of the Contract prior to the annuity date and if the Contract is surrendered prior to the anniversary date. It is designed to reimuburse the Company for administrative costs of maintaining issued Contracts on the Company's records system and servicing the individual Contracts.

11. The Company does not deduct a sales charge from any premium payment under the Contract. However, to defray certain expenses relating to the sale of the Contracts, the Company will impose a surrender and withdrawal charge upon a surrender of the Contract in its entirety, or upon a partial withdrawal of amounts held in any of the Accounts. The charge is imposed on the amount of premium payment deemed surrendered or withdrawn. No surrender or withdrawal charge is applicable to amounts excluded under the Free Surrender and Withdrawal Amount, to amounts paid as a death benefit, to Account Value applied to an annuity type upon annuitization, or to payments made in certain other circumstances. The charge is 6% of the amount of premium surrendered or withdrawn, in excess of the Free Surrender and Withdrawal amount, in the first year from the date of the premium payment and declines thereafter. The charge is eliminated as to premium payments made six or more years prior to surrender or withdrawal.

12. Section 26(a)(2)(C) of the Act provides that no payment to the depositor of or prinicpal underwriter for a registered unit investment trust shall be allowed as an expense except as a fee, not exceeding a reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Section 27(c)(2) of the Act requires that the proceeds of all payments on a periodic payment plan certificate (except amounts deducted for sales load) be deposited with a trustee or custodian as prescribed by section 26(a)(1) of the Act and held under an agreement as prescribed by section 26(a)(2) of the Act. The Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the Act to the mortality and expense risk charge because such charge is a traditional insurance charge and, therefore, is not a charge subject to regulation by the Commission. However, to remove any doubt with regard to the applicability of these provisions, the Applicants are seeking the subject exemptions to permit the assessment of this charge in the manner described herein.

13. The Company has designed the mortality and expense risk charge to reasonably compensate the Company for the assumption of these risks. Applicants state that they have reviewed publicly available information regarding comparable annuity contracts of other companies taking into consideration such factors as: guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Applicants have concluded that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. Applicants represent that they will maintain at their principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, the Company's comparative review.

14. Applicants acknowledge that if the revenues generated by the surrender and withdrawal charge are insufficient to cover all actual costs relating to the distribution of the Contracts, such costs will be paid from the Company's general account assets, which may include any ultimate profit realized from the mortality and expense risk charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission or its staff upon request.

15. The Company represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event any such fund should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

16. Applicants submit, for all the reasons stated herein, that their requests for exemptions meet the standards set out in section 6(c) as summarized above and that an order, therefore, be granted. Accordingly, Applicants request exemptions pursuant to section 6(c) of the Act from the operation of the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the mortality and expense risk charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24130 Filed 10–12–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24965]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 5, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 23, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Fuels, Inc., et al. (70–6688)

Columbia Fuels, Inc. ("Columbia"), and its parent company Alabama Power Company ("Alabama"), both located at 600 North 18th Street, Birmingham, Alabama 35291, indirect and direct subsidiaries, respectively, of The Southern Company, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By prior Commission orders (HCAR Nos. 22786, 23047, 24468 and 24807, December 20, 1982, August 31, 1983, September 30, 1987 and January 24, 1989, respectively), Columbia was authorized, among other things, to enter into a $100 million note-issuing credit agreement ("Note-Option") with Bank of America ("Bank") for a line of credit to be used to finance the purchase of nuclear fuel, which would then be leased by Alabama under a related fuel lease agreement. The particular credit arrangement, together with an additional $50 million arrangement with Credit Suisse, provides aggregate credit available to Columbia for nuclear fuel financing of up to $150 million. Columbia was subsequently authorized to enter into an amended agreement ("Agreement") with the Bank to provide for the issuance and sale of commercial paper ("Commercial Paper-Option"), in

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addition to the previously authorized Note-Option, for nuclear fuel financing.

Columbia now proposes to terminate the arrangement with Credit Suisse, and to provide for $150 million of borrowings from the Bank only, under substantially the same terms and conditions, but with the commitment fee reduced from .20% per annum to .1633% per annum of the total credit commitment, less the sum of the aggregate outstanding credit resulting from direct borrowings under the Agreement. The line of credit available to Columbia from the Bank will become $150 million and the aggregate credit limit of $150 million available to Columbia for nuclear fuel financing will remain unchanged. Under the Agreement, as proposed to be amended, the Commercial Paper-Option will be changed so that the commercial paper of Columbia will be offered for sale by Merrill Lynch, Pierce, Fenner & Smith, Incorporated, in addition to the Bank.

The Connecticut Light and Power Company, et al. (70–6961)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, subsidiaries ("Companies") of Northeast Utilities, a registered holding company, have filed a post-effective amendment to their declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior Commission orders in this matter (HCAR Nos. 23366, 23403 and 24218, July 12, 1984, August 28, 1984 and October 22, 1986, respectively), the Commission authorized transactions relating to the financing of each of the Companies' portion of the cost of acquiring, constructing, and installing certain pollution control facilities, and sewage or solid waste disposal facilities at the Millstone 1, Millstone 2, and Millstone 3 nuclear electric generating facilities, which resulted in the issuance of $69.6 million of Pollution Control Revenue Par Value Demand Bonds for CL&P and $16.4 million of Pollution Control Bonds for WMECO (together, "Bonds"). In connection with each of these transactions, CL&P and WMECO, pursuant to certain loan agreements ("Agreements"), each incurred certain repayment obligations to the Connecticut Development Authority ("CDA"), as evidenced by promissory notes ("Notes") issued by each of the Companies, and, pursuant to certain reimbursement and letter of credit agreements supporting the repayment obligations ("Letters of Credit"), each incurred certain reimbursement obligations to various banks (such repayment and reimbursement obligations together the "Obligations").

The repayment obligations of CL&P and WMECO under the Agreements and the Notes are secured by the Letters of Credit issued by Bankers Trust Company ("BTC"). The CL&P Letter of Credit is in the amount of $74.39 million, representing principal of $69.8 million and interest coverage for 120 days at an assumed rate of 20%. Pursuant to the CL&P Letter of Credit, CL&P is obligated to pay to BTC an annual Letter of Credit commission at a rate of .75% on $63.945 million of the total Letter of Credit amount and .90% on the balance. The WMECO Letter of Credit is in the amount of $17.494 million, representing principal of $16.4 million and interest coverage for 120 days at an assumed rate of 20%. WMECO is further obligated to pay the BTC an annual Letter of Credit commission at a rate of .75% of the total Letter of Credit amount.

The Companies now propose to substitute their letter of credit provider ("New Letters") to replace the Letters of Credit securing the repayment obligations now provided by BTC with those to be provided by Union Bank of Switzerland, New York Branch ("UBS"), for a term of five years from the date of substitution. Under the terms of the proposal, each of CL&P and WMECO will be obligated to pay to UBS an annual commission at a rate of .35% per annum on their respective New Letter amounts. In addition, at the time of the substitution of the New Letters, CL&P and WMECO will be obligated to pay to UBS a one-time facility fee of $74,390 and $17,494, respectively (.10% of the total New Letter amount). Each of CL&P and WMECO will also be responsible for the fees of UBS's counsel, estimated to be approximately $10,000 per transaction, and the fees of its own counsel, also estimated to be approximately $10,000 per transaction.

Because of the significantly lower New Letter commission proposed by UBS, the substitution will save CL&P $313,227 annually and WMECO $69,976 annually, except in the first year. The substitution of the New Letter will be accomplished by terminating the existing Letter of Credit with BTC and entering into new agreements with UBS called Reimbursement and Security Agreements. When BTC is removed as the Letter of Credit provider for both the CL&P Bonds and the WMECO Bonds, CL&P and WMECO intend to substitute UBS for BTC as a beneficiary of the second mortgage, above.

Energy Initiatives, Incorporated (70–7646)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a subsidiary of General Portfolios Corporation, Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, a subsidiary of General Public Utilities Corporation, a registered holding company has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

In connection with the development of a natural gas-fired generating facility in the Virginia Power Company ("Virginia Power") service territory, which is certified as a Qualifying Facility under PURPA, EII proposes to: (1) Acquire all the issued and outstanding shares of common stock of Bermuda Hundred Energy, Inc. ("EII Sub"), a New Jersey corporation for $1,000; (2) make a capital contribution to EII Sub of $1,000 which would, in turn, use such funds to acquire all of the general partnership interest in the Bermuda Limited Energy, L.P. ("Partnership"), a New Jersey limited partnership; and (3) guarantee, either directly or indirectly, letter of credit obligations of the Partnership up to a maximum amount of $7,275,000 in order to provide for the Partnership's liquidated damage security obligations under the Power Purchase Agreement with Virginia Power. The Power Purchase Agreement with Virginia Power requires the Partnership to pay liquidated damages in the amount of up to $7,275,000 under certain circumstances. To secure such liquidated damage obligations, the Partnership is required to furnish Virginia Power with an irrevocable stand-by letter of credit issued by a commercial bank in such amount.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24233 Filed 10–12–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1313]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 20, 1989 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to review the activities of the recent meetings of Study Groups I, II and III; prepare U.S. contributions for upcoming Working Party/Study Group meetings; examine contributions from other sources, and review general procedures and working methods currently underway. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647–5220. All attendees must use the C Street entrance to the building.

Dated: October 5, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–24237 Filed 10–12–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1314]

The U.S. Organization for the International Telegraph and Telephone Consulative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consulative Committee (CCITT) will meet on November 7, 1989 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The agenda for the meeting will be to review results of Study Group XVII meeting, prepare and review contributions for the next meetings of Study Group VII, scheduled for February, 1990, consider other matters related to the work of special rapporteurs of Study Groups VII, VIII and XVII, and take up any other business relevant to U.S. Study Group D.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: October 7, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–24238 Filed 10–12–89; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1315]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 15, 1989 at 9:30 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The agenda of the meeting will include approval of the August 3 meeting minutes, reports on CCITT Study Group XI Working Party meeting, CCITT Study Group XVIII Rapporteurs meeting, consideration of contributions in preparation for the Study Group XI/4 and 7, Study Group XVIII ISDN Experts, January 8–19, 1990, Study Group I Working Parties, February 20–March 2, 1990.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: October 5, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89–24239 Filed 10–12–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1312]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Change in Meeting Location

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea was scheduled to conduct an open meeting at 0930 on November 16, 1989, in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950–0001. The location of this meeting has been changed to Seafarers Harry Lundeberg School of Seamanship in Piney Point, Maryland. The date and time remain the same as originally scheduled.

For directions on how to get to the meeting location contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street, SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: October 3, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–24193 Filed 10–12–89; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Supplemental Environmental Impact Statement: Aquatic Plant Control on the Reservoir System

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS).

SUMMARY: TVA will prepare a supplement to the final EIS for aquatic plant control on the TVA reservoir system. The supplement will update information contained in the original EIS and evaluate alternatives for controlling Eurasian watermilfoil and other aquatic macrophytes that infest the TVA reservoir system. In addition to the no action alternative, chemical, biological, mechanical, and water level manipulation control methods will be

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evaluated. TVA is inviting comments on the scope of the draft SEIS analysis.

DATE: Comments on the scope of the draft SEIS must be received on or before November 13, 1989.

ADDRESS: Written comments should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, 201 Summer Place Building, Knoxville, Tennssee 37902–1499.

FOR FURTHER INFORMATION CONTACT: A. Leon Bates, Tennessee Valley Authority, Aquatic Biology Department, OSA 1S 122B, Muscle Shoals, Alabama, Phone No. (205) 386–2278.

SUPPLEMENTARY INFORMATION: TVA manages an integrated reservoir system consisting of 39 dams on the Tennessee River and its major tributaries. This system encompasses more than 11,000 miles of shoreline and 600,000 acres of water. Several of these reservoirs are infested with excessive amounts of submersed aquatic vegetation.

In August 1972, TVA released an EIS entitled, "Control of Eurasian Watermilfoil (Myriophyllum Spicatum L.) in TVA Reservoirs" (TVA–OHES–EIS–72–8). When this EIS was prepared, Eurasian watermilfoil was the predominant aquatic plant infesting the shallow littoral zones of the TVA reservoirs. Water level manipulation supplemented by applications of the herbicide 2,4-D in areas where aquatic plants resulted in reservoir use conflicts were the primary control strategies evaluated in the original EIS.

Since the late 1970's, the amount of aquatic plants infesting the reservoir has dramatically increased. Both aquatic plant abundance and species composition have changed, although the same kinds of areas in the reservoirs (the shallow littoral zones) continue to be the areas affected. Eurasian watermilfoil is still the predominant species, but other aquatic plants, especially the exotics, spinyleaf naiad and hydrilla, have increased to problem levels. These new species do not respond well to 2,4-D; thus, other herbicides approved by the U.S. Environmental Protection Agency for aquatic sites have been added to TVA's inventory of chemical controls used in its aquatic plant control program.

The SEIS will update the 1972 EIS and describe the process TVA uses to evaluate and select aquatic herbicides for its use in aquatic plant control program. Since 1972, TVA has also accumulated substantial data on the effects of the control methods it has employed and from special studies it periodically conducts on aquatic herbicides. These data will be used to update the SEIS and will be summarized in the SEIS.

The effectiveness, potential health and environmental effects, and costs of various alternatives will be analyzed. An internal scoping committee has identified the following alternatives for detailed analysis in the SEIS:

1. No action—Cessation of TVA's aquatic plant control program;
2. Chemical controls—Applications of various aquatic herbicides at targeted locations;
3. Mechanical controls—Use of cutters, harvesters, or dredges to physically remove aquatic plants at targeted locations; and
4. Biological Controls (*e.g.*, the grass carp, insects, or other competitive aquatic plants) on selected reservoirs and at targeted locations.
5. Environmental manipulation—Water level maniupulation on selected reservoirs.

TVA requests comments on whether these alternatives are an adequate scope for the SEIS and whether there are other alternatives or issues which should be evaluated. After reviewing any comments, the scope of the draft SEIS will be set. Notice of availability of the SEIS will be published in the Federal Register and will be provided to individuals, organizations, and Federal and State agencies who respond to this notice or who are known to have an interest in aquatic plant control on the TVA reservoir system.

Public participation during this review is very important and TVA encourages everyone with an interest in this subject to begin participating now by providing comments on the scope of the SEIS or by at least indicating your interest.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 89–24219 Filed 10–12–89; 8:45 am]

BILLING CODE 6120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on October 4, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on October 4, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB oficials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on October 4, 1989.

DOT No: 3261
OMB No: 2127–0503
Administration: National Highway Traffic Safety Administration
Title: Consolidated Labeling Requirements for Motor Vehicle Tires & Rims (FMVSS 571.109, 110, 117, 119, 120) Regulations Part 569 and 574)

Need for Information: To identify the tires and rims for safe operation of the vehicle.
Proposed Use of Information: All persons driving or riding in a motor vehicle need to have proper labeling on the tires and rims provided with the vehicle for safe operation.
Frequency: On occasion
Burden Estimate: 264,669 hours
Respondents: 6,673
Form(s): None.
Average reporting time: 1 hour 55 minutes

DOT No: 3262
OMB No: 2127–0006
Administration: National Highway Traffic Safety Administration
Title: Fatal Accident Reporting System (FARS)
Need for Information: Data will be used to support NHTSA's Motor Vehicle safety standards evaluation.
Proposed Use of Information: The Fatal Accident System is a census of all fatal motor vehicle accidents in the U.S. data is extracted from existing state records and automated for the agency's use in highway and motor vehicle safety problem identification, travel analyses and program evaluation.
Frequency: Monthly/On Occasion
Burden Estimate: 96,000 hours
Respondents: State/local governments
Form(s): HS–214, 214A, and 214B
Average Burden Hours Per Response: 2 hours 18 minutes

DOT No: 3263
OMB No: 2120–0034
Administration: Federal Aviation Administration
Title: Medical Standards and Certification—FAR 67
Need for Information: The FAA needs the information to assess if an applicant is medically qualified to perform the duties associated with the class of airmen medical certificate sought.
Proposed Use of Information: The information obtained from FAA Form 8500–8 is used to determine medical eligibility for the certificate sought. The information obtained on FAA Forms 8500–7, 14, and 20, is used to facilitate a fair and equitable ruling that may allow applicant's operational activities that are commensurate with their medical condition and public safety.
Frequency: On occasion
Burden Estimate: 1,149,025 hours
Respondents: Airmen
Form(s): FAA Forms 8500–7, 8500–8, 8500–14, 8500–20
Average Burden Hours Per Respondent: FAA Form 8500–7 is 15 minutes; FAA Form 8500–8 is 2 hours; FAA Form 8500–14 is 15 minutes; and FAA Form 8500–20 is 10 minutes

DOT No.: 3264
OBM No.: 2127–0501
Administration: National Highway Traffic Safety Administration
Title: Incentive Grant Criteria for Drunk Driving Prevention Programs
Need for Information: To promote effective programs to reduce drunk driving problems.
Proposed Use of Information: An alcohol incentive grant program is established to promote: Expedited driver license suspension for drunk drivers; self-sufficient community DWI programs; enforcement of under age drinking laws; and to discourage open alcohol containers and consumption of alcohol in motor vehicles.
Frequency: Annually
Total Estimated Burden: 2,340 hours
Respondents: States & local governments
Form(s): HS–62
Average Burden Per Response: 1½ minutes

DOT No.: 3265
OBM No.: 2127–003
Administration: National Highway Traffic Safety Administration
Title: Federal-Aid Agreement and Cost Summary Forms for the Highway Safety Plan
Need for Information: To serve as a basis for the execution for a Federal-Aid Agreement.
Proposed Use of Information: The Highway Safety Plan (HSP) identifies that States traffic safety problems and describes the programs and projects to address those problems. It serves as the basis for the execution for a Federal-Aid Agreement.
Frequency: Annually
Burden Estimate: 95,304 hours
Respondents: States/Territories
Form(s) HS–62, 62A, and 217
Average Burden Hours Per Respondent: 1 hour

DOT No.: 3267
OBM No.: 2125–0522
Administration: Federal Highway Administration
Title: Utility Use and Occupancy Agreements
Need for Information: For the Federal Highway Administration to fulfill its statutory obligation regarding controls on utility use of right-of-way of a Federal-aid highway.
Proposed Use of Information: Serves to document the arrangement made between the State highway agency and a utility to allow the utility to use public right-of-way under the control of the highway agency.
Frequency: Recordkeeping requirement/ no retention period specified
Burden Estimate: 552,000 hours
Respondents: Utility companies and state highway agencies
Form(s): None
Average Burden Hours Per Respondent: 8 hours

DOT No.: 3268
OBM No.: New Submission
Administration: Federal Railroad Administration
Title: Disqualification Proceedings
Need for Information: To assure compliance with the Rail Safety Improvement Act and prevent individuals from violating the terms of a disqualification order.
Proposed Use of Information: To prevent an individual serving under a disqualification order from obtaining employment in a safety sensitive position with another railroad.
Frequency: Recordkeeping
Burden Estimate: 8 hours
Respondents: 12 individuals
Form(s): None
Average Burden Hours Per Respondent: 30 minutes

DOT No.: 3269
OMB No.: 2106–0049
Administration: Office of the Secretary
Title: Basic Essential Air Service Questionnaire
Proposed Use of Information: Basic informational documents for DOT analysis of small community air transportation needs.
Need for Information: To enable DOT to meet statutory mandate to review basic essential air service requirements for all eligible points.
Frequency: Triennial
Burden Estimate: 1,192 hours
Respondents: State and local governments
Form(s): None
Average Burden Hours Per Respondent: 8 hours

DOT No.: 3270
OBM No.: 2115–0545
Administration: U.S. Coast Guard
Title: Financial Responsibility for Water Pollution
Need for Information: The information collection requirement is needed to implement the oil pollution responsibilities in the Federal Water Pollution Control Act, Trans-Alaska Pipeline Authorization Act, Outer Continental Shelf Act Amendments of 1978 and for administering and managing the Deepwater Port Liability Fund.
Proposed Use of Information: The Coast Guard uses the information to ensure that vessel operators can meet the

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statutory liability in the vent of water pollution incidents in the United States waters.
Frequency: On occasion
Burden Estimate: 2,182
Respondents: Vessel Operators
Form(s): CG–5358–8, CG–5358–9, CG–5358–3, CG–5358–4, CG–5358–1, CG–5358–2
Average Burden Hours Per Respondent: 30 minutes for reporting and 10 minutes for recordkeeping
DOT No.: 3271
OMB No.: 2115–0142
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Marine Engineering Systems
Need for Information: This information collection requirement is needed to ensure that a vessel construction, arrangement and equipment meet the applicable regulations.
Proposed Use of Information: Coast Guard uses the information to determine that all applicable standards are complied with.
Frequency: On occasion
Burden Estimate: 1,577 hours
Respondents: Vessel builders and owners
Form(s):
Average Burden Hours Per Respondent: 15 minutes
DOT No.: 3272
OMB No.: 2115–0096
Administration: U.S. Coast Guard
Title: Oil and Hazardous Materials Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions
Need for Information: The information collection requirements contained in the regulations are necessary to prevent or mitigate the results of an accidental release of bulk liquid hazardous materials transferred at waterfront facilities. The requirements are also necessary to verify that regulatory mandates for safety tests, inspections, training, designations, etc., are being followed. Provisions such as alternatives and exemptions are contained to allow the vessel or terminal operators flexibility in complying with the regulations.
Proposed Use of Information: The Coast Guard uses this information to help minimize the number and impact of pollution discharges and accidents occurring during the transfer of oil or hazardous materials. It is also used to evaluate the proposed alternative and requests for exemptions.
Frequency: On occasion
Burden Estimate: 111,444 hours
Respondents: Operators of bulk oil and hazardous materials facilities and vessels
Form(s):
Average Burden Hours Per Respondent: 4 hours for reporting and 5 minutes for recordkeeping
DOT No.: 3273
OMB No.: 2133–0515
Administration: U.S. Maritime Administration
Title: Determination of Fair and Reasonable Rates for the Carriage of Dry Bulk Preference Cargoes in Less than full Shiploads on U.S. Flag Commercial Liner Vessels
Need for Information: To document compliance with data-gathering provisions of certain cargo preference regulations.
Proposed Use of Information: To develop fair and reasonable guideline dates for the carriage of preference cargoes on U.S. flag vessels
Frequency: Annually
Burden Estimate: 48 hours
Respondents: Ship owners, ship operators
Form(s):
Average Burden Hours Per Respondent: 16 hours
Frequency: On occasion
Burden Estimate: 458 hours annually
Respondents: Individuals (pilots)
Form(s): AC Form 3150–7
Average Burden Hours Per Response: 5 minutes
DOT No.: 3276
OMB No.: 2115–0514
Administration: U.S. Coast Guard
Title: Merchant Marine License, Certificate and Document Application Recordkeeping/Reporting Requirements
Need for Information: This information collection requirement is needed to determine and document the training, experience, physical condition, professional qualifications and character of persons applying for a merchant marine license, certificate or document.
Proposed Use of Information: The information will be used to determine the applicant's qualifications to receive or continue to hold a license, certificate or document.
Frequency: On occasion
Burden Estimate: 101,087 hours
Respondents: Applicants for merchant marine license, certificate or document
Form(s): CG–719K, 866, 4509, 4510, 719B, 2675, 2838, 719A, 5206, 5205, 4865, 3750, 2987, 2849, 887, and FD–258
Average Burden Hours Per Response: Reporting burden is 26 minutes; recordkeeping burden is 7 minutes
DOT No.: 3274
OMB No.: 2133–0505
Administration: U.S. Maritime Administration
Title: Revised Standby Voluntary Tanker Agreement Under Public Law 774, 81st Congress as Amended
Need for Information: To document each participant's compliance with the provisions of the voluntary tanker agreement.
Proposed Use of Information: Defense contingency planning
Frequency: On occasion
Burden Estimate: 19 hours
Respondents: Tanker owners and operators participating in the agreement
Form(s):
Average Burden Hours Per Respondent: 30 minutes
DOT No.: 3275
OMB No.: 2120–0101
Administration: Federal Aviation Administration
Title: Physiological Training
Need for Information: This collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF/USN/NASA Training Agreements.
Proposed Use of Information: The information will be used by the Airman Education Programs Branch (AAM–420) to determine if the applicant is qualified to receive physiological training.
DOT No.: 3277
OMB No.: 2106–0023
Administrotion: Office of the Secretary
Title: Part 201—Application for Certificates of Public Convenience and Necessity
Need for Information: Required to issue a certificate of public convenience and necessity for carriers to engage in air transportation operations
Proposed Use of Information: Required to determine the nature and scope of required authority
Frequency: As needed
Burden Estimate: 1,050 hours
Respondents: 100
Forms: None
Burden Per Response: 10 hours and 30 minutes

Issued in Washington, DC, on October 4, 1989.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 89–24143 Filed 10–12–89; 8:45 am]

BILLING CODE 4910–62–M

[Docket 46534; Order 89–10–19]

Expanding International Air Service Opportunities to More U.S. Cities; Order Requesting Comments

Issued by the Department of Transportation on the 10th day of October, 1989.

SUMMARY: By this order, we are requesting comments on a new Department proposal designed to expand international air service opportunities to more U.S. cities.

BACKGROUND: During the past months, state and local officials, as well as business leaders, have advised the Department that their communities are interested in improved international air service. They have also expressed concern that on some occasions our traditional bilateral aviation negotiating process prevents foreign airlines from responding to their service needs. While these community parties understand the importance of maintaining a healthy U.S. airline industry, they also have recognized the importance to their communities of international air service, regardless of the flag of the carrier providing it. They have pointed out that international air service can mean expanded tourism, business, foreign investment, and jobs—in short, a boon to economic development. With these factors in mind, they have asked us to reevaluate our approach to the creation of expanded opportunities for foreign carriers to serve U.S. points.

PROPOSAL: We have considered the above comments and have determined that they justify our taking a fresh look at the process that produces international aviation services. Specifically, we have decided to explore an approach in which, under certain well-defined conditions, we will be able to grant foreign carrier requests to offer new U.S. services, notwithstanding the absence of a bilateral right supporting grant to the foreign carrier of such authority.

The text of the proposal is as follows:

DOT Proposal for Expanding International Air Service Opportunities to More U.S. Cities

In response to the desire expressed by U.S. cities for expanded international air service opportunities, the Department will approve a foreign carrier's application for one year, renewable exemption authority to provide scheduled combination nonstop international air service, or one-stop single-plane international air service via another U.S. point, between its homeland and a U.S. community provided that: (1) A U.S. or foreign carrier does not provide nonstop or one-stop single-plane international air service to that community from the same foreign country; (2) there is a procompetitive agreement is place with the homeland country and thus a basis does not exist for a traditional aviation trade to obtain benefits for U.S. airlines; (3) the foreign carrier's proposal does not involve service to and from third countries; (4) interested U.S. parties have not raised overriding public interest reasons for denying the requested authority;[1] (5) The foreign carrier has firm plans to operate the proposed service; and (6) the foreign carrier meets all other applicable licensing standards. If the foreign carrier has not inaugurated such service within 90 days [2] or suspends such service for more than nine months, the authority would expire by its terms without prejudice to any subsequent application for the same authority.

This proposal is not designed to replace the traditional bilateral negotiating process. We believe that, in the majority of cases, this negotiating process advances the public interest, including the interests of communities and carriers.

On the other hand, our own experience, and the experience of many communities interested in improved international air service, indicates that bilateral negotiations may not satisfy community service needs where U.S. carriers have no immediate plans to expand their services to a particular destination, or where they do not need additional foreign government permission to do so. It is in this situation that the traditional balance-of-benefits negotiating approach does not provide the opportunity to accord greater rights to foreign airlines seeking to provide our communities with new international air services.

Our proposal is designed to address this specific problem. As such, we view the proposal as having the potential to address the needs of our communities for additional international air service opportunities while at the same time ensuring that the interests of U.S. carriers are properly taken into account.

We appreciate that it represents an important and significant step that deserves to be seriously considered and thoroughly discussed. To that end, we request interested parties to submit comments in the docket within 30 days from the service date of this order. Any reply comments must be filed within 15 days after that date.

Accordingly,

1. We request comments from interested parties addressing the topic above be filed in this docket by November 13, 1989; reply comments will be due November 28, 1989;

2. We will serve this order on all certificated air carriers, all foreign air carriers, the Airport Operators Council International, U.S. Airports for Better International Air Service, and the U.S. Departments of State and Commerce; and

3. We will publish a copy of this order in the **Federal Register.**

Jeffery N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–24285 Filed 10–12–89; 8:45 am]

BILLING CODE 4910–62–M

[1] Such public interest issues could be, for example: (1) that there are substantial outstanding aviation problems with the foreign carrier's home country, or (2) that a U.S. carrier has firm plans to provide the requested service within a reasonable time frame. A foreign government's reaction to U.S. carrier requests for extrabilateral rights will be relevant in our determination of whether to grant and whether to continue in effect the foreign carrier exemption.

[2] We propose to give foreign carriers only 90 days to inaugurate service, because that is what we require of U.S. carriers when a start-up condition is imposed. However, we would be prepared to grant extensions of the 90-day period for good cause shown.

[Docket No. 46459]

Order to Show Cause; Joint Application of Midway Airlines, Inc., Eastern Air Lines, Inc., and Continental Airlines, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Order 89–10–12, order to show cause.

SUMMARY: By Order 89–10–12, the Department has tentatively decided to approve the transfer of Eastern/Continental's nonstop authority in the Philadelphia-Montreal and Philadelphia-Toronto markets to Midway Airlines. Midway's new authority for these routes would be in the form of five year, experimental certificates of public convenience and necessity. The Department also tentatively concludes that labor protective provisions should not be imposed as a condition to its approval of this transaction.

DATE: Comments and objections shall be filed by October 13, 1989 and answers shall be filed three calendar days thereafter.

ADDRESS: The above pleadings should be filed in Docket No. 46459, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107,

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Washington, DC 20590, and shall be served on all parties in Docket 46459.

Dated: October 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-24140 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTTAION

Coast Guard

[CGD-89-084]

National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on Consumer Education, Propeller Guards, Masthead Lights, Accident Reporting, Passengers for Consideration and Personal Watercraft to be held on Saturday, November 4, 1989, at the Las Palmas Inn, 6233 International Drive, Orlando, Florida, beginning at 1:30 p.m. and ending at 5:30 p.m. The agenda for each meeting will be to review the status of various projects that have been undertaken by the subcommittees.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meetings. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meetings. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

Dated: October 5, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-24136 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF TRANSPORTATION

[CGD-89-083]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, November 6 and 7, 1989 at the Las Palmas Inn, 6233 International Drive, Orlando, Florida, beginning at 8:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction and Swearing-in of a new Council Member.
2. Review of action taken at the 43rd meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Propeller Guard Subcommittee report.
7. Report on the National Boating Survey.
8. Accident Reporting Subcommittee report.
9. Report of the Personal Watercraft Subcommittee.
10. Report of the "Passengers for Consideration" Subcommittee.
11. Review of Developments in Personal Flotation Devices (PFDs).
12. Report of the Masthead Light Subcommittee.
13. Video "Boating Safety" as aired by WCVB-TV/Boston.
14. Report on National Safe Boating Week.
15. Report on Short Range Aids to Navigation.
16. Briefing on Boating Safety at Disney World.
17. Presentation on Pontoon Boats.
18. Presentation on the National Boating Education Seminar.
19. Presentation on Inflatable PFDs of the Future.
20. Remarks by Chief, Office of Navigation Safety and Waterway Services.
21. Reply to members' items.
22. Chairman's session.

Attendance is open to the public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

Dated: October 5, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-24137 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

[CGD 89-068]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Tug-Barge Construction, Certification and Operations of the Towing Safety Advisory Committee (TSAC). The subcommittee meeting will be held on October 31, 1989 in Room 7234 at Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Development of suggested improvements in the provisions of 46 CFR part 151.
2. Evaluation of the adequacy of current 46 CFR part 31 inspection intervals for tank barges.
3. Evaluation of the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges regularly plying "Lakes, Bays and Sounds" route or an "Oceans" route within the boundary line.
4. Evaluation of the requirement for a buckling analysis for existing barges with "Rivers" scantlings as a condition of continuing operation on "Lakes, Bays and Sounds" or "Oceans" routes within the boundary line.
5. Evaluation of the requirement for high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.
6. Evaluation of the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage.

Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: October 6, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-24138 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

Federal Highway Administration

Environmental Impact Statement: Alameda and Santa Clara Counties, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for proposed transportation projects in Alameda and Santa Clara Counties, California.

FOR FURTHER INFORMATION CONTACT: C.G. Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Surface Transportation Act of 1987, Section 149 (Demonstration Projects), the FHWA, in cooperation with Caltrans, will demonstrate methods of improving access to and alleviating congestion on Interstate 880 and its access roads, including access roads from Oakland International Airport and Alameda Island, California.

This demonstration project will comprise the following:

- A first tier (planning level) environmental impact statement (EIS) focusing on broad issues such as general location, type of facility, land use implications, and impacts in general of the major alternatives. The study limits are generally from the I-80/I-880/I-580 Distribution Structure to Hegenberger Road in the City of Oakland.
- An EIS (project level) addressing location, type of facility and specific details on project impacts, cost, and mitigation measures of major alternatives. The study limits are from Hegenberger Road in the City of Oakland to Route 84 in the City of Newark.
- A first tier (planning level) EIS focusing on broad issues such as general location, type of facility, land use implications, and impacts in general of the major alternatives. The study limits are from Route 84 in the City of Newark to generally Route 237 in Santa Clara County.

The range of alternatives to be studied will include:

- Widening and/or modifications to existing I-880 with and without High Occupancy Vehicle (HOV) facilities.
- New alignment freeway/multimodal facility with and without High Occupancy Vehicle (HOV) facilities (State Route 61).
- A combination of the above
- No Project alternative

A scoping meeting will be held at 7:30 p.m. on October 17, 1989 at San Leandro High School, 2200 Bancroft Ave., San Leandro for affected Federal, State, and local agencies and the public to solicit comments on the scope of the studies. A series of public meetings will also be held during the course of the environmental studies to inform and receive input from the public. Each draft environmental impact statement will be circulated for public and agency review and comment followed by a formal public hearing. Public notice will be given of the time and place of the meetings and hearings.

To ensure that the full range of issues related to these proposed actions are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and the EISs should be directed to the FHWA at the address provided previously in this Notice.

(Catalog of Federal Domestic Assistance and Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: October 6, 1989.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89-24208 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-22-M

Federal Highway Administration

Environmental Impact Statement: Hennepin County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of their intent to prepare an Environmental Impact Statement for proposed highway improvements on I-494 in Hennepin County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen Bahler, Area Engineer, Federal Highway Administration, Suite 490, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101 (612) 290-3259.

or

Mr. Leonard Palek, Assistant Corridor Manager, Minnesota Department of Transportation, Metro District, Golden Valley Office, 2055 North Lilac Drive, Golden Valley, Minnesota 55442 (612) 593-8578.

or

Ms. Constance Kozlak, Project Manager, Metropolitan Council of the Twin Cities Area, Mears Park Centre, 230 East Fifth Street, St. Paul, Minnesota 55101 (612) 291-6346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation and the Metropolitan Council of the Twin Cities Area, is planning to prepare an Environmental Impact Statement (EIS) on a proposal to improve I-494 from approximately Trunk Highway (TH) 5 in the City of Bloomington to I-394 (TH 12) in the City of Minnetonka. The section of I-494 proposed for improvement is approximately twenty miles long. The proposed improvements include:

- Addition of one lane in each direction on I-494 between 24th Avenue South and TH 100 and between CSAH 18/TH 169 and I-394;
- Addition of two lanes in each direction between TH 100 and CSAH 18/TH 169; and
- Interchange modifications at 12th Avenue South, Portland Avenue South, Nicollet Avenue South, France Avenue South, TH 100, East Bush Lake Road, TH 169/212, TH 5, Valley View Drive, TH 62, Baker Road, TH 7, CSAH 5, and I-394.

Interchange modifications currently underway at 34th and 24th Avenues South and at TH 77 are part of the TH 77/I-494 Improvement Project. Proposed interchange modifications (improvements) at Lyndale Avenue South, I-35W, and Penn Avenue South are being evaluated as part of the I-35W EIS.

The proposed roadway improvements are part of a comprehensive program for the corridor which includes transit service improvements, implementation of travel demand management techniques by the private sector, and land use management. The proposed roadway improvements include ramp metering and HOV bypass ramps as an incentive for carpools and vanpools. Mainline alternatives under consideration include, but are not limited to: (1) No-build, (2) HOV lanes, (3) Mixed traffic lanes plus HOV lanes. Interchange alternatives include removal of an existing interchange at

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Nicollet Avenue South, relocation of ramps at 12th Avenue South to Portland Avenue South, and new interchanges at West Bush Lake Road, Washington Avenue, and Baker Road. Design alternatives will be considered at all interchanges as part of the EIS.

Improvements to I–494 are needed to provide capacity for traffic forecasted in the year 2010 and to solve existing safety problems and roadway geometric deficiencies. Traffic volumes forecast for the year 2010 are between 56 and 136 percent higher than existing volumes. Current volume/capacity ratios over several segments of I–494 exceed 0.89, and ramp volumes are found to exceed available capacities. Many segments of I–494 pavement have deteriorated and will require extensive maintenance or replacement in the near future.

A Scoping Document will be prepared for agency and public comment in accordance with state requirements. A public meeting will be held to receive comments on proposed alternatives and the issues addressed in the Scoping Document. That meeting will be held during the fall of 1989. Public notice of the time and place of the meeting will be given. A Scoping Decision Document will subsequently be issued focusing alternatives and impacts to receive detailed analysis in the EIS.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions will be invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Minnesota state law requires that an EIS be prepared for the proposed I–494 improvements. That EIS will be prepared as a joint document with the federal EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

The provisions of the Minnesota Intergovernmental Review Process regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.

Issued on: October 4, 1989.

Alan Friesen,

District Engineer, St. Paul, Minnesota.

[FR Doc. 89–24194 Filed 10–12–89; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement, Lehigh County, PA

AGENCY: Federal Highway Administration FHWA, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lehigh County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086. Telephone: (717) 782–4422

or

Mr. Jack Porter, Project Manager, Pennsylvania Department of Transportation, Engineering District 50, 1713 Lehigh Street, Allentown, PA 18105. Telephone: (215) 821–4100

or

Glenn Taggart, Chief Planner, Lehigh/Northampton Joint Planning Commission, ABE Government Building, Allentown, PA 18101. Telephone (215) 264–4514

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT) and Lehigh County, will prepare an Environmental Impact Statement (EIS) on a proposal to improve US–222 (S.R. 0222) from the Interstate 78 interchange through Lower Macungie and Upper Macungie Townships to the vicinity of the Berks County line.

The proposed improvement would involve the reconstruction of US–222 for a distance of approximately 7-miles. Previous transportation planning studies have demonstrated that there is a need to enhance east-west traffic flow in the western section of Lehigh County. The project will relieve traffic congestion along the corridor and improve the regional transportation system. It will also provide needed access to a designated development area of Lehigh County.

This project has been selected as a pilot project to demonstrate highway corridor preservation and accelerated right-of-way acquisition principles and techniques. One of the primary goals of the pilot project is to demonstrate ways of acquiring right-of-way earlier or otherwise preserving potentially needed right-of-way for this project prior to land development or rapid escalation in land values in anticipation of the highway project benefits.

The study process will consist of two phases. The first phase will consist of a traffic and transportation analysis and a Phase I Alternatives Analysis including preliminary engineering and environmental studies. Preliminary alternatives analysis will consider the impacts of the various alternatives on the environment as they relate to the areas of air quality, quality, noise, historical and archaeological resources, traffic, transportation, energy, water resources, socioeconomic, land use, terrestrial ecology, water quality and aquatic biota, farmlands evaluation, floodplain and flood hazard, wetlands, visual resources, soils and erosion analysis, municipal, industrial and hazardous waste facilities, and construction impacts.

Alternatives to be considered during the Phase I Study will include upgrading the existing facility by widening to four lanes with appropriate center turn lanes, four lane controlled access Bypass north of Wescosville and Trexlertown, Transportation Systems Management (TSM) and a do-nothing alternative.

Throughout the Phase I Study process, there will be continuing coordination and involvement with the public and agencies by holding public meetings and meetings with involved agencies. A Phase I Study Report will be prepared.

During preparation of the Phase I Study, an appropriate environmental evaluation document will also be prepared to evaluate the impacts of preservation of the right-of-way for the alternative(s) resulting from the Phase I study in order to preserve the corridor. Methods for the preservation of the corridor could include right-of-way dedication, land donation and actual purchase.

The Phase I Study Report and the environmental evaluation document for corridor preservation will be made available for public and regulatory agency review and a public hearing held, if appropriate.

Approval will be obtained from the FHWA at the end of Phase I for the Phase I environmental evaluation document and for the alternatives to be advanced into the next study phase.

The second phase study will consist of a Phase 2 Alternatives Analysis process including detailed engineering and environmental studies and analyses for the approved Phase I Alternatives and the preparation of a Draft and Final EIS.

These alternatives will be studied in detail and their impacts to the environment will be assessed as they relate to the Environmental areas mentioned under the Phase I Study. In addition, a cost analysis of the various alternatives, preliminary engineering information and all public and agency consultation and coordination will be documented. The review of these studies will be coordinated with the public and the agencies via public meetings, meetings with agencies, circulation of the Draft EIS, and a public hearing.

Letters describing the proposed action and the Scope of Studies soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned with the agencies during the fall of 1989. An initial public meeting was held in the project area in the spring of 1989 and additional meetings will be held throughout the study process. Public notices of the date, time and place of these meetings, and also of any required public hearings, will be provided in the local newspapers. Public involvement and interagency coordination will be maintained throughout the EIS process.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction and the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and Local Review of Federal and Federally Assisted Programs and Projects apply to this Program)

Issued on: October 6, 1989.

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 89–24195 Filed 10–12–89; 8:45 am]

BILLING CODE 4910–22–M

Urban Mass Transportation Administration

Environmental Impact Statement for Transit Improvements in the Hunt Valley Corridor of Metropolitan Baltimore, MD

AGENCY: Urban Mass Transportation Administration, U.S. Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Mass Transit Administration (MTA) of the Maryland Department of Transportation intend to prepare an Environmental Impact Statement (EIS) for alternative transit improvements in the Hunt Valley corridor of the metropolitan area of Baltimore, Maryland. The UMTA and MTA will prepare the EIS in conformance with 40 CFR Parts 1500–1508, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, and 49 CFR part 622, UMTA, Environmental Impact and Related Procedures. In addition, in conformance with the Urban Mass Transportation Act of 1964 and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering.

FOR FURTHER INFORMATION CONTACT:

John T. Garrity, UMTA Region 3, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107; Telephone: (215) 597–4179.

Scoping

The UMTA and MTA invite the public and affected Federal, State, and local agencies to participate in determining the alternatives to be evaluated in the EIS and identifying the significant issues related to the alternatives. Written materials describing the proposed alternatives, the expected impact areas, a citizen involvement program, and the preliminary work schedule are being mailed to affected Federal, State, and local agencies and to interested parties on record. Others may request these scoping materials by calling or writing to Kenneth Goon, Director of Planning, Mass Transit Administration, 300 W. Lexington Street, Baltimore, Maryland 21201–3414; Telephone (301) 333–3366. No scoping meeting is planned. The MTA has already met with the Hunt Valley business community, the Cockeysville-Hunt Valley Special Advisory Committee, and the Hunt Valley Transportation Management Association. Written comments from the public and affected agencies on the scope of the EIS may be sent to Mr. Goon by November 13, 1989. Opportunity for additional public comment will be provided during the study.

Corridor Description

The Hunt Valley corridor in Baltimore County is bounded by Interstate Highway I–83 on the west, Timonium Road on the south, York Road on the east, and the Shawan Center and Hunt Valley Mall on the north. The corridor includes the communities of Hunt Valley, Texas, Padonia, part of Timonium, and part of Cockeysville. The area is predominantly industrial from Timonium to Schilling Circle. Major land uses include the Maryland State Fairgrounds, the Genstar Quarry, and the Texas Landfill. Also included are major manufacturing centers for Noxell, Westinghouse, McCormick, Sherwin Williams, and Becton Dickinson. A small residential area is located off York Road between the Fairgrounds and Padonia Road. The York Road area is predominantly a strip of commercial development. The northern section of the corridor from Schilling Circle to International Circle is largely office use, with the exceptions of the Hunt Valley Mall located north of Shawan Road, and the Masonic Home of Maryland, which are commercial and institutional uses, respectively.

Independently of UTMA, the MTA is constructing the Central Light Rail Line (CLRL) from Metro Center in downtown Baltimore south to Dorsey Road in Anne Arundel County, and north to Timonium in Baltimore County. The northern section to Timonium is being constructed in the Conrail (formerly the Northern Central Railroad) right-of-way and terminates at the existing Timonium park-and-ride facility located between York Road and I–83. The U.S. Army Corps of Engineers is preparing an environmental assessment of the impacts on wetlands and navigable waterways of this related but independent projects. The EIS to be prepared by MTA and UMTA will evaluate transit alternatives northward from the Timonium terminus of the CLRL to the Hunt Valley area.

Alternatives

Transportation alternatives proposed for consideration in the Hunt Valley corridor include: (1) The No-Build option, under which the existing and committed bus and rail systems (including the CLRL out to Timonium and its accompanying feeder bus system) would continue to operate, and committed roadway improvements such as the extension of Warren Road and its interchange with I–83, are assumed to be implemented; and (2) a Transportation Systems Management (TSM) alternative which expands the bus feeder and distribution systems, increases the parking access at the Timonium CLRL terminal, and optionally includes a shuttle bus system serving the major employment concentrations in Hunt Valley.

The alternatives to be considered also include three light rail alignments which extend the CLRL from the Timonium terminal where the committed section ends, to the Hunt Valley Mall. The three alignments are generally off-street and

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at-grade. They all follow the Conrail right-of-way from Timonium to Cockeysville and then diverge: (3) At Cockeysville, Alternative 3 follows the Cockeysville Industrial spur and then Gilroy Road. From Gilroy, it turns onto Schilling Circle and crosses Shawan Road along either McCormick Road (Alternative 3a) or Pepper Road (Alternative 3b) to end at the Mall. (4) From Cockeysville, Alternative 4 crosses the Noxell property and Beaverdam Creek on aerial structure, and then follows Pepper Road across Shawan Road to end at the Mall (Alternative 4a). A design option (Alternative 4b) shifts the alignment east of Pepper Road behind the buildings between Wight Avenue and Schilling Road. (5) Alternative 5 is identical to Alternative 3a up to the Mall. At the Mall, it parallels Shawan Road east to Pepper Road where it turn south and crosses back over Shawan. It then follows Pepper to Wight Avenue and Wight back to Gilroy to close a loop.

During scoping, comments on the alternatives should focus on the appropriateness of these and other options for consideration in the study, not on preferences for a particular alternative.

Probable Effects

The UMTA and MTA propose to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include noise, residential and business displacements, changes in development patterns and land use, community disruption due to traffic, noise, displacements, and parking changes, safety considerations, effects on historic sites, degradation of the air quality and water quality especially near stations, impacts on wetlands, floodplains, ecologically sensitive areas, navigable waterways, coastal zones, hazardous waste sites, and the aesthetic quality of the area. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to mitigate harm will be explored for any adverse impact identified.

Construction of any alternative other than the No-Build will require increased capital outlays for several years. The TSM and light rail alternatives are expected to increase transit service and patronage with associated increases in operating and maintenance costs. The alternatives are expected to have no significant impact on parklands, energy use, regional air quality, or highway congestion except near stations.

During scoping, comments on the probable effects should focus on the completeness of the proposed set of impacts to be evaluated. Other impacts or criteria judged relevant to decision-making should be identified.

Issued on: October 6, 1989.

Peter N. Stowell,

Southeastern Area Director

[FR Doc. 89-24139 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 119, Washington, DC 20420 on November 2-3, 1989. The purpose of the Committee is to review the scientific and medical literature relating to the issue of whether there exists a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of a non-Hodgkin's lymphoma.

The meeting will convene at 9:00 a.m. both days in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Department of Veterans Affairs Central Office (phone 202/233-2115) prior to October 26, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, Room 1078, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: October 5, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-24101 Filed 10-12-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 3:00 p.m.—October 16, 1989.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 89-16—Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24370 Filed 10-11-89; 3:48 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20 and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 11, 1989

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24332 Filed 10-11-89; 11:41 am]

BILLING CODE 6210-01-M

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Corrections

Federal Register
Vol. 54, No. 197
Friday, October 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-061]

Horse Quarantine Facility Standards; Collection of Fees at Animal Quarantine Facilities

Correction

In proposed rule document 89-20736 beginning on page 36986 in the issue of Wednesday, September 6, 1989, make the following correction:

§ 92.11 [Corrected]

On page 36995, in the first column, in § 92.11(e)(2)(B)(*2*), in the third line from the bottom of the paragraph, "contained" should read "continued".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180815; FRL 3634-3]

Emergency Exemptions

Correction

In notice document 89-19820 beginning on page 35059 in the issue of Wednesday, August 23, 1989, make the following corrections:

1. On page 35060, in the second column, in paragraph 24., in the fourth line, "beetles" was misspelled.

2. On the same page, in the same column, in paragraph 25., in the second line, "carboxin" was misspelled.

3. On the same page, in the third column, in paragraph 38., in the third line, "coffee" was misspelled.

4. On page 35061, in the first column, in paragraph 45., in the fourth line, "bulk" should read "bulb".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 60

RIN 3067-AB32

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions

Correction

In rule document 89-22894 beginning on page 40278 in the issue of Friday, September 29, 1989, make the following correction:

§ 60.3 [Corrected]

On page 40283, in the second column, in § 60.3(c)(6)(iv), in the sixth line, "flood" should read "floor".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12;I-1639]

Partial Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9187 beginning on page 15561 in the issue of Tuesday, April 18, 1989, make the following correction:

On page 15562, in the first column, under "T.21 N., R. 23 E.,", the second line should read "Sec. 4, NW¼, N½SW¼;".

BILLING CODE 1505-01-D

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Friday
October 13, 1989

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Part 205 etc.

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training Program and Child Care and Supportive Services; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 205, 224, 233, 234, 238, 239, 240, 250, 255 and 256

RIN 0970-AA68

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training (JOBS) Program; Child Care and Supportive Services; Conforming Changes to Existing Regulations

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements title II of the Family Support Act of 1988 (the Statute), Public Law 100–485, which creates the Job Opportunities and Basic Skills Training (JOBS) Program for recipients of Aid to Families with Dependent Children (AFDC). The JOBS program is designed to assist recipients to become self-sufficient by providing needed employment-related activities and support services.

This final rule also implements sections 301 and 302 of the Statute. Section 301 guarantees child care and provides other supportive services for JOBS participants and recipients who are in approved educational and training activities, and guarantees child care for those who are working. Section 302 guarantees child care for twelve months for certain individuals who have lost AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard.

EFFECTIVE DATE: October 13, 1989. (For further explanation, please see "Overview of JOBS Program Implementation.")

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC, 20447, telephone (202) 252–5118.

SUPPLEMENTARY INFORMATION:

Background

Studies indicate that the average length of time an AFDC family receives assistance is about 2 years. Included in that average are many families who remain on assistance for a protracted period of time. Often, the parent (or parents) in these families lacks the necessary skills or basic education to find employment and become self-sufficient. In many cases, the parent began to receive assistance as a teenager, never finished high school, and has never developed the skills needed to find and keep employment.

Current Federal law and implementing regulations provide for a number of work and training programs for AFDC recipients—the Work Incentive (WIN) program, the Work Incentive Demonstration (WIN Demo) program, the community work experience program (CWEP), the employment search program, and the work supplementation program. However, since most of these work programs are optional, and State support for the programs has varied, implementation of work and training programs has been uneven among the States. A number of studies of possible factors fostering welfare dependence cite the need for reliable and affordable child care in order to obtain and maintain employment. Lack of other support services, such as transportation, has also been mentioned as hindering employment.

On October 13, 1988, the President signed the Family Support Act (the Statute), Public Law 100–485. Title II of the Statute establishes the Job Opportunities and Basic Skills Training (JOBS) program under title IV–F of the Social Security Act (the Act). The purpose of JOBS is to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence. Title III provides child care and other services in support of employment and education and training activities.

Because the Statute affects programs administered by a number of Departments, we actively sought suggestions and comments from the Departments of Education, Interior, and Labor. We also considered letters received in the mail and comments at numerous meetings held with representatives of State IV–A agencies, Indian Tribes, Alaska Native organizations, welfare rights organizations, and other interested parties during the period in which the proposed regulations were being developed. In addition, we carefully reviewed over 700 comments which were received on various aspects of the regulations.

Discussion of the Regulations

In the final regulations, we have followed the format of the proposed regulations issued April 18, 1989 (54 FR 15638) with one exception. We have moved the definition of "participation" to a new § 250.78. We have written the preamble and final regulations so that they do not require reference back to the proposed regulations. Preamble language in the final regulations generally follows the same sequence as in the preamble to the proposed regulations, and we have interspersed comments and responses as appropriate. Regulatory language remains the same except when pertinent changes have been made. Some information about the WIN and IV–A work programs, which we had included as background for the proposed regulations, has been deleted from the preamble to the final regulations.

This discussion is divided into three parts. The first addresses all aspects of the JOBS program; the second addresses provisions regarding child care and other supportive services; and the third part describes changes to the existing regulations in the title IV–A program.

Provisions contained in title II of the Statute regarding workers' issues, such as working conditions, tort claims protection, workers' compensation, and displacement are included in a separate regulatory package developed jointly by the Department of Health and Human Services and the Department of Labor. Several related amendments affecting the AFDC program contained in the Statute, as well as changes to the title IV–D program, are included in separate regulations packages. Section 303, which provides for the extension of Medical Assistance under title XIX of the Social Security Act when a family loses AFDC eligibility, will be implemented under separate regulations to be published by the Health Care Financing Administration.

JOBS

Public Law 100–485 requires State IV–A agencies to have a JOBS program under a plan approved by the Secretary of HHS no later than October 1, 1990, or, at State option, as early as July 1, 1989. It further requires each State IV–A agency to make the program available in each subdivision of the State where it is feasible to do so by October 1, 1992. At least every 2 years, the State IV–A agency must review and update its JOBS plan and submit the updated plan to the Secretary for approval.

Sections 202(a) and 204 of the Statute provide for the repeal of the current WIN and WIN Demonstration programs upon State implementation of the JOBS program, which may be no later than October 1, 1990. JOBS program authority is under the new title IV–F of the Act.

Child Care and Other Supportive Services

Under the Statute, at the time that a State IV–A agency implements the JOBS program, the State IV–A agency must provide funding for child care, or provide child care, if the State IV–A agency determines that it is necessary to accept or maintain employment, or to enable participation in a JOBS education or training program or another approved education or training program. It also requires that participants be assisted with transportation and other work-related supportive services. Under section 302, effective April 1, 1990, twelve months of child care (transitional child care) is guaranteed for former recipients who received AFDC in 3 of the 6 months prior to the loss of AFDC as the result of increased hours of work, increased earnings, or the loss of the earned income disregards. Child care fees (to partially offset the costs) must be charged on a sliding scale based on the family's ability to pay. The transitional child care provision is in effect until September 30, 1998.

Technical and Conforming Amendments

Section 202 of the Statute amends certain sections of title IV–A of the Act and repeals title IV–C. These changes are necessitated by the creation of the JOBS program and the close-out of the WIN and WIN Demo programs. They include, among others, the repeal of the community work experience, employment search and work supplementation programs as of October 1, 1990, unless the State IV–A agency is operating under an approved JOBS plan prior to that date.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The increased expenditures authorized for JOBS and child care and other supportive services under the Statute are expected to have an annual effect on the national economy of over $100 million in each of the first five years of operation. The calculations for expenditures under the Statute are based on the anticipation of increased expenditures in work, training and education programs, and related supportive services (particularly child care), which will be partially offset by payment of child care fees by parents as well as reduced welfare costs in the long run. It is envisioned that required funding levels will decrease over time as a result of the impact of the JOBS program on long-term dependency and the number of families on AFDC.

We have determined that any economic impact in excess of $100 million per year is the result of section 201 of Public Law 100–485 (the Statute). The implementing regulations will not significantly affect expenditures. For this reason, an extensive analysis of the economic impact of these regulations is not required.

There may be increased administrative costs for State IV–A agencies due to the expansion of work programs and related support services, but such costs are not mandated by these regulations. State IV–A agency decisions concerning work programs and supportive services will affect administrative costs. Some increase in costs may be necessary because the Statute requires a minimum number of programs.

There is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely, as a result of these regulations.

Paperwork Reduction Act

Public reporting burden for the collections of information found at 45 CFR 250, 255, and 256 are estimated to average 22 hours for FSA 302, 12 hours for FSA 103, and 50 hours for FSA 104, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. These information collection requirements are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Send comments regarding the burden estimates or any other aspect of these collections of information to the Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that these regulations, if promulgated, will not result in a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program.

We received one comment requesting that we address economic impacts, whether they are positive or negative. The Department has traditionally taken the view that if the economic impact of a given action is expected to be positive, an economic impact statement under the Regulatory Flexibility Act is unnecessary. The additional spending on child care is expected to be a very small part of the total spending on child care in the United States. We have identified nothing in these regulations which have a direct economic effect on child care providers or other small businesses. Any economic impact would stem not from these regulations but, from the additional Federal funding appropriated by Congress to implement this Statute. These regulations merely ensure that the basic decisions on what services shall be provided and chosen will be made by the States, and parents of the children involved.

Therefore, we have concluded, and the Secretary has certified, that a regulatory impact analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required. These regulations are issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of a State to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

The Statute requires that all State IV–A agencies implement a JOBS program by October 1, 1990. In addressing the problems of welfare dependency, which are national in scope, the Statute mandates certain JOBS activities, and requires State IV–A agencies to choose to implement two of four optional program activities (job search, on-the-job training, work supplementation, and community work experience programs).

Previously, State IV–A agencies were required to have a Work Incentive (WIN) or WIN Demonstration program and could elect to provide other work

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programs. Under the work program option, the State IV–A agency chose which type of work programs to implement.

The Family Support Act is more specific than prior work program authorities regarding the activities which may be offered by State IV–A agencies and the population they are to serve under the various program authorities. However, within these limitations, the final regulations are written to allow the State IV–A agency considerable flexibility in the design and operation of its JOBS program. Moreover, title II of the Statute provides authority to Indian Tribes and Alaska Native organizations to operate autonomous programs.

HHS has consulted with State IV–A Directors, other State, County, Tribal and local representatives, welfare rights advocacy groups, labor unions, and similar organizations for their comments and suggestions in those areas of the program where options are available. In response to the Notice of Proposed Rulemaking published April 18, 1989, we received over 700 comment letters covering a number of areas in the regulations. The final regulations reflect consideration of those comments and suggestions.

The Statute mandates Federal support and technical assistance from the Departments of Health and Human Services and Labor in enhancing the flexibility and information resources of each State. Federal assistance is also required to be available to State IV–A agencies upon request for program assessment and to ensure that State IV–A agencies have adequate information both to carry out the program and to develop programs specifically fashioned to their demographic requirements.

The Statute calls for the development of performance standards by October 1993. The Department is directed to do so in consultation with the Secretary of Labor, Governors, State and local program administrators, community–based organizations, and similar groups. This permits participation by States through the entire development process. In its rulemaking, the Department has made a conscious effort to refrain from prematurely establishing standards but, based on section 487(b) of the Act, as added by section 203 of the Statute, the Department establishes certain uniform reporting requirements for performance standard purposes. We expect no State laws to be preempted.

Analysis Required by Executive Order 12606 on the Family

The JOBS program is expected to have an overall beneficial family impact. This analysis discusses this impact in terms of the criteria in the Executive Order.

(a) The objectives of the JOBS program, to provide training, education, job placement, and employment to end welfare dependency, will result in more secure and stable family units. For two-parent families, the Statute provides State options for the participation of both parents, thus enlisting each in the drive toward independence. The potential danger to family self-image, stability and marital commitment posed by welfare dependency increases as a family remains on welfare. The decrease in dependency and increase in self-sufficiency which the Statute is designed to achieve will help strengthen families and ameliorate the erosive effects of poverty.

(b) The Statute provides significant support for the nurture and supervision of children in the form of guaranteed child care, which will enable parents to work to achieve self-sufficiency and increase their earnings. Parents will continue to have supervision of their children as they would have in any working family, with options for choosing sources of child care. Federal financial support for child care services in no way changes the nature of that care, which may continue to be provided by relatives, friends and neighbors without State intrusion, except insofar as States and localities have already chosen, or may in the future choose, to regulate or license day care providers, or ensure that center-based care becomes subject to health and safety protections.

Some families may feel that control over their own destiny is diminished by the extension of mandatory requirements established by Congress to continue their education or seek employment while placing their children in child care. This is true in a limited sense, but it represents a positive compromise by a family in which a tradeoff is made between immediate autonomy and a better future through cooperation with the requirements under the JOBS program.

(c) The JOBS program does not substitute governmental activity for any of the functions of the family. It will help the family perform its nurturing functions. It will also provide support while the family attains economic independence.

(d) The JOBS program is specifically directed at increasing family earnings. Under JOBS and the other Family Support Act provisions for enhanced earned income disregards, supportive services, transitional child care and other benefits lasting beyond the period of AFDC eligibility, earnings are less apt to be offset by reductions of grants or loss of associated benefits.

(e) The JOBS options and services are to be designed and delivered by the non-Federal levels of government, i.e., States, localities, and Indian Tribes. The Federal government will not intrude upon family autonomy or decisions.

(f) The provisions in the Statute regarding the JOBS training program and the related child care and other supportive services emphasize that a strong family structure is critical for the nation's economic strength, and is an important source of values that promote the work ethic. Targeting families in economic crisis with supportive services and active help towards gaining (or regaining) strength and self-sufficiency, sends the message that all levels of government are getting involved in assisting families.

(g) Finally, the emphasis on achievement in the JOBS program should send the right message to young people about the rewards of self-reliance and the direct connection between responsible behavior and their own economic success.

Objectives of the Family Support Act and These Regulations

The Family Support Act embodies a new consensus that the well-being of children depends not only on meeting their material needs, but also on the parent's ability to become economically self-sufficient. The Statute assumes that self-sufficiency and family responsibility are necessary and achievable goals and makes education, training, and child care available to allow individuals to reach these goals. The Statute further recognizes the mutual obligations of parents, who are currently dependent, to work toward self-sufficiency through private employment, and of the government to support that effort.

These final regulations have been drafted to implement the objectives of the Statute and of the Administration of President Bush. Several key principles have guided their development:

—That the value of the Aid to Families with Dependent Children program should be measured not just by its ability to meet the income needs of individuals served, but also by its ability to help these individuals achieve independence;
—That parents have the primary responsibility for the support and welfare of their children and that programs should be designed to help parents meet these responsibilities;
—That women and their children represent the overwhelming proportion of AFDC recipients; that within this group the most dependent are never-married mothers who did not complete high school and who had their first child at a young age; and that programs designed to reduce overall dependency must necessarily address this group;
—That consistent with individual responsibility is choice, and that parents be given a wide range of options for child care while participating in the program;
—That education (such as literacy and high-school equivalency) is one of the most important tools an individual needs to achieve full citizenship and independence, and that this should be an important JOBS component;
—That skills training can be an important element in an individual's reaching self-sufficiency;
—That JOBS programs be designed to prepare participants for private employment in jobs they can realistically be expected to obtain;
—That resources be maximized through the coordination of existing programs at all levels of government and in concert with community-based volunteer and business organizations; and
—That States be given maximum flexibility to design program components within the JOBS provisions of the Statute in order to tailor programs to meet local needs.

In the sections below, we discuss our overall plan for program implementation, and provide in-depth discussions of each section of the final regulations. In these discussions, we refer to the Family Support Act of 1988 as "the Statute," and the Social Security Act as "the Act." We also use the pronoun "she" when referring to applicants, recipients, and participants. Unless otherwise specified, "she" is a generic term meaning both she and he. This choice of terminology is appropriate because the great majority of adult caretakers in the AFDC program are women.

Overview of JOBS Program Implementation

Section 204 of the Family Support Act of 1988 permits State IV–A agencies to implement a JOBS program as of July 1, 1989, regardless of the publication of implementing regulations. Fifteen States implemented on July 1, 1989.

JOBS and Supportive Services plans for States, Indian Tribes and Alaska Native organizations implementing JOBS prior to publication of the final regulations must meet the requirements of the Statute.

We plan to provide preprints for JOBS and Supportive Services plans following publication of the final regulations. These preprints will provide for a description of the design and operation of States' JOBS programs and associated supportive services. Prior to issuance by the Department, these forms will be submitted for approval to the Office of Management and Budget.

For the purposes of the following discussion, we use the terms "interim plans" and "initial plans". Interim plans are plans submitted by a State IV–A agency in a format other than preprints. Initial plans are the first plans submitted by a State IV–A agency and can be either an interim plan or a preprinted plan, depending on when the plans are submitted. State IV–A agencies must submit initial JOBS and Supportive Services plans 45 days before planned implementation. When the plan preprint is made available, States which are operating a JOBS program under interim plans will be given 90 days to resubmit plans in the required format.

Federal financial participation (FFP) will not be available for expenditures incurred before the date that initial JOBS and Supportive Services plans are approved. More information regarding this issue, as well as the State JOBS and Supportive Services plan review process, is provided below.

The preamble discussion generally follows the sequence of the final regulations, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the JOBS and Supportive Services sections in the final regulations.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Purpose (§ 250.0 of the Final Regulations)

This section of the final regulations contains the goals of the JOBS Program and the regulatory objectives of Part 250.

Comment: Several commenters suggested that we use the purpose of the JOBS Program as stated in section 481(a) of the Act instead of the language from section 482(c) of the Act, which provides that the State agency "must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Response: We have decided to use the language from section 481(a) of the Act to describe the overall purpose of the JOBS Program. However, we have added the language from section 482(c) of the Act that emphasizes parental responsibility to the more specific list of program goals contained in this section. We believe that the goal of ensuring that parents have primary responsibility for the support of their children is fundamental to the entire purpose of the Family Support Act of 1988.

Definitions (§ 250.1 of the Final Regulations)

We have included a number of definitions in order to facilitate understanding of the regulations. These definitions are discussed below.

Terms Related to the JOBS Program

The term "adult recipient" is defined in accordance with section 403(k)(4) of the Social Security Act. The term "caretaker relative" is used in several places in the Act. However, we have not provided a definition in these regulations. Traditionally, States have established procedures for determining who the caretaker relative is for each assistance unit, and we have continued this practice. The term "target population" is defined to meet the requirements of sections 403(1)(2)(B) and 403(1)(2)(C) of the Act. The definition includes provision for any State to adjust the particular target populations if it satisfactorily justifies the change to the Secretary.

For purposes of convenient reference in the body of the regulations, we define a number of words and acronyms. These include standard references such as "Secretary" and "Department"; thus, any reference to the Departments of, or the Secretaries of, Education, Interior, or Labor is made specific. We define "component" as including all services and activities that a State may make available under §§ 250.44 through 250.48. We define a number of acronyms common to work and welfare programs, such as "CWEP," "OJT," and "UP." We include "FFP" for Federal financial participation. We include a definition of "MSA" since we require the use of defined Metropolitan Statistical Areas in assessing issues related to statewideness requirements in the legislation. We add several acronyms that are specific to JOBS, such as the "JOBS" acronym itself, and "JAS" as the reference for the JOBS Automated System for recordkeeping and reporting purposes.

Terms Related to Educational Programs, Services or Activities

The Family Support Act provides for extensive educational services, and sets certain requirements, such as that

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participants "make satisfactory progress." We have defined the terms related to these services and requirements in accordance with Federal and State definitions when they are well understood, widely accepted, and feasible to use in connection with JOBS. For example, the definition of the term "institution of higher education" derives from the corresponding definition of the term found in section 481(a) and section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088 and 1141).

Basic Literacy Level. The phrase "basic and remedial education to achieve a basic literacy level" is listed in the Act as one of the mandatory educational activities of JOBS. Also, section 482(d)(2) of the Act provides that the State agency shall include educational activities as a component of participation in JOBS if the individual does not have a high school diploma or the equivalent, unless her employability plan has a long-term employment goal that does not require high school education or she demonstrates a basic literacy level.

In the NPRM, we proposed that basic literacy level mean a basic literacy level that allows a person to function at the level of an individual who has successfully completed the eighth grade. Our basis for that proposal was the recently proposed regulations for implementing the Adult Education Act, which indicated both that adult basic education includes education through grade 8.9 and that "adult secondary education" includes instruction designed for an adult who "is literate and can function in everyday life, but is not proficient." We also considered that in the list of mandatory educational activities contained in the Act, "basic and remedial education to achieve a basic literacy level" is an item separate from "high school or equivalent education." Further, we took into account that these terms were characterized in the Act as "educational activities," and that "job skills training" and "job readiness activities to help prepare participants for work" were listed separately from the educational activities.

Comment: We received many letters containing comments on our proposed definition of basic literacy level. The majority of the commenters did not favor our proposal. Many of those commenters stated a preference for the level of completed high school. A few commenters said the proposed level of "successfully completed the eighth grade" is too high. A few commenters advocated the use of State or local literacy criteria. Some commenters did not approve of the concept of completion of a school grade level, preferring a competency based, functional definition. A few commenters did not object to completed eighth grade as a basic literacy level. One commenter suggested that the definition refer only to reading skills at the completed 8th grade level. Similarly, another commenter preferred a 10th grade reading skill definition.

While most commenters said the eighth grade is too low to promote self-sufficiency, some stated that the level is too high to be in harmony with the goals of JOBS and to take advantage of existing services with which JOBS is intended to be coordinated, e.g. JTPA programs. A committee of a State legislature observed that using the proposed level of literacy would increase costs and thereby reduce the number of educational assignments that could be made for JOBS participants. Another agency within the same State asked that if a grade level continued to be used, it should be no higher than the grade level proposed. An organization involved in serving AFDC clients approved of the definition, which it saw as being advantageous in coordinating with adult and alternative education programs. Some commenters did not view "successfully completed the eighth grade" as being as precise in meaning as "grade 8.9." Others stated that the definition did not convey adequately measured performance. They, therefore, suggested that the definition incorporate the use of a standardized testing tool to measure successful completion of the eighth grade.

One commenter pointed out that using only a grade level, as opposed to setting out the specific proficiencies that comprise basic literacy, posed problems in instances where criterion-referenced assessment measures are used. Many groups suggested focusing the definition on a list of those proficiencies, usually consisting of reading comprehension, written communication, verbal communication, computation, and problem-solving.

Many of the groups seeking to have basic literacy established at the completed high school level cited studies of workforce trends that indicate that most new jobs being created will require basic skills at the high school level or above. Some of them reasoned that the wording of the Act at section 482(d)(2), concerning participants age 20 or over, indicated Congress' intent that basic literacy would be equivalent with a high school level education. Some stated that the definition of basic literacy should be compatible with what they saw as the strong emphasis upon achieving a high school education for participants under the age of 20 contained in section 402(a)(19)(E) of the Act. It was the sense of some of the comments that the use of a lower than high school level in defining basic literacy would result in States choosing to deny participants the opportunity to earn a high school diploma or the equivalent.

Other commenters requested that the States be given flexibility in defining basic literacy levels for the purpose of JOBS, in view of regional differences in the skills needed by the labor force. However, one literacy group favored a national, functional standard, because it said that States vary in their views of the content of a particular grade level. Some stated that basic literacy should be determined by the particular occupational goal of the participant. Some commenters wanted "life skills" to be incorporated as part of the definition.

We also received views that indicated that the broader range of goals appropriate for participants under the Adult Education Act, many of which are not oriented toward employment, made it difficult to apply definitions designed for adult education programs to the JOBS program. We note that Congress has required the U.S. Department of Education to make a determination of the criteria for defining literacy. The results of that study will be available in 1990. Also, the Department of Labor has contracted for a study of JTPA program participation that will profile workplace literacy levels and produce a workplace literacy testing instrument by 1991. These two Federal studies are expected to produce useful information on literacy relative to JOBS.

Response: Since the comments on this issue did not yield clear guidance concerning establishing a definition of "basic literacy level," and since the results of the two important Federal studies are not yet available, we have decided that at this time we will maintain our proposed definition with two modifications made for the purpose of clarification. First, for purpose of precision, we now refer to grade 8.9, instead of successfully completed eighth grade. Second, we now indicate that the individual is expected to function "at least" at that level, emphasizing that States may define basic literacy at a higher level.

We did not choose to lower the grade level for this definition because the comments indicate a trend toward greater literacy needs in the workplace. Moreover, even though a few States said they preferred a lower level than proposed in order to coordinate with JTPA, the Department of Labor commented that the basic literacy level should be defined as a literacy level above the 8th grade on a generally accepted standardized test or equivalent score on a criterion referenced test. Since our definition of basic literacy level does not prescribe the method of assessing the individual's educational achievement level, our reference to a grade level should not be interpreted to preclude use of equivalent scores in criterion-referenced assessment systems.

We recognize the trend toward a more literate workforce and strongly urge each State to adopt a definition of basic literacy level that will fulfill the aim of JOBS to reduce welfare dependency and foster self-sufficiency. The individual's educational skills, her skills that compose the concept of "job readiness," and appropriate job skills form a critical core of characteristics leading toward self-sufficiency. It would not serve any useful purpose under JOBS for a State to excuse an individual from educational activities on the basis of her performance at grade 8.9 if the local job market requires a higher level of educational competency to produce long-term self-sufficiency.

The issue of literacy impacts upon all aspects of life in the United States and has commanded the close attention of the administration of President Bush. Thus, our interest in the topic reaches far beyond literacy's relevance to welfare reform. We will continue to coordinate with the Departments of Education and Labor to reach an understanding of the basic literacy needs of this country. It is crucial to our economy and to the general well-being of our population that this country continue to strive to provide our citizens with appropriate educational opportunities—not only to achieve the goal of individual self-sufficiency but to fulfill the intellectual potential of each citizen. We urge all interested parties affected by the JOBS program to remain constantly attentive to literacy issues.

Comment: A few commenters asked that the definition of basic literacy level take into account the worth and potential of those who are learning disabled and do not have the ability to achieve an 8th grade literacy level.

Response: The regulations at § 250.44 provide for States to take into account those who are unable to achieve the basic literacy level. Specifically that section allows for placement in any educational activity below the postsecondary level that the State IV–A agency determines to be appropriate to the participant's employment goal. Moreover, § 250.32 provides appropriate opportunities for individuals of each of the age levels addressed in that section to be placed in educational activities other than those leading to high school level credentials or the basic literacy level defined in the regulations.

Limited English Proficiency

The definition of "limited English proficiency" is consistent with the manner in which the Department of Education's Office of Vocational and Adult Education uses the term. In the preamble to the NPRM we stated that a State IV–A agency would not have to provide instruction in English as a Second Language (ESL) if such instruction would not be necessary for an individual to become self-sufficient. As an example of an instance in which instruction in ESL might not be necessary for self-sufficiency, we cited the case of an employer who does not require English proficiency.

Many groups commented that they believed that these statements would discourage States from providing ESL education. Several commenters stated that limited English proficiency is one of the most significant barriers to true self-sufficiency, and that ESL instruction is mandated in the Act. One State labor department approved of the flexibility given to States regarding possible exceptions from ESL education but asked that the regulations require the State JOBS plan to give assurance that an individual will be excused from ESL education only if sufficient employment opportunities exist that meet the needs of the person's employability plan.

Education in English proficiency is listed as a mandatory component of JOBS in § 250.44 of these regulations. Our discussion in the preamble to the NPRM was intended to indicate that States have flexibility in selecting activities for the participant's employability plan that will best suit her needs to become self-sufficient. If the State IV–A agency determines that ESL instruction is not necessary for the participant to achieve self-sufficiency, other activities may be selected to help meet the goal. It is not our intent to diminish the use of ESL instruction when it is needed to help a participant achieve self-sufficiency.

Comment: One commenter from the adult literacy field observed that, while ESL instruction is highly important, JOBS should permit transitional bilingual educational programs in which the participant might receive instruction in fields such as mathematics and science in her first language.

Response: These regulations provide the States with the flexibility to place a JOBS participant in such a program, based upon her assessed needs and employability plan.

Comment: Some commenters found that the definition of "limited English proficiency" was not totally consistent with the reference to "education in English proficiency" located in § 250.44(a)(3). They asked that the terms be conformed.

Response: We agree with the commenters and have conformed the terms. We added "reading" to the list of limitations in English covered by the definition of "limited English proficiency." We added "understand" to the list of limitations in English to which § 250.44(a)(3) refers.

Comment: One commenter read the part of the definition of "limited English proficiency" that refers to the participant's family or community environment as a separate definition. The commenter observed that the wording might not serve to screen out those who lack proficiency in English. There were other comments that the final part of the definition was confusing.

Response: The definition should not be read as a two-part definition. We have revised the wording so that it is clear that the person's environment is considered along with her limited ability in English. The definition is compatible with the regulations recently proposed for implementing the Adult Education Act (20 U.S.C. 1201 et seq.)

Postsecondary Education. The term "postsecondary education" is defined to include a program of postsecondary instruction in the institutions captured in the definition of "institution of higher education," and a program of instruction in other institutions referenced by section 435(b) and section 435(c) of the Higher Education Act (20 U.S.C. 1065) as well as in any public institutions in the State that may not be covered by the Higher Education Act. The definition of postsecondary education: (1) allows a State to exercise a wide choice among educational activities, (2) includes private postsecondary schools among the institutions that the State might utilize to meet the educational needs of JOBS participants, (3) provides the protection concerning educational quality that is built into the Higher Education Act, and (4) permits States to select training from among any public postsecondary institutions that might not have been determined to meet the definitions in the Higher Education Act.

We wish to avoid uncertainty in applying the terms found in the Higher Education Act to the educational activities used in the JOBS program.

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Therefore, our definitions provide that the State IV–A agency use the determinations that result from the Secretary of Education's process for certifying institutional eligibility to apply for the Higher Education Act student financial assistance programs. This provision does not appear to be burdensome, nor is it an unrealistic way of securing a decision regarding a postsecondary institution's compliance with the definition, since we anticipate that welfare recipients who enroll in postsecondary education or activities will have the benefit of Federal student financial aid, such as Pell Grants and Guaranteed Student Loans.

Comment: One State commented that the inclusion of "vocational school" as part of the definition of "postsecondary education" was confusing, since the term "vocational training" appears in § 250.44(b) as part of a self-contained definition of "job skills training," which is listed as one of the mandatory components of JOBS. The State's interpretation was that the similar terms would therefore make postsecondary vocational education a mandatory part of JOBS, and they sought clarification of this point.

Response: The position of the commenter is not accurate. The Act identifies postsecondary education as a separate, optional JOBS activity. The unavoidable similarity of terms must not be used to blur the distinction between mandatory and optional activities.

Remedial Education. Since the term "remedial" appears within the clause, "basic and remedial education to achieve a basic literacy level," in section 482(d)(1)(A)(i) of the Act, we invited comment as to whether the distinction of remedial education from basic education can be an operationally useful distinction. All who commented on this issue indicated that a distinction of remedial education from basic education is artificial, unnecessary, and potentially confusing. Therefore, we have decided to delete the definition of remedial education from § 250.44(a)(2) and will consider "basic and remedial education" as a term not requiring an operational distinction.

Terms Related to Making Good or Satisfactory Progress in Educational Activities

The definition of "make good progress" and "making satisfactory progress" affects a participant's involvement in educational activities in two specific places. First, in section 402(a)(19)(E) of the Act, a State IV–A agency may require an 18 or 19-year-old custodial parent who lacks a high school diploma or its equivalent to accept a job or training—instead of enrolling in educational activities— if the participant "fails to make good progress in successfully completing such educational activities." Second, in section 402(a)(19)(F) of the Act, a State IV–A agency may accept, as satisfactory participation in the JOBS program, a participant's attendance in good standing in an "institution of higher education," or in a "school or course of vocational or technical training," if the participant is "making satisfactory progress."

The concept of satisfactory progress should be used in connection with other educational activities whenever a State IV–A agency performs a reassessment of a participant, in order to help determine whether the participant has been appropriately placed in an educational activity. It should be used to determine whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations. If a State elects to allow educational activities for unemployed parent under 25 in lieu of the work requirement at § 250.33, the unemployed parent meets the requirement if she is making satisfactory progress, as defined in § 250.1, in the educational activity. However, as indicated in our discussion related to participation in education at § 250.32, making satisfactory progress in an educational activity is not a factor in defining participation, for the purposes of participation rates under § 250.74 of the regulations.

Our definition of "make good progress" and "making satisfactory progress" is consistent with the *Federal Student Financial Aid Handbook* of the U.S. Department of Education, which is available in most schools and public libraries. The definition requires that a standard include both a qualitative element (e.g., grade point average or performance on a criterion referenced test) and a quantitative element (e.g., time limit for completion of the program or course of study). The final regulations permit the standard to provide that a participant may be considered to be making satisfactory progress during a probationary period or due to mitigating circumstances.

The regulations provide that a standard be used that was developed by the educational institution or program and approved by both the State or local education agency, and the State IV–A agency or Indian Tribe or Alaska Native organization. We believe that the institution or program offering the education should be involved in devising the standard, because of wide diversity among educational programs. Furthermore, the practice is compatible with Department of Education student financial assistance guidelines.

In order to assure that participation in educational components is meaningful and productive, we sought comments on the issue of including time standards where the educational activity is not part of an established educational program, such as high school. The examples that we gave were average hours per week or limits on the time period permitted to make specified educational gains.

Comment: A few commenters, including two postsecondary institutional membership organizations, specifically stated that they approved of the satisfactory progress definition for educational activities. A State education agency, for example, specifically noted the appropriateness of involving the State IV–A agencies and the State education agencies in approving the institutional definition, but at the same time the commenter asked that satisfactory progress be based solely upon attendance and grades. One organization, however, favored simply using existing Federal definitions where available and measuring literacy program progress by "satisfactory participation" and effort. Another commenter recommended that the State IV–A agency's definition prevail over any institutional, programmatic, or provider policy. A few commenters favored individualized plans for each participant. Some groups said that the definition should be used only for purposes of reassessing a participant and not for purposes of determining participation rates or continued receipt of supportive services. Several groups applauded the concept of a probationary period and recognition of mitigating circumstances, but they asked that a probationary period clearly be made mandatory.

More groups opposed the requirement for a qualitative component in the standard or asked for refinement of that requirement. Although grade point average was cited in the preamble of the NPRM as an example of the qualitative aspect of the standard, most commenters seemed to see it as the only qualitative measure permitted. They said a grade average is not applicable to nontraditional educational programs, such as adult education activities. One of the commenters specifically asked that the definition be adjusted to incorporate alternate ways to measure progress, e.g., criterion-referenced tests. One commenter suggested adding "improvement of basic skill competencies" as a specific example of a qualitative measure of a participant's progress. Another stated that promotion to a higher grade, particularly for young parents, should override other satisfactory progress requirements.

Some of these commenters said that the participant who faithfully attends an educational activity should not be penalized for failing to make progress according to an institution's standard. Some commenters pointed out that participants who are in adult education activities are more likely than the normal population to be learning disabled and therefore would progress more slowly. They feared that the definition would discourage the placement of those who are the most in need of education into educational activities. Some of them observed that an individualized definition of satisfactory progress might be needed. A few groups suggested that interim participation measures are too cumbersome, and some of them said that those measures should be replaced by outcome measures.

Concerning the issue posed in the NPRM as to whether to establish minimum hours for those who were in educational activities outside of regular high school, the comments were evenly divided between those in favor and those opposed. Of those opposed to a Federal requirement, one commenter stated that its experience was that time standards are not good measures of progress. One commenter noted that since those programs were likely to enroll people with learning disabilities, time is an inappropriate factor. One State asked that the States be allowed to establish their own standards. Another commenter said that States would purposefully underestimate time needed to complete an activity.

Response: We have decided to retain the definition essentially as proposed, because we believe that it provides adequate flexibility to accommodate the concerns of those who commented. (However, we will no longer use the concept for defining participation under § 250.78.) Since students who are participating in a wide variety of Federal financial aid programs are accountable for qualitative and quantitative progress, we believe that the JOBS population should not be exempted from accountability in these areas. At the same time we do allow for the State IV–A agency to take into account any special characteristics of the JOBS population. Therefore, for the purpose of assuring maximum flexibility, we have decided to delete the reference to the satisfactory progress definitions of accrediting bodies recognized by the U.S. Secretary of Education. Also, we will not require that minimum hours be established for those who are in programs, such as evening adult educational activities, that are outside of traditional educational settings.

While we give examples of qualitative and quantitative measures, these are not intended to be limiting. The State IV–A agency, therefore, has the flexibility to work with educational institutions or programs to develop standards that take into account the special needs of the JOBS population. While we do not see the need to mandate provisions for mitigating circumstances, our definition clearly allows for a probationary period relative to JOBS, and we encourage States to be sensitive to the issue.

We further note that, insofar as JOBS participants are enrolled in postsecondary education and are receiving loans and grants under the Higher Education Act, continued receipt of those loans and grants will be governed by the institution's provisions regarding satisfactory progress relative to the Higher Education Act, regardless of whether the State IV–A agency has accepted a more lenient definition of "good progress" or "satisfactory progress" from the provider for the purpose of JOBS.

Making Good or Satisfactory Progress in Training Programs. The Act does not include a qualitative measure of making good or satisfactory progress for training programs under JOBS, such as OJT and skills training. However, after consultation with the Department of Labor, we decided to expand the definition of making good or satisfactory progress to apply to OJT and skills training. We do so to assure that training offered through JOBS results in an increase in participants' skills and competencies, and that such progress be monitored by the State IV–A agency.

Operationally, this will require that qualitative measures be developed by the provider and approved by the State education agency and the State IV–A agency or Indian Tribe or Alaska Native organization. If such measures already exist for a training program, then they can be applied with the agreement of the State IV–A agency. If they do not exist, the State IV–A agency should secure appropriate measures as a condition of including such training in a JOBS component. States will have flexibility concerning measures of good or satisfactory progress because there will be a great deal of variation in the types of training programs which States will choose to offer. However, we strongly urge the State IV–A agency to consult with the appropriate State employment and training agency in developing such measures.

The measure of good or satisfactory progress should be used by the State IV–A agency to determine whether a participant should continue in a particular training activity and whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations.

We considered whether to apply the concept of making satisfactory progress in measuring participation rates for OJT and skills training. However, we sought comments on the issue because we were concerned that including such measures in training components for purposes of the participation standards could discourage a State from setting meaningful standards if the standards would affect the State's ability to meet the participation rates.

We also considered precluding FFP for the costs of training activities for individuals not making good or satisfactory progress. However, we sought comments on the issue because we were concerned that this might discourage States from including training components in their JOBS programs.

Comment: Those who commented on using a standard of good or satisfactory progress for training programs observed that the Act does not require such a standard for training programs. Most of these commenters did not favor applying the concept to training programs relative to continuing supportive services or determining participation; therefore, they did not discuss the content of the definition. Other commenters discussed the issue of satisfactory progress in training along with the issue of satisfactory progress in education or did not differentiate between the two, since they had the same concerns with both, such as whether the definitions would discourage placement of those most in need of the education or training into such activities.

However, we received about a dozen comments specifically related to the proposed definition of satisfactory progress in training activities. Some of the commenters had concerns about how well qualitative standards could be constructed for training programs. Some commenters stated that performance based contracting and outcomes would accomplish what was intended by imposing standards of satisfactory progress. A few commenters observed that the standard posed problems for coordination with JTPA programs. One of these commenters said that subcontracts with JTPA providers are outcome-oriented, that the monitoring

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aspect of the definition would be burdensome, and that the definition unfairly called for a standard for all participants in a single activity which did not take into account differing ability levels.

One commenter noted no objection to using qualitative measures of satisfactory progress in training as long as they did not discourage placement of the difficult to serve, but they stated that States have to be given time to develop the standards. A few groups did not object to the concept of satisfactory progress in training but recommended that the definition allow maximum flexibility and reliance upon training providers. One commenter highlighted the necessity to differentiate between the kinds of qualitative measures that would be used in determining satisfactory progress in educational activities from those measures that would be used to measure progress in job skills training and OJT. They suggested progress should be tracked through a sequence of learning objectives, related curriculum, and pre- and post-assessment.

Response: We are retaining our definition of "making good progress" and "making satisfactory progress" in training to help assure that the training results in an increase in the skills and competencies of JOBS participants. Periodic assessment of the participant's progress while she is in the program is preferable to determining at the program's conclusion that the participant did not profit from it, either because the placement was inappropriate or because the participant did not make an adequate effort to learn from the activity.

Our definition provides broad flexibility concerning the measures and time periods that can be used. Since there is such a variety of training programs, our definition allows for the provider to participate in setting the standard. Moreover, very short programs that do not meet the time increments established by the State IV–A agency for monitoring progress need not be subject to the policy.

In deference to those commenters who asked for time in which to develop standards of satisfactory progress in training activities, we will not require State IV–A agencies to use the definition until October 1, 1992, the second full JOBS cycle, although we encourage States to employ such standards before then if they are available. We believe that the two-year grace period will allow State IV–A agencies to work with providers and employment and training agencies, as well as to amass some initial experience in the area, in the development of definitions for programs that lack such standards.

Terms Related to Participation

We have moved the definition of participation to the new § 250.78.

Subpart B—Administration

State IV–A Agency Administration (§ 250.10 of the Final Regulations)

Section 482(a)(2) of the Social Security Act identifies the State IV–A agency as the State agency responsible for the administration or supervision of the JOBS program. Similar provisions apply to the AFDC and Adult Assistance programs (see sections 2(a)(3), 402(a)(3), 1002(a)(3), 1402(a)(3), and 1602(a)(3) (Aid to Aged, Blind, and Disabled) of the Social Security Act). Longstanding Federal policy construing these latter requirements has interpreted them to mean that the State IV–A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in the overall administration or supervision of the program (see § 205.100).

However, section 485 of the Act provides States with contract authority to administer the JOBS program (see § 250.13 and related preamble). Accordingly, in view of both sections 482(a)(2) and 485, we believe that certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the State IV–A agency, so long as there are specific rules and regulations issued by the State IV–A agency governing their implementation. For example, the State IV–A agency may contract out a wide range of functions—such as orientation, literacy testing, and JOBS component activities and services.

A number of questions have arisen regarding the effect of the single State agency requirement on the delivery of JOBS services to individual participants. Questions regarding this issue were raised in the comments to the NPRM, as well as through review of the State JOBS plans of the fifteen States which implemented the program on July 1, 1989. Longstanding policy with regard to State IV–A agency administration has required that decision-making and other functions which affect individual eligibility for and the amount of the AFDC benefit must be performed by an office of the State IV–A agency, or through the local welfare agency under the supervision of the State IV–A agency. We have said that such activities as processing applications, determining eligibility, providing hearings, and imposing sanctions must be performed by the State IV–A agency. This policy derives from congressional expressions of intent—e.g., section 402(a)(7) (the State agency is to determine need), and section 402(a)(4) (hearings are to be before the State agency).

Many States have questioned the effect of this policy on JOBS services to be provided under contract or agreement—e.g., assignment of an individual to a particular component. Others have asked if such functions as assessment and case management could be contracted out. Some States have asked if entire components could be provided by agreement with other State agencies. Other States have submitted plans in which overall program administration, including planning and control of the program, as well as the delivery of services, would be performed by another agency. In some plans it was clear that the States intended to make few changes to the existing service delivery system and would simply call the existing system "JOBS".

We believe that the State IV–A agency should have maximum flexibility to administer its programs within the requirements of the Act. We recognize that in many States, other agencies—such as Job Training Partnership Act (JTPA) agencies, the State education agency, the State employment security agency and community-based organizations—have been effectively performing a range of educational, training and employment-related functions for welfare recipients. Rather than requiring a State IV–A agency to train or expand in-house staff to perform similar JOBS functions which do not directly involve discretionary judgment, the final regulations provide the State IV–A agency with the flexibility to determine how it can most effectively use all potential State resources.

It is also clear that Congress intended to expand the variety of services available to assist families in achieving self-sufficiency. Many of these services involve decision-making. To be consistent with section 482(a), delivery of these services must be directed by the IV–A agency, both at the State and local level. However, in view of section 485, we believe that States may generally contract out such functions if they wish.

Therefore, certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the IV–A agency, but only according to policies, rules and regulations of the State IV–A agency. In doing so, such entities must not have the authority to review, change, or otherwise substitute their judgment for that of the IV–A agency.

Accordingly, if the State IV–A agency develops specific criteria under which the decision-making regarding a participant is carried out by the contractor, then such functions can be performed by the contractor. Such activities might include assessment, priority determinations, provision of component services, case management, and conciliation. If a situation arises that is not covered by the general policies of the IV–A agency, then the contractor must make recommendations to the IV–A agency, which has final authority for all decision-making regarding the participant. Alternatively, if the State does not have specific criteria for an activity, the State may utilize a contractor for the sole purpose of making recommendations in individual cases to the State IV–A agency.

This policy does not extend to AFDC activities under title IV–A traditionally performed by title IV–A staff, such as determining the amount of the AFDC payment, which must continue to be performed by title IV–A staff. Related JOBS functions under title IV–F affecting eligibility for and the amount of the AFDC payment must be performed by title IV–A staff. These functions include determining exemption status, determining good cause for failure or refusal to participate, providing notice of case actions, implementing sanctions, and holding hearings. We have amended the final regulations to clarify the circumstances under which the State IV–A agency may contract out for services and activities.

Comment: One State questioned the applicability of § 205.100(b), describing the single State agency concept, to the State IV–A agency administration of the JOBS program.

Response: Section 482(a)(2) of the Act requires that "[t]he State agency that administers or supervises the administration of the State's plan approved under section 402 shall be responsible for the administration or supervision of the administration of the State's program." A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e. the State IV–A agency, with adequate legal authority, to which the Federal Government can look for the carrying out of the approved State plan and with which it can deal in all matters related to the grants, and that the State functions not be so fragmented as to preclude effective administration. The single State agency principle does not preclude the purchase of services from other State agencies, nor is it designed to set aside the cooperative relationships that are normal and proper within a State. Purchase of services and working cooperatively with other agencies are, however, different from delegating administrative responsibility for performance of functions required under State and Federal laws to other agencies or individuals. The State may make use of the expertise of other agencies as long as the State IV–A agency does not delegate administrative decision-making authority.

Comment: Several commenters asked what single State agency administration meant in terms of the responsibilities of the State IV–A agency for overall management of the program.

Response: The State IV–A agency must submit the State JOBS and Supportive Services plan to the Department for approval. It must have sole responsibility for promulgating rules, regulations, and guidelines that govern the operation of the program. It must be responsible for program design decisions, including, but not limited to: (1) optional provisions, such as lowering the age of the youngest child that qualifies an individual for an exemption; (2) what optional components will be offered; (3) definition of failure to participate and good cause for failure to participate; and (4) the minimum requirements for conciliation.

Limits on Contracting

Before a State IV–A agency contracts for any JOBS service or activity, it must ensure that such service or activity is not otherwise available to JOBS participants on a non-reimbursable basis. This requirement is discussed in detail in § 250.13 and related preamble on contracting and in § 250.72 and related preamble concerning maintenance of effort.

Requirement for a Statewide Program (§ 250.11 of the Final Regulations)

Section 482(a)(1)(D) of the Social Security Act requires that by no later than October 1, 1992, a State IV–A agency must make the JOBS program available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors. The regulation at § 250.11(a) describes this requirement, and specifies that the State must operate a JOBS program, including all components described in § 250.44 and two of the components in § 250.45, in each political subdivision of the State, unless the State determines that it is not feasible to do so.

If the State IV–A agency determines that the program will not be made available in all political subdivisions, it must provide appropriate information regarding the extent of the State JOBS program to the Secretary in its JOBS plan. In order to determine whether a State IV–A agency needs to submit additional justification for less than statewide operation, we will apply the criteria described in § 250.11(c)(1). If a State meets these criteria, then no additional justification will be required. If these criteria are not met and additional justification is necessary, the Secretary will disapprove the plan if the justification is inadequate.

It is expected that the State IV–A agencies will make a serious and determined effort to implement programs throughout all local jurisdictions to the maximum extent possible, so that eligible families will have an opportunity to benefit from the new services that are authorized under the legislation.

In determining how specific to be in the regulations, we considered the statements in the Conference Report (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 112 (1988)). The conferees intended that the program be provided to as many recipients as possible. Specifically, section 482(d)(1)(A)(i)(I) of the Act requires that the State JOBS plan include educational activities, such as high school or equivalent education, and basic literacy and English proficiency training. The conferees noted (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 141 (1988)) that there would be those for whom enrollment in regular school programs would be inappropriate, and consequently suitable alternatives would have to be identified or developed. We believe that at least some of these educational activities are available in the majority of political subdivisions in all States, and they, therefore, should be made available, as appropriate, to AFDC recipients.

However, State resources may not permit the inclusion of the same optional components, listed in section 482(d)(1)(A)(ii) of the Act, in all political subdivisions. To allow maximum State flexibility in designing State JOBS programs, a State IV–A agency will not be required to implement the same optional components in all political subdivisions in which it operates a JOBS program. Further, the State need not operate components in the same manner in each political subdivision.

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Criteria for Determining Whether Further Justification is Necessary

First, a "minimal" JOBS program should be available to most adult recipients in a State. A minimal program includes high school or equivalent education, as specified at section 482(d)(1)(A)(i)(I) of the Act, one optional component from among those specified at section 482(d)(1)(A)(ii) of the Act, and information and referral to non-JOBS employment services. In determining whether a JOBS program is statewide, we will first determine whether a minimal program is available in a number of political subdivisions in which 95 percent of adult recipients reside.

Second, a "complete" JOBS program should be available to a large proportion of adult recipients. A complete program includes, but is not limited to, all mandatory and any two optional components, pursuant to section 482(d)(1)(A) of the Act. For the purposes of meeting this criterion, a complete program should be available in all Metropolitan Statistical Areas (MSAs) in the State, as well as in a number of political subdivisions in which 75 percent of adult recipients reside.

The use of MSA boundaries is a nationally recognized system for distinguishing among economically different areas of States. The 75 percent requirement is included because the number of adult recipients living in MSAs is relatively low in many rural States.

In the NPRM, we proposed the criteria set forth above as an alternative to requiring a justification for less than statewide operation in all circumstances when a State would not offer a JOBS program in all areas of the State. Based on the number and content of comments regarding the criteria, it is clear that further clarification is necessary.

In general, commenters appear to have read the above criteria as requirements. Many commenters complained that the criteria are too restrictive, do not allow for variation between States, and would require that resources be spread too thin. However, some commenters felt that use of the criteria was inappropriate because it would mean that some areas of a State might not have a JOBS program.

The statutory requirement that the program be available in each political subdivision where it is feasible to do so, as well as the requirement that a justification be provided when a State would not provide the program in all political subdivisions indicates congressional intent that the program be available to as many potential participants as possible.

However, it is also clear that Congress recognized that economic and demographic factors would affect States' ability to provide the program to all potential participants. We expect, therefore, that many States will not provide an identical program throughout the State, but rather will provide different levels of service in some areas, and no program in others. In this case, a justification would be required. However, in order to ease the administrative burden for these States, we have provided the criteria described in § 250.11 for the purposes of our review of this requirement.

We emphasize that States are not precluded from operating a JOBS program that does not meet the criteria. If a State JOBS program does not meet the criteria, then a justification, as required by the Statute and described in the following discussion, must be provided as part of the State's JOBS plan. We believe that the alternative to these criteria—to require a justification for all State JOBS programs that would not be absolutely statewide—would be extremely burdensome.

Comment: In the NPRM, we proposed that a minimal program include high school or equivalent education. A number of commenters felt that other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act should be included in the definition of a minimal program, in order to provide additional flexibility for States. Some commenters indicated that literacy levels in their States were relatively high, and that considering only high school for purposes of the criteria was too restrictive.

Response: We have not expanded the criteria to include any of the other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act, such as basic and remedial education, and education for individuals with limited English proficiency. We believe the statutory emphasis is on high school education in the JOBS program. If the characteristics of a State AFDC population are such that inclusion of high school as a mandatory component in most political subdivisions is not appropriate, the State should request waiver of the statewideness requirement.

Comment: In the NPRM, we indicated that because high school is generally available in all political subdivisions of a State, job search is relatively inexpensive to operate, and referral to public employment services is a simple method for directing recipients to potential employment, implementation of a minimal JOBS program in most areas of a State was a reasonable expectation. Many commenters felt that it was unreasonable to expect States, particularly those States with a largely rural population, or with limited resources, to provide even a minimal program to such a large percentage of the AFDC population. They felt that resources would be spread too thin in order to meet this criterion.

Response: The criteria are provided for the purpose of the review of the statewideness requirement. They are not absolute lower limits. States are free to design and implement JOBS programs that do not meet these criteria, so long as an acceptable justification is included in their approved JOBS plan.

Comment: A number of commenters felt that our use of the term "political subdivision" in these criteria was too restrictive, since services are often provided through program service delivery areas that may not coincide with political subdivisions. They felt that States should be free to define political subdivision for the purposes of this provision.

Response: The term political subdivision, which is contained in section 482(a)(1)(D)(i) of the Act, has longstanding meaning for the AFDC program, and is defined by each State. Typically, this includes counties, parishes, or other political jurisdictions in a State. Since JOBS is integrally related to the AFDC program, we see no basis for defining the term differently for purposes of the JOBS program. For this reason, we have retained the term "political subdivision" but eliminated any specificity as to types of political subdivisions in the final regulations.

Nevertheless, States are free to provide services in areas defined geographically in terms other than political subdivisions, such as JTPA service delivery areas. In order to maximize use of available resources, a State might include services provided at a site other than a local welfare office, perhaps in a neighboring county. The service would nevertheless be considered available to all potential participants. However, in the State JOBS plan, the State must describe component services provided under an alternative scheme in terms of political subdivisions.

Comment: One commenter was concerned that by including one mandatory component as well as one optional component in the criteria for a minimal program, we would discourage States from providing other mandatory components, choosing instead the optional component in order to meet the criteria.

Response: States are free to determine the mix of services and the location of such services. If the program will not meet the criteria for a minimal program, the State would then need to provide a justification for less than statewide operation.

Comment: One commenter asked why we included high school as the mandatory component in a minimal program to the exclusion of job skills training, job readiness, or other educational activities.

Response: The focus on educational activities, particularly high school, is based on the statutory emphasis on education. The Act contains specific educational requirements for custodial parents under 20 years of age. States must include educational activities in the employability plan of certain custodial parents who are 20 years of age or older and who do not have a high school diploma or equivalent. Educational activities are an alternative to the work requirement in the AFDC-UP program for parents under 25 years of age. It is, therefore, appropriate to expect such activities to be included in a JOBS program in almost all areas of the State, particularly in light of the general availability of such activities.

Comment: Some commenters felt that by including only one mandatory and one optional component in the definition of a minimal program, we would limit State program design. They felt that States might design programs merely to satisfy the criteria. Others felt that because the definition of a minimal program includes an optional component, which would then be available in most areas, States would include job search or CWEP, rather than another optional component that might be more expensive to operate.

Response: These criteria have been included to ease the burden for States by reducing the necessity to provide a justification for less than statewide operation, as well as to facilitate review of this requirement. We do not intend or expect States to design programs merely to meet these criteria. We encourage the design of programs that will meet the unique needs of the individual States.

There may also be some misunderstanding of the criteria as they relate to the mix of services that might be available. A State need not have the same optional component available in the number of political subdivisions in which 95 and 75 percent, respectively, of adult recipients reside. For example, for purposes of meeting the criterion for a minimal program, a State might make a CWEP program available in part of the State, and job search activities available in other areas.

Comment: A few commenters asked whether, for purposes of these criteria, the program should "serve" 95 and 75 percent, respectively, of adult recipients, or whether it should "be available" to these percentages. One commenter discussed phasing in the program in counties that currently do not operate work programs, in considering the statewideness requirement. The discussion related to the level of service, particularly the number of people who could be served during the phase-in of the program.

Response: For purposes of these criteria, a "minimal" and "complete" JOBS program must be available in a number of political subdivisions in which 95 and 75 percent, respectively, of potential participants reside. The program need not be capable of actually serving these percentages. The requirement related to actually serving individuals is the participation rate requirement at § 250.74. We have revised the language of § 250.11(c)(1) in order to clarify this point.

Comment: Another commenter asked whether the percentages would be measured in each political subdivision—that is, whether in a county with a minimal program, JOBS components must be available to 95 percent of the potential participants in the county.

Response: For purposes of these criteria, percentages will be measured on the State level, rather than at the political subdivision level. For example, JOBS components need not be available to 95 percent of potential participants within a county for it to be considered to have a minimal program.

Comment: A few commenters asked how implementation of Tribal JOBS programs would affect computation of the percentages in the criteria.

Response: For the purposes of these criteria, members of Indian Tribes and Alaska Native organizations to be served by Tribal JOBS programs will not be included in computing percentages. The regulations at § 250.11(c)(1)(iv) now include language to this effect.

Justification for Less Than Statewide Operation

Section 250.11(c) provides the basis for our review of the statewideness requirement. If a State JOBS program will not be available in a number of political subdivisions sufficient to meet the criteria of § 250.11(c)(1), the justification to the Secretary will include the information identified in § 250.11(c)(2).

The factors listed in § 250.11(c)(2) expand on the items identified in section 482(a)(1)(D) of the Act, which specifies two factors—i.e., the number of prospective participants and the local economy. We have added one additional item: whether a State IV-A agency will, even with the proposed areas excluded, fully expend all JOBS funds available to it for the period covered by the plan. This additional information will help in determining whether a State IV-A agency is proposing to concentrate services on specific geographic areas identified as particularly critical to reducing long-term dependency, and as a consequence, is unable to implement a statewide program.

We do not believe that depressed local market conditions would necessarily make a JOBS program infeasible. For example, even in areas of high unemployment, there are generally job opportunities because of job turnover and segmented job markets. However, in a rural area where the sole employer has recently closed its plant, a State IV-A agency might be justified in not operating a JOBS program, or in operating a minimal program. A State IV-A agency should consider these types of distinctions, and include this information in the justification for less than statewide operation.

In designing a State JOBS program that will be less than statewide, a State should assure that political subdivisions not be excluded on the basis of ethnic, racial or religious characteristics.

Because the statewideness requirement is not effective until October 1, 1992, phased implementation of the program will be permitted. As a consequence, an initial State JOBS plan may not reflect a level of component availability sufficient to meet the statewideness requirement. We would therefore expect that, no later than the first biennial review, for the plan period beginning October 1, 1992, the State JOBS plan and the State Supportive Services plan (pursuant to § 255.1) will be updated to reflect either sufficient program availability to meet this requirement, or a justification for less than statewide implementation.

Comment: A number of commenters felt that the additional information requested for the justification—whether the State will fully expend available Federal funding—will disadvantage States that are unable to secure the additional funding necessary to draw down all available Federal matching. One commenter, on the other hand, asked for clarification of the "automatic denial" when a State has "sought its full capped entitlement."

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Response: The additional information will be used in assessing whether a State should be permitted to operate a JOBS program on less than a statewide basis. Drawing down all available Federal matching may be an indication that the State is targeting resources to specific areas. However, drawing down all available Federal matching will not, in and of itself, result in waiver of the statewideness requirement. This factor will be considered in light of other information provided by the State in determining whether the requirement should be waived.

Comment: Other commenters felt that the lack of State resources should be included as a factor in the justification for less than statewide program operation.

Response: We believe that by providing additional funding under the JOBS program, Congress intended that States include a wider range of services than are currently available in order to provide the opportunity to achieve self-sufficiency to as many recipients as possible. Failure of a State to provide funding to operate an adequate JOBS program should not be a basis for waiving the statewideness requirement. Section 482(a)(1)(D)(i) of the Act bases feasibility of statewide operation on the number of prospective participants, local economic conditions, and other relevant factors, which in our view do not include availability of State resources. Congress explicitly included availability of State resources in other sections of the Act. Because it did not include similar language in describing the statewideness requirement, we conclude that this factor should not be considered in determining whether a JOBS program is statewide.

Comment: A number of commenters asked that the regulations contain specific criteria to be used in determining whether a request for waiver of the statewideness requirement should be approved.

Response: We do not believe that it would be appropriate to provide specific criteria. The reaction of commenters to the criteria described above is an indication of the general opposition to such specific language. Each State program will differ, and must be viewed in light of the unique demographic and economic factors in the State.

Coordination and Consultation (§ 250.12 of the Final Regulations]

Section 402(g) and section 483 of the Social Security Act contain a number of provisions designed to assure coordination of the JOBS program, including child care and supportive services pursuant to § 255.3(h) of the regulations, with other education, training, and employment programs available in a State. The purpose of this coordination is to provide comprehensive, quality services to meet the multifaceted needs of welfare recipients in the most effective and efficient manner.

At the Federal level, the Department is working closely with the Departments of Labor, Education, and Interior, and expects State and local IV–A agencies to promote coordination among their counterpart agencies. The Department has had discussions with the Department of Agriculture on ways to insure coordination between JOBS and Food Stamp work programs and with the Department of Housing and Urban Development to develop linkages between JOBS and supportive services in public housing projects. The JOBS program should be coordinated with providers such as Job Training Partnership Act (JTPA) agencies, the Employment Service, vocational education, adult basic education, Head Start and preschool programs under chapter I of the Education Consolidation and Improvement Act of 1981, school and nonprofit child care programs, public housing agencies, and other human development programs.

Congress intended that agencies identify existing resources to prevent duplication of services and to assure that other program services are available to JOBS participants. Such coordination is necessary to assure that costs for services for which welfare recipients have been eligible are not shifted to the JOBS program. The final regulations preclude such shifts in costs, as described in the maintenance of effort provisions in § 250.72.

Section 483 of the Act requires coordination with JTPA agencies, since one of JTPA's major goals is reducing welfare dependency. The JTPA requires that AFDC recipients be served in at least equal proportion to their incidence within the eligible population.

At the State level, the JOBS plan must be consistent with JTPA coordination criteria and must be reviewed by the State job training coordinating council (SJTCC) prior to submission to the Secretary. We strongly encourage the State IV–A agency to meet regularly with the SJTCC regarding the planning and implementation of the JOBS program to identify common JOBS–JTPA activities and services, and to develop an integrated strategy which ensures that eligible AFDC recipients receive training and employment services in an effective, non-duplicative manner.

At the local level, the welfare agency must consult with private industry councils (PICs) on the development of arrangements and contracts under JOBS and to identify and obtain advice on the types of jobs that are available, or are likely to become available, in the area. These provisions reflect congressional concern that JOBS resources not be used inefficiently, i.e., provided to ineffective service providers or expended on training for jobs which are not available to participants.

The local relationship between the welfare agency and the PIC is crucial to assure that welfare recipients receive the JTPA services for which they are eligible. Thus, we strongly urge local welfare administrators to be represented on the PIC or, at a minimum, to become actively involved in PIC meetings, as appropriate.

Initial and ongoing coordination between the State IV–A agency and local State and educational systems will enable the State IV–A agency to access needed expertise in this new area of welfare agency involvement, to avoid duplication of services and to assure that welfare recipients receive the necessary educational services for which they are eligible. Welfare agencies should meet regularly with their State or local educational counterparts to ensure that educational providers are involved in the planning and delivery of the JOBS program at all levels.

Section 250.21 of the final regulations requires State IV–A agencies to describe in the JOBS plans efforts to coordinate with other agencies including but not limited to JTPA, basic and adult education programs, programs under the Carl D. Perkins Vocational Education Act and other vocational services, and other human development programs.

Furthermore, the final regulations at § 250.20 specifically provide that State IV–A agencies make the proposed JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations during the public comment period. This segment of the population is highlighted to assure that a Tribal entity eligible to operate a separate JOBS program, pursuant to § 250.91 of the regulations, has sufficient opportunity to coordinate with the State in the planning of JOBS.

Coordination is necessary whether the Tribe or organization operates an independent program or receives services from the State, but is particularly important if a Tribal entity does operate a separate program. While a Tribal grantee will have responsibility for JOBS, the State IV–A agency will maintain responsibility for the basic AFDC program and for child care services, including transitional child care services. Given this interrelationship, §§ 250.12 and 250.93(b)(1) of the regulations require that the State IV–A agency and the Tribal applicant exchange all available information on adult Tribal AFDC recipients necessary to determine a Tribe's or organization's JOBS funding level. In addition, the requirements in § 250.94 concerning Tribal JOBS administration and in § 250.95 regarding child care elaborate on the need for the State and Tribal grantee to develop mutually agreed upon procedures and methodologies to assure that Tribal participants receive equitable treatment under the AFDC and JOBS programs.

Comment: Some commenters objected to the provision that JOBS provide training only for the types of jobs which are, or are likely to become, available in the area, because the local area may be economically depressed.

Response: Section 250.12(d)(2) implements section 485(e) of the Act which requires that the State IV–A agency (1) consult with PICs on the types of jobs available or likely to become available in the Service Delivery Area (SDA) and (2) ensure that the State program provides training in any area for jobs of a type which are, or are likely to become, available in the area.

We believe that the requirement of consultation with PICs is meant to give the State IV–A agency a broad picture of the labor market in the State. There are over 600 service delivery areas nationwide, many serving geographical areas that constitute one labor market. State and local IV–A agencies may have to coordinate with PICs in several different SDAs to serve its JOBS clientele. We do not believe that Congress meant to be so limiting as to bar training for a job that happens to be in an adjacent service delivery area. Rather, we interpret the "shall ensure" language of section 485(e) to require that at a minimum a State must provide training in an area for jobs that are or likely to become available in the area—not that it may not do more.

Comment: One State suggested that the requirement at § 250.12(d)(1) that State IV–A agencies consult with private industry councils on the development of arrangements and contracts promotes a conflict of interest since PICs with private, non-profit (rather than public) status might compete for contracts for which they had provided prior consultation.

Response: State rules on procurement must be observed. We do not believe that Congress intended to impede contracting with private industry councils when it adopted the provision for consultation on the development of arrangements and contracts. To the extent that prior consultation would prohibit a private industry council from competing for a contract to provide services, the State IV– A agency should limit consultation with private industry councils to subjects that would not result in conflict of interest.

Comment: One State recommended consulting with the Employment Service agency for labor market information rather than with private industry councils.

Response: Consultation with the private industry councils on labor market information is required by section 485(e) of the Family Support Act of 1988. However, in § 250.12 of the regulations, we specifically provide for consultation and coordination with several other organizations, including the State Employment Service agency. Such consultation could include labor market information, but it does not substitute for the statutorily required PIC consultation.

Contracting Authority (§ 250.13 of the Final Regulations)

Section 485 of the Social Security Act grants the State IV–A agency broad contracting authority, which is reflected in § 250.13 of the final regulations. At the same time, however, the Act requires administration of the JOBS program by the single State IV–A agency.

Comment: Many commenters asked for clarification about which activities and services can be contracted out under JOBS.

Response: We have addressed the question of what activities and services can be contracted out in § 250.10 and in the accompanying preamble on what administration by the State IV–A agency means in terms of the JOBS program.

Comment: One commenter asked for flexibility in contracting and in determining the wide range of methods used to purchase services.

Response: As discussed in the preamble to § 250.10 on State IV–A agency administration, States have broad authority to contract for services. Some of the methods that may be used include but are not limited to fixed price, cost reimbursement, and performance-based contracts.

Selection of Providers

Section 250.13 incorporates the requirements of section 485 of the Act regarding the factors which must be taken into consideration in selecting service providers and the prohibition against contracts for services which are otherwise available on a non-reimbursable basis. Regarding the issue of provider selection, the requirement for consultation with private industry councils is described in § 250.12 on coordination and consultation.

Comment: One State asked that the consulting role of the private industry councils be limited to providing labor market information and not include consulting on the development of contracts for JOBS.

Response: Section 485(c) of the Act requires that the State IV–A agency consult with private industry councils on the development of arrangements and contracts for the JOBS program. The only exception is discussed in the preamble to § 250.12 and involves the situation in which such consultation could result in a conflict of interest if the private industry council is also a competitor for contracts.

The statutory prohibition against contracts for services which would be otherwise available on a non-reimbursable basis reflects congressional concern that costs of services for which welfare recipients have been eligible not be shifted to the JOBS program. Since it is so closely connected to the provisions on maintenance of effort (section 482(a)(3) of the Act), we elaborate on its interpretation in § 250.72 of the regulations and preamble.

Before a State contracts for services under JOBS, we expect that it will carefully identify those services which have traditionally been available to welfare recipients at no cost, as well as community-based or volunteer programs that may provide competent services at minimal or no cost. The statutory language clearly intends that the State IV–A agency fully utilize all resources otherwise available to serve JOBS participants on a non-reimbursable basis. For instance, other programs have paid for many educational services provided to AFDC recipients, including those available under the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Higher Education Act (20 U.S.C. 1001 *et seq.*) and the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*) Similarly, through JTPA, the State employment security agency, State employment and training programs and the Community Services Block Grant program, extensive employment and training services—such as job counseling, job development and placement, job skills training, and on-the-job training—have been offered to eligible low income individuals, many of whom are AFDC recipients.

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Segregation of Costs by Matching Rate

For the purposes of FFP, the State IV–A agency must segregate costs according to applicable matching rates, as defined at § 250.73(b)(1), in any contract or arrangement under the JOBS program. This means that contracted services will qualify for Federal matching funds at the same rate as those services which the State IV–A agency provides directly. This provision is included to assure that State IV–A agency decisions on contracting will be based upon the efficient administration of the program and that consistent Federal matching will be available to the State IV–A agency regardless of the method used to provide services.

Comment: Several commenters said that segregation of costs would be extremely burdensome. They pointed out that the definitions in JOBS might not be compatible with other programs, such as JTPA. They said that it might cause some providers not to do business with JOBS, or that it would drive up the cost of the contracts with no benefit to participants.

Response: The Act does require different matching rates for different activities, and we maintain our position that State agency decisions about contracting not be driven by available matching rates.

However, based on all the comments we received, we have amended § 250.73 as to what activities are eligible for the different matching rates. A full discussion of these changes appears in the preamble to § 250.73. The effect of these changes is that more of the costs of providing services directly to participants will be eligible for enhanced match, whether the service is provided by the State IV–A agency or another entity. Therefore, it is less likely that segregation of costs will be required. However, we have not amended § 250.13 in the final regulations since there may be some contracts which will still require segregation of costs because of the nature of the activities.

Other Applicable Regulations

In addition to the specific contracting requirements in this section, contracted services under JOBS are subject to the requirements of Part 92 with the following exception. We have excluded the provisions under § 92.30(d)(4). These provisions, which require prior Federal approval of contracts, appear to be inconsistent with congressional intent since they would severely limit a State IV–A agency's contracting authority under section 485 of the Act.

State IV–A agencies are subject to the procurement requirements of only paragraph (a) of § 92.36. This means that the State IV–A agency is required to assure that JOBS contracts follow State and local laws, regulations, and procedures regarding procurement. Indian Tribes and Alaska Native organizations, however, are subject to the Federal procurement requirements of § 92.36(b) through (i).

Subpart C—State Jobs Plan Requirements and Content

Requirement for a State JOBS Plan (§ 250.20 of the Final Regulations)

The JOBS provisions are found in title II of the Family Support Act, which includes changes to Part A and creates Part F in title IV of the Social Security Act. State implementation of these provisions will be covered under a new State plan for JOBS (the JOBS plan). The requirements for that plan and the procedures for its submission are discussed below. Title III of the Statute also requires that States provide child care and other necessary supportive services. These services will be covered under a Supportive Services plan, to be developed and submitted with the JOBS plan. A discussion of the Supportive Services plan and related requirements is at § 255.1.

We believe that it is appropriate to include the new statutory requirements in section 402(a)(19) of the Social Security Act as well as all requirements of title IV–F in a separate JOBS plan. This position is supported by the language of section 482(a)(1)(A) of the Social Security Act, which requires the JOBS plan to meet "all of the requirements of this part and section 402(a)(19)."

Section 482(a)(2) of the Act provides that the State IV–A agency will be responsible for the administration or supervision of the State's JOBS program. Based on this provision, the final regulations provide that the State IV–A agency is responsible for the submission of the State JOBS and Supportive Service plans, after completion of all coordination requirements and review by the Governor.

Comment: Several commenters asked why we require separate JOBS and Supportive Service plans when they are so integrally connected and must be submitted concurrently.

Response: Child care under section 402(g) of the Act is a part of title IV–A, and, therefore, we believe, it would be inappropriate for it to be included in the IV–F (or State JOBS) Plan. A fuller discussion of the Supportive Services plan is contained in the preamble to § 255.1. We have carefully refrained from requiring any duplicate information in both plans. Since the same regulations for submission and approval govern both the JOBS Plan and the Supportive Services Plan, we do not believe that treating them as separate plans is burdensome on States. Furthermore, any State which has not implemented JOBS as of April 1, 1990 will have to submit a Supportive Services plan for transitional child care at that time.

Plan Approval Prior to Implementation

Section 250.20(a)(2) of these regulations requires States to submit the initial JOBS and Supportive Services plans for approval 45 days prior to implementation.

The Family Support Act does not directly address the question of whether a State's JOBS plan must be submitted and approved prior to a State's implementation of the program. However, the statutory language best supports the position that the JOBS plan should be approved prior to a State's implementation. In several places the Statute references JOBS programs operated and funded under *approved* plans; the implication is that programs could not be operated and funded unless a JOBS plan had been approved. Specifically, the statutory language includes the following: (1) Section 482(a)(1)(A) of the Social Security Act states, "As a condition of its participation in the program of aid to families with dependent children under part A, each State shall establish and operate a job opportunities and basic skills training program * * * under a plan *approved by the Secretary* * * *."; (2) Section 403(k)(1) provides that "Each State *with a plan approved under part F* shall be entitled to payments * * *."; and (3) Section 403(l)(1)(A) provides, "In lieu of any payment under subsection (a), the Secretary shall pay to each State *with a plan approved under section 482(a)* * * *." (emphasis added).

Submission of Initial JOBS Plans 45 Days Before Anticipated Implementation

This timeframe is not found in the Family Support Act. We have adopted the 45-day period for the initial submission as we proposed in the NPRM, because we believe this will provide a reasonable period of time within which to conduct an orderly and responsible review of a State's submission. We received no comments to the contrary.

Comment: Several commenters asked that we establish a timeframe in the regulations by which the Secretary would act to formally approve or disapprove a State JOBS Plan.

Response: We see no need for establishing a time frame. The Department is committed to acting expeditiously on all State JOBS and Supportive Services plans that are submitted timely, as evidenced by the fact that all fifteen plans submitted for July 1, 1989 start dates were approved before July 1.

Interim Plans

Initial State JOBS and Supportive Services plans submitted prior to the issuance of plan preprints have been and will continue to be approved as interim plans. States with interim plans will be required to submit new JOBS and Supportive Services plans 90 days after the issuance of a preprint form by the Secretary. An approved interim plan shall remain in force until action is taken by the Secretary to approve or disapprove the preprint. Although described as a new plan, a State's first JOBS plan preprint following its interim plan will not be subject to the requirement for review by the SJTCC before submission to the Secretary, unless there are substantial changes.

Comment: Several commenters said that the 60-day period for resubmission of the plan on the preprint form issued by the Secretary is too short, especially if State legislative action is necessary prior to resubmission.

Response: We have amended the final regulations at § 250.20(d)(2)(i) to provide that States will have 90 days after the publication of the State plan preprints to submit them to the Department for approval. Interim plans will remain in effect until the Secretary acts to approve or disapprove the new plans.

Comment: One commenter asked that the interim plan remain in effect in the event the final plan is disapproved.

Response: The regulations provide that the interim plan remains effective until the Secretary acts to approve or disapprove a State's final plan. Section 250.20(g) of the final regulations provides for an opportunity to make revisions to any plan prior to final disapproval. However, once the Secretary does issue a formal disapproval of a plan, there is no provision for continuation of an interim plan.

Resubmission of State Plans: Biennial Update

Section 482(a)(1)(A) of the Act requires that the State submit its State plan not less often than every two years to the Secretary for approval. Under these regulations, the biennial update shall be considered a new plan, which must be submitted for approval 90 days prior to the date it is to become effective. The biennial update must be available for public review and comment in accordance with the provisions of § 250.20(c).

We recognize that this process is very different from existing title IV–A plan amendment procedures. However, we believe that there are several compelling reasons to treat the biennial update as a new plan for which approval by the Secretary is required: (1) the specific requirement that it be resubmitted (not less than every two years) distinguishes it from the regular title IV–A plan amendment process at § 201.3, which requires only that plan amendments be submitted by the end of the calendar quarter of implementation; (2) the requirements for coordination and consultation, including the requirement that the State plan be submitted to the SJTCC for review and comment, would be significantly lessened if it were only required once prior to JOBS implementation and never thereafter; and (3) the nature of the information that section 482 of the Act requires be in the State plan makes it an "operational plan." Much of it is specific to the period which the plan covers, such as the number of persons to be served and the extent to which other services will be available by provider and type of service. Such information must be updated for each new period in order to make the plan a useful document.

Content of Biennial Update

The State plan update will consist of four parts: (1) assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged; (2) a description of any changes in program operations, including but not limited to, changes in the mix of components or target populations to be served; (3) specific information for the period of the update regarding estimates of persons to be served and the availability of services provided by the State IV–A agency as well as other providers; and (4) an assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA. The State plan preprint shall be the vehicle for the update.

Comment: Several commenters asked that we reduce the requirements for the biennial update. One suggested that if it were considered a new plan, it would trigger the consultation requirements which could result in the plan being disapproved for technical reasons. Another asked that only changes be submitted.

Response: In the NPRM, we outlined several reasons for our approach in considering the update a new plan. We have restated them in the final regulations because we find them no less compelling after review of the comments we received. Congress could have easily mandated that the same procedure that governs amendments for the AFDC program apply to JOBS. Instead it required an update at least every two years which must be submitted to the Secretary for approval. The conference report (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 113 (1988)) specifically describes the State plan as an "operational plan" which would describe how the State planned to operate the JOBS program during the period covered by the plan. We regard the requirement for consultation and coordination to be an on-going one.

Our regulations do not require the State to submit an entire plan as its biennial update. Section 250.20(e)(2)(i) simply requires assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged. We do require the State to submit a description of any changes to program operation and estimates of the number of persons to be served by the program during the next biennium. The State plan preprint will be the vehicle for submitting this information.

Submission of First Biennial Update

All plans submitted between the issuance of the preprints and October 1, 1990, (whether resubmission of interim plans or initial plans), if approved, will remain in force until the Secretary acts to approve or disapprove the first biennial update. To ease the administrative burden, the first biennial update for all States will be due on July 1, 1992 for the period beginning October 1, 1992. However, States may submit plans on April 1, 1992 to be effective July 1, 1992 if this would be administratively easier because it would coincide with either the State fiscal year or the program year under the Job Training Partnership Act or the Carl D. Perkins Vocational Act.

Comment: Several commenters asked that we make the biennial update submission consistent with the program period under JTPA and Carl D. Perkins Vocational Act by moving the submittal date back to April 1, 1992 for the period beginning July 1, 1992.

Response: In the NPRM, we proposed October 1, 1992 as the start date for the first biennium because it coincided with the date on which all States will have to

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have statewide programs, and we believed that it would ease the administrative burden to put all plans on the same schedule.

However, we are persuaded that for some States it would be advantageous to have the program period coincide with either the State fiscal year or the program period for other employment and training programs. Therefore, we have amended the final regulations to give States the option of submitting the first biennial update either on April 1, 1992 for the period beginning July 1, 1992 or on July 1, 1992 for the period beginning October 1, 1992. If a State, which does not have a statewide JOBS program, submits a plan for the period beginning July 1, 1992, the State plan must explain how the program will be statewide as of October 1, 1992.

Amendments

A State IV–A agency may submit amendments to an approved plan, if necessary, prior to the required resubmission described below. The current process for submission and review of amendments, as described at § 201.3(f) and § 201.3(g), will apply. Submission of plan amendments does not relieve the State of the obligation to resubmit its plan to the Secretary for approval every two years.

Comment: One commenter asked that we specify what circumstances would require a plan amendment.

Response: Amendments are required when the State IV–A agency changes its program in two circumstances: (1) it makes changes which would affect eligibility for services or the requirements to participate. These would include, but are not limited to, reducing the age of the youngest child exemption from 3 to 1, redefining "good cause" for failure to participate, and changing the criteria for excusing those under 18 from school attendance requirements; and (2) it makes changes in program design that alter the nature of the program. These would include, but not be limited to, expanding the geographical coverage (prior to October 1, 1992), adding or dropping any of the optional components including any other education, training, or employment activities pursuant to § 250.47, or proposing to change the target groups specified in § 250.1. We have renumbered § 250.20(f) to designate the existing language as paragraph (f)(1) and added paragraph (f)(2) to describe when an amendment to the JOBS or Supportive Services plan is required.

Public and Inter-Agency Review of State JOBS Plans

The Act requires that the State agency submit its JOBS plan to the State Job Training Coordinating Council (SJTCC) 60 days before submission to the Secretary. The final regulations require submission of the plan to the State education agency, based on the extensive required and optional educational activities under JOBS, and the general coordination requirements in section 483 of the Act related to State and local education agencies.

In accordance with section 483(a)(1) of the Act, the content of the plan, where it relates to job training and work preparation, must be consistent with the coordination criteria specified in the Governor's coordination and special services plan required by section 121 of the Job Training Partnership Act.

The Statute also requires that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. All public and State agency comments on the plan shall be resolved at the State level. It was noted that if this were not made clear, the State efforts to resolve disagreements could become a problem, since commenters might choose to press their view at the Federal level rather than at the appropriate State level.

Comment: Several commenters said that the final regulations should require the State IV–A agency to submit any comments it receives during the 60-day review period to the Secretary as part of its JOBS Plan.

Response: We see no practical reason for requiring submission of comments to the Secretary. The fact that the Act requires the comments of the SJTCC to be submitted to the Governor supports our position that disagreements should be resolved at the State level and not submitted to the Secretary.

Comment: Several commenters asked that the initial plan submitted after the preprint is issued be subject to the 60-day comment and review period prior to submittal to the Department.

Response: We have carefully reviewed the changes that we have made in the final regulations to determine whether there would be any reason to require States with approved interim JOBS plans to go through the public comment and review period when they submit their initial plans using the preprint. We conclude that the changes are not so substantial as to automatically require another comment and review period for all States. However, we have maintained the provision that if the State makes substantial changes in its program, the plan should be submitted for review and comment. We have amended the regulations to provide for an abridged review and comment period of 30 days.

Comment: One commenter pointed out that the proposed regulations omitted the statutory language "made reasonably available to the general public through local news facilities and public announcements * * *"

Response: The final regulations have been revised to contain the provisions of the statutory language which were inadvertently left out of the proposed regulations.

State Plan Content (§ 250.21 of the Final Regulations)

Section 250.21 lists the information required in the JOBS plan. We will provide a preprint which will elicit all necessary information in a standardized format. The preprint will guide States in submitting the JOBS plan and will expedite review. It will also provide a basis for comparison of State programs.

In the NPRM preamble, we said that some of the requirements for the JOBS plan were included in other sections of the proposed regulations (54 Fed. Reg. 15647). In the final regulations, we have collected all of those requirements and listed them in § 250.21. We have also made some changes in the order of items in this section in response to comments.

Comment: Several commenters requested that § 250.21(a)(1)(ii) be reworded to reflect the statutory provision that a recipient may only be required to participate when that recipient is guaranteed child care, rather than when child care is available "in the political subdivision," as stated in the NPRM.

Response: We clarified our language in the final regulations to meet these commenters' concern.

Comment: Several commenters requested that we clarify and expand paragraph (f) to ensure that the statutory requirements for consultation and coordination are carried out. Some commenters suggested that we require descriptions of State efforts in this area to ensure the most efficient and effective coordination of services possible.

Response: We agree with these commenters that the integration of JOBS with other programs serving those in need is essential to the success of the program. The consultation and coordination requirements of § 250.12 are intended to ensure this extremely important function is carried out. We have clarified and expanded paragraph (e) to require that the State plan include the specific results of any coordination and consultation that the State undertakes.

Comment: Some commenters asked us to soften our required descriptions of assessment techniques employed by States, claiming that requiring descriptions of the techniques used by each political subdivision was too burdensome.

Response: We do not wish to be unnecessarily burdensome in our requirements and have removed the requirement to describe assessment techniques in the State JOBS plan.

Comment: Similarly, some commenters believed the required descriptions of case management were too burdensome.

Response: To meet these concerns, we have amended the final regulations to provide for a general description of case management, including what entity will be responsible for providing the service and, if not used statewide, a description of methods by which individuals will be assigned a case manager.

Comment: Several commenters asked us to employ better assurances that the statutorily identified target groups would only be replaced if they were infeasible to serve, and that any alternative target groups would meet the statutory requirements.

Response: We have included a new paragraph (b)(5) in § 250.21 to meet this concern. Section 403(l)(2)(C) of the Act requires a State to demonstrate, to the satisfaction of the Secretary, that serving the statutorily identified target groups is infeasible and to define alternative target groups. Any alternative target groups must meet the statutory criteria of being populations of long-term or potentially long-term recipients.

Comment: Several commenters requested that we include under this section other information that § 250.35(d) and § 250.72(e) require in State plans.

Response: We have collected other State plan requirements and included them in this section. We added § 250.21(d)(12), requiring States to set forth in their State plans additional grounds for good cause selected by the State, as required by § 250.35(d). We added an assurance at § 250.21(a)(7) because § 250.72(e) requires the State to certify that services provided by the State IV–A agency are not otherwise available on a nonreimbursable basis.

Comment: Some commenters believed the State plan requirements were too extensive and structured and did not provide States with enough flexibility.

Response: We disagree. The Statute requires States to submit a plan and describe how the JOBS program will operate in the State. It also provides the Secretary with the authority to require additional information necessary for the proper administration of the program. We have tried to give States maximum flexibility, and our final regulations reflect that philosophy.

Comment: Some commenters asked us to require States to describe how they will decide who will receive JOBS services, including how they will give priority to volunteers.

Response: We do not believe this kind of detail is necessary in the State plan. We do not believe we must approve a process in order to ensure that volunteers are served according to the Statute and the regulations.

Comment: Some commenters asked us to use the term "basic skills assessment" instead of "literacy tests." Other commenters asked that we require an assurance that recipients will not be discriminated against on the basis of literacy.

Response: We have removed the requirement to describe the types of assessment tools a State will use. As for discrimination, since one of the principal goals of the program is to reach those recipients most in need, the provisions designed to assure that State programs strive toward those goals should prevent any discrimination against those in need of literacy training, since they are a population most in need.

Comment: Some commenters requested that, in States opting for an alternative hearing process, the State plan contain assurances that participants in these States who request use of the normal State hearing process will not be subject to delay or prejudice due to that request.

Response: If a State establishes a separate hearing process for JOBS as an alternative to the IV–A hearing process, as provided by section 482(h) of the Act, the participant does not have the option to pursue her case through the IV–A hearings process. The State is only required to insure that whatever hearing process it establishes meets the requirements of *Goldberg* v. *Kelly*.

Comment: Some commenters believe that the provisions under §§ 250.21(d) and (g)(3) (now subsection (f)) regarding estimates of numbers of people to be served and ways of serving them were too specific, while other commenters did not believe they were specific enough.

Response: The information asked for is required by section 482(a)(1)(B) of the Act. We believe that it is useful for planning purposes. We have not gone beyond the statutory requirements in these areas.

Comment: Some commenters asked us to require States to describe, in their State plan, how child care will be provided for parents under age 20.

Response: The Supportive Services plan covers methods of providing child care. We do not believe these questions need to be addressed in the JOBS plan.

Comment: Some commenters asked us to require States to describe, in the State plan, the circumstances under which assignment to each JOBS component is appropriate.

Response: We do not believe this type of specificity is needed in the State plan. We are unaware of any need for federally approved procedures.

Comment: Some commenters asked us to require States to state whether they will allow unemployed parents under age 25 to meet the 16-hour participation requirement in § 250.33 through education.

Response: Section 250.21(c)(6) requires a State to describe whether it will allow a parent under age 25 to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

Comment: Some commenters asked us to delete "education" from the § 250.21(n) State plan requirement that the State describe its actions to assure that education and training be directed to jobs in the area.

Response: We declined to adopt this suggestion. We believe education under the JOBS program should have the same goals as the training components—to provide necessary skills for self-sufficiency. Preparing participants for jobs available, or likely to become available, in the State is a primary means of assisting in the achievement of self-sufficiency, and provides enough latitude to include education. This provision, however, has been renumbered as § 250.21(e)(4) in the final regulations.

Comment: Some commenters asked us to require States to describe how they will ensure recipients will not be required to take a job that would result in a net loss of income.

Response: We have added a provision at § 250.21(c)(5) that provides that a State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income."

Comment: Some commenters asked us to require States to state in the plan any other priorities that could affect the order of participation in or access to the program.

Response: We believe that requiring this kind of detail is not appropriate. States must retain the flexibility to make some program assignments on a case-by-case basis, without having federally-

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approved procedures to follow in making every decision.

Comment: Some commenters asked us to require a medical assessment of all participants to determine whether or not they are handicapped, and then to require a handicapping assessment for those found to be handicapped, for the purpose of measuring residual functional capacity to assist in planning appropriate participation.

Response: We believe that requiring a medical assessment of all participants would be unduly burdensome. However, when a State does identify a participant as handicapped, we would expect it to provide her with the necessary services to insure meaningful participation.

Comment: Some commenters asked that we include vocational rehabilitation service organizations as a listed example of possible contractors under § 250.21(g)(4)(i).

Response: In the final regulations, we have elected not to list any specific kinds of providers with which a State might contract. As a result, we have not incorporated vocational rehabilitation service providers. This section has been renumbered as § 250.21(b)(3)(iii) in the final regulations.

Comment: Some commenters asked us to amend § 250.21(n) to require that the State plan provide that participants must be trained for jobs "in demand," rather than jobs which "will become available."

Response: We decline to make this change. JOBS is intended to provide skills for long-term self-sufficiency. This is not limited to jobs presently in demand, but must include jobs that will become available in the future. We do not necessarily want to place JOBS participants just in slots presently in demand, which may be limited in many areas, but to prepare them to compete in the workforce for jobs that are appropriate for them. This provision has been renumbered as § 250.21(e)(4) in the final regulations.

Subpart D—Participation Requirements, Exemptions and Requirements for Individual Participation and Exemptions

(§ 250.30 of the Final Regulations)

Section 402(a)(19)(C) of the Act provides for exemptions from participation in JOBS that are similar to those that exist under WIN. The exemptions are contained at § 250.30 and are discussed below.

Child Under 16

A child who is under 16 or is attending full-time an elementary, secondary, vocational or technical school is exempt.

Comment: Several commenters said that the designation in the NPRM of a minor parent as an adult for purposes of exemption determination is beyond the scope of the Statute. They contend that the statutory exemption applies to any child under 16. They further say that the fact that minor parents fall within the definition of "adult recipient" in section 403(k)(4) of the Act has no relevance to their exemption status; many other non-exempts are counted as "adult recipients" for the purposes of the funding formula.

Response: We have amended the final regulations to remove the exception for minor parents under age 16 because of the statutory exemption. However, we are concerned that this could result in these young parents being out of school for a very long time, and we, therefore, encourage States to help these young women to complete their educations.

Comment: One commenter asked whether a child, who did not qualify for this exemption because she was not in school, and is required to return to school as a required JOBS activity, would then qualify for the exemption for attending school.

Response: If a child is required by the State agency to participate in JOBS because the child was not attending school full-time (and thus did not qualify for this exemption), such participation could consist of required full-time school attendance. The regulations clarify that such school attendance, as a required JOBS activity, does not then trigger the exemption.

Advanced Age

We define "advanced age" for the purposes of this exemption to mean age 60 or older. This is consistent with the upper age exemption in the Food Stamp Program and should ease the administrative burden on State agencies.

Remoteness

Section 402(a)(19)(C)(vii) of the Act also provides an exemption for remoteness. This exemption is for the individual who lives in a political subdivision that has a JOBS program, but who resides so far away from a JOBS activity that participation is not feasible.

Comment: One State commented that the exemption for remoteness was changed in the Act to permit exemption only in the areas where the program is not available, and that the proposed regulations went beyond the exemption provided in the Act in the definition of remoteness.

Response: We do not agree. Section 402(a)(19)(B)(i) of the Act provides that the State will require participation by all recipients to the extent that the JOBS "program is available in the political subdivision involved" (and the individual is not otherwise exempt.) Thus, in a subdivision that does not have a JOBS program, there is no requirement to participate. In order to give meaning to the exemption at section 402(a)(19)(C)(vii), there must be circumstances in which even in a subdivision with a JOBS program, an individual would be so "remote" from services as to consider the services to be unavailable.

Comment: Several commenters suggested that the travel standard applied in the determination of remoteness (taken from prior WIN regulations) may have been reasonable when persons with children under six were exempt, but does not acknowledge the different circumstances of parents with very young children. They suggested the calculation of reasonable travel time should include child care travel time.

Response: We believe that remoteness in this context means physical distance from a JOBS office or activity. The amount of time it takes to get from home to the site can be objectively calculated if one knows distance and mode of travel.

On the other hand, the amount of time it takes to deliver a child to a caregiver is a very individual determination, and every working parent must factor in the time involved in delivering a child to a caregiver when determining the duration of her commute. We believe that calculating the commute for JOBS participants should be no different than calculating it for any working parent.

Working More Than 30 Hours per Week

Section 402(a)(19)(C)(iv) of the Act retains the exemption for working 30 hours or more per week. Currently, under WIN, § 224.20 provides a Federal standard for this exemption: the job has to be unsubsidized and expected to last at least 30 days. The Federal standard was designed to insure that the employment is bona fide and likely to lead to self-sufficiency for the family. However, in consultation with States, we have heard that the Federal definition does not provide States with enough flexibility to require participation by individuals who are working sporadically at very low wages.

Therefore, the final regulations allow State IV–A agencies to establish their own standards for the type of "work" that qualifies for this exemption. For example, such a standard might require that the job pay at least minimum wage.

The standards must be included in the State JOBS plan as provided at § 250.21.

Comment: One State suggested that the regulations allow those averaging 30 hours of work per week to be considered exempt from participation.

Response: We believe the regulations, as written, leave it open for States to "establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption." The State JOBS plan would have to define the period over which the averaging would be calculated.

Comment: One State asked if States are allowed to develop a policy for self-employed people for the purposes of the 30 hour work exemption.

Response: States are given maximum flexibility to establish their own standards for the type of work that qualifies for this exemption as long as it is contained in the State JOBS plan.

Pregnancy

Currently, a pregnant woman in her third trimester is exempt based on the pregnancy. Section 402(a)(19)(C)(vi) of the Act exempts pregnant women during the second and third trimesters based on the pregnancy.

However, we strongly encourage States to urge pregnant women to volunteer to participate in the program, particularly those who are not yet 20 years of age and are without a high school education.

Comment: One commenter objected to our urging States to encourage young pregnant women to participate, saying that singling out these exempt individuals for special pressure to volunteer subverted the intent of the Act.

Response: We do not see it as singling them out for pressure. We believe that it is important that these young women stay in school for their own sake and that of their children. A six-month absence from school is almost the equivalent of missing an entire year of school. We recognize the statutory exemption, but we believe these young women would be better served by continuing in educational activities. We decline to change the preamble.

Age of the Youngest Child

Section 402(a)(19)(C)(iii) of the Act provides that a parent or other relative of a child under 3 (or an age less than 3, but not less than 1, if the State plan so provides) is exempt if the parent or relative is personally caring for the child. It also provides that the parent or relative of a child under 6 is exempt if personally caring for the child unless the State IV–A agency assures the necessary child care and that participation in the program will not be required for more than 20 hours per week. However, both of these exemptions are superseded by the requirement at section 402(a)(19)(E) of the Act that custodial parents under age 20 attend educational activities if they have not finished high school and child care is otherwise available. A more complete discussion of this requirement is contained in the preamble for § 250.32.

The child care exemption is limited to one parent or caretaker relative per case. This is consistent with section 402(a)(19)(D) of the Act which specifically allows only one such exemption in a two-parent unemployed parent case. We believe that by analogy it is a reasonable interpretation to apply the same requirement in an AFDC case and, therefore, where there is more than one person who can qualify for the exemption, only one person may be exempt. We also believe that this policy is consistent with the language that the individual must be "personally providing care."

Exemptions in Unemployed Parent (UP) Cases

Section 402(a)(19) of the Act does not exempt a parent in an AFDC–UP family from JOBS participation due to the other parent's participation in JOBS. Accordingly, the second parent must participate unless he or she meets another exemption criterion such as caring for a young child. However, section 402(a)(19)(D) of the Act also allows a State to require both parents to participate, notwithstanding the exemption for personally providing care for a young child, if child care is guaranteed in accordance with section 402(g) of the Act.

If the State IV–A agency does not elect this option, section 402(a)(19)(D) of the Act provides that only one parent may be exempt for personally caring for a young child. We allow a State to establish policy on whether the principal earner is eligible for the exemption for caring for a child under age 3.

Comment: One State commented that the final regulations should clearly specify that if one parent in an AFDC–UP case is participating, the second parent is not required to participate unless the State IV–A agency chooses to require his or her participation.

Response: The State's interpretation is incorrect. Section 402(a)(19)(C) of the Act contains no exemption for the second parent in a two-parent family. The second parent is required to participate unless he or she meets another exemption criterion such as caring for a young child. This is a change from prior law at section 402(a)(19)(A)(viii) of the Act which exempted the second parent in an AFDC–UP case from participation if the principal earner was participating.

Comment: Two commenters asked if the option for States to require both parents in an AFDC–UP case to participate, notwithstanding the exemption for having a young child, means that the parents can be required to participate if their child is one day old.

Response: The commenters are correct. The statutory option to require both parents to participate specifically makes section 402(a)(19)(C)(iii) inapplicable to the parents. It does provide that child care must be guaranteed. However, as we explain in the preamble on the incapacity exemption, a woman who has recently given birth may qualify for an exemption for incapacity.

Incapacity

Section 402(a)(19)(C)(i) of the Act provides an exemption for incapacity. We do encourage State IV–A agencies not to automatically exempt someone as incapacitated if the individual could be served or employed if reasonable accommodation for the person's condition were made.

Comment: One commenter asked that we delete the language in the NPRM which provided that the State could take an individual's age into account in determining whether an incapacity prevented her from participating in employment or training. The commenter was concerned that this could result in age discrimination.

Response: We have deleted the language "by itself or in conjunction with age."

Comment: One commenter said the standards for verifying incapacity seem unreasonably strict.

Response: We do not regard the requirements of verification of incapacity to be so onerous as to require modification. The law distinguishes between exemptions for illness and incapacity, and our regulations provide different standards of verification. In the case of illness, which we define to include injury, the regulations require medical evidence or some other sound basis for verifying the illness. The commenter's example of a broken leg would clearly fall into this category, and the cast on the leg could provide evidence for a temporary exemption for illness. In the case of an incapacity, the regulations require verification by a physician or a licensed or certified psychologist. Since incapacity must be

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something other than a short-term illness, we believe that the verification standards are appropriate.

Comment: Several commenters pointed out that section 402(a)(19)(E) of the Act, requiring young custodial parents to participate in educational activities without regard to the age of the youngest child, does not provide for any period of "bonding" or recovery after a young mother gives birth. These commenters suggested that we add an exemption which allows a teen parent to stay home with her child for a "bonding period." Suggestions for the length of the bonding period varied from eight weeks to one year in duration.

Response: We agree with the comments that it is very important for young children to establish an early and firm bond with their mothers and that the mothers should spend sufficient time nurturing their children. Research seems to indicate that both the age of the child when separation begins and the amount of time of separation are critical to the normal development of young children. Infants who are placed in part-time, non-maternal care do not seem to suffer deleterious effects from separation. We believe, therefore, that it is important for the agency staff working with young mothers to design program options which are sensitive to the needs of both the mothers and their children. This could include working with school systems to encourage in-school programs for teen mothers and their children, including courses in parenting skills.

We also believe that the mother's physician is in the best position to determine when the mother is incapable of participating in educational activities after childbirth. The State IV–A agency may exempt her as "incapacitated" for an appropriate period of recuperation prescribed by her physician.

Other Exemptions

Other exemptions provided in section 402(a)(19)(C) of the Act, including caring for another ill or incapacitated individual in the household, are implemented in the final regulations and follow the language of the current WIN regulations, which implement identical exemptions.

Comment: One commenter suggested that we include in the final regulations an exemption for VISTA volunteers pursuant to the Domestic Volunteer Service Act Amendments of 1979 (Pub. L. 96–143) which provides that "a person enrolled for full-time service as a volunteer under title I of * * * [the Domestic Volunteer Service Act of 1973] who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service."

Response: We agree. Section 250.30 of the final regulations has been amended to include a new § 250.30(b)(10).

Review of Exemptions

The final regulations require that the State IV–A agency regularly review the appropriateness of exemptions, especially those of a temporary nature. Such review must occur, at a minimum, at each redetermination for AFDC.

Comment: One State asked that the final regulations be amended to require that the IV–A agency promptly notify the recipient and the appropriate service provider of any change in exemption status.

Response: We agree. Since there is no longer a "registration" requirement compelling an affirmative step by either the State or the recipient to change a status, it is possible that, without the provision for notice, the individual's status could change without her knowledge. We also believe that it is appropriate to notify service providers if an individual's status changes. For example, an agency providing case management services should be notified. In § 250.30 of the final regulations, paragraph (c) has been redesignated as paragraph (c)(1) and a new paragraph (c)(2) has been added to include that notification requirement.

Volunteers (§ 250.31 of the Final Regulations)

Section 402(a)(19)(B)(i)(II) of the Act contains a general requirement that the State IV–A agency must allow applicants for and recipients of AFDC who are exempt under section 402(a)(19)(C) to participate in JOBS on a voluntary basis if the program is available in their area and State resources otherwise permit. However, section 402(a)(19)(B)(iv) of the Act specifically provides that a State IV–A agency need not allow or require participation of an individual if such participation would affect the State's rate of reimbursement pursuant to Section 403(l)(2) because the State could not expend 55 percent of its funds on individuals in the target groups. This provision is incorporated in the regulations at § 250.74(a)(3).

Section 402(a)(19)(B)(ii) of the Act contains a specific requirement that in determining priority of participation within the target groups defined in section 403(l)(2)(B) of the Act, the State IV–A agency shall give first consideration to applicants and recipients who volunteer. We interpret the use of the term "volunteer" to include both non-exempt and exempt applicants and recipients so that a State may elect to prioritize among volunteers and, if appropriate, give priority to non-exempt volunteers.

The statutory priority given to volunteers in target groups does not usurp the State IV–A agency's authority to determine the type of program it will offer. Several factors may affect a State's decision to provide services, including: (1) goals of the State program, (2) availability of resources, and (3) the effect of selection of individuals to participate on the States's ability to meet participation rate standards.

The regulations at § 250.31(b) describe the consequences for volunteers who stop participating in JOBS. For exempt individuals who stop participating in the program without good cause, their priority status to participate in the program is lost as long as other individuals are actively seeking to participate. For individuals who are not exempt but enter the program voluntarily, the regulations provide that if such an individual stops participating without good cause, the individual is subject to sanction as described in § 250.34. We believe that this approach provides fair and equitable treatment for all non-exempt participants and avoids the situation in which a non-exempt (mandatory) participant could avoid participating in JOBS by volunteering first and then dropping out without good cause. If the rule about volunteers losing priority status were applied in that situation, the non-exempt individual would become part of the group served after all others thereby avoiding her obligation to participate.

Comment: Many commenters felt that the preamble to the proposed regulations went beyond statutory intent by giving States discretion in determining whether to serve volunteers. Many felt that the JOBS programs would have a greater likelihood of success by including as many volunteers as possible, since volunteers are more likely to cooperate, and would require less administrative activity, such as conciliation. They therefore felt that the regulations should require States to serve all volunteers first. One commenter indicated that the statutory language "clearly stated that volunteers were to be served before the mandatory population." Others asked for clarification of the language regarding the treatment of volunteers.

Response: We reviewed the conference report as well as the language of the Family Support Act. Though earlier versions of the bill contained stronger language relating to the status of volunteers, we feel that our reading of the Act is correct. Although many commenters felt that the Act requires States to serve volunteers first, the actual language does not support this view.

The statutory language does not include an absolute requirement that all volunteers be given priority; the Act requires the State to make reasonable efforts to allow volunteers to participate. Only in the case of members of the target groups is the State required to treat volunteers differently than other participants. While it may be appropriate for some States to emphasize volunteering in the JOBS program, this may not be the case in other States. For these reasons, we have retained the language of the proposed regulations.

The language of section 402(a)(19)(B) of the Act and the implementing regulations at § 250.31 provide the State with the flexibility to give volunteers, including those outside the target groups, priority. The State is in the best position to determine the emphasis to be given to including volunteers in its JOBS program, while considering such factors as targeting and participation rate requirements.

The State must provide applicants and recipients with information about the JOBS program, and allow individuals who are not required to participate to volunteer. Decisions to serve volunteers should be made on the basis of such factors as availability of services, resource constraints, effect on the targeting and participation requirements, and program goals. The exception to this general approach involves individuals in the target groups. As required by section 402(a)(19)(B)(ii) of the Act, the State must give first consideration to volunteers within the target groups. But even for this group, Congress stopped short of absolutely requiring that such individuals be served first by using the term "give first consideration." This language indicates that even for this group, the State may exercise judgment in serving volunteers.

Comment: A number of commenters felt that the preamble and regulations should not permit a State to consider such factors as the availability of resources, program goals, and possible impact on the State's ability to meet the participation rate requirement in serving volunteers, particularly those in the target groups. One commenter argued that Congress explicitly included the qualification that a State need not serve volunteers if doing so would result in failure to meet the targeting requirement, but did not include a similar qualification regarding the participation rate requirement.

Response: We do not agree that the qualification in section 402(a)(19)(B)(iv) of the Act is the only factor which a State may consider in deciding whether to serve volunteers. We believe that a better reading of the Act requires consideration of all of the paragraphs of section 402(a)(19)(B) in harmony. Subparagraph (iv) qualifies the general participation requirement in subparagraph (i), as well as the provisions regarding volunteers. A State need not require individuals to participate, nor allow individuals to volunteer, if by doing so it would fail to meet the targeting requirement.

Comment: One commenter asked for clarification of the term "give first consideration" in § 250.31 of the proposed regulations.

Response: This phrase comes directly from section 402(a)(19)(B)(ii) of the Act. We interpret this language to mean that in determining priority in serving target group members, a State must first look to volunteers. However, the Act does not require that volunteers necessarily be served before others, regardless of the individual circumstances. Rather, a State must give priority to a volunteer over a non-volunteer when all relevant factors are equal.

Comment: A few commenters felt that there should be no penalty for volunteers who drop out of the program, and that an individual in a program which did not meet her long-term aspirations should be encouraged to drop out. One State felt that only non-exempt individuals who drop out should be penalized, and that the penalty should be loss of priority status. Another commenter felt that the penalty should be the same for all volunteers, regardless of their exemption status. Others felt that non-exempt volunteers should not be subject to possible sanction.

Response: Section 402(a)(19)(B)(ii) of the Act provides that exempt individuals who drop out of the program without good cause will lose their priority status. This section of the Act does not address non-exempt volunteers who drop out of the program. We believe that such individuals should be treated as other non-exempt participants for the purpose of the sanction requirements at section 402(a)(19)(G) of the Act, as described in § 250.34 of these regulations. To do as other commenters suggest—providing no penalty for non-exempt volunteers who drop out—would result in preferential treatment for non-exempt volunteers, since exempt volunteers who drop out lose priority status.

Comment: One State asked for clarification of the language in the regulations which provides that individuals who are not otherwise required by the State to participate, as well as those who are exempt, may volunteer. The commenter felt that the only individuals not required to participate are those who are exempt. One commenter asked that we not require staff to make determinations based on the apparent oxymoron of the "mandatory volunteer." Another asked for clarification of this term. Another asked that the term "volunteer" be defined in such a way as to exclude non-exempt individuals.

Response: Section 402(a)(19)(B)(i) of the Act specifies that a State require participation "to the extent the program is available in the political subdivision involved and State resources otherwise permit * * *" There will therefore be circumstances in which non-exempt individuals are not required by the State to participate. Individuals from this group who then volunteer are "mandatory (non-exempt) volunteers".

We do not believe that it would be appropriate to exclude this group from the requirement that a State allow individuals to volunteer for the program.

Comment: A number of commenters stated that the preamble language implied that a State would not have to serve volunteers if they would not participate in an activity for 20 hours per week. Another felt that not counting participation of less than 20 hours per week would discourage potential participants from volunteering and the State from serving them.

Response: Changes made to the definition of participation, now at § 250.78 of these regulations, will affect the State's decisions regarding volunteers. However, some discussion of the term "volunteer" is appropriate, as it was apparent from the comments that there are differences in the treatment of volunteers with respect to the services that are provided in various programs.

An individual can volunteer to participate in JOBS, and at that point, be accepted into the program as would any non-volunteer—that is, the State would perform an assessment, formulate an employability plan with input from the individual, and assign the individual to a component. On the other hand, many commenters apparently believe that volunteers tend to volunteer for specific

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components and for a certain number of hours within a component.

While it may be possible to permit the flexibility of the latter type of "volunteering" in some State programs, other States will operate under the former. Once an individual volunteers, the components and activity level in their employability plan will be determined as for any non-volunteer. As indicated in § 250.41, the State has final authority for approval of the employability plan. We believe that both interpretations are acceptable and that the State should determine how volunteers will be served.

Comment: One commenter felt that it was inappropriate to permit States to prioritize among volunteers—for example, serving non-exempt volunteers first.

Response: The Act does not provide any incentives for serving non-exempt volunteers first. However, a State may determine that it would be more cost-effective to do so. In determining which volunteers to serve in circumstances in which not all can be served, the State is permitted to prioritize. For example, an individual may be exempt by reason of remoteness from an appropriate component site. The State might choose to serve an individual who is not exempt (e.g., one who is not remote) on the basis that there are limited funds available to provide for transportation for the exempt individual. We believe that the Act permits such flexibility, and we, therefore, have retained the language in question.

Comment: One commenter suggested that exempt volunteers be counted in determining participation rates.

Response: Exempt individuals living in JOBS areas of the State who participate will be included in determining State participation rates (but will not be included in the denominator pursuant to section 403(l)(3)(B)(iii)(II)of the Act).

Comment: One State suggested that in order to prevent children who are in school from requesting supportive services, such as reimbursement for transportation, by volunteering, we should specify that the provision applies only to adult recipients.

Response: We do not believe that there is a rational basis for making such a distinction. However, the State has final authority in determining the need for supportive services in individual cases.

Comment: Many commenters felt that volunteers, particularly those in target groups, should be provided child care.

Response: This subject is addressed in the revised preamble and regulations at § 255.2.

Participation Requirements for Education (§ 250.32 of the Final Regulations)

Congress recognized the importance of education to the achievement of long-term self-sufficiency, especially for young parents, and it addressed it in two ways in the Family Support Act. First, the Act requires the State IV–A agency to make available a range of educational activities which are described in the final regulations at § 250.44. Second, the Act requires that to the extent educational services are available and State resources permit, the State must (subject to certain exceptions described below) require a custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity.

Since teen mothers who drop out of school are prone to long-term welfare dependence, Congress specifically provided that a young parent under 20 years of age is not exempt from educational activities even if she has a child under 3 and gave the State IV–A agency the option to require that she attend full-time if it is in the pursuit of a high school diploma or its equivalent. This is a very important step in ensuring that the young parent remains in school and not be ignored until her youngest child turns 3. In addition, in section 403(l)(2)(B)(iii) of the Act, Congress designated custodial parents under 24 who have not completed high school and who are not enrolled in high school (or a high school equivalency course) at the time they apply for aid, as one of the four populations specifically targeted for services.

Section 402(a)(19)(E) of the Act provides the State IV–A agency with several options for young custodial parents. The State may establish criteria for excusing custodial parents under age 18 from the high school attendance requirements described above. We believe, however, that excusing custodial parents from high school attendance should be rare. Accordingly, the final regulations indicate that in such cases the State IV–A agency must provide for assignment to alternative educational activities or to training activities that are combined with education. Job Corps under Title IV of the Job Training Partnership Act is an example of an alternative program that has an educational component. All determinations must be based on an assessment of the individual's circumstances. The State agency's criteria may not excuse anyone from high school who is subject to the State's compulsory attendance requirements. The State may not categorically excuse someone because of the grade level she has completed. For example, it is not sufficient to say that a 17-year-old who has only finished 8th grade is excused automatically.

For custodial parents who are age 18 or 19, the State IV–A agency may require participation in training or work activities in lieu of educational activities if the individual is not making good progress in completing educational activities or, if an educational assessment, prior to assignment, determines that such educational activities are inappropriate for the individual.

The statutory reference to "custodial parent" in section 402(a)(19)(E) has prompted some to question whether 16- to 18-year-old individuals who are not parents are eligible for JOBS services. We want to be clear that they are. If they are not in school, they are mandatory participants because they do not meet the exemption criteria. In addition, if the individual is a member of a family in which the youngest child will lose eligibility within two years because of age, she is a member of one of the target groups described at § 250.1 earmarked for services. We believe that, like their counterparts who are parents, 16- to 18-year-old individuals should be encouraged and helped to remain in school or to participate in other educational or training activities.

For individuals 20 years of age or over, who have not earned a high school diploma (or its equivalent), section 482(d)(2) of the Act provides that if the State IV–A agency requires such an individual to participate, it must include educational activities consistent with her employment goals as a component in her employability plan. There are two exceptions: (1) if the individual demonstrates a basic literacy level, or (2) if the long-term employment goal identified in the individual's employability plan does not require a high school diploma (or its equivalent).

Comment: Concerning the proposed section in general, there were some groups that indicated approval for the strong emphasis upon education for those under 20 and stated that the emphasis upon education for those over 20 might not be strong enough.

Most of the comments were about § 250.32(a)(2), which sets forth the regulations for the State's criteria for excusing a custodial parent under age 18 from educational activities. The majority of these comments did not support the provisions, because the groups felt that the requirements exceeded congressional intent by only allowing

for placement in another educational activity, instead of the larger range of JOBS activities. Some commenters felt that the regulations overemphasized traditional high school as an educational activity for teen parents. They stated that the requirements deny a State the flexibility to address the needs of young AFDC parents in favor of an approach that is only experimental. They did not want these participants' benefits cut off if they are not in school. They sought more flexibility in the provisions, such as allowing the State to use categorical exemptions. One commenter noted, for example, such an exemption might be made for parents of children under the age of 2, in view of the high cost of child care for that age group.

Response: The conference report indicates that Congress gave careful consideration to the intended effect of educational activities upon reducing the welfare dependency of young parents. The stronger Senate amendment language concerning mandatory educational activities for young parents prevailed over the language in the House bill. We therefore believe that the emphasis upon placement of teen parents in educational activities is supported by the Act. Section 402(a)(19)(E) requires that, to the extent of program availability and State resources, the State agency must require a custodial parent under age 20 "who has not completed a high school diploma or its equivalent * * * to participate in an educational activity."

As to the issue of overemphasis upon full-time high school for teen parents, the regulations follow the Statute in indicating that the State IV–A agency "may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent," and so we provide for the State to assign the participant to alternative educational activities following the full range of options outlined in the regulations at § 250.44(a) or into training activities that are combined with education. These options provide for flexibility within the congressionally mandated requirement that the teen parents be in an educational activity.

The Act provides for the State to establish criteria concerning exempting custodial parents under age 18 from educational activities "in accordance with regulations established by the Secretary." Since Congress placed such a clear emphasis upon educational services for this age group, we believe that allowing categorical exemptions, including completion of a certain grade level, would dilute the requirement to serve this special group of participants, which is highlighted in the Act.

Comment: A few commenters stated that, taken literally, the regulations at § 250.32 do not allow a young parent an adjustment period after childbirth. They asked that the section be revised to provide for a bonding period between the infant and parent, so that the parent is not sanctioned for failing to return to her educational activity the day after the child is born.

Response: We encourage State IV–A agencies to be sensitive to the need for fostering a healthy relationship between mother and child, such as through assignment to educational activities with on-site child care and by encouraging young mothers to devote sufficient time to nurturing their children. Moreover, the exemption at § 250.30(b)(3), concerning incapacity has been modified to specifically allow a period after childbirth prescribed by the mother's physician in which she is not required to participate in JOBS activities.

Comment: Some organizations said that States should be required to provide alternative educational programs and on-site child care for teen parents.

Response: The regulations provide for State flexibility in fashioning appropriate JOBS activities and do not mandate a particular method of delivering services. Neither this section nor § 250.44 on mandatory components would prohibit a State from using such alternative educational programs.

Comment: Some States and other groups expressed concern with what they saw as this section's emphasis upon achieving universal coverage, since they felt there were not enough resources for appropriate educational activities to meet the special needs of the participants.

Response: The regulations in § 250.32 repeat the statutory language regarding consideration for the availability of the program in the political subdivision and whether State resources otherwise permit. If the State does not have the capacity to meet the needs of the individual, as determined by the agency's assessment, she is not required to attend inappropriate activities.

Comment: A commenter asked for clarification of the participation of 16- to 18-year-old non-parents in JOBS.

Response: Sixteen to eighteen-year-old non-parents are subject to the mandatory JOBS participation requirements unless they meet one of the statutory exemptions such as being in school.

Comment: One commenter read the preamble regarding the proposed regulations for this section as meaning that 16-to-18-year-old individuals who are not parents are mandatory participants in education. The commenter stated that the Statute referred only to custodial parents relative to the educational requirements, and that the provisions conflict with State requirement regarding compulsory school attendance, and that undue pressures, perhaps leading to physical abuse, would be placed upon the affected children of families who would receive sanctions if their children do not cooperate and remain in school.

Response: Sixteen to eighteen-year-old individuals who are not parents are subject to the participation requirements of JOBS if they are not exempt pursuant to section 402(a)(19)(C) of the Act. The commenter is correct in saying that they are not required by Federal law to participate in educational activities. We encourage educational activities in keeping with the general emphasis upon education in the Act, but the State may determine that another activity is more appropriate.

Comment: Some commenters requested that we define or give examples of when participation in educational activities would be inappropriate for the 18 or 19-year-old parent, provided in § 250.32(a)(3)(ii).

Response: The provision concerning the determination of appropriateness for individuals in this age group is taken from the Act. The determination of appropriateness or inappropriateness of educational activities is to be made based upon both an educational assessment and employability plan. For example, a person not likely to benefit from additional available educational activities might profit from other component activities of JOBS. In another example, the individual might be capable of continuing with educational activities, but activities meeting her needs might not be available in her area due to lack of resources. Further, an individual's assessment coupled with her employability plan might indicate that JOBS component activities other than education might be more effective in helping the individual reach her long-term employment goal more quickly.

Comment: A group expressed alarm about the provision that individuals aged 18 or 19 could be placed in training or work activities if they failed to make good progress in successfully completing educational activities. They stated that rote adherence to such a standard would deprive those in this age group of

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a chance for a renewed attempt at education.

Response: Our definition of making "satisfactory progress" or "good progress" provides for the State to adopt safeguards against this situation. It allows a State to use a probationary period or to consider mitigating circumstances. We encourage States to be sensitive to the special needs of the welfare population in educational activities. We also note the value of using the assessment of the individual's educational progress to reconsider educational placements. These regulations take account of Congress' great emphasis upon the education of young parents and should be applied in that spirit to those participants who are 18 or 19 years old.

Comment: A State education agency commented on the importance of the development of high quality basic education and remediation activities to serve the needs of JOBS participants. They asked that the regulations more clearly encourage the use of Federal funds to improve and expand such educational resources beyond typical local and State educational agency programs, in order to more directly serve the special needs of welfare recipients.

Response: When appropriate resources are not otherwise available, these regulations allow the development of special activities for JOBS participants to be directly administered by the IV–A agency, to be offered under contract, or to be offered through or in coordination with other Federal or State agencies. (See our comments regarding mandatory components of JOBS at § 250.44.)

Participation Requirements for Unemployed Parents (§ 250.33 of the Final Regulations)

Section 403(l)(4)(A)(i) of the Act provides that a State IV–A agency must require at least one parent in a family eligible for AFDC due to the unemployment of the principal earner in the family to participate for at least 16 hours a week in one of the following components of the JOBS program: work supplementation program, a community work experience program or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary.

If a parent is under age 25 and has not completed high school or an equivalent course of education, section 403(l)(4)(A)(i) of the Act permits the State IV–A agency to require the parent to participate in educational activities directed at attaining a high school diploma (or equivalent) or in another basic education program. The Act does not specifically define minimum levels of participation for individuals in this category. In the NPRM, we proposed to define the minimum level of participation in educational activities for unemployed parents to be the same as we defined it for the purpose of determining the general participation rate. Although we no longer use "making satisfactory progress" as a standard for participation rates (see discussion at preamble to § 250.78), we have maintained the definition for other purposes, including determining whether an 18-or-19-year old custodial parent should be assigned to work or training activities in lieu of educational activities. (See § 250.32.) Since we have maintained the definition proposed in the NPRM of "making good or satisfactory progress," we believe that it is reasonable to use this standard in determining whether a parent under 25 who has not completed high school or its equivalent is meeting the educational requirements of section 403(l)(4)(A)(i) of the Act.

Section 403(l)(4)(A)(ii) of the Act provides that in the case of a parent participating in a community work experience program for the maximum number of hours as provided in § 250.63, such participation shall meet the requirements of this section even if it is less than 16 hours per week. On the other hand, nothing in this section relieves the parent of the obligation under § 250.63(d) to participate in CWEP for the maximum number of hours even if it exceeds the 16 hours per week provided in this section.

Sections 403(l)(4) (B) and (C) of the Act provide that, by FY 1994, each State IV–A agency must have 40 percent of its Unemployed Parent caseload participating at least 16 hours per week in a work component described in this section. This requirement increases by steps to 75 percent in FY 1997. The consequences of not meeting these rates are contained at § 250.74(c) and discussed further in the preamble to that section. We believe that it would be prudent for the State IV–A agency to incorporate programs designed to meet these requirements at the time that they implement JOBS (or as soon as they have a UP program). Early implementation of this provision will allow the State to increase the coverage of its program on an incremental basis so that it can be at 40 percent by FY 1994. In addition, by implementing concurrently with JOBS, the State IV–A agency will maintain a consistent approach to serving unemployed parents.

In addition, we have read this provision together with the technical amendments that section 202 of the Statute makes to the Unemployed Parent program. These amendments impose additional requirements on the State to require early participation by principal earners, and on principal earners to participate or apply for participation in JOBS within 30 days of receipt of aid. These provisions are discussed more fully in the preamble to the technical and conforming amendments. By establishing a work program in accordance with this section, the State IV–A agency would have in place a program to which it could promptly and easily assign principal earners.

Comment: Based on the many comments received there is confusion regarding the effective date of these provisions. Although the preamble acknowledges that participation rates are not effective until FY 1994, and § 250.74(c) discusses the fiscal sanctions for not satisfying the relevant standards beginning in FY 1994, the regulations in this section are silent. Several commenters suggested that it was more appropriate and less confusing to place the effective date in this section of the regulations rather than in the fiscal section.

Response: We recognize the concern for including the effective date in this section of the regulations. However, since sections 403(l)(4)(B) and (C) of the Act tie participation rates to fiscal penalties it is appropriate to include this provision in § 250.74(c) of the regulations.

Comment: There were several comments suggesting that as States do not have to implement the UP provisions until FY 1994, they should be allowed under the regulations to treat mandatory UP participants as they would any other mandatory participant until that time; i.e. allow the unemployed parent to participate in any JOBS activity without the constraints of the 16-hour requirement until FY 1994. Other commenters also proposed that a phase-in period for unemployed parents be allowed after a State implements JOBS.

Response: Until FY 1994 a State with an approved JOBS plan has the option to either phase-in the unemployed parent 16-hour work requirement provisions for participation rate purposes or serve the unemployed parents under the regular JOBS program requirements. For a State without an approved JOBS plan there are no requirements to change the services currently being provided. States should also review section 202 of the Statute which imposes additional

requirements on unemployed parents. Despite the several options available under these provisions we want to stress that States should consider implementing programs incorporating the unemployed parent requirements as early as possible to provide consistency of services for the unemployed parent population.

Comment: Section 250.33(a) explicitly provides that a State-designed work program may not substitute education or training activities for the work requirement. Several commenters suggested that there are many instances in which work involves training and education. By making a flat prohibition of training and education in the regulations many of the options available to States in assisting a UP client in finding work may be hampered.

Response: A work component such as CWEP or OJT may well contain a training component, and such activities, as part of the work assignment, would be appropriate. The prohibition in the regulations means that the State may not substitute an education or training component, such as a skills training course, for the work requirement. However, an education or training activity could certainly be offered in addition to the work requirement.

Comment: Several commenters also suggested that States be allowed to waive the 16-hour requirement when an assessment indicates that the client would be better served in another component requiring more time.

Response: Section 403(l)(4)(A)(i) of the Act requires that at least one parent in a UP household participate for a total of at least 16 hours per week in a work supplementation program, CWEP or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary. This is a minimum requirement. If additional education or training is appropriate, based on the individual's assessment, the State may require the unemployed parent to participate in these activities as well.

Comment: Several commenters suggested that the "making satisfactory progress" requirement for those unemployed parents under 25 participating in an educational activity should be dropped. They suggested that these participants should be required to meet the same 16-hour participation requirements as unemployed parents assigned to work components.

Response: There is no statutory requirement that there be a 16 hours per week participation standard for educational activities. Moreover, we are unaware of any reason for imposing such a standard under general rulemaking authority.

Comment: One State asked if an unemployed parent could be required to participate for more than 16 hours per week in CWEP and, if so, when would they be expected to look for employment.

Response: Yes. There is nothing in section 403(l)(4)(A)(ii) of the Act which prohibits the unemployed parent from meeting the obligation of CWEP participation even if it exceeds the 16 hours per week requirement. In addition, the unemployed parent could be required to participate in a job search activity. However, this job search activity would not count towards meeting the 16 hours of work per week requirement.

Comment: One State asked if both parents are required to participate, are the hourly standards prorated among the two or is the requirement mandatory with only one of the parents.

Response: Section 403(l)(4)(A)(i) of the Act requires one parent in an AFDC–UP case to participate for at least 16 hours per week in a work activity. The requirement attaches to one parent designated by the State. There is no provision in the law for prorating the hour requirement between parents when the State requires both parents to participate in JOBS.

Comment: Several commenters asked if the 16-hour requirement would count towards meeting the JOBS participation standard. Others noted that as the 16-hour requirement does not count toward meeting the basic JOBS participation standard, States would be compelled to stretch the 16 hours of activity to 20 hours so that the unemployed parents participation could count.

Response: As we have redefined the participation standard to be an average of 20 hours of activity by the aggregate of participants, the 16 hours of UP activity could count in meeting the JOBS participation standard. However, there will need to be other activity occurring so that the established average can be met. For example, if an unemployed parent is meeting the 16 hours per week requirement, and another participant were active in a component for 24 hours per week, the 20-hour per week average would be met for these two individuals.

Comment: One commenter suggested that States should be allowed to design work programs for unemployed parents. They stated that workfare for large numbers of individuals for limited time periods is costly and not necessarily effective.

Response: Section 403(l)(4)(A) of the Act explicitly states the types of programs in which unemployed parents are required to participate. The State IV–A agency does have the option to develop its own work program which must be described in the State JOBS plan.

Sanctions (§ 250.34 of the Final Regulations)

Section 402(a)(19)(G) of the Act provides for sanctions if an individual who is required to participate in JOBS fails to participate in the program or refuses to accept employment without good cause.

Comment: One State pointed out that § 250.34(a)(1) of the regulations discusses sanctions for those who fail without good cause to participate in JOBS or refuse to accept employment, but does not include language contained in the similar provision from prior regulations at § 224.51, relating to termination of employment or reducing earnings without good cause. The State asked if the less expansive language of the JOBS regulations indicates an intentional change in the interpretation of what constitutes refusal to accept employment.

Response: The Act contains a sanction provision virtually identical in language to the former section 402(a)(19)(F) of the Act. The sanction provisions for WIN are spelled out in § 224.51. Where, as here, Congress enacts a new law incorporating language from a prior law, it is presumed to have been aware of the administrative interpretation of the prior law and to have ratified that interpretation.

The legislative history of the AFDC statute does not expressly mention terminating employment as a basis for imposing sanctions. However, Congress has repeatedly stated its intent to encourage welfare recipients to obtain and to maintain employment. In enacting the new JOBS program, the 100th Congress provided further incentives and opportunities designed to assist welfare recipients to become and to remain members of the workforce. Evidence of congressional intent can be found in section 482(c)(1) of the Act (Provision of Program and Employment Information): "The State agency must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Interpreting section 402(a)(19)(G) of the Act restrictively to authorize sanctions for refusing to take a job and

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not for voluntarily refusing to continue employment would defeat the statutory purpose of encouraging recipients to obtain and maintain employment. Congress did not intend to create such a loophole in fashioning a program designed to encourage continued employment.

Omission of the phrase "terminates employment or reduces earnings without good cause" from the NPRM was an oversight. The final regulations at § 250.34(a)(1) have been amended to include this language.

Length of Sanctions

Section 402(a)(19)(G)(ii) of the Act sets forth the length of sanction periods for JOBS purposes. For the first failure to participate or accept employment, the sanction lasts until the failure to comply ceases. For the second failure, the sanction lasts until the failure to comply ceases or 3 months whichever is longer. For any subsequent failure, the sanction lasts until the failure to comply ceases or 6 months, whichever is longer.

Determining When "Failure to Comply Ceases"

Many States have indicated that it is difficult to determine when a "failure to comply ceases." Accordingly, the final regulations contain an option which allows the State IV–A agency to determine that the individual has actually demonstrated a willingness to participate in the program and, therefore, has ceased her non-compliance. A State may require an individual to engage in either the activity to which she was previously assigned, or in some other activity designed by the State to lead to full participation, for a period of up to two weeks in order to demonstrate willingness to participate. If the individual successfully participates in such activities, the sanction will cease as of the day she agreed to participate. If the State IV–A agency has no activity to which it can assign the individual, the sanction will cease on the day she agrees to participate. If the individual fails to participate, during the trial period, she remains in sanction status until such time as she successfully demonstrates a willingness to participate in the program and, therefore, ceases her non-compliance.

For instance, if a sanctioned individual says on Monday that she wants to participate, the State may require her to come in and develop an employability plan or attend a pre-employment orientation. If she successfully completes the assigned activity, her sanction shall be considered to have ended on Monday. However, if she fails to complete the assigned activity, she will remain in sanction status.

Comment: Several commenters suggested that we eliminate this option. They claim that it goes beyond the provisions of the Statute. Some commenters also asked why it only applied to the first sanction.

Response: We believe that providing States with the option to require a trial period in order to determine that the individual has demonstrated a willingness to participate in the program is consistent with section 402(a)(19)(G)(ii) of the Act. Therefore, the option is retained in the final regulations. We have amended the final regulations to clarify that, as a participant, the individual will be eligible for the child care and supportive services necessary to allow her to participate.

We have also determined that it was an oversight not to make the option to require a trial period applicable to the second and all subsequent sanctions since they also contain the provision "until the failure to comply ceases." We have amended § 250.34(b) of the final regulations to reflect this change.

Nature of Sanction

If a parent or other caretaker relative in a one-adult AFDC family fails or refuses to participate in the WIN program or accept employment, her needs are not taken into account in determining the family's need for assistance and the amount of the assistance payment. In addition, aid has to be paid to a third party in the form of protective or vendor payments unless the agency was unable to arrange such payments. Further, section 402(a)(19)(F)(iii) of the Act specifically provided that if the only dependent child in a family failed or refused to participate, the entire family would be ineligible for AFDC. Finally, if the parent who was designated as the principal earner, for purposes of section 407, failed or refused to participate, the entire family was sanctioned.

Section 402(a)(19)(G) of the Act makes several changes to the way the sanction is applied to the parent (or caretaker) and her family. The general rule is that the needs of the individual are not taken into account in determining need for assistance and the amount of the assistance payment.

Sanction When Only Dependent Child Fails to Participate

Aid is not denied to a family if the only dependent child fails to participate; the general rule applies to such a family, and only the needs of the dependent child are removed in determining the need for assistance and the amount of the assistance payment. Prior to the enactment of the Family Support Act, section 402(a)(19)(F)(iii) of the Social Security Act specifically provided that the entire family was sanctioned when the only dependent child failed to participate. The Family Support Act, in amending the Social Security Act, did not retain this provision. The specific provision was necessary to sanction the entire family because despite an only dependent child's failure to participate, she is still considered a "dependent child" under section 406(a) of the Act for the purpose of determining the eligibility of the family. We have added a provision at § 250.34(c)(3) that explicitly states the policy with regard to the only dependent child who fails or refuses to participate.

Comment: Two States suggested that the existing AFDC eligibility determination provisions must be amended to allow the parent to receive a grant while the only dependent child is under sanction.

Response: Section 406(a) of the Act defines "dependent child." Cooperation with the JOBS Program is not part of the definition. Therefore, a child remains a "dependent child" even if under sanction as long as she otherwise meets the definition in section 406(a). Thus the parent or caretaker relative may still receive benefits if she is otherwise eligible. We do not find that any change to existing AFDC eligibility determination regulations is required.

Sanctions in AFDC–UP Cases

Section 402(a)(19)(G)(i)(I) of the Act revises the sanctions for unemployed parent families who are eligible under section 407 of the Act. In addition to applying the general rule to the individual who fails or refuses to participate, the Act provides that the needs of his or her spouse will also not be taken into account in determining the family's eligibility for AFDC and the amount of its assistance payment if the spouse is not participating in the JOBS Program. The rest of the family will have its eligibility and payment amount determined without inclusion of the needs of the sanctioned parent (and spouse, if such spouse is not participating in JOBS).

Comment: Several commenters asked for clarification regarding the requirement to sanction the spouse of a noncomplying unemployed parent under section 402(a)(19)(G)(i)(II) of the Act.

Response: Section 402(a)(19)(G)(i)(II) of the Act provides that if the spouse of a noncomplying AFDC–UP parent is not participating in the JOBS Program, the needs of the spouse shall also not be taken into account. This penalty is a lesser penalty than that imposed under the WIN Program, under which the entire family lost eligibility. We believe that the new penalty reflects the mutual obligations of both parents to support their children. Therefore, if one parent is not participating, the other is obliged to do so. At the time a State provides the program information to a participant required by § 250.40, it should provide information to both parents about their mutual obligations. If the second parent does not participate, his or her needs are not taken into account in making the determination of the family's eligibility for AFDC and the amount of the payment, whether or not the second parent would otherwise be exempt.

Comment: One commenter pointed out that the second parent in an unemployed parent case is not necessarily the "spouse" and use of the term "spouse" would result in unequal treatment of unemployed parent cases.

Response: We agree. We have revised the final regulations to use the term "second parent" in place of "spouse."

Protective or Vendor Payments

Section 402(a)(19)(G)(i)(I) of the Act retains the requirement for protective or vendor payments if the sanctioned individual is the parent or other caretaker relative, and the State can make such an arrangement. This applies to both one-parent and two-parent families. We have amended § 234.60(a)(12) to apply this provision to the JOBS Program.

3-Month Notice

Section 402(a)(19)(G)(iii) of the Act requires the State IV–A agency to notify an individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction by terminating the failure. The regulations clarify that, in the case of the third and all subsequent sanctions, the notice must be sent after 3 months, but it must say that the individual cannot terminate the sanction until the full 6-month sanction has elapsed.

Comment: Several commenters asked for regulatory relief from the statutory provision that notice must be sent to the individual after 3 months even though she is under a 6-month sanction. One commenter suggested that the final regulations require that a notice be sent at 6 months to those individuals experiencing 6-month sanctions in order to remind them in a more timely fashion of their option to terminate the sanction promptly.

Response: Section 402(a)(19)(G)(iii) of the Act provides that the State shall promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure. We find no basis for not following the statutory requirement of a 3-month notice, nor do we find any basis for requiring a State to provide for an additional notice at 6 months. However, the State has the option to provide an additional reminder at 6 months, if it chooses, and providing such a notice would be an allowable cost under the JOBS Program.

Other Comments

Comment: Several States asked whether a work program sanction in progress at the time a State implements JOBS must be cancelled or allowed to run its course.

Response: Such a sanction was properly imposed under the rules of the program existing at the time it was imposed and must run its course. However, once a State implements the JOBS Program, all new sanctions must be imposed under the provisions of the Statute applicable to JOBS. This means that the first sanction imposed on any participant after a State adopts JOBS counts as the first sanction for JOBS purposes, and all previous sanctions under prior work programs are ignored.

Comment: Several commenters suggested that the sanction provisions of the regulations be stricken and States be allowed to operate all voluntary programs.

Response: Section 402(a)(19) of the Act requires that all non-exempt individuals participate in the program, and section 402(a)(19)(G) of the Act provides for specific sanctions for failure to participate. There is no provision for an all-volunteer program.

Good Cause (§ 250.35 of the Final Regulations)

Sections 402(a)(19) (G) and (H) of the Act provide that a sanction may only be imposed if the individual does not have good cause for failing to participate in JOBS or refusing to accept employment. The concept of "having good cause" covers a broad range of circumstances. Sometimes situations arise where an individual is unable to participate for a day or several days because of such things as illness or a breakdown in child care arrangements or transportation. These are often short-term situations resulting from events beyond her control. There are other circumstances in which good cause will give the individual an on-going reason for not participating (lack of available child care). Between these two, there will be circumstances in which an individual will have "good cause" for turning down a specific job or assignment ("net loss of cash income") but will be required to continue to participate.

Under the WIN program "good cause" was defined in the Federal WIN Handbook. Prior regulations for CWEP and employment search required the State to define good cause in the State IV–A plan. The Family Support Act includes several specific provisions that give an individual "good cause" for failing or refusing to participate or to accept employment. We have incorporated these requirements into the final regulations at § 250.35 and describe them as follows:

(1) If the individual is a parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week, the participant shall have good cause.

(2) For all individuals, good cause exists if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to accept employment or enter or continue in the program and such care is not available and the State agency fails to provide the care.

(3) If accepting a job would result in a net loss of cash income for an assistance unit pursuant to section 402(a)(19)(H) of the Act, good cause exists. However, if the State IV–A agency elects to make a supplemental payment to the family so that it does not experience a net loss of cash income, good cause does not exist.

In addition, the State IV–A agency must include in its State JOBS plan other reasons for good cause which encompass circumstances beyond a household's control. These could include such events as inclement weather, breakdown of transportation and/or child care arrangements, short-term illness not requiring a doctor's care, or a family emergency. While we believe that each State is in the best position to establish its own additional reasons for "good cause," we expect that States will develop standards that will insure the integrity of the JOBS program.

Comment: Many commenters recommended that the final regulations set minimum standards for good cause. Alternatively, several suggested that the regulations specify that a State must identify minimum standards and describe these standards in its State JOBS plan. Several suggestions were received for additional good cause circumstances. Several agencies

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suggested that good cause should be granted for non-delivery and/or non-receipt of mail. The commenters indicated this is a pervasive problem in poor neighborhoods and housing projects and believed this problem should be acknowledged in the regulations. Another commenter suggested that the good cause definition for family emergencies should include psychological and psychosomatic behavioral emergencies of the children. One comment suggested that the lack of child care for a non-dependent child for whom the JOBS participant is responsible be considered good cause.

Response: Although we have received many comments supporting a minimal standard for good cause set by regulation, we have elected not to do so. We believe that the State is in the best position to establish policy regarding the additional circumstances about what constitutes "good cause" besides that set forth in the Act. However, we also believe that there are circumstances that are beyond a household's control and have amended the regulations at § 250.35(d) to specify that the State must have a definition of "good cause" in its State JOBS plan that at a minimum includes circumstances beyond the control of the participant.

Comment: Many commenters were concerned about the qualifying statement in the preamble on "good cause" that said that the State IV–A agency should determine if there are any other individuals in the home who are capable of providing the necessary child care in determining if good cause exists. Although there may be relatives or persons in the home who could be child care providers, the commenters raised serious concerns about a State forcing an unwilling or inappropriate household member into service as a child care provider with the recipient being sanctioned if she did not accept such care for her children.

Response: We believe that it is entirely appropriate for the State IV–A agency to discuss with the participant what care arrangements are available, as part of the assessment and employability plan. In general, the parent or caretaker makes the final decision about the necessity of care; however, if there are individuals in the assistance unit whose needs are met on the basis of their responsibility for caring for the child or they have legal responsibility for caring for the child, we would presume child care is not necessary.

Comment: One commenter asked if a waiver would be allowed of the age limit in the good cause provision found at § 250.35(a). This provision allows the client to refuse employment requiring her to work more than 20 hours per week, if she is personally providing care for a child under six.

Response: Section 1115 of the Social Security Act governs the granting of waivers for demonstration projects. In part, it provides that the Secretary may waive compliance with any of the requirements of section 402 to the extent and for the period he finds necessary to enable the State to carry out a project that is likely to assist in promoting the objectives of part A of title IV. Demonstration projects under section 1115 of the Act must include an evaluation component. We would be willing to consider waiver requests that meet the statutory requirements.

Calculating Net Loss of Cash Income

"Net loss of cash income" means that work-related expenses which would otherwise not be incurred must be subtracted from the gross income to determine whether the resulting net income is at least equal to the cash assistance received at the time the employment is offered. "Gross income" includes, but is not limited to, earnings, unearned income, and cash assistance. The calculation of the amount of cash assistance to be counted in "gross income" must be based on the current determination including the application of the appropriate earned income disregards. The need for and amount of a "supplemental payment" must be computed each month and include application of the appropriate earned income disregard.

Certain categories of expenses would logically be deducted from the gross salary, e.g., mandatory payroll deductions. However, other necessary expenses related directly to work must also be deducted. The final regulations provide that the State must use actual, reasonable work-related expenses in determining whether a "net loss of cash income" will occur. This calculation must be figured on an individual basis.

Comment: There were many comments on the "net loss of cash income" provision. One of the main issues centered on the definition and determination of necessary work-related expenses. Several commenters recommended that the net loss of income computation exclude work-related expenses.

Response: The Statute and legislative history do not specify what expenses are to be included in the calculation. The language of the Statute implies that Congress intended that a recipient's "disposable" income should not decrease. Certain categories of expenditures would thus logically be included in the work expense deduction. For example, for there to be "no net loss" mandatory payroll deductions must be deducted and net, disposable salary determined. However, there are other necessary, directly related work expenses that should be considered in the calculation. The State will be allowed to define these other expenses in its State JOBS plan.

Comment: One commenter recommended that States be allowed to define these expenses. Others asked that the work-related expenses be defined in the regulations and offered suggested definitions. These definitions ranged from limiting work-related expenses to standardized transportation costs and child care expenses (up to the local market rate) only for those individuals who would no longer receive AFDC benefits and not be eligible for transitional child care, to using standard disregards in lieu of actual expenses to reduce the administrative complexity of tracking actual expenses.

Response: We believe that a State is in the best position to define work-related expenses for its State and to determine the reasonableness of the expenses. Accordingly, we are not regulating in this area.

Comment: Another recommended that States be allowed to establish a flat rate work-expense standard with the client being able to document and receive reimbursement for actual expenses in excess of the standard.

Response: The use of actual expenses best serves the legislative purpose of ensuring that a participant who is required to accept a job is not penalized by having less income than was available while she was receiving assistance. The language of the Statute itself implies that the loss must be individually figured. This is also supported by the addition of the hearing process requirement, to the Senate version, to settle disputes. Disputes are most likely to arise when the permissible amount of expenses is debatable rather than when it is based on a reasonable allowance. In addition, the use of a flat-rate work-expense, while administratively simple, seems contrary to congressional intent insofar as Congress could have, but did not, specify such a flat rate work expense, as it did in section 402(a)(18)(A)(ii) of the Act.

Comment: One State asked for clarification on the inclusion of food stamp benefits as income for purposes of establishing net loss of cash income.

Response: Section 402(a)(19)(H) of the Act specifies that the State IV–A agency can require a participant to accept a job only if that participant experiences "no net loss of cash income" (emphasis added). As the Act specifically notes "cash" income, we have interpreted that to mean any "in-kind" benefits, such as food stamps, are not to be considered as income in determining if a net loss of income has occurred.

Treatment of Supplemental Payments

Supplemental payments are treated as AFDC expenditures under sections 403(a)(1) or (2) of the Act. Families receiving such payments shall not be considered categorically eligible for AFDC and are not eligible for Medicaid as AFDC recipients.

Eligibility for extended Medicaid (or transitional benefits after April 1, 1990) will be determined as of the month the family becomes ineligible for AFDC as a result of increased hours of or earnings from employment, or the loss of the earned income disregards.

Comment: One commenter recommended that the language in the last sentence of the "Treatment of Supplemental Payments" subsection be changed to reflect that eligibility for extended medical benefits was not based solely on acceptance of employment, but also on increased hours of earnings or loss of earned income disregards.

Response: We agree, and the preamble has been revised to reflect this recommendation.

Comment: One State asked whether the supplemental payment should be considered a title IV–A or title IV–F expense.

Response: As stated above the supplemental payment is treated as an AFDC expenditure.

Application to Unemployed Parent Cases

The definition of "net loss of cash income" does not supersede the 100-hour rule as applied to unemployed parents (UPs). Since the Act does not allow for AFDC payments to two-parent families where deprivation does not exist (i.e., two-parent families where neither parent is incapacitated and in which the principal earner is working more than 100 hours per month), it follows that a supplemental cash payment may not be made to a UP family if the parent who is the principal earner is working more than 100 hours per month. Congress did recognize that the current definition of "unemployment" for the purposes of qualifying for aid under section 407 of the Act should be studied and authorized several demonstrations in which alternative definitions to the 100-hour rule could be tested.

Comment: Several commenters questioned the legal basis for not allowing supplemental payments to a principal earner working more than 100 hours per month. The Statute makes no distinction between AFDC families and AFDC–UP families in making the supplemental payment option available to States.

Response: Although the Statute does not make a distinction between AFDC and AFDC–UP families in providing a supplemental payment, a family whose principal earner is working over 100 hours, does not meet the definition of deprivation for purposes of AFDC eligibility. Similarly, a family that had no child that met the deprivation requirement would not be eligible for a supplemental payment. As the supplemental cash payment is considered an AFDC payment and deprivation does not exist, no such payment can be made.

Other Comments

Comment: One commenter suggested that the regulations make clear that it is up to the recipient to claim "good cause" upon her failure to participate in the program or refusal to accept employment. The State IV–A agency should be able to assume that there is no "good cause", unless otherwise informed by the recipient.

Response: The recipient is responsible for providing the necessary information so that a good cause determination can be made by the State IV–A agency. Without this information, the State IV–A agency is unable to determine that "good cause" exists.

Conciliation and Fair Hearings (§ 250.36 of the Final Regulations)

Conciliation

Prior to the Family Support Act, there was no statutory requirement for a conciliation process. However, Federal regulations at §§ 224.60, 224.62, and 224.63 outline procedures for dispute resolution and conciliation in the WIN Program.

Section 482(h) of the Act requires that a State IV–A agency establish a conciliation procedure for the resolution of disputes involving an individual's participation in the JOBS program. We believe that it was Congress' intent that the State have a conciliation procedure that is neither so short as to be meaningless nor so long as to undermine the mandatory nature of the program and the imposition of sanctions.

An effective conciliation process can resolve misunderstandings or disagreements before they get to the point of resulting in a sanction. For example, a conciliation process could be used to resolve disagreements over the employability plan. It could also be used when a participant's attendance at an assigned activity has been irregular but not yet sanctionable. Even if it appears that the failure to participate or refusal to accept employment is clear, the conciliation process can prevent the need to go to a hearing.

We believe that an effective conciliation process has the following features. Either the recipient or the agency can request conciliation. At some point in the conciliation, the individual's rights and responsibilities under the program should be clearly explained, and she should be informed of the consequences of her continued failure to participate. The conciliation should be time-limited, and the individual should be made aware of this. We recommend that the period be no more than 30 calendar days. The agency should attempt to schedule at least one face-to-face meeting between the individual and a representative of the agency. It may be appropriate for a disinterested third-party to participate in such a meeting. If the agency initiates the conciliation process and, after reasonable efforts to schedule and hold a conciliation meeting, the individual does not appear for such meeting, the agency may end the conciliation process. The State's efforts at conciliation should be well-documented in the case file.

Comment: Several commenters asked us to require, rather than simply suggest, that certain features be included in any conciliation process. These suggestions included some or all of the features we describe above or components from the present WIN conciliation process. Some commenters supported mandating the 30-day procedure we suggest, while others supported a longer period, such as 60 days. Other suggestions included the establishment of a rebuttable presumption of good cause, mandatory arbitration, providing for alternative arrangements, and mandating participation by the case manager. Some supported establishing a shorter conciliation process in cases of subsequent non-compliance. One commenter believed our approach would allow a State to use one phone call as its conciliation procedure.

Response: We decline to mandate additional standards in this area. We believe that this is an area where State flexibility is warranted as the variety of the comments suggested a wide range of ideas about what constitutes conciliation. Each State must explain its procedure in its State JOBS plan. While

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we suggest some or all of the above features, we realize different circumstances in States warrant variations among States. Use of a telephone could be reasonable if agreed to by both parties.

Comment: Some commenters asked that in components administered by a contractor, we explicitly allow the contractor to be responsible for conciliation.

Response: Section 250.10 of the final regulations provides that a State may contract out various services, including conciliation, as long as the entity under contract follows the rules and regulations established by the State IV–A agency. Although another entity may perform the conciliation, the State IV–A agency must make the determination of whether the individual had good cause. In addition, the State IV–A agency should assure that any conciliation performed by a contractor be fair and impartial.

Comment: Some commenters asked that we not require States to provide for conciliation before giving any notice of intent to sanction and withhold the AFDC grant. These commenters cited the burden this extra procedure would place on local social service agencies.

Response: Section 482(h) of the Act requires the State to establish a conciliation process. Furthermore, we believe that conciliation can resolve disputes in an amicable and informal fashion before commencement of the formal hearing process. In fact, conciliation is itself a way to notify the recipient that there is a potentially sanctionable problem that can be solved.

Comment: Several commenters asked that we require that notice be given before conciliation, and some suggested that the notice be in writing so it would be documented in the case of a hearing.

Response: Conciliation begins when the State IV–A agency (or a contractor) or the recipient contacts the other party. This is, in effect, notice. A State's process may then involve the scheduling of a meeting between the recipient and the JOBS worker. Written documentation, including a written notice of the dispute, is one of the features of a conciliation process that we suggest States adopt.

Comment: Some commenters asked if the fair hearings office can be used to conduct conciliation, or if the State must create another level of hearing officers.

Response: The State has the flexibility to use any reasonable entity to conduct conciliation. We do not require that an additional administrative structure be created. The State must describe its conciliation process in its State JOBS plan.

Comment: Some commenters asked if a sanction can be lifted if the problem is resolved during conciliation or if the recipient cooperates during conciliation.

Response: Sanctions can not be instituted until after the conciliation process is complete. If conciliation solves the problem, sanctions will not be instituted, thereby making the issue of lifting them moot.

Comment: One State asked whether States have the option to stop a sanction from being applied if the client agrees to participate within the notice period provided in a notice of adverse action.

Response: Section 482(h) of the Act provides for a conciliation period during which an attempt is made to resolve any disputes. This is also the client's opportunity to try to resolve a dispute either by agreeing to cooperate or reaching some other solution. Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction through the fair hearing process. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

Fair Hearings

Under section 482(h) of the Act, the State IV–A agency must provide a hearing when the conciliation process does not resolve a dispute. The Act provides States with two options. The State may follow the hearing and notice procedures of § 205.10. As an alternative, the State may establish a separate hearing system. However, the State IV–A agency may not contract out the responsibility for providing a hearing to any other agency. An alternative hearing system could provide for a hearing only on the issues associated with JOBS disputes. It should be noted, however, that before an individual's grant could be reduced, suspended, discontinued, or terminated, she must be afforded an opportunity for a hearing that meets the standards of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Comment: Some commenters asked that a recipient be given notice prior to the imposition of a sanction, and that benefits not be terminated until after the hearing process is complete.

Response: Goldberg v. *Kelly* requires notice to clients prior to any action that would affect benefits and requires that clients be given an opportunity to request that benefits be continued until the hearing process is complete. Benefits can not be terminated during conciliation.

Comment: Some commenters suggested that we place an affirmative duty on the State to ascertain whether the State worker erred in not finding a legitimate basis for good cause, as part of the conciliation and hearing process.

Response: The conciliation and fair hearings processes are the proper ways for the participant to pursue a claim that a State worker erred in not finding "good cause." We expect that in the course of operating any program a State would regularly review decisions about "good cause" to determine that the policy was implemented correctly.

Subpart E—Operation of State Jobs Program/Program Components

Providing Program Informotion to AFDC Applicants and Recipients (§ 250.40 of the Final Regulotions)

Section 482(c) of the Social Security Act requires the State IV–A agency to provide all AFDC applicants and recipients with information on the JOBS program including education, training, and employment opportunities; available supportive services, including child care and transitional child care, for which they are eligible; the State IV–A agency's obligations; and the participant's responsibilities.

Although the Act only requires that this information cover the JOBS program, the Conference Report (H.R. Rep. No. 100–998, 100th Cong., 2d Sess. 132 (1988)) indicates that it is also important that the information cover child support responsibilities. Thus, this section of the final regulations requires that the State IV–A agency provide information on securing child support and establishing paternity as well as related requirements.

The purpose of providing program information on JOBS and child support is to ensure that all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by preparing for and obtaining employment and by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations.

To provide a State IV–A agency with the flexibility to administer its programs to accommodate variations in local resources and needs, the final regulations permit a State IV–A agency to develop the processes and methods for providing this information consistent with timeframes for phasing in the JOBS program. As the JOBS program is phased in by geographical area, a State IV–A agency must provide this program information to applicants at the time of application and to recipients at the time of the first redetermination after

implementation. There is no requirement to provide this information in areas without a JOBS program.

According to section 482(c)(5) of the Act, after the State IV–A agency provides a recipient with the information described above, it must, within one month, notify the recipient of the opportunity to indicate her desire to participate in JOBS. The agency must provide a clear description of how to enter the program. The Act does not, however, provide specifics regarding this notification process. To allow the State IV–A agency latitude in providing such notification to applicants, except those assigned to job search, this section permits the State IV–A agency to make such notification within one month of eligibility determination. Thus the State IV–A agency does not have to provide information to all applicants, many of whom may never become eligible. Following the language of the conference report, the regulations indicate that such notification must be in writing. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988).

Because the idea of participant preference can be confusing as it applies to non-exempt recipients, the regulations clarify that an indication by a non-exempt individual that she does not want to participate does not prevent a State IV–A agency from requiring that individual to participate. Alternately, consistent with other due process guarantees, a State IV–A agency may not interpret a lack of response or indication of a preference not to participate in JOBS by a non-exempt individual to constitute, by itself, failure to participate. Also, a State IV–A agency must inform a non-exempt participant before she decides to voluntarily enter the program that she would be subject to sanction if she stops participating in the program without good cause.

Comment: Several commenters sought clarification as to whether the explanation of the JOBS program and the written notice must be repeated at each redetermination. Two organizations recommended that States be required to repeat the process at each redetermination. Most State commenters felt this would be administratively burdensome. One State recommended that recipients not be informed at all, as it might generate an overwhelming number of volunteers.

Response: To the extent applicants and recipients have been notified of the program and given the opportunity to volunteer, the Act does not require that the process be repeated. However, there may be situations in which an individual who had qualified as a dependent child becomes a parent and establishes her own case or drops out of school and becomes a non-exempt participant. In such situations, the information and notice would have to be provided for those individuals, since the original explanation and opportunity to volunteer would have been given to her parent(s). We do, however, recommend that when the State IV–A agency reviews exemption status at redetermination, it use that opportunity to remind the recipient of the availability of JOBS services.

Comment: One commenter objected to combining information on securing child support with information on JOBS. Two others felt that the requirements to inform applicants and recipients of child care services and child support obligations should be moved to § 206.10, which addresses applications, determination of eligibility and furnishing assistance. One commenter thought the requirements under § 250.40 applied equally to the staff operating the JOBS program, if different from the title IV–A staff. As such, he felt it appropriate that should the JOBS staff discover relevant child support information, they should report it back to the income maintenance unit.

Response: The requirements under § 250.40 are responsibilities of the income maintenance unit insofar as they take place at application and redetermination of eligibility, and prior to participation in JOBS. On-going child support activities were not intended to be the responsibility of the JOBS program staff.

In regard to combining information on child support with information on JOBS, the discussion of child support obligations and cooperation at the time of application or redetermination is not new nor is a discussion of work programs or self-support. What is new is the intent of Congress to have both subjects discussed in the context of parental responsibility to support children. Although the means to achieve that end are embodied in two different programs, the purpose of each is to reinforce the notion of parental responsibility.

We do not believe that the requirements to provide information on child care and child support properly belong under § 206.10. The reason is technical rather than substantive. Section 206.10 relates to State plan requirements under title IV–A. Section 250.40 relates to State plan requirements under title IV–F, which we have incorporated in the final regulations at § 250.20. In any event, the requirements under both sections are binding on the State IV–A agency.

Comment: Three States wanted to do away with the written notice requirement found at § 250.40(c)(2). Another State wanted the timeframe for this requirement to extend to 45 days after the recipient is first informed of the JOBS program, rather than 30 days.

Response: Section 482(c)(5) of the Act requires the State IV–A agency to notify a recipient of the opportunity to indicate her desire to participate in the program and a description of how to enter the program "within one month" from the time the information is first provided to the recipient. Therefore, there is no basis for doing away with this provision of the regulations. Further, because the language specifies "one month," there is no basis for extending this period.

The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988)) indicates that it was the intent of Congress that the notice be in writing, and we believe that a "clear description" of how to enter the program can best be accomplished if it is in writing. Thus we have maintained the provision that the notice must be in writing.

Comment: One commenter said that the 30-day timeframe for the written notice represented a barrier to providing immediate service and asked that States be allowed to omit it.

Response: Section 250.40(c)(2) of the regulations states that the notice must be sent within one month of providing the information, meaning it can be sent anytime sooner than 30 days. Furthermore, § 250.40(c)(3) specifically provides that States are not prohibited from requiring non-exempt recipients, or applicants in the case of job search, from participating prior to the notice being sent.

Comment: One commenter recommended that a timetable be required for States to respond to a recipient's request to participate.

Response: While we feel that States should respond to such requests as expeditiously as possible, such a requirement would reduce State flexibility in operating programs. It will be in the State's best interest both in terms of running a credible program and serving interested participants to respond to positive inquiries in a timely manner.

Initiol Assessment and Employobility Plan (§ 250.41 of the Final Regulotions)

Initial Assessment

The final regulations require the State IV–A agency to conduct an initial assessment of each participant's employability based on: (1) her

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educational, child care and other supportive services needs; (2) the participant's proficiencies, skills deficiencies, and prior work experience; and (3) a review of the family circumstances, which may include the needs of any child of the participant.

The final regulations further provide that the initial assessment can be conducted through various methods including interviews, testing, counseling, and self-assessment instruments. Self-assessment instruments generally include check-off lists or survey forms designed to help the individual identify supportive service needs such as child care and transportation, and accomplishments such as educational level completed, prior work experience and skills acquired through employment, volunteer activities, or hobbies.

Appropriate assessment methodologies may vary among State IV–A and local programs due to differences in caseload size, program resources, and program philosophies. A State IV–A agency may also use different assessment methodologies to address individual recipient needs. For example, a State IV–A agency may find it cost-effective to do a limited, initial assessment for recipients, followed by a more in-depth assessment only as participant needs dictate. Since the Act does not provide specific details about assessment services and the conference report eliminated the requirement for testing literacy and reading skills, we believe Congress intended to give the State IV–A agency broad flexibility in this area.

We recommend that, where appropriate, State IV–A agencies use nationally recognized, standardized, or industry-developed tests to determine literacy levels and aptitude skills before assigning participants to specific educational and vocational training programs. Such testing may help the State IV–A agency assure that limited resources are used effectively and that participants are not placed in activities that are inappropriate for them.

The final regulations do not set forth timeframes (except for those individuals in job search pursuant to § 250.60) or establish a process for conducting the initial assessment. However, the final regulations provide that a State IV–A agency must conduct the initial assessment within a reasonable timeframe prior to participation.

Comment: Many commenters recommended that minimum standards be established for assessment. A few thought that periodic reassessments should be required. One commenter suggested different types of assessment, such as basic academic assessment, vocational assessment or self-assessment.

Response: We believe that the final regulations do contain minimum standards for the factors the State IV–A agency must consider in performing an initial assessment. However, there is nothing in the Act to suggest that there is one preferred method of conducting assessments. We think it would limit State flexibility to mandate periodic reassessments, and, therefore, have elected not to do so in the final regulations.

Employability Plan

Section 482(b) of the Act requires that the State IV–A agency develop an employability plan in consultation with the JOBS participant based on the initial assessment. It further specifies that the employability plan must contain an employment goal, describe the supportive services to be provided, and the JOBS activities to be undertaken. The final regulations follow the requirements of the Act as to the basic content of the employability plan but leave design and administration of the actual employability plan to the State IV–A agency.

Congress was particularly concerned that employability plans reflect the availability of jobs in the local job market so that JOBS resources would be expended efficiently. This concern is discussed in more detail in the preamble to § 250.12 on coordination.

The employability plan may identify services to be provided to address the needs of a participant's child, such as drug education or life skills planning courses. Many services for children are generally available to low-income community residents at no cost through local educational programs or volunteer services.

The employability plan should reflect a direct path to available employment. States might consider including a schedule of activities that would lead to employment by a specified date to achieve this goal. The employability plan should include activities which are selected to achieve self-sufficiency in an expeditious manner.

Section 482(b)(1)(B) of the Act provides that the employability plan must also take into account participant preferences as much as possible within the limits of the State's JOBS program. We interpret this to mean that in developing an individual's employability plan, the State IV–A agency must consider the needs and preferences of the participant in the context of agency goals and constraints (including program resources, available services and local employment opportunities). The final regulations specify that final determination of the contents of the employability plan rests with the State IV–A agency. This approval provision is particularly important in establishing the State IV–A agency's authority to determine the appropriateness of self-initiated activities as provided in § 250.48.

In developing employment goals and establishing appropriate participation requirements, the State IV–A agency should not limit a participant's options based upon traditional views of appropriate male and female roles. Such limitations would be inconsistent with the requirements on non-discrimination at section 484(a)(3) of the Act, and could contravene the self-sufficiency goals of the program.

Comment: Several commenters objected to the statement in the preamble that the employability plan should reflect a direct path to available employment. Some felt it undermined what they perceived to be the purpose of the Family Support Act, namely, the education, training and employment of recipients in order to avoid long-term dependency. Others felt the implication was to minimize training and emphasize low-paying, low-skill jobs.

Response: We do not think that suggesting that an employability plan reflect a direct path to available employment undermines the purpose of the Family Support Act. The statutory requirement that the employability plan contain an employment goal suggests that Congress expected that the education and training provided under JOBS would lead to employment. The final regulations define the content required for the employability plan. It should be based on an initial assessment and describe the supportive services to be provided and the JOBS activities to be undertaken. These are the real determinants of a participant's path to self-sufficiency.

Comment: Several commenters asked that we modify the requirement that the employment plan contain an employment goal. They said that, especially for young custodial parents who have not finished high school, establishing a specific employment goal in an employability plan would be premature.

Response: Section 482(b)(1)(B) of the Act requires that the employability plan "set forth an employment goal for the participant". We recognize that for the young custodial parent, this may not be a specific occupation. However, we do think that it is important that the participant understand that the ultimate goal is employment and that she can, indeed, see a path to achieving that goal within a time certain. We further point out that the employment plan should not be a static document, and, particularly in the case of the young custodial parent, should be frequently reassessed to assure that it reflects the needs of the individual. We, therefore, decline to change the wording of the final regulation, in the belief that there is enough flexibility in the concept of an "employability plan" to allow for preliminary or tentative employment goals, especially for young participants.

Agency-Participant Agreement (§ 250.42 of the Final Regulations)

Section 482(b)(2) of the Act provides that, following the initial assessment and the development of the employability plan, the State IV–A agency may require the JOBS participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV–A agency.

This is not a new concept. Currently, some State IV–A agencies require WIN/WIN Demonstration participants to sign a written agreement or contract with the welfare agency. Usually, this agreement is included as part of the employability plan and specifies the actions the recipient will take to implement the plan and the agency services and resources to be made available to the recipient. Generally, the agreement or contract includes well-defined time lines and benchmarks for progress for both the recipient and the agency. Thus, the agency-participant agreement is viewed as the basic tool for outlining the mutual responsibilities, expectations and specific tasks of the recipient and the agency.

The final regulations follow the conference report and permit a State IV–A agency to consider the agreement a contract. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 129 (1988). Such a contract is subject to applicable State laws and regulations.

This section of the regulations provides that the option need not be statewide. However, the State IV–A agency will be required to describe in its JOBS plan the types of participants for whom they will be used. Section § 250.21 contains the State JOBS plan content requirements.

Comment: Some commenters suggested that we require that participants sign any agreement under this section.

Response: We believe the States should retain flexibility as to whether to require participant signatures on agreements under this section, as they retain the flexibility to decide whether to have such agreements at all. We may question the utility of agreements that are not signed, but we can also envision circumstances where States could use these agreements as a way of clarifying how the employability plan will be implemented. In such cases signatures may not be necessary. We also note that if a State chooses to regard these agreements as contracts, State contract law may address whether signatures are required. We do not want to supersede State contract law by regulating in this area.

Comment: Some commenters suggested that contracts in this area should be generic in nature and not include specifics such as the number of hours of participation per week or the length of participation, due to the fluctuating nature of these numbers.

Response: Employment goals and the path to self-sufficiency should be set out in the employability plan. There is no need to repeat them here. The Act establishes these agreements as a means to explicitly set out the specific responsibilities of each party, in a manner that is straightforward and easily understood by both parties. It can serve as a daily or weekly guideline of responsibilities for the client, as well as a listing of services to be expected from the State. Whereas the employability plan addresses long-term self-sufficiency, we read the Act as requiring the agreement or contract to set out what must be done by each party in the present.

Comment: One State believed that regarding such an agreement as a contract would put the State at a disadvantage since its staff would draft the contract without the aid of an attorney.

Response: If a State is concerned about this, it should not regard the agreement as a contract. The Act and regulations clearly specify that this is a State option.

Comment: Some commenters believed that the Act requires agreements under this section to be regarded as contracts. These commenters also believed that if an agreement is not considered a contract, there would be a dubious distinction between it and the employability plan.

Response: Section 482(b) of the Act uses the term "agreement," while the Conference Report accepts the Senate amendment, which uses the term "contract." We believe there is a subtle, but important, difference between the two terms. A contract is enforceable in court against both parties under State contract law. A mere agreement is not. We believe Congress, in using both terms and making them at the option of the States, intended both to be State options. We also believe that an agreement that is not a contract can still be different from the employability plan. The employability plan contains long-term goals and could contain a sequence of several steps toward obtaining those goals. In more complex cases, States may wish to use agency-participant agreements to clearly spell out the mutual obligations of each step as it begins, without bringing on all the requirements of a legally-enforceable contract. States may also develop other uses for non-contractual agreements. We do not wish to limit States' options by requiring that all agreements be fully enforceable contracts.

Case Management (§ 250.43 of the Final Regulations)

Generally, a case management system is designed to support and strengthen the participant's capacity to become self-supporting and to help assure that participants and their families have access to the resources and opportunities required for self-support. Case management may be advocated on the grounds that the activities and services a recipient may need to progress to self-support are so scattered among programs and agencies that a case manager is needed so that progress is not delayed and frustrated.

Under the final regulations, a State IV–A agency that chooses to establish a case management system is given flexibility to design its case management services and procedures. Case management does not have to be offered in all political subdivisions that have a JOBS program. Section 250.21 provides that the State IV–A agency must describe in its JOBS plan its case management system, including how services will be delivered and by what entities and how the State will assign case managers to individuals.

Comment: Some commenters asked us to make case management a mandatory feature of a State's JOBS program. Some commenters also believed a State should not offer case management in only some areas or only to some individuals.

Response: We believe the Act is very clear on this matter. Case management is an option for the States and is not to be mandated. The Act also clearly provides that States may offer case management to some participants and not to others, as the State determines appropriate.

Comment: Some commenters, while recognizing that case management is optional, asked us to give States stronger encouragement to use it.

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Response: We recognize that advocates of case management believe that it is a very effective tool for assisting participants to achieve self-sufficiency. However, we also realize that there are reasons that a State may not use case management or use it only in certain instances. Cost may be one such reason. We believe that each State can best decide the proper utilization of case management for the needs of that State.

Comment: Some commenters asked us to provide a detailed description of case management and noted the importance of training case managers in various skills. Some commenters offered detailed descriptions for us to adopt.

Response: We thank those commenters who provided an in-depth discussion of case management and urge them to share this information with the States. However, for the reasons stated above, we decline to mandate that specific features of case management be adopted or that case managers be required to receive specified training. We leave these matters to the discretion of the States.

Mandatory Components (§ 250.44 of the Final Regulations)

Education

Section 482(d)(1)(A)(i) of the Act provides that the required educational activities are: (1) high school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level (our definition is discussed in § 250.1); and (3) education for individuals with limited English proficiency. The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 142 (1988)) states that where enrollment in regular high school programs is deemed inappropriate, the State IV–A agency is expected to identify or develop alternative education activities to meet the needs of JOBS participants.

Many of the comments we received on the educational content of this section revolved around definitions of "basic literacy level" and "limited English proficiency" found in the regulations at § 250.1 and around the material in the preamble concerning those definitions. The definitions have been modified as indicated under § 250.1 and in the corresponding preamble. The regulations here have been revised in accordance with the changes made in the definitions. For example, the reference to education in English proficiency lists the same skills as are contained in the definition.

The regulations provide at § 250.32(b) that if a State requires participation in JOBS of an individual age 20 or over who has not completed high school, it must include educational activities consistent with her employment goal. There are two exceptions: if the individual demonstrates a "basic literacy level," or if her long-term employment goal does not require a high school level of education. In responding to these two requirements in the Act, we note that levels of education between "basic" education and "high school" are not explicitly specified. Nonetheless, they are clearly allowable as JOBS educational activities. Section 250.44(a) provides that the educational activity may include any activity below the postsecondary level, which means that an intermediate educational goal between basic education and high school is acceptable if the State IV–A agency concludes that it corresponds to the individual's long-term employment goal.

Comment: A few groups suggested that § 250.44 be revised to emphasize that the education offered to the JOBS participant should be appropriate to the individual's "long-term employability goal," instead of being appropriate to the participant's "employment goal."

Response: We will retain the phrase "employment goal," since the term is the same one used in § 250.41, which describes initial assessment and the employability plan. In that section, the "employability plan" must contain the "employment goal" of the JOBS participant. These are the terms that are used in the Act.

Comment: Two literacy groups suggested that the final regulations specifically recognize the services of the voluntary literacy community as providers of basic literacy services for JOBS.

Response: The regulations discuss the kinds of services appropriate for JOBS participants but do not address the types of providers, either to include or exclude groups. State IV–A agencies may choose to employ the services of the voluntary literacy community if they are appropriate to meet participant needs.

Comment: One group stated that § 250.44 should mandate "adult special education" for those 22 years of age and older who lack the necessary comprehensive ability to grasp basic training skills and that the section also should provide for "entrepreneurship activities."

Response: Terms for the mandatory activities under this section follow those used in the Act. However, "adult special education" would not be precluded from the activities a State may offer under this section. "Entrepreneurship activities" would fall under § 250.47 of these regulations.

Comment: A small number of commenters stated that they thought the list of the three educational activities included under § 250.44(a) (high school or equivalent, basic and remedial education, and education in English proficiency) was unnecessary or confusing. One of these entities said that the inclusion of "basic education" on the list, would, in view of our definition of "basic literacy level," mean that education not leading to completion of the eighth grade would not be eligible for JOBS funding.

Response: The three forms of education are listed because they are specifically listed in the Act as mandatory educational activities. We believe that the wording of § 250.44(a) clearly provides that all types of educational activities are covered under JOBS if they are less than the postsecondary level and if the State IV–A agency determines them to be appropriate to the participant's employment goal.

Comment: A research organization suggested that HHS encourage States to provide remedial education integrated into job skills training, rather than provide such activities sequentially.

Response: The regulations at § 250.44 provide that the States may combine several activities into a single program activity. We encourage the selection of activities that are appropriate to the individual's employability plan, whether they be integrated or sequential.

Work and Training Programs

The Family Support Act provides no definition for the required work and training programs. It does, however, require reporting of activities and of costs related to each selected program or activity. We, therefore, adopted functional definitions for the three remaining mandatory components of "job skills training," "job readiness activities," and "job development and placement."

We sought available definitions of these terms from the Department of Labor, principally with reference to definitions used by the State employment security agencies and the Job Training Partnership Act programs. Not all programs required by the Family Support Act, such as "job readiness activities," are defined in Department of Labor programs. Other programs or activities are defined differently, such as "job development" and "job placement", which are established in the Act as a single, combined, required program activity, but which are each defined differently by JTPA and the Employment Service.

In a two-day meeting with selected State welfare agency directors and their work program directors, strong opinion was voiced that wherever possible, definitions of employment and training terms correspond with existing definitions used by the State agencies from whom State IV–A agencies would often be seeking both contracted and non-reimbursed services. While we have endeavored to be responsive to these State concerns in this regard, we had to choose between or combine definitions. We invited comment on the operational usefulness of the distinctions we proposed for such purposes as program design and data maintenance in case records. We received no comments in this area.

Job Readiness Activities

Under these regulations, "job readiness" centers on pre-employment preparation, and excludes activities that would readily fit within the scope of other defined components, such as vocational skills training. The Department of Labor advised us that "job readiness activities" are not defined by the Employment Service. However, employment security agencies define several closely related terms. Thus, a "non-job-ready" person is one who is deficient in work attitudes, behaviors or skills and is therefore unable to get and keep a job; a "job ready individual" is one who, among other things, has no physical, mental or job skill barriers that preclude employment; and "employability" is defined as, among other things, work behavior and attitudes that are necessary to compete successfully in the labor market. We agree with the Department of Labor observation, and in the regulations we provide that an activity related to removing such barriers would be defined as a job readiness activity.

Comment: One commenter thought the Act lacked a framework for the implementation and funding of critically needed job readiness activities.

Response: The Act and the regulations recognize the mandatory nature of job readiness activities. However, the regulations permit State flexibility in providing these services and encourage interagency cooperation in developing the JOBS program. State IV–A agencies should use available job readiness activities and seek appropriate advice on the development of additional activities when such resources do not already exist.

Job Skills Training

We adhere to what we believe is the commonly understood meaning of the term—pre-employment training in technical job skills. It would, for example, correspond approximately to what was understood in the WIN and WIN Demonstration programs as institutional training.

In order to assure that skills training offered through JOBS results in an increase in participants' skills and competencies, and that progress can be monitored by the State IV–A agency, we require that qualitative measures for "satisfactory progress" be developed for all skills training. Based upon the comments we received, we decided not to require measures of "satisfactory progress" in order to qualify a training program as a component activity under JOBS but to retain the concept with respect to reassessment and providing supportive services. This is discussed in more detail in § 250.1 in relation to the proposed definition of "making good or satisfactory progress in a training component."

Job Development and Job Placement

The final regulations define "job development and job placement" as agency activity on behalf of participants to create or discover openings, and to market participants for those openings. This is consistent with a longstanding approach in employment programs. We have followed that historical pattern as a means of distinguishing agency activity that is relatively intense on behalf of a participant, from a participant's intense activity in job search. Based on this distinction, we have excluded this component from the definition of "participation" found in § 250.78.

We also do not intend that this component should have any connection with the longstanding concept in employment security agencies of a "placement" as an outcome. The specialized meaning of this outcome measure for employment security agencies does not correspond to the requirements or expectations of JOBS.

Optional Components (§ 250.45 of the Final Regulations)

In addition to the four required components, the State IV–A agency must also offer at least two of the following four activities in its JOBS program:

(1) Group and individual job search;

(2) On-the-job training;

(3) Work supplementation; and

(4) Community work experience, or other approved work experience program.

Except for on-the-job training, these optional components are generally based on existing law and program regulations. The Act provides for a few changes to programmatic aspects of these components which are discussed in Subpart G. Otherwise, we have adopted as much of the existing regulations as possible. Since the Act establishes common sanctions, eligibility criteria, FFP guidelines, target populations and service area coverage for the JOBS program, the regulations governing the optional components will no longer have specific language addressing these areas as there was when they were discrete IV–A work programs.

Like the required components, the optional components need not be operated uniformly throughout the State. However, the additional State options do provide an opportunity for the State IV–A agency to develop a program meeting specific needs of individuals while recognizing State economic and environmental factors. Congressional conferees (H. R. Rep. No. 100–998, 100th Cong., 2d Sess. 141 (1988)) stressed the desirability of programs that respond to varying circumstances, including changes in the unemployment rate and different needs that exist in rural and urban areas. Our regulations seek to reflect this congressional intent.

Postsecondary Education (§ 250.46 of the Final Regulations)

We define postsecondary education in § 250.1. We interpret the language of section 482(d)(1)(B)(i) of the Act to mean that the offering of postsecondary education is an entirely optional matter for the State IV–A agency to address in its JOBS plan, except that we have limited such education to that which is directly related to the attainment of an individual's employment goal, i.e., to obtain useful employment in a recognized occupation. Within this occupational limitation, the State IV–A agency must set forth in its State JOBS plan the bases upon which it will determine whether postsecondary education is appropriate.

We believe that the restriction of postsecondary education to education related to the goal of obtaining useful employment in a recognized occupation is consistent with the intent of the JOBS program. The program's aim to reduce long-term welfare dependence would not be served by permitting a JOBS participant to embrace the broader, more general educational goals that also

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fall within postsecondary education but that have a less well-defined occupational connection.

While we do not prohibit the use of JOBS funds for this activity, we are concerned about the potential cost. Thus, we encourage States to use resources that are otherwise available to fund postsecondary education for JOBS participants. A State should consider the wide range of other, in some cases less well funded, components which must be included in its JOBS program when determining whether to fund postsecondary education as well as the fact that most welfare recipients are considerably more educationally needy and less able to support their families than those who are ready to enter postsecondary education. We will monitor State expenditures in this area for the purpose of determining the extent to which investment in postsecondary education for JOBS participants produces more beneficial returns, such as longer term self-sufficiency, than are produced by other levels of education or training.

We exclude the costs of such education, including tuition, books and fees, from coverage as special needs under § 233.20(a)(2)(v). Since the Act now provides funding for this activity and places a specific cap on the overall JOBS funding, we would be circumventing the Act were we to allow additional funding under special needs.

Comment: Although there were few comments regarding the definition of "postsecondary education," many groups, including a number of postsecondary institutions, commented upon the statement in the preamble that encouraged States to limit expenditures of JOBS funds on postsecondary education. They saw the statement as discouraging the placement of participants into postsecondary programs and objected to having that area singled out for special monitoring of JOBS expenditures. Therefore, they asked that the final regulations not appear to discourage States from placing JOBS participants into postsecondary education, since the reports of recent studies indicate that most of the new jobs being created will require postsecondary education. Objecting to our preference for short-term programs leading to employment over postsecondary education, the commenters stated their belief that postsecondary education is more likely than lower levels of education to produce returns of long-term self-sufficiency.

Response: In view of the availability of State, Federal, and private grants and loans for postsecondary education, we do not believe that it is unreasonable to encourage States to take advantage of other means of support for postsecondary students who participate in JOBS. This will enable the program to serve more individuals and to use JOBS funds to bolster, where necessary, scarce resources needed to serve the great number of potential JOBS participants who are educationally disadvantaged through lack of basic and high school education, or those who can benefit from short-term programs designed to address job readiness, job skills, or training. Our discussion contained under § 250.32 points out the general consensus among those who commented that adequate resources are not available for those below the postsecondary level, particularly those for whom regular high school is not appropriate. While we encourage States to consider how they use limited resources and to serve as many individuals as possible under JOBS, the regulations do not prohibit States from placing JOBS participants into postsecondary educational programs.

Comment: Comments were mixed concerning the language that permits a State to refer a participant to postsecondary education when the education is linked to "meeting individual goals that are directly related to obtaining useful employment in a recognized occupation." Several groups stated their specific approval of the language, indicating that they saw the language as following the intent of the Statute. A couple of groups objected to relating such education "directly" to occupational goals. One of them said that the language would make States hesitant to use postsecondary education as a JOBS activity. Another said that the language of the Act is broad enough to offer a wide range of postsecondary educational activities that can improve employability. Some of the commenters observed that any kind of postsecondary education is relevant to employment.

Response: We are maintaining our original position that the relationship of postsecondary education to the participant's employment goal is consistent with the intent of JOBS. While we concur that broader, less job-related education can provide skills related to employability, we believe that a specific occupational linkage more readily assures that the postsecondary education will lead to the employment goal that the Act requires to be part of each participant's employability plan.

Comment: A few entities, including several States, did not approve of the exclusion of postsecondary education costs from FFP as special needs. Some of them also mentioned exclusion of supportive services from special needs funding. Some of them sought an explicit statement that the costs of postsecondary education are covered through JOBS.

Response: We continue to believe that the exclusion from special needs funding of postsecondary educational expenses (along with the costs of other education resulting from participation in JOBS) constitutes the best reading of the Act, since it now provides JOBS funding to be used for educational activities except in the case of self-initiated education or training as treated in § 250.48. JOBS funding can be used for such expenses as tuition, books, and fees, except in the case of self-initiated education or training. Supportive services such as child care now are provided to JOBS participants and certain other categories of individuals through the supportive services provisions of the Act. However, we encourage States to take advantage of the other resources that are available to support the postsecondary educational activities of JOBS participants.

Other Education, Training, and Employment Activities (§ 250.47 of the Final Regulations)

Section 482(d)(1)(B)(ii) of the Act provides that the Secretary may approve additional components not specified in the Act. Because public service employment was specifically considered as a potential optional component and finally rejected by the conferees, we have expressly excluded public service employment from the acceptable possibilities. By public service employment we mean what that term meant under the WIN and CETA programs: a fully subsidized job in a public agency.

Comment: One commenter applauded our decision to bar public service employment, while one commenter said that we should leave it as an option to the States.

Response: We are persuaded by the fact that public service employment was specifically considered as a potential optional component and finally rejected by the conferees. Furthermore, we note that section 141(p) of the Job Training Partnership Act (Pub. Law 97–300) specifically bars funding for public service employment under JTPA.

We also point out that if an appropriate job is available in the public sector, and the State IV-A agency wants to place an individual in the slot, it could use the OJT component. While 100% funding would not be available, our regulations at § 250.61 on OJT do allow States to vary the rate of reimbursement to employers so that a higher rate could be offered at the beginning of the OJT as long as it averaged 50% over the period of the contract.

Comment: Another commenter said that we should define public service employment in the regulations so that States could propose alternatives under § 250.47 if the job would lead to full-time employment.

Response: We have decided to modify our definition of public service employment and include it in the final regulations. The modification is that we have dropped the phrase that the job "is not expected to convert to unsubsidized employment." Whether a public service job will lead to unsubsidized employment is not the controlling factor. Rather it is that subsidizing any employer at 100% is not an effective use of limited resources.

We are also concerned that routine costs of State and local governments would be inappropriately shifted to the Federal government under such a program.

Self-Initiated Education or Training (§ 250.48 of the Final Regulations)

This section describes State options, in areas of the State where the JOBS program is available, with regard to individuals already engaged in education or training at the time they would otherwise commence participation in JOBS. In the NPRM, this section referred only to self-initiated education or training that met the requirements of section 402(a)(19)(F) of the Act. As a result of comments we received and our further review of the language of the Statute, we have amended § 250.48 by adding paragraph (b) to address another group of participants: individuals who live in areas of the State where there is a JOBS program and are enrolled in a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act at the time they would commence participation in JOBS.

We have also identified a third category: AFDC applicants and recipients who live in non-JOBS areas and are engaged in education or training for whom the State may provide child care and other supportive services pursuant to the State's approved Supportive Services plan. However, such education or training in non-JOBS area is not part of the JOBS program, and, therefore, is not covered by this section of the regulations. Approval of education or training in non-JOBS areas for the purpose of providing child care and supportive services necessary for participation is addressed in the preamble and regulations at §§ 255.1 and 255.2.

For purposes of this section, we will use the term "self-initiated education or training" to mean education or training that meets the requirements of section 402(a)(19)(F) of the Act, and which is described at § 250.48(a) of the final regulations. We will use the term "other education or training pursuant to § 250.48(b)" to mean a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act but which the State may approve under the JOBS program. Finally, we will use the term "self-initiated activity" as a generic term to describe all such activities.

Self-Initiated Education or Training under Section 402(a)(19)(F) of the Act

Section 402(a)(19)(F) of the Act describes the circumstances in which the State IV–A agency may permit an individual who is in self-initiated education or training that meets certain requirements, at the time she would otherwise commence participation in JOBS, to continue such course of study. The final regulations at § 250.48(a) provide that: (1) the individual must be attending (in good standing) an institution of higher education (as defined by section 481(a) of the Higher Education Act of 1965, 20 U.S.C. 1088) or a school or course of vocational or technical training in a course of study that is consistent with her employment goals; (2) she must be attending at least half-time; (3) she must be making "satisfactory progress in such institution, school, or course"; and (4) she must meet the State's criteria for determining the appropriateness of the self-initiated education or training.

Comment: One commenter thought that we had narrowed the application of section 402(a)(19)(F) by referring to individuals who "would otherwise be required to commence participation" rather than using the statutory language "would otherwise commence participation." The commenter thought that such a provision would exclude persons not required to participate from being counted as participants.

Response: We did not intend this exclusion, and we have amended § 250.48(a) using the statutory language. Therefore, exempt and non-exempt individuals engaged in self-initiated education or training that meets the definition of section 402(a)(19)(F) are covered by § 250.48(a).

Half-time Attendance

While the wording of the Act could lead to an interpretation that the half-time attendance provision of section 402(a)(19)(F) pertains only to the school or course of vocational or technical training, this would leave a question as to the amount of time the participant would have to be in attendance at an institution of higher education. We see no reason to distinguish an "institution of higher education" from a "school or course of vocational or technical training" in applying a minimum attendance requirement. Rather, we see the application of the half-time attendance requirement to higher education as serving three beneficial purposes. First, it provides guidance as to minimal expectations of participation. Second, it serves as an indicator associated with making satisfactory progress in the institution, as defined in § 250.1. Third, the half-time requirement is consistent with such requirements for half-time attendance contained in certain student financial aid programs operated under the Higher Education Act. For example, the Guaranteed Student Loan Program requires a student to be enrolled at least half-time in order to receive aid from that program.

Vocational or Technical Training

The meaning of the term "vocational or technical training" is incorporated into § 250.48(a). The term includes vocational or technical training offered by postsecondary institutions. As a result of comments we received, the definition has been expanded to include such training offered by other entities such as secondary schools, and public and private agencies and organizations that offer adult vocational or technical education. The term refers to training that both leads to useful employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

Comment: Two organizations objected to the exclusion of secondary vocational education from this section.

Response: Secondary vocational education is not excluded from JOBS by virtue of the provision at § 250.44(a), which provides that any educational activity below the postsecondary level that the State determines to be appropriate to the participant's employability plan falls within the mandatory educational components of JOBS. However, we realize from comments we received that there might be instances in which such training is self-initiated within the meaning of section 402(a)(19)(F) of the Act. Therefore, we have refined our definition of the term "school or course of vocational or technical training" at

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§ 250.48(a) to include such education at the secondary level.

Assessment of Self-Initiated Education or Training

In supplying definitional information, the Department of Education stated that one of its primary concerns was "whether welfare recipients who are enrolled in postsecondary schools have the ability to benefit from the programs in which they are enrolled. The Division of Adult Education believes that the State should perform an educational assessment of the ability to benefit of any JOBS participant * * * before enrollment is considered satisfactory participation * * * ."

Other groups that we consulted in the regulations development process asserted that there is potential for abuse by some of the institutions cited in section 402(a)(19)(F) of the Act that would enroll welfare recipients as a means of securing indirect funding by means of student aid under the Higher Education Act. We believe that, in the case of this category of education or training which the State IV–A agency might find to be satisfactory for participation in the JOBS program, an educational assessment of the participant is crucial for the protection of both the participating student and Federal funds. Therefore, the regulations require an assessment and development of an employability plan before the State applies its criteria for determining the appropriateness of the individual's pre-existing education or training activity to her defined employment goal. In § 250.48(a) we now specifically refer to the State's criteria for determining appropriateness of self-initiated education or training, which were implicit in the NPRM.

Comment: There were a few commenters who did not approve of performing an assessment on an individual governed by § 250.48(a), or as full an assessment as would be performed on other individuals. They asked for State flexibility in assessing and preparing an employability plan for those in self-initiated education or training. Some of them stated that deference should be given to individual choice, since they believe that the person has taken considerable initiative in enrolling. They saw our concern with assessment of the individual's ability to benefit from the self-initiated education or training as demeaning the abilities and judgment of welfare recipients. A few commenters specifically stated their approval of the provision, however, fearing that the individual might have had an inadequate assessment by the enrolling institution. Some commenters specifically approved of the State's having final authority over the employability plan as provided by § 250.41 of the regulations.

Response: We maintain our position that the IV–A agency must perform an assessment that will enable a judgment to be made regarding the suitability of the self-initiated education or training in which the individual is enrolled. Our reasoning is based upon comments we received prior to the development of these regulations and is reinforced by those who commented on the NPRM in support of the use of assessment for those enrolled in self-initiated education or training. Some States have already seen what they believe are inappropriate recruitment of welfare recipients by for-profit institutions seeking to bolster their enrollments. It is our desire to encourage States to take measures that ensure that JOBS participants are engaged in education or training from which the individual can benefit and move toward self-sufficiency. The Department of Education is currently confronted with high student loan default rates associated with some educational institutions, many of which are for-profit trade schools. These defaults can be the result of the student's not being able to obtain employment after completing or dropping out of educational programs in which they have been inappropriately enrolled.

Comment: One State asked if a person meets the "attending" requirement of this section if she has enrolled but has not started attending classes.

Response: The regulations provide that the State may permit an individual who is attending self-initiated education or training at the time she would otherwise commence participation in the JOBS program to continue to attend if she meets the requirements established in the regulations at § 250.48(a). The regulations apply as well to individuals who have enrolled in an activity, but have not yet attended class. In either case the State must make a determination of the appropriateness of the education or training before approving it under § 250.48(a). For purposes of counting as participation pursuant to the requirements of § 250.78, the activity must have started.

State Restrictions on Approvable Activities

In order to maintain consistency with the regulations on postsecondary education found at § 250.46, we provide in § 250.48 that the State IV–A agency may place restrictions upon the self-initiated postsecondary education or training covered by section 402(a)(19)(F) of the Act. For example, the State IV–A agency might restrict such postsecondary education to a maximum of two years. Further, a State IV–A agency might choose to permit an individual who is within two years of completing a four-year program to complete it if the requirements of this section are otherwise fulfilled. We would encourage States in delineating restrictions to be mindful that the goal of self-initiated training should be to move the participant from welfare dependence within a reasonable time. Therefore, shorter programs leading to specific occupational goals are preferable to longer educational programs that may have far less specific employment goals.

Comment: A small number of commenters indicated that they did not support the statement in the preamble that encouraged States to restrict the length of self-initiated postsecondary education that would count towards participation in JOBS. One of them saw the preamble on this section encouraging even more stringent State restrictions on postsecondary education than the preamble on § 250.46, Postsecondary Education. One of them sought clarification as to whether self-initiated training could include the baccalaureate degree. Another State specifically supported having the authority to restrict such education.

Response: It is not our intention to suggest that the State's option to restrict self-initiated education should result in more stringent restrictions than it chooses to exercise regarding postsecondary education under § 250.46. The intent in both cases is to encourage the participant's attainment of an occupational goal within a reasonable period of time. The definitions associated with this section of the regulations do permit enrollment in a baccalaureate degree program if the program is offered by an "institution of higher education." However, in the case of such enrollment, the State could choose to restrict the period for which enrollment is approved and an individual is, therefore, eligible for supportive services.

Prohibition on FFP

Section 402(a)(19)(F) of the Act specifically states that the costs of "such school or training" shall not constitute federally reimbursable expenses under JOBS. The regulations on funding at § 250.75(a) define such costs to include tuition, books, fees, room, and board. The costs of necessary child care and other supportive services for participants in self-initiated education or training are eligible for Federal reimbursement, as provided at § 255.4.

Comment: A few commenters said that self-initiated postsecondary education should be funded under JOBS. They noted that if it is not, the individual might decide to drop out of the educational program in order to re-enroll under JOBS.

Response: Section 402(a)(19)(F) of the Act states that the costs of such school or training shall not constitute federally reimbursable expenses under JOBS. Furthermore, in the preamble to these regulations, States are strongly urged in § 250.46, Postsecondary Education, to use resources other than JOBS funds to pay for a participant's postsecondary education. Also, supportive services under the Act are available to either category of student, self-initiated or State-assigned, as long as the activity is approved. Therefore, in many instances there should be no benefit in making such a change.

Comment: One State commented that the regulations restricting funding for self-initiated education would impede clients who will benefit from retraining offered by vocational rehabilitation.

Response: If the individual's vocational rehabilitation program meets the definitions applicable to paragraph (a), and if the other conditions of the paragraph are met, the individual could be considered a JOBS participant. The financial support for the individual's educational program, as is the case with support for other educational programs falling under the paragraph, would have to come from sources other than JOBS. It is also possible for the individual in self-initiated vocational rehabilitation to participate under components of JOBS as provided by paragraph (b) of this section. There appear to be no special problems associated with participation in a referral to vocational rehabilitation activities under JOBS.

Comment: A few groups objected to the exclusion of the use of special needs funds under § 233.20(a)(2)(v) to pay for supportive services for those in self-initiated activities. Some included books and fees as supportive services. One asked for clarification as to what supportive services were available under JOBS for this category of participants.

Response: Supportive services, such as child care and transportation, are otherwise available under title IV–A and JOBS respectively for this category of individuals, so these services are not available under special needs. As required by the Act, § 250.75 prohibits FFP for costs of self-initiated education or training, as provided at § 250.48(a). We define educational costs to include tuition, books, fees, room and board; they include items which are directly connected to educational activities and traditionally funded as educational assistance. Thus, these educational costs are distinguishable from such adjunct items as transportation, which are matchable as supportive services.

Non-Interference

The regulations state that, consistent with the Act, the State IV–A agency must not permit other JOBS activities to interfere with approved self-initiated education or training. However, a State may require an individual to accept employment if the State IV–A agency has notified her at the time it first approves the self-initiated education or training that it may periodically review the approval and make such a change.

Comment: One State asked that a bona fide job offer not be considered to be an activity that interferes with education or training, so that the State could require the individual to accept the job.

Response: While the Act and implementing regulations prohibit interference by other JOBS activities with a self-initiated education or training, they do not prohibit the State IV–A agency from reviewing and revising the individual's employability plan based on changed circumstances, such as an improved job market. In addition, only interference by other JOBS program activities is precluded. Employment, other than through the work supplementation or OJT programs, is not a JOBS program activity. Thus, States could require the individual to accept a job.

In so doing, the State should consider such factors as whether the job has the potential for leading to long-term self-sufficiency and whether the individual will be left with an educational loan to repay that will impact upon her economic status. The regulations have been revised to clarify that, at the time of preparation of the initial employability plan, the State IV–A agency must make certain that the JOBS participant is aware that her plan is subject to this kind of review and revision.

Other Education or Training Pursuant to § 250.48(b)

We have renumbered § 250.48 to clearly acknowledge that there will be AFDC applicants and recipients who will be enrolled in self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act. For example, the individual might not be attending at least half-time or the institution might not be covered by section 402(a)(19)(F) of the Act. Section 250.48(a) now refers to education or training that meets the requirements of section 402(a)(19)(F) of the Act, and § 250.48(b) refers to any other self-initiated activity that does not.

The State may approve other education or training pursuant to § 250.48(b) as a JOBS activity according to the regulations and State criteria applicable to similar JOBS component activities covered under §§ 250.44 through 250.47. The State must perform an assessment and develop an employability plan pursuant to § 250.41, as an individual is considered a JOBS participant if the State approves the activity. The costs of child care and of other supportive services for participants in approved other education or training pursuant to § 250.48(b) are eligible for Federal reimbursement pursuant to § 255.4.

Because other education or training pursuant to § 250.48(b) does not meet the requirements of section 402(a)(19)(F) of the Act, participants in such approved activities are not subject to the statutory provisions of that section. This means that such participants are not subject to the principle regarding non-interference with the self-initiated education or training that is contained in section 402(a)(19)(F)(iii) of the Act. However, it also means that the State may pay for other education or training pursuant to § 250.48(b), so long as the State approves the activity in accordance with the regulations and criteria that govern JOBS activities and observes the restrictions regarding non-supplantation and services otherwise available on a non-reimbursable basis.

Comment: One State asked if a person in self-initiated activity is considered to be in a JOBS component and also if such a person could be considered to be in a target population when the criteria are met.

Response: If the individual is participating in self-initiated education or training approved by the State IV–A agency, pursuant to § 250.48(a), she is considered to be in a JOBS component and in a target population if the criteria were met. Likewise an individual in approved other education or training pursuant to § 250.48(b) would be considered to be in a JOBS component and in a target population if the criteria were met. However, an individual in education or training in non-JOBS areas of the State is not a JOBS participant as there is no JOBS program (and title IV–F funds may not be expended on such education or training). Expenditures for supportive services for that individual, if she is in a target population, can be

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included in the calculation of whether 55 percent of the State's expenditures was spent on the target populations.

Subpart G—Optional Components of State Jobs Programs

Job Search Program (§ 250.60 of the Final Regulations)

Section 482(g) of the Act provides for group and individual job search as an optional component under JOBS. Although we describe all mandatory and optional components in separate sections, we recognize that it will be appropriate for States to combine them for certain clients. Job search is an excellent example. While job search by itself is an appropriate activity for the job ready who have basic workplace skills, job search for those who are skills deficient should be coupled with other education and training activities.

The Act generally retains the provisions of the current law at section 402(a)(35) of the Act with some modifications. The first change is that Congress expressed its intent that job search be "intensive". We interpret this to mean that, in order to qualify as an optional component in which participation counts for the purposes of calculating participation rates pursuant to § 250.74, a job search program must be well-structured and include specific activities to be undertaken by the participant or the agency on behalf of the participant. Such activities must be described in the State JOBS plan.

Current law provides that a State IV–A agency may require an initial period of up to 8 consecutive weeks of job search which may begin at the time of application for aid. Some States have used this initial period to do a preliminary screening of the individual's employability prior to assessment and development of the employability plan. The Act amends this provision to provide that the State IV–A agency may not require an individual to participate in job search for longer than 3 weeks without performing an assessment as defined at § 250.41. The 3 weeks of job search prior to assessment count as part of the 16 weeks of job search that are allowable as a JOBS component during the application period and first year. If the employability plan that the State IV–A agency develops based on the assessment provides for an activity that is more appropriate for the individual, the job search activity must be terminated.

The Act also permits an additional 8 weeks of job search in any subsequent period of 12 consecutive months. We are adopting the existing interpretation of "an additional 8 weeks" to mean 8 weeks or its equivalent. For example, an equivalent would be one week a month for 8 months or one day a week for 40 weeks. Based on a comment, we are clarifying that after the additional 8-week period (or its equivalent) job search cannot be treated as a JOBS component for purposes of "participation".

The Act also provides that a State IV–A agency may require additional job search after the close of the 8-week period only as part of some other education, training or employment component which is designed to enhance the individual's employment prospects. For example, if a State IV–A agency requires an 8-week period of job search for a recipient and then assigns the individual to skills training, it is permissible to require her to engage in job search at the end of the training as part of the training.

Participation in job search as an activity under the program is not allowable for FFP or participation rates under the JOBS program if an individual has participated in job search for more than 4 months out of the 12 preceding months. We interpret "4 months" to be 4 months or its equivalent. For example, job search for one week a month for 8 months (after an initial 8 weeks of participation in a job search component) would be allowable.

Comment: One commenter recommended that a stronger emphasis be placed on job search activities, and suggested that the full-time "job" of every AFDC client should be looking for work. States should be encouraged to place all clients in job search upon completion of any other JOBS component if no employment has been obtained. Another commenter, however, proposed that only those individuals who have prior relevant work experience and usable job skills be assigned to job search. By assigning the "non-job-ready" to job search, job search becomes a "make-work" activity which does not promote self-sufficiency. Another commenter recommended that States be allowed greater flexibility in assigning participants to job search despite the time limitations imposed by the regulations.

Response: We agree that non-exempt AFDC applicants and recipients should be looking for work. However, we also agree that it is important for each State to have flexibility in designing its JOBS program to meet the specific needs of its clients and utilize those components that, in its judgment, will effectively promote self-sufficiency. Through JOBS, the client can be assisted to prepare for the occupation defined in her employability plan by participating in a range of components. The time limits contained in the regulations are taken directly from section 482(g) of the Act.

Comment: One commenter felt the proposed regulations on how and when clients were to participate in job search were too complex. Tracking the participation of the clients in job search would be too complicated and would hamper the State's ability to contract and coordinate with other agencies. They suggested a simpler definition: States should receive FFP for up to 16 weeks of job search activity per participant. Another commenter supported the idea that 16 weeks of job search be allowed not only for the applicant during the first year but also for recipients in each period of 12 months.

Response: Section 482(g) of the Act is very explicit as to the participation requirements of the job search program. Moreover, there were few changes made to the existing job search regulations from the previous law. States have the flexibility to define "eight weeks of participation" for the recipient which could lead to less intense job search over a longer period of time. Also, additional job search beyond the 16 weeks initial period (first year) or 8-week period (later years) can be required if combined with other activities.

Comment: Several commenters asked whether if a family becomes ineligible for AFDC and reapplies the 16-week participation requirement (8 weeks of job search as an applicant and 8 weeks as a recipient) begins again.

Response: Upon the filing of a new application, the potential JOBS participant is eligible for a "new" 16-week job search requirement if assigned to that component.

Comment: Several commenters noted that § 250.60(a) (1) and (2) include the provision of counseling and training. One commenter asked if these activities were required to be included under job search. Another commenter was concerned that the term "training" be clarified to mean job-seeking skills training—not occupational or academic training.

Response: The description of "individual job search" has been clarified to say "job-seeking skills training" rather than simply "training." Although not mandated by the Act, counseling and training activities related to developing job-seeking skills, resume writing, and interviewing techniques are a major part of assisting the client as she conducts a job search. It is expected, but not required, that the State would provide these types of activities for job search participants.

Comment: Several commenters indicated that the regulations leave unclear the relationship between the requirement of an assessment after three weeks, and the State's option to require up to eight weeks of job search at the time of application. They further state that the regulations do not mandate any action by the State based on the results of the assessment. They suggest that the job search should only continue after assessment if it is determined appropriate during the assessment.

Response: If the employability plan developed as a result of the assessment determines that another activity is more appropriate, the job search should be discontinued.

Comment: One State asked that the option be given to stretch the second eight week period of job search (after the initial applicant period of 8 weeks) over an extended period of time.

Response: Section 482(g) of the Act is clear that the second period of job search cannot exceed a total of 8 weeks in any period of 12 consecutive months. We continue the same interpretation of "an additional 8 weeks", as under prior regulations, to mean 8 weeks or its full-time equivalent. After that 8-week (or its equivalent) period, job search cannot count as "participation".

Comment: Several commenters asked for clarification on the limits imposed on job search participation and the additional job search that is permissible.

Response: Section 482(g)(2) of the Act limits participation in job search by an applicant to up to eight consecutive weeks from the time she files an application for AFDC. Following this initial period, an additional eight weeks (or its equivalent) of participation may be required in any period of 12 consecutive months. Once this period of job search has been completed, additional job search activities may be mandated only if performed as part of an educational, training, or employment component. These job search activities must be identified as activities of the component. For example, the client might be required to conduct an intensive job search following the completion of a skills training class, or to participate in a one day per week resume writing class while attending an eight-week business course. For participation purposes, the education, training, or employment component is considered the JOBS activity. For FFP purposes any expenditures directly related to the completion of the approved JOBS activity are allowable subject to the limitations at §§ 250.73, 250.75, and 250.77. Therefore, FFP is available for the administrative and supportive service costs of the job search-related portion of the approved JOBS component.

Comment: One State asked for clarification of the date on which the initial eight weeks of job search begins for an applicant. The State recommended that the regulations specify that the eight weeks begin when the applicant is first assigned to, or becomes a participant in, the job search component.

Response: Section 482(g)(2)(A) of the Act clearly states that the initial eight week period of job search begins on the date the individual applies for AFDC.

On-The-Job Training (§ 250.61 of the Final Regulations)

Section 482(d)(1)(A)(ii)(II) of the Act provides for on-the-job training (OJT) as one of the four optional components in JOBS. Section 250.61 contains the regulations for OJT.

Our definition of OJT is based on the definition contained in WIN regulations at § 224.42(a) and information provided by the Department of Labor. JTPA regulations do not define OJT, although it is an allowable activity. There are a few basic principles that govern OJT. The participant is hired first by the employer. While engaged in productive work, she is provided training which gives her the knowledge or skills essential to the full and adequate performance of that job. She is compensated at a rate (including benefits) comparable to that of other employees performing the same or similar jobs, and the employer is reimbursed by the State IV–A agency or its agent for the extraordinary training and the additional supervision that is required. At the end of the OJT, the participant is retained as a regular employee.

In order to assure that OJT assignments offered through JOBS result in an increase in participants' skills and competencies, and that progress can be monitored by the State IV–A agency, we are requiring that qualitative measures for progress be developed for all OJT assignments that are included under JOBS. This is discussed in more detail in the definition of making good or satisfactory progress in a training component in § 250.1.

Comment: Several commenters expressed concern that the regulations did not prevent or discourage employers from recycling JOBS participants, i.e. using a participant until the OJT subsidy runs out and then discharging that participant and obtaining another.

Response: It is not our intention to allow employers to recycle JOBS participants in OJT slots. Upon satisfactory completion of the OJT, the employer is expected to retain the employee. When a State develops OJT contracts with employers, provisions for retaining the OJT participant upon satisfactory completion of the OJT should be included.

Rate of Reimbursement

The rate of reimbursement to employers will be limited to no more than an average of 50 percent of the wages paid by the employer to the participant during the period of the OJT. The operational experience of the six federally-funded grant diversion demonstration projects in which subsidy levels ranged from 25 percent to 83 percent did not suggest that higher rates significantly increased job opportunities. Furthermore this limitation is consistent with JTPA policy. We believe that by adopting this comparable policy, we avoid fostering competition among programs as to the reimbursement levels they provide. Section 250.61(b) contains this provision.

Comment: One commenter suggested that to eliminate windfall profits for employers, the reimbursement should be limited to a flat 50 percent, rather than the average of 50 percent of the wages paid to the JOBS participant during the OJT.

Response: An average of 50 percent was chosen to be consistent with JTPA policy. This policy affords States flexibility to vary in setting reimbursement rates for the length of the contract for a particular individual.

Duration of OJT

We have decided against limiting the length of time an individual can spend in OJT because we believe that a State should have the flexibility to design the program that both meets the needs of the State and the individuals it plans to serve, especially if it uses OJT for target populations. While we permit State flexibility, we strongly recommend that the State IV–A agency take into account the guidance that is available, such as the Dictionary of Occupational Titles, in determining the appropriate length of training and that the State IV–A agency assure that training is only for as long as is reasonable to learn the necessary skills.

Eligibility for Services during Participation

Wages from OJT are considered to be earned income for any purpose of the law, which is consistent with current AFDC policy. A person who loses eligibility for AFDC because of earned

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income in accordance with § 233.20 or because of the application of the 100-hour rule in the case of the principal earner in an unemployed parent case will continue to be considered a participant in JOBS for the duration of the OJT. This will allow the agency to make payments to the employer through the completion of the OJT. This is comparable to the WIN regulations at § 224.42 which provide that a person in an OJT is considered to be a WIN registrant for the duration of the OJT even if she is no longer receiving AFDC. It also means that the participant will be eligible for the supportive services available to other participants in JOBS even though she is not receiving an AFDC grant. However, since the participant will have earned income, we believe that the State IV–A agency, in determining the need for supportive services, should treat the participant as it would treat an individual who finds unsubsidized employment.

As a participant in JOBS, the individual will be eligible for child care as determined by the State IV–A agency to be necessary for participation for the duration of the OJT. We have considered how to handle child care when the OJT ends in the case of an individual who became ineligible for AFDC during the period of participation in the OJT. The following approach is defined in the regulations. Since the individual was not in receipt of AFDC in the previous month, she is not eligible for the twelve months of transitional child care when the OJT ends. However, if she would have been eligible for transitional care at the time that she lost eligibility for AFDC due to going into the OJT, she can receive transitional care for the number of months left in the 12-month eligibility period.

For example, an individual who goes into OJT loses eligibility for AFDC in January. The OJT continues until April during which time she receives child care as a participant. If she would have been eligible for transitional child care under Part 256 in February, she is eligible for the remaining 9 months (from May to January). She would, of course, have to meet the requirements of eligibility and would have to contribute to the cost of the child care in accordance with the State's sliding fee scale. Alternatively, a State IV–A agency may simply provide child care as transitional child care from the time the individual becomes ineligible for AFDC due to income from the OJT if she would otherwise qualify. This approach has the advantage of being fairly simple although those individuals who did not meet other eligibility criteria (for example, did not receive AFDC benefits for the minimum 3 of the 6 preceding months) under Part 256 would not be eligible for the transitional care. However, these OJT participants could continue to receive child care under Part 255 for the duration of the OJT. We believe that our approach of providing up to 12 months of transitional child care to eligible OJT participants assures that individuals who enter employment through OJT are treated equitably regardless of whether the employment is unsubsidized or subsidized.

Comment: Several commenters raised concerns that those clients participating in OJT who become ineligible for AFDC due to earned income or the 100-hour rule in the case of an unemployed parent case, will not be deemed AFDC recipients during participation in OJT for purposes of establishing eligibility for transitional child care and Medicaid extensions. Several also suggested that the 12-month extended benefits should not begin until after the OJT had ended.

Response: Section 482 of the Act, which provides for OJT, does not provide for deeming eligibility for AFDC to a family which has lost eligibility for AFDC during the period of the OJT, for purposes of transitional child care or extended medical assistance. Furthermore, sections 302 and 303 of the Statute describe the eligibility requirements for transitional child care and extended medical assistance. Nothing in these sections allows those clients participating in OJT to be treated differently from other JOBS participants. We, therefore, do not believe that the Statute authorizes providing a full 12 months of transitional child care after the OJT period ends if the participant lost eligibility for AFDC during the period of the OJT.

Comment: One commenter asked if under § 250.61(f) a State must establish State policy on whether to implement the transitional child care provisions at the time AFDC eligibility is lost or at the end of the OJT. If the State chooses to treat all child care provided after an individual in an OJT loses eligibility for AFDC as transitional child care, does the individual who does not meet the minimum eligibility requirements receive no child care for the remainder of the OJT? The commenter felt the language in the preamble and the regulations appeared discrepant.

Response: A State does not need to establish one policy which it applies to all individuals who lose eligibility for AFDC while participating in OJTs. A State can determine on a case-by-case basis which child care treatment will be of most benefit to the client who is no longer AFDC eligible; i.e. whether the child care will be considered as transitional care at the point eligibility for AFDC is lost during the OJT or at the end of the OJT for the remaining months left in the 12-month eligibility period. However, pursuant to Part 255, the State must guarantee child care for a participant during her participation in OJT.

Comment: One commenter was concerned that if an OJT participant becomes ineligible for AFDC while in the OJT, continuation of supportive services appeared to be an option for the State.

Response: The State does not have an option whether to offer continuing supportive services for an OJT participant who has become ineligible for AFDC. The participant is eligible for supportive services if there is a need, and we have revised the regulations to reflect this policy. However, as the participant has earnings, the State IV–A agency, in determining the need for these supportive services, should treat the participant as it would any individual who finds employment.

Eligibility for Medicaid Extensions

Eligibility for Medicaid extensions is determined at the time the individual loses eligibility for AFDC. In other words, there is no provision, as there is under work supplementation, by which an OJT participant who is no longer an AFDC recipient may be eligible for Medicaid based on her status as a participant.

Differences Between OJT and Work Supplementation

Under JOBS, OJT and work supplementation are two of the four programs from which a State must choose its optional components. We carefully considered the differences between OJT and work supplementation under the Act. Since the Deficit Reduction Act of 1984 broadened the kinds of jobs that could be filled under work supplementation to include jobs in the private sector, many State IV–A agencies have used the existing work supplementation program authority to run what is essentially an OJT program. The diverted grants are used to pay for a portion of the training and supervision provided to the participant by the employer.

There have been many recommendations to make OJT and work supplementation as compatible as possible in our regulations so as to allow States maximum flexibility in program design. We have carefully considered all the arguments and conclude that OJT and work supplementation must be considered separate components. We have two major reasons for reaching this conclusion.

The first is a new provision (section 484(c) of the Act) which specifically bars any participant in a work supplementation component from being assigned to "fill any established, unfilled position vacancy." The same prohibition has always existed in CWEP and is carried over to CWEP by the Statute. However, it is a new provision as it applies to work supplementation and limits the use of the work supplementation component to jobs that did not previously exist. A more complete discussion of this provision is contained in the preamble in § 250.62 on work supplementation.

The second reason is that the Act allows the State IV–A agency to apply special rules to participants in work supplementation jobs that are not available to persons in OJT. The State IV–A agency may reduce or extend earned income disregards as they apply to work supplementation participants (section 482(e)(2)(G) of the Act). The State IV–A agency may exempt work supplementation participants from retrospective budgeting requirements (section 482(e)(3)(D)). In addition, the State IV–A agency must extend Medicaid coverage to participants in work supplementation who would otherwise be eligible for AFDC under the State's plan if such State did not have a work supplementation program (section 482(e)(6) of the Act). There is no basis for extending any of these special rules to OJT participants and, if we did not make any distinction, there would be no way to determine which rules should apply to a given participant.

Furthermore, there is no compelling reason in OJT to invoke the special rules which are necessary to divert grants to a wage pool in work supplementation. Since, in OJT, JOBS funds are used for the training provided by the employer, the State IV–A agency, in its planning process, should calculate how many OJT training opportunities the State will develop and proceed accordingly.

For States which are concerned that diverted grants will not provide an adequate wage pool for their work supplementation component, we point out that they may earmark JOBS program monies at any time to add to the diverted grant money in the wage pool to ensure that sufficient funds are available for subsidy. This money could be unused OJT money, or any other JOBS program money. However, it is not permissible to use diverted AFDC grants in the OJT component.

Comment: Several commenters noted that the language in the proposed preamble and regulations contained references to "subsidies." It was recommended that the term "reimbursement" be used. This distinction clarifies that OJT slots are used for training with the employers being reimbursed for the training and additional supervision.

Response: We agree that this distinction is important and changes have been made in the preamble and regulations where appropriate.

Comment: One commenter asked whether the spouse of the principal earner would be allowed to continue in an OJT or job skills training component under JOBS if the principal earner was no longer AFDC eligible.

Response: As a JOBS participant, the second parent who is participating in an OJT or job skills training component under JOBS would be allowed to complete the activity, as provided in § 250.73(e).

Comment: One State asked if an individual can be considered a participant in an OJT component if she is in a JTPA placement and no JOBS funds are being expended.

Response: If an individual is placed in a JTPA OJT through a JOBS referral, it is appropriate to count the client as participating in a JOBS OJT even though no JOBS funds are being expended. With the limitations set by the JOBS funding cap it is expected that the State IV–A agency will coordinate with and utilize other agency services and activities to enhance its JOBS program components.

Work Supplementation Program (§ 250.62 of the Final Regulations)

Section 482(e) of the Act provides for a work supplementation program (WSP) as an optional component under the JOBS program. This component allows the State IV–A agency to pay, or "divert," all or part of the AFDC grant to an employer to cover part of the costs of the wages paid to an AFDC recipient who is participating in the program. The Family Support Act adopted most of the existing law. However, there were a few changes made to the work supplementation program by the Statute which are discussed below.

Under the prior law, only those individuals who would have been eligible for AFDC under a State IV–A plan as it was in effect in May 1981, or as modified thereafter as required by Federal law, could participate in work supplementation. The Act does not carry over this provision to the JOBS program.

Participation in the work supplementation program was voluntary, i.e., the AFDC recipient could elect to participate in work supplementation by accepting an offer of work. However, once the individual entered the program, she became a mandatory participant to insure that the agreements with employers would be carried out. Under the Act, the State IV–A agency may require an individual who is not exempt to participate in any appropriate component, including work supplementation. We have clarified that the State may choose to operate WSP as a voluntary or mandatory program.

Comment: Several commenters questioned whether it is appropriate to apply the displacement language from CWEP to work supplementation and OJT programs as provided at § 250.62(b)(2). They point out that participation in these slots is an employment situation; thus, the protection needed for regular employees at a work experience site does not apply in work supplementation/OJT situations. In addition, several organizations and private businesses suggested that JOBS participants should be able to be placed in established, unfilled positions if the placement does not violate union agreements or affect union organizing, existing collective bargaining agreements, or other employer/employee policies.

Response: The provision at § 250.62(b)(2) prohibiting placement in established, unfilled position vacancies applies to work supplementation positions. It does not apply to OJTs under § 250.61. However, we believe that section 484(c) of the Act is clear in applying the prohibition to both work supplementation and CWEP.

The argument that the last two sentences of section 484(c) of the Act can be read together to allow CWEP and work supplementation placements in established, unfilled vacancies if the placements do not assist, promote, or deter union organizing is not persuasive. The first sentence refers to "[f]unds available to carry out the program under this part" not being used to assist, promote, or deter union organizing; it is not limited to funds for CWEP and work supplementation positions.

Comment: One commenter asked that "employee status" be defined. Is it limited to providing such things as insurance coverage, workmen's compensation, leave and other benefits, or, since wages are considered earned income, should Federal, State and FICA withholdings be deducted?

Response: Section 482(e)(5)(B) of the Act requires wages to be considered as earned income for any provision of law. This includes Federal and State

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withholding for income tax, FICA withholding, advance Earned Income Tax Credit if requested, etc. Employee status confers the benefits available to regular employees of that employer.

Comment: One commenter was concerned that a WSP participant is not deemed an employee for 13 weeks. The commenter stated that this lack of employment status would negatively affect an individual's entitlement to unemployment compensation, workers' compensation and health benefits.

Response: Section 482(e)(5)(A) of the Act allows a State the option of not considering a WSP participant an employee during the first 13 weeks of participation. Any employer who wishes to treat her as an employee during that period may do so.

Comment: One commenter asked if FFP would be paid for any period past the nine-month limitation on participation if the agency established a longer period of participation.

Response: No, we are limited by the provisions of section 482(e)(4) of the Act.

Comment: One commenter asked that the OJT provisions for the same pay and benefits as similarly situated workers be made applicable to WSP also.

Response: Section 482(e)(5)(A) is clear that the State has the option of not considering a WSP participant an employee during the first 13 weeks of employment. If the State chooses not to grant "employee status," the provisions for the same pay and benefits as similarly situated employees or trainees cannot be applied.

Comment: One commenter asked that States be given the option of setting up WSP as either a mandatory or voluntary program.

Response: Section 482(e)(3)(A) of the Act gives the State authority to implement either a mandatory or voluntary program. We have specified this in the regulations at § 250.62(c)(2).

Retrospective Budgeting/Monthly Reporting

The Deficit Reduction Act of 1984 and interim final rules at § 233.36, published September 10, 1984, provide that the State IV–A agency must require monthly reports from those assistance units with earned income or recent work histories. Additionally, § 233.31(a) provides that all assistance units required to file monthly reports must have the amounts of their assistance payments determined retrospectively. Because work supplementation program participants have earned income, they have been subject to monthly reporting and retrospective budgeting rules. The State, however, had the option to request waivers to exempt such participants from these two requirements.

The regulations at § 250.62(g) permit the State IV–A agency to exempt individuals who are participating in work supplementation from retrospective budgeting requirements and to determine their monthly payments prospectively. This means the amount of assistance payable to the participant's family for any month will be based on the income and other relevant circumstances in that month.

While the legislation does not specifically address the monthly reporting issue, we have decided to permit State IV–A agencies to exempt participants in supplemented jobs from monthly reporting without seeking a waiver. This policy is consistent with past practice. Furthermore, exemption from monthly reporting will allow the State to have one policy for all recipients whose payments are computed prospectively.

Calculating the Diverted Grant

The regulations at § 250.62(f) allows the State IV–A agency to "freeze" a participant's AFDC grant as an alternative to monthly recomputation. Under this procedure, upon taking a supplemented job, the participant's AFDC grant is recalculated considering her earnings from the job and any other sources. If her earnings and other income reduce her grant to zero, the entire amount of the former grant is "diverted" to a wage pool from which the employer is paid. If the earnings and other income do not cause the complete loss of the grant, she receives a "residual" payment. The difference between the former grant and the residual payment is diverted to a wage pool.

A wage pool is a mechanism which allows a State to pool (divert) AFDC grants not paid to the WSP participant and pay employers an amount for each WSP participant. From the Federal perspective, the pool is an account or listing for accumulating and tracking the diverted amounts so that FFP can be claimed when payments are made to employers.

The following example illustrates: The potential participant is a parent in a regular AFDC case receiving a monthly grant of $450 with no other unearned income. A full-time supplemented job is found which would pay $720 per month. The individual is currently eligible for the $30 and ⅓ and standard earned income disregards, and she has no other income. Child care is being provided at no cost, and no changes are foreseen in the family's needs, income, or resources.

Countable Income=$720−$90 (work expense after 10/1/89)−$30=$600; $600−(⅓ of $600)=$400
Residual Payment=$450 (AFDC grant)−$400 (countable income)=$50
Diverted Grant=$450 (AFDC grant)−$50 (residual payment)=$400

If a State elects to "freeze" a participant's residual payment, the State IV–A agency must determine at the time of placement what payment amount, if any, the participant will be eligible for while participating in a supplemented job, given the hours of work, wages and other circumstances. Once this initial payment is determined, the amount is "frozen," and the participant, if otherwise eligible, receives the same amount (residual payment) for each month of participation regardless of changes which occur during the participation. If a participant becomes otherwise ineligible for AFDC benefits, she can continue to participate in WSP, and the State can continue to receive FFP for payments to an employer on her behalf.

Although the basic concept of "frozen" grants is attractive, States may be concerned about their ability to make adjustments in certain limited circumstances (for example, when the household size changes). Therefore, the State IV–A agency is permitted to make limited adjustments to a participant's residual payment within a "frozen" grant policy. Under such a "partial" freeze, for example, one State might make adjustments only in cases where the State's need or payment standards change. Another State might make adjustments not only under those circumstances, but also where the family size changes. If a State chooses a partially frozen grant policy, it must be consistently applied. That is, if a State IV–A agency provides adjustments for factors which would increase the payment amount, it must also make downward adjustments if changes in those same factors would cause a decrease in payment amounts.

The use of the terms "frozen" and "partially frozen" grants is not new. This policy is retained from the previous work supplementation program because States feel that freezing grants eases administration of the program. It is also consistent with § 250.62(b)(2) which gives the State IV–A agency broad discretion in establishing the terms and conditions under which jobs, payments, wages, and the conditions of participation are defined.

If a participant becomes ineligible for AFDC for any reason other than earnings from the supplemented job, the individual does not receive a residual payment. However, she may continue in the supplemented job. The amount of the residual payment is diverted to the wage pool. For example, if a family becomes ineligible because of the receipt of a lump sum payment, the family would no longer receive a residual payment, but participation in the supplemented job could continue.

Comment: One State asked what FFP would be paid for JOBS funds supplementing the wage pool.

Response: No FFP is available for any funds supplementing the wage pool until the funds are used to pay the employer. Section 482(e)(3)(A) of the Act states the payments to individuals or employers under WSP, i.e., the AFDC grant funds that are being transferred to the wage pool and subsequently paid to an employer, shall be treated as IV–A expenditures. However, if JOBS funds are used to supplement the wage pool, FFP would be paid at the FMAP or 60% rate, whichever is higher, when expended, as a program cost has been incurred. The State IV–A agency must be able to segregate and track these program costs in order to claim the higher match.

Comment: Although noted in the preamble, one State recommended that the final regulations should specify that JOBS program funds may be added to the wage pool to subsidize wages of the participants. In addition, the regulations should specify that title IV–F funds used for this purpose are to be treated as an administrative cost of the work supplementation program.

Response: We have chosen not to add this language to the final regulations as the preamble often provides discussion of operational issues that do not necessitate regulation. Title IV–F funds used to supplement a wage pool and paid to an employer, are considered a program cost and would receive the higher JOBS match rate.

Comment: One commenter asked how an AFDC grant would be computed for a client who is simultaneously participating in WSP and in OJT and how the budgeting would be done if two members of the same household were both participating in one or both of these components.

Response: As pointed out in the discussion of OJT, there are important distinctions between OJT and WSP. No one is allowed to be in both components at the same time. There is no difference in budgeting from any other case with earned income by one or more family members.

Wage Pool Sampling

Section 482(e)(2)(F) of the Act allows the State to use a sampling methodology to determine the amount of money available for the wage pool. By selecting a sample of work supplementation cases to determine available monies for the wage pool, the State IV–A agency will not need to track all grants diverted on an individual basis. Reconciliation of the wage pool for each participant served is eliminated. Reconciliation is still required based on the results of the sample.

The State IV–A agency will need to develop a method to select an unbiased sample of work supplementation cases of sufficient size to produce statistically valid results when applying this method across the universe of work supplementation participants. The method used by the State IV–A agency must be described in its JOBS plan.

Medicaid Eligibility

Currently, a State has the option to provide Medicaid to the participant and her family if they are otherwise eligible. Section 482(e)(6) of the Act requires that the State provide Medicaid coverage to the participant and family members who would be eligible for AFDC under a State's plan if such plan did not have a work supplementation program. The Health Care Financing Administration (HCFA) is responsible for issuing regulations to implement this section of the Statute.

Child Care Eligibility

In § 250.62(h) we allow the State IV–A agency to provide child care to work supplementation participants according to the same policy that we apply to OJT participants. A more complete explanation of this policy is contained in the preamble to § 250.61 on OJT.

Comment: One State commented that except for § 250.62(h) concerning transitional child care for WSP participants, the proposed regulations were silent on supportive services for WSP participants. It was recommended that the final regulations specify that WSP participants shall be eligible for those supportive services that are available to other JOBS participants.

Response: A WSP participant is eligible for supportive services as a participant in JOBS. However, as was discussed in the preamble to OJT, since the participant is working, she should be treated as any individual who finds employment. We have chosen not to address supportive services in each section on the mandatory and optional components as an individual who is participating in an approved JOBS component is considered a JOBS participant and eligible for all supportive services provided under the State's Supportive Services plan.

Community Work Experience Program (§ 250.63 of the Final Regulations)

Section 482(f) of the Act provides for a community work experience program (CWEP). The new program generally retains the provisions in the prior law, with modification. The Act allows for training along with actual experience as ways to improve the employability of participants. We interpret this to mean that a State IV–A agency can include an element of training in a work experience position.

Under prior law, the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of financial assistance payable to the assistance unit divided by the greater of the Federal or the applicable State minimum wage. The Statute modifies this calculation to clarify that the State IV–A agency must deduct any child support collected (except the $50 pass-through) in making the calculation of maximum hours.

Reassessment

Section 482(f)(2) of the Act provides that after 6 months of an individual's participation in CWEP and at the conclusion of each work and/or training assignment, the State IV–A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

Section 482(f)(1)(B)(ii) of the Act provides that after an individual is assigned to CWEP for 9 months, she may not be reouired to continue in the assignment unless the maximum number of hours of participation is no greater than the amount of the assistance payment (excluding child support collected but not the $50 pass-through) divided by the highest of: (a) the Federal minimum wage; (b) the applicable State minimum wage; or (c) the rate of pay of individuals employed in the same or similar occupations by the same employer at the same site.

Comment: One commenter suggested that minimum standards be included in the regulations for the six-month reassessment process. The commenter proposed that in addition to requiring a face-to-face interview, a review would be conducted of the specific skills acquired during the past six months, and a determination made indicating whether extending CWEP participation would lead directly to employment or

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acquiring additional skills needed for employment.

Response: It is expected that the State will use the six-month reassessment as a tool to determine the viability of the CWEP placement and the need for additional skill development for the participant. However, we believe that, as with the initial assessment, the State should have the flexibility to develop the method by which CWEP participants will be reassessed.

Excluding Child Support Collections

The provision requiring a State IV–A agency to exclude the amount of aid for which it is reimbursed by a child support collection from the calculation of the maximum hours an individual must participate is new, although several States have done so under past law. After considering several methods by which child support collections could be used to calculate CWEP hours exciuding the child support collection, we have decided to allow each State to develop its own approach.

Comment: Several commenters were concerned about the exclusion of the $50 pass-through from being treated as a child support collection in calculating the maximum hours for CWEP participation. They believed that section 482(f)(1)(B) of the Act says that any portion of the AFDC benefit for which the State is reimbursed by a child support payment shall be excluded from the CWEP calculation. If an absent parent pays $300 in child support, the State has been reimbursed $300, even though in a separate transaction, the State passes through $50 of that amount to the family.

Response: Although the full amount of the child support collected from the absent parent is credited towards his child support obligation, the State does not retain all of the collected amount to reimburse the AFDC benefit; i.e. $50 is distributed to the AFDC household. In the example cited in the "Comment," the absent parent is credited for having met his $300 monthly child support obligation. However, in the distribution of the collection, $250 of the $300 is retained by the State and is considered a reimbursement for the AFDC benefit. The remaining $50 is not considered a reimbursement to the State as it is not retained by the State; it is "passed-through" to the AFDC family. Therefore, the $50 is deducted from the actual child support collected for purposes of calculating the maximum CWEP hours.

Comment: Several commenters made suggestions on procedures for treatment of child support in the calculation of the CWEP hours. These suggestions focused on how to calculate the CWEP hours if the child support reimbursement is not received in the month for which the calculation of the CWEP hours is being made. One commenter suggested that when a case is subject to retrospective budgeting, the income and child support from the budget month should be used to establish the maximum hours of obligation for the payment month. If a case is subject to prospective budgeting, the State and family's best estimate of income and child support for the month should be used to establish the maximum hours of obligation. One State proposed that the amount of the court order be used in the monthly calculation to ease administrative burden.

Response: As several logical options were received on this subject, we have decided to allow the State IV–A agency to establish its own procedures to implement this provision.

Other Work Experience Programs

The Act allows a State to have other work experience programs. A State may offer such programs if they are described in the State JOBS plan and approved by the Secretary. An alternative work experience program could be modeled after the WIN work experience program in which a participant is assigned to a full-time, temporary position for a limited number of weeks. Such a program gives the participant the experience of working full-time and learning what the demands of full-time employment are, both on the job and at home. Alternative work experience programs offer States the opportunity to be more creative and may be less burdensome administratively. Any alternative work program is subject to the FFP limitations at § 250.63(j) and the general program standards contained in section 484 of the Act.

Comment: Several commenters questioned whether States should be permitted to combine AFDC and Food Stamp benefits when determining the maximum hours of the CWEP obligation for purposes of participating in JOBS.

Response: Upon further examination of this issue, we have decided to remove § 250.63(d)(2) which allowed States to include the value of Food Stamp benefits in computing the maximum number of hours that a Food Stamp recipient, who participates in a CWEP program under JOBS, is required to participate.

Comment: One commenter noted that section 482(f)(1)(A) of the Act provides that "[t]o the extent possible, the prior training, experience, and skills of a recipient *shall* be used in making appropriate work experience assignments" (emphasis added). The comparable regulations at § 250.63(f) says: "To the extent possible, a State IV–A agency *should* take into account * * *" (emphasis added). The commenter suggested that the regulations reflect the Act as the term "shall" in legal construction is sometimes viewed as a stronger direction than "should."

Response: We agree. The appropriate change in the regulations has been made.

Comment: One State commented that since its inception CWEP has been portrayed as a training program intended to facilitate employment. However, the general perception of this program has been one of work in return for assistance as the hours of participation have been based on a wage standard. The State suggests that this perception is strengthened by the new regulations which provide that a participant's hours shall be based on the prevailing wage rate for that position if she is assigned to a work site for more than nine months. Therefore, the State believes that, in cases where an AFDC overpayment exists, States should be required to reduce the amount of the overpayment by calculating the value of the work performed by the CWEP participant using the formula of the hours worked times the applicable wage rate, instead of recouping the overpayment.

Response: Neither section 402(a)(22) of the Act nor § 233.20(a)(13) of the regulations permit recovery of overpayments by allowing a State to count hours of participation performed by an AFDC recipient in a CWEP site to reduce/recoup the overpayment. No additional language was added by the Statute allowing this method to recover overpayments.

Comment: Several commenters questioned how the CWEP differed from public service employment.

Response: The difference between CWEP and public service employment is that the participant is paid a wage in public service employment. A more complete discussion of public service employment is contained in the preamble and regulations at § 250.47.

Subpart H—Funding

JOBS Allocation Entitlement (§ 250.70 of the Final Regulations)

Federal funding for JOBS is provided as a capped entitlement. The regulations at § 250.70(b) implement the formula provided under section 403(k)(1) of the Act for determining the amount of Federal financial participation that is available to match expenditures by each State with an approved JOBS plan. The amount established by the formula is the limit of Federal reimbursement for a State for a particular fiscal year. If a State is unable to claim up to its limit because the State did not make sufficient expenditures, funds not obligated by the end of the fiscal year cannot be carried over, as provided in the regulations at § 250.70(c).

Comment: Several States said that there is no language in the Family Support Act that prohibits a State from carrying over unobligated funds for use in the next fiscal year.

Response: We assume by the nature of the comment that these States believe that they should have available for use in a subsequent year funds that they did not obligate in the current year, in addition to the allocation provided for the subsequent year. However, the language at section 403(k)(1) of the Act provides that a State "shall be entitled to payments * * * of expenditures to carry out the program under part F" and that "such payments for any fiscal year in the case of any State may not exceed the limitation determined under paragraph (2) with respect to the State." Therefore, the Act establishes a limit not on JOBS funding for each State, but on the amount of the reimbursement that the State is "entitled" to for each year's JOBS expenditures. FFP is available for matching allowable costs paid for by the State. There is, therefore, no entitlement to funding if the State does not incur the costs.

Comment: One State recommended that funds unobligated by States be redistributed to other States for use in the JOBS program.

Response: The Family Support Act prescribes the formula for determining each State's limit of Federal reimbursement for JOBS. Any redistribution to another State would increase that State's limit fo. the fiscal year above the statutorily established limit and would, therefore, be impermissible.

Liquidation of Obligations

States will be required to liquidate all obligations incurred during a fiscal year within one year after the end of that fiscal year. The liquidation period for grant programs subject to the regulations at Part 92 is normally 90 days (§ 92.23(b)). However, we are permitting one year for liquidation in the regulations at § 250.70(d) for the JOBS program because we recognize that a State may need more flexibility in administering the JOBS program as many services are likely to be provided under contract.

Comment: One State strongly supported the regulations providing for a one year period to liquidate obligations. Another State maintained that a one year liquidation period was too short and recommended that the time period be in quarters following the final delivery of the service, i.e., within eight quarters after the completion of a course of study. Another State suggested that the JOBS program be treated like other entitlement programs under the Social Security Act and recommended that States be subject to the two year limit for the filing of claims in accordance with the regulations at Part 95 Subpart A.

Response: The recommendation of the second State would provide no defined period by which the Federal government would know the extent of outlays attributable to the JOBS program because such a method assigns a liquidation period according to the particular JOBS service or activity.

The suggestion of the third commenter cannot be adopted because the JOBS program cannot be treated in the same manner as the AFDC program. The Family Support Act, as explained previously, establishes an annual limit on JOBS funds. Funding for programs which are open-ended, such as the AFDC program, are not bound by yearly limits.

The timely filing requirements for claiming expenditures in the regulations at Part 95, Subpart A continue to apply to the JOBS program because the liquidation requirement is separate from the claiming requirement. For example, if a State obligates a document on September 30, 1989, and liquidates the obligation, i.e., makes the expenditures for this obligation, on September 30, 1990, then the State has until September 30, 1992 to claim the expenditures.

Comment: One State was concerned that the establishment of a one year liquidation period would require the State to audit contracts with service providers within one year of the closure of the contract and that such a requirement may be in conflict with State law.

Response: The liquidation period does not require a State to audit contracts within this one year period. The only auditing requirements that a State operating a JOBS program must meet are the auditing requirements of the Single Audit Act of 1984 as provided in the regulations at § 92.26. Howevet, this does not mean that the State is not responsible, outside of the auditing process, for monitoring the activities, services, and expenditures conducted under contracts. The State must maintain ongoing monitoring of contracted activities, services, and expenditures.

Allotment of JOBS Limit of Entitlement (§ 250.71 of the Final Regulations)

All States are required to have a JOBS program effective October 1, 1990. However, States may begin operating a JOBS program before that date. Fifteen States began implementation of their programs on July 1, 1989.

A State's JOBS limit of funding is proportional to the number of quarters that the program is in operation in the State in a given fiscal year as described in the regulations at § 250.71(a).

Comment: One State suggested that States that implemented the JOBS program on July 1 should have been allocated their annual share of the JOBS funding limit, rather than just a quarterly share of that limit.

Response: Section 204(b)(1)(B) of the Statute provides that for a State that implements the JOBS program prior to October 1, 1990, its JOBS funding limit for the fiscal year will be divided by 4 and multiplied by the number of quarters the program is in operation in the fiscal year. Therefore, under the formula in the Statute, States that began July 1 receive one quarter's limit.

Comment: This same State recommended that States receive an annual grant award for the JOBS program instead of quarterly grant awards.

Response: An annual grant award pilot test program was initiated several years ago as a result of the efforts of the Joint State/Federal Cash Management Reform Task Force. The pilot applies to seven States and four of the Department's public assistance programs, such as the AFDC and Medicaid programs. Section 608(e) of the Statute extended this pilot test program through December 31, 1989. The test program is to operate on the same terms and conditions that existed as of September 30, 1988. Thus, its application has not been expanded beyond the original seven States and four programs. At this time it is the general practice in the AFDC program to issue quarterly awards. Because we have decided that the JOBS program should be operated similarly to the AFDC program, with certain exceptions, we believe that quarterly grant awards should be issued for the JOBS program as well.

Allotments to the Territories

The JOBS limit of funding for Puerto Rico, Guam, the Virgin Islands, and American Samoa is not subject to the funding restrictions at section 1108 of the Social Security Act (see the

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regulations at § 250.71(c)(1)). For these jurisdictions, the costs related to the provision of child care under Part 255 are subject to the JOBS limit of entitlement. This includes the costs of child care services and related administrative costs (see the regulations at § 250.71(c)(2)). The costs related to the provision of transitional child care services under Part 256, including the cost of the services and the related administrative costs, are eligible for FFP under section 1108 of the Act (see the regulations at § 250.71(c)(3)).

Funds Available to Indian Tribes and Alaska Native Organizations

The JOBS program provides direct funding to Indian Tribes and Alaska Native organizations. The Federal funds available to Tribes and Alaska Native organizations constitute a reduction to the allotment of the State in which the Tribe or organization is located. Regulations at § 250.71(b)(1) describe how the reduction is determined. The regulations at § 250.90 provide the specific requirements for Indian Tribe and Alaska Native organization participation in the JOBS program.

Maintenance of Effort (§ 250.72 of the Final Regulations)

Section 482(a)(3) of the Act specifies that "Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of this part. State or local funds expended for such purpose shall be maintained at least at the level of such expenditures for the fiscal year 1986."

We believe that Congress intended to provide for new or increased levels of services under the JOBS program, rather than to subsidize or buy-out existing programs. We believe that Congress also intended that the JOBS program bring together and make maximum use of existing resources. The requirements of the maintenance of effort provisions of the Act, as well as language limiting funding for contracted services to services not otherwise available on a non-reimbursable basis, are tests of whether a State is, in fact, meeting these goals.

One test has two parts: JOBS funds must not be used to supplant State and local funds, and JOBS funds must not be used to pay for services available on a non-reimbursable basis. Another test is whether the State is maintaining the FY 1986 level of expenditures for programs which serve the same purpose as the JOBS program.

We received many comments regarding the maintenance of effort provision of the NPRM. Based on the comments, we have reviewed these issues and reconsidered the language and legislative history of the Statute.

Non-Supplantation and Services Not Otherwise Available On a Non-Reimbursable Basis

The regulations at § 250.72(a), which prohibits the use of JOBS funds to supplant non-Federal funds for existing activities and services, is a general requirement of the JOBS program.

The regulations at § 250.72 (c) and (d) require that FFP not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis. For program services, such as high school, which a State is required by law, regulation or other rule to provide to all residents without regard to availability of funding, FFP under JOBS would not be available. For other programs available to the general public, or to low-income residents in particular, but which may be permissibly limited by availability of State or local funds, FFP is available for the increase in expenditures attributable to JOBS participants.

The regulations at § 250.72(e) extends the requirements of § 250.72 (c) and (d) to services provided directly by the State IV–A agency.

Comment: Several States requested clarification regarding the requirement that a State not use JOBS funds for activities and services that are available on a non-reimbursable basis. One State asked for clarification on the availability of JOBS funds for a program which ordinarily provided services to AFDC recipients on a non-reimbursable basis, but whose funds were limited.

Response: The regulatory requirements regarding the use of JOBS funds for activities and services that are "not otherwise available on a non-reimbursable basis" fall into two categories. The first category, established at § 250.72(c), requires that providers under contract or agreement with a State IV–A agency maintain a level of service to AFDC applicants and recipients that is guaranteed to these individuals, regardless of the availability of JOBS funds. In this category, for example, we include the Job Training Partnership Act (JTPA) Program. Section 203(b)(3) of the JTPA provides that assistance under the JTPA program must be provided to AFDC recipients "on an equitable basis, taking into account their proportion of economically disadvantaged persons sixteen years of age or over in the area." Therefore, JOBS funds would be available for services and activities provided by JTPA only insofar as they exceeded the level required by this section of JTPA.

The second category is covered in the regulations at § 250.72(d), which requires that providers under contract or agreement with the State IV–A agency certify that the services being provided with JOBS funds are not services that would have been available to AFDC applicants or recipients under a program providing general services to the community, including AFDC recipients. An example would be the cost of a State GED program. In this instance, JOBS funds would be available for the costs of a GED program established for AFDC recipients specifically for the purposes of the JOBS program which is in addition to the GED programs provided to the general community. This would be the case as long as AFDC recipients remained eligible for the programs available to the general community and were served under those programs to at least the same extent as they had been prior to JOBS, not just in absolute terms but also in proportionate terms. For example, if a State doubled its overall GED program level, JOBS would not pay for additional GED slots until the number of AFDC recipients in non-reimbursable GED also doubled. However, special circumstances such as the need for more intensive training might warrant additional or separate JOBS funding without regard to the level of regular GED slots. The essential test is that JOBS funding not be used to supplant services which the State would otherwise provide through other arrangements and sources of funds.

Comment: One State mentioned that its job development and placement activities were provided by the State employment security agency which has been Federally-funded under the Wagner-Peyser Act. It further stated that funding under the Wagner-Peyser Act has decreased considerably. The State was concerned that the regulations at § 250.72(c) would preclude use of JOBS funds to offset Wagner-Peyser funding for State employment services.

Response: If funds under the Wagner-Peyser Act, or any other program, are insufficient, then JOBS funds may be used to fund additional activities and services that are necessary for JOBS participants, but only if AFDC recipients continue to receive their proportionate share of the other program's funds.

Comment: Two organizations suggested that the final regulations clearly state that activities not otherwise available on a non-reimbursable basis are eligible for JOBS reimbursement and that these activities

should be delineated in each State's JOBS and Supportive Services plans.

Response: Section 250.21 of the final regulations requires a State to identify in its State JOBS plans the extent to which services to be provided through JOBS: are available on a non-reimbursable basis; are provided by the State IV–A agency; and are to be purchased. The plan also requires that the State identify other services which are available and appropriate for JOBS participants based on its efforts to coordinate with other agencies.

Comment: One State asked for a clear description of "certification from the provider." Another State asserted that the requirement that certification from the provider or IV–A agency that the services provided are not otherwise available on a non-reimbursable basis was very burdensome because it would require a certification on every service provided.

Response: "Certification from the provider" is defined as a written assurance from the provider that such service or activity or such groups of services or activities are not available from the provider on a non-reimbursable basis for the period of the contract or agreement. We do not believe that a certification from a provider regarding services it provides on a non-reimbursable basis is onerous.

Comment: One State said that our interpretation of the phrase "not otherwise available on a non-reimbursable basis" in the contract authority section of the Act was erroneous. It indicated that the provision meant that States must not enter into contractual arrangements for services to JOBS participants if such services "would be available for referral and assignment of JOBS participants in the absence of such contractual arrangements and without reimbursable expenditure."

Response: From this comment, we understand that the State interpreted this requirement to mean that a State could only contract for services that the State itself was not already making available, without reimbursement, to AFDC recipients. We do not share this interpretation. In considering the requirement that a State not use JOBS funds to supplant non-Federal funds for existing JOBS-like services and activities, we believe it necessary that the non-supplantation requirement be extended to services and activities provided under contract since many of these services and activities will commonly be provided under contract. Therefore, the regulations at §§ 250.72 (c) and (d) provide that JOBS funds can only be used for services that the provider is not already required to provide AFDC recipients and for services that the provider has certified are not available to AFDC recipients on a non-reimbursable basis. In addition, the regulations at § 250.72(e) provides that a State, when providing services directly, must certify that such services are not otherwise available on a non-reimbursable basis.

Comment: Several commenters expressed confusion regarding the timeframe for establishing whether services and activities were not otherwise available on a non-reimbursable basis. Specifically, they asked whether this requirement pertained to services and activities currently available or available in past periods, particularly FY 1986.

Response: The regulatory provision regarding maintaining a level of expenditures for programs with the same purpose as the JOBS program refers to FY 1986; thus it requires retrospective consideration. The provision containing the requirement that a State not use JOBS funds for services and activities that are otherwise available on a non-reimbursable basis requires the State and its contractors to consider services and activities that are currently available to JOBS participants; thus it requires consideration of present conditions. We recognize that the proposed regulations on this issue were somewhat ambiguous. The regulations have been changed to clarify this point.

FY 86 Level of Expenditure

We recognize from the comments that some States were unsure whether they were required to maintain current levels of expenditures, or expenditures equal to the level of FY 1986. We want to be clear that the level of expenditures that a State must maintain each fiscal year for the JOBS program must at least equal State and local expenditures made in FY 1986 for programs with purposes similar to those of the JOBS program. It is this requirement that a State must meet in the form of total aggregate expenditures. This provision is retained at § 250.72(b).

In determining a State's FY 1986 level of expenditures for purposes of this requirement, a State must include State and local funds for title IV–A work programs and title IV–C (WIN and WIN Demo), including expenditures for those programs which were unmatched. A State must also include other State and local funds which were used for training, employment and education programs which had a defined purpose of preventing welfare dependency. For example, a specially-designed GED program for welfare or potential welfare recipients would be included. However, the overall costs of the State's GED program would not be included, even if some of the program's participants are AFDC recipients, since such programs do not generally have the defined purpose of preventing welfare dependency.

In determining the level of expenditures for those programs included in the FY 1986 base, the State must include expenditures for supportive services, including child care, provided to individuals in these programs. Amounts related to in-kind contributions, to the extent that in-kind contributions were used as the State share of expenditures for programs in FY 1986, must also be included.

Comment: Several States asked whether in calculating the FY 1986 level of expenditures, they were required to include only State and local IV–A expenditures, or also expenditures made by other State or local agencies.

Response: For purposes of the maintenance of effort requirement, the State must include in the calculation other expenditures in addition to title IV–A expenditures. The Act requires that a State maintain FY 1986 expenditures that were made for the purpose of Part F. The purpose of Part F is "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence." The reference, therefore, is to a general list of activities and services, and there is no restriction to activities and services under only title IV–A.

Comment: Several commenters have suggested that the proposed regulations indicated that States had to base the FY 1986 maintenance of effort requirement on expenditures associated with separate component activities and services. They suggested that States should be required to maintain spending at the FY 1986 level based on total aggregate expenditures.

Response: Although the proposed regulations did not specifically address this issue, it was our intent that total aggregate costs be used to determine that a State had maintained its FY 1986 level of effort. This approach makes allowance for adjustments a State has made in spending for various activities and services since FY 86. We have included a provision regarding this issue in the regulations at § 250.72(b).

Comment: One State indicated that adult education agencies and other service providers do not determine whether persons who receive their services are AFDC applicants or recipients. The State would, therefore,

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not have information available to determine the FY 1986 level of expenditures.

Response: The final regulations clarify which expenditures constitute a State's FY 1986 level of effort. As a result, we believe that the State will have the ability to identify those expenditures made for programs that are included for purposes of this requirement.

Matching Rates (§ 250.73 of the Final Regulations)

JOBS program activities are subject to three different rates of FFP.

Cost Matched at 90 Percent

The FFP rate for that part of a State's total JOBS funds that equals the State's WIN or WIN Demonstration allotment for FY 1987 is 90 percent. This rate may be applied toward any allowable cost of the JOBS program. A State's 10 percent share may be in the form of cash or in the form of in-kind contributions. Section 403(l)(1)(B) of the Act does not provide a definition of "in-kind"; it states only that it be fairly evaluated. Therefore, in order to provide flexibility in this area, we are permitting a State's share of in-kind to be State in-kind or third party in-kind contributions. This has been the practice for the WIN program and we are incorporating this practice in the JOBS program, but only for this portion of the funding for JOBS.

Comment: Several commenters asked if there were any restrictions for claiming JOBS costs at 90 percent.

Response: A State may claim Federal reimbursement at 90 percent for any allowable JOBS costs. In addition, expenditures at 90 percent need not be claimed at the beginning of the fiscal year. The State can designate costs to be matched at 90 percent throughout the fiscal year.

Costs Matched at the FMAP Rate with a 60 Percent Floor

Federal matching under the JOBS program is also available at a State's Medicaid matching rate (the FMAP) for certain costs of the program that exceed a State's WIN or WIN Demonstration allotment. For the purposes of the JOBS program, the minimum matching rate is 60 percent. We shall refer to this matching rate as the "higher rate" in the following discussion.

Costs eligible for matching at the higher rate are: (1) the personnel costs of full-time staff working full-time in any capacity in the JOBS program, and (2) all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities. These costs include salaries and benefits of employees for the time and effort devoted specifically to these activities, whether they work on a full-time basis or not. In addition, costs of materials acquired or expended specifically for these activities, space, and other costs directly associated with the provision of these services are matched at the higher rate. For example, if a State contracts for a job club, the costs of staff, telephones used by participants, and the room used for the job club are matchable at the higher rate. Indirect costs are not matchable at this rate.

The definitions of "direct" and "indirect" costs are those definitions which are included in OMB Circular A–87, "Cost Principles for State and Local Governments." The term "full-time staff working in any capacity in the JOBS program" is defined as those individuals working a normal work week as defined by the State and who are working in the JOBS program only. A normal work week, however, cannot be based on a full-time equivalency measure.

The assessment of child care needs and referral to appropriate services for JOBS participants can be matched at the higher rate when these activities are provided as part of a JOBS assessment, development of an employability plan, or case management. Alternatively, these activities are available for match as child care administrative expenditures under title IV–A with an FFP rate of 50 percent.

Costs Matched at 50 Percent

Costs eligible for match at 50 percent are costs associated with the general administration of the JOBS program. In this category, we include: indirect personnel costs which are excluded from JOBS matching at the higher rate. Non-personal services costs associated with these indirect personnel costs are also matchable at 50 percent. These costs include space, travel, utilities, equipment, and supplies. Also matched at the 50 percent rate are: the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV–F fair hearing activities, and other indirect costs of providing JOBS services and activities.

In addition, transportation, work-related expenses, and work-related supportive services are also available for match under the JOBS program at 50 percent. The requirements regarding these supportive services are at Part 255.

As a result of the clarification of policy regarding application of the different matching rates to program expenditures, it will not be necessary to distinguish between types of costs in most contracts for the direct provision of JOBS services and activities to individuals. However, contracts which, for example, provide multiple services and activities, to the extent that they involve significant indirect costs, could continue to be subject to segregation of costs. For example, if a State IV–A agency contracts with a single provider to deliver several components, administrative costs not directly related to the delivery of services, such as the salary of the head of the agency, would have to be segregated. In addition, contracts for general administrative functions, e.g. payroll and accounting, would be at the 50 percent match rate. This is an area we expect to monitor closely, and should it be necessary, we will revise the regulations accordingly.

Comment: Many commenters asked that the higher rate be applicable for the costs of part-time staff involved in any capacity of the JOBS program.

Response: Section 403(l)(1)(A)(ii)(I) of the Act clearly stipulates that the higher rate applies to full-time staff employed in the operation of the JOBS program. Given this language, we conclude that the costs of part-time staff can be matched at the higher rate for the time they spend on the actual provision of activities and services, but that time spent on activities not matchable at the higher rate must be matched at 50 percent. For example, if an individual's work week is 20 hours, and she spends 10 hours running a job club and 10 hours doing administrative work, the 10 hours on job club is matched at the higher rate, but the rest is matched at 50 percent. However, the final regulations significantly increase the activities for which the higher rate applies so that all of a part-time individual's activities might be matchable at the higher rate.

Comment: Many commenters stated that activities such as assessment and case management should be available for match at the higher rate. Other commenters suggested that orientation activities be matched at the higher rate.

Response: The regulations now provide that this rate applies to the costs of assessment and case management activities. Costs of orientation can also be matched at the higher rate. As an alternative, costs of orientation can be matched as title IV–A expenditures, if provided by IV–A staff, as described in § 250.77.

Comment: Several commenters stated that any social service provided to remove barriers to participating in JOBS, such as assistance with housing, health and family problems and the costs of alcohol and drug abuse rehabilitation, should be available for match at the higher rate.

Response: The services described in the comment are supportive services, matchable at 50 percent. Alcohol and drug abuse rehabilitation may be considered as supportive services, if the State so provides in its Supportive Services plan.

Use of JOBS funds for supportive services should be related to assisting the individual to participate in JOBS or to accept employment. As such, we believe that it is appropriate for JOBS staff to make referrals to appropriate providers for such needs as housing, health, and for family problems.

JOBS funds can be used for remedial medical services necessary for an individual to participate in a JOBS component or to accept employment. An item in this category might be a pair of glasses. However, JOBS funds for this supportive service would only be available if funding from other sources, such as Medicaid, were not available.

Comment: One State asked whether JOBS funds could be used for programs designed to serve at-risk youth, i.e., younger recipients, who are not young parents, and are not eligible for participation in the JOBS program. The State also suggested that matching for such programs should be at the higher rate.

Response: Programs designed to serve at-risk youth may be matched as supportive services under the JOBS program. Expenditures for these programs can therefore be matched only at 50 percent. In order to be matched, such programs must be included in a State's Supportive Services plan and must be designed to include activities and services which assist the family in achieving self-sufficiency and enable these children to avoid welfare dependency in their adult years.

Comment: One State asked if the costs of a first-line supervisor supervising staff directly involved in both the JOBS program and the Food Stamps employment and training program are available for match at the higher percent.

Response: The distinction regarding first-line supervisors has been deleted from the final regulations. If a supervisor is directly involved with an activity for which the higher rate is applicable, then that part of her time associated with this activity is available for match at this rate. However, the costs of that part of her time that is associated with the Food Stamps employment and training program cannot be claimed under the JOBS program.

Comment: One State mentioned that it was not clear whether a State would be able to claim the higher match rate for full-time staff who are engaged in JOBS activities for only part of the time.

Response: If full-time staff are involved in non-JOBS activities in addition to JOBS activities, the higher rate is only available for that part of their time spent on activities matchable at the higher rate.

Other Matching Issues

A State's share of costs available for match at the higher rate or at 50 percent must be in cash. In-kind contributions, whether State in-kind or third party in-kind, cannot be used as the State's share.

State agencies are encouraged to seek financial support from private sources to develop and enhance JOBS program activities and other activities which help individuals to become self-sufficient. Funds donated from private sources for the JOBS program may be considered as a portion of a State's share of matching costs, a policy consistent with the use of such funds for the AFDC program. The conditions under which donated funds may be used as the State's share are set forth at § 235.66(b) and G–4000 of Part 5 of the Handbook of Public Assistance Administration. Thus, § 250.73(d)(2) provides that donated funds may be used for State match if such funds are transferred to the State IV–A agency and are under its administrative control, are donated without any restriction which would require use for a particular individual in the JOBS program or for a particular facility or institution involved in the JOBS program, and do not revert to the donor's facility or use. Donated funds may be used as the State share of JOBS expenditures for any of the three FFP rates.

Comment: Can JOBS funds be used to match the costs of services or activities provided to a JOBS participant after she is no longer an AFDC recipient, either because she has found unsubsidized employment or for other reasons? This question pertains to those activities or services other than those included in the child care or Medicaid transition benefit.

Response: If included in a State's JOBS and Supportive Services plans, the State may provide case management and supportive services for up to 90 days after a participant loses eligibility for AFDC. For JOBS component activities, if an individual loses AFDC eligibility after funds have been obligated or expended for such activities, FFP is available, regardless of the length of the activity. For example, if an individual is already participating in a course of vocational education which has been paid for, and the individual loses AFDC eligibility before the activity ends, then she may complete the course. Language incorporating this policy has been added at § 250.73(e).

Comment: Two States asked that the regulations provide flexibility in permitting States to use State funds not under the administrative control of the IV–A agency but used for purposes of the JOBS program as part of the State's share of JOBS expenditures for matching purposes.

Response: We have included requirements at § 250.73(d)(1) for the use of public funds as the State share of match under the JOBS program. The State IV–A agency must have administrative control of such funds in order to request Federal matching, in order to satisfy the single State agency requirement at § 250.10.

Comment: Several commenters expressed concern regarding the requirement that contractors and vendors segregate costs according to different matching rates. One commenter noted that segregating costs was not compatible with performance-based contracting, which makes payments to contractors based on outcomes, such as job placements.

Response: Changes in the final regulations regarding matching rates will, for the most part, eliminate the need for segregation of costs in contracts. Contracts which include costs not matchable at the higher rate will require cost segregation. The State may use performance-based contracts which include such costs, if the State, in calculating the unit cost, estimates the percentage of costs matchable at each rate.

Comment: One State asked whether, if title IV–F funding is used for systems interface, such funds would be subject to the JOBS cap under title IV–F?

Response: Section 250.81 provides that the costs for interfacing with an existing or planned title IV–A system are matchable under title IV–A. However, a State may choose to use title IV–F funds for this purpose, subject to the State's limit of entitlement.

Comment: One State mentioned that related Federal programs are based on a forward funding policy whereby the allocation amount is available to local planners during the planning process and that a similar process for the JOBS program would be helpful in coordinating the planning of these programs.

Response: The basis for forward funding in other Federal programs, such as JTPA, is statutory. The Statute does not include such a provision for the JOBS program.

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Although funding under the JOBS program is available only from the quarter the State implements the program, provided the State JOBS plan and Supportive Services plan have been approved, funding for planning for the JOBS program is available as an AFDC administrative cost matchable at 50 percent.

Comment: One State mentioned that the three matching rates for the JOBS program were administratively burdensome and that there should be an alternative of one matching rate.

Response: The three matching rates applicable in the JOBS program are specifically provided for in the Act.

Reduced Matching Rate (§ 250.74 of the Final Regulations)

Target Groups

For the JOBS program, the Act provides certain safeguards to assure that the increased Federal funding intended to assist individuals in avoiding long-term dependency is directed largely towards those individuals who are most in need of assistance. The regulations at § 250.74(a) provides that if, in any fiscal year, a State fails to expend 55 percent of its JOBS expenditures on members of the State's target population as defined in § 250.1, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent. The Secretary, however, may waive this reduction if a State can satisfactorily demonstrate that the characteristics of the caseload in that State make it infeasible to meet the requirements of the regulations at § 250.74(a) and that the State is targeting other long-term or potential long-term recipients.

Comment: One commenter asked when a State would be required to demonstrate that the characteristics of its caseload make it infeasible to meet this requirement and target other long-term or potential long-term recipients.

Response: A State must include in its JOBS State plan, or in an amendment to the plan, its reasons for concluding that the characteristics of its caseload make it infeasible to meet the requirement, and must identify at the same time other long-term or potential long-term groups which it plans to target.

Comment: One State said that there was no indication in the regulations about how the reduction for failure to spend 55 percent of JOBS expenditures on the target population would be taken. It recommended that the reduction be a prospective reduction.

Response: Section 403(l)(2)(A) of the Act provides that the penalty for failure to meet this requirement, i.e., the reduction to 50 percent, is applied to the year that the State fails to meet the requirement. The language is clearly different from the language regarding the participation rate penalty which specifically states that the penalty is to be applied prospectively.

Comment: One State asked whether the data collection requirements for determining if a State had spent 55 percent of JOBS expenditures on the target population could be waived if the State did not seek funding at the enhanced levels.

Response: In principle, we have no objection to waiving data collection requirements related to meeting the targeting standards where a State waives its entitlement to the higher matching rates. However, the same data are needed to meet some of the uniform data collection requirements contained in sections 203 and 606 of the Family Support Act. These sections do not specifically include the requirement for reduced funding if a State fails to spend 55 percent of its JOBS expenditures on the target population, but they do require data on the average amount spent per family in each JOBS component. Thus, a State would have to meet these latter data collection requirements even if it did not seek funding for JOBS at enhanced rates.

Comment: One State suggested that administrative costs not be included in the 55 percent target requirement.

Response: Section 403(l)(2) of the Act requires a State to spend 55 percent of its title IV–F expenditures on the target population in order to qualify for FFP at the rates specified in section 403(l)(1) of the Act. We have interpreted this to mean all JOBS expenditures because no category of costs was excepted. The regulations reflect this position.

Comment: One State suggested that if an individual is in a target group any time within the fiscal year but is moved out of the group within the fiscal year, the State should be allowed to count the individual as a participant in the target group for the entire year.

Response: A participant's target group status is established at the time of the initial assessment. Therefore, JOBS funds expended on behalf of this participant while she remains an AFDC recipient are counted as target group expenditures. A State may reassess target group status periodically as an individual may acquire target group status over time.

Participation Rates

Section 403(l)(3)(A) of the Act establishes participation rates that a State must meet for fiscal years 1990 through 1995 in order to qualify for enhanced matching rates. The term "participation" is defined in the regulations at § 250.78, and § 250.74 contains the formula for calculating participation rates.

The participation rate for FY 1990 is 7 percent; however, a State is not subject to a reduction in the Federal matching rate for FY 1990. FY 1992 is the first year in which a State will be liable for reduction of FFP for failure to meet the participation rates (for FY 1991.) Failure to meet a State's participation rate for a fiscal year will result in a reduction of its matching rate to 50 percent in the subsequent fiscal year.

The Secretary may waive in full or in part any penalties applicable to a State for not meeting these participation rates. The regulations at § 250.74(b)(5) provide the conditions under which such a waiver may be granted.

Comment: Several commenters asked whether certain groups of participants would be deemed not required to participate and, therefore, not included in the calculation. The groups suggested were: those in a political subdivision in which the program is not offered; those who are exempted based on remoteness; and those who have "good cause" not to participate.

Response: We have amended the final regulations to clarify that the calculation of participation rates will exclude: (1) a person who is exempt, including for remoteness, (2) a person living in a political subdivision in which there is no JOBS program, and (3) a person determined by the State to have "good cause" not to participate, for each month in which the "good cause" finding pertains.

Comment: Another group of commenters suggested that it would unfairly penalize a State if the calculation were to include those who cannot participate because the State determines that it has insufficient resources.

Response: We interpret the term "insufficient resources" as used by the commenters to mean that the State IV–A agency does not have adequate State funds to match available federal resources, and we disagree with this suggested change for the following reason. We believe that participation rates that only require 20 percent of the mandatory population to participate by FY 1994 already consider lack of State resources. Furthermore, the Statute provides specific relief from meeting this requirement in section 403(l)(3)(E) of the Act.

Comment: Another group of commenters suggested that we exclude

from the calculation those for whom the State cannot guarantee child care.

Response: Section 402(a)(19)(B)(i)(I) of the Act provides that the State must guarantee child care if it requires an individual to participate. If it cannot guarantee child care, then the individual cannot be required to participate and is not counted in the calculation. The determination that a State cannot guarantee child care must be made on an individual basis for each participant.

Comment: Several commenters asked how the calculation would treat participants entering or leaving a component in mid-month.

Response: The definition of participation at § 250.78 and the minimally required data elements at § 250.82 have been amended to include the date of assignment to a component. We have not specified a methodology for counting activity that does not occur throughout a calendar month. We will include the methodology in an Action Transmittal.

Comment: Several commenters approved of the proposal that persons sanctioned from a component be excluded from the calculation. Conversely, other commenters suggested that a State be allowed to include such persons. They argued that the issue in any sanction is participation, that sanctions are never undertaken lightly, and that they represent a high level of agency investment in maintaining the integrity of the program and the agreements between the program and the participants.

Response: We do not agree that sanctioned individuals should be counted as participants. We agree that sanction activity tends to involve significant staff time and effort. A fair and effective sanctions system is important to the integrity of a program. However, sanction activity is not participation. The regulations continues to provide that a sanctioned person will not be included in the participation calculation for the month she is sanctioned and any subsequent months she is under sanction.

Comment: Several commenters suggested that the Department's methodology for the participation rate calculation be made available to the States, including indication of how automated records are sorted, the number of records received, and the reason(s) for our exclusion of any records.

Response: We intend to involve a joint State/Federal work group in the precise working out of the calculation. The procedures and definitions resulting from that effort will be issued in Action Transmittals.

Comment: One State said that measuring participation rates rather than program outcomes defied the intent of the Family Support Act.

Response: The Act specified the applicable participation rates for several fiscal years, the methodology for determining a State's ability to meet them, and the penalty to be assessed for failure to meet the applicable participation rate. The regulations restate these provisions.

AFDC–UP Participation Rates

Participation rates for the AFDC–Unemployed Parent (AFDC–UP) program have also been established by the Act and appear in the regulations at § 250.74(c)(1). AFDC–UP participation rate requirements go into effect in FY 1994, and the first penalty would be imposed in FY 1995.

While the statutory language refers to waiving the penalty for not meeting the participation rates, and sets the waiver criteria, the actual penalty is not defined in the Act. We believe it is appropriate that the penalty for failure to meet the AFDC–UP participation rates be a reduction to 50 percent in FFP. This penalty is identical to the penalty established in the Act for failure to meet the general participation rates. It is also consistent with the penalty established for failure to expend 55 percent of JOBS funds on targeted groups.

As an alternative, we considered applying the penalties cited under section 404 of the Social Security Act for failure to substantially comply with the provisions of section 402(a) of the Social Security Act. The appropriate penalties under this section include the withholding of all AFDC grant funds to a State or the withholding of certain funds limited to specific categories. However, we concluded that these penalties would be too harsh.

The Secretary may waive in full or in part any penalties applied to a State for not meeting the participation rates for the AFDC–UP program. The regulations at § 250.74(c)(3) provide the conditions under which a full or partial waiver may be granted.

Comment: One organization noted that section 403(1)(4)(D) of the Act provides for waiver of the penalty for failure to meet the applicable AFDC–UP participation standards if the State submits a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years. The commenter asked why the proposed regulations at § 250.74(c)(3)(iii), on the other hand, specified that the proposal must be for both the current and subsequent fiscal years.

Response: The penalty for failing to meet a particular participation rate is enforced prospectively, i.e., it results in reducing a State's match to 50 percent for the year following the year for which the rate is not met. The "following year" is what we interpret the term "current fiscal year" to mean because a decision regarding participation rates is only made after the end of a fiscal year. For the regular participation rate waivers, section 403(1)(3)(E) of the Act provides that a proposal in support of a waiver request must contain a plan to achieve the applicable participate rate "for the current fiscal year and the subsequent fiscal years * * *" In the "current fiscal year" the State is already subject to a requirement that it meet a higher participation rate for unemployed parents, so it is appropriate that a plan to meet the higher rates should cover not only subsequent years but also the year in which the State submits the proposal. Otherwise, the State may also fail to meet the requirement for the "current fiscal year" and thus be subject to new penalties. Thus, although the language of the Family Support Act did not include the term "current fiscal year" for the AFDC–UP program, we believe that it is correct to do so.

Activities Excluded from FFP (§ 250.75 of the Final Regulations)

There are certain activities for which Federal matching under the JOBS program is not available under any circumstance. These are identified in the regulations at § 250.75. In addition, there are certain costs unallowable for FFP that apply only to the community work experience program and alternative work experience programs included in an approved JOBS plan. The regulations at § 250.63(j) detail these prohibitions.

Union Dues

Comment: One commenter asked about the availability of FFP for union dues.

Response: Union dues may be matched as a JOBS supportive service if an individual, as a condition of her acceptance of unsubsidized employment, is required to pay such dues and if union dues are identified in a State's Supportive Services plan as allowable.

Self-initiated Education and Training

Comment: The regulations at § 250.75 provides that the costs of self-initiated education or training activities, specifically tuition, books, fees, room and board, are not available for Federal reimbursement. One State suggested that the Family Support Act only meant

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for this prohibition to apply to tuition, but that FFP would be available for books, fees, room and board under JOBS, either as a component activity or a supportive service.

Response: Section 402(a)(19)(F)(iii) of the Act prohibits "the costs of such school or training * * * " We believe it reasonable to include tuition, books, fees, room and board in the definition of such "costs." Therefore, FFP is not available for the costs of these items for those individuals in approved self-initiated programs. Individuals in these programs, however, are eligible for child care, transportation, and other supportive services.

Comment: One State asked if FFP would be available for the costs of school or training for an individual in a self-initiated program for subsequent periods of enrollment, such as the next semester.

Response: We have reviewed the language of the Act and have determined that there is no flexibility regarding this issue. It does not provide for FFP for these costs at any time.

Comment: Several commenters recommended that the costs of self-initiated education or training be considered AFDC special needs and, therefore, be reimbursable under the AFDC program.

Response: The Family Support Act provides that such costs are not Federally reimbursable for purposes of section 403 of the Social Security Act. Section 403 contains the requirements for payments to States not just for the JOBS program, but for the entire AFDC program. Therefore, Federal reimbursement for these costs as AFDC special needs is also prohibited.

Comment: One State was concerned that the prohibition for Federal reimbursement for education and training activities under § 250.75 pertained to all JOBS participants enrolled in any education or training activity.

Response: The prohibition at § 250.75(a) pertains only to the costs of education and training for individuals in self-initiated programs. JOBS component activities may include education and training for which Federal reimbursement is available provided all other requirements of the program are met, e.g., that the educational activity is not already available on a non-reimbursable basis.

Comment: One State maintained that FFP for child care licensing fees for individuals in a child care related self-initiated training program should be available as a supportive service.

Response: Such a fee constitutes a one-time work related expense necessary for accepting employment and therefore would be allowable as a supportive service under the JOBS program. However, we remind States that FFP is not generally allowable for child care licensing either under title IV-F or title IV-A as a child care administrative expenditure.

Construction

Comment: One State asked if the prohibition of FFP for construction included remodeling work. If so, it indicated that this would impose a hardship on States where building modifications are necessary to accommodate the increase in JOBS participants and increase in activities.

Response: The prohibition on construction does not pertain to costs for remodeling, rearranging, or altering facilities in order to make the area more appropriate for JOBS. However, under the provisions of OMB Circular A-87, Attachment B, Item C.2.c, "Rearrangements and alterations," such costs require approval of the Family Support Administration. OMB Circular A-87 is made applicable to the JOBS program under the regulations at 45 CFR 92.22.

Comment: One organization believed that the prohibition on the use of JOBS funds for construction extended to the costs of tools, equipment and materials used in training for construction trades jobs.

Response: JOBS funds may be used for expenses associated with a JOBS training activity. This provision prohibits the building of facilities only.

Financial Reports, Records, Statements and Audits (§ 250.76 of the Final Regulations)

Grants provided under the JOBS program of title IV-F are subject to the grant management regulations at Part 92. These regulations apply to federally-assisted programs that are not funded as open-ended entitlement programs, such as the AFDC program. (For the AFDC program, the grant regulations at Part 74 continue to apply.) The following provisions of Part 74 also apply to grants subject to Part 92: §§ 74.62(a), 74.173, 74.174(b), 74.304, 74.710, and 74.715.

In addition, all claims for Federal reimbursement must be supported by appropriate documentation. JOBS funds under title IV-F are subject to audit and financial and programmatic review. Claims for improper costs under the JOBS program will be subject to disallowance. Disallowance procedures for JOBS funds will be similar to the disallowance procedures for the AFDC program. States are reminded that expenditures of the JOBS program are also subject to other HHS regulations, such as those at 45 CFR Part 95 and Part 16.

Costs Matchable as AFDC Payments (§ 250.77 of the Final Regulations)

Supplemental Payments to Avoid Net Loss of Cash Income

The Family Support Act specifies that costs incurred by the State for supplemental payments to families so that they do not experience a net loss of cash income, pursuant to § 250.35, shall be treated as title IV-A costs. However, they are not considered AFDC benefit payments for any purpose.

Payments to Employers Under the Work Supplementation Component

Payments to employers in the work supplementation program include part or all of an AFDC grant that has been diverted to cover part of the wages paid to an AFDC recipient participating in this program (see regulations at § 250.62(l)). Because these payments are AFDC benefit payments, they are available for Federal matching under the AFDC program.

Comment: One State noted that it currently made State-only supplemental payments to work supplementation program participants when the family would receive less disposable income than they would otherwise have received had they not participated in WSP. For example, a participant in WSP who is in retrospective budgeting has a permanent reduction in hours. Due to the time lag inherent in the retrospective budgeting system, a revised residual grant will not be issued until two months following the payment month. Therefore, a supplemental payment is also issued in the intervening months for the difference between the original residual and the revised residual. Would this supplemental payment now be eligible for FFP?

Response: The regulations at § 250.77(a) provides that supplemental AFDC payments can be made to a recipient's family so that the family does not experience a net loss of cash income from the recipient having been required by the State to accept a job. When such payments are made, a recipient may not claim good cause for not participating in the JOBS program.

The supplemental payments described by the commenter are of a different nature. They result from the State's application of the AFDC retrospective budgeting requirements. However, the regulations at § 250.62(g) permits a State to exempt from the retrospective requirements of Part 233 individuals who hold supplemented jobs. The State should consider this option when determining AFDC payments to an individual participating in the work supplementation program.

Comment: For the unemployed parent program, this same State also issues supplemental payments in those cases where a principal earner, who is working more than 100 hours and whose wages normally exceed the maximum aid payment, is ill for one week and his wages drop below the maximum aid payment even though he continues to work more than 100 hours. Will these supplemental payments be eligible for match under the AFDC program?

Response: No. The current regulations at § 233.100 provide that an individual is eligible for AFDC-UP payments only if she is employed less than 100 hours a month. In the State's example, the supplemental payments would be made to an individual working more than 100 hours a month.

Comment: Several States indicated that they perceive some overlap between the activities of an AFDC eligibility or income maintenance worker in determining eligibility and informing a potential recipient or recipient of the requirements and opportunities under the JOBS program. They asked under what conditions FFP would be available under title IV-A for JOBS activities.

Response: We permit a State to claim under the AFDC program at 50 percent those costs related to JOBS orientation, determination of exemptions, and referral to the JOBS program when such activities are conducted by a title IV-A eligibility or income maintenance worker. The State may, of course, choose to claim these costs as title IV-F costs. However, when the activities of JOBS orientation and referral are conducted by JOBS staff, and not AFDC staff, these costs can only be claimed under title IV-F.

Definition of Participotion for Enhanced FFP (§ 250.78 of the Final Regulations)

The NPRM included a definition of participation in § 250.1 that related only to participation requirements for qualifying for enhanced FFP under § 250.74(b). In the interest of avoiding any confusion with all other definitions of participation in this regulations, we have removed this material from § 250.1 and added a new § 250.78.

Participation Standard

Participation will be measured in terms of a 20 hour-per-week standard. However, we will not limit the number of individuals considered to be participating to those who are scheduled to participate in an activity for 20 or more hours per week. Instead, we will consider as participants the largest number of individuals whose combined and averaged weekly hours equal or exceed 20. This means, for example, that an individual who participates in an activity for 30 hours per week will balance either one individual who participates for ten hours (counting as two participants), or two individuals who participate for 15 hours each (counting as three participants). This does not mean that four individuals each participating for five hours per week would be counted as one participant.

In terms of the overall requirement, we provide the following example. In 1995, when the participation standard will be 20 percent, there might be 1,000 non-exempt individuals in areas of the State covered by the JOBS program. At least 200 individuals must be satisfactorily participating in a given month, and their scheduled hours of participation must average 20 hours per week. If this standard were met, additional individuals participating in JOBS would not adversely affect the overall participation rate computation, even if their scheduled hours resulted in an overall average of less than 20 hours per week.

Activities Considered in Determining Participotion Rates

In determining participation rates, activity will be counted for the number of hours scheduled. Activity in all components listed in the State JOBS plan, with the exception of Job Development and Job Placement, will qualify. In addition, participation in assessment and employability plan development will be counted, but only in one month for each period on AFDC.

We intend to develop a method to allow counting of participation for a portion of a calendar month. However, we have not yet determined the methodology for counting activity that does not occur throughout a calendar month. We considered a number of options, including prorating such activity, or converting partial month activity to a weekly average. These and other options would entail additional recordkeeping and reporting requirements. We have not included a specific methodology in the final regulations, but we intend to do so in an Action Transmittal.

Job entries will also be counted, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours required by the job. Hours of work will then be added to scheduled hours of component activity, yielding an average weekly activity level for the individual. In addition, work in the following calendar month will also be counted. For either month, hours required by the job will be counted only to the extent the individual retains employment. Job entries will only be considered for those who were participating in a JOBS component, or receiving job development and job placement services during the month of the job entry, or the preceding calendar month.

Satisfactorily Participating

In setting the participation standard, we considered whether the 20 hour standard should be based on scheduled hours, or on hours of actual attendance. We have determined that for purposes of measuring participation rates, activity will be counted for the number of hours scheduled, if an individual has "satisfactorily participated." In determining whether an individual has satisfactorily participated, the State will apply the following standard: an individual who attends at least 75 percent of the scheduled hours of activity in a month will be counted for the number of hours scheduled; an individual who attends for less than 75 percent of scheduled hours will not be counted. This policy is included in the regulations at § 250.78(b)(5).

In establishing this policy, we considered many factors and weighed a number of options. Our primary goal was to reflect Congressional intent with regard to the participation rate requirement. At this point, the JOBS program does not require outcome measures or performance standards—the Statute requires the Department to recommend such standards by October, 1993. However, as a temporary measure of State performance, Congress did include the participation rate requirement, which expires after FY 1995. We continue to believe that Congress intended this interim participation measure to be meaningful, and therefore must go beyond mere assignment, and reflect actual participation in the assignment.

We were also concerned that measuring only assignments, rather than actual participation, would encourage States to emphasize assignment, with little monitoring of individual activity. There is some evidence from current work and training programs that where States do not monitor individual activity there is a significant no-show and drop-out rate. The JOBS program will be more likely to reduce dependency if individual participants actually attend component activity for which funds are

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expended. The modest administrative costs should be more than offset by the improved effectiveness of the States' JOBS programs. In addition, States may be able to avoid situations where they are spending money to purchase slots for assignments which are then sporadically attended.

Further, we felt that States would choose to track individual activity for reasons other than the participation rate requirement. For example, attendance should be considered for purposes of determining whether an individual should be permitted to continue in an activity, or whether to continue to provide supportive services.

We were also concerned with the administrative burden on the State that tracking individual attendance for every participant would create, based on comment to the NPRM and discussions with State and local officials. We therefore did not set specific verification requirements, nor did we require that the State maintain a record of attendance for all participants. Instead, we require that attendance be verified for the cases sampled for purposes of the reporting requirements, as described in § 250.82 of the regulation. In practical terms, this means that States should require providers to maintain some record of attendance, in order to assure that individual participation will be credited in determining participation rates. However, records for all participants need not be kept by the IV-A agency. In addition, we will not require verification of attendance for individuals who enter employment. In order to receive credit for job entry, the State need only verify that an individual has remained employed until the end of the sample month.

We have purposely not included reference to excused absence, or good cause for failure to attend the assigned activity, in setting the 75 percent standard. While the States should consider such factors in providing continued services, and in determining whether an individual should be sanctioned, we believe that retaining records of excused or unexcused absence, or requiring providers to determine if good cause for failure to attend exists would be excessively burdensome.

For some component activities, providing attendance information will present no additional burden. For example, a participant assigned to attend high school will require no additional tracking, since attendance is regularly monitored. If such an individual case is sampled, the State would verify attendance with the school. However, for other activities, States will need to negotiate with providers so that attendance records are maintained. For example, attendance records are often not kept for adult education classes, since this type of activity is typically voluntary. Although some providers may not agree to such requirements, others will react positively because they will be supportive of efforts to reduce the drop-out rate. We have therefore concluded that the benefits of tracking attendance outweigh the burdens.

We considered a number of other options in establishing the policy of satisfactorily participating. For example, we considered crediting only actual hours of attendance. We rejected this option for two reasons. First, it would require verification of actual attendance for all participants. Second, it could result in including individuals who were clearly not participating satisfactorily as participants. For example, an individual who attended only 10 hours per week of an assignment that called for 40 hours attendance could have been included as a participant.

We also considered requiring a higher percentage of attendance, or factoring in excused absences, in setting the 75 percent level. We believe that the 75 percent level is a good compromise between an unreasonably high standard, such as 100 percent, and a low standard that would negate the concept of meaningful participation.

We also considered permitting States to define satisfactorily participating. We did not choose this option because it would provide incentives to set low standards, and would not lead to uniform measurement of participation. A State with a strict definition of satisfactorily participating might be disadvantaged, and comparisons of State participation rates would be misleading.

Comment: Many commenters suggested that intake activities such as assessment, employability development planning, and orientation should be included, since these often involve significant client activity, and represent a front-end investment in barrier identification that is central to the goal of reducing long-term dependency. Some commenters suggested that these intake activities count without regard to duration; some suggested limits of one or two months; one suggested that a credit of 3 hours per client be permitted, such that 7 clients would count for the equivalent of one week of participation.

Response: We have carefully considered the arguments made by commenters and have decided to modify our definition of participation. These activities will count for the purposes of calculating participation rates for the number of hours of the activity. However, because these are preliminary activities which lead to component participation, we will allow them to be counted for an individual in only one month for each period on AFDC.

Comment: Several commenters suggested inclusion of all component activities. This included counting Job Development and Placement, and removing the "full-time" requirement for OJT and Work Supplementation. The reasons offered included the complexity of tracking different hours requirements for different components. The full-time requirement for OJT and Work Supplementation might induce a State to not make a part-time assignment because of the hours requirement for participation.

Response: The final regulations remove the differing hours requirements among the various components, but we have not included job development and job placement in the participation calculation. We continue to believe that job development and placement is primarily an agency activity. Many commenters who wanted it counted as participation described activities that more properly fit under individual or group job search, one of the optional components. Such activities would count as participation if the State has individual and group job search as one of its optional components. However, entry to employment from job development and job placement counts as participation, as described § 250.78.

Comment: Many commenters suggested that the 20 hours per week requirement is unreasonable and unworkable since most component activities are not designed for that standard. Commenters suggested that a State would increase the cost of a component to raise it to the level of 20 hours instead of, say 16, thereby wasting training and child care resources. Other commenters suggested that States would feel compelled to assign "filler" activity to meet the 20 hours requirement, and that such assignments would similarly waste training, child care and transportation costs. Several commenters suggested that if an hours requirement were retained, it rely either on the Unemployed Parent requirement of 16 hours per week already in the Act, or on the Food Stamp requirement of 12 hours per month.

Response: We have amended the regulations to provide for the combining and averaging of the hours of those scheduled to participate. This provision will provide States with substantially greater flexibility, while assuring that States provide meaningful activities for

reducing long-term welfare dependency. The clear guidance of the legislative history is that participation should be significant and not be permitted to become a token effort.

Comment: Several commenters suggested that the difficulty of tracking actual attendance in lieu of hours scheduled would be both costly and a poor use of staff time.

Response: It was never our intention to require States to track actual attendance hours. Therefore, we have clarified the regulations to indicate that we will count hours scheduled as long as the individual is satisfactorily participating in the activity; however, States are required to verify attendance for cases in the sample, as described in § 250.80.

Comment: Several commenters suggested that in lieu of counting only those clients whose participation in a month was equivalent to 20 hours per week, we permit all participation in qualifying activity to be averaged to either the same 20 hour standard (one commenter) or to some lesser hour requirement (two other commenters).

Response: We are persuaded that a combined and averaging approach would provide States with greater flexibility in working with the broad range of recipients within their caseloads. We have, therefore, kept the 20 hours per week standard, amended as follows: at least the required percentage of the participants must average 20 hours per week of scheduled activity for the month. For example, for each person scheduled for 40 hours per week, the State could count an additional 5 persons who each had been scheduled for 16 hours per week, or an additional 2 persons who each had been scheduled for 10 hours per week. However, in no case can an individual with no hours of participation count as a participant because the Statute specifically prohibits counting mere registration as participation.

Comment: Several commenters suggested that we include activity in certain supportive services, particularly those related to drug and alcohol abuse and mental health services, in the definition of participation.

Response: We carefully considered this possibility for the NPRM. Although such services may be important in allowing certain individuals to become prepared to participate, we have not amended the regulations to include those receiving supportive services such as drug and alcohol abuse remediation, but not otherwise participating in a JOBS activity, in calculating participation rates. We do not believe that Congress intended such services to constitute participation, since they are not mentioned in the Statute.

Comment: Several commenters suggested counting certain kinds of time that were not direct participation in a component as part of the hours requirement. Among these were transportation time, including time to transport children to and from child care.

Response: While we agree that time spent on a daily basis in commuting is necessary, it is not participation, just as commuting to and from work is not work.

Comment: Several commenters suggested counting educational activities on a year-round basis, or counting semester or quarter breaks, or counting summers even though courses were not being taken during the summer. Several commenters suggested providing for a "homework" allowance in addition to the actual scheduled hours in an educational component.

Response: We have amended the regulations to provide that educational activities count for the amount of time scheduled, without regard to the "making satisfactory progress" standard. We do not include a "homework" time allowance. While we recognize that some educational programs do assign homework, it would be too difficult to account for this administratively since there are so many different types of educational activities.

We do believe that scheduled breaks during the school year, including time between semesters, should be counted as participation, and the regulations now provide that an individual in an educational activity will be considered to be participating for her scheduled hours during scheduled breaks within the school year. We have also provided that if an individual is enrolled and attending high school for the last semester of a school year and is expected to return to high school for the next school year, then she shall be counted as a participant for the break between school years. The average number of hours per week for the break between school years shall be the scheduled average weekly attendance level for the participant in the previous school year. We make a distinction between attendance at high school and other kinds of educational activities (particularly postsecondary education) because other educational activities are often offered during the summer allowing the participant to continue the process of becoming self-sufficient.

Comment: Several commenters suggested the inclusion of a credit for job entry, on the ground that exclusion of such a credit inappropriately de-emphasizes the goal of employment, and would induce a State to purposely defer job entry until the first of the succeeding month.

Response: We agree that certain job entries should be included in a State's count of participants. Therefore, we have amended the final regulations to count job entry from a component or activity either in the month participation in the component or activity ends or in the next calendar month. If the job entry occurs in the month component activity ends, we will average the scheduled hours of participation in the component for the portion of the month prior to job entry with the scheduled number of hours of employment for the remainder of the month. If job entry occurs in the subsequent month, we will count the average scheduled weekly hours of work as participation. For all job entries, we will count the average scheduled weekly hours of work for one additional month as participation. The final regulations provide participation credit for job entries from a component or through job development and job placement activities.

Comment: A few commenters suggested that participation credit be given for any recipient employed part-time, or employed more than 30 hours per week.

Response: We have not amended the regulations to accommodate this suggestion because the central issue is participation in the State's JOBS program. Job retention by AFDC recipients, whether part-time or full-time, is a desirable outcome, but the participation rate language of the Act does not contemplate the ongoing inclusion of persons no longer participating.

Comment: Some commenters suggested deleting all specific hours requirements, since they found no statutory basis for establishing such requirements.

Response: The Act provides, at section 403(l)(3)(D), that a State will establish requirements, "consistent with regulations of the Secretary." We continue to believe that it is well within the authority of the Secretary and the provisions of the Act for the regulations to define, in effect, an hours-based benchmark for significant participation. The fundamental basis for minimal standards is that the Secretary is required by the Act to allow or disallow enhanced FFP to States based on whether the participation rates established in the Act are met. We believe the absence of a federally set minimum would lead to non-comparable rates of participation among the States,

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and to the inclusion of token activities as participation.

Comment: Several commenters suggested that the standard be based solely on each individual's employability plan.

Response: We continue to believe that participation should be significant, and that Congress so intended. We note in this regard the colloquy among Senators Dole, Bentsen and Moynihan (134 Cong. Rec. S7970–1) regarding congressional intent that participation in JOBS be meaningful. In the absence of a Federal standard, we believe that relying on the employability plan as the standard would allow States to include token activities as participation. Proposing disallowances on the basis of non-comparable data among the States is not evidently contemplated by the Act. Permitting a "least common denominator" definition of participation to emerge is not responsive to the congressional indication that participation be "significant."

Subpart I—Uniform Data Collection Requirements

Uniform Data Collection Requirements (§ 250.80 of the Final Regulations)

The Family Support Act imposes substantial reporting requirements related to the JOBS program and its attendant child care provisions. Section 487(b) of the Social Security Act contains a minimum set of uniform reporting requirements that may be augmented as the Secretary determines. Section 403(e) requires, among other data elements, that a State provide information on the use of child care by AFDC recipients.

Comment: Many commenters suggested that the reporting requirements were drastically expanded beyond the requirements of the Act creating excessive administrative burdens and diverting funds from provision of services to reporting.

Response: With the exception of data elements needed to determine if a State qualifies for enhanced FFP, commenters cited no particular data elements as being beyond the requirements of the Act. The final regulations contain some additional data elements and some changes to those initially proposed. Most of the required data elements are directly related to an explicit or implicit statutory requirement. The rationale for these is discussed below.

Implicit Data Requirements

Certain reporting requirements are implicit because enhanced FFP is based on meeting certain levels of participation and on spending at least 55 percent of the State's JOBS funds for specified target groups.

Comment: One commenter suggested that implicit reporting requirements to determine whether a State qualifies for enhanced FFP were beyond any provision of the Family Support Act.

Response: The language of section 487(b) expressly provides that the uniform reporting requirements may include "* * * such other matters as the Secretary may determine." We find reporting requirements implicit in the participation and target group provisions of the Act. We believe it would be unreasonable and infeasible to calculate a State's eligibility for enhanced FFP in the absence of data by which to make the percentage determinations required by the Act. We have not amended the regulations.

Required Reporting

The final regulations provide for three kinds of reporting. First, it requires that the State submit electronically on a monthly basis a sample of unaggregated case records of JOBS participants scheduled to participate in a component, actively engaged in assessment or employability planning, or who had a job entry in the sample month or the month previous to the sample month. The sample must include a minimal set of data as prescribed in § 250.82. The case records must be identified by a federally described, but State supplied, substitute for the Social Security Number. A State will be required to maintain in its files a link between the identifier and the Social Security Number.

The sample in a State must be of sufficient size to provide accurate data at the State level, plus or minus two percentage points for an 0.2 attribute, at a 95 percent confidence level. This results in a maximum sample size of 1,537 cases annually for a State with a large JOBS program.

Second, the State must submit aggregate reports on a quarterly basis of the number of non-exempt AFDC recipients in political subdivisions of the State in which JOBS is operated, plus any additional aggregate reports necessary to fulfill reporting requirements not met by the sample.

Third, in lieu of a cost tracking system that would identify all title IV–F funds spent on each individual member of the State's target population, a State may submit an annually updated table of average total unit cost per component. The total unit cost per component must include associated administrative and case management costs. The table must also include an aggregate unit cost for a precomponent activity (assessment and related testing, and employability development planning) that includes associated administrative and case management costs. The State's sample of unaggregated case record data will be used in conjunction with the State's table of costs to determine whether the State has met the 55 percent requirement. In the same way we will develop the amounts spent per family by component and activity, as required by section 487(b) of the Act.

Sample Reporting

We developed this approach as an alternative to requiring periodic aggregate, hard-copy reporting. We require this sample in lieu of aggregate reporting because it will enable States and the Department to meet statutory reporting requirements, provide more useful information to Congress and the Executive Branch of the Federal government, and be less burdensome to States.

The regulations provide that any State may submit 100 percent of its unaggregated case records, rather than develop a sample that would approach the universe in order to achieve the required levels of precision.

Comment: Several commenters suggested that too large a sample would be required to meet the proposed precision and confidence levels, and contended that the workload involved in the proposed JOBS sample would be far in excess of the value of the precision obtained.

Response: We agree and have amended the regulations to require a sample that will yield a precision of plus-or-minus 2 percent for an 0.2 attribute at a 95 percent level of confidence. We note that this change should reduce a State's requisite sample size by a factor of six. On review, we concluded that a precision of plus-or-minus one percent would provide a larger sample of case records than is necessary.

Comment: Several States commented that their smaller AFDC populations made the option of submitting the universe in lieu of a sample attractive, and they requested that the option be retained in the final regulations.

Response: The regulations clarify and retain the option.

Comment: A few States commented that electronic submission of data would be difficult without significant systems support and technical assistance. Several other States commented that this would present no problem, and that they appreciated the option.

Response: We are providing systems support as described in § 250.81. We will be providing both technical assistance and technology transfers as the circumstances warrant.

Comment: Several States commented that they would prefer to send hard-copy data in tables of federally prescribed format, rather than unaggregated case record data. They expressed concern about loss of control of use of the data, how the Department could use the data for unspecified purposes, and how they believed unaggregated data contravened congressional intent. Several other States commented that the submission of unaggregated case record data freed them from the tedious complexities of compiling derivative data and assembling reports in federally prescribed formats.

Response: We continue to believe that an electronically drawn sample of unaggregated case record data, transmitted to the Department by disk, tape or data transmission greatly reduces the burden on the States to meet the Federal reporting requirements. In addition, the data will enable us to provide much greater information to Congress and the Executive Branch. We anticipate being significantly more responsive to governmental needs and to enhance public understanding of the program.

Outcomes Data

Comment: Numerous commenters favored the addition of outcome data to the case record requirements, while two commenters opposed their inclusion at this time. The comments in favor of outcomes expressed three broad sentiments. One was a perceived excessive emphasis on participation, which would drive program operations towards the meeting of quotas not necessarily related to outcomes connected to client self-sufficiency. A second was the general belief that outcomes should be reported, either because they will be better indicators of program impact, or because the States anticipate there will ultimately be federally required outcome data, and States should have the benefit of being able to include the basic data elements in their automated systems now. The third was a small group of States that went beyond the general suggestion, and submitted extensive suggestions of particular outcome measures.

Response: We have amended the regulations at § 250.82 to require certain outcome data concerning job entry. We include these data since employment as a means to self-sufficiency and independence from welfare is the objective of the JOBS program. We also understand States' concern that they be given sufficient indication at the program's inception to include outcome data in the design or modification of their automated systems, rather than face a future requirement for potentially costly and inconvenient systems modifications, and the possible necessity to reconstruct data on outcomes. However, we are not currently in a position to specify data elements that might relate to the performance standards specified in the Statute. Nevertheless, States are permitted to add data elements they deem appropriate for State functions as long as Federal data requirements are met.

Comment: Two commenters suggested that the potential for misinterpretation of outcomes data was so great that while the need was acknowledged, they argued for deferral. One State suggested deferral at least until Federal and State staffs can review and assess the results of the studies called for in section 203 of the Statute. Another State argued that gross outcomes would be inherently misleading, since the only meaningful measure of program impact is the amount of net impact from the program, as compared to the levels of outcomes that would have occurred without benefit of the program's interventions.

Response: We agree with the final comment and have decided to maintain the distinction between the tallying of outcomes—particularly gross outcomes, even when limited to those that follow directly from component participation—and the legislative mandate to develop performance standards and propose them to the appropriate committees of the Congress. Many of the suggested outcomes data were in fact proposals for performance measures rather than outcomes data. We will retain these suggestions for our later work on performance standards.

Comment: One commenter noted that the Statute, while requiring a good deal of specific data, is silent about any outcomes data requirement. Another commenter indicated that the Congress was fully aware of the extensive data reporting requirements that they placed in the Statute, yet suggested that were Congress to look favorably on any expansion of the specified data requirements, it would be in the area of outcomes.

Response: We have amended the regulations to require the inclusion of outcomes data related to job entry from or following participation, in the case record data. We have noted elsewhere that we will count the hours of work towards a State's participation rate if the job entry is directly from a component (including job development or job placement) or follows component participation by no more than 31 calendar days. To be consistent, we are restricting the tally of job entries that will be regarded as outcomes of the program. Persons who are assigned to JOBS but are never involved in a component by the State JOBS program and find jobs on their own will not be included in the tally of "JOBS outcomes."

State Data Systems Options (§ 250.81 of the Final Regulations)

Given the large number of individuals who may participate in the JOBS program and the detailed nature of the subcategories of data required by the Statute, we believe that it is unlikely that a State can either operate its program effectively or meet the minimum requirements in the Statute without an automated client-based information system. Therefore, § 250.81 permits various rates of FFP for different parts of the system needed to operate the JOBS program effectively. For the sake of distinguishing this system from all others in a State's welfare data system, we refer here and in the definitions in § 250.1, to a State's JOBS Automated System, or JAS.

All requirements at § 95.601 *et seq.*, and § 205.35 through § 250.38 must be met with regard to any funding for a State's JAS.

Comment: Numerous commenters were concerned that the NPRM was silent on any phase-in period, and that States might consequently be held responsible for a fully functioning JAS at the time the State converted to JOBS.

Response: We have amended the regulations to indicate that States will have a phase-in period available until at least October 1, 1991. We have developed and submitted to OMB for clearance interim hard-copy reporting forms to meet the minimum reporting requirements for determining eligibility for enhanced FFP, and for the requirements of section 487(b) and 403(e) of the Act. These reports will apply for FY 1990 and FY 1991 and may be extended if the situation warrants.

Title IV–F funding at 50 percent FFP is available for a State's JAS. Title IV–A funding, also at 50 percent FFP, is available for the interface between a State's IV–A system and its JAS, if the State's IV–A system is a non-FAMIS system. For the interface between a State's JAS and a FAMIS IV–A system, title IV–A FFP is available at 90 percent. A State may, of course, use the portion of its JOBS entitlement which is matched at 90% (the WIN or WIN Demo

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share based on FY 1987) for systems development.

Comment: Several commenters suggested that the exclusion of a State's JAS from 90 percent title IV–A funding was arbitrary and an abuse of discretion. Others commented that the JAS was fully as worthy of enhanced (i.e., 90 percent) funding as other systems that had qualified in the past. One State indicated it could not afford to develop a JAS without benefit of 90 percent funding.

Response: After careful review of the law and legislative history, we have not amended the regulations regarding enhanced FFP for a State's JAS, as there is no statutory authority for it. Enhanced FAMIS matching is only available pursuant to sections 403(a)(3)(B) and 402(a)(30) of the Act to develop title IV–A systems. We have allowed FAMIS funding for new or revised systems when they have met the functional requirement of section 402(a)(30) of the Act, for systems "under this part." This part is part A. The JOBS program is contained in part F. There is no mention in that part or anywhere in the Statute of enhanced funding for JOBS systems. Congress has specifically authorized enhanced funding for systems in other programs, and dealt with enhanced funding for IV–D systems in the Family Support Act itself.

We define the interface of an automated JOBS program with the title IV–A FAMIS system, for verification of eligibility and reconciliation of data, to include planning, development and implementation of title IV–A subsystems to: (1) manage information on eligibility factors or target group membership; (2) effect notifications and referrals including non-cooperation; (3) check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and (4) notify appropriate officials when a recipient ceases to be eligible.

Comment: One State commented that the definitions of the terms used to describe the interface needed clarification.

Response: We agree that much clarification and elaboration will be required, but we do not agree that this should be attempted in regulations. We have met and will continue to meet with State staff on the development of design specifications for both JAS and the JAS interface with a State's FAMIS or other IV–A system. The products of that work will be provided to the States in Action Transmittals and technical manuals.

Required Case Record Data (§ 250.82 of the Final Regulations)

This section contains the minimum requirements for the case record that will permit us to derive much of the data required by the Statute and the Act as described in § 250.80. We specify this minimum, in part, to support the proposed submission of a sample of unaggregated case record data. However, we believe this approach will also assist States to record some of the minimum data necessary to operate the JOBS program effectively. States may add additional data elements they deem appropriate for these purposes as long as the Federal requirements are met.

In addition to the inclusion of limited outcomes data described in § 250.80, we have amended the content of the minimally required data where, upon analysis, we found that data required by provisions of the Statute could not be derived from the data set as originally described. For instance, we had not originally included the date of birth of the youngest child; this has been added to enable capturing one of the target group populations specified in the Act. We have also added an identifier to indicate that the individual satisfactorily participated in the JOBS program, as described in § 250.78(b)(5). The case record data section has been renumbered; the new identifier is at § 250.82(b)(12).

Comment: A few States commented that it seems infeasible to record the data only for the sample of cases, since it would not be known in advance which cases would be in the sample. These States suggested that the data be recorded for all cases.

Response: We agree that it will not be known in advance which cases will be in the sample, and that data should be recorded for all cases. However, the determination that an individual has satisfactorily participated for participation rate purposes, in accordance with § 250.78(b)(5), cannot be made until the end of the month, since the number of hours of actual attendance will not be known until the end of the month. Therefore, a State may choose to collect this data only on sample cases.

Comment: A number of commenters suggested additions or clarifications to the items proposed. These suggestions included: the addition of a code for applicant status and the addition of a code for sanction.

Response: Applicant status was a separate element in the NPRM and is included in program status in the final regulations. We have removed several proposed fields and added fields in which to code the starting and ending dates for pre-component activity, component activity, and job entry. We have not included a data element for sanction since sanctioned individuals are not included in any calculation.

Comment: A few commenters suggested the addition of codes for various demographics.

Response: The regulations at § 250.82 require some demographic data to be coded as part of the case record data. We expect that any additional demographic data that from time to time may be required will be available from the IV–A data base if they are not part of a State's JOBS data base.

Comment: A few commenters requested clarification of whether the establishment of a literacy level, particularly through testing, was effectively required by the presence of a data element.

Response: We have clarified in the final regulations that testing is optional, but that where the State elects that option, the recording of the result in the case record is required.

Comment: Several commenters requested clarification of how to deal with persons entering a component in mid-month, and how to record persons scheduled for more than one component or activity at a time.

Response: We have amended the regulations to provide for the beginning and ending dates of participation in pre-component activity and components, which will allow for consideration of partial month participation. Once the methodology for computing credit for partial month participation is developed, it will be disseminated in an Action Transmittal.

Comment: Several States commented that both Federal and State interests in the JOBS program would be well served by State involvement in the development and refinement of the actual data element definitions and reporting instructions and manuals.

Response: We fully agree. We have initiated steps to form working groups both for design and content specifications for JAS modules, and for data element definitions and reporting instructions. We will also involve State staff in the design and specifications for electronic transfer of data from the States to the Department.

Child Care Reporting

We received a number of comments about the uniform reporting requirements for child care (found at § 255.6). We decided to answer them here because of the substantial overlap between the JOBS and supportive services systems.

Comment: Two commenters requested clarification of specific child care data items, such as a definition of "length of time assisted." One suggested that "types" of family be defined to mean whether the family was receiving cash assistance or not.

Response: We do not believe it appropriate to specify the child care data reporting requirements in more detail under regulations. Because these requirements under the Statute are much less extensive and detailed than the JOBS requirements, we do not see the need for the same type of elaborate data collection system as is needed for meeting the JOBS requirements. Therefore, the regulations at Part 255 are much less detailed. Furthermore, the level of detail suggested by the commenters (i.e., in terms of precisely defining data elements) is more appropriate to include in reporting instructions, and we are taking these comments into consideration in developing instructions.

In specifying the types of families for which data will be collected, consistency with the JOBS reporting requirements and the potential burden on States will be primary considerations. However, by law, we must collect data that distinguish between recipients and non-recipients, as well as between those who have earnings and those who do not have earnings.

Comment: Two commenters wanted us to require States to report or document additional child care information, such as receipt of transitional benefits; reasons for non-receipt of child care or other services; dates when specific information was provided and specific services were received; numbers requesting or needing services; numbers not receiving services; number of children receiving care, by age of child and type of care; amounts spent by type; and methods used to provide care.

Response: We have amended the regulations at § 250.82 to include some of these data in the requirements for the JOBS case record. The additions include information on receipt of child care and other supportive services. The value of data on reason for non-receipt of care has been substantially reduced because of the changes to Part 255 regarding requirements to provide child care and supportive services. The Supportive Services plan will provide information on the methods used to provide services, and local market rates will provide information on costs for different types of child care.

Consistent with our approach under JOBS, and in the interest of limiting the reporting burden on States, we tried not to go substantially beyond the child care reporting requirements specified in the Statute. However, we did decide to add one additional item —"type of paid child care arrangements." This information will be especially helpful in showing how States are implementing the new child care provisions. The amendment is incorporated in § 255.6.

Comment: One State opposed the requirement for documentation of child care data in the case record because such data is not related to the AFDC budget. It argued that data sufficient to establish an audit trail should be sufficient.

Response: Information sufficient to establish an audit trail is required for financial purposes. However, that information does not address the specific uniform reporting requirements at section 403(e) of the Act. Also, the argument of relationship to the AFDC budget is not relevant. Normally, child care assistance information would not be part the AFDC case record; rather, it would be part of the JOBS case record or separate IV–A records on child care.

Comment: Two States wanted us to delay reporting requirements. One suggested that individual-based data not be required immediately. Rather, it wanted States to be allowed to include in their Supportive Services plan a description of what data were available, together with its expectations about dates when all reporting requirements would be met.

Response: The Statute does not provide delayed effective dates for the reporting provisions. However, we recognize that many States will need time to set up automated systems which will be capable of providing detailed case record information. Therefore, we have developed interim reporting forms, based on specific statutory requirements, which will be in effect upon OMB approval until more elaborate systems can be put into place.

Comment: One commenter wanted us to specify that reporting of transitional child care assistance would cover only State contributions, and not recipient contributions.

Response: Assistance will be defined more specifically in the reporting instructions. Of course, our primary interest lies in child care assistance actually paid by the State IV–A agency. However, we also need information on recipient contributions paid directly to the State because such contributions could require adjustments to claims for Federal matching. Furthermore, as we indicate in our discussions about fee payment systems in the preamble to Part 256, the State must monitor and enforce contributions due directly to providers. If our experience with these requirements indicates that such data would be necessary for the proper administration of the program, requirements may be established in the future.

Subpart J—Operation of Jobs Programs by Indian Tribes and Alaska Native Organizations

Scope and Purpose (§ 250.90 of the Final Regulations)

The Statute provides that Indian Tribes and Alaska Native organizations may apply to the Secretary by April 13, 1989 for direct funding to conduct a JOBS program. Tribal (refers to both Indian Tribes and Alaska Native organizations) groups had to apply by this date in order to receive direct JOBS funding in any future year.

The Department issued initial application guidelines (FSA–AT–89–11) on February 24, 1989, to officials of federally recognized Indian Tribes and Alaska Native organizations. Based on comments received from Tribal leaders, requesting that the April 13, 1989 application not be treated as a final document, and on the fact that we were still developing Federal policy at the time these guidelines were issued, we advised Tribal applicants that we would not disapprove their applications based on their initial submittal. We issued further guidelines (FSA–AT–89–14) on April 27, 1989 to specify final documentation required in order to permit Tribal grantees to begin their JOBS programs prior to the issuance of final regulations.

Eligible Indian Tribe and Alaska Native Organization Grantees (§ 250.91 of the Final Regulations)

The regulations clarify the general eligibility requirements of the Act concerning Indian Tribes. They reflect congressional intent that an Indian Tribe must be recognized by the Federal Government as eligible to receive services from the Bureau of Indian Affairs (BIA) in order to be eligible for the JOBS program. Specifically, Report 100–37 of the Senate Committee on Finance (p. 39) states that "* * * an Indian tribe is any tribe, band, nation, or other organized group or community of Indians * * * that is recognized by the Federal government as eligible for services from the Bureau of Indian Affairs and is located on a reservation * * *."

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In addition, consortia or Tribal organizations representing eligible Tribes may operate a JOBS program if they meet certain conditions. These conditions provide that such consortia or organizations have the managerial and administrative capacity to operate the program and have received documented authority from the participating Tribes to conduct the program on their behalf.

Comment: Three commenters stated that a consortium should not be unnecessarily limited by "geographic proximity." They proposed that we should take into account similar governmental status, organizational structure, population characteristics and existing consortium arrangements. One State advised that it has Tribal consortia for Administration of Aging programs, WIC nutrition programs and JTPA that are not based on contiguous geographic boundaries and have a long history of operating very effectively.

Response: The regulations do not limit a consortium or Tribe to operating a JOBS program on behalf of eligible Tribes which are geographically contiguous to each other. We will take into account existing consortium arrangements. By requiring geographic proximity, we intend to preclude consortia from forming to serve Tribes that are scattered throughout the country.

Selection Criteria for Eligible Alaska Native Organizations (§ 250.92 of the Final Regulations)

The Act is very specific about the program eligibility of Alaska Native organizations. It limits Departmental approval to only one application from an Alaska Native organization for each of the 12 geographical regions. These regulations establish criteria which the Department will use to designate the Alaska Native organization grantee. The criteria are very similar to those used by JTPA in designating Native American grantees for its program. However, since under the JOBS program the Alaska Native grantee must serve all eligible Native Alaskans residing in the region in which the grantee is located, we have specifically required that the grantee demonstrate either that it has previous experience in operating regionwide programs or that it can establish the capability to effectively administer the program throughout the region.

Funding Formula (§ 250.93 of the Final Regulations)

The Act specifies that JOBS funding for an Indian Tribe is based on the number of adult members of the Tribe receiving AFDC compared to the total number of adult AFDC recipients in the State. The formula for Alaska Native organizations is based on the number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the Alaska Native organization represents compared to the total number of adult AFDC recipients in the State of Alaska.

Since the Act does not establish a designated geographical service area for Tribes, as it does for Alaska Native organizations, the regulations define such an area. The Tribe will receive JOBS funds based on the number of adult members of the Tribe receiving AFDC who reside in the designated service area as compared to the total number of adult AFDC recipients in the State. As defined, the designated area creates a manageable program service area which includes Tribal members who could realistically be served by the Tribe. The State IV–A agency will be expected to provide JOBS services to Tribal recipients outside of the designated area. A designated service area concept is used in various other programs such as JTPA, the Community Services Block Grant and those under the BIA.

The State IV–A agency and Tribes or organizations have a mutual responsibility to share all available information so a funding level can be calculated. Accordingly, the regulations specify that the State IV–A agency and the Tribe or organization must exchange available information on adult Tribal AFDC recipients needed to determine the estimated number of the eligible Tribal recipients and to define the designated service area, if other than the reservation or trust lands, as appropriate. This requirement reflects the fact that the State IV–A agency is the most appropriate source of data relating to AFDC recipient status. However, many State IV–A agencies cannot identify individuals in their caseload by Tribal affiliation and thus will probably need membership or residence information from Tribes or organizations to verify Tribal AFDC recipient status.

We recognize that the State IV–A agency and Indian Tribes or Alaska Native organizations may have difficulty developing data on adult Tribal AFDC recipients, especially using the definition of adult recipient contained in the Act (i.e., an individual other than a dependent child, including a minor custodial parent of another dependent child, who is receiving AFDC).

Because of these data deficiencies, we strongly encourage Indian Tribes or Alaska Native organizations and State IV–A agency to enter into agreements which establish population estimates, as well as service area definitions, as appropriate. If a State IV–A agency and Tribe or organization cannot agree on the number of Tribal eligible recipients or the designated service area, the Department will, in consultation with the Tribe or organization and the State IV–A agency, make the final determination.

Non-Tribal recipients in a designated area are subject to the requirements of the State's JOBS program. However, a State IV–A agency may through contract (or other referral arrangement) authorize an Indian Tribe grantee to serve non-Tribal members residing in the designated service area. The State IV–A agency may only delegate to an Indian Tribe grantee those functions which do not involve agency discretionary judgment, as discussed in § 250.10 and related sections of the preamble.

Comment: Several commenters proposed that we use the current definition and procedures contained in the BIA regulations at 25 CFR 20.1(r) which define "near reservation." Another commenter asked that we define "reasonably accessible" as it is used in § 250.93(a)(1) which defines designated service area. In this regard, questions were raised as to whether a Tribe can exclude from the designated service area a portion of the reservation and whether Tribes can redefine the service area at a later date.

Response: We have amended the regulations to specify that the designated service area can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). We chose this definition because the BIA service areas are well established and recognized by other Federal programs and States and Tribes, and we believe that it is an acceptable standard for JOBS purposes. We have further revised the regulations to allow a Tribe to exclude from its designated service area a portion of the reservation which is remote from that part of the reservation where JOBS services are provided. This will permit greater participation in JOBS by Tribal members living in the excluded area of the reservation to whom a State JOBS program is available. A Tribe may redefine the designated service area by submitting an amendment to the application as provided at § 250.97(d).

Comment: A number of commenters proposed that regulations at § 250.93(a)(1) which describe the JOBS funding formula be changed from "the number of adult members of the Indian Tribe" to "the number of Native American adults." This would permit Tribes or organizations to serve all Indians receiving AFDC and living in the designated service area. One State that commented suggested that this would be better than contracting with the Tribe to serve non-Tribal members because of the necessity of running two different programs. Furthermore, it would be consistent with the approach taken by JTPA and BIA Tribally-contracted programs. Another commenter stated that there was nothing in the regulations which specifies that a State agency may contract with a Tribe to serve non-Tribal members.

Response: The Secretary has no authority to provide direct funding to a Tribe on behalf of an individual who is not a member of the Tribe. The statutory language and legislative history specify that the amount of funds provided to an Indian Tribe or Alaska Native organization is based on the "number of adult recipients of such tribe" receiving AFDC. However, we have defined Tribal member in the regulations at § 250.93(a)(3) to mean a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization. Under regulations at § 250.13, however, States may through contract (or other referral arrangement) authorize a Tribal grantee to provide services under JOBS to non-Tribal members living in the designated service area. Also, the Tribe can serve non-Tribal members on a voluntary basis.

Comment: One commenter asked whether AFDC applicants and recipients can be required as a condition of eligibility to provide Tribal status on their applications.

Response: We are amending § 250.93 to provide that a State in which there is a Tribal JOBS program in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under certain conditions.

There are programmatic reasons why this is necessary. However, in order that the State IV–A agency exercise care in requesting this information, Tribal status may only be required under the following conditions: (1) the information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program; (2) upon requesting Tribal status, the State must explain the reason this information is requested and refer an individual who is a Tribal member to the Tribal JOBS program for further information; and (3) such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where State JOBS programs are also in operation; and (4) the information requested must relate only to membership in those Indian Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

Comment: One commenter was concerned that if the State serves or contracts with the Tribe to serve non-Tribal members it would create the potential for inequitable treatment because of the variation in the two programs. The commenter asked whether the State would be liable for deficiencies if the State program requirements were not met.

Response: While the State may contract with the Tribe or organization to serve non-Tribal members, the State is not required to ensure identical services to non-Tribal members living in the designated service area. However, the State must assure that the services provided through the Tribal program are appropriate in terms of the assigned individual's assessment and employability plan. If a State contracts with the Tribe or organization to serve non-Tribal members, it may limit the contract to the same services as are provided for Tribal members but it must retain responsibility for ensuring that the Tribe or organization fulfill the terms of the contract. Any differences in program services should be identified in the State plan.

Comment: One commenter asked whether a member of a Tribe that administers a JOBS program is considered a non-Tribal member if the individual lives on a reservation with another Tribe. The commenter also asked whether, if a Tribe serves non-Tribal members, through a contract with the State or on a voluntary basis, the Tribe is required to report activities subject to Federal reporting requirements to the State.

Response: Section 250.93 of the regulations provides that a Tribal grantee's share of program funds is based on the "number of adult members of the Indian Tribe receiving AFDC who live in the designated service area." This means that a Tribe may not receive direct funding on behalf of an AFDC recipient who resides outside his or her Tribe's designated service area regardless of the fact that he or she lives on a reservation with another Tribe who has also implemented JOBS. If a Tribe agrees to serve non-Tribal members in its designated service area based on a contract with the State, the Tribe will be required to report to the State information on activities subject to Federal reporting requirements.

Comment: Several commenters suggested that an Indian AFDC recipient living in areas served by both a State program and a Tribal program should be able to choose the program in which he or she will participate as is permitted in some other Federal programs. Two of the commenters proposed that if a Tribal member chooses a State JOBS program, the funding should transfer to the State. One commenter asked that we clarify whether a Tribal JOBS program has the power under § 250.93(a)(1) and § 250.95(e) to require all its Tribal members to be served only through its program rather than through a State program.

Response: When an Indian Tribe or Alaska Native organization opts to implement a JOBS program, the Tribal allocation of Federal funds, as specified in § 250.93(a)(1), is based on the number of adult members of the Tribe who are AFDC recipients residing in the Tribe's designated service area. This amount reduces the allotment of the State in which the Tribe or organization is located. The JOBS funding formula does not provide for funds to be diverted from the Tribe to the State where Tribal members' living in the designated service area participate in the State JOBS program. Therefore, a State is not required to provide services under JOBS to Tribal members living in the designated service area. While a State may serve Tribal members who wish to participate in a State program, using the State's share of JOBS funds, the Tribe may require that a Tribal member living in the designated service area participate in the Tribal JOBS program rather than the State program.

Comment: Several commenters supported the waiver of matching funds requirements for Tribal governments as a condition of receiving Federal JOBS funds. However, they believe this creates an inequity because funds provided to serve Indian JOBS participants will be based on a smaller per capita amount than non-Indian JOBS participants. They asked this inequity be resolved through enhanced Federal funds for Tribal JOBS programs. Other commenters stated that the allocation to the Tribe should not be in any way dependent upon the amount of funds appropriated by a State legislature.

Response: The funding formula is prescribed by Statute. Enhanced Federal funding for a Tribal JOBS program would be inconsistent with the Statute. Action by a State legislature has no

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effect on the amount of funding for a Tribal JOBS program, since only Federal funds are involved.

Comment: One commenter proposed that the regulations should require that Tribes operating programs in a multi-State environment develop programs which will ensure that Tribal members living in a given State derive benefits and services in direct proportion to the funds granted to the Tribe from that State's allocation. This would avoid situations where multi-state funds granted to a Tribe are not spent equitably in various States.

Response: The funding formula established by the Statute does not require a Tribe or consortium operating a JOBS program in several States to target those funds proportionately. A regulatory provision to require proportionate spending would take flexibility away from a Tribe or consortium to design the most effective JOBS program for all of its members.

Comment: Some commenters suggested that § 250.80 and § 250.82 with respect to data collection are not necessarily the most appropriate for Tribal JOBS programs. They suggested that we work with Tribal groups to design reporting requirements and systems suitable for JOBS which build upon systems already in place for similar job training and social services activities such as JTPA. Several of the commenters suggested that we not require submission of participant information in electronic form as many Tribal systems are not currently designed to meet such a requirement, and the limited number of participants would make such electronic submission inappropriate for most, if not all, Tribal programs.

Response: We agree § 250.80 and § 250.82 relating to data collection are not necessarily appropriate for Tribal JOBS programs. Therefore, we are amending § 250.96 to include waivers of these provisions. We expect to issue an Action Transmittal following publication of these regulations which will address the reporting requirements for Tribal grantees.

Comment: Several commenters recommended that States modify their data systems to collect information on Indian recipients by reservation, Tribal affiliation, residence and county, since 127 Tribes and organizations have applied for direct funding nationwide.

Response: We do not anticipate that it will be necessary to require a State to collect information on Indian recipients by reservation, etc. Under § 250.93, a State has the option to require disclosure of Tribal membership as a condition of eligibility for AFDC. We believe that Tribes and the State IV–A agency should be able to work out data collection under a cooperative agreement. We will revisit the issue if this becomes a problem.

Comment: Regulations at § 250.12(e) require a State to exchange certain information with an eligible Indian Tribe or Alaska Native organization interested in conducting a separate JOBS program. One commenter suggested that this provision should be revised to make clear States must coordinate and exchange information with all Tribes, not just those operating a program funded by HHS. Therefore, the commenter suggests that we delete "interested in conducting a separate JOBS program under § 250.91."

Response: Sections 250.12(e) and 250.93 require that the State IV–A agency and Indian Tribes or Alaska Native organizations exchange information pertaining to implementation of JOBS. The State is required to assure coordination of JOBS program services, including child care pursuant to § 255.3(h) of the regulations, with related services provided by other agencies, including Tribal agencies operating programs under Departments other than HHS. We have no authority to require a State to coordinate and exchange information with all Tribes for purposes other than JOBS.

Program Administration, Implementation and Operations (§ 250.94 of the Final Regulations)

Program Administration

Under the final regulations, the Tribe or organization must designate an administrative entity, such as the social services agency or the Tribal JTPA agency, to be responsible for the administration of the JOBS program. This responsibility for program administration includes all the requirements under the Act, unless waived under § 250.96, as well as applicable requirements under all other related Federal regulations. Such regulations include the general funding provisions under part 92 which are generally applicable to Tribal administration of Federal programs (as reflected in § 250.13 and § 250.77 of the regulations) and the joint Department of Health and Human Services/Department of Labor regulations at Part 251 which cover worker's issues such as working conditions and displacement.

The responsibility to administer JOBS means that the Tribe or organization must maintain overall responsibility for the design and operation of the program. However, final regulations at § 250.10 permit Tribes or organizations to delegate some JOBS functions and activities which involve decision-making with regard to individual participants to entities other than the Tribal agency designated to operate JOBS, e.g. assessment, priority determinations, provision of component services, case management and conciliation. This is permissible so long as there are specific rules and regulations issued by the Tribal agency governing their implementation. Such entities must not have the authority to review, change, or otherwise substitute their judgment for that of the Tribal agency. Certain functions, such as determining exemption status, determining whether to sanction a participant, and holding hearings must be performed by the designated Tribal agency unless a waiver under § 250.96 is granted. However, final regulations clarify that certain other related functions, such as imposition of sanctions, are retained by the State IV–A agency based on its responsibility to administer the IV–A program. For instance, if the Tribe or organization determines that an individual has failed to meet participation requirements, the State IV–A agency is responsible for making the necessary AFDC payment changes, after the individual is afforded appropriate due process.

Part 255 requires that the State IV–A agency (which receives matching Federal funds under title III of the Statute to guarantee child care for JOBS participants) provide necessary child care for Tribal participants either directly or through contract with the Tribe or organization. Also, under Part 256 the State IV–A agency is responsible for transitional child care benefits. Because of these interrelated functions, we encourage the State IV–A agency and Tribal grantees to enter into agreements to develop the referral and operating procedures necessary for effective program implementation.

Comment: One commenter requested that the IV–A agency retain the responsibility for determining whether Tribal AFDC recipients are subject to participation in JOBS. Giving Tribal grantees the responsibility will require that Tribal JOBS programs set up and maintain a client tracking mechanism to determine when changes, such as birthdays, change in school attendance, birth of a child, etc., occur which would change status. While AFDC eligibility systems and procedures are currently set up to perform these functions, they are not set up to give notice to Tribes when such changes occur. Another commenter suggested that it will be extremely difficult to verify both IV–A eligibility and JOBS participation when two organizations administer the program.

Response: Section 250.94(a)(3) specifies that the Tribal agency designated to administer JOBS may not delegate or contract out any functions which involve agency discretion, except as provided in § 250.10, such as program participation requirements and determining who should participate. Therefore, the Tribal agency must define exemption and participation criteria and must retain the final responsibility for determining whether, in fact, a Tribal AFDC recipient is subject to participation in the Tribal program. However, this does not preclude the Tribe or organization from arranging with the State to maintain a tracking mechanism for identifying status changes and to notify either the Tribe or organization or the Tribal AFDC recipients. We encourage States to alter their computer systems to provide such support. FFP will be available under title IV–F for that portion of the system. States need not, however, verify Tribal JOBS participation.

Comment: A commenter asked whether a Tribal member who is sanctioned for failure to participate may appeal the sanction to the State IV–A agency.

Response: No. It is the Tribal grantee's decision whether or not an individual should be sanctioned. This decision cannot be overturned by the State. However, the State IV–A agency retains the function of imposing the sanction and is responsible for making the necessary payment changes after the individual has been provided due process. The individual can appeal the amount of the reduction to the State IV–A agency.

Comment: A commenter suggested that we include in the final regulations a processing time for a State to impose a sanction following notification from the Tribe or organization. The commenter suggested that 45 days would be a reasonable processing time in order to provide time for notifying the AFDC recipient of the sanction.

Response: The State IV–A agency is responsible for imposing the sanction following notification by the Tribe or organization. We believe that we should not prescribe a specific timeframe for the State to effect the sanction. The State should have flexibility to establish a reasonable time limit.

Comment: Some commenters proposed that Tribes and Alaska Native organizations be permitted to use existing participant grievance procedures, such as JTPA, rather than be required to establish a separate process. Another commenter asked that we permit simplified procedures suitable to the size of the Tribe's program to avoid placing excessive administrative burdens on small Tribes.

Response: Tribes or organizations may apply under § 250.96(b) for a waiver of the requirement that the Tribal JOBS agency conduct the hearing, in order to use existing participant grievance procedures. The Tribe or organization must document that it is inappropriate for the Tribal JOBS agency to conduct the hearing, given the size of the Tribal JOBS program, and that the alternative procedure to resolve JOBS disputes meets the due process requirements of *Goldberg v. Kelly.*

Implementation

The regulations permit the Tribe or organization to begin its JOBS program before the State implements its program. This provision reflects the sovereignty of the Tribe or organization to operate its program to the full extent allowable under the Act. The requirement at § 255.2(f) for the State IV–A agency to guarantee child care necessary for Tribal members' participation is not effective prior to the State implementation date. However, this section (§ 250.94) of the regulations provides options to permit a Tribe or organization to conduct its program prior to the State's implementation. During the period prior to the State's implementation of the program, these options permit the Tribe or organization to either guarantee necessary child care for its participants or to operate its program on an entirely voluntary basis. These provisions are discussed in detail in § 250.95 and accompanying preamble concerning supportive services.

Also, to provide sufficient opportunity for the Secretary's review and approval, the regulations and the initial application guidelines (FSA–AT–89–11 and 14) require that the Tribe or organization submit its application with final documentation to the Department at least 45 days prior to implementation. Similar to the requirements for the State IV–A agency at § 250.20(b), the regulations provide that the Tribe or organization may not begin its JOBS program prior to approval by the Secretary. Prior approval is necessary given the complexity of the program, the needed interface which must occur between the Tribal applicant and the IV–A agency, and the fact that Tribal programs represent a whole new direction for welfare work programs.

Comment: Two commenters suggested that Tribes should be given greater flexibility on start dates for Tribal programs. They should be allowed to start their JOBS program on the first day of any month, and should not be limited to starting their programs on the first day of any quarter. Furthermore, the commenters stated that there should be flexibility for starting a JOBS program later than October 1, 1990 to allow for State/Tribal coordination, especially if a State does not intend to start the State JOBS program until October 1, 1990. Also, the commenters proposed that Tribes be given their entire fiscal year allocation regardless of the quarter in which they start and that they be permitted to carry over funds for two years such as is permitted with title IV–B programs and Indian Self-determination Act contracts.

Response: Section 204 of the Statute specifies that States must implement a JOBS program by October 1, 1990. The Statute also provides that should a State choose to implement JOBS sooner, it must do so on the first day of any calendar quarter prior to October 1, 1990. We read the Act, including this section, to apply to Tribal grantees as well. There is no basis for a waiver of this section. Furthermore, since section 204(b)(2) of the Statute requires that funding be proportional to the quarters the program is in operation in a given fiscal year, there is no basis for funding the JOBS program for the entire year when the program is in operation for less than four quarters. With regard to the comments on carrying over funds, see comments and responses under § 250.70.

Comment: Two commenters stated that Tribal governments should be able to use a Tribal council resolution of approval for the final JOBS application as an indication of community support for the program, consistent with the requirements for contract applications under the Indian Self-Determination Act. The commenters believe, for such small amounts of funds the regulations at § 250.94(d)(1)(ii), which require Tribes to hold extraordinary community comment procedures, are burdensome.

Response: Section 483(a)(2) of the Act specifies that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. The regulations only require a 30-day comment period for Tribal grantees. We choose not to waive this requirement, because we believe that public participation is an important indication of community support. We do not believe that the comment procedures are burdensome inasmuch as the requirement can be satisfied through public announcements.

Comment: Several commenters contend that the regulations at

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§§ 250.94(d)(3), (4), (5) and (6) require extensive consultation with other entities. They propose that rather than requiring documentation of such consultation, the Tribe or organization should be allowed to use a check-off form that indicates that there has been consultation with the appropriate entities. The commenters also suggested that the words "required to consult" be changed to "encouraged to consult," because consultation may not always be available given conflicting schedules. Furthermore, since Tribal and Navajo private industry councils that exist in Arizona are unique intergovernmental arrangements that do not exist in other States, regulatory language should be changed to permit alternate sources for obtaining required consultation.

Response: The regulations require extensive consultation in order to prevent duplication of services and to assure that other program services are available to JOBS participants. The regulations do not, however, require that the Tribal grantee submit formal documentation of each discussion it has with an organization identified in § 250.94(d) (4), (5), and (6). Section 250.94(d)(6) provides that the Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate. Therefore, if such councils do not exist, Tribal grantees should consult with alternate sources.

Operations

This section of the regulations exempts Tribes and organizations from the requirements of § 250.12 in order to specify appropriate coordination requirements for Tribal grantees. Under this section, the Tribe or organization is required to provide its application to the State IV–A agency prior to its submittal to the Department. This is to ensure that necessary interface with the State IV–A agency has been established, including the development of agreements or methodologies, to assure that Tribal recipients receive equitable treatment under both the AFDC and JOBS programs.

The regulations also indicate the appropriate agencies and programs with which the Tribe or organization must coordinate. The coordination requirements reflect congressional concern that agencies administering JOBS identify available resources from other programs in order to prevent duplication of services, to assure that the maximum level of services is available to participants, and to ensure that costs of these other program services for which welfare recipients have been eligible are not shifted to the JOBS program. This latter provision is closely related to the provisions on maintenance of effort, which are described in § 250.98 and preamble.

Furthermore, although Tribal grantees are subject to § 250.44, which covers mandatory components, they are not subject to § 250.45, which covers optional components. Instead, § 250.94(e) requires Tribal JOBS programs to include four mandatory components and at least one optional component. The following program design modification is expected to more realistically reflect the special circumstances and needs of Tribal grantees.

Because the four mandatory components cover basic education, training and employment activities, many of which should be available to Tribal participants through other program resources, we believe that most Tribal programs should be able to offer all four components. For example, many literacy programs should be available to Tribal recipients through the Office of Indian Education and, thus, would not be funded under JOBS.

The Tribal program need include only one optional component. Of the four options given to States, two components—community work experience program (CWEP) and the work supplementation program—are integrally linked with AFDC recipient grants. Thus, the final regulations require that adequate operational agreements be worked out between the State IV–A agency and Tribal grantee before the Department can approve these components.

A Tribe is permitted to include, as an optional component, a work experience program as approved by the Secretary or alternative education, training, and employment activities as approved by the Secretary. We would approve, for example, an alternative work experience program which generally meets the requirements of a CWEP, JTPA, or BIA work experience program. Tribes or organizations are cautioned that in order to receive approval of alternative education, training and employment activities, such approaches must be consistent with the purpose of the JOBS program to reduce welfare dependency and must serve only eligible AFDC recipients. Thus, if JOBS is linked with another program such as JTPA, a Tribal grantee must be able to validate that JOBS funds were used only to serve Tribal JOBS participants. These stipulations are necessary to protect the integrity of the program. Based on congressional concern as well as our careful consideration, the regulations further require that JOBS funds not be used for public service employment or for allowances.

Comment: Two commenters proposed that job search activities should not be required for a minimum of 20 hours per week, because such activities are not appropriate in a situation where there are few employers and limited job openings. Many reservations are located in rural areas where there are few jobs available.

Response: The regulations at § 250.78, which define participation, were never intended to prevent States, or Tribes or organizations, from requiring job search for less than 20 hours per week. Furthermore, participation requirements are waived for Tribes or organizations under § 250.96(a)(13). Therefore, tribes or organizations may, require that a participant perform job search activities for less than 20 hours per week.

Comment: Most of the Tribal organizations that commented objected to the language at § 250.94(d)(1)(i), which requires the Tribe or organization to submit applications to the State IV–A agency for "review and comment." The commenters believed that this creates a negative precedent for State intervention in Tribal/Federal relations. The commenters proposed that the words "review and comment" be deleted and suggested that the words be replaced with "for purposes of exchanging information and achieving appropriate coordination." Another commenter objected to the use of the word "resolved" in the requirement at § 250.97(b) to submit plans to States and Tribal members for review and comment.

Response: We disagree that the use of the words, "review and comment" permits State intervention in Tribal/Federal relations. Nor is it our intent that the review and comment process impinge upon Tribal sovereignty or the government-to-government relationship between Tribes and the Federal government. The regulations at § 250.20(c)(2) also require the State IV–A agency to make the State JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations for review and comment. In both cases, this means that the State or Tribal grantee must consider the comments offered in the same way it considers comments from the public. Section 250.97(b) requires that the Tribe or organization resolve all comments received at the Tribal level in the same way that § 250.20(c)(2) provides that the State shall resolve all comments at the State level. This means only that the Tribe or organization decides whether or not to change the application as a result of the comments.

Comment: Several commenters suggested that we allow Tribal programs to make incentive payments to JOBS participants as are currently used in connection with Tribal Work Experience Program (TWEP) participants. The commenters were concerned that JOBS participants would be treated inequitably relative to TWEP participants.

Response: There is no basis in the Statute or legislative history for making incentive payments using JOBS funds to AFDC recipients to participate in JOBS. Furthermore, any such payment made by a Tribal organization would have to be counted as income in determining the amount of the AFDC payment, i.e., the amount of the incentive payment would reduce the AFDC payment accordingly.

Comment: Regulations at § 250.94(d)(6) require a Tribe or organization to ensure that JOBS funds are used to provide training only for the types of jobs that are currently available or are likely to become available. Two commenters stated that since there are not always accurate labor market projections, the lack of such documentation should not be used as an obstacle to approving a JOBS application. They suggested that BIA labor force estimates, which do not indicate employment by type of jobs, be sufficient for planning purposes if no other data are available.

Response: The objective of the JOBS program is to provide training, education, job placement and employment to end welfare dependency. Therefore, it is important for Indian Tribes and Alaska Native organizations to consult with other organizations to identify and obtain advice on the types of jobs that are available within a reasonable distance of the reservation. When there are limited employment opportunities available, it is important that there be a plan as to how the education and training will make the JOBS participants self-sufficient. The labor force estimates published by BIA report the labor force status of Indians living on and adjacent to reservations, e.g., the number of Indians employed, unable to work, etc. This report does not provide any guidance as to types of jobs currently available or likely to become available. We will not disapprove an application solely on the basis that accurate projections or relevant statistical data are not available but will work with the Tribe or organization to assure that resources are expended consistent with the objectives of the program.

Comment: Section 250.94(e) states Tribal programs are not subject to the requirements of § 250.45, but paragraph (e)(2) specifies that Tribal programs must include at least one of the optional components unless a Tribe can provide justification that such activities are inappropriate. Two of the commenters found this misleading and suggested that it be reworded to say that Tribes "are not subject to requirements of § 250.45 but that Tribes may participate at their option."

Response: The commenter's interpretation of this point is incorrect. All of the optional components specified in § 250.45 for States are also included in § 250.94(e) for Tribes and organizations. However, the former requires that a State JOBS program include at least two of the components which are identified. Section 250.94(e)(2), on the other hand, specifies that Tribal programs are required only to include one optional component in their JOBS program and lists some alternatives in addition to those identified in § 250.45. Tribes or organizations must include one of the optional components or seek a waiver under § 250.96 on the basis that such activities are inappropriate.

Comment: One commenter proposed that the regulations at § 250.94(e)(2)(v)(B) be changed to permit JOBS funds to be used for public service employment as defined by the Tribal Government. Two other commenters suggested that we define "public service employment." Specifically, they wish to know what is the difference between non-allowable public service employment and allowable public sector placements for WSP and CWEP. They are concerned that the majority of reservation-based employment is through Tribal and Federal governments.

Response: By public service employment we mean a fully subsidized job in a public agency. The regulations do not preclude JOBS funds from being used to place Tribal members in jobs with Tribal, State, or Federal governments. What it does preclude is filling or establishing a job slot and fully reimbursing the employer for the salary paid to the JOBS participant.

Comment: Section 250.94(e)(3) provides that a Tribe or organization may operate WSP or CWEP only if adequate agreements with the State IV–A agency are implemented. Two commenters suggested that these agreements should be worked out using employer OJT contract formats currently used by Tribal JTPA and other programs. They proposed that the regulations should not require a formal State/Tribal intergovernmental agreement nor should an agreement be required as part of the Tribal JOBS application. Another commenter, however, suggested that the scope of agreements should be broadened. The agreements should cover any program function that is interrelated between the State's IV–A program and a Tribe's JOBS program, e.g., eligibility notifications, dispute resolution and hearings, imposition of sanctions, etc. The commenter suggested we should not prescribe specific terms of such agreements but should permit them to be tailored to the needs of both the Tribes and local IV–A agency offices.

Response: Because the CWEP and WSP programs are integrally linked with the AFDC recipient grants, it is mandatory that adequate operational agreements be worked out between the State IV–A agency and the Tribal grantee. The regulations do not define the format nor do they require that the agreement be submitted as part of the application.

However, the Tribal grantee must assure that such agreements exist. We do not believe, however, that it is necessary to require operational agreements to cover all phases of State/Tribal interface. It is best left to the State and Tribes or organizations to decide when this is necessary.

Supportive Services (§ 250.95 of the Final Regulations)

Under the final regulations, the Tribal grantee must provide for the work-related supportive services, such as clothing or transportation, necessary to enable an individual to participate in the JOBS program. Tribes or organizations must follow the requirements regarding work-related supportive services under Part 255. The Tribal grantee is given flexibility to determine the types of supportive services and methods of delivery but must describe these services and methods in its application documentation pursuant to § 250.97(f)(6).

Since the State IV–A agency is required to provide child care under Part 255 of the regulations, this section requires that the Tribe or organization must ensure, based on a method which is acceptable to the Tribe or organization and the State, that necessary child care is available when requiring an individual to participate in its program. Since the State IV–A agency will be providing child care services and the Tribe or organization will be designating who participates, we strongly encourage Tribal grantee to develop with the State IV–A agency

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appropriate referral mechanisms to ensure that Tribal participants receive necessary child care services. In addition, we encourage the State IV–A agency to contract with Tribal grantees for providing child care services for Tribal participants.

The regulations at § 255.2(f) are designed to ensure that the State provides sufficient funds to meet the child care needs of Tribal participants and that the State uses comparable and appropriate methods of providing child care for Tribal participants as it uses for non-Tribal participants in the State. The Tribe or organization may guarantee child care for its participants through other program sources.

If the Tribe or organization begins its JOBS program before the State IV–A agency, the Tribal grantee can operate an entirely voluntary program. However, after the State implements its JOBS program, the Tribe or organization may no longer operate an entirely voluntary program. This provision is consistent with congressional concern, as reflected by the participation and exemption requirements in § 250.30, that individuals who are reasonably able to participate in the program, and for whom guaranteed child care is available, should be required to participate.

Comment: Two commenters suggested that we should encourage the State IV–A agency to work with all Indian job training programs, including those operated by Indian community-based organizations in off-reservations areas under Title IV of JTPA, to insure that child care services are available to AFDC recipients in all such training programs.

Response: Title IV–A funds are available to provide child care for JOBS participants and for other AFDC recipients in approved education and training. We encourage all State IV–A agencies to work with all Indian job training programs to insure that child care services guaranteed under Part 255 are available. This, of course, would include child care for a JOBS participant who is assigned to an existing Tribal job training program.

Comment: Some commenters suggested that the Secretary should exercise waiver authority and allocate Federal child care funds directly to those Tribes that opt to implement Tribally-operated child care services. One commenter believed that this would provide greater flexibility for Tribes while reducing administrative costs for both States and Tribes. Another commenter suggested that States should receive FFP for services such as child care and other required functions without a State matching requirement for the portion of Federal funds expended in services to Tribes and organizations operating JOBS. The commenter believes that this would be consistent with the intent of the Act which provides for a JOBS program and support services for Indian Tribes and organizations without requirement of matching share.

Response: While the Secretary has authority to waive requirements of section 402(a)(19) and title IV–F of the Act for Tribal programs, FFP for JOBS participants is not covered in these sections of the Act. There is no waiver authority under title IV–A to allocate Federal child care funds directly to Tribal grantees or to dispense with State matching requirements for the portion of Federal funds expended for Tribal services.

Comment: It appeared from the comments that some Tribal organizations were not clear as to responsibility for child support enforcement in relation to § 250.40(b).

Response: The requirement at § 250.40(b) has no effect on responsibility for enforcing child support orders.

Comment: One commenter stated that the definitions of "making good progress" and "making satisfactory progress" in both educational and training components refer only to standards approved by State or local agencies. The commenter proposed that the definition should be expanded to substitute approval by Tribal or Alaska Native organizations.

Response: We have revised the definition at § 250.1 to reflect this comment.

Waiver Authority (§ 250.96 of the Final Regulations)

This section indicates that certain requirements of the Act and of the regulations do not apply to Tribal grantees, as they are unique to State programs. These include provisions relating to State agency administration, the State's JOBS funding allotment and State matching requirements. Thus, these have been determined to be inappropriate for Tribal JOBS programs by the Secretary pursuant to his authority under the Act.

A Tribe or organization may also request waivers for any other requirements of section 402(a)(19) or Part F of the Act not specifically mentioned but must provide proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

Comment: Several commenters suggested that we add § 250.34 and Parts 255 and 256 to the list of waivers which the Secretary considers inappropriate for Tribal JOBS programs.

Response: Parts 255 (Supportive Services) and 256 (Transitional Child Care) are not functions subject to waiver authority. Tribes and organizations do not need waiver authority as these provisions are State, and not Tribal, requirements. While many of the provisions of § 250.34 are also State and not Tribal requirements, it would be inappropriate to waive a Tribe's or organization's responsibility for determining that an individual failed to meet participation requirements.

Application Requirements and Documentation (§ 250.97 of the Final Regulations)

The Tribal application requirements generally follow State JOBS plan requirements, which are discussed in detail in §§ 250.20 and 250.21 and related preamble.

Under the Act, Tribes and organizations had to apply to the Department by April 13, 1989, in order to conduct a JOBS program. Since we were still developing JOBS policies at the time we released guidelines for Tribal applications, we advised Tribal groups in the application notice (FSA–AT–89–11) that their April 13 submissions would probably need to be supplemented. On April 27, 1989 we provided additional guidance (FSA–AT–89–14) specifying documentation needed to supplement Tribal applications if the Tribes or organizations intended to implement a JOBS program prior to issuance of these final regulations.

We believe that the application documentation specified in this section is necessary in order to provide the Secretary with a sufficient level of information upon which to base approval. We determined that this documentation was needed, based on our review of all the requirements reflected in the Act and those required for State JOBS programs. Because of the complexity of the JOBS program requirements and the degree of program flexibility we would like to provide Tribal grantees under our waiver authority, we do not think these application requirements impose an undue administrative burden upon Tribal grantees. The application must serve as the Department's primary vehicle for assessing whether a Tribal grantee is meeting the requirements of the Act and regulations.

Comment: Several commenters considered the application and documentation requirements specified at § 250.97 administratively burdensome for the amount of funds available. They suggested that we allow Tribes to submit a simple application and allow cross-references to established administrative and program procedures and manuals without requiring these materials as attachments to their applications.

Response: We do not believe that the application and documentation requirements specified at § 250.97 are unduly burdensome. As we have indicated above, the application is the Department's vehicle for measuring whether a Tribal grantee is meeting the requirements of the Act and regulations. We do not need extensive documentation of existing administrative and program procedures. In most cases, cross references would probably satisfy the requirements. However, most of the documentation we require relates to administrative and program procedures which must be established in order to meet the requirements of JOBS.

Comment: Several commenters suggested that, if a Tribal JOBS application is disapproved, there be a process, including technical assistance, in place to assist the Tribes in addressing and correcting the deficiencies in its application. They stated further that initial disapproval should not forever disqualify a Tribe from operating a JOBS program even after October 1, 1990.

Response: We currently provide technical assistance to Tribal grantees and plan to continue to provide such assistance as necessary. The Statute provides that a Tribe or Alaska Native organization had to apply by April 13, 1989 to conduct a JOBS programs and that a JOBS program may not be implemented later than October 1, 1990. We believe there is sufficient lead time for all Tribal grantees to develop and receive approval for an application to implement JOBS by that time. Therefore, Tribes or organizations that did not apply by April 13 or have not implemented a JOBS program by October 1, 1990 are ineligible to operate a JOBS program.

Maintenance of Effort for Indian Tribes and Alaska Native Organizations (§ 250.98 of the Final Regulations)

Tribal grantees are not subject to the requirements in § 250.72. Section 250.98 sets out maintenance of effort provisions that are more appropriate for Tribal entities. The requirements on maintenance of effort reflect congressional concern that JOBS funding not be used to supplant existing funding for programs which have been available for welfare recipients.

This means that JOBS funds should be used only to provide educational, training and employment activities for Tribal participants which are in addition to those which would otherwise be available. For example, where a high school education has been available to Tribal members, JOBS funds must not be used to pay for this activity. Thus, the Tribal grantee may not contract for services which are otherwise available on a non-reimbursable basis pursuant to the regulations at § 250.13.

Comment: One commenter proposed that when the AFDC–UP program provision becomes effective, the Bureau of Indian Affairs should continue to provide general assistance under the maintenance of effort provisions of law.

Response: This Department has no authority to require BIA to continue to provide general assistance to recipients who become eligible for AFDC.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Purpose (§ 255.0 of the Final Regulations)

The purpose of these regulations is to implement section 301 of the Family Support Act of 1988.

State Plan Requirements (§ 255.1 of the Final Regulations)

Title IH of the Statute adds section 402(g) to title IV–A of the Act. Thus, child care is not part of the title IV–A plan which is covered in section 402(a) of the Act. Neither is it included in the State JOBS plan under title IV–F, which is covered in section 482(a) of the Act. In fact, section 402(g) does not address whether a plan is needed regarding the provision of supportive services. However, services provided under sections 301 and 302 of the Statute must be covered by a separate plan submitted in accordance with these regulations. Further, the State Supportive Services plan covering services under section 301 of the Statute must be submitted at the same time as the JOBS plan to ensure appropriate public and Federal review. The approval process will follow that for the State JOBS plan which is specified in § 250.20.

The State Supportive Services plan must contain information about child care services, work-related supportive services, and work-related expenses necessary for an individual to participate in JOBS or in another approved education, training, or employment activity, including a description of those services. We also are requiring that the State IV–A agency include a cross-reference to its State Supportive Services plan in its State JOBS plan to show the coordination between the two plans. The specific State Supportive Services plan requirements are contained at § 255.1. In States where Tribal entities are directly funded to operate a JOBS program, the State Supportive Services plan must include specific information on the State's provision of child care services for JOBS participants served by those Tribal entities.

Requiring a Separate Plan

Comment: We received general support for our regulations on this section. However, a few commenters suggested that we not require a separate Supportive Services plan, but require one plan which incorporated both the JOBS and Supportive Services provisions.

Response: We do not believe such an approach would be consistent with the statutory language at section 482(a)(1)(A) of the Act which requires that States establish a JOBS program under a plan which meets all the requirements of part F and section 402(a)(19), but does not mention 402(g). In a related matter, in paragraph (B) of section 482(a)(1), the Act establishes requirements for "a State plan for establishing and operating" the JOBS program. Nowhere does it provide for the inclusion of the supportive services provisions in this plan. Furthermore, while there is considerable overlap between the two plans, there are two important differences. First, except for the benefits provided in Puerto Rico, Guam, American Samoa, and the Virgin Islands under part 255, the child care benefits described under the Supportive Service plan are funded under a different source than JOBS. Secondly, eligibility for services under the Supportive Services plan extends substantially beyond JOBS participants. Thus, there are also programmatic reasons for requiring two plans.

At the same time, however, we agree with the comments about the close interrelationships between the two programs and the need for an integrated approach for dealing with them. On that basis, we require that the Supportive Services plan covering applicant and recipient services be transmitted together with the JOBS plan. Furthermore, in developing State plan preprints, we intend to develop one preprint package which would incorporate both the JOBS and Supportive Services plans. We will try to design the preprints so as to facilitate the integration of the two programs and

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to minimize the burden on the States associated with completing two plans.

Comment: One State objected to the requirement for a Supportive Services plan, given the absence of specific statutory authority.

Response: Although the title III provisions of the Statute do not explicitly mention a State plan for Supportive Services, there are at least three specific bases for requiring such a plan. First, we believe that a Supportive Services plan is a necessary adjunct to the JOBS plan, as we cannot properly assess the acceptability of a JOBS plan without information on the nature and scope of supportive services to be provided. Secondly, supportive services are matchable under section 403 of the Act which provides that payments are made to the States under approved plans. Finally, section 1102 of the Act requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act. We do not believe the Secretary could fulfill the statutory obligations under this section unless a State plan which specified how the State would meet the requirements of sections 301 and 302 of the Statute is required.

Plan Content

Comment: One commenter felt that our plan requirements were extensive and would require a lot of coordination.

Response: In drafting the plan requirements, we tried to limit the number of requirements so that they would not be too burdensome. At the same time, there was a certain minimal amount of information needed to determine whether statutory requirements were being met and to monitor the appropriateness of expenditures on supportive services.

To the extent that our requirements in this section or elsewhere entail substantial coordination with JOBS activities, the child care community and providers of related educational and supportive services, we believe they are justified, since a successful JOBS program depends on the successful provision of supportive services and the development of a coordinated, effective strategy for their delivery.

Comment: We received two comments suggesting that additional items be required in the plan—including a description of how transportation needs would be met (e.g., through advance payments or reimbursement) and more material related to the meeting of child care standards, coordination and parental access.

Response: A few of these suggested changes that would provide information helpful in determining how program requirements are being met and in achieving greater compatibility with the JOBS plan. At the same time, because we are concerned about placing unnecessary administrative burdens on the State, we did not want to add too many requirements.

Under this framework, we have revised § 255.1 to add the following requirements: 1) the State must assure, in arranging care, that it takes the individual needs of the child into account; 2) the State must specify the methods it will use for providing transportation and other supportive services; 3) the State must describe criteria and procedures it will use for approving education, training and employment activities for which necessary child care and supportive services will be authorized for individuals who live in non-JOBS areas of the State; 4) the State must describe the nature of its efforts to coordinate child care and supportive services with groups specified at § 255.3(h); 5) the State must describe its procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections (or a plan for developing such procedures, if none exist); and 6) the State must specify its policy on transitional supportive services. The fourth requirement replaces an assurance requirement which was found at § 255.1(e)(2) of the NPRM.

Although we added a requirement for a description of State procedures on basic health and safety protections for center-based care, we did not alter the specific requirements for State assurances that all child care meet applicable State or local laws or that parents have access because those items affect eligibility for Federal matching funds. Therefore, we will be able to monitor State compliance as part of our review of State expenditures. Furthermore, in § 255.5, we have clarified that States will be required to report information, upon the request of the Secretary, on the applicable standards of State and local law, on health and safety requirements for center-based care, and on the development of guidelines for family day care.

As we indicate in the section of the preamble discussing § 255.4, we also added provisions for State specification of a statewide limit and local market rates for children with handicaps or special needs for care.

We also moved the assurance requirement (regarding hours of child care) previously found at § 255.1(l) to § 255.1(e), where the other assurance provisions are located.

Comment: We received comments that it was inappropriate for the State plan to include a description of the priorities to be applied in determining when needed care will be guaranteed (as required at § 255.1(d)). It was considered by some to be particularly inappropriate to talk about priorities for those entitled to transitional child care benefits.

Response: We agree that the language at § 255.1(d) of the proposed regulations confused the nature of the child care guarantee for JOBS participants and transitional cases, and we, therefore, have deleted it. (Additional discussion about the nature of the child care guarantee is contained in the response to the next comment and in subsequent sections of the preamble.)

Comment: Commenters also objected to the proposed regulatory language at § 255.1(j) where we required the State plan to describe "how the State will assure that sufficient child care will be available to meet the participation standards in 250.74." Many felt this language undermined the child care guarantee. At the same time, some States felt they should not be required to assure that sufficient child care be available to enable them to meet required participation levels. They argued that States were not absolutely required to meet the participation standards, but only as a condition of receiving JOBS funds at a higher matching rate.

Response: We recognize the problems with our proposed language and have deleted the provision that was at § 255.1(j) of the NPRM. In writing the NPRM, we wanted to make sure that States understood our expectation, and the expectation of Congress as well, that the number of individuals participating in education, work and training programs should increase under the JOBS program. For this to happen, child care and other supportive services necessary for JOBS participation would have to be provided. However, we acknowledge that participation concerns are more appropriately addressed within the context of the JOBS program.

Comment: One commenter did not want us to require States to specify monetary limits for expenditures on different types of supportive services.

Response: We believe such limits are important to include to ensure equitable treatment across the State and to ensure the proper and efficient administration of the program.

Comment: One commenter wanted us to revise the references to State and local standards in § 255.1 to recognize Tribal standards, where applicable.

Response: We made this revision and corresponding revisions to §§ 255.4(c)(2) and 255.5(a), which also refer to State and local standards.

Plan Schedule

Comment: One commenter objected to our requirements that the Supportive Services plan, especially the part dealing with transitional child care, be subject to the biennial update schedule.

Response: We require the Supportive Services plan to be submitted on the same schedule as the JOBS plan because the services provided under the two plans are so inextricably linked. To the extent a State is not changing its plan, the biennial update should not entail a major workload. At the same time, it provides a regular opportunity for the State to review its policies, assess the availability of child care services, ensure that care continues to meet applicable standards of State and local law, and update items like local market rates which need regular modifications.

Also, we did not separate the plan for transitional child care services since those services are subject to many of the same provisions as the care provided under part 255. Again, where changes are not indicated, the biennial update should not be overly burdensome.

In the interest of clarity, we did add a reference in § 255.1 of the regulations to the schedule requirements at § 250.20.

Eligibility (§ 255.2 of the Final Regulations)

Section 402(g) of the Act provides that the State IV–A agency must guarantee child care to the extent that the State determines necessary for an individual in a family with a dependent child to: (1) accept or maintain employment, or (2) participate in an education or training activity if the agency approves the activity and periodically determines that the individual is satisfactorily participating in the activity. (Such education and training is not limited to activities funded under JOBS.) Where child care is necessary, but not available, a State IV–A agency cannot require an individual to participate in an activity or to accept or maintain employment unless it guarantees child care.

Child Care Guarantee

The Statute requires the State to guarantee child care for: participants in a JOBS activity; individuals in other approved education or training activities; and employed individuals. We, therefore, believe that the State is obligated to guarantee care even if it has not required an individual to participate or accept employment. This is a change from the approach taken in the proposed regulations, particularly with respect to the treatment of volunteers, and will be discussed further in the comment section.

The State IV–A agency must guarantee needed care to recipients who are working at the time the State implements JOBS as well as to recipients who begin working at a later date. It must also guarantee care to an individual who finds employment through JOBS or on her own if the care is necessary for her to accept or retain employment. However, the State does have flexibility in determining how child care needs will be met. For example, the State may select the disregard as the method for providing care for employed individuals.

In areas where child care of the appropriate type cannot be located by JOBS participants, the State must be prepared to assist these individuals in locating care. Such assistance may take the form of referral to existing child care resource and referral services, or direct assistance based upon information gathered through the State agency's own consultation, coordination, and research efforts. In addition, the State may provide assistance to other AFDC applicants and recipients in locating such care. However, the State is not required to provide child care directly or to otherwise create child care services. Where child care cannot be located, an individual cannot be required to participate, or to accept or retain employment.

For approved JOBS activities and employment, the State is obligated to guarantee care even if it has not required an individual to participate or accept employment. However, just as State resources and budgetary constraints may indirectly affect the provision of child care for those assigned to activities under JOBS (whether exempt or non-exempt), those in self-initiated activities may also be indirectly affected by State budgetary constraints since the State has broad discretion in deciding whether to approve such activities. This discretion is discussed further in response to the comments that follow.

Comment: Although some commenters supported our linkage of the child care guarantee to the availability of resources, JOBS participation rates, State appropriation ceilings, the availability of other services, and agency requirements, many did not. They felt the language undermined the guarantee for working recipients and for volunteers participating in JOBS. Commenters also suggested that the language seemed to contravene the requirement in the JOBS program that volunteers from target groups receive priority for JOBS services.

Response: Based on these comments and further review of the statutory language, we reconsidered our position and decided to make changes to both the regulations and the preamble. We have deleted any reference to a State's determining who would be provided child care based on the availability of resources and the requirement to describe how sufficient child care would be made available to meet the participation rates described in § 250.74. A more detailed discussion of the child care guarantee is contained in the preamble and response to comments.

Comment: One State wanted us to clarify that States were not obligated to provide services to those in self-initiated activities. Another asked us to clarify that States would not be required to provide child care services in non-JOBS areas.

Response: The Statute allows a State to treat self-initiated education or training which meets the requirements at section 402(a)(19)(F) of the Act as JOBS participation and to provide associated supportive services, including child care, if the State approves the activity. The State has further discretion to decide the criteria under which other education or training would be approved under JOBS, and discretion whether to approve education or training for child care and supportive services in non-JOBS areas of the State. However, we do wish to clarify that, at State option, child care and supportive services are allowable for those in education and training in non-JOBS areas as long as the State IV–A agency has approved the activity, and the individual is making satisfactory progress.

Comment: Two commenters wanted us to clarify that provision of child care and supportive services for clients in non-JOBS training is a State option and is not required before implementation of the JOBS program.

Response: The provisions authorizing child care and other supportive services for those engaged in any kind of education or training activity do not become effective for a State until its JOBS program under title IV–F is implemented. At that point, the State has broad discretion in the criteria used for determining whether education or training would be approved.

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Informal Care

Consistent with our philosophy on parental choice (discussed later), we want to ensure that Federal and State policies support parental preference. In many cases, informal care provided by trusted friends or family members is the parent's preferred source of care. Therefore, we want to make clear that care provided in this manner is acceptable and must be included as one of the types of care to which families have access.

Comment: Several commenters expressed concern that informal care provided by relatives or family friends with no obligation to provide care was too tentative and unreliable. They felt it was counterproductive to rely on such services, especially when care would be needed on a regular basis over an extended period of time. (In fact, one commenter wanted the regulations to state the advantages of formal care.) Others were concerned that we were expecting care to be provided for free by persons with no legal responsibility for a child, that we were not giving adequate consideration to the needs of the child and that we were undermining parental choice by allowing States to limit families to informal, at-home care.

Response: The section on informal care in the preamble of the NPRM caused much confusion. We have re-written the preamble to clarify the principal reason for our original language—to validate informal care as one of the types of care to which families should have access. We were not attempting to limit families to informal, at-home care but merely to ensure that families have the choice of such care. The one exception to this provision is the situation where there is another adult in the home who is responsible for the care of the child (as discussed below).

Comment: Two commenters wanted us to require that a State agency accept the caretaker's assessment that no one at home was capable of providing necessary child care. In a related comment, it was suggested that individuals be allowed to determine if informal care was acceptable.

Response: We expect the State IV–A agency and the caretaker to work closely together to determine when child care is necessary. However, the ultimate decision about whether care is necessary rests with the individual except for a few limited situations. The State may determine child care is unnecessary in situations where: (1) the hours of employment or participation fall within the child's school hours; (2) there are individuals in the assistance unit whose needs are met on the basis of their responsibility for caring for the child (e.g., a parent, caretaker or essential person); or (3) there is another legally responsible adult in the home (e.g., an ineligible parent or a legal guardian). Exceptions to the latter two situations would be allowed, on a case-by-case basis, if the family provided information to the State agency indicating that the "responsible" individual could not provide appropriate care. Examples of reasons for exceptions would include cases where the other parent was bedridden or the child was at risk because of suspected abuse.

Under all other circumstances, (including the use of older siblings, aunts, or grandparents in the home), the individual may choose informal care as her preferred choice of care but may not be required to do so.

By Statute, responsibility for determining the necessity of supportive services resides with the State IV–A agency. This position is incorporated in § 255.2(c).

Eligible Children

In the final regulations at § 255.2(a), we have limited the guarantee of child care to those families with dependent children under 13, and those children who are either physically or mentally incapable of caring for themselves or subject to court supervision, when such care is necessary. Limiting child care to these situations is a reasonable policy, consistent with the limits enacted for the Dependent Child Care Tax Credit by section 703(a) of the Family Support Act, and, which will apply to taxable years beginning after December 31, 1988. These limits reflect widely-held views (reflected in a variety of laws and legislative proposals) on appropriate governmental participation in expenditures for child care services.

Comment: A substantial number of commenters opposed our limitation of the child care guarantee in this manner. They pointed out that many States and other programs had higher age limits or no age limits at all. At least one commenter felt the age standard should be replaced by the "need for supervision." A number wanted States to have general discretion in setting an age limit. Some were more supportive of the age 13 as a general rule for coverage, but wanted greater State discretion to cover children over the age of 12. Many were particularly concerned about covering older children who needed special supervision, either because of individual circumstances or because they lived in neighborhoods which had drug, crime, or related problems.

Response: We have determined that it is appropriate to retain the limit on child care guaranteed under title IV–A to children under 13 and to retain the exceptions for children over 13 who are mentally or physically unable to care for themselves. However, we have added an additional exception which would cover care for children aged 13 and over who are subject to court supervision. We decided to add the additional exception because we recognized that such children had an officially established need for special supervision. We did not feel that an exception was justified for all those over 13 needing supervision. Such an exception would be too broad and too difficult to define; in some States, it would act to obviate the age 13 limit.

Comment: We also received a few comments on our proposal to require the State IV–A agency to guarantee care for children who would be required to be in the assistance unit if it were not for the receipt of SSI under title XVI or foster care payments under title IV–E. Commenters wanted this guarantee to be broadened to cover other children in the household who were not on AFDC (such as undocumented alien children) and incapacitated older individuals.

Response: We decided not to expand the guarantee of child care to these categories of individuals or to otherwise cover the costs of their care. The statutory language covering the guarantee refers to families "with a dependent child requiring such care" and therefore suggests no broader eligibility than we proposed. We included children who would be AFDC recipients except for their receipt of IV–E foster care or SSI since such children are considered dependent children for other purposes of law; however, they are excluded under the Act from the assistance unit because of the receipt of needs-based, Federally-supported benefits.

We recognize the apparent inconsistency between the statutory language covering the guarantee and the "good cause" language at section 402(a)(19)(G)(iv)(II) of the Act which provides that individuals would have good cause for not participating or accepting employment if child care or day care for any incapacitated individual living in the same home as the dependent child is necessary, but is not available and not provided. However, it is possible to rationally and fully satisfy both statutory provisions. The revised language following subparagraph (D) of section 403(a)(3) of the Act, which limits Federal matching for child care expenditures to those

made pursuant to section 402(g), also identifies the class of individuals for whom IV–A expenditures may be made. These are those identified in the guarantee and include only dependent children. It is, therefore, narrower than the class of individuals whose need for care may affect JOBS participation or employment. With the narrower guarantee language, the State must devote IV–A funds to AFDC dependent children; where broader care needs are identified, the State would have to exempt the individual from participation or pursue alternative sources of care. For example, necessary day care for incapacitated adults may be provided as a JOBS supportive service.

Comment: A few commenters questioned the appropriateness of our reference to the verification requirements at § 250.30(b)(3) in determining whether a child aged 13 or over was physically or mentally incapable of caring for himself. They suggested other medical evidence, eligibility for handicapped or special education programs, and worker determinations as alternatives.

Response: We understand why the reference to § 250.30(b)(3) raised some question since entry into the labor force is not relevant. The point we wanted to make is that the determination of the handicapping condition had to be made by a physician, or a licensed or certified psychologist. It is the condition, notwithstanding the child's age, that creates a need for extended care and supervision. We have made changes in §§ 255.2(a) and 256.2(a) to reflect this position. We decided not to extend the determination further because we felt the determination should be specific to this purpose and should be made by someone professionally qualified to make it.

Child Care for Tribal Programs

The State IV–A agency must provide child care to AFDC applicants and recipients who are served by a Tribal JOBS program. Such services shall be available to the same extent that they are available to eligible participants in the State's JOBS program. The State IV–A agency must provide an equitable level of services for Tribal members, and they must provide the same range of methods or arrangements, unless certain methods would not be feasible because of the nature of child care services available in Tribal service areas.

Other Supportive Services

The Act requires that the State IV–A agency pay for or reimburse the costs of transportation and other work-related expenses, including work-related supportive services, if the State IV–A agency determines they are necessary for an individual to participate in JOBS. For individuals in JOBS components such as education and training, these expenses include both ongoing and one-time special expenses. In addition, we concluded that such services may include one-time, special work-related expenses which would enable individuals to accept or maintain employment. These are discussed in more detail under "Work-Related Expenses." On-going expenses related to employment are already covered by the work expense disregard (which was raised to $90 effective October 1, 1989); therefore, no provision for such expenses has been made under section 301 of the Statute or these regulations.

The State IV–A agency must define work-related supportive services and work-related expenses in its Supportive Services plan. It must also describe methods of providing other supportive services, specify monetary limits for each type, and indicate the basis for determining the need for the type of service.

Comment: One commenter wanted us to be more explicit about the State's duty to provide transportation.

Response: The regulations already specify that the State agency must pay for or reimburse transportation and other work-related supportive services for individuals in approved activities. We do not see the need to elaborate further.

Comment: One commenter wanted us to require that transportation support systems be funded through existing coordinated systems.

Response: Under this program, we will be funding the transportation needs of individuals. We will not be funding transportation systems. Nevertheless, in the interest of improved coordination, we have amended the regulations at §§ 250.12 and 255.3(h) to clarify that the State IV–A agency is expected to coordinate with other agencies providing related supportive services. Furthermore, we expect State policies on reimbursement to take into account existing transportation systems.

Comment: Two commenters were concerned about an apparent inconsistency with the preamble language on the requirement to provide other supportive services to participants and the regulatory language at § 255.2(c) which limited the requirement to services "necessary to enable an individual to participate as required * * *."

Response: Volunteers in approved activities have the same rights to services as mandatory participants. Therefore, we deleted the phrase "as required" from § 255.2(c).

Comment: In general, commenters agreed with the flexibility provided States under the proposed regulations to define supportive services and work-related expenses. However, two commenters suggested that the final regulations specify the types of supportive services (other than transportation and child care) that could be provided. Specific suggestions included medical expenses which were not covered under the Medicaid program, counseling, and substance abuse remediation.

Response: We did not list the types of services which were allowable under this section. We were concerned that we could not foresee all appropriate types of services that States would want to consider, and we did not want to preclude items at this point. In our discussion about one-time work-related expenses, we gave some examples of items that could be included. States could also include services for at-risk youth (as discussed in the preamble to the employability plan at § 250.41), counseling, medical and dental services, stand-alone courses in parenting or life skills training, day care for incapacitated adults, and substance abuse remediation. To be covered as JOBS expenditures, such services must be specified in an approved Supportive Services plan, necessary for the individual to participate in, or prepare for, a work, education or training activity, and not otherwise available on a non-reimbursable basis.

We also require that a State indicate in its Supportive Services plan the basis for determining need for covered supportive services. Here, the State would include additional factors or procedures employed by the State to determine the necessity of services. For example, a State might specify that it would authorize car repairs on a one-time basis only when public transportation was not available, or it might specify that it would authorize day care for incapacitated adults only upon written medical verification of such a need.

Comment: One commenter wanted us to require an assessment of transportation needs.

Response: The regulations at § 250.41(a)(1)(i) already requires that an initial JOBS assessment include "the individual's educational, child care, and other supportive services needs." Further, since JOBS participants are the only individuals for whom transportation must be provided (with the State having the option to approve

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necessary transportation and services for individuals in non-JOBS areas of the State), it did not seem necessary to regulate further in this area.

Work-related Expenses

Although the Act requires that child care be guaranteed so that an individual may accept or maintain employment, it is silent on whether the State IV–A agency can pay for work-related expenses in order for the same individual to accept or maintain a job.

We have concluded that payment of such expenses is consistent with the intent of the JOBS program to help individuals obtain employment and avoid long-term welfare dependency. Therefore, such expenses are matchable as a JOBS expenditures for a JOBS participant who finds employment (whether as part of that participation or on her own), as well as for any individual who finds employment (including, at State option, an individual in non-JOBS areas).

In addition, the State IV–A agency may make one-time payments for reasonable work-related expenses to an applicant or recipient so that she can accept or maintain employment, if the State IV–A agency so provides in its Supportive Services plan. Such expenses might include a uniform, a set of tools, a pair of eyeglasses (if not available elsewhere), or the fee for a driver's license.

Comment: One commenter wanted to know if States could define work-related expenses.

Response: Consistent with our policy to provide State flexibility, we are not defining what items could be covered by a State as one-time work-related expenses. However, at § 255.1(h), we do require the State to include a definition in its Supportive Services plan.

Comment: The same commenter asked how supportive services, including one-time work-related expenses, would be covered in non-JOBS areas, i.e., would they be matchable as IV–A expenses.

Response: As discussed earlier, the Statute makes specific provision for supportive services expenditures to be made from JOBS funds in support of self-initiated education or training. Through amendments to section 403(a)(3) of the Act, it precludes child care, transportation, and work-related expenses as title IV–A administrative costs. For the reasons given later in the discussion of Special Needs, we believe such expenses are matchable only through JOBS funding. We allow the State to set up procedures under which IV–A staff could authorize such expenditures in non-JOBS areas. We have revised the regulations at § 255.2(c) (2) to recognize this option (and related State plan requirements at § 255.1(d)).

Comment: One commenter objected to the NPRM preamble language which restricted one-time work-related expenses related to the acceptance or maintenance of employment to participants in activities like job search and work supplementation, but did not provide them for participants in other components like training who might also locate employment and face such expenses.

Response: We agree that the restriction was not appropriate, and we have deleted the referenced preamble language. The regulatory language at § 255.2(g) would accommodate such expenses related to acceptance or maintenance of employment from any component.

Comment: Two commenters expressed concern that our NPRM would not accommodate work-related expenses necessary for participation in component activities, but only those related to employment.

Response: It was never our intention to preclude matching for work-related expenses for participants in a JOBS component. We were only trying to establish that in addition to these on-going work-related expenses, the State could also receive matching for one-time expenses (such as uniforms, tools, or fees for a driver's license) related to the acceptance or maintenance of employment.

Comment: One commenter felt we should remove the one-time restriction for employment-related expenses since they could recur or new expenses could develop while an individual was working.

Response: We left the one-time restriction in the regulations. The Act provides a work-expense disregard for meeting on-going expenses (the amount of that disregard increased to $90 effective October 1, 1989), and we do not want to authorize duplicate payments or subvert the statutory limit of the disregard. We intend that the one-time restriction not be a lifetime restriction, but be a restriction per job. For example, if a State gave an individual funds for a car repair to get to one job, she could at some later date get funds for a uniform needed at a subsequent job.

Approval of Supportive Services

Child care, transportation, and other supportive services necessary for an individual to participate in JOBS, and, at State option, other approved education or training in non-JOBS areas, are eligible for FFP. In order to approve such services, the State IV–A agency must determine that the activity is consistent with an appropriate employment goal, that the individual is making satisfactory progress, and the activity otherwise meets the State's approval criteria. In JOBS areas, these determinations would be made through the JOBS program.

If a State elects to approve education or training activities for child care and supportive services in non-JOBS areas, its approval criteria should be consistent with those used in JOBS areas. The criteria can follow the standards for approval of self-initiated activities under § 250.48(a) or encompass broader approval criteria used for approving JOBS education and training activities. We have amended the regulations at § 255.1 to require that the State Supportive Services plan specify the State's criteria for approving education or training for child care and supportive services in non-JOBS areas.

Comment: Many commenters were concerned about the provisions in the proposed regulations which would require that an employability plan be developed for those in outside education and training, that participants in these activities would be considered to be JOBS participants, and that supportive services other than child care would be approved through the JOBS program. They were concerned about their ability to authorize services in areas not covered by JOBS (both before the October, 1992, deadline for statewideness and after), the administrative burden associated with setting up additional JOBS offices and doing full JOBS orientations, assessments, and employability plans.

Response: In response to these concerns, we have revised the final regulations to allow the State IV–A agency to approve education or training for child care and supportive services in non-JOBS areas of the State outside of the JOBS program procedures. The State agency retains the responsibility for determining the appropriateness of an individual's employment goals, but it does not have to provide for a full JOBS orientation, assessment, or employability plan. Approval of education or training for child care and supportive services can be done by IV–A staff in a non-JOBS area.

However, in areas of the State with a JOBS program, individuals who are engaged in any self-initiated activity as provided in § 250.48 are JOBS participants, and approval must be done by JOBS staff in accordance with JOBS procedures.

Verification of Participation in Education or Training Activities

The agency must periodically (based on the ability of the program to report) determine that a recipient is making satisfactory progress, as defined at § 250.1. Child care services (or other supportive services) provided to individuals who are not attending could be considered payments for ineligible individuals and might be subject to disallowances, even if the State were monitoring progress on a regular basis.

Comment: Several commenters objected to the proposed disallowance if a participant is not making satisfactory progress. They objected to preamble language which indicated that States which followed a standard reviewing progress on a 3-month basis could be subject to disallowances. They raised questions about whether this policy would apply equally: 1) to JOBS participants and individuals approved for child care and supportive services in non-JOBS areas; and 2) in cases where an individual was not attending and where an individual was not making progress. One commenter suggested that disallowances should not be taken when payments were correctly paid based on the circumstances at the time of payment.

Response: The Statute provides that individuals in any education and training activities must be satisfactorily participating in order to be eligible for child care services. Consistent with the proper and efficient administration of Parts A and F, we are extending this requirement to other supportive services, and we are interpreting this requirement to mean making satisfactory progress as defined in § 250.1. If individuals are not making progress in activities, the value of their participation is questionable, and continued support should be re-evaluated. We expect a State to incorporate this concept into the criteria it uses for approving activities under JOBS and for approving education or training in non-JOBS areas.

As we indicated earlier, in discussing the definition of "making satisfactory progress" at § 250.1, we allow adjustments to institutional standards of progress to reflect the special needs of AFDC recipients, probationary periods, and consideration of mitigating circumstances in satisfactory progress determinations.

In response to the comments, we removed our reference to a three-month monitoring standard from both the regulations and preamble. However, we do expect regular monitoring, based on the program's ability to report progress. We recognize that the State may have difficulty determining, on a three-month or shorter schedule, whether satisfactory progress is being made because education and training institutions may not make determinations that frequently. As long as an individual is attending the activity, we would not anticipate taking disallowances for expenditures made to cover a period when the State could not know an individual's progress. During such a period, the State can presume an individual is making satisfactory progress, as long as the individual is attending the activity and available reports for prior periods are not negative (or there are sufficient mitigating circumstances for lack of attendance or unsatisfactory progress). We do expect the State to monitor attendance on a regular basis (with the individual or institution), and we indicated that we may take disallowances for child care or supportive services expenditures which cover periods of non- attendance.

This policy is related to the provision requiring that the Supportive Services plan include an assurance that child care claimed for reimbursement be reasonably related to the hours of participation or employment. In both situations, we want to ensure that expenditures are necessary for and directly related to participation or employment.

Services During Gaps in Participation

The State IV–A agency may provide child care and other necessary supportive services for up to two weeks for families in which an individual is waiting to enter approved education or training activities or to begin a component. In addition, the State may provide services for up to one month, on an exception basis, when child care arrangements would otherwise be disrupted and participation in a JOBS activity or employment is scheduled to begin during that period. This provision is included to ensure that child care services (or other service arrangements) are not lost and continuity of care is provided so that an individual can continue the employability process.

Comment: Several commenters disagreed with the provision in the NPRM which only allowed for up to one two-week period of services during gaps in participation. Commenters asked for greater flexibility to cover the provision of services during gaps in JOBS participation or immediately following a loss in employment. Suggested alternatives included: (1) full State discretion; (2) at least one month or 30 days; (3) retain two weeks but allow for exceptions in cases where child care would otherwise be lost, the child would have to be moved, a placement was imminent, school breaks, or when no more than 30 additional days of care would be required; and (4) various combinations thereof. Some suggested that States be allowed to provide transitional benefits beyond the Federal standards under an approved State plan.

Response: We have revised the final regulations at § 255.2(d) to allow services for up to one month, on an exception basis. This approach provides additional State flexibility while protecting against expenditures which do not further the purposes of the JOBS program. It allows the State to address situations where the goals of participation, employment, and continuity of care would be positively served by extension of services beyond a two-week period. The State IV–A agency must describe its policies on interim services in its Supportive Services plan, as required under § 255.1(g).

Comment: One commenter asked about the ability to pay transportation costs after termination of AFDC eligibility.

Response: We would allow such costs as JOBS expenditures consistent with the policy specified at § 250.73.

Services for Applicants

We were faced with the question of whether Congress intended that child care be available to recipients of AFDC only, or to applicants as well. In considering this issue, we concluded that child care should be available, as it was under prior law, when the agency requires an applicant to participate in job search. Temporary child care should also be available for other activities necessary to prepare an individual for participation in the program, such as orientation. States had told us that the lack of such child care during orientation results in a very high absenteeism rate.

However, we did not consider it to be proper use of resources to provide services to applicants who were not likely to be determined eligible. A State IV–A agency could provide services to certain individuals (e.g., those in job search or needing services to accept employment) whose eligibility has not been determined, as long as it has no reason to believe that the individual would not likely qualify for benefits. In addition, we did not believe it to be proper or efficient use of resources to provide child care or other supportive services to applicants in education or training activities, until their eligibility was determined.

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Comment: Some commenters objected to the distinction we made in the proposed regulations between the eligibility of volunteers for services, compared to those required to participate. Under the proposed regulations, we provided for supportive services for those required to participate in job search, but not for those participating on a voluntary basis.

Response: As discussed previously, we decided that the distinction was inappropriate; it is not based on statutory language, and it acts to contravene the JOBS targeting provisions. Therefore, we have revised the regulatory language at § 255.2(e) to eliminate references to participation requirements. We also clarified that services are available to applicants both for job search and for other approved activities to prepare them for JOBS participation.

Comment: Another commenter wanted us to clarify that, like applicants, recipients were entitled to child care and other services necessary to participate in activities which prepare them for JOBS.

Response: In response to this comment, in our amendments to § 255.2(e), we also clarified that recipients participating in approved pre-component activities are entitled to such services.

Comment: One commenter wanted it clarified that applicants who were unlikely to qualify for AFDC eligibility should not be required to participate.

Response: When we stated that we did not consider it proper to provide services to individuals who appeared unlikely to qualify for AFDC, we meant to cover not just supportive services, but JOBS services as well, including job search, assessment, employability planning, and case management. For example, if a State agency has information (perhaps not yet verified) that a family applying for AFDC has excess resources or that deprivation does not exist, it should not refer that family for IV–A or IV–F services on either a mandatory or voluntary basis. Payments made for services provided to a family referred under such circumstances would be subject to disallowance.

Comment: One commenter had questions about the States' responsibility for documenting the allowability of applicant services.

Response: Applicant services generally would be subject to the same documentation requirements as recipient services. A unique aspect of applicant services is that questions about allowability could arise if there were evidence that services were provided after the State agency had information indicating that the individual was unlikely to qualify for AFDC. In the absence of such information, we would presume that applicant services were allowable.

Methods of Providing Child Care and Other Supportive Services (§ 255.3 of the Final Regulations)

The Act provided a number of methods to guarantee child care, including measures not specifically listed but methods identified and deemed appropriate by the State. Based on that language, the State IV–A agency may:

(1) Provide the care itself;

(2) Arrange care through public or private providers by use of contracts or vouchers;

(3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be pre-paid;

(4) Reimburse the caretaker relative for child care expenses incurred;

(5) Arrange with other agencies and community volunteer groups for non-reimbursed care;

(6) Use the earned income disregard; or

(7) Adopt such other measures as the State IV–A agency deems appropriate.

The State IV–A agency must describe which of these methods it will use in its Supportive Services plan.

Comment: One commenter wanted us to allow a State to use a combination of methods of providing care for a single family.

Response: This is allowable. In fact a State could use a combination of methods for providing care to an individual child. For example, a State could reimburse a caretaker for in-home care before a child went to school and provide a voucher for the child's after-school care at a center.

Comment: One commenter thought we should require States to make child care payments up front.

Response: The Statute specifically allows for reimbursement of expenses; thus, a State clearly has the authority to make child care payments after costs have been incurred.

Direct Provision of Child Care

Historically, State IV–A agencies have not provided child care directly except in a few instances. However, we can foresee a situation in which a State IV–A agency might provide child care services within the agency, for example, while a parent is in a JOBS orientation session. Where care is provided directly, Federal matching is subject to the same limits on costs as would be applied for outside child care; the State IV–A agency cannot charge its direct and overhead costs for providing care without regard to the limits established pursuant to § 255.4(a).

Vouchers

Vouchers have become a very popular method of providing care as they may give parents great freedom of choice. Many States are using voucher systems, also referred to as purchase-of-care mechanisms, for child care delivery. If a State IV–A agency wishes to institute such a system, the Department can provide referrals to agencies with expertise in establishing one.

Voluntary Providers

In planning to meet the child care demands related to the Statute, there may be an opportunity for communities to mobilize volunteer resources to expand existing programs. For example, there is a growing need for before and after school care for school-age children. Volunteers under the supervision of professional caregivers could be a tremendous addition to the staff necessary for such programs. Many communities are also recruiting retired citizens to help fill personnel shortages in day care centers by creating staff positions for aides which can be filled by volunteers.

Comment: Although we received general support for the flexibility in methods we provided, one commenter wanted us to eliminate care by volunteers, or any non-reimbursed care, as an option.

Response: We disagree. To eliminate these options would unduly restrict parental choice on care. In particular, we disagree with the assumption that all care provided on this basis is inferior, and we will not preempt parental decisions based on this assumption.

Direct Payments to the Caretaker Relative

The State IV–A agency may pay the caretaker relative directly either by providing payment in advance or by reimbursing the caretaker relative who has already paid for the care. In these situations, the family member cannot receive the earned income disregard for child care specified at § 233.20(a)(11)(i), and the determination of eligibility and payment amount must be determined without considering child care costs or payments.

Income Disregards

The State IV–A agency may use the existing child care disregards as provided at § 233.20(a)(11)(i). Although the child care disregard is not specifically listed among the methods in the Act, Congress demonstrated its intent that the disregard continue when it raised the amount of the child care disregard in title IV of the Statute effective October 1, 1989.

Inclusion of the disregard as a method for guaranteeing child care under this Part does not mean that the provisions of this Part supersede existing provisions regarding the child care disregard. Thus, the disregard remains limited by the amount specified in section 402(a)(8)(A)(iii) of the Act, it remains available for expenditures on children aged 13 and over, and it is not limited by the local market rate.

The State IV–A agency may make supplemental payments for child care costs that exceed the disregard amounts but are within the limits established under this Part. Under § 255.3(f), in cases subject to retrospective budgeting, the State IV–A agency may modify their budgeting procedures to provide for child care costs in the first one or two months of employment. This option is discussed in more detail later.

Comment: In general, commenters liked the flexibility we provided. However, one commenter objected to the use of the disregard as a method—apparently because they considered the disregard levels to be too low.

Response: We do not believe this objection merits a change. First, the Statute specifically allows a State to set the limit of child care expenses at the level of the disregards, and it would be inappropriate for us to try to undermine that flexibility here. Since States are given the option to use the disregard levels for payment of child care services, regardless of the method used, eliminating the disregard as a method does not in any way assure that higher child care payments will be available. Secondly, we allow States to supplement the disregard. Thus, inclusion of the disregard as a method of providing child care services does not necessarily result in lower child care payments for those receiving benefits under this Part.

Comment: One commenter supported our position stated in the preamble to the NPRM that these new child care provisions do not supersede the existing provisions in the Social Security Act for the disregard of actual child care costs. At the same time, other commenters questioned whether our regulations at § 233.20 needed revisions to reflect the options available under the Family Support Act for payment of child care costs, or to cross-reference the Supportive Services plan.

Response: We did not feel it was appropriate to amend § 233.20 to incorporate other methods of providing child care since this section deals specifically with the disregard of income under AFDC, and other methods would not involve a disregard. Further, we intend to include a reference to the disregard regulation in the Supportive Services plan. We do not believe that the disregard regulation would also need to cross-reference the Supportive Services plan.

Because the disregard regulations provide for a disregard only of actual costs, it should clearly be understood that the State would not disregard child care costs which were otherwise being met under Part 255. Child care costs being paid by the agency are not "expenditures for care" by the family and therefore are not eligible to be disregarded.

However, even where the State is paying for child care under Part 255, a family could be incurring its own child care expenses if the State payment level is less than the total cost of care. Where the cost of the care exceeds the local market rate, but is within the disregard limits at section 402(a)(8)(iii), the family could receive a disregard for the share of costs it incurs itself. For example, suppose child care costs under Part 255 were limited by the local market rate to $150 in a particular case, and the family needing child care would otherwise be eligible for the child care disregard of $175. The family may choose to continue its child care arrangement costing $175, and the State may choose whatever method it wants to pay the $150 for care allowed under Part 255. The family would then incur child care expenses of $25, which could be disregarded. (Alternatively, at State option, the full $175 amount could be met through the disregard.)

The disregard and other methods of paying for care under Part 255 may not be combined in order to duplicate assistance under the two provisions. The amount available in combination may not exceed the higher of the appropriate disregard limit at section 402(a)(8)(A)(iii) of the Act or the applicable limit under Part 255. For example, in the above case, a family could not secure child care costing $325 with the expectation of getting $150 in assistance under Part 255 and an additional $175 to be covered by the disregard amount. This would constitute duplication of benefits and would violate the intent of the statutory limits for both the disregard and the Part 255 provisions.

Comment: Two commenters suggested that States should be required to continue the disregard as a method of paying for child care expenses.

Response: We agree that the child care disregard authorized under section 402(a)(8) of the Act must remain available to eligible applicants and recipients when appropriate. However, we decided not to require States to include it as a method of guaranteeing care under these new provisions. We believe the statutory language requires State flexibility in this area because the Statute does not directly mention the disregard as a method by which States would guarantee care.

Comment: Another commenter wanted us to eliminate the inconsistency between the scope of the two sets of provisions; in particular, the new provisions cover only child care, while the disregard provisions cover dependent care.

Response: We recognize the inconsistency but have not made a change since the difference is due to differences in statutory language. The new provisions specifically refer to a guarantee of "child care," and (as discussed elsewhere) to families with a dependent child "requiring such care," while the disregard provisions in section 402(a)(8) of the Act specifically cover expenditures for a "dependent child, or an incapacitated individual living in the same home as the dependent child." Thus, the scope of the disregard language is broader. (In earned income cases, families with expenditures on care for individuals in the home who are not dependent children could have those costs covered through the disregard even though the guarantee under section 402(g) of the Act does not extend to such individuals. However, these costs could not be supplemented if care is more than the disregard amount because there was no statutory change made to the disregard provisions to allow such supplementation.)

Supplementing the Disregard

Comment: One commenter felt that States should be required to issue a supplement when the disregard amount was less than the amount which would be available if a direct payment were made. A second commenter inquired whether the States would be obligated to make supplemental payments in these cases. He felt that perhaps the State should not be required to make a supplemental payment if there were adequate care available and the State could arrange care within the disregard limits.

Response: We proposed these supplements as an option for States, rather than a requirement, because the child care provisions under title III of the Statute did not supersede the

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existing child care disregards. In fact, in title IV of the Act, Congress specifically amended the statutory limit on the disregard amount, without any reference to the other child care provisions. We believe that requiring supplementation of the disregard would subvert congressional intent by essentially invalidating the new disregard limits otherwise provided in the Family Support Act. Therefore, we have not amended our policy.

Disadvantaging the Family by a Change in Method

The Statute prohibits a State IV–A agency from disadvantaging any family receiving AFDC on October 13, 1988, through a change in its method of reimbursing the cost of child care. The only method for reimbursing child care costs for recipients with earnings on that date was the earned income disregard; for participants in education or training programs, special needs was an available method. Families receiving benefits under either method could be disadvantaged if the State changed to a method of direct payment. At § 255.3(e), we require that, for recipients who received AFDC payments on October 13, 1988, determined by using the child care disregard at § 233.20(a)(11)(i) or special needs payments, the State IV–A agency must determine current AFDC eligibility and payments based on the continued application of the disregard or special needs payments in order to find out if the family would be disadvantaged. If the family would be disadvantaged, we require the State to determine the family's AFDC eligibility and benefit (including child care needs) as if the method applicable on October 13, 1988, were still in effect.

Comment: Two commenters pointed out that families whose child care was provided as a special need as of October 13, 1988 could also be disadvantaged if a different method was used which provided or paid for child care directly.

Response: We have revised the preamble and regulations at § 255.3(e)(2) to recognize this additional group. We also revised the regulations and preamble language to indicate that the State must determine the family's AFDC eligibility and benefit (including child care needs) as if the October 13, 1988, method were being used; however, we do not directly require that the same method be used since, in the case of special needs, the method is no longer available.

Comment: Two commenters questioned the requirement for the disregard to be applied as of October 13, 1988.

Response: We retained the requirement because we believe that families who were not eligible for child care benefits at the earlier time cannot be disadvantaged by a change in method.

Comment: Another commenter asked that we expand upon how States would determine if a family was disadvantaged.

Response: When a family needs child care benefits for employment or for participation, the State would determine if the family received child care benefits in the form of a disregard or as special needs in October 1988. If not, the State need not worry about disadvantaging the family under this provision. However, if the family received the disregard or special needs in October 1988 and is now eligible for child care, but the State is considering another method of providing care, the State must check to determine that the family is not worse off as a result of applying the new method. If the family received the disregard in October 1988, the State must calculate eligibility and benefits as if the disregard were its method, to determine if the family would otherwise be disadvantaged. If the family's child care was provided as a special need, then the State must determine the family's AFDC eligibility and benefit as if special needs were its method of providing child care, to determine if the family would be otherwise disadvantaged.

In determining if the family would be disadvantaged, the State should look for two types of circumstances. The first is where the provision of direct services would make the family ineligible (for example, under the "185 percent gross-income test"), but the family would retain eligibility if the costs of care would be covered through a disregard or special needs. These methods would allow the family to retain AFDC eligibility with a higher income level. The second circumstance is where the amount available to cover costs under the method applied in October 1988 would be higher than under the method now under consideration. This could happen if the disregard level and actual costs for care are both higher than the local market rate. Since the disregard and special needs were not limited to the local market rate, the family would receive more money under the prior method. Under either of these circumstances, the family would be disadvantaged by a change in the State's method of providing care. Therefore, the State would be required to determine the family's AFDC eligibility and payment as if the October 1988 method (and the payment amount under that method) were in effect.

Meeting Child Care Costs Under Retrospective Budgeting

Recipients who need child care before beginning employment often lack sufficient funds to pay for such care before receiving their paychecks. If a State IV–A agency uses a two-month retrospective budgeting cycle and meets child care needs through the disregard at § 233.20(a)(11), for the first four months of employment, a family only receives recognition of child care costs for two of those four months. For example, under current rules, if a recipient becomes employed in January and has child care costs in January, February, March and April, the child care disregard will not offset income in determining the amount of the payment until March and April. If a State IV–A agency decides to provide child care for the first and second month of employment, as a start-up cost, the State IV–A agency could not use the disregard to offset income used to determine March and April's payment because the recipient did not actually meet the cost of child care in January and/or February.

We will allow the State IV–A agency to provide start-up costs for child care for the initial one or two months of employment and to apply the disregard for the third and fourth months as if such costs had been paid by the recipient. However, in order to prevent duplication of benefits, if a State IV–A agency elects to do this, it may not apply the disregard to income used to determine the payment for the month(s) following the month in which child care ceases. The State IV–A agency may meet the start-up costs by making direct payments to the provider or by reimbursing the recipient. Any reimbursement for child care would not be counted as income or resources for any month.

Comment: Commenters generally supported our policy to allow adjustments to retrospective budgeting (and for our disregard of supportive services payments). However, one commenter felt that States should be required to modify the retrospective budgeting process.

Response: We have not changed our proposal in response to this comment. We believe such a requirement would unduly limit State flexibility and could result in a very significant new administrative burden on State agencies that currently provide child care benefits largely through the disregard. Furthermore, the child care provisions of the Statute do not supersede the related provisions for disregard of child care expenses at section 402(a)(8) of the Act. Under the existing provisions, retrospective budgeting procedures remain in effect. Therefore, we do not believe States could be required to modify their retrospective budgeting procedures.

Comment: Two commenters objected to our requirement that States that modified the retrospective budgeting process had to discontinue application of the disregard after the recipient ceased receiving child care. They thought it was unfair to reduce AFDC benefits at the same time that individuals who lost their jobs were losing income.

Response: We do not believe a change in policy is indicated. We proposed this policy in order to prevent duplication of benefits. As written, the recipient would receive child care payments for the same period of time as they were incurring child care costs. Thus, those receiving payments through this method would be treated comparably to those who received child care benefits or vouchers directly. If we took the commenters' suggestion, these individuals would receive an extra one or two months of child care benefits. This kind of differential treatment would not be justified. Further, such a policy would seem to be inconsistent with the statutory language that recipients be paid no more than actual child care costs.

Comment: One commenter requested that we clarify the regulations at § 255.3(f) concerning the State's option to modify the retrospective budgeting process.

Response: We have revised the regulations to clarify that the State may directly pay for child care costs incurred during the initial one or two months but subsequently apply the child care disregard in determining payments for the corresponding payment months.

Comment: One commenter asked about the obligation of the State agency, in cases subject to the normal retrospective budgeting procedures, to cover full child care costs by paying for costs after the individual goes off the AFDC rolls. They also asked for clarification of the effective date of transitional coverage in this situation.

Response: We do not believe the State should be required to pay for child care expenditures after AFDC recipients who received the child care disregard leave the rolls. As stated elsewhere, we took the position that the existing disregard provisions under law were not superseded by the Family Support Act. Consistent with this position and our policy to provide State flexibility in determining appropriate methods of providing care, we have decided not to require the State to pay individuals who received the child care disregard any additional child care benefits under Part 255 after they are no longer eligible for AFDC.

This policy does not affect the length of time a family would be eligible for transitional benefits under Part 256, which cover child care expenses from the first month after a family becomes ineligible through the twelfth month after a family loses eligibility. Child care benefits under Part 255 cover the period before a family loses eligibility; payments for that period, even if made after the family is off the AFDC rolls, do not affect eligibility under Part 258.

Parental Choice

The regulations at §§ 255.3(c) and 255.3(d) reflect our desire to allow the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available. This is consistent with section 482 of the Act which requires the State IV–A agency to provide information to individuals about child care, including what assistance is available to help the participant select appropriate child care services.

The regulations at § 255.3(d) also provide that an individual who is required to participate under Part 250 may not refuse appropriate care unless she can arrange other care or demonstrate that such refusal will not prevent or interfere with participation. Thus, an individual's choice is not constrained by the methods or types of care which the State IV–A agency has elected to provide under its Supportive Services plan. The State IV–A agency is required to pay for the child care services arranged by the individual, even if that would require that it set up an alternative mechanism for payment of such services. Such payment would still be subject to the limits established by this Part.

Comment: One commenter wanted us to require that States allow a reasonable time for individuals to arrange care by themselves.

Response: We did not see the need to regulate in this area. We believe that individuals would have the ability on an ongoing basis to develop alternative child care arrangements. Further, in cases where the hours of participation would be minimal and the care arrangements temporary, such as for an orientation or assessment, we believe the State agency should have the ability to make temporary arrangements which would provide care needed during one-time or intermittent appointments for discussions with caretakers about JOBS participation.

Comment: States generally supported our conclusion that unlicensed care was permissible. However, several commenters objected to any requirements that States facilitate the use of unlicensed care and asked for broader State discretion on paying for unlicensed or unregulated care. Among their concerns were conflicts with existing State laws about the ability to make payments to unlicensed providers, cost and other complications related to minimum wage requirements for unrelated in-home providers, and interference with State efforts to upgrade child care quality.

Response: We understand these concerns, but consistent with the position of President Bush, we believe that parents should be able to make informed choices about who provides care for their children. In order to assist parents in making these decisions, the State agency is free to provide information on the advantages of different types of child care, and identify licensed providers who are conveniently located for participants and who otherwise meet their needs.

Informal care may be more problematic in some States when the State agency makes direct payments to providers. For years, States have been paying for informal care through the disregard, and the State might minimize its problems if it continues to use the disregard or otherwise make advance payments to participants who would be responsible for making the payments to providers. As a point of clarification, when we stated in the preamble that the State agency had to pay for this kind of care, we did not mean that the State agency must make direct payments to the providers of such care.

Comment: Two commenters wanted us to clarify that self-arranged care had to meet applicable standards of State and local law. In related comments, one commenter asked about the obligation of a State to pay for self-arranged care out of State funds: 1) if the care were substandard and therefore did not qualify for Federal matching; or 2) where a license was required, but never applied for or denied. The same commenter asked for clarification of the meaning of "applicable standards" for out-of-home care when there were no such standards.

Response: Payments for self-arranged care are subject to the requirements established under this Part. Thus, to qualify for Federal matching, any self-arranged child care has to meet

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applicable standards of State and local law. States are not required to pay for self-arranged care that does not meet the requirements for Federal matching at § 255.4(c). However, depending on the situation, unlicensed care could meet these requirements. For example, a church-affiliated child care center, a family day care provider caring for only one or two children, or an in-home provider could be exempt from State licensing requirements; in such cases licensing requirements would not apply, and by default, the care would meet the "applicable standards" of State law. On the other hand, if a child care center was subject to State licensing requirements, but had not applied, or was not qualified, care provided at that center would not be eligible for Federal matching, and the State would not have to pay for such care.

Comment: One commenter felt that, in offering a choice among available types of providers, States should be required to include licensed or regulated care.

Response: We do not feel the need to further regulate in this area. At § 255.3(c), we already require the State to offer a choice "if more than one type of care is available, e.g., center, group family, family day care, or in-home care." These choices would normally include licensed or regulated care. In some cases, licensed or regulated care might not be available; we cannot require the State to offer choices which are not available.

Comment: One commenter raised questions about care provided at religious institutions or at centers affiliated with religious institutions. It cited constitutional issues which could arise under purchase-of-service contracts or voucher programs concerning the separation of church and State—based upon religious effects of the care, hiring, and funding practices of the centers and other factors. It also raised concerns about recipients being required to choose care at centers with religious affiliations.

Response: A State may not require any individual to accept care at a center which has a religious affiliation. However, for those individuals choosing a center with religious affiliation, the State must develop payment mechanisms which can accommodate such a choice. Consistent with constitutional requirements, a State must ensure that its programs do not create an excessive entanglement between the government and religious institutions.

Comment: One commenter said we should require States to provide individuals a full choice of payment methods and inform them that direct payments were available. Another suggested that those using self-arranged care be afforded the full range of methods of payment.

Response: We believe the Statute gives States discretion in deciding which child care methods to use. Individuals are not necessarily entitled to direct payments or any other method of provision. Therefore, we have not incorporated such a requirement.

Needs of the Child

The Act and the regulations at § 255.3(b) require that the State IV–A agency must take into account the needs of the child if it arranges the care. This means that care must be available during the hours needed, including before or after school (or both) as well as care for the entire day. The care must be reasonably accessible so that neither the child nor the caregiver must travel distances beyond what is normally acceptable in the community.

Special attention should be given to children with special needs. There are a variety of programs funded at the Federal and the State level for children with special needs. Often, there is little or no coordination between these programs and other dependent care. We encourage the State IV–A agency to make a concerted effort to identify programs such as Head Start that might benefit JOBS participants and their children and to coordinate with these programs.

There are many materials already developed by the Department, the States, and the private sector that contain information on the types of care and selection of appropriate care. The State IV–A agency may find it cost effective to use local child care resource and referral (CCR&R) agencies to provide this information. Child care resource and referral agencies exist throughout the country as a public/private venture to serve the community. They keep data on available resources (including openings and providers), often listing not only name, address, and cost of care, but information on curriculum and special programs.

Comment: One commenter requested that we include the language about reasonable accessibility based upon normally acceptable community standards in the regulations.

Response: We revised the regulations at § 255.3(b) in response to this comment. However, we also allow the State to establish a uniform standard which would apply across the State. To require all States to establish standards based on individual community patterns raised serious concerns about intra-state equity and the potential administrative burden on States that hundreds of such determinations would entail.

Comment: Several commenters asked us to clarify the regulations at § 255.3(b) where we indicate that "[i]n arranging for child care, the State agency must take into account the needs of the child, including * * * the appropriateness of the care to the age and special needs of the child." The specific concern was the implication that the State agency was solely responsible for the determination of appropriateness. The commenters felt that the caretakers should be able to determine whether child care was appropriate.

Response: The State agency is not solely responsible for determinations of appropriateness of child care. When the State agency arranges for child care, then the agency must take into account the needs of the child (as required by statutory language at section 402(g)(1)(B)) and make an initial determination of the appropriateness of care. If a child care recipient is concerned about the appropriateness of care arranged by the State, she has several alternatives; including requesting assistance from the State in identifying alternative care, arranging alternative care, or requesting a hearing, pursuant to § 255.2(h).

Methods of Providing Other Supportive Services

Under § 255.3(g), the State IV–A agency may provide transportation or other supportive services either directly or through payment or reimbursement. This policy is consistent with current Federal policy and State practices under existing work program options. The Supportive Services plan must specify the methods by which supportive services would be provided; this requirement is incorporated in § 255.1(c).

Coordination

Under the Act and final regulations at § 255.3(h), the State IV–A agency must coordinate its child care activities with existing early childhood education programs in the State, including Head Start and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act. The State IV–A agency should build upon existing resources to expand the range of services available to JOBS participants.

We recognize that helping a mother set up a stable child care plan, especially if it involves more than one provider, can be difficult. However, we also know how important a well-developed plan is; poorly thought-out arrangements break down, causing

disruption to training and employment. We believe that the provision of services for a brief interim period may prevent the disruption of such carefully planned arrangements and allow continuity of care.

Comment: One commenter thought we should be more explicit regarding the form in which we expected States to coordinate and the results which we expected.

Response: Although we believe very strongly in the importance of coordination, we do not believe it would be fruitful for us to regulate in this area. Successful coordination depends upon items such as open, informed communication; the identification of mutual interests; and reductions in institutional and territorial barriers. These areas are difficult to regulate. We could lay out specific coordination activities which we would like the State to undertake, such as requirements to share its Supportive Services plan, to participate on boards, and to attend meetings, but those would not ensure successful coordination. Also, we do not want a State agency which has made valiant attempts to coordinate to be at risk when outside parties thwart its coordination efforts.

However, our regulations do touch upon our expectations of the results of coordination where we require the State Supportive Services plan to include an assessment of the availability of child care services provided on a non-reimbursable basis by other Federal, State, and local services. Further, as discussed under § 255.1, we have amended the State plan requirements to include a description of the nature of coordination with appropriate public and private agencies.

Comment: Two commenters thought we should require coordination with existing child care resource and referral agencies.

Response: We agree that such coordination would be beneficial. It would help the State agency identify potential resources and minimize duplication of efforts. Therefore, we have added resource and referral agencies to the list for State IV–A agency coordination.

Comment: One commenter suggested that State agencies should be required to consult with Indian Tribes and Alaska Native organizations about the child care methods that would be available. A couple of other commenters wanted States and Tribes to have the flexibility to work out mutually acceptable methods of providing care, which could include intergovernmental agreements for Tribes to provide services or systems for Tribal issuance of child care payments to JOBS participants. Another commenter thought that we should require States to develop their payment methods in consultation with the Tribes.

Response: The JOBS regulations at § 250.12(e)(2) already require coordination between the State agency and Tribal grantees about the services provided under Part 255. As part of this required coordination, we would expect the State and Indian Tribes or Alaska Native organizations to discuss such issues as methods of providing child care, criteria and procedures for approving and paying for care, and Tribal child care standards. However, we did not believe that it would be appropriate to issue specific regulatory requirements on the scope of consultation because we expect so much variation among the States with respect to State/Tribal child care issues.

Comment: One commenter suggested that State agencies be required to coordinate with JTPA agencies to ensure that there will not be duplication of supportive services.

Response: We have revised the regulations at §§ 250.12 and 255.3(h) to provide that the State IV–A agency must coordinate with agencies providing related supportive services. The NPRM only mentioned coordination with respect to child care; but not other supportive services.

Allowable Costs and Matching Rates (§ 255.4 of the Final Regulations)

Statewide Limit

Section 402(g)(1)(C) of the Act and § 255.4(a) of the regulations provide that FFP is available for payments for the actual cost of child care up to the statewide limit chosen by the State IV–A agency. The statewide limit may be the disregard level at § 233.20(a)(11)(i), or some higher figure. In no case is FFP available for payments which exceed the applicable local market rate.

An example may help to explain this provision. Suppose a State IV–A agency sets a statewide limit ($250), which is higher than the child care disregard, for the purpose of calculating the amount of child care costs that it will pay for or reimburse. In City A, the applicable local market rate is also $250. Thus the State IV–A agency can pay for the actual cost up to $250. In City B, the applicable local market rate is $225. Thus even if the care cost $250 in City B, FFP would only be available for $225. In City C, the applicable local market rate is $275. FFP would be available for only $250 (the statewide limit) or, if less than $250, the actual cost of care.

Comment: We received several comments opposing the requirement that States set a statewide limit for Federal matching of child care costs. Some commented that such a limit would not reflect local needs.

Response: We interpret the statutory language, which specifies that payments be limited by the disregard level or "an amount established by the State," to mean that if the State chooses to pay an amount higher than the disregard, it must establish a statewide limit. This amount is distinct in the Statute from local market rates. Further, we do not believe that setting a statewide limit precludes a State from reflecting local needs in its payment levels. For example, the State could set its statewide limit at the highest local market rate in the State. Payments would then be based on the actual cost of care up to the local market rate and the statewide amount would not be a limiting factor.

The statewide limit may be different for children under two and children aged two and over, consistent with the amendment to the child care disregard provision under the Statute effective October 1, 1989.

Comment: One commenter opposed allowing the AFDC disregard amount to be used as the statewide limit.

Response: The option for a State to use the disregard amount as its limit is specifically included in the Statute.

Comment: One commenter suggested allowing the State to use the statewide limit as the rate for a locality where the local market rate is very close to it.

Response: The Statute limits costs to the local market rate, and we cannot allow States to substitute a higher limit.

Local Market Rates

Each State IV–A agency must establish local market rates, and the State Supportive Services plan must explain the methodology used to establish them. We do not propose to impose any statistical formula to be used uniformly. However, in § 255.4(a)(2), we set a few requirements which the State IV–A agency must follow in establishing those rates. Furthermore, we intend to issue an Action Transmittal within six months which would specify criteria to be used in evaluating State sampling methodologies.

First, the State IV–A agency must base the rates on a representative sample of providers, obtained in a survey by the State IV–A agency or under an outside survey. Secondly, local market rates must be set at the 75th percentile. This level was selected because it represents a reasonable balance between concerns about fiscal

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accountability and accessibility to services. Finally, local market rates must be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool and school children and whether there are different rates for full-time and part-time care. Where appropriate, rates should reflect reductions in the cost of care for additional children from the same family.

State IV–A agencies have had some experience in determining local market rates when preparing State budgets and calculating the allowable title XX rate for child care. Also, studies are available to a State IV–A agency if help is needed in establishing local market rates. Many States rely on information provided by the local child care resource and referral agencies such as the studies done in 1987 and 1988 by the California Child Care Resource and Referral Network that gave costs of care, licensed capacity, enrollment, open slots, wait lists, hours of care, transportation, and types of regulated providers.

Collecting data on unregulated caregivers providing care in the home of the child may be more difficult and demand a different approach. We are aware of this difficulty, and we would allow a State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determined using the prescribed methodology.

Comment: Numerous commenters objected to an additional guideline we included in the NPRM which required that local market rates be determined for areas no greater than political subdivisions. Their concern was based in large part on the administrative difficulty of determining hundreds of rates and on the inconsistency of these requirements with other State systems. Most commenters supported greater flexibility in this area, but a few offered specific options such as the use of regional data; sub-State data grouped by similar geographic, economic or demographic conditions; or rural versus urban groupings.

Response: We have changed our regulations to delete the requirement that local market rates be determined for all political subdivisions. Instead, we allow the State to determine these rates for broader geographical regions in the State or for groups of small areas which reflect similar geographic, economic, or demographic conditions. This approach represents the best balance of our interests in minimizing the administrative burden on States and ensuring that rates reflect actual expected costs.

Comment: A number of commenters had general objections to the basic approach we used. They felt our approach was too complex and administratively burdensome. They also wanted greater flexibility so that other methods in the State could be adopted.

Response: Our decision to eliminate the requirement to produce local market rates for all political subdivisions addresses this concern and greatly reduces the administrative burden on the State.

Comment: We received one comment suggesting that establishing local market rates be made optional.

Response: The law states that "[t]he State agency may not reimburse the cost of child care provided with respect to a family in an amount that is greater than the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)." Therefore, the State must establish a local market rate. However, we did make some changes to the proposed guidelines for establishing the local market rate as discussed.

Comment: Numerous commenters opposed our basing the local market rate on the 75th percentile cost of such types of care in the local areas. Most commenters were concerned that this methodology might limit them from purchasing appropriate care in an area or care which provided special developmental programs, transportation, or medical services especially needed by children of AFDC recipients. Others felt that this would severely restrict access in rural areas. Some suggested that the computation of market rate cutoffs or percentiles should be based on the number of slots of care rather than the number of providers; if larger providers are more expensive, the 75th percentile would cover less than 75 percent of the slots.

Response: It is not our intention to restrict a State's ability to purchase appropriate quality child care in an area or care which has developmental programs or special services. However, we must have some method for controlling Federal financial participation in the cost of care which is exceptionally high for the State or locality. Therefore, we have decided to leave the 75th percentile requirement in the regulations. However, we will allow it to be based on child care slots instead of providers; this could increase the amount of child care available within the established cost limits. Further, by allowing the State broader discretion in defining local market areas, we believe we have alleviated some of the concerns of rural areas that our approach would arbitrarily exclude certain providers.

It was clear from the comments that there was considerable misunderstanding about what the term the 75th percentile means. Therefore, we decided it would be helpful to explain how the 75th percentile is derived.

Percentiles are derived from ranked data and separate the lowest values from the highest values, based on a percentage point cutoff. A common use of percentiles is in standardized educational tests, where a percentile score is typically given to indicate what percent of the nation's students are below the score reported. In the case of child care rates, a percentile score would identify the percentage of child care providers (or slots) in the sample whose rates were lower. Contrary to what some commenters thought, it does not indicate the percent of an average (or the highest) market rate. Thus, the 75th percentile does not mean that we would allow States to pay only 75 percent of the local market rate.

To determine the 75th percentile for a sample of a particular type of child care, it is first necessary to rank all of the sample child care rates from lowest to highest. Once this is done, you would go three-quarters of the way up the list. The number separating the 75 percent of providers (or slots) with the lowest rates from the 25 percent who are most expensive is the 75th percentile. Following is an example. In a local market area, a State develops a representative sample of child care rates for center-based care as follows: $120, $100, $110, $125, $95, $150, $120, and $135 (per week). Ranked from lowest to highest the rates are: $95, $100, $110, $120, $120, $125, $135, and $150. Here, $125 is the sixth value in a list of eight rates, and it represents the 75th percentile. Therefore, the local market rate would be established at $125.

One additional step must be taken if the size of the sample is not a multiple of four because, in those cases, a State may not be able to precisely determine the 75th percentile. Modifying the earlier example, suppose rates of $130 and $140 were also included in the sample. Here, the ranked rates would be as follows: $95, $100, $110, $120, $120, $125, $130, $135, $140 and $150. In this case, $130 represents the 70th percentile (i.e., 70 percent of the rates are at or below $130), and $135 represents the 80th percentile. Thus, any rate of $130 or less is clearly within the 75th percentile, and any rate of $135 or more is clearly above the 75th percentile. The State has discretion as to how to treat rates between $130 and $135; an obvious option would be to consider $132.50 to be the 75th percentile because it is halfway between the 70th and 80th percentile figures.

In addition, in response to concerns that the 75th percentile excludes care, especially in rural areas, where there are only one or two providers of a particular type of care in a local market area, we would allow the State to set the local market rate at the 100th percentile (to include the one or two providers).

Comment: One commenter suggested that States should be free to use the market rates for regulated care as the limit for informal care:

Response: It would not be appropriate to apply the rate for center-based, or regulated care, to other types of care which are likely to cost different amounts. However, we do recognize that it might be difficult to draw an adequate representative sample of providers for unregulated forms of care. Therefore, in such cases, we would allow the State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determines using the prescribed methodology. For example, it could use other surveys or other State programs to determine the appropriate differentials among rates for center-based, group family, family day, and in-home care and apply those differentials to the center-based rate that it determined under our standard guidelines. A State which plans to use this type of estimating procedure must describe its approach as part of its methodology description required in the Supportive Services plan at § 255.1(i).

Comment: A few commenters objected to the types of child care for which we required distinct market rates. A couple identified additional categories which might be appropriate, including night care or hourly care where care requirements exceeded the standard time available in a daily fee. Other commenters felt there were too many types specified. One specific objection was the reduction in cost associated with care provided to multiple members from one family.

Response: We identified these categories based on discussions with experts on child care services, indicating that the market for child care services typically was differentiated in this manner. At the same time, for certain types of differentiations, we used the terms "where applicable" and "if applicable" because we recognized the possibility that there could be local markets where such distinctions did not exist. In these cases, the State would have the flexibility not to develop separate rates. However, now that we allow the State to develop consolidated market areas which include a substantial number of political subdivisions, this is less likely to happen. We also recognize that it is not a universal practice among child care providers to make adjustments in fees when more than one family member uses a facility; therefore, our regulations only require States to "consider" this factor. Where such reductions are not standard, we do not expect States to make adjustments.

The types of differentiation specified in the regulations represent a minimum set of categories for which local market rates would be developed. Where the market for child care in an area, or State, is differentiated in additional ways, the State is free to develop more categories of local market rates. However, in response to concerns about the administrative burden of determining these rates, with the exception of creating a category for special needs, we did not want to add more Federal requirements in this area.

Comment: One commenter questioned the phrase "if applicable" in § 255.4(a)(3)(ii).

Response: We included this phrase to accommodate local markets for child care which were less differentiated. However, unless a State computes rates for all political subdivisions, we expect these categories to be generally applicable.

Comment: A few commenters expressed the desire to keep the special need option as a way of meeting the higher costs for care of handicapped children or children with other special needs, because that was not addressed in the instruction on local market rate and statewide limit.

Response: We recognize the need for making higher child care payments for certain children who are handicapped or who have other special needs. Therefore, we have added this as a category for determining local market rates. A State may also set a separate statewide limit for child care for children with special needs for such care. However, separate local market rates or statewide limits would not be allowed to cover special educational or other services not directly related to child care. For example, the State could not set special rates to cover costs of protective services or educational enrichment programs. However, this does not preclude a State from funding a Head Start grantee, for example, for costs (within the established limits) for child care provided during hours before or after the Head Start program.

Comment: Several commenters suggested that States update their local market rates periodically (i.e., every one or two years). Another commenter suggested that local market rates be increased, subject to cost-of-living changes for the services sector.

Response: Our regulations at § 255.1(i) already included a requirement for periodic updates, at least biennially. We decided to keep this requirement. A biennial requirement would be consistent with the plan submittal schedule and keep the rates reasonably up-to-date. At the same time, it would not force a State to spend a disproportionate share of its resources on this aspect of program administration, and it should allow sufficient flexibility to allow coordination of updates with other State programs. Our regulations allow more frequent updates by States where appropriate.

Also, we did not feel that it would be appropriate to require States to update based on outside cost-of-living indices. The system we established for determining local market rates should produce more accurate information on changes to child care costs at the local level than outside cost-of-living indices.

Applicable Standards For Child Care

The Statute requires that FFP be available for child care only if it meets applicable standards of State and local law and requires that parents be allowed access to the child care services. The requirement for parental access would cover custodial parents and non-custodial parents consistent with court orders governing such matters.

The State IV–A agency must also establish procedures to ensure that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. (Comments we received on this point are discussed at § 255.5.)

The State must also endeavor to develop guidelines for family day care if it does not already have them. We do not believe, however, that Congress intended to limit child care only to care that is specifically regulated by current State or local law. Other care, even if it is unregulated at the State or local level, is reimbursable under the Act. For example, some States exempt from their standards any center care that is under the auspices of a religious organization. Some States do not have licensing or registration standards for family day care. Other States do not require licensing or registration for family day

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care until they serve more than a specified number of children.

It should be noted that there are few laws covering in-home care, i.e., care of a child in that child's own home. Appropriate individuals may be paid as in-home caregivers. FFP is available for child care provided in the child's home by a relative who is not part of the assistance unit, such as a grandparent, aunt, or older sibling. FFP also is available for care by a relative outside of the home if care by that relative meets any applicable standards.

Comment: A few commenters wanted it clarified that relatives who were not part of the filing unit, or older siblings who were part of the filing unit, could be paid for child care services.

Response: FFP is available for child care provided by relatives who are not part of the assistance unit. However, as noted in the preamble of the proposed regulations, we preclude payment to any members of the assistance unit for providing child care services. Child care payments are made to offset direct financial costs to the assistance unit for child care services. When child care is provided by a member of the assistance unit, for example, an older sibling watching a younger child, there is no direct cost to that unit for child care. Even if the parent chooses to pay the older sibling, there is only an exchange of funds within the unit, not a direct financial cost to the assistance unit.

We have amended the regulation at § 255.4(f) to include the prohibition against FFP for payments made for care provided by parents or legal guardians, or by members of the assistance unit (including essential persons).

Comment: One commenter wanted us to clarify what would be required of States regarding the requirement that they endeavor to develop guidelines for family day care.

Response: We decided not to regulate specific requirements in this area. First, the vast majority of States have guidelines or stronger requirements already, and therefore regulating in this area would have limited effect. Secondly, the statutory provisions requiring that States report on such guidelines means that we will have much better information in the future on which to base any requirements (or otherwise judge State efforts). Finally, the availability of grant funds for fiscal years 1990 and 1991 to improve States' licensing and registration requirements means that changes in State guidelines or standards are expected, and regulatory requirements could easily become obsolete.

Comment: One commenter wanted the regulations at § 255.5 to incorporate the requirement for parental access.

Response: The regulations at §§ 255.1(e)(3) and 255.4(c)(1) already incorporate this requirement. Consistent with the Statute, we provide that FFP is available only if the entity providing care allows parental access. We also require the State to assure in the Supportive Services plan that entities providing care will allow parental access. We believe that these two provisions adequately address the statutory requirements on parental access.

Comment: One commenter wanted us to clarify that parental access meant access to all parts of a child care facility utilized by children at all times without prior notice.

Response: We decided not to regulate in this area. As we indicate elsewhere, the legislative history clearly establishes congressional intent not to create new Federal requirements for child care standards. Because parental access is such a closely related issue, we believe a consistent approach should be used. Although the commenter's definition looks reasonable, we would defer to States to define what parental access means.

Comment: One commenter wanted us to require States to establish standards on several specified items for all types of care (including exempt care); guidelines were not considered sufficient. Another wanted us to establish Federal requirements for informal care to ensure quality and safety.

Response: The conference report, (H. Rep. 100–998, 100th Cong., 2nd Sess. (at page 163)), specifically says: "The conference agreement does not give the Secretary the authority to establish Federal day care standards. It is not the intent of Congress to stipulate specific day care standards." On this basis, we have not created Federal requirements for child care standards, and this position received support from a number of commenters. In the case of family day care, the specific statutory requirement is that the State "endeavor to develop guidelines for family day care." Consistent with the principle of not creating Federal requirements, we are neither requiring standards in place of guidelines nor the development of guidelines in place of steps to endeavor to develop guidelines.

Comment: Several commenters wanted us to regulate all centers.

Response: Because Congress did not intend for us to regulate Federal child care standards, we have not created specific requirements. However, as discussed later, we have amended § 255.5 to require States to establish procedures to ensure that center-based care is subject to requirements designed to ensure basic health and safety, including fire safety, protections.

Applicable Tribal Standards

FFP is available for child care on Indian reservations if that care meets applicable State or Tribal standards. When both State and Tribal standards exist, the Tribal standards are the applicable standard. As required under the regulatory provision at § 255.5(a), State procedures to ensure that center-based care is subject to applicable health and safety requirements must cover center-based care provided on Indian reservations.

Comment: One commenter was concerned that two different child care standards would apply to a single household if there were an individual in the household subject to the State JOBS program and one subject to a Tribal program.

Response: There could be two different standards, but the existence of that situation would depend upon the location of appropriate child care services, not the nature of the participant's JOBS program. Either participant, working with the State, could seek child care on or off the reservation, depending upon her needs and the needs of her child.

Comment: One commenter asked whether State standards apply if there are no Tribal standards. Another commenter expressed concern about the State IV–A agency's being responsible for requiring that State licensing standards be met on Tribal lands.

Response: In the absence of Tribal standards, State standards would apply unless Tribal areas were excepted under State law. If State laws are applicable, those laws must be met in order for child care on a reservation to qualify for Federal matching.

Comment: One State asked about the ability of a State to pay for unlicensed providers through Indian Tribes.

Response: Depending on State and Tribal law, child care provided on a reservation may or may not be subject to State licensing requirements. It could also be subject to Tribal requirements. Whatever the situation, care on a reservation must meet any "applicable" standards to be eligible for payment under this Part, and we have revised the regulations at § 255.4(c)(2) to reference applicable Tribal law.

Matchable Administrative Costs

Many State and local agencies have indicated concern that adequate child care resources will not be available. However, the conference report does not support an interpretation that Congress intended to provide funds for activities such as resource development, recruitment and training under this program. Therefore, the regulations at § 255.4(f) specify that administrative costs for such activities as recruitment and training of providers, licensing, or resource development would not be considered allowable IV–A costs.

Under the Statute, Congress authorized a separate appropriation of $13,000,000 for fiscal years 1990 and 1991 for the Secretary to make grants to the States to improve licensing and registration requirements and procedures, and to monitor child care provided to children who receive aid under the State IV–A plan. State grants would reflect the State's proportion of the number of children in the State receiving aid under the State IV–A plan compared to the national total. The State would have to provide matching funds for these funds for an amount that is not less than 10 percent of the amount of the grant.

Comment: Although two commenters supported this position in part, many commenters wanted us to provide Federal matching for resource development and a broad range of other administrative activities. The suggested inclusions were numerous—matching of services, services information systems, counseling, staff development and training, coordination with other child care systems, joint resource and referral activities, establishing market rates, development and implementation of sliding fee scales, establishing payment or reimbursement systems, provider recruitment, provider training on State and local law, enforcement of child care standards and monitoring, development of after-school programs, provision of provider liability insurance, arranging purchase-of-service contracts (including development of requests for proposals and provider selection), creation or expansion of resource and referral systems, upgrading of providers/bringing unlicensed providers into the regulated system/providing technical assistance to providers who wish to be licensed, construction of child care facilities, advertising and recruiting providers to accept AFDC children, and ensuring that providers comply with State and local law. Commenters argued that Federal matching was necessary for these activities so that States could: (1) fulfill their responsibilities in guaranteeing care, counseling individuals and assisting them to locate care; and (2) assure child care expenditures would meet the conditions necessary to be eligible for Federal matching.

Response: Some of the items mentioned by commenters clearly fall within the definition of allowable administrative costs and would be matchable since they are necessary for the proper and efficient administration of the program. These include: matching of recipients to available child care services, services information systems, counseling about child care services, State IV–A agency staff development and training, coordinating with other child care delivery systems, establishing local market rates, developing and implementing sliding fee scales, establishing payment or reimbursement systems (as well as systems to collect fees, determine payment accuracy, recoup overpayments, and conduct hearings), and arranging purchase-of-service contracts (if this is a method the State has elected for providing care).

When we indicated that funds would not be available for resource development, we were not talking about the costs of matching recipient needs to available services or the costs of other coordination or consultation activities necessary for agencies to properly assist recipients in locating services. We were talking about resource development in the broader sense—those activities designed to increase or to upgrade the overall capacity of the child care delivery system. As one commenter pointed out, the conferees dropped a House provision that would have provided open-ended Federal matching funds for the development of new child care resources in the State. We must therefore conclude that Congress did not intend to provide such funding. On that basis we shall not allow Federal matching for general State expenditures on: provider recruitment, provider training (including training on State and local law), State programs to provide liability insurance, upgrading of providers (e.g., to bring unlicensed providers into the regulated system), or providing technical assistance to providers who wish to be licensed. We recognize that, in the process of developing information on providers or working out payment agreements, the State agency may provide incidental technical assistance to providers in some of these areas. This is acceptable, but IV–A funds may not be expended upon general resource development activities which serve to benefit a much broader community than this program.

State agency expenditures on coordinating with other programs to develop after-school programs which would serve AFDC recipients would be matchable, as would the costs of after-school care. However, IV–A funds could not be used for activities such as the recruitment or training of staff for after-school programs or for modification of existing facilities or programs. Construction costs are not matchable under a Comptroller General opinion which prohibits Federal funding of construction costs under programs unless specific statutory authority exists.

Federal matching would be available for the development of a resource and referral system for the IV–A program or for an appropriate share of the costs incurred in setting up or maintaining a resource and referral system which jointly benefits the IV–A program and other users. Where a resource and referral system already exists, Federal matching could cover the costs of expansion or modification necessary to serve the needs of the IV–A program. Federal matching could also cover fees for obtaining information from existing systems. However, Federal matching would not be available for expenditures on child care resource and referral services if they were otherwise available on a non-reimbursable basis. Likewise in the area of monitoring and enforcement of State and local standards for child care, we would match activities which are directly connected with IV–A program requirements. Specifically, we will provide Federal matching funds for the development of procedures to ensure that center-based care will be subject to applicable health and safety protections, including fire safety. However, we will not pay for implementation of such procedures or their ongoing application. Enforcement of State and local laws is a State and local responsibility, and we do not expect to provide Federal funds for State and local government expenditures in meeting their general responsibilities.

Since proper administration of the program includes activities necessary for ensuring that expenditures are proper, Federal matching funds will be available for State agency activities necessary to ensure that child care meets applicable standards of State and local law and that parents have access to child care providers. However, State agency activities in this area should build upon existing monitoring systems. We do not expect, and will not pay for, activities which: (1) duplicate monitoring activities of other State and

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local agencies which have general responsibilities in this area; or (2) are general in nature and not directly connected with the provision of services under Parts 255 or 256.

Matching Rates

The costs of providing transportation, work-related expenses, and other work-related supportive services are matched at 50 percent and are under the JOBS cap.

FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to the funding cap for JOBS for any State IV–A agency other than Puerto Rico, the Virgin Islands, Guam and American Samoa. For these jurisdictions, treatment of child care costs incurred is described at § 250.71(c).

Although the Statute does not directly address child care administrative costs, such costs are matchable at the administrative matching rate for AFDC as expenditures necessary for the proper and efficient administration of the program. As discussed in the previous section on "Matchable Administrative Costs," matchable administrative expenditures would include costs such as staff, supplies and overhead associated with the determination of eligibility for benefits, computation and issuance of benefit payments, review of payment accuracy, hearings, program referrals, program planning and management, and data collection and reporting.

Comment: One commenter wanted us to authorize the payment of one-time application or service fees to child care providers as administrative expenditures.

Response: We will allow these costs as IV–A administrative costs. We do not anticipate that these fees will be extremely costly since they are intended only to cover the one-time cost of processing the individual's application for child care. When a State agency arranges care at a facility which imposes these fees, the State would be required to pay for them. Where an individual arranges her own care or initiates an application without prior approval by the State, the State would have discretion whether to pay for the costs of any application or processing fees.

Comment: One State was concerned that expenses on rate-setting activities prior to JOBS implementation would not be matchable.

Response: We would match them as necessary and proper for the administration of the IV–A plan.

Comment: A few commenters felt that certain expenditures other than payments for child care services—such as expenditures related to connecting individuals with child care services, counseling, information systems, coordination, and resource and referral—should be matched as program, rather than administrative, expenditures.

Response: Title III of the Statute provides matching at the FMAP rate only for "amounts expended for child care." It does not provide it for information and referral activities. In fact, it does not directly address costs for any activities related to the administration of the child care assistance provisions. (Child care information and referral activities under JOBS are discussed in section 482(c)(3) of the Act.) However, we decided that such expenditures could be matched as necessary for the proper and efficient administration of the child care benefits. On that basis, they qualify as IV–A administrative costs and are matchable at the 50 percent rate.

Comment: One commenter wanted us to clarify that child care services provided by full-time JOBS staff and staff providing services such as determining eligibility, computing and issuing benefits, and making referrals would be matched under JOBS at the higher rates.

Response: When child care information and referral services are provided for JOBS participants and child care is approved through the JOBS program, costs associated with providing those services may be charged to the JOBS program. Such costs would be subject to JOBS matching regulations, as provided at § 250.73. Thus, the costs of staff who work full-time providing JOBS-related child care information or services (or full-time on these activities and other JOBS functions), are eligible for the higher JOBS match rate. In addition, when the assessment of child care needs and referral to appropriate services are provided as part of a JOBS assessment, development of an employability plan, or case management, those costs can be matched at the higher rate. If child care services are not matchable at the higher rate, then the State can charge the portion of time spent providing JOBS-related child care to JOBS at the 50 percent rate. Costs of providing these services are also allowable as IV–A administrative costs.

If IV–A staff provide child care for employed individuals and former recipients (eligible for transitional child care), and for JOBS participants, then only the costs of providing services for JOBS participants are matchable as IV–F costs, subject to the rules described above. The costs of providing child care services to individuals other than JOBS participants are matched as IV–A administrative costs.

Regardless of how costs associated with JOBS-related child care are charged, costs associated with providing transitional child care benefits must be charged as IV–A administrative costs. Further, expenditures on transitional child care benefits are chargeable only to IV–A (and not IV–F). As discussed elsewhere, costs associated with administering supportive services other than child care are generally matchable only under IV–F; however, where IV–A staff in non-JOBS areas are authorized to approve education or training for child care and supportive services, staff costs may be charged to title IV–A as administrative costs.

Comment: Another commenter wanted us to clarify that IV–A administrative match was available for administration of the child care provisions.

Response: As discussed above, IV–A administrative match is available for such administrative costs.

Fraud And Abuse

Although the Statute does not explicitly extend safeguarding against fraud and abuse to the supportive services authorized under the Statute, we believe that it is in the best interest of the Federal government and the State IV–A agency to require the State IV–A agency to do so. We have incorporated such a requirement at § 255.4(h). The State IV–A agency may use any method it deems reasonable to insure that charges are properly claimed and paid, and that they cover services actually received. Financial reviews to identify costs not eligible for FFP will be an important part of Federal oversight.

Comment: One commenter indicated that we should clarify what we meant by the requirement at § 255.4(h) that States take reasonable precautions against fraud and abuse or require that State child care programs be subject to the provisions of § 235.110.

Response: We believe that, consistent with the requirements at § 235.110, States should have methods available for identifying potentially fraudulent child care payments (to beneficiaries or child care providers), procedures for appropriate law enforcement referrals consistent with due process requirements, and designation of responsible officials. Therefore, we have amended the regulations at § 255.4(h) to make an appropriate reference to the requirements at § 235.110.

Comment: We also received a question about whether States would be required to recoup fraudulent child care payments for those receiving benefits under both Parts 255 and 256.

Response: Yes, for the child care benefits program, we are establishing recoupment rules similar to those in effect for the AFDC program. Our recoupment policies are discussed in more detail in "The Nature of Child Care Payments," section which follows.

Special Needs

In the past, many supportive services, especially for persons participating in employment and training programs, have been allowed as special needs. With the enactment of JOBS and the new child care provisions, Congress established specific programs for funding for such services and eliminated the need to treat such costs as special needs. Furthermore, for education and training activities and supportive services other than child care, it established an overall cap on the amount of Federal funds for these purposes. Therefore, the State IV–A agency may not pay for child care or for other supportive services that may be provided under JOBS, as special needs.

Comment: One commenter raised the issue of whether States who currently have a special need item covering training-related needs could eliminate such an item from their standard (as required by our NPRM) and still comply with the requirement of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, which prohibits lowering their AFDC payment levels below the levels in effect on May 1, 1988.

Response: Yes, they could. Based on the legislative history of the Medicare legislation, we have concluded that Congress intended to include only basic needs and not special needs in this maintenance of effort provision.

Comment: A number of commenters objected to the elimination of the option of providing payment for child care and supportive services (including fees and books for education) through special needs. Some commenters wanted the special need option at § 233.20(a)(2)(v) left unchanged, thus allowing the payment method throughout the State. Others wanted the special need option left for areas of the State that do not have a JOBS program so that self-initiated training and employment could be supported. Still others wanted the special needs left for non-JOBS participants in both areas of the State (JOBS and non-JOBS).

Response: For the reasons already stated, we have decided not to restore the special need item for child care and other supportive services for employment and training related to JOBS. However, in response to the concerns which were raised about the feasibility of approving all services through the JOBS program, we have decided to allow alternative approval procedures. For non-JOBS areas of the State, education or training activities may be approved for child care and supportive services by IV–A staff. The IV–A staff may also authorize one-time work-related expenses to accept or maintain employment if provided for in the State Supportive Services plan. Child care services would be covered by the payment of child care under title IV–A. Other supportive services and one-time work-related expenses would be charged to the JOBS program. We maintain, as stated in the preamble to the NPRM, that congressional intent was to fund these supportive services under the JOBS cap. Child care and supportive services needed for employment, education or training in non-JOBS areas of the State must meet State and Federal approval criteria (e.g., consistency with an appropriate employment goal and satisfactory progress). However, a streamlined approval process, which could be done by an AFDC eligibility worker as an adjunct to the normal IV–A eligibility functions, would be acceptable.

Nature Of Child Care Payments

Section 402(g)(3)(A) of the Act provides that child care payments are funded under section 403(a) of the Act. However, they are not IV–A assistance payments as such. Thus, (1) they are covered under a Supportive Services plan, rather than the State IV–A plan; (2) their receipt does not provide categorical Medicaid eligibility; (3) there is no entitlement to direct payment of benefits; (4) they are not subject to disallowance under the AFDC quality control system; and (5) they are not treated as assistance payments for the purposes of child support enforcement. At the same time, however, these child care benefits are funded on the same basis as AFDC, as an open-ended entitlement program, and they are administered by the same agency. Thus, for ease of administration, we are providing at § 255.4(i) that they be subject to many of the same administrative and financial rules as AFDC. For example, child care payments are subject to similar financial reporting requirements, similar procedures apply with respect to issues like the appeal of disallowances and the treatment of cancelled and uncashed checks, and grants to States are subject to the same basic administrative rules.

As indicated earlier, child care expenditures are not subject to disallowance under the AFDC Quality Control (QC) system. It appears that the QC system would not be an effective or proper vehicle for this purpose. However, consistent with the efficient administration of the program, we may use the existing QC process as a means of sampling cases to gather information on the correctness of child care payments. Using sample cases from the QC system, we would take disallowances following the procedures currently used for AFDC administrative costs.

Comment: A few commenters expressed concerns about the references to the QC system and wanted clarification of our plans.

Response: As we indicated in the NPRM preamble, child care payments under Parts 255 and 256 are not considered assistance payments for the purposes of Quality Control (e.g., for the purpose of §§ 205.40 or 205.44). However, as a point of clarification, child care expenses which are covered through the disregard will continue to be included under the QC system because they are part of the assistance payment. Since the child care disregard is subject to QC review, we would take no separate disallowances on those cases. Separate reviews would be limited to payment of child care costs through other methods—such as direct reimbursement, vouchers, etc.

We may use the QC system to draw samples of cases with child care payments for review. However, we recognize that any sample drawn through the QC system may need to be supplemented to include cases receiving transitional benefits and perhaps additional cases receiving benefits under Part 255 if we are to comprehensively review a State's child care payments.

We would expect financial reviews to cover such areas as the accuracy of payment levels. We would look at whether payment levels were within the limits established by law (no more than actual costs, the statewide limit, or local market rates). To the extent that payments did not meet Federal requirements, they would be subject to potential disallowances. We will issue an Action Transmittal within ninety days establishing the recordkeeping requirements that States will need to follow in order to qualify for Federal matching.

Similar disallowance procedures would be applied to improper claims for expenditures on supportive services made under title IV–F. However, these

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reviews would focus more heavily on consistency of expenditures with the approved State plan, since Federal rules in this area are minimal.

Comment: One commenter wanted us to clarify whether QC reviewers would be used to review child care payments.

Response: We have not yet determined the circumstances under which QC reviewers would be used to review child care payments and to make recommendations about whether disallowance are appropriate.

Comment: One commenter wanted us to clarify that disallowances for payments under Part 256 would also be excluded from the AFDC Quality Control system.

Response: This is the case. The regulations at § 256.4(b) indicate that the provisions at § 255.4 on disallowances also apply to Part 256.

Comment: One commenter wanted us to clarify the circumstances under which we would take disallowances for child care administration.

Response: Claims of administrative expenditures would be disallowed if the expenditures were not used for the purposes of this program or were otherwise unallowable under this program. For example, we could not pay costs associated with providing child care to Food Stamp-only or General Assistance recipients, for the construction of child care facilities, or for activities excluded under § 255.4(f).

Comment: A few commenters asked that we clarify child care overpayment and recoupment policies. As stated earlier, one commenter asked specifically about the requirement to recover fraudulent payments.

Response: We believe it would be appropriate for States to employ policies on overpayment and recoupment which are similar to those used under the AFDC program. We expect State agencies to promptly take any actions necessary to correct underpayment and overpayment. Payments made to adjust for underpayment would be disregarded in determining eligibility for AFDC, like other child care payments.

For those who received prior overpayments but are no longer receiving child care payments, recovery would normally be made by appropriate action under State law against the income or resources of the individual or family. For those who received prior overpayments and are still receiving child care payments, recovery would normally be made either through repayment by the recipient or by reducing future child care payments.

Overpayment recovery must be attempted in all cases involving current recipients of child care benefits, in all cases of fraud, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

Overpayment recovery should usually be attempted from the recipient of the child care payment regardless of whether the recipient of the child care payment is a provider of child care services or a recipient of child care benefits. However, based on the nature of the agreement between the State agency and providers, there may be cases where the State is obligated to pay an amount to the provider in excess of the amount which would be eligible for FFP. In these cases, the State agency need not attempt overpayment recovery, but it cannot receive Federal matching funds for such an overpayment. Examples of such situations include cases where the State purchases a number of child care slots, but does not fully utilize them, and cases where the State agrees to pay more than the allowable local market rate. In other cases where an individual receives child care services, which may have been approved by the State, but were not eligible for Federal matching (e.g., they did not meet applicable standards of State and local law; the child was not eligible under §§ 255.2(a) or 256.2(a); or the family was not eligible at the time under § 256.2(b)), it may also not be possible to collect the overpayment from the provider. Depending upon the individual case circumstances, it might be appropriate for the State to attempt recovery of these latter types of overpayments from the individual or family receiving child care benefits (e.g., where a family kept a child in child care after participation ceased or where they were no longer employed).

In § 255.4(j), we are incorporating these principles and related aspects of the AFDC recoupment process, derived from § 233.20(a)(13) where appropriate.

We decided not to impose the 90 percent rule (which applies to AFDC overpayments) for the recoupment of child care overpayments because it is not a statutory requirement for this program and it seemed inappropriate to impose such a rule when recoupment could be coming from provider payments rather that recipient benefits. However, when recovering an overpayment from an individual still receiving child care benefits, the recovery shall result in the family retaining, for any month, from the combined aid, financial assistance, income and liquid resources of the family, a reasonable amount of funds, consistent with preventing the unnecessary disruption of existing child care services and with the continued requirement to guarantee child care.

Any child care overpayments may be recovered from other IV–A child care payments. Recovery of child care overpayments may not be made from AFDC grants, except on a voluntary basis.

Recovery of overpayments of supportive services paid under IV–F would follow similar standards. Such recoveries could only be made from subsequent IV–F supportive services payments, not from AFDC or IV–A child care payments.

Due Process

Due process requirements (using the JOBS or IV–A hearing process, as appropriate) would apply to child care services. However, except in situations where a change in the method of payment affects AFDC benefit levels, requirements for timely notice would not apply to disputes about the method of payment. Under this Part, the State IV–A agency has discretion about the method of payment to be used; unlike the AFDC program, recipients are not necessarily entitled to assistance in any particular form.

If disputes arise about the provision of child care benefits under this part or the State IV–A agency proposes to deny, discontinue, terminate or reduce child care benefits, the individual is entitled to a hearing, but is not entitled to a continuation of child care benefits in the same amount or form pending that hearing. Consistent with the requirements of § 205.10, however, the individual's AFDC payment may not be reduced because of sanctions under § 250.34 or because of changes in the method of guaranteeing an individual's child care benefits while a hearing is pending. For example, in cases where a recipient's participation in a JOBS activity or in education or training ceased in non-JOBS areas (e.g., due to illness or termination due to unsatisfactory progress), the State IV–A agency would cease providing child care benefits. The individual could appeal that State IV–A agency decision, but child care benefits would not be provided during conciliation or while a hearing was pending. In the meantime, the recipient might be prevented from continuing (or resuming) participation because of the termination of child care benefits. She could not have her AFDC benefits reduced for non-participation while a hearing was pending, and the termination of child care benefits would be considered in determining whether she had good cause for non-participation during that period.

Comment: A number of commenters felt the proposed regulations violated due process requirements and the requirements of the Family Support Act regarding the applicability of *Goldberg* v. *Kelly*. They objected to our position that recipients of child care under Part 255 would not be eligible for continuation of benefits pending a hearing. Other concerns included the consistency in treatment between the two classes of child care beneficiaries (those on AFDC receiving benefits and those receiving transitional child care) and the potential for unnecessary losses of child care arrangements.

Response: To help ensure that due process requirements are met, we have changed the proposed regulations at § 255.2(g) to add requirements that the State IV–A agency inform families about their rights and responsibilities and respond to requests for assistance within a reasonable period of time. However, we decided not to change our position on hearings and aid paid pending. First, the Family Support Act provision on *Goldberg* v. *Kelly* applies only to disputes related to JOBS participation; it does not apply to general disputes on child care. Secondly, the standards under the *Goldberg* v. *Kelly* decision would not require aid paid pending a hearing under these circumstances. In this decision, the Court recognized a distinction between welfare assistance, which provides "the means to obtain essential food, clothing, housing, and medical care," and other kinds of assistance which do not provide "the very means by which to live." "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.' " Thus, under *Goldberg* v. *Kelly*, the loss of child care benefits should not be held to the same due process requirements as the loss of financial assistance because it does not touch "the means by which to live" in the same manner. By requiring continuation of financial assistance, unless declined, pending a hearing, our regulations meet due process requirements.

As stated earlier, we saw a distinction between child care benefits provided to a recipient and the transitional benefits provided to a former recipient (where we do require aid paid pending). In short, in the case of an AFDC recipient, we know that her basic needs are being met through AFDC until a hearing is held; further, a JOBS participant would not be subject to participation requirements if necessary care was not being guaranteed; and, for an employed recipient, the disregard would be available to prevent the loss of a job or income until a hearing is held. Since a recipient of transitional care typically has earned income as her basic means of support, we reasoned that the loss of that care could result in the loss of her basic means of support and, therefore, we believe that requiring aid be paid pending a hearing in such cases is reasonable.

Comment: Several States wanted to know if Federal matching is available for child care benefits paid pending a hearing.

Response: In the case of transitional benefits, where aid must be paid pending a hearing, Federal matching would be available for such assistance. Nevertheless, if the hearing decision is adverse to the recipient, such aid must be recovered. For child care benefits under Part 255, we would not provide Federal matching for aid paid pending a hearing.

Comment: A couple of commenters objected to the language at § 255.2(h), that changes in the manner of payment were not subject to timely notice requirements. Some expressed concerns about the continuity of care; one suggested that timely (ten-day) notices should be required when a change in method would affect the family's contribution.

A couple of commenters wanted us to distinguish between changes in the manner of child care payment and changes in the type of care. They thought our language implied that timely notice requirements would apply to changes in the type of child care arrangements and wanted us to clarify that position.

Response: We do not believe that timely notices should always be required when the manner of payment is changed. The Statute clearly gives the State the authority to select the methods of providing care; individuals are not entitled to receive care under any particular method. The authority for the State to change the manner of payment would be a simple extension of the authority of the State to select a method of providing care.

However, we do recognize that changes in the method of provision of care could disrupt child care arrangements or otherwise negatively affect the individual's child care benefits. In such cases, timely notice should be provided, and we have revised the regulations at §§ 255.2(h) and 256.4(d) accordingly. Specifically, if a change in the method of providing child care (i.e., a change in the manner of payment) would involve a discontinuation, suspension, reduction, or termination of benefits, or force a change in child care arrangements, the State must provide timely notice. Timely notice requirements would not apply if the change in method of providing child care did not have one of these effects.

Comment: One State had questions about how States would take into account changes in the statewide payment levels, market rates, and standards, particularly as they would affect vendors.

Response: If a change is made to the statewide payment levels, market rates, or applicable standards of State and local law, child care being provided at the time of the change is subject to the change. There is no statutory authority for States to phase-in such a change by grandfathering existing child care arrangements. States should be aware of this requirement when entering into arrangements or contracts with child care providers. A State might choose to include provisions for modification or cancellation in order to avoid questions about the availability of Federal matching.

Child Care Standards (§ 255.5 of the Final Regulations)

The language of the Act reflects Congress' intent to ensure the health and well-being of the children for whom child care is provided. Child care must meet current applicable standards of State and local law; however, States are not required to develop new standards. Consistent with congressional intent, we are not creating Federal requirements in this area. At § 255.1(e), we require that the State Supportive Services plan include an assurance that the State will meet the appropriate standards of State and local law (and/or Tribal law, where applicable). The State must make the standards available to the Family Support Administration, upon request, for the purposes of program reviews, payment reviews and audits.

The regulations incorporate the requirements in the Statute that the State provide the Secretary, upon request, with a description of State and local requirements for center-based care designed to ensure basic health and safety, including fire safety, protections and endeavor to develop guidelines for family day care. The Secretary shall report to the Congress on the nature and content of State and local standards for health and safety by October 1, 1992. We will be sending an Action Transmittal to the State IV–A agencies at a future date requesting the information necessary to meet these requirements. For the purpose of the one-time report to Congress, it would be helpful if the State IV–A agency

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describes the procedures that both have been and will be established. The State also must endeavor to develop guidelines for family day care if such guidelines do not already exist.

We have revised the regulations at § 255.5 to provide that the State will have to make available, upon request of the Secretary, information on the applicable standards of State and local law, as well as on its basic health and safety requirements for center-based care. This change reflects our changes to the requirements on States regarding center-based care, discussed in response to the following comment, and it makes the regulations consistent with the language in the NPRM. The revised regulations also indicate that the Secretary may require information on the development of guidelines for family day care. The guidelines information is not addressed in the Supportive Services plan, but is subject to reporting under the Statute.

Comment: Several commenters objected to the language at § 255.2(a), where we said that States had to have procedures to ensure that center-based child care would be subject to "applicable" standards of State and local law including those designed to ensure basic health and safety protection, and fire safety. Some commenters felt this language was inconsistent with our preamble language and the statutory language. Some wanted the regulatory language revised to correspond to the preamble language, which more directly reflected the Statute.

Response: We have revised the regulations at § 255.5(a) to require that the State establish procedures to ensure that center-based child care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. This language more closely follows the Statute.

Uniform Reporting Requirements for Child Care (§ 255.6 of the Final Regulations)

Consistent with the requirements of section 606 of the Statute, the State IV–A agency is required to report information on child care to ensure that the provisions of the Statute are effectively implemented. These requirements are addressed in § 255.6 of the regulations. We also have included a requirement that the State IV–A agency report the number of children for whom care is provided, by type of care, under both Parts 255 and 256. As in any other fiscal expenditure, adequate information must be in the case record documenting these expenditures.

We have addressed specific comments on uniform reporting requirements for child care under the general section on uniform reporting.

PART 256—TRANSITIONAL CHILD CARE

Purpose (§ 256.0 of the Final Regulations)

The purpose of this part is to implement section 302 of the Family Support Act of 1988.

State Plan Requirements (§ 256.1 of the Final Regulations)

The State Supportive Services plan must include the methods available to provide extended child care. We suggest that the State IV–A agency use the same methods, except for the income disregard, that it has in place for providing child care to AFDC recipients during employment, education and training activities, including activities under JOBS.

The State Supportive Services plan must also contain the sliding fee scale under which the family will contribute to the cost of the child care.

As in the case of the initial JOBS plan, we expect the State IV–A agency to submit a Supportive Services plan for transitional child care 45 days before the April 1, 1990 effective date. If a State IV–A agency has not previously submitted a Supportive Services plan because it has not implemented its JOBS program, the Supportive Services plan for transitional child care must contain both the provisions discussed here and any provisions described at § 255.1 that apply to transitional care. For example, the transitional plan must include necessary assurances on procedures and information on local market rates.

As discussed in the preamble to § 256.2, we have added a requirement that the State include in its Supportive Services plan a description of its application requirements for transitional benefits.

Eligibility (§ 256.2 of the Final Regulations)

Basic Eligibility Requirements

Effective April 1, 1990, certain AFDC recipients will, upon loss of eligibility for AFDC because of employment, become eligible for 12 consecutive months of child care. To be eligible for this benefit, the former recipient must have received AFDC (or been considered a recipient under § 233.20(a)(3)(viii)(D)) for 3 of the prior 6 months. We define the first month of the period of eligibility as the month the individual becomes ineligible for AFDC because of one of the following three events:

(1) any increase in earned income;

(2) the loss of the $30+⅓ or the $30 disregard because of the expiration of the time limits on their use; or

(3) for AFDC–UP cases only, an increase in the number of hours worked by the principal earner to 100 hours or more per month.

Comment: One commenter suggested that we clarify that eligibility based on an increase in the hours of work would result only from an increase in hours by the principal wage earner.

Response: Although a clarification may not be necessary, since hours of employment do not directly affect AFDC eligibility except in the case of the principal earner, we revised the preceding preamble language on eligibility to clarify that only an increase in the hours worked by the principal earner would cause eligibility.

Comment: One commenter was concerned about the eligibility requirements for transitional benefits not being parallel to existing programs using title XX.

Response: We realize these eligibility requirements may differ from requirements in other programs, but the requirements are statutory, and we cannot revise them. There may be greater opportunity for achieving consistency by modifying requirements in other programs. In particular, eligibility requirements for title XX child care benefits are not set by Federal law, but are determined by the individual States.

Comment: A few commenters objected to the requirement of receiving AFDC in 3 of the preceding 6 months. They felt that it penalized new recipients who receive AFDC for periods of less than 3 months, as well as those States that are able to quickly assist AFDC recipients in finding employment. Furthermore, they raised concern over a possible incentive to AFDC recipients to remain on AFDC for at least 3 months before securing employment so that they could be eligible for transitional child care benefits.

Response: The requirement that former recipients received AFDC for 3 out of preceding 6 months was set in the Statute. It is consistent with prior transitional benefit provisions.

Comment: One commenter requested that recipient declaration be allowed in determining whether the family received AFDC benefits during 3 of the preceding 6 months in cases where families received AFDC in another State.

Response: In cases where the State does not have direct access to data on prior AFDC receipt, recipient declaration would be allowed, but States are expected to develop and follow appropriate verification procedures.

Comment: One commenter wanted us to clarify that non-JOBS participants are eligible for transitional child care benefits.

Response: The regulations at § 256.2(b), which specifies the basic conditions under which families are eligible for transitional child care, includes no reference to JOBS. Therefore, all AFDC recipients are eligible for benefits, provided they meet all eligibility requirements discussed above.

Comment: One commenter wanted us to revise our regulations because they did not cover child care related to acceptance of a job under the guarantee.

Response: We have revised § 256.2 so that the guarantee covers care needed to accept and retain employment.

Application for Benefits

We will allow the State to establish its own requirements for determining eligibility for transitional child care benefits. These requirements must be included in the Supportive Services plan. The requirements could vary depending on the need of the State for eligibility and payment information. For example, a State that has current information about recipients might approve transitional child care and establish fees through a recertification process. In other cases, where the State does not have current information (e.g., where the individual's arrangements with a relative for unpaid care are discontinued and she begins needing child care benefits 6 months after she leaves AFDC), the same State might require a full application.

Comment: While two commenters supported the written application requirement contained in the NPRM as an administrative necessity, many commenters opposed it. Most were opposed to it because of the burden that it would place on agencies and clients, and because of the gap in child care that could result. A few commenters also noted that this sort of application is not required for extended Medicaid benefits and, therefore, should not be required for transitional child care benefits either.

A few commenters suggested that there be no requirement at all; some wanted automatic eligibility—at least for those who cooperated in establishing their eligibility before they become ineligible for AFDC or for those who were already receiving child care benefits under JOBS. Other suggestions included: (1) requiring that an application be filed: (a) based on the need to know; (b) if at least one month had elapsed since termination from AFDC; (c) only in situations where there has been a break in the period of State-supplemented day care and the break was at the household's request; and (2) giving States the option to require applications: (a) under any circumstance; (b) when at least one month had elapsed since leaving AFDC; or (c) if the client had a break in eligibility. In place of a written application, a few commenters suggested these alternatives: (1) recertification with minimum data asked and prompt approval; (2) recertification except in cases where factors have already been documented in the case file and there is no expectation of change; and (3) oral applications or other application methods, short of a formal, written application.

Response: We have changed the regulations and will no longer require a written application. The revised language at § 256.2(b) indicates that the family must request transitional child care benefits and meet appropriate application requirements established by the State. These requirements could vary depending on the need of the State for eligibility and payment information.

In light of the flexibility we provided in this area, we felt it was important to know the nature of the requirements established by the State. Therefore, we amended § 256.1 to add an additional item to the Supportive Services plan which would describe State application requirements.

Comment: We received similar objections to our policy denying retroactive benefits.

Response: We have decided to change our policy and require the provision of retroactive benefits. Therefore, we have deleted the language which was at § 256.2(b)(3) of the NPRM indicating that there was no eligibility for benefits prior to the month of application. We have also deleted preamble language saying that individuals should be clearly informed about the loss of transitional child care benefits for any month prior to the month of application if they fail to apply.

Comment: One commenter wanted us to include a reasonable time period for taking action on applications in the regulations. The commenter suggested that we set a 15-day time limit for acting on an application that is submitted just before the family becomes ineligible for AFDC and a 45-day limit when there has been a gap of one month or longer in AFDC eligibility.

Response: Since we deleted the mandatory application requirement, we expect State requirements, and the circumstances under which application is made, to vary considerably. Therefore, we do not feel that we should prescribe such standards. Nevertheless, we expect States to act upon requests for child care benefits—under this Part and Part 255—within a reasonable time period.

Comment: One commenter wanted clarification on the criteria that should be used in reviewing applications for approval or rejection.

Response: We do not want to regulate unnecessarily in this area, because we anticipate substantial variation in application requirements among and within States. Obviously, approval of benefits should be based on sound, documented and complete information. There should also be a specific request for benefits. Applications should be disapproved when information indicates ineligibility or when information is insufficient to determine eligibility or fees. If an application is disapproved, the State should send a notice which includes the reason for the disapproval. The State also must inform an applicant of the opportunity to have a hearing if she wants to appeal a disapproval of benefits.

The regulations at § 256.2(b)(3) have been revised to indicate that families must request transitional benefits, must provide the information necessary for the State to determine their eligibility and fees, and meet appropriate application requirements of the State.

Notifications

The State has the responsibility of informing the recipient that the transitional child care benefits are available. Such notification should take place at the time the State provides the program information required at § 250.40 and be repeated at the time of termination of the individual's AFDC benefits. Section 256.4(c) requires that recipients be notified of their potential eligibility for transitional child care when they become ineligible for AFDC and that they be informed of the steps they need to take to ensure that they request and receive all benefits for which they would be eligible.

Comment: One commenter wanted us to require States to develop procedures for clients to access child care after they find employment.

Response: We decided not to create regulatory requirements in this area. First, they would unduly interfere with the State's flexibility to establish the methods by which individuals would

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receive benefits under this part. Secondly, they would violate our general principle not to regulate procedural matters unnecessarily. Further, the statutory language does not support such requirements. In the context of the JOBS program, the Statute establishes certain expectations about State agency assistance in helping individuals access child care; it does not establish similar expectations for State agency assistance to individuals seeking transitional benefits. Thus, we concluded that no requirements were intended here.

Comment: One commenter suggested that the notification should cover penalties for quitting a job or failing to cooperate with the child support enforcement program.

Response: We agree that it is important that recipients are aware of these responsibilities and penalties. However, they should be informed of all their rights and responsibilities under the program. We therefore added a requirement in §§ 255.2(g)(1) and 256.4(c) to specify this State responsibility.

Comment: A couple of commenters felt the transitional notice should be separate from the notice of AFDC termination and recommended that notices be made by personal contact.

Response: We did not feel changes here were necessary. Under the proposed regulations, we already required that the notification be given "in writing, and orally as appropriate." We also required that individuals first receive information about these benefits under the JOBS orientation. To impose further notice requirements would seem unnecessarily onerous on States and would be contrary to our general philosophy not to unnecessarily regulate State notification procedures. Furthermore, we did not feel that a separate notice was necessarily preferable from the recipient's point of view. A well-designed single notice—or single mailing—could be more effective than separate notices.

Comment: One commenter thought that notices should cover the methods of providing transitional versus recipient care.

Response: Such information might be covered under the JOBS orientation or under the new rights and responsibilities requirement that we added in response to another comment. We do not believe a specific requirement is indicated. As we discussed elsewhere, under the JOBS program, there are detailed informational requirements regarding the provision of child care services. The Statute does not create similar informational requirements for transitional care, and it makes no provision for the administration of those benefits. Therefore, we do not believe extensive requirements in this area were intended.

Effective Date

We considered when the first month of ineligibility must occur to qualify a former recipient for this benefit. We decided that the first month of ineligibility for AFDC—and the concomitant first month of eligibility for transitional child care—must be April, 1990, or later, because April 1, 1990, is the effective date for the transitional child care provisions. Therefore, to receive transitional child care for April, 1990, the last month of AFDC benefits must have been in March, 1990, and March would be one of the three months with receipt of AFDC benefits required during the six-month period following September which are necessary for eligibility.

Comment: One commenter wanted clarification on which month is the first month of eligibility—the effective month of AFDC discontinuance or the month when AFDC should have been discontinued if an error is made.

Response: Eligibility for transitional child care benefits begins when AFDC should have been discontinued; that is when the family becomes ineligible for AFDC. The statutory language refers to the period when a family "ceases to receive aid to families with dependent children." We do not consider payments made in error to be such aid. Rather, we consider only aid paid while the family is eligible to be "aid to families with dependent children." Thus, the fact that a State continues to make AFDC payments erroneously does not affect the eligibility period for transitional child care.

Comment: A few commenters wanted us to interpret the April 1, 1990, effective date differently so that more individuals would be eligible. Some suggested that we extend the benefit to those already receiving such a benefit under a State program, provided that all other eligibility requirements were met at the time they became ineligible for AFDC and during the period before April 1, 1990. Another commenter wanted participants in States that had JOBS in place before April 1, 1990, who became employed and subsequently ineligible for AFDC prior to April 1, 1990, to be eligible for benefits for the remainder of their 12-month transition.

Response: We do not believe a change in policy is indicated. We believe the policy in the proposed regulations represents the best interpretation of the April 1, 1990, effective date for this provision. It is consistent with the interpretation used in implementing prior transitional benefit provisions under the Social Security Act.

Comment: One commenter suggested that the final regulations include the provision that the first month of AFDC ineligibility be on or after April 1, 1990, in order for the family to be eligible for this benefit.

Response: We have added this provision to the final regulations at § 256.2(b)(4).

Period of Eligibility

Based on the intent that families have help with their child care needs for 12 months after losing their AFDC benefits, the regulations provide that families who do not need child care immediately after such loss of AFDC may begin to receive child care in any month during the 12-month eligibility period for the remaining balance of the 12-month period. For example, a family that does not need child care until five months after going off AFDC would qualify for that month and the remaining six months of the 12-month eligibility period.

States must keep case records open for 12 months after the individual, who loses AFDC eligibility, becomes eligible for the transitional child care.

Comment: One commenter opposed the 12-month limit on benefits.

Response: The 12-month eligibility period was set by Congress in the Statute.

Comment: One commenter wanted everyone to receive 12 months of benefits regardless of when employment was found or the reason they lost eligibility for AFDC.

Response: The eligibility for and timing of the transitional child care benefits is set by the Act. The 12-month eligibility period begins when the family loses AFDC eligibility because of increased hours of or countable income from employment, not when a member of the family finds employment. For example, an AFDC recipient could be employed, but still be eligible for AFDC. If a few months later she gets a raise and becomes ineligible for AFDC because her income is now too high, she is eligible for 12 months of transitional child care from that point. If, however, a family loses AFDC eligibility for a reason other than the employment-related ones specified in the Act, it cannot receive transitional child care benefits, even if a member finds a job during the 12-month period after the family loses AFDC eligibility.

Comment: One commenter wanted to know whether those in the AFDC–UP program were eligible for the full 12 months of benefit if the State currently limits receipt of AFDC benefits to 6 months and they find a job after this 6-month benefit ends.

Response: In this situation, the family became ineligible for AFDC because of the time-limitation on UP benefits. The family is ineligible for transitional child care benefits because it does not meet the statutory eligibility requirement that the family become ineligible for AFDC because of employment.

Good Cause

The Act provides that a family is ineligible for transitional child care if the caretaker relative, who is a member of the AFDC family, terminates employment without good cause or fails to cooperate in establishing paternity and enforcing child support. Cooperation in establishing paternity and enforcing child support is discussed at § 232.12.

If the caretaker relative loses a job (with good cause as defined at § 250.35), and then (prior to re-establishing eligibility for AFDC) finds another, the family would qualify for the remaining portion of the 12-month eligibility period. Also, if the caretaker relative loses a job and the family goes back on AFDC, that family could again become eligible for a full 12 months of transitional child care as long as it meets the eligibility requirements discussed above.

Comment: One commenter opposed penalties for terminating employment without good cause.

Response: The Statute provides that a family is ineligible for benefits if a caretaker relative who is a member of the family terminates employment without good cause.

Comment: One commenter wanted us to clarify the regulations about provision of a new, full 12-month period of eligibility when the participant loses or quits her job with good cause, goes back on AFDC, and then finds another job.

Response: We have done so at § 256.2(e) in the final regulations.

Comment: One commenter questioned whether our reference to § 250.35 was appropriate. The particular concern was that § 250.35 did not necessarily cover the loss of a job which was beyond the recipient's control.

Response: Loss of eligibility only occurs when an individual terminates her employment. Thus, ineligibility would only occur when the individual takes an action which precipitates the loss of the job. Furthermore, the regulations at § 250.35 have been amended to include situations beyond the individual's control. We therefore believe the reference to § 250.35 is appropriate and adequate.

Comment: One commenter suggested that we require appropriate notification of the potential sanctions for non-cooperation.

Response: As discussed elsewhere, we believe that the State should provide recipients this information, and we have made appropriate changes to the regulations.

Comment: One commenter asked that we make the references in the regulations to "member" and "caretaker relative" in §§ 256.2(a), 256.2(d), and 256.2(e) consistent.

Response: We have not made these changes in the body of the final regulations because there are statutory differences between the two terms. Furthermore, if we change each of the named references to "member," we broaden the base for penalty. That is, a family could become ineligible for benefits based on the actions of any family member instead of the actions of a caretaker relative alone. Conversely, if we change each of the references to "caretaker relative", we limit the scope of the guarantee available to the family. The family could only receive transitional child care if it was necessary to keep a caretaker relative employed. Child care needed for the employment of family members other than the caretaker would be excluded.

Fee Requirement (§ 256.3 of the Final Regulations)

Section 402(g)(3)(A)(vii) of the Act requires the State IV–A agency to establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care.

The final regulations provide States flexibility in determining the formula for calculating these fees. The only regulatory requirement is that all recipients of benefits under this Part must make some contribution.

Comment: In the NPRM, we asked for suggestions for Federal rules on imposing specific limits on the fee scales determined by States. Most of the comments we received suggested that we give States flexibility and allow them to use existing formulas developed for other child care programs in the State. The following are some of the specific suggestions: (1) allow States to use their own formulas, which would be included in the Supportive Services plan; (2) require payment by the family of 100 percent of the cost of care if family income exceeds 185 percent of the poverty level; (3) do not require a payment of any amount from families below the poverty level; and (4) make the sliding fee scale optional.

Response: The Statute explicitly requires that the State establish sliding fee scales, and we cannot make it optional. However, in response to the strong support for State flexibility in this area, in the absence of similar requirements across States, and in the interest of reducing administrative hurdles to program coordination, we have decided to allow State flexibility in determining the formula for calculating fees. The only requirement we decided to impose at this time is a requirement that all recipients of benefits under this Part make some contribution, however minimal. We believe such a requirement would not create serious compatibility problems and we consider it essential to establish the transitional nature of these benefits and develop recipient responsibility for self-support. We are not setting Federal requirements on the significance of that contribution, and we recognize that the contribution expected from those with the lowest income levels might be no more than a token amount (and contributions might be subject to a different payment schedule).

Although we have decided not to regulate substantially in this area, we are still concerned that States establish scales which require meaningful contributions from families able to pay. We will monitor the State practices in this area over the coming few years and will reconsider our regulatory approach if it appears Congressional intent is not being met in this area.

Comment: Other commenters wanted clarification about how to determine family income; one commenter suggested counting all income normally counted plus income of dependent children. Commenters also asked whether they could add in other factors (e.g., expense of care) besides ability to pay in establishing their fee structures.

Response: The State may determine income using AFDC rules for counting and verifying income (at §§ 233.20 and 233.36), or it may use income rules established by other State child care programs. Also, it may consider factors besides income in setting fees as long as those factors directly affect the family's ability to pay. For example, the State could consider the number of children requiring child care services.

Comment: One commenter wanted the States to have flexibility in the method of payment and the setting of their fees. The commenter suggested that States have the option to develop a sliding scale which establishes the State's obligation for payment rather than setting recipient fees. One consequence of the proposed approach would be that

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recipients incur the full costs of more expensive care.

Response: Although we provide States flexibility in establishing payment methods, fee amounts, and fee collection procedures, we do not think this commenter's approach is consistent with congressional intent. It would not have the same effect on the recipient as a traditional sliding fee scale system, and recipient fees would not fully reflect the recipient's ability to pay. We are particularly concerned that this approach could work to discriminate against recipients based on their geographic location or the needs of the child, and that it would unduly restrict parental choice.

Collection of Fees

States may set different periods of payment collection for differing levels of payment. For example, it may not be cost-effective to collect and record very low fees every month. Data will be required in the case record concerning the fee schedule and the collection of the fee.

Under the regulations at § 256.3(e), the State IV–A agency must take appropriate action if a family does not pay its fee. If a family does not cooperate in paying its fee, it would become ineligible for continued transitional benefits, and it would remain ineligible for so long as back fees were owed, unless satisfactory arrangements have been made to make full payment. However, transitional child care benefits would not be discontinued without due process, and benefits would be continued pending a hearing, if requested. Unless the fee requirements are taken seriously by States and recipients of benefits, the program will not be effective in providing a transition towards self-sufficiency.

Under the regulations at § 256.1(e) the State plan must specify the methods and procedures the State IV–A agency shall use to ensure that fees are collected.

Comment: Several commenters on this section wanted the fee to be paid to the provider directly. Some suggested that payment to the provider be made a requirement, but a few suggested allowing a State the option. One commenter requested flexibility for the States to develop their own fee collection system.

Response: In order to ensure some State flexibility and ease administration, we have decided not to require State agencies to collect fees directly. States have at least three options: (1) require the fee to be paid to the State; (2) require the fee to be paid directly to the provider and have the State pay the provider for the difference; or (3) pay the recipient the State's contribution and require her to pay the provider in full.

Comment: One commenter wanted to know if the fee is used to offset the expense of child care.

Response: The fees collected should be used to offset the expense of child care (like AFDC overpayment collections are treated). They are considered program income which should be handled like a "deduction," as described in § 74.42(c).

Comment: One commenter suggested that we allow States flexibility to develop arrangements with providers to cover costs of uncollected fees.

Response: Some flexibility is allowable, as long as the State does not abdicate its responsibility to see that fees are collected. Recipients should be responsible for contributing to the cost of their child care, and any arrangements between the State agency and providers should be consistent with this goal.

Comment: Several commenters did not want the State to be obligated to monitor or enforce payments to providers.

Response: As long as the State is paying for part of the child care, we believe the State is obligated to make sure the provider is getting paid. Unless fees are paid, States may end up incurring higher child care costs or losing potential child care slots because of disgruntled, unpaid providers. This situation increases the potential for a lapse in care or a lack of child care slots. Therefore, the State must monitor and enforce payments to providers.

Comment: A couple of commenters were opposed to the denial of benefits to non-paying families.

Response: The Statute requires that families "shall contribute" to the cost of child care benefits based on their ability to pay. We decided to make such contributions a condition of eligibility in order to give the requirement meaning. Otherwise, those who failed to meet their fee obligations would be better off than those who were fulfilling their responsibilities. Furthermore, the provision creates some consistency between how cooperation in paying fees is treated and how other forms of cooperation (e.g., in meeting child support requirements) are met. This consistency will make the provision easier to administer and more understandable to recipients and agency staff.

Comment: One commenter had a question about whether a family is required to pay what it owes in full before benefits are restored.

Response: A family need not pay in full before benefits can be restored. However, arrangements must be made to ensure that it will meet its obligation. These arrangements could take the form of an agreement upon a payment plan or some plan for recoupment.

Comment: One commenter wanted a definition of "satisfactory arrangements."

Response: We decided not to include a definition in our regulations because we wanted to provide States with sufficient flexibility to handle individual family situations.

Comment: One commenter had a question about the effect the failure to pay the transitional child care fee has on the family's AFDC grant.

Response: If the family loses its job and goes back on AFDC while owing back child care payments, such payments could be recouped from future child care payments or may be paid back directly by the family, but the State could not recoup child care payments from the AFDC grant.

Other Provisions (§ 256.4 of the Final Regulations)

In part because the transitional child care provisions of the Statute have distinct beginning and ending dates separate from the other child care provisions of the Statute, we have included them as a separate part in these regulations. However, most of the provisions in Part 255 apply to this part. For example, the provisions of § 255.3(a) regarding the methods of providing child care generally apply to transitional child care although the income disregard is not an option in these cases. The other provisions in Part 255 that pertain to allowable costs, matching rates, standards, disallowance procedures, and uniform reporting also apply.

One minor exception to this general rule relates to the funding of Puerto Rico, Guam, the Virgin Islands and American Samoa. The exception reflects the fact that child care costs under Part 255 for these jurisdictions are covered under the JOBS funding cap, while their transitional child care costs fall under the section 1108 limits.

Another exception is that transitional child care benefits cannot be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing requested within a timely notice period. We make this distinction because recipients of transitional child care benefits under this part do not have the same protection of the "means by which to live" (in terms of continuation of AFDC benefits and the option to cease participation) as is available to individuals receiving child care under part 255.

Comment: One commenter asked that we make the regulatory cites in § 256.4(a) correspond to the text that follows.

Response: At § 256.4(a) in the NPRM, we state that the State IV–A agency providing transitional child care must meet the following requirements:

§ 255.3(a): which addresses the use of methods for guaranteeing care (paragraphs 1–7)
§ 255.3(b): which requires taking into account individual needs of the child
§ 255.3(c): which governs parental choice
§ 255.3(f): which covers cases that are subject to retrospective budgeting
§ 255.5: which covers child care standards
§ 255.6: which covers uniform reporting requirements

We go on to suggest those cites correspond to the following subjects:

Methods of providing child care
Child care standards
Disallowances
Coordination
Services to Indians and Alaska Natives
Uniform reporting requirements

Unfortunately, the two lists do not correspond. We therefore have revised § 256.4 to indicate that the following provisions of part 255 also apply to part 256:

§ 255.3(a), paragraphs 1–5 and 7—regarding available methods
§ 255.3(b) regarding consideration of the individual needs of the child
§ 255.3(c)–(d) regarding parental choice
§ 255.3(h) regarding coordination
§ 255.4(a) regarding FFP limits
§ 255.4(b)(1) regarding matching rates
§ 255.4(c) regarding requirements for FFP
§ 255.4(f) regarding no matching for resource development
§ 255.4(g) regarding matching for administrative costs
§ 255.4(h) regarding fraud
§ 255.4(i) regarding disallowances and fiscal requirements
§ 255.4(j) regarding recovery of overpayments
§ 255.5 regarding standards
§ 255.6 regarding uniform reporting

Technical and Conforming Amendments (§§ 205.50, 224.0, 233.20, 233.90, 233.100, 234.60, 238.01, 239.01 and 240.01 of the Final Regulations)

Section 202 of the Family Support Act, Public Law 100–485, contains the technical and conforming amendments to title IV–A of the Social Security Act which are required by the enactment of the Statute.

Until October 1, 1990, we cannot remove existing Federal regulations which have been amended by the Statute because the existing regulations will continue to govern State IV–A agencies until they have approved JOBS plans. Therefore, in amending the Federal regulations, we have either incorporated JOBS provisions in the existing regulations (for example, § 205.50 on safeguarding of information) or added a provision specific to States with JOBS programs (for example, treatment of earned income at § 233.20(a)(11)(v)).

Sections 202 and 204 of the Statute repeal the following statutory provisions of title IV of the Act as of October 1, 1990: Part C (WIN); Section 409 of Part A (community work experience program (CWEP)); Section 402(a)(35) of Part A (employment search); and Section 414 of Part A (work supplementation). For States which implement JOBS prior to October 1, 1990, the Federal regulations governing WIN (Part 224), CWEP (Part 238), work supplementation (Part 239), and employment search (Part 240) will no longer apply. Therefore, we have added a provision to each of these existing regulations clarifying that the current regulations do not apply to States with approved JOBS plans and will be repealed for all States as of October 1, 1990. The final regulations which distinguish the applicability of the current regulations are found at §§ 224.0(c) (WIN), 238.01(b) (CWEP), 239.01(b) (work supplementation), and 240.01(b) (employment search).

Safeguarding of Information

Section 202 of the Statute amends section 402(a)(9)(A) of the Act to include programs under Part F for which the State IV–A agency must also provide safeguards which restrict the use or disclosure of information concerning applicants or recipients. In accordance with these amendments, we have amended § 205.50(a)(1)(i)(A) to cover programs under Part F under our safeguarding regulations.

Treatment of Earned Income

Section 202 of the Statute also amends section 402(a)(8)(A)(iv) of the Act regarding the treatment of earned income to remove special treatment afforded earned income from public service employment and incentive payments for institutional training under the Work Incentive program. In lieu of amending § 233.20(a)(11)(iv) which governs treatment of earned income under WIN, we have added a new provision at § 233.20(a)(11)(v) that governs the treatment of earned income and expenses in States with approved JOBS plans. For regular employment or OJT, the disregards in §§ 233.20 (a)(11)(i) and (a)(11)(ii)(B) apply. For earned income from a job under work supplementation, the same disregards apply unless a State IV–A agency has elected to provide differently in its State JOBS plan in accordance with § 250.62 (j) and (k). Section 233.20(a)(11)(v)(C) provides that any advance payment or reimbursement to the JOBS participant for child care, transportation, work-related expenses, or work-related supportive services is to be disregarded. Section 233.20(a)(11)(v)(D) provides that payment for or reimbursement of child care pursuant to part 255 for employed individuals who are not JOBS participants is disregarded.

Changes to Section 407

Definition of "quarter of work". In the NPRM, we proposed to revise the definition of "quarter of work" based on section 202(b)(10) of the Statute, which amended section 407(d)(1) of the Act. Upon additional examination, we have determined that a technical amendment in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100–647) repealed section 202(b)(10) of the Statute. Therefore, we have deleted this proposed change from the final regulations. The definition of "quarter of work" is not changed by title II of the Family Support Act. It is changed by title IV of the Family Support Act and is not effective until October 1, 1990.

Participation Requirements for Unemployed Parents

Under current law, a principal earner in an AFDC–Unemployed Parent case must be registered with WIN or, if exempt because of remoteness, with a public employment office as a condition of eligibility for aid. In addition, there is a requirement that the principal earner be certified to participate in WIN within 30 days after receipt of AFDC. Certification means that the necessary support services are available so that recipients can participate in training or employment. Additionally, Federal financial participation is not available if, after the 30 days, the State IV–A agency has not taken action to certify the principal earner to WIN.

The Statute amends the current law to provide that aid will be denied if the parent, unless exempt under the new section 402(a)(19)(C)(vii), is not currently participating or available for participation in a JOBS program, or, if exempt due to remoteness, is not registered with the State public employment office. We have amended § 233.100(a)(5)(i) to add this provision for States with approved JOBS plans.

The Statute further amends section 407(c) of the Act to provide that within

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30 days after receiving aid, the parent must participate or apply for participation in the JOBS program, unless the program is not available in the area where the parent is living. We have amended § 233.100(a)(6) to add this provision for States with approved JOBS plans.

The Statute also amends section 407(c) of the Act to provide that FFP will not be available to the State IV–A agency for any period beginning with the 31st day after the individual receives aid, if the State has not taken appropriate steps directed towards the participation of the parent in a JOBS program. We have amended § 233.100(c)(2)(iii) to add this provision for States with approved JOBS plans.

Comment: Several commenters objected to the statutory provisions requiring unemployed parents to be available or participating in JOBS within 30 days of receiving AFDC and denying FFP to a State if it had not taken "appropriate steps directed toward the participation of such parent in a program under part F." One State asked what expenditures did the prohibition on FFP apply to?

Response: These are statutory provisions. The final regulations give States maximum flexibility within the statutory provisions to implement these provisions. FFP would not be available for expenditures for the benefits paid to a family eligible under section 407 of the Act if appropriate steps had not been taken toward the participation of the parent in that family in a program under Part F.

Comment: Some commenters asked for clarification about what the participation requirements in this section mean. One was concerned about phase-in of the JOBS program and how this provision affected it. One said that independent job search should be required of unemployed parents prior to enrollment in JOBS as many unemployed parents find jobs in the first few months anyhow.

Response: Although the amendments to the Act specify some timeframes within which either the State or the individual must act, they do not specifically define what those activities are. We believe that the State is in the best position to determine what activities would both conform to the requirements of the law and meet the needs of unemployed parents in the State. For example, as the commenter suggested, independent job search might be an appropriate approach. Independent job search is a JOBS component if the State so defines in its State Plan. It would not be staff intensive or costly, yet would meet the requirements of this provision. However, since the law refers to "appropriate steps directed toward participation" and that the participant must be participating (or available for participation), we believe that preparatory activities such as an initial assessment to determine availability would satisfy the requirements of the Act. Furthermore, we do not believe that such an activity would be a burden even in States that are phasing in the JOBS program.

Loss of Eligibility for Failure to Attend School or Make Satisfactory Progress

Comment: In the NPRM, we proposed to remove the provision at § 233.90(b)(2) which states that an otherwise eligible child under age 18 may not be denied aid if he fails to attend school or make satisfactory grades. Several States questioned our authority to make this change. They doubted whether the Statute intended to permit States to require satisfactory school attendance of all children in order to receive aid.

Response: In lieu of removing § 233.90(b)(2) entirely, we have revised it to provide that if an individual under the age of 18 is required to participate in JOBS and her assignment is to educational activities, then she is subject to the mandatory participation requirements of JOBS and may be sanctioned by the loss of her AFDC benefits as prescribed in section 402(a)(19)(G) for non-attendance at school as that would constitute non-participation in JOBS. We have not changed the provision that prohibits denial of AFDC benefits for failing to make satisfactory grades.

Vendor Payments

The Statute also amends section 402(a)(19)(G) of the Act to extend to the JOBS program the requirement that the State IV–A agency make vendor or protective payments in the event the caretaker relative is sanctioned for failure to participate. Therefore, we have revised § 234.60(a)(12) to add JOBS to the list of programs for which imposing a sanction requires a State IV–A agency to provide protective or vendor payments.

Special Needs

Finally, we have amended § 233.20(a)(2)(v) to prohibit the use of special needs for certain costs related to participation in JOBS or other educational or training activities. We have added the phrase "or other educational or training activities" to clarify that the prohibition applies to all educational or training activities, including those in areas which do not have a JOBS program and those which are self-initiated. Such costs are eligible for matching under JOBS or, in the case of self-initiated education or training, are not matchable pursuant to § 250.48. The additional language clarifies this. A more complete discussion of special needs is contained in the preamble to § 255.4.

Comment: Several commenters pointed out that the language of § 233.20(a)(2)(v) as contained in the proposed regulations did not appear to contain the prohibition on use of special needs for educational costs provided in § 250.48.

Response: The commenters are correct in pointing out this oversight. We have amended the final regulations to incorporate specific language about the costs of educational activities (including tuition, books, and fees) not being allowable as special needs.

Other Provisions

All conforming amendments and other changes to chapter II necessitated by the Family Support Act will be handled in another regulatory package.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance, 13.781 Job Opportunities and Basic Skills Training)

List of Subjects

45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 234

Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 238

Aid to Families with Dependent Children, Grant programs-social programs, Manpower training programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 250

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training.

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

45 CFR Part 256

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

Dated: September 11, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

Approved: September 14, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for Part 205 is revised to read as follows:

Authority: Secs. 402, 403, 406, 411, 1102, and 1106(a), Social Security Act (42 U.S.C. 602, 603, 606, 611, 1302, and 1306(a)); sec. 9101, Pub. L. 99–509, 100 Stat. 1972; sec. 202, Pub. L. 100–485, 102 Stat. 2377.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *
(1) * * *
(i) * * *

(A) The administration of the plan of the State approved under title IV–A, the plan or program of the State under title IV–B, IV–C, IV–D, or IV–F or under title I, X, XIV, XVI (AABD), XIX or XX or the supplemental security income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

* * * * *

PART 224—WORK INCENTIVE PROGRAMS FOR AFDC RECIPIENTS UNDER TITLE IV OF THE SOCIAL SECURITY ACT

1. The authority citation for Part 224 is revised to read as set forth below and the authority citations following all the sections in Part 224 are removed:

Authority: Secs. 402(a)(19), 430–444 and 1102, Social Security Act (42 U.S.C. 602(a)(19), 630–644, and 1302); secs. 202 and 204, Pub. L. 100–485, 102 Stat. 2377, 2381.

2. In § 224.0, paragraph (c) is added to read as follows:

§ 224.0 Purpose and scope.

* * * * *

(c) The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies the provisions of this Part are repealed as of October 1, 1990.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3359, sec. 221, Pub. L. 98–181, as amended by sec. 102, Pub. L. 98–479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100–485, 102 Stat. 2377.

2. In § 233.20, paragraph (a)(2)(v) is revised, paragraphs (a)(11)(v) and (a)(11)(vi) are redesignated as paragraphs (a)(11)(vi) and (a)(11)(vii) respectively and a new paragraph (a)(11)(v) is added to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *
(2) * * *

(v) If the State IV–A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(*1*) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(*2*) In a State which has a JOBS program under Part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

* * * * *

(11) * * *

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at § 250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply.

(B) For earned income from a job under the work supplementation component, as described at § 250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply unless the State IV–A agency in its State JOBS plan, has elected to provide otherwise under § 250.62(j) and § 250.62(k).

(C) For all activities under JOBS and self-initiated education and training in non-JOBS areas, advance payment or reimbursement to the individual for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants and one-time work-related expenses for individuals who are not JOBS participants pursuant to Part 255 are disregarded.

* * * * *

3. Section 233.90 is amended by revising paragraph (b)(2) to read as follows:

§ 233.90 Factors specific to AFDC.

* * * * *

(b) * * *

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether she attends school (unless she is required to participate in the JOBS program pursuant to § 250.30 and she is assigned to educational activities) or makes satisfactory grades.

4. Section 233.100 is amended by revising paragraphs (a)(5)(i); (a)(6); and (c)(2)(iii) to read as follows:

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§ 233.100 Dependent children of unemployed parents.

(a) * * *

(5) * * *

(i) If and for so long as such child's parent, unless exempt under § 224.20, is not currently registered for the work incentive program or if exempt under § 224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under § 250.20, such child's parent, unless exempt under § 250.30(b), must be currently participating (or available for participation) in a program under Part 250, or, if he is exempt under § 250.30(b)(5), must be registered with a public employment office in the State, and

* * * * *

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under Part 224 or, if the State IV–A agency has an approved JOBS plan pursuant to § 250.20, will participate or apply for participation in a program under Part 250 unless the program is not available in the area where the parent is living.

* * * * *

(c) * * *

(2) * * *

(iii) For any period beginning with the 31st day after receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive program under Part 224, or if the State IV–A agency has an approved JOBS plan pursuant to § 250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under Part 250; and

* * * * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for Part 234 is revised to read as set forth below and the authority citations following all the sections in Part 234 are removed:

Authority: Secs. 402, 403, 406 and 1102 of the Social Security Act (42 U.S.C. 602, 603, 606, and 1302); Section 201 of Pub. L. 100–485, 102 Stat 2359.

2. Section 234.60 is amended by revising the first sentence of paragraph (a)(12) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will be applicable. * * *

* * * * *

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. The authority citation for part 238 is revised to read as set forth below and the authority citations following all the sections in part 238 are removed:

Authority: Section 409 and 1102 of the Social Security Act (42 U.S.C. 609 and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2378, 2381.

2. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

(a) *General.* State IV–A agencies may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Subject to the conditions specified at § 238.16, State IV–A agencies must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50 percent).

(b) *Applicability.* The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, D.C. 20447. For all State IV–A agencies, the provisions of this part are repealed as of October 1, 1990.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. The authority citation for Part 239 is revised to read as set forth below and the authority citations following all the sections in Part 239 are removed:

Authority: Sections 414 and 1102 of the Social Security Act (42 U.S.C. 614 and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2378, 2381.

2. Section 239.01 is revised to read as follows:

§ 239.01 Scope of this part.

(a) *General.* Under the work supplementation program, State IV–A agencies may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The work supplementation program may be implemented notwithstanding the definitions contained in section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State IV–A agency may reduce the need standard in effect for selected categories of recipients on the basis of their ability to participate in the work supplementation program. The reduction of the need standard may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State IV–A agency's work supplementation program is limited as provided in subpart D of this part.

(b) *Applicability.* The provisions of this part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies, the provisions of this Part are repealed as of October 1, 1990.

PART 240—EMPLOYMENT SEARCH PROGRAM

1. The authority citation for Part 240 is revised to read as set forth below and the authority citations following all the sections in Part 240 are removed:

Authority: Sections 402(a) and 1102 of the Social Security Act (42 U.S.C. 602(a) and 1302); Sections 202 and 204 of Pub. L. 100–485, 102 Stat. 2377, 2381.

2. Section 240.01 is revised to read as follows:

§ 240.01 Scope of this part.

(a) *General.* Each State with a plan approved under title IV–A of the Social Security Act may establish a program of employment search in accordance with

the requirements in this Part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

(b) *Applicability.* The provisions of this Part do not apply to any State IV–A agency which has an approved JOBS plan under § 250.20. A list of State IV–A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV–A agencies, the provisions of this Part are repealed as of October 1, 1990.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 250 to read as follows:

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Sec.
250.0 Purpose.
250.1 Definitions.

Subpart B—Administration

250.10 State IV–A agency administration.
250.11 Requirement for a statewide program.
250.12 Coordination and consultation.
250.13 Contracting authority.

Subpart C—State Plan Requirements and Content

250.20 Requirement for a State JOBS plan.
250.21 State plan content.

Subpart D—Participation Requirements, Exemptions and Sanctions

250.30 Requirements for individual participation and exemptions.
250.31 Volunteers.
250.32 Participation requirements for education.
250.33 Participation requirements for unemployed parents.
250.34 Sanctions.
250.35 Good cause.
250.36 Conciliation and fair hearings.

Subpart E—Operation of State JOBS Programs/Program Components

250.40 Providing information to AFDC applicants and recipients.
250.41 Initial assessment and employability plan.
250.42 Agency-participant agreement.
250.43 Case management.
250.44 Mandatory components.
250.45 Optional components.
250.46 Postsecondary education.
250.47 Other education, training and employment activities.
250.48 Self-initiated education or training.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

250.60 Job search program.
250.61 On-the-job training.
250.62 Work supplementation program.
250.63 Community work experience program.

Subpart H—Funding

250.70 JOBS allocation entitlement.
250.71 Allotment of JOBS limit of entitlement.
250.72 Maintenance of effort.
250.73 Matching rates.
250.74 Reduced matching rate.
250.75 Activities excluded from FFP.
250.76 Financial reports, records, statements and audits.
250.77 Costs matchable as AFDC payments.
250.78 Definition of participation for enhanced FFP.

Subpart I—Uniform Data Collection Requirements

250.80 Uniform data collection requirements.
250.81 State data systems options.
250.82 Required case record data.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

250.90 Scope and purpose.
250.91 Eligible Indian Tribe and Alaska Native organization grantees.
250.92 Selection criteria for eligible Alaska Native organizations.
250.93 Funding formula.
250.94 Program administration, implementation and operations.
250.95 Supportive services.
250.96 Waiver authority.
250.97 Application requirements and documentation.
250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Authority: Sections 402, 403, 481, 481 note, 482, 483, 484, 485, 486, 487, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, 681, 682, 682 note, 683, 684, 685, 686, 687, and 1302); Section 204(b) of Pub. L. 100–485, 102 Stat. 2381.

Subpart A—Purpose and Definitions

§ 250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV–A and IV–F of the Social Security Act is to assure that needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence. To accomplish this purpose, the JOBS program is intended to:

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV–A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at a level equivalent to at least grade 8.9.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of "proprietary institution of higher education" or

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"postsecondary vocational institution," which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an unemployed parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100–485) and set forth in part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was: developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and by the State welfare agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. Upon review and approval by the State or local education agency and the State IV–A agency or Indian Tribe or Alaska Native organization, the standard may provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was: developed by the training provider, and approved by the State IV–A agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Standards for making good or satisfactory progress in a training program must be employed by October 1, 1992, but should be used at an earlier time if available.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in § 250.45 and § 250.61.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's caseload.

UP means Unemployed Parent and refers to the program authorized in section 407 of the Social Security Act which provides aid to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§ 250.10 State IV–A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV–A plan is responsible for the administration or supervision of the JOBS program.

(b) Except as provided in paragraph (c)(2), JOBS activities which involve decision-making with regard to individual participants may be performed by an entity other than the State IV–A agency according to the policies, rules, and regulations of the State IV–A agency. In doing so, such entity must not have the authority to review, change, or disapprove any administrative decision of the State IV–A agency, or otherwise substitute its judgment for that of the State IV–A agency as to the application of policies, rules, and regulations promulgated by the State IV–A agency.

(c) JOBS activities may be delegated or contracted with the exception of the following:

(1) Overall program administration, including:

(i) Establishment of optional provisions and components of the program;

(ii) Responsibility for program planning, design of program, and determining who should participate;

(iii) Establishment of program participation requirements;

(iv) Development of a definition of good cause for failing to participate; and

(v) The issuance of other policies, rules, and regulations governing the program.

(2) Actions involving individuals, including:

(i) Determination of exemption status;

(ii) Determination of good cause for failure or refusal to participate;

(iii) Determination and application of sanctions;

(iv) Providing notice of case actions; and

(v) Fair hearings.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available on a statewide basis. This means that the JOBS program, including all components described in § 250.44 and two of the components in § 250.45, must be available in each political subdivision of the State, unless the State determines that it is not feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, the components need not be operated in the same manner in each political subdivision, nor must the State operate the same optional components, as listed in § 250.45, in each political subdivision.

(c)(1) If the State IV–A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program is available in a number of political subdivisions in which 95 percent of the State's adult recipients reside; and

(ii) A complete JOBS program is available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions in which 75 percent of the State's adult recipients reside.

(iii) A minimal program includes high school or equivalent education, as specified in § 250.44, one optional component from among those specified at § 250.45, and information and referral to available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(iv) In determining the percentages of adult recipients residing in political subdivisions of a State, for purposes of this section, adult members of Indian Tribes and Alaska Native organizations who reside within the service area of a Tribal JOBS program, pursuant to § 250.90, will not be counted.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to excluded areas with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV–A agencies are required to assure coordination of JOBS program services, including child care and supportive services pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV–A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV–A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*);

(4) The State agencies responsible for child care activities as described in § 255.3(h); and

(5) The State agencies responsible for public housing.

(d) The State IV–A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV–A agency must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV–A agency must exchange information with an eligible Indian Tribe or Alaska Native organization which submitted an application to the Department by April 13, 1989 to operate a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b).

(2) Since the State IV–A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, and child care funds or services to participants in a Tribal JOBS program, the State and such grantee must coordinate interrelated activities as described in § 250.94(a) and part 255.

§ 250.13 Contracting authority.

The State IV–A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a nonreimbursable basis, as specified in § 250.72(c).

(b) The State IV–A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV–A agency must take into

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account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as the State IV–A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV–A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV–A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this Part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made reasonably available through local news facilities and public announcements, to the general public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 90 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted for public review and comment pursuant to the provisions of paragraph (c) no later than 30 days prior to submittal to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c).

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium and the availability of services provided by the State IV–A agency as well as other providers; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992. As an alternative, a State may submit its first biennial update by April 1, 1992 for the period beginning July 1, 1992. A State which elects to submit its biennial update on April 1, 1992 for the period beginning July 1, 1992 must show in the update that it will have a Statewide program by October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f)(1) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(2) A plan amendment is necessary if the State makes changes which affect eligibility for services or requirements to participate, or makes changes in program design that alter the nature of the program.

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213.

§ 250.21 State plan content.

A State's JOBS plan must contain the following:

(a) Assurances that:

(1) The title IV–A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV–F of the Act; and

(ii) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1;

(2) The JOBS program will meet all statutory and regulatory requirements;

(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients for whom the State guarantees child care in accordance with § 255.2(a) to participate;

(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;

(5) In assigning participants to any JOBS program activity the State agency

will comply with the provisions of section 484(a) of the Act;

(6) Benefits and services provided under the programs in part A, part D, and part F of title IV of the Act are furnished in an integrated manner;

(7) Services provided by the State IV–A agency are not otherwise available on a non-reimbursable basis, as required by § 250.72(e);

(8) All applicants for and recipients of aid are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for the FY 1986. The FY 1986 level must be identified;

(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F of title IV of the Act.

(b) Information about overall implementation of the State's JOBS program:

(1) A statement of the goals and objectives of the State JOBS program, and a description of how the State intends to implement the program during the biennium to support those goals and objectives;

(2) A description of the administrative structure for the JOBS program;

(3) A description of the contracting process that will be used to deliver services for the State IV–A agency, pursuant to § 250.13, including:

(i) Types of services to be provided under contract;

(ii) Types of contracts used;

(iii) Types of providers;

(4) If the State program is less than statewide, identification of subdivisions to be included or excluded. For any period after September 30, 1992, for which the State does not meet the criteria at § 250.11(c)(1), justification as described at § 250.11(c)(2);

(5) If the State proposes to serve target populations other than those described at § 250.1,

(i) The characteristics of the caseload in the State that make it infeasible to meet the requirements of § 250.74(a)(1); and

(ii) The long-term or potential long-term recipients that the State is targeting instead of those described at § 250.1.

(6) A description of the State's dispute resolution process including:

(i) A description of the conciliation process including:

(A) Length of conciliation; and

(B) The entity responsible for conciliation;

(ii) A description of an alternative fair hearing process the State uses for the JOBS program, if any;

(iii) A description of the grievance procedure for resolving complaints by regular employees pursuant to section 484(d) of the Act.

(c) The options for participation which the State elects including:

(1) Lowering the age of the youngest child (but no less than one) for the exemption pursuant to § 250.30(b)(9)(i);

(2) Making exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) inapplicable to both parents and requiring their participation if child care is guaranteed in accordance with part 255;

(3) Limiting exemptions in § 250.30 (b)(9)(i) and (b)(9)(ii) to the parent who is not the principal earner;

(4) Establishing minimum standards for work that qualifies an individual for the exemption at § 250.30(b)(7);

(5) Making supplemental payments if a family would experience a net loss of cash income resulting from acceptance of a job, pursuant to § 250.35(c). A State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income;"

(6) Allowing a parent under age 25 who has not completed high school or an equivalent course of education to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

(d) A description of program operations to include the following:

(1) A description of the client flow process;

(2) For each required component and each optional component a State elects (including all components in §§ 250.46, 250.47, and 250.48):

(i) A description of the services to be provided in the component;

(ii) The extent to which such services will be:

(A) Available on a non-reimbursable basis;

(B) Provided directly or funded by the State IV–A agency;

(iii) The extent to which such services will be provided in each political subdivision covered by the State JOBS program;

(3) If the State elects to use a case management system pursuant to § 250.43, a description of the case management system to include:

(i) How case management services will be delivered and by what entities; and

(ii) If not used statewide, description of methods by which individuals will be assigned a case manager;

(4) If the State elects to use agreements or contracts with participants, pursuant to § 250.42, a description of how they will be used, including, if not used statewide, how the State will determine for whom they will be used;

(5) If the State elects to offer an alternative work experience component pursuant to § 250.63, a description of potential sponsors, types of activities, the hours and duration of participation that will be required, target populations, and how the program differs from CWEP;

(6) If the State elects to design a work program for unemployed parents, pursuant to § 250.33, a description of the program including an assurance that the State has not substituted education or training activities for the work requirement;

(7) If the State elects to operate a work supplementation component pursuant to § 250.62, which of the following options it elects and, if appropriate, what the policy is with respect to:

(i) Exempting individuals holding supplemented jobs from the retrospective budgeting requirements at Part 233 and monthly reporting;

(ii) Varying the standard of need by subdivision in which the work supplementation component is in operation;

(iii) Varying the standard of need for different categories of recipients on the basis of ability to participate in the program;

(iv) Making any other adjustment in the amount of aid paid under the title IV–A plan to different categories of recipients pursuant to § 250.62(i)(3);

(v) Reducing or eliminating the amount of earned income to be disregarded from participation in a supplemented job;

(vi) Varying the number of months (up to nine) the State applies the $30 and one-third or the $30 disregard;

(vii) Using a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to § 250.62(m);

(8) Description of any State limits or restrictions upon postsecondary educational services, with respect to the subject matter of the education or training offered, length of program, characteristics of the institution, and length of coverage under JOBS (if different from length of program), for:

(i) Postsecondary education to which the State refers a JOBS participant under § 250.46.

(ii) Self-initiated education or training under § 250.48(a) for which the State

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provides child care or supportive services.

(9) Criteria established for:

(i) Determining the inappropriateness of educational activities for custodial parents aged 18 or 19 who are to be placed in training or work activities in lieu of educational activities under § 250.32(a)(3);

(ii) Assigning an individual aged 20 or over who does not have a high school diploma or the equivalent to educational activities under § 250.32(b);

(iii) Approving postsecondary educational activities under § 250.46, if the State elects to refer participants to such education; and

(iv) Approving self-initiated education or training under § 250.48(a).

(10) If the State elects to excuse custodial parents under 18 years of age from educational activities, the criteria in accordance with § 250.32;

(11) If the State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at § 250.1, the State's definition;

(12) The State's definition of other "good cause" for failure to participate in accordance with § 250.35(d). At a minimum this must include circumstances that are beyond a household's control;

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

(e) A description of the nature of coordination with public and private agencies and organizations as described at § 250.12. This must include:

(1) Identification of specific existing resources that are available and appropriate for participants in the State JOBS program;

(2) A description of coordination and consultation in the development of the State JOBS plan;

(3) A description of how the State JOBS plan is consistent with the coordination criteria specified in the Governor's coordination and special services plan, pursuant to § 250.12(a);

(4) The results of consultation with private industry councils to assure that training and educational activities under JOBS are directed toward jobs that are available or likely to become available;

(f) Annual estimates of the numbers of persons to be served on a monthly basis during the biennium covered by the plan, and;

(g) Other information needed to clarify how the State has chosen to implement its JOBS program in accordance with title II of the Family Support Act of 1988 and implementing regulations.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV–A agency has guaranteed child care in accordance with Part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

(1) Is a child who—

(i) Is under age 16, or

(ii) Attends, full-time, an elementary, secondary, vocational or technical school (except that such school attendance as a required JOBS activity for a child who loses this exemption will not requalify the child for the exemption);

(2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, prevents the individual from engaging in employment or training under JOBS. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is 60 years of age or older;

(5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV–A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(9)(i) Subject to paragraph (b)(9)(iv), is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv), is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV–A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV–A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with Part 255 is guaranteed with respect to the family; or

(10) Is a full-time volunteer serving under the Volunteers In Service To America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973;

(c)(1) The State IV–A agency shall reevaluate any exemption at such time as the condition is expected to terminate but no less frequently than at each redetermination of AFDC eligibility;

(2) The State IV–A agency shall promptly notify the recipient and any appropriate service providers of any change in the recipient's exemption status.

§ 250.31 Volunteers.

The State IV–A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV–A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV–A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, including custodial parents who would otherwise be exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV–A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV–A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria must:

(i) Provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) Not rely solely upon grade completion; and

(iii) Provide for participation in another educational activity as defined under § 250.44(a) or in skills training activities under § 250.44(b) that are combined with education.

(3) The State IV–A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) instead of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV–A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under § 250.44. However, a State IV–A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV–A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV–A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV–A agency may require the individual to participate in educational activities as defined at § 250.44(a) in lieu of one or more of the programs specified in paragraph (a). An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at § 250.1.

(c) An individual participating in a community work experience program under § 250.63 shall be considered to have met the participation requirement in paragraph (a) if the individual participates for the maximum number of hours in any month calculated in accordance with § 250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV–A agency exercised its option under § 250.30(b)(9)(iii), fails to comply (i.e., fails without good cause to participate in the program, refuses without good cause to accept employment, or terminates employment or reduces earnings without good cause), the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure to comply, until the failure to comply ceases;

(ii) For the second such failure to comply, until the failure to comply ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure to comply, until the failure to comply ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV–A agency requirements for orientation, assessment, employability development planning, or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased, a State IV–A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual shall be eligible for child care and support services which the State determines are necessary for participation. If she successfully participates in such activities, the sanction will be considered to have terminated as of the

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day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV–A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV–A agency will not take into account the needs of the second parent in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program.

(3) If the individual is the only dependent child, the State IV–A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV–A agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(e) The State IV–A agency will promptly remind in writing any individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c)(1) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV–A agency assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV–A agency in its JOBS plan. At a minimum, the State must describe what circumstances beyond the household's control will constitute "good cause."

§ 250.36 Conciliation and fair hearings.

(a) Each State IV–A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

(c) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of § 205.10. Alternatively, the hearing process may be established for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§ 250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV–A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV–A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in § 250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in Part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV–A agency gives an AFDC applicant the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV–A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and provide a clear description of how to enter the program.

(3) The notification provision in paragraphs (c)(1) and (c)(2) of this section does not prohibit the State IV–A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraphs (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV–A agency from otherwise requiring participation in JOBS.

§ 250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV–A agency must make an initial assessment of employability based on:

(i) The individual's educational, child care, and other supportive services needs;

(ii) The individual's proficiencies, skills deficiencies, and prior work experience;

(iii) A review of the family circumstances, which may include the needs of any child of the individual; and

(iv) Other factors that the State IV–A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV–A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV–A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to § 250.48 of this Part.

(1) The employability plan must:

(i) Contain an employment goal for the participant;

(ii) Describe the services to be provided by the State IV–A agency, including child care and other supportive services pursuant to Part 255;

(iii) Describe the JOBS activities, as provided in Subpart E of this Part, that will be undertaken by the participant to achieve the employment goal; and

(iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii), that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

(i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV–A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in § 250.41, the State IV–A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV–A agency.

(1) Such agreement should indicate at a minimum:

(i) The purpose of the agreement;

(ii) The participant's obligations under the program;

(iii) The length of participation in the program, including the number of hours of participation per week; and

(iv) The educational, training and employment activities, and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV–A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV–A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV–A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV–A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV–A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV–A agency need not make each service or activity a discrete offering, but may combine several into a single program activity, provided that the State IV–A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV–A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV–A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(3) Education in English proficiency for an individual who is not sufficiently competent to understand, speak, read, or write the English language to allow employment commensurate with her employment goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area;

(c) Job readiness activities that help prepare participants for work by assuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to, at least two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

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§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV–A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS. Public service employment is fully-subsidized employment in a public agency.

§ 250.48 Self-initiated education or training.

(a) The State IV–A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise commence participation in the JOBS program, to continue to attend. Vocational or technical training leads to useful employment in a recognized occupation. It includes postsecondary education, as defined in § 250.1, that results in other than a baccalaureate or advanced degree, and such training offered by other entities such as public secondary schools and public and private entities that offer adult vocational education.

(1) Self-initiated activity qualifies as "self-initiated education or training" under this paragraph if:

(i) The participant is attending at least half-time as defined by the institution;

(ii) The participant is making satisfactory progress in such institution, school, or course;

(iii) The course of study is consistent with the individual's employment goal; and

(iv) The participant meets the State's criteria for determining the appropriateness of the self-initiated education or training.

(2)(i) The State IV–A agency must conduct an assessment and develop an employability plan, as provided at § 250.41, so that the State IV–A agency may determine the appropriateness of the education or training in accordance with the criteria it has established.

(ii) If the State IV–A agency approves the self-initiated education or training, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity. However, an individual may be required to accept employment after a review of her employability plan, if the State IV–A agency has informed her at the time it first approves the self-initiated activity that it could perform such a review and reassignment.

(3) The costs of self-initiated education or training under this paragraph shall not constitute federally reimbursable expenses under JOBS.

(4) A State IV–A agency may restrict postsecondary education or training in its State JOBS plan.

(5) The costs of child care, transportation, and other supportive services necessary for approved self-initiated education or training under this paragraph are eligible for Federal reimbursement pursuant to § 255.4.

(b) If an individual in a JOBS area is enrolled in a self-initiated activity that does not meet the requirements of paragraph (a) of this section, the State may approve such activity as a JOBS activity according to the regulations and State criteria applicable to JOBS component activities covered under §§ 250.44 through 250.47. Eligibility for child care, transportation and other supportive services shall be in accordance with § 255.2.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

§ 250.60 Job search program.

(a) A State IV–A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, job-seeking skills training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV–A agency may require an individual applying for AFDC to participate in a job search component unless she is exempt under § 250.30(b).

(c) A State IV–A agency may require an individual to participate in a job search component from the date she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the State IV–A agency may require additional participation in a job search component not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV–A agency may not delay the processing of an individual's application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV–A agency conducts an assessment as provided at § 250.41. If the State IV–A agency determines based on the assessment that another JOBS activity is more appropriate, or is required by Part 250, the State IV–A agency shall terminate the job search requirement.

(d) Additional job search activities beyond those required in paragraph (c) may be required only as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months (or its equivalent) out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV–A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV–A agency or its agent shall enter into a contract with the OJT employer to reimburse the employer for providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and

periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and shall be eligible for supportive services under Part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV–A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(g) The State IV–A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, in order for OJT to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV–A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV–A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV–A plan or by any other employer for which all or part of the wages are paid by such State or local IV–A agency.

(1) The State IV–A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV–A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV–A agency, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c)(1) An eligible individual is an individual who is in a category which the State IV–A agency determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV–A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV–A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(2) The State may establish a work supplementation program as either a mandatory or voluntary program.

(d) A State or local IV–A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV–A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV–A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV–A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at Part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in a supplemented job, shall be determined on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV–A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(i) A State IV–A agency may adjust the standard of need under the State IV–A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV–A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV–A agency may make further adjustments in the amount of aid paid under the title IV–A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV–A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV–A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the $30 and one-third and the $30 disregard in § 233.20(a)(11), a State IV–A agency may allow a participant employed in a supplemented job to receive the $30 and one-third or the $30 disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV–A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV–A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV–A plan if the family of each individual employed in

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the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under paragraphs (i), (j), and (k), and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program).

(m) A State IV–A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV–A agency must describe its sampling methodology in its JOBS plan.

§ 250.63 Community work experience program.

(a) A State IV–A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV–A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV–A agency may provide that part-time participation in more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the $50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV–A agency shall take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV–A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

(i) The Federal minimum wage; or

(ii) The applicable State minimum wage; or

(iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the $50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under § 250.20 shall be construed to prevent a State IV–A agency from operating (on such terms and conditions and in such cases as the State IV–A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV–A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors, the type of activities, the hours or length of participation required, target group(s), and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts established for each fiscal year in section 403(k)(3) of the Act.

(b) A State IV–A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at § 250.1.

(c) In accordance with § 92.23, JOBS funds allocated to a State IV–A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV–F grant awards not later than one year after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV–A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV–A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under Part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under Part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for services and activities that promote the purposes of the JOBS program.

(b) States must spend no less than the total of State and local expenditures incurred in fiscal year 1986 for training, employment and education programs which had a defined purpose of preventing welfare dependency or potential welfare dependency. This requirement includes State and local funds expended for title IV–A and title IV–C work programs, including expenditures on those programs which were unmatched, and other State and local funds expended for this purpose, with or without benefit of Federal matching funds. This requirement also applies to expenditures for supportive services, including child care, expended for this purpose. In determining that State and local fiscal year expenditures are no less than fiscal year 1986 expenditures, States may use total aggregate expenditures.

(c) State IV–A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services are available to AFDC applicants and recipients by a provider, the provider must maintain that level of service before the State IV–A agency may contract for additional services of the same sort from that provider.

(d) Any State IV–A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State makes available to most eligible residents or to the low income population, including AFDC applicants and recipients.

(e) A State IV–A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a non-reimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV–A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV–A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for: personnel costs (salaries and benefits) for full-time staff working full-time in any capacity in the JOBS program; and all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities.

(ii) At 50 percent for: indirect personnel costs which are excluded from JOBS matching at the FMAP rate (or 60%); non-personal services costs associated with these indirect personnel costs, including space, travel, utilities, equipment, and supplies; the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV–F fair hearing activities, and other indirect costs of providing JOBS services and activities; and for transportation, work-related expenses, and work-related supportive services as provided under the requirements of Part 255.

(2) A State's match for these amounts must be in cash, not in kind.

(c) The costs of services and activities purchased under contract by the State or local IV–A agency must be segregated according to the requirements of the FMAP rate with a floor of 60 percent and the requirements for 50 percent matching.

(d) A State's share of JOBS expenditures may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds are:

(i) Transferred to the State or local agency and under its administrative control;

(ii) Donated without any restriction which would require their use for assisting a particular individual or at particular facilities or institutions;

(iii) Do not revert to the donor's facility or use.

(e) If included in a State's JOBS and Supportive Services plans, FFP is available for JOBS activities and services provided for certain periods to an individual who has been a JOBS participant but who loses eligibility for AFDC. These activities and periods are:

(1) Case management activities and supportive services for up to 90 days from the date the individual loses eligibility for AFDC; and

(2) JOBS component activities for the duration of the activity if funds for the activity are obligated or expended before the individual loses eligibility for AFDC.

§ 250.74 Reduced matching rate.

(a)(1) FFP for a State IV–A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year in which that State spends less than 55

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percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in § 250.1.

(2) If any State IV–A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1), and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in § 250.73 shall be applied.

(3) A State IV–A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1).

(b)(1) FFP for a State IV–A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2)) for the preceding fiscal year does not equal or exceed:

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i);

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(2) The State IV–A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

(i) The fiscal year, in the case of fiscal year 1990;

(ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;

(iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and

(iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV–A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to:

(i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.78) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of such participants is the greatest; divided by

(ii) Twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (b)(9)(i) and (b)(9)(iv) of § 250.30 with respect to whom the State IV–A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) In determining the average monthly number of individuals required to participate as provided in paragraph (b)(3)(ii), the following individuals shall be excluded:

(i) Those who are determined exempt in accordance with exemption criterion in § 250.30(b);

(ii) Those who on a case-by-case basis have been determined to have good cause for not participating;

(iii) Those who reside in an area of the State in which the JOBS program is not operated; and

(iv) Those who have been sanctioned.

(5) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year, if the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV–A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of:

(i) The number of individuals described in § 250.33 who have met the requirement therein; divided by

(ii) The total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV–A agency has failed to achieve the participation rate for any fiscal year specified above, the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room and board) that the State IV–A agency determines may constitute participation under the provisions of § 250.48(a) shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) The following Departmental regulations are applicable to the JOBS program: Part 92, "Uniform administrative requirements for grants and cooperative agreements to State and local governments;" Part 16, "Procedures of the Departmental Appeals Board;" Part 30, "Claims collection;" Part 75, "Informal grant appeals procedures;" Part 95, "General administration-grant programs;" and Part 201, "Grants to States for public assistance programs."

(b) Financial reporting of JOBS program expenditures are generally

subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(c) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(d) JOBS program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(e) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV–A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board, in accordance with part 16 of the Department's regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV–A agency for supplemental AFDC payments shall be treated as title IV–A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(l) shall be expenditures incurred by the State IV–A agency for AFDC.

(c) States may claim as AFDC administrative expenditures those costs related to JOBS orientation, determination of mandatory status, and referral to the JOBS program when such activities are conducted by a title IV–A eligibility or income maintenance worker. When these same activities are conducted by JOBS staff, these costs must be claimed under title IV–F.

§ 250.78 Definition of participation for enhanced FFP.

(a) For the purpose of determining a State's participation rate under § 250.74(b), the average monthly number of individuals who have participated will be the largest number of applicants and recipients whose combined and averaged weekly hours of participation in the activities specified in paragraph (b)(1) equals or exceeds 20 hours per week.

(b) For the purpose of paragraph (a),

(1) Activities include:

(i) Assessment and employability plan development, but only for one month for each such individual for each period on AFDC;

(ii) Any component specified in the State JOBS plan, with the exception of job development and job placement;

(iii) Any approved self-initiated education or training pursuant to § 250.48(a);

(iv) Job entry, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours of work. Hours of work will then be included with hours of component activity in the month of the job entry in determining the average weekly activity level for the individual. Hours of work in the following month will be counted, provided the individual retains employment throughout the month. However, job entries will only be considered for:

(A) Individuals who were participating in a JOBS component or activity during the month of the job entry, or the preceding calendar month, or;

(B) Individuals who received job development and placement services during the month of job entry, or the preceding calendar month.

(2) The number of hours counted for an individual will not include time spent commuting to or from the assignment or to or from a child care provider;

(3) Individuals, other than those in high school, will not be considered to be participating in an educational activity during the period between school years. An individual enrolled and in attendance in high school during the last semester of the school year will be considered to be participating at her average weekly attendance level for the previous school year during the period between school years if she is expected to return to high school for the next school year. Individuals in all educational activities will be considered to be participating for the assigned hours during shorter, scheduled school breaks;

(4) An individual will be considered to have satisfactorily participated if she attended an activity for at least 75 percent of the monthly hours scheduled. All hours of scheduled activity will be counted if the individual has satisfactorily participated. Neither hours of scheduled activity nor hours of participation will be counted if an individual has not satisfactorily participated.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV–A agency must provide to the Department a sample of monthly unaggregated case record data containing such data and identifiers as are specified in § 250.82, and such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

(1) The sample must be provided in formats specified by the Department. Data must be submitted electronically on an on-going basis by means of disk, tape or electronic connection, with all cases submitted no later than 45 days after the end of the month in which the sample is drawn.

(2) Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual pursuant to the requirements of § 205.50.

(3) The sample must be large enough to provide a precision of plus or minus two percentage points for an 0.2 attribute (p=20% or 0.2) at a 95 percent confidence level. Submission of 100 percent of unaggregated JOBS case records is also acceptable.

(4) The sample shall be drawn from the population of individuals scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month or the month previous to the sample month.

(5) For each record in the sample, the State must verify that the individual satisfactorily participated in the sample month, as defined in § 250.78, except that for individuals who entered employment, the State must verify only that the individual was employed at the end of the sample month.

(b) For the purpose of determining participation rates, a State IV–A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c)(1) For the purpose of calculating whether a State spent 55 percent of its title IV–F funds on target groups pursuant to § 250.74(a), and determining the amounts spent per family by component and activity, each year a State IV–A agency may, instead of a cost-tracking system that identifies all funds spent on each individual, develop and submit to the Secretary a table of the previous Federal fiscal year's average total JOBS cost per participant per month of participation.

(2) The average total cost data in the table must separately state:

(i) For pre-component activity: assessment and related testing, employability development planning, and associated administrative and case management costs;

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(ii) For each component: component costs, and associated administrative and case management costs;

(d) A State IV–A agency must submit any other information that the Secretary determines necessary.

(e) Until October 1, 1991, or until sample based reporting is implemented, whichever is later, the State must submit such interim aggregate hardcopy reports as are required by the Secretary.

§ 250.81 State data systems options.

(a) A State IV–A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV–A system. A State IV–A agency may also use a stand-alone system. Either option must be a client-based information system capable of producing at a minimum all data elements required in § 250.82.

(b)(1) Title IV–A funding is available for planning, design, development and implementation of the JOBS interface between title IV–A and title IV–F requirements. The interface of an automated JOBS program with the title IV–A system, for verification of eligibility and reconciliation of data, includes planning, design, development and implementation of title IV–A systems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, title IV–A FFP at 90 percent is available. Otherwise interface expenditures are matched at 50 percent under title IV–A.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.35 through § 205.38. This excludes the JOBS interface with the title IV–A system, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV–A system through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) Administrative funding under either title IV–A or title IV–F for systems design, development, and implementation must comply with the requirements of § 95.601, *et seq.*

§ 250.82 Required case record data.

(a) The State IV–A agency must maintain an individual case record for each JOBS participant.

(1) For the purposes of this section, a JOBS participant is an individual who is:

(i) Actively engaged in assessment or employability planning during the month; or

(ii) Assigned to a component, including self-initiated education or training pursuant to § 250.48(a).

(2) To the extent the State IV–A agency's JAS can access the required data in the required form from other systems, duplicate entry is to be avoided.

(b) The minimum data required are:

(1) Case identifier other than Social Security Number, but the State must maintain in its files a link between the identifier and the SSN;

(2) Date of birth;

(3) Program status and exemption code;

(4) Youngest child's date of birth;

(5) Date of most recent AFDC opening;

(6) Number of months within the most recent 60 months of receipt of AFDC;

(7) Education level (highest grade completed) and date completed;

(8) Literacy level, but only when the State elects to determine a literacy level;

(9) Target group codes to identify which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of entry into JOBS, and the date of entry;

(10) Identifier for a person not exempt, because the State elected to reduce the age of youngest child exemption to less than age three, or because the State elected to require participation of the second parent in a UP case where the second parent would otherwise be exempt for meeting the requirements of § 250.30(b)(9);

(11) Assignment status: scheduled hours, and beginning and ending dates, for each of the following that apply:

(i) Assessment and employability development planning;

(ii) Each JOBS component, including separate identification for self-initiated education or training, pursuant to § 250.48(a);

(iii) Job status, including date of job entry;

(12) Identifier indicating that the individual satisfactorily participated in the JOBS program, as defined at § 250.78, during the month, but only for sampled cases described in § 250.80;

(13) Amount of supportive services, other than child care, paid during the month;

(14) Amount of child care payment for the month;

(15) Type of child care;

(16) Such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under part 250, unless otherwise indicated in this subpart, and regulations under parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section and if such consortium or organization meets the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program, and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under Public Law 93–638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alaska Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, (85 Stat. 688) within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area compared to the total number of adult AFDC recipients in the State. The designated service area must include the reservation but can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). Tribal grantees may exclude a portion of the reservation which is remote from that part of the reservation where JOBS services are provided; or

(2) The number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(3) Tribal member means a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization.

(b)(1) The State IV–A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC recipient members of a Tribe or of an Alaska Native organization are not available, the State IV–A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population or covering the designated service area.

(3) If the State IV–A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

(d) States with Tribal JOBS programs in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under the following conditions:

(1) The information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program;

(2) Upon requesting information about Tribal status, the State must explain the reason for its request for the information (e.g., to determine which JOBS program will serve the individual), and refer the individual to the appropriate Tribal JOBS program for further information;

(3) Such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where a State JOBS program is also in operation; and

(4) Information requested must relate only to membership in those Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and Part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.38). Certain other related functions are retained by the State IV–A agency. These include the administration of provisions on child care (Part 255) and transitional child care services (Part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, except as provided for in § 250.10 of the regulations.

(b) The Tribe or organization that submitted an application by April 13, 1989, may begin operating its JOBS program as of the first day of any quarter between July 1, 1989 and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV–A funding for child care pursuant to Part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1), it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989 application) must be sent to the Department at least 45 days prior to implementation of the Tribal program. This will allow sufficient time for the Department's review and approval.

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(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations, but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV–A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV–A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV–A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child care funds or services for Tribal participation—and Tribal responsibilities—such as notifying the State IV–A agency when Tribal members fail to participate without good cause.

(3) A Tribe or organization must consult and coordinate with other providers including those specified in paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services, and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education, including any programs under the Bureau of Indian Affairs, the Department of Interior, or under the Office of Indian Education of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify, and obtain advice on, the types of jobs available or likely to become available within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can justify that such activities are inappropriate. A Tribe's or organization's application must describe the types of activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can justify that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in Part 255.

(3) Because the amount of the IV–A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV–A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to Part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

(b) The State IV–A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under Part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV–A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV–A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV–A agency, pursuant to paragraphs (b) and (c), or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under section 402(a)(19) and Part F of the Act that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

(1) Section 250.10 (IV–A agency administration);

(2) Section 250.11 (Statewide requirement);

(3) Section 250.12 (Coordination and consultation);

(4) Section 250.20 (State plan requirements);

(5) Section 250.21 (State plan content);

(6) Section 250.33 (UP–16 hour rule);

(7) Section 250.45 (Optional components);

(8) Section 250.70 (a) and (b) (Allocation entitlement);

(9) Section 250.71 (b)(2) and (c) (Allotment);

(10) Section 250.72 (Maintenance of effort);–

(11) Section 250.73 (Matching rates);

(12) Section 250.74 (Reduced matching rate);

(13) Section 250.78 (Definition of Participation for Enhanced FFP);

(14) Section 250.80 (Uniform Data Collection Requirements);

(15) Section 250.81 (State data systems);

(16) Section 250.82 (Required case record data);

(17) Section 255.1 (c) and (h) (Supportive Services plan requirements).

(b) A Tribe or organization may request that the Secretary waive any other requirements of section 402(a)(19) or Part F of the Act not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of parts 250 and 255.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV–A agency for review and comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to the beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b).

(2) The update must consist of:

(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and Part F of the Act, unless waived by the Secretary, and including cross-references to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under § 250.40;

(ii) Assessments pursuant to § 250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§ 250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under § 250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV–A agency, Tribal JTPA agency, other employment and training agencies and educational agencies, specifying how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed § 250.36, including notification to the State IV–A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§ 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in § 250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 255 to read as follows:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Sec.

255.0 Purpose.
255.1 State plan requirements.
255.2 Eligibility.
255.3 Methods of providing child care and other supportive services.
255.4 Allowable costs and matching rates.
255.5 Child care standards.
255.6 Uniform reporting requirements for child care.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

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§ 255.0 Purpose.

This Part pertains to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV–A agencies must provide such services, under conditions specified in this Part, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV–A agency operating a program under title IV–A must submit a Supportive Services plan to the Secretary, consistent with the schedule specified at § 250.20, which includes the following:

(a) The methods the State IV–A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount(s) which the State IV–A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV–A agency elects pursuant to § 255.4(a)(1), to set an amount (or amounts) higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250 and other eligible recipients, the methods by which they will be provided, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d)(1) A description of the criteria which will be used to approve education or training for child care and supportive services in non-JOBS areas of the State, in accordance with § 255.2. Such criteria must, at a minimum, include:

(i) That the education or training is consistent with an appropriate employment goal; and

(ii) That the individual is making satisfactory progress.

(2) Specification of any procedures under which IV–A staff will approve, in non-JOBS areas:

(i) Education or training activities for child care and supportive services; and

(ii) One-time work-related expenses which are necessary for an applicant or recipient to accept or maintain employment.

(e) An assurance that procedures are established to ensure that:

(1) Child care meets applicable standards of State and local law, and/or Tribal law, where applicable;

(2) Any entity providing child care allows parental access as required under § 255.4(c)(1);

(3) In arranging child care, the State IV–A agency takes the individual needs of the child into account, in accordance with § 255.3(b); and

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV–A.

(g) Specification of a State IV–A agency's policies on:

(1) Interim child care and other supportive services as provided in § 255.2(d); and

(2) Transitional supportive services, as provided in § 250.73(e)(1).

(h) Specification of a State IV–A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(c)(3), including:

(1) The types of any such expense;

(2) The monetary limits to be applied to such expenses; and

(3) Whether the State provides one-time work-related expenses in non-JOBS areas.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, pre-school and school-age children, special needs children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of the nature of the State IV–A agency's efforts to coordinate child care and other supportive services, with the groups specified at § 255.3(h).

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l)(1) A description of the State's procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections; or

(2) A plan for developing such procedures.

§ 255.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as verified by the State based upon a determination by a physician or a licensed or certified psychologist; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

(1) Accept employment or remain employed; or

(2) Participate in an approved education or training activity under JOBS (including self-initiated education or training pursuant to § 250.48(a)), or in approved education or training consistent with criteria in the State's Supportive Services plan for approval of education or training in non-JOBS areas.

(b) The guarantee under paragraph (a) also applies to Tribal members who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f).

(c)(1) The State IV–A agency must provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable an individual to participate in approved JOBS activities under Part 250, including self-initiated education or training pursuant to § 250.48(a)).

(2)(i) The State agency may provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved education or training in non-JOBS areas;

(ii) Approval of education and training for necessary supportive services in non-JOBS areas must be consistent with criteria established in the Supportive Services plan.

(3)(i) The State agency may provide, pay for, or reimburse one-time, work-related expenses which it determines are necessary for an applicant or recipient to accept or maintain employment.

(ii) The State IV–A agency may approve these expenses through the JOBS program or, in non-JOBS areas, through procedures established in accordance with § 255.1(d)(2).

(d) The State IV–A agency may provide for child care and other necessary supportive services for an individual who is waiting to enter an approved education, training, or JOBS component or employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(e) The State IV–A agency must provide child care and supportive services necessary:

(1) For applicants to participate in job search pursuant to § 250.60; and

(2) For applicants and recipients to participate in other approved activities to prepare them for participation in the JOBS program.

(f) The State IV–A agency must make child care services available to applicants and recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g)(1) The State IV–A agency must inform families requesting child care under this Part of their rights and responsibilities.

(2) The State IV–A agency must respond to a request for child care under this Part within a reasonable period of time.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this part. However:

(1) Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements; and

(2) The provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV–A agency may use any of the following methods for guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV–A agency deems appropriate.

(b) In arranging for child care, the State IV–A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretaker's place of employment or training (based on normally accepted standards in the community or State), and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a).

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV–A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV–A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV–A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i) or through the provision of special needs, if such a family would be disadvantaged as a result of meeting the cost of child care through another method which does directly affect AFDC eligibility, the State must determine the family's AFDC eligibility and payment (including child care needs), as if the method of provision which was applicable on October 13, 1988, is still in effect.

(f)(1) For cases subject to retrospective budgeting, the State IV–A agency has the option to meet the cost of child care directly for the first one or two months of employment and then to apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those initial one or two months in determining the AFDC payment for the corresponding payment months. The State IV–A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV–A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(2) The State IV–A agency, at its option, may provide a supplemental payment to a family when the amount available through the disregard is less than the amount that would be available if another method were used.

(g) The State IV–A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV–A agency must coordinate:

(1) Its child care activities with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and

(2) Its supportive services with related services provided by other agencies.

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV–A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit:

(i) The State IV–A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount(s); and

(ii) The State agency may specify a higher statewide limit for children with special needs.

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers or slots;

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(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics; and

(iii) Based on the 75th percentile cost of such types of care in the local areas. (However, where there are only one or two providers of a type of care in a local market area, the rate may be set at the 100th percentile.)

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for children with special needs, infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance program (Medicaid) rate and is included in the title IV–A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV–A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) FFP is not available for:

(1) Recruitment or training of child care providers, resource development, or licensing activities; or

(2) Payments made for care provided by parents, legal guardians, or members of the assistance unit (including essential persons).

(g) The matching rate for child care administrative costs under this Part is 50 percent and, except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV–A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs, consistent with requirements at § 235.110.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV–A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV–A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

(j)(1) The State must take all reasonable steps necessary to promptly correct any overpayment to a recipient or a service provider under this section (or Part 256). An overpayment to a family or provider currently receiving child care payments or benefits must be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment or by recovering the overpayment through a reduction in the amount payable to the family or provider.

(2) State IV–A agencies need not attempt recovery of overpayments from providers if obligated to make the full payment under contract; however, FFP may not be claimed for such overpayments.

(3) In recovering overpayments from a recipient family, the State shall provide that the family retains, for any month, a reasonable amount of funds.

(4) Recoupment of child care overpayments may be made only from child care benefits; and recoupment of supportive services overpayments may be made only from supportive services benefits. Any recoveries of child care or supportive services overpayments may be made from AFDC benefit payments only upon a voluntary request of the recipient family.

(5) Overpayments to individuals may be recovered from the family unit which was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family. In cases of former recipients or recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

(6) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(7) Recovery must be attempted in all cases of fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

(8) States must collect and maintain information on the collection of overpayments and make appropriate adjustments for Federal matching, consistent with requirements established by the Secretary.

§ 255.5 Child care standards.

(a) The State IV–A agency must establish procedures to ensure that center-based child care will be subject to State and local (and/or Tribal, where applicable) requirements designed to ensure basic health and safety (including fire safety) protections.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

(c) Upon request of the Secretary, the State IV–A agency must make available information on applicable standards of State and local law, including the requirements specified in paragraph (a) of this section and the guidelines specified in paragraph (b) of this section.

§ 255.6 Uniform reporting requirements for child care.

Each State IV–A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this Part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, the types of paid child care arrangements, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV–A plan and those who are not.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 256 to read as follows:

PART 256—TRANSITIONAL CHILD CARE

Sec.
256.0 Purpose.
256.1 State plan requirements.
256.2 Eligibility.
256.3 Fee requirement.
256.4 Other provisions.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 256.0 Purpose.

This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

(1) The methods the State IV–A agency will use to provide transitional child care;

(2) The sliding fee scale under which families will contribute toward the cost of child care;

(3) The methods and procedures the State IV–A agency shall use to ensure that fees are collected; and

(4) The application requirements established by the State.

(b) A State IV–A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this Part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (a), (b), (e), (f), (i), (k) and (l)).

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility;

(3) The family requests transitional child care benefits, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

(4) The family ceased to be eligible for AFDC on or after April 1, 1990.

(c) Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this Part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV–A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e)(1) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

(2) If the family re-establishes eligibility for AFDC during this period, it could qualify for a new 12-month eligibility period if it met the necessary conditions of eligibility (including the 3-of-6 month requirement).

§ 256.3 Fee requirement.

(a) The State IV–A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV–A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) A State IV–A agency may vary the period of collection for different fee levels.

(d) The State IV–A agency may establish whether fees are paid to the providers or the State agency. In cases where the family's contribution is paid to the State IV–A agency, such contribution is subject to the program income requirements in § 74.42(c), Subpart F. Claims for Federal matching funds for child care expenditures shall be adjusted to reflect collection of fees under this Part.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this Part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV–A agency, in providing transitional child care, must meet the requirements in §§ 255.3(a) paragraphs (1)–(5) and (7), (b), (c), (d), and (h); 255.5; and 255.6.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this Part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this Part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV–A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and of their rights and responsibilities under the program.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment, unless those changes result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements.

[FR Doc. 89–23937 Filed 10–12–89; 8:45 am]
BILLING CODE 4150–04–M

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federal register

Friday
October 13, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Desert Tortoise; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB35

Endangered and Threatened Wildlife and Plants; Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Mojave population of the desert tortoise (*Gopherus (=Xerobates, =Scaptochelys) agassizii*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The Service proposes to determine the Sonoran population of the desert tortoise found outside its natural range in Arizona (south and east of the Colorado River) and Mexico as a threatened species due to similarity of appearance to the Mojave population. Desert tortoises belonging to the Sonoran population remaining in their natural range in Arizona (south and east of the Colorado River) and in Mexico are not covered by this proposed rule.

An emergency rule was published on August 4, 1989, listing the Mojave population of the desert tortoise as an endangered species which expires on August 2, 1990. An emergency situation in the form of a recently documented outbreak of a virulent respiratory disease, currently known as Upper Respiratory Disease Syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. The Beaver Dam Slope desert tortoise is proposed to be upgraded from threatened to endangered with the critical habitat remaining as previously designated. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 11, 1990. The Act requires the Service to promptly hold at least one public hearing on the proposed listing regulation, if requested by any person by November 27, 1989. Because of anticipated widespread public interest, the Service has decided to hold three public hearings. See **SUPPLEMENTARY INFORMATION** for dates and locations of hearings.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232-4181. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Hearing Information

November 20, 1989, 7:00 to 11:00 p.m., Riverside Convention Center at Raincross Square, 3443 Orange Street, Riverside, California.

November 28, 1989, 2:00 to 5:00, and 7:00 to 10:00 p.m., Clark County Commission Chambers, Bridger Building, 225 Bridger Avenue, First Floor, Las Vegas, Nevada.

November 29, 1989, 7:00 to 9:00 p.m., St. George City Offices, Council Chambers, 175 East 200 North, St. George, Utah.

A public hearing will be conducted at each of these locations at the times indicated. Oral statements may be limited to 3 or 5 minutes, if the number of parties present desiring to give such statements necessitates limitation. There are no limits to the length of any written statement presented at a hearing or mailed to the Service. Written comments are given the same weight and consideration as oral comments presented at the public hearings.

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the desert tortoise has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The Colorado River has been an effective geographic barrier, isolating the Mojave and the Sonoran populations for millions of years. The Mojave population is found to the west and the north of the river and the Sonoran population is found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush (*Larrea tridentata*), cactus, and shadscale (*Atriplex confertifilia*) scrub habitats, and Joshua tree (*Jucca brevifolia*) woodlands (Dodd 1986).

Study plot data from eight sites in the western Mojave region indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many factors that have resulted in population declines. Habitat conditions have deteriorated and/or habitat has been lost in certain localities due to urban, energy, and mineral development, vehicle-oriented recreation, grazing, military activities, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Colorado River). Eastern Mojave tortoises occur in creosote bush-burro bush (*Ambrosia dumosa*) or creosote bush-Joshua tree vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, military activities, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found predominantly on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope subpopulation of the Mojave population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654).

The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(B)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

Data collection on the Mojave population in recent months indicate that many local tortoise subpopulations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 provided substantial new information and again petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited emergency provisions of the Act. This second petition, treated by the Service as a petition under the Administrative Procedure Act, was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and the current status of the tortoise. As a result of this and other information, the Service determined the Mojave population of the desert tortoise to be an endangered species under an emergency rule published on August 4, 1989 (54 FR 32326). The emergency rule provides protection under the Act for the Mojave population of tortoises for 240 days (until April 2, 1990). The Service did not take emergency action to reclassify the Beaver Dam Slope subpopulation in Utah to endangered because it is already protected by the Act.

This proposal constitutes the final finding on the petitioner's request to list the desert tortoise throughout its range in the United States as an endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The Act defines species to include subspecies and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. The factors and their application to the Mojave population of the desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost in many parts of the tortoise's range due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

For an animal such as the tortoise, which must consume its annual forage requirement in no more than five months out of the year (March to June, and September), it is apparent that meeting this need can become critical if forage has not been produced, is unavailable, or is of poor nutritive quality.

Changes in perennial vegetation, especially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in the desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises, making the tortoise more exposed and vulnerable as raven prey.

Changes in annual vegetation, also thought to be mostly connected to grazing, have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing, such as red brome (*Bromus rubens*), filaree (*Erodium cirutarium*), and abu mashi (*Schimus arabicus*), can germinate, flower, and fruit before native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. Exotic, weedy plant species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. The degree and nature of impacts from cattle grazing are dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1986).

Livestock grazing is thought to be a factor contributing to tortoise habitat degradation in portions of all four States covered by this proposed rule: Nevada, Utah, Arizona, and California. No formal research has been conducted in Nevada on effects of livestock grazing on tortoises. However, both the Final Statement for the Proposed Domestic Livestock Grazing Management Program for the Caliente Area, Nevada, and the Final Environmental Impact Statement for the Clark County, Nevada Grazing Program concluded that conflicts between livestock and desert tortoises would be reduced by grazing reductions and/or livestock removal during portions of the growing season (Bureau of Land Management (BLM) 1979, BLM 1982).

One BLM-funded research study on the Crescent Peak grazing allotment in Piute Valley near Searchlight, Nevada in 1983, concluded that an observed die-off of tortoises was "aggravated by the long-term grazing intensity that had occurred in the area" (Mortimer and Schneider 1983). An unusually high mortality rate in desert tortoises was found while the authors were investigating a permanent tortoise study plot in the valley. The plot is located in an ephemeral pasture used by livestock in the winter and early spring. From the data collected, the authors inferred that a major population change of tortoises occurred between 1979 and 1983. The population sustained a very high mortality rate (23.8 percent) with a resultant decline in the number of sexually mature individuals. Heavy spring grazing pressure had occurred for several years before 1980 and little or no annual forage was produced on the allotment in 1980 and 1981. The authors concluded that the decade of spring grazing had reduced the quality of the habitat and the ability of the tortoises to withstand the drought years of 1980 and 1981, even when cattle were not turned into the pasture during those years.

The Goffs tortoise study plot is located 26 miles to the south of the Piute Valley site and in 1980 was estimated to have a 2 percent annual mortality rate (Turner and Berry 1984). The major difference between the two plots is that the Goffs site is not grazed. The tortoises on that site were able to withstand the adverse weather conditions because they were in better physical condition than those in Piute Valley.

The majority of Utah's Beaver Dam Slope allotment is in the Southern Desert Shallow Hardpan Range Site as

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identified by the Soil Survey of Washington County (United States Department of Agriculture 1977). The potential vegetation for this site is approximately 15 to 25 percent grasses, 2 to 5 percent forbs, and 40 to 80 percent shrubs. If the site is in excellent condition, the total annual production of air-dried herbage available as forage is about 400 pounds per acre in good moisture years and 250 pounds per acre under poor moisture years. The median production of annuals on the Beaver Dam Slope between 1980 and 1986 was 83 pounds per acre; half of the time forage production was more and half of the time it was less. The mean (average) production of annuals during that time period was 191 pounds per acre.

It is possible that the forage requirements of the tortoise may never be met on the Beaver Dam Slope. The BLM (BLM 1987) stated that 47 percent of the Beaver Dam Slope allotment is considered to be in fair forage condition while 53 percent is in poor forage condition. This estimate was based on desirable forage for livestock, and hence tortoises because of the dietary overlap. Additionally, the overall range trend has been static, no improvement has occurred.

Another important facet of tortoise feeding behavior is food preferences. Like livestock, tortoises prefer some plants over others and will go out of their way to consume them even if the plant is in low abundance. Coombs (1977b) observed in his study on the Beaver Dam Slope that bush muhly (*Muhlenbergia porteri*) was sought out more than any other plant even though it was one of the least available. This perennial grass has been greatly reduced in abundance by livestock grazing (Stoddart et al. 1975). The second most important plant was cheatgrass (*Bromus tectorum*) and was also one of the least common plants available to the tortoise. Minden (1980) found that a milk-vetch (*Astragulus nuttallianus*) was by far the most commonly consumed plant in his study (59 percent). This annual plant was not mentioned by Coombs (1977). Apparently, the year of Minden's study (1980) was one of above normal rainfall which allowed this annual forb to grow. It is, therefore, believed that the tortoise has food preferences and that total forage production is not an accurate gauge of food availability.

In Arizona, the habitat of the Mojave population of tortoises has experienced alteration of plant species composition and density. This floristic change has been attributed, in part, to livestock grazing. The area has been overgrazed by cattle, sheep, and horses since the 1850's. Examination of livestock use in some of this area plus changes in plant densities and species composition indicate that adequate nutritional forage for tortoises may be lacking because of past overgrazing practices (Hohman and Ohmart 1978).

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism (Sievers et al. 1988).

The increasing use of off-road vehicles appears to be having a significant effect on tortoise abundance and distribution. Not only may direct mortality result through crushing of tortoises either above ground or in their burrows, but the desert ecosystems may be degraded as a result of off-road vehicle use (Luckenbach 1982). Growth of annuals and herbaceous perennials may be severely reduced. The basic energy fixation and transfer systems of the desert can be disrupted or destroyed by vehicular activities. The tortoises in the St. George area of Utah are particularly vulnerable because of their proximity to an expanding urban population.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They often involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use (Sievers et al. 1988).

Competitive off-highway vehicle racing events have adversely impacted tortoise habitat in Nevada. Vehicles operated by racers and pit crews, as well as spectators, have been known to cut across desert habitat off-road, and racers frequently pass other vehicles in vegetated areas (Burge 1986; U.S. Fish and Wildlife Service 1989).

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion (Sievers et al. 1988).

Road construction and vehicle use appear to have a long-ranging impact on the tortoise. Besides the immediate loss of tortoise habitat from road construction, paved roads and vehicular traffic affect tortoise populations within about one kilometer (km) (0.62 mile) of a road. For new roads, the extent of impact is up to 0.4 km (0.29 mile) away, while older roads may reduce tortoise numbers up to 2 km (1.24 miles) away (Nicholson 1978).

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause long-term, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises (Sievers et al. 1988).

The metropolitan Las Vegas, Nevada, area has experienced rapid expansion in recent years, climbing from 241,000 people in 1980 to 335,000 in 1987; an increase of 28 percent (Walker and Cowperthwaite 1988). In the four years between 1982 and 1986, 10,000 acres of desert (tortoise habitat) were converted to urban uses (Clark County Department of Comprehensive Planning, pers. comm. 1989). City and county planners assume the ultimate limits of growth are set at the effective topographic limits of construction; planning maps indicate that the metropolitan area could eventually cover approximately 390 square miles (Clark County Regional Flood Control District 1986).

In northeast Arizona, additional habitat loss and fragmentation has occurred from mining, off-road vehicle activities, road and powerline construction and maintenance, agricultural development, and commercial, residential, and recreational developments. Currently, there is a proposal to develop 2,000 acres of tortoise habitat near Littlefield, Arizona for commercial purposes. Other developments are also planned for this area. Long-term plans call for development of a community of 250,000 people in the Littlefield area. Other potential habitat degradation activities include a BLM proposal for a utility corridor alternative across the Beaver Dam Slope in Arizona that would be two miles wide.

Land exchanges may result in habitat loss and increased fragmentation of

populations. Even where tortoise habitat is exchanged by the BLM for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings (Sievers et al. 1988).

Three thousand sixty seven acres of moderate tortoise density lands, west of Las Vegas, Nevada, were recently transferred from BLM to Summa Corporation. The Desert Tortoise Council (Council) estimated that from 300 to 600 tortoises would be displaced by the exchange, and 3,470 acres of crucial tortoise habitat, as defined by the Council, would be lost to private development (Desert Tortoise Council 1987).

Recent legislation directs the Secretary of the Interior (Secretary) to sell 3,700 acres of moderate-to-high tortoise density lands, 20 miles northeast of Las Vegas, to Clark County. The Secretary is also authorized to offer for sale up to 17,000 additional acres in the same area (Pub. L. 101-67. Apex Project, Nevada Land Transfer and Authorization Act of 1989. July 31, 1989).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that at least 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of the contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations.

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the BLM and is considered a factor in reducing the number of tortoises in their natural habitat. BLM studies in the western Mojave Desert of California on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. At one plot, carcasses with evidence of gunshot was as high as 28.9 percent (Sievers et al. 1988).

Loss of tortoises from vandalism has also been reported in northwest Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds (Charles Pregler, BLM 1989).

Luckenbach (1982) concluded that human activity is the most significant cause of tortoise mortality. The Beaver Dam Slope subpopulation of the Mojave tortoise population has been subjected to collecting pressure in the past, and although the species is now protected in Utah, some collecting may still occur. On the Beaver Dam Slope in Arizona, heavy collection for the pet trade took place until the 1970s (Coombs 1977). Automotive stations paid children to collect tortoises and sold them to passing motorists (Coombs 1977a).

C. Disease or Predation

Predation of young tortoises by ravens (*Corvus corax*) is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation on juvenile desert tortoises has increased to a point where recruiting of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert in California, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have severely curtailed the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years. In the Mojave Desert, raven populations have increased 1528 percent between 1968 and 1988, at a rate of nearly 15 percent per year. In the Colorado-Sonoran Deserts, raven populations have increased 474 percent in 20 years, at a rate of over 9 percent per year. In the Great Basin Desert, raven populations have increased by 168 percent in the last 20 years, at a rate of over 5 percent per year. In the Southern California Basin, raven populations have increased by 328 percent, at a rate of over 7.5 percent per year.

In 1989, BLM funded a tortoise study at the Piute Valley study plot in Nevada. Preliminary indications include a relatively large number of young tortoise mortalities due to ravens. The carcasses have not yet been extensively examined in the laboratory. Evidence of raven predation on young tortoises at another study plot (Christmas Tree Pass in Nevada) was observed in 1986, as evidenced by tortoise remains around a raven nest and roost site (Sid Sloan, BLM, pers. comm. 1989).

Predation studies on the Mojave population of the tortoise in Arizona have not been formally conducted. The proximity of tortoises to local dumps and a dairy, however, indicates that increased predation by ravens on juvenile tortoises, if not already a problem, may result in increased mortality of tortoises in the future.

A new threat to certain desert tortoise subpopulations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, has been observed in animals in a number of widely dispersed locations throughout the Mojave Desert. It currently appears to be spreading and the mature, reproductively active segment of the population may be most vulnerable.

The disease has been known for some time in captive tortoises throughout the world (Snipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Rosskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, pers. comm., in Rosskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinotus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via physical contact between infected and non-infected animals (Rosskopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose

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contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual appears to overcome the disease, relapse may occur under stress conditions (Rosskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease signs have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguara National Monument in Arizona (2 of 12 radio-tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio-tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada, area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with signs of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. The release of diseased captive animals may, however, spread the disease faster than the natural movement of tortoises between States.

In addition to the identified respiratory disease in the Beaver Dam Slope subpopulation of the Mojave tortoise population, an apparent nutritional disease causing ostesoporosis of the bones has been identified (Jarchow 1988).

Berry and Coffeen (1987) analyzed 100 remains of desert tortoises collected between 1982 and 1986 on the Beaver Dam Slope, Utah. Almost all of the remains were collected from two permanent study plots: Woodbury-Hardy and Beaver Dam Slope. Of the 72 tortoises found on the Woodbury-Hardy plot and one off the plot, fifteen (20.6 percent) of the specimens showed thinning of the plastron and/or carapace, holes in the bone, or a honecomb structure. An additional five specimens (6.9 percent) had deformed bones (pelvic girdle) or eroded bones. Another 15 tortoises (20.6 percent) showed no evidence of abnormalities or thinning of bones. The remaining 38 specimens (52 percent) could not be evaluated. Of the 23 tortoises from the Beaver Dam Slope plot and 5 from nearby, 9 (32.1 percent) showed evidence of thin bones and/or holes on the plastron and/or carapace or honecombing on the girdles. Nine (32.1 percent) had normal bones and an additional nine could not be classified.

In 2,300 tortoise specimens observed in California, Berry found very few cases of bone abnormality, bone disease, and thinning of bones in young individuals. In contrast, young to middle-aged tortoises from Utah were found in substantial numbers with thin bones or bone disease. Dr. J. Fischer, an orthopedic surgeon, speculated that poor nutrition was the cause for thin bones and osteoporosis in young tortoises.

A study by Jarchow (1987) indicated that osteoporosis (porous bones) and associated osteomalacia (soft bones) in tortoise shells and skeletons found on the Beaver Dam Slope could be attributed to long-term malnutrition. He suggested that the reduction in abundance of bush muhly may be the primary cause. This perennial grass is highly palatable to livestock, as well as to the tortoise. Bush muhly, once occurred in extensive stands throughout the southwest, but is now found only in the protection of shrubs due to grazing pressure (Cronquist et al. 1977).

D. The Inadequacy of Existing Regulatory Mechanisms

All four States in which the Mojave tortoise population occurs have laws that provide varying levels of protection for the desert tortoise. Even with State protective measures, subpopulations of the tortoise have continued to decline.

State of Nevada laws concerning fish, game, and watercraft, as amended, afford limited protection to the desert tortoise. Nevada Revised Statutes (NRS), section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS section 503.597, states that if is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, section 670.5(b)(4) of title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State law or regulation.

The California Fish and Game Code, Article 4, section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

On January 1, 1988, the Arizona Game and Fish Commission (Commission) prohibited the take of desert tortoises from the wild (Arizona Game and Fish Commission 1989). The Commission also prohibits the sale of tortoises and the export of tortoises from the State. Prior to that date, anyone with an Arizona hunting license could take and possess one tortoise for each person in that household. No provisions have been made to permit or otherwise identify those tortoises that were in possession prior to January 1, 1988. Thus, enforcement of the State ban on take may not be possible unless the actual taking of a tortoise from the wild is observed. There is no State authority in Arizona to regulate the take of desert tortoise habitat.

Unlike many other States, Utah does not have special regulations designating certain species as either threatened or endangered, thereby affording them additional protection. All Utah wildlife species are classified as prohibited, controlled, or noncontrolled. The desert tortoise is considered a "prohibited reptile" under Utah Rule *R608–3 Collection, Importation, Transportation, and Subsequent Possession of Zoological Animals* (Utah Division of Wildlife Resources 1987). Prohibited species are zoological animals that are prohibited from collection, importation, transportation possession, sale, transfer, or release because they pose unacceptable disease, ecological, environmental, or human health or safety risks. No state regulations exist to stop loss of tortoise habitat through land development or other habitat degradative actions.

E. Other Natural or Manmade Factors Affecting its Continued Existence

An ancillary effect of continued declines in populations and loss of habitat is the fragmentation of remaining populations. Long-term survival of these fragmented populations will be aggravated by normal random fluctuations in the population and environment that could lead to extirpation of subpopulations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mojave population of the desert tortoise in determining to propose this rule. Based on this evaluation, the preferred action is to list the Mojave population of the desert tortoise as endangered. The Act states that the term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. Given the loss of a substantial number of tortoises due to the respiratory disease, loss and degradation of habitat over much of their range, and losses due to raven predation, it is considered that some subpopulations could be extirpated within one year. If the declining trend is not turned around, eventual extinction of the population may be unavoidable.

Listing of Sonoran Population Still Precluded

The Service declined to emergency list the Sonoran population of the desert tortoise in response to the petition. The rationale leading to this decision was as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons. This habitat is less subject to disturbance than is more level terrain.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease: (a) Is usually present in tortoise populations to varying degrees; (b) has not shown any evidence of becoming pandemic; (c) has not been shown to be Respiratory Disease Syndrome; and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available in January 1991.

The report will contain information needed to determine whether the Sonoran population of the desert tortoise warrants listing. All available information on distribution, abundance, and threats will be summarized. This will include review of published and unpublished information and preparation of maps overlaying tortoise distribution with projected land use patterns. Results of field work to determine population status and trend with emphases on reproduction, disease, and mortality will be determined from revisiting previously sampled sites.

Similarity of Appearance Treatment of the Sonoran Population

Section 4(e) of the Endangered Species Act, as amended, provides that the Secretary of the Interior may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered or threatened species even though it is not listed pursuant to section 4(d)(1) of the Act if he finds that: (a) Such species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service finds that there are no visual differences, readily discernible by law enforcement personnel or the general public, between the tortoises in the Mojave and Sonoran populations, that the similarity of appearance represents an additional threat to the Mojave population, and that treating the Sonoran population as threatened due to similarity of appearance, when located outside its natural range, would facilitate the enforcement of prohibitions under the Act regarding illegal trade in or possession of endangered Mojave desert tortoises. Treating the Sonoran population as threatened due to similarity of appearance when outside its natural range would eliminate the necessity of Service special agents having to determine the origin of each desert tortoise prior to enforcing the prohibitions in section 9 of the Act. Inability of the Service to enforce the prohibitions in the Act would represent an additional threat to the listed Mojave population of the desert tortoise. By treating members of the Sonoran population of tortoises as threatened under the similarity of appearance provisions of the Act, when located outside their natural range, the Service believes that enforcement problems can be minimized, while at the same time, the conservation of listed Mojave populations can be ensured.

Reclassification of the Beaver Dam Slope Population from Threatened to Endangered

The Beaver Dam Slope population of the desert tortoise was listed as threatened with critical habitat in 1980. The declining trend of this population appears to be continuing despite the protection afforded by the Endangered Species Act and efforts of State and Federal agencies to reverse the downward trend.

Minden and Keller (1981) surveyed a one square mile plot in the Woodbury Desert Study Area, which is located within designated critical habitat for the tortoise in southwestern Utah. They estimated a density of 109 to 136 tortoises per square mile based on the 74 live wild animals that were found. The average mortality rate for 1980 and 1981 was 6 percent.

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The same one square mile study plot was resurveyed in 1988 (Welker 1988). Preliminary results indicate an estimated reduction of over 50 percent in numbers from Minden and Keller's work in 1981. The data in Welker's draft report indicates that only 27 tortoises were captured within the study plot; i.e., 6 released captives and 21 wild tortoises. The density of tortoises within the study area was estimated at between 34 and 47 per square mile. The population was dominated by adult (61.9 percent) and male (77 percent) tortoises. This is a complete reversal of the sex ratios found by Woodbury and Hardy (1948) of 36 percent males and 64 percent females. An animal population weighed heavily towards males is an indication of a population in poor reproduction condition. The average annual mortality rate in 1988 was 22 percent with the majority of deaths occurring in juvenile and female tortoises. This rate is considered high when compared to an average annual mortality rate of 1 to 5 percent in 1948; 6.86 percent by Coombs (1977b); and 6 percent in 1981.

A 50 percent population decline of the desert tortoise on a study plot on the Beaver Dam Slope, Utah has been documented between 1981 and 1986. This data appears to be representative of a continuing decline of the entire Beaver Dam Slope subpopulation of Mojave desert tortoises. The Act states that the term "endangered species" means any species or vertebrate population which is in danger of extinction throughout all or a significant portion of its range. As previously discussed herein, given the loss of a substantial number of Beaver Dam Slope tortoises due to disease, loss and degradation of habitat over much of their range, losses due to raven predation, and an escalating decline in the population, it is considered that the Beaver Dam Slope subpopulation of the Mojave desert tortoise population is in imminent danger of extinction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened.

Critical habitat was designated for the Beaver Dam Slope subpopulation of the Mojave desert tortoise in 1980. The status of this previously designated critical habitat would not be changed with this proposal.

The Service finds that designation of critical habitat for the remainder of the Mojave desert population is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. The range of the Mojave desert tortoises is extensive. Much of this habitat has been fragmented and degraded by a number of land-disturbing activities. Some remaining areas of good habitat are isolated from each other or are of such small size as not to support viable subpopulations of the tortoise. The specific size and spatial configuration of these essential habitats, as well as vital connecting linkages between areas necessary for ensuring the conservation of the Mojave desert population throughout its range, cannot be determined at this time.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the Mojave desert tortoise. The Service intends to use this and other information in formulating a decision on critical habitat designation for the Mojave population of the tortoise.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and conservation efforts would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification and isolation of healthy populations, carrying out predator control to reduce loss of immature tortoises, public education to discourage further releases of diseased captive tortoises, and to address habitat issues including land acquisition, fencing, and habitat improvement.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Regulations governing these conferences are found at 50 CFR 402.10. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 50 percent of occupied habitat within the range of the Mojave population of the desert tortoise is managed by the BLM. Other Federal managers of tortoise habitat include the Department of Defense, National Park Service, and the Fish and Wildlife Service. Tortoises are also found on lands managed by Indian tribes. Federal activities may include, but may not be limited to, actions resulting in grazing, off-highway vehicle use, mining, construction of developments and rights-of-way, and military activities.

The act and implementing regulations found at 50 CFR part 17 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale any endangered species in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species. The CITES Convention, as implemented by the Act and various regulations (50 CFR part 23), imposes restrictions on importation and exportation of Appendix I and II species.

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the Mojave desert tortoise, would be classified endangered species in the area north and west of the Colorado River and would be protected under the Act.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of the emergency rule (August 4, 1989), provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Listing Coordinator) at the address provided above (**ADDRESSES** section).

Author

The primary author of this proposed rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181, (503) 231-6131 or FTS 429-6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for "Tortoise, desert" under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
REPTILES							
Tortoise, desert	Gopherus (=Xerobates, =Scaptochelys) agassizii.	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire area, except in AZ, south and east of the Colorado River, and Mexico.	E	103,357	17.95(c)	NA.
Do	do	do	U.S.A. (AZ, south and east of Colorado River) and Mexico when found outside of AZ, south and east of Colorado River, or Mexico.	T(S/A)		NA	17.42(e).

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3. It is further proposed to amend § 17.42 by adding a new paragraph (e) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(e) Desert tortoise (*Gopherus (=Xerobates, =Scaptochelys) agassizii*)

(1) *Definition.* For the purposes of this paragraph (e) "desert tortoise" shall mean any member of the species *Gopherus (=Xerobates, =Scaptochelys) agassizii*, whether alive or dead, and any part, product, egg, or offspring thereof, found outside of Arizona [south and east of the Colorado River) and Mexico, regardless of natal origin or place of removal from the wild.

(2) *Applicable provisions.* The provisions of § 17.21–17.23 shall apply to any desert tortoise subject to this paragraph (e).

Dated: October 5, 1989.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-24252 Filed 10-12-89; 8:45 am]

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federal register

Friday
October 13, 1989

Part IV

The President

Proclamation 6043—National Domestic Violence Awareness Month, 1989

Proclamation 6044—National Job Skills Week, 1989

Executive Order 12694—Amending Executive Order No. 12345

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Presidential Documents

Title 3—

The President

Proclamation 6043 of October 11, 1989

National Domestic Violence Awareness Month, 1989

By the President of the United States of America

A Proclamation

Today, far too many American families, whose lives and homes should be blessed by tranquility and security, dwell instead under the terrifying shadow of domestic violence. Domestic violence is not just a series of simple disputes or family quarrels. It is not just an isolated incident or private matter to be quietly settled, forgiven, and forgotten. Domestic violence is a serious crime that tears at the fabric of the American family.

Each year, hundreds of thousands of Americans—Americans of every age, race, and gender, and from every social, religious, and economic background—are harmed in their homes by a loved one. It is estimated that one-third of all domestic violence incidents involve felonies, including rape, aggravated assault, and robbery. Domestic violence is the single largest cause of injury to women in the United States, and research has shown that persons who engage in one form of family violence are likely to engage in others. Researchers are just beginning to understand the extent of injuries suffered by men as a result of domestic violence, particularly in their advanced years.

The suffering of those children who are abused, or who witness incidents of domestic violence, is inestimable. Domestic violence deprives these little ones of the innocence, joy, and security of childhood—and nothing can replace their loss.

In recent years, the number of shelters and safehouses for battered adults and children has increased dramatically. This month, we recognize the dedicated professionals and volunteers who provide these vital services to the victims of domestic violence. These generous, hard-working men and women merit our respect and gratitude.

However, because many abused individuals continue to need assistance, we must also recognize the importance of supporting private and public efforts to aid victims of domestic violence. Public awareness and understanding of the needs of battered adults and children must be increased. This month, let us renew our determination to learn more about the problem of domestic violence and how each of us can help bring an end to it.

The Congress, by Senate Joint Resolution 133, has designated October 1989 as "National Domestic Violence Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1989 as National Domestic Violence Awareness Month. I urge all Americans to become more aware of the tragedy of domestic violence; to support and assist victims and those who are working to eliminate domestic violence in our land; and to participate in other appropriate efforts.

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IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24433
Filed 10-12-89; 11:57 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6044 of October 11, 1989

National Job Skills Week, 1989

By the President of the United States of America

A Proclamation

The observance of National Job Skills Week, 1989, gives all Americans an opportunity to reflect on the changes taking place in our economy and work force. Today, the United States continues to hold a position of leadership in global economic affairs—with most Americans enjoying a high standard of living, employment levels continuing to increase, and unemployment falling to the lowest levels in more than a decade. In large part, this leadership reflects the flexibility, creativity, and commitment to excellence among American workers and employers, as well as the quality of our educational and training institutions.

However, the United States faces a serious challenge that must be dealt with immediately and directly. An increasingly competitive international economy requires that our labor force have improved skills—skills necessary to adapt to technological advances in the workplace.

At the same time, demographic changes are altering the composition of our labor force. Trends indicate that, during the next decade, fewer new young workers will be entering the labor market, and the average age of the work force will rise significantly. Workers without adequate education or training will likely make up a larger share of the entrants into the work force. These trends underscore the importance of providing retraining for older workers and employment opportunities for those Americans who, in the past, have not been able to compete in the labor market due to lack of education or occupational skills.

We must reaffirm our commitment to bringing disadvantaged and unemployed Americans into the labor market so that they, too, can experience the rewards of productive employment and self-sufficiency. Such a commitment is not only a moral imperative, but also vital to maintaining our Nation's prosperity and economic growth.

The centerpiece of the Federal Government's efforts to meet this challenge and commitment is the Job Training Partnership Act (JTPA). Through the JTPA, private and governmental efforts are combined to provide needed training and assistance to individuals seeking private sector employment. The JTPA has been an extremely successful program, but it can be improved. Amendments under consideration would target assistance and training to those who face the most serious barriers to employment; enhance the quality of services provided; and promote coordination of human resource programs serving the disadvantaged.

In addition, the Family Support Act of 1988—last year's landmark welfare reform legislation—moves us in the direction of including job training and education in our welfare system. Similarly, proposed changes to the Carl D. Perkins Vocational Education Act, now being considered, would emphasize student achievement in acquiring basic skills and occupational competence. Effective implementation of these programs can make a critical contribution to our efforts to train unskilled and disadvantaged Americans and bring them into the economic mainstream.

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To focus national attention on present and future work force needs, the Congress, by Senate Joint Resolution 148, has designated the week of October 8 through October 14, 1989, as "National Job Skills Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 8 through October 14, 1989, as National Job Skills Week. I urge all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24434
Filed 10-12-89; 11:58 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12694 of October 11, 1989

Amending Executive Order No. 12345

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to amend Executive Order No. 12345, as amended, to provide for the option of selecting one or more Chairmen and Vice Chairmen from among the members of the President's Council on Physical Fitness and Sports, it is hereby ordered that Executive Order No. 12345, as amended, is amended as follows:

Section 1. The second sentence of Section 2(b) shall read "The President may, as he deems appropriate, designate one or more members to be Chairmen and to be Vice Chairmen."

Sec. 2. This order is effective immediately.

George Bush

THE WHITE HOUSE,
October 11, 1989.

[FR Doc. 89-24437
Filed 10-12-89; 12:06 pm]
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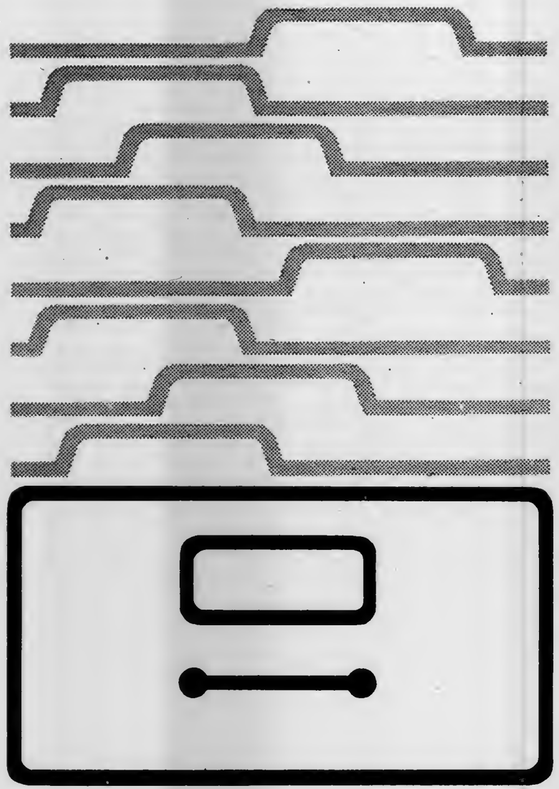
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in the Code of Federal Regulations (CFR)

Revised January 1, 1989

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 19; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A, 26 Federal Plaza, New York, NY.

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Rules and Regulations

Federal Register
Vol. 54, No. 196
Monday, October 16, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 687]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 687 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 304,000 cartons during the period October 15 through October 21, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 687 (7 CFR part 910) is effective for the period October 15 through October 21, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on October 11, 1989, in Yuma, Arizona, to consider the current and prospective conditions of supply and demand and, by an 11 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.987 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.987 Lemon Regulation 687.

The quantity of lemons grown in California and Arizona which may be handled during the period October 15, 1989, through October 21, 1989, is established at 304,000 cartons.

Dated: October 12, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-24489 Filed 10-13-89; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 21, and 73

RIN 3150-AD37

Change in Commercial Telephone Number for Region III Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

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SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to indicate a change in the commercial telephone number for the NRC's Region III Office located in Glen Ellyn, Illinois. These amendments are necessary to inform the public of these administrative changes to NRC regulations.

EFFECTIVE DATE: November 11, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086.

SUPPLEMENTARY INFORMATION: The commercial telephone number for the NRC's Region III Office will change on November 11, 1989. This notice is being published to inform the public of the change in the commercial telephone number.

Because these amendments deal with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.)

List of Subjects

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1975, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 20, 21, and 73.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix D—[Amended]

2. In Appendix D, the commercial telephone number for the NRC Region III Office (Glen Ellyn, Illinois) is changed from "(312) 790–5500" to "(708) 790–5500".

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

3. The authority citation for Part 21 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 21.3 [Amended]

4. In footnote 1 to § 21.3, the commercial telephone number for the NRC Region III Office (Chicago) is changed from "(312) 790–5500" to "(708) 790–5500".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix A—[Amended]

6. In Appendix A, the commercial telephone number for the NRC Region III Office (Glen Ellyn, Illinois) is changed from "(312) 790–5500" to "(708) 790–5500".

Dated at Rockville, Maryland, this 3rd day of October 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89–24330 Filed 10–13–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–115–AD; Amdt. 39–6364]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped With Main Landing Gear (MLG) Barrel Hinge Arms, Messier Part Number C65381–4 or –6

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplaines, which requires replacement of certain main landing gear barrel hinge arms which have a pad cadmium coating. This amendment is prompted by one report of hinge arm rupture during landing gear extension. This condition, if not corrected, could lead to collapse of one main landing gear.

EFFECTIVE DATE: November 20, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires replacement of certain main landing gear barrel hinge arms which have a pad cadmium coating, was published in the **Federal Register** on July 26, 1989 (54 FR 31046).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 53 airplaines of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplaine to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $270. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,030.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B4–103 and B4–203 series airplanes, equipped with main landing gear (MLG) barrel hinge arms, Messier Part Number C65381–4 or –6, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless previously accomplished.

To prevent collapse of one main landing gear, accomplish the following:

A. Except as provided in paragraph B., below, replace all main landing gear (MLG) hinge arms having a pad cadmium coating, with either hinge arms that do not have a pad cadmium coating or hinge arms that have been reconditioned in accordance with MHB Service Bulletin 470–32–652, dated December 30, 1988.

Replacement is required in accordance with the procedures specified in Airbus Industrie Service Bulletin A300–32–390, Revision 1, dated December 20, 1989.

Note: Airbus Service Bulletin A300–32–390 references Messier-Hispano-Bugatti (MHB) Service Bulletin 470–32–651 for additional replacement procedures.

B. The following airplanes are not subject to the requirements of this AD:

1. Airplanes equipped with MLG hinge arms to which a pad cadmium coating has been applied in accordance with Airbus Industrie Service Bulletin A300–26–356, dated May 15, 1985 (which references MHB Service Bulletin 470–32–422), and have since undergone a main workshop overhaul and have been subjected to an electrolytic cadmium stripping and replating in a bath.

2. Airplanes equipped with MLG hinge arms that have been reconditioned in accordance with MHB Service Bulletin 470–32–652.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective November 20, 1989.

Issued in Seattle, Washington, on October 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24311 Filed 10–13–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–103–AD; Amdt. 39–6362]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney engines, which would require removal of two unused engine throttle control cable fairleads. This amendment is prompted by an FAA certification cable inspection test in which it was discovered that, under simulated elevator cable system proof load, there was enough cable slack for the elevator cable to hang up on the throttle fairlead at left buttock line (LBL) 14 and body station (BS) 310. This condition, if not corrected, could lead to the elevator control cables binding on the engine throttle control cable fairleads, which would result in the inability of the pilot to safely control the airplane.

EFFECTIVE DATE: November 20, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

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Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires removal of two unused engine throttle control cable fairleads, was published in the **Federal Register** on July 13, 1989 (54 FR 29580).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America expressed no objection to adoption of the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 85 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 78 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes equipped with Pratt and Whitney engines, listed in Boeing Service Bulletin 757-76-0006, dated March 16, 1989, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent the elevator control cables binding on the engine throttle control cable fairleads, accomplish the following:

A. Remove two engine throttle control cable fairleads in accordance with Boeing Service Bulletin 757-76-0006, dated March 16, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 20, 1989.

Issued in Seattle, Washington, on October 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24314 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-111-AD; Amdt. 39-6363]

Airworthiness Directives; CASA C-212 Series Airplanes, Equipped With a Passenger Entry Step Installed Under Supplemental Type Certificate (STC) SA906GL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, which requires removal of the step, handrails, door latch modifications, and associated hardware installed under STC SA906GL. This amendment is prompted by a report that the step installation may obstruct the visibility of and access to the cabin entry door handle. This condition, if not corrected, could result in impairment of passenger egress during an emergency evacuation.

EFFECTIVE DATE: November 20, 1989.

ADDRESSES: The applicable service information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Payauys, Airframe Branch, ACE-120C; telephone (312) 694-7426. Mailing address: FAA, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain CASA Model C-212 series airplanes, which requires removal of the step, handrails, door latch modifications, and associated hardware installed under STC SA906GL, was published in the **Federal Register** on July 26, 1989 (54 FR 31051).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,920.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of govenment. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Casa: Applies to Model C-212 series airplanes equipped with a passenger entry step installed under Supplemental Type Certificate (STC) SA906GL, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent delay in opening the passenger door in the event of an emergency evacuation, accomplish the following:

A. Remove the step, handrails, door latch modifications, and associated hardware installed in accordance with Fischer Brothers Aviation, Inc., Installation Instructions for FBD-206, Revision F, dated June 5, 1985.

B. Restore the door handle to the original CASA configuration.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Chicago Aircraft Certification Office, ACE-115C.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The applicable service information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois.

This amendment becomes effective November 20, 1989.

Issued in Seattle, Washington, on October 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-24313 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-30-AD; Amdt. 39-6330]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes, which requires structural inspections, and repair or replacement, as necessary to assure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed manufacturer's original design life goal. This condition, if not corrected, could result in a compromise of the structural integrity of these airplanes.

EFFECTIVE DATE: November 20, 1989.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the **Federal Register** as of November 20, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Manager, Technical Publication Operation C1-L71 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda D. Baker, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California 90806-2425; telephone 213-988-5231.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas DC-10 series airplanes, which requires structural inspections, and repair or replacement, as necessary, to assure continued airworthiness, was published in the **Federal Register** on May 9, 1989 (54 FR 19908).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters who responded generally supported the adoption of the proposed rule. One operator expressed concern that the Structural Inspection Document (SID) program intervals for inspecting Principle Structural Elements (PSE) are less than its "C" check period. Although no alternate schedule was suggested, the FAA infers that the commenter has requested that the final rule be revised to extend these repetitive inspection intervals to coincide with this commenter's regular maintenance schedule. The FAA does not concur. The FAA has determined that the intervals specified in the SID represent the optimal inspection program for detecting significant structural cracking. The FAA recognizes that the SID program will be continually revised and updated as new data is made available. This AD may subsequently be amended to revise inspection intervals for selected PSE's, to provide alternative inspection methods, and the like, based on approval of this new data.

After careful review of the available data, including the comments noted

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above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 252 airplanes of U.S. registry and 10 U.S. operators will be affected by this AD. It is estimated that incorporation of the Supplemental Inspection Program for a typical operator will take approximately 1,000 man-hours per operator to accomplish the required actions, and that the average labor cost will be $40 per man-hour. Based on these figures, the cost to U.S. operators to incorporate the SID program is estimated to be $400,000.

The recurring inspection cost to the affected operators is estimated to be 341 man-hours per airplane per year, at an average labor charge of $40 per man-hour. Based on these figures, the recurring inspection cost impact of the AD on U.S. operators is estimated to be $3,437,280.

Based on the above figures, the total cost impact of this AD is estimated to be $3,837,280 for the first year, and $3,437,280 for each year thereafter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26-012, DC-10 Supplemental Inspection Document (SID), dated November 1988, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance times, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office.

McDonnell Douglas Report No. L26-012, DC-10 Supplemental Inspection Document (SID), dated November 1988, identified and described in this directive, is incorporated by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90806, Attention: Manager Technical Publication Operation C1-L71 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

This amendment becomes effective November 20, 1989.

Issued in Seattle, Washington, on September 13, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24310 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-191-AD; Amdt. 39-6361]

Airworthiness Directives; SAAB-Scania AB Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to SAAB-Scania AB Model SF-340A series airplanes, which requires installation of a modified engine electrical control unit (ECU). This amendment is prompted by two reports of engine failure during takeoff and the subsequent failure of the autocoarsen system to coarsen the propeller on the failed engine due to torque spikes from the ECU. This condition, if not corrected, could lead to high propeller drag on the failed engine side of the airplane and loss of climb performance.

EFFECTIVE DATE: November 20, 1989.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania, Aircraft Division, S.58188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to SAAB-Scania AB Model SF-340A series airplanes, which requires installation of a modified engine electrical control unit (ECU), was published in the **Federal Register** on June 14, 1989 (54 FR 25288).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the rule.

Another commenter stated that, as of July 17, 1989, approximately 50 percent of the affected U.S.-registered airplanes have accomplished the ECU modification in accordance with General Electric (GE) Service Bulletin 74-16. Based on projected work schedules, all of the remaining affected U.S.-registered planes could be modified within the proposed 60-day compliance period. However, in the event the Luftfartsverket (LFV), which is the airworthiness authority of Sweden, should elect to revise its related Airworthiness Directive No. 1-028 to include a requirement to install the modification within a specified compliance deadline, a worldwide parts availability problem would be created. Therefore, the commenter suggested that the proposed compliance time for modification be extended to 120 days.

The FAA does not concur with the suggestion to extend the compliance time since, currently, there is not a parts availability problem for affected U.S. operators and, further, the LFV has made no revision to its airworthiness directive. The FAA has determined that, in consideration of the safety implications of the addressed unsafe condition, an extension of the compliance time merely to consider a potential parts problem, which may or may not occur, is not warranted. However, in the event that ECU parts supply does become a problem for any individual operator, the FAA may consider any proposed alternate actions in accordance with the provisions of paragraph B. of this rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 79 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $400 per manhour. The required parts will be furnished by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Applies to Model SF-340A series airplanes, Serial Numbers SF340A-004 through -159, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent high propeller drag and loss of climb performance during single engine operation (i.e., one engine failed) while operating with the autocoarsen system on, accomplish the following:

A. Install modified electrical control units (ECU) in accordance with General Electric Service Bulletin 74-16, dated March 22, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Aircraft Division, S.58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 20, 1989.

Issued in Seattle, Washington, on October 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24315 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-31]

Amendment to Control Zone, Fayetteville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the Fayetteville, NC, control zone from full-time to part-time. Weather reporting service is conducted by FAA Airport Traffic Control Tower (ATCT) personnel. Currently, the ATCT is not staffed during the period 0000 to 0600 local time. This amendment permits the control zone to be effective during the specified dates and times established by Notice to Airmen (NOTAM) and thereafter as published in the Airport/Facility Directory. Also, the airport name is changed from Fayetteville Municipal Airport (Grannis Field) to Fayetteville Regional/Grannis Field Airport and a minor correction is made in the airport geographic position coordinates.

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EFFECTIVE DATE: 0901 U.T.C., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On July 31, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Fayetteville NC, control zone (54 FR 31540). This action proposed to change the control zone from full-time to part-time. The control zone would be effective during the specific dates and times established by NOTAM and thereafter as published in the Airport/Facility Directory. Also, the airport name would be changed to reflect the current name of Fayetteville Regional/Grannis Field Airport and a minor correction would be made in the airport geographic position coordinates. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations changes the Fayetteville, NC, control zone from full-time to part-time. Additionally, the airport name is changed in the control zone description from Fayetteville Municipal Airport (Grannis Field) to Fayetteville Regional/Grannis Field Airport and a minor correction is made in the airport geographic position coordinates.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fayetteville, NC [Amended]

Change the phrase, "Within a five-mile radius of Fayetteville Municipal Airport (Grannis Field) (latitude 34°59'22" N, longitude 78°52'52" W.)" to read, "Within a five-mile radius of Fayetteville Regional/Grannis Field Airport (latitude 34°59'29" N., longitude 78°52'49" W.)" and add the following sentences at the end of the existing description, "This control zone is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in East Point, Georgia, on September 27, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–24316 Filed 10–13–89; 8:45 am]

BILLING CODE 4910–13–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning October 1, 1989. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in August-October of 1989. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harold Ashner, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in Appendix A to the premium regulation and Appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning October 1, 1989, the interest charged on the underpayment of taxes will be at a rate of 11 percent. Accordingly, the PBGC is amending Appendix A to 29 CFR part 2610 and Appendix A to 29 CFR part 2622 to set forth this rate for the October 1-December 31, 1989 quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in Appendix B to the regulation.

For the reasons set forth in the preamble to the final payment of premiums regulation (54 FR 28944 (July 10, 1989)), the PBGC is publishing these monthly interest rates in Appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in Appendix A. (PBGC will henceforth publish the Appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the Appendix A rate, which is determined prospectively, the Appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending Appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in August, September and October of 1989.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the Appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in Appendix B to Part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A and Appendix B to part 2610 and Appendix A to part 2622 of chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 is continued to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100–203, 101 Stat. 1330.

2. Appendix A to part 2610 is amended by revising the April 1, 1989, entry and adding a new entry for the quarter beginning October 1, 1989 to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
April 1, 1989	Sept. 30, 1989	12
Oct. 1, 1989	Dec. 31, 1989	11

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in August–October 1989 to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rate for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
•	•
August	6.46
September	6.50
October	6.52

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by revising the April 1, 1989, entry and adding a new entry for the quarter beginning October 1, 1989 to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
April 1, 1989	Sept. 30, 1989	12
Oct. 1, 1989	Dec. 31, 1989	11

Issued in Washington, DC, the 6th day of October 1989.

James B. Lockhart III,

Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 89–24234 Filed 10–13–89; 8:45 am]

BILLING CODE 7708–01–M

COPYRIGHT OFFICE

Library of Congress

37 CFR Part 202

[Docket No. RM 88–6A]

Registration of Claims to Copyright; Mandatory Deposit of Machine-Readable Copies

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulations.

SUMMARY: The Copyright Office of the Library of Congress is adopting final

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regulations for deposit of certain machine-readable copies. The amendments revoke the exemption from mandatory deposit, pursuant to section 407 of the Copyright Act of 1976, of machine-readable copies and require deposit of data and software published in IBM or Macintosh formats for use in the collections of the Library.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559 (202) 707–8380.

SUPPLEMENTARY INFORMATION: On August 9, 1988 (53 FR 29923), the Copyright Office published a notice of proposed rulemaking regarding the adoption of new regulations for deposit of certain machine-readable copies. The Office proposed the repeal of the exemption for works published solely in machine-readable formats from mandatory deposit. Copies secured through mandatory deposit under section 407 of the Copyright Act would be added to the collections of the Machine-Readable Collections Reading Room.

The Copyright Office received seven comments on the proposed regulation. While some of the comments praised the broad goals of the Machine-Readable Collections Reading Room, all expressed reservations with the proposed regulation as published in the **Federal Register**.

The Copyright Office has studied carefully the comments that were submitted. For reasons detailed in this announcement, the Copyright Office has adopted as final, the proposed regulation without change. We are republishing as Appendix B the entire Best Edition Statement, including the additonal material regarding deposit of machine-readable copies.

1. Background

Under section 407 of the Copyright Act of 1976, title 17 of the United States Code, as originally enacted, the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States was required to deposit two copies (or, in the case of sound recordings, two phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress. Effective March 1, 1989, the requirement that a work subject to mandatory deposit contain a copyright notice was eliminated. This change was made in Public Law 100–568, the Berne Convention Implementation Act of 1988.

The deposit is to be made within three months after publication in the United States. Failure to make the required deposit does not affect copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights. As a qualification of these general provisions, section 407 also provides that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories."

Relying on this authorization, the Copyright Office, with the approval of the Librarian of Congress, established regulations governing mandatory deposit at 37 CFR Chap. II, §§ 202.19, 202.20, and 202.21. Section 202.19 establishes the standards governing mandatory deposit of published copies and phonorecords for the Library of Congress. Section 202.20 concerns the required deposit when application is made for registration of a copyright claim with the Copyright Office under section 408 of title 17, U.S.C. § 202.21 allows deposit of identifying material in lieu of copies or phonorecords in certain cases. In addition, the Library of Congress published its Best Edition Statement specifying the required deposit in instances where two or more different editions were published.

When these regulations were first promulgated in 1978, machine-readable copies were not widely marketed to the public at large. For this reason, the Library of Congress decided to exempt all works published solely in machine-readable formats from mandatory deposit. For purposes of copyright registration deposit, for such works generally can be satisfied by submitting identifying material comprising the equivalent of the first and last 25 pages of the source code in the case of a computer program, or the first 25 and last 25 pages of a database.

Since the time these policies were adopted, great changes have occurred. As a result of the popularity of the personal computer, computer software and databases are in wide public demand. In response to these public needs, the Library has established a Machine-Readable Collections Reading Room. The Reading Room provides public access to two categories of important machine-readable copies.

The first category is standard data in microcomputer machine-readable form that traditionally has only been available in print form (encyclopedias, census figures, standard reference publications, etc.). With the development of computer technology, many standard reference materials have become available in whole or in part in machine-readable form. The Library desires to provide patrons access to these machine-readable reference sources.

The second category is computer software in microcomputer machine-readable form. The Library makes software available in the Reading Room for purposes of review and study. The software is not acquired to perform the specific tasks for which the software was created. For this reason, utilizing the software collections of the Reading Room will not serve as a substitute for the purchase of a software package. Preview and study of the software in the Reading Room, however, may influence a researcher's selection of a package for purchase.

The Library is interested additionally in developing its software collections for archival purposes. As a general rule, a software package has a relatively short life. Therefore, acquisition and retention of software in a centralized location is vital for the use of future scholars who wish to study the computer revolution from an historical perspective.

Under the proposed regulation published in the **Federal Register** on August 9, 1988, § 202.19 governing mandatory deposit would be changed in two places. Section 202.19(c)(5) would limit the exemption for machine-readable copies to automated databases available only online. Section 202.19(d) would be modified by adding a new subparagraph (vii) allowing for deposit of only one machine-readable copy, except where a copy-guard system is used. In the latter case, two copies would be required.

In addition to changes in the deposit requirements, the Copyright Office proposed a new section in the Best Edition Statement covering machine-readable copies. IBM and Macintosh formats would be designated as the formats desired by the Library of Congress. In implementing mandatory deposit for machine-readable copies, the Register would demand only copies of works appearing in the formats designated in the Best Edition Statement.

2. Summary of Public Comments

Seven comments were received on the proposed regulation. Four comments were submitted from trade associations, two comments were received from major computer manufacturers, and one comment was received from a law firm.[1]

[1] The law firm held the mistaken belief that the proposed regulation would repeal present registration practices with respect to computer programs. This is not the case.

Continued

The Information Industry Association (IIA) criticized the proposed regulation as overbroad, and endorsed, in its place, reliance on a voluntary system. IIA urged that the regulations provide restrictions on the uses patrons could make of machine-readable copies, and asked whether applicable licensing restrictions would be respected. Questions were raised concerning the scope of the exemption for databases available "only online." Finally, IIA asserted that differing deposit requirements for mandatory deposit and copyright registration posed a problem for the industry.

The American Association of Publishers (AAP) criticized the proposed regulation for failing to restrict copying, lending, or electronic dissemination. The AAP suggested that the extent licensing terms commonly applicable to machine-readable works would be respected was also unclear. We were also asked to clarify the applicability of the "online" exemption to works "principally" distributed online. Finally, AAP suggested recasting of the Best Edition Statement.

The Computer Software and Services Industry Association (ADAPSO) doubted that the Library's proposal to prohibit patrons from bringing in diskettes for purposes of downloading would be workable. ADAPSO also questioned whether the support services made available by publishers to licensees would be provided in the Reading Room. ADAPSO contended that the proposed regulation should be tabled in favor of a voluntary program.

The Computer and Business Equipment Manufacturers Association (CBEMA) urged that the proposed regulation be recast to exempt all machine-readable works except IBM and Macintosh formatted material. CBEMA further believed the criteria in the Best Edition Statement should be clarified. Finally, CBEMA suggested a sunset provision in order to permit a Library-industry review of developments concerning the Reading Room.

A major manufacturer of personal computers expressed support for the broad goals of the Reading Room. It urged, however, that the limitations to IBM and Macintosh formats be placed in the regulations. It additionally believed that the criteria specified in the Best Edition Statement were misleading.

Another large manufacturer of computer equipment urged that a voluntary system be established instead of implementing mandatory deposit. It urged the following steps be taken: (1) The regulations provide an exemption for works requiring the utilization of a password; (2) stringent security measures be adopted; (3) the regulation be narrowed to exclude material which can not be used by the Library; and (4) the regulations be simplified as regarding revisions, and harmonized with deposit for registration purposes.

3. Final Regulation on Mandatory Deposit of Machine Readable Copies

a. *Basic decision.* For the first eleven years of the current Copyright Act, the Library of Congress has not exercised the authority to compel deposit of works published only in machine-readable formats.

In order to advance the services of the Machine-Readable Collections Reading Room, however, the Library has determined that it is necessary to implement mandatory deposit at this time. While the commentators have uniformly expressed support for a voluntary system, the Library has attempted through meetings and letters to create a voluntary system and these attempts have not succeeded.

Before publication of the proposed regulation, the Library sponsored a meeting with industry leaders to discuss the activities of the Reading Room. At that meeting industry spokesmen endorsed establishment of a voluntary system. Unfortunately, follow-up letters sent by the Library produced no donations.

Mandatory deposit serves as an important source of acquisition for the Library of Congress. In order to provide effective public service, the Machine-Readable Collection Reading Room must have available copies of significant works. Exercise of the mandatory deposit authority is a logical and reasonable means for securing these materials. In passing the Copyright Act of 1976, Congress clearly intended the Library to exercise its mandatory deposit authority in a reasonable way to enhance the collections of the Library for the good of the public.

Since 1870, copies secured through copyright deposit have augmented the collections of the Library of Congress. While under the present copyright law mandatory deposit is not a condition of copyright protection, compliance with demands for mandatory deposit remains an obligation of those who benefit from the copyright system.

Commentators expressed criticisms that the proposed regulations were "overbroad" or "beyond what the Library could use." Commentators also expressed support for greater restrictions on the materials that could be demanded by the Library.

The Copyright Office issues demands only for works desired to be added to the collections of the Library. Demands are not issued for works which are of no use to the Library. As a result, the universe of published works subject to mandatory deposit has always been far greater than the works actually demanded. These policies will be applied to machine-readable copies.

Determination of materials appropriate for acquisition has always been the sole responsibility of the Library. In the fast changing environment of works available in machine-readable formats, narrow-based policies would quickly become obsolete. The Library needs the flexibility to adjust the kinds of formats subject to mandatory deposit in response to changing acquisitions needs. For these reasons the Copyright Office declines to exempt broad categories of machine-readable works from mandatory deposit. Nevertheless, as discussed below, the Library and the Copyright Office reiterate that for the forseeable future, only IBM and Macintosh formats will be demanded.

By this basic decision to remove the present exemption for works in machine-readable formats, the public receives notice that these formats—except for on-line database not available in disk or other hard-copy formats—are potentially subject to mandatory deposit.

b. *Restriction to IBM and Macintosh Formats.* The major restriction in the demand policies of the Library with respect to deposit of machine-readable copies is the limitation to IBM and Macintosh formats. This limitation is not expressed in the regulation, however, but rather in the format designations of the Best Edition Statement.

At present, hardware available in the Reading Room limits access to IBM and Macintosh formats. For this reason alone the Library will not proceed with demands for material which can not be utilized by the Reading Room. The Library contemplates securing additional hardware to expand the formats usable by the collections. When this occurs, the Library will amend the Best Edition Statement to expand the designated formats, and the Copyright Office will publish notice of the change in the **Federal Register**. This policy is far more favorable to the depositors than an unqualified regulation.

Commentators expressed support for designating formats in the regulation, but this policy would unduly hamper the Library's ability to acquire copies in the

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fast-changing environment of machine-readable works. We decline to establish narrow-based regulations which will quickly become obsolete as a result of changes in the computer industry. The alternative would be to remove the present exemption and specify a general deposit standard, such as "disks" as the preferred medium, followed by tape formats, etc. The Library elects, instead, to limit its demands to the narrow formats described in the Best Edition Statement.

c. *Restrictions on Uses by Researchers.* The Machine-Readable Collections Reading Room has been established by the Library: (1) To provide access for research purposes to data and program software in microcomputer machine-readable form; and (2) to build and maintain a national archive of data and program software in microcomputer machine-readable form.

In order to utilize the collections of the Machine-Readable Collections Reading Room, all potential researchers must register and be interviewed. All machine-readable materials are stored in a secured area, and only staff members handle disks.

In order to protect materials in the collections from copying, the Library does not permit researchers to insert their own disks into the disk drives of the computer. Researchers' use of the machines is closely monitored by staff to ensure that downloading does not occur. The Library has on order special disks that can lock disk drive slots. The securing of these special disks will simplify the monitoring task. Additionally, the Library does not permit the photocopying of computer manuals that accompany deposited copies.

The Machine-Readable Collections Reading Room does not lend machine-readable works, nor participate in interlibrary loans of such material. There is no capability for researchers to transmit materials electronically outside of the Reading Room. All applicable licenses are available for review to inform researchers of user restrictions.

Several commentators urged that restrictions on copying be placed in Copyright Office regulations. Due to the ease of copying, machine-readable works are often the subject of abusive reproduction practices. For this reason, the Library has adopted the aforementioned security measures to ensure that such abuses do not occur within the Library of Congress.

The Library concedes that no system is foolproof. It is important to remember, however, that most machine-readable works are sold without any security against copying other than legal prohibitions. Of machine-readable copies distributed by copyright owners, the copies maintained within the collections of the Library of Congress will be among the most secure. The Library is confident that the security measures undertaken in the Reading Room will prevent the collections from becoming a source of access for illegal reproduction activities.

d. *The "Only Online" Exemption.* Several commentators questioned the scope of the "only online" exemption. Specifically they questioned the status of "hybrid" databases where the database is made available on CD–ROM with software included that provides access to the more up-to-date online version of the database. Additionally, we were asked to clarify whether databases distributed to a small number of vendors for purposes of offering online service would be entitled to claim the exemption.

The Library intends to secure through mandatory deposit machine-readable works which are publicly offered for sale or lease. In the case of "hybrid" databases, the Library will seek deposit of the CD–ROM. Clearly, this is a work which is not "only online." The Library will not demand deposit of the updates available online. However, once the updates are incorporated into a revised CD–ROM, the Library will seek deposit of the revised CD–ROM.

As to databases distributed to a small number of vendors for purposes of offering online service, several considerations are raised. The Library does not anticipate pressing demands where distribution of copies is genuinely restricted to special clients. However, the leasing of copies does constitute publication within the meaning of the copyright law, and works with a high price will naturally have relatively few sales. Decisions in these instances will be made on a case-by-case basis.

e. *Machine-Readable Copies Requiring Special Authorization.* In the preamble to the proposed regulation, we stated that "the Library does not intend to demand software that requires the utilization of a password or other special authorization." The comment letters revealed that this statement was unclear.

In utilizing the mandatory deposit procedures, the Library intends to acquire copies of material generally offered for sale or lease to the public. Copies that are genuinely restricted to special clients will not be sought. Factors revealing whether a distribution is genuinely restricted are face-to-face dealings and contractual provisions specifically tailored to the requirements of both parties. In instances of restricted distributions, the utilization of secret passwords might be one means for providing security for the software.

The existence or nonexistence of passwords will not be a conclusive factor in determining whether a distribution is genuinely restricted. Many mass marketed machine-readable works contain passwords. These passwords are often disclosed in the written documentation accompanying the work. The Library will determine whether a distribution is genuinely restricted on a case-by-case basis.

f. *Harmonization of the Deposit Requirements.* Under the mandatory deposit procedures adopted by the Library, deposit of machine-readable works for registration purposes differs from the deposit required for mandatory deposit. Some of the commentators urged that the Examining Division of the Copyright Office accept machine-readable copies.

The variation stems from the disparate purposes of deposit for registration and for enrichment of the Library's collections. The Examining Division is required to examine for copyrightable authorship. Machine-readable copies are generally unsuitable for this task. The computer code may not be viewable on a computer screen or printed out without utilization of expensive, and often different, hardware. The Examining Division requires human-readable deposits for examination, generally portions of source code. The Machine-Readable Collections Reading Room, on the other hand, can only utilize works in those machine-readable formats for which it has acquired hardware.

The Library has no interest in accessioning many of the computer programs in which claims to copyright have been registered in the Copyright Office. Clearly, unpublished computer programs and those of formats not designated in the Best Edition Statement could not be demanded. Additionally, certain restricted computer programs and software would not be desired by the Reading Room, and the Library will demand deposit of only those selected formats that are compatible with the limited hardware in the Reading Room. As a result, many copyright owners of computer software will never be asked to deposit machine-readable copies.

For those relatively few works that are demanded, the variation in deposit requirements is slight. It is likely, moreover, that any harmonization of the mandatory deposit and registration deposit requirements would result in deposit of both machine-readable and human-readable copies for registration purposes.

Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[a]

List of Subjects in 37 CFR Part 202

Copyright, Computer programs, Mandatory deposit under copyright.

Final Regulations

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II, is amended in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: Copyright Act, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 202.19 is amended by revising paragraph (c)(5) and adding a new paragraph (d)(2)(vii) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(c) * * *

(5) Automated databases available only online in the United States but not including automated databases distributed only in the form of machine-readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, and computerized information works in the nature of statistical compendia, serials, and reference works. Also works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety or microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

* * * * *

(d) * * *

(2) * * *

(vii) In the case of published computer programs and published computerized information works, such as statistical compendia, serials, and reference works that are not copy-protected, the deposit of one complete copy of the best edition as specified in the current Library of Congress Best Edition Statement will suffice in lieu of the two copies required by paragraph (d)(1) of this section. If the works are copy-protected, two copies of the best edition are required.

* * * * *

3. By adding Appendix B to part 202 as follows:

Appendix B to Part 202—"Best Edition" of Published Copyrighted Works for the Collections of the Library of Congress

The copyright law (title 17, United States Code) requires that copies or phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states that "The 'best edition' of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." (For works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.)

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purpose of the copyright law.

The criteria to be applied in determining the best edition of each of several types of material are listed below in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. Example: If a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper, and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial), by requesting "special relief" from the deposit requirements. All requests for special relief should be in writing and should state the reason(s) why the applicant cannot send the required deposit and what the applicant wishes to submit instead of the required deposit.

I. Printed Textual Matter

A. Paper, Binding, and Packaging:

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued. In the case of looseleaf materials, this includes the submission of all binders and indexes when they are part of the unit as published and offered for sale or distribution. Additionally, the regular and timely receipt of all appropriate looseleaf updates, supplements, and releases including supplemental binders issued to handle these expanded versions, is part of the requirement to properly maintain these publications.
9. Slip-cased rather than nonslip-cased.
10. With protective folders rather than without (for broadsides).
11. Rolled rather than folded (for broadsides).
12. With protective coatings rather than without (except broadsides, which should not be coated).

B. Rarity:

1. Special limited edition having the greatest number of special features.
2. Other limited edition rather than trade edition.
3. Special binding rather than trade binding.

C. Illustrations:

1. Illustrated rather than unillustrated.
2. Illustrations in color rather than black and white.

D. Special Features:

1. With thumb notches or index tabs rather than without.
2. With aids to use such as overlays and magnifiers rather than without.

E. Size:

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

[a] The Copyright Office was not subject to the Administrative Procedure Act before 1976, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)." except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements

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II. Photographs

A. Size and finish, in descending order of preference:
1. The most widely distributed edition.
2. 8 x 10-inch glossy print.
3. Other size or finish.
B. Unmounted rather than mounted.
C. Archival-quality rather than less-permanent paper stock or printing process.

III. Motion Pictures

A. Film rather than another medium. Film editions are listed below in descending order of preference.
1. Preprint material, by special arrangement.
2. Film gauge in which most widely distributed.
3. 35 mm rather than 16 mm.
4. 16 mm rather than 8 mm.
5. Special formats (e.g., 65 mm) only in exceptional cases.
6. Open reel rather than cartridge or cassette.
B. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.
1. Tape gauge in which most widely distributed.
2. Two-inch tape.
3. One-inch tape.
4. Three-quarter-inch tape cassette.
5. One-half-inch tape cassette.

IV. Other Graphic Matter

A. Paper and Printing:
1. Archival quality rather than less-permanent paper.
2. Color rather than black and white.
B. Size and Content:
1. Larger rather than smaller size.
2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.
C. Rarity:
1. The most widely distributed edition rather than one of limited distribution.
2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.
3. A photographic reproduction of the original, by special arrangement only.
D. Text and Other Materials:
1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.
E. Binding and Packaging:
1. Bound rather than unbound.
2. If editions have different binding, apply the criteria in I.A.2–I.A.7, above.
3. Rolled rather than folded.
4. With protective coatings rather than without.

V. Phonorecords

A. Compact digital disc rather than a vinyl disc.
B. Vinyl disc rather than tape.
C. With special enclosures rather than without.
D. Open-reel rather than cartridge.
E. Cartridge rather than cassette.
F. Quadraphonic rather than stereophonic.
G. True stereophonic rather than monaural.
H. Monaural rather than electronically rechanneled stereo.

VI. Musical Compositions

A. Fullness of Score:
1. *Vocal music:*
a. With orchestral accompaniment—
i. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)
ii. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)
b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).
2. *Instrumental music:*
a. Full score and parts, if any, rather than conductor's score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to full score only.)
b. Conductor's score and parts, if any, rather than condensed score and parts, if any. (In cases of compositions published only by rental, lease, or lending, this requirement is reduced to conductor's score only.)
B. Printing and Paper:
1. Archival-quality rather than less-permanent paper.
C. Binding and Packaging:
1. Special limited editions rather than trade editions.
2. Bound rather than unbound.
3. If editions have different binding, apply the criteria in I.A.2–I.A.12, above.
4. With protective folders rather than without.

VII. Microforms

A. Related Materials:
1. With indexes, study guides, or other printed matter rather than without.
B. Permanence and Appearance:
1. Silver halide rather than any other emulsion.
2. Positive rather than negative.
3. Color rather than black and white.
C. Format (newspapers and newspaper-formatted serials):
1. Reel microfilm rather than any other microform.
D. Format (all other materials):
1. Microfiche rather than reel microfilm.
2. Reel microfilm rather than microform cassetes.
3. Microfilm cassettes rather than micro-opaque prints.
E. Size:
1. 35 mm rather than 16 mm.

VIII. Machine-Readable Copies

A. Computer Programs
1. With documents and other accompanying material rather than without.
2. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
3. *Format:*
a. PC–DOS or MS–DOS (or other IBM compatible formats, such as XENIX):
(i) 5¼" Diskette(s).
(ii) 3½" Diskette(s).
(iii) Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
b. Apple Macintosh:
(i) 3½" Diskette(s).
(ii) Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
B. Computerized Information Works, Including Statistical Compendia, Serials, or Reference Works:
1. With documentation and other accompanying material rather than without.
2. With best edition of accompanying program rather than without.
3. Not copy-protected rather than copy-protected (if copy-protected then with a backup copy of the disk(s)).
4. *Format*
a. PC–DOS or MS–DOS (or other IBM compatible formats, such as XENIX):
(i) Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
(ii) 5¼" Diskette(s).
(iii) 3½" Diskette(s).
b. Apple Macintosh:
(i) Optical media, such as CD–ROM—best edition should adhere to prevailing NISO standards.
(ii) 3½" Diskette(s).

IX. Works Existing in More Than One Medium

Editions are listed below in descending order of preference.
A. Newspapers, dissertations and theses, newspaper-formatted serials:
1. Microform.
2. Printed matter.
B. All other materials:
1. Printed matter.
2. Microform.
3. Phonorecord.

Dated: August 31, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-23765 Filed 10-13-89; 8:45 am]

BILLING CODE 1410-07-M

POSTAL SERVICE

39 CFR Parts 3, 4, 5, 6, and 8

Conforming the Bylaws of the Board of Governors With the Inspector General Act Amendments of 1988, and Other Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The primary purpose of this final rule is to conform the bylaws of the Board of Governors with the Inspector General Act Amendments of 1988, which, among other things, require (1) that the Postmaster General's appointment of the Chief Postal Inspector must be made "in consultation with the Governors", and (2) that the Postmaster General's power to remove or transfer that official must be "with the concurrence of the Governors." Certain other minor, conforming, clarifying, or editorial changes are also made to the bylaws.

EFFECTIVE DATE: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: David F. Harris, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Inspector General Act Amendments of 1988 (Pub. L. 100–504) are the primary reason for the change of the bylaws of the Board of Governors, as described in the Summary above. The other changes are described as follows: §§ 3.3 and 5.3 are amended to increase the maximum number of meeting days per year for which a governor receives per diem compensation from 30 days to 42 days. These changes are in accord with Public Law 99–190.

Section 3.4(i) is amended to delete the language calling for Board approval of "specific authorization" of the revenue requirement in a rate case. Under certain circumstances, the deleted language might be thought to restrict the Board's authority to put new rates into effect on a date earlier than was anticipated at the time new rates were requested. Such an interpretation would be erroneous. The deleted language was not intended to support such an interpretation and the language is deleted to preclude such an interpretation being mistakenly inferred.

Sections 3.4 (p) and (q) and § 4.5 are amended to take into account an earlier organizational change that added a second Associate Postmaster General.

Section 3.4(q) is also amended to reflect the Chief Postal Inspector's correct title, and to reposition material presently contained in § 3.7(c).

Section 3.4(t) is amended to require Board approval only of major policy positions taken with the Department of Justice on petitions for Supreme Court review, instead of all positions, which might include comparatively abstruse questions of statutory interpretation or legal procedure.

Section 3.4(y) is redesignated 3.4(z) and new 3.4(y) is added to conform with the Inspector General Act Amendments of 1988. Section 3.7(c) is deleted, since its contents were transferred to § 3.4(q).

Section 4.6 is redesignated § 4.7 and new § 4.6 is added giving the status of the Chief Postal Inspector in view of the Inspector General Act Amendments of 1988.

Section 6.5 is amended to reflect the current title of the Communications Department.

Section 8.3 is amended to reflect the current title of the Senate Committee on Governmental Affairs.

Accordingly, 39 CFR parts 3, 4, 5, 6, and 8 are amended as follows:

List of Subjects in 39 CFR Parts 3, 4, 5, 6, and 8

Organization and functions (Government agencies), Administrative practice and procedure, Reporting requirements, Sunshine Act, Postal Service.

PART 3—BOARD OF GOVERNORS [ARTICLE III]

1. The authority citation for part 3 continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205 401 (2), (10), 402, 1003, 3013; 5 U.S.C. 552b (g), (j).

§ 3.3 [Amended]

2. In § 3.3 remove "30" and add, in its place, "42".

3. In § 3.4 republish the heading and the introductory paragraph; remove "Associate Postmaster General" in paragraph (p) and add, in its place, "Associate Postmasters General"; redesignate paragraph (y) as paragraph (z); revise paragraphs (i), (q), and (t); and add new paragraph (y) to read as follows:

§ 3.4 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

* * * * *

(i) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates.

* * * * *

(q) Compensation of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service, including the Associate Postmasters General, the Senior Assistant Postmasters General, Assistant Postmasters General, Regional Postmasters General, General Counsel, Deputy General Counsel, Chief Postal Inspector, Controller, Treasurer, Consumer Advocate, Executive Assistant to the Postmaster General, and Judicial Officer. (For new appointments to officer positions, the Postmaster General shall furnish written information to the Board on candidates for appointment reasonably in advance of any request for a Board decision under this paragraph.)

* * * * *

(t) Approval of all major policy positions taken with the Department of Justice on petitioning the Supreme Court of the United States for writs of certiorari.

* * * * *

(y) Concurrence of the Governors with the Postmaster General in the removal or transfer of the Chief Postal Inspector under 5 U.S.C. App. 8E(f).

* * * * *

§ 3.7 [Amended]

4. In § 3.7, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

PART 4—OFFICERS [ARTICLE IV]

5. The authority citation for part 4 continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 1003, 3013.

§ 4.5 [Amended]

6. In § 4.5, remove "Associate Postmaster General" and add, in its place, "Associate Postmasters General".

§ 4.7 [Redesignated from § 4.6]

7. Section 4.6 is redesignated as § 4.7 and new § 4.6 is added reading as follows:

§ 4.6 Chief Postal Inspector.

The Postmaster General, in consultation with the Governors, appoints the Chief Postal Inspector, certain of whose powers and duties are delegated to the holder of that office by the Postmaster General, consistent with these bylaws and the Reorganization Act. The Chief Postal Inspector also holds the position of Inspector General, and for purposes of the Inspector General Act of 1978, as amended by Public Law 100–504, 5 U.S.C App. 8E(f), reports to and is under the general supervision of the Postmaster General. The Postmaster General has the power, with the concurrence of the Governors, to remove or transfer the Chief Postal Inspector to another position or location within the Postal Service. In the event of any such removal or transfer, the Postmaster General must promptly notify both Houses of the Congress in writing of the reasons for such removal or transfer.

PART 5—COMMITTEES [ARTICLE V]

8. The authority citation for part 5 is revised to read as set forth below and the authority citations following § 5.1 are removed.

Authority: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (a), (b), (g).

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§ 5.3 [Amended]

9. In § 5.3 remove "30" and add, in its place, "42".

PART 6—MEETINGS [ARTICLE IV]

10. The authority citation for part 6 is revised to read as set forth below and the authority citations following § 6.3 are removed.

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (e), (g).

§ 6.5 [Amended]

11. In § 6.5 remove "Public and Employee Communications Department" and add, in its place, "Communications Department".

PART 8—REPORTS AND RECORDS [ARTICLE VIII]

12. The authority citation for part 8 is revised to read as set forth below and the authority citations following § 8.2 are removed.

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (g), (j).

§ 8.3 [Amended]

13. In § 8.3 remove "Committees on Post Office and Civil Service" and add, in its place, "House Committee on Post Office and Civil Service and Senate Committee on Governmental Affairs".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-24360 Filed 10-13-89; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-6, 201-38

[FIRMR Interim Rule 3]

Telecommunications Accessibility for Hearing and Speech Impaired Individuals

AGENCY: Information Resources Management Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements selected provisions of Public Law 100-542, the "Telecommunications Accessibility Enhancement Act of 1988." This statute directed the Administrator of General Services, in consultation with the Architectural and Transportation Barriers Compliance Board (ATBCB), the Interagency Committee on Computer Support of Handicapped Employees (ICCSHE), the Federal Communications Commission (FCC) and affected Federal agencies, by regulation to take the actions necessary to assure that the Federal telecommunications system is fully accessible to hearing and speech impaired individuals. The intent of this law is to have all Federal telecommunications facilities, whether operated by the General Services Administration (GSA) or other agencies, provide the capability for communications by and with hearing and speech impaired individuals.

This regulation provides mandatory Federal Information Resources Management Regulation (FIRMR) coverage requiring telecommunications accessibility for hearing and speech impaired individuals. FIRMR provisions are also being revised to: (1) Provide for the performance of determinations of need and requirements analyses to identify telecommunications accessibility requirements; (2) provide for the development of telecommunications accessibility specifications in solicitation documents, as necessary; (3) require agency telecommunications device for the deaf (TDD) relay operators to keep TDD conversations confidential; (4) require agencies to publish TDD access numbers in agency telephone directories and also provide such numbers to GSA; and (5) direct agencies to display the standard logo specified by GSA to indicate the presence of TDD equipment in buildings or offices. The objective of these provisions is to enable hearing and speech impaired individuals to communicate effectively and efficiently with Federal agencies.

DATES: Effective date: October 16, 1989. Comments are due: November 15, 1989.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), KMP-89-10, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) or FTS 566-0194 (voice only (v)).

SUPPLEMENTARY INFORMATION: (1) This rule prescribes policies and procedures for ensuring telecommunications accessibility for individuals with hearing and speech impairments for communication with and within Federal agencies. FIRMR Bulletin 63 provides more detailed information regarding this subject and about GSA and agency responsibilities.

(2) This rule implements selected provisions of Public Law 100-542, which required GSA to prescribe such regulations 360 days after the law's enactment on October 28, 1988. Among its other provisions, Public Law 100-542 required GSA to: assume responsibility for the operation of the pilot Federal telecommunications relay system operated by the Department of the Treasury and ATBCB; assemble, publish and maintain a directory of devices used by Federal agencies to accommodate individuals with hearing and speech impairments; publish in Federal agency directories access numbers for such agency equipment; in consultation with the ATBCB, adopt the design of a standard logo to indicate the presence of this equipment in Federal buildings; jointly with the FCC, promote research to reduce the cost and improve the capabilities of equipment for providing telecommunications accessibility for those with hearing and speech impairments; take into account the analysis developed to implement this regulation and any future technological improvements in telecommunications that improve accessibility for hearing and speech impaired individuals in planning future modifications to the Federal telecommunications system.

(3) Explanations of changes made by this rule are contained in the following paragraphs.

(a) Section 201-1.102 is amended by adding a provision to cite Public Law 100-542 is the statutory authority for telecommunications accessibility.

(b) Section 201-2.001 is amended by adding a definition for Telecommunications Device for the Deaf (TDD).

(c) Section 201-6.203 is revised to add a provision requiring TDD relay operators to keep TDD conversations confidential. This will assure compliance with applicable laws and regulations dealing with the consensual listening-in or recording of telephone conversations, as described in subpart 201-6.2.

(d) Section 201-38.009 is added to require Federal agencies to: (i) Provide telecommunications access to hearing and speech impaired individuals who are either employees or clients of Federal agencies; (ii) consider the needs of individuals with hearing and speech impairments when performing determinations of need and requirements analyses and developing specifications in solicitation documents for telecommunications acquisition; (iii) publish relevant TDD access numbers in agency telephone directories and provide agency TDD numbers to GSA for inclusion in a Government wide TDD directory; and (iv) display in their buildings or offices the standard logo specified by GSA for indicating the presence of TDD equipment so that prospective users may easily locate such equipment.

(4) The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The interim rule is written to ensure maximum benefits to Federal agencies and it will not have a significant effect beyond the internal operating procedures of Federal agencies. This Governmentwide management regulation will have little or no net cost effect on society. This interim rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201-1, 201-2, 201-6, and 201-38

Government procurement, Government property management, Information resource activities, Telecommunications, Federal Telecommunications System.

PART 201-1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

1. The authority citation for part 201-1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-1.102 is amended by adding paragraph (c)(7) to read as follows:

§ 201-1.102 Authority.

* * * * *

(c) * * *

(7) Public Law 100-542, The Telecommunications Accessibility Enhancement Act of 1988 (40 U.S.C. 762) regarding telecommunications system accessibility for hearing and speech impaired individuals.

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 201-2 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-2.001 is amended by adding the following definition in alphabetical order:

§ 201-2.001 Definitions.

* * * * *

Telecommunications Device for the Deaf (TDD) means a machine that uses typed input and output, usually with a visual text display, to enable individuals with hearing or speech impairments to communicate over a telecommunications network.

PART 201-6—PROTECTION OF PERSONAL PRIVACY

1. The authority citation for part 201-6 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-6.203 is amended by adding paragraph (g) to read as follows:

§ 201-6.203 Agency responsibilities.

* * * * *

(g) Conversations recorded or relayed by operators of telecommunications device for the deaf (TDD) relay systems are kept confidential to comply with § 201-6.202-2(d).

PART 201-38—MANAGEMENT OF TELECOMMUNICATIONS RESOURCES

1. The authority citation for part 201-38 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-38.009 is added to read as follows:

§ 201-38.009 Accessibility for Hearing and Speech Impaired Individuals.

(a) *Scope.* This section prescribes policies and procedures regarding telecommunications accessibility for hearing and speech impaired individuals.

(b) *General.* Public Law 100-542 directs that the Federal telecommunications system be fully accessible to hearing and speech impaired individuals, including Federal employees. The intent of this law is to ensure that all Federal agencies provide telecommunications accessibility to those with hearing and speech impairments who either work for or do business with the Federal Government.

(c) *Policies.* Federal agencies shall provide telecommunications access to hearing and speech impaired individuals for communication with and within the Federal Government. Determinations of need and requirements analyses shall be performed to identify specific deficiencies and requirements to ensure that agency telecommunications facilities are accessible to the hearing and speech impaired. As appropriate, agencies shall include specifications for telecommunications accessibility in agency solicitation documents.

(d) *Procedures.* (1) Specific information regarding telecommunications accessibility for hearing and speech impaired individuals and the requirements of GSA-related programs may be found in the FIRMR Bulletin series. Agencies shall consider these guidelines when performing determinations of need and requirements analyses, developing specifications for acquisitions of telecommunications services and equipment, and providing necessary information for the operation of GSA's telecommunications device for the deaf (TDD)-related programs.

(2) Agencies shall publish relevant access numbers for TDD and TDD-related devices in agency telephone directories and provide such agency numbers to GSA for inclusion in the Federal TDD Directory.

(3) Agencies shall display in their buildings or offices the standard logo specified by GSA for indicating the presence of TDD or TDD-related equipment.

Dated: September 22, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-24336 Filed 10-13-89; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 86-02; Notice 2]

Passenger Automobile Average Fuel Economy Standards; Final Decision To Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision granting exemption from average fuel economy standards and establishing an alternative standard.

SUMMARY: This decision is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model year (MY) 1990 and 1991 passenger automobiles, and that lower alternative standards be established for it. This decision grants Rolls-Royce that exemption and establishes an alternative standard of 12.7 mpg for MY 1990 and 12.7 mpg for MY 1991.

DATES: *Effective Date:* October 16, 1989 This exemption and alternative standard apply to Rolls-Royce for model years 1990 and 1991. Petitions for reconsideration may be submitted by November 15, 1989.

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ADDRESS: Petitions for reconsideration may be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be provided.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION: NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1990 and 1991 model year passenger automobiles and establishing an alternative standard applicable to Rolls-Royce for those model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 passenger automobiles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Section 502(e) of the Act (15 U.S.C. 2002(e)) requires NHTSA, in determining maximum feasible average fuel economy, to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable 1990 and 1991 passenger automobile average fuel economy standards, and that an alternative standard of 12.7 mpg should be established for Rolls-Royce in those model years (54 FR 37443, September 8, 1989). No comments were received on the proposed decision.

The agency is adopting the tentative conclusions set forth in the proposed decision at its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level of Rolls-Royce in Model Years 1990 and 1991 is 12.7 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this requested exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1990 and 1991 model years and establishes an alternative standard of 12.7 miles per gallon for Rolls-Royce in those years.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportations's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Executive Order and the Department policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant". The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of its vehicles will not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile travelled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's MY 1990 and 1991 automobiles cannot achieve better fuel economy than 12.7 mph, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Rolls-Royce. It does relieve the company from being subject to infeasible standards for MYs 1990 and 1991 and from having to pay civil penalties for noncompliance with those standards. Small entities and small governmental jurisdictions generally are not purchasers of Rolls-Royce automobiles. In any event, since the prices of 1990 and 1991 Rolls-Royce automobiles are not affected by this decision the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

Authority: Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C. 1657); Sec. 301, Pub. L. 94–163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

PART 531—[AMENDED]

In consideration of the foregoing, 49 CFR part 531 is amended by revising § 531.5(b)(2) to read as follows. The introductory text of (b) is shown for the convenience of the reader and remains unchanged.

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model Year	Average Fuel Economy Standard (MPG)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7

* * * * *

Issued on October 10, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89–24288 Filed 10–13–89; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 54, No. 198
Monday, October 16, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 456

[Amdt. No. 1; Docket No. 7236S]

Macadamia Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Macadamia Tree Crop Insurance Regulations (7 CFR Part 456), effective for the 1990 and succeeding crop years, to liberalize a policy requirement with respect to the age of bearing macadamia trees when reducing insurance coverage on a unit with less than 90 percent of a complete planting pattern. The intended effect of this rule is to make this provision of the policy more easily administered.

DATES: Written comments, data, and opinions on this proposed rule should be received not later than November 15, 1989 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small business, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with Sate and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Macadamia Tree Crop Insurance Regulations (7 CFR part 456), by liberalizing the requirement with respect to the age of bearing macadamia trees when reducing insurance coverage on a unit with less than 90 percent of a complete planting pattern.

Subsection 4.b. of the current Macadamia Tree Crop Insurance Policy provides that if, at the time insurance attaches, the number of bearing trees over five years old on a unit is less than 90 percent of the number of trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

The effect of this subsection applies more to macadamia nut crop insurance by referring to bearing trees over five years old and was inadvertently included in the macadamia tree policy.

Therefore, FCIC proposes to amend subsection 4.b., to remove the reference to bearing trees over five years old, while retaining the impact of reducing coverage on a percentage basis when the number of trees is less than 90 percent of the complete planting pattern.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 456

Crop insurance, Macadamia trees.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Macadamia Tree Crop Insurance Regulations (7 CFR part 456), proposed to be effective for the 1990 and succeeding crop years, as follows:

PART 456—[AMENDED]

1. The authority citation for 7 CFR part 456 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 456, the Macadamia Tree Crop Insurance Regulations, is amended by revising subparagraph 4.b. of the policy to read as follows:

§ 456.7 The application and policy.

* * * * *

4. Amounts of insurance and coverage levels.

* * * * *

b. If, at the time insurance attaches, the number of macadamia trees on a unit is less than 90 percent of the number of macadamia trees that would comprise a complete

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planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

* * * * *

Done in Washington, DC, on September 28, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24309 Filed 10-13-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 949

[Docket No. FV-89-096]

Irish Potatoes Grown in the High Plains Area of Texas and New Mexico; Order Directing That a Referendum be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents to Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Texas-New Mexico High Plains potatoes to determine whether they favor continuance of the marketing order regulating the handling of potatoes grown in the production area.

DATES: The representative production period is from November 1, 1988, through October 31, 1989. The referendum will be conducted from November 6 through November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; Telephone: (202) 447-2431.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 949 (7 CFR part 949), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, it is hereby directed that a referendum be conducted within the period November 6 through November 27, 1989, among the growers in the production area who, during the period November 1, 1988, through October 31, 1989 (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of potatoes covered by the said marketing order to ascertain whether continuance of the order is favored by the growers.

The marketing order was favored by about 71 percent of the growers voting in a May, 1989 referendum. However, since that time, more than ten percent of the growers in the production area have requested a referendum. It is therefore appropriate that a continuance referendum be held to determine the level of grower support for the marketing order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers of potatoes voting in the referendum and growers of less than two-thirds of the volume of potatoes represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581-0159. It has been estimated that it will take an average of 10 minutes for each of the approximately 120 High Plains potato growers to participate in the voluntary referendum balloting.

Belinda G. Garza, Southwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, and Robert F. Matthews, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*)

Copies of the text of the aforesaid marketing order may be examined in the offices of the referendum agents or in the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

Authority: Agricultural Marketing Agreement Act of 1937, as amended, secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: October 6, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-24339 Filed 10-13-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 7

[Docket No. 89-11]

Rules, Policies, and Procedures for Corporate Activities; Payment of Dividends

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period and additional information.

SUMMARY: On August 16, 1989, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a notice of proposed rulemaking (NPRM) concerning the payment of dividends by national banks. The NPRM required all comments to be submitted by October 16, 1989. Under the present statute and the NPRM, the dividend paying capacity of a national bank is governed by the "net profits" of the bank for the current period plus the prior two years. Consequently, the proposed dividend requirements would have retrospective application for which national banks could not adequately plan. The OCC is now proposing to implement the proposed dividend requirements on a prospective basis as of January 1, 1990. The OCC would like public comment on this issue, and therefore, extends the original comment period for 30 days to November 16, 1989.

DATE: Comments regarding the original NPRM and this additional issue must be received by November 16, 1989.

ADDRESS: Interested persons are invited to submit written comments to the Office of the Comptroller of the Currency, Communications Division, Fifth Floor, 490 L'Enfant Plaza East, Southwest, Washington, DC 20219. Docket No. [89-11]. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Larry Senter, National Bank Examiner, Supervision Policy/Research Division, (202) 447-1164; Ronald Shimabukuro, Attorney, Legal Advisory Services Division, (202) 447-1883; or Doug Burr, Accounting Fellow, Bank Accounting Division, (202) 447-0471.

SUPPLEMENTARY INFORMATION: On August 16, 1989, a NPRM was published in the **Federal Register** (54 FR 33711) in which the OCC proposed new requirements in 12 CFR part 5 concerning the payment of dividends by national banks. The NPRM required that all comments be received by October 16, 1989. The OCC is now considering the implementation of the proposed dividend requirements on a prospective basis and invites public comment on this issue. To encourage public comment on this issue, the OCC is hereby extending the comment period to November 16, 1989.

In the NPRM, the OCC proposed a new § 5.62 which concerns the earnings limitation on the payment of dividends by national banks. In pertinent part, proposed § 5.62(c) provides:

(c) *Allowance for loan and lease losses.* When computing its "net profits" for the purposes of 12 U.S.C. 60, a national bank must use generally accepted accounting principles, and may not add back provisions made to its allowance for loan and lease losses. Furthermore, a national bank should not deduct net charge-offs from its earnings for purposes of computing net profits.

This paragraph would clarify an existing Interpretive Rule, 12 CFR 7.6100, concerning the treatment of provisions made to the allowance for loan and lease losses and the deduction of net charge-offs when computing "net profits" for the purposes of 12 U.S.C. 60.

Pursuant to 12 U.S.C. 60, a national bank computes "net profits" (from which dividends may be paid) for the current period *plus* the previous two years. As a result of this retrospective application, the issue arises whether the proposed § 5.62(c) should be applied retrospectively to prior periods in the computation of "net profits" or only prospectively to all periods going forward. The OCC believes that the application of the proposed § 5.62(c) on a prospective basis would facilitate the transition process for national banks. Therefore, the OCC proposes to implement § 5.62(c) only on a prospective basis to the period beginning January 1, 1990.

Specifically, the OCC proposes that a new paragraph (f) of 12 CFR 5.62 be added to read as follows:

(f) *Effective Date.* For the purposes of computing "net profits" pursuant to 12 U.S.C. 60, paragraph (c) of this section, requiring the use of generally accepted accounting principles, applies to the period beginning January 1, 1990.

Proposed § 5.62(f) would apply the provisions in § 5.62(c) only on a prospective basis to the period beginning January 1, 1990. Accordingly, for the purposes of computing "net profits" under 12 U.S.C. 60, national banks may elect to use the existing method in computing "net profits" (*i.e.*, net income plus loan loss provisions minus net charge-offs) for all periods prior to January 1, 1990.

To illustrate, for calendar year 1990, a national bank could calculate dividend capacity under 12 U.S.C. 60 by using the existing method to compute "net profits" for any periods in 1988 and 1989; for periods in 1990, the bank would use proposed § 5.62(c). In this way, § 5.62(c) would be applied on a prospective basis. National banks would not be required to recompute their dividend paying capacity for prior periods using the proposed § 5.62(c).

The OCC again invites comments on all aspects of the proposed dividend regulation, but specifically solicits comments on the issue of the prospective application of § 5.62(c).

Dated: October 10, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-24341 Filed 10-13-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-98-AD]

Airworthiness Directives; Honeywell Attitude and Heading Reference System AH-600, as Installed in, but Not Limited to de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM); Correction; Reopening of Comment Period.

SUMMARY: This notice corrects an earlier proposed airworthiness directive (AD) which proposed to supersede an existing airworthiness directive, applicable to Honeywell Attitude and Heading Reference Systems (AHRS), with certain Honeywell Attitude and Heading Reference Units (AHRU) installed, to require installation of modified AHRU's in the pilot's, copilot's, and any auxiliary system. This action corrects a typographical error in the proposed rule published in the **Federal Register** and grants an extension of the comment period.

DATES: Comments must be received no later than November 14, 1989.

ADDRESSES: Send comments on the proposal, in duplicate, to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-98-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Honeywell Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic,

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environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing FAA to acknowledge the receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-98-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 88-26-05, Amendment 39-6093 (53 FR 51094; December 20, 1988), to require removal of specified AHRU's from service, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on July 31, 1989 (54 FR 31539). The proposal is prompted by the determination that defective AHRU's may be installed in the pilot, copilot's and auxiliary AHRS's. This condition, if not corrected, could result in the loss of attitude and heading display to the pilot and copilot.

The original proposal submitted to the **Federal Register** for publication specified, in paragraph B., that the proposed compliance time for the requirement to remove all specified AHRU's from service was 45 days after the required inspection. However, the FAA has noted that the document as published in the **Federal Register** incorrectly indicated the compliance time as 345 days instead of 45 days.

Since the intended compliance time would impose a greater economic burden on affected operator than that which appeared in the **Federal Register**, it is necessary to make this correction and to reopen the comment period to allow public comment on the proposed AD as corrected.

There are approximately 117 airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately eight (8) manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

The regulations proposed herein would not have substantial direct effects on the States, on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-26-05, Amendment 39-6093 (53 FR 51094; December 20, 1988), with the following new airworthiness directive; and by correcting the Notice of Proposed Rulemaking, Docket Number 89-NM-98-AD, published in the **Federal Register** on July 31, 1989 (54 FR 31539); as follows:

Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division (Sperry Corporation): Applies to the Honeywell AH-600 Attitude and Heading Reference System (AHRS) strapdown Attitude and Heading Reference Unit (AHRU), part numbers 7003360-931, -932, -933, -934, -935, and -936, with serial numbers 0100 through 0277. Compliance is required as indicated, unless previously accomplished.

Note: These systems are known to be installed in, but not limited to, the following airplanes: de Havilland Model DHC-8, British Aerospace (Commercial Aircraft) Limited Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR 42 300 series airplanes.

To eliminate the possibility of the primary attitude and heading displays on both sides of the instrument panel failing simultaneously, accomplish the following:

A. Within 10 days after January 9, 1989 (the effective date of Amendment 39-6093), inspect airplanes with Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the pilot's (Number 1) AHRS. Prior to further flight after inspection, remove all AHRU Part Numbers 7003360-931, -932, -933, -934, -935, and -936, with Serial Numbers 0100 through 0277, without Mod Level "F", from service in the pilot's (Number 1) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

Note: Serial numbers of the strapdown AHRU are eight digit numbers; the first four are date code and the last four are the individual unit identifier. Serial numbers referred to in this AD are the last four numbers of the serial number.

B. Within 60 calendar days after the effective date of this amendment, inspect airplanes with the Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Within 45 days after the inspection, remove all AHRU Part Numbers 7003360-931, -932, -933, -934, -935, and 936, with Serial Numbers 0100 through 0277, without Mod Level "F", from service in the copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Honeywell, Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on October 5, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24312 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 205, 294, and 298

[Docket No. 37531; Notice 89-19]

RIN 2105-AA47

Insurance for On-Demand U.S. and Canadian Air Taxi Operators

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; withdrawal.

SUMMARY: This notice withdraws the rulemaking begun by the Civil Aeronautics Board (CAB) that proposed to alter the minimum accident liability coverage per passenger for U.S. and Canadian air taxi operators. Commenters to the proposal have argued that the proposal would result in a severe economic burden on the air taxis and would also result in decreased on-demand air services.

DATE: The proposed amendment to 14 CFR parts 205, 294, and 298 relating to the minimum accident liability insurance for U.S. and Canadian air taxis (EDR 395B and 395C) is withdrawn October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Desta McDowell or Dennis Foley, Regulatory Analysis Division, Office of Aviation Analysis, P-57, Department of Transportation, 400 7th Street, SW., Washington, DC 20590: (202) 366-1062

SUPPLEMENTARY INFORMATION: This document withdraws the Civil Aeronautics Board's (CAB's) supplemental notices of proposed rulemaking (EDR-395B and 395C) that proposed to alter the minimum level of accident liability insurance coverage per passenger for U.S. and Canadian air taxi operators.

By EDR-395 which appeared in the **Federal Register** on February 4, 1980, (NPRM, Docket 37531; (45 FR 7566)) the CAB proposed to revise liability insurance requirements for all U.S. and foreign air carriers operating under its authority. The NPRM proposed to require minimum insurance coverage for certificated scheduled carriers and to require expanded cargo liability disclosure statements for all carriers. The CAB also proposed to increase the required minimum per passenger liability limitation from $75,000 to $300,000 for U.S. and Canadian air taxi operators. The CAB stated that the proposed changes were necessary to ensure an adequate minimum amount of coverage. In 1985, responsibility for this rulemaking transferred to the Department at CAB sunset.

Comments in support of the proposal regarding the increase in minimum insurance requirements for U.S. and Canadian air taxis were filed by the Aviation Consumer Action Project, the Association of Trial Lawyers of America, the U.S. Department of Justice and the U.S. Department of Transportation. These commenters supported a higher minimum level of liability. They further asserted that the proposed higher minimum level of liability should not pose a barrier to entry to on-demand air service. Twenty air taxi operators, two insurance companies, the Montana Aviation Trade Association, the Montana Aeronautics Board, the North Dakota Aeronautics Commission and the National Air Transportation Association (NATA) filed comments objecting to the proposal. The latter stated that the proposed increase in insurance would result in a severe economic burden on the air taxis and would drive many air taxis out of business. They asserted that the resultant decrease in on-demand air service would violate the intent of deregulation.

By EDR-395B (October 27, 1981, SNPRM, Docket 37531, (45 FR 52585)) the CAB addressed only the insurance requirements of U.S. and Canadian air taxis and proposed to:

(1) Increase the per person minimum liability from $75,000 to $150,000 for U.S. and Canadian air taxi operators; or

(2) Eliminate all insurance requirements and require the air taxis to provide a disclosure notice instead; or

(3) Retain the minimum level at $75,000.

By EDR-395C (March 10, 1983, SNPRM, Docket 37531, (48 FR 10073)), the CAB extended the comment period for EDR 395B and added a fourth alternative: To increase the minimum insurance level to $100,000 per passenger. Twenty-one comments were filed in objection to EDR-395B and 395C. Many of the commenters noted that the existing minimum insurance level ($75,000 per passenger) was sufficient. The commenters stressed that an increase in required insurance would result in a financial burden on the air taxi operators and that any increase in required insurance would result in fewer companies offering on-demand air taxi service.

After review of the comments, the Department has determined that there is insufficient reason to proceed with this rulemaking. Many of the air taxis apparently have opted for insurance levels that exceed this amount. Also in the time since this rulemaking began, there have been many changes in the aviation insurance industry, particularly regarding rates, liability limitations, and procedural requirements. If a final rule were to be issued, the Department, would need to carefully consider these, and other developments, in both the aviation insurance and airline industries. However, because of the passage of time, we find that continuance of this rulemaking is unwarranted.

In view of the foregoing, the proposed amendment to 14 CFR parts 205, 294, and 298 relating to the minimum accident liability insurance for U.S. and Canadian air taxis (EDR 395B and 395C) is withdrawn.

Issued in Washington, DC on October 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-24141 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-62-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM061MD; FRL 3671-9]

Approval and Promulgation of Implementation Plans; Approval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted a revision to the Maryland State Implementation Plan (SIP) in the form of a Secretarial Order (by Consent) for the American Cyanamid Company. The Order provides the Company with a Plan for Compliance (PFC) and an alternative method of assessing compliance for certain installations located at the plant by allowing the averaging or "bubbling" of volatile organic compound (VOC) emissions over a 24-hour period. This was originally proposed on November 20, 1984 (49 FR 45764), but because

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American Cyanamid is located in the Metropolitan Baltimore ozone nonattainment area which received a finding of SIP inadequacy on May 26, 1988, EPA is reproposing to approve this bubble.

DATE: Comments must be received by EPA by November 15, 1989.

ADDRESSES: Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, Pa. 19107

Maryland Department of the Environment, Air Management Administration, 2500 Broening Highway, Baltimore, MD 21224, Attn: George P. Ferreri

Written comments should be addressed to David L. Arnold, Chief, Program Planning Section of the Region III address above. Please reference the docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl (215) 597–9337 at the EPA Region III address indicated above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1982, (47 FR 15076), the Environmental Protection Agency issued a proposed Emissions Trading Policy Statement (ETPS) entitled "Emission Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits." The April 7, 1982, Notice indicated that until EPA takes final action on its policy statement, State actions would be evaluated under the provisions set forth in the proposed policy statement. On December 4, 1986, EPA finalized its emissions trading policy (51 FR 43814).

On August 20, 1984, the Maryland Air Management Administration (MAMA) submitted a Secretarial Order to EPA which would allow the American Cyanamid Company (the Company) to bubble VOC emissions at its paper and fabric adhesive plant located in Havre de Grace, Maryland, which is part of the Metropolitan Baltimore ozone nonattainment area. This area was designated as an extension/nonattainment area for ozone (0_3) and therefore, the ambient 0_3 standard was to be achieved by December 31, 1987, according to the approved part D Plan. See 48 FR 5048 and 49 FR 8610.

The installations at the Havre de Grace plant include paper and fabric adhesive coating towers, adhesive mixing facilities, a honeycomb core print line, and a corrugating line. The paper and fabric adhesive coating operation consists of towers #2, #3, and #5 and the FM-1000 coater/dryer, all of which are subject to the requirements of the Code of Maryland Regulations (COMAR) 10.18.21.07 *Paper, Fabric* and *Vinyl Coating.*

Description of Plan

The State Secretarial Order will provide a new plan for compliance (PFC) and an alternate method of assessing compliance under COMAR 10.18.21.02 C(1). This alternate PFC, as described in the November 20, 1984 proposed rulemaking Notice (49 FR 45764), would allow the Company to bubble their VOC emissions over a 24-hour period from towers #2, #3, and #5, and the FM-1000 coater/dryer to achieve compliance.

To determine compliance, the Company shall calculate daily actual and allowable emissions from the towers and coater/dryer and submit a summary report to the MAMA on a quarterly basis. The summary report shall show, for each reporting period, each calculated 24-hour average of actual VOC emissions and each calculated 24-hour average of allowable VOC emissions.

The Company shall also identify which exempt solvents are being utilized in their coatings. In addition, the Company will be considered out of compliance each time a coating's solvent content or application rate exceeds the value registered by the company with the MAMA for that coating. This method for determining compliance is consistent with EPA's Can Coating Operation Policy statement as discussed in the December 8, 1980 **Federal Register** (45 FR 80824).

Prior to June 1, 1985 the Company shall calculate allowable emissions on the basis that each coating complies with an emission standard of 3.2 pounds of VOC per gallon of coating applied minus water and exempt solvent. Beginning June 1, 1985, allowable emissions shall be calculated on the basis that each coating complies with the applicable emission standard of COMAR 10.18.21.07 B (2.9 pounds of VOC per gallon of coating applied minus water and exempt solvent). The Company requested the interim standard of 3.2 pounds of VOC per gallon of coating in order to allow time for adjusting their production schedules to meet the requirements of the bubble.

A major requirement in the 1986 final bubble policy is that all bubbles clearly identify both pre- and post-trade actual and allowable emissions for each source invovled in the trade so that the ambient effects may be known. This is normally indicated by including a table in each **Federal Register** action which lists this information. The American Cyanamid bubble includes "crossline averaging" for four coating lines. If the bubble is approved, the source must meet a 2.9 lb VOC/gallon of coating applied standard across all four coatings. Some coatings' VOC content will be above this and some will be below, but the daily average must be equal to or below 2.9 lb VOC/gallon coating. Since no add-on emission controls are included and the bubble is a crossline average, weighted with gallon usage in each line, credits are being simultaneously generated and used over each 24-hour period. Thus, allowable emissions before the bubble are the same as after the bubble, and there is no adverse ambient effect. The actual emissions (on a mass per time basis) will vary based on production but allowable plant-wide emissions on any given day will be the same before and after the bubble. Prior to the emissions trade, the source was restricted by its emission rate (the pound per gallon standard) on a per line basis. However, since emissions are a function of three factors: Emission rate, operating hours, and production capacity, actual emissions from the plant prior to the trade varied depending on the actual operating hours and production capacity of the plant. Likewise, after the emissions trade, the plant will be restricted by its emission rate. However, this restriction will be on a cross-line basis. As in the pre-trade situation, actual emissions will vary from day to day depending on the operating hours and the production capacity. In the case of American Cyanamid, allowable emissions will be calculated so that if the production level is at less than 100%, the alowable emissions will be restricted to that percentage. In other words, if the production level is at 30 percent, the allowable emissions will be reduced by 100 percent minus 30 percent or 70 percent. This is the key element in a production-based bubble such as this one.

Response to Public Comments

EPA published its Notice of Proposed Rulemaking for the American Cyanamid bubble in the November 20, 1984 **Federal Register** (49 FR 45764). Comments were received from the Natural Resources Defense Council, Inc. (NRDC), regarding the proposal. The proposed rulemaking

action for this revision contained a typographical error under the heading labeled "EPA Evaluation." The third paragraph, last sentence, should have read "now" instead of "not." EPA informed NRDC of the error, but NRDC stated that if the typographical error had not occurred, their comments would have remained the same. EPA is reproposing this action because it feels that the circumstances surrounding this bubble have changed slignificantly since the original proposal. Therefore, EPA will reserve responding to NRDC's comments on the November, 1984 proposal, until a final action is taken on this bubble. However, NRDC is welcome to resubmit the same comments, clarify their comments and/or make additional comments in response to this reproposal. EPA will address all comments from all interested parties in the final rulemaking of this action.

On December 4, 1986, EPA published the Final Emissions Trading Policy Statement (Final ETPS, 51 FR 43814). However, the State submitted this bubble to EPA before this final policy was published. Therefore, EPA considers this bubble to be a "pending bubble" under the Final ETPS 51 FR 43840 col. 2. At the time of the State's submittal, although the area was not in attainment of the ozone NAAQS, EPA had approved the SIP for the area, including the attainment demonstration, as provided for attainment by December 31, 1987. Thus, at that time, the area was considered a nonattainment area with an approved demonstration ("NAWAD") for purposes of applying the Final ETPS. Under the Final ETPS, a bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. *See id.*

As described in the Final ETPS, the baseline is computed by reference to three factors; the emission rate ("ER"), the average hourly capacity utilization ("CU"), and the hours of operation ("H"). The baseline equals ER×CU×H. The Final ETPS states that in a NAWAD, the factors to be used in the baseline calculation must be consistent with the assumptions used in the attainment demonstration. If those assumptions cannot be determined (because of vagueness in the attainment demonstration), the baseline must be determined by reference to the lower of the actual or allowable value for each baseline factor at the time of the source's application to the State to trade. 52 FR 43855 cols 1–2.

Because this is a pending bubble, however, the rule described above is not fully applicable. Rather, as indicated in the Final ETPS, the bubble must be consistent with the 1982 Emissions Trading Policy Statement ("1982 ETPS"). The 1982 ETPS stated that the baseline must be consistent with the assumptions used in the attainment demonstration, but did not address the situation in which those assumptions cannot be determined. 47 FR 15077 (April 7, 1982).

For the present bubble, it is not possible to determine clearly what assumptions were used in the attainment demonstration, which EPA approved on June 19, 1984. 49 FR 36645. Because this is a pending bubble, EPA believes that under these circumstances, the attainment demonstration should be presumed to have used the SIP-allowable emission rate for the ER factor, and typical daily production values for the CU and H factors. Most attainment demonstrations done during this time used these factors. Accordingly, EPA has accepted these values for determining the baseline. However, while EPA was considering this bubble, it received additional information that the SIP does not in fact provide for attainment by the end of 1987. On November 24, 1987, EPA stated in the **Federal Register** that air quality monitors revealed sufficient exceedances of the ozone standard in the area that a SIP call would be issued. 51 FR 45044. A SIP call is a finding by EPA under Clean Air Act section 110(a)(2)(H) that the SIP does not provide for attainment by the required date, and thus amounts to a revocation, for certain purposes, of EPA's approval of the SIP and the attainment demonstration. Since publishing that Notice, air quality monitors have revealed additional exceedances of the standard during 1987. On May 26, 1988, EPA issued a SIP call for this area.

For purposes of the general applicability of the Final ETPS, the issuance of a SIP call has converted the area into a nonattainment area lacking an approved demonstration ("NALAD"). 51 FR 43839 col. 3. Under the general rule of the Final ETPS, which would apply to all submissions of bubbles by the State to EPA after the date of the SIP call, the bubble would be approvable only if it met the following three requirements.

(1) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline determined as of the date the source submitted the bubble application to the State.

(2) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(3) The State must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The Final ETPS sets out five representatives that the State must make.

51 FR 43839–40.

However, the Final ETPS relaxes these requirements for a pending bubble in a NALAD. For a pending bubble:

(1) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(2) The bubble must produce some reduction—but need not produce 20% reduction—in the emissions remaining after application of the baseline specified above.

State assurances are not required for a pending bubble.

51 FR 43840.

The pending bubble requirements of the Final ETPS contemplate a bubble submitted by the State before publication of the Final ETPS, at a time when the area is a NALAD, with no EPA action on the bubble by the date of publication of the Final ETPS. These pending bubble requirements do not explicitly contemplate the circumstances of this bubble, which was submitted by the State before publication of the Final EPTS, at a time when the area was a NAWAD, but the area then received a SIP call that converted it to a NALAD, before EPA acted on the bubble.

EPA has determined that different requirements should apply to a pending bubble in a SIP call area, such as this one. This area, until the SIP call, was classified nonattainment for ozone but had an approved demonstration of attainment. EPA does not believe that bubbles in these areas should be required to use a lower of actual, SIP-allowable, or RACT-allowable baseline; rather, the bubble may continue to use the baseline that is consistent with the assumptions in the attainment demonstration. Nor is the bubble required to show any reduction in emissions beyond the baseline.

However, EPA does believe that the State should provide assurances identified in the Final EPTS. Specifically, the State must make the following representations to EPA:

(1) The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

(2) The bubble will not constrain the state or local agency's ability to obtain

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any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards.

(3) The State or local agency is making reasonable efforts to develop a complete approvable SIP and provides EPA a schedule for such development (including dates for completion of emissions inventory and subsequent increments of progress).

EPA believes that if the State adequately makes these representations, EPA will be able to approve this bubble on grounds that it does not interfere with attainment and maintenance of the ozone NAAQS, in accordance with the Clean Air Act Section 110(a)(2). On September 13, 1988, Maryland submitted these assurances to EPA. For other bubbles—pending or otherwise—in a NALAD, EPA continues to believe that the other requirements noted above must be met in order for EPA to conclude that such bubbles meet section 110(a)(2). EPA is waiving those requirements in this case for equitable reasons since the source and State fashioned the bubble proposal based on the area's status as a NAWAP, and only after the State submitted the bubble proposal was the area converted to a NALAD. Accordingly, EPA is today reproposing to approve this bubble.

Conclusion

Based on our review of this Secretarial Order, EPA is today reproposing approval of this Order as a SIP revision. The State of Maryland has certified that, after adequate public notice, a hearing was held on May 23, 1984 with respect to this SIP revision in Baltimore, Maryland.

The Regional Administrator's decision to repropose approval of the Order is based on a determination that the SIP revision meets the requirements of Section 110(a) (2) of the Clean Air Act and 40 CFR part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The public is invited to submit, to the address stated above, comments on whether the proposed revision to Maryland's SIP should be approved.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. (secs. 7401–7642).

Dated: August 29, 1989.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 89–24349 Filed 10–13–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 90756–9177]

Foreign Fishing Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary reassessment and reserve release, and request for comments.

SUMMARY: NMFS proposes increasing the amount of shortbelly rockfish available for joint venture processing in 1989 off Washington, Oregon, and California, and requests comments on this action. The amount of shortbelly rockfish available for joint venture processing would be supplemented with the reserve, the amount set aside for directed foreign fishing, and that portion of the amount designated for domestic processing that will not be needed by domestic processors. This action is based on the results of an inseason survey reassessing the needs of the domestic fishing industry. This action is intended to provide first for the needs cf the domestic processing industry, while making surplus amounts available to joint venture operations.

DATES: Comments will be accepted through October 30, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: Under the implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and part 663, the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY) and the amounts of the OY that are available for domestic annual processing (DAP), joint venture processing (JVP), domestic annual harvest (DAH, which equals DAP + JVP), and the total allowable level of foreign fishing (TALFF). If a TALFF is specified, a reserve which equals 20 percent fo the OY is set aside to accommodate unexpected expansion of the domestic industry. Six species in the Pacific Coast groundfish complex have numerical OYs and of these, only three, Pacific whiting, jack mackerel, and shortbelly rockfish are not fully utilized by the domestic processing industry and therefore have amounts designated for JVP aor TALFF. The annual specifications for these species were published in the **Federal Register** on January 3, 1989 (54 FR 32).

During the fishing year, near July 1, these annual specifications are reassessed by a telephone survey of the domestic fishing and processing industry, according to the regulations at 50 CFR 611.70(d), to determine whether there was any change in the domestic intent and capacity to harvest and process Pacific whiting, jack mackerel, and shortbelly rockfish for the rest of the calendar year. Past and projected domestic catch, effort, and processing performance are taken into account. As a result of the reassessment, the reserve may be apportioned to any one or more of the processing categories and the specifications modified, providing first priority to DAP, then JVP, and last, to TALFF.

The inseason survey of domestic processing needs was conducted June 7–12, 1989. It confirmed that the specifications for Pacific whiting and jack mackerel announced in January are adequate, and no change to these specifications is proposed. However, the survey also revealed that the DAP for shortbelly rockfish could be reduced by half (from 1,000 metric tons [mt] to 500 mt) and still accommodate all domestic processing needs for that species. In addition, the Council and NMFS have received requests for shortbelly rockfish joint ventures for up to 13,000–15,000 mt, although the current JVP for shortbelly rockfish is only 5,000 mt. To acccommodate development of new joint ventures, NMFS proposes increasing the JVP from 5,000 mt to 9,500 mt by reapportioning the entire 2,000 mt TALFF, the entire 2,000 mt reserve and 500 mt of surplus DAP to JVP.

In a separate **Federal Register** notice, NMFS proposes to increase the shortbelly rockfish OY from 10,000 mt to 13,000 mt which would provide for most of the remaining JVP needs.

Secretarial Action: After consultation with the Council and considering past and projected U.S. catch and effort and

processing performance, the Secretary proposes the following changes to the specifications for shortbelly rockfish in 1989 (in thousands of metric tons) as published in Table 2 of the **Federal Register** (54 FR 32, January 3, 1989):

	Total OY	DAP	JVP	DAH	Reserve	TALFF
Current Specification	10.0	1.0	5.0	6.0	2.0	2.0
Proposed Change:	10.0	0.5	9.5	10.5	0.0	0.0

Classification

The reassessment of the needs of the domestic industry and the reapportionment of the reserve, TALFF, and surplus DAP to the JVP for shortbelly rockfish are based upon the most recent data available. During the public comment period, the aggregate data upon which the preliminary reassessment is based will be available for public inspection at the Regional Office during business hours (See **ADDRESSES**). This action (1) is proposed under the authority of 50 CFR 611.70(d), which implements a framework provision of the FMP; (2) is in compliance with Executive Order 12291; and (3) is covered by the environmental impact statement prepared for the authorizing regulations. The action contains no additional collection of information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries.

Dated: October 10, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89–24359 Filed 10–13–89; 8:45 am]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 54, No. 198
Monday, October 16, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Correction of Meeting Place

ACTION: Notice of correction of meeting place.

SUMMARY: The users Advisory Board (UAB) meeting to be held October 29–31, and November 1, 1989 in Baton Rouge, Louisiana is now being conducted at the Sheraton Hotel, 4728 Constitution Avenue, Baton Rouge, Louisiana. This supersedes the October 3rd announcement in the Federal Register (5- FR 40724).

Done in Washington, DC, this 6th day of October 1989.

C. I. Harris,

Associate Administrator.

[FR Doc. 89–24338 Filed 10–13–89; 8:45 am]

BILLING CODE 3410–03–M

Farmers Home Administration

Submission of Information Collection to Office of Management and Budget

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for emergency clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. This action is necessary in order to comply with the Disaster Assistance Act of 1989 (Pub. L. 101–82).

ADDRESS: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Harry Puffenberger, FmHA, Community Facilities Division, USDA, Room 6314 South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202–382–1504.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is requested that OMB approve this submission within seven days.

The supporting statement shown below delineates the revisions to part 1956, subpart C, Debt Settlement—Community and Business Programs.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3407.

Supporting Statement

Amendments to 7 CFR Part 1956, Subpart C Implementing "FmHA Loans Made to Indian Tribes"

FmHA is requesting OME clearance of changes in the reporting and recordkeeping requirements relating to 7 CFR 1956–C. FmHA seeks to implement a program of allowing Indian tribes and tribal corporations to make application for the reduction of the unpaid principal balances on loans to the current fair market value of the land purchased with the proceeds of FmHA loans. This program is managed by section 303, title III of Public Law 101–82, (Disaster Assistance Act of 1989, "the Act") which will result in an extremely small increase in reporting and recordkeeping burden.

The Act states the unpaid principal balance of a loan or loans may be reduced to the current fair market value of the land purchased with the proceeds of the loan or loans if the fair market value of the land has declined by at least 25 percent since such land was purchased by the borrower. The current fair market value of the land is required to be determined through an appraisal by an independent qualified fee appraiser, selected by mutual agreement between the borrower and FmHA. The borrower is to submit their selection of an appraiser, together with the appraiser's qualifications, in writing, to FmHA for acceptance or rejection. FmHA estimates that approximately 4 such requests would be received during the first 12 months of this program. This estimate is based upon historical data and estimated current fair market data. The estimated response time per submission is 30 minutes.

The information collected under this program is considered the minimum necessary to conform to the requirements of proposed program regulations established by law. The information collected is considered to be the minimum necessary to ensure that the intent of the law is achieved.

This rule is to be published as an interim rule with a 30 day comment period to follow publication. All comments received will be analyzed and considered in finalizing the regulation.

Dated: October 11, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administrator.

[FR Doc. 89–24377 Filed 10–13–89; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Turner Lake Sockeye Salmon Enhancement Project, AK; Tongass National Forest—Chatham Area, Juneau Ranger District; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the USDA Forest Service, Tongass National Forest, Chatham Area, will prepare an environmental impact statement to disclose the environmental consequences of the Alaska Department of Fish and Game's proposed Turner Lake Sockeye Salmon Enhancement Project.

Turner Lake is located near Taku Inlet about 22 miles east of Juneau, Alaska. It has a surface area of approximately 3,000 acres and drains into Taku Inlet through Turner Creek. Turner Creek contains a series of falls which prevent fish migration from salt water to Turner Lake. The lake is a popular recreation area because of its scenic beauty and trophy size cutthroat trout population, and has two Forest Service recreation cabins. There are no roads to Turner Lake and most recreation access is via small float plane.

The Alaska Department of Fish and Game proposes to annually stock Turner Lake with sockeye salmon fry. Eggs for the first five years of the project would be obtained from an existing sockeye salmon run, hatched in a hatchery and stocked the following spring in Turner Lake Fry would rear in the lake for one to three years before outmigrating to the ocean, and would return to Turner Creek approximately five years after stocking. Most returning adults would be harvested in the existing commercial fishery and the remainder collected in Turner Creek, below the falls, to obtain eggs to restock the lake with fry. The Alaska Department of Fish and Game proposes to construct two temporary weirs on the creek and a temporary camp to house personnel. Construction of the camp and weirs is subject to Special Use permit approval by the Forest Service.

The environmental impact statement will consider the no action alternative as well as alternatives which include various brood stock (egg) sources and procedures, and fry stocking schedules ranging from an initial minimal stocking of (5,000,000 fry) up to the estimated carrying capacity of Turner Lake (23,000,000 fry).

An Environmental Assessment was completed for this project on June 13, 1989. As a result of public response, that decision was withdrawn by the Responsible Official and the decision made to prepare an environmental impact statement.

Concerns identified in the earlier document will be evaluated in this analysis and include: The effects of stocking on native fish populations in Turner Lake; the effects of increased commercial sockeye salmon harvest on other commercial fish stocks; the genetic effects adult Turner Lake salmon might have on native salmon stocks in the area; the effects on the quality of recreation on Turner Lake; and the potential effects five years of egg takes from a donor system might have on parent salmon stocks and nearby communities. Other concerns will be evaluated as they are defined.

Considerable public involvement has previously taken place concerning this project including four public meetings in affected communities. A mailing list has been developed. The Turner Lake Advisory Board, made up of members of commercial fishing, conservation, and environmental groups, has been established and will continue to be used to inform the public about project status and to act as a focal point of public concern and support. Additional interested persons are encouraged to participate in this analysis.

The Alaska Department of Fish and Game will participate as a cooperating agency in the preparation of this document. They will have primary responsibility for the collection and interpretation of baseline data and the evaluation of environmental consequences outside of National Forest System lands.

A Draft Environmental Impact Statement is expected to be completed by December 1, 1989, and a Final Environmental Impact Statement completed by March 1, 1990. If approved, the project could be implemented by mid-July, 1990.

Gary Morrison, Forest Supervisor, Tongass National Forest, Chatham Area, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to Don Martin, Fisheries Biologist, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska 99801, (907) 789–3111.

Dated: October 5, 1989.

Gary A. Morrison,

Forest Supervisor, Chatham Area, Tongass National Forest, Region 10.

[FR Doc. 89–24271 Filed 10–13–89; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

North Carolina Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

Notice is hereby given that the Rural Electrification Administration (REA) pursuant to the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of four diesel generating units and associated facilities on Hatteras Island in the town of Buxton and one diesel generating unit and associated facilities on Ocracoke Island in the town of Ocracoke by North Carolina Electric Membership Corporation (NCEMC). Each unit will have an output of approximately 3 megawatts (MW).

FOR FURTHER INFORMATION CONTACT: Joseph R. Binder, Director, Northeast Area—Electric, Room 0241, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–1420.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for approval to use general funds from NCEMC, required that NCEMC develop environmental support information reflecting the potential environmental impacts of the two projects. The information supplied by NCEMC is contained in a Borrower's Environmental Report (BER) which was a primary source document used by REA to develop its Environmental Assessment (EA). REA has concluded that the EA represents an accurate assessment of the environmental impacts of the two proposed projects and that the impacts are acceptable.

NCEMC proposes to install diesel electric generating units at existing generation sites which are owned by two member cooperatives. Initially, four units would be installed at the headquarters facility of Cape Hatteras Electric Membership Corporation (Cape Hatteras) which is located within the town of Buxton on Hatteras Island. Space would be provided for a fifth unit. The existing power station building would be reconstructed to accommodate the new units. The four existing diesel units at Buxton (not operating) would be removed. An above ground fuel oil storage tank with a capacity of 68,130 liters (18,000 gallons) would be installed adjacent to three existing fuel oil storage tanks. A new 34 kilovolt (kV) bus would be added to the existing on-site substation.

One unit would be installed at the district facility of Tideland Electric Membership Corporation (Tideland) which is located within the town of Ocracoke on Ocracoke Island. A 1.2 MW diesel unit with associated facilities is operating on site. These facilities would be retained. A building to house the new unit would be constructed and a 56,775 liters (15,000 gal) above ground fuel oil storage tank would be installed adjacent to two existing tanks. Additional 12.5 kV breakers would be added to the existing switchyard. All new facilities would be located within existing site boundaries at both Buxton and Ocracoke.

REA has concluded that the proposed projects will have no effect on important farmland, prime forest land or rangeland, wetlands, threatened or endangered species or critical habitat, and properties listed or eligible for listing in the "National Register of Historic Places". The Buxton project will not impact Buxton Woods or the Pea Island National Wildlife Refuge. Neither

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project will impact the Cape Hatteras National Seashore. The placement of the generation facilities on Ocracoke within the 100-year floodplain is unavoidable, but raising the foundation will minimize floodplain impacts. Predicted worse case impacts from stack emissions are substantially below corresponding National Ambient Air Quality Standards on all averaging periods at each site. No Prevention of Significant Deterioration Permit will be required. The use of sound absorbing materials and noise silencers will ensure that noise regulations are not exceeded. No other matters of environmental concern have come to REA's attention.

Alternatives examined for the proposed projects included no action, higher voltage transmission lines, conservation and load management, alternative generation facilities and alternative sites. REA determined that there is a need for the proposed projects and that constructing the facilities as recommended is an environmentally acceptable alternative for NCEMC to furnish an isolated part of its service area with a reliable supply of power for peak shaving and emergency situations.

Based upon the environmental support information provided, REA prepared an EA concerning the proposed projects and their impacts. As a result of its independent evaluation, REA has concluded that approval for NCEMC to construct facilities would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the two proposed projects. The preparation of an environmental impact statement is not necessary.

Copies of REA's EA, FONSI, and NCEMC's BER can be obtained from the offices of REA in the South Agriculture Building, Room 0250, 14th and Independence Avenue SW., Washington, DC 20250; or at the office of North Carolina Electric Membership Corporation, (Wayne D. Keller, Interim Executive Vice President), 3400 Sumner Boulevard, Raleigh, North Carolina 27611, during regular business hours. Copies of the documents are available for review at Cape Hatteras' office in Buxton and the Tideland's office in Ocracoke.

Dated: October 5, 1989.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 89-24340 Filed 10-13-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Pacific Tuna Fisheries.

Form Number: None; OMB—0648-0148.

Type of Request: Request for the extension of the expiration date of a currently approved collection.

Burden: 72 recordkeepers; 815 recordkeeping hours; average hours per recordkeeper—11.3 hours.

Needs and Uses:—U.S. tuna fishermen who fish in the area of responsibility of the InterAmerican Tropical Tunas Commission must maintain a logbook of their operations in that area. The information is used to monitor the abundance of the tuna stock and the amount and area of catch.

Affected Public: Businesses and other for-profit, small businesses or organizations.

Frequency: Daily when fishing.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 10,1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-24266 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Certificate of Exemption Renewal.

Form Number: None; OMB-0648-0078.

Type of Request: Request for the extension of the expiration date of a currently approved collection.

Burden: 14 respondents; 58 reporting hours; average hours per response—.96 hours.

Needs and Uses: Persons holding valid Certificates of Exemption from the interstate sale prohibitions of the Endangered Species Act may apply for renewal of the Certificates. Certificate holders must submit quarterly reports showing any transfers of endangered species parts of products. The information is needed to comply with and enforce the provisions of the Endangered Species Act.

Affected Public: Businesses and other for-profit, small businesses or organizations.

Frequency: On occasion, quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-24267 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Marine Recreational Fishery Statistics Survey.

Form Number: None; OMB-0648-0052.

Type of Request: Request for revision of a currently approved collection.

Burden: 430,325 respondents; 14,045 reporting hours; average hours per response—.032 hours.

Needs and Uses: U.S. marine recreational fishermen will be surveyed to obtain catch, effort, and participation data. The information will be used to develop, implement, and monitor fishery management plans.

Affected Public: Individuals.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 10, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-24268 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-CW-M

Deputy Under Secretary for Technology

The National Technical Information Service Advisory Board; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and pursuant to section 212(c) of the National Technical Information Act of 1988 (15 U.S.C. § 3704b(c)), the Secretary has undertaken the establishment of the National Technical Information Service (NTIS) Advisory Board (the "Advisory Board").

The Advisory Board shall review the general policies and operations of NTIS including policies in connection with fees and charges for its services, and shall advise the Secretary and the Director of NTIS with respect thereto.

The Advisory Board will consist of a Chairperson and four other members to be appointed by the Secretary. In appointing the members of the Advisory Board, the Secretary is required to solicit recommendations from the major users and beneficiaries of the Service's activities. The Advisory Board's composition shall reflect a balance of individuals experienced in the provision or utilization of technical information.

The Advisory Board will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this board to Dr. Joseph F. Caponio, Director, NTIS, 5285 Port Royal Road, Springfield, VA 22216 (703) 487-4636.

Dated: October 10, 1989.

Lee W. Mercer,

Deputy Under Secretary for Technology.

[FR Doc. 89-24335 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-04-M

Foreign-Trade Zones Board

[Docket 19-89]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone; E.J. Brach Candy Plant, Chicago

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, Chicago, requesting special-purpose subzone status for the confectionary manufacturing plant of E. J. Brach & Sons, Inc. (subsidiary of Jacobs Suchard Inc.), located in Chicago, Illinois, within the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 26, 1989.

The Brach plant (30 acres) is located at 4566 W. Kinzie Street, Chicago. The facility (3700 employees) is used to produce confectionary and related products. Some of the finished products are exported (currently, 2%). Foreign-sourced items currently account for about one percent of finished product value, and include cocoa, nuts, and flavorings. Brach plans to purchase sugar from abroad, which would account for some 25 percent of product value.

Zone procedures would exempt Brach from quota restrictions on foreign sugar used in the production of non-quota products. The company would also be exempt from Customs tariffs on the foreign content of its exports. Products sold in the U.S. market would be subject to quotas and tariffs on the basis of the finished product. The applicant indicates that the ability to use lower-priced foreign sugar at the Chicago plant would help Brach reduce its operating costs and encourage capital improvements. Brach's objective is to improve the plant's ability to compete against candy imports and become more competitive internationally, thus helping the company maintain U.S. employment.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Larry Shirk, Assistant District Director, U.S. Customs Service, North Central Region, 610 South Canal Street, Chicago, Illinois 60607; and, Lt. Colonel Jess Franco, District Engineer, U.S. Army Engineer District Chicago, 219 S. Dearborn Street, Chicago, Illinois 60604.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 21, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Mid-Continental Plaza, Room 1406, 55 E. Monroe Street, Chicago, IL 60604;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated October 6, 1989.

John J. Da Ponte, Jr.,

Secretary.

[FR Doc. 89-24269 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 20-89]

Foreign-Trade Zone 92—Gulfport, MS; Application for Subzone—Ingalls Shipyard, Pascagoula

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting special-purpose subzone status for the shipyard of Ingalls Shipbuilding, Inc. (subsidiary of Litton Industries, Inc.), in Pascagoula, Mississippi, within the Pascagoula Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones

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Act, as amended (19 USC 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 27, 1989.

The shipyard complex covers 794 acres on the east and west banks of the East Pascagoula River in the City of Pascagoula, some 3 miles south of the U.S. Highway 90 bridge and 12 miles from the Gulf of Mexico. The facility (10,000 employees) is used to produce oceangoing vessels, offshore drilling rigs and hopper-type rail cars. Zone procedures would be used only for the shipbuilding and rig construction activity. One of the yard's major activities is the construction of military vessels, some of which are built for foreign countries. Foreign-sourced components account for some 10 percent of the value of the vessels built at the facility, including doors, hatches, valves, pumps, diesel engines and cranes.

Zone procedures will help Ingalls reduce costs on its current orders and compete internationally for new contracts. Most of the imported components are subject to significant Customs duties (average duty 5%) while the finished products, as oceangoing vessels, are duty-free. The applicant is aware that the Board FTZ has required the full payment of Customs duties on foreign steel in its past decisions on shipyards.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and, Colonel Larry S. Bonine, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, Alabama 36128.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 21, 1989.

A copy of the application is available for public inspection at each of the following locations:

Port of Gulfport Administration Building, U.S. Highway 90, Gulfport, MS 39502;
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: October 6, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-24270 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 90917-9217]

Shark Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Mexico shark fishery.

SUMMARY: This notice announces that anyone entering the commercial shark fishery in the Gulf of Mexico after October 16, 1989 (control date), may not be assured of future access to the shark fishery if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act that limits the number of participants in the fishery. This notice is based on a decision by the Gulf of Mexico Fishery Management Council (Council) at its meeting of July 10–13, 1989, to adopt a control date for the Gulf shark fishery and to announce it by notice in the **Federal Register**. This announcement is intended to promote awareness of a potential eligibility criterion for access to the Gulf of Mexico shark fishery. It is also intended to discourage new entries into the fishery based on economic speculation while the Council continues discussions on whether and how fishery access to the shark resource should be controlled. This announcement does not prevent establishment of any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed by the Council or being implemented by the Secretary of Commerce (Secretary).

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, NMFS, 813–893–3722.

SUPPLEMENTARY INFORMATION:

Background

NMFS prepared a Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks (PMP) in 1978 (January 27, 1978, 43 FR 3818). The Council prepared a draft fishery management plan for sharks of the Gulf of Mexico in 1980, but did not submit it to the Secretary for review and implementation because domestic harvest was well below the maximum sustainable yield (MSY) level at that time. More recently, a significant market has developed for shark products, and current data on harvest and incidental mortality indicate that the MSY for Gulf sharks is being exceeded. The Secretary, therefore, is proceeding to prepare and implement a fishery management plan (FMP) for the shark fishery in both the Gulf and Atlantic. The Council will hold public hearings, and prepare an FMP amendment concerning the Gulf fishery as necessary and submit it for Secretarial approval and implementation. This notice is not part of the proposed Secretarial FMP.

The Gulf of Mexico shark fishing industry has requested the Council to develop alternative limited access systems, applicable to the Gulf shark fishery, for public review as soon as possible. The Council and the Gulf shark fishing industry are concerned that those using longline vessels in the reef fish, swordfish, and tuna fisheries may elect to enter the Gulf shark fishery because harvest restrictions are being placed on their present fisheries and catches in those fisheries are declining. Because the current fishing fleet is capable of annually harvesting the entire shark MSY for the Gulf of Mexico, any additional fishing effort would result in harvesting inefficiencies, increased risks to the health of shark stocks, and the need for greater management constraints. The Council believes that it should begin immediately to address these potential problems by identifying effective alternative controls on fishing effort. Such controls contemplated by the Council include those that govern access to the Gulf shark fishery.

At its meeting of July 10–13, 1989, the Council voted to establish September 1, 1989, as a control date for new entrants into the Gulf shark fishery. To assist the Council, the Assistant Administrator for Fisheries, NOAA, has agreed to publish this notice in the **Federal Register** announcing that anyone entering the Gulf shark fishery after the control date will not be assured of future participation should the Council develop, and the Secretary approve and implement, an effort-controlled fishery management regime limiting the number of participants in the fishery. NMFS was unable to publish this notice on or before September 1, therefore, the date published will inform affected fishermen in a more timely manner.

In establishing a control date and making this announcement, the Council intends to discourage speculative entry into the shark fishery while the Council discusses possible limited entry or access-controlled management regimes for the fishery. As the Council discusses development of a limited entry or access-control management regime, certain fishermen who do not currently fish for sharks in the Gulf of Mexico, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial shark landings. Such a record generally may be considered indicative of economic dependence on the fishery; on this basis, such fishermen may successfully lay claim to access to a shark fishery which the Council may intend to be limited to traditional participants. New fishery entrants subsequent to the establishment of any limited entry or access-controlled system may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant subsequent to establishment of a limited entry or access program.

When management authorities begin to consider use of a limited access management regime, speculative entry into a fishery often is responsible for a rapid increase in fishing effort in fisheries already fully or over-developed. Those seeking possible windfall gain from a possible management change can exacerbate the original problems. To help distinguish bona fide and established shark fishermen from speculative entrants to the fishery, a fishery management council may set a control date before beginning discussions and planning of limited access regimes. As a result, fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation.

This announcement establishes October 16, 1989 as a control date for potential use by the Council in determining historical or traditional participation in the Gulf of Mexico shark fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the shark fishery. Fishermen are not guaranteed future participation in the shark fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. The Council is free to apply other qualifying criteria for fishery entry, such as documentation of commercial landings and sales before the control date.

The Council may give varying considerations to fishermen in the fishery before and after the control date. Finally, the Council may choose also to take no further action to control entry or access to the fishery.

List of Subjects in 50 CFR Chapter VI

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89-24147 Filed 10-13-89; 8:45 am]

BILLING CODE 3410-22-M

Caribbean Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a rescheduled public hearing and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) announced a series of public hearings on the management measures being considered for development of the Queen Conch Fishery Management Plan which were published August 28, 1989 (54 FR 35524). The hearings that were scheduled for September 18, 20, and 21, 1989, were cancelled because of Hurricane Hugo. This notice announces a rescheduled hearing. Oral and/or written presentations will be accepted.

DATES: The comment period will end on December 31, 1989. The public hearing is scheduled for October 16, 1989, at 3:00 p.m.

ADDRESSES: Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918.

The hearing will be held at Club Náutico de Arecibo, Road 681, Km. 3, Barrio Vigia, Arecibo, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 809–5926.

Dated: October 10, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-24280 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Endangered and Threatened Wildlife and Plants: Recovery Plans for Draft Humpback Whales

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The Draft Humpback Whale National Recovery Plan is available for review and comments by interested parties prior to final approval and adoption by the National Marine Fisheries Service (NMFS). The plan was developed by the U.S. Humpback Whale National Recovery Team which was appointed in 1987 by the Assistant Administrator for NMFS to develop a Recovery Plan for the humpback whale (*Megaptera novaeangliae*) found in United States waters. Membership included biologists and resource managers from NMFS, the Marine Mammal Commission, Woods Hole Oceanographic Institution, Center for Whale Studies, New England Aquarium, National Cancer Institute and College of the Atlantic.

DATE: Comments on the draft recovery plan must be received on or before November 30, 1989.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Copies of the Draft Humpback Whale National Recovery Plan are available upon request from Gloria Thompson, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 8275, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gloria Thompson at 301/427–2319.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS appointed a Humpback Whale Recovery Team to assist in the development of a Draft Humpback Whale National Recovery Plan. The Recovery Plan discusses the natural history, current status of the North Atlantic and North Pacific populations, and the known and potential impacts on the species. Actions that would promote the recovery of humpback whales are

BEST COPY AVAILABLE

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identified and discussed in the draft plan. The Recovery Plan will be used to direct U.S. activities to promote the recovery of the endangered humpback whale.

The 1988 amendments to the ESA require "* * * estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal." NMFS is preparing these estimates and requests commenters to provide any such information available to them. In the meantime, the draft plan is being released for review and comment to expedite adoption and implementation of the final plan.

Dated: October 8, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-24290 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

[File No. P446]

Application for Marine Mammal Public Display Permit, J.B. Atkinson

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of application.

SUMMARY: Notice is hereby given that Mr. James Baker Atkinson, 522 Gulf Street, P.O. Box 1802, Port Aransas, Texas 78373, has applied in due form for a Permit to take marine mammals as provided for by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to approach, harass, and feed Atlantic bottlenose dolphins (*Tursiops truncatus*) in the Corpus Christi Ship Channel adjacent to Port Aransas, Texas. The applicant proposes to take 10-15 people on excursions to observe and feed wild Atlantic bottlenose dolphins. The cruises are planned for no more than half an hour with part of the cruise being sightseeing and part being watching and feeding dolphins. There may be as many as four cruises a day with no more than six or eight dolphin feedings per cruise. The applicant states that there are an estimated 200 to 500 dolphins in and around Port Aransas and that the chances of harassing an individual dolphin more than once a day are small. The permit is requested for the period from May 1, 1989, to October 31, 1989, or later for one (1) year's duration, with the possibility of extensions.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, c/o Permit Division, Office of protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices: Permit Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, MD 20910; Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702; Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731; Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; and, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Permit Division, Office of Protected Resources, NOAA Fisheries, 1335 East-West Hwy., Room 7324, Silver Spring, Maryland 20910 (301/427-2289).

SUPPLEMENTARY INFORMATION: NOAA Fisheries is processing this application as required by the regulations (50 CFR part 216). The agency encourages observations of marine mammals in the wild provided such activities are conducted in a way that avoids harassment of the animals. Inquiries regarding whale watching have been referred to the appropriate Region to be conducted within the confines of the whale watching guidelines. In addition, the Marine Mammal Protection Act (MMPA) prohibits the issuance of public display permits for depleted species (sec. 101(a)(3)(B)). By definition in the MMPA (sec. 3(1)(C)), depleted species include those listed as endangered under the Endangered Species Act. NOAA Fisheries has not previously received an application for dolphin feeding. With receipt of this application, the agency must address the question of whether the proposed activities (dolphin watching and feeding cruises) should be authorized under an MMPA public display permit. NOAA Fisheries invites interested parties to provide information relevant to a decision on this permit application.

NOAA Fisheries is currently conducting a review of its MMPA permit program, which will result in proposed regulations which include a definition of public display. These regulations should then clarify whether or not the observation of marine mammals in the wild and feeding dolphins in particular are activities that can be authorized under an MMPA public display permit. The agency has existing guidelines for conducting observations of marine mammals in the wild without harassment applicable to various regions of the U.S., and may be developing national regulations during the next year that will cover marine mammal observational activities and possibly the feeding of wild marine mammals.

A preliminary review of this issue indicates that the feeding of marine mammals in the wild may result in modification of natural feeding and behavior. Such feeding and behavioral modification may result in animals becoming nuisances to the public or animals which place themselves in dangerous situations in an attempt to obtain food from unnatural sources. In addition, the agency foresees problems in regulating such wild feeding activities with regard to the quality of food provided to the animals and ingestion of foreign objects or toxic material. As we proceed with review of this application we will be considering whether or not this is an activity which should be permitted for public display purposes under the current provisions of the MMPA, including, among other criteria: Whether the taking will be consistent with the policies and purposes of the MMPA; and whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on one hand, and the effect of the proposed taking on the population stocks of dolphin and the marine ecosystem on the other (50 CFR part 216.31(c)).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24289 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Mr. Frank Czeisler, dba Circus Tihany (P413A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Mr. Frank Czeisler, dba Circus Tihany, Tihany Productions, 6526-B S. Tamiami Trail, Sarasota, Florida 34231.

2. *Type of Permit Requested:* The applicant requests authorization to import five (5) California sea lions (*Zalophus californianus*) from Mexico for public display in a traveling show.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24291 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Issued to Dayton and Ragen

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 685.

SUMMARY: On Thursday, May 25, 1989, notice was published in the **Federal Register** (54 FR 22613) that an application (P450) had been filed by Paul K. Dayton and Timothy Ragen, Scripps Institution of Oceanography, University of California (San Diego) to take and harass northern fur seal pups (*Callorhinus ursinus*) on rookeries of St. Paul Island of the Pribilof Islands in the Bering Sea.

Notice is hereby given that on October 5, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Rm. 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: October 5, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24292 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Indianapolis Zoo

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Permit No. 628 Modification: Indianapolis Zoo (P409).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 628 issued to the Indianapolis Zoological Society, Inc., on April 13, 1988 (53 FR 12801) is modified as follows:

Section B.6 is changed to read:

6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1993. The terms and conditions of the Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification is effective upon publication in the **Federal Register**.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated October 5, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24293 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Public Display Permit for Miami Seaquarium

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Issuance of public display permit No. 683.

SUMMARY: On July 21, 1989, notice was published in the **Federal Register** (54 FR 30585) that an application (P35G) had been filed by Miami Seaquarium, 4400 Rickenbacker Causeway, Miami, Florida 33149, to transfer one (1) stranded pilot

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whale (*Globecephala melaena*) and one (1) stranded common dolphin (*Delphinus delphis*) from Sealand of Cape Cod to maintain for public display at Miami Seaquarium.

Notice is hereby given that on October 8, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972, (16 U.S.C. 1361 *et seq.*) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued a Permit for the above activities subject to the Special Conditions set forth therein.

This Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01920; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: October 8, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24294 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Scientific Permit Issued to J.W. Testa

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 689.

SUMMARY: On Thursday, August 24, 1989, notice was published in the **Federal Register** (54 FR 35221) that an application (P420B) had been filed by Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, to take by harassment, and import, Weddell seals (*Leptonychotes weddellii*), crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*) and southern elephant seals (*Mirounga leonina*) in McMurdo Sound, Antarctica.

Notice is hereby given that on October 8, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: October 8, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89-24295 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-22-M

Technology Administration

National Technical Information Service Advisory Board

AGENCY: Technology Administration, Department of Commerce.

ACTION: Request for recommendations for membership on the National Technical Information Service Advisory Board.

SUMMARY: Section 212(c) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(c)) establishes the National Technical Information Service (NTIS) Advisory Board (the "Advisory Board"). The statute provides that in appointing members of the Advisory Board, the Secretary shall solicit recommendations from the major users and beneficiaries of NTIS' activities, and shall select individuals experienced in providing or utilizing technical information. This Notice serves to solicit recommendations as provided above.

DATE: Recommendations and background information for each recommendation must be received on or before November 30, 1989.

ADDRESS: Recommendations and background information for each recommendation should be sent to Dr. Joseph F. Caponio, Director, NTIS, Springfield, VA 22216.

FOR FURTHER INFORMATION CONTACT: Thomas J. Cox, Jr., Associate Director for Administration, NTIS, Springfield, VA 22216 Telephone (703) 487-4736.

SUPPLEMENTARY INFORMATION:

Introduction

A. Statutory Authority

The National Technical Information Act, cited supra, states as follows:

Advisory-Board: There is established the Advisory Board of the National Technical Information Service, which shall be composed of a chairperson and four other members appointed by the Secretary.

(2) In appointing members of the Advisory Board the Secretary shall solicit recommendations from the major users and beneficiaries of the Service's activities and shall select individuals experienced in providing or utilizing technical information.

(3) The Advisory Board shall review the general policies and operations of the Service, including policies in connection with fees and charges for its services, and shall advise the Secretary and the Director with respect thereto.

(4) The Advisory Board shall meet at the call of the Secretary, but not less often than once each six months.

B. The Advisory Board and the NTIS Mission

The NTIS mission (pursuant to U.S.C. 1151, et seq., § 3701, et seq., and Pub. L. 100-418 and 100-519) is to operate as a clearinghouse for the collection and dissemination of scientific, technical and engineering information. To carry out this mission, NTIS is authorized to engage in many activities, including:

(1) To search for, collect, classify, coordinate, integrate, record, and catalog such information from whatever sources, foreign and domestic, that may be available;

(2) To make such information available to industry and business, to State and local governments, to other agencies of the Federal Government, and to the general public, through the preparation of abstracts, digests, translations, bibliographies, indexes, and microfilm and other reproductions for distribution either directly or by utilization of business, trade, technical, and scientific publications and services;

(3) To serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies and/or patents having potential application to State and local governments and to private industry;

(4) To utilize the expertise and services of the National Science Foundation and the Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(5) To receive requests for technical assistance from State and local governments, respond to such requests with published information available to NTIS, and refer such requests to the Federal Library Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to NTIS;

(6) To cooperate and coordinate its functions with other Government scientific, technical, and engineering information programs; and

(7) To maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical and engineering information.

Policy of NTIS Statutory Authority

To the fullest extent feasible, it is the policy of the Department that each of the services and functions provided by NTIS shall be self-sustaining or self-liquidating, and that the general public shall not bear the cost of publication and other services which are for the special use and benefit of private groups and individuals. Accordingly, NTIS is authorized to establish a schedule or schedules of reasonable fees or charges for services performed or for documents or other publications furnished under its statutory authority (15 U.S.C. § 1153).

Conclusion: The function of the Advisory Board is to assist the Secretary of Commerce and the Director of NTIS by providing advice and counsel on the general policies and operations of NTIS, including policies in connection with fees and charges for its services, as well as to provide the Advisory Board with its recommendations on the modernization of the facilities, capabilities and functions of NTIS.

Such advice from those experienced in the utilization of scientific and technical information is vital to the success of the Advisory Board and NTIS in general. Accordingly, the Deputy Under Secretary of Commerce for Technology requests that recommendations for membership on the Advisory Board together with background information be submitted.

Dated: October 10, 1989.

Lee W. Mercer,

Deputy Under Secretary for Technology.

[FR Doc. 89-24334 Filed 10-13-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber and Silk Blend Textile Products Produced or Manufactured in Korea

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 345, 619/620, 645/646 and 846 are being adjusted, variously for swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50988, published on December 19, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 12, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 13, 1989, the directive of December 13, 1988 is being amended to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-mo limit [1]
Sublevel in Group I:	
619/620	91,325,399 square meters.
Sublevels in Group II:	
345	82,915 dozen.
645/646	3,760,159 dozen.
Level in Group IV:	
846	366,183 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-24522 Filed 10-12-89; 4:17 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Equal Opportunity Management Institute Board of Visitors; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI. The Board meets semiannually.

DATE: November 3, 1989 (Agenda follows).

ADDRESS: The Pentagon, Room 3E752 (FMP Conference Room), Washington, DC.

Agenda: Sessions will be conducted and will be open to the public as indicated below.

Friday, November 3, 1989

8:00 a.m.-11:00 a.m. Review of minutes from last meeting. Presentation of New Business

11:30 a.m.-1:00 p.m. Luncheon (by invitation)

1:00 p.m.-4:30 p.m. General Conference Activities

FOR FURTHER INFORMATION CONTACT: Commander John R. Wise, USN,

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Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, Florida, 32925–6685; telephone (407) 494–6017.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact listed on page one no later than October 30, 1989.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy of later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: October 11, 1989.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–24346 Filed 10–13–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Chaplain Candidate Training Record/U.S. Air Force Reserve Chaplain Candidate Inquiry; ARPC Form 0–5 and ARPC Form 0–285; and OMB Control Number 0701–0069.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 25 minutes.

Frequency of Response: 1.

Number of Respondents: 150.

Annual Burden Hours: 63.

Annual Responses: 150.

Needs and Uses:

Information on the Chaplain Candidate Training Record is used to identify the Candidate and in scheduling tours of active duty training. It is used to track candidates for appointment. Chaplain/Candidate Inquiry Form is used to record information required to properly respond to inquiries about eligibility for our programs.

Affected Public: Individuals.

Frequency: Onetime only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: October 11, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–24348 Filed 10–13–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 15, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 10, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension

Title: National Education Longitudinal Study of 1988, First Follow-up

Frequency: On Occasion

Affected Public: Individuals or households; State or local governments

Reporting Burden:

Responses: 53,630

Burden Hours: 90,303

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This longitudinal study will collect data from individual respondents on the educational, vocational and personal development of a subsample of eight grade students. The Department will use the information to make possible analyses of the patterns of transition from the eight grade level through high school and postsecondary education and into adulthood and the world of work.

[FR Doc. 89–24307 Filed 10–13–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–678–000, et al.]

System Energy Resources, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 5, 1989.

Take notice that the following filings have been made with the Commission:

1. System Energy Resources, Inc.

[Docket No. ER89–678–000]

Take notice that on September 29, 1989, System Energy Resources, Inc. (System Energy) tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's regulations, (1) amendments to the existing Nuclear Decommissioning Trust Fund Agreement (supplement No. 6 to System Energy's Unit Power Sales Agreement (UPSA), Rate Schedule FERC No. 2); (2) an amendment to the UPSA's Billing Format, as previously modified, that would increase the monthly decommissioning charges from customers; and (3) an amendment to the UPSA's Billing Format that would include Account 283, Accumulated Deferred Income Taxes, as a reduction of Net Unit Investment.

System Energy proposes an effective date for this filing of January 1, 1990, which would provide a notice period of approximately 90 days. The proposed rate change to increase decommissioning charges will increase revenues for the calendar year 1990 by approximately $8.6 million. The proposed rate change to reduce Net Unit Investment by Account 283, will decrease revenues for the calendar year 1990 by approximately $1.4 million. All of the Energy System Operating Companies have consented to the rate changes.

System Energy states that copies of its filing have been provided to its customers and to the regulatory authorities in Louisiana, Mississippi and Arkansas.

Comment date: October 19, 1989, in accordance with Standard Paragraph E end of this notice.

2. Vermont Electric Power Company, Inc.

[Docket No. ER88–447–000]

Take notice that on September 29, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an Explanatory Statement relating to the filings it made in this docket on June 29 and July 11, 1989. The latter filings amended Supplement No. 1 to Rate Schedule No. 235 and Supplement No. 3 to Rate Schedule No. 240 and set forth proposed initial allocations of firm transmission capacity entitlements as required by the Supplements.

The Explanatory Statement responds to a deficiency letter issued on August 30, 1989 on behalf of the Director, Division of Electric Power Application Review. The letter questioned whether the allocations of firm transmission capacity entitlements had been made in conformance with the terms of the Supplements. The Explanatory Statement asserts that the allocations were properly made and sets forth the basis for that assertion.

VELCO states that it has served the filing upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water and Light Department, Franklin Electric Light Company, Green Power Corporation, Village of Hardwick Electric Department, Village of Hyde Park, Inc., Village of Jacksonville, Village of Johnson Electric Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water and Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: October 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER89–677–000]

Take notice that Louisville Gas and Electric Company (Louisville) on September 29, 1989, tendered for filing an Interconnection Agreement between Louisville and Ohio Valley Electric Corporation (OVEC) dated September 27, 1989.

The purpose of this filing is to provide the parties with a systematic interconnected operation which will permit the sale of power and energy by Louisville to OVEC.

Copies of the filing were served on OVEC and the Public Service Commission of Kentucky.

The Interconnection Agreement provides for service schedules that are designated:

I. Service Schedule A—Emergency Energy
II. Service Schedule B—Non-Displacement Energy
III. Service Schedule C—Short Term Power
IV. Service Schedule D—Seasonal Power
V. Service Schedule E—Limited Term Power

Comment date: October 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. EC89–18–000]

Take notice that on September 29, 1989, Northern Indiana Public Service Company (Applicant) filed an application for an order of the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act authorizing Applicant to sell and dispose of the Continental Power Machinery, Inc. certain generating equipment owned and maintained by Applicant, namely Unit 9B and Unit 9C now located at the D.H. Mitchell Generating Station in Gary, Indiana. The units will be removed from Applicant's site. The sale will become effective following approval of the Federal Energy Regulatory Commission.

Comment date: October 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

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5. Florida Power Corporation

[Docket No. ER89-627-000]

Take notice that on October 3, 1989, Florida Power Corporation (Florida Power) tendered for filing an amendment to its August 30, 1989 filing in this docket. Florida Power filed a corrected Original Sheet No. 13 of Exhibit B, Rate Limitation Supplement, for the town of Havana and the cities of Bartow and Newberry. Florida Power also filed a corrected Exhibit D, Supplemental Service Specifications for these three customers.

According to Florida Power, a copy of this filing has been served on each of its wholesale power and transmission customers.

Comment date: October 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pedricktown Cogeneration Limited Partnership

[Docket No. QF87-407-003]

On August 22, 1989, Pedricktown Cogeneration Limited Partnership (Applicant), of 3 Executive Campus, Route 70 and Cuthbert Road, Cherry Hill, New Jersey 08034, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Pedricktown, New Jersey. The facility will consist of a combustion turbine generating unit, a waste heat recovery boiler and an extraction/condensing steam turbine generation unit. Steam produced by the facility will be used by B.F. Goodrich, in the manufacturing of polyvinyl chloride and acrylic latex at its Pedricktown plant. The primary energy source will be natural gas. The net electric power production capacity is 117.8 MW. Installation of the facility will begin on or about March 1, 1990.

The original application was filed on May 7, 1987, and granted on October 13, 1987 (41 FERC ¶62,025). The recertification is requested due to a change in the ownership and increase in the net electric power production capacity of the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24299 Filed 10-13-89; 6:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2172-000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP89-2172-000]

October 4, 1989.

Take notice that on September 27, 1989, Texas Eastern Transmission Corporation (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2172-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to three existing service agreements with Philadelphia Electric Company (PECO), under the authorization issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TETCO states that pursuant to § 157.212(a) of the Commission's Regulations, it requests authorization to add the new delivery point, M&R Station No. 2636, to the individual service agreements covering service to PECO under Rate Schedules CD-1, CD-2 and FT-1 of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1. TETCO states that M&R Station No. 2636 was previously authorized for service to PECO under TETCO's Rate Schedules SS-2, SS-3 and FTS-2 in Docket No. CP88-808-000. TETCO states that no new facilities are to be constructed. According to TETCO, M&R Station No. 2636 is located in Worchester Township, Montgomery County, Pennsylvania where TETCO's pipeline system interconnects with pipeline facilities owned by PECO.

TETCO states that upon receipt of Commission authorization, TETCO and PECO will execute individual superseding service agreements providing for the delivery by TETCO to PECO of quantities of natural gas presently certificated under TETCO's Rate Schedules CD-1, CD-2 and FT-1. The superseding service agreements will establish a Maximum Daily Delivery Obligation (MDDO) for the new delivery point as follows: 14,000 dekatherms (dt) per day for Rate Schedule CD-1 and CD-2, and 14,000 dt per day (less applicable shrinkage) for Rate Schedule FT-1. TETCO states that there will be no change in MDDO at the other existing delivery points in the superseding service agreements, nor any increase in the total contract quantities. TETCO adds that the natural gas quantities delivered to PECO will be utilized as general system supply by PECO.

TETCO further states that the addition of M&R Station No. 2636 will have no effect on TETCO's peak day or annual deliveries. To the extent deliveries are made at M&R Station No. 2636, TETCO states that deliveries may be reduced at the other points of delivery to PECO on a day-to-day operational basis. Therefore, TETCO states that the addition of the new delivery point to each of the three service agreements as proposed will not result in any change in the total contract quantities deliverable under the individual service agreements providing for service to PECO pursuant to Rate Schedules CD-1, CD-2 and FT-1. TETCO submits that its proposal will be accomplished without detriment to disadvantage to TETCO's other customers.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89-2178-000]

October 4, 1989.

Take notice that on September 27, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-2178-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of BP Gas Inc. (BP Gas), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for BP Gas, pursuant to an interruptible transportation service agreement dated June 30, 1989, (#IGP-1930). The transportation agreement is effective for a primary term ending June 30, 1994, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 100,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS); on an average day up to 35,000 MMBtu; and based on the average day figure, 12,775,000 MMBtu annually of natural gas for BP Gas. Natural proposes to receive the subject gas at various points located in Louisiana, Texas, Oklahoma, Illinois and Kansas. The delivery points are located in Missouri, Iowa, Nebraska, Illinois, Arkansas, Louisiana and Oklahoma. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on August 1, 1989, as reported in Docket No. ST89-4828-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-2186-000]

October 4, 1989.

Take notice that on September 27, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-2186-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade) under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated August 23, 1989, it proposes to receive up to 200,000 million Btu per day at specified points located in the states of Oklahoma, Texas, Kansas, and New Mexico, and redeliver the gas at specified points located in the states of Kansas, Texas, Minnesota, Iowa, Wisconsin, and Oklahoma. Northern estimates that the peak day, average day, and annual volumes would be 200,000 million Btu, 150,000 million Btu, and 73,000,000 million Btu, respectively. It is indicated that on August 23, 1989, Northern initiated a 120-day transportation service for Entrade under § 284.223(a), as reported in Docket No. ST89-4693-000.

Northern further states that no facilities need be constructed to implement the service. Northern states that the primary term expires two years from the date of initial delivery, but that the service would continue unless terminated on thirty days written notice to the other party. Northern proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT-1.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Company

[Docket No. CP89-2162-000]

October 5, 1989.

Take notice that on September 25, 1989, Northwest Pipeline Company (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-2162-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-578-000 for Intermountain Gas Company (Intermountain), a local distributor, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest indicates that service commenced August 27, 1989, as reported in Docket No. ST89-4758-000 and estimates the volumes transported to be 110,000 MMBtu per day on a peak day, 1,700 MMBtu on an average day plus, 620,000 MMBtu on an annual basis for Intermountain. Northwest states that the gas will be transported under its Rate Schedule TI-1 from any receipt points on its system to any delivery point on its system.

Northwest also states that no new facilities are to be constructed.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-2169-000]

October 5, 1989.

Take notice that on September 26, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-2169-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation (Tejas), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Tejas. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 15,000 MMBtu and 18,250,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced August 16, 1989, as reported in Docket No. ST89-4521.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Transwestern Pipeline Company

[Docket No. CP88-99-007]

October 5, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on September 29, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1989

69 Revised Sheet No. 5
1st Revised Sheet No. 5(i)
37th Revised Sheet No. 6
6th Revised Sheet No. 37

Transwestern states that these tariff sheets are filed to comply with the Commission's orders issued May 11, 1988, July 31, 1989 and September 28, 1989 (Orders). Pursuant to the Orders, Transwestern has accepted the Commission's authorization of a Certificate of Public Convenience and Necessity to institute a gas inventory charge (GIC) and interruptible sales (IS)

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service. Pursuant to the procedures set forth under the GIC, Rates Schedule CDQ–1 and CDQ–3 customers elected to nominate zero volumes for purchase under the GIC. The above listed tariff sheets have been filed to reflect the zero nomination of Rate Schedule CDQ–1 and CDQ–3 customers for purchases under the GIC and the subsequent revisions to the rates for service under Rate Schedules SG–1, SG–2, RW–1 and IS–1, as required by the Orders.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective October 1, 1989.

Comment date: October 13, 1989, in accordance with Standard Paragraph F at the end of the notice.

7. Alabama-Tennessee Natural Gas Company

[Docket No. CP89–2201–000]

October 5, 1989.

Take notice that on September 29, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket No. CP89–2201–000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Alabama-Tennessee states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436 and Order 500, in accordance with the terms and conditions set forth in the application. Alabama-Tennessee states that, in providing the transportation services for which authorization is requested herein, it will comply with the conditions in paragraph (C) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of part 284 of the Commission's Regulations.

Alabama-Tennessee proposes to offer open-access transportation services to firm and interruptible shippers in accordance with the provisions of its proposed new Rate Schedules FT and IT, both of which are contained in First Revised Volume No. 1 of Alabama-Tennessee's FERC Gas Tariff, a *pro forma* copy of which is included in Alabama-Tennessee's application. Alabama-Tennessee submits that the proposed transportation rates applicable to Rate Schedules FT and IT comply with all requirements under Order No. 436, and with the Commission's Rules and Regulations thereunder, including the provisions of § 284.7.

Alabama-Tennessee also requests that the Commission require those current G and SG sales customers, who elect to convert daily sales entitlements to firm Rate Schedule FT transportation service under the blanket certificate sought herein, to purchase any remaining sales volumes under Alabama-Tennessee's currently effective CD Rate Schedule.[1] To the extent required, Alabama-Tennessee requests that any applicable waivers and additional authorizations be granted, as necessary, for the approval of its application.

According to Alabama-Tennessee, the provisions for open access transportation on behalf of its G and SG sales customers are necessary to provide Alabama-Tennessee a reasonable opportunity to continue to recover from those customers their allocable share of its demand cost obligations to its upstream supplier, Tennessee Gas Pipeline Company, from whom Alabama-Tennessee obtains contract demand service. Alabama-Tennessee states that this opportunity would not exist under the G and SG Rate Schedules as presently structured because those rates are not based on contract demand. For example, Alabama-Tennessee states that sales customers under its G Rate Schedule can ratchet their billing demand responsibility downwards based on the greatest number of dekatherms purchased on any day during the twelve-month billing period (see section 4, Fifth Revised Sheet No. 12 of Alabama-Tennessee's FERC Gas Tariff, First Revised Volume No. 1).

Alabama-Tennessee believes that the authority requested herein is consistent with the Commission's Rate Design Policy Statement issued in Docket No. PL89–2–000, *et al.*, and that it would be unfair and unreasonable for the Commission to issue the blanket authority without enabling Alabama-Tennessee to protect itself from the underrecovery of fixed costs it incurs to stand ready to provide each G and SG customer with such customers's full requirements for its certificated level of sales service on Alabama-Tennessee.[2] Alabama-Tennessee states that should the Commission conclude that this proposal is not appropriate for customers served under Rate Schedule SG, Alabama-Tennessee requests that the Commission authorize a comparable method of cost recovery to protect it from underrecovery of fixed costs, such as a standby charge.

Alabama-Tennessee will provide transportation service under the authorization requested herein in accordance with the revised General Terms and Conditions, Rate Schedules FT and IT and Forms of Service Agreement thereunder, at the proposed rates filed concurrently herewith in Docket No. RP89–251–000. Alabama-Tennessee requests approval of the terms and conditions of such transportation service.

It is further stated that the sales authorization requested herein will be provided under the terms and conditions of Alabama-Tennessee's Rate Schedule CD and associated Form of Service Agreement which are already part of its FERC Gas Tariff, First Revised Volume No. 1.

Comment date: October 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP89–2179–000]

October 5, 1989.

Take notice that on September 27, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–2179–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Sonat Marketing Company (Sonat), a marketer, under its blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for Sonat would be 25,000 MMBtu equivalent of natural gas, 5,479 MMBtu equivalent of natural gas and 2,000,000 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for Sonat from various receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi and Alabama to a delivery point in Alabama.

Southern indicates that in a filing made with the Commission in Docket ST89–4635, it reported that transportation service for Sonat commenced on August 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Great Lakes Gas Transmission Company

[Docket No. CP89–2196–000]

October 5, 1989.

Take notice that on September 28, 1989, Great Lakes Gas Transmission Company ("Great Lakes"), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89–2196–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of ANR Pipeline Company (ANR), until November 1, 2006, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that ANR has requested that Great Lakes transport up to 350,000 Mcf per day for the account of ANR, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited (TransCanada), to existing points of interconnection between the facilities of Great Lakes and ANR located at (i) Capac, Michigan (Capac Delivery Point), (ii) South Chester, Michigan (South Chester Delivery Point), (iii) Fortune Lake, Michigan (Fortune Lake Delivery Point), (iv) Farwell, Michigan (Farwell Delivery Point) and (v) Muttonville, Michigan (Muttonville Delivery Point); and (2) a point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company located, at Belle River Mills, Michigan (Belle River Mills Delivery Point) and (3) a point of interconnection between the facilities of Great Lakes and TransCanada located on the International Boundary near St. Clair, Michigan (St. Clair Delivery Point). Great Lakes also states that the subject Canadian gas would be purchased by ANR for its system supply.

Great Lakes states that ANR and Great Lakes have entered into a Transportation Service Agreement, dated September 21, 1989 (Service Agreement), which implements these arrangements. Great Lakes further states that the Service Agreement provides for a term ending November 1, 2006.

Great Lakes indicates that the Service Agreement provides for a rate for the transportation service to the Capac, Belle River mills, South Chester, Farwell, Muttonville, and St. Clair Delivery Points located in Great Lakes' Eastern Zone which is equal to the 100 percent load factor rate as determined from the demand and commodity components utilized in Rate Schedule T–4 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes' Eastern Zone.

Great Lakes asserts that the Service Agreement also provides for a rate for the transportation service to the Fortune Lake Delivery Point in Great Lakes' Central Zone which is equal to the 100 percent load factor rate as determined from the demand and commodity components utilized in the transportation component of existing Rate Schedule CQ–2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from the Emerson Receipt Point to Great Lakes' Central Zone. Great Lakes states that no new facilities are required to provide either of the above-described services.

Comment date: October 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP90–7–000]

October 5, 1989.

Take notice that on October 3, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–7–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Arco Oil and Gas Company (Arco), a producer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated December 19, 1988, under its Rate Schedule ITS, it proposes to transport up to 7,210 MMBtu per day equivalent of natural gas for Arco. United states that it would transport the gas from receipt points in Panola County Texas, and would deliver the gas at delivery points in Panola County, Texas, and Ouachita Parish, Louisiana.

United advises that service under § 284.223(a) commenced June 4, 1989, as reported in Docket No. ST89–4770–000 (filed September 19, 1989). United further advises that it would transport 7,210 MMBtu on an average day and 2,631,650 MMBtu annually.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Great Lakes Gas Transmission

[Docket No. CP89–2197–000]

October 5, 1989.

Take notice that on September 28, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit 48226, filed in instant docket an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Coastal Gas marketing (Coastal), until November 1, 2006, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Coastal had requested that Great Lakes transport up to 300,000 Mcf per day for the account of Coastal, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited (TransCanada), to (1) points of interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR) located at (i) Farwell, Michigan (Farwell Delivery Point), (ii) Fortune Lake, Michigan (Fortune Lake Delivery Point), (iii) Capac, Michigan (Capac Delivery Point), (iv) South Chester, Michigan (South Chester Delivery Point) and (v) Muttonville, Michigan (Muttonville Delivery Point); (2) a point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (Belle River Mills Delivery Point); (3) a point of interconnection between the facilities of Great Lakes and TransCanada located in St. Clair, Michigan (St. Clair Delivery Point); (4) a point of interconnection between the facilities of ANR Storage Company (ANR Storage) and Great

[1] Alabama-Tennessee states that service under the CD Rate Schedule would be available to any Alabama-Tennessee gas distributor customer, whose distribution system connects or will connect with Alabama-Tennessee. Under the Rate Schedule CD, Alabama-Tennessee states it would be required to provide firm sales service up to the level contracted for by the customer.

[2] Alabama-Tennessee states that filed testimony explaining the financial exposure faced by Alabama-Tennessee with respect to offering firm part 284 transportation service to its G and SG sales customers will be provided in Alabama-Tennessee's Statement P, to be filed within fifteen days under § 154.63 of the Commission's Regulations in its general rate case and tariff filing made concurrently herewith in Docket No. RP89–251–000.

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Lakes located at Deward, Michigan (Deward Delivery Point); and (5) a point of interconnection between the facilities of Great Lakes and Northern Natural Gas Company (Northern Natural) located at Carlton, Minnesota (Carlton Delivery Point).

Great Lakes states that Coastal has also requested transportation (included within the 300,000 Mcf per day quantity) from the (1) Fortune Lake Delivery Point to the Farwell, Capac, Muttonville, South Chester, Deward, Belle River Mills and St. Clair Delivery Points; (2) South Chester Delivery Point to the Deward, Farwell, Capac, Muttonville, Belle River Mills, and St. Clair Delivery Points; (3) Deward Delivery Point to the Farwell, Capac, Muttonville, Belle River Mills, and St. Clair Delivery Points; (4) Farwell Delivery Point to the Capac, Muttonville, Belle River Mills, and St. Clair Delivery Points; (5) Capac Delivery Point to the Muttonville, Belle River Mills and St. Clair Delivery Points; (6) Muttonville Delivery Point to the Belle River Mills and St. Clair Delivery Points; and (7) Belle River Mills Delivery Point to the St. Clair Delivery Point.

Great Lakes indicates that Coastal and Great Lakes have entered into a Transportation Service Agreement, dated September 19, 1989 (Service Agreement), which implement these arrangements. Great Lakes further indicates that the Service Agreement provides for a term ending November 1, 2006.

Great Lakes asserts that the Service Agreement provides for an initial rate for the transportation service from the Emerson Receipt Point to the Farwell, Deward, Capac, South Chester, Muttonville, Belle River Mills and St. Clair Delivery Points located in Great Lakes' Eastern Zone which is equal to the 100 percent load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes' Eastern Zone.

Great Lakes states that the Service Agreement also provides for an initial rate for the transportation service from the Emerson Receipt Point to the Fortune Lake Delivery Point in Great Lakes' Central Zone which is equal to the 100 percent load factor rate as determined from the demand and commodity components utilized in the transportation component of existing Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from the Emerson Receipt Point to Great Lakes' Central Zone.

Great Lakes states that the Service Agreement further provides for an initial rate for the transportation service from the Emerson Receipt Point to the Carlton Delivery Point located in Great Lakes' Western Zone which is equal to 100 percent load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-5 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from the Emerson Receipt Point to Great Lakes' Western Zone.

Great Lakes indicates that the Service Agreement also provides that the initial transportation rates for the transportation of the subject volumes from receipt points other than Emerson is, for transportation between two points within the same zone; if the receipt and delivery points lie in different zones, the rate is the sum of the individual zone rates for each zone in which the gas is transported.

No new facilities are required to provide any of the above-referenced services, it is stated.

Comment date: October 26, 1989, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 285.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commissions' Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed withing the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an aplication for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24300 Filed 10-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-53-000]

Chesterfield Energy Corporation, et al., Petition to Reopen and Vacate Final Well Category Determinations

September 15, 1989.

On August 22, 1989, the State of West Virginia, Department of Commerce, Labor and Environmental Resources (West Virginia) filed with the Federal Energy Regulatory Commission, pursuant to § 275.205 of the Commission's regulations, a petition to reopen and vacate 46 final well category determinations for wells located in various counties in West Virginia.

The applications for the determinations were filed with West Virginia by Chesterfield Energy Corporation (Chesterfield) prior to 1985. In November and December 1988, West Virginia gave the Commission written notice of the affirmative determinations and they became final forty-five days thereafter. West Virginia states in its petition that by letter dated February 13, 1985, Chesterfield filed a request with West Virginia to withdraw the 46 applications submits that since the withdrawal letter is dated in 1985 and the affirmative determinations were filed in 1988, that the withdrawal letter constitutes an omitted statement of material fact which justifies the reopening of the 46 determinations.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before October 16, 1989. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24301 Filed 10-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM90-3-20-000; RP90-3-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 6, 1989

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 3, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets as listed in appendix A, attached to the filing.

Algonquin states that pursuant to article 12, section 3 of the Stipulation and Agreement establishing service under Rate Schedule F-3 and section 7.3 of such Rate Schedule, Algonquin submits for filing the tariff sheets and their respective proposed effective dates as listed in Appendix A to concurrently track the changes made by Transcontinental Gas Pipe Line Corporation ("Transco") in the transportation service underlying Algonquin's Rate Schedule F-3. Pursuant to the Commission's Order of June 8, 1989 in Docket No. RP82-55-041, Transco instituted a two part rate structure consisting of a demand charge and a commodity charge changing from the single one part demand charge previously used. Furthermore, Algonquin states that Second Substitute Alternate Eighteenth Revised Sheet No. 204, Substitute Fifth Revised Sheet No. 373 and Substitute Fourth Revised Sheet No. 375, proposed to be effective May 1, 1988, are filed to incorporate the change in rates and rate structure made by Transco, all other revised tariff sheets are filed for the sole purpose of bringing forward such rates and rate restructuring into previously filed tariff sheets. Algonquin maintains that it has received a refund from Transco for the period prior to May 1, 1988 and flowed through such refund on September 20, 1989 to its Rate Schedule F-3 customers.

Algonquin states that the effect of its instant filing is to decrease the Transco demand charge by $2.96 per MMBtu, from $5.26 to $2.30 per MMBtu while instituting a commodity charge of 8.9 cents per MMBtu, all effective as of May 1, 1988.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.124 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24302 Filed 10-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-245-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

October 6, 1989.

Take notice that on September 29, 1989, Paiute Pipeline Company (Paiute) tendered for filing certain tariff sheets applicable to its FERC Gas Tariffs, Original Volume Nos. 1 and 1-A, for the purpose of establishing the procedures whereby Paiute will recover the fixed charge allocation of take-or-pay buyout and buydown costs billed by its upstream pipeline supplier, Northwest Pipeline Corporation (Northwest), and paid by Paiute to Northwest.

Paiute states that pursuant to the take-or-pay passthrough mechanism established under the provisions of Order No. 500, Northwest filed in Docket No. RP89-137-000 to recover a portion of approximately $76,917,541 in take-or-pay buyout and buydown costs. Paiute further states that Northwest's filing reflects a proposal to absorb 25% of the costs, to collect 25% through a fixed charge from its firm sales customers, and to recover 50% through a volumetric surcharge applicable to all of Northwest's throughput.

Paiute states that Northwest's filing, which was accepted by the Commission and made effective on April 1, 1989, allocated the 25% of buyout and buydown costs to be recovered through a fixed charge from its firm customers on the basis of each customer's cumulative deficiency in firm purchases utilizing calendar years 1982 and 1983 as the bse period and the period of January 1984 through September 1988 as the deficiency period. Northwest will collect the fixed charge amounts from its customers, at each customer's election, either in a lump-sum payment or amortized over a three-year period. Paiute's share of the allocated buyout and buydown costs is $1,401,801.

Paiute further states that Northwest filed revised tariff sheets in Docket Nos. RP89-219-000 and TM90-1-37-000 which, in part, seeks recovery of a portion of an additional $69,375,000 in the take-or-pay buyout and buydown costs over and above the amounts involved in Docket No. RP89-137-000. Paiute states that this filing reflects that Paiute's share of the allocated buyout and buydown costs to be collected through a fixed charge is $1,244,568.

Paiute's filing reflects primary tariff sheets to establish the procedure for recovery from its customers the above-described fixed charges billed by Northwest and paid by Paiute. In the event the Commission does not approve Northwest's filing in Docket Nos. RP89-219-000 and TM90-1-37-000, Paiute has included in its filing alternative tariff sheets which reflect only those charges authorized for Northwest by the Commission effective April 1, 1989 in Docket No. RP89-137-000. However, Paiute states that its filing reflects a modification to the methodology prescribed by Order No. 500 as set forth in § 2.104(e) of the Commission's Regulations for the passthrough of such costs by downstream pipelines on an as-billed basis. Paiute states that it is proposing to pass through to each of those direct transportation customers affected, as well as to its firm sales customers their allocable share of the take-or-pay buyout and buydown costs imposed by Northwest.

Paiute has further requested waiver of any necessary rules and regulations so as to permit its filing to become effective on October 1, 1989.

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Copies of the filing were served on Paiute's jurisdictional sales customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24303 Filed 10-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-252-000]

Washington Natural Gas Company; Project Operator, Filing Revised Tariff

October 6, 1989.

Take notice that on September 29, 1989, Washington Natural Gas Company (Washington Natural) 815 Mercer Street, Seattle, Washington 98109, in its capacity as Project Operator of the Jackson Prairie Storage Project (Storage Project), located in Chehalis, Lewis County, Washington, tendered for filing with the Commission its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of November 1, 1989.

According to Washington Natural, First Revised Volume No. 1 comprises a revised Gas Storage Project Agreement, also identified as Rate Schedule S-1, pursuant to which the Storage Project is operated, and upon effectiveness, First Revised Volume No. 1 will supersede Washington Natural's FERC Gas Tariff, Original Volume No. 1 which contains the original Gas Storage Project Agreement on file with the Commission.

According to Washington Natural, the revised Gas Storage Project Agreement, dated September 25, 1989, and filed in this matter as Washington Natural's Rate Schedule S-1 in its FERC Gas Tariff, First Revised Volume No. 1, is the first comprehensive revision of the agreement for operating the Storage Project by the owners since the original operating agreement. Washington Natural states that the basic function of the Storage Project, which is to provide the gas storage capacity and deliverability to support the storage gas service provided by Northwest under Rate Schedule SGS-1, is not changed by the revised agreement. It is stated that, under the original agreement, El Paso and later Northwest, had the exclusive right to store gas in the Storage Project and the pipelined owned all the working gas in the Storage Project. The revised agreement, it is stated, recognizes that changes have occurred in Northwest's Rate Schedule SGS-1 so that now parties other than Northwest have actual or beneficial title to gas stored in the Storage Project. It is stated, for example, that under the Option 10 revision to Rate Schedule SGS-1, Northwest's storage service customers can store their own gas in the Storage Project; also, Water Power has released a portion of its storage capacity to the British Columbia Hydro and Power Authority (B.C. Hydro) and B.C. Hydro now stores gas in the released capacity through transportation and exchange arrangements with Northwest and Westcoast Transmission Company, Ltd. *Northwest Pipeline Corporation, et al.*, 23 FERC ¶61,361; further, it is stated that, in connection with Northwest's "open-access" transportation proposal in Docket No. CP86-578-000, the Commission directed Northwest to make available to its transportation customers that portion of its Storage Project capacity utilized for system supply. *Northwest Pipeline Corporation*, 43 FERC ¶61,342. These changes in the use of the Storage Project and which are recognized in the revised operating agreement, according to Washington Natural, eliminate the distinctions made in the original agreement between the seasonal injection and withdrawal cycles that were appropriate when the only function of the Storage Project was to store gas solely for Northwest's account for Rate Schedule SGS-1 service.

Washington Natural further states that the revised agreement extends the primary term of the operating agreement between and among the owners to October 31, 2004 to coincide with the primary term of Northwest's recently renegotiated storage agreements for Rate Schedule SGS-1 service, pending approval in Docket No. CP89-1525. Also, Washington Natural states that the operating characteristics and capabilities of the Storage Project, as most recently authorized by the Commission in Docket No. CP87-516-000, have not been changed in the revised agreement and are as shown in Appendix A attached to the agreement.

Washington Natural states that copies of its filing were served upon the three owners of the Storage Project and upon those customers of Northwest who subscribe to its Rate Schedule SGS-1 service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24304 Filed 10-13-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3671-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP—Benzene from Coke By-Product Plants, Ethylbenzene/Styrene Plants, Equipment Leaks and Storage Vessels. (ICR # 1060.06; OMB # 2060-0165). (This is a renewal of a previously approved collection).

Abstract: Owners/Operators of coke by-product recovery plants must notify EPA of construction, reconstruction, and anticipated startup. They must submit an initial source report and a report of initial benzene emission changes. They must also keep records of, and report, leaks detected and repairs to equipment. EPA needs the information to ensure compliance with national standards limiting benzene emission into the ambient air.

Burden Statement: The public reporting burden for this collection of information is estimated to average 11.5 hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners/operators of: Coke by-product industry plants; petroleum refining industry plants, and chemical industry plants.

Estimated No. of Respondents: 152

Estimated Total Annual Burden on Respondents: 7,969 hours

Frequency of Collection: Semiannually, annually, and on occasion.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: October 3, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-24351 Filed 10-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3671-3]

Open Meetings of the Negotiated Rulemaking Advisory Committee for the Volatile Organic Chemical Equipment Leak Rule

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of open meetings of the Advisory Committee to negotiate a rule to control fugitive emissions of toxic volatile organic compounds (VOCs) from chemical equipment leaks.

The first meeting will be held on November 6, 1989 from 10:00 a.m. to 5:00 p.m., and on November 7, 1989 from 9:00 a.m. to 4:00 p.m., at the Pickett Inn, 2525 Meridian Street, Durham, North Carolina. For reservations, you can call (919) 361-4660. The purpose of the meeting is to continue to address the substantive issues.

The next two meetings are scheduled for December 6 and 7, 1989, and January 17 and 18, 1990, at locations to be announced.

Persons needing further information on substantive aspects of the rule should call Robert Ajax, Office of Air Quality Planning and Standards, U.S. EPA, (919) 541-5579. Persons needing further information on procedural matters should call Deborah Dalton, Regulatory Negotiation Project, U.S. EPA, at (202) 382-5495 or the Committee's facilitator, Philip Harter at (202) 887-1033.

Dated: October 6, 1989.

Thomas E. Kelly,

Director, Office of Standards and Regulations, OPPE.

[FR Doc. 89-24353 Filed 10-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3671-8]

Proposed Administrative Settlements Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Re-Solve; Inc. Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of CERCLA, as amended by SARA, notice is hereby given that the U.S. Environmental Protection Agency is proposing to enter into two administrative settlements to resolve claims under the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlements and of the opportunity to comment.

DATE: Comments must be provided on or before November 15, 1989.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In the Matter of: Re-Solve, Inc. Superfund Site, North Dartmouth, Massachusetts, U.S. EPA Docket Nos. I-89-1035 and I-89-1036.

FOR FURTHER INFORMATION CONTACT: Richard McAllister, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC-2203, J.F.K. Federal Building, Room 2203, Boston, Massachusetts, 02203, (617) 565-3469.

NOTICE OF ADMINISTRATIVE SETTLEMENT: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed *de minimis* administrative settlement and a proposed cost recovery settlement concerning the Re-Solve Inc. Superfund Site in North Dartmouth, Massachusetts.

The *de minimis* settlement, EPA Docket No. I-89-1035, resolves EPA claims under sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act (RCRA) against 169 settling parties at the Re-Solve Inc. Superfund Site in North Dartmouth, Massachusetts. Section 122(g) provides EPA with the authority to reach final settlement with a potentially responsible party if such settlement involves only a minor portion of the response costs at the facility concerned, and the amount and the toxic or other hazardous effects of the substances contributed by the party are minimal in comparison to the cumulative amount and the cumulative toxic or other hazardous effects of the substances contributed to the facility. The settlement requires the settling parties each to pay specified amounts totalling $3,836,057 to the Hazardous Substances Superfund. Pursuant to section 122(g)(4), the Attorney General has approved this settlement. The following parties will settle their liabilities for the Re-Solve site under this settlement.

A & R Deburring (Eyelet Toolmakers, Inc.); Acco Wilson (Babcock Industries, Inc.); Airpax Corp.; Allied Control (Gould, Inc.); Allied Metal Products, Inc.; Altek Company; American Circuitron, Inc.; American Jewelry Chain Co.; American Specialty Co.; AMF Cuno (Cuno, Inc); Amperex (N.A. Philips); Anaconda Metal Hose (Atlantic Richfield Co.); Anzac (Adams-Russel, Inc.); Arrow Mfg. Co.; Arwood Corp.; Associated Spring/Barnes Group, Inc.; Atrax Co. (Rogers Tool Works, Inc.); Aura Mfg. Co. Inc.; Autoswage Products, Inc.; Automation Industries (Sperry Rail, Inc.); Automotive Control Corp.; A.P.C.O. Products, Inc.; Baker Co., Inc.; Bassick Co. (Stewart Warner Bassick Corp.); Beaton & Corbin Mfg. Co.; Berco Mfg. (Burndy Corp.); Berkshire Transformer Corp. (Preferred

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Electronics, Inc.); Bic Corp.; Birken Mfg. Co.; Bostitch Textron (Stanley-Bostitch); Bottoms USA, Inc.; Bovano of Cheshire (Bovano Ind., Inc.); Bridgeport Machine (Textron); Bridgeport Stamp Mfg. (Bridgeport Tool & Stamping Corp.); Bullard (White Consolidated Ind., Inc.); Cablewave systems (Radio Frequency Systems Inc.); Cabot Mfg. Co. (JJJ Corp.); Cado Fabrications, Inc.; Camco Fittings (Harsco Corp.); Canberra Industries, Inc.; Capewell (Stantadyne, Inc.); Carlin Company; Casco Products, Co.; Caval Tool & Machine Co., Inc.; Chromium Process Co.; Circuit-Wise, Inc.; Coatings Technology Corp.; Colonial Bronze Co.; Columbia Mfg Company; Conard Corp.; Connecticut Mfg. Co., Inc.; Connecticut Products Finishing Corp.; Connecticut Spring & Stamping Corp.; Conn-Form Corp. (Handy & Harman Automotive Group, Inc.); Conrac-Cramer Div. (Mark IV Industries, Inc.); Contours Inc.; Contract Plating Co., Inc.; Cooper Thermometer (Cooper Instruments Corp.); Cornwall & Patterson Co. (Pratt-Read Corp.); Crawford Product, Inc.; Custom Design Services, Inc.; Davmatic, Inc.; Diventco Corp.; E.I. duPont De Nemours & Co. (Sorval); Durable Wire, Inc.; Durham Mfg Co.; Edmunds Co. (Edmunds Gages); Electrolux Corp.; Eyelematic Mfg. Co., Inc.; Eyelet Crafters, Inc.; Fairchild Semiconductor Corp.; Farrell Corp. (Emhart Industries, Inc.); Fireleite Alarms, Inc.; Fluids Control; F.W. French (Noranda Metal Ind., Inc.); General Electric Co.; General Plasma, Inc.; Heli Coil Products (Emhart Corp.); Henlopen MFG. Co., Inc.; Hi G Company (Tridex Corp.); Holgrath Corp.; H. D. Bronson; Industrial Controls (Mineleo Talley Ind.); Industrial Heat Treating (Drever Co.); Industrial Precision Components Corp.; Inertia Dynamics, Inc.; Industrial Precision Components Corp.; James L. Howard & Co.; Joma Tool (Joma, Inc.); Kanthol Corp.; Kellems (Kellums Division of Harvey Hubbell); Kemvolt of Connecticut, Inc.; Kenyon Marine (Wohl Shoe Co., Inc.; Kenyon Marine, Inc.); Kern Special Tools Co., Inc.; Klock Corp. (Wickes Co. Inc.) ; Kras Tool Mfg. Co., Inc.; L & R Metal Treating; Lacey Mfg. (Barden Corp.); Lake Eyelet Mfg. Co., Inc.; Lakewood Metal Products (Anchor Brush Co.); Lord Corp.; L. C. Doane Co.; Macdermid of Bristol (FL Aerospace Corp.); Machlett Laboratories, Inc. (Tube Holding Co., Inc.); Marvel Screw; Mattatuck Mfg. Co. (Boutin Ind. Corp.); Merriam Mfg. Co.; Metal Testing Co. (Kidde Ind., Inc.); Microtech, Inc. Milford Automatic; Milford Products Corp.; Mitchell-Bate Co.; Moroso Performance Products, Inc.; Napier Co.; Norfield Electronic Assembly, Inc.; North American Printed Circuit (Tyco laboratories, Inc.); Omega Engineering, Inc. (Omega Group); Palladin Precision Products, Inc.; Perkin-Elmer Corp.; Pic Design (Precision Industrial Components Corp.); Picker Corp. (Picker International, Inc.); Pitney Bowes, Inc.; Practical Automation, Inc.; Reece Corp.; Reliable Plating & Polishing Co., Inc.; Revere Corp. Of America; Rich Tool & Die Co.; Ridge Mfg Co. (Insilco Corp.); Romatic Mfg. Co., Inc.; Rowley Spring Co., Inc.; Rudolph Beaver Co. (Becton Dickinson Acutecare, Inc.); Scovill Apparel Fasteners (Scovill, Inc.); Sealectro Corp. (ITT Sealectro, Inc.); S & H Precision Co.; Shelton Precision Co., Inc.; Sherwood Medical Co.; Sibley Co.; Siemon Dynamic (Siemon Co.); Somers Thin Strip (Olin Corp.); Son Chief Electronics, Inc.; Standard Electric Time Corp. (Belltowne Mortage, Inc; Faraday, Inc.); Suissman & Blumenthal, Inc.; T Bar, Inc.; Talcott Screw Machine (Talcott Machine Products, Inc.); Tech Circuits, Inc.; Tech Systems; Torin Engineered Blowers (Madison Mgt. Group, Inc.); Torrington Co.; Towers Motor Parts Corp.; Tube Bends; Turner & Seymour Mfg. Co.; Tyco Engineered Systems, Inc.; Unimax (C & K/Unimax, Inc.); Union Carbide Coatings Service Corp.; United Tool & Die Co.; Unviersal Thread Grinding Co.; Veeder Root Co.; Venus Consolidated (UTI Corp.); Wallace Silversmiths, Inc. (Wallace International, Inc.; Wallace International Silversmiths, Inc.; Katy Industries, Inc.; HMW Industries, Inc.; H-K Exchange Co., Inc.; Bush Universal, Inc.; Syratech Corp., Inc.; New Wallace Corp., Inc.; International Silver Co., Inc.; International Silver De P.R., Inc.; PMW Silver De P.R., Inc.; Wallace Interantina De P.R. PMW Corp., Inc.); Wallingford Industries; Warco (Albany Intl.); Waterbury Buckle Co.; Waterbury Companies, Inc.; Waterbury Screw Machine Products Co.; W.H. Nichols Co. (Nicholas Portland/Parker Hannifin Corp.); Whiting Screw Machine (Whiting Products, Inc.); World Tableware Int'l (Insilco Corp.); Zierick Mfg. Corp.

A second settlement, EPA Docket No. I-89-1036, resolves an EPA Claim under section 107 of CERCLA against Hubbard-Hall Inc. Section 122(h) of CERCLA Provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the claim has not been referred to the Department of Justice. The settlement requires Hubbard-Hall Inc. to pay $1,632,651 to the Hazardous Substances Superfund. Pursuant to section 122(h)(1) of CERCLA, the Attorney General has provided prior written approval of this settlement.

EPA believes these settlements are fair and in the public interest. EPA will receive written comments relating to these agreements for thirty (30) days from the date of publication of this notice.

A copy of the settlement agreements may be obtained in person or by mail from EPA's Region I Office of Regional Counsel, J.F.K. Federal Bulding, Boston, Massachusetts 02203. Documents considered or relied upon in determining the *de minimis* status of each party settling under section 122(g) of CERCLA are available at the EPA Region I Records Center at 90 Canal Street in Boston, Massachusetts.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-24350 Filed 10-13-89; 8:45am]

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[FRL-3671-5]

Proposed Administrative Settlement and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: EPA is providing notice of a proposed administrative settlement for recovery of EPA's response and oversight costs pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. Public comment is also solicited by this notice.

Under 42 U.S.C. 9604, EPA is authorized to take response actions including, among other things, the investigation and cleanup of facilities where hazardous substances have or may have been released. 42 U.S.C. section 9607 provides that a party responsible for the release is liable for costs expended by the United States in its response to the problem. 42 U.S.C. 9622(h) provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the case has not been referred to the Department of Justice. This notice proposes a settlement to a claim by EPA against Garden Valley Ranch Estates Community Services District ("GVRECSD"), pursuant to this settlement authority. Because this case is one in which the United States has incurred costs less than $500,000, EPA may compromise and settle the claim without the prior written approval of the Attorney General. The settlement of this case has not been referred to the Department of Justice.

In 1986, the GVRECSD owned and maintained the roads through a residential district which was found to have been surfaced with rock containing chrysotile asbestos. On August 21, 1986, EPA issued an administrative order to GVRECSD, pursuant to 42 U.S.C. 9606(a), requiring GVRESCD to mitigate the threat to public health and the environment posed by the asbestos. As operator and maintainer of the roads, EPA determined that GVRECSD was a responsible party for the cleanup pursuant to 42 U.S.C. section 9607. When GVRECSD informed EPA that it could not comply with the Order, EPA mobilized its cleanup team and laid a chip and seal on the roads to prevent the migration of asbestos from the road bed.

EPA spent at least $166,551 in completing the containment of the asbestos. GVRECSD has agreed to reimburse EPA $25,000. Given the circumstances of the case, EPA believes that the settlement is fair and in the public interest.

EFFECTIVE DATE: November 15, 1989. Comments will be considered if received before the effective date.

ADDRESS: Comments may be mailed to: Sharon Johnson, United States Environmental Protection Agency, 215 Fremont Street, H-7-4, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Sharon Johnson, (415) 974-7801, or after 11/13/89, (415) 744-2102.

Dated: October 10, 1989.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 89-24352 Filed 10-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3656-1]

Proposed General Demonstration NPDES Permit for Oil and Gas Operations in Portions of the Gulf of Mexico; Fact Sheet

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed general demonstration NPDES permit and request for comment.

SUMMARY: The Regional Administrator of Region VI is proposing to issue a general demonstration NPDES permit to gather information on certain discharges in the Offshore Subcategory of the Oil & Gas Extraction Point Source Category. This general demonstration permit would establish BCT and BAT effluent limitations, prohibitions and other conditions on discharges of drill cuttings from mineral oil-based muds. The permit conditions would be based on application of thermal treatment and solvent extraction technologies for the treatment of cuttings from oil-based muds. The permit would allow discharges of treated cuttings from mineral oil-based muds from no more than 20 oil and gas facilities only. No more than seven (7) demonstrations of a vendor's technology would be allowed. Only facilities located in certain Federal waters in the portion of the Gulf of Mexico for which EPA Region VI administers general permit GMG280000 would be eligible for coverage. For wastestreams other than those associated with treatment of drill cuttings from mineral oil-based muds, the limitations, prohibitions and conditions set forth in general permit GMG280000 would continue to apply to facilities covered by this demonstration permit. This general demonstration permit would expire five years after the date of its publication in the **Federal Register** as a final permit.

This fact sheet sets forth the principal facts and the significant factual, legal, and policy questions considered in developing this draft permit. A copy of the draft permit is also being published today immediately following this fact sheet. The references cited in this fact sheet are available for public review at the address listed below.

Public Comments

Interested persons may submit comments on this proposed demonstration permit to EPA Region VI at the address below. The Region is seeking comments on all aspects of this proposed demonstration permit No. GMG280000, which would continue to be applicable to facilities covered by this general demonstration permit for wastestreams other than those associated with treatment of drill cuttings from mineral-oil based muds.

DATE: Comments must be received by November 30, 1989.

ADDRESS: Comments should be sent to Region Administrator, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, Permits Branch (6W-PS) U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 655-7180.

FACT SHEET AND SUPPLEMENTARY INFORMATION

I. Background

A. Summary of Background Information

EPA Region VI is proposing to issue a general demonstration permit that would allow the Agency to obtain additional information concerning thermal treatment and solvent extraction technologies for the treatment of drill cuttings from oil-based drilling fluids. These technologies are being investigated for possible application in national effluent limitations guidelines covering the oil and gas extraction category, offshore subcategory, that the Agency is now developing. See 50 FR 34592 (August 26, 1985); 53 FR 34628 (October 21, 1988). The Region has already issued two individual demonstration permits to allow data to be gathered on the performance of one of these technologies (thermal treatment). Under those individual demonstration permits, the technology has been used to treat a portion of the cuttings generated during the drilling of three wells.

The Region now has data sufficient to show that thermal treatment technology is capable of treating cuttings to reduce their oil content so as to eliminate the discharge of free oil. Based on this data, the Region believes that thermal treatment technology has the potential to eliminate or substantially reduce the volume of cuttings from oil-based muds that must be barged to shore for disposal on land to meet the requirement of general permit GMG280000 that no cuttings from oil-based muds be discharged. If the technology develops so that the volume of oil-contaminated cuttings to be disposed of on land can be reduced or eliminated on a Gulf-wide or industry-wide basis, it could alleviate potential adverse non-water quality environmental impacts of the current no discharge requirement. The Agency believes, however, that collection of further data is needed before this technology or similar technologies could be used as a basis for national effluent limitations guidelines or for any other regulatory actions covering large numbers of offshore facilities.

To gather data about the treatment efficiency and cost effectiveness of cuttings treatment technologies more expeditiously than has occurred under two individual permits, the Region is proposing to issue this general demonstration permit. The Region believes that these technologies should be tested offshore because: (1) The Agency needs data gathered when the technologies are operated under the difficult circumstances in which they

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would most likely be employed; and (2) operating offshore under the location restrictions of this permit will minimize any potential for environmental effect.

General NPDES Permits

Section 301(a) of the Clean Water Act (the Act) provides that discharges of pollutants to waters of the U.S. are unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits usually have been issued to individual dischargers, EPA's regulations authorize the issuance of general permits to oil and gas facilities (40 CFR 122.28(c)(1)). As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act.

C. General Permits Covering Oil and Gas Operations in the Gulf of Mexico and Limits on Discharge of Drill Cuttings From Oil-Based Muds

General permits were issued on April 3, 1981 under the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435), implementing Best Practicable Control Technology currently available (BPT) to cover the then existing facilities in Region VI operating in the Gulf of Mexico including:

1. Federal waters (west of 87', 40", west longitude),
2. Territorial seas of the State of Texas, and
3. Territorial seas of the State of Louisiana.

These permits were re-issued by Region VI through public notice in the **Federal Register** on September 15, 1983 (48 FR 41494, September 15, 1983), and continued past their expiration date of June 30, 1984 by the Administrative Procedure Act for current lease operators that notified EPA of their intent to be covered prior to June 30, 1984. Certain areas of biological concern were excluded from these general permits.

The pre-1986, BPT general permits allowed the discharge of cuttings from oil-based muds subject to a "no discharge of free oil" BPT effluent limitation. The permits required that the visual sheen test be used to determine compliance with this limit. To conduct the visual sheen test, an observer looks over the side of the facility (often some 60–80 feet over the receiving water) and records whether a sheen is observed on the surface of the water.

On July 9, 1986, EPA Regions IV and VI (the Regions) issued the current general permit regulating discharges from oil and gas exploration, development, and production activities in the Gulf of Mexico seaward of the outer boundary of the territorial seas off the States of Florida, Alabama, Mississippi, Louisiana, and Texas. 51 FR 24897 (July 9, 1986). (Unless otherwise indicated, all following references to "the general permit" refer to the 1986 general permit.) The Regions exercised Best Professional Judgment (BPJ) in determining: (1) Technology-based effluent limitations to control conventional pollutants under Best Conventional Technology (BCT); and 2) technology-based effluent limitations to control toxic and nonconventional pollutants under Best Available Technology (BAT). The Regions also evaluated the discharges under the Ocean Discharge Criteria (40 CFR part 125, subpart M) assuming BCT and BAT conditions were in place and set additional permit conditions.

The Regions determined that the appropriate BCT effluent limitation for drill cuttings was equal to the BPT limit of the previous permit: "no discharge of free oil." However, to implement this limit, the Regions prohibited the discharge of cuttings from oil-based muds (rather than allow discharge of these cuttings subject to a visual sheen test).

D. Basis for EPA's BCT Prohibition on Discharge of Drill Cuttings From Oil-Based Muds

Drill cuttings are mineral particles generated by drilling into subsurface geologic formations. Drill cuttings are carried to the surface of the well with the circulation of the drilling fluids and separated from the fluids by solids separation equipment (screens, shakers, desilters, desanders) on the platform. The initial separation of drilling fluids and cuttings is normally performed mechanically by a shale shaker. When oil-based drilling fluids are used, the solids control equipment leave substantial amounts of oily drilling fluid on the cuttings.

Historically, operators had used cuttings washers to remove oil before discharging cuttings from oil-based muds. However, at the time the Regions were drafting the general permit, most operators were transporting cuttings from oil-based muds to shore for disposal. This practice became common after the Department of Interior Minerals Management Service (MMS) required several major operators to remove oily cuttings from around their facilities after detection of free oil by MMS inspectors. In some cases, cuttings from oil-based muds produced visual sheens weeks or months after the cuttings were discharged even though operators had used cuttings washers. Much of this oil apparently was trapped in porous components of the cuttings. Though the cuttings might comply with the "no free oil" limitation upon discharge, they released substantial amounts of oil from their location on the ocean floor long after the original discharge occurred.

Based on this evidence, the Regions determined that cuttings washers left too much oil on the cuttings to satisfy the BCT limitations of the general permit. As the Regions did not have information indicating that other effective cuttings treatment technologies were available, the Regions proposed the prohibition on the discharge of cuttings from oil-based muds in the draft general permit.

During the comment period on the draft permit, SEDSCO, Inc. (now Thermal Dynamics, Inc.) commented that it had developed a thermal technology that would be more effective than cuttings washers in removing residual oil from drill cuttings. The Regions reviewed the available information and determined that not enough data were available on the technology to justify its use as a basis for effluent limitations. The Regions implemented the discharge prohibition on cuttings from oil-based muds and stated the rationale for their decision at 51 FR 24911:

> In response to the comment that this limitation will not encourage the development of cuttings treatment technology research, the Regions acknowledge this may be the case. However, until such time as the Regions have adequate information to demonstrate cuttings can be cleaned to achieve the no discharge of free oil limitation, the Regions do not believe they can authorize the discharge of cuttings from oil-based muds.

E. Individual Demonstration Permits for a Technology That Removes Oil From Cuttings From Oil-Based Drilling Fluids

Soon after the general permit was issued, Thermal Dynamics, Inc. (TDI) filed petition for review of the general permit in the United States Court of Appeals for the Fifth Circuit and requested administrative and judicial stays of the general permit's prohibition on the discharge of drill cuttings removed from oil-based drilling fluids. TDI argued that in view of its newly developed technology, the discharge prohibition was unnecessarily stringent and that the Regions were thus subjecting OCS operators to unnecessary expense (estimated at $5,400 per drilling day) for onshore disposal of cuttings. Subsequently, TDI provided the Agency with new information on the treatment efficiency of TDI's thermal recovery process; new information on cost savings which may result from using the process instead of barging cuttings to shore for disposal; and clarification of information submitted by SEDSCO during the comment period on the draft general permit. After reviewing this information, the Regions agreed to reconsider the ban on the discharge of cuttings from oil-based muds if provided with sufficient data on the technology's treatment efficiency.

Under the terms of the general permit, it was not possible to obtain sufficient data on the new technology's treatment efficiency and cost effectiveness. Because the general permit prohibits discharges of cuttings from oil-based muds regardless of treatment, there was no incentive for an OCS operator to incur the expense of installing a treatment unit on a drilling platform so that operational data could be obtained. To address this situation, EPA Region VI issued demonstration permits DPO601 and DPO602 to Conoco Inc., on March 31, 1987. See 52 FR 10262 (March 31, 1987). These permits allowed Conoco to discharge treated cuttings from mineral-oil based muds from one fixed platform and one mobile drilling rig for one year, and required Conoco to provide EPA with specified technical data gathered in those drilling operations and allow EPA staff to observe the treatment units in action. Under DPO601, Conoco treated a portion of the cuttings generated in drilling two wells. The technology was not used under permit number DPO602.

On June 3, 1988, Region VI reissued demonstration permit DPO602 to allow Conoco to discharge treated cuttings from one mobile drilling rig for one year (from July 4, 1988 to July 3, 1989). The reissued permit required Conoco to collect more extensive data than did the previous demonstration permits. Region VI continued the demonstration because it concluded that additional data was necessary before reconsidering the general permit's ban on the discharge of cuttings from oil-based muds. The Region's decision was also motivated by a desire to collect additional data on a technology that might be useful in development of effluent limitations and guidelines for the offshore subcategory of the oil and gas extraction point source category. See The Response to Comments on Draft NPDES Permit DPO602.

F. Summary of Data Collected Under the Individual Demonstration Permits and Other Data the Agency Has Reviewed

1. Operation of the Technology

In TDI's thermal distillation process, an auger is used to move drill cuttings through electrically heated chambers where they are exposed to controlled heat sufficient to burn, distill and/or vaporize residual oils and water. The vaporized oils and water are then condensed and separated. The condensed oils may be suitable for return to the drilling fluid. The condensed water is disposed of separately (under the individual demonstration permits, the condensed waters were discharged subject to no visual sheen test for free oil). Reduced in volume, the treated cuttings emerge from the process as a dry clay-like material. See EPA's Notice of Data Availability (53 FR 41356, October 21, 1988) for more description of this process, of three other thermal treatment processes and of one solvent extraction method for treating drill cuttings that the Agency is considering in developing effluent limitations guidelines and new source performance standards for the offshore subcategory of the oil and gas extraction category.

Under the demonstration permits, Conoco has field tested a TDI unit three times. The first test took place in August 1987 on Conoco's South Pass 75A platform. During drilling of the A–11 well, 300 barrels of cuttings were processed through the TDI unit. The remaining 2,899 barrels of cuttings generated while drilling the well were transported to shore for disposal. Conoco conducted the second test of the TDI unit in September 1987 (South Pass Block 75 (A–6 Well)). During this test, the unit processed 1,611 barrels of cuttings—51% (by volume) of all drill cuttings generated (TDI 1988). The third test began in October 1988 in the Green Canyon area. From October 18–25, the unit processed 354 barrels of cuttings. 184 barrels were hauled to shore for disposal. During each of these tests, operating problems of the kind typically associated with start-up tests on a new technology were experienced.

None of the other thermal treatment or solvent technologies that might be employed under this demonstration permit has yet been demonstrated at operational scale on an offshore facility. The Agency proposes to require that onshore trial runs of these technologies be performed prior to the submission of a request for coverage under this permit and that the applicant certify that use of the technology will result in compliance with the limitations of this permit (See Section IV, Specific Permit Conditions below).

2. Measuring Oil Content of Raw and Treated Drill Cuttings

Data on the oil content of raw and treated cuttings comes from three sources: TDI, Conoco and KRE, an Agency contractor. TDI utilized the Baroid retort method to analyze all but one of the samples it measured for oil content. As reported by TDI, the Baroid retort method indicates oil content as "Tr," "1%," 1+%," and so forth at low levels of oil content, and, at higher oil content levels, measures oil content to the nearest 0.5% by volume. One sample submitted by TDI was analyzed by a retort method that was reported to measure oil content to the nearest 0.1% by weight (TDI, 1988). Conoco used a retort method that was reported to measure oil content by weight to two significant digits (e.g., 1.9%, 0.89%). Conoco also used the soxhlet extraction method followed by gravimetric determination of oil content. This method measures oil content to the nearest 0.1% by weight and has a detection limit of 0.1% oil by weight (EPA, 1979). KRE used the soxhlet extraction method followed by gravimetric analysis and the retort-gravimetric method to analyze the oil content of cuttings samples. The Retort-gravimetric method provides accurate measurements of oil content down to 0.02% oil by weight (EPA, 1985). Although the retort method is the approved test for measuring oil content of drilling fluids in the general permit (51 FR 24926, July 9, 1986), the technique may not be appropriate for treated cuttings as it is not considered to be accurate when oil content is around 1% oil by weight or less. The Agency's preferred method for measuring oil content in drill cuttings is the retort-gravimetric method. See 53 FR 41356.

Results obtained using the soxhlet extraction and retort methods have a generally consistent relationship (retort values are about 1.23-fold larger than soxhlet values) and the data can be roughly compared. In general, retort-gravimetric data values are lower than retort or soxhlet data values. However, there is currently not enough data to establish a consistent relationship between retort-gravimetric data and soxhlet or retort data.

3. Data on Oil Content of Raw and Treated Cuttings

This discussion summarizes the data EPA has received on oil content of raw and treated cuttings from oil-based

muds. The Region's conclusions based on this data and a discussion of the Region's proposed regulatory approach for oil in treated cuttings can be found below in subpart G of this section and in section IV (Specific Permit Conditions).

TDI reported on 26 samples of raw and treated cuttings taken during the August 1987 test and 19 samples from the September 1987 tests. 40 of 45 samples of treated cuttings were reported to contain 1% or less oil by volume. The highest oil content value for treated cuttings was less than 3%. Raw cuttings were reported to contain 7% to 9% oil by volume (TDI, 1988). TDI also submitted to EPA the results of retort analyses performed on 66 samples of raw and treated cuttings during a 1987 onshore test of a TDI unit at Schoonebeek Holland. The oil content of raw cuttings ranged between 20% and 24% oil by volume. Sixty-five of the 66 samples of treated cuttings contained 1% or less oil by volume (TDI, 1988). TDI also submitted an analysis of one sample of raw and treated cuttings from an onshore test in Alaska. The oil content of the raw cuttings was 20.3% by weight. The treated cuttings contained 0.4% oil by weight. TDI acknowledges that its units for onshore treatment of drill cuttings remove oil more effectively than the unit that was tested under the demonstration permits (TDI, 1988).

Conoco collected and analyzed five samples of treated cuttings and two samples of raw cuttings during the August 1987 test. The oil content of treated cuttings ranged from 0.67% to 4.8% by weight. The arithmetic mean of the five samples was 2.9%; the standard deviation was 1.9%. One sample of raw cuttings contained 6.3% oil by weight; the other sample was reported to contain only 3.2% oil by weight. Conoco reported that the data (and several additional samples that were collected but not subjected to further analysis) are not considered representative due to severe operating problems with start-up and initial operation of the TDI unit.

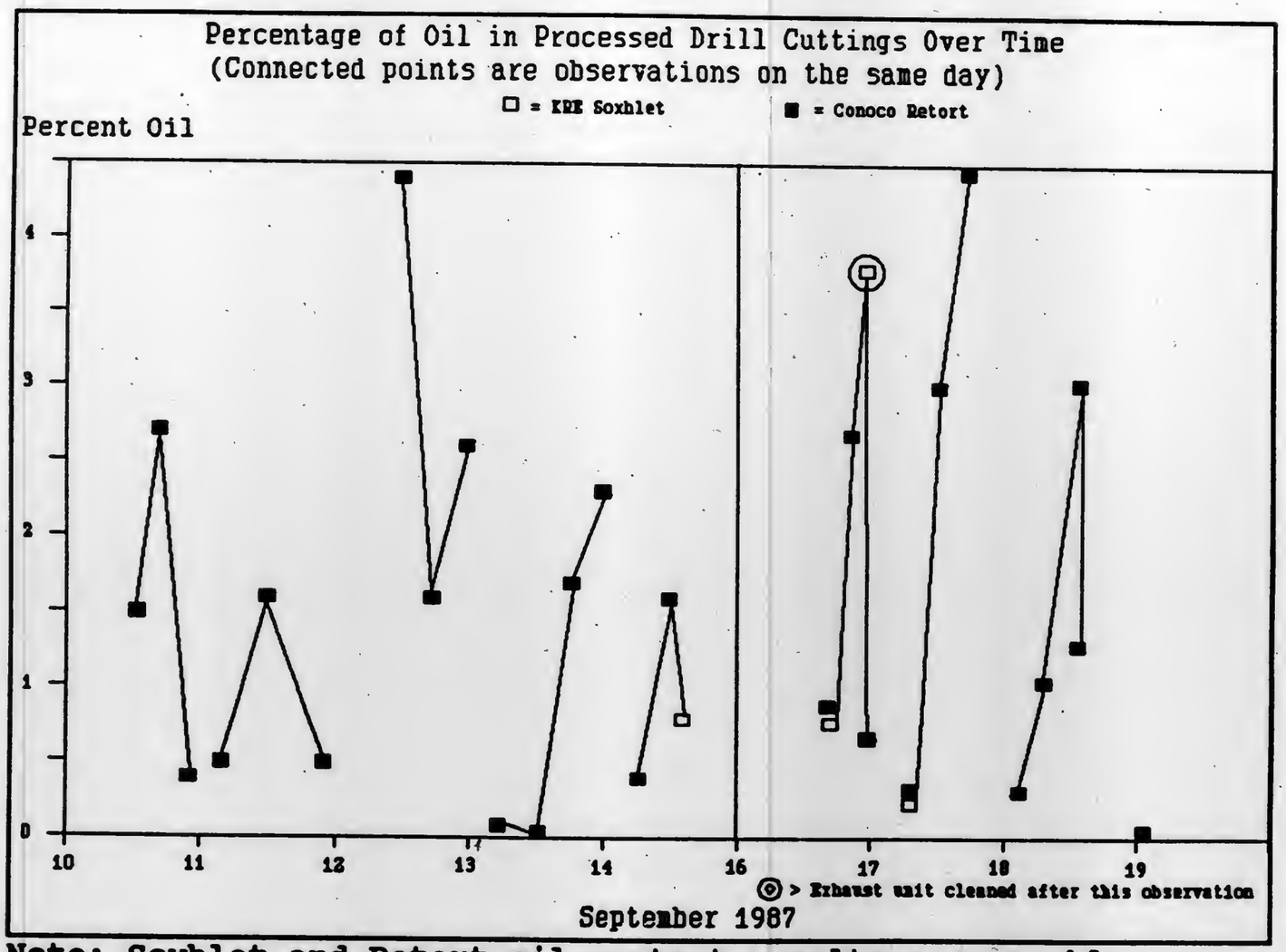
Conoco collected 26 samples of raw and treated cuttings during the September test. All samples taken by Conoco were analyzed by the retort method. By retort, the oil content of treated cuttings ranged from 0.05% to 4.54% by weight. The average oil content was 1.53%; the standard deviation was 1.29%. The oil content of raw cuttings ranged from 3.2% to 11.9% and averaged 6.97%. Fourteen of the 26 samples were analyzed by what EPA considers to be soxhlet extraction (reported as gravimetric by Conoco). Oil content of treated cuttings ranged from 0.15% to 3.99% by weight. The average oil content was 1.36% by weight; the standard deviation was 1.2%. Oil content of raw cuttings ranged between 3.25% and 7.45% by weight and averaged 6.09% (TDI, 1988).

During the September 1987 test of the TDI unit, EPA collected samples and performed analyses for oil content and a number of other parameters. EPA has previously described its sampling program and summarized its findings in its Notice of Data Availability (53 FR 41356, October 21, 1988). Also see Kohlmann Ruggiero Engineers, P.C. (KRE), 1988.

EPA tested four samples of raw cuttings and four samples of treated cuttings for oil content using soxhlet extraction and retort gravimetric methods. The raw cuttings contained an average of 7.11% oil by weight (soxhlet) and 5.82% oil by weight (retort-gravimetric). Using soxhlet extraction, processed cuttings contained 0.23% to 3.8% oil by weight. The average of the four samples was 1.4%; the standard deviation was 1.63%. By retort-gravimetric analysis, the oil content of the same samples ranged from 0.44% to 0.86%; the average value was 0.61%; the standard deviation was 0.18% (KRE, 1988).

Figure 1 below uses the EPA soxhlet and Conoco retort data from the September 1987 test to show the oil content of treated cuttings over time during the test. The pattern of oil content of treated cuttings over time during each operating day suggests that some non-random factor may affect the oil content of these cuttings. In Figure 1, the oil content of treated cuttings can be seen to rise for some period of time and then drop abruptly, as if some event has occurred. This pattern seems to recur. In no case does oil content drop in a series of increments, greater than analytical method variability, as one would expect to see if the variation in oil content is random. In other words, if the oil content removal process were entirely random then no recurring patterns would be seen.

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Note: Soxhlet and Retort oil content results are roughly comparable in the range of this data.

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Some evidence indicates that the oil content of drill cuttings processed by the TDI unit may depend on how often maintenance is performed. On September 16th, after the oil content of the processed drill cuttings rose from 0.77% (Conoco Soxhlet) to 3.8% (EPA Soxhlet) over a period of several hours, a clogged exhaust unit was noticed. Fifteen minutes later, perhaps after the TDI unit was serviced, the oil content dropped to 0.44% (Conoco Soxhlet). While these data suggest that equipment maintenance is required to interrupt a steady increase in the oil content of the processed drill cutting, the available data are not conclusive. More information on maintenance of the TDI unit during tests is needed to prove or disprove this assertion. If equipment servicing or some other factor such as temperature of the thermal chambers, cuttings residence time, or oil content of raw cuttings affects the oil content of processed drill cuttings, the Agency would need to have sufficient data to model the effect and to derive appropriate limitations for the technology.

During the August and September 1987 tests, the oil content of the raw cuttings was considerably lower than expected for the type of mud being used. This was probably because all of the processed drill cuttings came from the primary shale shaker. (The cuttings from the primary shale shaker are physically the largest cuttings in the entire cuttings recovery system. The finer cuttings from the secondary shaker, the desilter and the centrifuge would have higher oil content due to their higher surface area.)

With its comments on EPA's Notice of Data Availability (53 FR 41356, October 21, 1988), Conoco submitted retort data on nine samples of raw and treated cuttings from the October 1988 Green Canyon test. Raw cuttings contain between 5.83% and 18.65% oil by weight and contain an average of 11.08% oil by weight. Treated cuttings contain between 0.35% and 8.46% oil by weight and contain an average oil content of 3.64% by weight (Conoco, 1988).

4. Data on Oil Content of Other Wastestreams

During the second Conoco test, EPA measured the oil content of four samples of the combined seawater/treated cuttings slurry, the condensed water, the condensed hydrocarbons and the seawater used to sluice the cuttings. All samples were analyzed by the gravimetric method for measuring oil and grease in wastewaters (EPA Method 413.1 Oil and Grease). Both the combined seawater/cuttings slurry and the condensed water contained an average of 0.06% oil by weight (600 ppm). The condensed hydrocarbons were 97.4% oil by weight. The sample of the seawater used to sluice the cuttings contained an average of 0.003% oil by weight (32 ppm) (KRE, 1988). Based on these findings, EPA proposes to prohibit the discharge of condensed hydrocarbons and to require that the oil and grease level in condensed waters be reduced to 48 mg/liter as a monthly average and 72 mg/liter as a daily maximum limit before discharge.

5. Visual Sheen Test Data

Conoco reports that no sheens were observed when treated cuttings were discharged during the August 1987 and September 1987 tests (Kubena, et al., 1988). The EPA and TDI studies did not address whether visual sheen observations were made during the trial run. While the Region believes that visual sheen observations should include more information than was provided by Conoco and should be recorded in log books at the time of the observation and signed by the observer, the Region believes that it is unlikely that discharging cuttings which have been treated to the level possible with TDI's new technology would constitute a "discharge of free oil." One factor that supports this conclusion is the observation that cuttings from water-based muds (about 12% of which may contain approximately 1% oil by weight) have rarely, if ever, been observed to cause visual sheens. In comparison, as described above, treated cuttings from oil-based muds contain an average of 1.4% oil by weight when measured by soxhlet extraction and 0.6% when measured by the retort-gravimetric method.

In today's notice, the Agency is proposing to increase the specificity of the monitoring requirement for visual sheen observations (See section IV. Specific Permit Conditions below). For informational purposes, the Agency is proposing to require that treated cuttings be subjected to the minimal volume static sheen test (TRI, 1986).

6. Toxicity

The Conoco and EPA reports on the September 1987 trial run contain raw laboratory data on the acute toxicity of untreated and treated cuttings from the TDI equipment. The Conoco report also contains data on the acute toxicity of condensed water.

The acute toxicity of a material is usually measured by determining an LC_{50}. An LC_{50} is an estimate of the concentration of a material in an appropriate dilution water (e.g., seawater for a marine test species) that will kill fifty percent of a group of organisms within a specified time period. Typically, as is the case with the toxicity test for the suspended phase of drilling fluids, the test period is ninety-six hours. High LC_{50}s imply that a substance is non-toxic while low LC_{50}s imply that it is toxic. Information about toxicity testing and analytical procedures used by Conoco and EPA can be found in two of the references supporting this fact sheet (Parrish et al., 1988 and TDI, 1988). In order to make the toxicity data developed by the two laboratories more directly comparable, EPA recalculated the LC_{50} value for each test from the raw data using maximum likelihood probit analysis with optimization for control mortality (EPA, 1989).

It appears that cuttings from oil-based muds treated by the TDI unit are not highly toxic. Their estimated toxicity is more than one order of magnitude less than the current limit in the general permit on discharges of water-based drilling muds. The two Agency samples of processed drill cuttings have estimated LC_{50}s of 31.7% and 40.7% (317,000 ppm and 407,000 ppm).

In the industry and EPA studies, samples of the same wellmixed drill cuttings were not tested for toxicity before and after treatment. Hence, the data do not support a direct analysis for the effect of treatment on toxicity. The average estimated LC_{50} from the Agency's two properly conducted tests of the unprocessed sample of drill cuttings was 6.75% (67,500 ppm). The estimated LC_{50} value for this sample is lower (more toxic) than any sample of processed drill cuttings that was tested. However, analysis of the industry toxicity test for one sample of untreated drill cuttings gives an estimated LC_{50} of 47.6% (476,000 ppm). The estimated LC_{50} value for this sample is higher (less toxic) than any sample of processed drill cuttings that was tested.

Industry also performed a drilling fluid toxicity test on one sample of condensed water from the TDI unit. The condensed water had relatively low toxicity (the LC_{50} from this test was 53.9% (539,000 ppm)).

7. RCRA Components

EPA performed RCRA components tests on both raw and processed cuttings. Neither material ignited below 200 °F and both are considered noncorrosive under the EPA standard at 40 CFR 261.22. Both materials proved nonreactive in tests for cyanide and sulphates. pH measurements of the condensed water and treated cuttings/seawater slurry ranged from 7.5 to 8.5. The average pH of the condensed water was 8.1; the average pH of the treated cuttings/seawater mixture was 8.3. Based on these findings, neither the raw nor the treated cuttings fail the EPA tests for hazardous wastes.

8. Priority Pollutants and Other Toxic Pollutants

Conoco tested raw cuttings, processed cuttings, condensed hydrocarbons and condensed water for the presence of the 88 priority organic compounds. Conoco reports that no priority organics were detected in raw or treated cuttings. Conoco did detect priority organics in the condensed wastestreams. The condensed hydrocarbons contained toluene (45 mg/kg); ethyl benzene (35 mg/kg) and benzene (25 mg/kg). The condensed water contained semivolatile phenol (10,000 ug/kg or 10 mg/kg); benzene (110 ug/kg); toluene (81 ug/kg); chloromethane (16 ug/kg); ethyl benzene (11 ug/kg) and chlorobenzene (5.4 ug/kg). The exact volume of these waste streams was not reported, but Conoco notes that the volume of the condensed water generated was "very small" (Kubena et al., 1988).

EPA tested a total of ten samples for 234 organic compounds—one sample of raw cuttings, four of processed cuttings, one of condensed hydrocarbon and four of condensed water. The Agency detected six of the compounds in the raw cuttings and 18 of the compounds in the treated cuttings. In the raw cuttings, priority organics were not detected. In processed cuttings, the Agency detected: Naphthalene (4595 ug/kg); toluene (64 to 496 ug/kg); benzene (57 to 116 ug/kg); and ethyl benzene (14 ug/kg). EPA's data on organic compounds in the condensed hydrocarbons and condensed water were similar to the Conoco findings.

9. Biological Oxygen Demand (BOD)

Conoco collected BOD data which show average BOD values of 1,890 mg/kg for raw cuttings and 1,650 mg/kg for treated cuttings. The Agency believes that these levels of BOD would not unreasonably degrade the marine environment.

10. Solids Content

The Agency tested the treated cuttings/seawater slurry, the condensed water and the receiving water for TSS and found that, on average, slurried cuttings contained 12.4% TSS (12,365 mg/l); condensed water contained 79.5 mg/l TSS; and the receiving water contained 24 mg/l TSS. The Agency believes that these levels of solids will not unreasonably degrade the marine environment.

11. Air Emissions

Conoco tested the TDI unit's air emissions. Particulate matter emissions (3 samples) averaged 0.0113 mg/m^3. Eight measurements for organics indicated that, on average, the off-gas contained 39.33 mg/m^3 of benzene and 17.52 mg/m^3 of toluene. Total hydrocarbon emissions were 9.158 mg/m^3. The average of three samples tested for SO_X and NO_X was less than 1 mg/m^3 of each pollutant. Average CO concentration was 621 mg/m^3 (four samples tested). EPA did not take air samples due to unavailability of air sampling personnel during the Agency's sampling effort.

Air emissions from OCS oil and gas facilities are regulated by the MMS. Currently, the only parameter that MMS limits is total yearly hydrocarbon emissions. The current limit is 33.3 tons per year of hydrocarbon emissions times the distance of the facility to shore in statute miles. EPA has submitted data on air emissions from the TDI unit to the MMS for its consideration and will closely consult with the MMS about air emissions from this or other cuttings treatment technologies. Agency concerns about emissions of ozone-damaging compounds from the solvent extraction process for treating drill cuttings are discussed in the Notice of Data Availability (53 FR 41356, October 21, 1988).

12. Costs

EPA recently requested comments on cost information the Agency had developed on the TDI technology, one other thermal treatment technology and a solvent extraction method for reducing the oil content of drill cuttings (See 53 FR 41356, October 21, 1988). The Agency estimates that, after adjustment for the value of oil recovered, the TDI unit would cost $70 per barrel of cuttings treated. A second thermal distillation process would cost $36 per barrel of cuttings treated (only a prototype "demonstrator" model of this unit has been tested on drill cuttings). EPA estimates that the solvent extraction method would cost $75 per barrel of cuttings treated after adjustment for the value of the oil recovered. In comparison, EPA estimates that onshore disposal of drill cuttings would cost about $46 per barrel.

For the September 1987 test of the TDI unit, Conoco reports spending $127,460 to rent the TDI unit and an additional $60,000 to modify the drilling platform for its installation. It thus cost Conoco about $116 to treat each barrel of raw cuttings (1,611 barrels) treated under the demonstration permit. By contrast, Conoco has said it paid $62,000 or slightly over $40 per barrel for transportation and onshore disposal of untreated cuttings generated in the same drilling operation. The Agency does not believe that this cost comparison is definitive because, as cuttings treatment technologies are currently under development, the cost of using these technologies may drop. In addition, in a limited demonstration such as the September 1987 test, the volume of cuttings treated is so low as to magnify the effect of fixed costs that were incurred.

13. Non-water Quality Environmental Impacts

Air emissions and energy consumption are two potential non-water quality environmental impacts of treating cuttings from oil-based muds. Air emissions were discussed in Item 11 above. While the Agency has limited information about the energy consumption of cuttings treatment technologies, the Agency has no evidence that these technologies consume significant amounts of energy. EPA will request that additional information about the energy consumption of cuttings treatment technologies be provided by operators under this demonstration permit. To the extent that offshore-generated cuttings contribute to environmental problems associated with land disposal of oil and gas wastes onshore, issuing this general demonstration permit may have a positive effect by decreasing the volume of cuttings that is barged to shore for disposal.

14. Safety

The Agency has been presented with information about flash fires that occurred during operation of the TDI unit under the individual demonstration permits (Conoco, 1989). The Agency has also been presented with information about the potential for accidents in rough seas that could endanger workers involved in the transportation of cuttings to shore for disposal (API, 1989).

Currently, occupational safety and health at OCS oil and gas facilities is regulated by the MMS and the U.S. Coast Guard. EPA has submitted all data it has received on safety issues to the MMS and the Coast Guard for their review. EPA will consult closely with these agencies on all actions EPA takes that may affect occupational safety and health on OCS oil and gas facilities.

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G. The Region's Conclusions Based on Available Data

During the individual demonstration permit program, one vendor of a cuttings oil content reduction technology has demonstrated the ability to set up and run its technology on an offshore development facility. The technology has been shown, when operating properly, to be able to reduce the oil content of drill cuttings, separated from an oil-based mud at the primary shale shaker, to less than 1% by weight (as measured by retort-gravimetric analysis). The processed cuttings were dry and granular in appearance. The results indicate that the thermal distillation unit tested could achieve a significant reduction in the oil content of drill cuttings. Although the treatment efficiency of the process is still under investigation, it is apparently much more effective than cuttings washers. The Region believes that it is unlikely that discharging cuttings which have been treated to the level possible with TDI's new technology would result in a "discharge of free oil." Levels of other pollutants and pollutant parameters in the treated cuttings (toxicity, BOD, TSS) are lower than or similar to levels of these pollutants in water-based muds and cuttings which are currently discharged under the general permit.

Despite issuing two individual demonstration permits to gather data on thermal distillation technology and despite a number of generally favorable findings, the Region has determined that it has not received enough information to conclude that the technology is an appropriate basis for setting effluent limitations and conditions in the general permit or as a basis for national guidelines. One factor is that the technology has not been demonstrated to be cost-effective when compared to transport to shore and land disposal, the current BCT basis for meeting the "no discharge of free oil" requirement in the general permit. Operating problems of the kind typically associated with start-up tests on a new technology have kept the TDI unit from processing cuttings at a rate that could treat all cuttings generated during normal drilling operations. At currently demonstrated processing rates, users of the technology would still incur the fixed costs associated with barging cuttings to shore for disposal. The cost-effectiveness of this technology or similar technologies may improve and considerations other than cost might have great weight in an operator's decision to employ a particular technology. However, to conclude that onshore disposal was an inappropriate technology basis for the BCT-level controls on free oil in the general permit, the Region would need more evidence that the costs of an alternative BCT technology appear to be roughly in line with the cost estimates for onshore disposal.

The Region is also concerned about the variation in oil content of cuttings treated by the TDI unit. The available data show that treated cuttings may sometimes contain more than 4% oil (as measured by soxhlet extraction and retort methods), a level that Region is not convinced will ensure compliance with the visual sheen test for free oil. The available data suggest that variation in oil content is not entirely random and that a factor such as time since maintenance was performed may contribute significantly to the variation in oil content. However, there is not enough data at this time to conclude that equipment servicing or other factors such as oil content of the raw cuttings, kiln temperature or cuttings residence time is a substantial cause of the variation. If operation of cuttings treatment technologies under this demonstration permit indicates that variation in oil content is dependent on a factor such as a maintenance, the Region may determine that it would be appropriate to set a permit condition such as a maximum operating time before equipment is serviced if the Region were to propose to modify the Gulf-wide general permit.

H. Decision To Propose a General Demonstration Permit Rather Than Individual Demonstration Permits and Discussion of the Scope of the Proposed Permit

Because of the Region's difficulty in gathering sufficient data on the effectiveness of cuttings oil content reduction technologies in a timely fashion, the Region has decided to propose to issue a five-year general demonstration permit. The Region believes that the potentially larger number of facilities participating in the demonstration will facilitate the generation of necessary data. By opening up the proposed demonstration to other vendors of cuttings treatment technologies and other operators of offshore oil and gas facilities, the Region is not favoring one technology or operator over others.

The Region believes that these technologies should be demonstrated offshore rather than on land or in near-shore waters for a number of reasons. These technologies are primarily intended for operation on offshore rigs where the discharge of cuttings from oil-based muds is prohibited. To properly evaluate the treatment efficiency of the technologies, it is necessary to operate them under the difficult conditions (primarily the space limitations) imposed by drilling on platforms and mobile rigs. As these technologies are not yet fully demonstrated, the Agency believes it is prudent to operate them in deep, far-offshore waters so that any potential environmental effects can be minimized. Also, the demonstrations that have occurred to date and other information the Agency has received indicate that, in near-shore waters, these technologies may be more expensive than onshore disposal of drill cuttings. It is possible that these technologies will be cost-effective only in far-offshore waters where barging costs are higher than average.

As the purpose of this proposed permit is to gather data, the Region believes that no more than 20 facilities should participate in this demonstration and that no more than seven demonstrations of any one vendor's technology should be allowed. A demonstration of this magnitude should supply the Agency with sufficient data to conclude whether cuttings treatment technologies may be an appropriate basis for BAT effluent limitations for drill cuttings.

Only discharges of cuttings from mineral-oil based muds would be authorized under this permit. As the technologies that would be operated under this permit are not yet fully demonstrated, the Region believes that it would be inappropriate to permit the discharge of cuttings from more toxic diesel oil-based muds.

Based on the Agency's experience with individual permits DP0601 and DP0602, the Region has concluded that a five-year term is appropriate for this general demonstration permit. The Region believes that a shorter permit term would not allow for further technology development where needed; agreements to be reached between technology vendors and offshore operators; and actual installation and operation of the technologies.

II. Nature of Discharges From Cuttings Oil Content Reduction Technologies

After thermal treatment, processed cuttings from oil-based muds are in the form of a granular material. The material is cooled and slurried by mixing with seawater and then discharged to the ocean. The water and hydrocarbon vapors driven from the wastes are condensed and then separated in an oil/water separator. The hydrocarbons recovered can potentially be recycled and reused in the active mud system, subject to meeting the specifications for oil additives to the mud. Alternatives to recycling the recovered hydrocarbons would be to dispose of them separately or to market them for other purposes (e.g., heating fuel). If the recovered water meets effluent limitations, it could be suitable for discharge. If the recovered water does not meet these effluent limitations it may be necessary to treat the recovered water. If there are no oil/water separation facilities at the site the recovered water may need to be transported to another facility for adequate treatment or handling. Exhaust gases from the heating chambers in the thermal distillation unit and from the condenser would be treated to achieve appropriate air emissions standards. Similar wastestreams would be discharged after treatment of cuttings by a solvent method for oil extraction.

III. Statutory Basis for Permit Conditions

A. BCT and BAT Limitations

The proposed demonstration permit would change the regulatory requirements applicable to participating facilities as follows: It would allow the discharge of cuttings from mineral oil-based muds by participating facilities subject to (1) a by-weight limitation on "oil content" of treated cuttings; (2) a toxicity limit; and (3) a "no discharge of free oil" limit as measured by the visual sheen test or, at times when a visual observation of sheen is not possible, by a static sheen test. There would also be a limitation on the oil and grease levels in condensed waters that are discharged and a prohibition on the discharge of condensed hydrocarbons. In all other respects, the provisions in the Gulf-wide general permit would continue to apply.[1]

The Gulf-wide permit prohibits the discharge of "cuttings from oil based muds" as a BCT limitation. 51 FR 24,898, col. 3 (July 9, 1986) (preamble); 51 FR 24,921, col. 2 (permit) ["(a) Cuttings From Oil Based Drilling Fluids Discharge Prohibition. The discharge of cuttings, produced when using oil-based or inverse emulsion drilling fluids, is prohibited."] In addition, the permit prohibits the "discharge of free oil from discharges authorized by this permit, with the exception of produced water discharges * * *" 51 FR 24,899, col. 1 (preamble).

[1] In *NRDC* v. *EPA*, 863 F.2nd 1420 (9th Cir. 1988), the Court invalidated the provisions of the Gulf-wide general permit relating to "alternate toxicity limits." The references to the provisions of the Gulf-wide general permit in this fact sheet and in the proposed permit do not refer to those invalidated by the Court.

The explanation for the BCT discharge prohibition on oil contaminated drill cuttings was as follows: "The final permit prohibits the discharge of cuttings associated with oil-based muds. The Regions determined that the discharge of such cuttings would violate the BPT "no discharge of free oil" limitation (see response to Comment 10)." 51 FR 24,899, col. 1.

The response to Comment 10 elaborated: "Because of * * * past permit violations, the Regions have determined to prohibit the discharge of cuttings associated with oil based muds. The Regions do not have sufficient information at this time to demonstrate that current cuttings washers technologies can consistently reduce the oil content of cuttings below 10 percent (Jones and Burgbacher 1983). The Regions do not believe this is sufficient to comply with the BPT "no discharge of free oil" limitation * * * [U]ntil the Regions have adequate information to demonstrate cuttings can be cleaned to achieve the no discharge of free oil limitation, the Regions do not believe they can authorize the discharge of cuttings from oil based muds." 51 FR 24,911, col. 2.

Thus, the Regions' reason for imposing the prohibition on discharge was that they had insufficient data to conclude that discharges of cuttings treated with cuttings washers would not violate the "no free oil" limitation. The Regions left open the possibility of revision of the BCT prohibition on the discharge of cuttings from oil-based muds after receipt of data showing that the cuttings could be treated so as not to release "free oil." (General permits issued by EPA Region X already allow the discharge of cuttings from oil-based muds, but impose a 10% limitation on oil content, a static sheen test to additionally limit the discharge of "free oil," and toxicity limitations and other limits addressing the regulatory concerns associated with the discharge of cuttings from oil-based muds.)

Region VI now has data sufficient to show that the thermal distillation technology is capable of treating cuttings to reduce the oil content to less than 1% by weight so that the "no free oil" standard can be met. The data are not sufficient, however, to support Gulf-wide modification, principally because doubts remain concerning the reliability of the technology and its ability to consistently treat the necessary volume of cuttings.

Moreover, the thermal distillation technology has the potential to eliminate or substantially reduce the volume of oil-contaminated cuttings that must be barged to shore for disposal on land. If the technology develops so that the volume of cuttings to be disposed of on land can be reduced or eliminated on a Gulf-wide or industry-wide basis, it could alleviate potential adverse non-water quality environmental impacts of barging to meet the current no discharge requirement.

Region VI has already issued two individual demonstration permits that allow the discharge of cuttings from oil-based muds in order to gather data that would allow full evaluation of the capabilities and environmental effects of the use of thermal distillation on cuttings from oil-based muds (one individual demonstration permit expired July 3, 1989). The U.S. Court of Appeals for the Ninth Circuit referred to these permits with approval in *NRDC* v. *EPA*, 863 F.2nd 1420, 1433 (9th Cir. 1988). This proposal would expand the demonstration program to cover 20 additional facilities, but it also would include stringent additional controls (e.g., oil content and toxicity limitations) and enhance the usefulness of resulting data by expanding the monitoring requirements.

As "oil content" is a nonconventional pollutant, it is being subjected to BAT level control. In addition, as EPA stated in a recent notice of data availability concerning the development of effluent limitations guidelines for the offshore subcategory, "oil content" is an indicator pollutant to control the discharge of priority and nonconventional organic pollutants present in the hydrocarbons that are added to drilling fluids and in the hydrocarbons from formation fluids that are entrained in the drilling fluid. These same priority and nonconventional pollutants are present in the drill cuttings wastestream and may be similarly controlled by an oil content limitation. 53 FR 41,374 (October 21, 1988).

As noted in Part I.F.8 of this notice, EPA found that thermally treated drill cuttings do contain detectable levels of priority organic pollutants. The Region believes that the regulatory approach described in section IV (Specific Permit Conditions) would appropriately control these priority pollutants and other toxic pollutants. The Region believes that setting specific BAT limitations for these individual toxic pollutants is not feasible.

The Region finds that thermal distillation is the best available technology to treat oil content in cuttings from oil-based muds. Available cost data show that it is economically achievable. The reduction of waste to be

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disposed of on land (a non-water quality environmental impact) is an important consideration in the Agency's determination of BAT for this proposed permit. EPA will use the data generated by any participating facilities to determine appropriate BAT-level controls for drill cuttings in the national effluent guidelines rulemaking and to consider modifying the Gulf-wide general permit.

As the data currently available are not sufficient for developing a BAT toxicity limitation specific to treated cuttings, the Region is proposing to set a toxicity limit based on the general permit's BAT toxicity limitation for drilling fluids. Setting such a limit would ensure that discharges of treated drill cuttings contain no more toxicity than discharges of drilling fluids authorized by the general permit.

Condensed or otherwise separated water will be treated in the same manner as produced waters are regulated in the general permit: they will be subjected to a BCT limitation on oil and grease content. The discharge of condensed or otherwise separated hydrocarbons will be prohibited so as to meet a "no discharge of free oil" BCT limitation.

B. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into marine waters located seaward of the inner boundary of the territorial seas be issued in accordance with guidelines for determining the degradation of the marine environment. Section 403 and these guidelines, referred to as the Ocean Discharge Criteria (40 CFR part 125, subpart M), are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

An exhaustive Ocean Discharge Criteria Evaluation (ODCE) was completed for all discharges from oil and gas facilities in the area covered by this demonstration permit before the current Gulf-wide general permit was issued. The ODCE found that, when discharged in compliance with the limitations in the Gulf-wide general permit, the effects of drilling muds, cuttings and produced waters would not be measurable beyond a distance varying from meters to hundreds of meters for chemical effects on benthic sediments or biological effects on benthic communities. The ODCE found that the effects due to the suspended solids loads of these discharges would not be measurable beyond a distance varying from hundreds of meters to a few thousand meters. The effect on biological populations in the water column is virtually negligible. Regarding all other criteria that make up the ODCE, the Region found that the effects of discharges from oil and gas facilities, singly, are local and ephemeral and do not constitute unreasonable degradation of the marine environment.

The Regional Administrator has concluded that oil and gas facilities operating under the effluent limitations, conditions and prohibitions in this proposed general demonstration permit would not cause unreasonable degradation of the marine environment pursuant to the Ocean Discharge Criteria guidelines. One basis for this determination is that the mineral oil content of treated cuttings is expected to be less than the mineral oil content of water-based muds to which oil has been added and cuttings from muds that are currently authorized to be discharged under the general permit. BOD, TSS and toxicity levels in the treated cuttings are similar to or lower than the levels of these parameters in materials that are currently authorized to be discharged. The volume of material discharged under this permit would be extremely small compared to currently permitted discharges under the general permit. Finally, cuttings are discharged as they are produced. Therefore, bulk discharges comparable to end-of-well drilling fluid tank discharges are not anticipated. Continuous discharge at a low rate during drilling operations would yield excellent dispersion and further reduce any adverse environmental effect.

C. Section 308 of the Clean Water Act

Under section 308 of the Act and 40 CFR 122.44(i) the Administrator must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations. EPA has proposed extensive monitoring requirements in this general demonstration permit, as described in section IV Specific Permit Conditions below.

IV. Specific Permit Conditions

A. Approach

The determination of appropriate conditions for discharges associated with operation of cuttings oil content reduction technologies was accomplished through: (1) Consideration of technology-based effluent limitations to control conventional pollutants under Best Conventional Technology (BCT); (2) consideration of technology-based effluent limitations to control toxic and nonconventional pollutants under Best Available Technology (BAT); and (3) evaluation of Ocean Discharge Criteria and other legal requirements (e.g., consistency with Coastal Zone Management Plans), assuming BCT and BAT conditions were in place.

As this proposed demonstration permit is intended to gather data for use in future regulation of drill cuttings wastestreams, the Region has proposed that extensive information be submitted with requests for coverage and has proposed limits on the number of facilities eligible for coverage and on the number of demonstrations involving any one vendor's technologies. Discussions of the proposed eligibility and application requirements and specific proposed effluent limitations and monitoring requirements appear below.

B. Eligibility for Coverage Under This Permit

Only 20 oil and gas facilities covered by the general permit would be eligible for coverage under this proposed permit. In addition, no more than seven (7) demonstrations of any one vendor's technology would be authorized. The Region believes that a demonstration on this scale is sufficient to provide the data needed to resolve remaining questions about the efficiency of cuttings oil content reduction technologies. As described under F. below, only facilities located in certain geographic areas would be eligible for coverage.

Only discharges of treated cuttings from mineral-oil based muds would be authorized under this permit. As the technologies that would be operated under this permit are not yet fully demonstrated, the Agency believes that it would be inappropriate to allow the discharge of cuttings from more toxic diesel oil-based muds.

C. Requests for Coverage

The Region is proposing that a written request for coverage by the general demonstration permit be provided as described in part II. C. of the proposed permit at least 60 days prior to the proposed date of initiation of discharges of treated cuttings and condensed waters at the site. The request for coverage would identify the legal name and address of the operator, identify the location of the proposed demonstration and provide information on conditions at the site that might, under the terms of the proposed permit, prohibit discharge at the intended demonstration site. It is proposed that the request for coverage be accompanied by a signed and dated certification by the applicant that: (1) The applicant has carefully reviewed the permit and understands its limitations, terms and conditions; (2) the location of the proposed discharge complies with the location restrictions imposed by the permit; (3) an onshore trial run of the cuttings treatment technology meeting the requirements of part II.C.2 of this permit has been completed; (4) the applicant has mailed to EPA all of the information required for documenting the design and performance of the cuttings treatment technology to be employed (*See* part II.C.2 of the permit); and (5) based on the applicant's careful evaluation of the data generated during the onshore trial run, the technology that will be demonstrated will meet the limitations of the permit.

Applicants would also be required to submit the following support information to the Director, Industrial Technology Division (WH-552), U.S. EPA, 401 M St. SW., Washington, DC:

(1) A description of how the cuttings treatment technology operates;

(2) The stated treatment capacity of the equipment;

(3) Data from an onshore trial run of the equipment to be operated under the permit showing the amount of each of the various wastestreams generated (including air emissions) and the amount of cuttings treated;

(4) Data from the trial run on the oil content of the raw and treated cuttings as measured by retort-gravimetric analysis (Proposed Method 1651, 53 FR 41356, October 21, 1988);

(5) Trial run data on the oil content of any liquid wastestreams (e.g., condensed hydrocarbons and condensed water) as measured by the gravimetric method (EPA Method 413.1 Oil and Grease);

(6) Results of static sheen tests (as a visual sheen test will not be possible under a trial run) conducted under the protocol described in Appendix B to the attached proposed permit;

(7) Data from the trial run on the toxicity of the raw and treated cuttings and any other wastestream proposed to be discharged (e.g., condensed waters) (the required toxicity test methods are described in the attached draft permit);

(8) Data from the trial run on the levels of TSS, BOD and priority pollutants in wastestreams that are proposed to be discharged and from the Resource Conservation and Recovery Act (RCRA) tests for characteristic hazardous wastes;

(9) Data from the trial run on the levels of total particulates, total hydrocarbons, SO_X, NO_X and CO in air emissions;

(10) Information on space requirements and weight of the equipment;

(11) Information on energy requirements;

(12) An operating and maintenance log indicating all hours of operation during the trial, what maintenance was performed and when it was performed; and

(13) An estimate of the cost per barrel of cuttings treated if the equipment was operated under this permit, accompanied by a description of all assumptions and information used in developing the estimate.

The Region will decide whether to grant the request on the basis of the request for coverage and on the certification which is to accompany the request for coverage.

D. BCT Requirements

The Region has determined that the appropriate BCT limit for discharge of treated cuttings is a requirement that no free oil be discharged, as measured by the visual sheen test. The Region also proposes to apply the BCT findings for produced waters in the general permit and require that the oil and grease levels in any condensed or otherwise separated waters that are discharged meet the general permit BCT limit for produced waters: 72 mg/liter as a daily maximum and 48 mg/liter as a monthly average. The Agency believes that this approach is appropriate as: (1) The physical and chemical characteristics of the two wastestreams are similar and (2) The technologies available for treating produced waters can be applied without modification to the waters that may be separated during treatment of drill cuttings.

The discharge of hydrocarbons removed from the cuttings during treatment would be prohibited in order to ensure compliance with the existing "no discharge of free oil" limitation.

E. BAT Requirements

The Region is proposing to set a BAT level oil content limit on treated cuttings based on the four samples of treated cuttings the Agency collected in September 1987 under demonstration permit DP0601. The September 1987 test was the longest and most successful of the offshore demonstrations to date and most closely indicates the treatment efficiency the technology can achieve. In addition, these data are the only data measured by the Agency's preferred method for measuring oil content of drill cuttings. As the oil content of these four samples (when viewed in terms of soxhlet extraction and gravimetric analysis) is similar to the oil content found in Conoco's larger set of samples collected during the test, using only these four points rather than Conoco's larger set of data should not appreciably affect the proposed oil content limit.

While there is some evidence that the oil content of treated drill cuttings from the technology tested under the demonstration permits is dependent on maintenance or some other factor, until more data are available the Region is proposing to set an oil content limit assuming that variation in oil content is random. Using the data described above and the Agency's long established procedures for setting effluent guideline limitations and numerical permit limits, the proposed daily maximum limit on the oil content of treated drill cuttings is 1.16% by weight. Assuming ten samples of treated cuttings are analyzed for oil content per month, the proposed monthly average limit on the oil content of treated cuttings is 0.71% by weight. Compliance must be measured before the treated cuttings are mixed with seawater (for sluicing cuttings to the discharge point).

The Region believes that limiting the oil content of treated cuttings is appropriate because the one technology that has been tested in the Gulf of Mexico has shown the capacity to both provide excellent treatment and also to leave levels of oil in treated cuttings that might cause violations of the existing "no discharge of free oil" requirement. Setting a limit on the oil content of treated cuttings would ensure that technologies are operated in a manner that minimizes the possibility that discharge of treated cuttings would result in a discharge of free oil.

Because the data currently available on the toxicity of treated drill cuttings is not sufficient for setting a limitation, the Region is proposing a BAT toxicity limit on treated cuttings based on the toxicity limit in the general permit for discharged drilling fluids (LC_{50} of discharged material must be 30,000 ppm or greater).

F. Requirements Based on the Ocean Discharge Criteria Evaluation and Other Legal Requirements

The general permit prohibits discharge in areas of biological concern (ABCs) and sets a drilling fluids discharge rate limitation within 544 meters of these areas in order to protect them from unreasonable degradation. While it appears that treated cuttings from oil-based muds have low toxicity, as the purpose of this permit is to gather information on technologies that have not yet been fully demonstrated, the Region is proposing to approve requests for coverage only from operators of

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facilities that are located more than 544 meters from ABCs. As an additional precaution, the Region is proposing to approve requests for coverage only from operators of facilities that are also located in waters more than 20 meters deep. This measure would help to ensure good dilution and dispersion of the discharged wastestreams from cuttings treatment.

To allay any concern that discharges authorized by this permit would affect state coastal zones or result in violation of state water quality standards that apply in the territorial seas, the Region is proposing not to approve requests for coverage from operators of facilities located within 1000 meters of state waters as defined in the Clean Water Act.

G. Monitoring Requirements

In addition to the requirements described above, the Region is proposing to require operators under this permit to:

(1) Keep a detailed drill cuttings treatment equipment operations log;

(2) Monitor raw cuttings feed rate, temperature of thermal chambers (if applicable) and residence time of the cuttings in the treatment unit;

(3) Frequently monitor the oil content of raw and treated cuttings;

(4) Perform visual and static sheen tests;

(5) Perform toxicity tests on treated cuttings and condensed waters;

(6) Monitor the organic pollutant and metals content of treated cuttings;

(7) Document the labor required to operate the technology;

(8) Monitor the volume of any condensed hydrocarbons and condensed waters produced and note the disposition of these wastestreams;

(9) Measure the oil content of any condensed waters;

(10) Document the normal rate of use of water used to sluice treated cuttings;

(11) Measure the rate of electric power and fuel consumption of the cuttings treatment equipment; and

(12) Document the chemical and trade name of any solvents or other chemicals used in the treatment process.

EPA intends to use the information it receives in future regulation of discharges of cuttings from oil-based muds.

For tests of the toxicity of raw and treated drill cuttings, this demonstration permit proposes two changes to the drilling fluids toxicity test sample preparation procedures that the Agency proposed on August 26, 1985 (50 FR 34831, August 26,1985). These changes are specified in part III.C.2 of the attached draft demonstration permit. The change in the procedure for mixing the 1-part drill cuttings: 9-part seawater mixture is necessary because the consistency of drill cuttings is different from the consistency of drilling fluids. The purpose of the change in the procedure for aerating the suspended particulate phase is to minimize aeration and potential loss of volatile petroleum hydrocarbons present on or in the drill cuttings.

In an effort to ensure that visual sheen observations are as reliable as possible the Region is proposing that the following information be collected and reported with each observation: The name of the observer; time of observation; the height of the observation point above sea level (e.g., 5 meters above sea level, 20 meters above sea level); hours elapsed since the most recent discharge of treated cuttings; atmospheric conditions (full sun or degree of cloud cover); sea state; current direction and speed; a statement of whether the area observed for evidence of a sheen was in full sunlight or to what degree the area was shaded (by clouds, the platform or other objects); a statement that, to the best of the observer's ability, the observation was made at a point downcurrent of the discharge; and the dated signature of the observer.

The Region may use its discretion to reduce the frequency of required monitoring observations for individual facilities from the level that the demonstration permit initially requires of all facilities. The Region has proposed initial frequent monitoring in this demonstration permit primarily in order to determine an appropriate mathematical model of the pollutant content of the effluent from drill cuttings treatment technologies. In effect, the Region proposes to conduct a quality control process capability study using control charts and other appropriate methods to ascertain the capability of these technologies to produce effluent of predictable quality. Therefore, it is proposed that when the Region is satisfied that it has sufficient data to create an acceptable model of the performance of a particular treatment technology at a particular site, it may choose to reduce the frequency of required monitoring for that facility. In no case will the Region reduce the frequency of monitoring of any parameter to less than once per calendar month that the thermal or solvent extraction treatment equipment is operated.

V. Other Legal Requirements

A. State Certification

Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable state water quality standards or limitations. Under section 401(a)(1) of the Act EPA may not issue a NPDES permit until the state in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and state law. State waters are not included within the area of coverage by the draft permit, therefore state certification is not required.

B. The Endangered Species Act

Based on information in the general permit Ocean Discharge Criteria Evaluation and in the Environmental Impact Statements prepared for Federal Lease Sales in the Gulf of Mexico, the Region has concluded that the discharges authorized by this general demonstration permit are not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat. The Region is requesting comments on this determination from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The Region will consult with the services as is appropriate and otherwise will comply with the requirements of section 7 of the Endangered Species Act before issuing a final permit.

C. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) requires that any federally permitted activity affecting the coastal zone of a State with a federally approved coastal management program be subject to review for consistency with the State program. Because the discharges that would be allowed by this proposed general demonstration permit would occur in Federal waters at least 1,000 meters from the outer boundary of territorial sea, it is unlikely that the discharges would affect the coastal zone. Nevertheless, the Regions are submitting a copy of this proposal and a certification of consistency to the Louisiana Department of Natural Resources Coastal Management Division (Texas does not have a federally approved coastal zone management plan). Formal consistency review will begin when Louisiana receives a copy of the certification and other information required by 15 CFR 906.56.

D. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) establishes the Marine Sanctuaries Program, implemented by the National Oceanic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values.

Section 302(f) of MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other federal agencies and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and/or can be carried out within its promulgated regulations. There are currently no marine sanctuaries in the Gulf of Mexico.

E. Economic Impact (Executive Order 12291)

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 5(b) of that order.

F. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

EPA has not previously issued a general demonstration permit. Thus, the Agency intends to either develop and submit to OMB for review a new information collection request specific to this activity or modify its collection of information submissions made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit applications) and 2040–0004 (discharge monitoring reports).

All operators that choose to operate under this permit will need to perform an onshore trial run of the technology that will be demonstrated (unless a trial run meeting the requirements of part II.C.2 of this permit has previously been performed on an exact duplicate of the technology that will be used). EPA believes that contractor personnel may be used to perform these trial runs and has assigned a $50 per hour value to translate contractor costs to burden hours. EPA estimates that it will take an affected facility operator 1,144 hours to perform such a trial run and submit the requisite information to EPA. As 20 facilities are eligible for coverage under this permit and EPA estimates that each technology for which a trial run is performed will be demonstrated at three facilities, the total burden for these trial runs would be 8,008 hours.

All applicants will also need to submit a request for coverage under this permit and a certification letter. As EPA estimates that it will take an applicant four hours to prepare the request for coverage and certification and 20 facilities are eligible for coverage, the total burden would be 80 hours.

All facilities choosing to operate under this permit will be required to submit discharge monitoring reports (DMRs). EPA estimates the first-year DMR burden to be 5,726 hours per facility operator per year. The total burden would be 114,520 hours. As EPA may reduce monitoring requirements after sufficient data are generated to demonstrate stable, reliable treatment performance, DMR burden in subsequent years may be less.

The Agency invites the public to provide comments on EPA's estimate of the burden the information collection requirements of this draft permit would impose. The Agency also invites comment on any other aspects of the proposed information collection requirements, including suggestions for reducing the proposed burden. In addition, the public is invited to send copies of its comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2040–0086 and 2040–0004), Washington, DC 20503, marked "Attention: Desk Officer for EPA."

G. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by this permits are excluded from the provisions of section 311. However, this permit would not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil or hazardous materials which are covered by section 311 of the Act.

H. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general demonstration permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 27, 1989.

Robert E. Layton Jr.,

Regional Administrator (6A).

VI. Fact Sheet References

API. 1989. API 1989 Comments on Offshore Oil NSPS/BAT. Submitted in response to Notice of Data Availability.

API. 1985. Standard procedure for field testing drilling fluids. API Recommended Practice Bulletin 13B. 11th Edition, May 1985. API, Dallas, TX, pp 13–15.

Conoco, Inc. 1989. Comments on Notice of Data Availability and Request for Comments. Submitted January 18, 1989 to EPA/ITD.

EPA. 1989a. Statistical Limitations for Oil Content on the Demonstration Permit for Oil Reduction Technology. Memorandum from Charles E. White, Office of Water Regulations and Standards to Thomas Wall, Office of Water Enforcement and Permits. March 1, 1989.

EPA. 1989b. Recalculation of Toxicity Estimates from Tests of Wastes that were Generated by Thermal Treatment for Drill Cuttings. Memorandum from Charles E. White, Office of Water Regulations and Standards to Thomas Wall, Office of Water Enforcement and Permits. September 8, 1989.

EPA. 1989c. Burden Hour Estimates. Note to the Record File. Tom Wall, Office of Water Enforcement and Permits. September 28, 1989

EPA. 1988a. Notice of Data Availability and Request for Comments. Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; New Information and Request for Comments. 53 FR 41356, October 21, 1988.

EPA. 1988b. Proposed EPA Method 1651, Total Oil and Diesel in Drilling Fluids and Drill Cuttings by Retort Gravimetry and GCFID. 53 FR 34628, Appendix A, October 21, 1988.

EPA. 1985a. Drilling Fluids Toxicity Test. In Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule. 50 FR 34831, Appendix 3, August 26, 1985.

EPA. 1985b. Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. EPA/600/485/013. USEPA. March 1985

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EPA. 1979. EPA Method 413.1. Oil and Grease, Gravimetric (extraction). Methods for Chemical Analysis of Water and Waste. EPA–600/74–79–020. USEPA. March, 1979.

EPA Region VI. 1987. Demonstration Permits issued to Conoco. Permit Nos. DP0601, DP0602. Notice of proposed permits published at 52 FR 10262. DP0602 modified and extended July, 1988.

Jones, Jr., M., J.A. Burgbacher, M. Churan, M. Hulse. 1983. Efficiency of a Single-Stage Cuttings Washer with a Mineral Oil Invert Emulsion and its Environmental Significance. Presented at the 58th Annual Technical Conference and Exhibition of the Society of Petroleum Engineers.

Kohlmann Ruggiero Engineers, P.C. 1988. Report on the Results of Field Sampling of Thermal Dynamics, Inc. Thermal Distillation Unit for the Treatment of Drill Cuttings on Conoco South Pass 75 Platform. September 14–17, 1987. Final Draft.

Kubena, E., L.J. Gawel, S.E. Hawkins, and W.R. Moyer. 1988. Field Evaluation of the TDI Oil-base Mud Drill Cuttings Processor-South Pass 75. TSR 74–88–208–110.

Parrish, P.R., Montgomery, R.M., Friedman, S.D. 1988. Acute Toxicity of Drill Cuttings to Mysids (*Mysidopsis bahia*). Submitted to OWRS/ITD. February 1988.

Shell. 1985. Survey Results on Use of Hydrocarbons for Fishing Operations and Use of Hydrocarbons as Lubricity Agents. Attachments to J.A. Burgbacher, Shell Offshore letter to R.D. Ruddy, USEPA. October 30, 1985.

Standard Methods. 1980. Method 503D. Oil and Grease, Extraction Method for Sludge Samples. Standard Methods for the Examination of Water and Wastewater, APHA, AWWA, WPCF. 16th Edition.

Thermal Dynamics, Inc. 1988. Report on Field Evaluation of the TDI Oil-Base Mud Drill Cuttings South Pass 75–A6. *In*: thermal Dynamics, Inc. Formal Request for Modification to the General NPDES Permit.

Technical Resources, Inc. 1986. Minimal Volume Static Sheen Test. Memorandum from Gary Petrazzuolo, TRI to Edward Ovsenik, EPA, March 21, 1986.

GENERAL DEMONSTRATION PERMIT

Permit No. GMG 6800070

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*: the "Act"), operators of facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category that EPA Region VI ("the Region") approves to operate under this general demonstration permit are authorized to discharge certain residues from treatment of drill cuttings from mineral oil-based muds by thermal treatment processes or solvent extraction processes to receiving waters named the Central and Western Gulf of Mexico seaward of the outer boundary of the territorial seas in accordance with effluent limitations, prohibitions, monitoring requirements, and other conditions set forth in parts I, II, and III hereof.

Operators shall submit a written request for coverage to the Regional Administrator 60 days before the intended commencement of discharge under this general demonstration permit. The request for coverage shall state that the operator intends to be covered by this general demonstration permit and provide certain information about the operator and the location of the intended discharge (See part II.C.1.). The request for coverage shall be accompanied by a five-point certification (See part II.C.2.). The Regional Administrator will review the request for coverage and the certification and notify the applicant in writing whether additional information is needed to complete review of the request for coverage; whether the request is denied; or whether the request for coverage is approved.

Only operators who are authorized to discharge under general permit GMG280000 (51 FR 24897 (July 9, 1986)) ("the general permit") may be authorized to discharge under this demonstration permit. All terms and conditions of the general permit will continue to apply to operators covered by this demonstration permit except as specifically modified by this demonstration permit. This permit would allow the discharge of certain residues from the treatment of drill cuttings from mineral oil-based muds subject to limitations on treated drill cuttings, condensed waters, condensed hydrocarbons and the location of discharges. This demonstration permit also includes additional definitions; monitoring, reporting and recordkeeping requirements; and notification requirements. For operators who are not currently authorized to discharge under the general permit, a request for coverage under the general permit must be submitted to the Region at the time the operator requests coverage under this demonstration permit. Operators shall not commence discharging under this demonstration permit until after they have received written notification from the Region that their request for coverage has been approved. Operators who fail to request coverage or who fail to supply the information needed to process the request are not authorized to discharge under this demonstration permit to the receiving waters named.

The Regional Administrator will authorize discharges from no more than 20 facilities under this demonstration permit. No more than seven (7) demonstrations of any one vendor's technology will be authorized under this permit.

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.2.

This permit shall become effective at 1 p.m. Eastern Daylight Savings Time on _____ and shall expire five years from the effective date.

Signed this September 27, 1989.

Myron O. Knudson,

Director, Water Management Division (6W), Region VI.

PART I—GENERAL DEMONSTRATION PERMIT REQUIREMENTS

Section A. Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and continuing through the date of expiration, the permittee is authorized to discharge Treated Drill Cuttings From Mineral Oilbased Drilling Fluids in accordance with the requirements of this demonstration permit. Such discharges shall be limited and monitored by the permittee as specified below:

(a) Drill cuttings shall be treated prior to discharge by a thermal treatment system or a solvent extraction treatment system that will reduce the oil content of the cuttings to 0.7% by weight as a monthly average limit and 1.16% by weight as a daily maximum limit as measured by the retort-gravimetric method (EPA Proposed Method 1651. See appendix A). Oil content shall be measured every two cumulative elapsed hours of operation of the drill cuttings treatment system unless the Region has reduced the frequency of observation pursuant to part III.B.2.

(b) No visible sheen shall result from any discharge of drill cuttings authorized by this demonstration permit. To determine compliance with this limit, either a visual sheen test or a static sheen test shall be performed (see part III.C.6 for the requirements for performing and recording visual sheen test observations and Appendix B for the requirements for static sheen observations). The receiving water shall be observed daily for a visible sheen as the discharge occurs. Under conditions of poor visibility when a visual sheen test is not possible, a static sheen test shall be used to determine compliance with this limit; and

(c) The toxicity of treated cuttings that are discharged shall be less than 30,000 parts per million (ppm) on a volume basis (μl per l) of the test phase (i.e., the 96 hour LC_{50} shall be greater than 30,000 ppm) when measured using the toxicity test method specified in part III.C.2. The toxicity of treated cuttings shall be measured at least once per week unless the Region has reduced the frequency of observation pursuant to part III.B.2.

In addition to the reporting requirements of the general permit, any violations of these limitations shall be reported when the monitoring information specified in part III is reported.

2. During the period beginning on the effective date and continuing through the date of expiration, the permittee is authorized to discharge condensed or otherwise separated waters ("Condensed Waters") from treatment of drill cuttings from mineral oil-based muds. Such discharges shall be limited and monitored by the permittee as specified below:

Any condensed waters that are discharged shall contain less than 48 milligrams (mg)/liter oil and grease as a monthly average limit and 72 mg/liter oil and grease as a daily maximum limit as measured by the gravimetric method (See part III.C.5). The oil and grease content of condensed or otherwise separated waters must be measured every two cumulative elapsed hours of operation of the drill cuttings treatment system unless the Region has reduced the frequency of observation pursuant to part III.B.2.

In addition to the reporting requirements of the general permit, any violations of these limitations shall be reported when the monitoring information specified in part III is reported.

3. The discharge of condensed or otherwise separated hydrocarbons ("Condensed Hydrocarbons") from treatment of drill cuttings from mineral oil-based muds is specifically prohibited. In addition to the reporting requirements of the general permit, any violation of this prohibition shall be reported when the monitoring information specified in part III is reported.

4. The permittee must obtain approval from the U.S. Department of Interior, Minerals Management Service (MMS) and the U.S. Department of Transportation, U.S. Coast Guard, Marine Safety Office prior to operation of drill cuttings thermal treatment systems or solvent extraction treatment systems under this demonstration permit. Air emission test data required by the test requirements in part III of this permit shall, in addition to EPA, be submitted to the MMS at the address below:

Regional Director, MMS,
1201 Elmwood Park Blvd.,
New Orleans, Louisiana 70123–2394.

Section B. Other Discharge Limitations

1. There shall be no discharge under this permit within 544 meters of an area of biological concern, as defined in part III.D of the general permit.

2. There shall be no discharge under this permit into receiving waters that are less than 20 meters in depth as defined in part II.A.2 below.

3. There shall be no discharge under this permit within 1,000 meters of any State's territorial seas (as defined at section 502(8) of the Clean Water Act).

PART II—STANDARD CONDITIONS FOR NPDES PERMITS

Section A. Definitions

1. "Central and Western Gulf" means all lease blocks west of the western boundary of Outer Continental Shelf lease areas identified as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson.

2. "Waters having greater than 20 meters of depth" means waters greater than 20 meters in depth as measured at mean low water.

Section B. Monitoring and Records

1. For the discharges described in parts I.A.1 and I.A.2 of this demonstration permit, monitoring reports shall be submitted as specified in part III.B.3 below.

2. Record Contents. The records of monitoring information required by this demonstration permit shall meet all requirements set forth in part III below.

Section C. Notification Requirements

Prospective permittees shall submit a request for coverage in accordance with the requirements set forth below. The Region will review the request for coverage, determine the adequacy of the information submitted and, if necessary, request that the applicant supply additional information. Based on the information presented, the Region will decide whether to grant or deny the request for coverage. The Region will accompany all denials of requests for coverage with detailed information as to why the request was denied.

1. Request for Coverage

Requests for coverage under this demonstration permit shall be made in writing. The request for coverage shall be addressed to Region VI (Part III.B.4) and include the legal name and address of the operator; identify the lease block number assigned by the Department of Interior or, if none, the name commonly assigned to the lease area; identify the number and type of facilities located within the lease block; and specify the facility on which the cuttings treatment technology is proposed to be operated. All prospective permittees shall identify in their request for coverage: (1) The depth of water at the proposed demonstration site; and (2) the distance from the proposed demonstration site to the outer boundary of the territorial seas. Prospective permittees located in lease blocks either in or immediately adjacent to MMS defined "no activity" areas shall also report the distance from the proposed demonstration site to the "no activity" area boundary.

The request for coverage shall be accompanied by a signed and dated certification by the applicant that: (1) The applicant has carefully reviewed the permit and understands its limitations, terms and conditions; (2) the location of the proposed discharge complies with the location restrictions imposed by the permit; (3) an onshore trial run meeting the requirements of part II.C.2 of this permit has been completed; (4) the applicant has mailed to EPA all of the information required for documenting the design and performance of the cuttings treatment technology to be employed (See part II.C.2); and (5) based on the applicant's careful evaluation of the data generated during the onshore trial run, the technology that will be demonstrated will meet the limitations of the permit.

The request for coverage shall be submitted at least 60 days prior to the proposed commencement of discharge.

2. Documentation of Cuttings Treatment Technology Design and Performance

The following information shall be forwarded to the EPA Industrial Technology Division (see part III.B.4) at the time the request for coverage is made:

(a) Detailed process diagrams and narrative descriptions explaining how the cuttings treatment technology operates. Any chemicals (including fire suppression system chemicals) and solvents that may be employed shall be identified. The residence time of cuttings in the treatment unit shall be identified, as well as key operating parameters (e.g., temperature of thermal treatment chambers and the treatment capacity of the unit at its design maximum, in barrels of cuttings per day).

(b) Data from an onshore trial run of the treatment unit that is proposed to be

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operated under this demonstration permit. The onshore trial run shall consist of a minimum of 24 hours of treatment equipment operation time. Throughput shall be at 25% of the design maximum for the first 12 hours of operation and at 75% of the design maximum for the last 12 hours of operation. Samples shall be taken at the 1st, 3rd, and 5th hours of operation at both of these throughput rates. Data submitted shall include:

(i) The amount by volume of each of the various wastestreams generated (including air emissions) and the amount by volume of cuttings treated;

(ii) The oil content by weight of the raw and treated cuttings as measured by the retort-gravimetric method specified in appendix A. Each pair of samples of raw and treated cuttings shall be taken so that the time between collection of the raw sample and the treated sample matches the residence time of that sample of treated cuttings in the treatment unit;

(iii) The oil and grease levels of condensed hydrocarbons and condensed water as measured by the gravimetric method specified in part III.C.5;

(iv) Results of static sheen tests performed on the raw and treated cuttings as measured by the minimal volume static sheen test specified in appendix B;

(v) The toxicity of the raw and treated cuttings as measured using the method specified in part III.C.2. Each pair of samples of raw and treated cuttings shall be taken so that the time between collection of the raw sample and the treated sample matches the residence time of that sample of treated cuttings in the treatment unit;

(vi) The toxicity of condensed waters as measured using the procedures specified in part III.C.3;

(vii) The levels of total particulates, total hydrocarbons, SO_x, NO_x and CO in air emissions;

(viii) Information on space requirements and weight of the equipment;

(ix) Information on energy requirements. Electricity consumption shall be described in kilowatt hours. Consumption of diesel or other fuels shall be described in bbl/day for liquid fuel and scfm for gas fuels;

(x) An operating and maintenance log indicating all hours of operation during the trial, any maintenance performed and when it was performed;

(xi) An estimate of the cost per barrel of cuttings treated, accompanied by a description of all assumptions and information used in developing the estimate;

(xii) The levels of TSS, BOD, priority pollutants and dioxin in raw and treated cuttings. Each pair of samples of raw and treated cuttings shall be taken so that the time between collection of the raw sample and the treated sample matches the residence time of that sample of treated cuttings in the treatment unit; and

(xiii) Whether the raw and treated cuttings pass the RCRA characteristic hazardous waste tests (40 CFR part 261 subpart C). Each pair of samples of raw and treated cuttings shall be taken so that the time between collection of the raw sample and the treated sample matches the residence time of that sample of treated cuttings in the treatment unit.

EPA will handle all information properly identified as confidential business information according to the Agency's procedures for handling these materials.

PART III—OTHER CONDITIONS

Section A. General Demonstration Permit Area

The area covered by this general demonstration permit includes those areas in the Central and Western Gulf of Mexico located in lease areas seaward of the outer boundary of the territorial seas that meet the location requirements set forth in part I.B above.

Section B. Test Requirements

1. Operations Log

The operator shall maintain a contemporaneous log of operations of the drill cuttings treatment equipment while the equipment is installed at the offshore facility. At a minimum, the operator shall:

(a) Document the hours of operation of the equipment. The log shall indicate each exact time of each calendar day that the equipment was started or shut down, including any process stream interruptions (see also part III.B.1.c) and also indicate the reason for each shut down or interruption that occurs.

(b) Document the exact nature of routine or unscheduled maintenance that is performed and fully describe the maintenance performed including the estimated labor expenditure and total cost of the maintenance;

(c) Document the nature and cause of any abnormal operating conditions of the treatment equipment. Abnormal operations are conditions which either the permittee, operator, or vendor believe to be outside the normal operating mode of the treatment equipment, including any peripheral or support equipment (e.g., materials handling systems; power supply; safety systems; air, water, solids, or other by-product handling systems). Any actions taken to correct abnormal operations, including the estimated labor expenditure and cost of the remedial action(s) pertinent to returning the treatment equipment to a normal operating condition shall be fully described and indicated as unscheduled maintenance.

(d) If air, water, solids or other media samples were collected during a period of abnormal equipment operation, or if the permittee, operator or vendor reasonably believes that such samples may have been collected during a period of abnormal equipment operation, the samples shall be identified as such in the operations log and identified as such in any data tabulations, summaries, and submissions.

(e) The number of treatment equipment operators that are used to maintain normal operation of the cuttings treatment equipment shall be documented on a daily basis.

2. Monitoring

The operator shall conduct monitoring as follows:

(a) *Feed rate.* The volumetric feed rate of untreated cuttings to the treatment equipment shall be recorded hourly during the operation of the treatment equipment. This may be recorded as an estimate if it is not gauged and if the method of estimation is documented.

(b) *Oil content of drill cuttings.* The untreated drill cuttings fed to the treatment system and treated cuttings leaving the treatment system shall be sampled once after each two cumulative elapsed hours of operation of the treatment system. Sample type shall be a grab sample. Each pair of samples of raw and treated cuttings shall be taken so that the time between collection of the raw sample and the treated sample matches the residence time of that sample of treated cuttings in the treatment unit. The samples of treated cuttings shall be taken at a sampling location after treatment but prior to addition of seawater or any other material. Each sample shall be analyzed by EPA proposed method 1651 for oil content as expeditiously as practicable. A copy of proposed method 1651 is attached in appendix A. The date, time, sample type (*e.g.*, grab sample), facility identification, and description of any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of each sample. Analytical results shall be labeled such that the above sample identification and operations information can be readily and accurately cross-referenced.

(c) *Static sheen.* Once per day for each day of operation of the cuttings treatment equipment, one sample of treated drill cuttings shall be subjected to the minimal volume static sheen test according to the test method specified in appendix B. The sample to be subjected to the static sheen test shall be a subsample of a sample also taken for the purpose of measuring oil content, priority pollutant content and toxicity. The date, time, sample type, facility identification, and description of any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of each sample. Analytical results shall be labeled such that the above sample identification and operations information can be readily and accurately cross-referenced. Each documented analytical result for the static sheen test shall include an estimate of the percentage of surface area of the test container that exhibited a sheen. (Sheen is defined in appendix B.)

(d) *Toxicity of drill cuttings.* Once per week during operation of the cuttings treatment equipment, one pair of samples of raw and treated drill cuttings shall be subjected to bioassay tests. This sample shall be a subsample of a sample also taken for the purpose of measuring oil content, static sheen and priority pollutant content. The method to be used is specified in part III.C.2 below. Any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of the sample.

(e) *Priority pollutant content of drill cuttings.* Once per week during operation of the cuttings treatment equipment, one sample of treated drill cuttings shall be subjected to analyses for priority pollutants. This sample shall be a subsample of a sample also taken for the purpose of measuring oil content, static sheen and toxicity. Any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of the sample.

The test methods to be used are EPA methods 1624 and 1625 for priority organics and an approved method under 40 CFR part 136 for priority inorganic pollutants.

The date, time, sample type, facility identification, and description of any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of each sample. Analytical results shall be labeled such that the above sample identification and operations information can be readily and accurately with analytical results.

(f) *Volume, volumetric generation rate, and disposition of combined condensed hydrocarbon and water.* Once per day for each day of operation of the cuttings treatment equipment, the volumetric generation rate of combined condensed hydrocarbons and water shall be documented (units: gallons per minute). This rate may be estimated if the waste-stream is not gauged and if the method of estimation is documented and reported. This information shall be measured or estimated during a time interval when the treatment equipment is known or reasonably expected to be operating under normal conditions. The volume generated during each day shall also be reported, as well as whether the value is measured or estimated; if estimated, the method also must be documented.

The method of disposal of all condensed hydrocarbon and condensed water wastestreams shall be documented. (The discharge of hydrocarbons separated from cuttings is prohibited.)

(g) *Volume, volumetric generation rate, disposition, oil content and toxicity of condensed water.* Once per day for each day of operation of the cuttings treatment equipment, the volumetric generation rate of condensed water (after separating the condensed hydrocarbons) shall be documented (units: gallons per minute). This may be estimated if the wastestream is not gauged and if the method of estimation is documented. This information shall be measured or estimated during a time interval when the treatment equipment is known or reasonably expected to be operating under normal conditions. The volume generated during each day shall also be reported, as well as whether the value is measured or estimated; if estimated, the method also must be documented.

The normal disposition of the condensed water wastestream shall be documented.

Once per day for each day of operation of the cuttings treatment equipment, the condensed water wastestream (after separating the condensed hydrocarbons) shall be sampled. An oil and grease analysis shall be conducted on each such sample. The EPA-approved gravimetric method shall be used to analyze such samples (See part III.C.5). The date, time, sample type, facility identification, and description of any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of each sample. Analytical results shall be labeled such that the above sample identification and operations information can be readily and accurately cross-referenced.

Once per week during operation of the cuttings treatment equipment, one sample of the condensed water shall be subject to bioassay tests. This sample shall be a subsample of a sample taken for the purposes of measuring oil content. The toxicity test method to be used is specified in part III.C.3 below.

(h) *Sluice Water.* If water is used to sluice treated cuttings to the discharge point, the normal rate of use of water used shall be documented (units: gallons per minute).

(i) *Power Consumption.* The rate of electric power consumption by the cuttings treatment equipment (including peripheral equipment) under normal operating conditions shall be documented (units: Kilowatts). If diesel or other fuels are used to power the equipment (rather than to produce electricity to power the equipment), the rate of fuel consumption under normal operating conditions shall be documented (units: bbl/day for liquid fuel, and scfm for gas fuels).

(j) *Solvent or Other Chemical Use.* The operator shall document the chemical name, trade name, and volumes of all solvents or other chemicals used in the treatment process.

3. Changes in Frequency of Monitoring

The frequency of the following monitoring requirements may be reduced at the discretion of the Region. If after fifty (50) observations of a particular parameter the collected data show that the variation in the value of the parameter primarily results from a stable system of chance causes (rather than from factors such as cuttings throughput rate, kiln temperature or time between servicing of the treatment equipment), the Region, upon written request by the permittee, may authorize an increase in the time interval between samples for this parameter. Any reduced monitoring requirements so authorized will be set forth in writing by the Region. Monitoring frequency will in no case be reduced to less than once per calendar month that the treatment equipment is operated.

4. Reporting and Recordkeeping

The operating logs and monitoring information that are required under part III.B shall be summarized. These summaries and the original operating logs and monitoring information shall be reported to the Director, Industrial Technology Division (at the address given below) every three months. A

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discharge monitoring report (DMR), covering the limitations for discharges (see part I.A.1. (a), (b), (c) and part I.A.2.) covered by this report, shall be forwarded to the Region (at the address given below) every three months. The reporting period for each operator covered by this demonstration permit shall begin on the effective date of the operator's coverage under this permit. The first report is due on the 28th day of the fourth calendar month following the calendar month that includes the date that the operator's coverage under the permit is effective. Thereafter, reports are due every three months from the date that the first report was due. (For example, if March 21st is the effective date of an operator's coverage under this demonstration permit, the operator's first report is due on July 28th. This report must include all information collected between March 21st and June 21st. The second report is due on October 28th.)

All notices and reports required under this section shall be sent to:

Director, Water Management Division (6W)
Region VI, U.S. EPA
P.O. Box 50625
Dallas, Texas 95270
Director, Industrial Technology Division (WH-552)
U.S. EPA
401 M Street, SW.
Washington, DC 20460

Section C. Other Conditions

1. Retort-gravimetric Method

The approved test method for measuring the oil content of raw and treated drill cuttings is the retort-gravimetric method. A copy of this method is attached as appendix A.

2. Toxicity Test Method for Drill Cuttings

The approved test method for measuring the toxicity of raw or treated drill cuttings is:

U.S. Environmental Protection Agency Industrial Technology Division. August 1985. Appendix 3—Drilling Fluids Toxicity Test Proposed Regulation for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. 50 FR 34592, at 34631 (August 26, 1985). The following deviations from this test method are required for the testing of drill cuttings:

Sample Preparation (See section II–C(2) of the above cited test method).

To prepare the suspended particulate test phase (SPP), the drill cuttings-to-seawater ratio of 1:9 must be based upon the drill cuttings, dry weight. (*Example:* add 100 grams of drill cuttings, on a dry weight basis, to 900 ml of seawater.) Dry weight of cuttings shall be determined by attaining a constant weight after dying in an oven at 104°±1°C. Rather than mixing the drill cuttings: seawater mixture with a magnetic stirrer, use a high-speed, high-shear stirrer and mix for 5 minutes.

Sample Preparation (See section II–C(5) of the above cited test method).

The filterable and unfilterable residue of each SPP need not be measured. If dissolved oxygen is less than 60% of saturation (4.9 ppm at 20 °C and 20 parts per thousand salinity), aerate the SPP, while stirring, for only 3 minutes. Measure dissolved oxygen and, if necessary, aerate for 3 minutes again.

The date, time, sample type, facility identification, and description of any actual or reasonably suspected abnormal operation of the treatment system shall be documented concurrent with the procurement of each sample. Analytical results shall be labeled such that the above sample identification and operations information can be readily and accurately cross-referenced.

3. Toxicity Test for Condensed Waters

The approved test method for measuring the toxicity of condensed waters is:

A 96 hour static test performed according to EPA's acute toxicity testing manual (See Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, EPA/600/4–85/013). *Mysidopsis bahia* only shall be used as the test species. The test conditions described in Table 6, Recommended Test Conditions for Mysids shall be followed.

4. Static Sheen Test

The approved static sheen test method is specified in appendix B.

5. Gravimetric Method

The approved method for measuring the levels of oil and grease in condensed waters is:

Method 413/1, Oil & Grease, Gravimetric (extraction). Method for Chemical Analysis of Water and Waste, EPA–600/4–79–020, U.S. EPA, March 1979). See 40 CFR part 136.3(a), table 1B, Parameter no. 41).

6. Requirements for Visual Sheen Test Observations

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface. The operator shall conduct a visual sheen test only at times when a sheen can be observed and not, without limitation, at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas). At times when observation of a sheen is not possible, the minimal volume static sheen method for detecting free oil shall be used.

To conduct the visual sheen test, the observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface downcurrent from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made, both during discharge and at 5 minutes after discharge has ceased.

The following information shall be recorded with each observation for visual sheen: the name of the observer; time of observation; the height of the observation point above sea level (e.g., 5 meters above sea level, 20 meters above sea level); orientation of the observation point with respect to the discharge point and current flow; hours elapsed since the most recent discharge of treated cuttings; atmospheric conditions (full sun or degree of cloud cover); sea state; current direction and speed; a statement of whether the area observed for evidence of a sheen was in full sunlight or to what degree the area was shaded (by clouds, the platform or other objects). The observer shall state whether or not a sheen was observed and sign and date the observation.

Appendix A—Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID

1 Scope and Application

1.1 This method is used to determine the oil content and the identity and concentration of diesel oil in drilling fluid (mud) samples. It is applicable to all mud types and may also be used to determine the oil content and diesel oil in drill cuttings.

1.2 This method may be used for compliance monitoring purposes as part of the "Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category".

1.3 When this method is used to analyze samples for which there is no reference diesel oil, diesel oil identification should be supported by at least one additional qualitative technique. Method 1625 provides gas chromatograph/mass spectrometer (GC/MS) conditions appropriate for the qualitative and quantitative confirmation of the presence of the components of diesel oil (References 1–2).

1.4 The detection limit of this method is usually dependent upon the presence of other oils in the sample. Excluding interferences, estimated detection limits of 200 mg/kg of oil content and 100 mg/kg of diesel oil can be obtained.

1.5 Any modification of this method beyond those expressly permitted shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR 136.4 and 136.5.

1.6 The gas chromatography portions of this method are restricted to use by or under the supervision of analysts experienced in the use of gas chromatography and in the interpretation of gas chromatograms. Each laboratory that uses this method must generate acceptable results using the procedures described in sections 8.2 and 12 of this method.

2 Summary of Method

2.1 A weighed amount of drilling mud is distilled using a retort apparatus. The distillate is extracted with methylene chloride and the extract is dried by passage through sodium sulfate. The extract is evaporated to dryness, and the total amount of oil in the sample is determined gravimetrically. The oil is redissolved in methylene chloride, an internal standard is added, and an aliquot is injected into a gas chromatograph (GC). The components of the oil are separated by the GC and detected using a flame ionization detector (FID).

2.2 Identification of diesel oil (qualitative analysis) is performed by comparing the pattern of GC peaks (retention times and intensities) from the sample extract with the pattern of GC peaks from a reference diesel oil sample. Identification of diesel oil is established when the reference diesel and sample patterns agree per the criteria in this method.

2.3 Quantitative analysis of diesel oil is performed using an internal standard technique.

3 Contamination and Interferences

3.1 Solvents, reagents, glassware and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms. All materials shall be demonstrated to be free from interferences under the conditions of the analysis by running method blanks initially and with each set of samples. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required. Glassware and, where possible, reagents are cleaned by solvent rinse or banking at 450 degrees C for one hour minimum.

3.2 There is no standard diesel oil. Oil components, as seen by GC–FID, will differ depending upon the oil source, the production date, production process, and the producer. In addition, there are three basic types of diesel oils: ASTM Designations No. 1–D, No. 2–D, and No. 4–D. The No. 2–D is the most common "diesel oil"; however, No. 2–D is sometimes blended with No. 1–D which has a lower boiling range. For rigorous identification and quantification of diesel oil in a drilling fluid sample by GC–FID, the chromatographic pattern from the diesel oil should be matched with the chromatographic pattern from a reference standard of the same diesel oil suspected to be in the sample.

3.3 To aid in the identification of interferences, the chromatographic pattern from a reference sample of drilling fluid prior to use is compared to the chromatographic pattern of the drilling fluid after use. An interference is present when the pattern of the background oil does not match, but contributes substantially to, the pattern of the diesel oil in the sample.

3.4 Mineral oils are often added to drilling fluids for lubricity. These oils, when examined by GC–FID, contain some components common to diesel oil but have chromatographic patterns that are distinctly different from diesel oil. The analyst must first determine if the sample chromatogram shows the presence of diesel, mineral, or a combination of both before reliable quantification can be performed. This method permits selection of GC peaks unique to diesel oil for determination of diesel oil in the presence of mineral oil.

4 Safety

4.1 The toxicity or carcinogenicity of each reagent used in this method has not been defined. Therefore, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material handling data sheets should also be made available to all personnel involved in the chemical analysis. Additional references to laboratory safety are available and have been identified (references 3–5) for the information of the analyst.

4.2 Methylene chloride has been classified as a known health hazard. All steps in this method which involve exposure to this compound shall be performed in an OSHA approved fume hood.

5 Apparatus and Materials

5.1 Sample bottles for discrete sampling

5.1.1 Bottle—4 oz Boston round wide mouth jar with Teflon lined screw cap (Sargent Welsh S–9184–72CA, or equivalent). New bottles are used as received with no further cleaning required.

5.1.2 Bottle mailer—to fit bottles above (Sargent-Welsh 2306, or equivalent).

5.2 Distillation Apparatus

5.2.1 Retort—20 mL retort apparatus (IMCO Services Model No. R2100 or equivalent).

5.2.2 Glass wool—Pyrex (Corning 3950, or equivalent). Solvent extracted or baked at 450 degrees C for one hour minimum.

5.3 Extraction/drying apparatus

5.3.1 Separatory funnel—60 mL with Teflon stopcock.

5.3.2 Drying column—400 mm×15 to 20 mm i.d. Pyrex chromatographic column equipped with coarse glass frit or glass wool plug.

5.3.3 Glass filtering funnel—crucible holder (Corning No. 9480, or equivalent).

5.3.4 Spatulas—stainless steel or Teflon

5.4 Evaporation/concentration apparatus

5.4.1 Kuderna-Danish (K–D) apparatus

5.4.1.1 Evaporation flask—500 mL (Kontes K–570001–0500, or equivalent), attached to concentrator tube with springs (Kontes K–662750–0012).

5.4.1.2 Concentrator tube—10 mL, graduated (Kontes K–570050–1025, or equivalent) with calibration verified. Ground glass stopper (size 19/22 joint) is used to prevent evaporation of extracts.

5.4.1.3 Snyder column—three ball macro (Kontes K–503000–0232, or equivalent).

5.4.1.4 Snyder column—two ball micro (Kontes K–469002–0219, or equivalent).

5.4.1.5 Boiling chips

5.4.1.5.1 Glass or silicon carbide—approximately 10/40 mesh, extracted with methylene chloride and baked at 450 degrees C for one hr minimum.

5.4.1.5.2 Teflon (optional)—extracted with methylene chloride.

5.4.2 Water bath-heated, with concentric ring cover, capable of temperature control (±2 degrees C), installed in a fume hood.

5.4.3 Sample vials—amber glass, 1–5 mL with Teflon-lined screw or crimp cap, to fit GC autosampler.

5.5 Balances

5.5.1 Analytical—capable of weighing 0.1 mg. Calibration must be verified with class S weights each day of use.

5.5.2 Top loading—capable of weighing 10 mg.

5.6 Gas Chromatograph (GC)—analytical system with split injection, capillary column, temperature program with initial and final isothermal holds, and all required accessories including syringes, analytical columns, gases, detector, and recorder. The analytical system shall meet the performance specifications in Section 12.

5.6.1 Column—30±5 m × 0.25±0.02 mm i.d., 99 percent methyl, 1 percent vinyl, 1.0 um film thickness, bonded phase fused silica capillary (Supelco SPB–1, or equivalent).

5.6.2 Detector—flame ionization. This detector has proven effective in the analyses of drilling fluids for diesel oil, and was used to develop the method performance statements in Section 16. Guidelines for using alternate detectors are provided in section 11.1.

5.7 GC Data system—shall collect and record GC data, store GC runs in magnetic memory or on magnetic disk or tape, process GC data, compute peak areas, store calibration data including retention times and response factors, identify BC peaks through retention times, and compute concentrations.

5.7.1 Data acquisition—GC data shall be collected continously throughout the analysis and stored on a mass storage device.

5.7.2 Response factors and calibration curves—the data system shall be used to record and maintain lists of response factors, and multi-point calibration curves (section 7). Computations of relative standard deviation (coefficient of variation; CV) are used for testing calibration linearity. Statistics on initial (section 8.2) and ongoing (section 12.5)

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performance shall be computed and maintained.

5.7.3 Data processing—the data system shall be used to search, locate, identify, and quantify the compounds of interest in each GC analysis. Software routines shall be employed to compute and record retention times and peak areas. Displays of chromatograms and library comparisons are required to verify results.

6 Reagents

6.1 Sodium sulfate—anhydrous, (ACS) granular.

6.2 Methylene chloride—Nanograde or equivalent.

6.3 Reagent water—water in which the compounds of interest and interfering compounds are not detected by this method.

6.4 Internal standard—dissolve 1.0 g of 1,3,5-Trichlorobenzene (Kodak No. 1801 or equivalent) in 100 mL methylene chloride. Store in glass and tightly cap with Teflon lined lid to prevent loss of solvent by evaporation. Label with the concentration and date. Mark the level of the meniscus on the bottle to detect solvent loss.

6.5 Calibration standards—calibration standards are prepared from the same diesel oil expected to be in the sample; otherwise, No. 2 diesel oil is used. Calibration standards are prepared at the concentrations shown in table 1.

6.5.1 Weigh the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride.

6.5.2 Using a micropipet or microsyringe, transfer 100 uL of each reference standard solution (section 6.5.1) to a GC injection vial. Add 100 uL of the TCB internal standard (section 6.4) to each vial and mix thoroughly. Calibration standards are made fresh daily to avoid solvent loss by evaporation.

6.6 QC standard—used for tests of initial (section 8.2) and ongoing (section 12.5) performance. Prepare a reference mud sample containing 20,000 mg/kg of diesel by adding 20.0 +/− 0.2 mg of No. 2 diesel oil and 10.0 +/− 0.1 g of EPA Generic Mud No. 8 (reference 8) to a clean retort cup/ see Section 10.1). Mix the mud and diesel oil thoroughly with a metal spatula.

7 Calibration

7.1 Establish gas chromatographic operating conditions given in table 2. Verify that the GC meets the performance criteria (section 12) and the estimated detection limit (section 1.4). The gas chromatographic system is calibrated using the internal standard technique.

7.2 Internal standard calibration procedure—1,3,5-Trichlorobenzene (TBC) has been shown to be free of interferences from the diesel oils tested in the development of this method. However, if an interference is known or suspected, the analyst must choose an alternate internal standard that is free from interferences.

7.2.1 Inject 1 uL of each reference oil standard containing the internal standard (Table 1 and section 6.5.2) into the GC–FID. The TCB will elute approximately 8.5 minutes after injection. For the GC–FID used in the development of this method, the TCB internal standard peak was 30 to 50 percernt of full scale at an attenuator setting of 8E–11 amp.

7.2.2 Individual response factors

7.2.2.1 Tabulate the peak area responses against concentration for each of the 10 largest peaks in the chromatogram (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the internal standard peak). (See section 13 for guidance on peak selection.) Calculate response factors (RF) for each peak using the following equation:

Equation 1:

$$RF = \frac{(A_s)\ (C_{is})}{(A_{is})\ (C_s)}$$

where:

A_s = Area of the peak to be measured.

A_{is} = Area of the internal standard peak.

C_s = Concentration of the peak to be measured (mg/kg).

C_{is} = Concentration of the internal standard (mg/kg).

7.2.2.2 If the RF is constant (<15% CV) over the calibration range (table 1), the RF can be assumed to be invariant and the average RF can be used for calculations. Alternatively, the results can be used to plot a calibration curve of response ratios, A_s/A_{is}, vs RF.

7.2.2.3 Calibration verification—the average RF or a point on the calibration curve shall be verified on each working day by the measurement of one or more calibration standards. If the RF for any peak varies from the RF obtained in the calibration by more than +/− 15 percent, the test shall be repeated using a fresh calibration standard. Alternatively, a new calibration curve shall be prepared.

7.2.3 Combined response factor—to reduce the error associated with the measurement of a single peak, a combined response factor is used for computation of the diesel oil concentration. This combined response factor is the sum of the individual response factors as given in equations 2 or 3:

Equation 2:

RF combined = RF(1)+RF(2) . . . +RF(n)

Equation 3:

$$RF\ combined = \frac{[A_{s(1)}+A_{s(2)} \ldots +A_{s(n)}]\ (C_{is})}{(A_{is})\ (C_s)}$$

where:

n is the number of individual peaks

$A_{s(1)}$ . . . $A_{s(n)}$ are the areas of the individual peaks.

8. Quality Assurance/Quality Control

8.1 Each laboratory that uses this method is required to operate a formal quality assurance program (reference 7). The minimum requirements of this program consist of an initial demonstration of laboratory capability, an ongoing analysis of standards and blanks as a test of continued performance, analyses of spiked samples to assess accuracy, and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

8.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in section 8.2.

8.1.2 The analyst is permitted to modify this method to improve separations or lower the costs of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to achieve the estimated detection limit (section 1.4) and to repeat the procedure in section 8.2 to demonstrate method performance.

8.1.3 Analyses of spiked samples are required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in section 8.3.

8.1.4 Analyses of duplicate samples are required to demonstrate method precision. The procedure and QC criteria for duplicates are described in section 8.4.

8.1.5 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in section 8.5.

8.1.6 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the QC standard (section 6.6) that the analysis system is in control. These procedures are described in section 12.

8.1.7 The laboratory shall maintain records to define the quality of data that is generated. Development of accuracy statements is described in sections 8.3.4 and 12.5.

8.2 Initial precision and accuracy—to establish the ability to generate acceptable precision and accuracy, the analyst shall perform the following operations:

8.2.1 Retort, extract, concentrate, and analyze four samples of the QC standard (sections 6.6 and 10.1.3) according to the procedure beginning in section 10.

8.2.2 Using results of the set of four analyses, compute the average recovery (X) in mg/kg and the standard deviation of the recovery (s) in mg/kg for each sample by the internal standard method (sections 7.2 and 14.2).

8.2.3 For each compound, compare s and X with the corresponding limits for initial precision and accuracy in table 4. If s and X meet the acceptable criteria, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method and the manufacturer's instructions, correct the problem, and repeat the test.

8.3 Method accuracy—the laboratory shall spike a minimum of 20 percent (one sample in each set of five samples) of all drilling fluid samples. This sample shall be spiked with the diesel oil that was added to the drilling fluid. If a reference standard of diesel oil that was added to the drilling fluid is not available, No. 2 diesel oil shall be used for this spike. If doubt of the identity and concentration of diesel oil in any of the remaining 80 percent of the samples exists, that sample shall be spiked to confirm the identity and establish the diesel oil concentration.

8.3.1 The concentration of the spike in the sample shall be determined as follows:

8.3.1.1 If, as in compliance monitoring, the concentration of the oil in the sample is being checked against a regulatory concentration limit, the spike shall be at that limit or at one to five times higher than the background concentration determined in section 8.3.2, whichever concentration is larger.

8.3.1.2 If the concentration of the oil in a sample is not being checked against a limit, the spike shall be at the concentration of the QC standard (section 6.6) or at one to five times higher than the background concentration, whichever concentration is larger.

8.3.2 Analyze one sample aliquot to determine the background concentration (B) of oil content and of diesel oil. If necessary, prepare a standard solution appropriate to produce a level in the sample at the regulatory concentration limit or at one to five times the background concentration (per section 8.3.1). Spike a second sample aliquot with the standard solution and analyze it to determine the concentration after spiking (A) of each analyte. Calculate the percent recovery (P) of oil content and of diesel oil:

P = 100 (A–B) / T

where T is the true value of the spike.

8.3.3 Compare the percent recovery for oil content and for diesel oil with the corresponding QC acceptance criteria in Table 4. If the results of the spike fail the acceptance criteria, and the recovery of QC standard in the ongoing precision and recovery test [sections 10.1.3 and 12.5) is within the acceptance criteria in Table 4, an interference may be present (see sections 3 and 15 for identification of interferences). In this case, the result may not be reported for regulatory compliance purposes. If, however, the results of both the spike and the ongoing precision and recovery test fail the acceptance criteria, the analytical system is judged to be out of control and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.3.4 As part of the QA program for the laboratory, method accuracy for samples shall be assessed and records shall be maintained. After the analysis of five spiked samples in which the recovery passes the test in section 8.3, compute the average percent recovery (P) and the standard deviation of the percent recovery (s_p). Express the accuracy assessment as a percent recovery interval from $P-2s_p$ to $P+2s_p$. For example, if P = 90% and s_p = 10% for five analyses of diesel oil, the accuracy interval is expressed as 70 to 110%. Update the accuracy assessment on a regular basis (e.g., after each 5 to 10 new accuracy measurements).

8.4 The laboratory shall analyze duplicate samples for each drilling fluid type at a minimum of 20 percent (one sample for each five sample set). A duplicate sample shall consist of a well-mixed, representative aliquot of the sample.

8.4.1 Analyze one sample in the set in duplicate per the procedure beginning in section 10.

8.4.2 Compute the relative percent difference (RPD) between the two results per the following equation:

Equation 4:

$$RPD = \frac{(D1 - D2)}{(D + D2)/2} \times 100$$

where:

D1 = concentration of diesel in the sample

D2 = concentration of diesel oil in the second (duplicate) sample

8.4.3 The relative percent difference for duplicates shall meet the acceptance criteria in Table 5. If the criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.5 Blanks—reagent water blanks are analyzed to demonstrate freedom from contamination.

8.5.1 Extract and concentrate a reagent water blank initially and with each sample set (samples started through the analysis on the same day, to a maximum of 5 samples). Analyze the blank immediately after analysis of the QC standard (section 6.6) to demonstrate freedom from contamination.

8.5.2 If any of the components of diesel oil or any potentially interfering compound is detected in a blank, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination.

8.6 Comparison of gravimetric and diesel oil measurements.

8.6.1 Compare the concentration of the oil content (section 14.1.2) determined gravimetrically with the diesel oil concentration determined by GCFID (section 14.2.2). If the diesel oil concentration exceeds the gravimetric oil concentration, the analysis has been performed improperly. Correct the error or repeat the sample analysis beginning with section 10.

8.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for initial (section 8.2) and ongoing (section 12.5) precision and recovery should be identical, so that the most precise results will be obtained. The GC instrument will provide the most reproducible results if dedicated to the seetings and conditions required for the analyses of the analyte given in this method.

8.8 Depending on specific program requirements, field replicates and field spikes of diesel oil into samples may be required to assess the precision and accuracy of the sampling and sample transporting techniques.

9 Sample Collection, Preservation, and Handling

9.1 Collect drilling fluid samples in wide-mouth glass containers following conventional sampling practices (reference 8).

9.2 Samples must be representative of the entire bulk drilling fluid. In some instances, composite samples may be required.

9.3 Maintain samples at 0 to 4 degrees C from the time of collection until extraction.

9.4 Sample and extract holding times for this method have not yet been established. However, based on tests of wastewater for the analytes determined in this method, samples shall be extracted within seven days of collection and extracts shall be analyzed within 40 days of extraction.

9.5 As a precaution against analyte and solvent loss or degradation, sample extracts are stored in glass bottles with Teflon lined caps, in the dark, at −20 to −10 degrees C.

10 Sample Extraction and Concentration

10.1 Retort

10.1.1 Tare the retort sample cup and cap to the nearest 0.1 g. Transfer a well homogenized and representative portion of the drilling fluid to be tested into the sample cup. Do not fill the retort cup to the top so that excess sample must be wiped off. Place the cap on the cup and reweigh. Record the weight of the sample to the nearest 0.1 g.

Note: On agitation, most drilling fluids entrain air as small bubbles. The extent of air entrainment is uncertain and is difficult to detect when the mud is poured into the retort cup. By weighing the drilling fluid, the quantitative detection of diesel oil is improved. In addition, by using a gravimetric measurement of the amount of sample, the retort cup does not need to be completely filled. This procedure avoids the error that occurs when the cup is filled and the oil rises to the surface of the sample and must be wiped off (as occurs if the manufacturer's instructions are followed), thus resulting in a loss of oil.

10.1.2 Follow the manufacturer's instructions for retort of the drilling fluid. Substitute 6 g of loosely packed glass wool for the steel wool in the manufacturer's instructions and distill the sample into a glass receiver. The presence of solids in the distillate require that the distillation be rerun starting with a new portion of sample. Placing more glass wool in the retort expansion chamber, per the manufacturer's instructions, will help prevent the solids from being carried over in the distillation.

10.1.3 QC standard—used for tests of initial (section 8.2) and ongoing (section 12.5) precision and accuracy. For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a QC sample as follows:

10.1.3.1 Place the QC standard (section 6.6) in the retort cup beginning in section 10.1.

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10.1.3.2 Analyze the QC standard beginning with section 10.1.2 then proceeding to section 10.2.

10.1.4 Blank—For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a blank as follows:

10.1.4.1 Place 10 mL of reagent water in a clean, tared, retort cup and weigh to the nearest mg. Record the weight of the reagent water.

10.1.4.2 Analyze the blank beginning with section 10.1.2 then proceeding to section 10.2.

10.2 Extraction and drying.

10.2.1 After the distillation is complete, pour the retort distillate into a 60 mL separatory funnel. Quantitatively rinse the inner surfaces of the retort stem and condenser with methylene chloride into the separatory funnel. Rinse the receiver with two full receiver volumes of methylene chloride and add to the separatory funnel.

10.2.2 Stopper and shake the funnel for one minute, with periodic venting to prevent a buildup of gas pressure. Allow the layers to separate. Prepare a glass filtering funnel by plugging the botton with a piece of glass wool and pouring in 1 to 2 inches of anhydrous sodium sulfate. Alternatively, a drying column may be used. Wet the funnel or column with a small portion of methylene chloride and allow the methlyene chloride to drain to a waste container.

10.2.3 Place the glass filtering funnel or drying column into the top of a Kuderna-Danish (K–D) flask equipped with a preweighed 10 mL receiving flask. Add a preweighed boiling chip to the receiving flask. Drain the methylene chloride (lower) layer into the glass filtering funnel or drying column, and collect the extract in the K–D flask.

10.2.4 Repeat the methylene chloride extraction twice more, rinsing the retort with two thorough washings each time and draining each methylene chloride extract through the funnel or drying column into the K–D flask.

10.3 Concentration

10.3.1 Place a Snyder column on the K–D flask. Prewet the Snyder column by adding about one mL of methylene chloride to the top. Place the K–D apparatus on a hot water bath (60 to 65 degrees C) so that the concentrator tube is partially immersed in the hot water, and the entire lower rounded surface of the flask is bathed with hot vapor. Adjust the vertical position and the water temperature as required to complete the concentration in 15 to 20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood with condensed solvent. Concentrate the sample until it is free of methylene chloride. Remove the K–D apparatus from the hot water bath and allow to cool.

10.3.2 Weigh and record the final weight of the receiving flask.

10.3.3 Dissolve the oil in methylene chloride and adjust the final volume to 1.0 mL. If the extract did not concentrate to a final volume of 1.0 mL or less, adjust the final volume to 10.0 mL.

11. Gas Chromatography

11.1 Table 3 lists the retention times that can be achieved under the conditions in Table 2 for the n-alkanes of interest. Examples of separations that can be achieved are shown in Figure 1.[1] Other retort devices, columns, chromatographic conditions, or detectors may be used if the estimated detection limits (section 1.4) and the requirements of section 8.2 are met.

11.2 Using a micropipet or microsyringe, transfer equal 100 μL volumes of the sample extract or QC standard extract (section 10.3.3) and the TCB internal standard solution (section 6.4) into a GC injection vial. Cap tightly and mix thoroughly.

11.3 Inject 1 μL of the sample extract or reference standard into the GC using the conditions in Table 2.

11.4 Begin data collection and the temperature program at the time of injection.

11.5 If the area of any peak exceeds the calibration range of the system, make a 10-fold dilution of the extract (section 10.3.3), mix a 100 μL aliquot of this dilute extract with 90 μL of the internal standard solution (section 6.4), and reanalyze.

12. System and Laboratory Performance

12.1 At the beginning of each working day during which analyses are performed, GC calibration is verified. For these tests, analysis of the 300 mg/mL calibration standard (table 1) shall be used to verify all performance criteria. Adjustment and/or recalibration (per section 7) shall be performed until all performance criteria are met. Only after all performance criteria are met may the QC standard, blank, and samples be analyzed.

12.2 Retention times

12.2.1 Retention time of the internal standard—the absolute retention time of the TCB internal standard shall be within the range of 7.96 to 8.08 minutes.

12.2.2 Relative retention times of the n-alkanes—the retention times of the n-alkanes relative to the TCB internal standard shall be within the limits given in table 4.

12.3 Calibration verification

12.3.1 Compute the response factor for each peak by the internal standard technique (section 7.2).

12.3.2 For each peak, compare the response factor with the response factor from the initial calibration (section 7.2.2). If all response factors are within ±15 percent of their respective values in the initial calibration, system calibration has been verified. If not, prepare a fresh calibration standard and repeat the test (section 12.1), or recalibrate (section 7).

12.4 Multiple GC peaks—each n-alkane shall give a single, distinct GC peak.

12.5 Ongoing precision and accuracy

12.5.1 Compute the oil content concentration and the concentration of diesel oil in the QC standard in each sample set (section 10.1.3) prior to analysis of any sample in the set.

12.5.2 Compare the concentration with the QC limit in Table 4. If the concentrations of oil content and of diesel oil in the QC standard meet the acceptance criteria, system performance is acceptable and analysis of samples may proceed. If, however, the concentrations do not meet the acceptance criteria, system performance is unacceptable. In this event, correct the problem, reprocess the sample set (section 10), and repeat the ongoing precision and accuracy test (sections 10.1.3 and 12.5).

12.5.3 Add results that pass the specifications in section 12.5.2 to initial and previous ongoing data. Update QC charts to form a graphic representation of continued laboratory performance. Develop statements of laboratory accuracy for oil content and diesel oil in drilling fluids by calculating the average percent recovery (R) and the standard deviation of percent recovery (s_r). Express the accuracy statement as a recovery interval from R − 2 S_r to R2 + S_r. For example, if R = 95 percent and S_r = 5 percent, the accuracy is 85 to 105 percent.

13. Qualitative Determination

If less than 10 GC peaks (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the TCB internal standard peak) are present in the analysis of the sample, and the QC tests (sections 8 and 12) for the sample set are acceptable, diesel oil is not present in the sample. If 10 or more GC peaks are present in the analysis of the sample, diesel oil is identified by comparing the relative retention times and relative areas of peaks from the analysis of the concentrated extract of a mud sample to the relative retention times and relative areas of peaks from the reference standard.

13.1 Relative retention times—the n-alkane peaks (table 3) shall be within the limits in table 3. If the relative retention times are not within these limits, repeat the analysis of the reference diesel oil and the analysis of concentrated extract of the mud sample and compare the relative retention times. If the relative retention times of the n-alkane peaks do not agree, the retention times of the 10 largest components that agree within ± 1 percent are used for the identification of diesel oil (per section 13.2) and for determination of the concentration of diesel oil in the mud sample (per section 14).

13.2 Distribution of peak area ratios (Reference 9)—diesel oil is further identified by comparing the distribution of the area ratios of peaks in the chromatogram of the calibration standard (section 6.5) to these same ratios in the chromatogram of the sample.

13.2.1 Compare the chromatograms of the calibration standard and the sample.

13.2.2 Select the 10 peaks largest in area in the chromatogram of the sample that are in relative retention time agreement with the corresponding peaks in the calibration standard (section 13.1) and appear to be unique to the calibration standard. Exclude the solvent peak, the internal standard peak, any peaks that elute prior to the internal standrd peak, and any multiplet and unresolved peaks. For most samples, these will be the n-alkane peaks.

13.2.3 Using the largest peak of the 10 peaks as reference, divide the area of each of the other nine peaks by the area of this largest peak. Repeat this division process for the same 10 peaks in the calibration standard.

13.2.4 Compare the ratios of areas of the nine peaks in the sample with the respective ratios of the areas of the nine corresponding peaks in the reference standard.

13.2.4.1 If all of these ratios agree within ± 21 percent, diesel has been positively identified. The quantity of diesel oil is then determined per section 14.

13.2.4.2 If any of the ratios do not agree within ± 21 percent, an interference is suspected.

13.2.4.3 If other peaks can be found that agree in relative retention time (section 13.1) and in ratio (section 13.2.4.1), use these peaks for quantitation per section 14. If 10 peaks that agree cannot be found, Method 1625 (Revision C or greater) shall then be used to determine the presence and concentrations of the polynuclear aromatic hydrocarbons (PAH's) present in the sample.

14. Quantitative Determination

14.1 Oil content by gravimetry

14.1.1 Subtract the weight of the preweighed receiving flask and boiling chip (section 10.2.3) from the final weight of the receiving flask (section 10.3.2).

14.1.2 Calculate the concentration of oil content in the sample using the following equation:

Equation 5:

$$C\ (mg/kg) = \frac{W_f}{W_s} \times 1000$$

where:

W_f = final weight of oil in mg (from section 14.1.1)

W_s = wet weight of sample in grams (from section 10.1.1)

14.2 Diesel oil by gas chromatography

14.2.1 Compute the concentration of diesel oil in the sample extract using the combined response factor given in section 7.3.3 for the 10 largest peaks chosen in section 13 using the following equation:

Equation 6:

$$C_{ex}\ (mg/mL) = \frac{(C_{is})\ [A_{s(1)} + A_{s(2)} \ldots + A_{s(n)}]}{(A_{is})\ (RF\ combined)}$$

where:

C_{ex} is the concentration of the oil in the extract

14.2.2 Calculate the concentration of diesel oil (in mg/kg) in the same as follows:

Equation 7:

$$C\ (mg/kg) = \frac{(C_{ex})\ (V_{ex})}{(W_s)} \times 1000$$

where:

V_{ex} = final extract volume in mL (from section 10.3.3 or 14.2.3)

W_s = wet weight of sample in grams (from section 10.1.1)

14.2.3 If the area of any peak in the chromatographic pattern exceeds the calibration range of the GC, the extract is diluted by a factor of 10 with methylene chloride, 100 uL is withdrawn and mixed with 90 uL of the international standard solution (section 6.4) and the diluted extract is reanalyzed.

14.3 Results of analyses of drilling fluids are reported in units of mg/kg (wet weight) to three significant figures. Results for samples that have been diluted are reported at the least dilute level at which the peak areas are within the calibration range (section 14.2.3).

15. Complex Samples.

15.1 The most common interference in the determination of diesel oil is from mineral oil in the drilling fluid (see sections 3 and 13). Drilling fluids may also contain proprietary lubricity additives that can interfere with the identification and quantification of diesel oil.

15.2 The presence of mineral oil or other interfering oils and additives can often be determined by comparing the pattern of chromatographic peaks in the sample with the patterns of chromatographic peaks in the reference standard (sections 6.5 and 10.1.3) and in the spiked sample (section 8.3).

15.3 In cases where there is a mixture of diesel and mineral oil, the analyst may have to choose some of the smaller early or late eluting peaks present in the chromatographic pattern of the diesel oil, and not present in the chromatographic pattern of the mineral oil, to determine the diesel content. Quantification using these peaks is performed by using these peaks for calibration (section 7) and for determination of the final concentration (section 14).

16. Method Performance.

16.1 This method was developed by two laboratories that tested for diesel oil drilling fluids (mainly drilling muds) over a two-year period. The performance data for this method are based on the performance of the method in these two laboratories (reference 10).

16.2 The most commonly occurring drilling fluid in the tests of this method was a seawater lignosulfonate mud (EPA Generic Mud No. 8). The estimated detection limit for diesel oil in this mud is 100 ug/kg.

References:

1. Brown, John S, "Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives", Proceedings of Tenth Annual Analytical Symposium, USEPA, Industrial Technology Division (WH–552), 401 M St, Washington DC 20460, March 19–20, 1986.

1. Brown, John S, "Final Report for Research Program on: Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives", Phase II, Contract Reference Agreement No. 501–P–5476R, to Offshore Operators Committee, Environmental Subcommittee, Houston, TX, Prepared by Battelle Ocean Science and Technology Department, 397 Washington St, Duxbury MA 02332.

3. "Carcinogens—Working With Carcinogens", Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77–206, August 1977.

4. "OSHA Safety and Health Standards, General Industry", (29 CFR 1910), Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).

5. "Safety in Academic Chemistry Laboratories", American Chemical Society Publication, Committee on Chemical Safety, 3rd Edition, 1979.

6. Available through the EPA Sample Control Center, P.O. Box 1407, Alexandria, VA 22313 (703–557–5040).

7. "Handbook of Analytical Quality Control in Water and Wastewater Laboratories", USEPA, EMSL, Cincinnati, OH 45268, EPA–600/4–79–019 (March 1979).

8. "Standard Practice for Sampling Water", ASTM Annual Book of Standards, ASTM, Philadelphia, PA 76 (1980).

9. Boehm, Paul D., and Sauer, Theodore C., "Review and Evaluation of Draft EPA Method 1651 Total Oil and Diesel Oil in Drilling Discharges by Retort Gravimetry and GC–FID", Battelle Ocean Sciences, 397 Washington St., Duxbury, MA 02332 (March 4, 1988).

10. Rushneck, D. R., and Eynon B. P., "Precision and Recovery Analysis of DPMP Diesel Measurements", Memorandum to Dennis Ruddy, USEPA, Industrial Technology Division (WH–552), 401 M St SW., Washington DC 20460 (23 August 1987, draft).

TABLE 1.—CONCENTRATION OF CALIBRATION STANDARDS

Expected concentration in sample	Wt of Diesel oil in 10 mL volumetric [1] (g)	Concentration in standard
50,000 mg/kg	use undiluted oil	
30,000 mg/kg	7.6	760 mg/mL
10,000 mg/kg	3.0	300 mg/mL
5,000 mg/kg	1.5	150 mg/mL
2,000 mg/kg	0.6	60 mg/mL

[1] Weigh oil to the nearest mg.

[1] Figure 1—Sample Chormatograms, is not published in the Federal Register but is available in the public docket. See "Addresses" section.

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Table 2.—Gas Chromatographic Operating Conditions—Method 1651 [1]

Injection port, transfer line, and detector temperatures=275 deg. C
Column temperature program:
  Initial temperature: 90 deg. C
  Initial time: 0 minute
  Ramp: 90–250 deg. C at 5 deg. C per minute
  Final temperature: 250 deg. C
  Final hold: 10 minutes or until all peaks have eluted.
Carrier gas and flow rates:
  Carrier: nitrogen or helium
  Velocity: 20–40 cm/sec at 90 deg. C
  Split ratio: 80:1–120:1
  Makeup gas: as required by manufacturer
Hydrogen and air flow rates: as specified by manufacturer
Detector amplifier settings: 10–11 amp full scale.
Attenuation is
  Adjusted so that the highest peaks are on scale in the most concentrated standard.
  Recorder: Chart speed of 1–2 cm/min (fixed).

[1] Conditions are approximate and can be adjusted to meet the performance criteria in section 12.

TABLE 3.—RETENTION TIMES AND RELATIVE RETENTION TIME LIMITS FOR MAJOR COMPONENTS OF DIESEL OIL—METHOD 1651

Compound	Retention time	
	Mean	Relative
TCB	8.0	1.00 to 1.00
n-C12	9.9	1.22 to 1.24
n-C13	12.6	1.55 to 1.57
n-C14	15.3	1.89 to 1.92
n-C15	17.9	2.21 to 2.25
n-C16	20.4	2.52 to 2.56
n-C17	22.9	2.82 to 2.88
n-C18	25.2	3.12 to 3.15
n-C19	27.3	3.39 to 3.43
n-C20	29.4	3.66 to 3.71
n-C21	31.5	3.90 to 3.97
n-C22	33.4	4.14 to 4.21
n-C23	35.3	4.37 to 4.45
n-C24	37.1	4.58 to 4.59

TABLE 4.—QC ACCEPTANCE CRITERIA FOR PRECISION AND RECOVERY—METHOD 1651

Analyte	Test concentration (mg/kg)	Limit for s (mg/kg)	Range for X (mg/kg)	Range for P (mg/kg)
Oil Content	20,000	3,400	18,000 to 23,700	16,700 to 24,900
By gravimetry	[2] n	0.17n	0.88n to 1.16n	0.82n to 1.22n
Diesel oil by GC	20,000	3,600	17,200 to 20,300	13,600 to 21,400
	[2] n	0.18n	0.80n to 1.06n	0.73n to 1.14n

[2] For other test concentrations in the range of 1,000–50,000 mg/kg, assuming a spike to background ratio of 5:1.

TABLE 5.—QC ACCEPTANCE CRITERIA FOR DUPLICATES—METHOD 1651

Concentration detected (mg/kg)	Relative percent difference	
	Oil content	Diesel oil
500	36	94
750	30	68
1,000	28	54
2,000	24	34
5,000	21	22
10,000	21	18
20,000	20	16
50,000	20	15

Appendix B—Minimal Volume Static Sheen Test

1. Scope and Application

This method is to be used as a compliance test for the "no discharge of free oil" requirement for discharges of drilling fluids, drill cuttings, deck drainage, produced sand, and well treatment fluids. Free oil refers to any oil contained in a water steam that when discharged will cause a film or sheen on or a discoloration of the surface of the receiving water.

2. Summary of Method

Samples of drilling fluids, deck drainage, or well treatment fluids (5 mL) and samples of drill cuttings or produced sand (15 g, wet weight basis) are introduced into a 125 mL sample container (surface area approximately 26.5 cm^2, or 4.1 in^2) with test water from a drinking-quality water source. Fluid samples are introduced by automatic pipet into the container after filling with test water; samples of solids are introduced prior of adding test water. Minimum agitation is required when adding the fluid sample or the receiving water. Observations are made immediately and five minutes later. To aid in interpretation, an oil-fee drilling fluid blank and a 0.5% (v/v) oil-contaminated drilling fluid standard are tested concurrently with effluent samples. Observations are made to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test water. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers and the stainless steel spatual used to transfer drill cuttings or produced sand will be the principla sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similiar contamination from pipets and test containers.

4. Apparatus, Materials, and Reagents

4.1 *Apparatus*

4.1.1 Sampling containers—1 L polyethylene screw-cap containers.

4.1.2 Graduated cylinder—100 mL graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Triple-beam scale

4.1.4 Automatic pipet capable of delivering 5 mL volumes of test samples, and disposable polypropylene pipet tips. (Equivalent to Oxford MACRO–SET 5–10 mL transfer pipet, product number 8885–890502 and MACRO–SET 5–10. mL pipet tips, approximately 132 mm x 11 mm, product number 8885–081506.)

4.1.5 Stainless steel spatual

4.1.6 Test container—120 mL (4 oz) polypropylene or polyethylene specimen or sample cups, with or without screw-cap covers; approximate dimensions 72 mm high x 60 mm top diameter (od) 48 mm bottom diameter (od). Surface area is approximately 28.5 cm^2 (29 mm id). (Equivalent to Fisherbrand 118 mL clear polypropylene screw-cap containers, product number 14–375–112A or Lab-Tek 4 oz polyethlyene disposable cups, product number 4719.)

4.2 *Materials and Reagents*

4.2.1 Test water—from a drinking-quality water source.

4.2.2 Oil-free generic drilling fluids.

4.2.3 Samples of diesel oil or mineral oil, added either directly or as a component of a complex additive, or diesel oil from the rig's fuel supply.

5. Calibration

None currently specified.

6. Quality Control Procedures

Both negative control and positive control samples are tested concurrently with the effluent test sample. The negative control consists of an oil-free sample of the type of generic mud that is being used at the time that sampling was performed. The positive control is this same generic mud to which a 0.5% (v/v) spike of oil has been freshly added (within 12 hours, if tightly sealed in a screw-capped container; within 1 hour if left open to air). The added oil should be one of the following: (a) If no oil or oil-based additives have been used in the mud system, diesel oil from the rig's fuel supply; (b) if a specific diesel or mineral oil has been used in the mud system, a sample of that oil.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid must be obtained once per day from the active mud pit; the sample volume should range between 200 mL and 500 mL.

7.3 Samples of drill cuttings or produced sand must be obtained from each type of solids control equipment from which discharges occur on any given day prior to addition of any washdown water; samples should range between 200 g and 500 g.

7.4 Samples of deck drainage or well treatment fluids must be obtained from holding facility prior to discharge; the sample volume should range between 200 mL and 500 mL.

7.5 Samples must be tightly sealed with screw-cap enclosures immediately after sample collection and tested no later than 1 hour after collection.

7.6 If predilution is imposed as a permit condition, drilling fluid samples must be diluted at the same ratio with the same prediluting water as the discharged muds until the slurry is homogenously mixed. Muds should be mixed in screw-cap sampling containers by shaking.

8. Procedure

8.1 Test water that will be used as "receiving water" in the test must be obtained from a drinking-quality source of water. The test container must have an air to liquid interface area of 26.5±2.5 cm^2. The surface of the water should be no more than 1 cm below the top of the test container.

8.2 Drilling fluid materials, well treatment fluids, or deck drainage must be sampled by introducing the disposable pipet tip of the automatic pipet 1.5 inches below the surface of the effluent. Fluid is withdrawn from the effluent sample and carefully transferred to the test container without cleaning or scraping the pipet tip or touching it to the sides of either the effluent sample container or the test container. The pipet tip must be introduced into the test water at least 1.5 inches below its surface level and the test material then slowly injected into the test water. Care must be taken to keep the pipet tip as stationary as possible while expelling the sample to avoid creating turbulence in the test container. Care also must be taken to avoid discharging air bubbles, which can occur especially for viscuous muds, and which generally occur when most of the sample has been expelled. Test containers and pipet tips must be used only once and discarded.

8.3 Drill cuttings or produced sand should be transferred from the sampling container directly into test containers. Test containers should be tared and 15 g of wet solids added to the container. Test water should be added slowly; the container should be tipped slightly so that water can be added along the wall of the container and not directly onto the solids material at the bottom of the container.

8.4 Observations must be made immediately and 5 minutes after the test material is transferred to the test container. Viewing points above the test container should be made from at least 3 perspectives of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. The order for the testing should be (1) the negative control, (2) the positive control, (3) the test sample(s).

8.5 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence on the surface of the test water shall constitute a demonstration of "free oil." These visual observations include droplets, patches, streaks, or sheets of such altered surface characteristics. Generally, the appearance of free oil, as oil content increases, will proceed from droplets to swirls or streaks, to patches or sheets. With increasing time, the larger surface forms generally break down into the smaller forms, i.e., sheets will cast off swirls, which further disaggregate into droplets. Irridescence, i.e., a multi-color appearance of the oil film, is generally a transient phenomenon. It may occur immediately after the test material is added (or test water in the case of effluent solids), but as the film spreads and its thickness decreases, color will degenerate into a "silvery" appearance, or areas of increased light reflectance.

Addendum

Section 8.5—Interpretation

Several interferences in detecting a sheen can occur with drilling fluids. Two of these are bubbling or foaming in the test container and particulate surface deposits. Bubbles may be formed when pipetting the test sample into test water (especially for viscous muds) and some muds (e.g., lime muds) may foam or effervesce for a short time when added to test water.

Bubbles may interfere with the ability to detect oil, leading to false negative responses. Care must be taken to carefully observe the instant that the pipette tip touches the surface of the test water and the first few seconds thereafter. However, it is also useful to wait a minute or two and recheck the test containers to determine if a sheen has developed after foaming has stopped and bubbles have broken. The appearance of a sheen must persist for at least 30 seconds before it may be scored as a positive result.

Particulate surface deposits also interfere with interpreting sheen test results, leading to false positive results. This interference occurs when drilling fluid fines remain at the surface of the test water, normally occurring for the first 15–30 seconds, after which time they sink into the test water. Some fines do not sink, however. Generally these can be differentiated from oil sheens because fines have a "flat" appearance whereas oil sheens have a glossy or more reflective appearance. Also, oil sheens tend to "disappear" when the viewing angle is changed away from the angle of reflected light. Surface patches of particulate fines, on the other hand, tend to appear as darkened patches, or shadow-like appearances regardless of the viewing angle.

[FR Doc. 89–23722 Filed 10–13–89; 8:45 am]
BILLING CODE 6560–50–M

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FEDERAL RESERVE SYSTEM

First Interstate Corporation, et al. Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 30, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin,* Kohler, Wisconsin, and FIB Acquisition, Inc., Kohler, Wisconsin; to acquire 100 percent of the voting shares of First Illini Bancorp, Inc., Galesburg, Illinois, and thereby indirectly acquire Abingdon Bank and Trust Company, Abingdon, Illinois; Community Bank and Trust Company, Canton, Illinois; First Galesburg Bank and Trust Company, Galesburg, Illinois; and Madison Park Bank, Peoria, Illinois. In connection with this application, FIB Acquisition, Inc. also proposes to become a bank holding company.

2. *First State Bank of Monticello, Inc.,* Monticello, Illinois; to acquire 100 percent of the voting shares of Busey Bank of McLean County, Heyworth, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First SCK Financial Corporation,* Anthony, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Anthony, Anthony, Kansas.

Board of Governors of the Federal Reserve System, October 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24320 Filed 10-13-89; 8:45 am]

BILLING CODE 6210-01-M

Greenwood's Bancorporation, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Greenwood's Bancorporation, Inc.,* Lake Mills, Wisconsin; to engage *de novo* through its subsidiary, Greenwood's Financial Services, Inc., Lake Mills, Wisconsin, in insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the trade area for the community of Lake Mills, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens National Bank Corporation,* Tell City, Indiana; to engage *de novo* through its subsidiary, Citizens National Life Insurance Company, Tell City, Indiana, in reinsuring credit life and disability insurance directly related to extensions of credit made by the Applicant and its subsidiary bank pursuant to § 225.25(b)(8)(i) (A) and (B) of the Board's Regulation Y. These activities will be conducted in and around Tell City, Indiana.

Board of Governors of the Federal Reserve System, October 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24321 Filed 10-13-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Southwest Georgia Financial Corp. et al

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 30, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Southwest Georgia Financial Corporation Employee Stock Ownership Plan and Trust,* Moultrie, Georgia; to acquire an additional 15.2 percent of the voting shares of Southwest Georgia Financial Corporation, Moultrie, Georgia, for a total of 24.52 percent, and thereby indirectly acquire Moultrie National Bank, Moultrie, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Joseph D. Reid,* Okemos, Michigan; to acquire 14.99 percent of the voting shares of Capitol Bancorp, Ltd., Lansing, Michigan, and thereby indirectly acquire Capitol National Bank, Lansing, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sidney Azeez,* Jupiter, Florida; to acquire an additional 6.2 percent of the voting shares of The Regional Bank of Rifle, Rifle, Colorado, for a total of 29.2 percent.

2. *James M. Jenkins,* Trustee, Kansas City, Missouri; to acquire 32.01 percent of the voting shares of Third Bancshares Corporation, Sedalia, Missouri, and thereby indirectly acquire Third National Bank of Sedalia, Sedalia, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Arthur Temple,* Diboll, Texas; to acquire 21.36 percent of the voting shares of First Community Financial Corporation, Lufkin, Texas, and thereby indirectly acquire Community State Bank, Lufkin, Texas.

2. *Arthur Temple,* Diboll, Texas; to acquire 12.2 percent of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire Diboll State Bank, Diboll, Texas, and Peoples National Bank, Lufkin, Texas.

3. *Arthur Temple,* Diboll, Texas; to acquire 5.13 percent of the voting shares of Pineland Bancshares, Inc., Pineland, Texas, and thereby indirectly acquire Pineland State Bank, Pineland, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ray Doumani,* Beverly Hills, California; Gerald L. Parsky, Los Angeles, California; William E. Simon, Morristown, New Jersey; and Larry B. Thrall, Beverly Hills, California; to acquire an additional 31.19 percent of the voting shares of World Trade Bancorp, Beverly Hills, California, for a total of 61.09 percent, and thereby indirectly acquire World Trade Bank, N.A., Beverly Hills, California.

Board of Governors of the Federal Reserve System, October 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24322 Filed 10-13-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Detroit District Office, chaired by Carl C. Reynolds, District Director. The topic to be discussed is food labeling.

DATES: Wednesday, November 15, 1989, 7:30 p.m. to 8:30 p.m.

ADDRESSES: George Potter Larrick Bldg., Conference Rm., 1560 East Jefferson Ave., Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson Ave., Detroit, MI 48207, 313-226-6260.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24259 Filed 10-13-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATES: Monday, November 13, 1989, 1 p.m. to 3 p.m.

ADDRESSES: Mount Mary College, Notre Dame Hall, Multi-purpose Rm., 2900 North Menomonee River Pkwy., Milwaukee, WI 53222.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4103.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24260 Filed 10-13-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward McDonnell, District Director, in cooperation with the Cooperative Extension Service. The topic to be discussed is proposed food labeling requirements.

DATES: Friday, November 10, 1989, 10 a.m. to 11:30 a.m.

ADDRESSES: Extension Center, 70 Pierce St., East Greenwich, RI 02818.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24261 Filed 10-13-89; 8:45 am]

BILLING CODE 4160-01-M

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Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: St. Louis Branch Office, chaired by Raymond K. Hedblad, Director. The topic to be discussed is food labeling.

DATES: Tuesday, November 14, 1989, 1 p.m. to 4 p.m.

ADDRESSES: St. Louis Community College at Florissant Valley, Student Center, Multi-purpose Rm., 3400 Pershall Rd., St. Louis, MO 63135.

FOR FURTHER INFORMATION CONTACT: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 Collins Alley, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24262 Filed 10–13–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Detroit District Office, chaired by Carl C. Reynolds, District Director. The topic to be discussed is proposed food labeling requirements.

DATES: Friday, November 17, 1989, 10 a.m.

ADDRESSES: Marion County Central Library, Cospey Auditorium, 40 East St. Clair St., Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson St., Detroit, MI 48207, 313–226–6260.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24263 Filed 10–13–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: St. Louis Branch Office, chaired by Raymond K. Hedblad, Director. The topic to be discussed is food labeling.

DATES: Wednesday, November 29, 1989, 5:15 p.m. to 8 p.m.

ADDRESSES: Cedar Rapids Board of Education, Board Rm., 348 Second Ave., Cedar Rapids, IA 52406.

FOR FURTHER INFORMATION CONTACT: Mary-Margaret Richardson, Consumer Affairs Officer, Food and Drug Administration, 808 Collins Alley, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24264 Filed 10–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0201]

International Drug Scheduling; Convention on Psychotropic Substances; Certain Benzodiazepine Drugs; Certain Controlled Substances Analog Drugs; Delta-9-THC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, pursuant to international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the Commission on Narcotic Drugs (CND) in Vienna, Austria in February 1990. This notice is issued pursuant to the Controlled Substances Act (CSA).

DATES: Comments by November 15, 1989; requests for a public meeting and the reasons for such a request by October 31, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a public meeting and the reasons for such a request to Nicholas P. Reuter (address below).

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). Article 2 of the Convention provides that if WHO has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Psychotropic Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS shall then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments respecting the scientific and medical evaluation which the Secretary is to prepare respecting the drug or substance.

In 1988, the Secretary received notifications on 14 drug substances. Notices published in the **Federal Registers** of March 29, 1988 (53 FR

10155), June 15, 1988 (53 FR 22386), and August 17, 1988 (53 FR 31101), solicited information on these substances that was eventually forwarded to WHO. This information was used by WHO to prepare reports on each substance. These reports were deliberated by WHO's 26th Expert Committee on Drug Dependence (ECDD) in April 1989. As detailed below, the ECDD recommended no change in the international scheduling status of three substances but recommended that four substances be added to the schedules of the Convention on Psychotropic Substances and that one substance be transferred from Schedule I to Schedule II.

A. Substances Reviewed and Not Recommended for Control

The 26th session of the ECDD, which met April 17 through 22, 1989, decided not to recommend changing the international scheduling status of the following three substances: brotizolam; etizolam; and quazepam. The United States is not required to take any further action on these substances.

B. Substances Reviewed and Recommended for Control

1. *Midazolam.* WHO has recommended that midazolam be added to Schedule IV of the Psychotropic Convention. Midazolam is marketed in the United States and is currently controlled in Schedule IV of the CSA.

2. *Analogs of MDA.* WHO has recommended that *N*-hydroxy MDA, *N*-ethyl MDA (MDE), and 4-methylaminorex ((±)—*cis*—2-amino-4-methyl-5-phenyl-2-oxazoline) should be added to Schedule I of the Psychotropic Convention. All three of these substances are controlled domestically in Schedule I of the CSA.

3. *Delta-9-THC.* In 1987, the U.S. Government transmitted a petition to the Secretary-General requesting that the substance *delta*-9-THC be transferred from Schedule I to Schedule II of the Psychotropic Convention. At that time "tetrahydrocannabinols, all isomers" were listed under control in Schedule I of the Convention. The U.S. petition followed the approval, in 1986, of the drug product Marinol, which contained *delta*-9 tetrahydrocannabinol (*delta*-9-THC) (specifically dronabinol, or synthetic (−)-*delta*-9-(*trans*)-THC) as the active ingredient. According to the United Nations Notification (discussed below), the specific isomer dronabinol (or (−)-*trans-delta* THC) is controlled under Schedule I of the Psychotropic Convention. After reviewing the available data, WHO has accepted the U.S. Government petition as it pertains to (−)-*trans-delta*-9-THC and recommended that the specific isomer (−)-*trans-delta*-9-THC be transferred from Schedule I to Schedule II of the Psychotropic Convention.

4. *Fentanyl analogs.* WHO has recommended that six fentanyl analogs be added to Schedules I and IV of the Single Convention on Narcotic Drugs. Because WHO is not recommending that these six drugs be controlled under the Psychotropic Convention, they are not included in this notice.

The full text of the notifications from the Secretary-General of the United Nations is provided below in section II of this notice. Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) requires the Secretary of HHS, after receiving a notification proposing scheduling to publish a notice in the **Federal Register**, to provide the opportunity for interested parties to submit information and comments on the proposed scheduling action.

II. United Nations Notifications

The formal United Nations notifications which identify the five drug substances and explain the basis for the recommendations are reproduced below.

A. Notification on Midazolam and Analogs of MDA Reference: NAR/CL.15/1989

DND 411/211 11SS

DND 411/1(2) WHO/ECDD 26

The Secretary General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the World Health Organization, pursuant to article 2, paragraphs 1 and 4, of the Convention on Psychotropic Substances, has notified the Secretary-General by notes dated 3 June 1989 that it is of the opinion that the substance *midazolam* (8 chloro-6-(*o*-fluorophenyl)-1-methyl-4*H*-imidazol[1,5-*a*][1,4]-benzodiazepine) should be included in Schedule IV of that Convention and that the three substances *N-hydroxy MDA*-((±)-*N*-[*alpha*-methyl-3-4-(methylenedioxy)phenethyl] hydroxylamine)), *N-ethyl MDA* ((±)-*N*-ethyl-*alpha*-methyl-3,4-(methylenedioxy)phenethylamine)) and *4-methylaminorex* ((±)-*cis*-2-amino-4-methyl-5-phenyl-2-oxazoline)) should be included in Schedule I of that Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention, the Secretary-General hereby transmits the texts of those four notifications as annex I to the present note.

The Director-General of the World Health Organization, in connection with the notifications, has also submitted advance excerpts from the report of the Twenty-sixth WHO Expert Committee on Drug Dependence (17–22 April 1989) which reviewed these substances, *inter alia*, for possible international control. The excerpts from that report, concerning the four substances recommended for scheduling, are hereby transmitted as annex II.

In accordance with provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notifications from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5, reads as follows:

"The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible scheduling of the four substances indicated in Annex I could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by 13 October 1989.

18 August 1989

Annex I

Notes dated 3 June 1989 addressed to the Secretary-General by the Director-General of the World Health Organization

N-hydroxy MDA. The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to (±)-*N*-[*alpha*-methyl-3-4-(methylenedioxy)phenethyl]hydroxylamine and referred to as *N*-hydroxy MDA or N–OH MDA.

N-hydroxy MDA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be, abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *N*-hydroxy MDA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

N-ethyl MDA. The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to (±)-*N*- ethyl-*alpha*-methyl-3,4-(methylenedioxy)phenethylamine and referred to as *N*-ethyl MDA or MDE.

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N-ethyl MDA meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be, abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that *N*-ethyl MDA be added to Schedule I of the Convention on Psychotropic Substances, 1971.

4-methylaminorex. The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to (±)-*cis*-2-amino-4-methyl-5-phenyl-2-oxazoline and referred to as (±)-*cis*-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine or 4-methyl*aminorex*.

4-Methyl*aminorex* meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that 4-methyl*aminorex* be added to Schedule I of the Convention on Psychotropic Substances, 1971.

Midazolam. The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances, 1971, reviewed information pertaining to midazolam (INN) and defined as 8-chloro-6-(*o*-fluorophenyl)-1-methyl-4*H*-imidazo[1,5-*a*] [1,4]-benzodiazepine.

Midazolam meets the criteria of Article 2, paragraph 4(a) of the Convention, and there is sufficient evidence that the substance is, or is likely to be, abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that midazolam be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

Annex II

Summary of the Recommendations arising out of the 26th Expert Committee on Drug Dependence

The 26th ECDD met at headquarters between 17–22 April 1989. Since the report of this meeting will be published in due course of time in T.R. Series, this paper gives details of the recommendations made to the Director-General of WHO.

Analogues of MDA

N-Hydroxy MDA—Substance identification. (±)-N-hydroxy MDA (CAS 74698-47-8), chemically *N*-[*alpha*-methyl-3,4-(methylenedioxy)phenethyl]hydroxylamine, is also known as 3,4-methylenedioxy-*N*-hydroxyamphetamine, *N*-hydroxy-3,4-methylenedioxyamphetamine, N-OH-MDA, *N*-hydroxy-3,4-methylenedioxyphenylisopropylamine and 1-(3,4-methylenedioxyphenyl)-2-hydroxyaminopropane. There is one chiral carbon atom in the molecule so that two stereoisomers and one racemate are possible.

Similarity to already known substances and effects on the central nervous system. In rodent studies, (±)-N-hydroxy MDA was shown to be a psychomotor stimulant. In drug discrimination studies in rats, the substance did not generalize to either *d*-amphetamine or (±)-1-(2,5-dimethoxy-4-methylphenyl)-2-aminopropane (DOM). In humans, it was reported to have psychotomimetic activity at relatively high doses.

Dependence potential. In self-administration studies in the baboon, (±)-N-hydroxy MDA was reinforcing. The substance produced an amphetamine-like pattern of intake. The same laboratory previously reported that (±)-*N*-methyl-*alpha*-methyl-3,4-(methylenedioxy)phenethylamine (MDMA) was self-administered by baboons in a similar experiment.

Actual abuse and/or abuse liability likelihood of abuse. No data is available on actual abuse. (±)-N-hydroxy MDA has been identified in illicit traffic both in the USA and Europe. Clandestine production has been reported.

Therapeutic usefulness. There is no known therapeutic usefulness for (±)-N-hydroxy MDA.

Recommendation. On the basis of the data concerning its pharmacological profile, dependence potential, and actual abuse, the Committee rated the likelihood of abuse of (±)-N-hydroxy MDA as moderate. The degree of seriousness of the public health and social problems associated with the substance was found to be low at the present time and it has no known therapeutic usefulness.

The Committee found that there was sufficient evidence that (±)-N-hydroxy MDA is being, or is likely to be, abused so as to constitute a public health and social problem warranting the placing of the substance under international control.

In the light of this assessment, the Committee recommends that (±)-N-hydroxy MDA be controlled under Schedule I of the Convention on Psychotropic Substances, 1971.

N-Ethyl MDA (MDE)—Substance identification. (±)-*N*-ethyl MDA (MDE) (CAS 14089-52-2), chemically *N*-ethyl-*alpha*-methyl-3,4- (methylenedioxy)phenethylamine is also known as 3,4-methylenedioxy-*N*-ethylamphetamine, *N*-ethyl-3,4-methylenedioxyamphetamine, Eve, MDEA, N-ethyl-3,4-methylenedioxyphenylisopropylamine, 1-(3,4-methylenedioxyphenyl]-2-*ethylaminopropane* and 3,4-methylenedioxyethamphetamine. There is one chiral carbon atom so that two stereoisomers and one racemate are possible.

Similarity to already known substances and effects on the central nervous system. (±)-N-ethyl MDA has psychomotor stimulating properties in rodents and produces neurotoxicity which results from its damaging effect on serotonergic systems in the brain. In discrimination studies in rats, (±)-N-ethyl MDA generalizes to MDMA but not to *d*-amphetamine or DOM. Psychotromimetic effects have been observed in humans. Thus, (±)-N-ethyl MDA has a pharmacological profile similar to that of MDMA.

Dependence potential. In a baboon self-administration study, (±)-N-ethyl MDA was found to have reinforcing properties. There are no studies available on dependence potential in human subjects.

Actual abuse and/or abuse liability (likelihood of abuse). There is evidence from the Drug Abuse Warning Network (DAWN, USA) data for abuse, and two deaths have been reported in which (±)-N-ethyl MDA was detected in body fluids, along with other drugs. The substance has been identified in drug seizures in the USA, Canada and the Federal Republic of Germany. Clandestine production has been demonstrated. There is some evidence that (±)-N-ethyl MDA may pose a significant risk to public health due to its neurotoxicity.

Therapeutic usefulness. There is no known therapeutic usefulness for (±)-N-ethyl MDA.

Recommendation. On the basis of the available data concerning its pharmacological profile, dependence potential and actual abuse, the Committee rated the likelihood of abuse of (±)-N-ethyl MDA as moderate. The degree of seriousness of the public health and social problems associated with the substance was found to be high and it has no known therapeutic usefulness.

In the light of this assessment, the Committee recommends that (±)-N-ethyl MDA be controlled under Schedule I of the Convention on Psychotropic Substances, 1971.

Analogue of aminorex

4-Methyl aminorex—Substance identification. 4-methyl *aminorex* (CAS 3568 94–3), chemically 2-amino-4-methyl-5-phenyl-2-oxazoline is also known as McN-822, euphoria, U4Euh, ICE, *d,l-cis*-2-amino-4-methyl-5-phenyl 2-oxazoline, *d,l-erythro*-2-amino-4-methyl-5-phenyl-2-oxazoline, (±)-*cis*-2-amino-4-methyl-5-phenyl-2-oxazoline and (±)-*erythro*-2-amino-4-methyl-5-phenyl-2-oxazoline. There are two chiral carbon atoms so that four stereoisomers and two racemates are possible.

Similarity to already known substances and effects on the central nervous system. 4-methyl *aminorex* (*cis* racemate) is a potent psychomotor stimulant. Its actions are similar to those produced by amphetamine. It stimulates spontaneous activity in mice, has sympathomimetic and central stimulating effects in dogs and generalized to *d*-amphetamine in discrimination studies in rats. Its potency is about one-half that of *d*-amphetamine and it produces a lower degree of stimulation.

Dependence potential. In self-administration studies in rhesus monkeys 4-methyl *aminorex* (*cis* racemate) had potent reinforcing activity. All animals self-administered the substance at rates comparable to that of cocaine. No human studies are available concerning the dependence liability of 4-methyl *aminorex* (*cis* racemate).

Actual abuse and/or abuse liability (likelihood of abuse). No epidemiological data of actual abuse is available but there have been individual case reports. One death has been reported with significant blood levels of 4-methyl *aminorex* (*cis* racemate) and diazepam. There is evidence of illicit traffic in the USA and clandestine production has been demonstrated.

Therapeutic usefulness. There is no known therapeutic usefulness for 4-methyl *aminorex* (*cis* racemate).

Recommendation. On the basis of available data concerning its pharmacological profile, dependence potential and actual abuse, the Committee rated the likelihood of abuse of 4-methyl *aminorex* (*cis* racemate) as moderate to high. The degree of seriousness of the public health and social problems associated with the substance was found to be moderate and it had no therapeutic usefulness.

The Committee found that there was sufficient evidence that 4-methyl *aminorex* is currently being, or is likely to be, abused so as to constitute a public health and social problem warranting the placing of the substance under international control.

In the light of this assessment, the Committee recommends that 4-methyl *aminorex* (*cis* racemate) be controlled under Schedule I of the Convention on Psychotropic Substances, 1971.

Midazolam—Substance identification. Midazolam (INN, CAS 59467-70-8), chemically 8-chloro-6-(*o*-fluorophenyl)-1-methyl-4*H*-imidazo[1,5-*a*][1,4]-benzodiazepine, is also known as Dormicum, Dormoniol, Hypnovel, Versed, Dormonid and Flormidal. No stereoisomers are possible.

Similarity to already known substances and effects on the central nervous system. Midazolam is a benzodiazepine with the full range of the group specific CNS depressant effects of benzodiazepines, such as anxiolytic, anti-convulsant, sedative-hypnotic, muscle relaxant, etc. In animal experiments, midazolam is as efficacious as diazepam in most of its pharmacological effects, but has a more rapid onset and shorter duration of action. Clinical studies suggest that it is twice as potent as diazepam in its sedative-hypnotic effects. Midazolam is water insoluble, but its salts are soluble. It has an elimination half-life of approximately 2–2.5 hours in humans. Therapeutic use of midazolam, particularly at higher doses or in the elderly, may result in cardiopulmonary disturbances.

Dependence potential. Midazolam has been demonstrated to be reinforcing in animal studies. In physical dependence studies in animals, midazolam substituted for phenobarbital and produced barbiturate-like withdrawal signs.

Actual abuse and/or abuse liability likelihood of abuse. Abuse of midazolam is reported in several countries. There is also evidence of illicit trafficking and diversions from a number of countries. The Committee noted reports of severe cardiopulmonary adverse effects and some deaths.

Therapeutic usefulness. Midazolam is currently available in at least 33 countries. It is marketed as tablets for use in sleep disturbances and as a parenteral preparation for use as an adjunct to anesthesia.

Recommendation. On the basis of the available data concerning its pharmacological profile, dependence potential and actual abuse, the Committee rated the abuse-liability of midazolam as moderate and the therapeutic usefulness as moderate to high. Some public health and social problems are currently associated with the use of midazolam. As with all benzodiazepine agonists studied to date, it can be inferred from the preclinical studies that midazolam is capable of producing a state of dependence in human subjects similar to that observed with diazepam. In addition, the Committee noted that the availability of the substance as an injectable enhances the likelihood of abuse. Thus, the Committee considered that midazolam is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control. In the light of this assessment, the Committee recommended scheduling of the drug in Schedule IV of the Convention on Psychotropic Substances, 1971.

B. NOTIFICATION OF DELTA-9-THC REFERENCE: NAR/CL.16/1989

DND 411/211 11SS

DND 411/1(2) WHO/ECDD 26

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.3/1988 of 28 January 1988 by which he informed the Government of a notification received from the Government of the United States of America pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, to the effect that delta-9-tetrahydrocannabinol (hereinafter referred to as *delta*-9-THC), which is presently in Schedule I of the Convention, should be transferred from that Schedule to Schedule II of the same Convention.

The Secretary-General also transmitted a copy of that notification to the World Health Organization, in accordance with the provisions of article 2, paragraph 2, of the Convention, for consideration by the Twenty-sixth WHO Expert Committee on Drug Dependence (26th ECDD) in April 1989.

The 26th ECDD examined the notification in question and recommended to the Director-General of WHO that only dronabinol, defined as (6a*R*, 10a*R*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]-pyran-1,9ol or (−)-*trans-delta*-9-tetrahydrocannabinol should be transferred from Schedule I to Schedule II of the Convention on Psychotropic Substances. Dronabinol is currently in Schedule I of that Convention and is listed as one of the stereochemical variants of *delta*-9-THC.

In accordance with the provisions of article 2, paragraphs 1 and 4, of the Convention, the World Health Organization has notified the Secretary-General by a note dated 3 June 1989 that it is of the opinion that dronabinol should be transferred from Schedule I to Schedule II of the Convention.

The Secretary-General hereby transmits the text of that notification as annex I to the present note, pursuant to article 2, paragraph 2, of the Convention.

The Director-General of the World Health Organization, in connection with this notification, has also submitted advance excerpts from the report of the 26th ECDD which reviewed this substance, *inter alia*, with a view to its possible rescheduling. Relevant excerpts from that report are hereby transmitted as annex II.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notifications from the Government of the United States and from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its next session in January-February 1990. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5, of the Convention, will be notified to States Parties in due course.

Article 2, paragraph 5, reads as follows:

"The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible rescheduling of dronabinol could be communicated to the Secretary-General, c/o the Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by 13 October 1989.

21 August 1989.

Annex I.—Note Dated 3 June 1989 Addressed to the Secretary-General by the Director-General of the World Health Organization

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations, and with reference to his note verbale (NAR/CL.3/1988, DND 411/1(2) WHO/ECDD 26) dated 28 January 1988, has the honour to inform him that the World Health Organization, in conformity with Article 2, paragraph 6 of the Convention on Psychotropic Substances, 1971, has reviewed information pertaining to dronabinol (INN), defined as (6a*R*,10a*R*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]-pyran-1-ol or (−)-*trans-delta*-9-tetrahydrocannabinol. There is sufficient evidence that dronabinol, which is currently in Schedule I of the aforementioned Convention and is listed as one of the stereochemical variants of *delta*-9-tetrahydrocannabinol, has therapeutic usefulness in selective cases but is otherwise likely to be abused so as to constitute a public health and social problem warranting placing it under international control.

Therefore, the World Health Organization recommends that dronabinol be changed from Schedule I to Schedule II of the Convention on Psychotropic Substances, 1971.

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Annex II.—Summary of the Recommendations Arising Out of the 26th Expert Committee on Drug Dependence

The 26th ECDD met at headquarters between 17–22 April 1989. Since the report of this meeting will be published in due course of time in T.R. Series, this paper gives details of the recommendations made to the Director-General of WHO.

Delta-9-tetrahydrocannabinol. On 1 December 1967, the Government of the United States of America submitted to the Secretary-General of the United Nations, a notification under article 2, paragraph 1, of the Convention on Psychotropic Substances, 1971 to transfer *delta*-9-tetrahydrocannabinol (*delta*-9-THC) from Schedule I to Schedule II of the Convention.[1] The Secretary-General of the United Nations in a note verbale (DND 421/12(1–37); DND 411/1(2) WHO) requested a recommendation of the Director-General of WHO.

The generic term *delta*-9-THC in the Convention refers to two racemates and four stereoisomers. However, the data presented by the United States of America along with its notification and the material presented in the Critical Review concerns a single stereochemical variant of *delta*-9-THC, (−)-*trans-delta*-9-tetrahydrocannabinol. Since little or no data exists on the racemates or other stereoisomers and the pharmaceutical preparation marketed in the United States contains only this one stereochemical variant, the Expert Committee reviewed only (−)-*trans-delta*-9- tetrahydrocannabinol. The following recommendations refer solely to this individual substance.

Substance identification. (−)-*Trans-delta*-9-tetrahydrocannabinol (INN Dronabinol, CAS 1972–08–3), chemically (6a*R*,-10a*R*)-6a,7,8,10a-tetrahydro-6,6,9- trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]-pyran-1-ol is also known as (6a*R-trans*)-6a,7,8,10a- tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*- dibenzo-[*b,d*]-pyran-1-ol, (−)-*trans-delta*-9- THC, (−)-*trans-delta*-1-tetrahydrocannabinol, and (−)-*trans-delta*-1-THC. Two trade names are known, Marinol and Deltanyne.

Two racemates and four stereochemical variants of the parent substance, *delta*-9-tetrahydrocannabinol, are possible.

The following review and recommendation apply solely to (−)-*trans-delta*-9-tetrahydrocannabinol, abbreviated as (−)-*trans-delta*-9-THC.

Similarity to already known substances and effects on the central nervous system. (−)-*Trans-delta*-9-THC is identical to the major active principle of cannabis and cannabis resin which are listed in Schedules I and IV of the Single Convention on Narcotic Drugs, 1961. It is listed in Schedule I of the Convention on Psychotropic Substances, 1971. It produces complex effects on the central nervous system. In small dose it produces stimulation, followed by sedation and in high doses it produces hallucinogenic effects. Non-therapeutic effects of (−)-*trans-delta*-9-THC may be considered essentially identical to those of marijuana and other centrally active cannabinoids. It produces significant decrements on a number of performance measures including psychomotor performance.

Dependence potential. A number of animal studies have been conducted to date but most studies failed to demonstrate reinforcing effects of (−)-*trans- delta*-9-THC except one study in monkeys. The subjective effects in human studies were reported to be moderately euphorigenic. Chronically administered high doses of (−)- *trans-delta*-9-THC apparently produce a state of physical dependence in rats. Withdrawal of (−)-*trans-delta*-9-THC causes a disruption of operant behaviour in monkeys maintained on the drug which does not occur until the second day of withdrawal and often lasts for over a week. This disruption of behaviour can be reversed by readministration of the drug. After abrupt discontinuation of high doses of (−)-*trans delta*-9-THC given for 10 days or longer, human subjects exhibited some evidence of a withdrawal syndrome characterized by irritability, insomnia, restlessness, "hot flushes", diaphoresis, rhinorrhea, "loose stools", hiccoughs and anorexia.

Evidence of tolerance development to the behavioural and cardiovascular effects of the substance has been shown in human subjects. Animal studies have also confirmed a marked tolerance to the behavioural and hypothermic effects.

Actual abuse and/or liability (likelihood of abuse). (−)-*Trans-delta*-9 THC has been available for scientific and very limited medical use under close supervision for more than 15 years. The pharmaceutical product in sesame oil for oral use was marketed in 1966 in the United States of America. A number of cases of thefts and one case of "illicit purchase" have been reported. One attempt to synthesize the substance clandestinely was reported in the United Kingdom.

Drug Abuse Warning Network (DAWN, USA) data indicated a small number of emergency room or medical examiner mentions. Although the actual abuse of the marketed product is very limited, (−)-*trans-delta*-9-THC has a high abuse liability, as inferred from the abuse of cannabis and its products, with consequent public health and social hazards.

Therapeutic usefulness. (−)-*Trans-delta*-9-THC is being used in the United States of America and has been approved for marketing in Canada as an antiemetic for use in cancer chemotherapy.

It is effective in some cases in relieving severe nausea and vomiting refractory to the currently available antiemetics. It may make possible treatment with anti-cancer drugs in some patients who might otherwise refuse it. When applied in selected cases as an adjunct to cancer chemotherapy (−)-*trans-delta*-9-THC has a moderate to high therapeutic usefulness, but has otherwise no therapeutic role. (−)-*Trans-delta*-9-THC may produce a high incidence of transient side effects related to the central nervous system depending on the dose used.

Recommendation. On the basis of the available data concerning its pharmacological profile, dependence potential and actual abuse, the Committee rated the abuse-liability of (−)-*trans-delta*-9-THC as high and the therapeutic usefulness to be moderate to high when applied in selective cases as an antiemetic adjunct to cancer chemotherapy, but otherwise has no therapeutic role. Although few public health and social problems are currently associated with the therapeutic use of (−)-*trans-delta*-9-THC, it should be noted that this substance is the active principle of cannabis and is capable of producing the same effects as the plant material. Thus, the Committee considered that (−)-*trans-delta*-9-THC, is likely to be abused so as to constitute a public health and social problem. In the light of this assessment, the Committee recommended rescheduling of the drug from Schedule I to Schedule II of the Convention on Psychotropic Substances, 1971.[2]

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) rejection of the recommendations in their entirety.

The substances recommended for control under the Convention (midazolam, (±)-*N*-ethyl MDA (MDE), (±)-*N*-hydroxy MDA, 4-methyl *aminorex* (*cis* racemate), and (−)-*delta*-9-(*trans*)-THC) are controlled under the CSA to a degree commensurate with that recommended by WHO. The proposed international drug scheduling actions, if adopted by the CND, will result in no greater degree of control of these substances than current domestic controls.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the WHO notice concerning these five drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO recommendations. Then, pursuant to section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)), HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations at the CND meeting in February 1990.

[1] Letter of notification under article 2, paragraph 1 of the 1971 Convention on Psychotropic Substances, signed Otis R. Bowen, M.D., Secretary, Department of Health and Human Services, December 1, 1987, annex I of Secretary-General's note verbale to the Director-General of the World Health Organization, 12 January 1988 [DND 421/12(1–37) DND 411/1(2) WHO].

[2] Two members of the Committee, Professors M. Mubbashar and G. Lagier representing a different point of view, felt that the decision on the recommendation should be deferred until further convincing data is available concerning the therapeutic usefulness of (−)-*trans-delta*-9-THC. Moreover, the recommendation may be misinterpreted and promote the abuse of cannabis and its extracts.

IV. Submission of Comments and Opportunity for Public Meeting

Interested persons may, on or before November 15, 1989, submit to the Dockets Management Branch (address above) written comments regarding this notice. FDA will not consider holding a public meeting unless requested to do so. If any person believes that, in addition to its written comments, a public meeting would contribute to the development of the U.S. position on any of these five substances, a request for a public meeting and the reasons for such a request should be sent to Nicholas P. Reuter, Office of Health Affairs (HFY–20) (address above), on or before October 31, 1989. The short time period for the submission of comments and requests for a public meeting is needed to assure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 5, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24257 Filed 10–13–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0432]

Par Pharmaceutical, Inc.; Proposal to Withdraw Approval of Three Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) proposes to withdraw approval of abbreviated new drug applications (ANDA's) 71–642, 71–643, and 72–337 held by Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977 (Par). The grounds for the proposed withdrawal are (1) that the applications contain untrue statements of material fact, and (2) that, based on new information evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

DATES: A hearing request is due on November 15, 1989; data and information in support of the hearing request are due on (December 15, 1989.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 89N–0432, and submitted to the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, or Walter A. Brown, Division of Regulatory Affairs (HFD–366), Center for Drug Evaluation and Research, Food and Drug Administration, 500 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: .

Background

Based on information obtained from a continuing FDA inspection of Par conducted intermittently from May 24, 1989, to the present, and on information supplied by Par at a meeting with FDA on July 21, 1989, the agency has identified certain untrue statements submitted in ANDAs 71–642, 71–643, and 72–337, as well as related conflicting and missing information at Par. Based on this evidence, the Director of the Center for Drug Evaluation and Research has determined that the NADA's listed below should be withdrawn because they contain untrue statements of material fact and because there is a lack of substantial evidenoe that the drugs will have the effects they puport to have in their labeling. A discussion of the evidence supporting this determination follows.

ANDA 71–642, Orphengesic Tablets (Orphenadrine Citrate 25 Milligrams (mg), Aspirin 385 mg, Caffeine 30 mg); and ANDA 71–643, Orhengesic Forte Tablets (Orphenadrine Citrate 50 mg, Aspirin 770 mg, Caffeine 60 mg)

Par submitted a bioequivalence study performed with Orphengesic Forte Tablets, batch NO289 (control number 115886), in support of the approval of ANDAs 71–642 and 71–643. A copy of the batch record for batch NO289, along with dissolution and stability data from that batch, was also submitted to ANDA 71–643 in support of its approval. This batch record indicates that a 50,000 tablet batch had been manufactured utilizing a certain formulation. During an FDA visit to Par on July 20, 1989, however, two different versions of batch records for NO289 were discovered in the firm's files, both reflecting manufacture on the same dates, in many cases using the same pieces of equipment at the same time. One version was for a 50,000 tablet batch size, as submitted to ANDA 71–643, and the second was for a 25,000 tablet batch size. The two different versions showed different amounts of ingredients used in making the batch. They also showed the use of different formulations, in that they reported the use of different quantities of most of the ingredients used per tablet. In addition, two batch records showed differences in the identity of the caffeine raw material used and in some of the manufacturing steps such as mixing, granulating, and tableting.

Those raw material inventory cards reviewed at the firm showed the use of quantities of raw materials corresponding to the 25,000 tablet batch record, but not to the 50,000 tablet batch record. Signatures of a certain individual in the 25,000 tablet batch record appear to match the signatures for the same name on the corresponding raw material inventory records, but these signatures appear to differ from those appearing for the same name on the 50,000 tablet batch record.

It thus appears that the 50,000 tablet batch size may not have been actually manufactured and that untrue statements concerning it were submitted or were incorporated by reference to support the approval of ANDA's 71–642 and 71–643. Such untrue statements include, but are not limited to, those concerning the formulation (quantities per tablet), batch size, quantities of components used in the batch, all calculations that rely on or utilize quantities of components, the identity of at least one of the components, dates of manufacture, manufacturing procedures, tablet layer weights, in-process checks, and representations that the manufacturing steps were conducted in accord with the batch records. These constitute untrue statements of material fact in that they concern matters that could have influenced approval of the applications.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drugs will have the effects they purport to have under the conditions of use prescribed, recommended, or suggested in their labeling. Without reliable information as to the qualitative and quantitiatve formula, manufacturing process, and size of the test batches on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved,

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marketed products. In the absence of reliable data demonstrating stability and bioequivalence to the listed drugs, there is a lack of substantial evidence of effectiveness.[1]

ANDA 72-337; Trimameterene 75 mg and Hydrochlorothiazide 50 mg Tablets

On July 6, 1989, an FDA investigator requested a sample of the batch of the triameterene 75 mg and hydrochlorothiazide 50 mg tablets that had been used for bioequivalence testing in support of ANDA 72-337 (batch NO2305, control number 414887). Stability data from this same batch had also been submitted to ANDA 72-337. Par representatives subsequently revealed to FDA on July 21, 1989, that a Par employee did obtain a sample of batch NO2305 in response to the investigator's request, but then removed the tablets from the container and substituted other tablets believed to be from a current production batch before giving the sample to the investigator. According to Par representatives, the employee may have switched the tablets because batch NO2305 used for the bioequivalence study may not have contained a certain inactive ingredient that, according to records in ANDA 72-337, is included in the formulation used for the bioequivalence study and in the approved formulation. The inactive ingredient is reportedly used in current production lots. FDA inspection found that the firm cannot locate the original master record for batch NO2305. In addition, the raw material inventory record for the lot of inactive ingredient in question cannot be located to document its use.

It thus appears that untrue statements were submitted to support the approval of ANDA 72-337. Such untrue statements include, but are not limited to, those concerning the formulation, the quantity of an inactive ingredient used in the batch, all calculations that rely on or utilize the use for quantity of this ingredient, all control records that rely on or utilize the use or quantity of this ingredient, dates relating to the use of this ingredient, and representations that the manufacturing steps were conducted in accord with the batch records.

These constitute untrue statements of material fact in that they concern matters that could have influenced approval of the application.

Moreover, the discovery of these untrue statements constitutes new information demonstrating that there is a lack of substantial evidence that the drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested in its labeling. Without reliable information as to the qualitative and quantitative formula and the manufacturing process used for the test batch on which the bioequivalence and stability studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating stability and bioequvalence to the listed drug, there is a lack of substantial evidence of effectiveness.

Proposed Action and Notice of Opportunity for Hearing

The Director of the Center for Drug Evaluation and Research has evaluated the information concerning the three ANDA's discussed above and finds that each application contains untrue statements of material fact. The Director also finds on the basis of new information before him, consisting of untrue, conflicting, and missing information with respect to each drug as discussed above, evaluated together with the evidence available to him when each application was approved, that there is a lack of substantial evidence that each drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. Accordingly, the Director proposes to withdraw approval of the following ANDA's:

ANDA 71-642; Orphengesic Tablets (25 mg orphenadrine citrate, 385 mg aspirin, 30 mg caffeine);
ANDA 71-643; Orphengesic Forte Tablets (50 mg orphenadrine citrate, 770 mg aspirin, 60 mg caffeine);
ANDA 72-337; Triamterene 75 mg and Hydrochlorothiazide 50 mg Tablets

Notice is hereby given to the holder of the ANDA's listed above and to all other interested persons, that the Director of the center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), withdrawing approval of the foregoing ANDA's and all amendments and supplements thereto on the grounds stated above.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) On or before November 15, 1989, a written notice of appearance and request for hearing, and (2) on or before (December 15, 1989, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submissions of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 (except that the limitations imposed by 231 CFR 314.200(d) (1) and (2) not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportuntiy for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug product(s). Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request or hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under section 301(j) of the act or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the Federal Register notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505) (21 U.S.C. 355)) and under authority delegated to the Director of the center for Drug Evaluation and Research (21 CFR 5.82).

Dated: October 7, 1989.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 89-24327 Filed 10-13-89; 8:45 am]

BILLING CODE 4160-01-M

[1] Although ANDA's are approved for generic drugs without the submission of adequate and well-controlled clinical efficacy studies, which are required under the substantial evidence standard in 21 U.S.C. 355(d), these approvals are supported by such clinical efficacy studies based on a showing of bioequivalence to the listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated effective based on clinical efficacy studies satisfying the substantial evidence requirement or must be related through bioequivalence data to another drug that has been demonstrated effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelf-life, there is no basis for assuming that the clinical efficacy studies supporting the approval of the listed drug likewise support the claims of efficacy on the part of the generic drug.

Advisory Committee; Meeting

AGENCY: Food and Drug Administration. HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Blood Products Advisory Committee

Date, time, and place. October 31, 1989, 8:30 a.m., Ramada Inn, 8400 Wisconsin Ave., Bethesda, MD 20814.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Linda A. Smallwood, Division of Blood and Blood Products (HFB-400), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

General function of the committee. The committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

Open committee discussion. On the morning of October 31, 1989, the committee will discuss the recommendation for approval of tissue plasminogen activator, Eminase™, Beecham Laboratories, and in the afternoon will discuss the donor reentry algorithm for human immunodeficiency virus I (HIV-1) and public health issues related to antibody to hepatitis C virus (anti-HCV) testing of donors.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24258 Filed 10-13-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2067]

Submission of Proposed Information Collection to OMB

AGENCY: Adminstration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

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has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 6, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Energy Conservation Requirements of Chapter 12 of Handbook 4350.1, Appendix 1, Energy.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Owners are to review, annually, their Energy Conservation Plan to effect energy conservation measures and to notify the Department that they are in compliance with the Plan.

Form Number: None.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
First Year							
Survey	9,000		1		5		45,000
Plan	9,000		1		3		27,000
Recordkeeping	9,000		1		.05		450
Later Years							
Annual Plan Review	9,000		1		1		9,000
Recordkeeping	9,000		1		.05		450

Total Estimated Burden Hours: First Year, 72,450, Later Years, 9,450.

Status: Reinstatement.

Contact: James J. Tahash, HUD, (202) 426–3944, John Allison, OMB, (202) 395–6880.

Dated: October 6, 1989.

Proposal: Statment of Facts and Supplements.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Department's Office of Interstate Land Sales Registration will use the information from the Statement of Facts or any of the supplements to ensure that developers of certain types of subdivisions comply with the Interstate Land Sales Full Disclosure Act.

Form Number: HUD–9928, 9929–A, 9929–B, 9929–C.

Respondents: Businesses or Other For-Profit and Small Businesses and Organizations.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9928	300		1		1		300
HUD–9929–A	20		1		.25		5
HUD–9929–B	100		1		.75		75
HUD–9929–C	70		1		1		70

Total Estimated Burden Hours: 450.

Status: Extension.

Contact: Roger G. Henderson, HUD, (202) 755–0502, John Allison, OMB, (202) 395–6880.

Dated: October 6, 1989.

[FR Doc. 89–24278 Filed 10–13–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–89–2068]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of record.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT–54, Parking Application Files.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (November 25, 1989) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donna L. Eden, Departmental Privacy Act Officer, Telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Parking Application Files is an automated system of records consisting of applications submitted by individuals for HUD-controlled parking spaces. The information maintained includes names, addresses, vehicle information (year, make, tag number, and state) about the applicant and pool members. For the applicant, priority group is also maintained. This information is used to manage the parking facilities and for identifying and verifying eligibility for limited parking spaces.

The Department is revising the system of records to indicate that it has been automated; to expand the categories of records in the system to include the social security number for both the applicant and pool members; to establish a new routine use which will permit the Department to disclose the application data to other Government agencies and private sector organizations for computer matching purposes; and to include the new authority for maintenance of the system.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1987 Compilation, Volume II."

Authority: 5 U.S.C. Sec. 552a, 88 Stat. 1896; Section 7(d) Department of HUD Act (42 U.S.C. Sec. 3535(d)).

Issued at Washington, DC, October 5, 1989.

Claire E. Freeman,

Assistant Secretary for Administration.

HUD/DEPT–54

SYSTEM NAME:

Parking Application Files.

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees and individuals from other Government agencies or private sector organizations who made application to park in HUD controlled space.

CATEGORIES OF RECORDS IN THE SYSTEM:

For the applicant and carpool members, names (print and signature), home addresses, office telephone numbers, social security numbers, year and make of vehicles, states (in which vehicles are registered) and tag numbers; for the applicant, room number, permit number, correspondence (organization) code, date of applicaiton, and priority group (handicapped, job requirements/executive officials (SES) or carpool/vanpool); for pool members, agency or company name; for administrative purposes, date issued, type of permit (new or replacement), and signature of approving official.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property Management Regulations, Section 101–20.104, Parking facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraph in prefatory statement. Other Routine Uses: To contractor for managing the parking facilities; to parking coordinators of Government agencies and private sector organizations for verification of employment and participation in pool.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

For manual records, legal size file folder; for automated records, hard disk.

RETRIEVABILITY:

Name, address, social security number, permit number, vehicle tag number, and agency name or HUD correspondence (organization) code on either the applicant or pool members.

SAFEGUARDS:

Manual records are maintained in a lockable file cabinet with access limited to authorized personnel. Access to automated records is by password.

RETENTION AND DISPOSAL:

(1) For individuals issued permits, as long as permits are valid; (2) for individuals on the waiting list, approximately 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Mail and Transportation Branch, Office of Administrative and Management Services, ASBR, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

[FR Doc. 89–24333 Filed 10–13–89; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–650–09–4120–09]

Uinta-Southwestern Utah Regional Coal Team; Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix (1982)). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is reestablishing the regional coal team (RCT) for the Uinta-Southwestern Utah (Utah and Colorado) coal production region. The RCT is an independent subcommittee of the Federal-State Coal Advisory Board whose charter was renewed by the Secretary on September 28, 1988. As such, the RCT will guide all phases of the coal activity planning process in the region and will provide advice to the Secertary, through the Director, Bureau of Land Management, on regional coal leasing levels, and on regional coal lease

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sale schedules and the tracts to be offered.

Further information may be obtained from Stan McKee, (202) 343-4636 Bureau of Land Management (605), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

The certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Uinta-Southwestern Utah Regional Coal Team is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0-3 and by Departmental policy for Federal-State cooperation concerning the Federal coal management program.

Dated: September 25, 1989.

Manuel Lujan, Jr.,

Secertary of the Interior.

[FR Doc. 89-24326 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-89-M

Bureau of Land Management

[UT-060-5320-06]

MANCOS Mesa Wilderness Study Area; Environmental Assessment

October 6, 1989.

AGENCY: Bureau of Land Management, Moab District, Interior.

ACTION: Notice of 30-day comment period on a draft environmental assessment analyzing proposed reclamation of a post-Federal Land Policy and Management Act (FLPMA) road, constructed within a Wilderness Study Area (WSA).

SUMMARY: A draft environmental assessment has been prepared in response to the Bureau of Land Management's proposal to reclaim approximately 30 miles of road constructed within the Mancos Mesa WSA (UT-060-181). The road construction done for mining exploration, began on October 26, 1976, just 5 days after passage of the FLPMA on Octooer 21, 1976. Guidance regarding the protection of areas with potential for designation as wilderness was unavailable at this time.

The objective of the proposal is to restore the area disturbed by construction of the road system to a more natural appearance.

Interested parties may comment upon the environmental assessment for a period of 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 7, Monticello, Utah 84532, Telephone: (801) 587-2141.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 89-24272 Filed 10-13-89; 8:45am]

BILLING CODE 4310-PQ-M

[NM-940-09-4214-11; NM NM 52394]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 528.64-acre withdrawal for the Avalon Reservoir, Brantley/Carlsbad Project, continue for an additional 50 years. The land would remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by January 16, 1989.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, (505) 988-6071.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order of December 10, 1928, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

T. 21 S., R. 26 E.,
Sec. 10, lots 1 to 9, inclusive, lot 11, and NE¼NE¼;
Sec. 14, lots 1 and 3.

The area described contains 528.64 acres in Eddy County.

The purpose of the withdrawal is for the Avalon Reservoir, Brantley/Carlsbad Project. The withdrawal closed the described land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: October 4, 1989.

Monte G. Jordan,

Associate State Director.

[FR Doc. 89-24273 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-00-4214-10; GPO-004; ORE-03587, ORE-03587-A, ORE-012712-A, ORE-015246-C, OR-7602, OR-8762, OR-21314, OR-21576, OR-21578, OR-21594]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of nine separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Fremont National Forest

1. ORE-03587-A, Public Land Order No. 1144 dated May 4, 1955. Dairy Creek Recreation Area, 120.00 acres. Located in Lake County, 28 miles northwest of Lakeview. T. 36 S., R. 17 E., W.M., Secs. 2, 3, and 4.

2. ORE-012712-A, Public Land Order No. 3071 dated May 7, 1963. Cottonwood Meadows Recreation Area, 180.39 acres. Located in Lake County, 18 miles northwest of Lakeview.T. 38 S., R. 18 E., W.M., Secs. 7 and 18.

3. OR-8762, Public Land Order No. 5291 dated October 11, 1972. Fishhole Recreation Area, 274.36 acres. Located in Lake County, 23 miles west of Lakeview. T. 38 S., R. 16 E., W.M., Secs. 21 and 22.

4. OR-21314, Secretarial Order Dated October 5, 1908. Thomas Creek Ranger Station Administration Site, also known as Thomas Creek Work Center. Located in Lake County, 17 miles northwest of Lakeview. T. 37 S., R. 18 E., W.M., Secs. 27 and 34.

5. OR-21576, Secretarial Order dated December 20, 1907. Cougar Peak Administrative Site, 80.00 acres. Located in Lake County, 18 miles northwest of Lakeview. T. 38 S., R. 18 E., W.M., Sec. 7.

6. OR-21578, Secretarial Order dated August 13, 1907. Dog Lake Administrative Site, 143.59 acres. Located in Lake County, 18 miles southwest of Lakeview. T. 40 S., R. 17 E., W.M., Secs. 21 and 22.

7. OR-21594, Secretarial Order dated January 8, 1908. Silver Creek Administrative Site, 80.00 acres. Located in Lake County, 12 miles southwest of the town of Silver Lake. T. 30 S., R. 13 E., W.M., Secs. 1 and 2.

Wallowa-Whitman National Forest

8. OR-7602, Public Land Order No. 5077 dated June 10, 1971. Phillips Lake Recreation Area, 921.04 acres. Located in Baker County, 12 miles southwest of Baker. T. 10 S., R. 38 E., W.M., Secs 26, 27, and 28. T. 10 S., R. 39 E., W.M., Sec. 30.

Klamath National Forest

9. ORE-015246-C, Public Land Order No. 3650 dated April 15, 1965. Mt. Ashland Winter Sports Area, 90.00 acres. Located in Jackson County, 8 miles south of Ashland. T. 40 S., R. 1 E., W.M., Sec. 21.

Winema National Forest

10. ORE-03587, Public Land Order No. 1144 dated May 5, 1955. Miller Lake Recreation Area, 1,274.43 acres. Located in Klamath County, 8 miles west of Chemult. T. 27 S., R. 6½ E., W.M., Secs. 11, 12, 13, and 14.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 4, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-24274 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010-0073), Washington, DC, 20503; telephone 202-395-7340.

Title: Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR Part 220.

OMB approval number: 1010-0073.

Abstract: Companies involved in the exploration and development of Outer Continental Shelf oil and gas leases under the Net Profit Share Lease (NPSL) system make net profit share payments rather than royalty payments. To encourage exploration and development of a lease, the NPSL system provides for a sharing, by the lessee and the Government, of the risk involved. The lessee is permitted to deduct allowable costs to determine net profit, and profit share payments are not due until the lease becomes profitable. Lessees are required to maintain an NPSL capital account and to provide annual reports listing costs incurred, credits received, and the balance in the account. Beginning the first month in which production revenues are credited to the capital account, lessees are required to prepare monthly reports showing volume and disposition of oil and gas production, production revenue, all costs and credits to the account, the balance in the account, and the net profit share payment due the Government.

Bureau Form Number: None.

Frequency: Annually or monthly.

Description of Respondents: Oil and gas companies.

Annual Responses: 127.

Annual Burden Hours: 2,071.

Bureau Clearance Officer: Dorothy Christopher, 703-787-1239.

Dated: August 30, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89-24331 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Fire Island National Seashore, NY

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract to authorize marina and marine related facilities and services for the public at Fire Island National Seashore, New York, for a period of ten (10) years from October 1, 1989, through September 30, 1998.

EFFECTIVE DATE: The Prospectus describing this opportunity will be released to the public in the near future, and sixty days will be allowed from the date of release for responses to be received.

ADDRESS: Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109 (telephone: 617-565-8864), for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be

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categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following the release date shown on the cover of the Prospectus to be considered and evaluated.

Dated: June 6, 1989.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 89-24337 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-70-M

Revision of Park Boundary: Lowell National Historical Park; and Revision of Lowell Historic Preservation District

Whereas, subsection 101(b) of the Act of June 5, 1978, Public Law 95-290 (92 Stat. 290) authorizes the Secretary of the Interior to make minor revisions of the Park and Preservation District boundaries after obtaining the consent of the City Manager of Lowell and the City Council of Lowell; and

Whereas, the City Council of Lowell on March 15, 1988, voted to approve the minor revisions in the Park and Preservation district boundaries; and

Whereas, the City Manager of Lowell on March 16, 1988, approved the minor revisions of the boundaries of the Park and the Preservation District,

Therefore, pursuant to subsection 101(b) of the Act of June 5, 1978, Public Law 95-290 (92 Stat. 290) notice is given that the boundary of the Lowell National Historical Park and the boundary of the Lowell Historic Preservation District are hereby revised to include the additional tracts consisting of 0.82 and 11.43 acres, respectively, in Lowell, Massachusetts, as depicted on Drawing No. 80,008D, Sheets 7, 8, 11, 12, 14, and 18 of 18, dated March, 1989. The maps are on file and available for inspection in the office of the National Park Service, Mid-Atlantic Region, Land Resources Division, 143 South Third Street, Philadelphia, Pennsylvania 19106 and in the office of the National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: July 31, 1989.

John Guthrie,

Acting Regional Director, North Atlantic Region, National Park Service.

[FR Doc. 89-24356 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Two Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463. 86 Stat. 770, 5 U.S.C. App. 1, sec. 10), that the Acadia National Park Advisory Commission will hold meetings on Monday, October 30, 1989, and Monday, November 13, 1989.

The Commission was established pursuant to Public Law 99-420, section 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The two scheduled meetings will convene at Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine.

The meeting on October 30, 1989, will be a workshop to solicit input on the Acadia National Park General Management Plan. The meeting will begin at 1:00 p.m.

The Monday, November 13, 1989, meeting will begin at 1:00 p.m. and consider the following agenda:

1. Old Business.
2. New Business:
   - A. Committee Reports—
     - (1) Acquisition Committee Reports
     - (2) Easement Committee Reports
   - B. General Management Plan Update
   - C. Annual Report of the Advisory Commission
   - D. Otter Creek Landing
3. Proposed agenda and date of next Commission meeting.

The Commission meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609.

Dated: October 6, 1989.

Gerald D. Patten,

Regional Director.

[FR Doc. 89-24265 Filed 10-13-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications to Consolidate, Merge or Acquire Control

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6

MC-F-19510, filed September 25, 1989. CBS Bus Service, Inc. (CBS Service) (30 Mahan Street, West Babylon, NY 11704)—Purchase—Coram Bus Service, Inc. (Coram) (124 Mt. Sinai-Coram Road, Coram, NY 11727). Thomas G. Moonis and George Semke (Moonis and Semke)—Continuance in Control—CBS Bus Lines, Inc. (CBS Lines).

Applicants' representative: Gerald K. Gimmel, 444 North Frederick Avenue, Suite 200, Gaithersburg, MD 20877.

CBS Service, a motor common carrier of passengers, seeks approval to acquire the assets (including the operating authority in MC-165988) of Coram under authorization of the U.S. Bankruptcy Court for the Eastern District of New York in Case Nos. 086-60237-21 and 086-60238-21. Coram holds interstate irregular-route operations, between points in the United States (except Hawaii).

Moonis and Semke own 50 percent of the stock of CBS Service and a similar amount of Harran Transportation Co., Inc. (MC-40815), a common carrier of passengers and of CBS Lines, a new carrier seeking its initial common carrier authority to transport passengers, in charter and special operations, between points in the United States (except Hawaii) (MC-223305, interim grant published October 2, 1989, in the ICC Register).

Applicants have been granted temporary authority to lease the pertinent operating rights pending final disposition of the finance application.

Decided: October 4, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24345 Filed 10-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-309X)]

CSX Transportation, Inc.; Abandonment Exemption of Rail Line in Putnam County, Indiana, et al

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 26.73 miles of rail line in Putnam, Hendricks, and Marion Counties, IN, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 15, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 26, 1989, petitions to stay must be filed by October 31, 1989, and petitions for reconsideration must be filed by November 13, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 309X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: September 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24344 Filed 10-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 317X]

CSX Transportation, Inc.; Abandonment Exemption of Railroad Line in Nicholas County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 5.12-mile line of railroad between milepost 0.00, at Fenwick, and milepost 5.12, at Jetsville, in Nicholas County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 20, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 12, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24435 Filed 10-13-89; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

October 10, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96-511 applies.

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Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Existing Collection in use Without an OMB Control Number

(1) Domestic field survey of "Regulated Chemical Firms."
(2) No form number. Office of Diversion Control, Drug Enforcement Administration.
(3) One time.
(4) Business or other for-profit. The Chemical Diversion and Trafficking Act of 1988 was enacted and final regulations have been published. In order to identify those firms that will be subject to this Act, this one-time domestic field survey is required.
(5) 2,000 respondents at .25 hours per response.
(6) 500 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer.
[FR Doc. 89–24284 Filed 10–13–89; 8:45 am]
BILLING CODE 4410–09–M

Drug Enforcement Administration

[Docket No. 89–29]

Abelardo A. Pelaez, M.D.; Revocation of Registration

Abelardo A. Pelaez, M.D. (Respondent), submitted three applications, each dated May 14, 1988, for DEA registration at three separate addresses in the State of West Virginia. On January 9, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Respondent, proposing to deny the three applications. The statutory predicate for the Order to Show Cause was that Respondent's West Virginia medical license was on probation for prescribing controlled substances for his wife outside the scope of legitimate medical practice; that Respondent wrote prescriptions after being notified that his DEA registration had expired; and, that Respondent had been indicted by a Federal Grand Jury for knowingly and intentionally using an expired DEA registration.

By letter dated May 1, 1989, Respondent, through Counsel, requested a hearing and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, an Order for Prehearing Statements was issued. Subsequently, Government counsel filed a Motion for a Summary Disposition. The Order for Prehearing Statements was vacated and Respondent was given to and including June 30, 1989, to file an opposition or other response to the Government's motion. That date passed without Respondent filing an opposition or any other response.

On July 13, 1989, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed by either side and, on August 25, 1989, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety, and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Respondent was notified by the West Virginia Board of Medicine, via certified letter dated November 5, 1985, that he was required to immediately cease dispensing, prescribing, or administering any controlled substances, including Demerol, to Kay Pelaez, his wife. In February 1988, Respondent entered into a consent order with the West Virginia Board of Medicine which provided that his medical license be placed on probation for three years and that he comply with certain requirements of the Board, including: that he shall not prescribe controlled substances to his wife; that he take certain education courses; that he maintain a record of every Schedule II prescription that he writes for a period of three years; and that he pay a civil fine of $1,000.00.

Respondent's DEA Certificate of Registration, AP4801280, expired on March 31, 1988. Thereafter, through July 1988, Respondent continued to prescribe controlled substances using the expired registration. He was indicted by a Federal Grand Jury in the United States District Court for the Southern District of West Virginia for knowingly and intentionally prescribing after his DEA registration had expired. Respondent was tried and convicted on all four counts of the indictment and was sentenced to fifteen months incarceration and fined $20,000.00.

On May 19, 1989, the West Virginia Board of Medicine issued an order revoking Respondent's license to practice medicine in the State of West Virginia effective June 1, 1989. This action, following a hearing, was based upon Respondent's violation of the February 1988 Consent Decree and on his Federal conviction for prescribing controlled substances after his DEA registration had expired.

The Administrative Law Judge concluded that there was no issue of fact to be resolved in this matter. Lack of state authorization to handle controlled substances requires that Respondent's application for registration be denied. 21 U.S.C. 823(f). Thus, the Administrative Law Judge recommended that Respondent be denied registration under the Controlled Substances Act.

The Administrator adopts the findings and recommendation of the Administrative Law Judge, and, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Respondent's applications for registrations be, and they hereby are, denied. This order is effective November 15, 1989.

Dated: October 5, 1989.
John C. Lawn,
Administrator.
[FR Doc. 89–24357 Filed 10–13–89; 8:45 am]
BILLING CODE 4410–09–M

Albert L. Pullium, M.D.; Revocation of Registration

On May 17, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Albert L. Pullium, M.D., of 6711 Bellfort Boulevard, Houston, Texas, proposing to revoke DEA Certificate of Registration AP8039821, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Pullium's continued registration was inconsistent with the public interest, as the term is used in 21 U.S.C. 824(a)(4) and 823(f).

The Order to Show Cause was sent to Dr. Pullium by registered mail, return-

receipt requested. Although more than 30 days have elapsed since the Order to Show Cause was received at Dr. Pullium's address, DEA has received no request for a hearing or other response to the Order to Show Cause. Therefore, in accordance with 21 CFR 1301.54 (a), (d) and (e), the Administrator concludes that Dr. Pullium has waived his opportunity for a hearing in this matter, and enters this final order based upon the information contained in the DEA investigative file.

The Administrator finds that in 1988, the DEA Houston Field Division received information from the Houston Police Department and the Harris County, Texas Sheriff's Department, and a local pharmacist, that Dr. Pullium was issuing prescriptions for controlled substances indiscriminately and for other than legitimate medical purposes. Based upon this information, the DEA Houston Field Division initiated an undercover criminal investigation of Dr. Pullium's controlled substance prescribing practices.

As part of the criminal investigation, on September 15, 1988, a DEA Special Agent, using the undercover name "Charles Calhoun," visited Dr. Pullium's medical office. The Special Agent's conversations with Dr. Pullium were tape-recorded and monitored during the visit. After waiting approximately one hour, the Special Agent was taken to an examining room where he was weighed and had his blood pressure taken by an office nurse. Some time later, Dr. Pullium entered the examining room and asked him how he was doing. The Agent replied that he was "jittery." The Agent also told him that when he lived in Macon, Georgia, his physician treated him for the "jitters" with Valium, Tylenol #4 with codeine and another drug that was "very fine." Dr. Pullium then inquired as to whether the other drug was one of the "big three," which he explained were Ambenyl, Robitussin AC and Tussionex; all are heavily abused codeine-based cough syrups. The Agent acted as though he did not know which cough syrup he had received previously, but repeated to Dr. Pullium that he received it from his other physician for the "jitters." Eventually, the Agent told Dr. Pullium that Tussionex sounded like the cough syrup he used to get. He also claimed that he used to get "high" off the drugs. The Agent further told Dr. Pullium that he did not have any medical problems, but that he preferred obtaining prescriptions from him rather than buying the drugs on the street. In prescribing the Tussionex for the Agent, Dr. Pullium informed him that "they [regulatory agencies] are strict about that * * * I'm gonna have to say you got an acute case of bronchitis or something like that to justify my records," although the Agent never stated that he was suffering from bronchitis. In that visit, the Agent obtained prescriptions for 60 dosage units of Valium 10 mg. tablets, 40 dosage units of Tylenol #4 with codeine tablets and eight ounces of Tussionex suspension cough syrup from Dr. Pullium in exchange for $60.00. Dr. Pullium also told the Agent where he should have the prescriptions filled. Other than being weighed and having his blood pressure taken by the nurse, Dr. Pullium did not perform any medical or physical examination of the Agent.

The Agent returned to Dr. Pullium's office on November 2, 1988. Their conversations on that date were also tape-recorded. The conversation between the Agent and Dr. Pullium immediately turned to the attributes of a woman the Agent alleged to have met previously. He stated that she lives with a criminal friend of his who often has parties where illegal drugs are used. Dr. Pullium expressed an interest in attending one of the parties with the Agent in the future. When the Agent claimed that he had used "crack" cocaine at a previous party, Dr. Pullium admitted that he occasionally uses marijuana. The Agent also told Dr. Pullium that he had access to stolen electronic equipment. Dr. Pullium expressed an interest in obtaining a stolen combination televison/VCR for his relatives from the Agent. The Agent also stated that he would like to obtain controlled substance prescriptions during that visit. Dr. Pullium issued him prescriptions for 60 dosage units of Valium 10 mg. tablets, 40 dosage units of Tylenol #4 with codeine, and eight ounces of Tussionex suspension cough syrup in exchange for $30.00. The Agent never expressed a medical need for any of the drugs. During that visit, Dr. Pullium did not perform any medical or physical examination on the Agent.

On December 1, 1988, the Special Agent telephoned Dr. Pullium to determine whether he still was interested in purchasing a "stolen" television/VCR. Dr. Pullium stated that he remained interested in purchasing the item. On December 6, 1988, the Agent telephoned Dr. Pullium's office and arranged to sell him the television/VCR for $150.00 the following day. Prior to that time, the DEA Houston Field Division made arrangements with a local merchant to borrow a combination television/VCR for the Agent's visit to Dr. Pullium's office. The item retailed for approximately $700.00.

On December 7, 1988, the Special Agent returned to Dr. Pullium's office with the combination television/VCR. Their conversations during that visit were also tape-recorded. Upon first meeting with Dr. Pullium, the Agent informed him that the item was in his van outside and explained that if he was not interested in it, the Agent knew several other persons who would purchase it. Dr. Pullium and his wife, who was at the office during that visit, went with the Agent to his van. Dr. Pullium requested that the Agent drive the van to the rear of his office building. At the rear of the building, Dr. Pullium examined the television/VCR, acknowledged that he wanted it, and asked the Agent to place it in his car. Dr. Pullium also asked the Agent what prescriptions he wanted. The Agent requested prescriptions for the same drugs he received from Dr. Pullium during past visits. Dr. Pullium acquiesced and went upstairs to his office to retrieve the prescriptions and money for the television/VCR. Shortly thereafter, Dr. Pullium returned downstairs with a check in the amount of $150.00 for the television/VCR and prescriptions for 60 dosage units of Valium 10 mg. tablets, 40 dosage units of Tylenol #4 with codeine, and eight ounces of Tussionex suspension cough syrup. The Agent was not asked to pay for the prescriptions obtained during the visit. At no time did the Agent claim to suffer from any medical ailments which would require treatment with those drugs.

On December 8, 1988, DEA Special Agents and Investigators served a criminal search warrant at Dr. Pullium's medical office. Pursuant to the warrant, the Agents and Investigators seized the patient records for "Charles Calhoun." A review of those records revealed that Dr. Pullium falsified several statements in them to justify his unlawful prescribing practices. The record for the Agent's September 15, 1988, visit indicated that he was "nervous and jump a lot at times" and that he suffered from "chronic bronchitis," "chronic anxiety," and "tension headaches." The Agent never complained about "tension headaches" nor did he ever cough during the initial visit or complain of suffering from bronchitis. Dr. Pullium's entry for the Agent's November 2, 1988, visit stated that "the patient has basically the same general problems of nervous tension type headaches and a chronic cough as on the first visit." His general diagnosis was the same as on the previous visit. The Agent never complained during this visit of any headaches or chronic cough. No entry

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was made for the Agent's December 7, 1988, visit.

Based upon the results of undercover criminal investigation, on December 21, 1988, in the United States District Court for the Southern District of Texas, Houston Division, Dr. Pullium was indicted on nine counts of unlawfully dispensing controlled substances, by precription, in violation of 21 U.S.C. 841(a)(1). On September 18, 1989, Dr. Pullium was convicted, after entering pleas of guilty, to three counts of unlawfully dispensing controlled substances. He was sentenced to 30 days imprisonment followed by five years probation; he was further ordered to perform 100 hours of community service annually for the duration of his probation and to pay a $10,000.00 fine.

Based upon the information described above, the Administrator finds that Dr. Pullium's DEA Certificate of Registration should be revoked. First, Dr. Pullium has been convicted of a felony offense relating to controlled substances. The conviction itself is sufficient to support the revocation of his registration. *See* 21 U.S.C. 824(a)(2); *See also, Raymond A. Carlson, M.D.*, Docket No. 86–50, 53 FR 74725 (1988); and *John G. Bennett, M.D.*, Docket No. 87–80, 53 FR 48989 (1988).

In addition, Dr. Pullium has exhibited an inability or unwillingness to properly handle controlled substances. He clearly issued prescriptions for dangerous controlled substances to the undercover Agent for other than legitimate medical purposes. Dr. Pullium falsified the Agent's patient records by stating that he suffered from various medical problems which would justify the prescribing of controlled substances in order to conceal his illegal activities. There is no legal justification for the issuance of those prescriptions or the falsification of the Agent's patient records. Greed is the only apparent motivation for Dr. Pullium's illegal activities which can be gleaned from the investigative record. Such improper handling of controlled substances by a DEA registrant cannot be tolerated.

Consequently, based upon Dr. Pullium's recent felony conviction and improper prescribing practices, the Administrator finds that Dr. Pullium's continued registration is inconsistent with the public interest and that his DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator orders that DEA Certificate of Registration AP8039821, previously issued to Albert L. Pullium, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective November 15, 1989.

Dated: October 6, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-24358 Filed 10-13-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Bloodborne Diseases, Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Occupational Safety and Health Administration (OSHA), Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 10, 1988)), is submitting a request for approval to the Office of Management and Budget for a survey to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to bloodborne pathogens. This will be a one time only survey.

DATE: OSHA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW. Room N–1301, Washington, DC 20210 ((202) 523–6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/ Minutes Per Response.	80 minutes.
Frequency of Response	(one time only).
Number of Respondents	462.
Annual Burden Hours	(one time only).
Affected Public	462 establishments.
Respondents Obligation to Reply.	Voluntary.

Signed at Washington, DC, this 5th day of October 1989.

Theresa M. O'Malley,

Acting Departmental clearance Officer.

BILLING CODE 4510-26-M

Standard Form **83** (Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis

2. Agency code: 1218

3. Name of person who can best answer questions regarding this request: Hugh Conway, Director, Office of Regulatory Analysis

Telephone number: (202) 523-9690

4. Title of information collection or rulemaking: Bloodborne Pathogens Rulemaking -- Hospital Survey

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*: 29 USC 655 (b) (5), or Executive Order 12291

6. Affected public *(check all that apply)*

1 ☐ Individuals or households
2 ☐ State or local governments
3 ☐ Farms
4 ☐ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☐ Non-profit institutions
7 ☐ Small businesses or organizations

PART II.—Complete This Part Only If the Request Is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ — ___ ___ ___ ___, or, None assigned ☐

8. Type of submission *(check one in each category)*

Classification	*Stage of development*	*Type of review requested*
1 ☐ Major	1 ☐ Proposed or draft	1 ☐ Standard
2 ☐ Nonmajor	2 ☐ Final or interim final, with prior proposal	2 ☐ Pending
	3 ☐ Final or interim final, without prior proposal	3 ☐ Emergency
		4 ☐ Statutory or judicial deadline

9. CFR section affected

_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

Previous editions obsolete
NSN 7540-00-634-4034

83-108

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

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PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Occupational Health; Health Standards; Health Survey' The data collected in this survey will help define the extent of employee exposure to certain bloodborne diseases and current practices in hospitals, in order to assess the technological and economic feasibility of a standard to protect workers from exposure to blood and other potentially infectious materials.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*
7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection wrtnout any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*
none

17. Annual reporting or disclosure burden

1 Number of respondents	462
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	462
4 Hours per response	1.3
5 Total hours *(line 3 times line 4)*	614

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	614
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	614
Explanation of difference	
4 Program change	614
5 Adjustment	

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [ ] General purpose statistics
4 [X] Regulatory or compliance
5 [ ] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping
Reporting
2 [ ] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [X] Other *(describe)*: nonrecurring

20. Current *(most recent)* OMB control number or comment number

21. Requested expiration date
February 28, 1990

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection
_____ CFR _____ ; or _____ FR _____ ; or, Other *(specify)*: P. L. 91-596

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official: Vivian E. Allen
Vivian E. Allen
Date: 10/2/89

Signature of agency head, the senior official or an authorized representative: Teresa M. O'Malley
for Paul E. Larson
Date: 10/5/89

☆U.S. Government Printing Office: 1989—679-065/20252

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Appendix—Supporting Statement for Survey and Related Data Gathering to Support OSHA Rulemaking on Bloodborne Diseases

A. Justification

1. Necessity of Data Collection

The Office of Regulatory Analysis of the Occupational Safety and Health Administration (OSHA) is collecting data to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis B virus (HBV) and the human immunodeficiency virus (HIV). Health care and certain other workers are at increased risk for certain infectious diseases due to their exposure to blood and other potentialy infectious body fluids. Occupational exposure takes place in a variety of ways, the most common being injuries from needles and other sharp instruments and the contamination of open wounds from blood splash. These exposures are common, not just in medical personnel but in workers indirectly involved in the handling of potentially infectious body fluids.

OSHA has at this time no specific standard regulating exposure to biological hazards such as viruses. In 1983 the agency issued guidelines in conjunction with the Department of Health and Human Services for reducing the risks of occupational exposure to HBV. In 1988 the agency issued enforcement procedures providing uniform inspection procedures and guidelines to be followed when conducting inspections and issuing citations under section 5(a)(1) of the Act for occupational exposure to both HBV and HIV.

OSHA has developed a proposed section 6(b) rule to protect workers from bloodborne diseases. The proposal includes provision for safe work practices, personal protective equipment, training, post-exposure protocol and, in the case of HBV, a vaccination program.

OSHA's Congressional mandate stipulates that the agency carefully design and study its regulatory proposals. Section 6(b)(5) of the OSHA Act 2d U.S.C. 655 (b)(5) mandates that regulations promulgated by the Agency shall most adequately assure worker safety and health "to the extent feasible on the basis of the best available evidence." They are to be based on "research and the latest available scientific data." Section 6(f) of the Act requires regulations to be justified by "substantial evidence in the record" and authorizes the Secretary of Labor "to enter into contracts, agreements or other arrangements with appropriate public agencies or private organizations for the purposes of conducting studies related to his responsibility under the Act." The courts have endorsed the view that technological and economic factors affect the feasibility of proposed regulations. Thus, OSHA is obligated to gather data on the technological feasibility, cost of compliance, and economic consequences of future standards.

Executive Order 12291 reiterates this obligation by requiring the preparation of preliminary and final Regulatory Impact Analyses for each major rule. The Agency must analyze the potential benefits and costs of the rule and alternative approaches. The Regulatory Impact Analysis may be combined with the analysis required by the Regulatory Flexibility Act. This Act specifically requires an analysis that describes the "impact of the proposed rule on small entities" and significant regulatory alternatives that "take into account the resources available to small entities."

In order to fulfill the Congressional and Presidential mandates and to better evaluate the economic and technological feasibility of the final OSHA standard, OSHA requires a data base that describes current industry practices and identifies situations where potential hazards exist. Thus, in accordance with Section 6 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 655, OSHA is planning to gather statistically accurate data through a survey of hospitals to assess the extent to which hospitals have already implemented infection control measures to protect workers from bloodborne pathogens. These data will enable the Agency to refine its preliminary estimates of the direct and indirect costs associated with the proposed rule. As discussed below, none of the available data sources are fully adequate for this purpose.

To estimate accurately the cost of the standard, data are needed on baseline compliance rates of hospitals for specific provisions of the standard. Currently, much of the data available for estimating the extent to which hospitals have adopted measures to protect workers from bloodborne pathogens are limited or outdated. In addition, most of the data available to OSHA are not based on a random sample, and thus their accuracy cannot be judged. The data that do exist are for the most part over a year old, and are mostly from large, urban hospitals in areas which report a high incidence of HBV and HIV infection. Moreover, those studies on compliance that exist do not allow an estimate of the extent to which a facility may have adopted measures which would, at least in part, meet the requirements of the proposed standard.

In addition to estimates of compliance rates, data are needed on a variety of specific aspects of a facility's operation. For example, data on the number of incidents of employee exposure to blood or materials contaminated with blood are needed to estimate the cost of the post-exposure protocol.

A timetable for the survey is presented in Figure A–1. The timetable shows that OSHA is attempting to complete the survey within a short period of time in order to permit completion of the final regulatory analysis in conjunction with the final rule. The schedule currently calls for completion of the bulk of the survey effort within a 10-week period. Therefore, we request that an expedited review be performed by OMB.

Figure A–1.—Schedule for Design and Completion

Complete design of survey instrument and submit information collection plan to OMB.	Oct. 6, 1989.
Publish **Federal Register** notice of survey submission to OMB.	Oct. 12, 1989.
Obtain sampling frames for each sample stratum.	Oct. 15, 1989.
Receive OMB approval of survey (expedited).	Nov. 6, 1989.
Mail notification letters to survey targets.	Nov. 7, 1989.
Begin telephone interviewing	Nov. 20, 1989.
Complete telephone interviewing.	Dec. 18, 1989.
Perform data tabulations	Jan. 1, 1990.
Integrate survey results into a draft final report.	Jan. 15, 1990.
Respond to comments and submit final report.	Feb. 1, 1990.

2. Uses of the Information

The data gathered through this survey will be used by OSHA to make estimates of the direct and indirect costs of the various provisions for safe work practices, personal protective equipment, training, post-exposure follow up and HBV vaccination. The information gathered from all of the data collection efforts will be used by OSHA to prepare a final Regulatory Impact Analysis (RIA) for the final rule. Executive Order 12291 requires preparation of an RIA for each major rule. In an RIA, the Agency must assess the potential benefits and costs of the rule and of alternative approaches.

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The discussion below describes in detail the data uses for responses to each set of questions in the survey instrument.

A. *Questions on Infection Control Policies.* This set of questions identifies the types of infection control policies that have been adopted by the hospital, including isolation and surgical precautions, as well as general polices with regard to bloodborne infections. An understanding of the types of policies will provide general indication of the hospital's compliance level and a quality control check on later responses.

B. *Questions on Hospital Employment Structure.* These questions identify how many workers are employed by the hospital in each employment category. Employment categories include direct patient care employees, laboratory staff, and service employees. These questions also identify how many full time employees there are in each category. Data from these questions have an important effect on the cost of training and the HBV vaccination program aspects of the proposal.

C. *Data of Rates on Employee Exposure.* The next set of questions ask for estimates of the proportion of workers that are potentially exposed to blood or materials contaminated with blood. Data is gathered for each employment category mentioned above. Information gathered here is important in determining how exposure varies among the different employee categories.

D. *Questions on Policies for Use of Personal Protective Equipment.* Data are collected on the hospital's policies regarding employee use of personal protective equipment. Estimates are gathered for glove use, including when gloves are to be worn and how often they are to be changed. The data are specific to different employee categories. Where appropriate, additional questions are asked regarding the use of masks, goggles, shields and gowns. These questions are important in determining PPE usage rates and the level of current compliance. Hospitals covered in this survey were not included in the OSHA survey on personal protective equipment.

E. *Questions on Procurement of Personal Protective Equipment.* These questions gather data on the amounts of personal protective equipment purchased by the hospital, including gloves, gowns, masks, goggles and face shields. These data are used in determining usage rates for PPE as well as in the estimation of current compliance.

F. *Questions on Contract and Unpaid Workers.* These questions identify how many contract and unpaid workers are in danger of potential exposure and if they are offered personal protective equipment. This information is requested because these types of workers technically would not be the responsibility of the hospital under OSHA's proposed rule; thus, a rigorous analysis can not be performed without these data.

G. *Questions on Hepatitis B Vaccination Policies.* Questions are asked to determine the percentage of exposed workers who have received the HBV vaccine, if the hospital screens employees prior to vaccination, the extent to which these workers are offered the HBV vaccine free of charge, and when appropriate, the proportion of workers that accept the vaccine. Data from these questions are important in determining costs associated with the comprehensive surveillance program.

H. *Questions on Employee Training.* Data are collected on the length, frequency and timing of infection control training provided to at risk employees by the hospital. This information will enable the Agency to estimate the incremental effect of its proposed training provision.

I. *Questions on Post-Exposure Protocol.* Questions are asked to determine the annual number of exposures occurring in the hospital. Further, data are collected regarding source and employee testing, post-exposure employee counseling and medical treatment. Data from these questions are integral in determining cost and current compliance with regard to post-exposure procedures.

J. *Questions on Sharps Handling and Infectious Waste Disposal.* These questions deal with current practices with respect to disposal of infectious items. Questions are also asked to determine what types of waste the hospital treats as infectious. This information is important because the costs of disposing of waste designated as infectious are greater than the costs of disposal for non-infectious items.

K. *Questions on Laboratory Specific Infection Control Practices.* Data are collected with regard to centrifuge operation and aerosolization of infectious fluids and whether appropriate hazard signs are posted when concentrated HIV or HBV samples are in use. These questions are important for determining current levels of compliance.

L. *Questions on Policies Specific to AIDS and Hepatitis B.* These questions determine if any patient groups undergo routine HIV or HBV screening, how the status of HIV or HBV patients is made apparent, and if such patients are treated any differently than non-infected patients. These questions address issues of concern to the Centers for Disease Control.

3. Use of Technology to Reduce Burden

Information for this survey will be collected using a Computer Assisted Telephone Interviewing (CATI) system. Such a procedure will improve the quality and efficiency of the survey in a number of ways and will also reduce respondent burden. First, since the survey is done via telephone, there is no need for scheduling on-site visits to gather the information. This is expected to increase both the response rate and reduce the cost and time of completing interviews.

Further, CATI system responses are entered directly into the computer, eliminating the need for separate recording and coding operations. Also, the computer ensures that the proper sequence of questions is followed automatically. For example, if the response to one question suggest that a follow-up question can be skipped, the computer will automatically move on. The interviewer simply reads the questions as they appear on the screen. In addition, the use of the CATI allows the interviewer to omit questions that would not be relevant for the particular facility being questioned. This system produces a smoothly flowing interview and eliminates any pauses or delays by the interviewer to enter responses by hand or to find the next question. In essence, the computer produces a questionnaire tailored to each facility. If, however, the hospital indicates that it prefers to submit the information by mail, this method will also be accepted. There are no technical or legal obstacles to these plans for reducing the burden.

4. Efforts to identify Duplication

OSHA delayed this effort to allow for full coordination of its activities with the Centers for Disease Control and to eliminate the potential for duplication of efforts. OSHA and its contractor, Jack Faucett Associates, Inc., have conducted an extensive literature review and have explored sources within governmental and private agencies for data that are to be collected from these surveys. The findings indicate that there are no attempts to gather, in a systematic fashion, data on the work practices and the costs of control measures to protect workers from occupationally related exposures to bloodborne diseases for the hospitals affected by the rule.

5. Availability of Data from Existing Sources

More data have been collected that is relevant to the OSHA rulemaking for hospitals than for any other facility type potentially affected by the proposed standard. However, relative to the large proportion of the costs of the standard that hospitals will bear, the current data are not fully adequate.

A number of studies have considered the rates of exposure of health care workers to infected material, including studies by Marcus, Newberger, McCray, Gerberding, McCormick and others. However, the past studies have focused on the number of exposure incidents and have generally not provided useful data upon which to estimate the total number of exposed workers.

Incomplete or out of data data are available on levels of compliance among hospitals. CDC conducted a survey of hospitals in July of 1985 to measure the rate of adoption of selected universal precautions policies but these data are now seriously out of date. A survey in early 1988 of hospitals by the Joint Commission on Accreditation of Health Care Organizations [JCAHCO] asked whether the hospitals had adopted procedures that met or were equivalent to the CDC recommendations. These data, however, do not provide the detail required to estimate hospitals' current level of compliance with the proposed rule. A survey in 1987 conducted by Celetano for the Association of Practitioners of Infection Control had similar limitations as the JCAHCO survey.

The Service Employees International Union [SEIU] surveyed workers at a variety of facilities to estimate compliance with various infection control practices. The SEIU data were useful in developing the preliminary RIA but do not cover all the areas of interest. In addition, the small sample size and non-random selection of facilities in this survey limits the usefulness of these data.

There have been a number of surveys and studies analyzing the cost effectiveness of HBV vaccination programs and the levels of immunization of health care workers, but data on current vaccination rates are out of date, given anecdotal evidence that many facilities have only recently adopted vaccination programs. Data are also limited on the number of hospitals that offer the HBV vaccination free of charge and the types of workers that are offered the vaccine.

Regional data are available on infectious waste disposal practices in New Jersey, New York, Pennsylvania and parts of Washington State. National data, however, are limited. A study by Rutala in July of 1987 and January of 1988 provided national data on hospital infectious waste practices. Given the recent changes in many state laws and regulations and the public attention given during the summer of 1988 to infectious waste hospital practices are expected to have changed significantly. Current detailed data are needed on the types of waste hospitals are treating as infectious waste.

CDC collects information regarding the incidence of bloodborne diseases in their national medical surveillance, but these data lack information regarding occupationally related exposures to these infections, and do not address current work practices or control costs.

6. Minimizing Small Employer Burden

Approximately one-half of the establishment surveyed are expected to be small. To reduce the burden on these facilities, both the total number of facilities surveyed and the number of questions asked have been kept to a minimum.

7. Consequence of Less Frequent Collection

This is a one time only data collection. No plans exist for subsequent periodic follow up of this study.

8. Consistency With 5 CFR 1320.6

There are no special circumstances that require the collection of information in any manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Expert Review of the Survey Questionnaire

The survey design team has had discussions with industry experts in order to assess the substance of the survey questions. The clarity of instructions and other specific survey design elements have been reviewed by contractor survey experts, OSHA personnel and expert safety consultants in industry.

A. The survey instrument has been reviewed in September of 1989 by:

Dr. Hugh Conway, Office of Regulatory Analysis, OSHA, 202–523–9016;
Mr. Larry Braslow, Office of Regulatory Analysis, OSHA, 202–523–9016;
Mr. Robert Andrei, Office of Regulatory Analysis, OSHA, 202–523–9016;
Mr. Jack Smalligan, Jack Faucett Associates, 301–951–8600;
Mr. Ronald Bird, Jack Faucett Associates, 301–951–8600;
Ms. Gina Pugliese, American Hospital Associates, 312–280–5905.
Dr. Robert Hiett, KCA Research, 703–642–5220.
Ms. Jacquelyn Polder, Centers for Disease Control, 404–639–1444

B. No major problems arose during this review.

C. Public comment will be solicited through the Federal Register notice for the study.

10. Confidentiality

Procedures have been developed to protect the confidentiality of the collected data. These measures are summarized below:

A. All contractor and subcontractor personnel will be given instructions regarding the importance of keeping all information they obtain from respondents confidential.

B. The data will be collected using a Computer Assisted Telephone Interviewing (CATI) system. This technology enables the survey responses to be automatically written to a computer data file. Neither the name of the company nor the respondent will appear in the data file. A listing of respondents will be kept separately in a locked file cabinet at the contractor's office, and will be destroyed when no longer needed. The respondents' names will be linked to the data base through a unique number assigned at the time of the interview.

C. Publications of study results will be of a statistical nature only. Respondents will never be identified in any publication or presentation, nor will their names be made available to other individuals or groups.

11. Sensitive Questions

The proposed survey instrument contains no questions of a sensitive nature.

12. Costs

The total one-time cost to the government of the proposed data collection is $150,000. This estimate includes costs incurred by contractors for administration and operation of the data collection, tabulation of survey results, and subsequent analyses. The total one-time cost to the hospitals is estimated to be $12,556 (using 2 hours per facility for complete responses and 5 minutes/facility for screening or refusals).

13. Estimate of Respondent Reporting Burden

The survey instrument has been designed to allow the respondent to provide estimates and approximations. It is not the intent of the survey to require respondents to compile new data. Where data are requested, the survey instruments note that reference

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is being made to data which the respondent should be able to estimate readily or access easily.

It is estimated that 2 hours will be required for the completion of the survey. Based on 300 respondents; the respondent burden for completed surveys will be approximately 600 hours. For non-complete responses (screening or refusals), the burden will be 14 hours. The total respondent burden will be 614 hours. The respondent burden is summarized below.

Type of respondent	Number of respondents	Completion time (min.)	Total burden (hrs.)	Respondent costs [1]
Non-response or screening only	162	5	15	$286
Complete	300	120	600	12,270
Total	462		614	12,556

[1] Based on an administrative wage rate of $20.45 per hour including fringe benefits.

OSHA's 1989 information collection budget (ICB) allocated 600 hours to this survey.

14. Tabulation/Publication Timetable

The survey results will be placed in the relevant OSHA docket in whole or in part by OSHA as deemed appropriate as soon as complete computer files are finalized. Analysis of the data will appear in the final Regulatory Impact Analysis.

B. Statistical Methods

1. Characterization of the Universe and Sample

Universe and Sampling Frame. The universe of interest for the Blood Borne Diseases (BBD) Hospital Survey consists of all hospitals in the United States. It includes hospitals of all sizes, publicly as well as privately-controlled hospitals, and hospitals offering a range of services (e.g., general, psychiatric, and specialty hospitals). For the purposes of this survey, however, state or local government controlled hospitals in OSHA state plan states are excluded.

The sampling frame will be the hospital list marketed by the SMG Marketing Group, Inc., a company specializing in the health care industry. It is noted that should any problems arise with implementing the SMG frame, the American Hospital Association (AHA) frame will be used as a backup data source. The data sources for the SMG list are the records kept by State Health Departments. For licensing and other purposes, all hospitals must file accurate and up-to-date information with their respective State Health Department. These records are public documents that can be freely and completely accessed by private parties.

The SMG list, because of its completeness and data origin, is used by a number of U.S. health agencies for their data-gathering efforts. It is updated quarterly (the last update was completed in June, 1989), but information on hospitals which have closed since June is maintained current by feedback provided by users of the list. That is, whenever mail with an SMG-generated mailing label is returned to the sender, either because the facility is not at the address indicated or because it has closed, SMG immediately records this information on the data base. The coverage of this list, estimated at about 95 percent of operating hospitals at any given point in time, is quite good, since it is based on public records and all hospitals licensed in a State must report to the State Health Department. Because the list is in constant use and feedback on closed facilities is incorporated in the file on an ongoing basis, the expected proportion of "bad" listings associated with non-operating hospitals at any given point in time is less than 5 percent.

Design Overview. The sampling plan for the BBD Hospital Survey consists of a stratified probability sample of 300 hospitals. Two strata, defined on the basis of reported number of hospital beds (the measure of size), are used to select the sample. The sampling unit, based on the SMG data base, is the reporting unit. The two sampling strata are defined by splitting the hospital frame into two groups at roughly the median of the distribution of number of beds. The sample of 300 hospitals is allocated to each size stratum in proportion to the stratum measure of size. To achieve implicit stratification by geographic region of the country, the file will be ordered by Census region within strata and a systematic sample selection will be carried out independently within each primary stratum.

2. Information Collection Procedures

The information on the BBD Hospital Survey will be collected via CATI with prior mailing of the questionnaire to each sample hospital. (Respondents will be permitted to submit completed questionnaires by mail if they so desire.) The survey questionnaire and instructions supplementing the definitions and explanations appearing on the questionnaire will be mailed to a previously identified contact person (obtained from the SMG listing). The questionnaire will be broken up into information sections to facilitate completion. The contact person will be responsible for distributing the different sections to the appropriate hospital staff member. This approach allows different parts of the questionnaire to be answered by the person(s) most knowledgeable about the particular subject matter, while maintaining a central contact who will report the results to the telephone interviewers. The initial mailing of questionnaires will be accompanied by a letter of introduction, signed by the Assistant Secretary of Labor.

Effective Sample Size and Precision of Sample Estimates. The expected precision for the overall estimate and the stratum-level estimates was derived as follows. It is noted here that this approach is a continuation of the methodology employed in the BBD Survey presently being conducted for eighteen other health care industry sectors (FR Vol. 54, No. 137, Wednesday, July 19, 1989, p. 30330). The actual (i.e., incremental) cost (COST) incurred by a given hospital in order to come into compliance with the proposed standard may be modeled as the product of two independent random variables. The first variable, Y, relates to the total compliance cost for the establishment. This includes its baseline costs (i.e., those costs the hospital currently experiences as a result of its current health safety policies) plus its additional costs stemming from new policies it may be required to implement based upon the new standard. This total cost is independent of any establishment policy or practice and is derived solely from the characteristics of each facility (e.g., numbers of employees, numbers of people treated). The second variable, P, measures the hospital's current rate of non-compliance with the proposed standard. Its values range from 0 to 1. Hence, the incremental cost to each establishment as a result of the standard may be modeled as:

$$COST_i = Y_i \times P_i;$$

where,

$COST_i$ = Incremental cost to hospital i;
Y_i = Total compliance cost to hospital i; and
P_i = Current percent non-compliance for hospital i to new standard.

Using the assumption of independence of Y and P, the expected value and variance of this cost may be expressed as:

$E(COST) = E(Y) * E(P) = Y * P$; and

$Var(COST) = (E(Y))^2 Var(P) + (E(P))^2 Var(Y) + Var(P)Var(Y)$.

Having split the total variability in cost into two independent components, one stemming from the variability in facility characteristics and the other stemming from variability in policy (i.e., current compliance), sample requirements were estimated based upon various assumptions about the distributions of each.

For the total cost variable, Y, a gamma distribution was assumed, using a value equal to 3 for the shape parameter. This parameter corresponds to a slightly skewed distribution with moderate variability (CV = 0.58). The population coefficient of variance (CV) is defined as the population standard deviation divided by population mean. For the non-compliance variable, P, a triangular distribution waa assumed with endpoints at zero and one.[1] The mean of the distribution (expected non-compliance rate) was assumed to be 0.33. The figure is consistent with OSHA's assessment of current practice in the hospital industry.

Using the above parameters for the total cost variable, Y, and the percent non-compliance variable, P, the incremental cost variable has a population CV equal to 0.99. Based on this assumed population CV and simple random sampling selection, a sample size of 300 results in a relative standard error (RSE) of 0.057 (5.7%) in the survey estimate. The stratum level estimates, based on a sample size of 150 hospitals each, are expected to have a relative standard error of 0.08 (8%). Specifically, ignoring the finite population correction factor, these estimates were derived from the following standard formula:

$RSE(Y) = CV_Y/\sqrt{n}$.

The number of solicitations required to achieve the target number of 300 completed questionnaires from eligible hospitals was estimated by inflating this target sample size by the expected number of unsuccessful interview attempts. These losses are due to non-response (e.g., refusal, language barrier, extenuating circumstances existing during the data collection period), the inability to contact a hospital because it has closed, and other unforseen losses. Based on previous experience in hospital surveys, losses due to non-response are estimated at 25 percent, losses due to out-of-business and other out-of-scope are estimated at 10 percent, and losses due to other unforseen reasons are estimated at 20 percent. Hence, 462 hospitals will be asked to participate in the survey and 462 questionnaires will initially be mailed to the identified participants. An additional 295 hospitals will be assigned as a reserve sample. After the losses experienced in the mailing are determined (e.g., number of returned envelopes), subsets of the reserve sample will be released as required to achieve the 300 target completed interviews with eligible hospitals. Specifically, the total number of hospitals to be initially selected, 667, was estimated by:

$300 \times 1/(1 - (.25 + .10 + .20)) = 300 \times (1/.45) = 667$.

Stratification. The expected relative standard errors (RSE) indicated above were derived under the assumption of simple random sampling. However, with stratification, the efficiency of the sample may be increased. By identifying subdomains of the universe of interest that are more similar among themselves with respect to the key characteristics to be estimated from the survey and by selecting independent samples within each subdomain or stratum, the overall variance of the estimates may be reduced. The reduction in variance is a function of the correlation between the stratification variable(s) and the estimates to be produced from the survey. For the BBD Hospital Survey, number of hospital beds will be used as the primary stratification variable. We expect this size measure to be correlated with incremental cost of compliance with the proposed standard.

Stratification may also be used to achieve specific sample sizes for selected subdomains of the universe, since sample selection is carried out independently within strata. Thus, estimates for these selected subdomains can also be produced. Although estimates for the entire hospital sector are of primary importance in this survey, estimates by size subdomain are also of interest.

Two strata will be identified for sample selection: (1) Hospitals with less than 300 beds, and (2) hospitals with 300 or more beds. These stratum boundaries were defined following the "CUM square root of frequency" procedure.[2] For this survey, this rule implies that the two strata will represent approximately equal cumulative square root of the measure of size (total hospital beds accounted for by the hospitals) in the stratum. The table below shows how the rule was implemented. It presents the distribution of hospitals by bed size categories reported by AHA, total number of beds accounted for by hospitals in the category, and the cumulative square root of number of hospital beds for the two resulting strata.

[1] Kish, L. *Survey Sampling*, John Wiley and Sons, Inc., New York, 1965. p. 282.

[2] Cochran, W.G., *Sampling Techniques*, Third Edition, John Wiley and Sons, Inc., New York, 1977.

DISTRIBUTION OF HOSPITALS AND BEDS BY STRATA.[3]

Stratum	Number of hospital units	Number of beds	Square root (beds)	Cumulative percent of beds
6 to 24 beds	290	5,608	75	3
25 to 49 beds	1,145	42,845	207	10
50 to 99 beds	1,673	120,841	348	21
100 to 199 beds	1,581	222,765	472	38
200 to 299 beds	858	207,602	456	[4] 53
300 to 399 beds	503	172,627	415	67
400 to 499 beds	275	122,855	351	79
500+ beds	496	371,557	610	100
Total	6,821	1,266,700	2,933	

[3] "Hospital Statistics," American Hospital Association 1988 Edition, table 3, p. 12.
[4] The cumulative percent closest to 50 percent defines the stratum boundary.

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Sample Selection Methodology. Sample selection under stratified sampling will be carried out independently within strata. To implement the selection, the SMG hospital file will be sorted by the primary strata (less than 299 beds, and 300 or more beds) and by secondary strata. (Census geographic region) within bed size. The sort by region within primary strata will achieve a proportional distribution of the within-stratum sample across the four Census regions. The skip interval for the selection within stratum will be established as the reciprocal of the sampling rate corresponding to the particular stratum. As discussed earlier, a total sample of 667 hospitals will be selected. Four hundred sixty-two (462) hospitals will initially be contacted. This sample includes additional units to cover losses due to nonresponse, out-of-scope or out-of-business listings on the SMG file, and "bad" telephone numbers (e.g., ring-no-answer, disconnected). Two hundred five (205) hospitals will be identified as a reserve sample to cover unforeseen losses.

Estimation Procedure. The survey estimator will be selfweighting within stratum, but sampling weights will be required to produce overall estimates to account for differential probabilities of selection across the two strata. The overall estimator will take the form:

$$Y = \sum_{i} WGT_M * NRAF_M * RESP_i$$

where,

WGT_M = the stratum h sampling weight corresponding to hospital i; and

$NRAF_M$ = the stratum h non-response adjustment corresponding to hospital i.

The non-response adjustment will be computed within stratum as the ratio of eligible hospitals (indexed by i), weighted by number of beds to cooperating eligible hospitals (indexed by i*) weighted by number of beds. That is

$$NRAF_h = \frac{\sum_{ieh} (WGT_i \times BEDS_i)}{\sum_{ieh} (WGT_i^* \times BEDS_i^*)}$$

Sampling errors of survey estimates will reflect stratification. With a stratified sample, the variance of the overall estimate is equal to the sum of the stratum variances.

3. Methods to Maximize Response Rates

This survey is voluntary and is expected to yield a response rate of approximately 75 percent of in-scope hospitals. Every effort will be made to complete interviews for all in-scope hospitals: Up to five call-backs will be made to obtain a completed questionnaire. We expect that having identified a contact person at the hospital prior to the call by the CATI interviewer will facilitate obtaining a completed interview. Also, we hope to obtain an endorsement from the American Hospital Association. If obtained, this support will be indicated in our initial contact letter. In addition, the CATI process will help improve the overall response rate by:

- Allowing direct telephone contact with the hospital staff person in charge of reporting responses for all sections of the questionnaire (the central contact person); and
- Scheduling and maintaining a detailed record of the initial solicitation and all call-backs to obtain an interview with the contact person at the hospital.

BILLING CODE 4510-26-M

_____, 1989

OMB Approval # _____
OSHA Contact: Robert Andrei
(202) 523-9916

Name _____
Address _____
_____
_____

DRAFT

Dear _____:

The objective of the Occupational Safety and Health Act of 1970 is to provide a safe and healthful workplace for all employees in the United States. To help achieve this objective, the Occupational Safety and Health Administration (OSHA) is conducting a survey to support an assessment of the technological and economic feasibility of a standard to protect workers from occupational exposure to certain bloodborne diseases, primarily the hepatitis B virus (HBV) and the human immunodeficiency virus (HIV). Your hospital has been selected to participate in this survey, and an interviewer will be calling you in two weeks to ask some questions about practices at your facility which provide workers with protection against bloodborne diseases.

The information you can provide is essential to OSHA's rulemaking process, and will help to ensure that the Agency's final analysis reflects the infection control practices of hospitals such as yours. A copy of the survey is attached. Questions are asked regarding the infection control policies of your facility, policies for the use of personal protective equipment, training programs, and related topics. To assist you in the preparation of your responses for this survey, we have structured the questionnaire such that particular sections can be distributed among the respective departments or offices of your hospital. Participation in the survey is voluntary and all responses will be kept strictly confidential and will not be identified by name in any reports or data compilations submitted to OSHA.

The survey has been designed as a Computer Assisted Telephone Interview (CATI) survey, that is, the information requested in the questionnaire is to be collected by our telephone interviewers. However, if you should complete the questionnaire prior to receiving a call from an interviewer, you may forward your written response to:

KCA Research
5501 Cherokee Avenue
Suite 111
Alexandria, Virginia 22312
RE: Hospital Project

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Mr. _____
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For the purposes of this survey, we are requesting information only on those services provided on location by your hospital; information associated with any services provided at a separate location should not be reported in response to questions in this survey.

We estimate that it will take an average of 2 hours or less per complete response for this survey. If you have any comments regarding this estimate or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, NW, Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

You can help us to expedite our survey process by designating the best qualified person to answer questions regarding worker protection from blood and other potentially infectious materials. Your cooperation will be instrumental in OSHA's development of a feasible and effective final standard.

Thank you for your time and assistance and we look forward to receiving your valuable input.

Sincerely,

_____
Acting Assistant Secretary

INFECTION CONTROL POLICIES

1. Are there policies at your hospital regarding infection control?

Yes, written	1	
Yes, not written	2	
No	3	
Don't Know	4	GO TO 6
Refused	5	

2. Which policies most closely describe isolation policies adopted by your hospital? (Check all that apply)

__ Category Specific Isolation Precautions
__ Disease Specific Isolation Precautions
__ Universal Precautions
__ Body Substance Isolation
__ Facility Specific Policy
__ Other (specify) _____

3. Which of the following best describes policies used for isolation precautions in your hospital?

__ When a patient is known or suspected of having an infectious disease/condition, precautions are used that are appropriate for a category of conditions; that is, Enteric precautions for gastrointestinal diseases, Wound and Skin precautions for infected wounds, AFB precautions for pulmonary tuberculosis, etc.
__ When a patient is known or suspected of having an infectious disease/condition, that disease is considered specifically; only those precautions that are indicated to interrupt transmission of that disease or condition are recommended, for example, private room, masks, gowns, or gloves.
__ ALL body substances of ALL patients are handled as if they may be infectious. Gloves are worn for contact with mucous membranes, nonintact skin, and moist body substances, including contact with blood, feces, urine, sputum, saliva, wound drainage, and other body fluids; additional precautions are required for diseases transmitted by the airborne route.
__ A policy developed by your facility which may be a combination of the above or others. Specify _____
__ No official policy.

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4. Which of the following policies MOST CLOSELY resemble policies that your facility uses for the prevention of transmission of bloodborne infections:

__ ALL body substances of ALL patients are handled as if they may be infectious.
__ CERTAIN body fluids including blood, semen, vaginal secretions, tissues, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid of ALL patients are handled as if infectious.
__ ALL body substances of patients known or suspected of being infected with a bloodborne pathogen are handled as if they may be infectious.
__ CERTAIN body fluids including blood, semen, vaginal secretions, tissues, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, and amniotic fluid of patients known or suspected of being infected with a bloodborne pathogen are handled as if infectious.
__ A policy developed by your facility which may be a combination of the above or others. Specify _____
__ No official policy.

5. During surgical procedures in the operating room, is there a policy for changes in routine practices if the patient is known or suspected of having a bloodborne infection?

Yes, written	1
Yes, not written	2
No	3
Don't Know	4
Refused	5

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STAFF STRUCTURE

6. How many total employees, including full and part-time employees, are presently employed at your establishment? Do not include contract workers or unpaid workers.

7. Do you have contract workers who perform work onsite?

8. Do you have unpaid workers, such as volunteers or students, who perform work onsite?

Following are two questions which refer to the list of employee categories appearing on page 4.

Employees are only those workers who are employed by you and who are on your payroll. Do not include self-employed physicians with hospital privileges, contract workers, or volunteers.

Please indicate for each employee category:

the total number of employees in that category; and

the number of full time employees.

[INTERVIEWER READS DOWN LIST]

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9. I. Direct Patient Care

Diagnosing Occupations
Physicians* ___; full time ___
Dentists ___; full time ___
All other ___; full time ___

Health Assessment, Treating, and Technical Occupations
R.N. ___; full time ___
L.P.N. ___; full time ___
Therapists ___; full time ___
Physicians' Assist. ___; full time ___
Technicians ___; full time ___
All other ___; full time ___

Health Service Occupations
Dental Assistants ___; full time ___
Nursing Aides ___; full time ___
Orderlies ___; full time ___
Attendants ___; full time ___
All other ___; full time ___

10. II. Laboratory Staff

Technologists ___; full time ___
Technicians ___; full time ___
All other ___; full time ___

11. III. Service Employees

Housekeepers ___; full time ___
Laundry ___; full time ___
Central Supply ___; full time ___
All other ___; full time ___

* Please include all M.D.s, D.O.s, interns, and residents, if paid.

DRAFT

POTENTIAL FOR EXPOSURE

Following are two questions which refer to the list of employee categories appearing on pages 7 through 9.

This list is identical to the list used for STAFF STRUCTURE.

These questions ask about occupational exposure to blood and other potentially infectious materials.

Potentially infectious materials include the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, saliva in dental procedures, and any body fluid that is visibly contaminated with blood. Also included as potentially infectious materials are any unfixed tissue or organ, HIV- or HBV-containing solution, cell, tissue or organ culture, and organs or tissues from experimental animals infected with HIV or HBV.

The OSHA definition of occupational exposure is reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties. This determination of reasonably anticipated contact is to be made without regard to personal protective equipment, such as gloves.

For each employee category listed, please indicate;

the percentage of total employees in that category who are occupationally exposed, as defined above; and

the percentage of occupationally exposed employees in that category who are exposed to splashes or spatter of blood or other potentially infectious materials.

[INTERVIEWER READS DOWN LIST]

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12. I. Direct Patient Care

Diagnosing Occupations
Physicians
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Dentists
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
All other
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
(Please list up to 5 of the most frequently exposed occupational categories that you have included in the "all other" category.)
_____;_____; _____; _____; _____; _____

Health Assessment, Treating, and Technical Occupations
R.N.
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
L.P.N.
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Therapists
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Physicians' Assist.
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___

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Technicians
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
All other
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
(Please list up to 5 of the most frequently exposed occupational categories that you have included in the "all other" category.)
_____;_____; _____; _____; _____; _____

Health Service Occupations
Dental Assistants
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Nursing Aides
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Orderlies
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Attendants
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
All other
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of total number exposed to splashes or spatter of blood or other potentially infectious materials___
(Please list up to 5 of the most frequently exposed occupational categories that you have included in the "all other" category.)
_____;_____; _____; _____; _____; _____

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13. II. Laboratory Staff

Technologists
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Technicians
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
All other
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
(Please list up to 5 of the most frequently exposed occupational categories that you have included in the "all other" category.)
_____;_____; _____; _____; _____; _____

14. III. Service Employees

Housekeepers
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Laundry
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
Central Supply
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
All other
% who are occupationally exposed to blood or other potentially infectious materials ___;
% of those occupationally exposed who are exposed to splashes or spatter of blood or other potentially infectious materials___
(Please list up to 5 of the most frequently exposed occupational categories that you have included in the "all other" category.)
_____;_____; _____; _____; _____; _____

DRAFT

15. Are any of your direct patient care employees who are exposed to blood or other potentially infectious materials exposed less frequently than once per month, on average?

Yes	1	
No	2	------
Don't Know	3	------ GO TO Q.17
Refused	4	------

16. Please estimate the percentage of exposed direct patient care employees who are exposed less frequently than once per month.

17. Are any of your laboratory staff who are exposed to blood or other potentially infectious materials exposed less frequently than once per month, on average?

Yes	1	
No	2	------
Don't Know	3	------ GO TO Q.19
Refused	4	------

18. Please estimate the percentage of exposed laboratory staff members who are exposed less frequently than once per month.

19. Are any of your service employees who are exposed to blood or other potentially infectious materials exposed less frequently than once per month, on average?

Yes	1	
No	2	------
Don't Know	3	------ GO TO Q.21
Refused	4	------

20. Please estimate the percentage of exposed service employees who are exposed less frequently than once per month.

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POLICIES FOR USE OF PERSONAL PROTECTIVE EQUIPMENT (PPE)

The following questions are about personal protective equipment used to guard against exposure to blood and other potentially infectious materials.

The occupational categories for which information is requested below follow the groupings presented in the section on Staff Structure (p. 4). For example, employees with direct patient care responsibilities would be all those employees grouped under section I on page 4.

21. What is your facility's overall policy on the wearing of gloves by workers who have direct patient care responsibilities?

- ___ When contact with ALL body substances, including saliva, urine, and feces can be reasonably anticipated.
- ___ When contact can be reasonably anticipated with blood, semen, vaginal fluid, or other body fluids which contain blood or to which CDC's recommendations for universal precautions apply.
- ___ Whenever the health care worker chooses to use gloves.
- ___ No policy for the ROUTINE use of gloves.
- ___ Other (specify) _____

22. When does your policy state that gloves should be replaced by workers who have direct patient care responsibilities? (Check all that apply)

- ___ Between patients
- ___ As soon as possible whenever gloves are visibly soiled with blood.
- ___ As soon as possible whenever gloves are torn.
- ___ As soon as the worker leaves the work area.
- ___ No policy; decision is made by the worker.

23. What is your facility's overall policy on the wearing of gowns by workers who have direct patient care responsibilities?

- ___ If soiling of exposed skin or clothing with ANY body substance (including saliva, urine, and feces) can be reasonably anticipated.
- ___ If soiling of exposed skin or clothing with blood, semen, vaginal fluid, or other body fluids which contain blood or to which CDC's recommendations for universal precautions apply, can be reasonably anticipated.
- ___ Whenever the health care worker chooses to use a gown.
- ___ No policy for the ROUTINE use of gowns.
- ___ Other (specify) _____

DRAFT

24. What is your facility's overall policy on the wearing of face protection, including masks, goggles, and face shields by workers who have direct patient care responsibilities?

- ___ If splashes, spray, or spatter of ANY body substance (including saliva, urine, and feces) may be generated.
- ___ If splashes, spray, or spatter of blood, semen, vaginal fluid, or other body fluids which contain blood or to which CDC's recommendations for universal precautions apply, may be generated.
- ___ Whenever the health care worker chooses to use face protection.
- ___ No policy for the ROUTINE use of face protection.
- ___ Other (specify) _____

25. What is your facility's overall policy on the wearing of gloves by workers in the laboratory during routine processing of blood specimens? Please indicate all that apply.

- ___ During processing of ANY blood specimen.
- ___ Only during processing of blood specimens from isolation patients.
- ___ Only during processing of labelled blood specimens known or suspected to contain a bloodborne agent.
- ___ Only if worker has non intact skin.
- ___ No policy; decision is made by the worker.

26. When does your policy state that gloves should be changed by workers in the laboratory engaged in routine processing of blood specimens? Please indicate all that apply.

- ___ As soon as possible whenever gloves are visibly soiled with blood.
- ___ As soon as possible whenever gloves are torn.
- ___ As soon as the worker leaves the work area.
- ___ Upon completion of specimen processing.
- ___ No policy; decision is made by the worker.
- ___ Other

27. What is your facility's overall policy on the wearing of gowns by workers in the laboratory during routine processing of blood specimens? Please indicate all that apply.

- ___ During the processing of ANY specimen.
- ___ If soiling of exposed skin or clothing during processing of ANY blood specimen can be reasonably anticipated.
- ___ If soiling of exposed skin or clothing only during processing of blood specimens from isolation patients can be reasonably anticipated.
- ___ If soiling of exposed skin or clothing only during processing of labelled blood specimens known or suspected to contain a bloodborne agent can be reasonably anticipated.
- ___ Only if worker has non intact skin.
- ___ No policy; decision is made by the worker.

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28. What is your facility's overall policy on the wearing of face protection, including masks, goggles, and face shields, by workers in the laboratory during routine processing of blood specimens? Please indicate all that apply.

__ During the processing of ANY specimen.
__ If splashes, spray, or spatter may be generated during processing of ANY blood specimen.
__ If splashes, spray, or spatter may be generated during processing of blood specimens from isolation patients.
__ If splashes, spray, or spatter may be generated during processing of labelled blood specimens known or suspected to contain a bloodborne agent.
__ Whenever the laboratory technician chooses to use face protection.
__ No policy for the ROUTINE use of face protection.

29. What is your facility's overall policy on the wearing of gloves by service employees? Please indicate all that apply.

__ During handling of ALL used linen and waste.
__ During handling of used linen and waste from isolation patients.
__ During handling of used linen or waste from a patient known or suspected of being infected with a bloodborne pathogen.
__ During handling of linen and waste visibly contaminated by blood.
__ If worker has non intact skin.
__ No policy; decision is made by the worker.

30. When does your policy state that gloves should be changed by service employees? Please indicate all that apply.

__ As soon as possible whenever gloves are visibly contaminated with blood or other potentially infectious materials.
__ As soon as possible whenever gloves are torn.
__ As soon as the worker leaves the work area.
__ No policy; decision is made by the worker.

31. What is your facility's overall policy on the wearing of gowns by service employees? Please indicate all that apply.

__ During handling of ALL used linen or waste.
__ During handling of used linen and waste from isolation patients.
__ During handling of used linen or waste from a patient known or suspected of being infected with a bloodborne pathogen.
__ During handling of linen or waste visibly contaminated by blood.
__ If worker has non intact skin.
__ No policy; decision is made by the worker.

32. What is your facility's overall policy on the wearing of face protection, including masks, goggles, and face shields, by service employees? Please indicate all that apply.

__ If splashes, spray, or spatter of blood may be generated during handling of ANY item of used linen or waste.
__ If splashes, spray, or spatter of blood may be generated during handling of used linen or waste from isolation patients.
__ If splashes, spray, or spatter of blood may be generated during handling of used linen or waste from a patient known or suspected of being infected with a bloodborne pathogen.
__ If splashes, spray, or spatter of blood may be generated during handling of items of linen or waste visibly contaminated by blood.
__ Whenever the housekeeping or laundry employee chooses to use face protection.
__ No policy for the ROUTINE use of face protection.

I'm now going to ask you about your policy for the wearing of gloves with regard to seven specific procedures. The procedures are phlebotomy by experienced phlebotomists, phlebotomy by students, starting an IV, giving IV medication, fingersticks on adults, heelsticks on infants, and intramuscular injections. I'd like you to tell me, for each procedure, which of the following most closely resembles your policy: (1) that gloves should always be worn; (2) that gloves should be worn at the discretion of the worker; (3) that gloves should be worn only if the patient is known to have a bloodborne infection; or (4) that gloves should be worn only if the worker has non-intact skin.

33. Phlebotomy performed by experienced phlebotomists: Please indicate all that apply.

__ Gloves should always be worn.
__ Gloves should be worn if the worker anticipates exposure to blood or other potentially infectious materials.
__ Gloves should be worn if the patient is known to have a bloodborne infection.
__ Gloves should be worn if the worker has non-intact skin.
__ Other

34. Phlebotomy performed by students: Please indicate all that apply.

__ Gloves should always be worn.
__ Gloves should be worn if the worker anticipates exposure to blood or other potentially infectious materials.
__ Gloves should be worn if the patient is known to have a bloodborne infection.
__ Gloves should be worn if the worker has non-intact skin.

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35. Starting an IV:

__ Gloves should always be worn.
__ Gloves should be worn at the discretion of the worker.
__ Gloves should be worn only if the patient is known to have a bloodborne infection.
__ Gloves should be worn only if the worker has non-intact skin.

36. Giving IV medication through a side port:

__ Gloves should always be worn.
__ Gloves should be worn at the discretion of the worker.
__ Gloves should be worn only if the patient is known to have a bloodborne infection.
__ Gloves should be worn only if the worker has non-intact skin.

37. Fingersticks on adults:

__ Gloves should always be worn.
__ Gloves should be worn at the discretion of the worker.
__ Gloves should be worn only if the patient is known to have a bloodborne infection.
__ Gloves should be worn only if the worker has non-intact skin.

38. Heelsticks on infants:

__ Gloves should always be worn.
__ Gloves should be worn at the discretion of the worker.
__ Gloves should be worn only if the patient is known to have a bloodborne infection.
__ Gloves should be worn only if the worker has non-intact skin.

39. Intramuscular injections:

__ Gloves should always be worn.
__ Gloves should be worn at the discretion of the worker.
__ Gloves should be worn only if the patient is known to have a bloodborne infection.
__ Gloves should be worn only if the worker has non-intact skin.
__ Gloves not routinely worn.

40. When a phlebotomist needs to draw blood on several patients in a serial fashion, and the patients come to the phlebotomist, for example, in an outpatient clinic, when does your policy state that phlebotomists gloves should be changed?

__ Gloves changed and hands washed between each patient.
__ Gloves changed but hands not necessarily washed between each patient.
__ Gloves changed only if visibly worn or soiled with blood.
__ Gloves not necessarily changed, but washed between patients.
__ Gloves not worn routinely.
__ Other (specify) _____

41. When a phlebotomist needs to draw blood on several patients in a serial fashion, and the phlebotomist goes to the patient, for example, on the ward, when does your policy state that phlebotomists gloves should be changed?

__ Gloves changed and hands washed between each patient.
__ Gloves changed but hands not necessarily washed between each patient.
__ Gloves changed only if visibly worn or contaminated.
__ Gloves not necessarily changed, but washed between patients.
__ Gloves not worn routinely.
__ Other (specify) _____

42. Are glove use policies for phlebotomists different than policies for other health care providers?

Yes 1
No 2

43. Does your hospital label blood and body fluid specimens to inform persons of known or suspected pathogens?

Yes 1
No 2 ------ GO TO Q.45

44. Which blood and body fluid specimens are labeled? Please indicate all that apply.

__ All specimens.
__ All blood.
__ Blood known or suspected to contain hepatitis B virus.
__ Blood known or suspected to contain human immunodeficiency virus.
__ Blood specimens from any patient in isolation.
__ Other, please specify_____.

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PROCUREMENT

45. How many disposable latex gloves were purchased by your establishment during the first six months of 1989?

46. How many disposable vinyl gloves were purchased by your establishment during the first six months of 1989?

Of all the disposable gloves, what percentage is purchased for use by:

47. direct patient care employees _____
48. laboratory staff _____
49. service employees _____

50. How many pairs of reusable gloves were purchased by your establishment in 1988?

Of all the reusable gloves, what percentage is purchased for use by:

51. direct patient care employees _____
52. laboratory staff _____
53. service employees _____

54. How many disposable protective staff gowns were purchased by your establishment during the first six months of 1989?

Of all the disposable protective staff gowns, what percentage is purchased for use by:

55. direct patient care employees _____
56. laboratory staff _____
57. service employees _____

58. How many reusable protective staff gowns were purchased by your establishment in 1988?

Of all the reusable protective staff gowns, what percentage is purchased for use by:

59. direct patient care employees _____
60. laboratory staff _____
61. service employees _____

62. How many disposable masks were purchased by your establishment during the first six months of 1989?

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Of all the disposable masks, what percentage is purchased for use by:

63. direct patient care employees _____
64. laboratory staff _____
65. service employees _____

66. How many pair of goggles were purchased by your establishment in 1988?

Of all the goggles, what percentage is purchased for use by:

67. direct patient care employees _____
68. laboratory staff _____
69. service employees _____

70. How many reusable face shields were purchased by your establishment in 1988?

Of all the reusable face shields, what percentage is purchased for use by:

71. direct patient care employees _____
72. laboratory staff _____
73. service employees _____

74. How many disposable syringes were purchased by your establishment during the first six months of 1989?

75. How many non-disposable syringes were purchased by your establishment during the first six months of 1989?

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CONTRACT AND UNPAID WORKERS

[IF Q.7 = 0, GO TO Q.83]

76. Are any of your contract workers exposed to blood or other potentially infectious material while at your workplace?

Yes	1	
No	2	------
Don't Know	3	------ Go to Q.83
Refused	4	------

77. How many of those exposed contract workers are direct patient care or laboratory workers?

[IF 0, GO TO Q.79]

78. Does your firm provide personal protective equipment such as gloves, gowns, or face protection for these direct patient care or laboratory workers?

Yes	1
No	2
Don't know	3
Refused	4

79. How many of these exposed contract workers are housekeeping workers?

[IF 0, GO TO Q.81]

80. Does your firm provide personal protective equipment such as gloves, gowns, or face protection for these contract housekeeping workers?

Yes	1
No	2
Don't know	3
Refused	4

81. How many of these exposed contract workers are laundry workers?

[IF 0, GO TO Q.83]

DRAFT

82. Does your firm provide personal protective equipment such as gloves, gowns, or face protection for contract laundry workers?

Yes	1
No	2
Don't know	3
Refused	4

[IF Q.8 = 0, GO TO Q.86]

83. Are any of your unpaid workers exposed to blood or other potentially infectious materials while at your workplace?

Yes	1	
No	2	------
Don't know	3	------ GO TO Q.86
Refused	4	------

84. How many of your unpaid workers are exposed?

85. Does your firm provide personal protective equipment such as gloves, gowns, or face protection for these unpaid workers?

Yes	1
No	2
Don't know	3
Refused	4

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HEPATITIS B VACCINE POLICIES

[ASK Q.86 - 92 FOR DIRECT PATIENT CARE EMPLOYEES AND LABORATORY STAFF IF AT LEAST ONE RESPONSE TO Q.12 OR Q.13 IS GREATER THAN 0]

86. What percentage of the direct patient care and laboratory employees who are exposed to blood or other potentially infectious material have been vaccinated against hepatitis B?

87. How is the hepatitis-B vaccine funded for direct patient care and laboratory employees?

__ Free of charge to all ---------- GO TO Q.89
__ Free of charge to certain high risk workers
__ Health insurance benefit ----------GO TO Q.90
__ Sliding fee ---------- GO TO Q.90
__ Employee pays/no reimbursement ------ GO TO Q.93
__ Vaccine not provided ---------- GO TO Q.93

88. Of your direct patient care and laboratory employees who are exposed to blood or other potentially infectious materials, what percentage are offered the hepatitis-B vaccine free of charge?

89. Of these, what percentage have accepted your offer of free hepatitis-B vaccination?

90. Are direct patient care and laboratory employees screened for anti-HBs or anti-HBc prior to vaccination?

Yes	1
No	2 ------
Don't know	3 ------ GO TO Q.93
Refused	4 ------

91. What percentage of those direct patient care and laboratory employees screened for hepatitis B antibody are found to be immune?

92. For what percentage of the direct patient care and laboratory employees who are occupationally exposed to blood or other potentially infectious materials is hepatitis B vaccine mandatory?

DRAFT

[ASK Q.93 - 98 FOR SERVICE EMPLOYEES IF AT LEAST ONE RESPONSE TO Q.14 IS GREATER THAN 0]

93. What percentage of the service employees who are exposed to blood or other potentially infectious material have been vaccinated against hepatitis B?

94. How is the hepatitis-B vaccine funded for service employees who are exposed?

__ Free of charge to all ---------- GO TO Q.96
__ Free of charge to certain high risk workers
__ Health insurance benefit ----------GO TO Q.97
__ Sliding fee ---------- GO TO Q.97
__ Employee pays/no reimbursement ------ GO TO Q.99
__ Vaccine not provided ---------- GO TO Q.99

95. Of your service employees who are exposed to blood or other potentially infectious materials, what percentage are offered the hepatitis-B vaccine free of charge?

96. Of these, what percentage have accepted your offer of free hepatitis-B vaccination?

97. Are service employees screened for the hepatitis-B antibody prior to vaccination?

Yes	1
No	2
Don't know	3 ------ GO TO Q.99
Refused	4

98. What percentage of those housekeeping and laundry employees screened for hepatitis B antibody are found to be immune?

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EMPLOYEE TRAINING PRACTICES

[ASK Q.99 - 102 FOR DIRECT PATIENT CARE EMPLOYEES IF AT LEAST ONE RESPONSE FOR Q.12 IS GREATER THAN 0]

99. Do you offer training to direct patient care employees regarding the characteristics of bloodborne diseases and recommended precautions to prevent occupational exposure?

Yes	1
No	2 ------
Don't know	3 ------ GO TO Q.103
Refused	4 ------

100. How frequently is the training provided to direct patient care employees? Please indicate all that apply.

Once upon employment	01
At job change	02
Monthly	03
Quarterly	04
Semiannually	05
Annually	06
Less often than annually	07
Varies by tasks performed	08
Other (specify)	09
Don't Know	10
Refused	11

101. What is the length of the average training session for direct patient care employees?

Less than half an hour	1
1/2 to 1 hour	2
2 to 3 hours	3
4 to 6 hours	4
7 to 8 hours	5
Longer than 8 hours	6
Other (specify)	7
Don't know	8
Refused	9

102. Does the initial training for direct patient care employees take place prior to assignment to tasks involving exposure to blood or other potentially infectious materials?

Yes	1
No	2
Don't know	3
Refused	4

[ASK Q.103 - 106 FOR CLINICAL LABORATORY EMPLOYEES EMPLOYEES IF AT LEAST ONE RESPONSE FOR Q.13 IS GREATER THAN 0]

103. Do you offer training to laboratory employees regarding the characteristics of bloodborne diseases and recommended precautions to prevent occupational exposure?

Yes	1
No	2 ------
Don't know	3 ------ GO TO Q.107
Refused	4 ------

104. How frequently is the training provided to laboratory employees? Please indicate all that apply.

Once upon employment	01
At job change	02
Monthly	03
Quarterly	04
Semiannually	05
Annually	06
Less often than annually	07
Other (specify)	08
Don't Know	09
Refused	10

105. What is the length of the average training session for laboratory employees?

Less than half an hour	1
1/2 to 1 hour	2
2 to 3 hours	3
4 to 6 hours	4
7 to 8 hours	5
Longer than 8 hours	6
Other (specify)	7
Don't know	8
Refused	9

106. Does the initial training for laboratory employees take place prior to assignment to tasks involving exposure to blood or other potentially infectious materials?

Yes	1
No	2
Don't know	3
Refused	4

[ASK Q.107 - 110 FOR SERVICE EMPLOYEES IF AT LEAST ONE RESPONSE FOR Q.14 IS GREATER THAN 0]

107. Do you offer training to service employees regarding the characteristics of bloodborne diseases and acceptable practices to prevent occupational exposure?

Yes	1	
No	2	------
Don't know	3	------ GO TO Q.111
Refused	4	------

108. How frequently is the training provided to service employees? Please indicate all that apply.

Once upon employment	01
At job change	02
Monthly	03
Quarterly	04
Semiannually	05
Annually	06
Less often than annually	07
Other (specify)	08
Don't Know	09
Refused	10

109. What is the length of the average training session for service employees?

Less than half an hour	1
1/2 to 1 hour	2
2 to 3 hours	3
4 to 6 hours	4
7 to 8 hours	5
Longer than 8 hours	6
Other (specify)	7
Don't know	8
Refused	9

110. Does the initial training for service employees take place prior to assignment to tasks involving exposure to blood or other materials contaminated with blood?

Yes	1
No	2
Don't know	3
Refused	4

DRAFT

111. Does your facility provide training to contract employees who may be exposed while providing direct patient care?

Yes	1
No	2
Don't know	3
Refused	4

112. Does your facility provide training to contract employees who may be exposed while working in the laboratory?

Yes	1
No	2
Don't know	3
Refused	4

113. Does your facility provide training to contract employees who may be exposed while providing housekeeping services?

Yes	1
No	2
Don't know	3
Refused	4

114. Does your facility provide training to contract employees who may be exposed while providing laundry services?

Yes	1
No	2
Don't know	3
Refused	4

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POLICIES AND PROCEDURES FOR EXPOSURE INCIDENTS

The next set of questions concerns the procedures followed in your facility after the occurrance of an exposure incident.

An exposure incident is defined as a specific eye, mouth, other mucous membrane, non-intact skin, or other parenteral contact with blood or other potentially infectious materials that results from the performance of an employees duties.

In 1988, how many exposure incidents were reported among direct patient care or laboratory employees that resulted from:

115. needle sticks?_____
116. cuts from sharp instruments other than needles?_____
117. other contact, such as a splash in the eye or blood contact with broken skin? _____

In 1988, how many exposure incidents reported among service employees resulted from:

118. needle sticks?_____
119. cuts from sharp instruments other than needles?_____
120. other blood contact, such as a splash in the eye or blood contact with broken skin? _____

What percentage of sharps-related injuries occurred:

121. before or during use of a sharp instrument?
122. due to needle recapping?
123. during or after disposal of a sharp instrument?
124. during the handling of used linen?

125. In what percentage of the reported exposure incidents was the source patient identified?

126. For what percentage of these reported incidents was the HBV status of the source patient already known?

127. For what percentage of these reported incidents was the HIV status of the source patient already known?

128. When the HBV status of a patient is unknown, and that patient has been the source of an exposure incident, when does your policy state that the patient should be tested for HBV?

___ Always, if the patient has been involved in an exposure incident.
___ If the patient is thought to be a member of a population at high risk for hepatitis-B
___ Never ----------
___ No policy ------ GO TO 131
___ Don't know -----
___ Refused --------

DRAFT

129. Is consent obtained prior to testing the patient?

Yes	1	
No	2	------
Don't know	3	------ GO TO Q.131
Refused	4	------

130. Of patients asked, what percentage agree to be tested for Hepatitis-B?

131. When the HBV status of an employee is unknown, and that employee has been involved in an exposure incident, when does your policy state that the employee should be tested for HBV? Please indicate all that apply.

___ Always, following an exposure incident.
___ If the source patient is positive for hepatitis B surface antigen
___ If the source patient is thought to be a member of a population at high risk for hepatitis-B
___ If the source is unknown
___ Never ----------
___ No policy ------ GO TO 133
___ Don't know -----
___ Refused --------

132. Of the employees offered blood testing for HBV antibody following an exposure incident, what percentage agree to the procedure?

133. When the HBV status of an employee is unknown or the employee is known to be susceptible, and that employee has been involved in an exposure incident, when does your policy state that the employee should be offered hepatitis-B immune globulin? Please indicate all that apply.

___ Always, following an exposure incident.
___ If the source patient is positive for hepatitis B surface antigen
___ If the source patient is thought to be a member of a population at high risk for hepatitis-B
___ If the HBV status of the source is unknown
___ Never ----------
___ No policy ------ GO TO 135
___ Don't know -----
___ Refused --------

134. Of the employees offered hepatitis B immune globulin, what percentage agree to receive it?

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135. When the HBV status of an employee is unknown or the employee is known to be susceptible, and that employee has been involved in an exposure incident, when does your policy state that the employee should be offered hepatitis-B vaccine? Please indicate all that apply

___ Always, following an exposure incident.
___ If the source patient is positive for hepatitis B surface antigen
___ If the source patient is thought to be a member of a population at high risk for hepatitis-B
___ If the HBV status of the source is unknown
___ Never ----------
___ No policy ------ GO TO 137
___ Don't know -----
___ Refused --------

136. Of the employees offered vaccine after an exposure incident, what percentage agree to receive it?

137. When the HIV antibody status of a patient is unknown, and that patient has been the source of an exposure incident, when does your policy state that the patient should be tested for HIV?

___ Always, if the patient has been involved in an exposure incident.
___ Only if the patient is thought to be a member of a population at high risk for HIV
___ Never ----------
___ No policy ------ GO TO 141
___ Don't know -----
___ Refused --------

138. Is consent obtained prior to testing the patient?

Always	1	
Sometimes	2	
Never	3	------
Don't know	4	------ GO TO Q.141
Refused	5	------

139. How is consent obtained?

___ On admission, consent is obtained to do testing for any infectious disease and special mention of HIV is made
___ On admission, consent is obtained to do testing for any infectious disease and no special mention of HIV made
___ Special consent is obtained whenever HIV antibody testing is to be done
___ Other (Specify) _____

140. Of patients asked, what percentage agree to be tested for HIV antibody?

141. When an employee has been involved in an exposure incident, when does your policy state that the employee should undergo baseline and follow-up testing for HIV?

___ Always, following an exposure incident.
___ Only if the source patient is thought to be a member of a population at high risk for HIV
___ Only if the source patient is positive for HIV antibody
___ Never ----------
___ No policy ------ GO TO 336
___ Don't know -----
___ Refused --------

142. Of the employees offered HIV blood testing after an exposure incident, what percentage agree to the procedure?

143. When an employee has been involved in an exposure incident, when does your policy state that the employee should be offered post exposure counseling about the AIDS virus?

___ Always, following an exposure incident.
___ Only if the source patient is thought to be a member of a population at high risk for HIV
___ Only if the source patient is positive for HIV antibody
___ Never
___ No policy
___ Don't know
___ Refused

144. By hospital policy, is Zidovudine (AZT) prophylaxis discussed with an exposed employee following an exposure incident to an HIV antibody positive patient?

Yes, for all exposures	1	
Usually	2	
Occasionally	3	
Never	4	------ GO TO Q.147
Refused	5	------

145. Is AZT recommended to the exposed employee?

Yes, for all exposures	1	
Usually	2	
Occasionally	3	
Never	4	------ GO TO Q.147
Refused	5	------

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146. By hospital policy, if the person who experiences an exposure incident elects to take AZT prophylaxis, what percentage is paid for by:

___ Worker who sustained the injury
___ Hospital
___ Workers Compensation
___ Private Insurance
___ Other _____

POLICIES AND PROCEDURES FOR HANDLING SHARPS

147. Does your facility have a policy prohibiting needle recapping by hand?

Yes	1
No	2
Don't know	3
Refused	4

148. A Sharps Disposal Container is defined as a closable, leakproof, puncture resistant, disposable container that is labeled or color coded. Are such containers available in your facility?

Yes	1
No	2
Don't know	3 ------ GO TO Q.150
Refused	4 ------

These containers should be located as close to the point of use of needles and sharp instruments as is practicable, for example, at the bedside or in the immediate patient care area.

149. In how many different locations would containers need to be installed to meet this criterion?

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MANAGEMENT OF INFECTIOUS WASTE

150. Which of the following does your facility consider to be infectious waste requiring special handling? Please indicate all that apply.

___ Human blood and blood products
___ Contaminated sharps
___ Microbiological waste
___ Pathological waste
___ Waste from communicable disease isolation
___ Animal carcasses, bedding, etc.
___ Contaminated laboratory waste
___ All patient care waste
___ Patient care waste soiled with blood or other potentially infectious materials

151. Does your facility consider any other types of waste to be infectious? Please specify _____

152. Is the infectious waste destined for disposal placed in a closable, color coded or labeled container or bag?

Yes, always	1
Usually	2
Occasionally	3
Never	4
Refused	5

DRAFT

INFECTION CONTROL PRACTICES IN THE LABORATORY

153. Is it your policy that safety cups are to be used in centrifuge operation for all blood, body fluid, and other potentially infectious material?

__ Yes
__ No, only for operations involving materials known to be infectous
__ Don't know
__ Refused

154. Do your laboratories ever work with concentrated amounts of the hepatitis-B virus or human immunodeficiency virus?

Yes	1	
No	2	------
Don't know	3	------ GO TO Q.158
Refused	4	------

155. Is there a potential for aerosolization of fluid containing these viruses?

Yes	1
No	2
Don't know	3
Refused	4

156. Are hazard warning signs incorporating the universal biohazard symbol posted on all access doors of work areas and all rooms containing concentrated amounts of the hepatitis-B virus or human immunodeficiency virus?

Yes	1
No	2
Don't know	3
Refused	4

157. Is it your policy that during activities involving concentrated amounts of the hepatitis-B virus or human immunodeficiency virus work be performed in biosafety cabinets or other physical containment devices?

Yes	1
No	2
Don't know	3
Refused	4

DRAFT

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EFFECTIVENESS OF CURRENT INFECTION CONTROL POLICIES

158. Have you conducted any studies to measure the extent to which your policies for the prevention of occupational exposure to blood and other potentially infectious materials are followed by employees?

Yes	1
No	2
Don't know	3
Refused	4

If YES, please forward the results of such studies, if possible, to the Occupational Safety and Health Administration in Washington, DC. The address will be provided at the conclusion of the interview.

POLICIES SPECIFIC TO AIDS AND HEPATITIS B

159. Does your hospital policy state that any group of patients should routinely be tested for HIV antibody? Please omit patients who are tested because of an occupational exposure to their blood by a health-care worker.

Yes	1	
No	2	-----
Don't know	3	----- GO TO Q.161
Refused	4	-----

160. Which patients does your policy state should be tested?

___ All admissions
___ All surgical patients
___ Only certain surgical patients; Specify _____
___ Those patients with known history of activity which places them at increased risk of HIV infection
___ Others, specify _____

161. Are any health care workers routinely requested to have HIV antibody screening?

Yes	1	
No	2	-----
Don't know	3	----- GO TO Q.163
Refused	4	-----

162. Which health-care workers are routinely requested to have HIV antibody screening? Exclude those who are being followed after an occupational exposure:

_____

163. If a patient is known to have AIDS or to be HIV antibody positive how are persons made aware of the patient's status?

___ No special notification
___ Sign on door
___ Notification on the Kardex or Nursing Care Plan
___ Chart is marked
___ Word of mouth
___ Other, please specify _____

164. Does your hospital have a policy on work assignment for pregnant health-care workers caring for patients with HIV, HBV, or CMV infected patients?

Yes, written	1	
Yes, not written	2	
No	3	
Don't Know	4	GO TO 166
Refused	5	

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165. Please check the statements which are consistent with your policy for pregnant health-care workers:

HBV	HIV	CMV	
—	—	—	Work assignment is not changed
—	—	—	Worker has the option to change assignments to not care for known infected patients
—	—	—	Other, please specify _____

166. Does your hospital have a policy on health-care worker "refusal" to care for patients known to have AIDS or HIV infection?

Yes, written	1
Yes, not written	2
No	3
Don't Know	4
Refused	5

167. Does your hospital have a policy which addresses the management of HIV infected health care workers?

Yes, written	1
Yes, not written	2
No	3
Don't Know	4
Refused	5

168. Have patients known to be infected with the Human Immunodeficiency Virus (HIV) or to have AIDS been admitted to your hospital since 1981?

Yes	1
No	2
Don't know	3
Refused	4

169. Please estimate the number of patients admitted to your hospital during 1988 meeting the Centers for Disease Control's (CDC) case definition for AIDS:

___ 1-10
___ 11-25
___ 25-50
___ 50-100
___ more than 100

In our contact letter, we listed a number of services which are typically found as a part of a hospital. We also asked that you exclude these services when responding to the questions contained in the survey instrument, if possible, if such services are provided in separate facilities .

170. Will your answers today exclude such units?

Yes	1	
No	2	GO TO Q.171
Don't know	3	
Refused	4	

171. Which of the following services are part of your hospital and are provided in separate facilities?

- Ambulatory Surgery
- Blood Bank
- Chemical Dependency Unit
- Hemodialysis
- Histopathology Lab
- Home Care
- Hospice
- Long Term Care (nursing home, including care for the mentally retarded)
- Outpatient Services
- Other _____

172. For our records, what is your name, title and the name of your hospital?

If you wish to elaborate on any of the responses given today or supply any additional new information, please forward such information to OSHA at the address given below.

200 Constitution Avenue, NW
Room N-3627
Washington, DC 20210
Attn.: Robert Andrei

Thank you for your time.

[FR Doc. 89-24077 Filed 10-13-89; 8:45 am]
BILLING CODE 4510-26-C

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NATIONAL SCIENCE FOUNDATION

Committee Management Renewals; Advisory Panels for Archaeology and Physical Anthropology

The Assistant Director for Biological, Behavioral, and Social Sciences, has determined that the renewal of the Advisory Panel for Archaeology and the Advisory Panel for Physical Anthropology for an additional two years is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: October 10, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-24296 Filed 10-13-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ethics and Value Studies Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for Ethics & Values Studies.

Date/Time: November 2, 1989, 8:30 a.m. to 5:00 p.m.; November 3, 1989, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW, Room 1242.

Type of Meeeting: Part Open—Open November 3, 8:30 a.m. to 10:45 a.m., Closed Remainder.

Contact: Rachelle Hollander, Program Director, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9894, Room 312.

Minutes: May be obtained from the contact person at the above address.

Purpose of Panel Meeting: To provide advice and recommendations concerning support for research in Ethics and Values Studies in Science, Technology, and Society.

Agenda: Open—General discussion of approaches to "ethics" and "values" in the discourse of the physical and natural sciences, social sciences, and humanities disciplines.

Closed—To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-24297 Filed 10-13-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for History and Philosophy Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for History and Philosophy of Science.

Date/Time: November 17, 1989, 9:00 a.m. to 5:00 p.m.; November 18, 1989, 9:00 a.m. to 4:00 p.m.

Place: The Holiday Inn, 17th Street at Rhode Island Avenue, NW., Washington, DC 20036.

Type of Meeting: Closed.

Contact: Ronald J. Overmann, Program Director, Studies in Science, Technology & Society, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9894. Room 312.

Minutes: May be obtained from the contact person at the above address.

Purpose of Advisory: To provide advice and recommendations concerning research in the Studies in Science, Technology & Society Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-24298 Filed 10-13-89; 8:45am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Workshop on Conversion to the Metric System

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop on NRC conversion to metric system.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop to collect information that will assist the NRC in developing its policy and potential plans for converting to the metric system certain activities as required by the Omnibus Trade and Competitiveness Act of 1988.

DATES: The workshop will be held on November 14 and 15, 1989, from 8 a.m. to 5 p.m.

ADDRESS: Holiday Inn—Inner Harbor, 301 W. Lombard St., Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Sheri Hichar (301) 492-3793 or Joseph J. Mate (301) 492-3795, Office of Nuclear Regulatory Research, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (hereafter referred to as "the Act") designated the metric system as the preferred system of weights and measures for United States trade and commerce. It also required that, by the end of Fiscal Year 1992, each Federal agency "* * * use the metric system of measurement in its procurements, grants and other business-related activities, except to the extent that such use is impractical * * *". In this context, the "metric system" is defined as the International System of Units, also known as SI units.

In accordance with the Act, the NRC has begun developing its policy and plans for converting to the metric system. A public workshop is being held to collect information from the public, State and local governments, and the regulated industry that will assist the NRC in developing and implementing its metric conversion policy.

A range of options has been tentatively identified by the staff for NRC conversion to the metric system, including immediate conversion, gradual conversion, and partial conversion (for example, certain licensed activities could be excluded). Each option presents varying advantages and disadvantages, which may differ depending on the kind of licensed activity. In order to develop a metric conversion policy that maximizes the economic and international trade benefits of conversion, while avoiding adverse impacts, the NRC plans to structure the workshop to explore how metric conversion may affect the various categories of licensed activities. An outline of the agenda for the workshop is presented below. Each agenda item is followed by a series of topics or questions that are intended to illustrate the kinds of issues to be discussed and the information exchange sought. The issues listed are not intended to be exhaustive nor are they indicative of any fixed Commission positions already taken on such issues. The NRC encourages interested parties to raise additional significant issues, either during the workshop or prior to it. To suggest additional issues prior to the workshop, letters or telephone calls should be received by either NRC contacts listed above by November 3, 1989.

During the workshop itself, there will be opportunities for attendees to ask questions and offer comments on each topic. Members of the public who wish to make a presentation on any of the topics discussed below should notify one of the contacts listed so that they may be added to the agenda. A transcript of the workshop will be taken and made available to the public via the NRC Public Document Room.

Agenda for Public Workshop on NRC Metric Conversion

Day 1: November 14, 1989

National Policy on Conversion to the Metric System. The background objectives and statutory basis for conversion to the metric system will be discussed. What is the intent of Congress in the passage of the Omnibus Trade and Competitiveness Act of 1988? What is the role of the Interagency Committee on Metric Policy (ICMP) for implementation of the 1988 Act? What are other Federal agencies doing in metric conversion? What are the current plans and views of State governments, Agreement States and the regulated industry in responding to the most recent metric legislation of 1988?

NRC Current Practice and Future Plans. NRC staff will describe a range of options for converting to the metric system. The goal of the NRC policy will be to achieve consistency with the metric conversion requirements included in the Act, while tailoring implementation of the metric system so that the desired economic and trade benefits are achieved with a minimum of adverse economic or safety impact on the public and the regulated industry. The NRC recognizes that the impacts could vary considerably depending on the category of licensed and business-related activity. A principal purpose of the workshop is to assist the NRC in assessing those impacts as fully as possible and to assist in deciding the scope of important efforts that should be undertaken by NRC in conversion to metric.

Use of Metric System in Regulation of Future Nuclear Power Plants. In developing its policy for scope of effort and use of the metric system in regulation of future plants, the NRC will need to consider a variety of issues. The following are some examples. What are the current plans of the nuclear industry with respect to use of metric units in future plants? Will metric units be used in the design and operation of future plants? Should metric units be required in all licensing documentation for future plants, or should there be exceptions? Should there be a cutoff date after which all applications should be metric and, if so, what should be the cutoff date? What impact could NRC policy have on the commercial prospects of future plants, including international trade? Would mandatory use of the metric system in NRC/industry communications have any design or safety implications or impracticalities that should be considered?

Use of Metric System in Regulation of Existing Nuclear Power Plants. Would conversion of existing plants to the metric system be completely impractical? Are there any options for partial conversion that should be considered? What are the implications of partial conversion or non-conversion in such areas as procurement of spare parts and international commerce in the equipment and services markets? How would suppliers be affected? Whether conversion to metric units should be undertaken and, if so, how should conversion be handled in the areas such as emergency preparedness, waste management, and decommissioning of nuclear power plants? What steps, if any, can and should be taken by the NRC to familiarize the public with the use of metric radiation units? Would gradual conversion to metric radiation units enhance or hinder public understanding?

Day 2: November 15, 1989

Use of Metric System in Medical and Industrial Applications of Radioactive Material. To what extent are metric or dual units currently used in medical and industrial applications of radioactive material? Is conversion planned in the future? What type of conversion (immediate, partial, etc.) would be the most effective and orderely considering trade, commerce, and costs? Would conversion requirements by the NRC in its grants, procurements and business-related activities facilitate international trade and improve the competitiveness of U.S. firms? What safety implications would need to be factored into NRC's conversion policy and requirements? How would use of the metric system affect transportation of radioactive materials used in medical and industrial applications? Are there any small business impacts that should be considered and what might these be?

Use of Metric System in Regulation of Fuel Cycle Facilities. To what extent is the metric system, or dual units, used in fuel cycle facilities? Are there plans to convert in the future? What economic benefits, including international trade benefits, might accrue from conversion to the metric system? What would be the advantages and disadvantages of complete or partial conversion, and what timeframe for conversion would be most practical? How would transportation be affected?

Academic/Research Institutions. To what extent is the metric system currently in use in various academic and research settings? What are the plans for conversion in the future, if any? What kinds of adverse impacts might arise from NRC conversion in its grants, procurements and business-related activities? How might these impacts be avoided or minimized?

High-Level Waste Management. What are the current plans for use of metric units in the high-level waste program? What implications, if any, will use of the metric system have for the transportation portion of the system?

Low-Level Waste Management. What are the current practices and future plans with regard to metric unit conversions in low-level waste management, including transportation? What units are being used by State agencies? What are the plans for conversion? What are the advantages and disadvantages of NRC conversion to the metric system? What would be the likely impact?

A copy of the background information, along with further information on the workshop, may be obtained by telephoning either contact listed above. In order to assist NRC in making arrangements for the meeting, persons planning to attend are requested to notify either contact of their intent at their earliest convenience.

Dated at Rockville, Maryland, this 10th day of October, 1989.

For the Nuclear Regulatory Commission.

Zoltan R. Rosztoczy,

Deputy Director, Divsions of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 89-24329 Filed 10-13-89; 8:45 am]

BILLING CODE 7590-01-M

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27342; File No. SR-AMEX-89-22]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Index Warrants Based on the Nikkei Stock Average

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1989, the American Stock Exchange ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing under section 106 of the Amex Company Guide, to list index warrants based on the Nikkei Stock Average. In accordance with the requirements set forth in Securities Exchange Act Release No. 26152 (October 3, 1988) 53 FR 39832 (October 12, 1988), the Amex has submitted this filing pursuant to Rule 19b-4 under the Act to obtain Commission approval to list these warrants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In Securities Exchange Act Release No. 26152 (October 3, 1988) 53 FR 39832 (October 12, 1988), the Commission approved amendments to Section 106 (Currency and Index Warrants) of the Amex Company Guide to permit the listing of index warrants based on established market indices, both foreign and domestic.

In approving the aforementioned amendments, the Commission expressed interest in the impact of additional index products on U.S. markets, and stated that the Amex would be required to submit for Commission approval any specific index warrants that it proposed to trade. The Amex is now proposing to list index warrants based on the Nikkei Stock Average, an internationally recognized, price-weighted index consisting of 225 representative, actively-traded stocks on the Tokyo Stock Exchange. The Nikkei Stock Average is calculated and managed by Nihon Keisai Shimbun, Inc. of Japan.

Such warrant issues will conform to the listing guidelines under section 106 of the Amex Company Guide, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 101(a) of the *Company Guide*; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Nikkei index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei Stock Average has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Nikkei Stock Average has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Exchange Rule 411, Commentary .02 makes the options suitability standard in Exchange Rule 923 applicable to recommendations regarding index warrants. The Exchange also recommends that index warrants be sold only to options-approved accounts. Exchange Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Nikkei Stock Average.

In its approval order for index warrants, the Commission noted that, with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the Amex is undertaking to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: October 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24343 Filed 10-13-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27343; File No. SR-PSE-89-25]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Additions to PSE Rules Regulating the Activities of Alternate Specialists

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 17 CFR 200.30-3(a)(12) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has submitted a rule filing proposing the adoption of several policy statements relating to the PSE's alternate specialist system. The Exchange requests implementation of these policies on a six month pilot basis in order to evaluate their effectiveness.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

During the course of an ongoing evaluation of the interaction of market conditions and Exchange systems, the PSE's Market Performance Committee, Equity Floor Trading Committee, and Equity Allocation Committee initiated a review of the PSE's Alternate Specialist System.

PSE Rule II, Section 10, governs securities traded on an alternate specialist basis. The alternate specialist system was designed as a means of aiding primary specialists in the facilitation of a fair and competitive market. Following approval and appointment, an alternate specialist applies for securities in which he will have an obligation to engage "* * * in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and the demand for a particular security, or a temporary distortion of the price relationships between the Exchange and other markets." (Rule II, section 10(d)).

Subsequent to its review of the alternate specialist system, the Market Performance Committee of the PSE formulated and approved policy statements governing activities of alternate specialists. These proposals include clarification of the duty of alternate specialists to clear posts on each of the PSE's two equity trading floors prior to entering an order off the floor; a requirement that where an alternate specialist is also a primary specialist he will be precluded from acting as an alternate specialist if he fails to maintain his primary specialist ranking in the top 90%; establishment of a 500-share minimum for participation on pre-opening orders when requested by the specialist; and a requirement that names of alternate specialists and designated stocks be posted at each specialist post.

The Exchange requests approval of these policies for a six-month trial period to allow it an opportunity to monitor effectiveness and determine whether additional changes are necessary. The Exchange seeks to add these policy statements to PSE Rule II, subsection 10(d) as commentaries .02 through .05.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that they will act to facilitate transactions in securities and help to perfect the mechanism of a free and open market in Exchange listed securities, by furthering the effectiveness of the alternate specialist within the system.

(B) Self-Regulatory Organization's Statement on the Burden on Competition

The Exchange does not believe that its policy statements regarding the activities of alternate specialists will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-25 and should be submitted by November 6, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24283 Filed 10-13-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading U.S. Assurance Corp.

October 11, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of U.S. Assurance Corporation, a Nevada corporation with executive offices in Dallas, Texas and San Francisco, California, and that questions have been raised regarding the adequacy and accuracy of publicly disseminated information concerning, among other things, compliance with the registration provisions of the Securities Act of 1933 and the financial condition of the company. Specifically, among other things, subsantial questions have been raised about whether the issuer has distributed and is distributing securities in violation of the Securities Act of 1933, the value of a significant amount of securities it holds as assets, the existence of certain assets including but not limited to debentures, certificates of deposit, and securities it holds as assets, and the completion of a merger with another company. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of U.S. Assurance Corporation.

Therefore, *it is Ordered,* pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of U.S. Assurance Corporation, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (e.d.t.), October 11, 1989 through 11:59 p.m. (e.d.t.), on October 20, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24342 Filed 10-13-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended October 6, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46528

Date Filed: October 6, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1989

Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for Route. The amendment seeks to provide maximum future benefits for the U.S. in Pacific air route matters by improving Northwest's access on Route 129 to Malaysia and by the addition of Indonesia and Vietnam to the certificate.

Docket Number: 46529

Date Filed: October 6, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1989

Description: Application of Northwest Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for an amendment to its certificate of public convenience and necessity for Route 129 that would eliminate Condition (7) from Route 129.

Docket Number: 45723

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 3, 1989

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its Permit issued to it in Order 89-8-29, to the extent necessary to permit TAESA to engage in charter air transportation of property and mail between points in Mexico, on the one hand, and points in the U.S., on the other hand, using B-727 or other large aircraft.

Docket Number: 46532

Date Filed: October 6, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 3, 1989

Description: Application of of LTU Lufttransport-Unternehmen GmbH. & Co. KG. pursuant to section 402 of the Act and subpart Q of the Regulations requests amendment of its permit to add authority to engage in scheduled foreign air transportation of persons, property and mail between any point or points in the Federal Republic of Germany; directly and via intermediate points; and the coterminal points: New York, New York, Miami, Florida, San Francisco, California, Los Angeles, California, and Honolulu, Hawaii and beyond to any points outside the United States of America, without directional limitation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-24286 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

Status of the Implementation of the Recommendations of the Great Lakes Pilotage Study; Public Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Inquiries have been received regarding the status of the implementation of the recommendations contained in the Final Report of the Department of Transportation's Great Lakes Pilotage Study published December 7, 1988. Additionally, numerous requests have been received, including requests from Members of Congress, for a public meeting to discuss the recommendations of the Great Lakes Pilotage Study. Accordingly, a public meeting will be held on November 3, 1989, in Chicago, Illinois.

DATE AND TIME: The public meeting will be held on November 3, 1989. It will begin at 10 a.m. and end at 4 p.m. or sooner if all speakers have been heard.

ADDRESS: The meeting will be held at the Holiday Inn—City Centre, 300 E. Ohio Street, Chicago, Illinois, (312) 787-6100.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Merchant Vessel Personnel Division (G-MVP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0217.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this public meeting by presenting oral views or submitting written views. The details of how the meeting will be conducted will be explained at the beginning of the meeting. Individuals wishing to present oral views should so indicate on the sign-in sheet that will be available upon entering the meeting room. The following is a brief description of the status of the implementation of the recommendations of the Great Lakes Pilotage Study Report.

Status of the Recommendations

Pilotage Requirements

The final report recommends no changes in pilotage requirements in designated or undesignated waters. However, it did recommend that we continue to recognize the Canadian B Certificate (valid in undesignated waters only) while working with Canada to strengthen its certificate as appropriate. In this regard, the U.S. Coast Guard met with Canadian officials in March 1989 to begin discussions on the possible strengthening of the qualification requirements necessary to obtain the Canadian B Certificate. Additional meetings will be held to continue our discussions with Canada.

Salty Lakers

The final report recommends that U.S. pilotage legislation be amended to permit the Canadian salty laker vessels to leave and reenter the system any number of times without losing their exemption from pilotage when operating as lakers with licensed laker crews. The report recognizes that any proposed accommodation of Canadian salty lakers would have to be considered in the context of government-to-government consultations. Consultations with Canada on the salty laker issue have not been initiated to date. Thus, a legislative change has not been proposed.

Workload Standards

The final report recommends that, while the bridge time work standard should not be the only factor used in determining the number of pilots in the rate base, nor should it be rigidly applied, bridge time is an important factor and one that should continue to be utilized. The bridge time work standard continues to be utilized in determining the number of pilots to be included in the rate base.

The report also recommends that the Coast Guard consider lowering the undesignated water on-board-ship time work standard from 2,000 hours to 1,800 hours to more accurately reflect travel time needs. The Coast Guard has adopted this recommendation, and the 1,800 hour figure is now used in ratemaking analyses.

Financial Oversight and Rates

The final report recommends that financial oversight functions be tightened. These are being implemented through rulemaking. The Coast Guard published a notice of proposed rulemaking (54 FR 11930) on March 22, 1989, proposing amendments to the Great Lakes Pilotage Regulations. The comment period ended May 22, 1989. The proposed amendments deal with financial oversight; a pilotage fee comparable to detention charges for a pilot deadheading across Lake Erie; audits; and support service entity related by beneficial ownership to a pilot. The Coast Guard is in the process of developing a final rule regarding the proposals contained in that notice of proposed rulemaking.

The Coast Guard is developing guidelines regarding how allowable expenses will be determined for ratemaking purposes. The principle of uniformity of expenses among the pilotage districts is also to be applied. Increased attention will be given to the reasonableness of expenses.

Enforcement Practices

The final report recommends that each violation of the Great Lakes Pilotage statutes and regulations be subject to a civil penalty not to exceed $10,000. The Department of Transportation has developed and submitted to the Congress a proposed legislative amendment increasing the penalty provisions of 46 U.S.C. 9308 from $500 to $10,000. The final report also recommended that a vessel be allowed to contact the Coast Guard directly when a pilot is not available. That recommendation is being implemented through an amendment contained in the notice of proposed rulemaking discussed above.

Relationship With Canada

The final report contains recommendations regarding our relationships with Canada, including adding a consultation provision to the Memorandum of Agreements (MOA) and possible discussions on a definition of identical rates; U.S. pilots entering the Welland Canal; inclusion of the Canadian Cornwall District in the scope of shared assignments; dispatching issues; and system-wide rate approval to include the Canadian Laurentian and Cornwall District under the MOA. Negotiations have not been initiated as yet with respect to these relationships with Canada.

Issues for Future Consideration

The final report contains several issues for future consideration which were determined to be too comprehensive to be considered within the scope of the study. The final report published December 7, 1988, included the statement that the Department of Transportation was willing to further consider the issues of alternative pilotage services, centralized dispatching, and across-the-board assignments, if sufficient interest was shown within 90 days following publication. The study report was given wide distribution to interested parties through mailings within the affected industry. Sufficient interest has not been shown in these issues; therefore, the Department will not pursue these issues at this time.

Dated: October 1, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-29361 Filed 10-13-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-89-39]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

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SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 6, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 10, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 19651.
Petitioner: Learjet Corporation.
Regulations Affected: 14 CFR 21.197.
Description of Relief Sought: To extend Exemption No. 4593 as amended, that allows petitioner to ferry aircraft between its facilities at Wichita, Kansas and Tucson, Arizona before completion of flight test, certification, and customer delivery. Exemption No. 4593, as amended, will expire on January 31, 1990.

Docket No.: 22286.
Petitioner: Finnair.
Sections of the FAR Affected: 14 CFR 21.197.

Description of Relief Sought: To extend exemption No. 4598, as amended, that allows petitioner to fly its DC-10-30 aircraft number N345HC to a base for repairs, alterations, or maintenance when it does not meet all applicable airworthiness requirements but is capable of safe flight. Exemption No. 4598, as amended, will expire on February 1, 1990.

Docket No.: 25716.
Petitioner: Flamenco Airways, Inc.
Regulations Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow petitioner's pilots to remove one to four seats on their Britten Norman BN2A aircraft and install a supplemental type certificate stretcher in the seat tracks vacated by the seats. *PARTIAL GRANT, October 4, 1989, Exemption No. 5106.*

Docket No.: 26022.
Petitioner: Air Midwest, Inc.
Sections of the FAR Affected: 14 CFR 135.337(a)(2), (3), and (4) and 135.339(c)(1).
Description of Relief Sought/ Disposition: To allow petitioner to use certain instructor pilots of British Aerospace Corporation to train petitioner's initial cadre of pilots in the British Aerospace Jetstream 31 (BA-3201) type airplane without meeting all of the applicable training requirements of Subpart H of Part 135. *GRANT, October 4, 1989. Exemption No. 5105.*

[FR Doc. 89-24318 Filed 10-13-89; 8:45 am]
BILLING CODE 4910-13-M

Deadline for Submission of Preapplication for Airport Grant Funds Under the Airport Improvement Program for Fiscal Year 1990

Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during Fiscal Year 1990 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project preapplication or application (SF 424) submitted to the FAA field office no later than January 31, 1990. Approval of preapplications or applications after that date may be deferred by the FAA until the following fiscal year. FAA field offices, in developing their regional programs, may request sponsors' input at an earlier date. Every effort should be made to have projects under grant by August 15, 1990.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/ applications and provide procedural information as needed.

Prompt submission of complete requests will allow earlier funding decisions by the FAA. This, in turn, may be advantageous to sponsors in competing for available funds and in maximizing construction during a construction season.

This notice submitted by Mr. Stanley Lou, Manager, Programming Branch, APP-520, on (202) 267-3831.

Issued in Washington, DC on October 5, 1989.

Lowell H. Johnson,

Acting Director, Office of Airport Planning and Programming.

Radio Technical Commission for Aeronautics (RTCA); Special Committee 165—Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I), notice is hereby given for the fourth meeting of RTCA Special Committee 165 on Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services on November 6-9, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the third meeting's minutes, RTCA Paper No. 313-89/SC165-25 (previously distributed); (3) technical presentations; (4) working group reports: (a) Equipment Standards Working Group (WG-1); (b) Operation and Implementation Working Group (WG-2), and (c) Service Performance Criteria Working Group (WG.-3); (5) review of overall draft progress; (6) working group sessions; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 10, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-24319 Filed 10-13-89; 8:45am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Dunn and Chippewa Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on STH 29 in Dunn and Chippewa Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn D. Lawton, Environmental Coordinator, Wisconsin Division, FHWA, 4502 Vernon Boulevard, Madison, Wisconsin 53705-4905, Telephone: (608) 264-5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Trunk Highway 29 (STH 29) between Interstate 94 (I-94) in Dunn County and County Trunk Highway "J" (CTH "J") east of Chippewa Falls in Chippewa County, a distance of about 21 miles.

Improvements to the corridor are considered warranted to enhance safety of travel for existing and project traffic demand. Alternatives under consideration include: (1) Taking no action; (2) constructing a freeway/ expressway on existing location; (3) constructing a freeway/expressway on new location; and (4) constructing a freeway/expressway using a combination of existing and new alignments. Incorporated into the studies of the build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting will be held at a date/place to be determined. Meetings with public officials will be held in Dunn and Chippewa Counties between September 1989 and September 1990. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 6, 1989.

Ronald C. Marshall, P.E.,

Acting Division Administrator, Madison, Wisconsin.

[FR Doc. 89-24275 Filed 10-13-89; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement: Juneau, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project. The project would begin within the boundary of the City and Borough of Juneau, Alaska and extend northwesterly up Lynn Canal or northeasterly up the Taku River Valley.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 021648, Juneau, Alaska 99802-1648 or; Art Dunn, Project Environmental Coordinator, Alaska Department of Transportation and Public Facilities (ADOT&PF), P.O. Box 021467, Juneau, Alaska 99802-1467.

SUPPLEMENTARY INFORMATION: The ADOT&PF will prepare an EIS on improving access to the State of Alaska's capital city, Juneau. Several alternatives will be investigated to meet the need for increased vehicular access to the State Capital including new highway construction and/or upgrading of the existing ferry system.

The ADOT&PF has been directed by the state legislature to evaluate through an EIS, improved access to Alaska's capital, Juneau to meet the needs of the traveling public and commerce both to and from the city. The existing ferry link between Juneau, Haines and Skagway often runs at capacity during the summer peak demand period. The ADOT&PF has identified preliminary alternatives for remedying the situation. These consist of a road link, a combination road and shuttle ferry system or improved ferry system between Haines and/or Skagway and potential routes up the Taku River Valley to connect with the Alaska Highway. The "no build" alternative will be considered.

Federal, State and local organizations, land owners, and the general public will be contacted beginning in October 1989, and continue to be invited to participate in project scoping and the development of the Draft Environmental Impact Statement (DEIS). Information meetings to discuss the scope of the project, and formal scoping Public Hearings will be held prior to the DEIS development. Any additional alternatives developed during the public scoping process will be addressed in the DEIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Jerald E. Heimbuch,

Assistant Division Administrator, Federal Highway Administration, Juneau, Alaska.

[FR Doc. 89-24276 Filed 10-13-89; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement: Wood and Portage Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wood and Portage Counties, Wisconsin.

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FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn D. Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905, Telephone: (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Trunk Highway 54 (STH 54) between the Wisconsin River in the City of Wisconsin Rapids, Wood County, and U.S. Highway 51 (USH 51) near the Village of Plover, Portage County, Wisconsin, a distance of about 17 miles. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand including a high percentage of trucks, and to reduce the high accident rate.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *No-Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) *Upgrade the Existing Facility*—This alternative would improve the safety and traffic-handling capability of the existing route; (3) *Construction on New Alignment*—This alternative would involve construction on new location; and (4) *Re-Routing*—This alternative would re-route portions of STH 54 in the City of Wisconsin Rapids to other corridors in the city.

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accomplished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 6, 1989.

Ronald C. Marshall, *P.E.,*

Acting Division Administrator, Madison, Wisconsin.

[FR Doc. 89–24277 Filed 10–13–89; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Environmental Impact Statement on Transit Improvements in the New Jersey Hudson River Waterfront Corridor

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and Hudson River Waterfront Transportation Office of the New Jersey Transit Corporation (NJ Transit) are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements for the Hudson River Waterfront Region in New Jersey. The EIS is being prepared in conformance with 40 CFR part 1500–1508, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 49 CFR part 622, Urban Mass Transportation Administration, Environmental Impact and Related Procedures. In addition, in conformance with the Urban Mass Transportation Act of 1964 and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering.

FOR FURTHER INFORMATION CONTACT: Ms. Letitia Thompson, UMTA Region II, 26 Federal Plaza, New York, New York 10278; Telephone: (212) 264–8162.

SUPPLEMENTARY INFORMATION:

Scoping Meetings

The UMTA and NJ Transit invite the public and affected Federal, State and local government agencies to participate in determining the alternatives to be evaluated in the EIS and identifying any significant issues related to the alternatives. Two public scoping meetings will be held in Jersey City, NJ on November 9, 1989 in the Council Chambers, Jersey City Hall, 280 Grove Street, from 3:00–5:00 p.m. and 7:00–9:00 p.m., respectively.

At these scoping meetings, staff will present a description of the proposed scope of study using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments may be made either orally at the meetings or subsequently in writing before November 24, 1989. Written comments should be sent to: Gwen A. Watson, Director of Communications & Outreach, NJ Transit Hudson River Waterfront Transportation Office, 2 Journal Square Plaza, 8th Floor, Jersey City, NJ 07306.

Corridor Description

The Hudson River Waterfront Transportation Study area is bounded on the east by the Hudson River, on the south by the Kill Van Kull, on the west by Newark Bay, Hackensack River and Overpeck Creek, and on the north by the city lines of Edgewater, Ridgefield and North Bergen Townships.

The study area is located in Hudson and Bergen counties, stretching approximately 18.5 miles, and includes all or part of: Bayonne, Jersey City, Hoboken, Union City, Weehawken, West New York, North Bergen, Secaucus, Guttenberg, Edgewater, and Ridgefield. Study area population and employment for 1980 were 608,185 people and 262,500 jobs and are projected to grow to as high as 658,280 people and 306,000 jobs by the year 2000. Geographic constraints including steep cliffs and rivers, a serious lack of north-south facilities to serve local travel needs, and large volumes of east-west through traffic using the Hudson River crossings are already causing serious traffic congestion. Recent and projected development and redevelopment of sites along the waterfront will impose additional travel demands which must be addressed if the region is to continue to grow and prosper.

Alternatives

Transportation alternatives currently proposed for consideration in the corridor are the following:

1. A no-build option, under which the existing transportation systems including projects which already are committed, would be examined.

2. A low-cost transportation system management approach which would include some roadway improvements, improved or expanded local bus service, and preferential treatments for car pools and van pools.

3. A joint Light Rail Transit and Bus Transitway, that would be largely at-grade, typically within existing railroad rights of way. The initially proposed study alignment extends from Secaucus on the west, Edgewater on the north to Bayonne on the south and is generally adjacent to the waterfront. The route utilizes parts of the Conrail River Line right-of-way through the Weehawken Tunnel and along the eastern edge of the Palisades around the west side of Hoboken. Optional alignments in Hoboken are along the waterfront or along Washington Street. Several options also exist at the southern end of the alignment; either utilizing the existing New Jersey Transit rail right of way paralleling the New Jersey Turnpike or using the West Side Industrial track, an abandoned rail right of way in Jersey City.

4. An all-busway option that would provide an exclusive or semi-exclusive right of way for selected bus routes in the corridor. The busway alternative alignment is essentially the same as that of the previous alternative (3) indicated above, with exclusive bus roadways used throughout instead of rail facilities.

5. An automated guideway transit that would be built on an exclusive guideway, totally separated from other forms of transportation. Again, the alignment of this alternative would extend from Edgewater through Bayonne but would feature a reserved right-of-way for the exclusive use of fully-automated, driverless transit vehicles. Most of the route would be on aerial structure with a limited amount of at-grade routing with overpasses and underpasses for crossing traffic.

6. New north-south highway and additional east-west roadways to serve the Waterfront. This alternative will feature mass transit service as developed in the "no-build" alternative and will examine the likely consequences of reliance on developing more roadways on the waterfront in lieu of major transit improvements.

Comments at the scoping meetings should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

The UMTA and NJ Transit propose to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include noise, residential and business displacements, changes in development patterns and land use, community disruption due to traffic, noise, displacements, and parking changes, safety considerations, effects on parks and historic sites, aesthetic quality of the environment, degradation of the air quality and water quality especially near stations, hazardous waste sites, impacts on wetlands and floodplains, and affects on navigable waterways and the coastal zone. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to mitigate harm will be explored for any adverse impact identified. Construction of any alternative other than the No-Build will require increased capital outlays for several years. The TSM and guideway alternatives are expected to increase transit service and patronage with associated increases in operating and maintenance costs.

The alternatives are expected to have no significant impact on energy use, regional air quality, highway congestion except near stations and ecologically sensitive areas. During scoping, comments on the probable effects should focus on the completeness of the proposed set of impacts to be evaluated. Other impacts or criteria judged relevant to decision-making should be identified.

Issued On: October 10, 1989.

Leonard Braun,

Eastern Area Director.

[FR Doc. 89–24287 Filed 10–13–89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 28–89]

Treasury Notes of October 15, 1996, Series H–1996

Washington, October 5, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31, of title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of October 15, 1996, Series H–1996 (CUSIP No. 912827)YB 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each acccepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 16, 1989, and will accrue interest from that date, payable on a semiannual basis on April 15, 1990, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to government securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31, CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of Public Debt, Washington, D.C. 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving Time, Wednesday, October 11, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 10, 1989, and received no later than Monday, October 16, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed, in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used.

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Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders wil be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserved the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notices allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, October 16, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 12, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be asigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-24369 Filed 10-13-89; 8:45 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

[AC-5; OTS No. 4714]

Metro Savings Bank, F.S.B., Final Action Approval of Conversion Application

Date: October 2, 1989.

Notice is hereby given that on September 27, 1989, the General Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Metro Savings Bank, F.S.B., Wood River, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24323 Filed 10-13-89; 8:45 am]

BILLING CODE 6720-01-M

[AC-6; OTS NO. 5584]

Pamrapo Savings Bank, S.L.A.; Final Action Approval of Conversion Application

Date: October 2, 1989.

Notice is hereby given that on September 27, 1989, the General Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pamrapo Savings Bank, S.L.A.; Bayonne, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and Supervisory Agent, Office of Thrift Supervision, New York District Office, One World Trade Center, Floor 103, New York, New York 10048.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-24324 Filed 10-13-89; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES COURT OF VETERANS APPEALS

[Docket No. 89/001.FR]

Commencement of Operations

In accordance with the Court of Veterans Appeals Judges Retirement Act, Pub. L. No. 101-94, section 202, the United States Court of Veterans Appeals announces that it is Commencing operations effective October 16, 1989.

Pursuant to section 202 of Public Law No. 101-94, anyone who has been adversely affected by a final decision of the Board of Veterans' Appeals that was made before today's date, October 16, 1989, has until November 14, 1989, to file a notice of appeal with the Court providing that November 14, 1989, is later than the date that would otherwise be applicable for the filing of a notice of appeal under section 4066 of title 38, United States Code.

Further information, including rules of practice and procedure before the Court, may be obtained by contacting Melanie G. Dorsey, Executive Officer, 1625 K Street, NW., Suite 400, Washington, DC 20006; (202) 254-6600.

Frank Q. Nebeker,

Chief Judge, United States Court of Veterans Appeals.

[FR Doc. 89-24325 Filed 10-13-89; 8:45 am]

BILLING CODE 2210-55-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 198
Monday, October 16, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1421]

TIME AND DATE: 10 a.m., October 18, 1989.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on September 27, 1989.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Authority to Write Off Uncollectible Accounts Receivable.

A2. Fiscal Year 1990 Budget Financed from Appropriations.

A3. Fiscal Year 1990 Budget Financed from Nonpower Proceeds.

A4. Proposed Arrangements for Early Payment of up to Approximately $6.7 Billion of High Interest TVA Bonds Held by the Federal Financing Bank.

A5. Proposed Agreements with Federal Reserve Banks to Serve as Fiscal Agent and Maintain Certain Accounts.

*A6. Regulations Relating to Book-entry Procedures for TVA Power Securities.

A7. Proposed Second Amendatory Resolution to Basic Tennessee Valley Authority Power Bond Resolution to Provide for Use of Book-entry Procedures.

A8. Proposed Third Amendatory Resolution to Basic Tennessee Valley Authority Power Bond Resolution Providing for Elimination at a Future Time of Requirements for a Trustee.

A9. Proposed Purchase Agreement with the Federal Financing Bank Covering Arrangements for Short-term Power Bond Financing.

A10. Proposed Supplemental Resolution Authorizing Tennessee Valley Authority Power Bonds First Short-Term Series.

A11. Proposed Underwriting Agreement with the First Boston Corporation; Goldman, Sachs & Co.; Merrill Lynch Capital Markets; Morgan Stanley & Co. Incorporated; and Salomon Brothers Inc., as Representatives of the Several Underwriters.

A12. Proposed Supplemental Resolution Authorizing Tennessee Valley Authority Power Bonds 1989 Series C.

A13. Proposed Offering Circular and Proposed Offering Circular Supplement for 1989 Series C TVA Bonds.

A14. Proposed Redemption Prior to Maturity of Certain High-Interest Debt Held by the Federal Financing Bank.

A15. Proposed Resolution Authorizing Chairman and Certain Tennessee Valley Authority Officers to Take Further Actions Relating to Refinancing Arrangements.

B—Purchase Awards

*B1. Requisition 76—Short-term Coal for Colbert Fossil Plant.

*B2. Requisition 21—Term Coal for Gallatin Fossil Plant.

*B3. Requisition 78—Short-term Coal for Johnsonville Fossil Plant.

B4. Requisition 77—Short-term Coal for Shawnee Fossil Plant (Spray Dryer Project).

B5. Invitation GA-06328A—Induced Draft Fans for Allen Fossil Plant.

B6. YB-93919B—Indefinite Quantity Term Contract for Services, Hardware and Software—ADP Equipment Management Department.

E—Real Property Transactions

*E1. Agreement with the City of Johnson City, Tennessee, Covering Relocation of TVA's Sullivan-Northeast Johnson City No. 1 161-kV Line and Northeast Johnson City-West Johnson City No. 2 69-kV Line to Provide Clearance for a Manufacturing Plant.

E2. Sale of Permanent Easement Affecting 0.10 Acre of TVA's Sequoyah Access Railroad Property in Hamilton County, Tennessee.

E3. Grant and Conveyance of Highway Right-of-way Affecting Approximately 3.93 Acres in White County, Tennessee.

E4. Grant of Permanent Easement Affecting Approximately 5.5 Acres of South Holston Reservoir Land in Sullivan County, Tennessee.

F—Unclassified

F1. Supplement No. 5 to Contract No. TV-74449A with U.S. Department of the Army, Corps of Engineers, Memphis District, for Laboratory Analysis of Water and Sediment Samples.

F2. Supplement No. 1 to Contract No. TV-77677A with Walker State Technical College for a Business and Industry Center.

F3. Supplement No. 1 to Contract No. TV-77679A with Snead State Community College for a Continuing Education Center.

F4. Filing of Condemnation Cases.

F5. Nonexclusive Licensing of Patented Process for Dewatering Flue Gas Desulfurization Sludges and Delegation of Approval Authority for Nonexclusive Licensing of Power Patents.

F6. Contract No. TV-79561T with The Hartford Steam Boiler Inspection and Insurance Company for Authorized Nuclear Inspection Agency Services.

F7. Supplement No. 4 to Personal Services Contract No. TV-70659A with Rohrer, Hibler & Replogle, Inc., for Managerial Assessments and Related Activities.

F8. Tennessee Valley Authority Retirement System's New Investment Management Agreements.

*F9. Recommendations Resulting from the Thirty-seventh Salary Policy Negotiations.

*Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: October 11, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-24422 Filed 10-12-89; 11:04 am]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 54, No. 198
Monday, October 16, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 90926-9226]

Reef Fish Fishery of the Gulf of Mexico

Correction

In proposed rule document 89-23708 beginning on page 41297 in the issue of Friday, October 6, 1989, make the following correction:

On page 41297, in the first column, under **DATE:**, in the second and third lines, the date should read November 17, 1989.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524-9228]

RIN 0648-AC44

Atlantic Sea Scallop Fishery

Correction

In proposed rule document 89-23116 beginning on page 40463 in the issue of Monday, October 2, 1989, make the following correction:

On page 40463, in the second column, under **DATE:**, in the second and third lines, the date should read "November 13, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospehric Administration

50 CFR Part 651

[Docket No. 90927-9227]

RIN 0648-AC79

Northeast Multispecies Fishery

Correction

In proposed rule document 89-23117 beginning on page 40466 in the issue of Monday, October 2, 1989, make the following correction:

On page 40466, in the third column, under **DATE:**, in the second and third lines, the date should read "November 13, 1989".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50573; FRL-3651-3]

2,4-Pentanedione; Proposed Significant New Use of a Chemical Substance

Correction

In proposed rule document 89-22692 beginning on page 39549 in the issue of Wednesday, September 27, 1989, make the following corrections:

1. On page 39550, in the first column, under **VI. ALTERNATIVES**, in paragraph 2., in the second line, "section 5" should read "section 6".

2. On page 39551, in the second column, in the ninth line, "SHUR" should read "SNUR".

§ 721.1535 [Corrected]

3. On the same page, in the third column, in § 721.1535(a)(2), in the first line, "Significant" should read "significant".

4. On the same page, in the same column, at the end of § 721.1535, in the parenthetical expression, in the third line, "0028" should read "0038".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24722; Amdt. 91-213]

RIN 2120-AB04

Night-Visual Flight Rules Visibility and Distance From Clouds Minimums

Correction

In rule document 89-22990 beginning on page 40324 in the issue of Friday, September 29, 1989, make the following correction:

On page 40326, in the table at the bottom of the page, in the last column, in the last line, "2,000 feet horizontal" should read "1 mile horizontal".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Filing of Petition

Correction

In notice document 89-23084 beginning on page 40567 in the issue of Monday, October 2, 1989, make the following correction:

On page 40568, in the formula which begins in the first column and ends in the third, the symbol for water should read "H_2O" and the symbol for oxygen should read "$\frac{1}{2}O_2$".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for July 1989

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53121; FRL-3638-9]

Premanufacture Notices; Monthly Status Report for July 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for JULY 1989.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53121]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during JULY; (b) PMNs received previous and still under review at the end of JULY; (c) PMNs for which the notice review period has ended during JULY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during JULY; and (e) PMNs for which the review period has been suspended. Therefore, the JULY 1989 PMN Status Report is being published.

Date: August 23, 1989.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report, July 1989

I. 94 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.

P 89-0661	P 89-0662	P 89-0663	P 89-0664
P 89-0665	P 89-0666	P 89-0667	P 89-0668
P 89-0669	P 89-0670	P 89-0671	P 89-0672
P 89-0673	P 89-0674	P 89-0675	P 89-0676
P 89-0677	P 89-0678	P 89-0679	P 89-0680
P 89-0681	P 89-0682	P 89-0683	P 89-0684
P 89-0685	P 89-0686	P 89-0687	P 89-0688
P 89-0689	P 89-0690	P 89-0691	P 89-0692
P 89-0693	P 89-0694	P 89-0695	P 89-0696
P 89-0697	P 89-0698	P 89-0699	P 89-0900
P 89-0901	P 89-0902	P 89-0903	P 89-0904
P 89-0905	P 89-0906	P 89-0907	P 89-0908
P 89-0909	P 89-0910	P 89-0911	P 89-0912
P 89-0913	P 89-0914	P 39-0915	P 89-0916
P 89-0917	P 89-0918	P 89-0919	P 89-0920
P 89-0921	P 89-0922	P 89-0923	P 89-0924
P 89-0925	P 89-0927	P 89-0928	P 89-0929
P 89-0930	P 89-0931	P 89-0932	P 89-0933
P 89-0934	P 89-0935	P 89-0936	P 89-0937
P 89-0938	P 89-0939	P 89-0940	P 89-0941
P 89-0942	P 89-0943	Y 89-0146	Y 89-0147
Y 89-0148	Y 89-0149	Y 89-0150	Y 89-0151
Y 89-0152	Y 89-0153	Y 89-0154	Y 89-0155
Y 89-0156	Y 89-0157		

II. 293 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 85-0216	P 85-0535	P 85-0536	P 85-0619
P 85-0718	P 86-0294	P 86-0295	P 86-1189
P 86-1263	P 86-1602	P 86-1603	P 86-1604
P 86-1607	P 87-0057	P 87-0058	P 87-0059
P 87-0105	P 87-0197	P 87 0198	P 87-0199
P 87-0200	P 87-0201	P 87-0323	P 87-0770
P 87-0794	P 87-0963	P 87-1028	P 87-1104
P 87-1192	P 87-1226	P 87-1227	P 87-1337
P 87-1542	P 87-1548	P 87-1547	P 87-1548
P 87-1549	P 87-1555	P 87-1759	P 87-1872
P 87-1881	P 87-1882	P 88-0049	P 88-0063
P 88-0156	P 88-0157	P 88-0195	P 88-0225
P 88-0275	P 88-0319	P 88-0320	P 88-0353
P 88-0387	P 88-0393	P 88-0468	P 88-0515
P 88-0522	P 88-0576	P 88-0622	P 88-0658
P 88-0671	P 88-0701	P 88-0726	P 88-0836
P 88-0864	P 88-0884	P 88-0888	P 88-0889
P 88-0890	P 88-0894	P 88-0898	P 88-0918
P 88-0972	P 88-0981	P 88-1020	P 88 1021
P 88-1035	P 88-1063	P 88-1168	P 88-1211
P 88-1212	P 88-1240	P 88-1271	P 88-1272
P 88-1273	P 88-1274	P 88-1303	P 88-1377
P 88-1443	P 88-1446	P 88-1473	P 88-1529
P 88-1543	P 88-1567	P 88-1568	P 88-1618
P 88-1619	P 88-1620	P 88-1621	P 88-1622
P 88-1630	P 88-1631	P 88-1632	P 88-1647
P 88-1648	P 88-1658	P 88-1682	P 88-1690
P 88-1691	P 88-1730	P 88-1739	P 88-1740
P 88-1748	P 88-1753	P 88-1761	P 88-1763
P 88-1774	P 88-1783	P 88-1807	P 88-1809
P 88-1811	P 88-1823	P 88-1844	P 88-1850
P 88-1856	P 88-1889	P 88-1898	P 88 1937
P 88-1938	P 88-1958	P 88-1980	P 88-1982
P 88-1984	P 88-1985	P 88-1995	P 88-1999
P 88-2000	P 88-2001	P 88-2002	P 88-2069
P 88-2100	P 88-2160	P 88-2169	P 88-2177
P 88-2179	P 88-2180	P 88-2181	P 88-2188
P 88-2196	P 88-2204	P 88-2210	P 88-2212
P 88-2213	P 88-2228	P 88-2229	P 88-2230
P 88-2231	P 88-2236	P 88-2237	P 88-2271
P 88-2275	P 88-2293	P 88-2341	P 88-2343
P 88-2349	P 88-2367	P 88-2380	P 88-2389
P 88-2434	P 88-2435	P 88-2436	P 88-2437
P 88-2469	P 88-2470	P 88-2473	P 88-2484
P 88-2518	P 88-2529	P 88-2530	P 88-2540
P 88-2562	P 88-2563	P 88-2564	P 88-2566
P 88-2568	P 88-2575	P 88-2582	P 88-2631
P 88-2632	P 89-0030	P 89-0031	P 89-0073
P 89-0077	P 89-0078	P 89-0089	P 89-0090
P 89-0091	P 89-0097	P 89-0184	P 89-0194
P 89-0195	P 89-0225	P 89-0234	P 89-0254
P 89-0268	P 89-0279	P 89-0292	P 89-0301
P 89-0303	P 89-0321	P 89-0326	P 89-0336
P 89-0344	P 89-0380	P 89-0383	P 89-0384
P 89-0385	P 89-0386	P 89-0387	P 89-0396
P 89-0413	P 89-0422	P 89-0423	P 89-0424
P 89-0427	P 89-0448	P 89-0483	P 89-0506
P 89-0507	P 89-0520	P 89-0538	P 89-0539
P 89-0540	P 89-0576	P 89-0577	P 89-0583
P 89-0589	P 89-0596	P 89-0626	P 89-0632
P 89-0641	P 89-0648	P 89-0650	P 89-0651
P 89-0653	P 89-0655	P 89-0657	P 89-0658
P 89-0659	P 89-0660	P 89-0661	P 89-0672
P 89-0676	P 89-0694	P 89-0697	P 89-0698
P 89-0701	P 89-0703	P 89-0708	P 89-0711
P 89-0713	P 89-0714	P 89-0721	P 89-0726
P 89-0736	P 89-0739	P 89-0742	P 89-0749
P 89-0750	P 89-0755	P 89-0756	P 89-0760
P 89-0764	P 89-0769	P 89-0770	P 89-0775
P 89-0776	P 89-0785	P 89-0807	P 89-0808
P 89-0810	P 89-0815	P 89-0817	P 89-0819
P 89-0823	P 89-0829	P 89-0836	P 89-0837
P 89-0844	P 89-0850	P 89-0851	P 89-0854
P 89-0855			

III. 130 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. (Expiration or the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN No.

P 87-1028	P 87-1066	P 87-1273	P 87-1379
P 87-1547	P 87-1548	P 88-0602	P 88-0606
P 88-1005	P 88-1189	P 88-1956	P 88-2100
P 88-2169	P 88-2212	P 88-2213	P 88-2228
P 88-2229	P 88-2536	P 88-2568	P 89-0078
P 89-0116	P 89-0122	P 89-0426	P 89-0506
P 89-0574	P 89-0575	P 89-0579	P 89-0580
P 89-0581	P 89-0582	P 89-0583	P 89-0584
P 89-0585	P 89-0586	P 89-0587	P 89-0588
P 89-0589	P 89-0590	P 89-0591	P 89-0592
P 89-0593	P 89-0594	P 89-0595	P 89-0597

P 89-0598	P 89-0599	P 89-0600	P 89-0601	P 89-0630	P 89-0631	P 89-0633	P 89-0634	P 89-0674	P 89-0675	P 89-0676	P 89-0677			
P 89-0602	P 89-0603	P 89-0604	P 89-0605	P 89-0635	P 89-0636	P 89-0637	P 89-0638	P 89-0678	P 89-0679	P 89-0680	P 89-0681			
P 89-0606	P 89-0607	P 89-0608	P 89-0609	P 89-0639	P 89-0640	P 89-0642	P 89-0643	P 89-0692	P 89-0703	Y 89-0124	Y 89-0138			
P 89-0610	P 89-0611	P 89-0612	P 89-0613	P 89-0644	P 89-0645	P 89-0646	P 89-0647	Y 89-0139	Y 89-0140	Y 89-0141	Y 89-0142			
P 89-0614	P 89-0615	P 89-0616	P 89-0617	P 89-0649	P 89-0652	P 89-0654	P 89-0656	Y 89-0143	Y 89-0144	Y 89-0145	Y 89-0146			
P 89-0618	P 89-0619	P 89-0620	P 89-0621	P 89-0661	P 89-0662	P 89-0663	P 89-0664	Y 89-0147	Y 89-0148					
P 89-0622	P 89-0623	P 89-0624	P 89-0625	P 89-0665	P 89-0666	P 89-0667	P 89-0668							
P 89-0626	P 89-0627	P 89-0628	P 89-0629	P 89-0669	P 89-0670	P 89-0671	P 89-0673							

IV. 121 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Identity/generic name	Date of commencement
P 79-0034	Amido amine	Sept. 19, 1989.
P 83-1033	G C6-8 Carboxylic acid	Mar. 15, 1985.
P 84-0957	G Polyester resin	June 27, 1989.
P 85-0370	G Haloalkyl substituted cyclic ether	Do.
P 85-1390	G (Dialkyl-substituted-hydroxyphenyl) benzotriazole	July 14, 1989.
P 86-0016	G {(Dialkylcarbomonocyclic) amino}nthylium salt	June 15, 1989.
P 86-0017	G {(Dialkylcarbomonocyclic) amino}xanthylium salt, methylheteromonocyclic, phenyl heteromonocyclic, formal polymer	June 20, 1989.
P 86-0301	G Ammonium carboxylate-containing fluorochemical urethane	June 15, 1989.
P 86-0338	G Quaternary ammonium compound	May 30, 1989.
P 86-0860	G Hydrocarbon resin	June 28, 1989.
P 86-1038	G Oxime blocked polyether urethane	June 29, 1989.
P 86-1336	G Hexanediol polyester polyurethane	June 13, 1989.
P 86-1337	G Polyester of 1,6-hexanediol	June 13, 1989.
P 87-0244	G Substituted polyacrylate	Jan. 15, 1988.
P 87-0318	1,1'-(1,2-ethanediylbis(oxy)) bis (3-methylbenzene)	Aug. 15, 1989.
P 87-0918	G Polyester urethane of neopentyl glycol	June 13, 1989.
P 87-1519	G Isocyanate polymer with polyalkyloxy compound, substituted propionic acid, and a diamine	June 23, 1989.
P 87-1684	G Fatty quaternary ammonium chloride	July 18, 1989.
P 88-0238	G Modified polyether carbodiimide	Apr. 18, 1989.
P 88-0282	G Fatty amine	June 6, 1989.
P 88-0355	G Aliphatic polyester	May 19, 1988.
P 88-0377	Tricyclo(5.2.1-0, 2,6) dec-3(4)-ene, 8-(3'-hydroxy-2'-methylbut-1'-eny)-	June 30, 1989.
P 88-0420	G Trialkoxy silane derivative	Apr. 4, 1988.
P 88-0565	G Diarylmethane	June 23, 1989.
P 88-0624	G Phenyltris(dimethylsiloxy) silane	July 14, 1989.
P 88-1001	Ethylene glycol; propylene glycol; ethyl isocyanurate; dimethyl terephthalene; acetic acid, zinc salt; methylene dianiline; trimellitic anhydride.	June 16, 1989.
P 88-1201	G Anhydride-modified methacrylate polymer	June 21, 1989.
P 88-1290	Cyclohexadec-8-en-1-one mixture of cis and trans isomer	June 5, 1989.
P 88-1299	G Polyamide alloy	June 9, 1989.
P 88-1612	G Polyamide alloy	June 8, 1989.
P 88-1628	G Di(substituted)alkyl hydrogen acid phosphite	Dec. 6, 1988.
P 88-1663	G Acrylic lactone co-polymer	July 12, 1989.
P 88-1678	G Acrylic lactone copolymer	Do.
P 88-1726	G Mercaptan terminated polyether polymer	June 16, 1989.
P 88-1764	Ethanone, 1-(4-chlorophenyl)-2,2,2-trifluoro-omega-(1,3-dioxolan-2-yl-methyl)oxime	June 29, 1989.
P 88-1776	G Chlorosulfonated polymer	May 23, 1989.
P 88-1835	G Bisphenol-A-polycarbonate, alkylaryl alkyl endcapped	June 6, 1989.
P 88-1850	G Mixed alkylated diphenylamine	Mar. 27, 1989.
P 88-1900	G Substituted aromatic azo compound	June 29, 1989.
P 88-1949	G Copolyester	July 1, 1989.
P 88-1996	1-Octylamine, N, N-dimethyl-N-oxide	June 30, 1989.
P 88-2121	G Substituted aromatic azo compound	June 29, 1989.
P 88-2154	G Urethane modified polyester	May 30, 1989.
P 88-2166	Siloxanes and silicones, dimethyl, polymers with silsesquionanes, hydroxy-terminated, reaction products with methyltris(ethylketoxime silane and trimethoxy(3-(oxiranylmethoxy)propyl)siane.	July 4, 1989.
P 88-2167	Siloxanes and silicones, dimethyl, polymers with methyl silsesquioxanes, hydroxyterminated, reaction products with methyltris(ethylmethylketox ime)silane, trimethoxy(3-(oxiranylmethoxy)propyl) silane and (3-anilinopropyl)trimethoxysilane.	July 4, 1989.
P 88-2168	Siloxanes and silicones, dimethyl, polymers with methyl silsesquioxanes, hydroxyterminated, reaction,reaction products with hydroxy-terminated dimethylsiloxanes, methyltris(ethylmethylketox ime)silane,trimethoxy(3-(oxiranylmethoxy)propyl)silane and ethenyltriacetoxysilane.	Do.
P 88-2175	G Polyethylene glycol, fatty acid esters of	June 7, 1989.
P 88-2184	G Polyamide modified acrylic resin	July 18, 1989.
P 88-2187	G Substituted carboxylic acid alkane diol polyester	July 14, 1989.
P 88-2194	G Substituted carboxylic acid, alkane diol polyester	July 13, 1989.
P 88-2300	G Alkoxysilane terminated polyester polymer	June 1, 1989.
P 88-2442	G Substituted aromatic azo compound	June 29, 1989.
P 88-2443	G Substituted aromatic azo compound	Do.
P 88-2444	G Substituted aromatic azo compound	Do.

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IV. 121 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-2445	G Substituted aromatic azo compound	Do.
P 88-2446	G Substituted aromatic azo compound	Do.
P 88-2447	G Substituted aromatic azo compound	Do.
P 88-2448	G Substituted aromatic azo compound	Do.
P 88-2501	G Chlorinated polypropylene modified acrylic copolymer	June 15, 1989.
P 88-2520	G Isocyanate terminated polyether polyol	June 30, 1989.
P 88-2629	G Chloroalkyldisiloxane	June 12, 1989.
P 89-0010	G Salt of substituted oxazine	June 26, 1989.
P 89-0011	G Substituted oxazine	June 30, 1989.
P 89-0025	G Aryl bisphosphite	June 5, 1989.
P 89-0053	G Bis(aralky)(diaryl)phospho anediyl ammonium chloride	June 19, 1989.
P 89-0057	G Modified soya alkyd	June 27, 1989.
P 89-0085	Phosphine oxide, diphenyl(2,4,6-trimethylbenzoyl)	Apr. 19, 1989.
P 89-0189	G Aryl novolac resin	July 19, 1989.
P 89-0249	G Acrylic solution polymer	May 20, 1989.
P 89-0250	G Organotin compound	July 12, 1989.
P 89-0251	G Organopolysiloxane	Do.
P 89-0252	G Organopolysiloxane	Do.
P 89-0289	G Acrylourethane	Sept. 9, 1989.
P 89-0308	G Polyorganosilazane	July 12, 1989.
P 89-0354	G Polymer of alkyl poly(ethoxyethyl)ester of mon-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid, sodium salt.	June 15, 1989.
P 89-0357	G Polymer of alkylpoly(ethoxylethyl)est r of mono-ethylenically unsaturated carboxylic acid, mono-ethylenically unsaturated carboxylic acid and alkyl ester of mono-ethylenically unsaturated carboxylic acid ammonium salt.	June 16, 1989.
P 89-0416	G Alkyl grignard reagent	July 14, 1989.
P 89-0420	Formaldehyde; urea; dicyandiamide; phosphoric acid; monoethanolamine	June 20, 1989.
P 89-0425	G Organosiloxane	July 12, 1989.
P 89-0442	G Amino functional zirconium aluminum chloride hydroxide polymer	July 17, 1989.
P 89-0443	G Amino functional zirconium aluminum chloride hydroxide polymer	Do.
P 89-0444	G Amino functional zirconium aluminum chloride hydroxide polymer	Do.
P 89-0458	G Dithiophosphoric acid ester	June 27, 1989.
P 89-0459	G Metal dithiophosphate	June 28, 1989.
P 89-0463	G Polymer of polyalkylene glycol; alkyl diol; and monocyclicc dicarboxylic acid, dialkyl ester	June 16, 1989.
P 89-0470	G Copper phthalocyanine derivative	June 26, 1989.
P 89-0485	Alkenes, C2-C3 hydroformylation products, C3-C12 fraction; obtained by hydroformylation of ethylene and propylene, removal of propionaldehyde and butyraldehydes and further distillation to obtain a fraction rich in C3-C12 oxygenated hydrocarbons.	June 22, 1989.
P 89-0495	G Ethenetricarbonitrile derivative	July 8, 1989.
P 89-0496	G Propanedinitrile derivative	Do.
P 89-0497	G Propaneamine derivative	Do.
P 89-0500	G Acrylic polyelectrolyte	July 7, 1989.
P 89-0503	G Unsaturated polyester resin	June 23, 1989.
P 89-0529	G Acrylated alkyd	June 26, 1989.
P 89-0531	G Substituted pyrylium salt	June 27, 1989.
P 89-0532	G Substituted pyrylium based squarylium dye	Do.
P 89-0533	G Substituted pyrylium salt	June 26, 1989.
P 89-0534	G Substituted 2H-Pyran	Do.
P 89-0535	G Aliphate dione	June 27, 1989.
P 89-0536	G Substituted thiopyrylium based squarylium dye	June 30, 1989.
P 89-0537	G Substituted thiopyrylium salt	June 28, 1989.
P 89-0565	G Polyurethane based on polyisocyanates, polyols and polyamines	June 26, 1989.
P 89-0569	G Berium compound	June 30, 1989.
Y 88-0242	G Polyolefin copolymer	June 14, 1989.
Y 88-0243	4-Methyl-1-pentene; hydrogen	May 8, 1989.
Y 88-0251	G Saturated polyester	May 25, 1989.
Y 89-0018	G Acrylic alkyd copolymer	May 15, 1989.
Y 89-0025	G Acrylic modified rubber	June 1, 1989.
Y 89-0081	G Polyester resin solution	June 12, 1989.
Y 89-0089	G Polymers of: alkyl acrylates, lactone	July 7, 1989.
Y 89-0090	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0091	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0092	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0093	G Polymers of: alkyl acrylate, lactone	Do.
Y 89-0094	G Polymers of: Alkyl acrylates, lactone	Do.
Y 89-0095	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0096	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0097	G Polymers of: alkyl acrylates, lactone	Do.
Y 89-0098	G polymers of: Alkyl acrylates, lactone	Do.
Y 89-0099	G Polymers of: alkyl acrylates, vinylbenzene	Do.
Y 89-0100	G Polymers of: alkyl acrylates, styrene	Do.
Y 89-0122	2-propenic acid, 2-methyl, 2-hydroxyethylester;methyl 2-methyl-propenoate; butyl-2-propenoate; phenylethene; phenylethene; ethyl-3,3-di(t-butyl peroxyl peroxy)butyrate.	June 28, 1989.

V. 29 Premanufacture Notices for Which the Period Has Been Suspended

PMN NO.

P 88-0898 P 88-1740 P 88-1999 P 88-2000
P 88-2001 P 88-2341 P 88-2568 P 88-2631
P 88-2632 P 89-0576 P 89-0577 P 89-0589
P 89-0596 P 89-0604 P 89-0628 P 89-0632
P 89-0641 P 89-0650 P 89-0651 P 89-0653
P 89-0657 P 89-0658 P 89-0659 P 89-0660
P 89-0672 P 89-0698 P 89-0701 Y 89-0149
Y 89-0150

[FR Doc. 89-20665 Filed 10-13-89; 8:45 am]
BILLING CODE 6560-50-M

VOL
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UMI

federal register

Monday
October 16, 1989

Part III

Environmental Protection Agency

Proposing the Granting of an Exemption to Upjohn Company for the Continued Injection of Hazardous Waste Subject to the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3670-9]

Proposing the Granting of an Exemption to Upjohn Company for the Continued Injection of Hazardous Waste Subject to the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exemption to the Upjohn Company of Kalamazoo, Michigan for the continued injection of certain hazardous wastes.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is proposing to grant an exemption from the ban on disposal of hazardous wastes through injection wells to the Upjohn Company (Upjohn), Kalamazoo, Michigan. Upjohn may therefore continue to inject Resource Conservation and Recovery Act (RCRA) regulated hazardous wastes, if the exemption is granted. Upjohn submitted a petition to the USEPA under 40 CFR Part 148, which allows any person to petition the Administrator to determine whether its continued injection of certain hazardous wastes is protective of human health and the environment. After a comprehensive review of all material submitted, the USEPA has determined, with a reasonable degree of certainty, that Upjohn's injected wastes will not migrate out of the injection zone over the next 10,000 years.

DATE: The USEPA is requesting public comments on today's proposed decision. Comments will be accepted until November 20, 1989. Comments post-marked after the close of the comment period will be stamped "Late". A public hearing will be scheduled for this proposed action and notice will be given in a local paper and to all people on a mailing list developed by the Underground Injection Control (UIC) program. If you wish to be notified of the date and location of the public hearing please contact the person listed below.

ADDRESSES: Submit written comments, by mail, to: United States Environmental Protection Agency Region V, Underground Injection Control Section (5WD–TUB–9), 230 South Dearborn Street, Chicago, Illinois 60604, Attn: Edward P. Watters.

FOR FURTHER INFORMATION CONTACT: David Werbach, Lead Petition Reviewer, UIC Section, Water Division, Office Telephone Number: (312) 886–4242, 9th floor Trans Union Building, 111 West Jackson Street, Chicago, Illinois.

SUPPLEMENTARY INFORMATION:

I. Background

A. *Authority*—The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA section 3004(k)). After the effective date of prohibition, hazardous waste can only be injected under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA, (the USEPA has adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B); or

(2) When the owner/operator has demonstrated that there will be "No Migration" of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids would not migrate vertically upward out of the injection zone or to a point of discharge in a period of 10,000 years by use of mathematical models (40 CFR 148.20(a), 53 FR 28118 (July 26, 1988)).

B. *Facility Operation and Process*—The Upjohn facility in Kalamazoo, Michigan (See Figure 1) produces pharmaceutical chemicals used for both intermediate and finished products. All of the manufacturing processes are carried out in batch operations where individual production processes are combined to form a waste stream of variable composition. The liquid waste managed at the Upjohn facility is segregated into the following disposal categories:

(1) Spent solvents for on-site reclamation and reuse;

(2) Spent solvents for off-site reclamation;

(3) Waste waters to the Kalamazoo Public Owned Treatment Works (POTW); and

(4) Waste waters for deep well injection.

Part of the waste stream is currently injected into Well Numbers 3 and 4, which are Class I Hazardous Waste injections wells completed in the Munising Formation. Wastewater for deep well injection is generated at a rate of approximately 13 to 15 million gallons per year. The majority of the injected waste results from equipment rinses, extractions and crystallization operations conducted as part of the production process. This waste is typically composed of water mixed with organic solvents which constitute 2 to 5 percent of the wastestream. The facility previously injected 300 million gallons of waste into two shallower wells which were completed in the Traverse Limestone, Dundee Limestone and the Detroit River Group. In 1977, these two wells were taken off primary injection and were allowed to serve as emergency back-up to the two newer wells until they were plugged. Well Number 1 was plugged in 1984, and Well Number 2 was plugged in 1979. Approximately 900 million gallons per year consisting mainly of process water and sanitary wastewater is discharged to the Public Owned Treatment Works.

C. *Waste Minimization*—The Resource Conservation and Recovery Act (RCRA) emphasized the preeminence of source reduction and recycling as a strategy for managing solid waste. There are four major components of waste minimization—(1) Inventory Management and Improved Operations, (2) Modification of Equipment, (3) Production Process Changes, and (4) Recycling and Reuse. The Upjohn facility recovers approximately 10 million gallons per year of acetone, methanol, and methylene chloride as spent solvent for reuse at the facility. Approximately 2.7 million gallons of spent solvent are recovered and sent off-site as a part of a spent solvent waste fuels program. Upjohn plans to add additional equipment to recover tetrahydrofuran and the company will continue to assess waste minimization and identify and implement cost effective approaches to reduce the volume and toxicity of the waste generated.

D. *Submission*—On February 22, 1988, Upjohn submitted a petition for exemption from the land disposal restrictions on hazardous waste injection under the HSWA Amendments of RCRA (40 CFR part 148). This submission was reviewed for completeness and revised documents were received on September 21, 1988, and May 24, 1989. Several subsequent supplemental submissions were made thereafter to resolve minor deficiencies. The total submission was reviewed by staff at the USEPA and by consultants hired by the Agency to assist in their determination.

II. Basis for Determination

A. *Waste Description and Analysis (148.22)*—The wastes to be injected are spent halogenated and non-halogenated solvents, and are defined under 40 CFR Part 261 as F001, F002, and F005. These wastes are also characteristically ignitable and characteristically toxic for chromium, and therefore listed as D001 and D007 respectively, under part 261.

B. *Well Construction and Operation (148.22)*—The construction of the two Upjohn wells consists of four strings of casing for each well; the casing is cemented to the surface to preclude potential avenues for the injected fluid to escape the injection zone (See Figure 2a and 2b). Injection takes place through a tubing set on a packer and isolated from the casing by a fluid-filled annulus which is continuously monitored. The monitoring system is designed to trigger alarms and shut off if the injection or annulus pressure exceeds the maximum permitted levels, of if the annulus pressure falls below the minimum permitted level. Injection pressure is limited to 700 pounds per square inch (psi), which is below the value yielded by the equation in 40 CFR 147.1153 and below the value obtained from tests on the wells designed to determine the minimum fracture pressure of the injection interval. The injection pressure limit is conservative based on the aforementioned criteria and assures that the injection pressure provides insufficient energy to initiate or propagate existing fractures in the injection zone.

C. *Mechanical Integrity Test Information*—To assure that the waste does not leak prior to reaching the injection zone, Mechanical Integrity Tests (MIT) of the wells are required. Section 148.20(a)(2)(iv) requires submission of a satisfactory MIT performed within one year of petition submission, including Radioactive Tracer Test results. The Upjohn wells were tested in early December of 1987. The Standard Pressure Test as described in 40 CFR 146.8, the Radioactive Tracer Test, and the Temperature Log were performed. Results of these tests confirmed that the wells have mechanical integrity. They confirmed the positive results recorded on the continuous monitoring equipment. From both a construction and operation standpoint, the Upjohn injection wells ensure, with a reasonable degree of certainty, transmission of the injected fluid to the injection zone without leakage.

D. *Site Description*—Both of the injection wells at the Upjohn facility have approximately 3972 feet of separation between the lowermost underground source of drinking water (USDW) and the top of the injection zone (Munising Formation). This separation zone is composed of shales, limestones, dolomites, and evaporites.

The Michigan basin into which Upjohn injects is an almost circular sedimentary basin which extends to a depth of 14,000 feet in the center of the basin. The geologic strata generally dips less than 1 degree toward the center of the basin. The sedimentary formations can be classified into four general sequences—(1) the Cambrian sandstone sequence, (2) the Ordovician to middle Devonian carbonate-evaporite sequence, (3) the late Devonian to Mississippian shale-sandstone sequence, and (4) the Pennsylvanian coal bearing sequence. The Cambrian sandstone sequence (Munising Formation), the lowermost sedimentary unit in the basin, has the most favorable properties for the disposal of liquid waste because of its high permeability and porosity. There are very few historical seismic occurrences in the Michigan basin and a tectonic stress analysis revealed that the injected fluid is unlikely to cause an earthquake.

1. *Injection Zone Description*—The injection zone must have sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs. The injection zone consists of 1315 feet of the Munising Formation at a depth of 4302 to 5617 feet below the surface. The Munising Formation extends throughout the Michigan basin and reaches the surface near Munising, Michigan, several hundred miles from the Upjohn facility. Upjohn has subdivided the injection zone into an injection interval and a containment interval.

The injection zone is composed of the entire Munising formation, which contains four members, the Dresbach and Franconia sandstone Members, the Eau Claire dolomite-shale-sandstone Member, and the Mt. Simon sandstone Member. The Dresbach Member is composed of sandstone, is 4428 feet deep and 102 feet thick, and has a porosity ranging from 3 to 16 percent and permeability ranging from 0.1 millidarcies (md) to 180 md. The Franconia Member is composed mainly of sandstone and is 4302 feet deep and 126 feet thick, has a porosity ranging from 5 to 15 percent, and permeability ranging from 0.001 md to 10 md. The Eau Claire Member has been subdivided into two units by Upjohn, the upper Eau Claire dolomite-shale unit and the lower Eau Claire sandstone unit. Injection occurs into the lower Eau Claire sandstone unit and the Mt. Simon Member, at depths between 4837 feet and 5617 feet. Both wells were completed to inject solely into the Mt. Simon Member; however, in 1985, a hole in the casing of Well Number 4 was identified at a depth of 4837 feet (53 feet above the top of the Mt. Simon) by a noise log. The injection zone was expanded to include the Eau Claire Member by the USEPA through a permit modification in October, 1987. Approximately 5 percent of the 13–15 million gallons per year being injected flows into the Eau Claire Member through Well Number 4. The Mt. Simon Member is approximately 727 feet thick, and is composed mainly of massive sandstone. The porosity of the Mt. Simon ranges from 4 to 16 percent, and the permeability ranges from 2 md to 160 md. The Eau Claire Member is 360 feet thick; the lower 140 feet are composed of sandstone and minor amounts of dolomite, has a porosity range of 2 to 10 percent, and permeability ranging from 0.1 md to 100 md. The upper portion of the Eau Claire is composed of thinly bedded dolomite, shale, and sandstone, is 220 feet thick, has a porosity range of 2 to 13 percent and a permeability range from 0.0001 md to 10 md. The injection interval, consisting of the Mt. Simon and the lower Eau Claire, has generally high porosity and permeability which allow the waste to be injected without the use of a high injection pressure.

The containment interval is a portion of the injection zone, above the injection interval, which contains confining units (dolomites/shales) and pressure bleed-off units (sandstones). The upper Eau Claire, Dresbach, and Franconia Members are defined as the containment interval at Upjohn. The upper Eau Claire at a depth of 4530 to 4750 feet has a low permeability (0.0001 md to 10 md) which makes this unit a very effective barrier against the upward migration of waste. The Dresbach and Franconia Members are composed mainly of standstone and have higher permeabilities and porosities which act as pressure bleed-off units to allow any pressure build-up in the upper Eau Claire to be dissipated. No fractures or faults are known to exist in the containment interval.

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2. *Confining Zone Description*—The confining zone must be (1) laterally continuous, (2) free of transecting, transmissive faults or fractures over an area sufficient to prevent fluid movement and, (3) of sufficient thickness and lithologic and stress characteristics to prevent vertical propagation of fractures. The immediate confining zone above the injection zone is composed of the Trempealeau Dolomite (See Figures 2A and 2B), which has an average thickness of 240 feet in the area adjacent to the Upjohn facility, is at a depth of 4062 feet below the surface, and is 3732 feet below the lowermost USDW. Geophysical logs indicate that the Trempealeau Dolomite has low porosity and permeability; porosity ranges from 1 to 7 percent and permeability ranges from less than 0.001 md to 10 md. The Trempealeau Dolomite is found throughout the Michigan basin as indicated in numerous lithologic logs. No faults or fractures are known to exist in the Trempealeau Dolomite in the Area of Review. A study of the tectonic stresses shows that the formation is understressed, and no fractures are likely to be propagated because the injection pressure is strictly regulated to prevent overpressuring the formations.

The confining zone must be separated from the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide added layers of protection by either providing additional confinement (low permeability units) or allowing pressure bleed-off (high permeability units). Overlying the Trempealeau Dolomite at the Upjohn site is an alternating sequence of thick, low permeability units such as the Utica Shale, Detroit River Group, and the Antrim-Coldwater-Ellsworth Shales, and more permeable units such as the Salina Group, Dundee Limestone, and the Traverse Limestone. Some of the low permeability layers are up to 500 feet thick and are continuous for hundreds of square miles. Numerous oil and gas deposits in the Michigan basin are confined by these low permeability units, which suggests that these units would serve as secondary confining zones for any escaped injection fluid.

Geochemical Conditions—The characteristics of the injection and confining zone fluids and lithologies must be adequately described in order to determine the wastestream's compatibility with the zones. The injection zone is composed mainly of quartz sandstone, with minor amounts of siltstone and dolomite. These rocks are generally very resistant to chemical degradation, and therefore little, if any, compatibility problems are expected. Upjohn has injected approximately 110 million gallons of wastewater during the period from 1977 to 1987, and during this time, no adverse pressure response has occurred to indicate that the wells have suffered from a compatibility problem. The confining zone is composed of dolomite and should have little compatibility problems with the injected fluid, because it has low porosity and permeability which will inhibit any reaction between the rocks and the injected fluid.

4. *Area of Review*—The area of review (AOR) is the area within which the petitiner must identify all wells which penetrate the confining zone and demonstrate whether they have been properly completed or plugged and abandoned. For the Upjohn facility, the USEPA has designated an AOR of 2.5 miles, based on a flow model which shows that the pressure build-up 2.5 miles from the wells is no more than 10 psi. This is less than 2 percent of the maximum pressure build-up at the well bore. There are no wells within the AOR that penetrate the confining zone, and the nearest identified well that penetrates the confining zone is located approximately 40 miles from the injection facility. Accordingly, no corrective action is required for this facility.

E. *Model Demonstration of No Migration*—Over the past 20 years, mathematical modeling has emerged as the preeminent tool for the predictive analysis of hydrogeologic systems. It is appropriate then that the demonstration of no migration of hazardous constituents from the injection zone involves the use of predictive mathematical models. A combination of analytical and numerical models were used in Upjohn's demonstration.

Models used for the "no-migration" demonstration must be adequately verified and validated. The verification process has two principal objectives: (1) to ensure that the simulation code is mathematically accurate, and (2) to ensure tht the various features of the code are used correctly. The objective of model validation is to demonstrate that the model adequately represents the type of rock layers, the physical processes of the injection zone, and the boundary conditions of the modeled interval.

The Upjohn modeling demonstration used a numerical code known as SWIFT III (Sandia Waste-Isolation Flow and Transport Model) to predict the buildup of pressure and the lateral flow of waste from the Upjohn injection wells. The SWIFT III code has been used and verified extensively, as reported in various federal publications. The long history of development and successful use of SWIFT for sites similar to Upjohn provide confidence that the basic processes are accurately represented by the model.

The vertical migration of waste was modeled using a stochastic approach, designed to assign a range of probable permeabilities to a layered interval in which the waste is contained, in order to evaluate the model uncertainty through probabilities of vertical migration distance. The model calculates migration velocity based on an analytical solution using pressures predicted by SWIFT as the initial drive mechanism. Other analytical models were also used to demonstrate various components of the waste migration. All of the models used have been verified and validated as recorded in the model documentation, or in references to methods or techniques tht are widely accepted by the technical community.

1. *Model Development and Calibration*—The development of the Upjohn model was a two-step process. First, a conceptual model was developed from well logs and cores for the rock layers of the Munising Formation, extending from the base of the Mt. Simon Member through the Franconia Member, which included hydrogeologic information such as porosity, permeability and thickness. Next, this initial set of hydraulic parameters was calibrated or "fine-tuned" by comparing injection histories predicted by these parameters to records of injectivity tests on both wells run during the week of November 6, 1987. Hydaulic parameters for the Mt. Simon Member which were developed from the calibration exercise include a permeability of 27 md, a porosity of 7.2 percent and an effective, or modeled, thichness of 100 feet. Other model parameters, such as skin factor, viscosity, and diffusion coefficients, were assigned from site-specific information when possible, and otherwise based on accepted literature values. For those parameters most affecting pressure build-up and waste migration, such as permeability, a range of values was modeled so that pressure and migration under conservative conditions could be determined. Where parameters were uncertain, reasonably conservative values were chosen.

2. *Model Predictions*—Two simulation time periods were considered in the demonstration: a 40 year operational period and a 10,000 year post-operational period. For the operational period, pressure build-up due to injection and the lateral and vertical migration due to this pressure were modeled. For the post-operational period, additional lateral migration due to the natural flow gradient and additional vertical migration due to molecular diffusion were modeled. Modeling results, and the parameter choices which ensure that these results represent reasonably conservative conditions, are presented below.

For the operational period, an average monthly injection rate of 38 gallons per minute or approximately 20 million gallons per year, was used to predict pressure build-up in the injection zone. This exceeds the actual average injection rate of 13 to 15 million gallons per year and provides a conservative cushion to the demonstration by causing an over-prediction of modeled pressure build-up and waste migration. The modeling predicts that at the end of the 40 year operational period, the maximum pressure build-up at the wellbore is approximately 550 psi. Adding this build-up to the original reservoir pressure of approximately 2650 psi, the estimated maximum pressure in the Mt. Simon Sandstone at the end of the operational period would be 3200 psi. This is below the calculated fracture propagation pressure of 3870 psi. This pressure buildup is greatest near the injection wells and decreases outward, declining to less than 10 psi at a distance of 2.5 miles (the edge of the Area of Review).

The stochastic model described briefly above was used to predict vertical waste migration. The predicted pressure profile at the end of the operational period was used as a basis for calculating vertical waste migration velocity. This is a conservative approach because it will over-predict waste movement by ignoring (1) the lower vertical pressures that will exist in the early part of the operational period and (2) the smaller migration velocity further from the top of the injection interval. A modeled range of vertical permeabilities of the Eau Claire Member of 10^{-6} to 10^{3} md and a most probable permeability of 10^{-4} md, resulted in a vertical migration of waste at this site during its operational life between 95 feet (2 percent chance) and less than five (5) feet (77 percent chance). During the post-operational period, molecular diffusion is the primary migration mechanism. Using a conservative coefficient of molecular diffusion of 1×10^{-10} meter squared per second, the maximum vertical transport of the waste front during the post-operational period is 186 feet. This is a conservative estimate because it assumes the waste front extends to a point where the ratio of modeled concentration to original waste concentration (concentration ratio) is 10^{-12}, whereas a concentration ratio of 10^{-7} is sufficient to reduce all hazardous constituents injected by Upjohn to below health-based levels or detection limits, as documented following page VII–94 of Volume 3 of Upjohns' September 21, 1988, submittal. The total vertical migration at the Upjohn site would be a maximum of 281 feet above the permitted injection interval, or 41 feet below the top of the Dresbach Member. Therefore, the waste will be contained within the permitted injection zone.

Lateral migration of the waste plume during the operational period is mainly driven by injection and is modeled to extend 1576 feet, using realistic site-specific parameters deduced from the calibration exercises mentioned above. During the post-operational period, the modeled movement of the waste plume also considered the natural flow gradient of the Mt. Simon

Member, by buoyancy forces resulting from a lighter waste being injected into a more dense formation water, and molecular diffusion. Molecular diffusion and buoyancy forces result in the movement of the waste front of 5000 feet in 10,000 years, when a concentration ratio of 10^{-7} is used to define the edge of the waste plume. At this distance, all hazardous constituents will be below the health-based levels or detection limits. The groundwater flow velocity in this formation is estimated at 0.47 ft/yr at this site. Because the direction of this flow is uncertain, it is conservatively estimated to exist in every direction from the Upjohn site. This results in an additional drift of the waste plume of 4745 feet in 10,000 years. Therefore, the maximum predicted lateral migration of waste at the Upjohn site is 11,321 feet. This is within the permitted injection zone and within the Area of Review of 2.5 miles.

F. *Quality Assurance and Quality Control*—The Upjohn Company and its consultants have demonstrated that adequate quality assurance and quality control plans were followed in preparing the petition. Upjohn has followed appropriate protocol for locating records for penetrations in the area of review, for collection and analyses of geologic and hydrogeologic data, for waste characterization, and for all tasks associated with the modelling demonstration.

III. Conditions of Petition Approval

As a condition of granting this exemption to the ban on injection of certain hazardous wastes, the USEPA will require the following conditions to be met through modification of the well permits:

(1) The combined annual injection volume for Well Numbers 3 and 4 must not exceed 20 million gallons;

(2) The injection zone must be comprised of the Franconia, Dresbach, Eau Claire, and Mt. Simon Members of the Munising Formation; and

(3) Injection shall occur only into the Mt. Simon Member and into that portion of the Eau Claire Member which is below 4750 feet.

Dated: October 5, 1989.

Charles H. Sutfin,

Director, Water Division, Region V, U.S. Environmental Protection Agency.

BILLING CODE 6560-50-M

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FIGURE 1

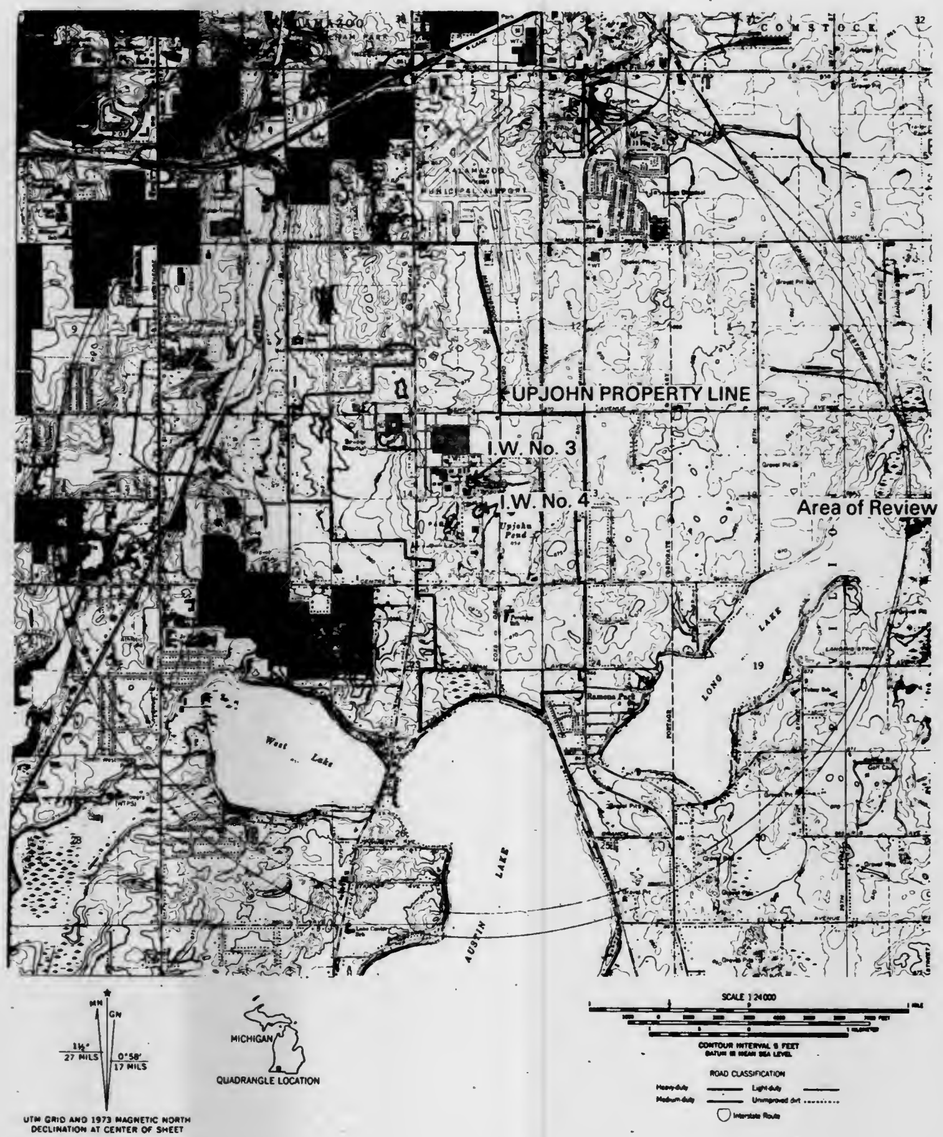
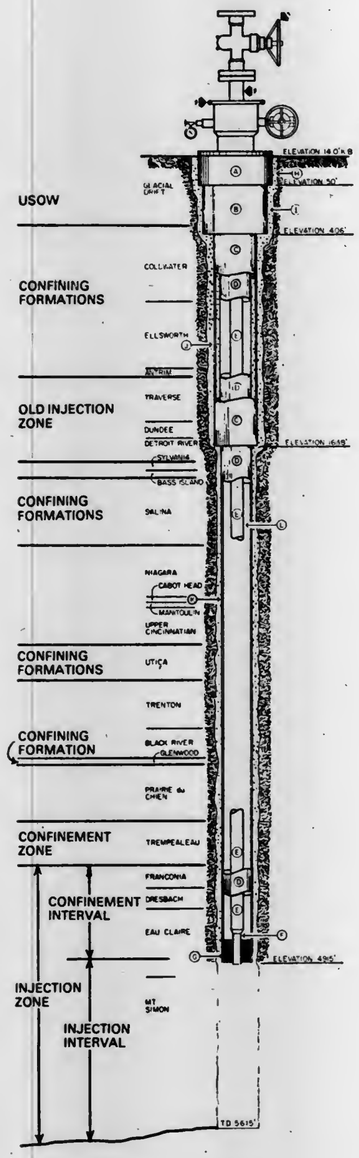


FIGURE 2A



DESCRIPTION OF MATERIAL

A. 24" O.D. unknown weight, ungraded steel conductor pipe set at 50' K.B. and cemented to surface.

B. 18" O.D. 65 lbs/ft, H-40, R-2, ST&C API casing set @ 406' K.B. and cemented to surface.

C. 10¾" O.D., 40.5 lbs/ft, K-55 R-8, ST&C API casing set @ 1638' K.B. and cemented to the surface in two stages.

D. 7" O.D., 23 lbs/ft, K-55, r-2, LT&C API casing set @ 4915' K.B. and cemented in two stages.

E. 3½" O.D. × 0.350" wall, Fibercast Epoxy chemical disposal tubing with Model "F" 316 SS non-ported seating nipple. 8.40' seal assembly with 7 seal units, 0.82'-3½" AST × 3½" API XO sub, 3.15' tubing sub above seal assembly, subs on top, total length 4861.40' to No Go.

F. 80-32 Model "GBH" 316SS Locator tubing Seal Assembly with 7-70 Hard Nitrile Bond Seal Units.

G. Baker Model "A" Retrieva D packer set at 4860 feet.

H. 24" conductor casing cemented to surface with 125 sx Class A with 3% $CaCl_2$ circulated.

I. 16" surface casing cemented to surface with 200 sx. Class A with 3% $CaCl_2$ and 375 sx. prozmix A with 4% gel and 3% $CaCl_2$ cement circulated.

J. 10¾" intermediate casing cemented in two stages with DV tool at 840'. First stage cemented with 900 sx. Class A with 3% $CaCl_2$ and second stage with 600 sx. pozmix A with 3% $CaCl_2$. Both stages circulated to surface.

K. 7" long string casing cemented in two steges with DV tool at 2492". First stage cemented with 970 sx. Class A with 3% $CaCl_2$ and second stage with 940 sx. pozmix with 6% gel and 3% $CaCl_2$. Neither stage circulated to surface.

L. Annular fluid — fresh water with added corrosion inhibitor.

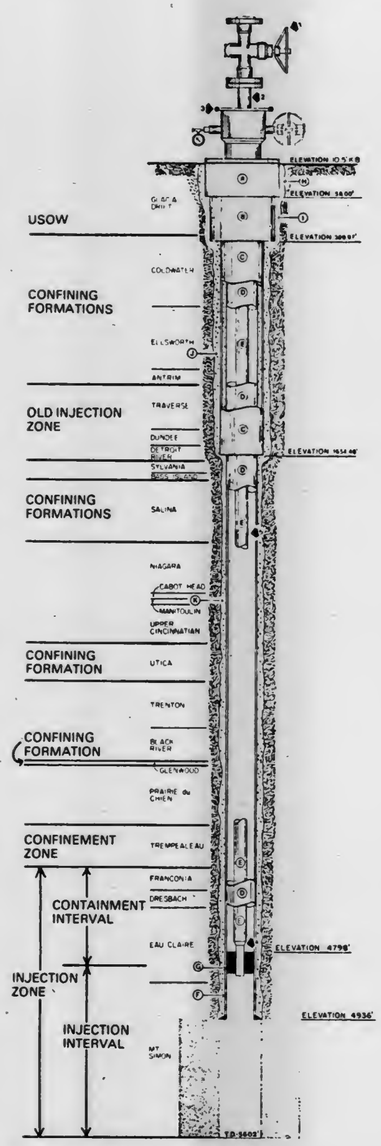
1. 3" Mohawk, Fig. 6, with ASA 600 RF Flanges. Carpenter-20 gate valve.

2. 3"Nom. Sch. 40 Carpenter 20 tube with ASA 600 RF flange top and 3" NPT Females 3½" ASTM male thread on bottom, 4 feet long.

3. 7" × 3" Hercules tubing head, Model with 2-2" NPT side openings.

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FIGURE 2B



DESCRIPTION OF MATERIALS

A. 24" O.D., 125.5 #/ft. Ungraded Steel Conductor pipe set @ 58 K.B. & cemented to surface.

B. 16" O.D., 65 #/ft., H-40, Rg 3, ST&C API casing set @ 388.97' K.B. and cemented to surface.

C. 10¾" O.D., 40.5 #/ft., K-55, Rg 2, ST&C API casing set @ 1654.48' K.B. and cemented to surface.

D. 7" O.D., 26 #/ft., K-55, Rg 2, LT&C, API casing run to 4876' K.B. and cemented to surface in three stages.

E 3½" O.D. × .350" wall Fibercast epoxy tubing with 7.60" seal assembly and a 3'-3½" API EUE ×3½" ASTM crossover sub.

F 7" O.D. × .375 wall Carpenter 20 casing, LT&C as integral part of Item D., from 4876' K.B. to 4936' (59.92' C-20, plus 3.35 cementing equipement).

G. Baker Model 47B4 Retreiva packer set at 4798 feet.

H. 24" Conductor casing cement-Class A Regular w/3% $CaCl_2$.

I 16" Surface casing cement-Halliburton Lite cement tail in w/Class A regular W/Class A Regular w/3% $CaCl_2$.

J 10¾" Intermediate casing cement-Halliburton 50-50 Pozmix A cement w/60% gel and 4% $CaCl_2$ tailed in with Class A Regular w/3% $CaCl_2$.

K 7" casing cement-1st stage-281 gallons Halliburton Epseal Epoxy cement, 2nd stage, 50-50 Pozmix A cement 2/2% gel tailed in w/Class A regular w/3% $CaCl_2$, 3rd stage, 50-50 Pozmix A cement with 2% gel.

1 3" Mohawk, Fig #6, 600 lb. RF, RS Gate valve Carpenter 20 construction.

2. 3" Nom., Sch. 40, Carpenter 20 Tube w/3" 600# RF Carpenter 20 Flange-Top and 3" NPT Female × 3½" ASTM Male thread on bottom 4 feet long.

3 7" × 3" Hercules Tubing Head — Model-A7s w/Stripper Rubber Assembly and 2-2" NPT side openings.

4 Baker size 80-32, Model GBH 22S locator seal assembly with 3-80 Hd. packing elements and 21-80-32 molded seals on a 316 ss tube, with xo sub on bottom and SS seating nipple with 2.25" diameter opening on bottom.

5. Fresh water w/15 gal. Corrosion inhibitor. (Corban 326), 10 gallons M-76 (bactericide), and 10lb. J-297 (oxygen scavenger).

[FR Doc. 89-24354 Filed 10-13-89; 8:45 am]
BILLING CODE 6560-50-C

federal register

Monday
October 16, 1989

Part IV

Tennessee Valley Authority

18 CFR Part 1314

Book-entry Procedures for TVA Power Securities; Rule

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TENNESSEE VALLEY AUTHORITY

18 CFR Part 1314

Book-entry Procedures for TVA Power Securities

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule sets forth terms and conditions governing the issuance of, and transactions in, all TVA power securities issued in book-entry form. The Federal Reserve Banks maintain a national system for electronic issue, maintenance, and transfer of securities issued by the United States Government and certain Federal agencies and require agencies seeking to issue book-entry securities through this national book-entry system to have agency rules establishing book-entry procedures. This Part, by establishing book-entry regulations for TVA, will permit it to issue book-entry securities through the Federal Reserve Banks' system.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Edward S. Christenbury at (615) 632–2241.

SUPPLEMENTARY INFORMATION: TVA, a wholly owned corporate agency and instrumentality of the United States, is authorized to issue bonds, notes, and other evidences of indebtedness to assist in financing its power program. This new part 1314 establishes book-entry procedures for TVA power securities. It has been determined that this rule does not require a notice of proposed rulemaking as it involves the fiscal policy of the United States. In addition, it is in the public interest that this Part become effective as soon as possible to facilitate TVA's performance of its responsibilities under section 15d and other sections of the TVA Act, 16 U.S.C. 831–831dd. Accordingly, it has been determined that a notice of proposed rulemaking is also not required because it would be contrary to the public interest. The effective date of this rule has not been delayed 30 days since the public interest necessitates the adoption and implementation of this rule without delay for the reasons set forth above. In addition, the effective date has not been delayed because this rule relieves a restriction.

This rule is not a major rule for the purpose of Executive Order 12291.

List of Subjects in 18 CFR Part 1314

Bonds, securities.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended by adding a part 1314 to read as follows:

PART 1314—BOOK-ENTRY PROCEDURES FOR TVA POWER SECURITIES

Sec.

1314.1 Applicability and effect.
1314.2 Definition of terms.
1314.3 Authority of Reserve Banks.
1314.4 Scope and effect of book-entry TVA power securities accounts.
1314.5 Transfer or pledge.
1314.6 Delivery of book-entry TVA power securities.
1314.7 Classes of accounts.
1314.8 Identification of accounts.
1314.9 Servicing book-entry TVA power securities.

Authority: The Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. 831–831dd.

§ 1314.1 Applicability and effect.

(a) *Applicability.* The regulations in this Part govern the issuance of, and transactions in, all TVA power securities (as defined herein) issued by TVA in book-entry form on or after the effective date of this part.

(b) *Effect.* The TVA power securities to which these regulations apply are obligations, which, by the terms of their issue, are available exclusively in book-entry form.

§ 1314.2 Definition of terms.

In this part, unless the context otherwise requires or indicates:

(a) "*TVA*" means the Tennessee Valley Authority, a wholly owned corporate agency and instrumentality of the United States of America created and existing under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831–831dd).

(b) "*Reserved Bank*" means the Federal Reserve Bank of New York and its branches (and any other Federal Reserve Bank, and its branches, which agrees to issue TVA power securities in book-entry form) as fiscal agent of the United States acting on behalf of TVA and, when indicated, acting in its individual capacity.

(c) The "*TVA Basic Bond Resolution*" means the Basic Tennessee Valley Authority Power Bond Resolution [1] adopted by the TVA Board of Directors on October 6, 1960, as heretofore or hereafter amended.

(d) "*TVA power security*" means a TVA power bond, TVA power bond anticipation obligation, TVA power note, or other TVA power evidences of indebtedness issued by TVA under section 15d of the TVA Act, as amended, and the TVA Basic Bond Resolution.

(e) "*Definitive form*" means engraved or printed form.

(f) "*Book-entry TVA power security*" means a TVA power security issued under, and in the form of an entry made as prescribed in, this part on the records of a Reserve Bank.

(g) "*TVA power bond*" means any TVA power security issued by TVA under § 2.2 of the TVA Basic Bond Resolution and the supplemental resolution adopted by the TVA Board of Directors authorizing the issuance thereof.

(h) "*TVA power bond anticipation obligation*" means any TVA power security issued under § 2.4 of the TVA Basic Bond Resolution.

(i) "*Other TVA power evidences of indebtedness*" means any TVA power security issued under § 2.5 of the TVA Basic Bond Resolution.

(j) "*TVA power note*" means any other TVA power evidences of indebtedness in the form of a note having a maturity at the date of issue of less than one year.

(k) "*Pledge*" includes a pledge of, or any other security interest in, book-entry TVA power securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(l) "*Depository institution*" means any national bank, State bank, other bank or trust company, or any other financial institution, authorized by law to secure Reserve Bank services.

(m) "*CUSIP number*" is a unique identification for each security issue established by the Committee on Uniform Security Identification Procedures.

(n) "*Date of call*" is the date on which TVA will make payment of a book-entry TVA power security before maturity in accordance with its terms.

§ 1314.3 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue book-entry TVA power securities by means of entries on its records, which shall include the name of the Reserve Bank's depositor, the latter's employer identification number, where appropriate, and the amount, maturity date and CUSIP number of each security;

(b) Otherwise service and maintain book-entry TVA power securities; and

(c) Issue a confirmation of transaction in the form of an advice (serially numbered or otherwise), which specifies the amount, maturity date and CUSIP number of the security, as well as the date of the transaction.

[1] A copy of the TVA Base Bond Resolution may be obtained upon request directed to TVA, 400 West Summit Hill Drive, Knoxville, Tenn. 37902, Attn.: Treasurer.

§ 1314.4 Scope and effect of book-entry TVA power securities accounts.

(a) *Scope and effect of accounts at Reserve Bank.* Each Reserve Bank, as fiscal agent of the United States acting on behalf of TVA, may apply the regulations in this Part to any book-entry TVA power securities in accounts held in its individual capacity under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity notwithstanding their maintenance in book-entry form. This paragraph is applicable, but not limited to, book-entry TVA power securities deposited or maintained:

(1) As collateral pledged to a Reserve Bank (in its individual capacity) for advances by it;

(2) For a depository institution for its sole account;

(3) For a depository institution held for the account of its customers;

(4) In connection with deposits in a depository institution of funds of States, municipalities, or other political subdivisions;

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The maintenance of book-entry TVA power securities under this paragraph shall not derogate from or adversely affect the relationship that would otherwise exist between a Reserve Bank in its individual capacity and the entities for which accounts are maintained. With respect to book-entry TVA power securities, the Reserve Bank is authorized to take all actions necessary in respect of such securities to enable the Reserve Bank, in its individual capacity, to perform its obligations as depository with respect to such securities.

(b) *Deposits not to be accepted.* No deposits shall be accepted under this section after the date of maturity or call of the security.

§ 1314.5 Transfer or pledge.

(a) *Reserve Bank records.* A transfer or a pledge of book-entry TVA power securities to a Reserve Bank or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve Bank under this Part is effected and perfected, notwithstanding any provision of law to the contrary, by the Reserve Bank making an appropriate entry in its record of the book-entry TVA power securities transferred or pledged. The making of such an entry in the records of a Reserve Bank shall:

(1) Have the same effect as the delivery of TVA power securities in bearer definitive form;

(2) Have the effect of a taking of delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder;

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee.

A transfer or pledge of book-entry TVA power securities under this paragraph (a) shall have priority over any transfer, pledge or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) *Member banks or others.* A transfer or a pledge of book-entry TVA power securities, or any interest therein, maintained by a Reserve Bank (in its individual capacity or as fiscal agent of the United States acting on behalf of TVA) in a book-entry account under this part is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of TVA power securities or any interest therein, if such securities were maintained by the Reserve Bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry TVA power securities maintained by a Reserve Bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve Bank maintaining book-entry TVA power securities either in its individual capacity or as fiscal agent of the United States acting on behalf of TVA is not a bailee for purposes of notification of pledges of those securities under this paragraph (b) or a third person in possession for purposes for purposes of acknowledgment of transfers thereof under this paragraph (b). Where book-entry TVA power securities are recorded on the books of an entity for account of the pledgor or transferor thereof and such securities are maintained with the Reserve Bank, such entity shall, for purposes of perfecting a pledge of such securities or effecting their delivery to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchase may be obtained. The Reserve Bank will not accept notice or advice of a transfer or a pledge effected or perfected under this paragraph (b), and any such notice or advice shall have no effect. The Reserve Bank may continue to deal with its depositors in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph (b).

(c) *Filing and recording unnecessary.* No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry TVA power securities or any interest therein.

(d) *Nonconversion.* Book-entry TVA power securities are not convertible into definitive form, nor are definitive form TVA power securities convertible into book-entry form.

(e) *Transfer by Reserve Bank.* A transfer of book-entry TVA power securities within a Reserve Bank shall be made in accordance with procedures established by the Reserve Bank not inconsistent with this part. The transfer of book-entry TVA power securities by a Reserve Bank may be made through a telegraphic transfer procedure.

(f) *Timeliness of requests.* All requests for transfer or any authorized transaction must be received prior to the date of call or maturity of the TVA power securities.

§ 1314.6 Delivery of book-entry TVA power securities.

Where a Reserve Bank has received book-entry TVA power securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor, it shall not be liable for conversion or for participation in breach of fiduciary duty even though the depositor has no right to dispose of or take other action in respect of such securities. A Reserve Bank shall be fully discharged of its obligations under this part by the transfer or delivery of book-entry TVA power securities to its depositor or upon the order of such depositor.

§ 1314.7 Classes of accounts.

A Reserve Bank is authorized to maintain book-entry TVA power securities for depository institutions located in its district for securities such institutions hold for their own account, or hold for the account of their customers, and as otherwise specified in § 1314.4. Purchasers of book-entry TVA power securities, on original issue or otherwise, may have such securities maintained in book-entry form at depository institutions of a Reserve

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Bank, or in accounts maintained at entities providing securities safekeeping services for customers (e.g., securities dealers) which have related accounts at such depository institutions.

§ 1314.8 Identification of accounts.

Book-entry accounts may be established in such form or forms as customarily permitted by the entity (e.g., depository institution, securities dealer, etc.) maintaining them, except that each account should include data to permit both customer identification by name, address, and taxpayer identifying number, as well as a determination of the book-entry TVA power securities being held in such account by amount, maturity, date and CUSIP number, and of transactions relating thereto.

§ 1314.9 Servicing book-entry TVA power securities.

(a) *Payment of interest.* Interest becoming due on book-entry TVA power securities shall be charged to the appropriate TVA account at the Federal Reserve Bank of New York on the interest-due date and remitted or credited in accordance with the instructions of the depository institution.

(b) *Payment of principal and redemption premiums.* Upon call or at maturity book-entry TVA power securities shall be redeemed and charged to the appropriate TVA account at the Federal Reserve Bank of New York, and the redemption proceeds, i.e., principal, redemption premium, and any interest payable with the principal, shall be disposed of in accordance with the instructions of the depository institution for whose account the securities were maintained.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-24542 Filed 10-13-89; 10:46 am]

BILLING CODE 8120-01-M

federal register

Monday
October 16, 1989

Part V

The President

Proclamation 6045—Italian-American Heritage and Culture Month, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6045 of October 12, 1989

Italian-American Heritage and Culture Month, 1989

By the President of the United States of America

A Proclamation

This month, we celebrate the rich ethnic heritage of Italian-Americans and the many contributions they have made to American culture. Throughout our Nation's history, men and women of Italian descent have made outstanding contributions in business and the arts, education, and government, as well as in athletics and military service. Virtually every aspect of our life as a Nation has been enriched by their unique talents and hard work.

Italian-Americans share with us not only the colorful traditions of their ancestral homeland, but also its proud history. It was a brave son of Genoa, Christopher Columbus, who first discovered the New World nearly half a millennium ago and, in so doing, forged the path that millions of immigrants have since followed to the United States. Italy has also given the world the great works of Dante, the breathtaking art of Giotto and Michelangelo, and the inspirational music of Antonio Vivaldi and Domenico Scarlatti. Italian-Americans enjoy a rich cultural heritage, indeed.

Many outstanding men and women of Italian descent have enriched our Nation's own history. All Americans take great pride in the accomplishments of individuals such as Fiorello La Guardia, the beloved Mayor of New York City; Enrico Fermi, who won the 1938 Nobel Prize in Physics; Paolo Soleri, the celebrated architect; and baseball hero Joe DiMaggio. They and other Italian-Americans throughout the United States have made extraordinary contributions to our life as a Nation.

Whether defending freedom on the front lines of battle or participating in the daily workings of our democracy, Italian-Americans have clearly demonstrated their love of freedom and self-government and their profound respect for the rights and dignity of every individual. Their patriotism—coupled with their deep faith and devotion to family life—has truly strengthened the fabric of our society.

In recognition of the many contributions Italian-Americans have made and continue to make to our Nation, the Congress, by House Joint Resolution 392, has designated the month of October 1989 as "Italian-American Heritage and Culture Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1989 "Italian-American Heritage and Culture Month." I urge all Americans to observe this month with appropriate programs, ceremonies, and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24562
Filed 10-13-89; 11:23 am]
Billing code 3195-01-M

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Tuesday, October 17, 1989

Presidential Documents

Title 3—

The President

Proclamation 6046 of October 13, 1989

National Disability Employment Awareness Month, 1989

By the President of the United States of America

A Proclamation

Our Nation's laws and traditions are rooted in a profound respect for the dignity and worth of every human person. It is this deep regard for the individual that has established the United States as a land of liberty and opportunity for all. Like generations of Americans before us, we have an obligation to ensure that the United States remains faithful to this promise for every individual—including those with disabilities.

Ensuring that business and employment opportunities remain open for all members of our society is not only a moral imperative; it is also vital to our Nation's economic growth. As the global economy continues to expand, U.S. goods and services will face ever greater competition in both foreign and domestic markets. Americans with disabilities can help to meet that challenge—but only if they have opportunities to bring their energy, creativity, and talent to the Nation's work force.

Many advances have been made in fostering the full participation by disabled persons in American society. Our Nation's educational system and training and rehabilitation programs have enabled millions of people with disabilities to become skilled, productive workers. The ongoing removal of architectural and other barriers in housing, transportation, and the workplace is permitting more and more disabled people to join the labor force as well as the mainstream of American life. Advances in technology are also enabling persons with disabilities to utilize their strengths and talents to the fullest. And many employers—recognizing all that these individuals have to offer—are enthusiastically hiring workers with disabilities.

Unfortunately, despite these advances—as well as the major gains we have made in lowering the Nation's unemployment rate—it has been estimated that only one-third of all disabled Americans of working age are currently employed. Yet millions of Americans with disabilities are both willing and able to take their rightful places in America's work force. As a Nation that takes justifiable pride in the unparalleled opportunities we have provided for all our citizens, we must continue working to enhance employment opportunities for persons with disabilities.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of the month of October of each year as "National Disability Employment Awareness Month." This special month is a time for all Americans to join together in recognizing the unlimited potential of persons with disabilities and in renewing our determination to provide increased employment opportunities for them.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1989 as National Disability Employment Awareness Month. I call upon all public officials, employers, and private citizens of this country to continue to help guarantee equal employment opportunities and the full rights and privileges of citizenship for disabled Americans.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24010
Filed 10-13-89; 2:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6047 of October 13, 1989

White Cane Safety Day, 1989

By the President of the United States of America

A Proclamation

The white cane is a device that all should recognize, for it is the staff that gives blind individuals greater freedom of movement as they pursue their daily activities. The white cane helps visually impaired persons avoid physical hazards and barriers, thereby enabling its users to travel more safely in the public environment. It is also a tangible reminder to all Americans that those who are blind possess the ability and the desire to lead independent lives.

Each year, White Cane Safety Day provides us with an occasion to renew our determination to eliminate barriers that continue to hinder the full participation of blind Americans in our society, especially those barriers created by discrimination or lack of understanding. It is a day to acknowledge the accomplishments of people who are blind and to reaffirm our support for efforts that will enhance their mobility.

In acknowledgment of the white cane and all it symbolizes, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1989, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor, through appropriate ceremonies and activities, their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24011
Filed 10-13-89; 2:26 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegation of authority from the Secretary to reflect the assessment of responsibility for the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under the Disaster Assistance Act of 1989, to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis G. Bennett, Assistant Administrator, Community and Business Programs, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 447-7287.

SUPPLEMENTARY INFORMATION: Departmental responsibility for guarantees of loans to rural business entities to further rural development and to save or create jobs in rural areas has been located in the Farmers Home Administration (FmHA) and its Business and Industrial (B&I) Loan Division. section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82) provides the Secretary new authority to guarantee such loans for disaster assistance purposes. Authority to administer this new loan guarantee authority is being delegated to the Under Secretary for Small Community and Rural Development, and further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Section 4(a) of Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.23 is amended by adding a new paragraph (a)(20) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(20) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding new paragraph (a)(36) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(36) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82).

* * * * *

Dated: October 11, 1989.

Clayton Yeutter

Secretary of Agriculture.

Dated: October 11, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89-24535 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories, Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations (7 CFR part 250) by: (1) Improving the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies; (2) establishing mandatory criteria to be used by distributing agencies in determining distribution charges; and (3) establishing minimum performance standards to be followed by distributing agencies responsible for intrastate distribution of donated commodities. The changes will improve the manner in which commodities are distributed to recipient agencies as required under the provisions of the "Commodity Distribution Reform Act and WIC Amendments of 1987."

EFFECTIVE DATE: This final rule is effective November 16, 1989.

FOR FURTHER INFORMATION: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park

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Center Drive, Alexandria, Virginia 22302 or telephone area code (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major. We anticipate that this rule will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and the final rule-related noticed at 48 FR 29114, June 24, 1983).

Paperwork Reduction Act Notice

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in the rule at § 250.14(a) are subject to review and approval by the Office of Management and Budget (OMB). The public reporting burden for the collections of information are estimated to average 360 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Act Project, Washington, DC 20503.

With the exception of § 250.14(a) described above, the current reporting and recordkeeping requirements found in part 250 are approved by OMB under control number 0584–0007.

Background

On January 8, 1988, President Reagan signed Public Law 100–237, "The Commodity Distribution Reform Act and WIC Amendments of 1987." The purpose of the law is to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. On October 20, 1988, the Department proposed rules to implement the following sections of Public Law 100–237:

Section	Topic
Section 3(b)(1)(B)	Monitoring of distributing agencies.
Section 3(d)(1)–(4)	Warehousing and distribution requirements for distributing agencies.
Section 3(e)(1)(A)	Distribution charges for commodities.
Section 3(e)(1)(B)	Performance standards for distributing agencies.

The proposed rules contained several of the most complex provisions required by the law. For a more comprehensive description of those provisions, readers should refer to the preamble of the proposed rule (53 FR 41172). Comments were solicited to assist the Department in developing regulations which will provide for a more efficient, effective and uniform operation of the Food Distribution Program. Specifically the Department proposed changes to the current Food Distribution Program Regulations (7 CFR part 250) concerning the use of commodity warehousing and delivery systems, mandatory criteria for establishing distribution charges that some States charge recipient agencies, and minimum performance standards for distributing agencies.

Analysis of Comments

A total of 115 comment letters were received from various entities including the American School Food Service Association, National Frozen Food Association, International Food Service Directors Association, National Association of State Agencies for Food Distribution, and the International Association of Refrigerated Warehouses. Other commenters included commercial distributors, local school food authorities, distributing agencies, State educational agencies, processors and private consultants.

The Department would like to take this opportunity to extend its gratitude to each of the commenters who spent time reviewing the proposal, analyzing the content and making recommendations for improvements. In the remainder of this preamble, the Department will explain where commenters' recommendations could or could not be incorporated into this final regulation. The Department would also like to remind readers that both the proposed and final rules were generated as a result of legislation in which Congress imposed very specific requirements upon the Department and program administrators. In many instances where commenters made recommendations for revisions, the Department had no discretion to alter the requirements. It is true that the intent of the legislation is to improve the manner in which commodities are distributed while being responsive to the needs of the recipient agencies, however, it was quite specific in placing the burden on distributing agencies using State warehousing and distribution systems to show that these systems were more cost effective and efficient than commercial facilities. The Department, therefore, was restricted as to the number of approaches that could be taken to improve the warehousing and distribution services to recipient agencies.

Commenter reaction to each of the regulatory requirements is explained in detail below. Readers should refer to the preamble of the October 20, 1988 proposed rule (53 FR 41172) for a more comprehensive description of the history of the program and of the legislative requirements of Public Law 100–237 that this rule is intended to implement.

System For Warehousing and Distributing Donated Foods

Under § 250.14(a)(1) of the proposed rule, distributing agencies were required to use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. Commercial facilities were defined as commercial enterprises that provide for warehousing and delivery.

Fourteen commenters requested that the definition of commercial facilities be clarified to allow for separate warehousing and delivery contracts. The commenters claimed that the regulations as they were proposed required a single contract to cover both the warehousing and delivery of donated food.

It was not the intent of the Department to define commercial facilities in such a way that it limits

such facilities only to those that can provide both warehousing and delivery services. Based on the commenters recommendations, § 250.14(a)(1) of this final rule is amended to clarify the definition of commercial facilities so that separate warehousing and delivery agreements/contracts can be negotiated.

Evaluation of Current Systems

Section 250.14(a)(2) of the proposed regulations required distributing agencies to evaluate their current warehousing and distribution systems. Initial evaluations were to be completed by June 30, 1989 and updates submitted each June 30 thereafter. Each of the requirements for the evaluation and the commenters' reactions are described below.

Six commenters supported the requirement that all distributing agencies evaluate their existing systems. Three commenters suggested that the Temporary Emergency Food Assistance Program be exempt from the requirement. Reflecting the same sentiments, two commenters requested an exemption for the Nutrition Program for the Elderly and three commenters requested an exemption for the Commodity Supplemental Food Program. Three distributing agencies recommended that States currently using commercial warehousing and distribution systems or States currently in the process of converting to commercial systems should not be required to do a costly evaluation. Two commenters stated that the regulations were geared only to the National School Lunch Program.

Under the provisions of Public Law 100–237, the distributing agencies for all programs must evaluate their system for warehousing and distributing donated food. No exceptions to this requirement were provided by the law. Therefore, the requirement remains in this final rule as proposed.

Section 250.14(a)(2)(i) of the proposed rule required that the following information be included in the description of the principal warehousing/delivery techniques used by the distributing agency:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered;

(D) The system for recipient agencies to order specific amounts of food from available inventory;

(E) The system for handling recipient agencies complaints; and

(F) The system for recipient agencies to offer input regarding other services they may find desirable.

Eleven commenters stated that the evaluation should not include the description of the system for handling recipient agency complaints or the system for recipient agencies to offer input regarding services they may find desirable. Of those who commented on these particular provisions, two commenters also questioned how they could determine a cost figure for these two services.

Public Law 100–237 requires that the distribution of donated foods be responsive to the needs of the recipient agencies. If recipient agencies have complaints about the warehousing and distribution services they are receiving, there must be a formalized procedure for registering complaints. Also, there should be a mechanism in place for recipient agencies to offer suggestions for improvements in the way donated food is distributed. In response to other provisions of the legislation, both of these avenues for collecting information are addressed under the performance standards in § 240.24 (e) and (f) of this regulation. This provision only requires a description of the existing system; cost information is dealt with in § 240.14 (a)(3)(ii) and (a)(4). Nevertheless, the Department has deleted subparagraphs (E) and (F) from this section of the final rule in order to avoid confusion.

Section 250.14(a)(2)(ii) of the proposed rule required distributing agencies to identify all costs incurred in administering the Food Distribution Program. These costs were to include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses including fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc.

Nineteen commenters stated that they would have a problem identifying costs incurred by recipient agencies for picking up commodities. They also believed that the result of identifying such costs could be that recipient agencies would have to pay for services that were previously provided by another agency (maintenance department, general services department, transportation department, etc.). These commenters further stated that if there is no direct cost for these services against the food service program, they should not be considered a cost in the evaluation of existing systems.

The Department does not have the flexibility to make the suggested changes to the regulation. The legislation is quite specific in requiring distributing agencies to use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. In order to determine the most cost effective and efficient system, the distributing agencies must compare commercial and distributing agency-operated systems. Such a comparison will not be valid unless all costs incurred in administering the Food Distribution Program are identified. Section 250.14(a)(2)(ii) of the final rule has been revised to clarify that the cost information is to be an estimate for the upcoming school year. A parallel change has been made to the cost comparison provision (§ 240.14(a)(4)) to ensure that the data will be for the same time period.

Section 250.14(a)(2)(ii) of the proposed rule required all distributing agencies to complete initial system evaluations by June 30, 1989, and updates each June 30 thereafter.

Eighteen commenters stated that the deadline for submitting the initial evaluations to the regional offices was unreasonable. They further stated that guidelines were needed to assist distributing agencies in conducting meaningful evaluations prior to implementation of the requirement. Four distributing agencies requested that USDA make State Administrative Expenses (SAE) funds available to fund the additional workload associated with implementing the new regulation requirements. They further commented that the workload associated with the rules is unrealistic and disconcerting.

Based on the comments received in response to the proposed rule, § 240.14(a)(2) is amended in this final rule to provide a one year delay to the due date by requiring initial evaluations to be submitted to the FNSRO by June 30, 1990. Additionally, the Department would like to point out that technical assistance materials and reallocated State Administrative Expense funds are available to assist distributing agencies in evaluating their current warehousing and distribution system.

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Twenty-four commenters believed that the annual review of existing systems is unnecessary. Of these commenters, 18 recommended that distributing agencies should only be required to evaluate their warehousing and delivery systems once every three years. Two commenters recommended that evaluations be conducted once every five years and two commenters believed that evaluations should only be required when the State modifies an existing system. The remainder of the commenters felt that complete evaluations were unnecessary altogether.

Fourteen commenters believed updates should only be required if a change occurs in the level of service provided or the price of the service increases.

The legislation does provide the Department some discretion with respect to the frequency of these evaluations. In an effort to reduce the burden on the distributing agencies associated with the annual evaluation of their current warehousing and distribution system, the Department has decided to change the proposed frequency and to exempt commercial systems from routine reevaluations. The Department believes that the competitive bid process used to obtain commercial warehousing and distribution will serve as an adequate basis for reevaluating commercial systems and that to require reevaluations through the process set forth in this rule would be unnecessarily duplicative. The final rule requires distributing agencies that do not use commercial facilities to reevaluate their current system once every three years by March 31. For purposes of consistency, as described later in this preamble, cost comparison data will also be required on the same cycle.

In order to permit FNS to continuously monitor changes in all distributing agencies' activities, § 250.14(a)(7) of the final regulation provides that at least 90 days before reducing the level of service provided or increasing distribution charges beyond normal inflation, the distributing agency must request approval from the FNSRO for the proposed change and submit justification. This request will provide FNS the opportunity to review those distribution systems making changes, especially commercial systems that will not automatically fall under the three year reevaluation process set forth in § 250.14(a)(2). Upon reviewing a request for a change, should FNS determine that a complete reevaluation of a commercial or noncommercial system is in order, § 250.14(a)(6)(ii) of this rule specifies that FNS may require a complete reevaluation of the system being used.

Comparison of Existing System with Commercial Systems

Section 250.14(a)(3) of the proposed rule required all distributing agencies which do not use commercial facilities to compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system. The cost comparison was to be made between the cost of providing a minimum level of service under the current system with the cost of obtaining an equivalent level of service from commercial facilities. This minimum level of service was to consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites with monthly deliveries of donated food to all recipient agencies. A distributing agency could base its cost comparison on a level of service in excess of the minimum and/or services not currently provided. However, in all cases, the proposal required that the comparison be made on the costs of providing a comparable level of service under the existing system versus a commercial system.

One commenter requested that the Department provide a clearer definition of "minimum level of service." In response to that recommendation, the terminology has been revised in the final rule to refer to a "basic level of service" which consists of storing and warehousing donated food and making monthly deliveries to all recipient agencies.

Seven commenters stated that obtaining cost comparison data from commercial facilities involves a bid process that can be very cumbersome at the distributing agency level. Commenters claim that going through the whole bid process to obtain cost information from commercial enterprises when a distributing agency may or may not award the bid has serious implications. According to the commenters, it is unethical, inappropriate, and unconscionable, if not illegal, for a distributing agency which has no intention of awarding a contract to solicit cost information from commercial enterprises.

The Department is not suggesting that distributing agencies should issue formal requests for contracts that will not be awarded. In order to meet the requirements of the law, distributing agencies must only obtain information on the cost of commercial warehousing and distribution of commodities in that State. Price information must cover a basic level of service which consists of storing and warehousing donated food and making monthly deliveries to all recipient agencies. The Department is in the process of developing guidance to assist distributing agencies in collecting cost information and in making appropriate cost comparisons. The guidance will be distributed as soon as it is developed.

Five commenters questioned why distributing agencies should obtain cost information for using commercial facilities in those States that have laws prohibiting the use of commercial facilities for the delivery of donated food. The Department believes that Public Law 100-237 supersedes any State laws that prohibit commercial facilities from warehousing or delivering donated food.

Seventeen commenters believed that requiring monthly deliveries to all recipient agencies will result in increased costs that they would be unwilling to pay. Eight commenters stated that they were happy with the service they were receiving under the current system and claimed that no commercial firm could give the level of service that the distributing agency gives. Nine commenters recommended that the Department permit distributing agencies and recipient agencies to mutually agree on delivery schedules other than once a month. They claimed that fewer deliveries help keep costs to a minimum.

These commenters are misconstruing this provision. This provision does not itself require monthly deliveries to all recipient agencies. Instead, it uses monthly deliveries as a basic level of service for purposes of comparison between commercial and distributing agency-operated systems. Section 250.13(a)(2), added by an interim rule on June 16, 1988 (53 FR 22469), is the provision which requires distributing agencies to make monthly deliveries. However, the Department never intended this requirement to preclude a distributing agency and recipient agency from agreeing to less frequent distributions, such as school food authorities which do not need monthly deliveries when classes are not in session. In order to be consistent with this interpretation of the requirement, the description of the basic level of service in § 250.14(a)(4)(i) is revised to specifically state this modification. The Department will make the corresponding clarification to the monthly delivery

requirement in § 250.13(a)(2) when finalizing that provision.

Section 250.14(a)(3) of the proposed rule required that all data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities be submitted to FNS for review by June 30, 1989 and each June 30 thereafter.

Thirteen commenters were opposed to the requirement that cost comparison data be submitted each year. Nine commenters stated that cost comparison data should only be needed once every three years. One commenter stated that the data should only be required once every two years. Three commenters requested clarification on what dates to base the cost comparison data. These commenters claim that the data could be based on a calendar, State or fiscal year basis. Another commenter claimed that the annual cost comparison is not necessary if there is satisfaction with the distributing agency's current system. Several commenters claimed it is better to have multi-year contracts to ensure better pricing, service and inventory controls.

Based on the comments to the proposed rule and in order to coordinate with the date for submission of the evaluation, § 250.14(a)(4)(iv) is revised to specify that the initial cost comparison data must be submitted by June 30, 1990 and that updated data must be submitted by March 31 every third year.

In addition as discussed above, § 250.14(a)(7) has been added to require distributing agencies to provide FNS at least 90 days notice before reducing the level of service provided or increasing the distribution charges beyond normal inflation. The distributing agency must request approval from the FNSRO for the proposed change and submit justification for the change. In the case of a noncommercial system, this justification must include updated cost comparison data.

The final rule is also revised to clarify that all cost data are to be submitted on a school year basis.

Approval to Use Other Systems

Section 250.14(a)(4) of the proposed rule required distributing agencies not opting to implement a commercial warehousing and distribution system to apply to the FNSRO for approval to use other facilities proving that other facilities are more cost effective and efficient. Each request was to be considered on a case by case basis. The FNSRO would inform the distributing agency whether it could continue to use the alternative system. Approval to use the alternative system would be granted for no more than one year. After one year, the distributing agency must implement a commercial system or apply to the FNSRO for approval to continue to use the alternative system.

Fourteen commenters stated that the regulations should focus more on the needs of recipient agencies and less on the commercialization of the storage and delivery of donated food. Nineteen commenters claimed that recipient agency satisfaction should count as evidence that the current system is acceptable. These commenters claimed that acceptability of the current system by the State food distribution advisory council and the State school food service association should be considered in determining whether to grant approval to use other systems.

Eight commenters claimed that commercial systems (although generally the most cost effective) may not be the best for all distributing agencies. All of these commenters were concerned that they may be forced into doing business with a distributor they find unacceptable. Nine commenters requested that distributing agencies be permitted to modify their current systems to make them more cost effective and efficient rather than forcing them to convert to a commercial system.

Three commenters recommended that distributing agencies should be allowed to maintain their current system if they can provide evidence that there is no competition for a commercial system. Also, two commenters claimed that the largest school districts in a State will dictate the level of service to be provided to all recipient agencies. These commenters would like to see an end to the whole idea of using commercial facilities. One commenter claimed that commercial systems do not lend themselves to slow-moving commodities. The commenter claimed that distributors will be unwilling to handle commodities for which requests for the item are infrequent and/or in small amounts.

The Department is aware that this rule may impose hardships upon some distributing agencies and is sympathetic to those agencies. However, the legislation is very clear on this requirement and allows the Department very little latitude to offer any relief. Under section 3(d)(3) of Public Law 100-237, distributing agencies that do not implement a commercial warehousing and distribution system must apply to the Secretary for approval to use other facilities and must provide justification that other facilities are more cost effective and efficient. Therefore, § 250.14(a)(5) of this final rule remains as proposed with the following modifications.

In recognition of commenter concerns and in order to be consistent with the date for submission of the system evaluation and cost comparison, § 250.14(a)(5) has been revised to require the initial requests to be made by June 30, 1990 and subsequent requests (where appropriate) to be made every three years by March 31. In addition, at least 90 days before reducing the level of service provided or increasing in the distribution charges beyond normal inflation, the distribution agency must request approval from the FNSRO for the proposed change and request continued approval to use an alternative system. As discussed above, the request must include justification, and if a noncommercial system, updated cost comparison data.

System Implementation

Section 250.14(a)(5) of the proposed rule required distributing agencies to implement the most cost effective and efficient system by July 1, 1990.

Twelve commenters stated that the deadline for implementation of the new requirements was unreasonable. The Department concurs with the commenters and changed the requirement in § 250.14(a)(6) to a new implementation date of July 1, 1991. The additional year should give distributing agencies sufficient time to evaluate their current system for warehousing and distributing donated food, compare that system with the cost of comparable commercial alternatives and make the decision to request a waiver or convert to a commercial system.

Section 250.14(a)(5) of the proposed rule also stated that if at any time FNS determines that the warehousing and distribution system in place is not cost effective based on distribution charge information or other information, the distributing agency will be required to reevaluate its system within 90 days of notification by the FNSRO.

Two commenters stated that requiring the reevaluation of a warehousing and distribution system at the whim of a regional office is impractical. At the present it is the intent of the Department to require distributing agencies to reevaluate warehousing and distribution systems only when the systems are no longer the most cost effective and efficient based on distribution charge information they submit. However, the Department believes it is necessary to retain general authority to require distributing agencies to reevaluate their systems should the Department otherwise have grounds for questioning

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a system's cost effectiveness or efficiency. For these reasons, that portion of the final rule remains as proposed.

The final rule has been revised to clarify that in any instance in which an interim evaluation, cost comparison and/or request for approval to use an alternative system is required pursuant to § 250.14(a)(6)(ii), the next required submission for noncommercial systems will be the third March 31 following the date of the interim submission.

Section 250.14(a)(6) of the final rule has been revised to specify the timeframe for conversions to commercial systems after the initial evaluation cycle. Any time a distributing agency's evaluation and cost comparison data indicates that a commercial system is more cost effective and efficient, the distribution agency must convert to the commercial system within six months of the submission of the data to the FNSRO, unless otherwise approved by the FNSRO. Further, any time a request to use an alternative system is denied, the distributing agency must convert to a commercial system within six months of the date of the denial, unless otherwise approved by the FNSRO.

As described previously in the preamble, a paragraph (a)(7) has been added to § 250.14 to require all distributing agencies to request approval from the FNSRO 90 days prior to any reduction in service or increase in distribution charges beyond normal inflation. This request will provide FNS the opportunity to review the systems, especially the commercial systems about which FNS will not be receiving routine updates every three years. This review will provide FNS the opportunity to determine if a complete reevaluation of the system is necessary.

Summary of Warehousing and Distribution Requirements.

Evaluations—All distributing agencies must submit an initial evaluation of their warehousing and distribution systems by June 30, 1990. Distributing agencies that do not use commercial facilities must submit updates by March 31, 1993 and every third March 31 thereafter. To provide FNS the opportunity to determine the need for an interim evaluation, all distributing agencies must request approval from the FNSRO at least 90 days prior to increasing distribution charges or reducing service levels. Interim evaluations must be conducted within 90 days of a request by the FNSRO. In cases where noncommercial facilities are used and in which an interim evaluation has been made, the next update must be submitted no later than the third March 31 following submission of the interim evaluation. All evaluations must meet the requirements in § 250.14(a)(3).

Comparisons with Commercial Systems—Distributing agencies not using commercial systems must make an initial comparison between their current system and a commercial system using a comparable level of service by June 30, 1990 and must update this cost comparison data every third March 31. In cases in which an interim cost comparison has been made, the next update must be submitted no later than the third March 31 following submission of the interim cost comparison. If after conducting a cost comparison a distributing agency chooses to continue to use a non-commercial system, a request for approval must be submitted with the evaluation and cost comparison. If an agency is not able to locate a commercial distributor, documentation of this must be submitted in accordance with the deadlines above. In addition, when requesting approval of reductions in service levels or increases in distribution charges beyond normal inflation, distributing agencies using noncommercial systems must include updated cost comparison data with their justification. All cost comparisons must meet the requirements in § 250.14(a)(4).

System Implementation—The most cost effective and efficient system of warehousing and distribution must be implemented by July 1, 1991. In addition, any time a distributing agency's subsequent evaluation and cost comparison data indicates that a commercial system is more cost effective and efficient, the distribution agency must convert to the commercial system within six months of the submission of the data to the FNSRO, unless otherwise approved by the FNSRO. Further, anytime a request to use an alternative system is denied, the distributing agency must convert to a commercial system within six months of the date of the denial, unless otherwise approved by the FNSRO.

Distribution Charges

Section 250.15(a)(1) of the proposed rule required distributing agencies that assess recipient agencies for distribution charges to submit to the FNSRO for approval a description of their system with supporting allowable cost data used in calculating the rate to be used for the upcoming school year. This description and data was to be submitted by May 1 of each year.

Before making any changes to the distribution charges during the school year, the distributing agency must submit to the FNSRO for approval a description of the change together with supporting data used to calculate the change.

One commenter claimed that if distributing agencies obtain competitive bids for distribution services and base the distribution charges on those bids it is not necessary to submit distribution charge information to USDA for approval. Six commenters were opposed to the requirement that distributing agencies should have to justify distribution charges to the FNSRO on a yearly basis. Of these commenters, two believed the information should only be submitted if costs escalate or recipient agency dissatisfaction develops. Another commenter stated the information on distribution charges should only be required once every three years. One commenter pointed out that if recipient agencies pay for transportation fees directly to a company based on a competitive bid, it would be inappropriate for FNS to approve those fees.

The Department recognizes that if a distributing agency has a contract in place for the distribution of commodities and passes on to the recipient agencies the full cost of the contract in the form of distribution charges, it may be difficult for the distributing agency to alter the distribution charge structure. Further, the Department does not intend that its review of proposed distribution charges would force the contract to be terminated. In reviewing the distribution charge information, the Department will take into consideration existing contracts and, where necessary, require changes to be made when the contracts are next renegotiated. The Department believes that this process, together with the cost effective and efficient requirements of § 250.14, will ensure that distribution charges are kept to appropriate levels. The Department also wishes to point out that to the extent that a recipient agency itself contracts for transportation and pays the company directly, the distribution charge provisions do not apply. Section 250.15(a) applies only to fees for distribution charged by the distributing agency. However, distributing agencies may not use such a system to avoid review of distribution charges since § 250.14(a) requires the distributing agency to take into account the costs incurred by recipient agencies in picking up commodities when evaluating its warehousing and distribution system.

In response to the commenters who questioned the requirement for annual submissions and in order to coordinate with the dates for submissions of system evaluations and cost comparisons, the Department amended § 250.15(a)(1)(i) of the final rule to require distributing agencies to submit the initial description of their system for assessing distribution charges with supporting allowable cost data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval by June 30, 1990. Updates to this information will be required once every three years by March 31. In addition, § 250.15(a)(1)(ii) has been revised to require distributing agencies to request approval from the FNSRO at least 90 days before increasing distribution charges beyond normal inflation.

Section 250.15(a)(1) of the proposed rule stated that distribution charges may not be based solely on a percentage of the value of the commodities distributed.

Two commenters agreed that distributing agencies should be prohibited from assessing distribution charges based on the value of the commodities. However, six commenters disagreed with the provision stating that distributing agencies should be permitted to assess distribution charges based on a percentage of the value of the donated food as long as total charges do not exceed incurred costs. These commenters claim that assessing distribution charges in this manner ensures that each school food authority pays their fair share. One commenter remarked that the basis a distributing agency uses to assess distribution charges should remain the prerogative of each individual agency as long as the method is applied equally and fairly to all recipient agencies. Two commenters stated the wording in the proposed rule was unclear in that distribution charges could not be based solely on a percentage of the value of the commodities distributed. The commenters wanted to see the word "solely" removed because they felt the proposed revision would permit distributing agencies to base distribution charges on a percentage of the value of the donated food as well as other costs which must be passed on to recipient agencies.

The Department continues to believe that distribution charges should be distributed among recipient agencies based on the volume of food received by each recipient, as measured on a unit or weight basis. The value of the food bears little relationship to the costs of handling it. Section 250.15(a)(1)(vi) of the final rule, however, has been amended by removing the word "solely" from the text to eliminate any confusion on the part of distributing agencies.

Section 250.15(a)(1)(v) of the proposed rule required FNS to review the distribution charge information and inform the distributing agency of the appropriateness of its distribution charges. If it was determined that a distributing agency's proposed distribution charges were excessive or incorporated inappropriate costs, the distributing agency would be required to adjust the distribution charges to an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges were essential to cover allowable costs and services.

One commenter stated that if distribution charges are found to be excessive and were established by a bid obtained under State procurement activity, no random adjustments or changes would be legal.

As discussed above, the Department does not intend to force distributing agencies to void their warehousing and distribution contracts. Instead, the Department will review the circumstances to determine if a distributing agency's distribution charges are found to be substantially higher than what other distributing agencies charge for a comparable level of service. If the charges appear to be excessive, the distributing agency with the higher charges will be required to justify or further explain how the level of distribution charges was determined. If necessary the distributing agency may be required to make changes when renegotiating the contracts. Only in an extrme situation would a distributing agency be required to absorb the excess costs. Section 250.15(a)(1)(v) of the final rule remains as proposed.

Corrective Action Plans

Section 250.19(d) of the proposed rule required that corrective action plans be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of the regulations. The corrective action plan should identify the actions and the timeframes needed to correct the deficiencies found by the FNSRO. The plan should be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days following receipt of the report of deficiencies. Extensions beyond the 60 days may be made, for cause, with written justification to and approved by the FNSRO.

One commenter supported the requirement that distributing agencies must submit a corrective action plan within 60 days of the FNSRO report. One commenter stated that FNS should state how monitoring will be carried out, how often and on what schedule.

The Department is using this requirement to assure that deficiencies that may be identified are also corrected. Deficiencies in program operations may be discovered during routine management evaluations, during audits or other review procedures. With the advent of legislation requiring minimum performance standards that agencies must meet, the Department believes that it is appropriate to ensure that distributing agencies correct any deficiencies in their operations as expeditiously as possible. The requirement remains as proposed and is redesignated as § 259.19(c) of this final rule.

Distributing Agency Performance Standards

Section 250.24 of the proposed rule established minimum performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that should be provided to recipient agencies. The minimum standards include the following:

The first, *Program Management and Evaluation*, required distributing agencies to conduct reviews in accordance with § 250.19 of this part. Distributing agencies were also to assess the adequacy of their service to recipient agencies. No comments were received regarding this requirement and the requirement as proposed has been retained in Section 250.24(a) of this final rule.

The second performance standard, *Information Dissemination*, required distributing agencies to provide recipient agencies with information needed for informed participation on the program. Distributing agencies were to provide program information relative to:

(1) Current program regulations;

(2) Summaries of commodity specifications;

(3) Results of any test evaluations and surveys;

(4) Advisory council membership recommendations;

(5) Recipes; and

(6) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications, submitting complaints and other written policy which affects program operations.

Five commenters were opposed to this performance standard and one commenter supported it. The commenter in favor of the standard supported it but said that in order to satisfy the

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requirement it was necessary for the FNSROs to furnish information in a timely manner. Those commenters who opposed the standard stated that compliance with the requirement was contingent upon receiving timely information from USDA, especially regarding information about stale, spoiled or out of condition donated food. One commenter recommended that FNS establish a standard for itself to respond in writing to distributing agencies within 30 days of receiving a complaint. The Department is aware that it must promptly furnish information regarding commodities which are found to be stale, spoiled, out of condition or not in compliance with specifications including procedures for replacement. Information is passed on to recipient agencies as soon as it is received so distributing agencies can take actions to alleviate the problem(s). The standard simply requires distributing agencies to establish procedures so when information is received from the Department, they can act immediately to correct the situation. The requirement in § 250.24(b) of this final rule remains as proposed.

The third performance standard, *Fiscal Responsibility*, required distributing agencies to maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices and Office of Management and Budget circulars. No comments were received regarding this section. However, the Department has noted that OMB circulars are not generally applicable to non-Federal grant funding. Therefore, reference to these circulars has been deleted in the final rule.

The fourth standard, *Ordering and Allocation*, required distributing agencies to ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usuable by recipient agencies. Distributing agencies were to be responsible for:

(1) Obtaining and utilizing semi-annual commodity acceptability information;

(2) Providing recipient agencies with information regarding commodity availability;

(3) Providing recipient agencies with information regarding commodity assistance levels;

(4) Ordering and allocating donated food based on participation data for those programs which serve meals;

(5) Ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by the recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values;

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food; and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quality, packaging and quantities.

Seven commenters were opposed to various provisions contained in this standard. One commenter recommended changing the word "allocating" to "offering." Five commenters stated that to enable distributing agencies to be responsive to recipient agency needs, the Department should establish practices and procedures to ensure that distributing agencies receive the commodities in the types and forms that will allow them to be responsive to recipient agency needs. One commenter recommended that language be added to require the vendor or the Department to reimburse the distributing agency or the recipient agency for storage and distribution costs associated with out-of-condition foods. Another commenter stated that the rules seemed to apply only to school food authorities. If all types of recipient agencies are to be included, the Department should establish entitlement rates for all programs.

The Department has made many improvements to commodity distribution programs over the past few years. Many of the changes to the ordering and allocation system have been made based on feedback from the distributing agencies. The Department is attempting to order donated food items as requested by the recipient agencies. It is also attempting to purchase food items in amounts requested and deliver the food in a timely manner so it can be utilized during the school year. This performance standard is designed to ensure distributing agencies provide food on an equitable basis and to give recipient agencies the greatest flexibility possible in ordering/requesting donated food. Concerning the comment requesting reimbursement of distribution and storage costs for out-of-condition foods, it is the Department's position that once a distributing agency accepts a commodity, the distributing agency is responsible for any storage and distribution costs for that commodity. In those instances where a distributing agency later attempts to revoke acceptance, the Department will consider claims for reimbursement of distribution and storage costs in accordance with principles of commercial law. For these reasons the Department continues to support this performance standard requirement as proposed.

The fifth standard, *Warehousing and Distribution*, required distributing agencies to use a warehousing and distribution system that is efficient, cost effective and responsive to the needs of recipient agencies. In addition, it required distributing agencies to encourage recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses. It required distributing agencies to solicit information regarding the individual delivery needs of recipient agencies and maintain distribution schedules which are equitable and reliable, recognizing hours of operation, holidays and vacations and other special needs of recipient agencies. This standard also required the distributing agencies to make donated food available at least monthly; however, the distributing agency would not be held responsible for delays in deliveries of donated food when the delays were due to late deliveries of donated food to the distributing agency by the Department.

Many of the comments received regarding this performance standard paralleled the comments received on § 250.14(a) of the proposed regulations regarding warehousing and distribution systems. Eight commenters were opposed to the standard as proposed and two commenters were in favor of the requirement. Those commenters who opposed the requirement stated that donated food does not have to be delivered monthly. These commenters stated that requiring monthly deliveries will add unnecessary costs. They stated that deliveries should be mutually agreed upon by the distributing agencies and the recipient agencies. One commenter supported the provision to impose minimum performance standards on the distributing agencies, placing emphasis on the basic services to be provided to recipient agencies. Another commenter supported the basic requirements of this performance standard but was opposed to the requirement for monthly deliveries. This commenter further stated that schools do not need deliveries during the summer. The commenter wanted the provision changes to require monthly deliveries during the school year only.

As discussed in connection with § 250.14(a), the Department did not intend to preclude a distributing agency and recipient agency from agreeing to less frequent distributions, such as school food authorities which do not need monthly deliveries when classes are not in session. Section 250.24(e) has been amended to clarify this point.

The Sixth performance standard, *Disposition of Damaged or Out-of-Condition Commodities*, required distributing agencies to establish a system for handling recipient agency complaints and to notify the Department of any commodity losses and to arrange for replacement of lost commodities.

One commenter supported the inclusion of this requirement in the regulation and four commenters opposed the requirement. Those who opposed the requirement did so stating that distributing agencies cannot arrange for commodity replacement without the Department's commitment to the system. These commenters wanted the rule changed to make the distributing agencies' responsibility to be contingent upon action by the Department to replace lost commodities. One commenter recommended that language be added to impose responsibilities and timeframes upon the Department for arranging for the replacement of donated food.

The Department is committed to arranging for replacing commodities that are delivered damaged or out-of-condition as provided for in § 250.13(g) of the interim rule published June 16, 1988 (53 FR 22469); however, there are circumstances where immediate replacement cannot be made. The Department will arrange for replacement commodities as soon as possible and continues to rely on distributing agencies to notify them of problems experienced in the replacement of commodities found to be damaged and/or out-of-condition. In § 250.24(f), the performance standard remains as proposed.

The seventh performance standard, *Processing*, required distributing agencies to administer an acceptable processing program. It also required distributing agencies to inform recipient agencies annually of the processing options available to them for facilitating their participation in local, State or National processing contracts. Distributing agencies were also to test end products prior to entering into processing contracts and to monitor the acceptability of processed end products.

Fifteen commenters opposed the provisions contained in this performance standard and six were in favor of the requirements. Those who supported the requirement stated that it was a good idea to inform all recipient agencies of the processing options available to them. These commenters further recommended creating a requirement that distributing agencies must negotiate Statewide contracts when at least 20 percent of the recipient agencies request a particular processed end product.

Those commenters which opposed the provisions contained in this performance standard objected to the requirement that distributing agencies be required to test processed end products. These commenters stated that the testing of end products should be the responsibility of the purchasing recipient agency. These commenters further stated that the State has neither the facilities nor the qualified staff required to test products. They stated that the ultimate test of a product is the students' acceptability of the product.

Although section 3(d)(5) of Public Law 100-237 specifically requires the testing of end products, the Department never intended for the distributing agency itself to have to test each and every end product approved under a processing contract. It was implied that recipient agencies could test the products and inform the distributing agency whether or not the products are acceptable. In § 250.24(g) the Department amended the requirement in this final rule to clarify that distributing agencies may delegate the testing of end products to the purchasing recipient agencies.

The Department has also made minor technical changes and reordered certain language in the final rule for purposes of clarification.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donation, Food processing, Grant programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR part 250 is amended to read as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79-396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16 Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1114(a), Pub. L. 97-98, 95 Stat. 1299 (7 U.S.C. 1431e); Title 11, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100-237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. In § 250.14, the section title is revised, paragraphs (a), (b), (c), (d), and (e) are redesignated (b), (c), (d), (e) and (f), respectively, and a new paragraph (a) is added to read as follows:

§ 250.14 Warehousing, distribution and storage of donated foods.

(a) *Standards for Warehousing and Distribution Systems*—(1) *Use of cost efficient and effective facilities.* Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. For the purpose of this part, commercial facilities are defined as enterprises that provide commercial warehousing services or commercial delivery services, or those commercial enterprises that provide both warehousing and delivery services.

(2) *Timeframes for evaluation.* All distributing agencies shall evaluate their current warehousing and distribution systems. Initial evaluations shall be submitted to the FNSRO by June 30, 1990. Subsequent evaluations of noncommercial systems shall, at a minimum, be submitted to FNS every three years by March 31.

(3) *Evaluation of current systems.* The evaluation of the system in place shall, at a minimum, include the following information:

(i) A description of the principal warehousing/delivery techniques used by the distributing agency. The description should include:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered (to the loading dock or placement in the storeroom); and

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(ii) The system for recipient agencies to order specific amounts of food from available inventory; and

(iii) An estimate of all costs that will be incurred in administering the Food Distribution Program for the upcoming school year. These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and to deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses. These expenses shall include fringe benefits, travel expenses, rent, utilities, accounting/auditing services to recipient agencies such as the costs for administering and monitoring the State's processing program, and technical assistance workshops.

(4) *Comparison of existing system with commercial systems.* All distributing agencies which do not use commercial facilities for a basic level of warehousing and distribution services shall compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system for the upcoming school year.

(i) The cost comparison shall be made between the cost of providing a basic level of service under its current system and the cost of obtaining an equivalent level of service from commercial facilities. This basic level of service shall consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites and shall include monthly deliveries of donated food to all recipient agencies except those that have agreed to less frequent deliveries.

(ii) A distributing agency may base its cost comparison on a level of service in excess of the basic level and/or on services not currently provided. In all cases, the comparison must be made on the costs of providing a comparable level of service under the existing system (as identified in § 250.14(a)(2)) versus a commercial system.

(iii) If a distributing agency is unable to locate any commercial facilities expressing interest in providing the basic level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities.

(iv) All initial data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities shall be submitted to the FNSRO by June 30, 1990. Subsequent cost comparisons shall, at a minimum, be submitted to FNS once every three years by March 31.

(5) *Approval to use other systems.* Distributing agencies that do not implement a commercial warehousing and distribution system shall apply to the FNSRO for approval to use other facilities and must demonstrate that other facilities are more cost effective and efficient. All requests for a waiver shall be accompanied with a full evaluation of the existing system complete with cost comparison data. Each request will be considered on a case by case basis. Initial requests for approval of alternative systems shall be submitted to the FNSRO by June 30, 1990. Subsequent requests shall, at a minimum, be submitted to the FNSRO once every three years by March 31.

(6) *System implementation.* (i) Distributing agencies shall implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1991. Unless otherwise approved by the FNSRO, subsequent to July 1, 1991, a distributing agency shall convert to a commercial system within six months of:

(A) The date of submission of evaluation and cost comparison data indicating that a commercial system is more cost effective and efficient (if no request for approval of an alternate system is made); or

(B) The date of the denial of a request to use an alternative system.

(ii) If at any time FNS determines that the warehousing and distribution system in place is not cost effective or efficient, the distributing agency will be required to reevaluate its system (including a cost comparison and request for continued approval to use an alternative system) in accordance with this subsection within 90 days of notification by the FNSRO.

(7) *Revisions in system.* All distributing agencies (using either commercial or noncommercial systems) shall request approval from the FNSRO at least 90 days in advance of any planned reduction in the level of service provided or any increase in distribution charges beyond normal inflation. If FNS determines the proposed changes are inappropriate, FNS may require the distributing agency to submit additional justification, deny the request, or request a reevaluation of the system in accordance with paragraph (a)(6)(ii) of this section.

* * * * *

3. In § 250.15, paragraph (a)(1) is revised to read as follows and paragraph (a)(2) is amended by removing the first part of the first sentence which reads "For the period May 1, 1983 through September 30, 1988" and by capitalizing the next word "Whenever."

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency, except as provided in paragraph (a)(2) of this section.

(i) Distributing and subdistributing agencies assessing distribution charges shall submit a description of their system with all data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval. The initial description and data shall be submitted by June 30, 1990. Updates to this information shall, at a minimum, be submitted to the FNSRO for approval every three years by March 31.

(ii) At least 90 days before increasing distribution charges beyond normal inflation, the distributing/subdistributing agency shall submit to the FNSRO a description of the change together with all data used to calculate the change. FNS will take action on the proposed increase in accordance with paragraph (a)(1)(v) of this section.

(iii) Allowable costs include but are not limited to those program costs referenced in paragraph (f)(2) of this section, i.e. transportation, storage and handling of donated foods, salaries of persons directly connected with the administration of the program and other program related expenses. Examples of other program related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the cost for administering and monitoring the State's processing program, and technical assistance workshops.

(iv) Distribution charges shall not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative Expense (SAE) funds, State or local appropriated funds or any other funds available to the distributing or subdistributing agency to administer the program. Distribution charges shall not be based on a percentage of the value of the commodities distributed.

(v) FNS shall review the information and inform the distributing agency of the appropriateness of its distribution charges. If it is determined that a distributing agency's proposed distribution charges are excessive or incorporate inappropriate costs, the distributing/subdistributing agency will be required to adjust the distribution charges to reflect an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges are essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with services provided.

(vi) Distribution charges, including any excess distribution charges which may accrue (as defined in paragraph (f)(4) of this section) shall be used in accordance with provisions of paragraph (f) of this section.

* * * * *

4. In § 250.19, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 250.19 Reviews.

* * * * *

(c) *Corrective action plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FNSRO. The plan shall be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days after the distributing agency receives notification from the FNSRO of a deficiency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FNSRO.

* * * * *

5. A new § 250.24 is added to subpart B to read as follows:

§ 250.24 Distributing agency performance standards.

This section establishes basic performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The basic standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with all information needed for informed participation in the program. Distributing agencies shall provide program information relative to:

(1) Current program regulations,

(2) Summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets,

(3) Results of any test evaluations and surveys,

(4) Advisory council membership recommendations,

(5) Recipes, and

(6) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices. Distributing agencies shall submit information relative to distribution charges to FNS in accordance with § 250.15(a).

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for:

(1) Obtaining and utilizing semi-annual commodity acceptability information in accordance with § 250.13(k);

(2) Providing recipient agencies with information regarding commodity availability;

(3) Providing recipient agencies with information regarding commodity assistance levels;

(4) Ordering and allocating donated food based on participation data for those programs which serve meals;

(5) Ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values (§ 250.13(a)(5));

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with § 250.48(c); and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quantity, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to needs of recipient agencies in accordance with § 250.14(a). In addition, distributing agencies shall:

(1) Work with recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses;

(2) Solicit information and recommendations regarding the individual delivery needs of recipient agencies;

(3) Maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies;

(4) And make donated food available at least monthly to all recipient agencies except those that have agreed to less frequent deliveries (§ 250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) and arranging for the replacement of lost commodities in accordance with § 250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with § 250.30. In addition, distributing agencies shall inform recipient agencies

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annually of processing options available to them in facilitating participation in State or National processing contracts. Prior to entering into a processing contract, distributing agencies shall test end products. The end product testing may be delegated to the purchasing recipient agency provided that test results are reviewed by the distributing agency. Distributing agencies shall monitor the acceptability of processed end products as required in § 250.30(b)(1).

Dated: October 10, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-24455 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-182]

Mediterranean Fruit Fly; Additions to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 11, 1989. Consideration will be given only to comments received on or before December 18, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-182. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the Federal Register on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the Federal Register on September 20, 1989 (54 FR 38643-38645, Docket Number 89-169), we amended the Mediterranean fruit fly regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. These areas remain infested with the Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles and San Bernardino Counties in California.

Specifically, inspectors collected more than 69 adult Mediterranean fruit flies in Los Angeles County, near Valinda, Baldwin Park, and Whittier, California, during the period of September 19, 1989, to October 3, 1989. During this period, inspectors also found 33 Mediterranean fruit fly larvae infesting fruit in the same area. In addition, one mated female Medfly was found near Alta Loma in San Bernardino County.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as quarantined areas the following areas in Los Angeles and San Bernardino Counties, California:

Los Angeles County

That portion of the county in the Valinda, Baldwin Park, and Whittier areas bounded by a line drawn as follows: Beginning at the intersection of Santa Anita Avenue and Duarte Road; then east along this road to its intersection with Mayflower Avenue; then north along this avenue to its intersection with Interstate Highway 210; then east along this highway to its intersection with Grand Avenue; then south along this avenue to its intersection with Valley Boulevard; then south along this boulevard to its intersection with Brea Canyon Road; then south along this road to its intersection with State Highway 60; then west along this highway to its intersection with Nogales Street; then south along this street to Colima Road; then west along this road to its intersection with Fullerton Road; then south along this road to the northern city limits of La Habra Heights; then northwest along the city limits to its intersection with Hacienda Boulevard; then south along this boulevard to its intersection with the Los Angeles/Orange County line; then west and south along this county line to its intersection with La Habra Boulevard; then west along this boulevard to its intersection with Leffingwell Road; then southwest along this road to its intersection with Imperial Highway; then west along this highway to its intersection with Interstate Highway 5; then north along this highway to its intersection with Garfield Avenue; then north along this avenue to its intersection with Whittier Boulevard; then east along this boulevard to its intersection with Wilcox Avenue; then north along this avenue to Pomona Boulevard; then east along this boulevard to its intersection with Potrero Grande Drive; then east along this drive to its intersection with San Gabriel Boulevard; then north along this boulevard to its intersection with Garvey Avenue; then east along this avenue to its intersection with Santa Anita Avenue; then north along this avenue to the point of the beginning.

San Bernardino County

That portion of the county bounded by a line beginning at the intersection of the Los Angeles and San Bernardino County line with the Los Angeles National Forest boundary; then east along the Los Angeles National Forest boundary to its intersection with the San Bernardino National Forest boundary; then east and south along this boundary to its intersection with Rochester Avenue; then south along this avenue to its intersection with 8th Street; then west along this street to its intersection with Milliken Avenue; then south along this avenue to its intersection with Interstate Highway 10; then west along this highway to its intersection with Holt Boulevard; then west along this boulevard to its intersection with Central Avenue; then north along this avenue to its intersection with Foothill Boulevard; then west along this boulevard to its intersection with the San Bernardino County line; then north along this county line to the point of beginning.

There does not appear to be any reason to designate other additional quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles and San Bernardino Counties, California. Approximately 345 entities will be affected by this rule. All would be considered small entities. They include fruit/produce vendors, nurseries, grape vineyards, citrus groves, community gardens and flea markets. Specifically, in Los Angeles County the following entities would be affected by this rule: 110 growers of avocados, 50 nurseries, 30 fruit stands, 1 swap meet, and 6 growers of persimmons. In San Bernardino County the following entities would be affected: 60 nurseries, 3 growers of tomatoes, peppers, and apples, 2 olive processors, 2 hobbyist wineries, and 80 growers with a total of 600 acres of citrus and grapes. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 301.78-3(c), the designation of the quarantined area is amended by adding the following immediately before the description for Santa Clara County:

§ 301.78-3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Valinda, Baldwin Park, and Whittier areas bounded by a line drawn as follows: Beginning at the intersection of Santa Anita Avenue and Duarte Road; then east along this road to its intersection with Mayflower Avenue; then north along this avenue to its intersection with Interstate Highway 210; then east along this highway to its intersection with Grand Avenue; then south along this avenue to its intersection with Valley Boulevard; then south along this boulevard to its intersection with Brea Canyon Road; then south along this road to its intersection with State Highway 60; then west along this highway to its intersection with Nogales Street; then south along this street to Colima Road; then west along this road to its intersection with Fullerton Road; then south along this road to the northern city limits of La Habra Heights; then northwest along the city limits to its intersection with Hacienda Boulevard; then south along this boulevard to its intersection with Los Angeles/Orange County line; then west and south along this county line to its intersection with La Habra Boulevard; then west along this boulevard to its intersection with Leffingwell Road; then southwest along this road to its intersection with Imperial Highway; then west along this highway to its intersection with Interstate Highway 5; then north along this highway to its intersection with Garfield Avenue; then north along this avenue to its intersection with Whittier Boulevard; then east along this boulevard to its intersection with Wilcox Avenue; then north along this avenue to Pomona Boulevard; then east along this boulevard to its intersection with Potrero Grande Drive; then east along this drive to its intersection with San Gabriel Boulevard; then north along this boulevard to its intersection with Garvey Avenue; then east along this avenue to its intersection with Santa Anita Avenue; then north along this avenue to the point of the beginning.

San Bernardino County

That portion of the county bounded by a line beginning at the intersection of the Los Angeles and San Bernardino County line with the Los Angeles National Forest boundary; then east along the Los Angeles National

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Forest boundary to its intersection with the San Bernardino National Forest boundary; then east and south along this boundary to its intersection with Rochester Avenue; then south along this avenue to its intersection with 8th Street; then west along this street to its intersection with Miliken Avenue; then south along this avenue to its intersection with Interstate Highway 10; then west along this highway to its intersection with Holt Boulevard; then west along this boulevard to its intersection with Central Avenue; then north along this avenue to its intersection with Foothill Boulevard; then west along this boulevard to its intersection with the San Bernardino County line; then north along this county line to the point of beginning.

* * * * *

Done in Washington, DC, this 11th day of October 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24448 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Part 1980

Disaster Assistance for Rural Business Enterprises

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to provide procedures for guaranteeing loans to rural businesses impacted by drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989. This action is needed to implement section 401 of the Disaster Assistance Act of 1989. The intended effect of this action is to provide loan guarantees to businesses in rural areas which suffered losses or distress as a result of drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989.

EFFECTIVE DATE: October 17, 1989. Written comments must be received on or before December 18, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, room 6348 South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Loan Specialist, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940 subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Discussion of Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The purpose of this rule is to provide assistance to businesses which have been distressed by natural disasters that have occurred in 1988 or 1989.

Especially as a result of drought across most of the country, an emergency situation exists. This interim rule is a response to an existing situation and, while this Department is reluctant to short circuit prior public comment, it is certain that failure to implement a mandated program at once will result in significant economic harm to the public.

FmHA believes it is essential that this assistance be made available as soon as possible before it is too late for the businesses to recover. The typical drought-impacted business in rural communities was only beginning to recover from the serious agricultural and other physical and economic problems of the preceding decade. Forbearing creditors, aware that any business depends on its customers' economic health, can forbear just so long. Rural businesses and their creditors must plan for the immediate economic future. Without immediate implementation of programs of financial assistance, there is no reason to assume the creditors of rural businesses devastated by the blow to the agricultural and other rural business sectors will—or can—continue to forbear.

The legislative history of Disaster Assistance Act of 1989 (the Act) further indicates that many farm related businesses, such as certain small feed-lot operations, were deemed ineligible for assistance under either the disaster loan provisions administered by the Department of Agriculture or those administered by other Federal agencies. Therefore, in keeping with the intent of the committee, the proposed regulation shall make every effort to assist farm related businesses, "that are ineligible for other Federal disaster loan programs, ineligible for disaster loans when these businesses have suffered drought related losses."

The legislative history of the Act indicates that Congress felt that quick response is needed to implement this disaster program in order to alleviate the effects of the disasters affecting rural businesses. The Congress has stressed the importance of getting the regulations written and the payments made as quickly as possible.

Public comments will be accepted for 60 days and later revisions will be made to this interim rule if justified on the basis of comments received. This procedure will make assistance available now. The usual course of a proposed rule, comment period, comment analysis, and a final rule incorporating changes would inevitably mean a 60 to 90 day delay in getting assistance where it is most needed. Those seeking to comment and make suggestions for improvement should be advised that final action will occur as promptly as possible after the 60 day comment period.

Discussion of the Rule

FmHA is implementing section 401 of the Disaster Assistance Act of 1989 by adding an appendix for this new program at the end of its Business and Industry loan program. The loan guarantees authorized and implemented by this action will be called Disaster Assistance for Rural Business Enterprises. These loans will be available to generally the same type of entities as Business and Industry loans for generally the same type of loan purposes as Business and Industry loans, through generally the same type of lenders. The major differences between Disaster Assistance for Rural Business Enterprises and Business and Industry loans are as follows:

(1) Disaster Assistance for Rural Business Enterprises loans must assist in alleviating financial distress caused to rural business entities by drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989 or assist such entities which refinance or restructure debt as the result of losses incurred because of such natural disasters

(2) Disaster Assistance for Rural Business Enterprises loans for refinancing may allow an existing lender to bring that part of its existing unguaranteed debt that has been adversely affected by a disaster under the new guarantee. In no case will the guarantee exceed 90 percent of loan principal and interest or $2.5 million whichever is less.

(3) The maximum amount of Disaster Assistance for Rural Business Enterprises loans to any one borrower is $10,000,000.

(4) The maximum loss payment on loans to any one borrower under Disaster Assistance for Rural Business Enterprises loan program is limited to $2,500,000 or 90 percent of principal and interest, whichever is less.

(5) The requirement for borrower's equity contribution to the business may be somewhat smaller for a Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loan than for a Business and Industry loan, although that equity must be positive and must be such that when considered with other credit factors, repayment of the loan and continued success of the business operation are reasonably assured.

(6) DARBE loan proceeds may be used for hotels, motels, tourist and recreation facilities, and agricultural production (production agriculture) entities.

(7) Subsequent DARBE guaranteed loans will not be made due to the maximum loss coverage of $2,500,000.

(8) Webster's Ninth New Collegiate dictionary defines production as "the making of goods available for use" and agriculture as "the science or art of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation of these products for man's use and their disposal." It follows then, that agriculture production means cultivating the soil, producing crops and raising livestock to make goods, and production agriculture means the making of goods through cultivating the soil, producing crops and raising livestock. FmHA has concluded that there is no substantial difference in meaning between the terms agriculture production as used in its regulations for B&I guaranteed loans and production agriculture. Additionally, this definition appears to fulfill Congress's concern as expressed in the legislative history of the Act that certain businesses have been precluded guarantee assistance in other programs. Accordingly, FmHA has adopted this definition coupled with the provise that entities involved in agricultural production are eligible for DARBE assistance so long as these entities are not eligible for other assistance under farmer program loans. FmHA feels the exclusion from DARBE assistance of projects eligible under farmer program loans is reasonable because assistance will still be rendered but under a program which has a larger financial assistance resources than DARBE. In addition, DARBE should not duplicate existing FmHA programs.

Generally, except where the Disaster Assistance Act mandates otherwise, FmHA has sought to minimize differences between these loans and business and Industry loans so that field staff, lenders, and other already familiar with B&I guaranteed loans will be able to handle these loans without any significant training or research. This will expedite the provision of needed assistance.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, title 7, chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Pub. L. 100-387; Pub. L. 101-82; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.6(a) is revised to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

Assignment Guarantee Agreement (Form FmHA 449-36, 1980-70 or 1980-73). The signed agreement among FmHA, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Borrower. (B&I loans only). All parties liable for the loan/line of credit or any part thereof. For Farmer Program loans, see § 1980.106(b)(4) of Subpart B of this part for the definition of borrower.

Conditional Commitment for Guarantee (Form FmHA 449-14). FmHA's advice to the lender that the material it has submitted is approved subject to the conditions and requirements set forth in "Conditional Commitment for Guarantee."

Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA 1980.15). FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Contract of Guarantee."

Contract of Guarantee (Line of Credit) (Form FmHA 1980-27). The signed commitment issued by FmHA setting forth (specifically or by reference) the terms and conditions of the gauaranteed line of credit.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized for section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See subpart E of this part and its

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appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 188 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See Subpart E of this part and its appendices, especially appendix I, containing additional regulations for these loans.

Finance Office. The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103 (Phone Commercial 314–549–4400 or FTS 262–4400).

FmHA. The United States of America, acting through the Farmers Home Administration, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA offices or official should be read as prefaced by "FmHA."

Guaranteed line of credit. Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in a Form FmHA 1980–27, "Contact of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Lender's Agreement (Line of Credit)."

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35 (or 1980–68 or 1980–71), "Lender's Agreement," and for which FmHA has issued a Form FmHA 449–34 (or 1980–69 or 1980–72), "Loan Note Guarantee."

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a holder when Form FmHA 449–36 (or 1980–70 or 1980–73), "Assignment Guarantee Agreement," is used.

Insured loans. A loan directly made and serviced by FmHA as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

Joint financing. Occurs when two or more lenders (or any combination of such lenders) makes separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate subpart. The lender is also the party requesting a guarantee.

Lender's Agreement (Form FmHA 449–35 (or 1980–68 or 1980–71) or Form FmHA 1980–38). The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for selected farmer program loans only.

Line of credit agreement. An evidence of debt in those instances in which a lender extends a line of credit to a borrower.

Loan Note Guarantee (Form FmHA 449–34 (or 1980–69 or 1980–72)). The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

Market value. The amount for which property would sell for its highest and best use at voluntary sale.

Note: An evidence of debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

* * * * *

3. Section 1980.6(b) is amended by adding after the paragraph that begins with the abbreviation, "B&I," the following new paragraph to read as follows:

§ 1980.6 Definitions and abbreviations.

* * * * *

(b) * * *

DARBE—Disaster Assistance for Rural Business Enterprises guaranteed loans.

* * * * *

4. Section 1980.20 is amended by revising paragraph (a) to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be advised in writing on Form FMHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of subpart E of this part. The maximum percentage of guarantee for all other loans covered by this section will be 90 percent. Also, except in regards to D&D and DARBE guaranteed loans (see subpart E of this part), the maximum loss covered by the Loan Note Guarantee, Form FmHA 1980–72 or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of:

* * * * *

5. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA approval official. The determination will be based upon FmHA's completion of the appropriate environmental review and Form FmHA 1940–20, "Request for Environmental Information," when required as set forth in subpart G of part 1940 of this chapter

and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA is responsible for assuring that the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and subpart G of part 1940 of this chpater are met.

6. Section 1980.83(b) is amended by adding to the end of the list of forms the following to read as follows:

§ 1980.83 FmHA forms.

* * * * *

FmHA

Form No.	Title of form	Purpose and code*
1980–71	Lender's agreement—drought and disaster guaranteed loan.	Used to establish contract between FmHA and lender on a DARBE guaranteed loan. (2)
1980–72	Loan note guarantee—drought and disaster guaranteed loan.	Used to express terms of the guarantee of a DARBE guaranteed loan. (1)
1980–73	Assignment guarantee—agreement—disaster assistance for rural business enterprises guaranteed loan.	Used to express terms of the guarantee and the nature and limits of contractual conditions when a holder buys a guaranteed loan. (1)

Code: (1) FmHA use only, (2) FmHA and lender use, (3) Lender use only.

Subpart E—Business and Industrial Loan Program

7. Section 1980.401 is amended by revising paragraph (c) to read as follows:

§ 1980.401 Introduction.

* * * * *

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

* * * * *

8. Section 1980.402 is amended by adding a new definition after the paragraph beginning with the words "Development cost," to read as follows:

§ 1980.402 Definitions.

* * * * *

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially appendix K, containing additional regulations for these loans.

* * * * *

9. Section 1980.495 is amended by revising the introductory text and by adding a new paragraph (k) to read as follows:

§ 1980.495 FmHA forms and guides.

The following FmHA forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

* * * * *

(k) "Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises" and Forms FmHA 1980–71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," 1980–72 "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," and 1980–73 "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans" are referred to as "Appendix K."

§ 1980.497 [Amended]

10. Section 1980.497(a) is amended in the first sentence by changing the phrase "B&I and D&D" to read "B&I, D&D, and DARBE."

11. In appendix C of subpart E, paragraph (14) is revised to read as follows:

Appendix C—Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities

* * * * *

(14) Alcohol Fuel Production Facilities are eligible for assistance under the Drought and Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

12. Appendix K of subpart E of part 1980 is added to read as follows:

Appendix K—Regulations for Loan Guarantees for Disaster Assistance

For Rural Business Enterprises

A. In general

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or $2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, freeze, storm, excessive moisture, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the **Federal Register** following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA 1980–71, "Lender's Agreement—Disaster Assistance for Rural

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Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449-35, "Lender's Agreement."

(2) Form FmHA 1980-72, "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449-34, "Loan Note Guarantee."

(3) Form FmHA 1980-73, "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449-36, "Assignment Guarantee Agreement."

B. Loan purposes

Loan proceeds may be used for purposes described in § 1980.411(a), except in lieu of the debt refinancing requirements in § 1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in FmHA Instruction 1980-E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for FmHA farmer program loans because the entity exceeds the definition of a family-size farm as defined by FmHA Instruction 1941-A, § 1941.4(d).

C. Ineligible loan purposes

FmHA Instruction 1980-E, § 1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in § 1980.412(e). DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other FmHA-type farm loan programs.

D. Transactions which will not be guaranteed

In addition to transactions listed in FmHA Instruction 1980-E, § 1980.413, except for § 1980.413(a)(3), FmHA will not make DARBE guaranteed loans if the completed application is not received by FmHA on or before September 30, 1991, nor will FmHA make subsequent DARBE guarantee loans.

E. Borrower equity requirements

See FmHA Instruction 1980-E, § 1980.441. In lieu of the borrower equity requirements in § 1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of § 1980.441(c) apply to DARBE guaranteed loans.

F. Filing and processing preapplications and applications

See FmHA Instruction 1980-E, § 1980.451. All requirements of § 1980.451 remain in effect. In addition to the information required as part of a preapplication under § 1980.451(f), and unless previously submitted as a part of an application under § 1980.451(i) evidence is required which demonstrates to FmHA's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

G. Loan guarantee limit

The provisions of FmHA Instruction 1980-E, § 1980.420 shall not apply. While the total principal amount of DARBE guaranteed loans to any one borrower cannot exceed $10,000,000, the maximum loss covered by the Form FmHA 449-34, "Loan Note Guarantee," can never exceed the percentage of guarantee multiplied by the unpaid principal and interest amount of the loan as evidenced by the note(s) or by assumption agreement(s), or $2,500,000, whichever is the lesser amount.

H. Percentage of guarantee

The provisions of FmHA Instruction 1980-E, § 1980.420 will apply to DARBE guaranteed loans.

I. Lender's existing unguaranteed exposure

The provisions of § 1980.452 ADMINISTRATIVE C. 1(d) do not apply.

J. No direct or insured loans

FmHA Instruction 1980-E, §§ 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are FmHA guaranteed loans. FmHA has no authority to make DARBE loans directly to borrowers.

K. Sodbuster and Swampbuster requirements

The provisions of FmHA Instruction 1940-G, exhibit M, will apply to loans made to rural business enterprises engaged in agricultural production.

Exhibit A to Appendix K

Lender's Agreement—Disaster Assistance for Rural Business Enterprise (DARBE) Guaranteed Loans:

Type of loans: _____
Applicable 7 CFR Part 1980 Subpart _____
FmHA Loan Ident. No. _____

_____
(Lender) of

_____
Has made a loan(s) to

_____
(Borrower)

_____
In the principal
As evidenced by _____ Note(s)
(include Bond as appropriate) described as follows: _____
_____
_____
_____
_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee—DARBE" (Form FmHA 1980-72) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The Parties Agree:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness. The maximum loss payment under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

II. Full Faith and Credit. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0029), Washington, D.C. 20503.

III. Lender's Sale or Assignment of Guarantee Loan—DARBE. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed, or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 1980-73, "Assignment Guarantee Agreement—DARBE." Holders(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 1980-72, "Loan Note Guarantee—DARBE," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 1980-72, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—DARBE which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement, and the FmHA program regulations found in the applicable subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loans funds will be used for the purposes authorized in the applicable subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower. .

VIII. Lender certifies that it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written

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approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. *Lender's servicing responsibilities include, but are not limited to:*

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. *Assuring that adequate insurance is maintained.* This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. *Assuring that:* taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other ligitation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at each time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report." For Farm Ownership, Soil and Water, and Operating loans, Form FmHA 1980–41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B § 1980.126.

X. Default. A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's Lender's, and the Holder(s) approval provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less then 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guarantee loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or 90% of principal and interest, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder's demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of the FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interest necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquified. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale

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of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA regulations.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved.

a. If the loss is greater than the estimated loss payment, FmHA will send the original to the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee—DARBE.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to advances made for taxes annual assessments, ground rent hazard of flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery. After a loan has been liquidated and a final loss has been paid to FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases. Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA 449–30, lines 13 and 14.

XVI. Bankruptcy. A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.*

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. Debt Write-down. For Farm Ownership, Soil and Water, and Operating loans only, refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVIII. Other Requirements. This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XIX. Execution of Agreements. If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA with respect to the execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XX. Notices. All nonces and actions will be initiated through FmHA for _____ (State) with mailmg address at the date of this instrument _____

Dated this _____ day of _____, 19 ____.

LENDER:

ATTEST: *(SEAL)* _____
By _____
Title _____
United States of America
Farmers Home Administration
By _____
Title _____

Exhibit B to Appendix K

USDA-FmHA
Form FmHA 1980–72
(9–89)
Type of Loan: _____
Applicable 7 C.F.R. Part 1980
Subpart _____

Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise (DARBE) Guaranteed Loans

Borrower _____
Lender _____
Lender's Address _____
State _____
County _____
Date of Note _____
FmHA Loan Identification No. _____
Lender's IRS ID Tax No. _____
Principal Amount of Loan _____
$ _____

The guaranteed portion of the loan is $_____ which is _____ (_____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

Lender's identifying number	Face amount	Percent of total face amount	Amount guaranteed
	$		$
Total	$	100%	$

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, P.L. 93–357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, P.L. 95–334), Title V of the Housing Act of 1949 (42 U.S.C. 1471 et. seq.), or Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or the maximum loss payment under the Disaster Assistance for Rural Business Enterprise Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. The maximum loss payment under the Disaster Assistance for Rural Business Enterprise Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when

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Form FmHA 1980–73, "Assignment Guarantee Agreement—DARBE," is used.

Definition of Lender. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

1. Loan Servicing. Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has acutal knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments. Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee. For loans covered by 7 CFR part 1980, Subpart H, the Holder may designate the payee when an Individual Certificate is issued.

6. Protective Advances. Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee-DARBE.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s) FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. Loan Subsidy.

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of _____ percent per year. Payments will be made annually.

15. Notices.

All notice and actions will be initiated through the FmHA _____ for _____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America
Farmers Home Administration
By: _____

_____

(Date)
Title: _____
Assumption Agreement by _____
Dated _____, 19___
Assumption Agreement by _____
Dated _____, 19___

* If not applicable delete paragraph prior to execution of this instrument.

Exhibit C to Appendix K

Assignment Guarantee Agreement Disaster Assistance for Rural Business (DARBE) Guaranteed Loan

Type of Loan: _____
FmHA Loan Identification Number _____
Applicable 7 CFR Part 1980 Subpart _____

_____

of _____
(Lender) has made a loan to _____
in the principal amount of $ _____ as evidenced by a note(s) dated _____.
The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA 1980–72) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or 90% of principal and interest, whichever is less.

_____

of _____
(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises are attached hereto as a part hereof.

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is $ _____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $ _____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. For loans covered by 7 CFR Part 1980, Subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable Subpart of 7 CFR 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement Disaster Assistance for Rural Business Enterprises attached to or relating to a note which provides for payment of interest on interest is void.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 1980–73 to effectuate the transfer.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, D.C. 20503.

7. Repurchase by the Lender (Defaults). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. Purchase by FmHA. If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within 30 days after

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written demand to FmHA from the Holder. The Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises properly endorsed to FmHA or the original of the Assignment Guarantee Agreement Disaster Assistance for Rural Business Enterprises properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Notices. All notices and actions will be initiated through the FmHA _____ for _____ (state) with mailing address at the date of this assignment: _____

Dated this _____ day of _____, 19___.

_____ Attest: *(SEAL)*

Lender:
Address:
By _____
Title _____

Holder:
Address:

_____ Attest: *(SEAL)*

By _____
Title _____

United States of America
Farmers Home Administration
Address: _____

By _____
Title _____

Dated: October 10, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-24537 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 2003

Authority To Administer Disaster Assistance for Rural Business Enterprises; Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to designate the Assistant Administrator-Community and Business Programs as the official within the organization of Farmers Home Administration responsible for administration of Disaster Assistance for Rural Business Enterprises (DARBE) Guaranteed Loans made available in section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101-82) and to further designate the Business and Industry Division as the division responsible for overseeing the making and servicing of DARBE guaranteed loans. Authority to administer these loan guarantees has been delegated by the Secretary of Agriculture to the Under Secretary for Small Community and Rural Development and redelegated to the Administrator of Farmers Home Administration.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Loan Specialist, Farmers Home Administration, USDA, Room 6321-S, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION: Farmers Home Administration responsibility for administration of guarantees of loans to rural business entities to further rural development and to save and create jobs in rural areas has been located in the Assistant Administrator-Community and Business Programs. The Administrator, FmHA, having been delegated responsibility for the guarantee of loans to rural business entities for disaster relief (Disaster Assistance for Rural Business Enterprises Guaranteed Loans), locates that authority in the Assistant Administrator-Community and Business Programs and, within his functional area, in the Business and Industry Division.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comments is not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

The Business and Industry program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422. The Business and Industry program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

List of Subjects in 7 CFR Part 2003

Organization and functions (government agencies).

Accordingly, part 2003, title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Public Law 100-82, 7 CFR 2.83 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Exhibit A to subpart A of part 2003 is amended by revising paragraph 1 under item "07 02 03 0003 Business and Industry Division" to read as follows:

Exhibit A—Department of Agriculture, Farmers Home Administration

• • • • •

07 02 03 0003 Business and Industry Division

• • • • •

1. Implements current and long range plans, policies and procedures necessary for the efficient and orderly management of a nationwide program of business and industry loans and grants, including a program of guaranteed loans to assist rural business entities adversely impacted by certain natural disasters.

• • • • •

Dated: October 3, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-24538 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-11-AD; Amdt. 39-6357]

Airworthiness Directives; Beech 90, 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech 90, 200 and 300 Series airplanes, which requires a determination if Scotch foam was installed in either aileron at manufacture and, if present, removal of the Scotch foam. This action is necessary to preclude possible aileron flutter due to the foam absorbing water which, in turn, could create an unstable aileron balance condition.

EFFECTIVE DATE: November 17, 1989.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD.

ADDRESSES: Beech Service Bulletin No. 2256, dated November 1988, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection for, and removal of Scotch foam from the ailerons on certain Beech 90, 200 and 300 Series airplanes was published in the **Federal Register** on July 26, 1989 (54 FR 31049). The proposal resulted from the determination that Scotch foam, which was used in the manufacture of ailerons on certain Beech 90, 200, and 300 Series airplanes, could absorb moisture to an extent that aileron balance would be driven out of acceptable limits. As a result, Beech issued Service Bulletin No. 2256 in November 1988, which calls for removal of Scotch foam from certain serial numbers of the affected models. The Service Bulletin also advises that any ailerons purchased from Beech for these models between January 1, 1985, and March 11, 1988, may have Scotch foam installed.

By letter dated March 14, 1989, to the FAA, Beech supplied analytical data which shows the effects of aileron static balance on flutter speed. The data shows that if an aileron is balanced to its aft limit, then a small amount of weight aft of the hinge line can cause an unsafe condition. The Scotch foam, which is located aft of the hinge line, can provide this weight change by absorbing water. The flutter analysis data indicate 2.0 ounces of water distributed aft of the hinge line could deplete the available flutter margin. This is not free water, but water trapped in the Scotch foam. Although no instances of aileron flutter on affected airplanes have been reported, the potential for such a condition has been predicted analytically. Therefore, an AD was proposed to require removal of Scotch foam from ailerons wherever found.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editorial corrections.

The FAA has determined that this regulation only involves 183 airplanes at an approximate one-time cost of $360 or a total one-time fleet cost of $65,580. The cost is so small that compliance with the AD will not have a significant financial impact on any small entities owning affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location

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provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to 90, 200 and 300 Series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible aileron flutter, accomplish the following:

(a) For Models C90A (S/N LJ-1132) through LJ-1167), B200 (S/N BB-1246 through BB-1285 except BB-1272), 300 (S/N FA-91 through FA-140 except FA-120 and FA-128), A200CT (S/N BP-59 through BP-83), and B200C (S/N BP-64 through BP-66 and BV-1 through BV-8), inspect each aileron using the tap procedure in Beech Service Bulletin No. 2256, dated November 1988. If this inspection shows the presence of foam, prior to further flight remove the foam in accordance with the procedures in the above Service Bulletin.

(b) For all other affected airplanes, check the airplane records to determine if any aileron has been replaced for any reason subsequent to January 1, 1985. If so, inspect the aileron using the tap procedure in Beech Service Bulletin No. 2256. If this inspection shows the presence of foam, prior to further flight remove the foam in accordance with the procedures in the above Service Bulletin.

Note 1: If the applicability of paragraph (b) is uncertain, perform a "tap test" on each area between the rivet rows along the aft 8.0 inches of the aileron skins. Use care in tapping to reduce the possibility of chipping the paint.

(1) A tinny, hollow sound indicates an acceptable area.

(2) A solid, heavy sound indicates that Scotch foam is present and must be removed.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, KS 67201-0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 17, 1989.

Issued in Kansas City, Missouri, on October 4, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24407 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-07]

Alteration of Control Zone; Elmira, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces that amount of controlled airspace required to contain instrument approaches to the Elmira/Corning Regional Airport (formerly known as the Chemung County Airport), Elmira, New York. In addition, the control zone description is being updated to reflect the current airport name. This action reduces the amount of controlled airspace for the Elmira, NY Control Zone.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone established at the Elmira/Corning Regional Airport, Elmira, New York (54 FR 31696). The proposed action would eliminate that amount of airspace which was required to accommodate Standard Instrument Approach Procedures (SIAP's) to a runway which has been closed at the airport and is no longer available for use.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Elmira, New York, Control Zone by reducing the amount of airspace to that which is needed to contain SIAP's currently in use at the Elmira/Corning Regional Airport. In addition, the airport name is being updated.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Elmira, NY [Amended]

Change "Chemung County Airport" to read "Elmira/Corning Regional Airport";

Delete section which reads as follows: "within 2 miles each side of the centerline of Runway 19 extended southerly from the 5-mile radius zone for 2 miles".

Issued in Jamaica, New York, on September 27, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-24409 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-10]

Alteration of Control Zone; Morristown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Morristown, NJ, Control Zone. This action is necessary due to the cancellation of Standard Instrument Approach Procedures (SIAP's) to the Morristown Municipal Airport, Morristown, NJ, and to adjust the amount of controlled airspace required to contain arriving and departing flights from the surface to 1,000 feet above ground level.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 18, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at the Morristown Municipal Airport, Morristown, NJ (54 FR 31699). The proposed action would adjust the Morristown, NJ, Control Zone to reflect that amount of controlled airspace necessary to contain arriving and departing flights at the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Morristown, NJ, Control Zone to reflect the amount of controlled airspace required to contain arriving and departing flights at the Morristown Municipal Airport, Morristown, NJ, from the surface to 1,000 feet above ground level.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Morristown, NJ [Revised]

That airspace within a 5-mile radius of the center, lat. 40°47'57" N., long. 74°24'55" W., of Morristown Municipal Airport, Morristown, NJ. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

Issued in Jamaica, New York, on September 27, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-24410 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 89-ASW-17]

Revision of Restricted Areas R-5601A, B, C, D, and E; Fort Sill, Oklahoma; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the boundaries of R-5601A and R-5601B, Fort Sill, OK. In the airspace descriptions, Interstate Highway 44 was incorrectly listed as Interstate Highway 40. This action corrects that error.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7686.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 89-22047, published on September 19, 1989, revised Restricted Areas R-5601A, B, C, D, and E in the vicinity of Fort Sill, OK. In the airspace descriptions, Interstate Highway 44 was incorrectly listed as Interstate Highway 40. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Federal Register Document 89-22047, as published in the Federal Register on September 19, 1989, (54 FR 38511) is corrected by removing the words "Interstate Highway 40" and substituting the words "Interstate Highway 44" in the descriptions of R-5601A and R-5601B Fort Sill, OK.

Issued in Washington, DC, on October 11, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-24411 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 772

[Docket No. 90762-9162]

Procedures for Duplicate License Requests

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains a procedure for requesting duplicate export licenses (BXA-622P) if an export license is lost or destroyed. BXA is amending the duplicate license procedures in § 772.10 of the Export Administration Regulations to reflect that exporters need not submit information regarding quantity and value of commodities shipped under the original license when requesting a duplicate license. This procedure provides specific guidance and establishes a procedure on how to submit a duplicate license request.

EFFECTIVE DATE: This rule is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Chuck Guernieri, Exporter Assistance Staff, Office of Export Licensing, U.S. Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-4811).

Rulemaking Requirements

This rule is consistent with Executive Orders 12291 and 12661.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act ((APA) 5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by Section 553 of the Administrative Procedure Act (5 U.S.C. § 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0031. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Project—0694-0031.

List of Subjects in 15 CFR Part 772

Administrative practice and procedure, Exports.

Accordingly, the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 772—[AMENDED]

1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, (50 U.S.C. App. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 13, 1985) and Pub. L. 100-418 of August 23, 1988; Pub. L. 95-223, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571, October 27, 1986 (51 39505, October 29, 1986).

2. Section 772.10 is revised to read as follows:

§ 772.10 Duplicate license.

(a) If a license is lost or destroyed, the licensee may obtain a duplicate of the license by submitting a letter to the Office of Export Licensing at the address listed in § 772.4(i) certifying:

(1) That the original license assigned Export License Number ____ issued to (name and address of licensee) has been lost or destroyed;

(2) The circumstances under which it was lost or destroyed;

(3) If the original license is found, the licensee will return either the original or duplicate license to the Office of Export Licensing.

(b) If shipment was made against the original license, those shipments must be counted against what may be shipped under the duplicate license.

(c) Any person to whom a duplicate license has been issued shall retain the duplicate license and maintain complete records in accordance with §§ 786.2(d) and 787.13, including any duplicate licenses (whether used or unused, valid or expired) and all supporting documents and shipping records. The Office of Export Licensing may require submission of such records upon notification.

(Approved by the Office of Management and Budget under control number 0694-0031)

Dated: October 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-24365 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123, 126

[Public Notice 1137]

RIN 1400-AA23

International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule makes certain administrative changes that enhance and clarify the regulations implementing section 38 of the Arms Export Control Act (the Act), which govern the export of defense articles and services. The final rule also makes some technical corrections to the regulatory amendments that were promulgated on April 4, 1988 (53 FR 11494).

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Chief, Compliance Analysis Division, Office of Munitions Control, Department of State (202-875-6650).

SUPPLEMENTARY INFORMATION: This final rule makes some administrative changes to the International Traffic in

Arms Regulations (ITAR), 22 CFR parts 120-130, which implement section 38 of the Arms Export Control Act (the Act), 22 U.S.C. 2778 and govern the export of defense articles and defense services. It also makes certain technical corrections to the regulatory amendments that were promulgated on April 4, 1988 (53 FR 11494).

One important change is the extension of the validity of new export licenses from two to three years. This change does not affect existing licenses, but should eliminate unnecessary delays in the future by allowing exporters to renew licenses less frequently. This measure would also reduce the caseload of the Office of Munitions Control (OMC) in a manner that is fully consistent with U.S. security and foreign policy interests. As a result of this change, additional OMC resources can be devoted to increasing the level of scrutiny of certain license applications. The availability of additional resources should also result in more efficient review of many license applications.

Another change makes it clear that the Director of OMC has designated the Director of the Diplomatic Security Service, or his designee, as authorized to inspect and to copy records maintained by persons registered with OMC. Because of the increasing role being played by the Director of the Diplomatic Security Service in conducting pre-license and post-shipment verification checks, it is important that registrants be aware that designated personnel have the authority to inspect and to copy records concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services.

A third change clarifies that the prohibition against permitting foreign persons to apply for export licenses and most other approvals does not extend to approvals to resell or transfer defense articles. Under § 123.9, the approval of OMC is required before such articles can be resold or retransferred to any country other than the country of end-use stated on the export license. A related change makes it clear that only U.S. persons may sign applications for export licenses and other approvals (excluding the retransfer approval discussed above). This requirement extends to the statements regarding eligibility that must accompany each application, approval and notification.

The remaining amendments are also technical or administrative in nature.

These amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining public views. Because of the desire to increase the term of new export licenses from two to three years as soon as possible, and because the other changes are administrative or technical in nature, these amendments are being published as a final rule.

List of Subjects in 22 CFR Parts 120, 122, 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M, (consisting of parts 120 through 130) of the Code of Federal Regulations, is amended as set forth below:

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 120.1, revise paragraph (b) to read as follows:

§ 120.1 General.

* * * * *

(b) *Eligibility.* Licenses or other approvals (other than approvals obtained pursuant to § 123.9 of this subchapter) may be granted only to U.S. persons (as defined in § 120.23) and foreign governmental entities in the United States. Foreign persons (as defined in § 120.11) other than governments are not eligible. U.S. persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.24, or who have been debarred pursuant to part 127 of this subchapter, are also generally ineligible (*see* § 127.6(c) of this subchapter). Applications for licenses or requests for other approvals will generally be considered only if the applicant has registered with the Office of Munitions Control pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a responsible official who is a U.S. person and who has been empowered by the registrant to sign such documents.

3. In § 120.24, paragraph (e) is revised to read as follows:

§ 120.24 U.S. criminal statutes.

* * * * *

(e) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

* * * * *

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

4. The authority citation for part 122 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

5. In § 122.2, paragraph (a) is revised to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DSP-9 (Registration Statement) and the transmittal letter required by paragraph (b) of this subsection must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Munitions Control will return to sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

* * * * *

6. In § 122.4, the last sentence of paragraph (b) is revised to read as follows:

§ 122.4 Notification of changes in information furnished by registrants.

* * * * *

(b) * * * Such notice provides the Office of Munitions Control with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers (as opposed to exports) of articles or data should be invoked (*see* § 126.1(f) of this subchapter).

7. In § 122.5, paragraph (b) is revised to read:

§ 122.5 Maintenance of records by registrants.

* * * * *

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or a person designated by the Director (the Director

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of the Diplomatic Security Service or a person designated by the Director of the Diplomatic Security Service or another designee), or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

8. The authority citation for part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11938, 42 FR 4311; 22 U.S.C. 2658.

9. In § 123.23, revise paragraph (a) to read:

§ 123.23 Renewal and disposition of licenses.

(a) A license is valid for a period of three years. The license expires if the defense articles described in the license are not shipped within the three-year period.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

10. The authority citation for part 126 continues to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778, 2780); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

11. In § 126.13, the introductory text of paragraph (a) and paragraph (a)(4) are revised to read as follows:

§ 126.13 Required information.

(a) Pending revisions to the application forms, all applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Munitions Control, stating whether:

* * * * *

(4) The natural person signing the application or other request for approval, or notification (including the statement required by this subsection) is a citizen of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act (8 U.S.C. 1101(a), § 101(a) 20, 60 Stat. 163), or is an official of a foreign governmental entity in the United States.

* * * * *

Dated: October 3, 1989.

Reginald Bartholomew,

Under Secretary for Security Assistance, Science and Technology.

[FR Doc. 89–24367 Filed 10–16–89; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–012A]

RIN 1218–AA53

Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; approval of information collection requirements.

SUMMARY: This notice announces that the information collection requirements in OSHA's final rule on Control of Hazardous Energy Sources, 29 CFR 1910.147, which was published on September 1, 1989 (54 FR 36644), have been approved by the Office of Management and Budget through September 30, 1992, and have been assigned OMB Control Number 1218–0150. These requirements become effectve October 31, 1989.

DATES: Paragraphs (c)(4), (c)(9), and (f)(2) of 29 CFR 1910.147 shall become effective October 31, 1989. The information collection requirements are approved through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On September 1, 1989 (54 FR 36644), OSHA issued its final rule on Control of Hazardous Energy Sources (Lockout/Tagout), 29 CFR 1910.147, which is to become effective October 31, 1989. When the final rule was published, the Agency noted that the information collection requirements contained in the final rule were to be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Paragraphs (c)(4), (c)(9), and (f)(2) of the final rule, which contain information collection requirements, were not to become effective until they had been approved by OMB. (The final rule erroneously referred to paragraph (c)(7) as having paperwork requirements. The correct citation should have referred to paragraph (c)(9)).

The above requirements have now been approved by OMB through September 30, 1992, and have been assigned OMB Control Number 1218–0150. Accordingly, these requirements will become effective at the same time as the other provisions of the final rule—October 31, 1989.

Public reporting burden for the collections of information contained in the final rule is estimated to average 4.18 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218–0150), Washington, DC 20503.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911, 29 CFR part 1910 is amended as set forth below.

Signed at Washington, DC, this 12th day of October, 1989.

Gerard F. Scannell,

Assistant Secretary of Labor.

29 CFR part 1910 is amended as follows:

PART 1910—[AMENDED]

1. The authority citation for subpart J of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.141, 1910.142, and 1910.147 also issued under 29 CFR Part 1911.

§ 1910.147 [Amended]

2. A parenthetical is added at the end of the regulatory text in § 1910.147,

between paragraph (f)(4) and the introductory note to the nonmandatory appendix, to read as follows: "(The information collection requirements contained in this section are approved by the Office of Management and Budget (OMB) and listed under OMB control number 1218–0150.)"

[FR Doc. 89–24467 Filed 10–16–89; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, Off Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Trump Castle World Championships to be held off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal on October 17, 19, and 21, 1989. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations are effective for the following periods:

8:00 a.m. to 3:30 p.m., October 17, 1989.
6:30 a.m. to 3:30 p.m., October 19, 1989.
6:30 a.m. to 3:30 p.m., October 21, 1989.

FOR FURTHER INFORMATION CONTACT: QM1 Kevin R. Connors, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on August 8, 1989 (54 FR 32453). Interested persons were requested to submit comments. No comments were received in response to the notice of proposed rulemaking.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The New York Offshore Powerboat Racing Association will sponsor this year's Trump Castle World Championships. The race will consist of between 100 to 150 powerboats, from 24 to 50 feet in length, racing approximately 150 nautical miles over a 30 nautical mile course. This year's event will be a three-day event instead of the one-day event held last year. Race headquarters will be located in Trump Castle, Atlantic City, New Jersey. Coast Guard patrol vessels will be positioned at Great Egg and Absecon Inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels on how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to and from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1988. It still remains a flattened, elongated triangle, but the course has been moved 200 yards farther seaward at the end nearest Great Egg Harbon Inlet. The change was made in order to relocate the Great Egg Harbor Inlet Spectator Anchorage Area between the shoreline at Ventnor City and the inshore leg of the race course.

Generally, the race course is the same as last year, extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area includes the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extends approximately 1000 yards beyond the outer leg of the race course, except where the course exceeds the three-mile territorial sea limit. The portion of the race course that exceeds the three-mile limit is not regulated by the Coast Guard. Nevertheless, vessel operators are advised to remain clear of the advisory area designated in § 2.(a)(2) of this rule. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages (at Great Egg Harbor Inlet and Absecon Inlet) for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the **Federal Register**, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0549 is added to read as follows:

§ 100.35–0549 Atlantic Ocean, New Jersey Seacoast, off Atlantic City, New Jersey.

(a) *Definitions*—(1) *Regulated area.* The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at

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Longport, New Jersey, at latitude 39°18.20' North, longitude 74°32.30' West; thence to latitude 39°17.80' N, longitude 74°31.65' W; thence northeastward to latitude 39°21.25' N, longitude 74°20.50' W; thence along the three-mile territorial sea limit to latitude 39°24.30' North, longitude 74°13.80' West; and thence to the shoreline at latitude 39°24.8' North, longitude 74°21.5' West.

(2) *Advisory area.* The waters of the Atlantic Ocean enclosed by lines connecting the following points:

Latitude	Longitude
39°21.25' N	74°20.50' W
39°23.30' N	74°13.80' W
39°24.15' N	74°13.60' W
39°24.35' N	74°16.85' W

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Cape May.

(4) *Spectator Anchorage Areas*—(i) *Absecon Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°22'24.0" N	74°24'00.0" W
39°22'00.0" N	74°23'43.0" W
39°22'25.0" N	74°22'54.0" W
39°22'48.0" N	74°23'12.0" W

(ii) *Great Egg Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°18'48.0" N	74°31'18.0" W
39°18'42.0" N	74°31'12.0" W
39°21'00.0" N	74°26'24.0" W
39°21'06.0" N	74°26'30.0" W

(b) *Special Local Regulations.* (1) Except for participants in the Trump Castle World Championships and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs (a)(4)(i) and (a)(4)(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of these regulations.

(c) *Effective periods:* The regulations are effective for the following periods:

8:00 a.m. to 3:30 p.m., October 17, 1989.
6:30 a.m. to 3:30 p.m., October 19, 1989.
6:30 a.m. to 3:30 p.m., October 21, 1989.

Dated: October 6, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-24479 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD62

Dependents' Education; Eligibility of Stepchildren

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The stepchildren of a veteran whose children are eligible for dependents' educational assistance are also eligible for that assistance on the same basis as those children. Occasionally, while such a stepchild is receiving assistance, the veteran will separate from or divorce his or her spouse. The child in question then ceases to be eligible for dependents' educational assistance, because he or she is no longer the veteran's stepchild. These amended regulations state how the Department of Veterans Affairs (VA) will determine when to discontinue the child's assistance.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr. (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 10377 and 10378 of the **Federal Register** of March 31, 1989, there was published notice of intent to amend part 21 in order to state when a child's educational assistance should be discontinued when that child ceases to be the stepchild of a veteran. Interested people were given 30 days to submit comments, suggestions or objections. VA received one letter from a university official containing a suggestion.

The letter writer noted that the proposed § 21.3041(d)(9) mentions the effect on a stepchild's eligibility of a veteran's separation from a spouse so that the child is no longer a member of the veteran's household. He suggested that this sentence refer only to the veteran's legal separation.

After careful consideration, VA has decided not to adopt this suggestion. When a veteran is estranged and residing apart from the parent of a child, so that the child is no longer a member of the veteran's household, the child is no longer eligible for dependent's educational assistance. This is true regardless of whether the separation qualifies as a legal separation in the State where the veteran is residing. Consequently, there is no need to include the language suggested by the commenter.

However, in reviewing the proposed regulation, VA noted that § 21.3041(d)(9) could be taken to imply that only the natural child of a veteran's spouse could qualify as that veteran's stepchild. Hence, the final regulation has been slightly modified to clarify that it also applies to a child who qualifies as the stepchild of a veteran through the veteran's marriage to the child's adoptive parent.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 26, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.3041, paragraph (d) introductory text is revised and paragraph (d)(9) is added to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d) (1) to (7) of this section and 10 years in paragraph (d)(8); whichever is later. When paragraph (d)(9) is applicable, the ending date will be as stated in paragraph (d)(9). Where the ending date is subject to modification under more than one of paragraph (d) (3), (4), (5), (6) or (7) of this section, the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

(Authority: 38 U.S.C. 1712).

* * * * *

(9) The child may lose eligibility through ceasing to be the veteran's stepchild either because the veteran and the child's natural or adoptive parent divorce or because the veteran and the child's natural or adoptive parent separate and the child is no longer a member of the veteran's household. If this occurs, the ending date of the child's period of eligibility will be determined as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's eligibility shall be the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is in training in a school organized on a term, semester or quarter basis, the ending date of the child's eligibility will be the last date of the term, semester or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is in training in a school not organized on a term, semester or quarter basis, the ending date of the child's period of eligilibity will be the end of the course or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier. See § 21.4135(z).

(Authority: 38 U.S.C. 101(4)(A), 1701).

2. In § 21.4135, paragraph (z) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(z) *Eligible child ceases to be a stepchild.* When an eligible child loses eligibility because he or she ceases to be the stepchild of the veteran, VA will discontinue the dependent's educational assistance allowance on the last day of the child's eligibiltiy as determiend by § 21.3041(d)(9).

(Authority: 38 U.S.C. 1701).

[FR Doc. 89-24491 Filed 10-16-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determinations to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Marengo County (unincorporated areas) (FEMA Docket No. 6946)	
Chickasaw Bogue:	
At mouth	*81
About 1.1 miles upstream of State Highway 28	*90
Black Warrior River: Within county	*95
Tombigbee River:	
About 2000 feet downstream of confluence of Chickasaw Bogue	*81
At confluence of Black Warrior River	*95
Maps available for inspection at the County Courthouse, Linden, Alabama.	
CALIFORNIA	
Kern County (unincorporated areas) (FEMA Docket No. 6932)	
Caliente Creek:	
At confluence with Indian Creek	*2652
At confluence with Sand Canyon Creek	*2765
Just downstream of unnamed road connecting Rolling Oaks and Indian Spring Roads	*3089
Just downstream of Rolling Oaks Road	*3165
Approximately 1,300 feet upstream of Rolling Oaks Road	*3196
Indian Creek:	
Approximately 50 feet upstream of Caliente Creek Road	*2667
Just downstream of first intersection with Indian Creek Road	*2744
At intersection of Hog Canyon and Indian Creek Roads	*2770
Caliente Creek Tributary:	
At confluence with Caliente Creek	*2830
Approximately 1,400 feet downstream of County Road 5995	*2915
Approximately 140 feet upstream of County Road 5995	*2960
Weaver Creek:	
At confluence with Caliente Creek	*2859
Approximately 200 feet downstream of County Road 5995 Bridge	*3013
Horse Toad Hills Alluvial Fan:	
At intersection of Douglas Avenue and Koch Street	#1
Approximately 3,500 feet north of intersection of Koch Street and Arroyo Avenue	#2
At the intersection of Arroyo Avenue and Rosewood Boulevard	#3
Little Dixie Wash:	
Just upstream of Southern Pacific Railroad	*2513
Approximately 50 feet downstream of West Bowman Road	*2538
Approximately 4,300 feet upstream of West Bowman Road	*2566
Maps are available for review at the Kern County Planning Department, 1415 Truxton Avenue, Bakersfield, California.	
Newman (city), Stanislaus County (FEMA Docket No. 6936)	
Orestimba Creek:	
At intersection of San Joaquin Street, Inyo Avenue, and N Street	*86
At intersection of N and Tulare Streets	#2
At intersection of Fresno and P Streets	#1
Maps are available for review at the Public Works Department, Engineering Division, 1162 O Street, Newman, California.	
Patterson (city), Stanislaus County (FEMA Docket No. 6936)	
Salado Creek:	
Just upstream of Second Street (State Highway 33)	*97
Along Mary Jane Avenue	*98
At Ward Avenue	*102
At the upstream corporate limits	*108
Along Walnut Avenue, east of Hartley Street	#1
Maps are available for review at the Department of Public Works, 33 Del Puerto Avenue, Patterson, California.	
COLORADO	
Rio Blanco County (unincorporated areas), (FEMA Docket No. 6936)	
White River:	
Approximately 11,100 feet downstream of the confluence with Coal Mine Draw	*5161
Approximately 430 feet downstream of the White Avenue	*5202
Approximately 2,700 feet downstream of the confluence with Douglas Creek	*5216
Approximately 10,190 feet upstream of the confluence with Douglas Creek	*5234
Approximately 23,400 feet upstream of the confluence with Douglas Creek	*5250
Approximately 3,200 feet downstream of State Highway 13	*6116
Approximately 5,810 feet upstream of State Highway 13	*6143
Approximately 1,120 feet upstream of Unimproved Road	*6166
Approximately 6,550 feet upstream of Unimproved Road	*6184
Approximately 12,450 feet upstream of Unimproved Road	*6203
Coal Mine Draw:	
Approximately 570 feet upstream of confluence with White River	*5194
Approximately 4,070 feet downstream of Oil Road	*5243
Approximately 60 feet upstream of Oil Road	*5306
Approximately 1,725 feet upstream of Oil Road	*5336
Approximately 660 feet downstream of Unnamed Road located 3,230 feet upstream of Oil Road	*5337
Approximately 1,580 feet upstream of Unnamed Road located 3,230 feet upstream of Oil Road	*5379
College Canyon Draw:	
Approximately 40 feet upstream of Town of Rangely corporate limits	*5271
Approximately 730 feet downstream of Town of Rangely corporate limits	*5300
Approximately 1,090 feet downstream of Oil Road which is located 1,680 feet upstream of Town of Rangely corporate limits	*5350
Approximately 1,200 feet upstream of Oil Road which is located 1,680 feet upstream of Town of Rangely corporate limits	*5436
Maps are available for review at the Department of County Development, County Courthouse, 6th and Main Streets, Meeker, Colorado 81641.	
CONNECTICUT	
Chester (town), Middlesex County (FEMA Docket No. 6936)	
Pattaconk Brook:	
Approximately 200 feet downstream of North Main Street	*12
At crest of dam located approximately 300 feet upstream of State Route 148 (West Main Street)	*241
Great Brook:	
Approximately 100 feet downstream of North Main Street	*15
Approximately 0.6 mile upstream of Deep Hollow Road	*137
South Branch Great Brook:	
Approximately 15 feet downstream of Deep Hollow Road	*97
Downstream side of dam	*101
Maps available for inspection at the Town Clerk's Vault, Town Hall, Chester, Connecticut.	
Southington (town), Hartford County (FEMA Docket No. 6946)	
Quinnipiac River:	
At downstream corporate limits	*120
Approximately 450 feet downstream of the upstream corporate limits	*169
Spring Lake Brook:	
At confluence with Quinnipiac River	*158
Downstream side of Flanders Road	*243
East Branch Judd Brook:	
At confluence with Judd Brook and Humiston Brook	*143
Approximately 650 feet downstream of Frost Street	*166
Maps available for inspection at the Town Planning Department, Town Hall, Southington, Connecticut.	
Warren (town), Litchfield County (FEMA Docket No. 6936)	
Lake Waramaug Brook:	
At confluence with Lake Waramaug	*697
Approximately 0.4 mile upstream of second upstream crossing of State Route 45	*1,186
Shepaug River:	
At downstream corporate limits	*733
At Shepaug Reservoir dam	*777
Tributary A:	
At confluence with Lake Waramaug Brook	*803
Approximately 0.3 mile upstream of Curtiss Road	*952
Tributary B:	
At confluence with Lake Waramaug Brook	*853
Approximately 0.5 mile upstream of State Route 45	*1,056
Tributary C:	
At confluence with Lake Waramaug Brook	*870
Approximately 0.2 mile upstream of Rabbit Hill Road	*1,003
Tributary D:	
At confluence with Tributary C	*870
Approximately 60 feet upstream of second upstream crossing of Angevine Road	*1,111
Tributary AA:	
At confluence with Lake Waramaug	*697
Approximately 0.3 mile upstream of North Shore Road	*751
Tributary BB:	
At confluence with Lake Waramaug	*697
Approximately 0.6 mile upstream of North Shore Road	*842
Tributary CC:	
At State Route 45	*700
Approximately 0.5 mile upstream of State Route 45	*903
Lake Waramaug:	
Entire shoreline within community	*697
Maps available for inspection at the Town Clerk's Office, Town Hall, Warren, Connecticut.	
GEORGIA	
Baldwin County (unincorporated areas) (FEMA Docket No. 6956)	
Fishing Creek:	
About 900 feet upstream of Norfolk Southern Railway	*275
Just upstream of confluence of Moore Creek	*341
Camp Creek:	
Just upstream of Vinson Highway	*246
Just downstream of Pancras Road	*315
Oconee River:	
About 2.2 miles downstream of confluence of Fishing Creek	*267
About 0.9 mile upstream of CSX Railroad	*284
Tobler Creek:	
About 1100 feet upstream of Norfolk Southern Railway	*260
Just downstream of North Jefferson Street	*286
Tobler Creek Tributary 1:	
At mouth	*280
Just downstream of Barrows Ferry Road	*280
Tributary E:	
About 1300 feet upstream of Norfolk Southern Railway	*304
About 2000 feet upstream of Norfolk Southern Railway	*310
Maps available for inspection at the Board of Commissioner's Office, County Courthouse, 201 West Hancock Street, Milledgeville, Georgia.	
Dalton (city), Whitfield County (FEMA Docket No. 6956)	
Mill Creek:	
About 0.46 mile downstream of Underwood Street	*687

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Willowdale Road	*724
Drowning Bear Creek:	
About 0.79 mile downstream of South Hamilton Street	*688
About 2200 feet upstream of South Hamilton Street	*713
Tar Creek:	
About 1000 feet upstream of mouth	*688
Just downstream of CSX railroad	*698
Crown Creek:	
At mouth	*709
Just downstream of Judson Street	*711
City Park Branch:	
At mouth	*695
About 750 feet above Legion Drive	*697
Just upstream of Mitchell Street	*707
About 1250 feet above Mitchell Street	*716
Colony Creek:	
At mouth	*688
About 1500 feet upstream of Underwood Street	*690
McLellan Creek:	
At mouth	*720
Just upstream of U.S. Route 41	*721
Slaughter Pen Creek:	
At mouth	*689
About 1600 feet upstream of Beechland Place	*692
Tar Creek Tributary:	
About 0.50 mile downstream of Riverbend Drive	*696
About 950 feet downstream of Riverbend Drive	*705
Maps available for inspection at the City Hall, Dalton, Georgia.	
Monroe (city), Walton County (FEMA Docket No. 6956)	
Jacks Creek Tributary No. 1:	
About 650 feet upstream of Monroe Dam	*779
Just downstream of East Marable Street	*796
Jacks Creek Tributary No. 2:	
About 2400 feet upstream of mouth	*789
Just downstream of East Spring Street	*841
Jacks Creek Tributary No. 3:	
At mouth	*789
Just downstream of East Spring Street	*820
Grubby Creek:	
About 1200 feet downstream of Poplar Street	*791
Just downstream of Poplar Street	*800
Just upstream of Poplar Street	*805
About 800 feet upstream of Poplar Street	*805
Mountain Creek:	
About 0.9 mile upstream of Liberty Hill Church Road	*744
Just downstream of State Route 138	*772
Mountain Creek Tributary No. 1:	
At mouth	*755
Just downstream of Breedlove Drive	*758
Just upstream of Breedlove Drive	*764
About 0.5 mile upstream of West Spring Street	*820
Mountain Creek Tributary No. 2:	
Just upstream of Vine Street	*756
Just downstream of Barrett Street	*852
Maps available for inspection at the City Hall, Monroe, Georgia.	
Walton County (unincorporated areas) (FEMA Docket No. 6956)	
Alcovy River:	
About 1.1 miles upstream of confluence of Beaverdam Creek	*735
About 0.8 mile upstream of State Route 81	*767
Shoal Creek:	
At mouth	*696
Just upstream of Tom Odom Road	*824
Little Haynes Creek:	
About 1.1 miles downstream of Center Hill Church Road	*712
About 350 feet downstream of Center Hill Church Road	*730
Just upstream of Center Hill Church Road	*743
Just upstream of Green Street	*780
Big Flat Creek:	
About 2500 feet upstream of Marce Camp Road	*660
Just downstream of Old Zion Cemetery Road	*679
Jacks Creek Tributary 1:	
Just upstream of Monroe Dam	*777
About 600 feet upstream of Monroe Dam	*778
Mountain Creek:	
Just downstream of State Route 138	*773
Just upstream of U.S. Route 78	*788
About 300 feet upstream of U.S. Route 78	*794
About 1600 feet upstream of U.S. Route 78	*798
Mountain Creek Tributary No. 2:	
Just upstream of Criswell Road	*748
Just downstream of Vine Street	*748
Just upstream of Vine Street	*756
About 2200 feet upstream of Vine Street	*782
Maps available for inspection at the County Code Office, County Courthouse Annex 2, 100 North Broad Street, Monroe, Georgia.	
Whitfield County (unincorporated areas) (FEMA Docket No. 6956)	
Coahulla Creek:	
At mouth	*677
Just downstream of Dawnville Road	*688
Mill Creek:	
At mouth	*688
Just downstream of CSX railroad	*727
Just upstream of CSX railroad	*736
Just downstream of Sam Lowe Road	*741
Little Creek:	
About 0.81 mile upstream of Ridge Road	*689
Just downstream of Hill Road	*699
Just upstream of Hill Road	*704
About 1400 feet upstream of Hill Road	*709
Drowning Bear Creek:	
Just upstream of River Bend Road	*678
Just downstream of State Route 3	*722
Little Swamp Creek:	
About 250 feet upstream of mouth	*689
Just downstream of State Route 3 connector	*702
McLellan Creek:	
Just upstream of U.S. Route 41	*721
Just upstream of Tibbs Road	*748
Tar Creek:	
At mouth	*688
Just downstream of CSX railroad	*696
Tar Creek Tributary:	
At mouth	*690
About 0.46 mile upstream of mouth	*699
East Chickamauga Creek:	
About 1200 feet downstream of Cottonwood Road	*805
About 0.42 mile upstream of Cottonwood Road	*809
Slaughter Pen Creek:	
At mouth	*689
About 1600 feet upstream of Underwood Street	*690
Maps available for inspection at the Building Inspector's Office, County Courthouse, 1419 Ross Drive, Dalton, Georgia.	
IOWA	
Tama (city), Tama County (FEMA Docket No. 6956)	
Mud Creek:	
About 0.5 mile upstream of mouth	*814
Just downstream of 9th Street	*836
Deer Creek:	
At mouth	*818
Just downstream of 13th Street	*824
Iowa River:	
About 1.3 miles downstream of U.S. Highway 63	*814
About 0.5 mile upstream of U.S. Highway 63	*816
Maps available for inspection at the City Hall, 305 Siegel Street, Tama, Iowa.	
KANSAS	
Cimarron (city), Gray County (FEMA Docket No. 6956)	
Arkansas River:	
About 3500 feet downstream of Main Street	*2606
About 1600 feet upstream of Main Street	*2615
Maps available for inspection at the City Hall, 119 South Main Street, Cimarron, Kansas.	
LOUISIANA	
Allen Parish (unincorporated areas) (FEMA Docket No. 6956)	
Calcasieu River:	
At downstream Parish boundary	*31
At upstream Parish boundary	*116
Calcasieu River Tributary 1:	
At confluence with Calcasieu River	*110
At upstream side of Union Pacific Railroad	*119
Calcasieu River Tributary 2:	
At confluence with Calcasieu River Tributary 1	*110
Approximately 1,400 feet upstream of State Route 1153	*119
Beaver Creek:	
At downstream side of State Route 10	*109
At upstream Parish limits	*119
Maps available for inspection at the Police Jury Office, 7th Street, Oberlin, Louisiana.	
MICHIGAN	
Lapeer (township), Lapeer County (FEMA Docket No. 6956)	
South Branch Flint River:	
About 1.2 miles downstream of Peppermill Road (west of Meyers Road)	*823
Just downstream of Peppermill Road (near dam)	*829
Just upstream of Peppermill Dam	*839
About 0.7 mile upstream of Higley Road	*848
Hunters Creek:	
About 0.6 mile downstream of Turrill Road	*831
Just downstream of Turrill Road	*832
About 0.4 mile upstream of Interstate 69	*839
Mirror Lake Drain:	
Within community	*839
Maps available for inspection at the Township Hall, 1500 Morris, Lapeer, Michigan.	
Mayfield (township), Lapeer County (FEMA Docket No. 6956)	
South Branch Flint River:	
Just upstream of Millville Road	*801
About 1.2 miles upstream of confluence of Rood Lake Drain	*812
Plum Creek Drain:	
At mouth	*802
Just downstream of Farnsworth Road	*810
Rood Lake Drain:	
At mouth	*810
About 0.8 mile upstream of Haines Road	*817
Maps available for inspection at the Township Hall, 1900 North Saginaw, Lapeer, Michigan.	
MISSISSIPPI	
Bruce (city), Calhoun County (FEMA Docket No. 6956)	
Skuna River Canal:	
About 2400 feet downstream of State Highway 9	*260
About 4500 feet upstream of State Highway 9	*263
Maps available for inspection at the Mayor's Office, City Hall, Bruce, Mississippi.	
Calhoun City (city), Calhoun County, (FEMA Docket No. 6956)	
Yalobusha River Canal:	
About 2800 feet downstream of State Highway 9	*251
About 2200 feet upstream of State Highway 9	*254
Hurricane Creek:	
About 1600 feet upstream of mouth	*253
About 2900 feet downstream of State Highway 9	*267
Huffman Creek:	
At mouth	*265
About 1400 feet upstream of mouth	*267
Maps available for inspection at the Mayor's Office, City Hall, Calhoun City, Mississippi.	

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Source of flooding and location	#Depth in feet above ground. ‡Elevation in feet (NGVD)
Calhoun County (unincorporated areas) (FEMA Docket No. 6956)	
Skuna River Canal:	
About 3500 feet downstream of State Highway 9	*259
About 0.9 mile upstream of State Highway 9	*263
Yalobusha River Canal:	
About 0.9 mile downstream of State Highway 9	*250
About 0.9 mile upstream of confluence of Hurricane Creek	*255
Miles Creek:	
About 2500 feet downstream of State Highway 9	*259
About 3500 feet upstream of State Highway 8	*272
Hurricane Creek:	
At mouth	*253
Just downstream of State Highway 9	*271
Huffman Creek:	
At mouth	*265
About 1.2 miles upstream of mouth	*274
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Pittsboro, Mississippi.	
Derma (town), Calhoun County (FEMA Docket No. 6956)	
Miles Creek:	
About 2500 feet downstream of State Highway 8	*259
About 2800 feet upstream of State Highway 8	*271
Maps available for inspection at the Town Clerk's Office, Town Hall, Main Street, Derma, Mississippi.	
Jones County (unincorporated areas) (FEMA Docket No. 6960)	
Tallahoma Creek:	
At mouth	*202
About 5.0 miles upstream of U.S. Highway 84 along hydraulic base line	*243
Tallahala Creek:	
About 1.8 miles upstream of State Highway 29	*201
About 1.4 miles upstream of U.S. Highway 11	*241
Rocky Creek:	
About 1.4 miles upstream of mouth	*187
At confluence of Rocky Creek Tributary No. 2	*207
Little Rocky Creek:	
At mouth	*189
About 0.9 mile upstream of Interstate 59	*226
Basie Branch:	
At mouth	*196
About 1.1 miles upstream of mouth	*211
Rocky Creek Tributary No. 2:	
Within community	*207
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Laurel, Mississippi.	
MISSOURI	
Osage County (unincorporated areas) (FEMA Docket No. 6956)	
Missouri River:	
At downstream county boundary	*529
About 4.0 miles upstream of confluence of Osage River	*546
Osage River:	
At mouth	*543
Just downstream of U.S. Highway 50	*545
Maps available for inspection at the County Courthouse, Linn, Missouri.	
NEBRASKA	
Dannebrog (village), Howard County (FEMA Docket No. 6956)	
Oak Creek:	
About 1100 feet downstream of Union Pacific Railroad	*1848
About 1 mile upstream of Pioneer Avenue	*1866
Maps available for inspection at the Village Hall, Dannebrog, Nebraska.	
Gothenburg (city), Dawson County (FEMA Docket No. 6956)	
North Channel:	
About 1.8 miles downstream of State Highway 47	*2548
Just downstream of Interstate 80	*2565
Platte River:	
About 1.6 miles downstream of State Highway 47	*2550
About 2.3 miles upstream of State Highway 47	*2572
Maps available for inspection at the City Hall, 409 9th Street, Gothenburg, Nebraska.	
NEW JERSEY	
Frankford (township), Sussex County (FEMA Docket No. 6956)	
Paulins Kill:	
At downstream corporate limits	*488
At approximately 1,150 feet upstream of U.S Route 206 at upstream corporate limits	*503
Dry Brook:	
At confluence with Paulins Kill	*492
At approximately 50 feet upstream of U.S. Route 206 at upstream corporate limits	*509
Culvers Creek:	
At downstream corporate limits	*645
At U.S. Route 206	*847
Maps available for inspection at the Frankford Municipal Building, U.S. Route 206, Augusta, New Jersey.	
Hampton (township), Sussex County (FEMA Docket No. 6956)	
Paulins Kill:	
At downstream corporate limits	*458
At upstream corporate limits	*562
Maps available for inspection at the Hampton Municipal Building, Route 206, Belevile, New Jersey.	
NEW YORK	
Catskill (town), Green County (FEMA Docket No. 6956)	
Catskill Creek:	
At downstream corporate limits	*22
At upstream corporate limits	*178
Kasterskill Creek:	
At confluence with Catskill Creek	*26
At most upstream corporate limits	*678
Maps available for inspection at the Town Hall, 439 Main Street, Catskill, New York.	
OKLAHOMA	
Seminole County (unincorporated areas) (FEMA Docket No. 6960)	
Wewoka Creek:	
Approximately 800 feet downstream of confluence of Tributary A	*778
Approximately 200 feet upstream of Strother Avenue	*877
Coon Creek:	
At confluence with Wewoka Creek	*801
Approximately 1,600 feet upstream of Missouri-Kansas-Texas Railroad crossing	*817
Tributary A:	
At confluence with Wewoka Creek	*781
Approximately 200 feet upstream of US Route 270	*841
Carter Creek:	
At confluence with Wewoka Creek	*848
Approximately 100 feet upstream of Harvey Road	*896
Magnolia Creek:	
At downstream side of Goodhope Road	*892
Approximately 1.1 miles upstream of Goodhope Road	*923
Tributary No. 3 of Carter Creek:	
At confluence with Carter Creek	*892
At downstream Seminole City corporate limits	*939
Tributary No. 3 of Magnolia Creek:	
At downstream side of Goodhope Road	*907
Approximately 1.2 miles upstream of Goodhope Road	*967
Tributary No. I of Tributary No. 3 of Magnolia Creek:	
At Seminole City corporate limits	*906
Approximately 1.1 miles upstream of confluence with Tributary No. 3	*923
Sandy Creek:	
Approximately .5 mile upstream of confluence with Wewoka Creek	*791
Upstream side of Missouri-Kansas-Texas Railroad	*795
Tributary No. 1 of Carter Creek:	
Approximately .5 mile upstream of confluence with Carter Creek	*860
Approximately 920 feet upstream of Strother Avenue	*864
Maps available for inspection at the Commissioner's Office, Seminole County Courthouse, Wewoka, Oklahoma.	
PENNSYLVANIA	
Clifton (township), Lackawanna County (FEMA Docket No. 6956)	
Lehigh River:	
At downstream corporate limits	*1,571
Approximately 800 feet upstream of T-303	*1,818
Approximately .7 mile downstream of the dam at West End Pond	*1,855
At the dam at West End Pond	*1,874
Meadow Brook:	
At the confluence with Tamarack Creek	*1,786
At the dam at L.R. 2013	*1,798
Maps available for inspection at the Clifton Township Building, Clifton, Pennsylvania.	
Elmhurst (township), Lackawanna County (FEMA Docket No. 6956)	
Roaring Brook:	
Approximately 520 feet downstream of confluence of Unnamed Tributary to Roaring Brook	*1,361
Approximately 270 feet upstream of State Route 435	*1,375
Unnamed Tributary to Roaring Brook:	
At confluence with Roaring Brook	*1,367
At CONRAIL Railroad	*1,377
Maps available for inspection at the Township Building/Sewer Authority Building, Elmhurst, Pennsylvania.	
Factoryville (borough), Wyoming County (FEMA Docket No. 6956)	
South Branch Tunkhannock Creek:	
At downstream corporate limits	*815
Approximately 150 feet upstream of upstream corporate limits	*843
Maps available for inspection at the Borough Building, College Avenue, Factoryville, Pennsylvania.	
Girardville (borough), Schuylkill County (FEMA Docket No. 6956)	
Mahanoy Creek:	
At downstream corporate limits	*941
At confluence of Shenandoah Creek	*962
Shenandoah Creek:	
At confluence with Mahanoy Creek	*962
Approximately 100 feet upstream of corporate limits	*967
Maps available for inspection at the Municipal Building, 4th and B Streets, Girardville, Pennsylvania.	
Huston (township), Clearfield County (FEMA Docket No. 6941)	
Bennett Branch:	
Approximately .9 mile downstream of confluence with Moose Run	*1,227
Approximately 400 feet upstream of confluence with Mountain Run	*1,263
Wilson Run:	
At confluence with Bennett Branch	*1,236

Source of flooding and location	#Depth in feet above ground. ‡Elevation in feet (NGVD)
Approximately 400 feet upstream of State Route 153	*1,291
Maps available for inspection at the home of Gail Ann Kaigren, Township Secretary, R.D. I, Box 4181, Penfield, Pennsylvania.	
Patton (borough), Cambria County (FEMA Docket Nos. 6946 and 6951)	
Little Chest Creek:	
At confluence with Chest Creek	*1,738
At the confluence of Unnamed Tributary to Little Chest Creek	*1,795
Unnamed Tributary to Little Chest Creek:	
At confluence with Little Chest Creek	*1,795
Approximately 42 feet upstream of upstream corporate limits	*1,799
Chest Creek:	
At downstream corporate limits	*1,723
At upstream corporate limits	*1,742
Maps available for inspection at the Borough Building, 4th and Magee Streets, Patton, Pennsylvania.	
Upper Mahantongo (township), Schuylkill County (FEMA Docket No. 6956)	
Mahantongo Creek:	
Confluence with Pine Creek	*526
Approximately .44 mile upstream of State Route 4014	*571
Pine Creek:	
Approximately 210 feet downstream of confluence of Mahantongo Creek	*525
Approximately .5 mile upstream of Township route 379	*532
Maps available for inspection at the Upper Mahantongo Township Building, c/o Mr. Dale Troutman, Main Street, Klingerstown, Pennsylvania.	
Washington (township), Schuylkill County (FEMA Docket No. 6956)	
Lower Little Swatara Creek:	
At the downstream corporate limits	*535
Approximately .4 mile upstream of South Lake Road	*683
Upper Little Swatara Creek:	
Approximately .7 mile downstream of State Route 3002	*580
At upstream corporate limits	*620
Maps available for inspection at the Secretary's Office, c/o Walter Stump. R.D. 3, Box 268, Route 443, Pine Grove, Pennsylvania.	
Weisport (borough), Carbon County (FEMA Docket No. 6956)	
Lehigh River:	
At downstream corporate limits	*457
At upstream corporate limits	*472
Maps available for inspection at the Borough Building, Weisport, Pennsylvania.	
West Cameron (township), Northumberland County (FEMA Docket No. 6956)	
Mahanoy Creek:	
Approximately 2.3 miles upstream of corporate limits	*543
Approximately 3.8 miles upstream of corporate limits	*556
Maps available for inspection at the Township Building, Gottshall Lane, West Cameron, Pennsylvania.	
West Penn (township), Schuylkill County (FEMA Docket No. 6956)	
Little Schuylkill River:	
Approximately 620 feet downstream of CONRAIL	*635
Approximately 1.6 miles upstream of upstream crossing of State Route 443	*742
Lizard Creek:	
At corporate limits	*577
At upstream side of T-912	*707
Lizard Creek Tributary:	
At confluence with Lizard Creek	*633
Approximately 770 feet upstream of T-970	*762
Mahoning Creek:	
At corporate limits	*594
Approximately .9 mile upstream of T-932	*682
Maps available for inspection at the Municipal Building, R.D. 1, New Ringgold, Pennsylvania.	
Zerbe (township), Northumberland County (FEMA Docket No. 6956)	
Zerbe Run:	
Approximately 500 feet downstream of 11th Street	*733
Approximately 660 feet upstream of 1st Street	*783
Maps available for inspection at the Zerbe Township Building, 800 Mahanoy Street, Trevorton, Pennsylvania.	
TENNESSEE	
Carter County (unincorporated areas) (FEMA Docket No. 6956)	
Watauga River:	
Just upstream of U.S. Route 321	*1414
Just downstream of Wilbur Dam	*1588
Doe River:	
About 1.9 miles above mouth	*1580
Just downstream of Hampton Road	*1774
Just upstream of Hampton Road	*1779
About 0.3 mile upstream of U.S. Route 19E	*1815
About 0.5 mile downstream of confluence of Shoemaker Branch	*2540
Just downstream of County Road located about 850 feet upstream of State Route 143	*2569
Just upstream of County Road	*2574
Just downstream of County Road located about 950 feet upstream of confluence of Shell Creek	*2581
Just upstream of County Road	*2586
About 700 feet upstream of confluence of Hampton Creek	*2601
Doe River Overland Flow:	
At confluence with Doe River	*2568
At divergence with Doe River	*2587
Laurel Fork Creek:	
At mouth	*1759
Just upstream of U.S. Route 19E	*1765
About 0.39 mile upstream of U.S. Route 321 (upstream crossing)	*1885
Little Doe River:	
At mouth	*1800
Just downstream of Elliott Road	*1919
Shell Creek:	
At mouth	*2577
About 0.62 mile upstream of U.S. Route 19E	*2618
Buffalo Creek:	
At mouth	*1460
Just upstream of U.S. Route 321	*1468
Just downstream of Milligan Highway	*1486
Maps available for inspection at the County Courthouse, Elk and Main Streets, Elizabethton, Tennessee.	
Elizabethton (city), Carter County (FEMA Docket No. 6956)	
Doe River:	
At mouth	*1509
About 1.57 miles upstream of U.S. Route 19E	*1580
Watauga River:	
At confluence of Buffalo Creek	*1460
About 1760 feet upstream of confluence of Davis Branch	*1526
Gap Creek:	
At mouth	*1461
Just downstream of East Tennessee and Western North Carolina Railroad	*1475
Just upstream of West G Street	*1480
About 1.6 miles above mouth	*1558
Buffalo Creek:	
At mouth	*1460
Just upstream of U.S. Route 321	*1468
Just downstream of Milligan Highway	*1484
Maps available for inspection at the City Hall, Elizabethton, Tennessee.	
TEXAS	
Austin County (unincorporated areas) (FEMA Docket No. 6951)	
Allens Creek:	
Approximately 1,740 feet downstream of Maxville Road	*145
At the City of Sealy downstream corporate limits	*161
Allens Creek Tributary:	
At confluence with Allens Creek	*149
Approximately 0.50 mile upstream of FM Route 1458	*154
Bullinger Creek:	
At the Town of San Felipe upstream corporate limits	*147
Approximately 2.01 miles upstream of State Route 36	*199
Brazos River:	
At downstream County boundary	*106
At FM Route 1458 extended	*127
Approximately 79 feet downstream of State Route 159	*162
At upstream County boundary	*165
Maps available for inspection at the County Courthouse, 1 East Main Street, Bellville, Texas.	
Bellinger (city), Runnels County (FEMA Docket No. 6960)	
Colorado River:	
Approximately 1,400 feet downstream of confluence of Elm Creek	*1,628
Approximately 700 feet upstream of Atchinson, Topeka, and Santa Fe Railway	*1,630
Elm Creek:	
At confluence with Colorado River	*1,628
At upstream corporate limits	*1,637
Maps available for inspection at the City Hall, 7th and Railroad Avenue, Bellinger, Texas.	
Colorado County (unincorporated areas) (FEMA Docket No. 6951)	
Colorado River:	
Approximately 2.2 miles downstream of Interstate Route 10	*191
Approximately 7.8 miles upstream of abandoned Railroad Bridge	*222
Maps available for inspection at 400 Spring Street, Columbus, Texas.	
Columbus (city), Colorado County (FEMA Docket No. 6951)	
Colorado River:	
At intersection of Interstate Route 10 and State Route 71	*193
Approximately .6 mile upstream of State Route 71	*202
Maps available for inspection at 805 Spring Street, Columbus, Texas.	
Gregg County (unincorporated areas) (FEMA Docket No. 6951)	
Hawkins Creek:	
Approximately 900 feet upstream of County Route 2275	*321
Approximately 0.86 mile upstream of Bacel Road	*344
Elm Branch:	
Upstream side of Amy Street	*364
Approximately 0.50 mile upstream of Amy Street	*392
Grace Creek:	
At downstream corporate limits	*373
Approximately 50 feet upstream of County Route 1844	*418
McCann Creek:	
At downstream corporate limits	*357
Approximately 1.0 mile upstream of corporate limits	*402
Ray Creek:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream corporate limits	*342
Upstream side of County Route 1844	*420
Oak Branch Creek:	
Approximately 0.54 mile downstream of County Route 2751	*335
Approximately 650 feet upstream of Sunnybrook Road	*406
Murray Creek:	
Approximately 0.60 mile downstream of U.S. Route 259 southbound	*341
Approximately 70 feet upstream of Sunnybrook Road	*421
Oakland Creek:	
At downstream corporate limits	*360
Approximately 0.83 mile upstream of corporate limits	*407
Eastman Lake Creek:	
Approximately 400 feet downstream of Hollybrook Drive	*368
Approximately 0.78 mile upstream of Hollybrook Drive	*415
Maps available for inspection at the Engineer's Office, 101 Methvin Street, 1st Floor, County Courthouse, Longview, Texas.	
San Felipe (town), Austin County (FEMA Docket No. 6951)	
Bullinger Creek:	
Approximately 1.46 miles downstream of Remmert Road	*129
At upstream corporate limits	*147
Maps available for inspection at the City Offices, 1483 F.M. 1458 N., San Felipe, Texas.	
Sealy (city), Austin County (FEMA Docket No. 6951)	
Allens Creek:	
Approximately 200 feet downstream of the downstream corporate limits	*161
Approximately 1,480 feet upstream of U.S. Route 90	*180
Maps available for inspection at the City Hall, 415 Main Street, Sealy, Texas.	
Whitney (city), Hill County (FEMA Docket No. 6956)	
Stream WC-1:	
At downstream corporate limits	*570
Approximately 50 feet upstream of Lavaca Street	*586
Stream WC-1A:	
At confluence with Stream WC-1	*581
Approximately 600 feet upstream of upstream corporate limits	*589
Maps available for inspection at the City Hall, 105 Jefferson, Whitney, Texas.	
VIRGINIA	
Craig County (unincorporated areas) (FEMA Docket No. 6956)	
Craig Creek:	
Approximately 3.3 miles downstream of State Route 606	*1,161
Approximately 0.6 mile upstream of State Route 614	*1,191
Approximately 1.6 miles downstream of confluence of Johns Creek	*1,246
At confluence of Meadow Creek	*1,275
Approximately 450 feet upstream of second crossing of State Route 311	*1,327
Approximately 200 feet downstream of third crossing of State Route 311	*1,366
Approximately 0.9 mile upstream of fifth crossing of upstream State Route 311	*1,393
Johns Creek:	
At confluence with Craig Creek	*1,260
Approximately 0.9 mile upstream of State Route 615	*1,301
Meadow Creek:	
At confluence with Craig Creek	*1,275
Upstream side of State Route 311	*1,314
Approximately 0.4 mile upstream of State Route 311	*1,378

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the County Administrator's Office, New Castle, Virginia.	
Haymarket (town), Prince William County (FEMA Docket No. 6956)	
North Fork Broad Run:	
Approximately .3 mile upstream of State Route 709	*334
Upstream corporate limits	*341
Maps available for inspection at the Town Hall, 15025 Washington Street, Haymarket, Virginia.	
New Castle (town), Craig County (FEMA Docket No. 6936)	
Johns Creek:	
At downstream corporate limits	*1,273
At upstream corporate limits	*1,276
Maps available for inspection at Janet Harden's residence, Caldwell Street, New Castle, Virginia.	
WASHINGTON	
Sedro Woolley (city), Skagit County (FEMA Docket No. 6965)	
Skagit River:	
Just east of Collins Road	*43
Approximately 3,700 feet west (downstream) of State Highway 9	*44
Approximately 1,200 feet west (downstream) of State Highway 9	*45
Maps are available for review at the Planning Department, 720 Murdock Street, Sedro Woolley, Washington.	
WEST VIRGINIA	
Camden-On-Gauley (town), Webster County (FEMA Docket No. 6946)	
Gauley River:	
At downstream corporate limits	*2,027
At upstream corporate limits	*2,029
Maps available for inspection at the Mayor's Office, Main Street, Camden-On-Gauley, West Virginia.	
Webster County (unincorporated areas) (FEMA Docket No. 6946)	
Elk River:	
Approximately 2,575 feet downstream of the confluence of Ezra Run	*1,037
Approximately 2.90 miles upstream of the confluence of Ezra Run	*1,100
Approximately 4.20 miles downstream of the confluence of Big Run	*1,175
Approximately 0.65 mile downstream of the confluence of Big Run	*1,250
Approximately 860 feet upstream of the confluence of Lynch Run	*1,325
Approximately 1.8 mile upstream of the confluence of Kingfisher Creek	*1,400
Approximately 0.67 mile upstream of the confluence of Back Fork Elk River	*1,475
Approximately 1,490 feet upstream of the confluence of Dyers Run	*1,550
Approximately 0.75 mile downstream of the confluence of Mill Run	*1,625
Approximately 0.91 mile downstream of the confluence of Steps Run	*1,700
Approximately 1.04 miles upstream of the confluence of Baltimore Run	*1,775
Approximately 560 feet downstream of the confluence of Bergoo Creek	*1,879
Left Fork Elk River:	
At confluence with Elk River	*1,454
At divergence from Elk River	*1,465
Right Fork Holly River:	
Approximately 1,870 feet downstream of the confluence of Highbank Run	*1,080
Approximately 0.86 mile upstream of the confluence of Weese Run	*1,125
Approximately 0.85 mile downstream of the confluence of Deep Run	*1,200
Approximately 1,490 feet downstream of the confluence of Grassy Creek	*1,275

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 920 feet downstream of the confluence of Wrack Timber Run	*1,350
Approximately 1,120 feet downstream of the confluence of Mudlick Run	*1,425
Approximately 0.69 mile downstream of the confluence of Desert Fork	*1,500
Approximately 780 feet upstream of the confluence of Desert Fork	*1,580
Approximately 300 feet downstream of the confluence of Upper Mudlick Run	*1,660
Approximately 1,150 feet upstream of the second crossing of County Route 18	*1,740
Approximately 1,100 feet downstream of the confluence of Laurel Fork	*1,820
Approximately 220 feet upstream of the confluence of Laurel Fork	*1,847
Left Fork Holly River:	
Approximately .71 mile downstream of the confluence of Hodam Creek	*1,451
Approximately 1.35 miles upstream of the confluence of Laurel Fork	*1,550
Approximately 2.20 miles upstream of the confluence of Laurel Fork	*1,596
Gauley River (Lower):	
Approximately 225 feet downstream of County boundary	*2,025
Approximately .62 mile upstream of the confluence of Mill Fork	*2,037
Gauley River (Upper):	
Approximately 50 feet downstream of CSX Transportation Railroad Bridge	*2,191
Approximately .73 mile downstream of the confluence of Price Run	*2,250
Approximately 400 feet downstream of the confluence of Laurel Creek	*2,298
Back Fork Elk River:	
At Webster Springs corporate limits	*1,478
Approximately .41 mile upstream of the confluence of Bear Run	*1,550
Approximately .72 mile upstream of the confluence of Dry Bed Run	*1,620
Approximately 1,810 feet upstream of the confluence of Laurel Run	*1,700
Approximately 800 feet upstream of the confluence of Aaron Run	*1,780
Approximately .51 mile downstream of the confluence of Steps Gap Run	*1,850
At the confluence of Sugar Creek	*1,925
Approximately 750 feet upstream of the confluence of Middle Run	*1,967
Birch River:	
Approximately .70 mile downstream of the confluence of Ming Run	*1,489
Approximately 330 feet downstream of the confluence of Braggs Run	*1,565
Approximately 760 feet downstream of the confluence of Silk Run	*1,640
Approximately 1,070 feet downstream of the confluence of Chuffy Run	*1,715
Approximately 400 feet downstream of the confluence of Beughman Run	*1,790
At the confluence of Johnson Branch	*1,882
Laurel Creek:	
Approximately .55 mile downstream of the confluence of Carpenter Fork	*1,508
Approximately 1,100 feet upstream of the confluence of Amos Run	*1,575
Approximately 660 feet downstream of the confluence of Lost Run	*1,680
Approximately 1.0 mile upstream of the confluence of Lost Run	*1,780
Approximately 0.4 mile downstream of the confluence of McAvoy Run	*1,880
Approximately 0.46 mile upstream of the confluence of Given Run	*1,980
At the confluence of Dry Branch	*2,080
Approximately 0.39 mile downstream of Little Glade Run	*2,160
Approximately 1,200 feet upstream of the confluence of Little Glade Run	*2,212
Hodam Creek:	
At confluence with Left Fork Holly River	*1,469
Approximately 1,370 feet upstream of the confluence of Bear Run	*1,550
Approximately 0.61 mile upstream of the confluence of Big Lick Fork	*1,656
Leatherwood Creek:	
At confluence with Elk River	*1,816

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.71 mile upstream of the most downstream crossing of County Route 26-4	*1,891
Big Ditch Run:	
Approximately 1.08 miles downstream of John Galt Road	*2,219
Approximately 0.55 mile upstream of John Galt Road	*2,230
Williams River:	
At confluence with Gauley River	*2,191
Approximately 0.43 mile upstream of the confluence of Spice Run	*2,258
Grassy Creek:	
At the confluence with Right Fork Holly River	*1,289
Approximately 540 feet downstream of the confluence of Weedy Run	*1,380
Approximately 0.71 mile upstream of the confluence of Weedy Run	*1,480
Approximately 1.05 miles downstream of the confluence of Leatherwood Run	*1,590
Approximately 780 feet downstream of the confluence of Leatherwood Run	*1,762
Strouds Creek:	
At downstream County Boundary	*2,039
Approximately 0.66 mile upstream of the confluence of Sugarcamp Run	*2,117
Sugar Creek:	
At the confluence with Back Fork Elk Creek River	*1,925
Approximately 790 feet upstream of the confluence of Little Sugar Creek	*2,047
Price Glade Run:	
At the confluence with the Gauley River	*2,192
Approximately 1.64 miles upstream of the confluence with the Gauley River	*2,245
Maps available for inspection at the County Coordinator's Office, 112 Bell Street, Webster Springs, West Virginia.	
Webster Springs (city), Webster County (FEMA Docket No. 6946)	
Left Fork Elk River:	
At confluence with Elk River	*1,453
At divergence from Elk River	*1,465
Back Fork Elk River:	
At confluence with Elk River	*1,457
Approximately 840 feet upstream of upstream corporate limits	*1,483
Elk River:	
At downstream corporate limits	*1,455
Approximately 0.6 mile upstream of State Route 20	*1,482
Maps available for inspection at the Municipal Building, 146 McGraw Avenue, Webster Springs, West Virginia.	
WISCONSIN	
Endeavor (village), Marquette County (FEMA Docket No. 6956)	
Fox River at Buffalo Lake:	
At northern corporate limits	*773
At eastern corporate limits	*774
Maps available for inspection at the Village Hall, Lakeview Avenue, Endeavor, Wisconsin.	
Menomonie (city), Dunn County (FEMA Docket No. 6956)	
Red Cedar River:	
At confluence of Gilbert Creek	*787
Just downstream of Broadway Street Dam	*792
Gilbert Creek:	
At mouth	*787
About 3,800 feet upstream of Holland Road	*803
Galloway Creek:	
At mouth	*787
About 1,100 feet upstream of 9th Street East	*877
Lake Menomin:	
Entire shoreline	*814
Maps available for inspection at the City Hall, 800 Wilson Street, Menomonie, Wisconsin.	
Plum City (village), Pierce County (FEMA Docket No. 6951)	
Plum Creek:	
Just downstream of confluence of Rush Coulee	*799
About 700 feet downstream of East Street	*811
Rush Coulee:	
At mouth	*799
About 2,100 feet upstream of Main Street	*827
Maps available for inspection at the Village Hall, 501 Main Street, Plum City, Wisconsin.	

Issued: October 6, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-24470 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-594; RM-6394, RM-6726]

Radio Broadcasting Services; Othello and Wilson Creek, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 248C2 for Channel 249A at Othello, Washington, and modifies the construction permit for Station KZLN-FM at Othello to specify operation on the higher powered channel, as that community's first wide coverage area FM station, at the request of P-N-P Broadcasting, Inc. See 54 FR 3823, January 26, 1989. In addition, this document allots Channel 277A to Wilson Creek, Washington, as that community's first local FM service, at the request of Jon Bruce Thoen. The allotments can be made in accordance with § 73.207 of the Commission's Rules at the communities reference coordinates, which are 46-49-36 and 119-10-00 (Othello) and 47-25-24 and 119-07-18 (Wilson Creek). Canadian concurrence has been obtained for the allotments. With this action, this proceeding is terminated.

DATES: Effective November 27, 1989. The window period for filing applications for Channel 277A at Wilson Creek, Washington, will open on November 28, 1989, and close on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-594, adopted September 19, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by removing Channel 249A and adding Channel 248C2 at Othello; and adding Wilson Creek, Channel 277A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24415 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 815

RIN 2900-AE16

Acquisition Regulation; Contracting by Negotiation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to assure that all Department-issued procurement-related regulations are essential to implement Governmentwide policies and procedures within the Department. In addition, the regulations are being amended to specify the VA control point for all unsolicited

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proposals received at VA Central Office; to delegate authority to Head of Contracting Activity to permit correction of mistakes in proposals before award consistent with FAR 15.607; and, authorization is given to contracting officers to use option clauses in acquisitions with medical schools, clinics, and any other group or individual providing scarce medical specialist and sharing services at VA facilities. Other technical amendments are made and duplicative coverage already provided for in the Federal Acquisition Regulation (FAR) is eliminated.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-4339.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has directed each executive agency to review their respective acquisition regulations to ensure that they are the minimum necessary to appropriately implement and supplement the FAR. This mandate is specifically aimed at reducing repetitive coverage in the agency acquisition regulation text.

VA is amending its regulations to delete duplicative coverage. In addition, authorization is being given to contracting officers to use option clauses in acquisitions with medical schools, clinics, and any other group or individual producing scarce medical specialist and sharing services at VA facilities, and to specify the VA control point for all unsolicited proposals received at VA Central Office.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

These changes are internal VA management policies and therefore public participation in the rulemaking process is unnecessary (38 CFR 1.12 and 5 U.S.C. 553(d)(3)). Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 815

Government procurement.

Approved: October 10, 1989.

Edward J. Derwinski,

Secretary.

48 CFR chapter 8 Department of Veterans Affairs is amended as set forth below:

PART 815—[AMENDED]

1. The authority citation for parts 815 and 817 continue to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

815.506 [Amended]

2. In 815.506(a) remove the words "Chief, Supply Service", and insert in their place, the words "Chief, Acquisition and Materiel Management Service".

3. Subpart 815.6, consisting of 815.607, is added to read as follows:

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 801.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

815.804-2 [Removed]

4. Section 815.804-2 is removed.

815.805-5 [Removed]

5. Section 815.805-5 is removed.

Subpart 815.9 [Removed]

6. Subpart 815.9, consisting of § 815.901, is removed.

7. In 815.7001 paragraph (d)(2) is removed, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (e), and (f) are redesignated as paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (f), and (g), respectively.

8. In 815.7001, paragraphs (c), (c)(5), (d) introductory text, and (d)(1) are revised, and new paragraph (e) is added to read as follows:

815.7001 Personal or professional services.

* * * * *

(c) Contracting officers may include one or two 1-year prepriced options for extensions of proposed contracts for scarce medical specialist and specialized medical resources. When a prepriced option has not been used, the authority to approve the award of a new contract with the current contractor for extension of a scarce medical specialist or specialized medical resource is delegated to the Medical District Director under the circumstances specified in paragraph (d) of this section. Except as provided in paragraphs (d) and (e) of this section, proposed contracts will be submitted for approval to the Associate Deputy Chief Medical Director (10B/EMS), VA Central Office at least 60 days prior to effective date of the proposed contract.

* * * * *

(5) Contracting officers must send a copy of each signed contract, negotiated under the authority of either 38 U.S.C. 4117 or 38 U.S.C. 5053, to the Director, Emergency Management and Resource Sharing Service (10B/EMS), within ten days of execution. This requirement also applies to any contract modification issued to exercise options to extend contract periods.

(d) Proposals to negotiate a new contract with the current contractor under the authority of 38 U.S.C. 5053 or 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such proposals meet the following conditions:

(1) For specialized medical resources agreements, (i) no new resources are being added to the contract, (ii) and no individual cost item that is being acquired from the contractors will increase the cost more than 5 percent over the cost for that same item on the previous contract. (Resources may be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an increase in the cost of an individual item or of the total contract in excess of 5 percent over the cost of the contract).

* * * * *

(e) Contracting officers may exercise an option to extend a contract when the contract includes an option to extend. This may be done without further review.

* * * * *

[FR Doc. 89-24492 Filed 10-16-89; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1145

[Ex Parte No. 394; Sub-No. 3]

RIN 3120-AB47

Cost Ratios for Recyclables—Compliance Procedures

[Ex Parte No. 290; Sub-No. 2]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts rules providing for an annual Commission determination of the cap level on railroad freight rates for nonferrous recyclable commodities and identification of rates and territorial rate groups that exceed the cap. The rules also set forth principles and procedures governing review of maximum reasonableness of increases in recyclable commodity rates. The purpose of the rules is to assure continued compliance by the Nation's railroads with the cap on freight rates for recyclable commodities established in the Staggers Rail Act of 1980. The rules are intended to clarify the rights and obligations of affected parties while minimizing compliance and enforcement burdens.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Proposed rules were published at 52 FR 13482, April 23, 1987, and an environmental assessment was published at 53 FR 16296, May 6, 1988

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect the quality of the human environment or conservation of energy resources.

List of Subjects

49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1145

Railroads, Reporting and recordkeeping requirements.

Decided: October 6, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble and explained fully in the decision, title 49, chapter X, parts 1135 and 1145 of the Code of Federal Regulations are amended as set forth below:

1. A new part 1145 is added to read as follows:

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

Sec.
1145.1 Definitions.
1145.2 Purpose.
1145.3 Annual proceedings: submission of evidence.
1145.4 Annual proceedings: Commission decision.
1145.5 Regulation of rate increases.
1145.6 Propsective effect.
1145.7 Application of railroad cost recovery procedures.

Authority: 49 U.S.C. 10321, 10731, and 1070a; 5 U.S.C. 553.

§ 1145.1 Definitions.

(a) For the purpose of this part, "*recyclable commodities*" means recyclable material as defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel. Commodities are to be specified at the five digit Standard Transportation Commodity Code (STCC) level, unless exceptions are requested and justified as provided in § 1145.3(a).

(b) "*Costs determined pursuant to 49 U.S.C. 10705a(m)*" means "unadjusted costs" calculated pursuant to the procedures developed in Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge and Cancellation*, as amended, with two exceptions. For the purpose of this part, parties are to use actual shipment weight as shown in the waybill file (rather than tariff minimum weight), and route miles as calculated in the Princeton Railroad Network model and entered in the waybill file (rather than short line miles increased for circuity).

(c) "*Statutory cap level*" means the railroad revenue-to-variable-cost ratio level referred to in 49 U.S.C. 10731(e).

(d) "*Above-cap rate*" means an individual rate that produces a revenue/variable cost ratio above the statutory cap level.

(e) "*Above-cap rate group*" means a rate group specified in § 1145.3(b) that produces an average revenue/variable cost ratio above the statutory cap level. The term may relate either to a railroad industry rate group or to an individual carrier rate group for which a determination is made under § 1145.4(a).

(f) "*Rate (or rate group) determined to be above the cap level*" means a rate (or rate group) that had or would have an above-cap status as of the effective date of an increase in the rate, under the latest effective determination made by the Commission concerning the status of the rate on that date, whether made in an annual proceeding under § 1145.4 or in another proceeding.

(g) "*Below-cap rate (or rate group)*" means a rate (or rate group) that produces a revenue/variable cost ratio equal to or below the statutory cap level.

§ 1145.2 Purpose.

These rules establish procedures by which the Interstate Commerce Commission will ensure continued compliance by the Nation's railroads with the statutory cap level on freight rates for recyclable commodities established in 49 U.S.C. 10731(e). The Commission will:

(a) Determine annually the statutory cap level to apply for the ensuring calendar year;

(b) Determine annually the regional and national average revenue/variable cost ratios produced by rates on recyclable commodities and identify the recyclable commodities having territorial average ratios above the statutory cap level;

(c) Determine annually, in respnse to shipper requests, the revenue/variable cost ratios produced by rates on individual movements of recyclable commodities and identify the movements having ratios above the statutory cap level; and

(d) Regulate rate increases on recyclable commodities, including increases under 49 U.S.C. 10707a (a) through (d), to prohibit increases in rates with ratios above the statutory cap level and to prevent increases in other rates from raising the ratios on those rates above the cap level.

§ 1145.3 Annual proceedings: submission of evidence.

(a) *Initial railroad submission.* By September 15 of each year, railroads shall file, jointly or separately, certified average revenue/variable cost ratios as described in paragraph (b) of this section for all single-line, joint, and combination rates applicable to each

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recyclable commodity. Such ratios will be computed on the basis of the railroads' revenues for each commodity and the railroads' costs for that particular transportation determined pursuant to 49 U.S.C. 10706a(m). The Commission's most recently published one percent waybill study will be an acceptable source for computing the average revenue/variable cost ratios determined under this paragraph subject to correction for overstatement of revenues due to 49 U.S.C. 10713 contracts at the option of participating railroads. The recyclable commodity ratios shall be for the applicable five-digit STCC code groups. Parties may petition for reconsideration of the STCC level described in § 1145.1(a) by identifying, with adequate justification, specific exceptions that may be appropriate.

(b) *Regional and national average revenue/variable cost ratios required.* The computations described in paragraph (a) of this section will be made so that for each commodity there will be computed a separate average revenue/variable cost ratio for three regional rate groups and one national rate group as follows:

(1) Intra-East;
(2) Intra-West;
(3) Between East and West; and
(4) Nationally.

The Commission decision under § 1145.4 for each commodity will be based upon the revenue/variable cost ratios computed for the three regional rate groups wherever the car samples used in computing the regional ratios comprise ten or more cars. Wherever the car sample used in computing a regional ratio comprises nine or fewer cars, the national revenue/variable cost ratio for that commodity will be used for that regional rate group instead of the regional ratio.

(c) *Initial railroad submission available to shippers.* By September 15 of each year, the railroads shall make available to shippers, at a convenient time and a place provided by the railroads, the certified average revenue/variable cost ratios described in paragrpah (b) of this section, including the underlying workpapers. The certified average revenue/variable cost ratios submitted by the railroads and the underlying workpapers shall also be made available to shippers during business hours in the Interstate Commerce Commission Building, Public Dockets Room. The underlying workpapers shall be presented to shippers at a level of aggregation sufficient to assure that specific shipper contract or shipment information is not disclosed.

(d) *Shippers to present to appropriate railroads disagreement with certified average revenue/variable cost ratios.* If a shipper disagrees with the certified average revenue/variable cost ratios submitted by the railroads pursuant to paragraph (a) of this section, it shall present its disagreement to the railroads in writing within 7 days of the railroads' filing, or by September 22 of each year, whichever is earliest.

(e) *Railroads and shippers to negotiate changes in submitted certified average revenue/variable cost ratios and submit revised ratios.* Upon receipt of a shipper's written disagreement with any certified average revenue/variable cost ratio submitted by the railroads pursuant to paragraph (a) of this section, the railroads shall negotiate in good faith with the shipper to resolve the disagreement. The railroads and shippers shall submit to the Commission by October 15 any agreed adjustments to the railroads' initial submissions pursuant to paragraph (a) of this section. To the extent that disagreement remains, the railroads and shippers shall, by October 15, submit evidence and argument supporting their respective positions.

(f) *Alternate railroad filing in lieu of filing under paragraph (a).* Any individual railroad or railroad system may satisfy the requirements of paragraph (a) of this section with respect to some or all recyclable commodities by submitting by September 15 the revenue/variable cost ratios produced by single-line or combination rates for movements of the commodities over its line only. A submission under this paragraph shall be made available to shippers pursuant to paragraph (c) of this section and the provisions of paragraphs (d) and (e) of this section shall also apply.

(g) *Individual rates.* A shipper may establish in any annual proceeding that the rate it actually pays for an individual movement of a recyclable commodity exceeds the statutory cap level. Submission of evidence on individual rate issues will be governed by the following schedule:

(1) By September 15 of each year, shippers shall file their statements, if any, on individual rates with the Commission and serve them on the railroads. These shall be sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of actual revenues paid to railroads for shipments made.

(2) The railroads may respond to the shippers' individual rate statements on or before October 15 by filing sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of revenues actually collected for shipments transported.

§ 1145.4 Annual proceedings: Commission decision.

(a) *Date and content of decision.* In a decision to be issued annually by December 15, the Commission will state the statutory cap level required by 49 U.S.C. 10731(e), to apply for the ensuing calendar year. The Commission will also state the regional and national average revenue/variable cost ratio levels produced by the rates for each recyclable commodity and determine which, if any, regional and national rate groups produce ratios exceeding the simultaneously announced statutory cap level. These rate group determinations will be made not only in relation to rates for the railroad industry overall but also in relation to the rates of any railroad that has made an acceptable alternative submission under § 1145.3(f). In addition, based on the evidence submitted regarding individual rates, the Commission will state the revenue/variable cost ratios produced by those rates and determine which, if any, of those rates produce ratios exceeding the statutory cap level.

(b) *Contingencies.* (1) If for any reason the Commission experiences delay in issuing the annual decision, the prior annual decision shall remain in effect until the issuance of a new decision. At such time as the new annual decision is issued, its statutory cap level determination shall apply retroactively so as to cover all recyclable commodity movements transported during the calendar year.

(2) If the Commission is unable to make a requested individual rate determination by the date of the annual decision, it will provide in the decision either:

(i) That the determination will be made in a subsequent decision in the same annual proceeding; or

(ii) That the issue will be transferred to a separate proceeding for disposition.

(c) *Limited scope.* No rate reductions or damages will be ordered and no rate increases will be approved in the annual proceedings conducted under this part, which are solely for determination of the statutory cap level, revenue/variable cost ratio levels, and above-cap rates and rate groups.

§ 1145.5 Regulation of rate increases.

(a) *Focus.* The ongoing regulation of maximum reasonableness of rates on recyclable commodities is directed to rate increases, not to rate levels apart from increases.

(b) *Jurisdiction.* The Commission has regulatory jurisdiction over all rate increases on recyclable commodities. No showing of railroad market dominance is required.

(c) *Standard of maximum reasonableness.* The reasonable maximum rate level on a recyclable commodity produces a revenue/variable cost ratio equal to the statutory cap level determined in annual proceedings under this part. A rate increase violates this standard to the extent that it raises a below-cap rate above the cap level, or if it applies to a rate that is already above the cap level.

(d) *Review of increases.* Investigation and complaint proceedings with respect to maximum reasonableness of rate increases on recyclable commodities are conducted under the same procedures as apply to challenges to rates on other commodities, with the exception of the special requirements and procedures identified in paragraph (f) of this section for certain increases.

(e) *Increases subject to special procedures.* The following rate increases are subject to the special requirements and procedures of paragraph (f) of this section:

(1) Increases in rates belonging to rate groups determined to be above the cap level.

(2) Increases in rates determined to be individually above the cap level.

(f) *Special requirements and procedures.* Notwithstanding the provisions of 49 U.S.C. 10707a (a) through (d), every increase covered by paragraph (e) of this section is subject to the following requirements and procedures:

(1) *Notice and challenges.* The increase must be filed on statutory notice and is subject to protest, suspension, investigation, and to challenge by complaint.

(2) *Prejustification.* The tariff filing containing the increase must be accompanied by a sworn statement, supported by unadjusted or adjusted cost evidence, to demonstrate the facts specified in paragraphs (f)(3) and (4) of this section.

(3) *Relationship of existing rate to cap level.* The prejustification must establish one of the following:

(i) The rate group or individual rate that was determined to be above the cap level has fallen to or below the cap level;

(ii) The cap level has risen above the level of the rate; or

(iii) The rate, although belonging to an above-cap group, is not individually above the cap.

(4) *Effect of increase.* The prejustification must also establish the following:

(i) The increase will not raise the rate above the cap level; and

(ii) If the rate is a below-cap rate belonging to an above-cap group, the increase will not raise the group's average ratio farther above the cap level, because either:

(A) The increase is a cost recovery increase that does not raise the revenue/variable cost ratio produced by the rate; or

(B) The increase is offset by decreases in other rates in the same rate group.

(g) *Increases not subject to special procedures.* A rate increase is not subject to the special requirements and procedures of paragraph (f) of this section if all rates to which the increase applies belong to groups determined to be at or below the cap level and none of the rates has been determined to be above the cap level individually. Such an increase is subject to the reasonableness standard set forth in paragraph (c) of this section, but may be challenged and reviewed only by procedures consistent with the provisions of 49 U.S.C. 10707a (a) through (d) and part 1135 of this chapter.

(h) *Remedies.* Rate reductions and damage awards are available, to the extent justified, in all rate investigation and complaint proceedings regarding recyclable commodities. They will be ordered only to remedy unlawful rate increases and will not be premised on rate levels apart from increases.

§ 1145.6 Prospective effect.

The rules established in this part are prospective only. Claims relating to periods prior to adoption of these rules are not affected by the rules.

§ 1145.7 Application of railroad cost recovery procedures.

Nothing in these rules is to be construed so as to preclude the application to recyclable commodities of any valid changes by the Commission in rules and procedures adopted in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, that apply to all commodities.

PART 1135—RAILROAD COST RECOVERY PROCEDURES

2. The authority citation for part 1135 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10707a, and 10731; 5 U.S.C. 553.

§ 1135.1 [Amended]

3. Section 1135.1 is amended by adding paragraph (h) to read as follows:

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(h) A Commission order pursuant to paragraph (a) of this section that provides a quarterly adjustment of rates that is a positive number may not be applied to any rates that, in any annual order setting the ratio of revenue to variable costs pursuant to 49 U.S.C. 10731(e), the Commission finds exceed the established ratio on a regional aggregate or an individual basis, unless the railroads demonstrate that those rates have fallen to or below the established ratio.

[FR Doc. 89-24436 Filed 10-16-89; 8:45 am]
BILLING CODE 7035-01-M

VOL 54 ISS 199 OC 17 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Size Standard for Export Trading Companies and Export Management Companies

AGENCY: Small Business Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Small Business Administration (SBA) is withdrawing its 1988 proposed rule, which if promulgated in final, would have established a size standard of $10 million for Export Trading and Management Companies. Since the proposed size standard will not become effective, the applicable size standard for such companies will remain at 100 employees as part of Wholesale Trade.

FOR FURTHER INFORMATION CONTACT: Harvey Bronstein, Economist, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On June 7, 1988, SBA published in the Federal Register (53 FR 20857) a proposal to establish a size standard of $10 million for Export Trading Companies (ETCs) and Export Management Companies (EMCs) (hereinafter referred to as ETCs). The proposal was made to identify those ETCs which could be eligible for SBA assistance. It enumerated the forms of SBA assistance available to small business exporters and described the nature of the ETCs' activity. The assistance includes: export revolving lines of credit, regular business loans, business development assistance, legal consultation and export training. The proposal also described the nature of export trading and the sizes of firms engaged in this activity.

SBA considered a size standard for ETCs, apart from the wholesale trade industry, in 1984 when there were several size standards applicable to wholesale trade. Today, a single size standard applies to all wholesale trade industries. The wholesale industries had had a three-part size standard of $9.5, $14.5 or $22 million depending on the item being sold. For an ETC that sold more than one product, it was subject to different wholesale size standards and thus determining its size status was confusing. Also, ETCs provide services to manufacturers generally not provided by other types of wholesalers. The influence of these activities on industry structure needed to be assessed for size standard purposes. For these reasons SBA sought to create a unique size standard for this industry. SBA, in an unrelated action, established a single size standard of 500 employees for the wholesale trade industry (revised to 100 employees in 1986), regardless of the item being sold.

SBA believes that the revised wholesale size standard of 100 employees has proven to be appropriate for the purposes of assisting ETCs and that creation of a special size standard is unnecessary. An ETC's primary industry classification will generally be within the wholesale trade industries because most of its revenues will be derived from exporting manufactured products. In some cases an ETC's primary industry classification will be within a service industry when its primary source of revenue is derived from export consulting and related services. Establishing an ETC size standard would require segmenting a portion of the wholesale trade industry division. This action would reverse the Agency's previous effort to establish a common size standard for all wholesale trade firms. Unless there is demonstrated a compelling reason to segment an industry, SBA's policy is to apply a single size standard to a four-digit Standard Industrial Classification industry. The current wholesale trade size standard appears to be more appropriate for ETCs than the 1984 receipt-based size standard or the proposed standard. Accordingly, SBA is withdrawing the proposed rule.

Dated: October 3, 1989.

Susan Engeleiter,

Administrator, U.S. Small Business Administrator.

[FR Doc. 89-24481 Filed 10-16-89; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-26-AD]

Airworthiness Directives; Beech 55, 56TC, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech 55, 56TC, 58, and 95 series airplanes, which would require inspections of the wing front spar carry-through web structure. There have been numerous reports of cracking of this structure. The proposed action is necessary to detect and repair cracks that could propagate to lengths that would compromise the integrity of the wing attachment to the fuselage and lead to possible loss of the airplane.

DATE: Comments must be received on or before December 1, 1989.

ADDRESSES: Beech Service Bulletin No. 2269, dated August 1989, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently aware of 87 reports of cracks of various sizes in the wing front spar carry-through web structure on certain Beech 55, 56TC, 58, and 95 series airplanes. The cause of the cracking has been determined to be fatigue in the corners of the fuselage frames, around and between the huckbolts, and in areas where stringers are attached. The carry-through web cracks have been on both the left and right side of the front spar carry-through and may be accelerated by rough field operations. Although the reported cracks have not progressed to a point where actual safety of flight has been affected, failure to detect and repair these cracks could result in propagation to lengths that would compromise the integrity of the wing attachment to the fuselage. As a result, Beech issued Service Bulletin No. 2269, dated August 1989, that specifies the inspection and repairs necessary to maintain the integrity of the carry-through structure. Since the condition described is likely to exist or develop in other airplanes of the same design, an AD is being proposed which would require compliance with Beech Service Bulletin Number 2269, dated August 1989, on certain Beech 55, 56TC, 58, and 95 series airplanes. This action does not include Models 58TC and 58P airplanes which have different carry-through web assemblies because there have been no reports of cracks in these models. The FAA has determined there are approximately 4,000 airplanes affected by the proposed AD. The cost of the inspection as proposed in the AD is estimated to be $160 per airplane. The total cost is estimated to be $640,000. The cost of this inspection will not have a significant economic impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. By adding the following new AD:

BEECH: Applies to the following airplanes certificated in any category:

Models	Serial Numbers
95, B95, B95A, D95A, E95	TD-1 through TD-721.
95-55, 95-A55, 95-B55, 95-B55A	TC-1 through TC-2456, except TC-350.
95-C55, 95-C55A, D55, D55A, E55, E55A	TC-350 and TE-1 through TE-1201.
95-B55B (T42A)	TF-1 through TF-70.
56TC, A56TC	TG-1 through TG-94.
58, 58A	TH-1 through TH-1475.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent cracks in the wing front spar carry-through web structure from propagating to lengths that could compromise the integrity of the wing attachment to the fuselage, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, or upon the accumulation of 1500 hours total TIS, whichever occurs later, and thereafter at the intervals specified below, inspect the wing front spar carry-through web structure in accordance with the instructions in Beech Service Bulletin (SB) No. 2269, dated August 1989.

(1) If no cracks are found, repeat the inspection at 500 hour TIS intervals thereafter.

(2) For cracks in the bend radius:

(i) If the crack length is less than 0.5 inch, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269 and reinspect for crack progression every 100 hours TIS thereafter. Only one stop drilled crack for the left side and one stop drilled crack for the right side of the web structure are permissible.

(ii) If the crack length is greater than 0.5 inch but less than 2.0 inches, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269 and within the next 25 hours TIS, repair the web structure with the applicable Beech part number (P/N) 58-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If the crack length is greater than 2.0 inches, prior to further flight repair the web structure with the applicable Beech P/N 58-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(3) For cracks in the web face, in the area of the huckbolt fasteners:

(i) If the crack length is less than 0.5 inch, reinspect for crack progression every 100 hours TIS thereafter. Only one crack for the left side and one crack for the right side are permissible.

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Note 1: Do not stop drill these cracks due to the possibility of damaging the structure behind the web face.

(ii) If any crack length is greater than 0.5 inch, or a crack is connecting two fastener holes, within the next 25 hours TIS, repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If any crack passes through two fastener holes and extends beyond the holes, prior to further flight repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(4) If cracks are found in both the forward and aft web on the same side of the airplane, regardless of the crack lengths, prior to further flight repair the web structure with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

Note 2: If a fuselage skin crack is discovered around the opening for the lower forward carry-through fitting, an external doubler may be required.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946–4400.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 2, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24405 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–CE–27–AD]

Airworthiness Directives; Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) that would require inspection and replacement, as necessary, of the main landing gear inner barrel bearings on certain Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes. The FAA has received reports of failures of these bearings. The proposed actions will preclude jamming of the oleo strut, and possible subsequent damage to the landing gear system and airframe.

DATE: Comments must be received on or before November 16, 1989.

ADDRESSES: Cessna Service Bulletin MEB88–7, dated December 2, 1988, applicable to this AD, may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of eight failures of the main landing gear strut barrel inner bearing on Cessna 300 and 400 series airplanes. Failure of this bearing can result in the shock strut jamming, possibly in the extended position. This can cause the gear retraction system to fail or the gear to collapse after landing, with damage to the airplane, and possible injury to the occupants. Cessna redesigned the bearing, and incorporated it into production in 1980 model airplanes. Cessna has also issued Service Bulletin MEB88–7, dated December 2, 1988, that defines repetitive inspections of the pre-1980 model year production bearing and instructions to replace any bearings found to be cracked. Since the condition described is likely to exist or develop in other Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes of the same design, this proposed AD would require a visual and magnetic particle inspection of these bearings, and replacement if found cracked.

The FAA has determined there are approximately 8,367 airplanes affected by the proposed AD. The cost of the initial and each recurring inspection is estimated to be $880 per airplane for a total cost of $7,362,960. The cost of compliance is so small that the expense of compliance will not have a significant impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[Amended]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following models and serial numbered airplanes certificated in any category:

Model	Serial numbers
310	310L0001 thru 310R1690.
320	320E0001 thru 320F0045.
340	340–0001 thru 340A0801.
401	401–0001 thru 401B0221.
402	402–0001 thru 402C0125.
411	411–0001 thru 411A0300.
414	414–0001 thru 414A0340.
421	421–0001 thru 421C0715.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To assure structural integrity of the main gear barrel inner bearing and prevent jamming of the inner and outer barrels of the main landing gears, accomplish the following:

(a) Upon the accumulation of 1,300 hours total time-in-service (TIS), or within the next 300 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS, inspect the left and right main gear strut barrel inner bearings, Part Numbers 5041108–1 and 5041108–2, in accordance with the following procedures:

(1) Using the appropriate Aircraft Service Manual or Maintenance Manual, refer to the Landing Gear section and use it as a guide to remove the lower barrel and axle assemblies from the upper barrel assemblies.

(2) Remove all oil and grease from the external lock rings, inner ring bearings, and extended stop spacers.

(3) Visually inspect the external lock rings, inner bearings, and extended stop spacers for cracks.

(4) If any cracks are found in the external lock rings or the extended stop spacers, prior to further flight replace the cracked part with a serviceable part.

(5) If any cracks are found in the inner bearings, prior to further flight replace the cracked part with a Part Number (P/N) 5141109–1 bearing.

(6) If no cracks are found, magnetic particle inspect the inner bearings using the procedures specified in Part B, "Magnetic Particle Nondestructive Inspection Procedures" of Cessna Service Bulletin MEB88–7, dated December 2, 1988. If any cracks are found, prior to further flight replace the cracked part with a P/N 5141109–1 bearing.

(b) The 1,000 hour repetitive inspections specified in paragraph (a) of this AD are no longer required when the P/N 5141109–1 bearing is installed in each gear.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 2, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24406 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 89N–0118]

Proposed Technical Revision in the Regulations Governing Drug Master File Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing minor revisions to the rules governing the submission to FDA of drug master files (DMF's) DMF's are reference files submitted to FDA in support of investigational and marketing applications for human drugs. There are five types of DMF's. This proposed rule would revise the titles to reflect more accurately the purpose of each type of DMF.

DATE: Comment by December 18, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: DMR's are reference files submitted to FDA that contain information that may be used in the review of investigational and marketing applications for human drugs. DMF's are submitted to the agency to permit the submitter to incorporate the information in DMF's when submitting an application of the allow another party to reference this material without disclosing to that party the contents of the file. The submission of a DMF is not required; and DMF is submitted solely at the discretion of the holder. In the **Federal Register** of February 22, 1985 (50 FR 7452 at 7493), FDA adopted new regulations governing the submission and content of DMF's. The agency is now proposing minor changes to these requirements.

The current regulation describes several types of information that may be submitted in a DMF. DMF's are divided into five types according to their contents. Type I DMF's as described in 21 CFR 314.420(a)(1), cover the facilities and operating procedures used to

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manufacture drug products and drug substances. This proposed rule would revise 21 CFR 314.420(a)(1) to make clear that the use of Type I DMF's is more applicable for foreign rather than domestic manufacturing establishments. In most instances, Type I DMF's for domestic facilities are not sufficiently beneficial to the agency to warrant submission. Because of a generally greater inspectional history for domestic firms, FDA is familiar with the location and layout of such facilities. In contrast, Type I DMF's are sometimes useful for foreign establishments. An FDA on-site inspection of a foreign drug manufacturing facility presents unique problems of planning, scheduling, and travel not presented by an inspection of a domestic manufacturing facility. To help FDA plan efficient inspections of foreign manufacturing facilities, some foreign manufacturers have submitted information about their facilities in DMF's. DMF's provide a convenient means to convey such information. It should be emphasized that foreign facilities making products for the American market are subject to the same current good manufacturing practice requirements as domestic facilities.

The proposed rule also would revise the title of Type V DMF's from "Preclinical or clinical data" to "FDA-accepted reference information." The agency has found that the Type V DMF is sometimes used to submit information that is either inappropriate or should be submitted with other documentation. For example, FDA has received clinical data in Type V DMF's that properly should be a part of investigational and marketing applications. therefore, the proposed change in intended to discourage the submission of Type V DMF's for miscellaneous information, duplicate information, or information that should be included in one of the other types of DMF's. If a person wishes to submit information in a DMF that is not appropriate for submission in one of the other four types of DMF's that person must first submit a letter of intent to the Drug Master File Staff, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2–14, Rockville, MD 20852. FDA will then contact the person to discuss the appropriateness of the proposed submission. This proposed rule also would make minor changes in the regulation to describe more accurately the other three types of DMF's.

These revisions are consistent with the guidance provided in the "Guideline for Drug Master Files," which may be consulted for help in preparing and submitting DMF's. Elsewhere is this issue of the Federal Register, the agency is publishing a notice of availability of this guideline under Docket No. 79D–0124. Written requests for a copy of the guideline should be sent to the Legislative, Professional, and Consumer Affairs Branch (HFD–365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (send a self-addressed adhesive label to assist the branch in processing your requests).

Interested persons may, on or before December 18, 1989, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(a)(9) that this proposed technical revision is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this proposed rule. This proposed rule would be merely a technical revision of an existing rule which would have minor but beneficial economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the Commissioner certifies that this clarification will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

The minor technical changes under this proposed rule would relate to information collection requirements already submitted to the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and previously approved under OMB control number 0910–0001.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

2. Section 314.420 is amended by revising paragraphs (a)(1), (2), (3), (4), and (5) to read as follows:

§ 314.420 Drug master files.

(a) * * *

(1) Manufacturing site, facilities, operating procedures, and personnel (because an FDA on-site inspection of a foreign drug manufacturing facility presents unique problems of planning and travel not presented by an inspection of a domestic manufacturing facility, this information is only recommended for foreign manufacturing establishments);

(2) Drug substance, drug substance intermediate, and materials used in their preparation, or drug product;

(3) Packaging materials;

(4) Excipient, colorant, flavor, essence, or materials used in their preparation;

(5) FDA-accepted reference information. (A person wishing to submit information and supporting data in a drug master file (DMF) that is not covered by Types I through IV DMF's must first submit a letter of intent to the Drug Master File Staff, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2–14, Rockville, MD 20852. FDA will then contact the person to discuss the proposed submission.)

* * * * *

Dated: August 9, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24430 Filed 10–16–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–89–097]

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Senator Stanley C. Walker of Virginia, the Coast Guard is considering changing the regulations that govern the operation of the Berkley drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, in Norfolk, Virginia, by restricting bridge openings during the morning and evening rush hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATE: Comments must be received on or before December 1, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer and Captain M. K. Cain, project attorney.

Discussion of Proposed Regulations

Senator Stanley C. Walker of Virginia has requested that openings of the Berkley drawbridge across the Eastern Branch of the Elizabeth River at mile 0.4 in Norfolk, Virginia, be eliminated during peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. Currently, the draw opens on signal at all times, and there is a "gentlemen's agreement" with the Coast Guard from the commercial maritime industry to avoid requesting bridge openings during morning and evening rush hours; however, this agreement has not been completely successful as there are a number of waterway users unaware of it who request draw openings during peak rush hours. The proposed change would close the Berkley Bridge to commercial, recreational, tour boats and public vessels Monday through Friday, except Federal holidays, from 5:30 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m. A provision that allows the draw to open on signal at all times for vessels in distress is being made a part of this proposal.

Draw openings during the peak traffic hours have been causing lengthy highway traffic backups with resultant delays often lasting as long as 1½ hours. Since the Berkley Bridge and the Downtown Tunnel are part of the same highway corridor, they are both affected by the traffic backups which occur on the Norfolk side beginning midway on the Berkley Bridge extending back towards downtown Norfolk and onto I–264, and on the Portsmouth side beginning at the mouth of the Downtown Tunnel and extending back towards I–264 and into downtown Portsmouth. According to the Virginia Department of Transportation, these backups do not automatically return to a normal traffic flow when the draw is closed. It generally takes a period of time lasting longer than the rush hours for traffic to recover and return to a nomal flow. The problem often worsens as a result of vehicles overheating and experiencing mechanical problems that frequently occur during traffic stoppages. A problem also exists for emergency vehicles (fire, police, rescue, etc.) that need to go through the Downtown Tunnel, and the Virginia Department of Transportation has a problem reaching broken down cars in the tunnel with their wreckers and emergency vehicles when traffic congestion occurs due to a bridge lift. An extra burden also is placed on the ventilation system in the tunnel due to excessive exhaust fumes coming from idling cars.

The Berkley Bridge and tunnels, a part of I–264, are an important link between the cities of Portsmouth and Norfolk. It is one of the primary routes for motorists that work at the Norfolk Naval Shipyard, and other industries and businesses in Portsmouth and Norfolk. The bridge is heavily traveled throughout the day, with the heaviest traffic volumes occurring during the morning and evening rush hours. The Hampton Roads Maritime Association has been notified that this proposal is being considered, and they will be given the opportunity along with other navigational interests to comment as to whether this proposed restriction is practical and feasible from their viewpoint. The Coast Guard believes these proposed restrictions will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits around the proposed schedule. Many commercial waterway users already do this as a result of the "gentlemen's agreement".

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with

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section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43

2. Section 117.1007(d) is added to read as follows:

§ 117.1007 Elizabeth River-Eastern Branch.

* * * * *

(d) The draw of the Berkley Bridge, mile 0.4 in Norfolk, shall open on signal, except that:

(1) From 5:30 a.m. to 9:00 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draw will remain closed to all vessel traffic.

(2) The draw shall open on signal at all times for vessels in distress.

Dated: October 5, 1989.

P. A. Welling,
Rear Admiral, U. S. Coast Guard,
Commander, Fifth Coast Guard District.

[FR Doc. 89–24480 Filed 10–16–89; 8:45 am]
BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6969]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Meriwether County (Unincorporated Areas)	
Pigeon Creek:	
Just upstream of Mitchell Cove Road	*722
Just downstream of Pigeon Creek Road	*764
Just upstream of Pigeon Creek Road	*769
About 0.8 mile upstream of confluence of Cooler Branch	*932
Maps available for inspection at the County Building Department and Zoning Administrator's Office, Greenville, Georgia.	
Send comments to The Honorable Carl Garner, Chairman, County Commissioners, Meriwether County, P.O. Box 438, Greenville, Georgia 30222.	
Peach County (Unincorporated Areas)	
Bay Creek:	
About 1.1 miles downstream of Holland Road	*320
About 2.7 miles upstream of Sanitary Creek Road	*372
Mossy Creek:	
Just upstream of State Route 96	*327
About 400 feet downstream of confluence of Mule Creek	*343
Echeconnee Creek:	
Just upstream of Houston Road	*287
Just downstream of Interstate 75	*295
Maps available for inspection at the County Zoning Office, County Courthouse, Ft. Valley, Georgia.	
Send comments to The Honorable Glenwood Hill, Chairman, Board of Commissioners, Peach County, P.O. Box 468, Ft. Valley, Georgia 31030.	
IOWA	
Denver (City), Bremer County	
Quarter Section Run:	
About 3,800 feet downstream of Fayette Street	*937
About 2,300 feet upstream of Denver Dam	*946
Map available for inspection at the City Hall, 107 North State Street, Denver, Iowa.	
Send comments to The Honorable Gene Leonhart, Mayor, City of Denver, City Hall, 107 North State Street, Denver, Iowa 50622.	
Sumner (City), Bremer County	
Little Wapsinicon River:	
About 3,000 feet downstream of Division Street	*1,051
About 4,000 feet upstream of Walnut Street	*1,080
Maps available for inspection at the City Hall, 105 East 1st Street, Sumner, Iowa.	
Send comments to The Honorable Claude Waskow, Mayor, City of Sumner, City Hall, 105 East 1st Street, Sumner, Iowa 50674.	
KANSAS	
Medicine Lodge (City), Barber County	
Medicine Lodge River:	
About 2.0 miles downstream of U.S. Highway 160	*1,446
About 1.1 miles upstream of U.S. Highway 160	*1,462
Elm Creek:	
At mouth	*1,452
Just downstream of Atchison, Topeka and Santa Fe Railway	*1,459
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,464
About 0.5 mile upstream of Curry Lane	*1,484
Ditch Creek:	
At mouth	*1,456
Just downstream of Barber County State Lake Dam	*1,495
Just upstream of Barber County State Lake Dam	*1,518
About 0.3 mile upstream of Iliff Street	*1,527
Maps available for inspection at the City Hall, 114 West 1st, Medicine Lodge, Kansas.	
Send comments to The Honorable Kenneth Swigart, Mayor, City of Medicine Lodge, City Hall, 114 West 1st, Medicine Lodge, Kansas 67104.	
KENTUCKY	
Pulaski County (Unincorporated Areas)	
Pitman Creek:	
500 feet downstream of confluence of Caney Fork	*876
Just downstream of State Route 635	*948
Caney Fork:	
At mouth	*876
Just upstream of dam	*886
Just downstream of State Route 39	*894
Pointer Creek:	
About 1.9 miles above mouth	*766
About 1.4 miles upstream of confluence of Pitman Branch	*813
Maps available for inspection at the Disaster and Emergency Services Department, County Courthouse, Somerset, Kentucky.	
Send comments to The Honorable Darrell Beshears, Judge-Executive, Pulaski County, P.O. Box 712, Somerset, Kentucky 42501.	
MAINE	
Alfred (Town), York County	
Littlefield River:	
Approximately 150 feet upstream of Estes Lake Dam	*216
Approximately 350 feet upstream of U.S. Route 202 and State Route 4	*235
Shaker Pond: Entire shoreline within community	*235
Maps available for inspection at the Town Hall, Alfred, Maine.	
Send comments to The Honorable Dorothy M. Hill, Chairman of the Town of Alfred Board of Selectmen, York County, P.O. Box 85, Alfred, Maine 04002.	
Cushing (Town), Knox County	
St. Georges River:	
Shoreline at Maple Juice Cove	*10
Shoreline at south western tip of Gay Island	*20
Atlantic Ocean:	
Shoreline at Meduncook River at Hornbarn Cove	*16
Shoreline of Meduncook River at Davis Point Road	*17
Maps available for inspection at the Clerk's Office, Cushing, Maine.	
Send comments to The Honorable Alton Grover, Chairman of the Town of Cushing Board of Selectmen, Knox County, HCR Box 131, Cushing, Maine 05463.	
Friendship (Town), Knox County	
Meduncook River:	
From 500 feet south of State Route 97 to Northeast Point	*10
Friendship Harbor	*14
Atlantic Ocean:	
Shoreline of Muscongus Bay at:	
Northeast Point	*10
Little Franklin Ledge	*12
Delano Cave	*14
Jameson Point	*27
Crane Island	*17
Goose River: Boot Neck	*10
Maps available for inspection at the Town Office, Friendship, Maine.	
Send comments to The Honorable Richard Lash, First Selectman of the Town of Friendship, Knox County, Town Office, Friendship, Maine 04547.	
South Bristol (Town), Lincoln County	
Atlantic Ocean	
Damariscotta River:	
Shoreline at northern corporate limits	*11
Shoreline at Jones Point	*16
Southeast shoreline of Foster Point	*17
Eastern Branch Johns River: Entire shoreline	*10
North Branch Johns River: Entire shoreline	*10
Heron Island:	
Northeastern shoreline	*10
Southeastern shoreline at Central Avenue extended	*18
Thrumpcap Island:	
Northern shoreline	*10
Eastern shoreline	*14
Crow Island: Southeastern shoreline	*18
Rutherford Island:	
Southwestern shoreline	*10
Shoreline at East Side Road extended southward	*18
Johns River:	
Peabow Island and High Island shorelines	*10
Shoreline northeast of McFarlands Cove Road	*20
Johns Bay:	
North Shoreline of Witch Island	*10
West shorelines of Birch and Hay Islands	*10
East shorelines of Birch and Hay Islands	*18
Shoreline at McFarlands Cove Road extended	*30
Poorhouse Cove: Entire shoreline	*10
McFarlands Cove:	
South and west shorelines	*10
Northwest shoreline	*12
Seal Cove: Entire shoreline	*10
Jones Cove:	
Northern, northwestern, and eastern shorelines	*12
Shoreline along east side of Jones Point	*18
Christmas Cove:	
Eastern and northwestern shorelines	*10
Shoreline shoutheast of southern end of Prescott Road	*25
The Gut: Entire shoreline	*10
Maps available for inspection at the Town Hall South Bristol, Maine.	
Send comments to The Honorable Larry Kelsey, Chairman of the Town of South Bristol Board of Selectmen, Lincoln County, HC 64, Boc 650, Walpole, Maine 04573.	
Woolwich (Town), Sagadahoc County	
Kennebec River:	
At U.S. Route 1	*9
At Chops Point	*9
At upstream corporate limits	*12
Atlantic Ocean	
Montsweag Bay: At Murphys Corner Road (extended)	*11
Brookings Bay: Approximately 2,400 feet southeast of intersection of Murphys Corner Road and Hockomock Road	*11
Hockomock Bay: At Phipps Point	*11
Pleasant Cove: At U.S. Route 1	*9
Maps available for inspection at the Town Office, Woolwich, Maine.	
Send comments to The Honorable Robert Buck, Chairman of the town of Woolwich Board of Selectment, Sagadahoc County, R.R. 1, Box 1660, Woolwich, Maine 04579.	
MISSISSIPPI	
Jefferson County (unincorporated areas)	
Mississippi River:	
About 13.5 miles downstream of northern county boundary	*83
About 1.5 miles upstream of northern county boundary	*87
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Fayette, Mississippi.	
Send comments to The Honorable James Jackson, President, Board of Supervisors, Jefferson County, P.O. Box 145, Fayette, Mississippi 39069.	
Scooba (Town), Kemper County	
Little Scooba Creek:	
About 0.5 mile downstream of State Highway 16	*186
About 0.7 mile upstream of county road	*198
Maps available for inspection at the Town Clerk's Office, Town Hall, 1037 Kemper Street, Scooba, Mississippi.	
Send comments to The Honorable Lloyd Hutcherson, Mayor, Town of Scooba, Town Hall, 1037 Kempter Street, P.O. Box 68, Scooba, Mississippi 39358.	
Tunica County (unincorporated areas)	
Mississippi River:	
At southern county boundary	*190
About 2.3 miles upstream of northern county boundary	*215
Jerry's Bayou:	
About 2000 feet downstream of Prichard Road	*189
About 0.8 mile upstream of Prichard Road	*192
Whitcoak Bayou Tributary:	
At mouth	*189
About 0.8 mile upstream of State Highway 4	*194
Whitcoak Bayou:	
About 400 feet downstream of confluence of Whitcoak Bayou Tributary	*189
About 400 feet upstream of confluence of Whitcoak Bayou Tributary	*189
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Tunica, Mississippi.	
Send comments to The Honorable Paul Battle, Jr., President, County Board of Supervisors, Tunica County, P.O. Box 53, Tunica, Mississippi 38676.	
Wilkinson County (unincorporated areas)	
Mississippi River:	
At downstream county boundary	*61
About 19 miles upstream of upstream county boundary	*71
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Woodville, Mississippi.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable William B. Netterville, President, Board of Supervisors, Wilkinson County, P.O. Box 516, Woodville, Mississippi 39669.	
MISSOURI	
Brookfield (city), Linn County	
Elk Creek:	
Just upstream of U.S. Highway 36	*742
About 1750 feet upstream of West Pratt Street	*765
West Yellow Creek:	
About 1100 feet downstream of County Road	*727
At confluence of Long Branch Creek	*735
Long Branch Creek:	
At mouth	*735
About 1.6 miles upstream of mouth	*737
Maps available for inspection at the City Hall, 116 Westbrooks, Brookfield, Missouri.	
Send comments to The Honorable Jack Forbes, Mayor, City of Brookfield, City Hall, Box 328, 116 Westbrooks, Brookfield, Missouri 64628.	
NEBRASKA	
Juniata (village), Adams County	
Main Ditch:	
Just upstream of South Street	*1,957
About 450 feet upstream of Eighth Street	*1,967
East Tributary:	
At confluence with Main Ditch	*1,957
Just upstream of Brass Avenue	*1,963
Maps available for inspection at the Village Hall, Juniata Avenue, Juniata, Nebraska.	
Send comments to The Honorable Bernice Wyman, Chairperson, Village of Juniata, P.O. Box 26, Juniata, Nebraska 68955.	
Scotts Bluff County (unincorporated areas)	
North Platte River:	
About 3.0 miles downstream of Broadway Avenue	*3,855
About 1.14 miles downstream of State Highway 29	*3,934
Tub Springs Drain:	
At mouth	*3,906
Just downstream of Burlington Northern railroad	*3,912
Just upstream of U.S. Highway 26	*3,919
Just downstream of Drop Structure	*3,937
Just upstream of Drop Structure	*3,944
About 0.54 mile upstream of confluence of Sunflower Drain	*3,956
Sunflower Drain:	
At mouth	*3,947
About 1,800 feet upstream of County Road	*3,950
Maps available for inspection at the County Building and Zoning Department, 101 Avenue I, Scottsbluff, Nebraska.	
Send comments to The Honorable Raymond Russel, Chairman, County Board of Commissioners, Scotts Bluff County, County Administration Building, 1825 Tenth Street, Gering, Nebraska 69341.	
NEW MEXICO	
Estancia (town), Torrance County	
Unnamed Arroyo:	
Approximately 700 feet downstream of downstream corporate limits	*6,107
At upstream corporate limits	*6,132
Maps available for inspection at the Town Hall, 1001 Highland, Estancia, New Mexico.	
Send comments to The Honorable Jerry Chavez, Mayor of the Town of Estancia, Torrance County, P.O. Box 166, Estancia, New Mexico 87016.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Clinton (township), Wyoming County	
South Branch Tunkhannock Creek:	
At downstream corporate limits	*715
At upstream corporate limits	*815
Maps available for inspection at the Township Building, Factoryville, Pennsylvania.	
Send comments to The Honorable Donald R. Clark, Chairman of the Township of Clinton Board of Supervisors, Wyoming County, R.D. 1, Factoryville, Pennsylvania 18419.	
Coal (township), Northumberland County	
Coal Run:	
At downstream corporate limits	*748
Approximately .6 mile upstream of the State Route 61 Exit Ramp	*903
Quaker Run:	
At confluence with Shamokin Creek	*833
Approximately 625 feet upstream of downstream crossing of Main Street	*875
Shamokin Creek:	
At downstream corporate limits	*616
At upstream corporate limits	*711
Maps available for inspection at the Township Building, 805 West Lynn Street, Shamokin, Pennsylvania.	
Send comments to The Honorable Vincent A. Purcell, President of the Township of Coal Board of Supervisors, Northumberland County, 805 West Lynn Street, Shamokin, Pennsylvania 17872.	
Falls (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*574
At upstream corporate limits	*594
Maps available for inspection at the Township Building, Falls, Pennsylvania.	
Send comments to The Honorable Eugene Dziak, Chairman of the Township of Falls Board of Supervisors, Wyoming County, R.D. 1, Falls, Pennsylvania 18615.	
Greenfield (township), Lackawanna County	
Dundaff Creek:	
Approximately 1,400 feet upstream of L.R. 615	*1,141
Approximately 315 upstream of confluence of Unnamed Tributary to Dundaff Creek	*1,251
Unnamed Tributary to Dundaff Creek:	
At confluence with Dundaff Creek	*1,249
Approximately .8 mile upstream of T-578 (Decker Road)	*1,321
Unnamed Tributary to South Branch Tunkhannock Creek:	
Approximately 75 feet downstream of T-510 (Stillmeadow Road)	*1,102
Approximately 100 feet upstream of T-560 (Watt Road)	*1,170
Maps available for inspection at the Township Building, R.D. 1, Carbondale, Pennsylvania.	
Send comments to The Honorable Joseph J. Slebodnik, Chairman of the Township of Greenfield Board of Supervisors, Lackawanna County, R.D. 1, Carbondale, Pennsylvania 10407.	
Longswamp (township), Berks County	
Toad Creek:	
At the downstream corporate limits	*399
At the upstream corporate limits; Borough of Topton's eastern boundary	*454
Little Lehigh Creek:	
At the downstream corporate limits	*402
Approximately 1.1 miles upstream of L.R. 06119 (Main Street)	*521
Swabs Creek:	
At the downstream corporate limits	*475

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 470 feet upstream of L.R. 06119 (Main Street)	*521
Tributary A to Swabs Creek:	
At the confluence with Swabs Creek	*483
Approximately 435 feet upstream of L.R. 06012 (Mountain Road)	*515
Tributary B to Swabs Creek:	
At the confluence with Swabs Creek	*495
Approximately 90 feet upstream of L.R. 06012 (Mountain Road)	*506
Maps available for inspection at the Township Building, Mertztown, Pennsylvania.	
Send comments to The Honorable Nevin M. Behm, Chairman of the Township of Longswamp Board of Supervisors, Berks County, R.D. #1, Box 367-B, Mertztown, Pennsylvania 19539.	
Mehoopany (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*626
At upstream corporate limits	*648
Maps available for inspection at the Township Building, Mehoopany, Pennsylvania.	
Send comments to The Honorable Robert B. Adams, Chairman of the Township of Mehoopany Board of Supervisors, Wyoming County, R.D. 1, Box 132, Menoopany, Pennsylvania 18629.	
Monroe (township), Wyoming County	
Bowman Creek:	
Approximately 0.78 mile downstream of downstream corporate limits	*723
At upstream corporate limits	*938
Maps available for inspection at the Township Building, Noxen, Pennsylvania.	
Send comments to The Honorable James Sickler, Chairman of the Township of Monroe Board of Supervisors, Wyoming County, R.D. 1, Noxen, Pennsylvania 18636.	
Nesquehoning (borough), Carbon County	
Nesquehoning Creek:	
At State Route 93	*663
Approximately 720 feet upstream of confluence of Dennison Run	*981
Maps available for inspection at the Borough Building, 127 W. Catawissa Street, Nesquehoning, Pennsylvania.	
Send comments to The Honorable Michael Krazalk, Mayor of the Borough of Nesquehoning, Carbon County, 127 West Catawissa Street, Nesquehoning, Pennsylvania 18240.	
Newton (township), Lackawanna County	
Susquehanna River:	
At downstream corporate limits	*572
Approximately 100 feet upstream of the upstream corporate limits	*575
Falls Creek:	
Approximately .5 mile downstream of LR 35017	*1,061
Approximately 1,360 feet upstream of LR 35017	*1,080
Maps available for inspection at the Township Building, Clarks Summit, Pennsylvania.	
Send comments to The Honorable William Heen, Chairman of the Township of Newton Board of Supervisors, Lackawanna County, R.D. #3, Clarks Summit, Pennsylvania 18411	
Washington (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*615
At upstream corporate limits	*638
Maps available for inspection at the Township Building, Washington, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Wayne Allen, Chairman of the Township of Washington Board of Supervisors, Wyoming County, R.D. 3, Tunkhannock, Pennsylvania 18657.	
Wilmot (township), Bradford County	
Susquehanna River:	
Downstream corporate limit	*663
Upstream corporate limit	*675
Maps available for inspection at the Township Building, Wilmot, Pennsylvania.	
Send comments to The Honorable Earl Messersmith, Chairman of the Township of Wilmot Board of Supervisors, Bradford County, R.D., New Albany, Pennsylvania 18833.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Windham (township), Bradford County	
Wappasening Creek:	
At downstream corporate limits	*643
Approximately 240 feet upstream of L.R. 699	*833
Maps available for inspection at the Township Building, Rome, Pennsylvania.	
Send comments to The Honorable John Doane, Chairman of the Township of Windham Board of Supervisors, Bradford County, R.D. 2, Rome, Pennsylvania 18837.	
Wysauing (township), Bradford County	
Susquehanna River:	
At downstream corporate limits	*699

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 5.7 miles upstream of the confluence of Wysauing Creek	*890
Maps available for inspection at the Township Building, Wysauing, Pennsylvania.	
Send comments to The Honorable Marvin Meteer, Chairman of the Township of Wysauing Board of Supervisors, Bradford County, R.D. 2, Wysauing, Pennsylvania 18853.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground * Elevation in feet	
				Existing	Modified
Arizona	Town of Prescott Valley	North Navajo Drive Wash	Approximately 150 feet downstream of Ranger Road.	None	*4,916
	Yavapai County		Just upstream of Manley Drive	None	*4,945
			At Spouse Drive	None	*4,995
			Approximately 55 feet upstream of Tonto Way	None	*5,045
			Just downstream of Long Look Drive	None	*5,072
Maps are available for review at Town Hall, 8501 East Yavapai Street, Prescott Valley Arizona.					
Send comments to the Honorable Edward Smith, Mayor, town of Prescott Valley, P.O. Box 25456, Prescott Valley, Arizona 86312.					
Hawaii	Hawaii County	Waikoloa	Approximately 3,400 feet downstream of Opelo road.	None	2,545*
			Approximately 1,100 feet downstream of Opelo Road.	None	2,595*
			Approximately 100 feet downstream of Opelo Road	None	2,617*
			Just upstream of Opelo Road	None	2,626*
			Just downstream of Lindsey Road	None	2,664*
			Just upstream of Lindsey Road	None	2,666*
			Just downstream of confluence with Waikoloa Stream Tributary.	None	2,700*
			Approximately 1,500 feet upstream of confluence with Waikoloa Stream Tributary.	None	2,805*
			Just upstream of confluence with Waikoloa Stream	None	2,670*
			Approximately 1,000 feet downstream of Kamamalu Street.	None	2,702*
			Approximately .50 feet downstream of Kamamalu Street.	None	2,717*
			Just upstream of Kamamalu Street	None	2,724*
			Approximately 600 feet upstream of Kamamalu Street.	None	2,725*
			Approximately 1,000 feet upstream of Kamamalu Street.	None	2,741*
			Approximately 1,650 feet upstream of Kamamalu Street.	None	2,748*
			Just upstream of confluence with Waikoloa Stream	None	2,702*
			Approximately 800 feet upstream of confluence with Waikoloa Stream.	None	2,725*
			Approximately 900 feet upstream of confluence with Waikoloa Stream.	None	2,728*
			Approximately 1,500 feet upstream of confluence with Waikoloa Stream.	None	2,751*
			Approximately 3,500 feet upstream of confluence with Waikoloa Stream.	None	2,873*
Maps are available for inspection at Hawaii County Services, 1st Federal Plaza, 75-5737 Kuakini Highway, Kailua-Kona, Hawaii.					
Send comments to Mayor Bernard K. Akana, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96720.					
Missouri	City of Warrensburg Johnson County.	Bear Creek Tributary	About 3,800 feet upstream of mouth	None	*732

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground * Elevation in feet	
				Existing	Modified
			About 1,900 feet upstream of confluence of Small Tributary.	None	*762
		Small Tributary	At mouth just upstream of Christopher Street	None	*748
				None	*777

Maps available for inspection at the Municipal Building, 102 South Holden, Warrensburg, Missouri.

Send commetns to The Honorable Robert Ulrich, Mayor, City of Warrensburg, Municipal Building, 102 South Holden, Warrensburg, Missouri 64093.

Missouri	City of Warsaw Benton County.	Osage River	Within community	None	*667
		Town Branch	Just upstream of Town Levee	None	*667
			About 750 feet upstream of Polk Street	None	*693

Maps available for inspection at the Community Building, Warsaw, Missouri.

Send comments to The Honorable Mahlon White, Mayor, City of Warsaw, Community Building, P.O. Box 68, Warsaw, Missouri 65355.

Nevada	Nye County Unincorporated Areas.	Amargosa	Approximately 640 feet downstream of U.S. Highway 95, first road crossing downstream of the confluence of Dry Canyon Creek.	None	*3,178
			At U.S. Highway 95 first crossing downstream of Dry Canyon Creek confluence.	None	*3,189
			Just downstream of Main Street	None	*3,269
			Approximately 40 feet downstream of U.S. Highway 95 near Second Street (extended).	None	*3,296
			Approximately 2,625 feet upstream of U.S. Highway 95 which runs through Second Street.	None	*3,321
		West Pahrump Valley Wash	At the interestion of Acacia Avenue and Leslie Street.	None	#1
		Unnamed Western Wassh	At the intersection of Bell Avenue and Barney Stree.	None	#1
			At the intersection of Corbin Street and an unnamed road located 2,680 feet south of Charleston Park Avenue.	None	#1
		Wheeler Wash	At the mouth of Wheeler Wash Canyon approximately 3 miles up-fan from State Highway 160.	None	#5
			At the intersection of Homestead Road and State Highway 160.	None	*#1
			At the intersection of Gamebird Road and Pahrump Valley Boulevard.	None	#1

Maps are available for review at the Nye County Depairtment of Planning, 377 North Jackson, Tonopah, Nevada.

Send comments to the Honorable Robert Revert, Cairman, Nye County Board of Commissioners, P.O. Box 1767, Tonopah, Nevada 89049.

New York	Jeffersonville, Village Sullivan County.	East Branch Callicoon Creek	Approximately 400 feet downstream of corporate limits.	None	*1,045
			At upstream corporate limits	None	*1,087
		Laundry Brook	At confluence with East Branch Callicoon Creek	None	*1,054
			Approximately 1,065 feet upstream of Maple Avenue.	None	*1,099

Maps available for inspection at the Village Clerk's office, Village Hall, Jeffersonville, New York.

Send comments to the Honorable Russell E. Duttweiler, Mayor for the Village of Jeffersonville, Sullivan County, P.O. Box 155X, Jeffersonville, New York 12748.

Pennsylvania	Pine Creek, Township Jefferson County.	Sandy Lick Creek	At Pittsburgh and Shawmut Railroad	None	*1,222
			Approximately 300 feet upstream of CONRAIL	None	*1,241
		Mill Creek	At the confluence with Sandy Lick Creek	None	*1,233
			Approximately .8 mile upstream of confluence with Sandy Lick Creek.	None	*1,246
		Fivemile Run	At the confluence with Sandy Lick Creek	None	*1,222
			Upstream corporate limits	None	*1,231

Maps available for inspection at the Township Building, Route 332, Brookville, Pennsylvania.

Send comments to The Honorable L. Reid Henry, Chairman of the Township of Pine Creek Board of Supervisors, Jefferson County, R.D. #1, Brookville, Pennsylvania 15825.

Issued: October 6, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-24469 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-449, RM-6802]

Radio Broadcasting Services; Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Kidd Communications, Inc. permittee, Channel 299A, Kings Beach, CA, seeking the substitution of FM Channel 299C3 for Channel 299A at Kings Beach and modification of its permit accordingly. Coordinates for this proposal are 39-18-50 and 119-53-00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Tannenwald, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Wash., DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-449, adopted September 19, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24417 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-447, RM-6848]

Radio Broadcasting Services; Coushatta, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James G. Bethard, proposing the substitution of Channel 235C3 for Channel 222A at Coushatta, Louisiana, and the modification of his construction permit to specify operation on Channel 235C3 in lieu of Channel 222A. The proposal could provide Coushatta with its first wide coverage area FM service. A site restriction of 7.6 kilometers (4.7 miles) south of the city is required. The coordinates are 31-56-49 and 93-20-13.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before Deember 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James G. Bethard, P.O. Drawer C, Coushatta, Louisiana 71019 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-447, adopted September 20, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24419 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-445, RM-6820]

Radio Broadcasting Services; Athens, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James C. Sliger proposing the substitution of Channel 269C3 for Channel 269A at Athens, Tennessee, and the modification of the license for Station WJSQ(FM) at Athens to specify operation on the higher class co-channel. A site restriction of 18.2 kilometers (11.3 miles) east of the Athens is requested for Channel 269C3. The coordinates are 35-28-31 and 84-23-59.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James K. Edmundson, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, Post

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Office Box 96870, Washington, DC 20090 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-445, adopted September 20, 1989, and released October 11, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24418 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-446, RM-6834]

Radio Broadcasting Services; Trenton, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by The Wireless Group, Inc., licensee of Station WLOT(FM), Channel 249A, Trenton, Tennessee, proposing the substitution of Channel 248C3 for Channel 249A at Trenton, and the modificaiton of Station WLOT(FM)'s license to specify operation on the higher powered channel, as that community's first wide coverage area FM service. A site restriction of 10.9 kilometers (6.8 miles) north of Trenton is required. The coordinates are 36-04-30 and 88-56-00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Carlton Veirs, President, The Wireless Group, Inc., P.O. Box 198, 42 South Washington Avenue, Brownsvile, Tennessee 38012 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-446, adopted September 20, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Nctice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24418 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; Proposed Revision of Special Regulations for the Grizzly Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise the special regulations for the threatened grizzly bear to enlarge the types of persons permitted to take nuisance bears. The proposal would allow specially authorized persons to take dangerous or incorrigible nuisance bears that would normally be removed by State or Federal authorities to minimize continued conflict and to prevent human injury. Removal would be accomplished through a State-administered hunt restricted to a specific area encompassing the Idaho, Montana, and Wyoming portions of the Yellowstone ecosystem outside Yellowstone and Grand Teton National Parks. The proposal allows greater flexibility in the management of grizzly bears without increasing the number of bears normally removed from this area. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 18, 1989. Public hearing requests must be received by December 1, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above, 406/329-3223 or FTS 585-3223).

SUPPLEMENTARY INFORMATION:

Background

The grizzly bear (*Ursus arctos*) originally occurred throughout western North America from Alaska to Mexico. Its populations in the conterminous United States are now restricted to northeastern and northwestern Washington, northern and eastern Idaho, western Montana, and northwestern Wyoming. Fewer than 1,000 individuals are thought to remain in these areas, with the majority in the Northern Continental Divide ecosystem in northwest Montana and the Yellowstone ecosystem in northwestern Wyoming and adjacent portions of Montana and Idaho. In the **Federal Register** of July 28, 1975 (40 FR 31734), the Service determined threatened status for the grizzly in the conterminous United States, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Special regulations were issued in conjunction with that determination and were incorporated into 50 CFR Part 17.40(b). These rules provided general protection for the species but allowed taking under certain conditions to defend human life, to remove nuisance animals, and to carry out research. In addition, a limited sport hunting season was authorized in a specified portion of northwestern Montana.

The present proposal would modify the portion of the special rule addressing removal of nuisance bears to include specially authorized persons among those authorized to remove dangerous or incorrigible nuisance bears in the Yellowstone area. Removal would be accomplished by means of a supervised hunt administered by State game agencies. Hunting for grizzly bears has not been permitted in the Yellowstone ecosystem since 1974 (Montana portion) and 1975 (Wyoming portion). The State of Wyoming also limited the baiting of black bears for hunting in portions of grizzly bear range outside Yellowstone National Park in 1982 because of concern about the number of accidental grizzly kills by black bear hunters.

The rationale for the proposed change is as follows: Under the existing special rule, a grizzly posing a serious threat to human safety can be legally taken by a person in self-defense or in defense of others. A dangerous bear can also be controlled by government officials. However, only State, Federal or Tribal officials are presently allowed to take a grizzly bear that is potentially dangerous or that causes significant property loss. Upon closer examination, the Service now recognizes that while it is absolutely necessary and advisable for authorized wildlife officials to make the crucial management decision on whether to relocate or remove a depredating or potentially dangerous grizzly, it is not necessary for the conservation of the grizzly to restrict the act of removal to Federal, State, or Tribal authorities only.

Therefore, new regulatory language is suggested to allow nuisance bears that would normally be removed by State or Federal officials to be taken by specially authorized persons under the supervision of State game management authorities in portions of the Yellowstone area outside Yellowstone and Grand Teton National Parks. Control of nuisance bears within National Parks would remain the responsibility of the National Park Service. The change would not result in any additional bears being taken in the Yellowstone ecosystem.

Data on human-caused grizzly bear mortality in the Yellowstone ecosystem from 1980 to 1987 show that a total of 22 nuisance grizzly bears have been removed from the ecosystem over the last 8 years, or an average of 2.8 per year. Of this total, 12 were removed from outside Yellowstone and Grand Teton National Parks. Therefore, the average number of nuisance bears removed from the area subject to this proposed rule change was 1.5 bears per year from 1980-1987. Since no change to the criteria used to evaluate nuisance bears will result from this proposed rule change, the average number of dangerous and/or repeat offender nuisance bears taken over the last 8 years (1.5 bears/year) is an indicator of the number of bears expected to be taken in the future by specially authorized persons under this proposed rule change.

The criteria used to judge whether a bear is a nuisance or not and how and where taking of such animals can take place are specified in the Interagency Grizzly Bear Guidelines (Interagency Grizzly Bear Committee. 1986. Interagency Grizzly Bear Guidelines. 100 pp. Published by U.S. Forest Service and available from the Regional Forester, U.S. Forest Service, Federal Building, Missoula, Montana 59802). The Guidelines were made available for public comment, with portions published in the **Federal Register** on May 28, 1985 (50 FR 21696). In addition, 19 public meetings were held in Idaho, Montana, Washington, and Wyoming to explain and discuss the Guidelines.The final Guidelines were adopted on November 25, 1985 (51 FR 42863) by the Interagency Grizzly Bear Committee as the management document directing the management of the grizzly bear in the conterminous United States.

Under these Guidelines, decisions relating to the determination of nuisance bear status and the method used to control nuisance bears outside National Parks are made jointly by the Fish and Wildlife Service, the appropriate Federal land management agency (e.g., Forest Service, Bureau of Land Management) and the appropriate State game agency (e.g., Montana, Wyoming, Idaho, Washington).

With regard to the determination of nuisance bear status, a grizzly bear may be determined to be a nuisance if any or all of the following conditions apply:

Condition A: The bear causes significant depredation to lawfully present livestock or uses unnatural food materials (human and livestock foods, garbage, home gardens, livestock carrion, and game meat in possession of man) which has been reasonably secured from the bear resulting in conditioning of the bear or significant loss of property.

Condition B: The bear has displayed aggressive (not defensive) behavior toward humans which constitutes a *demonstrable* immediate or potential threat to human safety and/or a minor human injury resulted from a human/bear encounter.

Condition C: The bear has had an encounter with people resulting in a *substantial* human injury or loss of human life.

If a grizzly is determined to be a nuisance bear using the criteria above, capture is usually attempted, and a decision is made within 24 hours on whether to relocate or remove (i.e., kill or transport to a zoo or research) the bear. The decision on the appropriate control action to be taken is made after evaluating several factors, such as the nature of the bear offense (Condition A, B, and/or C), the number and type of offenses the bear has previously committed, and the age and sex of the nuisance bear. A detailed explanation of the nuisance bear criteria and the process for determining the appropriate control action to be taken may be found in the Guidelines.

The supervised hunt would be conducted in accordance with Federal and State law and regulations. The selection of hunters would be at the discretion of the State game management authority. It is anticipated that hunters will be selected through a State-run lottery system, wherein persons interested in participating would submit their names and a list of potential hunters would be created through a random drawing, with the first name drawn at the top of the list. When a bear-human conflict arises that (a) is diagnosed in accordance with the Guidelines as a dangerous or incorrigible nuisance bear situation for which removal is the appropriate remedy, and (b) the circumstances are such that a supervised person is an

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appropriate means of removal, the first person on the list will be contacted. If that person can arrive within 12–24 hours, he/she will be the person specially authorized to remove the dangerous or incorrigible bear. If not, the next person on the list will be offered the opportunity. The authorized person would be supervised and accompanied by State game management authorities.

Edible baits would not be permitted, as usage may attract nonnuisance bears, positively reinforce an association between humans and food rewards, and thereby create new nuisance bears. Nonedible baits or attractants would be permitted at the discretion of the State game management authority. Nonedible baits or attractants could attract bears to a well-chosen site where the hunter and accompanying State game official could clearly view each bear to determine whether it was the problem nuisance bear, without creating a human-food association. This would decrease the possibility that the wrong bear would be taken and improve the likelihood of a clean kill. Muzzle loaders and archery hunting would not be permitted, as these are less effective removal methods with greater safety risks for the hunter. After 5 years, a formal evaluation will be conducted to assess the number of bears taken, evaluate the impact of the rule change on grizzly recovery in the Yellowstone ecosystem, and to determine if refinements are necessary.

Questions may arise as to how the take of nuisance bears by specially authorized persons in the Yellowstone area differs from the Montana grizzly hunt authorized under 50 CFR 17.40(b)(1)(i)(e). The major differences are as follows:

—*Different wildlife management objectives.* The Montana hunt is essentially a limited sport hunt used to relieve population pressures and, in some instances, remove nuisance bears in the Northern Continental Divide ecosystem bear population. By tending to remove unwary bears more so than wary bears, the Montana hunt also acts as a general preventative to reduce potential bear/human conflicts in the area. In Yellowstone, the hunt would be an animal damage control hunt with the sole purpose of remedying or precluding significant human/bear conflicts by removing known incorrigible or dangerous nuisance bears.

—*Different, disjunct grizzly populations are affected:* The Montana hunt is restricted to the Northern Continental Divide population of grizzly bears in northwest Montana. This grizzly population is entirely separate from the bear population in the Yellowstone ecosystem that would be affected by the proposed rule change.

—*Different regulatory systems are used, with different degrees of impact on affected bear populations:* The Montana hunt is regulated by a quota system that limits the number of bears that can be taken by humans in the ecosystem each year. If the known number of female grizzly bears killed or removed reaches 6, or if the known total number of all grizzlies removed or killed reaches 21 (including an allowance of 7 bears to represent annual unknown human-induced mortality), then the Montana hunt is terminated. Hence, the net effect would be that no more than 6 female grizzlies or 14 grizzlies overall can be removed by authorized hunters each year in the Northern Continental Divide ecosystem. In the Yellowstone area, hunting would be restricted to nuisance bears that would have been removed anyway by authorized government officials. The net effect of the proposed action would be that no additional bears would be taken.

—*Different levels of State supervision during the hunt:* Authorized hunters are not required to be accompanied by State game officials in the Montana hunt. In the Yellowstone area, specially authorized private persons will be accompanied by State game officials to ensure that only the specific offending bear is taken.

Environmental Analysis

A draft environmental assessment was prepared to provide a preliminary assessment of the impacts of the proposed rule, and is available at the office of the Grizzly Bear Recovery Coordinator (see **ADDRESSES** above). Copies may also be obtained by contacting: Chief, Division of Endangered Species and Environmental Contaminants (Mail Stop 60153), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, 303/236–7398 or (FTS) 776–7398. Final environmental impact analysis, including Section 7 consultation, will take place after the public comment period, but before the final rule is approved. Comments received will be used to develop the final rule and provide input for environmental impact analysis.

Author

The primary author of this proposed rule is Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.40 is proposed to be amended by revising paragraph (b)(1)(i)(C) as follows:

§ 17.40 Special rules—mammals.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) *Removal of nuisance bears.* (1) A grizzly bear constituting a demonstrable but nonimmediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(*i*) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(*ii*) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears, except as authorized under (b)(1)(i)(C)(*2*); and

(*iii*) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(*2*) *The Yellowstone Area.* (*i*) If it is not contrary to the laws of Idaho, Montana, or Wyoming, a specially authorized person may take grizzly bears fitting the definition of nuisance bears as defined in the Interagency Grizzly Bear Guidelines and fitting the criteria for bears to be removed from the area under said Guidelines. The determination of nuisance status for any grizzly bear to be taken in this area will be a joint decision made by authorized representatives of the State game management agency, the U.S. Fish and Wildlife Service, and the land management agency involved as specified in the Interagency Grizzly Bear Guidelines.

(*ii*) Such taking shall be allowed in the area bounded by Interstate Highway 90 at its intersection with Interstate Highway 15 west of Butte, Montana, thence eastward along Interstate Highway 90 to Highway 310 at Laurel, Montana, thence south on Highway 310 to Highway 72 to Highway 120 to Cody, Wyoming, thence south on Highway 120 to Highway 20, thence west along the northern border of the Wind River Indian Reservation, south along the western border of the reservation, thence east along the southern border of the reservation to Highway 789, thence southeast on Highway 789 to Highway 28 to Highway 191, thence northwest on Highway 191 to Highway 189/191 to Hoback Junction, Wyoming, thence west on Highway 26 to Idaho Falls, Idaho, thence north on Interstate Highway 15 to the point of beginning, except that this area shall not include Yellowstone National Park or Grand Teton National Park.

(*iii*) Provided, that authorized persons will be supervised and accompanied by personnel of the State game management agency, the use of edible baits will not be permitted, the use of nonedible baits or attractants would be permitted at the discretion of the State game management authority, and muzzle loaders and archery hunting will not be permitted. No bears shall be taken by specially authorized persons in the Yellowstone area under this regulation that would not otherwise be taken as nuisance bears by authorized State or Federal authorities under the Interagency Grizzly Bear Guidelines.

(*iv*) Provided further, that any legal taking of a grizzly bear in the above-described area shall be reported within 48 hours of occurrence to the appropriate State authorities, and within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section. A formal evaluation will be conducted after 5 years.

* * * * *

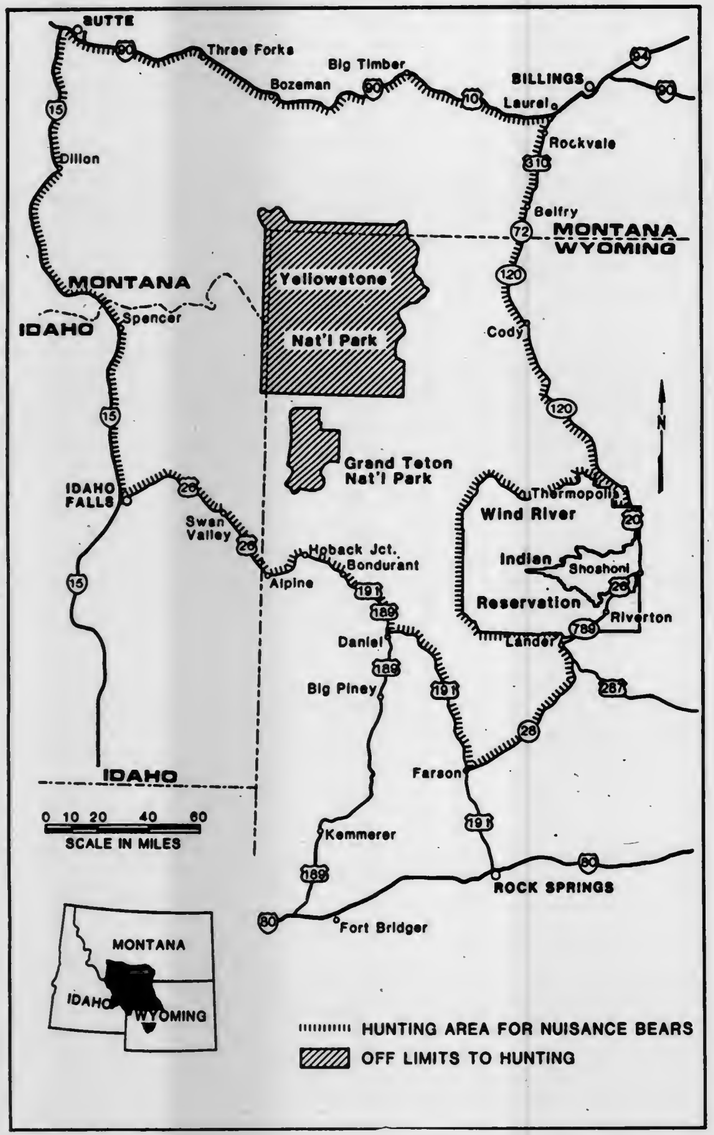
Dated: August 31, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

BILLING CODE 4310-55-M

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Grizzly Bear

Nuisance bear removal - Yellowstone area

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner presented substantial information that listing the spotted frog (*Rana pretiosa*) may be warranted.

DATES: The finding announced in this notice was made on September 7, 1989. Comments and information for the Service's use in issuing its 12-month finding will be accepted until February 3, 1990.

ADDRESSES: Questions or comments concerning this finding should be sent to: Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James Miller (see **ADDRESSES** above) (303/236-7398 or FTS 776-7398).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. A status review is initiated herewith, and the Service seeks information until February 3, 1990.

The Service has received and made a 90-day finding on the following petition:

A petition dated May 1, 1989, was received from the Board of Directors of the Utah Nature Study Society on May 4, 1989. The petition requested the Service to add the spotted frog (*Rana pretiosa*) to the List of Threatened and Endangered Species.

The petitioners stated that the spotted frog has been on the decline for 30 years and consists of numerous relict populations throughout the northwest.

It was further indicated that the spotted frog's range in northwest North America extends to the islands of Alaska, throughout British Columbia, Washington, Oregon, Idaho, western Montana, western Wyoming, and scattered locations in Nevada, and Utah. They state that the spotted frog's present range in the lower 48 states is greatly reduced from its historic range. The petitioners also claim that in some locations the bullfrog (*Rana catesbeiana*), because of its predatory nature, has eliminated the spotted frog from western Oregon, northeastern Oregon, western Idaho, the intermountain region of Montana, and the Wasatch populations in Utah. They also indicate that the three desert populations (Tule Valley, Snake Valley, and Deep Creek) are surviving; however, the Snake Valley population is threatened by an expanding population of the leopard frog (*Rana pipiens*).

The petitioners further stated that the spotted frog is a highly aquatic species which utilizes cold permanent water and the cold water portions of warm water springs. They concluded that spotted frog breeding requirements include the peripheral portion of permanent water sources in which the temperature fluctuations are maximum for the particular water source. Water sources include slow flowing streams, backwaters of major rivers, springs, and wetlands. The petitioners also indicated that the species is not protected by Federal and State laws and regulations. And finally, they state that the spotted frog is threatened due to the introduction of exotic species into wetlands, springs, and riparian habitats, and that water development projects have also impacted the species.

A preliminary review by the Service indicates that the spotted frog is doing well in western Montana and Wyoming. The species appears to be on the decline in Idaho, Nevada, Oregon, Utah and Washington. No preliminary determination could be made as to whether the spotted frog populations in southeast Alaska are increasing, stable, or declining.

After a review of the petition, accompanying documentation, and references cited therein and additional information obtained, the Service found the petition presented substantial information that the requested action may be warranted. Within one year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Dr. James L. Miller (see **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 3, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-24374 Filed 10-16-89; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Submission of Information Collection to the Office of Management and Budget; Amendment

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice; Amendment.

SUMMARY: On October 3, 1989, Farmers Home Administration published a Notice of Submission of Information Collection to the Office of Management and Budget (54 FR 40725). This action amends the notice as reflected below.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, FmHA Business and Industry Division, USDA Room 6327, South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202–475–3805.

SUPPLEMENTARY INFORMATION: The notice published on October 3, 1989, (54 FR 40725) is amended as follows:

1. In the third unnumbered paragraph under the heading "Supporting Statement," the two references to "36" months are revised to "24" months.

2. In the eleventh unnumbered paragraph the number "50" is revised to "10."

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3407.

Dated: October 11, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24536 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–07–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: November 2, 1989.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) discussion of OTA study; (2) aflatoxin issues; (3) report by subcommittee on dockage, foreign material, and broken grains; (4) procedures of Board of Appeals and Review; (5) international monitoring activities; (6) financial status; (7) safety; and (8) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: October 12, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–24458 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

Lugert Altus Watershed, Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Gudelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lugert Altus Watershed, Jackson and Greer Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, Agricultural Center Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, C. Budd Fountain, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project

The project concerns a plan for water conservation. The planned works of improvement include 199 tailwater recovery systems, 49 grade stabilization structures, and 98,610 linear feet of concrete lined ditches.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting C. Budd Fountain.

No administrative action on implementation of the proposal will be taken until 30 days after the date of the publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 10, 1989.

Donald R. Vandersypen,

Assistant State Conservationist (WR)

[FR Doc. 89–24461 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census, Commerce.

Title: Survey of Housing Starts, Sales, and Completions (Supplemental Questionnaires).

Form Number: SOC 900X, SOC 900AX.

Type of Request: New.

Burden: 166 hours.

Number of Respondents: 1,000.

Average Time Per Response: 5 minutes.

Needs and Uses: This information is needed to determine the number and type of new residential buildings being built and/or sold. The data are used by government agencies to evaluate economic policy and by businesses for production scheduling. The data are collected from home builders, real estate agents, and new house owners. This supplement is to test changes to existing questions.

Affected Public: Individuals or households, Businesses or other for-profit organizations.

Frequency: 2 survey months only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24371 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census, Commerce.

Title: 1990 Content Reinterview Questionnaire and Advance Letter.

Form Number: D–1010, D–1010L.

Type of Request: New.

Burden: 4,906 hours.

Number of Respondents: 12,600.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Content Reinterview Survey is designed to measure response error associated with selected population and housing items for the 1990 Decennial Census of Population and Housing. The data quality information obtained assists users of census data in interpreting census results and in deciding whether to use data for a given purpose.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24372 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Distribution License Procedure.

Form Number: Export Administration Regulations, § 773.3; OMB No. 0694–0015.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 40,297 respondents; 42,905 reporting/recordkeeping hours. Average hours per respondent for new applications is 40 hours. Average hours per respondent for renewals is 20 hours.

Needs and Uses: "Export regulation, licenses, authorization, distributions, special". The Distribution License procedure is a "bulk type" licensing procedure developed in response to and advice received from the export community. It is designed to facilitate the export of commodities under the large scale international marketing programs.

Affected Public: Business or other for-profit institutions; small business or organizations.

Frequency: On occasion, Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Construction Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24460 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held November 7, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.

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2. Introduction of Members and Visitors.
3. Discussion of 10MB Bulgarian Hard File.
4. Discussion of Local Area Networks.
5. Discussion of Streamlining Tape Drives.
6. OFA Progress Report on 50 MByte Hard Drives.
7. Feedback Report on Segment A Items.
8. Report on Upcoming Segment B Items.
9. Discussion of 1565 Simplification & Positive Rewrite.
10. Presentation of Papers or Comments by the Public.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and stategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address:

Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: October 12, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–24486 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–401–601]

Brass Sheet and Strip From Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period August 22, 1986 through February 29, 1988. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/5253.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 6998) the antidumping duty order on brass sheet and strip from Sweden. The petitioner and the respondent requested in accordance with 19 CFR 353.53(a) that we conduct an administrative review. We published the notice of initiation on Arpil 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of brass sheet and strip from Sweden. During the review period, such merchandise was classifiable under items 612.3960, 612.3982, and 612.3986 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 7409.21.00 and 7409.29.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Metallverken AB, a manufacturer/exporter of Swedish brass sheet and strip to the United States, and the period August 22, 1986 through February 29, 1988.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the delivered, duty paid, packed price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight and insurance, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. inland freight and insurance, and U.S. Customs duty. In ESP transactions we deducted U.S. commissions, credit expenses, indirect selling expenses incurred by the exporter for U.S. sales, other U.S. selling expenses, warranties, and the value added through further manufacture prior to sale in the United States. No other adjustments were claimed or allowed.

In certain instances, we could not make proper comparisons because we lacked complete information on the metal content of some U.S. sales. Therefore, we used the best information otherwise available for those sales. The best information otherwise available is the rate in the antidumping duty order.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market.

Home market price was based on the c.i.f. packed price to unrelated purchasers. We made adjustments, where applicable, for inland freight and insurance, differences in quantities and differences in packing, credit costs, and physical characteristics of the merchandise. Since there were no commissions paid in the home market, for purchase price comparisons we deducted indirect selling expenses from FMV to offset U.S. commissions which were added to FMV. For comparison to ESP sales, we limited the amount of indirect selling expenses incurred on home market sales by the sum of the indirect selling expenses and commissions incurred on sales to the United States.

We denied Metallverken's claim for a circumstance of sale adjustment to account for differences in metal costs because we believe that the calculation of weighted-average home market prices on a monthly basis eliminates the need to adjust for metal price fluctuations. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 6.03 percent exists for Metallverken AB for the period August 22, 1986 through February 29, 1988.

Interested parties may request disclosure within 5 days after the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Swedish brass sheet and strip by Metallverken AB.

For any future entries of this merchandise from a new exporter, whose first shipments occurred after February 29, 1988 and who is unrelated to any reviewed firm, a cash deposit of 6.03 percent shall be required.

These cash deposit requirements are effective for all shipments of Swedish brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of our antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: October 11, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–24493 Filed 10–17–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–029]

Partial Termination of Antidumping Duty Administrative Review: Fishnetting of Man-Made Fibers From Japan

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice.

SUMMARY: On July 25, 1989, the Department of Commerce initiated an administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The Department is now terminating that review with respect to one company, Amikan Fishing Net Mfg. Co. (Amikan).

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle, Kay Halpern, or Carole Showers, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone: (202) 377–3534, 377–0192, or 377–3217.

SUPPLEMENTARY INFORMATION: On July 25, 1989, the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on fishnetting of man-made fibers from Japan (54 FR 30915). That notice stated that we would conduct reviews for the following companies for the period June 1, 1988 through May 31, 1989: Mitsui & Co., Ltd. (Mitsui), Hakodate Seimo Sengu Co., Ltd. (Hakodate), Benny Toyama Corp. (Benny Toyama), and Amikan.

Jovanovich Supply Co., which was the only company to request a review for Amikan, subsequently withdrew its request for a review on August 8, 1989. As a result, the Department is terminating the review with respect to Amikan. We are proceeding with the review on fishnetting of man-made fibers from Japan with respect to Mitsui, Hakodate, and Benny Toyama.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22(a)(5) of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22(a)(5)).

Dated: September 28, 1989.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations.

[FR Doc. 89–24494 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–604]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Brazil materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

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FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administrations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Brazil. Petitioner deducted movement charges from the unit price and added a 17 percent value added tax applicable to products sold in Brazil.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturer's price quotes to Brazilian customers, including the 17 percent VAT, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made a circumstance of sale adjustment for differences in credit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 83 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Brazil and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classified under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Brazil materially injur, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24498 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-802]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the PRC materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that import of industrial nitrocellulose from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the PRC. Petitioner deducted movement charges from the unit price.

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value on constructed value calculated from factors of production valued in a market economy country (i.e., Thailand) at a comparable level of economic activity to the PRC. In its calculation, petitioner added amounts for factory overhead, general expenses and packing based on petitioner's costs. Petitioner also added the statutory minimum eight percent of the sum of its own general expenses and manufacturing cost for profit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 78 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the PRC and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the PRC materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24499 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-812]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

BEST COPY AVAILABLE

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SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Japan materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Japan. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturer's price quotes to Japanese customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit and packing.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 66 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Japan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–24500 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–805]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Korea materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Korea. Petitioner deducted movement charges from the unit price.

Petitioner's Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturers' price quotes to Korean customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit. Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 66 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Korea and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff* Schedules of the United States Annotated (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

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Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24501 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-803]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12472, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the United Kingdom. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on a foreign manufacturer's price quotes to home market customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit and packing.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 40 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumpting duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the United Kingdom and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Adminstration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24496 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-803]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the FRG materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit it request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the FRG, and adjusted to account for price differentials between plasticised and non-plasticised nitrocellulose. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on a foreign manufacturer's price quotes to home market customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstances of sale adjustments for differences in credit and packing, as well as a difference in merchandise adjustment to account for differences in dry nitrocellulose content.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 37 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumpiung duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the FRG and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the FRG are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC

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confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the FRG materially injure, or threaten material injury to, a U.S industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24495 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-801]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Yugoslavia materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Yugoslavia. Petitioner deducted movement charges from the unit price.

Petitioner states that it was unable to obtain pricing information on sales of industrial nitrocellulose in Yugoslavia. Consequently, petitioner's estimate of Foreign Market Value (FMV) is based on constructed value using petitioner's costs in the U.S. adjusted to reflect production costs in Yugoslavia. In its calculation, petitioner used amounts for factory overhead, general expenses and packing based on its own costs. Petitioner also added the statutory minimum 8 percent of the sum of general expenses and manufacturing cost for profit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 65 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Yugoslavia and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Yugoslavia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24497 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-809]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Japan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

There have been no developments in this investigation since our affirmative preliminary determination on July 26, 1989 (54 FR 31978, August 3, 1989).

Period of Investigation

The period of investigation is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under HTS item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the Tariff Schedules of the United States Annotated (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software

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used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. In our preliminary determination, therefore, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, 54 FR 31978 (1989), the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Fair Value Comparisons

To determine whether sales of SBTS from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination, we used the best information available, as required by section 776(c) of the Act, because the respondents withdrew their questionnaire responses from the administrative record of the investigation. As best information available, we took the highest margin contained in the petition for each such or similar category, and averaged these figures on a company-specific basis to determine the margins in this investigation. These categories are based on our "scope" definition and consist of (a) Control and switching equipment, (b) circuit cards and modules, (c) telephone sets and consoles, and (d) complete small business telephone systems. We are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Interested Party Comments

Comment 1

Petitioner argues that, rather than use the company-specific margins contained in the petition as best information available for each company, the Department should apply the highest margin calculated in the petition to both of the non-cooperating respondents. Therefore, petitioner argues, the margin calculated for Matsushita, 178.9%, should also be applied to Toshiba Corp. and "all other" imports from Japan. In support of its argument, petitioner cites the Department's final determination in its antidumping investigation of antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany (54 FR 18992).

DOC Position

We disagree. It is the Department's practice to use company-specific data, where available, for each company whenever a petition is used as a source for best information available (*see, e.g., Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan* (54 FR 15485, April 18, 1989)). In the case cited by the petitioner, company-specific data was not available.

Comment 2

Nakayo Telecommunications and Nakayo USA, Inc., a manufacturer and importer, respectively, request that products included under the scope of the investigation, but re-imported following repair in Japan be excluded from duties upon re-entry into the United States.

DOC Position

Re-imports of merchandise otherwise subject to this investigation are governed by U.S. Customs regulations concerning the re-importation of articles exported for repair.

Comment 3

Panor Corporation, a U.S. importer, disputes the large disparity between the margins calculated for purposes of the preliminary determination in this investigation, and the margins calculated in the preliminary determination of the companion investigation involving imports of the same class or kind of merchandise from Korea. Panor suggests it would be more logical and less discriminatory to impose a flat duty of 50 percent against imports of the subject merchandise from all sources.

DOC Position

There is no reason why the margins calculated in the two investigations necessarily should be similar, because each case involves different merchandise, different firms, and different pricing in the relevant markets. The margins in the companion investigation of SBTS from Korea were calculated on the basis of information submitted by the investigated firms concerning the prices those firms obtain on sales of the subject merchandise in the United States as compared to the prices they obtain on sales of such or similar merchandise in their home market. By contrast, the margins calculated for purposes of this investigation were based upon the best information otherwise available, as the respondent firms in Japan chose to withdraw their submissions and discontinue their involvement in the investigation.

Comment 4

Mitel Corporation, an importer of the subject merchandise, argues that the above definition of "dual use subassemblies" be modified by including two clarifying paragraphs proposed by Mitel:

1. Dual use subassemblies should be defined as those which function to their full or greater capability when operated as part of a large business system as well as a small system.

2. Dual use subassemblies by definition are not subassemblies "designed" exclusively for use in small business telephone systems.

Alternatively, Mitel proposes that the Deparmtent specifically exclude by name two Mitel telephone sets which Mitel claims fall under the definition of dual use subassemblies.

Petitioner argues that the proposed modifications are "confusing, and add nothing to the Department's definition of dual-use subassemblies."

DOC Response

We agree with petitioner that the modifications proposed by Mitel are apt to detract from, not add to the clarity of the definition of dual use subassemblies. With respect to Mitel's alternative suggestion that we exclude by name two of Mitel's telephone sets, the Department is not in a position to decide this issue at this time. In many proceedings, the Department can only investigate a limited number of respondents. Insofar as the products at issue are of a highly technical nature and were not manufactured by a respondent, the Department did not investigate whether the particular models imported by Mitel qualify as dual use subassemblies. Therefore, should an order be issued in this case, Mitel may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(1)(B)(vi).

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date of publication of the preliminary determination in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The averages of the highest margin for each such or similar category based on information provided in the petition are as follows:

Manufacturer/producer/exporter	Margin percentage
Toshiba Corp	136.77
Matsushita Electric Industrial Co. Ltd., Matsushita Communication Industrial Co., Ltd., Kyushu Matsushita Electric Co., Ltd	178.99
All Others	157.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine within 45 days from the date of this final determination whether material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that the material injury does exist, the Department will issue an antidumping duty order directing Customs officials ot assess antidumping duties on SBTS from Japan entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: October 10, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24562 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Taiwan, except those of Sun Moon Star as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION: Contact Louis Apple or Kathy Boyce, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-4198, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On July 26, 1989, the Department issued an affirmative preliminary determination (54 FR 31987). Since that time the following events have occurred:

Verification of the questionnaire response of Sun Moon Star (SMS) was conducted in Taiwan during August 7-18, 1989.

Interested parties submitted comments for the record in their case briefs dated September 11, 1989 and in their rebuttal briefs dated September 15, 1989. A public hearing was held on September 20, 1989.

Period of Investigation

The period of investigation (POI) is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.9040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the Tariff Schedules of the United States Annotated (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or

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incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. In our preliminary determination, therefore, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C), we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems.

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

Where there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments for differences in the merchandise proved to be substantial, we used constructed value.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

For Sun Moon Star (SMS), we determined that there were sufficient home market sales to unrelated customers for three such or similar categories. SMS had no sales of complete small business telephone systems in the United States during the POI.

Fair Value Comparisons

To determine whether sales of SBTS from Taiwan to the United States were made at less than fair value, we compared the United States price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Since Taiwan Nitsuko declined to provide information essential to our investigation, we used the best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for products manufactured by Nitsuko Japan for each such or similar category and averaged these figures to determine the margin for Taiwan Nitsuko in this investigation.

Taiwan Nitsuko declined to respond to the Department's MNC questionnaire. Because the MNC provision, section 773(d) of the Act, calls for the Department to calculate FMV with reference to merchandise produced in facilities outside the country of exportation, we attempted to compare the FMV in the petition for merchandise produced and sold in Japan with actual United States prices reported by Taiwan Nitsuko for products produced in Taiwan and sold in the United States, or Taiwan Nitsuko's U.S. sales prices as provided in the petition. Since we did not have data on sales of merchandise produced by Taiwan Nitsuko in Taiwan and sold in the United States that was comparable to the merchandise listed in the petition as being produced and sold in Japan and there were no U.S. sales prices for Taiwan Nitsuko reported in the petition, we used the margins calculated in the petition based on a comparison of the FMV of merchandise produced and sold in Japan and the United States price of merchandise produced in Japan and sold in the United States. Petitioner supplied information indicating that Taiwan Nitsuko and Nitsuko Japan produce the same products for sale in the United States and that these products are sold in the U.S. market at the same prices to the same single customer.

For SMS, we compared the United States price to the FMV as described below.

United States Price

Because virtually all sales by SMS were made directly to unrelated parties prior to importation into the United States, we based the United States price for these sales on purchase price, in accordance with section 772(b) of the Act. We calculated purchase price based on packed, f.o.b. Taiwan port prices. Gross unit price was based on the contract price plus an exchange rate adjustment. We made a further upward adjustment to gross unit price to account for early payment on future sales. We made deductions were appropriate for inland freight and brokerage and handling. We added uncollected duties pursuant to section 772(d)(1)(B) of the Act and § 353.41(d)(ii) of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.41).

For Taiwan Nitsuko we used information contained in the petition for United States price as described above.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated FMV for SMS based on home market sales prices or constructed value, as appropriate. We calculated FMV based on the packed, delivered or ex-works prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight, discounts, and rebates. We deducted the home market packing costs from the FMV and added all U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, advertising, and warranties. We made adjustments for indirect selling expenses and inventory carrying costs in the home market to offset commissions paid in the United States in accordance with § 353.56(b) of the Department's regulations.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise in accordance with section 353.57 of the Department's regulations.

In our preliminary determination, we stated that where the adjustment for differences in the physical characteristics of the merchandise being compared exceeded 20 percent, we would not use home market sales as the basis of FMV. Instead, FMV would be based on constructed value.

As a result of verification in this case, adjustments were made to increase the costs reported by SMS. The effect of these corrections was to raise the difference in the physical characteristics of one product above the 20 percent threshold stated in our preliminary determination to 23 percent.

For purposes of this final determination, we have decided that despite the size of the adjustment, the home market merchandise may still be reasonably compared to the U.S. merchandise within the meaning of section 771(16)(C)(iii) of the Act. The product in question, included in the such or similar category of control and switching equipment, is an SCPU. The SCPU is sold individually in the United States, while it is sold in combination with an internal circuit card in the home market. Except for this, the home market SCPU is identical to the SCPU sold in the United States. Moreover, the internal circuit card is significantly less important component by value than the SCPU in the home market transaction. For these reasons, we find the home market and U.S. merchandise to be similar within the meaning of 771(16)(C)(iii).

As noted above, for Taiwan Nitsuko, we used information contained in the petition for FMV.

Constructed Value

We calculated the constructed value in accordance with section 773(e) of the Act. For SMS, the following adjustments were made to its submitted costs. Material cost was adjusted: (1) To eliminate the effect of "free samples" by using the average cost at which the product was transferred from Work-In-Process to Finished Goods Inventory: (2) to reflect the difference between the purchase order price and the actual price paid for materials; (3) to include import duties (see DOC position to comment 13).

The cost of direct labor and factory overhead for each part was determined by calculating the average per unit fabrication cost at which the part was transferred from Work-In-Process to Finished Good Inventory. Additionally, direct labor and factory overhead were increased to reflect the effect of the respondant's reclassification of labor insurance from general expenses to the cost of manufacturing. Finally, factory overhead was also adjusted to include product-specific research and development costs (R&D) for three of the five R&D departments. While these departments performed product-specific R&D, the expenses had been classified as general expense.

Selling expenses included an absolute amount of indirect and direct selling expenses on a per product basis and an amount for interest expenses incurred by SMS. Since SMS is a sales company and because it could not be consolidated with Emptel (the related manufacturer), all of SMS's interest expenses were treated as indirect selling expenses. Interest income of SMS was used to offset its interest expenses, since the income was earned from short-term investments related to the current operations of the company. When imputed inventory and credit expenses were included in selling expenses, the interest expense reflected on SMS's books was reduced for a portion of the expenses related to these activities in order to avoid double counting.

For general and administrative expenses incurred by related entities other than Emptel, the following adjustments were made: (1) General expenses of the holding company of Vidar-SMS were allocated over the cost of goods sold of Vidar-SMS (parent of Emptel) and the holding company; (2) general management expenses incurred by SMS for the management of Vidar-SMS and SMS were allocated over the cost of goods sold of the same two companies; (3) general R&D incurred by Vidar-SMS was allocated over the cost of goods sold of Vidar-SMS. For general and administrative expenses incurred by Emptel, the following adjustments were made: (1) R&D was adjusted to exclude those expenses incurred for cellular mobile telephones (CMTs) and all product-specific R&D; (2) royalties paid for the production and sale of CMTs were excluded; (3) loss on physical inventory was reclassified from non-operating expenses to general expenses. Financial expenses were computed using the financial data from Vidar-SMS and the holding company. Interest revenue earned from short-term investments related to the current operations of the company was offset against interest expense. Since the profit on the sales of SBTS in the home market was not provided by the respondent, "best information available" was used. The "best information available" was the profit earned on Emptel's and SMS's financial statement, after eliminating intercompany sales.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve

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Bank of New York in accordance with section 353.60 of the Department's regulations.

Verification

Except where noted, we verified all information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in the public version of the verification report which is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Sun Moon Star

Comment 1

Petitioner asserts the Department should rely on best information available rather than the information submitted by SMS because of significant deficiencies in SMS's response. SMS disagrees and does not believe best information available should be used.

DOC Position

We disagree with petitioner. Verification of SMS did uncover several minor deficiencies. However, these deficiencies were not of a magnitude that warranted rejection of the response and they were subsequently corrected.

Comment 2

Petitioner asserts that if the Department does not use the best information availalbe for all subassemblies of SMS, the Department should compare the U.S. sales of DKTS Plus with home market sales of DKTS Non Plus products for the following two reasons. First, petitioner alleges that the DKTS Plus products sold in the home market were sold after the period of investigation and, therefore, the Department should reject SMS's date of sale for home market sales of these products. Petitioner argues that the facts indicate that there was no binding commitment from the dealers to purchase a specified quantity of goods in November 1988 because the dealers did not specify a delivery date until after the period of investigation and the obligation to take delivery appears conditional both on the dealers finding purchasers and the Taiwan authorities approving the products for sale in the home market. Second, petitioner argues that the Department should disregard these home market sales because they were sales of trial units and, therefore, were not sales in the ordinary course of trade.

SMS disagrees, arguing it would be inappropriate to compare DKTS Plus with DKTS Non Plus products. They contend that the merchandise was sold during the period of investigation because price and quantity were established within the period. They further assert that the two sales were in the ordinary course of trade, following normal sales procedures, and in fact were not sales of trial units.

DOC Position

We agree with SMS on both issues. First, when resolving date of sale issues, the Department is guided primarily by the date on which the essential terms of the sale—price and quantity—are established to the extent that the parties have nothing left to negotiate. In this case, the Department verified that price and quantity of the two DKTS Plus home market transactions were set in November 1988, the date of the purchase orders.

Contrary to petitioner's assertions, the facts indicate that both parties treated the November 1988 pruchase orders as binding agreements. Therefore, the date of sale for these transactions is within the period of investigation. Second, the DKTS Plus sales were within the ordinary course of trade. The sales were pursuant to an established dealer price list and discount schedule. The fact that approval by the Taiwan authorities was not given until after the period of investigation (because it took longer than expected to approve the system) is incidental to, and not dispositive of, this issue.

Comment 3

Petitioner claims that SMS failed to report significant exporter sales price (ESP) sales in the period of investigation. SMS disagrees, claiming that these transactions were actually transfers of goods from the home market manufacturer to its United States subsidiary and that they did not constitute sales.

DOC Position

We agree with SMS. We verified that SMS reported all of its ESP sales during the period of investigation and that these intracompany transfers were not sales.

Comment 4

Petitioner argues that the Department should reject SMS's proposed adjustments for rebates and monthly discounts. SMS claims that these adjustments were properly reported and verified as correct.

DOC Position

We agree with SMS and accept the adjustments SMS for rebates earned but not yet paid. We verified hat it is SMS's longstanding policy to grant cumulative discounts. We also verified that the amounts were correctly reported.

Comment 5

Petitioner argues that the Department should reject SMS's proposed adjustments for commissions and uncollected duties. SMS alleges that the adjustments for commissions and uncollected duties were correctly reported and verified.

DOC Position

We agree with SMS. These adjustments were verified to be correctly reported.

Comment 6

Petitioner claims that if the Department accepts SMS's proposed adjustments for uncollected duties, only 50% of the amount of the duties should be applied to U.S. price based on the terms of a confidential clause in the SMS-Bell South contract. SMS disagrees and claims that the adjustment for uncollected duties was reported and fully verified.

DOC Position

The Department has adjusted United States price for the full amount of duties which were not collected by reason of the exportation of the merchandise. We have done so because, regardless of the terms of the confidential contract clause at issue, inputs for the home market comparison merchandise are subject to the full amount of duties. Given this fact, it is appropriate to adjust for duties in their entirety per section 772 (d)(1)(B) of the Act.

Comment 7

SMS asserts that it was correct in not reporting a U.S. transaction arising from a purchase order dated December 18, 1988. SMS contends that the correct date of sale for this transaction is February 3, 1989, the "order date" stated on the February 9, 1989 invoice.

DOC Position

The Department agrees with SMS that the merchandise was not sold until the purchase order was issued in February 1989, because it was at this time that both price and quantity were set. Therefore, this sale was outside the period of investigation.

Comment 8

SMS argues that an advance downpayment from BellSouth was correctly reflected as a discount from invoice prices to BellSouth.

DOC Position

We agree. The downpayment was correctly reported as a deduction from the invoice price because the downpayment was applied to reduce the prices of DKTS products purchased in the future.

Comment 9

SMS claims that the Department should use the list-price allocation method SMS proposed for the comparisons of home market sales of MCPUs priced and sold with modems and SCPUs priced and sold with conference cards with MCPUs, modems, conference cards, and SCPUs sold separately in the United States.

DOC Position

We are not persuaded that the list-price methodology proposed by SMS yields an acceptable measure of FMV. In the instances SMS has cited, there is a single observed price for two components being sold together in the home market. Under its methodology, SMS would have the Department "create" two prices from that one observed price based on relative prices from their price list. We believe the better method is to start with the observed price and perform adjustments for differences in the physical characteristics of the home market and U.S. merchandise, where appropriate, using the variable manufacturing costs of the components, in accordance with section 773(a)(4)(C) of the Act and § 353.57 of our regulations.

Comment 10

SMS claims that the Department failed to make an adjustment to constructed value for home-market credit expenses.

DOC Position

We agree. Home-market credit expenses have been deducted from constructed value in the final determination.

Comment 11

Petitioner argues that the Department should not rely on respondent's constructed value data because respondent failed to identify all affiliated parties and thereby disguised related party transactions. The respondent states that it did in fact report the existence of other related companies, but acknowledges that it erred in identifying only certain companies as members of "Sun Moon Star Group." The respondent maintains that it had no intent of misleading the Department, because the other related parties were referred to in various parts of the SMS response and because the complete corporate structure was clarified at verification.

DOC Position

Prior to verification, the Department requested in the original questionnaire and in deficiency letters that the respondent provide details of its corporate organization. During the cost verification, the Department obtained information which reflected facts concerning related companies that were different than those disclosed in the SMS response. SMS and Vidar-SMS are related parties. Because of this relationship, certain adjustments were made to constructed value: (1) Net interest expenses incurred by SMS were considered to be indirect selling expenses, not manufacturing-related interest as presented in the response and were allocated over SMS's Cost of Goods Sold; (2) the offset related to the credit expenses and inventory carrying costs were computed on SMS's financial expenses since this company incurred the expense of credit and inventory carrying costs; and (3) the general management expenses of SMS incurred to manage the Vidar-SMS Group and SMS were allocated over the cost of goods sold of the Vidar-SMS Group and SMS to determine a fair value for these services to Emptel.

Comment 12

Petitioner contends that the Department correctly rejected the SMS internal profit and loss statement as an inaccurate protrayal of profit on home market sales because the statement failed to include the profits earned by Emptel, the manufacturer of the products under investigation. Petitioner further states that the Department must include the profit earned by both companies, Emptel and SMS, to determine the total profits earned by the SMS Group on the manufacture and sale of SBTS. The respondent claims that it reported its only "regularly kept" statement of profits and losses for the products under investigation. The respondent argues that it would be inappropriate to use the profit stated in the financial statement of Emptel as a measure of profit in the home market because Emptel's profit is earned on export sales as well as on transfers to SMS. The respondent further argues that Emptel's profit has no relationship to the home market sales to unrelated customers.

DOC Position

We agree with the petitioner. The amount of profit Emptel earns on the transfer of the product to SMS is crucial to the calculation of total profit on the sales in the home market. It is the actual costs incurred by the manufacturer of the product which determines profit on sales to unrelated buyers in Taiwan. Thus, the difference between the cost incurred by Emptel, the manufacturer, and the sales price of SMS in the home market to the first unrelated customer for the general class or kind of merchandise is the profit required for the constructed value. As related parties, the total profitability of home market sales can be determined only by reference to the profits earned by each. Because the submitted profit did not reflect profits earned by Emptel, the Department used the profit earned on Emptel's and SMS's financial statements after eliminating intercompany sales as BIA.

Comment 13

Respondent contends that the Department should not add import duties to the cost of manufacture because it would increase constructed value by an amount far greater than the amount of duties actually paid. This is due to the multiplier effect of the rates for general and administrative expenses and profit because they are expressed as percentages of cost of manufacture and cost of production, respectively. Respondent argues that the Department should continue to follow the methodology used in the preliminary determination and should add the duties separately after profit.

DOC Position

In our preliminary determination we added import duties after general expenses and profit were accounted for in the constructed value as BIA because respondent's treatment of these import duties was not clear. We were not able to resolve this issue during verification. In particular, respondent's general and administrative expenses were calculated as a percentage of cost of goods sold inclusive of import duties, based on its financial statements. As a result, it would be inappropriate to apply this percentage to a cost of manufacture exclusive of import duties for purposes of calculating constructed value. Therefore, as BIA, import duties have been included in cost of manufacture for purposes of the final determination.

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Comment 14

Petitioner argues that since the respondent failed to provide the 1988 financial statements for the holding company that owns Vidar-SMS the Department should reject the respondent's information and use the best information available. The respondent contends that the holding company had not been audited by its independent auditors and, thus, the 1988 financil statements were not available. The respondent maintains that the holding company had no employees and its general expenses were negligible.

DOC Position

The Department used the 1987 financial statement of the holding company as "best information available" for the general expenses for that entity, because there were no audited 1988 financial statements.

Comment 15

The respondent argues that royalty expenses included in general and administrative expenses in its response should be deducted from general and administrative expenses because they were specifically incurred for a product unrelated to those products under investigation.

DOC Position

The Department agrees with respondent and has deducted royalty expenses from general and administrative expenses that were incurred for the production of merchandise not under investigation.

Comment 16

Petitioner maintains that the respondent failed to provide documentation to support its claim that the "Inventory Loss" and "Loss on Physical Inventory" accounts were not related to the products under investigation. Furthermore, petitioner argues that the "Purchase Price Difference" account, which is the difference between the purchase order price and actual price paid for all materials, was also improperly excluded from the submission. The respondent maintains that these expenses were submitted in detail in the response. However, the three expenses were not included in the company's constructed value calculation because they were classified as non-operating expenses by the company's auditors. The respondent further argues that the "Provision For Inventory Loss" expense is merely a loss reserve and not an actual cost of production.

DOC Position

The Department agrees with the respondent in part. The "Loss on Physical Inventory" expense is an actual cost of production, although not a product-specific one. Therefore, it was included as a general expense and not as part of the cost of manufacturing. Since the "Provision for Inventory Loss" expense is a reserve against future losses, this amount was appropriately excluded by the respondent. The "Purchase Price Difference" expense was added to the material costs since this difference represented the actual price paid.

Comment 17

Petitioner argues that the respondent failed to include research and development costs (R&D) incurred by the parent Vidar-SMS in the constructed value calculations. The respondent contends that all other R&D incurred by Vidar-SMS, other than Emptel's R&D, was incurred by API and Vidar, the other subsidiaries consolidated with Emptel and Vidar-SMS. Furthermore, the R&D incurred by API and Vidar was for different products than those under investigation.

DOC Position

The Department included a portion of the R&D expenses incurred by Vidar-SMS as general R&D in the general and administrative section of the constructed value calculation. Those R&D expenses determined to be product-specific were reclassified from general expenses to cost of manufacturing.

Comment 18

Petitioner argues that the Department did not err by finding that fabrication costs are evenly distributed throughout the manufacturing process, and thus manufacturing costs should be computed using equivalent units. The respondent maintains that the structure of Emptel's assembly line dictates that virtually all manual labor expenses are incurred in the first eleven stages of the twenty-eight stage production process, and thus conversion costs are incurred most heavily in the very first stages of production. Therefore, the respondent claims that the process cost accounting system, by not computing equivalent units and instead using physical units to divide production costs, accurately reflects the cost of manufacturing the products under investigation. The respondent also maintains that it did not want to create controversies by using a new cost methodology solely for the submission.

DOC Position

The Department agrees with the petitioner. During the plant tour at verification and through our discussions with Emptel's officials, we noted that fabrication costs were not incurred only at the beginning of the production process as the respondent's process cost system assumes. This was apparent for factory overhead expenses, e.g., depreciation, rent, and indirect labor, which were a substantial portion of the overhead. The respondent uses a process cost accounting system that does not compute equivalent units in order to compute average costs per unit. Therefore, the production costs for a period of time are divided by less or more output than the amount actually produced by these costs. The Department, therefore, computed the equivalent units for the period of investigation for each part in work-in-process and used these equivalent units as the denominator in calculating average cost per unit.

Comment 19

Petitioner argues that the Department should not rely on the respondent's cost of production information because it substantially understated the material costs for units produced during the period of investigation by including free sample units without the fully loaded cost of these units being included in the process cost calculations. The respondent maintains that its cost system is reliable, and argues that if the Department makes substantial adjustments to the reported costs, the resulting figures will bear little resemblance to the respondent's knowledge of the products' cost structure.

DOC Position

We agree with the petitioner. The Department adjusted the per unit costs to exclude the effect of the "free samples." The Department used the average Finished Goods cost of the products which was based on the respondent's process cost accounting system used in the production process.

Comment 20

The respondent argues that the Department should allocate general expenses of Emptel over its cost of manufacturing rather than the cost of goods sold, although this was not the methodology that the respondent used in its questionnaire response. Also, the respondent argues that general expenses should not be solely attributed to production because Emptel is also an exporter and investor. Petitioner contends that the respondent's methodology for allocating general expenses is improper and that the Department should follow its normal methodology for allocating general and administrative expenses to the products.

DOC Position

We agree with petitioner. We allocated general expenses over the respondent's cost of goods sold since the nature of these expenses relate to current operations. General expenses are not allocated over the cost of manufacturing since all the products may not have been sold in the current period of time, nor may ever be sold. Certain expenses related to the selling operations of SMS for accounting and general manager staff functions classified as general expenses in the response to the Section D questionnaire were reclassified by the Department as indirect selling expenses.

Comment 21

The respondent argues that selling expenses should be divided by the cost of manufacture instead of sales value because it would be improper to use a ratio based on a denominator of sales value and then apply it to the smaller factor, i.e., cost of manufacturing.

DOC Position

Where selling expenses are allocated, it is the Department's practice to allocate those expenses on the basis of sales. Use of the respondent's proposed allocation methodology could lead to anomalous results. For example, selling expenses could be allocated to merchandise which was produced during the period even though there were no sales of that merchandise.

Moreover, SMS misunderstands the application of this amount to the constructed value. The allocation of selling expenses described above yields an absolute amount to be applied to sales of SBTS. This amount, in turn, is allocated among units sold to arrive at an absolute, per unit selling expense. Finally, this absolute amount is divided by the cost of manufacture so that the selling expense can be expressed as a percentage of that cost. This is not the same as applying a sales-based ratio to a smaller denominator as the comment implies.

Comment 22

Petitioner claims that the Department should reject the respondent's submission and use BIA because the respondent did not provide the Department with sufficient information to verify its response, which was replete with deficiencies and inaccuracies. The respondent argues that all costs of production were submitted as they are recorded on the company's books. Moreover, the respondent contends that most of the issues presented by petitioner were disagreements with methodologies used rather than material deficiencies and omissions.

Finally, the respondent maintains that BIA has been used only in cases of very serious deficiencies or lack of cooperation from respondents. They argue that there is nothing on the record that indicates that the respondent failed to provide requested information or made unresponsive, insufficient or untimely submissions.

DOC Position

The Department agrees with the respondent in part. Although there were areas in which information was not provided or was deemed insufficient, e.g., import duties and profit, the Department was able, with adjustments, to rely on the information submitted in the response for most costs.

Taiwan Nitsuko

Comment 23

Taiwan Nitsuko asserts that petitioner's MNC allegation was based on subassembly prices that were constructed from dealers' price lists for systems and, therefore, are not relevant to the true prices of Nitsuko Corporation's subassemblies. Taiwan Nitsuko requests that the Department rescind its MNC investigation and rely on the information submitted by Taiwan Nitsuko. Petitioner argues that it submitted actual prices of control units sold in Japan and that it did not extrapolate subassembly prices from system prices. Petitioner further argues that the information submitted was specific to Nitsuko.

DOC Position

We agree with the petitioner. The petitioner established to our satisfaction the criteria necessary for the initiation of a MNC investigation. Accordingly, we do not agree to rescind the MNC investigation with regard to Taiwan Nitsuko.

Comment 24

Taiwan Nitsuko asserts that the Department's decision to initiate the MNC investigation was improper because the information upon which the decision was made was not initially accompanied by the proper certification required by the Department's regulations. Petitioner asserts it was sufficient that its legal counsel certified the submission at a later date.

DOC Position

The Department agrees with the petitioner. The Department's certification requirement is relatively new (see section 353.31(i) of the Department's regulations). Department officials' failure to discover that the petitioner's allegation was not accompanied by the requisite certification was an oversight. Once respondent's counsel pointed out that the certification was missing, petitioner's counsel immediately provided the requisite certification. The fact that the petitioner's allegation was not initially accompanied by the requisite certification does not invalidate the allegation. The certification of the relevant submission subsequently provided by petitioner's legal counsel satisfied the Department's regulations.

Comment 25

Several importers have requested that we exclude certain imported products from the scope of the investigation.

DOC Position

In many proceedings, the Department can only investigate a limited number of respondents. Insofar as the products at issue are of a highly technical nature and were not manufactured by an investigated company, the Department did not investigate whether the particular models imported by the above interested parties should be excluded. For the most part, we did not have enough information, submitted in a timely fashion, to address these concerns. Therefore, should an order be issued in this case, the above importers may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(1)(B)(vi).

Comment 26

Several interested parties have requested that the best information available rate of Taiwan Nitsuko not be used in calculating the "All Others" rate as it was stated in the preliminary determination. These interested parties state that Taiwan manufacturers and American importers are being unfairly treated because the best information available rate is based on Taiwan Nitsuko which is a multinational company not a Taiwan company, and because Taiwan Nitsuko's rate is premised upon Japanese market information not reflective of the Taiwan market. These interested parties request that the Department disregard Taiwan Nitsuko's rate in calculating the "All Others" rate because they believe SMS, the only responding company from

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Taiwan, more fairly reflects the experience in Taiwan. Petitioner argues that Taiwan Nitsuko is a Taiwan company and is the largest exporter to the U.S. of the products under investigation; therefore, Taiwan Nitsuko's best information available rate is the appropriate rate to use in calculating the "All Others" rate.

DOC Position

In the preliminary determination, the Department followed its standard practice of excluding zero and *de minimis* margins from the "All Others" rate. As a result, the "All Others" rate was based solely on Taiwan Nitsuko's BIA rate. For purposes of this final determination, however, the Department has determined that the application of the BIA rate for Taiwan Nitsuko to the "All Others" rate is inappropriate. The Department does not believe that the BIA rate calculated for Taiwan Nitsuko is representative of other unnamed Taiwan manufacturers because, as previously explained, the Department applied section 773(d) of the Act (the MNC provision) to calculate Taiwan Nitsuko's BIA rate. This resulted in comparisons being based only on merchandise produced and sold in Japan to that produced in Japan and sold in the United States.

Instead, the Department has determined that it is more appropriate to apply the margin of SMS, the only responding company from Taiwan, as the "All Others" rate. For SMS, we calculated a dumping margin of 0.00%, which will be applied to the "All Others" rate for cash deposit purposes. We note, however, that the Department has determined that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The only company excluded from this determination is SMS. Therefore, all companies subject to the "All Others" rate are covered by the Department's affirmative determination, but will be subject to a cash deposit of 0.00%.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Taiwan, except those of Sun Moon Star, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Taiwan Nitsuko Co., Ltd	129.73
Sun Moon Star Inc	0
All Others	0

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on SBTS from Taiwan, except those of Sun Moon Star, entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: October 10, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24503 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[P346A]

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; the Moscow Zoo

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Mr. Vladimir Spitsin, Director, The Moscow Zoo, 123242 Moscow, USSR, B. Bruzinskaya 1.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* California sea lions (*Zalophus californianus*) 4.

4. *Type of Take:* permanent maintenance.

5. *Duration of Activity:* 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24379 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

[P27C]

Marine Mammals; Permit Modification: Walt Disney World Co.

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 594 issued to the Walt Disney World Company on May 22, 1987 (52 FR 20134), is modified as follows:

Section B.6 is changed to read:

6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1991. The terms and conditions of the Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification is effective upon publication in the Federal Register.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24381 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

[P20J]

Marine Mammals: Issuance of Permit; Dr. Kenneth S. Norris, et al.

On August 9, 1989, notice was published in the Federal Register (54 FR 32680) that an application had been filed by Kenneth S. Norris, Randall S. Wells, Jan S. Ostman, Carl Schilt and William T. Doyle for a scientific research permit to take Hawaiian spinner dolphins (*Stenella longirostris*) during studies to define the size and dimensions of an opening in the net that will allow intact dolphin subgroups to swim out.

Notice is hereby given that on October 6, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24380 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

CIVIL RIGHTS COMMISSION

Kentucky Advisory Committee to the United States Commission on Civil Rights; Agenda Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky. The purpose of the meeting will be to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities. This previously scheduled meeting was cancelled recently but is now rescheduled at its original time and place. The original notice of this meeting was published at 54 FR 40903 (October 4, 1989).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

Dated at Washington, DC, October 11, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-24366 Filed 10-16-89; 8:45 am]

BILLING CODE 6335-01-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Retirement Benefits; Revision Recommendation

ACTION: Request for written comment.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") requests the submission of written comments from interested persons or organizations with respect to its mandate of making specific recommendations for revisions in, or alternatives to, the current system to assure the provisions of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. These comments, prepared in conformity with the guidelines set out below, should be submitted to the Commission by December 31, 1989.

Background Information: The Commission was established by Public Law 100-203, enacted December 22, 1987, and amended by section 7108 of Public Law 100-647, enacted November 10, 1988. The Commission was directed to conduct a comprehensive study of the issues pertaining to the long-term financing of the Railroad Retirement system, and the system's short-term and long-term solvency.

The Commission shall transmit a report to the President and Congress not later than October 1, 1990. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

Written Submissions: Interested persons are invited to provide comments in writing to the Commission. Written

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comments should conform with the Commission's mandate, i.e. the assurance of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. Discussion of revisions in, or alternatives to the current system should be cast in that context.

Comments should be sent to the Commission on Railroad Retirement Reform, Suite 808, 1111 18th Street, NW., Washington, DC 20036, by December 31, 1989.

The following guidelines should be followed for written comments that will be considered by the Commission:

—All written comments and any accompanying exhibits must be typed in double-space and may not exceed a total of ten (10) letter-sized pages.
—Two copies of all written comments should be provided.
—Comments must contain the name and capacity of the person submitting the comments, as well as any clients or persons, or any organization for whom the comments are submitted.
—a supplemental sheet must accompany each submission listing the name, full address and telephone number of the person making the submission as well as a summary of the written comments that may not exceed one (1) typewritten, letter-sized page.

FOR ADDITIONAL INFORMATION CONTACT: Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, Suite 808, 1111 18th Street, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,
Executive Director.

[FR Doc. 89–24432 Filed 10–16–89; 8:45 am]

BILLING CODE 6820–63–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has applied for designation as a contract market in: (1) Options on oats futures, and (2) options on Tokyo Stock Price Index ("TOPIX") futures. For the proposed TOPIX futures option contract, the CBT's application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 16, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT oats option or to the CBT TOPIX option.

FOR FURTHER INFORMATION CONTACT: For the proposed oats option contract, please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303. For the proposed TOPIX option contract, please contact Stephen Sherrod at the same address, (202) 254–7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's rules. For the proposed TOPIX options, the petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

> * * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application * * *.

The Division notes that the CBT TOPIX futures contract which will underlie the proposed option contract has not been listed for trading.[1] Therefore, the futures trading volume requirement for the proposed option contract has not been met.

As discussed in more detail in previous Federal Register notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.[2]

In requesting comment on the CBT's proposed option on TOPIX futures, the Division is seeking specific comment on whether it should grant the CBT's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CBT for the proposed contract.

[1] The CBT was designated as a futures contract market in the Japanese Stock index on November 22, 1988. In September 1989, the CBT changed the name of this contract to the Tokyo Stock Price Index (TOPIX) futures contract.

[2] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a priod of three consecutive months.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6134.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed option contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 12, 1989.

Steven Manaster,
Director, Division of Economic Analysis.

[FR Doc. 89–24452 Filed 10–16–89; 8:45 am]

BILLING CODE 6351–01–M

New York Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has applied for designation as a contract market in options on platinum futures. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 16, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYMEX platinum option.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 12, 1989.

Steven Manaster,
Director, Division of Economic Analysis.

[FR Doc. 89–24483 Filed 10–16–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Development at Naval Base Pearl Habor, Oahu, Hawaii

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the construction of various improvements at Naval Base Pearl Harbor. The improvements are required to support various activities, including the homeporting of a battleship and two cruisers to support the recommendations of the Secretary of Defense Commission on Base Realignment and Closure.

Three major components are included as part of the proposed action, and they are:

(1) A causeway connecting Ford Islands to the rest of the Naval Base;
(2) Various operational and community support facilities on Ford Island, and on Naval Station and Naval Shipyard Pearl Harbor; and
(3) Housing for about 600 to 1,200 Navy families on Ford Island.

Each major component is functionally independent of the others and could be implemented as a separate action.

Causeway

The proposed causeway would be constructed to improve access to Ford Island and, hence, make possible further development of the island to serve existing and future missions at the Naval Base. Development of the mainside Pearl Harbor complex has reached the saturation point, while Ford Island contains 300 acres of open space (out of a total of about 450 acres) which is not being used to its fullest possible potential by the Navy. Given improved access, approximately 2,800 feet of ship berthing space and other facilities could be put to more effective use. The slow and inefficient vehicular ferry and passenger boat transportation system presently in operation severely constrains the potential use of Ford Island's vacant land and underused facilities.

The preferred alternative for providing access is a floating bridge,

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which would consist of a concrete pile causeway with a channel to allow passage of large vessels, as well as a 100 foot long, 33 foot height span to provide vertical clearance for small boat navigation. The Ford Island terminus of the proposed causeway would be to the north of the existing housing area, intersecting Saratoga Boulevard, and the mainside terminus would be near Halawa Landing, between the U.S.S. Bowfin Memorial and the Navy marina.

Alternatives to the floating bridge type of causeway include no action, expanded water-based system, fixed pile causeway without a moveable span, and sunken tube tunnel. Alternative termini on Ford Island for the floating bridge, causeway, and tunnel alternatives include a terminus passing north of the Public Works Center, intersecting the realigned Saratoga Boulevard west of its present junction with Princeton Place; and, a terminus passing through the housing area on the east end of the island, intersecting Lexington Boulevard west of the Arizona Mermorial. Alternative termini on mainside include the Richardson Recreation Center and McGrew Point.

Operational and Community Support Facilities

The following projects will be required to support the homeporting of a battleship and two cruisers in response to recommendations of the Base Realignment and Closure Commission, and Congressional mandate. Proposed facilities include upgrading and extension of Berth F–5 (Foxtrot Pier) on Ford Island to accommodate the battleship, including maintenance dredging, utilities improvements and shore support facilities; upgrading the fender system at Wharf Bravo Berths B20 and B21, and upgrading shore power outlets and electrical distribution at Bravo Wharves B23 and B24 at the Naval Station to accommodate the two cruisers; new fender systems along Bravo Basins B15 and B18, and upgrading shore power outlets and electrical distribution at Bravo Wharf B25 and Mike Dock M3 to support the two cruisers; a 4,800 square foot pre-engineered building at Naval Shipyard Pearl Harbor to store parts for the homeported battleship; a 7,200 square foot addition to the Applied Instruction Building (Building 1377) at the Naval Station to provide additional training and administrative space required for Mobile Technical Unit One (MOTU–1); three new buildings at the Naval Station to house transient enlisted personnel, legal hold and restricted enlisted personnel, administrative and shop space for the Transient Personnel Unit (TPU), and enlisted personnel assigned to the station; a 5,500 square foot addition to the club on Ford Island (Building 38) to house a snack bar, game room, dining and lounge spaces, enlarged kitchen and bar areas, restrooms, and storage; and Fleet Shoreside Support Center on Ford Island consisting of an amusement center, laundromat, outdoor basketball/volleyball courts, playing fields and racquetball courts.

Alternatives to these proposed Operational and Community Support Facilities include postponing the action and using other locations for specific projects. For the proposed Applied Instruction Building Addition, two specific alternatives have been considered: A different design and training of ship personnel on the west coast. An additional alternative to the proposed TPU Unit/BEQ is the use of civilian accommodations. In accordance with provisions of the Base Realignment and Closure Act of 1988 (10 U.S.C. 2687), the no action alternative will not be considered in this EIS for these proposed facilities.

Family Housing

A number of alternatives are being considered to fulfill the requirement to house approximately 1,200 Navy families. With improved access to Ford Island, development of the underutilized acreage on the island becomes possible. About 100 acres in the old runway area would be available for family housing. The runway is currently used as a general aviation practice landing airfield. These general aviation practice exercises will be displaced. Alternatives include no action (build no new housing and have families finding housing elsewhere, either in existing military housing or in the private sector); construct 1,200 housing units on Ford Island, which most likely would consist of a mixture of low and mid-rise buildings; construct about 600 to 700 units on Ford Island and accommodate the remaining units in existing military housing areas, new military housing at other locations, or in the private sector.

Potential environmental impacts resulting from the proposed action include short-term impacts during construction (noise, dust, temporary changes in water quality), increases in traffic, socio-economic effects and visual impacts.

The consulting firm of Belt Collins & Associates has been retained to prepare the Draft and Final Environmental Impact Statements.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on November 2, 1989, beginning at 7:00 pm, at Aliamanu Intermediate School cafeteria, 3271 Salt Lake Boulevard, Honolulu, Hawaii. This meeting will be advertised in the Honolulu Advertiser, the Honolulu Star Bulletin, and the State of Hawaii OEQC (Office of Environmental Quality) Bulletin.

A short formal presentation will precede the request for public comments. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments shold clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than November 17, 1989, to Mr. Gordon Ishikawa (Code 09P2), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300; telephone (808) 471–7130.

Dated: October 12, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–24428 Filed 10–16–89; 8:45 am]

BILLING CODE 3810–AE–M

Navy Resale System Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is given that the Navy Resale System Advisory Committee will meet November 4, 1989, at the Norfok Airport Hilton Hotel, 1500 N. Military Highway, Norfolk, Virginia. Sessions of the meeting will commence at 7:45 a.m. and 8:30 a.m. The 8:30 a.m. to 5:00 p.m. session will be closed to the public. The purpose of the meeting is to elicit the advice of the committee concerning commercial or financial information which is privileged or confidential; or information which, if disclosed prematurely, would be likely to significantly frustrate implementation of a proposed agency action. These matters, which will be discussed during the 8:30 a.m. to 5:00 p.m. session, are

privileged or condidential and required to be closed to the public in the national interest. The Secretary of the Navy has therefore determined in writing that the public interest requires the 8:30 a.m. to 5:00 p.m. session of the meeting to be closed to the public because it will be concerned with matters listed in section 552b (c)(4) and (9)(B) of title 5, United States Code.

For further information concerning this meeting, contact:

Commander W. T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, VA 22202, Telephone Number: (202) 695–5447.

Dated: October 12 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–24427 Filed 10–16–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI89–494–000, et al.]

Harbert Energy Corp., et al.; Applications for Blanket Certificates with Pregranted Abandonment [1]

October 10 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89–494–000	7–31–89	Harbert Energy Corporation, Suite 1800, 1200 Smith, Houston, Texas 77002–4395.
CI89–501–000	8–10–89	Enserch Gas Company, 301 South Harwood, Suite 504–N, Dallas, Texas 75201.

[FR Doc. 89–24383 Filed 10–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–1–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 3, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 2 as set forth in the revised tariff sheets:

First Revised Sheet No. 260
First Revised Sheet No. 262
First Revised Sheet No. 263
First Revised Sheet No. 272

Algonquin states that it is making the instant filing to remove Fuel Reimbursement Provision from Rate Schedule X–33.

The aforementioned Original Volume No. 2 tariff sheets are proposed to be effective November 16, 1989.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24385 Filed 10–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–256–000]

CNG Transmission Corp.; Request for Waiver

October 10, 1989.

Take notice that on September 29, 1989, CNG Transmission Corporation (CNG) filed a motion for waiver of § 154.305(e) of the Commission's Regulations and section 12.2 of the General Terms and Conditions of CNG's tariff to permit CNG to recover specific conversion costs resulting from its election to convert from sales service to firm transportation service on Texas Eastern Transmission Corporation (Texas Eastern).

CNG states that this request is made pursuant to the Commission orders issued September 29, 1988, and April 21, 1989, in Docket No. RP85–177, *et al.*, approving a contested offer of settlement and granting certificates of public convenience and necessity to Texas Eastern. CNG states that Texas Eastern filed compliance tariff sheets on May 22, 1989, proposed to be effective July 1, 1989, setting forth the rates, terms and conditions under which it will operate pursaunt to the newly issued certificates. CNG states that Texas Eastern's new Rate Schedule CD–1 gives customers flexibility by providing for standby sales service, as well as the option to convert sales service to firm transportation service.

CNG states that on September 14, 1989, it notified Texas Eastern of its election to convert 75,000 Dt per day of contract demand from Rate Schedule CD–1 (Zone C) to firm transportation service under Rate Schedule FT–1 (Zone C) to become effective November 1, 1989. CNG states that one factor complicating this decision is that costs which are currently accounted for as purchased gas costs may not be eligible for PGA treatment after conversion to transportation. CNG states that the Commission, on August 31, 1989, in Docket No. TA89–1–22–000. rejected certain blanket tariff language that CNG had proposed to deal with this problem, without prejudice to CNG seeking waiver to include specific conversion

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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costs it has incurred, consistent with previous Commission actions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.2114, 385.211 (1988)]. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24400 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-84-000]

Caprock Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that on October 3, 1989 Caprock Pipeline Company, (Caprock Pipeline) filed proposed changes in its FERC Gas Tariff. The purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1990.

A copy of this filing has been served upon all of Caprock Pipeline's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24392 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-24-002 and TF89-3-24-001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Equitrans, Inc., (Equitrans) on September 29, 1989 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Effective September 1, 1989:

First Revised Ninth Revised Sheet No. 10
First Revised Eighth Revised Sheet No. 14

Effective September 2, 1989:

First Revised Tenth Revised Sheet No. 10
First Revised Ninth Revised Sheet No. 14

Equitrans stated that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on August 31, 1989 in Docket No. TA89-1-24-000. The Order directed Equitrans to refile its § 154.305(h) and § 154.305(b)(a) of the Commission's Regulations for computation of the monthly interest rate factors and carrying charges. Also Equitrans' Interim PGA rates from Docket No. TF89-3-24-000 have been revised to comply with the conditions of the Order.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24393 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR89-3-000]

Farmland Industries, Inc. v. Gulf Central et al.; Complaint

October 10, 1989.

On September 14, 1989, Farmland Industries, Inc. (Farmland) filed a complaint against Gulf Central Pipeline Company (Gulf Central), Gulf General Storage and Terminal Company, Gulf Central Storage and Terminal Company of Nebraska, and their parent company, Koch Industries, Inc. (Koch), alleging that Gulf Central, its affiliated terminal companies, and its parent have violated various sections of the Interstate Commerce Act (ICA). Specifically, Farmland asserts that Gulf Central, its affiliated terminal companies and Koch have violated sections 1(5), 1(6), 2, 3(1), 6(1), 6(7) and 15(11) of the ICA. These sections generally prescribe the establishment of just and resonable rates, mandate transportation service provided under published tariffs, and prohibit undue preferences and rebates.

Farmland argues that the named defendants are violating these sections by charging for line-haul services, the use of tanks and terminal facilities, and for other accessorial services rates that are unjust and unreasonable. Farmland also asserts that Gulf Central and the terminal companies are failing to establish, observe and enforce just and reasonable regulations and practices affecting rates and tariffs, including those for the allocation of capacity and the provision of accessorial services. Farmland further asserts that Gulf Central and the terminal companies are failing to file, print, and keep open to public inspection schedules showing, and plainly stating, all terminal charges, storage charges, and all other charges required and all privileges or facilities granted or allowed and all rules and regulations which in any way affect any part of the stated rates or the value of service rendered. Additionally, Farmland asserts that Gulf Central and the terminal companies are: (1) Engaging in the transportation of property without the rates and charges upon which the same are transported being filed and published; (2) charging less for the transportation of property and services, in connection therewith when provided to Koch or Koch's affiliates than that specified in the tariff filed and in effect at the time; (3) refunding a portion of the charges specified in the tariffs to Koch in the form of dividends, the advancement of receivables, the failure to collect charges in a timely manner, the payment of unreasonable amounts for corporate overhead or other services, or through other devices; and (4) extending to Koch and to other shippers privileges and/or facilities in the transportation of property other than that specified in Gulf Central's tariffs.

Beyond these allegations, Farmland also alleges that Gulf Central knowingly and improperly is disclosing information concerning the nature of property tendered to Gulf Central for interstate transportation to persons or corporations other than the tendering shipper or consignee. Farmland contends that Koch knowingly is receiving from Gulf Central information concerning property tendered or delivered to Gulf Central for interstate transportation that could be detrimental to the shipper or consignee. Farmland also contends that Gulf Central and the terminal companies are improperly charging and collecting rates in excess of their cost of service, which they assert directly or indirectly allows terminal companies to receive from nonaffiliated shippers a greater amount than they receive in compensation for service rendered to Koch in the transportation of property of a like kind under substantially similar circumstances and conditions. Finally, Farmland contends that Gulf Central and the terminal companies improperly give undue preference to Koch in the transporation of anhydrous ammonia, and subject Farmland and other shippers to undue prejudice or disadvantage.

Farmland requests that the Commission: (1) Order Gulf Central and the terminal companies to place into effect maximum rates for services which do not exceed just and reasonable rates; (2) prescribe reasonable rates for the future to be applied by GCPL and the terminal companies; and (3) declare it to be discriminatory for Gulf Central and the terminal companies to earn from the revenues charged for common carrier services more than a fair return on assets dedicated to common carrier services. Farmland also requests that the Commission declare it to be unduly preferential to Koch and unduly prejudicial to competing shippers such as Farmland for Gulf Central and the terminal companies to earn from the revenues charged for common carrier services more than a fair return on assets dedicated to common carrier services. Farmland contends that the Commission should order Gulf Central and the terminal companies to stop providing to Koch any information concerning property tendered or delivered to Gulf Central without first obtaining the consent of the tendering shippers; Farmland requests that the Commission order Gulf Central and the terminal companies to pay the difference between the just and reasonable charges and the rate paid by Farmland for transportation services via Gulf Central and the terminal companies, plus interest, during the period beginning two years prior to the filing of this complaint; that the Commission order Gulf Central to publish and file with the Commission rates and related regulations regarding common carrier operations; that the Commission prescribe reasonable rates and charges and rules regarding all transportation services provided by Gulf Central; and that the Commission order Gulf Central and Koch to pay damages, plus interest, for injury caused by the disclosure of information concerning property tendered to Gulf Central for interstate transportation. Farmland also requests that the Commission order payment of its attorneys' fees and immediately establish a task force to oversee the operation of Gulf Central and the terminal companies in the allocation of capacity and the use of assets to insure that there is no discrimination or retaliation against Farmland, its shipments or its customers. Farmland states that a copy of this complaint has been served on the respondents.

Pursuant to section 13(1) of the ICA, Gulf Central, its terminal companies, and Koch should respond, in writing, within 30 days of the issuance date of this notice.

Any person desiring to be heard on the said complaint should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions should be filed on or before November 9, 1989. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24384 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-246-000]

KN Energy, Inc.; Filing

October 10, 1989.

Take notice that on September 29, 1989, K N Energy, Inc. (K N) filed First Revised Sheet No. 43 to its FERC Gas Tariff, Original Volume No. 1-B, to be effective August 1, 1989.

K N states that this filing adjusts the D2 volume nomination for Public Service Company of Colorado.

K N states that copies of this filing have been served on all its jurisidictional customers and public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protest should be filed on or before October 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24396 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 10, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 3, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Sixteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1989. The revised tariff sheet reflects a current increase of $.5298 in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.0526.

Kentucky West states that, effective November 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.0584 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on

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March 8, 1988, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure and 385.214. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24397 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 10, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 5, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 45 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1989.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0017 per MCF which represents decrease of $.0001 per MCF.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24389 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-200-003]

Pacific Gas Transmission Co.; Filing

October 10, 1989.

Take notice that on October 4, 1989, Pacific Gas Transmission Company (PGT) filed Substitute First Revised Sheet No. 46 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective August 1, 1988, in compliance with the Commission's order of September 19, 1989.

PGT states that this tariff sheet deletes the provision that accords the highest priority for interruptible transportation service to any shipper who contracted prior to October 9, 1985 for interruptible transportation service.

PGT states that a copy of this filing is being served on all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24386 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-132-001]

Tennessee Gas Pipeline Co.; Offer of Settlement and Shortened Response Time

October 10, 1989.

Take notice that on October 4, 1989, an Offer of Settlement was filed by Ocean State Power (Ocean State) and the Concerned Citizens of Burrillville and Uxbridge pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. The proposed settlement seeks a modification of the mitigation agreement which the Commission required that Ocean State and Tennessee Gas Pipeline Company execute as a condition to Tennessee's certificate in the above-captioned docket. The proposed modification would clarify Ocean State's ability to engage in low noise level, limited second shift construction activities as well as modify certain terms of the Property Value Stabilization Program which is attached as Exhibit G to the mitigation agreement.

Because it is necessary to resolve the issues addressed by the offer of settlement in as timely a manner as possible, notice is hereby given that comments on the offer of settlement are due 10 days after the date of filing, or on October 16, 1989. Replies to comments are due no later than 15 days after the date of filing, or on October 19, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24378 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT89-29-000]

Transwestern Pipeline Co., Filing

October 10, 1989.

Take notice that on September 29, 1989, Transwestern Pipeline Company (Transwestern) filed 4th Revised Sheet No. 34H and 3rd Revised Sheet No. 30I to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 30, 1989.

Transwestern states that these tariff sheets reflect revisions to § 16.4, the *Communication of Pricing and Capacity Information* section of its Rate Schedules FTS-1 and ITS-1, to reflect a change in the computer services firm retained to provide an electronic bulletin board on its behalf. Transwestern states that it contracted with US GASNET as provider of its electronic bulletin board service. Transwestern states that it deleted from the same provision the specific fee information regarding the electronic bulletin board because such fees are subject to change and such changes cannot be immediately reflected in the tariff. Rather, Transwestern lists on the proposed tariff sheets telephone numbers that potential shippers can call to obtain current pricing information.

Transwestern states that a copy of this filing have been mailed to all holders of its Second Revised Volume No. 1 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24390 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-4-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on October 4, 1989, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective November 1, 1989;

71st Revised Sheet No. 5
6th Revised Sheet No. 38
2nd Revised Sheet No. 39
2nd Revised Sheet No. 40
6th Revised Sheet No. 133
6th Revised Sheet No. 134
6th Revised Sheet No. 135
6th Revised Sheet No. 136

Transwestern proposes tariff changes to its IS-1 Rate Schedule herein in the following respects:

First, Transwestern proposes that the maximum IS rate for the IS Rate Schedule equal Transwestern's WACOG in effect on September 30, 1989 pursuant to the September 26, 1989 Commission order accepting Transwestern's August 14, 1989 IS compliance filing, plus transportation costs equal to the FTS-1 rate at 100% load factor (delivered to Needles, California), plus the maximum Production and Gathering charge, fuel and all applicable surcharges.

Second, Transwestern requests that the minimum gas cost included in the minimum rate for IS sales be eliminated. In this regard, Transwestern also proposes to charge SG and RW customers the lowest IS rate set forth in any initial or amended reports filed with the Commission with respect to the commencement of IS service, provided that the gas cost for its SG and RW customers shall not exceed $1.30 per dth.

Third, Transwestern proposes that Transwestern be permitted to determine the priority of interruption due to insufficient gas supplies of IS-1 service based upon the economic value of each IS-1 Service Agreement where the maximum IS-1 rate is not charged. Transwestern proposes that the economic value be determined solely by reference to the IS volume, gas cost of the IS rate and price term.

Transwestern also requests three revisions to the IS-1 Service Agreement. First, Transwestern requests that IS sales rates below the maximum rate be acknowledged through a written notice by Transwestern to the buyer. Thus, the buyer is not required to execute and return to Transwestern a contract amendment.

Second, Transwestern proposes that Article 2, "*Term*" of said Service Agreement—Form L be revised to state, "This Agreement shall become effective upon Buyer's execution of this Agreement and shall continue for a term of _____."

Third, Transwestern seeks approval to modify Article 4, "*Pressure*" of the IS Service Agreement—Form L to provide that Transwestern shall have no obligation to provide compression and/or to alter its system operations to effectuate deliveries.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before October 17, 1989 file with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24387 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-004]

Trunkline Gas Co.; Filing

October 10, 1989.

Take notice that on October 3, 1989, Trunkline Gas Company (Trunkline) filed Second Substitute Sixty-Ninth Revised Sheet No. 3-A and alternate Second Substitute Sixty-Ninth Revised Sheet No. 3-A to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Trunkline states that these tariff sheets reflect the currently effective PGA surcharge adjustment and requests that they be substituted in lieu of the two tariff sheets filed on September 29, 1989.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to accept these tariff sheets.

Trunkline states that copies of this filing are being mailed to its jurisdictional customers, interested state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24398 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-85-000]

West Texas Gathering Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that on October 3, 1989 West Texas Gathering, (West Texas Gathering) filed proposed changes in its

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FERC Gas Tariff. The purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1990.

A copy of this filing has been served upon all of West Texas Gathering's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24391 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Western Gas Interstate Company (Western"), on September 29, 1989, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheet is November 1, 1989.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause and its Annual Charge Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for: (1) A decrease in cost under Western's Rate Schedule G-N of 0.27 cents per Mcf; and (2) an increase in cost under Western's Rate Schedule G-S of 28.98 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24395 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-43-000, TM90-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Williams Natural Gas Company (WNG) on September 29, 1989 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 6
Fourteenth Revised Sheet No. 7

A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective November 1, 1989, to reflect a $.1541 per Dth increase in the Cumulative Adjustment, a $.0007 per Dth increase in transportation fuel rates and a $.0025 per Dth increase in gathering fuel rates.

WNG states that pursuant to Article 29 of its FERC Gas Tariff, the above referenced tariff sheets reflect a revised TOP Volumetric Surcharge for the period November 1, 1989 through January 31, 1990 of $.0323.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24394 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-257-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

October 10, 1989.

Take notice that on September 29, 1989, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. Williston Basin states that these tariff sheets reflect the restatement of rates to incorporate a second conversion of firm sales service to firm transportation service by Williston Basin's sales customers in light of abandonment authority issued in Docket No. CP89-302-000. Williston Basin has requested a November 1, 1989 effective date for the revised tariff sheets.

Copies of this filing were served on the Company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24399 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-2-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

October 10, 1989.

Take notice that on October 3, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1, Original Volume No. 1-A and Original Volume No. 2.

Williston Basin states that the proposed revisions to the tariff sheets reflect establishment of separate storage charges for service rendered under Rate Schedule S-2 of Williston Basin's FERC Gas Tariff, Original Volume No. 1-A.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24388 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

Idaho Operations Office

Intent To Negotiate a Grant With the University of Alaska Fairbanks (Annex VII)

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent to negotiate a grant with the University of Alaska Fairbanks (Annex VII).

SUMMARY: "Characterization of Oil and Gas Reservoir Heterogeneity." The U.S. Department of Energy (DOE), Bartlesville Project Office through DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis a cost share grant for approximately $1.2 million with the University of Alaska Fairbanks. The DOE share is approximately $0.6 million. This action is prompted by the consummation of Annex VII to the Memorandum of Understanding for fossil energy resource characterization, research, technology development, and technology transfer between the United States Department of Energy and the State of Alaska, which defines the research proposal, the participants, and specifies cost sharing. The objective of this research project is to comprehensively characterize Alaskan petroleum reservoirs in terms of their reserves, physical and chemical properties, geologic configurations in relation to lithofacies and structure, and development potential. This is to be accomplished through an intensive cooperative effort to identify and structure existing information, both published and unpublished, for use by developers, decision makers, and researchers, and to conduct analytical characterization studies of selected reservoirs to support a comprehensive final document and workshops. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i) criteria (B), (C), and (D). The activities proposed in Annex VII to the agreement between the U.S. Department of Energy and the State of Alaska are in support of a public purpose and are as directed by the agreement. DOE support of the activity would enhance the public benefits to be derived, and DOE knows of no other entity which is conducting or planning to conduct such an activity.

The applicant is a unit of Government and the activity to be supported is related to performance of a Governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The applicant has exclusive domestic capability to perform the activity successfully and has extensive data relative to the proposed activities that will be identified and structured and made available to developers, decisionmakers, and researchers.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402. Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: October 5, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-24504 Filed 10-16-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-41-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Northridge Petroleum Marketing U.S., Inc. (Northridge), an extension of its existing blanket import authorization which expires December 4, 1989. The order authorizes Northridge to import up to 200 Bcf of Canadian natural gas over a two-year period beginning December 5, 1989, through December 4, 1991.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open betwen the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 10, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-24505 Filed 10-16-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 88-52-NG]

Southeastern Michigan Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 31, 1989, of an amendment to an application to import natural gas from Canada filed by Southeastern Michigan Gas Company (Southeastern) on August 26, 1988, but by its subsequent request held in abeyance until the Canadian export arrangements were renegotiated. Southeastern requests authorization to import from Canada up to 15,000 Mcf of

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natural gas per day on a firm basis, and additional, excess gas on an interruptible basis, for a 15-year term beginning when gas is first delivered to Southeastern.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 16, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6233;

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Southeastern, a local distribution company subject to regulation by the Michigan Public Service Commission, seeks authorization to import gas that it will buy from Western Gas Marketing, Ltd. (WGM), a wholly-owned subsidiary of TransCanada PipeLines, Ltd. (TransCanada). The applicant had requested that DOE hold its original August 1988 filing (53 FR 39760, October 12, 1988) in abeyance pending governmental approval. WGM had been unable to secure the requisite producer support for the sale of the gas. Southeastern indicates in its amended application that the pricing and other terms of the import arrangement, as modified, have received the necessary producer support, and requests that DOE reactivate the application and consider it as amended.

TransCanada would deliver the gas to a point at the international border near Emerson, Manitoba, where TransCanada's facilities connect with those of Great Lakes Gas Transmission Company (Great Lakes) and Midwestern Gas Transmission Company. Great Lakes has filed a related application with the Federal Energy Regulatory Commission (FERC Docket No. CP88–541–000) for authority to transport the gas to Southeastern via an existing interconnection between Southeastern and ANR Pipeline Company (ANR). As part of its FERC application, Great Lakes requests authority to construct certain necessary facilities, including a 2.9-mile loop of 36-inch diameter pipe. Southeastern indicates ANR may also be involved in transporting some of the gas to an existing interconnection of their two systems.

The proposed gas purchase contract renegotiated by Southeastern and WGM provides for the sale and purchase of a daily contract quantity of 15,000 Mcf, up to a term total of 82,125 MMcf, with deliveries to commence after regulatory approval and to continue for a term ending 15 years after gas first flows. Southeastern also may buy gas in excess of the daily contract quantity on an interruptible, best-efforts basis, subject to available transportation. The annual contract quantity (sum of the daily contract quantity) is subject to a 50 percent minimum purchase requirement ("annual triggering volume") in the first three contract years and 70 percent thereafter. If Southeastern does not take the annual triggering volume in any year, the contract provides for a gas inventory charge of 10 cents per Mcf of the shortfall. The contract also permits WGM to reduce the daily contract volume to reflect a shortfall.

Southeastern would purchase gas under the proposed contract in accordance with a two-part, demand-commodity rate structure. The demand charge would be determined monthly based on the firm transportation charges of TransCanada and the NOVA Corporation of Alberta (NOVA). The method for calculating the NOVA component of the demand charge rate is subject to limited renegotiation.

The commodity component, as modified, is based on a formula indexed to the price paid by Southeastern under current long-term contracts for the purchase and sale of gas on a firm basis from alternative suppliers delivered through the pipeline systems of ANR or Panhandle Eastern Pipeline Company. The commodity charge is subject to annual renegotiation at the request of either party, and in the absence of agreement, arbitration. In an October 10, 1989, letter Southeastern indicated that under the pricing formula the delivered charge for September 1989 would be $1.63 per MMBtu. This price is the total of a $0.2575 demand charge and a $1.3725 commodity charge. The price for excess gas is the effective commodity charge under the gas purchase contract, plus the interruptible transportation charges of TransCanada.

Gas supplies committed to the import arrangement under the proposed contract would come from the pool of supplies dedicated by Canadian producers to TransCanada. WGM and TransCanada must use reasonable efforts to add gas reserves necessary to maintain a ten-year reserve-production ratio and, according to the application, may not enter into gas contracts in any year in which that ratio is less than ten, or which would reduce the ratio to less than ten.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC has performed an environmental review of the impacts of constructing and operating the proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address. They must be filed no later than 4:30 p.m., e.d.t., November 16, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeing intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, shown that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR section 590.316.

A copy of Southeastern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24506 Filed 10–16–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $1,362, 565.77 (plus accrued interest) which was remitted by five firms and one individual: Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil on behalf of Southland Royalty Co., Sante Fe Energy Co., Samedan Oil Corp., and Joe E. Smith. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate on or before November 16, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number(s): KEF–0140 (Tootle); Number(s): KEF–0141 (Carbonit); Number(s): KEF–0143 (Meridian); Number(s): KEF–0144 (Santa Fe); Number(s): KEF–0145 (Samedan); and/or Number(s): KEF–0146 (Joe E. Smith)..

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and order sets forth the procedures by which remittances made by Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil on behalf of Southland Royalty Co., Santa Fe Energy Co., Samedan Oil Corp., and Joe E. Smith will be distributed. The monies remitted by Tootle Petroleum, Inc., Carbonit Houston, Inc., and Joe E. Smith were in settlement of possible pricing violations with respect to the sale of domestic crude oil. The monies remitted by Meridian Oil, Santa Fe Energy Co., and Samedan Oil Co. represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.

The DOE has tentatively decided that the distribution of the monies received from Tootle, Carbonit, Meridian, Santa Fe, Samedan, and Joe E. Smith will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 10, 1989.

George B. Breznay,

Director, Office of hearings and Appeals.

DEPARTMENT OF ENERGY

Washington, DC 20585

Proposed Decision and Order; Implementation of Special Refund Procedures

Names of Firms:
Tootle Petroleum, Inc.
Carbonit Houston, Inc.
Meridian Oil
Santa Fe Energy Company
Samedan Oil Corp.
Joe E. Smith

Dates of Filing:
August 23, 1989
August 24, 1989
August 31, 1989
August 31, 1989
August 31, 1989
August 31, 1989

Case Numbers:
KEF–0140
KEF–0141
KEF–0143
KEF–0144
KEF–0145
KEF–0146

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special

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procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed petitions for the Implementation of Special Refund Procedures for consent order funds which the DOE has obtained from Tootle Petroleum, Inc. (TPI), Carbonit Houston, Inc. (Carbonit), Meridian Oil (Meridian), Santa Fe Energy Company (Santa Fe), Samedan Oil Corp. (Samedan), and Joe E. Smith (Smith). These five firms and Smith remitted a total of $1,362,565.77 to the DOE,[1] which deposited the funds in interest-bearing escrow accounts maintained at the Department of the Treasury. The funds paid by TPI, Carbonit and Smith were in settlement of crude oil enforcement proceedings brought under 10 C.F.R. Part 205, Subpart O. The funds received from Meridian, Santa Fe, and Samedan represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.[2] An additional $46,635.34 has accrued in interest on these six escrow funds as of August 31, 1989.[3] This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.[4] After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the six remittances. Therefore, we propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

[1] TPI, a crude oil reseller, remitted $7,615 (Consent Order Number 6A0X00339). Carbonit, a crude oil reseller, remitted $30,000 (Consent Order Number 650X00253). Smith, a crude oil producer, remitted $22,500 (Consent Order Number 610C00359W). Meridian remitted $693,547 on behalf of Southland Royalty Company (Escrow Account Number T00T00002W). Santa Fe remitted $531,699.77 (Escrow Account Number T00T00002W). Samedan remitted $77,204 (Escrow Account Number T00T00003W).

[2] Although these funds did not result from alleged violations of the regulations, they represent restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under Section 212.78. Since the effect of those higher prices was spread throughout the country, *see* n.5, *infra*, it is appropriate to combine these funds with crude oil overcharge funds.

[3] As of August 31, 1989, accrued interest on each of the escrow accounts is as follows: Tootle, $76.81; Carbonit, $245.34; Meridian, $19,711.07; Santa Fe, $14,458.29; Samedan, $1,947.12; Smith, $10,198.10.

I. Background

On July 28, 1986, the DOE issued a Modified statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.*, 6511 F. Supp. at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $1,362,565.77 plus interest in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $272,513.15 (plus interest), for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986).

[4] For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,552 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *A. Tarricone Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($1,362,565.77) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[5] This yields a volumetric refund amount of $0.000000674204 per gallon.

As we stated in previous decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. A deadline of June 30, 1988 was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone Inc.*, 16 DOE ¶ 85,681 (1987). A deadline of October 31, 1989 was established for all second stage crude oil proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOR ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). Any applicant that files a refund application after the October 31, 1989 deadline may not be eligible to receive a refund based on the volumetric amounts approved prior to that date. The volumetric refund amount in the third stage of disbursements will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $1,090,052.62 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the Federal Register.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil, Santa Fe Energy Co., Samedan Oil Corp., and Joe E. Smith pursuant to Consent Orders 6A0X00339, 650X00253, T00T00001W, T00T00002W, T00T00003W, and 610C00359W shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89–24507 Filed 10–16–89; 8:45 am]
BILLING CODE 6450–01–M

[5] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertification throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board:

Andrew S. Fishel,
Thomas P. Stanley,
Richard C. Firestone,
Robert L. Pettit.

Federal Communications Commission.
H. Walker Feaster III,
Acting Secretary.

[FR Doc. 89–24420 Filed 10–16–89; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–842–DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–842–DR), dated September 21, 1989, and related determinations.

DATED: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, is hereby amended to include the following areas

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among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 21:

The municipio of Penuelas for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24471 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

North Carolina; Amendment to Notice of a Major Disaster Declaration

[FEMA-844-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Davie, Davidson, Forsyth, Guilford, Stokes, and Yadkin for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24472 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 6, 1989, the President amended his declaration of a major disaster for the State of South Carolina, dated September 22, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the State of South Carolina, which resulted in my declaration of a major disaster on September 22, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under PL 93-288 for Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 100 percent.

Please notify the Governor of South Carolina and the Federal Coordinating of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24473 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-841-DR]

Territory of the Virgin Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the Virgin Islands (FEMA-841-DR), dated September 20, 1989, and related determinations.

DATED: October 9, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the Territory of the Virgin Islands, dated September 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20:

Water Island, and other inhabited islands under the jurisdiction of the Territorial Government for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24474 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port of Oakland Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004008-009

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)
Marine Terminals Corporation (MTC)

Synopsis: The Agreement modifies the basic agreement, a management arrangement for certain marine terminal facilities in the Port's Seventh Street Terminal Area, to delete a portion of the assigned premises. The portion deleted shall be restored to the premises assigned to MTC if Agreement No. 224-200287 terminates during the effectiveness of Agreement No. 224-004008-009.

Agreement No.: 224-200296

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)
EAC Trans Pacific Service Ltd. (EAC)

Synopsis: The Agreement provides EAC with a nonexclusive right to certain assigned premises at the Port's Charles P. Howard Terminal for the berthing, loading and discharging of its vessels and related operations. EAC agrees to make the Port of Oakland its regularly scheduled Northern California port of call and shall pay the Port 90% of dockage and wharfage tariff charges subject to certain conditions. The Agreement terminates September 30, 1994.

Agreement No.: 224-200295

Title: Virginia Port Authority Terminal Agreement.

Parties:

Virginia Port Authority (VPA)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement provides that VPA will construct and improve terminal facilities located at Portsmouth, Virginia. The Agreement permits Sea-Land the use of the terminal facilities for conducting container terminal operations and related activities and grants Sea-Land an option to use certain other adjoining property for similar purposes. The Agreement's term expires October 31, 2005.

By order of the Federal Maritime Commission.

Dated: October 12, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24462 Filed 10-16-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Hometown Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 3, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hometown Bancshares, Inc.*, Middlebourne, West Virginia; to merge with Universal Banc Corp., Paden City, West Virginia, and thereby indirectly acquire The Bank of Paden City, Paden City, West Virginia.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation*, Richmond, Virginia; to merge with The Northern Virginia Banking Corporation, Sterling, Virginia, and thereby indirectly acquire The National Bank of Northern Virginia, Sterling, Virginia.

2. *Maryland Publick Banks, Inc.*, Annapolis, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Annapolis National Bank, in organization, Annapolis, Maryland, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Quebec, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Frankfort Bancshares, Inc., Frankfort, Illinois, and thereby indirectly acquire Frankfort State Bank, Frankfort, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NBC Bancorporation, Inc.*, Newport, Minnesota; to merge with Central Bancorporation, Inc., Newport, Minnesota, and thereby indirectly acquire Blue Earth State Bank, Blue Earth, Minnesota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Security Bancshares Corporation*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank and Trust, Fort Worth, Texas, and North Fort Worth Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24449 Filed 10-16-89; 8:45 am]

BILLING CODE 6210-01-M

Industrial Equity (Pacific) Ltd. and Debra I. Lamb; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 31, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Industrial Equity (Pacific) Limited*, Central Hong Kong; Brierley Investments Limited, New Zealand; The Shanghai Electric Construction Company Limited, United Kingdom; Zorzan Investments Limited, Hong Kong; Stuart Corporation, Inc., Rorotonga, Cook Islands; Caisley Finance Limited, Rorotonga, Cook Islands; Mezerik Securities Limited, Rorotonga, Cook Islands; Stuart Investments Limited, Rorotonga, Cook Islands; Boulevard Limited, Rorotonga, Cook Islands; Ronald A. Brierley, New Zealand; Bruce A. Hancox, New Zealand; Alfred D. Boyer, United States; Robert G. Sutherland, New Zealand; Paul D. Collins, New Zealand; Paul R. Forrester, United Kingdom; Reginald F. Heath, United Kingdom; and Rodney F. Price, Australia, to acquire an additional 10.09 percent of the voting shares of Whitney Holding Corporation, New Orleans, Louisiana, for a total of 19.9 percent, and thereby indirectly acquire Whitney National Bank, New Orleans, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

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1. *Debra I. Lamb*, Scottsdale, Arizona; to acquire an additional 2.06 percent, for a total of 26.45 percent of the voting shares of Ada Banc Shares, Inc., Ada, Minnesota, and thereby indirectly acquire the Ada National Bank, Ada, Minnesota.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24450 Filed 10-16-89; 8:45 am]

BILLING CODE 6210-01-M

McCreary Bancshares, Inc., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *McCreary Bancshares, Inc.*, Whitley City, Kentucky; to engage *de novo* through its subsidiary, McCreary County Community Development Corporation, and thereby engage in lending and community development activities pursuant to § 225.25 (b)(1) and (b)(6) of the Board's Regulation Y. These activities will be conducted in McCreary County, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Corporation of Picayune*, Picayune, Mississippi; to engage *de novo* through its subsidiary, Community Finance, Inc., Picayune, Mississippi, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the Company's account or for the account of others, such as would be made, for example, by the following types of companies: (i) Consumer finance, (ii) credit card, (iii) mortgage, (iv) commercial finance, and (v) factoring pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the States of Mississippi, Louisiana and Alabama.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24451 Filed 10-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-16]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR); Public Health Service (PHS); Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the expected availability of the third set of 30 draft toxicological documents profiling 48 hazardous substances, prepared by ATSDR for review and comment.

The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 200 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The first list was published in the **Federal Register** on April 17, 1987 (52 FR 12866). The second list was published on October 20, 1988 (53 FR 41280).

Although we are confident that the key studies for each of the substances were considered during the profile development process, this **Federal Register** notice solicits any studies, including unpublished data and ongoing studies, which may aid in the revision of the draft profiles.

Availability

The following draft toxicological profiles are expected to be publicly available on or about October 17, 1989.

Document	Hazardous substance	CAS No.
1.	Acrolein	107-02-8
2.	Acrylonitrile	107-13-1
3.	Ammonia	7664-41-7
4.	Asbestos	1332-21-4
5.	Bromoform	75-25-2
	Chlorodibromomethane	124-48-1
6.	Chlorobenzene	108-90-7
7.	Chloromethane	74-87-3
8.	Copper	7440-50-8
9.	Creosote	8001-58-9
10.	Di-n-butylphthalate	84-74-2
11.	1,2-Diphenylhydrazine	122-66-7
12.	1,1-Dichloroethane	75-34-3
13.	cis-1,2-Dichlorethene	156-59-2
	trans-1,2-Dichloroethene	156-60-5
	1,2-Dichlorethene	540-59-0
14.	Endrin/Endrin Aldehyde	72-20-8
		7421-93-4
15.	Ethylbenzene	100-41-4
16.	Ethylene Oxide	75-21-8
17.	Hexachlorobenzene	118-74-1
18.	Naphthalene	91-20-3
	2-Methylnaphthalene	91-57-6
19.	Nitrobenzene	91-20-3
20.	Polycyclic Aromatic Hydrocarbons (PAHs).	
	Acenaphthene	83-32-9
	Acenaphthylene	208-96-8
	Anthracene	120-12-7
	Benzo(a)anthracene	56-55-3
	Benzo(a)pyrene	50-32-8
	Benzo(b)fluoranthene	205-99-2
	Benzo(g,h,i)perylene	191-24-2
	Benzo(k)fluoranthene	207-08-9
	Chrysene	218-01-9
	Dibenzo(a,h)anthracene	53-70-3
	Fluoranthene	206-44-0
	Fluorene	86-73-7
	Indeno(1,2,3-cd)pyrene	193-39-5
	Phenanthrene	85-01-8
	Pyrene	129-00-0
21.	Plutonium	7440-07-5
22.	Radium	7440-14-4
23.	Radon	10043-92-2
24.	Silver	7440-22-4
25.	Thorium	7440-29-1
26.	Toxaphene	8001-35-2
27.	1,1,1-Trichloroethane	71-55-6
28.	2,4,6-Trichlorophenol	88-06-2
29.	Uranium	7440-61-1
30.	Total xylenes	1330-20-7

The public comment period for each document will end on February 16, 1990. The close of the comment period will also be indicated on the front of each document. In order to assure consideration by ATSDR, comments must be received by the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Rd., Atlanta, GA 30333 on or before the close of the public comment period. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what ATSDR deems to be in the best interest of the general public.

Requests for draft toxicological profiles must be in writing and should be sent to Mr. Edward J. Skowronski, Program Manager, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Rd., Atlanta, GA 30333.

Specify the profiled hazardous substances you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested free of charge. In the case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-16. Send one copy of all comments and five copies of all supporting documents to Mr. Skowronski at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

SUPPLEMENTARY INFORMATION:

Background

CERCLA, as amended by SARA, requires ATSDR to prepare (1) lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

In compliance with section 104(i)(2)(A) of CERCLA, ATSDR and EPA published on April 17, 1987 (52 FR 12866), the first priority list of 100 hazardous substances. On October 20, 1988, the second priority list of 100 hazardous substances was published in the **Federal Register** (53 FR 41280). Both priority lists were further broken down into groups of 25 chemicals. Section 104(i)(3) of CERCLA as amended, spells out the content of these profiles.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

The final toxicological profiles are provided by ATSDR to the States and made available through the National Technical Information Service to the public.

This notice announces the projected availability of the third set of 30 documents profiling 48 hazardous substances. The documents have undergone extensive internal review and have been subjected to scientific and technical peer review by outside experts. We encourage public participation and comment on the further development of these profiles.

Dated: Oct. 11, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-24421 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 79D-0124]

New Drug Applications; Final Guideline for Drug Master Files; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final guideline for drug master files (DMF's). This guideline is intended to assist DMF holders with the format and content of DMF's.

ADDRESSES: Submit written requests for copies of the final guideline for drug master files to the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a final guideline for the format and content of DMF's. A DMF is a submission to FDA that may be used to provide detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of human drugs. The submission of a DMF is not required by law or FDA regulation. A DMF is submitted solely at the discretion of the holder. The information contained in the DMF may be used to support an investigational new drug application (IND), a new drug application (NDA), an abbreviated new drug application (ANDA), another DMF, an export application, or amendments and supplements to any of these. Elsewhere in this issue of the **Federal Register** the agency is also proposing technical revisions to rules that govern the submission to FDA of drug master files.

In October 1987, FDA published the "Draft Guideline for Drug Master Files" (Docket No. 79D-0124). The agency received 15 comments on the draft guideline, including a number of suggestions for minor changes in wording. No comments asked for

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substantive changes in the guideline. A committee in FDA's Center for Drug Evaluation and Research held a series of meetings to review the comments received. This final guideline responds to the comments.

On the agency's own initiative, the guideline has been revised to add a statement that discourages applicants from establishing DMF's for the sole purpose of referencing material contained in one of the applicant's own IND's, NDA's, or ANDA's. In such situations, the applicant should instead reference its own IND, NDA, or ANDA.

This notice and the revised guideline are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort on an alternate procedure that the agency may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: August 9, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24431 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill four vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by title XXI, subtitle I, section 2105 of the Public Health Service Act, enacted by Public Law 99-660, The National Vaccine Injury Compensation Act of 1986 [42 U.S.C. 300AA-1 *et seq.*].

DATES: Nominations are to be submitted by November 1, 1989.

ADDRESSES: All nominations for membership should be sent to Dr. Alan R. Hinman (address below).

FOR FURTHER INFORMATION CONTACT: Alan R. Hinman, M.D., Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, Room 13A-53, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0715.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for four vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, or public health organizations. Members will be invited to serve four year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and nongovernment cooperation that should be considered in implementaing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

DHHS has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees. Final selection will be determined by the expertise of the candidates and in a manner to ensure appropriate balance of membership.

Nomination Procedures: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nominee should be aware of the nomination, willing to serve as a member of the committee and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae of the nominee should be submitted with the nomination.

Dated: October 3, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-24429 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Availability of the Fifth Annual Report on Carcinogens

The HHS' National Toxicology Program (NTP) today announces the availability of the Fifth Annual Report on Carcinogens.

The Annual Report on Carcinogens, prepared by the National Toxicology Program (NTP), U.S. Public Health Service, is issued by the Secretary of the Department of Health and Human Services (DHHS) pursuant to an amendment to the Public Health Service Act (section 262, Pub. L. 95-622) which requires the Secretary to publish an annual report that contains "a list of all substances (i) which either are known to be carcinogens or which may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed * * *" The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

For the purposes of the Report, "known" carcinogens are defined as those substances for which the evidence from human studies indicates that there is a causal relationship between exposure to the substance and human cancer. Substances "which may reasonably be anticipated to be carginogens" are defined as those for which there is limited evidence of carcinogenicity in humans or sufficient evidence of carcinogenicity in experimental animals.

Substances in the above categories, for which potential exposure of persons residing in the United States has been demonstrated, are included in the Report. In the Fifth Annual Report, attempts are made to list substances that are currently being used, or for which there is some evidence for continuing exposures in the workplace or in the general environments of persons residing in the United States. Included as an appendix is a list of chemicals now banned or no longer produced in the United States, and/or for which there is no evidence for continuing exposure of persons residing in the United States. These chemicals have formerly appeared in Annual Reports, and information about them is provided in these earlier editions for all who are interested. The Fifth Annual Report does not contain all known carcinogens or substances reasonably anticipated to be carcinogens. Additional substances with identified carcinogenic properties as defined above will be included in subsequent Annual Reports.

The Fifth Annual Report lists 162 chemicals or substances, or mixtures. Included are the entries from the Fourth Annual Report and 21 additional substances or groups of substances. The new entries were chosen from those designated by the agenices participating in the preparation of the Report, from those tested within the National Toxicology Program and the National Cancer Institute Carcinogenesis Bioassay Program, or from those evaluated by the International Agency for Research on Cancer (IARC), a component of the World Health Organization (WHO), located in Lyon, France.

Copies of the Fifth Annual Report on Carcinogens Summary will be available in December. The Summary does not contain specific information on regulations promulgated by regulatory health agencies. In most other respects, the information is the same as that in the full report. Copies will be sent to those on the mailing list, or single copies may be obtained without charge by writing the Public Information Office, National Toxicblogy Program (MD B2-04), PO Box 12233, Research Triangle Park, NC 27709.

Copies of the complete Report are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. There is a $61.95 charge for the document plus a $3.00 per order shipping and handling charge. Ask for Report No. PB 89-231914 when ordering.

Comments on the Fifth Annual Report on Carcinogens are welcome. Corrections, suggestions, or any additional information should be addressed to Annual Reports on Carcinogens, Public Information Office, National Toxicology Program (MD B2-04), PO Box 12233, Research Triangle Park, NC 27709.

Dated: October 11, 1989.

David P. Rall,

Director.

[FR Doc. 89-24404 Filed 10-16-89; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on November 20 and 21, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9 a.m. both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and short-term toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on November 20 and 21 are draft Technical Reports of long-term studies on nine chemicals, listed alphabetically, along with supporting information including proposed levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats and B6C3F$_1$ mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on three chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than November 13, 1989, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentation should supplement and not just repeat the written statement. Presentations should be about five minutes, and must be limited to no more than ten minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Attachment.

Dated: October 4, 1989.

David P. Rall,

Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
DL-Amphetamine sulfate 60–13–9.	Dr. J. Dunnick, 919–541–4811, TR–387.	Treatment of narcolepsy and weight problems; for behavior disorders in children	Oral in feed (NIH–07 diet (powdered): 0, 20, 100 PPM.	Microbiological Associates.	6
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
2 Chloroacetophenone (CN) 532–27–4.	Dr. R. Melnick, 919–541–4142, TR–379.	Riot control gas; pharmaceutical intermediate	Inhalation: R: 0, 1, 2, M: 0, 2, 4 MG/M3.	Battelle Northwest Laboratory.	3
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: equivocal evidence mammary gland: fibroadenoma MM: no evidence FM: no evidence					
0-Chlorobenzalmalono-nitrile (CS) 2698–41–1.	Dr. K. Abdo, 919–541–7819, TR–377.	Riot control agent	Inhalation: R: 0, .075, .25, .75, M: 0, .75, 1.5 MG/M3.	Battelle Northwest Laboratory.	4
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
Epinephrine hydrochloride 55–31–2.	Dr. D. Dietz, 919–541–2272, TR–380.	Adrenergic; vasoconstrictor; cardiac stimulant; bronchodilator	Inhalation: R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 MG/M3.	Battelle Northwest Laboratory.	5
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
Ethylene thiourea (ETU) 96–45–7.	Dr. R. Chhabra, 919–541–3386, TR–388.	Intermediate for antioxidants, insecticides, fungicides, dyes, pharmaceuticals. Accelerator for neoprene, epichlorohydrin, and polyethylene rubbers.	Oral in Feed: R: 0, 25, 83, 250, M: 0, 100, 333, 1,000 PPM.	Battelle Columbus Laboratory.	8

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: clear evidence—thyroid gland: follicular cell neoplasms FR: clear evidence—thyroid gland: follicular cell neoplasms MM: clear evidence—thyroid gland: follicular cell neoplasms—liver: hepatocellular neoplasms FM: clear evidence—thyroid gland: follicular cell neoplasms—liver: hepatocellular neoplasms—pituitary gland: adenoma					
Furfural 98–01–1	Dr. R. Irwin, 919–541–3340, TR–382.	Intermediate in plastics preparation; solvent; wetting agent; flavoring agent; preparation of furfural alcohol.	Oral, Gavage (CORN OIL): R: 0, 30, 60, M: 0, 50, 100, 175 MG/KG.	Southern Research Institute.	2
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: some evidence—liver: cholangiocarcinoma FR: no evidence MM: clear evidence—liver: hepatocellular neoplasms FM: some evidence—liver: adenoma					
Methyl bromide 74–83–9	Dr. R. Yang, 919–541–2947, TR–385.	Fumigant; extractant; wool degreasing. In ionization chambers: fire-extinguishing agent, insecticide, rodenticide.	Inhalation mice only: 0, 10, 33, 100 PPM.	Brookhaven National Lab (DOE).	9
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MM: not yet reviewed FM: not yet reviewed					
Tetranitromethane 509–14–8.	Dr. J. Bucher, 919–541–4532, TR–386.	Rocket propellants; additive to diesel fuel; explosive; reagent	Inhalation: R: 0, 2, 5, M: 0, 0.5, 2 PPM.	Midwest Research Institute (Inhalation).	1

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: clear evidence—lung: alveolar/bronchiolar neoplasms FR: clear evidence—lung: alveolar/bronchiolar neoplasms MM: clear evidence—lung: alveolar/bronchiolar neoplasms FM: clear evidence—lung: alveolar/bronchiolar neoplasms					
Vinyl toluene 25013–15–4	Dr. G. Boorman, 919–541–3440, TR–375.	Preparing polyester resins, modified alkyl resins, and drying oils. In orthopedic cast material.	Inhalation: R: 0, 100, 300, M: 0, 10, 25 PPM.	Midwest Research Institute (Inhalation).	7
Proposed levels of evidence of carcinogenicity—organ /tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					

NOTE: The results indicated are to be considered tentative until reviewed, discussed, and agreed to at the Board of Scientific Counselors' Peer Review Panel public meeting on November 20–21, 1989. Levels of evidence summary for long-term studies (34 individual experiments): clear evidence, 9; some evidence, 2; equivocal evidence, 0; no evidence, 21; inadequate study, 0; not yet reviewed, 2. MR=male rats; FR=female rats; MM=male mice; FM=female mice

TABLE 2.—SUMMARY DATA FOR NTP TECHNICAL REPORTS OF TOXICITY STUDIES PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
D & C Yellow No. 11 8003–22–3.	Dr. W. Eastin, 919–541–7941, TOX–06.	Color additive used in cosmetics and externally applied to drugs. Contaminant of D&C Yellow 10, a compound which FDA is currently considering for approval for contact lenses.	Oral in feed (feed): R&M: 0, 500, 1,700, 5,000, 17,000, 50,000 PPM.	EG&G Mason Research Institute.	12
Pentachlorobenzene 608–93–5.	Dr. H. Matthews, 919–541–3252, TOX–06.	Pesticide.....	Oral in feed (feed): R&M: 0, 33, 100, 330, 1,000, 2,000 PPM.	EG&G Mason Research Institute.	10
1,2,4,5-Tetrachlorobenzene 95–94–3.	Dr. H. Matthews, 919–541–3252, TOX–07.	Intermediate for herbicides and defoliants; insecticide; impregnant for moisture resistance; electrical insulation; temporary protection in packing.	Oral in feed (corn oil/NIH–07 diet): R&M: 0, 30, 100, 300, 1,000, 2,000 PPM.	Microbiological Associates.	11

R=rats; M=mice

[FR Doc. 89-24403 Filed 10-16-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-00-4410-10]

Availability of Proposed Planning Criteria and Pre-Planning Analysis for the South Coast Resource Management Plan; California Desert District; Palm Springs-South Coast Resource Area, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2, notice is hereby given of the availability of proposed planning criteria and pre-planning analysis for the South Coast Resource Management Plan (RMP).

SUPPLEMENTARY INFORMATION: The planning area is the portion of the Palm Springs-South Coast Resource Area which is not within the California Desert Conservation Area.

It includes portions of San Diego, Riverside, Los Angeles, San Bernardino and Orange Counties. The RMP will guide future land use of approximately 145,000 acres of public land. In addition it will address the Bureau's mineral leasing and permitting responsibilities on additional lands of Federal mineral ownership. The planning effort, which will include both a draft and final environmental impact statement on the alternatives considered, is scheduled for completion in the fall of 1991. Copies of the initial planning criteria and pre-planning analysis are available upon request at the following locations: California Desert District, 1695 Spruce Street, Riverside, California 92507 (714) 351-6394; and Palm Springs-South Coast Resource Area, 400 So. Farrell Drive, Suite B-205, Palm Springs, California 92262 (619) 323-4421.

DATE: Comments should be sent to the Palm Springs-South Coast Resource Area not later than November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, or Duane Winters, RMP Project Coordinator, Palm Springs-South Coast Resource Area, (619) 323-4421.

Dated: October 10, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-24423 Filed 10-16-89; 8:45 am]
BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 7, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 1, 1989.

Beth Boland, Acting,

Chief of Registration, National Register.

ARKANSAS

Hempstead County

Jacques, Dr. Thomas S., House NW of McCaskill, McCaskill vicinity, 89001940

Poinsett County

Poinsett County Courthouse, Bounded by Market, East, Court, and Main Sts., Harrisburg, 89001876

White County

Wood, Jack, House, Judson, Ave., Judsonia, 89001939

HAWAII

Honolulu County

Sacred Heart Church, 1701 Wilder Ave., Honolulu, 89001875

LOUISIANA

Calcasieu Parish

Calcasieu Parish Courthouse, Ryan St. at Kirby St., Lake Charles, 89001938

MINNESOTA

Hennepin County

Minneapolis Warehouse Historic District, Roughly bounded by River St., 1st Ave. N., 6th St. N., 2nd Ave. N., 5th St. N., 5th Ave. N., 3rd St. N., & 10th Ave. N., Minneapolis, 89001937

VERMONT

Bennington County

Arlington Village Historic District, Roughly Main St., School St., E. Arlington Rd., and Battenkill Dr., Arlington, 89001936

VIRGINIA

Albemarle County

Cedars, The, US 250 W of US 64, Greenwood, 89001909
Clifton, VA 729 at Rivanna River, Shadwell vicinity, 89001922
Cove Presbyterian Church, US 29, N of VA 699, Covesville, 89001935
Seven Oaks Farm and Black's Tavern, US 250, W of US 64, Greenwood vicinity, 89001906
Woodlands, VA 676, Charlottesville (Independent City) vicinity, 89001931

Amherst County

Fort Riverview (44AH91 and 44AH195), Address Restricted, Madison Heights vicinity, 89001921

Clarke County

Bethel Memorial Church, Co. Rt. 622, White Post vicinity, 89001927
Farnley, VA 658 at VA 622, White Post vicinity, 89001914

Essex County

Wheatland, VA 638 between US 17 and the Rappahanock, River, Loretto, 89001918

Franklin County

Brooks—Brown House, VA 646, N of VA 890, Dickinson vicinity, 89001930
Farm, The, US 220, Rocky Mount, 89001910

Gloucester County

Shelly Archeological District, Address Restricted, Hayes vicinity, 89001932

Goochland County

Bolling Island, Stokes Station Road, Goohland vicinity, 89001926

Montgomery County

Croner House (Montgomery County NPS), Off VA 787, 0.25 mi. E of VA 693 Childress vicinity, 89001893
Earhart, George, House (Montgomery County MPS), VA 712, 0.5 mi. N of VA 723, New Ellett, 89001886
Edgemont Church (Montgomery County MPS), VA 666, 1 mi. E of VA 645, Christianburg vicinity, 89001902
Evans House No. 2 (Montgomery County MPS), VA 685, 0.5 mi W of VA 657, Prices Fork vicinity, 89001890
Grayson, John House (Montgomery County MPS), 0.5 mi. NE of VA 613 bridge over Little River, Graysontown vicinity, 89001896
Graysontown Methodist Church (Montgomery County MPS), VA 613, Graysontown, 89001889
Hall, Thomas, House (Montgomery County MPS), VA 667, 0.5 mi. SE of VA 600, Childress vicinity, 89001898
Harrison—Hancock Hardware Company Building (Montgomery County MPS), 24 E. Main st., Christianburg, 89001877
Hornbarger Store (Montgomery County MPS), VA 659, 0.1 mi. E of VA 719, Vicker, 89001888
Howard—Bell—Feather House (Montgomery County MPS), VA 669 at Elliot Creek, Riner vicinity, 89001887
Keister House (Montgomery County MPS), 607 Giles Rd. Blacksburg, 89001880
Kinzer, Michael, House (Montgomery County MPS), VA 655 1 mi. E. of VA 624, Blacksburg vicinity, 89001901
Lawrence, Frank, House (Montgomery County MPS), VA 612, 0.5 mi. E of VA 614, Bashan vicinity, 89001897
Linkous—Kipps House (Montgomery County MPS), VA 657, Merrimac, 89001885
Montgomery White Sulphur Springs Cottage (Montgomery County MPS), Depot and New Sts., Christiansburg, 89001884
Murdock, Elijah, Farm (Montgomery County MPS), Off VA 643, 1 mi. N of US 460, Yellow Sulphur vicinity, 89001882

BEST COPY AVAILABLE

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Phillips—Ronald House (Montgomery County MPS), Draper Rd. at Washington St., Blacksburg, 89001904
Phlegar Building (Montgomery County MPS), 2 S. Franklin St., Christiansburg, 89001892
Preston House (Montgomery County MPS), US 460/11, 0.5 mi. SW of VA 641, Christiansburg vicinity, 89001895
Rife House (Montgomery County MPS), VA 633 at US 460/11, Shawsville vicinity, 89001900
Surface House (Montgomery County MPS), High St., E of Depot St., Christiansburg, 89001883
Thomas—Conner House (Montgomery County MPS), 104 Draper Rd., Blacksburg, 89001881
Trinity United Methodist Church (Montgomery County MPS), VA 723, 0.1 mi. S of VA 603, Ellett, 89001894
Virginian Railway Underpass (Montgomery County MPS), jct. of Norfolk Southern Railroad tracks and VA 723, S of New Ellett, New Ellett, 89001903
Wall, Adam, House (Montgomery County MPS), VA 657, 0.5 mi. S of VA 685, Prices Fork vicinity, 89001891
Walnut Grove Farm (Montgomery County MPS), VA 609, 0.2 mi. SE of US 460/11, Shawsville vicinity, 89001899
Walnut Spring (Montgomery County MPS), VA 654, 0.5 mi. E of jct. with VA 654, Kanodes Mill vicinity, 89001878
Whitehorn (Montgomery County MPS), VA 685, 1 mi. W of jct. with US 460, Blacksburg vicinity, 89001879

Northumberland County

Holley Graded School, US 360, N of VA 614, Lottsburg, 89001934

Pittsylvania County

Leesville Dan Archeological Site (44PY30), Address Restricted, Altavista vicinity, 89001916

Prince George County

Hatch Archeological Site (44PG51), Address Restricted, Hopewell vicinity, 89001923

Prince William County

Louisiana Brigade Winter Camp (Civil War Properties in Prince William County), Address Restricted, Manassas Park vicinity, 89001912

Pulaski County

Belle-Hampton, VA 627, 0.3 mi. N of VA 617, Dublin vicinity, 89001911

Smyth County

Henderson Building, Southwestern State Hospital, E. Main St., Marion, 89001919
Marion Male Academy, 343 College St., Marion vicinity, 89001915

Stafford County

Hartwood Presbyterian Church, jct. VA 705 and 612, Hartwood, 89001929

Sussex County

Carpenter, Miles B., House, US 460, Waverly, 89001920

Wise County

Christ Episcopal Church, 100 Clinton Ave., Big Stone Gap, 89001905

Bedford Independent City

Bellevue, VA 643, 1 mi. E of Goode, Goode vicinity, 89001917

Charlottesville Independent City

Vowles, John, House, 1111–1113 W. Main St., Charlottesville, (Independent City), 89001928

Colonial Heights Independent City

Conjurer's Field Archeological Site (44CF20), Address Restricted, Colonial Heights (Independent City) vicinity, 89001924

Lexington Independent City

Col Alto, Nelson and Spottswood Dr., Lexington (independent City), 89001925

Richmond Independent City

Almshouse, The (Boundary Increase), 210 Hospital St., Richmond (Independent City), 89001913
Virginia House, 4301 Sulgrave Rd., Richmond (Independent City), 89001933

[FR Doc. 89–24487 Filed 10–16–89; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Board of Trustees of the University of Alabama

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 21, 1989, a proposed Consent Decree in *United States* v. *Board of Trustees of the University of Alabama* (the "University"), was lodged with the United States District Court for the Northern District of Alabama. The Complaint in this case sought injunctive relief and civil penalties pursuant to section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c). The Complaint was filed on September 19, 1988, against the Board of Trustees, the owner and operator of the site in question.

The site involved in the case is the University of Alabama campus located in Tuscaloosa, Alabama. The proposed Consent Decree provides that the University shall comply with all the provisions contained in the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos as set forth at subpart M of 40 CFR Part 61. The Consent Decree also provides that the University shall pay to the United States a civil penalty of $10,000 within ten (10) days of the date of entry of the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments diaclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Board of Trustees of the University of Alabama*, DOJ Ref. No. 90–5–2–1–1186.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 200 Federal Building, 1800 5th Ave, Birmingham, Alabama 35203 and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530.

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24438 Filed 10–16–89; 8:45 am]
BILLING CODE 4410–10–M

Lodging of Consent Decree; J. Pizzuto Co.

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on October 2, 1989, a proposed consent decree in *United States* v. *J. Pizzuto Company, Inc.* Civil Action No. 88–6097, was lodged with the United States District Court for the Western District of Arkansas. The complaint filed by the United States alleged violations by the defendants of the Clean Air Act and the Natural Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos. The complaint sought injunctive relief and civil penalties for past violations. The proposed Consent Decree requires J. Pizzuto Compnay, Inc. and Reynolds Metals Company, Inc. to comply with the Clean Air Act and the asbestos NESHAP in the future and imposes a $30,000 civil penalty against Pizzuto and a $75,000 civil penalty against Reynolds for past violations of the Act and the Standard.

For the period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J. Pizzuto Company, Inc.*, Department of Justice reference number 90–5–2–1–1273.

The proposed consent decree may be examined at the Office of the United States Attorney, P.O. Box 1524, Fort Smith, Arkansas 72902 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24439 Filed 10–16–89; 8:45 am]
BILLING CODE 4410–10–M

Lodging of Consent Decree; City of San Antonio

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on October 4, 1989, in *United States* v. *City of San Antonio*, Civil Action NO. SA89CA1359, in the United States District Court for the Western District of Texas, San Antonio Division, and, simultaneously, a proposed consent decree between the United States and the City of San Antonio ("City") was lodged with the court. This consent decree settles the claims alleged in the complaint pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties for violations of the Clean Water Act, the Environmental Protection Agency's ("EPA") pretreatment regulations at 40 CFR part 403, and the City's National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA for the City's three publicly-owned treatment works ("POTW"): The Dos Rios Plant, the Leon Creek Plant and the Salado Creek Plant.

Under the terms of the proposed consent decree, the City has agreed to develop and implement an enforcement response program for industrial users ("IU") of the City's POTWs, to take timely and effective enforcement action against IUs, to develop and enforce technically-based local limits, to include an enforceable compliance schedule in each discharge permit for a categorical IU, and to expand the monitoring and reporting requirements of part III of the City's NPDES permits relative to IUs. In addition, the City has agreed to pay a civil penalty of $225,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *City of San Antonio*, D.J. Ref. 90–5–1–1–3283.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI
Contact: Barbara Luke, Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–2129.
United States Attorney's Office
Raymond A. Nowak, Assistant United States Attorney, 727 E. Durango, 6th Floor, San Antonio, Texas 78206, (512) 229–4254.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $3.50 payable to Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24444 Filed 10–16–89; 8:45 am]
BILLING CODE 4410–01–M

UNITED STATES DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and Conductus, Inc., (hereinafter known as "Conductus") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Conductus is a Delaware corporation with its principal place of business at 969 W. Maude Avenue, Sunnyvale, California 94086.

Bellcore and Conductus entered into a written agreement effective July 1, 1989 to collaborate on research to better understand the application for exchange and exchange access services to technology and equipments utilizing high temperature superconductive materials.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

[FR Doc. 89–24440 Filed 10–16–89; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and Northern Telecom Inc., (hereinafter known as "NTI") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of involing the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NTI is a Delaware corporation having a place of business at 5550 Triangle Parkway, Norcross, Georgia 30092.

Bellcore and NTI entered into a written agreement effective July 27, 1989

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to collaborate on research in the field of high definition television (HDTV) moving image coding and decoding, multiplexing and networking, and transmission and display for the purpose of understanding the application of new and advanced algorithms, technology, and equipment in improved exchange and exchange access services, and demonstrating the feasibility of research concepts of such technology and equipment by means of experimental prototypes and experimental systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24441 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and American Telephone and Telegraph Company, (hereinafter known as "AT&T") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey, 07039.

AT&T is a New York corporation having a place of business at One Oak Way, Berkeley Heights, New Jersey 07922.

Bellcore and AT&T entered into an agreement effective July 1, 1989 to collaborate on research to better understand the applications for exchange and exchange access services of technology and equipment useful for audio and video teleconferencing.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-24445 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and American Telephone and Telegraph Company, (hereinafter known as "AT&T") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

AT&T is a New York corporation having a place of business at One Oak Way, Berkeley Heights, New Jersey 07922.

Bellcore and AT&T entered into a written agreement effective July 15, 1989 to collaborate on research to better understand the feasibility for exchange and exchange access services of transmitting high speed digital information over a subscriber loop.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-24446 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") on August 30, 1989 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988, May 2, 1988, October 20, 1988, and March 15, 1989, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 7411), June 30, 1988 (53 FR 24811), November 25, 1988 (53 FR 47773), and April 20, 1989 (54 FR 16013), respectively.

On June 1, 1989, Novell, Inc. and Swedish Telecom became members of COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24447 Filed 10-16-89; 8:45 a.m.]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 Petroleum Environmental Research Forum

Notice is hereby given that, on September 6, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Form ("PERF") Project No. 88-07, titled "Basic Principles And Control of Refinery Emulsion Formation," filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Project No. 88-07 and (2) the nature and objectives of the research program to be performed in accordance with said project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 88-07, together with the nature and objectives of the research program, are given below.

The current parties to Project No. 88-07 identified by this notice are: Amoco Oil Company, ARCO Products Company; BP Research; Chevron Research Company; Conoco, Inc.; Marathon Oil Company; Mobil Research and Development Corporation; Murphy Oil U.S.A., Inc.; Texaco, Inc.; and Union Oil Company of California; with work to be carried out by North Carolina State University. The objectives of this project are to determine the basic causes of the formation of emulsions and sludges in petroleum refineries by: (1) Identification of probable sources of emulsion/sludge formation; (ii) characterization of interfacial film of selected emulsions; (iii) development of analytical techniques to characterize refinery waste streams; (iv) carrying out model emulsion studies based on knowledge gained from (i), (ii) and (iii); and (v) development of recommendations for further studies directed to minimization of refinery wastes by prevention and/or destabilization of emulsions at their initial stage of formation. Participation in this project will remain open until issuance of the final Project Report, which is presently anticipated approximately twelve (12) months after the date of publication of this Notice, and the parties intend to file additional written notification disclosing all changes in membership in this project. Information regarding participation in this project may be obtained from Mr. W.J. Tracy, Mobil Research and Development Corporation, Paulsboro Research Laboratory, Billingsport Road, Paulsboro, New Jersey 08066.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24442 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

U.S. DEPARTMENT OF JUSTICE

Pursuant to the National Cooperative Research Act of 1984; Remaining Life Methodology for Disc Rim Cracking

Notice is hereby given that, on September 7, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change of planned activities to its cooperative research project entitled "Remaining Life Methodology for Disc Rim Cracking". The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances. Specifically, the SwRI advised that the following planned activities are added to the original scope of work of the cooperative research project: (1) Sizing and verifying type I and type II cracks; (2) developing a ray tracing computer program to optimize the path of the ultrasonic beam during type II crack measurements; (3) patent prosecution for the SwRI-designed inspection system; (4) fabrication of a two-arm inspection system.

Membership in the cooperative research project is now closed. No changes have been made in the membership in the group research project nor in the planned research activities other than those listed herein.

On May 14, 1986, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21261.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24443 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,207; Okonite Corp., Passaic, NJ

TA-W-23,232; Kearfott Guidance & Navigation Corp., Wayne, NJ

TA-W-23,199; Beatreme Foods, Inc., Beloit, WI

TA-W-23,108; General Electric Co., Microelectronics Center, Somerville, NJ

TA-W-23,203; Crane Plumbing, Inc., Alliance, OH

TA-W-23,212; Avtex Fibers, Inc., Front Royal, VA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,331; Truimph-Lor, Inc., Broussard, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,246; Tippett & Gee, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,241; Rheem Manufacturing Co., Chicago, IL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,225; General Motors Corp., CPC Framingham, Framingham, MA

Increased imports did not contribute importantly to workers' separations at the firm.

TA-W-23,226 & TA-W-23,247; General Motors Corp., BOC Lansing, Lansing, MI

Increased imports did not contribute importantly to workers' separations at the firm.

TA-W-23,228; Goodall Rubber Co., Braintree, MA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

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TA-W-23,338; BMW of North America, Inc., Parts Distribution Center, Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,370; Continental Airlines, Inflight Dept., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,196; Baker Hughes Vetco Service, Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,227; Geoscience Petroleum Services Corp., Denver, CO

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-23,224; Gidney & Associates, Denver, CO

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA-W-23,201; Cherco Compressors, Inc., Longview, TX

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determination

TA-W-23,291; General Electric Co., Motor Business Dept., Decatur, IN

A certification was issued covering all workers separated on or after August 9, 1988.

TA-W-23,176; Eaton Corp., Control Div., Fremont, OH

A certification was issued covering all workers separated on or after June 29, 1988, and before September 15, 1989.

TA-W-23,221; Derrick Well Service, Monahans, TX

A certification was issued covering all workers separated on or after July 19, 1988.

TA-W-23,243; Smith Drilling Co., Lawrenceville, IL

A certification was issued covering all workers separated on or after July 21, 1988.

TA-W-23,183; Momentum Manufacturing Corp., Herkemer, NY

A certification was issued covering all workers separated on or after July 22, 1988.

TA-W-23,239; Marathon Oil Co., Northeastern Production Region, Robinson, IL

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-23,254; Earnest Power Tong Service, Earnest Power Tong & Pipe, Odessa, TX

A certification was issued covering all workers separated on or after July 26, 1988.

TA-W-23,245; The Timken Co., Canton, OH, Canton Ohio Steel Mill

A certification was issued covering all workers separated on or after January 1, 1989.

TA-W-23,209; S & J Operating Co., Wichita Falls, TX

A certification was issued covering all workers separated on or after July 12, 1988.

TA-W-23,211; Wrangler, Tishomingo, MS

A certification was issued covering all workers separated on or after July 14, 1988, and before November 28, 1988.

TA-W-23,220; Devlieg-Sundstrand Machine Tool Group Div., Royal Oak, MI

A certification was issued covering all workers separated on or after July 22, 1988.

TA-W-23,141; El Paso Notural Gas Co., Midkoff Plant, Midland, TX

A certification was issued covering all workers separated on or after June 30, 1988.

TA-W-23,141A; El Paso Natural Gas Co., Midland Div. Headquarters, Midland, TX

A certification was issued covering all workers separated on or after June 30, 1988.

TA-W-23,141B; El Paso Natural Gas Co., Midland Div. & Other Locations in Texas

A certification was issued covering all workers separated on or after June 30, 1988.

TA-W-23,141C; El Paso Notural Gas Co., Midland Div. at Various Locations in New Mexico

A certification was issued covering all workers separated on or after June 30, 1988.

I hereby certify that the aforementioned determinations were issued during the month of September 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC. 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: October 10, 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-24463 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-149-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 132 (I.D. No. 46-04789) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the return airway be examined in its entirety on a weekly basis.

2. Due to deteriorating roof conditions and extreme hooving of the mine floor, the return airway from the 3 Right Longwall Section cannot be safely traveled.

3. As an alternate method, petitioner proposes to conduct the examination as follows:

(a) All the provisions of 30 CFR 75.222(g) (2) and (3) would be complied with in their entirety during the period covered by the modification;

(b) Nine additional CSE Model AU-911 self-contained self-rescuers would be stored at the tailgate;

(c) The longwall tailgate would be examined to that point that is impassable from both ends on each preshift examination;

(d) While the longwall is operating, only those personnel necessary to preshift examine the impassable section of the longwall tailgate would be permitted in the area. The results of the preshift examination would be recorded in the fireboss book; and

(e) A "Conspec" low-level carbon-monoxide monitoring system would be used, as an additional precautionary measure, to monitor the longwall belt air which is a neutral air split not used for face ventilation.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24464 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-150-C]

Cyprus Emerald Resources Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corporation, Route 218 South, Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Emerald No. 1 Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment are required to be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers are required to be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. The mine is currently utilizing undervoltage release breakers to meet the requirements for undervoltage protection after each power outage. It is necessary for an employee to travel to each belt drive and reset the low votage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection with specific equipment and procedures as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24465 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-142-C]

Greenwich Collieries—Petition for Modification of Application of Mandatory Safety Standard

Greenwich Collieries, P.O. Box 367, Ebensburg, Pennsylvania 15931 has filed a petition to modify the application of 30 CFR 75.1711-1 (sealing of shaft openings) to its No. 1 Mine (I.D. No. 36-02405) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shaft openings which are required to be sealed under 30 CFR 75.1711 be effectively capped or filled. Filling must be for the entire depth of the shaft, and for the first 50 feet from the bottom of the coalbed, the fill must consist of incombustible material.

2. As an alternate method, petitioner proposes to maintain water at the bottom of the Main "A" shaft at the permanently abandoned No. 1 Mine and utilize metal grating and expanded metal at the top of the shaft to allow shaft air and outside air to mix.

3. In support of this request petitioner states that—

(a) The raised cap design utilizes solid metal sheets, metal grating and expanded metal to secure the shaft and prevent access;

(b) A six-foot high chain link fence completely encloses the shaft to further prevent access;

(c) A permanent water seal exists in the Main "A" shaft which isolates the mine environment from the shaft environment;

(d) The pumps utilized are of the deep well type requiring only the discharge pipe to be in contact with the Main "A" shaft environment;

(e) An MSHA approved methane monitor has been installed within the Main "A" shaft 50 feet below the edge of the coping to continuously monitor the shaft air environment for methane; and

(f) Pump power is automatically deactivated when the methane monitor detects a methane level of one percent or greater.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 4, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24466 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

Pension of Welfare Benefits Administration

[Prohibited Transaction Exemption 89-88 et al.; Exemption Application No. D-7573 et al.]

Grant of Individual Exemptions; Goldman, Sachs and Co., et al.

AGENCY: Pension of Welfare Benefits Administration, Labor

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested

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persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 7, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Goldman, Sachs & Co. (Goldman Sachs)—Exemption

Located in New York, New York
[Prohibited Transaction Exemption 89-88; Exemption Application No. D-7573].

I. Transactions

A. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assests of that Excluded Plan.[1]

B. Effective January 1, 1987, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct of indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested in acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purpose of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 1, 1987, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions

[1] Section I.A. provides no relief from sections 406(a)(1)E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3]*For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separated account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D & P);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A(6) above.

III. Definitions

For purposes of this exemption:

A. *"Certificate"* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which Goldman Sachs or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *"Trust"* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *"Underwriter"* means:

(1) Goldman Sachs;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Goldman Sachs; or

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(3) Any member of an underwriting syndicate or selling group of which Goldman Sachs or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *"Sponsor"* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *"Master Servicer"* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through sub-servicers, the assets of the trust.

F. *"Subservicer"* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *"Servicer"* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *"Trustee"* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *"Insurer"* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *"Obligor"* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *"Excluded Plan"* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" wi hin the meaning of section 3(16)(B) of the Act.

L. *"Restricted Group"* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *"Affiliate"* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes bot' mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *"Reasonable compensation"* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *"Qualified Administrative Fee"* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *"Qualified Equipment Note Secured By A Lease" means an equipment note:*

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *"Qualified Motor Vehicle Lease"* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *"Pooling and Servicing Agreement"* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52861.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after January 1, 1987.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representatives

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, item 4 of the preamble to the proposed exemption states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on receivables. The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders.

The applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities that meet rating criteria consistent with the rating of the certificates. In some cases, the servicer may be permitted to make a single deposit in the account once a month. When the servicer makes such monthly deposits, the funds received by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to the rating agency that has rated the certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[4]

Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the servicer. The applicant notes that in some transactions the servicer, sponsor, or the trust may pay the trustee for services rendered on behalf of the trust. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

Item 11 of the preamble to the proposed exemption states that in some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. The applicant has commented that in some cases the sponsor will purchase the receivables from other sources in the secondary market.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale of the certificates to pay the originator for the receivables sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

[4] Goldman Sachs also has clarified that, if a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

With respect to item 16, the applicant notes that, for some public offerings, Goldman Sachs may sell certificates on an agency basis in a best efforts underwriting. In these cases, Goldman Sachs would receive an agency commission. The applicant further notes that in some private placements Goldman Sachs may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance. The applicant states further that the second paragraph of item 17 should read as follows: "The purchase price will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer."

With respect to item 18 of the preamble to the proposed exemption, the applicant states that cash flow subordination is a further example of credit support.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of

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its obligations as insurer.[5] Moreover, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

The applicant has requested the Department to clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the conditions reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

B. Proposed Exemption

Subsection I.A. of the proposed exemption states that "Section I.A. dos not provide an exemption from the restrictions of secion 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant expressed concern that this provision might be read to mean than an independent fiduciary with respect to an Excluded Plan could not purchase or hold certificates on behalf of a plan that is completely unrelated to the Excluded Plan. The applicant requests that the Department clarify that the exception applies only if the assets of the Excluded Plan with respect to which such person is a fiduciary are involved in the transaction. In response to the comment, the Department has revised section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan. Moreover, the Department has revised Section I.A. to clarify that this exception applies to persons rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and Department regulation 2510.3–21(c).

The applicant has also requested certain modifications to the exemption as proposed. Paragraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "soley in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that the sponsor may retain 100 percent of the subordinated class of certificates. The applicant has requested that the Department clarify that paragraph I.B.(1)(ii) requires only that this condition be satisfied with respect to classes of certificates to which the exemption applies. In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant maintains that footnote 13 is inconsistent with the policy of the federal securities laws respecting private placements. For example, in an offering that is made only to "accredited investors," there is no specific information that must be furnished to investors. Similarly, for the majority of private offerings, there is no specific information required. At all times, however, investors have the protection of the federal securities laws as well as any applicable "Blue Sky" and common law antifraud provisions. The applicant states that the essential requirements of these laws are that all material information regarding the offering be furnished or otherwise made available to investors and that the offering materials do not contain any material misstatements or omissions of material facts. In light of the applicant's comment, the Department has determined to revise the footnote in the exemption to provide that in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. Similarly, the Department has determined to modify subsection I.C.(2) to provide that the pooling and servicing agreement is provided to investing plans or described in all material respects in the prospectus or private placement memorandum. In this regard, the Department notes that the private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[6]

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by Goldman Sachs which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Goldman Sachs has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for all types of certificates covered by the exemption. In this regard, Goldman Sachs represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. Goldman Sachs believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on Goldman Sachs' representations, and additional information contained in a comment on the proposed exemption submitted by D&P, the Department has determined to revise the exemption to include D&P as an acceptable rating agency for all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[7]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975 (a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if the plan is determined not to be an accredited investor. The applicant suggests that this section should be revised to indicate that all the relief provided under Part I will be available if it is later determined that the plan was not an accredited investor. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption by deleting "shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975 (a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The applicant has requested clarification of the definition of "trust" in section III.B. First, the applicant notes that pooling and servicing agreements typically provide for the temporary investment of undistributed cash held in the trust pending distribution to certificateholders or application to the payment of trust expenses. The applicant therefore has requested that subsection III.B.(3) of the proposed exemption be amended to refer to "undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". After considering this suggested change, the Department has determined to modify the exemption in the manner requested.

The applicant also requests clarification that the definition of the "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association." For purposes of clarification, the Department has also determined to amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payment of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[8] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security.[9]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificateholders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[10] Under those

[5] The applicant has clarified that where the master servicer provides credit support to the trust, it covers defaulted payments rather than delinquent payments as stated in item 19 of the preamble to the proposed exemption.

[6] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

[7] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphabetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P–1" has been replaced with an "AAA" rating, "D&P–2" has been replaced with an "AA+" rating, and "D&P–7" has been replaced with an "A−" rating. D&P represents that it changed to alphabetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

[8] Department of Labor regulation section 29 CFR 2510.3–101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company Act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3–101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[9] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[10] In this situation, the pass-through certificates would be subordinate to the debt instruments and,

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circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In othere cases, the investors in REMIC debt instruments would have a security in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) in the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate demoninated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement". This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Deaprtment wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commenters requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to incorporate certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. Part II of the preamble to the proposed exemption states that to be an "accredited investor" under Rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. It has come to the Deaprtment's attention that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

4. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which Goldman Sachs or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

5. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

11. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption is January 1, 1987. In this regard, the Department notes that Salomon and First Boston, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc. requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. This is not a toll-free number.

Salomon Brothers, Inc. (Salomon)—Exemption

Located in New York, New York [Prohibited Transaction Exemption 89–89; Exemption Application No. D–6446]

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders

consequently, this exemption would not apply to plan investment in such pass-through certificates.

for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating (*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

6. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

7. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

8. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

9. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B and the other conditions of the exemption are met.

10. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or dispositions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to subsections I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided

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investment advice with respect to the assets of that Excluded Plan.[11]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D & P);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "*Certificate*" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which Salomon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "*Trust*" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "*Underwriter*" means:

(1) Salomon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Salomon; or

(3) Any member of an underwriting syndicate or selling group of which Salomon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "*Sponsor*" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "*Master Servicer*" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "*Subservicer*" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "*Servicer*" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "*Trustee*" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "*Insurer*" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "*Obligor*" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "*Excluded Plan*" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "*Restricted Group*" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "*Affiliate*" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a

[11] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *"Reasonable compensation"* has the same meaning as that term is defined in 29 CFR 2550.403c-2.

S. *"Qualified Administrative Fee"* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *"Qualified Equipment Note Secured By A Lease"* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *"Qualified Motor Vehicle Lease"* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *"Pooling and Servicing Agreement"* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52870.

Effective Date: This exemption is effective for transactions occurring on or after November 1, 1985.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representations

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, the applicant notes that item 4 of the preamble to the proposed exemption states that, prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. The applicant indicates that in many transactions, the sponsor acquires legal title to assets selected for the trust on the closing date and concurrently conveys to the trust legal title to the assets.

In addition, item 4 states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables. The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders. In this regard, the applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[14]

[14] Salomon also has clarified that, if a trust issues subordinate certificates, holders of such

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Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the servicer. The applicant notes that in some transactions, the trustee's fee is not paid by the servicer but rather is paid by the seller or sponsor or out of trust assets. For example, the trustee's fees may be paid out of investment earnings on undistributed cash or from specified amounts on deposit in the trust, as is the case with the servicer's compensation. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivables sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

With respect to item 16, the applicant notes that, for some public offerings, Salomon may sell certificates on an agency basis in a best efforts underwriting. In these cases, Salomon would receive an agency commission. The applicant further notes that in some private placements Salomon may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the *aggregate* unpaid balance on the receivables is reduced to a specified percentage (usually 10 percent) of the initial balance.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer.[15] Moreover, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

The applicant has requested the Department clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the representations reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

With regard to item 23 of the preamble to the proposed exemption, the applicant notes that a rating agency may not automatically receive reports regarding the operation of the trust at or about the time distributions are made to certificateholders, unless the rating agency requests that all reports be delivered to it. These reports will be available to any rating agency that rated the certificates upon its request, and will be delivered to the rating agency as frequently as requested by the rating agency.

B. Proposed Exemption

Section I.A. of the proposed exemption states that "section I.A. does not provide an exemption from the restrictions of section 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant requests clarification that this exception applies only to a person who becomes a fiduciary to an Excluded Plan by reason of rendering investment advice. In response to the comment, the Department has revised section I.A. to clarify that this exception applies to persons who render investment advice to Excluded Plans within the meaning of section 3(21)(A)(ii) of the Act and Department regulation 2510.3–21(c). The applicant also expressed concern that this provision might be read to suggest that an independent fiduciary with respect to an Excluded Plan could not purchase or hold certificates on behalf of a plan that is completely unrelated to the Excluded Plan. The applicant requests that the Department clarify that the exception applies only if the assets of the Excluded Plan with respect to which such person is a fiduciary are involved in the transaction. The Department has adopted this comment and revised section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan.

The applicant has also requested certain modifications to the exemption as proposed. Paragraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that frequently the sponsor retains 100 percent of the subordinated class of certificates, and that, therefore, the

subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

[15] The applicant has clarified that where the master servicer provides credit support to the trust, it covers *defaulted* payments rather than delinquent payments as stated in item 19 of the preamble to the proposed exemption.

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proposed exemption would effectively eliminate section 406(b) relief for transactions in which subordinated certificates are issued. The applicant requests that the Department amend paragraph I.B.(1)(ii) to require that "at least 50 percent of the certificates being offered (other than certificates of a class of subordinated certificates) is acquired by persons independent of the members of the Restricted Group." In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Subsection I.C.(2) of the proposed exemption requires, with respect to exemptive relief for servicing and operation of the trust, that "the pooling and servicing agreement is provided to, or fully described in, the prospectus or private offering memorandum provided to investing plans before they purchase certificates issued by the trust." The applicant notes that the federal securities laws require a prospectus to contain all information material to an investor's decision to acquire a security. Consequently, the issuer may omit from its disclosure document a description of provisions that are immaterial or irrelevant to purchasers of the offered certificates. The applicant indicates that, because the pooling and servicing agreement is available to investors before they invest in certificates, investors are better served by receiving a disclosure document that is more easily understood while still describing the pooling and servicing agreement in all material respects. Therefore, the applicant requests clarification that "fully described" as used in the proposed exemption is intended only to require that the pooling and servicing agreement is described in all material respects. On the basis of this comment, the Department has modified subsection I.C.(2) to incorporate the applicant's suggested change. In this regard, the Department notes that the description of the pooling and servicing agreement contained in the prospectus or private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[16]

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant notes that a private placement memorandum would never be identical to a prospectus used in an offering registered under the Securities Act of 1933. In particular, while a prospectus and a private placement memorandum would each contain all information material to an investor's decision to acquire certificates, a private placement memorandum would not contain, for example, statements regarding filing of a registration statement. Moreover, a private placement memorandum may describe restrictions on transfer of certificates because they are not registered under the Securities Act of 1933; a prospectus would not contain such information. The applicant represents that, under the federal securities laws, the level of prescribed disclosure in a private placement varies depending, in part, on the type of issuer, the nature of proposed offerees, and the characteristics of the security being offered. The applicant further indicates that compliance with applicable antifraud provisions of federal securities law would require that all material information regarding the offering (including the securities being offered and the nature and operation of the issuer) be disclosed to investors prior to their purchase of any of the securities being offered. In light of the applicant's comments, the Department has determined to revise the footnote in the final exemption to provide that, in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933.

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poors Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interst in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by Salomon which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Salomon has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for all types of certificates covered by the exemption. Salomon represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. Salomon believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on Salomon's representations, and additional information submitted by D&P, the Department has determined to revise the exemption to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[17]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975(a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if it is later determined that the plan is not an accredited investor. The applicant has expressed concern that if a plan is not an accredited investor, notwithstanding that the specified steps have been taken, the relief provided by part I of the exemption would not be available. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption by deleting "shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The application has requested clarification of the definition of "trust" in section III.B. in three respects. First, the applicant notes that pooling and servicing agreements typically provide for the temporary investment of undistributed cash held in the trust in "permitted investments" pending distribution to certificateholders or application to the payment of trust expenses. "Permitted investments" are subject to careful scrutiny by the rating agencies and consist of investments such as governmental obligations. The applicant, therefore, has requested that subsection III.B.(3) of the proposed exemption be amended to read as follows: "Undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". The second change requested by the applicant with respect to section III.B. of the exemption concerns subsection III.B.(4). The application notes that the trustee has a variety of rights under the pooling and servicing agreement that it may exercise for the benefit of certificateholders which are assets of the trust. Accordingly, the applicant has requested that the Department amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement." After considering these two suggested changes, the Department has determined to modify the exemption in the manner requested.

Third, the applicant requests clarification that the definition of the term "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payments of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[18] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security.[19]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificateholders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[20] Under those circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In other cases, the investors in REMIC debt instruments would have a security interest in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) In the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are

[16] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

[17] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphebetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P-1" has been replaced with an "AAA" rating, "D&P-2" has been replaced with an "AA+" rating, and "D&P-7" has been replaced with an "A−" rating. D&P represents that it changed to alphebetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

[18] Department of Labor regulation section 29 CFR 2510.3-101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company Act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3-101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[19] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[20] In this situation, the pass-through certificates would be subordinate to the debt instruments and, consequently, this exemption would not apply to plan investment in such pass-through certificates.

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secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate denominated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement." This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Department wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commentators requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to incorporate certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. Part II of the preamble to the proposed exemption states that to be an "accredited investor" under Rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. It has come to the Department's attention that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

4. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which Salomon or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

5. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating (*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

6. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

7. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

8. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

9. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B. and the other conditions of the exemption are met.

10. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or disppsitions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to subsections I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

11. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption is January 1, 1987. In this regard, the Department notes that Salomon and First Boston, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc. requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523–8194. This is not a toll-free number.

First Boston Corporation (First Boston)—Exemption

Located in New York, New York

[Prohibited Transaction Exemption 89–90; Exemption Application No. D–6555]

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[21]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates

[21] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

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between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[22] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1987, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[23]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D&P);

(4) the trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a convenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

[22] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[23] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

III. Definitions

For purposes of this exemption:

A. *"Certificate"* means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which First Boston or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *"Trust"* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *"Underwriter"* means:

(1) First Boston;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with First Boston; or

(3) Any member of an underwriting syndicate or selling group of which First Boston or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *"Sponsor"* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *"Master Servicer"* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through sub-servicers, the assets of the trust.

F. *"Subservicer"* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *"Servicer"* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *"Trustee"* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *"Insurer"* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *"Obligor"* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *"Excluded Plan"* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *"Restricted Group"* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *"Affiliate"* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or

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renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *"Reasonable compensation"* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *"Qualified Administrative Fee"* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect to the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *"Qualified Equipment Note Secured By A Lease"* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *"Qualified Motor Vehicle Lease"* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at lease as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *"Pooling and Servicing Agreement"* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52851.

Effective Date: This exemption is effective for transactions occurring on or after November 1, 1985.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representations

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, item 1 of the preamble to the proposed exemption states that the First Boston is a wholly-owned subsidiary of First Boston, Inc., a publicly traded New York Stock Exchange company. The applicant notes that in December 1988, First Boston, Inc., merged with Financiere Credit Suisse—First Boston, which merged company is now called CS First Boston, Inc., a privately held company.

The applicant further notes that item 4 of the preamble to the proposed exemption states that, prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. The applicant indicates that in many transactions, the sponsor acquires legal title to assets selected for the trust on the closing date and concurrently conveys to the trust legal title to the assets.

In addition, item 4 states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables.

The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders. In this regard, the applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[24]

[24] First Boston also has clarified that if a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the sponsor or servicer. The applicant notes that in some transactions, the trustee's fee is not paid by the sponsor or servicer, but rather is paid out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivable sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of interest income received on the receivables in excess of the pass-through rate. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

With respect to item 16, the applicant notes that, for some public offerings, First Boston may sell certificates on an agency basis in a best efforts underwriting. In these cases, First Boston would receive an agency commission. The applicant further notes that in some private placements First Boston may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid principal balance.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer.[25] Morever, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

The applicant has requested the Department clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the representations reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

Part II of the preamble to the proposed exemption states that to be an "accredited investor" under rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. The applicant has commented that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

[25] The applicant has clarified that where the master servicer provides credit support to the trust, it covers defaulted payments rather than delinquent payments as stated in item 19 of the proposed exemption.

B. Proposed Exemption

Section I.A. of the proposed exemption states that "Section I.A. does not provide an exemption from the restrictions of section 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant requests that the Department clarify that the exception applies only when such fiduciary is purchasing or advising the purchase of a certificate for the Excluded Plan. The Department has adopted this comment and revised Section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan. Moreover, the Department has revised section I.A. to clarify that this exemption applies to persons rendering investment advice to an Excluded Plan within the meaning of Department regulation 2510.3–21(c), that is, rendering investment advice which would make them fiduciaries.

The applicant has also requested certain modifications to the exemption as proposed. Subparagraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that the sponsor may retain 100 percent of the subordinated class of certificates. The applicant has requested that the Department clarify that paragraph I.B.(1)(ii) requires only that this condition be satisfied with respect to classes of certificates to which the exemption applies. In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is

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acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant maintains that footnote 13 is inconsistent with the policy of the federal securities laws regarding private placements. For example, in an offering that is made only to "accredited investors," there is no specific information that must be furnished to investors. Similarly, for the majority of private offerings, there is no specific information required. Rather, for all offerings, investors have the protection of the federal securities laws as well as any applicable "Blue Sky" and common law antifraud provisions. The applicant states that the essential requirements of these laws are that all material information regarding the offering be furnished or otherwise made available to each investor and that the offering materials be free of misleading statements and omissions. In light of the applicant's comments, the Department has determined to revise the footnote in the exemption to provide that in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. Similarly, the Department has determined to modify subsection I.C.(2) to provide that the pooling and servicing agreement is provided to investing plans or described in all material respect in the prospectus or private placement memorandum. In this regard, the Department notes that the private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[26]

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poors Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by First Boston which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. First Boston has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. First Boston represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. First Boston believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on First Boston's representations, and additional information submitted by D&P, the Department has determined to revise the exemption to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[27]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975 (a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if it is later determined that the plan is not an accredited investor. The applicant has expressed concern that if a plan is not an accredited investor, notwithstanding that the specified steps have been taken, the relief provided by Part I of the exemption would not be available. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption be deleting "shall be subject to the civil penalties which may be assessed under section 501(i) of the Act, or the taxes imposed by sections 4975 (a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The applicant has requested clarification of the definition of "trust" in section III.B. First, the applicant notes that pooling and servicing agreements commonly provide for the temporary investment of undistributed cash received from the servicer and held in the trust, together with the reinvestment income therein, pending distribution to certificateholders or application to the payment of trust expenses. The applicant, therefore, has requested that subsection III.B.(3) of the proposed exemption be amended to read as follows: "undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". After considering this suggested change, the Department has determined to modify the exemption in the manner requested.

The applicant also requests clarification that the definition of "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are

[26] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

[27] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphabetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P-1" has been replaced with an "AAA" rating, "D&P-2" has been replaced with an "AA+" rating, and "D&P-7" has been replaced with an "A−" rating. D&P represents that it changed to alphabetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association." For purposes of clarification, the Department has also determined to amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payments of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[28] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security; [29]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificate holders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[30] Under those circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In other cases, the investors in REMIC debt instruments would have a security interest in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) In the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate denominated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement". This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of

[28] Department of Labor regulation section 29 CFR 2510.3–101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3–101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[29] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[30] In this situation, the pass-through certificates would be subordinate to the debt instruments and, consequently, this exemption would not apply to plan investment in such pass-through certificates.

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a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Department wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commentators requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to provide certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which First Boston or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

4. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating (*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

5. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

6. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

7. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

8. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B. and the other conditions of the exemption are met.

9. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or dispositions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to paragraphs I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

10. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption was January 1, 1987. In this regard, the Department notes that First Boston and Salomon, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc., requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523–8194. This is not a toll-free number.

Exemption

Located in Pensacola, Florida
[Prohibited Transaction Exemption 89–91; Exemption Application No. D–8003]

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the loan (the Loan) of $60,000 by the Plan to Clark, Partington, Hart & Hart, P.A. (the Employer), a party in interest with respect to the Plan; and (2) the joint and several guarantees (the Guarantees) of the Loan by eight principals of the Employer, each a party in interest with respect to the Plan, provided that the terms and conditions of the Loan and the Guarantees are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1989, at 54 FR 35098.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202 523–8881. (This is not a toll-free number.)

Exemption

Located in Danville, California
[Prohibited Transaction Exemption 89–92; Exemption Application No. D–8035]

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash purchase by the IRA from Franklyn W. Meyer, a disqualified person with respect to the IRA, of 1,075 shares of the Windsor Fund, provided that the terms and conditions of the transaction are at least as favorable to the IRA as those obtainable in an arm's-length transaction between unrelated parties.[31]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1989 at 54 FR 35948.

FOR FURTHER INFORMATION CONTACT: Mrs. B. S. Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) the availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of October, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–24355 Filed 10–16–89; 8:45 am]

BILLING CODE 4510–29–M

[31] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Act. However, the IRA is subject to Title II of the Act pursuant to section 4975 of the Code

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Pension Portability of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12:30 p.m., Tuesday, November 7, 1989, in suite C–5322, seminar room #6, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This eight member work group was formed by the Advisory Council to study issues relating to Pension Portability for employee welfare plans covered by ERISA.

The purpose of the Pension PortabilityWork Group is to discuss the current status of portability of pension benefits in light of recent legislation lowering minimum vesting requirements, and hear testimony on methods to preserve accrued benefits through private and public fiscal intermediaries as an alternative to lump sum distributions to plan participants.

The agenda for the meeting will include the following:

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I. Opening Remarks of Work Group Chairperson.

II. Review and Discussion of 1988 Report of the ERISA Advisory Council to the Secretary of Labor on Portability and Preservation of Pensions.

III. Discussion of Portability Issues and Formulation of Work Group Priorities.

(a) Impact of Lowered Vesting Requirements.

(b) Public and Private Clearinghouse for Pre-retirement Pension Distributions.

(c) Indexing and Other Portability Enhancements to Deferred Vested Pension Benefits.

IV. Statements From The General Public.

V. Adjournment.

The Work Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives or organizations, wishing to address the Work Group should submit written requests on or before November 2, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 2, 1989.

Signed at Washington, DC, this 12th day of October, 1989.

Ann Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89-24459 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-72]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register citation of previous announcement: 54 FR 39235, Notice Number 89-66, September 25, 1989.

Previously announced times and dates of meeting: October 18, 1989, 8:30 a.m. to 5:15 p.m.; October 19, 1989, 8 a.m. to 5 p.m.; and October 20, 1989, 8 a.m. to 2:30 p.m.

Changes in the meeting: Dates and Times changed to October 18, 1989, 8:30 a.m. to 5:15 p.m.; and October 19, 1989, 8 a.m. to 5 p.m.

Contact person for more information: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

Dated: October 10, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-24414 Filed 10-16-89; 8:45 am]

BILLING CODE 7510-01M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202-786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. *Date:* November 2, 1989
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications for Regrant Conferences, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

2. *Date:* November 2-3, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives Programs, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

3. *Date:* November 2-3, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 116
Program: This meeting will review applications submitted for Humanities in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

4. *Date:* November 8-9, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

5. *Date:* November 9, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

6. *Date:* November 13, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

7. *Date:* November 15, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

8. *Date:* November 17, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

9. *Date:* November 20, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

10. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

11. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

12. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-24466 Filed 10-16-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Northern States Power Co.; Designation of Presiding Officer

[Docket No. 30-05004-MLA; ASLBP No. 90-599-01-ML]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

Northern States Power Company

Pathfinder Atomic Plant, Byproduct Material License No. 22-08799-02

The Presiding Office is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for an adjudicatory hearing submitted by Citizens for Responsible Government, the South Dakota Resources Coalition, the Technical Information Project, and Catherine Hunt. The requestors desire a hearing on the application of Northern States Power Company for an amendment to Byproduct Material License No. 22-08799-02 which would authorize the Licensee to perform final decommissioning of the fuel handling building and the reactor building in accordance with the Licensee's decomissioning plan. The License amendment request was submitted to the Commission by letter dated July 18, 1989. (See 54 FR 35267, August 24, 1989)

The presiding officer in this proceeding is Administrative Law Judge Morton B. Margulies.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Margulies and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administration Law Judge Morton B. Margulies, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of October 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-24454 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-05980-OM-2, 030-05981-OM-2, 030-05982-OM-2, 030-06335-OM-2, 030-06444-OM-2; ASLBP No. 90-599-01-OM-2]

Safety Light Corp. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Safety Light Corporation, Et Al.

Byproduct Material License Nos. 37-00030-02, 37-00030-08 37-00030-07E 37-00030-09G 37-00030-10G

(Order Modifying Licenses)

E.A. 89-29

This Board is being designated pursuant to Licensee's request for a hearing regarding an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated August 21, 1989, entitled "Order Modifying Licenses (Effective Immediately)" in the matter of Safety Light Corporation; United States Radium Corporation; USR Industries, Inc.; USR Lighting, Inc.; USR Chemical, Inc.; USR Metals, Inc.; USR Natural Resources, Inc.; Lime Ridge Industries, Inc.; Metreal, Inc.; and all other successor corporations to either USR Industries or U.S. Radium Corporation. (54 FR 36078, August 31, 1989)

The Board is comprised of the following administrative judges:

Helen F. Hoyt, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Frederick J. Shon Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of October 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-24453 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 77 to Facility Operating License No. NPF-10 and Amendment No. 65 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revise Technical Specification 3/4.6.1.7, "Containment Ventilation System," to limit the purposes for which the 8-inch containment purge supply and exhaust isolation valves may be opened during power operation, to provide flexibility in sealing the penetrations, and to clarify the surveillance requirements on the 42-inch lines. The amendments are in response to an application for amendments designated as PCN-221.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which is set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1989 (54 FR 19271). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated May 25, 1988, as revised April 4, 1989, (2) Amendment No. 77 to License No. NPF-10 and Amendment No. 65 to License No. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 4th day of October, 1989.

For the Nuclear Regulatory Commission

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24456 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project: Department of Agriculture

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of the proposed U.S. Department of Agriculture demonstration project plan.

SUMMARY: This action provides for changes in the preliminary project plan published August 23, 1989, to expand the list of experimental and comparison sites under the project.

DATE: Comments must be received on or before November 17, 1989.

ADDRESS: Send comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, Room 7433, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Recchia, (202) 447-8580, at U.S. Department of Agriculture; Paul R. Thompson, (202) 632-6164, at Office of Personnel Management.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1989, OPM published a preliminary plan to demonstrate an alternative personnel management system at the U.S. Department of Agriculture under chapter 47 of title 5, U.S. Code. The project tests four major innovations in current personnel policy and practice:

(1) Delegation of authority for the day-to-day recruitment and hiring process to the agency for internal redelegation, as appropriate;

(2) A streamlined candidate assessment and selection process, based on greater delegation of direct hire authority and replacement of numerical ratings with broad quality groupings;

(3) Recruitment incentives, including bonuses and relocation expenses, to attract candidates to hard-to-fill positions; and

(4) Establishment of a 2-3 year provisional appointment, to provide greater opportunity to evaluate employee performance before granting career status.

The demonstration will cover up to 5000 newly hired employees, at any given time, at over 130 locations within the Forest Service and the Agricultural Research Service. Covered employees will represent all occupational groups and grade levels (excluding SES) at the project sites, including both General Schedule (GS) and Federal Wage System (FWS) employees.

The preliminary project notice did not identify any experimental or comparison sites in Region 5 of the Forest Service or the Pacific Southwest Forest and Range Experiment Station. These sites were originally selected at random for inclusion in the project. They were not, however, listed in the original notice because of concerns within USDA about ongoing litigation in this area. These concerns have now been largely resolved, permitting inclusion of the selected sites within Region 5 and the Experiment Station in the project. With the additional sites, project participation will still not exceed the statutory limit of 5000 employees at any given time.

As stated in the August 23, 1989, notice, a public hearing will be conducted by OPM at the Department of Agriculture in Washington, DC on October 18, 1989. At that time interested persons or organizations may present their written or oral comments on the proposed demonstration project. Anyone wishing more information may telephone the person listed under "FOR FURTHER INFORMATION CONTACT."

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Project Plan Modification

The preliminary project plan which appeared in the **Federal Register** on August 23, 1989 (54 FR 35134) is hereby modified by adding several experimental and comparison sites from the Forest Service.

In Appendix B, "Experimental and Comparison Sites Forest Service" (54 FR 35145), add to the list of experimental sites the following:

Region 5

Angeles NF
Inyo NF
Klamath NF (includes Six Rivers and Modoc NF)
Los Padres NF
Plumas NF (includes Lassen and Mendocino NF)
Region 5 Regional Office
Shasta-Trinity NF
Sierra NF (includes Sequoia and Stanislaus NF)
Tahoe NF/Basin

Research Unit

Pacific Southwest Forest and Range Experiment Station

To the list of *comparison* sites (54 FR 35145), add the following:

Region 5

Cleveland NF
Eldorado NF
San Bernardino NF

[FR Doc. 89-24513 Filed 10-16-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27282; File No. SR-BSE-89-06]

Self-Regulatory Organizations; Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapters XXXI of the BSE Rules Relating to ITS Rules on the Determination of the "Previous Day's Consolidated Closing Price"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Incorporated ("BSE" or "Exchange"), proposes to amend Chapter XXXI, Paragraph 2501 (Intermarket Trading System) to adjust its Intermarket Trading System ("ITS") rules to conform to recent changes in the ITS system as adopted by the participating ITS members. These changes relate to the determination of the "previous day's consolidated closing price".[1]

The term "previous day's consolidated closing price" as used in Exchange rules means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system. The proposed rule change would provide that in the event that unusual market conditions render prices, on a broad scale, inappropriate as the basis for the Pre-Opening Application the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. (AMEX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this rule amendment is to promote cooperation and facilitation of transactions among the ITS participants. The Intermarket Trading Systems (ITS) was adopted for the purpose of enabling the participating market centers to act jointly in planning, developing, operating and regulating the System and its application so as to further the objectives of Congress as set forth in section 11A(a) of the Act.

Representatives from earlier participating market centers meet periodically during each year for the purpose of reviewing current ITS rules and, of course, areas where further interpretation and/or rules becomes necessary. This amendment was the result of such meetings where representatives unanimously voted to adopt such an amendment to the ITS Plan and incorporate the same within each market center's regulatory framework. It is expected that each participating market center will file a separate 19b-4 covering "Previous day's consolidated closing price."

This amendment to the BSE rules will bring BSE ITS rules in concert with the ITS plan changes approved by all participants. Further, these new procedures will help to expedite the proper determination and dissemination of the previous day's consolidated closing prices especially during and/or following unusual market conditions.

The statutory basis for this rule change is section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system. Further, as noted herein concerning the Intermarket Trading System this amendment furthers the objectives of Congress as set forth in Section 11A(a) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of this rule amendment.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[1] The appendix to this notice contains the specific rule change.

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submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,
Secretary.

Appendix

Proposed ITS Rule Amendments (italics indicate language to be added; brakets indicate language to be deleted)

Chapter XXXI
Intermarket Trading System
Paragraph 2501 (insert under the margin heading Pre-Opening Application—Openings on the Exchange).

(8) (i) *The term "Previous Day's Consolidated Closing Price" as used in Exchange rules shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous doy on which transactions in the security were reported by such system; provided, however that in the event that unusual market conditions render prices inappropriate, as the basis for the Pre-Opening Application, the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), respectively pursuant to the ITS plan.*

[FR Doc. 89-24484 Filed 10-16-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27283; File No. SR-CSE-89-03]

Self-Regulatory Organizations; Proposed Change by the Cincinnati Stock Exchange relating to the Intermarket Trading System Pre-Opening Application.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1989, the Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange proposes to amend Rule 14.1 in order to conform its rules to recent changes in the ITS Plan agreed upon by all the ITS participants. This change modifies the definition of "previous day's consolidated closing price" in order to more effectively utilize ITS's pre-opening procedures during unusual market conditions.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Under normal conditions, the "previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system. However, if unusual market conditions render prices inappropriate as the basis for ITS's pre-opening application, then the Chairman of the ITS Operating Committee, under the proposed amendment, would have the authority to designate the last price at which a trade occurred on NYSE or the AMEX as the previous day's consolidated last sale for purposes of the ITS pre-opening process.

The proposed Rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in

[1] The appendix to this notice contains the specific rule change.

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,
Secretary.

APPENDIX

Additions are italicized; deletions are bracketed.

Rule 14.1. Definitions
(a) – (h) * * * .
(i) The term "Previous Day's Closing Price" shall mean the last price at which a transaction in the stock was reported by the CTS Plan Processor; *provided, however, that in the event that unusual market conditions render prices, on a broad scale, inappropriate as the basis for the Pre-Opening Application, the Chairman of the ITS Operating Committee (or, if he is unavailable, or represents the NYSE or the AMEX, the most senior member of ITS Operating Committee, other than the NYSE or the AMEX member, available), upon the request of the NYSE (with respect to Network A Eligible Securities) or the AMEX (with respect to Network B Eligible Securities) may designate that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the NYSE or the AMEX, respectively.*

[FR Doc. 89-24485 Filed 10-16-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27355; Filed No. SR-NYSE-89-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Compliance Official Qualification ("Series 14") Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal concerns the application of the Series 14 Examination [1] requirements to Specialists and "upstairs trading" organizations.[2] Specifically, Specialists and "upstairs trading" organizations will be exempt from the Series 14 Examination requirements. Instead, compliance persons at such organizations will be required to take a separate examination to be developed by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this change is to create an exemption to the Series 14 examination requirements for Specialists and "upstairs trading" organizations.

Due to the unique nature of the business conducted by Specialists and "upstairs trading" organizations and the specialized nature of the compliance duties and responsibilities, the Exchange has determined to develop a separate examination for compliance persons at such organizations. The job analysis, examination specifications and questions developed by the Exchange for the Series 14 Examination would not appropriately measure the competence of compliance officials at such organizations. Therefore, such compliance persons will not be required to take and pass the Series 14 examination. A new examination will be developed to be used to satisfy the examination requirements of Exchange Rule 342.13 for members and member organizations exclusively conducting a Specialist or "upstairs trading" business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposal imposes any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submission should refer to File No. SR-NYSE-89-29 and should be submitted by November 7, 1989.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed exemption for the NYSE's Compliance Official Qualification (Series 14) Examination for Specialists and "upstairs trading" organizations and has concluded that it is consistent with

[1] The Compliance Official Qualification (Series 14) Examination is a qualification examination intended to ensure that the individuals designated as having overall day-to-day compliance responsibilities for their respective firms or who directly supervise ten or more persons engaged in compliance activity have the knowledge, skills and abilities necessary to carry out their job responsibilities. *See* File No. SR-NYSE-87-10, approved by the Commission in Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20925; NYSE Rule 342.13(b).

[2] An "upstairs trading" organization is defined as a member organization that trades for its own account from off the floor of the Exchange, but does no business with the public.

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the requirements of the Act and the rules and regulations thereunder pertaining to national securities exchanges. In particular, the Commission believes that the proposed rule change is consistent with section 6(c)(3)(B)[2] which provides that a national securities exchange may prescribe standards for training, experience, and competence for its members or persons associated with its members. The Commission agrees with the NYSE's view that the compliance duties and responsibilities of Specialists and "upstairs trading" organizations are unique to their business as compared to the business of those individuals who are required to take and pass the Series 14 examination.[4] Therefore, the Commission believes that Specialists and "upstairs trading" organizations should be exempted from the Series 14 examination requirement, and that the Exchange should develop a new examination which will address their unique compliance requirements in order to satisfy Exchange Rule 342.13. Accordingly, the Commission is approving this exemption for a two year period, during which time the Exchange can develop the alternative compliance examination for Specialists and "upstairs trading" firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof since the Series 14 examination is scheduled to be administered in fall 1989, and those individuals qualifying for exemption must be afforded advance notice of this rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a two year period.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24375 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[2] 15 U.S.C. 78f(C)(3)(B) (1982).

[4] *See* note 1, *supra.*

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27345; File No. SR-NYSE-89-08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Facilitation Orders

On June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rules 750 and 753 to expand and clarify the use of facilitation orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 26977 (June 27, 1989), 54 FR 28536 (July 6, 1989). No comments were received on the proposed rule change.

The NYSE is proposing to amend its rules concerning options facilitation orders.[3] Under existing NYSE rules a facilitation order can only be used to cross transactions between an order of a public customer and an order for the proprietary account of the customer's member organization. The proposed rule change would permit facilitation orders to be used to cross a public customer's order with orders from other member or member organizations, rather than just the proprietary account of the public customers' member organization. According to the NYSE, by expanding the types of facilitation orders, the proposal would enable public customers to receive executions on orders which may not have been executable otherwise. In addition the proposal would delete the words "at the same price" from facilitation Rule 753 to avoid any concern that the phrase could be read to permit market participants a second opportunity to make a quotation which could block the customer side of the order by changing the established market.

The Commission has carefully reviewed the proposed rule change and has concluded that the changes are appropriate and consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and in particular the requirements of section 6(b)(5) of the Act. First, we note that the deletion of the phrase "at the same price" in the rule will eliminate any ambiguity that market participants, after they have already been given an opportunity to accept the bid or offer made on behalf of the public customer's facilitated order, can break up the facilitated order by changing the established market prior to execution of the facilitation order. Secondly, by expanding facilitation orders to include crosses of public customer orders with orders for the proprietary account of any member organization in addition to the customer's member organization, more public customers may receive executions on their orders. In addition, under the NYSE's facilitation rules this change would require any member organization that accepts a bid or offer for a public customer's facilitated order to satisfy all contingencies associated with that order. This would avoid the concern that options market makers can accept a facilitation order without satisfying all contingencies, and potentially leave the public customer's member firm over-bought or sold when attempting to satisfy contingencies involving the stock side of an options transaction they had expected to facilitate.[4]

Based on the above, the Commission believes the proposed rule changes are consistent with section 6(b)(5) of the Act by, among other things, facilitating transactions in securities, promoting just and, equitable principles of trade and protecting investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24376 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Under current NYSE Rule 750 a facilitation order is defined as an order for the proprietary account of a member organization that is only executed in whole or in part in cross transactions with an order for a public customer of the member organization. Under the current facilitation order rules, market participants can compete with the member organization's order by accepting the bid or offer made on behalf of the public customer, but cannot compete with the public customer's side of the order by changing the established market. In addition, NYSE Rule 753 requires the member organization using a facilitation order to ensure that any contingencies on the public customer order are satisfied.

[4] *See* Securities Exchange Act Release No. 22273 (July 29, 1985), 50 FR 31449 and Securities Exchange Act Release No. 22691 (December 5, 1985) 50 FR 50881 in which the Commission approved rule changes of the American Stock Exchange and Chicago Board Options Exchange that permitted orders other than firm propriety orders to be used in a facilitation order cross.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(2) (1988).

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Fresno, will hold a public meeting at 9:00 a.m. on Thursday, November 9, 1989, at the Fresno District Office, 2719 N. Air Fresno Drive, Suite 107, Fresno, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Peter J. Bergin, District Director, U.S. Small Business Administration, 2719 N. Air Fresno Drive, Suite 107, Fresno, California 93727, phone (209) 487-5791.

Dated: October 4, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-24475 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Wednesday, November 1, 1989, at the Highland Manor Motel, Townsend, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Parkway Towers, Suite 1012, 404 James Robertson Parkway, Nashville, Tennessee 37219, phone (615) 736-5850.

Dated: October 6, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-24476 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, will hold a public meeting at 5:30 p.m., Thursday, November 2, 1989, and 8:30 a.m. Friday, November 3, 1989, at the Sheraton Harrisburg East, 800 East Park Drive, Harrisburg, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, Allendale Square, Suite 201 475 Allendale Road, King of Prussia, Pennsylvania 19406, phone (215) 962-3800.

Dated: October 4, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-24477 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, will hold a public meeting on Friday, October 20, 1989, from 9:00 a.m. to 3:00 p.m. at the Metropolitan Federal Bank, 133 South Main Avenue, Sioux Falls, South Dakota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Security Building, 101 South Main Avenue, Suite 101, Sioux Falls, South Dakota 57102, phone (605) 330-4231.

Dated: October 5, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89-24478 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0535]

Argentum Capital Partners, LP; Filing of an Application for a License to operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Argentum Capital Partners, LP, 405 Lexington Avenue, New York, New York 10174, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

	Percentage of ownership
General Partner:	
Baran—Raynor & Co., 405 Lexington Avenue, New York, New York 10174	33.3
Limited Partners:	
15 Limited Partners each owning less than 10 percent	66.7

Argentum Capital Partners, LP, will be managed by Baran—Raynor & Co. The officers and directors of Baran—Raynor & Co. are:

Name	Relationship to manager	Percentage of ownership in applicant
Daniel Raynor, 405 Lexington Avenue, New York, New York 10174.	Chairman	50
Walter H. Barandiaran, 405 Lexington Avenue, New York, New York 10174.	President	50
Thomas J. Sands, 405 Lexington Avenue, New York, New York 10174.	Vice President	0

The applicant will begin operations with a capitalization of $3,000,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

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Dated: October 12, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-24482 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Policy and Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Policy and Negotiations to be held October 25, 1989 from 1:30 p.m. to 4:30 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Yvonne Beeler, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 89-24424 Filed 10-16-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transporation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comments must be received on or before November 1, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Program Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Advance Research Chemicals, Inc., Catoosa, OK	2582
2582-X	Ozark-Mahoning Co., Tulsa, OK	2582
3004-X	U.S. Department of Defense, Falls Church, VA	3004
3004-X	Airco Industrial Gases, Murray Hill, NJ	3004
3004-X	Linde Puerto Rico, Inc., Gurabo, PR	3004
3004-X	Linde Gases of The West San Ramon, CA	3004
3004-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	3004
3004-X	Union Carbide Industrial Gases, Inc., Danbury, CT	3004
3004-X	Linde Gases of New England, Inc., West Hartford, CT	3004
3004-X	Linde Gases of The Southeast, Inc., Wilmington, NC	3004
3004-X	Linde Gases of Florida, Inc., Tampa, FL	3004
3004-X	Linde Gases of The Great Lakes, Inc., Cleveland, OH	3004
3004-X	Linde Gases of the South, Inc., Houston, TX	3004
3004-X	Linde Gases of The Midwest, Inc., Hillside, IL	3004
3004-X	Linde Gases of Southern California, Inc., Santa Ana, CA	3004
4453-X	Roundup Powder Co., Inc., Miles City, MT	4453
4453-X	Ladshaw Explosives, Inc., New Braunfels, TX	4453
4612-X	EM Science, Cincinnati, OH	4612
4850-X	The Ensign-Bickford Co., Simsbury, CT	4850
4850-X	GOEX, Inc., Cleburne, TX	4850
4850-X	Austin Powder Co., Cleveland, OH	4850
4850-X	Owen Oil Tools, Inc., Fort Worth, TX	4850
5749-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	5749
6122-X	Pennwalt Corp., Buffalo, NY	6122
6484-X	Angus Chemical Co., Northbrook, IL	6484
6501-X	GOEX, Inc., Cleburne, TX	6501
6530-X	Airco Industrial Gases, Murray Hill, NJ	6530
6531-X	TAVCO, Inc., Chatsworth, CA	6531
6563-X	Monongahela Power Co., Fairmont, WV	6563
6658-X	The Ensign-Bickford Co., Simsbury, CT	6658
6691-X	GenEx, Ltd., Des Moines, IA	6691
6765-X	U.S. Department of the Interior (Bureau of Mines) Amarillo, TX	6765
6765-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1)	6765
6801-X	Phillips Petroleum Co., Bartesville, OK	6801
7052-X	Ocean Technology, Inc., Burbank, CA	7052
7052-X	Honeywell Power Sources Center, Horsham, PA	7052
7052-X	Electrochem Industries Division, Clarence, NY	7052
7052-X	General Dynamics Corp., Fort Worth, TX	7052
7052-X	McDonnell Douglas Corp., St. Louis, MO	7052
7052-X	3M Transportation, St. Paul, MN	7052
7052-X	Hughes Electronics Products Corp., Livonia, MI	7052
7052-X	U.S. Department of Defense, Falls Church, VA	7052
7052-X	Mercury Instruments, Inc., Cincinnati, OH	7052
7052-X	Magnavox Government & Industrial Electronics Co., Fort Wayne, IN	7052
7052-X	Flow Research Corp., Houston, TX	7052
7052-X	Maxell Corporation of America, Fair Lawn, NJ	7052
7052-X	Exploration Logging, Inc., Houston, TX	7052
7052-X	SAFT America, Inc., Cockeysville, MD	7052
7052-X	Schlumberger Well Services, Rosharon, TX	7052
7052-X	Halliburton Services, Duncan, OK	7052
7052-X	Halliburton Logging Services, Inc., Fort Worth, TX	7052
7052-X	SAB NIFE A/S Denmark, Sweden	7052
7052-X	TOTCO, Houston, TX	7052
7052-X	Boeing Aerospace & Electronics, Seattle, WA	7052
7052-X	Telonics, Inc., Mesa, AZ	7052
7052-X	GE Aerospace, Philadelphia, PA	7052
7052-X	Allen-Bradley Co., Inc., Milwaukee, WI	7052
7052-X	Battery Engineering, Inc., Hyde Park, MA	7052
7073-X	Ethyl Corp., Baton Rouge, LA	7073
7607-X	Dames & Moore, Golden, CO	7607

Application No.	Applicant	Renewal of exemption
7654-X	J.T. Baker, Inc., Phillipsburg, NJ	7654
7654-X	Tennessee Eastman Co., Kingsport, TN	7654
7654-X	Texas Eastman Co., Longview, TX	7654
7737-X	Parker Hannifin Corp., Eastlake, OH	7737
7770-X	Arbol-Fauvet-Rail, Paris, France	7770
7887-X	Aero Technology Co., (Aerotech, Inc.), Las Vegas, NV	7887
7887-X	Flight Systems, Inc., Burns Flat, OK	7887
7887-X	Centuri Engineering Co., Penrose, CO	7887
7887-X	Estes Industries, Inc., Penrose, CO	7887
7887-X	Model Rectifier Corp., Edison, NJ	7887
7887-X	Flight Systems, Inc., Raytown, MO	7887
7891-X	Reliance Electric Co., Cleveland, OH	7891
7891-X	Sigma-Aldrich Corp., Saint Louis, MO	7891
7943-X	Hasa Chemicals Inc., Santa Clarita, CA	7943
7943-X	Grow Group, Inc., Montebello, CA	7943
7946-X	Imaging and Sensing Technology Corp., Horsehead, NY	7946
7985-X	Process Engineering, Inc., Plaistow, NH	7985
7991-X	Union Pacific RR Co. and Missouri Pacific RR Co., Omaha, NE	7991
8156-X	GenEx, Ltd., Des Monies, IA	8156
8156-X	Linde Gases of the South, Inc., Houston, TX	8156
8156-X	Linde Gases of Midwest, Inc., Hillside, IL	8156
8156-X	Linde Gases of The Great Lakes, Inc., Cleveland, OH	8156
8156-X	Linde Gases of The West, San Ramon, CA	8156
8156-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	8156
8156-X	Linde Gases of Florida, Inc., Tampa, FL	8156
8156-X	Linde Gases of New England, Inc., West Hartford, CT	8156
8156-X	Union Carbide Industrial Gases, Inc., Danbury, CT	8156
8156-X	Linde Gases of the Southeast, Inc., Wilmington, NC	8156
8156-X	Linde Gases of Southern California, Inc., Santa Ana, CA	8156
8162-X	Structural Composites Industries, Pomona, CA	8162
8194-X	Pennwalt Corp., Buffalo, NY	8194
8214-X	Volkswagen of America, Inc., Troy, MI	8214
8273-X	TRW Vehicle Safety Systems Inc., Washington, MI	8273
8348-X	Frell, Inc., Corpus Christi, TX	8348
8354-X	Compagnie Des Containers Reservoirs, Paris, France	8354
8390-X	Texas Instruments, Inc., Dallas, TX	8390
8390-X	General Chemical Corp., Parsippany, NJ	8390
8390-X	KTI Chemicals, Inc., Danbury, CT	8390
8390-X	Olin Hunt Specialty Products, Inc., West Peterson, NJ	8390
8390-X	Hi Pure Chemicals, Inc., Nazareth, PA	8390
8390-X	Image Technology Corp., Chandler, AZ	8390
8390-X	Ashland Chemical Co., Columbus, OH	8390
8445-X	SEI Environmental, Inc., Wheeling, IL	8445
8478-X	West-Mark, Ceres, CA	8478
8518-X	Pacific Construction & Maintenance, Inc., Ventura, CA	8518
8556-X	Air Products and Chemicals, Inc., Allentown, PA	8556
8723-X	Roundup Powder Co., Inc., Miles City, MT	8723
8811-X	Hercules Inc., Wilmington, DE	8811
8960-X	Sunshine Aero Industries, Inc., Crestview, FL	8960
8967-X	Hercules, Inc., Wilmington, DE	8967
9052-X	Chemical Handling Equipment Co., Inc., Toledo, OH (See Footnote 2)	9052
9066-X	Volkswagen of America, Inc., Troy, MI	9066
9136-X	Sonoco Plastic Drum, Inc., Lockport, IL	9136
9146-X	Biefa-Feiser GmbH, Postfach, West Germany	9146
9256-X	U.S. Department of Energy, Washington, DC	9256
9414-X	GenEx, Ltd., Des Moines, IA	9414
9414-X	Linde Gases of the South, Inc., Houston, TX	9414
9414-X	Linde Gases of The Midwest, Inc., Hillside, IL	9414
9414-X	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9414
9414-X	Linde Gases of the West, San Ramon, CA	9414
9414-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	9414
9414-X	Linde Gases of New England, Inc., West Hartford, CT	9414
9414-X	Linde Gases of Florida, Inc., Tampa, FL	9414
9414-X	Union Carbide Industrial Gases, Inc., Danbury, CT	9414
9414-X	Linde Gases of Southern California, Inc., Santa Ana, CA	9414
9440-X	Hoover Group, Inc., Beatrice, NE	9440
9501-X	Hughes Aircraft Co., Los Angeles, CA	9501
9527-X	Carolina Aircraft Corp., FL Lauderdale, FL	9527
9533-X	B.A.G. Corp, Dallas, TX (See Footnote 3)	9533
9555-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	9555
9694-X	All Pure Chemical Co., Inc., Tracy, CA	9694
9723-X	Aqua-Tech, Inc., Port Washington, WI (See Footnote 4)	9723
9736-X	Aqua-Tech, Inc., Port Washington, WI	9736
9802-X	McNeely Charter Service, Inc., Earle, AR	9802
9803-X	Transcon Transport, Inc., Smithville, TN	9803
9844-X	Theodor Fries Gesellschaft MBH & Co., Sutz, Austria	9844
9846-X	FlexCon and Systems, Inc., Lafayette, LA	9846
9880-X	G.E. Reuter-Stokes, Twinsburg, OH	9880
9881-X	G.E. Reuter-Stokes, Twinsburg, OH	9881
9920-X	Tri-Wall Co., Louisville, KY (See Footnote 5)	9920
9923-X	Chemical Handling Equipment Co., Inc., Toledo, OH (See Footnote 6)	9923
9929-X	Morton Thiokol, Inc.—Elkton Division, Elkton, MD (See Footnote 7)	9929
10167-X	Hexcel Corp., Dublin CA (See Footnote 8)	10167
10223-X	TPI International Airways, Inc., Miami, FL	10223
10254-X	University of Texas M.D. Anderson Cancer Center, Houston, TX	10254

[1] To authorize reinspection and testing of the portable tank once every 5 years in accordance with 49 CFR 173.32(e) at a pressure of 1.25 times the sum of the design pressure, the static head and 14.7.

[2] To authorize marking by etching or stamping of the certification into the polyethylene of the portable tank.

[3] To authorize an increase in capacity of the super sack from 2260 pounds to capacity not to extend 3000 pounds.

[4] To authorize reduction of the polyethylene liner from 65 mil to 10 mil.

[5] To authorize rail as an additional mode of transportation.

[6] To authorize a minimum wall thickness of 0.200 inch.

[7] To authorize shipment of an additional Star 63 rocket motor, Class B explosives.

[8] To authorize rail as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
6418-P	Agrinorth West Co., Prescott, WA	6418
6974-P	Williams International, Walled Lake, MI	6974
7052-P	Ansul Fire Protection, Marinette, WI	7052
7052-P	Baker Hughes Drilling Systems, Inc. (BHDS), Houston, TX	7052
7052-P	Computalog Wireline Services, Inc., Houston, TX	7052
7774-P	Wedge Wireline, Inc., Arlington, TX	7774
8009-P	American Energy Services, Knoxville, TN	8009
8426-P	Pacific Industrial Service Corp., Long Beach, CA	8426
8445-P	Price Trucking Corp., Buffalo, NY	8445
8445-P	FIW, Inc., Pecatonica, Il	8445
8824-P	Computalog Wireline Services, Inc., Houston, TX	8824
8839-P	Hampton Roads Sanitation District, Virginia Beach, VA	8839
8843-P	Computalog Wireline Services, Inc., Houston, TX	8843
8988-P	Computalog Wireline Services, Inc., Houston, TX	8988
8995-P	Polyfoam Products, Inc., Spring, TX	8995
9549-P	Mecano-Tech, Inc., Houston, TX	9549
9549-P	Computalog Wireline Services, Inc., Houston, TX	9549
9607-P	MidLab, Inc., Sweetwater, TN	9607
9607-P	Diversified International, Boca Raton, FL	9607

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Application No.	Applicant	Parties to exemption
9785–P	SafBank Line Limited, Iselin, NJ	9785
9929–P	Hughes Aircraft Co., Los Angeles, CA [1]	9929
9953–P	The ServiceMaster Co., L.P., Downers Grove, IL	9953
9991–P	Aqua-Tech, Inc., Port Washington, WI	9991
10001–P	Linde Gases of the West, Inc., San Ramon, CA	10001
10001–P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	10001
10001–P	Linde Gases of the Southeast, Inc., Wilmington, NC	10001
10001–P	Linde Gases of the Mid-Atlantic, Moorestown, NJ	10001
10001–P	Linde Gases of the midwest, Hillside, IL	10001
10022–P	Linde Gases of the West, San Ramon, CA	10022
10022–P	Linde Gases of the Southeast, Inc., Wilmington, NC	10022
10022–P	Linde Gases of the Midwest, Hillside, IL	10022
10260–P	Image Technology, Chandler, AZ	10260
10260–P	Hi Pure Chemicals, Inc., Nazareth, PA	10260
10261–P	Image Technology, Chandler, AZ	10261
10261–P	Hi Pure Chemicals, Inc., Nazareth, PA	10261

[1] To amend paragraph 8(f)(1) to authorize shipments for Los Angeles, CA to Xichang, Chica vi Federal Express or Northwest Airlines.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49) U.S.C. 1806; 49 CFR 1.53(e)).

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–24401 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 16, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10255–N	Sexton Cap Co., Inc., Cambridge, MA.	49 CFR 173.304, 175.3, 178.33a.	To authorize manufacture, marking, and sale of a non-Dot specification drawn and ironed container similar to the DOT specificaiton 2Q cylinder for shipment of non-flammable and flammable liquified compressed gases authorized for shipment in a DOT specification 2Q cylinder. (Modes 1, 2, 3, 4.)
10257–N	Libbey-Owensford Co., Toledo, OH.	49 CFR 173.245b(a)(8)	To authorize shipment of dimethyltin dichloride, a corrosive solid, in specially designed, rust proof non-DOT specification portable tanks having a gross weight of 8,860 pounds. (Mode 1.)
10258–N	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.252(a)(4)(ii)	To authorize shipment of bromine, classed as a corrosive material, in DOT specification MC 312 cargo tanks constructed of nickel clad steel of ¾ inch total thickness. (Mode 1.)
10259–N	Phillips Petroleum Co., Bartlesville, OK.	49 CFR 173.141	To authorize shipment of mercaptans, classed as flammable liquids, in DOT specification 57 portable tanks constructed of 318 stainless steel with a service pressure of 40 psig. (Modes 1, 2, 3.)
10260–N	Olin Hunt Speciality Products, Inc., West Paterson, NJ.	49 CFR 173.266	To authorize shipment of a 30% hydrogen peroxide solution, classed as an oxidizer, in a 101 liter non-DOT container consisting of an inner polyethylene bottle with an outer housing of 304 stainless steel. (Modes 1, 2, 3.)
10261–N	Olin Hunt Speciality Proudcts, Inc., West Paterson, NJ.	49 CFR 173.272(g)	To authorize shipment of sulfuric acid solution with a sulfuric acid concentraiton of no more than 98%, classed as corrosive material, in a 100 liter non-DOT specification container consisting of an inner polyethylene bottle with a FRP outer housing. (Modes 1, 2, 3.)
10262–N	Tay Textiles Limited, Dundee, Scotland.	49 CFR 173.245b	To authorize shipment of chloroacetic acid solid and sodium hydroxide, solid, classed as corrosive materials, in non-DOT specification flexible bulk-bags. (Modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–24402 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under Office of Management Budget Review

AGENCY: Notice of reporting requirements submitted for OMB review.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that an Agency has made such a submission. USIA is requesting clearance of information collection activities associated with its "University Affiliation Program," under OMB control number 3116–0179. No forms are involved in this activity; however, the responent must prepare on plain bond paper a two-page summary document and a narrative statement not to exceed 15 pages. The only notice to the public of this program is through an announcement in the **Federal Register.** Respondents will be required to respond only one time.

DATE: November 16, 1989.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Officer of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Knox, Agency Clearance Officer, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7503; OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 15 hours per response. This includes preparation on plain bond-paper of a two-page summary document and a narrative statement not to exceed 15 pages, plus the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the USIA Agency Clearance Officer and the OMB Desk Officer for USIA at the addresses given above.

Title: "USIA's University Affiliation Program".

Form Number: None

Abstract: Under the University Affiliation Program, USIA offers grant-in-aid to support the development or enhancement of institutional partnerships between U.S. and non-U.S. institutions of higher education. The program promotes mutual understanding, strengthens research and teaching abilities and improves or expands the academic offerings of the institutions involved.

Proposed Frequency of Responses:

No. of Respondents	106
Recordkeeping Hours	24
Total Annual Burden	2,070

Dated: October 6, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–24362 Filed 10–16–89; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Consul Smith Collection. Masterpieces of Italian Drawing from the Royal Library, Windsor Castle: Raphael to Canaletto," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum in Fort Worth, Texas, beginning on or about November 11, 1989 to on or about January 21, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 29, 1989.

Alberto J. Mora,

General Counsel

[FR Doc. 89–24363 Field 10–16–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:45 a.m., Monday, October 23, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24620 Filed 10-13-89; 3:31 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-34]

TIME AND DATE: Tuesday, October 17, 1989 at 9:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Pressure Transmitters (D/N 1522)
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: October 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24621 Filed 10-13-89; 3:50 pm]

BILLING CODE 7020-02-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 2:00 p.m., Monday, October 16, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(10) (deliberations concern * * * the Board's participation in a civil action * * * or disposition by the Board of particular * * * unfair labor practice proceedings * * * or any court proceedings, collateral or ancillary thereto.)

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, October 12, 1989.

By direction of the Board.

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 89-24605 Filed 10-13-89; 2:05 pm]

BILLING CODE 7545-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, October 24, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad/Highway Accident Report: Consolidated Rail Corporation Train Collision with Island Transportation Truck, Roosevelt Avenue near Lafayette Street, Carteret, New Jersey, December 6, 1988.
2. Recommendations to Engine Retarder Manufacturers: Heavy Truck Engine Retarder.
3. Recommendation to FAA: Amend 14 CFR 135.63(c) (load manifest) to include single-engine aircraft.
4. Withdrawal of Notation 5153; Recommendation to FAA—Amend 14 CFR 135.63(c) (load manifest) to include single engine aircraft.
5. Board Policy: Calendaring of Notation Items

News Media Contact (202) 382-6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 13, 1989.

[FR Doc. 89-24617 Filed 10-13-89; 3:16 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 16, 23, 30, and November 6, 1989.

PLACE: Commissioners' Conference Room, 1555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 16

Thursday, October 19

10:00 a.m.
Briefing on Status of Comanche Peak (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Decision on the Massachusetts Attorney General's Petition for Rule Waiver Certified by ALAB-920 (Concerning Financial Qualification Review of Public Service Company of New Hampshire) (Tentative)

Week of October 23—Tentative

Wednesday, October 25

10:00 a.m.
Briefing on Emerging Technical Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 30—Tentative

Tuesday, October 31

8:30 a.m.
Collegial Discussion of Items of Commission Interest (Public Meeting)

Wednesday, November 1

10:00 a.m.
Briefing by General Electric on the Advanced BWR Standard Plant Review (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:00 p.m.
Briefing by Combustion Engineering on ALWR System 80+ (Public Meeting)

2:30 p.m.
Briefing by Westinghouse on Advanced LWR SP 90 (Public Meeting)

Week of November 6—Tentative

Thursday, November 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note. Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: October 12, 1989.

William M. Hill, Jr,

Office of the Secretary.

[FR Doc. 89-24608 Filed 10-13-89; 2:18 pm]

BILLING CODE 7590-01-M

PAROLE COMMISSION

DATE AND TIME: Tuesday, October 24, 1989, 9:00 a.m. to 12:00 p.m.

PLACE: 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 11 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.7. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: October 13, 1989

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89-24603 Filed 10-13-89; 2:05 pm]

BILLING CODE 4410-1-M

PAROLE COMMISSION

DATE AND TIME: Wednesday October 24, 1989 1:00 p.m., eastern standard time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Case Operations, and Administrative Sections.
3. Report on meeting with Regional Probation Administrators.
4. Presentation by United States Probation Officers with regard to Experimental Drug Program.
5. Consideration of proposed modification of 28 CFR 2.14(a)(1)(ii)
6. Adoption of final rule amending 28 CFR 2.40.
7. Consideration of proposed discussion with the United States Marshal's Service concerning moving and housing of United States Parole Commission prisoners.
8. Consideration of proposal to modify United States Parole Commission "Community Treatment Center" (CTC) terminology with Bureau of Prisons "Community Correctional Center" (CCC) terminology.
9. Consideration of proposal to equate cocaine addiction with opiate addiction for purposes of computing salient factor scores.
10. Discussion of goals to be accomplished prior to the end of 1990. (Discussion Only).
11. Discussion of Black Powder/Muzzle-Loading Weapons.
12. Adoption of Final Rule regarding the timing of interim hearings for Youth Corrections Act prisoners. 28 CFR 2.65(c)(2).
13. Consideration of approval of research report on Community Control Project.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492-5952.

Dated: October 13, 1989.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89-29604 Filed 10-13-89; 2:05 pm]

BILLING CODE 4410-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on November 6, 1989, in Washington, DC., consideration of a capital investment for Remote Video Encoding—Pilot Testing and Computerized Imaging. (See 54 FR 41564, October 10, 1989.)

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan, and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 89-24573 Filed 10-13-89; 2:18 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 16, 1989.

A closed meeting will be held on Monday, October 16, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8) (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, October 16, 1989, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.

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Institution of administrative proceedings of an enforcement nature.
Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

Dated: October 11, 1989.
Jonathan G. Katz,
Secretary.
[FR Doc. 89-24566 Filed 10-13-89; 12:57 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3110-10-9202/GP9-0116]

Realty Action; Exchange, Federal Surface and Subsurface in Dona Ana County, NM, for Private Minerals Within El Malpais National Monument Area in Cibola County, NM

Correction

In notice document 89-17491 beginning in the third column of page 31389 in the issue of Friday, July 28, 1989, make the following corrections:

1. On page 31390, in the second column, under **ADDRESS:**, the first sentence should read "For a period of 45 days after publication of this notice, interested parties may submit comments to the District Office at the above address."

2. On the same page, in the third column, in the file line, the document number should read "89-17491".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-22-AD; Amdt. 39-6325]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

Correction

In rule document 89-22541 beginning on page 39162 in the issue of Monday, September 25, 1989, make the following correction:

On page 39163, in the third column, in paragraph (b), the third line should read "110 airplanes, S/N 110146, 110153".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-27-89]

RIN 1545-AN52

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

Correction

In proposed rule document 89-20917 beginning on page 37125 in the issue of Thursday, September 7, 1989, make the following corrections:

1. On page 37125, in the second column, under **SUMMARY**, in the third line from the bottom of the page, "1721" should read "1272".

2. On the same page, in the third column, in the seventh paragraph from the bottom of the page, in the second line, "1-6049-7(c)(6)" should read "1.6049-7(c)(6)".

3. On the same page, in the same column, in the fifth paragraph from the bottom of the page, in the first and second lines, "1.649-7(f)(3)(iii)" should read "1.6049-7(f)(3)(iii)".

4. On the same page, in the same column, in the last paragraph, in the last line, "1990" should read "1989".

5. On page 37126, in the first column, under "**ADDRESS**", in the fourth line, "20024" should read "20224".

6. On the same page, in the same column, in the fifth paragraph from the bottom of the page, in the sixth line, insert a "period" after "Service".

7. On the same page, in the same column, in the fourth paragraph from the bottom of the page, in the third line, "§§ 1.60D-1(d)" should read "§§ 1.860D-1(d)".

8. On the same page, in the 2nd column, under "**Background**", in the 1st paragraph, in the 14th line, "§§ 1.860-1T" should read "§§ 1.860D-1T".

9. On page 37127, in the first column, in "Par.2" in amendatory instruction 1, in the last line, "1271(a)(6)" should read "1272(a)(6)".

10. On the same page, in the same column, under "Par.2" in amendatory instruction 5, in the last line, "(b)(2[(ix)(C)" should read "(b)(2)(ix)(C)".

11. On the same page, in the second column, under "Par.3", after amendatory instruction 1, the next paragraph of amendatory instruction should be designated "2.".

BILLING CODE 1505-01-D

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Part II

Department of Transportation

Coast Guard

33 CFR Part 155
46 CFR Part 12 et al.

Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations; Supplemental Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154

[CGD 79-116 and 79-116a]

RIN 2115-AA03

Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to issue regulations governing the qualifications of personnel in charge of and assisting in the handling, transfer, and transportation of oil and hazardous liquid cargoes in bulk aboard vessels. Human error and lack of awareness of the hazards involved on the part of personnel engaged in these operations have resulted in a number of well publicized marine casualties. Having better qualified personnel participating in these operations should lead to a reduction in tank vessel casualties.

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-LRA-2/3600) [CGD 79-116] U.S. Coast Guard, Washington, DC 20593-0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday except holidays, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2/3600), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, phone (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Heizer, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MVP), phone (202) 267-0224.

SUPPLEMENTARY INFORMATION: Two notices of proposed rulemaking (NPRMs) were published in the **Federal Register** on December 18, 1980: CGD 79-116 (45 FR 83290) covering proposed rules for tankerman requirements and CGD 79-116a (45 FR 83268) covering proposed rules for the qualifications of persons-in-charge of oil transfer operations. In conjunction with the NPRMs the Coast Guard held public hearings in St. Louis, Missouri; New Orleans, Louisiana; Long Beach, California; and Washington, DC.

Due to the similarity of these two rulemakings the Coast Guard has decided to combine the two dockets into CGD 79-116 and hereby withdraws CGD 79-116a.

Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the name and address of the person making comment, identify this notice [CGD 79-116], the specific section of the proposal to which the comment applies, the reasons for the comment, and suggested modifications to the proposed rules. Persons desiring an acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is confirmed.

Drafting Information

The principal drafters of this supplemental notice are: Mr. Christopher J. Heizer, Office of Marine Safety, Security and Environmental Protection, and CDR Gerald A. Gallion, Office of Chief Counsel.

Background

The Port and Tanker Safety Act of 1978 (PTSA) (46 U.S.C. 3703) specifically requires the Secretary of Transportation to prescribe personnel and manning standards for tank vessels of the United States. The Coast Guard interprets personnel and manning standards to include training, license qualifications, health and physical fitness criteria, periodic retraining, recognition of experience and completed training, and performance testing in the determination of licenses and certificates for the certification of crew members in the handling of oil and hazardous materials. Section 7317 of title 46 of the U.S. Code also authorizes the Secretary to prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman.

Improvement of crew standards was the subject of the International Conference on Training and Certification of Seafarers held in 1978 under the auspices of the Intergovernmental Maritime Consultative Organization, now known as the International Maritime Organization (IMO). At this conference, 72 nations agreed on the text of the world's first international convention establishing basic requirements concerning training, certification and watchkeeping for masters, officers, and crews of seagoing merchant ships. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) will be applicable to vessels of the United States once the Convention is ratified by the U.S. Senate. Since the Convention has been accepted internationally, it already applies to U.S. flag vessels on foreign voyages to party states.

The Coast Guard in the December 18, 1980, **Federal Register** (45 FR 83268, 83290) published notices of proposed rulemaking which proposed redefining and establishing more stringent qualifying criteria for individuals engaged in transporting and transferring various categories of oil and hazardous materials and proposed revising the qualifications of the person-in-charge of an oil transfer operation. Four public hearings were held and 140 written comments were received in response to the proposed rules and are discussed in this document. Comments were received from private individuals, maritime attorneys, commercial enterprises, maritime unions, industry associations, state maritime agencies, Federal agencies, and state and Federal maritime schools.

Many commenters complained that industry input was not sought during the development of the NPRMs. Many commenters want the Coast Guard to allow the Towing Safety Advisory Committee (TSAC) to review the proposed regulations while other commenters want the Coast Guard to publish another notice of proposed rulemaking before publishing a final rule. The Coast Guard agrees with both of these recommendations. The Coast Guard has worked closely with TSAC in revising these proposed regulations and considered TSAC Recommendation #53, which contains TSAC's specific recommendations. The minutes from the TSAC meetings at which the proposed tankerman regulations were discussed and TSAC's Recommendation #53 have been placed in the official docket, where they are available to the public for review.

As a result of working with TSAC in developing this supplemental notice of proposed rulemaking (SNPRM) the Coast Guard has revised the tankerman regulations by separating the tankship and tank barge tankerman requirements so special consideration could be given to the operational conditions and practices of each industry. The proposed tankerman regulations in the SNPRM try to ensure the requirements for a tankerman endorsement correspond to the operational level of authority granted by the endorsement.

These proposed regulations have been renumbered to maintain consistency with other sections in the Code of Federal Regulations. Therefore, after each specific comment is a "new" cite that reflects the affected section in this supplemental notice of proposed rulemaking and an "old" cite corresponding to the previous proposal (45 FR 83268, 83290), e.g. New 46 CFR 13.103, Old 46 CFR 13.01-3.

The Coast Guard has revised the proposed regulations to require only the master, chief mate, and other personnel designated as person-in-charge of liquid cargo transfer operations to be fully qualified tankermen. Personnel assisting with the transfer of bulk liquid hazardous materials do not need the same extensive training required by the person-in-charge, who is responsible for supervising the transfer. The requirements for engineers and personnel assisting in transfer operations have been revised to more closely reflect their level of responsibility.

To reflect the levels of experience and training necessary for the different levels of responsibility, the proposed regulations use several new merchant mariner's document (MMD) endorsements. A person who has satisfied the requirements to be a person-in-charge of bulk liquid cargo transfer operations would be issued an MMD endorsement as "Tankerman-PIC" or "Tankerman-PIC (Barge)." The abbreviation PIC stands for "Person-In-Charge" and indicates the person can be in charge of bulk liquid cargo transfer operations. "Tankerman-PIC" authorizes service on tank vessels, while "Tankerman-PIC (Barge)" authorizes service on tank barges only.

The proposed "Tankerman-Assistant" endorsement would not authorize a person to be a person-in-charge of bulk liquid cargo transfer operations. On tankships a person who will be assigned duties and responsibilities related to bulk liquid cargo or cargo equipment during a transfer operation, that will not be directly supervised by the person-in-charge of the transfer, must have a "Tankerman-Assistant" or "Tankerman-PIC" endorsement for the classification of cargo being transferred.

Individuals serving as chief, first assistant, or cargo engineer on a tankship must have a "Tankerman-Engineer" endorsement. When the Certificate of Inspection for a tankship requires a licensed engineer but not a chief or a first assistant engineer, at least one of the required engineers must have a "Tankerman-Engineer" endorsement. This proposed endorsement does not allow an individual to serve as a person-in-charge of bulk liquid cargo transfer operations.

All tankermen endorsements will be placed on an individual's MMD, even if the individual also has a license.

The Coast Guard has reduced the number of cargo classifications from the three proposed in the NPRM, Flammable/Combustible Liquids, Dangerous Liquids, and Liquefied Gases, to two, Dangerous Liquids and Liquefied Gases. The new Dangerous Liquids classification will cover all products previously covered under the Flammable/Combustible Liquids and Dangerous Liquids classifications of the NPRM.

To reduce the number of cargo tables to which the public must refer and the Coast Guard must update, the tables listing the specific cargoes that fall under the Dangerous Liquid and Liquefied Gas classifications have been eliminated from the rulemaking. Dangerous Liquids are liquids identified by the Coast Guard in 46 CFR 153.40 as dangerous when transported in bulk that are not Liquefied Gases. Part 13 uses the same definition for Liquefied Gas as used in 46 CFR Part 154. Cargoes listed in 46 CFR Part 153 Table 2 are not regulated when carried on non-oceangoing barges.

The proposed grandfathering provisions for personnel currently authorized to transfer bulk liquid cargoes have been revised. Personnel currently authorized to supervise the transfer of Liquefied Gases will be grandfathered just like personnel currently authorized to supervise the transfer of Dangerous Liquids. Personnel willing to accept a restricted tankerman endorsement, that reflects their actual transfer experience, will only have to present evidence of having met the firefighting training requirement and the service requirements. Applicants who want a standard Dangerous Liquid or a Liquefied Gas endorsement will also have to meet the liquid cargo training course requirement, since these endorsements will normally authorize an individual to transfer a wider variety of cargoes than they have in the past.

Comments are invited on how the Coast Guard should document who is authorized to transfer bulk liquid cargoes during the five year transition period for grandfathered personnel.

The Coast Guard has proposed that the firefighting training be required for all tankerman endorsements because of the importance of this knowledge when serving on tank vessels. Due to the limited firefighting capability of tank barges, it is proposed that grandfathered applicants for a "Tankerman-PIC (Barge)" endorsement not be required to attend a firefighting training course if they can document they attended some form of flammability hazard awareness and tank barge firefighting lecture, seminar, or training program. This flammability hazard awareness and tank barge firefighting training should have included some hands-on practice in extinguishing fires.

In the NPRM both the firefighting training course and the liquid cargo training course had to be completed within two years of the date of application. This has been changed in this SNPRM. The firefighting training course must now be completed within five years of the date of application. This increase in time frame coincides with the revised 46 CFR part 10 licensing requirements for firefighting training. The liquid cargo training course must still be completed within two years of the date of application because the training involves many complex operations and teaches the skills that are crucial to a tankerman safely and efficiently conducting bulk liquid cargo transfer operations.

The Coast Guard proposes that grandfathered personnel may meet the firefighting training requirement by having attended a firefighting training course at some time; recency is not required. If the course was not Coast Guard approved, the Coast Guard must be able to verify that the course substantially meets the firefighting training guidelines established by the Coast Guard and used as the basis for reviewing firefighting courses for Coast Guard approval.

In the NPRM published in December 1980, the proposed course outlines were included as a part of the regulations in 46 CFR 13.05 (Old). In response to comments, these outlines for the liquid cargo and tank barge firefighting training courses have been modified and are included at the end of the preamble to this SNPRM. Comments are invited on these course outlines. The course outlines adopted when the final rule is published will be the basis for evaluating the courses needing Coast Guard approval. The Coast Guard recognizes that there is no "best" way to teach a course and that flexibility in designing courses is essential. This flexibility will also permit revisions to courses as needed to reflect changing technology and lessons learned through casualty analysis.

Since the NPRM was published, the Coast Guard has decided not to specify the number of hours for a particular course. Each course submitted for Coast Guard approval will be examined to determine whether it will be of sufficient

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duration to adequately cover the material in the course. As a result, there are no course lengths specified.

The Coast Guard is in the process of developing proposed regulations for vapor recovery systems, docket CGD 88–102. Some training on vapor control is included in the proposed liquid cargo training course outlines, but the training requirements for vapor control systems have not been finalized. The Coast Guard will coordinate development of the vapor control regulations and the development of these tankerman regulations.

The Coast Guard published an SNPRM on Hazardous Materials Pollution Prevention [CGD 86–034] in the **Federal Register** of June 9, 1989 (54 FR 24718). It proposed to apply the oil pollution regulations to vessels and facilities which transfer bulk liquid "hazardous materials," including oil and all 46 CFR subchapter O and MARPOL 73/78 Annex II Noxious Liquid Substances (NLS) materials. Personnel handling these materials, not previously required to have a tankerman endorsement, would now be required to have one. The proposed tankerman regulations in this SNPRM address these personnel.

Discussion of Comments

In general, the comments received are not supportive of the originally proposed action. Many commenters question the basis and need for the proposed regulations applying to the inland barge industry and feel the cost of the regulations is not justified. However, many commenters support the need for better trained, more conscientious tankermen, admitting many spills and other relatively minor incidents aboard barges result from ignorance or inattention.

Specific Comment Areas

1. *Current regulations:* Thirteen commenters are against revising the current regulations because they believe the current regulations are adequate. The Coast Guard disagrees. The Statement of Policy in the PTSA declares "that existing standards for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of all such vessels which use any port or place subject to the jurisdiction of the United States or which operate in the navigable waters of the United States must be more stringent and comprehensive for the mitigation of the hazards to life, property, and the marine environment; * * *." The regulations concerning the training and qualifications required for a tankerman endorsement have not been revised since the PTSA was passed and do not have a clear standard that can be uniformly applied. Seven commenters support the need for the proposed regulations.

2. *Enforcement of current regulations:* Fourteen commenters believe increased enforcement of the current regulations would be sufficient and are opposed to revising the regulations. The Coast Guard disagrees. The increased hazards associated with the volume and types of hazardous cargoes being shipped today clearly support the Congressional finding that the personnel qualification and manning standards must be more comprehensive and stringent. In addition, the lack of clear-cut qualification standards makes it difficult to enforce the current regulations effectively.

3. *Effectiveness of training requirements:* Nine commenters believe the additional training requirements called for in the NPRM would not have a major impact on pollution and casualties. They feel the personnel involved in the casualties cited in the NPRM had plenty of experience but had a careless attitude, and that carelessness and inattention cannot be regulated out of existence.

The Coast Guard disagrees in part. While the Coast Guard cannot regulate away carelessness and inattention, proper training can heighten a tankerman's awareness of tasks and information essential to the safe performance of his or her duties. Many times a careless attitude evolves from a lack of understanding of the hazards involved or lack of familiarity with the items a tankerman should be monitoring during a transfer operation. The requirements proposed in the SNPRM are designed to ensure the personnel having duties and responsibilities related to bulk liquid cargo transfer and tank cleaning operations are fully aware of all aspects of these operations, especially the safety considerations.

4. *Imposing international standards on domestic industries:* Seventeen commenters are against imposing standards derived from the STCW on the domestic inland tank barge industry. The Coast Guard agrees. Although the Coast Guard agrees with and supports the STCW standards, the tankerman standards in the Convention were primarily designed for seagoing tankships. In this proposal, the Coast Guard has focused attention on the standardization and improvement of the tankerman qualifications and manning requirements that are appropriate to the barge industry. This SNPRM proposes additional training requirements; however, they have been modified from the NPRM and tailored to the particular circumstances that will be encountered.

5. *Exceeding the STCW requirements:* One commenter believes the proposed regulations in the NPRM exceed the STCW requirements. The Coast Guard agrees that some of the proposed regulations in the NPRM were excessive because the levels of training and experience were not related to the level of authority exercised by various crew members. The Coast Guard has revised the proposed regulations to ensure the level of experience and training reflects the level of authority authorized by the particular tankerman endorsement. The Coast Guard believes this has eliminated most of the instances where the requirements exceed the STCW.

6. *Separating tankship and tank barge requirements:* Ten commenters from the inland tank barge industry believe the Coast Guard did not consider the special requirements of their industry and inappropriately merged tank barges with tankships. The Coast Guard agrees that not enough consideration was given to the operating practices and conditions in the tank barge industry. The qualifications and training requirements for tankship and tank barge tankermen have been placed in separate sections, recognizing the differences in the methods of operation and equipment utilized.

(New part 13, subparts B & C; Old 13.01–11 and 13.01–12)

7. *Removing authority of licensed officers to act as tankermen:* Eight commenters are against removing the regulatory authority for licensed officers to serve as tankermen and want any additional knowledge requirement to be verified by an expanded license examination. The Coast Guard partially agrees. The Coast Guard believes licensed officers without specialized tank vessel training and experience can safely act as the person-in-charge of vessel fueling and the transfer of the limited quantities of grade D and E bulk liquid cargo carried on passenger, freight, and miscellaneous vessels. This limited authority is supported by four commenters.

Loading and discharging a tank vessel, however, calls for specialized training and experience. The Coast Guard believes even licensed officers need the specialized training and experience. This has been recognized by the tanker companies' reluctance to make an officer, with no experience on tankers, the person-in-charge of a cargo transfer operation. Normally officers without tanker experience go through a period where the chief mate provides the needed on-the-job-training (OJT) and evaluates their ability before they can assume the responsibilities of a person-in-charge. In the proposed rule only officers on tank vessels or transferring the more dangerous bulk liquid cargoes will be required to obtain the specialized training and experience.

(New 31.15, 35.35, 70.05–30, 90.10–42, 98.30–17, 151.45–3, 153.957, 154.1831, and 33 CFR 155.710; Old 31.15, 35.35, 70.05–30, 90.10–42, 98.30–17, 151.45–3, 153.957, and 33 CFR 155.710)

8. *Required training vs examination:* Three commenters want all applicants to have the option of qualifying for a tankerman's endorsement by taking a Coast Guard examination or completing a Coast Guard approved course. The Coast Guard disagrees. Overall, the Coast Guard believes required attendance of an approved training course with curriculum and instructors that have been reviewed and determined to meet a minimum standard is the best way to ensure a required minimum level of training.

An additional commenter wants the Coast Guard to continue testing tankerman applicants to ensure quality control. The Coast Guard disagrees. Requiring applicants to take a Coast Guard examination is not the only method that can be used to ensure only qualified applicants obtain a tankerman endorsement. A properly monitored approved course can also effectively filter out applicants who are not qualified. The Coast Guard plans to make the monitoring of approved courses a high priority to ensure the maintenance of Coast Guard standards.

There are many problems with relying solely upon OJT. Reliance upon OJT is not effective in that it tends to perpetuate the standards of the person currently doing the job. If the person has high standards, they are passed on. Many times the standards passed on are not as high as they should be, even though the person believes they are passing on the highest standard. Not all tankermen have the same level of knowledge, competence, ability to communicate, desire to communicate, or the varied background needed for a well rounded tankerman instructor. Emergency procedures can not normally be practiced. The duties of the person-in-charge of the transfer operation may restrict the time available to train assisting personnel. However, because loading and discharging a tank barge is a relatively simple operation, the Coast Guard proposes to allow applicants for a "Tankerman-PIC (Barge)-DL" endorsement the option of obtaining all of their training on the job and demonstrating their qualifications by taking a Coast Guard examination.

9. *Simulation training:* Six commenters want simulator training to be mandatory. The Coast Guard does not agree. Simulator training is a valuable way to gain an understanding of the proper procedures for transferring bulk liquid cargoes, but it is not the only way to conduct training. The Coast Guard has revised the proposed regulations to give credit toward the required transfer experience for transfers obtained through courses that provide simulated transfers.

10. *Oral examinations:* Two commenters indicate the Coast Guard should not allow oral examinations for tankerman endorsements because tankermen must be able to read and write to fill out required forms. The Coast Guard partially agrees. While a tankerman must be able to review forms and information related to the cargo and the transfer operation, the Coast Guard does not believe it is justified in disqualifying an experienced individual who may have a reading deficiency. In the proposed regulations no tankerman applicant is forced to take a Coast Guard examination. Applicants will always have the option to take a Coast Guard approved course, where reading difficulties can be handled individually. Therefore, no provisions for an oral examination have been made.

(New 46 CFR 13.309; Old 46 CFR 13.01–16)

11. *Unilateral action on foreign flag vessels:* Seven commenters are critical of the potential impact unilateral action by the Coast Guard in regards to foreign vessels would have on international cooperation if the proposed regulations were brought into force prior to ratification of the STCW. STCW came into force on April 28, 1984 for the initial ratifying states. As other countries ratify the convention, their vessels will be subject to the Convention. Since STCW has been accepted internationally, the Coast Guard believes this proposal will not produce the unilateral negative impact envisioned.

12. *Equal enforcement on foreign vessels:* Six commenters want the Coast Guard to ensure foreign flag vessels meet the same standards U.S. vessels are required to meet. Five commenters want the Coast Guard to evaluate the content of the training and licensing programs foreign countries have established to ensure they meet the STCW requirements. The Coast Guard plans to require that personnel on vessels of countries signatory to STCW meet the requirements of STCW when in U.S. waters and that personnel on vessels of countries not signatory to STCW have equivalent qualifications.

13. *Foreign certificates:* Three commenters state that foreign countries do not issue "certificates." The term "certificate" is defined in Article II of the STCW as a valid document by whatever name it may be known, issued by or under the authority of the administration or recognized by the administration authorizing the holder to serve as stated in this document or as authorized by national regulations. The proposed regulations have been modified, however, to refer to licenses or other documentation authorizing service on the vessel.

14. *COW training:* One commenter wants the liquid cargo training course to be considered as meeting the crude oil washing (COW) training option discussed in 33 CFR 157.152(c)(2). The Coast Guard partially agrees. If the liquid cargo training course covers the material outlined in Appendix II of IMO Resolution A.446(XI), students will be considered as meeting 157.152(c)(2). Although COW/Inert Gas (IG) equipment and operations need to be covered in the liquid cargo training course, the extensive coverage needed to meet 157.152(c)(2) is not required. It is the vessel operator's responsibility to ensure personnel hired for vessels equipped with COW systems have the required experience or training.

15. *Definitions:* Two commenters want "Cargo engineer" added since there is such a position on liquefied natural gas (LNG) tankships. Several commenters want "work shift" more clearly defined. The Coast Guard agrees and has revised the list of definitions.

(New 13.103; Old 13.01–3)

16. *Shore based personnel:* Two commenters are concerned that the proposed regulations in the original notice did not address shore based personnel. Tankermen hired by barge companies or terminal personnel who come onto barges and transfer cargoes must meet the proposed regulations. Personnel in charge of the transfer facility only, and not the tank barge, during transfer operations do not need to meet the proposed regulations.

17. *Tankerman endorsements:* One commenter suggests the Coast Guard use the term "endorsement" rather than "certificate" to describe the endorsement on an MMD. The Coast Guard agrees.

One commenter is concerned that applicants for a proposed tankerman endorsement would be required to possess MMDs before they could apply

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for a proposed tankerman endorsement. An MMD is not a prerequisite for a tankerman endorsement. Applicants who have not previously been issued an MMD will receive one with the tankerman endorsement if they meet all the requirements.
(New 13.107; Old 13.01-5)

18. *Tankerman endorsements: authorized cargoes:* Fifteen commenters argue that the skills required to transfer Flammable/Combustible Liquids (FC) and Dangerous Liquids (DL) are so similar they should be combined or say that their operations will require their personnel to obtain both FC and DL endorsements. The Coast Guard agrees the two cargo classifications are very similar. Transferring bulk liquid cargoes in these classifications requires similar skills; however particular hazards are associated with each different product. When discussing particular hazards, people normally think about DL cargoes, but with the recent concern over benzene many of the FC cargoes are beginning to be treated with similar caution. For this reason and the fact that the liquid cargo training courses are designed to give tankerman applicants a broad working knowledge of tank vessel operations and cargo characteristics and hazards, the Coast Guard has decided to combine FC and DL cargoes into a single DL cargo classification.

Three commenters want the Liquefied Gas classification broken into several smaller subdivisions because of the variety of characteristics the different products in the classification have. The Coast Guard disagrees. Even though the products in this classification may have a wide range of special characteristics, the intent of the required training is to give people a broad understanding of the vessels, operations, equipment, and special cargo characteristics associated with this cargo classification. The vessel operator or agent is responsible for designating the persons-in-charge and ensuring that the designated person-in-charge has the training and experience needed to safely conduct the transfer of a cargo having particular hazards.
New 33 CFR 155.700; Old 13.01-6)

19. *Tankerman certificated under prior regulations:* The NPRM proposed to allow personnel who held a tankerman certificate or were authorized to transfer bulk liquid cargoes to continue to serve under their previous authority for five years. During this five year period they would have to apply for one of the new tankerman endorsements. They would have to show service on tankships or tank barges prior to the effective date and within three years of application, and have attended a firefighting course. Personnel in charge of transferring liquefied gas cargo were not going to be grandfathered.

Eighteen commenters want tankermen for liquefied gas tank vessels to be grandfathered like the other tankermen. They make the point that the personnel currently responsible for transferring liquefied gas cargoes are specially trained for these cargoes and that grandfathering liquefied gas personnel will not impact transfer safety. The Coast Guard agrees and has modified the proposed regulations.

Two commenters want foreign flag officers and tankermen to be grandfathered just like U.S. tankermen. In principle, if they possess the same level of qualifications and experience as U.S. officers and tankermen, the Coast Guard will consider grandfathering them. Foreign flag personnel from countries that have ratified STCW may be handled according to the STCW transition guidelines in Article VII, which depend on when these countries ratified the Convention. The Coast Guard is not sure it will establish a grandfathering provision for foreign flag personnel from countries not signatory to STCW. If it does, the provision will probably require these people to present letters of service documenting the service that qualifies them for the grandfathering provision. The Coast Guard would like comments on the possible grandfathering of foreign flag personnel and suggestions on how this might be done.

There is disagreement over the length of the grandfathering period. Three commenters want the period shortened, one commenter wants the period shortened unless applicants take a bulk liquid cargo training course, three commenters like the five year period proposed in the NPRM, and one commenter wants a longer period. The Coast Guard believes a five year grandfathering period is appropriate.

One commenter is against requiring grandfathered personnel to take liquid cargo and firefighting training courses. The Coast Guard partially agrees. Grandfathered personnel will be required to complete a firefighting training course prior to applying for a new tankerman endorsement because the training plays an important role in fire safety and responding to emergencies. However, grandfathered applicants applying for restricted endorsements for the products they are currently authorized to transfer would not be required to attend the liquid cargo training. Grandfathered applicants who receive the proposed DL and/or LG endorsements would normally be authorized to handle a much broader range of cargoes than they have experience in handling. For this reason the Coast Guard has proposed that grandfathered applicants must attend a liquid cargo training course to qualify for an unrestricted endorsement. Applicants presenting course completion certificates for liquid cargo training courses completed up to ten years prior to the effective date of the final rule would be considered to have satisfied the liquid cargo training requirement if the Coast Guard determines that the course covered a substantial portion of the material required for the DL or LG course.

Three commenters want to know what kind of documentation will be needed to qualify for grandfathering. The Coast Guard agrees that this needs to be clarified and has revised the proposed regulations to explain the requirements. Basically, an applicant would be required to present a letter of service or, in some cases, certificate(s) of discharge.
(New 13.111; Old 13.01-7)

20. *Restricted tankerman endorsements:* Although TSAC is against allowing a restricted tankerman endorsement, ten commenters want restricted tankerman endorsements to recognize the special situations where a tankerman handles only a few different cargoes or product families. The Coast Guard agrees and has made allowance in the proposed regulations for Officers in Charge, Marine Inspection (OCMIs), with regional examination centers to reduce or modify the requirements needed to qualify for a "Tankerman-PIC" or a "Tankerman-PIC (Barge)" endorsement limited to specific cargoes, cargo facility, employer, and/or vessel.
(New 13.107; Old 13.01-5)

21. *Renewal of tankermen endorsements:* Four commenters think a five year renewal period is unnecessary and excessively costly. Five additional commenters recommend a ten year renewal period. TSAC supports a five year renewal period. Two commenters also state they do not believe the Coast Guard has the personnel resources to process the renewals. As proposed, all tankermen endorsements would be placed on MMDs which are not required to be renewed.
(New 13.119; Old 13.01-9)

22. *Vision requirements:* One commenter feels that the requirement for 20/200 uncorrected vision in each eye is too severe and should be dropped. The Coast Guard disagrees. The U.S. visual acuity requirements for all marine personnel are already among the most liberal in the world. The requirements for tankerman have always been the same as Qualified Members of the Engine Department (QMED) and licensed engineers. The duties of a tankerman and a QMED are equivalent as far as the need for visual acuity is concerned. The Coast Guard sees no compelling reason for a more liberal standard for tankerman. The standards were just relaxed two years ago when 46 CFR part 10 was revised.
(New 13.301; Old 13.01-12)

23. *Service requirements:* Nineteen commenters want to reduce the total number of on board transfers required for a tankerman endorsement. One group is concerned about the time needed to obtain 10 transfers, while another group wants credit for simulated transfers. The Coast Guard partially agrees. The Coast Guard believes that at least 10 transfers, five loading and five discharging, are required for a person to become fully familiar with the transfer procedures. These required transfers must include at least one commencement and one completion of both a loading operation and a discharge operation. On the other hand, the Coast Guard believes that simulated transfers can be a very valuable way to gain transfer experience, although some actual transfers are still needed to round out an applicant's experience. For these reasons the Coast Guard has revised the proposed regulations to allow simulated transfers to be substituted for a substantial portion of the ten required transfers.

Four commenters want a transfer credit for each four-hour watch even if the watches were stood during one continuous transfer operation. The Coast Guard partially agrees. The Coast Guard is concerned that applicants could use consecutive four-hour work shifts to significantly reduce the number of transfers they have participated in or have observed.

If an applicant participates in the commencement and the completion of a transfer, they will get credit for the commencement and the completion, but they will still receive credit for only one transfer. For example, an applicant's first transfer experience is standing two, four-hour work shifts during one loading transfer operation, including participation in the commencement and the completion operations. The applicant would get credit for participating in a loading commencement transfer and a loading completion transfer but would only receive credit for one loading transfer. This means the applicant would have to complete the normal five discharge transfers and four more loading transfer operations, but, since the applicant has already met the loading commencement and completion requirements, none of these additional four loading transfers would have to be a commencement or a completion.

Two commenters want a transfer credit for each chemical or product that a product carrier is transferring during a work shift. The Coast Guard partially agrees. If a vessel is loading and discharging products during a work shift, the demands of the two different operations should warrant credit for one loading and one discharging transfer. If a vessel is loading or discharging multiple products the Coast Guard believes the operation should be considered a single loading transfer or discharge transfer and should not receive multiple transfer credit. When loading or discharging, the operation is basically the same whether one tank is involved or several.

One commenter thinks there should be a minimum service requirement as well as a transfer requirement. This is also supported by TSAC. The Coast Guard agrees, and a service requirement has been proposed for all "Tankerman-PIC" and "Tankerman-PIC (Barge)" endorsements. A tankerman needs to have some background experience in tank vessel operations. Applicants working at a very busy terminal may obtain all the required transfer experience in a very short period of time, but may not develop a good understanding of tank vessel operations. In some cases, the regulations provide for a reduction in the service requirement if the applicant has attended a liquid cargo training course.

Two commenters feel engineers will not be able to get the required transfers. The Coast Guard agrees, since engineers do not normally participate in bulk liquid cargo transfers. The Coast Guard has proposed a "Tankerman-Engineer" endorsement that would not require transfer experience.

One commenter is concerned a master may have difficulty obtaining the transfer experience required for a "Tankerman-PIC" endorsement because of the normal duties and responsibilities that must be performed while the vessel is in port. The Coast Guard agrees that it may be difficult for the master to get transfer experience. If, however, a master attends a liquid cargo training course approved by the Coast Guard for equivalent transfers, the equivalent transfers earned by completing the course can be used to reduce the number of shipboard transfers required. At a minimum, an applicant must participate in or observe at least two actual transfers. The transfer experience is an important part of gaining the skills needed to be a person-in-charge of liquid cargo transfer operations.

One commenter is concerned that a dangerous situation may develop if too many people try crowding into a cargo control room to obtain their transfer requirements. The Coast Guard agrees, but it is the responsibility of the person-in-charge to make sure that observing personnel do not become a hazard.
(New 13.203, 13.303, 13.403, and 13.503; Old 13.01-13)

24. *Documentation of service:* Three commenters want the service documentation requirements for the proposed tankerman endorsements clarified. The Coast Guard agrees and has revised the proposed regulations.

One commenter wants the Coast Guard to generate a standard form, preferably in a sign-off format. The Coast Guard disagrees. As long as the service information required for the endorsement is provided, there is no mandatory format for the service documentation.

One commenter wants only a master to be authorized to verify an applicant's service. The Coast Guard partially agrees. It is the master's responsibility to appoint the persons-in-charge on the vessel, so it should be the master's responsibility to document a tankerman applicant's service. There are, however, many tank vessels that are not required to have a master. There will also be situations where the master may be busy or unavailable. The proposed regulations have been revised to allow several methods of documenting service.

One commenter wants a transfer facility operator to be authorized to document an applicant's service. The Coast Guard partially agrees. The proposed regulations have been revised to allow this option for service involving tank barges, since many facilities directly control the loading and discharging of the tank barges.

Two commenters want the required documentation of service dropped because they are concerned the applicants cannot compel employers to generate service letters, and employers are not required to keep the service records so applicants can get a service letter at some later date. The Coast Guard disagrees. Companies who use tankermen have a vested interest in documenting the service of their employees since they need to ensure a supply of tankermen for their operations. Applicants should collect their service letters as service is accumulated.

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One commenter wants the Coast Guard to allow an applicant to submit a single letter to document their service because tankermen normally get their service from a wide variety of employers and because it would be difficult for applicants to keep track of many service letters. The Coast Guard partially agrees. The proposed regulations would allow applicants who work for a tankering service that transfers liquid cargo for a wide variety of companies to present a letter of service from the tankering company, since the tankering company has direct knowledge of all the applicant's experience. Applicants who obtain their service from a wide variety of employers because they have worked for a lot of different companies will still have to keep track of the service letters issued by each company, since none would be able to attest to service acquired outside of their employ.

(New 13.205, 13.305, 13.405, and 13.505; Old 13.01–14)

25. *Course approvals:* Eleven commenters are concerned the Coast Guard is going to require company personnel to attend formal schools, separate from employer training programs. Formal schools are not the only organizations that can apply for Coast Guard approval of a training course. The Coast Guard will review any training program submitted for approval. The Coast Guard recognizes that there are many well-run training programs being offered by companies for their employees and expects to review and approve many company training programs that already come close to satisfying the required training discussed in the proposed regulations.

(New 13.121; Old 13.05–2)

26. *Shipboard firefighting training courses:* Four commenters want first aid deleted from the required firefighting training courses contained in the NPRM because it would take too much time to adequately cover the material. The Coast Guard agrees. First aid is not in currently approved basic and advanced shipboard firefighting courses.

One commenter wants the firefighting course to discuss and demonstrate the large dry chemical extinguishers used as the primary firefighting system on LNG tankers. The Coast Guard agrees that the use of these extinguishers should be discussed, but does not feel there is a need to include this equipment in field exercises since they are currently only used on LNG vessels.

One commenter wants recognition for shipboard firefighting training. If a company has a regular shipboard firefighting training program, it may submit it for Coast Guard review and approval.

The firefighting training requirements can be broken into two parts, classroom training and field training. It is possible for a school to offer only one of the two parts of the training. An applicant satisfying the firefighting training requirement by attending two different schools, each teaching a different portion of the required training, must take the two portions within a specified time limit. Three commenters want the Coast Guard to increase this time limit because winter weather can close fire fields and academic scheduling problems can prevent an applicant from meeting the NPRM time limit. The Coast Guard agrees and has developed firefighting training course guidelines without a time limit. However, both portions of the firefighting training requirement must have been completed within five years of the date of application.

Three commenters are concerned that the firefighting training course will cover the use of the canister type oxygen breathing apparatus (OBA), since they are ignition sources and are a potential hazard on tank vessels. The approved basic and advanced firefighting training courses are not specifically designed for tank vessels. This hazard is recognized and should be covered in any approved course. The Coast Guard will consider placing increased emphasis on this subject in approving and monitoring existing firefighting courses.

(Old 13.05–6)

27. *Tank barge firefighting training course:* Fourteen commenters want the tank barge firefighting training course eliminated; and six commenters want local company training accepted. Twenty-seven commenters want the tank barge firefighting training course requirement reduced in length and modified to reflect the special operating conditions of tank barges. Several commenters feel existing fire companies at waterfront facilities could be relied upon to respond if a fire occurred. The Coast Guard agrees that the tank barge firefighting training course should reflect the industry's special requirements, and the tank barge firefighting training course requirements have been modified accordingly.

Four commenters want the tank barge firefighting training course requirements eliminated for tankermen who will not be handling liquid cargoes that are flammable or combustible. This is a factor that will be considered by the OCMI when evaluating an application for a restricted tankerman endorsement.

(Old 13.05–7)

28. *Liquid cargo training courses:* Four commenters only want courses to cover Federal regulations, not state or local regulations that may be changed without wide notification and should be learned on the job. The Coast Guard agrees and has modified the proposed course requirements.

One commenter wants the tankship training course to cover international regulations. The Coast Guard agrees and has modified the proposed course requirements.

One commenter indicates that the course outlines in the NPRM only mentioned tank cleaning once, and that was addressing crude oil washing which is not used on all tank vessels. The commenter believes this area should be expanded. The Coast Guard agrees and has modified the proposed course requirements.

Nine commenters want non-barge topics eliminated from the tank barge liquid cargo course as being inappropriate. The Coast Guard agrees and has modified the proposed course requirements for this course.

Two commenters indicate that not all products listed in the NPRM proposed Table 13.01–6(a) are discussed in the Chemical Data Guide or the CHRIS Manual. This is true, but the liquid cargo training courses are not designed to cover all the specific products listed. The manufacturers normally provide product safety cards that indicate the cargo-specific hazards and precautions.

(Old 13.05–11 and 13.05–12)

29. *Manning requirements on tank vessels:* One commenter supports and eleven commenters oppose requiring all personnel assisting in the liquid cargo transfer operation to be fully qualified tankermen. The Coast Guard agrees that not all personnel involved in a transfer need the same level of training the person-in-charge must have. The proposed regulations have been modified to require personnel assisting with the transfer who will not be under the direct supervision of the person-in-charge to hold an MMD endorsed as "Tankerman-Assistant." This proposed endorsement indicates the person has had a required amount of service on a tankship or has taken the required training that will allow the person to safely carry out cargo related duties without the direct supervision of the person-in-charge. The Coast Guard is interested in suggestions on how we should define "direct supervision."

One commenter opposes requiring engineers to be fully qualified tankermen. Two commenters only want "Cargo engineers" to be tankermen. One commenter proposes allowing all engineers to be tankermen. The NPRM requirement for engineers to be fully qualified tankermen went beyond the STCW requirements. The STCW only requires the chief and first assistant engineer to have experience on tankships and the special training they need to perform their engineering duties on tankships. The Coast Guard agrees that engineers do not need to be fully qualified tankermen because they are not normally directly involved in cargo transfer operations, unless they have been designated as a person-in-charge of a bulk liquid cargo transfer. Engineers who wish to take the liquid cargo training course and obtain the service and transfer requirements may qualify for a "Tankerman-PIC" endorsement. A proposed requirement for cargo engineers to have at least a "Tankerman-Engineer" endorsement has been added.

Three commenters oppose specifying the number of tankermen on the Certificate of Inspection. The Coast Guard disagrees since 46 U.S.C. 8703 requires the number of certificated tankermen be placed on the Certificate of Inspection. The Certificate of Inspection specifies the minimum safe manning levels required on U.S. vessels and is the appropriate place to specify the minimum number of "Tankerman-PIC," "Tankerman-Engineer," and "Tankerman-Assistant" required for safe operation of the vessel.

Five commenters express concern about how a master will be able to verify a person's previous experience on "similar" cargo systems. One additional commenter wants the proposed regulations to be modified to let the master use his or her own judgment in this evaluation. The Coast Guard agrees, and the proposed regulations have been modified to require the master to verify to his or her satisfaction that the person-in-charge has sufficient training and/or experience with the cargo containment system, the vapor control system, the cargo system, and the control and monitoring systems on the tankship to safely conduct a transfer operation.

(New 31.15–1; Old 31.15–1)

30. *Riding tankerman for tank barges:* Fifty-two commenters oppose the requirement for a tankerman to be on a towing vessel while towing a barge subject to these regulations. Most feel having a tankerman on the towboat will not alleviate a spill caused by improper navigation. Many other factors may prevent quick and efficient transfer of liquid cargo from a leaking tank barge even if a tankerman was available. There is no guarantee that there will be an empty barge available, and even if there is, many tank barges have no pumps or hoses. The Coast Guard agrees. The Coast Guard believes the operator or individual in charge of the watch on the towboat has the responsibility for the proper monitoring of any tank barges in the tow, ensuring that the crew of the towboat understands the hazards associated with the cargoes in the tank barges, and reporting cargo spills to the Coast Guard.

(New 46 CFR 31.15–5 and 151.45–3; Old 46 CFR 13.01–3, 31.15–5 and 151.45–3)

31. *Foreign personnel's need to understand English:* One commenter considers the proposed requirement to understand, in English, all instructions relative to cargo and vessel operations to be reasonable if there is uniform and reasonable interpretation by enforcement officials. Two commenters feel the requirement is much more than necessary to ensure a safe transfer. The Coast Guard has modified the proposed regulations to reflect only instructions relative to cargo transfer operations.

One commenter thinks the ability to speak English is just as important as the ability to understand English in ensuring a safe transfer operation. The Coast Guard agrees and has modified the proposed regulations to require that personnel be able to understand and speak, in English, instructions relative to cargo transfer operations.

One commenter wants the Coast Guard to require an interpreter during a transfer operation. The Coast Guard partially agrees. The proposed regulations have been modified to permit the use of an interpreter to meet the English requirement, but an interpreter is not required.

(New 33 CFR 155.710; Old 33 CFR 155.710)

32. *Tank cleaning and gas freeing operations:* Seven commenters want a marine chemist to be able to supervise tank cleaning and gas freeing operations, while three other commenters also want a "competent person" to be able to supervise these operations. The Coast Guard agrees and has revised the proposed regulations accordingly. A marine chemist must go through an extensive training program before receiving a marine chemist's certificate issued by the National Fire Protection Association. For this reason the Coast Guard does not propose to have them get a Coast Guard endorsement. The regulations covering the selection of a "competent person" do not have any specific training requirements. For this reason it is proposed that a "competent person" must hold a Coast Guard endorsement, so the Coast Guard can take effective action to withhold service authority if competence comes into question. A "competent person" not meeting the requirements for "Tankerman-PIC (Barge)" may obtain a restricted "Tankerman-PIC (Barge)" endorsement restricted to the tank cleaning operations by a specified company. When the Coast Guard districts were surveyed about allowing "competent persons" to supervise these operations, the districts indicated that the safety record of "competent persons" was about the same as marine chemists.

(New 33 CFR 155.710; Old 33 CFR 155.710)

Training Course Requirements

An organization seeking Coast Guard approval of a course required for a tankerman endorsement will have to apply in accordance with 46 CFR 10.302 and meet the general requirements of 46 CFR 10.303. In addition the Coast Guard proposes that, except for the firefighting course, each instructor must hold an MMD with a tankerman endorsement appropriate for the course, or establish equivalent qualifications to the satisfaction of the Coast Guard. The firefighting course must include actual practice in extinguishing fires, all other courses may include field training or simulation in meeting the course requirements. Satisfactory completion of an approved course will be evidenced by a certificate issued by the organization and signed by the head of the training organization or a designated representative.

Courses including simulated cargo transfer operations will be evaluated to determine the amount of credit that will be allowed towards meeting the proposed service requirements, and the certificates will reflect the credit granted. The Coast Guard maintains a listing of organizations conducting approved training courses. This information is available upon request by writing to Commandant (G–MVP) U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001 or calling (202) 267–0224.

Comments are specifically invited on the proposed subject matters to be covered; the appropriate minimum amount of instruction; and the inclusion of hands-on practice or drills, or the use of simulated transfers that should be required.

Tankship Dangerous Liquid Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required

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subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.

(2) General arrangement of cargo tanks, vapor control, and venting.

(3) Cargo piping systems and valves, including remote control, excess flow and pressure-vacuum valves.

(4) Operation of cargo pumps.

(5) Operations connected with the loading and discharging of cargo including:

(i) Lining up the cargo and vapor control systems.

(ii) Pre-transfer inspections.

(iii) Pre-transfer conference and completion of the Declaration of Inspection.

(iv) Hooking up cargo hose and loading arms.

(v) Starting liquid flow.

(vi) Calculation of loading rates.

(vii) Discussion of the loading operation itself.

(viii) Ballasting and deballasting operations.

(ix) Topping off the cargo tanks.

(x) Discussion of the discharging operation itself.

(xi) Stripping the cargo tanks.

(xii) Monitoring transfer operations.

(xiii) Tank gauging (open & closed).

(xiv) Disconnecting cargo hoses or loading arms.

(6) Stability and stress considerations when loading, discharging, and ballasting or deballasting a tankship.

(7) Loadline, draft, and trim considerations.

(8) Rules and regulations (tankship and tank barge, both international and Federal) pertaining to operational procedures and pollution prevention.

(9) Pollution prevention and control.

(10) Emergency procedures for the following:

(i) Fire.

(ii) Collision.

(iii) Equipment failure.

(iv) Groundings.

(v) Leaks and spills.

(vi) Emergency shutdown.

(11) Safety precautions relative to:

(i) Testing tank atmospheres for oxygen and hydrocarbon vapor.

(ii) Entering cargo tanks and pump room.

(iii) Dangers of skin contact.

(iv) Inhalation of vapors.

(v) Protective clothing and equipment.

(vi) Hot work procedures.

(vii) Electrical and static electricity hazards and precautions.

(12) Oil and chemical tankship and tank barge terminology.

(13) Principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS), including:

(i) Purpose.

(ii) Equipment and design.

(iii) Operations.

(iv) Safety precautions.

(v) Maintenance of plant and equipment.

(14) Tank cleaning operations, procedures, and precautions.

(15) Principles and procedures of vapor control systems, including:

(i) Purpose.

(ii) Coast Guard regulations.

(iii) System principles.

(iv) Hazards.

(v) Active system components.

(vi) Passive system components.

(vii) Operating procedures.

(viii) Emergency procedures.

(16) Cargo hazard information systems.

Tankship Liquefied Gas Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquefied gas cargoes and their vapors defined as Liquefied Gases in 46 CFR part 13.

(2) Physical phenomena of liquefied gas, including:

(i) Basic concept.

(ii) Compression and expansion.

(iii) Mechanism of heat transfer.

(3) Potential hazards of liquefied gas, including:

(i) Chemical and physical properties.

(ii) Combustion characteristics.

(iii) Hot work procedures.

(iv) Results of gas release to the atmosphere.

(v) Health hazards (skin contact, inhalation and ingestion).

(vi) Protective clothing and equipment.

(vii) Tank entry procedures and precautions.

(viii) Control of flammability range with inert gas.

(ix) Thermal stress in vessel structure and piping.

(4) Cargo systems, including:

(i) Principles of containment systems.

(ii) Tank construction, materials, coatings and insulation.

(iii) General arrangement of cargo tanks.

(iv) Venting and vapor control systems.

(5) Cargo handling systems, including:

(i) Piping systems, valves, pumps and expansion systems.

(ii) Operating characteristics.

(6) Instrumentation systems, including:

(i) Cargo level indicators.

(ii) Gas detecting systems.

(iii) Hull and cargo temperature monitoring systems.

(iv) Automatic shut down systems.

(7) Auxiliary systems, including:

(i) Ventilation, inerting.

(ii) Valves, including:

(A) Quick closing.

(B) Remote control.

(C) Pneumatic.

(D) Excess flow.

(E) Safety relief.

(F) Pressure vacuum.

(iii) Cofferdam and ballast tank heating systems.

(8) Operations connected with the loading and discharging of cargo including:

(i) Lining up the cargo and vapor control systems.

(ii)–(iii) Pre-transfer inspections and completion of the Declaration of Inspection.

(iv) Hooking up cargo hose and loading arms.

(v) Starting liquid flow.

(vi) Calculation of loading rates.

(vii) Discussion of the loading operation itself.

(viii) Ballasting and deballasting operations.

(ix) Topping off the cargo tanks.

(x) Discussion of the discharging operation itself.

(xi) Stripping the cargo tanks.

(xii) Monitoring transfer operations.

(xiii) Tank gauging.

(xiv) Disconnecting cargo hoses or loading arms.

(9) Operating procedures and sequence for the following:

(i) Inerting cargo tanks and void spaces.

(ii) Tank cool down and tank warm up.

(iii) Gas freeing.

(iv) Loaded or ballasted voyages.

(v) Testing tank atmospheres for oxygen and cargo vapor.

(10) Stability and stress considerations connected with the loading and discharging of cargo.

(11) Loadline, draft, and trim considerations.

(12) Boil-off disposal, including:

(i) System design.

(ii) Safety features.

(13) Emergency procedures for the following:

(i) Leaks and spills.

(ii) Fires.

(iii) Collisions.

(iv) Groundings.

(v) Structural failures.

(vi) Emergency cargo discharge.

(vii) Emergency shut down of cargo operations.

(viii) Emergency cargo valve closing systems.

(14) Rules and regulations (tankship and tank barge, both international and Federal) pertaining to operational procedures and pollution prevention.

(15) Pollution prevention, including:

(i) Procedures to be followed to prevent air and water pollution.

(ii) Measures to be taken in the event of spillage.

(iii) Danger from vapor cloud drift.

(16) Tankship and tank barge terminology.

(17) Principles and procedures of the inert gas system, including:

(i) Purpose.

(ii) Equipment and design.

(iii) Operations.

(iv) Safety precautions.

(v) Maintenance of plant and equipment.

(18) Principles and procedures of vapor control systems, including:

(i) Purpose.

(ii) Coast Guard regulations.

(iii) System principles.

(iv) Hazards.

(v) Active system components.

(vi) Passive system components.

(vii) Operating procedures.

(viii) Emergency procedures.

(19) Cargo Hazard information systems.

Dangerous Liquid Tankship Familiarization Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.

(2) Oil and chemical tankship terminology.

(3) General arrangement of cargo tanks, vapor control, and venting.

(4) Cargo piping systems and valves.

(5) General operation of cargo pumps.

(6) General discussion of operations connected with the loading and discharging of cargo including:

(i) Pre-transfer inspections/conference and Declaration of Inspection.

(ii) Lining up the cargo and vapor control systems and start of liquid flow.

(iii) Connecting/disconnecting cargo hose/loading arms.

(iv) Loading operations.

(v) Ballasting and deballasting operations.

(vi) Discharging operations.

(vii) Tank gauging (open & closed).

(7) Coast Guard tankship rules and regulations pertaining to operational procedures and pollution prevention.

(8) Pollution prevention and control.

(9) Emergency procedures.

(10) Safety precautions relative to:

(i) Entering cargo tanks and pump room.

(ii) Dangers of skin contact.

(iii) Inhalation of vapors.

(iv) Protective clothing and equipment.

(v) Hot work procedures.

(vi) Electrical and static electricity hazards and precautions.

(11) General principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS).

(12) Tank cleaning operations, procedures, and precautions.

(13) Principles and procedures of vapor control systems.

(14) Cargo hazard information systems.

Liquefied Gas Tankship Familiarization Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for cargoes defined in 46 CFR part 13 as Liquefied Gases.

(2) Liquefied gas tankship terminology.

(3) Physical phenomena/properties of liquefied gas.

(4) Safety precautions and potential hazards of liquefied gas, including:

(i) Combustion characteristics.

(ii) Hot work procedures.

(iii) Results of gas release to the atmosphere.

(iv) Health hazards (skin contact, inhalation and ingestion).

(v) Protective clothing and equipment.

(vi) Tank entry procedures and precautions.

(vii) Thermal stresses.

(viii) Electrical and static electricity hazards and precautions.

(5) Cargo containment systems.

(6) General arrangement and construction of cargo tanks.

(7) Cargo piping and valves.

(8) Instrumentation systems, including:

(i) Cargo level indicators.

(ii) Gas detecting systems.

(iii) Hull and cargo temperature monitoring systems.

(iv) Automatic shut down systems.

(9) Cofferdam and ballast tank heating systems.

(10) General discussion of operations connected with the loading and discharging of cargo including:

(i) Pre-transfer inspections/conference and Declaration of Inspection.

(ii) Lining up the cargo and vapor control systems and start liquid flow.

(iii) Connecting/disconnecting cargo hose/loading arms.

(iv) Loading operations.

(v) Ballasting and deballasting operations.

(vi) Discharging operations.

(11) Boil-off disposal.

(12) Emergency procedures.

(13) Coast Guard tankship rules and regulations pertaining to operational procedures and pollution prevention.

(14) Pollution prevention.

(15) Principles and procedures of inert gas systems.

(16) Tank cleaning operations and procedures.

(17) Principles and procedures of vapor control systems.

(18) Cargo hazard information systems.

Tank Barge Firefighting Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods must include actual practice in extinguishing the listed fires and may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) Fire safety.

(i) Basic elements of fire.

(A) Fire triangle.

(B) Fire classifications.

(ii) Ignition sources applicable to barge operations.

(iii) Basic flammability/combustibility definitions.

(A) Ignition point.

(B) Burning temperature.

(C) Lower flammable limit.

(D) Upper flammable limit.

(E) Flammable range.

(F) Inerting.

(G) Static electricity.

(H) Flash point.

(I) Autoignition.

(iv) Main causes of fires.

(A) Oil leakage.

(B) Smoking.

(C) Spontaneous ignition.

(D) Hot work.

(E) Reactivity.

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(F) Overheating pumps.
(v) Spread of fire.
(A) By radiation.
(B) By convection.
(C) By conduction.
(vi) Fire prevention.
(A) General.
(B) Fire hazards of DL and LG general cargo classifications as defined in 46 CFR part 13.
(C) Means for gas freeing tanks.
(vii) Firefighting equipment.
(A) Required equipment.
(B) Characteristics of available extinguishing agents.
(C) Limitations of portable and semiportable extinguishers.
(2) Emergency procedures.
(i) Initial procedures.
(A) Evacuation.
(B) Stopping leakage of product.
(ii) Basic firefighting techniques.
(A) Sounding alarm.
(B) Locating and isolating fires.
(C) Sizing up situation.
(D) Locating information on cargo.
(E) Extinguishing with portable units.
(F) Setting reflash watch.
(G) Using additional personnel.
(iii) Extinguisher use on:
(A) Flammable/combustible liquids.
(B) Manifold flange fire.
(C) Drip pan fire.
(D) Pump fire.
(iv) Fire drills for typical fires.
(c) Field exercise training shall include the use of portable extinguishers on the following fires:
(i) Electrical fire.
(ii) Manifold flange fire.
(iii) Drip pan fire.
(iv) Pump fire.

Tank Barge Dangerous Liquid Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.
(2) General arrangement of cargo tanks, vapor control, and venting.
(3) Cargo piping systems and valves, including remote control, excess flow and pressure-vacuum valves.
(4) Operation of cargo pumps.
(5) Operations connected with the loading and discharging of cargo including:
(i) Lining up the cargo and vapor control systems.
(ii) Pre-transfer inspections.
(iii) Pre-transfer conference and completion of the Declaration of Inspection.
(iv) Hooking up cargo hose and loading arms.
(v) Starting liquid flow.
(vi) Calculation of loading rates.
(vii) Discussion of the loading operation itself.
(viii) Ballasting and deballasting operations.
(ix) Topping off the cargo tanks.
(x) Discussion of the discharging operation itself.
(xi) Stripping the cargo tanks.
(xii) Monitoring transfer operations.
(xiii) Tank gauging (open & closed).
(xiv) Disconnecting cargo hoses or loading arms.
(6) Practical stress considerations when loading, discharging, and ballasting or deballasting a tank barge.
(7) Stability letter requirements.
(8) Loadline, draft, and trim considerations.
(9) Rules and regulations (tank barge, international and Federal) pertaining to operational procedures and pollution prevention.
(10) Pollution prevention and control.
(11) Emergency procedures for the following:
(i) Fire.
(ii) Collision.
(iii) Groundings.
(iv) Equipment failure.
(v) Leaks and spills.
(vi) Emergency shutdown.
(12) Safety precautions relative to:
(i) Testing tank atmospheres for oxygen and hydrocarbon vapors.
(ii) Entering cargo tanks, cofferdams and voids.
(iii) Dangers of skin contact.
(iv) Inhalation of vapors.
(v) Protective clothing and equipment.
(vi) Hot-work procedures.
(vii) Electrical and static electricity hazards and precautions.
(13) Oil and chemical tank barge terminology.
(14) Tank cleaning operations, procedures, and precautions.
(15) Cargo hazard information systems.

Tank Barge Liquefied Gas Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics and safety precautions of those liquefied gases and their vapor defined as Liquefied Gas in 46 CFR part 13.
(2) Physical phenomena of liquefied gas, including:
(i) Basic concept.
(ii) Compression and expansion.
(iii) Mechanism of heat transfer.
(3) Potential hazards of liquefied gas, including:
(i) Chemical and physical properties.
(ii) Combustion characteristics.
(iii) Hot work procedures.
(iv) Results of gas release to the atmosphere.
(v) Health hazards (skin contact, inhalation and ingestion).
(vi) Protective clothing and equipment.
(vii) Tank entry procedures and precautions.
(viii) Control of flammability range with inert gas.
(ix) Thermal stress in vessel structure and piping.
(4) Cargo systems, including:
(i) Principles of containment systems.
(ii) Tank construction, materials, coatings and insulation.
(iii) General arrangement of cargo tanks.
(iv) Venting and vapor control systems.
(5) Cargo handling systems, including:
(i) Piping systems, valves, pumps and expansion systems.
(ii) Operating characteristics.
(6) Instrumentation systems, including:
(i) Cargo level indicators.
(ii) Gas detecting systems.
(iii) Hull and cargo temperature monitoring systems.
(iv) Automatic shut down systems.
(7) Auxiliary systems, including:
(i) Ventilation, inerting.
(ii) Valves, including:
(A) Quick closing.
(B) Remote control.
(C) Pneumatic.
(D) Excess flow.
(E) Safety relief.
(F) Pressure-vacuum.
(iii) Cofferdam and ballast tank heating systems.
(8) Operations connected with the loading and discharging of cargo including:
(i) Lining up the cargo and vapor control systems.
(ii) Pre-transfer inspections.
(iii) Pre-transfer conference and completion of the Declaration of Inspection.
(iv) Hooking up cargo hose and loading arms.
(v) Starting liquid flow.
(vi) Calculation of loading rates.
(vii) Discussion of the loading operation.

(viii) Ballasting and deballasting operations.
(ix) Topping off the cargo tanks.
(x) Discussion of the discharging operation.
(xi) Stripping the cargo tanks.
(xii) Monitoring transfer operations.
(xiii) Disconnecting cargo hoses or loading arms.
(9) Practical stress considerations when loading, discharging, and ballasting or deballasting a tank barge.
(10) Stability letter requirements.
(11) Loadline, draft, and trim considerations.
(12) Boil-off disposal, including:
(i) System design.
(ii) Safety features.
(13) Operating procedures and sequence for the following:
(i) Inerting cargo tanks and void spaces.
(ii) Tank cool down and tank warm up.
(iii) Gas freeing.
(iv) Loaded or ballasted voyages.
(v) Testing tank atmospheres for oxygen and cargo vapor.
(14) Emergency procedures for the following:
(i) Leaks and spills.
(ii) Fires.
(iii) Collisions.
(iv) Groundings.
(v) Structural failures.
(vi) Emergency cargo discharge.
(vii) Entering cargo tanks.
(viii) Emergency shut down of cargo operations.
(ix) Emergency cargo valve closing systems.
(15) Rules and regulations (tank barge, international and Federal) pertaining to operational procedures and pollution prevention.
(16) Pollution prevention, including:
(i) Procedures to be followed to prevent air and water pollution.
(ii) Measures to be taken in the event of spillage.
(iii) Danger from vapor cloud drift.
(17) Tank barge terminology.
(18) Principles and procedures of vapor control systems, including:
(i) Purpose;
(ii) Coast Guard regulations.
(iii) System principles.
(iv) Hazards.
(v) Active system components.
(vi) Passive system components.
(vii) Operating procedures.
(viii) Emergency procedures.
(19) Cargo hazard information systems.

Regulatory Evaluation

The Coast Guard has evaluated this proposal under Executive Order 12291 and the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979) and has determined that it is neither a major nor a significant rulemaking. The proposed regulations serve to implement the intent of the Port and Tanker Safety Act of 1978.

A draft regulatory analysis accompanied publication of the previous NPRM concerning Tankerman in the December 18, 1980, Federal Register (45 FR 83290). The impact section of the draft regulatory analysis reviewed costs and benefits which may result from the proposed regulations.

A draft Environmental Impact Statement was developed and placed into the docket for the NPRM and remains essentially unchanged. The proposed tankerman regulations will reduce the number of incidents and volume of bulk liquid cargoes released by tankships and tank barges in United States waters. The Coast Guard estimates that the number of pollution incidents resulting from tankerman personnel errors could be reduced between 10% and 30%. The volume of pollution resulting from tankerman personnel error could be reduced between 10% and 30%. How fast this reduction occurs relates to the number of individuals obtaining training and when this training is received.

The overall effect of these regulations will be to reduce the amount of oil entering the navigable waters of the United States. The Coast Guard believes that there are no adverse environmental effects resulting from the proposed actions. So far as the Coast Guard can determine, these regulations do not involve any tradeoffs between short-term environmental gains at the expense of long-term losses or vice versa, nor are any future options foreclosed. No significant irreversible and irretrievable commitments of resources are involved in this proposed action.

It was determined that almost all of the costs resulting from the regulations would be in the area of training tankermen, a discounted cost of 38.3 million 1980 dollars for the first ten years. Several changes to the proposed rulemaking and recent regulatory changes have reduced this projected impact. A revised regulatory evaluation has been prepared and is included in the docket file.

One of the two new major training requirements proposed for tankermen in the NPRM was the firefighting training requirement. Firefighting training became a Coast Guard license qualification requirement for licensed personnel in December 1988. For 92% of the licensed personnel effected by the proposed tankerman regulations, the cost of firefighting training is a cost of being licensed, not a cost of becoming a qualified tankerman. The proposed firefighting training will mainly increase the costs for unlicensed personnel applying for the proposed tankerman endorsements.

The Maritime Administration (MARAD) has reduced its role in the operation of firefighting training courses. In 1980 MARAD operated the majority of the firefighting training courses attended by merchant marine personnel. In the last nine years private industry has begun providing a major portion of the firefighting training. MARAD now operates only one of the 17 Coast Guard approved firefighting courses, and this has reduced MARAD's costs.

The NPRM proposed that all personnel having anything to do with bulk liquid cargo or cargo equipment on tank vessels have the experience and training needed to be a person-in-charge (PIC) of a bulk liquid cargo transfer. This required an excessive amount of training and experience for those individuals in the crew supervised by the PIC or not involved in cargo transfer operations. The Coast Guard is now proposing tankerman endorsements whose experience and training requirements are directly related to the cargo responsibilities the endorsement would authorize. This will ensure applicants have the experience and training necessary to safely carry out the responsibilities of their endorsement while avoiding the excessive experience and training requirements included in the NPRM.

The SNPRM has reduced the number of people who need a tankerman endorsement and the overall amount of training required, without sacrificing safety. The Coast Guard has also dropped the NPRM's mandatory course lengths and expects this will slightly shorten the training courses. In addition, unlike the NPRM, the SNPRM does not call for tankermen to attend firefighting or bulk liquid cargo refresher training. The Coast Guard also intends to evaluate and approve company in-house training courses. These changes considerably reduced the projected training costs.

As a result of these and other changes the total cost over the first ten years has been reduced from 38.3 million 1980 dollars in the draft regulatory analysis (estimated 52 million 1988 dollars at 4% inflation) to 15.7 million 1988 dollars for the SNPRM. Therefore, this proposal is not considered to have a significant economic impact on the private or public sectors.

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Quantifiable benefits resulting from the proposed regulations will accrue from reductions in vessel casualties, reductions in personnel injuries/deaths, and reductions in pollution incidents and the associated clean up costs. Non-quantifiable benefits resulting from the proposed regulations will be improved tankerman qualifications that will be standardized nationwide and improved safety and firefighting procedures.

The draft regulatory analysis prepared for the NPRM estimated that there would be an overall reduction of 10 to 30% in tank vessel casualties, injuries and deaths, and pollution incidents.

It is the Coast Guard's view that catastrophic marine casualties resulting from tankerman errors will be more likely to result in monetary losses similar to the total loss of the SS SANSINENA, National Transportation Safety Board (NTSB) report of November 25, 1977, than the $300,000 loss resulting from the M/V VENUS casualty, NTSB report of August 16, 1974. The Coast Guard believes the proposed regulations will prevent at least one catastrophic casualty in the first ten years that the regulations are in effect, a $25.5 million savings.

The reductions in injuries and deaths brought about by the proposed regulations could be larger than the estimated overall reduction of 10 to 30%. A larger reduction in this area is possible because catastrophic casualties cause a disproportionate share of the injuries and deaths. By preventing even one of these casualties a significant reduction could be realized, on the order of 10 to 60%. Without considering the impact of a catastrophic incident, there would be an estimated six to seventeen lives saved and seven to twenty injuries prevented over the first ten years that the proposed regulations are in force. The associated hospital costs saved would be relatively insignificant.

The amount of money saved through reduced pollution incidents can only be estimated. The NPRM draft regulatory analysis estimated a savings of between $1,052,450 and $3,224,047 in 1980 dollars over the first ten years that the regulations are in effect. Over the last five years the Coast Guard Pollution Fund has averaged an annual clean up expenditure of $4,793,747. This expenditure is only for pollution cases where the Federal government has assumed control of the clean up. This cost does not reflect Coast Guard salary costs or the Coast Guard expense for monitoring third party clean up operations. The cost to the Coast Guard is only a small portion of the cost of cleaning up pollution, since the vast majority of pollution cases are cleaned up by third parties.

There has never been formalized systematic training for tankermen as a group. The qualification requirements for tankermen have been vague and not fully documented. This has resulted in a variety of qualification standards being enforced by Coast Guard regional examination centers around the country. By establishing a clear set of tankerman qualification standards and a systematic training requirement the overall quality and effectiveness of tankermen will be increased. This will increase preparedness for emergencies and the use of proper safety procedures, and result in an increase in the overall safety of liquid cargo transfer operations.

Several alternatives to the proposed regulations, discussed in the NPRM, were considered and the alternative selected is considered the least burdensome and most effective. This alternative meets the various legislative requirements for more stringent and comprehensive standards regarding tankerman imposed by the Port and Tanker Safety Act of 1978 with a minimal disruption in the operation of the United States Merchant Marine.

In accordance with 5 U.S.C. 605(b), the Coast Guard certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The cost for training qualified tankerman is related to the number of tankermen used, which is in turn related to size of the operation a business conducts.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in 46 CFR sections 13.113 , 13.115, 13.117, 13.121, 13.201, 13.301, 13.401, and 13.501. With the exception of the requirement to submit a course completion certificate from a firefighting, a tankship familiarization, and/or a liquid cargo training course, the proposed rule contains no new information collection requirements when applying for a tankerman endorsement.

The information collection requirements are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The control numbers listed in 46 CFR 13.105 are control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) for similar reporting and record keeping requirements. These numbers will be revised as needed in the final rule when the information collection requirements have been approved by OMB.

The new collection requirements will only affect applicants for tankerman endorsements in that they must provide a certificate as evidence of training. The certificate will be supplied by the training facility which provides the course(s). The time required to comply with this requirement is inconsequential.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 155

Environmental protection, Oil pollution, Vessels, Water pollution control.

46 CFR Part 12

Seamen.

46 CFR Part 13

Seamen, Tank vessels, Barges.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 30

Administrative practice and procedure, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels, Barges.

46 CFR Part 31

Marine safety, Tank vessels, Barges, Law enforcement, Flammable materials.

46 CFR Part 35

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seamen.

46 CFR Part 78

Passenger vessels, Marine safety, Foreign trade, Treaties.

46 CFR Part 90

Cargo vessels, Marine safety, Administrative practice and procedure, Authority delegation.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum.

46 CFR Part 151

Hazardous materials transportation, Marine safety, Flammable material, Tank vessels, Barges.

46 CFR Part 153

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 154

Hazardous materials transportation, Marine safety, Tank vessels.

In consideration of the foregoing the Coast Guard proposes to amend part 155 to title 33, Code of Federal Regulations and parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154 to title 46, Code of Federal Regulations as set forth below:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

SUBCHAPTER O—POLLUTION

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b); E.O. 11735; 49 CFR 1.46(m), unless otherwise noted.

2–3. Section 155.700 is revised to read as follows:

§ 155.700 Designation of person-in-charge.

The operator or agent of each vessel that has a capacity for 250 or more barrels of oil or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e), shall designate the person-in-charge of each transfer operation. Prior to conducting tank cleaning operations on vessels with residues of these products, the operator or agent of each vessel shall designate the person-in-charge of the tank cleaning operation.

4. Section 155.710 is revised to read as follows:

§ 155.710 Qualifications of person-in-charge.

(a) On a tankship documented under the laws of the United States, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tankship to safely conduct a transfer operation;

(ii) Except on tankships not certificated for voyages beyond the Boundary Line, holds a license issued under 46 CFR part 10 authorizing service as a licensed officer aboard that tankship; and

(iii) Holds a "Tankerman-PIC" endorsement issued under 46 CFR part 13 which authorizes the holder to supervise the handling and transfer of the particular cargo involved.

(2) Of a cargo tank cleaning operation meets paragraph (a)(1) of this section, except:

(i) A Coast Guard license is not required; and

(ii) If the tankship is at a tank cleaning facility or shipyard, the individual may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" endorsement.

(b) On a tank barge required to be inspected under 46 U.S.C. 3703, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tank barge to safely conduct a transfer operation; and

(ii) Holds a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement issued under 46 CFR part 13 which authorizes the holder to supervise the handling and transfer of the particular cargo involved.

(2) Of a cargo tank cleaning operation meets paragraph (b)(1) of this section, except if the tank barge is at a tank cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement.

(c) On a foreign tankship, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge of a bulk liquid cargo transfer or cargo tank cleaning operation:

(1) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tankship to safely conduct a transfer operation;

(2) Holds a license or other documentation, issued by the vessel's flag state or its authorized agent, authorizing service as master, mate, engineer, or operator on that vessel;

(3) Holds a document acceptable to the Coast Guard attesting to the holder's qualifications to act as a person-in-charge of an oil, chemical or liquefied gas transfer or cargo tank cleaning operation, as appropriate to the cargo; and

(4) Is capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations. An interpreter may be used to meet this requirement if the interpreter is immediately available to the person-in-charge at all times during the cargo transfer operation.

(d) On a foreign tank barge, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge of a bulk liquid cargo transfer or cargo tank cleaning operation:

(1) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tank barge to safely conduct a transfer operation;

(2) Holds a document acceptable to the Coast Guard issued by the vessel's flag state or its authorized agent attesting to the holder's qualifications to act as a person-in-charge of an oil, chemical or liquefied gas transfer or cargo tank cleaning operation, as appropriate to the cargo; and

(3) Is capable of clearly understanding and speaking, in English, all instructions

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needed to commence, conduct, and terminate cargo transfer operations. An interpreter may be used to meet this requirement if the interpreter is immediately available to the person-in-charge at all times during the cargo transfer operation.

(e) The vessel operator or agent of each vessel to which this section applies shall verify to his or her satisfaction that an individual designated as a person-in-charge of a fuel oil transfer operation:

(1) On a vessel required by 46 CFR chapter I to have a licensed officer on board, holds a valid license issued under 46 CFR part 10 as a master, mate, pilot, engineer, or operator authorizing service as a licensed officer or operator aboard that vessel.

(2) On an uninspected vessel of 100 or more gross tons, must have been instructed in his or her duties and the Federal Water Pollution laws and regulations that apply to the vessel by the individual in charge of the vessel.

(f) On non-tank vessels, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) For cargo of grades D or E, holds a valid license issued under 46 CFR part 10 as a master, mate, pilot, engineer, or operator authorizing service as a licensed officer or operator aboard that vessel. A "Tankerman-PIC" endorsement is not required; or

(ii) For cargo of grades C and above, cargoes regulated under 46 CFR part 153, or liquefied gases, holds a "Tankerman-PIC" endorsement for the classification of cargo carried.

(2) Of a cargo tank cleaning operation, meets paragraph (f)(1) of this section, but if vessel is at a tank cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of the requirements of paragraph (f)(1) of this section.

TITLE 46—SHIPPING

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 12—CERTIFICATION OF SEAMEN

5. The authority citation for part 12 continues to read as follows:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

§ 12.01-5 [Amended]

6.–7. Paragraph (d) of § 12.01–5 is removed.

§§ 12.20-1 through 12.20-5 (Subpart 12.20) [Removed]

8. Subpart 12.20, consisting of § 12.20–1 through § 12.20–5, is removed.

9. Part 13 is added to read as follows:

PART 13—CERTIFICATION OF TANKERMEN

Subpart A—General

Sec.

13.101 Purpose.
13.103 Definitions.
13.105 Paperwork approval.
13.107 Tankerman endorsements.
13.109 Tankerman endorsements: authorized cargoes.
13.111 Restricted endorsements.
13.113 Tankerman certificated under prior regulations.
13.115 Licensed engineers with service on tankships prior to [*Insert Effective Date*].
13.117 Personnel with service on tankships prior to [*Insert Effective Date*].
13.119 Expiration date.
13.121 Tankerman training courses.
13.123 Recency of service.
13.125 Physical requirements.

Subpart B—Requirements for "Tankerman-PIC" Endorsements

13.201 Original application for "Tankerman-PIC" endorsements.
13.203 Eligibility requirements: service.
13.205 Documentation of service for "Tankerman-PIC" endorsements.
13.207 Eligibility requirements: firefighting training.
13.209 Eligibility requirements: cargo training.

Subpart C—Requirements for "Tankerman-PIC (Barge)" Endorsements

13.301 Original application for "Tankerman-PIC (Barge)" endorsements.
13.303 Eligibility requirements: service.
13.305 Documentation of service for "Tankerman-PIC (Barge)" endorsements.
13.307 Eligibility requirements: firefighting training.
13.309 Eligibility requirements: cargo training or examination.
13.311 "Competent person" requirements for restricted "Tankerman-PIC (Barge)" endorsements.

Subpart D—Requirements for "Tankerman-Assistant" Endorsements

13.401 Original application for "Tankerman-Assistant" endorsements.
13.403 Eligibility requirements: service.
13.405 Documentation of service for "Tankerman-Assistant" endorsements.
13.407 Eligibility requirements: firefighting training.
13.409 Eligibility requirements: cargo training.

Subpart E—Requirements for "Tankerman-Engineer" Endorsements

13.501 Original application for "Tankerman-Engineer" endorsements.
13.503 Eligibility requirements: service.
13.505 Documentation of service for "Tankerman-Engineer" endorsements.
13.507 Eligibility requirements: firefighting training.
13.509 Eligibility requirements: cargo training.

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; 49 CFR 1.46.

Subpart A—General

§ 13.101 Purpose.

This part describes the various tankerman endorsements that are issued by the Coast Guard and prescribes the requirements for obtaining a "Tankerman-Assistant," "Tankerman-PIC," "Tankerman-PIC (Barge)," or "Tankerman-Engineer" endorsement on a merchant mariner's document.

§ 13.103 Definitions.

As used in this part:

"Bulk liquid cargo" means a liquid or liquefied gas listed in 46 CFR 153.40 carried as liquid cargo or cargo residue in integral or fixed tanks.

"Cargo engineer" means an individual on a liquefied gas tankship whose primary responsibility is maintaining the cargo system and equipment.

"Competent person" means a person designated a "competent person" in accordance with 29 CFR 1915.7.

"Dangerous Liquid" or "DL" means a liquid listed in 46 CFR 153.40 that is not a liquefied gas as defined in this part. Bulk liquid cargoes in 46 CFR Part 153 Table 2 are not considered Dangerous Liquid cargoes when carried by non-oceangoing barges.

"Equivalent transfers" means transfer experience gained in a liquid cargo training course that uses simulation training that can be used to meet a portion of the tankerman transfer service required by § 13.203 or § 13.303.

"Liquefied Gas" or "LG" means a cargo having a vapor pressure of 172 kPa (25 psia) or more at 37.8 °C (100 °F).

"MMD" is an abbreviation for merchant mariner's document.

"Participation" when used with regard to gaining the tankerman transfer service required by § 13.203 or § 13.303, means a person has participated in the transfer operation or has closely observed how the transfer operation is conducted and supervised.

"PIC" is an abbreviation for person-in-charge.

"Tank barge" means a non-self-propelled tank vessel.

"Tank vessel" means a vessel especially constructed or converted to carry liquid bulk cargo in tanks.

"Tankerman-Assistant" means a person holding a valid "Tankerman-Assistant" endorsement to their Coast Guard issued MMD.

"Tankerman-Engineer" means a person holding a valid "Tankerman-Engineer" endorsement to their Coast Guard issued MMD.

"Tankerman-PIC" means a person holding a valid "Tankerman-PIC" endorsement to their Coast Guard issued MMD.

"Tankerman-PIC (Barge)" means a person holding a valid "Tankerman-PIC (Barge)" endorsement to their Coast Guard issued MMD.

"Tankship" means any tank vessel propelled by power or sail.

"Work shift" means a period of at least four hours during which an individual participates in a liquid cargo transfer operation.

§ 13.105 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for the reporting and record keeping requirements in this part.

(b) The following control numbers have been assigned to the sections indicated:

(1) OMB 2115–0514—46 CFR 13.113, 13.115, 13.117, 13.201, 13.203, 13.205, 13.301, 13.303, 13.305, 13.401, 13.403, 13.405, 13.501, 13.503, 13.505

(2) OMB 2115–0111—46 CFR 13.113, 13.121, 13.207, 13.209, 13.307, 13.309, 13.407, 13.409, 13.507, 13.509.

§ 13.107 Tankerman endorsements.

(a) If an applicant meets the requirements of Subpart B of this Part, the applicant's MMD is endorsed as "Tankerman-PIC" with the appropriate cargo classification(s). A person with this endorsement and meeting the other requirements of 33 CFR 710 may be the person-in-charge of liquid cargo transfer operations on tankships or tank barges.

(b) If an applicant meets the requirements of subpart C of this part, the applicant's MMD is endorsed as "Tankerman-PIC (Barge)" with the appropriate cargo classification(s). A person with this endorsement may be a person-in-charge of liquid cargo transfer operations only on tank barges.

(c) If an applicant meets the requirements of subpart D of this part, the applicant's MMD is endorsed as "Tankerman-Assistant" with the appropriate cargo classification(s). A "Tankerman-Assistant" is not authorized to be in charge of liquid cargo transfer operations. A "Tankerman-Assistant" may, however, perform cargo and cargo equipment duties assigned by the person-in-charge of liquid cargo transfer operations without being under the PIC's direct supervision.

(d) If an applicant meets the requirements of subpart E of this part, the applicant's MMD is endorsed as "Tankerman-Engineer." A "Tankerman-Engineer" is not authorized to be in charge of liquid cargo transfer operations on tank vessels. An individual with this endorsement may serve as a chief engineer, first assistant engineer or cargo engineer on board a tankship when bulk liquid cargo or cargo residue is carried, if the person holds the appropriate Coast Guard license issued under 46 CFR part 10 required for the position.

(e) A tankerman wishing to qualify for a tankerman endorsement that he does not currently hold must make application at a regional examination center (REC) listed in 46 CFR 10.105. If the applicant satisfies all requirements for the new endorsement, a new MMD will be issued including the desired tankerman endorsement.

§ 13.109 Tankerman endorsements: authorized cargoes.

(a) Each tankerman endorsement described in § 13.107 will expressly limit the holder's service under that endorsement to transfers involving one or both of the following cargo classifications:

(1) Dangerous Liquids (DL).

(2) Liquefied Gas (LG).

(b) No tankerman endorsement is required to handle or transfer the bulk liquid cargoes listed in 46 CFR Part 153 Table 2 when those cargoes are carried on non-oceangoing barges.

(c) A tankerman qualified in one cargo classification wishing to qualify for an additional cargo classification must make application at a regional examination center (REC) listed in 46 CFR 10.105. If the applicant satisfies all requirements for the cargo classification desired, a new MMD will be issued with the appropriate endorsement.

§ 13.111 Restricted endorsements.

Applicants for tankerman endorsements may apply for endorsements that are restricted to specific cargoes or groups of cargoes, specific vessels, specific transfer facilities, specific employers, etc. The Officer in Charge Marine Inspection (OCMI) will evaluate these applications, and may reduce the applicable requirements for the endorsement, making allowance for special circumstances and the limitations that will be placed in the endorsement. The specific requirements for a restricted endorsement for a "competent person" are contained in § 13.311.

§ 13.113 Tankerman certificated under prior regulations.

(a) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46 CFR part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may continue to serve as a PIC under the "Tankerman" endorsement or previous transfer authority authorized by the individual's license until [*Insert the date five years after the Effective Date*].

(b) Personnel qualifying under paragraph (a) of this section may act as "Tankerman-Assistant," "Tankerman-PIC," or "Tankerman-PIC (Barge)," as appropriate, during the five year transition period that ends [*Insert the date five years after the Effective Date*] as follows:

(1) Personnel with an existing tankerman endorsement may act as a "Tankerman-Assistant" or "Tankerman-PIC (Barge)" for the cargoes on the endorsement. If a person with an existing tankerman endorsement applies for some non-tankerman endorsement that requires the issuance of a new MMD the existing endorsement will be retained.

(2) A licensed individual qualifying under paragraph (a) of this section and not having an MMD with a new tankerman endorsement may act as a "Tankerman-Assistant" or "Tankerman-PIC" if they can produce a service letter documenting their qualifying service as required in paragraph (c) of this section.

(3) Personnel who have been the person-in-charge for the transfer of Subchapter O bulk liquid cargoes which did not require a tankerman document because the cargoes were non-flammable and/or non-combustible liquids may act as a "Tankerman-PIC (Barge)" if they can produce a service letter documenting their qualifying service as required in paragraph (d) of this section.

(4) Competent persons shall obtain a new tankerman endorsement prior to [*Insert the date six months after the Effective Date*].

(5) Individuals who cannot obtain a service letter to document their qualifying service may submit relevant documentation to an REC for evaluation. If the OCMI determines that the individual does qualify under paragraph (a) of this section, the OCMI will issue a letter of acknowledgment as a substitute for a letter of service.

(c) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46

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CFR part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-PIC" endorsement under this Subpart.

(1) To qualify for a "Tankerman-PIC" endorsement, the applicant must meet the following training and service requirements:

(i) Present a certificate of completion from a Coast Guard approved shipboard firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the shipboard firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the basic shipboard firefighting training requirements of International Maritime Organization (IMO) Resolution A.437 (XI) "Training of Crews in Fire Fighting";

(ii) Present a certificate of completion from a Coast Guard approved liquid cargo training course, appropriate to the desired endorsement. Completion of a course up to ten years prior to [*Insert Effective Date*] may be accepted as meeting this liquid cargo training course requirement if the Coast Guard finds that the course is in substantial compliance with the course guidelines established by the Coast Guard as the basis for approval of a Tankship Dangerous Liquid Cargo Training Course or a Tankship Liquefied Gas Cargo Training Course as appropriate for the cargo classification applied for; and

(iii) Present evidence of service as follows:

(A) Present a letter of service on company letterhead documenting:

(*1*) That the applicant acted as the person-in-charge of bulk liquid cargo transfer operations on tankships prior to [*Insert Effective Date*] and has done so within three years of the date of application;

(*2*) The applicant's tankship service;

(*3*) The applicant's transfer experience; and

(*4*) The cargo classification, DL and/or LG, and grades handled.

(B) Applicants who wish to present evidence of service in the form of discharges from tankships rather than a letter of service from a company must:

(*1*) Present discharges totaling at least 30 days of service as master or chief mate prior to [*Insert Effective Date*]. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis; and

(*2*) Present at least one discharge from a tankship where the discharge date is within three years of the date of application.

(*2*) To qualify for a DL cargo endorsement an applicant must have been a person-in-charge of a DL cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tankships certificated to carry DL cargoes.

(3) To qualify for an LG cargo endorsement an applicant must have been a person-in-charge of an LG cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tankships certificated to carry LG cargoes.

(4) Applicants seeking a "Tankerman-PIC" endorsement restricted, based on the individual's cargo handling experience, to the cargo grades that they have handled must meet all the requirements of paragraphs (c)(1) through (c)(3) of this section except the liquid cargo training course requirements.

(d) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46 CFR Part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-PIC (Barge)" endorsement under this Subpart.

(1) To qualify for a "Tankerman-PIC (Barge)" endorsement, the applicant must meet the following training and service requirements:

(i) Present evidence of firefighting training in the form of:

(A) A certificate of completion from a Coast Guard approved shipboard firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the shipboard firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the basic shipboard firefighting training requirements of IMO Resolution A.437 (XI) "Training of Crews in Fire Fighting";

(B) A certificate of completion from a Coast Guard approved tank barge firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the tank barge firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the requirements of the tank barge firefighting training course guidelines established by the Coast Guard; or

(C) A letter on company letterhead certifying that the applicant has received flammability hazard awareness and firefighting training in the form of a training program, lecture, or seminar which also included hands-on firefighting training;

(ii) Present a certificate of completion from a Coast Guard approved liquid cargo training course, appropriate to the desired endorsement. Completion of a course up to ten years prior to [*Insert Effective Date*]) may be accepted as meeting this liquid cargo training course requirement if the Coast Guard finds that the course is in substantial compliance with the course guidelines established by the Coast Guard as the basis for approval of a Tankship or Tank Barge Dangerous Liquid Cargo Training course or a Tankship or Tank Barge Liquefied Gas Cargo Training course as appropriate for the cargo classification applied for; and

(iii) Present a letter of service on company letterhead documenting:

(A) That the applicant acted as the person-in-charge of bulk liquid cargo transfer operations on tank vessels prior to [*Insert Effective Date*] and has done so within three years of the date of application;

(B) The applicant's tank vessel service;

(C) The applicant's transfer experience; and

(D) The cargo classification, DL and/or LG, and grades handled.

(2) To qualify for a DL cargo endorsement an applicant must have been a person-in-charge of a DL cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tank vessels certificated to carry DL cargoes. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis.

(3) To qualify for an LG cargo endorsement an applicant must have been a person-in-charge of an LG cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tank vessels certificated to carry LG cargoes. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis.

(4) Applicants seeking a "Tankerman-PIC (Barge)" endorsement restricted, based on the individual's cargo handling experience, to the cargo grades that they have handled must meet all the requirements of paragraphs (d)(1) through (3) of this section except the liquid cargo training course requirements.

§ 13.115 Licensed engineers with service on tankships prior to [Insert Effective Date].

(a) A person who has service as chief, first assistant, or cargo engineer on tankships before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-Engineer" endorsement under this Subpart if the applicant:

(1) Presents a letter of service on company letterhead documenting:

(i) That the applicant served as a chief, first assistant, or cargo engineer on a tankship prior to [*Insert Effective Date*];

(ii) The cargo classifications, DL and/or LG, and cargo grades carried by the vessels; and

(iii) That the applicant has served as an engineer on a tankship within three years of the date of application. The applicant may use a certificate of discharge to meet this requirement; or

(2) Presents discharges from tankships:

(i) Totaling 30 days of service as chief, first assistant, or cargo engineer prior to [*Insert Effective Date*]; and

(ii) At least one discharge for service as an engineer on tankships where the discharge date is within three years of the date of application.

(b) To qualify for a DL cargo endorsement, the applicant must document at least 30 days service as a chief or first assistant engineer on tank vessels certificated to carry DL cargoes.

(c) To qualify for an LG cargo endorsement, the applicant must document at least 30 days service as a chief, first assistant, or cargo engineer on tank vessels certificated to carry LG cargoes.

§ 13.117 Personnel with service on tankships prior to [Insert Effective Date].

(a) A person who has deck service on tankships before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-Assistant" endorsement under this subpart if the applicant discharges from tankships totaling at least 30 days of deck service prior to [*Insert Effective Date*] with at least one discharge for deck service on a tankship where the discharge date is within three years of the date of application.

(b) To qualify for a DL endorsement, the applicant must document at least 30 days deck service on tankships certificated to carry DL cargoes.

(c) To qualify for an LG endorsement, the applicant must document at least 30 days deck service on tankships certificated to carry LG cargoes.

§ 13.119 Expiration date.

A tankerman endorsement on a merchant mariner's document does not expire.

§ 13.121 Tankerman training courses.

(a) This section prescribes the requirements, in addition to those contained in 46 CFR 10.302 and 10.303, applicable to organizations offering courses required for a tankerman endorsement or courses that are a substitute for the service required for such an endorsement.

(b) Upon satisfactory completion of an approved course of instruction, students shall receive a certificate, signed by the head of the organization or a designated representative, in a form approved by the Commandant, indicating the title of the course, its duration, and any credit allowed towards meeting the transfer service requirements of this part.

(c) Liquid cargo training and tankship familiarization training courses that use simulation or other equivalent training techniques which allow students to be trained in, and practice, tank vessel loading and discharge transfer operations will be evaluated to determine whether this training may be substituted for any of the transfers required for a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement. The Coast Guard course approval letter will state the number and type of equivalent transfers to be granted to an applicant upon successful completion of a particular training course.

§ 13.123 Recency of service.

Except for applicants under § 13.113, an applicant for any tankerman endorsement must have at least 25% of the required qualifying service and at least two of the qualifying transfers, if the endorsement requires transfer experience, required by the applicable sections of this Part within the three years immediately preceding the date of application.

§ 13.125 Physical requirements.

(a) All applicants for an original tankerman endorsement must pass an examination given by a licensed physician or a licensed physician assistant and present to the OCMI a completed Coast Guard physical examination form, or the equivalent, executed by the physician. This form must provide information on the applicant's acuity of vision, color sense, and general physical condition. This examination must have been completed prior to submission of the application and not more than 12 months prior to issuance of the endorsement.

(b) The applicant must have correctable vision to at least 20/50 in each eye and uncorrected vision of at least 20/200 in each eye, and the ability to distinguish the colors of red, green, blue, and yellow.

(c) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician or physician's assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the OCMI, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/50.

Subpart B—Requirements for "Tankerman-PIC" Endorsements

§ 13.201 Original application for "Tankerman-PIC" endorsements.

To qualify for a "Tankerman-PIC" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.203;

(e) Meet the shipboard firefighting training course requirements in § 13.207;

(f) Meet the liquid cargo training course requirements in § 13.209; and

(g) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.203 Eligibility requirements: service.

Each applicant for a "Tankerman-PIC" DL or LG endorsement must:

(a) Present evidence of the following service:

(1) At least 30 days of licensed deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for;

(2) At least 60 days of unlicensed deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(3) A mixture of licensed and unlicensed deck service, which is the equivalent of at least 30 days of licensed

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deck service, wherein the unlicensed service may count as licensed service on a two for one basis; and

(b) Present evidence of participation, under the supervision of a "Tankerman-PIC," in at least ten bulk liquid cargo transfer operations of the cargo classification desired on tankships, including:

(1) At least five loading transfer operations and five discharge transfer operations;

(2) At least one loading transfer operation commencement and one loading transfer operation completion; and

(3) At least one discharge transfer operation commencement and one discharge transfer operation completion.

(c) If the applicant already has a "Tankerman-PIC" DL or LG endorsement and is applying for the other cargo classification endorsement, that individual must:

(1) Provide only half the evidence of service required in paragraph (a) of this section; and

(2) Meet the requirements of paragraph (b) of this section except that the applicant need only provide evidence of three loading and three discharge transfer operations.

§ 13.205 Documentation of service for "Tankerman-PIC" endorsements.

(a) Service must be documented by a letter from the owner, operator, or master of the vessel on which the service was obtained. The letter must specify:

(1) The grades of cargo (DL, LG, or specific products for a restricted endorsement) handled while the applicant accumulated the service;

(2) The number and types of transfer operations that the applicant has participated in, and the number of such operations which involved the commencement or completion of the transfer.

(3) That the applicant has demonstrated to the satisfaction of the signer that they are fully capable of supervising liquid cargo transfer operations including:

(i) Pre-transfer inspections;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading arms;

(iv) Line up of the cargo system for loading and discharging;

(v) Start of liquid flow during loading;

(vi) Cargo pump startup and increase to full pressure for a discharge operation;

(vii) Calculation of loading rates;

(viii) Monitoring cargo transfer operations;

(ix) Topping off the cargo tanks during loading;

(x) Stripping out the cargo tanks;

(xi) Ballasting and deballasting, if appropriate; and

(xii) Disconnecting the cargo hoses or loading arms upon completion of the transfer.

(b) For the purpose of evaluating the transfer service requirements of § 13.203(b) of this subpart:

(1) A transfer must involve the loading or discharge of at least one of the vessel's tanks to or from a shore facility or another vessel. An internal transfer of cargo from one tank to another is not a transfer for purposes of meeting the transfer service requirements for a "Tankerman-PIC" endorsement.

(2) A 4-hour work shift must be worked to obtain credit for a transfer operation. If, during the course of a single transfer operation, a person stands more than one 4-hour work shift, they will only receive credit for one transfer operation.

(3) If, during the course of a single transfer operation, a person stands more than one 4-hour work shift and participates in the commencement and the completion of the operation, they will receive credit for one commencement and one completion.

(4) If different products are being loaded or discharged at the same time, a person will only receive credit for one transfer operation.

(5) If different products are being loaded and discharged at the same time, a person will receive credit for one loading transfer operation and one discharging transfer operation.

(6) Credit for a partial 4-hour work shift is received only if the shift includes either the hooking up and commencement of transfer or the completion of transfer and disconnecting.

(7) Credit for a loading transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of the cargo system for the transfer, the start of liquid flow, and the calculation of the loading rate(s).

(8) Credit for a discharge transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of cargo system for the transfer, the cargo pump start up and increase to the normal discharge pressure, and the calculation of the discharge rate(s).

(9) Credit for a transfer operation completion is received only if the person participates in the topping off operation in the loading port, or the stripping of cargo tanks and commencement of ballasting, if required by the vessel's transfer procedures, in the discharge port.

(c) Applicants may present certificates of completion from a Coast Guard approved tankship liquid cargo training or tankship familiarization course that indicate that the training was equivalent to a specified number and type of transfers. These equivalent transfers will be counted for purposes of meeting the tankerman transfer service requirements of this section. An applicant may not use equivalent transfers to meet the entire transfer service requirements. At least one loading transfer and one discharging transfer must have been obtained on-board a tankship.

(d) Letters attesting to only part of the applicant's total service requirements under § 13.203 of this subpart must state the grades of cargo handled, how many of the different types of transfers the applicant participated in, and the number of such operations which involved the commencement or completion of the transfer. If the applicant demonstrated any of the skills required in paragraph (a)(3) of this section, this must be documented in the letter.

§ 13.207 Eligibility requirements; firefighting training.

To be eligible for a "Tankerman-PIC" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-PIC" endorsement, unless a certificate of completion for one of these courses has been previously submitted for a license or tankerman endorsement; or

(b) Present a certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting course under § 13.302 of this subchapter.

§ 13.209 Eligibility requirements; cargo training.

(a) To be eligible for an original "Tankerman-PIC–DL" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships for DL cargoes within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this subchapter.

(b) To be eligible for an original "Tankerman-PIC–LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships for LG cargoes as defined by this Part within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course under § 10.302 of this subchapter.

Subpart C—Requirements for "Tankerman-PIC (Barge)" Endorsements

§ 13.301 Original application for "Tankerman-PIC (Barge)" endorsements.

To qualify for a "Tankerman-PIC (Barge)" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tank barges in accordance with § 13.303;

(e) Meet the shipboard firefighting training course requirements in § 13.307;

(f) Meet the liquid cargo training course requirements in § 13.309 of this Subpart or successfully pass a Coast Guard examination on the knowledge and skills needed to be a "Tankerman-PIC (Barge)"; and

(g) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.303 Eligibility requirements; service.

An applicant for a "Tankerman-PIC (Barge)" DL or LG endorsement must:

(a) Present evidence of the following service:

(1) At least six months service on tankships or tank barges certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(2) At least 60 days service on tankships or tank barges certificated to carry DL or LG cargoes as appropriate for the endorsement applied for and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.309; and

(b) Present evidence of participation, under the supervision of a "Tankerman-PIC" or "Tankerman-PIC (Barge)", in at least ten bulk liquid cargo transfer operations of the cargo classification desired on tankships or tank barges, including:

(1) At least five loading transfer operations and five discharge transfer operations;

(2) At least one loading transfer operation commencement and one loading transfer operation completion; and

(3) At least one discharge transfer operation commencement and one discharge transfer operation completion.

(c) If the applicant already has a "Tankerman-PIC (Barge)" DL or LG endorsement and is applying for the other cargo classification endorsement, that individual must:

(1) Provide only half the evidence of service required in paragraph (a) of this section; and

(2) Meet the requirements of paragraph (b) of this section except that the applicant need only provide evidence of three loading and three discharge transfer operations.

§ 13.305 Documentation of service for "Tankerman-PIC (Barge)" endorsements.

(a) Service must be documented by a letter from a terminal owner or operator; a tank barge owner or operator; a tankering services employer; or the owner, operator, or master of a tankship on which the service was obtained. The letter must specify:

(1) The grades of cargo (DL, LG, or specific products for a restricted endorsement) handled while the applicant accumulated the service;

(2) The number and types of transfer operations that the applicant has participated in, and the number of such operations which involved the commencement or completion of the transfer.

(3) That the applicant has demonstrated to the satisfaction of the signer that they are fully capable of supervising liquid cargo transfer operations including:

(i) Pre-transfer inspections;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading arms;

(iv) Line up of the cargo system for loading and discharging;

(v) Start of liquid flow during loading;

(vi) Cargo pump start up and increase to full pressure for a discharge operation;

(vii) Calculation of loading rates;

(viii) Monitoring cargo transfer operations;

(ix) Topping off the cargo tanks during loading;

(x) Stripping out the cargo tanks;

(xi) Ballasting and deballasting, if appropriate; and

(xii) Disconnecting the cargo hoses or loading arms upon completion of the transfer.

(b) For the purpose of evaluating the transfer service requirements of § 13.303(b) of this subpart:

(1) A transfer must involve the loading or discharge of at least one of the vessel's tanks to or from a shore facility or another vessel. An internal transfer of cargo from one tank to another is not a transfer for purposes of meeting the transfer service requirements for a "Tankerman-PIC (Barge)" endorsement.

(2) A 4-hour work shift must be worked to obtain credit for a transfer operation. If, during the course of a single transfer operation, a person stands more than one 4-hour work shift, they will only receive credit for one transfer operation.

(3) If, during the course of a single transfer operation, a person stands more than one 4-hour work shift and participates in the commencement and the completion of the operation, they will receive credit for one commencement and one completion.

(4) If different products are being loaded or discharged at the same time, a person will only receive credit for one transfer operation.

(5) If different products are being loaded and discharged at the same time, a person will receive credit for one loading transfer operation and one discharging transfer operation.

(6) Credit for a partial 4-hour work shift is received only if the shift includes either the hooking up and commencement of transfer or the completion of transfer and disconnecting.

(7) Credit for a loading transfer operation commencement is received

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only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of the cargo system for the transfer, the start of liquid flow, and the calculation of the loading rate(s).

(8) Credit for a discharge transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of cargo system for the transfer, the cargo pump start up and increase to the normal discharge pressure, and the calculation of the discharge rate(s).

(9) Credit for a transfer operation is received only if the person participates in the topping off operation in the loading port, or the stripping of cargo tanks and commencement of ballasting, if required by the vessel's transfer procedures, in the discharge port.

(c) Applicants may present certificates of completion from a Coast Guard approved tankship or tank barge liquid cargo training course, or a tankship familiarization training course that indicate that the training was equivalent to a specified number and type of transfers. These equivalent transfers will be counted for purposes of meeting the tankerman transfer service requirements of this section. An applicant may not use equivalent transfers to meet the entire transfer service requirements. At least one loading transfer and one discharging transfer must have been obtained on-board a tankship or tank barge.

(d) Letters attesting to only part of the applicant's total service requirements under § 13.303 must state the grades of cargo handled, how many of the different types of transfers the applicant participated in, and the number of such operations which involved the commencement or completion of the transfer. If the applicant demonstrated any of the skills required in paragraph (a)(3) of this section, this must be documented in the letter.

§ 13.307 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-PIC (Barge)" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-PIC (Barge)" endorsement, unless a certificate of completion for one of these courses has been submitted for a previous license or tankerman endorsement;

(b) Present a certificate of completion from a Coast Guard approved tank barge firefighting training course, completed within five years of the date of application for the "Tankerman-PIC (Barge)" endorsement, unless a certificate of completion for this course has been submitted for a previous tankerman endorsement; or

(c) Present a certificate of completion from a marine firefighting training course or tank barge firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course or tank barge firefighting training course guidelines established by the Coast Guard as the basis for approval of a tank barge firefighting course under § 10.302 of this subchapter.

§ 13.309 Eligibility requirements: cargo training or examination.

(a) To be eligible for an original "Tankerman-PIC (Barge)–DL" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships or tank barges for DL cargoes as defined in this part within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship or tank barge DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this subchapter; or

(3) Pass a Coast Guard examination for "Tankerman-PIC (Barge)."

(b) To be eligible for an original "Tankerman-PIC (Barge)–LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships or tank barges for LG cargoes as defined by this part within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship or tank barge LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course number § 10.302 of this subchapter.

§ 13.311 "Competent person" requirements for restricted "Tankerman-PIC (Barge)" endorsements.

(a) For a person designated as a "competent person" by the operator of a tank cleaning facility to qualify for a restricted "Tankerman-PIC (Barge)" endorsement, the applicant must:

(1) Meet the age and physical requirements in § 13.301; and

(2) Present evidence in the form of a letter from the operator of the facility on company letterhead stating that the person is a "competent person" for the facility and has the knowledge necessary to supervise tank cleaning and gas freeing operations.

(b) The restricted "Tankerman-PIC (Barge)" endorsement on a competent person's MMD is only valid while the individual is employed by the operator of the facility that provided the letter of service required in paragraph (a) of this section and this and any other appropriate restrictions will be included in the endorsement.

Subpart D—Requirements for "Tankerman-Assistant" Endorsements

§ 13.401 Original application for "Tankerman-Assistant" endorsements.

To qualify for a "Tankerman-Assistant" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Meet the shipboard firefighting training course requirements in § 13.407;

(e) Document experience or training as follows:

(1) Present evidence of service on tankships in accordance with § 13.403; or

(2) Meet the training course requirements in § 13.409; and

(f) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.403 Eligibility requirements; service.

(a) An applicant for a "Tankerman-Assistant" endorsement must:

(1) Present evidence of at at least 90 days deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(2) Present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.409.

(b) Applicants who already have a "Tankerman-Assistant" DL or LG endorsement and are applying for the other cargo classification endorsement must provide only half the evidence of service required in paragraph (a)(1) of this section.

§ 13.405 Documentation of service for the "Tankerman-Assistant" endorsements.

(a) When using letters of service to document service:

(1) The letter must be from the owner, operator, or master of the vessel on which the service was obtained.

(2) The letter must specify:

(i) The grades of cargo, DL or LG, carried while the applicant accumulated the service;

(ii) The number of days of service the applicant had on deck on the tankship; and

(iii) That the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out cargo and cargo equipment duties and responsibilities assigned by the person-in-charge of the transfer operation without direct supervision from the person-in-charge.

(3) Letters attesting to only part of the applicant's total service requirements under § 13.403 must state the grades of cargo handled, the days of service, and whether or not the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, the applicant is fully capable of safely carrying out cargo and cargo equipment duties and responsibilities without direct supervision from the person-in-charge of the transfer operation.

(b) When using discharges to document service:

(1) The applicant must present discharges from tankships totaling 90 days service on tankships certificated to carry DL or LG cargoes.

(2) The applicant must also present a letter from the owner, operator, or master of one of the vessels issuing a discharge to the applicant stating that the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out cargo and cargo equipment duties and responsibilities assigned by the person-in-charge of the transfer operation without direct supervision from the person-in-charge.

(3) If discharges are used to document service, the cargo endorsement will be based on the cargoes the vessels are certificated to carry.

§ 13.407 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-Assistant" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced firefighting training course, completed within five years of the date of application for the "Tankerman-Assistant" endorsement, unless a certificate of completion for one of these courses has been submitted for a previous license or tankerman endorsement; or

(b) Present a certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the shipboard firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting training course under § 10.302 of this subchapter.

§ 13.409 Eligibility requirements; cargo training.

(a) Each applicant for a "Tankerman-Assistant-DL" endorsement that has not presented the required service must:

(1) Present a certificate of course completion from a Coast Guard approved tankship DL cargo training course, or DL tankship familiarization training course, for DL cargoes as defined in this part, within two years of the date of application; or

(2) Present a certificate of completion from a liquid cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course or DL tankship familiarization training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this Subchapter.

(b) Each applicant for a "Tankerman-Assistant-LG" endorsement that has not presented the required service must:

(1) Present a certificate of course completion from a Coast Guard approved tankship LG cargo training course, or LG tankship familiarization training course, for LG cargoes as defined in this part, within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course or LG tankship familiarization training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course under § 10.302 of this Subchapter.

Subpart E—Requirements for "Tankerman-Engineer" Endorsements

§ 13.501 Original application for "Tankerman-Engineer" endorsements.

To qualify for a "Tankerman-Engineer" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.503;

(e) Meet the shipboard firefighting training course requirements in § 13.507;

(f) Meet the liquid cargo training course requirements in § 13.509; and

(g) Be capable of clearing understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.503 Eligibility requirements; service.

(a) An applicant for a "Tankerman-Engineer-DL" endorsement must:

(1) Present evidence of at least 90 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes;

(2) Present evidence of at least 30 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(a); or

(3) Present evidence of at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry DL cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(a).

(b) An applicant for a "Tankerman-Engineer-LG" endorsement must:

(1) Present evidence of at least 30 days service as a licensed engineering officer on tankships certificated to carry LG cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(b); or

(2) Present evidence of at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry LG cargoes and present a certificate of completion from a cargo training course as appropriate for the

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endorsement applied for as prescribed in § 13.509(b).

(c) Applicants who already have a "Tankerman-Engineer" DL or LG endorsement and are applying for the other cargo classification endorsement must provide only half the evidence of service required in paragraphs (a) or (b) of this section, as appropriate for the cargo classification applied for.

§ 13.505 Documentation of service for "Tankerman-Engineer" endorsements.

(a) When using letters of service to document service:

(1) The letter must be from the owner, operator, chief engineer, or master of the vessel on which the service was obtained.

(2) The letter must specify:

(i) The grades of cargo, DL or LG, carried while the applicant accumulated the service; and

(ii) The number of days of service the applicant has as a licensed engineering officer or unlicensed cargo engineer on the tankship; and

(3) Letters attesting to only part of the applicant's total service requirements under §13.503 of this subpart must state the grades of cargo handled and the days of service.

(b) When using discharges from tankships to document service:

(1) For a DL cargo classification endorsement, an applicant must:

(i) Present discharges totaling at least 90 days service as a licensed engineering officer on tankships certificated to carry DL cargoes; or

(ii) If the applicant presents a certificate of completion for a Coast Guard approved DL cargo course:

(A) Present discharges totaling at least 30 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes; or

(B) Present discharges totaling at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry DL cargoes.

(2) For an LG cargo classification endorsement, an applicant must:

(i) Present discharges totaling at least 30 days of service as a licensed engineering officer on tankships certificated to carry LG cargoes; or

(ii) Present discharges totaling at least 60 days service as an unlicensed cargo engineer on tankships certificated to carry LG cargoes.

(c) If an applicant has a mixture of licensed and unlicensed service, the unlicensed service may count as licensed service on a two for one basis;

§ 13.507 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-Engineer" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-Engineer" endorsement, unless a certificate of completion for one of these courses has previously been submitted for a license or tankerman endorsement; or

(b) Present certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting training course under § 10.302 of this subchapter.

§ 13.509 Eligibility requirements: cargo training.

(a) To take advantage of a reduction in required service, as provided in § 13.503, an applicant for an original "Tankerman-Engineer-DL" endorsement may:

(1) Present a certificate of course completion from a Coast Guard approved training course for the DL cargoes for tankships within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo training course under § 10.302 of this subchapter.

(b) To be eligible for an original "Tankerman-Engineer-LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for the LG cargoes as for tankships within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo training course under § 10.302 of this subchapter.

PART 15—MANNING REQUIREMENTS

10. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

11.–12. Section 15.301 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 15.301 Definition of terms in this part.

* * * * *

(c) The following categories of ratings are established in part 12 of this chapter. When used in this part, the following terms mean an individual holding a valid merchant mariner's document to serve in that capacity issued under part 12 of this chapter.

(1) Able seaman;

(2) Ordinary seaman;

(3) Qualified member of the engine department;

(4) Lifeboatman;

(5) Wiper;

(6) Steward's department (F.H.).

(d) The following categories of ratings are established in part 13 of this chapter. When used in this part, the following terms mean an individual holding a valid merchant mariner's document to serve in that capacity issued under part 13 of this chapter.

(1) Tankerman-PIC;

(2) Tankerman-PIC (Barge);

(3) Tankerman-Assistant;

(4) Tankerman-Engineer.

13. Section 15.860 is added to subpart G to read as follows:

§ 15.860 Tankermen.

(a) The Officer in Charge, Marine Inspection, shall enter in the certificate of inspection issued to any manned tank vessel subject to the regulations in this chapter, the number of the crew required to have endorsements as "Tankerman-PIC," "Tankerman-PIC (Barge)," "Tankerman-Assistant," and "Tankerman-Engineer," as follows:

(1) For tankships certified for voyages beyond the Boundary Line:

(i) For tankships of more than 5,000 gross tons:

(A) The number of "Tankerman-PICs" required shall not be less than two.

(B) The number of "Tankerman-Assistants" required shall not be less than three.

(C) The number of "Tankerman-Engineers" required shall not be less than two.

(ii) For tankships of 5,000 gross tons or less:

(A) The number of "Tankerman-PICs" required shall not be less than two.

(B) The number of "Tankerman-Engineers" required shall not be less than two, unless only one engineer is required, then only one "Tankerman-Engineer" is required.

(2) For tankships not certificated for voyages beyond the Boundary Line, if the total crew complement is:

(i) One or two individuals, only one "Tankerman-PIC" is required.

(ii) In excess of two individuals, only two "Tankerman-PICs" are required.

(3) For tank barges certificated for voyages beyond the Boundary Line, if the total crew complement is:

(i) One or two individuals, only one "Tankerman-PIC" or "Tankerman-PIC (Barge)" are required.

(ii) In excess of two individuals, only two "Tankerman-PIC" or "Tankerman-PIC (Barge)" are required.

(b) The following personnel aboard tankships certificated for voyages beyond the Boundary Line shall possess the following tankerman endorsements for the classification of cargo carried:

(1) The master and chief mate shall have "Tankerman-PIC" endorsements.

(2) The chief, first assistant, and cargo engineer shall have "Tankerman-Engineer" endorsements or "Tankerman-PIC" endorsements.

(3) A licensed individual acting as the person-in-charge of bulk liquid cargo transfer operations shall have a "Tankerman-PIC" endorsement.

(4) Licensed or unlicensed personnel assigned duties and responsibilities related to the cargo or cargo equipment during a bulk liquid cargo transfer operation and who are not directly supervised by the person-in-charge shall have a "Tankerman-Assistant" endorsement.

(c) The tankermen endorsements required by the provisions of this section shall be for the cargo classification of the bulk liquid cargo or cargo residue being carried.

(d) Tank barges subject to the provisions of this chapter need not be manned unless in the judgment of the Officer in Charge, Marine Inspection, manning is necessary for the protection of life, property, the environment or the safe operation of the barge.

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

14. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 30.01–2 also issued under the authority of 44 U.S.C. 3507.

15. Section 30.10–71 is revised to read as follows:

§ 30.10–71 Tankerman—TB/ALL.

(a) *"Tankerman-Assistant"* means an individual holding a valid "Tankerman-Assistant" endorsement issued under part 13 of this chapter.

(b) *"Tankerman-Engineer"* means an individual holding a valid "Tankerman-Engineer" endorsement issued under part 13 of this chapter.

(c) *"Tankerman-PIC"* means an individual holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

(d) *"Tankerman-PIC (Barge)"* means an individual holding a valid "Tankerman-PIC (Barge)" endorsement issued under part 13 of this chapter.

PART 31—INSPECTION AND CERTIFICATION

16. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105, 9101; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

17. Section 31.15–1 is revised to read as follows:

§ 31.15–1 Licensed officers and crews—TB/ALL.

The Officer in Charge, Marine Inspection, who inspects the vessel, shall enter in the certificate of inspection for each tank vessel the complement of officers and crew as required by law and regulations in this subchapter, and which in the judgment of the Officer in Charge, Marine Inspection, will be necessary for her safe operation. The complement may be changed from time to time by endorsement on such certificate by an Officer in Charge, Marine Inspection, by reason of change of conditions or employment.

PART 35—OPERATIONS

18. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 8101, 9101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 CFR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19.–20. Section 35.05–15 is amended by revising the section heading and paragraph (b)(1) to read as follows:

§ 35.05–15 Tank vessel security—TB/ALL.

* * * * *

(b) * * *

(1) The owner, managing operator, master, or person in charge of a vessel towing a tank barge that is not required to be manned shall be responsible for monitoring the security and integrity of the tank barge, and ensuring that the proper safety precautions are followed. These responsibilities include, but are not limited to:

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing ports, if any, unobstructed; meets any loadline or freeboard requirements; and has no leakage into the water, voids, or cofferdams.

(ii) Ensuring that all tank barges are properly secured in the tow.

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage into the water, voids, or cofferdams.

(iv) Obtaining information on the cargo content of all tank barges added to or contained in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(v) Ensuring that the crew of the vessel is informed of the cargo content of all tank barges in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(vi) Reporting any cargo leaks from a tank barge in the tow into the water to the Coast Guard as required in 33 CFR 151.15.

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the normal safety precautions for tank vessels, and that no activity takes place in the vicinity of the barge which would create a hazard.

* * * * *

21. Section 35.35–1 is revised to read as follows:

§ 35.35–1 Men on duty—TB/ALL.

(a) On a tankship documented under the laws of the United States:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(2) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(b) On an inspected United States tank barge:

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(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(2) The person-in-charge of the operation shall ensure that:

(i) A sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation; and

(ii) The approved portable extinguishers required by Table 34.50–10(a) of this Chapter are on board and readily available prior to the transfer of cargo or operation of barge machinery or boilers.

(c) On a foreign tankship:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a sufficient number of personnel qualified for the classification of cargo carried are on duty to safely perform the bulk liquid cargo transfer or cargo tank cleaning operation.

(2) The owner, managing operator, master, or person in charge of the vessel shall ensure that a cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(d) On a foreign tank barge:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(2) The person-in-charge of the operation shall ensure that a sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(e) The person-in-charge of the bulk liquid cargo transfer on the tank vessel is responsible for the safe loading and discharging of the bulk liquid cargo.

(f) The person-in-charge of a bulk liquid cargo transfer operation on a United States tank vessel, of lightering to or from a foreign tank vessel, shall ensure that the person-in-charge on the foreign tank vessel, or his or her interpreter, has sufficient command of the English language to allow a safe transfer operation.

22. Section 35.35–10 is revised to read as follows:

§ 35.35–10 Closing of scuppers and sea valves—TB/ALL.

The designated person-in-charge of the cargo transfer operation shall see that all scuppers are properly plugged during transfer operations except on tank vessels using water for deck cooling. Sea valves shall be closed and lashed or sealed to indicate that they should not be opened during cargo transfer operations. Under no circumstances shall such valves be secured by locks.

23. Section 35.35–15 is amended by revising paragraph (b) to read as follows:

§ 35.35–5 Connecting for cargo transfer—TB/ALL.

* * * * *

(b) When cargo connections are supported by ship's tackle, the designated person-in-charge of the cargo transfer operation shall determine the weights involved in order to insure that sufficient tackles are used.

* * * * *

24. The introductory text of § 35.35–20 is revised to read as follows:

§ 35.35–20 Inspection prior to transfer of cargo—TB/ALL.

Prior to the transfer of cargo, the designated person-in-charge of the cargo transfer operation shall inspect the vessel to ensure that the following conditions exist:

* * * * *

25. Section 35.35–25 is revised to read as follows:

§ 35.35–25 Approval to start transfer of cargo—TB/ALL.

When the designated person-in-charge of the cargo transfer operation has ensured that the requirements of §§ 35.35–20 and 35.35–30 have been met, he or she may give approval to start cargo transfer operations.

26. Section 35.35–30 is amended by revising the first sentence of paragraph (a), and the introductory text of the "Declaration Of Inspection Prior To Bulk Cargo Transfer" of paragraph (b) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tankships—T/ALL.

(a) After an inspection under § 35.35–20 but before cargo transfer, the designated person-in-charge of the operation shall prepare, in duplicate, a Declaration of Inspection.* * *

(b) * * *

Declaration of Inspection Prior to Bulk Cargo Transfer

Date _____
Vessel _____
Port of _____

I, _____, the designated person-in-charge of the bulk liquid cargo transfer about to be undertaken, do certify that I have personally inspected this vessel with reference to the following requirements set forth in 46 CFR 35.35–20, and that opposite each of the applicable items listed below I have indicated whether the regulations have been complied with.

* * * * *

27. Section 35.35–35 is revised to read as follows:

§ 35.35–35 Duties of the designated person-in-charge of the transfer during transfer operations—TB/ALL.

The designated person-in-charge of the cargo transfer operation shall control the operations as follows:

(a) Supervise the operations of cargo system valves.

(b) Start transfer of cargo slowly.

(c) Observe cargo connections for leakage.

(d) Observe operating pressure on cargo system.

(e) Observe rate of loading for the purpose of avoiding overflow of tanks.

28. Section 35.35–42 is revised to read as follows:

§ 35.35–42 Restrictions on vessel coming alongside a tank vessel while loading Grade A, B, or C cargo—TB/ALL.

(a) No vessel shall come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading Grade A, B, or C cargo without having the permission of the designated person-in-charge of the cargo transfer operation on the vessel which is loading.

(b) No vessel shall come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading Grade A, B, or C cargo unless the conditions then prevailing are mutually acceptable to the designated persons-in-charge of cargo handling on both vessels.

29. Section 35.35–55 is amended by revising paragraph (a) to read as follows:

§ 35.35–55 Transfer of other cargo or stores on tank vessels—TB/ALL.

(a) Package goods, freight, and ships' stores shall not be loaded or discharged during the loading of Grade A, B, or C cargoes except by permission of the designated person-in-charge of the cargo transfer operation. Explosives as cargo shall not be loaded or carried on any tank vessel containing Grade A, B, or C cargo.

* * * * *

SUBCHAPTER H—PASSENGER VESSELS

PART 78—OPERATIONS

30. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804, E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31.–32. Subpart 78.95 is added to read as follows:

Subpart 78.95—Persons-in-Charge of Bulk Liquid Cargo Transfers

§ 78.95–1 General.

The person-in-charge of a bulk liquid cargo transfer operation must be designated in accordance with subpart C of 33 CFR part 155.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

33. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34.–35. Section 90.10–42 is added to read as follows:

§ 90.10–42 Tankerman-PIC.

"Tankerman-PIC" means an individual holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

PART 97—OPERATIONS

36. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37.–38. Subpart 97.95 is added to read as follows:

Subpart 97.95—Persons-in-Charge of Bulk Liquid Cargo Transfers

§ 97.95–1 General.

The person-in-charge of a bulk liquid cargo transfer operation must be designated in accordance with subpart C of 33 CFR part 155.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

39. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

40. Section 98.30–17 is revised to read as follows:

§ 98.30–17 Qualifications of person-in-charge.

(a) The vessel operator or his or her agent shall designate the person-in-charge of a transfer of bulk liquid cargoes to or from a portable tank.

(b) An individual designated as person-in-charge of the transfer of bulk liquid cargoes to or from portable tanks shall:

(1) On tank barges, hold a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement authorizing transfer of the classification of cargo involved.

(2) On self-propelled tank vessels, hold:

(i) A license authorizing service as a master, mate, pilot, operator or engineer aboard that vessel; and

(ii) A "Tankerman-PIC" endorsement authorizing transfer of the classification of cargo involved.

(3) On vessels other than tank vessels required by this chapter to have a licensed officer on board, hold:

(i) A license authorizing service as a master, mate, pilot, operator or engineer aboard that vessel; and

(ii) If the bulk liquid cargo is grade C or above or regulated under 46 CFR part 153, a "Tankerman-PIC-DL" endorsement.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

41. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

42.–43. Section 105.45–1 is revised to read as follows:

§ 105.45–1 Loading or dispensing petroleum products.

A commercial fishing vessel must have a valid letter of compliance (see subpart 105.15) on board and must be in compliance with the requirements therein while dispensing petroleum products.

44. Subparts 105.50 and 105.60 are removed.

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

45. The heading for part 151 is revised to read as follows:

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

46. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

47. Section 151.03–53 is revised to read as follows:

§ 151.03–53 Tankerman.

(a) *"Tankerman-PIC"* means a person holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

(b) *"Tankerman-PIC (Barge)"* means a person holding a valid "Tankerman-PIC (Barge)" endorsement issued under part 13 of this chapter.

48. Paragraph (f)91)k of § 151.45–2 is revised to read as follows:

§ 151.45–2 Special operating requirements.

* * * * *

(f) * * *

(1) The master, licensed operator, or individual in command of a vessel towing tank barge that is not required to be manned shall be responsible for monitoring the security and integrity of the tank barge, and ensuring that the proper safety precautions are followed. These responsibilities include, but are not limited to:

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing ports, if any, unobstructed; meets any loadline or freeboard requirements; and has no leakage into the water, voids, or cofferdams.

(ii) Ensuring that all tank barges are properly secured in the tow.

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage into the water, voids, or cofferdams.

(iv) Obtaining information on the cargo content of all tank barges added to or contained in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(v) Ensuring that the crew of the vessel is informed of the cargo content of all tank barges in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(vi) Reporting any cargo leaks from a tank barge in the tow into the water to the Coast Guard as required in 33 CFR 151.15.

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow

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follow the normal safety precautions for tank vessels, and that no activity takes place in the vicinity of the barge which would create a hazard.

* * * * *

49. Section 151.45–4 is amended by revising paragraph (a) to read as follows:

§ 151.45–4 Cargo handling.

(a) On an inspected United States tank barge:

(1) The vessel operator, or his or her agent, shall ensure that:

(i) A bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155;

(ii) When cargoes regulated under this Part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures; and

(iii) The Officer in Charge, Marine Inspection, in whose zone the transfer will take place, is provided with satisfactory, documentary evidence that the designated person-in-charge has received this training and is capable of performing competently the necessary operation which relates to the specific cargo.

(2) The person-in-charge of the operation shall ensure that a sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

50. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

51.–52. Section 153.957 is revised to read as follows:

§ 153.957 Person-in-charge of cargo transfer or cargo tank cleaning operations.

The vessel operator, or his or her agent, shall ensure that:

(a) A sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation;

(b) A bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155;

(c) When cargoes regulated under this part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures;

(d) The Officer in Charge, Marine Inspection, in whose zone the transfer will take place, is provided with satisfactory, documentary evidence that the designated person-in-charge has received this training and is capable of performing competently the necessary operation which relates to the specific cargo; and

(e) On foreign vessels, the designated person-in-charge understands his or her responsibilities as described in this subchapter.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

53. The authority citation for part 154 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

54.–55. Section 154.1831 is revised to read as follows:

§ 154.1831 Person-in-charge of cargo transfer or cargo tank cleaning operations.

The vessel operator, or his or her agent, shall ensure that:

(a) A sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(b) A bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation in accordance with subpart C of 33 CFR part 155;

(c) When cargoes regulated under this part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures;

(d) Provide the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, with satisfactory, documentary evidence that the individual has received this training and is capable of performing competently the necessary operation which relates to the specific cargo; and

(e) On foreign vessels, the designated person-in-charge understands his or her responsibilities as described in this subchapter.

Dated: September 28, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–24250 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–14–M

federal register

Tuesday
October 17, 1989

Part III

State Justice Institute

Grant Guideline; Notice

VOL
54
ISS
199
OC
17
1989
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STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1990 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at 120 S. Fairfax St., Alexandria, Va. 22314, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

Approximately $10 million is expected to be available for award in FY 1990. Congress is also considering a supplementary FY 1989 appropriation of up to $4.02 million to support projects that would help State courts address the many serious challenges posed by a rapidly increasing number of drug-related cases.

Changes in the Final Guideline

On August 21, 1989, the Institute published its proposed FY 1990 Grant Guideline in the **Federal Register** for public comment. 54 FR 34642. The final Guideline differs from the proposed Guideline in the following respects:

Special Interest Categories

In response to a comment, the *Career Development in the Courts* Special Interest category (section II.B.2.a.) has been revised to delete the reference to projects that would "assess and enhance university-based programs preparing individuals for careers in court management." The Special Interest category entitled *Improving the Decisionmaking Process in the Apellate Courts* (section II.B.2.g.) has also been revised to include a reference to a project examining the impact of case referrals from State courts of last resort on the dockets of intermediate appellate courts in those States.

Financial Requirements

A new clause has been added to Section XI.H.1. of the Guideline notifying grantees that no costs may be recovered to liquidate obligations which are incurred after the approved grant period. Section XI.H.2.c. has been revised to require the prior written approval of the Institute when the compensation to be paid consultants exceeds $300 a day, rather than the previous $200 a day. Section XII.E. has been amended to require that a request to change or extend the grant period, or a request to extend the deadline for the final financial or progress report, be submitted 30 days in advance.

Finally, the Board wishes to emphasize to applicants and grantees the Guideline requirement that records be maintained to clearly document the source, amount, and timing of all matching contributions. See section XI.D.2.

No other changes (except typographical corrections) have been made in the Final Guideline.

FY 1990 Funding Schedule

The FY 1990 concept paper deadline is November 30, 1989. Papers must be postmarked by that date. The Board of Directors will meet on March 9–11, 1990 to invite formal applications based on the most promising concept papers. Applications will be due in mid-May, and awards approved by the Board in mid-July.

This will be the only round of funding in FY 1990. The FY 1991 funding cycle is expected to begin with submission of concept papers in late November, 1990 and to follow the same general schedule. The Institute will consider proposals submitted after the established deadlines only if the Board determines that "time factors or other critical considerations" justify waiving the deadlines or the concept paper requirement. See section VI.

Recommendations to Grantwriters

Over the past three years, Institute staff have reviewed approximately 800 concept papers and 300 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline. Suggestions regarding the preparation of application budgets have been added to the recommendations for concept papers and applications made in last year's Guideline.

The Institute suggests that applicants make certain that they address the following questions and issues when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?*

Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?*

Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?*

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. *How will others find out about it?*

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?*

The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?*

Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?*

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form CI if the funding request exceeds $100,000. Form CI also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, may be preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, it is acceptable to use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?*

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000=$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page=$375.00).

Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?*

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?*

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automatic data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?*

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.3 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?*

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel

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time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1990:

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1990 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1990 funds, with a concept paper submission deadline of November 30, 1989. This Guideline applies to concept papers and formal applications submitted for FY 1990 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.* as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1990 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1990, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description.

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1990, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories.

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Career Development in the Courts.* This category includes the development and testing of innovative methods to enhance judicial and court personnel careers, other than direct increases in salary, and innovative methods to attract and select persons in the judiciary and other court occupations. These methods could include approaches that emphasize the intrinsic rewards of the profession, such as job enrichment and participative management strategies, judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout," sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers, to encourage qualified persons to seek and accept positions as judges and court professionals, and to evaluate the impact of equal employment opportunity policies on court personnel, administration and the public perception of the courts.

b. *Education and Training for Judges and Other Key Court Personnel.* The Board of Directors anticipates allocating approximately $3,350,000 for judicial education projects in FY 1990. Of this amount, it is expected that up to $2,600,000 will provide support to projects which the Institute has not funded previously, and up to $750,000 will provide renewal funding for judicial education programs of proven merit under section IX of the Guideline. The exact amount to be awarded in each subcategory listed below will depend on the number and quality of the applications submitted in both this Special Interest category and other areas of the Guideline. The Board anticipates allocating the $2,600,000 available for new awards in Fiscal Year 1990 as follows:

i. State Initiatives	$750,000
ii. National/Regional Training Programs	750,000
iii. Technical Assistance	600,000
iv. Conferences	500,000
Total	2,600,000

i. *State initiatives.* This category includes support for training projects

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developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

—The development of State-determined standards for judicial education;
—The preparation of State plans for judicial education, including model plans for careerlong education for the judiciary (e.g., new judge training and orientation followed by continuing education and career development);
—Seed money for the creation of an ongoing State-based entity for planning, developing and administering judicial education programs;
—The development of a pre-bench orientation program and other training for new judges;
—The development of benchbooks and other educational materials; and
—Seed money for innovative continuing education and career development programs, including training which brings teams of judges, court managers and other court personnel together to address topics of mutual interest and concern.

ii. *National and regional training programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

—Training programs or seminars on topics of interest and concern that transcend State lines;
—Multi-State or regional training programs sponsored by national organizations, State courts or universities; and
—Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel.

iii. *Technical assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

—Development of educational curricula and support materials;
—Training faculty in adult education theory and practice;
—Consultation on planning, developing and administering State judicial education programs;
—Coordination and exchange of information among judicial education providers;
—Collection and dissemination of information about exemplary adult and continuing judicial education programs;
—Development of improved methods of evaluating court education programs; and
—On-site assistance in any of the areas listed above.

iv. *Conferences.* This category includes support for regional or national conferences on topics of mejor concern to the State judiciary and court personnel.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

c. *Alternative Dispute Resolution (ADR).* This category covers the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving complex civil litigation, and cases involving families and children (e.g., divorce, child support, visitation, and custody, juvenile delinquency, children in need of supervision, and child abuse and neglect) more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, court workload, and case processing.

This category also includes evaluation of the impact of "settlement weeks" in civil cases and the examination of the judicial role in settling cases, including the effectiveness of various settlement techniques that judges may use, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

The Board is especially interested in empirical research projects that would examine the impact of "private judging services" on the State courts, including studies of:

—The volume and nature of cases, e.g., contract, tort, insurance, being adjudicated by private judging organizations;
—The types of substantive legal issues, e.g., grounds for liability, that are being adjudicated, the types of procedures used to adjudicate cases and the frequency with which those procedures used;
—The "due process" protections afforded by private judging organizations, including evidentiary rules;
—The types of parties in such cases, including the demographic and economic characteristics of both plaintiffs and defendants;
—The factors that motivate litigants to take their cases to private judges;
—The disposition of the cases, including the speed of disposition, the satisfaction of the parties, and the frequency with which judgments are being brought to the State courts for enforcement or appeal;
—The effect that private judging organizations have had on the caseload of State courts in the immediate jurisdiction; and
—The numbers of judges retained by such organizations, their legal backgrounds, their compensation, and the factors that motivated their decision to seek and accept employment with such organizations.

To help interested applicants secure the cooperation of the organizations to be studied, the Institute plans to send letters expressing its interest in such research projects to leading private judging organizations in the near future. The letters will solicit their cooperation and explain the confidentiality and human subject protection provisions of the SJI Act and Grant Guideline.

d. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the long-range planning and implementation of modifications that may be needed in court organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice;
—How developments in biology, chemistry, disease and disease control, engineering, genetics, computer design and other sciences are likely to affect the cases adjudicated by the State courts: and
—The impact that demographic changes in the American population over the next generation will have on the State courts.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed, are:

—Instances in which multiple cases are pending involving members of a single family (e.g., divorce, domestic violence, child support, and child custody proceedings);
—Post conviction challenges in capital cases;
—Mass tort litigation; and
—Instances in which a litigant in a State civil, criminal, or domestic relations case is subject to a Federal bankruptcy proceeding.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, untested refers to applications of technology that are not used widely by the courts or that include a unique element to enhance their usefulness to the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support development and evaluation of: An interactive computerized information system to assist pro se litigants; the effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving probate court records; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; an automated State-wide records management system; the effects of telephone conferencing in interstate child support cases; the integration of bar-coding technology with an existing automated case management system; and the use of FAX technology by courts. Current grants are also supporting the development of court automation performance standards and the development of a court technology bulletin and court technology assistance services.

g. *Improving the Decisionmaking Process in the Appellate Courts.* The Board specifically invites proposals for establishing intermediate appellate court panels responsible for handling specific subject matter cases. The Board would like to support a carefully designed and evaluated "subject matter panel" experiment to test whether such panels result in more uniformity and stability in the law; preserve judicial authority and avoid undue delegation to non-judicial staff; and expedite the decisionmaking process.

The Board contemplates that the subject matter panels would consist of three to five judges who are assigned specific types of cases, e.g., torts, family matters, property cases. Criminal cases could be assigned to one panel or allocated among all of them. The panels need not be permanent but could shift through gradual rotation. For a more thorough discussion of subject matter panels, see Meador, "An Appellate Court Dilemma and a Solution Through Subject Matter Organization," 16 *Journal of Law Reform* 471 (1983).

In addition, the Board is interested in supporting projects which assess the impact of structural innovations and procedures designed to expedite the decisionmaking process in the appellate courts, including procedures to control appellate court dockets through the referral of cases by the court-of-last-resort to the intermediate appellate court, innovative procedures for the submission of cases through oral argument without traditional briefing, and the application of differential case management techniques to the appellate process.

h. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile or other types of litigation at the trial or appellate level (or both); the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures; and the development, implementation and evaluation of legal and administrative procedures to expedite the jury selection and empanelment process, reduce the expense of operating the jury system, and limit the cost and inconvenience of jury service.

i. *The Use of Juries.* This category includes the evaluation of legal and administrative procedures relating to jurors that are designed to enhance the fairness and expeditiousness of the litigation process, such as improved methods for orienting and instructing jurors, the clarification of jury instructions, permitting jurors to take notes or ask questions, the use of jury panels of different sizes, the acceptance of non-unanimous verdicts, the use of "blue ribbon" panels, or the elimination of juries in specified classes of cases.

j. *Enforcement of Court Orders.* This category includes the development, implementation and evaluation of the effectiveness and costs of innovative methods of enforcing compliance with court orders. These methods may apply to orders issued in a range of cases, such as orders imposing fines, restitution, community service, or conditions of probation in a criminal or juvenile delinquency proceeding; orders requiring payment of child support or setting the terms for visitation and custody in divorce and paternity cases; dispositional orders in child abuse and neglect, civil commitment, guardianship, and institutional reform litigation; and protection orders in domestic violence proceedings.

k. *Substance Abuse.* This category includes the planning and presentation of conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse, and to discuss the appropriate role of the courts in addressing the problem of substance abuse; the development and testing of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional and treatment decisions in cases involving substance-abusing persons; the development and

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evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related cases fairly and expeditiously; and the evaluation of the effectiveness of innovative drug and alcohol treatment programs that are administered directly by the courts or through contracts negotiated between the service providers and the courts.

l. *Responding to the Court-Related Needs of Victims of Crime and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment to victims of crime and witnesses. Court-based programs are those that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily not considered favorably for funding.

Eligible projects may involve civil, criminal, domestic relations, and other types of cases, including but not limited to demonstrations and evaluations of programs and procedures to assure the fair, effective and efficient handling of domestic violence cases, such as: The appropriate use of court-ordered domestic violence mediation programs; evaluations of innovative court-ordered treatment programs for offenders and their families: and implementation and evaluation of innovative procedures governing the issuance and enforcement of protective orders.

m. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons. The issues that may be addressed include but are not limited to:

—The fair and effective consideration of cases concerning the provision of medical, mental health, social and support services to elderly or disabled persons;
—The fair and effective consideration of cases concerning the imposition of plenary or limited surrogate decisionmakers; and
—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

n. *Public Education about the Courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of videotapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

o. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
—Processing complex multistate litigation in the State courts;
—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

C. Programs Addressing A Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction.

Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

2. The Board has established two categories of such projects:

a. *Critical Needs of the Largest Urban Courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include but are not limited to the development and testing of improved methods to assist those courts in selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. The Board has set aside up to $1,000,000 of available grant funds to support such projects.

b. *Projects Addressing the Critical Needs of Other State and Local Jurisdictions.* This category includes projects addressing a critical need of a State or local jurisdiction that is not a major urban court, as defined in the preceding paragraph. A project within this category may address any of the topics included in the Special Interest Categories or statutory Program Areas. The Board has set aside up to $500,000 of available grant funds to support such projects.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute.* The State Justice Institute.

B. *State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. *Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency.* The State Justice Institute.

E. *Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match.* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. *Renewal Funding.* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

J. *On-going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

K. *Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. A project addressing the needs of the largest urban courts under section II.C.2.a. may receive support of up to $500,000.

3. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support the second and any subsequent years of the grant will be made available upon the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and subject to the availability of appropriations for that Fiscal Year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Products

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived by the Board if it determines that time factors or other critical considerations justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 doublespaced pages on 8½ by 11 inch

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paper. Margins should not be less than 1 inch. The narrative should contain:

a. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed project. Applicants should explain the proposed project's relationship to a Program Area or Special Interest Category only if it is not obvious.

b. An explanation of the need for the project. If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, applicants should discuss the problems that the proposed project will address, and explain why existing materials, programs, procedures, services or other resources do not adequately resolve those problems.

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the 10-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1990 must be sent by first class or overnight mail, or by courier no later than November 30, 1989. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

The Board expects to meet on March 9–11, 1990, to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in Section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C or Cl)—Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM Cl. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or Cl, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See Section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11-inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks, Methods and Evaluation*

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. The plan should present the qualifications of the evaluator(s); describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be

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used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an appropriate evaluation approach for many research projects is the review of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted by an advisory panel comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

An appropriate evaluation approach for many education or training projects is to obtain the reaction of training participants to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither an organization qualifying as a priority recipient nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. *Letters of Support for the Project.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative.

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies.

2. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. *Consultant/Contractual Services.* The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. *Postage.* Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. *Printing/Photocopying.* Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. *Indirect Costs.* Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed will be documented.

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 11, 1990. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project; and

h. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

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C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revision's (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VIII.

A. Continuation Grants

1. *Purpose and Scope.* Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. *Application Procedures—Letters of Intent.* In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. *Application Format.* An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. *Purpose and Scope.* On-going support grants are intended to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in V.B.2. and V.C.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period. In addition, a detailed annual task schedule must be submitted for Institute approval within 30 days after the end of each project year.

2. *Application Procedures—Letters of Intent.* The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.B.3.

In lieu of a concept paper, a grantee seeking an ongoing support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. *Application Procedures and Format.* An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community;

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

e. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive

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branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institutefunded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding.

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

> This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Invention and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff.

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records.

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. *Purpose.* The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. *References.* Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities.

1. *Grantee Responsibilities.* All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting for receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract

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obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. *Timing of Matchine Contributions.* Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project. In instances where a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. *Records for Match.* All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. *Retention Period.* The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. *Maintenance.* Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income.

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. *Interest.* A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and

inventions, unless the terms and conditions of the project provide otherwise.

3. *Registration and tuition fees.* Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. *Other.* Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. *Payment of Grant Funds.* The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

The Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. *Financial Reporting.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. *Consequences of Non-Compliance With Submission Requirements.* Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. *General.* Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. *Costs Requiring Prior Approval.*

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to

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assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. *Procurement Standards.* For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. *Property Management Standards.* The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. *Implementation.* Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. *Consequences of Non-Resolution of Audit Issues.* It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. *Definition.* Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities

during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met, and, if any of the objectives have not been met; explain the reasons therefor.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. *A transfer of the grant to another recipient.*

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/sub-grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made 30 days in advance of the end date of the grant. A request to change or extend the deadline for the final financial report or final progress report must be made 30 days in advance of the report deadline (see section XI.K.2.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director.

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,

Executive Director.

Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130 (205) 834–7990

Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K

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Street, Anchorage, Alaska 99501 (907) 264–0547
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004 (602) 255–4359
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Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102 (415) 557–1581
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Mr. Bruce Borre, Director, Research and Planning, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106 (203) 722–5836
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801 (302) 571–2480
Mr. James Lynch, Deputy Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001 (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900 (904) 488–8621
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334 (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472–8961 through 8968
Ms. Janice Wolfe, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804 (808) 548–4605
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720 (208) 334–2246
Mr. Samuel D. Conti, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701–1791 (217) 782–7770
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204 (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319 (515) 281–5241
Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296–4873
Ms. Laura Stammel, Comptroller, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792
Mr. Peter J. Lally, Assistant State Court Administrator, Courts of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–2141
Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787
Honorable Dorothy Comstock Riley, Chief Justice, Supreme Court of Michigan, Law Building, Post Office Box 30052, Lansing, Michigan 48909, (517) 373–0128
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd, Jefferson City, Missouri 65109, (314) 751–3585
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. Jeffrey Leidinger, Director, Administrative Office of the Courts, Supreme Court of New Hampshire, Noble Drive, Concord, New Hampshire 03301, (603) 271–2521
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275
Honorable Albert M. Rosenblatt, Chief Administrative Judge, New York State Office of Court Administrator, Empire State Plaza, Agency Building 4, 20th Floor, Albany, New York 12207, (913) 431–1930
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800
Mr. Franklin E. Freeman, Jr. Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107
Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1915 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
Mr. Ralph Hunsicker, Administrative Office of Pennsylvania Courts, 407 City Towers, 301 Chestnut Street, Harrisburg, Pennsylvania 17101, (717) 783–7322
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758–2961
Honorable George W. Wuest, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625
Honorable Gordon R. Hall, Chief Justice, Supreme Court of Utah, State Capitol Building, Room 332, Salt Lake City, Utah 84114, (801) 533–5285
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281

[FR Doc. 89–24364 Filed 10–16–89; 8:45 am]
BILLING CODE 6820–SC–M

federal register

Tuesday
October 17, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1020
Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing technical amendments to the Federal performance standard for diagnostic X-ray systems and their major components (the performance standard). Experience gained by FDA in administering the performance standard has shown the need for proposing these changes.

DATES: Comments by January 16, 1990. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**, except that FDA is proposing that the amendment to § 1020.31(c) *Linearity* (21 CFR 1020.31(c)) be effective 1 year after the date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Samuel Fleisher, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b *et seq.*), FDA is proposing to amend the performance standard for diagnostic X-ray systems and their major components, §§ 1020.30, 1020.31, and 1020.32 (21 CFR 1020.30, 1020.31, and 1020.32). In the **Federal Register** of August 15, 1972 (37 FR 16461), the performance standard was published as a final rule, which became effective on August 1, 1974. Since that time, there have been several amendments to the performance standard. These amendments take into account new technology, clarify misinterpreted provisions, and encourage the improvement of uncertified systems manufactured before the performance standard became effective. (See, e.g., those published October 7, 1974 (39 FR 36008); February 25, 1977 (42 FR 10963); September 2, 1977 (42 FR 44230); November 8, 1977 (42 FR 58167); May 22, 1979 (44 FR 29653); August 24, 1979 (44 FR 49667); November 30, 1979 (44 FR 68822); and April 25, 1980 (45 FR 27927).) A cost-benefit analysis of several significant elements of the performance standard led to amendments of the provisions governing assembly/reassembly of diagnostic X-ray equipment (August 24, 1979; 44 FR 49667).

Thus, in the 14 years since the promulgation of the standard, FDA has gained experience in administering it and believes that more amendments may now be appropriate. Further, Executive Order 12291 encourages Federal agencies to assess existing regulations for possible significant impacts on the private sector, and the Regulatory Flexibility Act (Pub. L. 96-354) requires all agencies to review existing regulations that can have an impact on small manufacturers. In addition, FDA has always believed that, for regulatory controls to be appropriate, FDA must devise them so that they are coordinated with educational programs, voluntary standards, professional practices, and controls imposed at the State and local levels. For all of these reasons, FDA has believed that it was appropriate to look at the performance standard with a fresh perspective.

On March 8, 1982, FDA's Center for Devices and Radiological Health (CDRH) established an ad hoc working group to analyze and review the performance standard. This X-Ray Standard Review Group (XSRG) was charged with assessing the costs and public health benefits of the performance standard and with developing recommendations on both regulatory and nonregulatory radiation control programs for consideration by FDA. Accordingly, on November 16, 1982 (47 FR 51710), FDA published in the **Federal Register** a notice of intent to review the X-ray performance standard and invited comments, data, and information that might be useful in the review. FDA received 38 comments on the notice. In addition to the comments, over 200 individuals and groups requested materials and reports that might be generated in the review. In November 1982, the members of the XSRG attended a meeting of the Radiological Society of North America and personally solicited comments and information from 6 professional societies and representatives of 33 manufacturers; their comments proved useful in guiding the XSRG's efforts.

The first phase of the XSRG's retrospective review resulted in a report entitled, "An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30-32)," which was circulated for extramural review and comment on January 24, 1984 (Ref. 3). FDA received 10 comments on that report, and it was made available as a final report in September 1984.

The second phase of the XSRG's two-phase review resulted in a report issued in July 1985 entitled, "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and their Major Components (21 CFR 1020.30-32)." (Ref. 4) The data contained in the first report's overview of the costs and benefits were used extensively in that second report. The XSRG took into account those relatively hard data, considerations advanced in public comments, and CDRH's experience in the administration and enforcement of the performance standard. In the **Federal Register** of November 12, 1985 (50 FR 46646), FDA announced the availability of the July 1985 report. FDA received 25 comments, 22 from outside FDA and 3 from inside FDA. These comments were analyzed by the XSRG and CDRH and incorporated into draft proposed amendments to the performance standard. On May 8, 1987, FDA distributed these draft proposed amendments to the general public for comment. FDA received nine letters of comment from individual manufacturers, manufacturer organizations, and State and local health agencies. Subsequently, the draft proposed amendments were discussed publicly at the June 22 through 23, 1987, meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), a statutory advisory committee (42 U.S.C. 263f(f)) that FDA is required to consult before it may prescribe any electronic product performance standard under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b *et seq.*) (Ref. 1). TEPRSSC generally concurred with publication of the draft proposed amendments for public comment (Ref. 2).

In response to the comments and to the recommendations of TEPRSSC, FDA has prepared these proposed amendments to the performance standard. FDA believes that the amendments proposed herein would clarify and simplify the performance standard, would reduce significantly the regulatory burden on affected manufacturers without compromising

the public health, and generally would improve the effectiveness of FDA's regulation of diagnostic X-ray equipment. However, comments and supporting data concerning the proposed amendments would be particularly helpful to the agency during its preparation of any final rule based on this proposal. Accordingly, FDA is proposing the following amendments to the performance standard.

II. Proposed Amendments to the Standard for Diagnostic X-Ray Systems and Their Major Components

A. Applicability (§ 1020.30(a))

FDA proposes to revise the standards to add computed tomography (CT) gantry to the list of specified components and to indicate that the date of manufacture of the CT gentry is considered to be the date of manufacture of the CT system.

In a letter dated August 21, 1985, to manufacturers of computed tomography X-ray systems, CDRH stated that the CT amendment published in the August 31, 1984, **Federal Register** were applicable to entire CT systems and not to the individual components comprising the system. Although the major components specified in § 1020.30(a) (21 CFR 1020.30)), such as beam-limiting devices, tube housing assemblies, etc., must still be individually certified and compatible with the CT gantry, the gantry itself must also be certified and must display both certification and identification labels. The letter further stated that FDA was defining the date of manufacture of the gantry as the date of manufacture of the CT system. TEPRSSC unanimously agreed with the proposed change (Ref. 2).

B. Definitions (§ 1020.30(b))

FDA proposes to revise some definitions in § 1020.30(b) and also to incorporate new definitions into the regulation. The definitions will be alphabetically arranged rather than sequentially numbered.

From time to time, formal advisory opinions or letters in response to individual queries from manufacturers have been necessary to clarify various definitions of terms used in the standard or to define new terms. These revised and new terms are now being incorporated into the proposed amendments.

Elimination of the sequential numbering of the definitions in favor of an alphabetical sequence will facilitate any future modifications and make it easier for the reader to locate definitions. TEPRSSC unanimously agreed with the proposed changes (Ref. 2).

C. Certification of Components (§ 1020.30(c))

FDA proposes to simplify § 1020.30(c) by removing excess verbiage, redundancies, and unnecessarily complex statements. In addition, the portion of § 1020.30(f)(1) on limits of responsibility of the manufacturer is relevant to the requirements of § 1020.30(c) and would be incorporated here for clarity; existing requirements of both sections would be retained in the proposed amendment. Also, FDA proposes to rename § 1020.30(c) "Manufacturer's responsibility." TEPRSSC agreed with the proposed changes (Ref. 2).

D. Certification by Assembler (§ 1020.30(d))

FDA proposes to simplify and rename § 1020.30(d) "Assemblers' responsibility." The portion regarding reporting noncompatibility would be deleted, and reloaded or replacement tube housing assemblies and accessory components would be exempted from assembler reporting requirements. The portion of § 1020.30(f) on assemblers' responsibilities would be relocated here for clarity.

This paragraph deals primarily with the information that the assembler is required to provide in the Report of Assembly. The regulation contains detailed instruction for completing the Report of Assembly which are duplicated in the report itself. The Report of Assembly was recently revised to delete unnecessary information and to make the report more efficient. This caused the reports to be technically out of compliance with the regulation in that some information required by the current standard was deleted from the report. Assemblers, manufacturers, and the States were involved in making the changes by an informal notice and comment procedure. By referring to the Reports of Assembly in the standard rather than listing the requirements, FDA could change the report format as necessary without amending the standard. The requirement of completing a prescribed Report of Assembly is still retained in the proposed amendment.

The paragraph on reporting noncompatibility is now unnecessary since certified component compatibility is covered by (1) § 1020.30(g) Information to be provided to assemblers, which requires manufacturers to provide specification of components compatible with those to be installed when compliance of the system with the standard depends on their compatibility; and by (2) the retained provisions of § 1020.30(d), which require the assembler to affirm that he has followed the manufacturers' instructions for assembly and has assembled only those components required by §§ 1020.31 through 1020.33. Therefore, FDA proposes to remove this reporting requirement.

The problem of noncompatibility of components lies primarily with the combining of certified and uncertified components. The Report of Assembly does not provide instructions for this kind of assembly because the regulations do not require a Report of Assembly for uncertified components. Additionally, only certified components in a mixed assembly are subject to the performance standard, and then only if their compliance does not depend on an uncertified component in the system.

Finally, the available supply of uncertified components is dwindling, which will eventually obviate the need for this paragraph. FDA's main concern is that fully certified systems be initially installed in a compliant manner. Because there is already an active and comprehensive surveillance program to ensure this, deletion of the noncompatibility paragraph will not represent any increased exposure to the patient or have any adverse effect on current industry or FDA practices.

The requirement for reporting of reloaded and replacement tube housing assemblies and accessory components would be eliminated under the proposal because assembly of these components will have little or no effect on the radiation safety of the system, and FDA is not currently using these reports for followup. Only Reports of Assembly of major components are entered into the database.

TEPRSSC supported the proposal to exempt reloaded and replacement tube housing assemblies and certified accessory components from the reporting requirements because traceability is managed through serial numbers maintained by the manufacturer (Ref. 2).

FDA notes that the Report of Assembly was never intended as a traceability document but as an affirmation by the assembler that the components were assembled correctly. It is FDA's opinion that the report is necessary for whole systems being put together and for major components or groups of major components installed rather than for tube housing reloads, the major portion of which occurs on CT systems.

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E. Identification of X-ray Components (§ 1020.30(e))

FDA proposes to add a sentence to § 1020.30(e) requiring the use of the word "model" or "type" on the identification label of certified components to identify the model designation.

This amendment incorporates information in FDA Compliance Policy Guide (CPG) 7133.03, dated October 1, 1980, which requires the word "model" or "type" to appear as part of the manufacturer's required identification of certified X-ray components. CPG 7133.03 is included in FDA's CPG Manual. (See 21 CFR 20.26 and 20.107.) In the past, manufacturers have used a variety of words to identify the model, such as: catalog number, part number, style, etc. In some cases, these model designations were not unique to the component, and some labels have had two designations, for example, a catalog number and a style number. This has led to confusion on the part of the assembler in reporting the certified components and on the part of FDA investigators trying to identify the components. By restricting the wording allowed for model designation, FDA proposes to assure that there will be uniformity throughout the industry, which should alleviate the confusion. TEPRSSC unanimously agreed with the proposed change (Ref. 2).

F. Limits of Responsibility (§ 1020.30(f))

FDA proposes to remove and reserve § 1020.30(f). Section 1020.30(f)(1) would be incorporated into a proposed revision to § 1020.30(c) Certification of components and § 1020.30(f)(2) would be combined with the proposed revision to § 1020.30(d) Certification by assembler. TEPRSSC unanimously agreed with these proposed changes (Ref. 2).

G. Information to be Provided to Assemblers (§ 1020.30(g))

FDA proposes that part of § 1020.30(h) Information to be provided for users also be incorporated into § 1020.30(g). Currently, § 1020.30(h) concerns electrical requirements. Because the assembler usually works in conjunction with the users in determining what the electrical requirements of the system are and what the facility can provide, this information may also remain in the user information section of the manuals provided by industry. The information would not necessarily have to be included in the assembler's manual as long as the assembler receives both the assembler and user manuals and the instructions say that the assembler's manual consists of both documents.

Although the user has the responsibility for making arrangements for adequate electrical power lines, this is usually done in consultation with the assembler. Thus, the required electrical power information would also be placed in the information provided to assemblers to ensure a compliant installation. TEPRSSC was in agreement with the change (Ref. 2).

H. Beam Quality (§ 1020.30(m) (1) and (2))

FDA proposes to modify Table I in § 1020.30(m)(1) so that the transition point at 50 kilovolts peak (kVp) allows for the lesser half-value layer up to and including 50 kVp.

The 50 and 70 kVp values in Table I of § 1020.30(m)(1) are points at which the inherent filtration in the beam is usually increased. Historically, this derives from the recommendation of the National Council on Radiation Protection and Measurements (NCRP) on minimum filtration. Normally, one would tend to state kVp ratings by decades, such as "up to 50 kVp," rather than using less common numbers such as 38 or 49 kVp. The 70 kVp value takes this into account since 1.5 millimeters (mm) aluminum equivalent half-value layer will meet the standard up to (and including) 70 kVp. This is not true for the transition at 50 kVp, where a system would have to be rated only up to 49 kVp or would have to have additional filtration added. Manufacturers have presented convincing arguments that it is impractical to design a system that provides technique selection only up to 49 kVp, because the convention for kVp ratings is usually in decade steps, and the common guages/indicators are in decade ranges. This argument is particularly crucial for mammography systems. Because of the way Table I is constructed, manufacturers of 50 kVp mammography systems must provide the additional filtration required by the standard. The manufacturers have shown this to be unacceptable because mammographic examinations are usually performed at less than 50 kVp (the primary reason for the 50 kVp selection being design simplicity) where the lesser amount of filtration is needed. Thus, the manufacturer has to "lock out" the 50 kVp selection to meet the requirements of the standard. Because the value of the kVp chosen in Table I is somewhat arbitrary, the change would not be significant and would alleviate the design problems for the manufacturer. TEPRSSC agreed with the amendment (Ref. 2).

In § 1020.30(m)(2), FDA proposes to add the word "selectable" between the words "maximum" and "quantity." Manufacturers have sometimes interpreted the requirement as currently worded to call for the maximum quantity of charge that is used for a particular exposure technique, and not necessarily to call for the maximum charge attainable, by design, at that exposure technique. The intent of the standard, which this proposed change would make clear, is for the system to be charged as fully as possible at the selected technique when performing the compliance test. (See HHS Publication FDA 84-8221, dated November, 1983, p. 55.) TEPRSSC unanimously agreed with the proposed change (Ref. 2).

I. Aluminum Equivalent of Material Between Patient and Image Receptor (§ 1020.30(n))

FDA proposes to add tabletops with articulated joints and cantilevered tabletops along with the maximum allowable aluminum equivalence for these to Table II in § 1020.30(n). A definition of cantilevered tabletop would also be added to § 1020.30(b).

The amendment to § 1020.30(n) would create the following limits:

Stationary tabletop without articulated joints.	1.0 mm.
Tabletop with radiolucent panel having one articulated joint.	1.5 mm.
Tabletop with radiolucent panel having two or more articulated joints.	2.0 mm.
Cantilevered tabletop	2.0 mm.

Because stretchers with a radiographic and/or fluoroscopic capability are really a type of X-ray table, they are not separately defined in proposed § 1020.30(b) and are not referred to as such in Table II of § 1020.30(n). Instead, the definition for "X-ray table," which would be added, is inclusive enough to cover any table with a radiographic/fluoroscopic capability such as these emergency room and surgical stretchers.

This proposal also contains a relaxation of aluminum equivalence limits for certain X-ray tables. Manufacturers of tables have for some time related problems concerning the allowable limits in § 1020.30(n) for their products. In particular, for tables with cantilevered tops and for mobile stretchers, manufacturers have argued that they cannot meet the aluminum equivalent limits and provide the structural integrity necessary for patient safety. A Health Industry Manufacturers Association report entitled "Application of 21 CFR 1020.30(n) Performance Standards for Diagnostic X-Ray System Tabletops to Mobile Stretchers," submitted to FDA on December 10, 1986 (Ref. 5), contained a proposal to raise the aluminum equivalent limits for stretchers. It provides a comprehensive discussion of stretcher design and use and a rationale for raising the limits. The report states that the 1974 standard was based on existing technology and products and, therefore, requirements for stretchers were not considered. Because of this, stretchers were categorized as stationary tabletops and need to be redefined with consideration for relaxing the aluminum equivalent limits.

Precedents for relaxing the aluminum equivalent limits for cantilevered tabletops and special surgical tables have already been established through variances granted to several manufacturers. TEPRSSC concurs with these changes (Ref. 2).

J. Assembly and Reassembly of Diagnostic X-ray System (§ 1020.30(p))

FDA proposes to remove and reserve § 1020.30(p). After publication of the final rule establishing the X-ray standard, manufacturers posed several questions on how the standard would apply to the sale and installation of both new and used X-ray components. Questions such as the following were not addressed in the standard:

(1) How would the standard apply to components physically produced before the effective date of the standard but assembled into a system after the effective date of the standard?

(2) How should the assembly of uncertified components into a system containing certified components be controlled?

(3) How should the reassembly, rebuilding, or refurbishing of used X-ray components or systems be controlled?

(4) How should the standard be applied to preserve the radiation safety performance provided by certified components and systems?

(5) How should the standard be applied to encourage the improvement of existing X-ray systems through the addition of certified components?

To rectify this situation (as well as to respond to congressional concern over the regulation of used X-ray equipment), § 1000.16 Assembly and reassembly of diagnostic x-ray system was promulgated and made effective on the same date as the standard. In 1979, this regulation was amended and recodified as § 1020.30(p).

Originally, § 1000.16 provided for two phases of regulation. The first phase requirements were almost exactly the same as the current requirements, i.e., certified and uncertified components could not be arbitrarily combined into or to form an X-ray system. Once a certified component was installed in a system, all subsequent components added to the system had to be certified. This phase was to last 5 years.

The second phase imposed the much stricter requirement that only certified components could be assembled or reassembled into a diagnostic X-ray system. Thus, any replacement component or addition to a system had to be certified, and any reassembled system had to contain only certified components. The gradual "upgrading" of the first phase would have changed to a forced "upgrading" of existing systems. An analysis of the potential effects of the second phase (T. B. Shope and H. Rudolph, "A Second Look at the Costs and Benefits Associated with the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly," draft No. 3, unpublished, November 1978) (Ref. 6) resulted in the following conclusions:

(1) The provisions of § 1000.16 that would be effective after August 1, 1979, would affect only a small fraction of the uncertified X-ray systems currently in use.

(2) The total impact of this regulation, in terms of increased cost for the X-ray equipment or interruption of health care delivery, could be significant.

(3) For those uncertified systems that would be affected, by virtue of their sale and relocation, § 1000.16 was not likely to be a cost-effective approach to improve the radiation safety performance of X-ray systems.

FDA proposed to revoke the post-1979 requirements on April 17, 1979 (44 FR 22755). On August 24, 1979 (44 FR 49667), FDA published a final rule on the assembly and reassembly of diagnostic X-ray systems.

In the past, the principal reason for attempting to control older equipment was the belief that there is an economic incentive for avoiding positive beam limitation (PBL) collimators and that avoidance would be possible but for § 1020.30(p). However, with the change in the applicability of the requirement for PBL (PBL is not now required unless several major components are certified (42 FR 58167; November 8, 1977) and would no longer be required under the proposed amendments), the economic incentive for avoidance should be less. Therefore, this reason for regulating used equipment is no longer valid.

Additional points to note are:

(1) Tracing uncertified systems and components has proven to be practically impossible. Thus, in essence, this section of the standard is unenforceable.

(2) The standard has been in effect for nearly 14 years. Less and less uncertified equipment is available in the used equipment market. Data from a survey of used equipment dealers ("A Study of the Need for Controlling the Sale of Antiquated X-Ray Equipment," unpublished report submitted to Congress pursuant to section 357 of the Radiation Control for Health and Safety Act, House Document 90-390, January 1, 1970) (Ref. 7), indicated that over 50 percent of used systems sold were less than or equal to 10 years old (almost 90 percent less than 15 years). Thus, much of the problem which § 1020.30(p) was intended to address has already been eliminated due to obsolescence and, with the passage of a few more years, will essentially disappear completely.

(3) The 1978 cost/benefit analysis (Ref. 6), referred to earlier, noted that voluntary action programs aimed at maintaining a high level of performance for uncertified systems were more cost-effective than was forced replacement of uncertified components with certified components. This is still true today.

From the above, it is evident that § 1020.30(p) is becoming less and less applicable as the number of older systems dwindles, and they eventually become obsolete. There are also voluntary programs which address the performance of X-ray systems, i.e., general quality assurance activities using the recommendations contained in 21 CFR 1000.55; and activities involving the Nationwide Evaluation of X-ray Trends (NEXT) surveys conducted by State and local agencies with FDA assistance. These result in performance evaluation of X-ray systems.

CDRH also has regulatory authority under the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) to apply the current good manufacturing practices requirements of 21 CFR Part 820. On December 29, 1987, FDA issued a CPG that addresses refurbishers of medical devices, including X-ray systems (Chapter 24—Devices, Guide 7124.28, Reconditioner/ Rebuilders of Medical Devices). (See 21 CFR 20.26 and 20.107.) Its aim is to assure that refurbished equipment still meets original manufacturer specifications or, if it does not, that it is relabeled as to the new specifications that they do meet. These approaches are much more effective than § 1020.30(p) in promoting an appropriate level of radiation safety for used X-ray systems and components. They address not only uncertified, but certified systems and components also.

The TEPRSSC consensus recommendation was to delete § 1020.30(p) (Ref. 2).

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K. Linearity (§ 1020.31(c))

In this proposed rule, FDA is proposing to change the linearity requirement in § 1020.31(c) to include X-ray equipment that provides a selector only for the product of tube current and time, milliamperes seconds (mAs), in place of independent selection of tube current, milliamperes (mA), and time (seconds). The amendment would allow for testing linearity between adjacent mAs stations.

The current requirement excludes systems that provide mAs selection only, but it is just as important for mAs-only systems to meet the linearity requirement. Because mAs-only systems provide just the one technique factor selector for exposure output, it is important that the selector be capable of controlling the exposure in a linear manner. Thus, the proposed amendment would specifically include mAs-only systems.

Typical technique charts provided to clinicians by the manufacturer give the recommended mAs settings for specific examinations, and X-ray technologists are accustomed to thinking in terms of mAs settings for a particular exposure rather than mA and time separately. Thus, it may be more meaningful to require the system to be mAs linear.

FDA has received comments from State personnel and the user community to the effect that the linearity requirement is not stringent enough and that it should apply over the entire range of mA stations rather than just between adjacent ones. Because the present requirement permits a 22 percent difference between adjacent stations, there could be significant deviations from linearity over the full range of tube current settings usually provided. Although FDA is not now proposing this change, the agency solicits comments on this subject.

FDA also proposes not to require linearity between microfocus (nominal focal spot size less than or equal to 0.45 mm) and larger focal spot sizes, because technologists normally do not switch between the two for a particular examination.

L. Field Limitation and Alignment for Mobile and Stationory General Purpose X-ray Systems (§ 1020.31(d))

FDA proposes to add the word "portable" to the title in § 1020.31(d) and the applicability portion of the section and to revise the wording for the required minimum field size. Mobile X-ray systems and portable X-ray systems are treated the same throughout the regulations and are usually referred to collectively as "mobile" systems. Sometimes, however, "portable" and "mobile" are distinguished. There seems to be no consistency in referring to these systems. Even though all current performance requirements that apply to one also apply to the other, the two types of systems are distinctly different from each other and could have different requirements in the future. For example, a portable fluoroscope might be allowed a shorter source-to-skin distance than would a mobile system. Therefore, in the proposed amendments, the two systems are defined separately in § 1020.30(b) and treated separately throughout §§ 1020.31 and 1020.32.

Manufacturers have interpreted the minimum field size requirement as meaning that, as long as the minimum field size is no greater than an area of 5 by 5 centimeters (cm), the requirement is met. This would allow, for example, a field of 1 by 25 cm. This is not the intent of the standard. The intent is that no dimension of the minimum field size shall exceed 5 cm; therefore, the wording would be revised accordingly. Similar revisions would occur again in §§ 1020.31(e)(2), 1020.31(g)(3), 1020.32(b)(1) and (2) for the same reason.

FDA also proposes to reduce the minimum required illumination from 160 lux (15 foot candles) to 100 lux (9.3 foot candles).

The intent of the illumination requirement is to provide a means for visual indication of the X-ray field in a radiographic room under typical ambient conditions. This allows proper patient positioning and X-ray field sizing to the region of interest.

There have been several recalls associated with the illumination requirement, affecting every major foreign manufacturer of general purpose radiographic collimators. Bulbs burned out so fast that some assemblers purposely set lamp voltages too low, resulting in noncompliant light localizers. These recalls, in almost all cases, involved both a labeling/information and hardware fix (which is inherently expensive) on several thousand collimators.

The 160 lux illumination limit was primarily based on technical feasibility. The ambient light levels to be expected and the radiological task to be performed were not factored into the requirement. Observation of the visually indicated X-ray field is basically an edge/contrast detection process, and the interaction of the collimator light field brightness with ambient light levels is a very important consideration. In preparation for an enforcement action in 1982, FDA obtained data on ambient light conditions in 369 X-ray rooms across the United States. The X-ray technologist in each facility was asked to adjust the room light to the brightness used to perform the radiological task, i.e., "normal" conditions. The median value for normal room light conditions was measured at approximately 65 lux. This number should be compared with the Illuminating Engineering Society recommendation of about 105 lux for X-ray rooms.

Individual manufacturers and the National Electronic Manufacturer's Association have suggested amendments to the 160 lux illumination requirement in response to the Federal Register notice announcing the retrospective review of the diagnostic X-ray standard (47 FR 51710; November 16, 1982). Their primary suggestion was to lower the minimum illumination requirement to 100 lux. They claimed that a 100 lux requirement would extend bulb life 1000 percent without compromising the radiological task. The lower illumination requirement suggestion is consistent with the International Electrotechnical Commission (IEC), which specifies 100 lux as essential and 160 lux as desirable.

The XSRG (Ref. 4) concluded that:

(1) Although there is only fragmentary anecdotal evidence, the 160 lux requirement may well have resulted in higher than desirable bulb replacement rates;

(2) As long as the current edge sharpness requirement is maintained, there are no real data that indicate that lower illumination would in any way compromise the radiological task. The somewhat unexpectedly low ambient light levels that have been observed (approximately 65 lux) combined with the light level recommended by the IEC reinforces the adequacy of specifying 100 lux as the minimum illumination for light localizers; and

(3) The 100 lux requirement would make the U.S. standard compatible with the IEC.

The TEPRSSC consensus was in agreement with FDA's proposal to change the requirement to 100 lux (Ref. 2). However, FDA continues to solicit data regarding the adequacy of a limit of 100 lux at 1 meter for those systems where a larger source-image receptor distance (SID) is possible (e.g., 72 inches using a wall-mounted cassette holder).

M. Field Limitation and Alignment on Stationary General Purpose X-ray Equipment (§ 1020.31(e))

FDA proposes to remove the requirement for PBL. Instead, the agency proposes that PBL be optional for any radiographic system. The PBL performance requirements (currently, § 1020.31(e)(2) through (6)) would be moved from the section on field limitation and alignment on stationary general purpose X-ray equipment to a new § 1020.31(g). Consequently, all current sections beyond § 1020.31(f) would be redesignated as shown in the proposed revision of the standard. Note that all other requirements for field limitation and alignment on general purpose X-ray equipment would be retained.

The institution of PBL as a regulatory requirement has had a profound effect on the radiologic community. The cost impact is estimated by the XSRG to be more than half the cost impact of the entire performance standard (Ref. 4). The costs come from purchasing new equipment that has PBL instead of a less expensive manual collimator and of maintaining PBL systems over the life of the equipment. The cost impact is greatest in the low volume facilities that do not have a large patient load. For high-volume facilities, the purchase and maintenance costs of PBL may be an even trade for more efficient patient handling and positioning. They probably would purchase PBL even without any Federal requirement.

There is evidence that the originally anticipated dose saving to be accomplished by PBL could have been accomplished without PBL. Significant gains in achieving more optimum beam-area-to-film-area ratios may have resulted more from the introduction of continuously variable rectangular collimation than from PBL. Except in a few instances, the institution of continuously variable rectangular collimation leads to X-ray beam areas which generally approximate the film area used (which is what one hopes to achieve with PBL). Also, the dose reduction benefits for PBL seem to be minimal, according to recent data from NEXT (Ref. 2).

Anecdotal evidence is also accumulating (principally from formal and informal comments on the retrospective review) that, when PBL components fail, they are not always repaired, especially in smaller facilities. Such facilities then make do with what in essence is an expensive manual collimator, and any possible benefits of PBL are eliminated.

Comments on the documents that the XSRG circulated for review to industry, States, physicists, and individuals showed mixed reactions to the proposal to eliminate the PBL requirement. The XSRG collected information and impressions using the Delphi method to survey the benefits of the PBL requirement, and PBL was rated highly in that evaluation process (Ref. 4). A user survey about PBL done in 1978 showed mixed satisfaction and dissatisfaction with PBL (Ref. 8). Mechanical and reliability problems were noted for some of the manufacturers' systems. Although those problems may have disappeared, continuing maintenance costs associated with PBL raise the question of whether the benefits are commensurate with the costs.

In arriving at its recommendation to delete the requirement for PBL, the XSRG considered several alternatives such as (1) retaining PBL, (2) requiring PBL to operate only when the beam area was greater than the image receptor, (3) requiring evidence of collimation, (4) relaxing the requirements with different tolerances. The XSRG recommended that FDA consider educational and other programs to reinforce the message that collimation is important for radiation control.

The TEPRSSC membership was divided in its opinion of the PBL amendment (Ref. 2). Members' arguments against the amendment to make PBL optional were:

(1) The PBL requirement is necessary in order to have the feature available. The device will disappear if it is optional.

(2) Certain public health issues cannot be left to the marketplace.

(3) Many people who take X-rays are not fully trained radiologic technologists (RT's) or radiologists. They need PBL for proper collimation.

(4) Hospitals that make their purchasing decisions based primarily on cost would not purchase PBL systems.

(5) The costs presented by attending manufacturers did not compare with the cost analysis done by the Center.

(6) The suggestion of putting the effort on the States to require positive indication of collimation is not viable.

Members' arguments for making PBL optional were:

(1) The Center has shown that PBL is not cost-effective.

(2) The public health reason for PBL to reduce the dose, and the only case in which there was dose reduction was in chest images in nonhospital settings. Dose from chest exams is not a significant fraction of the total dose to the population; therefore, the value of PBL is small.

(3) The disappearance of PBL, if it were made optional, would mean that society does not want it.

(4) There is a demand on the part of users for non-PBL systems in certain applications, and they should be given the choice.

(5) Where facilities have invested a great deal of money to install PBL, it is often found to be in override or in the manual mode, in which case it is of no benefit.

(6) Because a significant percentage of the radiographs being taken today are done on mobile systems, the focus of training ought to be shifted to manual collimation with a deemphasis on PBL systems.

The deletion of the requirement for PBL would constitute a significant change in the standard. Therefore, FDA specifically solicits comments on this issue. FDA also asks for comments on whether other collimation systems, such as the World Health Organization's Basic Radiological System (which uses color coded fixed apertures) should be allowed.

N. Field Limitation and Alignment for Spot-Film Devices (§ 1020.31(g))

In § 1020.31, FDA proposes to redesignate paragraph (g) as paragraph (h) and to revise it, including changing the word "film" to "image receptor". The term "image receptor," as defined, includes film. "Image receptor" is used throughout the X-ray performance standard and again in this section even though the word "film" is also used. The proposed amendment provides for consistency of terms by using "image receptor" throughout.

FDA also proposes to change the limits on edge misalignment of the X-ray field and image receptor to a size comparison of X-ray field and image receptor. As currently expressed, the requirement creates a difficult test procedure. Further, this requirement is not compatible with other radiographic field limitation and alignment requirements contained in the standard. The difficulty in testing arises from the need to reconstruct the entire X-ray field at the spot-film plane and to compare it to the edges of the selected portion of the spot film. Because a direct test of the spot-film requirement is so difficult to perform in the field, indirect tests are made by FDA when determining compliance at users' facilities.

There are only two arguments against this change, both of which FDA considers to be of minor concern. First, the comparison of edges requirement imposes a requirement on the orientation of the X-ray field with respect to the selected portion of the film. However, large rotations of the X-ray field with respect to the selected portion of the film are very improbable and, in addition, would be unacceptable to the radiologist because of unexposed portions of the film. On the other hand, small rotations which would be tolerated by the radiologist would not

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have a significant impact on radiation exposure to the patient.

The second argument is that if both the size of the X-ray field and the centers misalignment happen to be at the tolerances permitted by the proposed amendment, then the maximum permitted unnecessary exposure to the patient would be larger than now exists. This, however, assumes worst-case conditions for both the X-ray field size as well as for the centers misalignment, and the likelihood of this is small. Thus, the present and proposed requirements would be essentially identical with respect to the control of unnecessary exposure to the patient.

FDA also proposes to redesignate § 1020.31(g)(3) as § 1020.31(h)(4) and to revise it to incorporate information in FDA CPG 7133.17, dated October 1, 1980, for fixed-SID fluoroscopic systems that do not provide stepless adjustment of the X-ray field. (See 21 CFR 20.26 and 20.107.

The current requirement for the minimum X-ray field size for nonstepless beam limitation during spot-filming is different from the minimum X-ray field size during fluoroscopy, yet the same beam limiting device may be used in both applications. This complicates the beam limitation design because different diaphragms may be needed to meet the minimum requirement for each mode of operation. In a memorandum to all diagnostic X-ray equipment manufacturers and assemblers dated October 22, 1980 (Ref. 9), FDA stated that the 5 by 5 centimeter (cm) minimum field size requirement for spot-film devices would not be enforced for nonstepless beam limiting devices, but that such devices would be required to provide a minimum X-ray field size of 125 square centimeters or less. This makes the requirement consistent with the fluoroscopic field limitation requirements in § 1020.32(b)(2)(iv). FDA proposes to incorporate this requirement into the standard.

TEPRSSC was in agreement with the changes to § 1020.31(g) (Ref. 2).

O. Standby Radiation From Capacitor Energy Storage Equipment (§ 1020.31(k))

FDA proposes to redesignate § 1020.31(k) as § 1020.31(l); to revise the paragraph heading to read, "Radiation from capacitor energy storage equipment"; to revise the text of this paragraph to change the exposure limit format for standby radiation; and to incorporate the exposure limit for discharge radiation.

The standby radiation from capacitor energy storage systems is not always emitted at a constant amplitude but may occasionally have large short duration spikes which can be measured by radiation instruments having very short response times. If one were using such an instrument to measure for only a short time and happened to encounter one of these spikes, the measurement would be highly biased, making the overall exposure rate appear much higher than it really is. An instrument with a longer response time would tend to average the exposure rate, giving a more reasonable assessment of the overall rate.

Currently, § 1020.31(k) specifies the acceptable range for instrument response times for measurement of standby radiation. Unfortunately, response time is an unwieldy concept that is often confusing and, as specified in § 1020.31(k), does not cover all radiation instruments that might be used in quality assurance programs. In fact, the instrument now being used by FDA for compliance testing technically does not meet the response time requirement.

The proposed amendment changes the requirement from exposure rate to exposure expressed over a reasonable time interval that allows for "smoothing" of the exposure profile and, at the same time, obviates the need for specifying the instrument response time.

The current standby radiation requirement was written using the worst-case assumptions that the unit was continually on standby (i.e., charged up) and that the user was in close proximity to the unit. The two milliroentgen (mR)-per-hour-at-5-cm limit ensures that the 40-hour week occupational exposure limit of 100 mR is not exceeded. In many capacitor discharge X-ray systems, however, radiation may also be emitted under the following situations:

(1) The kilovoltage is initially set too high for the radiological procedure and is lowered by discharging through the X-ray tube;

(2) The radiological procedure is completed and the unit is manually discharged ("discharge pushbutton") through the X-ray tube before or after deactivating the input power; or

(3) The radiological procedure is completed and the unit automatically discharges through the X-ray tube upon deactivating the input power. These circumstances do not involve the exposure switch or timer and, therefore, fall within the description of standby radiation in § 1020.30(k).

However, the worst-case assumptions of the standby requirements are not appropriate for the discharge situations described above. First, one cannot make the assumption that the unit is continually being discharged; secondly, the user will not be in close proximity to the radiation source during discharge, certainly not at 5 cm. An exposure rate limit of 2 mR per hour at 5 cm is unduly restrictive for these situations. Recognizing this, FDA issued a multiple address letter (BRH:DOC:MA 355) (Ref. 10) to all manufacturers and established a different exposure limit for when the system was being discharged via a discharge button or by deactivation of power.

The proposed amendment would revise the paragraph heading, eliminating the word "standby." Standby radiation (although not defined in § 1020.30(b)) was intended, for purposes of § 1020.31(k), to be only that radiation that was emitted from the source while the system was in a charged state awaiting an exposure activation. The radiation produced via the discharge button does not fit within that intent. Neither does it fit within the definition of leakage radiation, even though the proposed exposure limits are identical. Thus § 1020.30(k) is inapplicable as well.

Therefore, the "discharge" radiation limits that would be codified in the proposed amendment to § 1020.31(k), are chosen in order to be consistent with the leakage requirements in existing § 1020.30(k), which originally derived from the recommendations of the NCRP (Ref. 11). The word "standby" would be eliminated from the title since both standby and discharge radiation are addressed in this section.

TEPRSSC was in agreement with the proposed changes to § 1020.31(k) (Ref. 2).

P. Image Intensified Fluoroscopy (Further Limitation of the Field (§ 1020.32(b)(2)(iv))

FDA proposes to revise the first two sentences of § 1020.32(b)(2)(iv) to add the phrase, "the capability of," preceding the phrase, "a visible area."

The current wording of the requirement has been interpreted by some manufacturers to mean that, if the collimator can be adjusted so that the system does not produce a visible area of greater than 300 square cm, it does not need stepless adjustment collimation. The intent of the performance standard, however, is that systems designed with the capability to produce a visible area of greater than 300 square cm by ordinary opening of the collimator, regardless of whether or not the collimator happens to be opened that large, shall provide stepless adjustment collimation. TEPRSSC agreed with the proposed change (Ref. 2).

Q. Entrance Exposure Rate Limits (§ 1020.32(d))

FDA proposes to insert a new paragraph to be codified as § 1020.32(d)(3) for fluoroscopic systems having both an automatic and a manual mode.

Section 1020.32(d) specifies the entrance exposure rate (EER) limits for systems which have only an automatic mode or a manual mode, but it does not specify the EER limits for systems capable of both manual and automatic operation. A number of manufacturers make such combination systems, and FDA has received many questions regarding allowable EER limits for such systems. In response, FDA issued a multiple address letter (BRH:DOC:MA 1189, dated March 26, 1974) to all manufacturers which set forth the policy that FDA follows in enforcing § 1020.32(d) for combination systems (Ref. 12). The policy introduced a new EER limit which is not found in existing § 1020.32(d), namely an allowance of 10 roentgens per minute (R/min) for the manual mode if that mode does not have a high level control. The proposed amendment adds the provisions of the policy to the standard and distinguishes combination systems from automatic-only and manual-only systems.

FDA proposes (1) to make clear that the requirements of § 1020.32(d)(4)(iii) apply to all C-arm systems; (2) to specify the measurement geometry more clearly for variable (source-image receptor distance) SID systems; and (3) to incorporate the requirements of the FDA multiple-address letter (MA:OC:DRP 387, dated March 24, 1966) for measurement of EER of C-arm fluoroscopes (Ref. 13) into a new paragraph.

When this section was originally written, the only C-arm systems available were mobile with a fixed SID. In recent years, manufacturers have produced a variety of C-arm systems that are much more sophisticated than the simple mobile fixed-SID types. These include large stationary systems with variable SID, tables, and radiographic as well as fluoroscopic capability.

Although § 1020.32(d)(4)(iii) does not specifically exclude the larger systems, manufacturers have interpreted it to apply only to mobile systems with fixed SID's. For the larger stationary C-arm systems, some manufacturers have taken the position that § 1020.32(d)(4)(iii) does not apply but rather that § 1020.32(d)(4)(i) or (ii) does apply because those manufacturers' systems were equipped with a table. Other manufacturers, admitting that their large stationary systems were C-arm fluoroscopes, have interpreted § 1020.32(d)(4)(iii) to mean that they could measure the EER at the maximum SID. This means that the EER limits could be exceeded at the 30 cm measurement point when the system is adjusted to shorter SID's. This, of course, was not the intent of § 1020.32(d)(4)(iii).

FDA also proposes to add a new paragraph to provide the measurement geometry for lateral fluoroscopes. The present performance standard does not state the measurement geometry for the EER of lateral fluoroscopes. These systems are usually configured such that the X-ray beam is directed across the table and the source is neither below nor above. Thus, § 1020.32(d)(4) (i) and (ii) do not apply. FDA issued a multiple-address letter (BRH:DOC:MA 335, dated August 29, 1977) describing the measurement geometry for lateral fluoroscopes (Ref. 14). The proposed amendment adds the requirements stated in the letter to § 1020.32(d). TEPRSSC agreed with the proposed amendment (Ref. 2).

R. Change in Units Throughout the Standard

In accordance with current agency policy, under this proposal, all units for quantities in §§ 1020.30, 1020.31, and 1020.32 would be changed to units of the International System of Units (SI units). This would result, for example, in the use of coulomb/kilogram as the unit of exposure in place of the unit roentgen, as previously used, and in changing values expressed in centimeters to values expressed in millimeters or meters. No changes in requirements result from the changes to SI Units.

III. Paperwork Reduction Act of 1980

Section 1020.30(g) *Information to be provided to assemblers* contains relief from information collection requirements in that certain replacement assemblies and components are exempted from reporting and recordkeeping requirements. There are no other changes in information collection requirements. All information collection and recordkeeping requirements for this performance standard have been approved by the Office of Management and Budget (OMB) under control number 0910-0213 "Reporting and Recordkeeping for Electronic Products under Public Law 90-602—Specific Product Requirements" and are in conformance with section 3504(h) of the Paperwork Reduction Act of 1980 as interpreted by OMB in 5 CFR part 1320. (See 49 FR 13666; March 31, 1983.) Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, ATTN: Desk Officer for FDA.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Agenda and Background Information, 21st Meeting, Technical Electronic Product Radiation Safety Standards Committee, June 22 and 23, 1987, Center for Devices and Radiological Health.

2. Center for Devices and Radiological Health, 21st Meeting of the Technical Electronic Product Radiation Safety Standards Committee, transcript.

3. "An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30-32)," NTIS, PB85-115947, August, 1984.

4. "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and Other Major Components (21 CFR 1020.30-32)," July, 1985.

5. Health Industry Manufacturers Association Report, "Application of 21 CFR 1020.30(n) Performance Standards for Diagnostic X-Ray System Tabletops to Mobile Stretchers," submitted to FDA, December 10, 1986.

6. T.B. Shope and H. Rudolph, "A Second Look at the Costs and Benefits Associated with the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly," draft No. 3, unpublished, November 1978.

7. "A Study of the Need for Controlling the Sale of Antiquated X-Ray Equipment," unpublished report submitted to Congress pursuant to section 357 of the Radiation Control for Health and Safety Act, House Document 90-390, January 1, 1970.

8. U.S. Department of Health and Human Services, "Positive Beam Limitation Effectiveness Evaluation," HHS Publication (FDA) 80-8108.

9. Multiple address letter (MAH: BRH: DOC XPB 354, dated October 22, 1980), "Minimum X-Ray Field Size for Spot Film Operation of Fluoroscopic Systems with Fixed SID."

10. Multiple address letter (BRH: DOC: MA 355, dated September 18, 1980), "Standby Radiation from Capacitor Energy Storage Equipment." (21 CFR 1020.31(k)).

11. National Council on Radiation Protection Report, No. 33, "Medical X-Ray and Gamma-Ray Protection for Energies up to 10 MeV—Equipment Design and Use," February 1, 1968.

12. Multiple address letter (BRH: DOC: MA 1189, dated March 26, 1974), "Entrance Exposure Rate Determination for Fluoroscopic Systems."

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13. FDA multiple-address letter (MA: OC: DRP 387, dated March 24, 1986), "Measurement of EER of C-Arm Fluoroscopic X-Ray Systems."

14. FDA multiple-address letter (BRH: DOC: MA 335, dated August 29, 1977), "Measurement of Entrance Exposure Rate for Lateral Type Fluoroscopes—21 CFR 1020.32(d)."

V. Economic Impact

This proposed rule is the result of an extensive retrospective review, including a cost-benefit analysis of regulatory impact, meeting the requirements of Executive Order 12291, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Copies of the documents supporting this determination ("An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30–32)" and "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and Their Major Components") are on file in the Dockets Management Branch and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

VI. Comments

Interested persons may, on or before January 16, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1020

Diagnostic X-ray systems, Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1020 be amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR Part 1020 continues to read as follows:

Authority: Secs. 501, 502, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

2. Sections 1020.30, 1020.31, and 1020.32 are revised to read as follows:

§ 1020.30 Diagnostic X-ray systems and their major components.

(a) *Applicability.* (1) The provisions of this section are applicable to:

(i) The following components of diagnostic X-ray systems:

(A) Tube housing assemblies, X-ray controls, X-ray high-voltage generators, X-ray tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

(B) Fluoroscopic imaging assemblies manufactured after August 1, 1974, and before April 26, 1977.

(C) Spot-film devices and image intensifiers manufactured after April 26, 1977.

(D) Cephalometric devices manufactured after February 25, 1978.

(E) Image receptor support devices for mammographic X-ray systems manufactured after September 5, 1978.

(ii) Diagnostic X-ray systems, except computed tomography X-ray systems, incorporating one or more of such components; however, such X-ray systems shall be required to comply only with those provisions of this section and §§ 1020.31 and 1020.32 which relate to the components certified in accordance with paragraph (c) of this section and installed into the systems.

(iii) Computed tomography (CT) X-ray systems manufactured before November 29, 1984.

(iv) CT gantries manufactured after September 3, 1985.

(2) The following provisions of this section and § 1020.33 are applicable to computed tomography X-ray systems manufactured or remanufactured after November 29, 1984:

(i) Section 1020.30(a);

(ii) Section 1020.30(b) "Technique factors";

(iii) Section 1020.30(b) "Computed tomography (CT)," "Scan," "Scan time," "Tomogram," and "Dose";

(iv) Section 1020.30(h)(3) (vi) through (viii);

(v) Section 1020.30(n);

(vi) Section 1020.33 (a) and (b);

(vii) Section 1020.33(c)(1) as it affects § 1020.33(c)(2); and

(viii) Section 1020.33(c)(2).

(3) The provisions of this section and § 1020.33 in its entirety, including those provisions in paragraph (a)(2) of this section, are applicable to computed tomography X-ray systems manufactured or remanufactured after September 3, 1985. The date of manufacture of the CT system is the date of manufacture of the CT gantry.

(b) *Definitions.* As used in this section and §§ 1020.31, 1020.32, and 1020.33, the following definitions apply:

Accessible surface means the external surface of the enclosure or housing provided by the manufacturer.

Accessory component means:

(1) A component used with diagnostic X-ray systems, such as a cradle or film changer, that is not necessary for the compliance of the system with applicable provisions of this subchapter but which requires an initial determination of compatibility with the system; or

(2) A component necessary for compliance of the system with applicable provisions of this subchapter but which may be interchanged with similar compatible components without affecting the system's compliance, such as one of a set of interchangeable beam-limiting devices; or

(3) A component compatible with all X-ray systems with which it may be used and that does not require compatibility or installation instructions, such as a tabletop cassette holder.

Aluminum equivalent means the thickness of aluminum (type 1100 alloy)[1] affording the same attenuation, under specified conditions as the material in question.

Articulated joint means a joint between two separate sections of a tabletop which joint provides the capacity for one of the sections to pivot on the line segment joining the sections.

Assembler means any person engaged in the business of assembling, replacing, or installing one or more components into a diagnostic X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

Attenuation block means a block or stack of type 1100 aluminum alloy or aluminum alloy having equivalent attenuation with dimensions 200 millimeters by 200 millimeters by 38 millimeters.

[1] The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper, as given in "Aluminum Standards and Data" (1988). Copies may be obtained from: The Aluminum Association, New York, NY.

Automatic exposure control means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation.

Beam axis means a line from the source through the centers of the X-ray fields.

Beam-limiting device means a device which provides a means to restrict the dimensions of the X-ray field.

Cantilevered tabletop means a tabletop designed such that the unsupported portion can be extended at least 1 meter beyond the support.

Cassette holder means a device, other than a spot-film device, that supports and/or fixes the position of an X-ray film cassette during an X-ray exposure.

Cephalometric device means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

Coefficient of variation means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \bar{X})^2}{n-1}\right]^{1/2}$$

where

s=Estimated standard deviation of the population.

$\bar{X}$=Mean value of observations in sample.

Xi=ith observation sampled.

n=Number of observations sampled.

Computed tomography (CT) means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

Control panel means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

Cooling curve means the graphical relationship between heat units stored and cooling time.

Cradle means:

(1) A removable device which supports and may restrain a patient above an X-ray table; or

(2) A device:

(i) Whose patient support structure is interposed between the patient and the image receptor during normal use;

(ii) Which is equipped with means for patient restraint; and

(iii) Which is capable of rotation about its long (longitudinal) axis.

CT gantry means tube housing assemblies, beam-limiting devices, detectors, and the supporting structures, frames, and covers which hold and/or enclose these components.

Diagnostic source assembly means the tube housing assembly with a beam-limiting device attached.

Diagnostic X-ray system means an X-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

Dose means the absorbed dose as defined by the International Commission on Radiation Units and Measurements. The absorbed dose, D, is the quotient of de by dm, where de is the mean energy imparted by ionizing radiation to matter of mass dm.

Equipment means X-ray equipment.

Exposure means the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air.

Field emission equipment means equipment which uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

Fluoroscopic imaging assembly means a subsystem in which X-ray photons produce a fluoroscopic image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

General purpose radiographic X-ray system means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

Half-value layer (HVL) means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

Image intensifier means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

Image receptor means any device, such as a fluorescent screen, radiographic film, solid-state detector, or gaseous detector, which transforms incident X-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect portions of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

Image receptor support means, for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

Leakage radiation means radiation emanating from the diagnostic source assembly except for: the useful beam; and radiation produced when the exposure switch or timer is not activated.

Leakage technique factors means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows: for diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs or the minimum obtainable from the unit, whichever is larger; for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential; and for all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

Light field means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illuminance is one-fourth of the maximum in the intersection.

Line-voltage regulation means the difference between the no-load and the load line potentials expressed as a percent of the load line potential; that is

Percent line-voltage regulation

$$\frac{100\,(Vn - Vi)}{Vi}$$

where

Vn=No-load line potential and

Vi=Load line potential.

Maximum line current means the root mean square current in the supply line

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of an X-ray machine operating at its maximum rating.

Moveable tabletop means a tabletop which, when assembled for use, is capable of movement with respect to its supporting structure within the plane of the tabletop.

Peak tube potential means the maximum value of the potential difference across the X-ray tube during an exposure.

Primary protective barrier means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

Quick change X-ray tube means an X-ray tube designed for use in its associated tube housing such that:

(1) The tube cannot be inserted in its housing in a manner that would result in noncompliance of the system with the requirements of paragraphs (k) and (m) of this section; and

(2) The focal spot position will not cause noncompliance with the provisions of this section or § 1020.31 or § 1020.32; and

(3) The shielding within the tube housing cannot be displaced; and

(4) Any removal and subsequent replacement of a beam-limiting device during reloading of the tube in the tube housing will not result in noncompliance of the X-ray system with the applicable field limitation and alignment requirements of § § 1020.31 and 1020.32.

Radiation therapy simulation system means a radiographic or fluoroscopic X-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

Rated line voltage means the range of potentials, in volts, of the supply line specified by the manufacturer at which the X-ray machine is designed to operate.

Rated output current means the maximum allowable load current of the X-ray high-voltage generator.

Rated output voltage means the allowable peak potential, in volts, at the output terminals of the X-ray high-voltage generator.

Rating means the operating limits specified by the manufacturer.

Recording means producing a permanent form of an image resulting from X-ray photons (e.g., film, video tape).

Scan means the complete process of collecting X-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

Scan time means the period of time between the beginning and end of X-ray transmission data accumulation tor a single scan.

Source means the focal spot of the X-ray tube.

Source-image receptor distance (SID) means the distance from the source to the center of the input surface of the image receptor.

Spot-film device means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

Stationary tabletop means a tabletop which, when assembled for use, is incapable of movement with respect to its supporting structure within the plane of the tabletop.

Technique factors means the following conditions of operation: for capacitor energy storage equipment, peak tube potential in kilovolts (kV) and quantity of charge in milliamperes seconds (mAs); for field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses; for CT equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in milliamperes (mA), X-ray pulse width in seconds, and the number of X-ray pulses per scan, or the product of tube current, X-ray pulse width, and the number of X-ray pulses in mAs; for CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and for all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

Tomogram means the depiction of the X-ray attenuation properties of a section through a body.

Tube means an X-ray tube, unless otherwise specified.

Tube housing assembly means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when they are contained within the tube housing.

Tube rating chart means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

Useful beam means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

Variable-aperture beam-limiting device means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

Visible area means the portion of the input surface of the image receptor over which incident X-ray photons are producing a visible image.

X-ray control means a device which controls input power to the X-ray high-voltage generator and/or the X-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors of an X-ray exposure.

X-ray equipment means an X-ray system, subsystem, or component thereof. Types of X-ray equipment are as follows: "mobile X-ray equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled; "portable X-ray equipment" means X-ray equipment designed to be hand-carried; and "stationary X-ray equipment" means X-ray equipment which is installed in a fixed location.

X-ray field means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

X-ray high-voltage generator means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

X-ray system means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

X-ray subsystem means any combination of two or more components of an X-ray system for which there are requirements specified in this section and §§ 1020.31 and 1020.32.

X-ray table means a patient support device with its patient support structure (tabletop) interposed between the patient and the image receptor during radiography and/or fluoroscopy. This includes, but is not limited to, any

stretcher equipped with a radiolucent panel and any table equipped with a cassette tray (or bucky), cassette tunnel, image intensifier, or spot-film device beneath the tabletop.

X-ray tube means any electron tube which is designed for the conversion of electrical energy into X-ray energy.

(c) *Manufacturer's responsibility.* Manufacturers of products subject to §§ 1020.30 through 1020.33 shall certify that each of their products meet all applicable requirements when installed into a diagnostic X-ray system according to instructions. This certification shall be made under the format specified in § 1010.2 of this chapter. Manufacturers may certify a combination of two or more components if they obtain prior authorization in writing from the Director of the Office of Compliance and Surveillance of the Center for Devices and Radiological Health. Manufacturers shall not be held responsible for noncompliance of their products if that noncompliance is due solely to the improper installation or assembly of that product by another person; however, manufacturers are responsible for providing assembly instructions adequate to assure compliance of their components with the applicable provisions of §§ 1020.30 through 1020.33.

(d) *Assemblers' responsibility.* An assembler who installs one or more components certified as required by paragraph (c) of this section shall install certified components that are of the type required by §§ 1020.31, 1020.32, or 1020.33 and shall assemble, install, adjust, and test the certified components according to the instructions of their respective manufacturers. Assemblers shall not be liable for noncompliance of a certified component if the assembly of that component was according to the component manufacturer's instruction.

(1) *Reports of assembly.* All assemblers who install certified components shall file a report of assembly, except as specified in paragraph (d)(2) of this section. The report will be construed as the assembler's certification and identification under §§ 1010.2 and 1010.3 of this chapter. The assembler shall affirm in the report that the manufacturer's instructions were followed in the assembly or that the certified components as assembled into the system meet all applicable requirements of §§ 1020.30 through 1020.33. All assembler reports must be on a form prescribed by and available from the Director, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Completed reports must be submitted to the Director, the purchaser, and, where applicable, to the State agency responsible for radiation protection within 15 days following completion of the assembly.

(2) *Exceptions to reporting requirements.* Reports of assembly need not be submitted for:

(i) Reloaded or replacement tube housing assemblies which are reinstalled or newly assembled into an existing X-ray system; or

(ii) Certified accessory components which have been identified as such to the Center for Devices and Radiological Health in the report required under § 1002.10 of this chapter.

(e) *Identification of X-ray components.* In addition to the identification requirements specified in § 1010.3 of this chapter, manufacturers of components subject to this section and §§ 1020.31, 1020.32, and 1020.33, except high-voltage generators contained within tube housings and beam-limiting devices which are integral parts of tube housings, shall permanently inscribe or affix thereon the model number and serial number of the product, so as to be legible and accessible to view. The word "model" or "type" shall appear as part of the manufacturer's required identification of certified X-ray components. Where the certification of a system or subsystem, consisting of two or more components, has been authorized pursuant to paragraph (c) of this section, a single inscription, tag, or label bearing such information may be used to identify the product.

(1) *Tube housing assemblies.* In a similar manner, manufacturers of tube housing assemblies shall also inscribe or affix thereon the name of the manufacturer, model number, and serial number of the X-ray tube which the tube housing assembly incorporates.

(2) *Replacement of tubes.* Except as specified in paragraph (e)(3) of this section, the replacement of an X-ray tube in a previously manufactured tube-housing assembly certified pursuant to paragraph (c) of this section constitutes manufacture of a new tube housing assembly, and the manufacturer is subject to the provisions of paragraph (e)(1) of this section. The manufacturer shall remove, cover, or deface any previously affixed inscriptions, tags, or labels, that are no longer applicable.

(3) *Quick-change X-ray tubes.* The requirements of paragraph (e)(2) of this section shall not apply to tube-housing assemblies designed and designated by original manufacturer to contain quick change X-ray tubes. The manufacturer of such X-ray tubes shall include with each replacement tube a label with the tube manufacturer's name, the model, and serial number of the X-ray tube. The manufacturer of the tube shall instruct the assembler who installs the new tube to attach the label to the tube-housing assembly and to remove the cover or deface the previously affixed inscriptions, tags, or labels that are described by the tube manufacturer as no longer applicable.

(f) [Reserved]

(g) *Information to be provided to assemblers.* Manufacturers of components listed in paragraph (a)(1) of this section shall provide to assemblers subject to paragraph (d) of this section and, upon request, to others at a cost not to exceed the cost of publication and distribution, instructions for assembly, installation, adjustment, and testing of such components adequate to assure that the products will comply with applicable provisions of this section and §§ 1020.31, 1020.32, and 1020.33, when assembled, installed, adjusted, and tested as directed. Such instructions shall include specifications of other components compatible with that to be installed when compliance of the system or subsystem depends on their compatibility. Such specifications may describe pertinent physical characteristics of the components and/or may list by manufacturer model number the components which are compatible. For X-ray controls and generators, manufacturers shall provide:

(1) A statement of the rated line voltage and the range line-voltage regulation for operation at maximum line current;

(2) A statement of the maximum line current of the X-ray system based on the maximum input voltage and current characteristics of the tube housing assembly compatible with rated output voltage and rated output current characteristics of the X-ray control and associated high-voltage generator. If the rated input voltage and current characteristics of the tube housing assembly are not known by the manufacturer of the X-ray control and associated high-voltage generator, he shall provide necessary information to allow the assembler to determine the maximum line current for the particular tube housing assembly(s);

(3) A statement of the technique factors that constitute the maximum line current condition described in paragraph (g)(2) of this section.

(h) *Information to be provided for users.* Manufacturers of X-ray equipment shall provide for purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, manuals or instruction

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sheets which shall include the following technical and safety information:

(1) *All X-ray equipment.* For X-ray equipment to which this section and §§ 1020.31, 1020.32, and 1020.33 are applicable, there shall be provided:

(i) Adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the equipment; and

(ii) A schedule of the maintenance necessary to keep the equipment in compliance with this section and §§ 1020.31, 1020.32, and 1020.33.

(2) *Tube housing assemblies.* For each tube housing assembly, there shall be provided:

(i) Statements of the leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the tube housing assembly manufacturer states compatibility, the minimum filtration permanently in the useful beam expressed as millimeters of aluminum equivalent, and the peak tube potential at which the aluminum equivalent was obtained;

(ii) Cooling curves for the anode and tube housing; and

(iii) Tube rating charts. If the tube is designed to operate from different types of X-ray high-voltage generators (such as single-phase self-rectified, single-phase half-wave rectified, single-phase full-wave rectified, 3-phase 6-pulse, 3-phase 12-pulse, constant potential, capacitor energy storage) or under modes of operation such as alternate focal spot sizes or speeds of anode rotation which affect its rating, specific identification of the difference in ratings shall be noted.

(3) *X-ray controls and generators.* For the X-ray control and associated X-ray high voltage generator, there shall be provided:

(i) A statement of the rated line voltage and the range of line-voltage regulation for operation at maximum line current;

(ii) A statement of the maximum line current of the X-ray system based on the maximum input voltage and current characteristics of the tube housing assembly compatible with rated output voltage and rated output current characteristics of the X-ray control and associated high-voltage generator. If the rated input voltage and current characteristics of the tube housing assembly are not known by the manufacturer of the X-ray control and associated high-voltage generator, the manufacturer shall provide necessary information to allow the purchaser to determine the maximum line current for his particular tube housing assembly(s);

(iii) A statement of the technique factors that constitute the maximum line current condition described in paragraph (h)(3)(ii) of this section;

(iv) In the case of battery-powered generators, a specification of the minimum state of charge necessary for proper operation.

(v) Generator rating and duty cycle;

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of X-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraphs (h)(3) (iii), (vi), and (vii) of this section; for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

(4) *Beam-limiting device.* For each variable-aperature beam-limiting device, there shall be provided;

(i) Leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the beam-limiting device manufacturer states compatibility; and

(ii) A statement including the minimum aluminum equivalent of that part of the device through which the useful beam passes and including the X-ray tube potential at which the aluminum equivalent was obtained. When two or more filters are provided as part of the device, the statement shall include the aluminum equivalent of each filter.

(i) [Reserved]

(j) *Warning label.* The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(k) *Leakage radiation from the diagnostic source assembly.* The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source shall not exceed 2.58×10^{-5} kilogram (C/kg) (100 milliroentgens) in 1 hour when the X-ray tube is operated at the leakage technique factors. If the maximum rated peak tube potential of the tube housing assembly is greater than the maximum rated peak tube potential for the diagnostic source assembly, positive means shall be provided to limit the maximum X-ray tube potential to that of the diagnostic source assembly. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

(l) *Radiation from components other than the diagnostic source assembly.* The radiation emitted by a component other than the diagnostic source assembly shall not exceed 5.16×10^{-7} C/kg (2 milliroentgens) in 1 hour at 50 millimeters from any accessible surface of the component when it is operated in an assembled X-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

(m) *Beam quality*—(1) *Half-value layer.* The half-value layer (HVL) of the useful beam for a given X-ray tube potential shall not be less than the appropriate value shown in Table I under "Specified dental systems," for any dental X-ray system designed for use with intraoral image receptors and manufactured after December 1, 1980; and under "Other X-ray systems," for all other X-ray systems subject to this section. If it is necessary to determine such half-value layer at an X-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made. Positive means [3] shall be provided to insure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure.

TABLE I

X ray tube voltage (kilovolt peak)		Minimum HVL (millimeters of aluminum)	
Designed operating range	Measured operating potential	Specified dental systems	Other x ray systems
Below 51	30	1.5	0.3
	40	1.5	0.4
	50	1.5	0.5
51 to 70	51	1.5	1.2
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

[3] In the case of a system which is to be operated with more than one thickness of filtration, this requirement can be met by a filter interlock with the kilovoltage selector which will prevent X-ray emission if the minimum required filtration is not in place.

TABLE I—Continued

X ray tube voltage (kilovolt peak)		Minimum HVL (millimeters of aluminum)	
Designed operating range	Measured operating potential	Specified dental systems	Other x ray systems
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

(2) *Measuring compliance.* For capacitor energy storage equipment, compliance shall be determined with the maximum selectable quantity of charge per exposure.

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT X-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor, may not exceed the indicated limits. Compliance shall be determined by X-ray measurements made at a potential of 100 kilovolts peak and with an X-ray beam that has a half-value layer of 2.7 millimeters of aluminum. This requirement applies to front panel(s) of cassette holders and film changers provided by the manufacturer for patient support or for prevention of foreign object intrusions. It does not apply to screens and their associated mechanical support panels or grids.

TABLE II

Item	Aluminum equivalent (millimeters)
Front panel(s) of cassette holder (total of all)	1.0
Front panel(s) of film changer (total of all)	1.0
Cradle	2.0
Tabletop, stationary, without articulated joint(s)	1.0
Tabletop, movable, without articulated joint(s) (including stationary subtop)	1.5
Tabletop, with radiolucent panel having one articulated joint	1.5
Tabletop, with radiolucent panel having two or more articulated joints	2.0
Tabletop, cantilevered	2.0
Tabletop, radiation therapy simulator	5.0

(o) *Battery charge indicator.* On battery-powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(p) [Reserved]

(q) *Modification of certified diagnostic X-ray components and systems.* (1) Diagnostic X-ray components and systems certified in accordance with § 1010.2 of this chapter shall not be modified such that the component or system fails to comply with any applicable provision of this chapter unless a variance in accordance with § 1010.4 of this chapter or an exemption under sections 358(a)(5) or 360B(b) of the Public Health Service Act has been granted.

(2) The owner of a diagnostic X-ray system who uses the system in a professional or commercial capacity may modify the system, provided the modification does not result in the failure of the system or component to comply with the applicable requirements of this section or of § 1020.31, § 1020.32, or § 1020.33. The owner who causes such modification need not submit the reports required by Subpart B of Part 1002 of this chapter, provided the owner records the date and the details of the modification, and provided the modification of the X-ray system does not result in a failure to comply with § 1020.31, § 1020.32, or § 1020.33.

§ 1020.31 Radiographic equipment.

The provisions of this section apply to equipment for the recording of images, except equipment involving use of an image intensifier or computed tomography X-ray systems manufactured on or after November 29, 1984.

(a) *Control and indication of technique factors*—(1) *Visual indication.* The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated. On equipment having fixed technique factors, this requirement may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(2) *Timers.* Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second. Termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

(ii) During serial radiography, the operator shall be able to terminate the X-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(3) *Automatic exposure controls.* When an automatic exposure control is provided:

(i) Indication shall be made on the control panel when this mode of operation is selected;

(ii) When the X-ray tube potential is equal to or greater than 51 kilovolts peak (kVp), the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses and the minimum exposure time for all other equipment shall be equal to or less than 1/60 second or a time interval required to delivery 5 milliamperes seconds (mAs), whichever is greater;

(iii) Either the product of peak X-ray tube potential, current, and exposure time shall be limited to not more than 60 kilowatt seconds (kWs) per exposure or the product of X-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except when the X-ray tube potential is less than 51 kVp in which case the product of X-ray tube current and exposure time shall be limited to not more than 2,000 mAs per exposure; and

(iv) A visible signal shall indicate when an exposure has been terminated at the limits described in paragraph (a)(3)(iii) of this section, and manual resetting shall be required before further automatically timed exposures can be made.

(4) *Accuracy.* Deviation of technique factors from indicated values shall not exceed the limits given in the information provided in accordance with § 1020.30(h)(3);

(b) *Reproducibility.* The following requirements shall apply when the equipment is operated on an adequate power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3);

(1) *Coefficient of variation.* For any specific combination of selected technique factors, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05.

(2) *Measuring compliance.* Determination of compliance shall be based on 10 consecutive measurements

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taken with a time period of 1 hour. Equipment manufactured after September 5, 1978, shall be subject to the additional requirement that all variable controls for technique factors shall be adjusted to alternate settings and reset to the test setting after each measurement. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation shall be within ±1 of the mean value for all measurements. For equipment having automatic exposure controls, compliance shall be determined with a sufficient thickness of attenuating material in the useful beam such that the technique factors can be adjusted to provide individual exposures of a minimum of 12 pulses on field emission equipment rated for pulse operations or no less than one-tenth second per exposure on all other equipment.

(c) *Linearity.* The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3) for any fixed X-ray tube potential within the range of 40 percent to 100 percent of the maximum rated.

(1) *Equipment having independent selection of X-ray tube current (mA).* The average ratios of exposure to the indicated milliampere-seconds product (C/kg/mAs)) obtained at any two consecutive tube current setting shall not differ by more than 0.10 times their sum. This is:

$X_1 - X_2 < 0.10(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at each of two consecutive tube current settings or at two settings differing by no more than a factor of 2 where the tube current selection is continuous.

(2) *Equipment having selection of X-ray tube current-exposure time product (mAs).* The average ratios of exposure to the indicated milliampere-seconds product (C/kg/mAs (or mR/mAs)) obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. This is:

$X_1 - X_2$ 0.10$(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at each of two consecutive mAs selector settings or at two settings differing by no more than a factor of 2 where the mAs selector provides continuous selection.

(3) *Measuring compliance.* Determination of compliance will be based on 10 exposures, made within 1 hour, at each of the two settings. These two settings may include any two focal spot sizes, provided that neither focal spot size is equal to or less than 0.45 millimeter. For purposes of this requirement, focal spot size is the nominal focal spot size specified by the X-ray tube manufacturer. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation at any one combination of technique factors shall be within ±1 of the mean value for all measurements at these technique factors.

(d) *Field limitation and alignment for mobile, portable, and stationary general purpose X-ray systems.* Except when spot-film devices or special attachments for mammography are in service, mobile, portable, and stationary general purpose radiographic X-ray systems shall meet the following requirements.

(1) *Variable X-ray field limitation.* A means for stepless adjustment of the size of the X-ray field shall be provided. Each dimension of the minimum field size at an SID of 1 meter shall be equal to or less than 50 millimeters.

(2) *Visual definition.* (i) Means for visually defining the perimeter of the X-ray field shall be provided. The total misalignment of the edges of the visually defined field with the respective edges of the X-ray field along either the length or width of the visually defined field shall not exceed 2 percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the X-ray beam.

(ii) When a light localizer is used to define the X-ray field, it shall provide an average illumination of not less than 100 lux (9.3 foot candles) at 1 meter or at the maximum source-image receptor distance (SID), whichever is less. The average illumination shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

(iii) The edge of the light field at 1 meter or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than 4 in the case of beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than 3 in the case of beam-limiting devices designed for use on mobile and portable equipment. The contrast ratio is defined as I_1/I_2 where I_1 is the illumination 3 millimeters from the edge of the light field toward the center of the field; and I_2 is the illumination 3 millimeters from the edge of the light field away from the center of the field. Compliance shall be determined with a measuring aperture of 1 millimeter.

(e) *Field indication and alignment on stationary general purpose X-ray equipment.* Except when spot-film devices or special attachments for mammography are in service, stationary general purpose X-ray systems shall meet the following requirements in addition to those prescribed in paragraph (d) of this section.

(1) Means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, to align the center of the X-ray field with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent;

(2) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted;

(3) Indication of field size dimensions and SID's shall be specified in meters, or centimeters, and/or inches and shall be such that aperture adjustments result in X-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within 2 percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor; and

(4) Compliance measurements will be made at discrete SID's and image receptor dimensions in common clinical use (such as SID's of 1.0, 1.5, and 2.0 meters and/or 36, 40, 48, and 72 inches and nominal image receptor dimensions of 130, 180, 240, 300, 350, 400, and 430 millimeters and/or 5, 7, 8, 9, 10, 11, 12, 14, and 17 inches) or at any other specific dimensions at which the beam-limiting device or its associated diagnostic X-ray system is uniquely designed to operate.

(f) *Field limitation on radiographic X-ray equipment other than general purpose radiographic systems—(1) Equipment for use with intraoral image receptors.* Radiographic equipment designed for use with an intraoral image receptor shall be provided with means to limit the X-ray beam such that:

(i) If the minimum source-to-skin distance (SSD) is 180 millimeters or more, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 70 millimeters; and

(ii) If the minimum SSD is less than 180 millimeters, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 60 millimeters.

(2) *X-ray systems designed for one image receptor size.* Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to

dimensions no greater than those of the image receptor, and to align the center of the X-ray field with the center of the image receptor to within 2 percent of the SID or shall be provided with means to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(3) *Systems designed for or provided with special attachments for mammography.* Radiographic systems designed only for mammography and general purpose radiographic systems, when special attachments for mammography are in service, shall be provided with means to limit the useful beam such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the X-ray field may not extend beyond this edge by more than 2 percent of the SID. This requirement can be met with a system which performs as prescribed in paragraphs (f)(4)(i), (ii), and (iii) of this section. When the beam-limiting device and image receptor support device are designed to be used to immobilize the breast during a mammographic procedure and the SID may vary, the SID indication specified in paragraphs (f)(4)(ii) and (iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed. In addition, each image receptor support intended for installation on a system designed only for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.

(4) *Other X-ray systems.* Radiographic systems not specifically covered in paragraphs (d), (e), (f) (2) and (3), and (h) of this section and systems covered in paragraph (f)(1) of this section, which are also designed for use with extraoral image receptors and when used with an extraoral image receptor, shall be provided with means to limit the X-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than 2 percent of the SID, when the axis of the X-ray beam is perpendicular to the plane of the image receptor. In addition, means shall be provided to align the center of the X-ray field with the center of the image receptor to within 2 percent of the SID, or means shall be provided to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. These requirements may be met with:

(i) A system which performs in accordance with paragraphs (d) and (e) of this section; or when alignment means are also provided, may be met with either;

(ii) An assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Each such device shall have clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(iii) A beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(g) *Positive beam limitation (PBL).* The requirements of this paragraph shall apply to radiographic systems which contain a PBL system.

(1) *Field size.* When a PBL system is provided, it shall prevent X-ray production when:

(i) Either the length or width of the X-ray field in the plane of the image receptor differs from the corresponding image receptor dimension by more than 3 percent of the SID; or

(ii) The sum of the length and width differences as stated in paragraph (g)(1)(i) of this section without regard to sign exceeds 4 percent of the SID.

(2) *Conditions for PBL.* When provided, the PBL system shall function as described in paragraph (g)(1) of this section whenever all the following conditions are met:

(i) The image receptor is inserted into a permanently mounted cassette holder;

(ii) The image receptor length and width are less than 0.5 meter;

(iii) The X-ray beam axis is within ±3 degrees of vertical and the SID is 0.9 meter to 1.3 meter inclusive; or the X-ray beam axis is within ±3 degrees of horizontal and the SID is 0.9 meter to 2.05 meters inclusive;

(iv) The X-ray beam axis is perpendicular to the plane of the image receptor to within ±3 degrees; and

(v) Neither tomographic nor stereoscopic radiography is being performed.

(3) *Measuring compliance.* Compliance with the requirements of paragraph (g)(1) of this section shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of paragraph (g)(2) of this section are met. Compliance shall be determined no sooner than 5 seconds after insertion of the image receptor.

(4) *Operator initiated undersizing.* The PBL system shall be capable of operation such that, at the discretion of the operator, the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. Each dimension of the minimum field size at an SID of 1 meter shall be equal to or less than 50 millimeters. Return to PBL function as described in paragraph (g)(1) of this section shall occur automatically upon any change of image receptor size or SID.

(5) *Override of PBL.* A capability may be provided for overriding PBL in case of system failure and for servicing the system. This override may be for all SID's and image receptor sizes. A key shall be required for any override capability that is accessible to the operator. It shall not be possible to remove the key while the PBL is overridden. Each such key switch or key shall be clearly and durably labeled as follows:

For X-Ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

(h) *Field limitation and alignment for spot-film devices.* The following requirements shall apply to spot-film devices, except when the spot-film device is provided for use with a radiation therapy simulation system:

(1) Means shall be provided between the source and the patient for adjustment of the X-ray field size in the plane of the image receptor to the size of that portion of the image receptor which has been selected on the spot-film selector. Such adjustment shall be accomplished automatically when the X-ray field size in the plane of the image receptor is greater than the selected portion of the image receptor. If the X-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected that mode of operation.

(2) Neither the length nor the width of the X-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the

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selected portion of the image receptor by more than 3 percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed 4 percent of the SID. On spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(3) The center of the X-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within 2 percent of the SID.

(4) Means shall be provided to reduce the X-ray field size in the plane of the image receptor to a size smaller than the selected portion of the image receptor such that:

(i) For spot-film devices used on fixed-SID fluoroscopic systems which are not required to, and do not provide stepless adjustment of the X-ray field, the minimum field size, at the greatest SID, does not exceed 0.0125 square meter; or

(ii) For spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, each dimension of the minimum field size, at the greatest SID, does not exceed 50 millimeters.

(5) A capability may be provided for overriding the automatic X-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic X-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

(i) *Source-skin distance.* (1) X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

(i) One hundred eighty millimeters if operable above 50 kVp, or

(ii) One hundred millimeters if not operable above 50 kVp.

(2) Mobile or portable X-ray systems other than dental shall be provided with means to limit source-to-skin distance to not less than 300 millimeters.

(j) *Beam-on indicators.* The X-ray control shall provide visual indication whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(k) *Multiple tubes.* Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated before initiation of the exposure. This indication shall be both on the X-ray control and at or near the tube housing assembly which has been selected.

(l) *Radiation from capacitor energy storage equipment.* Radiation emitted from the X-ray tube shall not exceed:

(1) 7.7×10^{-9} C/kg (0.03 milliroentgens) in 1 minute at 50 millimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open, the system fully charged, and the exposure switch, timer, or any discharge mechanism not activated. Compliance shall be determined by measurements averaged over an area of 0.01 square meter or less, with no linear dimension greater than 200 millimeters; and

(2) 2.58×10^{-8} C/kg (100 milliroentgens) in 1 hour at 1 meter from the X-ray source, with the beam-limiting device fully open, when the system is discharged through the X-ray tube either manually or automatically by use of a discharge switch or deactivation of the input power. Compliance shall be determined by measurements of the maximum exposure per discharge multiplied by the total number of discharges in 1 hour (duty cycle). The measurements shall be averaged over an area of 0.01 square meter or less, with no linear dimension greater than 200 millimeters.

(m) *Transmission limit for image receptor supporting devices used for mammography.* For X-ray systems manufactured after September 5, 1978, which are designed only for mammography, the transmission of the primary beam through any image receptor support provided with the system shall be limited such that the exposure 50 millimeters from any accessible surface beyond the plane of the image receptor supporting device does not exceed 2.58×10^{-9} C/kg (0.1 milliroentgen) for each activation of the tube. Exposure shall be measured with the system operated at the minimum SID for which it is designed. Compliance shall be determined at the maximum rated peak tube potential for the system and at the maximum rated product of the tube current and exposure time (mAs) for that peak tube potential. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

§ 1020.32 Fluoroscopic equipment.

The provisions of this section apply to equipment for fluoroscopy and for the recording of images through an image intensifier except computed tomography X-ray systems manufactured on or after November 29, 1984.

(a) *Primary protective barrier*—(1) *Limitation of useful beam.* The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID. The X-ray tube used for fluoroscopy shall not produce X-rays unless the barrier is in position to intercept the entire useful beam. The exposure rate due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed 0.00334 percent of the entrance exposure rate, at a distance of 100 millimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor. Radiation therapy simulation systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required in § 1020.30(g). Additionally, the manufacturer shall provide to users, pursuant to 1020.30(h)(1)(i), precautions concerning the importance of remote control operation.

(2) *Measuring compliance.* The entrance exposure rate shall be measured in accordance with paragraph (d) of this section. The exposure rate due to transmission through the primary barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters. If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 300 millimeters above the table top. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 300 millimeters. Movable grids and compression devices shall be removed from the useful beam during the measurement. For all measurements, the attenuation block shall be positioned in the useful beam 100 millimeters from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

(b) *Field limitation*—(1) *Nonimage-intensified fluoroscopy.* (i) The X-ray field produced by nonimage-intensified fluoroscopic equipment shall not extend beyond the entire visible area of the image receptor. Means shall be provided for stepless adjustment of the field size. Each dimension of the minimum field size, at the greatest SID, shall be equal to or less than 50 millimeters.

(ii) For equipment manufactured after February 25, 1978, when the angle between the image receptor and the beam axis of the X-ray beam is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor. Compliance with paragraph (b)(1)(i) of this section shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(2) *Image-intensified fluoroscopy.* (i) For image-intensified fluoroscopic equipment other than radiation therapy simulation systems, neither the length nor the width of the X-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(ii) For rectangular X-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the X-ray field which pass through the center of the visible area of the image receptor.

(iii) For equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor. Compliance with paragraph (b)(2)(i) of this section shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(iv) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or the capability of a visible area of greater than 0.03 square meter shall be provided with means for stepless adjustment of the X-ray field. Equipment with a fixed SID and the capability of a visible area of no greater than 0.03 square meter shall be provided with either stepless adjustment of the X-ray field or with a means to further limit the X-ray field size at the plane of the image receptor to 0.0125 square meter or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size with each dimension 50 millimeters or less.

(3) If the fluoroscopic X-ray field size is adjusted automatically as the SID or image receptor size is changed, a capability may be provided for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

(c) *Activation of tube.* X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the X-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(d) *Entrance exposure rate limits*—(1) *Equipment with automatic exposure rate control (AERC).* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is provided with AERC shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 2.58×10^{-3} coulombs per kilogram (C/kg) (10 roentgens per minute) (10 R/min) at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images, or

(ii) When an optional high level control is provided. When so provided, the equipment, shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29×10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(2) *Equipment without AERC (manual mode).* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is not provided with AERC shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29×10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images, or

(ii) When an optional high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(3) *Equipment with both an AERC mode and a manual mode.* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is provided with both an AERC mode and a manual mode shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 2.58×10^{-3} C/kg per minute (10 R/min) in either mode at the point where the center of the useful beam enters the patient except:

(i) During recording of fluoroscopic images, or

(ii) When the mode or modes have an optional high level control, in which case that mode or modes shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29 X 10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall only be operable when continuous manual activation is provided by the operator. A continuous signal, audible to the fluoroscopist, shall indicate that the high level control is being employed.

(4) *Measuring compliance.* Compliance with paragraph (d) of this section shall be determined as follows:

(i) If the source is below the X-ray table, the exposure rate shall be measured at 10 millimeters above the tabletop or cradle.

(ii) If the source is above the X-ray table, the exposure rate shall be measured at 300 millimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(iii) In a C-arm type of fluoroscope, the exposure rate shall be measured at 300 millimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than 300 millimeters from the input

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surface of the fluoroscopic imaging assembly.

(iv) In a lateral type of fluoroscope, the exposure rate shall be measured at a point 150 millimeters from the centerline of the X-ray table and in the direction of the X-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral X-ray source, with the end of the beam-limiting device or spacer no closer than 150 millimeters to the centerline of the X-ray table.

(e) *Indication of potential and current.* During fluoroscopy and cinefluorography, X-ray tube potential and current shall be continuously indicated. Deviation of X-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer in accordance with § 1020.30(h)(3).

(f) *Source-skin distance.* Means shall be provided to limit the source-skin distance to not less than 380 millimeters on stationary fluoroscopes and to not less than 300 millimeters on mobile or portable fluoroscopes. In addition, for image-intensified fluoroscopes intended for specific surgical application that would be prohibited at the source-skin distances specified in this paragraph, provisions may be made for operation at shorter source-skin distances but in no case less than 200 millimeters. When provided, the manufacturer must set forth precautions with respect to the optional means of spacing, in addition to other information as required in § 1020.30(h).

(g) *Fluoroscopic timer.* Means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while X-rays are produced until the timing device is reset. As an alternative to the requirements of this paragraph, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which X-rays were produced, and which is capable of being reset between X-ray examinations.

(h) *Mobile or portable fluoroscopes.* In addition to the foregoing requirements of this section, mobile or portable fluoroscopes shall provide intensified imaging.

Dated: August 30, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24366 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
October 17, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-12]

RIN 2120-AD07

Proposed Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Tampa International Airport, FL. The TCA would consist of airspace from the surface up to 10,000 feet mean sea level (MSL) within a 5-nautical-mile arc based on the Tampa International Airport airport surveillance radar (ASR) site located on the airport. The TCA extends outward to 30 nautical miles with altitude restrictions from 8,000 to 10,000 feet MSL. Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omnidirectional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Tampa International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Tampa International Airport is currently served by an Airport Radar Service Area (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATE: Comments must be received on or before December 15, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-12, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 nautical miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

Three pre-NPRM airspace meetings were held: Tampa, August 23; St. Petersburg, August 24; Sarasota, August 25, 1988. The meetings were held to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Tampa TCA. The final recommendations for the proposed TCA were coordinated with members of the Ad Hoc Committee formed by the Florida Department of Transportation.

At the pre-NPRM meetings the following recommendations were submitted:

A representative of the 56th Tactical Training Wing at MacDill Air Force Base (AFB) recommendad that the floor of the TCA be established at 1,200 feet MSL in the area between the Skyway Bridge and MacDill AFB, and the inner core of the TCA be extended to include the entire airport traffic area (ATA) at MacDill AFB.

Several commenters submitted the following recommendations:

1. The Tampa TCA should be designed with approach and departure corridors that consider the operational performance of the aircraft being separated. and with a VFR corridor, east/west, across the city of Tampa. The FAA should establish a north/south corridor over the Lakeland area which will provide VFR pilots the ability to travel through central Florida without penetrating the TCA boundaries. Also, the FAA should install a VORTAC at Tampa Airport and limit the innermost circle of the TCA to no more than 5 nautical miles. A 5-mile circle would be consistent with the existing Tampa ARSA and would eliminate the need to provide special procedures, or a TCA cutout for the Peter O'Knight Airport operations.

2. The Tampa and Orlando TCA's should be effective on the same date and the charts should be available at least 60 days prior to the effective date. Also, the FAA should consider a violations grace period of 6 months before enforcement action begins.

The Central Florida Airspace Planning and Utilization Committee offered the following recommendations:

The Inner Core of the TCA should be from the surface up to and including 8,000 feet MSL. A ceiling of 8,000 feet MSL was recommended because of known performances and factors. This altitude is low enough to allow encoder-equipped aircraft to operate VFR over-the-top of the TCA without the need for exceptional performance capability, and without the use of supplemental oxygen.

The boundary of the inner core should be a 5-nautical-mile radius, excluding Davis Island, and the northern segment of Hillsborough Bay, and should be elongated to the south to include MacDill AFB.

The First Step-ring of the TCA should have a floor altitude of 1,200 feet MSL; however, in the vicinity of the Peter O'Knight Airport the altitude should be 1,400 feet MSL. This altitude would provide aircraft access to the St. Petersburg-Clearwater International Airport and the Peter O'Knight Airport.

The boundary should be a 10-nautical-mile radius from the center of the Tampa International Airport, elongated to include lower Tampa Bay. This would exclude Vandenberg Airport and Albert Whitted Airport.

The Outer Boundary of the TCA should have an altitude floor of 4,000 feet MSL on the east and west sides and a 3,000-foot MSL floor for the northern approach area.

The boundaries should include the airspace west of Tampa to the Gulf Coast, north to Florida State Highway 52 to St. Leo, northeast from St. Leo to Zephyrhills, then east from Zephyrhills to the Alafia River, then southeast along the railroad, to Interstate I-75 to State Road 64 Interchange, then south along State Road 64 then back to the beginning.

Other recommendations to be considered are as follows:

1. The Sarasota ARSA should be incorporated in the Tampa TCA. Air carrier/air taxi activity enplaned passengers increased to 616,343 by October 1988. The traffic flow at Sarasota, which mixes with the traffic from Tampa and MacDill, supports the inclusion of the Sarasota ARSA into the Tampa TCA.

2. User groups requested that geographical landmarks should be used to define the TCA boundaries. In addition, members of the Tampa Tower staff have flown along the proposed boundaries and stated that visual landmarks can be utilized for determining the boundaries. The user groups recommended a TCA chart be published for Tampa using actual photographs of the geographical landmarks similar to the prototype chart for the New York TCA developed by the Eastern Region.

The written comments on the proposed TCA are as follows:

A Sunshine Flying Club member, who is a certified flight instructor and a member of the Albert Whitted Airport Advisory Committee, stated that he was in support of the Tampa TCA proposal that was submitted by the Central Florida Airspace Planning and Utilization Committee. He also believes TCA's should automatically consist of the airspace within a 30-nautical-mile radius, up to 10,000 feet MSL. The Central Florida Airspace Planning and Utilization Committee's proposal, however, recommended a TCA area of less than 30 nautical miles.

The International Aerobatic Club spokesperson requested that provisions be made, within the plans for the Tampa TCA, for an area for the performance of aerobatics. Sites that should be considered are in the areas of Brooksville, FL, Airport, Zephyrhills Airport, Wimauma Airport, and east of Tampa Palms over land owned by the Southwest Water Management District. The International Aerobatic Club also requested assistance from the air traffic control tower (ATCT) at Tampa to locate a suitable site for aerobatics in the Tampa area, not necessarily within the TCA. The FAA has offered three sites for consideration.

The Experimental Aircraft Association (EAA), Chapter 175, Brandon, FL, expressed concern over Vandenberg Airport being included in the Tampa TCA. Pilots felt strongly that consideration should be given to the need for arrival and departure aircraft to maneuver in that area without having to contact Tampa International Airport Control Tower. Although Vandenberg is within the 10-nautical-mile ring, the

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proposed TCA is designed to keep this airport out of the surface area. Vandenberg is now within the 1,200 to 10,000 feet MSL area, and access is possible without clearance from ATC. The 56th Tactical Training Wing, based at McDill AFB, generally concurred with the proposed TCA at Tampa. They believe the establishment of a TCA at Tampa will undoubtedly reduce the midair collision potential and greatly improve flight safety in the Tampa area.

An airport restaurant owner at Lakeland Municipal Airport opposes the TCA at Tampa because pilots have told him they will not have the equipment to enter the TCA; therefore, the TCA will effectively put him out of business. The FAA has determined that departure and arrival traffic will experience no problems because Lakeland is not within the TCA; however, the Lakeland Airport is in the Mode C Veil which requires aircraft to be equipped with Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL. The authority to permit an aircraft to operate without a Mode C transponder is assigned to the facility air traffic manager in areas of no radar coverage.

The city of Lakeland, FL, stated that the TCA rule would place a "squeeze" on many of Lakeland's home and visitor aircraft owners. In addition to the financial burden, there are real questions as to whether or not the rule would improve safety.

The Lakeland Air Center wrote that the proposed TCA's at Tampa and Orlando, FL, seriously threaten the economic health of Polk County, the city of Lakeland, and Lakeland Municipal Airport and its business. If implemented. the TCA could cost the city of Lakeland over $12 million annually, and Lakeland Air Center several hundred thousand dollars annually.

The Sun'N Fun EAA Fly-In, Inc., stated that the proposed TCA design, and the operating rules as stated in NPRM 87–7, would result in a negative financial impact on the tourist industry in the State of Florida and on the Sun'N Fun Fly-In. The FAA stated to the Sun'N Fun officials that each aircraft without Mode C equipment will be considered for entry within the Mode C Veil during the annual Sun'N Fun Fly-In. The Sun'N Fun EAA Fly-In, Inc., recommended that pilots continue to provide input on the TCA, and they further recommend letters to the FAA in Washington, DC, asking that the Mode C rule be rewritten to encompass the TCA only as depicted on sectional charts.

The Sun'N Fun Fly-In, Inc., also commented that the use of the Mode C in the veil area, below the outer layers of the TCA, will place unnecessary hardship on aircraft owners who fly out of secondary airports. The FAA recognizes that the establishment of a TCA and the effect of the Mode C rule are related; however, the TCA design and the Mode C Veil are separate matters. Aircraft which are not equipped with Mode C may be accommodated within the veil in accordance with national policies and local procedures.

The Aviation Task Force and Board of Directors of Greater Brandon, FL, submitted a resolution recommending support of the proposal forwarded by the Vandenberg Fixed Base Operator and the general aviation pilots to establish the Tampa TCA. The FAA is of the opinion that it has incorporated the Aviation Task Force and Board of Directors' recommendations.

Vandenberg Airport, Inc., wrote that Vandenberg is vital to the future development along the I–75 corridor. With present expansion plans, increased hangar space will probably double within the next 10 years. The economic importance of Vandenberg Airport to East Hillsborough County Area is immeasurable for long-range corporate and community development.

The President of Niles Aviation stated that TCA's, ARSA's and TRSA's are a complete waste of valuable airspace. The FAA should develop climb and descent corridors, and forbid VFR traffic to enter these corridors. The present system distracts pilots and needlessly complicates controller workload with flights that do not require tracking. The FAA has determined that while corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adaquate and/or sufficient airspace required to effectively vector, sequence, and meter the vast number of aircraft served in major terminal areas today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a TCA at Tampa International Airport, FL. In 1987, the total number of annual enplaned passengers at Tampa International Airport was 5,002,812 which exceeds the 3.5 million necessary for consideration as a TCA candidate. The total number of airport operations was 522,787 of which 177,999 were air carrier. Consequently, the FAA has determined that establishment of a TCA at Tampa International Airport would be in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in that terminal area. Tampa International Airport is currently served by an ARSA which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within the TCA; (3) hold at least a private pilot certificate; (4) meet the requirements of § 61.95 of the Federal Aviation Regulations if the aircraft is operated by a student pilot. Any aircraft arriving at any airport within the TCA or flying through the TCA must: have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within the TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of part 71 of the Federal Aviation Regulations (14 CFR Part 71); and §§ 91.1 and 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of the TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined that the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

1. That airspace extending upward from the surface up to and including 10,000 feet MSL beginning from the St. Petersburg, FL, 090° radial, 9 nautical miles, then the 5-nautical-mile arc of the Tampa, FL, airport surveillance radar (ASR) antenna located at lat. 27°59'15" N., long. 82°32'40" W., clockwise to the St. Petersburg, FL, 076° radial 13 nautical miles, then southwest along the west side of Interstate Highway I–275 to the St. Petersburg, FL, 090° radial, 9 nautical miles. This airspace is required to contain aircraft departing from and arriving at the primary airport.

2. That airspace extending upward from 1,200 feet above ground level up to and including 10,000 feet MSL from the shoreline at Anna Maria Island, FL. (St. Petersburg, FL, 184° radial, 24 nautical miles) then north along the shoreline to the St. Petersburg 192° radial, 14 nautical miles, then northeast to the north of the Skyway Bridge, then north along the shoreline to the St. Petersburg 145° radial, 5 nautical miles, then a 10-nautical-mile arc of the Tampa ASR antenna, clockwise to Highway 301, then southwest along the west side of Interstate Highway I–75 to the Sarasota, FL, 10-nautical-mile arc, then southeast along the 10-nautical-mile arc to the St. Petersburg 150° radial, 29 nautical miles, then west along the 30-nautical-mile arc of the Tampa ASR antenna to the shoreline of Anna Maria Island, FL.

3. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL from Hudson, FL, east along Highway 52 to San Antonio, FL, then southeast to Zephyrhills, FL, then south on the west side of Highway 39, then west along Highway 60 to the St. Petersburg 087° radial, 27 nautical miles, then southwest along the west side of the railroad to Parrish, FL, then southwest to Highway 301, and a 10-nautical-mile arc of Sarasota, FL, to the St. Petersburg 157° radial, 22 nautical miles, then northeast along the west side of Interstate Highway I–75 to Highway 60, then the 10-nautical-mile arc of the Tampa ASR antenna, then counterclockwise to the St. Petersburg 145° radial, 5 nautical miles, then south to follow the shoreline to the north and of the Skyway Bridge, then southwest to the St. Petersburg 192° radial, 14 nautical miles, then north along the shoreline to Hudson, FL.

4. That airspace extending upward from 8,000 feet MSL up to and including 10,000 feet MSL from Anna Maria Island, FL, then northwest along the 30-nautical-mile arc of the Tampa, FL, ASR antenna, northwest to the St. Petersburg 322° radial, 27 nautical miles, then clockwise along the 30-nautical-mile arc of the Tampa ASR antenna to Dade City, FL, then south on the west side of Highway 301 to Zephyrhills, FL, then northwest to San Antonio, then west along Highway 52 to Hudson, FL, then south along the shoreline to Anna Maria Island, FL.

5. That airspace extending upward from 8,000 feet MSL up to and including 10,000 feet MSL from Sarasota, FL, 10-nautical-mile arc, then northwest along the Sarasota 10-nautical-mile arc to the St. Petersburg, FL, 152° radial, 24 nautical miles, then northeast to Parrish, FL, then along the west side of the railroad northeast to Highway 60, then east along Highway 60 to Highway 39, then south on the west side of Highway 39, to the St. Petersburg 126° radial, 33 nautical miles, then southwest on the 30-nautical-mile arc of the Tampa ASR antenna to the Sarasota 10-nautical-mile arc.

This configuration would provide an area to contain aircraft during climb and descent profiles while transitioning between the terminal and en route structure.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Tampa International Airport. Air Traffic Control would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA would greatly enhance the safety of flight within the congested airspace overlying the Tampa metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Tampa, FL. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around Tampa International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Cost-Benefit Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $311,000 (discounted, 15 years) in 1987 dollars. Approximately $107,000 (discounted) or 34 percent of the total estimated costs would be incurred by the FAA primarily for additional equipment. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA-primary airports. There are currently 24 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA-primary airports. Phase

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II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 neutical miles of a TCA-primary airport, within 10 nautical miles of an ARSA-primary airport, or within the controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions due to increased air traffic control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, due to the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's, aircraft operations in the 23 existing TCA's, and a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Tampa ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Tampa Terminal Area would be expected to experience approximately 1.6 critical NMAC's annually (or 23 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.5 critical NMAC's annually (or 7 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 16 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the Mode C rule as it is applied to the Tampa ARSA and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1990 at Tampa is that the safety enhancements of the Mode C and TCAS requirements will occur earlier than they otherwise would be expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of ATC by 20 nautical miles through replacing the Tampa ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions). It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules, are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload as a result of aircraft being controlled due to a reduction in radio communications. It would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload, increased by separation requirements in the proposed TCA, would be somewhat offset due to the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and in the number of VFR aircraft delayed during busy periods. As the result of converting the existing Tampa ARSA to a TCA, improved operational efficiency would accrue due to the availability of additional air traffic equipment. If the Tampa ARSA were to remain intact, such additional equipment would not be required. Therefore, the potential benefits of improved operational efficiency, which is not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $311,000 (discounted, in 1987 dollars). Approximately 66 percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in ths form of opportunity costs requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a result of the opportunity cost concept, the derivation of these cost estimates is too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes this risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Tampa Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information ralated to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Tampa, FL [New]

Primary Airport
Tampa International Airport (lat. 27°58'31" N., long. 82°32'00" W.)
Tampa International Airport (LOC/DME) Antenna (lat. 27°54'29" N., long. 82°30'56" W.)

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(ASR) (lat. 27°59'15" N., long. 82°32'40" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat. 27°54'29" N., long. 82°30'56" W., then clockwise along the 5-mile arc of the Tampa ASR to lat. 27°57'43" N., long. 82°27'18" W., to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the Tampa ASR 30-mile arc, north along the shoreline to lat. 27°40'42" N., long. 82°44'21" W.; to lat. 27°42'25" N., long. 82°40'36" W. (the end of the Skyway Bridge), north along the shoreline to the 10-mile arc of the Tampa ASR clockwise to Interstate 75, south along Interstate 75 to the 10-mile arc of the Sarasota, FL, VOR then clockwise along the Sarasota 10-mile arc to the 30-mile arc of the Tampa ASR clockwise along the Tampa ASR 30-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the intersection of Highway 19 and Highway 52, east along Highway 52 to San Antonio, FL, southeast to Zephyrhills, FL, south on Highway 39 to Highway 60, west on Highway 60 to lat. 27°56'15" N., long. 82°11'00" W., south to and along the railroad to Parrish, FL, then southwest to the intersection of Highway 301 and the 10-mile arc of Sarasota, FL, then counterclockwise along the Sarasota 10-mile DME to Interstate 75, north along Interstate 75 to the 10-mile arc of the Tampa ASR then counterclockwise along the Tampa ASR 10-mile DME to the shoreline then along the shoreline to lat. 27°42'25" N., long. 82°40'42" W.; to lat. 27°40'42" N., long. 82°44'21" W.; then north along the shoreline to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the 30-mile arc of the Tampa ASR, clockwise along the Tampa 30-mile DME to long. 83°00'00" W., then north along long. 83°00'00" W. to the 30-mile arc of the Tampa ASR, then clockwise along the Tampa ASR 30-mile DME arc to Dade City, FL, then south on Highway 30 to Zephyrhills, FL, then northwest to San Antonio, FL, then west along Highway 52 to Hudson, FL, then south along the shoreline to lat. 27°40'42" N., long. 82°44'21" W., south along the shoreline to the point of beginning; and that airspace beginning at Highway 301 and the Sarasota, FL, 10-mile arc, then northeast to Parrish, FL, then northeast along the railroad to lat. 27°56'15" N., long. 82°11'00" W., then east along Highway 60 to the intersection of Highway 60 and Highway 39, then south along Highway 39 to the 30-mile arc of the Tampa ASR, clockwise along the Tampa ASR 30-mile DME arc to Sarasota, FL, 10-mile arc, then counterclockwise along the Sarasota 10-mile DME arc to the point of beginning.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Tampa International Airport, FL [Removed]

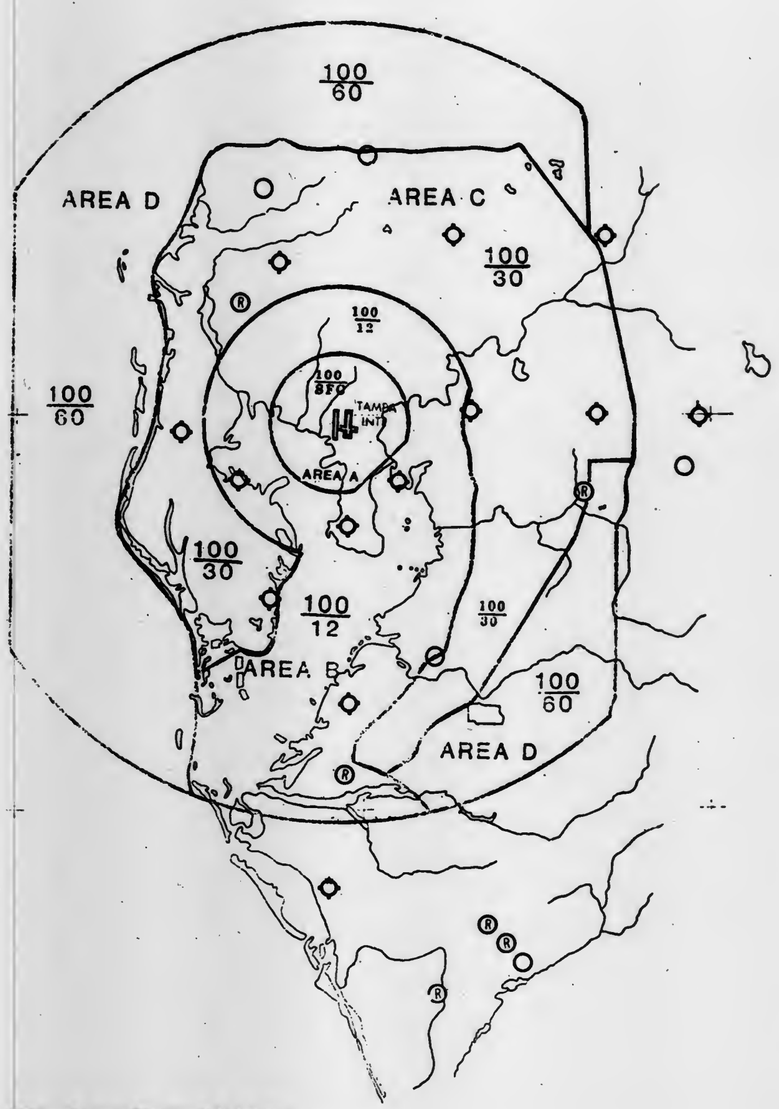
Issued in Washington, DC, on October 11, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

TAMPA TCA PROPOSAL



[FR Doc. 89-24412 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-C

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federal register

Tuesday,
October 17, 1989

Part VI

Department of Education

34 CFR Part 302

Chapter 1 State Operated or Supported Programs for Handicapped Children Program; Notice of Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 302

RIN 1820-AA83

Chapter 1 State Operated or Supported Programs for Handicapped Children Program

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues proposed regulations for the Chapter 1 State Operated or Supported Programs for Handicapped Children program (Chapter 1 Handicapped program) authorized under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (School Improvement Amendments of 1988). This program provides financial assistance to State operated and supported programs and projects to supplement special education and early intervention services for handicapped infants, toddlers, and children.

DATE: All comment must be received on or before December 18, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3615 MES 2720, Washington, DC 20202; telephone: (202) 732-1104.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. William Tyrrell, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3625, MES 2720, Washington, DC 20202; telephone: (202) 732-1025.

SUPPLEMENTARY INFORMATION: The School Improvement Amendments of 1988 supersedes the provisions of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). These proposed regulations set out the proposed requirements for implementing this revised program. Except where specifically noted, the regulatory changes identified in the following discussion effectuate changes in the statutory requirements for this program.

1. Application of the Education Department General Administrative Regulations

In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary proposes in § 302.4 to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to programs under this part, and to modify the application of certain other provisions of EDGAR that are now made applicable by the current program regulations. These proposed changes would result in rules applying EDGAR to this program that are consistent with recent regulations for the other Chapter 1 programs.

In determining which provisions of EDGAR should apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the proposed regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), currently codified for programs of the Department of Education in 34 CFR part 80; and A-87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these circulars apply to the Chapter 1 Handicapped program.

If a State wishes to use its own procedures instead of those in the two OMB circulars as implemented in EDGAR, its procedures would have to meet the three general criteria in § 302.2(a)(4). A State's procedures would not have to be submitted to the Secretary for approval, but would have to be available for Federal inspection. If a State does not implement its own written requirements by the effective date of the final regulations, but wishes to develop them, the requirements in Part 80 would apply until the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) would apply, including the due process provisions in that part.

Many local educational agencies and State agencies participating in the Chapter 1 Handicapped program also receive assistance for their programs for handicapped children under Part B and H of the Education of the Handicapped Act (EHA), and are required to comply with A-102 and A-87 with regard to the EHA funds. The Secretary is interested in whether commenters believe the approach outlined above, which would afford States significant discretion over these matters with regard to the Chapter 1 Handicapped program, is helpful, or whether, in the instance of the Chapter 1 Handicapped program, it would be better to require compliance with part 80 and A-87 since many recipients of the Chapter 1 Handicapped program funds also receive EHA funds.

In addition, these proposed regulations would modify the applicability of provisions in part 76 (State-Administered Programs); continue the applicability of part 77 (Definitions that Apply to Department Regulations); and make applicable part 78 (Education Appeal Board), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). The Secretary believes that these regulations are the minimum necessary for ensuring basic accountability without imposing undue paperwork and additonal administrtive burdens on State and local educational agencies.

Several of the applicable provisions in part 76 contain cross-references to 34 CFR part 74, which was superseded by part 80 on October 1, 1988 with respect to State and local governments. The outdated cross-references in part 76 to part 74 (now part 80) are not intended to make any provisions of part 80 applicable to programs under this part that a State has not, on its own, decided to apply.

The regulations in part 85 were adopted by the Department in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organziations from nonprocurement programs of the U.S. Government. The Department implemented this Executive Order in subparts A through E of part 85 (regular debarment and suspension) (53 FR 19161 (May 26, 1988)). Second, under the Drug-Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in subpart F of part 85 (drug-free debarment and suspension) (54 FR 4946 (January 31, 1989)).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subtier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal (as defined by 34 CFR 85.105(p)) for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator paid from program funds that would constitute grounds for debarment, the debarring official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual, the Department would consider issuing a Program Determination Letter to the State to recover the program funds.

Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they apply only to principals. The Department will submit to OMB for approval a new form that would apply only to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submittted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees.

However, pending approval of the new forms, the Department will use the current forms with the understanding that they apply only to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs to grantees that fail to meet these requirements. Regarding the State certifications required under these regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

2. Definitions of Handicapped Children and Handicapped Infants and Toddlers

These proposed regulations use a definition of handicapped infants and toddlers based upon the definition in part H of the EHA. Infants and toddlers who are at risk of being handicapped (who are included in the Part H definition) are not included in this definition because, under the Chapter 1 statute, they are not eligible to be counted or served. The Secretary does not believe that this definition constitutes a substantive change from the meaning of the Chapter 1 statutory definition. The purpose of using this definition is to avoid unnecessary labeling of handicapped infants and toddlers with specific handicapping conditions.

3. The State Application for a Grant

As required by the statute, the proposed regulations require a State educational agency to submit an application to the Secretary to receive funds under this program. The existing regulations do not require State educational agencies to submit an application to the Secretary.

The proposed regulations provide assurances that must be included in each State educational agency's application for funds under this part. The statutory assurance include a requirement that State educational agencies monitor the compliance of programs and projects receiving Chapter 1 Handicapped program funds with the requirements of Parts B and H of the EHA. In addition to assurances specifically required by the statute, the application also requires an assurance that programs under this part be under the general supervision of persons responsible for educational programs for handicapped infants, toddlers, and children in the State educational agency, that the educational program meet the standards of the State educational agency, and that the State educational agency ensure the accuracy of child count information.

4. The Child Count Requirements

Under the provisions of the School Improvement Amendments of 1988, all of the grant funds under this part go directly to State educational agencies based on a child count and, through them, are distributed to State agencies and local educational agencies. The proposed regulations establish December 1 as the child count date for these programs and February 1, as the date for submitting these data to the Secretary. The February 1 reporting date is not statutory. These dates differ from the dates used in the existing Chapter 1 Handicapped program regulations, but they correspond to the dates used under Part B of the EHA.

In accordance with statutory changes, the age range of children who may be counted and served under this program is extended to include children through age twenty-one. Formerly, the statutory age range for services was from birth through age twenty.

Handicapped infants and toddlers, as that term is defined in these proposed rules, may be counted. However, infants and toddlers who merely are at risk of becoming developmentally delayed if not provided early intervention services cannot be included in the child count, since the statute requires the existence of a handicapping condition in order to include a child in the count.

The statute permits the counting of handicapped infants, toddlers, and children enrolled in programs or schools operated or supported by a State agency responsible for providing free public education or early intervention services. The transfer provision, however, is more restrictive with regard to handicapped infants and toddlers than the State operated or supported school portion of the count. In accordance with section

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1221(d)(1) of the statute, § 302.22(a)(2) permits counting a handicapped infant, toddler, or child who transfers to a local educational agency from a State operated or supported program if (1) that infant, toddler, or child was receiving a free appropriate public education according to the provisions in Part B of the EHA and (2) continues to receive a free appropriate public education.

These proposed regulations retain the requirement in the current regulations that a transfer student must have been enrolled in a State operated or supported program for at least one school year in order to be counted for the purpose of generating grant funds. Without this stipulation, children who are enrolled in programs under this part for a short period would be eligible to be counted and to generate funding under the transfer provision until they reached age twenty-two. This would result in inequities among recipients of funds under this part.

These proposed regulations also reflect a statutory change that permits children counted for the Chapter 1 Programs for Neglected and Deliquent Children program to be counted for this part if they are eligible to be served under both programs.

5. Application for a Subgrant

Unlike the previous procedures used for the Chapter 1 Handicapped program which mandated that the State educational agency could only serve as "fiscal agent" for grants to other applicant State agencies, State agencies and local educational agencies must apply directly to the State educational agency for a subgrant under this program. The proposed regulations describe the contents of an application for a subgrant. The State educational agency must also meet the application procedures and requirements of proposed §§ 302.30 and 302.31 to use Chapter 1 Handicapped program funds. If a local educational agency serves fewer than five children, the State educational agency may accept a letter of request instead of an application.

6. Distribution of Subgrant Funds

These proposed regulations describe how the State educational agency distributes the State's total grant among eligible State and local educational agencies for programs and projects under this part. The proposed regulations at § 302.42 govern how funds can be distributed to local educational agencies that serve children who transferred from a State operated or supported program. Proposed § 302.43 establishes rules for distributing funds based on counts of children who have since moved from the program that counted them. The proposed regulations at § 302.44 also describe how State educational agencies can redistribute excess funds.

7. Fiscal Requirements

Subpart F of these proposed regulations describes how the funds provided under this part may be used. Proposed § 302.51(a) includes a nonexclusive list of activities for which Chapter 1 Handicapped program funds can be used that is contained in the statute at section 1223(a). Proposed § 302.51 (b) and (c) restate longstanding policy positions of the Department under this program that (1) parents cannot be charged for special education and related services, including room and board and nonmedical care provided to children who are served under this program and who have been placed in residential care for educational reasons, and (2) that funds available to State agencies and local educational agencies under this program cannot be used for the payment of tuition and fees. Although construction costs were allowable expenses under this program in the past, under section 1223(b) of the statute use of Chapter 1 Handicapped program funds for construction costs is specifically prohibited. This prohibition is reflected in the proposed regulations in the incorporation by reference of 34 CFR 76.533 in proposed § 302.4(a).

Proposed §§ 302.52 and 302.53 contain the maintenance of effort and waiver of maintenance of effort rules derived from section 1018(a) of the statute. Section 1224(c)(4) of the statute requires that State educational agencies applying for Chapter 1 Handicapped program funds assure the Secretary that they meet the maintenance of effort requirements. These proposed regulations are modified only slightly from the rules adopted by the Chapter 1 Program in Local Educational Agencies program.

Proposed § 302.54 contains the supplement, not supplant, requirement. This provision and proposed §§ 302.55 (the prohibition against using Chapter 1 funds as general aid), 302.56(a) (funds for State administration), and 302.57 (prohibition against considering payments under this part in determining State aid) are closely modeled on regulatory provisions adopted by the other Chapter 1 programs on the same statutory provisions that are the basis for these proposed regulations. Proposed § 302.56(b) governs a State educational agency's use of project funds when it is functioning in the role of a State agency directly responsible for the education of handicapped infants, toddlers, and children. The Secretary invites comment on whether additional guidance should be provided on the supplement, not supplant, requirement, particularly on what services can or cannot be paid for with Chapter 1 funds.

8. Post Award Conditions

Information about how agencies must demonstrate that children benefit from programs and projects funded under this program, the relationships between this part and Parts B and H of the EHA, the responsibility of public agencies for contracted services, the requirements for State complaint procedures, and other State administrative matters are in subpart G of these proposed regulations. These proposed regulations also include rules for the inclusion of uncounted children in the programs and projects funded under this part at proposed § 302.60. Formerly, children who were on the membership roll of a State agency receiving assistance under this program or who had transferred to local educational agencies could be served whenever space was available in an agency's program or project if they were otherwise eligible to be counted but had not been in the program on the count date. In accordance with the statutory changes in the Chapter 1 Handicapped program, these proposed regulations do not require that priority for service be given to children who actually were counted. Instead, all handicapped children for whom the State is directly responsible for providing special education or early intervention services and who are enrolled in State operated or supported programs (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with the State agency) or who transferred from such a program and receive special education or early intervention services from local educational agencies are eligible to be served. Other handicapped children may participate in the programs and activities funded under this part if all children described above have been fully served. However, children from birth through age two who may be at risk of having substantial developmental delays if they are not provided early intervention services, but who are not handicapped infants and toddlers as that term is defined in these proposed regulations, may not be served.

Proposed § 302.68 contains special rules to govern the relationship of services under this part for handicapped infants and toddlers and the requirements of Parts B and H of the EHA during the phase-in period under Part H and after a State has fully adopted Part H of the EHA. With regard to early intervention services, the Secretary believes that allowing States to charge parents of children enrolled in a Chapter 1 Handicapped program fees for early intervention services would be a departure from the Department's longstanding interpretation of the Chapter 1 statute that services required under the Chapter 1 Handicapped program must be at no cost to parents. Therefore, proposed § 302.63(d) would prohibit programs receiving assistance under this part from charging parents for any early intervention services provided to them or their handicapped infant or toddler. Section 1222(a) of the statute, however, vests in the Secretary the policy discretion to determine the extent to which the provision of Part H of the EHA, should apply to the Chapter 1 Handicapped program. The Secretary believes that the Department's prior interpretation should be reflected in its policy under the School Improvement Amendments of 1988 with regard to fees for early intervention services provided to infants and toddlers who participate in the Chapter 1 Handicapped program because similar services under this program have traditionally been provided at no cost to parents. The Secretary invites public comment on whether States should be permitted to charge parents of handicapped infants and toddlers for required services.

9. State Complaint Procedures

In the Conference Report accompanying the statute, Congress suggested that the Secretary "issue amended regulations making 34 CFR 76.780–76.782 applicable to Chapter 1." *See* H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988). Prior to the publication of these proposed regulations, the Department published proposed changes to the EDGAR. *See* 53 FR 31580–31606 (August 18, 1988). One of those proposed changes was the removal of the State complaint procedures in 34 CFR 76.780–76.782 of EDGAR and the transfer of those procedures, with some modification, to the regulations implementing Part B of the EHA, which had shown the greatest need for the complaint procedures. In response to comments on those proposed EDGAR revisions, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Since no final action has yet been taken on the changes proposed to EDGAR, and in light of the Secretary's determination that the EDGAR procedures need some minor adjustments to accommodate distinctive features in various educational programs, the Secretary has included State complaint procedures from EDGAR, with appropriate modifications, in these proposed regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that would be affected by these proposed regulations are small local educational agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local educational agencies affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 302.11, 302.21, 302.22, 302.30, 302.31, 302.32, 302.61, 302.64, and 302.66 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3615, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 302

Education, Education of handicapped, Elementary and Secondary education, Grant programs education.

Dated: July 20, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.009; Chapter 1 State Operated or Supported Programs for Handicapped Children Program)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 302 to read as follows:

PART 302—CHAPTER 1 STATE OPERATED OR SUPPORTED PROGRAMS FOR HANDICAPPED CHILDREN PROGRAM

Subpart A—General

Sec.

302.1 What is the Chapter 1 State Operated or Supported Programs for Handicapped Children program?
302.2 Who is eligible for an award?
302.3 What kinds of activities may be assisted?
302.4 What regulations apply?
302.5 What definitions apply to this program?
302.6–302.9 [Reserved]

Subpart B—How does a State Apply for a Grant?

302.10 How does a State apply for a grant?
302.11 What must be included in an application for a grant?
302.12–302.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

302.20 How does the Secretary determine the amount of a grant to a State?
302.21 What are the dates for counting and reporting the number of enrolled children?
302.22 Which children are to be counted?
302.23 Which handicapped infants, toddlers, and children may not be counted?
302.24 Which agency may count a child receiving services form more than one agency?
302.25–302.29 [Reserved]

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Sec.
Subpart D—How Does an Applicant Apply for a Subgrant?
302.30 What are the requirements for a State agency or local educational agency to receive a subgrant?
302.31 What are the contents of an application for a subgrant?
302.32 What are the simplified application procedures for certain local educational agencies?
302.33–302.39 [Reserved]
Subpart E—How Does a State Make a Subgrant to an Applicant?
302.41 How does the State educational agency determine the amount of a subgrant to a State agency?
302.42 How does the State educational agency determine the amount of a subgrant to a local educational agency?
302.43 How are funds attributable to children who leave the local educational agency distributed?
302.44 How does the State educational agency redistribute excess funds under this part?
302.45–302.49 [Reserved]
Subpart F—What Fiscal Requirements Must Be Met By a State and Its Subgrantees?
302.50 How may funds be used under this program?
302.51 What are allowable costs under this program?
302.52 What maintenance of effort requirements apply to the programs and projects under this part?
302.53 Under what circumstances may a State educational agency waive the maintenance of effort requirement?
302.54 What is the supplement, not supplant, requirement that applies to programs and projects under this part?
302.55 What is the prohibition against using Chapter 1 funds to provide general aid?
302.56 What funds are available to a State educational agency to carry out its responsibilities under the Chapter 1 Handicapped program?
302.57 What is the prohibition against considering payments under this part in determining State aid?
302.58–302.59 [Reserved]
Subpart G—What Other Post-Award Conditions Must Be Met by a State and Its Subgrantees?
302.60 May uncounted children be served in programs and projects under this part?
302.61 What evaluation and assessment requirements apply for a State and its subgrantees?
302.62 What special requirements apply under this part?
302.63 How does a State educational agency administer this program in a manner consistent with Part H of the EHA?
302.64 What complaint procedures shall a State adopt?
302.65 What minimum complaint procedures shall a State adopt?
302.66 How may an organization or individual file a complaint?
Sec.
302.67 What requirements apply to State rulemaking and other State educational agency responsibilities?
302.68–302.69 [Reserved]

Authority: 20 U.S.C. 2791 *et seq.*, unless otherwise noted.

Subpart A—General

§ 302.1 What is the Chapter 1 State Operated or Supported Programs for Handicapped Children program?

Under the Chapter 1 State Operated or Supported Programs for Handicapped Children program (Chapter 1 Handicapped program), the Secretary provides financial assistance to State educational agencies and, through them, to State agencies and local educational agencies to provide services designed to supplement special education or early intervention services for children—

(a)(1) To whom the State is directly responsible for providing special education or early intervention services (including schools or programs providing special education and related services for handicapped children under contract or other arrangements); and

(2) Who are participating in a State operated or State supported school or program for handicapped children (including schools and programs operated under contract or other arrangement with a State agency); or

(b) Who previously participated in a State operated or State supported program and are receiving special education or early intervention services from local educational agencies; and

(c) Other handicapped children, if the handicapped children aged birth through twenty-one described in paragraphs (a) and (b) of this section have been fully served.

(Authority: 20 U.S.C. 2792(a), 2795)

§ 302.2 Who is eligible for an award?

(a) Each State educational agency that meets the requirements of this part is eligible to receive a grant for each fiscal year to support programs and projects under this part.

(b) The following public agencies are eligible to receive subgrants from the State educational agency:

(1) State agencies that operate or support schools and programs for handicapped children.

(2) Local educational agencies that provide services to handicapped children who formerly were enrolled in schools or programs operated or supported by a State agency.

(Authority: 20 U.S.C. 2791(a)(1), 2794)

§ 302.3 What kinds of activities may be assisted?

The Secretary makes payments to a State to carry out activities, programs, and projects, including the acquisition of equipment, that are designed to supplement the special education or early intervention needs of handicapped childen participating in programs and projects funded under this part.

(Authority: 20 U.S.C. 2792(a))

§ 302.4 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administrated Programs) as follows:

(i) Subpart A (General), except for §76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and its Subgrantees?), except for the following sections:

(A) Sections 76.580–76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 78 (Education Appeal Board).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies, other State agencies, and local educational agencies under this part.

These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Work Place (Grants)).

(b) The regulations in this part 302.

(c) The regulations in 34 CFR part 300 (Part B of the Education of the Handicapped Act (EHA), Assistance to States for Education of Handicapped Children), with respect to the rights and procedural safeguards under part B of EHA.

(d) The regulations in 34 CFR part 303 (Part H of the EHA, Early Intervention Programs for Infants and Toddlers with Handicaps), with respect to the rights and procedural safeguards under Part H of the EHA that apply to public agencies receiving funds under this part.

(Authority: 20 U.S.C. 1412(1)–(6), 1413(a), 2791 *et seq.*, 2831(a))

§ 302.5 What definitions apply to this program?

(a) *Definitions in the Elementary and Secondary Education Act of 1965.* The following terms used in this part are defined in section 1471 of the Elementary and Secondary Education Act of 1965:

Equipment
Free public education
Local educational agency
Parent
State educational agency

(Authority: 20 U.S.C. 2891)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
EDGAR
Facilities
Fiscal Year
GEPA
Grant
Grantee
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(Authority: 20 U.S.C. 2791 *et seq.*)

(c) *Definitions in 34 CFR part 300.* The following definitions in 34 CFR part 300 apply to this part:

Free appropriate public education (34 CFR 300.4)
Individualized education program (34 CFR 300.340)
Public agency (34 CFR 300.11)
Related services (34 CFR 300.13)
Special education (34 CFR 300.14)

(Authority: 20 U.S.C. 1401)

(d) *Definitions in Part H of the EHA.* The following definition in section 672(2) of part H of the EHA applies to this part, except for section 672(2)(B):

Early intervention services

(Authority: 20 U.S.C. 1472(2))

(e) *Other definitions.* The following defintions also apply to this part:

"Act" means Chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 2701)

"EHA" means Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1401 *et seq.*)

"Handicapped children" means children who by reason of their handicap require special education and related services and who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, deaf-blind, multihandicapped, other health impaired, or have specific learning disabilities, as those terms are defined in 35 CFR 300.5(b).

(Authority: 20 U.S.C. 2791(a)(2))

"Handicapped infants and toddlers" means individuals from birth through age two, who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development, or self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(Authority: 20 U.S.C. 1472(1))

"State agency" means an institution or agency of the State that has direct responsibility established under State statute, State regulation, signed agreement between respective agency officials, or other documents, for providing free public education or early intervention services to handicapped infants, toddlers, or children in schools or programs operated or supported by the State agency. The term does not include an agency whose responsibility for handicapped infants, toddlers, or children is limited solely to the distribution of State financial assistance to other agencies that State law makes directly responsible for providing free public education or early intervention services.

(Authority: 20 U.S.C. 2791(c)(1))

"State operated program" means a school or program for handicapped infants, toddlers, or children that is administered directly by a State agency.

(Authority: 20 U.S.C. 2791(c)(1))

"State supported program" means a school or program for handicapped infants, toddlers, or children that is operated under contract or other arrangement with a State agency.

(Authority: 20 U.S.C. 2791(c)(1))

§§ 302.6–302.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

§ 302.10 How does a State apply for a grant?

In order to receive funds under this part, the State educational agency shall submit an application to the Secretary that meets the requirements in § 302.11.

(Authority: 20 U.S.C. 2791(b))

§ 302.11 What must be included in an application for a grant?

A State educational agency shall include the following assurances in its application:

(a) Each educational program for handicapped infants, toddlers, or children receiving funds under this part, including each program administered by any other public agency—

(1) Is under the general supervision of the persons responsible for educational programs for handicapped infants, toddlers, or children in the State educational agency; and

(2) Meets the education standards of the State educational agency.

(b) All child count information reported under § 302.22 is accurate and submitted in the manner required by the Secretary.

(c) All handicapped children in a State, other than handicapped infants and toddlers, who are participating in programs and projects funded under this part receive a free appropriate public education, and these children and their

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parents are provided all the rights and procedural safeguards under Part B of the EHA and this part.

(d) All handicapped infants and toddlers in the State participating in programs and projects funded under this part receive early intervention services, and these infants and toddlers and their families are provided the rights and procedural safeguards under Part H of the EHA.

(e) Programs and projects receiving assistance under this part are administered in a manner consistent with this part, subpart 2 of part F of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended, Part B of the EHA, and, as determined by the Secretary to be appropriate, Part H of the EHA, including the monitoring by the State educational agency of compliance under those programs listed in paragraphs (d) and (e) of this section.

(f) Programs and projects funded under this part are coordinated with services under the EHA.

(g) For fiscal year 1991, and each subsequent fiscal year, the State educational agency will administer the program authorized by this part through the State office responsible for administering Part B of the EHA.

(h) The State educational agency will report annually to the Secretary—

(1) The number of children served under this part for each disability and age category as described in section 618(b)(1) of the EHA;

(2) The number of children served under this part in each of the educational placements described in section 618(b)(2) of the EHA reported separately for each type of program listed in paragraph (h)(3) of this section;

(3) The number of children served under this part in State operated or supported programs and local educational agency programs for children previously served in those State programs; and

(4) The uses and allocations of funds under this part.

(i) The State educational agency will report to the Secretary such other information as the Secretary may reasonably request.

(Authority: 20 U.S.C. 1412(6), 1476(b), 2791(b), 2792(a), 2838(a))

§§ 302.12–302.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

§ 302.20 How does the Secretary determine the amount of a grant to a State?

The Secretary awards grants to participating States in the amounts calculated in accordance with the formula described in section 1221 (c), (d), and (e) of the Act.

(Authority: 20 U.S.C. 2791 (c)–(e))

§ 302.21 What are the dates for counting and reporting the number of enrolled children?

(a) Each State agency and local educational agency shall count the handicapped infants, toddlers, and children described in § 302.22 enrolled on December 1 of each year and shall report that count to the State educational agency.

(b) The State educational agency shall submit a report to the Secretary by the following February 1 that provides the information required by paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(a)(3), 2791(c))

§ 302.22 Which children are to be counted?

(a) The following children are to be counted for purposes of computing a grant under this part:

(1) Handicapped infants, toddlers, and children from birth through twenty-one years of age enrolled in programs or schools for handicapped infants, toddlers, and children operated or supported by a State agency which is directly responsible for providing free public education for handicapped children or early intervention services for handicapped infants and toddlers (including schools or programs providing special education and related services or early intervention services under contract or other arrangements with such agencies); and

(2) A handicapped infant, toddler, or child to whom the State was directly responsible for providing special education or early intervention services and who was enrolled in a State operated or supported program, including schools or programs providing special education and related services under contract or other arrangement with a State agency, and is now enrolled in a program operated or supported by a local educational agency if that child—

(i) Was enrolled in a State operated or supported program for at least one school year, as that period is defined under State law for schools serving nonhandicapped as well as handicapped infants, toddlers, and children and has left that program in order to participate in such a program operated or supported by a local educational agency;

(ii) Was receiving and continues to receive a free appropriate public education; and

(iii) The State educational agency transfers to the local educational agency in whose program the child participates an amount equal to the sums received by the State educational agency under this part that are attributable to the child, to be used for the purposes set forth in § 302.51.

(b) Children in State operated or supported programs for neglected or delinquent children or in adult correctional institutions who are also eligible for programs under this part—

(1) May be counted for the purposes of generating funds under both this part and the Chapter 1 program for neglected and delinquent children if they are served under each of these programs.

(2) May be served under each of those programs.

(Authority: 20 U.S.C. 2791, 2795, 2812)

§ 302.23 Which handicapped infants, toddlers, and children may not be counted?

For purposes of computing an allocation under this part, handicapped infants, toddlers, and children may not be counted who—

(a) Are counted under Part B of the EHA;

(b) Are counted under the provisions of the Chapter 1 Migrant Education Program (34 CFR part 201);

(c) Are not receiving a free appropriate public education or early intervention services;

(d) Are individuals from birth through age two who are not handicapped infants and toddlers, even if they may be at risk of having substantial developmental delays if early intervention services are not provided to them; or

(e) Are handicapped children age three through five if a State is not eligible for a grant under section 619 of the EHA (*see* 34 CFR part 301).

(Authority: 20 U.S.C. 1411(a)(1)(A), 2791)

§ 302.24 Which agency may count a child receiving services from more than one agency?

If more than one public agency is directly responsible for providing a free public education to a child, the public agency that is primarily responsible for the child's education, as determined by the State educational agency, is the only public agency that may count that child under this part.

(Authority: 20 U.S.C. 2791)

§§ 302.25–302.29 [Reserved]

Subpart D—How Does an Applicant Apply for a Subgrant?

§ 302.30 What are the requirements for a State agency or local educational agency to receive a subgrant?

(a) *General.* A State agency, including a State educational agency, or a local educational agency within a participating State may receive a subgrant under this part for any fiscal year if—

(1) It has on file with the State educational agency an application that contains the assurances and information required under § 302.31; and

(2) The application has been approved by the State educational agency.

(b) *Frequency of submission.* A State agency or a local educational agency shall file an application for a subgrant under this part with the State educational agency for a project period of not more than three fiscal years, including the first fiscal year for which a subgrant is made under that application.

(c) *Amendments to the application: updating of information in the application.* Prior to the receipt of project funds for any fiscal year, an eligible subgrantee shall update its project application by submitting to the State educational agency—

(1) Data showing that the agency has maintained fiscal effort in accordance with the requirements of § 302.52 if those data are not otherwise available to the State educational agency;

(2) A budget for the expenditure of funds under this part for that fiscal year;

(3) Any changes in policies or procedures that have occurred since th e submission of the most recent application; and

(4) Any other programmatic or fiscal information that the State educational agency may require to perform its duties under this part.

(Authority: 20 U.S.C. 2794(a)–(b))

§ 302.31 What are the contents of an application for a subgrant?

An application for a subgrant under this part must include—

(a) Assurances that—

(1) All handicapped children age three through twenty-one who are participating in programs and projects funded under this part receive a free appropriate public education, and that they and their parents are provided all the rights and procedural safeguards under Part B of the EHA and this part; and

(2) All handicapped infants and toddlers who are participating in programs and projects under this part receive early intervention services, and that they and their parents are provided all the rights and procedural safeguards under Part H of the EHA and this part;

(3) Services, programs, and projects conducted under this subpart are of sufficient size, scope, and quality to give reasonable promise toward meeting the special educational and early intervention needs of children to be served;

(4) Funds made available under the subpart will be used to supplement, not supplant, State and local funds in accordance with § 302.54;

(5) The agency will maintain its fiscal effort in accordance with § 302.52;

(6) The agency will conduct such evaluations and assessments as may be necessary to demonstrate that the programs and projects are beneficial to the children served;

(7) The parents of children to be served with funds under this subpart are provided an opportunity to participate in the development of the project application; and

(8) The agency will comply with all reporting requirements in a timely manner.

(b) Program information that—

(1) Indicates the number of children to be served;

(2) Shows the projected number of children to be served for each handicapping condition and age category as described in 34 CFR 300.5, 300.751, and 302.23;

(3) Describes the purpose or purposes of the project and the method or methods of evaluating the effectiveness of the services, projects, or programs to be provided under this part;

(4) Specifies the types of services to be provided with the funds furnished under this part;

(5) Describes the opportunities that parents will have to participate in the development of the project application; and

(c) Contains any other information the State educational agency may request.

(Authority: 20 U.S.C. 2794(b)–(c))

§ 302.32 What are the simplified application procedures for certain local educational agencies?

The State educational agency may accept, instead of a project application, a letter of request for payment from a local educational agency that serves children who have transferred from a State operated or supported program, if the local educational agency—

(a) Intends to serve with its payment fewer than five children who have transferred from a State operated or supported program; and

(b) Includes in its letter of request an assurance that the funds received under this part will be used to supplement the provision of the special education and related services provided to participating children.

(Authority: 20 U.S.C. 2794(d))

§§ 302.33–302.39 [Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 302.41 How does the State educational agency determine the amount of a subgrant to a State agency?

(a) For each fiscal year, the state educational agency shall distribute the funds allocated under a grant to the State under this part to each eligible State agency on the basis of the December 1 child count.

(b) The State educational agency shall distribute to each eligible State agency an equal amount for each child counted.

(Authority: 20 U.S.C. 2791(c)–(d))

§ 302.42 How does the State educational agency determine the amount of a subgrant to a local educational agency?

A local educational agency receives the total amount of funds generated by each child who has transferred from a State operated or supported program if—

(a) The child was counted the previous December 1 according to the requirements in § 302.22(a)(2);

(b) The child was receiving on the previous December 1, and continues to receive, a free appropriate public education; and

(c) The local educational Agency meets the requirements in §§ 302.30 and 302.31.

(Authority: 20 U.S.C. 2791(d))

§ 302.43 How are funds attributable to children who leave the local educational agency distributed?

(a) A local educational agency shall notify the State educational agency when any handicapped infant, toddler, and child counted under this part leaves that agency's program or project.

(b) If the State educational agency has distributed funds generated by any of those infants, toddlers, or children to the local educational agency, the State educational agency shall require the local educational agency either to—

(1) Retain funds generated by those children under this part to serve other handicapped infants, toddlers, or children in the project or program supported under this part; or

(2) Return all or a portion of those funds to the State educational agency.

(c) The State educational agency may not transfer funds to a local educational agency if all infants, toddlers, and children counted under this part cease to be enrolled in that local educational agency.

(Authority: 20 U.S.C. 2791, 2851)

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§ 302.44 How does the State educational agency redistribute excess funds under this part?

(a) *Reporting dates for estimated expenditures and redistribution.* (1) In any fiscal year, the State educational agency may set a date by which each State agency and local educational agency that receives an allocation under this part must report to the State the amount of funds that it estimates it will expend in carrying out the project described in its application.

(2) The State educational agency shall determine whether any of the amounts available to subgrantees as provided in §§ 302.41 and 302.42 will not be expended during the period of availability (excess funds).

(b) *Redistribution of excess funds.* The State educational agency shall make available any excess funds for allocation to other subgrantees, in the manner provided in §§ 302.41(a) and (b) and 302.42, if the State educational agency determines that a subgrantee will be able to use additional funds to carry out the programs or projects described in an approved application.

(Authority: 20 U.S.C. 2831)

§§ 302.45–302.49 [Reserved]

Subpart F—What Fiscal Requirements Must Be Met by a State and Its Subgrantees?

§ 302.50 How may funds be used under this program?

Funds under this program must be used to supplement the provision of special educational and related services for handicapped infants, toddlers, and children or early intervention services for handicapped infants and toddlers.

(Authority: 20 U.S.C. 2792(b))

§ 302.51 What are allowable costs under this program?

(a) Funds provided under this part may be used for programs and projects including, but not limited to—

(1) Services provided in early intervention, preschool, elementary, secondary, and transition programs;

(2) Acquisition of equipment and instructional materials, and telecommunications, sensory, and other technological aids and devices;

(3) Employment of special personnel;

(4) Training and employment of educational aides;

(5) Training in the use and provision of assistive devices and other specialized equipment;

(6) Training of teachers and other personnel;

(7) Training of parents of handicapped infants, toddlers, and children;

(8) Training of nonhandicapped children to facilitate their participation with handicapped infants, toddlers, and children in joint activities;

(9) Training of employees and independent living personnel involved in assisting the transition of handicapped children from school to work and independent living;

(10) Outreach activities to involve handicapped infants, toddlers, and children and their families more fully in a wide range of educational and recreational activities in their communities;

(11) Planning for, evaluation of, and dissemination of information about the programs and projects funded under this part.

(b) Parents of children served under this part may not be charged for special education or related services provided for those children, including the cost of room and board and nonmedical care that are provided in an institutional residential care facility in which the child is placed for educational purposes.

(c) Funds under this part may not be used for the payment of tuition and fees.

(Authority: 20 U.S.C. 2791(b), 2792(b), 2793)

§ 302.52 What maintenance of effort requirements apply to the programs and projects under this part?

(a)(1) *Basic standard.* A State educational agency, another State agency, or a local educational agency is eligible to receive its allocation of funds under this part for any fiscal year if the State educational agency finds that either the combined State and local fiscal effort per child or the aggregate expenditures of State and local funds with respect to the provision of required services to handicapped infants, toddlers, and children for the preceding fiscal year were maintained at a level not less than 90 percent of the combined fiscal effort per child or the aggregate expenditures of that agency and the State for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1988, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is Federal fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1988, the "preceding fiscal year" is the 12 month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(b) *Failure to maintain effort.* (1) If a State educational agency, another State agency, or a local educational agency fails to maintain effort and a waiver under § 302.53 is not granted, the State educational agency shall reduce that subgrantee's allocation of funds under this part in any fiscal year in the exact proportion to which the subgrantee fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the subgrantee) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the subgrantee failed to maintain effort, the State educational agency shall consider the subgrantee's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the subgrantee) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a subgrantee fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the subgrantee maintained effort during the next fiscal year (1991), the State educational agency may consider the subgrantee's expenditures for the second preceding fiscal year (1988) (the year that caused the subgrantee's failure to maintain effort) to be no less than 90 percent of the subgrantee's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a) (1)–(2), 2794)

§ 302.53 Under what circumstances may a State educational agency waive the maintenance of effort requirement?

(a)(1) A State educational agency may waive, for one fiscal year only, the maintenance of effort requirement in § 302.52 if the State educational agency determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to—

(i) A natural disaster; or

(ii) A precipitous and unforeseen decline in the financial resources of the subgrantee.

(2) A State educational agency may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the State educational agency grants a waiver under paragraph (a) of this section, the State educational agency may not reduce the amount of the funds the subgrantee is otherwise entitled to receive under this part.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the State educational agency shall consider the subgrantee's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate (using the measure most favorable to the subgrantee) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a subgrantee secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the subgrantee maintained effort during the next fiscal year (1991), the State educational agency may consider the subgrantee's expenditures for the second preceding fiscal year (1988) (the year for which the subgrantee needed a waiver) to be no less than 90 percent of the subgrantee's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))

§ 302.54 What is the supplement, not supplant, requirement that applies to programs and projects under this part?

A State educational agency, another State agency, or a local educational agency may use funds received under this part only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of such Federal funds, be made available for the provision of services to handicapped children participating in programs and projects assisted under this part and in no case may funds under this part be used to supplant those non-Federal funds.

(Authority: 20 U.S.C. 2728(b), 2794)

§ 302.55 What is the prohibition against using Chapter 1 funds to provide general aid?

A State educational agency, another State agency, or a local educational agency participating under this part may use Chapter 1 funds provided under this part only for programs and projects that are designed and implemented to meet the special education and early intervention needs of handicapped infants, toddlers, and children who are eligible to be served in accordance with the provisions of this part.

(Authority: 20 U.S.C. 2792)

§ 302.56 What funds are available to a State educational agency to carry out its responsibilities under the Chapter 1 Handicapped program?

(a) *Funds for State administration.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its State administrative duties under the Chapter 1 Handicapped program.

(2) The State educational agency may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for programs and projects.* A State educational agency that meets the requirements of §§ 302.2 and 302.31, and receives a subgrant under §§ 302.41 and 302.42, may use those funds only in accordance with the fiscal requirements of subpart F of this part.

(Authority: 20 U.S.C. 2793, 2794, 2824)

§ 302.57 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of a State agency or local educational agency for State aid; or

(b) The amount of State aid to be paid to a State agency or local educational agency for free public education.

(Authority: 20 U.S.C. 2854)

§ 302.58–302.59 [Reserved]

Subpart G—What Other Post-Award Conditions Must Be Met by a State and Its Subgrantees?

§ 302.60 May uncounted children be served in programs and projects under this part?

Handicapped children who are not eligible to be counted, as described in § 302.23(a), are eligible for services under this part if all handicapped infants, toddlers, and children described in § 302.22 have been fully served.

(Authority: 20 U.S.C. 2795(2))

§ 302.61 What evaluation and assessment requirements apply for a State and its subgrantees?

A State educational agency, another State agency, or local educational agency that receives funds under this part shall collect and maintain evaluations and assessments needed to demonstrate the extent to which children benefited from the services provided by those programs and projects.

(Authority: 20 U.S.C. 2792(c))

§ 302.62 What special requirements apply under this part?

A State educational agency, another State agency, or a local educational agency that provides services through contracts or other arrangements is responsible for ensuring that the requirements of this part, 34 CFR part 300, and 34 CFR part 303 are met in providing these services.

(Authority: 20 U.S.C. 2791(c))

§ 302.63 How does a State educational agency administer this program in a manner consistent with Part H of the EHA?

(a) If a State does not participate in Part H of the EHA, the State shall insure that each handicapped infant or toddler receiving services under this part receives a free appropriate public education and all procedural protections required by Part B of the EHA and 34 CFR part 300.

(b) If a State participates in Part H of the EHA, during years one through four of its participation, the State can elect to provide handicapped infants or toddlers receiving services under this part with either a free appropriate public education and the procedural protections required by Part B of the EHA and 34 CFR part 300 or early intervention services and the procedural protections required under Part H and 34 CFR part 303.

(c) If a State participates in Part H of the EHA, after the beginning of the fifth year of participation, a State shall ensure that all handicapped infants and toddlers receive early intervention services and the procedural protections required under Part H of the EHA and 34 CFR part 303.

(d) Early intervention services required under this part must be provided at no cost to parents.

(Authority: 20 U.S.C. 2792(a), 2831(a))

§ 302.64 What complaint procedures shall a State adopt?

A State shall adopt written procedures for—

(a) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to this program;

(b) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))

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§ 302.65 What minimum complaint procedures shall a State adopt?

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Authority: 20 U.S.C. 2831(a))

§ 302.66 How may an organization or individual file a complaint?

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§ 302.67 What requirements apply to State rulemaking and other State educational agency responsibilities?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit State agencies' or local educational agencies' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits a State educational agency's—

(1) Authority to review and approve a State agency's or local educational agency's application; or

(2) Responsibility to ensure that a State agency or local educational agency uses funds under this part in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 Handicapped programs funded under this part, including those based on State interpetation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(1) (ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist State agencies and local educational agencies with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs funded under this part but issues policies that the State educational agency, other State agencies, and local educational agencies are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(C) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of State agencies and local educational agencies.

(iii) Members of the committee must be knowledgeable about the Chapter 1 Handicapped program.

(4) State educational agencies are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2792, 2851)

§§ 302.68–302.69 [Reserved]

[FR Doc. 89–24382 Filed 10–16–89; 8:45 am]
BILLING CODE 4000–01–M

federal register

Tuesday
October 17, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards: Turboshaft Engine Rotor Burst Protection; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 29

[Docket No. 26037; Notice No. 89-29]

RIN 2120-AB91

Airworthiness Standards: Turboshaft Engine Rotor Burst Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations to minimize the failure hazards of high speed powerplant rotor systems used in turboshaft engines in newly designed transport category rotorcraft. Engine rotor failures have occurred resulting in the release of high energy rotor fragments or other engine component fragments. These fragments have impacted and damaged critical rotorcraft structures, systems, controls, and adjacent engines, as well as caused serious or fatal injuries to passengers and crewmembers. This proposal, if adopted, is intended to eliminate these hazards.

DATE: Comments must be received on or before April 16, 1990.

ADDRESS: Comments on the notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26037, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26037.

Comments may be inspected in room 915G between the hours of 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, FAA, Regulations Group (ASW-111), Rotorcraft Directorate, Aircraft Certification Service, Forth Worth, Texas 76193-0111, telephone number (817) 624-5123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments on Docket No. 26037." The postcard will be date/time stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular (AC) No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Turboshaft engines are specialized turbine engines that provide power by use of an output shaft; these engines are used in rotorcraft and employ both compressor and turbine rotors which operate at high stress levels induced by high rotational speeds and high gas flow loads. Turbine section rotors are further subjected to high temperature by hot gases from the engine combustion process which, in turn, produces a more severe stress condition and an erosive environment. Engine designers have been able to solve these problems in an acceptable manner throughout the normal operating range of the engine. However, rotor burst failures continue to occur, often due to external events or other factors such as lubrication failures, exposure to transient overtemperature conditions, bearing failures, turbine load absorbing mechanism failures, and structural failures.

A typical burst failure involves mechanical rupture of the rotor which results in a high velocity, high energy radial dispersal of rotor fragments or adjacent engine components. Impact from these fragments can inflict damage to critical rotorcraft structure, systems, controls, main and tail rotors, rotor drive system elements, and other engines; in addition these fragments can injure occupants.

The need for increasing the level of safety is further supported by the adverse accident history that continues for rotor burst failures. Specific airworthiness directives are currently required to correct rotor burst problems uncovered by the adverse accident history. It should be noted that parts 23 and 25 already require engine rotor burst protection for airplanes which are by geometry more protected from engine rotor burst than rotorcraft. This proposal would explicitly state and increase the minimum level of safety for engine rotor burst protection and require that all necessary engine rotor burst design precautions be incorporated during certification.

History

The FAA held its Rotorcraft Regulatory Review Conference in New Orleans, Louisiana, December 10-14, 1979, and invited all interested persons to submit proposed regulatory changes for consideration pursuant to Notice 79-1 (44 FR 3250, January 15, 1979). One of the proposals discussed at the conference dealt with design precautions to minimize hazards from an engine rotor failure. The proposal was subsequently deferred because of insufficient service history.

Service experience indicates that hazardous rotor bursts continue to occur in most of the standard engine types used in rotorcraft, and that the occurrence rate now justifies proposing a regulatory change. A recent review indicates a history of 59 reported, uncontained rotor bursts since 1980. Many of these rotor bursts occurred in engines used in nontransport or in military aircraft. However, the data are relevant to part 29 because the engines involved are similar or identical to those used in civil transport rotorcraft and are operated in either a similar or less severe manner. For example, rotorcraft engines, in many instances, have turboprop or turbojet engine counterparts which exhibit rotor burst failure modes similar to those in part 29 rotorcraft even while operating under less severe conditions than rotorcraft.

This proposal is also prompted by an accident history which has resulted in the FAA issuing several airworthiness directives (AD) for certain types of engines used in U.S. type-certificated helicopters throughout the world. These AD's contain requirements such as (1) emergency engine shutdown and landing to prevent catastrophic accidents due to uncontained rotor bursts which could occur following certain abnormal engine instrument fluctuations or (2) addition of protective plates to shield against a rotor burst. If adopted, this proposal would obviate much of the need for further AD action in other products.

National Transportation Safety Board (NTSB) Recommendation

This proposal also addresses NTSB Safety Recommendation A-84-60, dated June 14, 1984, which recommends that the engine compartment design of all U.S. type certificated multiengined helicopters be reviewed with regard to the probability that an uncontained engine failure will result in catastrophic damage to the drive train, electrical, fuel and hydraulic system components and recommends rulemaking to effect the appropriate changes.

Reference Material

Existing design standards, state-of-the-art design technology, and current FAA technical data bases were carefully examined with respect to this proposal. A summary of that review follows.

High energy rotor fragment containment, other design standards, and methodologies for minimizing rotor burst hazards have been the subjects of numerous safety studies. These studies have recommended use of design techniques which will minimize rotor burst hazards; these techniques range from the use of containment shielding to the use of critical component shielding and/or dispersal. A document of particular interest is FAA Order 8110.11, "Design Considerations for Minimizing Damage Caused By Uncontained Aircraft Turbine Engine Rotor Failures," dated November 19, 1975, to be reissued as an advisory circular (AC) in the AC 20 series. Order 8110.11 is important to this proposal because it considers the minimum design standards in terms of the worst-case rotor fragment size and energy level. These design considerations include one-third of the disk mass being released at the critical rotor burst speed. Such an energized fragment has been considered in previous analyses and tests used by certification applicants to evaluate rotor burst hazards. Order 8110.11 discusses in detail the critical speeds and associated fragment energy levels that should be considered.

To substantiate the technical feasibility of this new proposal, relative to the current state-of-the-art, a survey of current literature was conducted. Considerable government and industry research is available on rotor burst containment and in related fields such as lightweight armor. Key research documents reviewed in support of this proposal and contained in the docket are as follows:

(1) AIR4003, "Report on Aircraft Engine Containment," Society of Automotive Engineers, Inc., Seventh Draft, February 1, 1987, 400 Commonwealth Drive, Warrendale, PA 15096.

(2) National Aeronautics and Space Administration (NASA) Report No. CP-2017, "An Assessment of Technology for Turbojet Engine Rotor Failures," dated August 1977 (available from the National Technical Information Service, Springfield, Virginia 22161), which contains a research anthology.

(3) "Analysis Methods for Kevlar Shield Response to Rotor Fragments," dated August 1977, by J. H. Gerstle, Boeing Commercial Airplane Company, Seattle, WA.

(4) "Ceramic Composite Protection for Turbine Disc Bursts," circa 1977, by P. B. Gardner, Industrial Ceramics Division, Norton Company, New Bond Street, Worcester, MA 01606.

(5) Report No. NAPTC-PE-98, "Rotor Burst Protection Program: Experiment to Provide Guidelines for the Design of Turbine Burst Fragment Containment Rings," dated March 1977, Naval Air Propulsion Test Center, Trenton, New Jersey.

(6) National Aeronautics and Space Administration (NASA) Report TMX-73633, "Concepts for the Development of Light-Weight Composite Structures for Rotor Burst Containment," dated 1977.

Numerous other papers on rotor burst protection have been presented at various technical symposiums. Further, most engine manufacturers have conducted extensive research (for both civil and military applications) in containment methodology. A survey of the literature shows that protection from turboshaft engine rotor burst is well within the current state of the art for small to medium size engines common to rotorcraft; therefore, adoption of this proposal would impose no undue technological burden on the industry.

Related Rulemaking Activity

This proposal parallels rules that currently exist in parts 23 and 25 for airplanes. The rule in part 23, adopted in Amendment 23-30, for normal category airplanes was effective on March 26, 1984 (49 FR 7340, February 28, 1984). Since very few of these aircraft have been certificated since Amendment 23-30, no significant service history is available to determine its effect. The rule in part 25, adopted in Amendment 25-23, for transport category airplanes has been in effect since April 1970 (35 FR 5673, April 8, 1970), and a significant beneficial service history has been established; i.e., since adoption of Amendment 25-23, few accidents of transport airplanes have resulted from uncontained rotor bursts.

General Discussion of Proposals

The fact that parts 23 and 25 contain rotor burst hazard protection and part 29 does not is a regulatory and safety dichotomy because fixed-wing aircraft are by geometry less vulnerable to rotor burst hazards than rotorcraft. Fixed-wing aircraft are already protected from the rotor burst hazard, although it is less critical for them than such protection is for rotorcraft. There is, therefore, a significant safety incentive for adoption of this proposal.

The degree of damage from a rotor burst in a fixed-wing aircraft is typically far less catastrophic than that resulting from a similar rotor burst in a conventional rotorcraft. This is because rotorcraft are very compact and have nearly all of their critical components colocated. A fixed-wing aircraft is less compact, and its critical components are dispersed making it less vulnerable to high energy fragments than a similarly sized rotorcraft. Use of fixed-wing aircraft service history to aid in quantifying proposed benefits for rotorcraft is conservative in the safety and economic senses. Safety and economic benefits from rotor burst protection for a given rotorcraft design could be as much as 10 times that for a similar fixed-wing aircraft design. Fixed development costs for either design would be essentially the same. This is true even when using the fixed-wing aircraft rotor burst data conservatively.

Airplane designers typically use existing design features for rotor burst protection not available in rotorcraft including the following: Relatively wide engine separation; dispersed redundant structure; widely separated and/or redundant primary controls; hydraulic, pneumatic, and electrical systems; and powerplant operating regimes characterized by long term stable operation at lower power settings which greatly limit rotor burst initiation and damage.

Conversely, designers of conventional rotorcraft, with rare exception, must locate the engines side-by-side within the fuselage contours. The rotorcraft

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designer must also locate the following directly within the immediate rotor fragmentation zone: primary controls; critical single load path structure; critical rotor drive system components; fuel cells; critical hydraulic, pneumatic, and electrical system components; personnel compartments; and the main lifting rotor.

The inherent rotorcraft side-by-side powerplant arrangement has resulted in at least seven instances in which a rotor burst has caused the failure of the remaining adjacent engine. In one instance a rotor burst penetrated an adjacent fuel tank and caused a severe fire. In other instances the rotor burst severed closely located, critical flight control system components.

A realistic consideration of the rotor burst service history, design constraints, and optimum state-of-the-art design requirements for rotor burst containment suggests a design solution that embodies either airframe or integral engine containment shielding. A requirement for shielding would, of course, cause an increase in design, manufacturing, weight penalty, and testing costs. However, any recurring costs, such as those due to increased weight and manufacturing, would eventually be absorbed (at least partially) by natural improvements in material and design technology which occur in the aircraft industry.

An alternate solution would be to revise part 33 to require integration of the containment shield into appropriate sections of the engine case. Certainly an engine case which met this objective would provide an acceptable level of safety and, thus, meet the requirements of this proposal. However, the FAA is proposing to place the requirement in part 29 to address possible future certification questions that concern the installation eligibility of a previously type-certificated engine, which does not have rotor burst protection, in a subsequently type-certificated rotorcraft airframe (i.e., rotor burst protection would be provided by airframe design, not special engine design). Also, placing the requirement in part 29 would encourage development of future configurations which may not use a containment ring, but may use more sophisticated technology beyond the current state-of-the-art. For these reasons, the alternate proposal to mandate the containment shield in part 33 is not being considered at this time.

Specific Discussion of Proposals

Section 29.901

The FAA is proposing that the minimum level of safety be increased by requiring consideration of failure of engine rotor discs unless such failure is shown to be extremely remote. Since this proposed new requirement would be inconsistent with existing paragraph (c)(2), it would be removed and existing paragraphs (c) and (c)(1) would be combined as shown in the proposal.

Section 29.903

For turbine engine installations, the FAA is proposing to revise paragraph (f) to state explicitly that design precautions must be taken to minimize the hazard to the rotorcraft in the event of an engine rotor failure.

Regulatory Evaluation Summary

Benefits—Cost Evaluation

This economic impact evaluation compares the benefits and costs of the proposed regulation on a per-rotorcraft basis with the rotorcraft varying in size from 8 to 20 seats; as such, it reduces dependence on forecasts of the size and the number of new transport rotorcraft produced.

For purposes of this evaluation, it is assumed that a Category A or B transport rotorcraft with two engines will be certificated under this proposed rule. Also, it is assumed that the rotor of each engine will be enclosed by a ring of material that is sufficient to contain fragments from a rotor burst, and that the costs of these rings will not vary significantly because of the relatively small variation in size among transport rotorcraft engines. The benefits derived from the containment ring will, however, increase as the size of the rotorcraft increases.

Costs of Compliance

The proposed requirement could be satisfied by shielding each engine with a containment ring (e.g., one previously approved containment device consists of a 6-pound laminated ring made from boron-carbide with fiberglass backing); this conclusion is based on an assessment of typical rotorcraft designs using standard state-of-the-art materials and manufacturing technology, and an assessment of the previously cited certification experience of a major manufacturer. The one-time cost to a manufacturer of transport rotorcraft for developing these composite material rings is estimated to be $330 per rotorcraft produced, and the estimated manufacturing cost per containment ring is $480. Since a twin-engine transport rotorcraft would require two containment rings, the increase in cost of manufacturing rotorcraft certificated under these proposed requirements would be twice $480 plus $330 or $1,290. Rotorcraft operators would experience an increase in the operating cost of transport rotorcraft certificated under this proposed rule as a result of the additional weight of the two containment rings. The estimated annual cost per pound of additional weight is $37.13; therefore, the 12-pound weight of the two containment rings is estimated to increase the operating cost for a twin-engine transport rotorcraft by $445.56 annually. The present value of the increase in the total cost of purchasing and operating twin-engine transport rotorcraft, over 15 years, certificated under this proposed rule would be $4,254. For a more detailed explanation of the estimation of these costs, see the regulatory evaluation included in the docket.

Benefit Estimation

The value of the rotorcraft destroyed or damaged is one of the determinants of the benefits of this proposed regulation with regard to eliminating property losses due to uncontained rotor burst. The expected annual benefit per seat in preventing rotorcraft property loss by containing a possible turbine burst is estimated to be $47.90. The value assigned to casualties is also one of the determinants of the benefits of this proposed regulation with regard to eliminating casualties due to uncontained rotor burst in rotorcraft. In this evaluation, the statistical value of a human life is set at $1 million; the cost of a serious rotorcraft injury is estimated to be $390,900; and the cost of a minor rotorcraft injury is estimated to be $25,100. Based on these assumptions, the expected casualty prevention benefits per year are estimated to be $571.75 per seat.

The present value of the benefits of this proposal would vary with the size of the rotorcraft—the larger the rotorcraft, the greater the benefits. Using FAA critical values for human life, injuries, and rotorcraft replacement and repair, the estimated benefits are $619.65 per seat per year, and the estimated present value of these benefits over 15 years is $4,285 per seat. Since the estimated present value of the benefits from the proposed rule exceeds the estimated present value of the costs of this proposal, the FAA, therefore, has determined that this proposed regulation would be cost beneficial.

Trade Impact Statement

The costs which may be imposed by this proposal will not result in a competitive trade disadvantage for U.S. manufacturers in the U.S. market. Foreign manufacturers would have to comply with the proposed regulation as a condition for exporting their rotorcraft to the United States. Foreign manufacturers are expected to comply with these proposed regulations since the United States is their largest market. In foreign markets, neither U.S. manufacturers nor foreign manufacturers can be required to comply with these proposed standards. Therefore, U.S. manufacturers will not be at a competitive disadvantage in foreign markets.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA small entity standards define a small rotorcraft manufacturer as an independently owned and managed firm having fewer then 75 employees. There are currently only three manufacturers in the United States that produce rotorcraft certificated under part 29, and all three have more than 75 employees. Therefore, under the FAA size standard criteria, there are no small manufacturers that will be affected by this proposed change to part 29. Small rotorcraft operators are not necessarily affected by this proposed rule since they will not be required to purchase rotorcraft certificated under this proposed regulation. Thus, the FAA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Federalism Implication

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 29 of the Federal Aviation Regulations (14 CFR part 29) as follows:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 29.901 is amended by revising paragraph (c) to read as follows:

§ 29.901 Installation.

* * * * *

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the rotorcraft except that the failure of structural elements need not be considered if the probability of any such failure is extremely remote.

* * * * *

3. Section 29.903 is amended by revising paragraph (f) to read as follows:

§ 29.903 Engines.

* * * * *

(f) *Turbine engine installation.* For turbine engine installations—

(1) Design precautions must be taken to minimize the hazards to the rotorcraft in the event of an engine rotor failure; and

(2) The powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect engine rotor structural integrity will not be exceeded in service.

Issued in Washington, DC, on October 10, 1989.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-24413 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

VOL
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ISS
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OC
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UMI

federal register

Tuesday
October 17, 1989

Part VIII

Department of Health and Human Services

Public Health Service

45 CFR Part 60

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners; Final Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 60

[RIN 0905-AC 51]

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule sets forth criteria and procedures for information to be collected in and released from a National Practitioner Data Bank, in accordance with the requirements of title IV, part B, of the Health Care Quality Improvement Act of 1986. These regulations govern the reporting and release of information concerning: (1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists.

EFFECTIVE DATE: These regulations will be effective on the date on which the National Practitioner Data Bank is operational. The Secretary will publish this date in an announcement in the **Federal Register**.

A separate announcement will be published in the **Federal Register** when the Department obtains Office of Management and Budget approval for § 60.6(b) which contains information collection requirements.

FOR FURTHER INFORMATION CONTACT: Daniel D. Cowell, M.S., Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, Room 8-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-2300.

SUPPLEMENTARY INFORMATION: On March 21, 1988, the Secretary published a Notice of Proposed Rulemaking (NPRM) to implement the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99-660, through the establishment of a National Practitioner Data Bank (the Data Bank). The Department received more than 140 comments which were postmarked on or before May 20, the end of the comment period, from health professionals' organizations, hospitals, health maintenance organizations, State licensing boards, other units of State government, insurers, health care consultants, attorneys, physicians, and others.

The Secretary would like to thank the respondents for the quality and the thoroughness of their comments. As a result of the comments, many modifications have been made to the NPRM. The comments and the Department's response to the comments are discussed below. For clarity, the comments and responses are arranged according to the section numbers and titles of the NPRM to which they pertain. We note that a new § 60.6 has been added to the final regulations, which results in renumbering the sections following new § 60.6.

As the Secretary indicated in the March 21, 1988 NPRM, the Act does not require the application of these provisions to Federal health care entities, physicians, dentists, and other health care providers. However, the intent of the law appears clear that coverage be as broad as possible, and hence that Federal providers be included to the extent feasible. Accordingly, the Secretary has signed Memoranda of Understanding with the Department of Defense and the Drug Enforcement Administration of the Department of Justice, and is pursuing the execution of such a memorandum with the Department of Veterans Affairs. Also, the Secretary is developing a policy and procedure regarding the manner in which health care providers in the Department of Health and Human Services will participate in the Data Bank.

Subpart A—General Provisions

Section 60.1 The National Practitioner Data Bank

The Department has revised the title of "The National Data Bank," to "The National Practitioner Data Bank" to more precisely represent the purpose of the Data Bank. Accordingly, references to the Data Bank have been so revised throughout these regulations.

Section 60.3 Definitions

Several respondents indicated that the reference to "failing to renew State licensure" in the definition of "adversely affecting" was incorrect, since "adversely affecting" is used in the body of the regulations only in connection with professional review actions concerning clinical privileges and membership in a professional society.

The Department agrees with the comments and has deleted the phrase "failing to renew State licensure" from this definition.

A large number of respondents indicated that the definition of "adversely affecting" was overbroad in its incorporation of actions by specialty boards. "Adversely affecting," as proposed, referenced specialty boards for consistency with the proposed definition of "health care entity," which included specialty boards. These respondents similarly felt that including "specialty board" within "health care entity" was an overexpansion of the Act.

In response, the Department has deleted the references to "specialty board" both from the term "adversely affecting" and from "health care entity." A more detailed explanation of the comments and the basis for these revisions is contained in the discussion below of the term "health care entity."

A board of dental examiners stated that the definition of "dentist" was inaccurate. The board indicated that D.M.D. means "doctor of dental medicine," not "doctor of medical dentistry," as proposed. It was also indicated that some dentists, generally foreign graduates, may hold a degree other than doctor of dental surgery or doctor of dental medicine which qualifies them to hold licenses and practice in a State.

In response, the Department has deleted the abbreviations for degrees and retained the statutory references for the credentials of a dentist. For consistency, the Department has made the same revisions in the definition of "physician." The definition of "dentist" was also expanded to include dentists with degrees equivalent to doctor of dental surgery or doctor of dental medicine who otherwise meet the statutory criteria.

Numerous attorneys, associations, and medical boards found the definition of "health care entity" to be unclear and questioned whether various organizations, such as Individual Practice Associations and Preferred Provider Organizations, would fall within the term.

In clarification, the Department's intent is that an entity apply the criteria of paragraph (b) of the definition of "health care entity" to itself in order to make a factual determination of whether the definition would encompass it. Specifically, these criteria are that an entity: (1) Provides health care services; and (2) engages in professional review activity through a formal peer review process for the purpose of furthering quality health care. The Department prefers to define this term broadly, rather than to attempt to focus on the myriad of health care organizations, practice arrangements, and professional societies, so as to ensure that the

regulations include all the entities within the scope of the statute. In keeping with this intent, the Department has revised the description of "group medical practice" in the definition of "health care entity" to delete the specific criteria of shared facilities, personnel, medical records, and responsibilities, and incomes set by contract. The modification generalizes the definition to indicate that a health care entity includes any group or prepaid medical practice which meets the criteria of paragraph (b).

As previously mentioned, the Department has further revised "health care entity" to delete the reference to "specialty board" based on numerous comments that the proposal was overly broad. In addition, respondents pointed out that membership in a specialty board is voluntary, and that curtailment of this membership does not necessarily reflect lack of competence. The comments generally indicated that equating "specialty board" with "professional society" within the definition of "health care entity" was not within the intent of the Act.

Several respondents questioned the definition of licensed "health care practitioner" as it refers to "an individual who is licensed or otherwise authorized by a State to provide health care services." The Department used "otherwise authorized" to include disciplines for which States grant authority to provide health care services by mechanisms other than licensure, such as registration and certification. All health care practitioners authorized by a State to provide health care services by whatever formal mechanism the State employs are included within this definition. The Act similarly uses "otherwise authorized" to define "licensed health care practitioner."

Some respondents requested the Department to include a list of health care practitioners subject to these regulations. To include such a list in the regulations would be unfeasible since regulatory amendments would then be necessary each time the list would require revisions. However, the Department does intend to make available to members of the public, upon request, a list by State of those practitioners who are the subject of these regulations.

Numerous respondents found the definition of "medical malpractice action or claim" to be in need of clarification. Several comments questioned whether this term was limited to claims or actions filed in court or included administrative claims. Other respondents questioned the meaning of "other adjudicative body" as used in this term in reference to where a medical malpractice action or claim may be filed.

In response to these comments, the Department has adopted some of the suggested revisions to clarify the definition as follows:

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort, brought in any State or Federal court or other adjudicative body.

This definition, as did that in the NPRM, includes the filing of medical malpractice claims on an administrative level, as well as judicial claims and actions. The revised definition more closely tracks the language of the Act.

"Other adjudicative body," as used in this definition, is intended to specify medical malpractice actions which are brought before arbitration boards and other dispute resolution mechanisms prior to or instead of a formal court action.

Two associations opposed the definition of "professional review action." One stated that including within the term "a formal decision not to take an action or to make a recommendation" was inappropriate, since this phrase is relevant to the immunity provisions of part A of the Act but not the reporting provisions of part B. The other association found that the definition implied that a decision to not take an action should be reported.

The Department agrees with these comments. Since these regulations implement only the reporting provisions of part B of the Act and not the immunity provisions of part A, the Secretary has revised the definition of "professional review action" to delete the above-referenced phrase. However, the Secretary points out that "a formal decision not to take an action or to make a recommendation" which would result in the voluntary surrender of clinical privileges would be reported under § 60.9(a) (i) and (ii). The Department has similarly deleted the reference to "professional review activities related to a professional review action" as being unnecessary in the implementation of the reporting requirements of part B.

Numerous respondents requested clarification of the meaning of "professional competence or conduct" as used in the definition of "professional review action." They inquired whether revocation or suspension of privileges related to nonclinical factors would be reportable, such as failure to attend staff meetings or to complete medical records or billing forms. Another respondent questioned whether it would include criminal activities committed by the professional outside the employment setting.

In response, the Department has revised the form of the definition of "professional review action" to stress that it encompasses only professional competence or conduct which affects or could affect adversely the health or welfare of a patient. Hence, "professional review action" does not include an action taken against a physician, dentist, or other health care practitioner based on a technical or administrative failing unrelated to the health or welfare of patients. With respect to criminal activities, it would obviously be necessary to analyze the criminal action to make a determination whether the health or welfare of a patient was or could be adversely affected by the situation. In short, the Department believes that "professional review action" is best defined in generic terms which allows each health care entity to make its own factual determinations.

Several respondents found the definition of "professional review activity" to be unclear. They felt, for example, that a health care entity could have many reasons unrelated to professional competence for making an initial determination not to grant clinical privileges. For example, it may have a sufficient number of anesthesiologists currently on its staff and not need the services of another. Another comment stated that many hospitals routinely grant initial privileges on a probationary basis.

The Department clarifies that, as used in the Act as well as in the NPRM, the definition of "professional review activity" is not descriptive of the reasons for modification or curtailment of clinical privileges or membership but relates only to various types of actions that may or may not lead to modification or curtailment of clinical privileges and membership. This definition's significance is in how it relates to the definition of "professional review action." It is only "professional review actions," not "professional review activities," which are reportable under Part B of the Act. The definition of "professional review action" encompasses only professional review activities which are related to the professional competence or conduct of a physician, dentist, or other health care practitioner and which could adversely affect the health or welfare of a patient.

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In fact, paragraph (d)(5) specifically excludes from the definition of "professional review action" matters that do not relate to the competence or professional conduct of a physician, dentist, or other health care practitioner. Thus, it is clear that although the definition of "professional review activities" does not by its own terms exclude such actions as refusing privileges to an anesthesiologist because a health care entity already has enough such practitioners, such actions would not be reportable under § 60.9.

Subpart B—Reporting of Information

Section 60.4 How Information Must Be Reported.

To improve the clarity of the structure of these regulations, the Secretary has moved the portion of proposed § 60.4 that related to errors and omissions in reports to a new § 60.6.

Section 60.5 When Information Must Be Reported

There were approximately 40 comments on this section. Most of them addressed the timing of reports. Some respondents found the time periods outlined in the NPRM too stringent; others, particularly insurers, proposed alternate report submission schemes or the submission of reports in batches; still others asked for clarification of the events which trigger the time periods.

With the few exceptions noted below, the Department has decided to retain the language of the NPRM in the final rule. In this decision, the Department was guided both by the language of the Act which specifies that reports shall be made "not less often than monthly," and by the importance of maintaining current information for the protection of the public.

Several respondents questioned why § 60.5(c), as proposed, required health care entities to report adverse actions within 20 days, whereas other reports were required within a 30-day timeframe. The rationale for the 20-day period is that the reporting of adverse actions is a two-step process, with the health care entity making a report to the Board of Medical Examiners, and the Board then submitting this report to the Data Bank, both of which actions are to be accomplished within a single 30-day timeframe.

Several respondents opposed § 60.5(c) on the basis that the 10-day timeframe for reports by Boards of Medical Examiners to the Data Bank placed an undue burden on Boards whose resources are limited.

The Department is sympathetic to the difficulties of meeting a 10-day deadline and, in response, has revised § 60.5(c) to shorten the time for health care entities to file reports with Boards of Medical Examiners from 20 to 15 days and increase the time for Boards to file their reports from 10 to 15 days. Nevertheless, we stress that this particular type of reporting simply requires Boards of Medical Examiners to pass through information which they have received from the health care entity in the form that they received it and does not require the preparation of a new document or Board action on the contents of the report.

With respect to inquiries concerning the triggering event of the applicable time period for reporting, the Department views the events as follows:

(1) For malpractice payments (§ 60.7)—the date of the check in payment of the medical malpractice action or claim.

(2) For licensure and adverse actions (§ 60.8 and § 60.9)—the date of formal approval of the adverse action by the Board's or entity's authorized official.

The Department will be issuing guidelines to explain these points further, as well as other regulatory provisions in need of greater discussion, and provide examples.

The Secretary emphasizes that individuals and entities will not be held responsible for reporting any information under these regulations or the Act until the Data Bank has been established and the Secretary has announced the date of the beginning of its operation in the **Federal Register**. The reporting requirements are not retroactive from November 14, 1987, the statutory date on which the Data Bank was to have been in operation.

Section 60.6 Reporting Errors, Omissions, and Revisions (New)

As stated earlier, the Department reorganized these regulations, moving the provision concerning errors and omissions from § 60.4. One medical association had commented on the lack of any reference to time in reporting an omission or error. Several respondents expressed concern about the accuracy of the information in the Data Bank.

The Secretary is sensitive to the importance of accuracy of the information in the Data Bank, for the protection of the users of the information, the subjects of the reports, and the public. In response to the comments on the proposed § 60.4, the Department has added "as soon as possible" to indicate the urgency of correcting reports on file.

The Secretary has added the requirement that individuals and entities who file reports must update them when they learn of revisions, such as the reinstatement of a license or the reversal or modification of a professional review action. The procedures for reporting revisions will be the same as those which applied to the reporting of the original event.

To increase the accuracy of the information in the Data Bank, all reports which are filed will be held for 30 days after receipt prior to release to any parties other than to the subjects of the reports. This period will provide opportunity for disputes, corrections, or revisions to be filed prior to release of the information. In addition, the Data Bank will maintain a record of all inquiries made to it and any information provided as a result of an inquiry. It will then issue corrections or supplementary reports to all who have received erroneous or incomplete information.

Section 60.7 (Proposed § 60.6) Reporting Medical Malpractice Payments

More than 50 respondents commented on proposed § 60.6 (§ 60.7 below). The majority of comments expressed concern over the burden of reporting all payments, regardless of size. About one-fourth of the respondents suggested setting a floor for the size of medical malpractice payments below which reporting would not be required. For example, several respondents recommended that payments below $30,000 not be reported.

The Department cannot accept these comments due to the statutory requirement that medical malpractice payments of any size be reported. However, as stated in the NPRM, the Secretary will be filing a report with Congress on whether information on small payments should continue to be collected. These comments will be considered when making this report.

Numerous comments were made regarding the interpretation of malpractice payments. Respondents pointed out that nuisance or frivolous claims are frequently settled by small payments which do not reflect on the professional competence or conduct of the physician, dentist, or other health care practitioner in issue.

The Secretary agrees with these comments and therefore has revised § 60.7 to include a new paragraph (d) entitled "Interpretation of information." This paragraph reiterates section 427(d) of the Act, which states that a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

Several associations requested that the "acts or omissions" which must be reported under § 60.7 be described as "alleged" acts or omissions. These respondents stated that if a payment were made in a settlement, then "alleged" should be used as a modifier because the acts or omissions may never have occurred. They also felt that to add "alleged" would be consistent with the statutory provision of section 427(d) of the Act, that a payment in settlement of a medical malpractice claim shall not be construed as creating a presumption that medical malpractice has occurred.

The Department has not accepted these comments. The Secretary believes that § 60.7, as proposed, is closer to the statutory intent and language. For example, section 421(b)(4) of the Act requires a report on a payment on a medical malpractice claim or action to contain "a description of the acts or omissions and injuries or illnesses upon which the action or claim was based." The Department has, however, revised § 60.7(a) so that it reflects the language of the Act. Further, as mentioned above, the Department has included a new paragraph (d) in § 60.7 to set forth the interpretation of medical malpractice payments contained in section 427(d).

Several respondents suggested that information in the Data Bank be "purged" after a periodic interval of, perhaps, 5 years.

The Department has not accepted these comments because the deletion of reports from the Data Bank would be inconsistent with the statutory purpose of protecting the public. However, the Secretary wishes to make every effort to maintain the accuracy of the information and thus, as discussed earlier, has added new § 60.6 to require the filing of updated information. The Department acknowledges that data retained over very long periods of time can lose practical utility. For that reason, the Department will assess the desirability of indefinite retention of information in the Data Bank.

An association of insurers requested clarification of § 60.7(a) to emphasize that reportable payments are those for medical malpractice claims or actions and for the benefit of a physician, dentist, or other health care practitioner. This respondent was concerned that a suit could include multiple defendants and multiple allegations, such as libel or slander.

The Department has accepted this comment and has revised § 60.7(a) accordingly.

Numerous health care entities inquired whether the waiver of an outstanding bill to settle a medical malpractice claim or action would be required to be reported under § 60.7.

Both the Act and these regulations require the reporting of payments in response to medical malpractice claims or actions. The Department interprets "payment" as meaning an exchange of money; therefore, the waiver of a debt as described above would not be a reportable event. The Department has revised § 60.7(a) to clarify this point.

Several insurers and professional organizations opposed the requirements of § 60.7(b)(1), subitems (iii), (vii) and (viii) to report the home address, the license number, and the Drug Enforcement Administration registration number of the subject of the report. They indicated that this information is neither routinely collected nor readily known.

In response, the Department has modified § 60.7(b)(1)(viii) to allow for the reporting of the Drug Enforcement Administration registration number, if known. Since an individual's home address could be a useful identifier, it has been retained but has been modified to be required only if it is known. The reporting data of § 60.8 and § 60.9 for licensure and adverse actions have been similarly revised. The Department has retained the requirement of the license number, since it is an important provider identifier.

The Department is requiring the reporting of additional information to distinguish more precisely among individual physicians, dentists, and other health care practitioners on whom information is reported to the Data Bank. The additional personal identifiers to be reported are: Date of birth; name of each professional school attended and year of graduation; the field of licensure and the name of the State or Territory in which the license is held. The reporting requirements in § 60.8 and § 60.9 for licensure and adverse actions have been similarly revised.

As previously mentioned, the Secretary is sensitive to the importance of accuracy of the information in the Data Bank. The combination of identifiers required to be reported to the Bank will help prevent errors in distinguishing among more than one practitioner with the same name.

To correct the references to the Privacy Act in the proposed rule at §§ 60.6(b)(1)(v), 60.7(b)(5), and 60.8(a)(3)(v), the Secretary has removed from those sections the phrase, "* * * and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a) * * *" and has inserted in its place the phrase, "in accordance with section 7 of the Privacy Act of 1974."

Numerous respondents expressed concern over § 60.7(b)(3)(viii), which stated that the Secretary would require other information from time to time, as announced in the **Federal Register**. They opposed this provision as omitting the rulemaking requirements of the Administrative Procedure Act.

The Secretary never intended these additional data requirements to be imposed without public notice and comment. This section, and the parallel provisions of § 60.8 and § 60.9, have been revised to clarify that any such additional requirements would be proposed in the **Federal Register** for public comment.

Many insurers sought clarification on how payments should be reported when they are made on a periodic basis or on behalf of more than one individual.

In response, the Department interprets § 60.7 as requiring reporting only at the time of the first payment of periodic payment terms. The accompanying report would indicate the expectation of periodic payments. In the case of a payment on behalf of multiple individuals, the insurer would report the total payment, list the details concerning each health care provider, and indicate that the payment was made on behalf of all the listed providers. The Department will be issuing guidelines with illustrative examples to advise individuals and entities in the filing of all required reports.

Several respondents expressed a need for a uniform system of classification of medical malpractice claims to assist in reporting.

The Department recognizes this need and has added new § 60.7(b)(3)(vii). This requirement is similar to proposed § 60.7(b)(8) which requires the reporting of the classification of licensure actions in accordance with a reporting code to be adopted by the Secretary. The Department is consulting with liability insurers and others to develop a system to classify acts or omissions upon which a medical malpractice claim or action is based. A classification for each category of reportable actions, such as malpractice claims and licensure actions, will be developed with an opportunity for public comment in accordance with the review procedures of the Paperwork Reduction Act of 1980.

The Secretary notes that the procedures for the imposition of sanctions for failure to report malpractice payments, as referenced in § 60.7(c) were proposed in the **Federal Register** on March 21, 1988. Final regulations for the latter will be published separately in the **Federal Register** by the Office of the Inspector

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General (OIG), Department of Health and Human Services, shortly after the publication of these Title IV regulations. The OIG regulations will be codified at 42 CFR part 1003.

Section 60.8 (Proposed § 60.7) Reporting Licensure Actions Taken by Boards of Medical Examiners

The majority of comments on proposed § 60.7 (§ 60.8 below) criticized this section for requiring licensure actions which are unrelated to professional conduct or competence to be reported. As proposed, § 60.8(a) (1) and (3) required a Board of Medical Examiners to report actions which revoke or suspend a physician's or dentist's license or under which such license is surrendered. Only § 60.8(a)(2), which requires the reporting of an action to censure, reprimand or place on probation a physician or dentist, conditioned the clause with "reasons relating to the physician's or dentist's professional competence or professional conduct." Insurers, associations, and boards pointed out that a license may be surrendered simply due to retirement or relocation. Also, licensure actions may be taken for reasons related to licensees' fees, or advertising, which do not relate to professional competence or conduct.

The Department has accepted these comments. Since the purpose of the Data Bank is to improve the quality of medical care by restricting the ability of certain physicians and dentists to continue to change practice locations without the disclosure or discovery of their previous incompetent performance or misconduct, the Secretary intends to collect only data relating to professional competence or conduct. The regulations have been revised accordingly.

Several associations found § 60.8(b)(11) to be unclear. This section requires a report to contain a classification of the action per State reporting code.

In response, the Department has revised this section to delete the reference to "State," and to note that the code will be one adopted by the Secretary. The Department intends to develop a code or codes for reporting licensure actions to the Data Bank and to distribute this code to reporting agencies and entities. To the extent feasible, the reporting scheme which is most commonly used by Boards will be incorporated.

The Department notes that § 60.8(b) (3) and (8) have been revised, as explained in the preamble discussion of § 60.7, entitled "Reporting medical malpractice payments."

Section 60.9 (Proposed § 60.8) Reporting Adverse Actions on Clinical Privileges

The Department received nearly 50 comments on proposed § 60.8 (§ 60.9 below). The vast majority addressed § 60.9(c), concerning sanctions for noncompliance with reporting requirements. The comments generally requested clarification of some provisions but also contained many helpful suggestions. As noted in preceding discussion pertaining to § 60.7(c), final regulations regarding sanctions for failure to comply with these reporting requirements will be published shortly and codified at 42 CFR part 1003.

Numerous respondents expressed dismay over their interpretation of § 60.9 as requiring the reporting of voluntary decisions to limit clinical privileges, such as a family practitioner's decision to stop accepting obstetrical or minor surgical cases, when these decisions are not motivated by investigations or threats of investigation of clinical competence or professional conduct.

The Department shares the view of these respondents that the Data Bank should contain only information which reflects adversely on a practitioner's professional competence or conduct. However, § 60.9, as proposed, achieves this purpose. A "professional review action," as referenced in § 60.9(a)(1)(i), requires, by definition, both a formal peer review process and a relationship to professional competence or conduct. The same is true of § 60.9(a)(1)(iii) for professional review actions by professional societies. Thus, a physician's or dentist's voluntary reduction in clinical privileges for reasons of personal preference is not a reportable event.

Another respondent objected to § 60.9(a)(1)(ii) as lacking clarity. This section requires the reporting of the "surrender of clinical privileges" by a physician or a dentist in situations where the physician or dentist is under investigation for possible incompetence or improper professional conduct, or where the physician or dentist surrenders clinical privileges in return for not conducting such investigation. The respondent was concerned that the reporting of the surrender of clinical privileges would not include a partial surrender of such privileges.

The Department has accepted this comment and revised § 60.9(a)(1)(ii) accordingly, to clarify that the restriction of clinical privileges in those situations would be reported.

A dental association commented on § 60.9(a)(1)(iii) concerning professional review actions by professional societies. The association suggested the deletion of "which adversely affects the membership of a physician or dentist" as being redundant with "professional review action."

The Department has accepted this comment and revised this provision accordingly.

A medical board supported § 60.9 but suggested that the regulations should require the reporting of a loss of clinical privileges of any length, not just of 30 days or more. This respondent suggested that suspensions of 29 days might become a common mechanism for avoiding the reporting requirement.

The Secretary appreciates this concern. However, the provision has been retained as proposed, since the 30-day time period is explicit in the Act.

An association felt that "appropriate" as modifying "Board of Medical Examiners" in § 60.9(a)(1) was unclear.

In response, the Department has revised this provision to require a health care entity to report to the "Board of Medical Examiners *in the State in which the health care entity is located*" (emphasis added).

Most of the comments on § 60.9 addressed paragraph (c), which describes the Department's procedures for imposing sanctions for noncompliance with reporting requirements of this section. With regard to requests for hearings, several respondents asked what constituted "substantive and relevant" issues, and how the Department would determine whether the statement of factual issues submitted was "frivolous or inconsequential." Some respondents questioned whether it was appropriate for the Department to deny hearing requests, given the substantial nature of the sanction. Finally, many comments opposed the provision of this subsection which requires that hearings be held in the Washington, DC, area. These respondents stated that the requirement will limit the opportunity for adequate representation during proceedings and recommended that there be regional hearings instead.

In response, the Department emphasizes that the intent of the proposal is to assure that the hearing process is administered as efficiently and cost-effectively as possible for the health care entities and the Department, and concludes that it is consistent with both due process and legislative requirements.

A determination of what constitutes a factual issue in dispute is directly tied to the reporting requirements in § 60.9. An example of a factual issue in dispute would be a case where a health care entity alleges facts which, if true, would undercut the Department's determination that the health care entity has not met the requirements of the reporting provision. Such a case would involve a material, factual issue in dispute that would be appropriate for resolution through a hearing.

The proposed procedure for determining whether a hearing must be conducted is essentially an administrative "summary judgment" proceeding. It is a well-settled principle that an agency has the authority to deny a hearing when it appears from the request that no substantial issue of fact is in dispute. *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609 (1973); *United States* v. *Storer Broadcasting Co.*, 352 U.S. 192, 202–205 (1956); *Pineapple Growers Association of Hawaii* v. *F.D.A.*, 673 F.2d 1083 (9th Cir. 1982).

Section 411(b) of the Act, which requires the Secretary to provide an opportunity for a hearing, does not constitute a bar to such summary judgment. When it is apparent from a request that there are no substantive issues in dispute, no purpose could be served by holding a public hearing. In upholding a similar summary judgment provision promulgated by the Food and Drug Administration, the U.S. Court of Appeals for the Eighth Circuit articulated the rationale for the provision as follows:

> • • • The hearing is solely for the purpose of receiving evidence "relevant and material to the issues raised by such objections." Certainly, then the objections, in order to be effective and necessitate the hearing requested, must be legally adequate so that, if true, the order complained of could not prevail. The objections must raise "issues." The issues must be material to the question involved; that is, the legality of the order attacked. They may not be frivolous or inconsequential. Where the objections stated and the issues raised thereby are, even if true, legally insufficient, their effect is a nullity and no objections have been stated. Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that the petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law. *Dyestuffs and Chemicals, Inc.*, v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied* 362 U.S. 911 (1960).

With regard to the recommendation for regional hearings, the Secretary continues to believe that the location of hearings for most cases must be limited to the Washington, DC, metropolitan area due to constraints in departmental resources.

Several respondents noted that § 60.9(c)(1) as proposed, concerning sanctions for health care entities, omitted the statutory language of "substantially" as used to modify "failed to report information in accordance with § 60.9."

The Department acknowledges this oversight and has revised this provision accordingly.

Another respondent pointed out that § 60.9(c)(1) as proposed also omittted the statutory requirement that the Secretary must give a health care entity an opportunity to correct noncompliance before imposing a sanction.

The Secretary accepts this comment and has revised the provision accordingly.

Subpart C—Disclosure of Information by the National Practitioner Data Bank

Section 60.10 (Proposed § 60.9) Information Which Hospitals Must Request From the National Practitioner Data Bank

Several respondents opposed the requirement that hospitals "obtain information, suggesting that it be replaced by "request." They asserted that hospitals could only be held responsible for making requests from the Data Bank and should not be held responsible if they fail to receive it due to a deficiency on the part of the Data Bank.

The Secretary accepts these comments and has revised § 60.10 accordingly.

Another respondent opposed as burdensome the requirement that a hospital request information from the Data Bank every 2 years for its medical staff and those who have clinical privileges.

The Department is unable to accept this comment since this requirement is mandated by the Act.

A dental association pointed out that dentists had not been included in the requirement of § 60.10(a)(2) that a hospital query the Data Bank every 2 years concerning its staff.

The Department has corrected this oversight by revising § 60.10(a)(2) accordingly.

Several associations requested that § 60.10 be revised to include "authorized agents" of hospitals as entities who may query the Data Bank. These respondents pointed out that many hospitals rely on centralized medical staff application and reappointment programs operated by local medical societies.

The Secretary has accepted these comments and has revised § 60.10(a) accordingly. However, it should be noted that § 60.11(a) already specifically provides that "authorized agents" of persons or entities may request and obtain information from the Data Bank. The Secretary has nevertheless made the requested changes for additional clarity.

Section 60.11 (Proposed § 60.10) Requesting Information From the National Practitioner Data Bank

The Department received over 80 comments on this section.

Several respondents suggested that the regulations provide for timely responses by the Data Bank to requests for information.

The Secretary emphasizes that all efforts will be made by the Department and the contractor who will be operating the Data Bank to insure that requests for information are fulfilled on a timely basis. However, at this time it is not feasible to incorporate a response time in these regulations because the Data Bank has not been established. It is the intent of the Secretary to establish a timeframe for the Data Bank to respond to requests after it is in operation. This information will be available to the public at that time.

Several insurers and an educational institution requested access to information in the Data Bank.

The Secretary cannot expand access to the Data Bank beyond what the Act authorizes. It should be noted that individuals are permitted to obtain information about themselves and may share this information with a potential employer or insurer. In addition, information requested in a form that does not identify any health care entity or health care practitioner will be available to anyone making such a request.

Numerous respondents questioned what information would be given in response to authorized requests concerning physicians, dentists, or other health care practitioners.

Persons and entities who make such requests will be given the substantive content of all reports on the subject individual which are contained in the Data Bank.

The majority of the respondents expressed concern over verification of the identity of individuals and entities who request information from the Data Bank. Some suggested procedures involving identification codes for verification of requestors.

The Secretary shares these concerns about maintaining the confidentiality of the information in the Data Bank and will take measures necessary to insure the proper release of this information. Since the Data Bank has not been

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established at this time, it is impossible to detail the precise procedures which will be used for the verification of the identity of requestors. At the time of operation of the Data Bank, the Department intends to provide this information to the public in the form of guidelines.

The Department notes that it will be maintaining a list of all requests for information on each individual in the Data Bank. Upon request, the subject individual may receive a copy of the list of requestors.

Several comments stated that § 60.11(a)(3), as proposed, was confusing and that Boards of Medical Examiners and State licensing boards should be separated from health care entities.

The Department has accepted these comments and revised § 60.11(a) accordingly.

The majority of comments received on this section expressed great concern over § 60.11(a)(5), which provides for access by attorneys to information in the Data Bank. Many respondents requested its deletion. Others requested that it be narrowed as much as possible. Some comments indicated that attorney access is contrary to the intent and purpose of the Act—that of promoting effective professional peer review and furthering quality health care. Most respondents felt that attorney access threatened the confidentiality of the Data Bank records.

In response, the Secretary stresses that § 60.11(a)(5) implements section 427(b)(1) of the Act as narrowly as possible. Access by attorneys cannot be eliminated without an amendment to the Act. The Department points out that attorney access to the Data Bank is extremely limited. To clarify, a plaintiff's attorney (or a person representing himself or herself in a medical malpractice action) may request information from the Data Bank on a health care provider if, and only if, he or she meets these tests:

(1) The attorney or individual has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital and requests information regarding a specific physician, dentist or other health care practitioner also named in the action or claim; *and*

(2) The attorney or individual produces evidence that the hospital failed to request information from the Data Bank on the physician, dentist or other health care practitioner, as required by these regulations.

The information so obtained may be used solely with respect to the action or claim against the hospital. In short, the applicability of § 60.11(a)(5) is limited to judicial cases filed against a hospital where the hospital failed to make a request from the Data Bank, as required under § 60.10. In this instance, the hospital is then presumed, under section 425(b) of the Act, to have knowledge of the information contained in the Data Bank. Thus, if the attorney who filed the action against the hospital could not obtain the information at issue from the Data Bank, the parties and the court would not know what information must be imputed to the defendant hospital and could not effectively litigate the case.

Several comments questioned the purpose of providing access in § 60.11(a)(5) to an individual "acting on his own behalf" and suggested clarification of the provision.

In response, the Department intended simply to allow access to *pro se* litigants, as well as attorneys, for purposes of § 60.11(a)(5). This section has been revised for greater clarity.

One respondent requested access for the defendant's attorney, as well as the plaintiff's, in § 60.11(a)(5).

In response, no revision is necessary for this purpose because the defendant physician, dentist, or other health care practitioner can always obtain information about himself, or the hospital can obtain the information which it should have requested under § 60.10.

Numerous respondents requested clarification of what "evidence" of a hospital's failure to request information would be required to obtain information from the Data Bank. Many comments suggested that a court order to this effect would be appropriate.

The Secretary agrees that evidence of an objective, factual nature should be required to obtain access under § 60.11(a)(5). Due to the variety of possible forums for these medical malpractice actions—State courts, Federal courts, county courts, etc., and their accompanying varying procedural rules—the Department prefers to retain the general requirement of "evidence" in this provision. This would permit an attorney to present a court order, a deposition, a response to an interrogatory, an admission, or other evidence of the failure of a hospital to request information. The Department will be providing guidance of this nature in guidelines for the Data Bank.

A few respondents indicated concern about possible breaches of confidentiality under § 60.11(a)(7), the release of information for research purposes. Others requested clarification. This regulation explicitly states that information released for research purposes will be released only in a form which will not allow the identification of an individual health care entity, physician, dentist or health care practitioner.

The Department has deleted the word "patient" from this provision. Its inclusion may have given the mistaken impression that the Bank would collect information that would allow the identification of patients. This is not the case. The Department wishes to emphasize that no information that would allow patient identification will be contained in the Data Bank.

The Department wants to take this opportunity to notify the public that it plans to request additional information regarding reported adverse actions to support important medical liability and malpractice research. In the Department's publication, "Report of the Task Force on Medical Liability and Malpractice," August 1987, the Task Force found a significant need for additional data (part IV: Research Issues). The type of information that the Department plans to request will be specified through the rulemaking process with an opportunity for public comment.

It should be noted that giving researchers access to Data Bank information does not imply that the Data Bank will act as a research service, but its data, without identifiers, will be available to researchers who request it. As in other requests for data information, appropriate user fees will be charged according to § 60.12

Section 60.12 (Proposed § 60.11) Fees Applicable to Requests for Information

The Department received 15 comments on § 60.12. Most of these stressed the importance of keeping fees at a "reasonable" level or requested that funds be waived or reduced for various classes of users. Several respondents noted the limited financial resources of State Boards. One association suggested that fees for statutorily required requests, such as those by hospitals under § 60.10, be at a lower scale than "optional" requests.

In response, the Department recognizes these concerns, Although § 60.12 has not been revised, the Secretary wishes to assure the public that, as the regulation states, fees will be based on the costs of processing requests and providing information. It should be noted, however, that the President's Budget for Fiscal Year 1990 proposes appropriation language that would require fees for the disclosure of information from the Data Bank to be calculated so that the full costs of operating the Data Bank can be recovered.

The Department will endeavor to keep costs associated with operating the Data Bank, and the consequent costs of querying it, as low as possible.

Section 60.13 (Proposed § 60.12) Confidentiality of National Practitioner Data Bank Information

Several respondents requested clarification of the confidentiality provisions in § 60.13. One State board suggested a revision to clarify the point that information from the Data Bank may only be used for the purpose for which it was provided, whether the information was received directly from the Data Bank or received indirectly from the requesting party. A group of insurers suggested that this section be revised to forbid the requesting party from disclosing the information received from the Data Bank.

In response, the Department has revised § 60.13 to emphasize that the confidentiality restrictions apply to parties who receive information from the Data Bank indirectly, as well as directly. However, it has not accepted the suggestion to forbid further disclosure of information from a requesting party because this is contrary to the intent of the Act. An individual or entity who receives information from the Data Bank is permitted to disclose it further in the course of carrying out the activity for which it was sought. For example, a hospital may request information from the Data Bank on a physician who is applying for a staff position and may share this information with the officials who make the employment review and decision on this physician's application. Nevertheless, the confidentiality limitations of the Act apply both to the initial hospital staff who receive the information and to the specific department staff who subsequently review it. They may each only use and disclose the information with respect to the employment decision.

Section 60.14 (Proposed § 60.13) How to Dispute the Accuracy of the National Practitioner Data Bank Information

Numerous respondents opposed the procedures for disputing the accuracy of information in the Data Bank. Some found them to be vague. Several comments suggested withholding information from parties who make requests pending resolution of a dispute.

In response, the Secretary has made some revisions to clarify the procedures for disputing information. Section 60.14 now explicitly states that the Secretary will routinely mail copies of reports to the subject individual. In order to determine the accuracy of Data Bank information in an expeditious manner, § 60.14(b) now provides a 60-day time period within which to challenge a report.

The Department has not accepted the suggestion that information in dispute be withheld from requestors pending the resolution of the dispute. The Secretary believes that labeling the report as "disputed" provides sufficient notice that the report is in question. The Secretary further believes that the potential threat to the public of withholding valuable information which may well be accurate is not outweighed by a possible detriment to the subject physician, dentist, or other health care practitioner.

Several respondents were disturbed by the statement that, in resolving a dispute, the Secretary would review "related information which is available, including, but not limited to, that available from malpractice insurers, test examination results, State administrative procedures and judicial decisions, and the Health Care Financing Administration." These respondents felt that the Secretary's review should be limited to the statements on file by the reporting and disputing parties, since they would have no further opportunity to challenge this information.

The Secretary has accepted these comments and revised § 60.14 accordingly.

Numerous comments indicated that the Secretary should not continue to label reports as "disputed" if the Secretary determines that the information is accurate. The comments stated that in such a case this label would be misleading.

The Secretary has accepted this comment and has revised § 60.14(c)(2)(i) to indicate that when the information is determined to be accurate, it will simply contain a statement by the subject individual describing the basis for challenge and an explanation of the Secretary's decision.

The Secretary wishes to point out that section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100–93), enacted August 18, 1987, requires that States have in effect a system of reporting information to the Secretary with respect to formal proceedings concluded against health care practitioners or entities by authorities responsible for the licensing of health care practitioners or entities. This Act requires the Secretary to provide for the maximum appropriate coordination in implementing section 5 and the Health Care Quality Improvement Act. Proposed regulations implementing section 5 are being developed. When issued, those regulations will complement these final regulations.

The Department will be republishing in the **Federal Register** for public comment the notice of a new system of records for the Data Bank, with proposed routine uses. Although a Privacy Act systems of records notice had been published on September 14, 1987 (52 FR 34721), legislative amendments necessitate the republication of this notice.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that these regulations do not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these final regulations would not have a significant economic impact. While some of the penalties and fees the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant

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adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. This final regulation establishes procedures for the reporting and releasing of information from the Data Bank. As such, the regulations would have little direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

Section 60.4 of this regulation requires that information to be reported under §§ 60.7, 60.8 and 60.9 shall be provided in the form and manner prescribed by the Secretary. Section 60.11(b) provides that requests for information from the Data Bank, including those required under § 60.10, shall be made in the form and manner prescribed by the Secretary. The actual forms to be used for reporting information to or requesting information from the Data Bank will be submitted to the Office of Management and Budget for review and public comment in accordance with the Paperwork Reduction Act of 1980 as soon as they are available.

Sections 60.6(a), 60.7, 60.8, 60.9, 60.10, and 60.14 contain information collection requirements which have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 and assigned control number 0915–0126.

Section 60.6(b) contains information collection requirements which are subject to OMB review. We have submitted an information request to OMB for approval under section 3504(h) of the Paperwork Reduction Act of 1980. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 45 CFR Part 60

Health professions, Malpractice, Insurance companies.

Accordingly, the Department of Health and Human Services adds a new part 60 to title 45 of the Code of Federal Regulations, as set forth below.

Dated: September 7, 1989.
James O. Mason,
Assistant Secretary for Health.
Approved October 11, 1989.
Louis W. Sullivan,
Secretary.

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

Subpart A—General Provisions

Sec.
60.1 The National Practitioner Data Bank.
60.2 Applicability of these regulations.
60.3 Definitions.

Subpart B—Reporting of Information

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60.14 How to dispute the accuracy of National Practitioner Data Bank information.

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Subpart A—General Provisions

§ 60.1 The National Practitioner Data Bank.

The Health Care Quality Improvement Act of 1986 (the Act), title IV of Pub. L. 99–660, as amended, authorizes the Secretary to establish (either directly or by contract) a National Practitioner Data Bank to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. These regulations set forth the reporting and disclosure requirements for the National Practitioner Data Bank.

§ 60.2 Applicability of these regulations.

These regulations establish reporting requirements applicable to hospitals; health care entities; Boards of Medical Examiners; professional societies of physicians, dentists or other health care practitioners which take adverse licensure or professional review actions; and individuals and entities (including insurance companies) making payments as a result of medical malpractice actions or claims. They also establish procedures to enable individuals or entities to obtain information from the National Practitioner Data Bank or to dispute the accuracy of National Practitioner Data Bank information.

§ 60.3 Definitions.

Act means the Health Care Quality Improvement Act of 1986, title IV of Pub. L. 99–660, as amended.

Adversely affecting means reducing, restricting, suspending, revoking, or denying clinical privileges or membership in a health care entity.

Board of Medical Examiners, or "Board," means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2) of the Act, has designated an alternate entity to carry out the reporting activities of § 60.9 due to a Board's failure to comply with § 60.8, the term "Board of Medical Examiners" or "Board" refers to this alternate entity.

Clinical privileges means the authorization by a health care entity to a physician, dentist or other health care practitioner for the provision of health care services, including privileges and membership on the medical staff.

Dentist means a doctor of dental surgery, doctor of dental medicine, or the equivalent who is legally authorized to practice dentistry by a State (or who, without authority, holds himself or herself out to be so authorized).

Formal peer review process means the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.

Health care entity means:
(a) A hospital;
(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or
(c) A professional society or a committee or agent thereof, including

those at the national, State, or local level, of physicians, dentists, or other health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and any group or prepaid medical or dental practice which meets the criteria of paragraph (b).

Health care practitioners means an individual other than a physician or dentist, who is licensed or otherwise authorized by a State to provide health care services.

Hospital means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

Medical malpractice action or claim means a written complaint or claim demanding payment based on a physician's, dentists or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort, brought in any State or Federal Court or other adjudicative body.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized).

Professional review action means an action or recommendation of a health care entity:
(a) Taken in the course of professional review activity;
(b) Based on the professional competence or professional conduct of an individual physician, dentist or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and
(c) Which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician, dentist or other health care practitioner.
(d) This term excludes actions which are primarily based on:
(1) The physician's, dentist's or other health care practitioner's association, or lack of association, with a professional society or association;
(2) The physician's, dentist's or other health care practitioner's fees or the physician's, dentist's or other health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;
(3) The physician's, dentist's or other health care practitioner's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;
(4) A physician's, dentist's or other health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or
(5) Any other matter that does not relate to the competence or professional conduct of a physician, dentist or other health care practitioner.

Professional review activity means an activity of a health care entity with respect to an individual physician, dentist or other health care practitioner:
(a) To determine whether the physician, dentist or other health care practitioner may have clinical privileges with respect to, or membership in, the entity;
(b) To determine the scope or conditions of such privileges or membership; or
(c) To change or modify such privileges or membership.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the Data Bank or to a Board of Medical Examiners as required under §§ 60.7, 60.8, and 60.9 in such form and manner as the Secretary may prescribe.

§ 60.5 When information must be reported.

Information required under §§ 60.7, 60.8, and 60.9 must be submitted to the Data Bank within 30 days following the action to be reported, beginning with actions occurring on or after the effective date of these regulations or the date of the establishment of the Data Bank, whichever is later, as follows:

(a) *Malpractice Payments (§ 60.7).* Persons or entities must submit information to the Data Bank within 30 days from the date that a payment, as described in § 60.7, is made. If required under § 60.7, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.8).* The Board must submit information within 30 days from the date the licensure action was taken.

(c) *Adverse Actions (§ 60.9).* A health care entity must report an adverse action to the Board within 15 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 15 days from the date on which it received this information. If required under § 60.9, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing Board.

§ 60.6 Reporting errors, omissions, and revisions.

(a) Persons and entities are responsible for the accuracy of information which they report to the Data Bank. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the Data Bank or, in the case of reports made under § 60.9, to the Board of Medical Examiners, as soon as possible.

(b) An individual or entity which reports information on licensure or clinical privileges under §§ 60.8 or 60.9 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time constraints and procedures of §§ 60.5, 60.8, and 60.9, as applicable to the original action which was reported.

(Section 60.6(a) approved by the Office of Management and Budget under control number 0915–0126)

§ 60.7 Reporting medical malpractice payments.

(a) *Who must report.* Each person or entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such physician, dentist, or other health care practitioner for medical malpractice, must report information as set forth in paragraph (b) to the Data Bank and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim was based. For purposes of this section, the waiver of an outstanding debt is not construed

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as a "payment" and is not required to be reported.

(b) *What information must be reported.* Persons or entities described in paragraph (a) must report the following information:

(1) With respect to the physician, dentist or other health care practitioner for whose benefit the payment is made—

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting person or entity—

(i) Name and address of the person or entity making the payment,

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity, and

(iii) Relationship of the reporting person or entity to the physician, dentist, or other health care practitioner for whose benefit the payment is made;

(3) With respect to the judgment or settlement resulting in the payment—

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based,

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary, and

(viii) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* Any person or entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty of up to $10,000 for each such payment involved. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

(d) *Interpretation of information.* A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the Data Bank any action based on reasons relating to a physician's or dentist's professional competence or professional conduct–

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,

(2) Which censures, reprimands, or places on probation a physician or dentist, or

(3) Under which a physician's or dentist's license is surrendered.

(b) *Information that must be reported.* The Board must report the following information for each action:

(1) The physician's or dentist's name,

(2) The physician's or dentist's work address,

(3) The physician's or dentist's home address, if known,

(4) The physician's or dentist's Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(5) The physician's or dentist's date of birth,

(6) Name of each professional school attended by the physician or dentist and year of graduation,

(7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,

(8) The physician's or dentist's Drug Enforcement Administration registration number, if known,

(9) A description of the acts or omissions or other reasons for the action taken,

(10) A description of the Board action, the date the action was taken, and its effective date,

(11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.9.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.9 Reporting adverse actions on clinical privileges.

(a) *Reporting to the Board of Medical Examiners.*—(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action.

(2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.

(3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date the action was taken, and effective date of the action, and

(xi) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health car entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions*—(1) *Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with § 60.9, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with § 60.9, the Secretary will provide the entity with a written notice describing the noncompliance, giving the health care entity an opportunity to correct the noncompliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely,

(ii) The health care entity does not provide a statement of material factual issues in dispute, or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register**. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register**.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

(Approved by the Office of Management and Budget under control number 0915–0126)

Subpart C—Disclosure of Information by the National Practitioner Data Bank

§ 60.10 Information which hospitals must request from the National Practitioner Data Bank.

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the Data Bank concerning a physician, dentist or other health care practitioner as follows:

(1) At the time a physician, dentist or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every 2 years concerning any physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to request information.* Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the Data Bank concerning this physician, dentist or other health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the Data Bank to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.11 Requesting information from the National Practitioner Data Bank.

(a) *Who may request information and what information may be available.* Information in the Data Bank will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on the medical staff of the hospital, has clinical privileges at the hospital, or is in the process of being granted medical staff membership or clinical privileges at the hospital,

(2) A physician, dentist, or other health care practitioner who requests information concerning himself or herself,

(3) Boards of Medical Examiners or other State licensing boards,

(4) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff,

(5) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a), and may be used solely with respect to ligitation resulting from the action or claim against the hospital.

(6) A health care entity with respect to professional review activity, and

(7) A person or entity who requests information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

(b) *Procedures for obtaining National Practitioner Data Bank information.* Persons and entities may obtain information from the Data Bank by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.12

§ 60.12 Fees applicable to requests for information

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank, other than those of individuals for information concerning themselves. These fees are authorized by section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137). They reflect the costs of processing requests for disclosure and of providing such information. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register**.

(b) *Criteria for determining the fee.* The amount of each fee will be

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determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees.

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

(c) *Assessing and collecting fees.* (1) A request for information from the Data Bank will be regarded as also an agreement to pay the associated fee.

(2) Normally, a bill will be sent along with or following the delivery of the requested information. However, in order to avoid sending numerous small bills to frequent requesters, the charges may be aggregated for certain periods. For example, such a requester may receive a bill monthly or quarterly.

(3) In the event that a requester has failed to pay previous bills, the requester will be required to pay the fee before a request for information is processed.

(4) Fees must be paid by check or money order made payable to "U.S. Department of Health and Human Services" or to the unit stated in the billing and must be sent to the billing unit. Payment must be received within 30 days of the billing date or the applicant will be charged interest and a late fee on the amount overdue.

§ 60.13 Confidentiality of National Practitioner Data Bank information.

(a) *Limitations on disclosure.* Information reported to the Data Bank is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in § 60.10, § 60.11 and § 60.14. Persons and entities which receive information from the Data Bank either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) shall be subject to a civil money penalty of up to $10,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

§ 60.14 How to dispute the accuracy of National Practitioner Data Bank information.

(1) *Who may dispute National Practitioner Data Bank information.* Any physician, dentist or other health care practitioner may dispute the accuracy of information in the Data Bank concerning himself or herself. The Secretary will routinely mail a copy of any report filed in the Data Bank to the subject individual.

(b) *Procedures for filing a dispute.* A physician, dentist or other health care practitioner has 60 days from the date on which the Secretary mails the report in question to him or her in which to dispute the accuracy of the report. The procedures for disputing a report are:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it.

(2) Requesting simultaneously that the disputed information be entered into a "disputed" status and be reported to inquirers as being in a "disputed" status, and

(3) Attempting to enter into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.* (1) If the reporting entity revises the information originally submitted to the Data Bank, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity does not revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the physician, dentist or other health care practitioner), and the reporting entity. After review, the Secretary will either—

(i) If the Secretary concludes that the information is accurate, include a brief statement by the physician, dentist or other health care practitioner describing the disagreement concerning the information, and an explanation of the basis for the decision that it is accurate, or

(ii) If the Secretary concludes that the information was incorrect, send corrected information to previous inquirers.

(Approved by the Office of Management and Budget under control number 0915-0126)

[FR Doc. 89-24425 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-15-M

federal register

Tuesday
October 17, 1989

Part IX

The President

Proclamation 6048—World Food Day, 1989 and 1990

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Federal Register
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Tuesday, October 17, 1989

Presidential Documents

Title 3—

The President

Proclamation 6048 of October 16, 1989

World Food Day, 1989 and 1990

By the President of the United States of America

A Proclamation

Each day, millions of people around the world face the frightening specter of hunger and malnutrition. These problems are devastating to developing countries, where they cause immeasurable human suffering—especially among children. As an expression of our Nation's continued commitment to ending world hunger, the United States joins 150 other countries in observing World Food Day.

The American people, through a number of government-sponsored and private food relief programs, have responded generously to the needs of those affected by famine and natural disasters. During the year that ended in June, the United States sent over five million metric tons of wheat, rice, and coarse grains to countries in need—more than all other contributing nations combined. The United States is also helping to alleviate hunger and malnutrition in poor countries by encouraging economic growth and private sector development.

Fortunately, the need for global food donations abated during the past year as drought ended in many countries. In most of Africa, the agricultural situation improved. Yet widespread starvation continues in Sudan and Mozambique, mainly due to violent civil conflict and the dislocation of millions of people.

Efforts to alleviate hunger and encourage agricultural reforms in developing countries must continue. While food production has improved around the world, the financial capacity to grow, import, and distribute agricultural products has deteriorated in many nations. Indeed, in several countries where production has reached only marginal rates, the potential for disaster remains.

The developed nations of the world must determine how best to help developing countries increase their food production and generate sufficient revenues to buy, store, and distribute essential agricultural imports. It is our hope that World Food Day will inspire fresh proposals for easing world hunger and promote greater understanding between those nations in need and those with food to share.

This year, as we observe World Food Day, we call special attention to the global environment. If we are to improve and sustain the world's agricultural productivity, we must protect its soil, air, and water. Through careful planning and stewardship of our natural resources, we can reduce threats to the environment and increase our food security.

We Americans have been blessed with not only an abundance of natural resources, but the freedom that is the foundation of economic growth and prosperity. We recognize the adverse consequences of centralized control of agriculture and excessive government intervention in the marketplace. We know that, in the fight against world hunger, freedom is the key to long-term progress and lasting productivity. That is why, in addition to providing direct food aid to less developed countries, the United States is encouraging the development of agricultural policies that harness the power of private enterprise and reward individual initiative. The United States is also encouraging

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the development and implementation of free and fair trade practices that will allow all farmers greater access to international markets.

As we observe World Food Day, let us renew our determination to seek effective answers to the problem of world hunger. Let us also gratefully acknowledge the generous efforts of the many public employees, health care professionals, volunteers, and concerned citizens who devote their time and energy to assisting those who suffer from hunger and hunger-related diseases.

In recognition of the desire and commitment of Americans to end world hunger, the Congress, by Senate Joint Resolution 138, has designated October 16, 1989, and October 16, 1990, as "World Food Day" and has authorized the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 16, 1989, and October 16, 1990, as World Food Day, and I call upon the people of the United States to observe these days with appropriate ceremonies and activities, including worship services, fasting, educational programs, and studies designed to find ways in which our Nation can further contribute to the elimination of hunger in the world.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24701
Filed 10-16-89; 12:24 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Oct. 16 on signing Proclamation 6048, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 42).

federal register

Tuesday
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Part X

Office of Management and Budget

Final OMB Sequester Report to the President and Congress for Fiscal Year 1990; Report Transmittal

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OFFICE OF MANAGEMENT AND BUDGET

Final OMB Sequester Report to the President and Congress for Fiscal Year 1990

AGENCY: Office of Management and Budget.

ACTION: Report Transmittal.

SUMMARY: This notice transmits the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990* in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

Dated: October 16, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

FINAL OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1990

NOTICE

There should be no release of this document until 12:00 noon (E.D.T.), Monday, October 16, 1989.

If the Congress passes reconciliation legislation, consistent with the Bipartisan Budget Agreement, prior to midnight on October 16, an alternative Report will be presented to the President.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

The following is the text of a letter transmitting the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990.*

October 16, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

Enclosed please find the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990*. It has been prepared in accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

As required by law, the budget estimates contained in this report are based on economic and technical assumptions published by the Office of Management and Budget in the July 18th *Mid-Session Review*, and on laws enacted and final regulations promulgated as of October 10, 1989.

The report finds that, under current law, sequestration is necessary in order to meet the Gramm-Rudman-Hollings deficit reduction target. Accordingly, a final Presidential sequestration order that requires the immediate reduction of funds has been prepared for issuance today.

This report provides calculations of the amounts and percentages by which various budgetary resources are to be reduced. The report includes projected budget baseline levels, economic assumptions, a discussion of the sequestration calculations, and comparisons with the estimates provided by the Director of the Congressional Budget Office in his report of October 10th. Appendix A lists sequestration reductions by agency and budget account. Appendix B provides program, project, and activity detail for atomic energy defense, the only defense programs for which 1990 appropriations have been enacted.

I regret that the Congress has failed to pass any reconciliation legislation. Had the Congress passed such legislation by today's date, in a manner consistent with the Bipartisan Budget Agreement, sequestration could have been avoided. Now we must hope that the Congress will be capable of developing an alternative to sequester—a responsible deficit-reduction program that could serve as a basis for rescinding the sequester order. If the Congress fails to develop a responsible alternative, the sequester order will, of course, remain in force—and associated deficit reduction of $16.1 billion in outlays will be achieved in this across-the-board manner.

Respectfully yours,

Richard G. Darman
Director

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE, HONORABLE THOMAS S. FOLEY

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.
2. Details in the tables and text may not add to totals because of rounding.
3. Unless otherwise noted, the source of all data in this report is the Office of Management and Budget.
4. Unless otherwise noted, "the Act" refers to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

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I. THE BASELINE DEFICIT

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended, (commonly known as Gramm-Rudman-Hollings, or G-R-H) sets deficit targets through 1993. The Act requires automatic reductions in selected programs (a sequester) to achieve these targets if they cannot be reached through the legislative process. The table below shows the deficit targets specified in the Act. Except in 1993, the Act allows for a $10 billion margin-of-error.

Deficit Targets
(In billions of dollars)

Fiscal Year	Target Deficit	Sequester Trigger
1990	100.0	110.0
1991	64.0	74.0
1992	28.0	38.0
1993	zero	zero

Under the Act, the Director of the Office of Management and Budget (OMB) is obliged to determine each year whether or not sequestration is necessary and, if so, the magnitude of the sequester. The Congressional Budget Office (CBO) is obliged to prepare independently its own sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and provide a basis for comparison against which Congress and others may assess the OMB reports. The OMB reports to the President and the Congress provide the basis for sequestration orders to be issued by the President.

OMB issued an estimate of the G-R-H baseline deficit in the *Mid-Session Review of the Budget*, which was published on July 18, 1989. Under the Act, subsequent G-R-H reports must use the same economic and technical assumptions as in the *Mid-Session Review*. Both the initial OMB and CBO sequestration reports were based on laws enacted and regulations promulgated as final as of August 15th (the snapshot date). The revised reports, however, do not share a common snapshot date. Rather the G-R-H law requires that the revised reports be based on laws enacted and final regulations promulgated by the latest possible date before the reports are issued. The CBO revised report was issued six days ago, on October 10th. As a result, the estimates in the OMB revised report reflect the promulgation in final of a medicaid regulation that occurred after the CBO snapshot date and, thus, is not included in CBO's revised estimates.

As required by the Act, this report:

— estimates the 1990 G-R-H baseline deficit, using the economic and technical assumptions OMB used in the *Mid-Session Review*;

— calculates the sequester amounts required; and

— presents and explains significant differences between the estimates in this report and the estimates in the CBO report.

This report shows the G-R-H baseline deficit to be $116.1 billion, $16.1 billion above the $100 billion deficit target specified in the Act for 1990 and $6.1 billion above the level that would trigger a sequester. Since the publication of the August initial sequester report, laws enacted and regulations promulgated in final have reduced the deficit by a net amount of less than $50 million. The changes since August, which basically offset each other, include enactment of the Energy and Water Development Appropriations Act, the enactment of supplemental appropriations to aid the victims of hurricane Hugo, the promulgation in final of several Health and Human Services regulations, and the establishment of the 1990 pay raises for Federal military and civilian employees.

Because the estimates in this report indicate that, under current law, a sequester is required for 1990, the President is to issue a final order to implement the sequester. As a result of the initial sequester order issued on August 25th, agencies have been restricted since the fiscal year began on October 1st from obligating a portion of their 1990 funds; this restriction has been consistent with a sequester of $16.2 billion, the estimate contained in the August initial sequester report. With the issuance of the final order, funds will be sequestered in amounts necessary to reduce estimated 1990 outlays by $16.1 billion, the amount of the outlay reduction estimated in this report. The final order is to be issued and take effect today.

As shown in Table 1, OMB's current 1990 G-R-H baseline estimate for receipts is $1,074.8 billion. Baseline outlays are estimated to total $1,190.9 billion.

Table 1.—G-R-H Baseline Totals for 1990
(In billions of dollars)

	Laws and regulations in effect as of—			
	January 1, 1989	July 10, 1989	August 15, 1989	October 10, 1989
Receipts	1,074.3	1,074.3	1,074.8	1,074.8
Outlays	1,201.5	1,202.4	1,191.0	1,190.9
Deficit	127.1	128.1	116.2	116.1

The estimates assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, and that expiring provisions of law providing revenues and spending authority will terminate as scheduled, except as provided in the G-R-H Act.[1] For discretionary spending accounts for which no 1990 appropriations bills have been enacted, baseline estimates are based on the 1989 appropriations adjusted for inflation and pay costs. The baseline estimates also include the receipts and outlays of the off-budget social security trust funds, although social security benefits themselves are exempt from sequestration.

OMB's estimate of the baseline deficit is further affected by a technical spendout requirement specified in the G-R-H Act. The Act requires that in developing the G-R-H baseline the Director of OMB shall assume that the aggregate spendout rate (the ratio of new outlays to new budgetary resources) from sequesterable discretionary resources for defense programs not differ by more than one-half percentage point from the comparable rate contained in the sequester report submitted for the previous fiscal year. The Act applies the same requirement to nondefense programs. The estimates for nondefense programs meet this requirement. To meet the requirement for defense programs, however, a $4.0 billion downward adjustment of the estimated outlays from new budgetary resources is needed in order to bring the aggregate spendout rate within one-half a percentage point of the benchmark rate.

Estimates of the G-R-H baseline using current economic and technical assumptions but assuming laws and regulations in effect on January 1, 1989, produce a fiscal year 1990 deficit of $127.1 billion. Table 2 shows the impact on this estimated deficit of legislation enacted and final regulations promulgated since January. In total, these policy changes have decreased the baseline deficit by $11.0 billion.

[1] The G-R-H Act allows for continuation of expiring programs in the following cases: excise taxes dedicated to a trust fund (but not spending authority in that trust fund); Commodity Credit Corporation price support programs; contract authority for transportation trust funds; and authority to provide insurance through the Federal Housing Administration fund.

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The largest reduction in the 1990 baseline deficit since January is the result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73), which reduced the deficit by $12.8 billion. Promulgation of several final regulations, including the medicare direct graduate medical education regulation, have brought the deficit down by another $0.7 billion.[2] Other changes—primarily the enactment of various appropriations measures and the Disaster Assistance Act—have, on net, increased the deficit by $2.5 billion.

Table 2.—G-R-H Baseline Deficits for 1990—Based on Laws in Effect in January, July, August, and October

(In billions of dollars)

January Baseline Deficit	127.1
Changes in law between January 1st and July 10th:	
Supplemental Appropriations Act, 1989 (Public Law 101–45)	0.9
Other (net, including debt service)	0.1
Subtotal, changes in law between January 1st–July 10th	0.9
July (Mid-Session Review) Baseline Deficit	128.1
Changes in law between July 10th and August 15th:	
Financial Institutions Reform, Recovery, and Enforcement Act, 1989 (Public Law 101–73)	–12.8
Disaster Assistance Act, 1989 (Public Law 101–82)	0.9
Other (net, including debt service)	–*
Subtotal, changes in law between July 10th–August 15th	–11.9
August Baseline Deficit	116.2
Changes in law between August 15th and October 10th:	
Legislation enacted:	
FEMA supplemental in Continuing Appropriations for 1990 (Public Law 101–100)	0.4
Energy and Water Development Appropriations Act, 1990 (Public Law 101–101)	0.8
Performance Management and Recognition System Reauthorization (Public Law 101–103)	–0.2
Extension of Certain Veterans Affairs Programs (Public Law 101–110)	–*
Health and Human Services final regulations	–0.6
Other changes:	
Establishment of the 1990 Federal pay raise	–0.6
Offsets to Federal pay raise	0.2
Other (net, including debt service)	*
Subtotal, changes in law between August 15th–October 10th	–*
October Baseline Deficit	116.1
MEMORANDUM	
Net Deficit Reduction Achieved January 1st–October 10th	–11.0

*$50 million or less.

[2] Implementation of a final regulation for the veterans housing loan guarantee program was blocked by the District Court after the OMB initial sequester report was issued in August. Under the G-R-H Act, OMB is not permitted to reflect the impact of the court decision on the baseline. Therefore, the estimated net savings of $43 million associated with this regulation remains in the baseline.

II. ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the G-R-H baseline estimates for 1990 are shown in Table 3. The Act also requires the OMB Director to estimate the rate of real GNP growth for the last two quarters of fiscal year 1989 and for each quarter of fiscal year 1990. These estimates are shown in Table 4. As required by law, all these economic assumptions are the same as those used by OMB for its *Mid-Session Review of the Budget* and the August initial sequester report.

Table 3.—Economic Assumptions

(Fiscal year 1990)

Gross National Product:	
Current dollars (in billions of dollars)	5,482.0
Percent change, year over year	6.7
Constant dollars (in billions of 1982 dollars)	4,179.7
Percent change, year over year	2.4
GNP Implicit Price Deflator (percent change, year over year) [1]	4.2
CPI-W (percent change, year over year)	4.4
Civilian Unemployment Rate (percent, fiscal year average)	5.4
Interest Rates (fiscal year average):	
91-day Treasury bills	7.1
10-year Treasury notes	7.8

[1] As required under the Act, the discretionary program inflation adjustment and pay raise costs are estimated using the increase in the GNP deflator (3.6 percent) from the economic assumptions presented in January. All other estimates in this report, however, use the economic assumptions presented in the *Mid-Session Review of the Budget* and shown in this table.

Table 4.—Real Economic Growth Rates by Quarter

(In percent, annual rates)

FY 1989			FY 1990			
Actual		Estimate	Estimates			
Jan.–Mar. 1989 [1]	Apr.–June 1989 [2]	July–Sept. 1989	Oct.–Dec. 1989	Jan.–Mar. 1990	Apr.–June 1990	July–Sept. 1990
4.4	2.2	2.2	2.1	2.2	2.5	2.4

[1] As reported by the Department of Commerce (June 22, 1989) and published in the *Mid-Session Review of the Budget*. Subsequently, the Department of Commerce revised the actual for January–March 1989 to 3.7 percent. Pursuant to the Act, OMB may not update the Mid-Session figure for purposes of estimating the G-R-H baseline.

[2] On September 21, 1989, the Department of Commerce reported an actual real growth rate for April–June 1989 of 2.5 percent.

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III. COMPOSITION OF G-R-H BASELINE OUTLAYS AND RESOURCES SUBJECT TO SEQUESTER

For defense and nondefense programs combined, an estimated $765.8 billion in outlays, or 64 percent of total outlays, are associated with budgetary resources exempt from sequestration. The burden of sequestration falls on programs that comprise the remaining 36 percent of budget outlays. Of these outlays, defense programs account for 44 percent, special rule nondefense programs account for 29 percent, and other nondefense programs account for 26 percent.

Table 5 provides further detail on the G-R-H baseline outlay estimates for 1990. An estimated $188.0 billion of 1990 outlays for defense programs, or 65 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction.

An estimated $237.1 billion of outlays for nondefense programs, or 26 percent of total nondefense outlays for 1990, are associated with sequesterable budgetary resources. About $124.6 billion of these outlays, or 14 percent of total nondefense outlays, are for programs with automatic spending increases and for certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs. Of the total estimated 1990 nondefense outlays of $899.8 billion, an estimated $112.5 billion—about 12 percent of nondefense outlays—are associated with budgetary resources subject to an across-the-board percentage reduction.[3] An estimated $662.7 billion of nondefense outlays, or 74 percent of total nondefense outlays for 1990, are exempt from sequestration.

A sequester does not reduce outlays directly; rather, it permanently cancels budget authority and other authority to obligate and expend funds (except that special rules apply to amounts sequestered in special and trust funds). For defense programs, sequesterable budgetary resources consist of new budget authority provided for 1990 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations; and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 5, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, regular State unemployment insurance benefits, and veterans compensation and pensions. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts. Outlays from all obligated balances and outlays from unobligated balances for nondefense programs are generally not subject to sequestration.

Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Although budgetary resources available for Federal pay are subject to sequestration, the Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses

[3] The estimated $112.5 billion nondefense total subject to across-the-board reduction shown in Table 5 excludes $6.3 billion of 1991 outlays for Commodity Credit Corporation (CCC) that are also subject to a 1990 sequester.

of these programs) is limited to 2 percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable, but the program bases are exempt. Although the Federal share of extended unemployment benefits is sequesterable, if States act to increase their share by the amount of the reduction in the Federal share, total budget outlays, which include both the Federal and State shares, will not be changed by the sequestration.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriations acts be reduced, and that *de facto* limitations be imposed on both types of new credit activity where there is no enacted limitation.

Table 5.—Composition of G-R-H Baseline Outlay Estimates for 1990

(Dollar amounts in billions)

	Estimate	Percent of Total
Defense programs: [1]		
Subject to across-the-board reduction	188.0	15.8
Exempt from sequestration [2]	103.1	8.7
Subtotal, defense programs	291.1	24.4
Nondefense programs:		
Subject to sequestration:		
Certain programs with automatic spending increases [3]	1.3	0.1
Certain special rule programs [4]	123.4	10.4
Subject to across-the-board reductions [5]	112.5	9.4
Subtotal, subject to sequestration	237.1	19.9
Exempt from sequestration:		
Social security	247.0	20.7
Net interest	178.3	15.0
Low-income programs [6]	83.4	7.0
Federal retirement, disability, and workers compensation	66.4	5.6
State unemployment benefits	15.1	1.3
Veterans compensation and pensions	14.2	1.2
Earned income tax credit	4.0	0.3
Offsetting receipts and collections	–63.9	–5.4
Other [7]	118.1	9.9
Subtotal, exempt from sequestration	662.7	55.6
Subtotal, nondefense programs	899.8	75 6
Total	1,190 9	100 0

[1] Function 050, excluding Federal Emergency Management Agency (FEMA) programs.
[2] Largely outlays from obligated balances.
[3] National Wool Act, special milk, and vocational rehabilitation programs.
[4] Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
[5] Excludes $6.3 billion in estimated 1991 outlays for CCC that are subject to a 1990 sequester
[6] Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC
[7] Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs

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IV. SEQUESTRATION CALCULATIONS

This report indicates that, under current law, an outlay reduction of $16.1 billion, the difference between the current baseline deficit and the target of $100 billion, is required. The reductions are determined using the following steps, as shown in Table 6.

First, one-half of the required deficit reduction, $8.1 billion, is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, the savings from eliminating automatic spending increases in three specific programs, which are listed in Table 7, are applied to the required reduction in outlays for nondefense programs. The amount of savings from eliminating these adjustments in 1990 is estimated at $48 million.

Third, the amount of outlay savings to be obtained from programs subject to other special sequestration rules, also listed in Table 7, is then calculated. The estimated savings from these special rule programs, $1.8 billion for 1990, are applied toward the required spending reductions in nondefense programs.

Table 6.—Sequestration Calculations for 1990

(Dollar amounts in billions)

	Estimate
Required deficit reduction	16.1
Defense programs: [1]	
Total required outlay reductions	8.1
Estimated outlays associated with across-the-board sequesterable budgetary resources	188.0
Uniform reduction percentage	4.3%
Nondefense programs:	
Total required outlay reductions	8.1
Estimated savings from automatic spending increases	*
Estimated savings from the application of special rules	1.8
Amount remaining to be obtained from uniform percentage reductions of budgetary resources	6.2
Estimated outlays associated with across-the-board sequesterable budgetary resources [2]	118.8
Uniform reduction percentage	5.3%

* $50 million or less.
[1] Function 050, excluding FEMA programs.
[2] Includes $6.3 billion in estimated 1991 outlays for the CCC and $3.4 billion in outlays from offsetting collections that are subject to a 1990 sequester.

The reductions in defense programs and remaining reductions in nondefense programs are applied to budgetary resources on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Under current baseline estimates, the uniform percentage reduction is 5.3 percent for nondefense programs. For defense programs, the uniform percentage reduction is 4.3 percent. The Act specifies

special calculations to achieve the uniform percentage reduction for child support enforcement (CSE). The Federal matching rate on most CSE expenditures would be reduced from 66.0 percent to 61.6 percent, and the rate for computer-related expenditures and genetic testing would be reduced from 90.0 percent to 84.0 percent. Nondefense savings from the across-the-board reductions also include $0.3 billion in 1991 outlay savings from the Commodity Credit Corporation (CCC). Under the Act, CCC outlay reductions in 1991 resulting from contract adjustments made in 1990 following a sequester are to be credited to the overall outlay reduction required in 1990.

Table 7.—Programs Subject to Special Sequestration Rules

(Outlay amounts in millions of dollars)

	Required Outlay Reductions	Scheduled Increase (percent)
Programs with Automatic Spending Increases Subject to Sequestration:		
National Wool Act [1]	—	—
Special milk program [2]	1	5.7
Vocational rehabilitation [3]	46	4.2
Total	48	
Other Programs Subject to Special Sequestration Rules:		
Guaranteed student loans	34	
Foster care and adoption assistance	4	
Health programs with sequester limited to 2 percent:		
Medicare	1,527	
Veterans medical care and other health programs	201	
Total	1,765	

[1] Payment increases are based on changes in the wool parity price. No automatic increase is projected for 1990.
[2] Benefits are indexed to the Producer Price Index for Fresh Processed Milk.
[3] The automatic spending increase for this program, as specified in the program's authorizing legislation, results in a 4.2 percent increase in funding for the State grant portion of the program.

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Table 8.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Function

(In billions of dollars)

Function	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
National defense [1]	308.4	291.4	295.1	283.3	13.3	8.1
International affairs	18.5	16.3	17.5	15.8	1.0	0.5
General science, space, and technology	13.4	13.7	12.7	13.3	0.7	0.4
Energy	6.1	4.1	5.8	3.8	0.3	0.2
Natural resources and environment	16.1	16.9	15.0	16.2	1.0	0.6
Agriculture [2]	22.7	18.8	22.2	18.2	0.5	0.6
Commerce and housing credit	18.7	12.9	18.6	12.7	0.2	0.3
Transportation	29.7	29.1	28.2	28.5	1.6	0.5
Community and regional development	8.0	7.3	7.6	7.2	0.3	0.1
Education, training, employment, and social services	37.9	38.2	36.1	37.5	1.8	0.7
Health	57.9	56.6	57.0	56.2	0.9	0.4
Medicare	121.8	99.1	120.2	97.4	1.5	1.7
Income security	184.0	146.3	183.2	145.9	0.8	0.4
Social security	313.7	249.2	313.7	249.1	0.0	0.1
Veterans benefits and services	30.6	29.2	30.2	28.9	0.4	0.3
Administration of justice	10.1	10.1	9.6	9.6	0.6	0.5
General government	10.1	10.2	9.5	9.7	0.5	0.5
Net Interest [3]	178.3	178.3	177.5	177.5	0.8	0.8
Undistributed offsetting receipts	−36.6	−36.6	−36.6	−36.6	0.0	0.0
Total	1,349.5	1,190.9	1,323.3	1,174.3	26.2	16.6

[1] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.
[2] Estimates exclude $6 3 billion of 1991 CCC budget authority and outlays that are subject to a sequester of $0.3 billion in 1990.
[3] Estimates reflect the $0 8 billion debt service reduction that results from the sequester.

Table 9.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Agency

(In billions of dollars)

Agency	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Legislative Branch	2.2	2.2	2.1	2.1	0.1	0.1
The Judiciary	1.6	1.6	1.5	1.6	0.1	0.1
Executive Office of the President	0.1	0.1	0.1	0.1	*	*
Funds Appropriated to the President	11.6	11.3	10.9	11.0	0.7	0.3
Agriculture [1]	59.1	51.8	58.2	50.9	0.9	0.9
Commerce	2.9	2.9	2.8	2.8	0.2	0.1
Defense—Military [2]	296.2	281.8	285.3	274.0	12.9	7.8
Defense—Civil	38.3	24.8	38.1	24.6	0.2	0.1
Education	23.1	22.7	22.0	22.4	1.1	0.3
Energy	14.3	12.6	13.5	12.1	0.7	0.5
Health and Human Services, except Social Security	216.3	193.1	213.5	190.6	2.8	2.5
Health and Human Services, Social Security	308.4	243.9	308.4	243.8	0.0	0.1
Housing and Urban Development	15.6	21.6	14.9	21.5	0.7	0.1
Interior	5.6	5.5	5.2	5.2	0.4	0 3
Justice	6.7	6.5	6.3	6.3	0.4	0.3
Labor	33.1	24.5	32.8	24.3	0.3	0.2
State	4.1	3.7	4.0	3.6	0.2	0.1
Transportation	28.7	28.1	27.2	27.6	1.5	0.5
Treasury [3]	250.6	250.0	249.4	248.8	1.2	1.2
Veterans Affairs	30.4	29.1	30.1	28.8	0.4	0.3
Environmental Protection Agency	5.3	5.4	5.0	5.3	0.3	0.1
General Services Administration	0.1	0.2	0.1	0.2	*	*
National Aeronautics and Space Administration	11.2	11.5	10.6	11.2	0.6	0.4
Office of Personnel Management	54.8	34.2	54.6	34.2	0.2	*
Small Business Administration	0.5	0.2	0.5	0.1	*	*
Other independent agencies	24.8	19.6	24 3	19.2	0 5	0 4
Undistributed offsetting receipts	−98.0	−98.0	−98.0	−98 0	0 0	0 0
Total	1,349.5	1,190.9	1,323.3	1,174.3	26.2	16 6

* $50 million or less.
[1] Estimates exclude $6.3 billion of 1991 CCC budget authority and outlays that are subject to a sequester of $0 3 billion in 1990
[2] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.
[3] Estimates reflect the $0.8 billion debt service reduction that results from the sequester.

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V. COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

CBO issued its final sequester report on October 10th. As shown in Table 10, CBO estimates that the baseline deficit for 1990 is $141.3 billion, $25.2 billion above the OMB estimate of $116.1 billion. Under CBO assumptions, a sequester of $41.3 billion is estimated, while OMB estimates that a sequester of $16.1 billion is required. This section provides the comparisons between OMB and CBO estimates that are required by the G-R-H Act.

Table 10.—Differences Between OMB and CBO G-R-H Baselines

(In billions of dollars)

	Outlays	Receipts	Deficit
OMB baseline	1,190.9	1,074.8	116.1
Differences:			
Economic assumptions:			
Level of GNP and incomes	—	-9.4	9.4
Interest rates	1.8	0.3	1.5
Discretionary program inflation:			
Defense	1.0	—	1.0
Nondefense	0.5	—	0.5
Cost-of-living adjustments	0.7	—	0.7
Debt service	0.8	—	0.8
Subtotal, economic	4.7	-9.1	13.8
Technical:			
Federal Savings and Loan Insurance Corporation	11.5	—	11.5
Defense:			
Transfers	0.9	—	0.9
Other	3.6	—	3.6
Absorption of 1989 nondefense pay raise	1.0	—	1.0
Farm price supports	-2.5	—	-2.5
Medicaid	-0.9	—	-0.9
Federal Housing Administration	-0.8	—	-0.8
Net interest	-0.8	—	-0.8
Other (including debt service)	0.9	5.8	-4.8
Subtotal, technical	12.9	5.8	7.1
G-R-H spend-out requirements:			
Defense spend-out adjustment	4.0	—	4.0
Debt service	0.2	—	0.2
Subtotal, G-R-H spend-out requirements	4.2	—	4.2
Snapshot date:			
Medicaid regulation	*	—	*
Subtotal, snapshot date	*	—	*
Total differences	21.8	-3.3	25.2
CBO baseline	1,212.7	1,071.4	141.3

*$50 million or less.

Different economic assumptions account for $13.8 billion of the difference between OMB and CBO baseline deficit estimates. CBO forecasts slower real growth and higher interest and inflation rates than OMB. As a result, CBO estimates lower incomes and thus lower receipts ($9.4 billion), higher interest costs, and higher inflation adjustments for outlays. Technical estimating differences account for an additional $7.1 billion difference in the baseline deficit estimates, as discussed below. In addition, the adjustment for the aggregate defense spendout rate (discussed in the section on G-R-H baseline totals), which is required by law to be included in OMB baseline estimates, does not affect the CBO baseline. If OMB were not required to make this adjustment, the difference between OMB and CBO would narrow by $4.2 billion. OMB estimates also include the impact of a medicaid regulation that became law after the CBO snapshot date, reducing OMB's estimates by $19 million relative to CBO's.

Technical differences include $5.8 billion higher baseline receipts under CBO assumptions, due to higher assumed levels of capital gains realizations that more than offset other technical differences, and $12.9 billion higher baseline outlays, of which $11.5 billion is attributable to outlays for savings and loans institutions pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act.

For national defense, CBO estimates $4.5 billion more in outlays than OMB primarily because CBO assumes a faster spendout of new budgetary resources and the transfer of budget authority to faster-spending accounts. The CBO estimate of nondefense pay is $1.0 billion higher than the OMB estimate because OMB assumes that the January 1989 pay raise for Federal civilian employees was fully funded in the 1989 appropriations bills, while CBO does not. This difference, and the differences between OMB and CBO estimates shown in Table 10 for defense transfers ($0.9 billion) and discretionary program inflation ($1.4 billion), will disappear once the remaining full-year appropriations measures are enacted.

CBO estimates farm price support costs for 1990 to be $2.5 billion lower than OMB. This difference is due in part because of an assumption of no growth in Commodity Credit Corporation contingency funds, and in part because the CBO estimate takes into account a July crop report that was not available to be incorporated into the OMB estimates when they were originally prepared for the July 18th *Mid-Session Review*.

CBO's estimate of medicaid outlays is $0.9 billion lower than OMB's, primarily due to differences in estimating methodologies and assumptions about the number of eligible beneficiaries, utilization of medical services, and price factors. The CBO estimate of Federal Housing Administration outlays is $0.8 billion lower than the OMB estimate, due to differences in assumptions about program activity, such as the payment of mortgage-insurance claims. For net interest, there is an estimating difference between OMB and CBO regarding the maturity mix and seasonal distribution of Treasury borrowing. As a result, CBO's estimate of net interest is $0.8 billion below the OMB estimate.

The Act requires three comparisons of differences between OMB and CBO estimates. Table 11 shows, by type of sequesterable resource for defense and nondefense programs, the amount of budgetary resources that would be sequestered using the OMB estimate of the required outlay reductions and CBO's estimating methodology. Table 12 identifies differences between OMB and CBO estimates of the aggregate amount of resources to be subject to sequester by type of resource for defense and nondefense programs. Table 13 identifies differences for accounts where OMB and CBO estimates of sequesterable resources differ by $5 million or more. Explanations of these differences are presented in the footnotes, which appear at the end of the table.

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Table 11.—Budgetary Resource Reductions Using CBO Assumptions

(In billions of dollars)

	Sequester Amount
Defense programs: [1]	
Budget authority	13.0
Unobligated balances	1.7
Nondefense programs:	
Budget authority	8.0
Budget authority—special rules	0.2
401C authority	1.8
401C authority—use of offsetting collections	0.1
401C authority—special rules	1.9
Other 401C authority (including obligation limitations)	0.6
Obligation limitation	1.3
Direct loan limitation	1.1
Direct loan floor	0.1
Loan guarantee limitation	13.8
Guaranteed loan floor	—
MEMORANDUM: Aggregate Outlay Reductions Required—$16.1 billion	

Source: Congressional Budget Office.
[1] Function 050, excluding FEMA programs.

Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type

(In millions of dollars)

DEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	310,414
Difference:	
Operation and maintenance	−874
Military personnel	−745
Research, development, test, and evaluation	−101
Other	−41
Total, difference	−1,762
OMB estimate	308,652
Unobligated balances—defense:	
CBO estimate	39,586
Difference:	
Atomic energy defense activities	−387
OMB estimate	39,199
NONDEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	167,723
Difference:	
Uranium supply and enrichment activities	−1,431
Conservation reserve program	−401
Payments to States for AFDC work programs	258
National forest system	−192
Departmental administration, Department of Energy	−150
Subsidized housing programs (housing assistance)	−149
Salaries and expenses (research and general education aids)	−139
Reimbursement to the rural electrification and telephone revolving fund	−117
Disaster relief	−114
Veterans medical care	−108
Transfer of certain national forest fund receipts	−104
Other	−1,125
Total, difference	−3,772
OMB estimate	163,951
Budget authority—automatic spending increases:	
CBO and OMB estimate	61
Budget authority—special rules:	
CBO estimate	290
Difference	−4
OMB estimate	286
401(c) authority:	
CBO estimate	35,698
Difference:	
Interim assistance to States for legislation	870
FMS interest buydown	−270
Federal-aid highways	−252
Farm credit assistance fund	135
Unemployment trust fund (unemployment compensation)	129
Supplemental annuity pension fund	115
Other	356
Total, difference	1,082
OMB estimate	36,781

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Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type—Continued

(In millions of dollars)

401(c) authority—offsetting collections:	
CBO estimate	2,060
Difference:	
Uranium supply and enrichment activities	1,326
Departmental administration, Department of Energy	150
Other	–16
Total, difference	1,459
OMB estimate	3,520
401(c) authority—special rules: [1]	
CBO estimate	1,776
Difference:	
Federal supplementary medical insurance trust fund	–229
Other	–20
Total, difference	–249
OMB estimate	1,527
Obligation limitation:	
CBO estimate	28,438
Difference:	
Interim assistance to States for legislation	–895
Payments to States for AFDC work programs	–465
Federal hospital insurance trust fund	299
Federal old-age and survivors insurance trust fund	–280
Unemployment trust fund (unemployment compensation)	–123
Federal-aid highways	–103
Other	–6
Total, difference	–1,573
OMB estimate	26,865
Direct loan limitation:	
CBO estimate	21,227
Difference:	
Commodity Credit Corporation fund	–251
Disaster loan fund	–73
Other	–52
Total, difference	–376
OMB estimate	20,850
Direct loan floor:	
CBO and OMB estimate	2,053
Guaranteed loan limitation:	
CBO estimate	276,781
Difference:	
Guarantees of mortgage-backed securities	–5,942
Federal Housing Administration fund	–768
Agricultural credit insurance fund	–596
Rural development insurance fund	–210
Export-Import Bank	–82
Other	–37
Total, difference	–7,634
OMB estimate	269,147

[1] CBO calls this resource group "Obligation limitation—special rules."

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Legislative Branch					
Senate					
Salaries, officers and employees (01–05–0110–801–A)	Budget Authority	357,999	370,165	12,166	1
House of Representatives					
Salaries and expenses (01–10–0400–801–A)	Budget Authority	525,719	541,701	15,982	1
Government Printing Office					
Government Printing Office revolving fund (01–30–4505–808–A)	401(C) Authority—Off. Coll.	0	38,383	38,383	4
	Obligation limitation	38,383	0	–38,383	4
General Accounting Office					
Salaries and expenses (01–35–0107–801–A)	Budget Authority	361,059	371,184	10,125	1
The Judiciary					
Courts of Appeals, District Courts and other Svcs					
Salaries and expenses (02–25–0920–752–A)	Budget Authority	1,124,791	1,152,811	28,020	1
Funds Appropriated to the President					
International Security Assistance					
Economic support fund (04–09–1037–152–A)	Budget Authority	3,396,526	3,401,874	5,348	1,12
Foreign military sales credit (04–09–1082–152–A)	Budget Authority	4,426,569	4,460,751	34,182	1
Multilateral Assistance					
Contribution to the International Development Association (04–12–0073–151–A)	Budget Authority	1,030,820	1,038,780	7,960	1
Agency for International Development					
Operating expenses, Agency for International Development (04–14–1000–151–A)	Budget Authority	434,057	444,530	10,473	1,2
Functional development assistance program (04–14–1021–151–A)	Budget Authority	1,256,845	1,266,249	9,404	1
Military Sales Programs					
FMS interest buydown (04–37–8882–152–A)	401(C) Authority	0	270,000	270,000	3
Special Assistance for Central America					
Central American reconciliation assistance (04–55–1038–152–A)	Budget Authority	37,648	54,492	16,844	2
Department of Agriculture					
Agricultural Research Service					
Agricultural Research Service (05–18–1400–352–A)	Budget Authority	585,209	598,228	13,019	1
Foreign Assistance Programs					
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A)	Budget Authority	984,193	996,049	11,856	1
	Obligation limitation	1,535,248	1,547,104	11,856	1
	Direct Loan Limitation	819,372	825,700	6,328	1
Agricultural Stabilization & Conservation Service					
Conservation reserve program (05–60–3319–302–A)	Budget Authority	1,202,000	1,603,158	401,158	5
Commodity Credit Corporation					
Commodity Credit Corporation Fund (05–66–4336–351–A)	401(C) Authority	6,455,574	6,538,000	82,426	5
	401(C) Authority	6,306,876	6,274,000	–32,876	5
	Direct Loan Limitation	10,000,000	10,251,000	251,000	5
	Guaranteed Loan Limitation	5,698,000	5,742,000	44,000	1
Rural Electrification Administration					
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A)	Budget Authority	238,800	356,004	117,204	4
Rural electrification and telephone revolving fund (05–72–4230–271–A)	Direct Loan Limitation	3,485,193	3,492,796	7,603	1
Farmers Home Administration					
Salaries and expenses (05–75–2001–452–A)	Budget Authority	432,349	443,810	11,461	1
Agricultural Credit Insurance Fund (05–75–4140–351–A)	Direct Loan Limitation	1,625,070	1,637,619	12,549	1
	Guaranteed Loan Limitation	2,875,418	3,471,414	595,996	1
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A)	Budget Authority	224,359	0	–224,359	2
	401(C) Authority—Off. Coll.	23,828	17,000	–6,828	5
	Direct Loan Limitation	1,911,410	1,926,170	14,760	1
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A)	Guaranteed Loan Limitation	99,145	308,711	209,566	1,2
Rural development loan fund (05–75–4233–452–A)	Budget Authority	12,970	0	–12,970	7
Soil Conservation Service					
Conservation operations (05–76–1000–302–A)	Budget Authority	483,721	498,342	14,621	1
Animal and Plant Health Inspection Service					
Salaries and expenses (05–79–1600–352–A)	Budget Authority	344,010	351,584	7,574	1

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Table 13.—Detailed List of Sequestersble Resources for Which OMB and CBO Estimates Differ by More then $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Agricultural Marketing Service					
Funds for strengthening markets, income, and supply (section 3 (05–81–5209–605–A)	401(C) Authority	538,946	522,746	–16,200	6
Food Safety and Inspection Service					
Salaries and expenses (05–83–3700–554–A)	Budget Authority	421,533	433,289	11,756	1
Forest Service					
National forest system (05–96–1106–302–A)	Budget Authority	1,335,811	1,528,031	192,220	1,5
Transfer of certain national forest fund receipts (05–96–5220–302–A)	Budget Authority	0	104,062	104,062	8
Reforestation trust fund (05–98–8046–302–A)	401(C) Authority	30,000	0	–30,000	4
	Obligation Limitation	0	30,000	30,000	4
Forest Service permanent appropriations (05–96–9921–806–A)	401(C) Authority	382,916	307,430	–75,486	5
Forest Service permanent appropriations (05–96–9922–302–A)	Budget Authority	0	21,129	21,129	2
Department of Commerce					
Bureau of the Census					
Periodic censuses and programs (06–07–0450–376–A)	Budget Authority	580,775	592,711	11,936	1
Department of Defense—Military					
Military Personnel					
Military personnel, Marine Corps (07–05–1105–051–A)	Budget Authority	5,715,085	5,771,660	56,575	1,2
Reserve personnel, Marine Corps (07–05–1108–051–A)	Budget Authority	316,540	310,379	–6,161	1
Reserve personnel, Navy (07–05–1405–051–A)	Budget Authority	1,596,123	1,563,538	–32,585	1
Military personnel, Navy (07–05–1453–051–A)	Budget Authority	19,003,439	19,262,472	259,033	1,2
Military personnel, Army (07–05–2010–051–A)	Budget Authority	24,517,882	24,787,845	269,963	1,2
National Guard personnel, Army (07–05–2060–051–A)	Budget Authority	3,308,429	3,238,829	–69,600	1
Reserve personnel, Army (07–05–2070–051–A)	Budget Authority	2,220,108	2,174,299	–45,809	1
Military personnel, Air Force (07–05–3500–051–A)	Budget Authority	20,100,130	20,449,248	349,116	1,2
Reserve personnel, Air Force (07–05–3700–051–A)	Budget Authority	657,553	644,829	–12,724	1
National Guard personnel, Air Force (07–05–3850–051–A)	Budget Authority	1,031,188	1,008,226	–22,962	1
Operation and Maintenance					
Operation and maintenance, Defense agencies (07–10–0100–051–A)	Budget Authority	7,911,928	8,014,468	102,540	1,2
Operation and maintenance, Marine Corps (07–10–1106–051–A)	Budget Authority	1,883,771	1,897,109	13,338	1,2
Operation and maintenance, Navy (07–10–1804–051–A)	Budget Authority	25,832,372	26,262,788	430,416	1,2
Operation and maintenance, Navy Reserve (07–10–1806–051–A)	Budget Authority	1,013,872	1,021,346	7,474	1
Operation and maintenance, Army (07–10–2020–051–A)	Budget Authority	23,153,258	23,265,084	111,826	1
Operation and maintenance, Army National Guard (07–10–2065–051–A)	Budget Authority	1,869,131	1,875,873	6,742	1
Operation and maintenance, Air Force (07–10–3400–051–A)	Budget Authority	22,687,585	22,872,145	184,560	1,2
Operation and maintenance, Air National Guard (07–10–3840–051–A)	Budget Authority	2,045,955	2,053,255	7,300	1
Procurement					
Procurement, Defense agencies (07–15–0300–051–A)	Budget Authority	1,253,767	1,233,541	–20,226	1,2
National Guard and Reserve Equipment (07–15–0350–051–A)	Budget Authority	1,179,798	1,188,908	9,110	1
Procurement, Marine Corps (07–15–1109–051–A)	Budget Authority	1,343,526	1,348,681	5,155	1,2
Aircraft procurement, Navy (07–15–1506–051–A)	Budget Authority	9,738,094	9,723,506	–14,586	1,2
Weapons procurement, Navy (07–15–1507–051–A)	Budget Authority	6,364,117	6,358,973	–5,144	1,2
Shipbuilding and conversion, Navy (07–15–1611–051–A)	Budget Authority	9,922,238	9,951,878	29,640	1,2
Other procurement, Navy (07–15–1810–051–A)	Budget Authority	5,020,224	4,828,906	–191,316	1,2
Aircraft procurement, Army (07–15–2031–051–A)	Budget Authority	2,986,568	2,998,147	11,579	1,2
Missile procurement, Army (07–15–2032–051–A)	Budget Authority	2,695,680	2,706,056	10,376	1,2
Procurement of weapons and tracked combat vehicles, Army (07–15–2033–051–A)	Budget Authority	2,932,246	2,944,449	12,203	1,2
Procurement of ammunition, Army (07–15–2034–051–A)	Budget Authority	2,085,670	2,093,424	7,754	1,2
Other procurement, Army (07–15–2035–051–A)	Budget Authority	4,846,357	4,864,989	18,632	1,2
Aircraft procurement, Air Force (07–15–3010–051–A)	Budget Authority	16,181,769	16,306,743	124,974	1
Missile procurement, Air Force (07–15–3020–051–A)	Budget Authority	7,476,482	7,433,693	–42,789	1,2
Other procurement, Air Force (07–15–3080–051–A)	Budget Authority	8,483,824	8,512,255	28,431	1,2
Research, Development, Test, and Evaluation					
Research, development, test, and evaluation, Defense agencies (07–20–0400–051–A)	Budget Authority	8,508,262	8,540,712	32,450	1,2
Research, development, test, and evaluation, Navy (07–20–1319–051–A)	Budget Authority	9,685,026	9,730,714	45,688	1,2
Research, development, test, and evaluation, Army (07–20–2040–051–A)	Budget Authority	5,324,680	5,343,007	18,327	1,2

Table 13.—Detailed List of Sequestersble Resources for Which OMB and CBO Estimates Differ by More then $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Military Construction					
Military construction, Defense agencies (07–25–0500–051–A)	Budget Authority	703,996	689,024	–14,972	1,2
Military construction, Navy (07–25–1205–051–A)	Budget Authority	1,833,963	1,845,993	12,030	1
Military construction, Army (07–25–2050–051–A)	Budget Authority	1,186,678	1,194,170	7,492	1
Military construction, Air Force (07–25–3300–051–A)	Budget Authority	1,259,899	1,279,867	20,168	1,2
Family Housing					
Family housing, Army (07–30–0702–051–A)	Budget Authority	1,582,557	1,594,168	11,611	1
Family housing, Navy and Marine Corps (07–30–0703–051–A)	Budget Authority	827,806	834,199	6,393	1
Department of Defense—Civil					
Corps of Engineers—Civil					
Rivers and harbors contributed funds (08–10–8862–301–A)	401(C) Authority	215,550	169,465	–46,085	13
Department of Education					
Office of Elementary and Secondary Education					
Impact aid (18–10–0102–501–A)	Budget Authority	759,489	765,352	5,863	1
Compensatory education for the disadvantaged (18–10–0900–501–A)	Budget Authority	4,743,986	4,780,620	36,634	1
School improvement programs (18–10–1000–501–A)	Budget Authority	1,280,910	1,270,851	9,741	1
Office of Special Education & Rehabilitative Svcs.					
Education for the handicapped (18–20–0300–501–A)	Budget Authority	2,037,229	2,052,961	15,732	1
Special institutions for the handicapped (18–20–0604–501–C)	Budget Authority	21,053	0	–21,053	1,3
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C)	Budget Authority	47,321	68,902	21,581	1,3
Office of Vocational and Adult Educaion					
Vocational and adult education (18–30–0400–501–A)	Budget Authority	1,112,110	1,120,699	8,589	1
Office of Postsecondary Education					
Student financial assistance (18–40–0200–502–A)	Budget Authority	6,023,636	6,070,150	46,514	1
Departmental Management					
Salaries and expenses (Elementary, secondary and vocational ed.) (18–80–0800–501–A)	Budget Authority	20,889	0	–20,889	1,3
Salaries and expenses (Higher education) (18–80–0800–502–A)	Budget Authority	89,997	0	–89,997	1,3
Salaries and expenses (Research and general education aids) (18–80–0800–503–A)	Budget Authority	127,152	266,427	139,275	1,3
Salaries and expenses (Social services) (18–80–0800–506–A)	Budget Authority	22,383	0	–22,383	1,3
Department of Energy					
Atomic Energy Defense Activities					
Atomic energy defense activities (19–10–0220–053–A)	Unobligated Balances—Defense	85,000	471,675	386,675	10
Energy Programs					
Energy conservation (Energy conservation) (19–20–0215–272–A)	Budget Authority	326,721	389,433	62,712	4
Uranium supply and enrichment activities (19–20–0228–271–A)	Budget Authority	0	1,431,000	1,431,000	4
	401(C) Authority—Off. Coll.	1,325,900	0	–1,325,900	4
Isotope production and distribution fund (19–20–4180–271–A)	401(C) Authority—Off. Coll.	16,452	0	–16,452	13
Departmental Administration					
Departmental administration (Energy information, policy, & reg.) (19–60–0228–276–A)	Budget Authority	205,056	355,056	150,000	1,4
	401(C) Authority—Off. Coll.	150,000	0	–150,000	1,4
Department of Health and Human Services					
Food and Drug Administration					
Program expenses (09–10–0600–554–A)	Budget Authority	533,071	546,275	13,204	1
Health Resources and Services					
Health resources and services (health care services) (09–15–0350–551–A)	Budget Authority	978,575	987,543	8,968	1
Health resources and services (education and training) (09–15–0350–553–A)	Budget Authority	184,730	207,436	22,706	2
Indian Health					
Tribal Health Administration (09–17–0390–551–A)	Budget Authority	149,994	79,741	–70,253	1,4
Centers for Disease Control					
Disease control (Health care services) (09–20–0943–551–A)	Budget Authority	892,168	903,481	11,313	1
National Institutes of Health					
National Cancer Institute (Health research) (09–25–0849–552–A)	Budget Authority	1,596,191	1,608,958	12,767	1
National Institute of General Medical Sciences (Health research) (09–25–0851–552–A)	Budget Authority	690,153	695,173	5,020	1

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Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
National Heart, Lung and Blood Institute (Health research) (09–25–0672–552–A)	Budget Authority	1,039,894	1,049,299	9,405	1
National Institute of Allergy & Infectious Diseases (Research) (09–25–0685–552–A)	Budget Authority	754,055	760,335	6,280	1
Alcohol,Drug Abuse, & Mental Health Administration					
Alcohol, drug abuse, and mental health (Health care services) (09–30–1361–551–A)	Budget Authority	1,150,798	1,161,371	10,573	1
Alcohol, drug abuse, and mental health (Health research) (09–30–1361–552–A)	Budget Authority	713,040	719,959	6,919	1
Health Care Financing Administration					
Federal supplementary medical insurance trust fund (09–38–8004–571–A)	Obligation limitation	1,253,303	1,167,748	–85,555	1
FSMI 2% split (G-R-H) (09–38–8004–571–S)	401(C) Authority—Spec. Rules	372,000	601,000	229,000	11
Federal hospital insurance trust fund (09–38–8005–571–A)	401(C) Authority	201,038	206,142	5,104	1
	Obligation limitation	1,294,637	995,663	–298,974	4
FHI 2% split (G-R-H) (09–38–8005–571–S)	401(C) Authority—Spec. Rules	1,140,000	1,133,000	–7,000	5
Federal supplementary medical insurance trust fund, catastro. (09–38–8184–571–S)	401(C) Authority—Spec. Rules	12,000	40,000	28,000	5
Social Security Administration					
Supplemental security income program (09–60–0406–609–A)	Budget Authority	821,257	845,738	24,481	5
Family Support Administration					
Family support payment to States (CSE) (09–70–1501–609–B)	Budget Authority	1,309,000	1,279,000	–30,000	5
Low income home energy assistance (09–70–1502–609–A)	Budget Authority	1,432,995	1,444,061	11,066	1
Interim assistance to States for legalization (09–70–1508–506–A)	401(C) Authority	870,000	0	–870,000	4,5
	Obligation limitation	0	895,000	895,000	4,5
Payments to states for AFDC work programs (09–70–1509–609–A)	Budget Authority	257,721	0	–257,721	4,5
	Obligation limitation	0	465,000	465,000	4,5
Human Development Services					
Human development services (09–80–1636–506–A)	Budget Authority	2,667,229	2,698,760	31,531	1
Health and Human Services Social Security					
Social Security					
Federal old-age and survivors insurance trust fund (16–05–8006–651–A)	Obligation limitation	1,358,206	1,638,298	280,092	1,7
Federal disability insurance trust fund (16–05–8007–651–A)	Obligation limitation	506,221	546,163	39,942	1,7
Department of Housing and Urban Development					
Housing Programs					
Subsidized housing programs (Housing assistance) (25–02–0164–604–A)	Budget Authority	7,342,406	7,490,960	148,554	1,3,12
Federal Housing Administration fund (25–02–4070–371–A)	Guaranteed Loan Limitation	99,456,000	100,224,000	768,000	5
Public and Indian Housing Programs					
Payments for operation of low income housing projects (25–03–0163–604–A)	Budget Authority	1,766,906	1,780,550	13,644	1
Government National Mortgage Association					
Guarantees of mortgage-backed securities (25–04–4238–371–A)	Guaranteed Loan Limitation	144,000,000	149,942,000	5,942,000	5,8
Community Planning and Development					
Community development grants (25–06–0162–451–A)	Budget Authority	2,745,400	2,766,600	21,200	1
Rehabilitation loan fund (25–06–4036–451–A)	Direct Loan Limitation	85,212	70,000	–15,212	12
Nehemiah housing opportunity program (25–06–8888–451–A)	Budget Authority	0	20,880	20,880	3
Management and Administration					
Salaries & expenses, incl. transfer of funds (Community dev.) (25–35–0143–451–A)	Budget Authority	174,166	179,341	5,175	1
Department of the Interior					
Bureau of Land Management					
Construction and access (10–04–1110–302–A)	Budget Authority	5,631	11,738	6,107	2
Miscellaneous permanent appropriations (10–04–9921–806–A)	401(C) Authority	122,954	81,291	–41,663	5
Minerals Management Service					
Payments to states from receipts under Mineral Leasing Act (10–06–5003–806–A)	401(C) Authority	464,195	372,996	–91,199	5
Geological Survey					
Surveys, investigations and research (10–12–0804–306–A)	Budget Authority	468,056	480,893	12,837	1
Fish and Wildlife Service					
Resource management (10–18–1611–303–A)	Budget Authority	371,703	383,296	11,593	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Construction (10–18–1612–303–A)	Budget Authority	33,007	49,760	16,753	1
National wildlife refuge fund (10–18–5091–806–A)	401(C) Authority	6,040	0	–6,040	4
	Obligation limitation	0	6,040	6,040	4
Sport fish restoration (10–18–8151–303–A)	401(C) Authority	192,891	162,606	–30,285	5
National Park Service					
Operation of the national park system (10–24–1036–303–A)	Budget Authority	769,916	793,288	23,372	1
Construction (10–24–1039–303–A)	Budget Authority	164,909	206,738	41,829	1
Land acquisition (10–24–5035–303–A)	Budget Authority	45,262	65,474	20,212	1
Bureau of Indian Affairs					
Operation of Indian programs (Conservation and land management) (10–76–2100–302–A)	Budget Authority	152,689	162,984	10,295	1
Operation of Indian programs (Area and regional development) (10–76–2100–452–A)	Budget Authority	597,631	608,415	10,784	1
Revolving fund for loans (10–76–4409–452–A)	401(C) Authority—Off. Coll.	11,070	0	–11,070	5
Miscellaneous permanent appropriations (Area and regional dev.) (10–76–9925–452–A)	401(C) Authority	50,359	55,797	5,438	5
Office of Territorial Affairs					
Administration of territories (10–82–0412–808–A)	Budget Authority	62,272	54,983	–7,289	8
Department of Justice					
Legal Activities					
Salaries and expenses, General legal activities (11–05–0128–752–A)	Budget Authority	256,201	262,213	6,012	1
Salaries and expenses, United States Attorneys (11–05–0322–752–A)	Budget Authority	478,351	490,819	12,468	1
Salaries and expenses, United States Marshals Service (11–05–0324–752–A)	Budget Authority	213,187	218,677	5,490	1
Assets forfeiture fund (11–05–5042–752–A)	401(C) Authority	237,729	262,044	24,315	8
Federal Bureau of Investigation					
Salaries and expenses (11–10–0200–751–A)	Budget Authority	1,495,782	1,534,141	38,359	1
Drug Enforcement Administration					
Salaries and expenses (11–12–1100–751–A)	Budget Authority	555,143	567,488	12,345	1
Immigration and Naturalization Service					
Salaries and expenses (11–15–1217–751–A)	Budget Authority	854,257	875,617	21,360	1
Federal Prison System					
Salaries and expenses (11–20–1060–753–A)	Budget Authority	989,190	1,011,708	22,518	1
Department of Labor					
Employment and Training Administration					
Training and employment services (12–05–0174–504–A)	Budget Authority	3,872,575	3,903,761	31,186	1
Federal unemployment benefits and allowances (12–05–0326–603–A)	Budget Authority	204,000	166,000	–38,000	5
Unemployment trust fund (Training and employment) (12–05–8042–504–A)	Obligation limitation	1,082,794	1,092,587	9,793	1
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A)	401(C) Authority	129,100	0	–129,100	5
	Obligation limitation	1,735,981	1,859,156	123,175	1
Employment Standards Administration					
Salaries and expenses (12–15–0105–505–A)	Budget Authority	220,299	225,932	5,633	1
Occupational Safety and Health Administration					
Salaries and expenses (12–18–0400–554–A)	Budget Authority	257,197	262,203	5,006	1
Department of State					
Administration of Foreign Affairs					
Salaries and expenses (14–05–0113–153–A)	Budget Authority	1,856,768	1,897,322	40,554	1
Department of Transportation					
Federal Highway Administration					
Federal-aid highways (21–05–8083–401–A)	401(C) Authority	13,850,959	14,103,000	252,041	5
	Obligation limitation	12,432,000	12,535,000	103,000	1
Urban Mass Transportation Administration					
Formula grants (21–20–1129–401–A)	Budget Authority	1,862,780	1,875,620	12,840	1
Discretionary grants (21–20–8191–401–A)	Obligation limitation	1,181,000	1,190,160	9,160	1
Federal Aviation Administration					
Operations (21–25–1301–402–A)	Budget Authority	3,053,089	3,137,836	84,747	1
Trust fund share of FAA Operations (21–25–8104–402–A)	Budget Authority	490,849	503,509	12,660	1
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A)	Obligation limitation	1,450,400	1,461,600	11,200	1

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Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A)	Budget Authority	1,434,090	1,446,550	12,460	1
Coast Guard					
Operating expenses (21–30–0201–403–A)	Budget Authority	2,029,694	2,067,030	37,336	1
Retired pay (Coast Guard) (21–30–0241–403–A)	Budget Authority	45,050	37,463	–7,587	1
Department of the Treasury					
Financial Management Service					
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A)	Budget Authority	70,793	0	–70,793	5,6
Bureau of Alcohol, Tobacco and Firearms					
Salaries and expenses (15–13–1000–751–A)	Budget Authority	250,499	257,086	6,587	1
United States Customs Service					
Salaries and expenses (15–15–0602–751–A)	Budget Authority	1,074,599	1,103,055	28,456	1
Customs forfeiture fund (15–15–5693–803–A)	401(C) Authority	35,000	20,000	–15,000	5
Internal Revenue Service					
Processing tax returns and executive direction (15–45–0912–803–A)	Budget Authority	1,807,710	1,837,199	29,489	1
Examinations and appeals (15–45–0913–803–A)	Budget Authority	2,009,730	2,079,620	69,890	1
Investigation, collection, and taxpayer service (15–45–0914–803–A)	Budget Authority	1,491,667	1,530,298	38,611	1
United States Secret Service					
Salaries and expenses (15–55–1406–751–A)	Budget Authority	371,462	380,390	8,928	1
Department of Veterans Affairs					
Veterans Benefits Administration					
Readjustment benefits (29–10–0137–702–A)	Budget Authority	241,926	212,119	–29,807	5
Burial benefits and miscellaneous assistance (29–10–0155–701–A)	Budget Authority	143,612	138,120	–5,492	5
Veterans Health Services and Research Administration					
Medical care (29–20–0160–703–A)	Budget Authority	843,184	950,692	107,508	1,4
Medical and prosthetic research (29–20–0161–703–A)	Budget Authority	219,006	224,279	5,183	1
Departmental Administration					
Office of the Inspector General (29–30–0170–705–A)	Budget Authority	0	21,851	21,851	1,3
Environmental Protection Agency					
Environmental Protection Agency					
Construction grants (20–00–0103–304–A)	Budget Authority	2,020,000	2,035,800	15,800	1
Abatement, control, and compliance (20–00–0108–304–A)	Budget Authority	745,847	751,289	5,442	1
Salaries and expenses (20–00–0200–304–A)	Budget Authority	847,016	868,342	21,326	1
Hazardous substance superfund (20–00–8145–304–A)	Budget Authority	1,461,391	1,475,762	14,371	1
National Aeronautics and Space Administration					
National Aeronautics and Space Administration					
Research and program management (Space flight) (26–00–0103–253–A)	Budget Authority	958,460	982,651	24,191	1
Research & program management (Space science, applications, etc) (26–00–0103–254–A)	Budget Authority	624,299	640,574	16,275	1
Research and program management (Air transportaion) (26–00–0103–402–A)	Budget Authority	344,165	351,760	7,595	1
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A)	Budget Authority	3,640,400	3,668,512	28,112	1
Research and development (Space flight) (26–00–0106–253–A)	Budget Authority	1,630,864	1,643,256	12,592	1
Research and development (Space science, applications, etc) (26–00–0106–254–A)	Budget Authority	2,263,556	2,281,036	17,480	1
Small Business Administration					
Small Business Administration					
Salaries and expenses (28–00–0100–376–A)	Budget Authority	337,829	242,562	–95,267	2
Disaster loan fund (28–00–4153–453–A)	Direct Loan Limitation	250,000	323,000	73,000	5
Business loan and investment fund (28–00–4154–376–A)	Budget Authority	84,952	0	–84,952	9
	Direct Loan Limitation	84,952	94,000	9,048	2
	Guaranteed Loan Limitation	3,925,000	3,910,000	–15,000	1
Surety bond guarantees revolving fund (28–00–4156–376–A)	Guaranteed Loan Limitation	1,295,000	1,301,000	6,000	1
Other Independent Agencies					
District of Columbia					
Federal payment to the District of Columbia (30–45–1700–808–A)	Budget Authority	445,998	452,867	6,869	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Export-Import Bank of the United States					
Export-Import Bank of the United States (30–48–4027–155–A)	Direct Loan Limitation	720,020	725,580	5,560	1
	Guaranteed Loan Limitation	10,567,200	10,648,800	81,600	1
Farm Credit Systems Financial Assistance Corporation					
Farm credit assistance Fund (30–54–4133–351–A)	401(C) Authority	635,000	500,000	–135,000	5
Financial assistance corporation trust fund (30–54–8202–351–A)	401(C) Authority	80,705	0	–80,705	5,8
Federal Emergency Management Agency					
Disaster relief (30–67–0104–453–A)	Budget Authority	1,251,488	1,365,552	114,064	1
National Science Foundation					
Research and related activities (31–45–0100–251–A)	Budget Authority	1,679,104	1,692,189	13,085	1
Pennsylvania Avenue Development Corporation					
Land acquisition and development fund (32–08–4084–451–A)	401(C) Authority—Off. Coll.	3,000	10,000	7,000	5
Postal Service					
Payment to the Postal Service fund for nonfunded liabilities (32–10–1004–372–A)	Budget Authority	36,942	0	–36,942	3
Railroad Retirement Board					
Supplemental Annuity Pension Fund (32–20–8012–601–A)	401(C) Authority	114,908	0	–114,908	6
Smithsonian Institution					
Salaries and expenses (32–50–0100–503–A)	Budget Authority	219,565	225,275	5,710	1
United States Information Agency					
Salaries and expenses (33–22–0201–154–A)	Budget Authority	644,127	658,382	14,255	1

[1] Different adjustment factors for increased personnel costs and nonpay inflation.
[2] Different assumptions about enacted 1989 levels, including transfers.
[3] Different account structure.
[4] Different resource type classification.
[5] Different assumptions about resource levels under current law for mandatory programs.
[6] OMB classifies as sequesterable; CBO as exempt.
[7] OMB classifies as exempt, CBO as sequesterable.
[8] OMB error.
[9] CBO error.
[10] Technical estimating diferences for unobligated balances transferred from other accounts.
[11] Different assumptions regarding behavioral response of physicians to payment reductions.
[12] Different estimating techniques.
[13] Different assumptions about enacted 1990 levels, including transfers.

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APPENDIX A: SEQUESTERABLE BASELINE AND REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990; in thousands of dollars)

Percentages Used:
Nondefense, 5.3 percent
Defense, 4.3 percent

G-R-H Sequester Amounts
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legislative Branch		
Senate		
Salaries, officers and employees (01–05–0110–801–A):		
Budget Authority	357,999	18,974
Outlays	342,605	18,158
House of Representatives		
Mileage of Members (01–10–0208–801–A):		
Budget Authority	218	12
Outlays	109	6
Salaries and expenses (01–10–0400–801–A):		
Budget Authority	525,719	27,863
Outlays	495,227	26,247
Congressional use of foreign currency, House of Representative (01–10–0488–801–A):		
401(C) Authority	3,360	178
Outlays	3,360	178
Joint Items		
Capitol Guide Service (01–12–0170–801–A):		
Budget Authority	1,269	67
Outlays	1,142	61
Joint Committee on Printing (01–12–0180–801–A):		
Budget Authority	1,190	63
Outlays	1,090	58
Joint Economic Committee (01–12–0181–801–A):		
Budget Authority	3,466	184
Outlays	3,293	175
Joint Committee on Inaugural Ceremonies of 1989 (01–12–0186–801–A):		
Budget Authority	811	43
Outlays	811	43
Office of the Attending Physician (01–12–0425–801–A):		
Budget Authority	1,469	78
Outlays	1,469	78
Joint Committee on Taxation (01–12–0460–801–A):		
Budget Authority	4,520	240
Outlays	4,068	216
Capitol Police Board (01–12–0474–801–A):		
Budget Authority	55,356	2,934
Outlays	53,695	2,846
General expenses, Capitol police (01–12–0476–801–A):		
Budget Authority	1,955	104
Outlays	1,703	90
Statements of appropriations (01–12–0499–801–A):		
Budget Authority	21	1
Official mail costs (01–12–0625–801–A):		
Budget Authority	55,867	2,961
Outlays	55,867	2,961
Congressional Budget Office		
Salaries and expenses (01–14–0100–801–A):		
Budget Authority	19,089	1,012
Outlays	17,180	911
Architect of the Capitol		
Office of the Architect of the Capitol: Salaries (01–15–0100–801–A):		
Budget Authority	6,799	360
Outlays	6,460	342
Contingent expenses (01–15–0102–801–A):		
Budget Authority	104	6
Outlays	104	6
Capitol buildings (01–15–0105–801–A):		
Budget Authority	16,073	852
Outlays	12,070	640

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Capitol grounds (01–15–0108–801–A):		
Budget Authority	3,921	208
Outlays	3,442	182
Senate office buildings (01–15–0123–801–A):		
Budget Authority	25,042	1,327
Outlays	20,759	1,100
House office buildings (01–15–0127–801–A):		
Budget Authority	30,044	1,592
Outlays	24,396	1,293
Capitol Power Plant (01–15–0133–801–A):		
Budget Authority	25,894	1,362
401(C) Authority—		
Off. Coll.	253	13
Outlays	18,367	973
Structural and mechanical care; Library buildings and grounds (01–15–0155–801–A):		
Budget Authority	7,797	413
Outlays	6,635	352
Library of Congress		
Salaries and expenses (01–25–0101–503–A):		
Budget Authority	153,941	8,159
401(C) Authority—		
Off. Coll.	5,060	268
Outlays	132,389	7,016
Copyright Office: Salaries and expenses (01–25–0102–376–A):		
Budget Authority	12,136	643
401(C) Authority—		
Off. Coll.	8,144	432
Outlays	19,551	1,036
Congressional Research Service: Salaries and expenses (01–25–0127–801–A):		
Budget Authority	46,491	2,464
Outlays	42,026	2,227
Books for the blind and physically handicapped: Salaries & exp (01–25–0141–503–A):		
Budget Authority	37,810	2,004
Outlays	15,502	822
National Film Preservation Board: Salaries & expenses (01–25–0143–503–A):		
Budget Authority	259	14
Outlays	259	14
Furniture and furnishings (01–25–0146–503–A):		
Budget Authority	3,503	186
Outlays	1,860	99
Gift and trust fund accounts (01–25–8971–503–A):		
Obligation limitation	328	17
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses (01–30–0201–808–A):		
Budget Authority	14,249	755
Outlays	9,261	491
Congressional printing and binding (01–30–0203–801–A):		
Budget Authority	74,592	3,953
Outlays	66,387	3,519
Government Printing Office revolving fund (01–30–4505–808–A):		
Obligation limitation	38,383	2,034
General Accounting Office		
Salaries and expenses (01–35–0107–801–A):		
Budget Authority	361,059	19,136
Outlays	327,834	17,375
United States Tax Court		
Salaries and expenses (01–40–0100–752–A):		
Budget Authority	30,482	1,616
Outlays	27,006	1,431

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Tax Court independent counsel, U.S. Tax Court (01–40–5023–752–A):		
401(C) Authority	10	1
Outlays	10	1
Legislative Branch Boards and Commissions		
Commission on Security & Cooperation in Europe: Salaries & exp (01–45–0110–801–A):		
Budget Authority	771	41
Outlays	698	37
Botanic Garden: Salaries and expenses (01–45–0200–801–A):		
Budget Authority	2,622	139
Outlays	2,386	126
Copyright Royalty Tribunal: Salaries and expenses (01–45–0310–376–A):		
Budget Authority	127	7
Outlays	113	6
Biomedical Ethics: Salaries and expenses (01–45–0400–801–A):		
Budget Authority	250	13
Outlays	180	10
International conferences and contingencies. House, Senate exp (01–45–0500–801–A):		
401(C) Authority	340	18
Outlays	340	18
Commission on Railroad Retirement Reform (01–45–0650–801–A):		
Budget Authority	1,024	54
Outlays	311	16
National Commission on Children (01–45–1050–801–A):		
Budget Authority	820	43
Outlays	718	38
U.S. Bipartisan Commission on Comprehensive Health Care (01–45–1100–801–A):		
Budget Authority	1,073	57
Outlays	902	48
Office of Technology Assessment		
Salaries and expenses (01–50–0700–801–A):		
Budget Authority	18,637	988
Outlays	13,436	712
John C. Stennis Center for Public Service Training and Development		
Payment to John C. Stennis Center (01–60–1200–801–A):		
Budget Authority	7,770	412
Outlays	7,770	412
Total, Legislative Branch:		
Budget Authority	1,912,039	101,340
401(C) Authority	3,710	197
401(C) Authority—		
Off. Coll.	13,457	713
Obligation limitation	38,711	2,051
Outlays	1,742,775	92,370
The Judiciary		
Supreme Court of the United States		
Salaries and expenses (02–05–0100–752–A):		
Budget Authority	16,536	877
Outlays	11,750	623
Care of the building and grounds (02–05–0103–752–A):		
Budget Authority	2,212	117
Outlays	2,107	112

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Court of Appeals for Federal Circuit		
Salaries and expenses (02-07-0510-752-A):		
Budget Authority	8,621	457
Outlays	8,022	425
United States Court of International Trade		
Salaries and expenses (02-15-0400-752-A):		
Budget Authority	8,307	440
Outlays	8,075	428
Courts of Appeals, District Courts and other Svcs		
Salaries and expenses (02-25-0920-752-A):		
Budget Authority	1,124,791	59,614
Outlays	1,109,401	58,796
Defender services (02-25-0923-752-A):		
Budget Authority	114,195	6,052
Outlays	43,280	2,294
Fees of jurors and commissioners (02-25-0925-752-A):		
Budget Authority	50,194	2,660
Outlays	42,517	2,253
Court security (02-25-0930-752-A):		
Budget Authority	42,917	2,275
Outlays	21,415	1,135
Registry administration (02-25-5101-752-A):		
401(C) Authority	21,000	1,113
Outlays	21,000	1,113
Administrative Office of the United States Courts		
Salaries and expenses (02-26-0927-752-A):		
Budget Authority	34,935	1,852
Outlays	31,861	1,689
Federal Judicial Center		
Salaries and expenses (02-30-0928-752-A):		
Budget Authority	11,628	616
Outlays	9,512	504
Judiciary Retirement Funds		
Payment to Judicial Officers' Retirement Fund (02-35-0941-752-A):		
Budget Authority	1,000	53
Outlays	1,000	53
Judicial Officers' Retirement Fund (02-35-8122-802-A):		
401(C) Authority	4,167	221
Outlays	4,167	221
Total, The Judiciary:		
Budget Authority	1,415,339	75,013
401(C) Authority	25,167	1,334
Outlays	1,314,116	69,848
Executive Office of the President		
The White House Office		
Salaries and expenses (03-10-0110-802-A):		
Budget Authority	29,047	1,539
Outlays	26,004	1,378
Executive Residence at the White House		
Operating expenses (03-20-0210-802-A):		
Budget Authority	5,925	314
401(C) Authority—		
Off. Coll.	1,471	78
Outlays	7,223	383

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Official Residence of the Vice President		
Operating expenses (03-21-0211-802-A):		
Budget Authority	267	14
Outlays	114	6
Special Assistance to the President		
Salaries and expenses (03-22-1454-802-A):		
Budget Authority	2,284	121
Outlays	1,923	102
Council of Economic Advisers		
Salaries and expenses (03-28-1900-802-A):		
Budget Authority	2,898	154
Outlays	2,633	140
Council/Office on Environmental Quality		
Council on Environmental Quality & Off. of Environmental Quali (03-31-1453-802-A):		
Budget Authority	884	47
Outlays	796	42
Office of Policy Development		
Salaries and expenses (03-35-2200-802-A):		
Budget Authority	3,119	165
Outlays	2,872	152
National Security Council		
Salaries and expenses (03-36-2000-802-A):		
Budget Authority	5,299	281
Outlays	4,208	223
National Space Council		
Salaries and expenses (03-39-0020-802-A):		
Budget Authority	188	10
Outlays	131	7
National Critical Materials Council		
Salaries and expenses (03-41-0111-802-A):		
Budget Authority	233	12
Outlays	209	11
Office of Administration		
Salaries and expenses (03-42-0038-802-A):		
Budget Authority	17,468	927
Outlays	13,825	733
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses (03-45-0201-802-A):		
Budget Authority	2,447	130
Outlays	1,895	100
Salaries and Expenses (03-45-0300-802-A):		
Budget Authority	41,206	2,184
Outlays	37,837	2,005
Office of National Drug Control Policy		
Salaries and Expenses (03-47-1457-802-A):		
Budget Authority	3,628	192
Outlays	2,721	144
Office of Science and Technology Policy		
Salaries and expenses (03-49-2600-802-A):		
Budget Authority	1,648	87
Outlays	988	52

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the United States Trade Representative		
Salaries and expenses (03-50-0400-802-A):		
Budget Authority	15,868	841
Outlays	13,805	732
Total, Executive Office of the President:		
Budget Authority	132,431	7,016
401(C) Authority—		
Off. Coll.	1,471	78
Outlays	117,184	6,210
Funds Appropriated to the President		
Unanticipated Needs		
Unanticipated needs (04-06-0037-802-A):		
Budget Authority	1,036	55
Outlays	995	53
Investment in Management Improvement		
Investment in Management Improvement (04-07-0061-802-B):		
Budget Authority	1,036	55
Outlays	777	41
International Security Assistance		
Peacekeeping operations (04-09-1032-152-A):		
Budget Authority	32,830	1,740
Outlays	22,653	1,201
Economic support fund (04-09-1037-152-A):		
Budget Authority	3,396,526	180,016
Outlays	1,863,174	98,748
Military assistance (04-09-1080-152-A):		
Budget Authority	485,480	25,730
Outlays	84,720	4,490
International military education and training (04-09-1081-152-A):		
Budget Authority	49,106	2,603
Outlays	24,553	1,301
Foreign military sales credit (04-09-1082-152-A):		
Budget Authority	4,426,569	234,608
Direct Loan		
Limitation	424,760	22,512
Outlays	1,853,063	98,212
Multilateral Assistance		
Contribution to the International Development Association (04-12-0073-151-A):		
Budget Authority	1,030,820	54,633
Contribution to the Asian Development Bank (04-12-0076-151-A):		
Budget Authority	157,878	8,368
Contribution to the International Bank for Reconstruction & De (04-12-0077-151-A):		
Budget Authority	51,801	2,745
Outlays	5,180	275
Contribution to the International Finance Corporation (04-12-0078-151-A):		
Budget Authority	5,068	269
Outlays	5,068	269
Contribution to the African Development Fund (04-12-0079-151-A):		
Budget Authority	108,780	5,765
Contribution to the African Development Bank (04-12-0082-151-A):		
Budget Authority	7,609	403
Outlays	7,609	403
International organizations and programs (04-12-1005-151-A):		
Budget Authority	234,255	12,416
Outlays	175,692	9,312

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Agency for International Development		
Operating expenses, Agency for International Development (04-14-1000-151-A):		
Budget Authority	434,057	23,005
Outlays	325,330	17,242
Operating expenses of the AID Office of Inspector General (04-14-1007-151-A):		
Budget Authority	29,579	1,568
Outlays	22,173	1,175
American schools and hospitals abroad (04-14-1013-151-A):		
Budget Authority	36,260	1,922
Outlays	11,803	615
Development fund for Africa (04-14-1014-151-A):		
Budget Authority	569,800	30,199
Outlays	84,900	4,500
Functional development assistance program (04-14-1021-151-A):		
Budget Authority	1,256,845	66,613
Outlays	121,732	6,452
International disaster assistance (04-14-1035-151-A):		
Budget Authority	29,008	1,537
Outlays	7,252	384
Housing and other credit guaranty programs (04-14-4340-151-A):		
401(C) Authority—		
Off. Coll.	7,035	373
Guaranteed Loan		
Limitation	129,500	6,864
Outlays	7,035	373
Private sector revolving fund (04-14-4341-151-A):		
Budget Authority	8,806	467
Direct Loan		
Limitation	12,432	659
Guaranteed Loan		
Limitation	51,800	2,745
Trade and Development Program		
Trade and development program (04-16-1001-151-A):		
Budget Authority	25,906	1,373
Outlays	5,357	284
Peace Corps		
Peace Corps (04-18-0100-151-A):		
Budget Authority	160,013	8,481
Outlays	130,571	6,920
Overseas Private Investment Corporation		
Overseas Private Investment Corporation (04-20-4030-151-A):		
401(C) Authority—		
Off. Coll.	12,504	663
Direct Loan		
Limitation	23,828	1,263
Guaranteed Loan		
Limitation	181,300	9,609
Outlays	14,416	764
Inter-American Foundation		
Inter-American Foundation (04-22-4031-151-A):		
Budget Authority	17,201	912
401(C) Authority—		
Off. Coll.	13,277	704
Outlays	18,496	980

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
African Development Foundation		
African Development Foundation (04-24-0700-151-A):		
Budget Authority	8,298	440
Outlays	4,479	237
Military Sales Programs		
Special defense acquisition fund (04-37-4116-155-A):		
Obligation limitation	245,392	13,008
Foreign military sales trust fund (04-37-8242-155-A):		
401(C) Authority—		
Off. Coll.	263,000	13,939
Outlays	263,000	13,939
Special Assistance for Central America		
Central American reconciliation assistance (04-55-1036-152-A):		
Budget Authority	37,848	1,995
Outlays	37,848	1,995
Total, Funds Appropriated to the President:		
Budget Authority	12,602,213	667,918
401(C) Authority—		
Off. Coll.	295,818	15,679
Obligation limitation	245,392	13,008
Direct Loan		
Limitation	461,020	24,434
Guaranteed Loan		
Limitation	362,800	19,218
Outlays	5,097,476	270,165
Department of Agriculture		
Office of the Secretary		
Office of the Secretary (05-03-0115-352-A):		
Budget Authority	6,190	328
Outlays	5,841	310
Gifts and bequests (05-03-8203-352-A):		
401(C) Authority	50	3
Outlays	50	3
Departmental Administration		
Rental payments and building operations (05-05-0117-352-A):		
Budget Authority	73,324	3,886
Outlays	63,635	3,373
Advisory committees (05-05-0118-352-A):		
Budget Authority	1,550	82
Outlays	1,066	56
Departmental administration (05-05-0120-352-A):		
Budget Authority	26,980	1,429
Outlays	22,404	1,187
Hazardous Waste Management (05-05-0500-304-A):		
Budget Authority	5,180	275
Outlays	5,095	270
Working capital fund (05-05-4609-352-A):		
Budget Authority	4,877	258
Outlays	3,576	190
Office of Governmental and Public Affairs		
Office of Governmental and Public Affairs (05-06-0130-352-A):		
Budget Authority	9,209	488
Outlays	7,094	376

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the Inspector General		
Office of the Inspector General (05-08-0800-352-A):		
Budget Authority	52,514	2,783
Outlays	47,054	2,494
Office of the General Counsel		
Office of the General Counsel (05-10-2300-352-A):		
Budget Authority	21,672	1,149
Outlays	19,734	1,046
Agricultural Research Service		
Agricultural Research Service (05-16-1400-352-A):		
Budget Authority	585,209	31,016
401(C) Authority—		
Off. Coll.	3,200	170
Outlays	471,121	24,969
Buildings and facilities (05-16-1401-352-A):		
Budget Authority	16,598	880
Outlays	2,490	132
Cooperative State Research Service		
Cooperative State Research Service (05-24-1500-352-A):		
Budget Authority	350,271	18,564
401(C) Authority	2,850	151
Outlays	201,264	10,667
Extension Service		
Extension Service (05-27-0502-352-A):		
Budget Authority	374,422	19,844
401(C) Authority—		
Off. Coll.	380	20
Outlays	282,309	14,962
National Agricultural Library		
National Agricultural Library (05-30-0300-352-A):		
Budget Authority	14,818	785
Outlays	11,046	585
National Agricultural Statistics Service		
Salaries and expenses (05-33-1801-352-A):		
Budget Authority	66,056	3,501
401(C) Authority—		
Off. Coll.	1,200	64
Outlays	58,845	3,108
Economic Research Service		
Salaries and expenses (05-36-1701-352-A):		
Budget Authority	51,307	2,719
Outlays	41,496	2,199
World Agricultural Outlook Board		
World agricultural outlook board (05-50-2100-352-A):		
Budget Authority	1,893	100
Outlays	1,509	80
Foreign Agricultural Service		
Foreign Agricultural Service (05-51-2900-352-A):		
Budget Authority	99,024	5,248
Outlays	59,352	3,146
Office of International Cooperation & Development		
Scientific activities overseas (05-53-1404-352-A):		
Budget Authority	1,036	55
Outlays	636	34

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (05–53–3200–352–A):		
Budget Authority	5,524	293
Outlays	5,524	293
Foreign Assistance Programs		
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A):		
Budget Authority	984,193	52,162
Obligation limitation	1,535,248	81,366
Direct Loan Limitation	819,372	43,427
Outlays	984,193	52,162
Agricultural Stabilization & Conservation Service		
Salaries and expenses (05–60–3300–351–A):		
Budget Authority	395	21
401(C) Authority— Off. Coll.	23,561	1,250
Outlays	23,986	1,271
Dairy indemnity program (05–60–3314–351–A):		
Budget Authority	5	0
Outlays	5	0
Agricultural conservation program (05–60–3315–302–A):		
Budget Authority	183,305	9,715
Outlays	84,137	4,459
Emergency conservation program (05–60–3316–453–A):		
Budget Authority	5,180	275
Outlays	2,331	124
Colorado river basin salinity control program (05–60–3318–304–A):		
Budget Authority	5,648	299
Outlays	1,864	99
Conservation reserve program (05–60–3319–302–A):		
Budget Authority	1,202,000	63,706
Outlays	918,674	48,690
Water Bank program (05–60–3320–302–A):		
Budget Authority	9,324	494
Outlays	1,212	64
Forestry incentives program (05–60–3336–302–A):		
Budget Authority	12,894	683
Outlays	3,739	198
Federal Crop Insurance Corporation		
Administrative and operating expenses (05–63–2707–351–A):		
Budget Authority	209,401	11,098
Outlays	113,019	5,990
Commodity Credit Corporation		
Temporary Emergency Food Assistance Program (05–66–3635–351–A):		
Budget Authority	171,800	9,105
Outlays	159,523	8,455
Commodity Credit Corporation Fund (05–66–4336–351–A):		
401(C) Authority	12,762,450	676,410
Direct Loan Limitation	10,000,000	530,000
Guaranteed Loan Limitation	5,698,000	301,994
Outlays	12,762,450	676,410
Rural Electrification Administration		
Salaries and expenses (05–72–3100–271–A):		
Budget Authority	32,534	1,724
Outlays	29,445	1,561

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A):		
Budget Authority	238,800	12,656
Outlays	238,800	12,656
Purchase of Rural Telephone Bank capital stock (05–72–3102–452–A):		
Budget Authority	29,744	1,576
Outlays	29,744	1,576
Rural communication development fund (05–72–4142–452–A):		
Budget Authority	1,499	79
Outlays	1,467	76
Rural electrification and telephone revolving fund (05–72–4230–271–A):		
Budget Authority	563	30
Direct Loan Limitation	3,485,193	184,715
Direct Loan Floor	1,869,739	99,096
Outlays	240,215	12,731
Rural telephone bank (05–72–4231–452–A):		
Direct Loan Limitation	218,119	11,560
Direct Loan Floor	183,419	9,721
Outlays	–20,485	–1,086
Farmers Home Administration		
Salaries and expenses (05–75–2001–452–A):		
Budget Authority	432,349	22,914
Outlays	394,453	20,906
Rural housing for domestic farm labor (05–75–2004–604–A):		
Budget Authority	9,855	522
Outlays	99	5
Mutual and self-help housing (05–75–2006–604–A):		
Budget Authority	8,288	439
Outlays	663	35
Very low income housing repair grants (05–75–2064–604–A):		
Budget Authority	12,950	686
Outlays	12,303	652
Rural development grant program (05–75–2065–452–A):		
Budget Authority	6,734	357
Outlays	6,397	339
Rural water and waste disposal grants (05–75–2066–452–A):		
Budget Authority	121,103	6,418
Outlays	4,844	257
Rural community fire protection grants (05–75–2067–452–A):		
Budget Authority	3,202	170
Outlays	1,441	76
Rural housing preservation grants (05–75–2070–604–A):		
Budget Authority	19,829	1,051
Outlays	1,190	63
Compensation for construction defects (05–75–2071–371–A):		
Budget Authority	518	27
Outlays	518	27
Agricultural Credit Insurance Fund (05–75–4140–351–A):		
Budget Authority	3,109	165
401(C) Authority— Off. Coll.	112,901	5,984
Direct Loan Limitation	1,625,070	86,129
Guaranteed Loan Limitation	2,875,418	152,397
Outlays	1,129,009	59,837

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A):		
Budget Authority	224,359	11,891
401(C) Authority— Off. Coll.	23,828	1,263
Obligation limitation	285,211	15,116
Direct Loan Limitation	1,911,410	101,305
Outlays	1,173,342	62,187
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A):		
401(C) Authority— Off. Coll.	362	19
Direct Loan Limitation	444,009	23,532
Guaranteed Loan Limitation	99,145	5,255
Outlays	26,054	1,381
Self-help housing land development fund (05–75–4222–371–A):		
Direct Loan Limitation	518	27
Rural development loan fund (05–75–4233–452–A):		
Budget Authority	12,970	687
Direct Loan Limitation	14,504	769
Outlays	1,450	77
Soil Conservation Service		
Conservation operations (05–78–1000–302–A):		
Budget Authority	483,721	25,637
401(C) Authority— Off. Coll.	9,053	480
Outlays	454,170	24,071
Resource conservation and development (05–78–1010–302–A):		
Budget Authority	26,095	1,383
401(C) Authority— Off. Coll.	4,600	244
Outlays	24,720	1,310
Watershed planning (05–78–1068–301–B):		
Budget Authority	8,995	477
401(C) Authority— Off. Coll.	213	11
Outlays	7,950	421
River basin surveys and investigations (05–78–1068–301–C):		
Budget Authority	12,530	664
401(C) Authority— Off. Coll.	166	9
Outlays	11,945	633
Watershed and flood prevention operations (05–78–1068–301–D):		
Budget Authority	179,027	9,488
401(C) Authority— Off. Coll.	11,849	628
Outlays	115,403	6,116
Great plains conservation program (05–78–2268–302–A):		
Budget Authority	21,247	1,126
401(C) Authority— Off. Coll.	41	2
Outlays	9,111	483
Miscellaneous contributed funds (Water resources) (05–78–8210–301–A):		
401(C) Authority	460	24
Outlays	302	16
Miscellaneous contributed funds (Conservation and land mgmt.) (05–78–8210–302–A):		
401(C) Authority	100	5
Outlays	90	5

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Animal and Plant Health Inspection Service		
Salaries and expenses (05–79–1600–352–A):		
Budget Authority	344,010	18,233
401(C) Authority— Off. Coll.	17,771	942
Outlays	314,712	16,680
Buildings and facilities (05–79–1601–352–A):		
Budget Authority	2,638	140
Outlays	728	39
Federal Grain Inspection Service		
Salaries and expenses (05–80–2400–352–A):		
Budget Authority	8,437	447
Outlays	7,467	396
Inspection and weighing services (05–80–4050–352–A):		
401(C) Authority— Off. Coll.	36,856	1,953
Outlays	36,856	1,953
Agricultural Marketing Service		
Marketing services (05–81–2500–352–A):		
Budget Authority	34,890	1,839
401(C) Authority— Off. Coll.	37,278	1,976
Outlays	54,865	2,906
Payments to States and possessions (05–81–2501–352–A):		
Budget Authority	976	52
Outlays	156	8
Perishable Agricultural Commodities Act fund (05–81–5070–352–A):		
401(C) Authority	5,500	292
Outlays	4,131	219
Funds for strengthening markets, income, and supply (section 3 (05–81–5209–605–A):		
401(C) Authority	538,946	28,564
Outlays	116,691	6,185
Milk market orders assessment fund (05–81–8412–351–A):		
401(C) Authority— Off. Coll.	38,709	2,052
Outlays	38,709	2,052
Miscellaneous trust funds (05–81–9972–352–A):		
401(C) Authority	85,979	4,557
Outlays	55,673	2,951
Office of Transportation		
Office of Transportation (05–82–2800–352–A):		
Budget Authority	2,477	131
Outlays	2,058	109
Food Safety and Inspection Service		
Salaries and expenses (05–83–3700–554–A):		
Budget Authority	421,533	22,341
401(C) Authority— Off. Coll.	47,800	2,533
Outlays	436,487	23,134
Exp. & refunds, insp. & grading (05–83–8137–352–A):		
401(C) Authority	1,150	61
Outlays	986	52
Food and Nutrition Service		
Special milk program ASI (G-R-H) (05–84–3502–605–I):		
Budget Authority— ASI	392	392
Outlays	1,125	1,125

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Food donations program (05–84–3503–605–A):		
Budget Authority	246,316	13,055
Outlays	212,480	11,261
Food stamp program (05–84–3505–605–A):		
Budget Authority	54,089	2,867
Outlays	20,955	1,111
Food program administration (05–84–3508–605–A):		
Budget Authority	92,791	4,918
Outlays	85,353	4,524
Supplemental feeding programs (05–84–3510–605–A):		
Budget Authority	3,000	159
Outlays	3,000	159
Child nutrition programs (05–84–3539–605–A):		
Budget Authority	4,135	219
Outlays	4,135	219
Human Nutrition Information Service		
Salaries and Expenses (05–86–3501–352–A):		
Budget Authority	9,159	485
Outlays	5,719	303
Packers and Stockyards Administration		
Packers and Stockyards Administration (05–90–2600–352–A):		
Budget Authority	9,946	527
Outlays	9,271	491
Agricultural Cooperative Service		
Salaries and expenses (05–92–3000–352–A):		
Budget Authority	4,838	256
Outlays	3,106	165
Forest Service		
Construction (05–96–1103–302–A):		
Budget Authority	234,099	12,407
401(C) Authority— Off. Coll.	2,835	150
Outlays	96,474	5,113
Forest research (05–96–1104–302–A):		
Budget Authority	143,384	7,599
401(C) Authority— Off. Coll.	1,262	67
Outlays	109,769	5,818
State and private forestry (05–96–1105–302–A):		
Budget Authority	89,579	4,764
401(C) Authority— Off. Coll.	4,358	231
Outlays	40,312	2,137
National forest system (05–96–1106–302–A):		
Budget Authority	1,335,811	70,798
Outlays	1,068,849	56,636
Land acquisition (05–96–5004–303–A):		
Budget Authority	66,532	3,526
Outlays	26,612	1,410
Range betterment fund (05–96–5207–302–A):		
Budget Authority	4,094	217
Outlays	2,988	158
Acquisition of lands for nat'l forests (05–96–5208–302–A):		
Budget Authority	1,001	53
Outlays	565	30
Acq. of lands to complete land exchanges (05–96–5216–302–A):		
Budget Authority	347	18
Outlays	288	15
Operations and maintenance of quarters (05–96–5219–302–A):		
401(C) Authority	5,852	310
Outlays	1,878	100

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Cooperative work trust fund (05–96–8028–302–A):		
401(C) Authority	315,117	16,701
Outlays	129,173	6,846
Highway Construction: Mount St. Helens National Monument (05–96–8029–401–A):		
Budget Authority	5,557	295
Outlays	3,134	166
Gifts, donations, bequests for forest and rangeland research (05–96–8034–302–A):		
Budget Authority	30	2
Outlays	30	2
Reforestation trust fund (05–96–8046–302–A):		
401(C) Authority	30,000	1,590
Outlays	30,000	1,590
Other appropriations (05–96–9911–302–A):		
Budget Authority	37,388	1,982
Outlays	27,318	1,448
Forest Service permanent appropriations (05–96–9921–606–A):		
401(C) Authority	382,916	20,295
Outlays	362,320	19,203
Forest Service permanent appropriations (05–96–9922–302–A):		
401(C) Authority	140,747	7,460
Outlays	49,002	2,597
Total, Department of Agriculture:		
Budget Authority	9,598,956	508,736
Budget Authority— ASI	392	392
401(C) Authority	14,272,117	756,423
401(C) Authority— Off. Coll.	378,253	20,046
Obligation limitation	1,820,459	96,484
Direct Loan Limitation	18,518,195	981,464
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	8,672,563	459,646
Outlays	23,623,911	1,253,132
Department of Commerce		
General Administration		
Salaries and expenses (06–05–0120–376–A):		
Budget Authority	41,967	2,225
Outlays	40,223	2,132
Grants and loans administration (06–05–0125–452–A):		
Budget Authority	25,718	1,363
Outlays	22,568	1,196
Economic development assistance programs (06–05–2050–452–A):		
Budget Authority	188,581	9,995
Guaranteed Loan Limitation	194,250	10,295
Outlays	18,858	999
Bureau of the Census		
Salaries and expenses (06–07–0401–376–A):		
Budget Authority	99,833	5,291
401(C) Authority— Off. Coll.	8,000	424
Outlays	96,852	5,133
Periodic censuses and programs (06–07–0450–376–A):		
Budget Authority	580,775	30,781
Outlays	445,454	23,609

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Economic and Statistical Analysis		
Salaries and expenses (06–06–1500–376–A):		
Budget Authority	34,202	1,813
401(C) Authority—		
Off. Coll.	395	21
Outlays	30,834	1,634
International Trade Administration		
Operations and administration (06–25–1250–376–A):		
Budget Authority	174,068	9,226
401(C) Authority—		
Off. Coll.	15,960	846
Outlays	138,565	7,344
Export Administration		
Operations and administration (06–30–0300–376–A):		
Budget Authority	41,704	2,210
Outlays	29,401	1,558
Minority Business Development Agency		
Minority business development (06–40–0201–376–A):		
Budget Authority	41,180	2,183
Outlays	12,909	684
United States Travel and Tourism Administration		
Salaries and expenses (06–44–0700–376–A):		
Budget Authority	14,322	759
401(C) Authority—		
Off. Coll.	1,450	77
Outlays	12,191	646
National Oceanic and Atmospheric Administration		
Operations, research, and facilities (06–48–1450–306–A):		
Budget Authority	1,334,243	70,715
401(C) Authority—		
Off. Coll.	11,434	606
Outlays	926,135	49,085
Coastal energy impact fund (06–48–4315–452–A):		
401(C) Authority—		
Off. Coll.	5,200	276
Outlays	5,200	276
Federal ship financing fund, fishing vessels (06–48–4417–376–A):		
401(C) Authority—		
Off. Coll.	7,300	387
Guaranteed Loan Limitation	480,000	25,440
Outlays	7,300	387
Fishermen's contingency fund (06–48–5120–376–A):		
Budget Authority	744	39
Outlays	708	38
Foreign fishing observer fund (06–48–5122–376–A):		
Budget Authority	1,991	106
Outlays	1,914	101
Fisheries Promotional Fund (06–48–5124–376–A):		
Budget Authority	3,106	165
Outlays	1,712	91
Promote and develop fishery products and research (06–48–5139–376–A):		
401(C) Authority	3,350	178
Outlays	1,843	98
Aviation weather services program (06–48–8105–306–A):		
Budget Authority	29,751	1,577
Outlays	29,751	1,577

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Patent and Trademark Office		
Salaries and expenses (06–51–1006–376–A):		
Budget Authority	113,222	6,001
401(C) Authority—		
Off. Coll.	180,032	9,542
Outlays	161,290	8,548
Technology Administration		
Information products and services (06–53–8546–376–A):		
401(C) Authority	50,000	2,650
Outlays	35,114	1,861
National Institute of Standards and Technology		
Scientific and technical research and services (06–55–0500–376–A):		
Budget Authority	163,596	8,671
Outlays	127,805	6,763
Working capital fund (06–55–4650–376–A):		
Budget Authority	1,563	83
Outlays	782	41
National Telecommunications and Information Admin.		
Salaries and expenses (06–60–0550–376–A):		
Budget Authority	14,164	751
Outlays	11,331	601
Public telecommunications facilities, planning and construcito (06–60–0551–503–A):		
Budget Authority	20,724	1,098
Outlays	2,404	127
Totsl, Department of Commerce:		
Budget Authority	2,925,474	155,052
401(C) Authority	53,350	2,828
401(C) Authority—		
Off. Coll.	229,771	12,179
Guaranteed Loan Limitation	674,250	35,735
Outlays	2,160,944	114,529
Department of Defense—Military		
Military Personnel		
Military personnel, Marine Corps (07–05–1105–051–A):		
Budget Authority	5,715,065	245,749
Outlays	5,489,910	236,066
Reserve personnel, Marine Corps (07–05–1108–051–A):		
Budget Authority	316,540	13,611
Outlays	291,217	12,522
Reserve personnel, Navy (07–05–1405–051–A):		
Budget Authority	1,596,123	68,633
Outlays	1,473,221	63,348
Military personnel, Navy (07–05–1453–051–A):		
Budget Authority	19,003,439	817,148
Outlays	18,235,700	784,135
Military personnel, Army (07–05–2010–051–A):		
Budget Authority	24,517,882	1,054,269
Outlays	23,240,500	999,342
National Guard personnel, Army (07–05–2060–051–A):		
Budget Authority	3,308,429	142,262
Outlays	2,994,790	128,776
Reserve personnel, Army (07–05–2070–051–A):		
Budget Authority	2,220,108	95,465
Outlays	2,031,620	87,360

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military personnel, Air Force (07–05–3500–051–A):		
Budget Authority	20,100,130	864,306
Outlays	19,304,164	830,079
Reserve personnel, Air Force (07–05–3700–051–A):		
Budget Authority	657,553	28,275
Outlays	614,154	26,409
National Guard personnel, Air Force (07–05–3850–051–A):		
Budget Authority	1,031,188	44,341
Outlays	977,257	42,022
Operation and Maintenance		
Operation and maintenance, Defense agencies (07–10–0100–051–A):		
Budget Authority	7,911,928	340,213
Outlays	6,535,252	281,016
Court of Military Appeals, Defense (07–10–0104–051–A):		
Budget Authority	3,638	156
Outlays	3,129	135
Drug Interdiction Defense (07–10–0105–051–A):		
Budget Authority	217,560	9,355
Outlays	97,902	4,210
Goodwill Games (07–10–0106–051–A):		
Budget Authority	5,180	223
Outlays	2,296	99
Foreign currency fluctuations, Defense (07–10–0801–051–A):		
Unobligated Balances–Defense	414,152	17,809
Humanitarian Assistance (07–10–0819–051–A):		
Budget Authority	10,360	445
Outlays	7,594	327
Operation and maintenance, Marine Corps (07–10 1106–051–A):		
Budget Authority	1,883,771	81,002
Outlays	1,314,872	56,539
Operation and maintenance, Marine Corps Reserve (07–10–1107–051–A):		
Budget Authority	80,334	3,454
Outlays	55,752	2,397
National Board for the Promotion of Rifle Practice, Army (07–10–1705–051–A):		
Budget Authority	4,460	192
Outlays	3,010	129
Operation and maintenance, Navy (07–10–1804–051–A):		
Budget Authority	25,832,372	1,110,792
Outlays	18,495,979	795,327
Operation and maintenance, Navy Reserve (07–10–1806–051–A):		
Budget Authority	1,013,872	43,596
Outlays	665,100	28,599
Operation and maintenance, Army (07–10–2020–051–A):		
Budget Authority	23,153,258	995,590
Outlays	18,175,307	781,536
Operation and maintenance, Army National Guard (07–10–2065–051–A):		
Budget Authority	1,869,131	80,373
Outlays	1,397,175	60,079
Operation and maintenance, Army Reserve (07–10–2080–051–A):		
Budget Authority	825,122	35,480
Outlays	594,087	25,546
Operation and maintenance, Air Force (07–10–3400–051–A):		
Budget Authority	22,687,585	975,566
Outlays	17,401,378	748,259

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operation and maintenance, Air Force Reserve (07–10–3740–051–A):		
Budget Authority	1,073,096	46,143
Outlays	859,550	36,961
Operation and maintenance, Air National Guard (07–10–3840–051–A):		
Budget Authority	2,045,955	87,976
Outlays	1,673,592	71,964
Procurement		
Procurement, Defense agencies (07–15–0300–051–A):		
Budget Authority	1,253,767	53,912
Unobligated Balances–Defense	349,815	15,042
Outlays	392,878	16,894
National Guard and Reserve Equipment (07–15–0350–051–A):		
Budget Authority	1,179,798	50,731
Unobligated Balances–Defense	442,388	19,023
Outlays	168,707	7,254
Defense Production Act purchases (07–15–0360–051–A):		
Budget Authority	34,706	1,492
Unobligated Balances–Defense	45,850	1,972
Chemical agents and munitions destruction, Defense (07–15–0390–051–A):		
Budget Authority	185,962	7,996
Unobligated Balances–Defense	31,788	1,367
Outlays	77,302	3,324
Procurement, Marine Corps (07–15–1109–051–A):		
Budget Authority	1,343,526	57,772
Unobligated Balances–Defense	266,802	11,472
Outlays	317,235	13,641
Aircraft procurement, Navy (07–15–1506–051–A):		
Budget Authority	9,738,094	418,738
Unobligated Balances–Defense	1,865,544	80,216
Outlays	1,479,464	63,617
Weapons procurement, Navy (07–15–1507–051–A):		
Budget Authority	6,364,117	273,657
Unobligated Balances–Defense	2,295,631	98,712
Outlays	909,273	39,099
Shipbuilding and conversion, Navy (07–15–1611–051–A):		
Budget Authority	9,922,238	426,656
Unobligated Balances–Defense	9,802,211	421,495
Outlays	1,130,211	48,509
Other procurement, Navy (07–15–1810–051–A):		
Budget Authority	5,020,224	215,870
Unobligated Balances–Defense	1,804,590	77,597
Outlays	853,102	36,683
Aircraft procurement, Army (07–15–2031–051–A):		
Budget Authority	2,966,568	128,422
Unobligated Balances–Defense	555,538	23,888
Outlays	655,290	28,177
Missile procurement, Army (07–15–2032–051–A):		
Budget Authority	2,695,680	115,914
Unobligated Balances–Defense	779,755	33,529
Outlays	278,034	11,955

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Procurement of weapons and tracked combat vehicles, Army (07–15–2033–051–A):		
Budget Authority	2,932,246	126,087
Unobligated Balances–Defense	1,303,644	56,057
Outlays	211,794	9,107
Procurement of ammunition, Army (07–15–2034–051–A):		
Budget Authority	2,085,670	89,684
Unobligated Balances–Defense	168,801	7,258
Outlays	721,430	31,021
Other procurement, Army (07–15–2035–051–A):		
Budget Authority	4,846,357	208,393
Unobligated Balances–Defense	1,602,125	68,891
Outlays	548,121	23,569
Aircraft procurement, Air Force (07–15–3010–051–A):		
Budget Authority	16,181,769	695,816
Unobligated Balances–Defense	6,053,661	260,307
Outlays	1,778,835	76,490
Missile procurement, Air Force (07–15–3020–051–A):		
Budget Authority	7,476,482	321,489
Unobligated Balances–Defense	2,758,717	118,625
Outlays	2,350,001	101,050
Other procurement, Air Force (07–15–3080–051–A):		
Budget Authority	8,483,824	364,804
Unobligated Balances–Defense	2,139,693	92,007
Outlays	5,832,310	250,789
Research, Development, Test, and Evaluation		
Research, development, test, and evaluation, Defense agencies (07–20–0400–051–A):		
Budget Authority	8,508,262	365,855
Unobligated Balances–Defense	629,063	27,050
Outlays	4,666,431	200,657
Developmental test and evaluation, Defense (07–20–0450–051–A):		
Budget Authority	155,296	6,678
Unobligated Balances–Defense	34,398	1,479
Outlays	40,785	1,754
Operational test and evaluation, Defense (07–20–0460–051–A):		
Budget Authority	73,798	3,173
Unobligated Balances–Defense	20,694	890
Outlays	11,330	488
Research, development, test, and evaluation, Navy (07–20–1319–051–A):		
Budget Authority	9,685,029	416,456
Unobligated Balances–Defense	482,879	20,764
Outlays	5,643,187	242,657
Research, development, test, and evaluation, Army (07–20–2040–051–A):		
Budget Authority	5,324,680	228,961
Unobligated Balances–Defense	395,274	16,997
Outlays	3,083,056	132,571
Research, development, test, and evaluation, Air Force (07–20–3600–051–A):		
Budget Authority	15,320,436	658,779
Unobligated Balances–Defense	1,708,045	73,446
Outlays	9,067,866	389,910

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military Construction		
Military construction, Defense agencies (07–25–0500–051–A):		
Budget Authority	703,996	30,272
Unobligated Balances–Defense	356,803	15,343
Outlays	194,126	8,347
Foreign currency fluctuations, construction (07–25–0803–051–A):		
Unobligated Balances–Defense	195,814	8,420
North Atlantic Treaty Organization infrastructure (07–25–0804–051–A):		
Budget Authority	509,712	21,918
Unobligated Balances–Defense	133,905	5,758
Military construction, Navy (07–25–1205–051–A):		
Budget Authority	1,633,963	70,260
Unobligated Balances–Defense	374,393	16,099
Outlays	477,988	20,553
Military construction, Naval Reserve (07–25–1235–051–A):		
Budget Authority	63,092	2,713
Unobligated Balances–Defense	10,927	470
Outlays	11,103	477
Military construction, Army (07–25–2050–051–A):		
Budget Authority	1,186,678	51,027
Unobligated Balances–Defense	437,348	18,806
Outlays	519,686	22,347
Military construction, Army National Guard (07–25–2085–051–A):		
Budget Authority	237,408	10,209
Unobligated Balances–Defense	44,743	1,924
Outlays	31,037	1,335
Military construction, Army Reserve (07–25–2086–051–A):		
Budget Authority	89,071	3,830
Unobligated Balances–Defense	21,950	944
Outlays	15,021	646
Military construction, Air Force (07–25–3300–051–A):		
Budget Authority	1,259,699	54,167
Unobligated Balances–Defense	649,510	27,929
Outlays	305,474	13,135
Military construction, Air Force Reserve (07–25–3730–051–A):		
Budget Authority	73,142	3,145
Unobligated Balances–Defense	23,702	1,019
Outlays	10,169	437
Military construction, Air National Guard (07–25–3830–051–A):		
Budget Authority	164,214	7,061
Unobligated Balances–Defense	53,309	2,292
Outlays	17,402	748
Family Housing		
Family housing, Army (07–30–0702–051–A):		
Budget Authority	1,582,557	68,050
Unobligated Balances–Defense	120,034	5,161
Outlays	1,045,804	44,970

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Family housing, Navy and Marine Corps (07–30–0703–051–A):		
Budget Authority	827,806	35,598
Unobligated Balances–Defense	173,606	7,465
Outlays	360,863	15,508
Family housing, Air Force (07–30–0704–051–A):		
Budget Authority	954,037	41,024
Unobligated Balances–Defense	105,938	4,555
Outlays	567,253	24,392
Family housing, Defense agencies (07–30–0706–051–A):		
Budget Authority	21,445	922
Unobligated Balances–Defense	176	8
Outlays	13,568	583
Revolving and Management Funds		
National Defense Stockpile transaction fund (07–40–4555–051–A):		
Budget Authority	34,706	1,492
Unobligated Balances–Defense	460,973	19,822
Navy stock fund (07–40–4911–051–A):		
Budget Authority	191,349	8,226
Outlays	63,145	2,715
Air Force stock fund (07–40–4921–051–A):		
Budget Authority	193,626	8,326
Outlays	63,897	2,748
Defense stock fund (07–40–4961–051–A):		
Budget Authority	25,900	1,114
Outlays	8,547	368
Army stock fund (07–40–4991–051–A):		
Budget Authority	302,408	13,004
Outlays	99,795	4,291
Allowances		
GRH aggregate spendout rate requirement (07–45–9920–051–A):		
Outlays	–4,045,000	–173,935
Total, Department of Defense—Military:		
Budget Authority	298,937,436	12,854,308
Unobligated Balances–Defense	39,114,189	1,681,910
Outlays	181,910,839	7,822,156
Department of Defense—Civil		
Cemeterial Expenses, Army		
Salaries and expenses (08–05–1805–705–A):		
Budget Authority	13,686	725
Outlays	10,206	541
Corps of Engineers—Civil		
Flood control, Mississippi River and tributaries (08–10–3112–301–A):		
Budget Authority	336,000	17,808
401(C) Authority—Off. Coll.	195	10
Outlays	245,475	13,010
General investigations (08–10–3121–301–A):		
Budget Authority	131,886	6,948
Outlays	89,138	4,724
Construction, general (08–10–3122–301–A):		
Budget Authority	980,200	51,951
401(C) Authority—Off. Coll.	250	13
Outlays	392,330	20,793
Operation and maintenance, general (08–10–3123–301–A):		
Budget Authority	1,193,504	63,256
401(C) Authority—Off. Coll.	3,500	186
Outlays	970,238	51,423
Operation and maintenance, general (08–10–3123–303–A):		
Budget Authority	20,000	1,060
Outlays	20,000	1,060
General expenses (08–10–3124–301–A):		
Budget Authority	128,800	6,826
Outlays	103,040	5,461
Regulatory Program (08–10–3126–301–A):		
Budget Authority	99,427	3,880
Outlays	65,955	3,496
Revolving fund (08–10–4902–301–A):		
Budget Authority	10,000	530
Outlays	8,009	424
Inland waterways trust fund (08–10–8861–301–A):		
Budget Authority	119,000	6,307
Outlays	119,000	6,307
Rivers and harbors contributed funds (08–10–8862–301–A):		
401(C) Authority	215,550	11,424
Outlays	100,851	5,334
Harbor maintenance trust fund (08–10–8863–301–A):		
Budget Authority	164,000	8,692
Outlays	164,000	8,692
Permanent appropriations (Water resources) (08–10–9921–301–A):		
401(C) Authority	7,000	371
Outlays	48	3
Permanent appropriations (08–10–9921–806–A):		
401(C) Authority	5,000	265
Soldiers' and Airmen's Home		
Operation and maintenance (08–20–8931–705–A):		
Budget Authority	38,730	2,053
401(C) Authority—Off. Coll.	144	8
Outlays	33,874	1,795
Capital outlay (08–20–8932–705–A):		
Budget Authority	15,354	814
Outlays	5,374	285
Forest & Wildlife Conservation, Mil. Reservations		
Wildlife conservation (08–30–5095–303–A):		
401(C) Authority	2,100	111
Outlays	1,400	74
Total, Department of Defense—Civil:		
Budget Authority	3,219,788	170,650
401(C) Authority	229,850	12,171
401(C) Authority—Off. Coll.	4,089	217
Outlays	2,328,729	123,422
Department of Education		
Office of Elementary and Secondary Education		
Indian education (18–10–0101–501–A):		
Budget Authority	74,138	3,929
Outlays	10,739	569
Impact aid (18–10–0102–501–A):		
Budget Authority	759,489	40,253
Outlays	604,356	32,031
Compensatory education for the disadvantaged (18–10–0900–501–A):		
Budget Authority	4,743,966	251,431
Outlays	569,278	30,172
School improvement programs (18–10–1000–501–A):		
Budget Authority	1,260,910	66,826
Outlays	151,310	8,019
Off. of Bilingual Ed. & Minority Languages Affairs		
Bilingual, immigrant, and refugee education (18–15–1300–501–A):		
Budget Authority	204,500	10,838
Outlays	24,540	1,301
Office of Special Education & Rehabilitative Svcs.		
Education for the handicapped (18–20–0300–501–A):		
Budget Authority	2,037,229	107,973
Outlays	251,471	13,328
Vocational rehabilitation (18–20–0301–506–A):		
Budget Authority	225,403	11,946
Outlays	173,560	9,199
Vocational rehab split for G-R-H: ASI (G-R-H) (18–20–0301–508–B):		
Budget Authority—ASI	60,400	60,400
Outlays	46,500	46,500
Special institutions for the handicapped (18–20–0304–501–C):		
Budget Authority	21,053	1,116
Outlays	19,790	1,049
Special institutions for the handicapped (APHB) (18–20–0604–501–D):		
Budget Authority	5,527	293
Outlays	5,527	293
Special institutions for the handicapped (NTID) (18–20–0604–502–B):		
Budget Authority	34,526	1,830
Outlays	34,526	1,830
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C):		
Budget Authority	47,321	2,508
Outlays	44,543	2,361
Office of Vocational and Adult Education		
Vocational and adult education (18–30–0400–501–A):		
Budget Authority	1,112,110	58,942
401(C) Authority	7,148	379
Outlays	134,311	7,118
Office of Postsecondary Education		
Student financial assistance (18–40–0200–502–A):		
Budget Authority	6,023,636	319,253
Outlays	1,448,201	76,755
Higher education (18–40–0201–502–A):		
Budget Authority	585,698	31,083
Outlays	86,922	4,607
Guaranteed student loans (18–40–0230–502–A):		
Budget Authority—Spec. Rules	42,170	42,170
Outlays	33,736	33,736
College housing and academic facilities loans (18–40–0242–502–A):		
Budget Authority	35,843	1,900
Direct Loan Limitation	30,707	1,627

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Howard University (18–40–0903–502–A):		
Budget Authority	185,416	9,827
Outlays	176,981	9,380
College housing loans (18–40–4250–502–A):		
401(C) Authority—Off. Coll.	650	34
Outlays	650	34
Office of Educational Research and Improvement		
Libraries (18–69–0104–503–A):		
Budget Authority	142,139	7,533
Outlays	50,148	2,658
Education research and statistics (18–50–1100–503–A):		
Budget Authority	81,015	4,294
Outlays	34,836	1,846
Departmental Management		
Office for Civil Rights (18–80–0700–751–A):		
Budget Authority	43,301	2,295
Outlays	35,919	1,904
Salaries and expenses (Elementary, secondary and vocational ed.) (18–80–0800–501–A):		
Budget Authority	20,689	1,097
Outlays	17,173	910
Salaries and expenses (Higher education) (18–80–0800–502–A):		
Budget Authority	89,997	4,770
Outlays	74,697	3,959
Salaries and expenses (Research and general education aids) (18–80–0800–503–A):		
Budget Authority	127,152	6,739
Outlays	105,537	5,593
Salaries and expenses (Social services) (18–80–0800–506–A):		
Budget Authority	22,383	1,186
Outlays	18,578	985
Office of the Inspector General (18–80–1400–751–A):		
Budget Authority	19,359	1,026
Outlays	16,010	849
Total, Department of Education:		
Budget Authority	17,903,218	948,870
Budget Authority—ASI	60,400	60,400
Budget Authority—Spec. Rules	42,170	42,170
401(C) Authority	7,148	379
401(C) Authority—Off. Coll.	650	34
Direct Loan Limitation	30,707	1,627
Outlays	4,169,840	296,986
Department of Energy		
Atomic Energy Defense Activities		
Atomic energy defense activities (19–10–0220–053–A):		
Budget Authority	9,656,034	415,209
Unobligated Balances–Defense	85,000	3,655
Outlays	6,038,441	259,686
Energy Programs		
Geothermal resources development fund (19–20–0205–271–A):		
Budget Authority	75	4
Outlays	75	4
Federal Energy Regulatory Commission (19–20–0212–276–A):		
Budget Authority	116,550	6,177
Outlays	109,267	5,789
Fossil energy research and development (19–20–0213–271–A):		
Budget Authority	394,472	20,907
Outlays	157,789	8,363
Energy conservation (Energy conservation) (19–20–0215–272–A):		
Budget Authority	326,721	17,316
Outlays	3,678	195
Energy information administration (19–20–0216–276–A):		
Budget Authority	65,227	3,457
Outlays	42,398	2,247
Economic regulation (19–20–0217–276–A):		
Budget Authority	22,206	1,177
Outlays	13,990	741
Strategic petroleum reserve (19–20–0218–274–A):		
Budget Authority	179,700	9,524
Outlays	98,834	5,238
Naval petroleum and shale reserves (19–20–0219–271–A):		
Budget Authority	191,757	10,163
Outlays	102,015	5,407
General science and research activities (19–20–0222–251–A):		
Budget Authority	1,114,431	59,065
Outlays	758,926	40,223
Energy supply, R&D activities (19–20–0224–271–A):		
Budget Authority	2,215,486	117,420
Outlays	1,107,733	58,710
Uranium supply and enrichment activities (19–20–0226–271–A):		
401(C) Authority—Off. Coll.	1,325,900	70,273
Outlays	1,325,900	70,273
SPR petroleum (19–20–0233–274–A):		
Budget Authority	158,157	8,435
401(C) Authority	91,555	4,852
Outlays	208,826	10,868
Emergency preparedness (19–20–0234–274–A):		
Budget Authority	6,384	339
Outlays	5,115	271
Clean Coal Technology (19–20–0235–271–A):		
401(C) Authority	710,000	37,630
Outlays	25,650	1,359
Isotope production and distribution fund (19–20–4180–271–A):		
Budget Authority	16,243	861
401(C) Authority—Off. Coll.	16,452	872
Outlays	16,452	872
Payments to states under Federal Power Act (19–20–5105–806–A):		
401(C) Authority	2,446	130
Nuclear waste disposal fund (19–20–5227–271–A):		
Budget Authority	346,000	18,338
Outlays	173,000	9,169
Power Marketing Administration		
Operation and maintenance, Southeastern Power Administration (19–50–0302–271–A):		
Budget Authority	932	49
Outlays	848	45
Operation and maintenance, Southwestern Power Administration (19–50–0303–271–A):		
Budget Authority	8,195	434
Outlays	4,713	250
Operation and maintenance, Alaska Power Administration (19–50–0304–271–A):		
Budget Authority	763	40
Outlays	366	19
Bonneville Power Administration fund (19–50–4045–271–A):		
401(C) Authority—Off. Coll.	45,800	2,427
Outlays	45,800	2,427
Colorado river basins power marketing fund, WAPA (19–50–4452–271–A):		
401(C) Authority—Off. Coll.	7,868	408
Outlays	7,868	408
Construction, rehabilitation, operation and maintenance, WAPA (19–50–5068–271–A):		
Budget Authority	41,376	2,193
Outlays	14,234	754
Departmental Administration		
Departmental administration (Energy information, policy, & reg.) (19–60–0228–276–A):		
Budget Authority	205,056	10,868
401(C) Authority—Off. Coll.	150,000	7,950
Outlays	273,033	14,471
Office of the Inspector General (19–60–0236–276–A):		
Budget Authority	22,959	1,217
Outlays	22,959	1,217
Total, Department of Energy:		
Budget Authority	15,089,715	703,193
401(C) Authority	804,001	42,612
401(C) Authority—Off. Coll.	1,545,820	81,928
Unobligated Balances–Defense	85,000	3,655
Outlays	10,553,652	498,948
Department of Health and Human Services		
Food and Drug Administration		
Program expenses (09–10–0800–554–A):		
Budget Authority	533,071	28,253
Outlays	426,226	22,590
Buildings and facilities (09–10–0803–554–A):		
Budget Authority	24,812	1,315
Outlays	2,977	158
Revolving fund for certification and other services (09–10–4309–554–A):		
401(C) Authority—Off. Coll.	3,216	170
Outlays	3,216	170
Health Resources and Services		
Health resources and services (health care services) (09–15–0350–551–A):		
Budget Authority	978,575	51,864
401(C) Authority—Off. Coll.	365	19
Direct Loan Limitation	494	26
Outlays	589,849	31,262
Health resources and services 2% split (G-R-H) (09–15–0350–551–G):		
Budget Authority—Spec. Rules	9,966	9,966
Outlays	6,009	6,009

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Health resources and services (education and training) (09-15-0350-553-A):		
Budget Authority	164,730	9,791
Outlays	111,374	5,903
Indian Health		
Tribal Health Administration (09-17-0390-551-A):		
Budget Authority	149,994	7,950
Outlays	125,923	6,674
Tribal and Federal Health Services 2% split (G-R-H) (09-17-0390-551-G):		
Budget Authority—		
Spec. Rules	18,176	18,176
Outlays	14,819	14,819
Indian health facilities 2% split (G-R-H) (09-17-0391-551-G):		
Budget Authority—		
Spec. Rules	1,233	1,233
Outlays	210	210
Centers for Disease Control		
Disease control (Health care services) (09-20-0943-551-A):		
Budget Authority	892,168	47,285
Outlays	508,535	26,952
Disease control (Health research) (09-20-0943-552-A):		
Budget Authority	123,346	6,537
Outlays	70,307	3,726
National Institutes of Health		
National Library of Medicine (Health research) (09-25-0807-552-A):		
Budget Authority	26,237	1,391
Outlays	16,253	861
National Library of Medicine (Education and training) (09-25-0807-553-A):		
Budget Authority	50,257	2,664
Outlays	31,132	1,650
John E. Fogarty International Center (09-25-0819-552-A):		
Budget Authority	16,391	869
Outlays	7,533	399
Buildings and facilities (09-25-0838-552-A):		
Budget Authority	39,878	2,114
Outlays	7,976	423
National Institute on Aging (Health research) (09-25-0843-552-A):		
Budget Authority	221,925	11,762
Outlays	67,827	3,594
National Institute on Aging (Education and training) (09-25-0843-553-A):		
Budget Authority	8,817	467
Outlays	2,671	142
Nat. Inst. Child Health and Human Development (Health research) (09-25-0844-552-A):		
Budget Authority	423,708	22,457
Outlays	130,306	6,906
Nat. Inst. Child Health and Human Development (Ed. & training) (09-25-0844-553-A):		
Budget Authority	17,197	911
Outlays	1,719	91
Office of the Director (Health research) (09-25-0846-552-A):		
Budget Authority	67,877	3,597
Outlays	41,360	2,192
Office of the Director (Education and training) (09-25-0846-553-A):		
Budget Authority	7,050	374
Outlays	4,295	228

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Research resources (Health research) (09-25-0848-552-A):		
Budget Authority	368,820	19,547
Outlays	204,685	10,848
Research resources (Education and training) (09-25-0848-553-A):		
Budget Authority	2,362	125
Outlays	141	7
National Cancer Institute (Health research) (09-25-0849-552-A):		
Budget Authority	1,596,191	84,598
Outlays	652,511	34,583
National Cancer Institute (Education and training) (09-25-0849-553-A):		
Budget Authority	34,419	1,824
Outlays	1,199	64
National Institute of General Medical Sciences (Health research) (09-25-0851-552-A):		
Budget Authority	630,153	33,398
Outlays	252,081	13,359
National Institute of General Medical Sciences (Ed. & training) (09-25-0851-553-A):		
Budget Authority	76,717	4,066
Outlays	30,696	1,626
National Institute of Environmental Health Sciences (Research) (09-25-0862-552-A):		
Budget Authority	221,892	11,760
Outlays	110,877	5,876
National Institute of Environmental Health Sciences (Ed.&train.) (09-25-0862-553-A):		
Budget Authority	9,713	515
Outlays	4,856	257
National Heart, Lung and Blood Institute (Health research) (09-25-0872-552-A):		
Budget Authority	1,039,894	55,114
Outlays	397,118	21,047
National Heart, Lung and Blood Institute (Education & training) (09-25-0872-553-A):		
Budget Authority	43,621	2,312
Outlays	1,740	92
National Institute of Dental Research (Health research) (09-25-0873-552-A):		
Budget Authority	129,587	6,868
Outlays	66,052	3,501
National Institute of Dental Research (Education and training) (09-25-0873-553-A):		
Budget Authority	5,922	314
Outlays	2,959	157
National Inst. of Diabetes, and Digestive and Kidney Diseases (09-25-0884-552-A):		
Budget Authority	557,742	29,560
Outlays	201,807	10,696
National Inst. of Diabetes, and Digestive and Kidney Diseases (09-25-0884-553-A):		
Budget Authority	22,099	1,171
Outlays	6,695	355
National Institute of Allergy & Infectious Diseases (Research) (09-25-0885-552-A):		
Budget Authority	754,055	39,965
Outlays	217,785	11,542
National Institute of Allergy & Infectious Diseases (Ed.&train.) (09-25-0885-553-A):		
Budget Authority	15,106	801
Outlays	2,264	120
National Institute of Neurological Disorders and Stroke (09-25-0886-552-A):		
Budget Authority	484,570	25,682
Outlays	185,440	9,828
National Institute of Neurological Disorders and Stroke (09-25-0886-553-A):		
Budget Authority	12,802	678
Outlays	3,660	194

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Eye Institute (Health research) (09-25-0887-552-A):		
Budget Authority	233,517	12,376
Outlays	78,437	4,157
National Eye Institute (Education and training) (09-25-0887-553-A):		
Budget Authority	6,234	330
Outlays	596	32
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09-25-0888-552-A):		
Budget Authority	159,727	8,466
Outlays	58,285	3,089
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09-25-0888-553-A):		
Budget Authority	6,007	318
Outlays	2,132	113
National Center for Nursing Research (09-25-0889-552-A):		
Budget Authority	26,233	1,390
Outlays	8,390	445
National Center for Nursing Research (09-25-0889-553-A):		
Budget Authority	3,954	210
Outlays	1,265	67
NID and Other Communication Disorders (09-25-0890-552-A):		
Budget Authority	87,200	4,622
Outlays	33,357	1,768
NID and Other Communication Disorders (09-25-0890-553-A):		
Budget Authority	2,500	132
Outlays	733	39
Alcohol,Drug Abuse, & Mental Health Administration		
Federal subsidy for St. Elizabeths Hospital (09-30-1300-551-A):		
Budget Authority	24,566	1,302
Outlays	24,566	1,302
Alcohol, drug abuse, and mental health (Health care services) (09-30-1361-551-A):		
Budget Authority	1,150,798	60,992
Outlays	739,963	39,218
Alcohol, drug abuse, and mental health (Health research) (09-30-1361-552-A):		
Budget Authority	713,040	37,791
Outlays	626,738	33,217
Alcohol, drug abuse, and mental health (Education and training) (09-30-1361-553-A):		
Budget Authority	46,469	2,463
Outlays	36,711	1,946
Office of Assistant Secretary for Health		
Public health service management (Health care services) (09-37-1101-551-A):		
Budget Authority	45,230	2,397
Outlays	30,274	1,605
Public health service management (Health research) (09-37-1101-552-A):		
Budget Authority	28,579	1,409
Outlays	20,282	1,075
Health Care Financing Administration		
Program management (Health care services) (09-38-0511-551-A):		
Budget Authority	86,841	4,592
Outlays	76,836	4,062
Program management (Health research) (09-38-0511-552-A):		
Budget Authority	10,236	542
Outlays	921	49

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Health maintenance organization loan and loan guarantee fund (09-38-4420-551-A):		
Obligation limitation	5,000	265
Outlays	-5,000	-265
Federal supplementary medical insurance trust fund (09-38-8004-571-A):		
401(C) Authority	53,440	2,832
Obligation limitation	1,253,303	66,425
Outlays	1,131,333	59,961
FSMI 2% split (G-R-H) (09-38-8004-571-S):		
401(C) Authority—		
Spec. Rules	372,000	372,000
Outlays	372,000	372,000
Federal hospital insurance trust fund (09-38-8005-571-A):		
401(C) Authority	201,038	10,655
Obligation limitation	1,294,537	68,616
Outlays	1,075,591	57,028
FHI 2% split (G-R-H) (09-38-8005-571-S):		
401(C) Authority—.		
Spec. Rules	1,140,000	1,140,000
Outlays	1,140,000	1,140,000
Federal Catastrophic drug insurance trust fund (09-38-8183-571-S):		
401(C) Authority—		
Spec. Rules	2,560	2,560
Outlays	2,560	2,560
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-A):		
Obligation limitation	129,208	6,848
Outlays	158,647	8,362
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-S):		
401(C) Authority—		
Spec. Rules	12,000	12,000
Outlays	12,000	12,000
Social Security Administration		
Supplemental security income program (09-60-0406-609-A):		
Budget Authority	821,257	43,527
Outlays	821,257	43,527
Special benefits for disabled coal miners (09-60-0409-601-A):		
Budget Authority	6,943	368
Outlays	6,943	368
Family Support Administration		
Program administration (09-70-1500-609-A):		
Budget Authority	84,834	4,496
401(C) Authority—		
Off. Coll.	450	24
Outlays	83,942	5,369
Family support payment to States (CSE) (09-70-1501-609-B):		
Budget Authority	1,309,000	69,377
Outlays	1,309,000	69,377
Low income home energy assistance (09-70-1502-609-A):		
Budget Authority	1,432,995	75,949
Outlays	1,304,025	69,113
Refugee and Entrant Assistance (09-70-1503-609-A):		
Budget Authority	396,121	20,994
Outlays	257,479	13,646
Community services block grant (09-70-1504-506-A):		
Budget Authority	384,300	20,998
Outlays	272,087	14,420
Work incentives (09-70-1505-504-A):		
Budget Authority	94,732	5,021
Outlays	89,048	4,720

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Interim assistance to States for legalization (09-70-1506-506-A):		
401(C) Authority	870,000	46,110
Outlays	217,500	11,528
Payments to states for AFDC work programs (09-70-1509-609-A):		
Budget Authority	257,721	13,659
Outlays	257,721	13,659
Human Development Services		
Social services block grant (09-80-1634-506-A):		
Budget Authority	2,700,000	143,100
Outlays	2,565,000	135,945
Human development services (09-80-1639-506-A):		
Budget Authority	2,667,229	141,383
Outlays	1,463,800	77,587
Payments to State for foster care and adoption assistance (09-80-1645-506-A):		
Budget Authority—		
Spec. Rules	5,132	5,132
Outlays	3,683	3,683
Departmental Management		
General Departmental administration (09-90-0120-609-A):		
Budget Authority	70,202	3,721
Outlays	49,141	2,604
Policy research (09-90-0122-609-A):		
Budget Authority	8,136	431
Outlays	3,255	173
Office of the Inspector General (09-90-0128-609-A):		
Budget Authority	51,247	2,716
Outlays	38,435	2,037
Office for Civil Rights (09-90-0135-751-A):		
Budget Authority	16,680	884
Outlays	15,178	804
Office of Consumer Affairs (09-90-0137-506-A):		
Budget Authority	1,778	94
Outlays	1,422	75
Total, Department of Health and Human Services:		
Budget Authority	22,713,606	1,203,819
Budget Authority—		
Spec. Rules	34,507	34,507
401(C) Authority	1,124,478	59,597
401(C) Authority—		
Off. Coll.	4,031	213
401(C) Authority—		
Spec. Rules	1,526,560	1,526,560
Obligation limitation	2,882,148	142,154
Direct Loan Limitation	484	26
Outlays	18,876,650	2,469,526
Health and Human Services Social Security		
Social Security		
Federal old-age and survivors insurance trust fund (16-05-8006-651-A):		
Obligation limitation	1,358,206	71,965
Outlays	1,221,711	64,751
Federal disability insurance trust fund (16-05-8007-651-A):		
Obligation limitation	506,221	26,830
Outlays	415,864	22,030
Total, Health and Human Services Social Security:		
Obligation limitation	1,864,427	98,815
Outlays	1,637,375	86,781

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Department of Housing and Urban Development		
Housing Programs		
Housing counseling assistance (25-02-0156-506-A):		
Budget Authority	3,626	192
Subsidized housing programs (Community development) (25-02-0164-451-A):		
Budget Authority	5,169	275
Subsidized housing programs (Housing assistance) (25-02-0164-604-A):		
Budget Authority	7,342,406	389,148
Outlays	88,109	4,670
Congregate services program (25-02-0178-604-A):		
Budget Authority	5,594	296
Transitional and supportive housing demonstration program (25-02-0188-604-A):		
Budget Authority	82,880	4,393
Rental housing assistance fund (25-02-4041-604-A):		
401(C) Authority—		
Off. Coll.	50,000	2,650
Outlays	50,000	2,650
Nonprofit sponsor assistance (25-02-4042-604-A):		
Direct Loan Limitation	985	53
Federal Housing Administration fund (25-02-4070-371-A):		
Obligation limitation	396,582	21,019
Direct Loan Limitation	107,071	5,675
Guaranteed Loan Limitation	99,458,000	5,271,168
Outlays	396,582	21,019
Housing for the elderly or handicapped fund (25-02-4115-371-A):		
Direct Loan Limitation	497,260	26,356
Interstate land sales (25-02-5270-376-A):		
401(C) Authority	600	32
Outlays	600	32
Manufactured home inspection and monitoring (25-02-5271-376-A):		
401(C) Authority	7,320	388
Outlays	6,337	336
Public and Indian Housing Programs		
Payments for operation of low income housing projects (25-03-0163-604-A):		
Budget Authority	1,766,906	93,646
Outlays	812,777	43,077
Government National Mortgage Association		
Guarantees of mortgage-backed securities (25-04-4238-371-A):		
401(C) Authority—		
Off. Coll.	5,588	296
Guaranteed Loan Limitation	144,000,000	7,632,000
Outlays	5,588	296
Community Planning and Development		
Community development grants (25-06-0162-451-A):		
Budget Authority	2,745,400	145,508
Guaranteed Loan Limitation	149,000	7,897
Outlays	109,816	5,820

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Urban homesteading (25-06-0171-451-A):		
Budget Authority	13,675	725
Outlays	13,675	725
Emergency shelter grants program (25-06-0181-804-A):		
Budget Authority	48,174	2,553
Outlays	9,635	511
Rental rehabilitation grants (25-06-0182-451-A):		
Budget Authority	155,400	8,236
Rehabilitation loan fund (25-06-4036-451-A):		
401(C) Authority—		
Off. Coll.	12,700	673
Direct Loan		
Limitation	85,212	4,516
Outlays	12,700	673
Policy Development and Research		
Research and technology (25-28-0108-451-A):		
Budget Authority	17,819	944
Outlays	5,340	283
Fair Housing and Equal Opportunity		
Fair housing activities (25-29-0144-751-A):		
Budget Authority	10,360	549
Outlays	1,865	99
Management and Administration		
Salaries & expenses, incl. transfer of funds (Community dev.) (25-35-0143-451-A):		
Budget Authority	174,166	9,231
Outlays	133,936	7,099
Salaries & expenses, incl. transfer of funds (Public assist.) (25-35-0143-604-A):		
Budget Authority	157,757	8,361
Outlays	121,353	6,432
Salaries & expenses, incl. transfer of funds (Federal law acts.) (25-35-0143-751-A):		
Budget Authority	15,455	819
Outlays	11,888	630
Total, Department of Housing and Urban Development:		
Budget Authority	12,544,798	664,874
401(C) Authority	7,920	420
401(C) Authority—		
Off. Coll.	68,288	3,619
Obligation limitation	396,582	21,019
Direct Loan		
Limitation	690,558	36,600
Guaranteed Loan		
Limitation	243,605,000	12,911,065
Outlays	1,780,201	94,352
Department of the Interior		
Bureau of Land Management		
Management of lands and resources (10-04-1109-302-A):		
Budget Authority	525,652	27,860
Outlays	418,784	22,196
Construction and access (10-04-1110-302-A):		
Budget Authority	5,631	298
Outlays	1,406	75
Payments in lieu of taxes (10-04-1114-806-A):		
Budget Authority	108,780	5,765
Outlays	108,616	5,757
Oregon and California grant lands (10-04-1116-302-A):		
Budget Authority	62,348	3,304
Outlays	46,136	2,445

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Special acquisition of lands and minerals (10-04-1117-302-A):		
401(C) Authority	1,300	69
Service charges, deposits, and forfeitures (10-04-5017-302-A):		
Budget Authority	6,227	330
Outlays	5,474	290
Land acquisition (10-04-5033-302-A):		
Budget Authority	12,734	675
Outlays	6,315	335
Operation and maintenance of quarters (10-04-5048-302-A):		
401(C) Authority	250	13
Outlays	209	11
Range improvements (10-04-5132-302-A):		
Budget Authority	8,393	445
Outlays	5,305	281
Miscellaneous permanent appropriations (10-04-9921-302-A):		
401(C) Authority	7,000	371
Outlays	5,948	315
Miscellaneous permanent appropriations (10-04-9921-806-A):		
401(C) Authority	122,954	6,517
Outlays	122,954	6,517
Miscellaneous trust funds (10-04-9971-302-A):		
Budget Authority	100	5
401(C) Authority	600	32
Outlays	356	19
Minerals Management Service		
Leasing and royalty management (10-06-1917-302-A):		
Budget Authority	177,324	9,398
Outlays	115,130	6,102
Payments to states from receipts under Mineral Leasing Act (10-06-5003-806-A):		
401(C) Authority	464,195	24,602
Outlays	464,195	24,602
Office of Surface Mining Reclamation & Enforcement		
Regulation and technology (10-08-1801-302-A):		
Budget Authority	106,450	5,642
Outlays	61,993	3,286
Abandoned mine reclamation fund (10-08-5015-302-A):		
Budget Authority	200,189	10,610
Outlays	55,397	2,936
Bureau of Reclamation		
Loan program (10-10-0687-301-A):		
Budget Authority	34,122	1,808
Direct Loan		
Limitation	31,922	1,692
Outlays	20,985	1,112
Construction program (10-10-0684-301-A):		
Budget Authority	662,120	35,092
401(C) Authority—		
Off. Coll.	4,000	212
Outlays	560,181	29,690
Lower Colorado River basin development fund (10-10-4079-301-A):		
401(C) Authority—		
Off. Coll.	95,458	5,059
Outlays	95,458	5,059
Upper Colorado River basin fund (10-10-4081-301-A):		
401(C) Authority—		
Off. Coll.	32,375	1,716
Outlays	32,375	1,716

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Working capital fund (10-10-4524-301-A):		
Budget Authority	8,500	450
Outlays	6,800	360
Emergency fund (10-10-5043-301-A):		
Budget Authority	1,000	53
Outlays	605	32
General investigations (10-10-5060-301-A):		
Budget Authority	11,530	611
401(C) Authority—		
Off. Coll.	75	4
Outlays	7,500	396
Operation and maintenance (10-10-5064-301-A):		
Budget Authority	212,287	11,251
401(C) Authority—		
Off. Coll.	10,136	537
Outlays	175,063	9,279
General administrative expenses (10-10-5065-301-A):		
Budget Authority	47,983	2,543
Outlays	43,185	2,289
Colorado River Dam Fund, Boulder Canyon Project (10-10-5656-301-A):		
401(C) Authority	48,650	2,578
Outlays	27,877	1,477
Reclamation trust funds (10-10-8070-301-A):		
401(C) Authority	54,100	2,867
Outlays	43,280	2,294
Miscellaneous permanent appropriations (10-10-9922-806-A):		
401(C) Authority	282	15
Outlays	226	12
Geological Survey		
Surveys, investigations and research (10-12-0804-306-A):		
Budget Authority	468,056	24,807
401(C) Authority	250	13
401(C) Authority—		
Off. Coll.	75,405	3,996
Outlays	520,058	27,563
Operation and maintenance of quarters (10-12-5055-306-A):		
401(C) Authority	75	4
Outlays	40	2
Bureau of Mines		
Mines and minerals (10-14-0959-306-A):		
Budget Authority	165,452	8,769
Outlays	105,902	5,613
Helium fund (10-14-4053-306-A):		
401(C) Authority—		
Off. Coll.	3,453	183
Outlays	3,453	183
Fish and Wildlife Service		
Resource management (10-16-1611-303-A):		
Budget Authority	371,703	19,700
401(C) Authority—		
Off. Coll.	5,776	306
Outlays	301,738	15,992
Construction (10-16-1612-303-A):		
Budget Authority	33,007	1,749
Outlays	6,601	350
Land acquisition (10-16-5020-303-A):		
Budget Authority	77,472	4,106
Outlays	34,790	1,844
Operations and maintenance of quarters (10-16-5050-303-A):		
401(C) Authority	1,736	92
Outlays	476	25

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National wildlife refuge fund (10-16-5091-806-A):		
Budget Authority	6,864	365
401(C) Authority	6,040	320
Outlays	8,811	467
Migratory bird conservation account (10-16-5137-303-A):		
Budget Authority	30,600	1,622
Outlays	21,420	1,135
Sport fish restoration (10-16-8151-303-A):		
401(C) Authority	192,891	10,223
Outlays	57,867	3,067
Contributed funds (10-16-8216-303-A):		
401(C) Authority	4,165	221
Outlays	1,832	97
Miscellaneous permanent appropriations (10-16-9923-303-A):		
401(C) Authority	129,200	6,848
Outlays	38,760	2,054
National Park Service		
Operation of the national park system (10-24-1036-303-A):		
Budget Authority	769,916	40,806
401(C) Authority—		
Off. Coll.	2,800	148
Outlays	575,737	30,514
John F. Kennedy Center for the Performing Arts (10-24-1038-303-A):		
Budget Authority	5,379	285
Outlays	4,035	214
Construcuon (10-24-1039-303-A):		
Budget Authority	164,909	8,740
401(C) Authority—		
Off. Coll.	11,000	583
Outlays	35,673	1,891
National recreation and preservation (10-24-1042-303-A):		
Budget Authority	15,182	805
Outlays	11,386	603
Illinois & Michigan Canal National Heritage Corridor Commissio (10-24-1043-303-A):		
Budget Authority	259	14
Outlays	129	7
Land acquisition (10-24-5035-303-A):		
Budget Authority	45,262	2,399
401(C) Authority	30,000	1,590
Outlays	30,543	1,619
Operations and maintenance of quarters (10-24-5049-303-A):		
401(C) Authority	8,632	457
Outlays	6,411	340
Historic preservation fund (10-24-5140-303-A):		
Budget Authority	31,596	1,675
Outlays	16,279	863
Miscellaneous permanent appropriations (10-24-9924-303-A):		
401(C) Authority	953	50
Outlays	136	7
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land management) (10-76-2100-302-A):		
Budget Authority	152,689	8,093
Outlays	116,035	6,150
Operation of Indian programs (Area and regional development) (10-76-2100-452-A):		
Budget Authority	597,631	31,674
401(C) Authority—		
Off. Coll.	4,000	212
Outlays	511,986	27,135

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operation of Indian programs (Elementary, secondary, & vo. ed.) (10-76-2100-501-A):		
Budget Authority	278,723	14,772
Outlays	236,914	12,556
Construction (10-76-2301-452-A):		
Budget Authority	98,308	5,210
Outlays	22,589	1,197
Revolving fund for loans (10-76-4409-452-A):		
401(C) Authority—		
Off. Coll.	11,070	587
Direct Loan		
Limitation	13,000	689
Outlays	24,070	1,276
Indian loan guaranty and insurance fund (10-76-4410-452-A):		
Budget Authority	3,491	185
Guaranteed Loan		
Limitation	45,000	2,385
Outlays	1,955	104
Operations and maintenance of quarters (10-76-5051-452-A):		
401(C) Authority	7,000	371
Outlays	5,000	265
Cooperative fund (Papago) (10-76-8366-452-A):		
401(C) Authority	1,232	65
Miscellaneous permanent appropriations (Area and regional dev.) (10-76-9925-452-A):		
401(C) Authority	50,359	2,669
Outlays	32,104	1,702
Miscellaneous permanent appropriations (10-76-9925-806-A):		
401(C) Authority	2,000	106
Outlays	1,275	68
Office of Territorial Affairs		
Administration of territories (10-82-0412-808-A):		
Budget Authority	62,272	3,300
Outlays	31,816	1,686
Trust Territory of the Pacific Islands (10-82-0414-808-A):		
Budget Authority	29,458	1,561
Outlays	26,216	1,390
Compact of free association (10-82-0415-808-A):		
Budget Authority	28,345	1,502
Outlays	28,345	1,502
Office of the Secretary		
Salaries and Expenses (10-84-0102-306-A):		
Budget Authority	50,980	2,702
Outlays	43,333	2,297
Construction management (10-84-0103-306-A):		
Budget Authority	1,869	99
Outlays	1,684	89
Oil spill emergency fund (10-84-0119-306-A):		
Budget Authority	7,563	401
Outlays	3,782	200
Office of the Solicitor		
Office of the Solicitor (10-86-0107-306-A):		
Budget Authority	25,864	1,390
Outlays	23,097	1,224
Office of Inspector General		
Office of Inspector General (10-88-0104-306-A):		
Budget Authority	19,493	1,033
Outlays	17,544	930
Total, Department of the Interior:		
Budget Authority	5,702,935	302,252
401(C) Authority	1,164,464	61,715
401(C) Authority—		
Off. Coll.	255,546	13,543

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Direct Loan		
Limitation	44,922	2,381
Guaranteed Loan		
Limitation	45,000	2,385
Outlays	5,341,599	283,106
Department of Justice		
General Administration		
Salaries and expenses (11-03-0128-751-A):		
Budget Authority	89,254	4,730
Outlays	79,968	4,238
Office of the Inspector General (11-03-0328-751-A):		
Budget Authority	9,411	499
Outlays	8,432	447
Emergency drug funding (11-03-0331-751-A):		
Budget Authority	73,556	3,898
Outlays	21,016	1,114
United States Parole Commission		
Salaries and expenses (11-04-1061-751-A):		
Budget Authority	11,321	600
Outlays	9,733	516
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission (11-05-0100-153-A):		
Budget Authority	490	26
Outlays	355	19
Salaries and expenses, General legal activities (11-05-0128-752-A):		
Budget Authority	256,201	13,579
Outlays	222,894	11,813
Fees and expenses of witnesses (11-05-0311-752-A):		
Budget Authority	54,082	2,866
Outlays	37,911	2,009
Salaries and expenses, Antitrust Division (11-05-0319-752-A):		
Budget Authority	46,834	2,482
Outlays	38,306	2,030
Salaries and expenses, United States Attorneys (11-05-0322-752-A):		
Budget Authority	478,351	25,353
Outlays	420,949	22,310
Salaries and expenses, United States Marshals Service (11-05-0324-752-A):		
Budget Authority	213,187	11,299
401(C) Authority—		
Off. Coll.	4,106	218
Outlays	196,263	10,402
Independent counsel (11-05-0327-752-A):		
401(C) Authority	6,000	318
Outlays	6,000	318
Salaries and expenses, Community Relations Service (11-05-0500-752-A):		
Budget Authority	28,891	1,531
Outlays	24,554	1,301
Support of United States prisoners (11-05-1020-752-A):		
Budget Authority	114,076	6,046
Outlays	68,446	3,628
Assets forfeiture fund (11-05-5042-752-A):		
Budget Authority	75,389	3,996
401(C) Authority	237,729	12,600
Outlays	125,247	6,638
United States trustees system fund (11-05-5073-752-A):		
Budget Authority	49,250	2,610
Outlays	44,300	2,348

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Federal Bureau of Investigation		
Salaries and expenses (11–10–0200–751–A):		
Budget Authority	1,495,782	79,276
401(C) Authority—		
Off. Coll.	24,354	1,291
Outlays	1,220,980	64,712
Drug Enforcement Administration		
Salaries and expenses (11–12–1100–751–A):		
Budget Authority	555,143	29,423
401(C) Authority—		
Off. Coll.	1,500	80
Outlays	417,857	22,146
Immigration and Naturalization Service		
Salaries and expenses (11–15–1217–751–A):		
Budget Authority	854,257	45,276
401(C) Authority—		
Off. Coll.	3,817	202
Outlays	686,936	36,406
Immigration legalization (11–15–5086–751–A):		
401(C) Authority	54,792	2,904
Outlays	54,792	2,904
Immigration user fee (11–15–5087–751–A):		
401(C) Authority	105,000	5,565
Outlays	104,900	5,560
Immigration examinations fee (11–15–5088–751–A):		
401(C) Authority	54,000	2,862
Outlays	54,000	2,862
Federal Prison System		
Buildings and facilities (11–20–1003–753–A):		
Budget Authority	312,755	16,576
Outlays	28,863	1,519
National Institute of Corrections (11–20–1004–754–A):		
Budget Authority	9,946	527
Outlays	3,973	211
Salaries and expenses (11–20–1060–753–A):		
Budget Authority	969,190	52,427
401(C) Authority—		
Off. Coll.	12,746	676
Outlays	930,544	49,319
Federal Prison Industries, Incorporated (11–20–4500–753–A):		
Budget Authority	20,720	1,098
Obligation limitation	2,857	151
Outlays	23,577	1,250
Office of Justice Programs		
Justice assistance (11–21–0401–754–A):		
Budget Authority	334,924	17,751
Outlays	123,172	6,528
Crime Victims Fund (11–21–5041–754–A):		
401(C) Authority	125,000	6,625
Outlays	62,500	3,312
Total, Department of Justice:		
Budget Authority	6,073,010	321,869
401(C) Authority	582,521	30,874
401(C) Authority—		
Off. Coll.	46,525	2,467
Obligation limitation	2,857	151
Outlays	5,016,270	265,862
Department of Labor		
Employment and Training Administration		
Program administration (12–05–0172–504–A):		
Budget Authority	73,575	3,899
Outlays	58,144	3,082
Training and employment services (12–05–0174–504–A):		
Budget Authority	3,872,575	205,246
Outlays	149,102	7,902
Community service employment for older Americans (12–05–0175–504–A):		
Budget Authority	356,202	18,879
Outlays	65,339	3,463
State unemployment insurance and employment services (12–05–0179–504–A):		
Budget Authority	23,371	1,239
Outlays	5,575	295
Federal unemployment benefits and allowances (12–05–0326–504–A):		
Budget Authority	80,000	4,240
Outlays	24,000	1,272
Federal unemployment benefits and allowances (12–05–0326–603–A):		
Budget Authority	204,000	10,812
Outlays	204,000	10,812
Unemployment trust fund (Training and employment) (12–05–8042–504–A):		
Obligation limitation	1,062,794	57,388
Outlays	453,321	24,026
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A):		
401(C) Authority	129,100	6,842
Obligation limitation	1,735,961	92,007
Outlays	1,865,099	98,850
Labor-Management Services		
Salaries and expenses (12–10–0104–505–A):		
Budget Authority	74,999	3,975
Outlays	63,875	3,385
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund (12–12–4204–601–A):		
Obligation limitation	72,468	3,841
Outlays	72,468	3,841
Employment Standards Administration		
Salaries and expenses (12–15–0105–505–A):		
Budget Authority	220,299	11,676
401(C) Authority—		
Off. Coll.	1,500	80
Outlays	190,434	10,093
Black lung disability trust fund (12–15–8144–601–A):		
Budget Authority	58,581	3,105
Outlays	58,581	3,105
Special workers' compensation expenses (12–15–9971–601–A):		
Obligation limitation	539	29
Outlays	539	29
Occupational Safety and Health Administration		
Salaries and expenses (12–16–0400–554–A):		
Budget Authority	257,197	13,631
Outlays	229,542	12,166
Mine Safety and Health Administration		
Salaries and expenses (12–19–1200–554–A):		
Budget Authority	169,095	8,962
Outlays	153,295	8,125
Bureau of Labor Statistics		
Salaries and expenses (12–20–0200–505–A):		
Budget Authority	195,319	10,352
401(C) Authority—		
Off. Coll.	1,100	58
Outlays	167,175	8,860
Departmental Management		
Inspector General salaries and expenses (12–25–0106–505–A):		
Budget Authority	41,074	2,177
Outlays	35,875	1,901
Salaries and expenses (12–25–0165–505–A):		
Budget Authority	123,076	6,523
Outlays	101,593	5,384
Total, Department of Labor:		
Budget Authority	5,749,363	304,716
401(C) Authority	129,100	6,842
401(C) Authority—		
Off. Coll.	2,600	138
Obligation limitation	2,891,782	153,265
Outlays	3,897,957	206,591
Department of State		
Administration of Foreign Affairs		
Salaries and expenses (14–05–0113–153–A):		
Budget Authority	1,856,768	98,409
Outlays	1,466,277	77,713
Protection of foreign missions and officials (14–05–0520–153–A):		
Budget Authority	9,428	500
Outlays	3,809	202
Emergencies in the diplomatic and consular service (14–05–0522–153–A):		
Budget Authority	4,662	247
Direct Loan		
Limitation	626	33
Outlays	2,727	145
Payment to the American Institute in Taiwan (14–05–0523–153–A):		
Budget Authority	11,282	598
Outlays	6,337	442
Acquisition and maintenance of buildings abroad (14–05–0535–153–A):		
Budget Authority	248,796	13,186
Outlays	45,873	2,421
Representation allowances (14–05–0545–153–A):		
Budget Authority	4,755	252
Outlays	4,151	220
International Organizations and Conferences		
Contributions for international peacekeeping activities (14–10–1124–153–A):		
Budget Authority	30,044	1,592
Outlays	30,044	1,592
International conferences and contingencies (14–10–1125–153–A):		
Budget Authority	6,210	329
Outlays	4,227	224
Contributions to international organizations (14–10–1126–153–A):		
Budget Authority	503,434	26,682
401(C) Authority—		
Off. Coll.	40	2
Outlays	478,302	25,350

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
International Commissions		
Salaries and expenses, IBWC (14–15–1069–301–A):		
Budget Authority	10,668	565
Outlays	9,636	511
Construction, IBWC (14–15–1078–301–A):		
Budget Authority	3,282	174
Outlays	1,643	87
American sections, International commissions (14–15–1082–301–A):		
Budget Authority	4,480	237
Outlays	3,515	186
International fisheries commissions (14–15–1087–302–A):		
Budget Authority	10,928	579
Outlays	10,928	579
Other		
United States emergency refugee and migration assistance fund (14–25–0040–151–A):		
Budget Authority	51,800	2,745
Outlays	25,900	1,373
Anti-terrorism assistance (14–25–0114–152–A):		
Budget Authority	10,194	540
Outlays	8,156	432
Soviet-East European research and training (14–25–0118–153–A):		
Budget Authority	4,766	253
Outlays	4,766	253
Payment to the Asia Foundation (14–25–0525–154–A):		
Budget Authority	14,193	752
Outlays	14,193	752
International narcotics control (14–25–1022–151–A):		
Budget Authority	104,659	5,547
Outlays	31,382	1,663
Migration and refugee assistance (14–25–1143–151–A):		
Budget Authority	478,584	25,365
Outlays	335,007	17,755
U.S. bilateral science and technology agreements (14–25–1151–153–A):		
Budget Authority	2,072	110
Outlays	2,072	110
Fisherman's guaranty fund (14–25–5121–376–A):		
Budget Authority	1,767	95
Outlays	1,787	95
International Center, Washington, D.C. (14–25–5151–153–A):		
401(C) Authority	1,284	68
Outlays	1,223	65
Total, Department of State:		
Budget Authority	3,372,796	178,757
401(C) Authority	1,284	68
401(C) Authority—		
Off. Coll.	40	2
Direct Loan		
Limitation	626	33
Outlays	2,493,755	132,170
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes (21–05–0503–401–A):		
Budget Authority	1,337	71
Outlays	267	14
Motor carrier safety (21–05–0552–401–A):		
Budget Authority	28,054	1,487
Outlays	24,407	1,294
Railroad-highway crossings demonstration projects (21–05–0557–401–A):		
Budget Authority	2,611	138
Outlays	522	28
Trust fund share of other highway programs (21–05–8009–401–A):		
Budget Authority	5,221	277
Outlays	1,044	55
Baltimore-Washington Parkway (21–05–8014–401–A):		
Budget Authority	13,287	704
Outlays	2,657	141
Highway safety research and development (21–05–8017–401–A):		
Budget Authority	6,299	334
Outlays	1,260	67
Highway-related safety grants (21–05–8019–401–A):		
401(C) Authority	10,000	530
Obligation limitation	9,744	516
Outlays	1,717	91
Motor carrier safety grants (21–05–8048–401–A):		
401(C) Authority	60,000	3,180
Obligation limitation	62,160	3,294
Outlays	23,960	1,270
Federal-aid highways (21–05–8083–401–A):		
401(C) Authority	13,850,959	734,101
Obligation limitation	12,432,000	658,896
Outlays	2,263,116	119,945
Right-of-way revolving fund (trust revolving fund) (21–05–8402–401–A):		
Direct Loan		
Limitation	47,850	2,536
Outlays	47,850	2,536
Miscellaneous appropriations (21–05–9911–401–A):		
Budget Authority	56,592	2,999
Outlays	11,319	600
Miscellaneous trust funds—Highway (21–05–9972–401–A):		
Budget Authority	65,395	3,466
Outlays	13,079	693
National Highway Traffic Safety Administration		
Operations and research (21–10–0650–401–A):		
Budget Authority	70,451	3,734
Outlays	43,885	2,326
Trust fund share of operations and research (21–10–8016–401–A):		
Budget Authority	31,904	1,691
Outlays	19,188	1,017
State and community highway safety grants (21–10–8020–401–A):		
401(C) Authority	126,000	6,678
Obligation limitation	130,536	6,918
Outlays	53,520	2,837
Federal Railroad Administration		
Northeast corridor improvement program (21–16–0123–401–A):		
Budget Authority	20,306	1,076
Outlays	4,061	215
Office of the Administrator (21–16–0700–401–A):		
Budget Authority	21,753	1,153
Outlays	20,865	1,095
Railroad safety (21–16–0702–401–A):		
Budget Authority	28,924	1,533
Outlays	23,124	1,226
Grants to National Railroad Passenger Corporation (21–16–0704–401–A):		
Budget Authority	605,024	32,066
Outlays	544,522	28,860
Freightline rehabilitation (21–16–0713–401–A):		
Budget Authority	6,216	329
Outlays	3,730	198
Railroad safety research and development (21–16–0745–401–A):		
Budget Authority	9,624	510
Outlays	5,772	306
Commuter rail service (21–16–0747–401–A):		
Budget Authority	4,662	247
Outlays	513	27
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses (21–20–1120–401–A):		
Budget Authority	33,142	1,757
Outlays	29,828	1,581
Research, training and human resources (21–20–1121–401–A):		
Budget Authority	10,360	549
Outlays	2,072	110
Interstate transfer grants (21–20–1127–401–A):		
Budget Authority	207,200	10,982
Outlays	4,144	220
Washington metro (21–20–1128–401–A):		
Budget Authority	174,048	9,225
Outlays	41,046	2,175
Formula grants (21–20–1129–401–A):		
Budget Authority	1,662,780	88,127
Outlays	544,502	28,859
Discretionary grants (21–20–8191–401–A):		
401(C) Authority	1,300,000	68,900
Obligation limitation	1,161,000	62,593
Outlays	59,050	3,130
Federal Aviation Administration		
Operations (21–25–1301–402–A):		
Budget Authority	3,053,089	161,814
401(C) Authority—		
Off. Coll.	14,650	776
Outlays	2,641,542	140,002
Headquarters administration (21–25–1302–402–A):		
Budget Authority	38,284	2,029
Outlays	33,690	1,786
Aircraft purchase loan guarantee program (21–25–1399–402–A):		
Budget Authority	150	8
Outlays	150	8
Trust fund share of FAA Operations (21–25–8104–402–A):		
Budget Authority	490,849	26,004
Outlays	490,849	26,004
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A):		
Budget Authority	104	6
401(C) Authority	1,700,000	90,100
Obligation limitation	1,450,400	76,871
Outlays	217,216	11,512
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A):		
Budget Authority	1,434,090	76,007
401(C) Authority—		
Off. Coll.	45,327	2,402
Outlays	181,176	9,602
Research, engineering & development (Airport & airway trust fn (21–25–8108–402–A):		
Budget Authority	165,584	8,776
401(C) Authority—		
Off. Coll.	500	26
Outlays	101,869	5,400

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Coast Guard		
Operating expenses (21–30–0201–403–A):		
Budget Authority	2,029,894	107,574
401(C) Authority—		
Off. Coll.	5,181	275
Outlays	1,702,005	90,206
Acquisition, construction, and improvements (21–30–0240–403–A):		
Budget Authority	398,958	21,146
Outlays	43,795	2,321
Retired pay (Coast Guard) (21–30–0241–403–A):		
Budget Authority	45,050	2,388
Outlays	45,050	2,388
Reserve training (21–30–0242–403–A):		
Budget Authority	69,140	3,664
Outlays	60,554	3,209
Research, development, test, and evaluation (21–30–0243–403–A):		
Budget Authority	19,477	1,032
Outlays	6,646	352
Alteration of bridges (21–30–0244–403–A):		
Budget Authority	14,000	742
Outlays	1,700	90
Coast Guard shore facilities (21–30–0246–403–A):		
Budget Authority	51,862	2,749
Outlays	5,701	302
Offshore oil pollution compensation fund (21–30–5167–304–A):		
Obligation limitation	62,160	3,294
Pollution fund (21–30–5168–304–A):		
401(C) Authority	5,700	302
Outlays	1,760	93
Deepwater port liability fund (21–30–5170–304–A):		
Obligation limitation	51,800	2,745
Boat safety (21–30–8149–403–A):		
Budget Authority	62,160	3,294
Obligation limitation	31,080	1,647
Outlays	42,393	2,247
Maritime Administration		
Ready reserve force (21–35–1710–403–A):		
Budget Authority	114,740	6,081
Outlays	97,527	5,169
Operations and training (21–35–1750–403–A):		
Budget Authority	66,804	3,647
Outlays	56,465	3,099
Federal ship financing fund (21–35–4301–403–A):		
Obligation limitation	3,730	198
Outlays	3,544	188
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation (21–40–4089–403–A):		
401(C) Authority—		
Off. Coll.	1,000	53
Outlays	1,000	53
Operations and maintenance (21–40–8003–403–A):		
Budget Authority	11,536	611
Outlays	11,536	611
Office of the Inspector General		
Salaries and expenses (21–45–0130–407–A):		
Budget Authority	30,155	1,598
Outlays	26,043	1,380

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Research and Special Programs Administration		
Research and special programs (21–50–0104–407–A):		
Budget Authority	15,370	815
Outlays	10,141	537
Pipeline safety (21–50–5172–407–A):		
Budget Authority	9,645	511
Outlays	9,162	486
Office of the Secretary		
Salaries and expenses (21–55–0102–407–A):		
Budget Authority	56,667	3,004
Outlays	50,337	2,668
Transportation planning, research, and development (21–55–0142–407–A):		
Budget Authority	5,813	308
Outlays	2,307	122
Payments to air carriers, DOT (21–55–0150–402–A):		
Budget Authority	32,738	1,735
Outlays	26,190	1,388
Working capital fund (21–55–4520–407–A):		
Budget Authority	3,315	176
Outlays	3,315	176
Total, Department of Transportation:		
Budget Authority	11,286,284	598,173
401(C) Authority	17,052,659	903,791
401(C) Authority—		
Off. Coll.	66,658	3,532
Obligation limitation	15,414,810	816,972
Direct Loan		
Limitation	47,850	2,536
Outlays	9,666,305	512,315
Department of the Treasury		
Departmental Offices		
Salaries and expenses (15–05–0101–803–A):		
Budget Authority	84,857	4,497
401(C) Authority—		
Off. Coll.	5,123	272
Outlays	78,525	4,162
Federal Law Enforcement Training Center		
Salaries and expenses (15–08–0104–751–A):		
Budget Authority	36,003	1,908
Outlays	32,486	1,722
Acquisitions, construction, improvements, & related expenses (15–08–0105–751–A):		
Budget Authority	20,720	1,098
Outlays	8,702	461
Financial Management Service		
Salaries and expenses (15–10–1801–803–A):		
Budget Authority	287,595	15,243
Outlays	244,414	12,954
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A):		
Budget Authority	70,793	3,752
Outlays	70,793	3,752
Saint Lawrence Seaway toll rebate program (15–10–8665–808–A):		
Budget Authority	11,065	586
Outlays	10,964	581
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses (15–13–1000–751–A):		
Budget Authority	250,499	13,276
Outlays	226,187	11,988

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Customs Service		
Salaries and expenses (15–15–0602–751–A):		
Budget Authority	1,074,590	56,954
401(C) Authority	116,584	6,179
Outlays	1,012,056	53,639
Operation and maintenance, air interdiction program (15–15–0604–751–A):		
Budget Authority	154,635	8,196
Outlays	85,049	4,508
Customs forfeiture fund (15–15–5693–803–A):		
Budget Authority	10,360	549
401(C) Authority	35,000	1,855
Outlays	45,360	2,404
Customs services at small airports (15–15–5694–808–A):		
Budget Authority	1,652	88
Outlays	1,652	88
Refunds, transfers and expenses, unclaimed and seized goods (15–15–8789–803–A):		
401(C) Authority	17,403	922
Outlays	17,403	922
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund (15–20–4502–803–A):		
401(C) Authority—		
Off. Coll.	333,809	17,692
Outlays	333,809	17,692
United States Mint		
Salaries and expenses (15–25–1616–803–A):		
Budget Authority	48,856	2,589
401(C) Authority—		
Off. Coll.	109,957	5,826
Outlays	141,666	7,506
Bureau of the Public Debt		
Administering the public debt (15–35–0560–803–A):		
Budget Authority	226,944	12,028
Outlays	183,533	9,727
Internal Revenue Service		
Salaries and expenses (15–45–0911–803–A):		
Budget Authority	90,431	4,793
Outlays	67,630	3,584
Processing tax returns and executive direction (15–45–0912–803–A):		
Budget Authority	1,807,710	95,809
Outlays	1,482,322	78,563
Examinations and appeals (15–45–0913–803–A):		
Budget Authority	2,009,730	106,516
Outlays	1,828,854	96,929
Investigation, collection, and taxpayer service (15–45–0914–803–A):		
Budget Authority	1,491,687	79,059
Outlays	1,342,518	71,153
Federal tax lien revolving fund (15–45–4413–803–A):		
401(C) Authority—		
Off. Coll.	8,451	448
Outlays	8,451	448
United States Secret Service		
Contribution for annuity benefits (15–55–1407–751–A):		
401(C) Authority	18,000	954
Outlays	18,000	954
Salaries and expenses (15–55–1408–751–A):		
Budget Authority	371,462	19,687
Outlays	315,743	16,734

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Total, Department of the Treasury:		
Budget Authority	8,049,620	426,530
401(C) Authority	186,987	9,910
401(C) Authority—		
Off. Coll.	457,340	24,240
Outlays	7,556,117	400,479
Department of Veterans Affairs		
Veterans Benefits Administration		
Readjustment benefits (29–10–0137–702–A):		
Budget Authority	241,926	12,822
Outlays	227,833	12,075
Burial benefits and miscellaneous assistance (29–10–0155–701–A):		
Budget Authority	143,612	7,611
Outlays	138,226	7,326
Direct loan revolving fund (29–10–4024–704–A):		
Direct Loan		
Limitation	1,000	53
Veterans Health Services and Research Administration		
Grants to the Republic of the Philippines (29–20–0144–703–A):		
Budget Authority	518	27
Medical administration and miscellaneous operating expenses (29–20–0152–703–A):		
Budget Authority	49,788	2,639
Outlays	31,274	1,658
Medical care (29–20–0160–703–A):		
Budget Authority	843,184	44,689
Outlays	714,683	37,878
Medical care (29–20–0160–703–G):		
Budget Authority—		
Spec. Rules	209,402	209,402
401(C) Authority—		
Spec. Rules	406	406
Outlays	180,194	180,194
Medical and prosthetic research (29–20–0161–703–A):		
Budget Authority	219,096	11,612
Outlays	165,462	8,769
Medical center research organizations (29–20–4026–703–A):		
401(C) Authority—		
Off. Coll.	4,500	238
Outlays	4,500	238
Departmental Administration		
Construction, major projects (29–30–0110–703–A):		
Budget Authority	370,918	19,658
Outlays	6,649	352
Construction, minor projects (29–30–0111–703–A):		
Budget Authority	100,784	5,342
Outlays	42,008	2,226
General operating expenses (29–30–0151–705–A):		
Budget Authority	827,826	43,875
Outlays	761,599	40,365
Grants for construction of state extended care facilities (29–30–0181–703–A):		
Budget Authority	43,512	2,306
Grants for the construction of State veterans cemeteries (29–30–0183–705–A):		
Budget Authority	9,324	494
Outlays	942	50

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Parking garage revolving fund (29–30–4536–703–A):		
Budget Authority	26,936	1,428
Total, Department of Veterans Affairs:		
Budget Authority	2,837,424	152,504
Budget Authority—		
Spec. Rules	209,402	209,402
401(C) Authority—		
Off. Coll.	4,500	238
401(C) Authority—		
Spec. Rules	406	406
Direct Loan		
Limitation	1,000	53
Outlays	2,273,372	291,131
Environmental Protection Agency		
Environmental Protection Agency		
Construction grants (20–00–0103–304–A):		
Budget Authority	2,020,000	107,060
Outlays	34,000	1,802
Research and development (Energy supply) (20–00–0107–271–A):		
Budget Authority	52,061	2,759
Outlays	18,221	966
Research and development (Pollution control and abatement) (20–00–0107–304–A):		
Budget Authority	157,729	8,360
Outlays	59,937	3,177
Abatement, control, and compliance (20–00–0106–304–A):		
Budget Authority	745,847	39,530
Outlays	332,493	17,622
Buildings and facilities (20–00–0110–304–A):		
Budget Authority	8,268	439
Outlays	1,445	77
Salaries and expenses (20–00–0200–304–A):		
Budget Authority	847,016	44,892
401(C) Authority—		
Off. Coll.	3,808	202
Outlays	731,989	38,795
Payment to the hazardous substance superfund (20–00–0250–304–A):		
Budget Authority	155,400	8,236
Registration and expedited processing revolving fund (20–00–4310–304–A):		
401(C) Authority—		
Off. Coll.	14,000	742
Outlays	14,000	742
Revolving fund for certification and other services (20–00–4311–304–A):		
401(C) Authority—		
Off. Coll.	1,200	64
Outlays	1,200	64
Hazardous substance superfund (20–00–8145–304–A):		
Budget Authority	1,461,391	77,454
401(C) Authority—		
Off. Coll.	13,200	700
Obligation limitation	197,171	10,466
Outlays	362,555	19,215
Leaking underground storage tank trust fund (20–00–8153–304–A):		
Budget Authority	51,819	2,746
Obligation limitation	5,199	276
Outlays	7,757	411
Total, Environmental Protection Agency:		
Budget Authority	5,499,551	291,476
401(C) Authority—		
Off. Coll.	32,208	1,706
Obligation limitation	202,670	10,742
Outlays	1,563,597	82,871

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
General Services Administration		
Real Property Activities		
Federal buildings fund (23–05–4542–804–A):		
401(C) Authority—		
Off. Coll.	4,900	260
Outlays	4,900	260
Personal Property Activities		
Federal supply service (23–10–0116–804–A):		
Budget Authority	48,982	2,596
Outlays	31,880	1,690
Expenses of transportation audit contracts (23–10–5250–804–A):		
401(C) Authority	15,500	822
Outlays	15,214	806
Information Resources Management Service		
Operating expenses, information resources management service (23–15–0900–804–A):		
Budget Authority	33,114	1,755
Outlays	21,623	1,146
Federal Property Resources Activities		
Operating expenses, federal property resources service (General) (23–25–0533–804–A):		
Budget Authority	11,220	595
Outlays	7,226	383
Real property relocation (23–25–0535–804–A):		
Budget Authority	4,144	220
Outlays	2,172	115
Expenses, disposal of surplus real and related personal proper (23–25–5254–804–A):		
401(C) Authority	3,800	201
Outlays	2,865	152
General Activities		
Allowances and office staff for former Presidents (23–30–0105–802–A):		
Budget Authority	1,071	57
Outlays	937	50
Expenses, presidential transition (23–30–0107–802–A):		
Budget Authority	4,921	261
Outlays	4,921	261
Office of Inspector General (23–30–0108–804–A):		
Budget Authority	25,997	1,378
Outlays	22,106	1,172
General management and administration, salaries and expenses (23–30–0110–804–A):		
Budget Authority	125,520	6,653
Outlays	85,819	4,548
Consumer information center fund (23–30–4549–376–A):		
Budget Authority	1,406	75
401(C) Authority—		
Off. Coll.	536	28
Outlays	73	4
Total, General Services Administration:		
Budget Authority	256,375	13,590
401(C) Authority	19,300	1,023
401(C) Authority—		
Off. Coll.	5,436	288
Outlays	189,546	10,577

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Aeronautics and Space Administration		
National Aeronautics and Space Administration		
Research and program management (Space flight) (26–00–0103–253–A):		
Budget Authority	958,460	50,798
401(C) Authority—		
Off. Coll.	5,000	265
Outlays	827,359	43,850
Research & program management (Space science, applications, etc) (26–00–0103–254–A):		
Budget Authority	624,299	33,068
Outlays	533,151	28,257
Research & program management (Supporting space activities) (26–00–0103–255–A):		
Budget Authority	74,035	3,924
Outlays	63,152	3,347
Research and program management (Air transportation) (26–00–0103–402–A):		
Budget Authority	344,165	18,241
Outlays	293,917	15,578
Space Flight, Control, and Data Comm. (26–00–0105–250–A):		
401(C) Authority—		
Off. Coll.	8,368	444
Outlays	8,368	444
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A):		
Budget Authority	3,640,400	192,941
Outlays	2,566,482	136,024
Space Flight, Control, and Data Comm. (supporting act.) (26–00–0105–255–A):		
Budget Authority	815,962	43,246
401(C) Authority	47,935	2,541
Outlays	430,828	22,834
Construction of facilities (Space flight) (26–00–0107–253–A):		
Budget Authority	76,042	4,030
Outlays	4,943	262
Construction of facilities (Space science, applications, etc) (26–00–0107–254–A):		
Budget Authority	11,810	626
Outlays	768	41
Construction of facilities (Supporting space activities) (26–00–0107–255–A):		
Budget Authority	142,761	7,566
Outlays	9,279	492
Construction of facilities (Air transportation) (26–00–0107–402–A):		
Budget Authority	54,390	2,883
Outlays	3,535	187
Research and development (Space flight) (26–00–0108–253–A):		
Budget Authority	1,630,864	86,425
401(C) Authority—		
Off. Coll.	5,781	306
Outlays	788,499	41,790
Research and development (Space science, applications, etc) (26–00–0108–254–A):		
Budget Authority	2,263,556	119,988
Outlays	1,152,150	61,064
Research and development (Supporting space activities) (26–00–0108–255–A):		
Budget Authority	19,477	1,032
Outlays	12,522	664
Research and development (Air transportation) (26–00–0108–402–A):		
Budget Authority	450,556	23,879
Outlays	230,189	12,200
Science, Space and Technology Education Trust Fund (26–00–8978–503–A):		
401(C) Authority	1,000	53
Outlays	1,000	53
Total, National Aeronautics and Space Administration:		
Budget Authority	11,108,577	588,647
401(C) Authority	48,935	2,594
401(C) Authority—		
Off. Coll.	19,149	1,015
Outlays	6,928,142	367,067
Office of Personnel Management		
Office of Personnel Management		
Salaries and expenses (27–00–0100–805–A):		
Budget Authority	112,254	5,949
Outlays	106,823	5,851
Government payment for annuitants, employees health benefits (27–00–0206–551–A):		
Budget Authority	3,780,169	200,349
Government payment for annuitants, employ. life insur. benefit (27–00–0500–602–A):		
Budget Authority	2,700	143
Outlays	2,100	111
Revolving fund (27–00–4571–805–A):		
401(C) Authority—		
Off. Coll.	1,167	62
Outlays	1,167	62
Civil service retirement and disability fund (27–00–8135–602–A):		
Obligation limitation	69,463	3,682
Outlays	69,463	3,682
Employees life insurance fund (27–00–8424–602–A):		
Obligation limitation	772	41
Outlays	772	41
Employees health benefits fund (27–00–8440–551–A):		
Obligation limitation	10,650	564
Outlays	10,650	564
Retired employees health benefits fund (27–00–8445–551–A):		
Obligation limitation	130	7
Outlays	130	7
Total, Office of Personnel Management:		
Budget Authority	3,895,123	206,441
401(C) Authority—		
Off. Coll.	1,167	62
Obligation limitation	81,015	4,294
Outlays	190,905	10,118
Small Business Administration		
Small Business Administration		
Salaries and expenses (28–00–0100–376–A):		
Budget Authority	337,829	17,905
Outlays	304,046	16,114
Disaster loan fund (28–00–4153–453–A):		
Direct Loan		
Limitation	250,000	13,250
Business loan and investment fund (28–00–4154–376–A):		
Budget Authority	84,952	4,502
Direct Loan		
Limitation	84,952	4,502
Guaranteed Loan		
Limitation	3,925,000	208,025
Outlays	33,980	1,801
Surety bond guarantees revolving fund (28–00–4156–376–A):		
Guaranteed Loan		
Limitation	1,295,000	68,635
Total, Small Business Administration:		
Budget Authority	422,781	22,407
Direct Loan		
Limitation	334,952	17,752
Guaranteed Loan		
Limitation	5,220,000	276,660
Outlays	338,026	17,915
Other Independent Agencies		
ACTION		
Operating expenses (30–01–0103–508–A):		
Budget Authority	176,944	9,378
Outlays	107,228	5,683
Administrative Conference of the United States		
Salaries and expenses (30–02–1700–751–A):		
Budget Authority	1,938	103
Outlays	1,550	82
Advisory Committee on Federal Pay		
Salaries and expenses (30–05–1800–805–A):		
Budget Authority	212	11
Outlays	204	11
Advisory Council on Historic Preservation		
Salaries and expenses (30–10–2300–303–A):		
Budget Authority	1,848	98
Outlays	1,663	88
American Battle Monuments Commission		
Salaries and expenses (30–12–0100–705–A):		
Budget Authority	15,681	831
Outlays	13,316	706
Architectural & Transportation Barriers Compliance Board		
Salaries and expenses (30–14–3200–751–A):		
Budget Authority	1,963	104
Outlays	1,510	80
Arms Control and Disarmament Agency		
Arms control and disarmament activities (30–17–0100–153–A):		
Budget Authority	32,220	1,708
Outlays	27,376	1,451
Barry Goldwater Scholarship Foundation		
Barry Goldwater Scholarship and Excellence in Educ. Foundation (30–18–8281–502–A):		
401(C) Authority	3,840	204
Outlays	1,307	69
Board for International Broadcasting		
Grants and expenses (30–19–1145–154–A):		
Budget Authority	202,048	10,709
Outlays	200,027	10,601
Israel Relay Station (30–19–1146–154–A):		
Budget Authority	34,186	1,812
Outlays	34,186	1,812

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Commission of Fine Arts		
Salaries and expenses (30–32–2800–451–A):		
Budget Authority	493	28
Outlays	451	24
National capital arts and cultural affairs (30–32–2802–503–A):		
Budget Authority	5,180	275
Outlays	5,180	275
Commission on Civil Rights		
Salaries and expenses (30–35–1800–751–A):		
Budget Authority	5,893	312
Outlays	5,006	265
Committee for Purchase from the Blind & others		
Salaries and expenses (30–37–2000–505–A):		
Budget Authority	895	47
Outlays	805	43
Commodity Futures Trading Commission		
Commodity Futures Trading Commission (30–38–1400–376–A):		
Budget Authority	36,096	1,913
Outlays	30,750	1,630
Consumer Product Safety Commission		
Product safety (30–41–0100–554–A):		
Budget Authority	35,861	1,901
401(C) Authority—		
Off. Coll.	19	1
Outlays	38,474	1,815
Corporation for Public Broadcasting		
Public broadcasting fund (30–42–0151–503–A):		
401(C) Authority	232,648	12,330
Outlays	232,648	12,330
Court of Veterans Appeals		
Salaries and expenses (30–43–0300–705–A):		
Budget Authority	3,241	172
Outlays	2,754	146
Defense Nuclear Facilities Safety Board		
Salaries and expenses (30–44–3600–053–A):		
Budget Authority	7,000	301
Outlays	7,000	301
District of Columbia		
Federal payment to the District of Columbia (30–45–1700–805–A):		
Budget Authority	445,998	23,638
Outlays	445,998	23,638
Federal payment to the District of Columbia (30–45–1700–806–B):		
Budget Authority	33,193	1,759
Outlays	33,193	1,759
Federal payment to the District of Columbia (30–45–1700–806–C):		
Budget Authority	53,945	2,859
Outlays	53,945	2,859
Federal payment to the District of Columbia (30–45–1700–806–D):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Federal payment to the District of Columbia (30–45–1700–806–E):		
Budget Authority	3,419	181
Outlays	3,419	181
Equal Employment Opportunity Commission		
Salaries and expenses (30–46–0100–751–A):		
Budget Authority	167,829	8,855
Outlays	165,783	8,786
Export-Import Bank of the United States		
Export-Import Bank of the United States (30–48–4027–155–A):		
Budget Authority	113,960	6,040
Obligation limitation	21,202	1,124
Direct Loan		
Limitation	720,020	38,161
Guaranteed Loan		
Limitation	10,567,200	560,062
Outlays	57,804	3,053
Farm Credit Administration		
Revolving fund for administrative expenses (30–52–4131–351–A):		
Obligation limitation	36,377	1,928
Outlays	36,377	1,928
Farm Credit Systems Financial Assistance Corporation		
Farm credit assistance Fund (30–54–4133–351–A):		
401(C) Authority	635,000	33,655
Outlays	593,090	31,434
Financial assistance corporation trust fund (30–54–8202–351–A):		
401(C) Authority	80,765	4,277
Federal Communications Commission		
Salaries and expenses (30–60–0100–376–A):		
Budget Authority	103,596	5,491
Outlays	97,361	5,161
Federal Election Commission		
Salaries and expenses (30–65–1800–808–A):		
Budget Authority	16,093	853
Outlays	14,484	768
Federal Emergency Management Agency		
Salaries and expenses (Defense-related activities) (30–67–0100–054–A):		
Budget Authority	71,417	3,785
Outlays	64,276	3,407
Salaries and expenses (Disaster relief and insurance) (30–67–0100–453–A):		
Budget Authority	71,301	3,779
Outlays	64,171	3,401
Emergency planning and assistance (Defense-related activities) (30–67–0101–054–A):		
Budget Authority	265,479	14,070
Outlays	146,013	7,739
Emergency planning and assistance (Community development) (30–67–0101–453–A):		
Budget Authority	27,125	1,436
Outlays	14,979	781
Emergency food and shelter (30–67–0103–805–A):		
Budget Authority	130,788	6,932
Outlays	130,788	6,932
Disaster relief (30–67–0104–453–A):		
Budget Authority	1,251,488	66,329
Outlays	41,446	2,196
National insurance development fund (30–67–4235–451–A):		
401(C) Authority	220	12
Outlays	220	12
Federal Labor Relations Authority		
Salaries and expenses (30–70–0100–805–A):		
Budget Authority	16,226	996
Outlays	15,190	805
Federal Maritime Commission		
Salaries and expenses (30–72–0100–403–A):		
Budget Authority	14,124	749
Outlays	12,758	676
Federal Mediation and Conciliation Service		
Salaries and expenses (30–76–0100–505–A):		
Budget Authority	26,931	1,427
Outlays	24,472	1,297
Federal Mine Safety and Health Review Commission		
Salaries and expenses (30–79–2800–554–A):		
Budget Authority	4,205	223
Outlays	3,901	207
Federal Trade Commission		
Salaries and expenses (30–84–0100–376–A):		
Budget Authority	68,869	3,650
Outlays	67,491	3,577
Harry S Truman Scholarship Foundation		
Harry S Truman memorial scholarship trust fund (31–01–8296–502–A):		
Obligation limitation	3,061	162
Outlays	3,053	162
American Revolution Bicentennial Administration		
American Revolution Bicentennial Administration (31–02–1900–806–A):		
Budget Authority	4,937	262
Outlays	4,937	262
Christopher Columbus Quincentennary Jubilee Commission		
Salaries and expenses (31–03–0809–376–A):		
Budget Authority	220	12
Outlays	220	12
Gifts and donations (31–03–8095–376–A):		
401(C) Authority	29	2
Outlays	29	2
Commission on the Bicentennial of the U.S. Constitution		
Salaries and expenses (31–04–8054–808–A):		
Budget Authority	7,294	382
Outlays	5,713	303
Franklin Delano Roosevelt Memorial Commission		
Salaries and expenses (31–05–0700–808–A):		
Budget Authority	29	2
Outlays	29	2
Institute of American Indian and Alaska Native Culture and Arts Development		
Salaries and expenses (31–06–7900–502–A):		
Budget Authority	3,205	170
Outlays	3,205	170

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Intelligence Community Staff		
Intelligence community staff (31-07-0400-054-A):		
Budget Authority	24,554	1,056
Outlays	15,953	686
Advisory Commission on Intergovernmental Relations		
Salaries and expenses (31-08-0100-808-A):		
Budget Authority	1,078	57
Outlays	769	41
Appalachian Regional Commission		
Appalachian regional development programs (31-09-0200-452-A):		
Budget Authority	150,000	7,950
Outlays	12,016	637
Delaware River Basin Commission		
Salaries and expenses (31-10-0100-301-A):		
Budget Authority	214	11
Outlays	200	11
Contribution to Delaware River Basin Commission (31-10-0102-301-A):		
Budget Authority	345	18
Outlays	345	18
Interstate Commission on the Potomac River Basin		
Contribution to Interstate Commission on the Potomac River Bas (31-11-0448-304-A):		
Budget Authority	300	16
Outlays	300	16
Susquehanna River Basin Commission		
Salaries and expenses (31-12-0500-301-A):		
Budget Authority	200	11
Outlays	188	10
Contribution to Susquehanna River Basin Commission (31-12-0501-301-A):		
Budget Authority	276	15
Outlays	276	15
International Trade Commission		
Salaries and expenses (31-17-0100-153-A):		
Budget Authority	37,371	1,981
Outlays	33,380	1,769
Interstate Commerce Commission		
Salaries and expenses (31-19-0100-401-A):		
Budget Authority	44,833	2,376
Outlays	40,349	2,138
James Madison Memorial Fellowship Foundation		
James Madison Memorial Fellowship Trust Fund (31-20-8282-502-A):		
Obligation limitation	500	26
Outlays	500	26
Japan-United States Friendship Commission		
Japan-United States friendship trust fund (31-21-8025-154-A):		
Budget Authority	1,473	78
Outlays	1,348	71

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legal Services Corporation		
Payment to the Legal Services Corporation (31-22-0501-752-A):		
Budget Authority	319,663	16,942
Outlays	278,426	14,757
Marine Mammal Commission		
Salaries and expenses (31-23-2200-302-A):		
Budget Authority	996	53
Outlays	816	43
Merit Systems Protection Board		
Salaries and expenses (31-24-0100-805-A):		
Budget Authority	21,226	1,125
Outlays	19,137	1,014
Office of the Special Counsel (31-24-0101-805-A):		
Budget Authority	5,160	275
Outlays	4,267	226
National Archives and Records Administration		
Operating expenses (31-26-0300-804-A):		
Budget Authority	126,583	6,709
Outlays	98,481	5,219
National archives trust fund (31-26-8436-804-A):		
401(C) Authority—		
Off. Coll.	10,555	559
National Capital Planning Commission		
Salaries and expenses (31-28-2500-451-A):		
Budget Authority	3,079	163
Outlays	2,832	150
National Commission on Libraries & Info. Science		
Salaries and expenses (31-30-2700-503-A):		
Budget Authority	770	41
Outlays	616	33
White House conference on library and information services (31-30-2701-503-A):		
Budget Authority	1,815	96
Outlays	598	32
National Commission on Migrant Education		
Nat'l Commission on Migrant Education: Salaries and Expenses (31-31-0600-501-A):		
Budget Authority	2,046	108
Outlays	163	9
National Council on Disability		
Salaries and expenses (31-32-3500-506-A):		
Budget Authority	1,204	64
Outlays	922	49
National Endowment for the Arts		
National Endowment for the Arts: Grants and administrati (31-35-0100-503-A):		
Budget Authority	174,450	9,246
Outlays	58,397	3,095
National Endowment for the Humanities		
National Endowment for the Humanities: Grants and administrati (31-36-0200-503-A):		
Budget Authority	158,560	8,404
Outlays	69,737	3,696

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Institute of Museum Services		
Institute of Museum Services (31-37-0300-503-A):		
Budget Authority	23,074	1,223
Outlays	5,969	316
National Labor Relations Board		
Salaries and expenses (31-39-0100-505-A):		
Budget Authority	142,465	7,551
Outlays	133,935	7,099
National Mediation Board		
Salaries and expenses (31-40-2400-505-A):		
Budget Authority	6,729	357
Outlays	5,161	274
National Science Foundation		
Research and related activities (31-45-0100-251-A):		
Budget Authority	1,879,104	88,993
Outlays	836,065	44,311
Science and engineering education activities (31-45-0106-251-A):		
Budget Authority	177,156	9,389
Outlays	26,647	1,412
U.S. Antarctic program (31-45-0200-251-A):		
Budget Authority	135,716	7,193
Outlays	67,095	3,556
National Transportation Safety Board		
Salaries and expenses (31-47-0310-407-A):		
Budget Authority	26,361	1,397
Outlays	24,610	1,304
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation (31-49-1300-451-A):		
Budget Authority	20,196	1,070
Outlays	20,196	1,070
Nuclear Regulatory Commission		
Salaries and expenses (31-50-0200-276-A):		
Budget Authority	442,100	23,431
Outlays	331,575	17,573
Office of the Inspector General (31-50-0300-276-A):		
Budget Authority	2,900	154
Outlays	2,500	132
Occupational Safety and Health Review Commission		
Salaries and expenses (32-02-2100-554-A):		
Budget Authority	6,099	323
Outlays	5,596	297
Pennsylvania Avenue Development Corporation		
Salaries and expenses (32-08-0100-451-A):		
Budget Authority	2,425	129
Outlays	1,964	104
Public development (32-08-0102-451-A):		
Budget Authority	3,289	174
Outlays	2,467	131
Land acquisition and development fund (32-08-4084-451-A):		
401(C) Authority—		
Off. Coll.	3,000	159
Outlays	3,000	159

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Postal Service		
Payment to the Postal Service fund (32-10-1001-372-A):		
Budget Authority	452,128	23,963
Outlays	452,128	23,963
Payment to the Postal Service fund for nonfunded liabilities (32-10-1004-372-A):		
Budget Authority	36,942	1,958
Postal Service (32-10-4020-372-A):		
Obligation limitation	1,097,124	58,148
Outlays	1,075,162	56,985
Railroad Retirement Board		
Railroad social security equivalent benefit account (32-20-8010-601-A):		
Obligation limitation	28,383	1,504
Outlays	28,383	1,504
Rail Industry Pension Fund (32-20-8011-601-A):		
Obligation limitation	33,937	1,799
Outlays	33,937	1,799
Supplemental Annuity Pension Fund (32-20-8012-601-A):		
401(C) Authority	114,908	6,090
Obligation limitation	2,275	121
Outlays	58,527	3,102
Securities and Exchange Commission		
Salaries and expenses (32-35-0100-376-A):		
Budget Authority	148,161	7,853
Outlays	129,533	6,865
Selective Service System		
Salaries and expenses (32-40-0400-054-A):		
Budget Authority	27,316	1,175
Outlays	22,412	964
Smithsonian Institution		
Salaries and expenses (32-50-0100-503-A):		
Budget Authority	219,565	11,637
Outlays	194,736	10,321
Construction and improvements, National Zoological Park (32-50-0129-503-A):		
Budget Authority	5,496	291
Outlays	2,473	131
Repair and restoration of buildings (32-50-0132-503-A):		
Budget Authority	21,481	1,138
Outlays	8,592	455
Construction (32-50-0133-503-A):		
Budget Authority	8,967	475
Outlays	3,587	190
Salaries and expenses, National Gallery of Art (32-50-0200-503-A):		
Budget Authority	39,474	2,092
Outlays	34,685	1,838
Repair, restoration and renovation of buildings (32-50-0201-503-A):		
Budget Authority	776	41
Outlays	452	24
Salaries and expenses, Woodrow Wilson International Center (32-50-0400-503-A):		
Budget Authority	4,401	233
Outlays	2,725	144
Payment to the endowment challenge fund (32-50-0401-503-A):		
Budget Authority	311	16
Outlays	155	8

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Endowment challenge fund (32-50-8186-503-A):		
401(C) Authority	270	14
Outlays	270	14
Canal Zone biological area fund (32-50-8190-503-A):		
401(C) Authority	150	8
Outlays	150	8
Other Temporary Commissions		
State Justice Institute (33-02-0052-752-A):		
Budget Authority	11,379	603
Outlays	3,607	191
Commission on Agricultural Workers: Salaries and expenses (33-02-0057-352-A):		
Budget Authority	519	28
Outlays	467	25
Nat'l Comm. on Responsibilities for Financing P.S. Education (33-02-0400-502-A):		
Budget Authority	816	43
Outlays	772	41
Nuclear Waste Technical Review Board: Salaries and Expenses (33-02-0500-271-A):		
Budget Authority	2,000	106
Outlays	2,000	106
Office of the Nuclear Waste Negotiator: S & E (33-02-0700-271-A):		
Budget Authority	2,000	106
Outlays	2,000	106
Navajo and Hopi Indian Relocation Commission (33-02-1100-808-A):		
Budget Authority	28,316	1,501
Outlays	17,836	945
Interagency Council on the Homeless (33-02-1300-604-A):		
Budget Authority	1,143	61
Outlays	594	31
Comm. for the Study of Int. Mig. and Coop. Econ. Dev: S and E (33-02-1400-153-A):		
Budget Authority	1,338	71
Outlays	869	46
National Commission to Prevent Infant Mortality (33-02-1500-808-A):		
Budget Authority	675	36
Outlays	544	29
Intl Cultural and Trade Center Commission: Salaries and expens (33-02-1800-804-A):		
Budget Authority	864	46
Outlays	648	34
National Economic Commission, Salaries and Expenses (33-02-2100-802-A):		
Budget Authority	728	39
Outlays	728	39
Tennessee Valley Authority		
TVA fund (Energy supply) (33-16-4110-271-A):		
401(C) Authority—		
Off. Coll.	73,500	3,896
Outlays	73,500	3,896
TVA fund (Area and regional development) (33-16-4110-452-A):		
Budget Authority	121,000	6,413
Obligation limitation	1,500	80
Outlays	29,767	1,578
United States Holocaust Memorial Council		
Holocaust Memorial Council (33-19-3300-808-A):		
Budget Authority	2,330	123
Outlays	1,843	98

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Information Agency		
Salaries and expenses (33-22-0201-154-A):		
Budget Authority	644,127	34,139
Outlays	523,079	27,723
East West Center (33-22-0202-154-A):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Radio construction (33-22-0204-154-A):		
Budget Authority	67,340	3,569
Outlays	37,859	2,007
Radio broadcasting to Cuba (33-22-0206-154-A):		
Budget Authority	11,613	615
Outlays	9,058	480
Educational and cultural exchange program (33-22-0209-154-A):		
Budget Authority	155,441	8,238
Outlays	79,275	4,202
National Endowment for Democracy (33-22-0210-154-A):		
Budget Authority	16,369	868
Outlays	7,693	408
United States Institute of Peace		
United States Institute of Peace (33-24-1300-153-A):		
Budget Authority	7,174	380
Outlays	7,174	380
United States Sentencing Commission		
Salaries and expenses (33-31-0936-752-A):		
Budget Authority	5,383	285
Outlays	4,977	264
Total, Other Independent Agencies:		
Budget Authority	9,316,134	493,170
401(C) Authority	1,067,770	56,592
401(C) Authority—		
Off. Coll.	87,065	4,615
Obligation limitation	1,224,359	64,892
Direct Loan Limitation	720,020	38,161
Guaranteed Loan Limitation	10,567,200	560,062
Outlays	7,807,993	413,371
Total Government:		
Budget Authority	472,602,989	21,961,425
Budget Authority— ASI	60,792	60,792
Budget Authority— Spec. Rules	286,079	286,079
401(C) Authority	36,780,561	1,949,370
401(C) Authority— Off. Coll.	3,519,880	186,556
401(C) Authority— Spec. Rules	1,526,966	1,526,966
Obligation limitation	26,865,012	1,423,845
Direct Loan Limitation	20,850,344	1,105,067
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	269,146,613	14,264,771
Unobligated Balances-Defense	39,199,189	1,685,565
Outlays	308,585,076	16,191,811

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APPENDIX B: PROGRAM, PROJECT, AND ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES

(Fiscal year 1990; in thousands of dollars)

PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
WEAPONS ACTIVITIES:				
1. Research and development—core:				
Operating expenses	802,770	497,717	34,519	21,402
Capital equipment	93,875	58,202	4,037	2,503
Construction:				
90–D–101 General plant projects	20,730	12,853	891	553
90–D–102 Nuclear weapons research, development, and testing facilities revitalization, Phase III	1,000	620	43	27
88–D–105 Special nuclear materials R&D laboratory replacement	44,000	27,280	1,892	1,173
88–D–106 Nuclear weapons research, development, and testing facilities revitalization, Phase II	75,400	46,748	3,242	2,010
2. Nuclear directed energy weapons:				
Operating expenses	97,000	60,140	4,171	2,586
Capital equipment	6,000	3,720	258	160
Construction:				
88–D–106 Nuclear weapons research, development, and testing facilities revitalization, Phase II	19,000	11,780	817	507
3. Inertial fusion:				
Operating expenses	165,200	102,424	7,104	4,404
Capital equipment	8,740	5,419	376	233
4. Environment, safety and health:				
Construction:				
90–D–103 ES&H improvements	10,700	6,634	460	285
88–D–102 Sanitary wastewater systems consolidation	3,100	1,922	133	83
86–D–103 Decontamination and waste treatment facility	5,200	3,224	224	139
5. Safeguards and security:				
Construction:				
88–D–104 Safeguards and security upgrade, Phase II	1,000	620	43	27
87–D–104 Safeguards and security enhancements II	7,000	4,340	301	187
6. Testing—core:				
Operating expense	421,700	261,454	18,133	11,243
Capital equipment	40,420	25,060	1,738	1,078
Construction:				
90–D–101 General plant projects	7,400	4,588	318	197
7. Nuclear directed energy weapons:				
Operating expenses	90,000	55,800	3,870	2,399
Capital equipment	8,000	4,960	344	213
8. Safeguards and security:				
Construction:				
85–D–105 Combined device assembly facility	9,460	5,865	407	252
9. Production and surveillance:				
Operating expenses	2,100,000	1,302,000	90,300	55,986
Capital equipment	125,600	77,872	5,401	3,348
Construction:				
90–D–122 Production capabilities for the nuclear depth/strike bomb (ND/SB)	8,000	4,960	344	213
90–D–123 Follow on to lance warhead production facilities	—	—	—	—
87–D–122 Short-range attack missile II (SRAM II) warhead production facility	41,200	25,544	1,772	1,098
88–D–122 Facilities capability assurance program (FCAP)	83,099	51,521	3,573	2,215
90–D–121 General plant projects	30,850	19,127	1,327	822
90–D–124 High explosives (HE) synthesis facility	1,800	1,116	77	48
89–D–122 Production waste storage facility	9,200	5,704	396	245
89–D–125 Plutonium recovery modification project	45,000	27,900	1,935	1,200
88–D–125 High explosive machining facility	36,000	22,320	1,548	960
86–D–130 Tritium loading facility replacement	24,025	14,896	1,033	641
90–D–125 Steam plant ash disposal facility	1,500	930	64	40
90–D–126 ES&H enhancements	26,700	16,554	1,148	712

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PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES—Continued

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
89–D–126 Environmental, safety, and health upgrade, Phase II	3,500	2,170	150	93
88–D–124 Fire protection upgrading	5,400	3,348	232	144
88–D–123 Security enhancement	5,500	3,410	236	147
10. Program direction:				
Weapons program	88,853	55,089	3,821	2,369
Community assistance	9,050	5,611	389	241
Capital equipment	1,735	1,076	75	46
MATERIALS PRODUCTION:				
11. Reactor operations:				
Operating expenses	578,049	358,390	24,856	15,411
Construction:				
90–D–142 Coal storage facility environmental upgrade	920	570	40	25
90–D–150 Reactor safety assurance	12,700	7,874	546	339
89–D–141 M-Area waste disposal	7,800	4,836	335	208
89–D–142 Reactor effluent cooling water thermal mitigation	40,000	24,800	1,720	1,066
89–D–148 Improved reactor confinement system	7,100	4,402	305	189
86–D–152 Reactor electrical distribution system	3,164	1,962	136	84
12. Processing of nuclear materials:				
Operating expenses	589,609	365,558	25,353	15,719
Construction:				
86–D–148 Special isotope separation project	40,000	24,800	1,720	1,066
90–D–141 Idaho chemical processing plant fire protection	3,500	2,170	150	93
90–D–143 Plutonium finishing plant fire safety and loss limitation	800	496	34	21
13. Supporting services:				
Operating expenses	282,868	175,378	12,163	7,541
Construction:				
90–D–146 General plant projects	36,802	22,817	1,582	981
90–D–151 Engineering Center	7,000	4,340	301	187
86–D–149 Productivity retention program, Phase I, II, III, IV, and V	81,780	50,704	3,517	2,180
85–D–139 Fuel processing restoration	75,000	46,500	3,225	1,999
90–D–149 Plantwide fire protection, Phase I	4,900	3,038	211	131
87–D–159 Environmental, health, and safety improvements Phases I, II, III, and IV	55,111	34,169	2,370	1,469
89–D–140 Additional separations safeguards	10,300	6,386	443	275
88–D–153 Additional reactor safeguards	6,400	3,968	275	171
86–D–156 Plantwide safeguards systems	6,181	3,832	266	165
14. Enriched material	168,900	104,718	7,263	4,503
15. Capital equipment	104,425	64,744	4,490	2,784
16. Program direction	35,265	21,864	1,516	940
DEFENSE WASTE AND ENVIROMENTAL RESTORATION:				
17. Environmental restoration:				
Operating expenses	572,000	354,640	24,596	15,250
18. Waste operations and projects:				
Operating expenses	699,696	433,812	30,087	18,654
Construction:				
90–D–170 General plant projects	29,036	18,002	1,249	774
89–D–171 INEL road renovation	7,400	4,588	318	197
89–D–174 Replacement high level waste evaporator	9,360	5,803	402	250
88–D–173 Hanford waste vitrification plant (HWVP)	29,100	18,042	1,251	776
87–D–173 242–A Evaporator crystallizer upgrade	700	434	30	18
87–D–181 Diversion box and pump pit containment buildings	2,790	1,730	120	74

PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES—Continued

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
90–D–171 Laboratory ventilation and electrical system upgrade	1,100	682	47	29
90–D–172 Aging waste transfer line	1,300	806	56	35
90–D–173 B-plant canyon crane replacement	1,500	930	64	40
90–D–174 Decontamination laundry facility	2,800	1,736	120	75
90–D–175 Landlord program safety compliance—I	4,200	2,604	181	112
90–D–176 Transuranic (TRU) waste facility	3,100	1,922	133	83
90–D–177 RWMC Transuranic (TRU) waste treatment and storage facility	5,000	3,100	215	133
90–D–178 TSA retrieval containment building	6,000	3,720	258	160
89–D–172 Hanford environmental compliance	27,600	17,112	1,187	736
89–D–173 Tank farm ventilation upgrade	15,400	9,548	662	411
89–D–175 Hazardous waste/mixed waste disposal facility	6,440	3,993	277	172
83–D–148 Non-radioactive hazardous waste management	14,140	8,767	608	377
19. Waste research and development	115,225	71,440	4,955	3,072
20. Hazardous waste and compliance technology	40,163	24,901	1,727	1,071
21. Transportation management	11,841	7,341	509	316
22. Capital equipment	50,126	31,078	2,155	1,336
23. Program direction	2,950	1,829	127	79
NEW PRODUCTION REACTORS:				
24. New production reactor support:				
Operating expenses	203,500	126,170	8,750	5,425
Construction:				
88–D–154 New production reactor capacity (design only)	100,000	62,000	4,300	2,666
NAVAL REACTORS DEVELOPMENT:				
25. Plant development	87,000	53,940	3,741	2,319
26. Reactor development	245,300	152,086	10,548	6,540
27. Reactor operation and evaluation	217,000	134,540	9,331	5,785
28. Capital equipment	54,000	33,480	2,322	1,440
29. Construction:				
90–D–101 General plant projects	8,500	5,270	365	227
90–D–102 Expended core facility dry cell project	3,600	2,232	155	96
90–D–103 Advanced test reactor off-gas treatment system	200	124	9	5
90–D–104 Facility renovations, Knolls Atomic Power Laboratory (KAPL)	3,900	2,418	168	104
89–D–102 Heat transfer test facility	6,500	4,030	280	173
89–D–103 Advanced test reactor modifications Test Reactor Area	3,100	1,922	133	83
89–D–104 Power system upgrade, Naval Reactors Facility	6,400	3,968	275	171
88–D–102 Expended core facility receiving station, Naval Reactors Facility	3,000	1,860	129	80
30. Program direction	13,500	8,370	580	360
OTHER NATIONAL SECURITY PROGRAMS:				
31. Verification and control technology:				
Operating expenses	159,146	98,671	6,843	4,243
Capital equipment	9,732	6,034	418	259
Construction:				
90–D–186 Center for national security and arms control	1,000	620	43	27
32. Nuclear safeguards and security:				
Operating expenses	82,241	50,989	3,536	2,193
Capital equipment	4,967	3,080	214	132
33. Security investigations—OE	41,200	25,544	1,772	1,098
SEQUESTERABLE UNOBLIGATED BALANCES	85,000	52,700	3,655	2,266

[FR Doc. 89–24666 Filed 10–16–89; 12:01 pm]
BILLING CODE 3110–01–C

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federal register

Tuesday
October 17, 1989

Part XI

The President

Emergency Deficit Control Measures for Fiscal Year 1990
Final Order of October 16, 1989

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Title 3—

The President

FINAL
ORDER

Emergency Deficit Control Measures
for Fiscal Year 1990

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget as set forth in his report dated October 16, 1989, under section 251 of the Act:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1990 is permanently sequestered or reduced as provided in section 252.

(2) The following are sequestered as provided in section 252: new budget authority; unobligated

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balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the fiscal year by the amount specified by the Director of the Office of Management and Budget in his report of October 16, 1989.

(4) For accounts making commitments for guaranteed loans or obligations for direct loans as authorized by substantive law, the head of each department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified by the Director of the Office of Management and Budget in his report of October 16, 1989.

3

All reductions and sequestrations shall be made in strict accordance with the specifications of the October 16th report of the Director of the Office of Management and Budget and the requirements of section 252(b).

This order shall be effective immediately and supersedes the initial order issued on August 25, 1989.

This order shall be published in the Federal Register.

THE WHITE HOUSE,
October 16, 1989.

[FR Doc. 89-24769
Filed 10-16-89; 7:18 pm]
Billing code 3195-01-C

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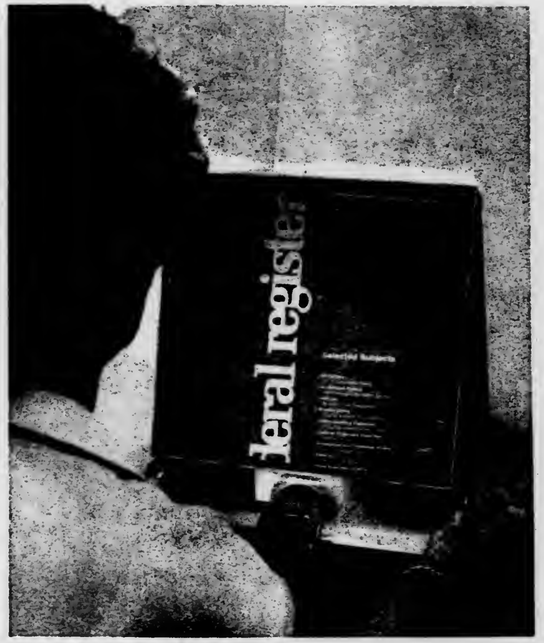
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Briefing on How To Use the Federal Register
For information on briefing in New York City, see announcement on the inside cover of this issue.

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WHEN: October 24; at 1:00 p.m.
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RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1864 and 1962

Elimination of Loan Codes and Account Status Statements

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to remove references to FmHA Instruction 450.1, Loan Codes and Account Status Statements, which has been deemed unnecessary, and to change the reference Form FmHA 450–1, "Statement of Account," to Form FmHA 1951–9, "Annual Statement of Loan Account." The intended effect of this action is to update the Agency's regulations and CFR.

EFFECTIVE DATE: October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Keith Miller, Systems Accountant, Accounting Policy and Procedures Section I, USDA, Farmers Home Administration, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262–6024 or Commercial 314–539–6024.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only matters involving management, making publication for comment unnecessary and impractical.

This action affects the following programs listed in the catalog of Federal Domestic Assistance:

10.406–Farm Operating Loans.
10.410–Low Income Housing Loans.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local official. See 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and 7 CFR part 1940, subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects for 7 CFR Parts 1864 and 1962

Accounting, Loan programs-Agriculture, Rural areas, Crops, Government property, Livestock.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; and 7 CFR 2.70.

2. Section 1864.19 is amended by revising paragraph (b) to read as follows:

§ 1864.19 Finance Office handling.

* * * * *

(b) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. In such cases, Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. All copies of Form FmHA 1951–9, "Annual Statement of Loan Account," or other forms used for the same purpose, issued in cases of approved adjustments will be stamped by the Finance Office with the following legend: "Subject to approved adjustment." The original Form FmHA 1956–1 in approved cases will be retained in the Finance Office.

* * * * *

PART 1962—PERSONAL PROPERTY

3. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

4. Section 1962.49 is amended by revising the introductory text of paragraph (e) to read as follows:

§ 1962.49 Civil and criminal cases.

* * * * *

(e) *Actions on cases referred to the U.S. Attorney and on judgement cases (including third-party judgements).* OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Form FmHA 1951–9, Annual "Statement of Loan Account," to such borrowers. OGC will also notify the State Director when a judgement (including third-party) is obtained.

* * * * *

Dated: August 30, 1989.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24534 Filed 10–17–89; 8:45 am]
BILLING CODE 3410–07–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapters III and V

Regulations Transferred From Federal Savings and Loan Insurance Corporation; Redesignation From Chapter V to Chapter III

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Rule.

SUMMARY: In abolishing the Federal Home Loan Board ("FHLBB") and the Federal Savings and Loan Insurance Corporation ("FSLIC"), the Financial Institutions Reform, Recovery, and

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Enforcement Act of 1989 ("FIRREA") provided for the transfer of FHLBB and FSLIC regulations relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the FSLIC insurance fund to either the Office of Thrift Supervision ("OTS") or the Federal Deposit Insuranace Corporation ("FDIC"). On October 6, 1989, as required by FIRREA, the Director of the OTS and the Chairperson of the FDIC jointly identified those regulations to be transferred and published a notice in the **Federal Register** allocating those regulations between the OTS and the FDIC (54 FR 41359–61).

This document carriers out the transfer of those FHLBB or FSLIC regulations which have been allocated to the FDIC by redesignating them from the former FHLBB's regulations in title 12, chapter V, of the Code of Federal Regulations to the FDIC's regulations in title 12, chapter III, of the Code of Federal Regulations. This action is being taken for the purpose of transferring the former FHLBB and FSLIC regulations out of chapter V so that the OTS can establish its regulations in chapter V; the FDIC may take additional action in the future to modify, amend, or revoke certain of the transferred regulations.

EFFECTIVE DATE: October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Alan J. Kaplan, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, phone (202) 898–3734; or Grovetta D. Nelson, Regional Attorney, Legal Division DOS, Federal Deposit Insurance Corporation, 452 Fifty Avenue, New York, New York 10018, phone (212) 704–1454.

SUPPLEMENTARY INFORMATION:

A. General

The FIRREA, signed into law August 9, 1989 (Pub. L. No. 101–73), immediately abolished the FSLIC, and abolished the FHLBB 60 days after enactment. Although these agencies have been abolished, FIRREA provides that FHLBB or FSLIC regulations and orders that relate to functions transferred by FIRREA and that were in effect on August 9, 1989 shall continue in effect according to their terms. These rules and regulations are enforceable by or against the FDIC, the Director of the OTS, the Federal Housing Finance Board, or the Resolution Trust Corporation, as the case may be, until the responsible agency modifies, terminates, sets aside, or supersedes them in accordance with applicable law. Pursuant to section 401(i) and 402(b) of FIRREA, the Chairperson of the FDIC and the Director of the OTS were required to identify those FHLBB or FSLIC regulations and orders relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the FSLIC insurance fund which would be enforceable by the FDIC and the OTS, and publish notice of the allocation of these regulations and others in the **Federal Register**. This was accomplished in a separate notice document jointly issued by the two agencies and published in the **Federal Register** on October 6, 1989 (54 FR 41359).

The FDIC is hereby formally transferring those regulations which have been allocated to it from 12 CFR chapter V to 12 CFR chapter III, and redesignating them to conform to the current structure of the FDIC's regulations in 12 CFR chapter III.

This document establishes subchapter C in title 12, chapter III, of the Code of Federal Regulations, where the transferred and redesignated regulations will be codified. Subchapter C will be entitled "Regulations Transferred from Federal Savings and Loan Insurance Corporation".

The regulations are being transferred at this time for the purpose of removing them from 12 CFR chapter V, since the OTS intends to publish its regulations in that chapter. To expedite this action, no changes (other than their redesignation) are being made at this time to the content of the transferred regulations; however, the FDIC may take additional action in the future to modify, amend, or repeal certain of the transferred regulations.

The FIRREA abolished the FSLIC insurance fund and established two separate insurance funds to be administered by the FDIC, the Bank Insurance Fund ("BIF") and the Savings Association Insurance Fund ("SAIF"). In general (with certain exceptions), members of the BIF are banks, while members of the SAIF are savings associations (savings and loans and similar institutions). Those regulations transferred from FSLIC relating to the administration of the FSLIC insurance fund will apply only to members to the SAIF.

B. Administrative Procedure Act

The transferred regulations were previously promulgated by the former Federal Home Loan Bank Board after notice and opportunity for public comment, where required. Therefore, a notice of proposed rulemaking and ensuing comment period is unnecessary in this case. Moreover, this action merely redesignates certain regulations from one chapter of the Code of Federal Regulations to another, without changing the content of those regulations in any way, in order to permit another agency (OTS) to publish its regulations in the chapter being vacated. Accordingly, this redesignation will become effective immediately upon publication.

C. Regulatory Flexibility Act

No notice of proposed rulemaking is required for this action, so the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Accordingly, under the authority of title IV of Public Law 101–73 (103 Stat. 183, 354) and as set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended by adding a new subchapter C in chapter III, and chapter V of title 12 of the Code of Federal Regulations is amended by redesignating certain parts and sections of chapter V to chapter III, as set forth below.

1. Title 12, chapter III, of the Code of Federal Regulations is amended by adding a new subchapter C, consisting of parts 382 through 396, as follows:

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER C—REGULATIONS TRANSFERRED FROM FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Part
382 Powers of conservator and conduct of conservatorships.
383 Powers of receiver and conduct of receiverships.
384 Application for insurance of accounts.
385 Insured status.
386 Settlement of insurance.
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390 Net worth certificates.
391 Voluntary assisted-merger program.
392 Procedures for the administration and determination of claims filed with the FSLIC as receiver.
393 Presentment of claims to receiver prior to commencing litigation.
394 Procedures for the processing and determination on review of determinations of the FSLIC as receiver.
395 Procedures for the administration and determination of requests for expedited relief from decisions or threatened actions of the FSLIC as receiver.
396 FSLIC financial operations.

2. Title 12 of the Code of Federal Regulations is amended by redesignating certain regulations from 12 CFR chapter V to 12 CFR chapter III as set forth in the following redesignation table which shows the relationship of the former CFR part and section numbers under 12 CFR chapter V and new part and section numbers in 12 CFR chapter III:

REDESIGNATION TABLE

12 CFR ch. V: Former Section Numbers	12 CFR ch. III: New Section Numbers
Part 548	Part 382.
Part 549	Part 383.
Part 562	Part 384.
563.8–2	385.5.
563.15	385.6.
563.16	385.7.
563.16–2	385.8.
563.28	385.9.
563.29–1	385.1.
563.30	385.2.
563.31	385.3.
563.36	385.4.
Part 564	Part 386.
564.1	386.1.
564.2	386.2.
564.3	386.3.
564.4	386.4.
564.5	386.5.
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564.11	386.11.
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569a.4	388.1.
569a.5	388.2.
569a.6	388.3.
569a.7	388.4.
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Part 569c	Part 389.
570.12	386.12.
570.13	386.13.
Part 572	Part 390.
Part 572a	Part 391.
Part 575	Part 392.
Part 575a	Part 393.
Part 576	Part 394.
Part 577	Part 394.
Part 577	Part 395.
Part 578	Part 396.

3. All internal references in the redesignated parts and sections are changed accordingly.

By direction of the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 12th day of October, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–24539 Filed 10–17–89; 8:45 am]

BILLING CODE 6174–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ANM–4]

Establish Transition Areas; Telluride, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes the Telluride, Colorado, transition areas to provide a controlled airspace environment for a new VOR/DME approach to Runway 9 at the Telluride Airport. The areas will be depicted on aeronautical charts, and are intended to segregate aircraft operating under Instrument Flight Rules from other aircraft which are operating under Visual Flight Rules.

DATES: *Effective Date:* 0901 u.t.c., November 13, 1989.

Comments must be received on or before November 30, 1989.

ADDRESSES: Send comments on the rule to: Federal Aviation Administration, 17900 Pacific Highway South, Docket 89–ANM–4, Seattle, Wasington 98168, ATTN: ANM–536.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536. Federal Aviation Administration, Docket No. 89–ANM–4, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2536.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves establishment of transition areas at Telluride, Colorado, and was published as Notice of Proposed Rulemaking (NPRM) (54 FR 18538, May 1, 1989); and although no comments were received, change has been made to the initial proposal. Public comment is again invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with any other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects on the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

Discussion

The purpose of this amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) is to establish controlled airspace for a new instrument approach procedure at Telluride, Colorado. This airspace is needed to encompass a VOR/DME approach to Runway 9. The area will be depicted on appropriate aeronautical charts for pilot reference, enabling pilots to remain clear of controlled airspace or otherwise comply with Instrument Flight Rules.

After the Notice of Proposed Rulemaking was published, it was decided to reduce the impact upon the flying public by eliminating the portion which would establish controlled airspace upward from 1,200 feet above the surface, and replace it with controlled airspace which extends upward from 11,000 feet above sea level. This will provide aircraft from other airports in the same geographical area with 2,000–4,000 feet more in which to operate outside of controlled airspace. In addition, the geographical dimensions of the 11,000 foot transition area are slightly larger than those proposed for the 1,200 foot transition area, and the dimensions of the 700 foot transition area have been slightly enlarged over those proposed. Overall, however, impacts on the flying public are significantly less than those anticipated from the proposal.

It is important that the airspace be designated as soon as possible so as to permit operations during the highly critical period of time involving winter months when the procedure is most needed. Under these circumstances, the FAA concludes that there is an immediate need for the regulation to establish the transition area before the winter season, when the flying public would most benefit. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to public interest. For the same reason, I find that good cause exists for making this amendment effective 30 days after publication in the **Federal Register**.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6Z dated January 3, 1989.

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The Rule

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING

1. The authority citation for part 71 continues to read as follows:

AUTHORITY: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Telluride, Colorado (New)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at:
Lat. 38 12'30"N., long. 108 11'45"W.; to lat. 38 03'45"N., long. 107 38'00"W.; to lat. 37 44'45"N., long. 107 46'00"W.; to lat. 37 53'00"N., long. 108 20'00"W.;

To the point of beginning; and that airspace extending upward form 11,000 feet above mean sea level within an area bounded by a line beginning at:
Lat. 38 22'00"N., 108 39'30"W.; to lat. 38 11'30"N., 107 56'30"W.; to lat. 37 51'00"N., 108 05'00"W.; to lat. 38 01'15"N., 108 48'00"W.; to point of beginning.

Issued in Seattle, Washington, on September 27, 1989.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 89–24550 Filed 10–18–89; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AB64

Claims Based on Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations concerning diseases considered to be "radiogenic." These amendments are deemed appropriate based upon our evaluation of the recommendations by the Veterans' Advisory Committee on Environmental Hazards. The effect of these amendments will be improved adjudication of radiation claims. We are also withdrawing a proposed clarification concerning when service connection can be established based upon claimed exposure to ionizing radiation and herbicides containing dioxin.

EFFECTIVE DATE: These amendments are effective November 17, 1989.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 48551–48552 of the **Federal Register** of December 1, 1988, the VA published a proposal to amend §§ 3.311a and 3.311b. A correction was published on page 50547 of the **Federal Register** of December 16, 1988. Interested persons were invited to submit comments, suggestions, or objections by January 3, 1989. One comment was received.

The regulatory changes were proposed under RIN 2900–AB64 with the title, Claims Based on Exposure to Ionizing radiation and Herbicides Containing Dioxin. However, for the reasons set forth below, the proposed change to § 3.311a, the regulation pertaining to claims based on exposure to herbicides containing dioxin during service in the Republic of Vietnam, is being withdrawn. Consequently, the title of these regulatory amendments has been changed to delete reference to claims based on exposure to herbicides containing dioxin.

The commenter noted that a proposed amendment to a different regulation (§ 3.309) to implement Public Law 100–321, 102 Stat. 485 (1988), published on pages 50547–50550 of the **Federal Register** of December 16, 1988, would list 13 diseases for which service connection may be established by presumption in a radiation-exposed veteran. Should the amendments to §§ 3.311b and 3.309 become final, five of the thirteen diseases that could be service-connected by presumption (lymphomas (except Hodgkin's disease), and cancers of the pharynx, small intestine, bile ducts, and gall bladder) would not be considered to be "radiogenic" in § 3.311b(b)(2). It was suggested that the five diseases be added to the list of "radiogenic" diseases in § 3.311b(b)(2) as there is sound scientific and medical evidence to do so.

As the suggested additions to the list of "radiogenic" diseases are outside of the scope of the original proposal and have not been subject to public comment, they will be given separate consideration. We will consult with the Veterans' Advisory Committee on Environmental Hazards and will consider whether there is sound scientific and medical evidence to warrant our adding any or all of the five diseases to the list of "radiogenic", diseases. Should we conclude that any or all of the five should be considered "radiogenic" we will implement a new rulemaking procedure for the further amendment of § 3.311b(b)(2).

The commenter objected to the proposed change to § 3.311b(h), stating that it was not explained, or even mentioned, in the preamble to the proposed regulations. It was suggested that the final sentence of the proposed change be eliminated. The reason for the proposed change to § 3.311b(h) was explained in the preamble (see the summary paragraph and the last paragraph on page 48551 of the **Federal Register** of December 1, 1988). However, in Nehmer, et al., v. United States Veterans Administration, et al., C. A. No. C–86–6160 TEH, U. S. D. C., N. D. Cal., May 3, 1989, the court invalidated VA's requirement of proof of a causal relationship in adjudicating Agent Orange claims. In view of that decision, VA is reconsidering any necessary amendments to regulations adopted under the Veterans' Dioxin and Radiation Exposure Standards Act, Public Law 98–542, 98 Stat. 2725 (1984). Accordingly, we are withdrawing the proposed amendments of §§ 3.311a(g) and 3.311b(h) as they made reference to the causal relationship standard.

We appreciate the comments and suggestions submitted in response to publication of the proposed rules which are adopted with the exception of the proposed amendments of §§ 3.311a(g) and 3.311b(b) which are withdrawn.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are nonmajor for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program numbers are 64.100, 64.101, 64.106, 64.109, and 64.110).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 13, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR PART 3, ADJUDICATION, IS AMENDED AS FOLLOWS:

1. In § 3.311b, the first sentence of paragraph (a)(1) is revised, paragraphs (b)(2)(i), (b)(2)(iii), (b)(2)(xiv), (b)(2)(xv), and (b)(4) are revised, and paragraphs (b)(2) (xvi) and (xvii) and authority citations for paragraphs (a)(1) and (b)(2) are added, to read as follows:

§ 3.311b Claims based on exposure to ionizing radiation.

(a) * * *

(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in § 3.307 or § 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. * * *

(Authority: 38 U.S.C. 210(c))

* * * * *

(b) * * *

(2) * * *

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

* * * * *

(iii) Breast cancer;

* * * * *

(xiv) Salivary gland cancer;

(xv) Multiple myeloma;

(xvi) Posterior subcapsular cataracts; and

(xvii) Non-malignant thyroid nodular disease.

(Authority: 38 U.S.C. 210(c))

* * * * *

(4) For the purposes of paragraph (b)(1) of this section:

(i) Bone cancer must become manifest within 30 years after exposure;

(ii) Leukemia may become manifest at any time after exposure;

(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and

(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(Authority: 38 U.S.C. 210(c); Pub. L. 98–542)

§ 3.312 [Amended]

2. In § 3.312(c)(1), remove the word "casual" and add in its place, the word "causal".

[FR Doc. 89–24490 Filed 10–17–89; 8:45 am]
BILLING CODE 8320–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–40

[FPMR Temp. Reg. G–52, Supp. 1]

Use of Carrier Contractor for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation G–52 to September 30, 1990.

DATES: *Effective date:* October 1, 1989. *Expiration date:* September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Ed Kelliher, Transportation Management Division, Freight Management Branch (FBXF), FTS 557–7981 or commercial 703–557–7981.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

PART 101–40 [AMENDED]

The authority citation for part 101–40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR chapter 101, the following temporary regulation is added to the appendix at the end of subchapter G to read as follows:

Federal Property Management Regulations, Temporary Regulation G–52, Supplement 1

To: Heads of Federal agencies.

Subject: Use of carrier contractor for express small package transportation.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation G–52.

2. *Effective date.* This supplement is effective October 1, 1989.

3. *Expiration date.* This supplement expires September 30, 1990, unless sooner canceled or revised.

4. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation G–52 is extended to September 30, 1990.

Dated: October 2, 1989.

Richard G. Austin,
Acting Administrator of General Services.

[FR Doc. 89–24512 Filed 10–17–89; 8:45 am]
BILLING CODE 6820–24–M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-615; RM-5877, RM-6321]

Radio Broadcasting Services; Virgie and West Liberty, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298A to Virgie, Kentucky, in response to a petition filed by Shelby Valley Broadcasting, Inc., ("petitioner"), as the community's first local FM service. Channel 298A can be allotted to Virgie in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 298A at Virgie are 37-20-06 and 82-34-47. In response to a counterproposal filed by East Kentucky Broadcasting Corporation, we shall allot Channel 275A to West Liberty, Kentucky, as that community's first local FM service. Channel 275A can be allotted to West Liberty in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 275A at West Liberty are 37-55-24 and 83-15-30. With this action, this proceeding is terminated.

DATES: Effective November 24, 1989; The window period for filing applications will open on November 27, 1989, and close on December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a snyopsis of the Commission's Report and Order, MM Docket No. 87-615, adopted September 19, 1989, and released October 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73-202 [Amended]

2. Section 73.202(b) the Table of FM Allotments is amended under Kentucky by adding Virgie, Channel 298A, and West Liberty, Channel 275A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24547 Filed 10-17-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-416, RM-5112]

Radio Broadcasting Services; Keokuk, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document vacates an earlier action in this proceeding modifying the license of Station KOKX(FM), Channel 237A, Keokuk, Iowa, to specify operation on Channel 290C2, Keokuk, and reallots Channel 237A to Keokuk, in response to the request of the licensee of KOKX(FM). Channel 290C2, with a site restriction of 15.7 kilometers (9.8 miles) southwest of Keokuk at coordinates 40-16-12 and 91-28-29 is thereby available for applications. The licensee of Station KOKX(FM) has filed a petition for rule making proposing to substitute Channel 237C1 for Channel 237A at Keokuk. In a concurrent action, the Commission issues a Notice of Proposed Rule Making to this effect. If Channel 237A is modified to Channel 237C1, Channel 290C2 will be deleted from Keokuk due to interference concerns, and Channel 242C2 will serve as the substitute to accommodate any parties interested in pursuing a Class C2 channel at Keokuk. The document also dismisses a petition for stay, and denies an opposition to order to show cause and a petition for reconsideration. With this action, this proceeding is terminated.

DATES: Effective November 24, 1989; the window period for filing applications for Channel 290C2 at Keokuk, Iowa will open on November 27, 1989, and close on December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 86-418, adopted September 19, 1989, and released October 10, 1989. The full text of this Commission decision is available during business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Iowa by adding Channel 237A at Keokuk.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 89-24548 Filed 10-17-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[DA 89-1208]

Waiver of the Rules To Extend Aircraft Transmitter Frequency Tolerance

AGENCY: Federal Communications Commission.

ACTION: Waiver of rule.

SUMMARY: This order waives compliance with footnote 2 to title 47 of the Code of Federal Regulations § 87.133(a) until January 1, 1992, for currently installed aircraft radios. This waiver alleviates the impact of footnote 2 by providing more time within which aircraft radio transmitters operating in the band 100-470 MHz must meet a frequency tolerance of thirty parts per million (ppm). The frequency tolerance for aircraft stations subject to this waiver continues to be fifty ppm.

EFFECTIVE DATE: October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Robert P. De Young, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Order

In the matter of transmitter frequency tolerance in the aviation services.

Adopted: September 21, 1989.

Released: September 22, 1989.

By the Chief, Private Radio Bureau:

1. In an Order released May 22, 1984, FCC 84-220, 49 FR 21737 (1984), the Commission amended § 87.65 of the Rules, 47 CFR 87.65 to require, among other things, aircraft radio stations operating in the frequency band 100 MHz to 470 MHz to maintain a frequency tolerance of 30 parts per million (ppm).[1] Section 87.133(a) of the rules, 47 CFR 87.133(a) provides that 30 ppm is the maximum frequency tolerance permitted after January 1, 1985, for new and replacement transmitters and for all transmitters after January 1, 1990. The effect of this rule is to require modification or replacement of all aircraft transmitters operating in the 100 MHz to 470 MHz band that do not meet the 30 ppm frequency tolerance by January 1, 1990.

2. When the Commission adopted the tolerance in 1984, it stated its intention to conform part 87 of the Rules to the Final Acts of the World Administrative Radio Conference, Geneva, 1979 (WARC 79), which became effective internationally on January 1, 1982. The Commission noted that the proposed frequency tolerance was published in the *Fifth Notice of Inquiry* in General Docket 80-739 FFC 82-213, 47 FR 25982 (1982) and that no comments were received regarding the proposed frequency tolerance. The Commission also noted in its 1984 *Order* that adoption of the frequency tolerance was consistent with the three-phase plan of the Federal Aviation Administration (FAA) to implement 25 kHz channel spacing in the 118-136 MHz band. No objections to or petitions for reconsideration of this action were received.

3. In a letter dated July 31, 1989, the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the General Aviation Manufacturers Association, and the Helicopter Association International (hereafter petitioners) jointly petitioned the Commission to exclude all currently installed VHF aircraft radios from the 30 ppm frequency tolerance requirement. In support of its petition, petitioners estimate that as many as 93,000 radios are currently installed in the general aviation fleet that do not meet the new tolerance requirement. Petitioners point out that these radios are installed in small, singe-engine, piston-powered aircraft which are primarily operated in relatively remote areas of the United States where they would not interfere with other U.S. or foreign radios employing the 30 ppm tolerance. The petitioners argue that the cost of replacing these radios which they estimate to be approximately $1200 or the cost of modifying them, between $450 and $650 frequently will exceed the radio's market value. Further, the petitioners state that the international Radio Regulations do not require all installed aircraft radios to meet to 30 ppm requirement by January 1, 1990. They note that footnote 28 to appendix 7 of the international Radio Regulations permits installed aircraft radios with channel spacing of 50 kHz to continue to operate with a frequency tolerance of 50 ppm.

4. We recognize the potential burden resulting from the pending change in the frequency tolerance requriement on the general aviation community. Additionally, we note that the continued operation of currently installed aircraft stations with a frequency tolerance of 50 ppm should not cause interference to other stations. Therefore, to alleviate the pending impact and to allow sufficient time to analyze the effects of petitioners' request on the general aviation community, we are extending the January 1, 1990, deadline to January 1, 1992, for meeting the 30 ppm frequency tolerance requirement.

5. Accordingly, pursuant to the authority in §§ 0.331 and 1.3 of the Commission's Rules, 47 CFR 0.331 and 1.3, the requirement contained in footnote 2 of § 87.133(a) of the Rules, 47 CFR 87.133(a), for currently installed aircraft stations operating in the band 100-470 MHz to maintain a frequency tolerance of 30 ppm effective January 1, 1990, IS WAIVED until January 1, 1992. The frequency tolerance for aircraft stations subject to this waiver continues to be 50 ppm.

List of Subjects in 47 CFR Part 80

Aviation Service.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-24081 Filed 10-17-89; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 87.65 of the rules has since been recodified as § 87.133, 47 CFR 87.133 See 53 FR 28940 (1988).

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Proposed Rules

Federal Register
Vol. 54, No. 200
Wednesday, October 18, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-40]

Proposed Establishment of Transition Area, Claxton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Claxton, GA, transition area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed to Runway, 9 at the Claxton-Evans County Airport. This action would lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in vicinity of the airport. The additional controlled airspace is required for protection of instrument flight rules (IFR) aeronautical operations. If approved, concurrent with publication of the SIAP the operating status of the Claxton-Evans County Airport would be changed from visual flight rules (VFR) to IFR.

DATES: Comments must be received on or before: November 30, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-40, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.161 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Claxton, GA, transition area. An NDB SIAP has been developed to serve runway 9, at the Claxton-Evans County Airport. This action would lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in vicinity of the airport for protection of IFR aeronautical operations. If approved, the operating status of the airport would change from VFR to IFR concurrent with publication of the instrument approach procedure. Section 71.181 of part 71 of the Federal Aviation Regulations was republshed in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Claxton, GA [New]

That airspace extending upward from 700 feet above the surface within a five-mile radius of the Claxton-Evans County Airport (latitude 32°11'37"N, longitude 81°52'23"W); within three miles each side of the 248° bearing from the Claxton NDB (latitude 32°11'34"N, longitude 81°52'30"W), extending from the 5-mile radius area to 8.5 miles west of the NDB.

Issued in East Point, Georgia, on October 4, 1989.

Don Cass,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-24549 Filed 10-17-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

RIN 0790-AA48

Commercial Activities Program Procedures

AGENCY: DoD, WHS.

ACTION: Proposed rule.

SUMMARY The Department of Defense is amending the proposed rule published in the **Federal Register** on April 18, 1989 (54 FR 15442), "Commercial Activities Program Procedures," 32 CFR part 169a. This amendment is to add § 169a.2(k) which was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Mr. Dom Miglionico, Office of the Assistant Secretary of Defense (Production and Logistics) Installations Support Division, Pentagon, Washington, DC 20301-8000.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, 32 CFR part 169a as proposed at 54 FR 15442 is amended as follows:

PART 169a—[AMENDED]

1. The authority citation for part 169a continues to read as follows:

Authority: 5 U.S.C. 301; E.O. 12615; Pub. L. 93-400.

2. Section 169a.2 is amended to add paragraph (k) to read as follows:

§ 169a.2 Applicability and scope.

* * * * *

(k) Establishes and shall not be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction was not in accordance with this part, except as specifically set forth in § 169a.6(c)(7).

Dated: October 10, 1989.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89 24217 Filed 10-17-89; 8:45 am]
BILLING CODE 3810-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-442, RM-6837]

Radio Broadcasting Services; Roanoke, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Eagle's Nest, Inc., licensee of Station WELR-FM, Channel 272A, Roanoke, Alabama, seeking the substitution of FM Channel 272C3 for Channel 272A and modification of its license accordingly. Coordinates for this proposal are 33-00-0000 and 85-28-00.

DATES: Comments must be filed on or before December 1, 1989, and reply comments on or before December 18, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Catherine M. Grofer, Esqs., Gardner, Carton & Douglas, 1001 Penn. Ave., NW., Suite 750-N, Wash., DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-442, adopted September 19, 1989, and released October 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24558 Filed 10-17-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-443, RM-6827]

Radio Broadcasting Services; Lake Arthur, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jefferson Davis Broadcasting Corporation, proposing the substitution of Channel 297C3 for Channel 297A at Lake Arthur, Louisiana, and the modification of Station KAHJ(FM)'s construction permit to specify operation on Channel 297C3 in lieu of Channel 297A. A site restriction of 17.9 kilometer (11.1 miles) northeast of the city is required, at coordinates 30-07-01 and 92-51-35. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before December 1, 1989, and reply comments on or before December 18, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 in addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Ashton R. Hardy, Esquire, Bradford D. Carey, Esquire, Marjorie R. Esman, Esquire, Walker, Bordelon, Hamlin, Theriot and Hardy,

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701 South Peters Street, New Orleans, LA 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–443, adopted September 20, 1989, and released October 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24559 Filed 10–17–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–444, RM–6861]

Radio Broadcasting Services; Pulaski, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by New River Media Group, Inc., licensee of Station WPSK(FM), Channel 296A, Pulaski, Virginia, proposing the substitution of Channel 296C3 for Channel 296A at Pulaski, and the modification of the station's license to specify operation on the higher class co-channel accordingly. The proposed upgrade can be accomplished at the current transmitter site of Station WPSK(FM) if a current pending application for Channel 296A, Hot Springs, Virginia, is granted. The coordinates are 37–01–28 and 80–44–47. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before December 1, 1989, and reply comments on or before December 18, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert J. Rini, Esquire, Brown, Finn & Nietert, Chartered, 1920 N Street, NW., Suite 660, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–444, adopted September 20, 1989, and released October 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24560 Filed 10–17–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–448, RM–6612]

Television Broadcasting Services; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Troy State University, seeking to delete the educational reservation on Channel *63 at Montgomery, Alabama, to make it available for commercial application. Coordinates used for this proposal are 32°22'54" and 86°18'30".

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: M. Scott Johnson and Lynn E. Shapiro, Esqs., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–448, adopted September 19, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24556 Filed 10–17–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–441, RM–6813]

Television Broadcasting Services; Calipatria, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Calipatria Television, seeking the allotment of UHF television Channel 54 to Calipatria, California, as that community's first local television broadcast service. Coordinates used for this proposal are 33–04–37 and 115–19–46.

Although the Commission has imposed a freeze on new TV allotments in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before December 1, 1989, and reply comments on or before December 18, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Michael L. Glaser and Joseph P. Benkert, Esqs., Gardner, Carton & Douglas, Republic Plaza, 370–17th St., Suite 2200, Denver, CO 80202–3520.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–441, adopted September 19, 1989, and released October 10, 1989. The full text of this Commission decision is available for inspection and copying during normal buriness hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24557 Filed 10–17–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 21]

Passenger Motor Vehicle Theft Data for 1988; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment regarding data on passenger motor vehicle thefts that occurred in 1988. These data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). These 1988 theft data indicate that vehicle thefts in 1988 increased above the 1983/1984 level. Of the 171 lines sold in the United States during 1988, 120 of the lines (70.2 percent) had theft rates that exceeded the median theft rate for 1983/1984.

DATE: All comments on this notice must be received by NHTSA not later than December 4, 1989.

ADDRESS: Comments should refer to Docket No. T84–01; Notice 21, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590, (202 366–4949).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202 366–4808).

SUPPLEMENTARY INFORMATION: Title VI of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act), 15 U.S.C. 2021 *et seq.*, directs NHTSA to promulgate a motor vehicle theft prevention standard applicable to high-theft car lines. Section 603(a)(1) of the Cost Savings Act [15 U.S.C. 2023(a)(1)], specifies that three types of car lines are high theft lines within the meaning of title VI:

(1) Existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) New lines that are likely to have a theft rate exceeding the 1983–84 median theft rate; and

(3) Lines with theft rates below the 1983–84 median theft rate, but which have a majority of major part interchangeable with lines whose theft rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the 1983–84 median theft rate. Section 603(b)(3) directs NHTSA to obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comments, [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection.

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983–1984 theft data, 50 FR 46666. Based on those data, NHTSA calculated the median theft rate for purposes of title VI as 3.2712 thefts per 1000 vehicles produced.

Although the Cost Savings Act provides that the calculation of the median theft rate is a one-time event, subsection 603(b)(3) directs the agency to continue to collect and publish theft data on a periodic basis. The publication of national data should serve to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 171 lines of passenger motor vehicles sold in the United States for the 1988 model year, based on information provided by the NCIC.

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These 1988 theft data show an increase in vehicle thefts above the levels experienced in 1983–1984. As earlier noted, for 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. For model years 1985 through 1988, the median increased to 3.4539, 3.6023, 4.1476, and 4.4158, respectively. The corresponding percentage of car lines per year that exceeded the 1983/1984 median theft rate also increased to 55 percent, 58.6 percent, 67.2 percent, and 70.2 percent, respectively. For 1988, 120 of the 171 lines, or 70.2 percent, exceeded 3.2712 thefts per 1000 vehicles produced. For model year 1988, the second effective year of the theft prevention standard, the 4.4158 median theft rate represents a 35 percent increase in the median since model years 1983/1984, and a 6.5 percent increase over model year 1987.

In calculating the 1988 theft data, the agency followed the same approach it used in calculating the 1983–1984 median theft rate, in that it has sought to eliminate multiple countings of the same theft by excluding all duplicate vehicle identification numbers (VINs) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

Interested persons are invited to submit comments on these data. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR part 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the data will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1988 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: October 12, 1989.

Barry Felrite.

Associate Administrator for Rulemaking.

TABLE 1.—MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988

	Manufacturer	Make/model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft rate (thefts/product) (1988) (1,000's)
1	General Motors	Pontiac Firebird/Trans Am	1,659	56,449	29.3894
2	General Motors	Chevrolet Camaro	2,329	90,484	25.7394
3	General Motors	Chevrolet Monte Carlo	674	26,603	23.5640
4	Mitsubishi	Cordia	86	4,119	20.8789
5	Mitsubishi	Starion	78	3,945	19.7719
6	Chrysler Corp.	Chrysler Conquest	178	9,561	18.5784
7	Mitsubishi	Mirage	323	17,735	18.2126
8	Aston Martin	Saloon Vantage/Volante	1	56	17.8571
9	Volkswagen	Cabriolet	185	10,931	16.9243
10	General Motors	Pontiac Fiero	381	25,371	15.0171
11	Hyundai	Excel	3,326	231,551	14.3640
12	Porsche	911	93	6,532	14.2376
13	Volkswagen	Scirocco	50	3,690	13.5501
14	Alfa Romeo	Milano	24	1,870	12.8342
15	General Motors	Cadillac Brougham	580	48,964	11.8454
16	Porsche	928	19	1,613	11.7793
17	General Motors	Chevrolet Corvette	223	21,282	10.4783
18	Toyota	Supra	209	20,122	10.3866
19	Toyota	MR2	98	9,571	10.2393
20	Nissan	300ZX	206	20,224	10.1859
21	General Motors	Pontiac Bonneville	973	96,356	10.0980
22	Isuzu	I-Mark	248	24,684	10.0470
23	Chrysler Corp	Dodge 600	166	17,080	9.7190
24	Isuzu	Impulse	88	9,070	9.7023
25	Ford Motor Co	Ford Mustang	1,750	180,724	9.6833
26	General Motors	Cadillac Seville	214	22,432	9.5399
27	Chrysler Corp	Dodge Shadow	853	91,304	9.3424
28	Honda	Prelude	688	77,601	8.8659
29	General Motors	Chevrolet Spectrum	529	61,377	8.6189
30	Volkswagen	Jetta	514	59,899	8.5811
31	Chrysler Corp	LeBaron Coupe/Convertible	686	85,956	7.9808
32	General Motors	Cadillac Fleetwood/DeVille	1,163	147,000	7.9116
33	Chrysler Corp	Chrysler Fifth Avenue/Newport	342	43,416	7.8773
34	Mitsubishi	Galant Sigma	71	9,027	7.8653

TABLE 1.—MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988—Continued

	Manufacturer	Make/model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft rate (thefts/product) (1988) (1,000's)
35	Mazda	323	791	101,161	7.8192
36	Ford Motor Co	Lincoln Continental	287	39,148	7.3312
37	Chrysler Corp	Plymouth Sundance	629	87,132	7.2189
38	General Motors	Pontiac Sunbird	488	70,380	6.9338
39	Nissan	Maxima	434	64,928	6.6843
40	General Motors	Chevrolet Cavalier	1,813	278,279	6.5150
41	BMW	3	192	29,550	6.4975
42	General Motors	Oldsmobile Delta 88 Royale	941	145,555	6.4649
43	Ford Motor Co	Ford Thunderbird	902	139,717	6.4559
44	Chrysler Corp	Dodge Daytona	417	65,187	6.3970
45	AMC/Renault/Chrysler	Eagle Medallion	149	23,413	6.3640
46	Porsche	924	13	2,061	6.3078
47	Volvo	780	9	1,457	6.1771
48	General Motors	Buick Riviera	51	8,290	6.1520
49	Chrysler Corp	Plymouth Caravelle	102	16,895	6.0373
50	General Motors	Chevrolet Impala/Caprice	798	132,963	6.0017
51	General Motors	Cadillac Allante	14	2,444	5.7283
52	General Motors	Pontiac 6000	502	88,270	5.6871
53	Ford Motor Co	Mercury Cougar	668	113,972	5.6856
54	Mazda	RX-7	221	39,166	5.6426
55	General Motors	Oldsmobile Toronado	90	16,106	5.5880
56	Chrysler Corp	Plymouth Colt/Colt Vista	252	45,141	5.5825
57	Porsche	944	33	5,931	5.5640
58	Chrysler Corp	Chrysler New Yorker	394	70,914	5.5560
59	Nissan	Pulsar	234	42,355	5.5247
60	Nissan	200 SX	97	17,597	5.5123
61	General Motors	Buick LeSabre	672	122,415	5.4895
62	General Motors	Oldsmobile 98/Touring	393	73,647	5.3363
63	General Motors	Chevrolet Beretta/Corsica	2,804	526,011	5.3307
64	Chrysler Corp	Dodge Colt/Colt Vista	269	50,716	5.3040
65	Ford Motor Co	Ford Escort/Exp	2,148	405,313	5.2996
66	Nissan	Sentra	1,354	259,171	5.2243
67	Chrysler Corp	Chrysler New Yorker Turbo	45	8,787	5.1212
68	Toyota	Cressida	59	11,795	5.0021
69	Mercedes-Benz	560SL	62	12,444	4.9823
70	General Motors	Oldsmobile Cutlass Supreme	556	112,333	4.9496
71	Ford Motor Co	Mercury Tracer	451	91,702	4.9181
72	Ford Motor Co	Lincoln Town Car	947	193,576	4.8921
73	General Motors	Cadillac Cimarron	31	6,377	4.8612
74	Chrysler Corp	Chrysler Lebaron/Town & Country	128	26,346	4.8584
75	Toyota	Celica	338	69,626	4.8545
76	Chrysler Corp	Dodge Lancer	45	9,262	4.8481
77	Ford Motor Co	Lincoln Mark VII	174	36,319	4.7909
78	General Motors	Pontiac Parisienne/Safari S/W	26	5,470	4.7532
79	Chrysler	Dodge Dynasty	257	55,326	4.6450
80	Ford Motor Co	Ford Tempo	1,239	267,401	4.6335
81	Ferrari	Mondial	1	216	4.6296
82	General Motors	Chevrolet Sprint	248	53,918	4.5996
83	Volkswagen	Golf/GTI	123	27,045	4.5480
84	Toyota	Corolla/Corolla Sport	988	218,280	4.5263
85	General Motors	Oldsmobile Cutlass Ciera	1,013	228,094	4.4412
86	Yugo	GV/GVX/GVL	166	37,592	4.4156
87	General Motors	Oldsmobile Cutlass Calais	455	103,111	4.4127
88	General Motors	Buick Electra	377	86,183	4.3744
89	Nissan	Stanza	171	39,370	4.3434
90	General Motors	Pontiac Grand Prix	341	78,541	4.3417
91	General Motors	Buick Skylark	220	52,494	4.1910
92	Suburu	XT	68	16,272	4.1790
93	Honda/Acura	Integra	217	52,340	4.1460
94	Toyota	Camry	904	219,155	4.1249
95	Chrysler Corp	Dodge Aries	453	110,907	4.0845
96	General Motors	Buick Electra/LeSabre Estate Wagon	36	8,848	4.0687
97	Chrysler Corp	LeBaron GTS	56	14,102	3.9711
98	Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	2	504	3.9683
99	Ford Motor Co	Mercury Topaz	315	79,844	3.9452
100	General Motors	Buick Skyhawk	107	27,803	3.8485
101	Ford Motor Co	Mercury Sable	425	110,489	3.8465
102	General Motors	Chevrolet Celebrity	961	250,028	3.8436
103	General Motors	Oldsmobile Firenza	43	11,316	3.7999
104	Subaru	Justy	78	21,049	3.7056
105	Ford Motor Co	Ford Festiva	357	98,290	3.6321
106	General Motors	Buick Century	377	105,717	3.5661
107	Alfa Romeo	Spider Veloce 2000	8	2,256	3.5461
108	Toyota	Tercel	398	112,327	3.5432
109	Mercedes-Benz	300SEL	18	5,112	3.5211
110	General Motors	Buick Regal	428	121,774	3.5147

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TABLE 1.—MODEL YEAR 1988 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1988—Continued

	Manufacturer	Make/model (Line)	Thefts 1988	Production (Mfgr's) 1988	Theft rate (thefts/product) (1988) (1,000's)
111	Ford Motor Co	Ford Taurus	1,263	361,038	3.4982
112	Daihatsu	Charade	47	13,522	3.4758
113	BMW	6	10	2,889	3.4614
114	Honda/Acura	Legend	281	81,826	3.4341
115	Mercedes-Benz	260E	21	6,188	3.3937
116	Mercedes-Benz	190D/E	52	15,414	3.3736
117	Austin Rover	Sterling	35	10,401	3.3651
118	BMW	7	72	21,484	3.3513
119	General Motors	Pontiac Grand Am	722	216,641	3.3327
120	Mercedes-Benz	300CE	9	2,731	3.2955
121	Mazda	929	92	28,749	3.2001
122	General Motors	Cadillac Eldorado	103	32,560	3.1634
123	General Motors	Pontiac LeMans	535	170,126	3.1447
124	Mercedes-Benz	300E	46	14,682	3.1331
125	Chrysler Corp	Plymouth Reliant	390	124,744	3.1264
126	Mercedes-Benz	560SEC	5	1,623	3.0807
127	Lotus	Espirt	1	325	3.0769
128	Ford Motor Co	Merkur XR4TI	19	6,271	3.0298
129	Mercedes-Benz	420SEL	24	7,960	3.0151
130	Honda	Accord	1,231	410,583	2.9982
131	Volkswagen	Fox	227	75,828	2.9936
132	Mercedes-Benz	560SEL	16	5,361	2.9845
133	General Motors	Oldsmobile Custom Cruiser Wagon	31	10,454	2.9654
134	Ford Motor Co	Mercury Grand Marquis	318	109,375	2.9074
135	General Motors	Buick Reatta	13	4,479	2.9024
136	Volvo	740/760	150	52,484	2.8580
137	Subaru	Subaru	192	67,838	2.8303
138	General Motors	Chevrolet Nova	308	109,196	2.8206
139	Jaguar	XJ6	63	22,753	2.7689
140	Volkswagon	Quantum	8	2,970	2.6936
141	Suzuki	Forsa	12	4,587	2.6161
142	Saab	900	97	37,171	2.6096
143	BMW	5	55	22,409	2.4544
144	Honda	Civic	544	225,907	2.4081
145	AMC/Renault-Chrysler	Eagle Premier	94	40,326	2.3310
146	Saab	9000	33	14,765	2.2350
147	Mazda	626	223	108,799	2.0497
148	Ford Motor Co	Ford Ltd/Crown Victoria	233	114,678	2.0318
149	Chrysler Corp	Plymouth Horizon	119	61,051	1.9492
150	Chrysler Corp	Dodge Omni	115	59,181	1.9432
151	Volvo	240 DL/GL	76	40,894	1.8585
152	Chrysler Corp	Plymouth Gran Fury	21	11,422	1.8386
153	Ferrari	328	1	560	1.7857
154	Ford Motor Co	Merkur Scorpio	28	16,067	1.7427
155	Mitsubishi	Precis	44	26,307	1.6726
156	Audi	80 & 90 Series	24	16,014	1.4987
157	Audi	5000S/Quattro	10	7,910	1.2642
158	Mitsubishi	Tredia	4	3,514	1.1383
159	Mercedes-Benz	300SE	4	3,600	1.1111
160	Chrysler Corp	Dodge Diplomat	18	19,155	0.9392
161	Peugeot	505	6	8,128	0.7382
162	Mercedes-Benz	300TE	2	2,738	0.7305
163	Bertone	X-1/9	1	2,000	0.5000
164	Jaguar	XJ-S	2	5,662	0.3532
165	Ferrari	Testarossa	0	376	0.0000
166	Excalibur	Phaeton/Roadster	0	79	0.0000
167	Aston Martin	Lagonda	0	9	0.0000
168	Zimmer	Classic/Elegante/Cabriolet	0	170	0.0000
169	Rolls-Royce/Bentley	Camargue/Silver Spirit/Silver Spur	0	711	0.0000
170	Bitter GMBH	Bitter SC	0	82	0.0000
171	TVR	2801	0	225	0.0000

[FR Doc. 89-24524 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition to List

Cladonia perforata (Perforate Reindeer Lichen)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Plants. Substantial information has been presented that a petition to list the lichen *Cladonia perforata* (perforate reindeer lichen), from Florida, is warranted. Formal review of the status of *Cladonia perforata* is initiated herewith.

DATES: The finding announced in this notice was made in August 1989. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*) requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the species.

Ann Buckley, a staff member of the George M. Gray Museum, Marine Biological Laboratory, Woods Hole, Massachusetts, submitted a petition to list *Cladonia perforata* as an endangered species. The petition, dated May 28, 1989, was received by the Service on June 5, 1989.

The petition cited rapid development of the limited scrub habitat occupied by *Cladonia perforata* on the Lake Wales Ridge of central Florida as the primary threat to the lichen, combined with the frequency of fire in the remaining habitat (fires destroy group dwelling lichens). The petition cited the results of a lichen inventory at and near Archbold Biological Station in Highlands County, central Florida (Buckley and Hendrickson 1988), as well as the results of a search for this lichen by Dr. James Burkhalter and Dr. Gerould Wilhelm in May 1989 at Elgin Air Force Base and Santa Rosa Island on the Gulf coast of western Florida. Burkhalter and Wilhelm relocated a previously known population of the lichen and plan to publish a note on the discovery (file information, Florida Natural Areas Inventory). The site may be vulnerable to washover during hurricanes; in addition, the site is open to public use and is therefore subject to trampling by visitors (letter from Dr. Ann F. Johnson, Florida Natural Areas Inventory).

In central Florida's Highlands County, the loss of scrub habitat is already well documented; the Service has listed eight plants and three animals native to scrub vegetation in this county as endangered or threatened species, has prepared a recovery plan for one of the plants (Fish and Wildlife Service 1987) and is drafting another recovery plan for scrub plant species (Fish and Wildlife Service 1989). The draft plan summarizes the threats to scrub vegetation and prescribes conservation measures. To the extent that the plan is implemented, it may reduce the threats to *Cladonia perforata*.

Before proposing to list *Cladonia perforata* as an endangered or threatened species, the Service should ensure that the true geographic distribution of this lichen is known. This will require searches of areas with excessively drained white sand soil, scrub vegetation, and populations of ground-dwelling lichens in bare sunny areas where fires or other severe disturbances occur very rarely. Appropriate places to search include the Gulf Coast barrier islands from Mobile to Panama City, the Cedar Key area, the Atlantic Coastal Ridge on the east coast of Florida, and inland scrub vegetation in the Ocala National Forest and on the Lake Wales Ridge in Polk County. Because this lichen apparently has a very specialized habitat, and because this lichen is easy to recognize throughout the year, effecting searches are feasible. Despite the need for further searches, the Service found that the petition and its supporting data presented substantial information indicating that the requested action may be warranted.

Review of the status of *Cladonia perforata* is initiated with publication of this notice. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any interested party concerning *Cladonia perforata*.

Author

This notice was prepared by Mr. David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

References

Buckley, A., and T.O. Hendrickson. 1988. Thje distribution of *Cladonia perforata* Evans on the southern Lake Wales Ridge in Highlands County, Florida. The Bryologist 91:354-356.

Fish and Wildlife Service. 1987. Recovery plan for three Florida mints. Fish and Wildlife Service, Southeast Region, Atlanta, GA. 21 pp.

Fish and Wildlife Service. 1989. Agency draft recovery plan for eleven central Florida plants. Fish and Wildlife Service, Southeastern Region, Atlanta, GA. 56 pp. + maps, tables.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: October 3, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-24580 Filed 10-17-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Harrisia portoricensis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

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SUMMARY: The Service proposes to determine a cactus, *Harrisia portoricensis* (higo chumbo), to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically, *Harrisia portoricensis* was known from the offshore islands of Mona, Monito, and Desecheo and one area on mainland Puerto Rico. Deforestation for industrial and urban development has extirpated the species from the mainland. This endemic cactus is threatened by potential development projects on Mona Island and by impacts to vegetation from feral goats and pigs. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Harrisia portoricensis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 18, 1989. Public hearing requests must be received by December 4, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Harrisia portoricensis (higo chumbo) was first collected by N.L. Britton in 1908 in southern Puerto Rico from an area to the west of Ponce called "Las Cucharas." However, urban, industrial, and agricultural expansion has resulted in the elimination of this population. Today it is known only from three small islands off the west coast of Puerto Rico: Mona, Monito and Desecheo.

This endemic cactus was placed in the genus *Harrisia* together with species from other Caribbean Islands and Florida by Britton in 1908 (Bull. Torr. Club 35:561). In 1910 Weingart transferred members of this genus to *Cereus* along with other columnar cacti (*In* Urban, Symbolae Antillanae 4:430). However, the treatment of *Harrisia* as distinct prevailed until recently when the grouping of columnar cacti into the genus *Cereus* once again began to gain acceptance (Vivaldi and Woodbury 1981). Liogier and Martorell (1982) in their flora of Puerto Rico and adjacent islands retain the taxon as a species in the genus *Harrisia*, and it has been treated as such here.

Harrisia portoricensis is a slender, upright, columnar cactus. It is usually unbranched and may reach up to 6 feet (2 meters) tall and 3 inches (7 centimeters) in diameter. It has from 8 to 11 ribs separated by shallow grooves. Spines from 1 to 3 inches (2 to 7 centimeters) long occur in groups approximately ½ to ¾ inches (1 to 2 centimeters) apart. Opening at night, the funnel-shaped flowers are greenish-white and may reach 6 inches (13 centimeters) in length. Fruits are a round, yellow berry without spines (Vivaldi and Woodbury 1981). Numerous black seeds are immersed in a white pulp. These fruits are a preferred food of the endangered yellow-shouldered blackbird (*Agelaius xanthomus*) on the island of Mona (Department of Natural Resources 1986).

The species is restricted to the islands of Mona, Monito, and Desecheo; all three islands are located in the Mona Passage between Puerto Rico and the Dominican Republic. These islands are composed of carbonate rocks, stratified limestone and dolomite, reef rock, and boulder rubble. Annual rainfall is only 32 inches (70 centimeters) in this semiarid climate. *Harrisia portoricensis* is primarily limited to, but common in, the semi-open xerophytic forest type associated with other species of columnar cacti.

Harrisia portoricensis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in each October of 1983 through 1988 that listing *Harrisia portoricensis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Harrisia portoricensis* Britton (higo chumbo) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Destruction and modification of habitat have been, and continue to be, significant factors reducing the numbers of *Harrisia portoricensis*. Dry forests similar to that on Mona and Desecheo once covered much of southern and southwestern Puerto Rico. These have been destroyed or modified for urban, industrial and agricultural development. The cactus is no longer found in the Ponce area, its type location. The islands of Mona and Monito are currently managed as wildlife reserves by the Puerto Rico Department of Natural Resources. However, in the past, various proposals have been presented for using Mona Island, which has the vast majority of the habitat, as a superport and oil storage facility and as a prison. Desecheo is currently protected as a National Wildlife Refuge; however, it was once managed as a breeding colony for monkeys by the National Institute of Health. All three islands have been utilized in the past for bombing practice by the U.S. Navy.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species; however, problems with the take of cacti in Puerto Rico continue, even on public lands, despite their protection. Should the species be reintroduced onto mainland Puerto Rico, take could become a problem. Trade in all American species of cactus is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Appendix II.

C. *Disease or predation.* The larvae of the cactus moth (*Cactoblastis cactorum*) has caused damage to *Harrisia portoricensis* in the past, but the moth has not been observed recently. Feral pigs on Mona uproot the cactus while searching for edible roots. Feral goats on both Mona and Desecheo forage on a variety of species and may be responsible for shifts in vegetation composition.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Harrisia portoricensis* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* One of the most important factors affecting the continued survival of *Harrisia portoricensis* is its limited distribution, which increases its vulnerability to threats listed under factors A and C above. These threats include potential habitat loss from development and the impacts from feral goats and pigs.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Harrisia portoricensis* as threatened. The species is restricted to only three small islands to the west of mainland Puerto Rico, the primary one of which is subject to habitat destruction and modification by development projects, and two of which are impacted by feral animals. However, because plants of all sizes and ages have been observed (Vivaldi and Woodbury 1981), threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Mona Island has been designated critical habitat for the yellow-shouldered blackbird (*Agelaius xanthomus*), the Mona ground iguana (*Cyclura stejnegeri*), and the Mona boa (*Epicrates monensis monensis*); and Monito Island has been designated as critical habitat for the Monito gecko (*Sphaerodactylus micropithecus*). The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the Section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Harrisia portoricensis*, as discussed above. The only Federal involvement anticipated for the immediate future would be within the Service relative to possible goat control on the Desecheo National Wildlife Refuge, and possibly on Mona and Monito Islands relative to Service-administered grant-in-aid projects.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits for *Harrisia portoricensis* will ever be sought or issued, since the species in not known to be in cultivation and wild populations are relatively inaccessible. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any

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other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Harrisia portoricensis;*

(2) The location of any additional populations of *Harrisia portoricensis*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this spcies; and

(4) Current or planned activities in the subject areas and their possible impacts on *Harrisia portoricensis*.

Final promulgation of the regulation on *Harrisia portoricensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C, xv + 403 pp.

Department of Natural Resources. 1986. Annual report for the yellow-shouldered blackbird project. San Juan, Puerto Rico.

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Harrisia portoricensis* Britton. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 12 pp.

Woodbury, R.C., L.F. Martorell, and J.G. García-Turduri. 1977. The flora of Mona and Monito Islands, Puerto Rico (West Indies). Bulletin 252, Agricultural Experiment Station, University of Puerto Rico. Mayaguez.

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
Harrisia (=Cereus) portoricensis	Higo chumbo	U.S.A. (PR)	T		NA	NA.

Dated: September 25, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-24581 Filed 10-17-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Sagittaria secundifolia (Kral's water-plantain)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine an aquatic plant, *Sagittaria secundifolia* (Kral's water-plantain), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. This species is currently known only from a single population in the Little River system in northeast Alabama (De Kalb and Cherokee Counties) and northwest Georgia (Chattooga County). A historical population from Town Creek (De Kalb County, Alabama) has not been located and is believed destroyed. This species is extremely vulnerable due to its restricted range and the clearing of the river banks for silvicultural, residential, agricultural or mining purposes. This proposal, if made final, would implement Federal protection provided by the Act for *Sagittaria secundifolia*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 18, 1989. Public hearing requests must be received by December 4, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to Complex Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cary Norquist, at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Kral (1982) described *Sagittaria secundifolia* from material collected by Cusick in 1972 from the Little River in Alabama. However, during his studies, Kral discovered earlier collections made in 1899 by the Biltmore Herbarium collectors from Little River and from Town Creek on Sand Mountain by Harper in 1951 (Kral 1982, Whetstone 1988). The Town Creek population in De Kalb County, Alabama, has not been relocated despite extensive searches and is believed destroyed (Kral 1982, 1983; Whetstone 1988). Currently *Sagittaria secundifolia* is only known to occur in the Little River drainage system of Lookout Mountain. This species is primarily located in the upper undammed reaches of the Little River in Cherokee and De Kalb Counties, Alabama. It has been collected from a single site in the East Fork of the Little River in Chattooga County, Georgia (Whetstone 1988, Whetstone *et al.* 1988). On rare occasions, individuals have been located near the mouth of tributaries (Whetstone 1988). Extensive surveys of other river systems with suitable habitat in northeast Alabama and northwest Georgia have been unsuccessful at locating additional populations (Whetstone 1988).

This species is a member of the water-plantain family (Alismataceae) and is in the "graminea" complex of *Sagittaria*. Distinguishing characters include a stout, elongated rhizome, hairy filaments, linear leaves and spreading or reflexed sepals (Kral 1982, Whetstone 1988).

Sagittaria secundifolia is a submersed to emersed aquatic perennial arising from a stiff elongated rhizome up to 10 centimeters (cm) (4 inches) in length. The leaves are of two types, depending upon the velocity and depth of the water it inhabits. In swift shallows, the leaves are linear, rigid and sickle-shaped, 5-8 cm (2-3 inches) long and 2-5 millimeters (mm) (0.08-0.20 inches) wide. In quite, deep waters, the leaves are more quill-like, being longer (10-30 cm) (4-12 inches), linear in shape and tapering. Separate male and female flowers are produced on a stalk, 10-50 cm (4-20 inches) long. The petals are inconspicuous in the female flowers: however, in the male flowers, they are white and 1.0-1.5 cm (0.4-0.6 inches) long. The fruit consists of a cluster of achenes approximately 2 mm (0.08 inch) in length. Although infrequent, flowering occurs from May into July and intermittently into the fall (Kral 1982, 1983).

This taxon typically occurs on frequently exposed shoals or rooted among loose boulders in quiet pools up to 1 meter (3 feet) in depth. Plants are locally distributed, where suitable habitat exists, and grow in pure stands or in association with various submergents including *Potamogeton, Najas,* and *Myriophyllum* and emergents such as *Justicia americana, Lindernia,* and *Polygonum*. The immediate banks are often dominated by a thicket of shrubs including *Alnus, Rhododendron, Kalmia, Lyonia,* and *Ilex*. Sphagnous seeps are frequent with *Carex, Rhynchospora, Eriocaulon, Panicum, Xyris,* and *Rhexia* among the common genera present. The stream bottoms are typically narrow and bounded by steep slopes (Kral 1982, Whetstone 1988). Two endangered plants, *Sarracenia oreophilia* and *Ptilimnion nodosum*, and several candidate plant (*Cuscuta harperi, Coreopsis pulchra, Allium speculae*) occur in associated habitats at several sites.

Approximately 40 percent of the habitat in Little River is owned by the Alabama Power Company, and 20 percent by the Alabama Department of Conservation and Natural Resources (DeSoto State Park). The remainder is in private ownership.

On September 27, 1985, the Service published a revised Notice of Review for plants in the **Federal Register** (50 FR 39526), which included *Sagittaria secundifolia* as a category 2 species. Category 2 comprises those taxa for which listing as endangered or threatened may be appropriate but existing information is insufficient to support a proposed rule. In 1986, the Service contracted a status survey to assess its rarity and evaluate threats to this species and its habitat. This report (Whetstone 1988) and other information support its proposed listing as a threatened species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Sagittaria secundifolia* Kral (Kral's water-plantain) are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range. Sagittaria secundifolia* is only known from the Little River drainage system in northeast Alabama and northwest Georgia. A major threat to this species is the elimination or adverse modification of its already limited habitat. Clearing of the adjacent river banks for silvicultural, residential-recreational development, surface mining or agricultural purposes poses a significant threat for this species. These activities contribute to water quality degradation and increase stream turbidity and siltation from erosion (Kral 1983, Whetstone 1988). Similar impacts likely caused the loss of the population and much of the suitable habitat in the Town Creek watershed (Kral 1982, 1983).

The Little River population may be adversely affected by eutrophication from garbage dumping and leaking sewage systems. Large quantities of human coliform bacteria were present in water samples taken at several sites along the Little River (Whetstone 1988). This eutrophication increases the presence of filamentous algae, which clings to individuals of *Sagittaria secundifolia*. Extreme water turbidity and dense filamentous algae decrease the amount of light available to the plants for growth and flowering.

A small number of sites are accessible by fords and are often a center for recreational activity, subjecting them to damage by off-road vehicle traffic.

Impoundments exist over large areas of presumed suitable habitat on the Little River and may have destroyed undocumented populations. Four large impoundments exist along a five mile stretch of the West Fork of the Little River and two are present below the Georgia locality on the East Fork. The impoundment of Lake Weiss in Cherokee County, Alabama, in the 1960s flooded suitable habitat along Yellow Creek and several miles of the Little River. In the past, dams along two creeks, which flow into the Little River, have broken and flooded portions of suitable habitat. Cracks and leaks have been observed on the dam above DeSoto Falls and a portion of a dam near the Georgia population has deteriorated (Whetstone 1988). Several existing populations are threatened by unstable impoundments that could break and eliminate or degrade populations and suitable habitat.

Approximately 33 percent of the habitat and associated local populations would be destroyed if a proposed hydroelectric impoundment is constructed on the Little River. In addition to flooding several local populations and changing stream flow dynamics, associated construction would cause excessive siltation and further degrade water quality

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(Whetstone 1988). However, the Little River site is presently viewed as the least desirable site for this impoundment from an economic and environmental standpoint (John Grogan, Alabama Power Company, pers. comm., 1989).

B. *Over-utilization for commercial, recreational, scientific or educational purposes.* This species is not known to be a component of commercial trade; however, collection or vandalism could reduce populations in the more accessible sites.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of this species.

D. *The inadequacy of existing regulatory mechanisms. Sagittaria secundifolia* is informally listed as endangered in Alabama (Freeman 1984) and Georgia (T. Patrick, Georgia Heritage Program, pers. comm., 1989). However, this designation does not afford this species any legal status or protection. Plants located within the confines of the DeSoto State Park in Alabama are protected from collecting and adverse land use practices on the river banks. However, this provides protection for only 20 percent of the Little River population and the remaining sites are unprotected. The Act would strengthen existing protection, provide additional protection, and encourage active management for *Sagittaria secundifolia.*

E. *Other natural or manmade factors affecting its continued existence.* This species' occurrence in a single stream system makes it extremely vulnerable to any catastrophic event. Flooding is frequent and intense in certain areas, particularly those portions of the river within high canyon walls (Whetstone 1988). When such occurs, the water scours the bottom, uprooting the shallow-rooted *Sagittaria.* While a certain amount of flooding is natural, its detrimental effect is intensified due to the continuing loss of suitable habitat.

This species is clonal and reproduction is primarily asexual, which suggests there may be low genetic variability within this single existing population. Flowering was observed in only 1 percent of this *Sagittaria* and only in areas of direct sunlight and at a water level that allowed emergent leaves (Whetstone 1988). Many of the sites supporting local populations are in less than these optimum conditions for flowering: therefore, it is important to maintain as much suitable habitat as possible to encourage reproduction by sexual means. Sexual reproduction increases genetic variability, which enables species to adapt to changing conditions. Eight of the twelve local populations studied by Whetstone (1988) occur in pools and/or in partially wooded areas. Here, the number of plants ranged from 5 to 40 individuals. The remaining 4 local populations on the shallow shoals supported 75 to several hundred plants.

Algae blooms are common in the summer due to eutrophication in the Little River (see factor A). *Sagittaria secundifolia* was observed to be completely covered with a filamentous algae at times, and this may have an adverse effect on this species' vigor (Whetstone 1988).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Sagittaria secundifolia* as threatened.

Threatened status seems appropriate since this species is not in imminent danger of extinction. However, this species is extremely vulnerable due to its restricted range and could become endangered in the foreseeable future if protection measures are not taken. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. Publication of critical habitat maps will increase public interest and possibly lead to additional threats for this species from collecting and vandalism, particularly at the many accessible sites along the river (see factor B in the "Summary of Factors Affecting the Species"). Taking is an activity difficult to control and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce and no benefit can be identified through critical habitat designation that would outweigh the potential threats of collecting and vandalism All State agencies and Alabama Power Company have been notified of the general location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Sagittaria secundifolia.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All known populations are under State or private ownership. A hydroelectric impoundment has been proposed for a site on the Little River where plants are known to occur. This would require a license from the Federal Energy Regulatory Commission. The Environmental Protection Agency would consider this species relative to pesticide use.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowning violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Complex Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Freeman, J.D. 1984. Vascular plant species critical to maintenance of floristic diversity in Alabama. Unpub. report. 23 pp.

Kral, R. 1982. A new phyllodial-leaved *Sagittaria* (Alismaceae) from Alabama. Brittonia 34:12-17.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA, Forest Service, Technical Publication R8-TP2. 1305 pp.

Whetsone, R.D. 1988. Status survey of *Sagittaria secundifolia.* Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 28 pp. + attachments.

Whetstone, R.D., C.L. Lawler, L.H. Hopkins, A.L. Martin, and C.C. Dickson. 1988 Kral's water-plantain, *Sagittaria secundifolia* Kral (Alismataceae), new to Georgia. Castanea 52:313-314.

Author

The primary author of this proposed rule is Cary Norquist (see **ADDRESSES** section) 601/965-4900 or FTS 490-4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Alismataceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Alismataceae:						
•	•	•	•	•	•	•
Sagittaria secundifolia	Kral's water-plantain	U.S.A. (AL,GA)	T		NA	NA

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Dated: September 30, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-24583 Filed 10-17-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Astragalus cremnophylax var. cremnophylax (sentry milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule:

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Astragalus cremnophylax* var. *cremnophylax* (sentry milk-vetch), as an endangerd species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single site on the South Rim of Grand Canyon National Park. The entire population consists of fewer than 500 plants. Park visitors at the site are trampling plants and degrading the habitat. This proposal, if made final, would implement Federal protection provided by the Act for sentry milk-vetch. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 18, 1989. Public hearing requests must be received by December 4, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (Telephone 602/261-4720 or FTS 261-4720).

SUPPLEMENTARY INFORMATION:

Background

Astragalus cremnophylax var. *cremnophylax* is a dwarf milk-vetch that is endemic to a single viewpoint on the South Rim of Grand Canyon National Park. The plant occurs in crevices and depressions with shallow soils on Kaibab limestone on a broad platform at the rim of the Grand Canyon gorge. This milk-vetch apparently prefers the unshaded, well drained soils or limestone pavement in an opening in the pinyon-juniper woodland. Dominant species in the surrounding community include *Petrophytum caespitosum* (rock-mat), *Pinus edulis* (pinyon pine), *Juniperus osteosperma* (Utah juniper), *Cercocarpus intricatus* (little-leaf mountain mahogany), *Ephedra viridis* (Mormon tea), *Cowania mexicana* (cliffrose), *Artemesia bigelovii* (sagebrush), *Agropyron smithii* (wheatgrass), and *Poa pratensis* (bluegrass), (Philips et al. 1982). Sentry milk-vetch and rock-mat are the two dominant species in the dwarf plant community that occurs on this limestone pavement.

Astragalus cremnophylax var. *cremnophylax* is usually less than one inch (2.5 cm) high and forms a mat 1-10 inches (2.5-25 cm) in diameter (McDougall 1964). The short, creeping stems have compound leaves less than 0.4 inches (1.0 cm) long composed of 5-9 tiny leaflets. The fruit is obliquely egg-shaped and densely hairy. Whitish or pale purple flowers are 0.2 inches (0.5 cm) long and apear from late April to early May. Seeds are set in late May-June (Phillips et al. 1982). The plants appear to be long-lived and have a thick tap root that penetrates the limestone surface to reach a more constant source of moisture.

A thorough count of all plants in 1988 indicated that the population contained 489 plants. A 1989 inventory of the monitoring plots established in 1988 indicated that the population declined about 10 percent. Data indicate the cause for this decline may be trampling by park visitors. The effects of trampling on both plants and their habitat may have been amplified by the below average rainfall in 1989.

In 1988, the seedling class comprised only 22.2 percent of the population. Given the trampled condition of most mature plants, a likely explanation for the small proportion of seedlings is that they are killed by trampling. Only those seedlings in sites relatively safe from trampling survive. Poor seed dispersal may also affect the number of seedlings.

Astragalus cremnophylax was first discovered in 1903 by Marcus E. Jones who reported it as "apparently common at Grand Canyon * * * on sandy ledges." He mistook the plant for *A. humillimus* Gray, of which only Brandegee's imperfect, now flowerless type from Mesa Verde, Colorado, is extant. Both are alike in diminutive stature and similar pubescence but differ in petioles and pods. Barneby and Ripley recollected the species in 1947 at a location west of El Tovar, Grand Canyon National Park. Barneby described it as a new species in 1948. In 1979, Barneby distinguished a new variety, *A. cremnophylax* var. *myriorraphis* after plants were discovered by Ralph Gierisch and associates in 1978 on Buckskin Mountain in Arizona. The typical form then became *A. cremnophylax* var. *cremnophylax*.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the Federal Register (45 FR 82480); *A. cremnophylax* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information to support the biological appropriateness of their being listed as endangerd or threatened species. The 1985 revision (50 FR 39526) of the 1980 notice included *Astragalus cremnophylax* var. *cremnophylax* in category 1, and moved *Astragalus cremnophylax* var. *myriorraphis* to category 3C. Category 3C includes taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangerd or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus cremnophylax* var. *cremnophylax* Barneby (sentry milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The population of sentry milk-vetch occurs at one of the scenic canyon viewpoints along the West Rim Drive at Grand Canyon National Park. During the summer months, a shuttle bus brings visitors to the area where they disembark in the paved parking lot. At other times, visitors may drive their own vehicles to this site. At all times of the year, this area can be reached by walking or hiking. Not all visitors use the paved walkway that transects the sentry milk-vetch's habitat. The area is flat, and many visitors walk from the parking lot directly to the rim, thus trampling any or all of the vegetation. The 1988 survey showed that 65 percent of all plants in the population had experienced some degree of trampling. More than half of all plants (51.4 percent) experienced severe trampling. Data from 1989 indicates the percent of trampled plants increased, as did the percent of plants showing the effects of severe trampling. The high centers of the mats are the first to show the effects of trampling.

The paved trail and related construction activities probably resulted in the loss of habitat and destruction of plants. Removal of this paved surface and rerouting the trail and visitors around the population may increase and improve the habitat.

Trampling may affect the plants and population stability in a number of ways. Observations indicate that foot traffic has uprooted seedlings and mature plants with decreased vigor. Repeated foot-falls on individual plants may contribute to decreased productivity and decreased flower and fruit production, which may eventually affect recruitment. Degradation of the habitat by foot traffic is evidenced by the informal trails formed by visitors, the smoothness of the limestone caused by the abrasive action of shoes, and the soil loss in the area. If the decline in plant vigor and habitat continues, further declines in population size may occur.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, *Astragalus cremnophylax* var. *cremnophylax* is of interst to botanists and other rare plant enthusiasts. Therefore, take is a minor but present threat.

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This species is protected by National Park Service (NPS) regulations, as are all plant species within the park. The NPS constructed fences that alleviate some of the foot traffic. However, park visitors tend to disregard the fences, particularly those fences that separate them from the canyon rim.

Sentry milk-vetch is protected by the Arizona Native Plant Law.

E. *Other natural or manmade factors affecting its continued existence.* The number of seedlings produced per year seems to be small and their mortality is high. Seedling numbers may be less than predicted for a number of reasons. Seed production may be limited by hard frosts and freezes during the flowering/fruiting period, a situation that occurred in 1988. Poor seed dispersal may also affect the number of seedlings. The tiny orange seeds are inconspicuous and probably not an attractive food item for birds and mammals. Continuing the annual inventory of the monitoring plots may help determine whether or not natural recruitment levels are sufficient to maintain the population.

Any undue publicity directed toward this species could make it susceptible to collection or increased visitation. Many places in the park have signs telling visitors the names and natural history of certain plants; this type of publicity may be detrimental to the survival of this rare endemic.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus cremnophylax* var. *cremnophylax* as endangered. With the only known population in decline, the species warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threat of trampling facing the population. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent preduct and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare endemic (O'Brien 1984). As discussed under Factors A and B in the Summary of Factors Affecting the Species, *Astragalus cremnophylax* var. *cremnophylax* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of the critical habitat description and map would make *A. cremnophylax* var. *cremnophylax* more vulnerable and increase enforcement problems. The NPS has been notified of the location and importance of protecting this species' habitat, and has already initiated recovery actions. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *A. cremnophylax* var. *cremnophylax*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The NPS has jurisdiction over the only known habitat for this species. Federal activities that could impact *Astragalus cremnophylax* var. *cremnophylax* include, but are not limited to, keeping the viewpoint parking lot open to vehicular traffic, which allows large numbers of visitors to trample the population, and possible future trail improvement or construction at the viewpoint.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that

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apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 24, 1983 (48 FR 49244).

Reference Cited

McDougall, W.B. 1964. Grand Canyon wildflowers. The Museum of Northern Arizona, Flagstaff.

O'Brien, S. 1984. Status of *Astragalus cremnophylax* and recommendations to protect it. Unpubl. report to Grand Canyon National Park. 6 pp.

Phillips, A.M., III, B.G. Phillips, N. Brian, L.T. Green III, and J. Mazzoni. 1982. Status report, *Astragalus cremnophylax* Barneby. U.S. Fish and Wildlife Service, Albuquerque, NM. 16 pp.

Author(s)

The primary authors of this proposed rule are Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972) and Sue Rutman (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus cremnophylax var. *cremnophylax.*	Sentry milk-vetch	U.S.A. (AZ)	E		NA	NA

* * * * *

Dated: September 25, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-24582 Filed 10-17-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 54, No. 200

Wednesday, October 18, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 442]

Approving Application of the Greater New Haven Chamber of Commerce, Inc., for Foreign-Trade Zone in North Haven, CT

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater New Haven Chamber of Commerce, Inc., filed with the Foreign-Trade Zones Board (the Board) on March 7, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in North Haven, Connecticut, within the New Haven Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in North Haven, CT

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Greater New Haven Chamber of Commerce, Inc., (the Grantee) has made application (filed March 7, 1988, FTZ Docket 16-88, 53 FR 9132) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in North Haven, Connecticut, within the New Haven Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 162, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 2d day of October, 1989, pursuant to the Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-24600 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

University of Arizona, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

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instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-090. *Applicant:* University of Arizona, Tucson, AZ 85724. *Instrument:* Intravital Light Microscope with Accessory Components. *Manufacturer:* E. Leitz, West Germany. *Intended Use:* See notice at 54 FR 13725, April 5, 1989. *Reasons:* The foreign instrument is uniquely constructed to provide direct intravital microscopic examination in vivo. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-091. *Applicant:* University of Alabama, Birmingham, AL 35294. *Instrument:* 3-Dimensional Micromanipulators with Accessories, Models MX-2R and MX-2L. *Manufacturer:* Narishige Scientific Instrument Laboratory, Japan. *Intended Use:* See notice at 54 FR 13725, April 5, 1989. *Reasons:* The foreign instrument provides a stability of 0.1 μm with a fine adjustment range of 4.0 mm in the x and y axes and 30 mm in the z axis. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-092. *Applicant:* Washington University, School of Medicine, St. Louis, MO 63110. *Instrument:* Microelectrode Manipulator and Stepper Drive. *Manufacturer:* AB GE-KA Finmekaniska, Sweden. *Intended Use:* See notice at 54 FR 13725, April 5, 1989. *Reasons:* The foreign instrument provides a rigid, adjustable, arch-type frame and a stepping motor with speed and vibrational characteristics which permit precise positioning of microelectrodes in tissue. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-097. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Stopped Flow Instrument, Model SFA-11. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 13726, April 5, 1989. *Reasons:* The foreign article directly delivers mixed reagent solutions to the observation cell of an existing spectrophotometer. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-103. *Applicant:* State University of New York, Health Science Center at Syracuse, Syracuse, NY 13210. *Instrument:* Freeze Fracture Apparatus, Model CFE-50. *Manufacturer:* Cressington Scientific Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 13727, April 5, 1989. *Reasons:* The foreign article provides programmable, high-speed electron beam evaporation shadowing. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-106. *Applicant:* University of California, La Jolla, CA 92093.

Docket Number: 89-110. *Applicant:* Haverford College, Haverford, PA 19041-1328. *Instrument:* Stopped-Flow Spectrophotometer, Model SF-51. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notices at 54 FR 15536, April 18, 1989. *Reasons:* The foreign instrument provides an inert flow path, 650 μs dead time, and uses the same observation cell for both fluorescence and absorbance measurements to permit rapid changeover. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-108. *Applicant:* University of Montana, Polson, MT 59860. *Instrument:* Precision Dissolved Oxygen Meter and Accessories, Model 781b. *Manufacturer:* Strathkelvin Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 15536, April 18, 1989. *Reasons:* The foreign article provides gas-tight sample chambers, low oxygen consumption by the microelectrodes and parts-per-million sensitivity. *Advice Submitted By:* National Institutes of Health, August 3, 1989.

Docket Number: 89-115. *Applicant:* Washington University School of Medicine, St. Louis, MO 63110. *Instrument:* Stopped Flow Spectrofluorimeter, Model SF-17MV/20MB. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 54 FR 18689, May 2, 1989. *Reasons:* The foreign instrument provides: (1) sub-millisecond dead time, (2) five optical windows and (3) 25 microliter sample volume per determination. *Advice Submitted By:* National Institutes of Health, August 29, 1989.

Docket Number: 89-119. *Applicant:* Baruch College, CUNY, New York, NY 10010. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 54 18689, May 2, 1989. *Reasons:* The foreign article directly delivers mixed reagent solutions to the observation cell of an existing spectrophotometer. *Advice Submitted By:* National Institutes of Health, August 29, 1989.

The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-24599 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Mackerel Advisory Panel on November 2, 1989, from 10 a.m. to 4 p.m. The meeting will be held at the Howard Johnson—New Orleans Airport Hotel, 6401 Veterans Boulevard, Metairie, LA. The panel will review draft Amendment #5 to the Coastal Migratory Pelagic (Mackerel) Fishery Management Plan, which addresses the following measures:

(1) Extend the management area through the Mid-Atlantic Fishery Management Council's area of jurisdiction (Action 1);

(2) Identify new problems in the fishery and revise objectives (Actions 2 and 3);

(3) Revise the fishing year for Gulf and Spanish mackerel (Action 4);

(4) Revise the definition of "overfishing" (Action 5);

(5) Provide that the South Atlantic Fishery Management Council will be responsible for preseason adjustments to total allowable catches and bag limits for the Atlantic migratory groups of mackerel, while the Gulf of Mexico Fishery Management Council will be responsible for Gulf migratory groups (Action 6);

(6) Continue to manage the two recognized Gulf migratory groups of king mackerel as one unit until management measures appropriate to the eastern and western groups can be determined (Action 7);

(7) Reallocate Gulf Spanish mackerel between recreational and commercial fishermen (Action 8);

(8) Redefine recreational bag limits as daily limits (Action 9);

(9) Redefine qualifications to obtain a commercial permit (Action 10);

(10) Prohibit the sale of king mackerel taken under a bag limit (Action 11);

(11) Provide trip limits for commercial Spanish mackerel vessels (Action 12);

(12) Specify that Gulf king mackerel may be taken only by hook-and-line and runaround gillnets (Action 13);

(13) Impose a bag limit of two cobia per person, per day (Action 14);

(14) Establish a minimum size of 12" fork length or 14" total length for king mackerel (Action 15);

(15) Provide management for dolphin (Action 16); and

(16) Include a definition of "conflict" to provide guidance to the Secretary of Commerce (Action 17).

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815

Dated: October 12, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24589 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico and South Atlantic Fishery Management Councils; Public Hearings Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments; correction.

SUMMARY: This document corrects the time for a public hearing on draft Amendment 5 to the Coastal Migratory Pelagic (Mackerel) Fishery Management Plan that was published October 6, 1989, (54 FR 41324). All other information, as published, remains the same.

In FR Doc. 89-23652 in the issue of October 6, 1989, on page 41324, third column, under the **"SUPPLEMENTARY INFORMATION"** heading, the second paragraph should read "All hearings will begin at 7:00 p.m., and will adjourn at 10:00 pm., local time for each area with the exception of the Ft. Lauderdale hearing on Monday, October 23, 1989, which will begin at 1:00 p.m. and adjourn at 4:00 p.m."

Dated: October 12, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89-24587 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of an ad hoc committee to develop proposals for long-term management of the sablefish fishery. The meeting will be held on October 30-31, 1989, at the Metro Center Building, 2000 S.W. First Avenue, Room 145, Portland, OR. The committee will begin the meeting at 1 p.m., on October 30 and adjourn on October 31 at 4 p.m.

In July 1989 the Pacific Fishery Management Council established its sablefish management objectives in priority order. Conservation is the highest priority; economics and utilization are second and third, respectively. The committee has been directed to develop management alternatives in line with these priorities, and will report its findings during the Pacific Council's November 15-17, 1989, meeting in Portland, OR. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: October 12, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24588 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to prepare a Draft Environmental Impact Statement (DEIS) for Proposed Improvements to Dike 14 Confined Disposal Facility (CDF) at Cleveland Harbor, Cuyahoga County, OH

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent

SUMMARY: The proposed action involves raising the existing Confined Disposal Facility (CDF) at Site 14 by seven feet in height to provide an additional 880,000 cubic yards of capacity, or approximately three additional years of capacity for consolidated dredged material from the Cuyahoga River. The action is necessary because of the need for an interim fill capacity until a new dike (referred to as the Burke East CDF) with a 15-year fill capacity, to be located off the nearby Burke Lakefront Airport, can be constructed. The current schedule calls for completion of the new Burke East CDF in the mid-1990s.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement can be directed to: Mr. Timothy Daly, (716) 879-4171, U.S. Army Corps of Engineers, Buffalo District, Environmental Analysis Branch, 1776 Niagara Street, Buffalo, NY 14207-3199.

SUPPLEMENTARY INFORMATION:

Previous Reports

Supplemental Information Report for Cleveland Harbor, Ohio, Diked Disposal Site 14, January 1983; and, Final Environmental Impact Statement, Diked Disposal Facility Site No. 14, Lake Erie, Cleveland Harbor, Cleveland, Ohio, Office of the Chief of Engineers, Department of the Army, Washington, DC 20314, December 1975, filed with USEPA 20 February 1976.

Authority

The current Federal CDF at Site 14 was constructed under the authority of section 123 of Public Law 91-611.

Proposed Action

The proposed action involves raising the existing CDF Site 14 as an interim measure to provide holding capacity for dredged material until a new CDF can be constructed at the nearby Burke Lakefront Airport vicinity. The dike would be raised by seven feet, and provide a service life (additional holding capacity) of about three years. Raising the Dike by seven feet would put its height at +27 feet LWD; therefore, the target height of the dike would be approximately two feet higher than the existing steel sheet pile wall.

Alternatives

The U.S. Army Corps of Engineers, Buffalo District has investigated concerns and potential alternative measures to address the need for interim dredged disposal capacity at Cleveland Harbor. Many alternative plans were considered in the effort to find the least costly and environmentally sound dredge disposal method. In addition to the structural plans being considered for a new CDF in conjunction with raising Dike 14, other alternatives, including open lake disposal, upland use of dredged material, upland disposal, and a no action plan were considered.

Several concerns need to be

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addressed in finalizing the proposed Dike 14 plan. A Fish and Wildlife Coordination Act Report is currently being prepared, as well as a section 404(b)(1) Water Quality Evaluation, both of which will be included with the Draft Environmental Impact Statement. In addition, continued coordination with Federal, State, and local agencies will examine the need for any additional studies to assess project effects on endangered or threatened species, cultural resources, or other aspects of the human environment.

Scoping Process

Scoping coordination is being conducted for each phase of this evaluation. Activities are coordinated with government agencies, interest groups, and the general public. The general intent is to gain assistance in: Identifying and scoping problems, needs, and concerns; developing feasible alternative solutions; and in assessing, evaluating, and identifying preferred and selected plans. The public involvement process incorporates written correspondence, telephone communication, public meetings/workshops, and draft and final report review procedures. Additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice. .

Significant issues to be analyzed in depth include those "concerns needed to be addressed" under Alternatives.

The evaluation shall be conducted so as to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Engineering Report and accompanying DEIS are completed for review, the combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Environmental Policy Act procedures.

Availability

The combined document consisting of a project Engineering Report and Draft Environmental Impact Statement will be made available to the public about April 1990. A local public meeting may be scheduled after coordination of the draft reports.

Dated: October 2, 1989.

Hugh F. Boyd III,

Colonel, EN, Commanding.

[FR Doc. 89-24511 Filed 10-17-89; 8:45 am]

BILLING CODE 3710-GF-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 25, 1989 beginning at 1:30 p.m. in the Corinthian Room of the Concord Resort Hotel in Kiamesha Lake, New York. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. in the Towers No. 8 Meeting Room and will include status reports on the upper Delaware ice jam project and amendment of Compact Section 15.1(b) to fund the Francis E. Walter Reservoir project as well as recommendations concerning metering, deletion of obsolete projects from the Comprehensive Plan and use attainability in the Delaware Estuary.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1990, in the aggregate amount of $2,697,900 and a capital budget for the same period in the amount of $1,497,500 in revenue and $1,171,200 in expenditures. Copies of the current expense and capital budget are available from the Commission on request.

A Proposal to Adopt the 1989 Water Resources Program. A proposal that the 1983 Water Resources Program approved on November 30, 1983, as extended and adopted respectively by DRBC Resolution Nos. 84-27, 85-42, 86-27, 87-29, and 88-25, as the 1984, 1985, 1986, 1987 and 1988 Water Resources Program, be extended and adopted as the 1989 Water Resources Program, in accordance with the requirements of section 13.2 of the Delaware River Basin Compact.

Applications for the Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:

1. *Holdover Project: Pennsylvania Department of Environmental Resources (PADER) D-88-48 CP.* An application for inclusion of the Lower Brandywine Scenic River designation under Pennsylvania's Scenic Rivers Act in DRBC's Comprehensive Plan. To be included are the main stem Brandywine and segments of the East Branch Brandywine, West Branch Brandywine, Pocopson Creek, Valley Creek, Broad Run, Buck Run, Doe Run and two unnamed tributaries in Newlin Township. Pennsylvania officially designated the Lower Brandywine as a Scenic River on June 16, 1989 by Act No. 1989-7. This hearing continues that of September 27, 1989.

2. *Merchantville-Pennsauken Water Commission D-84-52 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 30 million gallons (mg)/30 days of water to the applicant's distribution system from National Highway Well No. 2. Commission approval on January 30, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 356.5 mg/30 days. The project is located in Merchantville Borough and Pennsauken Township, Camden County, New Jersey.

3. *Atlantic Pipeline Corporation D-89-30.* An application for approval of a ground water withdrawal project to withdraw up to 4.32 mg/30 days of water from Well Nos. MW38, MW39, MW64, and MW65 for the applicant's ground water decontamination system. The project is located in West Whiteland Township, Chester County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Tamiment Water Company—Wesland Development, Inc. D-89-33 CP.* An application for approval of a ground water withdrawal project to supply up to 6.4 mg/30 days of water to the applicant's distribution system from new Well No. 3, and to increase the existing withdrawal limit of 5.5 mg/30 days from all wells to 6.4 mg/30 days. The project is located in Lehman Township, Pike County, Pennsylvania.

5. *Utility Group Services Corp. D-89-40 CP.* An application for approval of a ground water withdrawal project to supply up to 23.1 mg/30 days of water to the applicant's distribution system from existing Well Nos. UG-1 through UG-18. The project is located in West Bradford Township, Chester County and is in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Textile Chemical Company D-89-59.* An application for approval of a ground water withdrawal project to withdraw up to 4.6 mg/30 days of water for the applicant's ground water decontamination system from new Well Nos. 4, 8 and 12, and to limit withdrawal from all wells to 4.6 mg/30 days. The project is located in Ontelaunee Township, Berks County, Pennsylvania.

7. *Atlantic Pipeline Corporation D-89-68.* An application to expand a 0.072 million gallon per day (mgd) wastewater treatment facility to treat an average 0.144 mgd flow of ground water which has been contaminated by a leakage of the applicant's petroleum products pipeline in the project area. The ground water will be decontaminated and discharged via an outfall pipe to the East Branch Chester Creek. The project is located between Ship and Boot Roads, West Whiteland Township, Chester County, Pennsylvania.

8. *Penn Utility Company D-89-71.* An application to expand an existing 0.10 mgd sewage treatment plant (STP) to provide 0.15 mgd tertiary treatment for service of the growing residential community of Penn Estates. The STP will continue to discharge to an unnamed tributary of Brodhead Creek. The project STP is located off Cherry Lane and west of Routes 191 and 447 in Stroud Township, Monroe County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: October 10, 1989.

Susan M. Weisman,

Secretary.

[FR Doc. 89-24564 Filed 10-17-89; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES89-39-000, et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES89-39-000]

October 6, 1989.

Take notice that on September 27, 1989, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue not more than 500,000 shares of common stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Savings Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: October 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Co.

[Docket No. ES90-1-000]

October 6, 1989.

Take notice that on October 3, 1989, Consumers Power Company filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue and sell, or guarantee up to $800,000,000 in secured and/or unsecured short-term debt including but not limited to, notes, drafts, debentures and commercial paper. The issuance, sale or guarantee of the secured and/or unsecured short-term debt would be from time to time, during the period January 2, 1990 through December 31, 1990, with maturities of 364 days or less.

Comment date: November 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER90-11-000]

October 10, 1989.

Take notice that on October 3, 1989, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the parties to the PJM Agreement, Revision No. 2 to Schedule 4.02 of that Agreement, on file as PJM Rate schedule FERC No. 1. Revision No. 2 supersedes Revision No. 1 issued September 8, 1983 and Supplement No. 7 to PJM Rate Schedule FERC No. 1.

The purpose of this filing is to revise each party's allocated share of PJM import capability from west of PJM Agreement Schedule 4.02. PJM requests an effective date of December 4, 1989. No changes in facilities are proposed in this filing.

PJM states that the revised shares are the result of a negotiated settlement among the parities following a recent capacity purchase and associated transmission reinforcements by a PJM member company.

Copies of this filing have been set to the Regulatory Commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia, and the District of Columbia for their information.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Philadelphia Electric Co.

[Docket No. ER90-10-000]

October 10, 1989.

Take notice that on October 3, 1989, Philadelphia Electric Company (PECo) filed on behalf of the parties to the Extra High Voltage Transmission EHV Agreement, Revision No. 1 to Schedule 2 and Revision No. 1 to Schedule 3 of the Transmission Enhancement Facilities (TEF) Agreement which is filed as a supplement to the EHV Agreement. The parties to both Agreements are:

Public Service Electric and Gas Company
Philadelphia Electric Company
Atlantic City Electric Company
Delmarva Power & Light Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Potomac Electric Power Company
Jersey Central Power & Light Company
Metropolitan Electric Company
Pennsylvania Electric Company
UGI Corporation

The purpose of revising Schedules 2 and 3 of the TEF Agreement is to maintain investment responsibilities in the TEF project consistent with the shares of capability to import from west of PJM as set forth in revised PJM Agreement Schedule 4.02. An effective date of December 4, 1989 has been requested for this revision concurrent with the revision to PJM Agreement Schedule 4.02.

PECo states that this filing has been sent to the Regulatory Commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia, and the District of Columbia for their information.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. United Illuminating Co.

[Docket No. ER90-3-000]

October 10, 1989.

Take notice that on October 3, 1989, the United Illuminating Company (UI) tendered for filing a Unit Sales Agreement between UI and Vermont Marble Company (Vermont Marble). The agreement provides for the sale to Vermont Marble of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Vermont Marble. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corp.

[Docket No. ER90-4-000]

October 10, 1989.

Take notice that on October 3, 1989, Florida Power Corporation, on behalf of Florida Power Corporation (Florida Power) and Entergy Services, Inc. (Entergy), tendered for filing a Contract For Purchases of Economic Energy

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Between Florida Power Corporation and Entergy Services, Inc., proposed to be effective September 1, 1989. Entergy acts as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L) and New Orleans Public Service, Inc. (NOPSI).

Florida Power also tendered the filing, on behalf of Florida Power only, a Contract For Purchases Of Economy Energy Between Florida Power Corporation and Cajun Electric Power Cooperative, Inc., also proposed to be effective September 1, 1989.

According to Florida Power, a copy of this filing has been served on Entergy, Cajun, and the Florida Public Service Commission.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Public Service Co.

[Docket No. ER90-6-000]

October 10, 1989.

Take notice that on October 3, 1989, Iowa Public Service Company tendered for filing an executed Letter Agreement dated August 18, 1989, whereby Iowa Public Service Company (IPS) will sell to Dairyland Power Cooperative (Dairyland) energy for a period commencing September 16, 1989 and ending October 13, 1989. IPS requests that the negotiated Agreement be made effective as of September 16, 1989.

Comment date: October 24, 1989, in accordance with Standard Paragraph E end of this notice.

8. Long Island Lighting Co.

[Docket No. ER90-8-000]

October 10, 1989.

Take notice that Long Island Lighting Company on October 3, 1989, tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the New York Power Authority to the three municipal electric utilities on Long Island: the Village of Greenport, Rockville Centre and Freeport. The proposed changes would decrease revenues from such service by $225,342.000 based on the 12-month period ending May 31, 1990.

LILCO proposes to decrease the rates in order to reflect the Company's cost of service.

Copies of this filing were served upon the New York Authority the Municipal Electric Utilities Association of New York State, the Incorporated Villages of Greenport, Freeport and Rockville Centre, and the New York State Public Service Commission.

Comment date: October 24, 1989, in accordance with Standard Paragraph E end of this notice.

9. United Illuminating Co.

[Docket No. ER90-5-000]

October 10, 1989.

Take notice that on October 3, 1989, the United Illuminating Company (UI) tendered for filing a Unit sales Agreement between UI and the Town of Hudson Light and Power Department (Hudson). The agreement provides for the sale to Hudson of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Hudson. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Long Island Lighting Co.

[Docket No. ER90-9-000]

October 10, 1989.

Take notice that Long Island Lighting Company on October 3, 1989, tendered for filing proposed changes in its FERC Rate Schedule 34, pursuant to which LILCO transmits power and energy from the New York Power Authority, Brookhaven National Laboratory in Upton, New York and Grumman Corporation in Bethpage, New York. The proposed changes would decrease revenues from such service by $161,544.000 based on the 12-month period ending May 31, 1990.

LILCO proposes to decrease the rates in order to reflect the Company's cost of service.

Copies of this filing were served upon the New York Power Authority, Brookhaven National Laboratory, Grumman Corporation and the New York State Public Service Commission.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Co.

[Docket No. ER90-1-000]

October 10, 1989.

Take notice that Duquesne Light Company (DLC) on October 3, 1989, tendered for filing proposed changes in its FERC Municipal Electric Resale Service Tariff for Pitcairn, Pennsylvania. DLC requests that the proposed rate schedule change become effective on December 1, 1989. DLC indicates that the proposed change would increase revenues from jurisdictional sales by $119,908 based on the twelve-month period ending May 31, 1989. On December 1, 1990, revenues would be increased by an additional $80,614. DLC indicates that it has experienced increased costs for service to the Borough. The Borough has filed a statement in support of the proposed increase.

DLC states that copies of the filing were mailed to the Pennsylvania Public Utility Commission and to the Secretary of the Borough of Pitcairn.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Georgia Power Co.

[Docket No. ER90-2-000]

October 10, 1989.

Take notice that on October 3, 1989, Georgia Power Company (Georgia Power) tendered for filing an Interim Agreement for Gulf Power Company Scherer Unit 3 Transmission Facilities Service Payment to Georgia Power Company (the Agreement) dated as of August 31, 1989, between Georgia Power and Gulf Power Company (Gulf Power).

Georgia Power states that the Agreement has been executed to facilitate transmission of power from Gulf Power's 25% interest in Plant Scherer Unit No. 3 (located on Georgia Power's system) to Gulf Power's service territory or to off-system customers. Georgia Power seeks waiver of the Commission's notice requirements and seeks an effective date of January 1, 1989. The Agreement will terminate on December 31, 1992.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Power & Light Co.

[Docket No. ER90-7-000]

October 10, 1989.

Take notice that on October 3, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amended wholesale power agreement dated September 15, 1989, between the Village of Sauk City and WPL. WPL states that this new wholesale power agreement revises the previous agreement between the two parties which was dated May 26, 1970, and designated Rate Schedule No. 84 by the Commission.

The purpose of this new agreement is to identify an additional delivery point. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Sauk City and the Wisconsin Public Service Commission.

Comment date: October 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Power & Light Corp.

[Docket No. ER89-675-000]

October 10, 1989.

Take notice that on September 6, 1989, Citizens Power & Light Corporation (Citizens) filed a notice of cancellation concerning Citizens' sale of power to the Utah Association of Municipal Power Systems pursuant to Citizens Rate Schedule FERC No. 1. Citizens requests an effective date of May 27, 1989.

Comment date: October 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24525 Filed 10-17-89; 8:45am]

BILLING CODE 6717-01-M

[Project Nos. 3757-005, et al.]

Hydroelectric Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Filing:* Surrender of License.
b. *Project No.:* 3757-005.
c. *Date Filed:* August 18, 1989.
d. *Applicants:* City of Bountiful, Utah.
e. *Name of Project:* Lost Creek Project.
f. *Location:* On Lose Creek in Morgan City, Morgan County, Utah.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)
h. *Applicant Contracts:*
Mr. McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, (202) 371-5785.
Mr. Kevin Garlick, Bountiful City Light and Power, 198 South 200 West, Bountiful, UT 84010, (801) 295-9496.
i. *FERC Contact:* Thomas Dean, (202) 376-9562.
j. *Comment Date:* November 2, 1989.
k. *Description of Application:* The proposed project would have utilized the Bureau of Reclamation's Lost Creek Dam and Reservoir and would have consisted of: (1) A 36-inch-diameter steel penstock near the right dam abutment; (2) a powerhouse containing one generating unit with a rated capacity of 1,000 kilowatt; (3) a tailrace near the existing outlet works stilling basin; (4) a 1,200-foot-long, 46-kV transmission line; and (5) appurtenant facilities. The applicant estimated the average annual energy generation at 3,064 MWh.

The applicant states that the project is currently not economical at prevailing financing rates. No project construction has begun at the site.

l. *Purpose of Project:* Applicant intended to use the power for its municipal needs and sell surplus power to the City of Morgan.
m. *This notice also consists of the following standard paragraphs:* B and C.

2. a. *Type of Application:* Amendment of License.
b. *Project No.:* 4684-012.
c. *Date Filed:* June 27, 1989.
d. *Applicant:* Long Lake Energy Corporation.
e. *Name of Project:* Stillwater Hydroelectric Project.
f. *Location:* The project would use the existing Stillwater and Lock No. 4 Dams, located on the Hudson River, a navigable waterway of the United States, near the Township of Stillwater in Saratoga and Rensselaer Counties, New York.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)
h. *Applicant Contract:* Mr. Sanford L. Hartman, Counsel, 420 Lexington Avenue, Suite 540, New York, NY 10170, (212) 986-0440.
i. *FERC Contact:* Ken Fearon, (202) 357-0666.
j. *Comment Date:* November 24, 1989.
k. *Description of Application:* The licensee proposes to add flashboards to the crest of the existing dam to maintain a reservoir having a mean surface elevation of 84.1 feet m.s.l.; relocate the powerhouse and appurtenances to the west bank of the Hudson River, adjacent to the dam abutment; and downsize the plant capacity from 4.97-MW to 3.0-MW by replacing the two double-regulated horizontal Kaplan turbine generator units with six smaller siphon intake, single-regulated horizontal Kaplan turbines.
l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3. a. *Type of Application:* Transfer of License.
b. *Project No.:* 7481-010.
c. *Date Filed:* August 10, 1989.
d. *Applicant:* Enerco Corporation and NYSD Limited Partnership.
e. *Name of Project:* New York State Dam.
f. *Location:* On the Mohawk River in Albany and Saratoga Counties, New York.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* Lee M. Goodwin, Wickwire Gavin, Two Lafayette Center, Suite 500, 1133—21st Street, NW., Washington, DC (202) 887-5200.
i. *FERC Contact:* Robert Bell (202) 357-0806.
j. *Comment Date:* October 31, 1989.
k. *Description of Project:* Enerco Corporation (Licensee) was issued license to construct, operate and maintain the New York State Dam Project No. 7481 on October 13, 1987. The license was amended on July 7, 1989. The licensee intends to transfer the license to NYSD limited Partnership (transferee), which will pruchase, construct, and operate the project. The Tranaferee agrees to accept the terms and conditions of the license as if it were the original license. The transfer is requested to facilitate the financing and construction of the Project.
l. *This notice also consists of the following standard paragraphs:* B and C.

4. a. *Type of Application:* Minor License.
b. *Project No.:* 10683-000.
c. *Date Filed:* November 1, 1988.
d. *Applicant:* Lansing Board of Water and Light.
e. *Name of Project:* North Lansing Dam.
f. *Location:* On the Grand River in the City of Lansing, County of Ingham, Michigan.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* Mr. Joe Pandy, Jr., P.O. Box 13007, Lansing, MI 48901, (517) 371-6710.
i. *FERC Contact:* Charles T. Raabe (202) 376-9778.
j. *Comment Date:* December 1, 1989.
k. *Description of Project:* The existing project consists of: (1) a 233-foot-long, 11.5-foot-high reinforced-concrete dam

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having 4 drum-type gates; (2) a reservoir having a 100-acre surface area and a 500 acre-foot storage capacity at normal water surface elevation 817.5 feet; (3) an integral powerhouse at the right (east) abutment containing an existing 205-kw generating unit operated under an 8-foot head and at a flow of 380 cfs; (4) a 300-foot-long, 480-volt udnerground transmission line and a 480/4,160-volt transformer; (5) a fish ladder; and (6) appurtenant facilities. The existing hydroelectric facilities were constructed in 1936. No change to the current run-of-river operation is proposed. The average annual electrical generation has approximated 270,000 kWh. The primary function of the facility is to provide cooling water for the nearby Ottawa Station—a coal-fired power plant.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D1.

5. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10801–000.

c. *Date Filed:* June 21, 1989.

d. *Applicant:* Boca Hydro Associates.

e. *Name of Project:* Boca Dam Project.

f. *Location:* On the Little Truckee River in Nevada County, California near the town of Truckee. T.18N, R.17E, sections 21 and 28, Mt. Diablo Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. David K. Iverson, Synergics, Inc., 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* November 22, 1989.

k. *Description of Project:* The project would be located at the outlet of the U.S. Bureau of Reclamation's Boca Dam. The project would consist of: (1) A 12-foot-long, 70-inch-diameter conduit; (2) a 90-foot-long penstock; (3) a powerhouse containing one or more generating units with a total installed capacity of 2,500 kW, producing an average annual energy output of 6.0 GWh; (4) a 1,500-foot-long, 14.4-kV transmission line tying into an existing Sierra Pacific Power Company line; No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $30,000.

l. *Purpose of Project:* Project Power would be sold to Sierra Pacific Power Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10807–000.

c. *Date Filed:* July 21, 1989.

d. *Applicant:* Hydro Energy Development Corporation.

e. *Name of Project:* Big/Grade Creek.

f. *Location:* On Big and Grade Creek in Skagit and Snohomish Counties Washington near the town of Darrington, T32N, R9E and R10E; T33N, R11E, Willamette Meridan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contacts:*

Mr. Martin W. Thompson, Vice President, Hydro Energy Development Corporation, 411 106th Avenue, N.E., Bellevue, Washington 98004–5515, (206) 453–7327;

Mr. Lon C. Covin, Hydro West Group, Inc., 1422 130th Avenue, N.E., Bellevue, WA 98005, (206) 455–0234;

Mr. Frank Frisk, Jr., Attorney-at-Law, 1054 31st St., NW., Washington, DC 20007, (202) 342–5267.

i. *Commission Contact:* Ms. Deborah Frazier-Stutely, (202) 376–1669.

j. *Comment Date:* December 11, 1989.

k. *Description of Project:* The proposed project would consist of: (1) An 80-foot-long diversion dam on Big Creek at elevation 1,560 feet; (2) a 40-foot-long diversion dam on Grade Creek at elevation 2,200 feet; (3) a 48-inch-diameter, 12,500-foot-long penstock; (4) a 36-inch-diameter 12,100-foot-long penstock; (5) a powerhouse containing two generating units with a combined installed capacity of 11,000 kW, producing an average annual energy output of 43.4 gWh; (6) a tailrace; (7) a 15-mile-long, 34.5-kV transmission line tying into an existing Puget Sound Power and Light Company line.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $300,000.

l. *Purpose of Project:* Project power would be sold to either Puget Sound Power and Light Company, Snohomish County PUD, Bonneville Power Administration or Tacoma Light.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10816–000.

c. *Date Filed:* September 6, 1989.

d. *Applicant:* Bill Onweiler.

e. *Name of Project:* Box Creek Water Power Project.

f. *Location:* On Box Creek in Valley County, Idaho within the Payette National Forest, near the Town of McCall. T20N, R3E and R4E, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r)

h. *Applicant Contacts:*

Mr. Bill Onweiler, P.O. Box H, McCall, ID 83638, (208) 634–2000;

Carl L. Myers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336–1425.

i. *Commission Contact:* Ms. Deborah Frazier-Stutely, (202) 376–1669.

j. *Comment Date:* December 14, 1989.

k. *Description of Project:* The proposed project would consist of: (1) a 2-foot-high diversion dam at elevation 6,730 feet; (2) an intake structure; (3) a 22-inch-diameter, 13,000-foot-long penstock; (4) a powerhouse containing a generating unit with an installed capacity of 3,100 kW, producing an average annual energy output of 5,854,000 kWh; (5) a tailrace; and (6) a 3-mile-long, 12.5-kV transmission line tying into an existing Idaho Power Company line.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $60,000.

l. *Purpose of Project:* Project power would be sold to Idaho Power Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10619–000.

c. *Date Filed:* September 12, 1989.

d. *Applicant:* Idaho Water Resource Board.

e. *Name of Project:* Dworshak Hydroelectric Project.

f. *Location:* On the North Fork of Clearwater River in Clearwater County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contacts:* R. Keith Higginson, Director, Idaho Department of Water Resources, Statehouse Mail, Boise, Idaho 83720.

i. *Commission Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* December 11, 1989.

k. *Description of Project:* The applicant proposes to utilize the proposed Clearwater Fish Hatchery (CFH) water supply system, which is currently being designed by the U.S. Army Corps of Engineers (Corps). The Corps proposes to construct an 18–inch and a 36–inch diameter pipe through its existing Dworkshak dam to supply water to the CFH and the Dworshak National Fish Hatchery. This water supply would be intercepted by the proposed project and then discharged into a distribution tank, which would divide the flows between the two

hatcheries. The proposed project would consist of: (1) A proposed 36–inch and a bifurcated 18–inch diameter penstock; (2) a proposed powerhouse containing one generating unit rated at 1,924 kW and two generating units rated at 300 kW each; (3) a proposed 115–kV transmission line; and (4) appurtenant facilities. The estimated average annual energy output for the project is 15,837,000 KWh. The applicant estimates the cost of the work to be performed under the preliminary permit at $200,000.

l. *Purpose of Project:* Power produced at the project would be sold to the Clearwater Power Company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing licence application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Divsion of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 12, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24533 Filed 10–17–89; 8:45 am]

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[Docket Nos. CP90-11-000, et al.]

Tennessee Gas Pipeline Co. et al.; Natural Gas Certificate Filings

October 6, 1989.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP90-11-000]

Take notice that on October 3, 1989, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP90-11-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Equinox Gas Supply, Inc. (Equinox), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 100,000 dt equivalent of natural gas on a peak day, 100,000 dt equivalent on an average day and 36,500,000 dt equivalent on an annual basis. It is stated that Tennessee would receive the gas for Equinox's account at designated points on Tennessee's system in Louisiana, offshore Louisiana and Texas, and would deliver equivalent volumes at designated points on Tennessee's system in Alabama, Tennessee, Mississippi, Kentucky, West Virginia, Ohio, Pennsylvania, New York, Rhode Island, Massachusetts, Connecticut and Louisiana. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the service commenced August 31, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4846.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this paragraph.

2. Natural Gas Pipeline Company of America

[Docket No. CP90-18-000]

Take notice that on October 4, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-18-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated March 8, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Phillips. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points located in the Vermilion and West Cameron Areas, offshore Louisiana, and would deliver the gas to delivery points also located in Vermilion and West Cameron Areas, offshore Louisiana.

Natural advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST90-40-000. Natural further advises that it would transport 5,000 MMBtu on an average day and 1,825,000 MMBtu annually.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Co.

[Docket No. CP90-6-000]

Take notice that on October 3, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-6-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of American Central Gas Marketing Company (American Central), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 dekatherms of natural gas per day for American Central from receipt points located in Illinois, Louisiana, Offshore Louisiana, Tennessee, Texas and Offshore Texas to a delivery point located in Jasper County, Indiana. Trunkline anticipates transporting 10,000 dekatherms on an average day and an annual volume of 3,650,000 dekatherms.

Trunkline states that the transportation of natural gas for American Central commenced August 16, 1989, as reported in Docket No. ST89-4787-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-586-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-2-000]

Take notice that on October 3, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Phibin Distributors, Inc. (Shipper), under is blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it proposes to transport for Shipper 17,345,000 dt on a peak day, 250,000 dt on an average day and 91,250,000 on an annual basis. Transco also states that it will receive gas at various existing points in Virginia, Maryland, Pennsylvania, Mississippi, New Jersey, onshore and offshore Louisiana and onshore and offshore Texas and will deliver the gas at various existing delivery points in Pennsylvania, Alabama, Maryland, North Carolina, South Carolina, Virginia, Georgia, Mississippi, New Jersey, New York, Delaware, Onshore Louisiana and Onshore Texas.

Transco further states it commenced this service August 19, 1989, as reported in Docket No. ST89-4760-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP90-13-000]

Take notice that on October 3, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-13-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authorization to provide a transportation service for Texican Natural Gas Company (Texican), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes, pursuant to a transportation agreement dated July 12, 1989, as revalidated by letter dated September 8, 1989, to transport natural gas for Texican from points of receipt located in the offshore area of Louisiana, for delivery to the Grand Chenier plant in Cameron Parish, Louisiana. Tennessee further states that under the contract the maximum daily and average daily quantities are 30,000 dekatherms (dt) and 10,950,000 dt on an annual basis. Tennessee states that service under § 284.223(a) commenced September 19, 1989, as reported in Docket No. ST89-4948-000 filed September 28, 1989.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corp.

[Docket No. CP90-21-000]

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-21-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated January 17, 1989, under its Rate Schedule IT, it proposes to transport up to 35,000 MMBtu per day equivalent of natural gas for Tejas. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas at delivery points in Lafourche and Vermilion Parishes, Louisiana, as shown in Exhibit "C" of the agreement. It is stated that the recipient of the gas is Louisiana Gas Marketing, Inc.

Texas Gas advises that service under § 284.223(a) commenced September 2, 1989, as reported in Docket No. ST89-4732. Texas Gas further advises that it would transport 25,000 MMBtu on an average day and 12,775,000 MMBtu annually.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Black Marlin Pipeline Co.

[Docket No. CP90-15-000]

Take notice that on October 4, 1989, Black Marlin Pipeline Company (Black Marlin), P.O. Box 1188, 1400 Smith Street, Houston, Texas 77251-1188, filed in Docket No. CP90-15-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Conoco Inc. (Conoco) under its blanket authorization issued to OCS pipelines under § 284.303(a) of the Commission's Regulation, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Black Marlin would perform the proposed firm transportation service for Conoco, pursuant to a firm transportation service agreement dated August 9, 1989 (Contract No. 8028). The transportation agreement is effective as of the date of the contract and shall remain in effect for a term of one year and month-to-month thereafter unless terminated by either party upon thirty days written notice. Black Marlin proposes to transport 15,000 MMBtu natural gas on a peak day; 11,250 MMBtu on an average day; and 5,475,000 MMBtu annually. Black Marlin proposes to receive the subject gas at High Island Block 171, Offshore Texas and deliver the subject gas to the Black Marlin/HPL Galveston 24" pipeline interconnection located in Texas City, Texas. Black Marlin avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Black Marlin commenced such self-implementing service on August 9, 1989, as reported in Docket No. ST89-4612-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Colorado Interstate Gas Co.

[Docket No. CP89-2209-000]

Take notice that on September 29, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP89-2209-000 pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) under the Natural Gas Act (NGA) for authorization to transport natural gas for Coastal Gas Marketing Company (Coastal), a natural gas marketer, under CIG's blanket certificate issued in Docket No. CP86-589-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

CIG proposes to transport for Coastal on an interruptible basis up to 40,000 Mcf of natural gas on average and peak days, and 14,600,000 Mcf on an annual basis. CIG would receive the gas for Coastal's account at existing points on its system in Colorado, Kansas, Oklahoma, Texas, and Wyoming and would deliver equivalent gas volumes for Coastal's account in Weld County, Colorado. CIG commenced its transportation service for Coastal on July 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4245.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-2189-000]

Take notice that on September 28, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-2189-000, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Transco Energy Marketing Company (Transco), a marketer of natural gas, under the certificate issued in Docket No. CP86-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests authorization to transport up to 15,000 MMBtu of natural gas per day, pursuant to an August 18, 1989, agreement between Northern and Transco from receipt points located in offshore Texas to delivery points located in offshore Texas. Northern would provide the service to Transco under the provisions of its Rate Schedule IT-1, it is indicated. Northern further states that the average and annual quantities would be 11,250 MMBtu and 5,475,000 MMBtu, respectively.

Northern states that the transportation of natural gas for Transco commenced August 18, 1989, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST89-4694-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

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10. Southern Natural Gas Co.

[Docket No. CP90-8-000]

Take notice that on October 3, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-8-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Diamond Shamrock Gas Marketing Company (Diamond Shamrock), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated July 24, 1989, it proposes to receive up to 150,000 million Btu per day at specified points located in onshore and offshore Louisiana, Texas, Alabama, and Mississippi and redeliver the gas at specified points located in the state of Georgia. Southern estimates that on a peak day and average day it would transport 150,000 million Btu and that it would transport 54,750,000 million Btu annually. It is stated that on August 3, 1989, Southern initiated a 120-day transportation service for Diamond Shamrock under § 284.223(a) as reported in Docket No. ST89-473-000.

Southern further states that no facilities need be constructed to implement the service. Southern states that the service continues on a month-to-month basis until cancelled by either party giving five days written notice to the other party. Southern proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this paragraph.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-2202-000]

Take notice that on September 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2202-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for BHP Gas Marketing Company (BHP), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 3,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of BHP pursuant to a transportation agreement dated August 3, 1989, between Panhandle and BHP. Panhandle would receive the gas at various existing points of receipt in its Wyoming and deliver equivalent volumes, less fuel used and unaccounted for line loss, to CIG Red Desert in Sweetwater County, Wyoming.

Panhandle states that the estimated daily and annual quantities would be 2,600 dkt and 1,000,000 dkt, respectively. Service under § 284.223(a) commenced on August 9, 1989, as reported in Docket No. ST89-4739-000.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Co.

[Docket No. CP89-2207-000]

Take notice that on September 27, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2207-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 60,100 MMBtu of natural gas per day for Diamond Shamrock. Southern states that construction of facilities would not be required to provide the proposed service.

Southern further states that the maximum day, average day, and annual transportation volumes would be approximately 60,100 MMBtu, 123 MMBtu and 45,000 MMBtu respectively.

Southern advises that service under § 284.223(a) commenced August 2, 1989, as reported in Docket No. ST89-4477.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-2204-000]

Take notice that on September 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2204-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specially, Panhandle requests authority to transport up to 75,000 Dt per day on an interruptible basis on behalf of Transtate pursuant to a transportation agreement dated July 25, 1989, between Panhandle and Transtate. The transportation agreement provides for Panhandle to receive gas from various existing points of receipt in Colorado, Kansas, Oklahoma, and Texas. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle states that the proposed estimated daily and estimated annual quantities would be 75,000 Dt and 27,375,000 Dt, respectively. Service under § 284.223(a) commenced on August 1, 1989, as reported in Docket No. ST89-4738.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Co.

[Docket No. CP89-2208-000]

Take notice that on September 29, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2208-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 20,500 MMBtu equivalent of natural gas on a peak day, 20,219 MMBtu equivalent on an average day, and 7,380,000 MMBtu equivalent on an annual basis for Texican. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at existing points on Southern's system in Georgia and South Carolina. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced August 2, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4631.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Co.

[Docket No. CP89-2200-000]

Take notice that on September 29, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, made a prior notice filing pursuant to §§ 157.205 and 284.223 in Docket No. CP89-2200-000, to provide interruptible transportation service on behalf of CNG Trading Company (CNG), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1-21-1890, dated October 3, 1988, as amended May 22, 1989, proposes to transport a maximum daily quantity of 30,900 MMBtu, and that service commenced August 3, 1989, as reported in Docket No. ST89-4553-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: November 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24526 Filed 10-17-89; 8:45am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-253-001]

Carnegie Natural Gas Co.; Filing

October 11, 1989.

Take notice that on October 5, 1989, Carnegie Natural Gas Company (Carnegie) filed certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Carnegie states that this filing corrects certain inadvertent errors that exist in its September 29, 1989 filing. Carnegie states that this supplemental filing provides superseding tariff sheets which correct those errors.

Carnegie requests that the Commission grant such waivers as it may deem necessary for the acceptance of these tariff sheets, with an effective date of November 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24527 Filed 10-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-164-001 and TA90-1-23-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 11, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on October 3, 1989 certain substitute revised tariff sheets included in appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1989.

ESNG states that such tariff sheets are being filed to comply with paragraph (B) of the Commission's Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedures. Such ordering paragraph requires ESNG to file revised tariff sheets and supporting workpapers to revise its base tariff rates to reflect the elimination of the cost of facilities not in service by September 30, 1989.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24528 Filed 10-17-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-6-000]

El Paso Natural Gas Co.; Proposed Change in Rates

October 11, 1989.

Take notice that on October 5, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to section 4 of the Natural Gas Act and part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Third Revised Volume No. 2.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to permit El Paso to eliminate the Liquids Surcharge established in the Offer of Settlement at Docket No. RP86-157-000 and in lieu thereof permit El Paso to direct bill, each

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month, certain east-of-California ("EOC") one-part rate firm sales customers for their allocable share of the remaining net liquid revenue deficiency as settled at Docket No. RP86–157–000.

El Paso states that on August 31, 1989 at Docket Nos. TQ90–1–33–000, TQ90–1–33–001 and TQ90–1–33–002, El Paso filed, along with its quarterly purchased gas adjustment filing, a request for waiver of Article 2.10(b) of the Offer of Settlement at Docket No. RP86–157–000 ("Liquids Settlement") to accomplish such direct billing of the remaining net liquids revenue deficiency. By order issued September 29, 1989 at said docket, the Commission denied such request; but the Commission also stated that, "If El Paso believes the liquids revenue deficiency should be direct billed, it could make the proposal in a section 4 rate proceeding."

Accordingly, El Paso requested waiver of Article 2.10(b) of the Liquids Settlement at Docket No. RP86–157–000 to eliminate the RP86–157 Liquids Surcharge and in lieu thereof directly bill, each month, its EOC one-part rate sales customers, inclusive of the continuation of the current procedure applied to Gas Company of New Mexico, for their allocable share of the remaining net liquids revenue deficiency.

El Paso respectfully requested expeditious treatment of the filing and that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective October 1, 1989. Such action will permit El Paso to begin as soon as possible to equitably allocate, direct bill and collect the remaining net liquid revenue deficiency.

Copies of the filing were served upon all of El Paso's interstate pipeline system sales customers, all parties of record at Docket No. RP86–157–000, and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24529 Filed 10–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–7–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

October 11, 1989.

Take notice that on October 5, 1989, Northwest Pipeline Corporation ("Northwest") tendered the following tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1.

Fifth Revised Sheet No. 32
Original Sheet No. 32–A
Fourth Revised Sheet No. 34
Third Revised Sheet No. 35
Third Revised Sheet No. 36

Northwest states that the purpose of this filing is to conform Northwest's Rate Schedule SGS–1 to the terms of a new Gas Storage Agreement among Northwest, Washington Natural Gas Company and Washington Water Power Company, the owners of the Jackson Prairie Storage Project.

Northwest requests waiver of the Commission's regulations to permit an effective date of November 1, 1989, coincident with the effective date requested by Washington Natural Gas in a related filing in Docket No. RP90–252–000.

A copy of this filing has been served on all jurisdictional sales customers and affected state regulatory Commission.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24530 Filed 10–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–160–000 and RP89–114–000]

Trunkline Gas Co.; Informal Settlement Conference

October 11, 1989.

Take notice that a settlement conference will be convened in this proceeding on November 2, 1989, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo (202) 357–8410 or Donald A. Heyde (202) 357–5248.

Lois D. Cashell,

Secretary.

FR Doc. 89–24531 Filed 10–17–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES89–38–000

Utilicorp United Inc.; Application

October 12, 1989.

Take notice that on September 27, 1989, UtiliCorp United Inc. ("Application") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue not more than 2,000,000 shares of common stock, par value $1.00 per share, and for exemption from the competitive bidding requirements. This notice replaces the notice issued September 29, 1989 (54 FR 41667, October 11, 1989).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24532 Filed 10–17–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Advisory Board; Cold Fushion Panel

Notice is hereby given of the following meeting:

Name: Cold Fusion Panel of the Energy Research Advisory Board (ERAB), Office of Energy Research, DOE.

Date & Time: October 30, 1989, 8:30 a.m.–5:00 p.m., October 31, 1989, 8:30 a.m.–Noon.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A–110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review the experiments and theory of the recent work on cold fusion; identify research that should be undertaken to determine, if possible, what physical, chemical, or other processes may be involved; and identify what R&D direction DOE should pursue to fully understand these phenomena and develop the information that could lead to their practical application.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

Agenda October 30–31

- Administrative items.
- Discussion and Drafting of Final Report.
- Public Comment (10 minute rule).

Agenda October 31

- Future Meeting Schedule.
- Discussion and Drafting of Final Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairmen of the Panel are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–24598 Filed 10–17–89 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Coal Policy Committee; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council, Office of Fossil Energy, DOE.

Date and Time: Wednesday, November 8, 1989, 8:30 a.m.

Place: The Madison Hotel, 15th & M Streets NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss studies the Council are presently preparing.

Tentative Agenda:

—Call to order by Irving Leibson, Chairman.
—Update on coal Utilization.
—Update on "The Future Long-Range Use of Coal in the United States—Its Strategic, Economic, and Environmental Considerations."
—Discuss any other business properly brought before the National Coal Council Coal Policy Committee.
—Adjournment

Public Participotion: The meeting is open to the public. The Chairman of the Committe is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–24595 Filed 10–17–89; 8:45 am]

BILLING CODE 6450–01–M

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council, Office of Fossil Energy, DOE.

Date and Time: Thursday, November 9, 1989, 9:30 a.m.

Place: The Madison Hotel, 15 & M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

—Call to order by William Carr, Chairman of the National Coal Council.
—Remarks by Chairman Carr.
—Keynote speaker Admiral James Watkins, USN (Ret), Secretary of Energy.
—Report to the Coal Policy Committee.
—Report of the Finance Committee.
—Discussion of any other business properly brought before the Council.
—Adjournment.

Public Participation: The meeting is open to the public. The chairman of the Council is empowered to conduct the

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meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–24596 Filed 10–17–89; 8:45 am]

BILLING CODE 6450–01–M

Vector Energy (U.S.A.) Inc.; Application to Amend and Extend a Blanket Authorization to Export Natural Gas

[FE Docket No. 89–66–NG]

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to amend and extend a blanket authorization to export natural gas.

SUMMARY: The Office of Fossil energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 18, 1989, of a request by Vector Energy (U.S.A.) Inc. (Vector) to amend and extend its blanket authorization to export natural gas to Canada. Vector, a Delaware corporation, is currently authorized by DOE/ERA Opinion Order No. 194 (1 ERA Para. 70,725), issued October 5, 1987, and filed in ERA Docket No. 87–38–NG, to export up to 60 Bcf of natural gas for a two-year period ending November 1, 1989. Vector is requesting that its authorization be (1) amended to allow it to export up to an additional 40 Bcf of natural gas (100 Bcf total), and (2) extended for a two-year period until November 1, 1991. Vector intends to continue to use existing pipeline facilities for the transportation of the requested exports and to submit quarterly reports giving details of individual transactions.

The application is filed with the Department under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t. November 17, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–8116;

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

This export authorization will be reviewed under section 3 of the Natural Gas and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

Vector requests expedited treatment of its application. A decision on Vector's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additonal procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24597 Filed 10–17–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3672–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 17, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Census of Toxicological Testing Facilities (EPA ICR #1544.01). This ICR requests clearnace for a new collection.

Abstract: Under section 4 of the Toxic Substances Control Act, EPA must consider the availability of testing services prior to issuing test rules for chemicals. The proposed census of toxicological testing facilities is designed to determine whether sufficient capacity exists to absorb the demand for laboratory tests generated by the increase in both test rules and other regulatory requirements that involve testing for human health and environmental effects and chemical and environmental fate.

Burden Statement: The public reporting burden for this collection of information is estimated to average 5 hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Toxicological testing facilities.

Estimated No. of Respondents: 435.

Estimated Total Annual Burden on Respondents: 2175 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW, Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 (Telephone (202) 395–3084).

Dated: October 5, 1989.

Paul Lapsley,

Director Infarmotion and Regulatory Systems Division.

[FR Doc. 89–24518 Filed 10–17–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–400037; FRL–3659–7]

Emergency Planning and Community Right-To-Know Act; Train-The-Trainers Conference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conferences.

SUMMARY: EPA will hold two 2-day train-the-trainers conferences on section 313 of the Emergency Planning and Community Right-to-Know Act reporting requirements. The purpose of this training is to present a model course to persons who plan to train others to comply with the reporting requirements of section 313. Persons who should consider attending are representatives from industry, consulting firms, or university continuing education departments. Attendance is restricted to organizations that intend to provide training on a regular basis and expect to conduct a minimum of two training courses on section 313 prior to July 1, 1990. Persons who successfully complete the course will obatin a certification of proficiency. There is limited space available. Requests should be sent in writing to the person listed in "FOR FURTHER INFORMATION CONTACT". Notification will be sent to each applicant regarding their acceptance for the training session. There is no charge for this training.

DATES: The meeting in San Francisco, CA will be held Wednesday and Thursday, November 14th and 15th, 1989. The meeting in Dallas, TX will be held December 6th and 7th, 1989. Both meetings will start each day at 9 a.m. and end at approximately 5 p.m.

ADDRESSES: The San Francisco meeting will be held at: 120 Howard St., Room 206 and 207, San Francisco, CA.

The Dallas meeting will be held at: 1445 Ross Avenue, First Interstate Bank Tower, USEPA 12th Floor, Dallas, TX.

FOR FURTHER INFORMATION CONTACT: Lee Ann duFief, Economics and Technology Division, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., (OS–120), Washington, DC 20460, Telephone: (202–382–3112).

SUPPLEMENTARY INFORMATION: Requests for registration will not be accepted after October 26, 1989.

Dated: October 11, 1989.

Michael Shapiro,

Acting Director, Office of Toxic Substances.

[FR Doc. 89–24516 Filed 10–17–89; 8:45 am]

BILLING CODE 6560–50–M

Citizens Advisory Committee Gulf of Mexico Program; Open Meeting

[FRL–3672–2]

Date: November 2–4, 1989.

Place: New Orleans, Louisiana.

Agenda Items:

—Louisiana Coastal Erosion Problems
—Oil Spill Response in the Gulf
—Citizens Workshops on: Agriculture, Business/Industry, Fisheries, Tourism, Environment
—Reports from other Gulf of Mexico Program committees
—1990 Status-of-the-Gulf Symposium
—Citizens Monitoring Workshop—New Orleans, LA, Dec. 6–8, 1989

Contact: William R. Whitson, Assistant Director for Operations, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center,

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Stennis Space Center, MS 39529, (601) 688-3726.

Al J. Smith,

Acting Director, Water Management Division.

[FR Doc. 89-24661 Filed 10-17-89; 8:45 am]

BILLING CODE 6560-50-M

Office of Pesticides and Toxic Substances

[OPTS-59276A; FRL 3660-6]

Certain Chemicals Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-26. The test marketing conditions are described below.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460 (202) 382-2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-26. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and the restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The test marketing time period, production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-26. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities suppled in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-89-26

Date of Receipt: September 1, 1989.

Notice of Receipt: September 25, 1989 (54 FR 39230).

Applicant: Westvaco Corporation.

Chemical: (G) Lignin, deploymerized.

Use: Dispresant for Carbon Black.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 10, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-24569 Filed 10-17-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3657-8]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Kansas City, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed administrative penalty assessment and opportunity to comment regarding the City of Kansas City, Kansas.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 13, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2853, the following Complaint: In the Matter of the City of Kansas City, Kansas, EPA Docket No. VII 89-W-0006. The Complaint proposes a penalty of $125,000, for failure to implement and enforce the City's pretreatment program pursuant to the terms part D Pretreatment Program of the City's National Pollutant Discharge Elimination System (NPDES) Permit No. KS-00038563.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Kansas City, Kansas is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

Dated: September 13, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-24517 Filed 10-17-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3671-7]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Little Blue Valley Sewer District (LBVSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding LBVSD.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty assessment. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On September 25, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2853, the following Complaint: In the Matter of the Little Blue Valley Sewer District, EPA Docket No. VII 89-W-0009. The Complaint proposes a penalty of $80,000, for failure to implement and enforce LBVSD's pretreatment program pursuant to the terms part C. Special Conditions of the LBVSD's National Pollutant Discharge Elimination System (NPDES) Permit No. MO-0101067.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the LBVSD is available as part of the administrative record, subject to provisions to law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this Notice.

Dated: September 25, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-24515 Filed 10-17-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3657-3]

North Dakota's Application for National Pollutant Discharge Elimination System (NPDES) General Permit Authority

AGENCY: Environmental Protection Agency.

ACTION: Notice of application, public comment period.

SUMMARY: On September 20, 1989, the State of North Dakota submitted to EPA a final application for authority to administer general permits under the NPDES program. Approval of this application would authorize state issuance of general permits, under specific circumstances, in lieu of individual NPDES permits. The application received from North Dakota is complete and is now available for inspection and copying. EPA requests public comments and will hold a public hearing if sufficient public interest exists.

DATE: EPA must receive comments and requests for a public hearing on or before November 17, 1989.

ADDRESS: Address comments and requests for further information to Mr. Marshall Fischer, Water Management Division, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

SUPPLEMENTARY INFORMATION: EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of waste water which result from substantially similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under general permits rather than by individual permits. State authority to issue general permits would significantly reduce the backlog of unissued NPDES permits and reduce the administrative burden and cost of issuing individual permits.

On June 13, 1975, North Dakota received authority to administer the NPDES program under section 402 of the Clean Water Act. Their program, as it currently exists, does not include provisions for the issuance of general permits. The State's final application for authority to issue general permits was received September 20, 1989. The submittal contains a letter from the State asking for approval, a copy of the Memorandum of Agreement (MOA), a supplementary NPDES program description, and copies of relevant State statutes and regulations. The submittal also includes a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program.

After the close of the comment period, the EPA Regional Administrator, with concurrence of EPA Headquarters, will approve or disapprove this proposed modification to North Dakota's NPDES program. This decision will be based upon the contents of the submittal, all written comments received during the comment period and presented at the public hearing, if one is held, and upon meeting the requirements of 40 CFR part 123. If North Dakota's request is approved, the Regional Administrator will notify the State and notice will be published in the **Federal Register**. North Dakota's program will implement Federal law; however, each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44(a)(2). Public notice and opportunity to request a hearing will also be provided for each general

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permit. If the Regional Administrator disapproves the State's request for general permit authority, he will notify the State of the reasons for disapproval and of any revisions or modifications which are necessary to obtain approval.

The public may review North Dakota's application from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays, at the Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202–2405. Copies of the submission may also be obtained by contacting Ms. Daniela Thigpen at the Denver address listed or at (303) 293–1432.

Approval of the State's general permit program would establish no new substantive requirements, nor would it modify the regulatory control over any industrial category. Program approval would merely provide a simplified administrative process.

Kerrigan Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. 89–24590 Filed 10–17–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. W.B.A. Broadcasting Corp.	Dock Junction, GA.	BPH–87091 0MI.	89–458
B. Lorraine M. Wiggins.	Dock Junction, GA.	BPH–87091 0MJ.	
C. Dock Junction Radio Limited Partnership.	Dock Junction, GA.	BPH–87091 0ND.	
D. South Georgia Broadcasting.	Dock Junction, GA.	BPH–87091 0NQ.	
E. James P. McGahan.	Dock Junction, GA.	BPH–87091 0NR.	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applicants have been designated for a hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicants
1. See Appendix	C
2. See Appendix	C
3. See Appendix	C
4. Air Hazard	C
5. Comparative	A, B, C, D, E
6. Ultimate	A, B, C, D, E

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in the appendix to this notice. A copy of the complete HDO in this proceeding is available in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcripton Services, Inc., 2100 M Street, NW. Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Medic Bureau.

Appendix

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to the application of DJRLP Broadcasting Partnership.

2. To determine whether DJRLP Broadcsting Partnership's organizational structure is a sham.

3. To determine, based on the evidence adduced pursuant to issues 1 and 2 above, whether DJRLP Broadcasting Partnership possesses the basic qualifications to be a Commission licensee.

[FR Doc. 89–24540 Filed 10–17–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARTIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200009–001.

Title: Port of San Francisco Terminal Agreement.

Parties: City and County of San Francisco, Transportacion Maritime Mexicana, S.A. de C.V.

Synopsis: The Agreement provides for a "Bypass Container" wharfage rate for cargo delivered or received at the Port of San Francisco other than by vessels making a direct call. All other terms of the basic agreement remain unchanged.

By Order of the Federal Maritime Commission.

Dated: October 12, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–24519 Filed 10–17–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

George Gale Foster Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and §225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Govenors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 9, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *George Gale Foster Corporation,* Poughkeepsie, New York; to beocme a bank holding company by acquiring 51 percent of the voting shares of Fishkill National Corporation, Beacon, New York, and thereby indirectly acquire Fishkill National Bank, Beacon, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Raymond Bancorp, Inc.,* Raymond, Illinois; to acquire 100 percent of the voting sares of Illini Bancshares, Inc., Girard, Illinois, and thereby indirectly acquire State Bank of Girard, Girard, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bancommunity Service Corporation,* St. Peter, Minnesota; to acquire 100 percent of the voting shares of Security Shares, Inc., Mankato, Minnesota, and thereby indirectly acquire Security State Bank, Mankato, Minnesota.

2. **Dakota Bankshares, Inc.,** Fargo, North Dakota; to acquire at least 65 percent of the voting shares of Republic National Bancorp, Inc., Phoenix, Arizona, and thereby indirectly acquire Republic National Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, October 12,1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24543 Filed 10–17–89; 8:45 am]

BILLING CODE 6210–01–M

Hillsboro Financial Corp.; Wichita, KS; Merger and Notice of Acquisition of Banks

This notice corrects a previous **Federal Register** notice (FR Doc. 89–23254) published at page 40738 of the issue for Tuesday, October 3, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Hillsboro Financial Corporation is amended to read as follows:

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President), 925 Grand Avenue, Kansas City, Missouri 64198.

2. *Hillsboro Financial Corporation,* Wichita, Kansas; to merge with Council Grove BancShares, Inc., Wichita, Kansas, and thereby indirectly acquire Council Grove National Bank, Council Grove, Kansas; Potwin Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Potwin State Bank, Potwin, Kansas, and Potwin Insurance Agency, Inc., Potwin, Kansas, and engage indirectly in general insurance agency activities in a place that has a population not exceeding five thousand; K & B Producers, Inc., Wichita, Kansas, and thereby indirectly acquire Allen County Bank & Trust, Iola, Kansas; Eureka Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Citizens National Bank, Eureka, Kansas; Toronto Financial Corporation, Wichita, Kansas, and thereby indirectly acquire First National Bank, Toronto, Kansas; and Molina Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Exchange State Bank, Moline, Kansas. In connection with this application, Applicant also proposes to acquire 93.33 percent of the voting shares of Citizens State Bank, Moran, Kansas.

Board of Governors of the Federal Reserve System, October 12, 1989

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–24546 Filed 10–17–89; 8:45 am]

BILLING CODE 6210–01–M

Joel E. Johnson, Jr.; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Joel E. Johnson, Jr., Panama City, Florida; to acquire an additional 1.68 percent of the voting shares of Genala Banc, Inc., Geneva, Alabama, for a total of 16.78 percent as the result of a stock redemption, and thereby indirectly acquire Citizens Bank, Geneva, Alabama.

Board of Governors of the Federal Reserve System, October 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24545 Filed 10–17–89; 8:45 am]

BILLING CODE 6210–01–M

Society Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

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Governors not later than November 10, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio, to acquire 100 percent of the voting shares of Trustcorp, Inc., Toledo, Ohio, and its Ohio bank subsidiary, Trustcorp Bank, Ohio, Toledo, Ohio, and its second-tier Indiana subsidiaries: Trustcorp of Indiana, Inc., South Bend, Indiana; Trustcorp Bank Angola, N.A., Angola, Indiana; Trustcorp Bank, Columbus, N.A., Columbus, Indiana; Trustcorp Bank, Dunkirk, Dunkirk, Indiana; Trustcorp Bank, Goshen, Goshen, Indiana; Trustcorp Bank, Hartford City, Hartford City, Indiana; Trustcorp Bank, Huntington, N.A., Huntington, Indiana; Trustcorp Bank, Indianapolis, Indianapolis, Indiana; Trustcorp Bank, Knox, Knox, Indiana; Trustcorp Bank, South Bend, South Bend, Indiana, and its second-tier Michigan subsidiaries, Trustcorp of Michigan, Inc., Ann Arbor, Michigan; Trustcorp Bank, Winamac, Winamac, Michigan; Trustcorp Bank, Ann Arbor, Ann Arbor, Michigan; Trustcorp Bank, Lenawee, Adrian, Michigan; and Trustcorp Bank, Ypsilanti, Ypsilanti, Michigan. All subsidiaries will be 100 percent acquired, except for Trustcorp Bank, Hartford City, Hartford City, Indiana, which will be 96.3 percent acquired.

In connection with this application, Applicant also proposes to acquire SeaGate Appraisal Services, Inc., Toledo, Ohio, and thereby engage in performing real estate and personal property appraisals pursuant to § 225.25(b)(13); SeaGate Community Development Services, Inc., Toledo, Ohio, and thereby engage in community development activities pursuant to § 225.25(b)(6); St. Joseph Insurance Agency, Inc., Goshen, Indiana, and thereby engage in the sale of personal, commercial and casualty insurance pursuant to § 225.25(b)(8)(iv); Trustcorp Life Insurance Company, Goshen, Indiana, and thereby engage in credit reinsurance underwriting pursuant to § 225.25(b)(8); Trustcorp Mortgage Company, South Bend, Indiana, and thereby engage in originating, acquiring, and servicing mortgage loans pursuant to § 225.25(b)(1); and Trustcorp of Florida, N.A., Naples, Florida, and thereby engage in providing trust services in Florida pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24544 Filed 10-17-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0303]

International Drug Scheduling; Convention on Psychotropic Substances; Certain Benzodiazepine Drugs; Propylhexedrine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 17, 1989, the closing date for submitting data and comments on the notification from the Secretary-General of the United Nations concerning abuse potential, actual abuse, medical usefulness, and trafficking of 34 various drug substances. The United Nations Division of Narcotic Drugs has indicated that four additional substances will also be part of the review.

DATES: Comments by November 17, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 18, 1989 (54 FR 38441), FDA announced the receipt of a notification (Reference: NAR/CL.10/1989, DND 411/1(2) WHO/ECDD 27) from the Secretary-General of the United Nations on 34 drug substances. The 34 substances were being considered for review by the World Health Organization (WHO) for a possible change in their international control status under the Convention on Psychotropic Substances, 1971. Subsequent communications with the United Nations Division of Narcotic Drugs indicated that WHO would consider four additional substances as part of the review. The 38 substances are listed below.

A. Benzodiazepines

1. Alprazolam
2. Bromazepam
3. Camazepam
4. Chlordiazepoxide
5. Clobazam
6. Clonazepam
7. Clorazepate
8. Clotiazepate
9. Cloxazolam
10. Delorazepam
11. Diazepam
12. Estazolam
13. Ethyl loflazepate
14. Fludiazepam
15. Flunitrazepam
16. Flurazepam
17. Halazepam
18. Haloxazolam
19. Ketazolam
20. Loprazolam
21. Lorazepam
22. Lormetazepam
23. Medazepam
24. Nimetazepam
25. Nitrazepam
26. Nordazepam
27. Oxazepam
28. Oxazolam
29. Pinazepam
30. Prazepam
31. Temazepam
32. Tetrazepam
33. Triazolam

B. 34. Propylhexedrine

C. Additional Substances

35. Brotizolam
36. Etizolam
37. Midazolam
38. Quazepam

FDA announced the notification, in accordance with the Controlled Substances Act (21 U.S.C. 811 *et seq.*—title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970), to provide opportunity for interested persons to submit comments to assist the Department of Health and Human Services (HHS) in preparing scientific and medical evaluations about the drug or substance. The Secretary of HHS will forward this information to WHO, through the Secretary of State, for WHO's consideation in preparing a report for presentation to a WHO review group, which will evaluate the need to modify the existing international control of these drugs.

The September 18, 1989, **Federal Register** notice announced that the period of submit comments and data on these substances would close on October 18, 1989. The Upjohn Co. has requested a 4-week extension to allow them to formulate a more extensive submission. In light of this request, and the fact that WHO will not convene its Expert Committee on Drug Dependence to consider these substances until September 1990, FDA has agreed to extend the comment period until November 17, 1989.

Interested persons may, on or before November 17, 1989, submit to the Dockets Management Branch (address above) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24572 Filed 10-17-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Alaska National Interest Lands Conservation Act (ANILCA), Public Law 96-487, dated December 2, 1980, section 1201, paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Thursday, November 2, 1989, at the Legislative Affairs Office, 3111 C Street, Anchorage, Alaska 99503.

The tentative agenda for the Council will include consideration and recommendations on:

—the ANILCA 1201(1) Report to Congress
—Wilderness Review Guide
—Nonrenewable Resources Report
—Revenue Producing Visitor Services
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or other matters of general concern to the Council should contact either Cochairman's office before the close of business Friday, October 27, 1989.

The public is invited to attend.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272-3422, (FTS) 271-5485;

Alaska Land Use Council, Office of the State Cochairman Designee, P.O. Box AW, Juneau, Alaska 99811, (907) 465-3562.

or

2600 Denali Street, Suite 700, Anchorage, Alaska 99503, (907) 274-3528.

Dated: October 13, 1989.

John E. Schrote,

Deputy Assistant Secretary, Policy, Budget & Administration.

[FR Doc. 89-24601; Filed 10-17-89; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Indian Affairs

Amendment to the Notice of Intent of the preparation of an Environmental Impact Statement (EIS) for a Proposed Lease of 1,000 Acres of the Fort Mojave Indian Reservation, Nevada for a Mixed Residential, Commercial and Recreational Development Project to include an Additional 1,218 Acres.

AGENCY: Bureau of Indian Affairs.

ACTION: Amendment of notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the proposal to lease approximately 2,218 acres of the Fort Mojave Indian Reservation, for mixed residential, commercial and recreational deveopment projects in Clark County, Nevada and San Bernardino County, California. A public scoping meeting will be held to receive further input and questions from the public regarding this proposal and preparation of the EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1401.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited. This notice amends the original Notice of Intent which was published December 29, 1988, (FR 52829). The original notice was for site A only as described in supplemental information below.

DATES: Written comments should be received on or before 11/7/89.

The scoping meeting to identify issues and alternatives to be evaluated in the EIS will be held on Monday October 23, 1989 at the Mojave High School, 1414 Handcock Road, Riviera, Arizona, Mohave County at 7:00 pm. Comments and participation in the scoping process are solicited and should be directed to the BIA at the address provided below or to Carter Associates, Inc., Attention: Ms. Karen E. Watkins, 5080 North 40th Street, Suite 300, Phoenix, Arizona, 85018.

Significant issues to be covered during the scoping process include biotic resources; archeological, cultural and historic sites; socioeconomic conditions; land use; air, visual and water quality; and resource use patterns.

ADDRESSES: Comments should be addressed to: Mr. Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona, 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Area Environmental Protection Specialist, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona, 85001, telephone (602) 241-2281 or FTS: 261-2281.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, in cooperation with the Fort Mojave Indian Tribe, will prepare an Environmental Impact Statement (EIS) on two proposed lease sites located on the Fort Mojave Indian Reservation on the Nevada side of the Colorado River north of the junction of the Nevada, California and Arizona. The proposed lease Site A would include approximately 1,000 acres of mixed residential, commercial and recreational development. The current proposal for site A is divided into two phases of development. The first phase would include two hotels with approximately 500 rooms each, an artificial lake of approximately 75 acres, an 18-hole golf course, and approximately 25 acres of a Recreational Vehicle Park. The second phase of Site A would include a hotel with approximately 1,000 rooms and 2,400 residential units.

The proposed lease site B would include approximately 1,218 acres of mixed-use including residential, recreational, commercial and public uses. The current proposal for Site B is divided into four phases of development. The first pahse would include 1,024 residential units, improved natural open space, a marketing center and public service facilities. The second phase of Site B would include 1,800 residential units, expansion of the marketing center into a club house, expansion of the open space to incorporate an 18-hole golf course and commercial/office space. Phase three of site B would include 2,200 residential units, shcools, public use area (i.e., library, etc.), and additional commercial/office space. The fourth phase of Site B would include 1,812 residential units, commercial/office space and additional recreational amenities including an amphitheater.

The Fort Mojave Indian Tribe had identified this area as a future new townsite as early as 1955 and more

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recently adopted land use plans which support this type of development.

This notice is published pursuant to Section 1501.7 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Enviromental Policy Act of 1969, as amended (42 U.S.C. 4347 *et. seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated by the Secretary of the Interior to the Deputy Assistant of the Secretary—Indian Affairs by 209 DM 8.

Dated: October 13, 1989.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–24594 Filed 10–17–89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV–030–90–4333–11–24–10]

Temporary Closure of Public Lands; Carson and Douglas Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Selected Public Lands in Carson and Douglas Counties of Nevada During the 1989 Sports Car Club of America (SCCA) Mason Valley Rally.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1989 SCCA Mason Valley Rally, Gardnerville, Nevada.

EFFECTIVE DATES: October 21 and 22, 1989.

FOR FURTHER INFORMATION CONTACT: Tom Abbett, Outdoor Recreation Planner, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure information are as follows:

1. The event is located on existing roads in the Pine Nut Mountains near Carson City, NV, within T. 14, N., R. 20 E; T. 15, N., R. 20 E; T. 14, N., R. 21 E; T. 15, N., R. 21 E. A map can be obtained from Tom Abbett at the contact address. The event permittee is required to mark and monitor the race course during this closure period. Included in this closure are the Brunswick Canyon and Sand Canyon Roads.

2. Between 4:00 P.M., Saturday, October 21, 1989, and 5:00 A.M., Sunday, October 22, 1989, the 18 miles of competitive race stage, and public lands within ¼ mile of either side, are closed to the public except at designated spectator areas.

3. Areas designated for viewing the event are limited to the start and finish areas of the Sand Canyon and Brunswick Canyon race stages. All public spectator vehicles operating within these designated areas shall maintain a maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to emergency or law enforcement personnel, event officials, or BLM personnel involved in monitoring the event.

Authority for closure of public lands is found in 43 CFR part 8340, subpart 8341; 43 CFR part 8360, subpart 8364.1, and 43 CFR part 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

James W. Elliott,

District Manager.

[FR Doc. 89–24561 Filed 10–17–89; 8:45 am]

BILLING CODE 4310-HC-M

[OR–943–00–4214–11; GPO–015; WASH–01619, WASH–01935, OR–1374 (WASH)]

Proposed Continuation of Withdrawals, WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposed that all or portions of three separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Colville National Forest

1. WASH–01619, Public Land Order No. 1874 dated June 9, 1959.
   Pierre Lakes Recreation Area, 134. 90 acres. Located in Stevens County, 17 miles west of Northport. T. 39 N., R. 37 E., W.M., Sec. 5.
Summit Lake Recreation Area, 27.50 acres.
   Located in Stevens County, 16 miles west of Northport. T. 40 N., R. 37 E., W.M., Secs. 17, 20, and 21.
Swan Lake Recreation Area, 88.77 acres.
   Located in Ferry County, 12 miles southwest of Republic. T. 35 N., R. 32 E., W.M., Secs. 20 and 29.
Ferry Lake Recreation Area, 52.90 acres.
   Located in Ferry County, 12 miles southwest of Republic. T. 35 N., R. 32 E., W.M., Sec. 28.
Long Lake-Fish Lake Recreation Area, 51.10 acres.
   Located in Ferry County, 12 miles southwest of Republic. T. 35 N., R. 32 E., W.M., Sec. 28.
Ten Mile Campground, 29.29 acres.
   Located in Ferry County, 12 miles southwest of Republic. T. 35 N., R. 32 E., W.M., Sec. 24. T. 35 N., R. 33 E., W.M., Sec. 19.
Lake Ellen Recreation Area, 153.50 acres.
   Located in Ferry County, 14 miles southwest of Kettle Falls. T. 35 N., R. 36 E., W.M., Secs. 26, 27, 33, and 34.
Trout Lake Recreation Area, 80 acres.
   Located in Ferry County, 9 miles west of Kettle Falls. T. 36 N., R. 36 E., W.M., Secs. 11, 12, 13, and 14.
Davis Lake Recreation Area, 41.76 acres.
   Located in Ferry County, 12 miles northwest of Kettle Falls. T. 38 N., R. 36 E., W.M., Sec. 34.
Lake Thomas and Gillette Recreation Area, 121.70 acres.
   Located in Ferry County, 20 miles northeast of Colville. T. 36 N., R. 42 E., 42 E., W.M., Secs. 17 and 20.
Little Twin Lakes Recreation Area, 121.17 acres.
   Located in Stevens County, 12 miles east of Colville. T. 35 N., R. 41 E., W.M., Sec. 4. T. 36 N., R. 41 E., W.M., Sec. 33.
2. WASH–01935, Public Land Order No. 1375 dated December 20, 1956.
Pierre Lake Recreation Area, 27.25 acres.
   Located in Stevens County, 17 miles west of Northport. T. 39 N., R. 37 E., W.M., Sec. 5.
Sullivan Lake Reservoir (Millpond) Site, 80 acres.
   Located in Pend Oreille County, 4 miles east of Metaline. T. 39 N., R. 43 E., W.M., Sec. 25. T. 39 N., R. 44 E., W.M., Sec. 30.
Sullivan Mountain Lookout Administrative Site, 10 acres.
   Located in Pend Oreille County, 7 miles east of Metaline. T. 39 N., R. 44 E., W.M., Sec. 16.
Lake Leo Recreation Area, 19.85 acres.
   Located in Pend Oreille County, 15 miles south of Metaline. T. 36 N., R. 42 E., W.M., Sec. 3.

3. OR–1374(WASH), Public Land Order No. 4362 dated February 12, 1968.
Canyon Creek Recreation Area, 40 acres.
   Located in Ferry County, 8 miles southwest of Kettle Falls. T. 36 N., R. 36 E., W.M., Sec. 35.
Frater Lake Recreation Area, 38.85 acres..
   Located in Pend Oreille County, 15 miles south of Metaline. T. 36 N., R. 42 E., W.M., Sec. 3.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the publicf land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to be the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 6, 1989.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–24563 Filed 10–17–89; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 322X)]

CSX Transportation, Inc.; Abandonment Exemption of Railroad Line in Montgomery County, OH

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 1.18-mile line of railroad between mileposts 1.66 and 2.84, at Dayton, Montgomery County, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 7, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petiton filed with the Commission should be sent to applicant's representative:

Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 23, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 12, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24576 Filed 10–17–89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–319X]

Florida Central Railroad Co., Inc.; Abandonment Exemption of Railroad Line in Orange County, FL

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 0.9-mile line of railroad between mileposts F–0.0 and F–0.9, near Forest City, Orange County, FL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigetion) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

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employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 17, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 7, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to the applicant's representative:

Robert L. Calhoun, Sullivan & Worcester, Suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 23, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 12, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24575 Filed 10–17–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31514]

Indiana Hi-Rail Corp.; Lease and Operation Exemption From Norfolk and Western Railway Co. Rail and Rail-Related Property Between Liberty Center, OH and Woodburn, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption for a lease and operation.

SUMMARY: The Interstate Commerce Commission exempts: (1) From the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Indiana Hi-Rail Corporation from Norfolk and Western Railway Company of 51 miles of rail and rail-related property between Liberty Center, OH and Woodburn, IN, subject to standard labor protective conditions; and (2) from the provisions of 49 U.S.C. 10761, 10762 and 11145 Indiana Hi-Rail Corporation's operations over the same lines described in (1) above.

DATES: These exemptions are effective on October 21, 1989. Petitions for reconsideration must be filed by November 7, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31514 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

Robert J. Cooney, Senior General Attorney, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: October 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression. Vice Chairman Simmons would not have granted the exemption from tariff filing and reporting requirements.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24602 Filed 10–17–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:00 a.m., Monday, November 6, 1989.

Place: Horton Grand Hotel, Three-eleven Island Avenue San Diego, California, 92101.

Status: Open.

Matters to be Considered: NIC Advisory Board Recommendations for Fiscal Year 1991; NAC Project Relocation Update; Prison Administrators Training Model Briefing; NASA Project Briefing; Briefing on Interagency Memoranda and Agreements; Review of Planning Meeting of Non-Judicial and Quasi-Judicial Means/Processes to Address Unconstitutional Conditions in Prisons and Jails; and SJI/NIC Project on Intermediate Sanctions Briefing.

Contract Person for More Information: Larry Solomon, Acting Director (202) 724–3106.

Larry Solomon,

Acting Director.

[FR Doc. 89–24565 10–17–89; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held on Wednesday, November 8, 1989, in Suite N–3437, U.S. Department of Labor Building, Third and Constitution Avenue, NW. Washington, DC.

The purpose of the November 8 meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Assistant Secretary's Report: (a) PWBA update, (b) Miscellaneous Issues.
2. General Business of the Advisory Council.
3. Report of the Enforcement Work Group.
4. Report of the Access To Health Care Work Group.
5. Report of the National Retirement Income Policy Work Group.
6. Report of the Pension Portability Work Group.
7. Statements from the General Public.

Members of the public are ecouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 3, 1989, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW. Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 3, 1989.

Signed at Washington, DC, this 13 day of October, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration.

[FR Doc. 89–24593 Filed 10–17–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Engineering Education Coalitions; Program Solicitation Announcement

Engineering Education Coalitions is a targeted program solicitation of the *Undergraduate Curriculum Development in Engineering* program, as previously described in NSF 88–84, and is part of NSF's evolving long range plan to strengthen undergraduate education in engineering, mathematics, and the sciences in the United States. This program is managed by the Division of Undergraduate Science, Engineering, and Mathematics Education, Directorate and Science and Engineering Education in collaboration with the Office for Engineering Infrastructure Development, Directorate for Engineering. The text of the program solicitation is presented below. Copies of the complete program solicitation (NSF 89–107) with appendices and forms will be available soon from the Forms and Publications Unit, Room 232, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357–7668.

Text of the Program Solicitation

Undergraduate Curriculum Development in Engineering—Engineering Education Coalitions

Objectives

The principal objective of the Engineering Education Coalitions initiative is to support a small number of major coalitions of U.S. institutions in a multi-year effort to:

•Increase dramatically the quality of U.S. undergraduate engineering education as well as the number of engineering baccalaureate degrees awarded, especially to women and underrepresented minorities.

•Design, implement, evaluate, and disseminate new structures and fresh approaches affecting all aspects of U.S. undergraduate engineering education, including both curriculum content and significant new instructional delivery systems.

•Create significant intellectual exchange and substantive resource linkages among major U.S. engineering baccalaureate-producing institutions and other major and smaller institutions.

This year NSF anticipates having funds to support three Engineering Education Coalitions with each Coalition supported at the level of about $2 to $3 million per year for up to 5 years.

Rationale

The U.S. engineering education enterprise is facing serious challenges. These challenges have been studied in depth by the National Science Board Task Committee on Undergraduate Science, Mathematics and Engineering Education, the National Congress on Engineering Education, the Engineering Dean's Council of the American Society for Engineering Education, a Task Force of the American Society of Engineering Education, and several NSF Disciplinary Workshops on Undergraduate Education, among others (see Selected Bibliography). Among the most pressing challenges today are the following.

A major shortfall of engineers at all levels is projected by the end of the next decade. This shortfall is based on several factors, among them is a significant decline in the number of 18-year-olds in the United States, a continuing decline in Freshman interest in engineering careers, a low and declining enrollment in engineering programs by women and underrepresented minorities, a substantial increase in the number of faculty retirements, and inadequate enrollments in graduate programs by U.S. students.

Undergraduate engineering education is in need of comprehensive restructuring. There is considerable evidence that the undergraduate engineering learning experience is in need of major renovation to recast an overburdened and compartmentalized curriculum, to prepare graduates better for careers in engineering in the next century, to integrate the teaching and research missions in academic institutions more completely, to improve the scientific and technological literacy of all students, to encourage and support faculty efforts in both scholarship and undergraduate teaching, to develop a new learning environment, and to utilize better information and communications technology.

The engineering education system needs more integration and coordination. The engineering community needs to develop a systems perspective of the role of engineering education in the larger U.S. educational system, including the need for better preparation and understanding of careers in engineering for precollege students, the need to improve important links in undergraduate engineering education, both at the precollege to college transition and at the 2-year college to 4-year institution interface, the need to encourage more qualified U.S. students to pursue graduate studies and faculty careers, and the need to prepare students for life-long learning.

These challenges are beyond the capabilities and resources of any single discipline, department, college or institution. They require a comprehensive and coordinated approach involving significant inter-institutional collaboration. it is to this end that the Engineering Education Coalitions initiative seeks to support coalitions of U.S. educational institutions to introduce fresh approaches and comprehensive changes in U.S. undergraduates engineering education.

Features of the Engineering Education Coalitions

It is important for the well-being of the U.S. undergraduate engineering education enterprise that efforts under this solicitation preserve the diversity of constituencies and approaches to

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engineering education. While each Coalition may be unique in some respects, each Coalition should exhibit the following key features.

A proposed Coalition of institutions should have awarded collectively at least 2,000 undergraduate engineering degrees annually to U.S. citizens and permanent residents, including 300 degrees to minorities who are underrepresented in engineering and 600 degrees to women, based on a yearly average for the three calendar years 1987–1989. (For the purposes of this program, underrepresented minorities in engineering are Blacks, Native Americans, Mexican Americans, Puerto Ricans, Alaskan Natives, and Native Pacific Islanders.)

It is expected that proposed Coalitions will vary in size and exhibit diverse forms of organization, participation, and operation. The size, structure, and operation of a Coalition will depend on the focus and objectives to be accomplished. Although no single type of Coalition, or its focus, is prescribed, this feature is intended to encourage the formation of Coalitions that have the potential for a major impact on U.S. undergraduate engineering education. In the formation of Coalitions, consideration should be given to inclusion of major doctoral universities, primarily undergraduate institutions, minority institutions, and two-year colleges, among others. Each Coalition is expected to work collaboratively to increase the number of engineering baccalaureates, especially to women and underrepresented minorities.

A Coalition should have a clear vision and well-formulated plans for comprehensive restructuring and reshaping of the undergraduate engineering learning experience involving the breadth of engineering and all levels of undergraduate engineering education.

There is strong evidence (see, for example, the Selected Bibliography) of the need for a major restructuring and reshaping of undergraduate engineering education. There is a need to integrate the commonality in principles among different disciplines, to improve the students' skills in problem definition and communication, and to improve the effectiveness and quality of the interaction between the students and faculty. There is also a need to develop new learning environments that utilize effectively new communication and information technologies, and to heighten the role of laboratory instruction, experimentation and design. In general, there is a need to produce engineers who are more informed about the technological, environmental, global and social factors involved in engineering practice.

A Coalition should be an agent of active inter-institutional collaboration with significant intellectual exchange and resource linkages.

Many of the critical challenges facing engineering education are beyond the capabilities and resources of an individual institution. Thus, an objective of this solicitation is to promote significant collaboration among participating institutions. Collaboration among Coalition institutions may include visiting faculty appointments, inter-institutional academic programs for students, cooperative curriculum development, inter-institutional instruction via networking of communications and information technologies, and linking of appropriate institutional programs.

The Coalition institutions should contribute significant and tangible resources that reflect the unique interests and capabilities of the institutions.

A quality engineering education program today requires considerable resources, not only in terms of faculty, staff, laboratories, equipment and, often, special facilities, but also the institutional resolve to maintain its currency and relevancy to engineering practice in an environment of rapid technological change. The long-term success of a Coalition is likely to rest largely on the resolve and tangible commitments of the participating institutions to develop a strong infrastructure on which to continue to build after the completion of the project.

There should be well-developed plans for integrating the proposed activities into the academic programs of the Coalition institutions within the period of the award.

The challenges facing engineering education are serious and pressing. This solicitation is intended to address these challenges now and to have a major impact on U.S. engineering education within the near future. The solicitation will support activities to plan and design innovations in engineering education, and to experiment with such innovations. However, a principal objective of this solicitation is to implement and integrate the educational innovations into the Coalition institutions' academic programs within the period of the award.

The Coalition should be comprised primarily of baccalaureate-producing institutions with activities that exhibit a broad perspective of the engineering education system.

Although a principal focus of this solicitation is to strengthen U.S. undergraduate engineering education in our Nation's institutions of higher education, each Coaltion should have activities that exhibit a systems perspective of the engineering education pipeline including the importance of precollege preparation, the transition to college, the 2-year college and 4-year institution interface, the graduate/industry interface, and life-long learning. Coalitions are encouraged to include, as appropriate, the substantive involvement of industry and other education or professional organizations.

Deadlines

Letters: February 16, 1990

To faciliate preparations for proposal processing and review, the Foundation requests that persons planning to submit a proposal to this program indicate their intentions by sending a letter to the Division of Undergraduate Science, Engineering and Mathematics Education (USEME), Attn: Engineering Education Coalitions, Room 639, National Science Foundation, 1800 G St. NW., Washington, DC 20550. This letter should be received by February 16, 1990. The letter may also be sent via FAX: (202) 357–7009 or by electronic mail: Bitnet: undergrad@nsf; Arpanet, CSnet: undergrad@note.nsf.gov. The letter should not exceed 3 pages and it should contain a concise summary of the vision, scope, and duration, and a list of the participating institutions. This letter is not required for submission of a proposal, it will not be considered by NSF as a binding commitment of the institutions comprising the Coalition, and it will not be considered in the proposal evaluation process.

Proposals: April 16, 1990

Proposals must be received by the Proposal Processing Unit, room 223, National Science Foundation, 1800 G St. NW., Washington, DC 20550, by 5:00 p.m., April 16, 1990.

Institutional Commitment

Institutional commitments are expected to provide matching support in an amount equal to or greater than the funds to be provided by the NSF. The matching funds may be provided by the institutions participating in the proposal, by industry or other sources, or by a combination of the institutions and industry and other non-Federal sources.

Equipment requests must provide matching support in amounts equal to or greater than requested of NSF.

Proposal Review, Awards, and Oversight

Review

Proposals will be evaluated in several stages of review. This may include mail and/or panel review, site visits, and NSF staff and National Science Board reviews. Proposals may be declined at any point in the review process. (The evaluation and processing of proposals will require approximately six months.)

Awards

Support may be requested for a period of up to 5 years. For this program, it is important to note that an institution can be a member of only one coalition proposal.

Although the number of awards for FY 1990 will depend on the quality of the proposals received and on the availability of funds for this solicitation, NSF anticipates funding 3 Coalitions with each Coalition supported at the level of about $2 to $3 million per year for up to five years. Additional coalitions are expected to be awarded for the next several years.

Oversight

Grants awarded as a result of this announcement will be administered in accordance with the terms and conditions of NSF GC–1, "Grant General Conditions," or FDP–II, "Federal Demonstration Project General Terms and Conditions," depending on the grantee organization. Copies of these documents are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7666, or via e-mail (Bitnet:pubs@nsf or Internet: pubs@note.nsf.gov). More comprehensive information is contained in the NSF Grant Policy Manual (July 1989) for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

If the submitting institution has never received an NSF award, it is recommended that appropriate administrative officials become familiar with the policies and procedures in the NSF Grant Policy Manual which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are described in chapter III of the NSF Grant Policy Manual.

The progress of each Coalition will be assessed periodically. In general, oversight and monitoring of each Coalition is coordinated by NSF through Program Director's visits, submission of annual reports, and site visits. Special evaluations of the Coalition may also be conducted as deemed appropriate and necessary by NSF.

Upon the completion of the project a Final Project Report (NSF Form 98A), including the Part IV Summary, will be required. Applicants should review this form prior to proposal submission so that appropriate tracking mechanism are included in the proposal plan to ensure that complete information will be available at the conclusion of the project.

Who May Submit

Proposals are invited from coalitions comprised primarily of institutions and organizations offering baccalaureate engineering programs, or engineering-related undergraduate programs, including major doctoral universities, primarily undergraduate institutions, minority institutions, and two-year colleges, among others. A Coalition should have awarded collectively at least 2,000 undergraduate engineering degrees annually to U.S. citizens and permanent residents, including 300 degrees to minorities who are underrepresented in engineering and 600 degrees to women, based on a yearly average for the three calendar years 1987–1989.

Proposal Preparation and Format

Proposals submitted in response to this program solicitation should be prepared in accordance with the guidelines provided in the NSF brochure, Grants for Research and Education in Science and Engineering (NSF 83–57, rev. 8/89), except as modified or elaborated by this solicitation. Single copies of this brochure are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7666, or via e-mail (Bitnet:pubs@nsf or Internet: pubs@note.nsf.gov).

A proposal should describe the unique combination of the Coalition's interests, resources and capabilities and should present the vision, goals, plans, and anticipated results of the proposed Coalition in sufficient detail to be evaluated in accordance with the criteria listed in this solicitation. The proposal should contain only material essential for the review. A lengthy proposal is not encouraged. Copies of the proposal should be securely fastened together. They should not be in ring binders or held together with elastic bands. The proposal should contain the following information and be assembled in the corresponding order. All of the forms identified below are provided at the back of this solicitation and they can also be found in Grants for Research and Education in Science and Engineering (NSF 83–57, rev. 3/89).

1. Cover Page

NSF Form 1207.

2. Table of Contents.

3. Executive Summary

In lieu of the usual 200-word Project Summary, an Executive Summary of no more than two (2) pages should be provided. It should be a succinct description of the vision, goals, structure, plans, programs, and special features of the proposed coalition. Because this summary may ultimately be used to inform the public about the Foundation's programs, it should be written so that a technologically literate layperson could understand the use of Federal funds in support of the project.

4. Results From Prior NSF Support

For the Project Director/Principal Investigator as described in GRESE.

5. Project Description

Up to fifteen (15) single-spaced pages (or 30 double-spaced pages) of 12 point type or larger will be accepted. In developing the project description, attention should be given to the areas outlined below. This information, and any other information relevant to the project, should be presented in sufficient detail to allow assessment of the merit of the proposed activities and the necessity for a coalition mode of operation. The anticipated results of the proposed project should be integrated into the institutions' academic programs within the budget period of the award and they should be of interest and use to wide segments of the undergraduate engineering education community outside the Coalition.

Strategic Plans, Goals and Results. Articulate the overall vision and goals of the Coalition, describe the strategic plans and the anticipated results, and especially the expected impact of the Coalition's activities on U.S. undergraduate engineering education. Justify the choice of institutions comprising the Coalition as they relate to the objectives of this initiative.

Comprehensive Restructuring. Discuss the plans for the project and the effect of the anticipated results on the undergraduate engineering learning experience. These plans should view engineering as a whole and not just a few disciplines and they should outline activities of high quality and creativity. Proposers are strongly encouraged to consult the references listed in the Selected Bibliography. NSF will support activities such as planning and designing innvoation in engineering education, experimenting with the implementation of such innovations, assessing and evaluating outcomes, and disseminating the results to other educators. Indicate how the changes proposed prepare undergraduates better for careers in engineering in the next century. Describe the plans for integrating the innovations into the institutions' academic programs within the period of the award. Describe the mechanisms for the dissemination of the results of the Coalition activities to non-Coalition institutions both during and after the project. Describe the plans for attracting and retaining qualified students and for increasing the participation of women and underrepresented minorities.

Inter-Institutional Linkages. Identify the inter-institutional linkages and mechanisms for collaboration. These linkages should involve significant intellectual exchange as well as

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resource commitments (e.g., funds, facilities, and people).

Management Plan. Provide a clear description of the organizational structure of the Coalition, including the mechanisms for focusing the coalition activities, allocating funds and equipment, and managing the project team and other affected faculty and participants.

Summary of Baccalaureate Degrees. Provide a tabular summary of the undergraduate engineering degrees awarded by each institution in the Coalition each year for the three calendar years of 1987–89. The summary should indicate gender, ethnic origin, and nationality. A coalition should have awarded collectively at least 2,000 undergraduate engineering degrees annually to U.S. citizens and permanent residents, including 300 degrees to underrepresented minorities and 600 degrees to women, based on a yearly average for the three calendar years 1987–1989.

6. Bibliography.

7. Biographical Sketches

Provide no more than a two page biographical sketch for each senior personnel listed in section A. Senior Personnel on the Summary Proposal Budget Forms except those included in line A.5. *Others.* In accordance with Important Notice No. 107 (9/89), biographical sketches, in addition to data on educational background and career, must now include the following information:

—A list of up to five publications most relevant to the work proposed and up to five other significant publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from and citing prior NSF support. A complete list of publications for the past five years is no longer required. Only the list of the ten will be used in merit review.

—A list of the names of graduate students with whom the PI has had an association as thesis advisor and postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored.

—To avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own graduate and postdoctoral advisors. For senior personnel included in line A.5. of the Summary Proposal Budget Forms, provide a list comprised of their name, title, department, and institutional affiliation.

8. Budget

NSF anticipates that the majority of the costs for the Coalition's activities will be for personnel time and personnel-related costs, including modest amounts of materials, supplies, equipment, computing services, etc. It is expected that the institutions will have the major computing facilities, equipment, and physical environment to achieve the goals of the project, and therefore NSF does not anticipate providing major equipment and facilities support. Because the results of the project are expected to be integrated into the academic programs of the institutions within the period of the award, it is expected that the budgets will reflect the assumption of responsibility by the participating institutions as the educational innovations are fully implemented.

Eligible Costs. In developing the budget, include only items that represent new costs. NSF funds may not be used to support expenditures that would have been undertaken in the absence of an award, such as the costs for normal teaching activities and normal curriculum development. Equipment costs must be matched with non-Federal funds equal to or greater than the funds requested from NSF.

Forms and Documentation. NSF Form(s) 1030. The "Budget Explanation Pages," described on the reverse of Form 1030, should: (1) provide detail supporting the funds requested from NSF as identified on Form(s) 1030, and (2) provide a summary of the expenditures for the project as a whole—that is, for the combined total of requested NSF funds and institutional commitments.

9. Current and Pending Support

NSF Form(s) 1239.

10. Appendices.

I. Facilities and Equipment. Include a description of no more than three pages of the relevant and related facilities, plans for purchase of and justification for major items of equipment, and plans for new or renovated space.

II. Letters of Commitment. Official letters only that verify specific institutional and other resource commitments.

III. Other Appendices. Other appendices provided should be relevant and concise.

Materials Required

1. Fifteen (15) copies of the proposal.

2. One (1) copy of the NSF Form 1225 attached to the copy of the proposal bearing original signatures. Do not include the form within the body of the proposal, since this would compromise the confidentially of the information. WHILE PROVIDING THE INFORMATION REQUESTED IS VOLUNTARY, SUBMITTING THIS FORM IS REQUIRED BY NSF. OMISSION OF THIS FORM WILL CAUSE CONSIDERABLE DELAY IN PROCESSING THE PROPOSAL.

3. Two (2) sets of the following extra forms with each set of forms stapled as a unit.

a. One copy of the Cover Sheet
b. One copy of the Executive Summary.
c. One copy of the Budget, including explanation pages.

These materials should be submitted to: Proposal Processing Unit, room 223, Attn: Engineering Education Coalitions, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Evaluation Criteria

Proposals will be evaluated in accordance with Foundation procedures and the criteria described in *Grants for Research and Education in Science and Engineering.* These criteria address:

- Intrinsic merit of the proposed project;
- Capability of the investigator(s) and the adequacy of the institutional resources to carry out the proposed work;
- Expected impact of the proposed project;
- Utility or relevance of the proposed project.

In addition, a proposal should exhibit evidence of the project's potential to contribute to the national effort to strengthen U.S. undergraduate engineering education, including the following as appropriate to the criteria above to which they relate. The proposal should:

- Propose activities of high quality and creativity that address major challenges facing U.S. undergraduate engineering education and that have the potential for a major impact on U.S. undergraduate engineering education within the period of the project.
- Present well-developed plans for comprehensive restructuring and reshaping of the undergraduate engineering learning experience involving the breadth of engineering and all levels of undergraduate engineering education.
- Propose plans for attracting and retaining qualified U.S. students in undergraduate engineering education, especially the increased participation of women and underrepresented groups, that recognize the breadth of the engineering education pipeline and the role of undergraduate engineering education within it.
- Provide plans to integrate the results of the project's activities into the academic programs of the Coalition institutions within the period of the project.
- Present evidence that the infrastructure created will support continued growth and development of undergraduate engineering education after completion of the project.
- Describe appropriate mechanisms to evaluate the project efforts as the project progresses and upon its completion, that is, describe plans to determine the 'value-added' as a consequence of the project's activities.
- Present significant mechanisms for disseminating the results of the project with engineering educators and students at institutions outside the Coalition, both during the period of the project and upon its completion.
- Propose a Coalition structure to promote active intra- and inter-institutional collaboration with significant intellectual and resource linkages among the participating institutions.
- Provide clear evidence of institutional resolve to support the project through tangible resource commitments.

Inquiries

Program Inquiries: (202) 357–7051.

For program inquiries, contact the Division of Undergraduate Science, Engineering and Mathematics Education: (202) 357–7051

Forms and Publications: (202) 357–7668.

Copies of Grants for Research and Education in Science and Engineering (NSF 83–57, rev. 3/89) and other forms and publications are available at no cost from Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7668, or e-mail (Bitnet: pubsnsf or Internet: pubsnote.nsf.gov).

Selected Bibliography

The following selected references discuss undergraduate science, engineering, and mathematics education and related issues. The NSF publications are available at no cost from:

Forms and Publications Unit, Room 232, National Science Foundation, 1800 G Street NW., Washington DC 20550, Telephone: 202–357–7668. e-mail: Bitnet: pubsnsf, Internet: pubsnote.nsf.gov

Undergraduate Science, Mathematics, and Engineering Education, Volume I and Volume II, Source Materials, Pub. No. NSB 86–100.

Report on the NSF Disciplinary Workshops on Undergraduate Education, Pub. No. NSF 89–3.

Report on the NSF Workshop on Science, Engineering, and Mathematics Education in Two Year Colleges, Pub. No. NSF 89–50.

Focus on the Future: A National Action Plan for Career-Long Education for Engineers, Report of the Committee on Career-Long Education for Engineers, National Academy of Engineering, 2101 Constitution Avenue NW., Washington, DC 20418, 1988.

Changing America: The New Face of Science and Engineering, Interim Report, The Task Force on Women, Minorities, and the Handicapped in Science and Technology, 330 C Street SW., Washington, DC, 20201, September, 1988.

A National Action Agenda for Engineering Education, Report of the Task Force on a National Action Agenda for Engineering Education, American Society for Engineering Education, Eleven Dupont Circle, Suite 200, Washington, DC, 20036, 1987.

Engineering Education and Practice in the United States, Report of the Committee on the Education and Utilization of the Engineer, Commission on Engineering and Technical Systems, National Research Council, National Academy Press, 2101 Constitution Avenue NW., Washington, DC, 20418, 1985.

Dated: October 12, 1989.

Edward W. Ernst,

Program Director.

Jack R. Lohmann,

Program Director, Division of Undergraduate Science, Engineering and Mathematics Education.

[FR Doc. 89–24521 Filed 10–17–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting (Amended); Advisory Panel for Economics

This notice amends the agenda for the open session.

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, NSF.

Date/Time: Friday November 3, 1989—8:30 a.m. to 5:00 p.m., Saturday November 4, 1989–9:00 a.m. to 3:00 p.m.

Place: Lombardy Hotel, 2019 I St., NW.

Type of Meeting: Part Open-Open November 3, 12:15 p.m. to 1:00 p.m., Closed Remainder.

Contact Persons: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow, or Dr. Ivy Broder, Program Directors, Division of Social and Economic Science, Room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357–9674.

Minutes: May be obtained from the contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in economics.

Agenda: Open-General discussion of trends and opportunities in economic research.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c) Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–24606 Filed 10–17–89; 8:45 am]

BILLING CODE 7555–01–M

Engineering Education Coalitions; Program Solicitation; Meeting

A meeting for engineering deans and other representatives is scheduled for November 7, 1989 in Washington, DC to announce a major new NSF initiative in undergraduate engineering education, the Engineering Education Coalitions program solicitation, to be initiated in FY 1990. Dr. Bassam Z. Shakhashiri, Assistant Director for Science and Engineering Education, and Dr. John A. White, Assistant Director for Engineering, will describe the objectives and operations of this new initiative. The Engineering Education Coalitions is a targeted initiative of the Undergraduate Curriculum Development in Engineering program to support inter-institutional coalitions of engineering programs to reshape and restructure undergraduate engineering education. Funding for the first year of the program is expected to support three major awards.

Many of the challenges facing undergraduate engineering education require a comprehensive and coordinated approach involving significant inter-institutional efforts. This program solicitation will support coalitions of academic institutions in a multi-year commitment to develop, implement and evaluate comprehensive changes and innovations in undergraduate engineering education. NSF funding for each coalition is expected to be about $2 to $3 million per

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year for up to 5 years. A competitive coalition should have awarded at least 2,000 undergraduate engineering degrees annually, including 300 degrees to minorities who are underrepresented in engineering and 600 degrees to women.

The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Ave., NW., Washington, DC, on November 7, 1989, from 2:00–4:00 p.m. A draft of the impending program solicitation and other materials will also be provided.

Questions about this meeting should be directed to either Dr. Edward W. Ernst or Dr. Jack R. Lohmann, (202) 357–7051, in the Division of Undergraduate Science, Engineering and Mathematics Education.

Dated: October 12, 1989.

Edward W. Ernst,

Program Director,

Jack R. Lohmann,

Program Director, Division of Undergraduate Science, Engineering and Mathematics Education.

[FR Doc. 89–24520 Filed 10–17–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for the Methematical Sciences; Meeting

In compliance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences, NSF.

Date & Time: November 6, 1989—10:30 a.m. to 5:30 p.m., November 7, 1989—8:30 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: November 6 Open—10:30 a.m. to 5:30 p.m., November 7, Open—8:30 a.m. to 5:00 p.m.

Contact Person: Dr. Judith S. Sunley, Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–9669. Electronic mail: jsunley@note.nsf.gov. Anyone planning to attend this meeting should notify Dr. Sunley no later than November 3, 1989.

Purpose of Committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda: Monday, November 6, 1989—10:30 a.m. to 5:30 p.m. (Open) and Tuesday, November 7, 1989—8:30 a.m. to 5:00 p.m. (Open)

Introductory remarks;

Information exchange

—NSF program and budget information,

—Progress in research and education,

—Interests of the community;

Focus on education and human resources;

Focus on research and research infrastructure;

Staffing;

Broadening the base of the advisory system;

Concluding business.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–24607 Filed 10–17–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 2, Appendix B—Rules of Practice for Domestic Licensing Proceedings.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Petitions are submitted only once.

5. *Who will be required or asked to report:* Persons requesting exemption of specific radioactive waste streams from regulation by the Commission due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to be below regulatory concern.

6. *An estimate of the number of responses:* Six annually.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately 3,000 hours per response. The total annual industry burden is estimated to be 18,000 hours.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* Appendix B to 10 CFR part 2 provides regulatory guidance for obtaining expeditious action on rulemaking petitions to exempt specific radioactive waste streams from NRC regulation because the radionuclides present are in such low concentrations or quantities as to be below regulatory concern.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0136), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 13th day of October 1989.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting, Designated Senior Official for Information Resources Management.

[FR Doc. 89–24584 Filed 10–17–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: United States Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review certain information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). These requirements were approved by OMB at the proposed rule stage, approval number 3150–0146. The final rule adds new information collection requirements and licensees records retention periods. Therefore, an amended supporting statement is being submitted to OMB.

1. *Type of submission:* Revision.

2. *The title of the information collection:* 10 CFR parts 2 and 26, Fitness-for-Duty Programs.

3. *The former number if applicable:* N/A.

4. *How often the collection is required:* As necessary.

5. *Who will be required to report:* Nuclear power plant licensees.

6. *An estimate of the number of the reports anticipated annually:*

a. 162 semi-annual reports

b. 162 telephonic events reports.

7. *An annual burden estimate per response:*

a. 40 hrs. per semi-annual report

b. 15 minutes per event report.

8. *An estimate of the total number of hours needed annually by the industry to complete the requirement:* 6,952.2 hours for reports; 25,353 hours for recordkeeping. Therefore, the total annual industry burden is expected to be 32,305 hours.

9. *An indication of whether section 3504(h), Public Law 9696–511 applies:* Not applicable.

10. *Abstract:* 10 CFR parts 2 and 26 of NRC's regulations, "Fitness-for-Duty Programs" require operators of nuclear power plants to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated within the management of these programs, and to provide reports concerning significant events.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–00146), Office of Management and Budget, Washington, D.C. 20503. Comments can also be submitted by telephone (202) 395–3084.

NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of October 1989.

Joyce A. Amenta,

Designated Senior, Official for Information Resources Management.

[FR Doc. 89–24585 Filed 10–17–89; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 35—Medical Use of Byproduct Material.

3. *The form number if applicable:* NRC Form 473.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years. NRC Form 473 is submitted following the occurrence of a diagnostic misadministration.

5. *Who will be required or asked to report:* Physicians and medical institutions who are applicants for or holders of an NRC license authorizing the administration of byproduct material or its radiation to humans for medical care.

6. *An estimate of the number of responses:* 10 CFR part 35—8,422,955 NRC Form 473—300.

7. *An estimate of the total number of hours needed to complete the requirement or request:* 10 CFR part 35—An average of 0.002 hours per response plus 118.4 hours per recordkeeper. The total industry burden is 302,944 hours annually.

NRC Form 473—An average of 0.5 hours per response. The total industry burden is 150 hours.

8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR part 35, Medical use of Byproduct Material, contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical care. NRC Form 473 is used by NRC medical licensees to report diagnostic misadministrations of radiopharmaceuticals as required by 10 CFR § 35.33. The information in the required reports, applications and records is used by the NRC to ensure that the health and safety of the public is protected and that licensee possession and use of byproduct material is in compliance with license and regulatory requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0010), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 5th day of October 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–24586 Filed 10–17–89; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 23, 1989 through October 5, 1989. The last biweekly notice was published on October 4, 1989 (54 FR 40922).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

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The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: January 12, 1989, revision dated August 14, 1989.

Description of amendment request: This is a renotice as a result of the revised amendment request dated August 14, 1989. The original notice was published on February 22, 1989 (54 FR 7634).

The licensee's August 14, 1989 letter expanded the original request to include changes to Table 4.3-3 of the Technical Specifications. Specifically, the licensee proposed to add a footnote to the table to allow the surveillance intervals of the containment radiation monitors be extended to the next refueling outage if the interval between refueling outages is greater than 18 months. This change would obviate the need to perform a calibration of the monitors when the plant is at power, and would thus eliminate the circumstance under which both types of monitors (gaseous and particulate) are rendered inoperable due to calibration activities.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed amendment to Table 4.3-3 only adds schedular flexibility to the calibration schedule of the radiation monitors. There is no modification to existing plant hardware nor operating procedures. The monitors themselves do not cause design basis accidents nor are they used to mitigate the consequences of such accidents. Hence the answers to both questions (1) and (2) are negative. There is furthermore no change in the assumptions or acceptance criteria of any previous analysis; thus the answer to question (3) is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 14, 1989

Description of amendment request: The proposed license amendments are for a Final Safety Analysis Report (FSAR) change based on the recalculation of radiological doses for a loss of cooling accident, a fuel handling accident, and a Gaseous Waste Processing System (GWPS) failure. These recalculations reflect the original plant design without modification. The proposed changes reflect increased doses, but remain substantially below the limits established in General Design Criterion (GDC) 19, Standard Review Plans (SRPs) 6.4 and 15.7.5, and 10 CFR Part 100. There is no impact on environmental qualification of equipment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has reviewed the proposed changes and has determined the following:

1) Effect on Probability and Consequences of an Accident:

The proposed change concerns only recalculation of consequences of presently postulated accidents. No system or plant changes are involved. Therefore, there is no effect on the probability of an accident.

The proposed changes document revised analyses which determined increased Control Room, TSC and offsite doses of postulated accidents. The Control Room and TSC doses remain below the regulatory limits established in GDC 19 and SRP 6.4. Offsite doses for the affected accidents are minimally affected.

Occupational doses per 10 CFR 51.22 are unaffected. There is no impact on equipment qualification.

2) Effect on Possibility of a New or Different Kind of Accident:

No plant modifications are involved. There is consequently no effect on the possibility of a new different accident. The changes to the HVAC [High Velocity Air Conditioning] FMEAS [Failure Mode Effects Analyses] are addressed by this revised dose analysis.

3) Effect on Margin of Safety as Defined in Technical Specifications:

Although the consequences of the accident have increased slightly, the affected systems (Control Room HVAC and FHB [Fuel Handling Building] HVAC system, Containment Spray and GWPS) still function within the bounds prescribed by the Technical Specifications. The revised analyses determine the doses considering all appropriate parameters and single failures. There is no change in the basis of the Technical Specifications. Therefore, the Technical Specification margins are maintained.

Based on the previous discussion, the licensee concluded that the proposed amendment requests do not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

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Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 23, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) Section 6 on operator qualification and training to reflect the current regulation, 10 CFR Part 55 as revised May 1987.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to a operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of a accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

Present TS require, in addition to ANSI/ANS 3.1-1978, licensed operators to meet or exceed the minimum qualifications of the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980, NRC letter to all licensees. TS also require the retraining and replacement training program to meet or exceed the minimum requirements of the above criteria as well as Appendix A of 10 CFR Part 55. In May 1987, the NRC incorporated Appendix A and the March 28, 1980, letter into 10 CFR Part 55. Therefore, the proposed changes to TS reflect the current 10 CFR Part 55 revision. The licensee has performed an evaluation as follows:

The proposed changes simply incorporate the proper references to 10 CFR Part 55. The Technical Specification's intent remains intact. Therefore, the proposed change in no way increases the probability or consequences of an accident.

As stated above, this proposal causes no change in the intent of the existing Technical Specifications. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes incorporate the proper reference to 10 CFR Part 55. Because the amended 10 CFR does not change the intent of the existing Technical Specifications, the proposed change does not reduce any margin of safety.

We have reviewed the licensee's evaluation and agree with the findings. Therefore, based on the above, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 1989

Description of amendment request: The proposed amendment to the Technical Specifications is to increase the maximum allowable setpoint drift for the primary and secondary safety valve setpoints from 271% to +3%/-2%. This is as a consequence to responding to Licensing Event Reports 87-003 and 87-014 which resulted from safety valve setpoint drifts in excess of that allowed by the Technical Specifications 2.1.6(1) and 2.1.6(3). Based on past experience and the NRC-approved reload licensing methodology, the Loss of Load and the Loss of Feedwater events were found to be the most limiting. Using the NRC-approved CESEC-III transient analysis code and using the above events, the analysis of drifts of +3%/-2% did not exceed the design basis acceptance criteria of 2750 psia and 1100 psia, respectively, as specified in the Updated Safety Analysis Report, Sections 14.9 and 14.10.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed amendment to the Technical Specifications does not involve a significant hazard consideration because the operation of the Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. The proposed revision to the allowable setpoint drifts was conservatively analyzed (CESEC-III). The results demonstrate that during a severe transient the peak reactor coolant system pressure (RCS) and peak steam generator pressure would fall significantly below the Safety Limit and design basis acceptance criteria of 2750 psia and 1100 psia, respectively, as specified in the Updated Safety Analysis Report Sections 14.9 and 14.10. Since the safety valves function to control transient events, the revision of the allowable setpoint drifts would not increase the probability of occurrence of such events. Therefore, this amendment would not significantly increase the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report.

(2) Create the possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report. The safety valves function to control transient events. Analysis of the proposed allowable setpoint drift using the NRC approved transient analysis methodology and computer code (CESEC-II) demonstrates that during the limiting overpressure transients, peak RCS pressure and peak steam generator pressure would be significantly below the design basis acceptance criteria of 2750 psia and 1100 psia, respectively, as specified in the Updated Safety Analysis Report Sections 14.9 and 14.10. No new or different kind of accident is created because actual operation of the plant remains unchanged. Therefore, the possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report would not be created.

(3) Involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification. This revision only increases the allowable primary and secondary safety valve setpoint drift within safety limits as demonstrated using the NRC approved transient analysis methodology and computer code (CESEC-III). Therefore, the margin of safety as defined in the basis for any Technical Specification is not reduced.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 19, 1989 (Reference LAR 89-12)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to delete the requirement for the steam generator water level-low coincident with steam/feedwater flow reactor trip (low feedwater flow reactor trip) following installation of a new digital feedwater control system. Specifically, the following TS would be deleted:

1. TS Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," Functional Unit 14, and associated Bases.

2. TS Table 3.3-1, "Reactor Trip System Instrumentation," Functional Unit 14.

3. TS Table 3.3-2, "Reactor Trip System Instrumentation Response Times," Functional Unit 14.

4. TS Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," Functional Unit 14.

During the next refueling outages for Units 1 and 2, PG&E plans to install a new digital feedwater control system as allowed by 10 CFR 50.59. The new system will include a steam generator level median signal selector (MSS) that selects the median of three steam generator narrow range signals. This improved design will enhance feedwater control performance and reliability. The installation of the MSS effectively eliminates the concern regarding a single random failure causing a control system action that results in a condition requiring protective action and preventing proper operation of a protection system demand designed to protect against this condition. Thus, the MSS will prevent interaction between the feedwater control and reactor protection systems in accordance with the requirements of IEEE 279-1971. Removal of this interaction eliminates the need for the low feedwater flow reactor trip. The MSS will functionally separate steam generator narrow range level protection channels (low-low trip) to provide compliance with IEEE 279-1971 and satisfy the original design basis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 19, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Deletion of the low feedwater flow reactor trip combined with installation of the MSS in the digital feedwater control system will allow continued compliance with the requirement of IEEE 279-1971 for prevention of control and protection system interaction. The low feedwater flow reactor trip is not required to mitigate the consequences of any analyzed accidents in the FSAR Update accident analyses. Removal of the low feedwater flow trip will reduce the probability of unplanned reactor trips and unnecessary challenges of engineered safety feature systems.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The changes involve removal of the low feedwater flow reactor trip function and the addition of the MSS function. With the MSS installed, the steam generator water level low-low reactor trip will provide protection in compliance with IEEE 279-1971. As discussed above, the low feedwater flow reactor trip function is not required to mitigate the consequences of any accident described in the FSAR Update accident analyses.

Abnormal operational transients that could result from feedwater control system failures are analyzed in the FSAR Update. These analyses bound all postulated feedwater control system failures.

The new digital feedwater control system will improve feedwater performance and reliability. Evaluation of the new system in accordance with 10 CFR 50.59 indicates that no credible protection system failure will result in failure of the MSS or an upset of the feedwater control system.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

As discussed above, the low feedwater flow reactor trip is not assumed in the FSAR Update accident analyses. A new digital feedwater control system and MSS function will significantly reduce the potential for feedwater control system related reactor trips and unnecessary challenges to the reactor protection system.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the licensee's no significant hazards consideration determination and finds it acceptable. Therefore, the Staff proposes to determine that the proposed changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: February 6, 1989

Description of amendment request: The following change is proposed to the Trojan Technical Specification (TTS) 3/4.6.1.2, "Containment Leakage". The following sentence would be added: "h. The provisions of Specification 4.0.2 are not applicable."

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92. The evaluation is summarized below.

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

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The surveillance interval tolerance allowed in TTS 4.0.2 is unnecessary and may conflict with TTS 3/4.6.1.2. Changing TTS 3/4.6.1.2 to make TTS 4.0.2 not applicable does not change test frequency, test methods, or acceptance criteria. Because current procedure will not be changed, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change is administrative in nature and does not alter the test frequency, test methods, or acceptance criteria. The change is a clarification and is not related to creation of an accident.

3. This change does not involve a significant reduction in a margin of safety.

TTS 3/4.6.1.2 implements the requirements of 10 CFR Part 50, Appendix J for "Integrated Leak Rate Test" intervals. The change to TTS 3/4.6.1.2 will eliminate the possible conflict between TTS 3/4.6.1.2 and TTS 4.0.2, and will bring TTS into conformance with the Westinghouse Standard Technical Specifications.

No change is proposed in the Integrated Leak Rate Test frequency, method, or acceptance criteria.

The March 6, 1986 Federal Register (51 FR 7751) provided a list of examples of amendments that are not likely to involve a significant hazards consideration. One example from this list is: "A purely administrative change to technical specifications, e.g., a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

This change proposed herein is an administrative change.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for license: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: September 14, 1989

Description of amendment request: This amendment modifies the design control section, TS Section 6.1. It proposes changes to this section consistent with the licensee's plans to defuel the Fort St. Vrain (FSV) Reactor. These changes include a description of the dummy fuel blocks that will be used to maintain the reactor core's structural integrity. The boron loading in the dummy blocks and provisions for their cooling are also described.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The defueling elements are constructed similar to fuel elements. The defueling elements contain lumped poison pins (LPP's) that replace the negative reactivity of the control rods.

Shutdown margin will be maintained during defueling in accordance with Reactivity Technical Specification LCO 3.1.4, LCO 3.1.6, SR 4.1.4, and SR 4.1.6 similar to a refueling.

The Safety Analysis Report, GA-C19694, analyzed the FSAR accidents contained in Chapter 14 of the Fort St. Vrain FSAR for potential effects of defueling. All accidents during defueling were determined to be bounded by current FSAR analysis or were no longer applicable. The analysis of earthquake, reactivity accident, column deflection and misalignment, misplaced fuel element, blocking of coolant channel, electrical incidents, loss of normal shutdown cooling, moisture ingress, fuel storage accidents, and permanent loss of forced circulation (DBA-1) were determined to be bounded by current analyses. Another five accidents, all involving loss of primary coolant were determined to be no longer applicable.

PSC has evaluated the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulations, Part 50.92. The proposed amendment request involves no significant hazards consideration, since the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor fuel elements will be replaced with defueling elements that contain boronated graphite and no fuel. The startup channels will continue to monitor core reactivity. The structural and thermal characteristics of the reactor will remain unchanged. Procedures for removing the fuel elements will be maintained similar to a refueling. The insertion of the defueling elements will also be similar to a refueling except that the defueling elements will not contain fuel and control rods will not be reinstalled.

Adequate shutdown margin will continue to be assured in accordance with Reactivity Technical Specifications LCO 3.1.4, LCO 3.1.6, SR 4.1.4, and SR 4.1.6.

The Safety Analysis Report, GA-C19694, analyzed the FSAR accidents contained in Chapter 14 of the Fort St. Vrain FSAR for potential effects of defueling. All accidents during defueling were determined to be bounded by current FSAR analysis or were no longer applicable. The analyses of earthquake, reactivity accident, column deflection and misalignment, misplaced fuel element, blocking of coolant channel, electrical incidents, loss of normal shutdown cooling, moisture ingress, fuel storage accidents, and permanent loss of forced circulation (DBA-1) were determined to bounded by current analyses. Another five accidents, all involving loss of primary coolant were determined to be no longer applicable.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No significant change is being made to plant operation or safety system operation as described in Item 1.

3. Involve a significant reduction in a margin of safety. No significant change is being made to refueling procedures (which will be used for defueling), core materials, reactivity monitoring systems, core structural design, or shutdown margin determinations as described in Item 1. Therefore, no significant change in any margin of safety is involved.

Based on the above evaluation, it is concluded that operation (Defueling) of Fort St. Vrain in accordance with the proposed changes will involve no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: September 14, 1989

Description of amendment request: The proposed license amendment request upgrades the Technical Specifications (TS) Sections 4.7 and 5.7. These TS Sections address fuel handling and storage at Fort St. Vrain. They are being upgraded at the request of the NRC as part of the Technical Specification Upgrade Program (TSUP).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

In a letter dated August 8, 1989, the NRC has requested that Public Service Company of Colorado (PSC) submit these Technical Specification amendments to the fuel handling and fuel storage sections of the Fort St. Vrain Technical Specifications. The fuel handling sections, for the most part, are only applicable while the reactor is shutdown. The fuel storage sections can be applicable more frequently. The handling of defueling elements as described in the Fort St. Vrain Defueling Safety Analysis Report, GA-C19694 submitted August 16, 1989, has been added to LCO 4.7.2. These changes have been stimulated by the Technical Specification Upgrade Program (TSUP), previously reviewed by the NRC, and by the Defueling Safety Analysis Report.

The Fort St. Vrain HTGR has 37 control rod pairs that enter the core from the top. For an accident such as loss of power the control rod drive motors and brakes are deenergized and gravity causes the control rods to fall into the core. During fuel handling, the reactor is shutdown with most of the control rods inserted. The Fuel Handling Machine is used to remove and insert fuel elements into the core during a refueling. The changes being included with this submittal include increased monitoring and surveillance of the Fuel Handling Machine operation.

Other changes being included involve the cooling and monitoring of spent fuel in storage wells. Each of the changes is addressed in the following evaluation.

PSC has evaluated the proposed amendment request for significant hazards consideration using the standards in Title 10, Code of Federal Regulations, Part 50.92. The proposed amendment request involves no significant hazards, since the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The revisions to Sections 4.7 and 5.7 of the Fort St. Vrain Technical Specifications contained herein are being made to improve the specifications for maintaining safety and ensuring proper surveillance of the plant safety systems.

Section 2.26 is added to include a definition of Core Alterations.

Section 2.30 is added to include a definition of Shutdown Margin.

LCO 4.4.1 has been modified to add Note (u) to Page 4.4-7b under permissible bypass conditions. This note identifies a condition where the startup channel low count rate rod withdrawal prohibit can be bypassed because the probability of the reactor going critical is very low. This condition is discussed in more detail in the Fort St. Vrain Defueling Safety Analysis Report, Section 3.1.

LCO 4.5.2 is deleted as it is duplicated by the requirements of LCO 4.7.1.

LCO 4.7.1 adds a clarification of atmospheric pressure as being less than 1 psig, relocates the requirement for monitoring of neutron flux to LCO 4.7.5, adds a requirement to maintain the shutdown margin requirements of LCO 3.1.4, adds the Auxiliary Transfer Cask to the note, and adds an action statement to close up the reactor before the core average inlet temperature reaches 400 degrees F. Each of these changes is a format change or improves the specifications and safe operation of plant equipment. The clarification of atmospheric pressure to be less than 1 psig maintains the reactor pressure well within the pressure ratings of the associated equipment, reactor isolation valve (5 psig) and Fuel Handling Machine (5 psig). Maintenance of the shutdown margin during fuel handling and maintenance is a confirmation of that requirement from LCO 3.1.4. The addition of the Auxiliary Transfer Cask is included as it can be used in place of the Fuel Handling Machine for reactor maintenance. The change of "Specification 3.1.3" to "LCO 3.1.4" is made to agree with the new Reactivity Technical Specifications. An applicability statement stating that applicability is whenever both primary and secondary closures are open on any PCRV penetration is unchanged from the TSUP LCO 3.9.1. The action statement is very similar to the current requirement of LCO 4.7.1. The insertion of a control rod drive and orifice assembly(ies) to close up the reactor before the core average inlet temperature reaches 400 degrees F is designed to protect the seal material of the reactor isolation valve(s). None of these changes involve a significant increase in the probability or consequences of an accident previously evaluated.

LCO 4.7.2 adds a clarification of atmospheric pressure, adds a requirement for the gas waste system to be available, adds a requirement for an additional cooling water coil to be operable or to have backup fire water connections and hose operable, adds a requirement to keep the reactor building crane attached to the Fuel Handling Machine except when the Fuel Handling Machine is bolted to a seismically qualified location, and adds a requirement to maintain switches and alarms operable. An applicability statement has been added which is very similar to the current requirements of LCO 4.7.2 and includes reactor internal maintenance. Action Item c. is modified to include the option of unloading fuel to the Fuel Storage Casks. Action Item d. is new and adds reflector elements and defueling elements to the statement. Each of the changes made is either a format change or improves the specifications and safe operation of the equipment and maintains TSUP analysis. Defueling elements are described in the Fort St. Vrain Defueling Safety Analysis Report, GA-C19694.

The LCO 4.7.3 title has been changed to Fuel Storage Wells, a clarification of atmospheric pressure is added, the requirement to have both cooling coils operable is changed, the requirement for emergency cooling air flow is changed to 9000 cfm in accordance with FSAR section 14.6.3.2, a prohibition from storing irradiated fuel in the central column of a fuel storage well is added and two action statements to incorporate TSUP and FSAR section 14.6.3.2 analyses are added. The Applicability Statement has been

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revised from the TSUP to address the possibility that the stored fuel elements can, at some time, maintain a temperature below 750 degrees F without the provisions of this LCO. The Basis is revised to discuss the fact that this LCO is only required to ensure that the fuel element surface temperatures do not exceed 750 degrees F. Each of the changes made is a format change or is a change in accordance with FSAR and/or TSUP analyses. The prohibition from storing irradiated fuel in the central column is addressed in FSAR Section 14.6.3.2 and is a new addition to the Technical Specifications.

LCO 4.7.4 and the Basis are identical to TSUP LCO 3.9.5 which has previously been reviewed by the NRC.

LCO 4.7.5 adds the requirements for monitoring the core reactivity that were formerly included in LCO 4.7.1 and adds action statements that require the startup channels to be operable. A provision has been added that when all control rods have been withdrawn without resulting in reactor criticality, as determined with a calculated k(eff) not to exceed 0.95 assuming all conditions specified in SR 4.1.4, the startup channel low count rate rod withdrawal prohibit can be bypassed. These provisions are in agreement with the Defueling Safety Analysis Report, Section 3.1.

LCO 4.7.6 is a new LCO addressing the maintenance of two-way communications between the Control Room and the refueling deck. It maintains the TSUP analyses and format intact. It also includes an applicability statement and an associated surveillance requirement reference. These additional requirements are considered an enhancement to the Technical Specifications.

SR 5.7.1 changes the current SR 5.7.1 with surveillances every 12 months instead of prior to use and every refueling period. The surveillance requirements of SR 5.7.1 are very similar to TSUP SR 4.9.3 except that some editorial changes are made and the frequency of item c., reactor building crane inspection, has been changed from every 14 days to every 31 days because movement of the reactor building crane is very infrequent. The 31 day interval, in addition to other preventive maintenance inspections required by ANSI B.30.2, adequately assures that the crane will perform properly. This surveillance is an enhancement of the current SR 5.7.1.

SR 5.7.2 changed title of Surveillance from "Fuel Storage Facility" to "Fuel Storage Wells". This Specification is substantially revamped to incorporated the TSUP and FSAR Section 14.6.3.2 analyses. It also envelopes the current Technical Specification analysis. It includes an associated LCO statement. It replaces "once per REFUELING CYCLE" in item c. of the TSUP with "once per 18 months". Refueling Cycle is defined as 18 months. This surveillance is an enhancement of the current SR 5.7.2.

SR 5.7.3 is a new surveillance for the Technical Specifications and adds verification of reactor pressure and temperature every 12 hours. This surveillance and basis are identical to TSUP SR 4.9.1. These are new surveillance requirements and enhance the Technical Specifications.

SR 5.7.4 is a new SR added to provide surveillance requirements not included in the current Technical Specifications for the Spent Fuel Shipping Cask. SR 5.7.4 and the Basis are identical to TSUP SR 4.9.5.

SR 5.7.5 is a new specification for the current Technical Specifications. The new SR 5.7.5 is very similar to TSUP 4.9.2. The Basis is revised to add reference to the condition where subcriticality has been demonstrated with all control rods withdrawn and with a calculated k(eff) not greater than 0.95.

This surveillance is new to the Technical Specifications, supplements the requirements of SR 5.4.1, and is considered an enhancement to the Technical Specifications. The permissible bypass conditions of the startup channel low count rate rod withdrawal prohibit are addressed by the LCO 4.4.1 and LCO 4.7.5.

SR 5.7.6 is a new SR added to provide surveillance requirements for the new Communications During Core Alterations LCO (LCO 4.7.6). It also includes an associated LCO statement. It incorporates the TSUP analysis and is an enhancement to the Technical Specifications.

These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As described in item 1, no change is being made to plant operation or safety systems that has not been previously analyzed in the FSAR, TSUP analyses, or the Defueling Safety Analysis Report, GA-C19694.

3. Involve a significant reduction in a margin of safety.

No margins of safety are being affected other than those already analyzed in the FSAR or Defueling Safety Analysis Report, GA-C19694. The changes made are format and other changs which will better implement the conditions specified by the FSAR and Defueling Safety Analysis Report, GA-C19694.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain, in accordance with the proposed changes, will involve no significant hazards consideration. PSC considers the proposed changes to be an improvement in the overall plant reliability and documentation as the new limiting conditions for operation and surveillances are designed to improve fuel handling and storage performance. The majority of these changes have been previously reviewed by the NRC during the TSUP review process. Other changes have been presented in the Fort St. Vrain Defueling Safety Analysis Report, GA-C19694.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: September 14, 1989

Description of amendment request: This request is for an upgrade of the TS for reactivity control. This upgrade of the reactivity control TS was requested by the NRC.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above

three standards in the amendment application as follows:

LCO's 4.1.2 through 4.1.6, SR's 5.1.1, 5.1.2, 5.1.3, and 5.1.5 were superseded by the Interim Technical Specifications. These LCO's and SR's are being deleted from the Technical Specifications by this amendment proposal. The Interim Specifications are being replaced by the proposed new Reactivity Control Section, which is derived from the Technical Specification Upgrade Program (TSUP). Other changes are being proposed to the Technical Specifications to support the new Reactivity Control Section. This amendment proposal responds to a request made by the NRC.

As most of this amendment proposal is derived from the TSUP, and the variations between existing Technical Specifications and the TSUP specifications were identified and evaluated as acceptable. Only specific changes between the TSUP specifications previously evaluated and this proposed amendment will be evaluated.

Definitions Section 2.0 is revised to incorporate certain definitions from the TSUP as described in the Summary of Proposed Changes. Other definition changes described in are editorial in nature for clarification.

Definition 2.18 is revised to delete the restriction associated with the termination of surveillances to those having an interval of one month or less. This revision ensures that Surveillance Requirements shall only be applicable for conditions specified for individual Limiting Conditions for Operation unless otherwise stated in an individual Surveillance Requirement. This is consistent with the TSUP.

SR 5.1.4 and AC 7.1.3 are revised to reference superseding specifications. These changes maintain technical equivalence to current Technical Specifications.

Definitions Section 1.0 contains a surveillance interval definition and table for operational modes as used in the Reactivity Control Specifications. This definition and table are derived from and are technically equivalent to TSUP Definition 1.23 and Table 1.1.

Applicability LCO 3.0.1 through 3.0.4 and their Bases are a duplication of the same TSUP specifications, except the example for TSUP LCO 3.7.3 is deleted from the LCO 3.0.3 Basis. The technical content of these specifications is maintained the same as the TSUP Specifications. New Applicability LCO 3.0.5 references current LCO 4.0.4 for CALCULATED BULK CORE TEMPERATURE. Applicability Specifications 4.0.1, 4.0.3, 4.0.4, and their Bases are a duplication of the same TSUP Specifications except for editorializing the reference to Specification 4.0.2.

The 3.25 limit was removed from SR 4.0.2. This will provide greater flexibility, reduce the administrative burden associated with the use of this provision, and have an overall positive effect on safety. As stated in Generic Letter 89-14, 'This alternative to the requirements of Specification 4.0.2 will remove an unnecessary restriction on extending surveillance requirements and will result in a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements'.

New Specification 3/4.1.1 replaces Interim Specification 3/4.1.1 and is derived from TSUP Specification 3/4.1.1. The Surveillance Requirements have been reorganized and re-ordered, to the extent necessary to maintain consistency with the existing procedures. Variations between the TSUP specification and this proposal are editorial in nature and do not affect the technical content.

New Specification 3/4.1.2 replaces Interim Specification 3/4.1.2 and is derived from TSUP Specification 3/4.1.2.1. Variations between the TSUP specification and this proposal are editorial in nature and do not affect the technical content.

New Specification 3/4.1.3 replaces Interim Specification 3/4.1.3 and is derived from TSUP Specification 3/4.1.2.2. Variations between the TSUP specification and this proposal are editorial in nature and clarify control rod requirements "in fueled regions," and do not affect the technical content. A defueled region does not require the negative reactivity of a control rod pair to maintain the SHUTDOWN MARGIN because without fuel, the region has no positive reactivity.

New Specification 3/4.1.4 replaces Interim Specification 3/4.1.4 and is derived from TSUP Specification 3/4.1.3. As stated in the Basis, the purpose of this specification is to ensure that during Shutdown and Refueling, a sufficient number of control rod pairs are fully inserted into fueled regions to keep the reactor in a shutdown condition. The revision to SR 4.1.4 (during Refueling) that will delete the requirement to assess the Shutdown Margin after all control rod pairs have been withdrawn without resulting in reactor criticality, still meets the expressed purpose of this Specification. K(eff) must be calculated assuming the same conditions as during Shutdown Margin assessment except that all control rod pairs shall be assumed withdrawn, and k(eff) must not exceed 0.95 for this revision to become operative. Other variations between the TSUP specification and this proposal are editorial in nature and clarify control rod requirements "in fueled regions," and do not affect the technical content, as described above in the discussion on 3/4.1.3.

New Specification 3/4.1.5 replaces Interim Specification 3/4.1.5 and is derived from TSUP Specification 3/4.1.4.1. Variations between the TSUP specification and this proposal are mostly editorial in nature. The exception to the requirements of TSUP Specification 3/4.1.4.1 during power operation for Xenon Stability Physics Tests, was not included in Specification 3/4.1.5 since this testing will not be done during the remaining time Fort St. Vrain maintains an operating license. This does not degrade the technical aspect of this specification.

New Specification 3/4.1.6 replaces Interim Specification 3/4.1.6 and is derived from TSUP Specification 3/4.1.4.2. As stated in the Basis, the purpose of this specification is to ensure that during Shutdown and Refueling, a sufficient number of control rod pairs are fully inserted into fueled regions to keep the reactor in a shutdown condition. When all control rod pairs have been withdrawn without resulting in reactor criticality, the intent of this specification will be met. See additional discussion in the write-up for Specification 3/4.1.4, above. The added discussion to the Basis on how to make rod pairs incapable of being withdrawn promotes better technical understanding and does not affect the intent or mechanism of this Specification. Other variations between the TSUP specification and this proposal are editorial in nature and clarify control rod requirements "in fueled regions," and do not affect the technical content, as described above in the discussion on 3/4.1.3.

New Specification 3/4.1.7 replaces Interim Specification 3/4.1.7 and is derived from TSUP Specification 3/4.1.5. Only reformatting changes were made to this specification.

New Specification 3/4.1.8 replaces Interim Specification 3/4.1.8 and is derived from TSUP Specification 3/4.1.6.1. Variations between the TSUP specification and this proposal, are editorial in nature and do not affect the technical content.

New Specification 3/4.1.9 replaces Interim Specification 3/4.1.9 and is derived from TSUP Specification 3/4.1.6.2. Variations between the TSUP specification and this proposal are editorial in nature and do not affect the technical content.

Control rods and reserve shutdown material cannot physically be inserted in defueled regions because of the difference between defueling blocks and fuel blocks. For this reason, the clarification that the requirements only apply to fueled regions was added to Specifications 3/4.1.8 and 3/4.1.9.

An exception was added to the applicability of Specification 3/4.1.9., when all control rod pairs have been withdrawn without resulting in reactor criticality, as determined with a calculated k(eff) not exceeding 0.95 assuming all conditions specified in SR 4.1.4, the probability of the reactor going critical is negligible (Ref. the Defueling Safety Analysis Report, GA-C19694). For this reason, Specification 3/4.1.9 is no longer applicable under these circumstances.

Based on the evaluation conducted on the differences between the current Technical Specifications and the TSUP, the acceptability to the NRC of these differences, and the evaluation of the differences between this proposed amendment and the applicable TSUP sections above, this amendment proposal involves no significant hazards because operation of Fort St. Vrain in accordance with this amendment proposal would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3) Involve a significant reduction in a margin of safety.

Therefore, it is concluded that operation of Fort St. Vrain, in accordance with the proposed changes, will involve no significant hazards consideration. PSC considers the proposed changes to be an improvement in the overall plant reliability and safety as the new limiting conditions for operation and surveillances are designed to improve reactivity control. The majority of these

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changes have been previously reviewed by the NRC during the TSUP review process.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 18, 1989

Description of amendment request: The licensee has proposed modifications to the Technical Specifications (TS) that would establish a new TS 3/4.7.1.6 regarding the atmospheric dump valves (ADVs). The proposed technical specification establishes the limiting condition for operation, associated action statements, surveillance requirements and bases for the atmospheric dump valves. The proposed technical specification requires that the ADVs be operable at all times in Modes 1, 2, and 3, and in Mode 4 when the steam generators are being used for decay heat removal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided the following no significant hazards consideration determination that is quoted below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No

The proposed Technical Specification defines the required Limiting Condition for Operation and Action statements for the ADVs as well as their corresponding Surveillance Requirements to ensure ADV operability and availability. The TS will mandate operability requirements for the ADVs in conformity with the regulatory position, i.e. safe shutdown using only safety-grade systems, and the assumptions made in the safety analyses, i.e. shutdown can be accomplished assuming the most limiting single failure. Therefore, operation of the facility in accordance with this proposed change does not constitute an increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No

The proposed Technical Specification does not alter the configuration of the plant or its operation. The proposed Technical Specification will further enhance the reliability of the ADVs. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No

The proposed Technical Specification will enhance the availability of the ADVs to perform their design basis functions and to obviate the possibility of an abnormal situation or event which may impose a potential threat to the public health and safety. Therefore, the proposed change does not involve any reduction in a margin of safety.

The NRC staff has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: July 21, 1989

Description of amendment request: The proposed amendments to Table 2.2-1 of Technical Specification Section 2.2.1, "Reactor Trip System Instrumentation Setpoints," and Table 3.3-4 of Technical Specification Section 3.3.2, "Engineered Safety Feature Actuation System Instrumentation," reflects revised instrumentation setpoints associated with the removal and replacement of the existing resistance temperature detector (RTD) bypass manifold system with fast response RTDs located in the reactor coolant hot and cold leg piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The original RTD bypass system utilized an arrangement which directs a sample of the Reactor Coolant System (RCS) flow from the main coolant piping to an independent temperature measurement manifold. Coolant is redirected by scoops from the hot leg at three locations, 120 degrees apart in the same plane around the pipe circumference, in order to obtain a representative sample. A cold leg sample is also taken, at the discharge of the reactor coolant pump, which provides sufficient mixing so that multiple sampling is not necessary. After temperature measurement, the sample is then returned to the main coolant flow. The narrow range RTDs provide the temperature to calculate loop delta-T and T_{avg}. In order to eliminate operating obstacles associated with the bypass system (such as leakage through valves and flanges and radiation exposure during reactor building maintenance), South Carolina Electric & Gas Company (SCE&G) is proposing to install a fast response system which measures loop temperature via thermowell mounted RTDs protruding into the main reactor coolant flow thereby eliminating the bypass piping network.

The licensee has evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and has determined that, if implemented, the proposed changes do not involve any significant hazards consideration as described below:

1. The probability or consequences of an accident previously evaluated is not significantly increased. The loss-of-coolant accident (LOCA) and non-LOCA accident analyses were reviewed verifying that the variations in uncertainty associated with certain reactor trip functions, reflected in the Technical Specification changes, do not invalidate the current Reload Transition Safety Report (RTSR) analyses of record. Therefore, the design basis conclusions are still met. Additionally, it was determined that sufficient allowance exists in the current RTSR assumptions such that the total temperature measurement uncertainly and protection system response time for the new RTDs do not impact the RTSR results. With respect to a LOCA, conservative nominal input values were assumed in the analysis and not plant specific input valves; therefore, slight variation in uncertainties do not affect the RTSR results. These conclusions are based upon calculations supporting the revised Tables 2.2-1 and 3.3-4 provided in the attached WCAP-12189. The new values were obtained using methodology consistent with the Westinghouse Setpoint Methodology for Protection System, WCAP-11770, which was previously submitted to the Commission.

2. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis reports is not created. At V.C. Summer Nuclear Station, the three hot leg RTDs and one cold leg RTD will utilize the existing penetrations into the RCS piping from the bypass system with only slight modifications. Caps and welds sealing the crossover leg bypass return piping nozzle, as well as the modification and welding for the existing penetation, will be qualified in accordance with the ASME Code consistent with current plant designs. Consideration has been given to plant response in the remote possibility that a thermowell would be ejected from its boss. It has been concluded that the affect of this flow area is insignificant on the results of the large break LOCA analyses and bounded by the results for the small break LOCA analyses. Therefore, the possibility of a new or different kind of accident does not exist.

The function of the delta-T/T_{avg} protection channels is not changed because of the bypass elimination. The newly installed fast response RTDs perform the same function in both T_{hot} and T_{cold} applications. The three T_{hot} signals are electronically averaged, with the capability to manually add an electronic bias to a two-RTD average should one RTD fail. These measured temperature values will still serve as input to two-out-of-three voting logic for protection functions. Spare RTDs are installed and can be manually activated should the on-line RTD fail. The basis for the instrumentation and control design meets the criteria of applicable IEEE standards, regulatory guides and general design criteria which satisfy electrical separation, seismic and environmental qualification and single failure criteria.

3. The margin of safety as defined in the basis of the Technical Specifications is not significantly reduced by the affect of the change of the response time and setpoint uncertainties. The investigation of the affect of these variables on non-LOCA and LOCA transients has verified that plant operation will be maintained within the bounds of safe, analyzed conditions as defined in the RTSR with the revised Technical Specifications. Conclusions presented in the RTSR remain valid. The specific analyses and supporting calculations supporting these conclusions are provided in the attached WCAP-12189. As such, no reduction in the margin of safety between the RTSR acceptance limit and the ultimate safety limit (such as departure from nucleate boiling ratio) has taken place for operation with the new RTD system.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: July 21, 1989

Description of amendment request: The proposed amendment to Section 4.5.2.d deletes the surveillance requirement associated with the Residual Heat Removal (RHR) autoclosure interlock (ACI) concurrent with the deletion of the ACI circuitry scheduled for the fifth refueling outage.

Basis for proposed no significant hazards consideration determination: The Surveillance Requirement 4.5.2.d.1 of the Technical Specifications requires that the automatic isolation and interlock function of the RHR inlet isolation valves be demonstrated operable on an 18 month interval. However, with the ACI function removed, there is no longer a need to retain this surveillance requirement within the Technical Specifications. Removal of the RHR ACI addresses utility and Commission concerns regarding the potential for failure of the ACI circuitry to cause inadvertent isolation of the RHR system with subsequent loss of RHR capability during cold shutdown and refueling operations.

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and determined that the proposed change will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated because adequate overpressure protection of the RHR system will exist through alarms and relief valves. Further, the probability of a loss of decay heat removal due to closure of the RHR isolation valves has been significantly reduced.

2. Create the possibility of a new different kind of accident from any previously evaluated because the probability of an interfacing LOCA has been significantly reduced.

3. Involve a significant reduction in a margin of safety because the removal of the RHR ACI provides a significant improvement in the availability of the RHR system.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas

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Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: July 24, 1989

Description of amendment request: The purpose of this submittal is to present the justification for extending application of the F* criterion in the Virgil C. Summer Nuclear Station (VCSNS) Technical Specification 3/4.4.5, Steam Generators. Current authorization apply to the F* criterion expires at the end of the fifth fuel cycle which is scheduled to occur in the spring of 1990.

Basis for proposed no significant hazards consideration determination: The F* criterion was developed to allow steam generator tubes to remain in service when degradation has been detected in the full depth hard roll expanded portion of the tube in the tube sheet below the F distance (1.6"). If the F* criterion were not in use for VCSNS, defects below the F* distance would require the affected tubes to be plugged. Based on technical considerations, such plugging is not necessary. The presence of the tube sheet constrains the tube and compliments its integrity in the hard rolled region by precluding tube deformation beyond its expanded outside diameter. The resistance to both tube rupture and tube collapse is significantly strengthened by the tube sheet. In addition, the intimate contact between the tube and the tube sheet effects the leak behavior of any potential throughout tube cracks in this region, i.e., no significant leakage relative to plant technical specification allowables has been experience.

The technical basis for establishing the F* criterion has been presented previously in Westinghouse Reports WCAP-11228 (proprietary) and WCAP-11229 (non-proprietary). The F* criterion identifies a distance below the face of the tube sheet or the top of the last hardroll, whichever is further in the tubesheet, and designates that distance F*. Below F*, tube degradation of any extend does not necessitate plugging. To date, the F* criterion has been utilized during both the third and fourth refueling outages at VCSNS. The information presented by the licensee provided their justification for continuing the application of the F* criterion for the remaining life of the steam generators.

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the significant hazards criterion of 10 CFR 50.92 and determined that:

1) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

As previously documented, the utilization of the F* criterion does not not impact the operability of the steam generator. The restraining action of the tubesheet upon the tubes precludes tube rupture or collapse for F* tubes, and the tube to tubesheet interface restricts the potential for primary to secondary leakage.

The prevention of tube rupture by the tubesheet assures the probability of this accident is unaffected, while the restriction of leakage assures that the consequences of any accident are not significantly affected by the application of F*.

2) The proposed amendment would not create the possibility of a new or different kind of accident previously evaluated.

The proposed changes continue to ensure the integrity of the steam generator tubes and the tubesheet. With the integrity of the steam generator maintained, no new accident scenarios are created.

3) The proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes extend the use of the F* criterion for the life of the steam generator. Testing and operational experience have revealed that the affected tubes behave as expected, i.e, remain restrained by the tubesheet with no significant leakage, and do not present a safety concern.

Additionally, the NRC has previously found the F* criterion to be acceptable at VCSNS, pending confirmation of tube behavior through two cycles of operation. Documentation to date supports the behavior of F* tubes has been as expected. Proper application of the F* criterion has been demonstrated to not have an adverse effect on the integrity of the generators, thus the F* criterion may be extended for the life of the steam generators without decreasing plant safety.

In addition, the grammatical restructuring of the F* definition is purely administrative in nature and has no technical impact. Based upon the preceding analysis, the licensee concluded, in accordance with 10 CFR 50.91, that the proposed change warrants a no significant hazards determination as defined by 10 CFR 50.92.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: June 23, 1989.

Description of amendment request: The licensee has requested that Technical Specification Tables 3.3.7.5-1, Accident Monitoring Instrumentation, and 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, be modified by removing reference to instrument number 24, Post-Accident Sampling Containment Atmosphere Radiation Monitor, and to instrument number 29, Post Accident Sampling Primary Coolant Radiation Monitor. Under the existing technical specification these two instruments must meet specified operability requirements which must be demonstrated by periodic surveillances. Under the proposed amendment the operability of these two instruments would not be required by the technical specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The function of the post accident sampling system (PASS) is to provide a method for evaluating the extent of core degradation as required by TMI action item II.B.3. The basis for the Accident Monitoring Instrumentation technical specification is to ensure that sufficient information is available on selected plant parameters to monitor and assess important variables following an accident. The two instruments proposed for removal from the technical specifications do not provide data for evaluating the extent of core degradation nor for monitoring and assessing the important variables. The two instruments were included in the plant design to give technicians an indication of contamination levels to enhance safety in the collection of samples. Since these instruments are not the source of the data for the evaluation of accident conditions, the licensee believes that these instruments should be removed from the Technical Specifications.

The licensee does not intend to remove these instruments from service. They will be maintained as are other non-safety related instrumentation. The instruments are part of the PASS which is a function required by the Procedures and Programs section 6.8.4.c in the Administrative Controls section of the WNP-2 Technical Specifications. However, the licensee believes that their operability should not be held to the same standard as the instruments retained in the technical specifications since inoperable status of the two devices would not impair the capability of the licensee to monitor and assess plant conditions following an accident.

The licensee has noted that there is additional monitoring equipment which is used to minimize exposure of personnel during sampling activities.

The licensee has determined that the proposed amendment does not represent a significant hazard because it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because, as discussed above, the instruments do not provide input to plant actions during or following an accident. As such the removal of these instruments from the Technical Specifications will not affect the plant accident response capabilities. Hence, no increase in the consequences of an accident previously evaluated is considered credible. The PASS and the subject instruments are used post accident but do not provide an automatic mitigation function. The proposed change can therefore not influence the probability of occurrence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the unavailability of the instrumentation will not prevent the PASS from performing its design function. Additionally the proposed change does not represent a change to plant design. Hence no new different accident possibilities are introduced with this change.

3. Involve a significant reduction in a margin of safety because as discussed above the subject instruments do not contribute to the functional bases of the PASS and serve no significant function during post accident conditions. Hence no safety margins are reduced by removing them from the Technical Specifications.

The staff is in agreement with the licensee's evaluation. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: September 14, 1989 (two letters).

Description of amendment request: The Washington Public Power Supply System (the licensee) has applied for an amendment to Technical Specification 3/4.3.1 "Reactor Protection System Instrumentation" and supporting basis. Specifically it is proposed that channel functional test frequencies for eleven instrument channels specified in Table 4.3.1.1-1, "Reactor Protection System Instrumentation Surveillance Requirements," be changed from their current interval to a quarterly interval. The functional units affected and the current channel functional test frequency are: Average power range monitor, flow biased simulated thermal power - upscale, weekly; Average power range monitor, fixed neutron flux - upscale, weekly; Average power range monitor, inoperative, weekly; Reactor vessel steam dome pressure - high, monthly; Reactor vessel water level - low, level 3, monthly; Main steam line isolation valve - closure, monthly; Main steam line radiation - high, monthly; Primary containment pressure - high, monthly; Scram discharge volume water level - high, level transmitter, monthly; Turbine throttle valve - closure, monthly, and; Turbine governor valve fast closure valve trip system oil pressure - low, monthly. Additionally, the frequency of the channel functional test for the manual scram would be increased from monthly to weekly.

The licensee has also proposed to increase the response times for all reactor protection system instrument channels. Currently the licensee must place a trip system for an inoperable channel in the tripped condition within one hour. It is proposed that this time be increased to twelve hours. If the inoperable channel can be restored to an operable status within two hours, the licensee currently is excused from placing the channel in the tripped condition when such action would cause the trip function to occur. The proposed amendment would increase this time to return the channel to operability to six hours.

The licensee would also amend Bases Section 3/4.3.1 to include the basis for the specified surveillance intervals.

The current technical specifications allow a channel to be placed in an inoperable status for up to two hours for required surveillance without placing the trip system in the tripped condition provided that at least one operable channel in the same trip system is monitoring that parameter. The licensee has proposed that this time allowed for surveillance be increased to six hours.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from

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any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The changes would incorporate reactor protection system (RPS) surveillance frequencies and outage times established by the Boiling Water Reactor Owners Group as meeting the recommendations of NRC Generic Letter 83-28, Item 4.5.3. The proposed changes optimize surveillance intervals for improved RPS reliability and increase allowable outage times (AOTs). The owners group study showed that the increase in AOTs has negligible impact on RPS failure frequency yet allows more time for repair and decreases the potential for unnecessary plant shutdown.

The licensee has determined that the proposed amendment does not represent a significant hazard consideration because:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes have been shown to have insignificant impact to overall RPS failure rates and operability. As shown by NEDC 30851P ["Technical Specification Improvement Analyses for BWR Reactor Protection System"] and the corresponding plant specific analyses, the changes do not degrade the reliability of the RPS. Hence the probability or consequences of previously evaluated accidents are not significantly increased due to this change. To the contrary as stated in section 5.7.4 [of NEDC 30851P] the changes represent a decrease in core damage frequency.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because RPS function and reliability are not degraded by these changes. No new modes of plant operation are introduced with these changes. No new or different kind of accident is credible.

3. The proposed changes do not involve a significant reduction in a margin of safety because as shown in Reference 1) and GE report MDE-88-0485 (Reference 5) and found acceptable by the Staff in Reference 2) the changes represent an overall decrease in core melt frequency. As such the margin of safety is enhanced by the proposed changes.

The staff is in agreement with the licensee's evaluation. Accordingly the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Dates of amendment requests: December 16, 1988

Brief description of amendments: The amedments modified the Technical Specifications to clarify and define which fire barriers are encompassed by the surveillance requirements and action statements.

Date of issuance: September 27, 1989

Effective date: September 27, 1989

Amendment Nos.: 127 and 99

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31098 and 31099).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station Plymouth County, Massachusetts

Date of application for amendment: July 31, 1989

Brief Description of amendment: This amendment deletes the onsite and offsite organization charts, including a section on how to change the charts. The amendment also specifies general requirements in place of the deleted charts. The changes affects Section 6.0 "Administrative Control", of the Pilgrim Technical Specifications. The change is in accordance with the guidance provided in NRC Generic Letter 88-06 dated March 22, 1988.

Date of issuance: September 25, 1989

Effective date: Date of issuance and implemented within 30 days.

Amendment No.: 125

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35101) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: May 9, 1989, supplemented by letter dated July 21, 1989.

Brief description of amendment: The amendment revises the Technical Specifications and associated basis pages to permit use of upgraded Westinghouse fuel design in fuel cycle 6 and beyond. The upgraded features included the Vantage 5H design features, reconstitutable top nozzles, debris filter bottom nozzles, snag resistant grids and standardized fuel pellets.

Date of issuance: September 28, 1989

Effective date: September 28, 1989

Amendment No.: 144

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25373) The July 21, 1989 letter provided supplemental information only, and therefore did not change our initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: July 27, 1989

Brief description of amendment: The amendment revises certain visual inspection criteria for snubbers and the service life monitoring requirements.

Date of issuance: September 25, 1989

Effective date: September 25, 1989

Amendment No.: 21

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35102) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 12, 1989

Brief description of amendment: This amendment adds a new specification which addresses the use of hydrogen purge valves for depressurization.

Date of issuance: October 2, 1989

Effective date: October 2, 1989

Amendment No.: 121

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31106) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 28, 1989

Brief description of amendment: The amendment modified the implementation of neutron flux monitoring system modifications from the before restart from the next refueling outage starting after 10 months from the date of receipt of the NRC staff's safety evaluation of the Boiling Water Reactor Owners Group topical report, "Position on NRC Regulatory Guide 1.97, Revision 3, Requirements for Post-Accident Neutron Monitoring System," NEDO-31558, March 1988 to before restart from the next refueling outage starting after 18 months from the date of receipt of the staff's safety evaluation on NEDO-31558.

Date of issuance: October 4, 1989

Effective date: October 4, 1989

Amendment No.: 39

Facility Operating License No. NPF-47. The amendment revised the License.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35103) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 26, 1989.

Brief description of amendment: The amendment relocates cycle-specific thermal-hydraulic limits from the Technical Specifications to a "Core Operating Limits Report" (COLR) and adds a requirement to submit the COLR to the NRC.

Date of issuance: September 28, 1989

Effective date: September 28, 1989

Amendment No.: 70

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32713) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 12, 1989, as supplemented by letters dated May 11, July 3, July 18, and September 5, 1989 (Reference LAR 89-05).

Brief description of amendments: The amendments revised Technical Specification (TS) 3/4.8 "Electrical Power Sources," the related surveillance requirements and bases to change the diesel generator (DG) allowed outage time (AOT) from 72 hours to 7 days. Prior to installation of the sixth DG, this change would apply only to the swing diesel generator (DG 1-3) for performance of preplanned preventive maintenance. After the sixth DG is installed and operational the 7-day AOT would apply to all DGs.

Date of issuance: October 4, 1989

Effective date: October 4, 1989

Amendment Nos.: 44 and 43

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31109) The Commission's related evaluation of the

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amendments is contained in a Safety Evaluation dated October 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: September 9, 1988 and August 11, 1989

Brief description of amendment: The amendment revised Sections 3.8.1.1 and 3.8.1.2 along with the associated Bases of the Technical Specifications related to testing requirements of the onsite emergency diesel generators. The application was in response to the Commission's Generic Letter 84-15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability" issued July 2, 1984.

Date of issuance: September 28, 1989

Effective date: September 28, 1989

Amendment No. 32

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5171) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 26, 1988

Brief description of amendments: Responded to issues identified in several NRC Inspection Reports concerning (a) classification of the specifications for components of the Containment Cooling System and (b) alternate emergency core cooling system component testing requirements upon the loss of a diesel generator.

Date of issuance: September 27, 1989

Effective date: September 27, 1989

Amendments Nos.: 148 and 151

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 28, 1989 (54 FR 31395) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 9, 1989

Brief description of amendments: These amendments reflected the installation of an additional transformer to supply offsite power to the station.

Date of issuance: October 2, 1989

Effective date: October 2, 1989

Amendments Nos.: 149 and 152

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27235) An Environmental Assessment was published on September 26, 1989 (54 FR 39483).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 24, 1989

Brief description of amendment: The amendment removes the requirement to perturb the reactor vessel water level instruments as part of the monthly functional test of the reactor water level scram instruments.

Date of issuance: September 25, 1989

Effective date: September 25, 1989

Amendment No.: 138

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 85375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 21, 1989, supplemented by a request for exigent treatment on September 11, 1989.

Brief description of amendment: The amendment request amended the Technical Specifications by removing the description of specific fuel assembly and control rod design features and replacing it with a more generic description.

Date of issuance: September 27, 1989

Effective date: September 27, 1989

Amendment No.: 33

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 37052 dated September 6, 1989 and 54 FR 38306 dated September 15, 1989). Both notices provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. Both notices provided for an opportunity to request a hearing (1st, October 6, 1989; 2nd, October 16, 1989), but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 1989.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 9, 1987

Brief description of amendments: Revised the trip setpoints and channel description of the second level of undervoltage protection system relays, Tables 3.3-3 and 3.3-4.

Date of issuance: September 25, 1989

Effective date: For Units 1 and 2, as of the date of issuance and shall be implemented within 45 days of the date of issuance.

Amendment Nos.: 102 and 79

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35109) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 23, 1988 and supplemented on January 26, 1989 and May 22, 1989.

Brief description of amendments: Modification of Surveillance Requirements 4.1.3.4 and 4.1.3.5 by removing the requirement to verify rod position within one hour after rod motion and clarified the applicability of Surveillance Requirement 4.1.3.4.a.

Date of issuance: September 25, 1989

Effective date: Units 1 and 2, effective as of the date of issuance to be implemented within 45 days of the date of issuance.

Amendment Nos.: 103 and 80

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 11, 1989 (54 FR 1024) and August 23, 1989 (54 FR 35111) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: June 21, 1988, as revised February 28, 1989.

Brief description of amendment: The amendment revised the Technical Specifications concerning reactor building pressure equalization and purge system operability and surveillance.

Date of issuance: September 29, 1989

Effective date: September 29, 1989

Amendment No.: 113

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18958) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 22, 1989

Brief description of amendment: This amendment allows, in the case of a missed surveillance requirement, delaying compliance with the Action Statement for a period up to 24 hours to permit the completion of the surveillance when the allowed outage time limits of the Action Statement are less than 24 hours and establishes as the starting time of the noncompliance that time when it is discovered that the Surveillance Requirement has not been performed. This Amendment also permits passage through or to Operational Conditions as required in order to comply with the Action Statements.

Date of issuance: August 8, 1989

Effective date: August 8, 1989

Amendment No.: 81

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29411) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1989. The amendment was inadvertently issued before expiration of the comment period. However, no comments or requests for hearing were received within the period for such comments or requests.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 16, 1988, as revised June 19, 1989

Brief description of amendment: The amendment changes the Technical Specifications (TS) Section 6.0, Administrative Controls, by (1) replacing references to specific operations staff positions with description and qualifications of required personnel, and (2) adding a footnote to allow a licensed Senior Reactor Operator (SRO) on the crew to serve in a dual capacity as SRO and Shift Technical Advisor.

Date of issuance: September 28, 1989

Effective date: September 28, 1989

Amendment No.: 64

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 8, 1989 (54 FR 6196) The June 19, 1989 letter withdrew two of the requested TS changes that did not affect the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: June 20, 1989 (TS 272)

Brief description of amendment: The changes add new requirements in the form of a new Section, 3.5/4.5-M to provide more restrictive operating conditions per the guidance of the NRC Bulletin 88-07, Supplement 1.

Date of issuance: October 5, 1989

Effective date: October 5, 1989, and shall be implemented within 60 days

Amendment No.: 174

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29414) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1989.

No significant hazards consideration comments received: No

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Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: May 1 and 5, 1989 (TS 89-11 and 89-14, respectively)

Brief description of amendments: This amendment revises the surveillance requirements (SR) on the containment integrated leak rate test in Section 3/4.6.1, Primary Containment, of the Sequoyah, Unit 1 Technical Specifications (TS). The revisions to SR 4.6.1.2.a are the following: (1) add a statement to allow a one-time extension of the 40 27 10-month test interval in the SR so that the third ILRT can be conducted during the Unit 1 Cycle 4 refueling outage and (2) delete the requirement that the third ILRT of each 10-year period must be conducted during the shutdown for the 10-year unit inservice inspection. The revision to allow the third ILRT to be conducted during the Unit 1 Cycle 4 refueling outage requires that this outage must begin no later than May 1, 1990 and the third ILRT must be conducted before the restart of Unit 1 from that outage. The first revision was in the licensee's application dated May 1, 1989 (TS 89-11) and the second, was in the licensee's application dated May 5, 1989 (TS 89-14).

The previous requirements in the TS on the third ILRT at Unit 1 also exist in Appendix J of 10 CFR Part 50. The licensee's applications dated May 1 and 5, 1989 also requested a temporary and a permanent exemption to Appendix J. These exemptions to Appendix J to allow the same revisions being made to the TS were granted in the staff's letter dated September 29, 1989.

Date of issuance: September 29, 1989

Effective date: September 29, 1989

Amendment Nos.: 127

Facility Operating Licenses Nos. DPR-77. Amendment revised the Unit 1 Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23326 and 54 FR 23327, respectively). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 20, 1988

Brief description of amendment: The amendment revised the Technical Specifications to reflect administrative and editorial changes to the Administrative Controls, including Station Review Board (SRB) responsibilities and the Company Nuclear Review Board's (CNRB's) audit responsibilities. Several minor editorial and administrative changes were also approved.

Date of issuance: October 3, 1989

Effective date: October 3, 1989

Amendment No.: 139

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32719) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 24, 1989

Brief description of amendments: The amendments add the Superintendent-Engineering to the list of specified members of the Station Nuclear Safety and Operating Committee.

Date of issuance: September 26, 1989

Effective date: September 26, 1989

Amendment Nos.: 124 and 108.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1989 (54 FR 35112) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: October 24, 1988

Brief description of amendment: The amendment modifies Section 3/4.3.7, Table 3.3.7.1-1 Radiation Monitoring Instrumentation and the associated bases of the Technical Specifications that reflect modifications in system configuration and operation. These modifications are necessitated by corrective actions taken to prevent an unanalyzed condition that could result from a LOCA and a single failure in the main control room ventilation system.

Date of issuance: October 3, 1989

Effective date: October 3, 1989, and must be fully implemented within 7 days of issuance of the amendment.

Amendment No.: 74

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** November 30, 1988 (53 FR 48340) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 11th day of October 1989.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 89-24457 Filed 10-18-89; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Meeting

The ACRS Subcommittee on advanced Pressurized Water Reactors will hold a meeting on November 3, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeing will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, November 3, 1989—8:30 a.m. until the conclusion of business*

The Subcommittee will discuss the Westinghouse Advanced Pressurized Water Reactor Design (RESAR-SP/90).

Oral statement may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 11, 1989.

Sam Duraiswamy,

Acting Chief, Project Review Branch No. 2.

[FR Doc. 89-24570 Filed 10-17-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published September 19, 1989 (54 FR 38573). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the November 1989 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Advanced Boiling Water Reactors (GE ABWR), October 31, 1989, Bethesda, MD. The Subcommittee will review the NRC staff's SER on Module One of GE ABWR.

Advanced Pressurized Water Reactors, November 3, 1989, Bethesda, MD. The Subcommittee will discuss the WAPWR (RESAR-SP/90) design.

Thermal Hydraulic Phenomena, November 8, and 9, 1989, San Francisco, CA. The Subcommittee will discuss: (1) the capability of the thermal hydraulic codes to model BWR core power instability, and (2) the key thermal hydraulic design aspects of the GE ABWR related to the ECCS, and LOCA analyses.

Thermal Hydraulic Phenomena, November 14, 1989, Bethesda, MD. The Subcommittee will discuss selected topics related to the NRC-RES thermal hydraulic research program, including future research needs and the recent ACRS letter commenting on thermal hydraulic research.

General Electric Reactor Plants, November 14, 1989, Bethesda, MD. The Subcommittee will review the restart of Nine Mile Point Unit 1.

Regulatory Policies and Practices, November 15, 1989, Bethesda, MD. The Subcommittee will discuss integration of the regulatory process.

Thermal Hydraulic Phenomena (week of December 4, 1989), Bethesda, MD. The Subcommittee will review the proposed NRC NRR and RES programs for resolution of the interfacing systems LOCA issue.

Containment Systems, December 12, 1989, Bethesda, MD. The Subcommittee will discuss the NRC staff's document on the Containment Performance Improvements (CPI) Program (all containment types other than BWR Mark Is).

Joint Containment Systems and Structural Engineering, December 13, 1989, Bethesda, MD. The Subcommittees will continue to discuss containment design criteria for future plans with invited speakers from industry and national laboratories.

Regulatory Policies and Practices, January 10, 1990, Bethesda, MD. The Subcommittee will review the approach suggested by the NRC staff in SECY-89-288 for license renewal along with the staff's proposed resolution of industry's comments on the suggested approach obtained at the November Workshop.

Safety Research Program, February 7, 1990, Bethesda, MD. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1991.

Occupational and Environmental Protection Systems, Date to be determined (October/November), Bethesda, MD. The Subcommittee will continue to review of Interim Standard for hot particles.

Decay Heat Removal Systems, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Systematic Assessment of Experience, Date to be determined (November/December), Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Severe Accidents, Date to be determined (December/January), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Advanced Pressurized Water Reactors, Date to be determined (December/January), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being dveloped for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Joint Severe Accidents and Probabilistic Risk Assessment, Date to be determined (January), Location to be determined. The Subcommittees will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear

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Power Plants" (Second Draft for Peer Review).

Decay Heat Removal Systems, Date to be determined (June/July 1990), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined, Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Regulatory Policies and Practices, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed staff program for the renewal of power plant licenses.

Materials and Metallurgy, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

ACRS Full Committee Meetings

355th ACRS Meeting, November 16–18, 1989, Bethesda, MD—Items are tentatively scheduled.

**A. Accident Management (Open)*—Review and comment regarding proposed accident management strategies for consideration in Individual Plant Examinations.

**B. Advanced Pressurized Water Reactors (Open)*—Briefing by NRC staff members regarding the status of review of the proposed standardized advanced pressurized water reactors.

**C. TMI–2 Accident Evaluation (Open)*—Briefing regarding status of the TMI–2 post-accident evaluation effort.

**D. Nine Mile Point Unit 1 (Open)*—Review and report on proposed restart of this BWR plant. Representatives of the NRC staff and licensee will participate as appropriate.

**E. GE Advanced Boiling Water Reactors (Open)*—Review and comment on Module I of this standardized advanced BWR design.

**F. Nuclear Power Plant Access Authorization (Open/Closed)*—Review and comment on proposed final rule regarding access authorization to controlled areas of nuclear power plants.

**G. Integration of the Regulatory Process (Open)*—Discuss proposed ACRS report on proposed integration of the NRC regulatory process.

**H. ACRS Future Activities Open)*—Discuss anticipated ACRS subcommittee activities, proposed ACRS meeting dates, and items proposed for consideration by the full Committee.

**I. ACRS Subcommittee Activities (Open)*—Reports and discussion of assigned ACRS subcommittee activities, including thermal hydraulic matters and ACRS procedures and practices.

**J. Generic Issue B–56, Diesel Reliability and Proposed Regulatory Guide 1.9, Revision 3 (Open)*—Discuss proposed ACRS report regarding NRC staff's proposed resolution of this generic issue.

**K. Generic Issue 87, Failure of HPCI Steam Line Without Isolation (Open)*—Discuss proposed ACRS report regarding NRC staff's proposed resolution of this generic issue.

**L. Material Performance (Open)*—Discuss proposed ACRS report to the NRC regarding performance of Inconel–600 in a nuclear power plant environment.

**M. Appointment of ACRS Members (Open/Closed)*—Discuss status of Commission action regarding nominees for ACRS membership.

356th ACRS Meeting, December 14–16, 1989—Agenda to be announced.

357th ACRS Meeting, January 11–13, 1990—Agenda to be announced.

ACNW Full Committee Meetings

No ACNW Meeting in November, 1989.

ACNW Meeting, December 27, 29, 1989—Cancelled.

15th ACNW Meeting, January 24–26, 1990—Agenda to be announced.

Dated: October 12, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–24511 Filed 10–17–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27349; File No. SR–MSRB–89–6]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Professional Qualifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to Board rule G–3, on professional qualifications, to eliminate the Board's Financial and Operations Principal ("FINOP") Examination and, thus, require FINOP candidates to qualify through the National Association of Securities Dealers' FINOP Examination (hereafter referred to as the "proposed rule change"). The Board requests that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, to allow FINOP candidates to have sufficient time to prepare for the NASD's FINOP examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–3, on professional qualifications, requires securities firms that engage in municipal securities transactions to have at least one associated person qualified as a FINOP. A FINOP supervises the financial reporting and net capital compliance required by SEC rules and the processing, clearance, and safekeeping of municipal securities by the securities firm. The chief financial officer of a firm must be qualified as a FINOP. The head of the operations department is also usually a FINOP.

Under Board rule G–3(d), an individual may qualify as a FINOP by passing either the Board's Financial and Operations Principal Qualification Examination [Test Series 54) or by being qualified as a FINOP by the National Association of Securities Dealers ("NASD"). The NASD qualifies FINOPs through its FINOP Examination (Test Series 27). The Board's FINOP examination is a three-hour "paper and pencil" examination with 66 multiple choice questions and additional arithmetical problems which test the candidate's ability to perform net capital and reserve formula computations regarding municipal securities. Developed by the Board in 1978 and administered by the NASD, the Board's FINOP examination is designed to test a candidate's knowledge of applicable Board and SEC rules and statutory provisions pertaining to financial responsibility and recordkeeping as well as the protections afforded investors under the Securities Investor Protection Act of 1970. The FINOP examination used by the NASD qualifies candidates to supervise the financial and operations activities of firms handling both municipal and corporate securities and includes questions on financial responsibility rules, SEC recordkeeping rules and NASD uniform practice rules. In addition, this examination also tests a candidate's knowledge of the Board's recordkeeping and uniform practice requirements.

When the Board's FINOP examination was developed in 1978, FINOPs from all previously unregistered municipal securities dealers were required to take either the Board's or the NASD's FINOP examination. Most took the Board's FINOP examination because, at the time, there were significant differences in the net capital treatment of municipal securities under SEC rules. Since then, however, fewer and fewer FINOP candidates satisfy their examination requirment by taking the Board's FINOP examination. This may be because there are fewer municipal securities-only firms qualifying FINOPs, there are fewer differences in the treatment of municipal securities and other securities in the SEC's net capital rule, or because municipal securities-only firms, like most general securities firms, prefer that their FINOP candidates qualify under the NASD's more comprehensive examination. Because so few Board FINOP examinations are given, the Board has determined to eliminate it.

The NASD currently is revising the test specifications of its FINOP examination. These revised specifications will include, among other things, a section devoted exclusively to questions on Board rules, including rules G–8 and G–9 on recordkeeping, rules G–12 and G–15 on uniform practice, deliveries to customers, and automated clearance and settlement, and rule G–27 on supervision. Also, the Board and the NASD are in the process of reaching an agreement that the questions contained in the NASD's FINOP examination regarding Board rules will be provided or reviewed by the Board.

The proposed rule change also includes certain technical changes to rule G–3.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(A), which empowers the Board to adopt rules that:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless . . . every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. In connection with the definition and application of such standards the Board may
>
> (i) appropriately classify municipal securities brokers and municipal securities dealers (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers and municipal securities dealers;
>
> (ii) specify that all or any portion of such standards shall be applicable to any such class;
>
> (iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition since it applies equally to all FINOP candidates associated with brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In March, 1989, the Board published for comment amendments to rule G–3 to eliminate the Board's FINOP examination. The Board received five comments, four of which are in favor of the amendments. One commentator notes that, even though its primary business is in municipal securities, it has several persons qualified as NASD FINOPs. Another commentator states that the additional subject areas NASD-qualified FINOPs are required to learn should be helpful to Board-qualified FINOPs. One commentator notes that some administrative efficiencies and economies of scale should result from use of only one examination (the NASD's). One commentator, however, states that municipal securities-only firms will be disadvantaged if required to qualify solely through the NASD examination process and sees no reason to change the present procedure. The Board believes that the NASD's FINOP examination is so similar to the Board's examination that municipal securities-only firms should not be disadvantaged by being required to qualify their FINOPs through the NASD's examination.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

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rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 8, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24568 Filed 10-17-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

American Fusion, Inc., et al.; Order of Suspension of Trading

October 13, 1989.

In the matter of American Fusion, Inc., Cambrian Gold Resources, Inc., Dorex, Inc., Entec Products International, Inc., Gulf Coast Resources International, Inc., IMABV, Ltd., Monarch Acquisitions, Inc., MPV, Inc., National Pro-Gold Resources, Inc., PCP Corp., Puma Motor Car of America, Inc., TBV Corp., Tompson Valley Mining & Exploration, Ltd., TR, Inc., Transworld Energy Systems, and Valdor Gold Corp.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Fusion, Inc., Cambrian Gold Resources, Inc., Dorex, Inc., Entec Products International, Inc., Gulf Coast Resources International, Inc., IMABV, Ltd., Monarch Acquisitions, Inc., MPV, Inc., National Pro-Gold Resources, Inc., PCP Corp., Puma Motor Car of America, Inc., TBV Corp., Tompson Valley Mining & Exploration, Ltd., TR, Inc., Transworld Energy Systems, and Valdor Gold Corp. and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the corporate histories and financial conditions of the companies, the identities of their shareholders, the length of time those persons have been shareholders and the claims for exemption from the registration provisions of the Securities Act of 1933 made by these companies and pursuant to which their securities are trading. Specifically, among other things, substantial questions have been raised about the true ownership of the shares in these corporations, the identity of officers and directors, and whether the issuers have distributed and are distributing securities in violation of the registration provisions of the Securities Act of 1933. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. e.d.t., October 13, 1989 through 11:59 p.m. e.d.t., on October 22, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24567 Filed 10-17-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Determination; Assistance to Dominican Republic

Subject: Assistance to the Dominican Republic.

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended, (the Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to the Dominican Republic is in the national interest of the United States.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register.**

Dated: September 22, 1989.

Lawrence Eagleburger,

Acting Secretary of State.

[FR Doc. 89-24592 Filed 10-17-89; 8:45 am]

BILLING CODE 4710-10-M

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Lifesaving, Search and Rescue; Meeting

The Working Group on Lifesaving, Search and Rescue of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 8, 1989 at 9:30 a.m. in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to review the agenda items and prepare U.S. positions for the 21st Session of the International Maritime Organization (IMO) Subcommittee on Lifesaving, Search and Rescue, scheduled for March 19–23, 1990. Items of principal interest on the agenda for this session are:

—Clarifications of SOLAS Chapter III, including the completion of revision of Resolution A. 521 (Testing and Evaluation of Lifesaving Appliances).
—Maximum stowage height of survival craft.
—Matters concerning search and rescue (SAR), including those related to the 1979 SAR Conference, the introduction of the Global Maritime Distress and Safety System (GMDSS), and work consequential to the 1988 GMDSS Conference.
—Amendments to the 1977 Torremelinos International Convention for the Safety of Fishing Vessels.
—Inflatable liferafts.
—Reconsideration of SOLAS Regulation V/17 (Pilot Boarding Arrangements).

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Kurt J. Heinz, U.S. Coast Guard Headquarters [G-MVI-3/1404], 2100 Second Street SW., Washington, DC 20593-0001, Telephone (202) 267-1444.

Dated: October 6, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-24509 Filed 10-17-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Akron-Canton Regional Airport, North Canton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Akron-Canton Regional Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 24, 1989, the FAA determined that the noise exposure maps submitted by the Akron-Canton Regional Airport Authority under Part 150 were in compliance with applicable requirements. On September 21, 1989, the Associate Administrator for Airports approved the Akron-Canton Regional Airport noise compatibility program, as supplemented and revised by an Addendum dated August 8, 1989, titled, "Taxiway and Helicopter Ramp Noise Analysis-Impact on Greensburg Road Homes". This was revised further in a letter from the airport operator dated September 6, 1989. All of the seventeen proposed measures of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Akron-Canton Regional Airport noise compatibility program is September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Akron-Canton Regional Airport, effective September 21, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatibile land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and mangement of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The Akron-Canton Regional Airport Authority submitted to the FAA on June 8, 1988 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1986 through June 1988. The Akron-Canton Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 24, 1989. Notice of this determination was published in the **Federal Register** on May 19, 1989.

The Akron-Canton Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2008. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on July 21, 1989 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program, supplemented and revised by an Addendum dated August 8, 1989 titled, "Taxiway and Helicopter Ramp Noise Analysis-Impact on Greensburg Road Homes", contained seventeen proposed measures for noise mitigation on and off the airport. This was revised further in a letter from the airport operator dated September 6, 1989. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective September 21, 1989.

Outright approval was granted for all seventeen program measures. Four of the seventeen measures submitted were "Noise Abatement Measures." These included formalizing existing aircraft and helicopter noise abatement procedures and instituting a new noise abatement turn for a specific runway. The next ten of the seventeen measures submitted were "land Use Management Measures." The measures included planning, zoning and subdivision recommendations/policies, acquiring land and developing parks (for a compatible land use). The last three measures of the seventeen submitted, identified as "Continuing Program Measures," included administrative-type measures such as monitoring compliance, updating the noise contours, responding to noise complaints and conducting on-going review of the noise program.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator of Airports on September 21, 1989. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal of FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018

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Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport-East Side, 8820 Beck Road, Belleville, Michigan 48111

Akron-Canton Regional Airport Port Authority, Akron-Canton Regional Airport, 5400 Lauby Road, Box No. 23, North Canton, Ohio 44720

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, September 29, 1989.

W. Robert Billingsley,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-24553 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Alexander Hamilton Airport, St. Croix, VI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program (NCP) submitted by the Virgin Islands Port Authority, under the provisions of title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On February 4, 1989, the FAA determined that the noise exposure maps submitted by the Virgin Islands Port Authority, under part 150, were in compliance with applicable requirements. On August 22, 1989, the Administrator approved the Alexander Hamilton Airport Noise Compatibility Program. Ten (10) of the twelve (12) recommendations of the program were approved in full.

EFFECTIVE DATE: The effective date of the FAA's approval of the Alexander Hamilton Airport Noise Compatibility Program is August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Ilia A. Quinones-Flott, Airports Planning and Development Specialist, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5098, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Alexander Hamilton Airport, St. Croix, VI, effective August 22, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes or aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The Virgin Islands Port Authority submitted to the FAA on December 18, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 14, 1985 through December 16, 1987. The Alexander Hamilton Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 4, 1989. Notice of this determination was published in the Federal Register on February 24, 1989.

The Alexander Hamilton Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on February 24, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The NCP assumes completion of a 2,400-foot runway and taxiway extensions to a full runway length of 10,000 feet.

The submitted program contained twelve (12) proposed actions to mitigate noise from the runway extension. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. Ten (10) of the measures are recommended for approval. Part of a measure regarding imposition of fines for runup violations is recommended for disapproval due to a lack of sufficient analysis of that portion of the measure to make an informed determination. Two others, Operational Recommendations 4 and 5, were withdrawn by the airport operator and a new Operational Recommendation 6 was submitted in place of Measure 5 which would achieve the same results but is technically sound. Measures 4 and 5 dealt with restricting the use of the fully extended runway and taxiway to wide-body jets by establishing a relocated threshold for aircraft other than wide-body aircraft. The airport operator was advised that this measure would be disapproved because it is technically incorrect to displace or relocate a threshold for only *some* aircraft. The operator was also advised that the related recommendation to restrict use of the extended taxiway would have been disapproved because it would violate portions of FAR 150.35 relative to safe and efficient movement of aircraft. The airport operator withdrew this measure on the advice of the FAA.

This is the first time that FAA would have had to disapprove a measure on technical merit. We advised the airport operator that the analysis and discussion of Operational Measure 5 was clearly presented in the NCP documentation and that some of the desired outcome could be achieved through a voluntary measure involving intersection takeoffs. Operational Recommendation No. 6 was presented to the FAA as a result of this advice.

Approval action for the program elements is as follows:

Measure No.	Description	FAA action
	Noise Control Alternatives	
1	Preferential runway use.	Approved.
2	Preferential flight tracks.	Approved.
3	Engine runup procedures.	Approved. In eastern part of the airport, away from noise sensitive areas.
		Disapproved. Use of noise suppressors and the establishment of a system of fines.
4	Displaced threshold/ Relocated threshold.	Withdrawn by airport operator, August 1989.
5	Restriction of ground movement of aircraft.	Withdrawn by airport operator, August 1989.
6	Noise abatement departure location.	Approved as a voluntary measure.
	Land Use Recommendations	
7	Fee simple purchase of homes located in the Paradise Mills/Louis E. Brown Villas.	Approved.
8	Development controls.	Approved.
	Program Implementation Recommendations	
9	Air traffic control tower orders and agreements.	Approved.
10	Published charts and notices.	Approved.
11	Coordination with airport user groups.	Approved.
12	Oversight and compliance.	Approved.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 22, 1989.

The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Orlando Airports District Office.

Issued in Orlando, Florida, on September 18, 1989.

Billy J. Langley,

Acting, Manager Orlando Airports District Office.

[FR Doc. 89-24551 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program; McCarran International Airport, Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Clark County Department of Aviation, Las Vegas, Nevada, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On November 3, 1988, the FAA determined that the noise exposure maps submitted by the Airport Authority under Part 150 were in compliance with applicable requirements. On September 18, 1989, the Associate Administrator for Airports approved the McCarran International Airport noise compatibility program. Twenty-two (22) of the proposed action elements were approved, one (1) element was partially approved, three (3) elements were disapproved and one (1) element had no action.

EFFECTIVE DATE: The effective date of the FAA's approval of the McCarran International Airport noise compatibility program is September 18, 1989.

FOR FURTHER INFORMATION CONTACT: John L. Pfeifer, Manager, Airports District Office, SFO-600, Federal Aviation Administration, 831 Mitten Road, Burlingame, California 94010. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the McCarran International Airport, effective September 18, 1989.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map, may submit to the FAA, a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 of the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

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c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the Airports District Office at the location identified in "FOR FURTHER INFORMATION CONTACT" clause above.

The Clark County Department of Aviation submitted to the FAA on March 13, 1988, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 3, 1985, through February 24, 1989. The McCarran International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 3, 1988. Notice of this determination was published in the Federal Register on November 29, 1988.

The McCarran International Airport Study contains noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on July 15, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 27 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective September 18, 1989.

Outright approval was granted for twenty-two of the specific program elements. One element was partially approved because of insufficient information on a portion of the element. Three elements were disapproved. Two were disapproved for the purposes of part 150. One was disapproved because of insufficient detail. One element was a no action required at this time because it related to flight procedures. The approved elements included existing nighttime restrictions, existing runway use program, testing proposed flight tracks, encouraging quieter aircraft, evaluating noise-monitoring system, noise abatement staff, public information program, support legislation, acquire land, plan redevelopment, soundproofing, property transaction assistance, encouraging specific plans, consistent off airport improvement, zoning, disclosure to buyers, and continuation of mortgage insurance policies and practices.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on September 18, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Clark County.

Issued in Hawthorne, California.

Herman C. Bliss,

Manager, Airports Division.

[FR Doc. 89-24555 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Ocala Municipal/Jim Taylor Field Airport, Ocala, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Ocala, Florida for the Ocala Municipal/Jim Taylor Field Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL, telephone (407) 648-6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Ocala Municipal/Jim Taylor Field Airport are in compliance with applicable requirements of part 150, effective September 29, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Ocala, Florida. The specific maps under consideration are "1987 Baseline Noise Exposure Map" and "1992 Baseline Noise Exposure Map" in the submission. The FAA has determined that these maps for the Ocala Municipal/Jim Taylor Field Airport are in compliance with applicable requirements. This determination is effective on September 29, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independent Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Mr. Richard Lewis, Assistant City Manager, City of Ocala, 151 S.E. Osceola Avenue, Ocala, Florida 32678

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Orlando, Florida, September 29, 1989.

Billy J. Langley,

Acting Manager, Orlando Airports District Office.

[FR Doc. 89-24554 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program; Panama City-Bay County Airport Panama City, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Panama City-Bay County Airport and Industrial District, under the provisions of title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 23, 1989, the FAA determined that the noise exposure maps submitted by the Panama City-Bay County Airport and Industrial District, under part 150, were in compliance with applicable requirements. On September 18, 1989, the Administrator approved the Panama City-Bay County Airport Noise Compatibility Program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Panama City-Bay County Airport Noise Compatibility Program is September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Airports Planning and Development Specialist, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827-5096, (407) 648-6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Panama City-Bay County Airport, effective September 18, 1989.

Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, (hereinafter referred to as "the Act") an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitue its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitation with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request

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may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office, Orlando, Florida.

The Panama City-Bay County Airport and Industrial District submitted to the FAA on March 23, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 10, 1985 through November 22, 1988. The Panama City-Bay County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 23, 1989. Notice of this determination was published in the Federal Register on April 12, 1989.

The Panama City-Bay County Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to/or beyond the year 1992. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program, as described in section 104(b) of the Act. The FAA began its review of the program on March 23, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten (10) proposed actions for noise mitigation on and off the airport which are divided into two (2) categories of actions: (a) Airport Noise Control Alternatives and (b) Alternatives for Land Use Compatibility. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 18, 1989.

Outright approval was granted for nine (9) of the ten (10) specific program elements and one (1) program element was disapproved. The approval action was for the following program elements:

A. Airport Noise Control Alternatives

Measure No.	Description	FAA action
1	Preferential runways	Approved
2	Use of alternative flight tracks/corridors.	Approved
3	Modification of aircraft approach and departure procedures.	Approved
4	Designated run-up areas/orientation.	Approved
5	Construction of artificial sound barriers (if required).	
6	New parallel runway	Disapproved for purposes of part 150. This runway is clearly planned to be constructed for capacity enhancement. When the runway is in place, the airport will have greater flexibility to operate in such a way that 59 residences will prospectively be removed from the DNL 65 noise contour. However, the runway construction itself is not a measure which the airport operator has taken or proposes to take for the purpose of reducing noncompatible land uses.

B. Alternatives for Land Use Compatibility

1	Noise overlay zone	Approved on the condition that the noise map will be published as a matter of public record.
2	Noise disclosure statements.	Approved
3	Building code requirements for soundproofing.	Approved
4	Zoning	Approved

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 18, 1989.

The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Panama City-Bay County Airport and Industrial District.

Issued in Orlando, Florida, on September 29, 1989.

Billy J. Langley,

Acting, Manager, Orlando Airports District Office.

[FR Doc. 89-24552 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 11, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0047.

Form Number: 990 and Schedule A (Form 990).

Type of Review: Revision.

Title: Return of Organization Exempt From Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust.

Description: Form 990 is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 327,953.

Estimated Burden Hours Per Response/Recordkeeping:

	990	Schedule A (990)
Recordkeeping	82 hrs., 3 mins.	39 hrs., 56 mins.
Learning about the law or the form.	14 hrs. 25 mins.	8 hrs. 2 mins.
Preparing the form	19 hrs. 11 mins.	9 hrs. 6 mins.
Copying, assembling, and sending the form to IRS.	48 mins.	0

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 45,411,692 hours.

OMB Number: 1545-0747.

Form Number: 5498.

Type of Review: Extension.

Title: Individual Retirement Arrangement Information.

Description: Form 5498 is used by trustees and issuers to report contributions to and the fair market value of an individual retirement arrangement.

Respondents: Business or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 47,051.

Estimated Burden Hours Per Response: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,187,674 hours.

OMB Number: 1545-0800.

Form Number: None.

Type of Review: Extension.

Title: Rules and Regulations.

Description: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Response: 1 hour 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545-0982.

Form Number: None.

Type of Review: Extension.

Title: Various Elections Made Under the Tax Reform Act of 1986.

Description: These regulations establish various elections with respect to which immediate interim guidance on the time and manner of making the election is necessary. These regulations enable taxpayers to take advantage of the benefits of various Code provisions.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small Businesses or organizations.

Estimated Number of Respondents: 114,710.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 28,678 hours.

Clearance Officer: Garrick Shear (202) 535-4297.

Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviwer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-24510 Filed 10-17-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: October 5, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information, Management and Statistics.

Extension

1. Veterans Benefits Administration.
2. REPS Annual Eligibility Report.
3. VA Form 21-8941.
4. The form is used by surviving spouses to furnish evidence of current and continuing entitlement to the Restored Entitlement Program for Survivors (REPS). Entitlement factors include earnings, marital status and status of children. Information provided by the surviving spouse may be used to adjust the rate of REPS benefits.
5. Annually.
6. Individuals or households.
7. 2,250 responses.
8. ¼ hour.
9. Not applicable.

Extension

1. Veterans Benefits Administration.
2. Veterans Application for Counseling.
3. VA Form 28-8832.
4. The form advises veterans and other eligible persons of the educational and vocational counseling services available from VA. The form also serves as an application for counseling.
5. On occasion.
6. Individuals or households.
7. 5,000 responses.
8. 1/12 hour.
9. Not applicable.

Extension

1. Veterans Benefits Administration.
2. Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing.
3. VA Form 26-4555c.
4. The form is used by veterans to apply for the specially adapted housing grant. The information requested is used to determine the economic feasibility of residing in specially adapted housing and to compute the proper grant amount.
5. On occasion.
6. Individuals or households.
7. 280 responses.
8. ¼ hour.
9. Not applicable.

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Extension

1. Veterans Benefits Administration.
2. Obtaining Supplemental Information from Hospital or Doctor.
3. VA Form Letter 29-551b.
4. The form is used to request medical evidence from an insured's attending physician or hospital regarding the continuation of disability insurance benefits.
5. On occasion.
6. Individuals or households.
7. 244 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 89-24609 Filed 10-17-89; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 200
Wednesday, October 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 23, 1989.

A closed meeting will be held on Tuesday, October 24, 1989, at 2:30 p.m. An open meeting will be held on Wednesday, October 25, 1989, at 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 24, 1989, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Dismissal of injunctive action.
Regulatory matter regarding financial institutions.
Consideration of *amicus* participation.

The subject matter of the open meeting scheduled for Wednesday, October 25, 1989, at 2:00 p.m., will be:

1. The Commission will consider: (1) Approval of a proposed rule change by the New York Stock Exchange, Inc. ("NYSE") to trade stock baskets on the Floor of the NYSE; (2) approval of a proposed rule change by the Chicago Board Optons Exchange, Inc. ("CBOE") to trade stock baskets on the Floor of the CBOE; (3) approval of a proposed rule change and transaction reporting plan by the Midwest Stock Exchange, Inc. to establish an after-hours trading session for the execution of transactions in portfolios of securities through its new automated Portfolio Trading System; (4) approval of two separate orders granting the NYSE unlisted trading privileges in stocks contained in the Standard and Poor's ("S&P") 500 Index and granting the CBOE unlisted trading privileges in stocks contained in the S&P 100 and 500 Indexes that are not currently registered for trading on the NYSE and CBOE, respectively, for the limited purpose of trading market baskets; and (5) issuance of a Commission release proposing for comment adoption of new Rule 12a-7 under the Securities Exchange Act of 1934 ("the Act"), which will exempt from Section 12(a) of the Act, solely for the purpose of market basket trading, securities included in a standardized market basket product approved by the Commission pursuant to Section 19(b) of the Act. For further information, please contact George Scargle at (202) 272-2371.

2. Consideration of an application filed by T. Rowe Price Associates, Inc. on behalf of T. Rowe Price Spectrum Fund, Inc. for a conditonal order of the Commission under Sections 6(c), 17(b), and 17(d) and Rule 17d-1 of the Investment Company Act of 1940 to permit the Spectrum Fund to acquire shares of funds within the T. Rowe Price group of funds in excess of the limitations imposed by Sections 12(d)(1) and to permit certain affiliated transactions otherwise prohibited by Sections 17(a) and 17(d). For further information, please contact Bibb L. Strench at (202) 272-2856.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barbara Green at (202) 272-2000.

Dated: October 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24198 Filed 10-16-89; 12:27 am]
BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 54, No. 200
Wednesday, October 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 82F-0229]

Indirect Food Additives, Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 89-22602 beginning on page 39355 in the issue of Tuesday, September 26, 1989, make the following correction:

On page 39355, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the 11th line, "(4/ABP)" should read "(4-ABP)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 455

[Docket No. 89N-0199]

Antibiotic Drugs; Rifampin For Injection

Correction

In rule document 89-21870 beginning on page 38374 in the issue of Monday, September 18, 1989, make the following corrections:

On page 38375, in the second column, in § 436.365(e), in the 6th, 7th and 11th lines, superscript "f" should be a subscript "f".

BILLING CODE 1505-01-D

federal register

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Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 2, 1989.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.[1]

The report gives the status as of October 2, 1989 of seven deferrals contained in the first special message of FY 1990. This message was transmitted to the Congress on October 2, 1989.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of October 2, 1989 $1,369.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 54, FR p. 41410, Friday, October 6, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

[1] Because October 1st fell on a Sunday this year, this report is as of October 2nd.

TABLE A

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	1,380.4
Routine Executive releases through October 2, 1989.....	-11.2
Overturned by the Congress.....	0
Currently before the Congress.....	1,369.2

Attachments

Attachment A - Status of Deferrals - Fiscal Year 1990

As of October 2, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 10-2-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund.....	D90-1	271,000		10-02-89	11,200				259,800
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D90-2	188,680		10-02-89					188,680
Cooperative work.....	D90-3	410,189		10-02-89					410,189
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense. . ..	D90-4	1,047		10-02-89					1,047
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D90-5	7,078		10-02-89					7,078
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D90-6	44		10-02-89					44

Attachment A - Status of Deferrals - Fiscal Year 1990

As of October 2, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 10-2-89
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D90-7	502,361		10-02-89					502,361
TOTAL, DEFERRALS.....		1,380,400	0		11,200	0		0	1,369,200

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[FR Doc. 89-24508 Filed 10-17-89; 8:45am]
BILLING CODE 3110-01-M

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 209

Railroad Safety Enforcement Procedures; Disqualification Proceedings; Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. RSEP-6, Notice No. 2]

49 CFR Part 209

RIN 2130-AA49

Railroad Safety Enforcement Procedures; Disqualification Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending its railroad safety enforcement regulations (49 CFR part 209) to prescribe procedures for disqualifying railroad employees, including managers, supervisors, and other agents from performing safety-sensitive functions in the rail industry. Section 3(a) of the Rail Safety Improvement Act of 1988 authorizes FRA to disqualify individuals who are shown to be unfit to perform safety-sensitive functions, based on the individual's violation of an FRA safety rule, regulation, order or standard. These procedures are intended to assure the prompt and efficient conduct of disqualification proceedings under the Act while affording administrative due process to those against whom such proceedings are initiated.

EFFECTIVE DATE: This final rule will be effective November 17, 1989.

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SUPPLEMENTARY INFORMATION:

Introduction

On December 9, 1988, FRA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend part 209, entitled "Railroad Safety Enforcement Procedures," by revising Subpart A—General and adding a new Subpart D—Disqualification Procedures prescribing procedures for disqualifying railroad employees, including managers, supervisors, and other agents from performing safety-sensitive functions in the rail industry (53 FR 49695). A public hearing was held in Washington, DC on January 5, 1989, at which seven organizations were represented: Three railroads, one organization representing railroads, and three organizations representing railroad employees. In addition, those organizations provided prepared statements, and written comments were received from one individual, one labor union, and six other railroads.

The Rail Safety Improvement Act of 1988 (RSIA), Public Law 100-342, 102 Stat. 624 (June 22, 1988), empowers the Secretary to disqualify individuals who are shown to be unfit to perform safety-sensitive functions, based on violations of safety rules, regulations, orders or standards "after notice and opportunity for a hearing."

A preliminary question was whether the RSIA requires formal, trial-type "on the record" hearings (*i.e.*, characterized by testimony of witnesses under oath, cross-examination, and compulsory process) under 5 U.S.C. 554, 556, and 557. There is no declaration in the RSIA of an individual's right to an "on the record" hearing. Neither is there any reference to such a procedural requirement in the Conference Report. See H.R. Rep. No. 100-637, 100th Cong., 2d Sess. 20 (1988). No House Report was issued. The debates in the House and the Senate shed no light on the issue. *See* 133 Cong. Rec. S15893-15910 (daily ed. November 15, 1987) (Senate floor debate and passage of S. 1539); 133 Cong. Rec. H11745-11753 (daily ed. December 18, 1987) (House floor debate and passage of H.R. 3743); 134 Cong. Rec. H218-224 (daily ed. February 3, 1988) (House passage of S. 1539 as amended to conform to H.R. 3743); 134 Cong. Rec. H3468-3472 (daily ed. May 23, 1988) (House floor debate and passage of conference committee substitute for S. 1539); 134 Cong. Rec. S7506-7512 (daily ed. June 9, 1988) (Senate floor debate and passage of conference committee substitute for S. 1539). The Senate Report, however, opines that under the disqualification procedure the "employee would be entitled to a complete, on-the-record hearing." S. Rep. No. 100-153, 100th Cong., 2d Sess. 9-10 (1988).

While the nature and scope of the hearing required in disqualification proceedings is not defined in the RSIA, it is clear that the RSIA contemplates that fact finding and discretion shall be vested in the agency. FRA believes, therefore, that it is essential to promulgate procedures that assure the prompt and efficient conduct of disqualification proceedings under the statute, afford administrative due process to those against whom such proceedings are initiated, and lead to the creation of a record in each individual proceeding that will form the basis for judicial review in the United States District Court without a trial *de novo* of the relevant facts. For those reasons, the procedures for formal hearings set forth under 5 U.S.C. 554, 556 and 557 have been adopted in this rule.

Legislative Background

Section 3(a)(4) of the RSIA, which amends section 209 of the Federal Railroad Safety Act of 1970 (FRSA) (to be codified at 45 U.S.C. 438(f)), authorizes FRA, as delegated by the Secretary, to issue orders disqualifying railroad employees, including supervisors, managers, and other agents from performing safety-sensitive functions in the rail industry. Before such an individual may be disqualified, he or she must receive notice alleging (1) that he or she violated a "rule, regulation, order, or standard" issued by FRA under the Federal railroad safety statutes codified at Title 45, United States Code (*i.e.*, FRSA, 45 U.S.C. 421 *et seq.*; Safety Appliance Acts, 45 U.S.C. 1-16; Locomotive Inspection Act, 45 U.S.C. 22-34; Accident Reports Act, 45 U.S.C. 38-43; and the Hours of Service Act, 45 U.S.C. 61-64.), and (2) that based in whole or in part on the violation, the individual is unfit to perform safety-sensitive functions. In addition, the individual must have received an opportunity for a hearing. There is, however, one narrow exception to the notice and hearing proviso: The RSIA specifically reserves the FRA's authority under section 203 of the FRSA (45 U.S.C. 432) to issue an emergency order immediately disqualifying an individual when he or she is engaging in unsafe practices that "create an emergency situation involving a hazard of death or injury to persons."

Prior to the RSIA, FRA had no enforcement authority over an individual who violated its safety regulations. FRA's sole remedy was against the employing railroad. With enactment of the RSIA, FRA is empowered to: First, impose civil penalties against individuals for willful violations of the rail safety regulations and the Safety Appliance Acts, Locomotive Inspection Act, Accident Reports Act, Hours of Service Act, and Signal Inspection Act (RSIA sections 3(a)(3), 13(1)(F) and (2)(C), 14(7)(A), 15(4), 16(6)(A), and 17(7)(A); see also 53 FR 52918, December 29, 1988, final rule and statements of policy entitled "Amendments to Railroad Safety Regulations to Increase Standard Civil Penalty Assessment Amounts"), and second, disqualify individuals from performing safety-sensitive functions in the rail industry for violations of rail safety rules, regulations, standards or orders that evidence unfitness to perform safety-sensitive functions. RSIA section 3(a)(4).

FRA believes it is important to recognize the two categories of safety violations that the RSIA does not address because RSIA's disqualification authority extends only to violations of regulations and orders promulgated under Title 45 of the United States Code. First, it does not authorize the agency to disqualify individuals for violations of the Hours of Service Act itself, but only for violations of the Hours of Service Act record keeping regulations set forth at 49 CFR part 228, subpart B. See 49 CFR 228.21. Second, it does not permit FRA to disqualify individuals for violations of the Hazardous Materials Transportation Act, 49 U.S.C. 1801 *et seq.*, or for the regulations and standards promulgated thereunder affecting carriage of hazardous materials by rail, 49 CFR parts 171-174 and 179. Under the Hazardous Materials Transportation Act, however, individuals may be subject to civil penalties for knowingly violating the act or a regulation issued thereunder. See 49 U.S.C. 1809.

Additionally, the RSIA does not authorize FRA to disqualify individuals for violations of regulations that do not "make (him or her) unfit for the performance of safety-sensitive functions." Although FRA cannot envision every possible ramification of violations of each of its regulations, it is probable that violations of a few regulations would not meet the statutory standard of unfitness.

Discussion of Comments and Conclusions

A total of 13 responses were received concerning the NPRM published in the December 9, 1988 issue of the **Federal Register**. At the public hearing on January 5, 1989, seven organizations participated: Three railroads (Grand Trunk Western Railroad Company, Illinois Central Railroad Company, and Chicago North Western Transportation Company), one organization representing railroads (Association of American Railroads), and three organizations representing railroad employees (Railway Labor Executives' Association, United Transportation Union, and Brotherhood of Locomotive Engineers). In addition, those organizations, with the exception of one railroad and one labor union, provided prepared statements or written comments and written comments were received from one individual (a truck driver) and five other railroads (Burlington Northern Railroad, Consolidated Rail Corporation, The Long Island Rail Road, Southeastern Pennsylvania Transportation Authority, and Union Pacific Railroad Company). Discussions follow with respect to the primary issues raised by the commenters.

1. Should there be a limitations period after which the agency may not initiate a disqualification period?

The NPRM contained no time limit for issuing a notice of proposed disqualification. Four commenters recommended that the regulations provide a time limit within which a disqualification proceeding may be initiated. One commenter requested a period no longer than one year from the date of the action giving rise to issuance of the notice. Another commenter noted that many employment law issues have six-month limitations periods (*e.g.*, employment discrimination actions under the Civil Rights Act, judicial enforcement of the Railway Labor Act, and suits for an alleged breach of a union's duty of fair representation under the National Labor Relations Act) and recommended a six-month limitation period. Two commenters did not recommend a specific limitations period, although they commented that there should be one.

FRA is not persuaded that a limitations period specific to disqualification proceedings is necessary or appropriate. The RSIA prescribes no limit on the time within which either a disqualification proceeding may be initiated or a suit for enforcement of a disqualification order may be brought. FRA is reluctant to limit by regulation the authority conferred upon it by the RSIA to initiate disqualification proceedings against individuals who are unfit to perform safety-sensitive functions in the rail industry. Of course, the general statutes of limitations applicable to government claims apply to enforcement actions by FRA. The one most likely to apply to disqualification proceedings, and the one FRA will consider applicable, is the statute of limitations for enforcement of civil penalties, which is five years from the date the violation was committed. 28 U.S.C. 2462.

As a practical matter, FRA envisions that it will strive to issue a notice of proposed disqualification against an individual within six months from the FRA's discovery of the individual's rule violation. Additionally, consideration is being given to requiring inspectors to provide railroad employees and their employers copies of inspection reports containing recommendations to initiate disqualification proceedings, thereby putting them on notice that a disqualification proceeding may be initiated. Not all recommendations, however, may result in the initiation of formal disqualification proceedings. Some may result in the issuance of warnings, as has sometimes occurred when a rule violation is serious, but not serious enough to warrant the initiation of civil penalty proceedings against individuals under 49 CFR part B for violations of regulations promulgated under the Hazardous Materials Transportation Act. Such a warning letter could be used as a factor in fashioning an appropriate disqualification order for any subsequent rule violations by the individual.

In addition, the act giving rise to the issuance of the warning could be one of a number of rule violations alleged in a subsequent notice of proposed disqualification. In other words, while the first rule violation alone did not warrant the actor's disqualification, it could, when coupled with other similar violations within, for example, a three year period, provide an adequate basis for finding an individual unfit. A multi-year pattern of rule violations and other unsafe behavior may make out a stronger case for disqualification than a single rule violation. Since Congress could have, but did not, establish a specific statute of limitations for the initiation of disqualification orders or their enforcement in the Federal courts, FRA will not do so. FRA is, however, keenly aware of the legal and practical problems associated with lengthy delays between the occurrence of an individual's rule violation and the initiation of a disqualification proceeding. FRA fully intends to honor an individual's due process rights in implementing the disqualification authority; disqualification proceedings will be initiated in a timely manner.

2. Should full discovery be provided in the proceeding?

The NPRM afforded limited prehearing information and evidence sharing. The Chief Counsel is required to provide respondent, with the notice of proposed disqualification, the material that supports the charges. NPRM and final rule, § 209.305(c). Requests for admission are permitted. NPRM, § 209.317; final rule, § 209.6. A prehearing conference is required at which, among other things, the parties may exchange witness lists and hearing exhibits. NPRM, § 209.323; final rule, § 209.319. Depositions could be introduced at the hearing when a witness was unavailable (NPRM, § 209.321) and subpoenas requiring the attendance of a witness or the production of documents or other tangible evidence may be issued by the presiding officer (NPRM, §§ 209.7 and 209.319; final rule, §§ 209.7 and 209.317).

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Three commenters proposed that, in the interests of fairness, the Chief Counsel provide respondent with evidence acquired after issuance of the notice. Four commenters proposed broad discovery, as provided by the Federal Rules of Civil Procedure for judicial proceedings in United States District Courts—*e.g.*, depositions, interrogatories, requests for production of documents and things, and requests for admissions. One recommended a discovery procedure similar to that of the United States Merit Systems Protection Board (MSPB) (which adjudicates appeals from federal employees who are, *inter alia*, removed or suspended from the federal service), which permits discovery by any method provided by the Federal Rules of Civil Procedure.

FRA agrees to the first comment, and § 209.305(c) now requires the Chief Counsel to provide respondent copies of any evidence acquired after issuance of the notice. See the text of the rule and the accompanying discussion, *infra*. Under § 209.319(a) the presiding officer is required to conduct the prehearing conference at least ten days before the hearing to allow the parties time to deal with any issues, exhibits, or witnesses identified at the conference. See the text of the rule and the accompanying discussion, *infra*.

Discovery is not required by law in formal agency hearings. *Pacific Gas and Electric* v. *Federal Energy Regulatory Comm'n*, 746 F.2d 1278 (D.C. Cir. 1979). However, some discovery is arguably warranted if its refusal would deny respondent due process. *McClelland* v. *Andrus*, 606 F.2d 1278 (D.C. Cir. 1979). The intent of these regulations is to provide for a fair yet expeditious and relatively inexpensive procedure to adjudicate the charges set forth in the notice of proposed disqualification. FRA believes that the efficient use of requests for admission, the prehearing disclosure of evidence underlying the notice of proposed disqualification, and the exchange of witness lists and exhibits at the prehearing conference more than satisfy an individual's due process rights.

However, in the final rule FRA goes further by permitting the use of discovery depositions when ordered by the presiding officer upon a showing of good cause. See the text of section 209.8 and the accompanying discussion, *infra*. The final regulation still directs that disqualification proceedings be conducted as expeditiously and as economically as possible. See § 209.313(a). For example, a deposition will not be permitted if the request is unduly expensive in light of the needs of the case and resources of the parties. See § 209.8(b)(2). Further, discovery must generally be conducted within 90–120 days following receipt of an individual's request for a hearing. See § 209.313(c).

In summary, with the intent of providing a fair, expeditious, and economical proceeding, the final rule permits discovery within a specified time period by deposition, request for production of documents and other tangible evidence, and request for admission; requires that respondents be provided copies of any evidence acquired after issuance of the notice of proposed disqualification; and requires that prehearing conferences be conducted 10 days before the hearing.

3. After it is proven that the respondent committed a violation, is shifting the burden of proof to the respondent to prove his fitness contrary to law? Is a *per se* rule that a willful violation makes a person unfit contrary to law?

The NPRM proposed that proof of a non-willful rule violation establishes a rebuttable presumption that the respondent is unfit to perform safety-sensitive functions. Once proof of a rule violation was adduced, the burden would shift to the respondent to prove his or her fitness. The NPRM also proposed that proof of a willful violation establishes a conclusive presumption that the respondent is unfit.

Five commenters, both labor organizations and railroads, argued strongly that the rebuttable presumption of unfitness for a non-willful rule violation was contrary to the FRA's burden of proof under RSIA. Two commenters, a labor organization and a railroad, commented that a *per se* rule that a willful violation proves a respondent's unfitness is unfair and contrary to the RSIA.

While FRA does not agree that the presumptions proposed were contrary to law, after careful consideration it has withdrawn this portion of the proposal. The presumptions do appear to impose unnecessarily heavy burdens on the respondent in disqualification proceedings.

Section 209.329(a) of the final rule provides that a willful violation of certain regulations establishes a rebuttable presumption of unfitness. In this situation, the burden of proof would not shift to the respondent. As discussed in Fed. R. Evid. 301, the presumption would impose on respondent the burden of going forward with evidence to rebut the presumption. The burden of proof, which the agency meets upon proving a willful violation, remains at all times with the agency. See the text of the rule and the accompanying discussion, *infra*.

4. Is the standard of proof, preponderance of the evidence, appropriate for proving respondent's unfitness?

The NPRM proposed that FRA be required to prove respondent's unfitness and the appropriateness of the disqualification order by a preponderance of the evidence.

Two organizations commented that the proposed standard of proof was too low. One recommended a clear and convincing evidence standard, a higher standard commonly found in denaturalization proceedings and certain cases under the due process and equal protection clauses of the Constitution. The other commenter stated that the standard should be even higher. It proposed the same standard as that employed in criminal proceedings—beyond a reasonable doubt. Other commenters noted that there is no evidentiary standard in railroad disciplinary hearings. One commenter stated that the evidentiary standard for review of a railroad disciplinary action by a Public Law Board, which involves a record review only, was substantial evidence.

FRA will adopt the preponderance of the evidence standard. That standard is the most common evidentiary standard employed in civil proceedings. For example, it is the standard used for removing and suspending federal employees for misconduct. 5 U.S.C. 7512, 7513, and 7701(c)(1)(B). It is higher than the standard employed for removing and demoting such employees for unacceptable performance. 5 U.S.C. 7701(c)(1)(A). No persuasive reasons were given for establishing a higher standard of proof. The disqualification of a person, while an extremely serious matter, is not analogous to criminal sanctions or deportation proceedings. Given the apparent lack of an evidentiary standard in railroad disciplinary proceedings, the absence of any compelling need for a higher standard, and the need to remove unfit employees from the work force, the standard proposed is both fair and satisfactory.

5. Should the employer railroad be a party to a disqualification proceeding?

The proposed rule identified the parties as the Chief Counsel and the individual. No provision is made for including the railroad that employed the respondent at the time of the alleged rule violation as a party or permitting it to intervene.

Three organizations commented that the employer railroad should be a party to the proceeding. They believe the results and record of a proceeding could be used against them in labor arbitration, employee discrimination, or Federal Employers' Liability Act proceedings. As a consequence, they argue that the employer railroad is a real party in interest to disqualification proceedings. One commenter opined that the participation of the railroad as a party may be appropriate at some unspecified times, but that the railroad should only be permitted to intervene by motion for good cause shown. One commenter vigorously opposed the participation of the railroad as a party in a disqualification proceeding.

FRA adopts the NPRM proposal that the parties to the proceeding are the Chief Counsel and the individual. The participation of the railroad could unduly complicate and lengthen the proceeding without providing a benefit to the public. There is nothing in the regulations to prevent the employer railroad from representing the employee, whether contract or managerial, or to otherwise assist in the employee's defense. Further, railroad personnel may be called (by either side) via subpoena to testify at the hearing. Since the employers are not parties to the proceeding, railroad counsel should be able to prevent a disqualification determination from being introduced or, at least, limit its evidentiary value in unrelated proceedings. Note in this regard § 209.301(c), which clearly states that disqualification determinations shall have no effect on subsequent railroad disciplinary proceedings.

Some commenters requested that the Chief Counsel provide a copy of a notice of proposed disqualification to the railroad, so that the railroad would have notice of disqualification proceedings initiated against its employees. FRA has decided to adopt this proposal. It will provide a copy of the notice to the individual's employing railroad. See § 209.305(d).

6. Should FRA retain discretion to initiate disqualification proceedings for violations of any rules, regulations, orders, or standards?

Under the proposal, FRA would retain the discretion to initiate a disqualification proceeding for a violation of any of its regulations. FRA's burden of proof, however, is to establish that such rule violation "make(s) the individual unfit for the performance of safety-sensitive functions." RSIA, section 3(a).

Five commenters opined that there should be a threshold standard before a disqualification action may be initiated for a rule violation. One stated that the standard should be the same as the one employed for issuance of an emergency order under the FRSA—*i.e.*, "that an * * * unsafe practice * * * create(s) an emergency situation involving a hazard of death or injury to persons." 45 U.S.C. 432(a). Two organizations commented that disqualification actions were only appropriate for violations that cause a serious safety hazard. The third commenter remarked that such actions should be taken only for willful and flagrant violations that evidence gross misconduct and that could result in catastrophic incidents. The fifth commenter proposed that such actions be taken only when a rule violation causes an accident reportable under 49 CFR part 225.

The first commenter's proposal, endorsing the emergency order standard, is not appropriate. The RSIA expressly reserves FRA's authority to exercise its power under 45 U.S.C. 432(a). To use the same standard in determining an employee's unfitness in a disqualification proceeding would nullify that statutory reservation of power. The second suggestion is not desirable because, while the prevention of serious safety hazards is certainly a reason for disqualifying an individual, defining a general standard of "seriousness" is not feasible. Whether a specific rule violation could pose a "serious" safety hazard is best left to a case-by-case determination. The third recommendation is unacceptable because it would impose an inordinately high standard of misconduct coupled with the potential for an undefined "catastrophic" accident before a person could be disqualified. The RSIA specifically provides that individuals may be disqualified for non-willful violations of regulations. There is no compelling reason to limit arbitrarily FRA's disqualification authority to the commission of willful violations only. Finally, the last comment would impose an undesirable and excessively high threshold—that a person's rule violation cause an accident. It is in the public interest to identify and prevent unfit persons from performing safety-sensitive functions before they cause accidents, not after.

FRA, therefore, does not adopt any of the foregoing suggestions and, as proposed in the NPRM, retains its discretion to initiate disqualification proceedings for violations of any of its regulations. The statutory burden of proof—that the employee is unfit to perform safety-sensitive functions—the requirement under § 209.329(b) to consider the relevant factors in determining an individual's unfitness, and personnel and financial resources necessary to prosecute a disqualification, should impose sufficient checks on FRA to prevent an abuse of discretion. Public safety demands that FRA use its discretion wisely and judiciously. Further, it is in the public interest to place railroad employees on notice that disqualification proceedings could be initiated for any rule violation. Their potential liability should serve as an additional deterrent to the commission of such violations.

7. Should an administrative appeal of a presiding officer's decision be permitted by either party?

The NPRM proposed that the decision of the presiding officer would be final. No appeal within the agency would be permitted by either the respondent or the Chief Counsel. FRA, however, specifically invited comments on whether the individual or the Chief Counsel, or both, should be allowed to appeal a presiding officer's decision to the FRA Administrator—if the Administrator was not involved in the issuance of the notice of proposed disqualification—or to some other Departmental official if the Administrator was involved in the issuance of the notice. 53 FR 49695, 49699.

No commenter expressly recommended that an administrative appeal of a presiding officer's decision should not be permitted. One commenter suggested the individual be permitted to appeal a presiding officer's decision. Two commenters recommended that any of the parties, which they suggested should also include the employer railroad, should be allowed to appeal. None of the commenters identified a person to whom the appeal should be made.

The principal benefits of the absence of an appeal are the presence of a relatively inexpensive forum and the expeditious issuance of a final decision and order. The major detriments are the lack of administrative review of the presiding officer's decision and the absence of the development of any agency precedent. The advantages of an administrative appeal include the ability to develop agency precedent with respect to its determinations of rule violations and other factors that evidence a railroad employee's unfitness to perform safety-sensitive functions and the appropriate remedial sanctions that should be taken by the agency to protect the individual's coworkers, other railroad employees, and the public. Given the fact that the rule does not

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provide a schedule of offenses and penalties for disqualification actions, it is extremely important that the agency develop the foundation necessary for building a cohesive, consistent body of agency precedent on those issues. In addition, a party will have the opportunity to seek redress of any perceived injustice imposed by the presiding officer's decision.

The disadvantages of providing an administrative appeal include a more time-consuming process for final adjudication of the charges against the individual—the individual would not be disqualified while an appeal is pending (see § 209.325(b)). Also, there is the concomitant risk that an unfit individual would be permitted to continue work in safety-sensitive activities pending final disposition of the case.

On balance, however, FRA believes that the advantages of an administrative appeal outweigh its disadvantages. Disqualifying a railroad employee from performing safety-sensitive functions is a very serious and sensitive matter. It may result in the employee's loss of income and the loss of the employee's services to the railroad. He or she should be permitted the opportunity to seek administrative review of an initial decision recommending his or her disqualification. Further, in the interests of public safety, the Chief Counsel should be permitted the opportunity to contest a dismissal order or an inadequate disqualification order.

For the foregoing reasons, FRA has decided to provide the opportunity for review of a presiding officer's decision within the agency, and permit either the Chief Counsel or the individual to appeal that decision to the Administrator. See §§ 209.323 through 209.327. Pursuant to the separation of functions prohibition of the Administrative Procedure Act (5 U.S.C. 554(d)), no agency employee who is involved in investigating or prosecuting the charges against an individual shall participate in the final decision. FRA does not envision the participation by the Administrator at any stage of the proceedings prior to appeal, including the thereshold decision to issue the notice of proposed disqualification. However, if the Administrator is involved in a decision to initiate a proposed disqualification or in any decision on behalf of the agency during the pendency of the proposed action, the Administrator shall recuse himself or herself from rendering a decision, and the appeal shall be referred to an agency official who was not previously involved in the case. Further, any FRA employee who was involved in issuing or prosecuting the proposed disqualification shall not participate in the decision on appeal.

8. Should FRA maintain a roster of disqualification orders, past and/or current and act as a clearinghouse for railroads who are contemplating hiring or retaining an individual?

The proposed rule, which remains substantively unchanged, seeks to enforce disqualification orders by requiring: (1) A railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of the order to the individual's new or prospective employer railroad; (2) a railroad considering hiring an individual in a safety-sensitive position to inquire from the individual's prior employer railroad whether the individual is serving under a disqualification order; and (3) a disqualified individual to inform his employer of the disqualification order and provide a copy of it to the employer and to inform a prospective employer railroad of the disqualification order and provide a copy thereto. NPRM and final rule, § 209.331. Additionally, the proposed regulation prohibits a railroad from employing a person serving under a disqualification order in a safety-sensitive position and prohibits such a person from working in such a position. NPRM and final rule, § 209.333. Finally, the proposed regulation imposes civil monetary penalties on railroads and individuals and authorizes a more severe disqualification for individuals violating the disclosure requirements and/or committing the specified prohibited acts. NPRM and final rule, § 209.335. Two commenters suggested that FRA retain a listing of disqualified employees. One stated that it should include only disqualification orders in effect. The other recommended that it include all disqualification orders imposed, both current and expired. Neither proposal is acceptable. The latter confuses the purpose of §§ 209.331 through 209.335, which is to enforce disqualification orders in force, not to serve as a repository for previous actions. The former proposal raises some unresolved Privacy Act issues, and it would impose additional administrative burdens on the FRA. FRA believes that the disqualification order enforcement procedure, as proposed and adopted, does not impose hardship on the railroads or the employees involved.

9. Is it proper for FRA to disqualify an individual from performing safety-sensitive functions without the existence of FRA-mandated qualification standards for such individuals?

Two commenters observed that FRA has promulgated no qualification standards for safety-sensitive functions. They argued that, because certain railroads allegedly require employees to perform safety-sensitive functions without adequate training, on such individuals due process rights could be infringed by disqualification. FRA respectfully disagrees with that proposition.

Whether FRA has or has not promulgated standards for railroad employee qualifications related to safety, as permitted by section 202(a) of the FRSA (45 U.S.C. 431(a)), is not germane to its authority granted under the RSIA to disqualify railroad employees for violating FRA rules. Lack of training in the FRA regulations applicable to an employee's duties may be viewed as an affirmative defense to charges that an employee committed a willful violation or a mitigating factor in fashioning an appropriate disqualification order for a violation. It is essential to recognize, however, that a person who lacks the training necessary to perform his or her safety-sensitive duties in compliance with FRA regulations is likely to be unfit to perform such duties. It is certainly not in the public interest to retain an unqualified person in a safety-sensitive position simply because he or she alleges (or proves) that the railroad failed to provide adequate training. Moreover, FRA retains the power to order any necessary training under sections 202(a) and 208(a) of the FRSA (45 U.S.C. 431(a) and 437(a)). The reason for disqualifying a person who is unfit is not to discipline the person. It is to protect his or her life, co-workers' lives and health, and the lives, health, and property of other persons.

Section-by-Section Analysis

The final rule contains substantial revisions in response to the written comments received, the testimony at the public hearing, and further review and reflection within FRA. Where the section citation in the final rule differs from that in the NPRM, the latter citation is also provided.

1. Technical amendments are made to various sections of part 209, subpart A, to conform the general provisions for railroad safety enforcement proceedings applicable to subparts B (assessment of penalties under the Hazardous Materials Transportation Act) and C (issuance of compliance orders), and new subpart D (disqualification proceedings) is added. Specifically, §§ 209.1, 209.3, 209.7, 209.9, 209.13, and 209.15 are amended to reflect the inclusion of subpart D within part 209. Section 209.3 also includes a revised definition of "respondent" and definitions for the terms "motion," "presiding officer," "day," and "pleading." Section 209.5 is amended to permit service by first-class mail of motions and requests for admissions and to require that a certificate of service accompany each pleading filed with the agency. Section 209.7 is further amended to clarify that, once a proceeding under subparts B, C, or D has begun, a subpoena or subpoena duces tecum requiring the production of documents or other tangible evidence may be issued only by the presiding officer. (Prior to institution of formal proceedings or in the context of enforcement actions not requiring formal administrative hearings, the Chief Counsel retains the right to issue subpoenas, including deposition subpoenas, on his or her own initiative.)

Proposed §§ 209.315, governing motions, and 209.317, governing requests for admission, have been moved from subpart D to subpart A and redesignated §§ 209.17 and 209.6, respectively, because they set forth general procedural requirements applicable to all three railroad safety enforcement proceedings covered in 49 CFR part 209: hazardous materials penalties (subpart B), compliance orders (subpart C), and disqualification proceedings (subpart D). Proposed § 209.321, governing depositions, was substantially revised, moved to subpart A, and redesignated § 209.8. In formulating rules for depositions pertaining to subpart D actions, FRA decided that to avoid confusion the requirements appropriate to depositions should be equally applicable to proceedings under subparts B and C.

2. Section 209.6 (proposed as § 209.317) governs the procedures for obtaining requests for admission of facts, the genuineness of documents, and the application of law to facts. Requests for admission do not involve the participation of the presiding officer unless the parties cannot resolve compliance issues that may arise. Sworn answers to requests for admission or objections must be served within 30 days after receipt of the request. Failure to answer or object within that time period will result in an admission of the matter requested. Objections to requests may be tested by filing a motion to compel with the presiding officer who has the authority to compel an answer. Any matter admitted that is entered into the record is conclusively established.

3. Section 209.8 (proposed as § 209.321) governs the procedure for requesting, obtaining, and using depositions of witnesses in discovery or at the hearing. As previously discussed, this section was substantially revised to permit the taking of depositions as a discovery tool. Depositions may be used in the proceeding to contradict or impeach the testimony of the deponent as a witness. A deposition may also be used in the proceeding as evidence of the matters asserted therein, subject to valid objections made at the deposition and later sustained by the presiding officer, and as permitted by Fed. R. Civ. Pro. 32 applied as though it were applicable to such proceedings on its face. Depositions may be taken of parties, and in conjunction with the requirements of section 209.7 governing subpoenas, of any other persons.

Depositions may be taken only for good cause after a proper motion is granted by the presiding officer and an appropriate order is entered. The rule states that "good cause" exists when the information sought is relevant to the subject matter involved in the proceeding and (1) not obtainable from some other source that is more convenient, less burdensome, and less expensive or (2) not unreasonably cumulative, unduly burdensome, or unduly expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in the case. See § 209.8(b).

Objections to motions for depositions are governed by § 209.17. The rule requires the presiding officer when granting a motion for deposition to give ten days' notice before the date of the deposition. The parties may agree to a shorter period. The time frame within which depositions may be taken in disqualification proceedings under part D is set forth in § 209.313. See the text of the rule and the accompanying discussion, *infra*.

4. Section 209.17 (proposed as § 209.315) specifies the procedures for filing written motions (defined in § 209.3(f)) and objections thereto. Objections must be filed within 10 days from receipt of the motion. The presiding officer may modify the time limit for objecting and rule on oral motions. No time limit is prescribed for filing motions. If that becomes an issue in a proceeding, the presiding officer has the authority to make appropriate rulings.

5. Section 209.301 states the purpose for subpart D, *i.e.*, the establishment of the rules of practice for disqualification proceedings of railroad employees and agents from safety-sensitive functions in the rail industry. It is the view of FRA that railroad accidents caused, directly or indirectly, by violations of safety regulations may be prevented or avoided by disqualifying individuals who have shown themselves to be unfit to perform the safety-sensitive functions described in § 209.303. Two purposes would be accomplished by suspending or barring such an individual from these functions in the rail industry: First, the person would be prevented from further violating safety regulations and the railroad's rules; and second, the person's suspension would serve to deter him or her and other railroad employees and agents from committing future violations. In the most serious cases, permanent disqualification could be deemed appropriate.

The exercise of FRA's disqualification authority does not supersede the railroad's independent disciplinary authority or any employee's rights secured under a collective bargaining agreement for review of a disciplinary action imposed under the railroad's independent authority. Those rights would not be applicable, of course, to a suspension imposed by FRA under this rule. Disqualification determinations and concomitant disqualification orders are not intended to have any influence on subsequent disciplinary proceedings or any sanctions by railroads against their employees. Further, a disqualification proceeding may not serve as a forum for a railroad employee to challenge a prior disciplinary action that may have been taken for a violation of the FRA regulation that is the subject of the disqualification proceeding.

FRA's disqualification authority is both narrower and broader than discipline imposed by a railroad on an employee. It is narrower in the sense that an employee may be disqualified only from performing safety-sensitive functions; the employee may remain in an active status with the railroad performing functions that are not designated as safety-sensitive. In a railroad disciplinary proceeding, however, an employee may be suspended without pay from his or her position. FRA's disqualification authority is broader in the sense that FRA may bar a railroad employee from performing safety-sensitive functions with any railroad, not just the employee's present employer. In summary, an FRA disqualification order is independent of any disciplinary action that may be taken by a railroad against an employee for violating an FRA regulation, rule, order, or standard. Likewise, a railroad disciplinary action is independent of any prior or subsequent disqualification order.

6. Section 209.303 delineates the individuals in the rail industry who may

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be subject to disqualification by specifying the functions they perform. This section lists those functions that FRA views to be safety-sensitive within the meaning and intent of the FRSA, as amended by the RSIA. First, railroad employees who are assigned to perform service under the Hours of Service Act, 45 U.S.C. 61–64b, will be covered. Section 209.303(a). Employees covered by the Hours of Service Act include those engaged in or connected with the movement of any train (primarily engineers, brakemen, firemen, and conductors); those who dispatch, report, transmit, or receive orders pertaining to or affecting train movements (primarily operators and dispatchers); and those engaged in installing, repairing, or maintaining signal systems (primarily signalmen and certain electricians).

Second, railroad employees and agents engaged in inspecting, installing, repairing or maintaining track and roadbeds will be subject to disqualification for safety regulation violations. Section 209.303(b)(1). Third, employees engaged in inspecting, repairing, and maintaining locomotives, passenger cars and freight cars will be covered. Section 209.303(b)(2). Fourth, employees who conduct training and testing of other employees required by FRA's safety regulations will be covered. Section 209.303(b)(3). Fifth, railroad supervisors, managers, or agents who supervise or perform the foregoing safety-sensitive functions will be subject to disqualification for safety regulation violations. Section 209.303(c)(1)–(2). Sixth and finally, supervisors, managers, or agents who are in a position to direct the commission of violations of FRA safety regulations may be disqualified from performing any of the foregoing functions and serving in any position in which they would have the ability to direct subordinates to violate safety regulations. Section 209.303(c)(3).

Section 209.303(c)(3) does not impose vicarious liability on supervisors or managers for the rule violations of their subordinates. Such liability is not authorized under the RSIA. A supervisor and a manager may be disqualified from the functions described thereunder when he or she violates an FRA rule, regulation, order, or standard. Moreover, the legislative history of the RSIA shows Congress' intent that railroad supervisors and other managerial officials may be held liable for civil penalties for directing subordinates to violate the law. See the statement of Senator Exon, one of the primary sponsors of the RSIA, at 133 Cong. Rec. S15899 (daily ed. November 5, 1987) (cited in appendix A to part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, 53 FR 52920, 52922, December 29, 1988). Under FRA's regulations, therefore, an individual "is liable for a civil penalty for a willful violation of, or for willfully causing the violation of, the safety statutes or regulations." Appendix A to part 209, 53 FR 52920, 52921 (December 29, 1988).

It is arguable that such egregious actions by railroad supervisors or managers should also subject them to disqualification. It is evident that such intolerable conduct poses an insidious threat to rail safety and renders the culpable supervisor or manager unfit to perform safety-sensitive functions. FRA will decide on a case-by-case basis whether to initiate a disqualification action and/or impose a civil penalty for such conduct.

It is FRA's position that a person who is disqualified from performing safety-sensitive functions will be disqualified from performing all of the foregoing functions listed, not just the ones inherent to his or her job class. For example, a disqualified engineer may not perform work for any railroad in any of the other safety-sensitive functions described. Nor may a supervisory track inspector supervise track inspectors or perform such inspections, or any of the other enumerated safety-sensitive functions, for any railroad. The engineer and the supervisor could remain in an active duty status with their employing railroad in a position that does not require the performance of safety-sensitive functions. The rule, however, neither precludes nor requires reassignment to a position that is not safety-sensitive.

7. Section 209.305 sets forth the action that initiates a disqualification proceeding. The FRA Chief Counsel, after an initial determination that an alleged violation of a safety regulation establishes that an individual is unfit to perform safety-sensitive functions, issues a notice of proposed disqualification to the individual. The Chief Counsel also provides a copy of the notice to the respondent's employing railroad. Paragraph (b) of this section defines the contents of the notice to include: A statement of the rule, regulation, order, or standard allegedly violated (*e.g.*, identification of the regulation violated, the date of the violation, and a brief description of the underlying facts); the factual allegations supporting the initial determination that the individual is unfit to perform safety-sensitive functions (*e.g.*, identification of the relevant factors cited in § 209.329 and underlying facts in support thereof, which form the basis for the terms and conditions of the disqualification order); the terms and conditions, including effective dates, of the proposed disqualification order (*e.g.*, the duration and effective dates of any suspension or, if termination of a suspension is conditioned upon a subsequent event other than the passage of time (completion of prescribed training, rehabilitation, respondent's application for permission to return to safety-sensitive service, etc.), identification of the event, if any, that will permit the individual to resume performance of safety-sensitive functions); and notice of the consequences of the individual's failure to reply to the charges.

Paragraph (b) also requires that the notice advise the individual of his or her rights: To answer the charges in writing and provide supporting documentary evidence; to make an informal response to the Chief Counsel; to request an evidentiary hearing; and to be represented by counsel or other designated representative.

Paragraph (c) requires the Chief Counsel to provide along with the notice a copy of the material supporting the charges. The material relied on generally will include a copy of an FRA safety inspector's violation report and supporting exhibits, and may include other non-privileged information. Nothing in this section precludes the Chief Counsel from presenting at a subsequent hearing under § 209.325 any evidence of the charges set forth in the notice that the Chief Counsel acquired after service thereof upon the respondent. The Chief Counsel is required, however, to furnish the respondent such after-acquired evidence at or, if feasible, before the prehearing conference required under § 209.323. Failure to provide respondent such evidence when required would preclude its introduction at the hearing. Any disputes between the Chief Counsel and the respondent concerning after-acquired evidence could be tested by a motion to strike the evidence.

8. Section 209.307(a) describes the individual's reply rights to a notice of proposed disqualification and prescribes the time limit for submitting the reply and the basis for requesting extensions. Within 30 days after receipt of service of the notice of proposed disqualification, the individual must reply in writing to the charges, and he or she may submit documentary evidence in support of the reply. In addition to submitting a written reply, the individual may make an informal response to the Chief Counsel or request an evidentiary hearing. The individual may, of course, decide to forgo submitting a written reply and stipulate to the charges and consent to imposition of the disqualification order set forth in the notice. In any event, FRA believes that the interests of all parties will be best served by the efficient, expeditious conduct of these proceedings. The individual against whom charges have been made deserves a prompt determination as to his or her fitness, and the public safety demands no less.

Although it is the FRA's policy to disfavor extension requests, the Chief Counsel may extend the reply period under paragraph (b) when the Chief Counsel concludes, for example, that the individual's right to reply to the notice would be materially impaired if the extension were denied.

Paragraph (c) prescribes the adverse consequences of an individual's failure to reply in writing to a notice of proposed disqualification. Specifically, it will be treated as a waiver of the individual's right to contest the charges or the disqualification order. In that event, the Chief Counsel may find the individual unfit, issue and serve him or her with the disqualification order, and provide a copy of the order to the railroad by which the individual is employed. FRA realizes that this is a severe penalty for failure to file a reply. However, FRA believes that treating a respondent's failure to file a reply as a waiver and imposing a disqualification order consistent with the scope and duration of the notice will discourage a person from ignoring a notice and encourage a person who legitimately disputes the allegations in a notice to reply.

9. Section 209.309 prescribes the procedures for an informal response to a notice of proposed disqualification. The objective of the informal response provision is to provide an opportunity for the charged employee to settle the charges without resort to litigation. If a settlement is not achieved, the parties may at least narrow their differences on the unresolved issues and disputed facts. An individual who elects to make an informal response may submit information, including exculpatory material, mitigating factors, or extenuating circumstances, or discuss the matter with the Chief Counsel or designated staff attorney. See § 209.309(a) and (b).

Based on the individual's written response and information provided at any conference, the Chief Counsel will consider the issues raised in the notice of proposed disqualification and take one of the following actions: Dismiss the charges and notice of proposed disqualification; dismiss some of the charges and mitigate the proposed disqualification; mitigate the proposed disqualification; or sustain the charges and the proposed disqualification. See § 209.309(d). Should the Chief Counsel sustain, in whole or in part, the charges and proposed disqualification and reach settlement of the charges with the respondent, the Chief Counsel shall issue an appropriate disqualification order. No order, however, shall be issued unless the individual consents to the imposition of the disqualification and waives, in writing, his or her right to a hearing. See § 209.309(e). If the parties are unable to reach a settlement within 30 days of service of the individual's reply upon the Chief Counsel, the Chief Counsel will terminate negotiations by serving respondent written notice of termination of settlement negotiations. See § 209.309(f).

The individual does not waive his right to a hearing by filing a written response to the charges and requesting a conference with the Chief Counsel. Within 10 days after receipt of the notice of termination of settlement negotiations, the individual may exercise that right. Failure to request a hearing within that period, however, does constitute a waiver of the respondent's right to a hearing. Section 209.309(g). Although it is the FRA's policy to disfavor extension requests, the Chief Counsel may extend the period under paragraph (g) for good cause shown. Section 209.309(h)

10. Paragraph 209.311 governs an individual's request for a hearing. Under paragraph (a), an individual who requests a hearing must do so within 30 days after receipt of the notice of proposed disqualification or, if the individual pursues an informal response, within 10 days after receipt of the notice of termination of settlement negotiations. The written request must be signed by the individual and include, at a minimum, the following information: Name, address, and phone number of the individual and his or her representative, if any; a specific response to the charges, admitting, denying, or explaining each allegation contained in the notice of proposed disqualification; and a description of the claims and defenses, that the individual intends to raise at the hearing. A defense raised at the prehearing conference or the hearing, which was not identified in respondent's hearing request, will be subject to a motion to strike by the Chief Counsel. Absent compelling reasons, the motion should be granted.

Since discovery in these proceedings is limited, full disclosure of all claims and defenses should be made early in the proceedings. The Chief Counsel is limited to proving the charges and the propriety of the terms and conditions of the proposed order set forth in the notice of proposed disqualification, or lesser charges or a less severe disqualification order if any charges are terminated after respondent's informal response under § 209.309. No new charges may be added, nor may a more severe disqualification order be proposed after such notice is served on the respondent. It is only fitting that the respondent is bound by claims and defenses that are raised in his or her request for a hearing.

Under paragraph (b), upon receipt of a proper hearing request, the Chief Counsel shall arrange for the appointment of a presiding officer. Presiding officers for disqualification hearings will be Administrative Law Judges, normally from the Department's Office of Hearings, who are assigned cases by the Chief Administrative Law Judge. The presiding officer assigned retains the authority to schedule the hearing.

Questions have been raised concerning the role, if any, of the presiding officer in the settlement of proposed disqualifications. Paragraph (c) provides that the Chief Counsel and the respondent in a case pending before a presiding officer may agree to settle or dismiss a case without the approval of the presiding officer. The Chief Counsel will promptly inform the presiding officer when a case is settled or dismissed.

11. Section 209.313 contains general provisions governing discovery. There was no counterpart in the NPRM because FRA proposed to limit the methods of discovery permitted to requests for admission (NPRM, § 209.317; final rule, § 209.6) and requests for production of documents and tangible evidence by subpoena under § 209.7. As discussed in part 3 of this section, however, in addition to those discovery devices, FRA decided to permit the taking of depositions. With the addition of that discovery device, FRA decided that limited controls had to be imposed over the discovery scheme to avoid unnecessary delays in achieving a final outcome in the proceeding and to minimize the potential for abuses in the discovery process.

Paragraph (a) sets forth the FRA's concern that disqualification proceedings be conducted as expeditiously as possible with due regard to the rights of the respondent and the Chief Counsel. Discovery should be employed only as necessary for a

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party to obtain relevant information necessary for the preparation of his or her case. It should not be used by a party as a fishing expedition, nor should it be used as an offensive weapon to delay the proceeding or to harass a party's opponent. On the other hand, legitimate discovery requests and orders should be complied with in a timely manner. The discovery scheme set forth in these regulations is intended to be simple, timely, and relatively inexpensive. The reasonableness of any requests for discovery should be evaluated by those precepts, as well as the requirements established in the applicable sections for a specific discovery tool. See §§ 209.7 (subpoenas), 209.6 (requests for admission), and 209.8 (depositions).

Discovery may be initiated only after the respondent requests a hearing under § 209.311. See paragraph (c). Discovery is not permitted during a respondent's informal response to the notice of proposed disqualification under § 209.309. The objective of the informal response is to settle the charges against respondent without resort to litigation. To permit discovery during that phase of the proceedings could be disruptive and would be inimical to that objective.

Paragraph (d) provides strict timeframes for the conduct of discovery. Generally, discovery must be completed within 90 days after respondent requests a hearing. Upon motion for good cause shown, however, a 30-day extension may be granted by the presiding officer. Further, in what FRA believes will be an extremely rare situation, an additional 30-day extension may be granted when the party requesting the extension shows by clear and convincing evidence that the party was unable to complete discovery within the 120-day time period permitted through no fault or lack of due diligence of such party, and that denial of the request would result in irreparable prejudice.

Paragraph (e) provides a method to compel a party to comply with discovery requests approved by the presiding officer through an order to compel—*e.g.*, an order to provide answers to specific questions posed in a deposition—or discovery orders—*e.g.*, an order directing a person to submit to a deposition under § 209.8. Sanctions that may be imposed by a presiding officer are limited to the particular failure of the party. This will avoid complete dismissal of the case based solely on the Chief Counsel's failure to participate in discovery. Similarly, a disqualification order will not be issued based solely on a respondent's failure to participate in discovery.

12. Section 209.315 (proposed as § 209.319) provides that only the presiding officer may issue subpoenas under § 209.7 after disqualification proceedings have been initiated by the issuance and service of a notice of proposed disqualification under § 209.305.

13. Section 209.317 (proposed as § 209.313) specifies the material comprising the official record in each disqualification proceeding—*i.e.*, notice of proposed disqualification, reply, exhibits, hearing transcript, pleadings, stipulations, admissions, rulings, and orders. If no hearing is held because a settlement is reached and a stipulated disqualification order is issued, the record would consist of the settlement agreement, the order, the notice of proposed disqualification, supporting documentation (generally a violation report with supporting exhibits), and the individual's reply.

14. Section 209.319 (proposed as § 209.323) establishes the requirement for, and the minimum subject matter of, a prehearing conference, which must be conducted within 150 days of respondent's request for a hearing under § 209.311. One of the primary purposes of a prehearing conference is to shorten the hearing, or eliminate it if settlement is achieved. Since discovery is limited in disqualification proceedings, it also gives the parties an opportunity to simplify the issues, enter into stipulations, and exchange witness lists and exhibits that are approved by the presiding officer. Because it will be conducted at least 10 days before the hearing, the parties will have adequate time to deal with any issues or evidence raised at the prehearing conference. For example, any evidence acquired by the Chief Counsel after issuance of the notice of proposed disqualification will be provided at the conference, if it was not provided earlier.

15. Section 209.321 (proposed as § 209.325) contains the requirements for disqualification hearings conducted by administrative law judges. Under paragraph (a), the presiding officer is required to begin the hearing within 180 days of the respondent's hearing request, and give the parties at least 20 days notice of the time and place of the hearing. The presiding officer retains the authority to determine the site of the hearing. Naturally, motions for a specific hearing site or for a change of venue may be made by the parties, usually at the prehearing conference. Also under paragraph (a), witnesses will testify under oath, a verbatim transcript of the hearing will be made, and the hearing shall be open to the public. The presiding officer retains authority to close all or any part of the hearing if he or she determines that to do so would be in the best interests of the public, the respondent, a witness, or any affected person. Any order of closure must set forth the reasons therefor. As a general rule, public hearings are in the best interests of the individual and society. There may be rare exceptions, however, when a part of the proceeding is appropriately conducted out of the public eye.

Paragraphs (b) and (e) prescribe the broad powers of the presiding officer in controlling the proceeding and conducting the hearing. The powers of the presiding officer are based on, and consistent with, the powers outlined in the Administrative Procedure Act.

Paragraph (c) sets forth the burden and standard of proof for the Chief Counsel. The Chief Counsel has the burden of production and persuasion as to the facts alleged in the notice of proposed disqualification, respondent's unfitness and the reasonableness of the terms of the proposed disqualification. However, when the Chief Counsel proves that the individual committed a willful violation of one of the requirements of 49 CFR parts 213 through 236, excluding the record keeping and reporting requirements of parts 225, 228, and 233, the individual is presumed to be unfit to perform safety-sensitive functions. See § 209.329(a). The presumption is rebuttable. It does not shift the Chief Counsel's burden of proof (*i.e.* the risk of nonpersuasion) to the respondent; it does, however, impose on the respondent the burden of going forward with evidence to rebut the presumption. The individual may, therefore, proffer evidence to rebut the finding of his or her unfitness. In addition, the individual may proffer evidence in mitigation of the proposed disqualification.

FRA's definition of a "willful" violation is discussed in detail in appendix A to part 209 of 49 CFR. See 53 FR 52918, 52921–52922, (December 29, 1988). Briefly, FRA considers a "willful" act to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or with reckless disregard for whether the act violated the requirements of the law. Consequently, proof that conduct constitutes a violation does not require a showing of evil purpose (as is sometimes required in criminal law) or actual knowledge of the law. A level of culpability higher than simple negligence, however, must be established. A willful violation also requires actual or constructive

knowledge of the facts constituting the violation. It is FRA's firm belief that an individual who willfully violates a safety requirement is generally not fit to perform safety-sensitive functions in the rail industry. For example, an employee or supervisor who is responsible for providing blue signal protection to other employees and who intentionally and voluntarily fails to display a blue signal when required to do so by 49 CFR 218.25, is unfit to perform safety-sensitive functions. Similarly, a locomotive engineer who intentionally and voluntarily reports for duty under the influence of alcohol in contravention of 49 CFR 219.101(a)(2)(i) is unfit to operate a locomotive. The standard of proof for the Chief Counsel is the preponderance of the evidence, the traditional standard used in most administrative and civil judicial proceedings. For example, it is the standard of proof used in proceedings before the MSPB to remove and suspend, among other things, certain categories of employees from the federal service.

5 U.S.C. 7701(c)(1)(b). A generally accepted definition of "preponderance of the evidence" is set out in the MSPB's regulations: "* * * that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue." 5 CFR 1201.56(c)(3).

Paragraph (d) sets out the respondent's hearing rights and responsibilities. The respondent may, either personally or through a representative, conduct cross-examination and offer evidence in defense of the allegations or in mitigation of the proposed disqualification. The respondent has the burden of proof, by a preponderance of the evidence, as to any affirmative defense. For example, a statutory affirmative defense to a charge that respondent's alleged violation of an FRA-prescribed rule, regulation, order, or standard was willful is to show that the violation was committed in obedience to the direct order of a railroad supervisor or other official, under protest communicated to the supervisor. See section 3(a)(3) of the RSIA.

FRA recognizes that there is language in the legislative history of the RSIA that implies it would not be appropriate to initiate a disqualification proceeding against any individual who violates an FRA regulation in obedience to a direct order from a railroad official. See the statement of Senator Exon at 133 Cong. Rec. S15899 (daily ed. November 5, 1987) (cited in appendix A to part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, 53 FR 52920, 52922, December 29, 1988). However, the statute expressly provides that a person is exonerated from a charge of willfully violating a safety regulation if he or she "acted pursuant to a direct order of a railroad official or supervisor, under protest communicated to the supervisor." RSIA, section 3(a)(3)(C). A civil penalty may only be imposed on an individual for willful violations. RSIA, section 3(a)(3)(A). Consequently, if an employee obeys a direct order that violates a regulation and protests that action to the appropriate railroad official, the employee will not be subject to a civil penalty. However, the RSIA itself does not provide, expressly or impliedly, that an individual who obeys an order will be relieved of all responsibility. For example, under the RSIA, even if a person obeyed an order to perform an act that violates a safety regulation, he or she could still be held culpable if the person did not protest the action to the supervisor who gave the order. Similarly, an individual who complied with a direct order to violate the blue signal rules resulting in the death of an employee who should have been protected by such signals may, depending on the individual's appreciation for the likelihood of such a result, have demonstrated unfitness for safety sensitive service.

Congress' purpose in giving the FRA authority to bar an individual from safety-sensitive functions was to remove the risk unfit individuals pose to their co-workers and the public. There could be egregious circumstances where an employee who obeys an order resulting in a rule violation is, nonetheless, unfit to perform safety-sensitive functions—*e.g.*, an engineer who is under the influence of alcohol is ordered to operate a locomotive and consents to do so. Hopefully, FRA will never be confronted with such a situation. But if it is, it preserves its authority to take action necessary to protect the public and the malefactor's co-workers.

16. Section 209.323 (proposed as § 209.327) prescribes the requirements for issuance and contents of the initial decision and order by the presiding officer. The decision of the presiding officer may take one of three forms: (1) Dismissal of all or some of the charges set forth in notice of proposed disqualification; (2) sustain all or some of the charges and proposed disqualification; or (3) sustain all or some of the charges, but impose a disqualification less severe than the one proposed. Paragraph (a). If the presiding officer's decision sustains any of the charges against the respondent, the presiding officer shall issue an appropriate disqualification order. If some charges are dismissed, the disqualification order shall specify which charges are dismissed. Should the presiding officer dismiss all charges, he or she shall issue a dismissal order. Paragraph (b).

In addition to including either a disqualification or dismissal order, the initial decision shall contain findings of fact and conclusions of law and the reasons therefor, which shall be based on the evidence and argument presented in the record, the terms and conditions of any disqualification order, the date the decision shall become final—35 days after issuance of the decision, unless an appeal is filed—and the parties' appeal rights to the Administrator. Paragraph (c).

Under paragraph (d), the initial decision shall be served upon the respondent and the Chief Counsel. The Chief Counsel shall provide a copy of it to the railroad who employed the individual when the notice of proposed disqualification was issued, since a copy of that notice was provided to the railroad under § 209.305. FRA recognizes that it is possible that the individual will not be employed by that same railroad when the presiding officer's decision is rendered. He or she could have one or more employers between the issuance of the notice of proposed disqualification and the issuance of the disqualification order. To obviate the Chief Counsel's need to ascertain the identity of the respondent's employer when the disqualification order is issued, it should be noted that the respondent is also required to notify his employer railroad of the issuance of such an order under § 209.331(c).

Consequently, if the individual is employed by a different railroad when the order is issued, that railroad should receive a copy of it from the individual.

17. Section 209.325 (proposed as § 209.323 (e)) describes when the initial decision rendered under § 209.325 is final. The presiding officer's decision becomes the final agency decision 35 days after its issuance, unless any party files an administrative appeal to the FRA Administrator under § 209.327. Should a party file a timely appeal, the order issued with the initial decision, either disqualification or dismissal, is stayed pending final disposition of the case on appeal. If no timely appeal is filed, the presiding officer's decision becomes the final agency action, and it is not subject to further review within

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the Department. Since an appeal of an initial decision by an aggrieved respondent is permissive, rather than mandatory, the decision when final is subject to judicial review in an appropriate United States District Court under 28 U.S.C. 1331 and 5 U.S.C. 701–706.

Section 209.325 also provides that an initial decision that has not been appealed is not precedent in subsequent disqualification proceedings. Neither a presiding officer nor the Administrator is required to decide any issue in conformity with any unappealed initial decision that did not result in a final decision and order under § 209.327(f). There is no intent, however, to preclude a presiding officer from using similar reasoning or analysis in similar disqualification actions.

18. Section 209.327 contains the procedures a party must follow to file an appeal of the presiding officer's initial decision with the FRA Administrator. For purposes of this rule, an appeal connotes a brief on appeal, not merely a notice of appeal. Any party may file an appeal with the Administrator within 35 days of issuance of the initial decision. Upon motion for good cause shown, an extension of the filing period may be granted by the Administrator.

The appeal must set forth objections to the initial decision, discuss applicable laws or regulations, and if he or she relies on evidence in the record, it should be clearly identified. An opposing party may file a reply brief within 25 days of service of the appeal. If the reply depends on evidence contained in the record, it should also be clearly identified. For example, if the appeal or reply relies on oral testimony taken at the hearing, the appellant or appellee should include the pertinent page numbers from the hearing transcript.

There is no right to oral argument on appeal. Oral argument will be permitted only if the Administrator finds that it is necessary to develop the issues on appeal. If an oral argument is allowed, the Administrator shall fashion and issue an appropriate order setting forth the time, place, scope, and other procedures that will be followed.

Section 209.327 also prescribes the Administrator's authority on appeal. On appeal, the Administrator possesses all the powers that the presiding officer had in making the initial decision. He or she may affirm, reverse, alter, or modify the initial decision. Further, the Administrator may remand the case to the presiding official to take further testimony or evidence or make further findings and conclusions.

Initial decisions that have been appealed to the Administrator and result in a decision and order of the Administrator constitute final agency orders and are subject to judicial review in an appropriate United States District Court under 28 U.S.C. 1331 and 5 U.S.C. 701–706.

19. Section 209.329, paragraph (a), establishes the rebuttable presumption, as discussed above, that proof of an individual's willful violation of any of the requirements of 49 CFR parts 213 through 236, excluding parts 225, 228, and 233, establishes that individual's unfitness.

Paragraph (b) sets forth an illustrative list of factors to be used by the Chief Counsel, the presiding officer, and the Administrator in determining an individual's fitness for performing safety-sensitive functions and, if the individual is found to be unfit, in fashioning an appropriate disqualification order. Not all of the factors listed may be relevant in every case. For example, in determining whether the respondent who violated a regulation is unfit to perform safety-sensitive functions, the following factors usually would be relevant: Factor one (nature, seriousness, and frequency of the violation), factor two (adverse impact or potential adverse impact of the violation on the health and safety of persons and safety of property), factor six (whether the respondent was on notice of any safety regulations that were violated or whether he or she had been previously warned about the conduct in question), and factor seven (the respondent's past record of committing violations of safety regulations, including previous FRA warnings issued, disqualifications imposed, civil penalties assessed, railroad disciplinary actions, and criminal convictions therefor). Those same factors would be relevant to fashioning an appropriate disqualification order, but they may not be the only factors relevant. For example, the consistency of the penalty with disqualification orders issued against other individuals for the same or similar violations (factor five) and the civil penalty scheduled for violation of the regulation in question (factor eight) would also be relevant in imposing an appropriate disqualification order. In some cases some of the factors would not be relevant to any issue in the proceeding. If the violation in issue involved an operating practice, for example, railroad and industry maintenance standards (factors three and four) would not be relevant to either a fitness determination or a disqualification order.

Given the sheer newness of this remedy, the seriousness of a disqualification action against an individual, and the myriad considerations that should be taken into account in determining an individual's fitness and developing an appropriate disqualification order, FRA is not at this time proposing a general schedule of offenses and penalties for disqualification proceedings. There may be aggravating factors involved in an individual's violation of a safety requirement that warrant the imposition of a lengthy or permanent disqualification. For example, an engineer who is drinking an alcoholic beverage while operating a locomotive in violation of 49 CFR 219.101(a) is clearly unfit and could be barred from employment as an engineer or in any other position involving the performance of safety-sensitive functions for a lengthy period of time. On the other hand, there may be mitigating factors involved in an individual's violation of a safety requirement that warrant the imposition of a lesser disqualification period. For example, a railroad inspector who negligently fails to conduct, a required track inspection in violation of 49 CFR 213.33 may be disqualified for a relatively brief period if the violation was the inspector's first offense, and undiscovered defects in the track were relatively minor and posed little potential adverse impact on the safety of persons.

20. Section 209.331, paragraph (a), imposes a requirement on an individual who is subject to a disqualification order to disclose the existence of the order and to provide a copy of it to his or her current employer or a prospective employer. Any individual who violates this requirement may be subject to another disqualification proceeding in which FRA will seek to bar permanently the individual from performing safety-sensitive functions and, if the violation is willful, the individual may be assessed a civil penalty of between $1,000 and $5,000 per Violation. See § 209.335(a).

Paragraphs (a) and (b) impose disclosure requirements on railroads in an effort to prevent employees and agents from working in safety-sensitive positions for railroads other than the employee's present employer. For example, if a person is serving under a 120 day disqualification order, that person will be prohibited from working in the rail industry in any of the safety-sensitive functions identified in § 209.303. If the individual applies for a position involving the performance of safety-sensitive functions with any railroad, the railroad that is considering hiring him or her must inquire of the person's former employer as to whether he or she is presently subject to a disqualification order. Upon receipt of such an inquiry, the person's former employer must inform the inquiring railroad of the terms and conditions of any effective disqualification order. Failure of any railroad or other employer in the rail industry to meet the requirements of this section shall subject them, under § 209.335(b), to a civil penalty of between $5,000 and $10,000 per violation.

21. Section 209.333 prohibits an individual who is subject to a disqualification order from working for a railroad in violation of the terms and conditions of the order. In addition, railroads must not allow such individuals to work in any manner inconsistent with the order. For example, a person who is subject to a disqualification order suspending the person for 120 days and requiring the completion of a specified training program may not be employed by a railroad in a position involving the performance of safety-sensitive functions until the expiration of 120 days and completion of the program. Violations of these provisions will subject the offending individuals and railroads to the sanctions set forth in § 209.335.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979). The rule would not have any direct or indirect economic impact because it does not impose any additional regulatory burden on either railroads or individuals. Therefore, no further analysis of economic impact is required. The potential cost to an individual for participating in a disqualification proceeding and the imposition of a disqualification may and, hopefully, will serve as a deterrent to individuals who might contemplate violating safety regulations. These disqualifications, therefore, may result in the avoidance of substantial costs associated with railroad accidents caused, directly or indirectly, by violations of safety regulations.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the administration of FRA's rules but are not required to do so.

Paperwork Reduction Act

The rule contains information collection requirements in § 209.331. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The public reporting burden for the collection of information under § 209.331 is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Gloria D. Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh St., SW., Washington, DC 20590; and to Ed Clark, Regulatory Policy Branch (OMB No. 2130–New), Office of Management and Budget, New Executive Office Bldg., 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 209

Railroad safety, Railroad safety enforcement procedures.

The Final Rule

In consideration of the foregoing, part 209, title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 6, 10 and 13, as amended; 45 U.S.C. 34, as amended; 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438, and 439, as amended; 49 U.S.C. 103(c); 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808, 1809, and 1810; and 49 CFR 1.49(s).

2. The table of contents is amended to add new entries as follows:

Subpart A—General

* * * * *

Sec.
209.6 Requests for admission
* * * * *
209.8 Depositions in formal proceedings
* * * * *
209.17 Motions
* * * * *

Subpart D—Disqualification Procedures

209.301 Purpose and scope
209.303 Coverage
209.305 Notice of proposed disqualification
209.307 Reply
209.309 Informal Response
209.311 Request for hearing
209.313 Discovery
209.315 Subpoenas
209.317 Official record
209.319 Prehearing conference
209.321 Hearing
209.323 Initial decision
209.325 Finality of decision
209.327 Appeal
209.329 Assessment considerations
209.331 Enforcement of disqualification order
209.333 Prohibitions
209.335 Penalties

3. Section 209.1 is amended by revising paragraph (b) to read as follows:

§ 209.1 Purpose.

* * * * *

(b) Exercise of the authority vested in the Secretary by the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431–441, as amended by the Rail Safety Improvement Act of 1988, Pub. L. 100–342 (June 22, 1988) (49 CFR 1.49(m)); and

* * * * *

4. Section 209.3 is amended by revising paragraph (e) and adding new paragraphs (f) through (i) to read as follows:

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§ 209.3 Definitions.

* * * * *

(e) "Respondent" means a person upon whom the FRA has served a notice of probable violation, notice of investigation, or notice of proposed disqualification.

(f) "Motion" means a request to a presiding officer to take a particular action.

(g) "Presiding Officer" means any person authorized to preside over any hearing or to make a decision on the record, including an administrative law judge.

(h) "Day" means calendar day.

(i) "Pleading" means any written submission setting forth claims, allegations, arguments, or evidence.

5. Section 209.5 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 209.5 Service.

* * * * *

(d) Service of requests for admission and motions may be made by first-class mail, postage prepaid.

(e) Each pleading must be accompanied by a certificate of service specifying how and when service was made.

6. Section 209.6 is added to read as follows:

§ 209.6 Requests for admission.

(a) A party to any proceeding under subpart B, C, or D of this part may serve upon any other party written requests for the admission of the genuineness of any relevant documents identified within the request, the truth of any relevant matters of fact, and the application of law to the facts as set forth in the request.

(b) Each matter of which an admission is requested shall be deemed to be admitted unless, within 30 days after receipt of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer under oath or objection addressed to the matter, signed by the party.

(c) The sworn answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. If an objection is made, the reasons therefor shall be stated.

(d) Any matter admitted under this section is conclusively established unless the presiding official permits withdrawal or amendment of the admission for good cause shown.

(e) Upon motion, the presiding officer may order any party to respond to a request for admission.

7. Section 209.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 209.7 Subpoena; witness fees.

(a) The Chief Counsel may issue a subpoena on his or her own initiative in any matter related to enforcement of the railroad safety laws. However, where a proceeding under subpart B, C, or D of this part has been initiated, only the presiding officer may issue subpoenas, and only upon the written request of any party to the proceeding who makes an adequate showing that the information sought will materially advance the proceeding.

(b) A subpoena may require attendance of a witness at a deposition or hearing or the production of documentary or other tangible evidence in the possession or control of the person served, or both.

* * * * *

8. Section 209.8 is added to read as follows:

§ 209.8 Depositions in formal proceedings.

(a) Any party to a proceeding under subpart B, C, or D of this part may take the testimony of any person, including a party, by deposition upon oral examination on order of the presiding officer following the granting of a motion under paragraph (b) of this section. Depositions may be taken before any disinterested person who is authorized by law to administer oaths. The attendance of witnesses may be compelled by subpoena as provided in § 209.7 and, for proceedings under subpart D of this part, § 209.315.

(b) Any party desiring to take the deposition of a witness shall file and serve a written motion setting forth the name of the witness; the date, time, and place of the deposition; the subject matter of the witness' expected testimony; whether any party objects to the taking of the deposition; and the reasons for taking such deposition. Such motion shall be granted only upon a showing of good cause. Good cause exists to take a person's deposition when the information sought is relevant to the subject matter involved in the proceeding and:

(1) The information is not obtainable from some other source that is more convenient, less burdensome, and less expensive; or

(2) The request is not unreasonably cumulative, unduly burdensome, or unduly expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues in the case.

(c) Such notice as the presiding officer shall order will be given for the taking of a deposition, but this shall not be less than 10 days' written notice unless the parties agree to a shorter period.

(d) Each witness testifying upon deposition shall be sworn and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, subscribed by the witness, and certified by the reporter.

(e) Depositions taken under this section may be used for discovery, to contradict or impeach the testimony of the deponent as a witness, or as evidence in the proceeding as permitted by paragraph (f) of this section and in accordance with the limitations of Fed. R. Civ. Pro. 32 as though it were applicable to these proceedings.

(f) Subject to such objections to the questions and answers as were noted at the time of taking the deposition and as would be valid were the witness personally present and testifying, such deposition may be offered in evidence by any party to the proceeding.

9. Section 209.9 is revised to read as follows:

§ 209.9 Filing.

All materials filed with FRA or any FRA officer in connection with a proceeding under subpart B, C, or D of this part shall be submitted in duplicate to the Assistant Chief Counsel for Safety, (RCC–30), Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, except that documents produced in accordance with a subpoena shall be presented at the place and time specified by the subpoena.

10. Section 209.13 is revised to read as follows:

§ 209.13 Consolidation.

At the time a matter is set for hearing under subpart B, C, or D of this part, the Chief Counsel may consolidate the matter with any similar matter(s) pending against the same respondent or with any related matter(s) pending against other respondent(s) under the same subpart. However, on certification by the presiding officer that a consolidated proceeding is unmanageable or otherwise undesirable, the Chief Counsel will rescind or modify the consolidation.

11. Section 209.15 is revised to read as follows:

§ 209.15 Rules of evidence.

The Federal Rules of Evidence for United States Courts and Magistrates shall be employed as general guidelines for proceedings under subparts B, C, and D of this part. However, all relevant and material evidence shall be received into the record.

12. Section 209.17 is added to read as follows:

§ 209.17 Motions.

Motions shall be in writing, filed with the presiding officer, and copies served upon the parties in accordance with § 209.5, except that oral motions may be made during the course of any hearing or appearance before the presiding officer. Each motion shall state the particular order, ruling, or action desired and the grounds therefor. Unless otherwise specified by the presiding officer, any objection to a written motion must be filed within 10 days after receipt of the motion.

13. Subpart D, consisting of §§ 209.301 to 209.335, is added to read as follows:

Subpart D—Disqualification Procedures

§ 209.301 Purpose and scope.

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under § 209(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(f)).

(b) The purpose of this subpart is to prevent accidents and casualties in railroad operations that result from the presence in the work force of railroad employees, including managers and supervisors, and agents of railroads who have demonstrated their unfitness to perform the safety-sensitive functions described in § 209.303 by violating any rule, regulation, order or standard prescribed by FRA. Employees and agents who evidence such unfitness may be disqualified, under specified terms and conditions, temporarily or permanently, from performing such safety-sensitive functions.

(c) This subpart does not preempt a railroad from initiating disciplinary proceedings and imposing disciplinary sanctions against its employees, including managers and supervisors, under its collective bargaining agreements or in the normal and customary manner. Disqualification determinations made under this subpart shall have no effect on prior or subsequent disciplinary actions taken against such employees by railroads.

§ 209.303 Coverage.

This subpart applies to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training or testing of employees when the training or testing is required by the FRA's safety regulations; or

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 236 of this title.

§ 209.305 Notice of proposed disqualification.

(a) FRA, through the Chief Counsel, begins a disqualification proceeding by serving a notice of proposed disqualification on the respondent charging him or her with having violated one or more rules, regulations, orders, or standards promulgated by FRA, which render the respondent unfit to perform safety-sensitive functions described in § 209.303.

(b) The notice of proposed disqualification issued under this section shall contain:

(1) A statement of the rule(s), regulation(s), order(s), or standard(s) that the respondent is alleged to have violated;

(2) A statement of the factual allegations that form the basis of the initial determination that the respondent is not fit to perform safety-sensitive functions;

(3) A statement of the effective date, duration, and other conditions, if any, of the disqualification order;

(4) A statement of the respondent's right to answer the charges in writing and furnish affidavits and any other documentary evidence in support of the answer;

(5) A statement of the respondent's right to make an informal response to the Chief Counsel;

(6) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing;

(7) A statement of the respondent's right to counsel or other designated representative; and

(8) Notice of the consequences of the respondent's failure to take any of the actions described in § 209.307(a).

(c) The Chief Counsel shall enclose with the notice of proposed disqualification a copy of the material that is relied on in support of the charges. Nothing in this section precludes the Chief Counsel from presenting at a subsequent hearing under § 209.321 any evidence of the charges set forth in the notice that the Chief Counsel acquires after service thereof on the respondent. The Chief Counsel, however, shall serve a copy of any such evidence on the respondent at or before the prehearing conference required under § 209.319. Failure to furnish such evidence to respondent at or before the prehearing conference bars its introduction at the hearing.

(d) The Chief Counsel shall provide a copy of the notice of proposed disqualification to the railroad that employs the respondent.

§ 209.307 Reply.

(a) Within 30 days after receipt of the notice of proposed disqualification issued under § 209.305, the respondent shall reply in writing to the charges. The respondent may furnish affidavits and any other documentary evidence in support of the reply. Further, the respondent may elect to—

(1) Stipulate to the charges and consent to the imposition of the disqualification order under the conditions set forth in the notice;

(2) Make an informal response as provided in § 209.309; or

(3) Request a hearing as provided in § 209.311.

(b) The Chief Counsel may extend the reply period for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (a) of this section.

(c) Failure of the respondent to reply to the notice of proposed disqualification within the period provided in paragraph (a) of this section or an extension thereto provided under paragraph (b) of this section constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification. Respondent's failure to reply authorizes the Chief Counsel, without further notice to the respondent, to find the respondent unfit for the performance of the safety-

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sensitive functions described in § 209.303 and to order the respondent disqualified from performing them for the period and under the other conditions described in the notice of proposed disqualification. The Chief Counsel shall serve respondent with the disqualification order and provide a copy of the order to the railroad by which the respondent is employed.

§ 209.309 Informal Response.

(a) If the respondent elects to make an informal response to a notice of proposed disqualification, he or she shall submit to the Chief Counsel such written explanations, information, or other materials as respondent may desire in answer to the charges or in mitigation of the proposed disqualification.

(b) The respondent may include in an informal written response a request for a conference. Upon receipt of such a request, the Chief Counsel shall arrange for a conference at a time and place designated by the Chief Counsel.

(c) Written explanations, information, or materials submitted by the respondent and relevant information presented during any conference held under this section shall be considered by the Chief Counsel in reviewing the notice of proposed disqualification, including the question of the respondent's fitness and the conditions of any disqualification that may be imposed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Chief Counsel shall take one of the following actions:

(1) Dismiss all the charges and terminate the notice of proposed disqualification;

(2) Dismiss some of the charges and mitigate the proposed disqualification;

(3) Mitigate the proposed disqualification; or

(4) Sustain the charges and proposed disqualification.

(e) Should the Chief Counsel sustain, in whole or in part, the charges and proposed disqualification and reach settlement with the respondent, the Chief Counsel shall issue an appropriate disqualification order reflecting the settlement and shall provide a copy of that order to the railroad by which the respondent is employed. The duration of the disqualification period may be less than, but shall be no greater than, the period set forth in the notice. Any settlement reached shall be evidenced by a written agreement, which shall include declarations from the respondent stipulating to the charges contained in the disqualification order, consenting to the imposition of the disqualification under the conditions set forth in the disqualification order, and waiving his or her right to a hearing.

(f) If settlement of the charges against the respondent is not achieved, the Chief Counsel shall terminate settlement discussions no later than 30 days from service of the informal response upon the Chief Counsel by serving respondent written notice of termination of settlement negotiations.

(g) By electing to make an informal response to a notice of proposed disqualification, the respondent does not waive the right to a hearing. However, the respondent must submit the hearing request required by § 209.311(a) within 10 days after receipt of the notice of termination of settlement negotiations from the Chief Counsel. Failure to submit such a request constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification.

(h) The Chief Counsel may extend the period for requesting a hearing for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (g) of this section.

§ 209.311 Request for hearing.

(a) If the respondent elects to request a hearing, he or she must submit a written request within the time periods specified in § 209.307(a) or § 209.309(g) to the Chief Counsel referring to the case number that appears on the notice of proposed disqualification. The request must contain the following:

(1) The name, address, and telephone number of the respondent and of the respondent's designated representative, if any;

(2) A specific response admitting, denying, or explaining each allegation of the notice of disqualification order.

(3) A description of the claims and defenses to be raised by the respondent at the hearing; and

(4) The signature of the respondent or the representative, if any.

(b) Upon receipt of a request for a hearing complying with the requirements of paragraph (a) of this section, the Chief Counsel shall arrange for the appointment of a presiding officer and transmit the disqualification file to the presiding officer, who shall schedule the hearing for the earliest practicable date within the time period set by § 209.321(a) of this subpart.

(c) Upon assignment of a presiding officer, further matters in the proceeding generally are conducted by and through the presiding officer, except that the Chief Counsel and respondent may settle or voluntarily dismiss the case without order of the presiding officer. The Chief Counsel shall promptly notify the presiding officer of any settlement or dismissal of the case.

§ 209.313 Discovery.

(a) Disqualification proceedings shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for preparation of the party's case. These regulations are intended to provide a simple, timely, and relatively economical system for discovery. They shall be interpreted and applied so as to avoid delay and facilitate adjudication of the case.

(b) Discovery may be obtained by requests for admission under § 209.6, requests for production of documentary or other tangible evidence under § 209.7, and depositions under § 209.8.

(c) A party may initiate the methods of discovery permitted under paragraph (b) of this section at any time after respondent requests a hearing under § 209.311.

(d) Discovery shall be completed within 90 days after receipt of respondent's request for a hearing under § 209.311. Upon motion for good cause shown, the presiding officer may extend this time period for an additional 30 days. The presiding officer may grant an additional 30 day extension only when the party requesting the extension shows by clear and convincing evidence that the party was unable to complete discovery within the prescribed time period through no fault or lack of due diligence of such party, and that denial of the request would result in irreparable prejudice.

(e) If a party fails to comply with a discovery order or an order to compel, the presiding officer may:

(1) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order;

(2) Prohibit the party failing to comply with such order from introducing evidence relating to the information sought;

(3) Draw an inference in favor of the requesting party with regard to the information sought; and

(4) Permit the requesting party to introduce secondary evidence concerning the information sought.

§ 209.315 Subpoenas.

Once a notice of proposed disqualification has been issued in a particular matter, only the presiding officer may issue, deny, quash, or modify subpoenas under this subpart in accordance with § 209.7.

§ 209.317 Official record.

The notice of proposed disqualification, respondent's reply, exhibits, and verbatim record of testimony, if a hearing is held, and all pleadings, stipulations, and admissions filed and rulings and orders entered in the course of the proceeding shall constitute the exclusive and official record.

§ 209.319 Prehearing conference.

(a) The parties shall confer with the presiding officer, either in person or by telephone, for a conference at least 10 days before the hearing to consider:

(1) Formulation and simplification of the issues;

(2) Stipulations, admissions of fact, and admissions of the contents and authenticity of documents;

(3) Advance rulings from the presiding officer on the admissibility of evidence;

(4) Identification of witnesses, including the scope of their testimony, and of hearing exhibits;

(5) Possibility of settlement; and

(6) Such other matters as the presiding officer deems necessary to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such a prehearing conference. The subsequent course of the hearing shall be controlled by such action.

(c) The prehearing conference shall be held within 150 days after receipt of respondent's request for a hearing under § 209.311.

§ 209.321 Hearing.

(a) When a hearing is requested and scheduled under § 209.311, a presiding officer designated by the Chief Administrative Law Judge of the Department convenes and presides over the hearing. The hearing shall begin within 180 days from receipt of respondent's hearing request. Notice of the time and place of the hearing shall be given to the parties at least 20 days before the hearing. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim. The hearing shall be open to the public, unless the presiding official determines that it would be in the best interests of the respondent, a witness, or other affected persons, to close all or any part of it. If the presiding official makes such a determination, an appropriate order, which sets forth the reasons therefor, shall be entered.

(b) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken as provided in § 209.8;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, adjourn, and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(9) Take any other action authorized by or consistent with the provisions of this subpart and permitted by law that may expedite the hearing or aid in the disposition of an issue raised therein.

(c) FRA has the burden of proof, by a preponderance of the evidence, as to the facts alleged in the notice of proposed disqualification, the reasonableness of the conditions of the qualification proposed, and, except as provided in § 209.329(a), the respondent's lack of fitness to perform safety-sensitive functions. The Chief Counsel may offer relevant evidence, including testimony, in support of the allegations contained in the notice of proposed disqualification and conduct such cross-examination as may be required for a full disclosure of the material facts.

(d) The respondent may appear and be heard on respondent's own behalf or through respondent's designated representative. The respondent may offer relevant evidence, including testimony, in defense of the allegations or in mitigation of the proposed disqualification and conduct such cross-examination as may be required for a full disclosure of the material facts. Respondent has the burden of proof, by a preponderance of the evidence, as to any affirmative defense, including that respondent's actions were in obedience to the direct order of a railroad supervisor or higher level official.

(e) The record shall be closed at the conclusion of the hearing, unless the parties request the opportunity to submit proposed findings and conclusions. When the presiding officer allows the parties to submit proposed findings and conclusions, documents previously identified for introduction into evidence, briefs, or other posthearing submissions the record shall be left open for such time as the presiding officer grants for that purpose.

§ 209.323 Initial decision.

(a) The presiding officer shall prepare an initial decision after the closing of the record. The initial decision may dismiss the notice of proposed disqualification, in whole or in part, sustain the charges and proposed disqualification, or sustain the charges and mitigate the proposed disqualification.

(b) If the presiding officer sustains the charges and the proposed disqualification, dismisses some of the charges, or mitigates the proposed disqualification, the presiding officer shall issue and serve an appropriate order disqualifying respondent from engaging in the safety-sensitive functions described in § 209.303. If the presiding officer dismisses all of the charges set forth in notice of proposed disqualification, a dismissal order shall be issued and served.

(c) Each initial decision shall contain:

(1) Findings of fact and conclusions of law, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order, as described in paragraph (b) of this section;

(3) The dates any disqualification is to begin and end and other conditions, if any, that the respondent must satisfy before the disqualification order is discharged; and

(4) The date upon which the decision will become final, as prescribed in § 209.325.

(5) Notice of the parties' appeal rights, as prescribed in § 209.327.

(d) The decision shall be served upon the FRA Chief Counsel and the respondent. The Chief Counsel shall provide a copy of the disqualification order to the railroad by which the respondent is employed.

§ 209.325 Finality of decision.

(a) The initial decision of the presiding officer shall become final 35 days after issuance. Such decisions are not precedent.

(b) Exception. The initial decision shall not become final if, within 35 days after issuance of the decision, any party files an appeal under § 209.327. The timely filing of such an appeal shall stay the order in the initial decision.

§ 209.327 Appeal.

(a) Any party aggrieved by an initial decision issued under § 209.323 may file an appeal. The appeal must be filed within 35 days of issuance of the initial decision with the Federal Railroad Administrator, 400 Seventh Street, SW., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the initial decision, supported by reference to applicable laws and regulations, and with specific reference to the record. If the Administrator has played any role in investigating, prosecuting, or deciding to prosecute the particular case, the Administrator shall

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recuse him or herself and delegate his or her authority under this section to a person not so involved.

(b) A party may file a reply to an appeal within 25 days of service of the appeal. If the party relies on evidence contained in the record for the reply, the party shall specifically refer to the pertinent evidence in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided the written request for extension is served before the expiration of the applicable period provided in paragraph (c) or (d) of this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or upon written motion by any party, the Administrator may determine that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(e) The Administrator may affirm, reverse, alter, or modify the decision of the presiding officer, or may remand the case for further proceedings before the presiding officer. The Administrator shall inform the parties and the presiding officer of his or her decision.

(f) The decision of the Administrator is final, constitutes final agency action, and is not subject to further administrative review.

§ 209.329 Assessment considerations.

(a) Proof of a respondent's willful violation of one of the requirements of parts 213 through 236 (excluding parts 225, 228, and 233) of this title establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. Where such presumption arises, the respondent has the burden of establishing that, taking account of the factors in paragraph (b) of this section, he or she is fit to perform the foregoing safety-sensitive functions for the period and under the other conditions, if any, proposed in the notice of proposed disqualification.

(b) In determining respondent's lack of fitness to perform safety-sensitive functions and the duration and other conditions, if any, of appropriate disqualification orders under §§ 209.309, 209.323, and 209.327, the factors to be considered, to the extent each is pertinent to the respondent's case, include but are not limited to the following:

(1) The nature and circumstances of the violation, including whether the violation was intentional, technical, or inadvertent, was committed willfully, or was frequently repeated;

(2) The adverse impact or the potentially adverse impact of the violation on the health and safety of persons and the safety of property;

(3) The railroad's operating rules, safety rules, and repair and maintenance standards;

(4) Repair and maintenance standards adopted by the industry;

(5) The consistency of the conditions of the proposed disqualification with disqualification orders issued against other employees for the same or similar violations;

(6) Whether the respondent was on notice of any safety regulations that were violated or whether the respondent had been warned about the conduct in question;

(7) The respondent's past record of committing violations of safety regulations, including previous FRA warnings issued, disqualifications imposed, civil penalties assessed, railroad disciplinary actions, and criminal convictions therefor;

(8) The civil penalty scheduled for the violation of the safety regulation in question;

(9) Mitigating circumstances surrounding the violation, such as the existence of an emergency situation endangering persons or property and the need for the respondent to take immediate action; and

(10) Such other factors as may be warranted in the public interest.

§ 209.331 Enforcement of disqualification order.

(a) A railroad that employs or formerly employed an individual serving under a disqualification order shall inform prospective or actual employers of the terms and conditions of the order upon receiving notice that the disqualified employee is being considered for employment with or is employed by another railroad to perform any of the safety-sensitive functions described in § 209.303.

(b) A railroad that is considering hiring an individual to perform the safety-sensitive functions described in § 209.303 shall ascertain from the individual's previous employer, if such employer was a railroad, whether the individual is subject to a disqualification order.

(c) An individual subject to a disqualification order shall inform his or her employer of the order and provide a copy thereof within 5 days after receipt of the order. Such an individual shall likewise inform any prospective employer who is considering hiring the individual to perform any of the safety-sensitive functions described in § 209.303 of the order and provide a copy thereof within 5 days after receipt of the order or upon application for the position, whichever first occurs.

§ 209.333 Prohibitions.

(a) An individual subject to a disqualification order shall not work for any railroad in any manner inconsistent with the order.

(b) A railroad shall not employ any individual subject to a disqualification order in any manner inconsistent with the order.

§ 209.335 Penalties.

(a) Any individual who violates § 209.331(c) or § 209.333(a) may be permanently disqualified from performing the safety-sensitive functions described in § 209.303. Any individual who willfully violates § 209.331(c) or § 209.333(a) may also be assessed a civil penalty of at least $1,000 and not more than $5,000 per violation.

(b) Any railroad that violates § 209.331 (a) or (b) or § 209.333(b) may be assessed a civil penalty of at least $5,000 and not more than $10,000 per violation.

(c) Each day a violation continues shall constitute a separate offense.

Issued in Washington, DC, on October 11, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89-24523 Filed 10-17-89; 8:45 am]
BILLING CODE 4910-06-M

federal register

Wednesday
October 18, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Airport Certification and Operations; Clarification of Various Provisions; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 25698; Notice No. 89-30]

RIN 2120-AD10

Airport Certification and Operations; Clarification of Various Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes changes to the certification and operation regulations of land airports serving air carriers. These actions regarding certification requirements and the control of ground vehicles on an airport are necessary for consistency with existing operating regulations and to address concerns that the current language appears to place undue responsibility and liability on certificate holders. The proposed changes are intended to permit use of uncertificated airports, by air carriers in unscheduled service, in certain situations and clarify responsibility for compliance with airport rules for the operation of ground vehicles by individual tenants, contractors, and employees.

DATE: Comments must be submitted on or before December 18, 1989.

ADDRESS: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Council, Attention: Rules Docket (AGC-10), Docket No. 25698, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25698. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Rancourt, Airport Safety and Operations Division (AAS-300), Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8723.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25698." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Discussion of the Proposed Rule

Background

Part 139 of the Federal Aviation Regulations (FAR) prescribes rules governing the certification and operation of land airports serving any passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers. In 1987, the FAA issued Amendment No. 139-14 (52 FR 44278, November 18, 1987) which revised and reorganized the part to make it more understandable, defined certain requirements more specifically, and imposed additional safety requirements. Since that time, it has become evident that these proposed changes are necessary for consistency with existing operating regulations and to clarify current requirements.

General Discussion of the Proposals

Section 139.101

Current § 139.101(b) states, in pertinent part, that no person may operate a land airport in the United States serving any unscheduled passenger operation of an air carrier while operating an aircraft having a seating capacity of more than 30 passengers without or in violation of a limited airport operating certificate. Section 121.590 prohibits air carriers and pilots operating under part 121 from operating into a land airport unless it is certificated under part 139; however, it includes a provision for special authorization by the Administrator. The proposal would include the same type of provision in § 139.101. This provision is needed in emergency or sensitive situations such as the use of large air carrier aircraft in evacuations, emergencies, natural disasters, and unusual circumstances such as the operation of aircraft accompanying Air Force One when the President is traveling. The proposed change would make the airport certification requirement in part 139 consistent with the operating requirement in part 121 and would provide the Administrator with the authority to allow air carrier operations into an uncertificated airport in emergency and unusual circumstances. Additional editorial changes are proposed for clarity and consistency.

Section 139.329

Current § 139.329, in pertinent part, requires airport operators to ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar and complies with the airport's rules and procedures for the operation of ground vehicles. After Amendment No. 139-14 was published, airport operators expressed concern that the section, as amended, appears to make an airport operator absolutely liable in every case of a ground vehicle violation. There was particular concern since the words "and complies" were not included in the NPRM.

The FAA had not intended this change in the language as a substantive change. Since previous § 139.59 required airport operators to have procedures for the control of ground vehicles, the FAA viewed this revision as making explicit the requirements that had been implicitly understood in the previous version of the rule. However, because of the unintended effect of the language and the misinterpretation of intent, the FAA issued a policy statement in an attempt to clarify the intent of the provision.

Petition for Rulemaking

The Airport Operators Council International (AOCI) and the American Association of Airport Executive (AAAE) have jointly petitioned the FAA to clarify the language in the regulation. The petition raises the concern that the language can be interpreted to place liability for any ground vehicle violation on airport operators. A summary of the petition was published in the Federal Register on November 14, 1988 (53 FR 45771). In response to this petition, the FAA received approximately 20 comments supporting the request for change. No responses were received opposing the petition.

The FAA agrees with AOCI/AAAE that the language in § 139.329(e) should be changed. It is not intent of the FAA to establish strict liability on the part of the airport operators but to ensure compliance on the part of individual vehicle operators. It is the FAA's intent to require airport operators to have adequate procedures and to require that they implement those procedures. Therefore, the FAA is proposing to amend § 139.329 (b) and (e) to clarify that airport operators must establish and implement a program for the operation of ground vehicles. The program must include a compliance aspect so that individuals, tenants, and other operators of ground vehicles who do not comply with the program are held accountable by the airport operator for their noncompliance.

It is the FAA's view that these proposed changes are not substantive, reflect what had always, been the airport operator's responsibility, and reflect those obligations more clearly in the rule. The program, including the provisions identifying the consequences of noncompliance, may vary with airport size and complexity, the number and type of ground vehicle operations, and similar factors that result in the variations reflected now among airports.

Paperwork Reduction Act

The proposed amendments to §§ 139.101 and 139.329 do not change any recordkeeping or reporting burden associated with those sections. Information collection requirements in part 139 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0063.

Regulatory Evaluation

The proposed changes would place no additional requirements or costs upon certificate holders. The FAA has not quantified any specific economic benefits, although there are some perceived benefits, as reflected in the AOCI/AAAE petition. For the reason, it has been determined that the expected economic impact of the proposals are so minimal that a full Regulatory Evaluation is not warranted.

International Trade Impact Analysis

The proposals affect only airports subject to part 139 of the Federal Aviation Regulations. Accordingly, the proposed rules would have no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this document involves proposed regulations which are not major rules under Executive Order 12291 and are not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Additionally, it is certified that, under the criteria of the Regulatory Flexibility Act, this NPRM will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 139

Air carriers, Aircraft, Airports, Airplanes, Air safety, Aviation safety, Air Transportation, Safety, Transportation.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration Proposes to amend part 139 of the Federal Aviation Regulations (14 CFR part 139) as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By revising § 139.101 to read as follows:

§ 139.101 Certification requirements: General.

(a) No person may operate and land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any scheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without an airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport certification manual for that airport.

(b) Unless otherwise authorized by the Administrator, no person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any unscheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without a limited airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport specifications for that airport.

3. By amending § 139.329 by revising paragraphs (b) and (e) to read as follows:

§ 139.329 Ground Vehicles.

* * * * *

(b) Establish and implement a program for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles, including provisions identifying the consequences of noncompliance with the program by an employee, tenant, or contractor;

* * * * *

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar with the airport's rules and procedures for the operation of ground

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vehicles and the consequences of noncompliance; and

* * * * *

Raymond T. Uhl,

Acting Director, Office of Airport Safety and Standards, AAS-1.

Issued in Washington, DC on October 10, 1989.

[FR Doc. 89-24541 Filed 10-17-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
October 18, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 1 et. al.
Airspace Reclassification; Proposed Rule

VOL 54 ISS 200 OCT 18 1989 UMI

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 1, 11, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 137, and 171

[Docket No. 24456, Notice No. 89-28]

RIN 2120-AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt certain recommendations of the National Airspace Review (NAR) concerning changes to regulations and procedures dealing with airspace classification. These changes are intended to: (1) Simplify airspace designations; (2) achieve international commonality of airspace designations; (3) increase standardization of equipment requirements for operations in the various classifications of airspace; and (4) associate appropriate pilot certification requirements, visual flight rules (VFR) visibility and distance from clouds rules, and air traffic services offered in each proposed class of airspace. This proposal represents the combination of three separate advance proposals issued in 1985 concerning airspace assignment and related air traffic operating rules. The FAA believes the simplified airspace classification proposed in this action will reduce existing airspace complexity and thereby enhance safety.

DATES: Comments must be received on or before April 18, 1990.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24456, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. A. Wayne Pierce, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Any materials submitted should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24456." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed as a result of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of the Advisory Circular No. 11-2 which describes the application procedure.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. Organizations participating in the NAR included:

Aircraft Owners and Pilots Association (AOPA)
Air Lines Pilots Association (ALPA)
Air Transport Association (ATA)
Department of Defense (DOD)
Experimental Aircraft Association (EAA)
Federal Aviation Administration (FAA)
Helicopter Association International (HAI)
National Association of State Aviation Officials (NASAO)
National Business Aircraft Association (NBAA)
Regional Airline Association (RAA)

The main objectives of the NAR were: (1) To develop and incorporate into the ATC system a more efficient relationship between traffic flows, airspace allocation, and system capacity. This will involve the use of improved air traffic flow management to maximize system capacity and improve airspace management.

(2) To review and eliminate, wherever possible, governmental restraints to system efficiency imposed by Federal Aviation Regulations (FAR) and FAA directives thereby reducing complexity and simplifying the ATC system.

(3) To revalidate ATC services within the National Airspace System (NAS) with respect to state-of-the-art and future technological improvements.

In concert with the foregoing objectives, several NAR task groups were organized and assigned to review various issues associated with airspace classifications and ATC procedures, pilot certification requirements, and aircraft equipment and operating requirements in the different categories of airspace. The recommendations identified and discussed below in the paragraph entitled "Discussion of Pertinent NAR Recommendations," were made by these task groups and were the basis of three separate advance notices of proposed rulemaking (ANPRM): Notice No. 85-4, Terminal Airspace Reclassification, Docket No. 24455 (50 FR 5055; 2/5/85); Notice No. 85-5, Airspace Reclassification/Services/Requirements, Docket No. 24456 (50 FR 5046; 2/5/85); and Notice No. 85-15, Controlled Airspace Designations in International Airspace, Docket No. 24732 (50 FR 30798; 7/29/85).

Related Agency Actions

Subsequent to the issuance of these ANPRM's, the FAA has undertaken other regulatory actions which affect the content of the airspace reclassification being proposed. First, on January 29, 1987, the FAA issued Amendment No. 91-198 (52 FR 3380; 2/3/87) which required, effective 12/1/87, all aircraft operating in a Group II terminal control area (TCA) to be equipped with a transponder capable of reporting altitude information.

Second, on October 14, 1988, the FAA published Amendment Nos. 61-80, 71-11, and 91-205 (53 FR 40318). Amendment No. 71-11 established a single-class TCA. Operations within what were previously Group II TCA's will be subject to the more stringent aircraft equipment requirements already existing for Group I TCA's (Amendment No. 91-205).

Pursuant to Amendment Nos. 61-80 and 91-205, operations within a TCA by a student pilot will be limited to those conducted through a TCA, at non-TCA primary airports, and at selected TCA primary airports. Such student pilot operations will be allowed only after the student has received specific additional training, a determination that the student is competent to operate in a TCA, and a logbook endorsement by an instructor of the student's competency. Also proposed under the same NPRM (Notice No. 87-7) that culminated in Amendment Nos. 61-80, 71-11, and 91-205, each aircraft operating below 12,500 feet mean sea level (MSL) within 30 miles of a TCA primary airport would have been required to have an operating transponder with automatic altitude reporting capability. This last proposal was modified and made a part of Amendment No. 91-203 (52 FR 23356; June 21, 1988). Amendment No. 91-203 requires, in pertinent part, altitude encoding: (1) When operating within 30 miles of a TCA primary airport below 10,000 feet; (2) above an airport radar service area (ARSA) below 10,000 feet; (3) anywhere, at and above 10,000 feet.

Third, the FAA proposed, in response to laws enacted in December 1987, Pub. L. 100-202 and Pub. L. 100-223, to lower the Continental Control Area from 14,500 feet MSL to 1,200 feet above the surface or an altitude yet to be determined. If this proposition, originally publicized in Notice No. 88-2 (53 FR 4306; February 12, 1988), is adopted, there would be no need to continue to designate controlled airspace with the establishment of a Federal Airway. The lowering of Continental Control Area was not included in the final rule, Amendment No. 91-203, and it is not proposed in this notice but may be proposed in a separate, subsequent notice. Notice No. 88-2 also proposed a requirement for aircraft to be equipped with a transponder and altitude reporting equipment for operations within 40 miles of an airport for which a terminal radar facility has been established, and for operations at and above 6,000 feet above the surface or 12,500 feet MSL, whichever is lower. These altitude reporting requirements were modified and made a part of Amendment No. 91-203, as indicated in the preceding paragraph.

The airspace reclassification and requirements proposed earlier in the ANPRM's have been revised in this notice to reflect only those proposals which have not been incorporated into other related rulemaking actions. Those revisions are addressed later in this document in a discussion of the actions proposed.

International Implications

Canada has already implemented a new airspace classification system dividing Canadian airspace into six categories, and has conducted a formal review of that airspace classification system within a framework similarly structured to the U.S. National Airspace Review (NAR). This review is called the Canadian Airspace Review. Currently, Canada's categories of airspace are defined as Classes A, B, C, D, E, and F. Each class of airspace is associated with a set of pilot qualification requirements, pilot operating rules, and specific ATC services.

In addition, the Air Navigation Commission (ANC) of the International Civil Aviation Organization (ICAO) has accepted a recommendation from the Visual Flight Operations Panel (VFOP) of ICAO which proposes: "That ICAO, as soon as practicable, provide states and selected international organizations with information concerning the proposed types of airspace, the types of traffic, and the air traffic services in each." In conjunction with the VFOP recommendation, an airspace classification concept has been developed by the VFOP and accepted by the ANC as a recommendation. The VFOP's recommendations, along with the nearest equivalent U.S. airspace designations, are summarized as follows:

Airspace A (U.S. Positive Control Areas). All operations must be conducted under instrument flight rules (IFR) and are subject to ATC clearances and instructions. ATC service is provided to all aircraft.

Airspace B (U.S. Terminol Control Areas). Operations may be conducted under IFR or visual flight rules (VFR). However, all aircraft are subject to ATC clearances and instructions. ATC service is provided to all aircraft.

Airspace C (U.S. Airport Radar Service Areas). Operations may be conducted under IFR or VFR; however, all aircraft are subject to ATC clearances and instructions. ATC service is provided to all aircraft operating under IFR and, as necessary, to any aircraft operating under VFR when any aircraft operating under IFR is involved. All VFR operations will be provided collision hazard information (traffic advisories) and, upon request, conflict resolution instructions.

Airspace D (U.S. Airport Traffic Areas). Operations may be conducted under IFR or VFR; however, all aircraft are subject to ATC clearances and instructions. ATC separation service is provided to aircraft operating under IFR only. All traffic will receive collision hazard information (traffic advisories) and, upon pilot request, conflict resolution instructions.

Airspace E (U.S. General Controlled Airspace). Operations may be conducted under IFR or VFR. ATC service is provided to aircraft operating under IFR only. As far as practical, ATC may provide collision hazard information (traffic advisories) to aircraft operating under VFR.

Airspace F (U.S. Has No Equivalent). Operations may be conducted under IFR or VFR. ATC services will be provided, so far as practical, to aircraft operating under IFR.

Airspace G (U.S. Uncontrolled Airspace). Operations may be conducted under IFR or VFR when ATC service is not available.

Present U.S. Airspace Classification

Federal Aviation Regulations (FAR) parts 71, 73, and 75 contain the various designations and definitions of controlled airspace and routes. FAR Part 1 contains the definition of an airport traffic area. Uncontrolled airspace is not designated by regulations but may be thought of as that airspace not included within the definition of controlled airspace in Part 1. Other parts of the FAR contain rules under which pilots and operators must operate while in the various airspace segments as well as in uncontrolled airspace. Pilot certificates are not regulated or issued with respect to operations in a specific airspace designation, but may be issued with a limitation on operations to those conducted under VFR. In general, the application and extent of ATC services are not regulated under the FAR. ATC services are provided in accordance with FAA directives. The following U.S. airspace comparison table is not thoroughly descriptive of the operating requirements of each classification, it is meant only to illustrate the similarity of the airspace types developed by the ICAO panel and those being proposed in this notice.

Positive Control Areas (PCA)—VFOP Class A Airspace. Operations in a PCA must be conducted under IFR and are subject to ATC clearances and instructions. ATC service is provided to all aircraft.

Terminal Control Areas (TCA)—VFOP Class B Airspace. Operations in a TCA may be conducted under IFR or VFR. However, ATC service is provided to all aircraft and all aircraft are subject to ATC clearances and instructions.

Airport Radar Service Areas (ARSA)—VFOP Class C Airspace. Operations may be conducted under IFR or VFR; IFR aircraft are subject to ATC

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clearances and instructions, VFR aircraft must maintain two-way radio communications and are subject to certain ATC instructions. ATC separation is provided to all aircraft operating under IFR and, as necessary, to any flights operating under VFR when any aircraft operating under IFR is involved. VFR aircraft are provided with traffic advisories as necessary. Safety alerts are provided to all aircraft.

Airport Traffic Area—VFOP Class D Airspace. Operations may be conducted under either IFR or VFR; all aircraft must be operating to or from an airport in the air traffic area or have an authorization from the primary airport tower. All aircraft (except those operating to or from an uncontrolled airport within an air traffic area are subject to ATC clearances and instructions. ATC separation is provided to aircraft operations conducted under IFR and to takeoff and landing operations. All aircraft are provided with safety alerts. Traffic advisories are provided on a controller-workload-permitting basis.

General Controlled Airspace—VFOP Class E Airspace. For the purpose of showing comparisons with the reclassification being proposed under this NPRM, the term "General Controlled Airspace" is used to describe U.S. airspace designations within which the pilot operating requirements and ATC services are common to the class of airspace recommended by the VFOP. This designation or classification does not presently exist in the United States. General Controlled Airspace may be considered to be that designated as Colored Federal Airways, very high frequency omnidirectional range (VOR) Federal Airways, the Continental Control Area, Control Areas Associated with Jet Routes Outside the Continental Control Area, Additional Control Areas, Control Area Extensions, Control Zones Without Operating Control Towers, Transition Areas, Area High Routes Outside the United States, and Area Low Routes. Operations may be conducted in these airspace designations under IFR or VFR. ATC separation service is provided only to aircraft operating under IFR. ATC traffic advisory service, however, is provided to other aircraft upon request and on a controller-workload-permitting basis.

Special Use Airspace (SUA)—VFOP, Each Notion Would Use Existing Names. Certain types of airspace in this category are defined in, and designated under, part 73 of the FAR (prohibited areas and restricted areas). The FAA also establishes other types of SUA under nonrulemaking procedures such as alert areas, warning areas, controlled firing areas, and military operations areas. Operations within SUA can be conducted under IFR and VFR, and ATC services are provided only on a case-by-case basis. Section 91.105, visibility and distance from clouds minimums apply.

Uncontrolled Airspace—VFOP Class G Airspace. Airspace which is not otherwise designated as a continental control area, control area, control zone, terminal control area, or transition area, within which some or all aircraft may be subject to ATC. Under this proposal, Class G would become all navigable airspace not otherwise designated as Class A, B, C, D, E, or SUA.

Discussion of Comments to the Advance Notices

The comments discussed below were received in response to the three advance rulemaking efforts. These separate efforts are being combined into this action and are being published as one NPRM. Several comments were received which are no longer applicable to this proposal, as they addressed proposals originally contained in the ANPRM's which have been acted upon through other rulemaking actions.

The Air Line Pilot Association (ALPA) commented that the proposal lacks commonality with the Canadian classification and the proposed ICAO airspace system and suggested that it was premature to adopt an airspace classification before there is international agreement. Further, ALPA recommended that the airspace reclassification proposal be used only as a guide for further international consideration.

However, the Aircraft Owners and Pilots Association (AOPA) suggested that international standardization can be achieved and that it is reasonable to assume that an airspace designator should be necessary for each category of airspace that is common in its operations, equipment, and pilot qualification requirements. The VFOP-recommended airspace classification, AOPA suggests, has sufficient merit to justify consideration for some degree of incorporation in the U.S. system. AOPA recommended that the United States give first consideration to obtaining international agreement on an acceptable list of standardized airspace definitions keyed to an alphabetical identifier and should not proceed further with the airspace reclassification proposed in Notice No. 85-5 until such a consensus is reached by the VFOP. Also, AOPA stated, the FAA should achieve standardization, where possible, with the Canadian airspace definitions. However, AOPA stated, the FAA should not adopt an indentification for SUA similar to that implemented by Canada. Furthermore, AOPA commented, the elimination of existing airspace names, airspace subcategories, and airspace acronyms should be a product of any reclassification effort if simplification is to be achieved. It is entirely too late, AOPA commented, for a unilateral U.S. implementation to have any significant influence on the ICAO VFOP recommendations, and the proposal's goal of international commonality will be difficult to achieve. AOPA concluded that there is no reason to go foward with rulemaking that does not contribute to that goal.

An FAA representative, as a member of the VFOP, met with other VFOP members in a working-group-of-the-whole conference in October 1985 and with the complete VFOP in July 1986 in Montreal. Also in attendance were the representatives of Canada, United Kingdom, Republic of Germany, Australia, New Zealand, France, U.S.S.R., and various representatives of international user organizations. Of concern to some of the members of the VFOP working group was the U.S. airspace classification proposal contained in Notice No. 85-5 and the adopted Canadian airspace classification system. The concerns were for the United States and Canadian deviations from the VFOP's previously adopted airspace classification recommendations. The working group reviewed various recommendations of individual members; however, it basically sustained the previously adopted recommendations. The VFOP's recommendations have been circularized as an official ICAO proposal to its various member states.

The FAA reviewed the VFOP recommendations and recognized that its original proposals would have to be modified in order to achieve the stated goals of international airspace reclassification. The required modifications, as reflected in this notice, are relatively few and the FAA views them as being in the spirit of the NAR recommendations that precipitated the original proposals.

While one commenter believed that changing statute-mile measurements to nautical-mile measurements appeared to be a change for change's sake, AOPA and another commenter generally supported the aspects of the proposal to standardize the dimensions of air traffic areas, control zones, and surface areas of ARSA's. AOPA's support was qualified, however, by the condition that the ceilings of these airspace areas

would be established at 3,000 feet above the surface. The FAA proposes to establish those ceilings at 4,000 feet above the surface. Additionally, AOPA objected to the aspects of the proposal which would change airspace lateral dimension descriptions from statute miles to nautical miles because it believed the proposal would result in an increase in the size of the affected airspace; e.g., an air traffic area changing from a 5-statute-mile radius from the airport to a 5-nautical-mile radius would add airspace to that air traffic area. AOPA recommended that the FAA consider designating any future air traffic area with a 4-nautical-mile radius which would represent only an 8 percent decrease in radius and 15 percent decrease in area size. AOPA also stated that it favors using a 4-nautical-mile radius control zone for new locations and retention of existing control zone sizes except where significant advantages can be shown to result from change.

The FAA is convinced that safety is enhanced by standardization and is proposing to adopt the NAR recommendations to describe airspace assignments using nautical-mile measurements. Accordingly, the FAA is proposing to convert each control zone from statute-mile measurements to equivalent nautical-mile measurements; e.g., one statute mile would become .87 nautical mile. Further, the FAA no longer believes that there is a need to universally describe a control zone in terms of a 5-mile radius. In some cases, this airspace may be excessive, while in others it may be insufficient to contain instrument procedures.

Adoption of the aspects of this proposal dealing with control zones would eventually lead to the elimination of control zones as an airspace classification. During the transition, prior to the elimination of control zones, the FAA would promulgate rules at the regional level to describe control zones in terms of required airspace. This procedure is consistent with the current practice of establishing and describing control zones.

Further, this notice proposes to amend the operating rules of part 91 associated with operations in an air traffic area to specify the rules for operations within specific classes of airspace. The control zone(s) and surface area associated with each TCA and ARSA would be subjects of individual rulemaking actions designed to make those areas standard in size except as required by topography and local conditions. This is viewed as a transitional step leading to the elimination of control zones as an airspace classification. Additionally, a control zone with an operating control tower, at locations other than surface areas of TCA's or ARSA's, would be reclassified as Class D airspace. For the most part, the operating requirements currently applicable to an airport traffic area would apply to Class D airspace. As a result, the term "airport traffic area" would become superfluous and is proposed to be eliminated. The two-way radio communications requirement for operations to or from the primary airport is extended to include operations to or from a satellite airport. Control zones at locations without operating control towers would be reclassified as Class E airspace and the existing rules for operating in that airspace would effectively remain unchanged.

Several commenters, including the National Business Aircraft Association (NBAA), endorsed the proposals. ALPA objected to the proposal on the grounds that the proposed airspace reclassification would be as confusing as the current system. ALPA's view was shared by another commenter who was of the opinion that the proposal, if adopted, would produce more confusion rather than simplification. Further, ALPA stated that the task group did not make a specific recommendation urging the United States to reclassify its airspace.

The FAA recognizes that the NAR Task Group did not specifically urge the FAA to adopt their recommendations; however, the task group did recommend the FAA pursue their recommendations in the light of the Canadian airspace reclassification and the work being done by the ICAO in the airspace classification area. Additionally, the FAA recognizes that there could be potential for confusion if the reclassification were to be accomplished as presented in the ANPRM's because of the significant differences in the ICAO and the Canadian approaches. As mentioned above, the FAA has modified the proposals by aligning the airspace types with the ICAO approach.

ALPA also commented that the classification of ARSA's remains unresolved. AOPA recommended in its comments that the FAA classify an ARSA as Class C airspace. AOPA also suggested that the FAA specify that terminal radar service areas (TRSA) would continue to exist only on an interim basis, until full implementation of the ARSA Program is achieved.

Under this proposal, ARSA's would be reclassified as Class C airspace; however, each TRSA-to-ARSA conversion would be accomplished under separate rulemaking actions. Any remaining TRSA would be a candidate for disestablishment.

ALPA commented that the ANPRM failed to indicate how the FAA would ensure that all pilots would acquire the basic knowledge to operate safely in a reclassified airspace system. The Experimental Aircraft Association (EAA) commented that it was of the opinion that the airspace classification would be a burden on pilots and flight schools but a boon to textbook and chartmakers. However, AOPA commented that it is convinced that implementation of a standardized airspace classification could be in the best interest of all users of the NAS and that the incremental cost of implementing the proposal is insignificant when compared to the obvious benefits in reduced complexity. AOPA also stated that the cost impact would be minimal to pilots and other aviation-related activities as much of that reeducation would be accomplished by voluntary efforts of the aviation press. AOPA encouraged the FAA to utilize safety seminars, FAA General Aviation News, and direct mailings to describe and detail the new airspace classification system to the active pilot population.

In the event the FAA adopts the proposals contained in this notice, appropriate educational efforts similar to those recommended by the AOPA would be completed prior to the effective date of any final rule dealing with the reclassification of airspace. A draft implementation plan has been placed in Docket No. 24456 and it addresses the principal areas upon which the FAA would concentrate its educational efforts.

ALPA objected to the aspect of the proposal that would allow special VFR (SVFR) operations at some TCA locations where SVFR is currently prohibited by § 93.113. ALPA stated that if such a provision were to be adopted, then safety would be degraded.

The regulation in part 93 that prohibits SVFR operations in specific control zones is not proposed to be changed except for its incorporation into part 91. SVFR operations would continue to be prohibited at those locations listed in § 93.113 if the proposals in this notice are adopted.

EAA commented that the current plain language airspace description system is a well understood system, and since English is the international aviation language, the ICAO airspace classification system should be in plain English.

Any airspace reclassification adopted in the United States would, of course, be

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based on the English language. While one of the goals of this notice is to increase international commonality of classifications, ICAO rules and conventions are not proposed nor established through this or any other U.S. rulemaking proposal or action.

EAA commented that it sees no benefit in allowing ultralight operations above 3,000 feet above the surface in what is control zone airspace under the present airspace structure but what could be classified under the proposed airspace reclassification as "general" controlled airspace.

The provisions of part 103 which restrict ultralight vehicle operations in any TCA, ARSA, air traffic area, and PCA would remain in effect under both proposals contained in Notice Nos. 85–4 and 85–5. This means that, under these proposals an ultralight vehicle could continue to operate above these airspace areas provided the airspace above the area is "general" controlled airspace. The proposal in this notice regarding ultralights merely changes the language of part 103 to reflect the proposed new airspace designations. This notice does not propose to change the existing rules for operating ultralights except that which occurs due to the proposed use of 4,000 feet above the surface as a ceiling for Classes D and E surface areas.

EAA also suggested that the proposed distance from cloud minimums for operations in TCA airspace (clear of clouds) would be feasible only if proposed ATC separation standards were in effect in that airspace.

The FAA has not proposed any new separation standards in Notice Nos. 85–4, 85–5, or 85–15. Currently, ATC provides Stage III separation service in TCA's and is planning to continue to provide similar services in the reclassified TCA airspace.

AOPA commented that the combining of air traffic areas, ARSA's, TRSA's, and control zones into Class C airspace would result in the FAA applying the more restrictive requirements of these types of airspace to the currently less restrictive airspace. For example, the communications requirements associated with an ARSA would also become associated with a simple air traffic area or control zone.

The proposals, if adopted as presented in the notices, would require a pilot to establish and maintain two-way radio communications with ATC prior to operating in the reclassified airspace of an airport traffic area with an operating control tower regardless of the operation being planned or conducted in that airport traffic area.

This aspect was explicitly recommended by the NAR Task Group. However, the FAA has modified its proposals concerning Class C airspace to classify only those control zones associated with ARSA's as Class C airspace because of the commonality of air traffic services provided in that airspace. This means that if this proposal is adopted the lateral boundaries of the surface area of an ARSA, associated control zone, and associated air traffic area would be reviewed and appropriately adjusted so that Class C airspace, which would replace these areas, would be represented on charts by a single "line." However, such actions would be accomplished under separate airspace rulemaking proposals. Further, other control zones currently associated with air traffic areas, but not associated with an ARSA or TCA, would become Class D airspace. As recommended by the NAR task group, the same two-way radio communications requirement of proposed Class C airspace would apply to Class D airspace. The services presently provided in air traffic areas would continue to be provided but within the entire Class D airspace area.

AOPA stated that the FAA's discussion of SUA in the proposal was misleading in regard to the statement that "* * * ATC separation service is not provided between aircraft operating in SUA."

The FAA acknowledges that the statement was partially incorrect. Appropriate separation in SUA would be provided for operations conducted under IFR in controlled airspace. However, ATC does not route nonparticipating IFR traffic through an active SUA.

AOPA commented that the proposal incorrectly implies that there is a further requirement for a pilot to obtain an ATC authorization before overflying an air traffic area.

Since an overflight operation could be construed as an operation conducted above an air traffic area, the statement in the proposal addressed by AOPA could be misunderstood. Section 91.85(b) limits operations within an air traffic area to those conducted to or from an airport in the air traffic area; thus, any operation conducted through an air traffic area for any other purpose, including transiting or "overflights" may be conducted only under an ATC authorization.

ALPA commented that the charting of a reclassified system would be a tremendous and costly undertaking which would take years to accomplish. The FAA does not agree with this assertion. The projected costs and implementation period are discussed below in a summary of the draft regulatory evaluation and in more detail in the regulatory evaluation document contained in the docket.

ALPA commented that it strongly supports the terminal airspace proposals contained in Notice No. 85–4 as a positive step toward standardization and simplification of the ATC system, except for the NAR recommendation to change the name of an air traffic area to control tower area. Stating that while the recommended name change would be more indicative of the area and its applicability, ALPA suggested that the change appears to be a change for change's sake and that it would involve considerable pilot reeducation. AOPA also objected to the proposed term "control tower area," as it believed that the resulting abbreviation, "CTA," is in common use internationally to represent a type of controlled airspace. However, EAA commented that it supports the proposal to change the name of an air traffic area to a control tower area.

The FAA recognizes the potential for some confusion that would be associated with the abbreviation for the term "control tower area" (CTA) and the international abbreviation for the term "control area" (CTA). However, as stated previously, the FAA is proposing to eliminate the term "airport traffic area," and to reclassify such airspace according to the type of airspace for which the airport qualifies. This notice does not propose to adopt the term "control tower area."

AOPA objected to the aspect of the proposals that would limit the application of the SVFR provisions of § 91.107, when applied within the surface area of a TCA (Class B airspace), to the airspace below 3,000 feet above the surface within 5 miles of the primary airport. Instead AOPA suggested that SVFR operations should be authorized in Class B airspace within the entire surface area of the TCA up to 3,000 feet above the surface.

The FAA agrees with the AOPA comment and has modified the proposal so that SVFR operations could continue to be authorized by ATC in portions of the surface areas of Class B, C, D, or E airspace as specified in an ATC clearance, provided SVFR operations are conducted utilizing the appropriate required equipment and are not prohibited by § 93.113.

AOPA objected to the proposed definition of SVFR referring to Class B, C, or D terminal airspace, and which, AOPA stated, implies that there is also Classes B and C en route airspace. AOPA recommended that airspace class identifiers be constructed so as to eliminate the need to relate airspace to terminal or en route designations. AOPA also suggested that the NAR recommended changes to the VFR Minima tables in §§ 91.105 and 103.23 which associate the proposed Class B airspace cloud clearance minima above and below 10,000 feet MSL with the terms "en route" or "terminal," are unnecessary. AOPA suggested that the FAA delineate the different minima at 10,000 feet MSL and in this way serve the objective of simplification and contribute to the achievement of commonality.

Additionally, AOPA commented that while it generally supports the proposed pilot certification and qualification requirements for conducting operations in a reclassified airspace system, it objected to the implication that the pilot qualification requirements for operations in Class C airspace would only apply to operations in Class C terminal airspace. This implication, AOPA suggested, further implies that there is also en route Class C airspace.

The FAA partially agrees with the AOPA comments and is proposing airspace classifications and associated VFR minima tables that refer only to the appropriate airspace classification and the differing requirements of Class E airspace above and below 10,000 feet MSL. While Classes B, C, and D airspace are inherently terminal airspace classifications, the terms "en route" and "terminal" are not used to describe airspace in this proposal.

AOPA commented that the current 5-mile visibility requirement for operations conducted in controlled airspace above 10,000 feet MSL does not apply at and below 1,200 feet above the surface, and that Notice No. 85–5 would delete this exclusion. AOPA suggested that this exclusion be retained.

The proposal in Notice No. 85–5 would simplify the visibility requirements by associating them with operations in specific airspace classifications. The surface to 1,200 feet above the surface exclusion would not apply in proposed designations of Classes A, B, C, and D airspace in order to maintain uniformity of operations within those airspace areas. However, under the proposal in this notice the exclusion would continue to apply to Class E airspace.

AOPA objected to the different ceilings for the Class C airspace designations such as 4,000 feet above the surface for ARSA designations, and 3,000 feet for the other Class C airspace designations that would replace the present air traffic areas and control zones. Another commenter suggests that ARSA's be classified as Class C airspace and that the ceiling of all Class C airspace be 3,000 feet above the surface.

The FAA agrees that ARSA's should be classified as Class C airspace and this proposal reflects that agreement. Additionally, for the sake of uniformity of airspace designations, the FAA is proposing that the ceilings of Classes C, D, and E airspace areas that replace control zones be designated at the MSL equivalent of 4,000 feet above the elevation of the airport for which the airspace is designated. In regard to a control zone for a TCA primary airport, such airspace would be replaced with Class B airspace designated to the surface. However, the ceiling would be that which was designated for the entire TCA.

While, AOPA commented that it generally supports the criteria proposed in Notice No. 85–5 for selecting candidate locations for conversion from Class C to Class B, it objects to the language in Notice No. 85–5 which suggests that the Department of Defense would provide the criteria for making military airfields candidates for Class B airspace. AOPA suggested that the FAA establish, and make public, clear criteria based on operations and other factors, against which military Classes B and C airspace designations could be evaluated for implementation or continuation.

While the FAA has published criteria for the establishment of an ARSA and a TCA, there are no plans to establish similar criteria for the classes of airspace. Under this proposal, any class of airspace could be designated at a given location or area. For example, Class B airspace could be established in the en route structure and Class A airspace could be established in a terminal environment. However, in any case each such action would have to be accomplished individually under the appropriate rulemaking procedures.

AOPA commented that the floors of "general controlled airspace," should be made consistent with the floors of the similarly designated Canadian airspace by excluding the airspace below 3,000 feet above the surface except for the airspace presently designated as control zones and transition areas. As discussed herein above, this aspect was addressed in Notice No. 88–2 but dropped from the final rule and may be the subject of a separate proposal to follow this notice. For the purpose of the airspace reclassification proposal, the FAA did not propose to establish a common base for controlled airspace as suggested by AOPA and as exists in Canada. Canada is currently reviewing its airspace structure including the established common base of controlled airspace toward reaching commonality with the U.S. system and ICAO planning.

EAA suggested that the total number of TCA's be reduced by redesignating some TCA's as ARSA's. By doing this, EAA stated, pilots would benefit because there would no longer be a transponder requirement in the affected airspace.

TCA's are established to provide more efficient control in terminal areas where there is a large volume of air traffic and where a high percentage of that traffic is large turbine-powered aircraft. Therefore, the elimination of some TCA's would create a substantial adverse impact on the safe and efficient control of air traffic in those high volume terminal areas. Further, Amendment No. 91–203 requires the use of Mode C transponders in ARSA's by December 31, 1990.

The Department of the Navy, Office of the Chief of Naval Operations (CNO) commented that it had no objections to the proposed terms for use in describing international airspace designations for clarification purposes.

However, the CNO did state that it would view any change to existing airspace boundaries, regulatory altitudes, etc., as an FAA initiative to encroach upon airspace historically reserved for Department of Defense use.

Under Executive Order (E.O.) 10854, the FAA may not designate controlled airspace in international airspace without first consulting with the Departments of State and Defense. While this proposal would not in itself enlarge controlled airspace outside of the United States, it would amend the regulations that are used to establish/alter airspace descriptions over the high seas. However, the actual establishment or alteration of airspace that is under the auspices of E.O. 10854 would only take place after appropriate consultation with the Departments of State and Defense.

ALPA commented that the NAR recommendations dealing with adopting the term "offshore control area," establishing a uniform base altitude for such areas, and the naming of offshore control areas are practical and reasonable and suggested that the FAA further pursue the recommendations. ALPA suggested that the FAA await final disposition of the NAR recommendations dealing with reclassifying the U.S. airspace structure until further consideration is given to including airspace designations outside the United States. However, AOPA suggested that the proposal be combined

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with the proposal dealing with U.S. airspace reclassification.

In the interest of standardization and simplification, the FAA is proposing to reclassify airspace designations outside the United States as Class E airspace except where otherwise designated, as in TCA's (Class B airspace), ARSA's (Class C airspace), and control zones with operating control towers (Class D airspace) that extend outside of U.S. airspace.

The Air Transport Association (ATA) commented that it concurred with the proposals dealing with the designation of controlled airspace outside the United States provided there was no linking of § 91.70 provisions with the proposal. Currently § 91.1 makes § 91.70(c) applicable to U.S.-registered aircraft operations conducted in airspace outside the United States; i.e., indicated airspeeds greater than 200 knots are not permitted in the airspace underlying a TCA. This notice does not propose to modify the applicability of § 91.70 to operations outside the U.S.

The Air Traffic Control Association (ATCA) commented that it believes the proposal dealing with airspace designations outside the U.S. would enhance safety by reducing the likelihood of misunderstanding and that costs should be reduced by a resulting decrease in the amount of printed matter and required revisions. While stating that it believed that small businesses, non-profit organizations, or governmental jurisdictions would not be significantly impacted, ATCA was unsure of the cost impact on pilots and other related personnel. However, ATCA believes that such impacts could be minimized if adequate advance notice of changes were given prior to implementation.

The FAA will not implement any general reclassification of airspace until it is convinced the using public and its own staffs are thoroughly familiar with the changes.

ATCA recommended that the FAA develop any required charting changes in consultation with the affected users prior to issuing an NPRM.

The FAA believes that changes to existing charting specifications will be minimal and not of sufficient substance to warrant consultation with users prior to issuing an NPRM. However, if the FAA subsequently finds it necessary to produce prototype charts containing such changes, then copies would be made available for review and comment.

Discussion of Pertinent NAR Recommendations

The full text of the NAR recommendations germane to this proposal are contained in Notice Nos. 85–4, 85–5, and 85–15 as well as in the appropriate NAR staff studies. While review of these documents is not necessarily a prerequisite for understanding the proposed rules contained in this notice, interested parties may elect to review these relevant documents with this notice. A copy of each relevant staff study is in Docket No. 24456.

NAR 1–5.2.1 and 1–5.2.2—Airspace Reclassification. The NAR Task Group recommended that the FAA consider reclassifying its airspace system by either adopting the Canadian airspace classification system or one similar to it. The group suggested further that such consideration should be accomplished under the NAR with appropriate industry participation.

The FAA accepted these recommendations by including them as topics of the subtask groups under NAR Task Group 1–7.

NAR 1–7.1.1 and 1–7.1.2—Airspace Reclassification. The NAR Task Group recommended that the FAA and NAR pursue an airspace reclassification concept and to utilize the airspace reclassification model developed by Task Group 1–7.1.

Note: Task Group 1–7.1's Recommended Airspace Classification Model, appears in Appendix B of Task Group 1–7.1 Staff Study and a copy of which is in the public docket. For the purpose of this NPRM, the group's airspace model was utilized in developing Table 1—Airspace Classes.

The FAA has accepted these recommendations by virtue of issuing Notice No. 85–5 and the proposals contained in this notice.

NAR 1–7.2.2—TRSA Replacement. This recommendation would require a pilot, operating an aircraft in the class of airspace adopted for ARSA's that had replaced TRSA's, to participate in the ATC services provided in that class of airspace.

Note: While not established under any regulatory process, a TRSA generally consists of airspace already established under part 71 wherein the FAA provides radar vectoring, sequencing, and separation on a full-time basis to all aircraft operating under IFR and participating aircraft operating under VFR.

The FAA has accepted this recommendation as an aspect of this proposal.

NAR 1–7.2.4—SVFR Limits. This recommendation sought to keep the operational provisions of SVFR as applicable in the class(es) of airspace adopted for control zones. However, it would limit the application of SVFR to that airspace below 3,000 feet above the surface within a 5-mile radius of the affected airport.

Under this proposal all control zones would be replaced by Classes B, C, D, and E surface areas. Under procedures that would be developed for SVFR, a controller would limit the effectiveness of a SVFR clearance to that airspace below 4,000 feet above the surface. For example: "Cessna 234V cleared out of Class B (or C, or D, or E) airspace 10 miles west, maintain special VFR at or below 2,500 feet, etc." The FAA has opted for 4,000 feet above the surface versus 3,000 feet, as recommended by the task group, in order to promote standardization with the ceilings of ARSA's and with the proposed vertical limit of the Class E surface area prohibition, below which ultralight operations would have to be operated under an ATC authorization.

Further, the FAA disagrees with the aspect of the NAR recommendation that would limit SVFR to that airspace within 5 miles of the airport. The FAA has chosen to limit the effectiveness of SVFR to the lateral boundaries of the surface area as in most cases, this would be the point where a pilot would likely encounter uncontrolled airspace and if improved meteorological conditions have not been encountered, the pilot could continue flight in that airspace under the same meteorological conditions as authorized under a SVFR clearance. Also, many TCA's have surface areas that extend beyond 5 miles. A mandatory SVFR clearance limit of 5 miles from the airport could create situations whereby a pilot would reach 5 miles and not encounter visual meteorological conditions but would require an IFR ATC clearance to proceed further or another SVFR clearance to return to the airport. The FAA believes it more efficient to allow the effectiveness of a SVFR clearance to extend to the boundaries of controlled surface area to enable a pilot to continue flight, if desired by the pilot and otherwise permitted by the rules.

NAR 1–7.2.5—SVFR Definition. This recommendation would define the term "SVFR Conditions" in the Pilot/Controller Glossary (Airman's Information Manual) and in part 1 of the FAR as weather conditions which are less than basic VFR minima and in which some aircraft are permitted to operate under VFR.

This recommendation is accepted and proposed in this notice.

NAR 1–7.2.6—SVFR Definition. This recommendation would define the term "SVFR Operations" in the Pilot/Controller Glossary (Airman's Information Manual) as any operation conducted under VFR, in SVFR conditions, in accordance with an ATC clearance issued in response to a pilot's request to conduct such an operation.

This recommendation is accepted and will be reflected in appropriate publications if the proposed rules in this notice are adopted and issued as final rules.

NAR 1–7.2.7—Revise § 91.107. This recommendation would revise § 91.107 to eliminate the term "control zone."

This recommendation is proposed in this notice. The airspace of a control zone, under this proposal, would be classified according to the specific safety conditions, traffic density, and degree of ATC involvement needed to provide the appropriate level of safety in that airspace. Accordingly, the single term "control zone" would no longer be used in the FAR.

NAR 1–7.2.8—Revise § 103.17. This recommendation confirms the existing prohibition of ultralight operations in the classes of airspace adopted for control zones, air traffic areas, ARSA's, PCA's, and TCA's.

Effectively, this recommendation is accepted and the FAA proposes that ultralight operations would continue to be permitted in such airspace areas as they are under current rules. This notice proposes to amend § 103.17 to prohibit, unless otherwise authorized by ATC, ultralight operations in Classes A, B, C and D, and below 4,000 feet above the surface in any Class E airspace area that extends upward from the surface.

NAR 1–7.2.9—Recommended VFR Minima. This recommendation proposes that the VFR Minima tables in existing §§ 91.105 and 103.23 be revised to reflect a reclassified airspace system. Further, this recommendation would, for operations conducted under VFR in Class B airspace, reduce the minimum distance from clouds that a pilot must currently maintain to that of simply maintaining clear of clouds. However, the NAR Task Group recommended that the provisions of existing rules that contain exclusions to the basic VFR minima for helicopters *not* be amended.

This recommendation is effectively accepted including the reduction of cloud clearance minima for operations in a TCA (Class B airspace). The FAA views the relaxation of minima as an enhancement to safety as it has the potential to reduce the number of times that pilots operating under VFR would have to alter course or assigned heading/route in order to remain a specific distance from clouds.

NAR 1–7.3.1—Pilot Certification. The NAR Task Group recommended that the regulatory requirements for the present certification of student, private, instrument, commercial, and airline transport pilots be retained within any reclassified airspace system.

This recommendation is accepted and proposed in this notice.

NAR 1–7.3.2—Pilot Qualifications for Operations in PCA's. The recommendation confirms, as necessary, the existing requirements under § 91.97 that operations conducted in the class of airspace adopted for PCA's, must be conducted under IFR.

This recommendation is accepted and proposed in this notice.

NAR 1–7.3.3—Pilot Requirements for Operations in TCA's. This recommendation would reduce the existing minimum pilot qualifications for operations conducted under VFR in any TCA to that of a student pilot certificate.

This recommendation is effectively accepted but with certain conditions. These conditions are in accordance with the pilot qualification requirements of a related action. Amendment Nos. 61–80, 71–11, and 91–205, established all TCA's as one type and allows certain, limited student pilot activity in a TCA. These amendments established that a student pilot certificate will qualify such a pilot to receive authorization for flight through TCA's (proposed Class B airspace) or to or from most airports within the TCA's. However, student pilot operations to or from certain high traffic density airports in certain TCA's will continue to be prohibited as is the case under the current rule. In any case, all student flight activity will be required to be conducted under an appropriate logbook endorsement from his/her instructor, as well as under an ATC authorization.

NAR 1–7.3.4—Pilot Qualifications for Operations in Control Zones (with operating control towers,) ARSA's, and air traffic areas. This recommendation confirmed the existing rules pertaining to the minimum pilot qualifications for operations in the classes of airspace adopted for ARSA's, air traffic areas, and control zones with operating control towers.

This recommendation is accepted.

NAR 1–7.3.5—Pilot Requirements for Operations in Other Designated Controlled Airspace. This recommendation confirmed the existing rules pertaining to pilot qualifications for operating in the class(es) of controlled airspace adopted for airspace areas other than PCA's TCA's, ARSA's airport traffic areas, and control zones without operating control towers.

This recommendation is accepted.

NAR 1–7.3.6—Pilot Qualifications for Operations in Uncontrolled Airspace. This recommendation confirmed the existing rules pertaining to pilot qualifications for conducting operations in uncontrolled airspace.

This recommendation is accepted.

NAR 1–2.1.3—TCA Operating Requirements. The NAR Task Group recommended that the classification of TCA's, Group I and Group II, be eliminated and that all such airspace classifications be designated as one class of terminal airspace with the following equipment and flight requirements:

(a) A two-way radio capable of communicating with ATC on appropriate frequencies;

(b) Except for helicopter operations, a VOR or TACAN receiver;

(c) Except for helicopter operations conducted under a letter of agreement with ATC, a 4096 code transponder with Mode C automatic altitude reporting equipment;

(d) Except for student pilots with pilot logbook endorsement by a certified flight instructor that he/she has satisfactorily demonstrated ability to operate in this class of airspace, a private pilot certificate would be required as a minimum qualification;

(e) Large turbine-engine powered airplane to or from a primary airport would be required to operate at or above the designated floors while within the lateral limits of this class of airspace;

(f) Operations conducted in the airspace underlying this class of airspace would be limited to indicated airspeeds of 200 knots (230 mph) or less; and

(g) Operations within this class of airspace may, if authorized or required by ATC, be conducted at indicated airspeeds greater than 250 knots (288 mph);

This recommendation is effectively adopted, in part, through other FAA initiatives contained in Amendment Nos. 61–80, 71–11, 91–203, and 91–205.

Amendment Nos. 61–80, 71–11 and 91–205, which were published as a single rule, revised the classification and pilot and equipment requirements for conducting operations in TCA's. Specifically, that rule: (1) Established a single-class TCA; (2) required the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and, (3) eliminated the helicopter exception from

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the minimum navigational equipment requirements. The provisions of that rule are being phased in with the final provisions becoming effective July 1, 1989. Amendment No. 91-203 eliminated the helicopter exception to the transponder and Mode C requirements for operating in a TCA effective July 1, 1989.

NAR 1-2.1.9—TCA Name. The NAR Task Group recommended that the term "Terminal Control Area" and current definition be retained and associated with this class of airspace.

In the interest of simplification of airspace terms and commonality with trends in the international theatre, the FAA believes it inappropriate to retain airspace names as well as the proposed class designator. Therefore, this recommendation is not adopted. TCA airspace would be classified as Class B airspace under this proposal.

NAR 1-2.3.1—Control Tower Area. The NAR Task Group recommended that the term "airport traffic area" or "ATA" be changed to "control tower area."

For the reasons stated for non-adoption of NAR Recommendation 1-2.1.9, this recommendation is also not adopted. The term "airport traffic area" would be eliminated under this proposal and replaced with the appropriate airspace depending on the requirements within the airspace and the ATC services available.

NAR 1-2.3.2—Two-way Radio Communications Requirements in Airport Traffic Areas. The NAR Task Group recommended that the two-way radio communications requirements for operations in the vicinity of an airport with an operating control tower be the same regardless of what entity operates the control tower. Furthermore, the NAR Task Group recommended amending § 91.87 of the FAR to clarify that pilots would be complying with the two-way communications requirements by contacting the ATC facility responsible for the airspace involved.

This recommendation is accepted and proposed in this notice.

NAR 1-2.3.4—Control Tower Area Definition. The NAR Task Group recommended that the definition of an airport traffic area (control tower area) in part 1 of the FAR be amended to make the airport reference point (geographic position) identical to that of a control zone, and to define the horizontal radius of that area as 5 nautical miles versus 5 statute miles.

This recommendation is not adopted. Airport traffic areas would be eliminated and replaced by the appropriate class of airspace designator as discussed previously.

NAR 1-2.3.5—Control Zone Airspace Limits. The recommendation would amend the definition of the term "control zone" in part 71 of the FAR to make its ceiling identical to that of an airport traffic area and to define that any horizontal radius used to describe a control zone to be normally 5 nautical miles versus normally 5 statute miles, and to require the use of nautical miles versus statute miles to describe any extension to a control zone.

This recommendation is not adopted. Under this proposal the term "control zone" would be eliminated. Each Class C and D airspace surface area description would be described with a "4,000-foot cap"; however, the cap would be expressed as an equivalent MSL altitude. As stated previously, the MSL altitude representative of 4,000 feet above the surface has been selected for the purpose of standardization and to continue to maintain the integrity of instrument operations in airspace that was originally designated to protect such operations. Class B and Class E airspace surface areas would not have a regulatory 4,000-foot cap. Instead, a Class B and E airspace surface area would have an effective "procedural cap" at a relatively equivalent altitude for the purposes of placing vertical limits on SVFR operations for the specific airport. A Class E surface area would effectively be capped at 4,000 feet above the airport elevation through the proposed regulatory language for part 103 which would prohibit ultralight operations below 4,000 feet above the surface in a Class E surface area within 5 miles of the airport. Additionally, each such airspace area would be expressed in nautical miles and reviewed as to whether its existing size should be increased or decreased to reflect the actual airspace needed to encompass instrument procedures.

NAR 1-2.3.7—Nautical Miles Versus Statute Miles. The NAR Task Group recommended that for the sake of standardization and consistency of aeronautical references, nautical miles (versus statute miles) be used in Federal Airway, control zone, and transition area airspace descriptions.

This recommendation is effectively accepted since under this proposal all airspace assignments in part 71 would be described with nautical-mile distances.

NAR 2-3.1.13—Global Positioning System (GPS) Use In TAC's. The NAR Task Group recommended that, following certification of GPS for use as a sole navigation aid, § 91.90 be changed to allow its use in TCA's.

This recommendation is not adopted. GPS is not anticipated to be certified for use as a sole NAVAID within the NAS in the near future. Although this recommendation is not adopted, should GPS or any other navigation system become certified for sole use within the NAS, such system(s) would be incorporated, as appropriate, at that time.

NAR 3-2.1.1—Offshore Airspace Nomenclature. This recommendation would rename the airspace descriptions in part 71 of the FAR for "additional control areas," designated in international airspace for which the United States has jurisdiction through ICAO regional agreement, as "offshore control areas."

This recommendation is essentially accepted and airspace designations outside the United States would be classified as an appropriate class of airspace as would be the domestic airspace.

NAR 3-2.1.2—Offshore Control Area Uniform Base. The NAR Task Group recommended that offshore control areas have a uniform base of 1,200 feet above the surface unless otherwise designated.

This recommendation would be implemented to the extent possible. However, floors of designated airspace outside the United States would continue to be established in concert with the Department of Defense requirements and in consultation with the Department of State.

NAR 3-2.1.3—Offshore Control Area Identification. The NAR Task Group recommended that offshore control areas be identified only as named areas, such as the current North Atlantic, Santa Barbara, etc., and that names of airspace descriptions such as Control 1142, Control 1154, Control 1217, etc., would be retained only for airspace descriptions that function as routes.

This recommendation is accepted. However, FAA procedures for naming an airspace description such as Control 1142 would be reviewed in concert with the ICAO-recommended practices for naming routes in offshore airspace.

NAR 3-2.1.4—Offshore Airspace Classification. The NAR Task Group recommended that the offshore control areas be classified as Class A, B, C, D, etc., as appropriate.

This recommendation is accepted and proposed in this notice. With few exceptions, most of the airspace would be classified as Class E airspace.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 and Annex 11, of the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, (61 Stat. 1180), state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Proposal

The proposed amendments would, in part, classify all airspace by use of a single alphabet character designation and thereby eliminate any need or reference to airspace assignments, except offshore control areas and SUA designations. Such changes are intended to achieve international commonality of airspace classification and, to that end, are based on several previously mentioned NAR recommendations as well as on the recommendations of the VFOP of the ICAO. The aspects of this proposal dealing with pilot certification and the proposed amendments to Parts 71; 75, 101, 103, 105, 121, 127, 137, and 171 are generally of an editorial nature to integrate the proposed airspace class designators into the respective regulations dealing with airspace assignments and operating rules. Most of the proposed amendments to part 91 are generally editorial to accommodate the proposed airspace reclassification. However, there are new requirements included in this proposal. It is of particular note that the requirements of §§ 91.70(c), 91.85, 91.87, 91.88, and 91.89 would be put upon operators of U.S. civil aircraft when operating over the high seas. Appropriate notes are interspersed with the actual proposed regulatory language to assist the reader in correlating FAA's regarding for the proposed change.

Regulatory Evaluation Summary

Benefit-Cost Analysis

The regulatory evaluation examines the costs and benefits of this NPRM to reclassify U.S. airspace. This proposed rule is intended to simplify airspace designations, achieve international commonality of airspace designations, standardize equipment requirements and associate appropriate pilot certification requirements as well as certain other requirements associated with each proposed airspace designation. These proposed changes are based primarily on recommendations from a NAR Task Group and would ultimately allow for increased safety and efficiency in the U.S. airspace and ATC system.

Costs

The FAA estimates the total incremental cost that would accrue from the implementation of this proposed rule to be $1.6 million (discounted, in 1986 dollars). Virtually all of the cost, which would be incurred by the FAA, would accrue from revisions to aeronautical charts, reeducation of the pilot community, and revision of air traffic controller training courses. Each one of these factors is briefly discussed below:

1. *Revisions to Aeronautical Charts*—Significant cost impact associated with this proposed rule would result from the requirement to change aeronautical charts. These modifications would be incorporated during the regular updating and printing of the charts. Therefore, all costs associated with printing aeronautical charts are assumed to be normal costs of doing business. However, because of dimension and symbol changes which would be needed, the symbology and depictions on the charts would need to be modified. This would require changes to the plates used to print the charts and would affect most of the aeronautical charts printed. The total cost of revisions to all of the charts is estimated by the National Oceanic Service based on the summation of the costs of revising each class of the airspace. The total discounted cost is estimated to be $1 million.

2. *Revision of Air Traffic Training Courses*—Manuals, textbooks, and other training materials used to educate FAA controllers would need to be updated to reflect the airspace reclassification. According to the FAA Aeronautical Center in Oklahoma City, lesson plans, visual aids, handouts, laboratory exercises, and tests would need to be revised.

The cost of these revisions is determined by multiplying the total revision time by the hourly cost of the course manager making the changes. The course managers are level GS-13 (step 5) employees with an average loaded annual salary of $54,000. Assuming 2,080 hours per year, their average loaded hourly salary is $26. The cost of the course changes is estimated to be $31,000 (discounted). An additional cost of $8,000 (discounted) would accrue as the result of a one-week seminar and associated travel. This seminar would be necessary to educate course managers about the airspace reclassification. The total cost that would accrue from this factor is estimated to be $39,000 (discounted).

3. *Reeducation of the Pilot Community*—Pilots who are presently certificated to operate in the U.S. airspace would need to become familiar with the airspace reclassification if this proposal is implemented. This would be accomplished through a variety of publications, videotapes, and pilot meetings.

The FAA is considering the production of a videotape that would be provided as a public service to industry associations such as AOPA, ALPA, and NBAA to inform them of the airspace reclassification. This videotape could be shown at various association meetings to help reeducate the pilot community. The FAA's Office of Public Affairs, estimates that the film would be 15 minutes in length and could be produced at a cost of $17,000 (discounted).

The FAA is also considering the publication of an Advisory Circular (AC documenting the new airspace classification. This AC would be mailed to each registered pilot. It is estimated that one man-week at a level GS-14 (Step 5) would be required to draft the AC and obtain approval in the sponsoring organization, and one GS-14

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man-week would be required to obtain FAA approval of the AC. The cost associated with 2 man-weeks at a level GS–14 needed to prepare the AC is estimated to be $2,200 (discounted). This cost was estimated using the average loaded hourly salary of a level GS–14 employee which is $31.

After the AC is approved it would be mailed to approximately 761,000 registered pilots. Assuming that the AC would be 10 pages in length and the cost of reproduction is $0.05 per page, the cost of reproduction would be $335,000 (discounted). Assuming that the shipping and handling charge associated with each copy is $0.25, the cost of shipping and handling is $168,000 (discounted). The cost impact that would result from reeducating the pilot community was estimated by summing the cost of the videotape and the AC, described in the preceding paragraphs. This estimated cost impact is $522,000 (discounted).

4. *Equipage with Two-way Radio*—The NPRM would require that aircraft operators in control zones with operating control towers (Class D airspace) be capable of two-way radio communications. Currently, pilots operating to or from an airport having a federally operated control tower must maintain two-way radio communications with the control tower. However, this is not a requirement at satellite airports or at airports with non-federally operated towers. According to NAR Task Group 1–2.3, this inconsistency causes confusion for pilots. Thus the proposal includes the task group recommendation that two-way radio communications be required at all airports with control towers.

According to the *General Aviation Activity and Avionics Survey* (December 1987), the aircraft not equipped with two-way radios are primarily operated for personal, aerial application, aerial observation, and other work use. These four categories account for 133,366 of the 220,044 active general aviation fleet, or about 61 percent. The greatest number of these aircraft fall into the personal use category. According to the survey, an estimated 90 percent of personal use aircraft are equipped with two-way radios.

It can be assumed that an estimated 10 percent which are not equipped with two-way radios are operating in airspace where this equipment is not required. Also, 70 percent of the aircraft used for aerial application are not equipped with two-way radios. However, this change should not affect aerial application aircraft since the FAA plans to continue to authorize the operations in Class D airspace. Based on these assumptions and on the FAA's intention to continue to authorize such aircraft operations at satellite airports in Class D airspace without two-way radio requirements, this proposed change would have no cost impact on the aviation community.

Benefits

This proposed rule is expected to generate benefits in the form of enhanced safety and operational efficiency to the aviation community. These benefits are briefly described, in qualitative terms, below.

1. *Increased Safety Due to Better Understanding and Simplification*—The FAA believes that the simplified classification in this proposal would reduce airspace complexity and thereby enhance safety. This proposed airspace reclassification mirrors the proposed ICAO airspace designations.

This propopsal would increase safety in the United States since foreign pilots operating aircraft in U.S. airspace would be familiar with the airspace designations and classification system.

Another simplification which would help to increase airspace safety is the change that would correlate the class of controlled airspace currently termed a control zone to the airspace of the surrounding area. Presently, there are several types of designated airspace around an airport which makes it difficult for pilots and controllers to determine how the areas are classified and which requirements apply. After the reclassification the terminology would be more explanatory.

The conversion of statute-mile designations to nautical mile designations is intended to further simplify operations. Since the instruments on-board the aircraft are calibrated in nautical miles and aviation charts have representations in nautical miles, this change would eliminate the need for pilots to convert between nautical and statute miles. This simplification would help pilots and controllers to be better able to understand the airspace designations in part 71.

2. *Reduced Minimum Distance from Cloud Requirement*—This proposed airspace reclassification would designate TCA's as Class B airspace. The VFR minimum distance from clouds requirement in this airspace would also change. Currently this distance is 500 feet below, 1,000 feet above, and 2,000 feet horizontal. In Class B airspace, it is proposed that this minimum distance from clouds be "clear of clouds." This change would afford VFR traffic increased opportunities to fly in Class B airspace in more types of weather than they currently have in a TCA. This would not be a threat to safety since all aircraft operating in Class B airspace are provided with the appropriate separation.

3. *Operation of Ultralight Vehicles*—This NPRM would require one operational change regarding ultralight vehicles. The proposal incorporates NAR Task Group 1–7.2's recommendation to change the regulation pertaining to operations under part 103 to reflect the airspace reclassification terminology and adds reference to 4,000 feet above the surface as the floor of such operations over Class C, D, and E airspace surface areas. This is consistent with the proposed revision to the current 3,000 feet above the surface ceiling of airport traffic areas (proposed Class D) and control zones (proposed Class E surface area).

Conclusion

Despite the fact that benefits are *not* quantifiable in monetary terms, the FAA, nonetheless, concludes that the benefits of this proposal would outweigh its expected costs.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this proposed rule.

International Trade Impact Statement

Since this proposal would not affect airspace outside of the jurisdiction or effective control of the United States, it would not impose any new operating requirement in foreign or international airspace. As such, it would have no affect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of U.S. products or services in foreign countries.

Federalism Statement

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in acccordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not

unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities which could be potentially affected by the implementation of this notice are pilot schools (SIC 8299). Training materials used in the courses offered by the pilot schools would have to be modified to reflect the changes of the airspace reclassification. However, it was determined the pilot schools would not incur any cost impact since the documents they use would be updated as a normal course of business. Thus, it has been determined that there would be no cost impact to those pilot schools classified as small entities. Therefore, the FAA certifies that this proposed rule, if promulgated, would not have a significant cost impact on a substantial number of small entities.

The FAA has determined that this proposed rule would not be a "major rule" under E.O. 12291. The FAA has determined that this proposal is a "significant regulation" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Reporting and recordkeeping requirements.

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 75

Airspace, Navigation (air).

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Zimbabwa.

14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Penalties, Reporting and recordkeeping requirements.

14 CFR Part 101

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 103

Aircraft, Aviation safety, Recreation and recreation areas.

14 CFR Part 105

Aircraft, Aviation safety, Recreation and recreation areas, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 137

Agriculture, Aircraft, Aviation safety.

14 CFR Part 171

Air traffic control, Navigation (air), Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons set out in the preamble, the FAA is proposing to amend parts 1, 11, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 137, and 171 of the Federal Aviation Regulations as follows:

PART 1—DEFINITIONS OF ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 1.1 would be amended by removing the definition "airport traffic area," revising the definition of "controlled airspace," adding the definitions of "uncontrolled airspace," and "Special VFR conditions" in alphabetical order to read as follows:

§ 1.1 General Definitions.

* * * * *

Controlled airspace means airspace designated as Class A, B, C, D, or E airspace in Part 71 of this chapter and within which all aircraft may be subject to ATC.

* * * * *

Special VFR conditions mean meteorological conditions that are less than those required for basic VFR flight in controlled airspace and in which ATC may permit aircraft to operate for the purposes of departing from or arriving at an airport within controlled airspace.

* * * * *

Uncontrolled airspace means that portion of the navigable airspace which is not designated in part 71 as controlled airspace.

PART 11—GENERAL RULEMAKING PROCEDURES

* * * * *

3. The authority for Part 11 continues to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. Section 11.61 would be amended by revising (a)(1) and (c). The introductory text of (a) is republished for the convenience of the reader.

§ 11.61 Scope.

(a) This subpart establishes procedures for initiating, processing, issuing, and publishing rules and orders issued under 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)), including—

(1) Designations of controlled airspace under part 71 of this chapter;

* * * * *

(c) For the purposes of this subpart, "Director" means the Executive Director for System Operations, the Associate Administrator for Air Traffic or, the Director, Air Traffic Operations Service or any person to whom the Director as delegated authority in the matter concerned.

* * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422 and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

6. Section 65.37 would be amended by revising (f) introductory text and (f) (2) to read as follows:

§ 65.37 Skill requirements: Operating positions.

* * * * *

(f) Each of the following procedures that is applicable to that operating position and is required by the person performing the examination:

* * * * *

(2) The terrain features, visual checkpoints, and obstructions within the surface area of controlled airspace designated for the airport.

* * * * *

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PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

7. For a discussion of changes to Part 71, see the Supplementary Information section of this document.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

8. The authority for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

9. Section 75.13 would be revised as follows:

§ 75.13 Area routes above 18,000 feet MSL.

Each area route designated in Subpart D of this part consists of a direct course for navigating aircraft at altitudes between 18,000 feet MSL and flight level 450, inclusive, between the waypoints specified for that route.

PART 91—GENERAL OPERATING AND FLIGHT RULES

10. The authority for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. Section 91.1 would be amended by removing the reference to Special Federal Aviation Regulation No. 45–1 and revising 91.1 (a), (c) introductory text and (c)(1) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this part describes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States shall comply with Subpart A, 91.1 through 91.43, and Subpart B of this part.

(c) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with 91.70(c), 91.85, 91.87, 91.88, and 91.89 of Subpart B;

* * * * *

Note: Operations outside the U.S. within the vicinity of an airport would be required to comply with the appropriate rules for such operations.

12. Section 91.17(c)(4) would be revised to read as follows:

§ 91.17 Towing: gliders.

(a) * * *

(4) Before conducting any towing operation below 4,000 feet above the surface within the lateral limits of the surface area of controlled airspace designated for an airport, or before making each towing flight with such airspace if required by ATC, the pilot-in-command notifies the control tower. If a control tower does not exist or is not in operation, the pilot-in-command must notify the FAA flight service station serving that airspace before conducting any towing operations in that airspace.

* * * * *

13. Section 91.24 would be amended by revising paragraphs (b) and (c) to read as follows:

§ 91.24 ATC transponder and altitude reporting equipment and use

* * * * *

(b) *All airspace.* No person may operate an aircraft in the airspace described in paragraphs (b)(1) through (b)(5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3A 4096 code capability, replying to Mode 3A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) *All aircraft.* In Class A and Class B airspace areas;

(2) *Effective July 1, 1989.* All aircraft in all airspace within 30 miles of an airport for which Class B airspace is designated (primary airport), from the surface upward to 10,000 feet MSL;

(3) *Effective July 1, 1989.* Notwithstanding paragraph (b)(2) of this section, any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon or glider may conduct operations in the airspace within 30 miles of a Class B airspace primary airport provided such operations are conducted—

(i) Outside any Class B or Class A airspace area; and

(ii) Below the altitude of the Class B airspace area ceiling or 10,000 feet MSL, whichever is lower; and

(4) *Effective December 30, 1990.* All aircraft—

(i) In Class C airspace, and

(ii) In all airspace above the ceiling and within the lateral boundaries of a Class C airspace area upward to 10,000 feet MSL; and

(5) *All aircraft except any aircraft which was not originally certificated with an engine-driven electrical system or which has not subsequently been certified with such a system installed, balloon, or glider*—

(i) In all airspace of the 48 contiguous states and the District of Columbia:

(A) *Through June 30, 1989.* Above 12,500 feet MSL and below the floor of a Class A airspace area, excluding the airspace at and below 2,500 feet above the surface.

(B) *Effective July 1, 1989.* At and above 10,000 feet MSL and below the floor of a Class A airspace area, excluding the airspace at and below 2,500 feet above the surface; and

(ii) *Effective December 30, 1990.* In the airspace from the surface to 10,000 feet MSL within a 10-mile radius of any airport listed in Appendix D of this part, excluding the airspace below 1,200 feet above the surface outside of the area in which Class E airspace is designated to the surface for that airport.

(c) *Transponder-on operation.* While in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with 91.172 of this part shall operate the transponder, including accordance with 91.172 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

* * * * *

14. Section 91.43 would be amended by revising (c)(1)(i) to read as follows:

§ 91.43 Special rules for foreign civil aircraft.

* * * * *

(c) * * *

(1) * * *

(i) Radio equipment allowing two-way radio communication with ATC when it is operated in controlled airspace; and

* * * * *

15. Section 91.70 would be revised to read as follows:

§ 91.70 Aircraft speed.

(a) Unless otherwise authorized by the Administrator (or ATC in the case of operations in Class A or B airspace), no person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 mph).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft below 4,000 feet above the surface within Class A, B, C, or D airspace surface area at an indicated airspeed of more than—

(1) In the case of reciprocating engine aircraft, 156 knots (180 mph); or

(2) In the case of turbine-powered aircraft, 200 knots (230 mph).

(c) No person may operate an aircraft through a VFR corridor designated in Class B airspace, at an indicated airspeed of more than 200 knots (230 mph).

(d) If the minimum safe aircraft speed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

16. Section 91.71 would be amended by revising (c), (d), and (e) and by adding (f) to read as follows:

§ 91.71 Acrobatic flight.

* * * * *

(c) Below 4,000 feet above the surface within the lateral limits of the surface area of controlled airspace designated for an airport;

(d) Within 4 nautical miles of the center line of any Federal airway;

(e) Below an altitude of 1,500 feet above the surface; or

(f) When flight visibility is less than 3 statute miles.

* * * * *

17. Section 91.75 would be amended by revising paragraph (a) to read as follows:

§ 91.75 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, a pilot-in-command may not deviate from that clearance, except in an emergency, unless that pilot obtains an amended clearance. However, except in Class A airspace, this paragraph does not prohibit that pilot from canceling an IFR flight plan if the operation is being conducted in VFR weather conditions. When a pilot is uncertain of an ATC clearance, that pilot shall immediately request clarification from ATC.

* * * * *

18. Section 91.85 would be revised to read as follows:

§ 91.85 Operating on or in the vicinity of an airport.

(a) *General.* Unless otherwise required by part 93 of this chapter or unless otherwise authorized or required by ATC, each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section and the applicable requirements of this part for operating in specific classes of airspace.

(b) *Flap settings.* Except when necessary for training or certification, the pilot-in-command of a civil turbojet-powered aircraft shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the Airplane Flight Manual for the applicable conditions. However, each pilot-in-command has the final authority and responsibility for the safe operation of his airplane, and may use a different flap setting for that airplane if he determines that it is necessary in the interest of safety.

(c) *Minimum altitudes.* Each pilot of a large or turbine-powered airplane shall:

(1) Unless otherwise required by the applicable distance from cloud criteria, enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing;

(2) When approaching to land on a runway served by an instrument landing system (ILS), shall, if the airplane is ILS-equipped, fly that airplane at an altitude at or above the glide slope between the outer marker (or point of interception of glide slope, of compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) When operating an airplane approaching to land on a runway served by a visual approach slope indicator, maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing. Paragraphs (c)(2) and (c)(3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(d) *Direction of turns.* When approaching to land at an:

(1) *Airport with an operating control tower,* except when conducting a circling approach under part 97 of this chapter, each pilot of an airplane, shall circle the airport to the left.

(2) *Airport without an operating control tower,* each pilot of an airplane, shall make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot shall make all turns to the right.

(3) *Any airport,* each pilot of a helicopter shall avoid the flow of fixed-wing aircraft.

(e) *Takeoffs.* Each person departing from an airport in:

(1) *Any aircraft,* shall comply with the departure traffic pattern or departure procedure prescribed for that airport.

(2) *A turbine-powered aircraft,* shall, unless otherwise required by the prescribed departure procedure for that airport or the applicable distance from clouds criteria, climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(f) *Takeoff, landing, taxi clearance.* No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway, or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

(g) *Noise abatement.* Where a formal runway use program has been established by the FAA, each pilot of a large or turbine-powered airplane assigned a noise abatement runway by ATC, shall use that runway. However, consistent with the final authority of the pilot-in-command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

§ 91.87 [Removed]

19. Section 91.87 would be removed.

20. Section 91.88 would be revised to read as follows:

§ 91.88 Operations in Class C or D airspace.

(a) Except as provided in paragraph (b) of this section, each aircraft operation in Class C or D airspace shall be conducted in compliance with the following two-way radio communications requirements:

(1) *Arrival or through flight,* establish two-way radio communications with the ATC facility (including foreign ATC in the case of airspace designated in the U.S. for a non-U.S. airport) providing air traffic services prior to entering that airspace and thereafter maintain those communications while within that airspace.

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(2) *Departing flight.* establish and maintain two-way radio communications with ATC prior to departing an airport within Class C and D airspace, except that for aircraft departing a satellite airport, two-way radio communications shall be established as soon as practicable after departing that satellite airport.

(b) An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

(c) Unless otherwise authorized by ATC, no person may operate an aircraft within a Class C airspace area unless that aircraft is equipped with the applicable equipment specified in § 91.24.

21. Section 91.89 would be revised to read as follows:

§ 91.89 Operations in Class A airspace

Each person operating an aircraft in Class A airspace shall conduct that operation under IFR and in compliance with the following:

(a) *Clearance.* Operations may be conducted only under an ATC clearance received prior to entering the airspace.

(b) *Communications.* Unless otherwise authorized by ATC, each aircraft operating in Class A airspace shall be equipped with a two-way radio capable of communicating with ATC on a frequency assigned by ATC. Each pilot shall maintain two-way radio communications with ATC while operating in Class A airspace.

(c) *Transponder requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft within a Class B airspace area unless that aircraft is equipped with the applicable equipment specified in § 91.24.

(d) *ATC authorizations.* An operator may deviate from any provision of this section under the provisions of an ATC authorization issued by the ATC facility having jurisdiction of the airspace concerned. Requests for deviation from any provision of this section other than paragraph (c) of this section must be submitted in writing, at least 4 days before the proposed operation. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

22. Section 91.90 would be revised as follows:

§ 91.90 Operations in Class B airspace.

(a) *Operating rules:* No person may operate an aircraft within a Class B airspace area designated in part 71 of this chapter except in compliance with the following rules:

(1) The operator must receive an ATC authorization prior to operation of the aircraft in that area.

(2) Unless otherwise authorized by ATC, each person operating a large turbine engine-powered airplane to or from a primary airport shall operate at or above the designated floors of the Class B airspace area while within the lateral limits of that area.

(3) Any person conducting pilot training operations at an airport within a Class B airspace area shall comply with any procedures established by ATC for such operations in that area.

(b) *Pilot requirements.* (1) No person may take off or land a civil aircraft at an airport within a Class B airspace area or operate a civil aircraft within a Class B airspace area unless:

(i) The pilot-in-command holds at least a private pilot certificate; or

(ii) The aircraft is operated by a student pilot who has met the requirements of § 61.95 of this chapter.

(2) Notwithstanding the provisions of paragraph (b)(1)(ii) of this section, no person may take off or land a civil aircraft at those airports listed in section 4 of Appendix D of this part unless the pilot-in-command holds at least a private pilot certificate.

(c) *Communications and navigation equipment requirements.* Unless otherwise authorized by ATC, no person may operate an aircraft within a Class B airspace area unless that aircraft is equipped with—

(1) An operable VOR or TACAN receiver (except for helicopter operations prior to July 1, 1989); and

(2) An operable two-way radio capable of communications with ATC on appropriate frequencies for that Class B airspace area.

(d) *Transponder requirement.* Unless otherwise authorized by ATC, no person may operate an aircraft in a Class B airspace area unless the aircraft is equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section.

§ 91.97 [Removed]

23. Section 91.97 would be removed.

24. Section 91.105 would be amended by revising (a) and (b) to read as follows:

§ 91.105 Basic VFR weather minimums.

(a) Except as provided in §§ 91.105(b) and 91.107, no person may operate an aircraft under VFR when the flight visibility is less than, or at a distance from clouds that is less than that prescribed for the corresponding altitude and class of airspace in the following table:

Airspace class	Flight visibility	Distance from clouds
Class A	Not applicable	Not applicable.
Class B	3 statute miles	Clear of clouds.
Class C	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class D	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class E: below 10,000 feet MSL	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class E: at 10,000 feet MSL, and above	5 statute miles	1,000 feet below, 1,000 feet above, 1 mile horizontal.
Class G: Day	1 statute mile	Clear of clouds.
Night	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Day and night: Except as provided by § 91.105(b).		

(b) *Class G. Airspace.* Nothwithstanding the provisions of paragraph (a) of this section the following operations may be conducted in Class G airspace at and below 1,200 feet above the surface:

(1) *Helicopter.* When the visibility is less than 1 mile during day hours or less than 3 miles during night hours, a helicopter may be operated clear of clouds if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

(2) *Airplane.* When the visibility is less than 3 miles but greater than 1 mile during night hours, an airplane may be operated clear of clouds if operated in an airport traffic pattern within one-half mile of the runway.

* * * * *

25. Section 91.107 would be revised to read as follows:

§ 91.107 Special VFR weather minimums.

Except as provided in Appendix D of this part, the following special weather minimums and requirements apply to operations conducted to or from an airport in controlled airspace:

(a) Operations may be conducted only under an ATC clearance—

(1) Within the lateral limits of controlled airspace designated to the surface; and

(2) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6° or more above the horizon) unless:

(i) That person meets the applicable requirements for instrument flight under Part 61 of this chapter; and

(ii) The aircraft is equipped as required in § 91.33(d).

(b) Operations may only be conducted clear of clouds.

(c) Except for helicopters, operations may be conducted only when flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter)—

(1) Unless ground visibility is at least 1 statute mile; or

(2) If ground visibility is not reported, unless flight visibility during landing and takeoff is at least 1 statute mile.

26. Appendix D of part 91 would be revised to read as follows:

Appendix D—Airports/Locations: Special Operating Restrictions

Section 1. Locations at which the requirements of § 91.24(b)(2) apply. The requirements of § 91.24(b)(2) apply below 10,000 feet above the surface within a 30-nautical-mile radius of each location in the following list:

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Chicago, IL (Chicago-O'Hare International Airport)
Cleveland, OH (Cleveland-Hopkins International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)
Denver, CO (Stapleton International Airport)
Detroit, MI (Metropolitan Wayne County Airport)
Honolulu, HI (Honolulu International Airport)
Houston, TX (Houston Intercontinental Airport)
Kansas City, KS (Mid-Continent International Airport)
Las Vegas, NV (McCarran International Airport)
Los Angeles, CA (Los Angeles International Airport)
Miami, FL (Miami International Airport)
Minneapolis, MN (Minneapolis-St. Paul International Airport)
Newark, NJ (Newark International Airport)
New Orleans, LA (New Orleans International Airport-Moisant Field)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
Philadelphia, PA (Philadelphia International Airport)
Pittsburgh, PA (Greater Pittsburgh International Airport)
San Diego, CA (San Diego International Airport)
San Francisco, CA (San Francisco International Airport)
Seattle, WA (Seattle-Tacoma International Airport)
St. Louis, MO (Lambert-St. Louis International Airport)
Washington, DC (Washington National Airport)

Section 2. Airports at which the requirements of § 91.24(b)(5)(ii) apply. The requirements of § 91.24(b)(5)(ii) apply to operations in the vicinity of each of the following airports:

Logan International Airport, Billings, MT.
Hector International Airport, Fargo, ND.

Section 3. Locations at which special VFR is not authorized. The special VFR weather minimums of § 91.107 do not apply for the following airports:

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Baltimore, MD (Baltimore/Washington International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Buffalo, NY (Greater Buffalo International Airport)
Chicago, IL (Chicago-O'Hare International Airport)
Cleveland, OH (Cleveland-Hopkins International Airport)
Columbus, OH (Port Columbus International Airport)
Covington, KY (Greater Cincinnati International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)
Dallas, TX (Love Field)
Denver, CO (Stapleton International Airport)
Detroit, MI (Metropolitan Wayne County Airport)
Honolulu, HI (Honolulu International Airport)
Houston, TX (Houston Intercontinental Airport)
Indianapolis, IN (Indianapolis International Airport)
Los Angeles, CA (Los Angeles International Airport)
Louisville, KY (Standiford Field)
Memphis, TN (Memphis International Airport)
Miami, FL (Miami International Airport)
Minneapolis, MN (Minneapolis-St. Paul International Airport)
Newark, NJ (Newark International Airport)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
New Orleans, LA (New Orleans International Airport, Moisant Field)
Philadelphia, PA (Philadelphia International Airport)
Pittsburgh, PA (Greater Pittsburgh International Airport)
Portland, OR (Portland International Airport)
San Francisco, CA (San Francisco International Airport)
Seattle, WA (Seattle-Tacoma International Airport)
St. Louis, MO (Lambert-St. Louis International Airport)
Tampa, FL (Tampa International Airport)
Washington, DC (Washington National Airport)

Section 4. Locations at which solo student pilot activity is not permitted. Pursuant to § 91.87(b), solo student pilot operations are not permitted at any of the following airports.

Atlanta, GA (The William B. Hartsfield Atlanta International Airport)
Boston, MA (General Edward Lawrence Logan International Airport)
Chicago, IL (Chicago-O'Hare International Airport)
Dallas, TX (Dallas/Fort Worth Regional Airport)

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Los Angeles, CA (Los Angeles International Airport)
Miami, FL (Miami International Airport)
Newark, NJ (Newark International Airport)
New York, NY (John F. Kennedy International Airport)
New York, NY (LaGuardia Airport)
San Francisco, CA (San Francisco International Airport)
Washington, DC (Washington National Airport)
Andrews Air Force Base, MD

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

27. The authority for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1346, 1354(a), 1421(a), 1424, the Metropolitan Washington Airports Act of 1966, Pub. L. 99–500; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

28. Part 93 would be amended by removing subparts I and Q entirely.

Note: Subpart Q would be removed and the special rules associated with the airports at Abbotsford, BC, and Sault St. Marie, ON, would no longer be needed as these rules would be codified into proposed § 91.88.

29. Section 93.151 would be amended by revising the introductory text to read as follows:

§ 93.151 Applicability.

This subpart prescribes special air traffic rules and communications requirements for persons operating aircraft, under VFR, below 3,000 feet within the lateral limits of the surface area of controlled airspace designated for Ketchikan International Airport, Alaska, excluding that airspace below 600 feet MSL and—

* * * * *

PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

30. The authority for part 101 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

31. Section 101.33 would be amended by revising paragraph (a) to read as follows:

§ 101.33 Operating limitations.

* * * * *

(a) Unless otherwise authorized by ATC, below 2,000 feet above the surface of a Class D airspace or within the lateral limits of a Class E airspace surface area:

* * * * *

PART 103—ULTRALIGHT VEHICLES

32. The authority for part 103 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421(a), 1422 and 1433; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

33. The reference to Special Federal Aviation Regulation No. 45–1 would be removed.

34. Section 103.17 would be revised to read as follows:

§ 103.17 Operations in certain airspace.

No person may operate an ultralight vehicle within Class A, B, C, or D airspace or below 4,000 feet above the surface within the lateral limits of a Class E surface area unless that person has prior authorization from the ATC facility having jurisdiction over that airspace.

35. Section 103.23 would be revised to read as follows:

§ 103.23 Flight visibility and cloud clearance requirements.

No person may operate an ultralight vehicle when the flight visibility or distance from clouds is less than that in the following table, as appropriate:

Airspace class	Flight visibility	Distance from clouds
Class A	Not applicable	Not applicable.
Class B	3 statute miles	Clear of clouds.
Class C	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class D	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class E: Below 10,000 feet MSL	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Class E: At 10,000 feet MSL, and above	5 statute miles	1,000 feet below, 1,000 feet above, 1 mile horizontal.
Class G	1 statute mile	Clear of clouds.

PART 105—PARACHUTE JUMPING

36. The authority for Part 105 would continue to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1421; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

37. The reference to Special Federal Aviation Regulation No. 45–1 would be removed.

38. Section 105.19 would be revised to read as follows:

§ 105.19 Jumps in or into Class A, B, C, and D airspace.

(a) No person may make a parachute jump, and no pilot-in-command may allow a parachute jump to be made from that aircraft, in or into Class A, B, C, and D airspace, without, or in violation of, the terms of an ATC authorization issued under this section.

(b) Each request for an authorization under this section must be submitted to the nearest FAA air traffic control facility or FAA flight service station and must include the information prescribed by § 105.25(a).

§ 105.20 [Removed]

39. Section 105.20 would be removed.

§ 105.21 [Removed]

40. Section 105.21 would be removed.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

41. The authority for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485 and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

42. Section 121.347 would be amended by revising (a) introductory text and (a)(2) to read as follows:

§ 121.347 Radio equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an aircraft under VFR over routes that can be navigated by pilotage, unless it is equipped with the radio equipment necessary under normal operating conditions to fulfill the following:

* * * * *

(2) Communicate with appropriate traffic control facilities from any point within the lateral limits of controlled airspace designated to the surface within which flights are intended.

* * * * *

43. Section 121.649 would be amended by revising (c) to read as follows:

§121.649 Takeoff and landing weather minimums: VFR: Domestic air carriers.

* * * * *

(c) The weather minimums in this section do not apply to the VFR operation of fixed-wing aircraft at any of the locations where the special weather minimums of 14 CFR 91.107 are not applicable (See Appendix D of 14 CFR part 91). The basic VFR weather minimums of 14 CFR 91.105 apply at those locations.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

44. The authority for part 127 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

45. Section 127.125 would be amended by revising (b). The introductory text of the section is republished for the convenience of the reader to read as follows:

§ 127.125 Radio equipment for operations over routes navigated by pilotage.

No person may operate a helicopter over a route that can be navigated by pilotage, unless the helicopter is equipped with the radio equipment needed to perform the following functions under normal operating conditions.

* * * * *

(b) Communicate with ATC towers from any point within the lateral limits of controlled airspace designated to the surface within which flights are intended.

* * * * *

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

46. The authority for Part 137 continues to read as follows:

Authority: 49 U.S.C. 1348(c), 1354(a), 1421 and 1427; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

47. Section 137.43 would be revised to read as follows:

§ 137.43 Operations in Class D and E airspace.

(a) Except for flights to and from a dispensing area, no person may operate an aircraft within Class D airspace unless authorization for that operation has been obtained from the control tower concerned.

(b) No person may operate an aircraft in weather conditions below VFR minimums within Class D airspace or within the lateral limits of a Class E airspace area designated to the surface unless authorization for that operation has been obtained from the appropriate ATC facility.

(c) Notwithstanding § 91.107(a)(2) of this chapter, an aircraft may be operated under the special VFR weather minimums without meeting the requirements prescribed therein.

PART 171—NON-FEDERAL NAVIGATION FACILITIES

48. The authority for part 171 continues to read as follows:

Authority: 49 U.S.C. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1430, 1472(c), 1502 and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

49. Section 171.49 would be amended by revising paragraph (e) and the concluding text to the section to read as follows:

§ 171.49 Installation requirements.

* * * * *

(e) The facility must have, or be supplemented by (depending on the circumstances) the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to controlled airspace, ground-air communications from the airport served by the facility must be available. The utilizaton of voice on the ILS frequency should be determined by the facility operator on an individual basis.

(2) At facilities within or immediately adjacent to controlled airspace, there must be the ground-air communications required by paragraph (e)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility. Paragraphs (e)(1) and (e)(2) of this section are not mandatory at airports where an adjacent FAA facility can communicate with aircraft on the ground at the airport and during the entire proposed instrument approach procedure. In addition, at low traffic density airports within or immediately adjacent to controlled airspace, and where extensive delays are not a factor, the requirements of paragraphs (e)(1) and (e)(2) of this section may be reduced to reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility, if an adjacent FAA facility can communicate with aircraft during the proposed instrument approach procedure down to the airport surface or at least to the minimum approach altitude.

50. Section 171.113 would be amended by revising (f) to read as follows:

§ 171.113 Installation requirements.

* * * * *

(f) The facility must have the following ground-air or landline communications services:

(1) At facilities outside of and not immediately adjacent to controlled airspace, there must be ground-air communications from the airport served by the facility. The utilization of voice

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on the SDF should be determined by the facility operator on an individual basis.

(2) At facilities within or immediately adjacent to controlled airspace, there must be ground-air communications required by paragraph (b)(1) of this section and reliable communications (at least a landline telephone) from the airport to the nearest FAA air traffic control or communications facility.

* * * * *

§ 171.271 [Amended]

51. In § 171.271, paragraph (e) would be amended by changing the words "air traffic control areas" and "air traffic control zones or areas" to read "controlled airspace."

Issued in Washington, DC, on September 18, 1989.

David J. Hurley,

Acting Director, Air Traffic Operations Service.

[FR Doc. 89-23692 Filed 10-17-89; 8:45 a.m.]

BILLING CODE 4910-13-M

federal register

Wednesday
October 18, 1989

Part VI

Environmental Protection Agency

Environmental Protection Agency

Cancellation of Pesticides for Nonpayment of 1989 Registration Maintenance Fees; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-64012; FRL-3658-3]

Cancellation of Pesticides for Nonpayment of 1989 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A new requirement for annual pesticide registration maintenance fees was created by the October, 1988 amendments tothe Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The fee due last March 1 has gone unpaid for about 20,000 registrations, including some 14,000 under section 3 of FIFRA and about 6,000 more under section 24(c) of FIFRA. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. For 189 other registrations, however, the Agency is deferring cancellation because it could lead to adverse impacts on users of minor pesticides. This deferral will permit affected users to pursue with the registrants alternatives to cancellation.

DATE: Reports of agreements to support continued registration or transfer of the 189 registrations for which cancellation is being deferred must be received by November 17, 1989.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the 189 products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John M. Carley, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Room 210 (bay), Crystal Mall No. 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, 703-557-2315.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i), of FIFRA as amended in October, 1988 requires for the first time that all pesticide registrants pay an annual registration maintenance fee, due by March 1 of each year, to keep their registrations in effect. This requirement applies to all registrations without exception--those granted under section 24(c) to meet special local needs as well as those granted under section 3. There are no statutory exceptions to the requirement, and registrations for which the fee is not paid are subject to cancellation, by order and without a hearing.

Implementation of these requirements has gone smoothly over the past several months. In early February all holders of either section 3 registrations or section 24(c) registrations were notified of the requirement and provided with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain, and to calculate and remit the appropriate fees. Most responses were received by the statutory deadline of March 1, but late responses have been accepted up to the time of execution of the cancellations. Since mailing the notices EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for some 22,139 section 3 registrations, or about 63 percent of the registrations on file in January. Fees have been paid for about 3,067 section 24(c) registrations, or about 35 percent of the total on file in January. Cancellations for non-payment of the maintenance fee affect about 13,400 section 3 registrations and about 5,900 section 24(c) registrations.

Because of the unprecedented magnitude of these cancellations, EPA has deferred actual cancellations to permit careful assessment of the impacts of the potential loss of these registrations. We have been particularly concerned about the potential impact on minor uses of pesticides, and have taken special steps to avoid adverse impacts where possible.

II. Housekeeping Cancellations of Inactive Registrations

Our analyses indicate that the great majority of these cancellations are simple housekeeping transactions. For over 10,000 section 3 registrations (77.3 percent of the total for which no fee was paid) no production has been reported since before 1985. This group includes all registrations for some 124 active ingredients with no recent production, which will be dropped from the registration rolls.

Most of the cancelled 24(c) registrations for special local needs are similarly obsolete. We do not have comparable production data for these registrations, but we know that over 92 percent of them were originally issued before 1984—most for a finite period which has long since expired. We also know that a great many have been made obsolete by section 3 registrations for the same uses.

The only anticipated impact of cancelling section 3 registrations which are no longer produced, or 24(c) registrations which have been superseded, is a healthy cleaning out of the Agency's records.

III. Cancellations of Active Registrations

The remaining cancellations, of about 3,000 section 3 registrations and perhaps 1,000 section 24(c) registrations, have been the focus of our further impact analyses. In most of these cases—all but 235 section 3 product registrations—the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations.

First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary. The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the cancelled products until the due date for the next annual registration maintenance fee, March 1, 1990. Existing stocks already in the hands of dealers or users, however, can generally be used legally until they are exhausted. (The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed.) These general provisions should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique uses will disappear, although the active ingredients will remain available for different uses in other products. We cannot estimate how often this may happen. When it does, in addition to possible distribution problems there may be more serious impacts on users of the cancelled products. Once again, existing stocks of the cancelled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments

and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been cancelled.

IV. Disappearing Active Ingredients

The most significant impacts will arise when an active ingredient with recent production disappears. There are 94 active ingredients for which production has been reported in at least one year since 1984, but for which no maintenance fees have been paid.

Seventeen of these 94 ingredients have been the object of Agency regulatory actions. Impacts of the disappearance of these pesticides have already been extensively addressed, and will not be reconsidered here. We have cancelled the 46 registrations in which these 17 ingredients appear.

After deleting these 17 from the list of 94, some 77 active ingredients remain, all with recently reported production, none subject to other regulatory action, and all likely to disappear as a consequence of these cancellations. These chemicals span a broad range of pesticide uses, as summarized in Table 1.

Table 1—Summary Distribution of Disappearing Active Ingredients by Predominant Use Pattern

Use Pattern	Number of Chemicals	Number of Products
Agricultural Crops & Ornamentals	17	22
Domestic Animals & Pets	7	10
Wide Area or Public Health Use	4	4
Aquatic Use	5	5
Wood Preservatives	8	18
Manufacturing Use Only	5	5
Commercial/Institutional Use	26	111
Miscellaneous Other Uses	5	14
Totals	77	189

The 77 ingredients, grouped in these same general categories of use patterns, are individually listed (with the ID of their registrants) in Table 2 at the end of this notice. The names and addresses of the registrants are listed in order by ID in Table 3.

If the last section 3 registration for an ingredient disappears, 24(c) registrations are unlikely to be able to compensate entirely for the loss. Thus EPA is deferring cancellation of these 189 products to allow adversely affected users to pursue alternatives to cancellation.

If the impact of loss of one of these ingredients is expected to be signifianct, we encourage individual users or user groups to work directly with the registrants to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives which will remain (or may become) registered.

If the Agency is notified within 30 days of this notice at the address given above either that the registrant will continue to support the registration, or that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status when the delinquent maintenance fee is paid. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

In addition to publishing this notice in the **Federal Register**, we are sending it directly to over 1,300 minor user organizations, to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Table 2—Active Ingredients with Recent Production Pending Cancellation of all Products for Non-Payment of 1989 Registration Maintenance Fees, Arranged by Predominant Registered Use Pattern

Chemical Name (Chemical Abstracts Number)	Registrant ID
I. Agricultural Crop and Ornamental Uses:	
Alkyl* amine 2,4-D *(100% C12) (CAS 2212-54-6)	000264
Alkyl* amine 2,4-D *(100% C14) (CAS 53404-06-1)	000264
Allium sativum (CAS 8000-78-0)	047319
Butoxycarboxim (CAS 34681-23-7)	035902
Butoxyethanol 4-(2,4-dichlorophenoxy)butyrate (CAS 32357-46-3)	000264
2-Chloroallyl diethyldithiocarbamate (CAS 95-06-7)	002749
Cycloheximide (CAS 66-81-9)	034874
Demeton (CAS 8065-48-3)	000456
	002749
2-(2-Ethoxyethoxy)ethyl 2-benzimidazole carbamate (CAS 83601-82-5)	007946
Fish oil (CAS 8016-13-5)	046078
Lithium 2,4-D (CAS 3766-27-6)	011275
4-Methyl-2-pentanone (CAS 108-10-1)	011474
Norea (CAS 18530-56-8)	001022
	005905
Quinolinol sulfate (CAS 134-31-6)	001327
Sulfur dioxide (CAS 7446-09-5)	036480
1,2,4,5-Tetrachloro-3-nitrobenzene (CAS 117-18-0)	005533
Zinc sulfate, basic (CAS 68813-94-5)	000279
II. Domestic Animal and Pet Treatments:	
Alkyl* bis(2-hydroxyethyl) amine acetate *(65% C18, 30% C16, 5% C14)	005185
Alkyl* trimethyl ammonium chloride *(70% C12, 30% C14) (CAS 112-00-5)	005185
1,3-Butylene glycol (CAS 107-88-0)	005185
Capric diethanolamide (CAS 136-26-5)	010075
Famphur (CAS 52-85-7)	000241
2',4',5',7'-tetraiodofluorescein, disodium salt (CAS 16423-68-0)	002823

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Table 2—Active Ingredients with Recent Production Pending Cancellation of all Products for Non-Payment of 1989 Registration Maintenance Fees, Arranged by Predominant Registered Use Pattern—Continued

Chemical Name (Chemical Abstracts Number)	Registrant ID
Undecylenic acid (CAS 112-38-9)	045729
III. Uncultivated Land/Wide Area/Public Health Uses:	
Dialkyl* dimethyl ammonium bentonite *(as in fatty acids of tallow) (CAS 68953-58-2)	001606
Isopropyl carbanilate (CAS 122-42-9)	000748
Sodium 2,3,6-trichlorophenylacetate (CAS 2439-00-1)	010114
2,3,6-Trichlorobenzoic acid and related polychlorobenzoic acids, dimethylamine salt (CAS 3426-62-6)	019713
IV. Aquatic Uses:	
1-(Alkyl* amino)-3-aminopropane monoacetate *(47% C12, 18% C14, 10% C18, 9% C10, 8% C16, 8% C8) (CAS 61791-64-8)	031910
p-(N,N-Dichlorosulfamoyl)benzoic acid (CAS 80-13-7)	000275
1-Ethyl-2-heptadecenyl-1-(2-hydroxyethyl)-2-imidazolinium bromide	007254
(Mono(trichloro)tetra(monopotassium dichloro))-penta-s-triazinetrione (CAS 30622-37-8)	041879
Sodium sulfate (CAS 7757-82-6)	010294
V. Wood Preservatives:	
Linseed oil (CAS 8001-26-1)	001353
Pentachlorophenol, potassium salt (CAS 7778-73-6)	001022
Pentachlorophenyl laurate (CAS 3772-94-9)	023553
Phenylmercuric lactate (CAS 122-64-5)	001022
Tetrachlorophenols (CAS 25167-83-3)	001022
	005211
Tetrachlorophenols, sodium salt (CAS 25567-55-9)	001022
	006651
Tetrachlorophenols, potassium salt (CAS 53535-27-6)	001022
2,4,5-Trichlorophenol (CAS 95-95-4)	000464
	001022
VI. Manufacturing Use Only:	
Alkyl* isoquinolinium bromide *(50% C12, 30% C14, 17% C16, 3% C18) (CAS 53466-68-5)	001839
Derris resins other than rotenone	001439
Dipropetryn (CAS 4147-51-7)	000100
8-Quinolinol citrate (CAS 134-30-5)	009129
Sodium propionate (CAS 137-40-6)	010593
VII. Commercial/Institutional Uses:	
Alkyl* dimethyl benzyl ammonium chloride *(60% C12, 30% C14, 10% C8-18) (CAS 63449-41-2)	000541
	003635
Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(90% C14, 5% C16, 5% C12) (CAS 68989-02-6)	004170
	005185
	006020
	010827
	012179
	034892
Alkyl* dimethyl ethylbenzyl ammonium chloride *(60% C14, 30% C16, 5% C12, 5% C18) (CAS 68956-79-6)	044409
	005747
	006621
	041260
Alkyl* trimethyl ammonium bromide *(95% C14, 5% C16) (CAS 1119-97-7)	001457
Ammonium citrate (CAS 7632-50-0)	010120
Ammonium EDTA (CAS 7379-26-2)	002296
Ammonium oleate (CAS 544-60-5)	010120
Ammonium oxalate (CAS 1113-38-8)	002296
Cetyl pyridinium bromide (CAS 140-72-7)	010141
4-Chloro-2-biphenylol, potassium salt (CAS 53404-21-0)	000257
	001203
	002311
	005345
6-Chloro-2-phenylphenol, potassium salt (CAS 18128-17-1)	006378
	000257
	001203
	002311
	009398
	007234
3,5-Dibromo-3'-(trifluoromethyl)salicylanilide (CAS 4776-06-1)	001270
Disodium EDTA (CAS 139-33-3)	004823
	010141
Dodecyl bis(hydroxyethyl)dioctyl ammonium phosphate	043670
Dodecyl bis (2-hydroxyethyl) octyl hydrogen ammonium chloride	043670
1-Heptadecenyl-2-(2-hydroxyethyl)-2-imidazolinium chloride	000541
Malic acid (CAS 6915-15-7)	009402
Periplanone B (CAS 61228-92-0)	008730
Polyethylene (CAS 9002-88-4)	002270
Potassium 2-chloro-4-phenylphenate (CAS 18128-16-0)	000257
	002860
	006378
Propyl alcohol (CAS 71-23-8)	001677
	009398
Sodium alkyl* benzene sulfonate *(100% C9) (CAS 26856-61-1)	000541
Sodium oleate (CAS 143-19-1)	003862
	010120
Sodium trichloroacetate (CAS 650-51-1)	001439

Table 2—Active Ingredients with Recent Production Pending Cancellation of all Products for Non-Payment of 1989 Registration Maintenance Fees, Arranged by Predominant Registered Use Pattern—Continued

Chemical Name (Chemical Abstracts Number)	Registrant ID
	010114
	010638
	056077
Triethanolamine laurate (CAS 2224-49-9)	006378
Triethanolamine myristate (CAS 41669-40-3)	006378
VIII. Miscellaneous Uses:	
Alkyl* dimethyl benzyl ammonium chloride *(41% C14, 28% C12, 19% C18, 12% C) (CAS 68391-01-5)	010742
Butyl 4-hydroxybenzoate (CAS 94-26-8)	003999
Malachite green (CAS 569-64-2)	003095
	005598
Methyl 4-hydroxybenzoate (CAS 99-76-3)	003999
Zinc fluosilicate (CAS 16871-71-9)	003350

Table 3—Registrants of Active Ingredients Pending Cancellation For Non-Payment of 1989 Registration Maintenance Fee

Registrant ID	Name & Address
000100	Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540.
000257	Grow Group, Inc., 1354 Old Post Rd., Havre de Grace, MD 21078.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000275	Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064.
000279	FMC Corp., 2000 Market St., Philadelphia, PA 19103.
000456	Chemical Formulators Inc., P.O. Box 26, Nitro, WV 25143.
000464	Dow Chemical U. S. A., P.O. Box 1706, Midland, MI 48640.
000541	Puritan/Churchill Chemical Co., P.O. Box 93247 Martech Station, Atlanta, GA 30318.
000748	Federal Regulatory Consultants, Inc., 1555 Wilson Blvd., Arlington, VA 22205.
001022	Chapman Chemical Co., P.O. Box 9156, Memphis, TN 38109.
001203	Delta Foremost Chemical Corp., 3915 Air Park St., Memphis, TN 38130.
001270	Zep Manufacturing Co., 1310 Seaboard Industrial Blvd. NW, Atlanta, GA 30318.
001327	Fuller System, Inc., 226 Washington St., Woburn, MA 01801.
001353	Vaccinal Chemical Company, Inc., 1625 North Highland, Memphis, TN 38108.
001439	Blue Spruce Co., 50 Division Ave., Millington, NJ 07946.
001457	Hexcel Corp., 205 Main St., Lodi, NJ 07644.
001606	Baums Castorine Company, Inc., 200 Matthew St., Rome, NY 13441.
001677	Ecolab, Inc., Ecolab Center, 370 Wabasha St., St. Paul, MN 55102.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002270	The Huge Company, Inc., 7625 Page Ave., St. Louis, MO 63133.
002296	National Chemical Labs, Inc., 401 N. 10th St., Philadelphia, PA 19123.
002311	Haag Labs, Inc., 1415 W. 37th St., Chicago, IL 60609.
002749	John M. Wise, P.O. Box 301, Liberty, MO 64068.
002823	John W. Kennedy Consultants, 910 Cherry Lane Suite 113, Laurel, MD 20708.
002860	Windsor Aerosol Division, Approved Products Industries, 8804 Tyson Rd., Wyndmoor, PA 19118.
003862	ABC Compounding Company, Inc., P.O. Drawer 585, Morrow, GA 30260.
004170	Betco Corp., P.O. Box 3127, Toledo, OH 43607.
004823	Maintenance Supply Company, Inc., P.O. Box 498, Huntersville, NC 28078.
005185	Bio-Labs, Inc., 627 E. College Ave., P.O. Box 1489, Decatur, GA 30030.
005211	Reichhold Chemicals, Inc., 2340 Taylor Way, Tacoma, WA 98401.
005345	Perrow Chemical Co., Rural Route #3 Box 10463, Hurt, VA 24563.
005533	Eddyco, Inc., 1217 Grandview Ave., Columbus, OH 43212.
005747	Arrow Chemical Products, Inc., 2067 St. Anne St., Detroit, MI 48216.
005905	Helena Chemical Co., 5100 Poplar Ave. Suite 3200, Memphis, TN 38137.
006020	Mom Chemical Co., Inc., 7775 N.W. 66th St., Miami, FL 33166.
006378	Lab Automated Chemicals, P.O. Box 152170, Irving, TX 75015.
006621	National Inter Chem Corp., 2819 W. Lake St., Chicago, IL 60612.
006651	Troy Burford, 2016 Culleywood Rd., Jackson, MS 39211.
007234	Forshaw Chemical Co., 650 State St., Charlotte, NC 28206.
007254	Hackik Distributors, 2300 Island Ave., Philadelphia, PA 19142.
007946	J.J. Mauget Co., 2610 N. Figueroa, Los Angeles, CA 90065.
008730	Hercon Laboratories Corp., P.O. Box 786, York, PA 17405.
009129	The Southland Corp., 2841 Pierce St., Dallas, TX 75233.
009398	Bruce Floor Care Products, 100 S. Wacker Dr., Chicago, IL 60680.
009402	Kimberly-Clark Corp., Legal Department, Neenah, WI 54956.
010075	Dermavet Laboratories, 150 Eileen Way, Syosset, NY 11791.
010114	Arborchem Products Co., P.O. Box 1567, Fort Washington, PA 19034.
010120	Cerfact Lab, P.O. Box 988, Tucker, GA 30084.
010141	Holliston Laboratories, Inc., 440 Totten Pond Rd., Waltham, MA 02154.
010294	M Q Co., 7473 Main St., Hugo, MN 55038.
010593	Standard Brands, Inc., 625 Madison Ave., New York, NY 10022.
010638	Farm & Ranch Supply Co., 7890 E. 11th St., Tulsa, OK 74112.
010827	Chemical Specialties, Inc., P.O. Box 312, San Marcos, TX 78666.

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Table 3—Registrants of Active Ingredients Pending Cancellation For Non-Payment of 1989 Registration Maintenance Fee—Continued

Registrant ID	Name & Address
011275	Guth Corp., P.O. Box 302, Naperville, IL 60540.
011474	Sungro Chemicals, Inc., P.O. Box 24632, Los Angeles, CA 90024.
019713	Drexel Chemical Co., P.O. Box 9306, 2487 Pennsylvania St., Memphis, TN 38109.
012178	Diversified Chemical Technologies, Inc., 15477 Woodrow Wilson, Detroit, MI 48238.
023553	Thiokol/Ventrol Division, 150 Andover St., Danvers, MA 01923.
031910	Alco Chemical Corp., 909 Mueller Dr., Chattanooga, TN 37406.
034674	Bishop Chemical, Inc., Rt 12 Box 12020, Tyler, TX 75708.
034892	Russell Products Company, Inc., 2253 Light St., Bronx, NY 10466.
035902	Henley & Company, Inc., Wacker-Chemie Gmbh, 750 Third Ave., New York, NY 10017.
036480	Mid-America Chemical Co., P.O. Box 490, Montrose, AL 36559.
041260	Jackson & Davis Consultants, P.O. Box 118097, Carrollton, TX 75011.
041879	United Worth Hydrochem Corp., P.O. Box 366, Fort Worth, TX 76101.
043670	Kilpatrick & Cody, 2501 M St. NW, Suite 500, Washington, DC 20037
044409	The Major Company, Inc., P.O. Box 206, Aryiant & Mosley Corner, Fairport, NY 14450.
045729	Lester J. Workman, P.O. Box 5547, Sarasota, FL 33579.
046078	Front Builder, Inc., Star Route Box 302, Entiat, WA 98822.
047319	Sevana Co., 5336 E. Easterby Dr., Fresno, CA 93727.
056077	Cedar Chemical Corp., 5100 Poplar Suite 2414, Memphis, TN 38137.

Because so many registrations are involved, it would be impractical to list them all in this notice. Complete lists of registrations cancelled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket and Freedom of InformationSection, Room 248 Crystal Mall 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1-800-444-7255.

Dated: October 10, 1989.

Linda J. Fisher,

Assistant Administrator, Office of Pesticide and Toxic Substances.

[FR Doc. 89-24676 Filed 10-17-89; 8:45 am]

BILLING CODE 6560-50-D

federal register

Wednesday
October 18, 1989

Part VII

The President

Proclamation 6049—National Down Syndrome Month, 1989 and 1990

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Presidential Documents

Title 3—

The President

Proclamation 6049 of October 16, 1989

National Down Syndrome Month, 1989 and 1990

By the President of the United States of America

A Proclamation

During National Down Syndrome Month, we Americans recognize the rights, needs, and potential of individuals with Down Syndrome. We also pay tribute to the scientists, physicians, and teachers whose labors have enhanced our understanding of this congenital disorder.

During the past 20 years, scientists working in molecular genetics and other fields have been carefully studying Down Syndrome. Researchers are looking for the genes, or combination of genes, on chromosome 21 that are related to the development of intelligence and to the physical disorders associated with Down Syndrome. Their efforts are important because, among all the genetic disorders associated with developmental disabilities, Down Syndrome has the most frequent incidence.

Recent progress in the study of Down Syndrome and advances in treatment of its related health problems are enabling more and more of those affected to enjoy greater participation in our life as a Nation. Today, children with Down Syndrome are benefitting from early intervention and mainstreaming. Parents of babies with Down Syndrome are receiving the education and support they need to cope with this condition and to prepare for their child's future. Young people with this developmental disability are now participating in special education classes within mainstream programs in schools, and many have begun to reap the rewards of vocational training and independent living programs.

All of these accomplishments have been made possible through the vision and hard work of concerned researchers, service providers, physicians, teachers, and parent-support groups. Government agencies such as the National Institute of Child Health and Human Development, the Bureau of Maternal and Child Health and Resources Development, and the President's Committee on Mental Retardation continue to work in concert with private organizations such as the National Down Syndrome Congress and the National Down Syndrome Society. The dedicated professionals and volunteers in these agencies and organizations are not only helping to promote public awareness about the nature of Down Syndrome, but also fostering greater respect for the rights, abilities, and needs of those affected by it.

This month, we recognize their efforts and rededicate ourselves to learning more about Down Syndrome and the concerns of the individuals and families it affects. We do so in order that all Americans might be worthy of the praise found in the "Beatitudes for Friends of Exceptional Children":

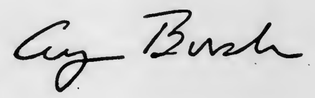
Blessed are you, when, by all these things
you assure us that the thing that makes us
individuals is not in our peculiar muscles,
nor in our wounded nervous systems, nor in
our difficulties in learning, but in the
God-given self which no infirmity can confine.

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The Congress, by Senate Joint Resolution 122, has designated the month of October 1989 and 1990 as "National Down Syndrome Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1989 and 1990 as National Down Syndrome Month. I urge all Americans to unite during October with appropriate programs, ceremonies, and activities directed toward helping affected individuals and their families enjoy to the fullest the blessing of life.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-24822
Filed 10-17-89; 12:00 pm]
Billing code 3195-01-M

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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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H.R. 1486/Pub. L. 101–115

To authortze appropriations for fiscal year 1990 for the Maritime Administration, and for other purposes. (Oct. 13, 1989; 103 Stat. 691; 5 pages) Price: $1.00

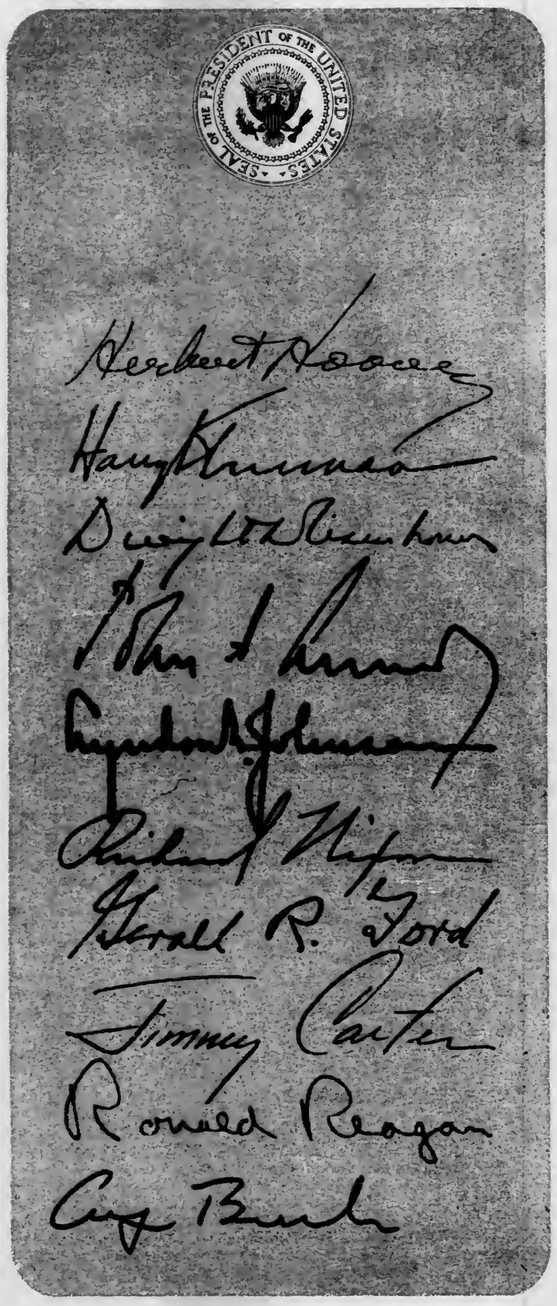
S.J. Res. 81/Pub. L. 101–116

To designate the week of October 1 through 7, 1989, as "National Health Care Food Service Week". (Oct. 13, 1989; 103 Stat. 696; 1 page) Price: $1.00

S.J. Res. 122/Pub. L. 101–117

To designate October 1989 and 1990 as "National Down Syndrome Month". (Oct. 13, 1989; 103 Stat. 697; 1 page) Price: $1.00

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Rules and Regulations

Federal Register
Vol. 54, No. 201
Thursday, October 19, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 89-145]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Florida from a modified accredited State to an accredited-free State.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective May 16, 1989 (54 FR 21048-21049, Docket Number 89-081), we amended the tuberculosis regulations contained in 9 CFR part 77 by removing Florida from the list of modified accredited States and adding it to the list of accredited-free States.

Comments on the interim rule were required to be received on or before July 17, 1989. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Florida may affect the marketability of cattle and bison from the State since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 77.1 that was published at 54 FR 21048-21049 on May 16, 1989.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

Done in Washington, DC, this 13th day of October 1989.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24612 Filed 10-18-89; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88-25-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

October 13, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1989 through January 31, 1990. This benchmark rate is set at 12.04 percent.

EFFECTIVE DATE: November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

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SUPPLEMENTARY INFORMATION:

Notice of Benchmark Rate of Return on Common Equity for Public Utilities

Issued October 13, 1989.

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate floatation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1989 through January 31, 1990, is 12.04 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 98 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.33$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the second and third quarters of 1989 are 7.83 percent and 7.28, respectively. The average yield for those two quarters is 7.56 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.04 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 37, chapter I, title 18 of the Code of Federal Regulations, as set forth below, effective November 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
2/1/86 to 4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86 to 7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86 to 10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86 to 1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87 to 4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87 to 7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87 to 10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87 to 1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88 to 4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88 to 7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88 to 10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88 to 1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89 to 4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89 to 7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89 to 10/31/89	1.02	4.33	7.94	12.43	12.43
11/1/89 to 1/31/90	1.02	4.33	7.56	12.04	12.04

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

[3] As a result of the acquisition of Utah Power and Light by PacifiCorp, the Commission has reduced the number of companies in the sample to 98. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1988).

Middle South Utilities, changed its name to Entergy Corp. on May 19, 1989. Duquesne Light Co., changed its name to DQE, Inc. on July 7, 1989.

Note: The Appendix will not be published in Code of Federal Regulations

Appendix

Exhibit No.	Title
1	Initial sample of utilities.
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.
Source of Data	Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Canterior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Service	CIP	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Public Service.	CV	4911
Citicorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy System.	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
DQE Inc	DQE	4911
Duke Power Co	DUK	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Electric Light.	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Industries	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Electric	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Nsco Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric System.	NES	4911
New York State Electric & Gas.	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utilities	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Corp	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc	PIN	4911
Public Service Co. of Colorado.	PSR	4931
Public Service Co of NH	PNH	4911
Public Service Co. of NM	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
Scana Corp	SCG	4931
Scecorp	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & Electric.	SIG	4931
St. Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=98

EXHIBIT 2—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Year=89; Quarter=3

Ticker symbol	Utility	Reason for exclusion
CMS	CMS Energy Corp.	Dividend rate was zero for quarter Calendar 89Q3.
GSU	Gulf States Utilities Co.	Dividend rate was zero for quarter Calendar 89Q3.
IPC	Illinois Power Co.	Dividend rate was zero for quarter Calendar 89Q3.
LIL	Long Island Lighting.	Dividend rate was zero for quarter Calendar 89Q2.
NMK	Niagara Mohawk Power.	Dividend rate was zero for quarter Calendar 89Q3.
PNW	Pinnacle West Capital Corp.	Dividend rate was reduced for the quarter Calendar 89Q1.
PIN	PSI Holdings Inc.	Dividend rate was zero for quarter Calendar 89Q4.
PNH	Public Service Co. of NH.	Dividend rate was zero for quarter Calendar 89Q3.
PNM	Public Service Co. of N ME.	Dividend rate was zero for the quarter Calendar 89Q3.
TEP	Tucson Electric Power Co.	Dividend rate was reduced for the quarter Calendar 89Q3.

N=10

EXHIBIT 3—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

Year = 89; Quarter = 3

Ticker symbol	Price, 1st month of qtr—High	Price, 1st month of qtr—Low	Price, 2nd month of qtr—High	Price, 2nd month of qtr—Low	Price, 3rd month of qtr—High	Price, 3rd month of qtr—Low	Average price	Dividends annual rate	Annualized dividend yield
AEP	31.000	27.625	31.000	29.375	30.500	29.625	29.854	2.450	8.207
ATE	37.750	35.500	38.125	36.625	37.500	35.750	36.875	2.880	7.810
AYP	40.875	37.500	40.875	39.250	40.250	38.500	39.542	3.060	7.759

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EXHIBIT 3—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year = 89; Quarter = 3

Ticker symbol	Price, 1st month of qtr—High	Price, 1st month of qtr—Low	Price, 2nd month of qtr—High	Price, 2nd month of qtr—Low	Price, 3rd month of qtr—High	Price, 3rd month of qtr—Low	Average price	Dividends annual rate	Annualized dividend yield
BGE	33.625	31.250	33.625	31.125	33.250	31.125	32.333	2.100	6.495
BKH	29.875	27.500	29.750	27.875	29.000	27.625	28.604	1.520	5.314
BSE	18.000	16.875	17.750	16.875	19.250	17.250	17.667	1.820	10.302
CER	36.000	36.000	38.000	35.625	37.250	35.375	36.708	2.460	6.701
CES	35.750	33.000	35.750	33.875	35.000	33.625	34.500	2.800	8.116
CIN	29.250	27.500	28.875	28.000	29.250	28.250	28.521	2.320	8.134
CIP	24.000	22.000	24.000	22.750	23.250	22.625	23.104	1.800	7.791
CNH	23.000	22.125	23.250	22.500	23.250	22.750	22.812	1.760	7.715
CNL	34.500	33.250	34.750	33.625	34.250	33.000	33.896	2.440	7.199
CPL	42.375	39.500	43.250	40.750	44.500	43.000	42.229	2.840	6.725
CSR	36.500	34.000	36.750	35.250	36.500	35.000	35.667	2.600	7.290
CTP	19.875	18.375	20.250	18.625	19.500	18.500	19.187	1.520	7.922
CV	27.625	26.125	27.500	25.875	27.500	26.125	26.792	2.040	7.614
CWE	39.125	37.500	38.625	36.375	38.750	36.750	37.854	3.000	7.925
CX	18.375	17.250	19.000	17.875	19.125	18.500	18.354	1.600	8.717
D	46.125	43.750	46.125	43.500	44.375	43.000	44.479	3.200	7.194
DEW	19.750	18.625	20.000	18.875	19.625	19.000	19.312	1.500	7.767
DPL	27.750	26.125	28.125	26.500	28.000	26.000	27.083	2.240	8.271
DQE	22.750	20.500	23.250	21.500	23.500	22.125	22.271	1.280	5.747
DTE	21.500	20.625	22.125	20.875	22.625	21.250	21.500	1.680	7.814
DUK	52.625	49.500	53.250	49.750	51.875	50.125	51.187	3.120	6.095
ED	27.000	25.125	26.250	25.375	25.875	24.500	26.021	1.720	6.610
EDE	30.000	29.250	30.875	29.500	30.500	29.375	29.917	2.220	7.421
ETR	21.125	19.125	21.875	20.750	23.000	21.125	21.167	1.000	4.724
EUA	37.000	35.250	37.000	35.750	36.750	35.750	36.250	2.500	6.897
FGE	34.500	32.750	34.750	32.625	34.000	32.875	33.583	2.000	5.955
FPC	38.000	35.375	38.625	36.375	36.875	36.000	36.875	2.560	6.942
FPL	32.875	30.750	33.250	31.125	32.625	30.875	31.917	2.280	7.144
GMP	25.500	24.125	25.500	24.125	25.375	24.000	24.771	1.980	7.993
GPU	41.500	39.625	41.875	39.625	41.250	40.125	40.667	2.200	5.410
HE	35.625	32.750	35.500	33.375	34.000	32.875	34.021	2.040	5.996
HOU	34.875	31.375	34.875	32.500	34.125	33.375	33.521	2.960	8.830
IDA	27.625	26.125	28.625	27.125	27.625	26.625	27.292	1.860	6.815
IEL	25.750	24.250	26.750	25.250	26.375	24.875	25.542	2.040	7.987
IOR	20.500	18.875	20.625	19.500	19.875	19.250	19.771	1.680	8.497
IPL	25.250	24.125	25.500	24.625	25.000	23.875	24.729	1.720	6.955
IPW	25.750	24.000	25.750	23.625	24.750	23.625	24.583	2.000	8.136
IWG	43.125	41.250	42.750	41.750	42.875	42.000	42.292	3.260	7.708
KAN	24.750	23.250	25.375	23.750	24.500	23.500	24.187	1.760	7.276
KGE	24.250	22.250	23.250	22.250	23.000	21.500	22.750	1.600	7.033
KLT	35.750	32.625	35.750	33.250	34.375	33.000	34.125	2.560	7.502
KU	20.750	19.625	20.875	19.625	20.125	19.500	20.083	1.400	6.971
LOU	39.250	38.375	39.500	38.000	39.125	37.125	38.229	2.780	7.272
MAP	23.000	22.125	23.750	22.125	23.000	21.125	22.521	1.600	7.105
MPL	26.750	25.125	27.625	25.625	26.500	25.125	26.125	1.780	6.813
MTP	40.875	39.125	41.500	39.625	39.875	38.250	39.875	2.760	6.922
MWE	20.750	18.750	20.875	20.000	20.625	19.750	20.292	1.600	7.885
NES	27.750	25.875	27.875	26.125	27.125	25.625	26.729	2.040	7.632
NGE	27.750	26.125	27.500	25.875	26.500	25.875	26.604	2.040	7.668
NI	18.750	17.125	19.000	18.375	18.875	18.375	18.417	0.840	4.561
NPT	18.250	17.250	17.750	14.625	15.125	14.875	16.312	1.500	9.195
NSP	37.500	35.375	38.375	36.000	37.500	38.000	36.792	2.220	6.034
NU	22.250	20.500	23.000	21.125	21.500	20.750	21.521	1.760	8.178
NVP	22.500	21.375	23.000	21.500	22.750	21.500	22.104	1.560	7.057
OEC	22.375	21.125	23.000	22.000	22.250	21.250	22.000	1.960	8.909
OGE	36.625	34.875	37.250	35.625	36.375	35.875	36.104	2.380	6.592
ORU	30.500	29.750	30.875	29.625	30.000	29.000	29.958	2.300	7.677
PCG	21.500	19.875	21.625	20.125	21.000	19.500	20.604	1.400	6.795
PE	23.875	22.375	24.500	21.625	22.625	21.250	22.708	2.200	9.688
PEG	26.125	26.500	26.500	26.625	26.875	25.875	27.083	2.040	7.532
PGN	24.875	24.000	25.500	24.375	24.750	22.875	24.396	1.960	8.034
POM	22.125	21.125	22.750	21.125	22.125	21.250	21.750	1.460	6.713
PPL	41.125	38.250	41.250	40.125	40.875	40.000	40.271	2.860	7.102
PPW	41.750	39.750	41.875	40.375	41.375	40.000	40.854	2.760	6.756
PSD	21.500	19.750	22.125	21.000	21.875	21.375	21.271	1.760	8.274
PSR	25.000	22.750	25.000	23.750	25.375	24.750	24.437	2.000	8.184

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year = 89; Quarter = 3

Ticker symbol	Price, 1st month of qtr—High	Price, 1st month of qtr—Low	Price, 2nd month of qtr—High	Price, 2nd month of qtr—Low	Price, 3rd month of qtr—High	Price, 3rd month of qtr—Low	Average price	Dividends annual rate	Annualized dividend yield
RGS	21.375	19.625	20.875	19.750	21.375	19.125	20.354	1.500	7.369
SAJ	23.000	22.250	23.000	22.000	22.625	21.875	22.458	1.520	6.768
SCE	37.750	34.500	37.875	35.375	36.875	35.625	36.333	2.560	7.046
SGC	35.125	33.250	35.500	34.000	34.250	32.750	34.146	2.460	7.204
SDO	42.000	40.000	42.875	40.625	41.375	40.750	41.271	2.700	6.542
SIG	30.750	29.375	32.125	29.375	29.750	28.500	29.979	1.800	6.004
SO	26.250	26.250	28.125	26.250	27.875	27.000	27.292	2.140	7.841
SRP	25.625	24.375	25.500	23.750	24.375	23.750	24.562	1.800	7.328
TE	26.875	25.250	27.375	25.625	26.750	25.500	26.229	1.520	5.795
TNP	22.125	20.625	22.125	20.750	21.375	20.625	21.271	1.550	7.287
TXU	33.875	30.625	34.000	31.625	32.625	31.250	32.333	2.920	9.031
UCU	20.750	18.875	21.250	20.000	20.500	18.875	20.042	1.440	7.185
UEP	27.500	26.125	27.750	26.375	27.375	26.625	26.958	2.000	7.419
UIL	29.000	27.000	31.375	28.375	30.750	27.000	28.917	2.320	8.023
UTL	37.500	36.750	36.875	35.875	35.750	34.625	36.229	2.080	5.741
WEC	30.375	28.250	30.500	28.750	29.750	28.375	29.333	1.660	5.659
WPH	23.875	23.125	24.500	23.125	23.500	22.500	23.438	1.680	7.168
WPS	24.250	22.750	24.875	22.750	23.625	22.250	23.417	1.620	6.918
WWP	30.250	29.375	30.750	29.000	30.250	29.125	29.792	2.480	8.324

N=88

[FR Doc. 89-24622 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 222

RIN 3220-AA57

Family Relationships

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board hereby amends its regulations by adding a new part 222 which defines the relationships to a railroad employee created by marriage, divorce, birth, adoption, or dependency which a claimant may have to establish in order to qualify for benefits under the Railroad Retirement Act.

EFFECTIVE DATE: October 19, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231 *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors who meet certain eligibility requirements under that Act. The Railroad Retirement Board's regulations regarding family relationships are currently located in parts 216 and 219. These regulations were issued in February 1982 and do not take into account the categories of beneficiaries which were added by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35); namely, divorced spouses, surviving divorced spouses and remarried widow(er)s.

The Board published part 222 as a proposed rule on June 6, 1989 (54 FR 24196-24203) and invited comments by August 7, 1989. No comments were received, and no changes have been made in the proposed regulation.

The final regulation incorporates the provisions regarding family relationships currently contained in parts 216 and 219 into one new part 222, an adds provisions pertaining to the classes of beneficiaries created by the 1981 amendments to the Railroad Retirement Act. The phrase "family relationship" generally pertains to a relationship to a railroad employee which has been created by marriage, divorce, birth, adoption, or dependency. Both parts 216 and 219 are also currently under extensive revision and when published as final rules will reflect that all definitions regarding family relationships are now contained in part 222.

The Bureau of Law within the Railroad Retirement Board is currently involved in a project to revise all regulations for which the agency has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Railroad Retirement Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily usable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

List of Subjects in 20 CFR Part 222

Railroad employees, Railroad retirement, Family relationships.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended by adding part 222, Family Relationships, to read as follows:

PART 222—FAMILY RELATIONSHIPS

Subpart A—General

Sec.
222.1 Introduction.
222.2 Definitions.
222.3 Other regulations related to this part.
222.4 Homicide of employee.

Subpart B—Relationship as Wife, Husband, or Widow(er)

222.10 When determinations of relationship as wife, husband, widow or widower of employee are made.

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222.11 Determination of marriage relationship.
222.12 Ceremonial marriage relationship.
222.13 Common-law marriage relationship.
222.14 Deemed marriage relationship.
222.15 When spouse is living with employee.
222.16 When spouse is living in the same household with employee.
222.17 "Child in care" when child of the employee is living with the claimant.
222.18 "Child in care" when child of the employee is not living with the claimant.

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.
222.21 When marriage is terminated by final divorce.
222.22 Relationship as divorced spouse.
222.23 Relationship as surviving divorced spouse.
222.24 Relationship as remarried widow(er).

Subpart D—Relationship as Child

222.30 When determinations of relationship as child are made.
222.31 Relationship as child for annuity and lump-sum payment purposes.
222.32 Relationship as a natural child.
222.33 Relationship resulting from legal adoption.
222.34 Relationship resulting from equitable adoption.
222.35 Relationship as stepchild.
222.36 Relationship as grandchild or stepgrandchild.

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

222.40 When determinations of relationship are made for parent, grandchild, brother or sister.
222.41 Determination of relationship and support for parent.
222.42 When employee is contributing to support.
222.43 How the one-half support determination is made.
222.44 Other relationship determinations for lump-sum payments.

Subpart F—Child Support and Dependency

222.50 When child dependency determinations are made.
222.51 When a natural child is dependent.
222.52 When a legally adopted child is dependent—general.
222.53 When a legally adopted child is dependent—child adopted after entitlement.
222.54 When a legally adopted child is dependent—grandchild or stepgrandchild adopted after entitlement.
222.55 When a stepchild is dependent.
222.56 When a grandchild or stepgrandchild is dependent.
222.57 When an equitably adopted child is dependent.
222.58 When a child is living with an employee.

Authority: 45 U.S.C. 231f.

Subpart A—General

§ 222.1 Introduction.

This part sets forth and describes the family relationships that may make a claimant eligible for an annuity or lump-sum payment under the Railroad Retirement Act and furnishes the basic rules for determining when those relationships exist. Such relationships may result from a current or terminated marriage or through birth, death or adoption. Other relevant relationships are having a child in care, dependency or lack of it, contributing to support, living in the same household, and being under court order to contribute to support.

§ 222.2 Definitions.

As used in this part—

"*Annuity*" means a payment under the Railroad Retirement Act due to an entitlement claimant for a calendar month and made to him or her on the first day of the following month.

"*Apply*" means to sign a form or statement that the Railroad Retirement Board accepts as an application for an annuity or lump-sum payment under the rules set out in part 217 of this chapter.

"*Child*" has differing definitions for annuity and lump-sum payment purposes. See § 222.31.

"*Claimant*" means a person who files an application for an annuity or lump-sum payment or for whom an application is filed.

"*Eligible*" means that a person would meet all the requirements for payment of an annuity or lump-sum payment as of a given date but has not yet applied therefor.

"*Employee*" means an employee as defined in part 203 of this chapter.

"*Final divorce*" means a divorce that completely dissolves a marriage and restores the parties to the status of single persons; it is also referred to as an absolute divorce.

"*Finally divorced person*" means a person whose marriage has been terminated or dissolved by a final divorce.

"*Legal impediment*" means that there was a defect in the procedures followed in a marriage ceremony or that a previous marriage of the employee or spouse had not ended at the time of the ceremony.

"*Lump-sum payment*" means any of the following payments under the Railroad Retirement Act: lump-sum death payment, residual lump-sum, annuities due but unpaid at death, or lump-sum refund payment (see part 234 of this chapter).

"*Marriage*" means the social and legal relationship of husband and wife for family relationship purposes, as well as the act by which the married state is effected.

"*Permanent home*" means the employee's true and fixed home (legal domicile); it is the place to which the employee intends to return whenever he or she is absent therefrom.

"*Relationship*" means a family connection by blood, marriage, or adoption between the employee and another person who is a claimant.

"*Spouse*" means the husband or wife of the employee.

"*State law*" means the law of the State in which the employee has his or her permanent home or, in the case of a deceased employee, the law of the State in which the employee had his or her permanent home at the time of his or her death. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the laws of the District of Columbia are applied.

§ 222.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter:

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 225 explains how primary insurance amounts (PIA's) are computed.

Part 226 outlines the computation of employee and spouse annuities.

Part 228 describes how survivor annuities are computed.

Part 229 describes when and how an employee and spouse annuity may be increased under the social security overall minimum provision.

Part 234 describes lump-sum payments under the Railroad Retirement Act.

§ 222.4 Homicide of employee.

No person convicted of the felonious and intentional homicide of an employee can be entitled to an annuity or lump-sum payment based on the employee's earnings record (service and compensation). Further, the convicted person is considered not to exist in deciding the rights of other persons to annuity or lump-sum payments. A minor may be denied a survivor annuity or lump-sum payment on the earnings record of a parent if the minor was convicted of intentionally causing the parent's death by an act which would be considered a felony if committed by an adult.

Subpart B—Relationship as Wife, Husband, or Widow(er)

§ 222.10 When determinations of relationship as wife, husband, widow of widower or employee are made.

(a) The claimant's relationship as the wife or husband of an employee is determined when the claimant applies for an annuity, or when there is a claim which would include a husband or wife in the computation of the social security overall minimum provision, or when a claim is filed for a lump-sum payment. If a deemed marriage (see § 222.14) is to be determined, the husband, wife, or widow(er) must also be found to be or to have been living in the same household as the employee (see § 222.16).

(b) The claimant's relationship as the widow(er) of an employee is determined as of the date on which the employee died. If the claimant applied for a lump-sum payment as the widow(er) of the employee, one of the following determinations is made:

(1) Whether the widow(er) was living in the same household as the employee, as defined in § 222.16 of this part, at the time of the employee's death, if the claimant is applying for the 1974 Act lump-sum death payment.

(2) Whether the widow(er) was living with the employee, as defined in § 222.15 of this part, at the time of the employee's death, if the claimant is applying for the 1937 Act lump-sum death payment, annuities due but unpaid at death, the residual lump-sum payment, or a lump-sum refund payment.

(c) In order for a claimant who has applied for a monthly survivor annuity to establish a deemed marriage, the claimant must have been living in the same household as the employee at the time of the employee's death (see § 222.16).

(d) If the husband, wife, widow(er), remarried widow(er), or surviving divorced spouse of the employee is a claimant for a monthly annuity on a basis other than age or disability, a child-in-care determination is required (see §§ 222.17 and 222.18).

§ 222.11 Determination of marriage relationship.

A claimant will be considered to be the husband, wife, or widow(er) of an employee if the law of the State in which the employee has or had a permanent home would recognize that the claimant and employee were validly married, or if a deemed marriage is established.

(a) Generally, State courts will find that a claimant and employee were validly married if—

(1) The employee and claimant were married in a civil or religious ceremony (see § 222.12) or

(2) The employee and claimant live together in a common-law marriage relationship which is recognized under applicable State law (see § 222.13), and no impediment to the marriage existed at the time it took place.

(b) A deemed marriage relationship may be established as described in § 222.14.

§ 222.12 Ceremonial marriage relationship.

A valid ceremonial marriage is one which would be recognized as valid by the courts of the State in which the marriage ceremony took place. Generally, State law provides various procedures which must be followed, such as designation of who may perform the marriage ceremony, what licenses or witnesses are required, and similar rules. A ceremonial marriage may be a civil or religious ceremony, or a ceremony which follows tribal customs, Chinese customs, or similar traditional procedures.

§ 222.13 Common-law marriage relationship.

Under the laws of some States, a common-law marriage is one which is not solemnized in a formal ceremony, but is generally evidenced by a consummated agreement to marry between two persons legally capable of making a marriage contract, followed by cohabitation. The laws of the various States which recognize common-law marriage delineate specific factors which must be present in order to establish a valid common-law marriage in those States.

§ 222.14 Deemed marriage relationship.

If a ceremonial or common-law marriage relationship cannot be established under State law, a claimant may still be found to have the relationship as spouse of an employee based upon a deemed marriage. A claimant is deemed to be the wife, husband, or widow(er) of the employee if the person's marriage to the employee would have been valid under State law except for a legal impediment, and all of the following requirements are met:

(a) The claimant married the employee in a civil or religious ceremony.

(b) The claimant went through the marriage ceremony in good faith. Good faith means that at the time of the ceremony the claimant did not know that a legal impediment existed, or if the claimant did know, he or she thought that it would not prevent a valid marriage.

(c) The claimant was living in the same household as the employee (see § 222.18) when he or she applied for the spouse annuity or when the employee died.

(d) At the time the claimant applies for his or her annuity, no other person has a relationship under State law, as described in §§ 222.12 and 222.13, as the employee's wife, husband, or widow(er), and is entitled to an annuity under the Railroad Retirement Act or a monthly social security benefit based on that relationship.

§ 222.15 When spouse is living with employee.

A spouse, or widow(er) is living with the employee if—

(a) He or she and the employee are living in the same household; or

(b) The employee is contributing to the support of the spouse or widow(er); or

(c) The employee is under court order to contribute to the support of the spouse or widow(er).

§ 222.16 When spouse is living in the same household with employee.

(a) Living in the same household means that the employee and spouse customarily live together as a married couple in the same residence.

(b) The employee and spouse are also considered members of the same household when they live apart but expect to resume or continue living together after a temporary separation.

(c) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household" even if the separation was likely to be permanent.

§ 222.17 "Child in care" when child of the employee is living with the claimant.

"Child in care" means a child who has been living with the claimant for at least 30 consecutive days unless—

(a) The child is in active military service;

(b) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried

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widow(er) annuities) or older and is not disabled;

(c) The child is 18 years old (18 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a mental disability and the claimant does not exercise parental control and responsibility; or

(d) The child is 18 years old (18 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a physical disability, but it is not necessary for the claimant to perform personal services for the child.

(e) Parental control and responsibility for the care and welfare of the child means that the parent supervises the child's activities and makes important decisions about the child's needs either alone or with another person. Personal services are services such as dressing, feeding and managing money which the child cannot do alone because of a disability.

§ 222.18 "Child in care" when child of the employee is not living with the claimant.

(a) *When child is in care.* A child living apart from a claimant is in that claimant's care if—

(1) The child lives apart or is expected to live apart from the claimant for not more than six months; or

(2) The child is under 18 years old (18 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities), the claimant supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

(i) The child is living apart because of attendance at school but generally spends a vacation of at least 30 consecutive days with the claimant each year, and, if the claimant and the child's other parent are separated, the school must look to the claimant for decisions about the child's welfare.

(ii) The child is living apart because of the claimant's employment but the claimant makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 222.42.

(iii) The child is living apart because of the child's or the claimant's physical disability; or

(3) The child is 18 years old (18 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is mentally disabled and the claimant supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) *When child is not in care.* A child livng apart from a claimant is not in the claimant's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the claimant's custody and control; or

(4) The claimant gave the right to custody and control of the child to someone else; or

(5) The claimant is mentally disabled.

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

§ 222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.

(a) *Divorced spouse.* The claimant's relationship as the divorced spouse of an employee is determined when the purported divorced spouse applies for an annuity, or when there is a claim which would include a divorced spouse in the computation of the social security overall minimum provision. Such a determination is also made when a spouse annuitant age 62 or over secures a final divorce from the employee after 10 years of marriage.

(b) *Surviving divorced spouse.* The claimant's relationship as the surviving divorced spouse of an employee is determined when the purported surviving divorced spouse applies for an annuity on the basis of age, disability, or having a child in care. Such a determination is also made when there is a divorced spouse annuitant and the employee dies.

(c) *Remarried widow(er)* The claimant's relationship as a remarried widow(er) of a employee is determined when the purported remarried widow(er) applies for an annuity. Such a determination is also made when a widow(er) who is receiving an annuity remarries after age 60, or when a widow(er) who is receiving a disability annuity remarries after age 50.

§ 222.21 When marriage is terminated by final divorce.

A final divorce, often referred to as an absolute divorce, completely dissolves the marriage relationship and restores the parties to the status of single persons. A legal separation, qualified or preliminary divorce, divorce from bed and board, interlocutory decree of divorce, or similar court order is not considered a final divorce for family relationship and benefit entitlement purposes.

§ 222.22 Relationship as divorced spouse.

A claimant will be considered to be the divorced spouse of an employee if—

(a) His or her marriage to the employee has been terminated by a final divorce; and

(b) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(c) He or she had been validly married to the employee, as set forth in § 222.11, for a period of 10 years immediately before the date the divorce became final. The claimant meets this requirement even if the claimant and employee were divorced within the ten-year period, provided that the claimant and employee were remarried no later than the calendar year immediately following the year in which the divorce took place.

§ 222.23 Relationship as surviving divorced spouse.

A claimant will be considered to be the surviving divorced spouse of a deceased employee if the conditions in either paragraph (a) or (b) of this section are met:

(a) *Age or disability.* The claimant applied for an annuity on the basis of age or disability, and the conditions set forth in § 222.22 are met.

(b) *Child in care.* The claimant applied for an annuity on the basis of having a child in care, and—

(1) His or her marriage to the employee has been terminated by a final divorce; and

(2) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(3) He or she either—

(i) Was the natural parent of the employee's child; or

(ii) Had been married to the employee when either the employee or the claimant legally adopted the other's child or when they both legally adopted a child who was then under 18 years of age.

§ 222.24 Relationship as remarried widow(er).

(a) *New eligibility.* A claimant will have the relationship of a remarried widow(er) if he or she is the widow(er), as discussed in § 222.11, of an employee and the claimant—

(1) Remarried after attaining age 60, or remarried after attaining age 50 and after the date on which he or she became disabled; or

(2) Remarried before attaining age 60, but is now unmarried, or remarried before attaining age 50 or before the date on which he or she became disabled, but is now unmarried.

(b) *Reentitlement.* A claimant will have the relationship of a remarried widow(er) if he or she remarries after his or her entitlement to an annuity as a widow(er) has been established, and the claimant—

(1) Remarries after attaining age 60, or remarries after attaining age 50 and after the date on which he or she became disabled; or

(2) Is entitled to an annuity based upon having a child of the employee in care and remarries, but this marriage is to a person who is entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

Subpart D—Relationship as Child

§ 222.30 When determinations of relationship as child are made.

(a) Determinations will be made regarding a person's relationship as the child of the employee and that person's dependency on the employee (see Subpart F of this part) when—

(1) The wife or husband of an employee applies for a spouse's annuity based on having the employee's child in care; or

(2) The employee's annuity can be increased under the social security overall minimum provision based on the child; or

(3) The employee dies and the claimant applies for a child's annuity.

(b) A determination will be made regarding a claimant's relationship as the child of the employee when the claimant applies for a share of a lump-sum payment as a child.

§ 222.31 Relationship as child for annuity and lump-sum payment purposes.

(a) *Annuity claimant.* When there are claimants under paragraph (a)(1), (a)(2), or (a)(3) of § 222.30, a person will be considered the child of the employee when that person is—

(1) The natural or legally adopted child of the employee (see § 222.33); or

(2) The stepchild of the employee; or

(3) The grandchild or stepgrandchild of the employee or spouse; or

(4) The equitably adopted child of the employee.

(b) *Lump-sum payment claimant.* A claimant for a lump-sum payment must be one of the following in order to be considered the child of the employee:

(1) The natural child of the employee;

(2) A child legally adopted by the employee (this does not include any child adopted by the employee's widow or widower after the employee's death);

(3) The equitably adopted child of the employee.

§ 222.32 Relationship as a natural child.

A claimant will be considered the natural child of the employee for both annuity and lump-sum payment purposes if one of the following sets of conditions is met:

(a) Under relevant State law, the claimant could inherit a share of the employee's personal estate as the employee's natural child if the employee were to die without leaving a will;

(b) The claimant is the employee's son or daughter, and the employee and the claimant's mother or father went through a marriage ceremony which would have been valid except for a legal impediment;

(c) The claimant's mother or father has not married the employee, but—

(1) The employee has acknowledged in writing that the claimant is his or her son or daughter; or

(2) A court has decreed that the employee is the mother or father of the claimant; or

(3) A court has ordered the employee to contribute to the claimant's support because the claimant is the employee's son or daughter; and

(4) Such acknowledgement, court decree, or court order was made not less than one year before the employee became entitled to an annuity or, in the case of a disability annuitant, prior to his or her most recent period of disability or, in case the employee is deceased, prior to his or her death.

(d) The claimant's mother or father has not married the employee, but—

(1) The claimant has submitted evidence acceptable in the judgment of the Board, other than that discussed in paragraph (c) of this section, that the employee is his or her mother or father; and

(2) The employee was living with the claimant or contributing to the claimant's support, as discussed in §§ 222.58 and 222.42 of this part, when—

(i) The spouse applied for an annuity based on having the employee's child in care; or

(ii) The employee's annuity could have been increased under the social security overall minimum provision; or

(iii) The employee died, if the claimant is applying for a child's annuity or lump-sum payment.

§ 222.33 Relationship resulting from legal adoption.

(a) *Adopted by employee.* A claimant will be considered to be the child of the employee for both annuity and lump-sum payment purposes if the employee legally adopted the claimant in accordance with applicable State law. Legal adoption differs from equitable adoption in that in the case of legal adoption formal adoption proceedings have been completed in accordance with applicable State law and such proceedings are not defective.

(b) *Adopted by widow or widower.* A claimant who is legally adopted by the widow or widower of the employee after the employee's death will be considered to be the child of the employee for annuity but not for lump-sum payment purposes if—

(1) Either the claimant is adopted by the widow or widower within two years after the date on which the employee died, or the employee commenced proceedings to legally adopt the claimant before the employee's death; and

(2) The claimant was living in the employee's household at the time of the employee's death; and

(3) The claimant was not receiving regular support contributions from any other person other than the employee or spouse at the time of the employee's death.

§ 222.34 Relationship resulting from equitable adoption.

In many States, where a legal adoption proceeding was defective under State law or where a contemplated legal adoption was not completed, a claimant may be considered to be an equitably adopted child. A claimant will have the relationship of an equitably adopted child for annuity and lump-sum payment purposes if, in addition to meeting the other requirements of this part—

(a) The employee had agreed to adopt the claimant; and

(b) The natural parents or the person legally responsible for the care of the claimant agreed to the adoption; and

(c) The employee and the claimant lived together as parent and child; and

(d) The agreement to adopt is recognized under applicable State law such that, if the employee were to die without leaving a will, the claimant could inherit a share of the employee's personal estate as the child of the employee.

§ 222.35 Relationship as stepchild.

A claimant will be considered to have the relationship of stepchild of an employee, and will be considered a child for annuity but not for lump-sum benefit purposes if—

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(a) The claimant's natural or adoptive parent married the employee after the claimant's birth; and

(b) The marriage between the employee and the claimant's parent is a valid marriage under applicable State law (see §§ 222.12 and 222.13), or would be valid except for a legal impediment; and

(c) The employee and the claimant's parent were married at least one year before the date—

(1) On which the spouse applies for an annuity based on having the employee's child in care; or

(2) On which the employee's annuity can be increased under the social security overall minimum provision; or

(d) The employee and the claimant's parent were married at least nine months before the date on which the employee died if the claimant is applying for a child's annuity; or if the employee and the claimant's parent were married less than nine months, the employee was reasonably expected to live for nine months, and—

(1) The employee's death was accidental; or

(2) The employee died in the line of duty as a member of the armed forces of the United States; or

(3) The widow(er) was previously married to the employee for at least nine months.

§ 222.36 Relationship as grandchild or stepgrandchild.

A claimant will have the relationship of grandchild or stepgrandchild of an employee, or the grandchild or stepgrandchild of an employee's spouse, and be considered a child for annuity purposes if the requirements in both paragraph (a) and either paragraph (b) or (c) of this section are met.

(a) The claimant is the natural child, adopted child, or stepchild of a child of an employee, or of a child of the employee's spouse as defined in this subpart;

(b) The claimant's natural or adoptive parents are deceased or are disabled, as defined in section 223(d) of the Social Security Act, in the month in which—

(1) The employee, who is entitled to an age and service or disability annuity, under the Railroad Retirement Act, would also be entitled to an age benefit under section 202(a) of the Social Security Act or a disability benefit under section 223 of the Social Security Act, if his or her railroad compensation were considered wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if the employee has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (b)(1) of this section or until he or she dies.

(c) The claimant was legally adopted in the United States by the employee's widow(er) after the employee's death, and the claimant's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the claimant's support at the time the employee died.

Note: A grandchild or stepgrandchild does not have the relationship of "child" for lump-sum payment purposes (see § 222.44).

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

§ 222.40 When determinations of relationship are made for parent, grandchild, brother or sister.

(a) *Parent.* The claimant's relationship as a parent of the employee is determined when the claimant applies for an annuity or for lump-sum payments.

(b) *Grandchild.* The claimant's relationship as a grandchild, rather than as a child, of the employee is determined when the claimant applies for lump-sum payments.

(c) *Brother or sister.* The claimant's relationship as a brother or sister of the employee is determined when the claimant applies for lump-sum payments.

§ 222.41 Determination of relationship and support for parent.

(a) *Annuity claimant.* For purposes of applying for an annuity, a claimant is considered the employee's parent when the claimant—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under the law of the State in which the employee had a permanent home when the employee died; or

(2) Is a person who legally adopted the employee before the employee became 16 years old; or

(3) Is a stepparent who married the employee's natural or adoptive parent before the employee became 16 years old (the marriage must be valid under the law of the State in which the employee had a permanent home when the employee died); and

(4) Was receiving at least one-half support from the employee (see §§ 222.42 and 222.43 of this part) either when the employee died or at the beginning of the period of disability, if the employee had a period of disability.

(b) *Lump-sum payment claimant.* For purposes of applying for lump-sum payments, a claimant is considered the employee's parent when he or she—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under applicable State law; or

(2) Legally adopted the employee, if thereby recognized as a parent under applicable State law; but

(3) The claimant need not have received one-half support from the employee.

§ 222.42 When employee is contributing to support.

(a) An employee is contributing to the support of a person if the employee gives cash, goods, or services to help support such person. Support includes food, clothing, housing, routine medical care, and other ordinary and necessary living expenses. The value of any goods which the employee contributes shall be based upon the replacement cost of those goods at the time they are contributed. If the employee provides services that would otherwise require monetary payment, the cash value of the employee's services may be considered a contribution to support.

(b) The employee is contributing to the support of a person if that person receives an allotment, allowance, or benefit based upon the employee's military pay, veteran's pension or compensation, social security earnings, or railroad compensation.

(c) Contributions must be made regularly and must be large enough to meet an important part of the person's ordinary and necessary living expenses. If the employee provides only occasional gifts or donations for special purposes, they will not be considered contributions for support. Although the employee's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, will be disregarded unless during these interruptions someone else assumes responsibility for support of the person on a regular basis.

§ 222.43 How the one-half support determination is made.

(a) *Amount of contributions.* The employee provides one-half support to a person if the employee makes regular contributions to that person's support, and the amount of the contributions is equal to or in excess of one-half of the person's ordinary and necessary living expenses. Ordinary and necessary living expenses are the costs for food, clothing, housing, routine medical care, and similar necessities. A contribution may be in cash, goods, or services (see § 222.42 of this part). For example, an employee pays rent and utilities amounting to $6,000 per year on an apartment in which his mother resides. In addition, the employee's mother receives $3,600 per year in social security benefits which she uses to pay for her food, clothing and medical care. The mother's total necessary living expenses are $9,600 ($6,000 + $3,600). Since the employee contributes $6,000 toward these expenses, he is contributing in excess of one-half of his mother's support.

(b) *Reasonable period of time.* The employee is not providing at least one-half of a person's support unless the employee has made contributions for a reasonable period of time. Ordinarily, the Board will consider a reasonable period of time to be the 12-month period immediately preceding the time when the one-half support requirement must be satisfied. However, if the employee provided one-half or more of the person's support for at least 3 months of the 12-month period, and was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over responsibility for providing at least one-half of the person's support on a permanent basis, three months shall be considered a reasonable period of time.

§ 222.44 Other relationship determinations for lump-sum payments.

Other claimants will be considered to have the relationships to the employee shown below for lump-sum payment purposes:

(a) *Grandchildren.* A grandchild is a separate class of beneficiary to be considered for lump-sum payments and is not a child of the employee; he or she is a child of the employee's son or daughter as determined under State law. A stepgrandchild is not included in this class of beneficiary.

(b) *Brother or Sister.* "Brother" or "Sister" means a full brother or sister or a half brother or half sister, but not a stepbrother or stepsister.

Subpart F—Child Support and Dependency

§ 222.50 When child dependency determinations are made.

(a) *Dependency determination.* One of the requirements for a child's annuity or for increasing an employee or spouse annuity under the social security overall minimum provision on the basis of the presence of a child in the family group is that the child be dependent upon the employee. The dependency requirements and the time when they must be met are explained in §§ 222.51 through 222.57.

(b) *Related determinations.* To prove a child's dependency, an applicant may be asked to show that at a specific time the child lived with the employee, tht the child received contributions for his or her support from the employee, or that the employee provided at least one-half of the child's support. The terms "living with", "contributing to support", and "one-half support" are defined in §§ 222.58, 222.42, an 222.43. These determinations are required when—

(1) A natural child or legally adopted child of the employee is adopted by someone else; or

(2) The child claimant is the stepchild, grandchild, or equitably adopted child of the employee.

§ 222.51 When a natural child is dependent.

The employee's natural child, as defined in § 222.32, is considered to be dependent upon the employee. However, if the child is legally adopted by someone else during the employee's lifetime and, after the adoption, a child's annuity or other annuity or annuity increase is applied for on the basis of the employee's earnings record and the relationship of the child to the employee, the child will be considered dependent upon the employee (the natural parent) only if he or she was either living with the employee or the employee was contributing to the child's support when either:

(a) A spouse's annuity begins; or

(b) The employee's annuity can be increased under the social security overall minimum provision; or

(c) The employee dies; or

(d) If the employee had a period of disability which lasted until he or she could have become entitled to an age or disability benefit under the Social Security Act (treating the employee's railroad compensation as wages under that Act), at the beginning of the period of disability or at the time the employee could have become entitled to the benefit.

§ 222.52 When a legally adopted child is dependent—general.

(a) *During employee's lifetime.* If the employee adopts a child before he or she could become entitled to a social security benefit (treating his or her railroad compensation as wages under that Act), the child is considered dependent upon the employee. If the employee adopts a child, unless the child is his natural child or stepchild, after he or she could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is considered dependent on the employee only if the requirements of § 222.53 are met.

(b) *After employee's death.* If the surviving spouse of an employee adopted a child after the employee's death, the child is considered dependent on the employee if either—

(1) The employee began proceedings to adopt the child prior to his or her death, or the surviving spouse adopted the child within two years after the employee's death; and

(2) The child was living in the employee's household at the time of the employee's death; and

(3) The child was not receiving regular contributions from any person, including any public or private welfare organization, other than the employee or spouse at the time of the employee's death.

§ 222.53 When a legally adopted child is dependent—child adopted after entitlement.

A child who is not the employee's natural child, stepchild, grandchild, or stepgrandchild, and who is adopted by the employee after the employee could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

(a) The child is adopted in the United States;

(b) The child began living with the employee before the child attained age 18;

(c) The child is living with the employee in the United States and received at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to a social security benefit as described above; or

(2) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above.

(d) In the case of a child born within the one-year period stated in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the child was born.

(e) "Substantially all" means—

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(1) The child was living with and receiving one-half support from the employee when the employee could have become entitled to a social security benefit as described above; and

(2) Any period during which the child was not living with or receiving one-half support from the employee is not more than one-half the period from the child's birth to the employee's date of entitlement or three months, whichever is less.

§ 222.54 When a legally adopted child is dependent—grandchild or stepgrandchild adopted after entitlement.

If an employee legally adopts his or her grandchild or the spouse's grandchild after he could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the grandchild is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

(a) The grandchild is adopted in the United States.

(b) The grandchild began living with the employee before the grandchild attained age 18.

(c) The grandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee's annuity was increased under the social security overall minimum provision by including the grandchild; or

(2) The employee could become entitled to a social security benefit as described above; or

(3) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above.

(d) In the case of a grandchild born within the one-year period referred to in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild was born. "Substantially all" is defined in § 222.53.

§ 222.55 When a stepchild is dependent.

An employee's stepchild, as described in § 222.35, is considered dependent on the employee if the stepchild is living with or receiving at least one-half of his or her support from the employee at one of the times shown in § 222.51.

§ 222.56 When a grandchild or stepgrandchild is dependent.

An employee's grandchild or stepgrandchild, as described in § 222.36, is considered dependent on the employee if the requirements in both paragraphs (a) and (b), or paragraph (c) of this section are met:

(a) The grandchild or stepgrandchild was living with the employee before the grandchild or stepgrandchild attained age 18.

(b) The grandchild or stepgrandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to an age and service or disability annuity under the Social Security Act (treating his or her railroad compensation as wages under that Act); or

(2) The employee dies; or

(3) The employee becomes entitled to a period of disability that lasts until he or she could become entitled to a social security benefit as described above or until he or she dies.

(c) In the case of a grandchild or stepgrandchild born within the one-year period referred to in paragraph (b) of this section, at the close of such period the child must have been living with and receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild or stepgrandchild was born. "Substantially all" is defined in § 222.53.

§ 222.57 When an equitably adopted child is dependent.

An employee's equitably adopted child, as defined in § 222.34, is considered dependent upon the employee if the employee was either living with or contributing to the support of the child at the time of his or her death. If the equitable adoption is found to have occurred after the employee could have become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is not considered dependent on the employee during the employee's lifetime. If the equitable adoption took place before such time, the child is dependent on the employee if the employee was living with or contributing to the support of the child at one of the times shown in § 222.51.

§ 222.58 When a child is living with an employee.

A child is living with the employee if the child normally lives in the same household with the employee and the employee has parental control and authority over the child's activities. The child is considered to be "living with" the employee while they are living apart if they expect to live together again after a temporary separation. A temporary separation may include the employee's absence because of working away from home or hospitalization. However, the employee must have parental control and authority over the child during the period of temporary separation. A child who is in active military service or in prison is not "living with" the employee, since the employee does not have parental control over the child.

Dated: October 10, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-24675 Filed 10-18-89; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3669-3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: USEPA is approving a request from the State of Wisconsin to revise the sulfur dioxide (SO_2) attainment status designation for the City of Peshtigo, Marinette County, Wisconsin from nonattainment to attainment. Under the Clean Air Act (CAA), a designation can be changed if sufficient data are available to warrant such a change.

In today's notice, USEPA is approving this redesignation because the Wisconsin Department of Natural Resources (WDNR) has submitted sufficient data to support its request to redesignate Marinette County from nonattainment to attainment for SO_2.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on (60 days from the date of this notice). However, if we receive notice by (30 days from the date of this notice) that someone wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

DATE: Any adverse comments must be submitted by November 20, 1989. This final rulemaking becomes effective December 18, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Adverse comments on this rule, if any, should be addressed to: (Please submit an original and three copies, if possible)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan (312) 886-6031

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the National Ambient Air Quality Standard (NAAQS) attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A portion of Marinette County,[1] Wisconsin was designated as not attaining the secondary SO_2 standard. For areas designated nonattainment for SO_2, an SO_2 State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the SO_2 NAAQS. Wisconsin submitted such a plan, and, in an April 4, 1989, (54 FR 13522) direct Final Rulemaking notice, USEPA approved the SO_2 SIP for the City of Peshtigo, Marinette County, Wisconsin.

On December 16, 1988, pursuant to section 107(d)(5) of the CAA, the WDNR also requested that the City of Peshtigo nonattainment area be redesignated to attainment of the SO_2 NAAQS.

[1] The Marinette County SO_2 primary and secondary nonattainment areas are defined as follows: Peshtigo-City Limits of Peshtigo.

Redesignation Requirements

USEPA's redesignation requirements implementing the CAA are found in two memos: Sheldon Meyers to Air and Waste Management Division Directors, "Section 107 Designation Policy Summary", April 21, 1983, and G.T. Helms to Air Branch Chiefs, "Section 107 Questions and Answers", December 23, 1983. The policy requirements as they apply to WDNR's submittal are as follows:

1. There must be a referenced modeled attainment demonstration based on USEPA emission limitations.

USEPA analysis: The modeled attainment demonstration was performed using a USEPA guideline model. The revised emission limitations for Badger Paper Mills will assure attainment and maintenance of the NAAQS for SO_2.

2. Most recent eight consecutive quarters of quality assured, representative ambient air quality data (i.e., reflects maximum worst-case impacts with no violations of NAAQS).

WDNR submittal: WDNR submitted its most recent monitoring data from 1985-1987.

USEPA analysis: The monitored data show no violations of the SO_2 standards.

3. There must be evidence of compliance with the USEPA-approved SIP.

WDNR submittal: WDNR submitted its most recent compliance data based on the compliance test method for Badger Paper Mills.

USEPA analysis: The current federally approved SIP includes a stack test pursuant to the methods approved by USEPA. Although WDNR has developed a site specific compliance plan for Badger Paper Mill, the plan was not included as part of the April 4, 1989, rulemaking. Therefore, the only compliance data applicable to the Badger Paper Mill is stack testing which showed compliance with Wisconsin's SIP.

4. The redesignation must be consistent with USEPA's good engineering practice (GEP) Stack Height Regulations (50 FR 27892).

USEPA analysis: The SIP revision plan is based on two stack modifications. USEPA reviewed these modifications pursuant to the July 8, 1985, (50 FR 27892) Stack Height Regulations. Badger Papers stack height modifications are as follows:

1. Construct a single 197 foot stack to replace the previous single 106 foot stack for the Evaporator Plant, and,

2. Construct a single 100 foot digester blow stack to replace two 80 foot digester blow stacks for the Digester.

Both modifications will be less than the *de minimums* height of 213 feet (65 meters) and are, thus, creditable under USEPA's stack height regulations. With regard to the Digester Blow Stack, the merging of the two digester blow stacks is also creditable for SO_2, because it is associated with the installation of SO_2 control equipment which results in a net reduction in SO_2 emissions. Therefore, the GEP Stack Height Requirements have been met.

5. The redesignation must not result in a relaxation of the SIP, unless the State demonstrates that the NAAQS are still protected with the relaxation.

USEPA comment: The SIP was revised (See the April 4, 1989, **Federal Register** notice (54 FR 13522)) to include new, more stringent limitations for some sources at Badger Paper Mills. No relaxations in emission limitations are associated with the redesignation.

Conclusion

USEPA is approving the redesignation request for the City of Peshtigo, Marinette County, Wisconsin from nonattainment to attainment for the pollutant SO_2, because the WDNR has demonstrated that the area has attained the SO_2 NAAQS.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three SIP action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), I certify that approving this redesignation request will not have a significant economic impact on a number of small entities because it imposes no new requirements to anyone. (See 46 FR 8709).

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Under section 307(b)(1) of the CAA, Petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by (60 days from publication). This acton may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7642.

Dated: September 28, 1989.

Frank M. Covington,

Acting Regional Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642, unless otherwise noted.

2. In § 81.350 the Wisconsin SO_2 table is amended by revising the entry for "Marinette County" to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—SO_2

Designation area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * *	*	*	*	*
Marinette County:				
Peshtigo—City limits of Peshtigo				X
Remainder of—Marinette County				X
* * *	*	*	*	*

[FR Doc. 89-24591 Filed 10-18-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1171

[Ex Parte No. 55 (Sub-No. 74A)]

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting final amendments to the rules at 49 CFR part 1171 governing applications for certificates of registration for certain foreign carriers. A notice of proposed rules was published in the **Federal Register** on June 12, 1989 at 54 FR 24919. These amendments implement changes in the statutory requirements at 49 U.S.C. 10530 and 10922(1) enacted as part of the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B of the Anti-Drug Abuse Act of 1988; Pub. L. 100-690, 102 Stat. 4181). The Act changed the coverage of the registration requirement, and the duration of the certificates of registration. The amended rules are set forth below.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT:
Richard B. Felder, (202) 275–7691
or
Joseph B. O'Malley, (202) 275–7928
[TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Energy and Environmental Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We reaffirm our prior certification. The rules we are adopting will not have a significant economic impact on a substantial number of small entities. The modifications will continue an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates of registration consistent with statutory changes.

Paperwork Reduction Analysis

It is estimated that an average of 1 burden hour per response is required to complete the information elicited on the proposed revised licensing Form OP–2. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120–0079), Washington, DC 20503.

List of Subjects in 49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

Decided: October 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1171 of the Code of Federal Regulations is amended as follows:

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

1. The authority citation for 49 CFR part 1171 continues to read as follows:

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

2. Section 1171.1(a) is revised to read as follows:

§ 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530. Under this section certain foreign motor carriers and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. Neither a foreign motor carrier nor a foreign motor private carrier may provide interstate transportation of property unless the Commission has issued the carrier a certificate of registration. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(1)(2)(B).

* * * * *

3. Section 1171.2(a) is revised to read as follows:

§ 1171.2 Definitions.

(a) *The Act.* The Truck and Bus Safety and Regulatory Reform Act of 1988.

* * * * *

§ 1171.2 [Amended]

4. Paragraph (b) of § 1171.2 is removed.

5. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are redesignated as paragraphs (b), (c), (d), (e), (f), (g), and (h) in § 1171.2.

6. Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 1171.2 Definitions.

* * * * *

(b) *Foreign motor carrier.* A person transporting the goods of others for hire (including a motor carrier of property):

(1) Which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923;

(2) Which is domiciled in any contiguous foreign country, or is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor carrier of property, which provides interstate transportation of property under an agreement or contract with a motor carrier of property (except a motor carrier described in (b)(2) of this section).

(c) *Foreign motor private carrier.* A person transporting its own goods (including a motor private carrier):

(1) Which is domiciled in any contiguous foreign country;

(2) Which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor private carrier which provided interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor private carrier described in (c) (1) and (2) of this section).

* * * * *

7. Section 1171.3 (b) and (d) are revised to read as follows:

§ 1171.3 Procedures used generally.

* * * * *

(b) Under the statute, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the statute.

* * * * *

(d) Applicants must concurrently serve a copy of their completed applications on the United States Department of Transportation, Federal Highway Administration, Office of Motor Carriers (DOT). DOT may intervene in any proceeding on the issue of safety fitness by filing an appropriate pleading detailing its reasons for opposing a grant of authority. The pleading must be filed within 20 days of receiving a copy of the application. Applicant may respond to any such pleading within 20 days of its filing.

8. Section 1171.6(b)(2) and (c) are revised to read as follows:

§ 1171.6 Commission review of the application.

* * * * *

(b) * * *

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations provided that applicant has demonstrated compliance with:

(i) 49 CFR part 1044 (designation of process agent); and

(ii) 49 CFR part 1043 (insurance).

If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be decided by the Commission. If the Commission grants all or part of the application, it will issue a certificate in accordance with the procedure described in 49 CFR 1171.6(b)(2).

[FR Doc. 89-24695 Filed 10-18-89; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notice of partial lifting of stay to final rules previously adopted.

SUMMARY: The Commission is partially lifting a stay that it imposed in this case (54 FR 10533, March 13, 1989) pending consideration of petitions for reconsideration. The result is that regulations previously adopted by the Commission in this proceeding and published in the **Federal Register** on February 10, 1989 at 54 FR 6403 will become effective for rail carriers only. Rail carriers will be permitted to file electronic tariffs as an alternative to printed tariffs. (Rail carriers will be required to accompany their electronic tariffs with identical printed tariffs for one year following the effective date of the Commission's decision lifting the stay.)

DATES: The rules published at 54 FR 6403 will become effective November 8, 1989, for rail carriers only.

FOR FURTHER INFORMATION CONTACT:
Neil Llewellyn, (202) 275–7348
or
Charles Langyher, (202) 275–7739, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: To implement electronic tariff filing, the Commission is relieving the rail carriers from the requirements of its detailed regulations at 49 CFR part 1312, which were drafted with only paper tariffs in mind. Instead, as a result of the partial lifting of the stay, the rail carriers will be required to comply with the regulations of 49 CFR part 1314 that are neutral with regard to the medium by which tariff information is transmitted both to the Commission and to the public. The regulations now effective for rail carriers are brief tariff standards merely requiring that tariffs be filed in such a way that rate and service information is described accurately and fully for use both at the time of filing and in the future.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant adverse economic

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impact on a substantial number of small business entities, although it will reduce the cost of tariff filing for a number of small carriers.

List of Subjects in 49 CFR Parts 1312 and 1314

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads.

Authority: 49 U.S.C. 10321, 10706, 10761, and 10762, and 5 U.S.C. 553.

Decided: October 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24694 Filed 10-18-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 201
Thursday, October 19, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900-AE08

Veterans Education; Increase in Rates Payable in the Educational Assistance Test Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before November 20, 1989. Comments will be available for public inspection until November 28, 1989. It is proposed to make this rate increase retroactively effective on October 1, 1988.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1753, and monthly payment of subsistence allowance for full-time students of $437.

It is proposed to make these increases effective October 1, 1988. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretive rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1988. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The Department of Veterans Affairs (VA) and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations make adjustments required by law, and because they affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 6, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Dated: September 5, 1989.

Donald W. Jones,

Lieutenant General, USA, Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy).

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

1. In § 21.5820, the introductory text of paragraph (b), (b)(1)(ii) (A) and (B), and (b)(2)(ii) (A) and (B) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of education assistance.* The amount of educational assistance may not exceed $1753 per standard academic year, adjusted annually by regulation.

(Authority: 10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $194.78 for a full-time student or by $97.39 for a part-time student;

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(B) Multiplying any additional days in the enrollment period by $6.49 for a full-time student or by $3.25 for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by $194.78 for a full-time student or by $97.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $6.49 for a full-time student or by $3.25 for a part-time student; and

(Authority: 10 U.S.C. 2143)

* * * * *

2. In § 21.5822, paragraphs (b)(1) (i) and (ii) and (b)(2) (i) and (ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $437 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $218.50 per month.

(Authority: 10 U.S.C. 2144)

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $437 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $218.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144)

* * * * *

[FR Doc. 89-24722 Filed 10-18-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400035; FRL-3660-9]

Cadmium Sulfide and Cadmium Selenide; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delist cadmium sulfide (CdS) and cadmium selenide (CdSe) from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986. The decision to deny the petition is based on a weight of evidence determination that these chemicals cause or can reasonably be anticipated to cause cancer as well as other serious or irreversible health effects and environmental effects.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M Street SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC, and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to this petition is issued under sections 313 (d) and (3)(1) of The Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA"). EPCRA is also referred to as title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On April 14, 1989, EPA received a petition from SCM Chemicals, Inc., to delete CdS and CdSe from the list of toxic chemicals. CdS and CdSe are included within the category listing of cadmium compounds. The chemical properties and uses of the two chemicals are similar; therefore, EPA elected to review them together. The petition was based on SCM's contention that CdS and CdSe are not toxic and do not meet the section 313 criteria for listing. The statutory deadline for EPA's response is October 11, 1989.

III. EPA's Review of CdS and CdSe

A. Chemistry Profile

CdS is a yellow-orange powder. CdS ore occurs in nature, but CdS can also be synthesized by several methods. CdS has a melting point of greater than 999 °C and a water solubility of 0.13 mg/100g H_2O.

CdSe is a greenish-brown or red powder. CdSe can be prepared by passing hydrogen selenide into an acidified solution of soluble cadmium salts. The meeting point of CdSe is greater than 1350 °C, and it is reported to be insoluble in water, although quantitative data were not found.

B. Toxicity Evaluation

The major argument presented by the petitioner for delisting CdS and CdSe is that, because of their low solubility and low bioavailability, the compounds do not pose the same health and environmental risks as other cadmium compounds.

In response, EPA assessed information on the health and environmental hazards of CdS and CdSe and of cadmium ion itself. Data on cadmium ion are considered pertinent in view of the facts that: (1) The toxicity of cadmium compounds is acknowledged to be due to the cadmium cation, not the complementary anion; (2) the toxicity of CdS or CdSe would be a function of the availability of the cadmium ion; (3) data provided by the petitioner and additional data obtained in EPA's review show that some amounts of cadmium ion are available from these compounds to affect susceptible tissues. Because most of the effects of cadmium ion are produced at very low doses, it is possible that the quantities of cadmium ion released from CdS or CdSe would be toxic.

Futhermore, the well-documented accumulation and persistence of cadmium in humans and animals add

weight to the concerns for the toxicity of cadmium ion. The consequences of adding to the body burden of cadmium could become apparent when physiological resilience is diminished.

1. *Absorption/bioavailability.* Available data show that cadmium ion is bioavailable from CdS. There are no data on the bioavailability of cadmium ion from CdSe. However, based on the data on CdS, as well as other relatively insoluble cadmium compounds such as cadmium carbonate (water solubility = 0.0028 mg/100g H_2O), cadmium ion is also expected to be bioavailable from CdSe. Additional support for this conclusion comes from data on rats exposed to a mixture of CdSe and CdS pigments which showed that cadmium ion is bioavailable.

Animal data show that cadmium ion from CdS and CdSe is absorbed to some extent from the lung and that the cadmium ion from CdS is absorbed to some extent from the gastrointestinal (GI) tract.

Cadmium also warrants scrutiny because of its high bioaccumulation potential. The half-life of cadmium in humans is not exactly know, but it is many years and may be as long as 30 years.

2. *Carcinogenicity.* Based on a weight of evidence determination derived from data on CdS and other cadimum compounds, it is reasonable to anticipate that CdS and CdSe will cause cancer in humans. There is limited evidence from epidemiologic studies but sufficient evidence of carcinogenicity in rats and mice by multiple routes of administration.

CdS produced an increased incidence of tumors by three routes of administration in the rat. Lung tumors were increased following chronic inhalation exposure, and injection site tumors were produced after subcutaneous or intramuscular administration. There is, at present, inadequate evidence to conclude that cadmium is carcinogenic via ingestion.

CdSe has not been tested for carcinogenicity. Other cadmium compounds of various degrees of water solubility (cadmium chloride, cadmium sulfate, and cadmium oxide) have been tested by multiple routes of exposure and shown to increase tumor incidence following inhalation or injection routes. Cadmium compounds (cadmium acetate, cadmium sulfate, cadmium chloride) administered orally have not increased tumor incidence in rats or mice.

Thus, based on the carcinogenic activity of CdS and other cadmium compounds, CdSe is expected to have carcinogenic potential. The carcinogenic activity of cadmium compounds does not appear to be based on water solubility.

Mutagenicity data on several cadmium salts provide support for the possibility that CdS and CdSe may be heritable genotoxicants. Furthermore, CdS itself induces chromosome aberrations in human cells in culture and DNA effects and cell transformation in mammalian cells in culture.

3. *Other health effects.* Although the target organ of cadmium toxicity is the kidney, other adverse effects may occur in the liver, lung, and skeleton. In addition, there is a large amount of data on the development/reproductive system toxicity of other cadmium salts. Studies by several routes of administration (i.e., inhalation, diet, gavage, injection, and drinking water) in several animal species demonstrate these effects at low (milligram per kilogram) levels.

4. *Aquatic toxicity.* Both CdS and CdSe will partition predominantly into sediments, where they are anticipated to break down into their cadmium, sulfate, and selenium components by microbes or under aerobic/anaerobic and high/low pH conditions.

Cadmium may cause severe acute toxicity in fish and invertebrates, with freshwater biota being more sensitive than marine organisms. Water concentrations of 0.8 to 9.9 ppb. of cadmium were acutely toxic to invertebrates and to fish. Sublethal or chronic effects were noted for these groups at 0.7 to 5.0 ppb. Cadmium is also toxic to freshwater species (algae).

Both freshwater and marine organisms can bioaccumulate cadmium from water containing cadmium concentrations that are not considered hazardous to these organisms. Humans may then consume the fish that have bioaccumulated concentrations of these cadmium compounds in their adipose tissues. Bioconcentration factors are as high as 4,900 for fish, 2,720 for a mollusk, 2,550 for an alga, and 2,200 for an aquatic insect.

B. Use, Release and Exposure

1. *Production and use.* The 1988 U.S. production volumes have been estimated to be 2.2 million pounds for CdSe and 1.5 million pounds for CdS. There chemicals are manufactured at four sites.

All cadmium pigments are based on CdS, which produces a golden-yellow pigment when precipitated, dried, and calcined. The cadmium pigment class also includes blends of CdS with zinc or mercury sulfides and with CdSe to produce colors ranging from lemon-yellow to maroon.

Approximately 85 percent of cadmium pigment uses are in plastics such as acrylonitrile-butadiene-styrene (ABS), terpolymer, and high-density polyethylene. The remaining 15 percent is used in ceramics, paints and coatings, and miscellaneous uses.

2. *Exposure and release.* Release estimates for CdSe and CdS were based on data on Toxic Release Inventory forms submitted under section 313 and estimates made by EPA's Office of Air Quality Planning and Standards. EPA estimates were based on information provided under TRI, section 114 (Clean Air Act) responses, EPA source tests, and emissions factors. For both these estimates the releases of cadmium pigments are reported as cadmium based on the weight of the cadmium portion of the pigment.

a. *Air.* The largest source of air emissions of CdS and CdSe result from manufacturing operations. EPA estimates air emissions of cadmium pigment to range up to 2 kg/site/day (on the weight of cadmium). There daily emissions translate into a worst-case individual annual exposure of 0.905 mg/yr.

b. *Water.* The largest source of water releases results from manufacturing operations. Concentrations of these releases in receiving streams were calculated and compared with the EPA ambient water quality criteria for cadmium. Concentrations at one of the manufacturing sites exceeded the criteria over 300 days of a 350-day release. Water releases from processing operations were also found to exceed the water quality criteria value over 300 days of a 350-day release.

3. *Land.* Indirect releases (Publicly Owned Treatment Works sludge) from manufacturing operations may go to unrestricted landfills and be available for leaching. Landfill wastes from processing facilities have been estimated to range up to 2,400 kg/yr/site. Since these wastes are of the neat pigments, it is expected that they do not have to be disposed of in hazardous waste facilities and therefore may become available for leaching.

C. Summary of Technical Review

CdS and CdSe can be reasonably anticipated to cause cancer in humans. This conclusion is based on available cancer data on CdS and other cadmium compounds and it is supported by mutagenicity data on CdS and other cadmium compounds.

CdS and CdSe also can be reasonably anticipated to cause developmental/reproductive system toxicity and mutagenicity in humans. For these

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effects, the conclusion is based on data on other cadmium compounds showing that the cadmium ion produces these effects at low doses. The available data on other cadmium salts demonstrate that CdS and CdSe may be toxic to aquatic species at very low doses and may have the potential to bioaccumulate in these species.

There are releases of CdSe and CdS to air, land, and water during its manufacture, processing, and use. The water releases may cause exceedances of the national water quality criteria. Air releases may result in inhalation exposure to humans and there is possible leaching of these compounds from landfills at use sites.

IV. Explanation of Denial

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313. When granting a petition, EPA has an obligation to show how the granting of the petition fulfills the statutory criteria EPA is to use in section 313(d) when modifying the list of toxic chemicals. When denying a petition, the Agency must issue an explanation of why the petition is denied. In the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specific analyses in making listing determinations under section 313(d). EPA has concluded that potential exposure can be considered in making decisions to revise the chemicals on the list. In all evaluations, EPA has discretion to consider a variety of factors to determine whether it is appropriate to add chemicals to or delete chemicals from the list, albeit limited in the case of petitions under section 313(d) by the 180-day period.

B. Reason for Denial

EPA is denying the petition submitted by SCM Chemicals, Inc., to delete CdS and CdSe from the section 313 list of toxic chemicals. The decision to deny the petition is based on a weight of evidence determination that the chemicals can reasonably be anticipated to cause serious or irreversible health effects. CdS and CdSe can reasonably be anticipated to cause cancer in humans and there is evidence, from studies of other cadmium salts, that CdS and CdSe may cause developmental/reproductive system toxicity and mutagenicity in humans. There is also evidence, from studies of other cadmium salts, to indicate that the cadmium ion released from these compounds is toxic to aquatic species at very low doses.

V. Administration Record

The record supporting this decision is contained in docket control number OPTS-400035. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Room NE-G004, 401 M Street SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: October 11, 1989.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 89-24674 Filed 10-18-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1152

[Ex Parte No. 274 (Sub-No. 13A)]

Rail Abandonments—National Trails System Improvements Act

AGENCY: Interstate Commerce Commission.

ACTION: Petition for rulemaking granted; comments requested.

SUMMARY: The Commission grants a joint petition, by the Rails to Trails Conservancy and seven other parties, to begin a rulemaking proceeding. Petitioners seek rules designed to implement the National Trails System Improvements Act of 1988: (1) Requiring railroads abandoning lines to notify the Secretary of the Interior and the Secretary of Agriculture whether, to what extent, and under what statutory authority, lines proposed to be abandoned contain any right-of-way that was federally granted; and (2) requiring the Commission to stay the effectiveness of any abandonment if Interior or Agriculture request that the railroad furnish them title information reasonably available from the railroad's files or files of its agents. Petitioners suggest amending environmental regulations in 49 CFR part 1105. Other title 49 parts, such as 1152, may be more appropriate. The Commission seeks comments from Interior, Agriculture, and any other interested parties, especially about respective roles and burdens in implementing the Act.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 20, 1989.

ADDRESSES: Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 274 (Sub-No. 13A), Interstate Commerce Commission, Washington, DC 20423.

In addition, send a copy of all comments to petitioners' representative: Charles H. Montange, 1400 16th St., NW, #301, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245, [TDD for hearing impaired (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The Commission grants a joint petition [1] for rulemaking to consider whether to adopt rules to implement the National Trails System Improvements Act of 1988 (Improvements Act), Public Law No. 100-470, which amends The National Trails System Act. The purpose of the Improvements Act is to further the use of abandoned railroad rights-of-way for both recreational trail and conservation purposes.[2] Section 3 of the Improvements Act, codified at 16 U.S.C. 1248(c) *et seq.*, provides that in the event of future abandonments of railroad rights-of-way previously granted by the United States, the United States will retain whatever interests it may have in those rights-of-way so that they may be managed for recreational trail purposes and other consistent uses.[3]

Section 1248(c) is the focus of this proceeding. It provides:

> Commencing upon the date of enactment of this subsection, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in the Act of March 8, 1922 (43 U.S.C. 912), shall remain in the United States upon the abandonment of forfeiture of such rights-of-way, or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such Act.

Sections 1248 (d) and (e) provide for the management and disposition of reverted property. The U.S. Department of the Interior (Interior) is responsible for managing and disposing of reverted property. Petitioners suggest that the U.S. Department of Agriculture

[1] Petitioners include Rails to Trails Conservancy, American Hiking Society, League of American Wheelmen, Heritage Trails Fund, American Trails, American Horse Council, Minnesota Department of Natural Resources, and Washington State Parks and Recreation Commission.

[2] H.R. Rep. No. 572, 100th Cong., 2d Sess., (1988); and S. Rep. No. 408, 100th Cong., 2d Sess., (1988).

[3] *Id.*

(Agriculture) also may have implementing responsibilities.

Petitioners argue that Interior and Agriculture will need help in identifying "section 1248(c) property" and knowing when that property is being abandoned. According to petitioners, neither Interior nor Agriculture has information or information retrieval systems capable of giving them such information in a timely fashion within budget constraints. Because this Commission regulates rail line abandonments, petitioners maintain that we could help Interior and Agriculture in this regard. Petitioners recommend various modifications of the Commission's environmental regulations, codified at 49 CFR part 1105, as set forth in detail in our decision.

We seek comments from all interested parties, especially from both Agriculture and Interior describing their roles in implementing the Improvements Act and how we can assist. It will be helpful to us to understand: (1) What resources Interior and Agriculture have marshalled to date to implement section 1248(c); (2) the process Interior will use to reclaim affected property; and (3) how the proposed notice and title information would be used.

While we are not proposing specific rules, all parties are placed on notice that, following receipt of comments, we intend to adopt final rules. We seek to develop rules that meet implementation needs but at the same time minimize the burden on the industry to the extent possible.[4]

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 275-7428. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

[4] Petitioners state that because their proposed amendments relate to the Commission's environmental regulations implemented by the Commission's Section of Energy and Environment, they have informally discussed them with the staff of that Section. According to petitioners, they have been advised that the Section has no objection to the proposed amendments and foresees no additional significant burden upon itself in terms of implementing the proposals.

However, the Commission's Section of Energy and Environment denies that it has made any statements or agreement or has given any assurances regarding the merits of petitioners' proposals. In any event, it would not have been appropriate for that office to have provided any opinion in these matters.

Adopted rules would appear to have no significant impact on a substantial number of small entities because only minor notice and informational requirements would be involved, and most of the involved carriers do not qualify as small entities.

List of Subjects in 49 CFR part 1105

Environmental impact statements, Reporting and recordkeeping requirements

List of Subjects in 49 CFR part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, National resources, Public lands—grants, Public lands—rights-of-way, Railroads, Recreation and recreation areas, and Reporting and recordkeeping requirements.

Authority: 5 U.S.C. 553, 16 U.S.C. 1248(c); and 49 U.S.C. 10321, 10505, 10903, and 10904.

Decided: October 10, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24577 Filed 10-18-89; 8:45 am]

BILLING CODE 7035-01-M

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Notices

Federal Register
Vol. 54, No. 201
Thursday, October 19, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 13, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USD, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Emergency

- Animal and Plant Health Inspection Service,

National Animal Health Monitoring Systems (NAHMS), NAHMS–5, 6, 7, 8, 9, and 10, Monthly; Annually,
Farms; 70,000 responses; 12,740 hours; not applicable under 3504(h),
Dr. William D. Hueston (303) 498–1900.

- Farmers Home Administration,

7 CFR 1956–C, Debt Settlement—Community and Business Programs,
None,
On occasion,
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 18 responses; 9 hours; not applicable under 3504(h),
Jack Holston (202) 382–9736.

Extension

- Economic Research Service,

Honey Producers, Packers, Importers and Brokers Survey,
None,
On occasion,
Individual or households; Farms; Business or other for-profit; Small businesses or organization; 2,131 responses; 2,131 hours; not applicable under 3504(h),
Frederic L. Hoff, (202) 286–1883.

New Collection

- Food and Nutrition Service,

Supplement to Financial Status Report—Administrative Costs in Nutrition Education and Training Program,
FNS–665,
Quarterly,
State or local governments; 60 responses; 15 hours; not applicable under 3504(h),
Chris Lipsey, (703) 756–3048.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–24645 Filed 10–18–89; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

[Docket No. 89–027N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Notice is hereby given that a meeting of the Hazard Analysis Critical Control Points (HACCP) Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods, will be held on Monday and Tuesday, November 6–7, 1989. Meetings are scheduled from 1:00 p.m. to 5:00 p.m. on Monday and from 8:30 a.m. to 5:00 p.m. on Tuesday at the Radisson Hotel, 1400 Milwaukee Avenue, Glenview, Illinois 60025.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The subcommittee, which is comprised of committee members, will be meeting to review and finalize the HACCP recommendations for presentation to the full committee November 27–29, 1989.

The meetings are open to the public on a space available basis. Comments of interested persons may be filed before or after the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this notice. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on: October 13, 1989.

Lester M. Crawford,

Chairman.

[FR Doc. 89–24664 Filed 10–18–89; 8:45 am]

BILLING CODE 3410–P6–M

Agricultural Marketing Service

[FV–89–099]

Navel Oranges Grown in Arizona and Designated Part of California; Marketing Policy for the 1989–90 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1989–90 marketing policy for navel oranges grown in Arizona and a designated part of California. The marketing policy was discussed and approved on September 19, 1989, by the Navel Orange Administrative Committee, which locally administers the marketing order covering California-Arizona navel oranges. The marketing policy contains information on crop and market prospects for the 1989–90 season.

DATE: Written suggestions, views, or pertinent information relative to the marketing of the 1989–90 California-Arizona navel orange crop will be considered if received by November 20, 1989.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456. Such submissions should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone; (202) 447–8139. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly from the Navel Orange Administrative Committee. Copies of the marketing policy are also available from Ms. Schlatter.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50 of the marketing order covering navel oranges grown in Arizona and designated part of California, the Navel Orange Administrative Committee, hereinafter referred to as the "committee," is required to submit a marketing policy to the Secretary prior to recommending volume (prorate) or size regulations for the ensuing season. The order, issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets which are defined by the order to include Canada. Regulation of export shipments of navel oranges and navel oranges utilized in the production of processed orange products is not authorized under the order.

Prior to the recommendation for regulation for each prorate district specified in the order, the committee submits to the Secretary its marketing policy for the ensuing season. The marketing policy contains the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing seasons; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due considering to the onset and duration of prorate and any size regulation. In the event that it becomes advisable to substantially modify the marketing policy, the committee submits to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

The committee adopted its marketing policy for the 1989–90 marketing season at its September 19, 1989, meeting in Los Angeles, California. Various meetings to develop, discuss and review the committee's marketing policy were held throughout the production area on September 8 in Visalia, California, on September 11 in Riverside, California, on September 13 in Yuma, Arizona, on September 15 in Orland, California, on September 26 in Visalia, California, and on October 3 in Ontario, California. Substantial numbers of industry representatives were present at many of these meetings.

The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets during the season, without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In addition to providing the Secretary with information specified in the marketing order about crop and marketing conditions, the policy statement affords an opportunity for growers and handlers to gain a broad perspective of the industry as it relates to all prorate districts and supplies a view of the anticipated economic environment in which the total crop will be marketed. The committee identified an array of general considerations in formulating its 1989–90 marketing policy.

One of the considerations the committee discusses pertains to the nature of the navel orange as a round, relatively seedless, easy-to-peel fruit which has a widely accepted flavor and color. However, as the committee emphasizes, from season to season, this quality may be highly variable and may even change drastically during the course of the harvest. In addition, the characteristics of each crop of navel oranges are now known at the time the marketing policy is developed.

Another consideration is that the total amount of the crop available to be sold is not known at the time the marketing policy is developed. The total amount of navel oranges predicted to be available is derived from the crop estimate which is based on handler questionnaires and in-grove counts and measurements. The total crop estimate is regularly revised by the committee on the basis of surveys of the harvest in-progress and on-going grove measurements by committee staff and employees. This sometimes results in changes in the crop estimate as late as the final weeks of harvest. The committee observes that this is primarily due to weather. Drought can reduce production estimate as late as the final weeks of harvest. The committee observes that this is primarily due to weather. Drought can reduce production and cause crop failure; freezes can destroy maturing crops in the field; floods can make it impossible to cultivate or harvest.

Citrus fruit, which includes navel oranges, is especially vulnerable to freezes. Navel oranges for the fresh market can be held on the tree for an extended period but they cannot be stored for long periods without loss of quality or spoiling after picking. Storage on the tree has proven to be useful in extending shipments throughout the marketing season. However, navel oranges stored on the tree are more susceptible to freeze damage. In some seasons, the California-Arizona navel orange industry has suffered serious crop losses or downgrading of fruit quality when navel oranges are left on the tree throughout the winter months.

The length of the marketing season, which can vary greatly, is also not known at the time of development of the marketing policy. Traditionally, the marketing season for navel oranges begins when earlier navel orange cultivars turn color from green to orange and reach maturity under State of California standards, and continues as long as fruit has "shipping quality." Thus, the marketing season can begin as early as October and last until late May or early June. Weather can cause a shortened marketing period or extend the season to the point where California-Arizona navel oranges are in

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direct competition with California-Arizona Valencia oranges.

Thus, the committee observes, at the time of the development of the marketing policy, it may not be able to project with certainty the oranges available, and the length of the marketing season due to the variable factors previously discussed.

The aim of the committee is to put as much fruit into domestic fresh fruit channels as can be sold, consistent with income maximization and without price fluctuations which could damage the economic structure of the industry. This has involved extending the period of harvest and packing so that no single week's shipments result in over-supplies which could exceed demand. The committee, therefore, develops a proposed shipping schedule which is prepared on the basis of the initial crop estimate and adjusted with each revised estimate throughout the season.

The committee believes that, theoretically, adhering to such a proposed schedule could produce orderly marketing and economic success. However, a look at the two most recent seasons show how different two seasons can be when shipments were nearly identical. During the 1987–88 season, the industry shipped 45,087 cars to domestic fresh fruit channels; during the 1988–89 season, shipments were nearly identical—45,481 cars. However, in the first season, the average number of navel oranges per carton was 68, while in the 1988–89 season, it was 96 per carton. Navel oranges are primarily an out-of-hand eating fruit and are not satisfactory either for making juice or cooking. Thus, the difference in the number of oranges per carton meant that United States and Canadian consumers bought over a billion more oranges in 1988–89 than in the previous season in order for the industry to achieve comparable sales.

In seasons of abnormal size patterns, the industry must be especially careful in managing the flow of fruit to market in order to avoid building excessive inventories in the marketing chain and subsequently depressing prices. The committee has an interest both in orderly movement and pricing under its marketing order responsibilities. The actions of the committee must be taken on a timely basis to meet conditions which can change as rapidly as the weather. While weather-related problems have been the most common, they may not be the only problems to be faced in the future.

The committee believes that the marketing order for navel oranges continues to be a viable marketing tool. Domestic fresh shipments have increased to the point where 45,000 cars—once considered impossible—is now an accepted minimum. Total navel orange acreage in the production area totals 122,079, the highest in 15 years. Of this, nearly 5,000 is non-bearing new groves.

In its 1989–90 marketing policy, the committee projected the California-Arizona navel orange crop at 73,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each). This compares with last year's total production of 70,633 cars.

The committee estimates District 1, Central California, 1989–90 production at 63,500 cars compared to the 59,937 cars produced in 1988–89. In District 2, Southern California, the crop is expected to be 8,500 cars compared to the 9,282 cars produced last year. In District 3, the Arizona-California desert valley, the committee estimates a production of 900 cars compared to 919 cars in 1988–89. In District 4, Northern California, a 450-car crop is projected compared to 495 cars last year.

In terms of total crop utilization, the committee expects 68 percent of the 1989–90 crop to be accounted for in domestic fresh fruit markets compared with 64 percent in 1988–89; fresh exports are projected to require 10 percent of total 1989–90 utilization, the same as the 1988–89 season; and processing and other uses would account for the residual 22 percent compared with 26 percent in the last season. Expressed in terms of the actual volumes of navel oranges shipped or processed, domestic fresh fruit market shipments would be up about 8 percent from 1988–89 estimates, export shipments would be up about 8 percent, and processed and other utilization would decrease approximately 10 percent.

The committee estimates that shipments to domestic fresh fruit outlets, including Canada, during the 1989–90 season will account for 49,500 cars. Last year a total of 45,581 cars were shipped to fresh fruit domestic markets. Fresh export shipments are expected to total 7,500 cars compared to 6,885 cars last year. Processing and other dispositions are forecast at 16,350 cars compared to 18,167 cars last year. The committee expects that the fresh domestic market will absorb all the fruit that meets quality standards and which is economically feasible to ship.

The committee has projected that the overall quality of this year's crop will be excellent in all districts and a large portion of the navel orange crop will be in the preferred size ranges. Throughout the production area, the fruit appears well formed, somewhat more ovoid than last year, and of normal texture for fruit in the size ranges indicated. This would tend to indicate that internal texture should be good to excellent.

The committee reports that Florida round orange production is expected to be 281,600 cars, about 4 percent less than last year. In Texas, orange production for the 1989–90 season is expected to be 3,150 cars, a decrease of approximately 15 percent from last season. Production of apples is estimated at 236.01 million bushels in 1989–90 compared to 218.04 million bushels in 1988–89. Fresh shipments of winter pears are estimated at a record 12.51 million bushels in 1989–90 compared to 12.47 million bushels last year. Of increasing importance in considering the supplies of competitive non-citrus fruits as "summer fruit" importations from Chile (e.g. nectarines, plums, and peaches), and it is expected that this upward trend will continue for some time. Thus, imports of Chilean fruit in 1989–90 are expected to be greater than in 1988–89.

According to preliminary data reported by the National Agricultural Statistics Service and the committee, the 1988–89 season average fresh on-tree price for California-Arizona navel oranges is $3.72 per carton, 62 percent of the season average parity equivalent price of $5.98 per carton.

The current point estimate of the 1989–90 season average fresh on-tree price is $4.46 per carton, 66 percent of the projected season average fresh on-tree parity equivalent price of $6.52 per carton. Under the current estimate, the probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price is less than one percent.

In discussing the possible need for prorate regulation early in the season, the marketing policy indicated that the beginning of harvest is expected to start somewhat earlier this year than a year ago. Therefore, the committee anticipates that volume regulation could be recommended earlier than last year.

Based on current projections, shipments are expected to begin at the beginning of October and finish in late May. The committee has developed a schedule of estimated weekly shipments covering the 1988–89 season.

The marketing order identifies areas the committee should consider in recommending prorate regulation during a particular week and states that the committee, in making its recommendation, shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors:

(1) Market prices for oranges, including market prices by grades and sizes; (2) the supply of oranges on track at, and en route to, the principal markets; (3) the supply, maturity, and condition of oranges in the area of production including the grade and size composition; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas as well as supplies of competitive fruits; (5) trends and level in consumer income; and (6) other relevant factors.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, volume or size regulations for the 1988–89 season. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses. This notice provides a 30-day period for the receipt of comments. This period is considered to be appropriate due to the number of meetings held throughout the production area, both prior to and subsequent to the adoption of the marketing policy, at which such policy was reviewed and discussed by industry representatives and other interested persons.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 13, 1989.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89–24649 Filed 10–18–89; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

Change in Catalog of Federal Domestic Assistance Program Numbers

AGENCY: Farmer's Home Administration (FmHA), USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of changes in two Catalog of Federal Domestic Assistance (CFDA) program numbers for two Farmer's Home Administration (FmHA) programs. Although these programs were assigned CFDA numbers for administrative purposes, they have not as yet been listed in the CFDA.

DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Cleyman, Environmental Protection Specialist, Program Support Staff, FmHA, Room 6309—South Building, Washington, DC 20250 (Telephone 202–382–9619).

SUPPLEMENTARY INFORMATION: On August 17, 1988, the FmHA published a notice in the **Federal Register**, listing three programs as being covered under Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

The purpose of this notice is to make changes to two of those programs.

Those programs are:

10.437 Rural Development Loan Fund
10.438 Intermediary Relending Program

The following is a synopsis of the changes being made to the above mentioned programs:

10.437 Rural Development Loan Fund (RDLF)

This program will be removed from the CFDA and from the list of programs eligible for review under EO 12372.

The RDLF was a program that was originally administered by the Department of Health and Human Services. The purpose of the program was to provide loans to private and public nonprofit organizations to assist in the development of businesses in rural areas.

In September, 1986, the RDLF program was transferred to USDA. Congress then directed USDA to phase out the RDLF and institute a new program entitled the Intermediary Relending Program (IRP). This new program would serve as a revolving loan fund. As RDLF loan amounts are repaid by borrowers, the funds are then placed in the IRP to be reloaned for essentially the same purpose.

Because the RDLF is being phased out and replaced by a new program, no new loans or any other type of Federal assistance is being offered by the rule. For the purposes of USDA's portion of the CFDA, this program should not have been assigned a CFDA number or included in the Catalog as a Federal assistance program. The Intermediary Relending Program, however, will be included in the CFDA and will be eligible for review under EO 12372.

Therefore, through this notice, the RDLF program is being removed from USDA's list of programs eligible for review under EO 12372 and it will not appear in the CFDA. Program number 10.437 will be reserved for future use.

10.438 Intermediary Relending Program (IRP)

The only change being made to this program concerns the CFDA number. The new CFDA number for this program is 10.439. This program continues to be covered by EO 12372.

This program will appear in the 1989 CFDA.

Dated: October 2, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24715 Filed 10–18–89; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Burnt Mountain Expansion of the Snowmass Ski Area, White River National Forest, Pitkin County, CO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent.

Aspen Skiing Company and the USDA Forest Service have jointly decided to terminate the environmental analysis of Aspen Skiing Company's proposal for expansion of the Snowmass Ski Area onto Burnt Mountain. The Notice of Intent, published in the **Federal Register** of January 2, 1987 is hereby cancelled.

The White River National Forest will periodically review progress of localities in addressing local issues which relate to ski area expansion to determine when and if the process will be restarted.

FOR FURTHER INFORMATION CONTACT: Meg Rauch, Environmental Coordinator, Box 948, Glenwood Springs, Colorado 81602. 303–945–7077.

Dated: October 10, 1989.

Gerald P. Hart,

Acting Forest Supervisor.

[FR Doc. 89–24680 Filed 10–18–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Administrative Proceeding Against Warren E. Thompson

In the matter of: Warren E. Thompson, respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Warren E. Thompson (Thompson) of its intent to initiate an administrative proceeding against him pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (Supp. 1989)) (the Act), and part 788 of the Export Administration Regulations

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(15 CFR parts 768–799) (the Regulations),[1] based on allegations that Thompson committed:

1. One violation of § 787.5(a)(3) of the Regulations in that, between on or about September 13, 1983 and on or about April 25, 1984, Thompson made a representation of material fact to the Office of Export Administration and failed to notify either the Office of Export Administration or the Office of Export Enforcement after he received information which would lead a reasonably prudent person to believe that the material fact had changed; and

2. One violation of § 787.5(a)(1)(ii) of the Regulations in that, on or about April 30, 1984, Thompson indirectly made a false or misleading representation of material fact to a United States agency in connection with the preparation of an export control document;

The Department and Thompson having entered into a Consent Agreement whereby the Department and Thompson have agreed to settle this matter by the Department assessing a civil penalty of $10,000 against Thompson, by the Department's suspending the entire civil penalty for a period of five years subject to the conditions set forth below, by the Department's denying Thompson's export privileges for a five-year period and by Thompson's agreeing to cooperate fully with the Department regarding his knowledge of the transactions which gave rise to the proposed Charging Letter; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, a civil penalty in the amount of $10,000 is assessed against Thompson. The entire civil penalty shall be suspended for a period of five years from the date of entry of an appropriate Order, and shall thereafter be waived provided that, during the period of suspension, Thompson has committed no violation of the Consent Agreement, the Act or any regulation, order or license issued under the Act.

Second, Thompson shall, for a period of five years from the date of entry of an appropriate Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United Sates or abroad. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application of request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

Third, the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public.

This Order is effective immediately.

William V. Skidmore,

Acting Assistant Secretary for Export Enforcement.

Entered this 10th day of October 1989.

[FR Doc. 89-24625 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DT-M

[1] Effective October 1, 1988, the Export Administration Regulations were redesignated as 15 CFR parts 768–799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368–399 (1988).

International Trade Administration

[A-427-802]

Initiation of Antidumping Duty Investigation; Polychloroprene From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of polychloroprene from France materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 6, 1989. If that determination is affirmative, we will make a preliminary determination on or before March 1, 1990.

EFFECTIVE DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–8498 or (202) 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 22, 1989, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc. In compliance with the filing requirements of § 353.12 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12772) (to be codified at 19 CFR 353.12), petitioner alleges that imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

On October 3, and October 4, 1989, we received submissions supplementing the petition.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on price quotations to U.S. purchasers of polychloroprene by A. Schulman Inc. (Schulman). Schulman is a U.S. distributor of polychloroprene produced in France by Distugil S.A. Schulman's prices to U.S. purchasers were obtained by Du Pont salesmen. Petitioner adjusted these prices to account for commissions, U.S. warehousing, foreign inland freight, ocean freight and insurance, and U.S. freight.

Petitioner based foreign market value (FMV) on actual transaction price information collected by Du Pont's European subsidiary on sales of polychloroprene in France. Petitioner adjusted these prices to account for selling expenses, foreign inland freight, and warehousing and distribution.

Based on a comparison of FMV to USP, petitioner alleges dumping margins which range from 22.12 to 46.90 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on polychloroprene from France and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by March 1, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of this investigation.

The product covered by this investigation is polychloroprene. Polychloroprene [also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

Polychloroprene is currently provided for under the following HTS subheadings: 4002.41.00.00 and 4002.49.00.00. Prior to January 1, 1989, polychloroprene was classifiable under items 446.1521 of the *Tariff Schedules of the United States Annotated.*

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 6, 1989, whether there is a reasonable indication that imports of polychloroprene from France materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 12, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24711 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-804]

Initiation of Antidumping Duty Investigation; Polychloroprene From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of polychloroprene from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 6, 1989. If that determination is affirmative, we will make a preliminary determination on or before March 1, 1990.

EFFECTIVE DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 377–8498 or (202) 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 22, 1989, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc. In compliance with the filing requirements of § 353.12 of the Department's regulations published in the **Federal Register** on March 28, 1989 [54 FR 12772] (to be codified at 19 C.F.R. 353.12), petitioner alleges that imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

On October 3, and October 4, 1989, we received submissions supplementing the petition.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this

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petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on price quotations to U.S. purchasers of polychloroprene by Mobay Corporation (Mobay). Mobay, a subsidiary of Bayer A.G. (Bayer), is a U.S. distributor of polychloroprene produced in the Federal Republic of Germany by Bayer. Mobay's prices to U.S. purchasers were obtained by Du Pont salesmen. Petitioner adjusted these prices to account for U.S. selling expenses, U.S. warehousing, foreign inland freight, ocean freight and insurance, and U.S. freight.

Petitioner based foreign market value (FMV) on actual transaction price information collected by Du Pont's European subsidiary on sales of polychloroprene in the Federal Republic of Germany. Petitioner adjusted these prices to account for selling expenses, foreign inland freight, and warehousing and distribution.

Based on a comparison of FMV to USP, petitioner alleges dumping margins which range from 27.36 to 49.14 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on polychloroprene from the Federal Republic of Germany and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by March 1, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of this investigation.

The product covered by this investigation is polychloroprene. Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

Polychloroprene is currently provided for under the following HTS subheadings: 4002.41.00.00 and 4002.49.00.00. Prior to January 1, 1989, polychloroprene was classifiable under items 446.1521 of the *Tariff Schedules of the United States Annotated.*

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 6, 1989, whether there is a reasonable indication that imports of polychloroprene from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 12, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24712 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-802, A-580-806, A-583-808]

Initiation of Antidumping Duty Investigations: Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong, the Republic of Korea, and Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating antidumping duty investigations to determine whether imports or sweaters wholly or in chief weight of man-made fiber (hereinafter referred to as MMF sweaters) from Hong Kong, the Republic of Korea (Korea), and Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of MMF sweaters from Hong Kong, Korea, and Taiwan materially injure, or threaten material injury to, a U.S. industry. If these investigations proceed normally, the ITC will make its preliminary determinations on or before November 6, 1989. If these determinations are affirmative, we will make preliminary determinations on or before March 1, 1990.

EFFECTIVE DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, John Gloninger, or Gary Taverman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4924, 377-8330, or 377-0161, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 22, 1989, we received a petition filed in proper form by the National Knitwear and Sportswear Association on behalf of the domestic MMF sweaters industry. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of MMF sweaters from Hong Kong, Korea, and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(E) of the Act and that it has filed the petition on behalf of a U.S. industry producing the product that is subject to these investigations. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price is based on two methodologies. Using the first methodology, petitioner calculates an average U.S. FAS price-per-dozen based on import volume and value statistics taken from the U.S. Department of Commerce Bureau of the Census (Report IM-145X) for "Sweaters Knitted or Crocheted, of Man-Made Fibers", HTS item numbers 6110.30.30.10 (men's) and 6110.30.30.20 (women's) for the period January, 1989 to June, 1989. Using the second methodology, petitioner calculates a U.S. price based on an average FOB export price-per-dozen and price-per-kilogram taken from the Statistical Department of the Taiwan Inspectorate General of Customs and the Hong Kong Census and Statistics Department for the time period January through April 1989, and from the Korean Office of Customs Administration for the period January through March, 1989.

Petitioner's estimate of foreign market value (FMV) is based on three methodologies: 1) four average wholesale prices, adjusted for discounts and allowances, resales, and taxes and duties (for Korea only); 2) average export prices based on monthly data taken from official government export statistics of Hong Kong, Korea, and Taiwan; and 3) four constructed value calculations derived from a cost analysis developed for four particular MMF sweaters in Hong Kong, Korea, and Taiwan.

Petitioner has developed three types of less-than-fair-value (LTFV) comparisons of sales of MMF sweaters, specifically: 1) comparisons between average U.S. import values and average home market prices (for Korea only); 2) comparisons between the average prices at which MMF sweaters were exported to the United States and the average prices at which they were exported to third countries; and 3) comparisons between average U.S. import values and constructed value calculations.

Of the three methodologies supplied by the petitioner, given the statutory preference for the use of home market price over constructed value, we have based the initiation of the investigations with regard to Korea on the LTFV comparisons between home market prices and average U.S. import prices. We have based the initiation of the investigations with regard to Hong Kong and Taiwan on the LTFV comparisons between constructed value and average U.S. import prices. We are not bashing any of the three initiations on the methodology using export statistics from the various countries because the statistical categories include products other than the subject merchandise and, therefore, are too broad to allow reasonable comparisons.

Based on the comparisons of United States Price and FMV that we determined to be reasonable, petitioner alleges the following dumping margins for each country: Hong Kong—33.07 to 115.15 percent; Korea—13.2 to 53.60 percent; and Taiwan—44.18 to 135.49 percent.

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on MMF sweaters from Hong Kong, Korea, and Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of MMF sweaters from Hong Kong, Korea, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make preliminary determinations by March 1, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by these investigations include sweaters wholly or in chief weight of man-made fiber. For purposes of these investigations, sweaters of man-made fibers are defined as garments for outer wear that are knitted or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths but most typically ending at the waist, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys' or girls' "sweaters", as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

This merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, 6110.30.20.20, 6110.90.00.14 and 6110.90.00.30. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant

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Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 6, 1989, whether there is a reasonable indication that imports of MMF sweaters from Hong Kong, Korea, and Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigations will be terminated; otherwise, they will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 12, 1989

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24713 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Groundfish Plan Teams for the Gulf of Alaska and the Bering Sea/Aleutian Islands Fishery Management Plans (FMPs) will meet on November 13–17, 1989, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Room 2079, Seattle, WA. The Public meeting will begin on November 13 at 9 a.m., PST.

The meeting agenda will include: (1) Preparation of final Stock Assessment and Fishery Evaluation (SAFE) documents, and recommendations for final acceptable biological catch levels for the 1990 fisheries: (2) review of the North Pacific Council's draft environmental impact statement on sablefish management alternatives; (3) prioritization of research needs for groundfish stock assessments and fishery evaluations; (4) incorporation of marine mammal information into SAFE documents; (5) review and prioritization of groundfish FMP amendment proposals for the 1990 cycle; (6) approach for team preparation of FMP amendments on a definition for overfishing; and (7) review of revised amendment 19/14 on pollock roe stripping.

For more information contact Bill Wilson or Hal Weeks, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; telephone: (907) 271–2809.

Dated: October 13, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24699 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council Rescheduling of Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meeting of the South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) on October 17–19, 1989, in Charleston, SC, previously published at 54 FR 41484, has been postponed due to conditions resulting from Hurricane Hugo.

The meeting has been rescheduled for November 14–16, 1989, at the same location at the Town and Country Inn, 2008 Savanah Highway, Charleston, SC. The meeting will begin at 1 p.m., on November 14 and will adjourn at noon on November 16.

The SSC will review the swordfish and the red drum assessments, the Bluefish Fishery Management Plan, Mackerel Amendment #5, and the SEAMAP Shallow Water Trawl Study. A detailed agenda will be available to the public upon request.

For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: October 13, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-24700 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: West Coast Whale Research Foundation (P349A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing fish and wildlife permit (50 CFR parts 217–222).

1. *Applicant:* Elizabeth A. Mathews and Daniel J. McSweeney, West Coast Whale Research Foundation, c/o Applied Sciences 273, UCSC, Santa Cruz, CA 95060.
2. *Type of Permit:* Scientific research under MMPA and scientific purposes under ESA.
3. *Name and Number of Marine Mammals:* Humpback whales (*Megaptera novaeangliae*), 1000.
4. *Type of Take:* The applicant proposes to take by harassment 600 humpback whales in Hawaii and 400 in Alaska during the course of collecting identification photographs from boats. Approach will not be closer than about 25 meters when attempting to obtain photographs. Singing whales will be recorded, but close approach (<100m) during this portion of the work is not required. Natural markings will be used to document local movements, migratory destinations, stock discreetness, reproductive histories, and social behavior. The applicants also plan to study the genetic relationships of humpback whales using DNA 'fingerprinting' from pieces of sloughed skin.
5. *Dates and Location of Activity:* Activities scheduled to begin January 1990 to December 1994. Actual dates are November to May in Hawaii and April to October in Alaska.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Coordinator, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396.

Dated: October 11, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24644 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-22-M

Whale Watching Activities

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of availability of report.

SUMMARY: In November, 1988, the National Marine Fisheries Service (NMFS) and the Center for Marine Conservation sponsored a workshop to review and evaluate whale watching programs and management needs. The recommendations included in the Proceedings of the Workshop focus on actions that can be taken by the whale watching industry, the research community, conservation groups and the Federal Government to protect marine mammals, especially whales, from potentially harmful activities associated with whale watching.

ADDRESS: Copies of the Proceedings of the Workshop to Review and Evaluate Whale Watching Programs and Management Needs are available from Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Headquarters, 301–427–2322; Douglas Beach, Northeast Region, 508–281–9254; James Lecky, Southwest Region, 213–514–6664, Eugene Nitta, Pacific Area Office, 808–955–8831; Charles Oravetz, Southeast Region, 813–893–3366; Brent Norberg, Northwest Region, 206–526–6110; and Steven Zimmerman, Alaska Region, 907–586–7233.

SUPPLEMENTARY INFORMATION:

Background

Whale watching has become an important economic, recreational, educational, and in some cases, scientific activity, for hundreds of thousands of U.S. citizens annually. For many, watching whales is the first introduction to the marine habitat. For some researchers, whale watching trips provide an opportunity for close study of whales. The growth of whale watching has spurred the economies of some vessel owners and many coastal towns. Major whale watching centers exist in the Northeast, the West Coast, Alaska and Hawaii. In addition to whale watching, charter boats in the Southeast and Gulf areas have devloped a market for cruises specifically aimed at feeding dolpins in the wild.

The preciptous growth of the whale watching industry, as well as an interest in observing or approaching other marine mammals in the wild, has been accompanied by concerns that approaching and observing marine mammals may cause biological problems for the marine mammals and legal problems for the observers.

Whales are especially vulnerable to injury and disturbance by boats. Many are slow-moving, can escape only by diving, and in some regions, such as Hawaii and Baja, California, are distributed in limited areas. Vessel traffic may subject whales to impacts ranging from displacement of cow/calf pairs from nearshore waters to increased energy expenditure when feeding is disrupted or migratory paths rerouted. Also, when humans feed marine mammals in the wild, the animal's normal feeding pattern may be disrupted significantly.

Seals and sea lions are vulnerable to disturbance most often while using haul-out sites. These disturbances are particularly significant during breeding and pupping seasons because important patterns in their life cycles are disrupted. Depending on the frequency and severity of disturbance at haul-out sites and rookeries, breeding success may be affected, mothers and pups can be separated, or they may abandon important breeding locations.

All marine mammals are protected from harassment, injury, killing, and capturing or attempts to do so by the Marine Mammal Protection Act and, if they are threatened or endangered, by the Endangered Species Act. However, Federal managers face the difficult task of determining whether and when harassment, the most frequent of these violations, has occurred. Over the years, a number of measures have been used, with varying success, to protect whales from whale watching activities that could adversely affect them. In spite of these attempts, which have included guidelines, interim regulations, and educational programs to make whale watching safer for the whales, the Federal government, scientists, conservation groups, and industry representatives continue to be concerned about the effects these activities are having on whales.

The workshop brought together, for the first time, knowledgeable representatives of the industry and of the conservation, management and scientific communities throughout the United States and Canada to review whale watching activities and available information on the effects of whale watching. The goal was to give direction to NMFS in carrying out its responsibilities to protect whales from potentially harmful activities associated with whale watching.

Final Recommendations of the Workshop

I. The whale watching industry should expand its collaboration with researchers by providing space for qualified scientists and naturalists and by providing funding for research.

II. The research community should direct its attention to studying short-term and long-term effects of whale watching on individual whales, whale populations, and whale habitats. Immediate research priorities should be species, locations or situations of particular significance.

III. The conservation community should evaluate, and improve or expand where necessary, education programs and materials on whale watching.

IV. Each NMFS region should issue regulations on whale watching.

a. The primary focus of new regulations should be minimum approach distances based on regional considcrations.

b. Include in regulations restrictions on related activities, including thrill craft, swimming and diving with whales.

c. The regulations should address behavior, such as how to operate a vessel if a whale approaches the vessel, as well as distances.

d. The regulations should provide special restrictions, as warranted, for particular areas, such as feeding or calving grounds, or special situations such as whale watching on mating pairs or cow/calf pairs.

e. The regulations should include a prohibition on whale watching activities that involve the feeding of wild populations of cetaceans.

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V. The current permit review in the Office of Protected Resources, NMFS, should examine the use of scientific permits for commercial whale watching, including photography.

NMFS recognizes that commercial whale watching vessels provide an important platform for conducting research on whales. Not all research activities on whales require a permit from the Service. NMFS should investigate whether scientific research that requires a permit is being conducted concurrently with commercial whale watching trips and whether the privileges of a permit (which usually allow a closer approach to whales than whale watching guidelines or regulations) are being abused to benefit the permit holder monetarily. NMFS should clarify under what circumstances it is acceptable to combine research with commercial activities.

VI. By January 1, 1990, each NMFS Region shall have met with affected constituencies and drafted proposed regulations on whale watching for that Region.

There is still much disagreement about the extent to which whale watching is an activity harmful to the whales themselves. Although other, and perhaps greater, threats to whales and their habitats have been identified, most participants in the workshop believed that better protection of whales could be achieved relatively easily if whale watching were better regulated. Workshop participants emphasized that regulations should be simple to understand, follow and enforce. The participants agreed that minimum approach distances were required. However, because of the variability from region to region in such factors as species of whale, numbers and types of vessels, or importance of the area for feeding or breeding, participants stressed the need for components of the regulations to be sufficiently flexibile to address regionally specific factors. A major concern was the difficulty of ensuring compliance by private boaters. Workshop participants concurred that new regulations need to be combined with a vigorous public education effort.

Under the Marine Mammal Protection Act and the Endangered Species Act, harassment, harm, or injury is illegal regardless of how far away an activity occurs unless an exemption has been granted by NMFS under provisions for scientific research, public display or incidental but unintentional takings during commercial fishing or other specific activities. No exemptions have been made for the harassment, harm, or injury to endangered species except for scientific research and incidentally to specific activities under section 101(a)(5) of the MMPA (whale watching and associated activities are not an incidental take).

Current NMFS guidelines and Regulations

All NMFS Regions, except Alaska, have issued guidelines for approaching certain marine mammals, and these will continue to be in effect until the public is notified of any changes. In Hawaii, the interim regulations for approaching humpback whales (52 FR 44912, November 23, 1987) continue to be in effect. For details of each Region's current guidelines, see **FOR FURTHER INFORMATION CONTACT.**

Dated: October 11, 1989.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 89-24682 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile; Products Produced or Manufactured in the People's Republic of China

October 13, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 445/446 is being increased for swing and carryforward. The limit for Category 336 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provision.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 13, 1989.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 13, 1989, the directive of December 6, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category Levels in Group I	Adjusted Twelve-Month Limit [1]
445/446	281,016 dozen
336	132,117 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-24673 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Polish People's Republic; Correction

October 16, 1989.

In the letter to the Commissioner of Customs published in the Federal Register on December 8, 1988 (53 FR 49584), correct Footnote 1 as follows:

[1] In Category 334pt. all HTS numbers except 6101.20.0010, 6101.20.0020 and 6112.11.0010.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-24672 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology will meet in closed session on January 17, 1990 at the Pentagon, Arlington, Virginia.

The Mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate low observable technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 13, 1989.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24643 Filed 10-18-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Special Study Panel on Education Indicators; Meeting

AGENCY: Special Study Panel on Education Indicators.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Special Study Panel on Education Indicators. This notice also describes the functions of the Study Panel. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: November 16, 1989, 9:00 a.m. to 5:30 p.m. and November 17, 1989, 9:00 a.m. to 4:00 p.m.

ADDRESS: Ramada Renaissance Hotel, Potomac Room, 1143 New Hampshire Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Ralph, National Center for Education Statistics, 555 New Jersey Avenue NW., Washington, DC 20208-5650, (202) 357-6677.

SUPPLEMENTARY INFORMATION: The Special Study Panel on Education Indicators is established under section 406(g)(3) of the General Education Provisions Act (20 U.S.C. 1221e-1). The Study Panel is established to make recommendations concerning the determination of education indicators. The Panel advises the Commissioner of the National Center for Education Statistics on the development of indicators on the current state of the American educational system.

The meeting of the Study Panel is open to the public. The agenda includes the following items: November 16—introduction of Chairman and new members and meeting agenda, discussion of the Panel's purposes and expected product, review of indicator work in related fields, review of indicator development in education; November 17—panel discussion of alternative workplans for the Panel and recommendations for proceeding.

Records are kept of all Study Panel proceedings and are available for public inspection from 9:00 to 5:00 at the office of the Study Panel at the National Center for Education Statistics, 555 New Jersey Avenue NW., Room 400, Washington, DC 20208.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-24615 Filed 10-18-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Energy Task Force Management Corporation

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to solicit for award a noncompetitive cooperative agreement to the Energy Task Force Management Corporation for support of workshops and technical assistance on a technology transfer program.

Scope: Under an existing cooperative agreement, the Energy Task Force Management Corporation has been providing assistance to the DOE and the Energy Task Force for the Urban Consortium in assessing and resolving issues related to transportation of hazardous and nuclear materials through large urban areas. The purpose of the current cooperative agreement to is obtain local officials' participation and expertise in transportation activities including collection and dissemination of information, conducting regional and national workshops, providing technical assistance, and identification and analyses of issues related to transportation of hazardous materials through large urban areas. The proposed award will continue with this effort. The duration of the project is expected to cover five (5) years, with funding supplied on an annual basis. The estimated cost of this project for the first year is expected to be approximately $200,000. The DOE may continue funding of the cooperative agreement for the remaining four (4) years, pending availability of funding and/or need.

The DOE has determined that the award on a noncompetitive basis is appropriate because the applicant is already conducting this activity; is the only known organization that has an existing network with the local officials targeted by this program; is experienced in prior technology transfer activities for energy issues; has the relationship and credibility with local officials on energy-related projects; and has the constituent members experience related to transportation issues. DOE knows of no other entity which is conducting or planning to conduct this activity.

FOR FURTHER INFORMATION CONTACT: Julie A. Riel, U.S. Department of Energy, Richland Operations Office, Procurement Division, A7-80, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-9790.

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Dated: October 12, 1989.

Robert D. Larson,

Director, Procurement Division Richland Operations Office.

[FR Doc. 89-24705 Filed 10-18-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-471-000]

Gateway Pipeline Co.; Intent To Prepare an Environmental Assessment for the Gateway Pipeline Project and Request for Comments on Environmental Issues

October 12, 1989.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket for the *Gateway Pipeline Project.*

Gateway Pipeline Company (Gateway), a subsidiary of United Gas Pipe Line Company (United), is seeking a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act and 18 CFR part 157, subpart E (Optional Certificate) to construct, own, and operate approximately 25.75 miles of 20- and 30-inch-diameter pipeline and appurtenant facilities. The proposed pipeline would extend from the tailgate of one existing and two proposed gas treatment plants in Mobile County, Alabama, to United's existing Lirette-Mobile pipeline near the Mississippi-Alabama border, also in Mobile County. In addition, Gateway requests, pursuant to § 157.103(f)(1) of the Commission's Rules of Practice and Procedure, pregranted authority to abandon any facilities or services authorized under this certificate application that Gateway determines are no longer needed upon the termination of its contractual obligations underlying the service.

The purpose of the Gateway Pipeline Project is to transport natural gas produced in the Mobile Bay Area from gas treatment plants to United's interstate pipeline system, and to provide open-access transportation service for all potential shippers of Mobile Bay Area gas. The estimated cost of the Gateway Pipeline Project is $20,413,000.

By this notice, the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to publication of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternate routes), and measures to mitigate adverse environmental impact. Written comments must be submitted by November 20, 1989 in accordance with the instructions provided at the end of this notice.

Proposed Action

On December 22, 1988, Gateway filed an application with the FERC in Docket No. CP89-471-000 to construct, own and operate approximately 25.75 miles of pipeline and appurtenant facilities. No compression, storage, or process facilities are included in this project. The pipeline would connect the Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI) gas treatment plant in Mobile County, Alabama, the proposed gas treatment plants of Exxon Corporation and Jubilee Pipeline Company, and any other appropriate future gas treatment plants, with United's Lirette-Mobile pipeline at a point just east of the Mississippi border in Mobile County, Alabama.

Proposed Facilities

The general location of the proposed Gateway pipeline is shown in figure 1.[1] The proposed facilities include approximately 24.5 miles of 30-inch-diameter pipeline; a 1.0-mile-long 30-inch-diameter lateral; a 0.25-mile-long 20-inch-diameter lateral; associated appurtenances (check valves, blow off stacks, mainline valves, pressure differential detectors); gas metering facilities; and roads into the gas metering facilities. The proposed pipeline would extend from Section 34, T7S, R2W, Mobile County, Alabama at the MOEPSI gas treatment plant to Section 4, T5S, R4W, Mobile County, Alabama, where it would connect with United's existing Lirette-Mobile 30-inch-diameter pipeline. The proposed pipeline would also connect to the proposed Exxon plant located in Section 16, T7S, R2W, Mobile County, and other proposed plants which might be located in the vicinity. The exact connection points to these plants are not shown on figure 1 as their exact locations are presently unknown. Applications to construct these interconnections would be required in the future. The metering facilities would be located at the tailgates of the existing and proposed gas treatment plants and at the interconnection with United's Lirette-Mobile pipeline. The design capacity of the proposed pipeline is 600,000 Mcf (thousand cubic feet) of gas per day.

Construction-zone requirements include a 70-foot-wide construction right-of-way and 125-foot-square staging areas on each side of stream, highway, pipeline, and railroad crossings. Approximately 218.48 acres would be temporarily disturbed by construction along the 25.75 miles of proposed pipeline.

The permanent right-of-way would be reduced from the 70-foot-width needed for construction to 50 feet. Approximately 156.1 acres would be maintained as a permanent right-of-way. In addition, a total of approximately 4.0 acres would be needed for the four gas metering facilities, and approximately 0.7 acre of permanent 20-foot-wide road would be required for each of the four metering facilities.

Construction Procedures

Gateway states that the proposed facilities would be constructed and operated in accordance with all applicable regulations. These include: 49 CFR part 192—Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 CFR Part 2.69—Guidelines to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way; and other applicable Federal, state, and local regulations and permit requirements.

If authorized, construction is expected to require 3.5 to 4.5 months to complete. Gateway expects these facilities to be in service by July 1991.

A workforce of approximately 200 to 300 persons would be required, depending on scheduling, weather conditions and unforeseen problems.

Gateway would acquire right-of-way easements for the proposed pipeline, but has no plans to acquire any lands in fee for the project. All lands involved in the proposed project would remain in private ownership, and Gateway would compensate the landowners for properties used by the proposed project.

Approximately 83.5 acres of timbered land would be cleared during construction. Trees removed from the right-of-way would be disposed of in accordance with Federal, state and local regulations. It is anticipated that all merchantable timber would be harvested. Brush and other timber would be piled and burned or removed in conformance with applicable regulations.

[1] Figure 1 is not being printed in the **Federal Register**, but copies are available from the Commission's Public Reference Branch at (202) 357-8118. A copy of figure 1 is attached to each mailed copy of the notice.

Conventional methods would be used for the pipeline construction. A 70-foot-wide construction right-of-way would be surveyed, cleared and graded as necessary to move construction equipment in and out. The pipeline trench would then be excavated to a depth of approximately 66 inches to allow for a minimum of 3 feet of cover after construction. The bottom width of the trench would be sufficient to allow for the emplacement of the pipeline and its appurtenances, including concrete weights or coatings if necessary to hold the pipeline in place. The top width of the trench would vary with soil conditions and slope stability. Materials removed during the trenching operation would be temporarily placed next to the trench until the pipeline was installed.

There are no plans to use containment structures around the stockpiled excavated materials due to the temporary nature of the stockpiles. During backfill operations, the preconstruction contours and elevations would be restored along the pipeline route. Slopes would be stabilized by one or more of the following methods: seeding, sodding, terracing, riprapping or bulkheading.

The pipeline trench would be excavated by a crawler-mounted wheel-type trenching machine, back-hoe or similar equipment. All highway and surfaced road crossings would be dry bored in accordance with applicable regulations. Unsurfaced roads may be trenched after appropriate notice to users and in accordance with existing regulations.

As proposed, stream crossings would generally be accomplished through open trench excavation with equipment operating from the banks. Typically, draglines would be used to excavate the bank cuts and the trench across the stream.

Wetland crossings are proposed to be accomplished using marsh excavating equipment or land excavating equipment. The pipeline would be welded, coated, and inspected, floatation devices would be installed as required, and the pipe "pushed" across the wetland area. Weights would be attached to the pipe as needed to prevent any floatation after installation.

Cultivated farmland crossings would be accomplished by conventional construction methods, except that double ditching would be used unless prohibited by the landowner. In the double ditching method, topsoils and subsoils are stockpiled separately, and after the pipeline is in place, the subsoils are backfilled first, followed by the topsoil. The right-of-way would be restored to its original contour as much as practicable and revegetated in accordance with an erosion control and revegetation plan that will be reviewed by the FERC staff.

As a part of the construction procedures and as required by the U.S. Department of Transportation, the pipeline would be hydrostatically tested. Approximately 4,754,981 gallons of water would be required for the tests. Withdrawal rates, if local sources are used, would be 2,000 to 4,000 gallons per minute. After testing, the water would either be returned to its original source at approximately the same rate at which it was withdrawn, or discharged at an equivalent rate to follow natural contours, or trucked off site. Neither an oxygen scavenger nor a biocide would be used, so test water would not be treated prior to discharge, except to filter mill rust if necessary.

Environmental Issues

Based on preliminary analyses of the application for new facilities and the environmental information provided by the applicant, the FERC staff has identified a number of issues which will be addressed in the EA. These issues include:

Topography and Soils
- —Erosion control.
- —Impact on crop production and farmland.

Geology and Hydrology
- —Impact on streams.
- —Impact on existing water flow patterns.
- —Impact on water table.
- —Effects of construction on potable water supplies.
- —Effects of construction on water quality.

Wetlands and Vegetation
- —Effects of construction on wetlands.
- —Revegetation and right-of-way management.
- —Loss of endangered plant species.

Fish and Wildlife
- —Impact on fisheries.
- —Impact on threatened and endangered species.

Land Use, Socioeconomics, and Aesthetics
- —Impact on homes.
- —Impact on recreation, public lands, natural areas.
- —Appearance of right-of-way.
- —Conflicts with existing or potential land uses.

Cultural Resources
- —Effect on properties listed on or eligible for inclusion on the National Register of Historic Places.

Comments are solicited on any additional topics of environmental concern to residents and others in the project area. After comments in response to this notice are received and analyzed and the various issues investigated, the staff will publish an EA for the Gateway Pipeline Project.

Description of Alternative Routes

The FERC staff has currently identified two possible alternate routes to the proposed Gateway Pipeline Project. One route would utilize an existing electrical transmission line right-of-way east of the proposed route, extending from the vicinity of the MOEPSI gas treatment plant northward to the intersection with United's existing Lirette-Mobile pipeline approximately 6 miles east of the proposed interconnection. The other route would utilize Transcontinental Gas Pipe Line Corporation's (Transco) existing 30-inch-diameter pipeline right-of-way generally west of the proposed route, extending from the vicinity of the MOEPSI gas treatment plant northwest to the intersection with United's existing Lirette-Mobile pipeline approximately 2 miles east of the proposed interconnection.

The general location of the alternate routes mentioned above is shown in figure 1.

Comment Procedure

A copy of this notice and request for comments on environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, public interest groups, libraries, newspapers and other interested individuals. The governments of Mobile Country and all towns which are traversed by the proposed pipeline will be provided copies of detailed maps which identify the location of the proposed project.

Comments on the scope of the EA should be filed as soon as possible but no later than November 20, 1989. All written comments must reference Docket No. CP89-471-000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. A copy of the comments should also be sent to Mr. Phil Veres, Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, N.E., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will comprise part

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of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, and to interested members of the public. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a part to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Phil Veres, Project Manager, telephone (202) 357–8073.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24629 Filed 10–18–89; 8:45 am]

BILLING CODE 6717–01–M

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Niagara Import Point Project and Request for Comments on Its Scope

October 13, 1989.

In the matter of Tennessee Gas Pipeline Company, Docket Nos. CP88–171–001, Great Lakes Gas Transmission Company, CP89–892–000, Transcontinental Gas Pipe Line Corporation, CP89–7–001 and CP89–710–000, National Fuel Gas Supply Corporation and Penn-York Energy Corporation, CP88–194–001, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation, CP88–195–002, Algonquin Gas Transmission Company, CP88–187–001, CNG Transmission Corporation, CP89–712–000, Texas Eastern Transmission Corporation, CP89–711–000.

Notice of Intent

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has determined that approval of the *Niagara Import Point (NIP) Project* proposed by the above applicants would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to the Commission's Rules of Practice and Procedure, 18 CFR 380.6(a)(3), an environmental impact statement (EIS) will be prepared.

The FERC will be the lead Federal agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act.

Request for Comments

Written comments are requested to help identify significant issues or concerns related to the NIP Project to determine the scope of issues, including alternatives that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before November 20, 1989.

Written comments should reference Docket No. CP88–171–001 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Kurt W. Flynn, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Washington, DC 20426.

Comments are also requested on the specific environmental issues which exist at any of the sites where NIP Project-related nonjurisdictional facilities would be constructed (see table 1). If no issues are raised and the nonjurisdictional facilities have been approved or are being reviewed at the state or local level, or if there are no direct tie-ins to the interstate pipeline network, the Commission staff intends to limit its environmental review. In this case, the review would primarily address the potential indirect effects on endangered species and cultural resources.

Background

The FERC's Northeast proceedings produced four separate settlement projects. The NIP Project was formed as a direct result of the Niagara Settlement Process (NSP).

As a result of the NSP the following companies filed applications with the FERC pursuant to section 7 of the Natural Gas Act: Tennessee Gas Pipeline Company (Tennessee), Transcontinental Gas Pipe Line Company (Transco), National Fuel Gas Supply Corporation (National Fuel), Penn-York Energy Corporation (Penn-York), PennEast Gas Services Company (PennEast), CNG Transmission Corporation (CNG), Texas Eastern Transmission Corporation (Texas Eastern), and Algonquin Gas Transmission Corporation (Algonquin). Tennessee also filed an application with the Commission for a Presidential permit pursuant to section 3 of the Natural Gas Act for authorization to construct and operate facilities at the international border between the United States and Canada.

Great Lakes Gas Transmission Company (Great Lakes) filed a related application with the FERC, pursuant to section 7 of the Natural Gas Act. In its application, Great Lakes seeks authorization to expand its facilities to provide additional firm transportation service for TransCanada Pipeline Limited (TransCanada). Upon delivery from Great Lakes, TransCanada would transport the gas to its existing interconnection with Tennessee at the Niagara Import Point located at the United States/Canadian border in Niagara County, New York.

The purpose of the NSP applications is to transport for various customers a cumulative total of up to 587,118 thousand cubic feet a day (Mcfd) of natural gas. The gas would be transported from the Niagara Import Point and delivered to local distribution companies, cogeneration plants, storage facilities, and a power plant in the Northeastern United States.

The Commission has determined that some of the facilities included under the NSP can be phased as independent projects based on the existing capacity of TransCanada and the firm commitments of downstream users. For example, the Commission approved the SS–2 Storage Service (SS–2) Project as an independent phase of the NSP applications. It also appears that the TEMCO/Niagara (TEMCO) Project phase of the NSP applications may also be independent of the remaining NIP Project. As further discussed below, the TEMCO Project phase is being addressed in a separate environmental document.

Overall Facilities

The Great Lakes and the NSP facilities consist of approximately 633.63 miles of 12–, 24–, 30–, 36– and 42–inch–diameter pipeline loop; 5.86 miles of 20– and 24–inch–diameter replacement pipeline; 45.85 miles of new 20–, 24– and 30–inch–diameter pipeline; the addition of 43,000–horsepower (hp) of compression at existing compressor stations; and 20,600 hp of new compression at two proposed compressor stations.[1]

NIP Project

The NIP Project, which includes the Great Lakes facilities, would consist of approximately 535.7 miles of 12–, 24–, 30–, and 36–inch–diameter pipeline loop; 5.58 miles of 20–inch–diameter replacement pipeline; 4.85 miles of new 24– and 30–inch–diameter pipeline; the addition of 28,000 hp of compression at existing compressor stations; and 20,600 hp of new compression at two proposed compressor stations. Table 2 lists the locations of the proposed facilities by county and state. The appendix to this Notice provides a more detailed discussion of the proposed actions by each applicant in the NIP Project. The appendix also includes figures which show the general location of the facilities proposed.[2]

[1] A pipeline loop is a segment of pipeline which is usually adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to flow through the pipeline without additional compression.

SS–2 Project Phase

The SS–2 Project phase consists of the construction and operation of facilities in order to provide storage service to eight electric generators or local distribution companies. Facilities for the SS–2 Project include 67 miles of 20–, 24–, 30–, 36–, and 42–inch–diameter pipeline facilities as well as metering facilities at the existing Leidy Compressor Station. An environmental assessment (EA) for these facilities was completed by the Commission staff in July 1989. On July 27, 1989, the Commission issued an *Order Issuing Certificates and Approving Abandonment* for the SS–2 Project.

TEMCO Project Phase

The TEMCO Project phase would consist of approximately 72.5 miles of 16–, 24–, 30–, and 36–inch–diameter gas transmission pipeline loops; 0.28 mile of 24–inch–diameter replacement pipeline; 15,100 hp of additional compression at 4 existing compressor stations; and the addition and modification of measurement facilities.

A part of the TEMCO Project includes 31.4 miles of 30–inch–diameter pipeline loop on the existing Niagara Spur line. The entire Niagara Spur loop would be jointly owned by Tennessee, National Fuel, and PennEast.

The purpose of the TEMCO Project would be to provide transportation services on behalf of Transco Energy Marketing Company, Altresco Pittsfield Ltd (Altresco), and four Tennessee mainline customers (Altresco, ANR Venture Springfield, Flagg Energy and Capitol District). In addition, Tennessee has indicated that the construction of the Niagara Spur loop would eliminate the need for 2,200 hp of compression previously approved by the Commission.

[2] The appendix is not being printed in the Federal Register. However, copies are being mailed to everyone on the Commission's service and mailing lists. Copies are also available from the Commission's Public Reference Branch at (202) 357–8118.

For these reasons, the Commission staff will review the TEMCO Project in a separate EA which is currently under preparation.

The SS–2 and TEMCO Projects are not dependent upon the facilities proposed by Great Lakes.

Outline of Current Environmental Issues

The EIS will address the environmental concerns that have been and will be identified by the FERC staff, interveners, other Federal and state agencies, and individuals who respond to notices on this project. The issues include but are not limited to:

Land Use
- —Impact on homes, future development, and public recreation areas.
- —Impact on nature preserves, parks, public lands, Indian reservations, etc.

Aesthetics—Effect of appearance of rights-of-way and aboveground facilities on neighborhoods and scenic areas.

Pipeline Safety—Possibility of pipeline rupture.

Cultural Resources—Effect of the project on properties listed on or eligible for the National Register of Historic Places.

Water Resources
- —Effect of construction on potable water supplies.
- —Excavation of stream sediments contaminated by toxic substances.
- —Wetland impacts.

Wildlife/Fisheries
- —Impact on wildlife/fisheries.
- —Impact on threatened and endangered species.

Vegetation—Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management.

Soils & Geology
- —Erosion control and revegetation.
- —Effect on crop production and farmland.
- —Effects of blasting and geologic hazards.
- —Impact on exploitable mineral resources.

Air and Noise—Impact of additional compression on air quality and noise levels.

PCB's—Removal and disposal of facilities contaminated by PCB's.

Alternatives—Pipeline route variations and alternative system designs.

Alternative sites, route modifications, and specific mitigating measures will also be considered in the EIS. After comments from this notice are received and analyzed and the various issues are investigated, the staff will publish a draft EIS (DEIS) entitled "The Niagara Import Point Project."

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the EIS:

Advisory Council on Historic Preservation
Department of Agriculture:
- Soil Conservation Service
- U.S. Forest Service

Department of Commerce: National Oceanic and Atmospheric Administration
Department of Defense: U.S. Army Corps of Engineers
Department of Energy: Office of Fossil Fuels
Department of the Interior:
- U.S. Fish and Wildlife Service
- U.S. Geological Survey
- National Park Service
- Bureau of Indian Affairs

Department of State
Department of Transportation:
- Federal Highway Administration
- Office of Pipeline Safety
- U.S. Coast Guard

Environmental Protection Agency

These or any other agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426.

The request should reference Docket No. CP88–171–001 and should be received by November 20, 1989. Additional information, including detailed maps of limited areas of the proposed routes, may be obtained by contacting Mr. Kurt W. Flynn, Project Manager, at (202) 357–8870 or (FTS) 357–8870.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIS.

Notice and DEIS Distribution

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. Detailed maps of the proposed route have been provided to administrative officials of each effected county and municipality identified in table 2.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period

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will be allotted for review and comment on the DEIS.

Any person may file a motion to intervene on the basis of the Commission staff's DEIS [18 CFR 380.10(a) and 385.214]. After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the Commission staff and distributed. The FEIS will contain the staff's reponses to comments received on the DEIS.

Additional information about the proposal may be obtained by contacting Mr. Kurt Flynn, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, telephone (202) 357-8870 or (FTS) 357-8870.

Lois D. Cashell,

Secretary.

TABLE 1.—NIP PROJECT SUMMARY OF MAJOR NEW NONJURISDICTIONAL FACILITIES

Facility shipper [1]	Location
Ocean State Power II	Burrillville, RI.
Indeck/Oswego	Oswego, NY.

TABLE 1.—NIP PROJECT SUMMARY OF MAJOR NEW NONJURISDICTIONAL FACILITIES—Continued

Facility shipper [1]	Location
Indeck/Yerkes	Tonawanda, NY.
Northeast Energy	Bellingham, MA.
Long Island Cogen (Tellus)	Oyster Bay, NY.
Cogen Energy Tech	Brookview, NY.
G.A.S. Orange Development	Syracuse, NY.
IEC/Northeast Energy	Bellingham, MA.
IEC/North Jersey	Sayerville, NJ.
Continental Energy	Hazeltown, PA.

[1] All of the above nonjurisdictional facilities, with the exception of the OSP power plant, are cogeneration plants.

TABLE 2

NIP PROJECT PIPELINE FACILITIES

Proposed facilities	Pipe diameter (inches)	Approximate Length (miles) [1]	State	County
Tennessee				
(Docket No. CP88-171-001)				
Segment 1	30" loop	17.3	NY	Niagara, Erie.
Segment 2	30" loop	0.5	NY	Niagara.
Segment 3	30" loop	3.2	NY	Wyoming.
Segment 4	30" loop	12.5	NY	Livingston, Ontario.
Segment 8	30" loop	5.4	MA	Hampden.
Segment 9	30" loop	3.2	MA	Middlesex.
		42.1		
Great Lakes				
(Docket No. CP89-892-000)				
Loop 1	36" loop	5.8	MN	Marshall.
Loop 2	36" loop	12.2	MN	Marshall.
Loop 3	36" loop	21.3	MN	Clearwater.
Loop 4	36" loop	19.0	MN	Cass, Itasca.
Loop 5	36" loop	3.9	MN	Itasca.
Loop 6	36" loop	14.8	MN	Itasca.
Loop 7	36" loop	27.0	WI	Douglas, Bayfield.
Loop 8	36" loop	36.6	WI/MI	Iron/Gogebic.
Loop 9	36" loop	41.3	MI	Gogebic, Iron.
Loop 10	36" loop	36.0	MI	Dickinson, Marquette, Delta.
Loop 11	36" loop	45.8	MI	Delta, Schoolcraft, Mackinac.
Loop 12	36" loop	30.8	MI	Mackinac.
Loop 13	36" loop	31.9	MI	Emmet.
Loop 14	36" loop	16.2	MI	Ostego, Crawford.
Loop 15	36" loop	39.2	MI	Missaukee, Clare.
Loop 16	36" loop	51.4	MI	Midland, Gratiot, Saginaw.
Loop 17	36" loop	26.8	MI	Lapeer, St. Clair.
		459.6		
Algonquin				
(Docket No. CP88-187-001)				
G-5 to G-12 Loop	24" loop	5.5	MA	Bristol.
G-8 to Wareham	20" replacement	5.2	MA	Plymouth, Barnstable.
E-1 to Salem	12" loop	4.9	CT	New London.
Mansfield Loop	36" loop	2.0	CT	Tolland, Windham.
Stony Point Loop	36" loop	8.2	NY	Rockland.
		25.8		
Transco				
(Docket No. CP89-7-001)				
Leidy Line	36" loop	1.61	PA	Northampton.
Transco				
(Docket No. CP89-710-000)				
Leidy Line	36" loop	6.79	PA/NJ	Northampton/Warren.
National Fuel/Penn-York				
(Docket No. CP88-194-001)				
Y-M54 Line	24" new	2.50	PA	Potter.
PennEast/CMG/Texas Eastern				
(Docket No. CP88-195-002)				
Line No. 546 Extension	20" replacement	0.38	NY	Erie.

TABLE 2—Continued

NIP PROJECT PIPELINE FACILITIES

Proposed facilities	Pipe diameter (inches)	Approximate Length (miles) [1]	State	County
CMG				
(Docket No. CP89-712-000)				
TL-470	30" new	2.35	NY	Albany, Rensselear.
Texas Eastern				
(Docket No. CP89-711-000)				
Line No. 24	24" loop	5.00	PA	Centre.
		546.13		

[1] Scaled from U.S. Geological Survey 7.5-minute-series topographic maps. Actual length of pipeline to be installed would be slightly longer due to terrain relief.

NIP PROJECT COMPRESSOR STATIONS

Proposed facilities	New NP	Added NP	Size of new station (acres)	State	County
Tennessee					
(Docket No. CP88-171-001)					
Section 230C		7,000		NY	Niagara.
Transco					
(Docket No. CP89-7-002)					
Station 205	12,000		[1] 99.84	NJ	Mercer.
Station 515		12,600		PA	Luzerne.
National Fuel/Penn York Energy					
(Docket No. CP88-194-002)					
Concord Station	8,600		[2] 70	NY	Erie.
Ellisburg Station Station		2,600		PA	Potter.
PennEast/CMG/Texas Eastern)					
(Docket No. CP88-195-002)					
State Line Station		2,200		PA	Potter.
CMG					
(Docket No. CP89-712-000)					
State Line Station		1,350		PA	Potter.
Utica Station		2,250		PA	Oneida.
Total	20,600	28,000			

[1] Only 6.1 acres would be developed.
[2] Only 6 acres would be developed.

Appendix—Additional Background Information

NIP Project Applicants and Proposed Facilities

Figures 1, 2, and 3 show the geographic locations of the proposed NIP Project's facilities. Table 2 lists the pipelines by size, length and location, and lists new and additional compression by horsepower and location. (See table 2 in the main body of the Notice of Intent).

Great Lakes

In Docket No. CP89-892-000 (filed on February 23, 1989), Great Lakes proposes to construct seventeen 36-inch-diameter pipeline loops for a total length of 459.6 miles within Minnesota (76.8 miles), Wisconsin (42.6 miles), and Michigan (340.2 miles). Great Lakes also proposes the replacement of aerodynamic assemblies at 11 existing compressor stations and piping modifications at 5 existing compressor stations.

Great Lakes' facilities would be designed to provide additional firm transportation service of 417,500 Mcfd of gas on behalf of TransCanada. TransCanada would deliver the gas at the existing interconnection with Great Lakes at the United States/Canadian border near Noyes, Minnesota. Great Lakes would deliver the gas back to TransCanada at two existing interconnections along the United States/Canadian border near Sault Ste. Marie and St. Clair, Michigan. TransCanada would require this transportation service primarily to satisfy the market requirements of the export customers in the Northeastern United States.

Tennessee

The NIP Project facilities proposed by Tennessee in Docket No. CP88-171-001 (filed on January 17, 1989) consist of a total of 42.1 miles of 30-inch-diameter pipeline loops in New York and Massachusetts, and 7,000 hp of additional compression at Compressor Station 230C in New York. Tennessee's proposal consists of two major components:

First, Tennessee proposes to construct and operate 31.4 miles of 30-inch-diameter pipeline loop on the Niagara Spur Line and 7,000 hp of additional compression at Compressor Station 230C in Niagara and Erie Counties, New York. The Niagara Spur loop would be jointly owned by Tennessee, National Fuel and PennEast and would be used to transport 346,400 Mcfd of Canadian gas from the Niagara Import Point. The owners' daily entitlement to this gas is as follows: Tennessee—83,900 Mcfd, PennEast—101,000 Mcfd, and National Fuel—161,500 Mcfd.

Tennessee proposes to construct and operate a total of 21.8 miles of 30-inch-diameter pipeline loop along its mainline in New York and Massachusetts, and to construct and modify measurement facilities on its existing pipeline system in New York, Connecticut, and Massachusetts. Tennessee's facilities would be used to provide up to 140,200 Mcfd of Canadian and domestic gas supplies to three new customers.

National Fuel/Penn York

In Docket No. CP88-194-001 (filed on January 27, 1989), National Fuel and Penn York propose to construct 2.5 miles of 24-inch-diameter pipeline, 8,600 hp of compression at a new compressor station in Concord, New York, and 2,600 hp of additional compression at National's existing Ellisburg Compression Station. These facilities, which are to be phased in over 1990 and 1991, would be used to transport 125,000 Mcfd of gas to Transco on the Leidy Line, 10,000 Mcfd of gas for National Fuel's own system supply, and 24,000 Mcfd for two cogeneration plants in New York.

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PennEast, CNG, and Texas Eastern

In Docket No. CP88-195-002 (filed on January 27, 1989), the applicants propose to construct a new metering station and 2,000 feet (0.38 mile) of 20-inch-diameter pipeline, 2,200 hp of additional compression at CNG's existing State Line Compressor Station, new metering facilities at or near CNG's Ellisburg Compressor Station, and additional metering facilities at Leidy for deliveries to Transco and Texas Eastern. The facilities would be used to transport up to a total of 101,000 Mcfd as follows: 50,000 Mcfd for Northeast Energy Associates' Cogeneration plant in Bellingham, Massachusetts; 22,000 Mcfd for North Jersey Energy Associates Cogeneration Plant in Sayerville, New Jersey; and 29,000 Mcfd for Texas Eastern's system supply.

CNG

In Docket No. CP89-712-000 (filed on January 27, 1989), CNG proposes to construct 2.35 miles of new 30-inch-diameter pipeline, 3,600 hp of additional compression at two existing compressor stations, and to expand metering facilities at an existing meter station. These facilities would be used to transport 25,900 Mcfd for two cogeneration plants in New York. CNG proposes to transport 13,900 Mcfd for Cogen Energy Technology, Inc., a cogeneration plant near Brookview, New York, and 12,000 Mcfd for the Indeck Plant near Oswego, New York. CNG would receive delivery of the Canadian gas from Tennessee and National Fuel on the Niagara Spur loop at Marilla, New York.

Transco

Transco, in Docket Nos. CP89-7-001 and CP89-710-000 (filed on October 3, and January 27, 1989, respectively) proposes to construct two 36-inch-diameter pipeline loops totaling 8.4 miles on its existing Leidy Line, add 12,600 hp of compression at its existing Compressor Station 515, and install 12,000 hp of compression at its new Compressor Station 205 outside of Princeton, New Jersey.

The 1.61-mile, 36-inch-diameter loop on the Leidy Line in Northampton, Pennsylvania, the additional 12,600 hp of compression at Compressor Station 515, and the 12,000 hp of compression at the proposed Compressor Station 205 would be used to transport 125,000 Mcfd of Canadian gas to delivery for injection into storage or to points of delivery on the applicant's system. Transco proposes to phase the construction of these facilities. The 1.61-mile loop is proposed to be constructed in 1991 and would be used to transport 40,000 Mcfd of natural gas. The 24,600 hp of compression is proposed for 1990 construction and would be used to transport 85,000 Mcfd of natural gas.

Transco's 6.79-mile, 36-inch-diameter pipeline loop on the Leidy Line in Northhampton County, Pennsylvania and Warren County, New York is proposed to transport up to 72,000 Mcfd for delivery to three customers—Niagara Cogeneration Shippers, Northeast Energy Associates Limited Partnership and North Jersey Energy Associates.

Algonquin

In Docket No. CP88-187-001 (filed on January 17, 1989), Algonquin proposes to construct a total of 20.6 miles of 12-, 24-, and 36-inch-diameter pipeline loop; 5.2 miles of 20-inch-diameter replacement pipeline; and construction of a new metering station in Bellingham, Massachusetts. These facilities would be used to transport 62,817 Mcfd of gas for Northeast Energy Associates.

Texas Eastern

In Docket No. CP89-711-000 (filed on January 27, 1989), Texas Eastern proposes to construct 5.0 miles of 24-inch-diameter pipeline loop on its existing Leidy pipeline in Centre County, Pennsylvania. The facilities would be used to transport 29,000 Mcfd of Candian gas from Penneast at Leidy for delivery into Taxas Eastern's supply system at Perulack.

Construction Procedures [1]

The proposed facilities would be constructed and operated in accordance with all applicable regulations. These include: 49 CFR Part 192—Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 CFR Part 2.69—Guidelines to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-way; and other applicable Federal, state, and local regulations and permit requirements.

The NIP Project facilities are scheduled to be constructed in 1990 and 1991. Pipeline construction would begin with the clearing and grading of a 40- to 75-foot-wide construction right-of-way (depending primarily on pipe diameter) to prepare a relatively level strip to accommodate construction equipment. Replacement pipleines in or adjacent to existing rights-of-way will require less clearing and grading. Rotary wheel ditching machines, backhoes, or rippers, would be used to excavate a trench deep enough to provide the minimum depth of cover required by the U.S. Department of Transportation (normally 30-36 inches). Blasting would be required in areas of unrippable consolidated rock.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. The trench would be backfilled using previously excavated materials if these are suitable for contact with the pipeline. If not, more suitable, rock-free material would be brought in to pad the trench. Topsoil that was conserved would be replaced at approximately its original position. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with erosion and sedimentation control plans.

Special construction methods would be employed across wetlands, rivers, and streams to provide stable work areas for the construction equipment and to restore the begetation and prevent changes in natural drainage patterns. Small streams would be trenched using a backhoe, clam dredge, dragline, or similar equipment. For major river crossings, floating excavation quipment may be required to dig the trench. Blasting may be necessary for streams and rivers with rock bottoms. Work areas required for major river construction would be located back from the water line. Construction methods for crossing small wetlands would be similar to those used on dry land. Construction in large wetland areas would involve using the "push-pull" technique (i.e., after the trench is dug the pipe joints are welded together in one area, flotation devices are attached to the pipe, and the whole assembly is floted into position). Once the pipe is positioned over the trench the flotation devices are removed and the pipe settles to the bottom of the trench. The trench is then backfilled with suitable coarse material.

[FR Doc. 89-24630 Filed 10-18-89; 8:45 am]
BILLING CODE 6717-01-M

[1] Specific differences in construction procedures between companies which might affect the significance of impact will be noted in the EIS and, if necessary, modified by certificate conditions.

[Project No. 3195-003 California]

Sayles Hydro Associates; Availability of Environmental Assessment

October 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the Saylea Flat Project located on the South Fork American River in El Dorado county near Twin Bridges, California, and has prepared a revised Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24642 Filed 10-18-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GT90-1-000]

Black Marlin Pipeline Co.; Notice of Filing

October 12, 1989.

Take notice that on October 5, 1989, Black Marlin Pipeline Company tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

1st Revised Sheet No. 223

Black Marlin asserts that such revised tariff sheet is being submitted to reflect the change in the electronic bulletin board service it utilizes to provide interested shippers pricing and capacity information. Black Marlin has contracted with US GASNET to replace "The Source" in providing the electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's rules of practice & procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24631 Filed 10-18-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TO90-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 12, 1989.

Take notice that on October 5, 1989, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following two sets of alternate tariff sheets to its FERC Gas Tariff.

Alternate No. 1: To be implemented if Carnegie's First Revised Volume No. 1 to its FERC Gas Tariff is effective on the date these sheets become effective:

Eighteenth Revised Sheet No. 47
Eighteenth Revised Sheet No. 48

Alternate No. 2: To be implemented if Carnegie's Second Revised Volume No. 1 to its FERC Gas Tariff is effective on the date these sheets become effective:

First Revised Sheet No. 8
First Revised Sheet No. 9

Carnegie explains that the filing of alternate sheets arises because, on September 29, 1989, Carnegie filed a reorganized Volume No. 1 to its FERC Gas Tariff with a proposed effective date of November 1, 1989. If the reorganized tariff is not in effect on the date these out-of-cycle PGA rates become effective, then the Alternate No. 1 sheets will apply. Conversely, if the reorganized tariff is in effect, then the Alternate No. 2 sheets will apply.

Carnegie proposes that the appropriate sheets become effective on November 1, 1989, and requests a waiver of the Commission's regulations at 18 CFR 154.22 to this effect.

Carnegie states that this out-of-cycle purchased gas adjustment filing is made to reflect changes in its projected gas costs resulting from rate changes filed by its pipeline supplier, Texas Eastern Transmission Corporation, on September 29, 1989, with a proposed effective date of November 1, 1989. Carnegie proposes to adjust its rates to reflect a $.1830 per Dth increase in the applicable commodity components for its LVWS and CDS Rate Schedules, a $.0800 per Dth increase in the D-1 component, and a $.0008 per Dth increase in the D-2 component of those Rate Schedules. The proposed increase in the LVIS Rate Schedule is $.1896 per Dth.

Carnegie states tht copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24639 Filed 10-18-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA90-1-23-002]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 12, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on October 10, 1989 certain recopied tariff sheets included in Appendix A attached to this filing. Such recopied sheets were proposed to be effective November 1, 1989.

ESNG states that such tariff sheets are from its annual PGA filing pursuant to 154.308 of the Commission's regulations and Section 21 of its FERC Gas Tariff, Original Volume No. 1. Tariff sheets 49th Revised Sheet No. 11 and 50th Revised Sheet No. 12 are being refiled due to improper coping of the original sheets, therefore, are for replacement purposes only to the September 8, 1989 filing.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24635 Filed 10-18-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-1-33-003]

El Paso Natural Gas Co.; Compliance Tariff Filing

October 12, 1989.

Take notice that on October 5, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1 and Third Revised Volume No. 2, in compliance with the Commission's order issued September 29, 1989 at Docket Nos. TQ90-1-33-000, TQ90-1-33-001 and TQ90-1-33-002.

El Paso states that in compliance with the September 29, 1989 order, El Paso is submitting the tariff sheets to eliminate the Order No. 500 Special Surcharge from its Quarterly PGA rates to be effective October 1, 1989. Such action is necessary as a result of the order issued September 29, 1989 at Docket Nos. RP89-230-000, RP89-230-001, TM90-1-

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33-000 and TM90-1-33-001, whereby the Commission accepted, effective October 1, 1989, certain El Paso tariff sheets which established a Monthly Direct Charge for certain firm sales customers in lieu of the Order No. 500 Special Surcharge.

El Paso respectfully requests that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective October 1, 1989.

Copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any personn desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 89-24636 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT90-2-000]

Florida Gas Transmission Co.; Notice of Filing

October 12, 1989.

Take notice that on October 5, 1989, Florida Gas Transmission Company tendered for filing to become a part of FGT's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

1st Revised Sheet No. 57]
1st Revised Sheet No. 57K

FGT asserts that such revised tariff sheets are being submitted to reflect the change in the electronic bulletin board service it utilizes to provide interested shippers pricing and capacity information. Florida Gas Transmission Company has contracted with US GASNET to replace "The Source" in providing the electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20526, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24632 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT90-3-000]

Northern Natural Gas Company Division of Enron Corp.; Notice of Filing

October 12, 1989.

Take notice that on October 5, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Third Revised Sheet No. 52f.21

Northern asserts that such revised tariff sheet is being submitted to reflect a change in the computer services firm retained by Northern to provide an electronic bulletin board on Northern's behalf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFT 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24637 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-11-005]

Northwest Pipeline Corp; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 12, 1989.

Take notice that on September 28, 1989, Northwest Pipeline Corporation (Northwest), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and section 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

First Revised Sheet No. 423
First Revised Sheet No. 423-A
Second Revised Sheet No. 428
First Revised Sheet No. 432

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 18 CFR sections 385.214 and 385.211. All such motions or protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24633 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-17-000]

Texas Eastern Transmission Corp.; Proposed Change in FERC Gas Tariff

October 12, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 29, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Fifth Revised Volume No. 1:

Seventeenth Revised Sheet No. 50
Twelfth Revised Sheet No. 50A
Twelfth Revised Sheet No. 50B
Twelfth Revised Sheet No. 50C
Twelfth Revised Sheet No. 50D

The proposed effective date of these revised tariff sheets is November 1, 1989.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand-1 and Demand-2 rate decrease of $(0.20)/dth and $(0.0006)/dth, respectively, and a commodity rate increase of $.3024 per Dt, representing

Texas Eastern's projected quarterly cost of purchased gas.

Texas Eastern further states that the commodity rate adjustment reflects an estimated impact of $0.27/dth as a result of the fulfillment of the Warranty Contract with Chevron USA Inc (Chevron), and the delivery thereafter of volumes of natural gas pursuant to the Tail End Gas Agreement dated April 11, 1986, as supplemented on July 21, 1986, between Chevron and Texas Eastern. Pursuant to the provisions of the Tail End Gas Agreement, Chevron and Texas Eastern have been negotiating gas purchase contracts for the purchase of natural gas and have reached agreement in principal on the pricing and quantity terms of those gas purchase contracts.

Texas Eastern further states that the above tariff sheets include the GSI Unit Rate to be effective as of November 1, 1989. The GSI Unit Rate has been calculated based upon the projected cost of purchased gas included in the instant PGA filing and in accordance with the requirement of Section 28, Gas Supply Inventory Reservation Charge, in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Texas Eastern states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 23 (Purchased Gas Cost Adjustment Clause) of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect changes in Texas Eastern's rates effective November 1, 1989.

Texas Eastern states copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commision, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-246740 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-020]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

October 12, 1989.

Take notice that on October 6, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed to accept certain settlements approved and modified by Commission order dated September 29, 1989 in the referenced proceedings. Transco proposes an effective date for the settlements of November 1, 1989.

Specifically, Transco states that it accepts the August 7, 1989 Revised Stipulation and Agreement, the August 11, 1989 settlement with National Fuel, and the August 11, 1989 settlement with Transco's G and OG customers, all of which settlements were filed in Docket Nos. RP88-68 *et al.* Transco states that its filing (1) accepts the certificate of public convenience and necessity issued in Docket No. CP89-1915-000 which certificate authorizes Transco to provide an interim firm sales service; (2) accepts the certificate of public convenience and necessity issued in Docket No. CP89-1916-000 which certificate authorizes Transco to allocate its upstream transportation capacity; (3) accepts the amendment to Transco's existing certificates in Docket Nos. CP84-335-002, CP83-228-000, CP61-194-000, and G-2432-000 which amendment authorizes Transco to modify the restrictions on the injection or return to storage under Rate Schedules GSS, LSS, LG-A and S-2 of gas purchased from parties other than Transco; (4) accepts the amendment to Transco's existing certificate in Docket No. CP74-33-013 which amendment authorizes Transco to provide for daily withdrawal entitlements for its Washington Storage Service customers; (5) submits compliance tariff sheets to implement the foregoing certificate authorizations and amendments and (6) submits compliance tariff sheets to implement the rates and other tariff provisions under the above mentioned settlements effective November 1, 1989.

Transco states that copies of the instant filing are being mailed to all parties served with copies of the above mentioned settlements. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before Oct. 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24634 Filed 10-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-5-000]

Transcontinental Gas Pipe Line Corp.; Petition for Authority To Waive Tariff Provisions

October 12, 1989.

Take notice that on October 4, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed a petition to waive the gas source restriction provision of its Rate Schedule LG-S. Transco states that the reason for this petition is the need to conform to other waivers of gas source restrictions obtained as part of the Commission's approval of the August 7, 1989 Revised Stipulation and Agreement in Docket No. RP88-68-000, *et al.* Transco states that Rate Schedule LG-S was not addressed in its August 7, 1989 Settlement which was approved by Commission order dated September 29, 1989. Transco states that this petition is seeking a waiver to provide a short term

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solution to its customers' need for flexibility with respect to Rate Schedule LG–S. Transco states that in the long term it will continue to work with its customers to reach mutually agreeable Rate Schedule LG–S tariff provisions.

Specifically, Transco requests for the period commencing with the Commission's approval of this petition through December 31, 1989: (1) Authority to waive section 1.1(a) of Rate Schedule LG–S to the extent it requires a Buyer under Rate Schedule LG–S to be purchasing gas from Transco under Transco's CD, G or OG Rate Schedules; (2) authority to waive section 6 in its entirety; and (3) authority to allow a Buyer under Rate Schedule LG–S to arrange for same day delivery of natural gas to Transco at its liquefaction-storage plant location near Carlstadt, New Jersey, using Transco's Rate Schedule IT or FT. The quantity of natural gas to be concurrently delivered to Transco at the liquefaction-storage plant shall be the dt delivered by Transco to Buyer under Rate Schedule LG–S, multiplied by a factor of 1.18, to compensate for fuel and shrinkage at the liquefaction-storage plant.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24641 Filed 10–18–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT89–1–002]

Williston Basin Interstate Pipeline Co., Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

October 12, 1989.

Take notice that on September 29, 1989, Williston Basin Interstate Pipeline Company (Williston), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1–B:

Second Revised Sheet No. 169
First Revised Sheet No. 189A

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR sections 385.214 and 385.211. All such motions or protests must be filed by October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24638 Filed 10–18–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 90–01; Certification Notice—49]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Boston Edison Co.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Boston Edison Company Boston, MA	10–05–89	Combined Cycle	300	Weymouth, MA.

Amendments to the FUA on May 21, 1987, (Public Law 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue S.W., Washington, DC 20585, phone number (202) 586–6769.

Issued in Washington, DC, on October 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24706 Filed 10–18–89; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 89–17; Certification Notice—43A]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Cornerstone Energy Co.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company previously filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Cornerstone Energy Company, Salt Lake City, UT [1]	08–21–89	Combined Cycle	45	Boulder City, NV

[1] Company's address was erroneously listed on the previous certification as Miami, FL (54 FR 37706). It should have been Salt Lake City, UT.

Amendments to the FUA on May 21, 1987, (Pub. L. 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, phone number (202) 586–6769.

Issued in Washington, DC, on October 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24707 Filed 10–18–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of September 1 Through September 8, 1989; M.A. Malik et al.

During the week of September 1 through September 8, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 6, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 1 through Sept. 8, 1989]

Date	Name and Location of Applicant	Case No.	Type of Submission
Sept. 5, 1989	M.A. Malik, Hartford, CT	KFA–0316	Appeal of an Information Request Denial. If Granted: The August 31, 1989 Freedom of Information Request Denial issued by the DOE Office of Scientific and Technical Information would be rescinded and M.A. Malik would not be charged fees in connection with his FOIA request.
Sept. 7, 1989	Amoco/Illinois, Springfield, IL	RM251–159	Request for Modification/Rescission in the Amoco Second Stage Refund Proceeding. If Granted: A second stage refund plan previously approved for Illinois would be modified in the Amoco second stage refund proceeding.
Sept. 8, 1989	The DIE Gem Company, Inc., Akron, OH	KFA–0317	Appeal of an Information Request Denial. If Granted: The August 1, 1989 Freedom of Information Request Denial issued by the DOE Office of the Inspector General would be rescinded and the firm would receive access to documents pertaining to the DIE Gem Co., Inc. and its employees.

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REFUND APPLICATIONS RECEIVED

[Week of Sept. 1 to Sept. 8, 1989]

Date Received	Name of Refund Proceeding/Name of Refund Applicant	Case No.
03/01/89	Colesville Exxon	RF307-10050.
08/31/89	Chaney Oil Co	RF314-76.
09/01/89	OKC Corp/Kansas	RQ13-531.
09/01/89	Warren J. Peake	RF307-10051.
09/05/89	Fred M. Burkhart	RF307-10055.
09/05/89	Lamor Service Station.	RF307-10052.
09/05/89	Glenn T. Koteras	RF307-10054.
09/06/89	Chesapeake Corporation.	RF307-10057.
09/06/89	James D. Gouldin, Sr.	RF307-10056.
09/06/89	Triple T. Superette	RC272-70.
09/01/89	Crude Oil Refund Applications Received.	RF272-75633 thru RF272-75650.
09/01/89 thru 09/08/89.	Atlantic Richfield Refund Applications Received.	RF304-10292 thru RF304-10299.
09/01/89 thru 09/08/89.	Shell Oil Refund Applications Received.	RF315-7057 thru RF315-7100.

[FR Doc. 89-24708 Filed 10-18-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3672-9]

Relative Risk Reduction Strategies Committee Subcommittee Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a series of public meetings of the three Subcommittees of the Relative Risk Reduction Strategies Committee (RRRSC). For further information concerning this project, please refer to the notices contained in 54 Federal Register 35386, August 25, 1989, and 54 Federal Register 38282, September 15, 1989. The Subcommittees and meetings are as follows:

ENVIRONMENTAL RISK SUBCOMMITTEE: This Subcommittee will meet on October 21-22, 1989 in Room 18 of the Williamsburg Hilton Hotel, 50 Kingsmill Road, Williamsburg, Virginia 23185, Telephone: (804) 220-2500. The meeting will take place from 9:00 am to 5:00 pm on October 21, 1989 and from 8:30 am to 2:30 pm on October 22, 1989. The purpose is to discuss environmental and welfare-related risk reduction strategies. The Designated Federal Official for this Subcommittee is Mr. A. Robert Flaak.

RELATIVE RISK SUBCOMMITTEE: This Subcommittee will meet from 10:00 am to 4:00 pm on October 30, 1989 at Howard Johnson's National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The purpose is to identify risk reduction activities relevant to environmental problems and to define strategies based on those activities. The Designated Federal Official for this Subcommittee is Mrs. Kathleen W. Conway.

HEALTH RISK SUBCOMMITTEE: This Subcommittee will meet from 9:00 am to 5:00 pm on November 13-14, 1989 at the Stouffer Concourse Crystal City Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia. The purpose of this meeting is to discuss development of environmental health risk reduction strategies. The Designated Federal Official for the Subcommittee is Mr. Samuel Rondberg.

FOR FURTHER INFORMATION: Members of the public wishing further information concerning any of the three Subcommittees or their meetings should contact the relevant Designated Federal Official at the following address: U.S. Environmental Protection Agency (A-101F), 401 M Street, SW, Washington, DC, (202) 382-2552, (FTS) 382-2552, FAX (202) 475-9693. For further information on the entire project, or the RRRSC itself, please contact Dr. Donald G. Barnes, Designated Federal Official for the RRRSC. Dr. Donald G. Barnes, Designated Federal Official for the RRRSC. Dr. Barnes may be contacted at the same address, or at (202) 382-4126, (FTS) 382-4126. Seating at each meeting is on a first come basis.

Dated: October 13, 1989.

A. Robert Flaak,

Deputy Director Science Advisory Board.

[FR Doc. 89-24847 Filed 10-18-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3672-4]

Salvage Oil Site: Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Salvage Oil Site, Rockingham, North Carolina with Carolina Packaging, Inc., J.P.S. Carpet Corp., Lear Siegler Diversified Holdings Corp., Libbey-Owens Ford Co., Owens-Illinois Inc., Pfizer Inc., Sara Lee Hosiery, Goodyear Tire and Rubber Co., and the South Carolina Department of Highways and Public Transportation. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE. Atlanta, GA 30365, (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: October 3, 1989.

Patrick M. Tobin,

Director, Waste Management Division EPA Region IV.

[FR Doc. 89-24689 Filed 10-18-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-076
Title: American West African Freight Conference
Parties:
American-Africa Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirience de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line
Synopsis: The proposed amendment would permit a party to disassociate itself from any rate or service item agreed to by the Conference. It would also make certain changes regarding quorum and membership surety bonding requirements.

Agreement No.: 212-010286-021
Title: South Europe/U.S.A. Pool Agreement
Parties:
Compania Transatlantica Espanola, S.A.
Costa Container Line
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
Italia di Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Ltd.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
P & O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.
Synopsis: The proposed modification clarifies the geographic scope of the agreement by expressly excluding the Canary Islands as ports of origin.

Agreement No.: 202-010748-007
Title: West Coast/Middle East and West Asia Rate Agreement
Parties:
American President Lines, Ltd.
Dampskibsselskabet AF 1912 Aktieselskab
Synopsis: The proposed modification would republish the basic agreement and incorporate authority permitted by previous modifications of the agreement.

Agreement No.: 203-010977-008
Title: Hispaniola Discussion Agreement
Parties:
United States Atlantic and Gulf/Hispaniola Steamship Freight Association
Zim Israel Navigation Co.
Tropical Shipping and Construction Co., Ltd.
Seaborad Caribe Ltd.
Antillean Marine Shipping Corporation
U.S.A. Tecmarine Incorporated d/b/a Tecmarine Lines
Kirk Line, Ltd.
Synopsis: The proposed amendment would: (1) Restate the basic agreement; (2) add the Shipping Corporation of Trinidad & Tobago, Ltd., as a party to the Agreement; (3) delete the limitation on Anitillean Marine Shipping Corporation's participation; (4) provide sailing rationalization authority; and (5) provide voting with respect to the establishment of joint sailing rationalization.

Agreement No.: 203-011038-001
Title: Southeastern Caribbean Discussion Agreement
Parties:
United State Atlantic and Gulf/Southeastern Caribbean Conference
Trailer Marine Transport Corporation
Synopsis: The proposed amendment would add Tecmarine Line, Inc., as a party to the Agreement.

Agreement No.: 232-011253
Title: Deppe/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement
Parties:
Deppe Linie GmbH & Co.
Lykes Bros. Steamship Co., Inc.
Synopsis: Agreement No. 232-011253 proposes to establish space charter and coordinated sailing arrangements between Deppe Linie GmbH & Co., and Lykes Bros., in the trade between the U.S. and North Europe.

By Order of the Federal Maritime Commission.

Dated: October 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24619 Filed 10-18-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capitol Bancorp. Ltd., et al.; Formations of ; Acquisitions by: and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each applications is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capitol Bancorp. Ltd.,* Lansing, Michigan; to acquire 100 percent of the voting shares of Portage Commerce Bank, Portage, Michigan.

2. *Gore-Bronson Bancorp, Inc.,* Prospect Heights, Illinois; to acquire 100 percent of the voting shares of Irving Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire The Irving Bank, Chicago, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Appleton City Bancshares, Inc.,* Appleton City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Appleton City, Appleton City, Missouri.

2. *Wallco, Inc.,* Newhawka, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of The Newhawka Bank. Newhawka, Nebraska.

3. *Weld State Company,* Fort Lupton, Colorado; to acquire 100 percent of the voting shares of First National Bank of Windsor, Windsor, Colorado.

Board of Governors of the Federal Reserve System, October 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24692 Filed 10-18-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

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Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 2, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. John A. Coccomo, Sr., Windsor, Connecticut; to acquire an additional 10.1 percent of the voting shares of Olde Windsor Bancorp, Inc., Windsor, Connecticut, for a total of 20.0 percent, and thereby indirectly acquire New England Bank and Trust Company, Windsor, Connecticut.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. The Graham Group, Inc., Des Moines, Iowa; to acquire 5.15 percent of the voting shares of First Interstate of Iowa, Inc., Des Moines, Iowa, and thereby indirectly acquire First Interstate Bank of Des Moines, N.A., Des Moines, Iowa.

Board of Governors of the Federal Reserve System, October 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24693 Filed 10-18-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-14]

Data Needs Related to Priority Group One Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for unpublished or ongoing studies relevant to priority group one toxicological profiles.

SUMMARY: Section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499), requires that ATSDR prepare (1) a list of hazardous substances most commonly found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances. As part of its research program ATSDR is now updating the data needs sections of some of its first profiles. Through this notice, ATSDR is soliciting unpublished or ongoing studies relevant to the following list of substances.

Substance name	CAS Number
Aldrin/Dieldrin	309-00-2/60-57-1
Arsenic	7440-38-2
Benzene	71-43-2
Beryllium	7440-41-7
Cadmium	7440-43-9
Chloroform	67-66-3
Chromium	7440-47-3
Cyanide	57-12-5
1,4-Dichlorobenzene	106-46-7
Di(2-ethylhexyl)phthalate	117-81-7
Heptachlor/Heptachlor epoxide	76-44-8/1024-57-3
Lead	7439-92-1
Methylene chloride	75-09-2
Nickel	7440-02-0
N-nitrosodiphenylamine	86-30-6
Polychlorinated biphenyls (PCBs)	
(Aroclor -1260,	11096-82-5
-1254,	11097-68-1
-1248,	12672-29-6
-1242,	53469-21-9
-1232,	11141-16-5
-1221 and	11104-28-2
-1016)	12674-11-2
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
Tetrachloroethene	127-18-4
Trichloroethylene	79-01-6
Vinyl Chloride	75-01-4

DATE: Comments concerning this notice must be received by November 20, 1989.

ADDRESS: Submissions in response to this notice should bear the docket control number ATSDR-14 and should be submitted to Mr. Edward Skowronski, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Skowronski, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. Telephone: (404) 639-0730.

SUPPLEMENTARY INFORMATION

I. *Background:* On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 CERCLA or Superfund (42 U.S.C. 9601 et seq.). Section 110 of SARA amends section 104(i) of CERCLA by establishing requirements for the preparation of (1) lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are to be used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program, is required to assure the initiation of a program of research designed to determine these health effects.

Although ATSDR is confident that key studies for each of the listed substances have been considered during the development of the associated profile, this **Federal Register** notice solicits any unpublished data or ongoing studies which may aid in the determination of data needs for these substances.

II. *Administrative Record:* ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR-14). The public file is available for inspection during the times and at the address given in the section of this notice entitled **ADDRESS.**

Dated: October 12, 1989.

George E. Hardy,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-24663 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS): Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics.

Time and Date: November 1, 1989—1:30 p.m.-5 p.m.; November 2, 1989—9 a.m.-5 p.m.; November 3, 1989—9 a.m.-1:30 p.m.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the NCVHS to receive and consider reports from each of its subcommittees and to address new business as appropriate.

Contact person for more information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: October 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-24776 Filed 10-17-89; 11:04 am]

BILLING CODE 4160-18-M

Family Support Administration

Child Support Enforcement Program; Hearing

AGENCY: Office of Child Support Enforcement (OCSE), FSA, HHS.

ACTION: Notice of hearing.

SUMMARY: By designation of the Acting Director, Office of Child Support Enforcement, a member of the Departmental Appeals Board will hold a hearing pursuant to 45 CFR part 213 and 45 CFR 301.14 concerning the Acting Director's disapproval of a State plan amendment submitted by the State of Ohio.

DATE: 9:30 a.m., Monday, December 18, 1989.

Place: Room 644G—Departmental Appeals Board, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Requests to participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 by November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Peggy McFadden, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 637-D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 475-0009.

SUPPLEMENTAL INFORMATION: Notice of hearing is hereby given as set forth in the following letter, which has been sent to the Ohio Department of Human Services.

Mr. Roland T. Hairston
Director Ohio Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

Dear Mr. Hairston:

This letter is in response to your letter of September 13 requesting reconsideration of the Acting Director's decison of August 10 disapproving Ohio's proposed State plan amendment 88-27 regarding application for title IV-D child support services by operation of State law.

Pursuant to 45 CFR 301.14 and 45 CFR 213.12, I am scheduling a hearing to be held on December 18 1989 in Washington, DC at 9:30 a.m. in room 644-G of the Departmental Appeals Board, Hubert H. Humphrey Building, 1200 Independence Avenue, SW., Washington, DC 20201.

In accordance with 45 CFR 213.21, I have designated a member of the Departmental Appeals Board, Mr. Alexander G. Teitz, as presiding officer for the hearing on this matter. A copy of the designation is enclosed. The hearing will be conducted under the provisions of 45 CFR part 213.

The hearing will involve reconsideration of the issue of whether Ohio's proposed State plan amendment 88-27 is in conformance with the requirements of 42 U.S.C. 654(6) and 45 CFR 302.33 which provide that the State make title IV-D services available to any individual not otherwise eligible for such services who files an application with the IV-D agency. In addition, OCSE Policy in AT-76-9 (June 9, 1976) provides:

"In order to comply with the statutory requirements of filing an application, the application must be in writing, and may not be an oral application. The application must be signed by the individual applying for child support services."

The hearing will reconsider my finding of August 10 that Ohio's proposed amendment is not in conformance with these requirements, since the obligees covered by this proposed amendment will not have filed a signed application for IV-D services.

Any further inquiries, submissions or correspondence regarding this hearing should be filed in an original and two copies with the Departmental Appeals Board, Room 637-D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, where the record of this hearing will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience, please refer to Docket No. 89-200 which has been assigned to these proceedings.

Sincerely,
Eunice S. Thomas,
Acting Director.

Eunice S. Thomas,

Acting Director, Office of Child Support Enforcement.

Dated: October 13, 1989.

[FR Doc. 89-24702 Filed 10-18-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87P-0207]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Bumble Bee Seafoods, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit, issued to Bumble Bee Seafoods, Inc., to market test canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate to inhabit protein curd formation during retorting, is being amended to add another test-product manufacturing plant. This amendment will provide a broader base for the collection of data on consumer acceptance of the test produce.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: FDA issued a temporary permit under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., 5775 Roscoe Ct., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water and containing added sodium tripolyphosphate to inhibit protein curd formation during retorting. The purpose of the temporary permit is to measure consumer acceptance of the new style of pack. The agency issued the permit to facilitate market testing of a food that deviates from the requirements of the standard of the identity for canned Pacific salmon (21 CFR 161.170), which was promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of July 13, 1987 (52 FR 26186).

FDA amended the temporary permit in the **Federal Register** of April 8, 1988 (53 FR 11710), to permit the test product to be manufactured at one additional plant, Chugach Alaska Fisheries, Inc., Ocean Dock Rd., Cordova, AK 99574. The permit was further amended in the **Federal Register** of September 6, 1988 (53 FR 34354), to extend the expiration date of the permit to either the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon that may result from the National Food Processors Association's petition, submitted on

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behalf of Bumble Bee Seafoods, Inc., and other salmon packers holding temporary permits, or 30 days after termination of such proposal.

Bumble Bee Seafoods, Inc., has requested that FDA amend its temporary permit to allow the test product to be manufactured at a third plant, Excursion Inlet Packing Plant, located in Excursion Inlet, AK 99850.

Accordingly, under the provisions of 21 CFR 130.17(f), FDA is amending the permit to add to the Excursion Inlet Packing Plant, Excursion Inlet, AK 99850. as a test-product manufacturing plant. All other conditions and terms of this permit remain the same.

Dated: October 6, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-24671 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Radiopharmaceutical Drugs Advisory Committee

Date, time, and place. November 17, 1989, 8:30 a.m., Conference Rms. G and H, Parklawn Bldg., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational radioactive pharmaceuticals and contrast media for use in diagnostic and therapeutic procedures.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before November 3, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) New drug application (NDA) 19-928, Cardiotec® (technetium Tc 99m teboroxime) Injection, Squibb Diagnostics, for use in myocardial imaging; (2) status of gastric emptying petition, (3) NDA 19-785, Cardiolite® (technetium Tc 99m sestamibi) Injection, Dupont Pharmaceuticals, for use in myocardial imaging, (4) recent labeling changes in iodinated contrast media, and (5) proposed reconfiguration of the Radiopharmaceutical Drugs Advisory Committee.

Peripheral and Central Nervous System Advisory Committee

Date, time, and place. November 20, 1989, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; Robbin M. Nighswander, Center for Drug Evaluation and Research (HFD-120). Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301-443-3504.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before November 6, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss investigational new drug (IND) 17,213, Gamma Vinyl GABA (GVG), which is an experimental anticonvulsant that was previously reviewed by the committee at meetings on May 18, 1984, and October 18, 1985, in order to evaluate the occurrence of intramyelinic vacuoles in the brains of four animal species. At the May 18, 1984, meeting, the committee recommended that if brain vacuoles were detected in a then ongoing monkey toxicity study, the committee should be reconvened to discuss the findings.

The committee reconvened on October 18, 1985, to discuss the findings of an interim sacrifice of monkeys from that ongoing toxicity study. Brain vacuoles were detected in the sacrificed monkeys, and the committee recommended that clinical testing with new human subjects, previously unexposed to GVG, be suspended until such time as the sponsor could develop and validate a method to detect the earliest pathological changes in an animal, and demonstrate if these changes are reversible. The committee also recommended that patients currently on the drug be allowed to continue.

The sponsor has recently submitted a request to reinitiate clinical trails with GVG in the United States. In support of this request, data has been submitted from further animal studies and additional human clinical data obtained from foreign trials.

The committee will be asked to assess the propriety of reinitiating clinical studies in view of the additional data.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) and open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's descretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fisheres Lane, Rockville, MD 20857, approximately, 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24668 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Orlando District Office, chaired by Douglas D. Tolen, District Director. The topic to be discussed is proposed food labeling requirements.

DATES: Tuesday, November 28, 1989, 1:30 p.m. to 3:30 p.m.

ADDRESSES: Orange County Extension Service, Auditorium, 2350 East Michigan St., Orlando, FL 32806.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 407-855-0900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24669 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Orlando District Office, chaired by Douglas D. Tolen, District Director. The topic to be discussed is proposed food labeling requirements.

DATE: Thursday, November 30, 1989, 10 a.m. to 12 p.m.

ADDRESS: Pinellas County Extension Service, Auditorium, 12175 125th Street North, Largo, FL 34644.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Drive, Suite 120, Orlandao, FL 32809, (407) 855-0900.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24670 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress.

National Advisory Council on Health Professions Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Mr. James M. Hoeven, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Dated: October 13, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-24667 Filed 10-18-89; 8:45 am]

BILLING CODE 4160-10-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-89-2036; FR-2675-02-C]

Public Housing Drug Elimination Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

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ACTION: Extension of time to file applications.

SUMMARY: On September 18, 1989, HUD published a Notice of Fund Availability soliciting applications for funding under the Public Housing Drug Elimination Program. Today's notice extends the application deadline to December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Howard Mortman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4110, Washington, DC 20410, telephone (202) 755–3611. (This is not a toll-free number).

APPLICATION DEADLINE: Applications must be received by 5:15 p.m., Eastern Daylight Time, on December 1, 1989, at the Department of Housing and Urban Development, Room 4110, 451 Seventh Street SW., Washington, DC 20410, Attention: Howard Mortman, Office of Public and Indian Housing. A copy of the application materials should be simultaneously forwarded to the HUD Field Office with jurisdiction over the Public Housing Agency (PHA), Attention: Chief Assisted Housing Branch; or for Indian Housing Authorities (IHA), Attention: Director, Indian Programs. The Department will not consider any application that has been transmitted by facsimile ("FAX") machine.

SUPPLEMENTARY INFORMATION: On September 18, 1989 (54 FR 38496), HUD announced in the **Federal Register** the availability of $8,200,000 in grant funds appropriated by the Dire Emergency Supplemental Appropriations Act (Pub. L. 101–45, approved June 30, 1989). These funds are to be used in a manner consistent with the requirements of the Public Housing Drug Elimination Act of 1988 to provide grants to PHAs and IHAs. To receive funding under this program, PHAs and IHAs are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. The notice stated that applications were due by November 2, 1989. Today's notice extends the deadline to December 1, 1989. The Department has determined that this extension is needed to allow eligible applicants an opportunity to submit quality applications.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (Chapter 2, Subtitle C, Title V, Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, approved November 18, 1988); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 13, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89–24709 Filed 10–18–89; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–4230–15; F–14943–B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provision of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Tanacross, Inc. for approximately 11,760 acres. The lands involved are in the vicinity of Tok, Alaska.

Certain Lands Within:

T. 18 N., R. 13 E., Copper River Meridian, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 20, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Marcia K. Walker,

Chief, Branch of Doyon Adjudication.

[FR Doc. 89–24662 Filed 10–18–89; 8:45 am]

BILLING CODE 4310–JA–M

[NV–930–08–4333–11: NV5–89–34]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1989 Gold Coast 300 Off-Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1989 GOLD COAST 300 race course on October 14, 1989. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, October 14, 1989, to 2400 hours, October 14, 1989, to protect persons, property, and public land resources on and adjacent to the 1989 GOLD COAST 300 OHV race course. Spectators are restricted to the start/finish, and at authorized pit areas. These temporary closures and restrictions are made pursuant to 43 CFR part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1989 GOLD COAST 300 OHV race course.

The following public lands restricted or closed are described as: the Sloan area. T23S., R60E., all of section 36 and in T23S., R61E., all of sections 31 and 32. The Hidden Valley area, T24S., R60E., all of sections 1, 11, 12, 14, 15, 21, 22, 25, 26, 28, 29, 31, 32, 35 and 36; and in T24S., R61E., all of sections 5, 6, 7, 8, 17, 18, 20, 29, 30, and 31. The Jean, Nevada and the Jean Dry Lake areas, T25S., R59E., all of sections 34, 35 and 36; and in T25S., R60E., all of sections 1, 5, 6, 7, 8, 12, 13, 14, 17, 20, 21, 24, 28 and 33. The McCullough Mountain area, T25S., R61E., all of sections 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32 and 33; and in T25S., R62E., all of section 19. The Roach Dry Lake area, T26S., R59E., all of sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 23 and 24; and in T26S., R60E., all of sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 646–8800. Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: October 7, 1989.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 89–24681 Filed 10–18–89; 8:45 am]

BILLING CODE 4310–NC–M

[ID–010–00–4130–09]

Intent To Prepare EIS for Proposed Mine, ID

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and invitation to participate in issue identification (scoping).

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior, Bureau of Land Management (BLM) intends to prepare an environmental impact statement (EIS) on a plan of operations for a proposed open-pit gold and silver mine in Owyhee County, Idaho. Action on that plan of operations is pursuant to the authority under 43 CFR 3809.

DATES: Any public meetings pursuant to 40 CFR part 1501.7 (NEPA Regulations) to help identify and determine the issues to be addressed and the scope of the EIS will be announced in the local media and through our mailing list. Dates and locations for meetings have not yet been determined.

ADDRESS: Comments should be sent to: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705. Telephone: (208) 334–1582.

SUPPLEMENTARY INFORMATION: NERCO DeLamar Company has submitted an application for approval of a plan of operations for the Stone Cabin Mine, a proposed open-pit gold and silver mine located partially on BLM adminstrated lands about 50 miles southwest of Boise, Idaho. Major components of the NERCO proposal include: establishing open mine pits near the top of Florida Mountain, depositing waste rock at two sites between the Stone Cabin Mine and the existing DeLamar Silver Mine, hauling high grade ore over a newly constructed five-mile long haul road to the DeLamar Silver Mine for milling, increasing milling capacity at the DeLamar Silver Mine to accommodate high grade ore from the Stone Cabin Mine, increasing the capacity of the tailings pond at the DeLamar Silver Mine to accommodate tailings from the Stone Cabin Mine, processing low grade ore at a newly constructed heap leach site between the Stone Cabin Mine and the DeLamar Silver Mine, constructing ancillary facilities to support the Stone Cabin Mine, and reclamation of the Stone Cabin Mine site following mining activities which are projected to last approximately 10 years.

Possible alternatives under consideration include: (1) Approval of the plan of operations as submitted by NERCO DeLamar Company, (2) approval of the plan of operations (submitted by NERCO DeLamar Company) with stipulations identified by BLM through the environmental review process, (3) approval of an alternative plan of operations (as identified through the environmental review process), and (4) not conducting mining operations at the Stone Cabin Mine site ("No Action" alternative or rejection of application). Potential environmental issues to be addressed in the EIS include, but are not limited to: Impacts on ground and surface water quality and beneficial uses, impacts on cultural resources, impacts on wildlife (including threatened and endangered and sensitive species, migratory birds, and aquatic species), and impacts on recreation and access.

The EIS will be prepared under a third party contract pursuant to the CEQ regulations for implementing NEPA (40 CFR part 1505.6(c). The Boise District, BLM will assemble an interdisciplinary team to guide, assist and evaluate that effort.

Dated: October 5, 1989.

J. David Brunner,

District Manager.

[FR Doc. 89–24679 Filed 10–18–89; 8:45 am]

BILLING CODE 4310–GG–M

[OR–080–00–412–14: GPO–022; OR 45383]

Realty Action; Proposed Direct Sale

October 13, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

Lot 8, Block 45, Agate Beach No. 2 (located within Sec. 29, T. 10 S., R. 11 W.)

Containing 0.12 acres in Lincoln County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has been determined to be $2,200.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel was acquired recently in order to realign the BLM Yaquina Head Road and a portion of NW Lighthouse Drive (City of Newport). An easement interest was all that was needed but the landowner requested the United States purchase the lot in its entirety. Subsequently, the City of Newport was issued a right-of-way for the identical area of the proposed easement (OR 45213). The parcel is in a single-family residential zone but is not buildable because of its steep slope and lack of nearby sewer facilities. It is not needed for any Federal program and is not suitable for management by another Federal department or agency. The proposed sale will merge the parcel with an adjoining ownership, creating a more useable parcel. Use of direct sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered to John R. Altree using direct sale procedures authorized under 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Mr. Altree will be required to submit proof that he is a U.S. citizen and is 18 years of age or more. He will also be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised prive shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. Mr. Altree must include with his bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

BEST COPY AVAILABLE

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3. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

4. The deed will be issued subject to Right-of-Way OR 45213 and all valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address below.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Yamhill Area Manager, Salem District Office, 1717 Fabry Road SE, Salem, OR 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Richard C. Prather,

Yamhill Area Manager.

[FR Doc. 89-24687 Filed 10-18-89; 8:45 am]

BILLING CODE 4310-33-M

[AA-340-00-4333-11]

Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Specific Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice—specific fee adjustments for special recreation permits.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice it is adjusting certain special recreation permit fees for various recreation activities on the National Public Lands and related waters administered by the BLM. Along with the U.S. Forest Service (FS), BLM is adjusting the minimum annual fee for all special recreation permittees.

Effective with March 1, 1990 fee adjustments will be made in this manner automatically every 3 years. 1984 is used as a base year for the 1990 increase. Fees will be rounded to the nearest $10.00. This notice establishes the special recreation permit minimum annual fee at $60 and the site reservation fee at $120 until February 28, 1993. Multiyear and annual permits issued prior to March 1, 1990 will be adjusted accordingly. The intended effect is to ensure fees cover administrative costs of permit issuance and approach free market value in certain cases.

These fees will be calculated and adjusted based on the change in the Implicit Price Deflator. The Implicit Price Deflator Index (IPDI) is published every February as a part of the "Economic Report of the President" to Congress. The IPDI is also cited monthly in the "Survey of Current Business," a periodical available in most regional, university, and local government depository libraries.

EFFECTIVE DATE: March 1, 1990.

ADDRESS: Director (340), Room 3360, Main Interior Building, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation Resources Branch (202) 343-9353.

SUPPLEMENTARY INFORMATION: In 1984 (49 FR 5300 and 49 FR 34332), the Bureau of Land Management announced its final regulations and policy concerning special recreation permits for individuals or organizations conducting commercial, competitive, and other uses.

BLM established the minimum annual special recreation permit fee at $50 and site reservation fee of $100 to ensure consistency with the FS for commercial outfitters who use adjacent lands and waters. Since 1984, inflation has devalued these fixed free amounts. Therefore it is necessary to adjust the minimum and site reservation fees.

On September 9, 1987, the BLM incorporated its commercial fee and permit policy in the 8372 Manual and Handbook. As a part of this policy, the BLM established a new system for determining the annual administrative cost to issue permits and provide a fair return to the government for the privilege of conducting commercial recreation activities on the Public Lands and related waters. The fee system bases fees on either a minimum annual fee or 3% of the commercial permittee's gross revenue (allowing certain discounts for lodging and transportation), whichever is greater.

Office of Management and Budget Circular A-25, specifies that, "Where federally owned resources or property are leased or sold, a fair market value should be obtained." Fees based on revenue and charges to the customer are self-adjusting.

Because of many areas of adjacent jurisdiction, the BLM and FS coordinate their policies for managing outfitting and guiding and other activities of its recreation service partners. The FS published their proposal at 54 FR 11982, dated March 23, 1989 and BLM published the same proposal at 54 FR 22786, dated May 26, 1989.

During the public comment period from May 26 to July 7, 1989, the BLM received 2 comments, one letter and one phone call. The letter supported the proposed fee adjustment procedure as a reasonable pursuit of fair market value return. In addition, as a part of this letter, the suggestion was made that due to adjacent State lands, BLM should coordinate their policies with the State. Since BLM does coordinate with State and local governments through their resource management planning process, State Comprehensive Outdoor Recreation Plans, and comparability in establishing developed recreation site fees, no change was made in this proposal.

The phone inquiry was from a representative of a national outfitter organization inquiring about the details and coordination of the proposal prior to implementation. It was explained to this commentor that the proposal was discussed with a number of commercial outfitter organizations and had received their initial support for these groups. Additionally, it was clarified that this fee schedule only applies to the permittee if the minimum annual fee is less than 3% of the gross receipts. No additional concerns were voiced, therefore no change has been made in the proposal.

These fee adjustments hereby amend BLM 8372 Manual and Handbook H-8372-1, Special Recreation Permits For Commercial Use.

Dated: October 12, 1989.

Dean Stepanek,

Deputy Director.

[FR Doc. 89-24659 Filed 10-18-89; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: St. Louis Zoological Park, St. Louis, MO, PRT 742177

The applicant requests a permit to import one captive-born banteng (*Bos javanicus*) from the Zoo Berlin, Berlin, West Germany for the purpose of captive propagation.

Applicant: William Gruenerwald, Colorado Springs, CO, PRT 741920

The applicant requests a permit to import one captive-born female Somali wild ass (*Equus africanus somalicus*) from the Zoologischer Garten Basel, Switzerland for the purpose of captive propagation.

Applicant: Donnovan L. Fox, Jr., Bolivar, MO, PRT 742176

The applicant requests a permit to purchase in interstate commerce one captive-born clouded leopard (*Neofelis nebulosa*) and a captive-born pair of leopards (*Panthera pardus*) from Mr. Thomas Atchison, Hatten, Alabama for the purpose of captive propagation.

Applicant: Phoenix Zoo, Phoenix, AZ, PRT 742370

The applicant requests a permit to import one captive born female cheetah (*Acinonyx jubatus*) from Mr. Desmond Veraday, Cheetah Sanctuary, Middleburg, Transvaal Province, Republic of South Africa, for captive breeding purposes and display. The cheetah was born in captivity at Mr. Veraday's facility.

Applicant: Rio Grande Zoological Park, Albuquerque, NM, PRT 742372

The applicant requests a permit to import two male and three female cheetahs (*Acinonyx jubatus*) from Mr. Desmond Veraday, Cheetah Sanctuary, Middleburg, Transvaal Province, Republic of South Africa, for captive breeding purposes and display. The cheetahs were born in captivity at Mr. Veraday's facility.

Applicant: Lincoln Park Zoological Gardens, Chicago, IL, PRT 742371

The applicant requests a permit to import four captive born female cheetahs (*Acinonyx jubatus*) from Mr. Desmond Veraday, Cheetah Sanctuary, Middleburg, Transvaal Province, Republic of South Africa, for captive breeding purposes and display. The cheetahs were born in captivity at Mr. Veraday's facility.

Applicant: Louisville Zoological Garden, Louisville, KY, PRT 742373

The applicant requests a permit to import one pair of captive-born cheetahs (*Acinonyx jubatus*) from Mr. Desmond Veraday, Cheetah Sanctuary, Middleburg, Transvaal Province, Republic of South Africa, for captive breeding purposes and display. The cheetahs were born in captivity at Mr. Veraday's facility.

Applicant: John Otis Richards, Savannah, GA, PRT 742385

The applicant requests a permit to purchase one pair of captive hatched red-capped parrots (*Pionopsitta pileata*) from Mr. Tom Ireland, Tuwana Aviary, Lake Worth, Florida, for captive breeding purposes.

Applicant: Warren B. Katz, Wahiawa, HI, PRT 740482

The applicant requests a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from the Republic of South Africa for the purpose of enhancement of survival of the species.

Applicant: George Miksch Sutton Avian Research Center, Bartlesville, OK, PRT 683271

The applicant wishes to amend his current permit which authorizes take from nest in Florida of up to 100 bald eagle eggs per year for laboratory incubation and return to the wild. The proposed amendment would authorize the take of up to 25 eaglets each year, in lieu of the same number of eggs, for the purposes of determining whether the adult eagles will relay eggs as readily as they do when eggs are taken. The collected eaglets would be returned to the wild.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 16, 1989.

Susan Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-24703 Filed 10-18-89; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1991.

Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95-124. (42 U.S.C. 7701, et. seq.)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications must be received on or before January 25, 1990.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics, and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory, and fault zone studies; and (3) regional earthquake hazards assessments—geologic and seismic hazard evaluation and synthesis, loss estimation modeling, and implementation.

Application Forms: The program announcement is expected to be available on or about November 1, 1989. You may obtain a copy of announcement 7622 by writing to Karen Phillips, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092.

Organizations that applied for a FY 1989 award and organizations that requested to be retained on the mailing list since the last announcement, will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering—MS 905, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6722.

Dated: October 5, 1989.

(Catalog of Federal Domestic Assistance Number 15.807)

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 89-24686 Filed 10-18-89; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Flat Fork Watershed, TN, Lands Unsuitable for Surface Mining and Reclamation Operations; Availability of Draft Petition Evaluation Document and Draft Environmental Impact Statement; Request for Comment and Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

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ACTION: Notice of availability of the draft combined petition evaluation document/environmental impact statement (PED/EIS) for the Flat Fork watershed in Morgan County, Tennessee, lands unsuitable for surface coal mining and reclamation operations petition. Notice of public hearing to receive comments on Flat Fork Creek draft PED/EIS.

SUMMARY: OSM has prepared a draft combined PED/EIS addressing the petition to designate certain lands within the Flat Fork watershed as unsuitable for surface coal mining and reclamation operations. The document evaluates the allegations raised in the petition and considers the impacts of alternative unsuitability decisions for the Flat Fork watershed on the human environment, the economy, and the supply of coal. Copies of the PED/EIS are being made available today. Public comment on the PED/EIS is solicited and a public hearing will be held as described below.

DATES: Written comments on the PED/EIS must be received at the address given below under "**ADDRESSES**" on or before December 11, 1989, until 5 p.m. local time. Comments may also be presented at a public hearing starting at 7 p.m. on November 16, 1989, at the address given below.

ADDRESSES: Public hearing on the draft PED/EIS will be held at the Central Elementary School, Wartburg, Tennessee, on November 16, 1989, beginning at 7 p.m. local time.

Written comments on the draft PED/EIS must be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, Attn Willis L. Gainer. All comments will be on file and available for inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Office of Surface Mining Reclamation and Enforcement (telephone 615/673-4348 or FTS 854-4348) at the address listed above.

PED/EIS AVAILABILITY: Copies of the draft PED/DIS are available for inspection at the Morgan County Courthouse and at the OSM office listed above. In addition, copies of the document may be obtained, at the above-listed office.

SUPPLEMENTARY INFORMATION: The public hearing on the draft PED/EIS has been scheduled for the date and address listed above. Anyone who wishes to comment will be given the opporutnity to do so, but initial comments will be limited to 10 minutes of oral testimony. Time limits may be extended at the discretion of the presiding officials. Persons wishing to present testimony are encouraged to contact OSM at the address given above. OSM would appreciate receiving a written copy of the testimony four days prior to the public hearing.

The hearing will be transcribed. Filing a written statement at the time of giving oral testimony is encouraged as this will facilitate the job of the court reporter. A transcript of the meeting will be available at a nominal fee approximately 7 days after the meeting. The public hearing will commence at the times stated above and will continue until all persons scheduled to speak have been heard. Persons in the audience not scheduled to speak initially and who wish to do so will be heard at the end of the scheduled speakers.

OSM encourages the public to comment on the content of the draft PED/EIS. In particular, OSM solicits comments which identify errors, omissions, or alternatives not yet considered. Whenever possible, public comments should be supported by technical data or other source material. All comments from the public on the draft PED/EIS will be considered during preparation of the final document.

Dated: October 10, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 89-24665 Filed 10-18-89; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-83]

Certain Adjustable Window Shades; Commission Decision to Modify Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: In view of the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit) affirmance of a U.S. district court decision holding claims 1, 2, and 7 of U.S. Letters Patent 4,006,770 (the '770 patent) invalid, notice is hereby given that the U.S. International Trade Commission has determined to modify the exclusion order issued May 29, 1981, in the above-captioned investigation. Window shades and components thereof that infringe claims 1, 2, and 7 of the '770 patent are no longer excluded from entry into the United States. The modified order excludes only window shades and components thereof that infringe claims 8 and 9 of the '770 patent.

ADDRESS: Copies of the Commission's Order, its opinion, and all other nonconfidential documents filed in connection with this proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: In 1985, a federal district court determined that some of the claims of the patent underlying the exclusion order issued in the investigation were invalid, *Newell Companies, Inc.* v. *Kenney Manufacturing Co.*, 606 F. Supp. 1282 (D.R.I. 1985). In view of that decision, the Commission instituted a proceeding pursuant to Commission rule 211.57 to determine whether the *Window Shades* exclusion order should be modified or vacated. Notice of the proceeding was published in the **Federal Register** on October 9, 1985 (50 FR 41229). Interested parties were invited to file submissions. Submissions were received from the patent holder, Newell Window Furnishing Company, and an importer, the McCrory Corporation. On May 1, 1986, the Commission published its decision to maintain the exclusion order pending the outcome of the appeal of the district court decision to the Federal Circuit. 51 FR 16236. On December 29, 1988, the Federal Circuit issued its decision affirming the lower court's determination that some claims of the patent at issue were invalid. *Newell Companies Inc.* v. *Kenney Manufacturing Company*, 864 F.2d 757 (Fed. Cir. 1988).

This action is taken under the authority of section 337(k)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(k)) and § 211.57 of the Commission's interim rules (53 FR 33076 (Aug. 29, 1988)).

By order of the Commission.

Issued: October 11, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24626; Filed 10-18-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-285]

Certain Chemiluminescent Compositions and Components Thereof and Methods of Using, and Products Incorporating, the Same; Modification of General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is given that, pursuant to Commission interim rule 210.61 (53 FR 33073, Aug. 29, 1988), the Commission has modified paragraph 4 of the general exclusion order issued on August 17, 1989, in the above-captioned investigation.

ADDRESSES: Copies of the Commission's order modifying the general exclusion order are available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)-252-1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)-252-1116.

SUPPLEMENTARY INFORMATION: The general exclusion order issued in this investigation provides that articles that infringe certain specified patent claims, and/or packaging and related literature that infringe two registered trademarks, are excluded from entry. (*See* 54 F.R. 35087-8, August 23, 1989.) On August 31, 1989, complainant American Cyanamid Company filed a petition for reconsideration requesting that the Commission modify paragraph 4 of the general exclusion order. Paragraph 4 provides an exception to the exclusion of products bearing complainant's trademark for "Cyalume," Registration Nos. 925,341, or 1,141,455.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission interim rule 210.61 (53 FR 33073, Aug. 29, 1988).

By order of the Commission.

Issued: October 11, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24627 Filed 10-18-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Extension of Deadline for Determining Whether to Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend until November 15, 1989, the deadline by which it must decide whether to review an initial determination (ID) (Order No. 118) terminating the above-captioned investigation for abuse of the Commission's process.

FOR FURTHER INFORMATION CONTACT: Calvin H. Cobb, II, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging direct, contributory, and induced infringement of certain claims of three U.S. patents by 14 proposed respondents. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the **Federal Register** on December 28, 1988 (53 FR 52515).

On Septemer 28, 1989, the administrative law judge (ALJ) presiding in the investigation issued an ID (Order No. 118) terminating the investigation for abuse of Commission process pursuant to Commission interim rules 210.5(b)(4) and 210.51(a). Order No. 118 was served on September 29, 1989. Termination of an investigation in accordance with Commission interim rule 210.51(a) constitutes an ID issued under Commission interim rule 210.53(c) and, unless the Commission orders otherwise, the Commission must decide whether to review such an ID within 30 days from service of the ID, or in this case by October 31, 1989.

Also on September 28, 1989, the ALJ issued a second ID in the investigation, finding no violation of section 337 (the "Merits ID"). The Merits ID was also served on September 29, 1989. The Merits ID constitutes an ID concerning permanent relief under Commission interim rule 210.53(a). Pursuant to Commission interim rule 210.54(b), the Commission must decide whether to review the Merits ID within 45 days of service, or in this case, by November 15, 1989.

The Commission has extended the deadline for deciding whether to review Order No. 118 to coincide with the deadline for deciding whether to review the Merits ID. The Commission will therefore decide whether to review both Order No. 118 and the Merits ID within 45 days of service, *i.e.*, by November 15, 1989.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54 of the Commission's Interim Rules of Practice and Procedure (53 FR 33034, 33071 (Aug. 29, 1988)).

By order of the Commission.

Issued: October 12, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-24628 Filed 10-18-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Edward Clarke, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension

Bureau/Office: Office of Compliance and Consumer Assistance

Title of Form: Notice of Intent to perform Interstate Transportation for certain nonmembers

OMB Form No.: 3120-0005

Agency Form No.: OCP-102

Frequency: Annually

Respondents: Agricultural Cooperatives

No. of Respondents: 50

Total Burden Hrs.: 25 (average 30 minutes per response)

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Brief Description of the need & proposed use: Agricultural Cooperatives must file this form if they wish to perform transportation for nonmembers without a certificate or permit from the ICC.

Type of Clearance: Extension
Bureau/Office: Office of Compliance and Consumer Assistance
Title of Form: Designation of Agents—Motor Carriers and Brokers
OMB Form No.: 3120–0008
Agency Form No.: BOC–3
Frequency: On occasion
Respondents: Motor Carrier Agents and Brokers
No. of Respondents: 12,000
Total Burden Hrs.: 3,000 (Average 15 minutes per response)
Brief Description of the need & proposed use: Filing on this form is required to satisfy statutory requirements that motor carriers and property brokers maintain on file with commission agents upon whom process issued in court proceedings may be served.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Condensed Balance Sheet
OMB Form No.: 3120–0063
Agency Form No.: CBS
Frequency: Quarterly
Respondents: Class I Railroads
No. of Respondents: 17
Total Burden Hrs.: 408 (Average 6 Hrs. per response)
Brief Description of the need & proposed use: Reports are used by the Commission to assess industry growth, sudden changes in carrier financial stability and identify changes and trends that may effect the National Transportation System.

Noreta R. McGee,
Secretary.

[FR Doc. 89–24578 Filed 10–18–89; 8:45 am]
BILLING CODE 7035–01–M

Motor Passenger Carrier or Water Carrier Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.-Motor Passenger & Water Carriers*, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–19516, filed September 26, 1989. Charles S. Lenzner and John E. Lenzner—Continuance in Control—Lenzner Coach Lines, Inc., and Airlines Acquisition Co., Inc. Applicant's representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Applicants Charles S. Lenzner and John E. Lenzner (the Lenzners) are officers, directors, and 50 percent shareholders: (1) of Lenzner Coach Lines, Inc., d/b/a North Boroughs Cab (LCL) (MC–142120), a common and contract carrier of passengers; and (2) of Airline Acquisition Co., Inc., d/b/a Airlines Transportation Company (Airlines), a new carrier seeking its initial common and contract carrier authority to transport passengers, in charter and special operations, between points in the United States (except Hawaii) (MC–223575). The business address of both LCL and Airlines is R.D. #2, Nicholson Road, Sewickley, PA 15143. Upon issuance of authority to Airlines, the Lenzners will be in control of two carriers.

Decided: October 12, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,
Secretary.

[FR Doc. 89–24579 Filed 10–18–89; 8:45 am]
BILLING CODE 7035–01–M–2–KA

[Directed Service Order No. 1507]

St. Louis Southwestern Railway Co.—Directed Service—Chicago, Missouri and Western Railway Co., Debtor (Daniel R. Murry, Trustee) [1]

AGENCY: Interstate Commerce Commission.
ACTION: Directed service order.

SUMMARY: Pursuant to 49 U.S.C. 11125, the Commission is authorizing the St. Louis Southwestern Railway Company (SSW) to operate as a "Directed Rail Carrier" (DRC)—uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5)—over the Chicago to St. Louis lines of the Chicago, Missouri and Western Railway Company (CMW) for 60 days.

This unsubsidized and uncompensated directed service order is based on the representation by the CMW Trustee that the railroad's cash position does not allow it to continue operations over its entire system, and that there will be a cessation of service by CMW over a portion of its system. To assure continued service to shippers that would be affected by the discontinuance of operations, the Commission is authorizing the SSW to provide interim service between Chicago and St. Louis over the CMW's lines. *See* 49 U.S.C. 11125(a)(1) and (3).

DATES: Effective Date: Directed Service Order No. 1507 shall be effective on October 16, 1989, and authorized rail service shall commence upon cessation of service operations by CMW and its notification that it has done so to the Commission and the SSW. SSW shall immediately notify the Commission and all parties to this proceeding of the date it commences operations under this authority.

Expiration Date: Unless otherwise modified by the Commission, Directed Service Order No. 1507 will expire at 11:59 p.m., on December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 275–1559; or Joseph H. Dettmar, (202) 275–7245. (CTDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: The Chicago, Missouri and Western Railway Company (CMW) has been in bankruptcy since April 1, 1988, in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, (Bankruptcy Filing No. 88 B 05141). The carrier's rail system extends from Kansas City, MO on the west to Chicago, IL on the east and northward from East St. Louis, IL to Chicago, IL. CMW transports approximately 8,000 carloads of freight monthly and operates 54 Amtrak trains weekly over the St. Louis-Chicago corridor. The CMW's line between East St. Louis and Chicago contains trackage rights over the Burlington Northern Railroad (BN), Conrail (CR), Chicago, South Shore and South Bend Railroad (CSSSB), Illinois Central Railroad (ICR), Indiana Harbor Belt (IHB), and METRA.

On August 3, 1989, the Bankruptcy Court issued Order No. 145, Establishing procedure for Sale of Property of Estate, to cover the proposed sale of certain of CMW's rail lines requested by the carrier's Trustee, Daniel R. Murray, in a Notice of Sale filed with the court on August 3, 1989. The proposed sale relates to the rail line and trackage rights operated by the CMW between Chicago and East St. Louis. While the Commission, in a decision served on September 29, 1989, approved the purchase by RGI, the court must still decide whether to authorize the sale.

On October 12, 1989, the CMW's Trustee notified the Commission, in writing, that because of its deteriorating cash position the carrier will be unable to continue operations over its entire system. The directed service authority sought here will enhance CMW's ability to continue operations over the east-west portion of the railroad between Kansas City, MO and Springfield, IL, and between a junction with the Kansas City, MO line and East St. Louis, IL. To facilitate this partial operation, CMW states that it must cease operations between East St. Louis, IL and Chicago, IL no later than October 17, 1989. Simultaneously on October 12, 1989, RGI, on behalf of its subsidiary SSW and jointly with the Trustee, filed a request with the Commission to operate CMW's line between East St. Louis and Chicago as a directed carrier until a decision is reached on the sale by the bankruptcy court or for at least 45 days, and without compensation.

Section 11125(a) of the Interstate Commerce Act authorizes the Commission to act in situations where it finds that a rail carrier cannot transport traffic offered to it because—(1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under 49 U.S.C. 10903 (emphasis added). The initial period for the directed service order may not exceed 60 days. However, the order may be extended for an additional period not to exceed 180 days.

Under a directed service order from the Commission, a directed carrier may voluntarily choose to provide directed service without any subsidy or compensation to which it may be entitled from the Commission, as SSW has done here. *See St. Louis S.W. Ry. Co.—Directed Service—Chicago*, 363 I.C.C. 1 (1980), and Directed Service Order No. 1504, The New York, Susquehanna and Western Railway Corporation—Direct Service—The Delaware and Hudson Railway Company, (not printed) served June 22, 1988.[2]

Considering CMW's announced imminent cessation of service due to cashlessness, and CMW's request that the Commission direct service over the East St. Louis to Chicago line, we find that CMW's current situation meets the statutory standards of 49 U.S.C. 11125(a)(1) and (3).

In view of the urgent need for continued rail service over CMW's East St. Louis to Chicago line, and SSW's willingness to provide directed service without compensation from the Federal government, the Commission is exercising its authority under 49 U.S.C. 11125(a) and authorizing SSW to commence operations upon CMW's cessation of service. Service authorized by this order includes operations utilizing trackage rights agreements, leases, and other existing arrangements of CMW with connecting railroads.[3]

The emergency nature of the situation compels us to conclude that advance public notice and hearings would be impractical and contrary to the immediate public interest concern to secure continued rail transportation services. Accordingly, we exercise our authority under 49 U.S.C. 11125(a) to waive advance public notice and hearings in the present circumstances.

Section 11125 permits us to direct service for an initial period of not more than 60 days, with an option to extend the directed service period for an additional 180 days, if cause exists. We believe directed service authority to be necessary here at least for an initial 60 day period. Any interested person may file comments on this action during this period.

Terms and Conditions

Effective Date

Directed Service Order No. 1507 shall be effective on October 16, 1989. On the date CMW ceases operations and notifies the Commission and SSW that it has done so, SSW shall be authorized to commence operations and shall notify the Commission and all parties to this proceeding of the date it commences operations under this authority.

Expiration Date

Unless otherwise modified by the Commission, Directed Service Order No. 1507 will expire at 11:59 p.m., on December 15, 1989.

Compensation

SSW's authority under Directed Service Order No. 1507 is expressly conditioned upon its waiver of all compensation under 49 U.S.C. 11125(b)(5).

Track Safety

In accordance with 49 U.S.C. 11125(b)(2)(a), SSW need not operate over any CMW line segment certified by the Federal Railroad Administration as being below Class I track safety standards.

Cars and Operating Equipment

In operating CMW's line, SSW shall use its own cars and operating equipment wherever possible. However, SSW may use CMW's cars and operating equipment on terms mutually agreeable to the parties.

Employees

In providing service under this directed service order, SSW shall comply with the requirements of 49 U.S.C. 11125(b)(4) with respect to CMW employees.

Preservation of the CMW estate

During the period of its operations of the CMW lines, SSW shall be responsible for preserving the value of those lines to the CMW estate. SSW shall thus have an affirmative duty to perform that degree of maintenance necessary to avoid deterioration of the lines and related facilities.

Rates

SSW is authorized to act on behalf of CMW in all matters of transportation. Rates and charges shall be those applicable to the line and in effect at the time SSW commences operations. SSW may seek changes in CMW rates and charges. All revenues from such charges shall accrue to the account of SSW during the effective period of this order, and shall not constitute assets of the Trustee or the estate.

Liability for Expenses

Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility and liability of SSW. Any such costs or expenditures shall not be deemed an obligation or liability of the United States Government. SSW shall hold the United States Government harmless from any claims arising out of the authorized operations.

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[1] In Finance Docket No. 31522, *Rio Grande Industries, Inc., Et al.—Purchase and Trackage Rights—Chicago, Missouri and Western Railway Company Between St. Louis, MO and Chicago, IL.*, served September 29, 1989, the Commission granted authority for Rio Grande Industries, Inc. (RGI), Southern Pacific Transportation Company (SPT), The Denver Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), and SPCSL Corp. (SPCSL) a recently incorporated subsidiary of RGI, to acquire CMW's lines between East St. Louis, and Chicago, IL, East St. Louis and Godfrey, IL, and certain attendant trackage rights.

[2] Likewise, the Commission may authorize directed rail service without provision for compensation to the carrier over which service is directed. *Kansas City Terminal Ry. Co.—Operate—Chicago R.I. & P.*, 360 I.C.C. 288 (1979).

[3] We recognize that the Commission did not grant RGI the authority to acquire CMW's trackage rights over BN in Finance Docket No. 31522. That decision looks to a resolution of the long term transportation problems, and leaves to the parties the resolution of various contract issues. This decision, on the other hand, is based on an emergency need for continued rail transportation, will remain in effect for a short period of time, and is consistent with the Commission's treatment of other directed rail service emergencies.

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Operational Difficulties

Any operational difficulties associated with the authorized operations shall be resolved by SSW and any other affected party through negotiated agreement, or failing agreement, by the Commission.

Amtrak Operations

SSW is required, by exercise of this authority, to fulfill all CMW operational contracts with Amtrak.

Reporting Requirements

To assist us in evaluating SSW's operation of the line, we shall require SSW to file a report at the end of the directed service period identifying: (a) The average number of carloads transported daily over the line during the directed service period; (b) the total gross revenue for the carloads transported; (c) CMW's normal portion of the total gross revenue; and (d) the number of weekly Amtrak train operations.

We Find

1. CMW intends to discontinue service over certain of its lines. SSW has requested the Commission to permit it to provide continued rail service over those lines between East St. Louis, IL and Chicago, IL.

2. To prevent severe transportation and economic disruptions when CMW ceases operations, it is necessary for the Commission to authorize SSW to operate CMW's lines between East St. Louis, IL and Chicago, IL under 49 U.S.C. 11125, conditioned upon a waiver of any compensation or subsidy from the Federal government.

3. Our action in this decision will not substantially impair the ability of SSW to serve its own patrons adequately, or to meet its outstanding common carrier obligations, *see* 49 U.S.C. 11125(b)(2)(B), and will assure continued rail service to affected shippers and passengers of Amtrak.

This action will not significantly affect either the quality of the human environment or energy conservation.

It Is Ordered

1. Based upon its undertaking to do so without any form of compensation from the Federal government, SSW is authorized to enter upon and operate CMW's lines between Chicago and St. Louis pursuant to this voluntary directed service order under 49 U.S.C. 11125.

(a) Entry by SSW may occur on the date CMW discontinues service and notifies SSW and the Commission that it has done so, and operations may continue no later than the sixtieth day after the service date of this decision.

(b) SSW shall immediately notify the Commission and the parties to this proceeding, in writing, of the date on which it commences operations under this order.

2. Operations under this order shall conform to the directions and conditions prescribed above.

3. All submissions filed in this proceeding should refer to DSO No. 1507 and be sent to the Commission's headquarters at 12th Street and Constitution Avenue, NW., Washington, DC 20423, An original and 10 copies should be submitted.

4. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

5. The Commission retains jurisdiction to modify, supplement, or reconsider this decision at any time.

6. Notice of this decision shall be given to the general public by publication in the **Federal Register**. The decision will also be served on the Federal Railroad Administration, the Association of American Railroads, American Short Line Railroad Association, Amtrak, The Railway Labor Executives' Association, the CMW and the SSW, BN, CR, CSSSB, ICR, IHB, and METRA.

7. This decision and order shall become effective on October 16, 1989.

8. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., on December 15, 1989.

Decided: October 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24697 Filed 10-18-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31505]

Rio Grande Industries, Inc., et al.—Purchase and Related Trackage Rights—SOO Line Railroad Company Line Between Kansas City, MO and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 5.

SUMMARY: The Commission is accepting for consideration the application filed September 15, 1989, by Rio Grande Industries, Inc. (RGI), and its subsidiaries (Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), and SKCC Acquisition Corporation (SKCC) for the latter to acquire Soo Line Railroad Company's (Soo) line between Kansas City, MO, and Chicago, IL. This main line consists of approximately 482 miles of track. The applicants have also filed 16 related applications (Sub-Nos. 1–16) involving the assignment of trackage rights, stock acquisitions, and requests for terminal trackage rights under 49 U.S.C. 11103. A summary description of each of these related transactions is set forth below. In Decision No. 2, served and published (54 FR 32139–32140) on August 4, 1989, the Commission found this to be a significant transaction as defined in 49 CFR part 1180. Accordingly, the Commission has 10 months from the filing of the application to decide the case. 49 U.S.C. 11345(c). The schedule adopted here reflects this time period.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than November 20, 1989. Responsive and inconsistent applications must be filed no later than December 20, 1989. For further information, see the procedural schedule contained in the appendix.

FOR FURTHER INFORMATION CONTACT:

Thomas B. Shick (202) 275–7972
Joseph H. Dettmar (202) 275–7245
[TDD for hearing impaired: (202) 275–1721]

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 31505 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31505, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW, Washington, DC 20006

George W. Mayo, Jr., Hogan & Hartson, 555 Thirteenth Street, NW, Washington, DC 20004–1109.

SUPPLEMENTARY INFORMATION:

The related applications include the following:

Sub-No. 1. Soo's acquisition of trackage rights (and an associated haulage agreement) over the lines acquired by SKCC, giving Soo the right to serve local industries and connecting carriers on the lines and in Kansas City for traffic as to which Soo participates in a prior or subsequent line haul.

Sub-No. 2. SKCC's acquisition of certain overhead trackage rights (and associated haulage rights) over Soo's lines between Chicago and Milwaukee, WI, and between Sabula Junction, IA, and Dubuque, IA (including related terminal, gathering and distribution services in the Milwaukee and Dubuque Terminal Areas), as well as trackage rights over certain Soo lines in the Chicago Terminal District.

Sub-No. 3. SKCC's acquisition of trackage rights through appointment by Soo (with Soo continuing to operate under these same rights) over those lines owned and operated by the Commuter Rail Division of the Regional Transportation Authority ("METRA") as to which Soo has trackage rights, including the METRA lines: (a) Between Madison Street, Chicago, and Fox Lake, IL; and (b) between Tower A–5 (Chicago) and Almora, IL. In the alternative, SKCC may acquire these trackage rights through a separate agreement with METRA.

Sub-No. 4. SKCC's acquisition by assignment of the rights currently held by Soo under agreements relating to the line of the Burlington Northern Railroad Company (BN), between Rockford, IL, and Davis Junction, IL (12.03 miles), which rights Soo currently uses in conjunction with its operations over the Kansas City-Chicago lines.

Sub-No. 5. SKCC's acquisition by assignment of the rights currently held by Soo under agreements relating to the following lines of the Chicago and North Western Transportation Company ("CNW"), which rights Soo currently employs in conjunction with its operations over the Kansas City-Chicago lines: (a) A joint facility currently owned and operated by Soo and CNW between Polo and KCT Junction, MO, consisting of paired trackage between Polo and Birmingham, MO, jointly-owned trackage between Birmingham and Air Line Junction, MO, and jointly-owned trackage between KCS Junction and KCT Junction, MO; (b) certain yard and industrial lead trackage in the area of Janesville, WI that CNW jointly owns with Soo; and (c) certain trackage and a bridge that CNW jointly owns with Soo in the area of Beloit, WI.

Sub-No. 6. SKCC's acquisition by assignment of the rights currently held by Soo under agreements relating to the following line of the Chicago, Central and Pacific Railroad Company ("CCP"): several thousand feet of side track jointly owned by Soo and CCP in the area of Rockford, IL.

Sub-No. 7. Soo's acquistion of terminal trackage rights pursuant to 49 U.S.C. 11103 over the following BN line so as to permit operations under the grant-back of trackage rights it receives from SKCC: line between Rockford, IL and Davis Junction, IL (12.03 miles).

Sub-No. 8. Soo's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the following lines owned in whole or in part by CNW: (a) The CNW lines between Polo, MO and KCT Junction, MO, new subject to a joint facility agreement between CNW and Soo (which agreement Soo will assign to SKCC (*see* Sub-No. 5)) and consisting of the CNW line between Polo and Birmingham, MO (37.8 miles) that is operated as paired track with a parallel Soo line (to be conveyed to SKCC), and the lines jointly owned by CNW and Soo between Birmingham and Air Line Junction, MO (4.4 miles), and between KCS Junction, MO, and KCT Junction (0.13 miles) (Soo will convey its ownership interests in these lines to SKCC); (b) certain yard and industrial lead track in the area of Janesville, WI that CNW jointly owns with Soo; and (c) certain track and a bridge that CNW jointly owns with Soo in the area of Beloit, WI.

Sub-No. 9. Soo's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the following CCP line to permit operations under the grant-back of trackage rights it receives from SKCC: several thousand feet of side track in the areas of Rockford, IL, jointly owned by CCP and Soo.

Sub-No. 10. SKCC's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the following lines of BN: (a) Line in the area of Clinton, IA (1.4 miles); (b) line between Rock Island (Terminal Junction), IL, and East Moline (DRI & NW Junction), IL (6.3 miles); (c) certain track BN jointly owns with Soo in the area of East Moline, IL; (d) certain track BN jointly owns with Soo in the area of Clinton, IA. Soo currently has trackage rights that are used in conjuction with its operations over the Kansas City-Chicago lines. (Soo will retain its existing rights for use in its trackage rights operations over the lines.)

Sub-No. 11. SKCC's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the following lines of CNW: Certain cross-over treacks and appurtenant approach tracks in the area of Clinton, IA (0.49 miles); line between Bryn Mawr, IL, and Shermer (A–20), IL (10.24 miles); and certain other track in the area of Clinton, IA. Soo currently has trackage rights that are used in conjunction with its operations over the Kansas City-Chicago lines. (Soo will retain its existing rights for use in its trackage rights operations over the lines.)

Sub-No. 12. SKCC's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the Davenport, Rock Island & North Western Railway Company ("DRI") line between Clinton, IA and east Moline, IL (36.11 miles). Soo currently has trackage rights that are used in conjunction with its operations over the Kansas City-Chicago lines. (Soo will retain its existing rights for use in its trackage rights operations over the lines.)

Sub-No. 13. SKCC's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over Indiana Harbor Belt Railroad Company (IHB") lines between Franklin Park, IL, and Blue Island, IL (including the right to interchange with other carriers at Blue Island). Soo currently has trackage rights used in conjunction with its operations over the Kansas City-Chicago lines. (Soo will retain its existing rights for use in its trackage rights operations over the lines.)

Sub-No. 14. SKCC's acquisition of terminal trackage rights pursuant to 49 U.S.C. 11103 over the KCS line between Air Line Junction, MO, and KCS Junction, MO. Soo currently has trackage rights that are used in conjuction with its operations over the Kansas City-Chicago lines. (Soo will retain its existing rights for use in its trackage rights operations over the lines.) In addition, SKCC seeks terminal rights over a short segment of KCS trackage intersecting the Kansas City-Chicago lines between Air Line Junction and KCS Junction in the Kansas City Terminal area. The rights are necessary to create a continuous route between the lines to be acquired by SKCC and DRGW's trackage rights over the lines of Union Pacific Railroad Company ("UP") via Osawatomie.[1]

Sub-No. 15. SKCC's acquistion of the 50 percent common stock ownership interest of Soo in DRI. BN currently owns the remaining 50 percent. Since the proposed stock acquisition will not give SKCC control of DRI, applicants will seek dismissal of their related application or an exemption concerning this stock acquisition.

Sub-No. 16. SKCC's acquisition of one-half of the 49 percent common stock ownership interest of Soo in the Indiana Harbor Belt Railroad Company ("IHB"). Contrail currently owns the remaining 51 percent. Since the proposed stock acquisition will not give SKCC control of IHB, applicants will seek dismissal of their related application or an exemption concerning this stock acquisition.

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[1] With regard to all the various terminal trackage rights applications, SKCC and Soo, as appropriate, state an intention to negotiate voluntary agreements with each of the owning carriers. The applicants are filing the applications in case these negotiations prove unsuccessful.

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The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC. The procedural schedule adopted for this proceeding is set forth below.

Any interested person may participate in this proceeding by submitting written comments regarding the application. Comments including initial lists of protective conditions and notices of intent to file responsive or inconsistent applications must be filed no later than November 20, 1989. An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first class mail on the United States Secretary of Transportation and the Attorney General of the United States. Written comments must also be served upon all parties of record within 10 days after the service list is issued by the Commission. We plan to issue the service list by December 5, 1989. Any person who timely files written comments shall be considered a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed. Comments must contain the information specified at 49 CFR 1180.4(d)(1)(iii).

Comments filed by railroads must contain a statement on whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission. This will be considered a prefiling notice without which the commission will not entertain applications for this type of relief.

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by December 5, 1989.

Parties seeking to modify any of the protective conditions requested in their inital comments must file a second list of protective conditions no later than December 20, 1989. Parties will not be permitted to seek any protective conditions other than those requested in either their first or second list of protective conditions.

Parties filing responsive applications must do so no later than December 20, 1989. Responsive applications include inconsistent applications, petitions for inclusion, and any other affirmative relief that requires an application to be filed with the Commission (including trackage rights; purchase, acquisition, construction, or operation of a railroad line; pooling or terminal operations; or abandonment of a railroad line). Any responsive applications that are not major are presumed to be significant. Responsive applications must include all supporting evidence in the form of verified statements.

All evidence in opposition to the primary application including verified statements, is due December 20, 1989. Opposition evidence shall be served on all parties of record and shall be filed (with 20 copies) with the Commission.

Primary and responsive applicants and other parties supporting applicants may file evidence in rebuttal to any opposition evidence (including opposing evidence submitted by interveners). Rebuttal evidence of primary applications shall be due February 5, 1990. Rebuttal evidence of responsive and inconsistent applicants and other parties shall be due March 7, 1990. Rebuttal evidence must be served on all parties of record and filed (with 20 copies) with the Commission.

Any impact analysis, traffic studies, and data submitted shall relate to the calendar year 1988. These data may be supplemented with more recent data where available and relevant.

Parties should contact Thomas B. Shick (202) 275–7972 to obtain docket numbers for any responsive and inconsistent applications. Petitions for waiver, clarification, or leave to file an incomplete application shall be filed no later than 30 days prior to the filing of such responsive or inconsistent application. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding.

Additional information is contained in the Commission's Decision No. 5. To purchase a copy of that decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD Services (202) 275–1721.)

Decided: October 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

Appendix

Procedural Schedule

Day 1	Application accepted and published.
+20	Discovery conference on primary application.
+30	Written comments and protests, including initial list of protective conditions and notice of intent to file responsive or inconsistent applications.
+45	DOT and DOJ comments due.
+60	Second list of protective conditions due. Responsive and inconsistent applications due. Evidence in opposition due.
+80	Discovery conference on comments, protests, conditions, and responses and inconsistent applications due. Commission issues service list.
+105	Responses to comments, protests, conditions and rebuttal in support of primary application due.
+135	Rebuttal in support of comments, protests, conditions and inconsistent applications due.
+160	Opening briefs due, all parties.
+180	Reply briefs due, all parties.
+—	Oral argument (to be scheduled).
+—	Voting conference (to be scheduled).
+270	Decision served.

[FR Doc. 89–24716 Filed 10–18–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub–No. 318x)]

CSX Transportation, Inc.: Abandonment Exemption of Railroad Line in Nicholas County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152, subpart F—Exempt Abandonments to abandon its 8.03-mile line of railroad in Nicholas County, WV: (1) Between milepost 0.00, near Curtin, and milepost 8.09, at Donegan No. 10; and (2) between milepost 0.00, at Panther Creek Junction, to the end of the line at milepost 1.94.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 24, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 12, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24574 Filed 10–18–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub–No. 89X)]

Missouri Pacific Railroad Company—Abandonment Exemption—In Assumption Parish, LA

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 4-mile line of railroad between milespost 5, near Lula, and milepost 9, near Westfield, Assumption Parish, LA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adquately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 18, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 30, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jeanna L. Regier, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 24, 1989. Interested persons my obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 13, 1989.

By the Commission, Jane F. Mackall, Director, Office of Preoceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24696 Filed 10–18–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Extension of Public Comment Period on Proposed Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice was published in the **Federal Register** on August 21, 1989, that a complaint was filed on July 31, 1989, in *United States* v.

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French Limited, Inc., et al., Civil Action No. H–89–2544, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, a consent decree between the United States, French Limited, Inc. and eighty-six other defendants was lodged with the court. The prior notice stated that public comments on the proposed consent decree would be received for a period of thirty (30) days from the date of publication of the notice. In response to a request submitted on behalf of residents living in the vicinity of the French Limited Site, the public comment period on the proposed consent decree is being extended until November 15, 1989.

Accordingly, the Department of Justice will receive comments relating to the proposed consent decree until November 15, 1989. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. French Limited, Inc.*, D.J. Ref. 90–11–3–46A.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120;

United States Attorney's Office Janet Craig, Assistant United States Attorney, Civil Division, U.S. Courthouse & Federal Building, 515 Rusk, 3rd Floor, Houston, Texas 77002, (713) 229–2600.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $19.90 payable to Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24623 Filed 10–18–89; 8:45 a.m.]

BILLING CODE 4410–01–M

Office of the Attorney General

[Order No. 1371–89]

Termination of Department of Justice Policy Boards

By virtue of the authority vested in me by 5 U.S.C. 301, and 28 U.S.C. 509 and 510, I hereby revoke Attorney General Order 1275–88, dated June 7, 1988, and terminate the Personnel Policy Board; revoke Attorney General Order 1276–88, dated June 7, 1988, and terminate the Department Resources Board; revoke Attorney General Order 1277–88, dated June 7, 1988, and terminate the Strategic Planning Board; revoke Attorney General Order 1278–88, dated June 7, 1988, and terminate the Research and Development Board; and revoke Attorney General Order 1279–88, dated June 7, 1988, and terminate the Special Issues Coordinating Group.

This order is effective on the date of signature.

Dated: October 10, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–24624 Filed 10–18–89; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of Meeti 3.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: November 2, 1989 9:00 a.m. to 5:00 p.m.
November 3, 1989 9:00 a.m. to 4:00 p.m.

PLACE: Pan American Health Organization, Conference Room A, Second Floor, 525 23rd Street, NW., Washington, DC 20037.

DATE AND TIME: November 3, 1989 4:00 p.m. to 9:00 p.m.
November 4, 1989 9:00 a.m. to 4:00 p.m.

PLACE: Xerox Conference Center, Leesburg, Virginia.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., 8th Floor, Washington, DC 20006 (202/254–5125).

Agenda: On the morning of November 2nd the Commission will hear from a variety of public witnesses on international issues related to HIV and AIDS. These witnesses will include Dr. Jonathan Mann, Director Global Program on AIDS, World Health Organization.

The balance of November 2nd and the following day, November 3rd, will focus on the issues associated with the care and treatment of people with AIDS and the financing of such services.

The Commission will spend the evening of November 3rd and the following day, November 4th at the Xerox Conference Center in Lessburg, Virginia. The Commissioners will utilize this time to exchange information and ideas about their experiences and backgrounds related to HIV and AIDS and to explore ways in which the Commission as a group can most effectively respond to the Commission's statutory charge.

Maureen Byrnes,

Executive Director.

[FR Doc. 89–24781 Filed 10–18–89; 8:45 am]

BILLING CODE 4520–CH–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 3–4, 1989 from 9:00 a.m. to 5:30 p.m., and on November 5, 1989 from 9:00 a.m. to 1:00 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, November 3, 1989 from 9:00 a.m. to 5:30 p.m., and on Saturday, November 4, 1989, from 9:00 a.m. to 4:15 p.m. The topics for discussion will include Program Review and Guidelines for Visual Arts Program; Design Arts Program; Inter-Arts Program; Music Program: Presenters and Festivals; and the Media Arts Program. In addition there will be a discussion on Reauthorization of the Agency, FY 90 Appropriations, Issues and Concerns of the National Council on the Arts, Promoting a Positive Image of the Agency, and a report from the Southern States Regional Representative.

The remaining session on Saturday November 4, 1989, from 4:15 p.m. to 5:30 p.m. and on Sunday, November 5, from 9:00 a.m.–1:00 p.m. is for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9) of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–24614 Filed 10–18–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Interagency Arctic Research Policy Committee

In accordance with the Arctic Research and Policy Act, Public Law 98–373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: November 6, 1989, 1:30 p.m.

Place: National Science Foundation, Room 540, 18th and G Street NW., Washington, DC.

Type of Meeting: Open. Part of the meeting (3:00–3:30 p.m.) will be closed to discuss budgetary matters.

Contact Person: Jerry Brown or Charles E. Myers, Division of Polar Programs, Room 627, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7817.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Public Law 98–373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, assist in the development of a national arctic research policy, prepare a single, integrated multi-agency budget request for arctic research, develop a plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda:

1. Status of Biennial Reporting.
2. Arctic Oceans Research Plan.
3. International Activities.
4. Arctic Research Consortium of the United States.

Public Participation: Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at that particular meeting. The texts of such statements shall not exceed 5 double spaced typed pages each.

Charles E. Myers,

Division of Polar Programs.

[FR Doc. 89–24618 Filed 10–18–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Correction; Environmental Assessment and Finding of No Significant Impact

In the environmental assessment document appearing in the Federal Register of October 3, 1989 (54 FR 40759), make the following correction:

In the last full paragraph, in the first column, on page 40760, paragraph should read: "Dated at Rockville, Maryland, this 28th day of September 1989."

Dated at Rockville, Maryland, this 10th day of October 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–24684; Filed 10–18–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–454, 50–455, 50–456, and 50–457]

Commonwealth Edision Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License Nos. NPF–37 and NPF–66 issued to Commonwealth Edision Company, which revised the Technical Specifications for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois and Amendment No. 22 to Facility Operating License Nos. NPF–72 and NPF–77 which revised the Technical Specifications for Braidwood Station, Units 1 and 2, located in Will County, Illinois. The amendments were effective as of the date of its issuance.

The amendments modify Technical Specification Figure 3.2–2 which depicts the normalized heat flux hot channel factor as a function of core height.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the Federal Register on December 31, 1987 (53 FR 49540). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for Byron dated April 1982 and for Braidwood dated June 1984.

For further details with respect to the actions see (1) the application for amendment dated December 4, 1987, (2) Amendment No. 34 to License No. NPF–37 and NPF–66, (3) Amendment No. 22 to License No. NPF–72 and NPF–77, and (4) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., the Rockford Public Library, 215 N. Wyman Street, Rockford Illinois 61101, and at the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 11th day of October 1989.

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For the Nuclear Regulatory Commission.

Byron Siegel,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, and V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–24683 Filed 10–18–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 10, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allergran, Inc.
Common Stock, $.01 Par Value (File No. 7–5406)
American President Companies, Ltd.
$3.50 Cm. Cv. Exch. Ser. B Pfd., $.01 Par Value (File No. 7–5407)
Baker Hughes Inc. Corp.
$3.50 Cm. Cv. Exch. Pfd., $1.00 Par Value (File No. 7–5408)
BP Prudholde Bay Royalty Trust
Common Stock, No Par Value (File No. 7–5409)
Cabletron Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–5410)
Cummins Engine, Inc.
$3.50 Dep. Cv. Exch. Pref., No Par Value (File No. 7–5411)
Environmental Systems
$1.75 Cm. Cv. Exch. A Pfd., $1.00 Par Value (File No. 7–5412)
GATX Corp.
$2.50 Cm. Pfd, Vtg., $1.00 Par Value (File No. 7–5413)
Integrated Resources, Inc.
$1.8125 Cm. Cv. Exch. Pfd., $1.00 Par Value (File No. 7–5414)
Mass Mutual Corporate Investors
Common Stock, $1.00 Par Value (File No. 7–5415)
Morton International, Inc.
Common Stock, $1.00 Par Value (File No. 7–5416)
Plum Creek Timber Co. L.P.
Common Stock, No Par Value (File No. 7–5417)
Putnam High Yield Municipal Trust
Common Stock, No Par Value (File No. 7–5418)
R.O.C. Taiwan Fund
Shares of Beneficial Interest (File No. 7–5419)
Smithkline Beechman plc
Unit 5 ord "B" shrs/1 $2.25 Pfd., American Depository Shares (File No. 7–5420)
Smithkline Beechman plc
American Depository Shares (File No. 7–5421)
TCF Financial Corp.
Common Stock, $.01 Par Value (File No. 7–5422)
Thiokol Corp.
Common Stock, $1.00 Par Value (File No. 7–5423)
Van Kampen Merritt Ltd. Term High Income Inc.
Common Stock, $.01 Par Value (File No. 7–5424)
Xtra Corp.
$1.9375 Cm. Cv. B Pfd., No Par Value (File No. 7–5425)
Lifetime Corp.
Common Stock, $.01 Par Value (File No. 7–5426)
New Line Cinema
Common Stock, $.01 Par Value (File No. 7–5427)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 31, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 24650 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27346; File No. SR–DTC–89–17]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying Procedures Relating to the Deposit of Foreign-Owned Shares of U.S. Communications and Maritime Issuers

October 6, 1989.

On September 12, 1989, the Depository Trust Company ("DTC") filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") that would clarify certain DTC procedures applicable to foreign-owned shares of United States ("U.S.") communications and maritime issuers. The Commission is publishing this notice to solicit comment on the proposal.

Foreign-owned shares of U.S. communications and maritime issuers are eligible for DTC book-entry services.[1] Federal law, however, restricts the number of shares of certain U.S. communications and maritime issuers that may be owned beneficially by non-U.S. citizens.[2] As discussed below, DTC has certification procedures designed to ensure that shares it holds on behalf of participants do not exceed these ownership limitations.[3]

Foreign-owned shares of U.S. communications and maritime issuers are deposited at DTC into special segregation accounts known as Seg-100 accounts.[4] DTC periodically reports to transfer agents to aggregate number of shares in applicable Seg-100 accounts and transfer agents maintain records of those holdings. If a transfer to a Seg-100 account causes ownership limitations to be exceeded, the transfer agent notifies DTC, and DTC debits the account of the participant that last transferred shares to its Seg-100 account, requiring that participant to withdraw immediately from its DTC general account such foreign-owned shares.

The proposal clarifies that if DTC is notified of a transfer exceeding ownership limitations, it will act affirmatively to facilitate certificate withdrawal in accordance with the procedures described above, including, where necessary, disclosing to the issuer the identity of the affected participant and the number of shares to be withdrawn. The proposal also clarifies that, upon request by an issuer or its transfer agent, DTC will provide periodic reports listing the name of each participant having a Seg-100 position in the issuer's shares and the amount of shares segregated.[5]

DTC believes the proposal is consistent with the requirements of the Act. Specifically, DTC believes the above clarifications are designed to enhance the integrity of DTC procedures applicable to foreign-owned shares of U.S. communications and maritime issuers, thereby promoting the prompt and accurate clearance and settlement of transactions in those securities.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–89–17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–DTC–89–17) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office. All submissions to File No. SR–DTC–89–17 should be submitted by November 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24657 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27344; File No. SR–GSCC–89–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Interpreting GSCC's Rule 4

October 6, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1989, GSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule interpretation is provided in Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule interpretation and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule interpretation is to clarify the extent to which Clearing Fund and other required deposits of Netting Members may be applied to a loss or liability incurred by GSCC.

Both numbered paragraphs interpret Section 6 of GSCC Rule 4, which provides that the use of the Clearing Fund shall be limited to satisfaction of losses or liabilities of GSCC arising from the failure of a Netting Member to satisfy an obligation to GSCC or incident to the clearance and settlement business of GSCC other than from such failure of a Member, and to provide GSCC with a source of collateral to meet its temporary financing needs. (This interpretation also affects Inter-Dealer Broker Netting Members, who do not contribute to the Clearing Fund, because of Section 7 of Rule 4, which provides that collateral in the amount of $1.6 million is required to be maintained by such Members for the purpose of collateralizing any obligations that such Members may have to GSCC.) The first numbered paragraph addresses the issue of the concept of "arising incident to the clearance and settlement business of GSCC", with the Board making clear that the scope of this concept has not been pre-determined, and that the judgment as to whether a loss or liability has arisen incident to the clearance and settlement business of GSCC is one that is appropriately made on a case-by-case basis by the Board of Directors. In rendering this interpretation, it was the Board's intention that no inference be drawn that GSCC would not be able or willing to satisfy all losses or liabilities that may arise other than from the failure of a Member.

The second numbered paragraph is intended to make clear that the use of required deposits to provide GSCC with a source of collateral for financing is limited to their use to satisfy those temporary financing needs related to the clearance and settlement business of GSCC. This interpretation was rendered by the Board to clarify the intended meaning of the language of Section 6 of Rule 4 regarding temporary financing.

(b) For the reasons provided in paragraph (a) above of this section, the proposed rule interpretation is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule interpretation will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule interpretation have not been solicited or received. Members will be notified of

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[1] *See* Securities Exchange Act Release No. 25968 (August 10, 1988), 53 FR 30693, in which the Commission approved a DTC proposal establishing procedures for the deposit and transfer of foreign-owned shares of U.S. communications and maritime issuers.

[2] According to DTC, shares owned beneficially by non-U.S. citizens are prohibited from exceeding 25% of certain stock issues by provisions of the Shipping Act and Federal Communications Act. *See* Release No. 25968, *supra* note 1, at note 1.

[3] DTC believes its certification procedures conform to the requirements of the Shipping Act and Federal Communications Act. The Commission takes no position on whether DTC's certification procedures comply with these laws. *See* Release No. 25968, *supra* note 1, at note 2.

[4] For a more detailed discussion of these procedures, *see* File No. SR–DTC–88–09 and Release No. 25968, *supra* note 1.

[5] DTC believes it is authorized to provide securities position listings to the issuer of any security on deposit pursuant to the Participant's Agreement executed by each DTC participant. *See* File No. SR–DTC–89–17.

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the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. GSCC–89–11 and should be submitted by November 9, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Exhibit A—Interpretation of the Board of Directors of the Government Securities Clearing Corporation

Pursuant to Rule 47 of the Government Securities Clearing Corporation ("GSCC"), the Board of Directors has the authority to interpret the rules of GSCC. The purpose of this interpretation is to clarify certain provisions of GSCC Rule 4 (11Rule 4") and the extent to which Clearing Fund and other required deposits of Netting Members may be applied to a loss or liability incurred by GSCC.

Section 6 of Rule 4 provides that the use of the Clearing Fund shall be limited to satisfaction of losses or liabilities of GSCC arising from the failure of a Netting Member to satisfy an obligation to GSCC or incident to the clearance and settlement business of GSCC other than from such failure of such Member, and to providing GSCC with a source of collateral to meet its temporary financing needs. Section 7 of Rule 4 provides that collateral in the amount of $1.6 million is required to be maintained by Inter-Dealer Broker Netting Members (which Members are not required to contribute to the Clearing Fund for the purpose of collateralizing any obligations that such Member may have to GSCC pursuant to the Shareholder Agreement and Section 8 (Allocation of Loss or Liability Incurred by the Corporation) of Rule 4.

1. Use of Required Deposits To Satisfy a Loss or Liability Arising Incident to the Clearance and Settlement Business of GSCC

The appropriateness of the use of required deposits to satisfy in whole or part a loss or liability arising incident to the clearance and settlement business of GSCC is best determined by the Board of Directors on a case-by-case basis. The determination as to whether a loss or liability arose incident to the clearance and settlement business of GSCC such that the loss or liability may be covered by Netting Members' required collateral may be made only by the Board of Directors, after consideration of the circumstances that led to the loss and liability and the effect on GSCC of the use of required collateral to cover such loss or liability.

2. Use of Required Deposits To Provide GSCC With a Source of Collateral To Meet Its Temporary Financing Needs

The use of required deposits to provide GSCC with a source of collateral for financing to those temporary financing needs related to the clearance and settlement business of GSCC.

[FR Doc. 89–24656 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 10, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Advance Medical Technologies
Common Stock, $.01 Par Value (File No. 7–5401)
CXR Telecom Corporation
Common Stock, $.0033 Par Value (File No. 7–5402)
IVAX Corporation
Common Stock, $.10 Par Value (File No. 7–5403)
Munivest Fund
Common Stock, $.10 Par Value (File No. 7–5404)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7–5405)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 31, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24651 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27358; File No. SR–MSE–87–13]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Filing of Amendment No. 2 to a Proposed Rule Change Relating to Modifications to the Co-Specialist Evaluation Questionnaire

Pursuant to section 19(b)((1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on September 22, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 2 to a proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest has submitted a revised Co-Specialist Evaluation Questionnaire ("Questionnaire") which is completed periodically by Floor brokers when assessing the performance of co-specialists. This is the second amendment to Midwest's previous filing SR–MSE–87–13.[1] The complete text of Amendment No. 2, as well as the text of the original proposed rule change and Amendment No. 1, is available at the Midwest's Office of the Secretary and at the Commission's Public Reference Section.

The text of Amendment No. 2 is as follows:

Co-Specialist Evaluation Questionnaire

Item 2. *Accepting and Filling Orders in Thinly Traded Issues.*

5—Consistently Accepts Order and Fills Oversized Orders
4—
3—Accepts and Fills Orders Pursuant to Minimum Exchange Requirements
2—
1—Puts Issues Consistently on Automatic and Consistently Turns Down Order Flow

[1] Notice of the original filing of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25367, February 23, 1988), and by publication in the Federal Register (53 FR 6723, March 2, 1988). Notice of the filing of Amendment No. 1 was likewise provided by the issuance of a Commission release (Securities Exchange Act Release No. 26856, May 22, 1989), and by publication in the Federal Register (54 FR 22827, May 26, 1989).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment is to further clarify the ranking descriptions contained in Item 2 of the revised Questionnaire. The ranking descriptions of Item 2 as previously submitted did not adequately reflect performance standards as to a co-specialist's willingness to accept and fill orders in thinly traded issues. The new descriptions more accurately describe performance levels for this category.

The proposed amendment is consistent with section 6 of the Act in that it promotes just and equitable principles of trade by further defining the standards by which a co-specialist's performance is assessed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest does not believe any burdens will be placed on competition as a result of the proposed amendment.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The amendment reflects in part certain comments made by the Commission's staff and the Midwest Members Association.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Midwest. All submissions should refer to the file number in the caption above and should be submitted by November 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24654 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27357; File No. SR–NYSE–89–28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating To Exemptions From the Compliance Official Qualification ("Series 14") Examination Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared

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by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal creates an exemption to the Compliance Official Qualification ("Series 14") Examination requirements for Exchange members and member organizations conducting business with the public and whose commissions, mark-ups and other fees generated specifically from business with the public ("public business income") do not exceed $500,000 in the preceding year and who introduce all accounts to another broker/dealer.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B and C and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this change is to create an exemption to the Series 14 examination requirements for members and member organizations that conduct a limited public business.

The content and scope of the Series 14 examination exceed what is necessary and appropriate for compliance officials of members and member organizations that conduct a limited public business (*i.e.*, generating public business income not in excess of $500,000 in a calendar year, and introducing all accounts to another broker/dealer). Therefore, the Exchange has determined that it is inappropriate for these qualification examination requirements to apply to such persons. Members and member organizations to whom this exemption shall apply are still required to comply with all other supervisory and qualification requirements.

The statutory basis for this proposal lies in section 6(c)(3)(B) of the Act. Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory provision, the Exchange has developed certain examination requirements while taking into consideration unique factors and circumstances in regard to the application of these requirements to particular individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposal imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 .S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–28 and should be submitted by November 9, 1989

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed exemption from the NYSE's Compliance Official Qualification (Series 14) Examination for compliance officials of members and member organizations that conduct a limited public business.[2] The Commission believes that the proposed exemption is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(c)(3)(B) [3] which provides that a national securities exchange may prescribe standards for training, experience, and competence for its members or persons associated with its members. The Commission agrees with the NYSE that the content and scope of the Series 14 examination exceeds the appropriate competency level for compliance officials of members and member organizations that conduct a limited public business.

As noted above, the requirement that individuals having overall day-to-day compliance responsibilities for their firms, or who directly supervise persons engaged in compliance activity, pass a Compliance Official Qualification Examination was approved by the Commission in order to supplement existing compliance procedures of NYSE members and member organizations.[4] In its order approving this requirement, the Commission stated that the compliance official qualification examination will ensure that those persons responsible for day-to-day compliance activity will have the requisite specialized knowledge or broker-dealer compliance responsibilities under the federal securities laws and NYSE rules [5] The Commission believes that required knowledge of such additional compliance procedures exceeds the scope of the business activities of members and member organizations that generate income of less than $500,000 per year and that introduce all accounts to another broker-dealer.

The Commission finds good ause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof since the Series 14 examination is scheduled to be administered in fall 1989, and those individuals qualifying for exemption must be afforded advance notice of this rule change.

It is therefore ordered, pursuant to section 19(b)(2) [6] of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: October 11, 1989

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24655 Filed 10-18-89; 8:45 am]

BILLING CODE 8010-01-M

[1] The Compliance Official Qualification (Series 14) Examination is a qualification examination intended to insure that the individuals designated as having overall day-to-day compliance responsibilities for their respective firms or who directly supervise ten or more persons engaged in compliance activity have the knowledge, skill and abilities necessary to carry out their job responsibilities. *See* File No. SR–NYSE–87–10, approved by the Commission in Securities Exchange Act Release No. 25793, May 27, 1988, 53 FR 20925; NYSE Rule 342.13(b).

[2] The Exchange has defined a limited public business as generating public business income not in excess of $500,000 in a calendar year, and introducing all accounts to another broker/dealer.

[3] 15 U.S.C. 78f(c)(3)(B) (1982).

[4] *See* note 2, *supra.*

[5] *Id.*

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34-27359; File No. 4-208]

Joint Industry Plan; Notice of Filing of Amendments to the Intermarket Trading System Plan Relating to Boston Stock Exchange Regional Computer Interface, Pre-Opening Reports, Previous Day Consolidated Closing Price, and Third Participating Market Center Trade Throughs

The participants in the Intermarket Trading System ("ITS") on September 21, 1989, submitted copies of amendments to the restated ITS plan created pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") for the purpose of creating and operating an Intermarket Communication Linkage ("ITS Plan").[1] The amendments were submitted pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.

I. Description of the Amendments

The purposes of the amendments to the ITS Plan are (A) to recognize the use of the "Regional Computer Interface" by the Boston Stock Exchange ("BSE") (Third Amendment); (B) to allow for pre-opening application to be based on the closing price on the New York Stock Exchange ("NYSE") or the Ameerican Stock Exchange ("Amex") in certain circumstances (Eighth Amendment); (C) to clarify that a specialist/market-maker who has sent a pre-opening response has a responsibility to seek a report of execution (Third Amendment); and (D) to clarify the procedures for resolving third participating market center trade-throughs (Third Amendment).

A. BSE—Regional Computer Interfoce (Third Amendment)

The proposed amendments to sections 1(33), 1(34A) and 1(34B) of the Plan recognize that the BSE will be utilizing the "Regional Computer Interface" ("RCI") as provided for in section 10(e) of the plan. Section 10(e), by its terms, provides that any participant shall be entitled to use one of the four standard automated interfaces upon approval by the Commisson of appropriate amendments to the ITS Plan recognizing such use.

Section 1(33) states "participant Switch" as applied to the BSE and the other regional exchanges means its regional switch. Section 1(34A) defines "RCI" as the "Regional Computer Interface," which is the automated linkage between the ITS and the Regional Switches that enable members located on the floor of the BSE and the other regional exchanges to participate in ITS applications. Furthermore, section 1(34B) defines "Regional Switch" as the computerized system of the BSE and the other regional exchanges which permits entry and receipt of the ITS system communications by means of CRT or other terminals, card readers and associated printers on the floors of the regional exchanges, as appropriate.

B. Pre-opening Application—Closing Prices (Eighth Amendment)

The proposed amendment to section 7(a) of the Plan allows for the pre-opening application to be based on the closing prices on the New York Stock Exchane or the American Stock Exchange in certain circumstances (Eighth Amendment). Section 7(a) of the Plan sets forth the substance of the pre-opening application, which sets out the procedures an exchange specialist who wishes to open his market in an ITS stock may use to obtain any pre-opening interest in that stock from other market-makers. Exhibit A to the Plan is a model rule that states the substance of section 7(a) and specifies other requirements pertaining to the "pre-opening application."

Section 7(a) and the model rule provide that if an exchange specialist anticipates that the opening transaction on the exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change," he shall notify other participant markets by sending a pre-opening notification through the system. The "applicable price changes" are:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under $15	⅛ point.
	$15 or over	¼ point.
Network B	Under $5	⅛ Point.
	$5 or over	¼ point.

The amendment to section 7(a) deals with the occasional situation when a system problem will cause incorrect consolidated closing prices to be displayed in a participant market or markets. In these situations, the practices has been to guage "the applicable price change" from the Amex or NYSE closing prices, rather than on the consolidated closing prices. However, this substitution requires telephone consultation with, and the concurrence of, each of the ITS participant markets, usually just prior to the opening of trading.

As proposed, if, on a broad scale, consolidated closing prices are incorrectly displayed, the Chairman of the ITS Operating Committee, upon the request of the Amex or the NYSE, may designate that the Amex's or the NYSE's closing prices, as appropriate, be substituted for the purposes of the pre-opening application. The proposal provides a simple, efficient and timely means for accomplishing the substitution of closing prices.

A collateral amendment to section (a)(viii) of the model rule recognizes that each participant may designate that the Amex's or NYSE's last sales be substituted for consolidated closing prices in accordance with the Plan revision.

C. Pre-opening Application—Execution Reports (Third Amendment)

A second amendment to the model rule would add section (c)(vi) to make it clear that a specialist/market-maker who responds to a pre-opening notification has a responsibility to seek from the opening market-maker a report of participation in the opening.

The added section sets forth a basic responsibility to request a report if one is not promptly received following the opening. If a report is requested on or following the trade date, and a report is not received by 9:30 a.m. eastern time the following trading day, then a later-received report need not, but may, be accepted. If a report is not requested, a report must be accepted until 4:00 p.m. eastern time on the third day following the trade date. However, the section makes it clear that despite the provision for when a report is not requested, this provision is not intended to relieve the basic obligation to seek a report.

D. Trade-Through Rule (Third Amendment)

The last amendment is to sections (b)(3) (F) and (G) of Exhibit B ("Trade-Through Rule") and adds new section (b)(3)(H)(i). The purpose of this amendment is to clarify the procedures for resolving third participating market center trade-throughs (Third Amendment).

[1] The ITS Plan and subsequent amendments are contained in File No. 4–208.

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Section 8(d)(i) of the ITS Plan sets forth the substance of trade-through restrictions. A trade-through is the occurrence of a transaction in one participant market at a price inferior to the bid or offer in another participant market. Exhibit B to the Plan is a model Trade-Through Rule that sets forth the rights and obligations of members of the paticipant markets. The model rule generally provides that, upon receipt of a timely administrative message, the member who caused the trade-through is obligated to satisfy the bid or offer traded through. The rule also contains several exemptions to the obligations to satisfy a trade through.

An amendment to the model rule adds sections (b)(3)(H)(i) to provide another exemption to the satisfaction obligations of the Rule. The exemption provides that, if a member who initiates a "third participant market trade through" (as defined in the Rule) had sent a commitment to trade promptly following the trade-through to satisfy the bid or offer traded-through, and had preceded the commitment with an administrative message stating the the commitement was in satisfaction of the trade-through, then such member shall have no further obligation to satisfy the trade-through. The provision is intended to provide the receiving party with requisite information about the purpose of the commitment so that it can be properly acted on.

II. Implementation of the Amendments

The amendments set forth in paragraph IA shall be effective upon the later of (a) the execution of the Agreement by each of the participants and the approval of the amendments by the Commission or (b) such date as the BSE shall specify. The revisions discussed in IB to section 7(a) of the ITS Plan and to Exhibits A and B of the Plan will require that each participant adopt the uniform rule revisions included as part of the amendments as their own rules. The rest of the amendments shall be effective when each participant executes this Agreement and the Commission approves them.

III. Request for Comment

Interested persons are invited to submit written comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. 4–208 and should be submitted by November 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(29).

Dated: October 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24690; Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17163; File No. 812–7391]

First Charter Life Insurance Co., et al.; Application for Exemption

October 12, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: First Charter Life Insurance Company ("First Charter"); First Charter Variable Annuity Account ("Variable Account"); and CNL, Inc. ("CNL").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to issue flexible premium variable deferred annuity contracts that provide for the deduction of mortality and expense risk charges from the assets of the separate account attributable to the annuity contracts.

FILING DATE: The application was filed on September 15, 1989.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if the hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on November 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with the proof of service by affidavit, or, in the case of an attorney at law, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. First Charter Life Insurance Company, 315 Park Avenue South, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2028, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

APPLICANTS' REPRESENTATIONS:

1. The Variable Account was established by First Charter to fund variable deferred annuity contracts issued in the State of New York. The Variable Account is a unit investment trust registered with the Commission under the 1940 Act. Applicants have applied for the exemptive relief described herein in connection with a proposed issuance of certain flexible premium variable deferred annuity contracts ("Contracts") to be funded by the Variable Account.

2. The Variable Account has six Subaccounts, each of which invests exclusively in the shares of a Portfolio of the Scudder Variable Life Investment Fund (the "Fund"). The Fund is registered with the SEC as an open-end, diversified investment company.

3. CNL will serve as the principal underwriter of the Contracts. CNL has contracted with Scudder Fund Distributors, Inc. ("Scudder") for Scudder's services in connection with the distribution of the Contracts. Both CNL and Scudder are registered with the SEC as broker-dealers under the Securities Exchange Act of 1934, as amended, and are members of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible premium variable deferred annuity contracts designed to provide for accumulation of capital on a tax-deferred basis for retirement or other long-term purposes. The Contracts initially will be made available only to individuals, and will not be available to retirement plans and individual retirement accounts that qualify for special Federal income tax treatment.

5. An amount will be deducted from the daily net asset value of the Variable Account attributable to the Contracts to reimburse First Charter for certain mortality and expense risks assumed under the Contracts. The mortality risk assumed by First Charter arises from its contractual obligation to make Annuity Payments to each Annuitant regardless of how long all Annuitants or any individual Annuitant may live. Although Annuity Payments will reflect the investment performance of the shares purchased by each Subaccount of the Variable Account, they will not be affected by the mortality experience of persons receiving such payments or the general population. The expense risk assumed by First Charter is that the expenses incurred in issuing and administering the Contracts will be greater than estimated and, therefore, will exceed the expense charge limit set by the Contracts. This asset charge will be deducted daily in an amount equal to an effective annual rate of .70% of the average daily net assets of the Variable Account attributable to the Contracts. Of this amount, approximately .50% is charged to cover the mortality risks and approximately .20% is charged to cover expense risks. The rate of this charge is guaranteed never to increase, and is applicable only during the period from the Effective Date to the Maturity Date.

6. In addition to the deduction of a mortality and expense risk charge, First Charter will impose a contract administration charge at an annual rate of .30%, an annual record maintenance charge of $40, and may charge $20 for each transfer beyond the second request. No transfer charge is currently imposed. Also, no sales charges are deducted and no charge is currently made for premium taxes. All expenses relating to the sale of the Contracts will be paid by First Charter from its general assets.

7. Applicants do not concede the applicablity of sections 26(a)(2)(C) and 27(c)(2) of the Act to the mortality and expense risk charge. However, in order to avoid any possibility that questions may be raised as to the potential applicability of those provisions to this charge, Applicants request exemption from these provisions to the extent necessary to permit the assessment of a charge for mortality and expense risks against the assets of the Variable Account.

8. Applicants represent that the mortality and expense risk charge is a reasonable charge to compensate First Charter for the risk that the payees of Annuity Payments will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts and for the risk that administrative expenses will be greater than the amounts derived from the administrative charge.

9. First Charter represents, in support of the request, that the charge of .70% for mortality and expense risks assumed by First Charter is within the range of industry practice with respect to comparable annuity products. This representation is based upon First Charter's analysis of publicly-available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. First Charter represents that it will maintian at its Home Office and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support this representation.

10. Applicants acknowledge that to the extent First Charter's mortality experience and unreimbursed expenses are less than anticipated, the mortality and expense risk charge may be a source of profit, which would increase the general assets of the Company available to pay distribution, sales, and other expenses the Company must bear. Under such circumstances, the mortality and expense risk charge might be viewed as providing for some or all of the costs related to the distribution of the Contracts. First Charter cannot predict the amount of profit that may result from this charge. In fact, such a profit may not occur, in which case First Charter would still be required to pay all of the expenses relating to the sale and distribution of the Contracts. The fact that First Charter does not deduct a sales charge from Payments invested in the Contract or amounts paid upon full or partial surrender does not alter this fact. Thus, First Charter has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Owners. The basis for this conclusion is set forth in a memorandum which will be maintained by First Charter at its administrative offices and will be available to the Commission.

11. Applicants also represent that the Variable Account will invest only in management investment companies which undertake, in the event such a company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1 of the 1940 Act.

12. Accordingly, Applicants request an exemption pursuant to section 6(c) from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Variable Account attributable to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24652 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

File No. 500–1,

Order Modifying Prior Order Imposing Trading Suspension; Trading in the Securities of PCP Corp.

October 13, 1989.

On October 13, 1989 the Commission issued an Order suspending trading for a single 10 day period of sixteen issuers pursuant to section 12(k) of the Securities Exchange Act of 1934. It has since been determined that one of the companies listed in the Order, PCP Corp. had changed its name to CMS Holdings, Inc. The Commission has determined that it is appropriate to modify the order to reflect this name change.

Accordingly, *it is hereby ordered* that the Order entered on October 13, 1989 is modified by changing the name of PCP Corp. to CMS Holdings, Inc.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24691 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24967]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 12, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 8, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy

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on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–7674)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

National proposes to issue, from time to time through December 31, 1994, up to 1,250,000 shares of its authorized but unissued common stock, no par value ("Additional Common Stock"), to, or on behalf of, eligible employees of National and its subsidiaries, pursuant to three employee benefit plans.

National proposes to issue up to 1,000,000 shares of Additional Common Stock to Manufacturers Hanover Trust Company ("MHTC"), as trustee for two of the employee benefit plans. These two plans, which are intended to qualify under Sections 401(a) and 401(k) of the Internal Revenue Code of 1986, are the National Fuel Gas Company Tax-Deferred Savings Plan and the National Fuel Gas Company Tax-Deferred Savings Plan for Non-union Employees. National proposes to issue such Additional Common Stock to MHTC (500,000 shares to each of the two plans), from time to time, in lieu of making cash employer contributions ("Matching Contributions") used by MHTC to purchase National's common stock on the open market. In the alternative, National proposes to contribute, from time to time, cash Matching Contributions to MHTC, which would then be paid to National to purchase Additional Common Stock. National would retain the right to continue such proposed practices or revert to the current practice of contributing cash Matching Contributions to MHTC for its use in purchasing National's common stock on the open market. If National issues shares of Additional Common Stock to MHTC as Matching Contributions, or in the alternative, cash Matching Contributions are paid by MHTC to National to purchase Additional Common Stock, the value of such shares will be determined by averaging the daily high and low sales prices of common stock on the New York Stock Exchange ("NYSE"), on the date of issue, or the next preceding trading date if the NYSE is not open for trading, or no shares of National's common stock were traded on that date.

National also proposes to issue up to 250,000 shares of Additional Common Stock to persons eligible to receive awards under the National Fuel Gas Company Incentive Compensation Plan ("ICP"). Pursuant to the ICP, once the dollar amount of awards is determined, tax withholding will be implemented, and the remainder will be converted into whole shares of Additional Common Stock using the average market price in effect on the first trading date in December on which shares of National's common stock are sold. Any amount that cannot be converted into whole shares of common stock, will be paid by check. National further proposes to purchase, from time to time, shares of its common stock on the open market for awardees pursuant to the ICP, in lieu of issuing Additional Common Stock. National states that such shares of National's common stock, plus cash for fractional shares, will be issued to awardees, each December, beginning December 1989.

Entergy Corporation, et al. (70–7681)

Entergy Corporation ("Entergy"), a registered holding company, 225 Baronne Street, New Orleans, Louisiana 70112, and its wholly owned electric public-utility subsidiary company, Arkansas Power & Light Company ("AP&L"), 425 W. Capitol Street, Little Rock, Arkansas 72203, have filed an application-declaration under sections 9(a), 10, 12(c) and 12(d) of the Act and Rules 42 and 43 thereunder.

AP&L proposes to purchase from Entergy, from time-to-time through December 31, 1990, up to $100 million of AP&L's outstanding common stock, par value $.01 per share, at a purchase price equal to $12.50 per share, in order to reduce the amount of common equity in AP&L's capital structure from approximately 40 percent to approximately 35 percent. AP&L's capital structure would also include approximately 10 percent of preferred stock and approximately 55 percent of long-term debt. A reduced level of common equity would serve to lower AP&L's overall cost of capital given the higher cost of equity capital as opposed to debt. AP&L would fund the purchase of its stock from available cash or from the proceeds of short-term borrowings effected under available bank lines of credit, or through the Entergy system money pool.

Entergy Corporation (70–7682)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed an application-declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

Entergy seeks authority to acquire for its own account up to 20,458,109 shares of its currently issued and outstanding common stock, par value $5.00 per share ("Common Stock"), in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1991. At August 31, 1989, Entergy had 204,581,092 shares of common stock issued and outstanding. Assuming Entergy's acquisition of the entire 20,458,109 shares of Common Stock, as of August 31, 1989, Entergy's consolidated common equity ratio to total capitalization would have been reduced from 42.3 percent to 40.1 percent.

Repurchases of Entergy's Common Stock will be made in accordance with the requirements of Entergy's Restated Articles of Incorporation and the Florida General Corporation Act. Repurchases of Common Stock will be made from general corporate funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24653 Filed 10–18–89; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS Form No. and Title:

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimburesement Request

SSS Form 166, Claim for Reimbursement For Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Send a copy of the comments to: OMB Reports, Management Branch, New Executive Office Building, Room 33208, Washington, DC 20503.

Dated: October 11, 1989.

Samuel K. Lessey Jr.,

Director.

[FR Doc. 89–24678 Filed 10–18–89; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. William F. Casey Jr., submitted a petition dated June 6, 1989, requesting NHTSA to investigate alleged unreliability of the fuel system in Volvo Passenger vehicles. The petitioner cited, "* * * serious unresolved questions and doubt on the reliability and safety of the overall fuel system used on Volvo 240 model vehicles * * *." He contends that the subject vehicle is "prone to sudden unexpected vehicle decelaration" resulting from a fuel system failure or malfunction. He cites the possibility of accidents resulting form the alleged problem.

The petitioner supports his contention with a "Risk Factor Analysis" derived from his private survey of other Volvo owners and with a list of Volvo service bulletins and letters relating to diagnostic procedures and the introduction of various revised or updated fuel system components.

Analysis of the agency's computerized consumer complaint records for the 1987 Volvo 240 vehicle disclosed 42 reports related to alleged vehicle stalling. Seven are from the petitioner. The remaining 35 reports are pre-printed inquiry form letters to ODI. They were distributed to Boston area Volvo owners by an unknown source. Except for three complaints these reports do not cite stalling problems. Agency review of the petitioner's repair orders and of information from the manufacturer disclosed that three unrelated repairs were performed. The manufacturer, in its August 23, 1989, response to NHTSA inquiry, reported receiving five reports relating to vehicle driveability or stalling, including the complaint from the petitioner. The manufacturer reported that, " * * * there are no accidents, subrogation claims or lawsuits pertaining to the alleged defect in the subject vehicle known to Volvo."

The petitioner provided a NHTSA-supplied list of Volvo service bulletins. The petitioner referred to those bulletins which described improved fuel pumps and related fuel system components and questioned why his vehicle was not "recalled" for updating with the improved items. Agency examination of the bulletins revealed no evidence that the problems being corrected by the described product improvements are safety-related.

The petitioner also provided an analysis of the results of his Volvo owner survey. He did not provide a sample of the survey or the list of owners sampled or how they were selected. His "risk analysis" purports to show the existence of safety problems in the subject fuel system. The petitioner provided no evidence of actual accidents, injuries, or fatalities to support his contentions.

The petitioner has previously been advised by this agency that it is authorized to order manufacturer to recall and repair vehicles or items of equipment when its investigation indicates that the vehicle or item of equipment contains a safety-related defect. A safety-related defect is present when there is evidence of a significant number of failures and these failures present an unreasonable risk of accident, injury or fatality. He was further advised that the agency cannot act on isolated problems or disputes between individual owners and dealers or manufacturers.

In consideration of the available information, the agency concludes that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged fuel system problems would be issued at the conclusions of an investigation. Because the information the agency gathered in the review it conducted in response to this petition reveals no safety-related defect trend, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 13, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89–24647 Filed 10–18–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP 89–05; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Grumman Olson

This notice grants the petition by Grumman Olson of Sturgis, MI., to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on July 31, 1989, and an opportunity afforded for comment (54 FR 31609).

Prior to 1987, Standard No. 101 specified an identification symbol for the headlamp control. Beginning in 1987, a master light switch control symbol is now required by Standard No. 101 when one control activates multiple lighting systems (*i.e.*, headlamps, taillamps, clearance lamps). Grumman Olson used the old headlamp control identification symbol in 2,100 walk-in vans mounted on Ford E–305 stripped chassis in 1987, 1988, and 1989. Therefore, these vehicles are not in compliance with Standard No. 101.

Grumman Olson supported its petition for inconsequential noncompliance with the following reasons:

"1. The light switch is identified by the old symbol which was required in 1980 and allowed until 1987.

2. Since the symbol has been in use for seven years it is recognized as the light switch.

3. These types of vehicles are generally used in fleets which have a mixture of old and new trucks. The old trucks would contain the old symbol. Therefore, drivers would be familiar with it and understand that it denotes the light switch in new vehicles."

No comments were received on the petition.

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Before 1987, the headlamp symbol designated both a control that operated the headlamps alone, and a control that operated headlamps, clearance, side marker, and identification lamps. The symbol used by the petitioner met the need for motor vehicle safety until it was superseded by one that is more expressive of a control for the operation of multiple lamps. The previous symbol was in use for many years, and those familiar with it will know that it also indicated multiple lamp operation. The only possible confusion that could occur would involve a driver who had had experience only with vehicles manufactured since 1987, familiar with the master lighting control, but not with the fact that previously the headlamp symbol was used for both types of controls. However, if such a driver exists, the fact that other controls are identified should lead him by a process of elimination to the realization that the erroneous headlamp control symbol indicates a master lighting switch.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: October 13, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-24648 Filed 10-18-89; 8:45 am]

BILLING CODE 4910-59

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On June 21, 1989, Mr. and Mrs. Daniel Sicardi requested NHTSA to conduct a defect investigation into a safety problem involving an alleged steering defect in certain 1988 Chevrolet Celebrity vehicles manufactured by General Motors Corporation (GM).

The petitioners allege that a 1988 Chevrolet Celebrity vehicle owned by them went out of control due to failure of the steering. They allege that as a result of this failure, the vehicle went over a highway divider into oncoming traffic, causing damage to the front wheel, fender, and suspension. There were no other vehicles involved and there were no injuries. Following this incident, they drove the vehicle to a shop where repairs were made for damage caused by the accident.

There was one recall (88V-048) of certain 1988 Chevrolet Celebrity vehicles for steering problems. In that recall, the engine cradle assembly was replaced to correct a defective weld which attaches the front suspension lower control arm mounting bracket to the engine cradle. GM advised that if this failed while the vehicle was in motion, it could result in loss of steering control. It does not appear that the cradle assembly failed on the Sicardi vehicle because there is no indication on the repair orders provided by the Sicardis that the engine cradle was replaced.

Analysis of the Office of Defects Investigation (ODI) computer records revealed no reports of failures, other than the Sicardis, of the steering system in 1988 GM A-Body vehicles, which includes the Chevrolet Celebrity, for reasons consistent with the Sicardis' experience. Since no safety-related defect trend was discovered, further commitment of resources to investigate the alleged defect does not appear to be warranted. Accordingly, this petition was denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.5 and 501.8.

Issued on: October 13, 1989.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-24646 Filed 10-18-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 28-89]

Treasury Notes, Series H-1996

Washington, October 12, 1989.

The Secretary announced on October 11, 1989, that the interest rate on the notes designated Series H-1996, described in Department Circular—Public Debt Series—No. 28-89 dated October 5, 1989, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-24613 Filed 10-18-89; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 201
Thursday, October 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Saturday, October 21, 1989.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 10:30 a.m. at Jenkes Country Store, Main Street (Route 16) Douglas, MA for the following reasons:

1. To vote on approval of the Cultural Heritage and Land Management Plan.
2. Budget submission of final budget for FY 1989.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278-9400 or (508) 278-5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89-24771 Filed 10-17-89; 9:29 am]

BILLING CODE 4310-70-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Thursday, October 12, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Administrative enforcement proceedings.

Recommendations regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,442
Various Knoxville Banks, Knoxville Consolidated Office
Case No. FL-89-005
Silverado Banking, Savings & Loan Association, Denver, Colorado

Reports of the Inspector General:

Audit Report re: Audit of Knox Reports Limited, DOL Knoxville Consolidated Office (Memo dated August 14, 1989)
Audit Report re: Costa Mesa Consolidated Office, Cost Center—601 (Memo dated August 22, 1989)
Audit Report re: Knoxville Consolidated Office, Cost Center—503 (Memo dated August 15, 1989)
Audit Report re: Oak Lawn Consolidated Office, Cost Center—201 (Memo dated August 8, 1989)
Audit Report re: Operational Audit of the FDIC's Training Program (Memo dated August 12, 1989)

Matters relating to the Corporation's corporate activities.

Memorandum and resolution regarding the cross-guaranty provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall and Chairman L. William Seidman, (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 16, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-24831 Filed 10-17-89; 12:44 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 24, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 26, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinions:
A. Draft AO 1989-20:
Bruce C. Bigelow on behalf of Kuilima Development Co., Inc.
B. Draft AO 1989-22:
H. Daniel Holm, Jr. on behalf of Nagle Campaign
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-24807 Filed 10-17-89; 10:58 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 25, 1989.

PLACE: MARRINER S. ECCLES FEDERAL RESERVE BOARD BUILDING, C STREET ENTRANCE BETWEEN 20TH AND 21ST STREETS, NW., WASHINGTON, DC 20551.

STATUS: Closed.

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MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24873 Filed 10–17–89; 3:26 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 24, 1989.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Joint Presentation by the American Association of Advertising Agencies, the Association of National Advertisers, and the American Advertising Federation on the topic of Self-regulation.

CONTACT PERSON FOR MORE INFORMATION: C. Lee Peeler, Associate Director for Advertising Practices, (202) 326–3090.

Office of Public Affairs: (202) 326–2179.

Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 89–24820 Filed 10–17–89; 11:44 am]

BILLING CODE 6750–01–M

RESOLUTION TRUST CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:55 p.m. on Thursday, October 12, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of certain depository institutions.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, and M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 16, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89–24770 Filed 10–17–89; 9:02 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 42619 October 17, 1989]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 11, 1989.

CHANGES IN THE MEETING: Rescheduling.

A closed meeting scheduled for Monday, October 16, 1989, at 2:30 p.m., has been changed to Wednesday, October 18, 1989, at 9:30 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272–2400.

Dated: October 16, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–24844 Filed 10–17–89; 1:46 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 42438 (October 16, 1989).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EDT) Wednesday, October 18, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Tennessee Valley Authority (TVA), Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

CHANGES IN THE MEETING: In addition to the October 18, 1989 meeting, the TVA Board will meet on October 17, 1989 at 2 p.m. in the TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee, to consider the agenda items listed below.

STATUS: Open.

Agenda Items

A—Budget and Financing

1. Proposed arrangements for early payment of up to approximately $6.7 billion of high interest TVA bonds held by the Federal Financing Bank.
2. Proposed agreements with Federal Reserve Banks to serve as fiscal agent and maintain certain accounts.
*3. Regulations relating to book-entry procedures for TVA power securities.
4. Proposed Second Amendatory Resolution to Basic Tennessee Valley Authority Power Bond Resolution to provide for use of book-entry procedures.
5. Proposed Third Amendatory Resolution to Basic Tennessee Valley Authority Power Bond Resolution providing for elimination at a future time of requirements for a trustee.
6. Proposed purchase agreement with the Federal Financing Bank covering arrangements for short-term power bond financing.
7. Proposed supplemental resolution authorizing Tennessee Valley Authority power bonds first short-term series.
8. Proposed underwriting agreement with the First Boston Corporation; Goldman, Sachs & Company; Merrill Lynch Capital Markets; Morgan Stanley & Company Inc.; and Salomon Brothers Inc., as representatives of the several underwriters.
9. Proposed Supplemental Resolution authorizing Tennessee Valley Authority Power Bonds.
10. Proposed Offering Circular and Proposed Offering Circular Supplement for TVA Power Bonds.
11. Proposed redemption prior to maturity of certain high-interest debt held by the Federal Financing Bank.
12. Proposed resolution authorizing Chairman and certain Tennessee Valley Authority Officers to take further actions relating to refinancing arrangements.

These items, which were listed as Items A4 through A15 in the previously announced agenda, will be deleted from the agenda of the October 18 meeting.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

SUPPLEMENTARY INFORMATION: The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that a meeting be called at the time set out above and that the previously announced agenda of the October 18 meeting be amended, and

that no earlier announcement of either of these actions was possible.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000 or 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

William L. Osteen, Jr.,

Assistant Secretary and Associate General Counsel.

[FR Doc. 89–24783 Filed 10–17–89; 10:07 am]

BILLING CODE 8120–01–M

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Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

Air Quality, Chemical Substances, and Respiratory Protection Standards; Extension of Comment Period; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75, and 90

RIN 1219-AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's proposed rule revising existing standards for air quality and chemical substances at coal and metal/nonmetal mines.

DATES: Written comments must be received on or before March 2, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, (54 FR 35760) MSHA published a proposed rule revising existing standards for air quality and chemical substances at coal and metal/nonmetal mines. It contains permissible exposure limits for substances that may pose health hazards at these mines. In addition, the proposed rule contains revised requirements for exposure monitoring, carcinogens, and respiratory protection programs.

These actions are part of the Agency's ongoing review of metal/nonmetal and coal mine safety and health standards to improve protection for miners. The comment period was to remain open until November 27, 1989, but in response to requests from the mining community, MSHA is extending the comment period to March 2, 1990. All interested parties are encouraged to submit comments prior to this date.

Dated: October 16, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-24717 Filed 10-18-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

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Part III

Department of Labor

Mine Safety and Health Administration

30 CFR 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards; Pattern of Violations; Public Hearings; Proposed Rule

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DEPARTMENT OF LABOR

30 CFR Parts 44 and 104

Rules of Practice for Petitions for Modification of Mandatory Safety Standards; Pattern of Violations; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposed regulations for rules of practice for petitions for modification of mandatory safety standards, and pattern of violations. Separate hearings will be held in Pittsburgh, Pennsylvania, and Denver, Colorado, for both petitions for modification of mandatory safety standards and pattern of violations. Each hearing will cover the major issues raised by comments submitted in response to the respective proposed rules.

DATES: All requests to make oral presentations for the record should be submitted at least 5 days prior to each hearing date. Such requests should be specific as for which proposal the presentation will be made. Immediately before each hearing, any unallotted time will be made available to persons making later requests.

The public hearings will be held at the following locations on the dates indicated:

November 1, 1989—Pittsburgh, PA.
November 8, 1989—Denver, CO.

The public hearings on the proposed regulations for rules of practice for petitions for modification of mandatory safety standards will begin on both dates at 9:00 a.m. The public hearings on pattern of violations will begin immediately following the conclusion of all testimony on the petition for modification rule. In each day, the pattern of violations hearing will continue on the following day if necessary.

ADDRESSES: The hearings will be held at the following locations:

November 1, 1989, Ramada Inn—Airport Ballroom C, 1412 Beers School Road, Coraopolis, Pennsylvania 15108.
November 8, 1989, Stouffer—Concourse Hotel, Ballroom, 3801 Quebec Street, Denver, Colorado 80207.

Send requests to make oral presentations to: Mine Safety and Health Administration; Office of Standards, Regulations and Variances; Room 631; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances; MSHA; Phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 5, 1989, MSHA published a proposed rule to revise its existing standards for rules of practice for petitions for modification of mandatory safety standards (54 FR 19492). The written comment period for this proposed rule ended on August 7, 1989.

On May 30, 1989, MSHA proposed criteria and procedures for identifying mines with a "pattern of violations" of mandatory standards that significantly and substantially contribute to safety or health hazards (54 FR 23156). The proposed rule would implement section 104(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act). The written comment period for this proposed rule ended on August 31, 1989.

In the comments on the proposed rules, MSHA received requests for public hearings. The purpose of the public hearings is to receive relevant comments and respond to questions about the proposed rules. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA followed by an opportunity for members of the public to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. Verbatim transcripts of the proceedings will be taken and made a part of the rulemaking record. Copies of the hearing transcripts will be made available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until December 8, 1989.

Issues

Commenters questioned a number of provisions contained in the proposals. However, some portions of the rules raised issues of particular concern, which are discussed below. MSHA will specifically address these issues at the public hearings on each of the respective rules and solicit comments on them in addition to any other aspects of the proposed rules.

A. Rules of Practice for Petitions for Modification of Mandatory Safety Standards

This proposal would add timeframes for consideration of petitions at all stages of review. After a petition is filed, the proposal would require an investigation to be conducted by MSHA and, as soon as is practicable, would require the appropriate MSHA administrator to issue a draft proposed decision and order (PDO). The draft PDO would allow the parties to comment on the Administrator's decision before a final decision is issued. Several commenters suggested that the words "as soon as practicable" be deleted and be replaced with "within 30 days," stating that all parties, including the Administrator, should be bound by specified periods of time to respond. One commenter was opposed to the issuance of a draft PDO. The commenter stated that this step would only add additional time delays to the process, delaying the enhanced safety that results from a final decision on the petition. Another commenter agreed with the inclusion of the draft PDO but expressed concern that the procedures regarding requests for expedited or extended investigations and waivers of a draft PDO raises numerous questions as to timeframes.

Under the proposal, 45 days after the close of the comment period on the draft PDO, the Administrator would be required to issue a final PDO. As under the existing rules, if no hearing is requested in the 30 days after the PDO is issued, it becomes final. If a hearing is requested, the case file would be required to be referred "immediately" to the Chief Administrative Law Judge for the Department of Labor. One commenter suggested that "immediately" be deleted and be replaced with "within 5 days," giving the Administrator an explicit timeframe to meet.

A new provision would require the Chief Judge to designate an administrative law judge (ALJ) to preside over the hearings within 5 days after receipt of the case file. Commenters agreed with the established timeframe; however, one commenter felt that it would be appropriate to limit the time during which the hearing would be held and a decision issued and served on the parties involved. The commenter stated that to establish a deadline for starting the hearing and ALJ decision process is unless without a similarly precise deadline for ending the process.

The proposal would allow 45 days for discovery, after which a hearing would be scheduled by the ALJ as soon as practicable. One commenter stated that 45 days is an unrealistic time period. Another commenter opposed the language "as soon as practicable," stating that the review process could be further streamlined and shortened by eliminating these statements.

Following the hearing, parties would have 30 days to submit proposed findings and briefs to the ALJ. One commenter had no objection to changing the time from 20 days to 30 days; however, the commenter questioned when the 30-day period would begin. Does it start from the close of the hearing or from receipt of the transcript? Within 60 days after briefs are filed, the ALJ would be required to render a decision. One commenter questioned what would happen if the ALJ missed the 60-day deadline. Another commenter felt that such a timeframe might put pressure on the ALJ to keep the record small and would make the judge reluctant to consider evidence regarding all aspects of a proposed modification.

Under the proposal, an appeal of a petition would be filed with the Secretary. Thus, in each petition proceeding, MSHA would issue only one decision—the Administrator's. Commenters are opposed to the final decision's being made by the Secretary versus the Assistant Secretary who now makes such decisions. They stated that the Assistant Secretary could be properly independent, better experienced and more available to resolve such a dispute. The expertise necessary to fully evaluate the facts and prescribe appropriate conditions to safeguard the miners resides within MSHA, not with the DOL Solicitor's Office. Removal of the decisionmaking process from those MSHA officials best suited to provide the decision may actually diminish the health and safety of the miners.

The proposal would also delete existing procedures in § 44.16 for applications for interim relief. However, the proposal does permit the Administrator to give immediate effect to a PDO in contested cases. This relief, which would be granted only after issuance of a PDO, would be effective only until superseded by the decision and order itself, or until the PDO is contested. An application for relief under this aspect of the proposal would be required to include a good faith representation that no party is expected to contest the PDO. One commenter suggested that an application for such relief should be filed with the Administrator with copies sent to the miners' representative and any other parties to the proceedings. The commenter further suggested that the applicant be required to stipulate how delaying the effective date of the PDO for 30 days would unnecessarily disrupt mining, cause dislocation of a workforce, or otherwise unduly injure the interest of the parties to the petition process. One commenter expressed concern that a mine operator could make a good faith representation that a party is not expected to contest, have a decision granted and make major operational changes to implement the PDO, only to then have another party allege in good faith that new facts have become known and request a hearing. The first party would then be operating in a manner contrary to the mandatory standard, and MSHA would be compelled to issue a closure order on the affected portion of the operation.

B. Pattern of Violations

The proposal prescribes the criteria and procedures used by MSHA to determine whether a pattern of violations exists at a mine for purposes of section 104(e) of the Federal Mine Safety and Health Act of 1977 (Act). It addresses mines where operators habitually allow the recurrence of violations of mandatory safety or health standards which significantly and substantially (S&S) contribute to the cause and effect of mine safety or health hazards.

Commenters expressed concern that the language in the proposal is too broad and would encompass a greater portion of the mining community than was intended by Congress in the Mine Act. They suggested that the rule should be more narrow and limited to recalcitrant mine operators who have "thumbed their noses at the law."

The initial screening section of the proposed rule describes the review process MSHA would use to initially select mines for evaluation for a pattern of violations under § 104.3. One commenter stated that the annual review of the compliance records would be too long and suggested it be changed to biannual. Commenters stated that the proposed rule simply sets out a list of factors which are to be considered by the agency in deciding whether a pattern of violations exists at a particular mine and suggested that there should be a more objective quantitative approach using comparative statistical analysis to define a pattern. Commenters are also concerned that there is no criteria provided for the inspectors to use to determine which violations are S&S. Since the primary criteria being used to determine a pattern of violations are S&S violations, commenters feel there should be a definition for S&S violations in the rule and that it be defined as it was by the Review Commission in the National Gypsum case. Commenters also suggested that only S&S violations which are associated with more than a degree of ordinary negligence be considered. Commenters stated that if MSHA uses past history as part of the initial screening, the time period should be limited to 2 years. One commenter suggested that if MSHA can use retroactive selection criteria, then the operators should be granted retroactive appeal rights to challenge the S&S provision of all applicable violations. Several commenters suggested that only S&S citations issued after the effective date of the rule be considered in the initial screening to determine a pattern of violations. Commenters suggested that the only 107(a) orders that should be used in the pattern development are those that are accompanied by a 104(a) S&S citation. Commenters suggested that accidents, illnesses and injuries should not be a part of the criteria for initial screening unless there is a direct relationship between the S&S violations and the accident.

The proposal would allow only final citations and orders to be used to identify mines with a potential pattern of violations. Commenters were in agreement with this new provision. However, commenters felt that an additional provision should be added that would only include final citations and orders that are issued after the effective date of this rule. Commenters stated that they would have contested past citations and orders for S&S violations if they had known the violations could ultimately contribute to a "pattern" finding.

The proposal provides notification procedures which would provide both the mine operator and miners' representatives an opportunity to respond to the Agency's evaluation that a pattern of violations may exist at a mine. Commenters suggested that the identification and evaluation must be done on a national level as opposed to the district level and suggested that "District Manager" be replaced with "Administrator" in this section. They stated that Congress intended that the sanctions be applied to those few mine operators who repeatedly thumb their noses at the law, and this can only be achieved on a national level. Commenters further suggested that, due

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to the profound effect that the pattern violator status could have on an operator's ability to continue to mine, the final determination should be rendered by the Assistant Secretary. Commenters suggested that, because the sanctions associated with a pattern of violations notice are severe, the procedures leading to the issuance of a notice should be fair and should provide all parties with ample time to make their points. Specifically, an opportunity for a hearing should be provided before the pattern of violations notice is issued but after the district manager conference has been held. One commenter suggested that the proposal include criteria to specify how MSHA would determine whether a program has effectively reduced the occurrence of S&S violations. The commenter further noted that although the proposal requires the district manager to submit a report if a potential pattern of violation exists at the mine, it does not require a report if the operator's program has effectively reduced the occurrence of S&S violations. The commenter stated that a report should be required in such instances. One commenter suggested allowing a conference with the Assistant Secretary before a final determination is made. This would provide all interested parties the opportunity to arrive at an agreement to improve the health and safety at the mine. Another commenter stated that while the proposed procedures, with extended timeframes, appear properly designed to facilitate due process, an opportunity to appeal the issuance of the notice should also be provided.

The proposal also provides procedures for termination of a pattern notice. Commenters are concerned that the only way a pattern of violations notice can be terminated is when an inspection of the entire mine by MSHA results in no S&S violations. Commenters suggested that the notice be terminated when an inspection by MSHA results in no S&S violations in the area of the mine involved in the pattern. Commenters further suggested that only S&S violations of the same standard should be used in a determination not to terminate a pattern of violations notice. Commenters also suggested that district managers should be allowed to terminate pattern of violation notices when mitigating circumstances are present.

One commenter does not feel that mine operators should be afforded the opportunity to use partial inspections to avoid full abatement of S&S violations in the entire mine, stating that the existence of S&S violations is not a normal and acceptable situation in any mine. The commenters stated that operators under notice cannot claim that they should still be allowed to have some S&S violations in order to remain equivalent with operators that have never been pattern violators. Another commenter stated that conditions in an underground mine change rapidly and suggested that the length of time for a series of partial inspections be limited to 30 days. Other commenters agreed with the new provision of partial inspections; however, they feel that mine operators should have the right to request personnel from a different field or district office to perform the final inspection from those that performed the initial inspection.

Commenters are concerned that the cost of the proposal is inaccurate. Several commenters believe that MSHA failed to include the additional cost of litigation. They stated that the potential litigation costs of citations and orders may be staggering. These same commenters suggested that many operators in the past only weighed the cost of appeal against the payment of the fine and accepted the significant end substantial check off rather than go through the long and costly process of appeal. Many believe that if such action ultimately contributes to a "pattern" finding, many significant and substantial citations would have been contested.

Dated: October 16, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-24718 Filed 10-18-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Thursday
October 19, 1989

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Superfund Tax; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Superfund Tax

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise FAR 31.205-41 to set out a rule on the allowability of the Superfund Tax.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before December 18, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 89-71 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-71.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils are proposing a rule, for purposes of cost recognition under Government contracts, which categorizes the "Superfund Tax" as allowable. The Councils believe that the Government should recognize this cost as a matter of public policy.

B. Regulatory Flexibility Act

The proposed FAR 31.205-41 coverage is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C., 601 et seq.) because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principals do not apply. An Initial Regulatory Flexibility Act analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and must cite section 89-610 (FAR Case 89-71) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping, reporting, or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: September 12, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-41 is amended by adding paragraph (a)(4) to read as follows:

31.205-41 Taxes.

(a) * * *

(4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the "Superfund Tax."

* * * * *

[FR Doc. 89-24725 Filed 10-18-89; 8:45 am]

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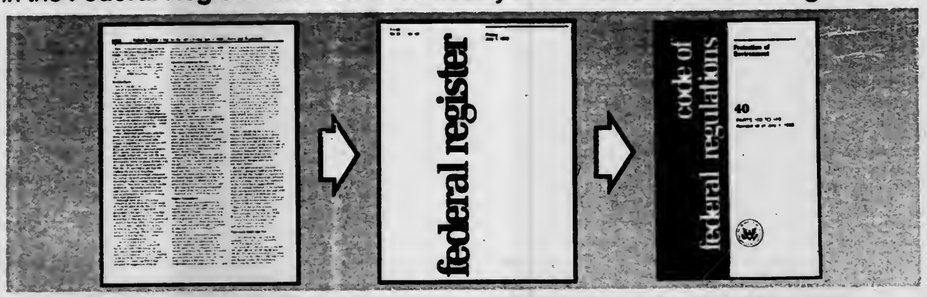
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Title 3—

The President

Proclamation 6050 of October 18, 1989

National Awareness Week for Children With Cancer, 1989

By the President of the United States of America

A Proclamation

Cancer causes more than 10 percent of all deaths among children in the United States between the ages of 1 and 14. It is second only to accidents as the leading cause of death in this age group.

Families confronted by the specter of childhood cancer face one of the most difficult experiences they will ever know. These families both need and deserve the best medical and emotional support we can provide; some may need considerable financial help as well. Every family touched by childhood cancer needs the patience and understanding of its friends, neighbors, teachers, and clergy. Parents need the support and compassion of their employers, and brothers and sisters of young cancer victims need special attention—not only at home, but also at school.

Fortunately, dramatic progress has been made in the early diagnosis and treatment of childhood cancers. The number of children who die from cancer has declined by approximately one-third since 1973—a significant change over a relatively short span of time. The number of children who survive even such serious forms of cancer as Hodgkin's disease, acute lymphoctyic leukemia, Wilms' tumor, and non-Hodgkin's lymphoma has increased markedly since 1960.

Many private sector organizations and government agencies have been responsible for our Nation's progress in the fight against childhood cancer. The National Cancer Institute (NCI), part of the Department of Health and Human Services, is the Federal Government's principal agency for cancer research. Members of the NCI's Pediatric Branch and pediatric oncologists at universities and research institutes throughout the country are working tirelessly to develop improved methods for diagnosing and treating children with cancer.

Scores of other national and local health care organizations and charitable associations play a vital role in supporting such cancer research. These organizations also help young patients and their parents cope with the emotional and financial stress caused by cancer treatment, and their efforts deserve our praise and support. Through the generosity of these groups, children suffering from cancer may be able to spend time at a special summer camp or realize a heartfelt dream; they and their parents may receive free air travel for treatment; or parents may benefit from low-cost lodging while their children obtain care far from home. Across the United States, concerned Americans have rallied to help young cancer patients and their families by founding and supporting wonderful programs like these.

Nevertheless, we still face many challenges in the fight against childhood cancer. Scientific research and advances in medicine and technology have improved our ability to detect and treat the disease, but current methods must be refined and new ones must be explored. We also must continue to support rehabilitation programs, which are particularly important for young victims of the disease. Work of this kind can help bring hope and healing to all cancer patients.

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This week, we pause to recognize in a special way the brave children and their parents who struggle against cancer. We also salute the physicians and scientists who are leading research into the disease, as well as the thousands of private organizations and individual Americans who are dedicated to serving young victims and their families.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 15, 1989, as National Awareness Week for Children with Cancer. I invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia to provide for the observance of this week. I also ask the people of the United States—in particular, health care professionals, educators, and concerned community groups—to join in reaffirming publicly our Nation's commitment to controlling childhood cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24982
Filed 10-18-89; 4:40 pm]
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Presidential Documents

Presidential Determination No. 90-2 of October 6, 1989

Determination of FY 1990 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

a. The admission of up to 125,000 refugees to the United States during FY 1990 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1990 with federal refugee resettlement assistance under the Amerasian admissions program, as provided in paragraph (b) below.

Fourteen thousand of these admissions numbers shall be set aside for private sector admissions initiatives. Of these, 10,000 shall be used for the Soviet Union, and 4,000 for any region. The admission of refugees using these numbers shall be contingent upon the availability of private sector funding sufficient to cover the reasonable costs of such admissions.

b. The 125,000 admissions shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this Determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia Orderly Departure Program shall be reduced by one for each person admitted to the United States during FY 1990 with federal refugee resettlement assistance under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in Section 101(e) of Public Law 100-202 (Amerasians and their family members):

Africa	3,000
East Asia, First Asylum	25,000
East Asia, Orderly Departure Program	26,500
Soviet Union	50,000*
Eastern Europe	6,500
Near East/South Asia	6,500
Latin America/Caribbean	3,500
Not Designated	4,000**

*(including 10,000 funded by the private sector)
**(funded by the private sector)

Utilization of the 111,000 federally funded admissions numbers shall be limited by such public and private funds as shall be available to the Department of State and the Department of Health and Human Services for refugee and Amerasian admissions in FY 1990. You are hereby authorized and directed to so advise the Judiciary Committees of the Congress.

Unused admissions numbers allocated to a particular region within the 111,000 federally funded ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and

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directed to consult with the Judiciary Committees of the Congress prior to any such reallocation.

The 4,000 privately funded admissions not designated for any country or region may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. You are hereby authorized and directed to notify the Judiciary Committees of the Congress in advance of the intended use of these numbers.

c. An additional 5,000 refugee admissions numbers shall be made available during FY 1990 for the adjustment to permanent resident status under Section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under Section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with Section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)), I also specify, after appropriate consultation with the Congress, that the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos who have past or present ties to the United States or who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos, and their accompanying family members.

b. Present and former political prisoners and persons in imminent danger of loss of life in countries of Latin America and the Caribbean, and their accompanying family members.

c. Persons in the Soviet Union.

You are hereby authorized and directed to report this Determination to the Congress immediately and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 16, 1989.

cc: The Secretary of State
The Attorney General
The Secretary of Health and Human Services

[FR Doc. 89-24941
Filed 10-18-89; 2:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 202
Friday, October 20, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-186]

Oriental Fruit Fly; Removal of a Portion of Los Angeles County From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Oriental fruit fly regulations by removing a portion of Los Angeles County, California, from the list of quarantined areas. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The effect of this action is to remove restrictions imposed by Oriental fruit fly regulations on the interstate movement of regulated articles from this formerly quarantined area.

DATES: Interim rule effective October 16, 1989. Consideration will be given only to comments received on or before December 19, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-186.

Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective August 15, 1989, and published in the **Federal Register** on August 21, 1989 (54 FR 34477-34483, Docket No. 89-144), we established the Oriental fruit fly regulations and quarantined an area of Los Angeles County, California, in the West Covina area. In another interim rule, effective September 19, 1989, and published in the **Federal Register** on September 25, 1989 (54 FR 39161-39162, Docket No. 89-170), we amended the Oriental fruit fly regulations by adding an additional portion of Los Angeles County and an adjoining portion of Orange County, California, to the list of quarantined areas. This quarantined area is known as the Cerritos area.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the West Covina quarantined area in Los Angeles County, California. The last finding of Oriental fruit fly in this area was made on July 22, 1989.

Since then, no evidence of infestations has been found in that area. We have determined that infestations no longer exist in the West Covina quarantined area of Los Angeles County, California.

The Cerritos area of Los Angeles and Orange Counties, California, remains infested with Oriental fruit fly.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. A portion of Los Angeles County, California, in the West Covina area was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, and because the quarantined status of this portion of Los Angeles County imposes an unnecessary regulatory burden on the public, we have taken immediate action to remove these restrictions.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity in the

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quarantined area that may be affected by this rule. Within the West Covina area there are approximately 75 nurseries, 2 open fruit stands, 2 community gardens, and 25 locations producing cucumbers, tomatoes, and avocados. These small entities comprise less than ½ of 1 percent of the total number of small entities that move these articles interstate from nonquarantined areas in California. In addition, most of their sales are for local intrastate markets, not interstate markets, and were therefore not affected by the regulatory provisions we are removing. Those sales that were affected were generally of articles that could be moved, without significant added costs, after treatment in accordance with the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations.

Also, many of the nurseries sell other items in addition to the regulated articles, minimizing the effect of the quarantine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 161–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.93–3 [Amended]

2. In § 301.93–3, paragraph (c) is amended by removing the first paragraph under "California" that begins "Los Angeles County—That portion of the county in the West Covina area * * *".

Done in Washington, DC, this 16th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–24845 Filed 10–19–89; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 688]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 688 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 307,622 cartons during the period October 22 through October 28, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 688 (7 CFR part 910) is effective for the period October 22 through October 28, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on October 17, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 9 to 2 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910–LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.988 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.988 Lemon Regulation 688.

The quantity of lemons grown in California and Arizona which may be handled during the period October 22, 1989, through October 28, 1989, is established at 307,622 cartons.

Dated: October 18, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–24939 Filed 10–19–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[FV–89–052FR]

Raisins Produced From Grapes Grown in California; Revision of the Maturity Dockage System for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the maturity dockage system for natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins. Currently, handlers may acquire any lot of these raisins which contain 35.0 percent to 49.9 percent, by weight, of well-matured or reasonably well-matured raisins under a maturity dockage system. This action will reduce by 50 percent the dockage factors applied to such lots. This revision was recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the order. The purpose of the revision is to provide a more accurate determination of the creditable weight of lots of raisins which are delivered to handlers by producers.

EFFECTIVE DATE: October 20, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3920.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of raisin producers and a minority of raisin handlers may be classified as small entities.

This final rule revises the administrative rules and regulations of the raisin marketing order. This action was recommended by the RAC at its April 20, 1989 meeting.

The marketing order provides that handlers may receive producers' natural condition raisins which exceed the tolerance established for maturity (i.e., at least 50 percent of the raisins must be well-matured or reasonably well-matured) under the maturity dockage system. This system applies a weight reduction to individual lots of raisins which contain from 35.0 percent through 49.9 percent, by weight, well-matured or reasonably well-matured raisins. The weight reduction approximates the weight of the raisins needed to be removed in order for the lot to meet minimum grade requirements.

The dockage system is used for the following varietal types: natural (sun-dried) seedless raisins, golden seedless raisins, dipped seedless raisins, oleate and related seedless raisins, Monukkas, and other seedless raisins.

The creditable weight of each lot of raisins acquired by handlers under the maturity dockage sysem is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factors in the dockage table under § 989.213. Handlers acquire and producers are paid according to the creditable weight of raisins delivered to handlers. Lots of raisins containing 50.0 percent or more of raisins which are well-matured or reasonably well-matured have met what the industry calls the "B or better" maturity standard.

In addition to meeting the requirement that 50 percent or more of the raisins are well-matured or reasonably well-matured, lots of raisins must meet other requirements in order to be considered standard. Natural (sun-dried) seedless raisins, for example, must have been prepared from sound, wholesome, matured grapes that have been properly dried and cured. They must be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury. They must have the normal characteristic color, flavor, and odor of properly prepared raisins for that varietal type. They may contain no more than five percent, by weight, of underdeveloped raisins. They must be fairly free from shattered or loose end berries and be uniformly cured. These are most, but not all, of the requirements for standard raisins of the natural (sun-dried) seedless varietal type.

Handlers may also acquire producers' raisin lots which contain fewer than 50.0 percent, by weight, of well-matured or reasonably well-matured raisins. However, raisin lots containing 49.9 percent or less, by weight, of raisins which are well-matured or reasonably well-matured are subject to a dockage

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factor. These factors reduce the weight of the raisin lots by an amount approximating the weight of the raisins needed to be removed in order for the remainder of the lot to meet minimum grade requirements. Producers' payments are reduced accordingly. Raisin lots below the 35.0 percent level are considered off-grade and require reconditioning. Producers incur the reconditioning costs necessary to bring such lots within acceptable requirements.

Currently, the weight of the raisin lots containing between 45.0 percent and 49.9 percent well-matured or reasonably well-matured raisins is reduced by 0.1 percent for each 0.1 percent of well-matured or reasonably well-matured raisins the lot contains below 50.0 percent, down to 45.0 percent. The weight of lots containing between 40.0 percent and 44.9 percent well-matured or reasonably well-matured raisins is reduced an additional 0.2 percent for each 0.1 percent the lot is below 45.0 percent down to 40.0 percent. The weight of raisin lots containing between 35.0 percent and 39.9 percent raisins which are well-matured or reasonably well-matured is reduced an additional 0.3 percent for each 0.1 percent the lot is below 40.0 percent, down to 35.0 percent.

A majority of the RAC believes that the current dockage factors are too stringent and that applying them results in a creditable fruit weight which understates the maturity of lots of raisins in the three maturity levels mentioned above (45.0 to 49.9 percent, 40.0 to 44.9 percent, and 35.0 to 39.9 percent well-matured or reasonably well-matured). Therefore, the RAC has recommended revisions in the maturity dockage system in order to provide creditable fruit weights which better represent the maturity of the raisins.

The RAC has recommended that the dockage factors be reduced by 50 percent for each of the three maturity levels. Lots of the previously named varietal types containing between 45.0 percent to 49.9 percent well-matured or reasonably well-matured raisins will be docked 0.05 percent (i.e., the weight will be reduced by 0.05 percent) for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. Producers delivering raisins in the 40.0 percent to 44.9 percent well-matured or reasonably well-matured range will receive an additional 0.1 percent weight reduction for each 0.1 percent the raisins were below 45 percent, down to 40.0 percent. Producers delivering raisins in the 35.0 percent to 39.9 percent range will receive an additional 0.15 percent weight reduction for each 0.1 percent the raisins were below 40.0 percent, down to 35.0 percent. Lots containing 34.9 percent or less of raisins which are well-matured or reasonably well-matured will continue to be considered off-grade and require reconditioning before they could be acquired by handlers.

The maturity dockage system was implemented to deduct from the delivered weight an amount approximating the amount of raisins which would need to be removed by handlers during reconditioning to bring the lot of raisins to the 50 percent well-matured or reasonably well-matured level. This action is needed to provide creditable fruit weights which are more representative of the maturity of the raisins. Reducing the dockage factors will increase producer returns because the weight of raisin lots containing from 35 percent to 50 percent well-matured or reasonably well-matured raisins, will not be reduced as much as the rules currently provide. Since producers' payments are based on the creditable weight of the raisins, producers will be credited with delivering more raisins. This will increase producers' payments and the increases would be paid by handlers. In addition, this action may reduce producers' expenses because it may reduce the cost of reconditioning a lot of raisins to bring it to the 50 percent level.

Notice of this action was published in the August 24, 1989, issue of the **Federal Register** [54 FR 35192]. Written comments were invited from interested persons until September 8, 1989. One comment was received from Ernest A. Bedrosian, President of the National Raisin Company, in opposition to the proposal.

Mr. Bedrosian stated in his comment that, through experience at his packing facility, the original 0.1 percent dockage factor was more in line with the actual weight of raisins needed to be removed in order for the lot to meet minimum grade requirements. The RAC has determined, however, that applying the current 0.1 percent dockage factor results in a creditable fruit weight which sometimes understates the maturity of lots of raisins. Therefore, the RAC recommended that the dockage factors be reduced by 50 percent to obtain a creditable fruit weight which better represents the maturity levels of raisins. The Department agrees that this action is necessary in order to obtain more accurate creditable fruit weights which will reflect the actual maturity level of lots of raisins.

Mr. Bedrosian also stated that the recommendation was forced upon the independent handlers because they have a minority vote on the RAC. The membership of the RAC is in conformance with requirements specified in the order (§ 989.26), which was approved by producers in a referendum. The RAC membership is representative of the industry as a whole. A majority vote of the RAC indicated to the Department that the RAC believes this change is in the best interests of the industry.

Mr. Bedrosian asserted that this change will result in a much larger quantity of poor quality raisins, which would not be in the best interest of the consumer. He also stated that consumer prices will increase because of the extra processing costs that handlers will have to absorb. The maturity dockage factor represents only a small portion of the price determination of raisins. Therefore, the potential for this action to cause any significant increase in consumer prices is negligible. Further, producers are not likely to change their cultural practices and intentionally reduce the quality of their crops, since such a change would affect producers' income. Therefore, the Department doesn't believe there will be a larger quantity of poor quality raisins, as the commenter suggests. This action would provide for more accurate determinations of the maturity of raisins and is desirable for that reason. Accordingly, the Department has concluded that this action is not likely to reduce the quality of the raisins produced or to increase consumer prices.

Mr. Bedrosian also asserts that producers would not benefit because this action would artificially inflate raisin production due to the acceptance of larger quantities of lower quality raisins. Mr. Bedrosian feels that this could result in a lower volume of free tonnage raisins and an increased volume of reserve tonnage raisins. When volume regulations are in effect, free tonnage raisins may be shipped immediately into any market. Reserve tonnage raisins must be held for later sale. Thus, Mr. Bedrosian asserts that there would be fewer free tonnage raisins available for sale and less immediate returns to the producers. There is no indication that production figures would be inflated. Further, the RAC and the Department feel that it is unlikely for there to be significant increases in deliveries of low maturity raisins, since producers' payments are based on the creditable fruit weight of raisins delivered. Producers will continue to receive a larger payment for raisins that are 50 percent and higher well-matured or reasonably well-matured and raisin lots below the 50 percent level will continue to be docked. Some producers will receive a slightly higher price for raisins in the 35 to 50 percent range of maturity because of this change. This would be a benefit to producers. In addition, there is no expectation that lower quality raisins would enter the market, since outgoing quality requirements which packed raisins must meet will remain unchanged.

Therefore, based on the Department's evaluation of the information and recommendation submitted by the RAC, the comment is denied.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities. The action is expected to benefit producers by increasing their returns.

After consideration of the information and recommendations submitted by the RAC and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action will reduce the maturity dockage factor by 50 percent in order to provide a more accurate determination of the creditable fruit weight of producers' raisin deliveries. It should be effective as soon as possible since August 1 was the beginning of the 1989–90 crop year, and producers have begun delivering new crop raisins to handlers.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is revised to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 is revised to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Paragraphs (b), (c), and (d) of § 989.213 are revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 989.213 Maturity dockage.

* * * * *

(b) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 45.0 percent through 49.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured:	*Dockage factor*
50.0 or more	(1)
49.9	0.9995
49.8	.9990
49.7	.9985
49.6	.9980
49.5	.9975

[1] No dockage.

Note: Percentages less than the last percentage shown in the table, down to 45.0 percent, shall be expressed in the same increments as the foregoing, and the dockage for each such increment shall be .0005 less than the dockage factor for the preceding increment.

(c) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 40.0 percent through 44.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured:	*Dockage factor*
44.9	0.974
44.8	.973
44.7	.972
44.6	.971
44.5	.970
44.4	.969

Note: Percentages less than the last percentage shown in the table, down to 40.0 percent, shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

(d) Maturity dockage table applicable to lots of natural (sun-dried) seedless, golden seedless, dipped seedless, oleate and related seedless, Monukka, and other seedless raisins which contain 35.0 percent through 39.9 percent well-matured or reasonably well-matured raisins:

Percent well-matured or reasonably well-matured:	*Dockage factor*
39.9	0.9235
39.8	.9220
39.7	.9205
39.6	.9190
39.5	.9175
39.4	.9160

Note: Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment be .0015 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 34.9 percent or less of well-matured or reasonably well-matured raisins.

Dated: October 18, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–24942 Filed 10–19–89; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 80–019F]

RIN 0583–AA65

Immersion Cured and Dry Cured Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to prohibit the use of nitrate in the preparation of immersion cured bacon and dry cured bacon. This rule will also limit sodium nitrite to 120 parts per million (ppm) going into immersion cured bacon bellies and to 200 ppm going into dry cured bacon bellies. The principal effect of this rule is to reduce the possible formation of nitrosamines in bacon by prohibiting the use of nitrate and limiting the use of nitrite in the production of immersion cured and dry cured bacon. The regulations will also be amended to provide that massaged bacon, a new product which is similar to pumped bacon, will be regulated like pumped bacon, for which the use of nitrate is already prohibited.

This rule also corrects two typographical errors in § 318.7(c)(4) concerning the quantitation of nitrite in cured products.

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EFFECTIVE DATE: January 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator also has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601). There are approximately 200 establishments now producing either dry cured, immersion cured or massaged bacon products. All of these establishments would be subject to this rule. Of these 200 establishments, 5 produce either massaged or immersion cured bacon and the remaining 195 produce dry cured bacon. The majority of these 200 establishments can be considered as small entities, because they produce a low volume of bacon products per establishment. Information from an Agricultural Research Service survey indicates that the majority of establishments which produce dry cured bacon no longer use nitrate in their cure.[1] Thus, the majority of affected establishments are now operating in compliance with the requirements on use of nitrate. The few establishments which are still using nitrate as part of their curing process must eliminate its use but may substitute nitrite to achieve the same technical effect. There is no significant cost difference between the purchase of nitrate or nitrite. Limiting the amount of nitrite that may be used in the product is expected to have a positive affect on producers as they will be able to use less nitrite and thus save on the cost of purchasing nitrite.

Background

On January 13, 1989, the Food Safety and Inspection Service (FSIS) published a proposal in the **Federal Register** (54 FR 1371) to amend the Federal meat inspection regulations to prohibit the use of nitrate in the preparation of dry cured and immersion cured bacon, and to limit the use of nitrite [2] to 200 parts per million (ppm) in dry cured bacon bellies and to 120 ppm in immersion cured bacon bellies. It also proposed to apply the pumped bacon requirements to massaged bacon and correct two typographical errors.

Bacon may be produced by any of three principal curing methods. Most bacon, about 98 percent, is prepared by injecting or tumbling a curing solution containing water, salt, flavorings and nitrite into pork bellies so that there is an immediate penetration of the cure into the muscle tissues. This is referred to as pumped bacon. The other two percent are divided between immersion cured and dry cured bacon. Immersion cured bacon is prepared by placing pork bellies in vats and then either completely covering them with the curing solution or adding a dry cure mixture and allowing the natural tissue fluids extracted by the cure to cover the bacon. Dry cured bacon is produced by rubbing a dry mixture of salt, flavorings and nitrite onto the surface of each pork belly. The dry cure must be dissolved by the natural tissue fluids and allowed to diffuse throughout the meat. The curing time is shortest for pumped bacon and longest for dry cured bacon.

The use of nitrate in the curing of meat can be traced back several hundred years. In the early 1900's, chemists and meat scientists began to understand some of the mechanisms of the nitrate curing process. Nitrate's principal role is as a source of nitrite which fixes the characteristic pink color in cured meat products. In recognition of this, the Department subsequently approved the direct use of nitrites in cured meats to reduce dependence on the unreliable conversion of nitrate to nitrite. Subsequently, nitrite was found to have additional benefits which increased shelflife and safety of cured meats. Nitrite retards rancidity and inhibits the growth of some bacteria.

Nitrate and nitrite have continued to be used separately and in combination in many cured products. With current technology nitrate remains useful as a source of residual nitrite in certain products such as hams and sausages that are cured for several weeks. Agency surveys of dry cured hams and sausages using nitrate have not demonstrated the nitrosamine problem that exists with bacon, as described below.

Until the late 1960's, the Department believed that acute toxicity from excessive consumption of nitrite was the only concern with its use. However, in 1971, analysts at the Department and the Food and Drug Administration reported nitrosamines in some meat food products (especially pumped bacon) to which nitrite had been added. Nitrosamines are formed when nitrite combines with secondary and tertiary amines in the meat product under appropriate conditions. Many of the nitrosamines, including some found in pumped bacon, have been demonstrated to be carcinogenic to laboratory animals.[3] Nitrosamines are apparently formed in bacon during cooking and can be reduced or prevented by limiting the residual nitrite and adding certain inhibitors of the reaction to the product.

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for assuring that meat and meat food products distributed to consumers are wholesome and not adulterated (21 U.S.C. 602). Section 6 of the FMIA (21 U.S.C. 606) directs the Secretary, through inspectors, to examine all meat food products prepared for distribution in commerce in any slaughtering, meat canning, salting, packing, rendering, or similar establishment. Inspectors shall mark or label as "Inspected and passed" all such products found to be not adulterated and "Inspected and condemned" all such products found to be adulterated within the meaning of section 1(m) of the FMIA (21 U.S.C. 601(m)).

Section 1(m) of the FMIA defines an adulterated product, in part, as product that "* * * bears or contains any poisonous or deleterious substance which may render it injurious to health. * * *" (21 U.S.C. 601(m)(1)).

In response to the finding of nitrosamines in pumped bacon, FSIS published a regulation in 1978 prohibiting the use of nitrate in pumped bacon, limiting the amount of ingoing nitrite in pumped bacon to 120 ppm, and requiring that sodium ascorbate or sodium erythorbate be added at 550 ppm (43 FR 20992). Sodium ascorbate and sodium erythorbate are compounds capable of decreasing nitrosamine formation in pumped bacon. Since that time, an active sampling and nitrosamine testing program for pumped bacon has been in effect.

Although FSIS did not address the levels of nitrites and nitrates in dry cured products in the rulemaking proceedings concerning pumped bacon, FSIS did begin an assessment to determine whether the formation of nitrosamines in dry cured products was of similar regulatory concern. The principal findings were as follows:

1. In a 1976 market basket survey, the Food and Drug Administration tested one sample of dry cured bacon. No nitrosamines were detected; however, formulation of the cure and processing procedures were unknown.

2. In October 1977, FSIS published a notice [42 FR 55626] requesting information as to whether carcinogenic nitrosamines are formed in cured meat products as a result of ordinary conditions of processing and/or preparation for consumption. The Nitrite Safety Council, an organization composed of representatives from several meat processor trade associations, submitted data [4] in response to this request. The data consisted of the analytical results from 15 samples of dry cured bacon collected and analyzed by the Nitrite Safety Council. Of these samples, 13 had been cured with nitrite, or nitrite and nitrate in combination. The ingoing range was from .027 ounce of nitrite alone per 100 pounds of meat to 3 ounces of nitrate plus 1 ounce of nitrite per 100 pounds of meat. One of the other two samples received the maximum allowable amount of sodium nitrate (3.5 ounces per 100 pounds of meat) but no nitrite. Nitrosamines were not found at confirmable levels in this sample. In the 13 samples in which nitrite had been used in processing, findings by the mineral oil vacuum distillation and thermal energy analyzer (TEA) screening test range from undetectable to 180 parts per billion (ppb) of nitrosopyrrolidine (a carcinogenic nitrosamine). Seven of the 13 findings indicated that carcinogenic nitrosamines were present at levels of 10 ppb or greater.

The Department monitored the collection and preparation of the samples analyzed by the Council. In addition, the Department analyzed companion samples to those tested by the Council. These monitoring results, including successful confirmation in all cases attempted, established the validity of the data submitted by the Council.

3. To get additional information on the occurrence of nitrosamines in bacon made with dry curing materials, the Department, in 1978, tested 39 additional bacon samples.[5] The results of the screening tests ranged from undetectable to 199 ppb. In 18 of the 39 samples, there were levels of carcinogenic nitrosamines widely recognized by scientists as confirmable. Three of these samples were selected as part of a nine-sample confirmation effort for TEA results. In all three cases, the presence of carcinogenic nitrosamines was confirmed.

4. Finally, in 1979, the Nitrite Safety Council reported additional data as part of a small study [6] to determine the effect of reducing ingoing nitrite to 120 ppm and adding sodium erythorbate as a nitrosamine inhibitor in pork bellies. The study was conducted in four cooperating processing establishments. Analyses of the samples were limited to a TEA screening of 10 individual pork bellies from one establishment and three 10-belly composite samples each from a different establishment. Analyses of these pork bellies revealed the presence of nitrosamines from 4 to 16 ppb in the individual bellies and 8 to 18 ppb in the composite belly samples. Although the Council reported that the results indicate that acceptable dry cured bacon with a very low potential for nitrosamine formation can be produced by using reduced levels of added sodium nitrite coupled with sodium erythorbate, the study was too small to permit the Department to draw any firm conclusions. However, nitrosamines were found in one of the composite samples.

The foregoing data show that the incidence of confirmable levels of nitrosamines in bacon prepared with dry curing materials may be high. Therefore, on June 27, 1980, FSIS published a proposed rule (45 FR 43425) to regulate production procedures for dry cured bacon. The proposal would have established a monitoring program and specific requirements for water activity and salt content. Most of the 117 commenters opposed the proposed rule because they believed the proposed water activity and salt content would make the product unsalable. Commenters also believed the monitoring program would result in many small processors closing. However, because of the potential adverse impacts on these producers and the inconclusive data on which the proposal was based, the June 27, 1980 proposal was withdrawn.

At the time the 1980 proposal was published, FSIS formed an expert task force to study the manufacture of dry cured bacon. The task force initiated a survey [7] of dry cured bacon producers to gather information on the current production practices. Producers were asked to voluntarily submit formulations and samples of dry cured product for laboratory testing. Of the 143 samples which were submitted, 135 were tested. The samples were analyzed for residual nitrate and nitrite, salt, moisture, nitrosamines, pH, fat, protein, and water activity.

Throughout the several tests conducted with dry cured bacon, nitrosamines were consistently found. The task force concluded that residual nitrite was a primary cause of high nitrosamine levels in high fat products such as bacon. Curing time in excess of a week was a secondary factor contributing to high nitrosamine levels in dry cured bacon. With the information gained from the survey, the task force prepared guidelines in 1983 for the manufacture of dry cured bacon. The guidelines recommended that manufacturers carefully control nitrite by (1) accurately measuring the amount added, (2) adding no more than 200 ppm of nitrite and (3) adding no nitrate. In addition, the guidelines recommended that bellies should be sorted according to weight and thickness; that bellies should not be cured for more than 7 days per inch of thickness at 36-43° F.; and that bellies should be cured with the skin off and not processed to excessive dryness. Since nitrate would be of little use in product cured for less than a week and it would be an uncontrolled source of residual nitrite, the task force recommended that nitrate not be used to cure bacon.

Although the task force's 1980 survey was not intended to include immersion cured bacon, six samples were received which had been cured by this method. Five of the six samples had nitrosopyrrolidine levels greater than 10 ppb and three of these samples had levels greater than 20 ppb. This data indicates that immersion cured bacon

[1] Fiddler, W., Pensabene, J.W., Gates, R.A., Foster, J.M. & Smith, W.J. (1969) *J. Assoc. Off. Anal. Chem.* 72, 19-22. A copy of the ARS Survey is available for public inspection in the office of the FSIS Hearing Clerk.

[2] As used in this document, the term "nitrite" refers to either sodium nitrite or potassium nitrite. However, unless specifically noted otherwise, quantity declarations are stated on the basis of the sodium salt. A conversion to approximate potassium salt equivalent is accomplished by multiplying by 1.23.

[3] Preussman, R., Schmohl, D. & Eisenbrand, G. (1977) Carcinogenicity of N-nitrosopyrrolidine: dose study in rats. *Z. Krebsforsh* 90 161-166.

[4] A copy of this data is available for public inspection in the office of the FSIS Hearing Clerk.

[5] The 39 bacon samples were part of a larger survey conducted by the Department on dry cured hams, pork shoulders, and bacon.

[6] A copy of this study is available for public inspection in the office of the FSIS Hearing Clerk.

[7] A copy of this survey report is available for public inspection in the office of the FSIS Hearing Clerk.

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also has a significant potential for nitrosamine formation. To verify these findings, and assess the nitrosamine levels in immersion cured bacon, an additional survey was done in 1980. This survey tested 59 samples of regular immersion cured bacon. Forty-nine percent of these samples had introsamine values equal to or greater than 17 ppb. This survey confirmed that immersion cured bacon has a potential for nitrosamine formation which is associated with residual nitrite in the raw product.

On January 13, 1989, FSIS published a proposed rule (54 FR 1371) to amend § 318.7(b) of the Federal meat inspection regulations (9 CFR 318.7(b)) to provide that certain provisions relating to a laboratory monitoring test system, apply only to pumped bacon (9 CFR 318.7(b)(1)). Requirements for immersion cured bacon would also be set forth separately in the regulations; they would provide for the use of ingoing nitrite at 120 ppm, or an equivalent amount of potassium nitrite (148 ppm). These are the same as the amounts permitted in pumped bacon. Since the cure ingredients are already in solution surrounding the pork bellies, diffusion of the nitrite into the product is facilitated.

For dry cured bacon, the manner by which dry curing materials enter the pork bellies is essentially one of absorption. For dry cured bacon, the proposal provided that nitrite would be limited to 200 ppm going into the product. To accurately control the amount of nitrite in the product and because of the variability of the conversion of nitrate to nitrite, the use of nitrate would be prohibited in both immersion cured bacon and dry cured bacon as it now is in pumped bacon.

A recent innovation in bacon manufacturing has been the introduction of massaged bacon. In this process pork bellies are placed in drums with the curing solution and tumbled until the cure is absorbed. All of the curing solution is incorporated into the bacon. As such, it is similar to pumped bacon where the curing solution is injected into the pork belly. In recognizing the similarity between these two products, FSIS would treat them the same and apply the pumped bacon requirements to massaged bacon.

Two typographical errors which were discovered in the chart in § 318.7(c)(4) of the regulations (9 CFR 318.7(c)(4)) in which the word "nitrate" should be "nitrite", would also be corrected.

Comments on the Proposed Rule

On January 13, 1989, a proposed rule was published. FSIS received four comments in response to the proposal—one from a consumer, one from a professional association and two from State-inspected establishments.

Comments:

1. A consumer supports the action to prohibit the use of nitrate in the preparation of bacon, but also believes that nitrite should also be eliminated from bacon.

Response. Meat science experience has shown that nitrite is necessary to cure bacon and that its use can be controlled to produce safe product. In addition to fixing color in cured meats, nitrite provides to other benefits: It inhibits rancidity and it inhibits microbiological growth. Therefore, until an efficacious substitute is found, FSIS will continue to permit the use of nitrite in bacon.

2. The American Veterinary Medical Association supports the action to remove nitrate from dry cured bacon and to limit the amount of nitrite. However, it cautioned that the Agency should be sure that these changes do not allow other microbiological problems of public health significance to emerge.

Response. In developing this rule, FSIS has considered the potential for microbial adulteration of reduced nitrite product. Since there are many manufacturers presently conforming to this rule and present knowledge of microbiology indicates that the potential for adulteration is negligible, FSIS believes this rule will not result in the emergence of new microbiological problems.

3. Two comments which oppose the regulation came from State inspected meat processors. The first commenter claims that he is using old curing recipes which require the use of nitrate, and that he will lose business if he must change his curing methods.

Response. FSIS believes that it is important to prohibit the use of nitrate because the process which produces nitrite from nitrate cannot be accurately controlled. Thus, an excess of nitrite may remain in the cured bacon which will react with the naturally occurring amines during frying and create significant levels of carcinogenic nitrosamines. Additionally, the relatively short curing times used for bacon permit little nitrate to be converted to nitrite. Thus, the nitrate is not a significant factor during the product's manufacture. However, during storage, shipping and retailing, additional nitrate converts to nitrite, raising the residual nitrite level, and increasing the nitrosamine levels upon cooking. The State inspection program and the State University Meat Science Department can assist the processor in adjusting curing formulation to be in compliance with this regulation and still meet the customer's expectations.

4. The second opposing commenter, also a State inspected processor, first questioned if the proposed regulation would apply to custom exempt product. FSIS responded that since the adulteration provisions of the Federal Meat Inspection Act apply to custom products (see 21 U.S.C. 623(c)) and products containing nitrosamines are adulterated, the regulation would apply. This individual then responded after the close of the comment period with a letter opposing the regulation.

In this letter the commenter stated that it is difficult to control the ingoing nitrite. It would require weighing each pair of bellies because the diet and breed of pig affect the absorption rate. The additional cost would be passed on to the customer who would protest the charges. The commenter also stated that the regulations do not allow for the local custom of using rind-on side pork; and, that the regulation would cause a large burden on the State inspectors since they would have to enforce it.

Response. The active ingredient in the curing process is nitrite, which is easier to control directly than nitrate, since the conversion of nitrate to nitrite is not consistent and occurs after the product is in storage. If the absorption rate is affected by diet and breed, then it is even more important to control the amount of ingoing nitrite to prevent nitrosamine formation.

The task force recommended weighing bellies individually or separating them by size so that cure application would be uniform for different sizes. Controlling the amount of curing mixture is not only important to limit the amount of nitrite and reduce nitrosamine formation, but also to make a product that is consistent and that meets the customer's expectations.

This regulation does not prohibit the production of rind-on side pork. It was the recommendation of the task force that the bellies be skinned; however, that is not a requirement. If rind-on bellies are cured, then an estimated weight of the skinless bellies is required to calculate the appropriate amount of nitrite in the cure. The Agency does not foresee an increased burden on the inspection programs, since there is no sampling program mandated for dry-cured and immersion cured bacon. The normal inspection oversight should be sufficient to enforce this regulation.

Final rule

For reasons set forth in the preamble, title 9, subchapter A, part 318, of the Code of Federal Regulations is amended as set forth below:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 318.7 is amended by revising paragraph (b) introductory text and the introductory phrase of paragraph (b)(1), and by adding new paragraphs (b)(5) and (b)(6) to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(b) Requirements for the use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon. Nitrates shall not be used in curing bacon.

(1) *Pumped bacon.* With respect to bacon injected with curing ingredients and massaged bacon: * * *

* * * * *

(5) *Immersion cured bacon.* Immersion cured bacon may be placed in a brine solution containing salt, nitrite and flavoring material or in a container with salt, nitrite and flavoring material. Sodium nitrite shall not exceed 120 ppm ingoing or an equivalent amount of potassium nitrite (148 ppm ingoing) based on the actual or estimated skin-free green weight of the bacon bellies.

(6) *Bacon made with dry curing materials.* With respect to bacon made with dry curing materials, the product shall be cured by applying a premeasured amount of cure mixture to the bacon belly surfaces, completely covering the surfaces. Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

3. Section 318.7(b)(2) is amended by changing each reference to the word "bacon" to read "pumped bacon".

4. In the chart in § 318.7(c)(4), the listing for the curing agent sodium or potassium nitrite for the purpose to fix color is corrected by changing "nitrate" in the last sentence under "Substance" to read "nitrite" and by changing "sodium nitrate" in the next to last sentence under "Amount" to read "Sodium nitrite."

Done at Washington, DC, on October 17, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-24777 Filed 10-19-89; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-93-AD; Amdt. 39-6366]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires a one-time inspection of certain landing gear (MLG) uplock control bellcrank support bearings, and replacement, if necessary. This amendment is prompted by one report that both MLG's did not extend in a free-fall mode due to a jam caused by defective bearings. This condition, if not corrected, could result in the inability to extend the MLG in the free-fall mode following a failure of the normal extend mode.

EFFECTIVE DATE: November 27, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Airbus Industrie Model A300 series airplanes, which requires a one-time inspection of certain main landing gear (MLG) uplock control bellcrank support bearings, and replacement, if necessary, was published in the **Federal Register** on July 11, 1989 (54 FR 29053).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the proposal.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, serial numbers up to and including 253, certificated in any category. Compliance is required within 100 landings after the effective date of this AD, unless previously accomplished.

To prevent malfunction of the main landing gear in the free fall mode, accomplish the following:

A. Inspect both main landing gears for defective uplock control bellcrank support bearings, P/N NSA 8116-16, in accordance with All Operators Telex (AOT) 32/88/02, dated December 14, 1988. If a defective bearing is found, replace it with a serviceable bearing prior to further flight.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 27, 1989.

Issued in Seattle, Washington, on October 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24787 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-106-AD; Amdt. 39-6367]

Airworthiness Directives; Boeing Model 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-400 series airplanes, which requires repetitive inspections for chafing between the number two engine throttle cable and adjacent right wing front spar bracket. This amendment is prompted by one report of throttle cable failure and additional reports of a significant number of the cables inspected and found to be worn or frayed on the Boeing 737-300 series airplane. In this area, the Model 737-400 is similar to the Model 737-300. This condition, if not corrected, could result in throttle cable separations and subsequent loss of engine throttle control.

EFFECTIVE DATE: November 27, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-400 series airplanes, which requires a repetitive inspection of the number two engine throttle cable, located near the right wing front spar, for chafing, was published in the **Federal Register** on July 18, 1989 (54 FR 30061).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Air Transport Association, the sole commenter responding to our proposal, was fully supportive.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 50 Model 737-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-400 series airplanes, equipped with CFM International CFM56-3 series engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for cable separation due to the number two engine throttle cable chafing against the right wing front spar bracket, accomplish the following:

A. Prior to the accumulation of 300 flight hours after the effective date of this AD, unless previously accomplished within the last 700 flight hours, and thereafter at intervals not to exceed 1,000 flight hours, gain access to the fuel shut-off cable pulley bracket near the right wing front spar Station

124 and inspect the number two engine throttle cable for wear. Replace the cable, before further flight, if cable wear exceeds acceptable wear limits specified in section 20-20-31 of the Model 737 Maintenance Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 27, 1989.

Issued in Seattle, Washington, on October 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24788 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-86-AD; Amdt. 39-6368]

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 series airplanes, which requires replacement of certain glide slope antennae. This amendment is prompted by numerous reports of erratic glide slope data during instrument flight rules (IFR) approaches. This condition, if not corrected, could result in airplanes receiving inaccurate glide slope data when landing in instrument weather conditions.

EFFECTIVE DATE: November 27, 1989.

ADDRESSES: The applicable service information may be obtained from EMBRAER, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. A.E. Clark, Systems and Equipment Branch, ACE-130A; telephone (404) 991-3020. Mailing address: FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 series airplanes, which would require replacement of certain glide slope antennae, was published in the **Federal Register** on June 23, 1989 (54 FR 26389).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, EMBRAER, supported the rule, but indicated that the manufacturer of the antenna has advised that, due to limited parts availability, it will be unable to provide the required parts to the 80 affected airplanes within the proposed 30-day compliance time. In light of this, the commenter requested that the compliance time be extended to 100 days. As justification of this extension, the commenter stated that glide slope oscillation is easily recognized (and corrected) by the pilots, and that current statistical data show that, in all reported cases of glide slope oscillation, landings were made visually without any further incident. The FAA has confirmed the parts availability problem and, therefore, concurs with the commenter's request. The FAA has determined that replacement of the antennae within 100 days will not adversely affect safety. The final rule has been revised accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 80 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for parts is $510. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

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Empress Brasileira de Aeronautica, S.A. (EMBRAER): Applies to Model EMB-120 series airplanes, as listed in EMBRAER Service Bulletin 120-034-0072, dated April 14, 1988, certificated in any category. Compliance is required within 100 days after the effective date of this AD, unless previously accomplished.

To prevent erratic glide slope information during IFR approaches, accomplish the following:

A. Replace the Chelton glide slope antenna, P/N 17-21F6P3, with a Collins glide slope antenna type 37P5, P/N 522-0700-023, and install a pedestal-type support P/N 120-47294-001, in accordance with EMBRAER Service Bulletin 120-034-0072, dated April 14, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective November 27, 1989.

Issued in Seattle, Washington, on October 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24790 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWA-2]

Alteration of VOR Federal Airways; Appleton, OH; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of VOR Federal Airway V-45 located in the vicinity of Appleton, OH. Appleton, OH, was inadvertently omitted from the description change of V-45 in Airspace Docket 89-AWA-2; this action corrects that mistake.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 89-22044, published on September 19, 1989, altered the descriptions of several VOR Federal airways located in the Detroit metropolitan area (54 FR 38510). These airway changes are the result of the reorganization of the Detroit Metropolitan Air Traffic Control Tower's and Cleveland Air Route Traffic Control Center's airspace. This action improves traffic flow in that area and reduces controller workload. However, a mistake was discovered in the description of V-45; this action corrects that mistake.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 89-22044, as published in the **Federal Register** on September 19, 1989. (54 FR 38510) is corrected to read as follows:

§ 71.123 [Corrected]

V-45 [Corrected]

By removing the words "Appleton, OH. From Youngstown, OH, INT Youngstown 272° and Akron, OH, 298° radials; INT Akron 298° and Waterville, OH, 085° radials; Waterville; Jackson, MI;" and substituting the words "Appleton, OH; Waterville, OH; INT Waterville 306° and Jackson, MI, 166° radials; Jackson;"

Issued in Washington, DC, on October 12, 1989.

Richard Huff,

Acting Manager, Airspoce-Rules and Aeronautical Information Division.

[FR Doc. 89-24799 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26038; Amdt. No. 1411]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on October 13, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g)(revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/OME or TACAN; § 97.25 LOC, LOC/DME, LDA, LOA/DME, SDF, SDF/DME, § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 11, 1990

Clayton, AL—Clayton Muni, VOR/DME RWY 27, Amdt. 1
Corning, AR—Corning Muni, VOR/DME-A, Amdt. 1
Cleveland, MS—Cleveland Muni, VOR-A, Amdt. 7
Cleveland, MS—Cleveland Muni, NDB RWY 17, Amdt. 5
Walterboro, SC—Walterboro Muni, NDB RWY 23, Amdt. 8

. . . Effective November 16, 1989

Waterloo, IA—Waterloo Muni, VOR RWY 6, Amdt. 2
Waterloo, IA—Waterloo Muni, VOR RWY 12, Amdt. 9
Waterloo, IA—Waterloo Muni, VOR RWY 18, Amdt. 7
Waterloo, IA—Waterloo Muni, VOR RWY 24, Amdt. 15
Waterloo, IA—Waterloo Muni, VOR RWY 36, Amdt. 16
Waterloo, IA—Waterloo Muni, VOR/DME RWY 30, Amdt. 14
Waterloo, IA—Waterloo Muni, LOC BC RWY 30, Amdt. 9
Waterloo, IA—Waterloo Muni, NDB RWY 12, Amdt. 9
Waterloo, 1A—Waterloo Muni, ILS RWY 12, Amdt. 7
Aurora, NE—Aurora Muni, VOR-A, Amdt. 3
Aurora, NE—Aurora Muni, NDB RWY 16, Orig.
Aurora, NE—Aurora Muni, NDB RWY 16, Amdt. 1, CANCELLED
Dayton, OH—James M. Cox-Dayton Intl, ILS RWY 24R, Amdt. 5
Big Spring, TX—Big Spring MC Mahon-Wrinkle, VOR/DME RWY 17, Amdt. 6
Big Spring, TX—Big Spring MC Mahon-Wrinkle, VOR/DME RWY 35, Amdt. 6
Conroe, TX—Montgomery County, NDB RWY 14, Orig.
La Porte, TX—La Porte Muni, NDB RWY 30, Orig.
La Porte, TX—La Porte Muni, NDB RWY 30, Amdt. 3, CANCELLED

[FR Doc. 89-24802 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 24722; Amdt. No. 91-213]

Night-Visual Flight Rules Visibility and Distance From Clouds Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an editorial error which appeared in a final rule, published on September 29, 1989 (54 FR 40324), establishing standard visibility and cloud clearance minimums for night visual flight rules operations. This action corrects that error.

EFFECTIVE DATE: 0901 u.t.c., November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Robert L Laser, Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9251.

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SUPPLEMENTARY INFORMATION:

History

On September 29, 1989, the Department of Transportation published a final rule, Federal Register Document 89-22990, establishing standard visibility and cloud clearance minimums for night-visual flight rules operations. The regulatory language was incorrectly stated in paragraph (b)(2), page 40326. This action corrects that error.

Correction to Final Rule

An editorial error in the regulatory text of Amendment No. 91-213, page 40326, third column, bottom page, is corrected by making the following changes:

§ 91.105 [Corrected]

In the second line of the first sentence under § 91.105(b)(2), remove the word "greater" and substitute with the words "not less".

Issued in Washington, DC, on October 13, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-24801 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Changes to NASA Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Grants and Cooperative Agreements regulations are amended to (1) require General Counsel review of deviations to Part 1260, (2) clarify award instrument selection criteria, (3) provide coverage for program income, and (4) revise the patent rights requirements to conform to Department of Commerce regulations.

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546. Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The Grants and Cooperative Agreements Handbook (GCAHB) contains NASA regulations for the award and administration of grants and cooperative agreements, including NASA implementing instructions for applicable statutues, Executive Orders, OMB Circulars and other documents of general applicability. The amendments to the GCAHB and part 1260 made by this Final Rule were previously published as a proposed rule for public comment on Wednesday, August 30, 1989 (54 FR 35890). No public comment requiring substantive changes was received. The GCAHB, including amendments, is available to the public and NASA grantees on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock No. 933-001-00000-8. It is not available directly from NASA.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980, nor does it substantially modify requirements associated with current OMB approval numbers 2700-0045 and 2700-0048.

List of Subjects in 14 CFR Part 1260

Grants.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1260—[AMENDED]

1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: Pub. L. 97-258, 31 U.S.C. 6301 et seq.

Subpart 1—General

§ 1260.103 [Amended]

2. In § 1260.103, in the first sentence of paragraph (a), the phrase "NASA policy directives," is removed; the word "complete" is removed, and the words "detailed" is added in its place.

§ 1260.105 [Amended]

3. In § 1260.105, paragraph (d), the word "Notice" is removed, and the words "Information Circular" are added in its place.

§ 1260.106 [Amended]

4. Section 1260.106 is amended as set forth below:

a. Paragraph (a)(9) is added to read as follows: "(9) Any other action described elsewhere in this Handbook as a deviation."

b. In paragraph (b), the period is removed after the word "representative", and the phrase "after review by Office of General Counsel." is added at the end of the paragraph.

c. In paragraph (c), introductory text, second sentence, the phrase "reviewed by local counsel," is added between the words "be" and "signed".

5. In § 1260.109, paragraph (d) is added to read as follows:

§ 1260.109 Prohibitions.

* * * * *

(d) Grants and cooperative agreements shall not be used as legal instruments when the primary purpose of the award is to pay the costs of travel ("Travel Grant") or for the purchase of equipment or supplies ("Equipment Grant"). (This restriction does not preclude otherwise allowable expenditures for travel, equipment or supplies in support of awards made pursuant to § 1260.203.)

Subpart 2—Basic Policies

§ 1260.201 [Amended]

6. Section 1260.201 is amended as set forth below:

a. In paragraph (a), introductory text, the phrase "required basic research" is removed, and the phrase "required research and research related activities" is added in its place.

b. In paragraph (a)(1), the word "basic" is removed.

§ 1260.203 [Amended]

7. Section 1260.203 is amended as set forth below:

a. In paragraph (a)(1), the sentence "Instrument selection will be made on the basis of this section, rather than on direct local interpretation of Pub. L. 97-258." is removed, and the following is added in its place: "As a matter of policy, NASA's use of grants, grant regulations and administrative procedures are tailored to educational institutions. Therefore, instrument selection will be made on the basis of this § 1260.203, which accommodates both statute and policy, rather than any additional local interpretation of Public Law 97-258."

b. In paragraph (a)(3), the following sentence is added at the end of the paragraph: "A proposed award which exhibits the general characteristics set forth in § 1260.203(b)(1) meets the above-described statutory criteria for use of the grant instrument."

c. In paragraph (b), introductory text, the second sentence, beginning "Research grants * * *" and the third

sentence beginning "Any exceptions * * *" are removed, and the following text is added in their place: Research grants and cooperative agreements may be awarded only to nonprofit institutions of higher education or to nonprofit organizations whose primary purpose is the conduct of scientific research to support research or research-related efforts. Conferences which clearly relate to and have potential for contributing to NASA research interests are considered to be research-related. Research in any academic discipline bearing on NASA research interests normally will qualify as research-related; however, advice of counsel should be sought in unusual situations (see § 1260.301(c)). Similarly, in instances where use of the grant instrument and organizational eligibility does not clearly require a deviation, but where unusual project activities or organizational attributes are evident, advice of local counsel should be obtained. "Travel Grants" or "Equipment Grants" are not authorized as research-related. Award of grants or cooperative agreements to types of organizations or for purposes other than set forth in this § 1260.203(b) requires a deviation (see § 1260.106).

d. In paragraph (b)(1)(i), the semicolon is removed, a comma is added in its place, and the words "or attempting to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques and advance the state of the art;" are added to complete the sentence.

e. In paragraph (b)(1)(v), the word "and" is removed.

f. In paragraph (b)(1)(vi), the period is removed, a semicolon is added in its place, and the word "and" is added to complete the sentence.

g. In paragraph (b)(1)(vii) is added to read as follows:

(vii) The effort is research or research-related.

§ 1260.204 [Amended]

8. Section 1260.204 is amended as set forth below:

a. In paragraph (a), the abbreviation "NPD" is revised to read "NMI".

b. In paragraph (b), the letter "E" is revised to read "EPM-20".

9. Section 1260.209 is revised to read as follows:

§ 1260.209 Property rights in inventions.

(a) The disposition of rights in inventions made by small business firms and nonprofit organizations under contracts, grants and cooperative agreements (including subcontracts thereunder) for the performance of experimental, developmental or research work funded in whole or in part by NASA is governed by chapter 18 of title 35, United States Code (Pub. L. 95-517, Pub. L. 98-620). The disposition of rights to inventions made by other than a small business firm or nonprofit organization under contracts, grants or cooperative agreements (including subcontracts thereunder) in the performance of experimental, developmental, research, design or engineering work for NASA is governed by section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457), and to the extent consistent with that law the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and section 1(b)(4) of Executive Order 12591, dated April 10, 1987. The implementation of the requirements of Chapter 18 of title 35, United States Code for grants and cooperative agreements is set forth in 37 CFR 401. The implementation of the National Aeronautics and Space Act of 1958, as amended, is set forth in NASA FAR Supplement 18-27.373 (48 CFR 1827.373).

(b) In accordance with paragraph (a) of this section, exhibit G, which is the clause required by 37 CFR 401.414 customized for NASA pursuant to 37 CFR 401.5, shall apply to all grants and cooperative agreements entered into under this Handbook unless either:

(1) The grantee is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government; or

(2) The grantee is not a nonprofit organization or an alternate provision is to be used in accordance with 37 CFR 401.3.

If the circumstances in paragraph (b)(1) of this section exist, the clause "Invention Reporting and Rights—Foreign" in NASA FAR Supplement 18-52.227-85 (48 CFR 1852.227-85) (suitably tailored to identify the parties and the instrument) may be used as a special condition unless in consultation with installation Patent Counsel, a different provision would be more appropriate. A deviation is not required in this situation. If, in accordance with paragraph (b)(2) of this section, the grantee is not a nonprofit organization or an alternate provision is to be used, a deviation, including concurrence by installation Patent Counsel, is required.

(c) Reports required pursuant to § 1260.409(b) of this Handbook shall be submitted to the grants officer, with a copy to the installation Patent Counsel.

10. Section 1260.210 is revised to read as follows:

§ 1260.210 Debarment and suspension; and drug-free workplace.

Grants officers shall follow the procedures in NMI 5101.31, Delegation of Authority—Debarment and Suspension Under Grants, Cooperative Agreements and Other Nonprocurement Transactions; and Requirements for a Drug-Free Workplace (Grants), in implementation of 14 CFR part 1265. Before making an award, the grants officer shall ensure that the participant's status has been verified [14 CFR 1265.505 (d) and (e)] and the certification requirements at 14 CFR 1265.510 and 14 CFR 1265.630 have been met. If the required certifications have not been submitted with the proposal, the grants officer shall obtain them before proceeding. However, NASA shall not require any particular form or format. Installations shall not impose local requirements for general submission of certifications with solicited or unsolicited proposals (except as may be otherwise authorized by this Handbook).

Subpart 3—Award of Grants and Cooperative Agreements

§ 1260.302 [Amended]

11. In § 1260.302, the words "no longer" are removed, and the word "not" is added in their place.

§ 1260.305 [Amended]

12. In § 1260.305, paragraph (b)(2), after the phrase "Third year $ * * *," the sentence "It is the responsibility * * *" is revised to read as follows: "It is the responsibility of the awardee to request such continued support by submitting a brief proposal."

13. In § 1260.306, paragraph (a)(2) is revised to read as follows:

§ 1260.306 Numbering of instruments.

(a) * * *

(2) Sequential numbers for new Training (NGT) and Facilities (NGF) grants, if the award is otherwise authorized, are assigned by the Office of External Relations, Educational Affairs Division (Code XE).

14. In § 1260.307, paragraph (b) is revised to read as follows:

§ 1260.307 Distribution of grants, cooperative agreements, and grant supplements.

* * * * *

(b) One copy, plus a copy of the grantee's proposal, will be furnished to the NASA Scientific and Technical

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Information Facility, P.O. Box 8757, BWI Airport, MD 21240. Attn: Acquisitions.

15. Section 1260.310 is added to read as follows:

§ 1260.310 Program income.

For conferences and awards in which there is high potential for the generation of income (other than royalties from patents or copyrights), the following special condition may be used (except with institutions participating in the Federal Demonstration Project):

Program Income (June 1989)

Program income shall be retained by the grantee and shall be * * *

[Complete the sentence with one of the following phrases, as appropriate:

* * * added to funds already committed to the project and used to further project objectives.

* * * used to finance the non-Federal share of the program.

* * * deducted from the total project costs in determining the net costs on which NASA's share of costs will be based.]

Subpart 4—Research Grant and Cooperative Agreement Provisions

§ 1260.420 [Amended]

16. Section 1260.420 is amended as set forth below:

(a) In paragraph (b), the first item in the list of clauses is revised and the following item is added at the end of the list of clauses:

Invention Reporting and Rights—Foreign, prescribed at § 1260.209(b).

* * * * *

Program Income, prescribed at § 1260.310.

(b) Paragraph (h) is added to read as follows:

(h) The following provision shall be appended, as a special condition, to all grants and cooperative agreements (pending revisions to § 1260.409 and NASA Form 1463A, Provisions for Research Grants and Cooperative Agreements):

Patent Rights—Correct Citations (June 1989)

In the NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A), the correct statutory citations in the "Patent Rights—Retention by Grantee" provision are "Chapter 18 Title 35, United States Code (Pub. L. 95–517, Pub. L. 98–620)."

17. Exhibit G is revised to read as follows:

Exhibit G—Patent Rights—Retention by the Grantee (June 1989)

(a) *Definitions.*

(1) *"Invention"* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) *"Subject Invention"* means any invention of the Grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant, the date of determination (as defined in section 4(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of the grant performance.

(3) *"Practical Application"* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) *"Made"* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) *"Small Business Firm"* means a domestic small business concern as defined at section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this exhibit G, the size standards for small business concerns involved in Government procurement, and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) *"Nonprofit Organization"* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Grantee may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this exhibit G and 35 U.S.C. 203. With respect to any Subject Invention in which the Grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by grantee.* (1) The Grantee will disclose each Subject Invention to NASA within 2 months after the inventor discloses it in writing to Grantee personnel responsible for patent matters. The disclosure to NASA shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA, the Grantee will promptly notify NASA of the acceptance of any manuscript describing the invention for the publication or of any on sale or public use planned by the Grantee.

(2) The Grantee will elect in writing whether or not to retain title to any such invention by notifying NASA within 2 years of disclosure to NASA. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NASA to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Grantee will file its initial patent application on a Subject Invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after publication, on sale, or public use. The Grantee will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under paragraphs (c)(1), (c)(2), and (c)(3) of this exhibit G may, at the discretion of NASA, be granted.

(d) *Conditions when the government may obtain title.* The Grantee will convey to NASA, upon written request, title to any Subject Invention:

(1) If the Grantee fails to disclose or elect the Subject Invention within the times specified in paragraph (c) of this exhibit G, or elects not to retain title; provided, that NASA may only request title within 60 days after learning of the failure of the Grantee to disclose or elect within the specified times.

(2) In those countries in which the Grantee fails to file patent applications within the times specified in paragraph (c) of this exhibit G; provided, however, that if the Grantee has filed a patent application in a country after the times specified in paragraph (c) of this exhibit G, but prior to its receipt of the written request of NASA, the Grantee shall continue to retain title in that country.

(3) In any country in which the Grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defined in reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum rights to grantee and protection of grantee right to file.* (1) The Grantee will retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Grantee fails to disclose the Subject Invention within the times specified in paragraph (c) of this exhibit G. The Grantee's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Grantee is a party and includes the right to grant sublicenses of the same scope to the extent the Grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Grantee's business to which the invention pertains.

(2) The Grantee's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR 1245.210 of the NASA regulation, Licensing of NASA Inventions, 14 CFR 1245.2. This license will not be revoked in that field of use or the geographical areas in which the Grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Grantee a written notice of its intention to revoke or modify the license, and the Grantee will be allowed 30 days (or such time as may be authorized by NASA for good cause shown by the Grantee) after the notice to show cause why the license should not be revoked or modified. The Grantee has the right to appeal, in accordance with 14 CFR 1245.210, any decision concerning the revocation or modification of the license.

(f) *Grantee action to protect the government's interest.* (1) The Grantee agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Grantee elects to retain title, and (ii) convey title to NASA when requested under paragraph (d) of this exhibit G, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The Grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Grantee each Subject Invention made under grant in order that the Grantee can comply with the disclosure provisions of paragraph (c) of this exhibit G, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this exhibit G. The Grantee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Grantee will notify NASA of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under [identify the grant) awarded by NASA. The Government has certain rights in this invention."

(5) The Grantee shall include a list of all Subject Inventions required to be disclosed during the preceding year in the renewal proposal or annual status report, and a complete list (or a negative statement) for the entire award period shall be included in the final report.

(g) *Subcontracts.* (1) The Grantee will include this exhibit G, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor will retain all rights provided for the Grantee in this exhibit G, and the Grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Grantee will include in all other subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work the patent rights clause as required by NASA FAR Supplement, 48 CFR 1827.373(b).

(3) In the case of subcontracts, at any tier, when the prime award with NASA was a contract (but not a grant or cooperative agreement), NASA, subcontractor, and the contractor agree that the mutual obligations of the parties created by this exhibit G constitute a contract between the subcontractor and NASA with respect to those matters covered by this exhibit G; *Provided, however,* that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this exhibit G.

(h) *Reporting on utilization of subject inventions.* The Grantee agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Grantee, and such other data and information as NASA may reasonably specify. The Grantee also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this exhibit G. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside the Government without permission of the Grantee.

(i) *Preference for United States industry.* Notwithstanding any other provision of this exhibit G, the Grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Grantee agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures established by NASA which are consistent with 37 CFR 401.6, Exercise of March-in Rights, to require the Grantee, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Grantee, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Grantee or assignee has not taken, or is not expected to take, within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the Grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this exhibit G has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(3) *Special provisions for Grants with nonprofit organizations.* If the Grantee is a nonprofit organization, it agrees that:

(1) Rights to Subject Invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Grantee;

(2) The Grantee will share royalties collected on a Subject Invention with the inventor including NASA co-inventors (when NASA deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Grantee with respect to

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Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Grantee. However, the Grantee agrees that the Secretary of Commerce may review the Grantee's licensing program and decisions regarding small business applicants, and the Grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Grantee could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this exhibit G.

(l) *Communications.* A copy of all submissions or requests required by this Exhibit G, plus a copy of any reports, manuscripts, publications or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the Grant provisions. If any reports contain information describing a "Subject Invention" for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, for six months from the date of receipt, in order for a patent application to be filed, provided that the Grantee identify the information and the "Subject Invention" to which it relates at the time of submittal. If required by the grants officer, the Grantee shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any Subject Invention in any country in which the Grantee has applied for patents.

[FR Doc. 89-24616 Filed 10-19-89; 8:45 am]
BILLING CODE 7510-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 200 and 262

RIN 3220-AA56

General Administration; Miscellaneous

AGENCY: Railroad Retirement Board.

ACTION: Final Rule.

SUMMARY: The Railroad Retirement Board hereby amends parts 200 and 262 of its regulations in order to consolidate certain administrative procedures in one part (Part 200) of its regulations, to revise and clarify certain procedures for the disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and to eliminate certain little used and obsolete provisions. This action is necessary to avoid the confusion which can result from having to consult two entirely separate parts containing general administrative rules. This final rule removes part 262

EFFECTIVE DATE: October 20, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). The Board has issued separate regulations to facilitate the administration of these two Acts. However, certain administrative procedures may be applied in situations arising under either Act. The Board believes that such procedures are better incorporated into one regulatory part (part 200), rather than being set forth in separate parts. Moreover, the subjects covered by certain regulations now in part 262 have already been incorporated into other sections of the Board's regulations as part of an ongoing project to revise and update the agency's regulations. In addition, the procedures in the present § 262.16 concerning the disclosure of information in the possession of the agency are hereby revised, reorganized, and moved to part 200, which already contains the Board's regulations issued under the Freedom of Information Act (§ 200.4) and the Privacy Act (§ 200.5), so that all of the agency's disclosure regulations may be located in one part. Finally, certain of the provisions in the current part 262 are little used and are being removed because they are obsolete.

The Board published the consolidation of part 262 into part 200 as a proposed rule on June 6, 1989 (54 FR 24193-24196) and invited comments by August 7, 1989. No comments were received, and no changes were made in the proposed regulation. In reviewing the proposed revision to Part 200, however, the Board noted that § 200.5(e)(3) mistakenly refers to "paragraphs (h)(1)(i), (iii), and (viii) of this section", rather than to "paragraphs (j)(1)(i), (iii), and (viii)." The final rule corrects this error.

A brief summary of the disposition of the various sections of the present Part 262 under the final regulation is set forth below.

1. Sections 262.1, "Penalties," is simply a repetition of 45 U.S.C. 2311 and, because of this redundancy, is removed.

2. Sections 262.2, "Posting notices to employees," and 262.10, "Free Transportation," are seldom used and are removed for obsolescence.

3. The subjects formerly covered by §§ 262.5, 262.6, and 262.7 now appear in Part 243 of the Board's regulations. These three sections were removed when Part 243 was added to the Board's regulations.

4. Section 262.12 is redesignated as § 200.10.

5. The subject covered by § 262.15, "Offices of the Board," is covered in detail in § 200.1. Section 262.15 is therefore removed.

6. Section 262.16 is redesignated as § 200.8. In addition, certain revisions have been made to this section in order to facilitate the administration of certain provisions of section 12(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362(d)), which is incorporated into the Railroad Retirement Act (RRA) by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)). The present § 262.16 provides that no document or any information in the possession of the Board will be produced, disclosed, delivered, or opened to inspection unless the Board finds that such production, disclosure, delivery, or opening to inspection "will not be detrimental to the interest of the person to whom the document pertains, or to the estate of such person." The "not detrimental" standard was set forth at 4 FR 1503, April 7, 1939, as part of a complete reissue of the Board's previous regulations under the Railroad Retirement Act of 1937. Section 12(d) of the RUIA permits disclosure if the Board finds that disclosure "is clearly in furtherance of the interest of the employee or his estate." Although the standard in section 12(d) was enacted as part of the original RUIA in June 1938, section 12(d) was not incorporated into the Railroad Retirement Act of 1937 until 1966 by Pub. L. 89-700, 80 Stat. 1079, and was also subsequently incorporated into the Railroad Retirement Act of 1974, Pub. L. 93-445, October 15, 1974, 88 Stat. 1305, the successor to the 1937 Act, by section 7(b)(3) of that Act. The difference in the two standards has caused some confusion. The revised regulation incorporates the statutory standard.

7. Section 200.8 also reorganizes most of the disclosure procedures contained in the present § 262.16 and updates statutory references therein. In addition, introductory provisions clarify the applicability of § 200.8 in order to avoid confusion with the Board's regulations issued under the Freedom of Information Act (found in § 200.4) and those issued under the Privacy Act (found in § 200.5).

8. Section 262.17 simply repeats statutory provisions concerning the Actuarial Advisory Committee provided for in section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)) and formerly provided for in the Railroad Retirement Act of 1937 (45 U.S.C. 228(o)) and is hereby removed.

9. Section 262.18 is redesignated as § 200.9.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 200 and 262

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717, unless otherwise noted.

2. Section 200.4 is amended by revising paragraph (b) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(b) The identifying details to be deleted shall include, but not be limited to, names and identifying numbers of employees and other individuals as needed to comply with sections 12(d) and (n) of the Railroad Unemployment Insurance Act, section 7(b)(3) of the Railroad Retirement Act, and § 200.8 of this part, or to prevent a clearly unwarranted invasion of personal privacy.

3. Section 200.5 is amended by revising paragraph (e)(3) to read as follows:

§ 200.5 Protection of privacy of records maintained on individuals.

* * * * *

(e) Special procedures—medical records. * * *

(3) The special procedure established by paragraph (e) of this section to permit an individual access to medical records pertaining to himself or herself shall not be construed as authorizing the individual to direct the Board to disclose such medical records to any third parties, other than to a physician in accordance with paragraph (e)(2) of this section. Medical records shall not be disclosed by the Board to any entities or persons other than the individual to whom the record pertains or his or her authorized physician regardless of consent, except as permissible under paragraphs (j)(1)(i), (iii), and (viii) of this section and as provided under paragraph (e)(4) of this section.

4. Section 200.8 is added to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(a) *Purpose and scope.* The purpose of this section is to establish specific procedures necessary for compliance with section 12(d) of the Railroad Unemployment Insurance Act, which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act. Except as otherwise indicated in this section, these regulations apply to all information obtained by the Railroad Retirement Board in connection with the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(b) *Definitions—Agency.* The term "agency" refers to the Railroad Retirement Board, an independent agency in the executive branch of the United States Government.

Applicant. The term "applicant" means a person who signs an application for an annuity or lump-sum payment or unemployment benefits or sickness benefits for himself or herself or for some other person.

Beneficiary. The term "beneficiary" refers to an individual to whom a benefit is payable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Board. The term "Board" refers to the three-member governing body of the Railroad Retirement Board.

Document. The term "document" includes correspondence, applications, claims, reports, records, memoranda and any other materials or data used, prepared, received or transmitted to, from, by or for the agency in connection with the administration of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Information. The term "information" means any non-medical document or data which is obtained by the agency in the administration of the Railroad Retirement Act and/or the Railroad Unemployment Insurance Act. "Information" does not include the fact of entitlement to or the amount of a benefit under either of these Acts. Medical records are subject to the disclosure provisions set out in § 200.5(e) of this part.

(c) *General rule.* Except as otherwise authorized by this section, information shall not be produced, disclosed, delivered or open to inspection in any manner revealing the identity of an employee, applicant or beneficiary unless the Board or its authorized designee finds that such production, disclosure, delivery, or inspection is clearly in furtherance of the interest of the employee, applicant or beneficiary or of the estate of such employee, applicant, or beneficiary. Where no such finding is made, no information shall be released except in accordance with the provisions of § 200.5 of this part, unless release of such information is required by a law determined to supersede this general rule. In addition, regardless of whether or not such finding can be made, information which is compiled in anticipation of a civil or criminal action or proceeding against an applicant or beneficiary may not be released under this general rule.

(d) *Subpoenas—general rule.* (1) No officer, agent, or employee of the agency is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board or to the agency except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the Deputy General Counsel of the agency and to no one else.

(2) In the event the production, disclosure, or delivery of any information is called for on behalf of the United States or the agency, such information shall be produced, disclosed, or delivered only upon and pursuant to the advice of the Deputy General Counsel.

(3) When any member, officer, agent, or employee of the agency is served with a subpoena to produce, disclose, deliver, or furnish any information, he or she shall immediately notify the Deputy

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General Counsel of the fact of the service of such subpoena. Unless otherwise ordered by the Deputy General Counsel or his or her designee, he or she shall appear in response to the subpoena and respectfully decline to produce, disclose, deliver, or furnish the information, basing such refusal upon the authority of this section.

(e) *Subpoena duces tecum.* (1) When any document is sought from the agency by a subpoena duces tecum or other judicial order issued to the agency by a court of competent jurisdiction in a proceeding wherein such document is relevant, a copy of such document, certified by the Secretary to the Board to be a true copy, may be produced, disclosed, or delivered by the agency if, in the judgment of the Board or its designee, such production is clearly in furtherance of the interest of the employee, applicant, or beneficiary to whom the document pertains, or is clearly in furtherance of the interest of the estate of such employee, applicant, or beneficiary, and such document does not consist of or include a report of medical information.

(2) When the production, diclosure, or delivery of any document described in paragraph (e)(1) of this section would not be permitted under the standards therein set forth, no member, officer, agent, or employee of the agency shall make any disclosure of or testify with respect to such document.

(f) *Authorized release of information.* Subject to the limitation expressed in paragraph (h) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant, or prospective applicant for an annuity or death benefit under the Railroad Retirement Act of 1974, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders administered by the Department of Veterans Affairs, and for the purpose of the administration of those Acts only.

(4) To any applicant or prospective applicant for death benefits or accrued annuities under the Railroad Retirement Act, or to his or her duly authorized representative, as to the amount payable as such death benefits or accrued annuities, and the name of the person or persons determined by the agency to be the beneficiary, or beneficiaries, thereof, if such applicant or prospective applicant purports to have a valid reason for believing himself or herself to be, in whole or in part, the beneficiary thereof.

(5) To any officer or employee of the United States lawfully charged with the administration of any Fede. al law concerning taxes imposed with respect to amounts payable under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act and the name of the person or persons to whom such amount was payable.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Act to such incompetent individual, but only for the purpose of such proceedings.

(8) To parties involved in litigation, including an action with respect to child support, alimony, or marital property, the amount of any actual or estimated benefit payable under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, where such amount or estimated amount is relevant to that litigation.

(9) To any employer, as to the monthly amount of any retirement annuity under the Railroad Retirement Act of 1974 or benefit under the Railroad Unemployment Insurance Act to which a present or former employee of that employer is entitled.

(10) To any governmental welfare agency, information about the receipt of benefits and eligibility for benefits.

(11) To any law enforcement agency, information necessary to investigate or prosecute criminal activity in connection with claims for benefits under the Railroad Retirement Act, Railroad Unemployment Insurance Act, or any other Act the Board may be authorized to administer.

(g) No document and no information acquired solely by reason of any agreement, arrangement, contract, or request by or on behalf of the agency, relating to the gathering, preparation, receipt or transmittal of documents or information to, from or for the agency, which is by virtue of such agreement, arrangement, contract, or request in the possession of any person other than an employee of the agency, shall be produced, reproduced, or duplicated, disclosed or delivered by any person to any other person or tribunal (other than the agency or an employee thereof, or the person to whom the document or information pertains), whether in response to a subpoena or otherwise, except with the consent of the Board or its designee. Any person, upon receipt of any request, subpoena, or order calling for the production, disclosure, or delivery of such document or information shall notify the Board or its designee of the request, subpoena, or order and shall take no further action except upon advice of the Board or its designee. Unless consent of the Board or its designee is given, the person shall respectfully decline to comply with the request, subpoena or order.

(h) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board or any member, officer, agent, or employee of the agency, if the disclosure of such information is prohibited by law.

5. Section 200.9 is added to read as follows:

§ 200.9 Selection of members of Actuarial Advisory Committee.

(a) *Introduction.* Under section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)), the Board is directed to select two actuaries to serve on an Actuarial Advisory Committee. This section describes how the two actuaries are selected.

(b) *Carrier actuary.* One member of the Actuarial Advisory Committee shall be selected by recommendations made by "carrier representatives." "Carrier representatives," as used in this section, shall mean any organization formed jointly by the express companies, sleeping-car companies and carriers by railroad subject to the Interstate Commerce Act which own or control more than 50 percent of the total railroad mileage within the United States.

(c) *Railway labor actuary.* The other member of the Actuarial Advisory Committee to be selected by the Board shall be recommended by "representatives of employees." "Representatives of employees," as used in this section, shall mean any organization or body formed jointly by a majority of railway labor organizations organized in accordance with the provisions of the Railway Labor Act, as amended, or any individual or committee authorized by a majority of such railway labor organizations to make such recommendation.

6. Section 200.10 is added to read as follows:

§ 200.10 Representatives of applicant or beneficiaries.

(a) *Power of attorney.* An applicant or a beneficiary shall not be required to hire, retain or utilize the services of an attorney, agent, or other representative in any claim filed with the Board. In the event an applicant or beneficiary desires to be represented by another person, he or she shall file with the Board prior to the time of such representation a power of attorney signed by such applicant or beneficiary and naming such other person as the person authorized to represent the applicant or beneficiary with respect to matters in connection with his or her claim. However, the Board may recognize one of the following persons as the duly authorized representative of the applicant or beneficiary without requiring such power of attorney when it appears that such recognition is in the interest of the applicant or beneficiary:

(1) A Member of Congress;

(2) A person designated by the railway labor organization of which the applicant or beneficiary is a member to act on behalf of members of that organization on such matters; or

(3) An attorney who, in the absence of information to the contrary, declares that he or she is representing the applicant or beneficiary.

(b) *Payment of claim.* The Board will not certify payment of any awarded claim to or through any person other than the applicant or beneficiary for the reason that a power of attorney for such person to represent such applicant or beneficiary has been filed.

PART 262—MISCELLANEOUS [REMOVED AND RESERVED]

7. Part 262, consisting of §§ 262.1 through 262.18, is removed and reserved.

Dated: October 10, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-24730 Filed 10-19-89; 8:45 am]

BILLING CODE 7905-01-M

20 CFR Part 335

RIN 3220-AA45

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 335 of its regulations, which relates to sickness benefits under the Railroad Unemployment Insurance Act (Act), in order to delete obsolete provisions, to liberalize certain time limits relating to the filing of claims, to incorporate the 1988 amendments to the Act, and to make the regulation easier to read and understand.

EFFECTIVE DATE: October 20, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Unemployment Insurance Act was amended to eliminate maternity benefits as a separate category of benefits available to female railroad employees. The Railroad Unemployment Insurance Act now makes sickness benefits available to a female railroad employee for days on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth. Accordingly, Subpart B, which treats maternity benefits as a separate and distinct category of benefits, is removed.

In addition, the Board amends § 335.104, Filing a Statement of Sickness and Claim for Sickness Benefits, to more clearly define the circumstances under which late forms will be accepted as timely filed and to allow a claimant 15 days to file a claim for sickness benefits for a particular 14-day claim period. (See § 335.4.)

The Board also amends § 335.103 to add clinical psychologists and certified nurse mid-wives to the list of medically qualified individuals who may issue statements of sickness in support of the payment of sickness benefits.

In addition, the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) amended section 2(a) of the Railroad Unemployment Insurance Act so as to provide that no sickness benefits may be paid to an employee in his or her first registration period in a benefit year. Part 335 is amended to explain how this waiting period will be applied to claims for sickness benefits under the Railroad Unemployment Insurance Act. See § 335.6. Finally, all sections have been completely rewritten to make them easier to read and understand.

On June 7, 1989, the Board published this rule as a proposed rule (54 FR 24357) inviting comments on or before July 7, 1989. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, part 335 of title 20 of the Code of Federal Regulations is revised to read as follows:

PART 335—SICKNESS BENEFITS

Sec.

335.1 General.
335.2 Manner of claiming sickness benefits.
335.3 Execution of statement of sickness and supplemental doctor's statement.
335.4 Filing statement of sickness and claim for sickness benefits.
335.5 Death of employee.
335.6 Payment of sickness benefits.

Authority: 45 U.S.C. 362(i) and 362(l).

§ 335.1 General.

(a) *Statutory basis.* The Railroad Unemployment Insurance Act provides for the payment of sickness benefits to a qualified railroad employee for days of sickness within a period of continuing sickness. To establish basic eligibility for sickness benefits, a qualified employee must have at least four consecutive days of sickness with respect to each period of continuing sickness. The terms "day of sickness" and "period of continuing sickness" as used in this part, are defined in sections 1(k) and 2(a) of the Act, respectively, and paragraphs (b) and (c) of this section. As evidence of days of sickness based upon illness or injury or upon pregnancy, miscarriage or childbirth, section 1(k) requires an employee to file a statement of sickness. Other information that is required to identify an employee's days of sickness is obtained by means of an application for sickness benefits at the beginning of each period of continuing sickness and by means of a claim for sickness benefits which is filed for each registration period within a period of continuing sickness. The term

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"registration period", generally refers to a period of 14 consecutive days and is defined in paragraph (d) of this section.

(b) *Day of sickness.* The term "day of sickness" means, in general, any calendar day, including days that would normally be rest days, on which an employee is not able to work because of any physical or mental illness or injury. With respect to a female employee, a "day of sickness" also includes any calendar day on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth.

(c) *Period of continuing sickness.* (1) The term "period of continuing sickness" refers to a period of time when an employee is not able to work on account of illness, injury, sickness or disease, including inability caused by pregnancy, miscarriage or childbirth. An employee has a period of continuing sickness under either of these circumstances:

(i) He or she has any number of "consecutive" days of sickness based on one or more infirmities; or

(ii) He or she has any number of "successive" days of sickness based on a single infirmity and there is no interruption of more than 90 "consecutive" days which are not days of sickness.

(2) Days of sickness are "consecutive" when they occur one after another continuously and without interruption by any day that is not a day of sickness. Days of sickness are "successive" when one or more days of sickness follow any day of sickness with an interval of one or more days that are not days of sickness.

Example: An employee is sick for 11 "consecutive" days from October 1 through October 11, meaning that each day in the period October 1 through October 11 is a day of sickness and there is no day in that period that is not a day of sickness. If the employee also had days of sickness on October 16, 17, 18, 21 and 22, those five days are considered "successive" days of sickness.

(3) A period of continuing sickness with respect to any employee begins with the first day of a number of consecutive days of sickness or with the first day of a number of successive days of sickness attributable to a single cause with no interval of more than 90 days that are not days of sickness. In the example given in paragraph (c)(2) of this section, October 1 begins a period of continuing sickness. The days October 16, 17, 18, 21, and 22 are in the period of continuing sickness beginning October 1, and benefits are payable for them, provided that the employee's inability to work on those five days is due to one or more of the same infirmities that caused the employee to be unable to work on the days from October 1 through October 11. Otherwise, October 16 begins another period of continuing sickness.

(4) A period of continuing sickness ends when either of these circumstances occurs:

(i) 91 consecutive days have elapsed none of which is a day of sickness resulting from the infirmity that was the basis for the preceding days of sickness; or

(ii) One or more days that are not days of sickness have elapsed and a statement of sickness is filed with respect to a day of sickness based on an infirmity other than any infirmity causing inability on the preceding days of sickness. The end of a benefit year, generally the 12-month period beginning July 1 of any year and ending June 30 of the next year (see 45 U.S.C. 351(m)), does not end a period of continuing sickness. In the example in paragraph (c)(2) of this section, if the inability to work on October 16 was not due to an infirmity or infirmities that caused the inability to work on October 11, then a period of continuing sickness ends on October 11. A new application and statement of sickness would be required in order for the employee to be paid sickness benefits for days beginning October 16. See § 335.2 of this part.

(5) A period of continuing sickness can be interrupted, provided that:

(i) The interruption is for not more than 90 consecutive days; and

(ii) The days of sickness after the interruption are due to one or more of the same causes as the days of sickness before the interruption. A period of continuing sickness can be interrupted any number of times so long as each interruption is not more than 90 days and the days of sickness are all due to the same cause. If a period of continuing sickness is caused by more than one infirmity, any one of the infirmities can be considered as the single continuing cause that will permit the interruption of the period of continuing sickness for not more than 90 days without ending it.

(d) *Registration period.* The term "registration period" means, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a period of continuing sickness is filed in his or her behalf in accordance with this part, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a period of continuing sickness was filed in his or her behalf, and ends with whichever is the earlier of:

(1) The thirteenth day thereafter; or

(2) The day immediately preceding the day with respect to which a statement of sickness for a new period of continuing sickness is filed in his or her behalf. However, each of the successive 14-day periods in an extended sickness benefit period shall constitute a registration period.

(e) *Liability for infirmity.* When sickness benefits are paid to an employee on the basis of an infirmity for which he or she recovers a personal injury settlement or judgment, the Board shall receive reimbursement for the sickness benefits in accordance with part 341 of this chapter.

§ 335.2 Manner of claiming sickness benefits.

(a) *Forms required for claiming benefits.* To claim sickness benefits for a period of inability to work due to an illness or injury, or in the case of a female employee, pregnancy, miscarriage, or childbirth, an employee must file the following forms:

(1) An application for sickness benefits at the beginning of each period of continuing sickness;

(2) A statement of sickness to accompany the employee's application;

(3) A claim for sickness benefits for each 14-day registration period during the employee's period of continuing sickness; and

(4) A supplemental doctor's statement, if the adjudicating office requests additional proof of the employee's inability to work.

(b) *Mailing or delivering the forms.* The forms required by paragraph (a) of this section may be mailed or delivered to any Board office. If the Board is satisfied that the employee is too sick or injured to execute the required forms, the Board may accept forms executed by someone in the employee's behalf. Instructions for completing and filing the forms are printed on the forms themselves.

(Approved by the Office of Management and Budget under control numbers 3220-0034, 3220-0039 and 3220-0045)

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* A statement of sickness and any required supplemental doctor's statement shall be executed by any of the following individuals:

(1) A licensed medical doctor;

(2) A licensed dentist if the infirmity relates to the teeth or gums;

(3) A licensed podiatrist or chiropodist if the infirmity relates to the feet or toes;

(4) A licensed chiropractor;

(5) A clinical psychologist;

(6) A certified nurse mid-wife; or

(7) The superintendent or other supervisory official of a hospital, clinic, or group health association, or similar organization, in which all examinations and treatment are conducted under the supervision of licensed medical doctors or under the supervision of licensed chiropractors, and in which medical records are maintained for each patient.

(b) *Use of Board form or other form.* The statement of sickness and supplemental doctor's statement referred to in paragraph (a) of this section shall be completed on the forms prescribed by the Board, except that other standardized medical forms may be substituted if they provide the same information as that called for by the Board's forms.

§ 335.4 Filing statement of sickness and claim for sickness benefits.

(a) *General requirement.* Except as provided in paragraph (e) of this section, statements of sickness and claims for sickness benefits must be filed within the time limits specified by this section. Failure to comply with the time restrictions on filing claims will result in a denial of benefits for days for which timely statements and claims are not filed, as such days would not be considered days of sickness.

(b) *Statement of sickness.* An employee shall file a statement of sickness within ten calendar days of the first day that he or she wishes to claim as a day of sickness. For example, if an employee wishes to claim sickness benefits for days starting November 1, the statement of sickness should reach the Board no later than November 10. If the statement of sickness is received November 11, the employee cannot be paid sickness benefits for November 1. Such day would not be considered as a "day of sickness", unless the form may be considered as timely filed under paragraph (d) (3), (4) or (5) of this section.

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 15 days of the ending date shown on the claim form, or within 15 days of the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13 for the period from July 1 to July 14, the employee must file the claim within 15 days of July 14 (on or before July 29) to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 15 days of July 16 (on or before July 31).

(d) *When form considered timely filed.* The Board will consider a statement of sickness or a claim for sickness benefits as timely filed if:

(1) The statement or form was received in a Board office within the prescribed time; or

(2) The statement or form was mailed to a Board office in accordance with instructions printed on the form and was received at such office; or

(3) The employee made a reasonable effort to file the statement of sickness or claim form within the prescribed time but was prevented from doing so by circumstances beyond his or her control, and such statement or claim was received at a Board office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form. The phrase "circumstances beyond his or her control" shall not include an employee's forgetfulness or lack of knowledge of the sickness benefit program or the time limit for filing for sickness benefits or any other lack of diligence by the employee. For the purposes of this provision, if a statement of sickness is not received within the prescribed time but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the Board will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless it is clear on the basis of affirmative evidence that the delay was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

(5) A female employee not able to work because of pregnancy, miscarriage, or childbirth filed an incorrect statement of sickness form within the prescribed time and after being so informed, filed the correct statement of sickness form within a reasonable period of time thereafter. Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See part 336 of this chapter.

§ 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word "employee" as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits due but unpaid as of the date of an employee's death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at § 234.31 of this title.

§ 335.6 Payment of sickness benefits.

(a) *Waiting period.* A qualified employee's first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of sickness in such registration period, four of which must be consecutive, and files a timely claim for sickness benefits for such period. No benefits are payable for any day of sickness in such registration period.

(b) *Subsequent registration period.* With respect to any subsequent registration period in the same benefit year and the same period of continuing sickness, the Board will pay benefits for each day of sickness in excess of four during such registration period.

(c) (1) *Example 1.* An employee has a period of continuing sickness running from May 1 through May 31. All of those days are days of sickness. The employee returned to work June 1. His first registration period in that period of continuing sickness is May 1 to May 14. That registration period, if it is the employee's first one in the benefit year, is a waiting period, and no benefits are payable for any day of sickness therein. The employee's second registration period is May 15 to May 28, and benefits will be paid for each day of sickness in excess of four during such period. The employee's third registration period is May 29 to June 11, but since he or she returned to work on June 1 the employee has only three days of sickness (May 29,

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30 and 31), and hence no sickness benefits are payable for that period.

(2) *Example 2.* An employee has a period of continuing sickness beginning on May 1 and ending on July 31, with all days in the period being days of sickness. The employee's first registration period in the period of sickness is May 1 to May 14. Because that registration period is the employee's first one in the benefit year, the period is the employee's waiting period and no benefits are payable for any of the days therein. Benefits are payable for each day in excess of four during each of the employee's next four registration periods of May 15 to May 28, May 29 to June 11, June 12 to June 25, and June 26 to July 9. July 10 is the beginning date of a new benefit year for the employee. Because the registration period July 10 to July 23 is the employee's first one in the new benefit year, the period is the employee's waiting period and no benefits are payable for any of the days of sickness in the period. The employee's second registration period in the new benefit year is July 24 to August 6. The employee has eight days of sickness in that period, having been found able to return to work as of August 1. Benefits are payable for four days of sickness in that period.

(d) The gross amount of sickness benefits for any registration period in a benefit year, following the waiting period for such year, shall be computed by multiplying the number of days of sickness in excess of four by the employee's daily benefit rate, as computed under part 330 of this chapter. From such gross amount the Board will deduct the amount of any social insurance payment apportionable to days of sickness in the registration period, any tier I railroad retirement employment tax imposed under chapter 22 of the Internal Revenue Code of 1986, and the amount of any overpayment being recovered under part 340 of this chapter. The net amount remaining shall then be certified to the United States Treasury Department for payment to the employee, unless a portion of such amount has been attached in accordance with part 350 of this chapter.

(e) Sickness benefits shall continue to be certified for payment pursuant to the foregoing paragraphs for the duration of the employee's period of continuing sickness, subject to the statutory maximums prescribed in section 2(c) of the Railroad Unemployment Insurance Act. See also part 336 of this chapter.

Dated: October 10, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-24735 Filed 10-19-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN-1024-AB67

Rocky Mountain National Park, Colorado; Trucking Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) has changed the trucking regulations in Rocky Mountain National Park. The changes still allow the Superintendent to issue a permit for commercial trucking on park roads by ranchers, farmers and business concerns located in the counties of Larimer, Boulder and Grand, Colorado, when the loads originate and terminate in these counties. This rule also revises the fee schedule and the permit conditions. With these changes in place, the park staff will be able to manage the truck traffic on park roads more effectively. Effects of the rules are expected to be minimal.

EFFECTIVE DATE: November 20, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, Colorado 80517, Phone: (303) 586-2371.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service special regulations that pertain to trucking are codified at 36 CFR 7.7 (b) and (e). They allow the Superintendent to issue permits for trucks on park roads, as long as they originate and terminate within the three counties (Grand, Larimer, and Boulder) that surround Rocky Mountain National Park.

The original intent of the trucking regulations was to abide by agreements reached with the State of Colorado when Trail Ridge Road was constructed, to permit trucking on park roads by ranchers, farmers, and business concerns located in the three counties surrounding the park. In recent years the number of trucking permits issued under this regulation has decreased considerably. Because of legislation which has rendered the present trucking permit fee schedule obsolete, and the low numbers of trucking permits issued, the NPS believes that a more accurate and simplified schedule of fees for these permits should be charged.

The NPS published a proposed rulemaking in the **Federal Register** on August 29, 1988 (53 FR 32924) and provided a 30-day period for public comment on the proposed revisions. No comments were received. Therefore, the final rule is published unchanged.

Drafting Information

The primary authors of these regulations are David Essex, Chief Park Ranger, and Ronald S. Maitland, Visitor Protection Specialist, both of Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks; Reporting and recordkeeping requirements.

In consideration of the foregoing 36 CFR chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); section 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. In § 7.7 by removing paragraph (e), redesignating paragraph (f) as paragraph (e) and revising paragraph (b) to read as follows:

§ 7.7 Rocky Mountain National Park.

* * * * *

(b) *Trucking Permits.* (1) The Superintendent may issue a permit for trucking on a park road when the load carried originates and terminates within the counties of Larimer, Boulder, or Grand, Colorado.

(2) The fee charged for such trucking over Trail Ridge Road is the same as the single visit entrance fee for a private passenger vehicle. A trucking permit is valid for one round trip, provided such trip is made in one day, otherwise the permit is valid for a one-way trip only.

(3) The fees provided in this paragraph also apply to a special emergency trucking permit issued pursuant to § 5.6(b) of this chapter.

* * * * *

Dated: September 27, 1989.

Contance Harriman,

Fish and Wildlife and Parks.

[FR Doc. 89-24775 Filed 10-19-89; 8:45 am]

BILLING CODE 4310-70-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Procurement Manual

AGENCY: Postal Service.

ACTION: Amendments to Procurement Manual.

SUMMARY: The Postal Service announces that it is making numerous miscellaneous amendments to the Procurement Manual, including, for example, a reduction in the categories of professionals required to carry malpractice insurance; a requirement that source lists be developed as needed, rather than maintained; a provision for alternative methods of publicizing requests for qualification statements; and an amendment permitting the use of oral solicitations using the simplified purchasing procedures. Certain other minor and editorial changes are also made to the Procurement Manual.

EFFECTIVE DATE: October 16, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. McGinn, (202) 268-4638.

SUPPLEMENTARY INFORMATION: The Procurement Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PM Circular 89-2, dated October 16, 1989.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Procurement Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

PART 601—[AMENDED]

The authority citation for part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411, 2008, 5001-5605.

Explanation of Changes

Procurement Manual Circular 89-2 contains changes and revisions to text concerning the procurement of facilities and related services. A list of the affected text follows. The full text of the changes follow this Explanation.

A. Section 7.2.4.a, Professional Services. Paragraph a is changed to delete the requirements that appraisers, attorneys, brokers, title examiners, surveyors and nurses carry errors and omissions (malpractice) insurance.

B. Section 11.2.2, Real Estate-Related Services.

1. Paragraph a is changed to require that source lists be developed as needed, rather than maintained, and to provide for alternative methods of publicizing requests for qualification statements.

2. Paragraph c is changed by adding a sentence permitting the use of oral solicitations using the simplified purchasing procedures.

C. Section 11.4.1, General.

1. A new paragraph a is added, defining "lease".

2. Paragraph a is changed to paragraph b.

3. Paragraph c is expanded to describe the scope of negotiations permitted, and to limit the disclosure of information as to the number and identity of offerors.

4. A new paragraph d is added, describing evaluation criteria for award of leases.

D. Section 11.4.2, Leases of Existing Space.

1. Subparagraphs d.1 and 2 are combined and rewritten for more clarity and conciseness.

2. Subparagraph d.3 is redesignated as subparagraph d.2.

3. A new subparagraph d.3 is added to allow lessors to make improvements in accordance with PM 11.5.1.

E. Section 11.4.3, New Construction Leases.

1. Paragraph b is changed to delete the requirement that new construction lease solicitations agree with *Procurement Manual* requirements, and to substitute a statement that requirements must be set forth in the solicitation.

2. A new paragraph d is added, requiring that solicitations for new leased construction be publicized in accordance with 11.4.2.a.

F. Section 11.5.1, Procurement of Construction.

1. Words are added at the end of paragraph a to make it clear that "construction," as defined, does not include a lease.

2. A new paragraph b is added, providing that construction to be accomplished under lease may be procured noncompetitively and without publicizing.

3. Redesignate existing paragraphs "b" through "d" as "c" through "e".

4. Paragraph e, "Specifications" is redesignated as paragraph "f," and subparagraph 3 is changed to provide that, when using a "brand name or equal" description, if more than three acceptable brands are known, only three need be listed.

5. Change the reference in the first sentence of 11.5.1.k.1 from "11.4.1.d.1" to "11.4.2.d.3."

G. Section 11.5.4, Contractor Prequalification. Subparagraph b.2 is revised to bring the requirements for selection of firms to receive solicitations into agreement with the procedures in Handbook RE-14, *Design and Construction*, and a recent protest decision.

H. Various Sections. Make pen and ink changes, as described below, to correct errors in the following sections and parts:

1. Section 3.2.2.a
2. Section 3.2.2.d
3. Section 7.1.9.a
4. Section 11.2.2.d

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5. Section 11.4.2.a.3
6. Section 11.5.1.k.1
7. Section 11.5.3.e

3.2.2. Methods of Publicizing. Change the last sentence in subparagraphs a and d to the following: "See the relevant handbook for guidance on format and procedures."

7.1.9.a. Prescribed Formats. Change this sentence to the following: "See the relevant handbook for guidance and procedures."

11.2.2.d. Real Estate-Related Services. Change the second sentence to the following: "Procedural guidance and formats for clauses can be found in Handbook RE–14, *Design and Construction.*"

11.4.2.a. Publicizing. In subparagraph 3, change "6,5000" to "6,500."

11.5.1.k. Solicitations. Redesignate "k" as "l." In subparagraph l, "Content," delete the first sentence, which is restated in the new paragraph 11.5.1.b.

11.5.3.e. Contract Preparation. Change the reference to the Procurement Handbook to "Handbook RE–14, *Design and Construction.*"

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–24763 Filed 10–19–89; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 89–283]

Broadcasting Drug Traffic Control

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: The Commission clarifies its policies regarding applicants and licensees in all services where the applicant, licensee or any principal of the applicant or licensee has been convicted of drug trafficking.

EFFECTIVE DATE: September 29, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Solomon, Office of General Counsel, Federal Communications Commission, (202) 632–6990.

SUPPLEMENTARY INFORMATION: At its meeting on September 29, 1989, the Commission adopted the following Public Notice regarding licensee participation in drug trafficking.

September 29, 1989

Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking

This Public Notice clarifies Federal Communications Commission policies regarding the participation of private radio, common carrier, broadcast, and other radio licensees in drug trafficking.

Eradicating illicit trafficking in narcotics, drugs, and other controlled substances today is a major Federal public policy priority. This is evidenced by congressional, judicial, and presidential actions and declarations. Last year, for example, Congress passed the Anti-Drug Abuse Act of 1988, which includes a provision (§ 5301) permitting judicial denial of federal benefits to persons convicted of drug offenses. The President recently transmitted to Congress his plan for implementing that statute.

Drug trafficking is severely affecting the health and safety of millions of Americans, and the contribution that they could otherwise make to our society. As President Bush recently stated:

All of us agree that the gravest domestic threat facing our nation today is drugs. Drugs have strained our faith in our system of justice. Our courts, our prisons, our legal system are stretched to the breaking point. The social costs of drugs are mounting. In short, drugs are sapping our strength as a nation.

The Commission has no evidence indicating that the incidence of drug trafficking on the part of FCC licensees, or employees of licensees, exceeds that for American society generally. The Commission nevertheless regards drug trafficking as a matter of the gravest concern and intends to apply policies that reinforce both private and Government efforts to eradicate drug trafficking.

Accordingly, absent extenuating or mitigating circumstances, the Commission intends promptly to take all appropriate steps, including initiation of license revocation proceedings, where information comes to our attention that FCC licensees or their principals have been convicted of drug trafficking.[1]

While our statement today is intended to apply to licensees in all FCC services and is not motivated by a concern regarding any particular service, we note that drug trafficking convictions fall within the scope of conduct the Commission may consider under existing policy in the broadcast area.[2]

In addition, licensees and permittees in all services are advised that the Commission encourages maximum possible effort on their part to stem the national problem of drug trafficking. In this regard, the adoption of drug counseling, drug education, and other similar programs by licensees and permittees is encouraged. Licensees and permittees should also prohibit the use of drugs by employees while at work.

Action by the Commission September 29, 1989, by Public Notice (FCC 89–283). Commissioners Sikes (Chairman), Quello, Dennis, Marshall and Barrett.

News Media contact: Audrey Spivack at (202) 632–5050. Office of General Counsel contact: David Solomon at (202) 632–6990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–24804 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

[1] *See, e.g., Policy Regarding Character Qualifications in Broadcast Licensing,* 102 FCC 2d 1179, 1217–20, 1227–28, *on reconsideration,* 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association of Better Broadcasting v. FCC,* No. 86–1179 (D.C. Cir. June 11, 1987).

[2] *See* 102 FCC 2d at 1197 n. 42. *See also Williamsburg County Broadcasting Corp.,* FCC 89–280, adopted September 29, 1989.

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47 CFR Part 73

[MM Docket No. 88–436; RM–6327]

Radio Broadcasting Services; Yermo, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 287A to Yermo, California, as that community's second local FM broadcast service, in response to a petition for rule making filed on behalf of Robert Jason. See 53 FR 37611, September 27, 1988. Coordinates used for Channel 287A at Yermo are 34–55–18 and 116–46–22. With this action, the proceeding is terminated.

DATES: Effective November 27, 1989; The window period for filing applications on Channel 287A at Yermo, California, will open on November 28, 1989, and close on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–436, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, for Yermo by adding Channel 287A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24738 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–104; RM–6645]

Radio Broadcasting Services; Big Pine, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 227B to Big Pine, California, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Janice D. Levin. See 54 FR 21260, May 17, 1989. Coordinates utilized for Channel 227B at Big Pine are 37–09–54 and 118–17–12. With this action, the proceeding is terminated.

DATES: Effective November 27, 1989; The window period for filing applications on Channel 227B at Big Pine, California, will open on November 28, 1989, and close on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530, regarding the allocation proceeding. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–104, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under California, by adding Big Pine, Channel 227B.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24740 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–311; RM–5858, RM 5859, RM–6136]

Radio Broadcasting Services; Hillsboro, Rushville, and Virden, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of James M. Wextten, *See* 52 FR 32817, August 31, 1887, this document allots Channel 259B to Hillsboro, Illinois, as that community's first local FM service. Channel 259B can be allotted to Hillsboro, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.7 miles) north of the city. The coordinates for this allotment are 39–14–20 and 89–27–37. The petitions separately filed by Virden Broadcasting Corporation and Berrey-Price Communications are denied. With this action, this proceeding is terminated.

DATES: Effective November 27, 1989; The window period for filing applications will open on November 28, 1989, and close on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–311, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Hillsboro, Illinois, Channel 259B.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24739 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–259; RM–5892, RM–6292, RM–6463 and RM–6464]

Radio Broadcasting Services; Faribault, MN, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298C2 to Faribault, Minnesota, in response to a petition filed by KDHL, Inc. The coordinates for Channel 298C2 are 44–14–14 and 93–23–41, at a site 11.8 kilometers southwest of the community. In response to a petition filed by Blooming Prairie Development Corp. we shall allot Channel 265A to Blooming Prairie, Minnesota, as that community's first FM broadcast service. The coordinates for Channel 265A are 43–52–06 and 93–03–06.

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This document also dismisses the counterproposal filed by KYMN, Inc. and a counterproposal filed by Kingsley H. Murphy, Jr. KYMN, Inc. requested the allotment Channel 298C2 at Northfield, Minnesota. Kingsley H. Murphy requested the substitution of Channel 239A for 238A at New Prague, Minnesota, and modification of its license for station KCHK–FM to specify Channel 239A.

DATES: Effective November 27, 1989; The window period for filing applications for Channel 298C2 at Faribault, Minnesota, will open on November 28, 1989, and close on December 28, 1989. The window for Channel 265A at Blooming Prairie, Minnesota, will be withheld until the license for Station KJLY(FM), Blue Earth, Minnesota, is modified to specify operation on Channel 283C2 in lieu of Channel 265A.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–259, adopted September 26, 1989, and released October 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Minnesota by adding Channel 265A, Blooming Prairie and Channel 298C2 at Faribault.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24741 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 202
Friday, October 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 78

[Docket No. 89–006]

RIN: 0579–AA27

Swine Identification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning swine identification to provide that swine in interstate commerce, with certain exceptions, must be identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. We believe these changes are necessary to provide a system of swine identification that allows for effective traceback of diseased or adulterated swine, without unnecessarily disrupting standard marketing procedures. We are also proposing to make certain amendments regarding the list of approved means of identification for swine, in order to clarify our requirements and to allow for the use of an additional device effective in identifying swine in interstate commerce. Additionally, we are proposing to clarify who within the Animal and Plant Health Inspection Service holds primary responsibility for various decisions under the regulations.

DATE: Consideration will be given only to comments received on or before December 19, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–006. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. J. P. Davis, Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 71 (referred to below as the regulations contain general provisions regarding the interstate transportation of animals and animal products. On October 14, 1988, we published in the **Federal Register** a final rule (53 FR 40378–40387, Docket No. 88–055) that, among other things, amended the regulations to require, with one exception, that no swine be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified with approved identification. The one exception is for swine from "farrow-to-finish" operations that are taken directly to a slaughtering establishment from the premises where they were raised. The final rule also established regulations that require that records be kept that show the identification of all swine in interstate commerce.

The amended regulations were established to provide a way to trace swine affected with disease to their source, and identify all animals they may have exposed to the disease and that may in turn have become infected and able to spread the disease. These traceback abilities were also designed to help the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) meet its responsibilities under the Federal Meat Inspection Act. The traceback provisions enable FSIS to trace carcasses adulterated with chemical residues to their source and assist in preventing further distribution of such carcasses.

In order to clarify which swine fall under the identification requirements, we added to the regulations, in our October 14, 1988, final rule, a definition of "Interstate commerce," and explained that the definition was intended to cover as many swine as possible under the animal quarantine laws and the Federal Meat Inspection Act. We explained that, under the regulations, individual swine may need to be identified, even if they are not immediately being moved interstate, and that transactions and movements occurring prior to, during, and after an interstate transaction or movement are included under interstate commerce, as long as the commerce in the swine continued.

Under the current regulations, in many cases the swine must be identified prior to leaving the producer's premises. A number of industry representatives have requested that we amend the regulations, however, to provide that swine need not be identified until the first point of concentration. According to the requesters, requiring identification at the producer's premises is contrary to standard industry procedure and disruptive of normal marketing practices.

We believe that requiring swine to be identified at the producer's premises is contrary to standard industry practice. Traditionally, swine identified for industry purposes have been identified at the first point of commingling with other swine. As noted, the purpose of our October 14, 1988, changes was to provide USDA with the capability to trace diseased or adulterated swine to their herd of origin. By doing this, APHIS can more effectively trace the movement of animals from that herd, and take appropriate action to ensure that those animals do not expose other animals to disease. For FSIS, adequate traceback capabilities enable that agency to more effectively find the source of swine adulterated with residues of drugs and other chemicals.

Based on our analysis of industry requests and our own experience conducting swine disease eradication programs, we believe that effective traceback of diseased or adulterated swine can be accomplished without requiring that swine in interstate commerce be identified at the producer's premises. We believe that effective traceback can be carried out if the swine in interstate commerce are

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identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. Each of these potential points of identification is discussed in the following paragraphs.

1. *The point of first commingling of the swine in interstate commerce with swine from any other source.* The most common example of such commingling is when a truck driver picks up swine from different farms for interstate delivery to market. Swine identified at this point could be traced directly back to their herd of origin.

2. *Upon unloading of the swine in interstate commerce at any livestock market.* This is the traditional point of identification of swine. The proposed regulations would allow swine in interstate commerce to be identified at these locations if they are not first commingled with other swine or transferred to a new owner (discussed below). If neither commingling with other swine nor transfer of ownership has taken place, the swine could be traced directly back to the herd of origin.

3. *Transfer of ownership of the swine in interstate commerce.* Swine in interstate commerce would have to be identified at the time of transfer of ownership. This provision would ensure that traceback to the herd of origin could be carried out in those situations where a buyer purchases swine, then subsequently moves them interstate.

4. *Upon arrival of the swine in interstate commerce at their final destination.* This provision would apply most commonly to swine in interstate commerce moved directly to a breeding farm or to a slaughter establishment. If the swine have not already been identified when so moved, the movement would necessarily be the result of one transaction between buyer and seller. Identification at the final destination would therefore allow for traceback to the herd of origin.

Swine Tattoos

Among the means of swine identification listed in § 71.19(b) for use on swine moving to slaughter are Veterinary Services-approved tattoos. Reference to Veterinary Services-approved tattoos is also made in 9 CFR part 78.33, regarding restrictions on the interstate movement of sows and boars because of brucellosis. We are proposing to amend the references to Veterinary Services-approved tattoos, everywhere they appear in parts 71 and 78, to refer instead to "Official swine tattoos." We believe it is necessary to add the word "swine" when referring to these tattoos to eliminate confusion between the swine tattoo and another type of tattoo used to identify brucellosis calfhood vaccinated animals. We would refer to official swine tattoos, rather than to Veterinary Services-approved tattoos, because, although the regulations contain certain requirements regarding the form and use of such tattoos, they do not contain criteria for Veterinary Services approval of the tattoos themselves.

Also, we are proposing to clarify the regulations by making consistent the provisions in parts 71 and 78 regarding Veterinary Services-approved tattoos (proposed to be changed to "official swine tattoos," as noted above). Current § 78.33(a)(3) sets forth the conditions under which these tattoos may be used on sows and boars. Under the regulations, the tattoos must be authorized in writing by APHIS, based on a determination by APHIS that they will provide a means of tracing the movement of the sows and boars in interstate commerce. In contrast, current § 71.19(b)(3), while listing such tattoos as an approved means of identification of swine moving to slaughter, does not include the conditions under which the tattoos will be issued. Therefore, we are proposing to clarify the conditions in § 78.33(a)(3) and to add such conditions to § 71.19(b)(3). They would be the same, except that § 71.19(b)(3) would apply to all swine moving to slaughter and § 78.33(a)(3) would continue to apply specifically to sows and boars. Both § 71.19(b)(3) and § 78.33(a)(3) would provide that the Administrator will authorize the use of official swine tattoos when he or she determines that such tattoos will be retained and visible on the carcass of the animal after slaughter, so as to provide identification of the swine. We are also proposing to amend the regulations to set forth consistent definitions of "Official swine tattoo" in parts 71 and 78.

Tattoos of At Least Four Characters

Also listed in § 71.19(b)(3) as an approved means of identification for swine moving to slaughter, except for sows and boars as provided in § 78.33, are four-character tattoos. The requirement that the tattoos be of four characters was based on the fact that a four-character tattoo is customarily used by industry packing plants in the United States. However, we did not intend to preclude the use of tattoos that are more than four characters. Because we recognize that, in certain cases, tattoos of more than four characters are used by the industry, and because these tattoos are at least as effective in identifying swine as four-character tattoos, we are proposing to amend the regulations to provide that tattoos of at least four characters may be used as an approved means of identification on swine moving to slaughter. Additionally, to make clear the difference between these tattoos and APHIS-approved swine tattoos, we are proposing to move the provisions regarding tattoos other than APHIS-approved tattoos from § 71.19(b)(3) to a new § 71.19(b)(4).

Department Backtags

Among the devices listed as approved means of swine identification in § 71.19(b) are "United States Department of Agriculture swine backtags, when used on swine moving to slaughter." Section 78.33, regarding sows and boars, also refers to "United States Department of Agriculture swine backtags." We are proposing to change these references, and their corresponding definitions in §§ 71.1 and 78.1, to "United States Department of Agriculture backtags." Backtags specifically for swine have been in use only since 1986. Prior to that time, cattle backtags could be used on swine. The identification systems used on swine and cattle backtags are similar. Both have eight characters. The only differences between the two are that (1) swine backtags use two letters to identify the State, and cattle backtags use two digits to identify the State; and (2) cattle backtags are ovals made of platic coated paper, and swine backtags are round disks of vinyl. We believe, based on experience, that swine can be identified effectively by USDA cattle backtags, and that it is therefore unnecessary to require that backtags used on swine be "swine" backtags.

Definitions

We are also proposing to add to the regulations definitions of "commingling" and "livestock market" to clarify the meaning of these terms as used in proposed § 71.19(a)(1). We would define "commingling" to mean the mixing or assembling of swine from one premises with swine from any other premises, including, but not limited to, loading swine from more than one premises on the same truck, trailer, vessel, or railroad car. We would define "livestock market" to mean a stockyard, buying station, concentration point, or any other premises where swine are assembled for sale or sale purposes.

Deletion of Definition

Current § 71.1 contains a definition of "premises of origin." However, because the term "premises of origin" is not otherwise used in Part 71, we are proposing to remove that definition.

Miscellaneous

The regulations in part 71 and part 78 indicate that the Deputy Administrator, Veterinary Services, is the official responsible for various decisions under these regulations. We are proposing to revise part 71, § 78.33, and certain definitions in § 78.1, to indicate that primary responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are proposing to change only § 78.33 and portions of § 78.1 in part 78 at this time, because they are the only sections in that part affected by the substantive changes we are proposing to make in part 71. We are proposing to replace references to "Deputy Administrator" with references to "Administrator," and are proposing to replace references to "Veterinary Services" with references to "Animal and Plant Health Inspection Service." We are making similar changes in all other APHIS regulations, including the remainder of part 78, in separate **Federal Register** documents.

With these changes, the terms "Veterinary Services," "Veterinary Services approved tattoo," and "Veterinary Services inspector" would no longer appear in part 71, and the term "Veterinary Services approved tattoo" would no longer appear in part 78. Therefore we are proposing to remove the definitions of those terms. We are proposing to add definitions of "Administrator," "Animal and Plant Health Inspection Service," "Official swine tattoo" (discussed further in this document under the heading "Swine Tattoos"), and "APHIS inspector" to part 71. We are also proposing to add definitions of "Animal and Plant Health Inspection Service" and "Official swine tattoo" to part 78.

Executive Order 12291 and Regulatory Flexibility Act

We are proposing this rule in conformance with Executive Order 12291, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Under the current regulations, swine in interstate commerce must be identified. In many cases, this places the responsibility for identification initially on the producer. Under the proposed regulations, swine in interstate commerce would have to be identified at whichever of the following comes first: (1) The point of first commingling of the swine in interstate commerce with swine from any other source; (2) upon unloading of the swine in interstate commerce at any livestock market; (3) upon the transfer of ownership of the swine in interstate commerce; or (4) upon arrival of the swine in interstate commerce at their final destination. Under these proposed provisions, the responsbiility for identification of swine in interstate commerce at the producer's premises would in many cases be transferred to the premises of meat packing plants, selling and buying firms and dealers.

In 1987, producers received approximately $117 per hog. Based on Government estimates, the costs of complying with identification requirements under the regulations are $.25 per animal for applying the identification and $.24-$.33 per lot of 30 animals for recordkeeping.

According to Department information, most of the hogs purchased by packing firms are purchased directly from producers. The remaining hogs are purchased at auction and terminal markets and from independent dealers. This proposed rule would have little or no economic impact on the large majority of these entities, because packing firms and most buying and selling facilities are already equipped to apply swine identification and are already employing means of swine identification, for their own purposes, that would satisfy the proposed requirements. no added recordkeeping would be required under the proposed regulations.

The provisions in this proposed rule concerning the types of permissible identification devices would neither increase nor decrease the cost to the public for their application.

Under these circumstances, the Administrator of the Aminal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

These programs/activities under 9 CFR parts 71 and 78 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), the information collection provisions that are included in this proposed rule have been approved by the Office of Management and Budget (OMB) and have been given OMB control number 0579-0047.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are proposing to amend 9 CFR parts 71 and 78 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 71.1, the definitions of "Premises of origin", "United States Department of Agriculture swine backtag", "Veterinary Services", "Veterinary Services approved tattoo" and "Veterinary Services inspector" would be removed; and new definitions of "Administrator", "Animal and Plant Health Inspection Service", "APHIS inspector", "Commingling", "Livestock market", "Official swine tattoo", and "United States Department of Agriculture backtag" would be added, in alphabetical order, to read as follows:

§ 71.1 Definitions.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

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APHIS inspector. An inspector of the Animal and Plant Health Inspection Service.

* * * * *

Commingling. The mixing or assembling of swine from one premises with swine from any other premises, including, but not limited to, loading swine from more than one premises on the same truck, trailer, vessel, or railroad car.

* * * * *

Livestock market. A stockyard, buying station, concentration point, or any other premises where swine are assembled for sale or sale purposes.

* * * * *

Official swine tattoo. A tattoo, conforming to the six-character alpha-numeric National Tatto System, that provides unique identification for each herd or lot of swine.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backstagging System, and that provides unique identification for each animal.

3. In § 71.19, paragraph (a)(2) would be redesignated as paragraph (a)(3); paragraph (a)(1) would be revised; and new paragraph (a)(2) would be added, to read as follows:

§ 71.19 Identification of swine in interstate commerce.

(a)(1) Except as provided in paragraph (c) of this section, no swine may be sold, transported, received for transportation, or offered for sale or transportation, in interstate commerce, unless they are individually identified at whichever of the following comes first:

(i) The point of first commingling of the swine in interstate commerce with swine from any other source;

(ii) Upon unloading of the swine in interstate commerce at any livestock market;

(iii) Upon transfer of ownership of the swine in interstate commerce; or

(iv) Upon arrival of the swine in interstate commerce at their final destination.

(2) The identification shall be by means of identificaiton approved by the Administrator and listed in paragraph (b) of this section. All swine shall remain so identified while they are in interstate commerce.

* * * * *

4. In § 71.19, paragraphs (b) (4) and (5) would be redesignated as paragraphs (b) (5) and (6) respectively; a new paragraph (b)(4) would be added; and paragraphs (b) (2) and (3), and paragraph (d), would be revised, to read as follows:

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(b) * * *

(2) United States Department of Agriculture backtags, when used on swine moving to slaughter;

(3) Official swin tattoos, when used on swine moving to slaughter, when the use of the official swine tattoo has been requested by a user or the State animal health official, and the Administrator authorizes its use in writing based on a determination that the tattoo will be retained and visible on the carcass of the swine after slaughter, so as to provide identification of the swine;

(4) Tattoos of at least 4-characters when used on swine moving to slaughter, except sows and boars as provided in § 78.33 of this chapter;

* * * * *

(d) Serial numbers of United States Department of Agriculture backtags and official swine tattoos will be assigned to each person who applies to the State animal health official or the Area Veterinarian in Charge for the State in which that person maintains his/her or its place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or State or Federal representative who requests official eartags from the State animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that State. Persons assigned serial numbers of United States Department of Agriculture backtags, official swine tattoos, and official eartags must:

* * * * *

5. In § 71.6, paragraph (c), the words "the Veterinary Services" would be removed, and the words "the Animal and Plant Health Inspection Service" would be added in their place.

§ 71.1, 71.6, 71.10, 71.13 [Amended]

6. In addition to the amendments set forth above, in 9 CFR part 71, the words "Veterinary Services" would be removed, and the word "APHIS" would be added in their place in the following places:

(a) Section 71.1, definitions of "Accredited herd", "Area Veterinarian in Charge", and "Official eartag".

(b) Section 71.6, paragraph (a), both times they appear; and paragraph (c);

(c) Section 71.10, paragraph (b)(1); and

(d) Section 71.13, heading.

§§ 71.3, 71.4, 71.5, 71.6, 71.13, 71.16 [Amended]

7. In addition to the amendments set forth above, in 9 CFR part 71, the words "a Veterinary Services" would be removed, and the words "an APHIS" would be added in their place in the following places:

(a) Section 71.3, paragraph (d), introductory text; and paragraph (d)(5);

(b) Section 71.7, paragraphs (a) and (b);

(c) Section 71.5, both times they appear;

(d) Section 71.6, paragraph (b);

(e) Section 71.13, both times they appear; and

(f) Section 71.16, paragraph (a).

§§ 71.3, 71.10, 71.16 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 71, the words "Deputy Administrator, Veterinary Services" would be removed, and the word "Administrator" would be added to their place in the following places:

(a) Section 71.3, paragraph (d)(6), both times they appear;

(b) Section 71.3, paragraph (e);

(c) Section 71.10, paragraph (a)(5) and (b)(3); and

(d) Section 71.16, paragraph (a)(1)(i) and (a)(4), both times it appears.

PART 78—BRUCELLOSIS

9. The authority citation for part 76 would contined to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 136b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

10. In § 78.1, the terms "Animal and Plant Health Inspection Service", "Official swine tattoo", and "United States Department of Agriculture backtag" would be added, in alphabetical order, to the list of terms defined in § 78.1; the definitions of "United States Department of Agriculture swine backtag" and "Veterinary Service approved tattoo" would be removed; and definitions of "Animal and Plant Health Inspection Service", "Official swine tattoo", and "United States Department of Agriculture backtag" would be added, in alphabetical order, to read as follows:

§ 78.1 Definitions.

The following terms are defined in this section.

* * * * *

Animal and Plant Health Inspection Service. The Aminal and Plant Health Inspection Service of the United States Department of Agriculture.

* * * * *

Official swine tattoo. A tattoo, conforming to the six-character alpha-numberic National Tattoo System, that provides a unique identification for each herd or lot of swine.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that conforms to the eight-character alpha-numberic National Backtagging System, and that provides unique identification for each animal.

* * * * *

11. In § 78.33, paragraph (a)(3) would be revised to read as follows:

§ 78.33 Sows and boars.

(a) * * *

(3) Individually identified by an official swine tattoo when the use of the official swine tattoo has been requested by a user or the State animal health official, and the Administrator authorizes its use in writing based on a determination that the tattoo will be retained and visible on the carcass of the swine after slaughter, so as to provide identification of the swine.

* * * * *

12. In § 78.33, paragraph (d) would be revised to read as follows:

§ 78.33 Sows and boars.

* * * * *

(d) Serial numbers of the United States Department of Agriculture backtags and official swine tattoos will be assigned to each person who applies to the State animal health official or the Area Veterinarian in Charge for the State in which that person maintains his or her place of business. Serial numbers of official eartags will be assigned to each accredited veterinarian or State or Federal representative who requests official eartags from the State animal health official or the Area Veterinarian in Charge, whoever is responsible for issuing official eartags in that State. Persons assigned serial numbers of United States Department of Agriculture backtags, official swine tattoos, and official eartags:

* * * * *

Done in Washington, DC, this 16th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–24848 Filed 10–19–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–202–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require modification of the ram air turbine system. This proposal is prompted by reports that, during ground and flight tests of the ram air turbine, the blades remained in the feathered pitch of initial spin-up, instead of progressively moving to the operating pitch, due to corrosion in the blade bearing and operating pin assembly. This condition, if not corrected, could lead to failure of the ram air turbine system to provide hydraulic power in an emergency situation.

DATE: Comments must be received no later than December 11, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–202–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–202–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A300 series airplanes. The manufacturer reported that, during some ground and flight tests of the ram air turbine system, the blades remained in the feathered pitch of initial spin-up, instead of progressively moving to the operating pitch. Further investigation revealed this was due to corrosion in the blade bearing and operating pin assembly. This condition, if not corrected, could result in failure of the ram air turbine system to provide hydraulic power in an emergency situation.

Airbus Industrie has issued Service Bulletin A300–29–088, Revision 1, dated December 27, 1985, which describes a revised greasing procedure and a new sealing compound application in the ram air turbine system. This modification

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improves corrosion resistance inside the ram air turbine blade pitch regulating system. (The service bulletin references Dowty Rotol Service Bulletin 29–125 for additional instructions.) The DGAC has classified the Airbus Service Bulletin as mandatory, and has issued Airworthiness Directive 85–146–IMP(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the ram air turbine system in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $210. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,780.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, Serial Numbers 001 through 305, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent failure of the ram air turbine system to provide hydraulic power in an emergency situation, accomplish the following:

A. Modify the ram air turbine system in accordance with Airbus Industrie Service Bulletin A300–29–068, Revision 1, dated December 27, 1985.

Note: Airbus Industrie Service Bulletin A300–29–068 references Dowty Rotol Service Bulletin 29–125 for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24797 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–184–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for cracks in certain areas of the center spar sealing angles and bottom skin, the rear spar bottom boom, the front spar bottom boom, the outer wing front and rear spar, and top boom; and repair, if necessary. This proposal is prompted by full-scale fatigue testing by the manufacturer, which identified certain structural components associated with the wing that are prone to fatigue cracking. This condition, if not corrected, could result in reduced structural capability of the wings.

DATES: Comments must be received no later than December 5, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–184–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–184–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. Full-scale fatigue testing by the manufacturer has revealed (1) cracks in the vertical web of a center spar sealing angle adjacent to Rib 6; (2) cracks originating from bolt holes in the rear spar bottom boom between Rib 1 and Rib 9; (3) cracks in the front spar bottom boom between Ribs 6 and 7, and Ribs 8 and 9; and (4) cracks emanating from bolt holes in the front spar top boom inboard and outboard of Rib 9. This condition, if not corrected, could lead to reduced structural integrity of the wings.

Airbus Industrie Has Issued

1. Service Bulletin A300–57–146, dated December 30, 1988, which describes procedures for repetitive X-ray examinations to detect cracks in the center spar sealing angles and replacement, if necessary; and repetitive high frequency eddy current inspections or close visual inspections of the wing bottom skins, and repair, if necessary;

2. Service Bulletin A300–57–147, dated December 30, 1988, which describes procedures for repetitive ultrasonic inspections to detect cracks in the rear spar bottom boom between Ribs 1 and 9, in the inboard and outboard areas of the main landing gear reinforcing plate, and repair, if necessary;

3. Service Bulletin A300–57–149, dated January 30, 1989, which describes procedures for repetitive ultrasonic inspections to detect cracks in the front spar boom between Ribs 6 and 7, and Ribs 8 and 9, and repair, if necessary; and

4. Service Bulletin A300–57–155, dated December 30, 1988, which describes procedures for repetitive high frequency eddy current inspections to detect cracks in the outer wing front and rear spar top boom inboard and outboard of Rib 9, and repair, if necessary.

The French DGAC has classified these service bulletins as mandatory, and has issued Airworthiness Directive 89–109–097(B), dated July 19, 1989, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect fatigue cracking in certain structural components associated with the wing, and repair, if necessary, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $211,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to certain Model A300 series airplanes, as identified in Airbus Industrie Service Bulletins A300–57–146, A300–57–147, A300–57–155, dated December 30, 1988, and A300–57–149, dated January 30, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wings, accomplish the following:

A. Perform X-ray inspections of the center spar sealing angles, and perform high frequency eddy current (HFEC) inspections of the wing bottom skins adjacent to the pylon rear attachment fitting, in accordance with Airbus Industrie Service Bulletin A300–57–146, dated December 30, 1988, as follows:

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

(2) For airplanes that have accumulated 18,000 or more landings but less than 23,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 23,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4–2C and B4–100 series airplanes:

(1) For airplanes that have accumulated less than 15,000 landings, perform the initial inspection prior to the accumulation of 17,000 landings.

(2) For airplanes that have accumulated 15,000 or more landings but less than 19,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 19,000 or more landings, perform the initial

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inspection within 750 landings after the effective date of this AD.

c. Model B4–200 series airplanes:

(1) For airplanes that have accumulated less than 10,000 landings, perform the initial inspection prior to the accumulation of 12,000 landings.

(2) For airplanes that have accumulated 10,000 or more landings but less than 14,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 14,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph A.1., above, repeat the inspections as follows:

a. Repeat the X-ray and HFEC inspections at intervals not to exceed 12,000 landings.

b. In lieu of repetitive HFEC inspections of the wing bottom skin, close visual inspections may be performed at intervals as follows:

(1) For Model B2 series airplanes: at intervals not to exceed 7,900 landings;

(2) For Model B4–2C and B4–100 series airplanes: At intervals not to exceed 6,700 landings;

(3) For Model B4–200 series airplanes: At intervals not to exceed 6,200 landings.

3. If cracks are found during any inspection required by paragraph A.1. or A.2. above, repair prior to further flight in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph A.2., above.

B. Perform ultrasonic inspections of the rear spar bottom boom between Ribs 1 and 9 in the inboard and outboard areas of the main landing gear (MLG) reinforcing plate on all aircraft where Modifications 1868 and 1869 have *not* been accomplished. On all aircraft where Modification 1868 has been accomplished but where Modification 1869 has *not* been accomplished, perform an ultrasonic inspection of the rear spar bottom boom between Ribs 1 and 9 in the areas inboard of the main landing gear reinforcing plate. Inspections are to be performed after paint removal in accordance with Airbus Industrie Service Bulletin A300–57–147, dated December 30, 1988, as follows:

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 21,000 landings, perform the initial inspection prior to the accumulation of 23,000 landings.

(2) For airplanes that have accumulated 21,000 or more landings but less than 26,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 26,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4–2C and B4–100 series airplanes:

(1) For airplanes that have accumulated less than 17,000 landings, perform the initial inspection prior to the accumulation of 19,000 landings.

(2) For airplanes that have accumulated 17,000 or more landings but less than 21,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 21,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

c. Model B4–200 series airplanes:

(1) For airplanes that have accumulated less than 14,000 landings, perform the initial inspection prior to the accumulation of 16,000 landings.

(2) For airplanes that have accumulated 14,000 or more landings but less than 18,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 18,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph B.1., above, repeat the ultrasonic inspections as follows:

a. For Model B2 series airplanes: At intervals not to exceed 5,300 landings;

b. For Model B4–2C and B4–100 series airplanes: At intervals not to exceed 4,500 landings;

c. For Model B4–200 series airplanes: At intervals not to exceed 3,900 landings.

3. If cracks are found during any inspection required by paragraph B.1. or B.2. above, repair prior to further flight, in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph B.2., above.

C. Perform ultrasonic inspections of the front spar bottom boom between Ribs 6 and 7, and Ribs 8 and 9, in accordance with Airbus Industrie Service Bulletin A300–57–149, dated January 30, 1989, as follows:

1. Perform the initial inspection as follows:

a. Model B2 series airplanes:

(1) For airplanes that have accumulated less than 21,000 landings, perform the initial inspection prior to the accumulation of 23,000 landings.

(2) For airplanes that have accumulated 21,000 or more landings but less than 26,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 26,000 or more landings, perform the initial inspection within 1,000 landings after the effective date of this AD.

b. Model B4–2C and B4–100 series airplanes:

(1) For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

(2) For airplanes that have accumulated 18,000 or more landings but less than 22,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 22,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

c. Model B4–200 series airplanes:

(1) For airplanes that have accumulated less than 14,000 landings, perform the initial inspection prior to the accumulation of 16,000 landings.

(2) For airplanes that have accumulated 14,000 or more landings but less than 18,000 landings, perform the initial inspection within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 18,000 or more landings, perform the initial inspection within 750 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph C.1., above, repeat the ultrasonic inspections as follows:

a. For Model B2 series airplanes at intervals not to exceed 7,100 landings;

b. For Model B4–2C and B4–100 series airplanes at intervals not to exceed 6,100 landings;

c. For Model B4–200 series airplanes at intervals not to exceed 4,700 landings.

3. If cracks are found during any inspection required by paragraph C.1. or C.2., above, repair prior to further flight in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph C.2., above.

D. For Model B2 and B4 series airplanes only: Perform high frequency eddy current (HFEC) inspections of the front and rear spar top boom inboard and outboard of Rib 9, in accordance with Airbus Industrie Service Bulletin A300–57–155, dated December 30, 1988, as follows, at the following intervals:

1. Perform the initial inspection as follows:

a. For airplanes that have accumulated less than 18,000 landings, perform the initial inspection prior to the accumulation of 20,000 landings.

b. For airplanes that have accumulated 18,000 or more landings but less than 23,000 landings, perform the initial inspection within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 23,000 or more landings, perform the initial inspections within 1,000 landings after the effective date of this AD.

2. If no cracks are found as a result of the inspections required by paragraph D.1., above, repeat the HFEC inspections at intervals not to exceed 9,300 landings.

3. If cracks are found during any inspection required by paragraph D., above, repair prior to further flight in accordance with the service bulletin. Repetitive inspections must be conducted thereafter in accordance with paragraph D.2., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 6, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24783 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–CE–25–AD]

Airworthiness Directives; Commander (Gulfstream Aerospace) Models 112, 112B, 112TC, 112TCA, 114, and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Commander (Gulfstream Aerospace) 112 and 114 series airplanes which would supersede AD 87–14–03, Amendment No. 39–5671. The FAA has reevaluated the repairs specified in AD 87–14–03, and has determined that the existing repairs are insufficient. Therefore, the FAA is proposing to supersede AD 87–14–03 with a new AD that would require inspections and repair as necessary of the forward wing spar and replacement of the previous repair with a repair of a new design.

DATE: Comments must be received on or before November 20, 1989.

ADDRESSES: Gulfstream Aerospace Service Bulletin (S/B) Nos. SB–112–71C and SB–114–22C, both dated November, 1988, applicable to this AD, may be obtained from the Commander Aircraft Company, 7200 NW. 63rd Street, Hangar 8, Wiley Post Airport, Bethany, Oklahoma 73008. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region Office of the Assistant Chief Counsel. *Attention:* Rules Docket 89–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Office, Southwest Region, FAA, Fort Worth, Texas 76193–0150; Telephone (817) 624–5155.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Rules Docket No. 89–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Subsequent to the issuance of AD 87–14–03, Amendment 39–5671 (52 FR 28472) applicable to Gulfstream Aerospace 112 and 114 series airplanes, a Petition for Reconsideration was received from the law firm of Mackey, Rozanski, and Friedland, seeking to modify AD 87–14–03 to require a permanent fix if cracks are found in the forward wing spar. The petition contends that the repair required by the AD is inadequate and is not a permanent fix. The Petition for Reconsideration was published for public comment on September 9, 1987 (52 FR 33952). There were 358 comments received in support of the petition and one comment was received which did not support the petition. As a result, Gulfstream Aerospace reevaluated the repairs specified in AD 87–14–03.

The analysis of the forces acting on the side brace fitting, the resultant fitting and bolt forces acting on the spar, and stresses in the spar cap that result from these forces revealed that there are significant out-of-plane forces acting on the spar cap through the side brace fitting and its attach bolts. These forces are due to two causes:

(1) The main landing gear side brace does not lie exactly in the wing spar plane, and thus when loaded, has force components out-of-plane; and

(2) Inherently, the clevis center line of the side brace fitting is displaced from the spar. Because of this design, bending moments and attaching bolt tensile loads are produced whenever the clevis is loaded by either the actuator or side brace.

This member force analysis was done not only for the modified structure but for the original structure as well. A comparison of the results obtained, specifically the out-of-plane forces that tend to produce spar cap flange cracking of the sort observed in service, indicates that the existing modifications per AD 87–14–03 will not preclude this cracking. Even though the ultimate strength of the original configuration was demonstrated by static tests, the FAA has determined that high spar cap flange bending stresses are produced locally by these out-of-plane forces. In the original configuration, the out-of-plane forces were sufficient to cause cracking at relatively short in-service times, and the modification per AD 87–14–03 cannot be expected to preclude such in-service cracking. Despite the modifications of AD 87–14–03, it has been reported that three airplanes have experienced deformation of the side brace support assembly tubes, deformation of the bolts, and fatigue cracks in the wing spars.

Therefore, a new repair modification has been developed which involves a new type fitting. This design beams these out-of-plane forces directly to the spar cap horizontal flanges, where the forces are transferred by shear connections. By preventing out-of-plane loading of the upper spar cap vertical flange and spar web, the fore and aft bending of the cap vertical flange is eliminated and cracking is precluded. This design needs no auxiliary links or brackets to perform its function and is relatively simple to install. Therefore, the proposed AD would supersede AD 87–14–03 and require inspections and repair as necessary of the forward wing spar in accordance with Gulfstream Aerospace Service Bulletin Nos. SB–112–71C or SB–114–22C as applicable. The FAA has determined there are

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approximately 1,064 airplanes affected by this proposal. The cost of the inspection portion of the AD would be $175 per airplane for a total estimated cost of $186,200. If cracks are found in either or both wings, repairs must be made at the owner's expense. The manufacturer has agreed to accomplish the modifications to the wings (the subject of this NPRM), the seats (AD 85-03-04R2) and vertical tail (AD 88-05-06), in accordance with the latest applicable service bulletins, for a total owner contribution of $2,000 per airplane. In addition, the owner will be reimbursed for reasonable costs of installing the earlier kit at the time the new repair is installed. The reimbursement amount per airplane will be based upon the retail price for the parts purchased and the documented reasonable labor rate paid by each owner for the installation. This is not considered a regulatory cost of the AD since owners/operators are required by other regulations to maintain their airplane to specific safety and airworthiness standards. The FAA views the economic impact of this proposed AD to be negligible and concludes that a full regulatory evaluation is not warranted. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of part 39 of the FAR as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

PART 39—[AMENDED]

§ 39.13 [Amended]

2. By superseding AD 87-14-03, Amendment No. 39-5671, with the following new AD:

Commander (Gulfstream Aerospace, Rockwell): Applies to Models 112 and 112B (S/N's 1 through 544, and 13000); 112TC and 112TCA (S/N's 13001 through 13309); and 114 and 114A (S/N's 14000 through 14540) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD unless already accomplished.

To prevent failure of the forward wing spar in the area of the main landing gear side brace fitting attachment, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the left and right forward wing spars in the area of the main landing gear side brace fitting in accordance with the instructions specified in part I of Gulfstream Aerospace Service Bulletin (SB) Nos. SB-112-71C or SB-114-22C, both dated November, 1988, as applicable.

(1) If cracks are found in the left or right forward wing spar as noted in paragraph 8d, part I, of the above referenced service instructions, prior to further flight repair in accordance with part II of Gulfstream Aerospace SB Nos. SB-112-71C or SB-114-22C, both dated November, 1988, as applicable.

(2) If cracks are found in the left or right forward wing spar as noted in paragraph 8a, part I, of the above referenced service instructions, prior to further flight repair in accordance with part IV of Gulfstream Aerospace SB Nos. SB-112-71C or SB-114-22C, both dated November, 1988, as applicable.

(3) If cracks are found in the left or right forward wing spar as noted in paragraph 8b or 8e, part I of the above referenced service instructions, prior to further flight repair in accordance with part V of Gulfstream Aerospace SB Nos. SB-112-71C or SB-114-22C, both dated November, 1988, as applicable.

(4) If cracks are found in the left or right forward wing spar as noted in paragraph 8c, part I of the above referenced service instructions, prior to further flight modify the airplane in accordance with instructions obtained from the Manager, Airplane Certification Branch, FAA, at the address listed in paragraph (e) of this AD.

(5) If no cracks are found, reinspect the spars thereafter at intervals not to exceed 100 hours TIS, and within the next 300 hours TIS, modify the airplane in accordance with the instructions in part II of Gulfstream Aerospace SB Nos. SB-112-71C or SB-114-22C, both dated November, 1988, as applicable. The repetitive inspection may be discontinued once the airplane is so modified.

(b) If the airplane has been modified either in accordance with part II of Gulfstream Aerospace SB No. SB-112-71, or part II of SB No. SB-112-71A, or part II or part V of SB No. SB-112-71B, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 100 hours TIS after the initial inspection, and within the next 300 hours TIS, modify the airplane in accordance with the instructions in part III of Gulfstream Aerospace SB No. SB-112-71C. The repetitive inspection may be discontinued once the airplane is so modified.

(c) If the airplane has been modified either in accordance with part II of Gulfstream Aerospace SB No. SB-114-22, or Part II of SB No. SB-114-22A, or part II or part V of SB-114-22B, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 100 hours TIS after the initial inspection, and within the next 300 hours TIS, modify the airplane in accordance with the instructions in part III of Gulfstream Aerospace SB No. SB-114-22C. The repetitive inspection may be discontinued once the airplane is so modified.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the repair can be performed, provided all of the following conditions are met:

(1) Existing cracks have not propagated together (in the event there are cracks above each bracket attachment bolts) and the cracks have not propagated beyond the limits stated in the service bulletin (as noted in paragraph 8c, part I of Accomplishment Instructions of Gulfstream Aerospace Service Bulletin Nos. SB-112-71C or SB-114-22C, both dated November 1988, as applicable).

(2) The landing gear side brace and bracket are firmly attached such that proper extension and retraction of the gear will occur.

(3) Pilot only on board.

(4) Day VFR only, avoiding all rough weather possible, and with no intentional abrupt maneuvers.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Airplane Certification Branch, FAA Southwest Region, Fort Worth, Texas 76193-0150; Telephone (817) 624-5150.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Airplane Certification Office, Southwest Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Commander Aircraft Company, 7200 NW. 63rd Street, Hangar 8, Wiley Post Airport, Bethany, Oklahoma 73008; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This supersedes Amendment 39-5671 (52 FR 26472), AD 87-14-03.

Issued in Kansas City, Missouri, on October 2, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24791 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-CE-28-AD]

Airworthiness Directives; Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, 17-30A, 17-31A, and 17-31ATC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to a adopt a new Airworthiness Directive (AD), applicable to Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, 17-30A, 17-31A, and 17-31ATC airplanes, which would require repetitive inspections and, if necessary, replacement of the drag strut landing gear assembly fitting. The FAA has received reports that these fitting assemblies are cracking and deforming. The actions proposed herein will detect and correct these conditions and preclude collapse of the landing gear.

DATE: Comments must be received on or before November 20, 1989.

ADDRESSES: Bellanca Service Letter B-106, dated March 30, 1989, applicable to this AD may be obtained from Bellanca, Inc., P.O Box 964, Alexandria, Minnesota 56308; Telephone (612) 762-1501. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-28-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Steven J. Rosenfeld, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694-7030.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Central Region, Office of Counsel, Attention: Rules Docket No 89-CE-28-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports that the two drag strut landing gear fitting assemblies, Part Number (P/N) 194153-10, on Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, 17-30A, 17-31A, and 17-31ATC airplanes, are cracking on the face near the landing gear strut attachment weld. The FAA has determined that these cracks can be initiated by hard landings at high speeds, heavy braking, or improper tightening of the fitting-to-spar attach bolts. These conditions cause local deformations of the fitting assembly around the weld, causing cracks to occur. These cracks grow with normal usage and this condition reduces the main landing gear down lock overcenter. Eventually, the main landing gear can collapse because the overcenter down lock is lost, or the fitting assembly itself fails. Since the condition described is likely to exist or develop in other Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31; 17-31TC, 17-30A, 17-31A, and 17-31ATC airplanes of the same design, the proposed AD would require repetitive inspections and replacement of any fitting assemblies which have cracked, are deformed, or have failed. The FAA has determined there are approximately 1,200 airplanes effected by the proposed AD. The cost of inspecting and replacing the fitting assemblies according to the proposed AD is estimated to be $230 per airplane. The total cost is estimated to be $276,000. The cost of compliance with this proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this section (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, it will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Bellanca, Incorporated. Applies to Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, (all serial numbers (S/N)), 17-30A (S/N 30283 through 89-301007), 17-31A (S/N 32-15 through S/N 78-32-172), and 17-31ACT (S/N 31004 through S/N 79-31155) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

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To prevent the collapse of the main landing gear which could result in subatantial airframe damage, accomplish the following:

(a) Upon the accumulation of 500 hours total time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and each 100 hours TIS thereafter, inspect the left and right drag strut landing gear fitting assemblies, Part Number (P/N) 194153-10, for cracks, deformations, or failures as follows:

Note 1: This information is also contained in Bellanca Service Letter B-106, dated March 30, 1989. Penetrant inspection techniques are described in FAA Advisory Circular (AC) 43-3, "Nondestructive Testing in Aircraft." These inspections can be conducted with the fitting assemblies installed on the airplane. Do not apply loads to the landing gear components, particularly the drag strut, as it is possible to move the drag strut to overcenter and cause the landing gear to collapse.

(1) Place jacks or other workstands under the airplane at locations specified in the Bellanca Service Manual to prevent accidental landing gear collapse during this inspection.

(2) Figure 1 to this AD describes the 194153-10 fitting assembly. Clean the aft face of the-1 fitting with Stoddart solvent and a brush.

(3) Inspect for cracks adjacent to the welds which join the -1 fitting to the -2 fitting and -3 brace near the lower aft attachment bolt holes using liquid penetrant inspection techniques and a magnifying glass. If any crack is found, prior to further flight replace the assembly with a new fitting assembly, P/N 194153-30 or P/N 194153-40, as applicable.

(4) Lay a straight-edge along side the lower aft attachment bolts, in accordance with Figure 2 and, using a feeler gage or wire gage of .030 inch thickness, look for any evidence of local deformation (dimpling) in the-1 fitting. If any deformation greater than .030 inches is found, prior to further flight replace the assembly with a new fitting assembly, P/N 194153-30 or P/N 194153-40, as applicable.

Note 2: The -30, -40 assemblies can be distinguished from assembly by measuring the -1, -2, fitting and -3 brace part thickness: -10 part thickness is 0.062 inches, -30, -40 parts thickness is 0.100 inches. A 0.040 Shim (P/N 194167-2 Shim Spar Bracket) is available to provide proper fit between the 194153 fitting assembly and the forward spar.

(5) Check and adjust, as required, the drag strut for correct overcenter using the appropriate procedures in the Bellanca Service Manual.

(6) If the inspections specified above do not indicate any evidence of cracks or local deformation in the -1 fitting, apply zinc chromate or Epibond primer, as necessary, to protect the part and repeat these inspections as specified above.

(7) The repetitive inspections specified above are not required on the P/N 194153-30 or P/N 194153-40 assemblies.

(b) Airplanes with cracked or deformed fittings may be flown with a special flight permit in accordance with FAR 21.197 to a location where this AD may be accomplished providing that no crack is found during the inspection of paragraph (a)(3) that exceeds 3/8 in. length, or no deformation is found during the inspection of paragraph (a)(4) that is great enough to cause the overcenter of the drag strut to be out of tolerance. In these cases, no special flight permit is allowed.

(c) An alternate method of compliance or adjustment of the initial and repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Chicago Aircraft Certification Office, 2300 E Devon Avenue, Des Plaines, Illinois 60018.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Chicago Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Bellanca, Inc.; P.O. Box 964, Alexandria, Minnesota 56308; Telephone (612) 762-1501; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 6, 1989.

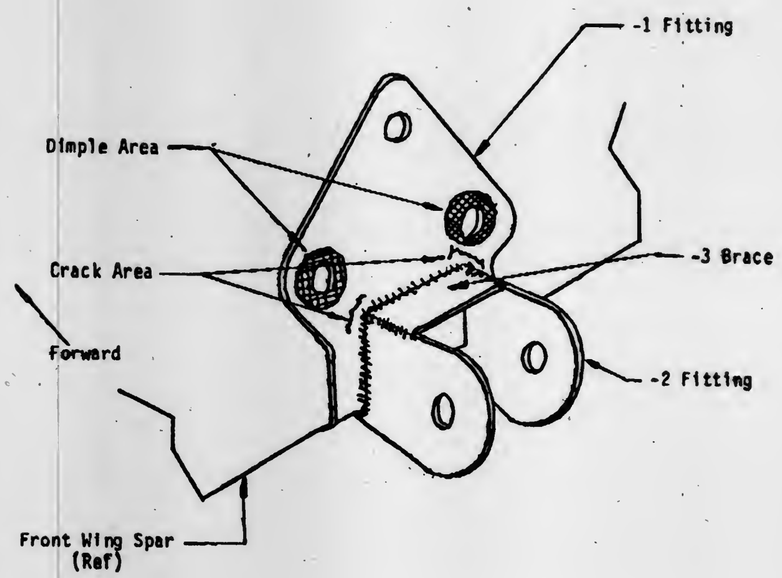
Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

BILLING CODE 4910-13-M

FIGURE 1

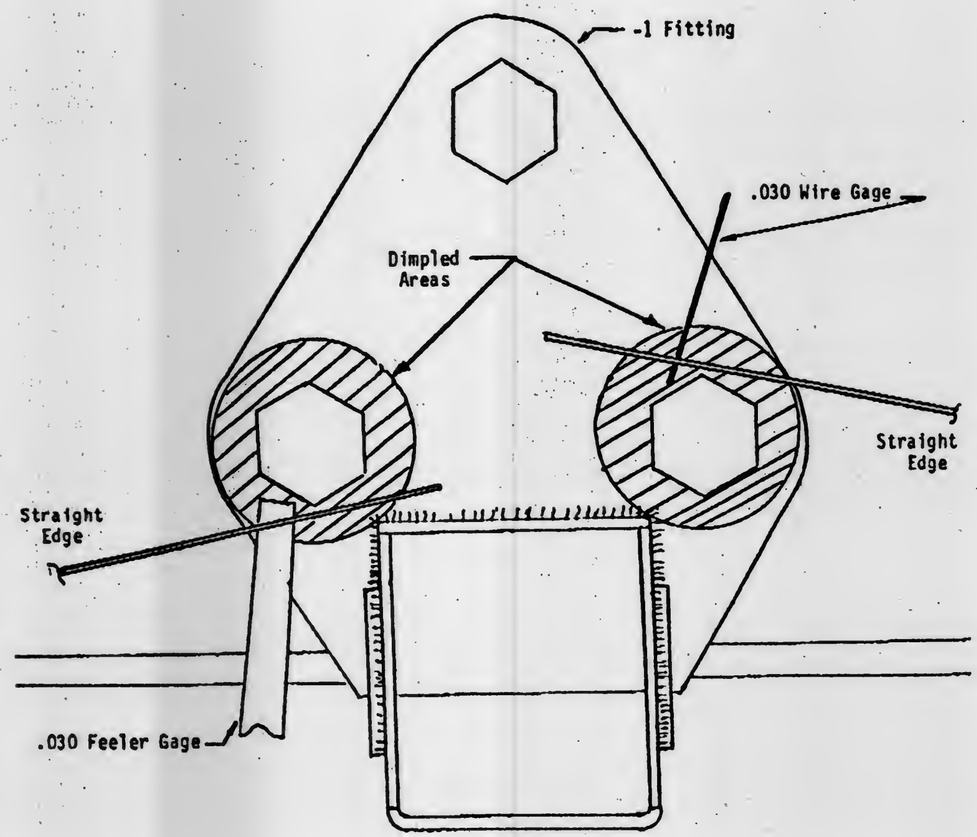
FRONT SPAR DRAG STRUT FITTING ASSEMBLY
BELLANCA P/N 194153-10



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FIGURE 2

EXAMPLES OF MEASURING DEPTH OF DIMPLED AREAS



[FR Doc. 89-24792 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 89-NM-190-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require a one-time eddy current inspection for cracks of the fuselage skin at certain lap joints. This proposal is prompted by reports of cracking of the fuselage skin at certain lap joints on airplanes with a similar lap joint configuration. This condition, if not corrected, could result in rapid decompression of the airplane.

DATE: Comments must be received no later than December 5, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-190-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 30, 1989, the FAA issued Telegraphic AD T89-14-51, applicable to certain Model 727 airplanes, to require a one-time inspection for cracks of the fuselage skin at lap joints located at stringer (S) 14L from body station (BS) 440 to BS 720, and at S-14R from BS 440 to BS 540. That AD was based upon a report of a 20-inch crack on one airplane. That AD is applicable to the first 47 airplanes produced, which have a thick (.080 inch) outer skin riveted and cold bonded to a thin (.040 inch) inner skin.

The FAA has been advised that some Model 727 series airplanes, subsequent to line number 047, have a thick outer skin riveted to a thin inner skin that is cold bonded to a .020 inch doubler. Although there have been no reports of cracking on airplanes so configured, the FAA has determined that the potential exists for cracking to occur in the thin inner skin if there is disbonding of the skin from the doubler. This cracking may not be detected by visual inspection. Failure to detect and repair cracks in the S-14 lap splice could lead to rapid depressurization of the airplane.

During the production cycle, the .040 inch inner skin with the .020 inch doubler was replaced with .060 inch machined inner skin on some airplanes. This configuration, with a thicker inner skin, would be less susceptible to cracking. However, records do not indicate when this configuration change was madein production, or on what airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an eddy current inspection of airplanes, line numbers 048 through 453, to determine if the configuration of the fuselage skin located between S-14 and S-19 is a .020 inch bonded doubler added to a .040 inch inner skin. If this configuration is present, a one-time eddy current inspection of the inner skin at the S-14 lap splice would then be required to determine if cracks are present. Any cracks identified would be required to be repaired prior to further flight. Additionally, operators would be required to report their inspection results to the FAA.

There are approximately 370 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 280 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,400.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

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the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, line numbers 048 through 453, certificated in any category. Compliance required within the next 600 landings after the effective date of this AD, unless previously accomplished.

To detect cracking and prevent rapid depressurization, accomplish the following:

A. Conduct an eddy current inspection in accordance with the 727 Non-Destructive Testing Manual (NDT), D6–48875, Part 6, 53–30–27, Figure 7, or an ultrasonic inspection in accordance with the 727 NDT Manual, D6–48875, Part 6, 53–30–27, Figure 2, to determine the configuration of the fuselage skins located between stringer (S) 14 and S–19. If the skin has the .020 inch bonded doubler added to the .040 inch skin, conduct the inspection described in paragraph B., below; otherwise, no further action is required.

B. If the fuselage skins are determined to have the .040 inch skin with the .020 inch bonded doubler, conduct a one-time eddy current inspection for cracks of the overlapped skin in accordance with the 727 NDT Manual D6–48875, Part 6, 53–30–27, Figure 8 or 9, near the bottom row of fasteners in the lower skin of the longitudinal lap splices located at S–14L from body station (BS) 440 to BS 720 and at S–14R from BS 440 to BS 540. Prior to further flight, repair any cracks found in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Within 10 days after completion of the inspections required by paragraph B., above, submit a report of findings, positive or negative, for airplanes with the bonded doubler, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The report must include the line number of the airplane inspected, the number of cycles, and, if cracks were found, the size and locations of the cracks.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington,

Issued in Seattle, Washington, on October 6, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24794 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–207–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8 (Pre-Modification No. 8/1098), Equipped With Main Gear Uplock Actuator Part Numbers 10800–103, –105, –107, –109, and –111

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8 series airplanes, which would require inspection of the main landing gear (MLG) uplock actuator to assess the position of the sensor bracket, and reworking or replacement of parts, if necessary. This proposal is prompted by reports that trapping of the MLG uplock actuator target lever can occur under adverse tolerance conditions, combined with a failed target lever return spring. This condition, if not corrected, could result in failure of the MLG to extend for landing.

DATE: Comments must be received no later than December 11, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–207–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K IY5, Canada.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, New York Aircraft Certification Office, ANE–173; telephone (516) 791–6427. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–207–AD. The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC–8 series airplanes. There have been reports that trapping of the main landing gear (MLG) uplock actuator can occur under adverse tolerance conditions, combined with a failed target lever return spring. A trapped lever will prevent rotation of the MLG uplock latch and, thus, prevent the release of the retracted MLG. This condition, if not corrected, could lead to failure of the MLG to extend for landing.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8–32–79, Revision A, dated February 3, 1989, which describes procedures for inspection of the MLG uplock actuator to assess the position of the sensor bracket, and reworking and replacement of parts, if necessary. This service bulletin references Dowty Alert Service Bulletin DHC8–32–50, dated December 16, 1988, for additional instructions. Transport Canada has classified the de Havilland service bulletin as mandatory, and has issued Airworthiness Directive CF–89–03 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require inspection of the MLG uplock actuator to assess the position of the sensor bracket, and reworking or replacement of parts, if necessary, in accordance with the service bulletin previously described.

It is estimated that 59 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to Model DHC–8–100 series airplanes, serial numbers 3 through 144 inclusive; certificated in any category; equipped with main landing-gear uplock actuator, Part Numbers 10800–103, –105, –107, –109, –111; and which do not have Modification 8/1098 incorporated. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear (MLG) to extend, accomplish the following:

A. Within 50 hours time-in-service after the effective date of this AD, inspect the MLG uplock installation in accordance with the compliance section of de Havilland Service Bulletin No. 8–32–79, Revision A, dated February 3, 1989. If the sensor bracket is under flush, and there are no spacers fitted, prior to further flight, rework the actuator in accordance with the service bulletin.

B. Whenever the proximity sensor and/or the proximity sensor mounting bracket on an uplock actuator has been reset or replaced, prior to further flight, perform the inspection and any necessary repair as required by paragraph A., above.

C. Within one year after the effective date of this AD, rework and reidentify all uplock actuators in accordance with Dowty Alert Service Bulletin (part of de Havilland Service Bulletin No. 8–32–79) paragraph 2.E., "Rework" instructions. After rework is accomplished, the inspections required in paragraphs A. and B., above, may be terminated.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on October 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24795 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–199–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9, C–9 (Military), and DC–9–80 (MD–80) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9, C–9 (Military), and DC–9–80 (MD–80) series airplanes, and Model MD–88 airplanes, which currently requires a check of the aft accessory compartment for fuel, installation of placards, and revision to the Airplane Flight Manual. This action would require inspection, modification, and repair of the auxiliary power unit (APU) exhaust system; trimming of the ends of the APU forward lower frame; and modification of the insulation blanket on the aft pressure bulkhead. This proposal is prompted by the discovery of a new fuel leak path, and the development of a new modification which improves the aft accessory compartment drainage and minimizes the possibility of fuel being absorbed by the aft pressure bulkhead

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insulation blanket. This condition, if not corrected, could result in a fire in the aft accessory compartment.

DATE: Comments must be received no later than December 11, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-199-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00(54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Aircraft Certification Service, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5245.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-199-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On November 2, 1988, the FAA issued AD 88-24-04, Amendment 39-6066 (53 FR 46441; November 17, 1988), to require a check of the aft accessory compartment for fuel, installation of placards, and revision to the Airplane Flight Manual (APM). That action was prompted by a report of a fire in the aft accessory compartment. This condition, if not corrected, could result in a fire in the aft accessory compartment.

Since issuance of AD 88-24-04, an operator discovered an additional fuel leak path at the APU exhaust duct outer elbow to baffle faying surface. This leak path was not addressed in McDonnell Douglas DC-9 Service Bulletin A49-40, dated September 26, 1988 (the service bulletin referenced in the existing AD). Furthermore, investigation has revealed that if fuel leaks into the aft accessory compartment, for whatever reason, the fuel may not properly drain overboard and may be absorbed by the aft pressure bulkhead insulation blanket. This condition, if not corrected, could present the same unsafe condition, fire in the aft accessory compartment, as was addressed in the existing AD.

The FAA has reviewed and approved McDonnell Douglas DC-9 Service Bulletin A49-40, Revision 1, dated May 16, 1989, which describes procedures for inspection, modification, and repair of the APU exhaust duct assembly (including procedures addressing the recently identified leak path); and McDonnell Douglas DC-9 Service Bulletin 53-229, dated July 6, 1989, which describes procedures for trimming the ends of the APU forward lower frame and modification of the aft pressure bulkhead insulation blanket. The latter modification will ensure proper drainage of fuel away from the aft accessory compartment and insulation blanket.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-24-04 to require inspection, modification, and repair of the APU exhaust duct assembly, trimming the ends of the APU forward lower frame, and modification of the aft pressure bulkhead insulation blanket, in accordance with the service bulletins previously described.

This proposal would also redefine the terminating action provisions of the existing AD. This proposal specifies that accomplishment of the inspection, modification, and repair of the APU exhaust system, trimming of the ends of the APU forward lower frame, and modification of the aft pressure bulkhead insulation blanket would constitute terminating action for the inspection, placard, and AFM revision requirements of the AD.

There are approximately 1,525 McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 936 airplanes of U.S. registry would be affected by this AD, that it would take approximately 90 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,369,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 88-24-04, Amendment 39-6066 (53 FR 46441; November 17, 1988), by requiring modification of the APU exhaust duct assembly, the APU forward lower frame, and the aft pressure bulkhead blanket as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire in the aft accessory compartment, accomplish the following:

A. Within 30 days or 300 flight hours time-in-service after December 2, 1988 (the effective date of AD 88-24-04, Amendment 39-6066), whichever occurs first, or upon the accumulation of 3,000 flight hours time-in-service since new, whichever occurs later, accomplish the following:

1. Check for evidence of fuel on the APU exhaust ducting and in the surrounding area in the aft accessory compartment, including the insulation blankets. Remove any fuel before the next APU start attempt.

2. Install a placard on or above the center instrument panel in a location that allows it to be in full view of both pilot and co-pilot, and on the aircraft logbook, stating the following: "Do not attempt to restart APU after a false start until check of aft accessory compartment for fuel is accomplished."

3. Add the following to the Limitations Section of the FAA approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM: "Do not attempt to restart APU after a false start until check of aft accessory compartment for fuel is accomplished."

B. Within 36 months from the effective date of this amendment, inspect, modify, and repair the APU exhaust duct assembly in accordance with procedures described in Figures 3, 4, and 5 of McDonnell Douglas DC-9 Service Bulletin A49-40, Revision 1, dated May 16, 1989.

C. Within 36 months from the effective date of this amendment, trim the ends of the APU forward lower frame and modify the aft pressure bulkhead insulation blanket, in accordance with procedures described in McDonnell Douglas DC-9 Service Bulletin 53-229, dated July 6, 1989.

D. Accomplishment of the inspection, modification, and repair of the APU exhaust system in accordance with procedures described in Figures 3, 4, and 5 of McDonnell Douglas DC-9 Service Bulletin A49-40, Revision 1, dated May 16, 1989; and trimming of the ends of the APU forward lower frame and modification of the aft pressure bulkhead insulation blanket in accordance with procedures described in McDonnell Douglas DC-9 Service Bulletin 53-229, dated July 6, 1989; constitutes terminating action for the requirements of this AD. Once those actions are accomplished, the placard and AFM change required by paragraph A., above, may be removed.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD. All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on October 11, 1989.

Darrell, M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24796 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3672-7]

Approval and Promulgation of State Implementation Plans, Montana; PM-10 Committal SIP for Group II Areas, New Source Review, SIP for Group III Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve revisions to the Montana State Implementation Plan (SIP) submitted on April 25, 1988, by the Governor of Montana. The revisions include: (1) The adoption of the PM-10 national ambient air quality standards (NAAQS); (2) deletion of the total suspended particulate (TSP) ambient air quality standard; (3) amendments to the new source review program to include protection of the PM-10 standard and assure consistency with EPA requirements; (4) commitments to monitor and develop plans if PM-10 violations are found in Group II PM-10 areas; (5) a revised emergency episode plan for PM-10; (6) a listing of the control measures in the SIP which will be relied on to maintain the PM-10 NAAQS, including a new measure—the Montana Smoke Management Plan; and (7) a request to redesignate TSP nonattainment areas which are classified as Group III PM-10 areas to unclassified for TSP. Item (7) will be addressed in another **Federal Register** Notice. The State has also reserved the right to request a two-year extension in attaining the PM-10 standard in any area where such an extension is found to be appropriate.

DATES: Comments must be received on or before November 20, 1989.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405.

Copies of the State submittal are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405

Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1773, FTS 564-1773.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which each NAAQS is based along with the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM-10) on July 1, 1987, (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups. Group I areas have violated the PM-10 NAAQS or have air quality data showing high probabilities (greater than 95%) of violating the NAAQS. For these areas, states must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate probability (between 20 and 95%) of violating the PM-10 NAAQS, and for these areas, the states must commit to monitor for PM-10 and submit a full SIP

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if a violation occurs. Group III areas are estimated to have a low probability (less than 20%) of violating the PM–10 NAAQS, and no new control strategy requirements apply. PM–10 areas in Montana are as follows: Group I: Butte, Kalispell, Lame Deer, Libby, Missoula and Polson/Ronan; Group II: Anaconda, Columbia Falls, Eureka, Hays, Helena/East Helena and Thompson Falls; Group III: the rest of the State. The Group I areas of Lame Deer and Polson/Ronan and the Group II area of Hays are located on Indian reservations and are not under the jurisdiction of the State of Montana.

The submittal does not address those areas on Indian reservations. The submittal also does not address attainment of the PM–10 NAAQS in the Group I areas. Attainment plans for the Group I areas are still being developed by the State.

EPA PM–10 SIP Requirements

The following SIP requirements apply to all areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM–10 standards, and PM–10 should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM–10 standard and the total suspended particulate (TSP) prevention of significant deterioration (PSD) increments, it must trigger preconstruction review for a major new or modified source which would emit significant amounts of either TSP or PM–10.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/m3 measured as PM–10, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L to Part 51 were also revised to PM–10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR 58 set forth the requirements for design of national, State and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily at least one site representative of the expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency can be reduced after the first year of data collection depending on the values monitored.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see Section 2.0 of the PM–10 SIP Development Guideline) or when an annual arithmetic mean (AAM) above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7) above, or within 37 months of promulgation of the PM–10 NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8) above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable, but no later than three years from approval of the committal SIP.

Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Montana SIP

The Montana submittal addresses EPA's requirements as follows:

(1) *PM–10 air quality standards.* The State has adopted ambient air quality standards for PM–10 in revisions to ARM 16.8.821 which are part of the submittal.

(2) *Preconstruction review of stationary sources of PM–10.* The State administers a New Source Review (NSR) program for major stationary sources and modifications, which was approved by EPA on September 23, 1980 (45 FR 62982). By adopting ambient air quality standards for PM–10 in ARM 16.8.821, the State has triggered a requirement (under the State regulations) for preconstruction review of all sources of PM–10. The State also administers a PSD program which was originally approved by EPA on May 5, 1983 (48 FR 20231). The submittal contains revisions to these regulations which are proposed for approval with this notice. The State did not amend (in ARM 16.8.941(a)) the maximum allowable increase in Class I areas receiving a variance to the increment from "particulate matter" to "particulate matter: TSP" as in 40 CFR 51.166(p)(4). This leaves the maximum allowable increase somewhat ambiguous since "particulate matter" is defined as either PM–10 or TSP. The State has submitted a SIP revision on September 5, 1989, which should correct this oversight. EPA will address the September 5, 1989, revision in a separate notice. This regulation is proposed for approval because it is clear that in all other instances, the increments are in terms of TSP.

(3) *Revised emergency episode plans.* In its submittal, the State has revised its emergency episode plans in Chapter 7 of its SIP to reflect the changes in the federal regulations due to PM–10.

(4) *PM–10 monitoring networks.* EPA approved the PM–10 monitoring network as meeting 40 CFR Part 58 criteria on March 30, 1989; however, EPA is completing a reanalysis of the network which may require modification of the network. The quality assurance (QA) plan for PM–10 monitoring has not yet been submitted in final form by the State and was not part of the March 30, 1989, approval. An acceptable QA plan and any required network modifications must be submitted to EPA prior to final approval of the Group II and III SIPs.

(5) *Collection of ambient PM–10 data.* The State has begun monitoring for PM–10 in all Group I and II areas. The State has continued to monitor for TSP as a surrogate for PM–10 in Group III areas and has committed to implement PM–10 monitoring if a TSP monitor being used as a surrogate PM–10 monitor records an exceedance of the PM–10 NAAQS. The State has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* The State has determined that the existing SIP as amended is adequate to maintain the PM–10 standards in areas currently in attainment. The standards will be maintained by continuing surrogate TSP monitoring, instituting PM–10 monitoring when excursions above the PM–10 standards occur, developing a full SIP revision if actual PM–10 standard violations occur, enforcing the control measures listed below (items 1–18), and continuing to enforce the PSD/NSR program.

(9) *Submittal of a revised control strategy for PM–10 if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit a PM–10 emissions inventory for all Group II areas by August 31, 1990.

The State submittal lists the control measures which are being relied on to maintain the PM–10 standards. These measures and their SIP approval status are listed below:

(1) Ambient Air Quality Standards for PM–10 (ARM 16.8.821)—proposed approval by EPA with this notice.

(2) Prevention of Significant Deterioration of Air Quality (ARM 16.8.921–16.8.943)—originally approved by EPA on May 5, 1983 (48 FR 20231)—approval of revisions submitted on August 21, 1985, and May 27, 1987, and September 5, 1989, will be addressed in separate Federal Register notices. Revisions to include PM–10 in the program and other minor revisions consistent with EPA requirements are proposed for approval by EPA with this notice.

(3) Visibility Impact Assessment (ARM 16.8.1001–16.8.1118)—approved by EPA on June 6, 1986 (51 FR 20646).

(4) Permits, Construction and Operation of Air Contaminant Sources (ARM 16.8.1101–16.8.1118)—originally approved by EPA on September 23, 1980 (45 FR 62982)—EPA is approving revisions to this regulation in a separate FR action.

(5) Stack Height and Dispersion Techniques (ARM 16.8.1204–16.8.1206)—approved by EPA on June 7, 1989 (54 FR 24334).

(6) Open Burning (ARM 16.8.1301–16.8.1306)—approved by EPA on July 15, 1982 (47 FR 30762).

(7) Particulate Matter, Airborne (ARM 16.8.1401)—approved by EPA on March 4, 1980 (44 FR 14036).

(8) Particulate Matter, Fuel Burning Equipment (ARM 16.8.1402)—approved by EPA on March 4, 1980 (44 FR 14036). On December 2, 1988 (53 FR 48643) EPA approved revisions submitted by the Governor on March 9, 1988, which exempt residential combustion units from this rule.

(9) Particulate Matter, Industrial Process (ARM 16.8.1403)—approved by EPA on March 4, 1980 (44 FR 14036).

(10) Visible Air Contaminants (ARM 16.8.1404)—EPA has not acted on this revision.

(11) Incinerators (ARM 16.8.1406)—approved by EPA on March 4, 1980 (44 FR 14036).

(12) Wood Waste Burners (ARM 16.8.1407)—approved by EPA on March 4, 1980 (44 FR 14036).

(13) Fluoride Emissions—Phosphate Processing (ARM 16.8.1419)—approved by EPA on March 4, 1980 (44 FR 14036).

(14) Standard of Performance of New Stationary Sources (NSPS) (ARM 16.8.1423)—incorporates by reference 40 CFR Part 60, effective July 1, 1987. Enforcement of the federal NSPS has been delegated to Montana.

15. Prohibited Materials for Wood or Coal Residential Stoves or Coal Residential Stoves (ARM 16.8.1428)—EPA has not acted on this revision.

(16) Emission Standards for Existing Aluminum Plants (ARM 16.8.1501–16.8.1505)—EPA has not acted on this revision.

(17) Combustion Device Tax Credit (ARM 16.8.1601–16.8.1602)—EPA has not acted on this revision.

(18) Montana Smoke Management Plan (SMP) (Memorandum of Agreement effective 7/31/78)—EPA is proposing to approve this measure as helpful in attaining and maintaining the PM–10 NAAQS with this notice. The SMP is a memorandum of agreement between the State Department of Health and Environmental Sciences, the U.S. Forest Service, the State Division of Forestry, the Bureau of Indian Affairs, the Bureau of Land Management, Burlington Northern, St. Regis Paper, Champion Timberlands, the National Weather Service, the State Department of Fish and Game, Wickes Forest Industries, the National Park Service, the U.S. Fish and Wildlife Service, and the Missoula City-County Air Pollution Control Board. The SMP requires prescribed burning for land management purposes to be carried out only when meteorological conditions are found to allow the dispersion of emissions and requires the burning to be curtailed when air quality or meteorological conditions so warrant.

Although items 10, 15, 16, and 17 have not been previously acted on by EPA because they were not previously submitted, EPA has reviewed these provisions and finds that they will be helpful in attaining and maintaining the standards. EPA, therefore, proposes that all of the requirements listed above in items 1 through 18 be included in the PM–10 SIP for Montana. EPA finds that the above provisions will be adequate to maintain the PM–10 standards in areas which are now in attainment of the standards (Group III areas).

The submittal also contains a request to extend the attainment date for the PM–10 NAAQS for up to two years should such an extension later be demonstrated to be necessary. A two-year extension is allowed by 40 CFR 51.340, but such a request must be submitted with a plan demonstrating that at least one or more emission sources or class of sources will be unable to comply with the control strategy. Since the attainment plans for Group I areas (and Group II areas later found to be exceeding the standards) will not be submitted until late in 1989 at the earliest, the State is asking to reserve the right to request the extension at the time actual attainment plans are submitted.

The State has satisfied EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental relations. These procedures have been approved as part of the State SIP in previous Federal Register notices; see 40 CFR 52.1370 et seq.

Proposed Action

EPA proposes to approve the revisions to the Montana State Implementation Plan (SIP) submitted on April 25, 1988, by the Governor of Montana. The revisions include the adoption of the PM–10 national ambient air quality standards, deletion of the total suspended particulate (TSP) ambient air quality standard, amendments to the new source review program, commitments to monitor and develop plans if necessary in Group II PM–10 areas, a revised emergency episode plan for PM–10, a listing of the control measures in the SIP which will be relied on to maintain the PM–10 NAAQS, and the Montana Smoke Management Plan. EPA also proposes to allow the State to request a two-year extension in attaining the PM–10 standard should the State later determine that such an extension is necessary. The State's request to redesignate the TSP nonattainment areas to unclassified for TSP is being addressed in a separate notice.

Interested parties are invited to comment on all aspects of these proposed actions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a

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substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401—7642.

Dated: September 29, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–24849 Filed 10–19–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–453, RM–6851]

Radio Broadcasting Services; Hampton, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Southern Arkansas Radio, licensee of Station KKOL(FM), Hampton, Arkansas, seeking the substitution of FM Channel 293C3 for Channel 296A and modification of its license accordingly. Coordinates for this proposal are 33–35–00 and 92–16–00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Southern Arkansas Radio, Attn: Wayne F. Brewis, P.O. Box 1066, Hampton, AR 71744.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–453, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24742 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–454, RM–6839]

Radio Broadcasting Services; El Dorado, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by William J. Wynne, permittee of Station KLTW(FM), El Dorado, Arkansas, seeking the substitution of FM Channel 227C3 for Channel 227A and modification of his permit accordingly. Coordinates for this proposal are 33–09–30 and 92–45–20.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William J. Wynne, Esq., Crampler O'Connor & Wynne, Suite 308, NBC Plaza, El Dorado, AR 71730.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–454, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24744 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–450, RM–6806]

Radio Broadcasting Services; Rogers, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of R & R Broadcasting, Inc., licensee of Station KAMO–FM, Rogers, Arkansas, seeking the substitution of FM Channel 232C3 for Channel 232A and modification of its license accordingly. Coordinates for this proposal are 36–24–06 and 94–06–00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 700, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–450, adopted September 19, 1989, and released October 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24745 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–519, RM–6379]

Radio Broadcasting Services; Beaumont and Big Bear Lake, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Eastland Broadcasting Corporation, proposing the allotment of Channel 269A to Beaumont, California, as its first local FM service. See 53 FR 45523, November 10, 1988. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 88–519, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24746 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–457, RM–6831]

Radio Broadcasting Services; Vero Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Treasure Coast Media, Inc. requesting the substitution of Channel 269C3 for Channel 269A at Vero Beach, Florida, and modification of its license for Station WCXL (FM) to specify the higher powered channel. Channel 269C3 can be allotted in Vero Beach in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are North Latitude 27–38–18 and West Longitude 80–23–54. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 269C3 at Vero Beach will not be considered and the petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Ann C. Farhat, Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–456, adopted September 26, 1989, and released October 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24746 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–455, RM–6915]

Radio Broadcasting Services; Murdock, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

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SUMMARY: This document requests comments on a petition by Murdock Broadcasting, proposing the allotment of Channel 255A to Murdock, Florida, as that community's first local FM service. The coordinates for the proposal are North Latitude 27–00–42 and West Longitude 82–08–42.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Vincent A. Pepper, Neal J. Friedman, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006, (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–455, adopted September 26, 1989, and released October 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24743 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–451, RM–6628]

Radio Broadcasting Services; Keokuk and Washington, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by W. Russell Withers, Jr., licensee of Station KOKX(FM), Channel 237A at Keokuk, Iowa, proposing the substitution of Channel 237C1 for Channel 237A at Keokuk, and the modification of his license to specify operation on the higher class channel, as a wide coverage area FM service. The site coordinates are 40–24–38 and 91–25–57. This proposal requires the deletion of vacant Channel 280C2 at Keokuk, the substitution of Channel 291A for Channel 237A at Washington, Iowa, and modification of the license of Station KCII(FM), licensed to Washington Radio, Inc., to accommodate its proposal. This document also directs Washington Radio to show cause why its license should not be modified to specify operation on Channel 291A at Washington.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William P. Bernton, Esq., 1875 Eye Street, NW., Suite 1050, Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 89–451, adopted September 19, 1989, and released October 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24749 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–457, RM–6857]

Radio Broadcasting Services; Carthage, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Carthage Broadcasters proposing the allotment of Channel 282A to Carthage, Texas, as that community's second local FM service. The channel allotment can be made consistent with the Commission's minimum separation requirements at the city reference coordinates, which are 32–09–24 and 94–20–18.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's, or their counsel or consultant, as follows: Jerrold Miller, Esquire, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–457, adopted September 26, 1989, and released October 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24747 Filed 10–19–89; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1615, 1616, 1622, 1632, and 1652

RIN: 3206–AD78

Federal Employees Health Benefits Acquisition Regulation; Revision of Contract Clauses and Community Rating Practices

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations which would recognize the increasing diversity in community rating practices within the insurance industry and, specifically, within the Federal Employees Health Benefits Program (FEHBP). The regulations would also expand and clarify OPM's FEHBP price negotiation policy. At the same time, OPM is taking the opportunity to amend some of the required contract clauses found in section 1652 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to better reflect the specific needs of the FEHBP, to add a new Federal Acquisition Regulation (FAR) clause requiring carriers to maintain a drugfree workplace, and to delete unnecessary or inappropriate FAR clauses.

DATE: Comments must be submitted on or before December 19, 1989.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director, Office of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Public Law 100–517, the Health Maintenance Organization Amendments of 1988, expanded the community rating methodology options available to federally qualified health maintenance organizations, also known as comprehensive medical plans or CMPs. Accordingly, OPM is proposing to modify its regulations to recognize the increasing diversity in community rating practices.

The proposed definition of "community rating" has been revised to focus on the basic per member per month (PMPM) capitation or revenue requirement that is common to a variety of community rating practices and to identify the resulting rate of payment as a market price under the FAR. The definition no longer assumes that a single community rate or market price will be applicable to all of a CMP's subscriber groups.

The definition of "experience rating" has been revised to broaden the composition of actual claims costs to include any legitimate benefit payment made, such as non-group specific capitation, per diems, and diagnostic related group (DRG) payments. This change will enable more CMPs to experience-rate the FEHBP contract.

A definition of "similar sized subscriber groups" has been added to clarify OPM's price negotiation policy. Simply stated, that policy is to obtain the market price, including applicable discounts, accorded to the two subscriber groups arithmetically closest in size to the FEHBP group for the same basic benefit package and same contract year.

OPM's statement of price negotiation policy has been expanded and clarified. The objective of obtaining the same prices accorded to similarly sized groups has been made explicit, including the potential for adjustments necessary to achieve that objective in a subsequent contract year. The statement of price negotiation policy also provides for the use of the FAR form SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, by small CMPs (those with an FEHBP enrollment of less than 1,500). OPM will require larger plans to submit additional pricing, utilization and/or demographic data about their proposed prices which will be subject to OPM review and analysis. The distinction between small and large plans is based on the revenue produced by the plans. Large plans collectively produce approximately 80 percent of all revenue produced by community rated plans. While OPM's price negotiation policy is the same for all plans, we will apply the majority of our negotiation resources to the largest contracts. Nevertheless, the proposed FEHBP rates, as well as the market price (capitation) on which they are based, will be subject to review and audit.

In subpart 1602.1, the term "subcontractor," which was redesignated as § 1602.170–11 by the letter of credit regulations published December 23, 1988, has now been redesignated as § 1602.170–12 and the new definition for "similarly sized subscriber groups" has been inserted as § 1602.170–11.

FEHBAR 1615.804–70, previously entitled "Certificate of community rating," has been amended and retitled "Certificate of accurate pricing for community rated plans." Similarly, FEHBAR 1615.804–71 has been renumbered as 1615.804–72 and retitled "Rate reduction for defective pricing or for defective cost or pricing data," and the corresponding contract clause, 1652.215–70, has been amended. The amendments make these sections consistent with OPM's price negotiation policy and will form the basis for the resolution of audit findings or other contract disputes relating to the market prices which OPM accepts from community rated CMPs. Note that a distinction is made between rate reductions for defective data, which include adjustments from the capitation or market price, and the normal accounting and price adjustments (see FEHBAR 1652.216–70) which are based on differences between an estimated and actual market price.

A new 1615.804–71 entitled "Supplemental Representation for Standard Form 1412" has been added which permits carriers with less than 1,500 subscribers to request an exemption from submission of certified cost and pricing data. The carrier must provide OPM with a representation that all statements made on or attached to the SF 1412 are correct.

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In reviewing the FEHBAR during the preparation of the proposed standard contract between OPM and carriers participating in the FEHBP, a number of clauses were identified as requiring revision to meet the specific needs of the Program. Other clauses were deemed unnecessary or inappropriate; and the passage of the Drug-Free Workplace Act of 1988 necessitated the addition of a new FAR clause to the list of required FAR clauses. The changes we have made are of three types: (1) Modification in the language of certain FEHBAR clauses; (2) addition of FAR clauses; and (3) deletion of certain optional use FAR clauses which were required in the original FEHBAR but which are no longer necessary. Descriptions of the changes follow.

The Misleading, Deceptive or Unfair Advertising clause [1652.203–70] has been changed to provide additional guidance about types of actions that would constitute misleading, deceptive or unfair advertising, to make failure to conform to the clause a material breach of the contract, and to provide a series of remedies available to the Government in the event of a breach.

The Coordination of Benefits (COB) clause [1652.204–71] has been modified to clarify that the rules carriers are to follow in coordinating benefits are those published by the National Association of Insurance Commissioners (NAIC) and specified by OPM. Also, the clause has been clarified so that only the order of benefit determination of the NAIC guidelines apply to this COB clause.

Other changes tighten the accounting for benefits which should not have been paid under the COB provisions. New paragraphs (d) and (e), respectively, require the carrier to attempt to recover COB overpayments before they can be charged as allowable costs to the contract and to report to OPM all COB savings to the contract.

The Investment Income clause [1652.215–71] has been modified in paragraph (a) to require that the carrier give "prudent" consideration rather than "due" consideration to the safety and liquidity of investments. The clause is also modified to add that maturity dates of investments usually should not exceed 1 year and under no circumstances should they exceed 3 years.

FEHB contracts require that the Carrier invest and reinvest excess FEHB funds and credit investment income earned to the Special Reserve on behalf of the FEHB Program. When a carrier fails to invest those funds or to credit income earned, it must make the contract whole as provided in 1652.215–71(f) by crediting lost investment income to the Special Reserve. OPM differentiates between lost investment income due the FEHB Fund before a Contracting Officer's Final Decision is issued and interest due the FEHB Fund following a Final Decision. The carrier's contractual obligation to credit lost investment income before the Contracting Officer issues the Final Decision is governed by the provisions of the Investment Income clause in the contract. Thus, the Interest clause at FAR 52.232–17 does not apply. After the Final Decision is issued, interest due the FEHB Fund is governed by the provisions of the Contract Disputes Act, and the Interest provision at FAR 52.232–17 is applicable.

The proposed regulations also distinguish between lost investment income due on disallowed charges and lost investment income due for failure to invest FEHB funds or credit income due the contract. Lost investment income due on disallowed charges will be assessed from the 1st day of the calendar year following the year in which the charge occurred to the date the funds are credited to the Special Reserve, the date specified by the Contracting Officer, or the date of the Contracting Officer's Final Decision, whichever is earlier. Lost investment income due for failure to credit income due the contract or failure to place excess funds in income producing investments and accounts will be assessed from the date the funds should have been invested to the date the funds are credited to the Special Reserve or the date of the Contracting Officer's Final Decision, whichever is earlier.

The Accounting and Price Adjustment clause [1652.216–70] used in the community rated contracts has been substantially changed to reflect OPM's treatment of the new HMO amendments contained in Public Law 100–517. The subscription rate now focuses on the basic PMPM capitation or revenue requirement and is considered to be a market price under the FAR. OPM recognizes that the actual market price for the following contract year may not be available at the time of the carrier's rate submission. Proposed rates must be developed by starting from a current market price and adjusting that price to project to January 1. If the projection is later revised downward for the similarly sized subscriber groups, adjustments must be made to the following year's FEHB proposal to reflect the revision. If the trend adjustment for the similarly sized subscriber groups is increased over the estimate, the carrier may propose an addition to the following year's capitation. This is equivalent to the annual reconciliation currently requested by OPM.

The Accounting and Allowable Cost clause [1652.216–71] used in experience rated contracts has been revised to better control unacceptable accounting practices. Specifically, the clause now requires a CPA certification of the plan's Summary Statement of FEHBP Financial Operations and balance sheet. In addition, a new paragraph (c) has been added to require the carrier's chief executive officer and chief financial officer and the authorized agent for the plan's underwriter to certify that, to the best of their knowledge and belief, the amounts charged are allowable and allocable in accordance with the FAR cost principles, that they do not include any unallowable costs, and that OPM has been given credit for all income, refunds, rebates and allowances due.

The Notice of Significant Events clause [1652.222–70] has been modified to add two additional events which require notification to OPM. These are: (1) Fraud, embezzlement or misappropriation of FEHBP funds and (2) any qualification, exception or reservation made by a CPA in its audit opinion or management letter to the Plan. The application of the clause has also been broadened to include not only Comprehensive Medical Plans but all FEHBP plans.

The Subcontracts clause [1652.244–70] has been modified to require FEHBP approval of the subcontract only where the amount charged the FEHBP exceeds 25 percent of the total cost of the subcontract. Approval of subcontracts is generally necessary to make sure that the Government's interests are protected. Where a large majority of the plan's business is in the commercial sector and the FEHBP is being charged only its pro rata share, the Government can rely on the competitive marketplace to make sure that the subcontract price is fair and reasonable. Therefore, even if the amount charged the FEHBP for the subcontract exceeds $100,000, the subcontract will not be reviewed unless more than 25 percent of the total cost of the subcontract is charged to the FEHBP.

The Renewal and Withdrawal of Approval clause [1652.249–70] has been revised to make certain that carriers understand that in the event the carrier fails to fulfill the requirements of the FEHBP contract, OPM does not have to wait until the contract is terminated before taking remedial action to protect enrollees.

In addition to the above amendments, technical corrections have been made to 1652.232–70 (now 1652.232–72), Non-Commingling of Funds, and 1652.246–70, FEHB Inspection. Further, the clauses have been redated to January 1990 to reflect the date they would become effective.

FEHBAR Subpart 1652.3 sets forth a matrix of FAR and FEHBAR clauses to be used in connection with the FEHB contracts. Two FAR clauses have been added to the matrix. FAR 52.203–7, Anti-Kickback Procedures, had previously been omitted from the FEHBP clause matrix and 52.223–6 has been added to implement the Drug-Free Workplace Act of 1988. The two FEHBAR clauses concerning FEHBP payments, 1652.232–70 and 1652.232–71, which were included in the letter of credit regulations published on December 23, 1988, are also now incorporated into the matrix. Technical corrections have been made to the line items for FAR 52.215–25, FAR 52.215–30, 1652.222–70, FAR 52.223–2, FAR 52.230–3, FAR 52.230–4, FAR 52.230–5, and FAR 52.232–23. In addition, we have changed the "R" ("reference") wherever it appears in the last two columns of the Matrix to "T" (full text) because the proposed model contract which will be in place for contract year 1990 contains the full text of these clauses. Further, we have determined that several clauses are inappropriate in the FEHBP contracts and are deleting them from the FEHBAR's list of applicable FAR clauses, as follows.

The Consistency in Cost Accounting Practices clause [FAR 52.230–6] is to be used in contracts performed substantially in the United Kingdom. Since OPM does not contract for health insurance or services to be performed substantially in the United Kingdom, the clause will not be included in FEHB contracts.

The Payments clause [FAR 52.232–1] is not a mandatory use clause of the FAR but is to be used as appropriate and as modified with respect to payment due dates. Because of the Program's unique method of payment, the modifications necessary to comport with the FEHBP requirements rendered the clause so different that it no longer resembled the original FAR clause. On December 23, 1988, OPM published FEHB-specific payments clauses in its letter of credit regulations which take the place of the FAR Payments clause. We are now deleting the FAR Payments clause from the FEHBAR's list of applicable FAR clauses.

The Extras clause [FAR 52.232–11] is used to prevent a contractor from providing and billing the Government for an extra or additional quantity of contracted for supplies or services without the authorization of the contracting officer. This concept has no relevance to the FEHBP. First, the Government does not contract for any quantity of memberships. Second, individual employees and annuitants sign up during an open season or at other times throughout the year as various events allowing them to change enrollment occur. As a consequence, the number of memberships in a plan continually changes. The carrier is entitled to be paid if there are additional or extra enrollments during the year. Therefore, in accordance with FEHBAR 1601.301, the practical realities associated with the unique nature of health care procurements warrant the deletion of the Extras clause from the proposed standard contract.

The Prohibition on Assignment of Claims clause [FAR 52.232–24] has been deleted. The Assignment of Claims Act gives contractors the right to assign payments by the Government to a third party, i.e., to a bank, as collateral for a loan. The Act also allows the Government to prohibit assignment. Most Government contracts are of short term of 1 or 2 years. The decision to assign or prohibit assignment lasts only for that short period. If the same item is again purchased from the contractor, a new decision can be made to allow or prohibit assignment based on the new contract.

FEHB contracts, however, extend over many years; some are almost 30 years old. A decision made when the contract is first executed to either allow or prohibit assignment may not be the correct decision for the circumstances 10 years later. In order to provide flexibility without modifying the contract every time a carrier wants to make an assignment, we have replaced the FAR Prohibition on Assignment of Claims clause with a separate Approval for the Assignment of Claims clause [1652.232–73] which requires the carrier to obtain the written approval of the Contracting Officer before he or she can assign the contract. To be consistent, we have added the Approval for the Assignment of Claims clause to the FEHBP Clause Matrix and have amended the Matrix to show the use status for the Assignment of Claims clause as "A," that is, the clause is to be used only when the applicable conditions are met. This decision is dictated by the practical realities of the long-term nature of FEHB contracts.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it provides the opportunity for many smaller contractors to submit less documentation than previously required of them and, also, simply makes changes to reflect current practices within the FEHBP.

List of Subjects in 48 CFR Parts 1602, 1615, 1616, 1622, 1632, and 1652

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

Accordingly, OPM proposes to amend 48 CFR chapter 16 as follows:

1. The authority citations for parts 1602, 1615, 1616, 1622, 1632, and 1652 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITION OF WORDS AND TERMS

2. In Subpart 1602.1, sections 1602.170–2 and 1602.170–6 are revised, section 1602.170–11 is redesignated as section 1602.170–12 and a new section 1602.170–11 is added to read as follows:

1602.170–2 Community rate.

(a) "Community rate" means a rate of payment which is based on a per member per month capitation or revenue requirement that applies to a combination of the subscriber groups for a comprehensive medical plan. The capitation rate is a market price consistent with FAR 15.804–3. References in this subchapter to "price analysis" or "established market price" relating to the applicability of policy and contract clauses refer to comprehensive medical plans using community rates.

(b) "Adjusted community rate" means a community rate which has been adjusted for expected medical utilization of the FEHBP group. An adjusted community rate is a prospective rate and can not be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group.

1602.170–6 Experience rate.

"Experience rate" means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and *estimated* claims incurred but not reported, adjusted for benefit modifications, utilization trends, and trends in the economy. Actual paid claims includes any legitimate benefit payment made to providers of medical

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services, such as non-group specific capitation, per diems, and Diagnostic Related Group (DRG) payments.

1602.170–11 Similarly sized subscriber groups.

"Similarly sized subscriber groups" means a comprehensive medical plan's two non-governmental employer groups which: (1) purchase substantially the same basic benefit package proposed for the Federal group; (2) renew in January or during the effective period of the January community rates; and (3) have total subscriber enrollment at the time of the rate proposal arithmetically closest in size to the previous September's FEHB subscriber enrollment, as determined by OPM. Contracts with a governmental authority or program or any health benefits program for employees of states, political subdivisions of states and other public entities are excluded.

PART 1615—CONTRACTING BY NEGOTIATION

3. In subpart 1615.8, section 1615.802(b) is revised; sections 1615.804–70 and 1615.804–71 are retitled and revised; a new section 1615.804–72 is added; section 1615.805–70(c) is renumbered as (d); and a new paragraph (c) is added to read as follows:

1615.802 Policy.

* * * * *

(b) (1) Price analysis for contracts where premiums and subscription income are based on community rates (market prices). For contracts with fewer than 1,500 FEHBP subscribers, OPM may rely on a basic reasonableness test in combination with a carrier's representation that the market price submitted on SF–1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, is based on the price offered to its similarly sized subscriber groups (see FEHBAR 1602.170–10).

(2) For contracts with 1,500 FEHBP subscribers or more and for contracts with fewer than 1,500 FEHBP subscribers that do not use the SF 1412, OPM shall require additional price or cost data relating to the community rate, including the submission and analysis of specified data relating to the prices offered to similarly sized subscriber groups and the demographic and utilization characteristics of those groups.

(3) Contracts will also be subject to a price adjustment if it is determined subsequently that different market prices were actually used for the similarly sized subscriber groups as defined in 1602.170–10. Such adjustments will normally be identified by the carrier and applied against its community rate for the subsequent year.

* * * * *

1615.804–70 Certificate of accurate pricing for community rated plans.

When a carrier proposes a community rate as defined by FEHBAR 1602.170–2, the Contracting Officer shall require the carrier to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempt from filing certified cost or pricing data. The Certificate shall be executed each time a proposal is made.

Certificate of Accurate Pricing for Community Rated Plans

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or the Contracting Officer's representative in support of _____ *FEHBP rates are accurate and complete for the current year; the FEHBP rates were developed in a manner consistent with the rating methodology and structure used to rate the Carrier's similarly sized subscriber groups (see FEHBAR 1602.170–10) and approved by OPM, except where the Carrier has elected to use the alternative methodology for adjusted community rating specified by OPM or other methodology approved by OPM; and the FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract.

Firm _____

Name _____

Title _____

Date of execution _____

*Identify the time period to which the rates apply.

(End of certificate)

1615.804–71 Supplemental representation for SF 1412.

Carriers with less than 1,500 FEHBP subscribers may request an exemption from submission of certified cost and pricing data. The request for exemption is made on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data [see FAR 53.301.1412], which contains a representation that all the statements made on or attached to the SF 1412 are correct. In addition to the representation made on the SF 1412, the Contracting Officer shall require the carrier to execute the Supplemental Representation for SF 1412 shown below. The carrier shall attach the supplemental representation to the SF 1412.

Supplemental Representation for SF 1412

The Carrier represents that the FEHBP market price, per member per month capitation for _____ * FEHBP rates is no greater than the capitation quoted to similarly sized subscriber groups (see FEHBAR 1602.170–11); that adjustments made to the market price, per member per month capitation were developed in a manner consistent with the rating methodology and structure used to rate the carrier's similarly sized subscriber groups; and that the adjustments were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract.

*Identify the time period to which the rates apply. The rate must be either the actual rate in effect for the current year or a quoted rate for the next year.

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in 1652.215–70 shall be inserted in all FEHBP contracts based on established market price.

1615.805–70 Carrier investment of FEHB funds.

* * * * *

(c) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier fails to invest excess FEHB funds or to credit any income due the contract, for whatever reason, it shall credit any investment income lost to the special reserve.

* * * * *

PART 1616—TYPES OF CONTRACTS

Subparts 1616.1 and 1616.2 [Amended]

4. In part 1616, the words "catalog, or" are removed wherever they appear in the table of contents and text of subparts 1616.1 and 1616.2.

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

5. In part 1622, section 1622.103–70 is revised to read as follows:

1622.103–70 Contract clause.

The clause at 1652.222–70 shall be inserted in all FEHBP contracts.

PART 1632—CONTRACT FINANCING

6. In part 1632, a new subpart 1632.8 and section 1632.806–70 are added to read as follows:

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

The clause set forth in 1652.232–73 shall be inserted in all FEHBP contracts.

PART 1652—CONTRACT CLAUSES

7. Section 1652.203–70 is revised to read as follows:

1652.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.703, the following clause shall be inserted in all FEHBP contracts:

Misleading, Deceptive, or Unfair Advertising (Jan. 1990)

(a) The Carrier agrees that any advertising material, including promotional material, marketing material, or supplemental literature for its Plan(s), shall adhere to the "Rules Governing Advertisement of Accident and Sickness Insurance with Interpretive Guidelines" and the additional Supplemental Literature Guidelines which are both set forth in Appendix D.

(b) Failure to conform to this requirement shall be a material breach of the contract to be corrected at the carrier's expense and may result in a reduction in the service charge. In order to protect the interest of Federal employees, annuitants and their dependents, OPM shall have the right to:

(1) Direct the Carrier to cease and desist distribution, publication or broadcast of the misleading material;

(2) Direct the Carrier to issue corrections in the same manner and media as the original material was made;

(3) Direct the Carrier to provide the correction in writing by certified mail to all enrollees of the Plan(s) that was the subject of the original material;

(4) Suspend new enrollments in the Carrier's Plan(s);

(5) Provide Enrollees an opportunity to transfer to another carrier; and

(6) Terminate the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval, paragraph (b).

(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute "contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

8. Section 1652.204–70 is amended by revising the clause heading and the opening to the first sentence of the clause and by revising 1652.204–71 to read as follows:

1652.204–70 Contractor records retention.

* * * * *

Contractor Records Retention (Jan. 1990)

Notwithstanding the provisions of Section 5.7 [FAR 52.215–2(d)] "Audit-Negotiation,"

* * *

1652.204–71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

Coordination of Benefits (Jan. 1990)

(a) The Carrier shall coordinate on a primary-secondary basis the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary or secondary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the Model Guidelines for Coordination of Benefits (COB) and specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract providing the Carrier demonstrates that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported each year along with the Carrier's annual accounting statement in a form specified by OPM.

(End of clause)

9. Sections 1652.215–70 and 1652.215–71 are revised to read as follows:

1652.215–70 Rate reduction for defective pricing or defective cost or pricing data.

As prescribed in 1615.804–72, the following clause shall be inserted in contracts based on established market price:

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Jan 1990)

If any rate established in connection with this contract was increased because of defective data or information—(1) the Carrier furnished cost or pricing data that was not complete, accurate, or current as certified in the Certificate of Accurate Pricing for Community Rated Plans (FEHBAR 1615.804–70); (2) the Carrier furnished pricing data that was not accurate as represented on the Claim for Exemption from Submission of Certified Cost or Pricing Data (SF 1412); (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–11) as certified in the Certificate of Accurate Pricing for Community Rated Plans or represented in the Supplemental Representation for SF 1412; or (4) the Carrier furnished data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(End of clause)

1652.215–71 Investment income.

As prescribed in 1615.805–71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

Investment Income (Jan 1990)

(a) The Carrier shall invest and reinvest all FEHBP funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments. Maturities usually should not exceed 1 year's duration and should under no circumstances exceed 3 years' duration.

(b) All investment income earned on FEHBP funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f), had it not been for the Carrier's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the first day of the calendar year following the year in which the unallowable charge was made and shall end on the earlier of: (1) the date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) the date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95–563), which is applicable to the period in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause. Thereafter, the rate shall be the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the

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Carrier's FEHB plan and shall substitute "underwriter" or other appropriate reference for the term "Carrier."

(End of clause)

10. The introductory text in section 1652.216–70 is revised, paragraphs (b)(2) through (b)(4) of the clause therein are revised and new paragraphs (b)(5) and (b)(6) are added, and section 1652.216–71 is revised to read as follows:

1652.216–70 Accounting and price adjustment.

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established market price:

Accounting and Price Adjustment (Jan 1990)

(a) * * *

(b) * * *

(2) The subscription rate agreed to in this contract is derived from the market price, per member per month (PMPM) capitation or revenue requirement that applies to a combination of subscriber groups. The PMPM capitation established in this contract may be an estimate of the Carrier's actual market price PMPM capitation that will be in effect during the contract period.

(3) If, for the contract period, the Carrier establishes an actual PMPM capitation higher than the PMPM capitation established for this contract and the higher capitation is actually paid by similarly sized subscriber groups (see FEHBAR 1602.170–11), the Carrier may include an adjustment to next year's PMPM capitation to recover the difference between the estimated PMPM capitation and the actual PMPM capitation.

(4) If for the contract period, the Carrier establishes an actual PMPM capitation lower than the PMPM capitation established for this contract and the lower capitation is actually paid by similarly sized subscriber groups, the Carrier shall reduce next year's PMPM capitation to reflect the difference between the estimated PMPM capitation and the lowest actual PMPM capitation.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract year on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the estimated and the actual market price, PMPM capitation or revenue requirement.

(End of clause)

1652.216–71 Accounting and allowable cost.

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

Accounting and Allowable Cost (Jan 1990)

(a) *Annual Accounting Statement.* (1) The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:

(i) Subscription income received and accrued (including amounts received from the Contingency Reserve);

(ii) Health benefits charges made and accrued;

(iii) Administrative expenses and other charges made and accrued;

(iv) Income on investments;

(v) Other adjustments;

(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).

(2) The Carrier shall have the Plan's Summary Statement of FEHBP Financial Operations and Balance Sheet audited by a Certified Public Accounting (CPA) firm. The CPA report shall be submitted to OPM not later than 180 days after the end of the contract period.

(3) Based on the results of either the CPA audit or a Government audit, the Carrier's annual accounting statements may be (i) reduced by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers, less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes including premium taxes, insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier is required to invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees are chargeable against the investment income earned.

(iv) *Other charges.* (A) *Mandatory statutory reserves.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* When the term "premium taxes" is used in the contract without further definition or explanation, it means a tax imposed by State or local statutes upon the Carrier's gross or net premiums received.

(c) *Certification of Accounting Statement Accuracy.*

(1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed the amounts charged or credited in this accounting statement and to the best of my knowledge and belief:

1. All costs included in the statement are allowable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

2. This statement does not include any costs which are unallowable under the terms of the contract and the applicable cost principles;

3. All costs included in the statement are properly allocable to the contract on the basis of a beneficial or causal relationship between the expenses incurred and this contract in accordance with the terms of the contract and the applicable cost principles; and

4. All income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Carrier Name: _____

Name of Chief Executive Officer (Type or Print)

Name of Chief Financial Officer (Type or Print)

Signature of Chief Executive Officer

Signature of Chief Financial Officer

Date Signed

Date Signed

Underwriter _____

Name and Title of Responsible Corporate Official (Type or Print):

Sidnature of Responsible Corporate Official:

Date Signed: _____

(End of certificate)

(End of clause)

11. In section 1652.222–70, the introductory text is revised, paragraphs (a)(12) and (a)(13) are added to the clause, and paragraphs (b) and (c) are revised to read as follows:

1652.222–70 Notice of significant events.

As prescribed in 1622.103–70, the following clause shall be inserted in all FEHBP contracts.

Notice of Significent Events (Jan 1990)

(a) * * *

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by a CPA as a result of the CPA's examination of the Carrier's financial statements.

(b) Upon learning of a Significant Event, OPM may institute action as it deems necessary to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another Carrier;

(4) Withholding payment of subscription income;

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to Section 1.15, RENEWAL AND WITHDRAWAL OF APPROVAL.

(c) The Carrier shall insert this clause in all subcontracts and provider agreements over $25,000 and shall substitute "contractor" or other appropriate reference for the term "Carrier."

(End of clause)

12. In § 1652.224–70, paragraph (b)(3) of the clause is revised to read as follows:

1652.224–70 Confidentiality of Records.

* * * * *

As prescribed in § 1624.104, the following clause shall be inserted in all FEHBP contracts:

Confidentiality of Records (Jan 1990)

(b) * * *

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

* * * * *

13. In section 1652.232–72, paragraphs (a) and (c) of the clause are revised and a new section 1652.232–73 is added to read as follows:

1652.232–72 Non-commingling of FEHBP funds.

* * * * *

Non-Commingling of Funds (Jan 1990)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) * * *

(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute "contractor" or other appropriate reference for "Carrier and/or its underwriter."

(End of clause)

1652.232–73 Approval for the assignment of claims.

As prescribed in 1632.806–70, the following clause shall be inserted in all FEHBP contracts:

Approval for Assignment of Claims (Jan 1990)

(a) Notwithstanding the provisions of section 5.34 (FAR 52.232–23), Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of clause)

14. In section 1652.244–70, paragraphs (a) and (f) of the clause and the clause heading are revised to read as follows:

1652.244 70 Subcontracts.

* * * * *

Subcontracts (Jan 1990)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000, and the amount of the subcontract to be charged to the FEHB Program exceeds 25 percent of the total cost of the subcontract.

* * * * *

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provision of section 3.7, SERVICE CHARGE.

* * * * *

15. Section 1652.246–70 is revised to read as follows:

1652.246–70 FEHBP inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

FEHB Inspection (Jan 1990)

(a) The Government or its agent has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government or its agent performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) The Carrier shall insert this clause in all subcontracts over $25,000 and shall substitute "contractor" or other appropriate reference for the term "Carrier."

(End of clause)

16. In section 1652.249–70, the clause heading, the introductory text to paragraph (b), and paragraphs (b)(3) and (c) are revised to read as follows:

1652.249–70 Renewal and withdrawal of approval.

* * * * *

Renewal and Withdrawal of Approval (Jan 1990)

* * * * *

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM

may take action as it deems necessary to protect the interests of members, including but not limited to—

(1) * * *

(2) * * *

(3) Providing enrollees an opportunity to transfer to another Plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 enrollees enrolled in its plan at any time during the two preceding contract periods.

(End of clause)

17. Section 1652.370 is revised to read as follows:

1652.370 Use of the matrix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text Reference	Title	Use with contracts based on		
			Use Status	Cost analysis	Price analysis
FAR 52.202-1	FAR 2.2	Definitions	M	T	T
FAR 52.203-1	FAR 3.102-2	Officials Not to Benefit	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404(c)	Covenant Against Contingent Fees	M	T	T
FAR 52.203-7	FAR 3.502-3	Anti-Kickback Procedures	M	T	T
1652.203-70	1603-703	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204-70	1604.705	Contractor Records Retention	M	T	T
1652.204-71	1604.7001	Coordination of Benefits	M	T	T
FAR 52.215-1	FAR 15.106-1(b)	Examination of Records by Comptroller General	M	T	T
FAR 52.215-2	FAR 15.106-2(b)	Audit-Negotiation	M	T	T
FAR 52.215-22	FAR 15.804-8(a)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215-23	FAR 15.804-8(b)	Price Reduction for Defective Cost or Pricing Data—Modifications.	M		T
FAR 52.215-24	FAR 15.804-8(c)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215-25	FAR 15.804-8(d)	Subcontractor Cost or Pricing Data-Modifications	M		T
FAR 52.215-30	FAR 15.904	Facilities Capital Cost of Money	M	T	
FAR 52.215-31	FAR 15.904	Waiver of Facilities Capital Cost of Money	A	T	
1652.215-70	1615.804-72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215-71	1615.805-71	Investment Income	M	T	
1652.216-70	1616.270	Accounting and Price Adjustment	M		T
1652.216-71	1616.271	Accounting and Allowable Cost	M	T	
FAR 52.219-8	FAR FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M	T	T
FAR 52.219-13	FAR 19.902	Utilization of Women-Owned Small Businesses	M	T	T
FAR 52.220-3	FAR 20.302(a)	Utilization of Labor Surplus Area concerns	M	T	T
FAR 52.222-3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222-4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	T	T
FAR 52.222-6	FAR 22.810(e)	Equal Opportunity	M	T	T
FAR 52.222-28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts.	M	T	T
FAR 52.222-29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223-6	FAR 23.505(c)	Drug-Free Workplace	A	T	T
1652.224-70	1624.104	Confidentiality of Records	M	T	T
FAR 52.229-3	FAR 29.401-3	Federal, State and Local Taxes	M		T
FAR 52.229-4	FAR 29.401-4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229-5	FAR 29.401-5	Taxes-Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
FAR 52.229-6	FAR 29.402-1(a)	Taxes-Foreign Fixed Price Contracts	A	T	T
FAR 52.230-3	FAR 30.201-4(a)	Cost Accounting Standards	A	T	T
FAR 52.230-4	FAR 30.201-4(b)(1)	Administration of Cost Accounting Standards	A	T	T
FAR 52.230-5	FAR 30.201-4(c)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.232-8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232-17	FAR 32.617(a) Modification: 1632.617.	Interest	M		T
FAR 52.232-23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
1652.232-70	1632.171	Payments—contracts without letter of credit payment arrangements.	A	T	T
1652.232-71	1632.172	Payments—contracts with letter of credit payment arrangements.	A	T	T
1652.232-72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232-73	1632.806-70	Approval for Assignment of Claims	M	T	T
FAR 52.233-1	FAR 33.214	Disputes	M	T	T
FAR 52.242-1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.243-1	FAR 43.205(a)(1)	Changes—Fixed Price—Alternate I	M	T	T
1652.244-70	1644.270	Subcontracts	M	T	T
FAR 52.244-5	FAR 44.204(e)	Competition in Subcontracting	M	T	T
FAR 52.245-2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M	T	T
FAR 52.246-25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246-70	1646.301	FEHBP Inspection	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text Reference	Title	Use with contracts based on		
			Use Status	Cost analysis	Price analysis
FAR 52.247-63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
1652.249-70	1649.101-70	Renewal and Withdrawal of Approval	M	T	T
FAR 52.251-1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252-2	FAR 52.107(b)	Clauses Incorporated by Reference	M	T	T
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[FR Doc. 89-24685 Filed 10-19-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

Injurious Wildlife; Importation of Fish or Fish Eggs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of public comment period.

SUMMARY: Notice of intent to revise 50 CFR 16.13 was published in the **Federal Register** on August 17, 1989, 54 FR 33947. The previously established public comment period of August 17 to October 16, 1989, is extended 30 days to close on November 15, 1989.

DATE: Comments, statements of effects, and suggestions pertaining to the intended revisions of 50 CFR 16.13 must be received on or before November 15, 1989.

ADDRESSES: Comments, statements, and suggestions pertaining to the intended revisions of 50 CFR 16. 13 must be sent to: Chief, Division of Fish Hatcheries, 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington. DC 20240. Telephone: 703/358-1678

FOR FURTHER INFORMATION CONTACT: Dr. John G. Nickum, Division of Fish Hatcheries, 820 ARLSQ, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington. DC 20240 Telephone: 703/358-1878.

List of Subjects in 50 CFR Part 16

Animal diseases, Fish, Freight, Imports, Transportation, Wildlife.

Dated: October 12, 1989.

Richard N. Smith,

Acting Director.

[FR Doc. 89-24821 Filed 10-19-89; 8:45 am]

BILLING CODE 4310-55-M

VOL 54 ISS 202 OCT 20 1989 UMI

Notices

Federal Register
Vol. 54, No. 202
Friday October 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Farmers Home Administration (FmHA) Programs and Activities Excluded Under Executive Order 12372

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform State and local governments and other interested persons of USDA programs and activities proposed for exclusion from the scope of Executive Order (E.O.) 12371, "Intergovernmental Review of Federal Programs. The Department of Agriculture rules on the requirements for intergovernmental review of agency programs and activities are published in 7 CFR Part 3015, Subpart V.

DATE: Comments must be received on or before November 20, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this Notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Clayman, Environmental Protection Specialists, Program Support Staff, FmHA, Room 6309, South Building, Washington, DC 20250 (Telephone 202–382–9619).

SUPPLEMENTARY INFORMATION: The programs listed below by Catalog of Federal Domestic Assistance (CFDA) numbers are being proposed for exclusion from coverage under E.O. 12372 on the basis that they do not affect State and local governments:

10.437 Interest Rate Reduction Program
10.438 Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland (FCS Demonstration Project)
10.429 Guaranteed Rural Housing Loan Demonstration Program

10.437 Interest Rate Reduction Program (IRRP)

FmHA has authorized under the Food Security Act of 1985 (Pub. Law 99–298) to temporarily make payments to lenders to reduce borrower interest rates on guaranteed loans to eligible applicants and borrowers under three existing FmHA programs. The Interest Rate Reduction Program provides lenders with a tool to enable them to continue to provide credit to family farm operators who are temporarily unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate. In order to be eligible for the IRRP, the applicant *must* be an applicant or an existing borrower under one of the following FmHA programs:

10.406 Farm Operating Loans
10.407 Fram Ownership Loans
10.416 Soil and Water Loans

When an applicant is approved for an interest rate reduction under one of these programs, the application continues to follow the processing requirements specified in the respective program regulations. Executive Order coverage for IRRP applications will be dependent upon the EO program coverage that already exists for the programs referenced above. Therefore, the IRRP itself is being proposed for exclusion from the EO.

10.438 Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm-land (FCS Demonstration Project)

The primary objective of the FCS Demonstration Project is to assist applicants of FmHA's existing guaranteed Farm Ownership (FO) loan drogram (10.407) to purchase acquired farm land owned by FCS member institutions certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971 by reducing the interest rate for 5 years.

In order to qualify for the FCS Demonstration Project, an applicant must provide a downpayment of 15 percent of the land purchase price using personal funds, have a need for the interest rate reduction in order to cash flow, and meet the requirements of the regular guaranteed FO program.

The FO Loan Program is excluded from coverage under the EO with the exception of "non-farm enterprise activity." Because the principal purpose of the FCS Demonstration Project is to assist applicants in purchasing acquired farm land owned by FCS member institutions in an attempt to preserve the family-size farm, no loans will be made for non-farm enterprise purposes. Therefore, the FCS Demonstration Project is being proposed for exclusion from the EO in its entirety.

10.429 Guaranteed Rural Housing Load Demonstration Program

The basic project of the Rural Housing Guaranteed Loan Program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound rural housing loans which would not be made without a guarantee.

This program, therefore, is being proposed for exclusion from the provisions of the EO except when an application involves a loan or loans in a subdivision in which FmHA has not previously made, insured, or guaranteed a housing loan. Therefore, the requirements of EO 12372 will be complied with by those applicants seeking subdivision assistance. Proposed subdivision developements must comply with established criteria to be suitable for FmHA housing programs. One of the processes is the submittal of subdivision developments to state an local governments for intergovernmental review prior to requesting FmHA review and approval.

Dated: October 2, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24714 Filed 10–19–89; 8:45 am]

BILLING CODE 3410–07–M

ARMS CONTROL AND DISARMAMENT AGENCY

William C. Foster Fellows Visiting Scholars Program

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1990–91 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director of the U.S. Arms Control and Disarmament Agency in order to obtain the services of scholars from the faculties of recognized institutions of higher learning."

The law states that "The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. * * * Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA began this program by competitively selecting six visiting scholars for the 1984–85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time between July 1990 and mid September 1991 for the positions in ACDA's four bureaus described in the Appendix. The emphasis is on the expertise and service which the visiting scholars can provide rather than on general interest in arms control and the pursuit of the scholars' own research.

It is planned that the visiting scholars will be assigned by detail and compensated in accordance with the Intergovernmental Personnel Act and within Agency limitations. In addition to pay based on their regular salary rates, the visting scholars will receive travel to and from the Washington, D.C. area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens or nationals of the United States and on the faculty of a recognized institution of higher learning. Prior to appointment they will be subject to full-field background security and loyalty investigation for a top secret security clearance including access to Restricted Data, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars also will be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the perspective and expertise which the applicant offers. The letter should be accompanied by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicant believes should be considered in the selection process. (If published materials are submitted, it is requested that they be provided in *twelve* copies, if possible.)

Applications, and any requests for additional information, should be sent to: Visiting Scholars Program, Attention: Personnel Office, Room 5722, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1990–91 academic year is December 31, 1989, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected early spring 1990.

Dated: October 6, 1989.

William J. Montgomery,

Administrative Director.

Appendix

A. Visiting Scholar Assignments to the Bureau of Multilateral Affairs of ACDA

1. Description of the BUREAU of MULTILATERAL AFFAIRS

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral forums. MA provides both technical backstopping and diplomatic support to the US Delegations to the Conference on Disarmament in Geneva, where negotiations on a chemical weapons ban takes place, to the various negotiating forums dealing with conventional arms control in Europe, the United Nations, and on variety of issues as they arise, such as multilateral arms control treaty reviews.

2. Nature of Assignment

The European Security Negotiations (ESN) Division of the Bureau of Multilateral Affairs has responsibility for supporting two negotiations concerning conventional forces in Europe. The negotiations on Conventional Armed Forces in Europe is taking place in Vienna, Austria, among the 23 members of NATO and the Warsaw Treaty Organization, and is addressing conventional force reductions and associated stability and verification measures. The Confidence- and Security-Building Measures negotiations is taking place in Vienna, Austria, among the 35 states participating in the Conference on Security and Cooperation in Europe (CSCE). These negotiations are considering further confidence-and security-building measures (CSBMs), building on the Stockholm Document of 1986.

Conventional arms control in Europe will be gaining increased attention in coming years, as a result of the progress made in US-Soviet bilateral negotiations on nuclear reductions, represented in particular by the INF Treaty. At the same time, NATO will be in the process of determining its post-INF nuclear and conventional force requirements for the next decade. While these two conventional forces negotiations are independent forums, their substance is clearly related. The interactions of the two negotiations and NATO force planning requirements will require careful analysis in the ESN Division.

3. Candidate Qualifications

Specific useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issues would be valuable.

B. Visiting Scholar Assignments to the Bureau of Verification and Intelligence of ACDA

1. Description of the BUREAU of VERIFICATION and INTELLIGENCE

The Bureau of Verification and Intelligence (VI) has responsibility for ACDA's work in verification, compliance, intelligence, operations analysis, and computer support. VI provides the support in these subject areas for the strategic and theater nuclear arms control negotiations; the Standing Consultative Commission; the Anti-Ballistic Missile, SALT I and SALT II Treaties, the Limited Test Ban Treaty and Threshold Test Ban Treaty, INF, START, CFE, Defense In Space, Nuclear Testing and the agreements on chemical and biological weapons.

2. Nature of the Assignment

VI develops verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; conducts operations analysis of relevant arms control issues and Soviet views thereof; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, drafting policy papers, and/or performing analyses both for use within ACDA and for coordination with other agencies. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: verification of a treaty on chemical weapons, verification of limits on space-based weapons and weapons which can attack spacebased military assets, compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing, or analysis of

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Soviet views on stability and their impact on verification.

3. Candidate Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, operations analyst, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: knowledge of basic physics, chemistry, aerospace systems, operations research, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be a value, but is not a requirement.

C. Visiting Scholar Assignments to the Bureau of Strategic Programs of ACDA

1. Description of the BUREAU OF STRATEGIC PROGRAMS

The Bureau of Strategic Programs (SP) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater nuclear offensive forces and defensive and space forces. This includes providing technical and policy guidance to the Director in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SP also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.–USSR nuclear arms control negotiations, and other defense related matters including ACDA participation in US decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for the periodic Anti-Ballistic Missile (ABM) Treaty reviews as well as meetings of the Special Verification Commission (SVC) on INF implementation and compliance. SP also has interagency responsibility for backstopping of the NST negotiations, the SVC, the SCC, and ABM Treaty reviews. SP has three divisions: Strategic Affairs, Theater Affairs, and Defense and Space.

2. Nature of the Assignment

A visiting scholar assigned to SP would assist in policy formation in one or more of the areas cited above. Because of the high technical content in these areas, SP seeks a physical scientist with a broad theoretical or applied background.

The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency Groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely areas of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of ACDA/SP.

3. Candidate Qualifications

Specific useful background for a candidate would include: knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SP responsibility would be of value but is not a requirement.

D. Visiting Scholar Assignment to the Bureau of Nuclear and Weapons Control of ACDA

1. Description of the BUREAU OF NUCLEAR AND WEAPONS CONTROL

The Bureau of Nuclear and Weapons Control (NWC) has responsibility for proliferation issues, including nuclear and chemical weapons, missiles, and conventional armaments. Functions include the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlatelolco. NWC also assesses the arms control implications of proposed arms transfers and technology transfers, prepares arms control impact statements on U.S. programs and prepares arms control policy assessments and proposals. The Bureau participates in missile and chemical weapon nonproliferation policy development and associated multilateral arrangements such as Missile Technology Control Regime and the Australia Group. In addition, NWC is responsible for ACDA's economic analysis work and coordinates publication of *World Military Expenditures and Arms Transfers*.

2. Nature of the Assignement

A visiting scholar assigned to NWC would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear nonproliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issues and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Departments of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

3. Candidate Qualifications

Desirable attributes for a candidate from the physical sciences would include expertise in nuclear, chemical or military technologies, industrial development, and science policy. Candidates from other disciplines relevant to NWC's activities ideally should have some understanding of the role of arms control in national security planning, familiarity with weapons characteristics and capabilities, and knowledge of political-military conditions in developing regions. Because of the complex political, technology and military issues involved, a good background in national security studies or international relations is also important.

[FR Doc 89–24723 Filed 10–16–89; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 91035–9235]

Service Annual Survey; Determination

In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined that 1989 data on receipts and revenues for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. Selected service industries include hotels and motels; personal, business, automotive, and repair services; real estate services; arrangement of passenger transportation; and selected social services. This survey will yield 1989 estimates of receipts/revenues for these service industries, in addition to sources of receipts/revenues for nursing and personal care facilities, temporary help supply services, and arrangement of passenger transportation. Also, information on number of beds, discharges, and average length of stay per discharge from nursing and personal care facilities will be provided, along with annual payroll and operating expensea for arrangers of passenger transportation.

The Census Bureau will require a probability sample of service firms in the United States to report in the 1989 Service Annual Survey. The sample will provide, with measurable reliability, statistics on the above items for these service industries. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: October 16, 1989.

C. Louis Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–24617 Filed 10–19–89; 8:45 am]

BILLING CODE 3510–07–M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Program, Board of Overseers; Meeting.

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Wednesday, November 15, 1989, from 8:00 a.m. to 4:30 p.m. The Board of Overseers is composed of seven members appointed by the Secretary of Commerce. The purpose of this meeting is to review the activities of the Malcolm Baldrige National Quality Award Program in order to assist the Board of Overseers in reporting to the Secretary of Commerce and Director of the National Institute of Standards and Technology as required by law.

DATES: The meeting will convene November 15, 1989, at 8:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESS: The meeting will be held in Room 6029, Department of Commerce, Herbert Hoover Building, 14th Street and Constitution Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

Dated: October 13, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–24605 Filed 10–19–89; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Government of Singapore, the current designated consultation levels are being increased for Categories 351/651 and 636 in Group II.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50440, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 16, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 12, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 23, 1989, the limits are being increased for cotton and man-made fiber textile products in the following categories:

Category	Amended 12-Month Limit[1]
Sublevels in Group II	
351/651	45,000 dozen.
636	150,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–24784 Filed 10–19–89; 8:45 am]

BILLING CODE 3510–DR–M

Amending the Coverage of Certain Part-Categories for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

October 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods exported on and after January 1, 1990 and imported on and after July 1, 1990, the coverage is being amended on all import limits and visa and certification arrangements for countries with part-Categories 338–S, 338–O, 338 (excluding 338–S); 369–D, 438–W, 438–O, 659–C and 659–O.

The attached directive contains HTS numbers which were published in the fourth supplement to the Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

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Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 16, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC.

Dear Mr. Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton, wool and man-made fiber textile products in part-Categories 338–S, 338–O, 338 (excluding 338–S), 369–D, 438–W, 438–O, 659–C and 659–H, produced or manufactured in various countries and exported to the United States on and after January 1, 1989.

Also, this directive amends further, but does not cancel, the directive of December 22, 1988 which amended visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on Oct. 23, 1989, you are directed to make the changes shown below in the aforementioned import control directives. These changes also shall be made for all countries with part-Categories 338–S, 338–O, 338 (excluding 338–S), 369–D, 438–W, 438–O, 659–C (or 659(1) in the case of Hong Kong) and 659–H included in their visa and certification arrangement. These changes are effective for goods exported on and after January 1, 1989 and imported into the United States on and after July 1, 1989.

Category	Delete	Add
338–S	6109.10.0035	6109.10.0009 6109.10.0027
338–O	6109.10.0010 6109.10.0015 6109.10.0025 6109.10.0030	6109.10.0012 6109.10.0014 6109.10.0016 6109.10.0023
338 (excluding 338–S)	6109.10.0010 6109.10.0015 6109.10.0025 6109.10.0030	6109.10.0012 6109.10.0014 6109.10.0016 6109.10.0023
338/339(1)	6109.10.0025 6109.10.0030	6109.10.0018 6109.10.0023
369–D	6302.91.0020	6302.91.0005 6302.91.0045
438–W	6110.10.0060	
438–O	6110.10.0050	
659–C	6210.10.4020	6210.10.4015
659–H	6505.90.8075	6505.90.8060

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–24785 Filed 10–19–89; 8:45 am]
BILLING CODE 3510–DR–M

Extending Coverage of Export Visa Requirements for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

October 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending coverage of export visa requirements.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the terms of the export visa arrangement established under the terms of the current bilateral textile agreement between the Governments of the United States and the Hungarian People's Republic, export visas will be required for wool textile products in Categories 445/446.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (See **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 49 FR 8659, published on March 8, 1984.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 16, 1989.

Commissioner of Customs
Department of the Treasury Washington, DC.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. This directive, as amended, directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hungary which were not properly visaed by the Government of the Hungarian People's Republic.

Effective on October 23, 1989, you are directed to amend further the March 5, 1984 directive to require export visas for wool textile products in Categories 445/446, produced or manufactured in Hungary and exported from Hungary on or after October 23, 1989. Merchandise, Categories 445/446 which have been exported prior to October 23, 1989 shall not be denied entry for lack of a visa.

Shipments entered or withdrawn from warehouse on and after October 23, 1989 which are not accompanied by an appropriate export visa, and which are exported from Hungary on or after October 23, 1989, shall be denied entry and a new visa or visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs, exceptioon to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–24786 Filed 10–26–89; 8:45 am]
BILLING CODE 3501–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 20, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 28, August 18 and September 1, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 31357, 34213 and 36369) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received in direct response to the proposed addition to the Procurement List. However, during the early development stage, the most recent contractor for the brassard claimed in a letter to the Committee that its addition to the Procurement List would adversely affect his firm. He indicated that inconsistencies of bids and contracts make it difficult to determine the amount of business which will be received from year to year. He commented that the loss of the contract for the brassard would definitely constitute severe adverse impact. Based on data provided by the firm, the value of the firm's contract for the brassard represents approximately 5.4 percent of its total annual sales. This is not considered to be severe adverse impact.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity

Brassard, Army, Military, 8455–01–236–1174

Services

Commissary Shelf Stocking & Custodial, Fort Bragg and Malonee Village, Fayetteville, North Carolina
Janitorial/Custodial, Federal Building, 600 Church Street, Flint, Michigan.

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89–24858 Filed 10–19–89; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before November 20, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commissary Shelf Stocking, Custodial and Warehousing, Charleston Air Force Base, South Carolina
Fast Pack/Carton Recycling and Pallet Repair, Sacramento Army Depot, Sacramento, California
Janitorial/Custodial, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California
Janitorial/Custodial, Hoffman I Building, 2461 Eisenhower Avenue, Alexandria, Virginia.

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89–24857 Filed 10–19–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,920; responses per respondent, 1; total annual responses, 2,920; hours per response, 3; total reporting hours, 8,760; and total recordkeeping hours, 2,920.

Obtaining Copies of Proposals: Requester may obtain copies from the, FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0028, Termination Requirements.

Dated: October 6, 1989.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 89–24726 Filed 10–19–89; 8:45 am]
BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

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SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Report Control Number 9000–0026, Change Order Accounting.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, wherever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 8,750; responses per respondent, 18; total reporting hours, 13,230. The annual recordkeeping burden is estimated as follows: recordkeepers 8,750; hours per recordkeeper 1.5; total recordkeeping hours, 13,125. Total burden hours 26,355.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting.

Dated: October 12, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–24729 Filed 10–19–89; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Priority Model; Defense Environmental Restoration Program

ACTION: Notice of plans to implement.

SUMMARY: The Department of Defense has developed a Defense Priority Model (DPM) which will be used to prioritize remedial actions at hazardous waste sites identified in the DoD Installation Restoration Program (IRP). The IRP is DoD's program to implement its responsibilities for addressing contamination associated with past activities under 10 USC 2701–2707, the Comprehensive Evironmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended the Resource Conservation and Recovery Act, and counterpart State programs. DoD proposed to use the new prioritization method in a **Federal Register** Notice (52 FR 44204–44206, November 18, 1987) and solicited comments from interested parties. Comments were received from three States and the U.S. Environmental Protection Agency (EPA). This notice summarizes the major comments, advises that the DoD has revised the model in response to the States' and EPA's concerns and discusses DoD plans to use the model.

FOR FURTHER INFORMATION CONTACT: Ms Marcia W. Read, Office of the Deputy Assistant Secretary of Defense (Environment), 206 N. Washington, St., Suite 100, Alexandria, VA 22314–2528, telephone (202) 325–2211.

SUPPLEMENTARY INFORMATION: The Defense Priority Model (DPM) is a waste site scoring model that evaluates relative risk based on information gathered during the Preliminary Assessment/Site Inspection (PA/SI) and the Remedial Investigation/Feasibility Study (RI/FS). DoD will use the scores to assist in identifying those sites on its installations which should receive priority for Remedial Design/Remedial Action (RD/RA). The DPM will help assure that sites are addressed on a "worst first" basis nationwide with funding available from the Defense Environmental Restoration Account.

I. Discussion

In 1976, the DoD realized that contamination from industrial activities and past waste disposal practices existed on some of its installations. In order to determine the extent of this problem and to control contamination, the DoD initiated the Installation Restoration Program (IRP). The IRP provides for evaluation of all DoD installations to identify contamination and to remediate potential threats to human health and the environment resulting from contamination. Because of the large number of sites DoD–wide and extensive investigations and planning that precede cleanup, it is not technically or economically feasible to undertake remedial actions at all sites simultaneously. The DoD does, however, upon discovery, immediately initiate response actions at sites which pose an imminent and subtantial endangerment to public health or the environment. DoD policy is to remediate those sites which pose the greatest potential for damage first.

To assist DoD and individual military service program managers in assessing the relative risk presented by sites on DoD installations, the DoD has developed the DPM. Technical personnel in the military services will apply the DPM to site data to produce a score. This score, along with other pertinent information such as regulatory considerations, community impacts, and programs efficiencies will be used to detemine the relative priority of a site for RD/RA.

II. Comments on the Defense Priority Model

Comments on the DPM were received from the U.S. EPA and three States. Specific responses have been provided directly to each commentor. The major comments and a summary of DoD's reply are presented below.

All commentors expressed concern that the DPM, as structured, did not account for two important exposure pathways, those involving air releases and those involving direct contact with contaminated soils. DoD responded to these concerns by incorporating an air/soil pathway into the DPM. This new pathway is explained in the following section (III. Pathway Subscores).

The U.S. EPA commented that the DPM may not discriminate well among sites with observed releases. DoD believes that the DPM does discriminate between sites with observed releases with respect to their contaminant hazard and receptor subscores. That is, the type and concentration of contaminants (the hazard subscore) and the population potentially at risk (receptor subscore) aid in discriminating among releasing sites. Also, if containment features have been added to the site since the observed release occurred, the pathways subscore can be reduced to account for the assessed effectiveness of the containment feature in preventing future releases.

The U.S. EPA commented that the DPM does not take full advantage of data generated during the Remedial Investigation/Feasibility Study (RI/FS), including documented evidence of human exposure, waste quantity and contaminant mobility. DoD believes that the ground water pathway scoring does require extensive use of RI/FS findings. Data items such as depth to seasonal high ground water table from the base of the waste, infiltration potential and permeability of the unsaturated zone are scored. Regarding documented evidence of human exposure, DoD advised that the DPM is intended to be applied to any DoD contaminated site where remedial action is planned. For many of these sites (the non-National Priorities List sites), no formal risk assessments are not required, so detailed risk exposure information will not necessarily be available for use in DPM scoring. The DPM was designed accordingly.

Regarding the issues of waste quantity and contaminant mobility, DoD responded that the DPM was designed with simplicity and conservatism in mind. Waste quantity was deliberately excluded from the model because an informal analysis revealed that scores were very sensitive to waste quantity and that individual scorers differed greatly in their estimates of quantity. Accurate quantity estimates are very difficult to make at most sites and for that reason we believe a better approach is to utilize measured contaminant concentration levels. Each site is scored as an infinite source.

Contaminant mobility is not directly included as a scoring factor because DoD believes that currently available estimators of contaminant mobility are not appropriate for universal application. Mobility in hydrologic media is highly dependent on the chemical form of the contaminant and on the geochemical environment. Contaminant mobility is considered indirectly in the DPM, in that the pathways subscore is highest where contaminants have actually been detected. This demonstrates that contaminants are, in fact, mobile in those media.

EPA commented that the model's three mile maximum distance for receptor evaluation for the surface water pathway may not be sufficient, since significant contamination has been found more than three miles downstream of Superfund sites. DoD responded by extending the receptor evaluation distance to five miles downstream of a site.

EPA commented that they were concerned that the DPM does not consider ground water use of deep aquifers. DoD responded that one scoring item (Ground Water Use of the Uppermost Aquifer) *is* concerned only with uses of the uppermost aquifer. This is justified because the uppermost aquifer is usually more susceptible than other aquifers to ground water contamination. However, all potentially susceptible aquifers are considered, regardless of depth, in the scoring items concerned with ground water travel time to water supply wells and with the population potentially at risk from ground water contamination. These latter items receive more weight in the scoring than does the item concerned solely with the uppermost aquifer.

One State expressed a concern that use of the DPM was inconsistent with CERCLA, the Superfund Amendments and Reauthorization Act (SARA) and EPA guidelines and that the EPA Hazard Ranking System (HRS) should be utilized instead of the DPM. DoD responded that the Department recognizes that the DPM cannot supplant any legal obligation under CERCLA or the Defense Environmental Restoration Program, and that DoD intends to meet SARA mandated schedules at its National Priorities List (NPL) sites. However, with hundreds of installations and thousands of sites nationwide, DoD must have a systematic process to insure its worst sites receive priority attention. This is the purpose for the development of the DPM.

DoD further responded that the purposes of the DPM and HRS are different and that the DPM will not be used as a substitute for the HRS. The DoD anticipates that EPA will continue to apply the HRS to DoD facilities in order to determine whether sites should be proposed for the NPL. In general, the HRS is applied to sites for which relatively little information is available, e.g., after a PA/SI is conducted. The DPM, however, will be applied to a site after an RI/FS has been conducted and a large amount of data are available to characterize conditions at the site. DoD believes the relative priority of IRP sites planned for cleanup can best be assessed with RI/FS data in hand. In addition, in the event that resource constraints prohibit DoD from funding all required Remedial Actions in a given year, DoD will have a rational system for identifying those sites which should be funded first based on public health and environmental needs.

Another State commentor questioned the rationale for applying the model after RI/FS work has been completed. The commentator pointed out that the RI/FS process provides the decision on whether or not to proceed with site cleanup and what cleanup process and degree of cleanup will be used. DoD responded that the DPM is not intended to be used as a yes/no decision tool but will assist in prioritizing required cleanups.

III. Pathway Subscores

The pathway subscores used in the DPM were explained in the inititial **Federal Register** Notice (52 FR 44204–44206, November 18, 1987). Subsequent to that notice and in response to concerns raised by certain States and EPA, DoD has incorporated an air/soil pathway into the model. An explanation of the pathways currently in the model follows:

The pathway subscore of DPM rates the potential for contaminants from a waste site to enter surface water, ground water and air or soil. If contaminants from a site have already been detected in one of these pathways, a maximum score of 100 is assigned to that pathway. If no contamination has been detected, the potential for contamination from the site is calculated separately for the surface water, ground water and air/soil pathways.

The surface water pathway subscore calculation starts as a weighted sum of pathway characteristics based on:

—Distance to nearest surface water
—Net precipitation
—Surface erosion potential
—Rainfall intensity
—Surface permeability
—Flooding potential

The ground water pathway subscore calculation is parallel to the surface water subscore calculation, but different characteristics are summed before the containment factor multiplier is applied. The characteristics are:

—Depth to seasonal high ground water from the waste or contaminated zone
—Permeability of the unsaturated zone
—Potential for discrete features in the unsaturated zone to "short-circuit" the pathway to the watertable.
—Infiltration potential based on net precipitation and physical state of the waste

The newly added air/soil pathway calculation is similar to the ground water and surface water calculation. The air/soil pathway characteristics are:

—Average soil temperature
—Net precipitation
—Wind velocity
—Soil porosity
—Days per year with greater than 2.5 mm precipitation
—Site activity

For each pathway, the characteristics are summed and a containment effectiveness factor which characterizes

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present waste containment is then applied.

IV. Future DoD Actions

The Department of Defense has responded to the major concerns of the U.S. EPA and the States and has modified the model by incorporating an air/soil pathway and extending receptor distances. DoD plans to utilize the DPM to assist in prioritizing sites for Remedial Design/Remedial Action starting in Fiscal Year 1990.

Copies of the revised DPM User's Manual can be obtained by writing to Ms. Marcia Read, Office of the Deputy Assistant Secretary of Defense (Environment), 206 N. Washington St., Suite 100, Alexandria, VA 22314–2528. The Department also plans to continue to work closely with the U.S. EPA and the States to periodically review and improve the model's capability to rank sites based on their impact on public health and environment.

Dated: October 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–24347 Filed 10–19–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Educational Research and Improvement National Advisory Council; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement.

ACTION: Full council meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: November 9 and 10, 1989.

ADDRESS: The Council will meet on November 9 from 11:00 a.m. to 5:00 p.m. at the Elliott Lyman Room, Longfellow Hall, Harvard Graduate School of Education, Appian Way, Cambridge, Massachusetts. The Council will continue its meeting on November 10 in University Room A, Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, Mass. from 10:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Room 4076, Washington, DC 20202–7579, (202) 732–4504.

SUPPLEMENTARY INFORMATION: The Council is authorized by Section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498, 20 U.S.C. 1221e). The Council advises the President, the Secretary of Education, and the Congress on policies and activities carried out by the Office of Educational Research and Improvement.

Meetings of the Council are open to the public. The agenda for November 9 includes briefings by representatives of the Harvard Graduate School of Education, the Center for Educational Leadership and the Harvard Libraries. On November 10, reports will be delivered on school restructuring, choice initiatives and standardized testing.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., room 4076, Washington, DC 20202–7579, from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Dated: October 17, 1989.

Mary Grace Lucier,

Executive Director.

[FR Doc. 89–24819 Filed 10–19–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Writing Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: November 7, 1989.

Time: 10:00 a.m. (e.s.t.) until adjournment.

Location: U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, Suite 7322, 1100 L Street, NW., Washington, DC 20202–7583. Telephone: (202) 523–3523.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provision Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2111–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary Improvement Amendments of 21988 (Pub. L. 100–297); (20 U.S.C. 1221E–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Writing Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on November 7, 1989 from 10:00 a.m. (e.s.t.) until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberation. The proposed agenda includes a discussion of the writing consensus process for establishing goals and objectives for the 1992 assessment; and other matters.

Records are kept of all Board proceedings, and are available for public inspection at the National Assessment Governing Board office, U.S. Department of Education, Suite 7322, 1100 L Street, NW., Washington, DC, 20202–7583, 8:30 a.m. to 5:00 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–24773 Filed 10–19–89; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting Amendment

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice amends the location of the meeting to be held on October 23, 1989, announced in the

Federal Register of Tuesday, October 10, 1989 (54 FR 41497).

Location: U.S. Department of Education, National Assessment Governing Board, Office of Educational Research and Improvement, Room 600 B, 555 New Jersey Avenue, Washington, DC 20208.

Dated: October 16, 1989.

Christopher T. Cross,

Assistant Secretary for Education Research and Improvement.

[FR Doc. 89–24774 Filed 10–19–89; 8:45 am]

BILLING CODE 4000–01–M

National Commission on Drug-Free Schools; Regional Hearings

AGENCY: National Commission on Drug-Free Schools.

ACTION: Notice of regional hearings.

SUMMARY: This notice sets forth the schedule and proposed agenda for a series of forthcoming regional hearings of the National Commission on Drug-Free Schools. This notice also describes the functions of the Commission. Notice of these hearings is offered pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2.

DATES: *Locations, Times:* November 6–7, 1989, Portland, Oregon; November 13–14, Boston, Massachusetts; December 14–15, Detroit, Michigan; January 11–12, Miami, Florida; February 19–20, San Diego, California; February 27–28, Salt Lake City, Utah. All meetings will occur between the hours of 8:30 a.m.–5:30 p.m. A more detailed agenda follows.

Agenda: For each of the regional hearings, the following format shall be utilized: the opening morning session will consist of testimony to be presented by local and statewide groups with a recognized expertise or involvement in specific issues identified by the Commission. The afternoon session will consist of discussions by Commission members with students and education officials. The concluding day's session will consist of extended and in-depth coverage of certain issues discussed at the opening session.

The issues to be addressed at the regional hearings are as follows: Portland, Oregon—curricula and research/evaluation; Boston, Massachusetts—high risk and other special youth groups, and parental involvement; Detroit, Michigan—community school partnerships and parental involvement; Miami, Florida—school policy and programs, and community school partnerships; San Diego, California—budgetary considerations, and methods to overcome community resistance; Salt Lake City, Utah—post secondary education issues, and staff level training for drug education programs.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC 20202–7584; (202) 732–6140. Specific information relating to addresses for individual hearings may be obtained two weeks prior to the established hearing date.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools was established pursuant to section 5051 of Public Law 100–690, the Anti Drug Abuse Act of 1988. Co-chaired by the Secretary of Education and the Director of the Office of National Drug Control Policy, the Commission membership consists of selected members of the Senate and House of Representatives, and other appropriate individuals representing various areas of drug abuse prevention and education. The legislative mandate of the Commission is to develop recommendations of criteria for identifying drug-free schools and campuses; develop recommendations for identifying model programs to meet such criteria; and to make such other findings, recommendations, and proposals as the Commission deems necessary to carry out its purpose. In accordance with the provisions of 20 U.S.C. 3172(i), the Commission is required to prepare and submit a final report on its findings and recommendations.

In accordance with applicable provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the hearings are open to the public. Records of Commission proceedings are available for public inspection at the Office of the Commission, 330 C Street SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m. during Federal Government working days.

Dated: October 16, 1989.

Ted Sanders,

Under Secretary.

[FR Doc. 89–24772 Filed 10–19–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Alaska Power Administration

Snettisham Project—Order Confirming and Approving an Extension of Power Rate on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of an extension of power rate—Snettisham project, rate schedule SN–F–3.

SUMMARY: Notice is given that the Deputy Secretary approved on September 28, 1989, Rate Order No. APA–9 which extends the power rate for the Snettisham Project. This is an interim rate action effective October 1, 1989, for a period of 12 months subject to review and approval by the Federal Energy Regulatory Commission of a proposed two-year extension.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802, (907) 586–7405.

SUPPLEMENTARY INFORMATION: On July 28, 1989, the Alaska Power Administration (APA) published a Federal Register notice of its intention to seek a two-year extension of the present power rate for the Snettisham Project and included comments on the proposal. The present rate is 2.88 cents a kilowatt hour for firm energy. The rate as approved by the FERC Order, Docket No. EF87–1021–000, issued March 5, 1987, for the period November 1, 1986 through September 30, 1989. The Federal Register notice also indicated APA's intention to seek an interim approval of the extension by the Deputy Secretary of Energy pending review and approval of the 2-year extension by FERC.

APA and DOE continue to pursue the sale of Snettisham. A legislative proposal to authorize the sale is expected to be ready for Congressional approval soon. The proposed rate extension reflects a continuation of present rate policies under existing law pending a Congressional decision on the divestiture. The rate extension is consistent with the proposed sale terms which are to be presented to the Congress.

Following review of APA's proposal within the Department of Energy, I approved on September 28, 1989, Rate Order No. APA–9 which extends the present Snettisham rate for 12 months beginning October 1, 1989, subject to review and approval by FERC of the proposed 2 year extension.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. APA–9]

Order Confirming and Approving Power Rate Extension on an Interim Basis

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities

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delegated in Delegation Order No. 0204–108, Amendment No. 1 to that order, and DOE Notice No. 1100.29 dated October 27, 1988.

Background

The Snettisham Project was authorized by section 204 of the Flood Control Act of 1962, Public Law 82 Stat. 875, and the Department of Energy Organization Act (Pub. L. 95–91). The authorization of the project consisted of two phases: The Long Lake phase, the initial phase of the project was completed December 1, 1973 and the Crater Lake phase was completed May 1989. Both phases were constructed by the U.S. Army Corps of Engineers (Corps). The Crater Lake phase has not been transferred from the Corps to APA. Long Lake phase of the project was constructed by the Corps in accordance with the Army-Interior Agreement of March 14, 1962. After the Long Lake construction was completed the operation and maintenance was tansferred from the Corps to Alaska Power Administration. However, because of serious transmission problems, full commercial production of power did not start until October 30, 1975. The transmission problems were corrected and Alaska Power Administration has operated and maintained the project since 1975.

The Snettisham Powerplant is located at the head of Speel Arm about 28 air miles south of Juneau. It is an underground plant currently housing two turbine-generator sets, each with a rated capacity of 23,580 kilowatts. A third turbine and a 34,500 KVA generator is part of the Crater Lake phase of the project.

Power is transmitted to Juneau over a 44-mile long 138,000 volt transmission line. Included are three miles of underwater cable crossing at Taku Inlet and the balance is overhead line supported on steel and aluminum towers.

Snettisham Project provides approximately 70 percent of the Juneau area energy requirements. As a major side benefit, the Alaska Department of Fish and Game has a fishery development program which consists of a salmon and trout hatchery and rearing facility located at the powerplant site.

The Alaska Power Administration has wholesale power contracts with Alaska Electric Light and Power Company and Alaska Department of Fish and Game.

Rate Schedule SN–F–3 is 28.8 mills a kilowatt hour for wholesale firm power for Senttisham Project. The rate schedule was confirmed and approved by the Federal Energy Regulatory Commission, Docket No. EF87–1021–000 issued March 5, 1987, for the period November 1, 1988 through September 30, 1989.

Studies prepared by the Alaska Power Administration as required by DOE Order No. RA 6120.2 demonstrate that the present rate will be sufficient to meet the revenue requirements for the next two years.

Public Notice and Comment

Opportunity for public review and comment on the rate extension was announced by notice in the **Federal Register** on July 28, 1989. Comment period is the 30-day period following the FR Notice.

Environmental Impact

Alaska Power has concluded that this rate extension will have no significant environmental impact to affect the quality of the human environment within the meaning of the Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate extension, including studies, comments, and other supporting material, is available for public review in the offices of the Alaska Power Administration, Room 825, Federal Building, 709 West Ninth Street, Juneau, Alaska 99802.

Submission to the Federal Energy Regulatory Commission (FEC)

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis Rate Schedule SN–F–3. This interim approval is effective October 1, 1989, for a maximum period of 12 months, or until confirmed and approved by the Federal Energy Regulatory Commission on a final basis.

Issued at Washington, DC, the 28th day of September 1989.

W. Henson Moore,

Deputy Secretary.

[FR Doc. 89–24838 Filed 10–19–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90–14–000, et al.]

Transwestern Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP90–14–000]

October 6, 1989.

Take notice that on October 4, 1988, Transwestern Pipeline Company (Transwestern) 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90–14–000 a petition pursuant to section 7(c) of the Natural Gas Act to amend the orders issued May 11, 1988, and July 29, 1988, in Docket Nos. CP88–99–000 and CP88–99–001, respectively, so as to authorize Transwestern to unbundle the sales and transportation services rendered under its Rate Schedule IS, all as more fully set forth in the petition to amend which is on file and open to public inspection.

Transwestern states that by orders issued May 11, 1988, and July 29, 1988, in Docket Nos. CP88–99–000 and CP88–99–001 the Commission authorized Transwestern to establish an on and off-system interruptible sales service under new Rate Schedule IS–1. Transwestern explains that the purpose of the service was to permit it to market on a flexible and interruptible basis any system supply gas which was in excess of the requirements of Transwestern's firm sales customers. It is stated that the Commission conditioned authorization of the interruptible sales service on Transwestern charging a maximum rate equal to the 100 percent load factor rate for Transwestern's CDQ–1 Rate Schedule and a minimum rate equal to Transwestern's weighted average cost of gas (WACOG) plus variable costs included in Transwestern's Rate Schedule SG.

Transwestern states that conditions on its system have changed markedly since the Commission authorized the IS service. Transwestern explains that as of October 1, 1989, it no longer has any firm sales customers under Rate Schedule CDQ, leaving service under Rate Schedule IS–1 and Rate Schedule SG (small cutomers representing minor volumes relative to total Transwestern throughput) as Transwestern's only merchant service.

Transwestern states that its IS sales service as currently structured is inflexible. Specifically, Transwestern asserts that the bundling of interruptible sales services with transportation services may prevent Transwestern from fully responding to actual market conditions and competitive forces which exist in the markets served by Transwestern. As a consequence, Transwestern proposes to unbundle its interruptible sales service under Rate Schedule IS–1 from all transportation services. Transwestern states that at a buyer's request, Transwestern could make sales at any receipt point on its system. Transwestern insists that its unbundling proposal is consistent with the Commission's goals as stated in Order No. 436.

Transwestern notes that in conjunction with the subject petition to amend, it has filed tariff sheets in Docket No. RP89–48–000 to change the basis of the maximum and minimum rates which it is required to charge under Rate Schedule IS–1. Therein, Transwestern asserts that the modifications are required because the Rate Schedule IS–1 maximum and minimum rates are not competitive and are predicated on Transwestern's CDQ Rate Schedule and its GIC which are no longer relevant, given the fact that Transwestern now has no CDQ customers.

Comment date: October 23, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Algonquin Gas Transmission Company

[Docket No. CP89–2165–000]

October 6, 1989.

Take notice that on September 26, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP89–2165–000 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Algonquin to transport, under the existing provisions of Rate Schedule T–1, gas that T–1 customers cause to be delivered to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern) or Tennessee Gas Pipeline Company (Tennessee) under Rate Schedules that succeed or are derived from Rate Schedules DCQ–D or CD–5, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Algonquin requests authority to expand its existing transportation authorization under Rate Schedule T–1 to permit the receipt, transportation and delivery by Algonquin to existing Rate Schedule T–1 customers of natural gas supplies:

(1) Currently authorized for purchase by Rate Schedule T–1 customers pursuant to existing Texas Eastern Rate Schedule DCQ–D and Tennessee Rate Schedule CD–5; or

(2) Purchased by Rate Schedule T–1 customers in replacement of authorized supply referred to in item (1) and pursuant to rate schedules approved to replace the rate schedules referred to in item (1), or,

(3) Purchased by Rate Schedule T–1 customers as a replacement for authorized supplies referred to in item (1) by virtue of conversion to transportation rate schedules, wholly or in part, of the sales rate schedules referred to in items (1) and/or (2); or

(4) Purchased by Rate Schedule T–1 customers as a replacement for authorized supplies referred to in item (1) by virtue of operation of authorized standby provisions set forth in Texas Eastern's and Tennessee's effective FERC Gas Tariffs.

Algonquin alleges that currently Rate Schedule T–1 service involves the transportation of up to 27,173 MMBtu per day of supply purchased by Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (ConEd) and Orange and Rockland Utilities, Inc. (Orange and Rockland) or collectively (T–1 Customers) from Texas Eastern under Rate Schedule DCQ–D and Tennessee under Rate Schedule CD–5. Algonquin contends that sales services such as those currently underlying Algonquin's Rate Schedule T–1 are changing to reflect new market demands.

It is averred that Texas Eastern has received authority to implement service under Rate Schedule CD–1. Algonquin states that Rate Schedule CD–1 provides for standby sales service options as well as permanent conversion from sales to transportation. Algonquin contends that Rate Schedule CD–1 service replaces DCQ service which is the authorized source of supply to Orange and Rockland and Central Hudson underlying Rate Schedule T–1.

It is asserted that Texas Eastern has also received authority to implement service under Rate Schedule FT–1f. Rate Schedule FT–1 involves firm transportation service which is available to any party that has made an election to convert to have gas transported which is subject to standby service under Rate Schedule CD–1 or has made an election to convert from firm sales under Rate Schedule DCQ pursuant to § 284.10 of the Commission's regulations or pursuant to the contractual provision under Rate Schedule CD–1.

Algonquin states that T–1 Customers purchasing gas from Texas Eastern pursuant to Rate Schedule FT–1 would have the option to purchase gas from any source and to transport that gas subject to Rate Schedule FT–1 provisions. It is further stated that current authorization does not allow for transportaton of those quantities under Rate Schedule T–1 despite the fact that, in total, gas delivered under Rate Schedule FT–1 and Rate Schedule CD–1 would not exceed the total quantities Algonquin is currently authorized to receive under Rate Schedule DCQ for Rate Schedule FT–1 and Rate Schedule CD–1 would not exceed the total quantities Algonquin is currently authorized to receive under Rate Schedule DCQ for Rate Schedule T–1 transportation.

Algonquin requests that its transportation authorization be expanded to allow transportation of natural gas, under the provision of Rate Schedule T–1, that would be received pursuant to Texas Eastern's Rate Schedules CD–1 and FT–1 and new rate schedules derived from Tennessee's Rate Schedule GD–5 when those new rate schedules are implemented.

Comment date: October 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89–2171–000]

October 6, 1989.

Take notice that on September 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–2171–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 2.86 miles of 20-inch pipeline loop on its Kinder-Sabine pipeline near its compressor station No. 823 in Jefferson Davis Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the proposed pipeline loop would provide it with additional operating flexibility and enable it to receive additional gas supplies located along the Kinder-Sabine pipeline. Tennessee asserts that the pipeline loop would therefore afford shippers and producers along the pipeline access to additional capacity and provide them access to additional markets.

Tennessee estimates the cost of the proposed facilities to be $1,659,000

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which would be financed with internally generated funds.

Comment date: October 27, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP90-9-000]

October 10, 1989.

Take notice that on October 3, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-9-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas on a firm basis for Columbia Gas Development Corporation (CGDC). Tennessee explains that service commenced September 2, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4845. Tennessee further explains that the peak day quantity would be 17,278 dekatherms, the average daily quantity would be 17,278 dekatherms, and that the annual quantity would be 6,306,470 dekatherms. Tennessee explains that it would receive natural gas for the account of CGDC at receipt points offshore Louisiana and in the state of Louisiana for redelivery to Columbia Gas Transmission Corporation at Broadrun Cobb, Kanawha County, West Virginia.

Comment date: November 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP90-32-000]

October 11, 1989.

Take notice that on October 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-32-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Wintershall Corporation (Wintershall), a producer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated June 21, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 25,750 MMBtu per day equivalent of natural gas for Wintershall. United states that it would transport the gas from receipt points as shown in Exhibit "A" of the amended transportation agreement and would deliver the gas to delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced September 1, 1989, as reported in Docket No. ST89-4841 (filed September 28, 1989). United further advises that it would transport 25,750 MMBtu on an average day and 9,398,750 MMBtu annually.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP90-4-000]

October 11, 1989.

Take notice that on October 3, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request for authorization at Docket No. CP90-4-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, and El Paso's blanket certificate issued in Docket No. CP82-433-000 for authorization to provide interruptible transportation service for Meridian Oil Trading Inc. (Shipper), all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

El Paso requests authority to transport up to 10,550 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points in the State of Arizona. El Paso states that the estimated daily and annual quantities would be 2,110 MMBtu and 770,150 MMBtu, respectively. El Paso further states that transportation service under § 284.223(a) commenced on September 1, 1989, as reported at Docket No. ST89-4769-000.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Tarpon Transmission Company

[Docket No. CP90-17-000]

October 11, 1989.

Take notice that on October 4, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-17-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to transport natural gas for UniCorp Energy Inc. (UniCorp), a marketer of natural gas, under Tarpon's blanket certificate issued by the Commission's Order No. 509, pursuant to Section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP88-29-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport on an interruptible basis up to 51,100 MMBtu of natural gas on a peak day, 3,548 MMBtu on an average day and 1,295,020 MMBtu on an annual basis for UniCorp. Tarpon indicates that it would receive the gas at four points in the Eugene Island Block 381, offshore Louisiana, and deliver the gas at a point in Block 274 of the Ship Shoal Area, South Addition, offshore Louisiana. Tarpon indicates that it would transport the gas for UniCorp pursuant to Tarpon's Rate Schedule ITS for a primary term of one year and on a monthly basis thereafter.

It is explained that the service commenced August 2, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-39. Tarpon indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP90-3-000]

October 11, 1989.

Take notice that on October 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-3-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Rangeline Corporation (Rangeline), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 200,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Rangeline from receipt points located in Louisiana, offshore Louisiana, Oklahoma, Illinois, Kansas, Texas, offshore Texas, Arkansas and Iowa to delivery points located in Texas, offshore Texas, Oklahoma, offshore Louisiana, Michigan, Kansas, Iowa and Illinois. Natural anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 1,825,000 MMBtu.

Natural states that the transportation of natural gas for Rangeline commenced August 4, 1989, as reported in Docket No. ST90-16-000, for a 120-day period pursuant to § 284.223(a) issued to Natural in Docket No. CP86-582-000.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP90-26-000]

October 11, 1989.

Take notice that on October 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-26-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Graham Energy Marketing Corp. (Graham), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated November 9, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 123,600 MMBtu per day equivalent of natural gas for Graham. United states that it would transport the gas from receipt points as shown in Exhibit "A" of the amended transportation agreement and would deliver the gas to a delivery point shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced August 3, 1989, as reported in Docket No. ST89-4794 (filed September 25, 1989). United further advises that it would transport 123,600 MMBtu on an average day and 45,114,000 MMBtu annually.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Texas Gas Transmission Corporation

[Docket No. CP90-20-000]

October 11, 1989.

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-20-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Stand Energy Corporation (Stand), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 2,000 MMBtu of natural gas on a peak day, 1,000 MMBtu on an average day and 365,000 MMBtu on an annual basis for Stand. Texas Gas states that it would perform the transportation service for Stand under Texas Gas' Rate Schedule IT. Texas Gas indicates that it would transport the gas from numerous specified receipt points to a delivery point located in Warren County, Ohio.

It is explained that the service commenced August 23, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4687. Texas Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. The Inland Gas Company, Inc.

[Docket No. CP90-44-000]

October 12, 1989.

Take notice that on October 10, 1989, The Inland Gas Company, Inc. (Inland), 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90-44-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Energy Marketing Services, Inc. (Energy Marketing) under Inland's blanket certificate issued in Docket No. CP89-779-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Inland proposes to transport on an interruptible basis up to 4,000 MMBtu equivalent of natural gas per day for Energy Marketing under a transportation service agreement dated August 21, 1989. Projected average day and annual quantities are 3,500 MMBtu and 1,277,500 MMBtu, respectively.

Inland states that no facilities would be constructed to provide the service, and that receipt points would be at various points and delivery points would be in Kentucky. It is stated that gas has been flowing pursuant to the service agreement since September 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4749-000.

Inland further states that to its knowledge no agency relationship exists under which a local distribution company or affiliate of Energy Marketing will receive gas on behalf of Energy Marketing under the transportation agreement.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. The Inland Gas Company, Inc.

[Docket No. CP90-42-000]

October 12, 1989.

Take notice that on October 10, 1989, The Inland Gas Company, Inc. (Inland), P.O. Box 1180, Ashland, Kentucky 41105-3171, filed in Docket No. CP90-42-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for King's Daughters' Medical Center (King's Daughters), an end-user, under Inland's blanket certificate issued in Docket No. CP89-779-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Inland states that pursuant to a transportation agreement dated September 2, 1989, it proposes to receive up to 400 Mcf per day from King's Daughters from two specified points located in Boyd and Ashland Counties, Kentucky and redeliver the gas at a specified point located in Ashland, Kentucky. Inland estimates that the peak day average day, annual volumes would be 400 million Btu, 212 million Btu, and 77,500 million Btu, respectively. It is stated that on September 2, 1989, Inland commenced a 120-day transportation service for King's Daughters under § 284.223(a) as reported in Docket No. ST89-4536-000.

Inland further states that no facilities need be constructed to implement the service. Inland indicates that primary term of the transportation agreement expires on September 1, 1989, but that the service would continue on a month-to-month basis until terminated by either party on 30 days written notice. Inland proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

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13. Algonquin Gas Transmission Company

[Docket No. CP89-2101-000]

October 12, 1989.

Take notice that on September 14, 1989 Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field, Soldiers Field Road, Boston, Massachusetts 02135, filed an application in Docket No. CP89-2101-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new delivery point, on behalf of its proposed customer New York State Electric and Gas Company (NYSEG), in the town of Southeast in Putnam County, New York, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that NYSEG has requested that Algonquin construct and operate a new meter station at the proposed Southeast, New York delivery point, permitting NYSEG to take delivery of up to 17,000 MMBtu per day of natural gas. NYSEG has indicated that it plans to use the new delivery point to provide the town of Southeast and village of Brewster, New York with gas service commencing late summer in 1990. NYSEG will reimburse Algonquin for costs to design and construct the proposed facilities which are estimates to cost $315,000 based on 1989 dollars.

NYSEG provides natural gas service to various cities, towns and villages witin New York and is currently awaiting New York Public Service Commission (NYPSC) approval to exercise its gas franchises in the town of Southeast and village of Brewster. In March 1988, NYSEG entered into a natural gas purchase and sale contract with ProvEnergy Investments Ltd. to supply gas for Southeast and Brewster for a primary contract term of five years with provisions to extennd the contract to October 31, 2003. Southeast and Brewster market requirements at the end of five years is estimated to be 6,300 MMBtu per day and 739,563 MMBtu per year based on forecasted customers. As part of the regulatory process in the state of New York, the Environmental Impact Statement for the project has been accepted by the town of Southeast and has been distributed for comment.

Initial deliveries to NYSEG at the new delivery point would involve transportation service on a self-implementing basis pursuant to Algonquin's currently effective Rate Schedules AFT-1 and AIT-1. In addition, NYSEG has elected to receive service pursuant to the proposed Iroquois/Tennessee Pipeline Project pending Commission approval in Docket No. CP89-634, et al. In conjunction with that proceeding, Algonquin has filed with the Commission in Docket No. CP89-661 an application for a certification of public convenience and necessity which requests, among other things, authorization to provide NYSEG with firm transportation of 6000 MMBtu per day commencing October 31, 1991 and an additional 11,000 MMBtu per day commencing October 31, 1992 pursuant to proposed Rate Schedule AFT-2.

Comment date: November 2, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. Williston Basin Interstate Pipeline Company

[Docket No. CP90-24-000]

October 12, 1989.

Take notice that on October 5, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP90-24-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add additional metering and appurtenant facilities under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin seeks authorization to add additional metering to its existing metering capabilities to more accurately measure the volumes being delivered to Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company sales customer of Williston Basin. It is stated that the seasonability of the requirements of the Montana-Dakota customer load being served has strained Williston Basin's existing metering and appurtenant facilities located at its St. Marie meter station. Williston Basin states that it proposed to install an additional meter and a larger relief valve parallel to the existing meter. It is stated that the new meter will be larger than the existing meter and will be used in conjunction with the smaller meter to measure winter load deliveries. It is stated that the existing meter will then be used alone to serve the summer load requirements.

Williston Basin states that the additional facilities to be constructed at the St. Marie meter station will consist of a Roots 7m Rotary meter and a 2-inch relief valve and associated piping necessitated by the above-ground installation. It is stated that the proposed meter station additions will be located on existing pipeline right-of-way in Valley County, Montana. Williston Basin estimates the cost of the proposed facilities to be $10,147. Williston Basin states that the installation of the additional metering and appurtenant facilities will have no significant effect on its peak day or annual requirements. In addition, Williston Basin states that the additional volumes to be delivered are within the certificated entitlement of Montana-Dakota.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williston Basin Interstate Pipeline Company

[Docket No. CP90-25-000]

October 12, 1989.

Take notice that on October 5, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP90-25-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add metering and appurtenant facilities under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin seeks authorization to construct and operate metering and appurtenant facilities for use in providing service to Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company. It is stated that Williston Basin is currently providing natural gas service for ultimate consumption by 111 Montana-Dakota end-use customers utilizing an existing tap located on pipeline right-of-way. Williston Basin states that as part of an ongoing program to create more distinct delivery points to Montana-Dakota, it proposes to install a master (custody transfer) meter in order to measure the amount of total natural gas sold to Montana-Dakota for use by its customers instead of relying on individual Montana-Dakota customer meter readings.

Williston Basin states that the facilities to be constructed at the proposed meter station will consist of a security fence, a large capacity meter, a pressure recording instrument and miscellaneous regulators, gauges and valves. It is stated that the proposed meter station will be located on existing right-of-way in Williams County, North Dakota. Williston Basin estimates the cost of the proposed facilities to be $13,494. Williston Basin states that the installation of the proposed facility will have no significant effect on its peak day or annual requirements. In addition, Williston Basin states that the volumes to be delivered are within the certificated entitlement of Montana-Dakota.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP89-2206-000]

October 12, 1989.

Take notice that on September 29, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-2206-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation service for Florida Gas Transmission Company (Florida), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Southern states that it requests approval to abandon the transportation of natural gas authorized by the Commission in Docket No. CP76-76 on November 19, 1979. The Commission authorized Southern to transport on a firm basis up to 37,500 Mcf of gas per day purchased by Florida from the Grand Isle Block 76 Field, offshore Louisiana, from a delivery point in West Delta Block 133, offshore Louisiana, to the redelivery point at the pipeline's interconnection near Franklinton, Washington Parish, Louisiana. Florida has given Southern a termination notice pursuant to the terms of the transportation agreement and has requested abandonment of the service, it is stated. Southern requests authority to abandon its transportation service for Florida on the date the Commission issues an order authorizing the abandonment. Southern further states that it does not propose to abandon any facilities in conjunction with the abandonment of this transportation service.

Comment date: November 2, 1989 in accordance with Standard Paragraph F at the end of the notice.

17. Texas Gas Transmission Corporation

[Docket No. CP90-19-000]

October 12, 1989.

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-19-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Brooklyn Interstate), under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a Transportation Agreement dated February 7, 1989, it proposes to transport, on an interruptible basis, up to a maximum of 100,000 MMbtu of natural gas for Brooklyn Interstate under Rate Schedule IT.

Texas Gas also states that it will transport approximately 300,000 MMbtu on an average day and approximately 10,950,000 on an annual basis.

Texas Gas further states that it commenced this service on October 23, 1989, as reported in Docket No. ST89-4689-000.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP89-2192-000]

October 12, 1989.

Take notice that on September 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2192-000, as supplemented October 10, 1989, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service on behalf of Tenngasco Corporation, a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, as set forth in the request on file with the Commission and open for public inspection.

United states that the interruptible gas transportation agreement, dated January 30, 1989, as amended May 1989, would transport a maximum daily quantity of 432,600 MMBtu, and that service commenced July 7, 1989, as reported in Docket No. ST89-4309, pursuant to § 284.223(a) of the Commission's Regulations.

It is further stated that the estimated daily and estimated annual quantities would be 432,600 MMBtu and 157,899,000 MMBtu, respectively. United states that it would be using existing facilities to provide transportation service. United further states that the agreement provides for United to receive gas from various receipt points and redelivered subject gas to Champlin Plant Tailgate, Panola County, Texas.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Tennessee Gas Pipeline Company

[Docket No. CP90-30-000]

October 12, 1989.

Take notice that on October 6, 1989, Tennessee Gas Pipeline Company (Tennessee) filed in Docket No. CP90-30-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP87-115-000 on behalf of North Atlantic Gas Utilities, Inc. (North Atlantic), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 10,000 Dt of natural gas for North Atlantic from receipt points located Offshore Louisiana, and in the states of Louisiana, Texas and New York, for redelivery to points off Tennessee's system located in the states of New York, Ohio, Pennsylvania and West Virginia. The peak day and average daily volumes are estimated to be 10,000 Dt and the annual volumes are estimated to be 3,650,000 Dt.

Tennessee explains that the service commenced September 1, 1989, as reported in Docket No. ST90-21. Tennessee also states that no new facilities are to be constructed.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. El Paso Natural Gas Company

[Docket No. CP90-34-000]

October 12, 1989.

Take notice that on October 10, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-34-000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for TXO Gas Ventures Corp. (TXO), under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated April 27, 1989, under its rate Schedule T-1, it proposes to transport up to 52,750

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MMBtu per day equivalent of natural gas for TXO. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points at the borderline between the States of Arizona and California, and in the States of Colorado, New Mexico, Oklahoma and Texas, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced August 20, 1989, as reported in docket No. ST89–4573. El Paso further advises that it would transport 10,550 MMBtu on an average day and 3,850.750 MMBtu annually.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. El Paso Natural Gas Company

[Docket No. CP90–5–000]

October 12, 1989.

Take notice that on October 3, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request with the Commission in docket No. CP90–5–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas for Meridian Oil Trading Inc. (Meridian), a natural gas shipper, under its blanket certificate issued in Docket No. CP88–433–000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes an interruptible transportation service for Meridian of 6,330 MMBtu equivalent of natural gas per peak day, 2,110 MMBtu equivalent per average day, and 770,150 MMBtu equivalent per year. El Paso would transport gas for Meridian from any receipt point on its system to an Arizona delivery point. MMBtu commenced its transportation service for Meridian on August 31, 1989, under the 120-day automatic authorization provisions of § 284.223(a) of the Regulations, as reported in Docket No. ST89–4752.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. United Gas Pipe Line Company

[Docket No. CP90–27–000]

October 12, 1989.

Take notice that on October 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77252–1478, filed a request with the Commission in Docket No. CP90–27–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for LaSer Marketing Company (LaSer), a natural gas marketer, under United's blanket certificate issued in Docket No. CP88–60–000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United proposes an interruptible transportation service for Laser of 626,240 MMBtu equivalent of natural gas on peak and average days, and 228,577,600 MMBtu equivalent on an annual basis. United commenced its transportation service for LaSer on August 28, 1989, under the 120-day automatic authorization provisions of § 284.223(a) of the Regulatons, as reported in Docket No. CPST89–4818.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Texas Gas Transmission Corporation

[Docket No. CP90–22–000]

October 12, 1989.

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–22–000 a request pursuant to §.157.205 of the Commission's Regulations for authorization to transport natural gas for Sun Operating Limited Partnership (Sun), a marketer of natural gas, under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis up to 4,000 MMBtu equivalent of natural gas on a peak day, 4,000 MMBtu equivalent on an average day, and 1,460,000 MMBtu equivalent on an annual basis for Sun. It is stated that Texas Gas would receive the gas for Sun's account at designated points on Texas Gas' system in the High Island area of offshore Texas, and would deliver equivalent volumes at an interconnection between Texas Gas' facilities and those of The Natural Gas Pipeline Company of America in the High Island area of offshore Texas. It is asserted that existing facilities would be used for the transportation service and that no construction of additional facilities would be required. It is explained that the transportation service commenced September 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST–4686.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Company

[Docket No. CP89–2203–000]

October 12, 1989.

Take notice that on September 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–2203–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas on an interruptible basis, under its blanket certificate issued in Docket No. CP86–585–000, a maximum of 100 Dt. per day on behalf of Amarillo Natural Gas Company, Inc. (Amarillo), a shipper, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that service commenced August 14, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4740 and estimates the volumes transported to be 6,000 Dt. on peak day, 50 Dt. on an average day and 18,250 Dt. on an annual basis. It is asserted that Panhandle would receive gas from various existing points of receipt in Colorado, Kansas, Michigan, Ohio, Oklahoma, and Texas, and would transport and redeliver the gas, less fuel and unaccounted line loss gas, to Caprock Archer—Irrigation in Hansford County, Texas.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. El Paso Natural Gas Company

[Docket No. CP90–36–000]

October 12, 1989.

Take notice that on October 10, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–36–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phelps Dodge Corporation (Phelps), under the blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated February 1, 1966, as amended and restated as of January 1, 1989, under its Rate Schedule T–1, it proposes to transport up to 158,250 MMBtu per day equivalent of natural gas for Phelps. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in Arizona and New Mexico, as shown in Exhibit "B" of the agreement. El Paso further states that it would transport 20,045 MMBtu on an average day and 7,316,425 MMBtu annually.

El Paso advises that service under part 284, subpart B, commenced February 1, 1966, as reported in Docket No. ST86–1035. It is stated that the parties have decided to continue the transportation pursuant to subpart G of the regulations.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. El Paso Natural Gas Company

[Docket No. CP90–33–000]

October 13, 1989.

Take notice that on October 6, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–33–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Apache Powder Company (Apache), an end user of natural gas, under El Paso's blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that transportation service for Meridian Oil Hydrocarbons, Inc. (MOHI) began on February 1, 1966, under part 284, subpart B of the Commission's Regulations, as reported in Docket No. ST86–1028–000, pursuant to a transportation agreement dated February 1, 1966. El Paso asserts that the transportation agreement provides for MOHI to assign its rights to the agreement to Apache when El Paso receives and accepts its open-access certificate. El Paso accepted its blanket certificate on December 1, 1988. MOHI has assigned its rights to the transportation agreement to Apache. El Paso and Apache now desire to continue the transportation service under part 284, subpart G of the Commission's Regulations.

El Paso proposes to transport up to 4,200 MMBtu of natural gas equivalent per day on an interruptible basis for Apache pursuant to a transportation agreement dated January 1, 1989, between El Paso and Apache. El Paso would receive the gas at any point of receipt on its system and redeliver equivalent volumes to a delivery point in Cochise County, Arizona.

El Paso states that the estimated daily and annual quantities would be 2,110 MMBtu and 770,150 MMBtu, respectively.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. Tarpon Transmission Company

[Docket No. CP90–16–000]

October 13, 1989.

Take notice that on October 4, 1989, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–16–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron), under Tarpon's blanket certificate issued in Docket No. CP88–89–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tarpon proposes to transport, on an interruptible basis, up to 51,000 MMBtu per day for Enron. Tarpon states that construction of facilities would not be required to provide the proposed service.

Tarpon further states that the maximum day, average day, and annual transportation volumes would be approximately 51,000 MMBtu, 1,100 MMBtu and 401,500 MMBtu respectively.

Tarpon advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–38.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. United Gas Pipe Line Company

[Docket No. CP90–31–000]

October 13, 1989.

Take notice that on October 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, made a prior notice filing pursuant to §§ 157.205 and 284.223 in Docket No. CP90–31–000, to provide interruptible transportation service on behalf of Texaco Gas Marketing, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the Interruptible Gas Transportation Agreement T1–21–1804, dated August 22, 1988, proposes to transport a maximum daily quantity of 103,000 MMBtu, and that service commenced August 11, 1989, as reported in Docket No. ST89–4837–000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

29. Williams Natural Gas Company

[Docket No. CP90–46–000]

October 13, 1989.

Take notice that on October 10, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90–46–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Coastal Gas Marketing Company (Coastal), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 dekatherms of natural gas per day for Coastal from receipt points located in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to delivery points located in Kansas, Missouri and Wyoming. WNG anticipates transporting an annual volume of 7,300,000 dekatherms.

WNG states that the transportation of natural gas for Coastal commenced September 1, 1989, as reported in Docket No. ST90–27–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP86–631–000.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. United Gas Pipe Line Company

[Docket No. CP90–40–000]

October 13, 1989.

Take notice that on October 10, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP90–40–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas

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for Reliance Gas Marketing Company (Reliance), a natural gas marketer, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United proposes an interruptible transportation service for Reliance of 5,150 MMBtu equivalent of natural gas on peak and average days, and 1,879,750 MMBtu equivalent on an annual basis. United commenced its transportation service for Reliance on August 19, 1989, under the 120-day automatic authorization provisions of § 284.223(a) of the Regulations, as reported in Docket No. ST89–4840.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Northern Natural Gas Company Division of Enron, Corp.

[Docket No. CP90–39–000]

October 13, 1989.

Take notice that on October 10, 1989, Northern Natural Gas Company Division on Enron Corp. (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–39–000 a request pursuant to § 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Meridian Oil Trading Inc. (Meridian) a gas marketer, under Northern's blanket transportation certificate issued in Docket No. CP86–435–000 on December 22, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes, pursuant to an agreement dated September 1, 1989, to transport natural gas for Meridian from various receipt points in Texas, and deliver the gas, for the account of Meridian, in Douglas and Sarpy Counties, Nebraska. Northern states that it proposes to transport tup to 50,000 MMBtu of gas on a peak day and approximately 37,500 MMBtu and 18,250,000 MMBtu of gas on an average day and annually, respectively. Northern states that transportation service under § 284.223(a) commenced on September 1, 1989, as reported in Docket No. ST89–4825–000 on September 27, 1989.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. United Gas Pipe Line Company

[Docket No. CP90–28–000]

October 13, 1989.

Take notice that on October 5, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152–1478, filed in Docket No. CP90–28–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corp. (MidCon), a marketer of natural gas, under United's blanet certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 721,000 MMBtu per day day for MidCon. United States that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 721,000 MMBtu, 721,000 MMBtu and 263,165,000 MMBtu respectively.

United advises that service under § 284.223(a) commenced September 4, 1989, as reported in Docket No. ST89–4819.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. Inland Gas Company, Inc.

[Docket No. CP90–43–000]

October 13, 1989.

Take notice that on October 10, 1989, Inland Gas Company, Inc. (Inland), 336–338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90–43–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of A. C. Lawrence Leather Company, Inc. (Lawrence), under Inland's blanket certificate issued in Docket No. CP89–779–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Inland proposes to transport, on an interruptible basis, up to 400 MMBtu per day for Lawrence. Inland states that construction of facilities would not be required to provide proposed service.

Inland further states that the maximum per day, average day, and annual transportation volumes would be approximately 400 MMBtu, 275 MMBtu and 100,400 MMBtu respectively.

Inland advises that service under § 284.223(a) commenced September 2, 1989, as reported in Docket No. ST89–4751.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Williams Natural Gas Company

[Docket No. CP90–45–000]

October 13, 1989.

Take notice that on October 10, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90–45–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Coastal Marketing Company (Coastal), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Coastal, a marketer, on an interruptible basis, pursuant to a transportation agreement dated June 1, 1989. Williams explains that service commenced September 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–28–000. Williams further explains that the peak day and average day quantity would be 50,000 Dth and that the annual quantity would be 18,250,000 Dth. Williams explains that it would receive natural gas for the account of Coastal at receipt points located in Kansas, Colorado, Oklahoma, Texas, Wyoming and Missouri and would redeliver the gas at various delivery points in Kansas and Wyoming.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Tennessee Pipeline Company

[Docket No. CP90–10–000]

October 13, 1989.

Take notice that on October 3, 1989, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77253, filed in Docket No. CP90–10–000, a request pursuant to section 284–223 of the Commission's Regulations for authorization to provide a transportation service for Alcan Aluminum Corporation (Alcan), an end-user, under Tennessee's blanket certificate issued in Docket No. CP87–115–000, allas more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 5,000 Dt of natural gas for Alcan from multiple receipt points located Offshore Louisiana, Mississippi, New York, New Jersey and Pennsylvania to Delta Natural Gas Company in Berea, Madison County, Kentucky. Tennessee expects the peak day and average daily volumes to be 5,000 Dt each. The annual volumes are estimated to be 1,825,000.

Additionally, Tennessee explains that the service commenced September 13, 1989 as reported in Docket No. ST89–4847. Tennessee also states that no new facilities are to be constructed.

Comment date: November 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24754 Filed 10–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES90–2–000]

Baltimore Gas & Electric Co.; Application

October 13, 1989.

Take notice that on October 11, 1989, Baltimore Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue from time to time no later than December 31, 1990 (a) not more than $450 million outstanding at any one time of short-term unsecured promissory notes and commercial paper with final maturities no later than December 31, 1991, and (b) not more than $100 million outstanding at any one time of unsecured medium-term promissory notes with final maturities no later than December 31, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 10, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 24755 Filed 10–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI80–40–002, et al.]

Chevron U.S.A. Inc.; Application

October 13, 1989.

Take notice that on July 11, 1989, Chevron U.S.A. Inc. (Chevron) of P.O. Box 2100, Houston, Texas 77252, filed an application pursuant to section 7 of the Natural Gas Act and parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue sales of natural gas previously made by Tenneco Oil Company (Tenneco) under the certificates listed in the appendix hereto. Chevron also requests that Tenneco's rate schedules listed in the Appendix hereto be redesignated as those Chevron, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that effective June 30, 1988, Tenneco assigned all of its interests in all of the properties subject to Tenneco's FERC Gas Rate Schedules listed in the appendix hereto to TOC-Gulf of Mexico Inc. and that TOC-Gulf of Mexico Inc. merged into Chevron U.S.A. Inc. effective December 31, 1988.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 1, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

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unnecessary for Chevron to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

APPENDIX

Tenneco Oil Co. FERC gas rate schedule No.	Certificate docket No.	Purchaser
536	CI80-40	Columbia Gas Transmission Corporation.
533	CI79-284	Columbia Gas Transmission Corporation.
285	CI73-841	Southern Natural Gas Company.
482	CI84-175	UGI Corporation
483	CI84-180	Lynchburg Gas Company
484	CI84-181	Carolina Pipeline Company
485	CI84-182	Public Service Company of North Carolina, Inc.
486	CI84-183	North Carolina Natural Gas Corporation.
487	CI84-185	City of Alexander City
488	CI84-196	Bayou Interstate Pipeline Corp.
489	CI84-198	Entex, Inc.
490	CI84-235	South Jersey Gas Company.
491	CI84-236	Citizens Energy Corporation.
494	CI84-379	City of Kings Mountain.
495	CI84-380	Virginia Natural Gas.
496	CI84-335	Eastern Shore Natural Gas Company.
497	CI84-89	Piedmont Natural Gas Company.
447	CI83-249	Louisiana Industrial Gas.

[FR Doc. 89-24762 Filed 10-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-50-000, CP88-179-013, CP89-555-000, and CP89-556-000]

Florida Gas Transmission Co.; Rescheduling of Settlement Conference

October 13, 1989.

Take notice that the informal settlement conference scheduled for October 18-20, 1989, in the above-captioned proceeding has been cancelled at the request of Florida Gas Transmission Company. Instead, the informal settlement conference will be convened on November 7, 1989, at 1:30 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE. (8th floor), Washington, DC. The conference will continue on November 8 and 9, 1989, if necessary.

Any participant, as defined by 18 CFR 385.102(b), is invited to attend.

For additional information, contact Donald A. Heydt (202) 357-5248 or John J. Keating (202) 357-5762.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24756 Filed 10-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-37-000 and RP89-82-000]

High Island Offshore System; Change of Date for Informal Settlement Conference

October 13, 1989.

Take notice that the informal settlement conference scheduled for October 17, 1989, at 10:00 a.m. in a hearing room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426 is cancelled.

Counsel for HIOS informed Staff Counsel on October 12, 1989, that it will not have a settlement proposal ready for consideration by the parties and Staff in time for the October 17 settlement conference.

HIOS has represented that it will make available to all parties a copy of its settlement proposal by close of business on Wednesday, October 18, 1989. In anticipation of a meaningful settlement offer from HIOS, the previously scheduled settlement conference is rescheduled to convene in a hearing room of the Commission located at 810 First Street, NE., Washington, DC 20426 beginning at 10:00 a.m. on Friday, October 20, 1989. Parties who desire a copy of the proposal in advance of the settlement conference should contact Christopher Boland, counsel for HIOS, at (202) 289-7200.

If there are any questions, please contact Staff Counsel Robert L. Woods at (202) 357-8549.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24757 Filed 10-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-020]

Kentucky West Virginia Gas Co.; Third Amendment To Compliance Filing

October 12, 1989.

Take notice that on October 12, 1989, Kentucky West Virginia Gas Company (Kentucky West) filed a third amendment to its March 30, 1989 compliance filing so as to extend the proposed effective date for the proposed tariff sheets to December 1, 1989.

Kentucky West states that the tariff sheets filed March 30, 1989, were filed in compliance with the Commission's "Order Rejecting Compliance Filing" issued in the referenced proceedings on March 15, 1989, and in accordance with the mandate of the United States Court of Appeals of the Fifth Circuit, issued in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986).

Kentucky West states that, under the tariff sheets filed March 30, 1989, it would bill its customers directly for the difference between: (1) The amounts each such customer paid during the period in which Kentucky West was required to price certain of its company production at cost of service rather than Natural Gas Policy Act (NGPA) rates; and (2) the amounts each such customer would have paid if Kentucky West, during such time period, had not been denied the right to price its pipeline production at NGPA prices, plus interest calculated in accordance with the Commission's regulations. Kentucky West states further that its customers are given the option of paying the direct billing amounts either: (1) By a lump-sum payment to be made by May 1, 1989; (2) in monthly installments of direct billing amounts, plus interest, to be paid over a period not to exceed 84 months; or (3) by a lump-sum payment during the installment period.

Kentucky West states that, by notice issued April 5, 1989, the Commission set April 14, 1989 as the deadline for motions to intervene or protests. However, on April 13, 1989, based on preliminary settlement discussions, Kentucky West filed an amendment to its March 30, 1989 filing, changing the proposed effective date to September 1, 1989, and extending the deadline for interventions or protests until August 14, 1989. Subsequently, based upon further progress in settlement discussions, Kentucky West amended its filing so as to extend the effective date of the filing until November 1, 1989, and the date for filing interventions or protests until October 16, 1989.

Kentucky West states that during the past few months it has made substantial progress in settlement discussions, but that if settlement is to be achieved, it will require further negotiations. Therefore, Kentucky West is amending its filing a third time so as to extend the proposed effective date of the tariff sheets filed to December 1, 1989, and that the deadline for interventions or protest be extended to November 16, 1989. In this regard, Kentucky West asks that the provisions of § 154.22 of the Commission's Regulations be waived to the extent necessary to permit such extension.

Kentucky West states that it has contacted all parties to these proceedings and the Commission Staff, and no party nor the Commission Staff have any objection to this extension.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24758 Filed 10-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-203-002]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 13, 1989.

Take notice that on October 6, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Second Revised Sheet No. 8B.1
Second Revised Sheet No. 11H.2
Second Revised Sheet No. 15A.2
Second Revised Sheet No. 26A.2

Southern states that these tariff sheets reflect the revision required by the Director, Office of Pipeline and Producer Regulation, in his letter order of September 22, 1989 in the above-captioned proceeding. In accordance with the aforesaid order, Southern has revised its D-2 overrun penalty provisions to specify that customers' requests for authorization of deliveries in excess of their respective D-2 determinants are not required to be made more than twenty-four hours in advance of such deliveries.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24759 Filed 10-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-8-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 13, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on October 10, 1989, tendered for filing certain tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed changes would increase revenues from jurisdictional sales, transportation and storage services by approximately $112.4 million annually based upon the 12-month period ended June 30, 1986, as adjusted. The proposed effective date of the instant filing is November 10, 1989. However, Transco anticipates that the Commission will suspend this filing and permit it to become effective on April 1, 1990, which suspension period would be ten days less than the full five-month period provided in section 4(c) of the Natural Gas Act. In that regard, Transco requests that the Commission not suspend the instant filing for the full period because an April 1, 1990 effective date: (1) Coincides with the commencement of the pipeline summer period; (2) would avoid the administrative burden on Transco and its customers of a rate change becoming effective in the middle of a billing month; and (3) coincides with the termination of the 36-month period under the PGA regulations at 18 CFR 154.303(e).

Transco states that the principal causes of the rate increase are: (1) Increases in operating and maintenance expenses and depreciation expenses; (2) a reduction in projected pipeline throughput; and (3) a change in the mix of contracts and services purchased by Transco's customers.

Transco states as background to the instant filing that on September 29, 1989 the Commission approved in Docket Nos. RP88-68 *et al.* a comprehensive settlement on the Transco system which establishes certain rate and tariff provisions which affect the instant filing. Specifically, in its September 29 order the Commission approved, among other things, an Interim Firm Service (IFS) Rate Schedule. Transco expects that to the extent that its traditional sales customers purchase gas from Transco, the gas will be purchased under the IFS Rate Schedule rather than as traditional CD or G/OG sales service. As further background, Transco states that it has pending in Docket No. RP87-7-000 a proposal for cost allocation and rate design for Transco's transportation services. Transco states that such proposal addresses the issues raised by the Commission in its May 30, 1989 Policy Statement on Rate Design in Docket No. PL89-1-000. Transco has incorporated into the instant filing some, but not all, of the cost allocation and rate design changes which Transco has proposed in the pending Docket No. RP87-7-00 proceeding. Transco submits that the changes proposed here are largely unrelated to the issues discussed in the Rate Design Policy Statement. Once the Docket No. RP87-7-000 proceeding is resolved, Transco states that the instant filing will be superseded on a prospective basis by the cost allocation and rate design methodologies determined in Docket No. RP87-7-000.

Transco states that tariff modifications contained in the revised tariff sheets submitted in appendix A to the filing include the following:

(a) Tariff sheets setting forth a proposal to retain fuel under Rate Schedules GSS, WSS, LSS, SS-1, LG-S and LGA.

(b) Redesign of the X-11, X-42, X-52, and X-56 rates to make reference to Transco's FT rather than CD rates and to provide for retention of fuel rather than sale of fuel.

(c) Tariff sheets setting forth a Fuel Recovery Provision which would allow Transco to make prospective adjustments to the fuel retention percentage applicable to transportation and storage services based upon actual fuel usage in a prior period. This Fuel Retention Adjustment is being filed pursuant to the undertaking set forth in Article III, section 7 of Transco's August 7, 1989 Revised Stipulation and Agreement in Docket Nos. RP88-68, *et al.*, approved by Commission order issued September 29, 1989. 48 FERC ¶ 61,—(1989). The Settling Parties thereto agreed to support, in concept, a fuel

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adjustment mechanism in the instant proceeding.

(d) A redefinition of the "production area" on Transco's system and the creation of three rate zones within such production area (resulting in a total of six rate zones).

(e) Revisions to the provisions whereby shippers under the FT Rate Schedule shall have firm transportation capacity entitlements within the production area.

(f) The inclusion of new Rate Schedules FT–MB and IT–MB for firm and interruptible transportation service on Transco's Mobile Bay pipeline system.

(g) A redesign of rates for services on the Leidy Line based upon aggregating the facilities costs of recent expansions; the redesign of rates included, for certain seasonal Leidy Line services, alternate tariff sheets reflecting such modification on a Fixed-Variable rate design (the primary sheets reflect the currently effective Modified Fixed Variable rate design).

(h) The separation of the currently effective gathering charge (after refunctionalization of certain facilities to transmission plant) into two components; (i) a Tilden Plant charge, (based on the costs associated with the Tilden Plant) and (ii) a purification/dehydration charge (based on the costs of the remaining purification/dehydration plant). Transco will file if deemed necessary by the Commission for section 7(c) authority for any uncertificated gathering facilities for which refunctionalization is proposed. If the refunctionalization is approved, Transco will request authority from FERC's Chief Accountant to reflect such refunctionlization on Transco's books.

In Statement Q, attached to the filing, Transco states that it has included *pro forma* tariff sheets which contain storage tracking provisions which would allow Transco to track future storage cost increases by Consolidated Gas Supply Corporation (Con Gas) from whom Transco acquires storage service in order to render storage service to its customers under Rate Schedule GSS. The *pro forma* tariff provisions in Statement Q shall be placed into effect only after approval by the Commission.

Copies of the filing were served upon the Company's customers and interested State Commissions. In accordance with the provisions of §154.16 of the Commission's Regulations, copies of this filing are available to public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24760 Filed 10–19–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–302–002]

Williston Basin Interstate Pipeline Co.; Compliance

October 12, 1989.

Take notice that on August 15, 1989, Williston Basin Interstate Pipeline Company (Williston Basin) filed revised tariff sheets to First Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, to be effective June 1, 1989. Williston Basin states that these tariff sheets, which implement an Authorized Overrun Service for its Rate Schedules G–1 and SGS–1 customers, are filed in compliance with the Commission's Order of July 20, 1989, in Docket No. CP89–302–000.

Williston Basin states that copies of this filing were served on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24761 Filed 10–19–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued During the Week of August 14 Through August 18, 1989

During the week of August 14 through August 18, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/K.E. David, Ltd., et al., 8/16/89, RF304–2842, et al.

The DOE issued a Decision and Order concerning 37 Applications for Refund from a consent order fund made available by Atlantic Richfield Company. All the applications were granted under an appropriate presumption of injury. The refunds granted totaled $151,784 representing $115,444 in principal and $36,340 in accrued interest.

Atlantic Richfield Company/Post Arco Service, et al., 8/16/89, RF304–7401, et al.

The DOE issued a Decision and Order approving 28 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All refunds were granted under the small claims injury presumption. The refunds granted in this decision totalled $48,926, including $11,717 in accrued interest.

Atlantic Richfield Company/Weis Markets, Inc., et al., 8/18/89, RF304–7200, et al.

The DOE issued a Decision and Order concerning 56 Applications for Refund filed by end users, reseller retailers of refined petroleum products covered by a Consent Order that the DOE entered into with Atlantic Richfield Company. Each claimant was granted a refund based on an applicable presumption of injury. The sum of the refunds approved in this Decision is $84,485, representing $64,260 in principal and $20,225 in accrued interest.

Boardman Ranch, et al., 8/15/89, RF272–40000, et al.

The DOE issued a Decision and Order concerning 59 Applications for Refund in the Subpart V crude oil overcharge proceeding. Each applicant was an end user of the refined petroleum products on which its application was based and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted is $25,915.

Clarkson Construction Co., et al., 8/18/89, RF272–32194, et al.

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 22 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $106,356.

Crown Central Petroleum Corporation/Paster Fuel Oil, Inc., et al., 8/18/89, RF313–137, et al.

The DOE issued a Decision and Order considering applications filed by 16 purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. The refund applications were granted using an appropriate presumption of injury. The total amount of refunds approved in this Decision was $78,199, representing $65,770 in principal plus $12,429 in accrued interest.

Crown Paper Board Company, Inc., et al., 8/16/89, RF272–8579, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six pulp and paper manufacturers. In reaching its determination, the DOE rejected the objections to the applicants' claims submitted by a group of States and denied the States' Motions for Discovery. Specifically, the DOE restated its position that the type of industry-wide data submitted by the States is insufficient to rebut the presumption that end-users outside of the petroleum industry were injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular industry or firm does not rebut the end-user presumption. The total refund granted the six claimants was $832,099.

Exxon Corporation/Paul Rollings Esso, et al., 8/16/89, RF307–1101, et al.

The DOE issued a Decision and Order concerning 34 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a retailer of Exxon products whose allocable share is less than $5,000 or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to it, full allocable share. The sum of the refunds granted in this Decision is $24,350 ($19,996 principal plus $4,354 interest).

Exxon Corporation/Rental Uniform Service Inc., et al., 8/16/89, RF307–604, et al.

The DOE issued a Decision and Order concerning 31 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $29,420, including $5,069 in interest.

Farmers Cooperative Company, et al., 8/15/89, RF272–71325, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to eight agricultural cooperatives, based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the applicants established its volumes of petroleum products either by actual purchase records or by reasonable estimates. The total refund granted in this Decision is $71,920

Gulf Oil Corporation/Alton C. Laccheo, et al., 8/18/89, RF300–9522, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was approved using a presumption of injury. The sum of the refunds granted in this Decision is $25,412, including accrued interest.

Gulf Oil Corporation/Moises Aruj Gulf, 8/18/89, RF300–5164

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. Although the DOE was able to corroborate that applicant purchased refined petroleum products from Gulf, the applicant was unable to document the level of its Gulf purchases. The DOE therefore utilized the gallonage figures of the station's subsequent owner in arriving at a conservative estimate of the applicant's gallonage. The total refund granted in this Decision is $3,210.

Gulf Oil Corporation/Powers Gulf Service, et al., 8/15/89, RF300–8885, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $23,122.

Gulf Oil Corporation/Ronald C. Ellison, et al., 8/16/89, RF300–901, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $19,781.

Gulf Oil Corporation/Wingert Oil Company, 8/15/89, RF300–10861

The DOE rescinded a refund granted to a past owner Wingert Oil Company in the Gulf Oil Corporation refund proceeding. The rescission was based upon the fact that the current owner of Wingert has also claimed the Gulf refund. The DOE stated that no refund would be issued for Wingert's claim until the appropriate recipient had been determined.

International Paper Company, 8/18/89, RF272–6446, RD272–6446

The DOE issued a Decision and Order concerning an Application for Refund filed by International Paper Company (IPC) from the crude oil funds being disbursed by the DOE under 10 C.F.R. part 205, subpart V. The DOE determined that IPC's refund claim was meritorious and granted the firm a refund of $2,840,746. The DOE also denied a Motion for Discovery field by a consortium of States and rejected their challenge to the IPC claim. The DOE denied the States' objections, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that IPC was injured by the crude oil overcharges.

Liedtka Trucking, Inc., 8/15/89, RF272–15999, RD272–15999

The DOE issued a Decision and Order concerning an application for refund filed by Liedtka Trucking, Inc. in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to Liedtka's application on the grounds that certain Interstate Commerce Commission fuel surcharge regulations may have enabled Liedtka, a

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trucking company, to pass through increased petroleum costs to consumers during the petroleum price controls period. The States argued that this evidence was sufficient to rebut the end-user presumption relied upon by Liedtka and therefore that the DOE should deny Liedtka's application. The DOE granted Liedtka's refund application, determining that the States had failed to show that Liedtka itself actually passed through increased fuel costs. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut Liedtka's presumption of injury.

Murphy Oil Corporation/Trade, Inc., et al., 8/18/89, RF309-635, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 12 applicants in the Murphy Oil Corporation special refund proceeding. Each applicant was granted a refund based on an appropriate presumption of injury. The total of the refunds granted in this Decision was $75,122, representing $62,835 in principal and $12,287 in accrued interest.

Shell Oil Company/Hanover Park Shell, et al., 8/15/89, RF315-4801, et al.

The DOE issued a Decision and Order granting 109 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $91,396 ($78,295 principal plus $13,101 interest).

Standard Oil Co. (Indiana)/West Virginia, 8/15/89, RM251-158

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of West Virginia in the Standard Oil Co. (Indiana) (Amoco II) special refund proceeding. The State wished to transfer $18,500 remaining from a previously approved program to a traffic light synchronization project in the City of Charleston. The OHA found that the plan would provide restitution to injured consumers of motor gasoline by helping them to conserve fuel through smoother flows of traffic. Accordingly, the plan was approved.

Total Petroleum/Bill's Apco Service Station, 8/15/89, RF310-343

The DOE issued a Decision and Order concerning an Application for Refund filed by a motor gasoline retailer, Bill's Apco Service Station, in the Total Petroleum, Inc. special refund proceeding. The DOE determined that it was unlikely that the applicant was injured because the claim arose from transactions which occurred nearly six years prior to the applicant's purchase of the outlet in question. The DOE also pointed out that the current owner of Bill's had failed to establish that the right to the refund was assigned to him by the prior owner of the firm. Accordingly, the application was denied.

Versailles Realty Company, 8/18/89, RC272-67

The DOE issued a Supplemental Order rescinding a duplicate crude oil refund of $360 inadvertently issued to Versailles Realty Company.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Allen G. Stroucker *et al*	RF272-26239	8/15/89	5	$829
Central Rural Electric Coop *et al*	RF272-57000	8/16/89	64	40,334
Forester Apartments *et al*	RF272-62549	8/18/89	83	48,334
Greenville Central School *et al*	RF272-67528	8/15/89	51	30,442
Grenadier Realty Corp. *et al*	RF272-65512	8/15/89	16	10,968
I&N Truck Lines *et al*	RF272-52512	8/16/89	75	34,042
M.F. Miller *et al*	RF272-47087	8/18/89	19	6,014
Mike Kuper *et al*	RF272-75000	8/16/89	77	9,752
National Jet Co., Inc. *et al*	RF272-75400	8/16/89	41	5,893
St. Patrick's Church *et al*	RF272-74001	8/16/89	52	30,186

Dismissals

The following submissions were dismissed.

Name	Case No.
Acree Oil Company	RF313-156
Charles A. Dugger/Holiday Gulf	RF300-9543
Energy Exchange Company, Inc.	HRO-0191
Griffin's Arco	RF304-7434
MacMillan's Mobil	RF307-7362
MacMillan's Mobil	RF307-7292
McClure Oil Company	KEF-0009
Northwest Service Station	RF309-1352

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 13, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-24839 Filed 10-19-89; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Power Rate

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of proposed power rate—Salt Lake City Area Integrated Projects.

SUMMARY: The Western Area Power Administration (Western) is proposing a rate increase for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects), which consist of the Collbran, Rio Grande, and Colorado River Storage Projects integrated for marketing and ratesetting purposes. A rate increase will be needed to cover increased annual operating expenses and to repay Federal investment in the Integrated Projects.

In this proposal, an objective is to achieve an equal increase in both the capacity and energy components of the existing rate. The proposed rate consists of a capacity charge of $2.82 per kilowatt-month (kW-month) and an energy charge of 6.84 mils per kilowatthour (mils/kWh), which results in a proposed combined rate of 13.4 mils/kWh at a 58.2-percent load factor. This results in approximately a 35-percent increase over the present rate of $2.09/kW-month capacity charge and a 5.0 mils/kWh energy charge, or an existing combined rate of 9.92 mils/kWh.

A brochure explaining the need for a rate increase and outlining the methodology used in developing the proposed rate will be distributed to Integrated Projects customers and other interested parties.

Customers and other interested parties are invited to comment on the proposed rate and the methodology used in its development.

According to the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions (10 CFR part 903), the proposed Integrated Projects firm power rate adjustment would be a major rate adjustment because annual Integrated Projects sales are normally more than 100 million kilowatthours. Therefore, a public information forum and a public comment forum will be held. After review of public comments, Western will recommend a final proposed rate.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end February 9, 1990.

A public information forum, at which Western will outline the methodology used in developing the proposed rate, will be held at the Red Lion Inn, 255 South West Temple, Salt Lake City, Utah, at 8:30 a.m., on November 21, 1989. Western will answer questions at this forum. A public comment forum, at which Western will receive oral and written comments, will be held at 1:30 p.m. on January 25, 1990, also at the Red Lion Inn, Salt Lake City, Utah. Written comments should be received by the end of the consultation and comment period to be assured of consideration and may be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524-5493.

SUPPLEMENTARY INFORMATION: Power rates for the Integrated Projects are established pursuant to the Department of Energy Organization Act of August 4, 1977, 42 U.S.C. 7101, *et seq.*; the Reclamation Act of 1902, ch. 1093, 372 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and the acts specifically applicable to the projects involved.

By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission. On September 20, 1989, the Secretary issued a notice, SEN-10A-89, which has the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy.

The procedures for public participation in rate adjustments for power marketed by Western at 10 CFR part 903 were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed Integrated Projects rate are and will be available for inspection and copying at the Salt Lake City Area Office, 257 East 200 South, Suite 475, Salt Lake City, Utah.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the proposed rate relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Because the proposed rate is of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981). In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore, will not prepare a regulatory impact statement.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council of Environmental Quality Regulations (40 CFR parts 1500 and 1508), and Department of Energy guidelines (52 FR 47662), Western will conduct an environmental evaluation of the rate action and develop the appropriate level of environmental documentation prior to the implementation of any rate increase.

Issued at Golden, Colorado, September 28, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-24875 Filed 10-19-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3673-4]

Stratospheric Ozone Protection Advisory Committee Meeting; Correction

ACTION: Correction-location of advisory committee meeting.

SUMMARY: On Wednesday, October 11, 1989, the U.S. Environmental Protection Agency (EPA) announced the time and location of the first meeting of the Stratospheric Ozone Protection Agency Committee, (54 FR 41677). The specific address of the meeting location was omitted in that announcement. This notice serves to announce that the meeting, scheduled for October 26, 1989, will take place at the Holiday Inn Capitol, 550 C St. SW., Washington, DC. The meeting will be held from 8:30 a.m. to 1 p.m., and is open to the general public.

FOR FURTHER INFORMATION CONTRACT: Karla Perri, at (202) 382-7750 or write to the Division of Global Change, Office of

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Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Dated: October 16, 1989.

Eileen B. Claussen,

Director, Office of Atmospheric ond Indoor Air Programs.

[FR Doc. 89-24852 Filed 10-19-89; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-3673-1]

Analysis of Particulate Matter Benefits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: The EPA has completed some reports assessing the benefits of controlling particulate matter emissions from several categories of fossil-fuel combustion and is requesting public review of these reports.

ADDRESS: Copies of these reports are available in Docket No. A-89-16. The docket is located in the Central Docket Section of the U.S. Environmental Protection Agency, room M-1500 Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying. Comments on these reports should be sent in duplicate to the same address. Attn: Docket No. A-89-16.

FOR FURTHER INFORMATION CONTACT: Mr. Allen C. Basala, Air Quality Management Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5622 (FTS 629-5622).

SUPPLEMENTARY INFORMATION: Particulate matter is the generic term for a broad class of chemically and physically diverse substances that exist as discrete particles over a wide range of sizes. Particles originate from a variety of stationary and mobile sources. They may be emitted directly or formed in the atmosphere by transformations of gaseous emissions such as sulfur oxides, nitrogen oxides, and volatile organic substances. Particulate matter is one of six criteria pollutants for which national ambient air quality standards are establisted to protect public health and welfare. Particulate matter can aggravate existing respiratory disease, produce acute reductions in lung function and increase the incidence of respiratory disease in children, and increase the risk of premature mortality in elderly and ill persons. The principal welfare effects associated with particulate matter include effects on visibility and climate, man-made materials, and soiling and nuisance.

The major sources of particulate matter include fugitive dusts from roads, construction, industrial activity, residential wood combustion, and diesel-powered motor vehicles. Because the major chemical and physical properties of particulate matter vary greatly with time, region, meteorology, and source type, the quantitative assessment of the health and welfare benefits associated with particulate matter emission reduction programs is a complex undertaking. These analyses require a combination of quantitative data an assumptions to define the source and emission characteristics, the dispersion process, and health and welfare responses associated with the ambient particulate matter concentrations achieved as a result of the emission reduction program being examined.

As part of its effort to examine the benefits associated with particulate matter reduction programs, EPA has recently completed an assessment of the benefits associated with controlling particulate matter from several categories of fossil-fuel combustion. These methodologies and approaches used in preparing this assessment are contained in two reports. The first, "PM Emission Characterization and Exposure Analysis for Selected Commercial Coal-Fired Boilers," describes the information used to characterize the boiler emissions and locations for the particulate matter exposure analysis. The second, "Methodology Report for Benefits Associated with PM Reductions Resulting from Regulating Small Boiler Emissions," describes the benefits analysis, the data used, the exposure and risk assessments, and valuation of effects. Through this notice, EPA is requesting public comment on the technical adequacy of the analytical and methodological approaches described in these reports for assessing the health and welfare benefits associated with reducing particulate matter emissions from these source categories.

Comments should be submitted no later than November 20, 1989.

Dated: October 12, 1989.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-24851 Filed 10-19-89; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3669-5]

Water Quality Act of 1987 Implementation: Final Guidance Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability fo a final document which describes EPA's "Sewage Sludge Interim Permitting Strategy."

DATE: Copies of this document will be available form EPA Office of Water for a period of 60 calendar days, beginning October 20, 1989.

ADDRESS: Copies of this document can be obtained by writing to Mrs. Adelaide Webb, Permits Division, EN-336, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephoning her at (202) 475-9537.

FOR FURTHER INFORMATION CONTACT: Catherine C. Crane, telephone (202) 475-9522.

SUPPLEMENTARY INFORMATION: The Water Quality Act (WQA) establishes an aggressive new program by EPA and States for the control of toxic pollutants found in sewage sludge which may adversely affect public health or the environment. EPA is to promulgate technical standards for sludge use and disposal to control these pollutants and to implement the technical standards Through permits issued to publicly-owned treatment works (POTWs) and other treatment works treating domestic sewage. The technical standards were proposed on February 6, 1989 in the **Federal Register** (54 FR 5937). In a related rulemaking, EPA has promulgated regulations for including sludge requirements in NPDES permits and for approving State sludge management programs [54 FR 18716, May 2, 1989].

In the interim before promulgation of the technical standards for sewage sludge use and disposal, section 405(d)(4) of the Clean Water Act, as amended by the WQA, directs EPA to include sludge requirements in NPDES permits issued to POTWs or to take other measures to protect public health and the environmenmt. In response, EPA has developed an Interim Permitting Strategy which sets forth procedures for including sludge requirements in permits (re)issued to POTWs. A Notice of Availability of the draft Strategy for public comment was published in the **Federal Register** in May 31, 1988 [53 FR 19817]. The Strategy was then revised in response to comments received.

The Strategy: (1) Discusses the identification of permitting priorities for sludge; (2) establishes minimum sludge permit requirements; (3) discusses the purpose and content of the forthcoming permit writers' guidance for writing interim sludge conditions, "Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge" draft 1988; (4) decribes State and EPA coordination on interim permitting; and (5) provides model documents for use in interim implementation.

Dated: September 18, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-24688 Filed 10-19-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3673-5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed October 9, 1989 Through October 13, 1989 Pursuant to 40 CFR 1506.9:

EIS No. 890277, FSuppl, COE, IA, West Des Moines and Des Moines Local Flood Control Protection, Polk County, IA, Due: November 20, 1989, Contact: Bob Vanderjack (309) 788-6361.

EIS No. 890278, Final, SCS, MS, Long Beach Watershed Plan, Flood Damage Reduction, Funding, Harrison County, MS, Due: November 20, 1989, Contact: L. Peter Heard (601) 965-5205.

EIS No. 890279, Final, BLM, OR, ID, NV, Owyhee Canyonlands Wilderness Study Areas, Suitability for Wilderness Designation, Legislative Action, Owyhee River, Malheur County, OR, Owyhee County, ID, and Elko County, Nevada, Due: November 20, 1989, Contact: J. David Brunner (208) 334-1582.

EIS No. 890280, FSuppl, NRC, PA, Three Mile Island Nuclear Power Station, Unit 2, Decontamination and Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Londonderry Township, Dauphin County, PA, Due: November 20, 1989, Contact: Dr. Michael T. Masnik (301) 492-1373.

EIS No. 890281, Draft, OSM, IN, Flat Fork and Mud Creek Watershed Surface Coal Mining Operations, Unsuitable Land Designation, Approval, Morgan County, TN, Due: December 4, 1989, Contact: Joe B. Maddox (615) 673-4356.

EIS No. 890282, Final, BOP, CA, Taft Federal Correctional Institution, Construction and Operation, Kern County, CA, Due: November 21, 1989, Contact: William J. Patrick (202) 272-6871.

EIS No. 890283, Draft, AFS, MT, Badger-Two Medicine Area Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Lewis and Clark National Forest, Rocky Mountain Ranger District, Pondera and Glacier Counties, MT, Due: December 15, 1989, Contact: Norman Yogerst (406) 329-3634.

Dated: October 17, 1989.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 89-24858 Filed 10-19-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3673-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 2, 1989 through October 6, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-COE-E50286-NC, Rating LO, Core Creek Bridge Replacement, Atlantic Intercoastal Waterway Bridge, Implementation, Carteret County, NC.

Summary: EPA finds the perturbations associated with upgrading this bridge have been modified to minimize losses and those unavoidable impacts have been appropriately mitigated.

Final EISs

ERP No. F1-COE-E32069-FL, Miami Harbor Channel Navigation Improvements, Implementation, Dade County, FL.

Summary: EPA's previous objections to the revised project design centered around the increased losses to valuable seagrasses caused by the shifted alignment of the turning basin; this alternative was discarded and the initial alignment was reinstated.

ERP No. F-MMS-A02228-00,

Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales Nos. 123 and 125, Offshore AL, MS, TX, and LA.

Summary: EPA continues to be concerned that this document does not adopt the protective stipulations described in the draft EIS. EPA also strongly recommends a comprehensive ozone modeling effort in order to gauge impacts of offshore emissions on ozone levels onshore.

Dated: October 17, 1989.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 89-24859 Filed 10-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 13, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0374.

Title: Section 73.1690, Modification of Transmission Systems.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 715 Recordkeepers; 1,108 Hours.

Needs and Uses: Section 73.1690 requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modifications to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram is to be retained at the transmitter site as long as the equipment is in use. The data are used by broadcast licensees to provide

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prospective users of the modified equipment with necessary information. If no such information exists, any future problems could prove difficult to solve and could result in electronic frequency interference for long periods of time.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-24803 Filed 10-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of review: Extension without any change in the substance or in the method of collection.
Title: Procedures for Monitoring Bank Secrecy Act Compliance.
Form number: None.
OMB number: 3064-0087.
Expiration date of current OMB clearance: January 31, 1990.
Frequency of response: On occasion.
Respondents: All insured nonmember banks.
Number of respondents: 8,400.
Number of responses per respondent: 1.
Total annual responses: 8,400.
Average number of hours per response: .5.
Total annual burden hours: 4,200.
OMB reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before December 19, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the collection of information contained in § 326.8 of FDIC's regulation 12 CFR part 326. Section 326.8 requires all insured nonmember banks to establish and maintain procedures designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The Bank Secrecy Act requires certain reports or records on monetary instruments transactions where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Dated: October 16, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-24786 Filed 10-19-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of review: Extension of the expiration date without any change in the substance or in the method of collection.
Title: Asset Marketing Survey—Loans and Real Estate.
Form number: FDIC 7240/01.
OMB number: 3064-0089.
Expiration date of current OMB clearance: January 31, 1990.
Frequency of response: On occasion.
Respondents: Individuals and organizations that have indicated an interest in purchasing loans or real estate held by the FDIC as a result of bank failures.
Number of respondents: 5,000.
Number of responses per respondent: 1.
Total annual responses: 5,000.
Average number of hours per response: One quarter of an hour.
Total annual burden hours: 1,250.
OMB reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before December 19, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the collection of information from qualified propective investors who are interested in purchasing loans and real estate held by the FDIC as a result of bank failures. The information is collected on survey form FDIC 7240/01 which the FDIC sends to qualified individuals and organizations that have indicated an interest by responding to FDIC announcements in the media, word of mouth or other means. The FDIC has established a nationwide automated asset marketing system whereby a file containing information about investors interested in buying loans or real estate held by the FDIC as a result of bank failures can be matched with a file containing data about specific loan portfolios or real estate available for sale by the FDIC. This information collection is designed to enable the FDIC to more efficiently sell loans and real estate held by the Corporation, nationwide.

Dated: October 13, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-24787 Filed 10-19-89; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change in substance or method of collection.
Title: Contract and Procurement Information Requirements.
Form Number: FDIC 3320/11, 3320/13, 3320/14, 3320/19.

OMB Number: 3064-0072.
Expiration Date of Current OMB Clearance: December 31, 1989.
Frequency of Response: On occasion.
Respondents: Contractors and vendors who wish to do business with the FDIC.
Number of Respondents: 3,000.
Number of Responses per Respondent: 1.
Total Annual Responses: 3,000.
Average Number of Hours per Response: .75.
Total Annual Burden Hours: 2,250.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before December 19, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the expiration date of the information collection required by the FDIC in conducting its procurement activities. The information is used to evaluate bids and proposals from offerors, to award contracts, and to make purchases of goods and services in support of FDIC's mission. It is also used for contract monitoring.

Dated: October 17, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-24830 Filed 10-19-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation, Issuance of Certificate (Performance) to Princess Cruises Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR part 540):

Princess Cruises Inc. (California) and Astramar S.P.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067-4189
Vessel: Crown Princess

Dated: October 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24736 Filed 10-19-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

East Texas Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requeats a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 9, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. East Texas Financial Corporation, Kilgore, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Kilgore, Texas.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire 62.98 percent of the voting shares of The National Bank of Houstonville, Kentucky, Houstonville, Kentucky.

Board of Governors of the Federal Reserve System, October 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24778 Filed 10-19-89; 8:45 am]

BILLING CODE 6210-01-M

First Commercial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. section 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

BEST COPY AVAILABLE

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1. First Commercial Corporation, Little Rock Arkansas; to engage *de novo* through its subsidiary, Baker and Hill, Incorporated, Little rock, Arkansas, in providing management consulting advice to nonaffiliate banks and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks and industrial loan companies pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24779 Filed 10-19-89; 8:45 am]

BILLING CODE 6210-01-M

John T. Newton, et al.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. section 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments nust be received not later than November 3, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John T. Newton, Griffin, Georgia; Virginia C. Newton, Griffin, Georgia; John T. Newton, Jr., Griffin, Georgia; and David G. Newton, Griffin, Georgia; Victoria Newton Mooney, Atlanta, Georgia; and Jan Newton Bevilagva, Atlanta, Georgia; together as the Newton Family Partnership, to retain 15.57 percent and acquire an additional 1.25 percent of the voting shares of FNB Banking Company, Griffin, Georgia, for a total of 16.82 percent, and thereby indirectly acquire First National Bank of Griffin, Griffin, Georgia.

Board of Governors of the Federal Reserve System, October 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24780 Filed 10-19-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 851 0149]

Cleveland Oldsmobile Connection et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, nine consent agreements, accepted subject to final Commission approval, would prohibit, among other things, eight Cleveland area Oldsmobile dealers and their association from entering into any agreement to restrict the advertising of prices, terms or conditions of sale or lease of motor vehicles in the future.

DATE: Comments must be received on or before December 19, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520-A, Cleveland, Ohio 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that nine consent agreements, each containing a consent order to cease and desist, have been filed with the accepted, subject to final approval, by the Commission, and have been placed on the public record for a period of sixty (60) days. The consent agreements are with Cleveland Oldsmobile Connection, an association, and eight Oldsmobile dealers: Dowd Oldsmobile, Inc.; Earl Oldsmobile, Inc.; Fred Stecker Oldsmobile, Inc.; Ganley Oldsmobile, Inc.; Gener Norris Oldsmobile-GMC, Inc.; Hern Oldsmobile-GMC Truck, Inc.; Reliable Oldsmobile, Inc.; and Zalud Oldsmobile, Inc. The agreement containing consent order with Cleveland Oldsmobile Connection and the agreement containing consent order with Dowd Oldsmobile, Inc. are reproduced herein. The agreements with the other seven dealers are substantively identical to the Dowd agreement, and are therefore not reproduced herein. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order to Cease and Desist

In the matter of Cleveland Oldsmobile Connection, an association.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Cleveland Oldsmobile Connection, an association, and it now appearing that Cleveland Oldsmobile Connection, an association, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Cleveland Oldsmobile Connection, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Cleveland Oldsmobile Connection is an unincorporated association composed entirely of Oldsmobile dealers and existing for their mutual benefit with its office and principal place of business located at 424 Broadway Avenue, Bedford, Ohio 44146.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That, for purposes of this order, the following definitions apply:

A. "Cleveland Oldsmobile Connection" means Cleveland Oldsmobile Connection, an association, as well as its officers, directors, committees, employees, agents, successors and assigns.

B. "Dealer" means any person, corporation, partnership, association, joint venture, trust, or any other organization or entity, but not governmental entities, that receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such entity.

It is further ordered, That Cleveland Oldsmobile Connection, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, *as amended,* cease and desist from:

A. Entering into, organizing, encouraging, carrying out or enforcing any agreement or understanding, either express or implied, between or among dealers which has the purpose or effect of restricting, regulating, or impeding the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle, including, but not limited to, maintaining, adopting or implementing any policy, act or practice that restricts, regulates or impedes the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle.

B. Requesting, recommending, coercing, influencing, encouraging or persuading or attempting to coerce, influence, encourage or persuade any dealer to maintain, adopt or adhere to any policy or practice that restricts, regulates or impedes the advertising or publishing of any price, term or condition of sale or lease of any motor vehicle.

C. Communicating with any dealer member of Cleveland Oldsmobile Connection concerning the policies, practices or decisions of any other dealer with respect to the advertising or publishing of any price, term or condition of sale of any motor vehicle or whether the advertising or publishing of prices of motor vehicles by dealers is effective, advisable or desirable, except to the extent that such communication is necessary for the purpose of engaging in joint advertising.

D. Continuing a meeting of Cleveland Oldsmobile Connection, or any committee or board thereof, at which any dealer makes any statement to any such meeting concerning one or more dealers' policies, practices or decisions relating to the advertising or publishing of prices of motor vehicles or whether the advertising or publishing of prices of motor vehicles by dealers is effective, advisable or desirable, except to the extent that such statements are necessary for the purpose of engaging in lawful joint advertising.

III

It is further ordered, That nothing contained in Paragraph II above shall be construed to prohibit Cleveland Oldsmobile Connection from formulating, adopting, disseminating and enforcing lawful guidelines concerning advertisements that Cleveland Oldsmobile Connection reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

IV

It is further ordered, That Cleveland Oldsmobile Connection:

A. Mail a copy of this order to each of its members within thirty (30) days after the date this order becomes final; and

B. Provide each new Cleveland Oldsmobile Connection member with a copy of this order at the time the member is accepted into membership.

C. File with the Commission within sixty (60) days after this order becomes final and annually on the anniversary date of the original report for each of the three (3) years thereafter, a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied and is complying with this order; and

D. Notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, change of name, or other action resulting in the emergence of the successor association or any other change in respondent that may affect compliance obligations arising out of this order.

Agreement Containing Consent Order to Cease and Desist

In the matter of Dowd Oldsmobile, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Dowd Oldsmobile, Inc., a corporation, and it now appearing that Dowd Oldsmobile, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between Dowd Oldsmobile, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Dowd Oldsmobile, Inc., is a corporation

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organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2958 Mayfield Road, Cleveland Heights, Ohio 44118.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the pubic record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is Ordered, That, for purposes of this order, the following definitions apply:

A. "Dowd Oldsmobile" means Dowd Oldsmobile, Inc., as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

B. "Dealer" means any person, corporation, partnership, association, joint venture, trust, or any other organization or entity, but not governmental entities, that receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such entity.

C. "Other dealer" means any dealer not affiliated by total or partial [ten (10) percent or more] common ownership with Dowd Oldsmobile, Inc.

D. "Dealer association" means any group, organization or entity, whether incorporated or unincorporated, composed of dealers and existing for their mutual benefit.

E. "Metropolitan Cleveland area" means the Cleveland, Ohio metropolitan area, comprising Cuyahoga County, Geauga County, Lake County and Medina County, in the State of Ohio.

II

It is further ordered, That Dowd Oldsmobile, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, organizing, encouraging, carrying out, continuing or enforcing any agreement or understanding, either express or implied, with any other dealer or with any dealer association which has the purpose or effect of:

1. Restricting, regulating or impeding the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle.

2. Coercing, influencing, encouraging or persuading any dealer or dealer association to maintain, adopt or adhere to any policy or practice that restricts, regulates or impedes the advertising or publishing by any dealer of any price, term or condition of sale or lease of any motor vehicle.

3. Coercing, influencing, encouraging or persuading any dealer or dealer association to change its advertised or published prices.

B. For a period of five (5) years after the date this order becomes final, communicating with any Oldsmobile dealer in the metropolitan Cleveland area any information concerning any intention or decision of Dowd Oldsmobile relating to the advertising or publishing of prices of motor vehicles or the effectiveness, advisability, or desirability of advertising or publishing prices of motor vehicles, except to the extent that such action is necessary for the purpose of engaging in joint advertising.

III

It is further ordered, That nothing contained in Paragraph II above shall be construed to prohibit Dowd Oldsmobile from participating in the formulation, adoption, dissemination and enforcement by a dealer association of lawful guidelines concerning advertisements that the dealer association reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

IV

It is further ordered, That respondent shall:

A. File with the Commission within sixty (60) days after this order becomes final and annually on the anniversary date of the original report for each of the three (3) years thereafter, a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied and is complying with this order; and

B. Notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in respondent that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements to proposed consent orders from Dowd Oldsmobile, Inc.; Earl Oldsmobile, Inc.; Fred Stecker Oldsmobile, Inc.; Ganley Oldsmobile, Inc.; Gene Norris Oldsmobile-GMC, Inc.; Hern Oldsmobile-GMC Truck, Inc.; Reliable Oldsmobile, Inc.; Zalud Oldsmobile, Inc. ("proposed dealer respondents"); and Cleveland Oldsmobile Connection. The agreements would settle charges by the Commission that the proposed dealer respondents and Cleveland Oldsmobile Connection violated Section 5 of the Federal Trade Commission Act by conspiring to refrain from advertising the prices of new Oldsmobiles.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Complaint

A complaint prepared for issuance by the Commission along with the proposed consent orders alleges that Cleveland Oldsmobile Connection organized a conspiracy among proposed dealer respondents to refrain from advertising the prices of new Oldsmobiles.

The complaint alleges the following facts, among others. Cleveland Oldsmobile Connection is an unincorporated association composed entirely of Oldsmobile dealers and existing for their mutual benefit. During the period 1980–85, proposed dealer respondents were members of Cleveland Oldsmobile Connection, formerly called North Coast Nine. From as early as 1980, and continuing until at least May 1985, proposed dealer respondents placed few price advertisements for new Oldsmobiles. During the same time period, dealers of automobiles other than Oldsmobiles frequently advertised the prices of new automobiles.

The complaint alleges that the conspiracy unreasonably restrained competition among Oldsmobile dealers in the metropolitan Cleveland, Ohio, area and injured consumers. The complaint alleges the conspiracy constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

The Proposed Consent Orders

Cleveland Oldsmobile Connection

Part I of the proposed consent order contains definitions of terms used in the order.

Part II.A prohibits Cleveland Oldsmobile Connection from entering into any agreement to restrict the advertising of any price, term or condition of sale or lease of any motor vehicle. Part II.B prohibits Cleveland Oldsmobile Connection from encouraging or attempting to encourage any dealer to adopt or adhere to any policy that restricts such advertising. Part II.C prohibits Cleveland Oldsmobile Connection from communicating with any dealer member about the policies or practices of any other dealer with respect to such advertising or whether advertising motor vehicle prices is advisable, except to the extent that such communication is necessary for the purpose of engaging in joint advertising. Part II.D prohibits Cleveland Oldsmobile Connection from continuing a meeting at which any dealer makes any statement concerning policies relating to the advertising of prices of motor vehicles or the advisability of such advertising, except to the extent necessary for the purpose of engaging in joint advertising.

Part III provides that nothing contained in Part II of the order shall be construed to prohibit Cleveland Oldsmobile Connection from formulating, adopting, disseminating or enforcing lawful guidelines concerning advertisements that the association reasonably believes would be false or deceptive under Section 5 of the Federal Trade Commission Act.

Part IV requires that Cleveland Oldsmobile Connection mail a copy of the order to each of its members, and provide each new member with a copy of the order, file periodic compliance reports; and notify the Commission thirty (30) days prior to any proposed change in Cleveland Oldsmobile Connection.

Proposed Dealer Respondents

Part I of the proposal consent order contains definitions of terms used in the order.

Part II.A prohibits each dealer from entering into any agreement to restrict the advertising of any price, term or condition of sale or lease of any motor vehicle, to encourage any dealer to adopt any practice that restricts such advertising, or to encouarge any dealer or dealer association to change its advertised prices.

Part II.B prohibits each dealer from communicating with any Oldsmobile dealer in the metropolitan Cleveland area about their intentions relating to the advertising of prices or about the advisability of advertising automobile prices for a period of five (5) years, except to the extent necessary for the purpose of engaging in joint advertising.

Part III provides that nothing contained in Part II of the order shall be construed to prohibit the dealers from participating in a dealer association's activities relating to lawful guidelines concerning advertisements that the association reasonably believes would be false or deceptive under Section 5 of the Federal Trade Commission Act.

Part IV requires that each dealer provide the Commission with compliance reports sixty (60) days after the order becomes final and annually for three (3) years thereafter, and that the Commission be notified thirty (30) days prior to any proposed change in any dealer.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89–24854 Filed 10–19–89; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3262]

Pepsico, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Pepsico to allow General Cinema Corp. (GCC) to continue distributing non-Pepsi brands in Broward County, Fla. and the Staunton, Va. area, and requires Pepsico to obtain prior Commission approval, for five years, for any carbonated soft drink asset acquisition in those two areas and to notify the Commission of any acquisition that would create substantial overlaps.

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DATE: Complaint and Order issued June 29, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: On Thursday, March 30, 1989, there was published in the **Federal Register**, 54 FR 13073, a proposed consent agreement with analysis in the Matter of Pepsico, Inc., et al. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 89-24855 Filed 10-19-89; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 004]

Project Grants for Preventive Health Services Sexually Transmitted Diseases Prevention

Introduction: The Centers for Disease Control (CDC) announces that grant applications are to be accepted for the prevention and control of Sexually Transmitted Diseases (STD).

Authority: This program is authorized under section 318(c) of the Public Health Service Act (42 U.S.C. 247c) as amended. Public and professional education activities authorized under sections 318 (b) (3) and (4) of the Act and integral to State control programs are also a part of these grants. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subparts A and D.

Eligible Applicants: Eligible applicants for this program are the official public health agencies who are current recipients of Project Grants for Preventive Health Services Sexually Transmitted Diseases Prevention.

Availability of Funds: Based on the President's budget, approximately $60,600,000 is expected to be available in Fiscal Year 1990 to award 64 competing continuation grants.

The average award is expected to be $940,000, ranging from $89,000 to $5,500,000. Awards are usually funded for 12-month budget periods within a 3 year project period. No new grants are expected to be made in 1990 since current grantees are conducting activities in all political jurisdictions in the United States. Funding estimates outlined above may vary and are subject to change.

Purpose: Project Grants for the Prevention and Control of Sexually Transmitted Diseases are awarded to State and local governments to assist them in carrying out disease prevention activities. These funds are intended to supplement State and local funds and to insure that nationwide, coordinated efforts are undertaken to control STD of highest national significance.

Program Requirements: Based on priorities established each applicant should carry out the following program activities:

1. Surveillance

Develop and implement a comprehensive active surveillance system for adult and pediatric STD, specifically syphilis, gonorrhea, and chlamydia.

2. Health Education and Risk Reduction

In conjunction with the State/local HIV prevention program, each project should develop targeted knowledge, attitudes, beliefs, and behaviors (KABB) surveys specific to the population of STD patients seen in their high incidence areas. Survey results should be used to develop education programs.

3. Case Prevention and Containment

Preventable cases of STD, specifically syphilis, gonorrhea, and chlamydia, continue to occur in the United States. By definition, preventable cases of these STD include all cases occurring in persons for whom one or more of the currently recommended interventions should have been utilized but were not. interventions should include:

A. Conducting routine screening in populations at increased risk which can result in the early identification and treatment of infected individuals. Screening among populations at low risk is not cost effective.

B. Providing recommended treatment to patients and their sexual partners consistent with the "CDC STD Treatment Guidelines for STD" and within time frames to prevent disease transmission.

C. Routinely providing, at a minimum, partner notification services to all persons infected with primary or secondary syphilis or early latent syphilis under 1 year duration. Similar services should be provided to persons with gonorrhea or chlamydia based on local priorities and the availability of funds.

4. Coordination with HIV Prevention Activities

Special emphasis should be placed on coordinating efforts with the HIV prevention program to ensure prevention of HIV infection as well as STD prevention and control. Activities should be coordinated with existing HIV prevention activities, especially HIV counseling/testing services, drug treatment initiatives, clinic-based assessments (KABB surveys), public information, and outreach to racial/ethnic minority and drug using populations.

5. Training and Education

Prevention of both STD and HIV infection must begin with quality education and training programs. School-based and provider-based education and training programs should be an integral part of all STD programs.

6. Laboratory Services

Applicants should ensure that laboratory services necessary to support STD programs are readily available and accessible.

7. Information Systems

Applicants should ensure that management information systems are established to provide timely information and to monitor and describe problems and their distribution in time, place, and person.

8. Evaluation and Quality Assurance

STD prevention and control programs should routinely assess program activities to:

A. Quantify activities and services provided;

B. Assess efficiency and effectiveness of the program or its components;

C. Assess quality of services; and

D. Determine the health benefits for target populations.

Evaluation Criteria

1. Competing Applications

Competing applications will be reviewed and evaluated according to the following criteria:

A. The need for program support, as evidenced by a needs assessment, that identifies specific areas for targeting disease specific interventions;

B. The extent to which those applicants receiving assistance in the previous budget period satisfactorily document progress in meeting prior year project objectives and reporting requirements;

C. The extent to which the proposed objectives are specific, measurable, time-phrased, and related to the priority national program objectives;

D. The extent to which applicants provide a plan for reducing early and congenital syphilis, particularly applicants serving in the 34 geographic areas which have the highest number of cases of early syphilis as reported to CDC during FY 1988;

E. For applicants requesting support for gonorrhea or chlamydia control, the extent to which the size of the problem has been established and the proposed activities are likely to impact on disease transmission;

F. The potential success of the methods of operation in meeting the proposed objectives;

G. The extent to which the applicant utilizes STD surveillance data to target and evaluate program activities;

H. The extent to which the applicant intends to collaborate with other organizations (e.g., community health centers, community groups, churches, AIDS service organizations, schools, State/local drug abuse authorities) involved in HIV/STD prevention and education programs;

I. The extent to which the applicant addresses coordination with HIV prevention activities, especially in counseling testing/partner notification activities, drug treatment initiatives, public information, and minority outreach;

J. The extent to which each program element is addressed by the applicant and will result in a balanced program of service delivery, active surveillance of disease, assessment, disease intervention, public and professional education, and STD counseling and partner notification;

K. The extent to which groups disproportionately affected by STD including racial/ethnic minority and other affected populations, have been involved in an assessment of program needs and in program planning; and the extent to which the applicant proposes, as evidenced by letters of support, to involve racial/ethnic minority and other community groups in implementing and evaluating all program activities; and

L. The quality of the applicant's evaluation plan in measuring the accomplishment objectives.

In addition, consideration will be given to the appropriateness and reasonableness of the budget request and the proposed use of project funds.

2. Noncompeting Continuation Applications

Noncompeting continuation applications within an approved project period will be evaluated on the basis of satisfactory progress in meeting project objectives; the extent to which objectives for the new budget period are specific, quantifiable, time-phased, realistic, and consistent with the priority national program objectives; the extent to which changes in methods of operation and evaluation plans are likely to enhance the success of the project; and the availability of funds.

Funding Priorities

Priority will be given to support interventions to reduce cases of early and cogenital syphilis in all areas of the country. Federal funds will be targeted to those eligible areas which reported to CDC in calendar year 1988 the largest number of cases of early syphilis.

E.O. 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, (Ref: 45 CFR part 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.977, Preventive Health Services-Sexually Transmitted Diseases Control.

Application Submission and Deadline

The original and two copies of the application (Form PHS 5161-1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 300, Atlanta, GA 30305, on or before October 23, 1989.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1. A. or B. above are considered late applications. Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information: Information on application procedures, copies of application forms, and other material may be obtained from Marsha A. Jones, or Gordon R. Clapp, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Announcement Number 004, "Project Grants for Preventive Health Services Sexually Transmitted Disease Prevention," must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Jack Kirby, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 3033, telephone (404) 639-1286 or FTS 236-1286. Technical assistance may also be obtained from the Director, Division of Preventive Health Services, in the appropriate HHS Regional Office.

Dated: October 16, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-24782 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication on September 29, 1989.

(For a copy of package, call the FSA. Reports Clearance Officer on 202-252-5604.)

Carryover and Reallotment Report—0970-0060—The information collected is used to determine the amount of funds to be held available for the following

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fiscal year and the amount, if any, available for reallotment. The information is also included in a report to the Senate Appropriations Committee and in an Annual Report to Congress, as required in section 2610 of the LIHEAP statute.

Respondents: State or local governments and Tribes,

Number of Respondents: 177;

Frequency of Response: 1;

Average Burden per Response: 3 hours;

Estimated Burden: 531 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: October 12, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 89-24750 Filed 10-19-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89M-0407]

Johnson & Johnson Patient Care, Inc.; Premarket Approval of INTERCEED™ (TC7) Absorbable Adhesion Barrier

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Johnson & Johnson Patient Care, Inc., New Brunswick, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the INTERCEED ™ (TC7) Absorbable Adhesion Barrier. After reviewing the recommendation of the Obstetrics-Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 15, 1989, of the approval of the application.

DATE: Petitions for administrative review by November 20, 1989.

ADDRESS: Written request for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

SUPPLEMENTARY INFORMATION: On December 19, 1988, Johnson & Johnson Patient Care, Inc., New Brunswick, NJ 08903, submitted to CDRH an application for premarket approval of the INTERCEED ™ (TC7) Absorbable Adhesion Barrier, a sterile absorbable off-white knitted fabric prepared by the controlled oxidation of regenerated cellulose and indicated as an adjuvant in gynecologic pelvic surgery for reducing the incidence of postoperative pelvic adhesions after hemostasis is achieved consistent with microsurgical principles.

On April 10, 1989, the Obstetrics-Gynescology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 15, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Raju G. Kammula (HFZ-470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 20, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 12, 1989.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 89-24813 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0388]

Menicon Co., Ltd.; Premarket Approval of Menicon SF-P (Melafocon A) Rigid Gas Permeable Contact Lens (Clear and Blue Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Menicon Co., Ltd., Naka-Ku, Nagoya, Japan, for premarket approval, under the Medical Device Amendments of 1976, of the spherical Menicon SF-P (melafocon A) Rigid Gas Permeable Contact Lens (clear and blue tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 1, 1989, of the approval of the application.

DATE: Petitions for administrative review by November 20, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1060.

SUPPLEMENTARY INFORMATION: On December 16, 1988, Menicon Co., Ltd., Naka-Ku, Nagoya, Japan, submitted to CDRH an application for premarket approval of the Menicon SF-P (melafocon A) Rigid Gas Permeable Contact Lens (clear and blue tinted). The spherical lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who exhibit astigmatism of 3.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −25.00 D to +9.75 D and is to be disinfected using the chemical lens care system recommended in the approved labeling. The blue tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On April 14, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 1, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the Menicon SF-P (melafocon A) Rigid Gas Permeable Contact Lens (clear and blue tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 20, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 12, 1989.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 89-24814 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0408]

Pharmacia Ophthalmics, Inc.; Premarket Approval of Model UV65 Ultraviolet-Absorbing Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmacia Ophthalmics, Inc., Monrovia, CA, for premarket approval under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), of the Model UV65 Ultraviolet-Absorbing Anterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 20, 1989, of the approval of the application.

DATE: Petitions for administrative review by November 20, 1989.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On September 30, 1988, Pharmacia Ophthalmics, Inc., Monrovia, CA 91017-7136, submitted to CDRH an application for premarket approval of the Model UV65 Ultraviolet-Absorbing Anterior Chamber Intraocular Lens. The device is indicated for use in the anterior chamber for the visual correction of aphakia in patients 60 years of age or older who are undergoing: (1) A primary intracapsular cataract extraction or (2) a primary extracapsular cataract extraction provided that this be performed after the physician has compared the published results or his/her own results from the anterior chamber lens with data from posterior chamber lenses or (3) a primary extracapsular cataract extraction where there is a structural reason that the UV65 is preferred (secondary intent) or (4) a secondary procedure in an aphakic patient. The device is available in a range of powers from 6 diopters (D) through 30 D in 0.5 D increments.

On January 26, 1989, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 20, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

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Under the amendments, intraocular lenses are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 20, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 12, 1989.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 89-24815 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0431]

Open Public Meeting; Educational Materials for Users of Central Venous Catheters

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 1-day open public meeting to discuss the development of educational materials for clinical practitioners that can lead to a reduction in the incidence of catheter-related complications. FDA is inviting interested persons, including device manufacturers, health professional organizations, industry, consumer groups, and health educators to attend the meeting. Because of space constraints, attendance will be allowed only for those persons who make telephone reservations.

DATES: The meeting will be held Monday, October 23, 1989, 9 a.m. to 5:30 p.m. Telephone reservations regarding attendance should be made with the contact person listed below by October 20, 1989. Interested persons, whether or not they are able to attend, may submit written comments on the issues described in this notice by November 30, 1989.

ADDRESSES: The meeting will be held at the Twinbrook Bldg. No. 4, Rms. 416-418, 12720 Twinbrook Pkwy., Rockville, MD 20857. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, referencing the docket number found in brackets in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Walter L. Scott, Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1002.

SUPPLEMENTARY INFORMATION: Medical device reporting data submitted to FDA under 21 CFR part 803 has indicated an appreciable and recurring number of device complication reports associated with the use of central venous catheters (CVC's). In response to this, FDA is developing an educational program to elevate the awareness of the practitioner to the complications associated with the use of CVC's. For example, FDA has published an article for practitioners, presenting recommendations for the safe placement of CVC's, in the FDA Drug Bulletin (July 1989), as well as in professional organization media. The agency is considering recommendations to the industry that catheter labeling indicate the danger of placing the catheter tip in a cardiac chamber. Additionally, the agency is engaged in the development of an educational video directed to CVC complications and in developing educational materials on CVC maintenance.

Summary minutes of the meeting will be made available from the Dockets Management Branch (address above). Interested persons who will be unable to attend the meeting may submit written comments that set forth their view on the issues outlined in this notice to the Dockets Management Branch. Submission of written comments is encouraged. Any comments will be carefully considered before the educational materials are approved for use.

Dated: October 13, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory affairs.

[FR Doc. 89-24816 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection for the State Plan for the Basic State Grant Program under the Developmental Disabilities Assistance and Bill of Rights Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3208, 725 17th Street, NW., Washington, DC 20503 (202) 395-7316.

Information on Document

Title: State Plan for the Basic State Grant Program
OMB No.: 0980-0162
Description: The Developmental Disabilities State Plan provides information on the developmentally disabled population of each State and a description of the service needs of the population. The State Plan sets forth the goals and specific objectives to be achieved by the State in meeting the service needs of the developmentally disabled population and describes the State priorities, strategies, actions, and the allocation of funds to meet these goals and objectives.
Annual Number of Respondents: 56
Annual Frequency: 1
Average Burden Hours Per Response: 100
Total Burden Hours: 5,600

Dated: October 16, 1989.

Donna Givens,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 89-24751 Filed 10-19-89; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on November 5-6, 1989. The meeting will begin at approximately 5:30 p.m. November 5, 1989, with a dinner and informal colloquy. The Board will reconvene at 8:30 a.m. November 6, 1989, and adjourn by 3:30 p.m. The meeting, which will be open to the public, will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The Board is meeting to discuss its activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 13, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-24809 Filed 10-19-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 13, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Infant Formula Recall Regulations—21 CFR part 107—0910-0188—The subject regulations establish certain reporting procedures and mandatory recordkeeping requirements necessary to perform an effective recall. Respondents are those infant formula manufacturers who decide to initiate a recall of their infant formula products. Respondents: Businesses or other for-profit; non-profit institutions, small businesses or organizations.

	Number of respondents	Number of hours per response	Number of responses per respondent
Infant formula recall elements/strategy Reporting 107.230, 240, 250, and 260	1	6,752	1
Records Retention Recordkeeping 107.280	4	370	1

Estimated Annual Burden.....8,232 hours

2. 1990 National Health Interview Survey—0920-0214—The National Health Interview Survey, an ongoing survey of the civilian, noninstitutionalized population, monitors the Nation's health. The 1990 NHIS will include supplements on "Assistive Devices", "Podiatry", "Health Promotion and Disease Prevention", "AIDS Knowledge and Attitudes", "Hearing", and "Income". Respondents: Individuals or households; Number of Respondents: 48,500; Number of Responses per Respondent: 1; Average Burden per Response: 1.49 hours; Estimated Annual Burden: 72,274 hours.

3. National Disease Surveillance Program—1. Case Reports—020-0009—Case reports on notifiable diseases furnished by State and Territorial health departments provide information on epidemiological characteristics (age, sex, geographic location, etc.) that contribute toward resolving public health problems. Data are used to detect epidemiologic trends or locate cases requiring control efforts. Respondents: State or local government; Number of Respondents: 55; Number of Responses per Respondent: 1,744.5; Averge Burden per Response: .287 hours; Estimated Annual Burden: 27, 598 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 16, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-24872 Filed 10-19-89; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Benzyl Alcohol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of benzyl alcohol, used primarily as a co-additive in the textile dyeing industry. This chemical is also used in the manufacture of other benzyl compounds and as a solvent for gelatin, casein, cellulose acetate and shellac. It is an ingredient in perfumes and food flavorings, is used as an embedding material in microscopy and as a bacteriostat in pharmaceuticals.

Toxicology and carcinogenesis studies were conducted by administering doses of 0, 200, or 400 mg/kg benzyl alcohol in corn oil by gavage, 5 days per week for 103 weeks, to groups of 50 rats of each sex. Groups of 50 mice of each sex were

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administered 0, 100, or 200 mg/kg according to the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity [1] of benzyl alcohol for male or female F344/N rats dosed with 200 or 400 mg/kg. Survival in both dose groups of female rats was 50% that of vehicle controls, primarily due to an increased number of gavage-related deaths. There was no evidence of carcinogenic activity of benzyl alcohol for male or female B6C3F1 mice dosed with 100 or 200 mg/kg for 2 years.

The study scientist for these studies is Dr. Michael P. Dieter. Questions or comments about the conduct of this Technical Report should be directed to Dr. Dieter at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3368.

Copies of Toxicology and Carcinogenesis Studies of Benzyl Alcohol in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 343) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: October 17, 1989.

David P. Rall,

Director.

[FR Doc. 89–24810 Filed 10–19–89; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Hydrochlorothiazide

The HHS' National Toxicology Program announces the availability of the NTR Technical Report on the toxicology and carcinogenesis studies of hydrochlorothiazide, used primarily as a diuretic.

Toxicology and carcinogenesis studies were conducted by feeding diets containing 0, 250, 500 or 2,000 ppm hydrochlorothiazide to groups of 50 male and 50 female rats for 105–106 weeks. Diets containing 0, 2,500, or 5,000 ppm hydrochlorothiazide were fed to groups of 50 male and 50 female mice for 103–104 weeks.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] of hydrochlorothiazide for male or female F344/N rats given feed containing 250, 500, or 2,000 ppm hydrochlorothiazide. There was equivocal evidence of carcinogenic activity of hydrochlorothiazide for male B6C3F1 mice, based on increased incidences of hepatocellular neoplasms. There was no evidence of carcinogenic activity for female B6C3F1 mice given diets containing 2,500 or 5,000 ppm hydrochlorothiazide.

Chronic renal disease was more severe in rats administered hydrochlorothiazide, and increased incidences of secondary lesions (parathyroid hyperplasia, fibrous osteodystrophy, and mineralization in multiple organs) occurred in dosed rats.

The study scientist for these studies is Dr. John R. Bucher. Questions or comments about the conduct of this Technical Report should be directed to Dr. Bucher at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4532.

Copies of Toxicology and Carcinogenesis Studies of Hydrochlorothiazide in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR 357) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: October 17, 1989.

David P. Rall,

Director.

[FR Doc. 89–24811 Filed 10–19–89; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 8-Methoxypsoralen

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of 8-methoxypsoralen, used in the treatment of vitiligo and psoriasis.

Toxicology and carcinogenesis studies were conducted by administering 0, 37.5, or 75 mg/kg 8-methoxypsoralen in corn oil by gavage, 5 days per week for 103 weeks, to groups of 50 F344/N rats of each sex.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity [1] of 8-methoxypsoralen (without ultraviolet radiation) for male F344/N rats, as shown by increased incidences of tubular cell hyperplasia, adenomas, and adenocarcinomas of the kidney and carcinomas of the Zymbal gland. Subcutaneous tissue fibromas and alveolar-bronchiolar adenomas of the lung in male F344/N rats may have been related to chemical administration. Dose-related nonneoplastic lesions in male F344/N rats included increased severity of nephropathy and mineralization of the kidney and forestomach lesions. There was no evidence of carcinogenic activity of 8-methoxypsoralen for female F344/N rats given the chemical at 37.5 or 75 mg/kg per day for two years.

The study scientist for these studies is Dr. June K. Dunnick. Questions or comments about the conduct of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4811.

Copies of Toxicology and Carcinogenesis Studies of 8-Methoxypsoralen in F344/N Rats (Gavage Studies) (TR 359) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3991; FTS: 629–3991.

Dated: October 17, 1989.

David P. Rall,

Director.

[FR Doc. 89–24812 Filed 10–19–89; 8:45 am]

BILLING CODE 4140–01–M

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Wednesday, November 15, 1989.

Name: Secretary's Council on Health Promotion and Disease Prevention

Date and Time: November 15, 1989, 9:00 am to 4:30 pm

Place: National Library of Medicine, Board Room, 8600 Rockville Pike, Rockville, Maryland 20892.

Open, except for working lunch, 12:00–1:30 pm

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This will be the fifth meeting of the Secretary's Council. The theme of this meeting is "Building and Serving Community Health Promotion Programs for Low-Income and Minority People." Speakers will include Dr. Alvin Tarlov, President of the Kaiser Family Foundation, and Dr. Donald Lindberg, Director, National Library of Medicine.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472–5370.

Agenda items are subject to change as priorities dictate.

Dated: October 13, 1989.

J.M. McGinnis,

Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 89–24737 Filed 10–19–89; 8:45 am]

BILLING CODE 4160–17–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–42–N]

Underutilized and Unutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 20, 1989.

ADDRESS: For further information, contact James Forsberg, room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–6300; TDD number for the hearing- and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess of surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets, NW, Washington, DC 20405 (202) 535–7067; U.S. Air Force: Bill Kimball, HQ–USAF/LEER, Washington, DC 20332–0500 (202) 767–4384.

Dated: October 13, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Building (by State)

(Number of Properties [ ])

Texas

NS Pistol Range [2]
Hudson Road, Old Ft. McIntosh
Laredo, TX

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Landholding Agency: GSA
Location: GSA #7–I–TX–517–M (excess)
Comment: 1200/64 sq. ft., 7.3 acres; shooting range and storage bldg., not all util.
LBJ Hospital [1]
10th St. and Avenue G
Johnson City, TX
Landholding Agency: GSA
Location: GSA #7–H–TX–1001 (excess), Blanco County
Comment: two story; 25,000 sq. ft.; environmental info unavailable

Unsuitable Building (by State)

(Number of Properties [ ])

Arizona

Luke AFB Bldg. 436 [1]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location: Buidling #436
Reason: Secured area
Comment: Possible Asbestos

Note.—Luke AFB Bldg. 246 was inadvertently listed twice in the **Federal Register** Notice of September 29, 1989 and Bldg. 436 was ommitted.

[FR Doc. 89–24710 Filed 10–19–89; 8:45 am]
BILLING CODE 4210–29–M

Office of Community Planning and Development

[Docket No. N–89–2070]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Emergency Shelter Grants Program.

The information collection requirements in this package are the result of amendments to the Emergency Shelter Grants Program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, P.L. 100–620 (approved November 7, 1988). The Department is requesting emergency review by October 27, 1989 so that HUD can meet the November 7, 1989 statutory deadline established under the McKinney Amendments Act. The public is invited to submit comments on the information collection requirements contained in this rule by October 27, 1989 to the address listed above. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Emergency Shelter Grants Program notice to OMB for regular paperwork review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 17, 1989.

Anna Kondratas,
Assistant Secretary for Community Planning and Development.

Proposal: Emergency Shelter Grants Program (FR–2562).
Office: Community Planning and Development.
Description: The information collection requirements contained in this paperwork package are necessasry to allow HUD to determine the eligibility of private nonprofit organizations or governmental entities to receiving funding under the Emergency Shelter Grants program, to assess the relative capability of these organizations to operate innovate programs for the homeless population, and to determine whether any adverse impact to the environment will result.
Form Number: None.
Respondents: State or Local Governments, tribes, and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Application to HUD	375	1	1.00	375.00
Waiver requests to HUD	50	1	1.00	50.00
State certification that nonprofit applicant will provide local government certification of approval	50	1	.25	12.50
Homeless prevention non-supplanting certification	375	1	.25	93.75
Environmental review certification	375	1	.25	93.75
Uniform Relocation Act certification	375	1	.25	93.75
Assurance that displacement is minimized	375	1	.25	93.75
Drug Free Workplace Act certification	375	1	.25	93.75
Description of revised proposed use of funds	50	1	.50	25.00
Uniform Relocation Act appeals process	4	1	2.00	8.00

Estimated Burden Hours: 93
Status: Revision.
Contact: James N. Forsberg, HUD, (202) 755–6300; John Allison, OMB, (202) 395–6880.

Dated: October 17, 1989.

[FR Doc. 89–24891 Filed 10–19–89; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 3, 1989, a notice was published in the **Federal Register** (Vol. 54, No. 148) that an application had been filed with the Fish and Wildlife Service by Envirosphere Company (PRT 740037) for a permit to conduct aerial surveys and vessel observations of walruses in the Chukchi Sea.

Notice is hereby given that on September 27, 1989, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Office of Management Authority, 4401 Fairfax Drive, Room 430, Arlington, Va.

Dated: October 17, 1989.

Susan M. Lawrence,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89–24823 Filed 10–19–89; 8:45 am]
BILLING CODE 4310–AN–M

Bureau of Land Management

[ID–010–00–4332–08; FES 89–23]

Results of Wilderness Study Concerning Owyhee County, Idaho, Malheur County, Oregon and Elko County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of a final Environmental Impact Statement (EIS) concerning the suitability or nonsuitability for wilderness designation of a total of 446,067 acres of Wilderness Study Area (WSA) lands within eight WSAs and 4,205 acres of adjoining non-WSA lands along the Owyhee River and its tributaries in southwestern Idaho's Owyhee County, southeastern Oregon's Malheur County, and northern Nevada's Elko County.

SUMMARY: This EIS documents the expected effects of managing eight WSAs as wilderness or nonwilderness.

Six alternatives for management are described and analyzed. The six alternatives are (1) manage 377,560 acres of public land as wilderness and 70,782 acres as nonwilderness (Bureau of Land Management's proposed action); (2) manage all of the public land in the study as nonwilderness and expand the existing 65 miles of Owyhee Wild River designation to a total of 131 miles; (3) manage all of the public land in the study as nonwilderness and expand the existing 65 miles of Owyhee Wild River designation to 130 miles, leaving one mile undesignated to allow for expansion of an existing utility corridor; (4) manage 88,900 acres of public land within the river canyons as wilderness and 357,167 acres as nonwilderness; (5) manage 291,910 acres of existing and potential habitat for California bighorn sheep as wilderness, and manage 155,257 acres as nonwilderness; (6) manage all 450,272 acres in the eight WSAs as wilderness.

The names of the WSAs, the total acreage of each, and the proposed action for each are as follows:

Owyhee River Canyon, 224,400 acres in WSA, 185,740 acres recommended suitable;
Little Owyhee River, 24,600 acres in WSA, 8,460 acres recommended suitable;
Owyhee River-Deep Creek, 70,160 acres in WSA, 67,530 acres recommended suitable;
Yatahoney Creek, 9,990 acres in WSA, 9,550 acres recommended suitable;
Battle Creek, 31,540 acres in WSA, 31,880 acres recommended suitable (includes acreage outside WSA);
Juniper Creek, 13,150 acres in WSA, 12,950 acres recommended suitable;
South Fork Owyhee River, 50,352 acres in WSA, 47,925 acres recommended suitable;
Owyhee Canyon, 21,875 acres in WSA, 13,525 acres recommended suitable. Bureau of Land Management wilderness proposals ultimately will be forwarded by the Secretary of Interior and President to Congress. The decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, District Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, Telephone: (208) 334–1582.

SUPPLEMENTARY INFORMATION: A limited number of copies of this EIS may be obtained from the District Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho, 83705. Copies are avaialble for inspection at the following location: Bureau of Land Management, Office of Public Affairs, Interior Building, 18th & C Street NW., Washington, DC 20240.

Dated: October 6, 1989.

Jonathan P. Deason,
Director, Office of Environmental Project Review.

[FR Doc. 89–24488 Filed 10–19–89; 8:45 am]
BILLING CODE 4310–GG–M

[UT–060–00–4333–09]

Availability of Environmental Assessments; Price River Resource Area; Utah

AGENCY: Bureau of Land Management, Moab, Utah.

ACTION: Notice of availability of two environmental assessments analyzing impacts of implementing the off-road vehicle decisions described in the Price River Management Framework Plan (MFP) September 1983, and analyzing impacts of allowing commercial land-based recreation guide services.

SUMMARY: The ORV implementation plan identifies only those actions essential to implement the ORV related decisions of the MFP. Public meetings were held and public comments were received and incorporated in the 1983 decisions.

The second programmatic environmental assessment has been prepared in response to proposed uses and anticipated applications for commercial special recreation permits to conduct activities such as guided horseback trips, llama-supported hiking trips, and educational tours within the Price River Resource Area.

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Four wilderness study areas lie within the Price River Resource Area: Desolation Canyon, UT–060–068A; Jack Canyon, UT–060–068C; Turtle Canyon, UT–060–067; and Mexican Mountain, UT–060–054.

For a period of 30 days from the date of publication of the notice, interested parties may submit comments relating to the adequacy of the ORV environmental assessment (comments relating to the MFP decisions will not be incorporated), and comments for the commercial recreation guide services environmental assessment.

FOR FURTHER INFORMATION, please contact the Price River Resource Area, Bureau of Land Mangement, 900 North 700 East, Price, Utah 84501 (801–637–4584).

Dated: October 10, 1989.

Gene Nodine,

District Manager.

[FR Doc. 89–24808 Filed 10–19–89; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–060–09–4333–11]

Off-Road Vehicle Designation; Valley County, Montana

AGENCY Bureau of Land Management, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that effective immediately the use of off-road vehicles (ORVs) is limited on public land within the south Valley block management area. This will be in effect during the bird and big game hunting season as established by Montana Department of Fish, Wildlife and Parks, Valley County, Montana, in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATE: This designation will only be in effect during the bird and big game hunting season which ends December 17, 1989.

FOR FURTHER INFORMATION CONTACT: Wayne, Zinne, District Manager, Bureau of Land Management (BLM), 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The 27,824 acre south Valley block management area is administered by the BLM, Valley Resource Area, Lewistown District. This designation is the result of a cooperative effort among BLM, Page-Whitham Ranches, and Montana Department of Fish, Wildlife and Parks. The purpose of the desigantion is to prevent damage to soil and vegetative resources to open additional private and state lands for hunting, and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The south Valley block management area is located southwest of Glasgow along the Willow Creek and Stonehouse roads. It includes all lands within the Square Creek pastures in the Carpenter Creek allotment and Etchart farm unit.

Hunting within the described block will be subject to the following restrictions: no travel off of established routes; open firest prohibited; hunters must obtain permission through the block manager at the Willow Creek and Stonehouse road junctions.

Dated: October 11, 1989.

Duane Whitmer,

Acting District Manager.

[FR Doc. 89–24719 Filed 10–19–89; 8:45 am]

BILLING CODE 4310–DN–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from November 1, 1989, through April 30, 1990. The List of Restricted Joint Bidders published in the **Federal Register** on April 14, 1989, at 54 FR 15029 covered the bidding period of May 1 through October 31, 1989.

Group I. Chevron Corp.; Chevron U.S.A. Inc.

Group II. Exxon Corp.; Exxon San Joaquin Production Co.

Group III. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.

Group IV. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group V. BP America Inc.; The Standard Oil Co.; BP Exploration Inc.; BP Exploration (Alaska) Inc.

Dated: October 13, 1989.

Edward M. Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 89–24818 Filed 10–19–89; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[MT–930–00–4212–12; MTM 72921]

Notice of Conveyance and Order Providing for Opening of Public Land in Carbon County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. No minerals were transferred in the exchange. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2941.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to Sec. 206 of FLPMA, the following described surface estate was transferred to the State of Montana:

Principal Meridian, Montana

T. 9 N., R. 12 E.,
Sec. 20, NW¼SE¼;
Sec. 28, S½NW¼;
Sec. 32, SE¼NE¼, NE¼SE¼.
T. 6 N., R. 15 E.,
Sec. 2, lots 11 and 12.
T. 9 N., R. 15 E.,
Sec. 6, SE¼NE¼.
T. 8 N., R. 19 E.,
Sec. 6, lots 4 and 5, SW¼NE¼, SE¼NW¼.
T. 11 N., R. 19 E.,
Sec. 35, E½E½.
T. 4 N., R. 22 E.,
Sec. 6, SE¼NE¼.
T. 10 N., R. 29 E.,
Sec. 12, N½NW¼.
Aggregating 754.34 acres.

2. In exchange for the above-selected land, the United States acquired the following described surface estate:

Principal Meridian, Montana

T. 8 S., R. 28 E.,
Sec. 16, all.
T. 9 S., R. 27 E.,
Sec. 36, N½, E½SW¼, SE¼.
T. 9 N., R. 28 E.,
Sec. 16, all.
Aggregating 1,840 acres.

3. The values of the Federal public land were appraised at $47,645 and the values of the State land were appraised at $52,800.

Opening Date

4. At 9 a.m. on December 13, 1989, the following described lands that were conveyed to the United States of America will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on December 13, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 11, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89–24734 Filed 10–19–89; 8:45 am]

BILLING CODE 4310–DN–M

[MT–930–00–4212–13; MTM 76695]

Notice of Conveyance and Order Providing for Opening of Public Land in Teton County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public and interested state and local governmental officials of the completion of a land exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 aeq. (FLPMA), and the issuance of the conveyance documents. The order will open lands reconveyed to the United States, and certain lands that were segregated but not used in the exchange, to the operation of the public land laws. No minerals were transferred in the exchange.

The purpose of this exchange was to acquire non-Federal lands in Teton County along the Rocky Mountain front which have high public values for public access, recreational opportunities, and improved grazing and wildlife management. The land is valuable for mule deer and bighorn sheep winter range, a bighorn sheep lambing area, grayling and trout fisheries and waterfowl habitat. A number of widely scattered Federal parcels that were difficult to manage were transferred to private parties. The public interest was well served through completion of the exchange.

EFFECTIVE DATE: December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Jim Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described surface estate was transferred to the parties shown:

Principal Meridian, Montana

Frank G. Kiedrowski and Kelly D. Kiedrowski

T. 36 N., R. 22 E.,
Sec. 14, SE¼NE¼. 40 acres

Joseph Francis Kinsella

T. 29 N., R. 17 E.,
Sec. 8, lot 2. 50.36 acres

William Cowan

T. 26 N., R. 17 E.,
Sec. 12, NW¼NW¼;
2Sec. 13, SE¼SW¼.
T. 26 N., R. 18 E.,
Sec. 18, SE¼SW¼.
T. 27 N., R. 18 E.,
Sec. 25, SE¼SE¼. 160 acres

Howard Sivertsen

T. 26 N., R. 18 E.,
Sec. 3, lot 4;
Sec. 9, NE¼SW¼;
Sec. 19, SE¼NE¼;
Sec. 20, NW¼NW¼.
T. 27 N., R. 18 E.,
Sec. 34, SW¼SW¼. 202.37 acres

Maddox Ranch Company

T. 37 N., R. 17 E.,
Sec. 12, SW¼SW¼. 40 acres

IX Ranch Company

T. 28 N., R. 13 E.,
Sec. 34, SE¼SW¼.
T. 26 N., R. 16 E.,
Sec. 34, SE¼NE¼.
T. 26 N., R. 17 E.,
Sec. 32, SW¼NE¼, S½SE¼. 200 acres

Triangle N Farms, Inc

T. 24 N., R. 7 E.,
Sec. 4, SW¼NE¼, SE¼NW¼, SW¼, SW¼. 120 acres

John E. Kelly and William K. Kelly

T. 24 N., R. 7 E.,
Sec. 2, SE¼NE¼.
T. 25 N., R. 7 E.,
Sec. 34, NE¼NW¼. 80 acres

Melvin Hogé or Judith F. Hoge

T. 23 N., R. 16 E.,
Sec. 5, lot 2, S½N½, NE¼SW¼, NW¼SE¼. 279.96 acres

Edwarsd J. Yirsa

T. 23 N., R. 15 E.,
Sec. 13, NW¼SW¼. 40 acres

Lawrence Jappe

T. 23 N., R. 15 E.,
Sec. 14, NE¼. 160 acres

Worrall Bros. Farms

T. 25 N., R. 10 E.,
Sec. 5, SW¼NW¼. 40 acres.

Paul Verploegen

T. 37 N., R. 15 E.,
Sec. 28, W½SW¼. 80 acres

Turner Colony

T. 34 N., R. 25 E.,
Sec. 4, lot 2; Sec. 9, SE¼NE¼, E½SE¼;
Sec. 10, W½W½.
T. 35 N., R. 25 E.,
Sec. 34, NW¼NE¼. 359.78 acres

Aaron Lacox

T 34 N., R. 23 E.,
Sec. 11, SW¼NE¼, SW¼NW¼, N½SW¼, W½SE¼;
Sec. 14, N½NE¼;
Sec. 15, N½NW¼. 400 acres

Richard P. Bergum

T. 22 N., R. 14 E.,
Sec. 28, E½SW¼;
Sec. 33, N½NE¼, SE¼NE¼, NE¼NW¼. 240 acres

William D. Snapp and Hilda M. Snapp

T. 19 N., R. 20 E.,
Sec. 34, NE¼, E½NW¼, N½SE¼. 320 acres

Glen R. Irish and Esther E. Irish

T. 18 N., R. 20 E.,
Sec. 12, E½NE¼, NW¼NE¼, NE¼NW¼, E½SW¼, SE¼. 400 acres

Lund # Ranch, Inc

T. 18 N., R. 24 E.,
Sec. 14, S½S½;
Sec. 15, SW¼NE¼, NW¼NW¼, SE¼NW¼, SE¼. 440 acres

Richard Hitchcock

T. 17 N., R. 14 E.,
Sec. 13, S½SE¼. 80 acres

Bruce W. Griffith and/or Gracia M. Griffith

T. 15 N., R. 23 E.,
Sec. 17, SE¼SW¼, S½SE¼. 120 acres

Leonard A. Miller and Bernice Bacon Miller

T. 14 N., R. 20 E.,
Sec. 7 E½SW¼, SW¼SE¼;
Sec. 18, NE¼NW¼. 160 acres

Carl A. Lindquist and/or Florence A. Linquist

T. 14 N., R. 23 E.,
Sec. 21, SE¼;
Sec. 28, N½NE¼. 240 acres.

Kenneth Abbott

T. 13 N., R. 23 E.,
Sec. 25, S½NW¼, W½SW¼, NE¼SW¼;
Sec. 28, E½, SE¼, NW¼SE¼. 320 acres

Elliott Industries a/b/a/ N-Bar Land and Cattle Company

T. 12 N., R. 23 E.,
Sec. 14, NW¼. 160 acres

Kenneth Abbott

T. 12 N., R. 23 E.,
Sec. 28, SE¼NE¼;
Sec. 34, NW¼SE¼. 80 acres

Darrell Abbott or Ruth Abbott

T. 12 N., R. 24 E.,
Sec. 13, SW¼SW¼;
Sec. 23, SE¼SE¼;
Sec. 26, E½. 400 acres

Kenneth Abbott

T. 12 N., R. 23 E.,
Sec. 29, NE¼NE¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 32, W½NW¼, NW¼SW¼, SW¼SE¼. 360 acres

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Leslie Finkbeiner

T. 13 N., R. 22 E.,
Sec. 12, lots 3, 4, SE¼, SW¼, W½SE¼.
T. 13 N., R. 23 E.,
Sec. 6, SE¼SW¼, SW¼SE¼;
Sec. 7, lots 1, 2, NW¼, NE¼, NE¼NW¼.
43.78 acres

John F. Hill

T. 19 N., R. 11 E.,
Sec. 28, NE¼NE¼;
Sec. 33, SE¼NW¼;
Sec. 34, SE¼NE¼;
Sec. 35, SE¼NE¼. 160 acres

Richard Hitchcock

T. 17 N., R. 14 E.,
Sec. 24, NE¼SW¼. 40 acres

Michael L. Hitchcock

T. 16 N., R. 14 E.,
Sec. 14, NE¼SE¼. 40 acres

Rachell K. Mansfield

T. 19 N., R. 10 E.,
Sec. 15, SW¼NE¼, NW¼NW¼, SE¼NW¼.
120 acres

Bailey Land & Livestock, Inc

T. 24 N., R. 10 E.,
Sec. 20, NE¼SE¼.
T. 25 N., R. 10 E.,
Sec. 34, NE¼SW¼.
80 acres

John A. Diekhans

T. 24 N., R. 9 E.,
Sec. 19, lot 4, SW¼SE¼;
Sec. 30, NE¼SW¼. 112.73 acres

Robert F. Klay, et al

T. 21 N., R. 9 E.,
Sec. 20, SW¼NE¼, E½NW¼, N½S½. 280 acres

Merlin Busenbark and Ruth Busenbark

T. 18 N., R. 25 E.,
Sec. 24, N½SW¼.
T. 18 N., R. 26 E.,
Sec. 19, E½SW¼, NW¼SE¼. 200 acres

Hale Ranch

T. 15 N., R. 28 E.,
Sec. 3, SW¼SW¼.
40 acres

John R. Hughes III, et al

T. 12 N., R. 25 E.,
Sec. 29, SW¼NW¼, W½SW¼;
Sec. 30, lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 31, E½;
Sec. 32, NW¼NW¼, SW¼SW¼. 990.20 acres

Donald E. Kimmel and Jean L. Kimmel

T. 12 N., R. 25 E.,
Sec. 29, SE¼NW¼, E½SW¼;
Sec. 32, NE¼NW¼, SE¼SW¼ less 2.43 ac. R/W. 197.57 acres

Total Federal acres transferred—8,276.75 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate:

Principal Meridian, Montana

T. 22 N., R. 8 W.,
Sec. 13, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 14, S½N½, NE¼SW¼, W½SW¼;
Sec. 15, all;
Sec. 21, E½NE¼, NE¼SE¼;
Sec. 22, N½NE¼, SW¼NE¼, NW¼;
Sec. 23, NW¼NW¼;
Sec. 24, W½NE¼, SE¼NE¼, NW¼SE¼.
containing 1,880 acres, more or less.

3. Also, the following described lands were segregated from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange, by the Notice of Realty Action published in the **Federal Register** on May 5, 1989. (54 FR 19466–67). They were not used in the exchange.

Principal Meridian, Montana

T. 12 N., R. 24 E.,
Sec. 4, SW¼SW¼;
Sec. 5, SE¼SE¼;
Sec. 9, SE¼SW¼, S½SE¼;
Sec. 10, SE¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 11, SE¼NE¼, S½S½;
Sec. 12, NW¼, W½SW¼, NE¼SW¼;
Sec. 14, NW¼NE¼, N½NW¼;
Sec. 15, NE¼NE¼.
T. 13 N., R. 21 E.,
Sec. 34, SW¼NW¼, N½SW¼;
Sec. 35, W½NW¼.
T. 13 N., R. 22 E.,
Sec. 13, lots 1–2, W½NE¼, E½NW¼, SW¼NE¼;
Sec. 23, S½NE¼, SE¼NW¼;
Sec. 24, SW¼NW¼;
Sec. 26, SW¼NE¼.
T. 14 N., R. 21 E.,
Sec. 12, SE¼.
T. 16 N., R. 18 E.,
Sec. 4, lot 1.
T. 19 N., R. 22 E.,
Sec. 9, N½N½.
T. 19 N., R. 23 E.,
Sec. 3, lot 2, NW¼SW¼.
T. 22 N., R. 14 E.,
Sec. 6, lots 1–5, S½NE¼, SE¼NW¼.
T. 23 N., R. 14 E.,
Sec. 31, SE¼SW¼, SE¼.
T. 31 N., R. 12 E.,
Sec. 9, W½SE¼.
T. 32 N., R. 21 E.,
Sec. 13, NE¼SW¼, NW¼SE¼.
T. 34 N., R. 22 E.,
Sec. 24, E½;
Sec. 26, NW¼, N½SW¼.
T. 36 N., R. 24 E.,
Sec. 14, N½NW¼, SW¼NW¼.

4. The appraised value of the public lands that were transferred is $414,423 and the private lands were appraised at $413,600. A cash equalization payment in the amount of $823 was made to the United States.

Opening Date

5. At 9 a.m. on December 7, 1989, the lands described in paragraph 2 above that were conveyed to the United States and the lands described in paragraph 3 will be opened to the operation of the public land laws, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on December 7, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

6. The lands described in paragraph 3 above were segregated from location under the mining laws by the Notice of Realty Action. At 9 a.m. on December 7, 1989, those lands will be open to location under the United States mining laws. Appropriation of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

Dated: October 13, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-24727 Filed 10-19-89; 8:45 am]

BILLING CODE 4310-DN-M

[ID-050-00-4214-14; IDI-20595]

Competitive Sale of Public Lands in Blaine County, ID

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The land has been examined, and through the development of land use decisions based upon public input, it has been determined that the sale of this parcel is consistent with section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered at no less than the appraised fair market value.

Parcel	Legal description	Acreage	Fair market value
I–20595	T. 1 N., R. 22 E., B.M., Section 34: Lots 1 and 2	73.32	$2,950.00

When patented, the land will be subject to the following reservations: A right-of-way for ditches and canals constructed by the United States under the authority of the Act of August 30, 1890, (20 Stat. 291); (43 U.S.C. 945). Oil and gas, and geothermal resource minerals reserved to the United States.

Pursuant to the authority contained in section 3(d) of the Executive Order 11988 of May 24, 1977, the section 203(a)(1) of Public Law 94–579, Federal Land Policy and Management Act, this patent is subject to a restriction which constitutes a covenant running with the land, that any portion of the land lying within the 100-year floodplain may be used only for agricultural purposes, but not for dwellings or buildings.

Pursuant to the authority contained in section 4 of the Executive Order 11990 of May 24, 1977, and section 203(a)(1) of Public Law 94–579, Federal Land Policy and Management Act, this patent is subject to a restriction that constitutes a covenant running with the land, that a portion of the land lying within 100 feet of the exterior limits of Fish Creek containing wetland-riparian habitat must be managed to protect and maintain the wetland-riparian habitat on a continuing basis.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1–2(d).

DATES: The sale offering will be on Friday, December 15, 1989 at 10:00 a.m. If no qualified bids are received at this offering, the parcel will be made available each Friday, excepting holidays, until March 31, 1990, at which time the sale will be cancelled.

ADDRESS: Sale will be held at the Bureau of Land Management, Shoshone District Office, 400 West F Street, Shoshone, Idaho 83352.

Sale Procedures: Only sealed bids will be accepted. The bid must be sealed in an envelope with the date and the serial number of the parcel being bid upon in the lower left-hand corner on the front of the envelope.

Bids must be received in this office no later than 10:00 a.m. on December 15, 1989. If two or more valid bids are equal and are the high bid, a supplemental oral bid in a minimum of $50.00 increments will be held to determine the successful bidder. Any participants who submitted a valid bid in the sealed bidding may participate in the oral bidding. A valid bid will constitute an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit of the bid price (not appraised price) must accompany each bid as well as a separate and additional $50.00 to process the mineral purchase application. Fees must be paid by certified check, money order, bank draft or cashier's check only.

Federal law requires that bidders be a U.S. citizen 18 years of age or older, or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid. The remainder of the full price bid shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

SUPPLEMENTARY INFORMATION: Contact the Monument Resource Area Manager or Realty Specialist at the District Office, or phone at (208) 886–2206.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action.

Comments will be evaluated and the proposed action may be vacated, modified or affirmed. In the absence of any objections, this realty action will become the final decision of the Department.

Jon H. Idso,

Associate District Manager.

[FR Doc. 89-24728 Filed 10-19-89; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-304]

Certain Pressure Transmitters; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on September 15, 1989, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rosemount, Inc., 12001 Technology Drive, Eden Prairie, Minnesota. A supplement to the complaint was filed on October 6, 1989.

The complaint as supplemented alleges a violation of subsection (a)(1)(B)(ii) of section 337 in the importation and sale within the United States of certain pressure transmitters made abroad by a process covered by claims 1, 2, 3, and 4 of U.S. Letters Patent 3,800,413, and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a public hearing, issue a permanent exclusion order and permanent cease and desist orders.

The complaint and motion for temporary relief further request that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and sale in the United States during the course of the Commission's investigation of respondents' pressure transmitters made abroad that infringe U.S. Letters Patent 3,800,413.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Deborah J. Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 17, 1989, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) or subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain pressure transmitters made abroad by a process covered by claims 1, 2, 3 or 4 of U.S. Letters Patent 3,800,413, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33061 (Aug. 29, 1988), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted

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for referral to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Rosemount, Inc., 12001 Technology Drive, Eden Prairie, Minnesota 55344.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

SMAR Equipment, Rua Guilherme Bolte 1422, Sertaozianno, Sao Paulo, Brazil;
SMAR International Corporation, 3505 Veterans Highway, Suite C, Ronkonkoma, New York 11779.

(c) Deborah J. Kline, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401–M, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Reponses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33059–33063 (Aug. 29, 1988) and 53 FR 49118, 49129–49133 (Dec. 6, 1988). Pursuant to §§ 201.16(d), 210.21(a) and 210.24(e)(9) of the Commission's Rules (19 CFR 201.16(d), 53 FR 33034, 33059 (Aug. 29, 1988), and 53 FR 49118, 49130–49131 (Dec. 6, 1988)), such responses will be considered by the Commission if received not later than ten (10) days after the date of service of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint, the motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: October 17, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–24898 Filed 10–19–89; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 310X)]

CSX Transportation, Inc.—Abandonment in Durham, NC—Petition for Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 1.1-miles of rail line between mileposts SB–154.8 and SB–155.9 in Durham, NC, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 19, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by October 30, 1989, petitions to stay must be filed by November 6, 1989, and petitions for reconsideration must be filed by November 14, 1989. Requests for a public use condition must be filed by October 30, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 310X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245; [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: October 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24842 Filed 10–19–89; 8:45 am]

BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on September 18, 1989, disclosing that there has been a change in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following additional party has become a member of PCA: Cementos Tolteca, S.A.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, and August 24, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26183), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), and September 11, 1989 (54 FR 37513), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–24768 Filed 10–19–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ARCO Oil and Gas, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 30, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 30, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 10th day of October 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Arco Oil & Gas Crane Field (Workers)	Crane, TX	10/10/89	9/15/89	23,457	Oil & Gas.
ARCO Oil & Gas Crane Gas Plant (Workers)	Crane, TX	10/10/89	9/15/89	23,458	Oil & Gas.
BHP Petroleum Mid-Continent Region	Oklahoma City, OK	10/10/89	9/25/89	23,459	Oil & Gas.
BHP Petroleum Rocky Mountain Region	Denver, CO	10/10/89	9/25/89	23,460	Oil & Gas.
BHP Petroleum Southwestern Region	Midland, TX	10/10/89	9/25/89	23,461	Oil & Gas.
BHP Petroleum Gas Processing Plant	Snyder, TX	10/10/89	9/25/89	23,462	Oil & Gas.
Balcron Oil (Company)	Billings, MT	10/10/89	9/19/89	23,463	Oil & Gas.
Burn Security International	Beverly Hills, CA	10/10/89	9/15/89	23,464	Marketing Sales Fragrance.
Car-Mal Sportswear, Inc. (ILGWU)	South Boston, MA	10/10/89	9/21/89	23,465	Women's Sportswear.
Dive-ettes, Inc. (Workers)	Allentown, PA	10/10/89	9/27/89	23,466	Children's Swimwear.
Ethicon, Inc. (ACTWU)	Somerville, NJ	10/10/89	9/29/89	23,467	Sutures & Needles.
ELCO Dress (ILGWU)	Holyoke, MA	10/10/89	9/26/89	23,468	Women's Dresses.
Graphic Interpretations (Workers)	Midland, TX	10/10/89	9/29/89	23,469	Oil & Gas.
Honeywell, Inc. (IUE–AFL)	Ft. Washington, PA	10/10/89	9/20/89	23,470	Electronic Devices.
Joy Knitting (Workers)	Allentown, PA	10/10/89	9/27/89	23,471	Children's Swimwear.
Kalart Victor Corp. (Workers)	Plainville, CT	10/10/89	9/5/89	23,472	Film Equipment.
Kent Knitting Mills, Inc. (ILGWU)	Jersey City, NJ	10/10/89	9/26/89	23,473	Knit Sweaters.
Products Tooling, Inc. (Company)	Corinth, MS	10/10/89	9/25/89	23,474	Organ Parts.
Ringo Drilling Co. (Workers)	Abilene, TX	10/10/89	9/22/89	23,475	Oil & Gas.
Rosta Engineered Components (UAW)	Waterbury, CT	10/10/89	9/15/89	23,476	Couplings, Misc.
Sweco Oilfield Services (Workers)	Casper, WY	10/10/89	9/21/89	23,477	Oilfield Equip.
Sprague Electric Co. (Workers)	Hillsville, VA	10/10/89	9/28/89	23,478	Aluminum Electrolytic Capacitors.
Taylor Diving Inc. (Workers)	Belle Chasse, LA	10/10/89	9/20/89	23,479	Oilfield Service.
Weston Instruments (Workers)	Newark, NY	10/10/89	9/19/89	23,480	Aircraft Instruments.

[FR Doc. 89–24840 Filed 10–19–89; 8:45 am]

BILLING CODE 4510–30–M

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[TA-W-21,616 Shreveport, Louisiana and TA-W-21,616A All other Locations in Louisiana]

M-I Drilling Fluids; Amended Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 1989 applicable to all workers of M-I Drilling Fluids (formerly Dresser Magcobar) Shreveport, Louisiana. The notice was published in the Federal Register on March 27, 1989 (54 FR 12508).

Based on new information from the company, additional workers were separated from the subject firm at other locations in Louisiana. The amended notice applicable to TA-W-21,616 is hereby issued as follows:

All workers of M-I Drilling Fluids Company in Shreveport, Louisiana and in all other locations in the State of Louisiana who became totally or partially separated from employment on or after October 1, 1985 and before January 1, 1987 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of October 1989.

Robert O. Deslongchamps,

Director, Office of Legislative and Actuarial Services, UIS.

[FR Doc. 89-24841 Filed 10-19-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page numbers(s).

Volume I

Florida:
FL89-45 ..... p. 206a, pp. 206b-206d

Volume II

Wisconsin:
WI89-17 ..... p. 1223, p. 1224.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:
FL89-45 (Oct. 20, 1989) ..... p. 206a, pp. 206b-206d.

Massachusetts:
MA89-1 (Jan. 6, 1989) ..... p. 371, pp. 372-375.
MA89-2(Sept. 29, 1989) ..... p. 387, pp. 388, 390.
MA89-3 (Jan. 6, 1989) ..... p. 401, pp. 402-403.

Mississippi:
MI89-3 (Jan. 6, 1989) ..... p. 475, p. 476.
MI89-20 (Jan. 6, 1989) ..... p. 511, p. 511.

New York:
NY89-3 (Jan. 6, 1989) ..... p. 701, p.705.

Pennsylvania:
PA89-15 (Jan. 6, 1989) ..... p. 957, pp. 959-960.

West Virginia:
WV89-3 (Jan. 6, 1989) ..... p. 1233, pp. 1234, 1236.

Volume II

Iowa:
IA89-1 (Jan. 6, 1989) ..... p. 21, p. 22.

Illinois:
IL 89-8 (Jan. 6, 1989) ..... p. 145, p. 148.
IL89-9 (Jan. 6, 1989) ..... p. 151, p. 153.

Indiana:
IN89-6 (Jan. 6, 1989) ..... p. 313, p. 314.

Michigan:
MI89-1 (Jan. 6, 1989) ..... p. 427, pp. 428-430.
MI89-2 (Jan. 6, 1989) ..... p. 447, pp. 448-451.
MI89-3 (Jan. 6, 1989) ..... p.463, pp. 464-465.
MI89-4 (Jan. 6, 1989) ..... p. 475, p. 476.
MI89-7 (Jan. 6, 1989) ..... p. 499, pp. 511-512.

Minnesota:
MN89-12 (Jan. 6, 1989) ..... p. 609.

Nebraska:
NE89-1 (Jan. 6, 1989) ..... p. 715, p. 716.

Wisconsin:
WI89-10 (Jan. 6, 1989) ..... p. 1187, pp. 1188, 1189.
WI89-17 (Jan. 6, 1989) ..... p. 1223, p. 1224.

Volume III

Arizona:
AZ89-2 (Jan. 6, 1989) ..... p. 15.

Idaho:
ID89-1 (Jan. 6, 1989) ..... p. 145, pp. 146, 149.

Oregon:
OR89-1 (Jan. 6, 1989) ..... p. 307, pp. 309-324.

Washington:
WA89-1 (Jan. 6, 1989) ..... p. 363, pp. 369-374.
WA89-2 (Jan. 6, 1989) ..... p. 389, pp. 391-395.
WA89-3 (Jan. 6, 1989) ..... p. 401, pp. 402-403.
WA89-5 (Jan. 6, 1989) ..... p. 411, p. 412.
WA89-6 (Jan. 6, 1989) ..... p. 423, pp. 424-426a.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of October 1989.

Ethel P. Miller,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-24660 Filed 10-19-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-18-M]

ASARCO, Inc.; Petition for Modification of Application of Mandatory Safety Standard

ASARCO, Incorporated, Box 440, Wallace, Idaho 83873 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Galena Mine (I.D. No. 10-00082) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid criteria.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

Dated: October 12, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24832 Filed 10-19-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-147-C]

Cross Mtn. Coal, Inc., Petition for Modification of Application of Mandatory Safety Standard

Cross Mtn. Coal, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Mine No. 5 (I.D. No. 40-02970) located in Anderson County, Tennessee and its Mine No. 6 (I.D. No. 40-02971) located in Campbell County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, boreholes must be drilled to a distance of at least 20 feet in advance of the working face of such working place and be continually maintained to a distance of at least 10 feet in advance of the advancing working face.

2. As an alternate method, petitioner proposes to use probe drills capable of drilling in excess of 400 feet to intersect the abandoned workings prior to mining within 200 feet of the abandoned workings using specific techniques and procedures as outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

VOL 54 ISS 202 OCT 20 1989 UMI

Dated: October 12, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 89-24833 Filed 10-19-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-148-C]

Cyprus Empire Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81625 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connections units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to use three non-permissible submersible pumps in boreholes drilled into sump areas of the mine. The petitioner also proposes to install additional pumps in a similar fashion in the future.

3. In support of this request, petitioner states that:

(a) The pump cannot start or operate if water is below the inlet valve of the pump; and

(b) The surface pump control and power circuits would be examined monthly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

Dated: October 12, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 89-24834 Filed 10-19-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-152-C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gateway Coal Company, R.D. No. 2, Box 107, Prosperity, Pennsylvania 15329 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Gateway Mine (I.D. No. 36-00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least one entry of each intake and return aircourse be examined in its entirety on a weekly basis.

2. Due to an accumulation of water, certain areas of the mine cannot be safely traveled. Rehabilitation of these areas would expose miners to unnecessary hazards.

3. As an alternate method, petitioner proposes the following:

(a) Establish methane monitoring stations at specific locations where certified persons would make weekly examinations for methane and air readings. Access to and from the measuring stations would be kept in a travelable and safe condition;

(b) Methane would not be allowed to accumulate in the return aircourse beyond legal limits;

(c) A date board would be located at each measuring station; and

(d) Date, time, area, velocity, and quantity of air, as well as methane percentages would be recorded in an official book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

Dated: October 12, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 89-24835 Filed 10-19-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-17-M]

Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Sunshine Mine (I.D. No. 10-00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid criteria.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

Dated: October 12, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 89-24836 Filed 10-19-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-151-C]

Tall Timber Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Tall Timber Coal Company, P.O. Box 702, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 1 (I.D. No. 15-13720) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined in their entirety on a weekly basis.

2. Due to roof falls, an area of the mine where seals have been installed cannot be safely traveled. To restore this area to a travelable condition would require prolonged and unnecessary exposure to hazardous conditions.

3. As an alternate method, petitioner proposes to establish evaluation points in a specific area where the air passing the seals would be monitored.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 20, 1989. Copies of the petition are available for inspection at that address.

Dated: October 12, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 89-24837 Filed 10-19-89; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before December 4, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of Agriculture, Agricultural Research Service (N1-310-89-1). Employee health, safety, and medical records.

2. Department of Agriculture, Assistant Secretary for Economics (N1-354-89-1). Reference copies of administrative records and background files from which reports and issue papers are developed.

3. Department of Energy, Albuquerque Operations Office (N1-434-89-12). Uranium Mill Tailings Remedial Action project training records.

4. Farm Credit Administration (N1-103-88-3). Vouchers, receipts, cancelled checks, individual loan files, work papers, and administrative records of closed financial institutions.

5. Department of Housing and Urban Development (N1-207-89-5). Routine finance and accounting records created by the Single Family Distributive Shares and One-Time Refunds Automated System (F26).

6. Department of the Interior, Office of Surface Mining and Reclamation Enforcement (N1-471-89-1). Revised comprehensive schedule for textual records.

7. Department of Justice, Foreign Claims Settlement Commission (N1-299-89-6). Reference material and facilitative legal records.

8. Department of the Treasury, Savings Bond Division (N1-56-89-1). Publicity records from the Second Liberty Loan Campaign of World War I determined during archival processing to lack sufficient archival value to

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warrant retention by the National Archives.

9. Department of the Treasury, Savings Bond Division (N1–56–89–2). Textual and photographic records of the War Finance Division, 1941–47 determined during archival processing to lack sufficient archival value to warrant retention by the National Archives.

10. Department of the Treasury, Savings Bond Division (N1–56–89–3). Records from the historical and promotional files of the National Director, 1940–60, determined during archival processing to lack sufficient archival value to warrant retention by the National Archives.

11. Department of the Treasury, Savings Bond Division (N1–56–89–5). Bond campaign participation records; promotional and administrative records, 1936–73, determined during archival processing to lack sufficient archival value to warrant retention by the National Archives.

12. Department of the Treasury, Assistant Secretary for Economic Policy (N1–56–89–6). Reduction in retention period for economic briefing files.

Dated: October 12, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–24764 Filed 10–19–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Advancement section) to the National Council on the Arts will be held on November 8, 1989, from 9:15 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 8, 1989, from 9:15 a.m.–9:30 a.m. The topic for discussion will be general program overview.

The remaining portion of this meeting on November 8, 1989, from 9:30 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: October 13, 1989

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts

[FR Doc. 89–24728 Filed 10–19–89; 8:45 am]

BILLING CODE 7537–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Medically Underserved Areas for 1990

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1990.

SUMMARY: The Office of Personnel Management has completed its annual determination of the states that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1990. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians. Accordingly, for calendar year 1990, OPM has determined that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Louisiana, Mississippi, New Mexico, North Dakota, South Dakota and West Virginia.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632–4634.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians. Such states are designated as Medically Underserved Areas for purposes of the FEHB program and the law requires payment to all qualified providers in these states.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the states that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–24861 Filed 10–19–89; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENT'S ADVISORY COMMITTEE ON THE POINTS OF LIGHT INITIATIVE FOUNDATION

Meeting of the Advisory Committee on the Points of Light Foundation

ACTION: Notice of Meeting of President's Advisory Committee on the Points of Light Initiative Foundation.

SUMMARY: This notice announces an upcoming meeting of the President's Advisory Committee on the Points of Light Initiative Foundation. The purpose of the meeting is to begin work on the Committee's assigned task, which is the provision of recommendations to the President with respect to the legal structure of the Points of Light Initiative Foundation and the legislation needed to establish the Foundation. Also included is an explanation of why 15 days notice of the date of this meeting was not provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. II, and its implementng regulation, 41 CFR part 101.6.

DATE: October 30, 1989, 9 a.m..

ADDRESS: Room 239, Hall of States, 444 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Committee Staff at (202–523–3349).

SUPPLEMENTARY INFORMATION: It was not possible to provide 15 days notice of this meeting due to the scheduling and other considerations.

The meeting, which is open to the press and public, is for the purpose of receiving testimony and discussion issues pertaining to the Committee's mission. Members of the public who wish to present written statements are invited to send such statements to the Committee at the following address: 730 Jackson Place, NW., Washington, DC 20006.

David B. Rivkin, Jr.,

General Counsel for the Advisory Committee on Points of Light Initiative Foundation.

[FR Doc. 89–25853 Filed 10–19–89; 8:45 am]

BILLING CODE 3195–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be on or before November 20, 1989. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Application for Participation in 8(a) Program.

Form Nos.: SBA Forms 1010A, 1010B, 1010C and 1017

Frequency: On occasion.

Description of respondents: SBA 8(a) program applicants and participants

Annual Responses: 22,000.

Annual Burden Hours: 69,600.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–24829 Filed 10–19–89; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m. on Tuesday, November 28, 1989, at the SBA Regional Office Conference Room, 999 18th Street, Suite 701, Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dratin H. Hill, Jr., District Director, U.S. Small Business Administration, 721 19th Street, Room 426, Denver, Colorado 80201–0660, phone (303) 844–3673.

Dated: October 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24827 Filed 10–19–89; 8:45 am]

BILLING CODE 8025–01–M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographic area of New York City, will hold a public meeting at 9:30 a.m. on Wednesday, November 15, 1989, in the Board Room of Pfizer, Inc., 235 East 42nd Street, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, Room 3100, New York, New York 10278, phone (212) 264–1318.

Dated: October 13, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24828 Filed 10–19–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0349]

Richmond Square Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Richmond Square Capital Corporation (RSCC), 1 Richmond Square, Providence, Rhode Island, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The proposed officers, directors, and major shareholders of the Applicant are as follows:

Name	Title	Percent of Ownership
Harold I. Schein, 50 Intervale Road, Providence, RI 02906.	President and director.	100
Philip Schein, 50 Intervale Road, Providence, RI 02906.	Treasure and director.	
Leslie Schein, 546 Angell Street, Providence, RI 02906.	Secretary and director.	

The Applicant, RSCC, a Rhode Island corporation, will begin operations with $3,025,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the State of Rhode Island, but will consider investments in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Providence, Rhode Island.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 12, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89–24824 Filed 10–19–89; 8:45 am]

BILLING CODE 8025–01–M

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[License No. 05/05-5210]

Cactus Capital Co.; Issuance of a Small Business Investment Company License

On April 28, 1989, a notice was published in the **Federal Register** (54 FR 18376) stating that an application has been filed by Cactus Capital Company, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business May 29, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-5210 on September 22, 1989, to Cactus Capital Company to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 12, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-24825 Filed 10-19-89; 8:45 am]

BILLING CODE 8075-01-M

[License No. 09/09-5384]

Vinh An Capital Investment, Inc.; Issuance of a Small Business Investment Company License

On June 13, 1989, a notice was published in the **Federal Register** (54 FR 25197) stating that an application has been filed by Vinh An Capital Investment Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business July 13, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5384 on September 25, 1989, to Vinh An Capital Investment, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 12, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-24826 Filed 10-19-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1317]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 14, 1989 at 9:00 a.m. in Room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to prepare for the 34th Session of the International Maritime Organization Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for February 19 to 23, 1990. Items of discussion will include the following: subdivision and damage stability of dry cargo ships, including Ro-Ro ships; intact stability; subdivision and stability requirements for MODUs; flooding protection and residual stability standards for passenger ships; load lines and stability for timber deck cargo ships; basic principles for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; the Work Program of SLF 34; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojeen or LCDR Anderson at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: October 10, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-24720 Filed 10-19-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1316]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Standards of Training and Watchkeeping; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on November 13, 1989, at 10:00 a.m. in room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting will be a general review of the agenda items for the 21st session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping, scheduled for January 8-12, 1990, in London. Items of principal interest on the agenda for this session are:

—Consequential work on operator functions in the Global Maritime Distress and Safety System (GMDSS)
—Additional training and qualifications of officers and crews of mobile offshore units
—Officer of the navigational watch acting as sole lookout
—Fatigue factor in manning
—Preparation of amendments to the 1977 Torremolinos International Convention
—Possible training in the use of Electronic Chart Display Systems (ECIDS)

Members of the public may attend up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT: Captain F. J. Grady, U.S. Coast Guard Headquarters (G-MVP/12), 2100 Second Street, SW., Washington, DC 20593, or call: (202) 267-0214.

Dated: October 10, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-24721 Filed 10-19-89; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: TVA Fishing Census.

Frequency of Use: On occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 24,000.

Estimated Total Annual Burden Hours: 2,400.

Estimated Average Burden Hours Per Response: .1.

Need For and Use of Information: Creel surveys are conducted to provide benchmark information for better aquatic resource management and assessment of benefits and impacts on the aquatic resources which result from reservoir operations and shoreline development activities.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-24732 Filed 10-19-89; 8:45 am]

BILLING CODE 8120-01-M

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Federal Assistance Programs Civil Rights Compliance.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, farms, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 550.

Estimated Total Annual Burden Hours: 165.

Estimated Average Burden Hours Per Response: 3.

Need For and Use of Information: TVA organizations' compliance officers conduct pre-award reviews of all TVA assistance contracts to ensure compliance with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the title IX of the Education Amendments of 1972.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 89-24733 Filed 10-19-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 13, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46547.

Date filed: October 13, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 1989.

Description: Application of Evergreen International Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 567 to authorize foreign air transportation of property and mail between McAllen, Texas, and Miami, Florida, on the one hand, and Guadalajara, Mexico, on the other hand.

Docket Number: 42012.

Date Filed: October 13, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 13, 1989.

Description: Amendment No. 3 to the Application of Servicios Aereos, S.A. for a foreign air carrier permit to withdraw Aero California's previous request to engage in scheduled foreign air transportation of persons, property and mail between La Paz, Mexico and Los Angeles, California, and Tucson, Arizona; and between Guaymas, Mexico, and Tucson, Arizona. Aero California renews its request for all other scheduled and charter authority previously requested in this docket.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-24752 Filed 10-19-89; 8:45 am]

BILLING CODE 4910-62-M

Office of Commercial Space Transportation

Amendment to Notice of Intent

AGENCY: Office of Commercial Space Transportation (OCST), DOT.

ACTION: Amendment to OCST Notice of Intent, September 25, 1989.

SUMMARY: OCST is issuing this amendment to its September 25, 1989 Notice of Intent (NOI) to prepare an Environmental Impact Statement to advise the public of: (1) The addition of a fifth scoping meeting, (2) a change in the times of two previously scheduled scoping meetings, (3) a change in the locations of the other two previously scheduled scoping meetings, and (4) the

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addition of a closing date for scoping comments.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Aerospace Engineer, Office of Commercial Space Transportation, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 366–2258.

George Mead, Executive Director, Office of Space Industry, Department of Business and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, Telephone: (808) 548–3451

SUPPLEMENTARY INFORMATION: OCST and the State of Hawaii's Department of Business and Economic Development (DBED) are jointly preparing an Environmental Impact Statement (EIS) for a proposed Hawaii commercial space launch complex. In its NOI of September 25, 1989, OCST announced that four public scoping meetings had been scheduled in Hawaii for the purpose of soliciting comments on significant environmental issues associated with the proposed action. A fifth meeting has been added, the times of the Na'alehu and Honolulu meetings have been changed, and the locations of the Pahala and Hilo meetings have been changed.

The revised specific dates and locations are:

(1) October 25, 1989, 7:30 p.m., Kona Hilton Discovery Room, Kailua-Kona, Hawaii.
(2) October 26, 1989, 1:30 p.m., Na'alehu Community Clubhouse, Na'alehu, Hawaii.
(3) October 26, 1989, 7:30 p.m., Ka'u High School Cafetorium, Pahala, Hawaii.
(4) October 27, 1989, 9:00 a.m., County Building, Hawaii County Council Chambers, Hilo, Hawaii.
(5) October 27, 1989, 4:00 p.m., Hawaii State Capitol Auditorium, Honolulu, Hawaii.

Comments regarding the scope and content of the EIS should be directed to DBED at the address listed above, no later than November 17, 1989.

Issued in Washington, DC, on October 13, 1989.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

[FR Doc. 89–24753 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Hartford County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Hartford County, Connecticut.

FOR FURTHER INFORMATION CONTACT: Federal Administration, Abraham Ribicoff Federal Building, 450 Main Street, Hartford, Connecticut 06103. Telephone: (203) 240–3685; or Edgar T. Hurle, Dirctor of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109. Telephone: (203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Connecticut Department of Transportation (ConnDOT) will prepare an Environmental Impact Statement (EIS) on a proposal for transportation improvements in the area of Prospect Street in the town of Easton Hartford in Hartford County, Connecticut. Improvements of some form to the area are considered desirable to accommodate existing and projected traffic demands and to reduce traffic congestion on local streets in East Hartford.

Alternatives which will be evaluated and presented in the EIS include the following: (1) A No-Build Alternative with and without a Transit option; (2) A Transportation System Management Alternative consisting of a variety of improvements (additional lanes, traffic control, etc.) to the existing highway network; (3) Build Alternative A which would be a controlled access highway from the vicinity of Governor Street in East Hartford northerly, along the East Hartford Dike, to the vicinity of King Street and Ellington Road in East Hartford, a distance of approximately 1.75 miles; (4) Build Alternative B which would be a controlled access highway from the vicinity of Governor Street in East Hartford traversing northerly with an alignment that would be adjacent to existing Prospect Street and terminate in the vicinity of King Street and Ellington Road in East Hartford, also a distance approximately 1.75 miles; and (5) A Widen Prospect Street Alternative.

This project, which could utilize a portion of the corridor for the formerly proposed Interstate 284, has an extensive history of coordination with Federal, State, local, and regional agencies and organizations. In addition, public informational meetings concerning traffic, engineering, environmental, social, economic, and land uses issues have been held. Information from the coordination effort and meetings has revealed that possible impacts to scenic areas, flood plains and wetlands will occur. Other potential impacts include the relocation of residents and businesses, stream crossings, railroad corssings and/or relocations, dike crossings and/or relocations and impacts on fish and wildlife.

Work on I–284 was halted in February 1983, and a concept program of substitute projects was developed which would be funded by the trade-in of funds stated for I–284. The Prospect Street area project is included as part of this program. It is expected that the project will have substantially less impact than the original I–284 proposal.

The Department will be scheduling a scoping meeting in the near future to discuss the full range of issues relating to this project. The U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the Corps of Engineers and the Connecticut Department of Environmental Protection will be asked to become Cooperating Agencies in the prepartion of this EIS. In addition, appropriate Federal, State and local agencies will be requested to submit comments.

Any agencies, organizations and individuals interested in submitting comments or questions should contact the FHWA or the Connecticut Department of Transportation at the addresses provided above before December 1, 1989.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 11, 1989.

Paul E. Toussaint,

Assistant Division Administrator, Hartford, CT.

[FR Doc. 89–24731 Filed 10–19–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the VAVS National Advisory Committee for 1988 has been issued.

The report summarizes activities of the Annual Meeting which was held in Albuquerque, NM, October 28–30, 1988.

It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Department of Veterans Affairs, Voluntary Service (135), Room 601, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: October 2, 1989.
By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–24860 Filed 10–19–89; 8:45 am]

BILLING CODE 8320–01

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 202
Friday, October 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

October 13, 1989.

DATE AND TIME: Friday, October 27, 1989, 9:00 a.m.–5:00 p.m.

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. Draft Report on *Economic Status of Black Women: An Exploratory Investigation*
V. Draft Statement on *Intimidation and Violence, Racial and Religious Bigotry in America*
VI. Proposal—Education and the Workplace
VII. Motion to Request Appropriations Committees to Reimburse Commissioners for Time Worked over the Earmark
VIII. Plan on Use of Information on Anti-Asian American Bigotry and Violence
IX. SAC Reports and Recharters
The Employment of Minorities and Women by Alabama State Government
The Employment of Minorities and Women by Kentucky State Government
Voter Registration in Louisiana Parishes
Civil Rights Laws and Legislation in West Virginia
Discrimination Against Chippewa Indians in Northern Wisconsin
Implementation in Utah of the Immigration Reform and Control Act: Phase One and Two
A Followup Forum on Census Undercounts and Preparations for the 1990 Census
SAC Recharters
X. Commission Subcommittee Reports
XI. Staff Director's Report
A. FOIA Regulations
B. 504 Regulations
C. FY 1990 Budget
XII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,
Acting Solicitor.

[FR Doc. 89–24896 Filed 10–17–89; 4:55 pm]
BILLING CODE 6335-01-M

federal register

Friday
October 20, 1989

Part II

Department of Education

Correction to the Selection Criteria for Applications for New Awards Under the Secondary Education and Transitional Services for Handicapped Youth Program, and the Technology, Educational Media, and Materials for the Handicapped Program for Fiscal Year 1990; Notice

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DEPARTMENT OF EDUCATION

[CFDA No: 84.158 and 84.180]

Correction to the Selection Criteria for Applications for New Awards Under the Secondary Education and Transitional Services for Handicapped Youth Program, and the Technology, Educational Media, and Materials for the Handicapped Program for Fiscal Year 1990

SUMMARY: On September 14, 1989, a notice was published in the **Federal Register** that set forth selection criteria for the Secondary Education and Transitional Services for Handicapped Youth Program (54 FR 38172), and the Technology, Educational Media, and Materials for the Handicapped Program (54 FR 38173). Detailed information concerning the competitions under both programs was included in that notice. The purpose of this notice is to alert applicants that the notice omitted selection criteria for two competitions: (1) One competition under the Secondary Education and Transitional Services for Handicapped Youth Program titled "Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination" (CFDA 84.158K); and (2) one competition under the Technology, Educational Media, and Materials for the Handicapped Program titled "Using Technology to Improve Assessment of Children with Handicaps" (CFDA 84.180B).

Secondary Education and Transitional Services for Handicapped Youth Program (CFDA No. 84.158)

The selection criteria included on page 38172 are the selection criteria for the 84.158*T* competition "Institute on Intervention Effectiveness" only, and pertain to applications for research or evaluation projects under the Secondary Education and Transitional Services for Handicapped Youth Program. For the competition "Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination", the Secretary uses the following criteria to evaluate applications. These criteria pertain to applications for model projects (*See* CFR 326.33).

Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination—CFDA No. 84.158K

Selection Criteria

The Secretary uses the following criteria to evaluate applications for model projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) a clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Program Authority: 20 U.S.C. 1425.

Technology, Educational Media, and Materials for the Handicapped Program (CFDA No. 84.180)

The selection criteria included on page 38173 are the selection criteria for the 84.180*C* competition "Designs for Multi-Media Instruction for Educating Children with Handicaps" only, and pertain to applications for development or demonstration activities under the Technology, Educational Media, and Materials for the Handicapped Program. For the competition "Using Technology to Improve Assessment of Children with Handicaps (CFDA 84.180B)", the Secretary uses the following criteria to evaluate applications. These criteria pertain to applications for research or evaluation activities (*See* 34 CFR 333.21).

Using Technology to Improve Assessment of Children with Handicaps Projects—CFDA No. 84.180B

Selection Criteria

The Secretary uses the following criteria to evaluate applications for research or evaluation projects.

(a) *Importance.* (15 points)

The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part, and considers the significance of the problem or issue to be addressed.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) Technical soundness of the research or evaluation plan, including if appropriate—

(A) The design;

(B) The proposed sample;

(C) The instrumentation; and

(D) The data analysis.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, or gender.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates necessary access to target population necessary to conduct the research or evaluation.

(f) *Impact.* (5 points)

The Secretary reviews each application to determine—

(1) The probable impact of the proposed project in educating or providing early intervention services to infants, toddlers, children, and youth with handicaps; and

(2) The contribution that the project findings or products will make to current knowledge or practice.

(g) *Dissemination.* (5 points)

The Secretary reviews each application to determine the extent to which the findings and products will be disseminated to, and used for the benefit of appropriate target groups.

(h) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

Program Authority: 20 U.S.C. 1461.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4620–2644), Washington, DC 20202 (for CFDA 84.158). Telephone: (202) 732–4503. Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and Development, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–2641), Washington, DC 20202 (for CFDA 84.180). Telephone (202) 732–1099.

Authority: 20 U.S.C. 1425 and 1461.

(Catalog of Federal Domestic Assistance Numbers: 84.158, Secondary Education and Transitional Services for Handicapped Persons; 84.180, Technology, Educational Media, and Materials for the Handicapped Program)

Dated: October 16, 1989.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89–24765 Filed 10–19–89; 8:45 am]

BILLING CODE 4000–01–M

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Thursday
October 20, 1989

Part III

Environmental Protection Agency

40 CFR Part 355
Community Right-to-Know Reporting Requirements; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL-3621-6]

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's final rule, the U.S. Environmental Protection Agency (EPA) is correcting the listing for reportable quantities (RQs) for two extremely hazardous substances, hydrogen chloride and methacrylonitrile, under section 304 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). A discrepancy currently exists between the RQs listed for these substances under 40 CFR 302.4 (list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) and the RQs listed under Appendices A and B of 40 CFR part 355 (list of extremely hazardous substances). EPA proposed to correct this discrepancy in a Notice of Proposed Rulemaking (NPRM) on reporting thresholds under sections 311 and 312 of SARA on March 29, 1989 (54 FR 12992). Although EPA is not finalizing other proposals included in the March 29, 1989 NPRM, the Agency is promulgating the correction in today's final rule. A final rule on the other issues proposed in the March 29, 1989 NPRM will be published at a later date.

EFFECTIVE DATE: October 20, 1989.

ADDRESSES: Copies of materials relevant to this rulemaking are contained in the Superfund Docket—Room 2427, 401 M Street SW., Washington, DC 20460. The docket may be inspected by appointment between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382–3046. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Bishop, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS–120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Righ-to-Know Information Hotline at 1–800–535–0202, or in the Washington, DC metro area and Alaska at (202) 479–2449

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of This Rulemaking
II. Regulatory Analyses
List of Subjects

I. Introduction

A. Statutory Authority

This regulation is issued under section 304 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background of this Rulemaking

In SARA section 302(a), Congress required that the EPA publish an initial list of extremely hazardous substances (EHSs) that included the same list of substances published in November 1985 in appendix A of the "Chemical Emergency Preparedness Program Interim Guidance (CEPP)." EPA codified the CEPP list in an interim final rule on November 17, 1986 (51 FR 41570), listing the reportable quantity (RQ) for hydrogen chloride as 5,000 pounds, and the RQ for methacrylonitrile as 1,000 pounds. The statutory provisions of SARA section 304(a) require that EPA adopt the RQs for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) hazardous substances listed in 40 CFR 302.4 as the RQs for EHSs in 40 CFR part 355. Section 304(a)(1) requires notification of the release of an EHS when the release is subject to notification under section 103 of CERCLA. EHSs must be reported under section 103 if they are CERCLA hazardous substances that are released in a quantity equal to or exceeding the RQ. The reporting trigger under section 304(a)(1), therefore, is identical to the reporting trigger under CERCLA section 103, that is, a release of an RQ or more of a CERCLA hazardous substance must be reported under both statutory provisions. EPA believes that Congress did not intend different RQ levels for a given hazardous substance under 40 CFR part 355 and 40 CFR 302.4.

In the final rule, however, the RQs for these substances were inadvertently listed at the statutory one-pound level in appendices A and B of 40 CFR part 355 (52 FR 13378, April 22, 1987). The EHS list incorrectly indicated that the RQ for hydrogen chloride (gas only) was the statutory one pound; the CERCLA list sets the RQ for hydrochloric acid (which includes all forms) at 5,000 pounds. Similarly, the RQ for methacrylonitrile on the EHS list was listed as one pound; the RQ for methacrylonitrile on the CERCLA list is 1,000 pounds.

In the March 29, 1989 Notice of Proposed Rulemaking (NPRM) on final reporting thresholds under SARA sections 311 and 312 (54 FR 12992), EPA proposed to correct the listings. Today's rule finalizes the proposed SARA section 304 RQs for hydrogen chloride at 5,000 pounds and for methacrylonitrile at 1,000 pounds, thereby resolving the discrepancy between appendices A and B to 40 CFR part 355 (EHS list) and 40 CFR 302.4 (list of hazardous substances under CERCLA) with respect to the RQs for hydrogen chloride and hydrochloric acid (each of which has Chemical Abstracts Service Registry Number (CAS) 7647–01–0), and methacrylonitrile.

Seven commenters on the NPRM agreed that the RQs should be changed as proposed. Three commenters, however, stated that maintaining consistency between the RQs should not outweight consideration of the risk posed by the hazardous chemical, and that the RQs should not be adjusted until the change could be justified scientifically on the basis of the risk represented. EPA agrees that RQs must be assigned on a scientific basis that considers the potential hazard posed by a release of the substance in question. EPA evaluated the potential toxicities associated with hydrogen chloride and methacrylonitrile and adjusted the CERCLA RQs for these substances in the April 4, 1985 rulemaking (50 FR 13456). The RQs for these substances and the methodology on which they are based were subject to the comment and response process during the developing of that rule and are supported by the "Technical Background Document To Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, " March 1985.

EPA's regulations implementing SARA Title III reference the CERCLA RQs. A release of an RQ of an extremely hazardous substance or a CERCLA hazardous substance must be reported under 40 CFR 355.40, EPA's regulations implementing section 304 of Title III. As a result, there must be consistency between CERCLA RQs and RQs used under Title III. Indeed, the Agency maintains that there is only one RQ for a given substance under either Act. EPA believes that it is appropriate, therefore, to finalize the RQs for these substances at the CERCLA levels in today's final rule.

Two commenters asserted that the RQ for hydrogen chloride should vary depending on the form of the substance released (i.e., liquid or gas). EPA does not agree that the various forms of hydrogen chloride should be assigned different RQs. Section 102(a) of CERCLA expressly authorizes the Administrator to set a single quantity for each hazardous substance. As stated above, hydrochloric acid is a listed CERCLA hazardous substance assigned an RQ of 5,000 pounds (40 CFR 302.4 (Table 302.4)). Although EPA has not specifically listed hydrogen chloride gas as a synonym of hydrochloric acid in a CERCLA regulation or background document, EPA stated that "[t]he CAS Registration Number, when available, uniquely identifies the designated hazardous substance," (50 FR 13456 at 13461; April 4, 1985). The CSA number for hydrochloric acid, 7647–01–0, is the same as the CAS number for hydrogen chloride, which is another name of hydrogen chloride gas. Thus, the 5,000 pound RQ assigned to hydrochloric acid under section 102 of CERCLA also applies to hydrogen chloride gas for purposes of emergency release notification under section 304 of SARA and section 103 CERCLA.

The RQs for hydrogen chloride and methacrylonitrile are subject to change if additional technical information is received or the RQ methodology is modified in such a way as to effect a change. Also, EPA has proposed (53 FR 3368; January 23, 1989) to designate all EHSs as CERCLA hazardous substances and is scheduled to propose adjustments to the RQs for those substances during 1989. The RQs for hydrogen chloride and methacrylonitrile are subject to adjustment in that rulemaking.

Several commenters on the NPRM suggested that EPA publish a technical correction concerning these RQs rather than going through a notice and comment rulemaking to correct the listings. EPA believes that the concern of the commenters is that the listings be corrected as soon as possible to preclude unnecessary reporting. EPA agrees and, therefore, is promulgating the corrections in today's final rule, rather than delaying them until the promulgation of the final rule on section 311 and 312 reporting thresholds.

II. Regulatory Analyses

A. Regulatory Impact Analysis

A Regulatory Impact Analysis is not necessary for today's final rule because the correction is not a major rule under Executive Order (E.O.) 12291, and today's action will reduce the reporting and recordkeeping burden on both industry and government.

B. Regulatory Flexibility Act Analysis

A Regulatory Flexibility Act Analysis is not necessary for the final rule because the impact on small businesses, if any, will be a decrease in the reporting burden imposed by 40 CFR part 355.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0046.

Public reporting burden for this collection of information is estimated to vary from two to five hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20403, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirement.

Dated: September 29, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the Preamble to this Final Rule, part 355 of subtitle J of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11028.

Appendices A and B [Amended]

2. Appendices A and B to part 355 are amended by revising the reportable quantity listed for Hydrogen Chloride (gas only) to read "5,000" and Methacrylonitrile to read "1,000".

[FR Doc. 89–23832 Filed 10–19–89; 8:45 am]
BILLING CODE 6560–50–M

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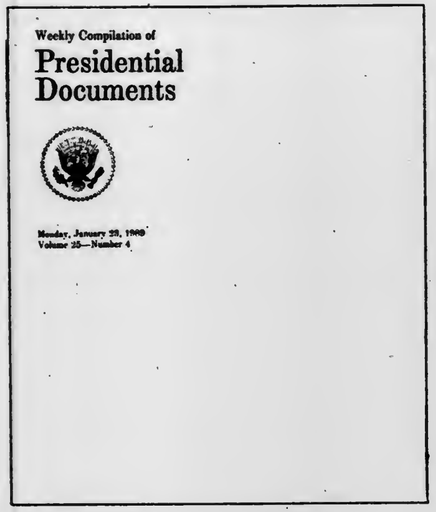
To authorize appropriations for fiscal year 1990 for the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes. (Oct. 17, 1989; 103 Stat. 698; 1 page) Price: $1.00

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Rules and Regulations

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket 89–155]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Quarantine Safeguard Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. Allowing avocados from Mexico to transit the United States through Galveston, Texas, will give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of Houston, Texas, and will slightly enlarge the corridor through which avocados will be allowed to transit the United States.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards, carriers, and routes of travel through the United States.

In a document published in the **Federal Register** on June 26, 1989 (54 FR 26767–26768, Docket Number 88–214), we proposed to amend the regulations (1) by adding Galveston, Texas, to the list of ports in § 352.29(b) through which avocados from Mexico may transit the United States and (2) by revising § 352.29(f) to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be extended by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Comments on the proposed rule were required to be received on or before August 25, 1989. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on the small entities will be limited to small increases or decreases to shipping costs paid by the avocado owners or exporters.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 is amended as follows:

1. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" are added immediately following the words "only at the following ports:"

§ 352.29 [Amended]

3. In § 352.29(f), the words "Houston, Texas," are removed and the words "Galveston, Texas," are added in their place.

Done in Washington, DC, this 17th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–24931 Filed 10–20–89; 8:45 am]
BILLING CODE 3410–34–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 82F-0041]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide-imide resins produced by the condensation of equimolar amounts of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine, for use as components of articles intended for repeated use in contact with food. This action is in response to a petition filed by E. I. duPont de Nemours & Co.

DATES: Effective October 23, 1989; written objections and requests for a hearing by November 22, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1982 (47 FR 11971), FDA announced that a food additive petition (FAP 6B3141) had been filed by E. I. duPont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.2450 *Polyamide-imide resins* (21 CFR 177.2450) be amended to provide for the safe use of a polyamide-imide resin produced by the condensation reaction of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine as components of articles intended for repeated use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. The polyamide-imide resin may contain minute amounts of 4,4'-diphenylmethanediamine as an impurity from its production. This chemical has been shown to cause cancer in test animals. Residual amounts of reactants and byproducts, such as 4,4'-diphenylmethanediamine, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of the polyamide-imide resin will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated the daily intake for the additive to be 90 nanograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. However, the agency has reviewed available data from subchronic rat and dog feeding studies with the additive. No adverse effects were observed in these studies. On the basis of these data and of the low level of migration of the resin, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical, 4,4'-diphenylmethanediamine, that may be present as an impurity in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). The risk evaluation of the carcinogenic impurity 4,4'-diphenylmethanediamine has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and

(2) Extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 4,4'-Diphenylmethanediamine

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyamide-imide resin and on the level of 4,4'-diphenylmethanediamine that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 4,4'-diphenylmethanediamine from the use of this additive to be 0.20 nanogram per person per day (Ref. 3). The agency used data from a National Toxicology Program technical report on a carcinogenesis bioassay on 4,4'-diphenylmethanediamine to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 4). The results of the bioassay on 4,4'-diphenylmethanediamine indicated that the material was carcinogenic for mice and rats of both sexes under the conditions of the study. The test material caused significantly increased incidence of follicular cell tumors of the thyroid in male rats, hepatocellular carcinomas in mice, follicular cell adenomas in mice and female rats, pheochromocytomas in male mice, malignant lymphomas in female rats and neoplastic nodules in the liver of male rats. In addition, several rare tumors (bile duct adenoma in male rats, and ovarian granulosa-cell tumors and urinary bladder transitional-cell papillomas in female rats) were observed in this study.

The Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 4,4'-diphenylmethanediamine. The Committee further concluded that the 4,4'-diphenylmethanediamine bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to 4,4'-diphenylmethanediamine stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal studies to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 0.20 nanogram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 4,4'-diphenylmethanediamine from use of the subject additive is 2.0×10^{-10} or less than 1 in 5 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 4,4'-diphenylmethanediamine is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 4,4'-diphenylmethanediamine that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of 4,4'-diphenylmethanediamine in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low levels at which 4,4'-diphenylmethanediamine may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and

(2) The upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1 in 5 billion.

C. Conclusion on Safety

FDA has evaluated the available data and other relevant material and concludes that the proposed use for the additive in components of articles intended for repeated use in contact with food is safe and that 21 CFR 177.2450 (a), (b), and (c) should be amended as set forth below. The agency is also clarifying in this final rule that the reactants benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine, described in the filing notice, react in equimolar parts in the manufacture of the additive.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" in "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, July 1979, p. 58.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulations and Compliance," edited by F. Homburger and J. K. Marquis, S. Karger, New York, pp. 24-33, 1985.

3. Memorandum dated October 21, 1988, from Food and Color Additives Review Section to Indirect Additives Branch, FAP 6B3141—E. I. duPont de Nemours & Co., Polyamide-imide Resins as Components of Articles Intended for Repeated Contact with Food.

4. Carcinogenesis bioassay of 4,4'-Methylenedianiline Dihydrochloride (CAS Reg. No. 1355-44-8) in F344/N Rats and B6C3F1/N Mice (Drinking Water Study), National Toxicology Program Technical Report, NTP-81-143, 1982.

5. Memorandum dated November 30, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences, Re: Assessment of Upper-bound Cancer Risk for Residual 4,4'-Diphenylmethanediamine, FAP 6B3141—E. I. duPont de Nemours & Co. Polyamide-imide Resins as Components of Articles Intended for Repeated Contact with Food.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 22, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made

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and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.2450 is amended by revising paragraphs (a) and (b), and by revising the first sentence in the introductory text of paragraph (c) to read as follows:

§ 177.2450 Polyamide-imide resins.

* * * * * *

(a) *Identity.* (1) For the purpose of this section the polyamide-imide resins are derived from the condensation reaction of substantially equimolar parts of trimellitic anhydride and *p,p'*-diphenylmethane diisocyanate.

(2) The polyamide-imide resins (CAS Reg. No. 31957-38-7) derived from the condensation reaction of equimolar parts of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine.

(b) *Specifications.* (1) Polyamide-imide resins identified in paragraph (a)(1) of this section shall have a nitrogen content of not less than 7.8 weight percent and not more than 8.2 weight percent. Polyamide-imide resins identified in paragraph (a)(2) of this section shall have a nitrogen content of not less than 7.5 weight percent and not more than 7.8 weight percent. Nitrogen content is determined by the Dumas Nitrogen Determination as set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 7.016–7.020, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(2) Polyamide-imide resins identified in paragraph (a)(1) of this section shall have a solution viscosity of not less than 1.200. Polyamide-imide resins identified in paragraph (a)(2) of this section shall have a solution viscosity of not less than 1.190. Solution viscosity shall be determined by a method titled "Solution Viscosity" which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(3) The polyamide-imide resins identified in paragraph (a)(1) of this section are heat cured at 600 °F for 15 minutes when prepared for extraction tests and the residual monomers: *p,p'*-diphenylmethane diisocyanate should not be present at greater than 100 parts per million and trimellitic anhydride should not be present at greater than 500 parts per million. Residual monomers are determined by gas chromatography (the gas chromatography method titled "Amide-Imide Polymer Analysis—Analysis of Monomer Content," is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC).

(c) Extractive limitations are applicable to the polyamide-imide resins identified in paragraphs (a) (1) and (2) of this section in the form of films of 1 mil uniform thickness after coating and heat curing at 600 °F for 15 minutes on stainless steel plates, each having such resin-coated surface area of 100 square inches.

* * * * * *

Dated: October 13, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24912 Filed 10–20–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–89–1963; FR–2633–N–02]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Suffolk County, NY; Special Revisions for Fiscal Year 1986 and Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document amends the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent Schedules to establish new FMRs for the Suffolk County, New York market area for those fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing

options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 Federal Register, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document establishes special revisions to the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent schedules applicable to the Suffolk County, New York, market area. These FMRs reflect data submitted by the New York Office. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The New York Office requested that the Department establish new rents for the Suffolk County, New York market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1986 and FY 1987 FMRs for this market area is needed.

A proposed notice was published in the Federal Register on May 15, 1989, at 54 FR 20859, and a 30-day comment period was afforded the public. Comments were received from five housing management and development organizations and one municipal government. All comments were favorable and urged promulgation of the new rents.

Accordingly, the Department is establishing revisions of the FY 1986 and FY 1987 schedules applicable to the Suffolk County, New York market area. It is intended that the applicability of these schedules be the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedule are established for the Suffolk County, New York Market Area:

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SCHEDULE A - FAIR MARKET RENTS FOR NEW CONSTRUCTION
AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

Region 2--New York Regional Office
Market: Suffolk County, New York

Special Revision of FY 1986 FMRs

Number of Bedrooms

Structural	0	1	2	3	4+
Detached			925	1121	1250
Semi-Detached/Row	699	741	878	918	1093
Walkup	561	654	787	858	947
Elevator 2-4 STY	721	847	1032		
Elevator 5+ STY	779	868	1085		

Special Revision of FY 1987 FMRs

Number of Bedrooms

Structural	0	1	2	3	4+
Detached			1013	1228	1369
Semi-Detached/Row	766	811	961	1005	1197
Walkup	615	716	862	939	1037
Elevator 2-4 STY	790	928	1130		
Elevator 5+ STY	853	951	1188		

BILLING CODE 4210-27-C

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: October 11, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-24902 Filed 10-20-89; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3672-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision for Lake County and Lassen County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board (ARB) submitted these revisions to EPA on March 23, 1988 for inclusion in the SIP. They affect the Lake County and Lassen County Air Pollution Control Districts (APCDs). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they retain equivalent emission control requirements in the existing SIP. They are consistent with the Clean Air Act, 40 CFR part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act. The intended effect of this action is to update rules and regulations in the California SIP.

EFFECTIVE DATE: This action will be effective on December 22, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be sent to: Colleen W. McKaughan, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A-2-3), 215 Fremont Street, San Francisco, CA 94105.

Copies of the rules and of EPA's Evaluation Reports are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. The ARB in Sacramento also has a complete set of the district rules. For information on a rule concerning a specific county, you may contact the ARB or the appropriate office listed below.

California Air Resources Board, SIP Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812
Lake County Air Pollution Control District, 255 N. Forbes Street, Lakeport, CA 95453
Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-7365 or FTS: 454-7365, (Effective November 13, 1989 new telephone will be (415) 744-1716—FTS: 484-1716).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the noncontroversial and administrative rules from this SIP submittal. The following list identifies the rules addressed in this notice.

Description of Rules—March 23, 1988 Submittal

Lake County APCD

Rule 431.5 Non-Agricultural Burning—Open Burning
Rule 431.7 Non-Agricultural Burning—Burn Hours
Rule 432 Exemptions—Public Officers
Rule 432.5 Exemptions—Preparation of Food and Recreational Purposes
Rule 433 Exemptions—Households
Rule 434 Exemptions—Right of Way Clearing
Rule 436.5 Wood Waste Burning
Rule 442 Wood Waste Disposal by Open Burning
Rule 1105 Agricultural Burning Hours
Rule 1107 Burning During Fire Hazard Season

Lassen County APCD

Article I Definitions
Article II Notification of Burning Conditions
Article III Exceptions
Article IV Enforcement
Article V Prohibitions
Article VI Burning Permits
Article VII Agricultural Burning Reports

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR part 51, and EPA policy. EPA is approving these rule revisions because they are consistent with the previously approved regulations. The rules govern routine administrative air pollution control operations for agricultural and non-agricultural burning. The revisions include recodifications of and minor language changes to existing rules which are expected to result in increased effectiveness and enforceability of those rules. In addition, new rules have been added setting out prohibitions for both agricultural and non-agricultural burning activities. A brief description of each county's rule changes is provided below.

Lake County Air Pollution Control District

New Rule 431.5, *Non-Agricultural Burning—Open Burning,* prohibits non-agricultural burning in the Lake County Air Basin from June 1 to the end of fire season, except as specified in the exemptions pursuant to Rules 432, 432.5 and 442. Rule 431.7, *Non-Agricultural Burning—Burn Hours,* establishes burning ignition hours for non-agricultural burning of 8 a.m. to 12 p.m. during the fire season and 9 a.m. to 3 p.m. during the non-fire season with extended burn days. Rule 433, *Exemptions— Households,* outlines what can be burned at a residence and the hours in which burning can be done. Rule 1105, *Agricultural Burning Hours,* specifies burning hours for agricultural burning and allow exceptions for agricultural burning on multi-day burn permits. Rule 1107, *Burning During Fire Hazard Season,* limits agricultural burning during the fire hazard season. Rules 431.5, 431.7, 433, 1105 and 1107 now reference section 226.5 of the Lake County Burning Rules and Regulations instead of the Director of the California Department of Forestry and Fire Protection. Rule 432, *Exemptions—Public Officers,* allows burning for disease or pest prevention and allows the burning of pesticide bags when no other alternative exists.

Rule 432.5, *Exemptions for Preparation of Food and Recreational Purposes,* consists of a recodification of the previously approved rule and exempts food preparation and recreational burning. Rule 434, *Exemptions-Right-of-way Clearing,* provides for right-of-way clearing by burning during the non-burn ban. Rule 436.5, *Wood Waste Burning,* consists of a recodification of the previously approved rule and specifies that the

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District shall be contacted prior to any burning of wood waste and that burning may be delayed when necessary.

New Rule 442, *Wood Waste Disposal by Open Burning*, allows for the permitting and establishment of vegetative dump sites where vegetation can be burned as a method of disposal under restrictive conditions.

Lassen County Air Pollution Control District

Article I, *Definitions*, consists of a recodification of Appendix A—Implementation Plan for Agricultural Burning, and adds new definitions for permit, wildland vegetation management burning and prescribed burning. Article II—*Notification of Burning Conditions*, Article III—*Exceptions*, and Article V—*Prohibition—5.1 General*, and *Prohibitions—5.2 Range Improvement Burning* consists of a recodification of Appendix A—Implementation Plan for Agricultural Burning. Article IV—*Enforcement* is a recodification of appendix B. In Article VI—*Burning Permits*, this new rule specifies how a permit can be obtained, where it can be obtained and what it should include as far as the description of the burn. And, in Article VII—*Agricultural Burning Reports*, this new rule specifies two methods available for filing a report after a burn.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR part 51 and EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective December 22, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1962.

Dated: October 2, 1989.

John Wise,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraphs (c)(177)(i) (B) and (C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(177) * * *

(i) Incorporation by reference.

(B) Lake County Air Pollution Control District.

(*1*) Amended rules 431.5, 431.7, 432, 432.5, 433, 434, 436.5, 442, 1105, and 1107 adopted October 20, 1987.

(C) Lassen County Air Pollution Control District.

(*1*) Amended Articles I, II, III, IV, V, VI, and VII adopted August 11, 1987.

* * * * *

[FR Doc. 89–24878 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3672–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision for Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board submitted these revisions to EPA on March 23, 1988 for inclusion in the SIP. They affect the Siskiyou County Air Pollution Control District (APCD). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they either strengthen the SIP or retain equivalent emission control requirements. They are consistent with the Clean Air Act, 40 CFR part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act. The intended effect of this action is to update the subject rules and regulations.

EFFECTIVE DATE: This action will be effective on December 22, 1989 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be sent to: Colleen W. McKaughan, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A–2–3), 215 Fremont Street, San Francisco, CA 94105.

Copies of the rules and of EPA's Evaluation Reports are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. The California Air Resources Board (ARB) in Sacramento also has a complete set of the district rules. For information on a rule concerning a specific county, you may contact the ARB or the appropriate district office listed below.

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, room 210, Sacramento, CA 95814.

Siskiyou County Air Pollution, Control District, 525 So. Foothill Drive, Yreka, CA 96097.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A–2–3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–7635 or FTS: 454–7635, Effective November 13, 1989 the new number will be 744–1716 or FTS: 484–1716.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the non-controversial and administrative rules from this SIP revision submittal. The following list identifies the rules addressed in this notice.

Description of Rules—March 23, 1988 Submittal

Siskiyou County APCD

Regulation IV—Prohibition

Rule 4.1 Visible Emissions
Rule 4.1–1 Exceptions to Visible Emissions
Rule 4.1–2 Uncombined Water
Rule 4.2–1 Exceptions
Rule 4.3 Non-Agricultural Burning
Rule 4.4 Specific Air Contaminants
Rule 4.5 Particulate Matter
Rule 4.6 Circumvention
Rule 4.6–1 Exception to Circumvention
Rule 4.7 Gasoline Storage
Rule 4.8 Analyses Required (deleted)
Rule 4.8 Combination of Emissions
Rule 4.9 Separation of Emissions
Rule 4.10 Reduction of Animal Matter
Rule 4.11 Orchard and Citrus Heaters

Regulation VII—Agricultural Burning

Rule 7.1 Agricultural Burning, Definitions
Rule 7.2 Notification of Burning Conditions
Rule 7.3 Exceptions
Rule 7.4 Enforcement
Rule 7.5.1 Prohibitions, General
Rule 7.5.2 Prohibitions, Range Improvement Burning
Rule 7.5.3 Prohibitions, Wildland Vegetation Management Burning
Rule 7.6 Burning Permits
Rule 7.7 Agricultural Burning Reports

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR part 51, and with EPA policy. We have also reviewed them to determine if they weaken or strengthen the existing SIP. The rules that are being approved in this notice meet the requirements of the Act, 40 CFR part 51, and EPA policy. The rules govern prohibitions relating to carbon monoxide, volatile organic compounds, sulfur dioxide, ozone, and particulate matter and routine administrative air pollution control operations for agricultural burning. The revisions include minor changes to existing rules which are expected to result in an increased effectiveness and enforceability of those rules. The remaining revisions either delete or repeal rules which were combined with existing rules and are no longer applicable. In addition, most of the rules result in a strengthening of the existing SIP and the remainder cause no change to the existing SIP. A brief description of the rule changes is provided below.

Rule 4.1, *Visible Emissions*, adds a phrase at the beginning of the paragraph for clarification; Rule 4.2–1, *Exceptions*, deletes paragraph (B), an exception for nuisance, from the rule which is a strengthening of the existing SIP; and Rule 4.4, *Specific Air Contaminants*, is a recodification of the previously approved rule and deletes reference to sulfides from specific air contaminants. This deletion should have no effect on air quality since there are no sources that emit sulfides; therefore, there are no sources subject to this provision. Sulfur compounds are still regulated by this rule, so new sources of sulfur dioxide coming into the County would be regulated.

Rules 4.1–2, *Uncombined Water*; 4.5, *Particulate Matter*; 4.6, *Circumvention*; 4.6–1, *Exception to Circumvention*; 4.8, *Combination of Emissions*; 4.9, *Separation of Emission*; 4.10, *Reduction of Animal Matter*; 4.11, *Orchard and Citrus Heaters*; 7.2, *Notification of Burning Conditions*; 7.3, *Exceptions*; 7.5–1, *Prohibitions—General*; 7.5–2, *Prohibitions—Range Improvement Burning*; 7.6, *Burning Permits*; and 7.7, *Agricultural Burning Reports*, consist of a recodification of the previously approved rules as follows:

March 23, 1988 submittal	Previous rules and submittal dates
Rule 4.1–2 Uncombined Water	Rule 4.14—07/25/73
Rule 4.5 Particulate Matter	Rule 4.4—02/21/72, Rule 4.6—02/21/72
Rule 4.6 Circumvention	Rule 4.7—02/21/72
Rule 4.6–1 Exception to Circumvention	Rule 4.7–1—02/21/72
Rule 4.8 Combination of Emissions	Rule 4.10—06/30/72
Rule 4.9 Separation of Emissions	Rule 4.11—06/30/72
Rule 4.10 Reduction of Animal Matter	Rule 4.12—07/25/73
Rule 4.11 Orchard and Citrus Heaters	Rule 4.13—07/25/73
Rule 7.2 Notification of Burning Conditions	Article II—01/28/81
Rule 7.3 Exceptions	Article III—01/28/81
Rule 7.5–1 Prohibitions—General	Article V—01/28/81
Rule 7.5–2 Prohibitions—Range Improvement Burning	Article V—01/28/81
Rule 7.6 Burning Permits	Article VI—01/28/81
Rule 7.7 Agricultural Burning Reports	Article VII—01/28/81

Rule 4.7, *Gasoline Storage*, adds a minor language clarification and consists of a recodification of the previously approved rule as follows:

March 23, 1988 submittal	Previous rule and submittal dates
Rule 4.7 Gasoline Storage	Rule 4.9—02/21/72

The deletion of Rule 4.8, *Analyses Required*, previously approved on May 31, 1972, is being approved since it is incorporated into Rule 4.8, *Combination of Emissions*, submitted on March 23, 1988.

Rule 7.1, *Definitions*, is a recodification of the previously approved rule and adds five (5) new definitions which consist of: (1) Agricultural Burning Guidelines, (2) Wildland Vegetation Management Burning, (3) Prescribed Burning, (4) Sensitive Receptor Area, and (5) Burning Permit. Rule 7.4, *Enforcement*, is a recodification of the previously approved rule and deletes procedures for a complaint received on an observed burning.

Recodification of the previously approved rules are as follows:

March 23, 1988 submittal	Previous rules and submittal dates
Rule 7.1 Definitions	Article I—01/28/81
Rule 7.4 Enforcement	Article IV—01/28/81

Rule 7.5–3, *Prohibition—Wildland Vegetation Management Burning*, is a new rule which outlines prohibitions and procedures for wildland vegetation management burning and applies to all

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burning which meets the definition of wildland vegetation management burning. This new rule is a strengthening of the existing SIP.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR part 51 and with EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective December 22, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 27, 1989.

John Wise,

Acting Regional Administrator.

Subpart F of part 52, chapter I title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220, paragraph (c) is amended by adding paragraph (176) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(176) Revised regulations for the following APCD's were submitted on March 23, 1988 by the Governor's designee.

(i) Incorporation by reference.

(A) Siskiyou County Air Pollution Control District.

(*1*) New and amended rules 4.1, 4.1–1, 4.1–2, 4.2–1, 4.3, 4.4, 4.5, 4.6, 4.6–1, 4.7, 4.8, 4.9, 4.10, 4.11, 7.1, 7.2, 7.3, 7.4, 7.5–1, 7.5–2, 7.5–3, 7.6, and 7.7 adopted on October 27, 1987.

* * * * *

[FR Doc. 89–24863 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3672–8]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Committal State Implementation Plan (SIP) for the Colorado Group II PM_{10} areas submitted by the Governor on April 14, 1989. The SIP commits the State to continue monitoring for PM_{10} and to submit a full SIP for any of the Group II areas in which a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. Also submitted on April 14, 1989, were the SIP revisions for the Colorado Group I Areas of Aspen, Canon City and Pagosa Springs. The Group I SIPs will be addressed in another notice.

DATES: This action will be effective on December 22, 1989, unless notice is received by November 22, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m., and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Colorado Department of Health, Air Pollution Control Division, Ptarmigan Place, N. Cherry Creek Drive and Colorado Blvd., Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405 (303) 294–1773 (FTS) 564–1773.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM_{10} NAAQS. Group I areas have violated the PM_{10} NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%–95%) probability of violating the PM_{10} NAAQS, and must commit to monitor for PM_{10} and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM_{10} NAAQS, and no new control strategy requirements apply.

The following Colorado areas have been classified as Group II: Greeley, Longmont, Brighton, Colorado Springs, Crested Butte, Delta, Grand Junction, Fruita, Rifle, Glenwood Springs, Steamboat Springs, and Vail. On April 14, 1989, the State submitted a Committal SIP for these areas. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

(1) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(2) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.

(3) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(4) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(5) Within 30 days of the notification referred to in (4), above, or within 37 months of promulgation of the PM_{10} NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(6) Within 6 months of the notification referred to in (5), above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(7) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Colorado Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} monitoring networks.* There is at least one PM_{10} monitoring site operating in each of the Group II areas in Colorado operating at the required frequency. EPA has performed an evaluation of the Colorado PM–10 monitoring network and has concluded that the 40 CFR 58 criteria have been met. The State has committed to continue monitoring in the Committal SIP.

(2) *Gather ambient PM_{10} data according to requirements.* This commitment is contained in the Committal SIP.

(3) *Analyze and verify ambient PM_{10} data and report exceedences.* This commitment is contained in the Committal SIP.

(4) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(5) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(6) *Submittal of a revised control strategy for PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit an emissions inventory of sources of PM_{10} for each of the areas. EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous **Federal Register** notices (see 40 CFR 52 subpart G). The State held a public hearing on the Committal SIP on September 15, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Final Action

EPA hereby approves the PM_{10} Committal SIP for the Colorado Group II areas as part of the Colorado SIP. The Committal SIP provides for adequate ambient air quality monitoring, notification to EPA should exceedance occur and for development of SIP revisions should violations of the PM_{10} NAAQS occur.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: September 25, 1989.

Irwin L. Dickstein,

Acting Regional Administrator.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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PART 52—[AMENDED]

Subpart G—Colorado

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.331 is added to read as follows:

§ 52.331 Committal SIP for the Colorado Group II PM_{10} areas.

On April 14, 1989, the Governor submitted a Committal SIP for the Colorado Group II PM_{10} areas. The SIP commits the State to continue to monitor for PM_{10}, report data and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards is detected.

[FR Doc. 89–24862 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6750

[CO–930–09–4214–10; C–46833]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 4,222 acres of National Forest System land from mining for a period of 50 years for the protection of existing and planned recreational facilities at the Beaver Creek Ski Area near Avon, Colorado. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1752.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Beaver Creek Ski Area:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 81 W.,
Sec. 19, SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 30, lots 1, 2, 5, 6, 7, 8, E½, and E½NW¼;
Sec. 31, lots 1 thru 4, W½NE¼, E½W½, and NW¼SE¼.
T. 5 S., R. 82 W.,
Sec. 22, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 23, SW¼NW¼, and S½;
Sec. 24, SW¼SW¼, and SW¼SE¼;
Sec. 25, lots 1, 2, E½, NW¼NW¼, S½NW¼, and E½SW½,
Sec. 26, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 27, E½, SE¼NW¼, and NE¼SW¼;
Sec. 36, lots 1, 2, 3, 4, 5, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
T. 6 S., R. 82 W.,
Sec. 1, The North 20 chains as defined by Protraction Diagram No. 10, Accepted May 10, 1965.

The area described aggregates approximately 4,222 acres of National Forest System land in Eagle County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 16, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89–24934 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6971]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia	Fulton and DeKalb Counties.	City of Atlanta	Oct. 19, 1989, Oct. 26, 1989, Atlanta Journal-Constitution.	The Honorable Andrew Young, Mayor, City of Atlanta, 55 Trinity Avenue, SW, Atlanta, Georgia 30335–0325.	Oct. 6, 1989	135147
Louisiana	Lafourche	Town of Golden Meadow.	Sept. 28, 1989, Oct. 5, 1989, The Daily Comet.	The Honorable Jervis Autin, Mayor of the Town of Golden Meadow, 313 North Bayou Drive, Golden Meadow, Louisiana 70357.	Sept. 19, 1989	225196 B

Issued: October 11, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration

[FR Doc. 89–24946 Filed 10–20–89; 1:30 pm]

BILLING CODE 6718–03–M

VOL 54 ISS 203 OC 23 1989 UMI

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[APD 2800.12A CHGE 1]

General Services Administration Acquisition Regulation, Authorizing Payment by Credit Card Under GSA Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to add subpart 532.70 to prescribe a contract clause that will authorize GSA schedule contractors to accept the Government commercial credit card as an alternative method of payment for orders of $25,000 or less; revise § 552.210–79, Packing List, to add supplemental information, which must be included on the packing list or other shipping document when payment will be made by Government commercial credit card; and add § 552.232–80 to provide the text of a clause authorizing GSA schedule contractors to be paid for oral or written orders of $25,000 or less by using the Government commercial credit card.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy and Regulations (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on June 29, 1989 (GSAR Notice 5–272, 54 FR 27396). Fifteen public comments were received all favoring the use of the Government commercial credit card as an additional method of payment for orders of $25,000 or less. As a result of the public comments and comments received from various GSA offices, the requirement for vendors to give an additional discount from its schedule prices, before payment by Government commercial credit card would be authorized, has been deleted. Several minor editorial changes also have been made for clarification.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

The GSA, in GSAR Notice 5–272, certified that the rule would not have a significant impact on a substantial number of small entities. Any impact was perceived to be beneficial, since payments to vendors would be expedited. Consequently, no regulatory flexibility analysis was prepared, though comments from small entities were solicited. No comments, taking exception to the certification, were received.

D. Paperwork Reduction Act

The Packing List clause at GSAR 552.210–79 contains an information collection requirement which has been approved by OMB under section 3504(h) of the Paperwork Reduction Act and assigned OMB Control No. 3090–0246. The title of the collection is "48 CFR 552.210–79, Packing list." The clause requires GSA schedule contractors shipping items that will be paid for by Government commercial credit card to include on the packing list or other suitable shipping document the name and telephone number of the cardholder and the term "Credit Card." This information is needed by the cardholder to verify receipt of the order, reconcile the monthly credit card statement, and expeditiously authorize payment to the credit card issuer. The respondents are GSA schedule contractors. The estimated annual burden for this collection is 2,427 hours. This is based on an estimated average burden hour per response of 0.0167, a proposed frequency of 48.4 responses per respondent, and an estimated number of respondents of 3,000. Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be directed to the Director, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4026, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

1. The authority citation for 48 CFR parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 532—[AMENDED]

2. Subpart 532.70 is added to read as follows:

Subpart 532.70—Authorizing Payment by Credit Under Schedule Contracts

532.7001 Definitions.
532.7002 Solicitation requirements.
532.7003 Contract clause.

Subpart 532.70—Authorizing Payment by Credit Card Under Schedule Contracts

532.7001 Definition.

"Government commercial credit card," used in this subpart, means the uniquely numbered credit card issued by the contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

532.7002 Solicitation requirements.

When solicitations for schedule contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) request offerors to indicate whether payment by Government commercial credit card for orders of $25,000 or less will be accepted, the contracting officer shall identify the clearinghouse that is being used by the contractor issuing credit cards under single award schedule, Federal Supply Schedule IG 615, for Governmentwide Commercial Credit Card Service on the cover page or in section L of the solicitation. The name of the clearinghouse is provided for offerors' information and use in responding to the schedule solicitation.

532.7003 Contract clause.

The contracting officer shall insert the clause at 552.232–80, Payment By Credit Card, in schedule solicitations and resultant contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) to provide for payment by Government commercial credit card as an alternative method of payment for orders of $25,000 or less.

3. Section 552.210–79 is revised to read as follows:

552.210–79 Packing List.

As prescribed in 510.011(i), insert the following clause:

Packing List (Dec 1989)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of the consignor; (2) Name and complete address of the consignee; (3) Government order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number and (2) the term "Credit Card."

(End of Clause)

PART 552—[AMENDED]

4. Section 552.232–80 is added to read as follows:

552.232–80 Payment by credit card.

As prescribed in 532.7003, insert the following clause:

Payment by Credit Card (Dec 1989)

(a) Definitions. "Government commercial credit card" means the uniquely numbered credit card issued by the Contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

"Oral delivery order" means an order placed orally either in person or by telephone, which is paid for by Government commercial credit card.

(b) At the option of the Government and if agreeable to the Contractor, payments of $25,000 or less for oral or written delivery orders may be made using the Government commercial credit card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(End of Clause)

Dated: October 13, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–24933 Filed 10–20–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels angling for young school, school or medium Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because the annual quota for this category has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATES: The closure is effective 0001 hours local time October 21, 1989, through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(e) of 50 CFR Part 285 provides for an annual quota of 139 short tons (st) of young school (less than 66cm), school (66cm but less than 145cm) and medium (145cm but less than 196cm) Atlantic bluefin tuna to be harvested from the regulatory area by anglers. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. The Assistant Administrator has determined, based on the reported catch, that the annual quota of Atlantic bluefin tuna for the Angling category will be attained by October 21, 1989. Therefore, fishing for, and retention of, any young school, school or medium Atlantic bluefin tuna harvested under § 285.22(e) must cease at 0001 local time on October 21, 1989.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers, several industry publications, associations and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 18, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation & Management, National Marine Fisheries Service.

[FR Doc. 89–24979 Filed 10–18–89; 4:55 pm]

BILLING CODE 3510–22–M

BEST COPY AVAILABLE

VOL 54 ISS 203 OCT 23 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA-89-041]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the months of November 1989 through January 1990. The proposed suspension would reduce the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. Mid-Am contends that the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk will be needed because of the sale of a distributing plant whose fluid milk accounts will be shifted to distributing plants that are regulated under other Federal orders. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to continue to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

DATE: Comments are due on or before October 30, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for November 1989 through January 1990:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend certain provisions of the order for the months of November 1989 through January 1990. The action would reduce the shipping standard for pool supply plants operated by cooperative associations.

Currently, the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. The proposed suspension would result in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during November 1989-January 1990.

The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirement for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for one of its supply plants by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that was sold are to be shifted to distributing plants that are regulated under other Federal orders and the distributing plant will cease receiving milk to supply its current accounts on October 19, 1989. As a result, there will be a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market. Consequently, Mid-Am contends that the suspension is necessary to reduce the shipping standard to 25 percent of receipts during November 1989-January 1990. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to pool its supply plant and the milk of its producers who have historically supplied the market.

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

PART 1032—[AMENDED]

The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on October 17, 1989.

David Haley,
Administrator.

[FR Doc. 89-24880 Filed 10-20-89; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 89N-0226]

Information Packet and Issue Papers for Food Labeling Hearings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an information packet and a compendium of food labeling issue papers as background information for the four regional food labeling hearings announced in the **Federal Register** on September 20, 1989 (54 FR 38806). The compendium summarizes the food labeling issues that were set forth in the advance notice of proposed rulemaking that published in the **Federal Register** on August 8, 1989 (54 FR 32610).

ADDRESSES: Submit written requests for single copies of the information packet and the compendium of food labeling issue papers to the Office of Consumer Affairs (HFE-88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3170. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The compendium of food labeling issue papers is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFF-200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking and request for public comment on possible changes to the food labeling requirements. The notice addressed five food labeling topics and announced that public hearings would be held. The public hearing dates and locations were announced September 20, 1989 (54 FR 38806). The first of the four regional food labeling hearings was held on October 16, 1989, in Chicago, IL 60612. The other three hearings are scheduled for November 1, 1989, San Antonio, TX 78284; December 7, 1989, Seattle, WA 98174; and December 13, 1989, Atlanta, GA 30303. The agency has prepared an information packet and a compendium of issue papers for distribution at the hearings. The compendium summarizes the focus issues to be addressed at the hearings: nutrition label content (Chicago), ingredient labeling/food standards and food descriptors (San Antonio), health messages (Seattle), and nutrition label format (Atlanta).

Interested persons who will be unable to attend the hearings may request a copy of the information packet and compendium by following the procedure outlined above.

Dated: October 17, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24913 Filed 10-20-89; 8:45 am]
BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3673-8]

Approval and Promulgation of Implementation Plans; State of Missouri; Revised Rules for the Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve amended state rules as a revision to the Air Pollution Control State Implementation Plan (SIP) of the state of Missouri. The rules, required by the Clean Air Act, establish reasonably available control technology (RACT) to limit volatile organic compound (VOC) emissions in the St. Louis Area. EPA's approval of this SIP revision provides federal enforceability of the rules, which will ensure progress toward improved air quality in the St. Louis vicinity.

DATE: Comments must be received by November 22, 1989.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state-submitted information and the EPA-prepared technical support document are available for public review during normal business hours at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: Part D of the Clean Air Act, as amended, requires that a state revise its SIP for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On May 26, 1988, EPA informed the Governor of Missouri that the SIP for the St. Louis area was substantially inadequate to attain the NAAQS for ozone and carbon monoxide.

In response to the SIP call, the state submitted corrections to its St. Louis VOC control rules on March 30, 1989. The rule amendments were adopted by the Missouri Air Conservation Commission (MACC) after proper notice and public hearing, and became effective on March 11, 1989.

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The state adopted these amendments in compliance with section 172(b)(2) of the Clean Air Act, which requires SIPs to provide for the implementation of all reasonably available control measures as expeditiously as practicable. The amendments are consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register," dated May 25, 1988.

The state submittal consisted of amendments to the following rules: 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading and Transfer; 10 CSR 10–5.300, Control of Emissions from Solvent Metal Cleaning; 10 CSR 10–5.310, Liquefied Cutback Asphalt Restricted; 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing Facilities; 10 CSR 10–5.350, Control of Emissions of Synthesized Pharmaceutical Products; 10 CSR 10–5.360, Control of Emissions from Polyethylene Bag Sealing Operations; 10–CSR 10–5.370, Control of Emissions from the Application of Deadeners and Adhesives; 10 CSR 5.390, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products; 10 CSR 10–5.410, Control of Emissions from the Manufacture of Polystyrene Resin; 10 CSR 10–5.420, Control of Emissions from Synthetic Organic Chemical and Polymer Manufacturing Plants; and 10 CSR 10–6.020, Definitions. Also, Rule 10 CSR 10–5.400, Control of Emissions from Production of Maleic Anhydride, was rescinded. This rule affected only one source, which has been permanently shut down.

The rule amendments improve the clarity and enforceability of the rules. Source applicability levels are more clearly defined. The rules now contain appropriate EPA approved compliance test methods; previously, some rules contained outdated, incorrect, or missing test method references. The rules now contain detailed recordkeeping requirements. Sources are required to keep sufficient records so that source compliance status can be determined on the basis of such records. For a detailed discussion of the state submittal, the reader is directed to the aforementioned EPA technical support document.

In rule 10 CSR 10–3.370, the state adopted a source-specific alternative RACT emission limit which applies to the Chrysler automobile assembly plant. This limit specifies that, after July 31, 1985, vinyl top adhesive shall not contain more than 5.33 pounds of VOC per gallon of adhesive. EPA's technical support document discusses the rationale for this alternative RACT limit.

Rule 10 CSR 10–5.340 provides for alternative compliance plans whereby compliance can be determined by a daily weighted average of emissions from a combination of source operations. EPA proposes approval of this rule with the understanding that any such alternative compliance plans must be submitted and approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the reduction requirements stated in the rule.

EPA Action

EPA proposes to approve the state's June 14, 1985; November 19, 1986; and March 30, 1989, submittals as a revision to the Missouri SIP. EPA's decision to approve or disapprove this SIP revision will be based on comments received and on a determination of whether the revision meets the requirements of sections 110 and 172 of the Clean Air Act and 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

Dated: October 9, 1989.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart AA, is proposed to be amended as follows:

Subpart AA—Missouri

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.1320 is amended by adding paragraph (c)(71) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(71) Revisions to regulations for controlling volatile organic compound emissions in the St. Louis area were submitted by the Missouri Department of Natural Resources on June 14, 1985; November 19, 1986; and March 30, 1989.

(i) Incorporation by reference

(A) New rule 10 CSR 10–5.410, Control of Emissions from the Manufacture of Polystyrene Resin, effective May 11, 1985, with amendments effective September 28, 1986, and March 11, 1989.

(B) Revisions to rules 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading and Transfer; 10 CSR 10–5.300, Control of Emissions from Solvent Metal Cleaning; 10 CSR 10–5.310, Liquefied Cutback Asphalt Restricted; 10 CSR 10–5.320, Control of Emissions from Perchloroethylene Dry Cleaning Installations; 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing facilities; 10 CSR 10–5.350, Control of Emissions of Synthesized Pharmaceutical Products; 10 CSR 10–5.360, Control of Emissions from Polyethylene Bag Sealing Operations; 10 CSR 10–5.370, Control of Emissions from the Application of Deadeners and Adhesives; 10 CSR 10–5.390, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products; 10 CSR 10–5.420, Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants; and 10 CSR 6.020, Definitions; effective March 11, 1989.

(C) Rescinded rule 10 CSR 10–5.400, Control of Emissions from Production of Maleic Anhydride, effective March 11, 1989.

3. Section 52.1323 is amended by adding paragraph (b) to read as follows:

§ 52.1323 Approval status.

* * * * *

(b) The Administrator approves rule 10 CSR 10–5.340 as identified under § 52.1320, paragraph (c)(71), with the understanding that any alternative compliance plans issued under this rule must be approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the reduction requirements stated in the rule.

[FR Doc. 89–24923 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 22, 1989, the Department published three advance notices of proposed rulemaking to announce its intent to revise the type B rule and the type A natural resource damage assessment procedure for coastal and marine environments, both codified at 43 CFR part 11, and to modify the ongoing development of a type A procedure for Great Lakes environments to conform with recent court rulings. The natural resource damage assessment rule was developed pursuant to Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department is now extending the period for comment on each of the three advance notices of proposed rulemaking from October 23, 1989, to November 13, 1989. Commenters should submit separate comments for each of the advance notices of proposed rulemaking.

DATE: Comments on the advance notices of proposed rulemaking (54 FR 39013, 54 FR 39015, and 54 FR 39016) will be accepted through November 13, 1989.

ADDRESS: Comments on the revision of the type B rule should be addressed to: Office of Environmental Project Review, ATTN: Type B NRDA Rule, room 2340, Department of the Interior, 1801 C Street NW., Washington, DC 20240. Comments on the revision of the type A procedure for coastal and marine environments should be addressed to: Office of Environmental Project Review, ATTN: NRDA Coastal and Marine Type A Rule, room 2340, Department of the Interior, 1801 C Street, NW., Washington, DC 20240. Comments on the revision to the ongoing development of a type A procedure for Great Lakes environments should be addressed to: Office of Environmental Project Review, ATTN: NRDA Great Lakes Type A Rule, room 2340, Department of the Interior, 1801 C Street NW., Washington, DC 20240. (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Linda Burlington or David Rosenberger at (202) 343–1301.

SUPPLEMENTARY INFORMATION: On September 22, 1989, the Department of the Interior (Department) published three advance notices of proposed rulemaking to announce its intent to: (1) Revise the type B natural resource damage assessment procedures (see 54 FR 39016); (2) revise the type A natural resource damage assessment procedure for coastal and marine environments (see 54 FR 39103), both codified at 43 CFR part 11; and (3) modify the ongoing development of a type A procedure for Great Lakes environments (see 54 FR 39015) to conform with recent court rulings. These revisions will ensure that the natural resource damage assessment rule carries out the purpose and requirement of the Cmprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) for the restoration, or replacement, of injured natural resources. The revisions must also meet the requirement in the law that the rule contain the "best available" procedures for performing damage assessments. The natural resource damage assessment rule was developed pursuant to section 301(c) of CERCLA.

The purpose of the three advance notices of proposed rulemaking of September 22, 1989, was to request public comments and technical information to assist the Department in complying with the issues remanded to the Department by the court, specifically, the incorporation of restoration or replacement values and the inclusion of all reliably calculated lost use values, with no required hierarchy of methodologies for conducting those valuations. Commenters should submit separate comments for each of the advance notices of proposed rulemaking.

Comments received from the public to date in response to the advance notices of proposed rulemaking have requested additional time to compile both informational and technical comments. These kinds of comments are what the Department specifically requested in the advance notices of proposed rulemaking. Therefore, after considering these requests, the Department has decided to extend the three comment periods through November 13, 1989.

Dated: October 19, 1989.

Terence N. Martin,

Acting Director, Office of Environmental Project Review.

[FR Doc. 89–24990 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

43 CFR Parts 2090 and 2200

RIN 1004–AB28

[AA–320–00–4212–02]

Land Exchange; General Procedures; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The proposed rule that would revise the exchange regulations of the Bureau of Land Management was published in the **Federal Register** on August 18, 1989 (54 FR 34380), with a 45-day comment period. The comment period is being extended by 60 days to December 1, 1989, in response to public requests.

DATE: The period for the submission of comments is hereby extended to December 1, 1989. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 18th & C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Taylor or Dave Cavanaugh, (202) 343–8735 or 343–5441.

Dated: October 18, 1989.

David O'Neil,

Assistant Secretary of the Interior.

[FR Doc. 89–24906 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–84–M

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Notices

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-176]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-257-04	U.S. Department of Agriculture/Agricultural Research Service..	09-14-89	Potato genetically engineered for a marker gene.....	Idaho.

Done in Washington, DC, this 17th day of October.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24932 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Dairy Export Incentive Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces a change in the operation of the Dairy Export Incentive Program (DEIP). Henceforth, the Commodity Credit Corporation (CCC) will pay exporters the agreed upon bonus through the issuance of generic certificates redeemable for CCC-owned commodities.

ADDRESSES: Comments should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, phone (202) 447-6225 or Mark Rowse of the same Division, phone (202) 382-9240. A revised announcement and invitation will be issued under the program and may be requested from the Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Section 153 of the Food Security Act of 1985 instructed the CCC to establish and operate an export incentive program for dairy products through September 30, 1989, with payment of the bonus through either cash, commodity certificate or CCC-owned commodities. This program became the DEIP. Section 106 of the Hunger Prevention Act of 1988 extended the operation of the DEIP through September 30, 1990.

A notice announcing the establishment of the DEIP program was published in the **Federal Register** on March 3, 1986, 51 FR 7300, and contains a general description of the operation of the program.

Since the inception of the program, CCC paid bonuses to exporters in the form of CCC-owned dairy products. Section 4308 of the Omnibus Trade and Competitiveness Act of 1988 amended section 153 of the Food Security Act of 1985 by changing the method by which CCC could pay bonuses to exporters. Under current law, bonuses may be paid in cash or through the issuance of generic certificates, redeemable for CCC-owned commodities. Accordingly, CCC will no longer make payment of bonuses in the form of CCC-owned dairy products. Future payments will be made through the issuance of generic certificates, redeemable for designated CCC-owned commodities. CCC-owned dairy products will no longer be available through the redemption of generic certificates.

The General Sales Manager invites the public to comment on this system and the operation of this program at any time. The operation of the program is subject to review and change at any time after comments are received and in light of experience gained in operating the program.

Signed at Washington, DC, on September 25, 1989.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 89-24928 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-10-10

Forest Service

Union Pass Road Project, Bridger-Teton National Forest, Fremont, Sublette, and Teton Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture—Forest Service, in cooperation with the State of Wyoming and the five-County Council of Governments, will prepare an environmental impact statement on a proposal to relocate a portion of the Union Pass Road on the Pinedale Ranger District, Bridger-Teton National Forest. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contibute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by December 8, 1989.

ADDRESSES: Send written comments to Paul Arndt, Union Pass Road Team Leader, Bridger-Teton National Forest, P.O. Box 1888, Jackson, WY 83001.

Public Meetings: The Pinedale District Ranger will hold informal public meetings at the public library in Pinedale, WY on November 14, 1989 at 7:00 p.m. and at Dubois, WY on November 16, at 7:00 p.m. The location in Dubois will be announced at a later date. Other meetings can be arranged if requested.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Bob Reese, Pinedale District Ranger, Box 220, Pinedale, WY 82941 (phone 307-367-4326).

Responsible Official: Brian E. Stout, Forest Supervisor, Bridger-Teton National Forest, Jackson, Wyoming is the responsible official.

SUPPLEMENTARY INFORMATION: The proposal is to relocate the "Connecting Road" segment of the Union Pass Road. The Connecting Road segment runs from Bacon Ridge to Kendall Bridge and connects with the Green River Lakes Road.

The Connecting Road segment is needed to provide access to a significant portion of the Pinedale Ranger District. The access is needed by both the Forest Service for management purposes, as well as the public for recreational purposes. Currently, a portion of the Connecting Road goes through private property and the Forest Service does not have legal access across that section. The Connecting Road is also a "substandard" road with problems of erosion and safety concerns with the road design where site distances are limited. Conflicts between local ranchers who use the area for cattle drives and recreationists also need to be addressed.

The alternatives evaluated will be based upon direction contained in the pending Bridger-Teton National Forest and Resource Management Plan, along with recommendations contained in the "Union Pass Road Study" prepared for the five-member Council of Governments (Fremont, Lincoln, Sublette, Sweetwater, and Teton Counties).

A range of alternatives for this project will be considered. One alternative will look at continuing the existing situation, one will look at improving the existing road alignment, and other alternatives will evaluate relocating portions of the road.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the prepartion of the environmental impact statement. This will include: (a) Further identifying potential issues; (b) further identifying issues to be analyzed in depth; (c) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis; (d) determination of need for the project; (e) exploring additional alternatives; and (f) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects, and connected actions).

The State of Wyoming and the five-County Council of Governments will be invited to participate as Cooperating Agencies in the development of the environmental impact statement. The U.S. Fish and Wildlife Service, Department of the Interior, will also be invited to participate as a Cooperating Agency to evaluate potential impacts on threatened and endangered species habitat.

The analysis is expected to take approximately six months. The draft environmental impact statement should be available for public review by April, 1990. The final environmental impact statement is scheduled to be completed by September, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmentel Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: October 12, 1989.

Brian E. Stout,

Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 89-24869 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Somes and Butler Compartments EIS; Klamath National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to implement commercial timber sales and related management activities, over the next five years,

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within portions of the Somes and Butler Compartments on the Ukonom Ranger District.

DATE: Comments concerning the scope of the analysis must be received by December 1, 1989.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Alice R. Forbes, District Ranger, Klamath National Forest, P.O. Drawer 410, Orleans, CA 95556.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Penny Eckert, TMO, Ukonom Ranger District, phone (916) 627-3291.

SUPPLEMENTARY INFORMATION: A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider an array of resource management strategies including intensive timber management (requiring high road densities and large amounts of stand treatments) to low intensity management with greater emphasis on other resource values.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and assignment by responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the compartments.

Robert Rice, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take about 10 months.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Somes and Butler Compartments EIS participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by September 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: October 12, 1989.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 89-24870 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Draft Environmental Impact Statement for Exploratory Oil and Gas Wells; Lewis and Clark National Forest, Glacier and Pondera Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; notice of meeting.

SUMMARY: Notice is hereby given that the Forest Service is distributing for public review a Draft Environmental Impact Statement on the proposals to drill exploratory oil and gas wells near Badger Creek and Hall Creek, Lewis and Clark National Forest, Glacier and Pondera Counties, Montana.

DATES: Five public open house sessions will be held at the following locations:

November 2, 1989, 3–8 PM—Holiday Inn, 200 S. Pattee, Missoula, MT

November 6, 1989, 3–8 PM—Glacier Electric Bldg., 410 E. Main, Cut Bank, MT

November 7, 1989, 3–8 PM—Little Flower Parish, Browning, MT

November 8, 1989, 3–8 PM—Community Hall, 412 Highway 2, East Glacier, MT

November 14, 1989, 3–8 PM—Ponderosa Inn, 220 Central Ave., Great Falls, MT

Written comments on this draft EIS must be received by the responsible official of the lead agency by December 15, 1989.

ADDRESS: Send written comments to John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, Post Office Box 871, Great Falls, Montana 59403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Norman Yogerst, EIS Team Leader, USDA Forest Service, Post Office Box 7669, Missoula, Montana 50807, Phone: (406) 329-3634.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement (DEIS) discloses the environmental effects of proposed oil and gas exploration drilling in the North End Geographic Unit of the Lewis and Clark National Forest, Rocky Mountain Ranger District. This area is commonly known as the Badger-Two Medicine Area. The Blackfeet people often refer to this area as the "ceded strip" and "Blackfeet unit."

This DEIS analyzes the impacts of proposed drilling applications submitted by Chevron USA, near Badger Creek, and Fina Oil and Chemical Company, near Hall Creek. Based on the issues and concerns identified during the scoping process, the DEIS focuses on impacts to water resources, air quality, Glacier National Park resources, adjacent Bob Marshall and Great Bear Wilderness, the Badger-Two Medicine Roadless area, wildlife and fisheries (including the grizzly bear), vegetation, outdoor recreation and visual resources, archaeological resources, Blackfeet Tribe reserved rights and traditional religious practices, local economic and social conditions, including public health and safety associated with the drilling proposals.

The analysis addresses 33 combinations of alternatives, including roaded access, helicopter mobilization of the drilling projects, and no action. The EIS also addresses each of the exploration proposals independently. The EIS preferred alternative is to permit the exploration projects, utilizing roaded access and mitigation requirements that minimize adverse environmental effects.

Dated: October 10, 1989.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 89-24868 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Kensington Venture Gold Mine Project, AK, Tongass National Forest-Chatham Area, Juneau Ranger District; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the USDA Forest Service, Juneau Ranger District will be directing the preparation of an environmental impact Statement to be prepared by a third party contractor on the impacts of a proposed underground mine, the Kensington Venture Gold Mine Project, proposed on public and private lands in the City and Borough of Juneau in southeastern Alaska.

The Kensington Venture will be jointly owned by Echo Bay Exploration, Inc., and Coeur d'Alene Mines Corporation, who, due to the General Mining Law of 1872, have a statutory right to enter upon the public lands to search for minerals. The proposed operations are subject to Plan of Operations or Special Use permit approval under 36 CFR part 228, which is intended to minimize adverse environmental impacts on National Forest surface.

The proposed mine is located approximately 45 miles north of downtown Juneau. If approved the project could begin production by 1993. The proposal includes a 4,000 tons of ore per day mine, mill, surface processing plant, surface support facilities, 250 person camp, electrical generating system, transportation system, and tailings disposal dam site. Over the minimum anticipated mine life of 12 years, 20 million tons of tailings and 400 tons per day of waste rock will be generated.

The no action alternative will be considered in the EIS. In addition, the EIS will address the proposed options and any additional feasible alternatives, assess environmental implications, and seek comment and involvement from a wide range of local, regional, and national publics.

Key resource values to be analyzed include the water quality of the surface drainages associated with trailings disposal, including associated fisheries and estuarine habitat; social and economic impacts to the City and Borough of Juneau and its transportation system, from mine operations and employment; impacts to wildlife, scenic, and recreation values; impacts to wetlands, air, and soils and vegetation; and protection of potential historic and prehistoric cultural values.

We invite other Federal agencies, state and local agencies, and interested individuals to participate in the project, including the initial scoping session, which is scheduled for December, 1989, in Juneau, Alaska. The Forest Service's scoping process for the EIS will include (1) identification of issues to be addressed, (2) identification of viable alternatives, and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained.

The scoping process will consist of a news release anouncing the start of the EIS process, letters of invitation to participate in the scoping process, and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered, to be distributed to selected parties and available upon request.

The Environmental Protection Agency and the U.S. Army Corps of Engineers will participate as cooperating agencies.

Gary A. Morrison, Forest Supervisor, Tongass National Forest, Chatham Area, is the responsible official.

The analysis is expected to take about 12 months. The draft environmental impact statement should be available for review by July, 1990. The final environmental impact statement is scheduled to be completed by November, 1990.

Written comments and suggestions concerning the analysis should be sent to Roger Birk, Minerals Management Specialist, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska, 99801. The telephone number is 907-789-3111.

Dated: October 16, 1989.

Gary A. Morrison,

Forest Supervisor, Chatham Area, Tongass National Forest, Region 10.

[FR Doc. 89-24871 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Forest Resource Inventory Statistics

AGENCY: Forest Service, USDA.

ACTION: Notice; uniform data and coding proposal.

SUMMARY: The Forest Service is proposing to improve the usefulness of its forest resource inventory information by making data available to the public in a uniform format for the entire Eastern United States. The new format would include detailed ownership codes and sample plot coordinates. This change will provide improved public access to current forest resource data collected by four research facilities in the East, and improved capabilities for making comparative analyses. Public review is invited.

DATE: Comments must be received in writing by December 1, 1989.

ADDRESSES: Send written comments or requests for the draft format and coding publication to F. Dale Robertson, Chief (1500), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. Comments are available for inspection in the office of Forest Inventory, Economics, and Recreation Research, 14th and Independence Avenue, SW., room 4105 between the hours of 8 a.m. and 4 p.m. Monday through Friday. To facilitate entrance into building, visitors are encouraged to call ahead (447-2747).

FOR FURTHER INFORMATION CONTACT: Richard A Birdsey, Forest Inventory, Economics, and Recreation Research Staff, 202-382-9341.

SUPPLEMENTARY INFORMATION: Through its Research organization, the Forest Service conducts continuing Statewide inventories of the Nation's forest resources to ascertain trends in the extent, condition, ownership, quantity, and quality of the forest resources. These statistics and subsequent analyses are released as unit, State, regional, and national resource bulletins and forest resource reports. The statistical reports are based on data collected at sample locations across the United States. Access to original data is available to the public on data tapes or through direct electronic links to data files after the State statistical report has been transmitted for publication.

In the past, data collected at different Experiment Stations have been made

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available in different formats and coding systems. For this reason, multiregional analyses were difficult. Four Forest Service Experiment Stations, whose territories encompass the eastern United States (all states east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas), have proposed a uniform format and coding system for providing data to requesters. This would allow requesters to perform their own statistical analyses for several States or geographical regions within two or more States inventoried by different Experiment Stations.

The proposed new format includes coding of ownership categories for sample plots on forest lands. Ownership categories include National Forest, Bureau of Land Management, Indian Lands, Other Federal Agencies, State, County and Municipal, Forest Industry, Farmer, Farmer—Leased, Other Private—Corporate, Other Private-Individual, Other Private-Corporate—Leased, and Other Private-Individual—Leased. The new format also includes latitude and longitude coordinates for sample plots with an accuracy of plus or minus 100 seconds (approximately one mile).

If the new format is adopted, it would be used as new State inventories are completed, and the agency would plan to expand this service nationwide as technology and resources permit. A draft publication containing complete details of the proposed formats and coding, and information about how to obtain the data, is available for review upon request.

Dated: October 13, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-24929 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Initiation of Antidumping Duty Investigation; Gray Portland Cement and Clinker from Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of gray portland cement and clinker from Mexico materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 10, 1989. If the ITC determination is affirmative, we will make a preliminary determination on or before March 5, 1990.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta, Kimberly Hardin, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0186, or 377-8371, 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 26, 1989, we received a petition filed in proper form by the Ad Hoc Committee of Arizona-New Mexico-Texas-Florida Producers of Gray Portland Cement on behalf of the U.S. gray portland cement and clinker industry. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(F) of the Act and that it has filed the petition on behalf of a regional U.S. industry producing the product that is subject to this investigation. Any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, that wishes to register support for, or opposition to, this petition, must file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price is based on the ex-factory price charged by a Mexican producer/exporter for the sale of a large shipment of gray portland cement to a U.S. customer in May 1989. Petitioner also bases its estimate of United States Price on unit Customs value of imports from Mexico for May 1989.

Petitioner's estimate of foreign market value (FMV) is based on the price at which such or similar merchandise is sold or offered for sale in the principal markets of Mexico.

Based on a comparison of United States Price and FMV as estimated by the Petitioner, the alleged dumping margins range from 98 to 111 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on gray portland cement and clinker from Mexico and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make a preliminary determination by March 5, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no other use than for being ground into finished cement. Gray portland cement is currently classifiable under HTS item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements."

Request for Exclusion

Any producer or reseller that desires exclusion from an antidumping duty order must submit to the Assistant Secretary of Import Administration, not later than 30 days after the date of publication of this notice, an irrevocable written request for exclusion in accordance with 19 CFR 353.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigation Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 10, 1989, whether there is a reasonable indication that imports of gray portland cement and clinker from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89- 24911 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-004]

Certain Carbon Steel Wire Rod From Argentina; Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its determination not to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 38263) its intent to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina (September 27, 1982, 47 FR 42393). The Department may terminate a suspended investigation if the Secretary concludes that the agreement is no longer of interest to interested parties. The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on certain carbon steel wire rod from Argentina for four consecutive annual anniversary months.

On September 28, 1989, four petitioners, Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas Incorporated and Raritan Steel Company, objected to the Department's intent to terminate this suspended investigation. On September 29, 1989, two interested parties, Bethlehem Steel Corporation and Northwestern Steel and Wire Company, objected to the Department's intent to terminate this suspended investigation. Therefore, we no longer intend to terminate the suspended investigation.

This notice is in accordance with § 355.25(d)(4) of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.25(d)(4)).

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24910 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 2, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We have now completed that review and determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be 12.11 percent *ad valorem*.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18687) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber. During the review period, such merchandise was classifiable under item numbers 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 5504.10.0000 of the Harmonized Tariff Schedule.

The review covers the period January 1, 1987 through December 31, 1987 and four programs: (1) Loans/Grants for Plant Creation; (2) Elderly Employment Compensation Program; (3) Grant for Manpower Reduction; and (4) Conditional Loan for Manpower Reduction. The only known Swedish exporter of this merchandise to the United States during the review period was Svenska Rayon AB.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the Swedish

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exporter, Svenska Rayon AB ("Svenska").

Comment: Svenska argues that the Department used the incorrect denominator in calculating the benefits from the four programs found to confer countervailable subsidies. Because the four programs are not specifically tied to the production, sale, or export of any product and provide benefits to the entire company, the Department should use total revenue rather than the net sales of viscose rayon staple fiber in calculating the benefit from these programs.

Department's Position: We agree and have adjusted our calculations accordingly. We determine the benefits to be 8.50 percent *ad valorem* for loan/grants for plant creation, 2.76 percent *ad valorem* for the elderly employment compensation program, 0.46 percent *ad valorem* for the manpower reduction grant, and 0.39 percent *ad valorem* for the conditional loan program.

Final Results of Review

After considering the comment received, we determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be 12.11 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24909 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Determination Respecting Fresh, Chilled or Frozen Pork from Canada made by the U.S. International Trade Commission, which was filed by the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. with the United States Section of the Binational Secretariat on October 13, 1989.

SUMMARY: On October 13, 1989, the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination respecting fresh, chilled or frozen pork from Canada, ITC file number 701-TA-298, issued by the U.S. International Trade Commission and published in 54 Federal Register 37838 on September 13, 1989. The Secretariat has assigned Case Number USA-89-1904-11 to this Request for Panel Review. In addition to the first Request for Panel Review, Requests have also been filed by the Canadian Meat Council and its Members, Canada Packers, Inc., the Government of the Province of Alberta and the Gouvernement du Quebec.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the Federal Register on December 30, 1988, (53 FR 53222). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on October 13, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 13, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 27, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 17, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-24908 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Emergency Striped Bass Research Study; Meeting

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 98-118).

DATE: The meeting will convene on Thursday, December 14, 1989 at 10 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Main Conference Room (Lobby Level), Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, Maryland, 20910.

For further information contact David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Telephone: (301) 427-2347.

Dated: October 16, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-24920 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-22-M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, budget status, the fellowship program, new panel member report, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business including communications, technology transfer, coastal ocean program, regional participation, and seafood and science research. The panel members will also participate in a joint session with the Sea Grant Director's Council.

DATE: The announced meeting is scheduled during two days: Sunday, November 19, 1989, 12:45-3:15 p.m. and Monday, November 20, 1989, 9-11:45 p.m. and 2:15-4 p.m.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, room 812, Rockville, Maryland 20852 (301) 443-8925.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Sunday, November 19, 1989—12:45-3:15 p.m.

NOAA/OAR Update and Budget Status
Reauthorization
Special Focus Program
Communications
Sea Grant Council Report
Technology Transfer
Coastal Ocean Program
Regional Participation

Monday, November 20, 1989—9 a.m.-11:45 p.m.

Seafood Science & Technology Research Decline
Strategic Initiatives
Marketing of Sea Grant
Business Initiatives Committee
Law & Policy Committee Report
New Technology Committee
Committee on National Office
Advisory Committee Network
Accidental Release of Non-Local Organisms

Monday, November 20, 1989—2:15 p.m.-4 p.m.

New Panel Member Report
North Carolina Recertification
Site Visits
Southern California
Frankenburg Report
New Business

The meeting will be open to the public.

Dated: October 13, 1989.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 89-24900 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-12-M

Notice of Proposed Amendment of Foreign Fishing Permits for the Bering Sea and Aleutian Islands Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed Permit Amendment.

SUMMARY: NOAA proposes to amend foreign fishing permits for vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China, and the Union of the Soviet Socialist Republics. This amendment will add additional restrictions to the permits for vessels of all nations, except Poland, in order to limit the authorization of those vessels to receive additional pollock from the Bering Sea and Aleutian Islands area (BSAI) under any future 1989 reapportionment from reserves to joint venture processing (JVP). This amendment will not affect the current authorization for foreign vessels to receive groundfish from the JVP apportionment released on September 3, 1989. This amendment will not authorize Polish or any other foreign vessels to engage in directed fishing. Comments may be submitted on this proposal. This action is taken in accord with § 50 CFR 611.3(1) (3) and (4).

DATE: Comments must be received on or before November 22, 1989.

ADDRESS: Send comments to the Operations Support and Analysis Division (F/CM1), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910; or telex comments to 467856 US COMM FISH CI. Mark envelopes "Permit Amendment".

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427-2337.

SUPPLEMENTARY INFORMATION: The President has indicated his desire to accord favorable treatment to Poland in recognition of the advancement of democratic principles under its new government. NOAA proposes to provide special consideration to Poland by ensuring that Polish vessels have an opportunity to receive 25,000 mt of JVP pollock from the BSAI. NOAA proposes to implement this decision by modifying the existing JVP permits for the BSAI for fishing vessels of all countries other than vessels of the Polish Peoples Republic. The permit authorizations for vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China and the Union of Soviet Socialist Republics to receive U.S. harvested Alaska groundfish in the BSAI are proposed to be amended under procedures of 50 CFR 611.3(1). The amendment will restrict vessels of these countries from receiving from the BSAI any part of an apportionment of pollock which may be specified for Polish vessels. The pollock is to be harvested by U.S. vessels in directed fisheries for Alaska pollock. The amount specified for Poland could only be received at-sea from U.S. fishing vessels and would not be available for directed fishing by Polish vessels. Regulations concerning the bycatch of prohibited species would continue to apply to all U.S. and foreign vessels.

The proposed amendments are designed to ensure that Polish vessels engaged in JVP operations have the opportunity to receive 25,000 mt of

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pollock from the BSAI. The Regional Director for the Alaska Region will calculate the amount of pollock from the BSAI received by Polish vessels since September 3, 1989, and the additional amount necessary to ensure that Polish vessels have the opportunity to receive 25,000 mt, if available. If amounts of unapportioned pollock currently in reserve are unnecessary for domestic annual processing (DAP) needs, the Regional Director will release the amount necessary to ensure that Polish vessels have the opportunity to receive 25,000 mt of pollock and will specify that amount for Polish vessels engaged in JVP operations. The Regional Director may release all or part of the apportionment specified for Poland for receipt by permitted vessels of any nation only if he determines that, despite the opportunity, Polish vessels will be unable to receive the specified apportionment by the end of the 1989 fishing year.

This action will further the foreign policy interests of the United States as reflected in the recommendations of the Department of State. This action is taken consistent with the requirements of paragraph (1) of 50 CFR 611.3 and will not adversely impact the resources.

NOAA therefore proposes to amend permits of vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China and the Union of Soviet Socialist Republics by adding a restriction to the their respective authorizations to receive Alaska pollock JVP in the BSAI groundfish fishery. The restriction would read:

This authorization will lapse on notification of this nation's representative by the Regional Director, Alaska Region, that the receipt of groundfish from U.S. vessels engaged in directed fishing for pollock in the BSAI is closed to vessels of the named nation. The implementation of this restriction will be based on a determination by the Regional Director that the balance of the JVP apportionment remaining during the 1989 fishing year is necessary to ensure that Polish vessels have an opportunity to receive 25,000 mt of pollock during the period from September 3, 1989, until December 31, 1989. The receipt of additional pollock by the vessel(s) named above from U.S. vessels following such notification constitutes a violation of these restrictions.

The Secretary of State will notify representatives of each nation whose vessels may be affected by the amendment proposed in this notice. Consistent with provisions of 50 CFR 611.3(1)(4), each nation, the owners of the involved vessels, and their representatives, other concerned Federal agencies and the public will be given 30 days from the date of publication in which to comment on this proposed action.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 17, 1989.

James E. Douglas,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-24980 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; NMFS, Southwest Fisheries Center, (P77#35)

On July 20, 1989, Notice was published in the **Federal Register** (54 FR 30439) that an application has been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271 for a scientific research permit to take California sea lions (*Zalophus californianus*).

Notice is hereby given that on October 16, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permit. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24901 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DIA Defense Intelligence College Board of Visitors; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Wednesday, 1 November 1989, and Thursday, 2 November 1989, from 0900 to 1600, and Friday, 3 November 1989, from 0900 to 1130..

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485 (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b (c) (1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Dated: October 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24892 Filed 10-20-89; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Meeting; Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATE: The meeting will be held from 8 a.m., Wednesday, November 15, 1989 to 10:30 a.m., Friday, November 17, 1989.

ADDRESS: The meeting will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama 36602.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the 47th Meeting of the EAB, "Dredged Material Management; Wetlands Creation and Activities to Control Coastal Erosion," is:

November 15, 1989

0800-0815—Welcome, BG Bunker
0820-0845—Chief's Charge to EAB (Swear-in New EAB Members), LTG H.J. Hatch
0845-0900—EAB Reply to Chief's Charge, Dr. L. Eugene Cronin
0900-1000—Old and New Business, Special Brief on Cultural Activities in SWD, Status of Past Reports, Dr. William L. Klesch
1000-1015—Break
1015-1045—Dredging Program Overview, Mr. John P. Elmore
1045-1100—Questions and Answers, EAB
1100-1230—Lunch
1230-1330—Long Term Management Strategy (LTMS) for the Displacement of Dredged Material, Panel
Overview and Status of National Initiative, Mr. Norman R. Francingues
American Association of Port Authorities, Mr. Eric Stromberg
Mobile District, Mr. J. Patrick Langan
1330-1345—Qustions and Answers, EAB
1345-1445—Management of Contaminated Sediments, Panel
Overview and Issues, Dr. Robert M. Engler
Field Verification Program and Long Term Effects of Dredging Operations, Dr. Thomas M. Dillon
Experiences at New Bedford, MA, and the Great Lakes, Mr. Vyto L. Andreliunas and Mr. Jan A. Miller
Future Directions, Dr. Robert M. Engler
1445-1500—Questions and Answers, EAB
1500-1515—Break
1515-1630—Testing Procedures for Ocean and Inshore Displacement, Panel
Overview and Issues, Corps, Mr. David B. Mathis
Overview and Issues, EPA, Mr. David Davis
The Green Book, Status, Dr. Richard Peddicord
Corps Managment Strategy, Dr. Charles R. Lee
1630-1645—Questions and Answers, EAB
1645-1700—Public Comments, Dr. L. Eugene Cronin
1700—Adjourn.

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0800-0915—SAD Dredging Issues, Panel
Overflow Dredging, Dr. Douglas G. Clarke
Seasonal Restrictions, Mr. Mark W. LaSalle
Thin Layer Displacement, Ms. Susan Ivester Rees
Cultural Resources, Ms. Dorothy H. Gibbens
Sea Turtle Demonstration, Dr. Terry Henwood
0915-0945—Questions and Answers, EAB
0945-1000—Break
1000-1100—Wetland Establishment, Restoration, and Management, Panel
Overview and Beneficial Issues of Dredged Material, Mr. Thomas Patin
Wetland Creation Experiences and Case Studies, Dr. Mary C. Landin
Survey and Workshop Results, Mr. Ellis J. Clarain
Future R&D Directions, Mr. Russel F. Theriol
1100-1130—Questions and Answers, EAB
1130-1300—Lunch
1300-1430—Coastal Erosion, Panel
Overview and Issues, Dr. James R. Houston
Shore Protection Methods, Dr. Thomas W. Richardson
National Underwater Berm Demo, Dr. Thomas W. Richardson, NMFS
State Issues and Problems:
Louisiana, Dr. Charles G. Groat
Florida, Mr. Tom Gardner
1430-1445—Questions and Answers, EAB
1445-1500—Public Comments, Dr. L. Eugene Cronin
1500—Adjourn.

November 17, 1989

0800-0900—Report of EAB to the Chief of Engineers, Dr. L. Eugene Cronin
0900-0915—Break
0915-1000—Response of the Chief of Engineers, LTG H.J. Hatch
1000-1030—Public Comments and Adjourn, Dr. L. Eugene Cronin
1030-1000—Headquarters Command Briefing for EAB (EAB only), Mobile District

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89-24864 Filed 10-20-89; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held October 30-31, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 9 a.m. on October 30. The purpose of the meeting is to finalize the ISAG training program. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed.

1. Opening Remarks
2. Overview of IEA Emergency Measures/ Organization
3. How the IEA Allocation System Operates
4. Use of ISAG Formats
5. Use of Computerized Allocation System
6. Understanding Each Organization's Role
7. Analysis of Impact of Disruption Scenario
8. Voluntary Offer Process
9. Working Sessions

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the ISAG, their counsel, representatives of the IEA Group of Reporting Companies, their counsel, employees of the IEA, employees of the Departments of Energy, Justice, and State, and the Federal Trade Commission and the General Accounting Office, representatives of committees of Congress, representatives of the Commission of the European Communities, and invitees of the ISAG or the IEA.

Issued in Washington, DC, October 16, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89-24935 Filed 10-20-89; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Docket Nos. ER89-124-000, et al.]

Carolina Power & Light Company, et al.; Electric rate, Small power production, and interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Co.

[Docket No. ER89-124-000]

October 11, 1989.

Take notice that on September 28, 1989, Carolina Power & Light Company (CP&L) filed revisions to Appendix A and Exhibit No. 1 to the Amendment to the Interchange Agreement between CP&L and Virginia Electric and Power Company (VaPow) dated August 5, 1988 (CP&L Rate Schedule FPC No. 96 and VaPow Rate Schedule FPC No. 95). These revisions were made pursuant to a Commission Staff request. The changes are requested to become effective on the date the Commission accepts this filing.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Tamal Atlantic

[Docket No. QF90-2-000]

October 11, 1989.

On October 3, 1989, Tamal Atlantic (Applicant), of 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, California 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination had been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at west side of Ocean Heights Avenue at Old River Road, Egg Harbor Township, New Jersey. The facility will consist of two steam generators and a steam turbine generator. The net electric power production capacity will be approximately 20 MW. The primary source of energy will be wood gas produced by the conversion of wood into low-Btu gas via SynGas gasification process.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Co.

[Docket No. ER90-15-000]

October 11, 1989.

Take notice that on October 6, 1989, the United Illuminating Company (UI) tendered for filing a Unit Sales Agreement between UI and the Town of Braintree Electric Light Department (Braintree). The agreement provides for the sale to Braintree of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Braintree. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. United Illuminating Company

[Docket No. ER90-12-000]

October 11, 1989.

Take notice that on October 4, 1989, the United Illuminating Company (UI) tendered for filing a Unit Sales Agreement between UI and Canal Electric Company (Canal). The agreement provides for the sale to Canal of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Canal. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Co.

[Docket No. ER90-14-000]

October 11, 1989.

Take notice that on October 4, 1989, Arizona Public Service Company (APS or Company) tendered for filing a Supplemental Agreement No. 2 (Supplement) to the Wholesale Power Supply Agreement (FPC Rate Schedule No. 52) between APS and the Papago Tribal Utility Authority (PTUA).

The tendered Agreement provides for 6MWs of the PTUA's load to be served as instantaneously interruptible and priced accordingly. The unique purpose of this service is to maintain an expanded load of the PTUA's major customer, Cyprus Casa Grande Corporation, which operates a copper mine within the PTUA's service territory.

This Agreement is proposed to become effective when the FERC issues a final order.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Alaska Power Administration

[Docket No. EF89-1021-000]

October 11, 1989.

Take notice that on September 29, 1989, the Deputy Secretary of the Department of Energy, by Rate Order APA-9, confirmed and approved on an interim basis effective October 1, 1989, the Extension of Rate Schedule SN-F-3 applicable to power from Alaska Power Administration's Snettisham Project. The rate schedule which is being extended was previously confirmed and approved on March 5, 1987 for a period fo 2 years, 11 months, Docket No. EF87-1021-000.

The Department requests approval by the Commission of the extension of the rate for a 2-year period ending September 30, 1991. The rate schedule is submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

Comment date: October 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Tamal Tinton Falls

[Docket No. QF90-1-000]

October 11, 1989.

On October 3, 1989, Tamal Tinton Falls (Applicant), of 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, California 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at 3230 Shafto Road, Tinton Falls, New Jersey 07724. The facility will consist of two steam generators and a steam turbine generator. The net electric power product capacity will be approximately 20 MW. The primary source of energy will be wood gas produced by the conversion of wood into low-Btu gas via SynGas gasification process.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. United Illuminating Co.

[Docket No. ER90-13-000]

October 11, 1989.

Take notice that on October 4, 1989, the United Illuminating Company (UI) tendered for filing a Unit sales

Agreement between UI and the Massachusetts Municipal Wholesale Electric Company (MMWEC). The agreement provides for the sale to MMWEC of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to MMWEC. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Western Area Power Administration

[Docket No. EF90-5161-000]

October 11, 1989.

Take notice that on October 3, 1989, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-40, did confirm and approve on an interim basis, to be effective on the first day of the October 1989 billing period, Western Area Power Administration's (Western) Power Rate Schedule L-F1 for the Loveland Area Projects (LAP): The Fryingpan-Arkansas Project (Fry-Ark), and the Pick-Sloan Missouri Basin Program—Western Division (P-SMBP-WD). The power rates will be in effect pending the Commission's approval of them or substitute rates, on a final basis for a 5-year period of time or until suuperseded.

The fiscal year 1987 power repayment studies indicated that the existing revenue returns were not sufficient to satisfy the cost-recovery criteria for either project through the appropriate study periods. The initial Rate Schedule L-F1 will yield adequate revenues to satisfy these criteria. Since this is the initial rate for the LAP, we cannot compare this rate to the existing rates for the projects. However, the total revenue return of the rates are compared as follows:

Loveland Area Projects

REVENUE RETURN

Project	Existing rate	Proposed rate	Absolute change	Percentage change
Fry-Ark	$9,000,000	$9,242,000	$242.000	+2.7
P-SMBP-WD	18,811,682	20,603,222	1,791.540	+9.5
LAP	27,811,682	29,845,222	2,033,540	+7.3

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates to customers consistent with sound business principles. The rate schedule is submitted by the Deputy Secretary for confirmation and approval on a final basis for a 5-year period, pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204-108, as amended.

Comment date: October 31, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24881 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-3-000]

LUZ Development and Finance Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 16, 1989.

On October 3, 1989, LUZ Development and Finance Corporation (Applicant), of 924 Westwood Boulevard, Suite 1000, Westwood, California 90024, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately thirty one miles west of Barstow, California, near the junction of U.S. Highway 395 and California Highway 58 at Kramer Junction, California. The facility will consist of AC to DC and DC to AC converters, and electro-chemical battery and control system. The maximum net electric power production capacity of the facility will be 30 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24889 Filed 10-20-89; 8:45 am]

Billing Code 6717-01-M

[Docket No. QF85-148-003]

Wadham Energy Limited Partnership, a California Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

October 13, 1989.

On October 3, 1989, Wadham Energy Limited Partnership, A California Limited Partnership (Applicant) of 3510 Unocal Place, Santa Rosa, California, 95403 submitted for filing an application for recertification of a facility as a

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qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Colusa County, about five miles south of Williams, California. The facility will consist of a biomass-fired steam generator and a steam turbine generator. The primary energy source of the facility will be biomass in the form of rice hulls and rice straw. The net electric power production capacity of the facility will be approximately 26.5 MW.

The certification for the original application was issued on December 15, 1987 (41 FERC ¶ 62,245). Instant recertification is requested due to change of ownership. Wadham Energy Company, Inc. (Wadham) is the sole general partner. AT&T Credit Corporation is the sole limited partner. Wadham is a wholly-owned subsidiary of Oxford Energy Inc. (OEI). OEI is a wholly-owned subsidiary of Oxford Energy Company (Oxford). CMS Generation Co. (CMS) currently owns 49.85% of Oxford's Common Stock. CMS is indirectly owned by CMS Energy Corporation, an Electric Utility holding Company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties in the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24893 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10710-001 Washington]

Washington Water Power Co.; Surrender of Preliminary Permit

October 16, 1989.

Take notice that Washington Water Power Company, permittee for the Monroe Street Second Powerhouse Project No. 10710, to be located on the Spokane River in Spokane County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 14, 1989, and would have expired on March 31, 1992.

The permittee filed the request on September 28, 1989, and the preliminary permit for Project No. 10710 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24890 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-230-001]

El Paso Natural Gas Co.; Compliance Filing

October 16, 1989.

Take notice that on October 6, 1989, El Paso Natural Gas Company (El Paso) filed workpapers in compliance with the Commission's order dated September 29, 1989.

El Paso states that these workpapers contain interest computations on revised rates and charges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24892 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-10-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 16, 1989.

Take notice that Equitrans, Inc. (Equitrans) on October 11, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Second Revised Sheet No. 177C

Equitrans requests authority to track the recovery of firm transportation charges assessed to it by Texas Eastern Transmission Corporation ("TETCO") under Rate Schedule FT-1. At present Equitrans is a customer of TETCO under Rate Schedule DCQ. On September 29, 1988, the Commission approved a joint settlement filed by TETCO in Docket Nos. RP85-177-000, *et al.* which, among other things, will allow TETCO's DCQ customers to replace DCQ service with firm sales sevice under Rate Schedule CD-1, standby service and the option to convert a portion or all of their CD-1 entitlements to firm transportation under Rate Schedule FT-1. Prior to November 1, 1989, Equitrans will enter into a new ten (10) year sales service agreement with TETCO under its new CD-1 sales service and convert a portion of its sales entitlements to firm transportation.

Commission orders in *Equitrans, Inc.*, Docket No. TA89-1-24-000, Letter Order issued August 31, 1989, pp.2-3, *Carnegie Noturol Gas Co.*, 47 FERC 61,379, 62,289-90 (1989), and *CNG Transmission Corp.*, 45 FERC 61,361, 62,361-62 (1988) authorized the tracking of standby costs in PGA filings. Equitrans is hereby requesting the same treatment be afforded to FT-1 costs, i.e., that they be tracked in Equitrans' PGA on an as-billed basis, and these charges be included as a separately identified component in Equitrans' rate. Pursuant to § 154.51 of the Commission's regulations, Equitrans also requests that the Commission grant any waivers that may be necessary to permit Second Revised Sheet No. 177C to become effective on November 1, 1989, the same day that the option for TETCO's customers to convert from DCQ to CD-1 becomes effective.

Equitrans states that a copy of its filing has been served upon its customers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24883 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-37-000]

Northwest Pipeline Corp.; Annual Charges

October 16, 1989.

Take notice that on September 11, 1989, Northwest Pipeline Corporation (Northwest), filed a letter pursuant to § 154.38(d)(6) of the Commission's regulations stating that Northwest will file no changes to its ACA surcharge.

Northwest states that applying its 1989 system average of 1015 Btu per cubic foot of gas to the .17¢ per Mcf surcharge factor results in a surcharge per MMBtu of .17¢ which equates to Northwest's currently effective ACA surcharge.

Northwest requests that the Commission grant any waivers it may deem necessary for the acceptance of the filing.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24886 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-4-37-010; RP89-1-012]

Northwest Pipeline Corp.; Compliance Filing

October 16, 1989.

Take notice that on October 10, 1989, Northwest Pipeline Corporation (Northwest), filed Sixth Revised Sheet No. 201 and Ninth Revised Sheet No. 201 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective July 1, 1988 and July 1, 1987, respectively.

Northwest states that this filing is made in response to an August 25, 1989 Office of Pipeline and Producer Regulation letter. Northwest states that these tariff sheets contain rates from which the ANR Pipeline Company crediting adjustments are derived.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24884 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-23-004 and RP89-182-002]

Northern Natural Gas Co., Division of Enron Corp.; Filing

October 16, 1989.

Take notice that on October 6, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 52f.12b

Northern states that this tariff sheet is submitted in compliance with the Commission's September 22, 1989 Order Granting Rehearing wherein the Commission directed Northern to modify its FT-1 Rate Schedule to reflect present Commission Policy by allowing shippers to certify that they have title to the gas to be transported or a contractual right to acquire title at the time the shipper requests transportation service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24885 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-342-000]

Pacific Gas & Electric Co.; Filing

October 12, 1989.

Take notice that on September 20, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing a rate schedule change to Rate Schedule FERC No. 79, for service provided by PG&E to Western Area Power Administration (Western) pursuant thereto. This filing amends PG&E's previous filing in FERC Docket No. ER89-342-000, reflecting the resolution by the parties of issues raised by Western in this docket concerning the calculation of the energy rates. PG&E states that copies of the filing have been served upon Western and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

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not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretry.

[FR Doc. 89-24887 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 16, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 11, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Seventh Revised Sheet No. 68
Substitute Seventh Revised Sheet No. 69
Substitute Seventh Revised Sheet No. 70
Substitute Seventh Revised Sheet No. 71

Texas Eastern states that this filing is being made to track modifications to Texas Gas Transmission Corporation's (Texas Gas) Order No. 500 fixed monthly surcharge in compliance with the Commission's order on August 18, 1989 in Texas Eastern's Docket No. TM89-8-17-000.

Texas Eastern states that it filed tariff sheets on July 20, 1989 to recover take-or-pay costs filed by Texas Gas which flow-through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Texas Eastern's July 20, 1989 filing was accepted by the Commission on August 18, 1989 in Docket No. TM89-8-17-000 to be effective August 1, 1989. On August 25, 1989 Texas Gas filed tariff sheets, which were approved by the Commission on September 22, 1989, tracking a revision by Tennessee to the demand surcharge. The revised tariff sheets reduce the total principal amount allocated to Texas Eastern from $42,923 to $41,084, to be amortized over the six month period beginning August 1, 1989.

Texas Eastern states that the tariff sheets proposed for filing herein are being filed solely to track revisions made by Texas Gas on August 25, 1989 and the resulting reduction in the total principal amount allocated to Texas Eastern. Substitute Seventh Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on August 25, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under appendix A of the filing.

Texas Eastern states that in tracking Texas Gas's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

The proposed effective date of the above tariff sheets is August 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24888 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-65-NG]

Amoco Energy Trading Corp.; Application To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 15, 1989, of an application filed by Amoco Energy Trading Corporation (AETC) requesting blanket authorization to export from the United States to Canada up to 200,000 Mcf of natural gas per day or up to 73 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. AETC intends to transport the gas through existing pipeline facilities and will advise the DOE of the date of first delivery. AETC intends to submit quarterly reports detailing each transaction.

The application is filed with the Office of Fossil Energy under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 e.d.t., November 22, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: AETC, a Delaware corporation with its principal place of business in Chicago, Illinois, is a wholly-owned subsidiary of Amoco Production Company, which is a wholly-owned subsidiary of Amoco Company, which is wholly-owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in the exploration, production, refining, transportation, and marketing of oil, natural gas and other hydrocarbons. AETC intends to sell natural gas pursuant to freely negotiated contracts at competitive prices. AETC cannot at this time identify the parties purchasing the natural gas that AETC proposes to export because no sales contracts have been executed.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border point where existing transmission facilities are located. In addition, the total amount of authorized volumes may be designated for the term rather than a daily or yearly limit, in order to provide the applicant with maximum flexibility of operations.

AETC indicates in its application that it may request confidential treatment of the quarterly reports that DOE requires importers to file if the application is granted. All parties should be aware that the DOE's disclosure policy and regulations implementing the Freedom of Information Act (*see* 10 CFR Part 1004) require information in the possession of the Department to be made available to the public to the fullest extent possible. In accordance with policy and regulation, while the DOE examines requests for confidentiality on a case-by-case basis, parties making such requests bear the burden of justifying confidential treatment. The DOE emphasizes that public participation has been a cornerstone of the Department's import and export policy and program, and limiting access to transaction details necessarily impairs the public's ability to comment on proposed arrangements. The DOE also emphasizes that, in the case of blanket arrangements such as AETC proposes, limited confidentiality is afforded by the quarterly reporting requirements since transaction information is not required to be filed until 30 days after the end of each calendar quarter.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed at the above address. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AETC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 16, 1989.

Clifford P. Tomaszewski,

Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-24936 Filed 10-20-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-61-NG]

Western Gas Processors, Ltd., Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorizations to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 5, 1989, of an application filed by Western Gas Processors, Ltd. (WGP) for blanket authorization to import up to 100,000 MMBtu (approximately 100,000 Mcf) of Canadian natural gas and export up to 100,000 MMBtu of domestic natural gas to Canada. The application requests that the import/export authority be approved for spot and short-term sales for a two-year period commencing on the date of first delivery. WGP intends to utilize

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existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 22, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: WGP, a Colorado Limited Partnership, with its principal place of business in Denver, Colorado, proposes to import and export natural gas, either for its own account or as an agent for the account of others, for short-term, spot sales to either United States or various Canadian customers. According to the application, the authority requested by WGP contemplates the importation of competitive Canadian natural gas supplies for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Canadian markets. According to WGP, the specific terms of each import and export transaction would be freely negotiated on an individual basis to reflect market conditions.

In support of its application, WGP asserts that a domestic natural gas surplus currently exists and that its export transactions will benefit U.S. suppliers who might not otherwise have a market for their excess gas. With respect to Canadian gas, WGP states that the short-term nature of the sales will minimize reliance on its blanket imports. WGP also states that its proposal is in the public interest since it does not require construction of any new facilities that may pose potential environmental impacts.

WGP asks that the DOE grant its blanket import/export request on an expedited basis. A decision on WGP's request for expedited treatment will not be made until all responses to this notice are received and evaluated. The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above. They must be filed no later than 4:30 p.m., e.s.t., November 22, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of WGP's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 16, 1989.

Clifford P. Tomaszewski,

Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24937 Filed 10–20–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3673–9]

Khoury Trailer Park Drum Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Khoury Trailer Park Drum Site, Fort Valley, Georgia, with Fort Valley Oil Company, Inc., and F. Herbert Hiley, Jr. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: October 12, 1989.

Patrick M. Tobin,

Director, Waste Manogement Division, EPA Region IV.

[FR Doc. 89–24922 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3674–1]

1987 Chesapeake Bay Agreement; Proposal for Review

A draft Baywide Fishery Management Plan for striped bass, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, is now available for public review. Comments will be accepted through November 21, 1989. Comments should be sent to Mr. Pete Jensen, Maryland Department of Natural Resources, Tidewater Fisheries, Tawes State Office Building C–2, Annapolis, MD 21401.

To obtain a copy of the draft plan, call Mr. Jensen at 301/974–3558 or Mr. David Packer, EPA Chesapeake Bay Liaison Office, 301/266–6873. For additional information, contact Mr. Jensen.

Charles S. Spooner,

Director, Chesapeake Boy Liaison Office.

[FR Doc. 89–24921 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 22, 1989

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 22, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has continued to expand at a moderate pace in recent months. In July, total nonfarm payroll employment rose appreciably further after a large advance in June, and the civilian unemployment rate, at 5.2 percent, remained close to its average level in earlier months of the year. Industrial production edged higher in July, continuing the slower growth observed since the beginning of the year. Retail sales have grown at a moderate pace in recent months. Housing starts rose slightly further in July following a large gain in June. Recent indicators of business capital spending suggest slower growth after the substantial increase in the first half of the year. The nominal U.S. merchandise trade deficit narrowed considerably in June and for the second quarter as a whole was about unchanged from a substantially reduced average value in the first quarter. Partly reflecting reductions in energy prices, increases in consumer prices moderated in June and July. The latest wage data suggest no change in prevailing trends.

Interest rates show mixed changes on balance since the Committee meeting on July 5–6. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies has risen on balance over the intermeeting period.

M2 and M3 grew markedly in July, lifting expansion of M2 thus far this year to around the lower end of the Committee's annual range, and keeping M3 somewhat above the lower bound of the Committee's range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 3 to 7 percent and 3–½ to 7–½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 6–½ to 10–½ percent for the year. For 1990, on a tentative basis, the Committee agreed in July to use the same ranges as in 1989 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 9 and 7 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, October 13, 1989.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89–24874 Filed 10–20–89; 8:45 am]

BILLING CODE 6210–01–M

[1] Copies of the record of policy actions of the Committee for the meeting of August 22, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

FEDERAL TRADE COMMISSION

[Dkt. 9230]

The Hensley Group, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting

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unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a promoter of timeshare and other real estate property interests from representing that a consumer has won a specified prize when he or she has not won the specified prize. The proposed order would require respondents to disclose any applicable costs immediately following reference to the prize.

DATE: Comments must be received on or before December 22, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580, (202) 326–3127.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Hensley Group, by its duly authorized officer, and H. Lloyd Hensley, individually and as an officer of The Hensley Group, ("respondents") and counsel for the Federal Trade Commission enter into this agreement in accordance with the Commission's rules governing consent order procedures. The parties agree that:

1. The Hensley Group, is a Virginia corporation with its principal office and place of business located at 4701 A Eisenhower Avenue, Alexandria, Virginia 22304.

H. Lloyd Hensley is an officer of The Hensley Group. He formulates, directs and controls the acts and practices of The Hensley Group. His address is the same as that of The Hensley Group.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Section 5 of the Federal Trade Commission Act.

3. Respondents admit all the jurisdictional facts set forth in the Commission complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (a) issue its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents, address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and its officers, and H. Lloyd Hensley, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing, directly or by implication, that a consumer has won a specified prize, award, gift, bonus, premium, or any other good or service which is similarly described when in fact the consumer has not won the specified prize, gift, bonus, premium, or other good or service similarly described.

II

It is further ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and its officers, and H. Lloyd Hensley, individually and as an officer of said corporation, and respondents, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing directly or by implication to any consumer that they will receive a prize, award, gift, bonus, premium, or any other good or service which is similarly described, without disclosing fully, in type of equal size to that used to identify such good or service and immediately following each good or service thus represented, any cost that the consumer must pay to receive such good or service.

III

It is further ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and H. Lloyd Hensley, individually and as an officer of said corporation, shall

for three years after the date the representation was last made maintain and upon request make available to the Federal Trade Commission for inspection and copying accurate records of (1) all advertising, promotional or sales materials containing representations regarding prize or gift offerings and (2) all prizes or gifts awarded pursuant to such offerings.

IV

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI

It is further ordered, That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement for a proposed consent order from The Hensley Group and its president, H. Lloyd Hensley. The Hensley Group is a promoter of timeshare and other real estate property interests. Its principal place of business is located at 4701 A Eisenhower Avenue, Alexandria, Virginia 22304.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments of interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that in numerous instances, The Hensley Group and H. Lloyd Hensley have made false and misleading representations that a named consumer has won one or more specified prizes. The complaint also alleges that in numerous instances, the Hensley Group and H. Lloyd Hensley have made false and misleading representations that consumers will receive one or more prizes at no cost, where additional costs must be paid by consumers.

The proposed consent order would prohibit The Hensley Group and H. Lloyd Hensley from representing that a consumer has won a specified prize when he or she has not won the specified prize. The proposed consent order would also require that The Hensley Group and H. Lloyd Hensley disclose any applicable costs immediately following reference to the prize.

The proposed order would require The Hensley Group and H. Lloyd Hensley to retain accurate records for three (3) years of all advertising and promotional materials containing representations regarding prize or gift offerings, and records of all prizes and gifts awarded. The proposed order would require The Hensley Group and H. Lloyd Hensley to notify the Commission of any proposed change in the corporation which may affect compliance with the order, and to file a compliance report within 60 days after service of the order. Finally, the proposed order would require H. Lloyd Hensley to notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment for a period of ten (10) years from the date of service of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 89–24938 Filed 10–20–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

RF-Induced Body Current and Absorbed Power Determinations Meeting: Cancellation

The Centers for Disease Control (CDC) is cancelling the meeting of the National Institute for Occupational Safety and Health (NIOSH): RF-Induced Body Current and Absorbed Power Determinations scheduled for October 24, 1989. The meeting was announced by notice in the **Federal Register** of October 2, 1989 (54 FR 40526).

FOR FURTHER INFORMATION CONTACT: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway (C27), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533–8482, FTS: 684–8482.

Dated: October 17, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–24905 Filed 10–20–89; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–2069; FR–2712–N–01]

Committee on Housing for Handicapped Families; meeting

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of meeting of the Federal Advisory Committee on Housing for Handicapped Families.

SUMMARY: This notice announces the second meeting of the Federal Advisory Committee on Housing for Handicapped Families. The meeting will be held on November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Elderly and Assisted Housing—Housing for Handicapped People, Office of Multifamily Housing Programs, 451 Seventh Street SW., room 6114, Washington, DC 20410–8000; telephone: (202) 755–3267 (voice) or (202) 755–6600 (TDD). (These are not toll-free numbers.)

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SUPPLEMENTARY INFORMATION: Section 162 of the Housing and Community Development Act of 1987 requires the Secretary to adopt distinct standards and procedures for development of housing for handicapped families under the section 202 program that reflect the difference between such housing and housing for elderly families also developed under section 202. In adopting these standards, the Secretary is directed to ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act. In compliance with the Act, an announcement of intent to establish the Committee was published in the Federal Register on January 24, 1989.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2), announcement is made of the following meeting:

The Federal Advisory Committee on Housing for Handicapped Families will meet on Monday, November 6, 1989. The meeting will convene at 9:45 a.m. at the Department of Housing and Urban Development, Room 10233, 451 Seventh Street SW., Washingotn, DC 20410–8000. The meeting is open to the public. Names of committee members may be obtained by calling (202) 755–3287.

The Committee will assist and advise the Department in implementing the legislation, as the Department adopts distinct standards and procedures for the allocation of funds and the processing of applications for loans and assistance payments under the new program.

The agenda will include a discussion of development cost limits for group homes, a review of Advisory Committee recommendations and their impact on the final rule, an analysis of the Fiscal Year 1989 funding round, and recommendations for program evaluation studies. The final agenda will be available at the meeting.

Authority: Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; section 10 of the Federal Advisory Committee Act, 5 U.S.C. App. 1.

Dated: October 17, 1989.

Peter Monroe,

Acting General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89–24903 Filed 10–20–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–00–4320–02]

Bakersfield District Grazing Advisory Board meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. Law 92–463) and the Federal Land Policy and Management Act (Pub. Law 94–579) that the Bakersfield District Grazing Advisory Board will meet Friday, November 17, 1989 from 10 a.m. to 3 p.m. in Room 224 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California.

SUPPLEMENTAL INFORMATION: The agenda for the meeting will include discussion of FY 89 project accomplishments, FY 90 planned projects, and allotment management planning in the District.

The meeting is open to the public. Interested persons may make oral statements, or file written statements for consideration by the Board. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by November 15, 1989.

Summary minutes of the meeting will be maintained in the Bakersfield District Office, and will be available for inspection, during business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Burke, District Range Conservationist, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301 (805) 861–4191.

Dated: October 13, 1989.

Nancy Cotner,

Associate District Manager.

[FR Doc. 89–24865 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 that the Canon City District Advisory Council (DAC) meeting will be held Wednesday, November 8, 1989, 10:30 a.m. to 5 p.m. and Thursday, November 9, 1989, 8 a.m. to 12 noon, at the Holiday Inn, 333 Santa Fe Avenue, Alamosa, Colorado. The meeting agenda will include:

1. Update on the Arkansas River Recreation Management Plan.
2. Discussion of the draft San Luis Resource Management Plan/ Environmental Impact Statement.
3. Briefing on the preliminary Royal Gorge Resource Management Plan/ Environmental Impact Statement.
4. Reports from Area Managers on current programs.
5. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. on November 8 or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 275–0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 89–24916 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–09–4111–15; WYW91347]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 12, 1989.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW91347 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW91347 effective August 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Acting Supervisory Land Law Examiner.

[FR Doc. 89–24867 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Cruise Ship Authorizations Within Glacier Bay National Park; Availability of Report

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the National Park Service has studied the issue of cruise ship authorizations within Glacier Bay National Park and has preliminarily decided to adopt an alternative that will increase opportunities for competitive allocation of vessel entries into Glacier Bay. This matter only concerns allocation of existing Glacier Bay cruise ship entries, not the permitted number of such entries. A final decision in this matter will be made after receipt and consideration of written public comment.

DATES: Comments on the National Park Service recommendation must be submitted on or before the sixtieth day following publication of this notice.

ADDRESSES: Copies of the National Park Service preliminary decision and the Task Force report are available from: National Park Service, Concessions Division, 1100 "L" Street, NW., Room 3207, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Wendy Mann of the National Park Service Concessions Division at the address given above; telephone 202/343–1550.

Dated: September 22, 1989.

James M. Ridenour,

Director, National Park Service.

[FR Doc. 89–24877 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–70–M

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held at 8:30 a.m., in the Hays Tavern at the Hays House Restaurant, 112 West Main Street, Council Grove, Kansas.

The Santa Fe National Historic Trail Advisory Council was established pursuant to Public Law 90–543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—National Park Service revisions to the Draft Comprehensive Management and Use Plan.

—Initial plan implementation objectives.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Project Coordinator.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Project Coordinator, Santa Fe National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6779. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Project Coordinator, located in Room 346, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: October 17, 1989.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 89–24907 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0049), Washington, DC 20503, telephone 202–395–7340.

Title: Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, 30 CFR part 822.

OMB approval number: 1029–0049.

Abstract: This section requires the permittee to install, maintain and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is needed to ensure that the agricultural utility and production of the alluvial valley floor is maintained.

Bureau Form Number: None.

Frequency: Semi-annually.

Description of Respondents: Coal Mining Operators.

Estimated Completion Time: 20 hours.

Annual Responses: 64.

Annual Burden Hours: 1,280.

Bureau Clearance Officer: Andrew F. DeVito 202–343–5954.

Dated: September 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89–24866 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1095X)]

Notice of Exemption; Consolidated Rail Corp.; Abandonment Exemption—in Lancaster and Chester Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152, subpart F—*Exempt Abandonments* to abandon about 66.5 miles of railroad line in Lancaster and Chester Counties, PA: (1) between the clearance point of the switch to Green Giant in Parkesburg, near milepost 1.1, and its connection to the Port Road Branch at CP "Port" in Manor Township, near milepost 33.7 (about 32.6 miles); and (2) between its connection to Amtrak at CP "Park" in Parkesburg, near milepost 0.0, and its connection to the Port Road Branch at

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CP "Port" in Manor Township, near milepost 33.9 (about 33.9 miles).

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 2, 1989.[3]

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 13, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

John J. Paylor, Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24924 Filed 10–20–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting Panel; Meeting

ACTION: Notice of meeting.

Summary: The National Commission on Migrant Education will hold its second meeting on Saturday, November 4, 1989. The Commission was established by Public Law 100–297, April 28, 1988.

Date, Time, and Place: Saturday, November 4, 1989, 9 a.m.–4 p.m., The Barclay Hotel, BAROQUE room, 237 S. 18th Street, Philadelphia, Pennsylvania 19103.

Status: Open meeting except for initial one and one-half hours which will be closed under 5 U.S.C. section 552 b(c) (2) and (6) as incorporated under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App 1), for the purpose of discussing hiring of staff and considering internal personnel rules and practices.

Agenda: The open meeting will be devoted to general discussion on operating procedures, study, scope, and schedule.

For Additional Information: Contact Nancy Watson, 301–492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 89–24940 Filed 10–20–89; 8:45 am]

BILLING CODE 6820–DE–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–73]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: November 7, 1989, 8:30 a.m. to 5:30 p.m., November 8, 1989, 8:30 a.m. to 5 p.m., and November 9, 1989, 8:30 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss status of Office of Space Science and Applications programs, Space Station issues and future Committee tasks. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

Tuesday, November 7

8:30 a.m.—Opening Remarks.
8:45 a.m.—Office of Space Science and Applications (OSSA) Program Status.
10:15 a.m.—Committee Discussion.
11 a.m.—Information Systems Strategic Plan.
1:15 p.m.—Exploration Initiative: Overview.
1:45 p.m.—View from OSSA: Precursor Missions, Impacts on OSSA Strategic Plan, FY 90/91 Impacts.
2:30 p.m.—Role of Exploration Science Working Group.
2:45 p.m.—Exploration Requirements for Space Station.
3:15 p.m.—Committee Discussion.
3:45 p.m.—Space Station Program Status.
4:30 p.m.—OSSA Space Station Planning Impacts.
5 p.m.—Committee Discussion.
5:30 p.m.—Adjourn.

Wednesday, November 5

8:30 a.m.—Committee Business.
8:45 a.m.—Division Subcommittee Reports.
10:45 a.m.—Solar Systems Exploration Program Overview.
12 Noon—The Neptune Encounter.
1:30 p.m.—OSSA Strategic Planning.
3:40 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Thursday, November 9

8:30 a.m.—Writing Group Work Sessions.
10:45 a.m.—Committee Discussion of Draft Statements.
1:30 p.m.—Committee Discussion With Dr. Fisk.
3 p.m.—Adjourn.

Dated: October 16, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–24899 Filed 10–20–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 13–16, 1989, from 9 a.m.–9 p.m. and November 17, 1989, from 9 a.m.–5 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 16, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–24917 Filed 10–20–89; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of title 5, United States Code.

1. *Date:* November 16–17, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, for the Division of General Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89–24930 Filed 10–20–89; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Generic Letter (GL) 89–13 Service Water System Problems Affecting Safety-Related Equipment

SUMMARY: The United States Nuclear Regulatory Commission (USNRC) is planning to hold four public meetings to discuss Generic Letter (GL) 89–13, "Service Water System Problems Affecting Safety-Related Equipment." The purpose of these meetings is to discuss the guidance contained in Generic Letter 89–13 with operators of commercial nuclear power plants and near term operating license applicants of nuclear power plants. The NRC staff plans to make a brief presentation on the contents of the Generic Letter at each meeting. However, the main focus of these meetings will be to discuss questions received from licensees and applicants.

DATE AND LOCATION: These meetings will be held from 10 a.m.–5 p.m. on the following dates at the following locations:

November 28, 1989, Philadelphia Airport Hilton Inn, 10th & Packer Avenue, Philadelphia, PA 19148, (215) 755–9500.

November 30, 1989, The Westin Peachtree Plaza, Peachtree at International Blvd., Atlanta, GA 30343–9986, (404) 659–1400.

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December 5, 1989, Rosemont O'Hare Conference Center, 5555 North River Road, Rosemont, IL 60018, (312) 692–2220 (across the street from Raddison Suite Hotel, O'Hare Airport), 5500 North River Road, Rosemont, IL 60018, (312) 678–4000.

December 7, 1989, The Registry Hotel, 2303 Quebec Street, Denver, CO 80207, (303) 321–3333.

FOR FURTHER INFORMATION CONTACT: Angela T. Chu, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555. Telephone (301) 492–1429.

SUPPLEMENTARY INFORMATION: These meetings are intended to be workshops where technical personnel from nuclear power plants or utility corporate offices may obtain information on expected responses to the Generic Letter. In order to assist NRC staff in preparing for these meetings, individuals planning to attend are requested to forward questions on the Generic Letter to their respective NRC Project Manager and to indicate the particular meeting they will attend. As time permits, additional questions will be solicited from the audience. Opportunities will be provided for the public to ask questions although priority will be given to nuclear utility personnel.

For the Nuclear Regulatory Commission.

Angela T. Chu,

Project Engineer, Project Directorate I–3, Division of Reactor Projects I.

[FR Doc. 89–24526 Filed 10–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–25]

Rockwell International Corp., Rocketdyne Division; Establishment of Temporary Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has established a temporary local public document room (LPDR) for Rockwell International Corporation, Rocketdyne Division's Santa Susana Field Laboratory.

The LPDR will be maintained for the duration of proceedings on Rockwell International Corporation's request to renew the special material license for this facility (Special Material License Number SNM–21).

Members of the public may now inspect and copy documents and correspondence related to these proceedings at the Chatsworth Branch Library, 21052 Devonshire Street, Chatsworth, CA 91311. The library is open on the following schedule: Monday through Thursday 1 p.m. to 8 p.m.; Friday 10 a.m. to 5:30 p.m.; and Saturday 9 a.m. to 1 p.m.

For further information, interested parties in the Chatsworth area may contact the LPDR directly through Cecelia Riddle, telephone number (818) 341–4276/4278. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Teresa D. Linton, LPDR Information Services Librarian, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 16th day of October 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–24927 Filed 10–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Louisiana Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Louisiana Power and Light Company (the licensee), for operation of the Waterford Steam Electric Station, Unit No. 3 located in St. Charles Parish, Louisiana.

The amendment would revise the Technical Specification (TS) on boron dilution and charging pumps—operating to permit changing plant operation from Mode 3 to Mode 2 by deborating the reactor coolant system. This change corrects the actions required by License Amendment No. 48, issued on December 14, 1988 which are correct for startup by pulling control element assemblies but inadvertently precluded startup by deboration.

The conflict with the TS issued by Amendment No. 48, which would preclude reactor startup by deboration, was first discovered by reactor operators. Discussions within the licensee organization began on correcting the conflict by license amendment but no immediate urgency was deemed necessary. During a subsequent management review, the licensee staff learned that the upcoming startup followng the ongoing refueling would use deboration to reach critically. This method is best for determining certain physics parameters for operation in Cycle 3 and 4. The license notified the NRC staff of the urgent need for the license amendment, arranged a special Safety Review Committee meeting to approve the request, and submitted the proposed TS change promptly thereafter. The license currently plans to enter Mode 2 on November 15, 1989 which will not allow the full 30 days for comments on the proposed action. A delay in issuing the amendment will, on the current restart schedule, delay the restart.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In order to perform reactor startup physics tests by deborating the reactor coolant system, the licensee must examine the current boron dilution analysis and assumptions. The current TS based on the approved analysis assumes the dilution alarms are not operable and that an additional 30 minutes is required to analyze samples. This results in the requirement that charging pumps are not operating. However, for the reactor startup by deborating to occur, the charging pumps must be available. The licensee has chosen to revise the assumption for the approved boron dilution analysis to achieve pump operation; this condition would require the two dilution alarms to be operable. The TS change is to add a condition for dilution alarms and pumps operable. There is no change to the dilution analysis methods and all conservatisms and margins remain as before. The proposed change to the TS would also allow the plant to operate in the condition found acceptable before Amendment No. 48 was issued in December 1988.

The dilution analysis methods for Waterford 3 remain unchanged; the assumption for the analysis have been corrected for the case where dilution alarms and charging pumps are operable. The analysis results do not significantly change the conservatisms found acceptable for Waterford nor does the change in operation differ to any extent from that previously found acceptable. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will involve an operational condition for dilution alarms and pumps operable and this condition was found acceptable for Waterford 3 at startup. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The current analysis includes a 30 minute delay for coolant sample analysis because the dilution alarms are not operable. With the two dilution alarms operable, the 30 minutes is not required by the analysis. The proposed change is analyzed to the acceptable methods, therefore, it does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 7, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at The University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the

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Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 5, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 16th day of October 1989.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Project Manager, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24925 Filed 10-20-89; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, October 26, 1989, from 9 a.m. to 5:30 p.m. and on Friday, October 27, 1989, beginning at 8:30 a.m. The meeting will be held at the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., in the Wintergarden meeting room. Among the topics to be discussed are: Commission plans for refining the relative value scale, an update on the Commission's work on practice costs, payment of limited license practitioners, physician payment under Medicaid, antitrust issues in physicians' collective responses to expenditure targets and financial protection for beneficiaries. A copy of the agenda can be obtained from the Commission office the week of the meeting.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89-24897 Filed 10-20-89; 8:45 am]

BILLING CODE 6820-SE-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated October 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0088.
Form Number: None.
Type of Review: Extension.
Title: Foreign Assembler's Declaration (with Endorsement by the Importer).
Description: Endorsement is used to substantiate a claim for duty-free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States. This is a recordkeeping requirement pursuant to 19 CFR 162.1c with a retention period of 5 years after date of related entry.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Number of Respondents: 2,730.
Estimated Burden Hours Per Response/Recordkeeping: 50 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 283,469 hours.
Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-24879 Filed 10-20-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: October 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0702.
Form Number: Form 8023.
Type of Review: Revision.
Title: Corporate Qualified Stock Purchase Elections.
Description: Form 8023 is used by corporations that acquire a corporation to treat that acquisition as an acquisition of assets. IRS uses Form 8023 to determine if the selling corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 201.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 8 hours, 22 minutes.
Learning about the law or the form, 1 hour, 12 minutes.
Preparing and sending the form to IRS, 1 hour, 23 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 2,199 hours.

OMB Number: 1545–0797.
Form Number: None.
Type of Review: Extension.
Title: Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group.
Description: The Income Tax Regulations relating to the definition of a brother-sister controlled group of corporations or businesses are amended to reflect a recent Supreme Court decision. Amendments will apply retroactively. However, taxpayers may elect prospective effect in certain circumstances.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2.
Estimated Burden Hours Per Response: 1 hour, 30 minutes.
Frequency of Response: One-time election.
Estimated Total Reporting Burden: 3 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-24878 Filed 10-20-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Receipt of Request for Import Restrictions from the Government of Guatemala Under the Convention on Cultural Property Implementation Act

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of Guatemala, a State Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from Guatemala is for U.S. import restrictions on certain endangered archaeological materials to assist Guatemala in protecting its cultural patrimony.

Dated: October 13, 1989.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 89-24914 Filed 10-20-89; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Paris on October 30–31, 1989. The Commission will consult with Public Affairs Officers on the effectiveness of U.S. Information Agency programs in the context of the changing political and economic situation in Europe.

Please call Gloria Kalamets, (202) 485–2468 for further information.

Dated: October 16, 1989.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 89-24915 Filed 10-20-89; 8:45 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

October 18, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: October 25, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 904th Meeting—October 25, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3195-030, Sayles Hydro Associates
CAP-2.
Project No. 9248-003, Town of Telluride, Colorado
CAP-3.
Project Nos. 8256-009 and 010, Electro-Technologies, Ltd.
CAP-4.
Project Nos. 2911-011 and 3015-005, 2742-010 and 2743-008, Alaska Power Authority
CAP-5.
Project Nos. 1744-000 and 003, Utah Power & Light Company
CAP-6.
Project No. 3109-001, Eugene Water & Electric Board
CAP-7.
Docket Nos. ER89-633-000, ER89-228-000, ER89-125-000 and ER89-66-000, Canal Electric Company
CAP-8.
(A) Docket No. ER89-475-000, Pacific Gas and Electric Company
(B) Docket No. ER89-512-000, Pacific Gas and Electric Company
CAP-9.
Omitted
CAP-10.
ER89-491-002, Canal Electric Company
CAP-11.
Docket No. ER84-348-012, American Electric Power Service Corporation
CAP-12.
Docket No. ER84-31-001, Central and South West Services, Inc.
CAP-13.
Docket No. ER89-265-001, Arizona Public Service Company
CAP-14.
Docket No. QF87-274-004, Union Carbide Corporation
CAP-15.
Docket No. ER85-596-001, New England Power Company
CAP-16.
Omitted
CAP-17.
Docket No. EL89-44-000, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-21-001, Revision of Freedom of Information Act Rules
CAM-2.
Docket No. RM89-12-000, Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Gas
CAM-3.
Docket No. RM89-16-000, Final Regulations Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAM-4.
Docket No. GP89-31-000, Kansas Corporation Commission
CAM-5.
Docket No. GP89-40-000, Oil Conservation Division of the State of New Mexico
CAM-6.
Docket No. GP86-54-001, ANR Pipeline Company v. Wagner & Brown
Docket No. GP83-48-001, Producer's Gas Company v. Southport Exploration, *et al.* & Kaiser-Francis
Docket No. GP83-49-001, Natural Gas Pipeline Company of America v. John A. Masek, *et al.*
Docket No. RM83-55-001, Associated Gas Distributors
Docket No. GP84-57-001, Transcontinental Gas Pipe Line Corporation v. Koch Industries
Docket No. GP85-1-001, Transcontinental Gas Pipe Line Corporation v. Felmont Oil Corporation and Case Pomery Oil Corporation
Docket No. GP85-10-001, Southern Natural Gas Company v. Pogo Producing Company
Docket No. GP85-11-001, Sea Robin Pipeline Company v. Pogo Producing Company
Docket No. GP85-33-001, KN Energy Inc v. Joe Gray, *et al.*
Docket No. GP86-39-001, ANR Pipeline Company v. Northwestern Life Insurance Company
Docket No. GP86-55-001, ANR Pipeline Company v. Hamilton Brothers, *et al.*
Docket No. GP87-13-001, ANR Pipeline Company v. Helmerich & Payne, Inc.
Docket No. GP87-21-001, ANR Pipeline Company v. Plains Resources, Inc.
Docket No. GP87-54-001, Transcontinental Gas Pipeline Corporation
Docket No. GP88-12-001, Colorado Interstate Gas Company v. RJB Gas Pipeline Company
Docket No. GP88-15-000, ANR Pipeline Company v. Maguire Oil Company *et al.*
Docket No. GP88-16-000, Colorado Interstate Gas Company v. Chemco, *et al.*
CAM-7.
Docket No. GP89-35-001, Jennings Exploration Company
CAM-8.
Docket No. GP89-30-000, Realitos Energy Corporation
CAM-9.
Docket No. GP88-28-000, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, individually, and as general partner for the Greater Green River Basin Drilling Program: 72-73
CAM-10.
Docket No. GP89-38-000, Corinne B. Grace, Complainant, v. El Paso Natural Gas Company, Respondent

Consent Gas Agenda

CAG-1.
Docket Nos. RP89-160-003 and 004, Trunkline Gas Company
CAG-2.
Docket No. RP89-241-000, Algonquin Gas Transmission Company
CAG-3.
Omitted
CAG-4.
Docket No. RP89-244-000, East Tennessee Natural Gas Company
CAG-5.
Omitted
CAG-6.
Docket No. RP89-248-000, Mississippi River Transmission Corporation
CAG-7.
Docket No. RP89-250-000, Columbia Gas Transmission Corporation
Docket No. RP89-249-000, Columbia Gulf Transmission Company
CAG-8.
Docket No. RP89-251-000, Alabama-Tennessee Natural Gas Company
CAG-9.
Docket Nos. RP89-254-000, Transwestern Pipeline Company
CAG-10.
Omitted
CAG-11.
Omitted
CAG-12.

Docket No. RP90-4-000, Transwestern Pipeline Company
CAG-13.
Docket Nos. TA90-1-38-000, 001 and RP89-218-000, Ringwood Gathering Company
CAG-14.
Docket Nos. TA90-1-41-000 and 001, Paiute Pipeline Company
CAG-15.
Docket No. TA90-1-51-000, Great Lakes Gas Transmission Company
CAG-16.
Docket No. TA90-1-58-000, Texas Gas Pipe Line Corporation
CAG-17.
Docket No. RP89-245-000, Paulte Pipeline Company
CAG-18.
Docket No. RP89-243-000, ANR Pipeline Company
CAG-19.
Docket Nos. RP89-178-066 and RP88-191-014, Tennessee Gas Pipeline Company
CAG-20.
Docket No. RP89-141-002, Sea Robin Pipeline Company
CAG-21.
Docket Nos. RP88-141-001, 003 and TQ88-3-2-000, East Tennessee Natural Gas Company
CAG-22.
Docket No. TA89-1-55-001, Questar Pipeline Company
CAG-23.
Docket Nos. TA85-1-16-007 and TA85-2-16-007, National Fuel Gas Supply Corporation
CAG-24.
Docket Nos. CP88-587-005, 006, and 007, Distrigas Corporation, Distrigas of Massachusetts Corporation
CAG-25.
Docket No. RP89-70-000, Stingray Pipeline Company
CAG-26.
Docket Nos. TA89-1-28-000 and RP88-262-000, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. TA89-1-63-001, Carnegie Natural Gas Company
CAG-28.
Docket Nos. TA89-1-22-002 and RP89-204-001, CNG Transmission Corporation
CAG-29.
Docket No. TM89-2-43-001, Williams Natural Gas Company
CAG-30.
Docket Nos. CP83-254-332 and CP83-335-252, Williston Basin Interstate Pipeline Company
CAG-31.
Docket Nos. RP89-12-006 and TM89-3-25-002, Mississippi River Transmission Corporation
CAG-32.
Docket Nos. RP89-214-001 and TM89-5-21-001, Columbia Gas Transmission Corporation
CAG-33.
Docket No. RP89-160-001, Trunkline Gas Company
CAG-34.
Docket No. RP89-161-001, ANR Pipeline Company
CAG-35.
Docket Nos. RP85-177-063, CP88-136-006 and RP88-67-014, Texas Eastern Transmission Corporation
CAG-36.
Docket No. RP89-135-001, Arkla Energy Resources
CAG-37.
Docket No. RP89-137-002, Northwest Pipeline Corporation
CAG-38.
Docket Nos. RP85-177-062 and CP88-136-002, Texas Eastern Transmission Corporation
CAG-39.
Docket Nos. RP89-45-005, RP89-127-002 and RP89-193-002, ANR Pipeline Company
CAG-40.
Omitted
CAG-41.
Docket No. RP89-173-000, Questar Pipeline Company
CAG-42.
Docket No. CP89-1281-000, Natural Gas Pipeline Company of America
CAG-43.
Docket No. RP87-34-000, North Alaskan Pipeline Company
CAG-44.
Docket Nos. RP87-62-000 and RP86-148-000, Pacific Gas Transmission Company
CAG-45.
Docket Nos. ST89-3765-000 and ST89-3949-000, Enogex, Inc.
CAG-46.
Docket Nos. ST89-2401-000, ST89-2402-000, ST89-2403-000 and ST89-4270-000, Utah Gas Service Company
CAG-47.
Docket Nos. ST89-3702-000, ST89-3752-000, ST89-3950-000 and ST89-4069-000, Louisiana Resources Company
CAG-48.
Docket Nos. ST85-956-003, ST85-1572-001, ST86-6-001, ST86-1010-000, ST86-1064-000, ST86-1647-000, ST86-1792-000, ST86-2067-000, ST86-2505-000, ST86-430-000, ST87-588-000, ST87-589-000, ST87-1126-000, ST87-1525-000, ST87-1526-000, ST87-1527-000, ST87-1974-000, ST87-2399-000, ST87-3708-000, ST87-3709-000, ST87-3710-000, ST87-3711-000, ST87-3874-000, ST87-4257-000, ST88-585-000, ST88-1440-000 and ST88-1441-000, Acadian Gas Pipeline System
Docket Nos. ST88-5599-001, ST88-5761-001, ST88-5762-001, ST88-5763-001, ST88-5764-001, ST88-5765-001, ST88-5766-001, ST88-5767-001, ST88-5768-001, ST88-5769-001 and ST88-5770-001, Gulf South Pipeline Company
CAG-49.
Docket No. ST88-5804-001, Acacia Natural Gas Corporation
CAG-50.
Docket Nos. RI88-281-000, RI88-282-000, RI88-283-000, RI88-284-000, RI88-963-000, RI88-964-000, RI88-965-000, RI88-966-000, RI88-967-000, RI88-968-000, RI88-969-000, RI88-970-000, RI88-971-000, RI88-972-000, RI88-973-000, RI88-974-000, RI88-975-000, RI88-976-000, RI88-977-000, RI88-978-000, RI88-979-000, RI88-980-000, RI88-981-000 and RI88-982-000, Exxon Corporation
Docket Nos. RI88-1114-000, RI88-1115-000, RI88-1116-000, RI88-1117-000, RI88-1118-000, RI88-1119-000, RI88-1120-000, RI88-1121-000, RI88-1122-000, RI88-1123-000, RI88-1124-000, RI88-1125-000, RI88-1126-000, RI88-1127-000, RI88-1128-000, RI88-1129-000, RI88-1130-000, RI88-1131-000, RI88-1132-000, RI88-1133-000, RI88-1134-000, RI88-1135-000, RI88-1136-000, RI88-1137-000, RI88-1138-000, RI88-1139-000, RI88-1140-000, RI88-1141-000, RI88-1142-000, RI88-1143-000, RI88-1144-000, RI88-1145-000, RI88-1146-000, RI88-1147-000, RI88-1148-000, RI88-1149-000, RI88-1150-000, RI88-1151-000, RI88-1152-000, RI88-1153-000 and RI88-1154-000, ARCO Oil and Gas Company
Docket Nos. RI88-1207-000, RI88-1208-000, RI88-1209-000, RI88-1210-000, RI88-1211-000, RI88-1212-000 and RI88-1213-000, Semedan
CAG-51.
Omitted
CAG-52.
Docket No. CI89-465-000, Union Pacific Fuels, Inc.
CAG-53.
Docket No. CP88-805-001, Great Lakes Gas Transmission Company
CAG-54.
Omitted
CAG-55.
Docket No. CP88-542-001, Great Lakes Gas Transmission Company
CAG-56.
Omitted
CAG-57.
Docket Nos. CP88-490-003 and CP89-548-003, Panhandle Eastern Pipe Line Company
CAG-58.
Docket No. CP89-3-003, Panhandle Eastern Pipe Line Company
CAG-59.
Docket No. CP87-238-001, Ozark Gas Transmission System
CAG-60.
Docket No. CP82-433-004, Northwest Pipeline Corporation
CAG-61.
Docket No. CP85-538-003, ANR Pipeline Company
Docket No. CP85-349-002, Northwest Pipeline Corporation
CAG-62.
Omitted
CAG-63.
Docket No. CP88-332-004, El Paso Natural Gas Company
CAG-64.
Docket No. CP89-2209-000, Colorado Interstate Gas Company
CAG-65.
Docket No. CP89-60-000, Southcoast Transmission Corporation
CAG-66.
Docket No. CP89-636-000, Columbia Gas Transmission Company
CAG-67.
Omitted
CAG-68.
Docket No. CP88-413-000, Texas Gas Transmission Corporation
CAG-69.
Omitted
CAG-70.

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Docket No. CP89-1314-000, East Tennessee Natural Gas Company
Docket Nos. CP89-1866-000 and CP89-1864-000, Chattanooga Gas Company
Docket No. CP88-28-003, Nora Transmission Company
CAG-71.
Omitted
CAG-72.
Docket No. CP89-378-000, Transco Gas Supply Company
CAG-73.
Docket No. CP89-256-000, Transcontinental Gas Pipe Line Corporation
CAG-74.
Docket No. CP88-301-000, Texas Eastern Transmission Corporation
CAG-75.
Docket No. CP89-783-000, Panhandle Eastern Pipe Line Company
CAG-76.
Docket Nos. CP89-1122-000 and CP79-251-000, El Paso Natural Gas Company
CAG-77.
Docket Nos. CP89-1280-000 and CP86-17-000, Colorado Interstate Gas Company
CAG-78.
Docket No. CP87-92-006, Texas Eastern Transmission Corporation
CAG-79.
Docket No. RP89-255-000, Texas Eastern Transmission Corporation
CAG-80.
Docket No. CP89-1721-000, Southern Natural Gas Company
CAG-81.
Docket Nos. RP89-45-000, RP89-127-000 and RP89-193-000, ANR Pipeline Company
CAG-82.
Docket No. TA89-1-24-001, Equitrans, Inc.
CAG-83.
Docket Nos. CP88-464-001 and CP88-509-001, Michigan Consolidated Gas Company-Utility Division
Docket No. CP89-1233-001, CNG Transmission Corporation v. Michigan Consolidated Gas Company-Utility Division
CAG-84.
Docket No. CP89-509-001, National Fuel Gas Supply Corporation

I. Licensed Project Matters

P-1.
Project Nos. 8142-005, 006, 007 and 014, Henwood Associates, Inc. Order on rehearing of May 2, 1989 order.

II. Electric Rate Matters

ER-1.
Docket No. EC89-5-001, Southern California Edison Company and San Diego Gas and Electric Company. Order on rehearing.

Miscellaneous Agenda

M-1.
Docket No. RM87-33-001, Hydroelectric Relicensing Regulations Under the Federal Power Act. Order on rehearing of Final Rule.
M-2.
Docket No. RM89-7-000, Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters. Notice of Proposed Rulemaking.
M-3.
Reserved
M-4.
Reserved
M-5.
Omitted

I. Pipeline Rate Matters

RP-1.
Docket Nos. RP85-209-021, RP86-83-007, RP86-158-010, RP86-246-003, RP87-34-007, RP88-8-009, RP88-27-013, RP88-264-005, RP88-92-014, RP88-265-004, RP88-263-010, RP88-42-006, RP89-138-000, CP88-6-004, CP88-440-001, CP87-527-001, CP88-329-001, CP88-478-001 and IN86-5-011, United Gas Pipe Line Company, concerning rehearing of order on settlement.
RP-2.
Docket Nos. RP86-168-000, *et al.*, RP86-15-000, *et al.*, RP87-55-000, *et al.*, RP88-43-000, *et al.*, RP88-58-000, *et al.*, RP88-119-000, RP88-187-000, *et al.*, RP88-207-000, *et al.*, RP89-116-000, CP83-452-034, RP89-181-000, TA81-1-21-000, *et al.*, TA81-1-21-022, TA82-1-21-001, TA82-1-21-024, TA82-1-21-027, TA87-4-21-000, TA87-4-21-002, TA87-5-21-000, *et al.*, TA88-2-21-000, TA89-1-21-000, TC79-127-000, TC86-21-000, TQ88-1-21-000, TQ88-2-21-000, TQ89-1-21-000, TQ88-2-21-000, TQ89-3-21-000, TQ89-4-21-000, TM89-2-21-000, TM89-3-21-000 and TM89-4-21-000, Columbia Gas Transmission Corporation
Docket Nos. RP86-167-000, *et al.*, RP86-14-000, *et al.*, and RP89-94-000, Columbia Gulf Transmission Company, concerning settlement involving restructuring of services and service levels.
RP-3.
Docket Nos. CP88-434-000 and RP88-185-000, El Paso Natural Gas Company, concerning gas inventory charge application.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP88-6-002 and RP88-8-008, United Gas Pipe Line Company. Order on rehearing of order issuing a blanket certificate authorizing the brokering of pipeline capacity.

Lois D. Cashell,
Secretary.
[FR Doc. 89-25057 Filed 10-19-89; 3:42 pm]
BILLING CODE 6718-21-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice if hereby given that at 2:12 p.m. on Tuesday, October 17, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 18, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-24991 Filed 10-19-89; 11:33 am]
BILLING CODE 6714-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-35]

TIME AND DATE: Friday, October 27, 1989 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, D.C. 20436.

STATUS: Open to the public:

MATTERS TO BE CONSIDERED:
1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   a. Certain Aramid Fiber Honeycomb; Unexpanded Block or Slice Precursor of such Aramid Fiber Honeycomb; and Carved or Contoured Blocks or Bonded Assemblies of such Aramid Fiber Honeycomb (D/N 1529)
   b. Certain Bath Accessories (D/N 1530)
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: October 18, 1989.
Kenneth R. Mason,
Secretary.
[FR Doc. 89-25001 Filed 10-19-89; 11:33 am]
BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-2064-000, et al.]

Colorado Interstate Gas Company, et al.—Natural Gas Certificate Filings

Correction

In notice document 89-23504 beginning on page 41139 in the issue of Thursday, October 5, 1989, make the following correction:

On page 41143, in the second column, under **16. United Gas Pipe Line Company**, the docket number should read "[Docket No. CP89-2164-000]".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Program

Correction

In rule document 89-19500 beginning on page 34692 in the issue of Monday, August 21, 1989, make the following correction:

§ 124.318 [Corrected]

On page 34739, in the second column, in § 124.318(b), in the fourth line, "existed" should read "exited".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4212-13; CA 23722]

Realty Action; Proposed Land Exchange in Monterey, Fresno and San Benito Counties, CA

Correction

In notice document 89-12892 beginning on page 23289 in the issue of Wednesday, May 31, 1989, make the following correction:

On page 23289, in the second column, under "Selected Public Land", the 31st line should read "Sec. 24, NW¼, W½ NE¼, N½ SW¼, 960.00".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, off Atlantic City, NJ

Correction

In proposed rule document 89-18445 beginning on page 32453 in the issue of Tuesday, August 8, 1989, make the following correction:

§ 100.35-0549 [Corrected]

On page 32454, in the third column, in § 100.35-0549(a) introductory text, in the last line, "39°25.8" should read "39°24.8"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-181-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-22710 beginning on page 39394 in the issue of Tuesday, September 26, 1989, make the following correction:

§ 39.13 [Corrected]

On page 39395, in the third column, in § 39.13, under "Airbus Industrie", in the third line, "A300-75-157" should read "A300-57-157".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. NM-181-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-22711 beginning on page 39396 in the issue of Tuesday, September 26, 1989, make the following correction:

§ 39.13 [Corrected]

On page 39398, in the first column, in paragraph E.2.a. in the third line, "13,000" should read "13,100".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-131-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-21817 beginning on page 38241 in the issue of Friday, September 15, 1989, make the following correction:

§ 39.13 [Corrected]

On page 38242, in the third column, in the first paragraph, in the last line, "1,500" should read "11,500".

BILLING CODE 1505-01-D

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federal register

Monday
October 23, 1989

Part II

Department of Education

34 CFR Parts 200, 201, and 203
Chapter 1—Migrant Education Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 200, 201, and 203

RIN 1810–AA48

Chapter 1—Migrant Education Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) issues final regulations implementing Subpart 1 of Part D, Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance to State educational agencies to meet the special educational needs of migratory children. In implementing Subpart 1, the Secretary makes applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 201.11, 201.13, 201.16, 201.17, 201.20, 201.25, 201.30, 201.35, 201.36, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56. Sections 201.11, 201.13, 201.16, 201.17, 201.20, 201.25, 201.30, 201.35, 201.36, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202–6135. Telephone: (202) 732–4758.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Principal themes of this new legislation are the promotion of access to quality education for educationally disadvantaged students and excellence in education for the Nation as a whole.

In keeping with these themes, title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. One of these programs is Chapter 1 of title I of the ESEA, which reauthorizes programs previously contained in chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Subpart 1 of part D of Chapter 1, which these regulations implement, provides financial assistance to State educational agencies to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. This assistance is provided to improve the educational opportunities of those children by helping them succeed in the regular school program, attain grade-level proficiency, and improve their achievement in basic and more advanced skills.

On January 26, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (54 FR 3924). The preamble to the NPRM included discussion of the provisions enacted by the Congress to strengthen and improve the program. The preamble also included a summary of other significant changes resulting from reauthorization.

Major Changes from the NPRM

In response to the Secretary's invitation in the NPRM, the Department received 4,829 letters from State and local educational agency officials, teachers, parents, students, organizations, and members of Congress. The comments addressed significant issues that concerned nearly all aspects of funding, planning, designing, implementing, and evaluating State programs and local projects under this part. Many commenters expressed concern for what they perceived as the NPRM's inadequate adaptation of general Chapter 1 statutory requirements to the special character and nature of the Migrant Education Program. Others objected to what appeared to them to be a proposal to transform the program into one that operated at the local, rather than the State, level. Many commenters requested changes in the proposed regulations to rectify these and other concerns so that, from their perspective, the final regulations would be more appropriate for the Migrant Education Program.

In these final regulations, the Secretary has considered these comments and responded in ways that balance the concerns of State and local school officials, parents, and others with the statutory purposes of the program and the needs of the migratory children to be served. The following sections provide a brief summary of the final regulations that are significantly different from the regulations proposed in the NPRM.

Submission of a Project Application to the SEA (§ 201.17)

As proposed, the regulations would have required, among other things, a general description of the project a local educational agency (LEA) would conduct. In keeping with the special character of the Migrant Education Program, and the statutory priority on statewide services to currently migratory children, the final regulations also require the LEA or other operating agency to provide separate narrative and budget information on services needed to address the unmet needs of currently migratory children residing within the area served by the project. The State educational agency (SEA) will use this information to ensure that the amount of its subgrants throughout the State (§ 201.25) is at least enough to pay the cost of projects designed to meet the unmet needs of all significant concentrations of currently migratory children.

Other changes involved information regarding the LEA's compliance with the maintenance of effort and comparability requirements. Section 201.17(c)(1) would have required the LEA annually to update its application by submitting data showing it had maintained fiscal effort. In response to a number of comments concerned with data burden, the regulations have been revised to require submission of the data only if the SEA does not already have that information.

Furthermore, the proposed § 201.18(a)(2) (Approval of a project application for a subgrant) would have required that before it could approve an application for a subgrant, an SEA had to determine that the LEA's salary structure, if implemented, would result in compliance with the comparability requirement in § 201.44. These regulations delete that provision and instead require only that an LEA that applies for a subgrant under § 201.17 have on file with the SEA a written assurance that it has established and implemented district-wide salary schedules, which ensure that migratory children will be provided comparable levels of services from State and local funds.

Amount Available for an SEA Grant (§ 201.20)

1. Proposed Changes in Summer School Adjustment

There are two major changes concerning the amount available for a grant. First, the proposed regulations would have required a new two-tier system for making adjustments in the statistics the Migrant Student Record Transfer System (MSRTS) generates for the Secretary on the number of migratory children estimated annually to reside in a State on the basis of the number of children enrolled in summer school programs. As proposed, children participating in non-intensive instructional projects would have generated only half the supplemental residency credit as children participating in intensive instructional projects, with the definition of "instructional" project tied to a minimum number of hours of daily or weekly instruction.

Under section 1201 of the Act, the count of each State's migratory children affects the size of its allocation of program funds and of the allocation of funds to each of the other States. Reactions to the Secretary's proposal were varied and intense. Many felt that it did not sufficiently address the needs of SEAs that operate intensive summer school projects, principally for currently migratory children. Many others felt that the proposal would undermine innovative State summer programs that had proven worthwhile. Still others generally favored the proposal. Commenters on both sides favored caution and further study. In response to the comments, the Secretary has withdrawn the proposed summer school formula rule so that the issue can be further reviewed within the framework of developing one that is better keyed to the summer school needs of currently migratory children. The Secretary anticipates that this effort will culminate in the publication of another proposed summer school adjustment formula. Until a new proposal is developed, the Department will maintain the current formula that assigns equal credit to all migratory children based on the number of days they are enrolled in any SEA summer school project.

2. Special Enrollment Procedures for Children Recruited at Stopover Sites

The proposed regulations also provided that children enrolled in MSRTS at stopover sites while they are en route to other locations could be enrolled as residents of the stopover State only for the limited period of residency at the project site.

Many commenters favored the proposal as a way to prevent States that operate projects at stopover sites from reaping financial rewards through the allocation system, which credits the State for child residency if children recruited at the sites are not recruited in the States to which they move. Other commenters felt strongly that the stopover sites were being singled out unfairly since their recruitment and enrollment practices comport with the nationwide system for assigning residency credit to each State, and that the projects provided so many benefits that their continued funding was imperative. In response to comments, the Secretary has adopted the proposal in the final regulations, but with clarifying language that would limit its applicability to situations in which the "other locations" are in other States.

In addition the Secretary intends, in consultation with and with the approval of the States, to seek continued funding for the stopover site projects through grants or contracts provided under section 1203 of the Act, the Migrant Education Coordination Program.

3. Five Percent Rate of Error in Eligibility Determinations

The proposed regulations further provided that, for purposes of determining State allocations, the data SEAs submit on their migratory children not exceed five percent of the total number of children the SEA identified as State residents. In response to a number of comments, the error rate provision has been deleted from § 201.20 but retained in § 201.30 with new language that clarifies that the SEA is responsible for monitoring its own determinations to ensure that the number of ineligible students the SEA has enrolled in the MSRTS does not exceed a five percent margin of error.

Amount of Subgrant (§ 201.25)

The proposed regulations would have required an SEA to emphasize, in calculating the amount of its LEA subgrants, the numbers and needs of currently migratory children whom the LEA would serve, and the costs of project activities the LEA would implement to meet their needs. Many commenters objected to any special requirement that the needs of currently migratory children be specifically considered in determining the amount of a subgrant. While rejecting the proposal that an SEA can legitimately tie the subgrant amount to the total number of migratory children, currently and formerly, who reside in the project area, the Secretary has revised § 201.25 to permit an SEA flexibility in calculating subgrants, provided it has ensured that operating agencies in the State have sufficient funds to pay the costs of projects designed to meet the unmet needs of all significant concentrations of the State's currently migratory children.

Service Priorities (§ 201.31)

The proposed regulations would have retained the existing requirement that all currently migratory children be given priority over formerly migratory children in the receipt of all Migrant Education Program services. Commenters stated that the proposal imposed undesirable rigidity in the program by precluding the provision of services to formerly migratory children with plainly greater needs than currently migratory children. In response, § 201.31 has been revised to repeat the statutory requirement that currently migratory children be given priority "in consideration of programs and projects" that are offered to migrant students. This new provision is then incorporated by reference into § 201.32 (Annual needs assessment) to permit projects to be designed around these migratory children plainly in greatest need.

Annual Needs Assessment (§ 201.32)

Many commenters stated that, as proposed, § 201.32 inappropriately required that all migrant education projects assess needs on the basis of educationally related objective criteria even though, because of student mobility and the kinds of summer school projects in which migrant students enroll, these forms of objective criteria cannot feasibly be used. In response, § 201.32 reiterates that all projects assess needs on the basis of educationally related objective criteria, but projects serving currently migratory children do not have to rely upon the results of written or oral tests, if it is not reasonably possible to use them. In order to avoid the need, in some projects, for constantly assessing individual student's needs, § 201.31 also clarifies that projects that serve currently migratory children may assess needs only during periods of peak enrollment.

State Rulemaking and Other SEA Responsibilities (§ 201.46)

Many commenters interpreted proposed requirements in § 201.46 on State rulemaking procedures and limitations as undermining the Migrant Education Program as a State-operated program. Commenters expressed strong reservations about the new authority they believed the regulations gave to individual LEAs over operation of the

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program. While the proposed regulations stemmed from section 1451 of the Act, which applies on its face to all Chapter 1 programs, commenters argued that the proposed regulations were far more prescriptive than appropriate in view of the requirement in section 1202(a)(3) of the Act that only the provision's "basic objectives" should apply to the Migrant Education Program.

As proposed, § 201.46(c) did provide that the limitations on State rulemaking would apply unless State regulations or policies are needed to implement SEA responsibilities in the approved State application, the Chapter 1 statute, or program regulations. The Secretary believes that, as drafted, this exception to the section 1451 limitations was sufficient to permit SEAs to continue operating the Migrant Education Program, unimpeded, as a State-operated program. However, § 201.46 has been further modified to clarify the applicability of the section 1451 limitations only to matters that the SEA, which by law operates the State's migrant education programs and projects, has reserved for LEA decisionmaking.

Evaluation (§§ 201.51 Through 201.56)

While recognizing the special nature of migratory student population, the proposed regulations would have required specific and detailed evaluation assessments and data collection procedures very similar to those required of LEAs for their basic chapter 1 program. In response to comments, the regulations concerning evaluation have been revised to provide greater flexibility in measuring the educational progress of migratory students. For example, they permit instructional projects serving students enrolled throughout the school year to use the results of national or State normed achievement tests without regard to an appropriate non-project comparison group. For other projects, while use of a non-project comparison group is still necessary, use of testing instruments is only required if it is feasible to do so.

Applicability of EDGAR (§ 201.2)

In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary proposed to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to programs under this part and has determined that in the final regulations those provisions will apply to programs under this part.

In determining which provisions of EDGAR will apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the final regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), currently codified for programs of the Department of Education in 34 CFR part 80; and A-87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these circulars apply to the Chapter 1—Migrant Education Program.

If a State wishes to use its own procedures instead of those in the two OMB circulars as implemented in EDGAR, its procedures must meet the three general criteria in § 201.2(a)(4). The State's procedures do not have to be submitted to the Secretary for approval, but must be available for Federal inspection. If a State did not implement its own written requirements by July 1, 1989, but wishes to develop them, the requirements in part 80 will apply until the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) apply, including the due process provisions in that part.

The Secretary wishes to emphasize that States have complete discretion, provided they meet the general criteria in § 201.2, to use their own procedures instead of the procedures in the two OMB circulars. Moreover, Circular A-102 has recently been revised to permit States to apply their own procedures to implement that circular, thereby giving them considerable flexibility in determining appropriate standards for accountability at the local level. Circular A-87 is currently being revised.

In addition, the final regulations make applicable specified provisions in part 76 (State-Administered Programs); part 77 (Definitions that Apply to Department Regulations); part 78 (Education Appeal Board); part 79 (Intergovernmental Review of Department of Education Programs and Activities); part 81 (General Education Provisions Act—Enforcement); and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). Parts 79 and 85 were inadvertently omitted from the NPRM for this program. The Secretary believes that these regulations are the minimum necessary for ensuring basic accountability without imposing undue paperwork and additional administrative burdens on SEAs and LEAs.

Several of the applicable provisions in part 76 contain cross-references to 34 CFR part 74, which was superseded by part 80 on October 1, 1988 with respect to State and local governments. The outdated cross-references in part 76 to part 74 (now part 80) are not intended to make any provisions of part 80 applicable to programs under this part that a State has not, on its own, decided to apply.

Technical Amendments to Parts 200 and 203

The regulations in part 200 (Chapter 1 Program in Local Educational Agencies) and part 203 (Chapter 1 Program for Neglected or Delinquent Children) are amended to reflect the applicability of part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). A discussion of how part 85 applies to these programs is included in the appendix to these regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 4,829 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant

negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1—Migrant Education Program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an SEA and its LEAs must develop, in coordination with parents of participating children in regular school year programs, activities and procedures to: inform parents about the Chapter 1—Migrant Education Program; support the efforts of parents, including training parents to work with their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for the full participation of parents who lack the literacy skills or whose native language is not English. Migrant Education Program funds may be used to support these activities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Proposed Rulemaking

These regulations include amendments to final regulations in 34 CFR part 200 (Chapter 1 Program in Local Educational Agencies) and 34 CFR part 203 (Chapter 1 Program for Neglected or Delinquent Children) referencing the applicability of 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) to those parts. These amendments were not published with the notice of proposed rulemaking.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, part 85 applies to parts 200 and 203 as a matter of law. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on the amendments to §§ 200.5 and 203.5 is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Elementary and secondary education, State-administered programs.

34 CFR Part 201

Children, Coordination, Education, Eligibility, Evaluation, Grant programs—education, Identification and recruitment, Local educational agencies, Migrant student record transfer system, Migratory children, Migratory workers, Needs assessment, Priorities, Reporting and recordkeeping requirements, Special educational needs, State educational agencies, Subgrants.

34 CFR Part 203

Education of disadvantaged, Juvenile delinquency, Neglected.

Dated: October 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; and 84.013, Chapter 1 Program for Neglected or Delinquent Children.)

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 201, 200, and 203 as follows:

1. The title, table of contents, and authority citation for part 201 are revised to read as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

Subpart A—Applying for Chapter 1 Migrant Education Programs Funds

Sec.
201.1 Purpose.
201.2 Regulations that apply.
201.3 Definitions for this program.
201.4–201.9 [Reserved]

Applying for a State Grant

201.10 Eligibility of an SEA to participate as a grantee.
201.11 Documents an SEA must submit to receive a grant.
201.12 [Reserved]
201.13 Approval of an SEA's application.
201.14–201.15 [Reserved]

Applying to an SEA for a Subgrant

201.16 Documents that an operating agency must submit to apply for a subgrant.
201.17 Submission of a project application to the SEA.
201.18 Approval of a project application for a subgrant.
201.19 [Reserved]

Subpart B—Determining the Amount of Grants and Subgrants

201.20 Amount available for an SEA grant.
201.21 Determination of an SEA grant.
201.22 Reallocation of excess funds.
201.23 Amount available for State administration.
201.24 Secretary's special arrangement for services (bypass).
201.25 Amount of a subgrant.
201.26–201.29 [Reserved]

Subpart C—Project Requirements

201.30 Eligibility of a child to participate.
201.31 Service priorities.
201.32 Annual needs assessment.
201.33 [Reserved]
201.34 Coordination with other migrant programs and projects.
201.35 Requirements for parent involvement.
201.36 General program requirements.
201.37–201.39 [Reserved]

Subpart D—Administrative and Fiscal Requirements

201.40 Prohibition against using Chapter 1 funds to provide general aid.
201.41 Maintenance of effort.
201.42 Waiver of the maintenance of effort requirement.
201.43 Supplement, not supplant.
201.44 Comparability.
201.45 Excluding special State and local funds from supplement, not supplant and comparability determinations.
201.46 State rulemaking and other SEA responsibilities.
201.47 Complaint procedures for an SEA.
201.48 Allowable costs using program funds.
201.49 Persons to be assigned non-Chapter 1 duties.
201.50 Prohibition against considering payments under the Migrant Education Program in determining State aid.

Subpart E—Evaluation

201.51 Evaluation and demographic reports.
201.52 Evaluation information to be collected.
201.53 General technical standards for evaluation.
201.54 Non-project comparison groups.
201.55 Submission of sampling plans.
201.56 Use of evaluation results for program improvement.

Authority: 20 U.S.C. 2781–2782, unless otherwise noted.

2. In § 201.1, paragraph (a) is amended by adding "(including migratory agricultural dairy workers)" after the word "workers" and the undesignated introductory text and authority citation are revised to read as follows:

§ 201.1 Purpose.

The Migrant Education Program, authorized by sections 1201 and 1202 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 is designed to—

* * * * *

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(Authority: 20 U.S.C. 2781)

3. Section 201.2 is revised to read as follows:

§ 201.2 Regulations that apply.

The following regulations apply to the Chapter 1—Migrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must be Met by the State and its Subgrantees?), except for the following sections:

(A) Sections 76.580 through 76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 78 (Education Appeal Board).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements For Drug-Free Workplace (Grants)).

(b) The regulations in this part 201.

Authority: 20 U.S.C. 2781, 2831)

4. In § 201.3, paragraph (a) is revised; paragraph (b) is amended by adding new introductory language; in the definition of "Formerly migratory child", the word "and" is added at the end of paragraph (1), paragraph (2) is removed, and paragraph (3) is redesignated as paragraph (2); the definition of "Migratory agricultural worker" is amended by adding the words "(including dairy work)" before the period at the end of the definition; new definitions for "Act", "Chapter 1", "Children", "Fiscal Year", and "Preschool children" are added in alphabetical order; and the authority citation is revised to read as follows:

§ 201.3 Definitions for this program.

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Equipment
Free public education
Local educational agency (LEA)
Parent
Parent advisory council
Secretary
State educational agency (SEA)

(b) *Other definitions.* In addition to the terms defined in the applicable regulations listed in § 201.2, or referred to in paragraph (a) of this section, the following definitions apply to this part:

Act means Elementary and Secondary Education Act of 1965, as amended.

* * * * *

Chapter 1 means Chapter 1 of Title 1 of the Act.

Children means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

Fiscal Year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

* * * * *

Preschool children means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

(Authority: 20 U.S.C. 2781, 2782, 2831)

5. Section 201.10(a) is amended by adding the words "subgrants or other" after the words "or through" and revising the authority citation for § 201.10 to read as follows:

(Authority: 20 U.S.C. 2781)

6. Section 201.11 is amended by redesignating paragraph (b) as paragraph (c) and revising the second sentence of newly designated paragraph (c) to read: "During subsequent years, the SEA's application must incorporate any updating reports arising from significant changes in the number or needs of children to be served, or the services to be provided.", by revising paragraph (a), adding new paragraphs (b) and (d), and revising the authority citation to read as follows:

§ 201.11 Documents an SEA must submit to receive a grant.

(a) *General.* An SEA that wishes to receive funds under this part for an SEA program designed to meet the special educational needs of migratory children shall submit and annually update an application to the Secretary that meets the requirements in section 1202(a) of the Act.

(b) *SEA assurances.* The SEA shall also provide assurances, which will remain in effect for the duration of its participation in the program under this part, that the SEA will—

(1) Meet the requirements in section 435(b)(2) and (5) of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures;

(2) Meet the requirements of section 1202(a)(5) of Chapter 1 that provision be made for the preschool educational needs of migratory children;

(3) Carry out the evaluation requirements in §§ 201.51 through 201.56; and

(4) Ensure that its subgrantee agencies comply with all applicable statutory and regulatory requirements.

* * * * *

(d) *Further updating of information in the application.* If, during the course of the project year, there are significant changes in number or needs of the children to be served or the services to be provided, the SEA shall submit a description of those changes to the Secretary together with the impact of the changes on the chapter 1 migrant education budget, program, and projects.

(Authority: 20 U.S.C. 1232d(b)(2), (5), 2722, 2729(b), 2781, 2782, 2731, 2838(c))

§ 201.12 [Removed and Reserved]

7. Section 201.12 is removed and reserved.

§ 201.13 [Amended]

8. The authority citation for § 201.13 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.16 [Amended]

9. Section 201.16 is amended by removing "LEA" in the heading and the text and adding, in its place, the words "operating agency", adding the words "developed in consultation with teachers and parents, and that is" before the word "specific", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2722, 2781)

10. Section 201.17 is amended by revising the section heading, paragraphs (a), (b), (c)(1), and the authority citation to read as follows:

§ 201.17 Submission of a project application to the SEA.

(a) *Frequency of submission.* An LEA, or other operating agency, shall submit a project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a subgrant would be made under that application.

(b) *Contents of the application.* The project application must include—

(1) Information consistent with the SEA's approved application regarding—

(i) The operating agency's separate annual assessments of the educational needs of its currently and formerly migratory children and the selection of children with the greatest needs (consistent with the service priorities in § 201.31);

(ii) A description of the local Chapter 1 migrant education project to be conducted and how those projects will meet the general instructional program goals the SEA has established. The description must contain—

(A) A separate summary of the project's components that are designed to meet the unmet needs of the currently migratory children expected to be served; and

(B) An estimate of the number of currently migratory children expected to participate in each component; and

(iii) A description of the desired outcomes in terms of basic and more advanced skills that participating children are expected to master and in terms of related support services the LEA will provide;

(2) A budget for the expenditure of Chapter 1—Migrant Education Program funds that, to the extent possible, separately summarizes the estimated costs of project components that would benefit the currently migratory children the agency plans to serve;

(3) Assurances that—

(i) The programs and projects described in the application have been planned and will be carried out in a manner consistent with the requirements in §§201.35 and 201.36; and

(ii) If appropriate, the agency has established procedures to ensure comparability of services as required by § 201.44;

(4) The assurances in section 436(b)(2) and (b)(3) of GEPA as they relate to fiscal control and fund accounting procedures; and

(5) Information the SEA needs to ensure that—

(i) The operating agency's project comports with activities described in the SEA's approved application submitted under § 201.11;

(ii) The operating agency complies with the assurances in paragraphs (b)(3) and (c)(1) of this section; and

(iii) The SEA has data, if those data are not otherwise available to the SEA, that the LEA has maintained effort in accordance with § 201.41.

(c) * * *

(1) Data showing that the LEA, if it annually provided services for migratory children, has maintained fiscal effort under § 201.41, if those data are not otherwise available in the SEA;

* * * * *

(Authority: 20 U.S.C. 2722, 2781, 2782)

11. Section 201.18 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 201.18 Approval of a project application for a subgrant.

(a) *Standards for approval.* An SEA may approve an LEA's, or other operating agency's, application for a subgrant only if—

(1) The application meets the requirements of § 201.17 and is consistent with the content of the approved SEA application; and

(2) The SEA first determines that the LEA—

(i) Maintained fiscal effort in accordance with § 201.40; or

(ii) If the LEA failed to maintain fiscal effort, has modified or updated its application to take into account any required reduction in the indirect costs that otherwise could be charged to its subgrant.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

12. Section 201.20 is amended by removing "141 of Title I" in paragraph (a)(1), and adding, in its place, "1201 of Chapter 1 and the funds appropriated for grants to States under that section"; removing "141(b)(1) of Title I" in paragraph (a)(2), and adding, in its place, "1201(b)(1) of Chapter 1"; removing the words "children aged five to seventeen" in paragraph (a)(2), and adding, in their place, the words "children (as defined in § 201.3) aged three through twenty-one"; adding a new paragraph (a)(3); removing "141(b) of Title I" in paragraph (b), and adding, in its place, "1201(b) of Chapter 1"; and revising the authority citation to read as follows:

§ 201.20 Amount available for an SEA grant.

(a) * * *

(3) If, regardless of funding source, a project exists that is designed to assist migrant families who are in transit to locations in other areas to obtain temporary or seasonal employment in an agricultural or fishing activity, the SEA may enroll migratory children who pass through the project site in the MSRTS or other system as a resident of the project's State only as follows:

(i) For a child in transit to a location in another State where the employment will be sought, the SEA may enroll the child as a resident of the SEA's own State only for the period the child resides at the project site.

(ii) For a child in transit to a location within its own State where employment will be sought, the State may enroll the child as a resident of the SEA's own State without restriction.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

13. In § 201.21, paragraph (b)(2) is amended by removing "554(a)(2) of Chapter 1 or Section 141 of Title I" and adding, in its place, "1201 of Chapter 1" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

14. The authority citation for § 201.22 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

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15. Section 201.23 is revised to read as follows:

§ 201.23 Amount available for State administration.

(a) Except for programs under Part C of Chapter 1 and as provided in paragraph (b) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may not use more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2781, 2782, 2824)

16. The authority citation for § 201.24 is revised to read as follows:

(Authority: 20 U.S.C. 2782)

17. Section 201.25 is revised to read as follows:

§ 201.25 Amount of a subgrant.

(a) In determining the amount of a subgrant to an LEA or other operating agency, the SEA shall first consider the relative needs of all operating agencies in the State that would operate migrant education projects in terms of—

(1) The numbers of currently and formerly migratory children with identified special educational needs who reside within the area served by the LEA, or other agency, in sufficient concentrations to warrant implementation of a migrant education project designed to meet those needs; and

(2) The nature, scope, and cost of the proposed projects designed to meet the needs of these currently migratory children, as described in the operating agency's approved subgrant application;

(b) Before distributing any Migrant Education Program funds to pay the supplemental costs of projects that arise because of the participation of formerly migratory children, the SEA shall ensure that the amount of each sub-grant to be awarded will be at least enough to pay the costs of projects designed to meet the unmet special educational needs of all significant concentrations of currently migratory children residing in the areas the LEA serves.

(c) Provided the amount of each subgrant satisfies the requirement of paragraph (b) of this section, the SEA shall determine the amount of a subgrant to an LEA, using procedures it considers appropriate, based on—

(1) The total number of migratory children who—

(i) Are expected to be served by the project; or

(ii) Are estimated to reside in the area served by the agency that operates the project;

(2) The nature, scope, and cost of the proposed project;

(3) The availability of funds and services from other sources; and

(4) Any other relevant criteria developed by the SEA, consistent with the service priorities in § 201.31, including the SEA's priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Authority: 20 U.S.C. 2781, 2782, 2831)

18. Section 201.30 is amended by removing the last sentence of paragraph (b), adding new paragraphs (c), (d), and (e), and revising the authority citation to read as follows:

§ 201.30 Eligibility of a child to participate.

* * * * *

(c) The SEA and its operating agencies are responsible for implementing procedures that ensure the correctness of the information on which they and the MSRTS or other system rely. In doing so, the SEA shall—

(1) Ensure that the information is recorded on any certificate of eligibility, including the one developed by the Secretary, that contains the minimum information needed to determine eligibility. If the child's eligibility was determined under § 201.20(a)(3)(i) (relating to recruitment at special stopover sites), the SEA shall also record the length of time the child was expected to reside at the stopover site; and

(2) Implement a process to ensure that the completed certificate of eligibility contains accurate information in sufficient detail to explain to an independent reviewer the basis for the determination that the child is a currently or formerly migratory child under § 201.3.

(d) In the event of an audit of the State's eligibility determinations, the Secretary considers those determinations as well as statistics on the full-time equivalent (FTE) number of migratory children residing in the State to be correct if the total number of children whom the SEA has identified as migratory were correctly identified within a five percent margin of error.

(e) In implementing procedures under paragraph (c) of this section, the SEA is responsible for ensuring that no child who is found to be ineligible for the Migrant Education Program is counted as migratory. However, the SEA is not responsible for auditing its determinations for correctness within the five percent margin of error.

(Authority: 2781, 2782, 2831)

19. Section 201.31 is revised to read as follows:

§ 201.31 Service priorities.

(a) Children (aged 3 through 21) who have been determined to be currently migratory must be given priority over formerly migratory children in the consideration of all programs and activities that the SEA, LEA, or other operating agency offers pursuant to its approved application for Migrant Education Program funds.

(b) If, in order to provide migrant education instructional services to preschool and regular school-aged currently migratory children, it would be necessary to provide day care or similar services to children aged two years or younger who are currently migratory children (or migrant education preschool services to currently migratory children three years of age or over who are not enrolled in instructional programs), and no funds—except Chapter 1—Migrant Education Program funds—are available for that purpose, an SEA or an operating agency may provide day care services to those children as if those children had a higher priority than formerly migratory children.

(Authority: 20 U.S.C. 2782)

20. Section 201.32 is revised to read as follows:

§ 201.32 Annual needs assessment.

(a) An SEA and any operating agency that receives Chapter 1 migrant education funds shall design and improve their migrant education programs and projects through use of an annual assessment of educational needs. Subject to the special rules for preschool projects in paragraph (c) of this section, in implementing the annual assessment of educational needs, the SEA or operating agency shall on the basis of the best available information—

(1) Identify migrant children or, if this is not possible, the specific characteristics of the children who are expected to reside in the area served by the SEA or operating agency and who are eligible to be counted as migratory children under § 201.20(a);

(2) Identify the general instructional areas and grade levels in which the program or project will focus;

(3) Establish educational criteria that—

(i) Are consistent with the requirements of paragraphs (b) and (c) of this section; and

(ii) For each grade level and instructional area, will be used to select

migratory children to participate in the program or project;

(4) To the extent possible, uniformly apply the criteria required in paragraph (a)(3) of this section to particular grade levels;

(5) Select for services those migratory children, consistent with the service priorities in § 201.31, who have the greatest need for Migrant Education Program services; and

(6) Determine—

(i) The special educational needs of migratory children expected to participate with sufficient specificity to permit concentration on those needs; and

(ii) The resources, such as personnel, instructional materials, and library resources, necessary to meet those special educational needs.

(b) In formulating and applying the educational criteria pursuant to paragraphs (a) (3) and (4) of this section, the SEA and operating agency—

(1) Shall consider the differing needs, if any, among—

(i) Currently migratory children based on the effect of migrations on the continuity of their education; and

(ii) Formerly migratory children based on the effect of former migrations on their educational development; and

(2) With regard to currently migratory students, may conduct its annual needs assessment on the basis of the latest available information relevant to the needs of the children expected to be present at periods of peak enrollment.

(c) The educational criteria referred to in paragraph (a)(3) of this section must be—

(1) For currently migratory children, the most appropriate educationally related objective criteria including, if reasonably possible, the results of written or oral tests; and

(2) For formerly migratory children, educationally related objective criteria, including the results of written or oral tests.

(d) The SEA or operating agency may skip currently or formerly migratory children in greatest need of special assistance if their special educational needs are being met with services provided under other Federal, State, or local programs.

(e) Only paragraphs (a) (1), (2), and (5), and (d) of this section apply to projects the SEA or operating agency establishes to meet the preschool educational needs of migratory children.

(Authority: 20 U.S.C. 2724, 2782)

§ 201.33 [Removed and Reserved]

21. Section 201.33 is removed and reserved.

22. Section 201.34 is amended by removing "Section 402 of the Job Training Partnership Act of 1982 and under the Community Services Block Grant Act of 1981" and adding, in its place, "section 418A of the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all appropriate programs of the Departments of Education, Labor, and Agriculture", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2782)

23. Section 201.35 is revised to read as follows:

§ 201.35 Requirements for parent involvement.

(a) *General.* State and local agencies that receive Chapter 1—Migrant Education Program funds shall design and implement their programs and projects in consultation with the parents of the children to be served, and shall carry out programs, activities, and procedures for the involvement of parents in their migrant education programs and projects.

(b) *Parent advisory councils.* (1) State and local agencies implementing programs extending for the duration of the school year shall establish a parent advisory council. The council must have a majority of members who are parents (or guardians) of children to be served by the migrant education program or projects and, if feasible, who are elected by the parents of children to be served;

(2) The SEA shall establish procedures to ensure that—

(i) The SEA and the State's operating agencies appropriately consult with, and solicit information from, councils representative of parents of migratory children in the planning, operation, and evaluation of a program or local project; and

(ii) Compliance with this provision at the State and local levels is documented annually in the State or local agency's application for funds or updating information.

(c) *Parental involvement.* Each SEA and operating agency shall, in a manner consistent with paragraphs (a) through (c) and (e) of 34 CFR 200.34, involve parents in meaningful consultation in the design and implementation of the programs and projects.

(Authority: 20 U.S.C. 2726, 2782)

24. In Subpart C a new § 201.36 is added to read as follows:

§ 201.36 General program requirements.

In developing and implementing its migrant education program and projects, the SEA shall ensure that—

(a) (1) The children selected for services are those with the greatest need for special assistance—

(i) Consistent with the service priorities in § 201.31; and

(ii) As determined, to the maximum extent possible, using the educational criteria required by § 201.32 (annual needs assessment); and

(2) The special educational needs of these children are sufficiently specified to permit the SEA to concentrate on meeting those needs;

(b) The size, scope, and quality of the program and projects offered are sufficient to give reasonable promise of substantial progress toward meeting the special educational needs of the migrant children being served;

(c) The results of evaluations are used to improve the provision of services to eligible migrant children by either—

(1) Disapproving an application to continue a project in a succeeding year if the project is not making substantial progress toward meeting the educational goals of the project and this part; or

(2) Approving changes in the project that will enable the SEA to meet those goals;

(d) Services are provided to all significant concentrations of eligible migratory children enrolled in private schools, consistent with the service priorities in § 201.31, in accordance with the basic objectives of section 1017 of the Act;

(e) The SEA allocates time and resources for frequent and regular coordination of the curriculum under the migrant education program with the regular instructional program; and

(f) In the case of children participating in the migrant education program who are also of limited English proficiency or are handicapped—

(1) The SEA provides maximum coordination between services provided, under the migrant education program and other services that are provided to address children's handicapping conditions or limited English proficiency; and

(2) The SEA's coordination activities are designed to increase program effectiveness, eliminate duplication, and reduce fragmentation of services for migratory children.

(Authority: 20 U.S.C. 2722, 2724, 2729, 2782, 2831)

25. A new subpart D containing §§ 201.40 through 201.50, inclusive, is added to part 201 to read as follows:

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SUBPART D—ADMINISTRATIVE AND FISCAL REQUIREMENTS

§ 201.40 Prohibition against using Chapter 1 funds to provide general aid.

An LEA or other operating agency that has received assistance from an SEA may use Chapter 1 funds provided under this part only for projects that are designed and implemented to meet the special educational needs of migratory children who are identified and selected for services in accordance with the provisions in this part.

(Authority: 20 U.S.C. 2761, 2782)

§ 201.41 Maintenance of effort.

(a) (1) *Basic standard.* Before an SEA may provide an LEA a subgrant for the operation of a migrant education project, the SEA must find either that the LEA's combined fiscal effort per student or its aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the LEA's combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year.

(2) *Meaning of preceding fiscal year.* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year, or 12-month period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, "the preceding fiscal year" is the Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the 12-month period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA may not consider the following expenditures in determining the LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort as provided in paragraph (a) of this section, and a waiver under § 201.42 is not granted, the SEA shall reduce the LEA's subgrant with respect to the amount allowed for its indirect costs under 34 CFR 76.563 by 50 percent.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) (see example in paragraph (a)(2) of this section) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's fiscal effort in the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditure in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.42 Waiver of the maintenance of effort requirement.

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an LEA in § 201.41, if the SEA determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b) (1) If the SEA grants a waiver under paragraph (a) of this section, the SEA may not reduce the amount of migrant education funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In fiscal year 1990, an LEA secures a waiver because its fiscal effort in the preceding fiscal year (1988) (see example in § 201.41 (a)(2)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.43 Supplement, not supplant.

(a) Except as provided in § 201.45(a)(1), an agency that receives migrant education funds available under this part may use those funds only to supplement and, to the extent practicable, increase the level of non-Federal funds that would, in the absence of migrant education funds, be made available for the education of pupils participating in migrant education projects, and in no case may migrant education funds be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through the use of a particular instructional method or in a particular instructional setting.

(Authority 20 U.S.C. 2728, 2782, 2831)

§ 201.44 Comparability.

(a) Except as provided in paragraph (b) of this section and § 201.45, an LEA may receive Migrant Education Program funds only if the LEA uses State and local funds to provide services to students receiving Migrant Education Program services that, taken as a whole, are at least comparable to services being provided to students, enrolled in the same grade levels of all of the LEA's schools, which are not receiving Migrant Education Program-funded services.

(b) (1) An LEA is considered to have met the comparability requirements in paragraph (a) of this section, if it either—

(i) Files with the SEA a written assurance that it has established and implemented—

(A) A district-wide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or

(ii) Establishes and implements other measures for determining compliance as the SEA may approve.

(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(c) (1) An LEA shall develop written procedures to ensure compliance with paragraph (a) of this section.

(2) The written procedures ensuring compliance with paragraph (a) of this section must include a process for demonstrating that State and local funds are used to provide services to students receiving Migrant Education Program services that are at least comparable to the services provided to students in the same grades who are not receiving Migrant Education Program funds.

(d) An LEA shall maintain annual records documenting compliance with paragraph (a) of this section.

(e) In accordance with the rulemaking requirements in § 201.46, an SEA may establish standards to ensure that an LEA's policies under paragraph (c) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(f) (1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the measures established under paragraph (b) of this section.

(Authority: 20 U.S.C. 2728(c), (d), 2782, 2831)

§ 201.45 Excluding special State and local funds from supplement, not supplant and comparability determinations.

(a) *General rule.* (1) For the purpose of determining compliance with the supplement, not supplant requirement in § 201.43 and the comparability requirement in § 201.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(ii) Special local programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in § 201.44 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (a)(2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1) of this section meets the requirements in section 1018(d)(1)(B) of the Act; and

(ii) A State phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making the determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d), 2782)

§ 201.46 State rulemaking and other SEA responsibilities.

(a) An SEA is responsible for ensuring that the agencies that receive Chapter 1—Migrant Education Program funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b)(1) Except as provided in paragraph (c) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they must be consistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(iv) The SEA application approved under § 201.13.

(c)(1) Unless needed to implement SEA responsibilities in its approved State application or in the Chapter 1 – Migrant Education Program statute or regulations, a State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(i) Grade levels to be served;

(ii) Basic skill areas to be addressed;

(iii) Instructional settings, materials, or teaching techniques to be used;

(iv) Instructional staff to be employed, as long as the staff meets State certification and licensing requirements for education personnel; or

(v) Other essential support services.

(2) For purposes of this section, decisions concerning the planning, implementation, and evaluation of migrant education programs and projects conducted at the local operating agency level are not "LEA decisions" unless the SEA determines that the LEA or other operating agency has authority to make these decisions.

(d) The imposition of any State rule or policy relating to the administration and operation of the Chapter 1—Migrant Education Program, including those based on State interpretation of any Federal law, regulation, or guideline, must be identified as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section, if a State issues major rules or

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regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist agencies with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and local operating agencies are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Member of local boards of education; and

(E) Representatives of private school children; and

(ii) A majority of the committee must be representatives of LEAs or other operating agencies.

(iii) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2782, 2831, 2851)

§ 201.47 Complaint procedures for an SEA.

(a) An SEA shall adopt written procedures for—

(1) Receiving and resolving any complaint that the SEA or an LEA is violating a Federal statute or regulations that apply to programs under this part;

(2) Reviewing an appeal from a decision of an LEA with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(b) An SEA shall include in its complaint procedures—

(1) A time limit of 60 calendar days after the SEA receives a complaint—

(i) If necessary, to carry out an independent on-site investigation; and

(ii) To resolve the complaint;

(2) An extension of the time limit under paragraph (b)(1) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(3) The right to request the Secretary to review the final decision of the SEA.

(c) An organization or individual may file a written signed complaint with an SEA. The complaint must include—

(1) A statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Chapter 1—Migrant Education Program; and

(2) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§ 201.48 Allowable costs using program funds.

(a) To administer its migrant education program for migratory children, an SEA may use the funds made available for the State migrant education program under § 201.21 only to perform those functions that are unique to the migrant education program or that are the same or similar to the functions performed by LEAs in the State under 34 CFR part 200.

(b) These functions include, but are not limited—

(1) Statewide identification and recruitment of eligible migratory children;

(2) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(3) Coordinating project level activities with other public and private agencies;

(4) Implementing the migrant student record transfer system;

(5) Processing reports that are submitted by the operating agencies to the SEA;

(6) Maintaining inventories of property acquired with Migrant Education Program funds;

(7) Negotiating awarding of contracts; and

(8) Evaluating activities of the State migrant education program, other than the design of evaluation report forms and final preparation of the SEA's evaluation report to the Secretary.

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.49 Persons to be assigned non-Chapter 1 duties.

(a) An LEA may assign public school personnel paid entirely with migrant education funds to limited supervisory duties that may provide some benefit to children not participating in the migrant education project if—

(1) Similarly situated personnel at the same school site, who are not paid with Chapter 1—Migrant Education Program funds, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The duties in paragraph (a) of this section need not be limited to classroom instruction, but may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853)

§ 201.50 Prohibition against considering payments under the Migrant Education Program in determining State aid.

A State may not take into consideration payments under the Migrant Education Program in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

26. A new subpart E containing §§ 201.51 through 201.56, inclusive, is added to part 201 to read as follows:

Subpart E—Evaluation

§ 201.51 Evaluation and demographic reports.

(a) *Operating ogency evaluations.* (1) An operating agency shall evaluate, at least once every three years, the overall progress, including the educational progress, of migratory children who participate in its Chapter 1 migrant education projects, in terms of basic and more advanced skills that all children are expected to master. Progress must be measured—

(i) Against the desired outcomes described in the operating agency's application; and

(ii) Except for Chapter 1 migratory children in preschool, kindergarten, and first grade, in terms of student achievement in accordance with the national standards in § 201.53.

(2) (i) The operating agency shall determine whether improved performance of the Chapter 1 formerly migratory children, participating in a full school year program at least two years, is sustained over a period of more than 12 months.

(ii) To make this determination, an operating agency shall assess performance of the same children for at least two consecutive 12-month periods, provided these children continue to be enrolled in the schools of the LEA.

Example: An LEA provides Chapter 1 migrant education services during the 1989–90 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring 1989, 1990). To determine whether improved performance is sustained over the period of more than 12 months, the LEA measures the performance again in the spring of 1991.

(3) The operating agency shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1—Migrant Education Program in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107 and 1202(a)(8) of the Act.

(2) The SEA shall ensure that its biennial evaluation report is representative of the statewide program.

(3) The SEA shall inform its operating agencies, in advance, of the specific data that will be needed and how the data may be collected.

(4) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(5) The SEA may require the operating agencies to evaluate the effect of the Chapter 1 migrant education projects on the children's achievement in basic and more advanced skills within the regular program, including, but not limited to, writing, science, history, or other subjects.

(c) *SEA's annual performance report.* (1) An SEA shall annually—

(i) Collect the evaluation and demographic data as required by section 1019 of the Act and specified by the Secretary for the SEA's annual performance report; and

(ii) Submit those data to the Secretary in that report.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual report.

(Authority: 20 U.S.C. 2722, 2729, 2781, 2782, 2835, 2852)

§ 201.52 Evaluation information to be collected.

(a) In assessing their programs and projects, the SEAs and operating agencies shall conduct evaluations that assess the overall progress of participating migratory children in grades 2 through 12, including educational progress, in terms of instructional services and support services.

(b) The evaluation design for the regular school year instructional project must include—

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, if possible, over a 12-month testing interval through the use of appropriate forms and levels of national or State normed achievement tests. If this is not possible, the SEA or operating agency may use other acceptable measures of educational progress of migratory children, such as changes in attendance patterns, dropout rates, and other objectively applied indicators of student achievement compared to the performance of an appropriate non-project comparison group, as defined in § 201.54; and

(2) A measure for determining whether, for formerly migratory children who have been served under this part in a full school year program for at least two years, improved performance is sustained for at least one additional year.

(c) The evaluation design for the summer school instructional project must include—

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) over the project performance period; and

(2) To the extent possible, a means of comparing project outcomes to those of an appropriate non-project comparison group.

(d) During either the regular or summer terms, the evaluation design for any support-service components must include—

(1) Measures of the effects of the project on participants that are consistent with the defined support services objectives. (For example, changes in student attendance rates may be an appropriate measure of the effect of guidance and counseling services.); and

(2) If possible, a means of comparing project outcomes to the performance of an appropriate non-project comparison group.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.53 General technical standards for evaluation.

SEAs and local operating agencies shall comply with the following technical standards in designing and implementing procedures for the evaluation of Chapter 1 migrant education projects:

(a) *Representativeness of evaluation findings.* The evaluation results must be computed so that the findings apply to the persons served in projects under the program. This may be accomplished by including in the evaluation either all or a representative sample of persons, schools, agencies, or projects.

(b) *Reliability and validity of evaluation instruments.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, mobility, language, degree of language fluency, and background of the persons served by the project.

(c) *Soundness of evaluation procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(d) *Valid assessment of project outcomes.* The evaluation procedures must provide for accurate and objective measurement of the progress made by project participants towards defined project objectives.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.54 Non-project comparison groups.

(a) To fulfill the requirement for a non-project comparison group, appropriate comparison groups consist of persons who are as similar as possible in age, grade, language, degree of language fluency, previous achievement level, and other relevant background variables.

(b) To fulfill the requirements of § 201.52(b) and (c), SEAs and operating agencies, to the extent possible, must use appropriate forms and levels of national or State normed achievement tests.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

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§ 201.55 Submission of sampling plans.

(a) If an SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be on a representative sample of its operating agencies in any school year.

(b) The Secrerary approves a sampling plan that will provide reliable and representative data under this subpart.

(c) (1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835)

§ 201.56 Use of evaluation results for program improvement.

SEAs and operating agencies must ensure that the results of their evaluations are used to improve services provided to the children in their Chapter 1 migrant education programs and projects.

(Authority: 20 U.S.C. 20 U.S.C. 2729, 2782)

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

27. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

28. Section 200.5 is amended by adding a new paragraph (a)(6) to read as follows:

§ 200.5 What regulations apply to the Chapter 1 LEA program?

* * * * *

(a) * * *

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

* * * * *

PART 203—CHAPTER 1 PROGRAM FOR NEGLECTED OR DELINQUENT CHILDREN

29. The authority citation for part 203 continues to read as follows:

Authority: 20 U.S.C. 1232(b)(2), (5), 2721(a), 2724(b), 2728(a), (b), (d), 2729(b), 2801–2804, 2811–2812, 2824(a), (b), 2831(a), 2835(a), (d), 2838(a), (b), (c), 2851, 2853, 2891, unless otherwise noted.

30. Section 203.5 is amended by adding a new paragraph (a)(6) to read as follows:

§ 203.5 What regulations apply?

* * * * *

(a) * * *

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

* * * * *

Note: The following Appendix will not be codified in the Code of Federal Regulations.

As used in the following discussion, the phrase "Migrant Education Program" refers to the Chapter 1—Migrant Education Program established in sections 1201 and 1202 of the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 100–297).

Appendix—Analysis of Comments and Changes

General Comments

Commenters generally expressed concern about two aspects of the proposed part 201 regulations. First, many commenters believed that proposed regulations did not adequately take into account the special characteristics and nature of the Migrant Education Program that make it different from the regular Chapter 1 Program in LEAs. These commenters objected particularly to what they considered to be a failure to properly interpret the statutory requirement in section 1202(a)(3) of the Act that migrant education programs and projects "be administered and carried out in a manner consistent with the basic objectives of section 1011 (other than subsection (b)), sections 1012, 1014, and 1018, and subpart 2 of part F." They considered the proposed regulations, in adopting conforming language from proposed regulations for the Chapter 1 Program in LEAs (34 CFR part 200) to be overly detailed in ways that did not consider differences between the two Chapter 1 programs.

Many commenters also expressed strong concern that, in various respects, the proposed regulations appeared to transform the Migrant Education Program from one that has always been State-operated and -administered to one that was increasingly LEA-operated and -administered. Commenters singled out for criticism the State rulemaking provisions in proposed § 201.46. That provision, derived from section 1451 of the Act, whose "basic objectives" apply to the Migrant Education Program by virtue of section 1202(a)(3) of the Act, was nearly identical to the comparable provision proposed in 34 CFR 200.70 of the October 21, 1988 notice of proposed rulemaking (NPRM) for the Chapter 1 Program in LEAs. Although it contained the statutory limitations on the authority of SEAs unilaterally to establish rules or policies, paragraph (e) of the proposed § 201.46 expressly precluded the applicability of those limitations if the SEA was acting to "review and approve an LEA's or operating agency's application or to ensure that the use of Chapter 1—Migrant Education Program funds is in accordance with applicable requirements." Commenters provided no comment on § 201.46(e), but objected to the other requirements as inconsistent with the Migrant Education Program as State-operated and -administered.

Discussion: In responding to these and other comments, the Secretary has paid particular attention to the special nature and character of the Migrant Education Program as a program intended to be State-operated and -administered, and designed to serve a unique population of educationally deprived children. Specific regulatory issues are discussed in the following section-by-section analysis. However, the Secretary first offers the following analytic framework surrounding the overriding issues of (1) treatment of the "basic objectives" language in the Act, (2) differences between the Chapter 1—Migrant Education Program and the Chapter 1 Program in LEAs, and (3) the relationship between section 1451 of the Act and the Migrant Education Program, that guided consideration of the comments.

A. *The link between requirements governing the Migrant Education Program and the "basic objectives" of specified requirements governing the Chapter 1 Program in LEAs.* Congress has offered no guidance on what it considers to be the "basic," rather than the "secondary" objectives. The Secretary therefore has not attempted to define the "basic objectives" of each applicable statutory provision in sections 1011, 1012, 1014, 1018 and subpart 2 of part F of the Act that are linked by section 1202(a)(3) of the Act to the Migrant Education Program, believing that this effort will quickly lead to an intractable quagmire. In order to address the responsibilities of SEAs and operating agencies with regard to the "basic objectives" of those statutory provisions, the Secretary instead has determined that these regulations should interpret those applicable requirements in ways that make sense for the Migrant Education Program, given its special character.

B. *Differences between the Migrant Education Program and the Chapter 1 Program in LEAs.* In adapting provisions governing the Chapter 1 Program in LEAs to the Migrant Education Program, the Secretary considered the major differences between the target populations for the two groups and the ways the two programs are conducted. These differences are interrelated, and are reflected in many of the regulations governing the administration and operation of migrant education programs and projects.

Characteristics of participating children: The Chapter 1 Program in LEAs serves educationally deprived children who reside in low-income areas. These children generally participate in supplemental Chapter 1 programs for which they have been selected on the basis of certain educationally related objective criteria concerning their academic performance. In the course of a year, some of these children may move to another attendance area in either the same school district or another school district. However, regardless of its importance to individual children, their transiency is not a factor in either their selection to participate in the Chapter 1 Program in LEAs or the design of projects to meet their needs.

On the other hand, children who participate in the Migrant Education Program are selected because they have moved between school districts (for reasons related to the migratory employment of a family member) and have special educational needs that may arise as a result of those moves. These factors, combined with the statutory priority, in section 1202(b) of the Act, that currently migratory children be given priority "in the consideration of programs and activities," combine to create differences in the ways that the two programs operate.

Moreover, programs operated under the Migrant Education Program, unlike those operated under the Chapter 1 Program in LEAs, must be designed around the differences among migratory children. For example, some currently migratory children may move across school district boundaries one or more times during the regular school term, and so need programs that are designed to meet special educational needs tied to the effects of both school disruption and their families' migratory and employment experiences. Other currently migratory children may move either over the summer when the regular school term is not in session or near the beginning or end of regular school terms, and so need programs that are designed to meet special educational needs tied to their families' migratory and employment experiences, but not directly to any school disruption. Formerly migratory children experience no immediate school disruption. However, some may need programs that address educational needs similar to those of currently migratory children, while others may be sufficiently removed from the effects of previous migrations to be without need of special Migrant Education Program services. Program regulations must be sufficiently flexible to ensure that migrant education projects can adequately address the varying needs of these and other migratory children.

Duration and Location of Projects: Related to the population served is the duration and location of local programs. Projects and activities funded by the Chapter 1 Program in LEAs operate in a cohesive way in one location over the course of the entire school year, including summers. Many SEAs operate migrant education projects whose principal, if not sole, components are summer projects that try to complement the regular school programs operated in other locations from which currently migratory students, who may appear without warning, have moved. Moreover, SEAs may operate these projects in areas that normally do not have a regular summer school program.

Assessing Student Performance: The two programs also differ significantly in terms of the ease with which students' needs and performance can be recorded and assessed. Projects that serve populations of mobile children who enroll and withdraw at different times may encounter more problems than others in utilizing what otherwise would be standard means of determining needs and measuring gains.

SEA Responsibilities: Unlike the Chapter 1 Program in LEAs, the Migrant Education Program by statute is State-operated and -administered. The SEA bears responsibility in the Migrant Education Program for coordinating projects throughout the State that serve children migrating from place to place, and ensuring that appropriate projects exist to meet the needs of migratory children on a statewide basis. While the SEA typically utilizes the resources of LEAs and other local operating agencies to assist it in operating migrant education projects, it retains responsibility for the administration, implementation, and operation of all migrant education projects in the State.

C. *The issue of continued SEA control over the State migrant education program presented by section 1451 of the Act.* Although the Migrant Education Program is State-operated, section 1451 of the Act places some limitations on the SEA's authority to direct unilaterally all aspects of its migrant education programs and projects. In particular, while section 1451(a)(1) contains general authority for States to issue regulations that are not inconsistent with Federal requirements, section 1451(a)(2) expressly states: "(2) State rules or policies may not limit local school districts' decisions regarding the grade levels to be served; the basic skills areas (such as reading, mathematics, or language arts) to be addressed; instructional settings, materials, or teaching techniques to be used; instructional staff to be employed (as long as such staff meet State certification and licensing requirements for educational personnel); or other essential support services (such as counseling and other pupil personnel services) to be provided as part of the programs authorized under this chapter."

Furthermore, section 1451(b) specifically provides that "[b]efore publication of any proposed or final State rule or regulation pursuant to this chapter, each such rule shall be reviewed by a State committee of practitioners * * *." Both paragraphs (a)(2) and (b) explicitly refer to their applicability to all programs under "this chapter" and so apply to the Migrant Education Program. While section 1202(a)(3) of the Act provides that migrant education programs and projects must "be administered and carried out in a manner consistent with the basic objectives of" section 1451, the Secretary is bound by the express language of section 1451 to give that provision applicability to the Migrant Education Program.

As the discussion of specific comments on proposed § 201.46 explains, the Secretary has sought to reconcile the special nature of the State-operated Migrant Education Program with the strictures imposed by section 1451(a)(2) by focusing on what, under the program, are construed to be LEA decisions and what are construed to be SEA decisions.

Changes: Modifications to the proposed regulations are noted following the discussion of each specific comment.

Section 201.3 Definitions for this Program

Comment: One commenter recommended that the definition of "migratory agricultural worker" specify that both dairy work and poultry processing are agricultural activities.

Discussion: The definition of a "migratory agricultural worker" includes persons who move across school district boundaries to enable them to obtain temporary or seasonal employment in an agricultural activity "including dairy work." Dairy work was included in the proposed regulations in response to sections 1201(a), 1202(b)(1), and 1202(b)(5) of the Act, in which Congress expressly provides that the Migrant Education Program meet the special educational needs of children of migratory agricultural dairy workers. Congress did not specifically address poultry processing. However, that activity (like dairy work) is already considered to be an "agricultural activity" under § 201.3(b)(1), so no corresponding change in the existing definition of "migratory agricultural worker" is necessary for poultry processing.

Changes: None.

Comment: Three widely varying comments were received regarding that part of the definition of "currently migratory child" that requires a "move." One commenter urged the Department to define a "move" as establishing residency in the new location, so that children whose only move across school district boundaries occurs on weekends could no longer be recruited as migrant children. Another commenter believed that since the term "move" already entailed establishment of a new residence, and children passing through stopover sites did not establish residency at them, compliance with the definition would eliminate any need for a rule, like that proposed in § 201.20(a)(3), to limit the residency days States accrue on behalf of children recruited at those sites. The third commenter simply recommended that the word "move" not be defined in regulations.

Discussion: The Secretary is aware of isolated situations in which children have qualified for participation in the Migrant Education Program solely because they have traveled with their parents away from their permanent residence for very brief and infrequent weekend (or holiday) periods. While some may interpret the current regulatory definitions as entailing establishment of a new residence, the definitions do not differentiate between the moves of weekend or overnight duration or overnight situations of children the commenters described, and the moves of children who travel from their homes for long periods of time.

The regulations do not define a move. Nor, despite the second commenter's opinion, do they contain standards for determining how brief inter-district moves that have little connection with conditions of migrancy, might justify precluding particular children from eligibility for the Migrant Education Program. Rather, the regulations permit any child to be counted and served by the Migrant Education Program for up to six full years (one as a currently migratory child and five as a formerly migratory child) provided only that he or she has made at least one move, regardless of duration, across school district boundaries to enable the child, or child's parent or guardian, to obtain temporary or seasonal employment in an agricultural or fishing activity.

The Secretary agrees with the first commenter that the lack of a regulatory definition of "move" creates the potential for

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abuse. Children who travel away from home only for brief and infrequent intervals, such as occasional weekends, encounter little, if any, disruption in their lives or education. Still, program definitions permit them to be counted and served by the Migrant Education Program for up to six years in the same manner as children who suffer the tangible effects of migratory lifestyles, thereby diverting services and resources from programs for truly migratory children. Moreover, under the statutory formula in section 1201(b) of the Act for allocating Migrant Education Program funds, these children will generate the same amounts of program funding for their States as will children who encounter serious and lengthy dislocations. Given these factors, the need exists to articulate reasonable minimum standards for determining when brief and infrequent moves would be non-qualifying.

Nevertheless, the NPRM did not propose to define the term "move," because section 1202(c) of the Act requires the Secretary to continue to use the existing regulatory definition of "currently migratory child." This definition refers simply to the need for a "move" to be made across school district or, in States comprising a single school district, administrative area boundaries. While the Secretary has not previously regulated on the allowable minimum duration of a "move," section 1202(c) does not necessarily preclude the Secretary from protecting the Migrant Education Program's integrity by interpreting the word "move" in such a way as to withhold eligibility from those with little connection with migrancy. However, the May 1988 proposal offered by the Office of Migrant Education, in draft nonregulatory guidance, to establish a minimum duration for a qualifying move or series of moves engendered widespread criticism from State officials and others who claimed the proposed non-mandatory guidance was both administratively cumbersome and inconsistent with the statutory freeze on the existing definitions. Given the intensity of this response, the Secretary is not now prepared to regulate in this area without a clearer direction from Congress that the Secretary should do so.

Changes: None.

Comment: One commenter asked whether the existing broad definition of "move" applied even in the case of preschool children who either might not yet be attending school or might be attending the same Head Start or other preschool program even after making a move across school district boundaries. The commenter noted that these children did not suffer any educational disruption, and so perhaps should not be eligible to be considered as currently migratory children.

Discussion: Under the program definitions in § 201.3, which Congress froze by virtue of section 1202(a) of the Act, a child who has moved between school districts may be counted and served as a currently migratory child even if the child suffers no educational disruption as a result of the move. Presumably, if a preschool child either had no educational need or had needs that were already being met, the State educational agency (SEA) would not spend Migrant Education Program funds on the child's account.

Changes: None.

Comment: One commenter recommended that the Secretary define the terms "temporary employment" and "seasonal employment" as they are used in the definition of a "currently migratory child."

Discussion: An Office of Migrant Education proposal to expand its existing interpretations of these terms was included in its May 1988 and January 1989 drafts of new nonregulatory guidance. Any final interpretations will be included in the policy manual that the Secretary will issue pursuant to section 1436 of the Act. In view of the many varieties of temporary or seasonal employment, the Secretary believes that the policy manual, rather than regulations, is the appropriate vehicle for providing non-binding definitions of temporary or seasonal employment.

Changes: None.

Section 201.10 Eligibility of an SEA to Participate as a Grantee

Comment: None.

Discussion: Section 1201(a) of the Act specifically permits an SEA to operate its State's migrant education program through LEAs and, as proposed, § 201.10 would have continued to authorize the SEA to make subgrants only to LEAs.

The Secretary does not believe that the Congress intended to preclude an SEA from operating its migrant education program through non-LEA operating agencies that in particular situations may be better equipped than LEAs to meet the needs of migratory children. As a result, because there is no reason to distinguish in the subgrant process between an LEA and any other operating agency, the Secretary has determined that § 201.10 should expressly permit an SEA to make subgrants with both LEAs and non-LEA operating agencies.

Changes: Section 201.10 has been modified accordingly. Consistent with this change, §§ 201.16 (Documents that an operating agency must submit to apply for a subgrant), 201.17 (Submission of a project application to the SEA), 201.18 (Approval of a project application for a subgrant), and other appropriate portions of these regulations have also been changed so that they apply to any local operating agency that applies for or receives a subgrant from the SEA.

Section 201.11 Documents an SEA Must Submit to Receive a Grant

Comment: One commenter stated that proposed § 201.11(b)(2), which requires the SEA's application to include an assurance regarding the circumstances under which preschool children "may" be served, appears to conflict with section 1202(a)(5) of the Act, which requires the application to contain an assurance that provision "will be made" for the preschool educational needs of migrant children. Despite the apparently mandatory language of the statute, the commenter recommended retention of the permissive language proposed in § 201.11(b)(2) in order to give State and local program administrators greater flexibility in determining how Migrant Education Program services should be distributed.

Discussion: Section 1202 (a)(5) of the Act requires each SEA application to contain an adequate assurance that "in planning and carrying out programs and projects" for migratory children, "provision will be made for the preschool needs of migratory children." The Secretary agrees that the permissive language proposed in § 201.11(b)(2) is inconsistent with the mandatory language in the statute.

Changes: Section 201.11(b)(2) has been changed to require the SEA's application to contain an assurance that meets "the requirements of Section 1202(a)(5) of Chapter 1 that provision be made for the preschool educational needs of migratory children."

Comment: One commenter stated that given the cost of complying with the statutory requirement that SEAs meet the preschool educational needs of migratory children, SEAs would have difficulty meeting their responsibilities to provide adequate continuity in education for school-aged migratory children. Another commenter, citing the importance of preschool educational services for migratory children, urged the Secretary to adopt standards that would require SEAs to provide both "child development" (i.e., instructional) and traditional "day care" (i.e., basic care) services.

Discussion: The requirements in sections 1202(a)(5) and 1202(b) of the Act direct each SEA to provide for the preschool "educational needs" of currently migratory children, as it does for the special educational needs of school-aged children and youth under the age of 22, before giving consideration to programs that will meet the needs of the State's formerly migratory children. Congress thereby has required that the uses of Migrant Education Program funds be shifted, to some extent, from addressing the continuing educational needs of school-aged formerly migrant children to addressing the needs of currently migratory children, ages 3 through 5, for "educational" services.

While the Secretary does not believe the regulations need to reflect an expansive definition of the term "preschool educational needs," the Secretary considers the statutory phrase "educational needs" to encompass needs for both child development and day care services. However, SEAs need not use Migrant Education Program funds to support preschool programs that provide these services for children who (1) have no special educational needs, (2) have needs that are being met through programs funded from other sources, or (3) pursuant to § 201.36 (General program requirements), do not reside in concentrations large enough to permit a project "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting" the preschool needs of the children whom the project would serve.

Changes: None.

Section 201.17 Submission of a Project Application to the SEA

Comment: A number of commenters objected to what they considered to be excessive and unwarranted detail in the proposed regulations governing the content of local educational agency (LEA) applications for subgrants (§ 208.17(b)). The commenters noted that the proposed application requirements conform closely to those contained in section 1012(b) of the Act without allowance for the special nature of the Migrant Education Program. While these statutory requirements in section 1012(b) are directly applicable to the Chapter 1 Program in LEAs, the commenters asserted that section 1202(a)(3) of the Act requires only that migrant education programs and projects be administered "consistent with the basic objectives" of section 1012. One commenter noted, for example, that while proposed § 201.17(b)(1)(i) required a project application to contain a description of program goals established to meet the needs of children "in greatest need," migrant education programs as a matter of first priority must serve the needs of currently migratory children, even if formerly migratory children are in greater need for assistance.

In addition, some commenters expressed the belief that proposed § 201.17 focused too heavily on the local rather than the State level. These commenters argued that since the Migrant Education Program is a State-administered rather than a locally-administered program, section 1202(a)(3) of the Act should make the "basic objectives" of section 1012 applicable at the State rather than the local level.

Discussion: In addressing these comments, the Secretary has focused upon two principal questions. These are (1) whether SEA administration of the Migrant Education Program requires minimum standards for the content of subgrant applications, and (2) if so, how section 1012(b) of the Act should affect that content.

A. *The need for regulations to address minimum requirements for applications that seek Migrant Education Program subgrants.* Unlike the Chapter 1 program in LEAs, the Chapter 1 Migrant Education Program is State-operated and -administered. Section 1201(a) of the Act authorizes SEAs to operate migrant education programs either directly or through subgrants to LEAs (interpreted by the Secretary to include local operating agencies), and nearly all SEAs elect to do the latter. While the SEAs retain responsibility for these local migrant education projects, staff of local operating agencies (usually LEAs) plan, implement, and evaluate the local projects, and spend program funds—just as they do in the Chapter 1 program in LEAs. The Secretary believes that the Congress intended for SEAs, in administering their migrant education programs, to review the same kinds of information that section 1012 requires an LEA to include in its application under the Chapter 1 Program in LEAs.

Sound programmatic management requires the same result. Given the common two-tier manner of operating a State's migrant education programs and projects, an SEA cannot effectively administer those programs and projects unless LEAs that desire subgrants submit to it applications that contain uniform information with which the SEA can ensure that subgrantees will properly operate migrant education projects on its behalf. Since nearly all of these operating agencies also participate in the Chapter 1 Program in LEAs, the Secretary believes it is reasonable that their applications for migrant education subgrants adapt the applicable requirements in section 1012(b) of the Act governing entitlement grants under the Chapter 1 Program in LEAs. Indeed, without knowledge that SEAs are reviewing subgrant applications that contain at least these kinds of information, the Secretary cannot review SEA applications submitted under section 1202 of the Act, and be able to determine that the SEA's programs will be administered and carried out in a manner consistent with the basic objectives of applicable provisions of the Chapter 1 statute.

Therefore, the Secretary rejects the suggestion that, for the Migrant Education Program, the provisions in section 1012(b) have no applicability at the LEA level. Rather, the Secretary has determined that § 201.17(b) should reflect the information relevant to this program that corresponds to the information that section 1012(b) of the Act requires under the Chapter 1 Program in LEAs.

B. *Adoption of the LEA application requirements in section 1012 to requirements for applications for Migrant Education Program subgrants.* The Secretary agrees with the concerns of some commenters that § 201.17(b) should be revised so that the specific content of section 1012 of the Act is adapted to the Migrant Education Program. In keeping with the differences between the Chapter 1—Migrant Education Program and the Chapter 1 Program in LEAs, identified at the outset of this Appendix, the final regulations have been modified in several respects so that LEA applications contain information that specifically addresses the migrant education projects the LEA proposes to implement.

In particular, the Secretary has determined that to ensure that the Statewide needs of currently migratory children are given priority, the SEA must be able to review an LEA subgrant application that contains a separate description of the activities and level of funding that would support programs for currently migratory children the LEA expects to serve. As noted in the discussion of comments on § 201.25(b) (Amount available for an LEA subgrant), the proposal that an SEA tie the amount of an LEA's subgrant to the numbers of currently migratory children it would serve and the costs of activities needed to serve them has been revised. Section 201.25(b) requires only that the SEA ensure that LEAs have sufficient funds to meet the unmet needs of currently migratory children residing in areas they would serve. Because the SEA cannot do so without Statewide information on the expected activities and the costs of those activities LEAs would implement to meet the needs of currently migratory children, the Secretary has determined that this information must be included in any application for a Migrant Education Program subgrant.

Changes: The Secretary has made several changes to proposed § 202.17(b). First, paragraph (b)(2) now requires an operating agency application to contain information, "consistent with the SEA's approved application" (rather than "section 1012(b) of Chapter 1" as the NPRM had proposed), about (i) the operating agency's needs assessments and children with the greatest needs, consistent with the priority favoring currently migratory children, and (ii) the design of proposed projects and how they would meet the general instructional program goals the SEA has established. Second, § 201.17(b)(1)(ii) requires a breakdown of the components that would serve the identified unmet needs of currently migratory children expected to participate and the numbers of those children. Similarly, the budget of the project's expenditures required by § 201.27(b)(2) must contain a separate summary of project components that would serve currently migratory children.

Furthermore, the applicant's assurances described in paragraph (b)(3) have been changed from the LEA assurances in section 1012(c) of Chapter 1 to assurances that programs have been planned and will be operated in a manner consistent with §§ 201.35 and 201.36 of these regulations.

Comment: One commenter questioned the advisability of permitting LEAs that operate short-term summer projects to submit three-year applications under § 201.17(a). The commenter observed that the LEA cannot know from year to year whether the same students or numbers of students will return to the LEA each year, and so presumably cannot adequately plan projects for the three-year period. The commenter recommended that only the SEA's application to the Secretary be permitted to cover a three-year period.

Discussion: In applying the basic objectives of section 1012 of the Act to the Migrant Education Program, the Secretary is adhering to the overall congressional statement of policy, recited in section 1011(a) of the Act, that Chapter 1 eliminate unnecessary administrative burdens. Since even those LEAs that operate only the kind of summer projects the commenter described may be able to eliminate some duplicative paperwork by submitting three-year applications, the Secretary believes that § 201.17(a) should continue to permit any LEA to submit an application of up to three years. Moreover, the Secretary is satisfied that the requirements in § 201.17(c) (for annual LEA updating of its application) and that in § 201.17(b)(5) (that the LEA include in its application information the SEA needs to ensure the local project comports with the approved State application) adequately meet the commenter's concerns.

Changes: None.

Comment: None.

Discussion: In section 1202(a)(3) of the Act, Congress reemphasized that migrant education programs and projects must be administered and carried out in ways that meet the basic objectives of the maintenance of effort and comparability provisions in section 1028. In order to interpret this requirement the Secretary, in §§ 201.41 through 201.45, proposed regulations establishing maintenance of effort and comparability as preconditions to an LEA's receipt of a Migrant Education Program subgrant. As a result of further internal discussion, the Secretary believes that the LEA's application for program funds must

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permit the SEA to determine that these preconditions have been met.

Changes: Section 201.17(b)(3) has been amended to require the operating agency's subgrant application to contain an assurance that the agency has established procedures to ensure that the levels of services that it provides for migrant children with State and local funds are comparable to the levels of services the LEA provides non-migrant children with State or local funds. Section 201.17(b)(5) has been amended to require the LEA to include in its application data from which the SEA can determine that the LEA has maintained fiscal effort. However, since many SEAs collect and maintain LEA expenditure data in a form that allows the SEA to determine whether LEAs have maintained fiscal effort, both § 201.17(b)(3) and § 201.17(c), which provides for annual updating of LEA applications, require the LEA to provide the data only if they are not otherwise available to the SEA.

Section 201.18 Approval of a Project Application for a Subgrant.

Comment: One commenter observed that conditioning approval of an LEA's project application on the SEA's prior determination that the LEA's salary schedule and policies would result in compliance with comparability, as proposed in § 201.18(a)(2)(ii), would serve no purpose in short-term summer programs that serve several school districts. Because of this factor and because the regulations appeared to be overly prescriptive, the commenter recommended deletion of the proposed provision.

Discussion: Section 1018(c) of the Act states that, as a means of demonstrating comparability, an LEA may provide a written assurance that it has established and implemented a district-wide salary schedule and other policies that will ensure equivalence among schools in staffing, curriculum, and materials and supplies. Because section 1202(a)(3) of the Act incorporates the basic objectives of that provision as a Migrant Education Program requirement, an LEA seeking funds must provide in its subgrant application the corresponding assurance of comparability the Secretary has established in § 201.44(b). That assurance covers the situation the commenter has described.

The intent of § 201.18(a)(2)(ii), as proposed, was to provide the SEA the information it needed prior to approving the LEA's application, thereby minimizing the LEA's risk of subsequently being found in noncompliance with the comparability requirement. However, the Secretary does not want to impose an unnecessary paperwork burden on LEAs or SEAs. Section 1018(c) of the Act states that an LEA shall be considered to have met the comparable services requirement if it files with the SEA the appropriate written assurance. Since an LEA that received a Migrant Education Program subgrant must comply with the comparable services requirement in § 201.44, and the SEA must monitor the LEA's compliance with it, the Secretary has determined that § 201.18(a)(2)(ii) should be revised.

Changes: Section 201.18(a)(2) has been revised accordingly.

Comment: None.

Discussion: As proposed, § 201.18(a)(1) provided that an SEA could approve an LEA's subgrant application that complied with the Chapter 1 statute, applicable regulations, and the provisions of the approved SEA application. The Secretary has revised the regulations for this part so that they contain all applicable Migrant Education Program requirements, and so that potentially unclear references to unspecified requirements of the statute can be eliminated.

While § 201.18(a) has been revised to embody much of the language of the corresponding regulations governing the Chapter 1 Program in LEAs (§ 200.21(a)), § 201.18(a) differs from its Part 200 counterpart by permitting, but not requiring, an SEA to approve an LEA application that meets the requirements in § 201.17 and the provisions of the approved SEA application.

Changes: The reference to the LEA application's need to comply with the "Chapter 1 statute" has been removed from § 201.18(a)(1).

Comment: Two commenters recommended that § 201.18(a) be amended so that the only requirements of the Chapter 1 statute with which the LEA application had to comply were those of maintenance of effort and comparability.

Discussion: The commenters failed to offer any rationale for their comment. The Secretary assumes that the commenters intended also to recommend deletion of the proposed rules on maintenance of effort and comparability (§§ 201.40 through 201.42 and 201.44), so that proposed § 201.18(a)(1) would mean that an LEA application would have to comply with only the statutory language concerning maintenance of effort and comparability. However, in view of the Secretary's decision to remove the express reference to Chapter 1 statutory requirements from § 201.18(a)(1), there is no need to consider further the commenters' recommendation.

Changes: None.

Section 201.20 Amount Available for an SEA Grant

Comment: Several commenters expressed confusion about whether proposed § 201.20(a)(2) made SEAs responsible for conducting audits to ensure that before submitting information on migratory children to the Migrant Student Record Transfer System (MSRTS), the State's count of those children did not exceed a five percent error rate. Commenters stressed their belief that Congress did not intend to impose this costly burden on States when it enacted the error rate provision in section 1201(b) of the Act.

Discussion: Children who are not migratory according to definitions in § 201.3 may not be enrolled in the MSRTS. While SEAs are responsible, under § 201.30(b), for implementing procedures that ensure the correctness of information on migratory children that they submit to the MSRTS, they are not specifically responsible for conducting audits of those eligibility determinations. If auditors or others review the correctness of the SEA's enrollment information, the count of the State's full-time equivalent (FTE) number of migratory children that the MSRTS generates will be sustained if the underlying eligibility determinations made for all enrolled children are correct within a five percent margin of error.

Other comments regarding the five percent error rate are addressed in the discussion of § 201.30 (Eligibility of a child to participate).

Changes: In view of the apparent confusion that proposed § 201.20(a)(2) created, the reference to the five percent error rate has been deleted from that section and retained only in § 201.30 (d) and (e).

Comment: Many commenters voiced strong opinions about the proposal in § 201.20(a)(3) to restrict the length of time children, who are recruited at "stopover" project sites while en route to other locations, may be counted as migratory children residing in States that operate those projects.

Commenters who opposed the proposal did so for many reasons. Some asserted that nothing in Public Law 100-297 supported the Secretary's proposal to alter the way in which the size of State grants should be determined. Many commenters claimed that the proposal inappropriately singled out for special treatment these "stopover" project sites. Commenters argued that under the MSRTS computer program for calculating each State's total of migrant child residency days (the Migrant Program Allocation Subsystem (MPAS)), no State is held responsible for determining and documenting when children leave their States. Commenters also claimed that the Secretary's proposal that States provide the MSRTS a "termination date" for children enrolled at a stopover site amounted to an improper effort to establish additional eligibility criteria. Many commenters claimed that their effort to monitor the dates children leave particular States would create excessive administrative burden, and violate the prohibition in section 1202(c) of the Act against expanding the definition of a "currently migratory child" in existing regulations.

Many commenters also stressed the substantial benefits that the projects at stopover sites provide. First, migrant children who pass through them receive supplemental education and health services and information about projects at their next destinations. Second, States that are the children's ultimate destinations could learn of the anticipated date and location of the family's arrival. Third, the overall fairness of the program's allocation process is improved. These commenters expressed serious concern about the continued viability of the migrant education projects located at stopover sites, should the Secretary adopt the proposed rule, and the corresponding harm that would befall the Migrant Education Program as a whole if proposed § 201.20(a)(3) were adopted. One commenter recommended that the Secretary continue to fund these projects, but do so from funds Congress appropriates for the separate migrant interstate and intrastate coordination program under section 1203 of the Act.

Commenters who favored the Secretary's proposal did not question the benefits that these very short-term projects provide. However, they agreed that SEAs operating them should not be able to generate inflated FTE counts through the existing MPAS when they know that the children whom they recruit will immediately be proceeding to destinations in other States. Indeed, a number of commenters argued that the Secretary's proposal did not go far enough. One commenter observed that "receiving States" had a marked disadvantage over both "stopover States" and "home States" in identifying and enrolling migratory children within their borders. Therefore, in keeping with the national focus of the Migrant Education Program, this commenter recommended that each child enrolled by a stopover State generate an automatic 20-day period of enrollment in the State of the child's destination, and the corresponding additional allocation of program funds, within which time the receiving State would work to find and recruit the child.

Three commenters argued that the proposal was far too narrow. They urged the Secretary to address the fundamental problem with the method the Department had adopted for allocating Migrant Education Program funds under section 1201(b) of the Act, which they characterized as the unreasonable assumption that a child's residency in one State continues until he or she is identified and recruited elsewhere. One of the commenters urged the Secretary to replace the current method of allocating program funds on the basis of residency days with a system for distributing program funds on the basis of the numbers of migratory children, depending on age, who attend schools or projects in the State for at least one day.

Discussion: The Secretary proposed § 201.20(a)(3) to resolve a significant and longstanding inconsistency between (1) the statistics on the numbers of migratory children residing in States with stopover sites, upon which the Department has relied in distributing Migrant Education Program funds, and (2) the statutory requirement, re-enacted in section 1201(b) of the Act, that those statistics provide the most accurate estimate of the total of FTE migratory children who annually reside in each State. See the Supplementary Information accompanying the published NPRM (54 FR 3926). After considering all the public comment, the Secretary has determined to retain the proposal, but with modifications as explained in the Secretary's discussion of the succeeding set of comments.

A. *The current method for annually calculating each State's total of FTE migrant children residing within its boundaries.* For many years, in consultation with the State Directors of Migrant Education, the Department has allocated Chapter 1—Migrant Education Program funds to States on the basis of FTE residency data generated by the MSRTS through operation of the MPAS. Under the MPAS, as soon as a child is identified as migratory and enrolled in the MSRTS, the State enrolling the child begins to accrue residency credit on his or her account as of the day the child was found to begin residing in the State. That State will continue to receive residency credit on account of the child for one year unless, before then, (1) another State enrolls the child as a "currently migratory child" residing within that State, or (2) the MSRTS "terminates" the child's enrollment. At present, MSRTS might terminate a child's enrollment for reasons that include (a) the child's completion of five years as a "formerly migrant child" without any recorded, intervening moves that would make him or her once again a "currently migratory child," (b) the child's becoming 22 years of age, (3) its receipt of information that the child has graduated from high school, or (4) its receipt of information that the child has died. The MPAS does not process information that a child has merely left a State and resides elsewhere, and neither the Department nor MSRTS staff have ever advised State and local project officials to provide the MSRTS with this information.

B. *The problem of recruitment at the stopover sites.* The project sites, which proposed § 201.20(a)(3) was intended to address, are those that assist migrant families who are in transit to destinations in other States, by offering them short-term educational, health, counseling, or other services. While the families are at the sites, often only overnight, project staff recruit children who are eligible to be counted and served by the Migrant Education Program. They then enroll them as migratory children in the MSRTS, which provides the children with individualized identification numbers, and enter any available medical or educational information about them for future retrieval by SEA or LEA personnel in other States.

In making this information so readily available to school district personnel around the country, the projects operated at these stopover sites perform an important function. Yet, given the way the MPAS now operates, enrollment of these children in the MSRTS also has the effect of generating residency credit for States operating these projects for up to one full year, if the States to which the children move subsequently fail to locate and recruit them as migratory children on the basis of the current moves. This circumstance alone draws into question the statutory basis for continuing to allow the States operating these projects to so benefit.

The problem posed by recruitment at the stopover sites is exacerbated because the project staff there typically learn from the migrant families themselves not only that their children will be leaving those sites immediately for other destinations, but the expected destinations themselves. Under these circumstances, permitting States operating these projects to retain a windfall in the FTE number of migratory children estimated to reside within their boundaries, solely because other States to which the children move failed to recruit them, is not consistent with any reasonable process for calculating the migrant child counts of States where these stopover sites exist. Therefore, in keeping with the Secretary's responsibilities under section 1201(b) of the Act to allocate program funds on the basis of "statistics made available by the [MSRTS] or such other system as the Secretary may determine most accurately and fully reflects the actual number of migrant students" full- and part-time, who are estimated to reside in each State, the Secretary has included § 201.20(a)(3) in the Migrant Education Program regulations.

Until now, the Department has specifically permitted those States that recruit migratory children at stopover sites to receive the same residency credit on their account as any other migrant children. This is so despite the fact that typically, when staff at the stopover sites recruit the children, they are informed that the children will be traveling, often the following day, to other locations usually in other States to enable their parents or guardians to obtain qualifying employment. The Secretary has determined that continuing to permit SEAs to accrue residency credit after these children have left the stopover sites for locations in other States violates section 1201(b) of the Act.

C. *The differences between enrollment of migratory children at the stopover sites and enrollment elsewhere.* Commenters correctly observed that proposed § 201.20(a)(3) is an exception to the general "enrollment to enrollment" process that the Department has long sanctioned as part of the MPAS. Under that process, the MPAS attributes the residency of each migratory child to the State in which he or she was last identified. The child may move elsewhere, but unless another State identifies him or her as a migratory child residing within its boundaries, the first State will continue to accrue residency credit.

Despite the fact that the statistics the MSRTS annually provides of each State's migrant child count, as derived from the MPAS, are only as good as the extent and quality of the nation's multi-State recruitment of currently migratory children, the Department has long justified the continued use of the MPAS on three bases. First, States cannot easily provide reliable information to each other on the expected date and location of migrant children's arrival in the "receiving" State. Second, any effort on their part to do so would be administratively burdensome, intrusive, and extremely costly, because in many cases project staff would have to conduct follow-up visits with migrant families and, against the State's fiscal interest, record yet more information on their children's travel plans. Finally, use of the MPAS creates financial incentives for States to locate currently migratory children residing within their boundaries, since each child found will generate program funding, and each child overlooked may continue to benefit another State. However, these rationales for the continued use of the MPAS cannot justify retention, by the States operating projects at the stopover sites, of residency credits for children whom they know will proceed immediately to other States. First, project staffs collect information on the children's destinations as families in transit; the information is inherently reliable because the parents or guardians who provide it know their immediate travel plans. Second, project staff collect this information (or can collect the information) on children's destinations during the recruitment interview. Therefore, no additional administrative burden, intrusion, or cost is incurred. Indeed,

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the function of these stopover migrant education projects, in most cases, includes obtaining this very information so that parents and the school districts into which the families expect to move can better find each other. Finally, while other States retain financial incentives to locate children who are recruited at these stopover projects and benefit directly from the information available to them through the MSRTS entries, the fundamental inconsistency with section 1201(b) of the Act remains.

It is true that States with migrant education projects at these stopover sites, like all other States, may fail to recruit some of their migratory children, thereby allowing the MSRTS to under-count their migrant child counts. But no logical relationship exists between the unknown extent of that failure and the known inflation in the number of migrant children to which States with stopover sites are credited because of the way the MPAS generates residency data for migratory children who are enrolled at them.

Section 201.20(a)(3) does not establish new eligibility requirements. SEAs in States that operate projects at these stopover sites can legitimately recruit any migrant child whose family comes to the project site because of the amenities or services the site provides, and enroll him or her in the MSRTS as a migratory child. However, they may not use the MSRTS and its MPAS to generate inflated numbers of their States' migrant residents with which the Secretary determines levels of State Migrant Education Program funding. Doing so directly conflicts with section 1201(b) of the Act, which directs the Secretary to allocate those funds according to the most accurate statistics on the estimated FTE number of migrant children residing in each State. Consequently, the fact that section 1201(b) includes language identical to that in the previous statute is of no account.

D. *The Secretary's plan to continue funding the stopover site projects.* The Secretary acknowledges the substantial national benefits that SEA efforts at these stopover sites have provided to the thousands of migrant children and their families who have passed through them. The Secretary also acknowledges the value of these projects in providing advance notification to other States about the children who are moving to their areas. The Secretary's objective, in issuing § 201.20(a)(3), is improving the accuracy of State child counts and the corresponding State-by-State distribution of Migrant Education Program funds, not eliminating worthwhile projects that serve important interstate needs of currently migratory children. Therefore, as one commenter recommended, the Secretary intends to commence discussions with State officials about ways to secure continued financial support for these projects from funds appropriated to the Department under section 1203 of the Act for grants or contracts that promote the interstate or intrastate coordination of Migrant Education Program services.

E. *The need for maximum recruitment to continue at the stopover sites.* The Secretary recognizes that the combined effect of § 201.20(a)(3) and the allocation formula in section 1201(b) of the Act may have the unfortunate practical consequence of eliminating the recruitment and enrollment of migratory children who would be State residents for only a day or two. Since it depends, in part, on an aggregation of child residency days, the allocation formula provides little fiscal reward for SEAs to expend the effort needed to recruit and enroll those children who will shortly move elsewhere. SEAs that, until now, have enrolled these children may feel they are receiving insufficient additional funds to justify the continued effort.

Nonetheless, the Secretary trusts that all SEAs affected by § 201.20(a)(3) will reject this parochial view, and continue expending the resources to permit active recruitment of *all* migrant children who pass through their States' stopover sites. Doing so will serve important educational objectives and benefit all of the States concerned. It will ensure that all migrant children who need the services available at the sites can get them. It will ensure that accurate records of these children's moves are established. Finally, recruitment of all those children who pass through the stopover sites, and entering corresponding residency data into the MSRTS identifying the period of their brief stays there, will substantially improve the accuracy of MSRTS statistics on the FTE numbers of migratory children residing in each State.

This one act, if performed at all sites, will permit the MSRTS statistics on the FTE number of migratory children residing in the "sending" States to reflect the fact that children who arrive at the stopover sites no longer reside in the States they have left. The Chapter 1—Migrant Education Program, as a national program, will thereby benefit because the Secretary will be able more fairly and with greater confidence to distribute program funds to all States, "sending," "receiving," and those where stopover sites exist, on the basis of more accurate estimates of where migrant children actually reside.

F. *Consideration of proposals to overhaul the system for generating statistics on the migrant children residing in each State.* The Secretary also considered the comment of those who believed that proposed § 201.20(a)(3) did not go far enough. Suggestions that Chapter 1—Migrant Education Program funds be allocated on the basis of the numbers of children actually served by migrant education projects have some merit but require further study by the Department. If implemented, they might permit MSRTS or another system to generate very accurate child count information while decreasing the amount of Migrant Education Program funds diverted from educational programs into child recruitment and enrollment efforts. The proposals, however, would not alleviate current problems of (1) identifying eligible children under the definitions in § 201.3, or (2) determining which children should be favored for receipt of program services given the statutory priority in section 1202(b) that favors currently migratory children. They also would likely decrease incentives SEAs now have to identify their currently migratory children, those who are hardest to find but who are the *raison d'etre* for the Migrant Education Program. In any event, the proposals conflict with the existing statutory requirement in section 1201(b) of the Act that the Secretary allocate funds on the basis of the most accurate estimate of each State's FTE number of migrant children residing within its boundaries.

Conversely, because they are controversial, the Secretary will treat as suggestions for future rulemaking the separate proposals (1) that receiving States that have not actually located and identified migratory children still receive some residency credit on the basis of information parents convey to the staff of the stopover projects, and (2) that the Secretary consider discarding the MPAS altogether for what the commenter characterized as unreasonable assumptions about continued child eligibility. The proposals will be studied as part of the Secretary's overall review of improvements that may still be needed in the quality of MPAS' estimates of State migrant child counts and, more generally, in the way Migrant Education Program funds should be allocated nationwide.

Changes: The substance of proposed § 201.20(a)(3) has been retained. However, the proposal has been modified as described in the following discussions of comments.

Comment: Several commenters recommended that, to avoid confusion, the terms "project" and "en route" in proposed § 201.20(a)(3) be defined or narrowed. Some commenters were concerned that, as written, the proposed regulations might prohibit desirable recruitment in any project that is located in an area to which migrant families have traveled to enable the child or members of the child's family to obtain temporary or seasonal work in agriculture or fishing. Others feared that the proposal would place undue recordkeeping and other administrative burdens on all States as their recruiters sought to determine whether migrant families were en route to locations in other States.

Discussion: In proposing § 201.20(a)(3), the Secretary wished to address one evident distortion that the current MPAS creates in the data that the MSRTS generates on each State's estimated annual migrant child count. It is the distortion caused by "large scale" efforts, conducted at sites that provide education and other services designed to attract migratory families during their moves from one location to another, to recruit migratory children who pass through them, coupled with the failure of States to which the families are moving to identify and enroll many of these children. The proposed regulations intended to address only this situation, not the more customary and varied forms of statewide recruitment activities. Consistent with that intent, the final regulations do not limit enrollment in the MSRTS of children recruited outside the kind of stopover site described above and in discussion of the preceding comment. Specifically, as revised in response to public comment, § 201.20(a)(3) has no effect on whatever recruitment efforts and MSRTS enrollment procedures may exist at stopover projects that offer migrant families short-term services, or job placement in temporary or seasonal agriculture or fishing, and that are located in the States to which migrant children and families have moved to enable them to seek or obtain qualifying work.

With regard to situations not addressed by § 201.20(a)(3), the Secretary does not encourage SEA or LEA officials to recruit, as a State resident, any migratory child whom they discover is simply passing through the State so that a family member can seek or obtain employment elsewhere, unless they are likewise prepared to notify MSRTS to stop giving the State residency credit as of the date the recruiter learned the child expects to leave the State. However, the conditions under which this kind of recruitment effort occurs are likely to be far more random and unpredictable than those existing at the designated stopover sites that are the subject of § 201.20(a)(3). The quality of the estimates that MSRTS generates on the FTE number of each State's migratory children certainly warrants serious study. Until the study by the Department is completed, the Secretary is not prepared to regulate further in this area because of doubt that the resulting adjustments in State Migrant Education Program allocations justify the increased documentation and administrative burdens that regulations would impose.

Changes: Section 201.20(a)(3) has been revised to clarify its applicability to situations in which stopover sites are designed to attract migrant families who are in transit to locations in other areas to obtain temporary or seasonal employment in agriculture or fishing. It also clarifies that the limitations imposed on the period for which States, having recruited migratory children at those sites, may enroll children in the MSRTS or other system do not apply in the case of a child in transit to another location within the same State.

Comment: None.

Discussion: Proposed § 201.20(a)(3) appeared to apply only to migrant education stopover projects the SEA "operates." However, the provision was intended to address any distortion in program allocations resulting from the way in which MPAS assigns residency credit to children enrolled at certain stopover sites, regardless of whether the SEA or another agency funded or operated a project at those locations.

Changes: Section 201.20(a)(3) has been revised to clarify its applicability to any project conducted at a stopover site, "regardless of funding source," where recruitment of migratory children is conducted.

Comment: With regard to the proposed regulatory language in § 201.20(a)(3) referring to the SEA's enrollment of the child in "the MSRTS or other system of records as a resident in that State," one commenter recommended, for consistency with the statute, deletion of the words "of records."

Discussion: The Secretary agrees with the recommendation.

Changes: The words "of records" have been deleted.

Comment: Several commenters questioned how § 201.20(a)(3) could be implemented. They observed that withdrawal of children from the MSRTS does not now trigger an "end funding" code, and urged the Secretary to direct those operating the MSRTS to make appropriate changes in the existing MPAS.

Discussion: When these regulations take effect, the Secretary will commence discussions with State officials responsible for the MPAS to ensure that appropriate changes are made in it and that the Arkansas Department of Education, which operates the MSRTS, instructs SEA and LEA officials nationwide on any corresponding changes in data entries that may be necessary.

Changes: None.

Comment: The Secretary's proposal in § 201.20(b) to adopt a two-tier summer school adjustment formula, generated a heated debate on how and whether to change the Department's existing formula for implementing the special summer adjustment that Congress re-enacted in section 1201(b) of the Act. Currently, the Department provides all SEAs the same FTE credit for the total days of student enrollment in State summer school programs operated any time between May 15 and August 31, regardless of the levels of intensity and cost of those programs. The Secretary's proposal would have given that full FTE credit only for days students are enrolled during this period in intensive programs of instruction, defined to be a minimum operation of three hours per day or fifteen hours per week. Days of enrollment for students enrolled in less intensive programs would have generated half the FTE credit.

Those favoring the proposal cited its improvement over the current formula that does not address in any manner the differences in program cost or intensity of summer school programs operated throughout the country. However, many commenters felt that while its thrust was correct, the proposal was far too weak. Several commenters expressed concern that the term "program of instruction" needed definition. One commenter observed that otherwise the Department would continue its practice of rewarding FTE summer enrollment data that included alleged participation in projects that were "little more than dates entered in the MSRTS computer," such as a one-way correspondence project that mailed workbooks to migrant students of which the commenter was aware. Many commenters, particularly those from "receiving" States whose State programs emphasized summer programs, argued that the single supplemental FTE credit for every 109 days of enrollment between May 15 and August 31 generated too little additional funding to meet the costs of operating intensive summer projects. Many of these commenters recommended that the larger FTE credit for enrollment in intensive summer school programs of instruction be awarded for a much smaller number of days of enrollment.

On the other hand, the Secretary received many comments from those opposing proposed § 201.20(b). Commenters argued that the proposal would discourage innovative instruction and drastically reduce the number of migratory children whom summer programs would be able to reach. Commenters from one large State stressed the emphasis the SEA had placed on praise-winning, effective, and non-traditional summer programs that serve large numbers of migratory children. These commenters claimed the proposal would cost a significant proportion of their State's annual allocation of Migrant Education Program funds and summer program budget, with devastating repercussions on its migrant children. In addition, noting that § 201.20(b) would not provide any summer allocation adjustment to programs of instruction that were "not part of the regular school program," some commenters expressed concern about the inequity of decreasing SEA allocations to those States whose school districts operate on a "year-round" basis. Still other commenters urged the Secretary to decrease, rather than increase, the significance of the summer school adjustment in the overall formula for allocating Migrant Education Program funds, so as not to detract regular school programs for migratory children, which the commenters believed were more important.

In keeping with the service priorities in section 1202(b) of the Act that favor programs and services for currently migratory children, many commenters stressed the failure of both the current formula and proposed § 201.20(b) to focus on the need for increasing the levels and proportion of funding for programs designed to meet the needs of those children. Many also recommended that, in view of the subject's complexity, the proposed change in the summer formula be withdrawn so that various suggestions for revising the Department's current formula can be studied in detail. One commenter stressed that the Department's current formula was outdated, and that it derived from a collective decision made over ten years ago that relied upon the existing data and conjecture, but which at the time was deemed "equitable for the first year only."

Lastly, commenters disagreed on the goals that any summer school adjustment formula seeking to implement section 1201(b) of the Act should address. Some stressed the need for a formula tied to defraying more of the costs that intensive summer school programs of instruction incur. Others stressed that receiving States need more money to provide basic services for their summer migrant children, both to defray the costs of their existing programs and to allow creation of many more that are needed in unserved portions of their States. Still others stressed that all Migrant Education Program funding, whether related to the special summer school adjustment or not, should be tied to the costs of programs that attempt to meet the needs of currently migratory children. Finally, many commenters insisted that the SEA should determine the best form of summer school programs to meet needs of the State's migratory children, without pressure from a summer adjustment formula that rewarded only particular forms of intensive instruction.

Discussion: Section 1201(b) of the Act directs the Secretary to adjust the FTE number of migratory children in States during summer months "to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer." As the Supplemental Information

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accompanying the January 26, 1989 NPRM explained (54 FR 3928), the Department's method for implementing this adjustment gives equal weight to the daily enrollment of every child enrolled in any migrant education summer school program. An SEA provides the MSRTS with the identities of enrolled students and the enrollment and withdrawal dates of what it considers to be qualifying programs. The MSRTS aggregates the data to provide an adjusted summer FTE count for the State that, when added to its regular calendar year FTE count, produces the MSRTS statistics on the numbers of migratory children enrolled in the State. This total number forms the basis of the Department's annual allocations of Migrant Education Program funds.

As noted in the Supplemental Information to the NPRM, the Secretary is concerned that the Department's current summer school adjustment formula may unfairly reward SEAs whose summer projects passively serve large numbers of migrant children at the expense of SEAs whose projects intensively serve far fewer. Many commenters not only expressed a similar concern, but criticized proposed § 201.20(b) because it still did not generate adequate funding for the intensive summer programs that their States operate for currently migratory children. Conversely, the Secretary is aware of some summer school projects that, through the existing formula, generate Migrant Education Program funding for their States far in excess of their summer school costs.

As proposed, § 201.20(b) sought to ameliorate some of these apparent inequities and to do so, through reliance upon MSRTS data like those currently used, with minimal administrative cost and burden. Those inequities affect the fairness with which the Department allocates program funds linked to summer school costs and needs. Since the FTE summer school adjustment is but one element of the broader Migrant Education Program allocation formula that relies upon the total FTE number of each State's migrant children, persistent inequities in the summer adjustment formula also raise disturbing questions about the relative purpose of careful State identification and recruitment.

In proposing § 201.20(b), the Secretary wanted to begin the process of addressing these inequities. The Secretary is concerned about the potential impact that this and other formula changes might have on any State's existing innovative programs. However, the Secretary is also concerned that a funding allocation system be implemented that, consistent with section 1201(b) of the Act, responds to the costs of operating summer school programs and the numbers of migrant children, particularly currently migratory children, enrolled in them throughout the nation. In this regard, the Secretary observes that enactment of the special summer adjustment in 1978 in section 141 of Pub. L. 95-561 was specifically described by the House Education and Labor Committee as necessary to meet the unmet needs of *currently* migratory children: "[T]he lack of stability in the average migrant child's educational process, speaks for the necessity of summer programs, but few States have implemented these programs due to their higher costs." See H.R. Rep. No. 95-1137, 95th Cong., 2d Sess. 40 (1978). The Secretary acknowledges that the proposed § 201.20(b) did not adequately address adjustments needed in FTEs to reflect the costs of summer school programs established for currently migratory children.

Reaction to the proposal has revealed the depth and extent of public concern about any new regulations the Secretary might now issue. Commenters of all viewpoints urged caution and further study to avoid what they believed might be widespread and unpredictable ramifications that § 201.20(b) would cause. In response, the Secretary agrees that further study and debate about the specifications of a new summer school adjustment formula must occur before a new proposal can be issued.

Therefore, the Secretary has determined that the Department's existing summer adjustment formula should be retained without modification to permit a review of other formulas for adjusting State FTE numbers of migratory children that might better reflect the costs of summer school programs for currently migratory children.

Changes: Section 201.20(b) has been revised by deleting the two-tier formula.

Section 201.25 Amount of o Subgrant

Comment: Several commenters objected to proposed § 201.25(a)(1), which included as a factor in the amount of a subgrant to an LEA the count of only currently migratory children, rather than currently and formerly migratory children, residing in an area to be served by the project. Commenters emphasized that the statute required only that a local project give priority to the needs of currently migratory children. They argued, therefore, that since Public Law 200-297 was silent on how the amount of subgrants should be determined, Congress left to the States the authority to calculate the amounts of subgrants, if they chose, based on the total number of migratory children residing in areas served by those agencies. A few commenters stressed their view that SEAs needed this authority so that they could operate effective programs tailored to meeting their States' unique needs, such as in areas with relatively low levels of currently migratory children. One commenter stated that otherwise, the SEA's grant will permit "many arbitrary decisions."

Other commenters offered opinions about proposed § 201.25(a)(4), which would require that the criteria the SEA uses to determine the amount of a subgrant include the availability of funds from other sources. One commenter recommended that this criterion be revised to reflect "funds or services," and that if the criteria listed in § 201.25(a)(4) were intended to reflect a descending order of priority, that this criterion be given greater importance. Another commenter suggested that the Secretary clarify to what extent the SEA had to exhaust efforts to obtain these funds or services from other sources before including corresponding amounts of Migrant Education Program funds in the subgrant. Still another commenter appeared to recommend deletion of the criterion altogether as inconsistent with the manner in which the Department allocates Migrant Education Program funds to the SEAs.

Discussion: Section 1202(b) of the Act requires currently migratory children to be given "priority in the consideration of programs and activities" contained in SEA applications for migrant program funding. While section 1201(a) permits the SEA, if it chooses, to operate these programs and activities through subgrants to local operating agencies, the needs of the State's currently migratory children must be given precedence in the development of the State's projects. As noted in response to the preceding comment, Congress further stressed the priority it was placing on currently migratory children when it enacted the special summer school adjustment.

A. *The practice of subgranting on the basis of numbers of total migratory children residing in the area served by the LEA.* As proposed, § 201.25 appeared to some to impose a requirement that the amount of an SEA's subgrant to local operating agencies be based on a strict formula tied to numbers and needs of currently migratory children residing in areas served by those agencies. Its intent however was much simpler, to emphasize that the way the SEA distributes Migrant Education Program funds must ensure that the needs of the State's currently migratory children are being considered and will be met. The Secretary does not believe an SEA can ensure that the needs of all significant concentrations of the State's currently migrant children are being met if, as is often the case, it calculates the amount of subgrants to LEAs simply by applying a formula tied to the numbers of all migrant children found to be residing in areas the LEA would serve.

This kind of formula is simple to administer. However, funding project areas with equal numbers of migrant children at the same levels, regardless of either the relative proportion of those in each who are currently migratory or the relative costs of programs designed to serve them, conflicts with the SEA's responsibility to give "priority in the consideration of programs and activities" to currently migratory children. Moreover, the Migrant Education Program is not really SEA-operated, as so many commenters insisted it remain, if the FTE number of migratory children residing in the area served by the LEA in a sense creates for that LEA a *de facto* entitlement to a formula-driven amount of migrant education funding on their account.

Moreover, previous departmental regulations have likewise not sanctioned use of an automatic "dollars per child" subgrant formula. Rather, regulations for the Chapter 1—Migrant Education Program operated under the Education Consolidation and Improvement Act of 1981 (Pub. L. 97-35), and predecessor regulations for the Title I Migrant Education Program under the Elementary and Secondary Education Act as amended by the Education Amendments of 1978 (Pub. L. 95-561) both have included the "nature and scope" of the LEA's proposed project as factors the SEA was to consider in determining the amount of a subgrant, while the previous Chapter 1 regulations further required the SEA to consider the "cost" of that program. See § 201.25(b) of the Chapter 1 regulations issued on April 30, 1985, and § 204.40 of the Title I regulations issued on April 3, 1980.

Congress included no provision in Pub. L. 100-297 regarding the method for calculating subgrants. However, section 1431 of the Act specifically authorizes the Secretary to issue appropriate regulations to ensure compliance with statutory requirements governing the Migrant Education Program. The Secretary has determined that retention of the regulatory requirement that an SEA consider the "nature, scope, and cost" of the LEA's proposed project in determining the amount of a subgrant continues to be necessary for two reasons. First, it will enable the Secretary, under section 1202 (a)(1) and (b), to determine that payments are used for programs and projects designed to meet the needs of migratory children, particularly currently migratory children, residing in the area served by the LEA. Second, by ensuring that the amount of a subgrant to an LEA bears a reasonable relationship to the activities the LEA will conduct, it complements the SEA's responsibilities under sections 1012(a) and 1202(a)(3) of the Act to exercise appropriate fiscal control over the use of Migrant Education Program funds.

Use of the kind of considered approach to determinations on the amount of a subgrant will not lead to "arbitrary decisions," as one commenter suggested, because the SEA will be relying on project information and proposed budgets offered by the LEA, under § 201.17(b)(1)(ii), as part of its subgrant application. Moreover, determining subgrant amounts by the numbers of migratory children residing in particular areas of the State is perhaps the most arbitrary method of funds distribution since it awards funds to LEAs without regard to the relative needs of the State's migratory, particularly currently migratory, children. For all of these reasons, the Secretary has concluded that Migrant Education Program regulations must continue to require an SEA to consider other relevant factors, in addition to the numbers of children who would benefit from the LEA's project, when it determines the amount of a subgrant.

B. *Funds and services available from other sources.* Furthermore, the Secretary agrees with commenters that in order to use Migrant Education Program funds efficiently, a subgrant should not include amounts for project activities if funds "or services" from other sources are available to provide them. While not part of the statutory formula under which the Department allocates Migrant Education Program funds to the States, the provision is a necessary factor to be considered in determining the amount of a subgrant in order that limited program funding is most effectively utilized.

The SEA and its subgrantees must use reasonable efforts to secure these funds and services from the other sources, keeping in mind the need both for avoiding unnecessary expenditures of program funds and to avoid discontinuity in providing needed educational and support services to migrant children. The Secretary does not believe that the extent of this effort needs to be addressed in this regulation.

C. *The procedures and criteria for determining the amount of a subgrant.* Provided the SEA has ensured that all LEAs throughout the State that will be awarded subgrants with sufficient Migrant Education Program funding to operate projects designed to meet the needs of their significant concentrations of currently migratory children, the Secretary agrees that the SEA should be free to adopt procedures it considers appropriate to determine the amount of an LEA subgrant. Therefore, in response to comment, the Secretary has modified § 201.25 accordingly.

Changes: Section 201.25(a) requires that before it awards any subgrants to LEAs or other operating agencies, the SEA consider the relative needs of all operating agencies in the State for Migrant Education Program funds to conduct projects designed to meet the needs of significant concentrations of currently migratory children. Section 201.25(b) requires that before it awards subgrants to pay the supplemental costs of operating projects that stem from the inclusion of formerly migratory children, the SEA must ensure that the amount of each subgrant will be sufficient to meet the unmet needs of the operating agency's currently migratory children. Section 201.25(c) provides that as long as it does so, the SEA shall determine the amount of a subgrant using whatever procedures it believes are appropriate, based on the broad criteria in § 201.25 of the former Chapter 1—Migrant Education Program regulations.

Section 201.25(c)(1) expressly permits an SEA to use the number of migratory children residing in the area served by the project as a component of its subgrant formula. Section 201.25(c)(3) requires the SEA to consider the availability of services as well as funds from other sources.

Comment: One commenter recommended that the amount of the LEA's subgrant be tied to the total numbers of currently migratory children with educational needs residing in the area served by the LEA, rather than, as proposed, to those residing only "in sufficient concentrations to warrant implementation" of a project to meet their needs.

Discussion: The proposed language comports with the basic objectives of section 1012(c)(1) of the Act, which requires an LEA's project to be "of sufficient size, scope, and quality" to give reasonable promise of substantial progress toward meeting the special educational needs of children to be served. The Secretary has concluded that because the SEA must operate a statewide program, it should not be responsible for expending resources in those areas of the State where the numbers of currently migratory children with special educational needs are so few that Migrant Education Program funds cannot be prudently spent.

Changes: Section 201.25 (b) and (c) has been changed in response to other comments, but retains the requirement regarding "sufficient concentrations" of currently migratory children with special educational needs.

Section 201.30 Eligibility of a Child to Participate

Comments: Several commenters recommended that the language in proposed § 201.30(c) regarding the certificate of eligibility (COE) provide that the SEA's use of the national standard COE to be developed by the Secretary is permissive rather than mandatory. Commenters also suggested clarifying language to substitute for the proposed phrase that the COE will contain "minimum needed documentary information."

Discussion: The Secretary agrees with the commenters, and has accepted commenters' suggestions for revised regulatory language. The COE developed by the Secretary will identify the essential information that is needed to establish a child's eligibility. The SEA may adopt, modify, or reject use of that COE in its State. However, the SEA should ensure that all agencies of the State that recruit migratory children use whatever single COE the SEA approves.

Changes: Section 201.30(c) has been modified accordingly.

Comment: The Department received many comments recommending that the Secretary interpret the five percent error rate in section 1201(b)(1) of the Act in a manner that does not burden SEA officials. While one commenter merely expressed a general desire that requirements for State documentation not be burdensome and counterproductive, commenters generally urged the Secretary to interpret the provision as establishing a margin of error in the case of audit, rather than an affirmative SEA responsibility to monitor the eligibility information it submitted to the MSRTS. Many commenters stressed their view that, in enacting the provision in section 1201(b), Congress did not intend to impose an administrative burden of this kind on SEAs.

Discussion: As discussed in response to comments on proposed § 201.20(a)(2), the Secretary agrees with the comments.

Changes: For clarity, the regulatory provision concerning the five percent error rate, proposed in § 201.30(c), has been incorporated into new § 201.30(d) and § 201.30(e). Section 201.30(d) provides that the five percent error rate is operational only in the case of an audit. Section 201.30(e) provides further that while the SEA is responsible for ensuring that children who are ineligible for the Migrant Education Program are not determined to be migratory, the SEA is not responsible for auditing its determinations for correctness within a five percent margin of error.

Comments: Several commenters inquired how the Secretary interpreted the statutory provision that, in submitting their eligibility information, the States "not exceed a standard error rate of 5 percent." Commenters wished to know whether the five percent referred to the total number of children enrolled as eligible in the MSRTS, to the total number of State COEs (where siblings were enrolled on the same forms), to the FTE number of migratory children whom MSRTS statistics estimate to be residents of the State, or to the individual pieces of information recorded on the SEA's COE. Commenters consistently recommended the first approach. One commenter also expressed confusion about the meaning of the phrase "standard rate of error," and recommended it be replaced by a phrase like

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"maximum error rate." Another commenter recommended that the language in proposed § 201.30(c) about the five percent rate of error be deleted as unnecessary in light of similar language contained in proposed § 201.20(a)(2).

Discussion. Because questions raised by the five percent standard error rate pertain most directly to matters of ensuring the correctness of State eligibility information, the Secretary believes it should be addressed in § 201.30 rather than in § 201.20, which concerns the amount of an SEA's grant. The Secretary agrees with the commenters that the five percent error rate applies to the actual numbers of children whom the SEA annually enrolls in the MSRTS as eligible to participate in the Migrant Education Program. While it might also apply to the State's MSRTS-generated FTE number of migrant children, the Secretary does not believe Congress intended one State's error rate to depend upon the quality of another State's recruitment effort end enrollment information, as would occur under the MPAS the MSRTS uses to generate its statistics. See the discussion of comments on proposed § 201.20(a)(3).

Moreover, the Secretary believes that in view of the complexities associated with applying the eligibility definitions in § 201.3, Congress enacted the margin of error provision to ensure that SEAs were given a reasonable latitude in the correctness of their child eligibility determinations. Because, under the MPAS, after enrolling a child in the MSRTS an SEA loses control over the period of time within the succeeding 365-day period that the child will generate as a State resident, it is logical that the five percent error rate apply to the very decisions on eligibility of individual children over which the SEA can exercise responsibility.

Finding no indication of a contrary congressional intent, the Secretary interprets the phrase "standard error rate" to mean "margin of error," as the commenter had recommended.

Changes: Section 201.30(d) provides that in case of audit, the Secretary considers both the SEA determinations and the statistics generated by the MSRTS or other system on the FTE number of migratory children residing within the State to be correct, if the number of children whom the SEA or its operating agencies found to be eligible migratory children is correct within a five percent margin of error.

Comment: One commenter recommended that the five percent error rate apply when incorrect eligibility information results in "non-eligible students being served."

Discussion: Under § 201.30(a), the SEA or its operating agency must indicate in writing the basis for determining a child to be a migratory child as the term is defined in § 201.2 before he or she may be counted as a migratory child or provided with program services. Section 1201(b)(1) of the Act provides that the five percent rate of error applies to information needed to make determinations on the total FTE number of migratory children estimated to reside in each State, and this statement is reflected in § 201.30(d). Since the State's eligibility determinations are also used to determine which children will be served with Migrant Education Program services, an SEA charged with serving ineligible children on a statewide basis may, under appropriate circumstances, demonstrate that the total number of ineligible children served by the program does not exceed five percent. However, the Secretary does not believe that this matter needs to be the subject of regulations.

Changes: None.

Comment: None.

Discussion: The enactment of the new requirements in section 1201 of the Act that the Secretary develop a national standard COE and that States be given a five percent margin of error in their eligibility determinations, has created some confusion about their relationship to the SEA's responsibility under proposed § 201.30(c) for "implementing procedures that ensure the correctness of the information on which the SEA or the operating agency relies." The Secretary has concluded that development of that COE, and its possible use by each SEA, is intended to give State and local officials confidence in the adequacy of the COE the SEA adopts for its State, and to eliminate future expenditures of resources devoted to modifying the State's COE. However, while use of the national standard COE, or any adequate COE, ensures the use of an acceptable document for purposes of recordkeeping, it does not ensure the necessary "correctness of the information on which the SEA or the operating agency relies." Use of the COE is a necessary but not sufficient condition for proper recordkeeping.

It is the accuracy of the information recorded on the COE, rather than the completed COE itself, that determines the eligibility of a migrant child. Therefore, the five percent error rate does not relate to the number of COEs that on their face contain information supporting the children's eligibility, but rather to the quality of the information recorded on these COEs. It is the quality of that information that must be the subject of the SEA's procedures under § 201.30(b) "that ensure the correctness of the information on which the SEA or the operating agencies rely" (subject to the five percent margin of error that will apply if an audit occurs). This subject has been the topic of substantial public discussion and comment in response to the May 1988 and January 1989 proposals offered by the Department's Office of Migrant Education to revise nonregulatory guidance, and the Secretary is satisfied that the public understands and concurs with this approach.

Changes: Section 201.30 has been rewritten to clarify the SEA's responsibilities for implementing procedures that ensure the correctness of eligibility information extend both to use of an adequate COE and to the implementation of a process to ensure that the completed COE contains information that is both accurate and in sufficient detail to explain the factors making the child eligible for the Migrant Education Program.

Comment: One commenter urged deletion of language in the second sentence of proposed § 201.30(c) that suggested that the SEA, rather than the Secretary, determine the FTE number of migratory children residing in each State.

Discussion: The Secretary agrees that the proposed language incorrectly implied that each State determine its count of migratory children. Section 1201(a) of the Act gives the Secretary responsibility for that determination.

Changes: As revised, references to data the Secretary accepts to determine the FTE number of migratory children residing in each State have been deleted from § 201.30. The issue is addressed instead in § 201.20.

Section 201.31 Service Priorities

Comment: Two commenters questioned the breadth of the language in proposed § 201.31(a) that would require currently migratory children to be given priority over formerly migratory children in the receipt of services provided in "all programs and activities" the SEA and operating agencies provide. They stated that, in keeping with section 1202(b) of the Act, which establishes the priority for currently migratory children in all programs and activities "contained in applications submitted under this section," the service priority should be limited to those programs and activities conducted under the Migrant Education Program.

Discussion: The Secretary agrees with the comment.

Changes: Section 201.31(a) has been revised to require an SEA or operating agency to give currently migratory children priority in all programs and activities that are offered "pursuant to its approved applications for Migrant Education Program funds."

Comment: Section 201.31(a), as proposed, would have required currently migratory children to be given priority over formerly migratory children in receipt of all Migrant Education Program services. One commenter stated that strict implementation of the proposal could create student selection procedures that are not necessarily educationally sound. In particular, the commenter observed that a single-year period as a currently migratory child provided insufficient time to address the cumulative effects of educational disruption, while the priority favoring them over formerly migratory children prevented formerly migratory children still suffering the effects of educational disruption from receiving sufficient levels of services. Another commenter, through a response to the proposed requirement, in § 201.36(a), that students selected for project participation "have the greatest need for special assistance (as identified on the basis of educationally related objective criteria)," stressed that at times formerly migratory children are in greater need of services than currently migratory children.

The comments raise the significant question of whether § 201.31(a) must retain its absolute rigidity in favor of services to currently migratory children.

Discussion: The issue is fundamental to the Migrant Education Program. Because the program exists to assist migratory children, currently migratory children must remain its central focus. However, isolated situations may exist in which, perhaps because of their previous dislocations and school interruptions, some formerly migratory children have needs that are greater than those of the currently migratory children residing in the project area. Conceivably, this might be so because of the lack of a minimum requirement for a migratory "move" (see the discussion of comments on § 201.3), or because climatic or industrial changes in a particular year cause significant numbers of an area's neediest migratory children to refrain from moving.

As proposed, § 201.31(a) repeated the requirement in previous regulations that currently migratory children be given "priority over formerly migratory children in receipt of services provided." The proposal is somewhat broader than the underlying statutory requirement in section 1202(b) of the Act, which requires currently migratory children to receive "priority in the consideration of programs and activities" described in program applications. The Secretary does not interpret the statutory provision to require blind allegiance to a priority favoring currently migratory children if, for example, needs assessments plainly reveal a greater need among formerly migratory children residing in an area. On the other hand, any broad revision of proposed § 201.31(a) could have very adverse consequences for currently migratory children.

The Secretary has determined that this dilemma can best be resolved by modifying § 201.31(a) to reflect the more flexible statutory language in section 1202(b) of the Act, and then using the annual needs assessment procedures discussed in § 201.32 as the vehicle for selecting children to participate in migrant education programs and projects. In particular, § 201.32(a)(5) requires SEAs and operating agencies to design their programs around the needs of those migratory children, consistent with the service priorities in § 202.32, who would benefit most from them.

The Secretary intends these provisions to permit SEA and local project officials to respond to those situations in which the special educational needs of formerly migratory children clearly exceed those of currently migratory children. They may do so by using the needs assessment process to identify services that are available to those currently migratory children from other sources, thereby directing limited Migrant Education Program funds to benefit those "most in need."

Changes: Section 201.31(a) has been modified to require that currently migratory children be given priority over formerly migratory children "in the consideration of all (migrant education) programs and projects" the SEA, LEA, or other operating agency offers.

Section 201.32 Annual Needs Assessment

Comment: Various commenters stated that the needs assessment requirement, as proposed in § 201.32, conformed too closely to the comparable requirement for the Chapter 1 Program in LEAs in section 1014(b) of the Act. They observed that the proposal failed to take into consideration the special problems posed by the mobility of migratory children. Commenters recommended that the provision be revised in keeping with the requirement in section 1202(a)(3) of the Act that programs and projects conducted under the Migrant Education Program "be administered and carried out in a manner consistent with the basic objectives of" section 1014(b).

Discussion: The Secretary agrees that § 201.32 should be revised to adapt the needs assessment requirement in section 1014 of the Act to the special nature of the Migrant Education Program and migratory children who, because of the nature and extent of their migration, may have special needs that are different from those of non-migratory children. In doing so, the Secretary has modified language of the comparable provision in § 200.31 of the Department's May 19, 1989 regulations governing the Chapter 1 Program in LEAs to highlight differences in the ways the two programs must operate. Therefore, § 201.32 follows the form of § 200.31 more closely than did the proposed regulations, but deviates from the latter provision in several important respects.

First, unlike the case in the Chapter 1 Program in LEAs, SEA and operating agency staff conducting migrant education programs and projects may be unable to design them around children whom they expect to participate the following year. Operating agencies that conduct regular school year projects either for children who move at other times of the year or for formerly migratory children may be able to do so. Agencies that conduct other projects, including summer school projects, may not. Therefore, § 201.32(a) has been revised to permit the needs assessment to be based upon an identification of the children or, if that is not possible, the characteristics of the children expected to reside in the area the project will serve. Section 201.32(b) now requires the SEA and operating agency to consider the differing needs, if any, that currently and formerly migratory children have in view of differing effects of migration on educational continuity and development.

Section 201.32(c), like the NPRM, requires that all projects, regardless of the types of migratory children they serve, must assess needs on the basis of educationally related objective criteria. However, the Secretary recognizes that projects serving children who miss substantial periods of the regular school term, or who attend summer school programs in areas other than those in which they regularly attend school, face procedural difficulties that do not arise elsewhere. Therefore, § 201.32(c) now differentiates, in the kinds of educationally related objective criteria to be used, among various migrant education projects. Some projects serve students during the regular school year who are mostly 1) currently migratory children who remain in the same school district for all or most of the regular school year or 2) formerly migratory children. Agencies that operate these projects can reasonably conduct needs assessments using educational criteria that are substantially similar to the criteria used in the Chapter 1 Program in LEAs. While § 201.32(c) encompasses the educational criteria that all projects serving currently migratory children must use, the Secretary interprets the provision as requiring these agencies to use the same forms of "educationally related objective criteria" that include "the results of written or oral tests" as do the Chapter 1 LEA projects.

However, § 201.32(c) also clarifies that migrant education projects serving more actively transitory children are not required to use the results of formal testing to assess educational needs. This provision is designed to recognize the practical difficulties that these disjointed or short-term projects may have in finding and using appropriate testing methods. Therefore, while formal testing should be performed if it is reasonably possible to do so, § 201.32(c)(1) provides that projects serving currently migratory children may assess educational needs using the most appropriate form of educationally related objective criteria. These "non-testing" objective criteria might include student absenteeism, reports from school districts that migratory students previously attended, and objectively performed teacher assessments.

Finally, the Secretary has determined that the contents of paragraphs (c)(1), (c)(3), (d)(1), and (d)(2) of section 1014 of the Act do not pertain to the Migrant Education Program, and so have no place in these regulations. Paragraph (c)(1), providing LEA discretion to maintain Chapter 1 services to children who are transferred to another school attendance area, conflicts with the SEA's responsibility both to operate the State's migrant education program and to determine the terms and amount of LEA subgrants. Paragraphs (c)(3) and (d)(2), regarding continuation of services to children from year to year, conflict with the service priority, in section 1202(b) of the Act, favoring services to currently migratory children. The special rules in section 1014(d)(1), conditioning services to children with handicapping conditions or limited English proficiency on meeting needs "stemming from educational deprivation," conflict with sections 1201 and 1202 of the Act, which impose no requirement that children receiving services under the Migrant Education Program must be suffering from educational deprivation.

Changes: Section 201.32 has been revised accordingly.

Comment: Several commenters stressed that testing of migratory children, as part of a needs assessment, will likely be very cumbersome because their mobility and unpredictable dates of enrollment would require year-round testing.

Discussion: The Secretary agrees that projects that typically cannot predict the dates of students' enrollment may have special problems using standardized tests or other forms of educationally related objective criteria in conducting needs assessments on the basis of all children who are expected to participate.

Changes: Section 201.32(b)(2) clarifies that, with regard to projects serving currently migratory children, the needs assessment may be conducted on the basis of the latest available information for those children "expected to be present at periods of peak enrollment."

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Comment: Several commenters recommended that § 201.32 (c) and (d) be revised to clarify the relationship of the needs assessment of one group of currently migratory children to the services that may well be provided to others, if those whose needs are assessed become "formerly migratory children" in the following project year. One commenter recommended that the statement of criteria to be used to assess needs be revised to reflect the general educational needs of programs serving mobile children, rather than the individual needs of students who would receive services.

Discussion: The situations the commenters described are most typically faced by projects that serve those currently migratory children who attend summer projects away from their regular places of residence, or whose moves significantly disrupt project attendance. Migrant education projects that serve either other currently migratory children, i.e., those whose moves do not affect regular school program enrollment, or formerly migratory children do not face these problems. These projects generally will serve many of the same students from year to year, and so can focus the needs assessment process on the needs of the same students who will participate the following project year.

However, projects designed to serve the other group of currently migratory children do require special consideration. The Secretary has provided flexibility in the way LEAs conduct their needs assessments. First, § 201.32(a)(1) permits the SEA or operating agency to identify either the migrant children or, if this is not possible, the "specific characteristics of the children who are expected to reside in" the area served by the project. Second, as noted in the response to the previous comment, § 201.32(b)(2) permits the needs of children to be assessed using information relevant to those children "expected to be present at periods of peak enrollment."

The needs assessment requirement does not require use of testing, or any other educationally related objective criteria, to be used for child placement. While it is logical to do so, § 201.32 concerns project design, not project placement. In this regard, § 201.32(a) requires that the needs assessment procedures, and the educationally related criteria used to assess needs, be used to "improve migrant education programs and projects." The fact that the migratory children to be assessed may not be the same as those expected to participate in the following year's project creates no significant problems provided the SEA or operating agency has reason to believe the needs of participating migratory children will be similar from project year to project year.

Changes: As discussed in response to this comment, § 201.32(c) now includes a requirement that those migrant education projects serving students whose migration affects project participation only need to use the "most appropriate" educationally related criteria when assessing student needs "including, if reasonably possible, the results of written or oral tests."

Comment: One commenter objected to requiring the use of educationally related objective criteria because many local project staff lack the skills to administer tests properly.

Discussion: Subject to the flexibility that has been incorporated into § 201.32 in response to the preceding comments, the Secretary has determined that the use of educationally related objective criteria in assessing educational needs, like other program requirements, may not be waived merely because of the relative capabilities of project staff. In operating migrant education projects throughout its State, the SEA is responsible for ensuring that those implementing projects are adequately trained in skills necessary to administer the projects.

Changes: None.

Comment: One commenter questioned how the requirement in proposed § 201.32(c) that projects assess needs on the basis of educationally related objective criteria could be implemented for preschool projects serving three- and four-year-old children.

Discussion: The Secretary believes that all migrant education projects, even those designed to serve the special educational needs of preschool children, can benefit from adoption of a needs assessment process. However, the Secretary has determined that formal use of educationally related criteria, objective or otherwise, to assess the special educational needs of preschool children could be unduly burdensome and costly. Therefore, § 201.32 has been modified to require that the formal needs assessment with regard to projects operated for preschool children only identify children expected to benefit most from preschool services and select those children, subject to the service priorities in § 201.31.

Changes: A new paragraph (e), limiting the scope of the needs assessment requirement to projects operating for preschool programs, has been added to § 201.32.

Comment: One commenter recommended that the phrase "educationally deprived children" in proposed § 201.32(c) be changed to read "migratory children."

Discussion: The Secretary agrees that sections 1201 and 1202 of the Act requires that migrant education programs and projects be designed to meet the special educational needs of "migratory children." They do not require those migratory children necessarily to be "educationally deprived."

Changes: Section 201.32 has been changed to require selection of those migratory children (consistent with the service priorities in § 201.31) who are in greatest need for Migrant Education Program services.

Comment: One commenter stressed that requiring an SEA and operating agency to determine the "library resource needs" of migratory children is confusing and beyond the scope of the Migrant Education Program. The commenter recommended the term be deleted.

Discussion: In enacting section 1014(b) of the Act, Congress specifically directed library resource needs to be addressed. In many areas, migrant education projects represent a significant, if not exclusive, portion of the total Chapter 1 services available to migrant students. Therefore, the Secretary has determined that the library resource needs of migratory students must be assessed. In doing so, the SEA or operating agency need not overemphasize this particular need, but only must consider those needs along with other needs of migratory children.

Changes: Section 201.32(a)(6) provides that as part of its needs assessment the SEA or operating agency determines the "resources, such as personnel, instructional materials, and library resources, necessary to meet" the identified special educational needs of children expected to participate in the project.

Section 201.35 Requirements for Parent Involvement

Comment: Several commenters requested that the new requirements for parental involvement be included in the regulations rather than incorporated by reference into § 201.35(c) through the phrase "in a manner consistent with paragraphs (a) through (c) and (e) of 34 CFR 200.34."

Discussion: The Secretary has determined that restating the many new requirements governing parental involvement in § 201.35 is unnecessary. Section 200.34 of the regulations governing the Chapter 1 Program in LEAs, which itself restates the underlying provisions in section 1016 of the Act, provides a full recitation of those provisions. Since nearly all State and local agencies that operate migrant education projects also operate Chapter 1 LEA projects, the Chapter 1 LEA program regulations are readily available to Migrant Education Program staff. Therefore, because of their length, these provisions will not be republished in these regulations.

Upon review of § 200.34, the Secretary has determined that paragraph (d) governing the LEA's annual assessment of its parental involvement program does not apply to parental activities conducted under the Migrant Education Program. That provision stems from program improvement plan requirements in section 1021 of the Act, which do not apply to migrant education programs and projects.

Changes: Section 201.35(c) clarifies that the requirements in § 200.34(d) do not apply.

Comment: None.

Discussion: The statutory provision in section 1202(a)(4) of the Act that *all* migrant education projects be carried out "consistent with the requirements of section 1016" expands the existing parental participation requirements for projects operated at the LEA level for the duration of the school year. For those projects, as with the State program as a whole, section 1202(a)(4) also requires LEA officials to ensure that project planning and operation includes appropriate consultation with parent advisory councils (PACs). Some confusion may exist about how these dual requirements impact upon each other.

The Secretary encourages LEAs to conduct their new section 1016 responsibilities through active PACs if it is appropriate to do so. If a PAC is active, the LEA can use it as the focal point of its effort, for example, to ensure full parental involvement in program planning, design, and implementation (section 1016(c)(1)), to convene an annual meeting of parents, where school officials explain the migrant education projects to be conducted (section 1016(c)(2)), and to provide opportunities for regular meetings of parents to provide formal input into the program (section 1016(c)(4)). However, even if PACs are strong and enjoy good working relations with school officials, section 1016 establishes parental involvement requirements that LEA officials cannot meet through the PACs. These include the various provisions for meaningful parent-teacher discussions on children's progress (section 1016(c)(3)), and the various processes suggested in section 1016(c)(5) to involve parents more actively in their children's education.

The Secretary is aware that while some projects have very active PACs, other projects, for various reasons, do not. If a PAC only nominally exists, or is used sparingly, the LEA almost certainly cannot rely on it to meet its ongoing responsibilities for full parental participation under sections 1016 and 1202(a)(4) of the Act. Moreover, if an LEA relies upon a PAC to help channel some of its section 1016 responsibilities, it must maintain vigilance to ensure that the PAC operates fully and with purpose.

The Secretary also emphasizes that LEA officials that do not operate projects for the duration of the school year, and so have no statutory responsibility to maintain a formal PAC, also must ensure that their projects are administered and carried out consistent with the section 1016 requirements. Indeed, section 1016(a)(2) of the Act specifically prohibits an LEA from receiving any Chapter 1—Migrant Education Program funds unless it "implements programs, activities, and procedures for the involvement of parents" in its migrant education project. Section 1016(a)(2) also provides that the LEA's methods for obtaining full participation must both be planned and implemented in consultation with parents, and be "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the" Act's stated goals of parental involvement.

Changes: None.

Section 201.36 General Program Requirements.

Comment: One commenter questioned the basis for language in proposed § 201.36(a), which would have required the SEA to ensure that the children selected for service are those with the greatest need for special assistance. The commenter stated that the provision conflicted with the service priority in section 1202(b) that favors services to currently migratory children, and provided too much latitude to an SEA or an operating agency to focus the project on the more easily identified and served formerly migratory children. Another commenter stressed that sometimes, because of the long-term developmental effects of transiency, formerly migratory children may have needs greater than those of currently migratory children.

Discussion: Section 201.31 (Service priorities) requires currently migratory children to receive priority over formerly migratory children "in receipt of services" under the Migrant Education Program. The services to be received, however, are those determined on the basis of an annual assessment of educational need. Although not typical, it is possible that in isolated circumstances the SEA and its operating agencies may determine that "in the consideration of migrant education program activities" some currently migratory children are less in need of services than formerly migratory children, and so do not warrant receipt of project services. As an extreme example, children who are currently migratory solely because of isolated weekend moves (see the discussion in response to comment on § 201.3 (Definitions for this program)) may not have sufficient needs for special Migrant Education Program services to warrant selection ahead of formerly migratory children who suffer the effects of years of previous dislocations.

Consequently, the service priorities in § 201.31 must guide student selection for projects, but must not do so to the total disregard of the identified needs of individual migrant children who reside in the area served by the operating agency.

Changes: Section 201.36(a) has been revised to require that the children selected for services are those, consistent with the service priorities in § 201.31, who have the greatest need for special assistance.

Comment: One commenter stated that the proposed requirement in § 201.36(a), that children be selected on the basis of "educationally related objective criteria," might lead to a failure to identify the neediest students. The commenter observed that sometimes other factors, "including the long-term developmental effects of transiency," often make formerly migratory children in greater need of assistance than currently migratory children.

Discussion: As revised, § 201.32(c) (annual needs assessment) requires that SEAs and operating agencies conduct needs assessments for all migrant education projects on the basis of "educationally related objective criteria." Section 201.32(c) directs use of the results of written or oral tests, such as traditional standardized tests, for assessing needs of formerly migratory children and, if reasonably possible, currently migratory children. Regardless of whether testing is necessary, the use of some appropriate form of objective criteria to conduct needs assessments is a pivotal part of project design and is appropriate in all cases.

However, use of these same criteria to select students who will actually participate in the following year's project may not always be feasible. For example, some migrant children either arrive in school districts well after their projects have begun or move to locations where they attend special summer programs. The Secretary does not believe that projects designed to serve these children should necessarily delay selecting each project participant until their use of educationally related objective criteria can confirm that the child's selection is warranted. Therefore, while use of these criteria to confirm that these students warrant project selection should be conducted as soon thereafter as reasonably feasible, the Secretary believes that § 201.36(a) should provide some flexibility.

Finally, as discussed previously, § 201.31 (service priorities) has been revised to permit projects to serve formerly migratory children in advance of currently migratory children if their needs for Migrant Education Program services are clearly greater than those of the currently migratory children.

Changes: Section 201.36(a) now requires that children be selected for services "to the maximum extent possible" on the basis of the criteria in § 201.32(c) (annual needs assessment).

Comment: One commenter suggested that proposed § 201.36 (d) and (e), regarding services to private school migratory children and coordination between the migrant education curriculum and the regular instructional curriculum, be revised in view of what the commenter believed would be an unwarranted expenditure of resources for the benefit of a very few students.

Discussion: The SEA is responsible for establishing and operating projects that serve all significant concentrations of migratory children in the State according to the service priorities in § 201.31. If currently migratory children attending private schools in a particular location are too few to justify their own migrant education project, the SEA does not have to spend Migrant Education Program funds to do so. However, if children attending private schools reside in sufficient numbers to warrant receipt of migrant education services, coordination of their migrant education curriculum with their regular school curriculum is as necessary as for children attending public schools.

Changes: Paragraph (d) of § 201.36 has been revised to clarify that the SEA must only ensure that services are provided to "all significant concentrations of migratory children enrolled in private schools, consistent with the service priorities in § 201.31."

Comment: One commenter expressed difficulty in determining the statutory basis of each of the general program requirements in § 201.36. The commenter recommended that the provisions be revised since, in the commenter's view, they reflected too closely the requirements for the Chapter 1 Program in LEAs since the Migrant Education Program only requires that projects be administered and carried out "consistent with" their basic objectives.

Discussion: The general program requirements in § 201.36 all stem from the incorporation into section 1202(a)(3) of the basic objectives of various specified requirements that govern the Chapter 1 Program in LEAs. Many of these requirements govern LEA application requirements for that program, but for the SEA-operated Migrant Education Program also represent SEA operational requirements.

The specific statutory underpinning of each provision of § 201.36 is as follows: § 201.36(a) regarding student selection and identification of their special educational needs—section 1014(b) (and the priority favoring currently migratory children in section 1202(b)); § 201.36(b) regarding the requisite size, scope, and quality of migrant education programs and projects—section 1012(c)(1); § 201.36(c) regarding the use of evaluations to improve program services—the interrelationships among sections 1019 and 1202(a)(6)

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concerning evaluations and section 1201(a)(1) requiring projects to be designed to meet the special educational needs of migrant students; § 201.36(d) regarding services to migrant children attending private school—section 1012(c)(2); § 201.36(e) regarding coordination of the migrant education curriculum with the regular instructional program—section 1012(c)(3); and § 201.36(f) regarding services to migratory children who are also of limited English proficiency or are handicapped—section 1012(c)(4).

The Secretary has carefully examined each provision in § 201.36 to ensure that the requirements are of sufficient breadth to be adaptable to the Migrant Education Program. Except for the revisions to the proposed regulations explained in response to previous comments, the Secretary has determined that the language and requirements of § 201.36 represent "basic objectives" of the pertinent statutes governing the Chapter 1 Program in LEAs, and pertain to the way the Migrant Education Program should operate.

Changes: None.

Section 201.41 Maintenance of Effort

Comment: Two commenters questioned the appropriateness of any maintenance of effort requirement for the State-operated and -administered Migrant Education Program. One of the commenters stated that § 201.41 was unnecessary given the "supplement not supplant" provision in § 201.43.

Discussion: Section 1202(a)(3) of the Act provides that migrant education programs and projects "be administered and carried out in a manner consistent with the basic objectives of section * * * 1018" of the Act. Section 1018(a) contains the maintenance of effort provision, as expressly applicable to the Chapter 1 Program in LEAs. This requirement conditions the full receipt of an LEA's Chapter 1 subgrant on its maintaining, from year to year, the level of State and local funds it spends on free public education.

The requirement that the basic objectives of the Chapter 1 maintenance of effort requirement apply to the Migrant Education Program is not new. Congress enacted identical provisions to govern the Migrant Education Program both in section 142(a)(3) of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561), and in section 19(a) of 1983 technical amendments to the Education Consolidation and Improvement Act of 1981 (Pub. L. 98–211). Thus, Congress has determined that even though LEAs have no entitlement to subgrant or suballocation of funds in State-operated programs such as the Migrant Education Program the requirement that LEAs maintain fiscal effort still exists.

While related, maintenance of effort and supplement, not supplant requirements serve different purposes. Unlike maintenance of effort, which focuses solely on aggregate levels of LEA expenditures, the supplement, not supplant requirement prohibits LEAs from using Chapter 1 funds to replace the State and local funds that, in the absence of Chapter 1 funding, would be spent on programs for Chapter 1 students. Consequently, the supplement, not supplant provisions of § 201.43 cannot substitute for the maintenance of effort requirement in § 201.41 (and § 201.42).

Changes: None.

Comment: Several commenters strongly objected to what one commenter considered to be the "burdensome paperwork" that proposed § 201.41 would entail, particularly for LEAs operating only summer projects. Commenters noted that the records to be maintained duplicate those required by the Chapter 1 Program in LEAs.

Discussion: Any effort to ensure an LEA's compliance with the maintenance of effort requirement will entail recordkeeping so that yearly comparisons in the district's aggregate levels of expenditures can be made. However, the Secretary has determined to address the issue of unnecessary paperwork through § 201.17(b)(5), under which, as part of its application for a subgrant, an LEA only needs to provide the SEA evidence that it has maintained effort, if that information is not otherwise available to the SEA.

Changes: None.

Comment: One commenter commented on the proposed penalty, in § 201.41(b), to reduce by 50 percent the amount of the LEA's subgrant that may be used for indirect costs if the LEA failed to maintain effort. The commenter stated that he understood that most LEAs do not receive subgrants for indirect costs.

Discussion: Section 1018(a) of the statute provides that noncompliance with the maintenance of effort requirement will have consequences to the LEAs. For the LEA-operated Chapter 1 Program in LEAs, the penalty expressed in section 1018(a) of the Act, a pro rata reduction in the amount of the LEA's grant, is logical. However, this penalty is incompatible with the State-operated nature of the Migrant Education Program, particularly because LEAs are not entitled to subgrants.

As explained in the supplemental information that accompanied publication of the NPRM (54 FR 3927–28), the Secretary proposed the penalty in § 201.41(b) because that penalty appeared to comport with the basic objective of the maintenance of effort requirement—to create incentives for maintaining levels of non-Federal support by reducing levels of program support to those who did not. Despite the commenter's perception that many LEAs do not receive subgrants for indirect costs, the Secretary understands that many LEAs do charge a portion of their Migrant Education Program subgrants to the indirect costs of operating their programs on the basis of an established formal indirect cost rate that comports with that in 34 CFR 75.564 through 75.568. The Secretary expects that program reviews, audit reports, and communications from SEAs and LEAs will highlight whether this penalty needs to be revised. However, until a demonstrated need for a different penalty for noncompliance arises, and thereafter further study of how better to implement the maintenance of effort requirement yields a more suitable penalty, the Secretary has determined to retain the penalty contained in § 201.41(b).

Changes: None.

Section 201.42 Waiver of the Maintenance of Effort Requirement

Comment: A number of commenters considered this provision overly prescriptive and incompatible with the language of section 1202(a)(3) of the Act that migrant education projects be administered in a manner "consistent with the basic objectives" of section 1018(a).

Discussion: Section 201.42(a)(1) permits an SEA to waive an LEA's maintenance of effort requirement only once because of unforeseen or uncontrollable circumstances the LEA faces. Because maintenance of effort is tied to the total of an LEA's non-Federal resources spent on public education, and an agency operating a Chapter 1 LEA Program is entitled to only one waiver, the Secretary has determined that it would be illogical to permit a greater number of waivers under the Migrant Education Program. Consequently, the Secretary has determined that no further regulatory flexibility in § 201.42 is available.

Changes: None.

Section 201.44 Comparability

Comment: Several commenters questioned the rationale for proposing to implement the comparability requirement at the LEA level in a State-operated program. Another commenter specifically questioned why a comparability requirement is appropriate for a small program in which one paraprofessional provides all migrant education services to all the LEA's migrant children.

Discussion: As with maintenance of effort, Congress in section 1202(a)(3) of the Act has re-enacted the requirement that migrant education programs and projects be administered and carried out consistent with the basic objectives of the section 1018(c) comparability requirements. Because comparability measures the levels of State and local resources provided to support programs for similarly situated Chapter 1 and non-Chapter 1 students attending schools in a particular school district, the requirement cannot be implemented through statewide comparisons, and is not met by providing all of the LEA's migrant children the same level of Migrant Education Program services. However, consistent with section 1018(c) of the Act, the SEA is able, as it is for the Chapter 1 Program in LEAs, to monitor LEAs to ensure that migratory students attending their schools receive equivalent levels of State and locally funded services as do nonmigratory students.

Changes: None.

Comment: One commenter expressed confusion about whether the proposal in § 201.44(a), that the LEA provide comparable levels of services to migrant students as to "students in the same grades who are not receiving migrant program funds," referred to grades in the school migrant children attend or grades in all schools the LEA operates.

Discussion: The comparability requirement is intended to ensure that programs in which migrant children are enrolled are given levels of State and locally funded services that are comparable to levels of services provided for programs in which non-migrants are enrolled. Therefore, the comparison is to the same grades throughout all the LEA's schools.

Changes: Section 201.44(a) has been revised to clarify that the corresponding grades of non-migratory children are those in all the LEA's schools.

Comment: None.

Discussion: While insisting upon regulations that consider the special nature and character of the Migrant Education Program, the Secretary has determined that the migrant education regulations should be as consistent as possible with those for the Chapter 1 Program in LEAs. Use of similar procedures will lessen the burdens LEAs would otherwise face if they had to implement separate comparability requirements for the two programs.

Changes: Section 201.44 has been revised to reflect many of the more flexible aspects of the corresponding § 200.42, governing the Chapter 1 Program in LEAs. For example, as proposed, § 201.44(b) would have required the LEA to establish and adopt the salary schedules and policies for equivalency among all the LEA's programs. However, § 201.44(b) now provides that an LEA will be considered to have satisfied the requirement if it files with the SEA an assurance that it has established and implemented that salary schedule and those policies or "establishes and implements other measures for determining compliance as the SEA may approve."

Section 201.45 Excluding Special State and Local Funds From Supplement, Not Supplant and Comparability Determinotions

Comment: One commenter recommended deletion or substantial modification of this requirement, claiming that it appeared inconsistent with the intent of the Migrant Education Program to provide migratory children the same opportunities as other children.

Discussion: The commenter has misconstrued the purpose of § 201.45. That provision, like its statutory counterpart in section 1018(d) of the Act, encourages State and local governments to establish their own special compensatory programs, similar to Chapter 1. It does so by permitting them to exclude payments made under these special programs from the fiscal requirements that would otherwise exist under comparability or supplement, not supplant. The Secretary perceives no inconsistency between the provision and the goals of the Migrant Education Program, and so retains § 201.45 in the regulations.

Changes: None.

Section 201.46 State Rulemoking ond Other SEA Responsibilities

Comment: As noted in the discussion of general comments on the Part 201 proposed regulations, many commenters strongly objected to the limits on State rulemaking in proposed § 201.46. Commenters, including both SEA and LEA officials, believed that the provision undercuts the authority of the SEA to administer and operate the State's migrant education program. The commenters pointed particularly to (1) the provisions of § 201.46(c), which they interpreted as precluding State determinations in matters such as the grade levels the migrant education projects should serve, and (2) the requirement in § 201.46(e) that a committee of practitioners shall review any State rules or regulations relating to the Migrant Education Program before they are published. One commenter also questioned the practicality of having a committee of practitioners review proposed State rules or regulations that would apply only to short-term summer projects.

Commenters felt that the purpose of the underlying statute, section 1451 of the Act, as applied to the Migrant Education Program through the "basic objectives" language of section 1202(a)(3), was merely to ensure local involvement in planning of local projects and development of the applications to support them.

Discussion: The Secretary sympathizes with the commenters' concerns that section 1451, after which § 201.46 was modeled, is a source of tension for those Federal, State, and local migrant education officials who have understood their program to be State-administered and State-operated. As discussed in response to the general comment on the part 201 proposed regulations, it is true that only the "basic objectives" of the provision need apply to the administration and implementation of migrant education projects. However, the express limitations on State rulemaking in named areas of local decisions and the requirement that a formal State committee of practitioners review rules or regulations before they are issued apply to all Chapter 1 programs, including the Migrant Education Program.

In seeking to resolve the question of the nature of section 1451's applicability to the Migrant Education Program, the Secretary has found no indication in Public Law 100–297 or its legislative history to indicate a congressional desire to preclude SEA decisionmaking in areas that have traditionally been accepted as State responsibilities. In this regard, the Department's Office of Migrant Education has long considered *all* activities conducted at the State or local level in the planning, design, implementation and evaluation of migrant education programs and projects to be part of SEA administration and operation, and the Secretary understands this view to be widely accepted. The Secretary therefore addresses the issues raised by section 1451 of the Act, regarding (a) limitations on State rulemaking and (b) the committee of practitioners, within this context.

A. *The "limitations" on State rulemoking.* Section 201.46(c) of the NPRM sought to resolve the dilemma by providing that the section 1451 preclusions on State rulemaking in the specified areas of LEA decisions would apply "unless [State rules, regulations, or policies were] needed to implement SEA responsibilities in an approved State application or in the Chapter 1 statute or regulations." The supplemental information accompanying the NPRM (54 FR 3925) stated that this provision was proposed because "the SEA must be able to retain authority to establish rules and policies that legitimately relate to its statutory responsibility for administering and operating the State's migrant education program." The intent of the provision was to continue to permit the SEA to implement legitimate activities under its State's migrant education program through the kinds of policies and rules it considered necessary to meet its responsibilities for operating the State program.

The Department received no specific comment on § 201.46(c). However, the Secretary has revised § 201.46(c) by including a new paragraph (c)(2), which clarifies the breadth of SEA decisionmaking. Under § 201.46(c)(2), the only reasons an SEA would be unable to issue rules or policies in the specified areas of grade levels to be served, skills to be addressed, and others described in § 201.46(c)(1), would be a conscious SEA decision to refrain from stepping into these areas. In effect, all Migrant Education Program decisions at the State or local levels are "SEA decisions" unless the SEA decides to delegate them to local operating agencies.

B. *The committee of practitioners.* Section 1451(b) expressly requires State rulemaking under any Chapter 1 program to be reviewed by a committee of practitioners. The Secretary has determined that while the manner of review of State migrant education program rules or regulations may be left to State discretion, nothing about the Migrant Education Program is inconsistent with the congressional desire to have broad discussion of any State rule, for the regular school year or summer school programs, before it is issued. Where expense is a major consideration, the SEA is free to use the least costly method available to obtain the committee's review, and may use a committee already empaneled for purposes of reviewing rules and policies for the Chapter 1 Program in LEAs.

Changes: Section 201.46(c) has been revised to clarify that decisions about the operation of the State's migrant education program do not become "LEA decisions" unless the SEA so determines.

Comment: Several commenters questioned the relationship between the committee of practitioners and the existing State parent advisory council, with which the SEA already must consult in planning and developing the State's migrant education programs and projects. Commenters stated that the work of the committee of practitioners would be duplicative of the work of that council.

Discussion: The committee of practitioners is much more broadly based than the State parent advisory council. Moreover, unlike the council, the composition of the committee of practitioners will include a majority of LEA representatives, who will be able to represent the specific interests of those local agencies during the State rulemaking process. Parent advisory council members ensure the involvement of another important constituency, parents of migratory children.

Changes: None.

Comment: None.

Discussion: Section 1451(b) of the Act requires that a State committee of practitioners review before publication any proposed or final State rule or regulation relating to the administration and operation of programs under this part. In addition, the Act requires that the State convene the committee to review an emergency regulation

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prior to issuance in final form. On further consideration, the Secretary recognizes the inconsistency in requiring a State to convene a committee to review emergency rules and regulations while not requiring that the committee be convened to review other regulations. However, the Secretary is concerned with the undue burden that will be placed on States if the committee must be convened to review all rules and regulations. Therefore, the Secretary believes that the most appropriate way to carry out the intent of the Act and reduce undue burden is to require that the State convene the committee to review all major rules and regulations. All other rules and regulations must be reviewed by the committee before publication but not necessarily in a meeting. In addition, in a State that does not issue rules or regulations relating to the administration and operation of programs under this part but issues policies that the SEA and local operating agencies are required to follow, the State must comply with the consultation requirements for issuing rules and regulations.

Changes: Section 201.46(e) has been revised to require a State to convene the committee of practitioners to review any major proposed or final rule or regulations that the SEA and local operating agencies are required to follow in administering and implementing programs under this part. In addition, a change has been made to require that, for a State that does not issue rules or regulations but only issues policies that the SEA and local operating agencies must follow, the State must comply with the consultation requirements for issuing rules and regulations.

Section 201.49 Persons To Be Assigned Non-Chapter 1 Duties.

Comment: Two commenters objected to proposed § 201.49 on the basis that it provided too much flexibility to Migrant Education Program staff to divert their attention away from serving migrant children. Commenters stated that this was particularly so since many migrant education paid staff have responsibilities for working with much smaller numbers of children than do their Chapter 1 LEA Program counterparts.

Discussion: Congress enacted the underlying statutory provision, section 1453 of the Act, in order to ensure that LEA officials have the authority to treat all "similarly situated" staff the same, subject to the time limits specified in section 1453(a), with regard to certain school-wide supervisory functions, such as cafeteria duty, hall monitoring, home room supervision, and curriculum committee membership. While in some locations migrant education staff may work with far fewer students than other staff, the Secretary does not believe this alone is sufficient cause to limit the scope of the regulations.

In view of the congressional desire that the Chapter 1 teachers, affected by § 201.49 (and section 1452 of the Act), be permitted assignment to duties that are broader than those normally considered to be "supervisory," the title has been revised to refer to "non-Chapter 1" duties rather than supervisory duties.

Changes: The heading of § 201.49 has been modified accordingly.

Sections 201.51 through 201.56 Evaluation

Comment: Several commenters emphasized that they believed the proposed evaluation requirements to be overly prescriptive, an undue data collection burden, and too similar to the program requirements governing evaluations in §§ 200.80 through 200.86 for the Chapter 1 Program in LEAs. These commenters generally believed that the proposed regulations were insensitive to the special conditions of migratory children, particularly those with limited English proficiency. One commenter expressed concern that since SEAs administer and operate migrant education programs on a statewide basis, the regulations did not provide them with adequate flexibility.

Discussion: Section 1435 of the Act requires the Secretary to set national standards for evaluating for all Chapter 1 programs. These regulations provide those minimum standards. States are not precluded, if they desire greater flexibility, from mandating additional evaluation requirements that promote better program improvement. The Secretary believes that the proposed regulations governing Migrant Education Program evaluation did recognize the uniqueness of the migratory child population served by the program. The proposed regulations varied from those established for the Chapter 1 Program in LEAs in several ways, bearing more similarity to the provisions applicable to bilingual education in §§ 500.50 through 500.52 of the Department's regulations, while still adhering to the basic objectives of the requirements for evaluation contained in the Chapter 1 statute. In particular, the proposed rules considered the special effect that the mobility of some currently migratory children may have on individual migrant education projects, particularly those operated in summer months. The Secretary continues to believe that the regular school year projects that serve formerly migratory children do not present evaluation problems substantially greater than those encountered under the Chapter 1 Program in LEAs. Furthermore, there are significant numbers of currently migratory children who either remain in their home base school district long enough to participate in its testing program or arrive in a receiving school at the time of its districtwide testing program. For projects with these currently migratory children, standardized test scores can be collected in the same ways as in the Chapter 1 Program in LEAs. Therefore, even though some currently migratory children may be missed by these testing procedures, this number will be fewer than the commenters believed.

Section 1435 of the Act directs the Secretary to develop national evaluation standards for the Migrant Education Program, which presumably should complement express SEA responsibilities to implement the evaluation requirements in section 1202(a)(6) of the Act. However, the Secretary also understands the commenters' concerns about potential difficulties in implementing the proposed requirements. Therefore, the Secretary has decided to permit added flexibility in evaluations by permitting SEAs and LEAs to measure the overall progress of migrant children served by the State's migrant education programs and projects. The Secretary is satisfied that since the SEAs have long been responsible for (1) evaluating their migrant education programs and projects in a manner of their choosing, (2) using these evaluations to improve their programs, and (3) making the results of these evaluations public, the use of procedures prescribed in these regulations should not create an undue data collection burden upon the SEAs or their operating agencies.

Changes: Subpart E of these regulations has been revised by modifying § 201.51(a) and 201.52 to allow the SEA and its local operating agencies to measure the overall progress of the State's migrant education program, including the extent of educational progress achieved through the projects, in terms of basic and more advanced skills.

Section 201.51 Evaluation and Demographic Reports

Comment: One commenter objected to the inconsistency between the requirement that LEAs report their evaluation results every three years and the requirement that SEAs submit evaluation reports to the Secretary every two years.

Discussion: Section 1019 of the Act requires that the results of local evaluations be submitted to the SEA at least once during a three-year period. While this provision is not incorporated directly into section 1202 of the Act as a requirement of those administering migrant education projects, the provision is generally cited in section 1012 of the Act (governing LEA applications), whose basic objectives are incorporated into section 1202(a)(3). Therefore, the Secretary has determined not only that local projects have an evaluation requirement, but that the section 1019 provision that it evaluate its project at least every three years applies to migrant education projects as well.

In accordance with section 1019(b) of the Act, the SEA is expressly required to conduct evaluations (based upon local evaluation data collected under 1202(a)(6)) at least every two years. Therefore section 1019(b) plainly requires separate Migrant Education Program evaluations every two years, a schedule that comports with the Secretary's responsibility under section 1435(b) of the Act to report to the Congress on a similar two-year schedule.

In trying to mesh the inconsistences between the two-year State evaluation and the potentially three-year local evaluation, § 201.51 permits the SEA to require operating agencies to report more frequently than once every three years. It also permits the SEA to establish a schedule under which a sufficient number of operating agencies report to it each year or every two years to ensure that the SEA receives statewide data that are representative of the State's migrant education program.

Changes: None.

Section 201.52 Evaluation Information to Be Collected.

Comment: One commenter objected to proposed § 201.51(a)(2), which would require the LEA to address, for formerly migratory children, whether improved performance had been sustained over two years. The commenter questioned how, given the impact of a migrant lifestyle, one can determine if improved performance has been sustained.

Discussion: Section 201.52(a)(2) applies only to formerly migratory children who have participated in a full school-year program for at least two years. The regulations reflect the underlying requirement in section 1019(a)(3) of the Act. The Secretary has determined that, since the regulations apply only to formerly migratory children who, by definition, have not migrated for at least two years, it is feasible for operating agencies to collect the uniform data the regulations specify.

Changes: None.

Comment: One commenter questioned the reasonableness of collecting separate evaluation data for both instructional and support services, as proposed § 201.52 (a) and (b) would require. The commenter felt that, for the Migrant Education Program, these two types of services are too intertwined to permit separate assessments of their effectiveness.

Discussion: The Secretary realizes that the benefits deriving from instructional and support services are intertwined, and that a measure of the success of one may be a measure of success of the other. However, most SEAs and operating agencies formally describe their migrant education programs and projects in terms of separate instructional and support activities. The purpose of the regulatory provision is only to require collection of data on the success of each of these project components.

Changes: None.

Comment: Some commenters questioned the use of "pre" and "post" normed test results as objective measures of the effectiveness of migrant education programs and projects, claiming that resulting matched scores will not be representative of the successes of the program.

Discussion: The Secretary recognizes that assessing the effectiveness of the migrant education programs and projects and the achievement of participating children presents challenges to SEAs and operating agencies. The Secretary, however, believes these challenges can be met, and that the extent of educational progress of migratory children can be determined for both currently and formerly migratory children participating in the regular school year program and those who may participate in the summer school projects. The regulations do not limit the objective measures of educational progress to nationally normed standardized achievement tests (or to the "pre" and "post" normed test results the commenter described). They acknowledge that other evaluation instruments, including those with State norms, may provide a valid measure of the progress of migratory children. Examples of objective measures other than standardized achievement tests include, as appropriate depending upon the objectives of the particular project, changes in attendance patterns indicating less frequent absenteeism and tardiness, declining course dropout and school dropout rates, and more frequent usage of library books and resource materials.

Changes: Sections 201.51 and 201.52 have been revised to clarify that SEAs and operating agencies must measure or assess the overall progress of both the instructional component, including the extent of educational progress achieved by its students, and support components of their Chapter 1 migrant education projects.

Section 201.52 Evaluation Information to Be Collected and Section 201.54 Non-Project Comparison Groups

Comment: A number of commenters were concerned about the proposal to require the use of appropriate non-project comparison groups in the collection of evaluation information. They expressed the view that the evaluation requirement may be very difficult to implement because of the lack of any appropriate non-project comparison group for migratory children. Another indicated that migratory children are decidedly different from the regular school population in ethnicity, language proficiency, ages in grade, and socioeconomic status and questioned the statutory basis for requiring use of non-project comparison groups.

Several commenters stated, as did the previous commenter, that limited English proficiency is an obstacle for making nonproject comparisons. In contrast, another commenter stated that evaluations of the Migrant Education Program should incorporate outcomes for migratory children served by Chapter 1, bilingual education, or other programs, as well as outcomes that directly stem from instructional services provided with Migrant Education Program funds.

Discussion: The Secretary believes that it is essential that the educational progress of migratory children receiving Migrant Education Program services be measured, to the maximum extent possible, using objective measures of gain. Indeed, educational progress in the regular school program can really only be measured against benchmarks uniformly applied to the migratory student population.

Two benchmarks are possible. One is a national or State norm based upon all students of a given age or grade. The other is an appropriate SEA or operating agency non-project comparison group. In addressing the ways in which either standard bears upon evaluation design, it is useful to examine separately (1) the form of the non-project comparison group, and (2) the different components, instructional and support-service, of migrant education programs and projects to be evaluated.

A. *The non-project comparison group.* It is sensible, if possible, to assess the performance of children who are served by migrant education programs and projects in comparison to the most similar groups available that receive no program assistance. For example, if the dominant characteristics of the migratory students whom a project serves are academic deficiency and non-English proficiency, the agency should try to compare their performance with the group of non-migratory students, if one is available, who most share those characteristics. Doing so will provide good information on the benefits that the migrant education programs and projects have produced. Therefore, pursuant to section 1425(a) of the Act, the Secretary has determined that use of appropriate non-project comparison groups may be necessary for evaluating the overall progress of migrant education programs and projects.

However, while proposed § 201.54 would have required the nonproject comparison group to include persons with characteristics and backgrounds "similar" to those of the migrant children participating in the project, the Secretary is satisfied that for some SEAs and operating agencies similar groups may not always exist. The Secretary understands that for some migratory children, particularly the actively mobile currently migratory children, an appropriate non-project comparison group, and data on that group, may be difficult to secure. Therefore, § 201.54(a) has been revised to define the non-project comparison group as consisting of those who "are as similar as possible" in characteristics and background.

B. *Use of the non-project comparison group or the national or State normed achievement test in evaluating the instructional and support-service components of migrant education projects.* Even so, the Secretary also recognizes that if the results of national or State normed achievement tests for a given age or grade of child are available, requiring the use of a non-project comparison group as a means of evaluating migrant student achievement may generate costs and difficulties that are not commensurate to the benefits obtained. Therefore, in response to the comments, the Secretary has revised § 201.52(b) to permit, for migrant education instructional projects operating throughout the regular school year, SEAs and operating agencies to conduct evaluations using "appropriate forms and levels of national or State normed achievement tests."

Only if those agencies do not use those achievement tests must they compare performance of migratory students to the performance of an appropriate non-project comparison group. Because instructional projects operating only over the summer term cannot reasonably be evaluated in terms of these national or State normed achievement tests, the Secretary has retained, in § 201.32(c), the requirement proposed in § 201.32(a)(2) of the NPRM that summer school projects be evaluated "to the extent possible," by comparing project results to those of a non-project comparison group.

If, for any instructional components of migrant education programs and projects, evaluations are conducted with an appropriate non-project comparison group, § 201.54(b) requires an SEA or operating agency to use standardized achievement tests based on national or State normative data only "to the extent possible." (The provision deletes the proposed alternate use of "local normed achievement data," contained in proposed § 201.54(b), because that data likely does not exist and, in any event, would frustrate development of common standards for a statewide evaluation.) However, if possible, the Secretary strongly recommends use of standardized norm-referenced tests to fulfill the requirement. Use of these tests,

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with the most reasonable non-project comparison group that is available, will at least provide some kind of measure, where none may otherwise exist, of the success of a migrant education program and the overall progress of its participants.

Whether based on national or State norms these comparisons also (1) can provide measures of the participants' ability to function in local mainstream classrooms with their non-migratory peers, and (2) can help determine whether participants in migrant education projects function at the level of established State or local standards.

Use of the Technical Assistance Centers (TACs), funded under section 1436(d) of the Act, and the Rural Technical Assistance Centers (R-TACs), established under section 1456 of the Act, are available to assist SEAs and operating agencies in selecting appropriate non-project comparison groups, and appropriate norm-referenced testing procedures, to fulfill this regulatory requirement.

Finally, the Secretary also recognizes that some project support-service components, such as clothing and health care, do not easily lend themselves to evaluation through the use of a non-project comparison group, while others, such as those that promote dropout prevention or reading, may well do so. Therefore, with minor modifications, § 201.32(d) retains the requirement proposed in § 201.32(b) of the NPRM that the evaluation design for support-service components include "if possible, a means of comparing project outcomes to the performance of an appropriate non-project comparison group."

Changes: Sections 201.52(b) and 201.54 have been revised accordingly.

Section 202.53 General Technical Standards for Evaluation

Comments: A commenter recommended that evaluations of the Migrant Education Program be conducted at the national level, rather than at the State and local levels, by persons skilled in evaluation who have a thorough knowledge of the unique population the program serves.

Discussion: The Secretary is planning to conduct a number of national studies to examine various issues related to the operation and effects of the Migrant Education Program. At the same time, provisions of the Act, such as sections 1019, 1202(a)(6), and 1435, emphasize both that local and State level evaluations are necessary for purposes of accountability and program improvement, and that their performance is a responsibility of the SEA and local operating agencies.

Changes: None.

Section 201.55 Submission of Sampling Plans

Comments: One commenter suggested that States not be required to submit sampling plans for prior approval by the Secretary. Another commenter recommended that the Secretary consider a specific sampling strategy to address the coordination problems posed by requirements that SEAs report at least once every two years while operating agencies report at least once every three years, while a third commenter recommended deletion of the requirement altogether.

Discussion: Section 1435 of the Act, which directs the Secretary to establish national standards for evaluation, permits appropriate sampling of operating agency projects in order to avoid undue data burden on SEAs and operating agencies. Rather than prescribing the sampling procedures to be used, the regulations provide SEAs flexibility to design sampling systems most appropriate for their States. Section 201.55 requires that SEAs submit their sampling plans to the Secretary for approval so that the Secretary can be satisfied, consistent with responsibilities imposed under section 1435 of the Act, that the statewide evaluation data that is obtained will be representative of the State's migrant education programs and projects. Deletion of § 201.55 would preclude this desired flexibility.

Changes: None.

Sections 200.5, 201.2, and 203.5 Applicability of 34 CFR Part 85

Comment: None.

Discussion: These final regulations make applicable 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). The regulations in part 85 were adopted in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organizations from nonprocurement programs of the U.S. Government. The Department implemented this Executive order in subparts A through E of part 85 (regular debarment and suspension) (53 FR 19161 (May 26, 1988)). Second, under the Drug-Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in subpart F of part 85 (drug-free debarment and suspension) (54 FR 4946 (January 31, 1989)).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subtier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal (as defined by 34 CFR 85.105(p)) for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator paid from program funds that would constitute grounds for debarment, the debarring official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual, the Department would consider issuing a Program Determination Letter to the State to recover the program funds.

Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they apply only to principals. The Department will submit to OMB for approval a new form that would apply only to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submitted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees. However, pending approval of the new forms, the Department will use the current forms with the understanding that they apply only to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs to grantees that fail to meet these requirements. Regarding the State certifications required under these regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

Changes: Section 201.2 has been revised to reference the applicability of 34 CFR part 85. Amendments have also been made to part 200 (Chapter 1 Program in Local Educational Agencies) (§ 200.5) and part 203 (Chapter 1 Program for Neglected or Delinquent Children) (§ 203.5) to indicate the applicability of part 85 to those programs as well.

[FR Doc. 89-24658 Filed 10-20-89; 8:45 am]
BILLING CODE 4410-01-M

federal register

Monday
October 23, 1989

Part III

Environmental Protection Agency

40 CFR Parts 795 and 799
Isopropanol; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42097B; FRL 3658-7]

RIN 2070-AB07

Isopropanol; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of isopropanol (CAS No. 67-63-0) to perform testing for health effects. The testing requirements include subchronic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity, developmental neurotoxicity, mutagenicity, oncogenicity, and pharmacokinetics. The action is in response to the Interagency Testing Committee's (ITC) designation of isopropanol for priority testing consideration.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on November 6, 1989. This rule shall become effective on December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of isopropanol.

I. Introduction

A. Test Rule Development Under TSCA

The final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) recommended isopropanol with intent to designate for health effects testing consideration in its 19th Report, published in the **Federal Register** of November 14, 1986 (51 FR 41417). The ITC designated isopropanol for priority testing consideration in its 20th Report (May 20, 1987, 52 FR 19020). The ITC recommended that isopropanol be tested for chronic toxicity including oncogenicity, and for genotoxicity including mutagenicity in mammalian systems and clastogenicity. Testing for developmental and reproductive effects was deferred from consideration pending the outcome of relevant studies that were being conducted in the United Kingdom by the British Industrial and Biological Research Association (BIBRA).

EPA responded to the ITC's recommendations for isopropanol by issuing a proposed rule (March 16, 1988, 53 FR 8636), which proposed that isopropanol be tested for subchronic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity, developmental neurotoxicity, mutagenicity, oncogenicity, and pharmacokinetics. Consent order negotiations for isopropanol, attempted prior to rulemaking, were abandoned when consensus could not be reached between EPA and the Isopropanol Panel of the Chemical Manufacturers Association (CMA) on the requirements of a two-species oncogenicity bioassay.

The proposed rule for isopropanol contained the discussions on the attempted consent order, chemical profile of isopropanol, section 4(a) findings, and the proposed test standards and reporting requirements.

II. Response to Public Comments

EPA received written comments on the isopropanol proposed test rule from the Isopropanol Panel of CMA (the Panel), the Procter and Gamble Company (PGC), and the Natural Resources Defense Council (NRDC) on May 16, 1988 (Refs. 1 through 3). The Panel members are: Arco Chemical Company, Exxon Chemical Corporation, Shell Oil Company, and Union Carbide Corporation. A public meeting was also requested by the Panel and was held on June 1, 1988. The Panel submitted supplemental written comments on July 21, 1988 that reiterated the issues discussed at the public meeting (Ref. 4). A summary of the comments received on the isopropanol proposed test rule are stated in the following Units II. A. and B. along with EPA's responses to the comments.

A. Exposure Finding

The Panel stated that it does not dispute EPA's finding that there is or may be substantial exposure to isopropanol, although it does not accept all aspects of EPA's characterization of exposure (Ref. 1).

1. *Exposure during isopropanol manufacture.* The Panel expressed concern that EPA's proposed rule may have overstated worker exposure to isopropanol during its manufacture. The Panel indicated that it had initiated a survey of its four members, who produce all of the U.S. isopropanol at five manufacturing sites, to obtain data on potential and actual exposure during production of isopropanol (Ref. 1). The survey results, submitted to EPA as part of the Panel's supplemental written comments, showed that there are 395 manufacturing employees in the United States who are potentially exposed to isopropanol. The concentration of isopropanol to which employees are exposed ranged from 0.02 parts per million (ppm) to 6.41 ppm (Ref. 1).

The worker exposure level to isopropanol of 50 mg/m³ (approximately 20 ppm) during its manufacture, stated in the proposed rule, is the upper limit of exposure derived from EPA analysis (Ref. 5). Although worker exposure to isopropanol from manufacturing operations is generally less than this value, EPA believes that worker exposure from isopropanol manufacturing operations is only a minor source of occupational exposure to isopropanol. Worker exposure from industrial use is a much greater source of occupational exposure to isopropanol (Ref. 5). Therefore, the data on exposure to workers at manufacturing facilities are of only limited use, since exposure to workers from processing and use of isopropanol, which contributes a far greater proportion of the exposure upon which the substantial exposure finding is based, was not considered by the Panel.

2. *Inhalation exposure within the general population.* The Panel suggested that isopropanol may be a naturally occurring constituent of milk, therefore, the Pellizarri mother's milk study (Ref. 6) should not be used as evidence of exposure to isopropanol in the general population. The Panel also pointed out several serious flaws with this study.

EPA agrees that there are flaws in the Pellizzari study and is not using the study to support the findings in the rule.

B. Health Effects Testing Requirements

The Panel agreed with EPA that additional health effects testing for isopropanol is warranted. Therefore, the Panel's comments are directed principally at the scope and sequence of the required tests and the selection of appropriate methodologies (Ref. 1).

1. *Route of exposure.* a. The Panel stated that, since inhalation is the principal route of exposure to isopropanol, inhalation should be the preferred route of exposure for all of the major health effects studies conducted, including reproductive toxicity, developmental toxicity, and developmental neurotoxicity studies. The Panel envisioned no technical difficulties in conducting the required studies by inhalation. The Panel recommended that exposure be through drinking water if EPA concludes inhalation is an inappropriate route for any of the major health effects studies. The Panel further stated that gavage administration is particularly inappropriate for testing isopropanol because isopropanol demonstrates saturable metabolism.

EPA concurs with the Panel that there are no major technical difficulties with conducting developmental toxicity tests by the inhalation route. There are, however, technical difficulties with conducting both the reproductive toxicity and developmental neurotoxicity tests by inhalation. In these latter tests the animals are exposed to isopropanol both during pregnancy and through the period of weaning. During the time from just prior to birth until the end of weaning it would be difficult to transfer animals daily to the inhalation chamber for the required exposure periods. This excessive handling of the animals (particularly removal of the mother from the pups) would likely result in adverse effects on the pups which was not chemically related and would confound the interpretation of the results. This would be particularly true in assessments of developmental neurotoxicity where aberrant behavior might be easily be attributed to handling. In addition, if it was decided to expose both mothers and pups in an inhalation chamber, the nesting material required during the latter part of pregnancy and during weaning could easily absorb vapors during an inhalation exposure, and the saturated bedding could provide an important, yet unquantified, exposure to the test substance to both the mothers and the pups. For these reasons, EPA disagrees that inhalation route should be used for conducting reproductive toxicity and developmental neurotoxicity tests. Further, EPA considers it advisable, for the ability to compare reproductive performance, that the developmental toxicity, developmental neurotoxicity, and reproductive toxicity tests be conducted by similar routes.

Administration by gavage has some distinct advantages for the developmental neurotoxicity testing. The use of gavage administration permits relatively precise estimations of the dosages administered. By comparison, drinking water studies require estimates of individual water consumptions. Also, some spillage of water may occur during drinking and volatile chemicals may be lost. Furthermore, in the developmental neurotoxicity study, exposure extends through the period of weaning, and gavage administration ensures that exposure of the pups only occurs through the mother's milk. Since, as mentioned above, it is desirable to perform all the reproductive tests by the same route of administration, EPA believes that gavage administration is the most appropriate route for these studies.

b. While the Panel supported the use of inhalation exposure for most of the health effects testing, the Panel stated that the *Drosophila* assay and the in vivo cytogenetics assay should not be conducted by inhalation exposure. The Panel contended that, since the data from these assays will not be used directly for human risk assessment, the greater expense involved in inhalation studies is not justified under TSCA. In addition, the Panel contended that vapor phase exposure has provided inconclusive results in tests of glycol ethers (Ref. 7), and that tests of a similar compound, methanol, have been conducted by feeding. Finally, the Panel contended that the use of a feeding study would allow a more ready comparison with other *Drosophila* assays.

EPA does not agree that feed should be the route of administration in the *Drosophila* assay because of the relative difficulty of determining the dosages administered by feed. There is no apparent major technical obstacle to performing this study with isopropanol using vapor exposure. The study of glycol ethers by McGregor (Ref. 7) does not indicate that there is any inherent limitation to the use of vapor exposure, but, on the contrary, demonstrates that this experimental system is feasible and has been performed in the past. The inconclusive results reported in this study were attributed by the authors to the metabolic status of *Drosophila* and not to the exposure conditions. Thus, EPA is requiring that isopropanol be administered by vapor exposure or by injection.

The Panel may choose to conduct the in vivo cytogenetic assay by a route other than inhalation. EPA is requiring the other route to be either oral gavage or interperitoneal (IP).

2. *Reproductive toxicity testing.* The Panel stated that the available data on reproductive toxicity of isopropanol are adequate. The Panel cites existing reproductive toxicity data in rats to indicate that reproductive effects are more severe in the first generation. The Panel also noted that a recently completed BIBRA one- generation reproductive toxicity study, currently under review in the United Kingdom, may provide the necessary data to assess the reproductive toxicity of isopropanol.

The question of one- vs. two-generation reproductive effects studies was recently evaluated by a panel of experts in a workshop sponsored by the EPA's Risk Assessment Forum. The Panel of experts concluded that, by itself, a one-generation reproductive effects study is insufficient to identify all potential reproductive toxicants and that a two-generation study is needed for an adequate assessment (Ref. 8). Thus, EPA considers that the one-generation study conducted by BIBRA, even when it becomes available in the United States, will not provide the data needed for an adequate assessment of this endpoint. Because there is no benefit in delaying the two-generation reproductive toxicity testing for isopropanol until the BIBRA study becomes available, EPA is requiring testing for this endpoint in this rule.

3. *Developmental toxicity testing.* The Panel recommended that EPA include a two-species developmental toxicity study in its final rule but stay the requirement to conduct testing in the rat until the results of a rat developmental toxicity study conducted by BIBRA becomes available. It further recommended that at this juncture, following a public meeting, EPA could determine whether additional testing in the rat is needed.

EPA concurs with the Panel's contention that the BIBRA study may fulfill the data needs for developmental toxicity testing in rats. To assure that adequate testing is available if BIBRA data are not submitted in a timely manner, EPA is requiring a two-species developmental toxicity test in this rule. The testing requirement in the rat will be reexamined after the BIBRA data are received by EPA.

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4. *Developmental neurotoxicity testing.* a. The Panel noted that in previous test rules, developmental neurotoxicity tests have only been required when data exists to raise concern about this endpoint for the test compound, and that the tests were required as a tier-II type study. The Panel disagreed with EPA's decision to use data on other short chain alcohols, ethanol and t-butanol, to support the decision to require developmental toxicity testing of isopropanol. The Panel stated that studies by Nelson and co-workers on ethanol and 1-propanol (Refs. 9 and 10) only reported changes in neurotransmitter levels and hence can only be used to support similar types of testing rather than the more extensive tests required in the proposed rule.

EPA is concerned that data on other short chain alcohols have shown developmental neurotoxic effects. As stated in the proposed rule, EPA is basing the developmental neurotoxicity testing requirement for isopropanol on the authority of section 4(a)(1)(B), not section 4(a)(1)(A), of TSCA. Because there is a high degree of exposure to isopropanol, EPA has decided that testing should not be delayed.

b. The Panel also noted a number of technical issues with regard to the conduct of the developmental neurotoxicity tests. For instance, statistical questions concerning the number of animals required for each test and neuropathology issues regarding such questions as the type of histologic stains to be used, the techniques for examining the spinal cord and other nerve tissues, and the measurement of brain tissues need to be resolved.

The neuropathology issues were raised earlier in a July 9, 1987 letter from Dr. John L. O'Donoghue to the CMA Glycol Ethers Program concerning similar testing under a consent order for triethylene glycol ethers (Ref. 11). These issues were subsequently addressed (Refs. 12 and 13).

c. Finally, the Panel maintained that an even greater problem with regard to the developmental neurotoxicity tests is the lack of testing facilities that can perform these tests by the required Good Laboratory Practice Standards (GLPS).

On the basis of information available to EPA, it appears that some capability exists for conducting developmental neurotoxicity studies at this time and additional capability will be available in the near future (Ref. 14).

5. *Neurotoxicity testing.* a. The Panel stated that the existing study in humans by Maizlish et al. (Ref. 15) provides sufficient data to indicate that exposure to isopropanol does not result in any neurologic impairment. In this study, workers were exposed to isopropanol at an average concentration of 161 ppm, with both naphtha (50 ppm) and hexane (39 ppm) also present in the air. The Panel noted that neither hexane nor naphtha is metabolized by alcohol dehydrogenase, nor would it be anticipated that these compounds would induce this enzyme, and thus the metabolism of isopropanol should not be affected by the co-exposure. In this study, no relation was observed between solvent exposure and 10 behavioral variables. The Panel contended that the lack of observed effects in humans is supported by the animal data by Boughton (Ref. 16), who observed only slight reversible decrement in performance in rats maintained on drinking water containing sufficient isopropanol to result in weight loss in the test animals. The Panel stated that this is sufficient evidence that isopropanol has little potential to be a neurotoxic agent, and that EPA should not require further testing.

EPA disagrees that the studies cited by the Panel provide sufficient data to evaluate the neurotoxicity of isopropanol. The study of Maizlish et al. has severe limitations. The entire exposed population in this study consisted of 240 workers in four plants; however, the subgroup referred to by the Panel was made up of only 26 individuals from one plant who signed consent forms and were tested. Not only was this group small, but the authors of the study were concerned with biases since only those who volunteered were tested. Also the extent of exposure was determined through an analysis of air in the breathing zone taken only during the week that the behavioral testing was conducted. There is no data to indicate that the reported exposure was representative of exposure in this plant. Possibly the most critical limitation was with regard to study design. As the authors noted, this was a cross-sectional study which has many inherent limitations. The predominant confounders are the healthy worker effect since workers who have ill health are likely to either leave employment or be transferred to other jobs, and not be present at the time the study is conducted. In addition, subjects are not followed up with time, and this does not permit evaluation of deterioration of performance as the subjects age. Also, the early study by Boughton is inadequate, since only one dose was used, 5 percent in drinking water, and the only behavioral test performed was the activity and maze learning tests which would allow for only a limited ability to detect neurological effects. Taken together, these two studies are inadequate to predict the potentiel for isopropanol to produce neurologic effects, and are insufficient to justify elimination of the proposed testing.

b. The Panel stated that the subchronic neurotoxicity test should not be initiated until completion of the acute study. The benefits cited by the Panel include the ability to identify appropriate doses for the subchronic study, and the identification of potential important endpoints in the acute study which may be monitored more closely in the subchronic test.

EPA agrees that there are advantages to conducting these tests sequentially. There are, however, disadvantages which include delays in the receipt of data, and the inability to conduct the acute tests as a satellite of the subchronic test. Since it is estimated by the Panel that performing the tests sequentially would result in an extension of the reporting requirements from 15 to 30 months, EPA has decided that this would unduly delay obtaining the needed data and that the schedule as outlined in the proposed rule should be maintained.

c. The Panel stated that EPA must resolve technical issues with regard to the adult neurotoxicity tests before the tests are required. Some of these issues are the same as discussed for the developmental neurotoxicity tests and have been addressed. (Refs. 12 and 13).

In addition, the Panel notes that for each of the proposed motor activity tests, "...each test or control group must be designed to contain a sufficient number of animals at the completion of the study to detect a 40 percent change in activity of the test groups relative to the control group with 90 percent power at the 5 percent level." The Panel maintains that testing laboratories and industrial company laboratories have insufficient experience with these test protocols to be able to predict the number of animals needed. Data would not be available from published studies since published articles often underestimate variation, and these tests have been conducted by university groups which have a great deal of experience in conducting such tests. Although the Panel expects that many of these issues will be resolved by neurotoxicity testing that is now underway, the Panel wants the adult neurotoxicity testing to be stayed if unresolved issues remain at the time of promulgation of the final rule on isopropanol.

As noted in the memorandum from Rees (Ref. 13), some judgment is required in determining the parameters

to be used in the determination of sample size. The determination of sample size to allow for confidence in experimental results is not limited to neurotoxicity testing, but is an integral part of all test protocols. It is professional judgement which allows an investigator to determine the number of animals needed and doses to be used to have sufficient animals at the termination of the study for valid interpretation of the results. EPA believes that, with the information gained by ongoing testing and the use of professional judgment, it will be possible to reasonably predict the numbers of animals needed for the adult neurotoxicity tests, and that the small amount of uncertainty involved with regard to the question of number of animals does not justify a delay in testing.

6. *Mutagenicity testing.* a. The Panel agreed that additional assessment of the genotoxic potential of isopropanol is warranted; however, it recommended that the first tier tests be modified. The study of Thompson (Ref. 17) compared 181 compounds tested for induction of chromosomal aberrations in both in vitro and in vivo assays, and reported that similar results were obtained with 126 compounds while 53 were positive when tested in vitro and negative in vivo, 2 compounds were positive in vivo and negative in vitro, and 35 had equivocal results. The Panel stated that this data indicates that in vitro chromosomal aberration tests are not predictive of results obtained in vivo, and hence the requirement for in vitro testing for chromosomal aberrations should be eliminated and an in vivo micronucleus test performed instead. The Panel also stated that the available data on clastogenic effects in vitro, negative tests for meiotic nondisjunction in *Neurospora crassa* and sister chromatid exchange (SCE) in cultured V79 cells, indicate that it is unlikely that isopropanol will be active in other in vitro systems. In addition, since EPA considers the in vivo chromosome aberration assay to be equivalent to the in vivo micronucleus test, the Panel requested that the rule be modified to substitute the latter for the former. Further, the micronucleus test is substantially less expensive and hence fulfills the requirement under TSCA of cost effective testing.

EPA is not requiring the in vitro chromosomal aberration assay for isopropanol. The study of Von der Hude et al. (Ref. 18), which evaluated the potential induction of SCE in vitro, has become available since the evaluation of the data for the proposed rule and fulfills the requirement for an in vitro cytogenetic assay. This recently published study reported on an assay of isopropanol at four concentrations, 3.3, 10.0, 33.3, and 100 mM, in the presence and absence of metabolic activation, and determined that isopropanol was negative. The highest concentration tested was reported to produce cytotoxicity as indicated by a delay in the cell cycle.

In regards to the Panel's arguments for elimination of the in vitro cytogenetic assay as a general rule, EPA does not agree with the Panel. The study by Thompson should not be interpreted to indicate that in vitro testing is unnecessary. In that report, the in vitro tests identified more compounds as potential genotoxic agents than did the in vivo tests. As noted by the authors, the occurrence of activity in vitro and not in vivo may result from detoxification mechanisms or barriers present in the whole animal. It should be concluded from this study that these "false positives" are only false positives as related to the in vivo bone marrow assay, while the activity observed in vitro may be expressed at other target sites.

b. The Panel agreed to perform Tier III tests if earlier results are positive; however, the Panel noted that there is some controversy over the mouse visible specific locus (MVSL) test, that EPA is reexamining the test, and that there is a question whether this relatively expensive test can actually be performed. The Panel recommended that the EPA not require any Tier III tests in the rule, but instead reopen the rulemaking proceedings if Tier III tests are to be required.

EPA is requiring the MVSL test in this rule, but plans to amend all test rules requiring the MVSL through a separate rule. EPA has proposed separately to amend the requirement for the MVSL (40 CFR 798.5200) for proposed and final test rules promulgated under section 4(a) of TSCA. EPA plans to allow test sponsors of current test rules, including this rule for isopropanol, to choose either the MVSL or the mouse biochemical specific locus test (MBSL), after it is promulgated, to test for heritable mutations in mammals. EPA believes that the MBSL and MVSL are comparable tests and are acceptable for detecting this endpoint in mammals. The test guideline for the MBSL was proposed on December 23, 1988 (53 FR 51847) to be codified at 40 CFR 798.5195. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL once triggered. The provision in this final rule for public review prior to requiring Tier III testing will permit EPA and the public to address many of the concerns raised by the Panel with regard to Tier III testing. Requiring the Tier III MVSL testing in the rule will permit a more expeditious treatment of questions concerning Tier III testing than would be obtained by requiring the reopening of the rulemaking process.

7. *Oncogenicity testing.* The Panel's comments reiterate the position it took during the consent order negotiations that the design of the oncogenicity study be determined by evaluation of data on the pharmacokinetics, subchronic, and mutagenicity testing of isopropanol. After evaluation of this data, a determination would be made as to whether a one species or two species oncogenicity study would be required.

EPA requires data from two species under its oncogenicity testing guidelines (40 CFR 798.3300) and cancer risk assessment guidelines (51 FR 33992). For chemicals of unknown activity, such as isopropanol, two mammalian species are needed to increase the power of the test to detect potential carcinogens. Also, a negative single-species bioassay would be insufficient evidence to exonerate isopropanol as a potential carcinogen (Ref. 3).

8. *Pharmacokinetics testing.* a. The Panel did not dispute that pharmacokinetics data were insufficient. The Panel argued that the reporting requirements specified in the proposed rule on isopropanol will make it necessary to initiate subchronic toxicity studies prior to completion of the pharmacokinetics studies. This would preclude use of the pharmacokinetics data for setting dose levels for the subchronic studies. The Panel suggested that it will be necessary to adjust the maximum dose level so that it does not exceed the metabolic saturation point, as defined from the results of pharmacokinetics studies. The Panel proposed that the subchronic and chronic toxicity studies be delayed to allow for completion of the pharmacokinetics studies.

The proposed reporting requirements allow 15 months from the effective date of the final rule for completion of the pharmacokinetics study and the 90-day subchronic study, and 53 months for completion of the 2-year chronic study. EPA believes that the reporting requirements allow sufficient time for completion of the pharmacokinetics study and preliminary data analysis prior to initiating the subchronic and chronic toxicity studies.

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b. The Panel suggested that an additional 9 months will be required to develop inhalation exposure methods and assay procedures for isopropanol and its metabolites, and that these tasks will be time-consuming because the metabolism departments of many testing facilities are unaccustomed to using the inhalation route for pharmacokinetics and metabolism studies.

EPA conducted a study to assess the availability of adequate test facilities and concluded that there will be test facilities and personnel to perform the testing specified in this rule. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82- 140773). With respect to assay procedures, the Panel's comments indicated that methods already exist for determining isopropanol and its metabolites in biological materials. Therefore, EPA believes that 15 months allows sufficient time for completion of the pharmacokinetics testing.

c. The Panel suggested that pharmacokinetics data for the mouse may be useful for interpreting mouse bioassays. The Panel indicated that it is prepared to work with EPA to initiate such testing voluntarily. EPA agrees that this data would be extremely useful and encourages the Panel to perform these studies on a voluntary basis.

d. The Panel would like EPA to specify whether inhalation exposures are to be conducted in dynamic or static exposure systems. EPA is requiring inhalation exposures to be conducted in dynamic exposure systems. Inhalation toxicity studies are generally performed under dynamic exposure conditions; guidelines for subchronic inhalation toxicity studies specify dynamic exposures (see 40 CFR 798.2450). It is also the most consistent with the goals of risk assessment extrapolations, which are based on assuming continuous exposures to a constant concentration of air-borne chemicals. Furthermore, it is the only exposure system in which exposure to volatile metabolites can be prevented.

e. The Panel expressed concern about the requirement for use of radioisotopes in the pharmacokinetics studies. The Panel suggested that very large quantities of radioactivity would be required for dynamic inhalation exposures and that incorporation of radiolabel into tissue constituents may lead to confusing or misleading data on distribution of the test substance.

EPA believes that use of radiolabel in conjunction with chromatographic techniques provides the most reliable and sensitive means for detecting metabolites and for evaluating mass balance for the carbon skeleton of the test substance. The objective of the metabolite identification requirements specified in the proposed rule is to identify the major metabolites of isopropanol in tissues and excreta, to provide data for evaluating the contribution of metabolism to detoxification or activation of isopropanol in the test species. If metabolic incorporation of the radiolabel into tissue constituents is a quantitatively significant metabolic fate of isopropanol, then this should be documented with data regarding the identity of the incorporated label. Such incorporation may represent fixation of CO_2 derived from the degradation of isopropanol or may represent a covalent interaction of tissue constituents with reactive metabolites of isopropanol. In either case, it will be important to document the nature of the incorporation. Indeed, only with the use of radiolabeled isopropanol is this kind of rigorous analysis possible.

f. The Panel expressed concern about the requirement for collection of exhaled air, urine, and feces excreta during nose-only or head-only inhalation exposures, and indicated that the latter is not technically feasible. EPA agrees that collection of multiple samples of urine and feces from such an apparatus may be very difficult and has modified the guideline accordingly.

g. The Panel expressed concern about the definition for percent absorption that is cited in the proposed rule. The definition given by EPA is "...100 times the ratio between total excretion of radioactivity following oral or inhalation administration and total excretion of radioactivity following intravenous administration of test substance." EPA agrees that for compounds administered by the oral route, this calculation may overestimate the actual percent absorption by that amount of chemical that passes through the gastrointestinal tract without absorption. Thus, EPA has modified the guideline to reflect this change.

h. The Panel expressed concern over the selection of an appropriate toxicity endpoint on which to base the selection of the high dose level to be used in the pharmacokinetics studies.

The objective of the high-dose level study is to examine the absorption, distribution, metabolism and excretion of the test substance at the highest dose level that can be achieved without severely perturbing or impairing the above mechanisms. Dose levels that produce frank effects, e.g., convulsions, coma, and death, are clearly unacceptable since the disposition mechanisms are likely to be severely perturbed or impaired in severely poisoned animals. Ideally, the high dose level should be the lowest observable effect level. This effect will vary depending on the chemical and its toxicologic characteristics. In the case of isopropanol, for which narcosis represents an important critical effect, the dose level at or just below that required to produce mild symptoms of narcosis seems appropriate. The relevant observation period in which to define the effect would include the exposure and sampling period, since it would not be productive to expose an animal to a dose that results in unconsciousness or frank effects after the exposure and before the sampling was completed. Note that toxicity will define the highest dose level acceptable for testing; however, this does not preclude testing of several levels below the high-dose level, although EPA requires that only one nontoxic dose level be examined.

C. TSCA Sections 4 and 12(B) Requirements

PGC proposed that EPA exclude small manufacturers and importers from the requirements of section 4. PGC suggested this exclusion include production or importation of 25,000 lb/yr or less. In addition, PGC suggested that EPA eliminate the requirement for all section 12(b) reporting for isopropanol, since the benefit would not be commensurate with the burden that this reporting requirement would place upon EPA. If all section 12(b) reporting is not exempted, then PGC further recommended that a small quantity exemption (shipment of 25,000 lb/yr or less) be used to eliminate the burden to small companies.

Since these issues apply to all section 4 rules and consent orders and the commenter has not distinguished how this rule is any more burdensome than other section 4 rules, EPA rejects these comments. EPA is continuing to look at the burden of section 4 and 12(b) requirements. EPA has proposed amendments to its procedural rule that would alleviate the requirement of certain manufacturers to submit letters of intent to test or submit exemption applications (54 FR 21237; May 17, 1989). EPA has also proposed amendments to its section 12(b) rules (54 FR 29524; July 12, 1989) to reduce the burden of section 12(b) notification as it relates to section 4.

D. Summary of NRDC's Comments

In general, NRDC concurred with the testing program outlined by EPA in its proposed rule for isopropanol. Specifically, NRDC agreed that oncogenicity testing must be conducted in two species and that a two-generation study is necessary to adequately assess reproductive effects. NRDC recommended that the BIBRA study on the developmental effects be used to replace the required developmental testing in the rat only if it is submitted and reviewed in a timely fashion.

III. Final Test Rule for Isopropanol

A. Findings

EPA is basing its final health effects testing requirements for isopropanol on the authority of section 4(a)(1)(B) of TSCA.

EPA finds that isopropanol is produced in substantial quantities and that there is or may be substantial human exposure to isopropanol from its manufacture, processing, use, and disposal. The available data on isopropanol, discussed in Unit II. of the preamble to the proposed rule (53 FR 8638), show that the annual production volume of isopropanol has been in excess of 1 billion pounds since 1956, and that it was ranked 50th among chemicals produced in the United States in 1985. There is or may be a substantial number of workers exposed to isopropanol from activities related to its manufacturing, processing, distribution in commerce, and use. The National Occupational Hazard Survey (NOHS) conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974 estimated that there were 8,899,594 exposures in 357,173 plants, potentially exposing 5,483,862 people to isopropanol in the workplace in 1970. The National Occupational Exposure Survey (NOES) estimates that 1,857,972 workers, 60 percent of whom were female, were potentially exposed to isopropanol in the workplace in 1980.

Isopropanol is used as a solvent and is a component of numerous industrial products, consumer products, and commercial sprays. The above uses may result in widespread exposure to workers and consumers (Ref. 5). EPA believes that exposures associated with the manufacture, processing, use, and disposal of isopropanol and its products provide a sufficient basis for a finding that there is or may be substantial human exposure under TSCA section 4(a)(1)(B) for isopropanol.

Under TSCA Section 4(a)(1)(B)(ii) and (iii), EPA finds that existing data are insufficient to reasonably determine or predict the subchronic, reproductive, developmental, neurotoxic, developmental neurotoxic, mutagenic, and oncogenic effects of human exposure to isopropanol resulting from its manufacture, processing, use, and disposal. EPA also finds that there are insufficient data to reasonably predict and compare the absorption, distribution, metabolism, and excretion of isopropanol in the body as a result of oral or inhalation exposure due to isopropanol's manufacture, processing, use, and disposal, and that an oral/inhalation comparative pharmacokinetics study of isopropanol is necessary to develop such data. The reasons data are insufficient are further discussed in Unit II. B. of this preamble. EPA believes that the data generated from this testing will be relevant to a determination as to whether the manufacture, processing, use, and disposal of isopropanol does or does not present an unreasonable risk of injury to human health.

B. Required Testing and Test Standards

On the basis of these findings, EPA is requiring that certain health effects testing be conducted for isopropanol in accordance with scientific test guidelines set forth in 40 CFR 795 and 798.

To assess the degree of toxicological activity of isopropanol upon various target organs, EPA is requiring that isopropanol be tested for subchronic toxicity by inhalation (40 CFR 798.2450).

EPA is requiring that testing for reproductive effects (40 CFR 798.4700), and developmental toxicity (40 CFR 798.4900) be done by gavage.

To assess the effects of acute neurotoxic inhalation exposures to isopropanol, EPA is requiring an acute neurobehavioral toxicity evaluation consisting of a functional observational battery (40 CFR 798.6050), and measurement of motor activity (40 CFR 798.6200).

To assess the neurotoxic effects of repeated inhalation exposures to isopropanol, EPA is requiring a subchronic neurobehavioral toxicity evaluation consisting of a neuropathologic evaluation of tissues perfused in situ (40 CFR 798.6400), a functional observational battery (40 CFR 798.6050), and measurement of motor activity (40 CFR 798.6200). This required battery of neurotoxic evaluation may be combined with the subchronic test (40 CFR 798.2450).

To assess the developmental neurotoxicity potential of isopropanol, EPA is requiring a developmental neurotoxicity evaluation (40 CFR 795.250).

To assess the potential for isopropanol to cause gene mutations, EPA is requiring that testing be conducted for gene mutations in cells in culture (40 CFR 798.5300). If the results of the cells in culture test are positive, a *Drosophila* sex-linked recessive lethal assay (SLRL) shall be conducted (40 CFR 798.5275). A positive result in the SLRL assay shall trigger a mouse visible specific locus (MVSL) test (40 CFR 798.5200). If the cells in culture test is negative, no further testing is required. If the SLRL assay is negative, the MVSL test is not required.

To assess the potential for isopropanol to cause chromosomal aberrations, EPA is requiring that an in vivo bone marrow assay (40 CFR 798.5385) be conducted. Should the in vivo bone marrow test results prove negative, no further chromosomal aberrations testing is required. If the results of the in vivo bone marrow test are positive, a dominant-lethal assay is required (40 CFR 798.5450). A positive result in the dominant-lethal assay will trigger a heritable translocation assay (40 CFR 798.5460).

If the results from the dominant-lethal assay and/or the SLRL are positive, EPA will hold a public program review prior to requiring initiation of the heritable translocation and/or mouse specific locus testing. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting, if one is held, will be published in the **Federal Register**. Should EPA determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or MVSL assay is no longer warranted, EPA will propose to repeal that test requirement and, after public comment, will issue a final amendment to rescind the requirement. For a more detailed discussion concerning mutagenicity tiered testing and program review, see the final test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

EPA believes that the oncogenicity testing is justified without waiting for the results of gene mutation tests. EPA is thus requiring a 2-year inhalation bioassay in two species (40 CFR 798.3300).

To aid in the assessment of the potential toxicity of isopropanol for risk assessment purposes, EPA is requiring metabolism and pharmacokinetics testing by the oral and inhalation routes of exposure. EPA believes this testing of isopropanol is necessary to reduce uncertainties associated with the

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extrapolation of test data from high to low doses, from species to species, and from one route of exposure to another. Pharmacokinetics testing in rats is being required to develop comparative, dose-dependent, oral and inhalation absorption, tissue distribution, bioaccumulation, metabolism, and excretion data. These data are needed for extrapolation purposes. The necessary extrapolations can be made on the basis of metabolism and pharmacokinetics data obtained from studies performed by both routes of isopropanol administration. Repeated dose studies are needed to learn whether multiple exposures modify the metabolism and/or pharmacokinetics of isopropanol. Although there are some human and rat data, these are not adequate to support the required extrapolations.

EPA is establishing the TSCA health effects test guidelines as the test standards for the purpose of the required tests for isopropanol. The TSCA test guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects for substances like isopropanol to which humans are expected to be exposed.

C. Test Substance

EPA is requiring that isopropanol of at least 99.8 percent purity be used as the test substance. Commercial isopropanol of such purity is available according to comments received from the Panel (Ref. 1). EPA has specified a relatively pure substance for testing to best evaluate the effects attributable to isopropanol itself. In addition, radiolabeled 14C isopropanol is required for the pharmacokinetics.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health from manufacture, processing, use, and disposal of isopropanol, EPA is requiring that persons who manufacture and/or process, or who intend to manufacture and/or process, isopropanol, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this final rule. While EPA has not identified any byproduct manufacturers of isopropanol, such persons are covered by the requirements of this test rule. The reimbursement period will end 5 years after the last final report is submitted to EPA or an amount of time equal to that which was required to develop data, whichever is later.

E. Reporting Requirements

EPA requires that all data developed under this rule be reported in accordance with its TSCA GLPS, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Thespecific reporting requirements for each of the test standards for isopropanol are specified in the following table:

TABLE—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR ISOPROPANOL

Test	Test Standard (40 CFR Citation)	Reporting Deadline for Final Report (Months)[1]	Number of Interim (6-month) Reports Required
Health Effects:			
1. Subchronic inhalation toxicity	§ 798.2450	15	2
2. Reproduction and fertility effects	§ 798.4700	29	4
3. Developmental toxicity	§ 798.4900	12	1
Mutagenicity - gene mutations:			
4. Mammalian cells in culture	§ 798.5300	6	---
5. *Drosophilla* sex-linked recessive lethal	§ 798.5275	18	2
6. Mouse visible specific locus test	§ 798.5200	51	8
Mutagenicity - chromosomal aberrations:			
7. In vivo cytogenetics: micronucleus	§ 798.5395	15	2
8. Dominant lethal assay	§ 798.5450	27	4
9. Heritable translocation assay	§ 798.5460	24[2]	3
Acute neurotoxicity:			
10. Functional observation battery	§ 798.6050	15	2
11. Motor activity	§ 798.6200	15	2
Subchronic neurotoxicity:			
12. Functional observation battery	§ 798.6050	18	2
13. Motor activity	§ 798.6200	18	2
14. Neuropathology	§ 798.6400	18	2
15. Developmental neurotoxicity	§ 795.250	21	3
Chronic toxicity:			
16. Oncogenicity	§ 798.3300	53	8
Pharmacokinetics:			
17. Oral and inhal. Pharmacokinetics	§ 795.231	15	2

[1] Number of months after the effective date of the final rule, except as indicated.
[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for isopropanol, the Agency has determined that the required testing must be performed.

Persons who export a chemical which is subject to a final section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final rules interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of the final test rule, an exporter of isopropanol must report to EPA the first annual export or intended export of isopropanol to each country. EPA will notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA. Section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "...establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce..." EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of EPA for the purpose of determining compliance with the final rule for isopropanol. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLPS and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers who fail to submit a letter of intent or an exemption request and who continue manufacturing after the deadlines for such submissions. This provision also applies to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 19) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates that costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these tests costs by examining four market characteristics of isopropanol: (1) price sensitivity of demand; (2) market expectations; (3) industry cost characteristics; and (4) industry structure.

Total testing costs for the final rule for isopropanol are estimated to range from $2.6 to $3.8 million. To predict the financial decision making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of 15 years, range from $289,000 to $412,000. Based on 1987 production of 1.4 billion pounds, the unit test costs range from $0.00021 to $0.00029 per pound. These costs are equivalent to 0.09 to 0.13 percent of the current price of $0.23 per pound.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.13 percent of product prices in the upper bound case.

2. Demand for isopropanol does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis which is contained in the public record for this rule making for a complete discussion of test cost estimation and potential for economic impact resulting from these costs.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "...the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 20) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLPS. However, the barriers faced by testing laboratories to gear up for conducting these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing programs under TSCA section 4 and the Federal Insecticide, Fungicide and Rodenticide

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Act (FIFRA) continue. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA guidelines and TSCA GLPS.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42097B). This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of isopropanol to the Priority List (51 FR 41417; November 14, 1986) and all comments on isopropanol received in response to that notice.

(b) Rules requiring TSCA section 8(a) and (d) reporting on isopropanol (51 FR 41328; November 14, 1986).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Interim Final Rule: Procedures Governing Testing Consent Agreements and Test Rules Under the Toxic Substances Control Act (51 FR 23706; June 30, 1986).

(2) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Reports--published and unpublished factual materials including Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

B. References

(1) CMA's Isopropanol Program Panel. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(2) The Procter & Gamble Company. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(3) Natural Resources Defense Council. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(4) CMA's Isopropanol Program Panel. Letter from Geraldine V. Cox, Chemical Manufacturers Association, 2501 M Street NW, Washington, DC 20037, to Richard Troast, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (July 21, 1988).

(5) USEPA. "Worker exposure assessment for isopropanol (IPA)." John D. Walker, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (November 20, 1985).

(6) Pellizzari, E.D., et al., "Purgeable organic compounds in mother's milk." Bulletin of Environmental Contamination and Toxicology, 28:222-238 (1982).

(7) McGregor, D.B. "Genotoxicity of glycol ethers." *Environmental Health Perspectives*, 57:97-103 (1984).

(8) Syracuse Research Corporation. "Response to public comments: Isopropanol." Contract No. 68-02-4209 (September 29, 1988).

(9) Nelson, B.K., et al., "Neurological, but not behavioral deviations in the offspring of rats following prenatal inhalation exposure to ethanol." *Neurotoxicology and Teratology*, 10:15-22 (1988).

(10) Nelson, B.K., et al., "Behavioral teratology investigation of 1-propanol administered by inhalation to rats." Paper presented at Teratology Society Meeting (1988).

(11) Eastman Kodak Company. Letter from John L. O'Donoghue, Eastman Kodak Company, 343 State Street, Rochester, NY 14650, to Carol Stack, Chemical Manufacturers Association, 2501 M Street NW, Washington, DC 20037 (July 9, 1987).

(12) USEPA. "Response to industry comments on the neuropathology portion of the glycol ether test rule." Intraagency memorandum from Robert C. MacPhail, Health Effects Research Laboratory, to Carol Glasgow, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (January 6, 1988).

(13) USEPA. "OTS-ORD comments on the proposed protocol for neurotoxicolo1gical testing of triethylene glycol 1monomethyl ether." Intraagency memorandum from David C. Rees, Health and Environmental Review Division, to Ralph Northrup, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (February 5, 1988).

(14) Mathtech, Inc. "Developmental neurotoxicity laboratory capability." Intraoffice memorandum from J.K. Orrell to Edmund Coe, Mathtech, Inc., 5111 Leesburg Pike, Falls Church, VA 22041 (September 19, 1988).

(15) Maizlish, N.A., et al. "Behavioral evaluation of workers exposed to mixture of organic solvents." *British Journal of Industrial Medicine*, 42:579-590 (1985).

(16) Boughton, L.I. "The relative toxicity of ethyl and isopropyl alcohols as determined by long term rat feeding and external application." Journal of *American Pharmacology Association*, 33:111-113 (1944).

(17) Thompson, E.D. "Comparison of *in vivo* and *in vitro* cytogenetic assay results." *Environmental Mutagenesis*, 8:753-767 (1986).

(18) Von der Hude, W. et al. "Genotoxicity of three-carbon compounds evaluated in the SCE test *in vitro*." *Environmental Mutagenesis*, 9:401-410 (1987).

(19) USEPA. Economic impact analysis of final test rule for isopropanol. Office of Toxic Substances, USEPA, Washington, DC (February 22, 1989).

(20) Mathtech, Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, USEPA (April 14, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G-004, NE Mall, 401 M St., SW, Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor cost, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96-511, December 11, 1980), and has assigned control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 1,190 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Chief, Information Policy Branch (PM-223), U.S. EPA, 401 M St., SW, Washington, DC 20460 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Laboratories, Recordkeeping and reporting requirements.

Dated: September 22, 1989

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, chapter I, subchapter R, is amended as follows:

1. In part 795:

a. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 795.231 to read as follows:

§ 795.231 Pharmacokinetics of isopropanol.

(a) *Purpose.* The purposes of these studies are to:

(1) Ascertain whether the pharmacokinetics and metabolism of the "test substance" are similar after oral and inhalation administration.

(2) Determine bioavailability of the test substance after oral and inhalation administration.

(3) Examine the effects of repeated dosing on the pharmacokinetics and metabolism of the test substance.

(b) *Definitions.* (1) "*Bioavailability*" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "*Metabolism*" means the study of the sum of the processes by which a particular substance is handled in the body, and includes absorption, tissue distribution, biotransformation, and excretion.

(3) "*Pharmacokinetics*" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used because it has been used extensively for metabolic and toxicological studies.

(ii) *Test animals.* For pharmacokinetics testing, adult male and female rats (Fischer 344 or strain used for major toxicity testing), 7 to 9 weeks of age, shall be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival at the testing laboratory. The animals shall be selected at random for the testing groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each test group shall contain at least four animals of each sex for a total of at least eight animals.

(iii) *Animal care.* (A) Animal care and housing should be in accordance with DHEW Publication No. (NIH)-85-23, 1985, entitled "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals should be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 22±2 °C and humidity of 50±20 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use and shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment.

(C) During the acclimatization period, the animals should be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum*.

(2) *Administration of test substance*—(i) *Test substance.* The use of radioactive test substance is required for all materials balance and metabolite identification requirements of the study. Ideally, the purity of both radioactive and nonradioactive test substance should be greater than 99 percent. The radioactive and nonradioactive substances shall be chromatographed separately and together to establish purity and identity. If the purity is less than 99 percent or if the chromatograms differ significantly, EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of test substance, in an appropriate vehicle, shall be administered intravenously to four rats of each sex.

(B) *Oral.* Two doses of test substance shall be used in the oral portion of the study, a low dose and a high dose. The high dose should ideally induce some overt toxicity, such as weight loss. The low dose level should correspond to a no-observed effect level. The oral dosing shall be accomplished by gavage or by administering an encapsulated test substance. If feasible, the same high and low doses should be used for oral and dermal studies.

(C) *Inhalation.* Two concentrations of the test substance shall be used in this portion of the study, a low concentration and a high concentration. The high concentration should ideally induce some overt toxicity, while the low concentration should correspond to a no observed level. Inhalation treatment should be conducted using a "nose-cone" or "head only" apparatus to prevent ingestion of the test substance through "grooming".

(iii) *Dosing and sampling schedule.* After administration of the test substance, each rat shall be placed in a separate metabolic unit to facilitate collection of excreta. For the inhalation studies, excreta from the rats shall also be collected during the exposure periods. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to the cages. All studies, except the repeated dose study, shall be terminated at 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(A) *Intravenous study.* Group A shall be dosed once intravenously at the low dose of test substance.

(B) *Oral studies.* (*1*) Group B shall be dosed once *per os* with the low dose of the test substance.

(*2*) Group C shall be dosed once *per os* with the high dose of the test substance.

(C) *Inhalation studies.* A single 6-hour exposure period shall be used for each group.

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(*1*) Group D shall be exposed to a mixture of the test substance in air at the low concentration.

(*2*) Group E shall be exposed to a mixture of test substance in air at the high concentration.

(D) *Repeated dosing study.* Group F shall receive a series of single daily oral low doses of nonradioactive test substance over a period of at least 7 consecutive days. Twenty four hours after the last nonradioactive dose, a single oral low dose of radioactive test substance shall be administered. Following dosing with radioactive substance, the rats shall be placed in individual metabolic units as described in paragraph (c)(2)(iii) of this section. The study shall be terminated 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(3) *Types of studies*—(i) *Pharmacokinetics studies.* Groups A through F shall be used to determine the kinetics of absorption of the test substance. In groups administered the substance by intravenous or oral routes, (i.e., Groups A, B, C, F), the concentration of radioactivity in blood and excreta including expired air shall be measured following administration. In groups administered the substance by the inhalation route (i.e., Groups D and E), the concentration of radioactivity in blood shall be measured at selected time intervals during and following the exposure period. In the groups administered the substance by inhalation (i.e., Groups D and E), the concentration of radioactivity in excreta (including expired air) shall be measured at selected time intervals following the exposure period. In addition, in the groups administered the substance by inhalation, the concentration of test substance in inspired air shall be measured at selected time intervals during the exposure period.

(ii) *Metabolism studies.* Groups A through F shall be used to determine the metabolism of the test substance. Excreta (urine, feces, and expired air) shall be collected for identification and quantification of test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 minutes, 30 minutes, 1, 2, 3, 6, 9, and 18 hours after dosing; and at 30 minutes, 3, 6, 6.5, 7, 8, 9, 12, and 18 hours after initation of inhalation exposure.

(B) *Extent of absorption.* The total quantities of radioactivity shall be determined for excreta collected daily for 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(C) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at appropriate time intervals. The collection of the intact test substance or its metabolites, including carbon dioxide, may be discontinued when less than 1 percent of the administered dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(D) *Tissue distribution.* At the termination of each study, the quantities of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, spleen, and residual carcass of each animal shall be determined.

(E) *Changes in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., biotransformation, extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low oral dose of test substance (Group B) shall be compared to the corresponding results obtained in rats receiving repeated oral doses of test substance (Group F).

(F) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the dose eliminated.

(G) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radioactive substances in excreta from the rats receiving a single oral dose (Groups B and C) with those in the excreta from rats receiving repeated oral doses (Group F).

(ii) [Reserved]

(d) *Data and reporting.* The final test report shall include the following:

(1) *Presentation of results.* Numerical data shall be summarized in tabular form. Pharmacokinetics data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All quantitative results shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (40 CFR 792.185), the following specific information shall be reported:

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substance, including:

(A) For the radioactive test substance, information on the site(s) and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive substance, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to generate the data.

(iv) Extent of absorption of the test substance as indicated by: percent absorption of the administered oral dose; and total body burden after inhalation exposure.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood.

(vi) Tissue distribution reported as quantity of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin, spleen and in residual carcass of each rat.

(vii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering single high and low doses to rats.

(viii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering repeated low doses to rats.

(ix) Pharmacokinetics model(s) developed from the experimental data.

2. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.2325 to read as follows:

§ 799.2325 Isopropanol.

(a) *Identification of test substance.* (1) Isopropanol (CAS No. 67-63-0) shall be tested in accordance with this section.

(2) Isopropanol of at least 99.8 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import or byproduct manufacture) or intend to manufacture or process isopropanol, from the effective date of this rule to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, subpart A of this part, and

parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with isopropanol in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d) of this section.

(B) Progress reports shall be submitted to EPA for the subchronic inhalation toxicity test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(2) *Reproduction and fertility effects*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by gavage with isopropanol in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 29 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(3) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted in two mammalian species by gavage with isopropanol in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the date specified in paragraph (d)(1) of this section.

(B) A progress report shall be submitted 6 months after the date specified in paragraph (d)(1) of this section.

(4) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A gene mutation test in mammalian cells shall be conducted with isopropanol in accordance with § 798.5300 of this chapter.

(B)(*1*) A sex-linked recessive lethal test in *Drosophila melanogoster* shall be conducted with isopropanol in accordance with § 798.5275 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5275, unless the results of the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(5)(i)(A) of this section are negative.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* The route of administration shall be by exposure to isopropanol vapors or by injection of isopropanol.

(*ii*) [Reserved]

(C)(*1*) The mouse visible specific locus (MVSL) test shall be conducted with isopropanol by inhalation in accordance with § 798.5200, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5200, if the results of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(4)(i)(B) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Dose levels and duration of exposure.* A minimum of 2 dose levels shall be tested. The duration of exposure shall be for 6 hours per day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation,

(ii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final report submitted to EPA as follows:

(*1*) The gene mutation in mammalian cells assay within 6 months of the date specified in paragraph (d)(1) of this section.

(*2*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 18 months of the date specified in paragraph (d)(1) of this section.

(*3*) The mouse visible specific-locus test within 51 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(4)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *Drosophila* sex-linked recessive lethal test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until the submission of the final report.

(C) Progress reports shall be submitted to EPA for the mouse visible specific locus test at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(5) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A)(*1*) The micronucleus test shall be conducted with isopropanol in accordance with § 798.5395 of this chapter.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by either inhalation or oral gavage or inperitoneally (IP).

(*ii*) *Duration of exposure.* For inhalation, the duration of exposure shall be for 6 hours per day for 5 consecutive days with one sacrifice time or for 6 hours for 1 day with three sacrifice times.

(B)(*1*) A dominant lethal assay shall be conducted with isopropanol in accordance with § 798.5450 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5450, unless the micronucleus test conducted pursuant to paragraphs (c)(5)(i)(A) of this section is negative.

(2) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) *Duration of exposure.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(C)(*1*) A heritable translocation test shall be conducted with isopropanol in accordance with § 798.5460 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5460, if the results of the dominant lethal assay conducted pursuant to paragraph (c)(5)(i)(B) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) [Reserved]

(ii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The micronucleus test within 15 months of the date specified in paragraph (d)(1) of this section.

(*2*) The dominant lethal assay within 27 months of the date specified in paragraph (d)(1) of this section.

(*3*) The heritable translocation test within 24 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice

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under paragraph (c)(5)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the the micronucleus and the dominant lethal assays at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(C) Progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(6) *Neurotoxicity*—(i) *Required testing.* (A)(1) A functional observation battery shall be conducted with isopropanol in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(B)(*1*) A motor activity test shall be conducted with isopropanol in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(C)(*1*) A neuropathology test shall be conducted with isopropanol in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration of exposure.* Animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(D) A developmental neurotoxicity test shall be conducted with isopropanol in accordance with § 795.250 of this chapter.

(ii) *Reporting requirements.* (A) The acute functional observation battery and motor activity tests shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d)(1) of this section. The subchronic functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports submitted to EPA within 18 months of the date specified in paragraph (d)(1) of this section. The developmental neurotoxicity test shall be completed and the final report submitted to EPA within 21 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted to EPA for the functional observation battery, motor activity, neuropathology, and developmental neurotoxicity tests at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the applicable final report.

(7) *Pharmacokinetics studies*—(i) *Required testing.* An oral and inhalation pharmacokinetics test shall be conducted with isopropanol in accordance with § 795.231 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted to EPA for the pharmacokinetics test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(8) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted by inhalation with isopropanol in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(d) *Effective dates.* (1) This test rule shall be effective on December 4, 1989.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-7030).

[FR Doc. 89-24677 Filed 10-20-89; 8:45 am]
BILLING CODE 6560-50-D

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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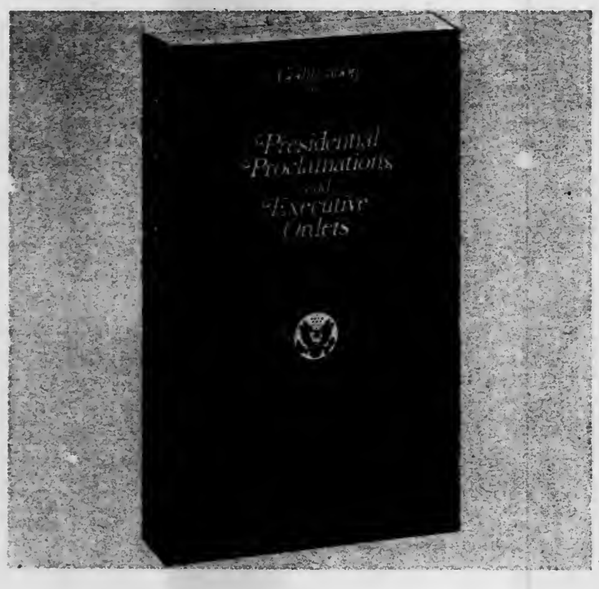
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Presidential Documents

Title 3—

The President

Proclamation 6051 of October 19, 1989

National Forest Products Week, 1989

By the President of the United States of America

A Proclamation

Our Nation's forests have been prized not only for their great beauty, but also for the wealth of natural resources they provide. These forests supply us with fuel, a variety of useful paper products, and the wood with which we build our homes and furniture. They also provide a habitat for much of our Nation's wildlife, as well as a scenic environment for family outings and vacations. Throughout the history of the United States, America's dense forests have contributed to our shelter, warmth, convenience, and recreation.

Today, nearly 740 million acres of land in the United States are forested. A century ago, such continued abundance was in doubt. During the late 1800's, forests were being depleted at an alarming rate, and some Americans predicted an eventual timber shortage. Fortunately, however, early leaders in forest conservation—including President Theodore Roosevelt and Gifford Pinchot, the Nation's first trained forester—helped to reverse that trend. Their legacy is one for which we should be thankful.

The premise of their conservation legacy is that, while forests need protection, they can be used and renewed for the personal well-being of the American people and for the sake of the Nation's economy. Yet they must be used wisely. Like other agricultural crops, new trees must be planted for future harvests, if natural regeneration does not appear to be adequate.

Our adherence to this simple principle has been rewarded. Each year, we harvest large quantities of timber for building, paper products, fuel, and much more. Primary wood manufacturing provides jobs for more than 600,000 workers and millions of jobs in related industries.

Our Nation has been blessed by an abundance of natural resources. It is our obligation to future generations to use these resources responsibly. By caring for our forests and replenishing them in a timely way, we can help ensure that they—and the Nation itself—continue to prosper.

All Americans can participate in the vital process of reforestation. Last year, Federal efforts resulted in the planting of 340,000 acres of new trees. Private voluntary organizations, families, and businesses planted eight times that number.

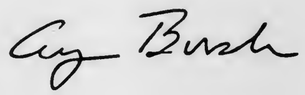
Every tree sown helps to reduce soil erosion by wind and water; improve air quality by reducing carbon dioxide in the atmosphere; and provide fuel, shelter, and valuable food and paper products. Whether planted on public land or in a suburban backyard, every tree also represents a living compact between generations. Through reforestation, we can help give our children and grandchildren a greener, healthier environment. Each tree makes a difference—so, too, does each American who plants a new one.

In recognition of the value of our forests, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and requested the President to issue a proclamation in observance of this week.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 15, 1989, as National Forest Products Week and call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-25183
Filed 10-20-89; 4:55 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6052 of October 19, 1989

United Nations Day, 1989

By the President of the United States of America

A Proclamation

Each year, United Nations Day provides us the opportunity to reaffirm the principles upon which the United Nations was founded in 1945. Those principles are eloquently expressed in the preamble to the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on December 10, 1948. In that historic document, the peoples of the United Nations agreed that "recognition of the inherent dignity of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world." The ongoing efforts of the United States and other members of the United Nations are rooted in the conviction that human rights should be protected by the rule of law.

Today, mankind is filled with hope, for the prospects for peace have improved greatly in regions where it seemed impossible just a few years ago. Throughout the world, we are witnessing the triumph of freedom and democratic ideals over regimes maintained by intimidation and force. The United Nations and the Universal Declaration of Human Rights have contributed much to this progress, both symbolically and practically.

The effectiveness and credibility of the organization have been enhanced by a continuing series of internal reforms, and the United Nations plays an important role in promoting constructive dialogue and the peaceful resolution of differences between nations. It has helped advance or implement the settlement of a number of regional conflicts, and it has helped promote the economic and political development of countries beset by strife and poverty. The United Nations has also begun to offer leadership in the fight against drug trafficking, as well as in efforts to protect the global environment.

Much of the United Nations' work is carried out by its technical and specialized agencies, such as the International Civil Aviation Organization (ICAO). This year marks the 45th anniversary of the Convention on International Civil Aviation, which provided for the establishment of the ICAO. Since its inception, the ICAO has led efforts to promote safety in international air navigation and to ensure the orderly growth of international civil aviation throughout the world.

In recent years, the ICAO has devoted increasing attention to the threat of terrorism. Earlier this year, it adopted a plan of action to thwart terrorists attempting to place bombs on board passenger aircraft. The Organization is currently developing a regimen for the marking and detection of plastic explosives. The ICAO has long been a useful forum in which to address the problem of aircraft hijackings. In fact, the incidence of aircraft hijackings around the world has decreased markedly—in large part as a result of improved security measures recommended by the ICAO and implemented by its member states.

The International Civil Aviation Organization is one example of the positive role played by the technical and specialized agencies of the United Nations. Throughout the United Nations system, men and women from around the world are working together to help make the world a safer, healthier place in which to live. Their efforts reflect the vision of those who, in signing the United Nations Charter, "reaffirmed their faith in fundamental human rights, [and] in the dignity and worth of the human person."

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1989, as United Nations Day. I urge all Americans to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-25184
Filed 10-20-89; 4:56 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 204
Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal Plant and Health Inspection Service

7 CFR Part 301

[Docket No. 89-166]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding to, and deleting from, the list of areas in counties in North Carolina and South Carolina.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on June 7, 1989 (54 FR 24313-24318, Docket Number 89-047), we amended the witchweed quarantine and regulations contained in 7 CFR part 301 by adding areas in Cumberland, Greene, Harnett, Pender, Richmond, and Sampson Counties in North Carolina, and an area in Marlboro County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations. The list of suppressive areas was also amended by removing areas in Beaufort, Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina.

Comments on the interim rule were required to be received on or before August 7, 1989. We received one comment from a State Department of Agriculture, favoring this regulation. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 477 of these entities by removing 472 entities from regulation and placing 5 new entities under regulation. We have determined that the 472 deregulated entities will realize combined annual savings of approximately $10,936, or $23.17 each, in regulatory and control costs. We estimate that the 5 newly regulated entities will need to invest approximately $675 each, per year, in order to comply with our regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.80-2a that was published at 54 FR 24313-24318 on June 7, 1989.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 19th day of October, 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-25042 Filed 10-23-89; 8:45 am]
BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 21; Doc. No. 7434S]

General Crop Insurance Regulations; Grape Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.130, the Grape Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on grapes in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA

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procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.130, the Grape Endorsement, effective for the 1990 and succeeding crop years in California (1991 and succeeding crop years in all other states), to provide the provisions for insuring grapes.

Upon publication of 7 CFR 401.130 as a final rule, the provisions for insuring grapes contained therein will supersede those provisions contained in 7 CFR part 411, the Grape Crop Insurance Regulations, effective in California only, with the beginning of the 1990 crop year. The present policy contained in 7 CFR part 411 for all states except California will be in effect for the 1990 crop year; terminated at the end of the 1990 crop year; and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 411 by separate document so that the provisions therein are effective only as outlined above.

Minor editorial changes have been made to improve compatibility with the general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Grape Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring grapes as follows:

1. *Subsection 1.*—Change language to allow an insured to elect the varieties to be insured in California only. Add language regarding insurable by the age of the grafted vines.

2. *Subsection 2.*—Remove reference to direct Mediterranean Fruit Fly damage as an insured cause of loss. This insect is more easily controlled than many other grape pests and since we do not cover insect damage in general, this cause should not be included.

3. *Subsection 4.*—Add language to prevent adverse selection via coverage levels or price election levels for individual varieties.

4. *Subsection 7.*—Change insurance period dates for Idaho and Oregon to match the dates in Washington. These two states previously fell into the "all other states" category.

Add an end-of-insurance date of October 10 for new county programs in Mississippi.

Revise language to allow insurance coverage for acreage acquired after sales closing date in all states. Previous language allowed this only in certain states.

5. *Subsection 8.*—Revise unit division language to include provisions for California to establish as policy units each variety insured and to permit optional unit division only for noncontiguous land.

6. *Subsection 10.*—Add language to clarify that quality adjustment applies to both harvested and unharvested production. Change language to include quality adjustment for all high value special use grapes. Previously language included only grapes which were harvested before normal maturity.

7. *Subsection 11.*—Change cancellation and termination dates for Idaho and Oregon to match the dates in Washington.

8. *Subsection 13.*—Modify the definition of "harvest" to include both mechanical and manual means of removing grapes from the vines. Replace the definition of "contiguous land" with the definition of "noncontiguous land". The term noncontiguous land is used in Subsection 8.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 33560, to provide the provisions of crop insurance protection on grapes in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 33560 is hereby adopted as a final rule.

Language previously contained in the unit division section of the proposed rule, which required additional premium for optional unit division, has been removed in the final rule. FCIC's Board of Directors has adopted a method which discounts premium for insureds who choose not to divide their acreage into optional units.

This discount is available only on selected crops in 1990 and will not be available for grapes since there will be no surcharge or discount for optional grape units, all language regarding premium changes for optional unit division has been removed from the endorsement.

Inasmuch as the earliest date by which changes in the contract must be filed in the service offices in California is October 31, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Grape endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years in California, and for the 1991 and succeeding crop years for all other states, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.130, Grape Endorsement, effective for the 1990 and Succeeding Crop Years in California, and for the 1991 and succeeding crop years in all other states, to read as follows:

§ 401.130 Grape endorsement.

The provisions of the Grape Crop Insurance Endorsement for the 1990 (in

California) and subsequent crop years (in all other States) are as follows:

Federal Crop Insurance Corporation

Grape Endorsement

1. Insured Crop

a. The crop insured:

(1) For California only, will be any insurable variety of grapes you elect which are grown for wine, juice, raisins or canning.

(2) For all other states, will be all insurable varieties of grapes which are grown for wine, juice, raisins or canning.

b. In addition to the grapes not insurable under section 2 of the General Crop Insurance Policy, we do not insure any grapes:

(1) If the producing vines, after being set out or grafted, have not reached the number of growing seasons designated by the actuarial table;

(2) If the producing vines have not produced an average of two (2) tons of grapes per acre; or

(3) Produced by vines where there is less than a ninety percent (90%) stand of bearing vines based on the current planting pattern;

unless inspected by us and we agree, in writing, to insure such grapes.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) If applicable, failure of the irrigation water supply; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the General Crop Insurance Policy.

b. In addition to the causes of loss not insured against under section 1 of the General Crop Insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or vine pruning debris has not been removed from the vineyard. We also specifically do not insure against the inability to market the grapes as a direct result of quarantine, boycott, or refusal of any entity to accept production, unless production has actual physical damage due to a cause specified in subsection 2.a. above

3. Report of Acreage, Share, Practice, and Type (Acreage Report)

In addition to the information required by section 3 of the General Crop Insurance Policy, you must report the crop type and variety

4. Coverage Levels and Price Elections

Only one coverage level (50%, 65%, or 75%) and only one price election set (high, medium, or low) will be applicable to all your insurable grapes

5. Production Reporting and Production Guarantees

In addition to the information required in section 4 of the General Crop Insurance Policy, you must report

a. The number of bearing vines; and

b. Any vine damage or change in farming practices which may reduce yields from previous levels.

6. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

7. Insurance Period

a. The calendar date on which insurance attaches is:

(1) November 21 in Idaho, Oregon, and Washington;

(2) February 1 in California; and

(3) December 11 in all other states.

b. The date harvest should have started on any acreage which is not harvested, is added to section 7 of the General Crop Insurance Policy as one of the items which ends the insurance period.

c. The calendar date for the end of the insurance period is:

(1) October 10 in Mississippi;

(2) November 10 in California, Idaho, Oregon, and Washington; and

(3) December 10 in all other states.

d. If you acquire an insurable share in any insurable acreage on or before the acreage reporting date of any crop year and if we inspect, consider acceptable, and agree in writing, to insure such acreage, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. If you relinquish your insurable interest on any acreage of grapes on or before the acreage reporting date of any crop year insurance will not be considered to have attached to such acreage for that crop year unless a transfer of right to an indemnity is entered into by all affected parties and the service office is notified in writing of such transfer prior to the acreage reporting date.

8. Unit Division

a. In California only, in addition to units as defined in section 17 of the General Crop Insurance Policy, each grape variety will be a separate unit. Grape acreage that would otherwise be one unit, as provided herein and in section 17 of the General Crop Insurance Policy, may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and the insured grapes are located on land owned by you which is noncontiguous. Land rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop will be considered owned by you.

b. In all other states, grape acreage that would otherwise be one unit as defined in section 17 of the General Crop Insurance Policy may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and

(1) The insured grapes are designated in the actuarial table as separate group A or group B varieties;

(2) The insured grapes are located on noncontiguous land;

(3) The acreage of insured grapes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(b) The grapes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

(4) The acreage of insured grapes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(a) Grapes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(b) Farming practices are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

c. If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined.

9. Notice of Damage or Loss

In addition to the notices required in section 8 of the General Crop Insurance Policy, and if you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

a. After total destruction of the grapes on the unit;

b. After discontinuance of harvest on the unit; or

c. Before harvest would normally start if any acreage on the unit is not to be harvested.

If notice is given under this subsection, the notice requirement under subsection 8.a.(4) of the General Crop Insurance Policy is not applicable.

10. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see subsection 9.c.) by the price election; and

(4) Multiplying this result by your share.

b. If a unit contains acreage to which more than one price election applies, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for such acreage and then added together to determine the total amount for the unit

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c. The total production (tons) to be counted for a unit will include all harvested and appraised production:

(1) Grapes which, due to insurable causes, have a value less than 75 percent of the average market price of undamaged grapes of the same variety will be eligible for quality adjustment. In California, the average market price will be the price shown by the Federal State Market News California Wine Report for the same week in which the damaged grapes were valued. In all other states, the average market price will be determined by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued. Damaged production will be adjusted by:

(a) Dividing the value per ton of the grapes by the highest price election available for such grapes; and

(b) Multiplying the result (not to exceed 1) by the number of tons of such grapes.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(4) If any grapes are harvested before or after normal maturity or for a special use (such as champagne or Botrytis affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

11. Cancellation and Termination Dates

a. The cancellation date in:

(1) California is January 31 of the calendar year in which the crop normally blooms;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year prior to the year of normal bloom; and

(3) All other states is December 10 of the calendar year prior to the year of normal bloom.

b. The termination date in:

(1) California is January 31 of the calendar year following the year of normal bloom;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year in which the crop normally blooms; and

(3) All other states is December 10 of the calendar year in which the crop normally blooms.

12. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California.

13. Meaning of Terms

a. *Crop Year* means the period beginning with the date insurance attaches to the grape crop and extending through normal harvest time, and will be designated by the calendar year in which the grapes are normally harvested.

b. *Harvest* means the mechanical or manual removal of grapes from the vines.

c. *Noncontiguous Land* means any land whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

d. *Ton* means 2,000 pounds.

Done in Washington, DC on October 10, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24963 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 22; Doc. No. 7242S]

General Crop Insurance Regulations; High-Risk Land Exclusion Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.131, to be known as the High-Risk Land Exclusion Option. The intended effect of this rule is to provide the regulations containing the provisions of a High-Risk Land Exclusion Option on several endorsements to the general crop insurance policy.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 6, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 28428, to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.131, the High-Risk Land Exclusion Option, effective for the 1990 and succeeding crop years, to provide the provisions for allowing an insured to exclude from crop insurance coverage all high-risk land.

The basic crop insurance policy provides insurance coverage on all land planted to a crop by an insured. If the crop is planted on insurable high-risk land, the insured will be required to report, and pay premium on, such acreage. The premium rate for such crop land reflects the risk which exists. Insurance coverage on all cropland is uniformly available to all insureds with an accepted application.

FCIC herewith issues the High-Risk Land Exclusion Option to address FCIC's concerns with respect to providing uniformly available coverage.

For those insureds who do not wish to insure their high-risk land, the basic insurance policy may be amended by submitting the High-Risk Land Exclusion Option for all crops involved, providing FCIC and the insured greater flexibility in reaching their insurance objectives.

Initially, the High-Risk Land Exclusion Option will be available on crops in those states and counties where the actuarial study on high-risk land classification has been completed. It is the intent of FCIC to expand to additional crops and counties as the actuarial classifications are completed. Beginning with the 1990 crop year, the High-Risk Land Exclusion Option will be available on the following crops:

Barley (7 CFR 401.104)
*Corn (7 CFR 401.111)
*Cotton (7 CFR 401.119)
Cotton ELS (7 CFR 401.121)
**Dry Beans (7 CFR 433)
*Grain Sorghum (7 CFR 401.113)
Oats (7 CFR 401.105)
Popcorn (7 CFR 447)
Rice (7 CFR 401.120)
Rye (7 CFR 401.106)
***Safflowers (7 CFR 401.123)
Soybeans (7 CFR 401.117)
Sunflowers (7 CFR 401.124)
Wheat (7 CFR 401.101)

Note: *Not available on these crops in Hidalgo County, Texas; **Not available on Dry Beans in Idaho, Oregon, Utah, and Washington; ***Not available on Safflowers in Idaho and Utah.

Following the publication of the notice of proposed rulemaking in the **Federal Register** at 54 FR 28428, the public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received, therefore, the rule published at 54 FR 28428 is hereby adopted as a final rule.

Since implementation of this rule will benefit insureds by allowing them to exclude from crop insurance coverage all high-risk land, thus reducing the producer's over-all farming costs by not requiring insurance on such land, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; High-risk land exclusion option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.131, High-Risk Land Exclusion Option, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.131 High-risk land exclusion option.

The provisions of the High-Risk Land Exclusion Option for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

High-Risk Land Exclusion Option

This is a continuous Option. Refer to item 5 of this Option.

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Crops _____
County _____
Identification No. _____
SSN _____
TAX _____

Upon our approval of this Option, we agree to amend your Federal Crop Insurance Policy to exclude from crop insurance coverage all high-risk land for the identified crops and county in which you have a share, subject to the following terms and conditions:

1. The Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to exclude high-risk land.

2. In the event of a loss on any insured unit, you must provide separate production records showing planted acreage and harvested production for any acreage which is excluded from crop insurance coverage under this Option.

3. By signing this Option, you are declining crop insurance coverage under the general crop insurance policy and the crop endorsement on your high-risk land.

4. As used in this Option, "high-risk" land is any land which is not classified as an "R" classification contained in the actuarial table.

5. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

6. You must report, on the acreage report for each crop year, the acreage of the crop planted on high-risk land.

7. All other provisions of the policy not in conflict with this Option are applicable.

Insured's Signature
Date _____

Corporation Representative's Signature and Code Number
Date _____

Collection of Information and Data (Privacy Act)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See below for information on the consequences of furnishing false or incomplete information).

The information furnished on this form will be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

A false claim made to the Corporation, or a false statement made on a matter within the jurisdiction of the Corporation, may subject the maker to criminal and civil penalties (18 U.S.C. 1001, 1006; 31 U.S.C. 3729, 3730).

Done in Washington, DC, on September 27, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24984 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 40; Doc. No. 7215S]

General Crop Insurance Regulations; Raisin Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.142, the Raisin Endorsement. The intended effect of this rule is to provide the provisions of crop

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insurance protection on raisins in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as March 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.142, the Raisin Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring raisins.

Upon publication of 7 CFR 401.142 as a final rule, the provisions for insuring raisins contained therein will supersede those provisions contained in 7 CFR part 402, the Raisin Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR part 402 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 402 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Raisin Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring raisins as follows:

1. *Subsection 1.*—Add language regarding share in the event of a loss. For purposes of raisin insurance, in case of an indemnity, the share should not exceed the share when the raisins are removed from the vineyard rather than at the beginning of harvest. Remove language allowing raisin insurance on grapes that have been sized for table grapes. This change was made due to unfavorable loss experience when insuring raisins made from table grapes.

2. *Subsection 3.*—Change the tonnage to be reported from net tons to delivered tons. Raisin maturity standards have made the use of net tonnage (or net paid tonnage) inappropriate when determining premium amounts.

3. *Subsection 9.*—Include language to authorize us to obtain records from the Raisin Administrative Committee and other parties who may have such records. This authorization is needed to allow us to determine insured tonnage when a tonnage report is not submitted. Change language regarding the value of undamaged raisins. The new term used is the "insurance price." This change was made because the term "field price" has generally been used in the raisin industry to define only the free tonnage price. Add language to clarify that the number of tons of raisins on which we allow a reconditioning allowance will be the actual (unadjusted) tonnage to be reconditioned. This clarification was made to eliminate inconsistencies in loss adjustment procedure.

4. *Subsection 12.*—Add the definitions of "Delivered ton," "Noncontiguous Land," "Insurance price," and "Substandard."

On Monday, July 10, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 28820, to add a new section, 7 CFR 401.142, the Raisin Endorsement, to provide the provisions of crop insurance protection on raisins in an endorsement to the general crop insurance policy.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the National Crop Insurance Service (NCIS) on behalf of its affiliated companies. The comments are addressed below in the order they appear in the rule, as follows:

1. Section 1.c. NCIS recommends that this section should be changed to reflect the time the insured's share is determined as being at the time insurance attaches. Currently, this section states: "In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard." NCIS' rationale is that the company is liable for the raisins when the insurance period begins and the share should be determined at this time. Section 2.c. of the general policy, while providing that the insured share is that share at the time insurance attaches, states in section 2.c.(2), that for the purpose of determining an indemnity, the insured's share will not exceed the share at the beginning of harvest.

Section 1.c. of the endorsement does not change the share percentage from what it is at the time insurance attaches unless there is an indemnity and the share is reduced from what it was at the time insurance attached. The provision only modifies the section 2.c.(2) of the general policy. For raisins, removing trays from the vineyard is the equivalent of the beginning of harvest.

2. NCIS stated that sections 1.d. (2) and (3) should be changed to read: "made from table grapes." Then by referencing the definition of table grapes in section 12.h., this would include what is not insurable.

Sections 1.d. (2) and (3) actually address two separate situations. First is the instance in which table grapes are removed from the vines and the strippings are made into raisins. The second includes situations when the entire production is utilized for raisins. For clarity and distinction of the two situations, FCIC has determined to retain the current language.

3. NCIS recommends changing the paragraph following section 3.b.(4) to provide a broader base from which companies can secure information to verify insured tonnage.

FCIC has no problem with expanding this language to be similar to that found in section 9.b. The language in section 3 will therefore read as follows: "By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the raisin packer, raisin reconditioner, Raisin Administrative Committee established under the United States Department of Agriculture, or any other party who may have such records".

4. NCIS suggested section 4.a.(2) should be changed for clarity to read: "damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard as determined by us. Tray weights will only be used to establish raisin tonnage on trays or in rolls not removed from the vineyard".

FCIC agrees to this change. Section 4.a.(2) of the Raisin policy has been changed in this final rule.

5. It was suggested by NCIS that section 5.a include a reference to any premium adjustment percentage that may apply to the computation of the annual premium amount.

FCIC agrees and has made the change in this section.

6. With the change suggested in Number 5 above, NCIS recommends deleting section 5.b. of the policy.

FCIC agrees and has made the change.

7. NCIS recommended that section 12.b. should be changed to reflect a more accurate definition of delivered tons which indicates the moisture adjustment percentage.

FCIC agrees and has made the change.

In addition, the notice of proposed rulemaking contained language in section 7 of the policy which required additional premium surcharge for optional unit division. This has been removed from the final rule because, on August 14, 1989, the Board of Directors of FCIC approved a method for discounting premium for those insureds who choose not to divide their acreage into optional units, and discontinued surcharges for optional unit division. Premium rates have been revised to reflect this change. This discount is only available on selected crops in the 1990 crop year and will not be available for raisins.

Since there will be no surcharge for optional raisin units, all language regarding premium charges for optional unit division have been removed from the policy.

Therefore, with the exception of the changes set out above, FCIC hereby adopts the rule published at 54 FR 28820 as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance; Raisin endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.142, Raisin Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.142 Raisin endorsement.

The provisions of the Raisin Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Raisin Endorsement

1. Crop, Tonnage, and Share Insured

a. The crop insured will be raisins of grape varieties designated as insurable by the actuarial table.

b. The tonnage insured will be the tonnage in which you have a share (as reported by you or as determined by us, whichever we elect).

c. In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard.

d. In addition to the raisins not insurable under section 2 of the general crop insurance policy, we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties or after September 20 in all other instances;

(2) Made from table grape strippings; or

(3) Made from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

2. Causes of Loss

The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, while raisins are in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

3. Report of Tray Count, Tonnage, and Share (Tonnage Report)

By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the raisin packer, raisin reconditioner, Raisin Administrative Committee established under the United States Department of Agriculture, or any other party who may have such records.

In lieu of section 3 of the general crop insurance policy, you must report on our form:

a. For all raisins which are not damaged, the delivered tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available, but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

(1) The variety;

(2) The location of the vineyard;

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

c. You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Amounts of Insurance and Production Reporting

a. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined for raisins:

(1) Not damaged by rain, by the raisins delivered (delivered tons); or

(2) Damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will only be used to establish raisin tonnage on trays or in rolls not removed from the vineyard.

b. Subsection 4.d. of the general crop insurance policy is not applicable to this crop.

5. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per ton times the premium rate, times the insured tonnage, times your share on the date insurance attaches, times any applicable premium adjustment percentage shown on the actuarial table.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

a. October 20;

b. The date the raisins are boxed; or

c. The date the raisins are removed from the vineyard.

7. Unit Division

a. Raisin acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into units by grape variety.

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b. Raisin acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if, for each proposed (optional) unit:

(1) You maintain written, verifiable records of raisin production for at least the previous crop year; and

(2) The acreage of insured raisins is located on noncontiguous land.

If you have a loss on any unit, production records for all harvested units must be maintained and be made available to us at our request. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, we must be given notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such damage is not reported within 72 hours.

9. Claim for Indemnity

a. In lieu of subsection 9.a. of the general crop insurance policy any claim for indemnity must be submitted to us on our form not later than Merch 31 after the calendar date for the end of the insurance period.

b. In addition to the requirements in subsection 9.b. of the general crop insurance policy, we will not pay any indemnity unless we are allowed in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrativc Committee established under order of the United States Department of Agriculture, or any other party who may have such records.

c. The indemnity will be determined on each unit by:

(1) multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the insurance price (see subsection 12.c.).

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet the Raisin Administrative Committee (RAC) standards for raisins, will be valued at the insurance price. An allowance for reconditioning will be deducted from the value only if you obtained our written consent prior to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro-organisms in excess of RAC tolerances.

The reconditioning allowance will be made based on the actual (unadjusted) weight of raisins to be reconditioned. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowances will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash-and-dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at the insurance price. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at "zero" in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

i. Raisins destroyed without USDA inspection or put to another use without our consent will be valued at the amount of insurance.

10. Cancellation and Termination Dates

The cancellation and termination dates are July 31.

11. Contract Changes

The date by which contract changes will be available in your service office is April 30 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the calendar year in which the raisins are placed on trays for drying.

b. *Delivered ton* means a ton of raisins or raisin material delivered to a packer, processor, buyer or a reconditioner, before any adjustment for B and better maturity standards, and after adjustment for moisture over 16 percent and adjusted for substandard raisins over 5 percent. Raisin tonnage will be reduced 0.12 percent for each 0.10 percent moisture in excess of 16.0 percent.

c. *Insurance price* means the value established by us for raisin tonnage for the purpose of determining indemnities. This value is shown in the actuarial table.

d. *Noncontiguous land* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

e. *Raisins* mean specific varieties of grapes, designated insurable by the actuarial table, which have been laid on trays or are in rolls in the vineyard to dry.

f. *Raisin tonnage report* means a form prescribed by us for annually reporting all the tonnage of raisins in the county in which you have a share.

g. *Substandard* means a quality of raisins that fail to meet the requirements of U.S. Grade C except that layer or cluster raisins with seeds or Zante Currant raisins will be considered substandard if they fail to meet the requirements of U.S. Grade B.

h. *Table grapes* mean grapes which are grown for commercial sales as fresh grapes on acreage where the cultural practices to produce fresh marketable grapes were carried out.

i. *Ton* means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one-half tons of fresh grapes when first placed on trays for drying.

j. *USDA inspection* means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considered "USDA inspections."

Done in Washington, DC, on September 26, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24985 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 422

[Amdt. No. 4; Doc. No. 7227S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Potato Crop Insurance Regulations (7 CFR part 422), effective for the 1989 and succeeding crop years, to change the end of insurance period for potatoes in Delaware, Maryland, and New Jersey. The intended effect of this rule is to change the currently incorrect date to reflect the farming practices for potatoes in such states.

DATES: This rule is effective October 24, 1989. Comments should be received by December 26, 1989.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations remains as February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In reviewing the potato crop insurance policy, it was determined that the August 15 end of insurance period for Delaware, Maryland, and New Jersey, is incorrect. Potato insureds in these states would not, by this time, have harvested their crops. To leave the date as August 15 would have the effect of removing crop insurance coverage before harvest and leaving the insured without protection. John Marshall, Manager, FCIC, has determined that in order to provide continuing potato crop insurance protection until harvest, it is necessary to change the end of insurance period for Delaware, Maryland, and New Jersey to a date more closely corresponding with harvest. By deleting these states from that section of the potato crop insurance policy identifying the end of the insurance period as August 15, such states would then fall into the "all other states" category, or October 15.

Since policies currently in effect list an incorrect end of insurance period for potato crop insurance policies in Delaware, Maryland, and New Jersey, and an immediate change of this reference would properly restore crop insurance protection to growers in such states, good cause is shown for making this rule effective upon publication in the Federal Register without provision for prior notice and comment. FCIC is soliciting public comment for 60 days after the publication of the rule, and will schedule a review of this rule as soon as possible after the 60-day period in order to consider any amendment which may be made necessary by the comments received.

Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Potato Crop Insurance Regulations (7 CFR part 422), effective for the 1989 and subsequent crop years, in the following instances:

1. The authority citation for 7 CFR part 422 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. In § 422.7(d), the Potato Crop Insurance Policy is amended by revising subparagraph 7.b.(4)(c) to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) * * *

7. * * *

b. * * *

(4) * * *

(c) Virginia, and Knox County, Texas—August 15;

* * * * *

Done in Washington, DC, on September 27, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24986 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

15 Year Loans

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This final rule amends § 701.21(f) by extending to 20 years the authority of Federal credit unions (FCUs) to make: (1) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, (2) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and (3) a loan to finance the repair, alteration, or improvement, of a residential dwelling which is the residence of the member-borrower.

EFFECTIVE DATE: October 24, 1989.

ADDRESSES: National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Timothy P. Hornbrook, Director, Department of Supervision, at the above address, or telephone: (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Background

Federal credit unions are authorized to make loans to members at maturities in up to 12 years with certain exceptions. Lines of credit have no statutory or regulatory maturity limitations. First mortgage loans secured by a first lien on the principal residence of the member may be granted with maturities of up to 40 years. Section 701.21(f) of the NCUA Rules and Regulations currently implements an FCU's authority to make certain mobile home, second mortgage and home improvement loans with maturities of up to 15 years.

Section 702 of the Competitive Equality Banking Act of 1987 (CEBA)

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amended section 107(5)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(ii)) to give the NCUA Board (Board) authority to set maturity limits for second mortgage loans, mobile home loans and home improvement loans at "up to 15 years or any longer term which the Board may allow." Until the CEBA, such loans were limited to 15 years. In October 1988, the Board requested public comment on whether it should exercise its regulatory authority to allow maturities is excess of 15 years. (See 53 FR 42953, October 25, 1988.) Based on public comments received, the Board, in May 1989 proposed to amend § 701.21(f) by extending the maturity to 20 years. (See FR 21967, May 22, 1989.)

Comments

A total of 18 comments were received in response to the proposed regulatory change. The comments came from 11 credit unions, 2 national credit union trade organizations, 2 credit union league associations, 2 national banking trade organizations and 1 credit union insurer. Of these comments, 16 supported extending the maturity limit for second mortgage loans, 15 supported extending the maturity limit for mobile home loans and 12 supported extending the maturity limit for home improvement loans. Only two commenters recommended that the limit be retained at 15 years for all three categories. Several commenters who support extending the maturity limit emphasized the need for credit unions to recognize the increased risk in making longer term loans and the corresponding need to develop appropriate underwriting standards addressing this risk.

Analysis

The Board has determined that extending to 20 years the maximum maturity for loans made under the provisions of § 701.21(f) is warranted. Extending the maximum maturity to 20 years should provide credit unions with the option and flexibility necessary to make a wide variety of competitive loan services available to their members. In granting this provision, the Board recognizes that increased maturity limits expose lenders to some additional liquidity and interest rate risk. Such risk can be addressed through adjustment of lending policies, underwriting standards and, in some cases, participation in the secondary market for such loans. Extending the maturity on loans imposes an additional burden on credit union officials to insure that the credit union is not exposed to undue risk as result of the extended terms. Lending policies and underwriting standards should be reviewed carefully and adjusted to recognize this exposure. Accordingly, § 701.21(f) is amended, as proposed, by changing the maximum maturity limit from 15 to 20 years.

The effective date of this regulatory change is immediate since the change expands the lending options for Federal credit unions. It imposes no new restrictions, hence a 30-day delayed effective date is not required.

Regulatory Procedures

Regulatory Flexibility Act

The Board has determined and certified that the rule does not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, 20-year loans, Second mortgages, Mobile home loans, Home improvement loans.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.21(f) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(f) *20-year loans.* Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 20 years in the case of:

(1) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home,

(2) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(3) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

* * * * *

[FR Doc. 89–25036 Filed 10–24–89; 8:45 am]
BILLING CODE 7535–01–M

12 CFR Part 708

Mergers of Federally-Insured Credit Unions: Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final amendment.

SUMMARY: The NCUA Board is amending its regulation relating to mergers of federally-insured credit unions and changes in insured status. This amendment adds "approval" and "disapproval" boxes to the ballots used for membership voting on termination of Federal insurance or conversion from Federal insurance to non-Federal insurance. This amendment will not affect the day-to-day operations of Federal or federally-insured state credit unions.

EFFECTIVE DATE: October 24, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

Background

The NCUA Board previously adopted regulations that added new provisions regarding the termination or conversion of Federal share insurance and set forth forms to be used in obtaining membership approval of those actions. (See 52 FR 12370, April 16, 1987, effective May 18, 1987.) Three of those provisions, §§ 708.301(a)(2), 708.302 (a)(2) and (b)(2), contain the language that is to appear on the ballot used to obtain membership approval. A fourth provision, § 708.301(b)(2), references the language set forth in § 708.301(a)(2). Although the provisions provide a signature line for a member to use, they do not prescribe the method for indicating whether the member approved or disapproved of the proposed action.

On May 11, 1989, the NCUA Board proposed amendments to the above provisions of part 708 that would add "approval" and "disapproval" boxes to the ballots used for membership voting on termination of Federal share insurance or conversion of Federal share insurance to non-Federal share insurance (share or deposit insurance provided by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law). (See 54 FR 21968, May 22, 1989.) The comment period on the proposed changes ended August 21, 1989.

In the preamble to the proposed rule, the Board stated the following with respect to the issue of share insurance:

> It should be kept in mind that share insurance, whether provided by NCUA through the National Credit Union Share Insurance Fund or by a private or cooperative insurance fund or guaranty corporation, is designed to protect the savings of the credit union members, not the institution itself or its management. Therefore, any decision regarding that insurance protection is to be made by the members, and the methods used to obtain their decision must be designed to clearly evidence each individual's position on the issue.

The Board believes that an understanding of this matter is crucial when addressing issues regarding changes of insurance.

In addition, the Board requested comments on two related matters: should there be a requirement that the reasons for termination or conversion be sent to the membership subject to prior review of an NCUA regional director; and should the regulation set forth a specified period of time for completion of a termination or conversion of insurance.

Public Comment

A total of 18 comments were submitted on this proposal from the following: one share insurance corporation trade association; two national credit union trade associations; one national savings and loan trade association; four state credit union leagues; eight Federal credit unions; one state credit union; and one individual. (Five of the Federal credit unions and the one individual submitted responses to a state league questionnaire)

Ballot Box Amendment

Sixteen of the commenters supported the addition of "approval" and "disapproval" boxes on the ballots used for obtaining the membership vote. Generally, where a reason for support was given, it was so that the ballot would clearly indicate the member's choice. One commenter, although favoring the ballot boxes amendment, questioned the membership vote requirement on the basis that the membership "* * * can not make an educated decision."

One of the commenters supporting the change suggested that if a ballot is not clearly and properly marked it should be considered void. The Board agrees but does not believe this needs to be stated in the regulation. Another commenter, a state league, suggested that the proposed boxes be revised to clearly show what the member is voting for or against. The suggested language has been added to the ballot in the final rule.

One of the commenters (a Federal credit union) opposed to the change did so on the basis that the "members do not understand such a vote" but "the directors do." Section 206 of the Federal Credit Union Act, however, requires a membership vote for both termination or conversion of Federal insurance. 12 U.S.C. 1786(a)(1) and (d)(2). The issue of share insurance directly affects the membership and not a credit union's board of directors.

The second commenter opposed to the change was the trade association for share insurance corporations. On behalf of itself and its member insuring corporations it opposes the amendment to the extent it applies to conversions of insurance on the basis that the NCUA Board is exceeding its jurisdiction or authority both under the Federal Credit Union Act and pursuant to the U.S. District Court's decision in *TWA Credit Union* v. *National Credit Union Administration*, No. 87–0056–CV–W–1, W.D. Mo., 1987. The court there determined that section 205(b)(1) of the Federal Credit Union Act, 12 U.S.C. 1785, does not provide the authority for the Board to approve or review insurance conversions. (On appeal the case was remanded to the district court and subsequently dismissed as moot.)

Notwithstanding the district court's initial decision, the Board retains its position that its approval is required for a credit union to convert from Federal insurance to insurance provided by a private or cooperative insurance fund or guaranty corporation organized under state law. Section 205(b)(1) provides that "[e]xcept with the prior written approval of the Board, no insured credit union shall—* * * (D) convert into a noninsured credit union * * *." The terms "insured credit union" and "noninsured credit union" are defined in section 101(7) of the Act, 12 U.S.C. 1752. The Board interprets section 101(7) to mean that an "insured credit union" is one that is insured through the National Credit Union Share Insurance Fund, a "noninsured credit union" is one that is not so insured. In the Board's opinion, a reading of sections 101(7) and 205(b)(1) supports its position that it does have authority and jurisdiction over insurance conversions.

Reasons for Termination or Conversion; Prior Review

Seventeen comments were received on these issues. Five commenters supported requirements that reasons for a termination or conversion be given the membership; four of those also supported review by the regional director, one did not comment on the issue of review. Three commenters opposed both requirements.

Nine commenters agreed that the membership should be provided reasons for a termination or conversion. However, they generally felt that this was the responsibility of a credit union's board of directors and should not be a regulatory requirement. These commenters did not support review by the regional director.

The NCUA Board believes that the membership should be provided with the reasons for a termination or conversion of insurance but agrees it is the function of the board of directors to inform the membership. Presently, there is no specific requirement that the reasons for such action must be provided to the membership and the Board is not going to make this a requirement. However, § 708.303 currently provides that modifications or additions to the notices or ballots or additional communications concerning insurance coverage included with the notices or ballots require approval of the regional director and, where appropriate, the state authority. Approval of modifications or additions by the regional director will not be withheld unless it is determined that a credit union has materially mislead or misinformed, by inclusion or omission, its membership. Language to this effect has been added to § 708.303(a).

Time for Completion of Termination or Conversion

Thirteen commenters addressed the issue of whether the regulation should establish a time period for completion of a merger or conversion. Five were

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opposed; four of those recommending setting a target date or otherwise providing flexibility or a case-by-case approach in determining the time frame. Of the eight who supported such a requirement, one recommended one year with the regional director having authority to extend the time period, one did not suggest a time, and the remaining suggestions ranged from three to six months.

The Board has decided not to set a specified time frame in the regulation. The credit union involved and the regional director will establish a target date for completion of the action taking into consideration the needs of the credit union and its members and the interests of the NCUA.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this amendment will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, this proposed amendment does not affect the daily operations of credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This amendment does not impose any additional paperwork requirements and, thus, the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this amendment will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. While the amendment will affect some federally-insured state chartered credit unions, it will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 706

Credit Unions, Mergers of federally-insured credit unions, Voluntary termination or conversion of insured status.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 706—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 706 continues to read as follows:

Authority: 12 U.S.C. 1766, 1785, 1786, and 1789.

2. Section 706.301 is amended by revising paragraph (a)(2) to read as follows:

§ 706.301 Termination of insurance.

(a) * * *

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination, up to a maximum of $100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

[ ] Approve termination of insurance.

[ ] Do not approve termination of insurance.

Signed _____

Member's Name

Date _____

* * * * * *

3. Section 706.302 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 706.302 Conversion of insurance.

(a) * * *

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to $_____ by _____, a corporation chartered by the State of _____.

[ ] Approve conversion of insurance.

[ ] Do not approve conversion of insurance.

Signed _____

Member's Name

Date _____

* * * * * *

(b) * * *

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

[ ] Approve merger and conversion of insurance.

[ ] Do not approve merger and conversion of insurance.

Signed _____

Member's Name

Date _____

* * * * * *

4. Section 706.303(a) is amended by adding a sentence at the end of the paragraph as follows:

§ 706.303 Modifications to notice.

(a) * * * Approval of such modifications, additions or additional communications will not be withheld unless it is determined that the credit union, by inclusion or omission of information, would materially mislead or misinform its membership.

* * * * * *

[FR Doc. 89-25037 Filed 10-23-89; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 747

Administrative Actions, Adjudicative Hearings and Rules of Practice and Procedure

AGENCY: National Credit Union Administration ("NCUA")

ACTION: Final rule.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") makes substantial changes in and clarifies NCUA's enforcement authority. The NCUA Board has determined that it is necessary to issue a final rule to conform 12 CFR 747 to FIRREA. Public comment is unnecessary because the final rule only adopts changes mandated by FIRREA.

EFFECTIVE DATE: This Final rule is effective October 24, 1989.

ADDRESS: NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

FIRREA makes substantial changes and clarifications in NCUA's enforcement authority, including changes and clarifications to NCUA's cease and desist, removal, suspension, prohibition, and civil money penalty authorities. FIRREA also extends the jurisdictional reach of NCUA's enforcement authority to cover "institution-affiliated parties." Institution-affiliated party is defined by FIRREA as: (1) Any committee member, director, officer, or employee of, or agent for, an insured credit union; (2) any consultant, joint venture partner, and any other person as determined by the Board, by regulation or on a case-by-case basis, who participates in the conduct of the affairs of an insured credit union; and (3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.

These changes are mandatory in nature. Part 747 is NCUA's regulation on administrative actions, adjudicative hearings, and rules of practice and procedure. It is therefore necessary to conform the current Part 747 to FIRREA by means of a final rule.

Analysis

Scope

Section 747.01 has been amended to include within the scope of part 747 civil money penalties assessed pursuant to paragraph 202(a)(3) of the Federal Credit Union Act. Paragraph 202(a)(3) is a provision added by FIRREA which authorizes the NCUA to assess civil money penalties against an insured credit union for submitting false, misleading or late reports or information, or for failing to submit reports or information as required.

Subpart A—Rules of Practice and Procedure

Section 747.101 has been amended to include institution-affiliated parties within the scope of the various administrative actions. The section has also been amended to indicate that civil money penalties pursuant to section 911 of FIRREA amending paragraph 202(a)(3) of the Federal Credit Union Act may now be assessed utilizing the procedures set forth in subpart D.

A new § 747.122 entitled "Availability to Public of Final Orders" has been added in light of FIRREA's requirement that final enforcement orders and modifications or terminations of those orders be made available to the public unless the Board determines that such publication would seriously threaten the safety or soundness of an insured credit union.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

Institution-affiliated party has been substituted for director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of a credit union throughout this subpart to conform it to FIRREA. Section 747.304 has been amended to include the definition of "affirmative action" contained in FIRREA. Section 747.306, Temporary Cease-and-Desist Order, has been amended because FIRREA lessens the burden which must be met by the NCUA Board in order to issue a temporary cease-and-desist order.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

There are substantial revisions to this subpart to conform it to FIRREA. Institution-affiliated parties are included within its provisions and the grounds necessary for assessment of civil money penalties and amounts which may be assessed contained in § 747.402 have been revised in light of FIRREA's broad grant of civil money penalty authority to the Board.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Section 206(g) Removal, Prohibition, and Suspension

FIRREA substantially rewrites the NCUA's removal, prohibition, and suspension provisions. Subpart E has been revised to note that an institution-affiliated party is subject to a section 206(g) action and to include the altered grounds for which a party may be removed, prohibited, or suspended.

Subpart F—Rules and Procedures Applicable to Suspensions Where Felony Charged

This subpart has been revised to conform to FIRREA's inclusion of institution-affiliated parties within the scope of this suspension action, and to indicate that a final removal or prohibition action may be taken not only in the event of a conviction but also if the party agrees to enter a pretrial diversion or other similar program.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that this rule does not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). It does not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

Certain provisions of part 747 apply to federally-insured, state-chartered credit unions. The changes adopted by this final rule adopt the provisions of FIRREA. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 747

Administrative actions, Adjudicative hearings, and Rules of practice and procedure.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 747—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The Table of Contents of part 747 is revised to read as follows:

747.01 Scope.

Subpart A—Rules of Practice and Procedure

747.101 Scope.
747.102 Appearance and practice before the Administration.
745.103 Notice of hearing.
747.104 Answer
747.105 Failure to appear.

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747.106 Conduct of hearing.
747.107 Subpoenas.
747.108 Rules of evidence.
747.109 Motions.
747.110 Proposed findings and conclusions and recommended decision.
747.111 Exceptions.
747.112 Briefs.
747.113 Oral argument before the Board.
747.114 Notice of submission to the Board.
747.115 Decision of the Board.
747.116 Filing papers.
747.117 Service.
747.118 Copies.
747.119 Computing time.
747.120 Documents in proceedings confidential.
747.121 Formal requirements as to papers filed.
747.122 Availability to public of final orders.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.
747.202 Grounds for termination of insurance.
747.203 Notice of charges.
747.204 Notice of intention to terminate insured status.
747.205 Order terminating insured status.
747.206 Consent to termination of insured status.
747.207 Notice of termination of insured status.
747.208 Duties after termination.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

747.301 Scope.
747.302 Grounds for cease-and-desist orders.
747.303 Notice of charges and hearing.
747.304 Issuance of order.
747.305 Effective date.
747.306 Temporary cease-and-desist orders.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

747.401 Scope.
747.402 Grounds for assessment of civil money penalties.
747.403 Relevant considerations.
747.404 Notice of assessment.
747.405 Period within which penalty is payable.
747.406 Notice of opportunity for hearing.
747.407 Request for hearing.
747.408 Hearing and order.
747.409 Collection.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension Actions

747.501 Scope.
747.502 Grounds for removal or prohibition.
747.503 Notice of intent to remove or prohibit; notice of hearing.
747.504 Issuance of removal order and effective date.
747.505 Suspension and immediate prohibition.
747.506 Effect of removal, prohibition, or suspension.
747.507 Remainder of the board of directors.

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

747.601 Scope.
747.602 Rules of practice.
747.603 Notice of suspension or prohibition.
747.604 Removal or permanent prohibition.
747.605 Effectiveness of suspension or removal until completion of hearing.
747.606 Notice of hearing.
747.607 Hearing.
747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
747.609 Decision of the Board.
747.610 Reconsideration by the Board.
747.611 Relevant considerations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

747.701 Scope.
747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.
747.703 Notice of intent to suspend or revoke charter; notice of suspension.
747.704 Notice of hearing.
747.705 Issuance of order.
747.706 Cancellation of charter.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart I—Rules and Procedures Applicable to Recovery of Attorneys' Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

747.901 Purpose and scope.
747.902 Eligibility of applicants.
747.903 Prevailing party.
747.904 Standards for awards.
747.905 Allowable fees and expenses.
747.906 Contents of application.
747.907 Statements of net worth.
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747.909 Filing and service of applications.
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747.911 Comments by other parties.
747.912 Settlement.
747.913 Further proceedings.
747.914 Recommended decision.
747.915 Decision of the Board.
747.916 Payment of award.

3. Section 747.01 is revised to read as follows:

§ 747.01 Scope.

(a) This part describes the various administrative adjudicative actions available to the National Credit Union Administration Board, the grounds for those actions and the procedures used in hearings related to each available action. The administrative actions described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206, and 304(c)(3) of the Federal Credit Union Act. Should any provision of this Part be inconsistent with these, or any other provisions of said Act, as amended, the Act shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the Federal Credit Union Act (12 U.S.C. 1751 *et. seq.*) (hereinafter Act) and the Administrative Procedure Act (5 U.S.C. 500 *et. seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the Act unless the context indicates otherwise.

4. Section 747.101 is revised to read as follows:

§ 747.101 Scope.

(a) This subpart prescribes the rules of practice and procedures applicable to the following hearings:

(1) Those held pursuant to section 206(b) of the Act, pertaining to the involuntary termination of the insured status of an insured credit union (subpart B);

(2) Those held pursuant to sections 206 (e) and (f) of the Act, pertaining to the issuance of cease and desist orders against any insured credit union, or any institution-affiliated party (subpart C);

(3) Those held pursuant to section 206(k)(2) of the Act, pertaining to the assessment of civil penalties against any insured credit union, or any institution-affiliated party (subpart D);

(4) Those held pursuant to section 206(g) of the Act, pertaining to the issuance of orders removing or suspending from office and/or prohibiting from further participation in the credit union's affairs, any institution-affiliated party of an insured credit union (subpart E);

(5) Those held pursuant to section 120(b) of the Act, pertaining to the suspension or revocation of the charter of any solvent Federal credit union, and the placing of such a credit union into involuntary liquidation (subpart G);

(6) Those held pursuant to section 202(a)(3) pertaining to the assessment of civil money penalties against an insured credit union for submitting false, misleading or late reports or information, or failing to submit such reports or information as required. (subpart D); and

(7) Those held pursuant to section 304(e)(3) of the Act, pertaining to the termination of membership in the Central Liquidity Facility, established under subchapter III of the Act (subchapter H).

(b) Except as provided in § 747.602 of this part, the provisions of this subpart do not apply to hearings held pursuant to section 206(i) of the Act, pertaining to suspension, removal or prohibition action against a person charged with the commission of a crime involving dishonesty or breach of trust as more fully described in subpart F.

(c) In connection with any proceeding involving an insured state-chartered credit union, or any institution-affiliated party, the Board will provide the appropriate state supervisory authority with timely notice of its intent to institute the proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the state supervisory authority, the Board will proceed as provided herein. No credit union or other party who is the subject of any notice or order issued by the Board under this part shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(d) For purposes of this part, the term "institution-affiliated party" shall have the meaning ascribed to it in section 206(r), 12 U.S.C. 1786(r), of the Federal Credit Union Act.

5. A new Section 747.122 is added to Subpart A to read as follows:

§ 747.122 Availability to public of final orders

(a) The Board will make available to the public all: (1) Final enforcement orders issued pursuant to this part; and (2) modifications to or terminations of such orders.

(b) Notwithstanding the foregoing, the Board may delay publication of an order if it makes a determination in writing that such publication would seriously threaten the safety and soundness of an insured credit union.

(c) All final orders published pursuant to this Part shall be made available in the library of the Office of General Counsel, NCUA, 1776 G Street, NW., Washington, DC 20456.

6. Subpart C of part 747 is revised to read as follows:

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board with a view to ordering an insured credit union, or any institution-affiliated party, to cease and desist from practices and violations described in sections 206 (e) and (f) of the Federal Credit Union Act and enumerated in § 747.302. The procedures for issuing such orders prescribed in section 206 of the Act will be followed and the hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part.

§ 747.302 Grounds for cease-and-desist orders.

(a) The Board may institute cease-and-desist proceedings against any insured credit union or any institution-affiliated party.

(b) Cease-and-desist action may be taken whenever the Board determines, or has reasonable cause to believe, that one or more of the parties described in 747.302(a) is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the affairs of an insured credit union, or (2) is violating, has violated, or is about to violate any law, rule, regulation, written condition imposed by the Board in response to any application or request of an insured credit union, or any written agreement entered into with the Board.

§ 747.303 Notice of charges and hearing.

Whenever the Board determines to institute cease-and-desist proceedings, it will do so by serving a notice of charges and hearing upon the concerned party. This notice will contain a statement of the facts constituting the alleged unsafe or unsound practices or violation[s] and will fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union, or institution-affiliated party. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the Notice of Charges and Hearing, unless an earlier or later date is set by the Board at the request of any party so served. Unless the party or parties appear at the hearing personally or by a duly authorized representative, they will be deemed to have consented to the issuance of the cease-and-desist order.

§ 747.304 Issuance of order.

(a) In the event of such consent as referred to in § 747.303, or if upon the record made at any hearing referred to in § 747.303, the Board finds that any unsafe or unsound practice or any violation specified in the notice of charges has been established, the Board may issue and serve upon the credit union or institution-affiliated party an order to cease and desist from any such practice or violation. The order may, by provisions which may be mandatory or otherwise, require the concerned party or parties to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such practice or violation. The order may place limitations upon the activities or functions of an insured credit union or any institution-affiliated party.

(b) The authority to require affirmative action to correct conditions resulting from any violation or practice includes but is not limited to the authority to require an insured credit union or institution-affiliated party to:

(1) Make restitution or provide reimbursement, indemnification, or guarantee against loss if the credit union or institution-affiliated party was unjustly enriched in connection with the violation or practice, or the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(2) Restrict the growth of the institution;

(3) Rescind agreements or contracts;

(4) Dispose of any loan or asset involved; and

(5) Employ qualified officers or employees who may be subject to approval of the NCUA Board at the direction of the Board; and

(6) Such other affirmative action as the Board determines is appropriate.

§ 747.305 Effective date.

A cease-and-desist order will become effective at the expiration of 30 days after its service (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and will remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 747.306 Temporary cease-and-desist orders.

(a) *Issuance of order.* Under section 206(f) of the Act, whenever the Board determines that the unsafe or unsound practices or violations or threatened violations specified in the notice of charges referred to in § 747.302, or the continuation thereof are likely to cause insolvency or significant dissipation of assets or earnings of the credit union or are likely to weaken the condition of the credit union or otherwise to prejudice the interests of its insured members prior to the completion of the hearing described in § 747.303, the Board may

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issue a temporary order requiring the concerned credit union or institution-affiliated party to cease and desist from any practice or violation. The order may immediately require the affirmative action described in § 747.304(b), or place immediate limitations on the activities or functions of the credit union or institution-affiliated party described in § 747.304(a).

(b) The Board may also issue a temporary cease-and desist-order when it specifies in a Notice of Charges and Hearing issued pursuant to § 747.303 that, on the basis of particular facts and circumstances, an insured credit union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the credit union. The temporary order may require the cessation of any activity or activities which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books and records, or it may require such affirmative action as is necessary to restore the books and records to a complete and accurate state, until the completion of the administrative hearing.

(c) *Effective date of temporary order.* A temporary order will become effective upon its service and, unless set aside, limited, or suspended by a court in proceedings authorized under section 206(f)(2) of the Federal Credit Union Act and § 747.306(c) of this part, shall remain effective and enforceable pending the completion of the administrative proceedings held pursuant to the notice of charges and until such time as the Board dismisses the charges specified in the notice, or if a cease-and-desist order is issued, until the effective date of any such order, or in the case of a temporary order based upon incomplete or inaccurate records, at such time as the Board, by examination or otherwise, determines that the credit union's books are accurate and reflect the financial condition of the credit union.

(d) *Injunctive procedure.* (1) Within 10 days after service of a temporary cease-and-desist order, the party or parties so served may apply to the U.S. District Court for the judicial district wherein the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served under § 747.302 and such court shall have jurisdiction to issue such injunction.

(2) In the case of a violation or threatened violation of, or a failure to obey, a temporary cease-and-desist order, the Board may apply to the U.S. District Court, or the U.S. court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, as provided in section 206(f)(4) of the Act, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

7. Subpart D of part 747 is revised to read as follows:

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

§ 747.401 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board which are held: (1) Pursuant to section 206(k)(2) of the Federal Credit Union Act to assess and collect civil money penalties of any insured credit union, or any institution-affiliated party; and (2) pursuant to section 202(a)(3) of the Federal Credit Union Act to collect and assess civil money penalties against an insured credit union.

§ 747.402 Grounds for assessment of civil money penalties.

(a) *First tier.* The Board may assess civil money penalties against any insured credit union, or any institution-affiliated party upon its finding that such party has: (1) Violated any law or regulation; (2) violated the terms of any final or temporary order issued pursuant to the provisions of subsections (e), (f), (i) and (g) of section 206 of the Federal Credit Union Act, 12 U.S.C. 1786; (3) violated any condition imposed in writing by the Board in connection with the grant of any application or other request by the credit union; or (4) violated any written agreement between the credit union and the Board. Civil money penalties for first tier violations may be no more than $5,000 per day for each day during which such violation continues.

(b) *Second tier.* If the Board finds that an insured credit union or institution-affiliated party commits the violations described above in subsection (a), or recklessly engages in an unsafe or unsound practice in conducting the affairs of the credit union, or breaches any fiduciary duty, and the Board further finds that the violation, practice, or breach is part of a pattern of misconduct, causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit to such party, the Board may assess civil money penalties against such party or credit union of $25,000 per day for each day during which the violation, practice or breach continues.

(c) *Third tier.* Any credit union or institution affiliated party who: (1) Knowingly commits any of the violations described in subsection (a) above, or engages in any unsafe or unsound practice in conducting the affairs of the credit union, or breaches any fiduciary duty; and (2) knowingly or recklessly causes a substantial loss to the credit union or a substantial pecuniary gain or other benefit to such party by reason of the violation, practice or breach, may be assessed by the Board a civil money penalty of not more than $1,000,000 per day for each day the violation, practice or breach continues. However, in the case of a credit union, the maximum penalty which may be assessed per day is $1,000,000 or 1% of assets, whichever is less.

(d) The Board may also assess civil money penalties pursuant to the provisions of section 202(a)(3) of the Federal Credit Union Act against an insured credit union for submitting false, misleading or late reports or information, or failing to submit such reports or information as required.

(e) The Board may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed.

§ 747.403 Relevant considerations.

In determining the appropriate amount of the penalty assessed pursuant to § 747.402, the Board will take into account the size of financial resources and good faith of the insured credit union or the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

§ 747.404 Notice of assessment.

The Board will assess civil money penalties by written notice served upon the credit union, party or parties assessed. The notice will state the amount of the penalty, and will contain a statement of law and fact upon which the penalty is based.

§ 747.405 Period within which penalty is payable.

The notice of assessment made pursuant to § 747.404 will provide that the civil penalty will become payable, and is to be collected, within 90 days of such notice. If the Board finds that in the specific case the purposes of the penalty will be better served if this period is shortened or eliminated, the Board may shorten the period or make the civil penalty payable immediately upon receipt of notice thereof, as the case may be. In such case, the notice of assessment will indicate when the civil penalty will be payable.
Notwithstanding any other provision of this or any other section of this subpart, if a party has requested a hearing pursuant to § 747.407 in order to challenge a penalty or a finding antecedent to such a penalty, the party will not be required to make actual payment of the penalty until the Board issues a final order following such hearing.

§ 747.406 Notice of opportunity for hearing.

The notice of assessment made pursuant to § 747.404 will be accompanied by a further notice to the party that it will be afforded a hearing if within twenty days after service of the notice of assessment the party requests one in writing. The notice of opportunity for a hearing will be accompanied by a description of the hearing procedure.

§ 747.407 Request for hearing.

A request for a hearing shall be filed in writing with the Chairman, National Credit Union Administration Board, Washington, DC 20456. If a party does not request a hearing in writing within twenty days after service of the notice of assessment, it will be deemed to have waived its claim to a hearing, and the notice of assessment will constitute a final and unappealable order.

§ 747.408 Hearing and order.

After receiving a request for a hearing pursuant to § 747.407, the Board will order a hearing to commence within the next 30 days. The procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and Subpart A will apply to the hearing. If, on the record made at such hearing, the Board finds that the grounds for the civil money penalty have been established, the Board will issue and cause to be served its final order. Such final order will require the penalty to be paid at the time originally specified in the notice of assessment, or at the time of service of such final order upon the party, whichever is later. In issuing its order, the Board may, in its discretion, reduce the amount specified in the notice.

§ 747.409 Collection

If the insured credit union or institution-affiliated party fails to pay an assessment after it has become final, the Board shall recover the amount in the appropriate United States District Court. In such action the appropriateness and validity of the penalty shall not be subject to review.

8. Subpart E of part 747 is revised to read as follows:

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension Actions

§ 747.501 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to remove, prohibit from further participation, or suspend an institution-affiliated party upon the grounds set forth in section 206(g) of the Federal Credit Union Act and enumerated in this subpart. The rules and procedures set forth in this subpart are not applicable to removal, prohibition, or suspension proceedings brought upon grounds set forth in section 206(i) of the Federal Credit Union Act and enumerated in subpart F.

§ 747.502 Grounds for removal or prohibition.

(a) The Board may remove any institution-affiliated party of an insured credit union upon its findings that such a party (1) has directly or indirectly violated any law, or regulation, or cease-and-desist order which has become final, or any condition imposed in writing by the Board in connection with the grant of any application by the credit union, or any written agreement between the Board and the credit union; or engaged or participated in any unsafe or unsound practice in connection with the credit union or business institution; or breached the party's fiduciary duty toward the institution; and the Board further finds that (2) by reason of the foregoing violation, practice, or breach the credit union or business institution has suffered, or will probably suffer, financial loss or other damage, or that the interests of the credit union's insured members have been or could be prejudiced, or that such party has received financial gain or others benefit by reason of such violation, practice, or breach; and the Board further finds that (3) such violation, practice or breach involves personal dishonesty or demonstrates such party's unfitness to serve as a director, or officer, or otherwise participate in the affairs of the credit union. (b) The Board may remove any director, officer, or committee member of an insured credit union upon its finding that such a party has committed any violation of the Depository Institution Management Interlocks Act (12 U.S.C. 3201, *et seq.*) or regulations issued thereunder, including part 711 of this chapter.

§ 747.503 Notice of intent to remove or prohibit; notice of hearing.

Whenever the Board determines that grounds for a removal or prohibition action exist, it will serve upon the concerned institution-affiliated party a notice of intent to remove and/or prohibit and a notice of hearing. This notice will contain a statement of the facts constituting the grounds therefor and will fix a time and place at which a hearing will be held thereon. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by the Board at the request of the party concerned, for good cause shown, or at the request of the Attorney General of the United States. Any responding party not appearing at the hearing in person or by a duly authorized representative, shall be deemed to have consented to the issuance of an order of removal and/or prohibition.

§ 747.504 Issuance of removal order and effective date.

(a) In the event of such consent referred to in § 747.503 or if upon the record made at any such hearing the Board shall find that any of the grounds specified in the notice has been established, the Board may issue such orders of removal from office and/or prohibition from participation in the conduct of the affairs of the credit union as it may deem appropriate.

(b) Any such order shall become effective at the expiration of 30 days after service upon the party concerned (except in the case of an order issued upon consent which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 747.505 Suspension and immediate prohibition.

(a) *Grounds for suspension or immediate prohibition; Notice.* In respect to any institution-affiliated party the Board may, if it deems it necessary for the protection of the credit union or the interests of its members, by written

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notice to that effect served upon such a party, suspend that person from office and/or prohibit that party from further participation in any manner in the conduct of the affairs of the credit union.

(b) *Effective date of suspension or immediate prohibition.* The suspension and/or prohibition will be effective upon service of the notice thereof and, unless stayed by a court in proceedings authorized by section 206(g)(6) of the Federal Credit Union Act and described in subsection (c) of this Section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under § 747.503 of this subpart and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the institution-affiliated party, until the effective date of any such order. Copies of any such order shall also be served upon the credit union with which the respondent party is affiliated at the time the order is issued.

(c) *Stay of suspension or immediate prohibition.* Within 10 days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under section 206(g)(3) of the Federal Credit Union Act and as set forth in this subpart, the concerned party may apply to the U.S. District Court for the judicial district in which the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings, and such court shall have jurisdiction to stay such suspension and/or prohibition.

§ 747.506 Effect of removal, prohibition, or suspension.

Any person who, pursuant to sections 206 (g) or (i) of the Federal Credit Union Act, is removed, suspended, or prohibited from participation in the conduct of the affairs of a credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any insured depository institution, any insured credit union, any institution treated as an insured bank under paragraph (3) or (4) of section 8(b) of the Federal Deposit Insurance Act, or as a savings association under section 8(b)(8) of such Act, any institution chartered under the Farm Credit Act of 1971, any Federal depository institution regulatory agency, the Federal Housing Finance Board, any Federal home loan bank, or the Resolution Trust Corporation, without the consent of the Board or other agency pursuant to section 206(g)(7).

§ 747.507 Remainder of the board of directors.

(a) If at any time, because of the suspension of one or more directors pursuant to this subpart, or pursuant to subpart F, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(b) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, or pursuant to subpart F, the Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(c) Directors appointed temporarily by the Board pursuant to paragraph (b) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30 day period (1) the regular annual meeting is convened, or (2) the suspensions giving rise to the appointment of temporary directors are terminated.

9. Subpart F of part 747 is revised to read as follows:

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.601 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to section 206(i) of the Federal Credit Union Act to suspend, remove, and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union when such a party is charged in, or convicted as a result of, or enters a pretrial diversion or other similar program as a result of, any state, Federal or territorial information or indictment or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law.

§ 747.602 Rules of practice.

Except as otherwise specifically provided in this subpart, the provisions of § 747.102 ("Appearance and Practice Before the Administration"), § 747.103 ("Notice of Hearing"), § 747.119 ("Computing Time") and § 747.120 ("Documents in Proceedings Confidential") of subpart A shall apply to proceedings conducted under this subpart. In addition, the provisions of § 747.506 ("Remainder of the Board of Directors") shall apply to this subpart as noted therein.

§ 747.603 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him from office, or prohibit him from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the Board.

§ 747.604 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the Board from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in affairs, pursuant to the provisions of section 206(g) of the Federal Credit Union Act and subpart E.

§ 747.605 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.603 and any order of removal or prohibition issued under § 747.604 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the Federal Credit Union Act and this subpart, unless such notice of suspension or order of removal is terminated by the Board.

§ 747.606 Notice of hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.603, and any order of removal or prohibition issued pursuant to § 747.604, shall be accompanied by a further notice to the concerned individual that he may within 30 days of service of such notice, request in writing a hearing at which he may present evidence and argument that his continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularity the relief desired, the grounds therefor, and shall include, when available, supporting evidence. Such petition and supporting evidence shall be filed in writing with the National Credit Union Administration Board, Washington, DC 20456.

§ 747.607 Hearing.

(a) After the receipt of a request for a hearing complying with § 747.606, the Board will order a hearing to commence within the next succeeding 30 days in Washington, DC, or at such other place as is designated by the Board, before a person designated by the Board to conduct such hearings. At the request of the concerned party, the Board may order the hearing to commence at a time more than thirty days after the receipt of the request for such hearing.

(b) The notice of the hearing shall be served by the Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the presiding officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the Board, oral testimony), and to present an oral argument before the presiding officer. A member of the staff of the Office of the General Counsel of the National Credit Union Administration may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557) shall apply to the hearing. The proceedings shall be recorded and a transcript will be furnished to the individual upon request and after the payment of the cost thereof. The Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the presiding officer ten (10) days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or the presiding officer. The presiding officer may ask questions of any witness and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of the General Counsel, the record shall remain open for a period of five (5) business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the Board or the presiding officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the Board permits the presentation of witnesses, the Board or the presiding officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The Board or the presiding officer may require the production of documents from any place in any such state, territory, or other place.

(e) The presiding officer will make his recommendations to the Board, where possible, within ten (10) business days following the close of the record.

§ 747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within thirty (30) days of service of the notice described in § 747.606 of this subpart, he will be deemed to have consented to the Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he will be deemed to have consented to the Board's action.

§ 747.609 Decision of the Board.

(a) Within sixty (60) days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.608, the Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.610 Reconsideration by the Board.

(a) The subject individual shall have ten (10) business days following receipt of the decision of the Board in which to petition the Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and

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any exceptions the individual has to the Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.611 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bonding company is likely to revoke the bond, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he has been charged.

[FR Doc. 89-25034 Filed 10-23-89; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 453

[Docket No. 89N-0389]

Antibiotic Drugs; Clindamycin Phosphate Injection

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a revised formulation of an antibiotic dosage form, clindamycin phosphate injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 24, 1989 comments, notice of participation, and request for hearing by November 24, 1989 data, information, and analyses to justify a hearing by December 26, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a revised formulation of an antibiotic dosage form, clindamycin phosphate injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR 453.222 by revising paragraphs (a)(1) and (b)(1) to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective November 24, 1989. However, interested persons may, on or before November 24, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 24, 1989, a written notice of participation and request for hearing, and (2) on or before December 26, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 453

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 453 is amended as follows:

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 453 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 453.222 is amended by revising paragraph (a)(1) and (b)(1) to read as follows:

§ 453.222 Clindamycin phosphate injection.

(a) * * * (1) *Standards of identity, strength, quality, and purity.* Clindamycin phosphate injection is an aqueous solution of clindamycin phosphate with one or more suitable and harmless preservatives, sequestering agents, or tonicity agents. Its clindamycin phosphate content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of clindamycin that it is represented to contain. It is sterile. It is nonpyrogenic. It contains no depressor substances. Its pH is not less than 5.5 and not more than 7. The clindamycin phosphate used conforms to the standards prescribed by § 453.22a(a)(1).

* * * * * *

(b) * * * (1) *Clindamycin content.* Use any of the following methods. However, the results obtained from the high performance liquid chromatographic assay shall be conclusive.

(i) *Vapor phase chromatography.* Proceed as directed in § 436.304 of this chapter, except prepare the sample for assay as follows: Shake the sample and dilute a portion with pH 9.0 borate buffer to obtain a solution containing the equivalent of approximately 0.4 milligrams of clindamycin per milliliter. Place 25 milliliters of this solution into a 50-milliliter stoppered centrifuge tube. Add 10 milliliters of chloroform. Shake vigorously for 15 minutes and centrifuge. There should be no emulsion present after centrifugation. Transfer 20 milliliters of the aqueous phase from the tube into a 35-milliliter stoppered centrifuge tube. Add to the tube a weighed amount of intestinal alkaline phosphatase equivalent to 50 units of activity [1] and allow to stand until the phosphatase has dissolved completely. Place the centrifuge tube into a water bath at 37 °C±2 °C for 2.5 hours. After the 2.5-hours hydrolysis, allow the solution to cool.

(ii) *High performance liquid chromatographic assay.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 210 nonometers, a 25-centimeter long × 4.6 millimeter ID column packed with microparticulate (5 to 10 micrometers in diameter) reversed phase octysilane hydrocarbon bonded silica packing material, a flow rate of about 1.0 milliliter per minute, and a known injection volume of between 10 and 20 microliters. The retention time of clindamycin phosphate, and clindamycin are approximately 6 and 9 minutes, respectively. Reagents, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(*a*) *Reagents—*(*1*) *0.1M Potassium phosphate monobasic buffer.* Dissolve 13.61 grams of potassium phosphate monobasic in 775 milliliters of water. Adjust the pH to 2.5 with phosphoric acid. Further dilute with water to a volume of 1,000 milliliters.

(*2*) *Mobile phase.* Mix 225 milliliters of acetonitrile and 775 milliliters of 0.1*M* potassium phosphate, pH 2.5 buffer (225:775). Filter through a suitable filter capable of removing particulate matter greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(*b*) *Preparation of working standard, sample, and resolution test solutions—*(*1*) *Working standard solution.* Dissolve an accurately weighed portion of the clindamycin phosphate working standard with sufficient mobile phase (prepared as directed in paragraph (b)(1)(ii)(*a*)(*2*) of this section) to obtain a solution containing 200 micrograms of clindamycin activity per milliliter.

(*2*) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient mobile phase (prepared as directed in paragraph (b)(1)(ii)(*a*)(*2*) of this section) to obtain a solution containing 200 micrograms of clindamycin per milliliter (estimated).

(*3*) *Resolution test solution.* Place 15 milligrams each of clindamycin phosphate, and clindamycin hydrochloride in a 25-milliliter volumetric flask and dissolve and dilute with mobile phase and mix well. Use this solution to determine the resolution factor.

(*c*) *System suitability requirements—*(*1*) *Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 5 percent of the peak height from the baseline as follows:

$$A_s = \frac{a+b}{2a}$$

where:
a = Horizontal distance from point of ascent to point of maximum peak height; and
b = Horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not more than 1.3.

(*2*) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) of this chapter calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)(10{,}000)}{(n)(d_p)}$$

where:
L = Length of the column in centimeters;
n = Number of theoretical plates; and
d_p = Average diameter of the particles in the analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 15.

(*3*) *Resolution factor.* The resolution factor (R) between the peak for clindamycin phosphate and the peak for clindamycin hydrochloride in the chromatogram of the resolution test solution is satisfactory if it is not less than 6.0.

(*4*) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_r in percent) of 5 replicate injections of the working standard solution (prepared as directed in paragraph (b)(1)(ii)(*b*)(*1*) of this section is satisfactory if it is not more than 2.5 percent.

If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

[1] Defined such that 50 units hydrolyzes at least 20 micromoles of a clindamycin phosphate authentic sample under the assay conditions described in § 436.304 of this chapter.

(d) *Calculations.* Calculate the clindamycin content as follows:

$$\text{Milligrams of clindamycin per milliliter} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the clindamycin phosphate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the clindamycin phosphate peak in the chromatogram of the clindamycin phosphate working standard;

P_s = Clindamycin activity in the clindamycin phosphate working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

* * * * *

Dated: October 13, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-24992 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Bioproducts, Inc. The sponsor informed FDA of the address change.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1989 (54 FR 27328), the agency published an amendment to 21 CFR 510.600(c) (1) and (2) to reflect a change of sponsor name from Nutrius, Inc., to Bioproducts, Inc. Subsequently, Bioproducts, Inc., requested that the agency revise the firm's address to 8221 Brecksville Rd., Cleveland OH 44141. Accordingly, the agency is amending 21 CFR 510.600(c) (1) and (2) to reflect the revised address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Bioproducts, Inc.," and in paragraph (c)(2) in the entry for "051359" by removing the sponsor address and inserting in its place "8221 Brecksville Rd., Cleveland, OH 44141".

Dated: October 17, 1989.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-24994 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

RIN 2125-AC45

Truck Size and Weight; National Network—Massachusetts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule technically amends appendix A to 23 CFR part 658 which identifies Interstate and other Federal-aid primary routes designated as part of the National Network for trucks available to vehicles described in the Surface Transportation Assistance Act of 1982 (STAA). Specifically, this rule removes the footnotes related to time of day and other restrictions on Interstate highway segments in Massachusetts which are no longer valid. This amendment is in response to revisions to 23 CFR part 658 which established specific approval requirements for use restrictions on Interstate highways.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Office of Planning, (202) 366-2951, Mr. John F. Grimm, Office of Motor Carrier Information Management and Analysis, (202) 366-4039, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Tandem Truck Safety Act of 1984 (TTSA) (Pub. L. 98-554, 98 Stat. 2829) amended the STAA (Pub. L. 97-424, 96 Stat. 2097) and defined the conditions under which exemptions from the basic requirement that Interstate highways must be available to vehicles described in the STAA could be granted. The FHWA issued a final rule (53 FR 12145) amending 23 CFR 658 on April 13, 1988, to implement the TTSA amendments.

Interstate Use Restrictions

The April 13, 1988, revisions require FHWA approval of use restrictions on Interstate segments, other than the routine types listed in 23 CFR 658.11(d)(4). The conditions and procedures for FHWA approval are outlined in 23 CFR 658.11(d).

The FHWA notified the State of Massachusetts on May 26, 1988, that the restrictions on portions of I-93 and I-95 in the Boston area and on I-391 in the Holyoke area are in violation of current law and provided the State the opportunity to apply for exemption under the aforementioned procedures. After careful consideration of the State's application and other available information, the FHWA determined that all the restricted Interstates can safely accommodate STAA vehicles and denied continuation of the restrictions in a May 17, 1989, letter to the State. This action to remove the footnotes from Appendix A of 23 CFR 658 provides clarification that there is no present Federal approval of the operating restrictions on a permanent basis. Another footnote noting the 1983 addition of I-395 to the Interstate System is also being deleted as no longer necessary.

Because of a 10-year major program to widen and depress the Central Artery portion of I-93 in Boston, it is anticipated that there will be temporary restrictions applied by the State to the affected portion of I-93 during actual construction in accordance with the provisions of 23 CFR 658.11(d)(4).

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. The technical amendment being issued merely conforms the Appendix appearing in the Code of Federal Regulations to the law and regulations as they presently exist. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information in view of the technical nature of this rulemaking.

A regulatory impact analysis was prepared for the June 5, 1984, rulemaking which initially designated the National Network and is available for inspection in the Headquarters Office of the FHWA, 400 7th Street, SW., Washington, DC 20590. Copies may be obtained by contacting Mr. Kevin E. Heanue or Mr. David C. Oliver at the address provided under the heading "FOR FURTHER INFORMATION CONTACT." Based on this analysis and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In consideration of the foregoing, the FHWA is amending chapter 1 of title 23, Code of Federal Regulations, by amending part 658, appendix A, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

Issued on: October 18, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, by amending appendix A to part 658 for the State of Massachusetts as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A—[Amended]

2. Appendix A to part 658 is amended for the State of Massachusetts by removing all footnotes.

[FR Doc. 89-24966 Filed 10-23-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1966; FR-2632-C-03]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program, Final Notice; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice; correction.

SUMMARY: On September 28, 1989 (54 FR 39866), the Department published in the **Federal Register**, the final FY 1990 Fair Market Rents (FMRs) for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part 882, subparts D and E); section 8 existing housing assisted under part 886, subparts A and C (section 8 loan management and property disposition programs); and the payment standard schedules in the Housing Voucher Program. The purpose of this document is to correct the FMRs for the one-bedroom unit in Putnam County, Indiana.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. On September 28, 1989 (54 FR 39866), the Department published the final FY 1990 Fair Market Rents (FMRs) for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part 882, subparts D and E); the section 8 existing housing assisted under part 886, subparts A and C (section 8 loan management and property disposition programs); and the payment standard schedules in the Housing Voucher Program. The FMRs for the one-bedroom unit for Putnam County, Indiana were incorrect.

Accordingly, the following correction is being made in FR Doc. 89-22890, in the Federal Register issue of Thursday, September 28, 1989 (54 FR 39866), to read as follows:

On page 39881, in Schedule B, in the tenth line down from the top of the page, under the heading "NONMETROPOLITAN COUNTIES" for the State of Indiana, in the County of Putnam, correct the FMRs for a one-bedroom unit from "317" to read "337."

Dated: October 17, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-24955 Filed 10-23-89; 8:45 am]

BILLING CODE 4210-27-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

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ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorgsnization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, city/town/county, source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD). Modified
ALABAMA	
Brewton (city), Escambia County (FEMA Docket No. 6962)	
May Branch:	
Just upstream of CSX railroad	*79
Just downstream of Forest Hill Drive Dam	*101
Just upstream of Forest Hill Drive Dam	*109
About 1,200 feet upstream of Forest Hill Drive Dam	*110
Franklin Mill Creek:	
About 100 feet downstream of CSX railroad	*69
About 3,400 feet upstream of Booth Boulevard	*91
King Branch:	
About 2,900 feet downstream of CSX railroad	*93
About 800 feet downstream of CSX railroad	*95
About 300 feet upstream of CSX railroad	*106
Maps available for inspection at the City Hall, Brewton, Alabama.	
ILLINOIS	
Fulton County (unincorporated areas) (FEMA Docket No. 6959)	
Spoon River:	
Just downstream of State Route 116	*536
Just upstream of Second Street	*537
Tributary to Swegle Creek:	
About .48 miles downstream of State Route 116	*536
About .78 miles upstream of State Route 116	*536
Maps available for inspection at the Zoning Office, 700 East Oak Street, Room 302, Canton, Illinois.	
IOWA	
Carroll (city), Carroll County (FEMA Docket No. 6959)	
Middle Raccoon River:	
About 2,550 feet downstream of Grant Road	*1222
About 1,000 feet upstream of Chicago and North Western Railroad	*1243
Maps available for inspection at the City Hall, 112 East 5th Street, Carroll, Iowa.	
KENTUCKY	
Allen City (city), Floyd County (FEMA Docket No. 6959)	
Levisa Fork:	
Just upstream of State Route 23	*651
About 1200 feet upstream of State Route 80	*652
Beaver Creek: Within community	*651
Maps available for inspection at the City Hall, Main Street, Allen City, Kentucky.	
Floyd (unincorporated areas) (FEMA Docket No. 6962)	
Levisa Fork:	
At downstream county boundary	*623
About 1.2 miles upstream of State Highway 979	*666
Abbott Creek:	
At mouth	*634
Just downstream of Little Abbott Creek Road	*635
Beaver Creek:	
At mouth	*651
About 1.96 miles upstream of mouth	*651
Mud Creek:	
At mouth	*664
About 4.66 miles upstream of mouth	*664
Maps available for inspection at the Courthouse Annex Building, West Minister Street, Suite 109, Prestonsburg, Kentucky.	
Pikeville (city), Pike County (FEMA Docket No. 6968)	
Levisa Fork:	
About 1,500 feet downstream of CSX railroad	*670
About 3,500 feet upstream of confluence of Marlon Branch	*683
Ratliff Creek:	
At mouth	*672
About 1,600 feet upstream of mouth	*672
Maps available for inspection at the City Hall, Building Inspector's Office, Pikeville, Kentucky.	
Prestonsburg (city), Floyd County (FEMA Docket No. 6968)	
Levisa Fork:	
About 0.85 mile downstream of University Drive	*632
About 0.7 mile upstream of abandoned suspension bridge	*645
Middle Creek:	
Within community	*636
Maps available for inspection at the City Hall, 31 North Lake Drive, Prestonsburg, Kentucky, Attention: Larry Adams, Building Inspector.	
MAINE	
Cherryfield (town), Washington County (FEMA Docket No. 6959)	
Narraguagus River:	
Approximately 1.5 miles upstream of confluence of West Branch Narraguagus River	*68
Upstream of corporate limits	*96
West Branch Narraguagus River:	
At confluence with Narraguagus River	*67
Upstream corporate limits	*89
Maps available for inspection at the Town Hall, Cherryfield, Maine.	
MISSOURI	
Manchester (city), St. Louis County (FEMA Docket No. 6959)	
Fishpot Creek:	
About 1,470 feet downstream of Lindy Drive	*525
About 850 feet downstream of Lindy Drive	*530
Just upstream of Lindy Drive	*533
Maps available for inspection at the City Hall, Engineering Department, 14316 Manchester Road, Manchester, Missouri	
TENNESSEE	
Collegedale (city), Hamilton County (FEMA Docket No. 6959)	
Wolftever Creek:	
About 0.6 mile downstream of Ooltewah-Ringgold Road	*760
Just upstream of Tucker Road	*791
About 1.82 miles upstream of Tallant Road	*805
Wilkerson Branch:	
At mouth	*791
Just upstream of College Drive East	*807
About 1,370 feet upstream of College Drive East	*819
Chestnut Creek:	
At mouth	*793
Just upstream of Norfolk Southern Railway	*797
Maps available for inspection at the City Hall, Collegedale, Tennessee	
TEXAS	
Bexar County (unincorporated areas), (FEMA Docket No. 6957)	
Tributary A of Culebra Creek:	
Approximately 200 feet downstream of Tezel Road Bridge	*836
Approximately 400 feet upstream of Timber Ranch Bridge	*846
Maps available for inspection at the Bexar County Public Works Department, County Courthouse, San Antonio, Texas.	
Send comments to The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78206.	
Grand Prairie (city), Tarrant, Dallas, and Ellis Counties (FEMA Docket No. 6957)	
West Fork of Trinity River:	
Upstream side of Beltline Road	*441
Approximately 1,500 feet downstream of N.W. 19th Street	*453
Mountain Creek:	
Approximately 300 feet upstream of Singleton Boulevard	*427
Downstream side of Mountain Creek Dam	*440
Stream 8C5:	
At corporate limits	*472
Approximately 650 feet upstream of corporate limits	*474
Stream 8C6:	
At Camp Wisdom Road	*472
Approximately 250 feet upstream of Camp Wisdom Road	*475
Maps available for inspection at the City Hall, 317 W. College, Grand Prairie, Texas.	
VIRGINIA	
Albemarle County (unincorporated areas) (FEMA Docket No. 6955)	
Mink Creek:	
Ponding area behind levee, from corporate limit of Town of Scottsville approximately 500 feet upstream	*275
James River:	
At County boundary with Fluvanna County	*285
At County boundary with Nelson County, confluence of Rockfish River	*322
Maps available for inspection at the Department of Planning and Community Development, 401 McIntire Road, Charlottesville, Virginia.	
Scottsville (town), Albemarle and Fluvanna Counties (FEMA Docket No. 6955)	
Mink Creek:	
At A. Raymon Thacker levee	*275
At upstream corporate limits	*283
Maps available for inspection at the Municipal Building, Bird and Valley Streets, Scottsville, Virginia.	

Issued: October 11, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–24949 Filed 10–23–89; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[General Docket 88–566, FCC 89–281]

Amendment of Parts 2 and 90 of the Commission's Rules To Provide for Stolen Vehicle Recovery Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends part 2 and part 90, subpart B, of its rules to provide for stolen vehicle recovery systems. Specifically § 2.106, Table of Frequency Allocations, is amended by adding footnote US312 to allocate the frequency 173.075 MHz for non-Government stolen vehicles recovery systems. Section 90.19 is amended to provide the necessary service rules for such systems. The objective of this action is to provide a nationwide allocation and service rules for stolen vehicle recovery systems.

EFFECTIVE DATE: January 10, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, Office of Engineering and Technology, Frequency Allocation Branch, Washington, DC 20554, (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket 88–566, FCC 89–281, Adopted September 29, 1989, and Released October 16, 1989.

The full text of the Commission's proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this final rule may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Public reporting burden for this collection of information (requirement in 47 CFR 90.19(f)(7) for analysis of potential interference) is estimated to average four hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of Final Rule

1. By this action the Commission modifies § 2.106 of its rules, the Table of Frequency Allocations, by adding footnote US312. Footnote US312 allocates the frequency 173.075 MHz for stolen vehicle recovery systems. Further, the Commission is modifying § 90.19 of its rules to provide service rules for these systems.

2. The Commission believes the development of stolen vehicle recovery systems will be of great benefit to law enforcement agencies and to the public. Therefore, we believe that it is in the public interest to provide an allocation and appropriate service rules to accommodate such operations. We wish to make it clear however, that we are to allocating spectrum for a specific type of service and not for a particular manufacturer's system or technology.

Ordering Clauses

3. Accordingly, *it is ordered that,* pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. SS 4(i), 301, and 303(r), parts 2 and 90 of the Commission's Rules, 47 CFR parts 2 and 90, Are Amended as set forth below. *It is further ordered* that this Order will become effective January 10, 1990. It is further ordered that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Table of frequency allocations.

47 CFR Part 90

Police radio service.

Rule Changes

Parts 2 and 90 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106 is amended by adding

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footnote designator US312 to columns 4 and 5 in the 162.0125–173.2 MHz band and by adding the following footnote to the list of footnotes following the Table to read as follows:

* * * * *

US312 The frequency 173.075 MHz may also be authorized on a primary basis to non-Government stations in the Police Radio Service (with a maximum authorized bandwidth of 20 kHz) for stolen vehicle recovery systems.

* * * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 90.19 is amended by adding the frequency 173.075 MHz to the Table of Frequencies in paragraph (d) in its appropriate location, adding paragraph (e)(31) and paragraph (f)(7) to read as follows:

§ 90.19 Police radio service.

* * * * * *

(d) *Frequencies available.* * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station (s)	Limitations
*	*	*
173.075	Base or mobile	31
*	*	*

(e) * * *

(31) This frequency is subject to the provisions of § 90.19(f)(5)(7).

(f) * * *

* * * * *

(7) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base stations will be limited to a total time of 1 second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 105 miles of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant: (i) Shows that the proposed site is the only suitable location; (ii) develops a plan to control any interference caused to TV reception from the operations; and (iii) agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV channel 7 reception within 30 days of the time it is notified in writing by the commission. If this interference is not removed within the 30 day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–24805 Filed 10–23–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 204
Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 25; Doc. No. 6962S]

General Crop Insurance Regulations; Sugarcane Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.133, the Sugarcane Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

COMMENT DATE: Written comments, data, and opinions on this proposed rule should be received not later than November 24, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.133, the Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring sugarcane.

Upon publication of 7 CFR 401.133 as a final rule, the provisions for insuring sugarcane contained therein will supersede those provisions contained in 7 CFR part 417, the Sugarcane Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 417 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 417 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sugarcane Endorsement to 7 CFR part 401, FCIC proposes to make other changes in the provisions for insuring sugarcane as follows:

1. Sugarcane that will be cut for seed is now insurable. This change was made to relieve insureds of paying premium on uninsurable acreage since most growers do not know by the acreage reporting date what acreage will be cut for seed cane.

2. Section 4—Change the language to indicate that insurance will attach on stubble cane in Florida and Texas the day following harvest if there is no damage before harvest. This change was made because ratoon cane in these two states is not as susceptible to freeze damage as in other states where this endorsement is offered. Language was also added to clarify that if the stubble cane is damaged before harvest, insurance will not attach for the following crop year until the later of April 15 or 30 days after harvest. This will allow us to conduct a stand reduction appraisal.

3. Section 5—Add language to provide for unit division guidelines under the endorsement.

4. Section 7—Add language to establish that on irrigated acreage, appraised production to be counted will include production lost due to inadequate irrigation. This change was made due to continued problems associated with determination of production to count when there is inadequate irrigation. An appraisal for inadequate stand will no longer be made on all stubble acreage over 3 years old in Florida and Texas. It will continue to be made on any acreage in which insurance does not attach the first day following harvest.

FCIC's Board of Directors recently adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sugarcane, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following

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publication in the **Federal Register.** Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Sugarcane.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continue to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.133, Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.133 Sugarcane endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Sugarcane Endorsement

Insured Crop and Acreage

a. The crop insured will be sugarcane grown for processing for sugar or for seed.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage.

2. Causes of Losses

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units.

4. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply.

a. Insurance attaches on:

(1) Plant cane at the time of planting unless otherwise provided for in writing by us.

(2) Stubble cane in all states on the first day following harvest for stubble cane unless the stubble cane was damaged by conditions occurring before harvest the previous crop year. If the stubble cane damaged before harvest the previous crop year, insurance will attach on the later of April 15 or 30 days following harvest. In Louisiana, insurance will attach on all stubble cane after the second crop year, only on the later of April 15 or 30 days after harvest.

b. The calendar dates for the end of insurance period are:

(1) Louisiana—January 31;
(2) All other states—April 30

5. Unit Division

Sugarcane acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee;

b. The acreage planted to insured sugarcane is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identifiable and the insured acreage can be determined; and

(2) The sugarcane is planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; and

c. The acreage planted to the insured sugarcane is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Sugarcane planted on irrigated acreage does not continue into nonirrigated acreage in the same rows and/or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with applicable recognized good dry-land and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your sugarcane acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notices

a. You must give us notice at least 15 days before you begin cutting any sugarcane for seed. During this time we may make an appraisal for the sugar potential. If we do not appraise the acreage, the production to count will be the production guarantee for the unit. Your notice must include the unit number and the number of acres you intend to harvest as seed.

b. For the purposes of section 8 of the general crop insurance policy, in case of damage or probable loss and you intend to harvest, the required representative samples of unharvested sugarcane must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

If an indemnity is to be claimed on any unit, you must leave the stalks on unharvested acreage and the stubble on harvested acreage intact until inspected by us.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period, which cannot be processed for sugar by the boiling house operation, will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar (The applicable price for raw sugar will be the local market price on the earlier of the day the loss is adjusted or the day such sugar is sold);

(2) Appraised production to be counted will include:

(a) Any appraisal under subsection 7.b.(3) and 7.b.(4);

(b) Unharvested production on harvested acreage, potential production lose due to uninsured causes, and failure to follow recognized good sugarcane farming practices;

(c) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We will make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) An appraisal for inadequate stand will be made at the time of inspection on sugarcane acreage where insurance did not attach the first day following harvest. If the product of the number of stalks per acre multiplied by 2, multiplied by the factor (percentage of sugar) contained in the actuarial table for that prupose does not equal the per-acre guarantee, the per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Report of Production

There is a one-year lag period for reporting your sugarcane production. You must report production for the previous crop year before the cancellation date for the subsequent crop year.

11. Meaning of Terms

a. *Crop year* means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

b. *Harvest* means the cutting and removing of sugarcane from the field.

c. *Plant cane* (see definition of sugarcane).

d. *Stubble cane* (see definition of sugarcane).

e. *Sugarcane* means either:

(1) Plant cane growing from seed planted that crop year; or

(2) Stubble cane growing from the stubble left to produce another crop from previously harvested sugarcane.

Done in Washington, DC, on September 27, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24987 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend the existing part 745 of the NCUA Rules and Regulations by adding a new subpart B entitled Payment of Share Insurance and Appeals. The proposed amendment would set forth detailed procedures for the payment of share insurance, the initial determination with respect to uninsured funds, requests for reconsideration of the initial determination, and appeals to the NCUA Board.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, or Allan Meltzer, Associate General Counsel, at the above address, or telephone (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

Part 745 of NCUA Rules and Regulations was last revised in 1986. While this Part sets forth detailed rules regarding the determination of the amount of share insurance payable upon a liquidation of a federally-insured credit union, it does not set forth any procedures for the appeal of a determination made by the NCUA pursuant to those provisions. The recently enacted Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") contemplates such regulations.

The following section-by-section analysis describes the proposed changes to the regulation. In addition to these proposed changes, the Board is proposing to change the title of part 745 to "Share Insurance and Appendix" and to label existing §§ 745.0 through and including 745.13 as "Subpart A—Clarification and Definition of Account Insurance Coverage."

Section-by-Section Analysis

Section 745.200 General

This section states that payment of share insurance may either be made directly to the accountholder or by transferring the share account to another federally-insured institution. The amount to be paid is to be determined in accordance with subpart A.

This section does not address the payment of dividends up to the date of liquidation. Comments are specifically solicited on this issue in light of the fact that dividends may be paid only if earnings are available after providing for reserves and operating expenses.

The section further sets out procedures for the payment of multiple accounts, and refers claimants to part 747 of the Rules and Regulations for the rules on computation of time for claims and appeals.

Section 745.201 Processing of Insurance Claims

This section delegates to the duly appointed agent for the Liquidating Agent the authority to make initial determinations on share insurance. Any accountholder who disagrees with this determination may, within 30 days of the date of the initial determination, request reconsideration of the initial determination from the Agent for the Liquidating Agent. The accountholder also has the option of directly appealing the initial determination of the Director of the Office of Examination and Insurance ("Director"), who is delegated the authority to act on such appeals.

Section 745.202 Appeals

This section sets out the time frames within which appeals to the Director must be filed, and the contents of those appeals. It provides for supplementation of appeals, either at the request of the Director or in the discretion of the accountholder. The section further requires that a decision on the appeal be provided in writing within 180 days of receipt of the appeal by the Director, and that such decision constitutes a final Agency action.

Section 745.203 Judicial Review

Pursuant to the provisions of FIRREA, this section notes that an appellant who disagrees with the Agency's final determination may seek judicial review of that determination within 60 days in the Court of Appeals for the District of Columbia or for the district in which the credit union's place of business is located. The section further notes that a failure to file an appeal, either to the initial determination or a decision on a request for reconsideration, is a failure to exhaust administrative remedies and the determination or decision will be deemed to have been accepted by, and binding upon, the accountholder.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

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Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply. In any event, it is anticipated that this provision will affect less than ten persons per calendar year.

Executive Order 12612

The proposed rule will apply to liquidations of both Federal and federally-insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 745

Credit unions, Account insurance coverage.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations in 12 CFR chapter VII as follows:

The authority citation is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1787, 12 U.S.C. 1789.

2. The heading of part 745 is revised to read as follows:

PART 745—SHARE INSURANCE AND APPENDIX

3. Sections 745.0 through and including 745.13 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—Clarification and Definition of Account Insurance Coverage

4. A new subpart B consisting of §§ 745.200 through 745.203 is added to part 745 to read as follows:

Subpart B—Payment of Share Insurance and Appeals

Sec.

745.200 General.
745.201 Processing of insurance claims.
745.202 Appeal.
745.203 Judicial review.

Subpart B—Payment of Share Insurance and Appeals

§ 745.200 General.

(a) *Payment.* In the event of the liquidation of an insured credit union, the Board will promptly determine the insured accountholders thereof and the amount of the insured account or accounts of each such accountholder. Payment may be in cash, or its equivalent, or may be made by making available to each accountholder a transferred account in a new federally-insured credit union in the same community or in another federally-insured credit union or institution in an amount equal to the accountholder's insured account. Notwithstanding the foregoing, the Board may withhold payment of such portion of the insured account of any member as may be required to provide for payment of any direct or indirect liability to the closed credit union or the liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by the member or any person liable therefore.

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of subpart A of this part and the Federal Credit Union Act.

(c) *Multiple accounts.* In the event an insured member holds more than one insured account in the same capacity, and the aggregate amount of such accounts (including share draft accounts held in such capacity) exceeds the amount of insurance afforded thereon, the insurance coverage will be prorated among the member's interest in all accounts held in the same capacity. In the case of individual accounts, the insurance proceeds shall be paid to the holder of the account, whether or not the holder is the beneficial owner. In the case of accounts which are owned jointly, the insurance proceeds shall be paid to the owners jointly. In the case of trust estates, the insurance proceeds shall be paid to the indicated trustee unless otherwise provided for in the trust instrument or under state law. In the case of corporations, partnerships and unincorporated associations, whether or not engaged in an independent activity, the insurance proceeds shall be paid to the indicated holder of the account. Where insurance payment is in the form of a transferred account to another insured institution, the same rules shall be applied.

(d) *Computing Time.* In computing any period of time prescribed by this subpart, the provisions of part 747.119 shall apply.

§ 745.201 Processing of insurance claims.

(a) *Delegations of authority.* The Agent for the Liquidating Agent ("Liquidating Agent") or his or her designee is authorized to make initial determinations with respect to insurance claims pursuant to the principles set forth in this part, and to act on requests for reconsideration of the initial determination. The Director of the Office Examination and Insurance or his or her designee ("Director") is authorized to make determinations on appeals of the initial determinations or decisions on requests for reconsideration of the Liquidating Agent.

(b) *Initial determination.* In the event the Liquidating Agent determines that all or a portion of an accountholder's account is uninsured, the Liquidating Agent shall so notify the accountholder in writing, stating the reason(s) for such initial determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Board in its capacity as Liquidating Agent for the insured credit union to enable the accountholder to share in the proceeds of the liquidation of the credit union, if any, up to the amount of the uninsured account.

(c) *Request for reconsideration.* An accountholder may, at his or her option, request reconsideration from the Liquidating Agent of the initial determination within 30 days of the date of the initial determination, or directly appeal the initial determination to the Director pursuant to § 745.202 of this subpart. The Liquidating Agent shall act on the request for reconsideration within 30 days from its receipt.

§ 745.202 Appeal.

(a) *Time for filing.* Within 60 days after issuance of an initial determination, or of the determination on a request for reconsideration by the liquidating agent, the accountholder may appeal by filing with the Director a written request for appeal.

(b) *Content of request.* Any appeal must include:

(1) A statement of the facts on which the claim for insurance is based;

(2) A statement of the basis for the initial determination or determination on the request for reconsideration to which the accountholder objects and the alleged error in such determination, including citations to applicable status and regulations;

(3) Any other evidence relied upon by the accountholder which was not previously provided to the Liquidating Agent.

(c) *Procedures for review of request.* (1) Within 60 days of the date of the Director's receipt of an appeal, the Director may request in writing that the accountholder submit additional facts and records in support of its request. The accountholder shall have 45 days from the date of issuance of such written request to provide such additional information. Failure by the accountholder to provide additional information may, as determined solely by the Director, result in denial of the accountholder's appeal.

(2) Within 60 days from the date of the Director's receipt of an appeal, the accountholder may amend or supplement the request in writing. In the event that the accountholder does amend or supplement the request, the provisions of paragraph (c)(1) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(d) *Determination on appeal.* (1) Within 180 days from the date of the receipt of an appeal by the Director, the Director shall issue a decision determining the extent of the accountholder's insurance pursuant to the rules of this part.

(2) The determination by the Director on appeal shall be provided to the accountholder in writing, stating the reason(s) for the determination, and shall constitute a final Agency order regarding the accountholder's claim for insurance.

(3) If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the accountholder shall promptly surrender to the Board the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Director determines that the accountholder is only entitled to a portion of the amount of insurance claimed, upon the accountholder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(4) Failure by the Director to issue a determination on appeal of the accountholder's claim for insurance within the 180-day period provided for under paragraph (d)(1) of this section shall be deemed to be a denial of such claim for purposes of § 745.203 of this subpart.

§ 745.203 Judicial review.

(a) For purposes of seeking judicial review of actions taken pursuant to this subpart, only a determination on appeal issued by the Director pursuant to § 745.202 of this subpart shall constitute a final determination regarding an accountholder's claim for insurance.

(b) *Failure to file an appeal with* regard to an initial determination, or a decision rendered on a request for reconsideration within the applicable time periods shall constitute a failure by the accountholder to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and binding upon, the accountholder.

(c) Final determination by the Director is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Such action must be filed not later than 60 days after such final determination is ordered.

[FR Doc. 89-25039 Filed 10-23-89; 8:45 am]
BILLING CODE 7535-01-M

12 CFR Part 747

Administrative Actions, Adjudicative Hearings and Rules of Practice and Procedure

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed rule.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") clarifies NCUA's authority to conduct compliance investigations. The NCUA Board has determined that it is in the public's interest to issue a proposed rule setting forth detailed procedures under which Board investigations will be conducted.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Richard S. Schulman, Trial Attorney, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Analysis

Subpart J—Rules and Procedures Applicable to Investigations

Part 747, subpart J is a new subpart. It creates an informal and formal investigation process through which the NCUA may determine, through the use of administrative subpoena and other investigative tools, whether any credit union or institution-affiliated party (as defined under FIRREA and, as necessary, by the NCUA Board) has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the Board's regulations and other statutes or regulations that may bear on any parties fitness to participate in the affairs of a credit union, whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as deemed appropriate. The current statutory language [12 U.S.C. 1784, 1786, 1787] controls such authority in the context of credit union examinations. This rule is necessary because the changes in FIRREA have clarified the scope of NCUA investigatory authority.

Section 747.1002 sets forth rules to protect information obtained pursuant to informal and formal investigations.

Section 747.1003(a) broadly defines the scope of NCUA investigations. This rule also incorporates the broader term "institution-affiliated party" used in Section 901 in FIRREA and includes both persons directly associated with the credit union through employment or officer status and outside parties as defined by the statute and as determined by the Board which "caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union."

The statute gives the Board latitude to define who is "institution-affiliated" prospectively through an encompassing regulation or on a "case-by-case basis." The NCUA Board is specifically soliciting comments to better define the term "institution-affiliated party" for the purpose of drafting and establishing published guidelines. As examples, should parties that conduct regular, ongoing business with a credit union, such as vendors, data processors and broker-dealers be deemed to be an "institution-affiliated party."

Section 747.1003(b) defines a "formal" and "informal" investigation. Formal investigations make use of the NCUA Board's power to subpoena documents and take sworn depositions from witnesses.

Section 747.1003(c) is a delegation of authority by the NCUA Board to the General Counsel, or his designee, to initiate investigations. Under this rule, the General Counsel will issue a written order of the purpose of the investigation and designate specific staff to conduct the investigation. The General Counsel may also narrow or expand the scope of an ongoing investigation when appropriate.

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Subpart K—Formal Investigative Proceedings

Subpart K is also new. It sets forth rules for the conduct of a formal investigation and outlines the rights of witnesses before the Administration. Section 747.1101 defines the term, "officer conducting the investigation."

Section 747.1102 states that all formal investigations are non-public matters. Section 747.1103 sets out rules for the issuance, service and enforcement of Administration subpoenas. Section 747.1103(a) states that the officer conducting the investigation may issue subpoenas for both documents and testimony.

Section 747.1103(b)(1) lists four permissible means of serving a subpoena on a natural person. This section also permits substitute service by any method that assures actual notice to the respondent. Section 747.1103(b)(2) outlines service on other than natural persons.

Section 747.1103(c) requires the Administration to pay, upon request, witness fees based on the attendance fee and mileage paid in the district courts of the United States. Section 747.1103(d) gives the General Counsel the discretion to seek subpoena enforcement in the courts of the United States.

Section 747.1104 allows the officer conducting the investigation to direct that witness statements be sworn. The rule incorporates criminal sanctions in title 18 of the United States Code for making false statements.

Section 747.1105 outlines the basis on which a witness before the Administration may refuse to answer questions. Subsection (a) lists the right against self-incrimination as granted by the Fifth Amendment to the Constitution of the United States. Subsection (b)(1) prohibits an officer conducting an investigation from granting or promising criminal immunity. Subsection (b)(2) allows the NCUA Board, with the approval of the Attorney General, to issue an order requiring testimony when previously refused. Subsection (b)(3) states that testimony given under subsection (b)(2) may not be used against the witness in any criminal case except a prosecution for perjury, giving false statement, or failing to comply with the order to testify.

Section 747.1106 requires formal investigative depositions to be recorded by an official reporter or other person designated by the officer conducting the investigation. Witnesses may inspect the official transcript of their testimony. Witnesses giving testimony to the Administration are entitled to copies of transcripts at their expense unless the Board prohibits release of said transcripts for good cause.

Section 747.1107 outlines the rights of witnesses testifying before the Administration. Subsection (a) allows the witness to inspect a copy of the NCUA Board's investigatory order. Subsection (b) permits representation by counsel and sequestration of witnesses during the testimony of other witnesses. Subsection (c) permits counsel to accompany the witness into the proceeding, to advise the witness throughout the testimony, to ask clarification questions of the witness and to take personal notes of the testimony. It also permits the officer conducting the investigation to bring outside counsel or other technical expert into the proceedings in an advisory capacity. Subsection (d) permits the officer conducting the investigation to report misconduct by a witness or counsel during the proceedings. The NCUA Board has authority to bar such individuals from attending the proceeding or bar the counsel from practicing before the NCUA Board.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). It would not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Further the new rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Claims, Credit unions, Equal access to justice, Lawyers, Penalties.

By the National Credit Union Administration Board on October 17, 1989

Becky Baker.

Secretary of the Board

Accordingly, NCUA proposes to amend its regulations in 12 CFR Chapter VII to read as follows:

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The Table of Contents of part 747 is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

Sec.
747.01 Scope.

Subpart A—Rules of Practice and Procedure

747.101 Scope.
747.102 Appearance and practice before the Administration.
747.103 Notice of hearing.
747.104 Answer.
747.105 Failure to appear.
747.106 Conduct of hearings.
747.107 Subpoenas.
747.108 Rules of evidence.
747.109 Motions.
747.110 Proposed findings and conclusions and recommended decision.
747.111 Exceptions.
747.112 Briefs.
747.113 Oral argument before the Board.
747.114 Notice of submission to the Board.
747.115 Decision of the Board.
747.116 Filing papers.
747.117 Service.
747.118 Copies.
747.119 Computing time.
747.120 Documents in proceedings confidential.
747.121 Formal requirements as to papers filed.
747.122 Availability to Public of Final Orders.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.
747.202 Grounds for termination of insurance.
747.203 Notice of charges.
747.204 Notice of intention to terminate insured status.
747.205 Order terminating insured status.
747.206 Consent to termination of insured status.
747.207 Notice of termination of insured status.
747.208 Duties after termination.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

747.301 Scope.
747.302 Grounds for cease-and-desist orders.
747.303 Notice of charges and hearing.
747.304 Issuance of order.
747.305 Effective date.
747.306 Temporary cease-and-desist orders.

Subpart D—Rules and Procedures Applicable To Proceedings Relating to Assessment and Collection of Civil Penalties

747.401 Scope.
747.402 Grounds for assessment of civil money penalties.
747.403 Relevant considerations.
747.404 Notice of assessment.
747.405 Period within which penalty is payable.
747.406 Notice of opportunity for hearing.
747.407 Request for hearing.
747.408 Hearing and order.
747.409 Collection.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension

747.501 Scope.
747.502 Grounds for removal or prohibition.
747.503 Notice of intent to remove or prohibit; notice of hearing.
747.504 Issuance of removal order and effective date.
747.505 Suspension and immediate prohibition.
747.506 Effect of removal, prohibition, or suspension.
747.507 Remainder of the board of directors.

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

747.601 Scope.
747.602 Rules of practice.
747.603 Notice of suspension or prohibition.
747.604 Removal or permanent prohibition.
747.605 Effectiveness of suspension or removal until completion of hearing.
747.606 Notice of hearing.
747.607 Hearing.
747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
747.609 Decision of the Board.
747.610 Reconsideration by the Board.
747.611 Relevant considerations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

747.701 Scope.
747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.
747.703 Notice of intent to suspend or revoke charter; notice of suspension.
747.704 Notice of hearing.
747.705 Issuance of order.
747.706 Cancellation of charter.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart I—Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

747.901 Purpose and scope.
747.902 Eligibility of applicants.
747.903 Prevailing party.
747.904 Standards for awards.
747.905 Allowable fees and expenses.
747.906 Contents of application.
747.907 Statement of net worth.
747.908 Documentation of fees and expenses.
747.909 Filing and service of applications.
747.910 Answer to application.
747.911 Comments by other parties.
747.912 Settlement.
747.913 Further proceedings.
747.914 Recommended decision.
747.915 Decision of the Board.
747.916 Payment of award.

Subpart J—Rules and Procedures Applicable to Investigations

747.1001 Applicability.
747.1002 Information obtained in investigations.
747.1003 Authority to conduct investigations.

Subpart K—Formal Investigative Proceedings

747.1101 Applicability.
747.1102 Non-public formal investigative proceedings.
747.1103 Subpoenas.
747.1104 Oath; false statements.
747.1105 Self-incrimination; immunity.
747.1106 Transcripts.
747.1107 Rights of witnesses.

3. A new subpart J consisting §§ 747.1001 through 747.1003 is added to part 747 to read as follows:

Subpart J—Rules and Procedures Applicable to Investigations

§ 747.1001 Applicability.

The rules in this subpart apply to informal and formal investigations conducted by the Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the Board's staff.

§ 747.1002 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the Board, shall be deemed non-public, but the Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his behalf or at his direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the Board or its General Counsel pursuant to delegated authority.

§ 747.1003 Authority to conduct investigations.

(a) The General Counsel and persons acting on his behalf and at his direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union, whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his designee, in his discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he delegates authority to act on his behalf and at his direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his behalf and at his direction. The General Counsel may amend such order as he deems appropriate.

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4. A new Subpart K consisting of § 747.1101 through 747.1107 is added to part 747 to read as follows:

Subpart K—Formal Investigative Proceedings

§ 747.1101 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the Board, before one or more of its members, or before any officer designated by the Board or its General Counsel, as described in Subpart J of this part, and with or without the assistance of such other counsel as the Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.1102 Non-public formal investigative proceedings.

Unless otherwise ordered by the Board, all formal investigative proceedings shall be non-public.

§ 747.1103 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by

(i) Handing it to the person;

(ii) Leaving it at his office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it by registered or certified mail to him at his last known address.

In the event that personal service as described in paragraphs (b)(1)(i) through (b)(1)(iv) of this section is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be affected by

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than thirty days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.1104 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.1105 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided below, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the Board requiring him to testify or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.1106 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the Board may for good cause deny such request or the Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

§ 747.1107 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request be shown a copy of the Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any formal investigative proceeding and to have this attorney—

(i) Advise such person before, during and after such testimony,

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given, and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) The Board realizes that, from time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his counsel to attend non-public investigative proceedings. Thus, for example, the officer may deem it appropriate that outside counsel to the Board attend and advise him concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his counsel in order to assist counsel in understanding technical issues. The Board wishes to emphasize that these latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witness, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

[FR Doc. 89-25038 Filed 10-23-89; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 89N-0380]

Neomycin Sulfate-Polymyxin B Sulfate-Hydrocortisone Otic Suspension; pH Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug regulations for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension to extend the pH range for the product. This action is being taken at the request of a manufacturer to provide for a product that will be less irritating to pediatric patients.

DATES: Comments by December 26, 1989; requests for an informal conference by November 24, 1989.

ADDRESS: Written comments or requests for an informal conference to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: At the request of a manufacturer, FDA is proposing to amend the antibiotic drug regulations for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension to extend the acceptable pH range for the product.

The individual monograph (regulation) for this product currently specifies a pH range of not less than 3.0 and not more than 5.5. The manufacturer contends that the current pH range for this product is inappropriate for pediatric patients because it may be irritating to the ear canal. In order to make the product less irritating for pediatric patients, the manufacturer has submitted a petition requesting that a separate pH range of not less than 4.1 and not more than 7.0 be specified in the monograph for this product if it is intended for pediatric use.

FDA has reviewed the manufacturer's request and has tentatively concluded that although amending the pH standard to permit a higher pH range is acceptable, FDA does not have sufficient information to justify two separate pH standards for adults and children or to conclude that products with a pH between 3.0 and 4.1 should not be considered safe and effective for children. Therefore, FDA is proposing that the monograph for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension be amended in 21 CFR 444.442g(a)(1) to extend the pH standard to not less than 3.0 and not more than 7.0. FDA invites comments, with supporting evidence, on the need for separate pH standards for adult and pediatric use of this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it does not require a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would make a minor amendment to an existing technical requirement without imposing a more stringent requirement. Accordingly, the agency certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Submitting Comments or Requests for Conference

Interested persons may, on or before December 26, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments shall be submitted, except

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that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before November 24, 1989, submit to the Dockets Management Branch (address above) a request for an informal conference. The participants in an informal conference, if one is held, will have until December 26, 1989 or 30 days after the day of the conference, whichever is later, to submit their comments.

Lists of Subjects in 21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 444 be amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 444.442g is amended by revising the sixth sentence in paragraph (a)(1) to read as follows:

§ 444.442g Neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension.

(a) * * *

(1) * * * Its pH is not lesa than 3.0 and not more than 7.0. * * *

* * * * *

Dated: October 17, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-24963 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This proposed rule revises the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), by requiring that all U.S. flights to and from Cuba arrive and depart during general U.S. Customs Service business hours, typically 8:30 a.m. to 5:00 p.m.

DATE: Comments must be received by December 26, 1989.

ADDRESSES: Comments may be mailed to the Unit C-560, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220. Comments received will be available for public inspection in the U.S. Department of the Treasury library, 1500 Pennsylvania Avenue NW., Room 5030, Washington, DC 20220. Members of the public may review comments by calling the library (202/566-2777) for an appointment.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (telephone: 202/376-0406), or Steven I. Pinter, Chief of Licensing (telephone: 202/376-0236), Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This proposed rule would affect all U.S. common carriers engaged in airline flights between the United States and Cuba, and persons holding travel service provider and carrier service provider licenses or provisional authorization issued pursuant to § 515.560(i) of the Regulations, to arrange transportation between the United States and Cuba. These common carriers and travel service providers would be required to insure that flights arranged by them arrive and depart from the United States during general U.S. Customs Service business hours at Miami International Airport, the only port of entry or exit in the United States for flights from or to Cuba currently authorized under the regulations of the U.S. Customs Service. General business hours are between 8:30 a.m. and 5:00 p.m. unless otherwise posted.

In order to assure proper and effective enforcement of the economic sanctions imposed against Cuba, systematic passenger clearnece and baggage inspection on flights going to an coming from Cuba are being instituted. Such procedures are necessary to prevent illegal importations and exportations from occurring, and to insure that excessive amounts of U.S. currency are not taken to Cuba for transactions that are restricted by the Regulations. By requiring all flights to depart and arrive during the regular hours of business for the U.S. Customs Service, sufficient resources will be available to conduct regular inspections of these flights.

In the event of an emergency determined to require arrival or departure at a time outside general business hours, the Office of Foreign Assets Control will issue an emergency license pursuant to § 515.801 of the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are also inapplicable. Nonetheless, the Office of Foreign Assets Control is soliciting public comment prior to issuing a final rule.

List of Subjects in 31 CFR Part 515

Cuba, Currency, and Travel.

PART 515—[AMENDED]

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959-1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp. p. 748.

2. § 515.560(l) is added to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba

* * * * *

(l) Except as authorized by the Director, Office of Foreign Assets Control, any travel service provider or carrier service provider arranging transportation between Cuba and the United States must insure that arrival and departure at the port of entry or exit in the United States occur during the general business hours of the U.S. Customs Service (as defind in 19 CFR 101.6) at the relevant port and entry or exit.

Dated: September 15, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 11, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89-24969 Filed 10-19-89; 11:17 am]

BILLING CODE 4810-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6970]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their content.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

1. The authority citation for part 67 continues to read aa follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	North Little Rock, City, Pulaski County.	Arkansas River	Approximately 2.65 miles downstream of Missouri-Kansas-Texas Railroad.	*249	*250
			Most upstream corporate limits	*261	*259
		Shilcotts Bayou	Confluence with White Oak Bayou	*260	*258
			Approximately 140 feet upstream of East 56th Street.	None	*333
		Shilcotts Bayou Tributary	Confluence with Shilcotts Bayou	*260	*258
			Approximately 190 feet upstream of Rock Street.	None	*301
Maps available for inspection at the City Hall, 3rd & Main, North Little Rock, Arkansas. Send comments to The Honorable Patrick Henry Hays, Mayor of the City of North Little Rock, Pulaski County, P.O. Box 5757, North Little Rock, Arkansas 72119.					
Arkansas	White Hall, City, Jefferson County.	Gamble Creek	At the downstream corporate limits	None	*241
			At a point approximately 930 feet downstream of the downstream side of U.S. Route 65.	None	*261
			Approximately 250 feet upstream of State Route 256.	*275	*274
Maps available for inspection at the City Hall, 101 Parkway Drive, White Hall, Arkansas. Send comments to The Honorable Tom Ashcraft, Mayor of the City of White Hall Jefferson County, 101 Parkway Drive, White Hall, Arkansas 71602.					
California	City of Livermore, Alameda County.	Altamont Creek	At confluence with Arroyo Las Positas	*499	*497
			Approximately 900 feet upstream of confluence with Arroyo Las Positas.	*500	*498
			Approximately 1,350 feet upstream of confluence with Arroyo Las Positas.	*501	*498
			Approximately 1,450 feet upstream of confluence with Arroyo Las Positas.	*501	*501
			Approximately 2,000 feet upstream of confluence with Arroyo Las Positas.	*502	*502

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,650 feet upstream of confluence with Arroyo Las Positas.	*503	*503
			Approximately 3,500 feet upstream of confluence with Arroyo Las Positas.	*505	*505
			Approximately 4,850 feet upstream of confluence with Arroyo Las Positas.	*509	*509
			Approximately 5,050 feet upstream of confluence with Arroyo Las Positas.	*509	*509
			Approximately 5,100 feet upstream of confluence with Arroyo Las Positas.	*511	*511
			Approximately 5,750 feet upstream of confluence with Arroyo Las Positas.	*512	*511
			Approximately 6,200 feet upstream of confluence with Arroyo Las Positas.	*513	*512
			Approximately 8,550 feet upstream of confluence with Arroyo Las Positas.	*517	*513
			Approximately 6,750 feet upstream of confluence with Arroyo Las Positas.	*519	*517
			Approximately 7,400 feet upstream of confluence with Arroyo Las Positas.	*525	*520
			Approximately 7,550 feet upstream of confluence with Arroyo Las Positas.	*527	*527
			Approximately 9,150 feet upstream of confluence with Arroyo Las Positas.	*535	*535
		Arroyo Las Positas	Approximately 39,850 feet upstream of mouth	*495	*495
			Approximately 40,750 feet upstream of mouth	*497	*498
			Approximately 42,750 feet upstream of mouth	*498	*497
			Approximately 44,750 feet upstream of mouth	*499	*497
			Approximately 45,000 feet upstream of mouth	*499	*497
			At Golf Course Maintenance Bridge	*501	*501
			At Bluebell Drive	*501	*502
			Approximately 1,650 feet upstream of Bluebell Drive.	*508	*507
			Approximately 100 feet downstream of Heather Lane.	*508	*508
			At Heather Lane	*513	*513
			Approximately 950 feet upstream of Heather Lane.	*516	*516
			Approximately 425 feet downstream of Central Avenue.	*520	*520
Maps are available for review at the Planning Department, 1052 South Livermore Avenue, Livermore, California 94550.					
Send comments to The Honorable Dale Turner, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550					
Colorado	Boulder County Unincorporated Areas.	Boulder Creek	Approximately 1,920 feet upstream of North 75th Street.	*5,120	*5,120
			Approximately 1,940 feet downstream Service Road.	*5,122	*5,123
			Approximately 1,420 feet downstream of Service Road.	*5,124	*5,125
			Approximately 520 feet downstream of Service Road.	*5,128	*5,128
Maps are available for review at the Boulder County Department of Public Works, 1777 Sixth Street, Boulder, Colorado.					
Send comments to The Honorable Josephine W. Heath, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.					
Illinois	Village of Burr Ridge, Du Page and Cook Counties.	63rd Street Ditch	About 340 feet downstream of Tomlin Drive	*642	*640
			Just downstream of Pond Inlet	*647	*648
			Just upstream of Pond Inlet	*653	*654
			About 950 feet upstream of Grant Avenue	*695	*696
Maps are available for inspection at the Town Hall, 7660 South County Line Road, Burr Ridge, Illinois.					
Send comments to The Honorable Emil Coglianese, President, Village of Burr Ridge, 7660 South County Line Road, Burr Ridge, Illinois 60521.					
Indiana	City of Jeffersonville, Clark County.	Greenbriar Tributary	Just upstream of of mouth	*453	*454
			Just downstream of 10th Street	*457	*457
Maps are available for inspection at the Building Department, City/County Building, 501 East Court Avenue, Room 416, Jeffersonville, Indiana.					
Send comments to The Honorable Dale Orem, Mayor, City of Jeffersonville, City/County Building, 501 East Court Avenue, Jeffersonville, Indiana 47130.					
Missouri	City of Shrewsbury, St. Louis County.	Deer Creek	Just downstream of Burlington Northern railroad.	*434	*436
			Just upstream of Burlington Northern railroad	*438	*437
			Just downstream of Big Bend Boulevard	*443	*444
		North Tributary to River Des Peres.	Within community	*432	*431

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the City Hall, 4400 Shrewsbury Avenue, Shrewsbury, Missouri.					
Send comments to The Honorable Daniel Lowery, Mayor, City of Shrewsbury Avenue, Shrewsberry, City Hall, 4400 Shrewsbury, Missouri 63119.					
New Hampshire	Lebanon, City, Grafton County.	Connecticut River	Downstream corporate limits	*343	346
			Upstream corporate limits	None	388
		Mascoma River	Approximately 530 feet upstream of State Route 12A.	*352	351
			Approximately 430 feet upstream of the second most downstream crossing of the Boston and Maine Railroad.	*424	425
Maps available for inspection at the City Hall, 51 North Park Street, Lebanon, New Hampshire.					
Send comments to The Honorable Steve Smith, Manager of the City of Lebanon, Grafton County, 51 North Park Street, Lebanon, New Hampshire 03766.					
New York	Niagara Falls [city), Niagara County.	Bergholtz Creek	At confluence with Cayuga Creek	*571	*572
			At upstream corporate limits	*573	*575
Maps available for inspection at the City Hall, 745 Main Street, Niagara Falls, New York 14302.					
Send comments to The Honorable Michael O'Laughlin, Mayor of the City of Niagara Falls, Niagara County, 745 Main Street, Niagara Falls, New York 14302.					
Pennsylvania	Temple (borough), Berks County.	Laurel Run	Approximately 1,250 feet upstream of the corporate limits.	None	*339
			At upstream corporate limits	None	*390
		Laurel Run Alternate Branch	At confluence with Laurel Run	None	*342
			At divergence with Laurel Run	None	*376
Maps available for inspection at the residence of Carl B. Geibel, Secretary/Treasurer, 4835 Kutztown Road, Temple, Pennsylvania.					
Texas	Hood County, Unincorporated Areas.	Lake Granbury	Shoreline at the south/southeastern boundary of the City of Granbury, approximately 1 mile downstream of the confluence of Rough Creek.	None	*697
			Shoreline approximately 300 feet south of U.S. Route 377.	None	*698
			Shoreline approximately 800 feet north of U.S. Route 377.	None	*698
			Shoreline west of intersection of of U.S. Route 377 and State Route 426.	None	*698
Maps available for inspection at the Hood County Courthouse, Main Street, Granbury, Texas.					
Send comments to The Honorable Milton Meyer, Hood County Judge, Hood County Courthouse, Main Street, Granbury, Texas 76048.					
Texas	Weatherford, City, Parker County.	Town Creek	Approximately 1,580 feet downstream of North Bowie Drive.	*1,033	*1,032
			Approximately 170 feet downstream of corporate limits.	*1,042	*1,043
Maps available for inspection at the City Hall, 303 Palo Pinto, Weatherford, Texas.					
Send comments to The Honorable Sherry Watson, Mayor of the City of Weatherford Parker County, City Hall, P.O. Box 255, Weatherford, Texas 76086.					

Issued: October 11, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 24950 Filed 10–23–89; 8:45 am]

BILLING CODE 6718-03-M

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Notices

Federal Register
Vol. 54, No. 204
Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-89-016]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application for a designated tobacco auction market at Fitzgerald, Georgia.

Date: November 2, 1989.

Time: 9:30 a.m. local time.

Place: Ben Hill County Courthouse, East Central Street, Fitzgerald, Georgia.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market at Fitzgerald, Georgia. The application was made by B.B. Rogers and Richard Rogers of Fitzgerald, Georgia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 17, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture Marketing and Inspection Services.

[FR Doc. 89-25104 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

[TB-89-017]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application for a designated tobacco auction market at Metter, Georgia.

Date: November 3, 1989.

Time: 9:30 a.m. local time.

Place: Candler County Courthouse, Broad Street, Metter, Georgia.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market at Metter, Georgia. The application was made by Barbara Sutton and Robert F. Cartee of Claxton, Georgia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1–29.3).

Dated: October 18, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture Marketing and Inspection Services.

[FR Doc. 89-25076 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

[TB-89-018]

Public Hearing Regarding the Conway and Loris, South Carolina Tobacco Markets

Notice is hereby given of a public hearing regarding the Conway and Loris, South Carolina, tobacco markets.

Date: November 7, 1989.

Time: 9:30 a.m. local time.

Place: Conway Chamber of Commerce, Main Street & Third Avenue, Conway, South Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Conway and Loris, South Carolina. The application was made by E.P. Roberts, President, Conway, South Carolina Tobacco Board of Trade, and Harvey Graham, Sr., President, Loris, South Carolina Tobacco Board of Trade.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1–29.3).

Dated: October 17, 1989.

John E. Frydenlund,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-24998 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census, Cutoff Dates For Recognition of Boundary Changes

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On July 8, 1986, the Bureau of the Census, U.S. Department of Commerce, published in the **Federal Register**, 51 FR 24653, cutoff dates for recognition of boundary changes received as a result of the 1990 Boundary Annexation Survey. These dates reflect the timing of the 1990 Census of Population and Housing. In order to increase public awareness of these cutoff dates, the Bureau of the Census wishes to restate, without change, this information. The Bureau of the Census compiles information about the boundaries for American Indian and Alaska Native areas in other programs. It uses the same effective and reporting dates for these boundaries.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, Bureau of the Census, (301) 763–5636.

SUPPLEMENTARY INFORMATION: For the tabulation of data from the 1990 Census Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 1990 that have been reported officially to the Bureau of the Census no later than March 1, 1990. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, and equivalent areas as those limits exist on January 1, 1990.

For the purposes of the Boundary and Annexation Survey, the Bureau of the Census defines "municipalities" and "county subdivisions" to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and

magisterial districts). A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume 1, Chapter A.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 1990 in taking the 1990 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the 1990 census as residents of the area in which they resided on January 1, 1990. The Bureau of the Census will not recognize in the data tabulations prepared for the 1990 census changes occurring on or before January 1, 1990, but not submitted officially to the Bureau of the Census until after March 1, 1990 except as necessary to conduct decennial census operations.

(Secs. 70.1, 70.2 and 70.3 of the Cutoff for Recognition of Boundary Changes for the 1990 Census (13 U.S.C. 4; 32 FR 15154)); and Department of Commerce Organizational Order 35-2A (40 FR 42765)

Dated: October 19, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-25006 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-07-M

Urbanized Areas for the 1990 Census—Proposed Criteria

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: The Bureau of the Census identifies and delineates urbanized areas to provide a better separation of the urban and rural population and housing data in the vicinity of large cities. In order to delineate urbanized areas consistently and equitably nationwide, the Census Bureau established specific criteria when it first created these areas for the 1950 census. The Census Bureau, in consultation with data users, periodically reviews and revises these criteria, including a review before each decennial census. The following criteria will apply to the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. The Census Bureau may apply these criteria to other areas as well.

Because the Census Bureau identifies and tabulates data for urbanized areas solely for the purpose of statistical presentation and comparison, it does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of any such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some Federal and state agencies are required by statute to use the Census Bureau-defined urbanized areas for allocating program funds, setting program standards, and implementing other aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urbanized area criteria also may affect the implementation of their programs.

If a Federal or state agency voluntarily uses the urbanized areas or their associated data in a nonstatistical program, it is the agency's responsibility to ensure that the results are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the urbanized area results specifically for purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly avoids confusion with the Census Bureau's official urbanized areas.

The Census Bureau proposes to use the following criteria and the results of the 1990 Census of Population and Housing [1] to determine what territory qualifies for designation as an urbanized area, and what the boundaries, central place(s), and title of each resulting urbanized area will be.

A. Definition

An urbanized area comprises a central place [2] and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people.[3]

The densely settled surrounding territory adjacent to the central place consists of the following:

1. Territory made up of one or more contiguous census blocks having a population density of at least 1,000 people per square mile,[4] provided that it is:

a. Contiguous with and directly connected by road to other qualifying territory, or

b. Noncontiguous with other qualifying territory; and:

(1) Within 1½ road miles of the main body of the urbanized area, and connected to it by one or more nonqualifying census blocks that (a) are adjacent to the connecting road and (b) together with the outlying qualifying territory have a total population density of at least 500 people per square mile,[5] or

(2) Separated by water or other undevelopable territory [6] from the main

[1] All references to population counts and densities relate to residential data reported in the 1990 Census of Population and Housing. An urbanized area delineated as a result of a special census conducted by the Census Bureau after the 1990 census (an intercensal urbanized area), at the request and expense of local officials, will be qualified using these criteria and the residential population counts and densities reported in that special census.

[2] The term "place" in the urbanized area criteria includes both incorporated places, such as cities and villages, and census designated places (CDPs). A CDP is an unincorporated population cluster for which the Census Bureau delineates boundaries in cooperation with state and local agencies to permit tabulation of data in Census Bureau products. In Puerto Rico, the Census Bureau, in cooperation with the Office of the Governor, delineates and recognizes zonas urbanas and comunidades as CDP equivalents for use when defining central places and applying the urbanized area criteria.

[3] When considering the qualification of a potential urbanized area, the urbanized area criteria exclude the people living in the rural portion(s) of extended cities, as defined by applying the Census Bureau's extended city criteria. If excluding the population of the rural portion of an extended city results in a total potential urbanized area population of less than 50,000, the potential urbanized area does not qualify even though the total population of the entire city equals or exceeds 50,000. In addition, for an urbanized area to qualify, at least 25,000 of the people in the potential urbanized area must reside in an area that is not part of a military installation.

[4] A census block is an area identified by a unique number on Census Bureau maps used for a decennial or special census. Such areas normally are bounded by physical features shown on those maps, such as streets, streams, and railroads. The boundaries of a census block also may consist of nonvisible feature(s) such as the boundary of an incorporated place, minor civil division, county, or other 1990 census tabulation area boundary. Population density is calculated by dividing the total population of the census block(s) by the land area of that block(s). The Census Bureau's calculation of population density generally excludes the area of certain large nonresidential urban land use areas such as railroad yards, industrial areas, airports, cemeteries, and golf courses shown on the Census Bureau's maps.

[5] The Census Bureau will not include additional noncontiguous area in the urbanized area if the connection required to include it contains territory already qualified under this criterion.

[6] For purposes of these criteria, undevelopable territory includes only mud flats, marshlands, steep slopes, and other terrain on which development is virtually impossible because of physical limitations. To be classified as undevelopable, the territory must not contain any existing housing or commercial structures. Military installations, parks, and forest preserves shown on the Census Bureau's maps at the time of the decennial or special census also may be classified as undevelopable territory. The land-use zoning of an area is not considered when applying this criterion.

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body of the urbanized area, but within 5 road miles of the main body of the urbanized area as long as no more than 1½ miles of otherwise nonqualifying developable territory intervenes.

2. A place containing any territory qualifying on the basis of criterion A.1 will be included in the urbanized area in its entirety (or partially, if the place is and extended city [7]) if that qualifiying territory includes at least 50 percent of the population of the place. If the place does not contain any territory qualifying on the basis of the above criterion, or if that qualifying territory includes less than 50 percent of the place's population, the place is excluded in its entirety.[8]

3. Other territory with a population density of fewer than 1,000 people per square mile, provided that it:

a. Eliminates an enclave of no more than 5 square miles in the otherwise qualifying urbanized areas when the surrounding territory qualifies on the basis of population density, or

b. Closes an indentation in the boundary of the otherwise qualifying urbanized areas when the contiguous territory qualifies on the basis of population density, provided that the indentation is no more than 1 mile across the open end, has a depth at least two times greater than the distance across the open end, and encompasses no more than 5 square miles.

B. Urbanized Area Central Places

One or more urbanized area central places function as the dominant centers of each urbanized area. The identification of urbanized area central places permits the comparison of these dominant centers with the remaining territory in the urbanized area.

Urbanized areas are closely related to metropolitan statistical areas (MSAs) [9] in that most urbanized area(s) form the continuously built-up core of MSAs. However, some MSAs included two or more noncontiguous urganized areas, and some urbanized areas exist outside of MSAs. The Census Bureau identifies one or more central places for each urbanized area. If the urbanized area encompasses all the central cities of a single MSA, then the central place(s) of the urbanized area generally will be the same as the central city(ies) of the corresponding MSA.

Urbanized area central places include:

1. Those MSA central cities entirely (or partially, if the place is an extended city [10] within the urbanized area. There is no limit on the number of qualifying central places, and not all MSA central cities necessarily are included in the urbanized area title.

2. If the urbanized area does not contain an MSA central city, or is outside of an MSA, then the central place(s) is any place(s) that qualifies as specified in criterion C.2 and C.3 of the urbanized area titling criteria. One or two additional places may qualify as central under criterion C.2 of the urbanized area titling criteria. Only one place may qualify as central within an urbanized area under criterion C.3 of the urbanized area titling criteria.

C. Urbanized Area Titles and Codes

The title of an urbanized area identifies those places that are most important within the urbanized area; it links the urbanized area to the encompassing MSA, where appropriate. If a single MSA mostly encompasses the urbanized area, then the title and code of the urbanized area generally are the same as the title and code of the MSA. If the urbanized area is not mostly encompassed in a single MSA, if it does not include any places that are central cities in the encompassing MSA, or if it is not part of an MSA, then the Census Bureau uses the population size of the included places, with a preference for incorporated places, to determine the urbanized area title. The name of the state (or states) in which the urbanized area is located also is used in each urbanized area title.

The following criteria determine urbanized area titles and codes:

1. The title consist of the same places named in the encompassing MSA when the urbanized area exists mostly within a single MSA as of the 1990 census, provided that the places in the MSA title are located entirely (or partially, if the places are extended cities) within the boundaries of the urbanized area. Any MSA title city(ies) not located in the urbanized area is omitted from the urbanized area title.

2. If the urbanized area does not contain any place that meets criterion C.1, then the urbanized area title includes the name of the most populous incorporated place in the urbanized area containing 2,500 or more people and the names of up to two additional incorporated places in the urbanized area, provided that each additional place has a population of 15,000 or more, and has at least one-third the population of the most populous incorporated place in the urbanized area.

This criterion also is used to determine the title of an urbanized area that is not mostly encompassed within a single MSA or where a single MSA encompasses more than one separate urbanized area, each centered on a separate MSA title city; that is, (a) those urbanized areas mostly within two or more PMSAs, but not within all constituent PMSAs of the CMSA, or (b) those urbanized areas that include one or more MSA title cities and for which other separate urbanized areas exist around one or more other MSA title cities. In these instances, the names used in the title of the urbanized area are restricted to MSA central cities that meet the population size criteria.

3. If the urbanized area does not contain any incorporated place with a population of 2,500 or more, the urbanized area title includes only the name of the largest nonmilitary place.[11]

4. A regional title may be used to identify an urbanized area with a population of one million or more, if the Census Bureau believes a regional title provides an unambiguous description of the area. Regional titles include only the name of the largest city in the urbanized area, followed by the regional title.

5. The order of place names within an urbanized area title is the same as the order of the central city names in the

[7] Only the urban portion of an incorporated place qualifies to be included in the urbanized area if the place qualifies as an extended city. An incorporated place is defined as an extended city if it contains one or more sparsely settled areas, each at least 5 square miles in land area and having a population density of fewer than 100 people per square mile. The sparsely settled area(s) must total at least 25 percent of the land area of the incorporated place or encompass more than 25 square miles.

[8] A place included in an urbanized area designated as a result of an earlier decennial or special census is retained in the urbanized area in its entirety even if it does not meet this criterion, unless it newly qualifies as an extended city.

[9] The term MSA, as used in these criteria, refers to a freestanding MSA or one of the primary metropolitan statistical areas (PMSAs) within a consolidated metropolitan statistical area (CMSA) as designated by the Federal Office of Management and Budget (OMB). In the titling criteria, the term also refers to a CMSA when the CMSA mostly encompasses an urbanized area. The MSA central cities and titles used to determine urbanized area central places and titles are those in effect on January 1, 1990 and, for those areas qalifying as new MSAs based on the results of the 1990 census, the central cities and titles included in the 1990 census data products. Changes to the list of central cities and titles of existing MSAs based on the results of the 1990 census are not included, because such changes occur after the release of the 1990 census data. The Census Bureau will not change the list of existing central places and titles of urbanized areas as a result of any subsequent MSA central city or title changes until after the next national census. The Census Bureau will determine the central places(s) and title of each qualifying intercensal urbanized area at the time of qualification based on the 1990 criteria. Urbanized area title, except for those titled under criterion C.4, include only place and state names.

[10] Only the urban portion of an extended city is classified as central.

[11] A nonmilitary place is one in which more than 50 percent of the population lives outside the boundaries of a military installation.

MSA title for urbanized areas that have places that qualify under titling criterion C.1, excluding places not contained in the urbanized area. For urbanized areas that are entitled under criterion C.2, the place names within the urbanized area title are listed in descending order of population.

6. In addition to the name of each qualifying place (including the place name in the regional title), the urbanized area title includes the name of each state into which the urbanized area extends. The order of state names is:

a. The same as the order of their related place names mentioned in the urbanized area title, followed by,

b. The names of other states into which the urbanized area extends in descending order of the state's population in the urbanized area.

7. The numeric code used to identify each urbanized area will be the same as the code for the mostly encompassing MSA (including CMSA and PMSA). If MSA title cities represent multiple urbanized areas, or the urbanized area title city does not correspond to the first name of an MSA title, the Census Bureau will assign a code based on the alphabtical sequence of the urbanized area title in relationship to all other urbanized area and MSA titles.

D. Retention of Boundaries, Contiguity, and Merger of Urbanized Areas

As with the identification of central places and titles, the Census Bureau uses the geographic structure of MSAs (including CMSAs and PMSAs) to determine when to define separate contiguous urbanized areas [12] or to merge contiguous urbanized areas. After delineating the boundaries of each urbanized area, the Census Bureau examines the relationship between the urbanized area and any contiguous urbanized area(s) using the criteria below to determine if each contiguous urbanized area should be recognized separately and, if so, where the boundary should be between these urbanized areas.

1. An urbanized area generally retains all territory previously included within its boundaries. When a previously existing urbanized area becomes contiguous with another urbanized area, the Census Bureau generally will not move previously qualifying territory from that urbanized area into the contiguous urbanized area.[13]

2. When previously noncontiguous urbanized areas become contiguous, the Census Bureau will choose a prominent physical feature or political boundary to use as the boundary separating the two urbanized areas. The feature or political boundary selected will be at or near the location of the lowest overall population density between the two areas.

3. No new urbanized area will be created from the territory of an existing urbanized area, even if one or more MSAs or PMSAs subsequently are established that subdivide the original territory of the urbanized area.

4. If the boundary used to separate two contiguous urbanized areas follows a political boundary that also is an MSA boundary, the urbanized area boundary will continue to follow that political boundary even if the MSA boundary subsequently changes.

5. When urbanized areas are contiguous, the Census Bureau will use the following criteria to determine if a merger occurs:

a. The Census Bureau merges urbanized areas when:

(1) Two or more newly qualifying urbanized areas are contiguous and are mostly in the same MSA or PMSA.

(2) A newly qualifying urbanized area is contiguous to an existing urbanized area and both are mostly in the same MSA or PMSA.

(3) Previously existing urbanized areas mostly in the same MSA or PMSA become contiguous.

(4) Existing contiguous urbanized areas, previously entirely or mostly in different MSAs, become entirely or mostly part of the same MSA or PMSA because of an MSA merger.

b. The Census Bureau does not merge urbanized areas when:

(1) Existing urbanized areas are contiguous or become contiguous and are entirely or mostly in different MSAs or PMSAs.

(2) Existing urbanized areas are contiguous or become contiguous and are mostly in the same CMSA but mostly in different PMSAs.

(3) Existing urbanized areas are contiguous or become contiguous and the largest central place of one of the urbanized areas is mostly outside the encompassing MSA.

Differences Between the Proposed 1990 Urbanized Area Criteria and the 1980 Urbanized Area Criteria

The following is a summary of the differences between the 1980 urbanized area criteria and the urbanized area criteria proposed for the 1990 census.

1. The Census Bureau will recognize an urbanized area if it contains a place, either incorporated or census designated. Previously, the Census Bureau required a potential urbanized area to contain an incorporated place (except in Hawaii and Puerto Rico, where incorporated places do not occur in the sense of functioning local governmental units). In line with this proposed change, the Census Bureau will replace the term "central city" with "central place."

2. The Census Bureau will add an entire place to an urbanized area only if the qualifying portion is adjacent to or within 1½ road miles of the rest of the urbanized area and the qualifying portion contains at least 50 percent of the population of the place. Previously, a place had to contain only a closely settled area that included at least 50 percent of the population of the place, or a cluster of at least 100 housing units, if the place did not have a population of at least 2,500 or a population density of at least 1,000 people per square mile.

3. The combined population density of any noncontiguous qualifying area and the intervening nonqualifying census block(s) added to the urbanized area must be at least 500 people per square mile. There must be at least one census block that is contiguous to the road connecting the qualifying core area with the noncontiguous qualifying area. Previously, there was no stated minimum population density requirement for adding any noncontiguous qualfying area and the intervening nonqualifying blocks to the urbanized area, but the Census Bureau used this proposed criterion as a guideline in the past.

4. The Census Bureau will close urbanized area boundary indentations only when the depth of the area is at least two times greater than a line closing the opening. This criterion applies only when the indented area within the urbanized area is surrounded by area meeting the population density requirements of 1,000 people per square mile. Previously, the Census Bureau generally closed any indentation less

[12] The Census Bureau considers two urbanized areas to be contiguous if they share a common boundary line (not simply a point), and the areas on both sides of this shared boundary qualify for inclusion in their respective urbanized areas based on the minimum population density criterion of 1,000 people per square mile. Urbanized areas that are separated by no more than 5 miles of undevelopable land or water, but are connected by road, are considered contiguous if both include areas meeting the population density criterion at the points where they adjoin the undevelopable land or water and the qualifying road connection exists.

[13] The Census Bureau unavoidably may have to delete previously qualifying territory from an urbanized area or shift previously qualifying territory from one urbanized area to another when there has been a change in a place boundary (due to a detachment from or disincorporation of an incorporated place or a retraction from or deletion of a CDP), a change in a county or minor civil division boundary, or the deletion of a feature previously used as a census block boundary.

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than 1 mile across the open end and encompassing no more than 5 square miles.

5. The Census Bureau no longer will add to an urbanized area the territory that contains a large concentration of nonresidential urban land use (such as an industrial park, office complex, or major airport) and is adjacent to the urbanized area, even if at least one-quarter of the boundary of the land use area is contiguous with the urbanized area. The Census Bureau does not have sufficient information to implement this criterion consistently on a nationwide basis. Existing urbanized areas will retain territory that qualified under the earlier criterion.

6. In most instances, the Census Bureau will use the title of the (mostly) encompassing MSA title as the urbanized area title. If a single MSA does not include most of the urbanized area of if the urbanized area does not contain any places in the title of the MSA, the Census Bureau generally will use as an urbanized area title the names of up to three of the most populous incorporated places over 2,500 population within the urbanized area. If no such incorporated places exist in the urbanized area, the Census Bureau will use the name of the CDP with the largest populations for the urbanized area title. The overall effect of these criteria will be to have the titles of urbanized title. The overall effect of these criteria will be to have the titles of urbanized areas and MSAs as similar as possible. The Census Bureau used 1970, and in come cases, 1960, urbanized area titles as the titles of 1980 urbanized areas.

7. For each urbanized area, where applicable, the Census Bureau will designate as an urbanized area central place, each place that also is a central city in the encompassing MSA. If there is no such place in the urbanized area, the Census Bureau will designate as an urbanized area central place, each place in the title of the urbanized area. The general effect of these criteria will be to have the central places of urbanized area and the central cities of MSAs as similar as possible in the 1990 census tabulations. Previously, except in the two urbanized areas assigned regional titles, the central cities of urbganized areas included only those places appearing in the urbanized area titles.

8. All crriteria related to delineating a boundary between contiguous urbanized areas and to merging contiguous urbanized areas are new. While the Census Bureau generally used the proposed criteria as "guidelines" in the past, it did not previously publish these as criteria. These criteria will result in the merger of the following 1980 urbanized areas for the 1990 census:

New Heaven, CT and Meriden, CT
Nortfolk-Portsmount, VA and Newport News-Hampton, VA
Richmond, VA and Petersburg-Colonial Heights, VA
Tampa, FL and St. Petersburg, FL

In addition, the criteria could result in the merger of other 1980 urbanized areas for the 1990 census, if their urbanized areas become contiguous and are in the same MSA or PMSA. In 1980, the following urbanized areas were within 2 miles of each other and mostly in the same MSA or PMSA:

Aurora, IL and Elgin, IL
Baltimore, MD and Annapolis, MD
Beaumont, TX and Port Arthur, TX
Greensboro, NC and High Point, NC
Johnson City, TN and Kingsport, TN—VA
Kingsport, TN—VA and Bristol, TN—Bristol, VA
Macon, GA and Warner Robins, GA
Oxnard—Ventura—Thousand Oaks, CA and Simi Valley, CA
St. Louis, MO—IL and Alton, IL
San Juan, PR and Vega Baja—Manati PR

DATES: Comments submitted on or before December 26, 1989 will receive consideration in developing the final urbanized area criteria for the 1990 census.

ADDRESSES: Persons wishing to comment or obtain additional information should write to: Mr. Robert W. Marx, Chief, Geography Division, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Marx at the address given above or telephone (301) 763-5636.

DATED: October 18, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-25005 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shark Advisory Panel on November 9, 1989, from 8 a.m. to 4 p.m. The meeting will be held at the Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, FL. The panel will review and comment on the Secretarial fishery management plan for sharks that is being prepared by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: October 18, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-25008 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on October 31-November 1, 1989, at the Sonesta Hotel, 175 High Street, Portland, ME. The Council will begin the meeting at 12:30 p.m., on October 31; will reconvene on November 1 at 8:30 a.m.; and will adjourn when agenda items have been completed. Except as noted below, the meeting is open to the public.

On the first day, the Council will hear a report from the Groundfish Oversight Committee. A closed session (not open to the public) will follow and pertain to employment matters. On the second day, the Council will hear reports from the Herring, Scallop and Large Pelagic Oversight Committees and receive updates on the lobster and surf clam/ocean quahog fisheries. Also, reports will be given on the annual meeting of the Atlantic States Marine Fisheries Commission, and the reauthorization of the Magnuson Fishery Conservation and Management Act.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: October 18, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-25009 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-22-M

EXECUTIVE OFFICE OF THE PRESIDENT

Council on Environmental Quality

Risk Analysis: A Guide to Principles and Methods of Analyzing Health and Environmental Risks; Availability

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: The Council on Environmental Quality is announcing the availability of "Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks." This guide is intended both as an introduction to risk analysis and as a readily accessible reference manual. Designed for consumers of risk information, the book offers a balance between the technical and nontechnical literature. Some of the topics covered in the guidebook include methodology and techniques, an overview of risk analysis, hazard identification, and risk communication. Included are a glossary, cases studies, examples and reference materials in this 407 page book.

ADDRESS: "Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks" may be ordered from the National Technical Information Service (NTIS), Springfield, VA 22161 or call (703) 487-4650. The NTIS order number is PB-137772KNK. The price is $17.50, add $3.00 handling for total order. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements with NTIS. Charge cards orders must include the account number and expiration date.

FOR FURTHER INFORMATION CONTACT: John J. Cohrssen, Council on Environmental Quality, Executive Office of the President, Washington, DC 20503, (202) 395-5750.

John J. Cohrssen,

Legal Advisor.

[FR Doc. 89-25025 Filed 10-23-89; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Ad Hoc Subcommittee, Armed Forces Epidemiological Board, DOD.

Date of Meeting: 11 November 1989.

Time: 0930-1600.

Place: Hilton Hotel, New Orleans, Louisiana.

Proposed Agenda: Laboratory procedures and medical testing standards for serum lipids for the U.S. Air Force.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-24988 Filed 10-23-89; 8:45 am]

BILLING CODE 3710-08-M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 14 November 1989 (8:00 a.m. to 5:00 p.m.)

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC. 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Intelligence Support to the U&S Commands.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24962 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 16-17 November 1989 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24964 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

Board of Visitors Meeting

AGENCY: Defense Systems Management College, DOD.

ACTION: Board of Visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 184, Fort Belvoir, Virginia, on Wednesday, November 8, 1989, from 0800 until 1600. The agenda will include a review of accomplishments related to the systems acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Shelley Fink on (703) 664-4094.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24963 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

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Privacy Act of 1974, Systems of Records Notices

AGENCY: Office of the Secretary, DOD.

ACTION: Addition of two new systems of records notices for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add two new systems of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: The new systems will be effective on or before November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 11803, Apr. 7, 1986
51 FR 17506, May 13, 1986
51 FR 23573, Jun. 30, 1986
51 FR 44668, Dec. 11, 1986
51 FR 44672, Dec. 11, 1986
51 FR 44670, Dec. 11, 1986
51 FR 44665, Dec. 11,1986
52 FR 4645, Feb. 13, 1987
52 FR 11849, Apr. 13, 1987
52 FR 23334, Jun. 19, 1987
52 FR 16431, May 5, 1987
52 FR 22837, Jun. 16, 1987
53 FR 15868, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 33757, Aug. 16, 1989
54 FR 33758, Aug. 16, 1989

The new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on October 12, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 18, 1989.

DHA 01

SYSTEM NAME:

Medical Malpractice Claims Data File.

SYSTEM LOCATION:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, The Pentagon, Washington, DC 20301–1200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include health care providers named in malpractice/professional negligence claims abstracted and reported whether the claim was denied, closed favorably for the plaintiff or for the U.S. Government and patients of the health care providers, identified to the extent of Social Security Number of military sponsor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case records relating to malpractice claims recorded against DoD. Record fields consist of Facility Name, Military Department, Date of Incident, Date Claim Filed, Date Claim Closed, Litigation Settlement Data, Diagnosis and Treatment Procedures, Injury Extent Classification, Social Security Number of Military Sponsor, Patient Allegation(s) of Malpractice, Professional Review Assessment, Provider Name, Social Security Number and Medical Specialty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 11101 (Pub. L. 99–660, "Health Care Quality Improvement Act of 1986); 42 U.S.C. 11131–11134; and E.O. 9397.

PURPOSE(S):

To collect malpractice claims data provided by the Military Services. The data are used to conduct trend analyses of DoD Medical Quality Assurance Programs and to facilitate DoD compliance with requirements of the Health Care Quality Improvement Act of 1986, which includes establishment of a National Data Bank for compilation of medical malpractice information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Office of the Secretary of Defense (OSD) "Blanket Routine Uses" published at the head of this components system notices compilation are applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on paper in file folders and on a microcomputer system.

RETRIEVABILITY:

Hard copy is filed by sponsor's Social Security Number. Electronic records may be accessed by search on Social Security Number of Military Sponsor.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand alone microcomputer system with a mechanical lock for additional protection.

RETENTION AND DISPOSAL:

Paper records are destroyed after five years. The microcomputer database files are destroyed after five years. Conversion of data to aggregate form with stripping of data fields, not to include personal identifiers, is performed on older data for statistical and other data analysis uses.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200.

The request should contain the full name of either the medical professional or military sponsor, requesting individual's Social Security Number (or Social Security Number of military sponsor, if inquiry is by a claimant), military department and medical facility and notarized signature of the requester, and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR Part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical facilities of the military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHA 02

SYSTEM NAME:

Adverse Clinical privilege Actions Data File.

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, The Pentagon, Washington, DC 20301–1200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All privileged health care providers in the DoD Health Care System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of case reports to the ASD(HA) concerning permanent actions on the limitation, revocation, or reinstatement of clinical privileges of DoD military and civilian health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1102 and Executive Order 9397.

PURPOSE(S):

To collect and update adverse clinical privilege data provided by the military services to the ASD(HA). The consolidation of Service data is used by ASD(HA) to conduct trend analyses of DoD Medical Quality Assurance Programs.

To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense Health care facilities or to perform monitoring, required by law, or Department of Defense health care facilities.

To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

To hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in the above paragraph, but only with respect to the subject of such proceeding.

The Office of the Secretary of Defense (OSD) "Blanket Routine Uses" published at the head of this component's system notices compilation are applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on paper in file folders and on a microcomputer system.

RETRIEVABILITY:

Hard copy is filed by medical practitioner's Social Security Number. Electronic records may be accessed by searching on any information field. Retrievable fields are health care provider's Social Security Number, pay grade of provider, years of Federal service of provider, name of medical treatment facility, reason for clinical privileges action and status of Federation of State Medical Boards or State notification, provider specialty, source of accession, and action taken.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand alone microcomputer system with mechanical lock for additional protection.

RETENTION AND DISPOSAL:

Paper records are destroyed after five years. The microcomputer database files are destroyed after five years. Conversion of data to aggregate form with stripping of data fields, not to include personal identifiers, is performed on older records for statistical and other data analysis uses.

Destruction of paper records is by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200, where a log of these requests will be maintained.

The request should contain the full name, subject individual's social

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security number, Military Department, hospital or medical facility and notarized signature of the requester, and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301–1200.

CONTESTING RECORD PROCEDURE:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR Part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical facilities of the military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–24961 Filed 10–23–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Contract Audit Agency

Privacy Act of 1974; New Record System Notice

AGENCY: Defense Contract Audit Agency (DCAA), Department of Defense (DoD).

ACTION: Notice of a new system of records for public comment.

SUMMARY: The Defense Contract Audit Agency of the Department of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The record system notice for the new system is set forth below.

DATES: The proposed action will be effective without further notice on November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, telephone: (202) 274–4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22884, May 29, 1985 (DoD Compilation, changes follow)
51 FR 18017, May 16, 1986
54 FR 37360, Sep 8, 1989

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 12, 1989, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals", dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 18, 1989

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records.

SYSTEM LOCATION:

Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Building 4, Room 4B319, Cameron Station, Alexandria, VA 22304–6178.

DCAA regional servicing personnel offices; and offices of EAP contractors who perform employee assistance and counseling services. Addresses can be found in the appendix to DCAA's compilation of system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees assigned to DCAA activities who are referred by management for, or voluntarily request, employee assistance counseling, referral, and rehabilitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to patients which are generated in the course of professional counselling, e.g., records on the patient's condition, status, progress and prognosis of personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 43; 5 U.S.C. 310; 5 U.S.C. 7301; 10 U.S.C. 3012; 42 U.S.C. 290dd–3 and 290ee–3, 42 U.S.C. 4582; Public Law 100–71; Executive Order 12564; and Executive Order 9397.

PURPOSE(S):

The system is established to maintain records relating to the counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment program facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd–3 and 290ee–3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained and stored in automated data systems, secured filing cabinets, and electronic secured files. Extracts of treatment records are also entered into electronic database on microcomputers.

RETRIEVABILITY:

Records are retrieved manually and automatically by patient's last name, client's case number, Social Security Number, organization, office symbol and counseling area offices or any other combination of these identifiers.

SAFEGUARDS:

Records are stored in locked filing cabinets, and secured working environments. Automated records are protected by restricted access procedures, e.g., password-protected coding system. Access to records is strictly limited to Agency or contractor officials with a bona fide need for the records. Only individuals on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system. All patient records are maintained and used with the highest regard for patient privacy. Safeguarding procedures are in accordance with the Privacy Act and required in Employee Assistance Program contractual service agreements.

RETENTION AND DISPOSAL:

Patient records are destroyed three years after termination of counseling and then destroyed by shredding, burning, or pulping. Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical reporting purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Employee Assistance Program Administrator, Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, VA 22304–6178.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, Identification Number (if known), approximate date of record, geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should contact Employee Assistance Program Administrator, Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, VA 22304–6178.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, approximate date of record, geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURE:

The Defense Contract Audit Agency (DCAA) rules for accessing records and for contesting contents and appealing initial DCAA determinations by the individual concerned are published in DCAA Manual 5410.6; 32 CFR part 290a; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The patient to whom the records pertain, Employee Assistance Program counselors, supervisory personnel, co-workers; other agency personnel, outside practitioners; or private individuals to include family members of the patient.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–24960 Filed 10–23–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting Amendment

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice amends the meeting to be held on October 25, 1989, announced in the **Federal Register** of Monday, October 2, 1989 (54 FR 40476).

SUPPLEMENTARY INFORMATION: The Technical Methodology Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on October 25, 1989 from 10:30 a.m. EDT until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Office of Educational Research and Improvement, Room 402 G, 555 New Jersey Avenue NW., Washington, DC 20208.

Dated: October 19, 1989.

Christopher T. Cross,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–25004 Filed 10–23–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Research and Development of Nickel/Cadmium Alkaline Batteries

AGENCY: Idaho Operations Office, DOE.

ACTION: Solicitation for financial assistance applications No. DE–PS07–90ID12873 for Research and Development of Nickel/Cadmium (Ni/Cd) alkaline electric vehicle batteries.

SUMMARY: "Research and Development of Nickel/Cadmium (Ni/Cd) Alkaline Batteries." The U.S. Department of Energy (DOE), Idaho Operations Office (ID), is seeking applications on the basis of open competition, for cost-sharing research and development of Nickel/Cadmium (Ni/Cd) alkaline batteries in support of its Electric and Hybrid Vehicle (EV) Program. The statutory authority for this action is the Electric Vehicle and Hybrid Vehicle Research, Development and Demonstration Act of 1976. This announcement is the complete solicitation document and no other document for this work is available. The objective of this program is to execute one or more cooperative agreements to evaluate currently available fiber-electrode technologies and identify those which possess the potential for advancing nickel/cadmium batteries for Electric Vehicle traction applications. A cooperative agreement is the anticipated instrument because, in accordance with the DOE financial assistance rules, 10 CFR part 600.202, DOE will be substantially involved in the project. The substantial involvement between DOE and the awardee and DOE's authorities and responsibilities under this agreement shall be as follows:

(1) DOE will monitor project status and expenditures, and counsel the awardee if significant variance with plans and budgets occur. DOE will convene periodic project reviews, at a time and place agreeable to the awardee, to permit review of the project status by DOE and/or DOE contractor personnel.

The reviews will determine if satisfactory progress towards the goals of the project are being met and determining whether to continue funding the project, redirecting the research efforts, or canceling support of the project.

(2) Within 30 days of any project review meeting or within 30 days of receipt of any technical progress report, DOE will inform the awardee of any required changes or additions.

(3) DOE review and approval is required prior to building any cells and prior to testing the cells.

(4) DOE will recommend technology transfer activities for consideration by the awardee as part of the activities. DOE will review and approve all technology transfer activities planned by the awardee to ensure that the activities will be effective in helping development and commercial

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acceptance of the technology. All projects will be cost-shared by DOE and the Participant and project duration is expected to be approximately 36 months. Applicants should be aware that any awardee will be required to have a cost-share of not less than 10% (ten percent). No fee or profit will be paid to the Participant. DOE anticipates that approximately $130,000 will be available for support of activities during the first year, and $150,000 to $300,000 for each of the following two years. Negotiation, award, and administration will be in accordance with DOE Financial Assistance Regulations (10 CFR part 600). The Catalog of Federal Assistance number for this program is 81.086. Profit making entities, individuals, educational institutions, nonprofit institutions and other entities are eligible to submit applications in response to this solicitation. Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government are not eligible for award and should not submit applications. Applications which anticipate participation of such a laboratory by subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant Federal agency.

Background

Public Law 94–413, enacted on September 17, 1976, then modified by Public Law 95–238, authorized the U.S. Department of Energy (DOE) to conduct a program of research, development and demonstration designed to promote electric and hybrid vehicle technologies to commercial feasibility. Basic and applied research on batteries for electric and hybrid vehicles were among the activities specified by this legislation.

Over the past ten years DOE has searched for the battery type that would be the breakthrough for electric vehicle transportation. The search goes on with static electrolyte, flowing electrolyte and solid electrolyte types. Progress toward achievement of the long range goals is as elusive as ever. Several battery types, in their earliest stages of development, have exhibited high promise, but that promise has become more and more modest as research turns up additional problems of a practical nature. Currently only two battery types show field operational capability: Lead/acid and nickel/iron (Ni/Fe). Research work on the nickel/cadmium (Ni/Cd) battery for EV traction has focused on the non-sintered nickel electrode, in an effort to produce a low cost Ni/Cd battery. However, the power limitation of this technology has always been a concern. This limitation is perhaps fundamental. At issue is internal "resistance" versus pore structure as an explanation for the battery's poorer performance when compared with the lead/acid battery of the same ampere-hour rating. This is a paradox, because standard rechargeable Ni/Cd batteries are popular because of their high power with high voltage cranking ability. The non-sintered nickel electrode technology has a rapid temperature-rise characteristic at high discharge rates. The high internal heat generation causes graphite oxidation, cell swelling, and loss of cell capacity on each cycle following a high rate demand. The standard Ni/Cd battery technology possesses two characteristics which make it attractive as an improved power source for EV traction. It is a high power delivery device, as described above, and exhibits better operating characteristics at cold ambient temperatures than the lead/acid battery. Thermal management is required on battery types that lose their capability at low ambient temperatures. Thermal management is a complication in the system that elevates cost, adds bulk and weight to the vehicle, and requires energy from the battery to maintain its operating temperature which reduces the energy available for powering the vehicle.

SCOPE

This technology evaluation program is designed to refocus the Ni/Cd efforts along more conventional lines. First it is designed to evaluate available fiber-electrode technologies and identify the best technology. Assuming that this evaluation identifies a technology that possesses the potential to reduce cost without sacrificing performance and life, the next effort would be directed at identification of a suitable cadmium recombination electrode technology. If successful on both counts, this project could lead to a cost-reduced Ni/Cd battery technology with low maintenance requirements. This technology would offer significant advantages over Ni/Fe batteries, which possess no known potential for gas recombination and require almost daily watering.

The proposer is to provide a concise but definitive scope of work for inclusion into any resulting agreement. The individual key tasks are to be defined and listed in logical sequence. It is the responsibility of the proposer to incliude all items in the scope of work that are required to accomplish the stated purpose of the project. Each task is to be priced separately. DOE may choose none, all, or some combination of the tasks to be funded. As a minimum, the following tasks should be included and discussed in the statement of work:

1. Perform a survey of all fiber nickel and cadmium electrode technologies (without carbon or graphite additives) available from both foreign and domestic battery developers. Using 50 Wh/kg (at 3-hour discharge rate) as the specific energy, 120 W/kg (at 50% depth of discharge) as the peak specific power, and −20 to +60°C as the operating temperature range as targets, the surveyed technologies shall be ranked and current status documented.

2. Build three sample cells each, of the top three rated electrode combinations (20 Ah minimum size). Charge-discharge performance shall be established at five different temperatures within the range of interest (room temperature being one point). A second series of tests shall be performed with the cells charged at room temperature and then discharged at each of the five temperatures previously chosen. Room temperature charging shall be at the 5- to 6-hour rate, with all discharging at the one-hour rate. When operating at temperatures other than room temperature, the charging rates shall be established at the gassing threshold for each temperature. These thresholds will be reported as part of the cell characteristics.

3. Identify the best technologies from task 2 to perform life cycle tests. Eight cells (20 Ah minimum size) are to be built. Four cells are to be cycled at the one-hour discharge rate using a water bath to control temperature. The Simplified Federal Urban Driving Cyle (SFUDC) is to be run at regular intervals (i.e. every 50 cycles) to determine if any degradation of the dynamic characteristics is occurring.

The objective is to determine if the best fiber nickel electrode, in combination with the best cadmium electrode, can achieve or exceed 1000 cycles. The life testing requirement is to extract 70% of the maximum one-hour rate energy from the battery. Beginning-of-life performance is to be established after 20 break-in or conditioning cycles. End-of-life is to be determined when the voltage under load drops below the cutoff voltage before the specified energy is delivered; or when the acceleration fails to meet the driving cycle requirements on two consecutive cycles or twice during the same cycle on the SFUDC regime. Cutoff voltage may not be defined lower than sixty percent (60%) of the open circuit voltage. The remaining four cells are to be sent to an independent testing facility designated by DOE.

4. Survey the available cadmium recombination elecrode technologies and report on the feasibility of using one or more of these technologies to build sealed or low maintenance batteries. The objective is to prove the potential for one-year (minimum) maintenance-free operation in an EV traction application. Noble metal catalysts are not an acceptable alternative to a recombining electrode technology.

5. Build eight cells (20 Ah minimum size) of the type from Task 3 and include the best cadmium recombination electrode, if the recombination technology shows promise. Establish a test plan and test four cells to show the effectiveness of the recombination electrode. Testing shall include an initial charge current equivalent to a 5- to 6-hour discharge rate, with allowance for taper current charging after 80% SOC. The data must be usable to define the maximum taper charge current that the recombination electrode can accommodate. The remaining four cells will be sent to an independent test facility designated by DOE.

6. Demonstrate scale-up of the chosen technologies: (1) build six full-size EV cells (150-200 Ah capacity) and (2) upon approval from DOE, build eight full-size 6-volt modules for delivery.

7. Prepare a detailed weight and cost analysis of the technology used in tasks 3 and 5. The analysis shall highlight costly materials and manufacturing areas. This analysis shall identify and address the high-cost aspects of mass production process (due to high labor requirements, expensive equipment, low production rates, and/or low yields).

Note: Any hazardous waste produced or the handling of hazardous material must be handled in accordance with applicable EPA and/or OSHA regulations. The proposal must reference applicable EPA regulations and your procedures on how the waste will be treated or disposed, and how hazardous material is to be handled.

EVALUATION CRITERIA

All timely proposals received will be evaluated and point scored in accordance with the technical evaluation criteria listed below.

The criteria are listed in descending order of importance.

Technical Proposal Evaluation Criteria

The Technical Evaluation Criteria are weighted in the following manner: Criterion A is weighted approximately equal to Criterion B and three times as much as Criterion C. Subcriterion A.1 is weighted about one and one-fourth as much as subcriterion A.2. Subcriterion B.1 is weighted equal to subcriterion B.2. Subcriterion C.1 is weighted twice as much as subcriteria C.2.

Criterion A: *Statement of Objectives and Facility Description.*

1. The statement of work will be evaluated for technical quality, merit of proposed approach, and probability of achieving positive results.

2. The facility description will be evaluated to determine the capabilities of the facility to build and test NiCd cells and batteries, to handle hazardous material and dispose of hazardous waste.

Criterion B: *Qualification and Capabilities.*

1. Key personnel will be evaluated as to their work experience in the required technology areas and understanding of the technology involved, as demonstrated by education, publications, inventions, and work experience in the required technology areas.

2. The proposing organization, including subcontractor's, capabilities will be evaluated relative to (1) experience and expertise in the required technology areas, (2) the ability to manage the proposed effort, (3) past technical performance, and (4) ability to handle hazardous material and hazardous waste.

Criterion C: *Project Management Plan.*

1. Quality of the management plan provisions for technical, quality, and administrative controls, to assure appropriate project maintenance and overall management for the building and testing of cells and batteries.

2. Cost effectiveness of building and testing cells and batteries as required.

Applications shall be responsive to all the above criteria. Cost considerations will not be point scored or adjectively rated. In making the selection decision, the apparent advantages of individual technical applications will be weighed against the evaluated probable cost to the Government (including cost sharing) to determine whether better applications, excluding cost considerations are worth the evaluated probable cost differentials over other proposals. If applications are very closely ranked and the Source Selection Official determines that the superiority in the technical aspects of the higher related application(s) is not meaningful when viewed in relationship to lower rated applications, evaluated probable costs to the Government may form the basis for selection.

Other Provisions

Stevens Amendment to the DOD Appropriations Act

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds including but not limited to State and local Governments shall clearly state (1) the percentage of the total cost of the program or project, which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

Instructions

Each application in response to this solicitation should be prepared in one volume. One original and seven copies of each application is required. Applications shall exclude material not essential to evaluation of the proposal. Applications shall be as short as possible consistent with completeness, clearly and concisely written and neat and logically assembled. The importance of supplying full and completely responsive information for each of the evaluation criteria cannot be overemphasized. If the offer is submitted under a joint venture arrangement, this fact must be clearly set forth. In conducting the evaluation of applications, the Government may utilize assistance and advice from non-Government personnel. Applicants that do not consent to the use of non-Government personnel in evaluating their proposal(s) are required to make that statement on the cover of their application(s). Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR part 600.18. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation. DOE may require applications to be clarified or supplemented either through additional written submissions or oral presentations: However, the award may be made solely on the information contained in the proposal. Unsuccessful proposals/applications will not be returned but will be destroyed by DOE. DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in

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the applicable cost principles. Further, costs incurred prior to the signing of a cooperative agreement are not reimbursable. The cost principles that shall apply will depend on the type of awardee(s): FAR 31.2 shall apply to commercial organizations; OMB Circular A-21 shall apply to educational institutions; OMB Circular A-87 shall apply to State and local governments; and OMB Circular A-122 shall apply to nonprofit organizations. Reporting under any agreement awarded will be in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance." The awardee(s) must have an accounting system capable of accumulating costs by project. All applicants are required to provide in their proposal the nine-digit Taxpayer Identification Number (TIN) assigned by the U.S. Internal Revenue Service. Applications should be submitted to the contact given below.

Applications must include a completed Standard Form 424 "Application for Federal Assistance," a 424A "Budget Information," and 424B "Assurances," including the Drug-Free Workplace Certification. These may be obtained from the Contract Specialist named below. The specific reporting requirements, prepared in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance," are also obtainable from the Contract Specialist.

Notice of Possible Availability of Loans for Bid Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance

Section 211(e)(1) of the DOE Act (Pub. L. 95-91 as amended by Pub. L. 95-619) authorizes the Department of Energy (DOE) to provide financial assistance to minority business enterprises to assist them in their efforts to participate in DOE acquisition and assistance programs. Financial assistance is in the form of direct loans to enable the preparation of bids or proposals for DOE contracts and assistance awards, subcontracts with DOE operating contractors, and contracts with subcontracts of DOE operating contractors. The loans are limited to 75 percent of the costs involved. Availability of these loans is subject to annual appropriation of funds and the remaining availability of funds from such appropriations. DOE does not warrant that such assistance can be made available in sufficient time to prepare a proposal for this solicitation. DOE does point out that the program includes provisions for a preliminary review in advance of a specific loan request. Information regarding loan availability, eligibility criteria, and how to apply may be obtained from: San Francisco Operations Office, U.S. DOE, Attn: Minority Loan Program Office, 1333 Broadway, Oakland, CA 94612, (415) 273-6403.

The closing date and time will be: 4:00 p.m., Idaho Falls, Idaho local time, on November 17, 1989. Be aware that the applications must be submitted no later than the closing date and time, according to the criteria of 10 CFR part 600.13 entitled "Application Deadlines." Evaluation of the proposals will commence approximately one week after the closing date. Late applications will be handled in accordance with 10 CFR part 600.13. Prospective applicants who intend to submit an application in response to this solicitation should so notify the contact below in writing.

Questions regarding this solicitation should also be submitted to the contact below in writing and postmarked prior to October 20, 1989. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent to those notifying this office of their intent to submit an application. Selection and award are expected to be made within four months of the closing date of this solicitation.

CONTACT: Kenny K. Osborne, Contract Specialist, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Elizabeth M. Bowhan,
Contracting Officer.

Issued this 25th day of September at Idaho Falls, Idaho.

J. Roger Gonsales,
Director, Contracts Management Division.

[FR Doc. 89-25028 Filed 10-23-89; 8:45 am]
BILLING CODE 6450-01-M

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities, DOE.

Date and Time: Monday, November 13, 1989, 8:30 a.m.-5:30 p.m. Tuesday, November 14, 1989, 8:00 a.m.-4:30 p.m.

Place: The Registry Hotel, 3023 Quebec Street, Denver, CO 80207.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC. 20585, Telephone: (202) 586-7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Monday, November 13, 1989

8:30 am—Inivted Testimony and Work Session
11:30 am—Tentatively Scheduled:
—Oil, Chemical and Atomic Workers
—Physicians for Social Responsibility
—United Steel Workers of America, Local 8031
11:30 am—Public Comment
12:00 pm—Lunch Break

Monday, November 13, 1989 (con't)

1:15 pm—Invited Testimony and Work Session
5:30 pm—Tentatively Planned
—A Presentation on environmental epidemiology and data management

Tuesday, November 14, 1989

8:30 am—Invited Testimony and Work Session
11:30 a.m.—Tentatively Scheduled
—Technical Steering Panel of the Hanford Environmental Dose Reconstruction Project
—Discussion and action on an Interim Report to the Secretary of the Department of Energy (For discussion draft see below; public comment on Panel activities at 11:30 am Monday November 13)
11:30 am—Lunch Break
1:00 pm—Invited Testimony and Work Session
5:00 pm—Tentatively Scheduled
—Panel discussion on epidemiologic research activities of the Department of Energy
—Orientation to Rocky Flats

Note: The Panel's discussion draft of an Interim Report will be available for review approximately ten (10) days before the meeting at the Department of Energy's Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC between 9:00 and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: October 18, 1989.

J. Robert Franklin,
Deputy, Advisory Committee Management Officer.

[FR Doc. 89-25029 Filed 10-23-89; 8:45 am]
BILLING CODE 6450-01-M

Bonneville Power Administration

Yakima/Klickitat Production Project: Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposal to construct and operate anadromous fisheries facilities within a floodplain of the Yakima and Klickitat River basins.

SUMMARY: BPA proposes to fund the construction and operation of anadromous fish production facilities on the Yakima and Klickitat River basins. Due to the nature of the proposed facilities, some may be located within the 100-year floodplain. The Yakima Indian Nation submitted a recommendation to the Pacific Northwest Electric Power and Conservation Planning Council (Council) identifying the need for these facilities to supplement natural fish runs. This recommendation was adopted by the Council and incorporated as sections 703(f)(3), 503(c)(2), and 803(d) of the Columbia River Basin Fish and Wildlife Program. The purpose of the Program is to work toward rebuilding fish and wildlife populations harmed by the development and operation of the Federal Columbia River Power System.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621-AJ, Portland, Oregon 97208; (503) 230-5136. Maps and additional information are available from the Yakima Project Manager, Tom Clune, P.O. Box 2685, Yakima, Washington 98907; (509) 575-5805.

SUPPLEMENTARY INFORMATION: The proposed plan for the Yakima basin calls for 1 or 2 central facilities, 5 to 8 satellite facilities, and 5 to 10 acclimation sites. The proposed plan for the Klickitat basin calls for one central facility, two satellite facilities, and several acclimation facilities. Water intake and output structures for each facility would be located in the floodplain facilities, to take water from the river for different functions of the facilities and to release water back to the river again. Construction for these facilities could begin as early as 1992.

DOCUMENTS AVAILABLE: An Environmental Assessment (EA) on the project is being prepared. A draft of the EA was distributed for public review in June through August 1989. The EA will include a floodplain assessment, an evaluation of the proposed facilities, and other information on potential environmental effects. You may obtain copies of the EA (106 pages plus appendices) by calling BPA's toll-free numbers: 800-841-5867 for Oregon; or 800-624-9495 for other States. You will reach a recorded message where you may leave a request for the *Yakima/Klickitat EA.*

Issued in Portland, Oregon, on October 10, 1989.

Jack Robertson,
Acting Administrator.

[FR Doc. 89-25032 Filed 10-23-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-17554-000, et al.]

Concoco Inc., et al.; Applications for Termination or Amendment of Certificates [1]

October 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-17554-000, D, 9-26-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Texas Gas Transmission Corporation, Bayou Pigeon Field, Iberia Parish, Louisiana.	Assigned 7-1-87 to Sound Resource Inc. and James E. Hughes.
CI78-195-001, D, 9-21-89	Union Oil Co. of California, P.O. Box 3100, Midland, TX 79702.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	Assigned 8-1-89 to Hondo Oil and Gas Compan.
CI85-490-002, D, 9-25-89	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, New Mexico Federal Unit Leases, Lea County, New Mexico.	Assigned 1-1-89 to V.H. Westbrook.
CI89-548-000, (G-6831), D, 9-18-89.	Amoco Production Co., P.O. Box 3092, Houston, Texas 77253.	Transco Energy Marketing Company, Harris Field, Live Oak County, Texas.	Assigned 4-1-89 to Kamlok, Inc.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

[FR Doc. 89-24968 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. CI89-549-000, et al.]

Exxon Corp., et al.; Applications for Certificates [1]

October 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-549-000 (CI62-1251) F 9-21-89.	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Arkla Energy Resources, a Division of Arkla, Inc. Arkoma Area, Haskell and LeFlore Countries, Oklahoma.	Acreage acquired 4-1-88 from Sun Exploration and Production Company.
CI89-550-000 (G-6355) F 9-25-89.	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	El Paso Natural Gas Company, Arrowhead (Jalmat Gas Pool), Lea County, New Mexico.	Acreage acquired 2-1-88 from Concoco Inc.
CI89-551-000 (G-3610) F 9-29-89.	Exxon Corp.	El Paso Natural Gas Company, South Fullerton Field, Andrews County, Texas.	Acreage acquired 10-1-88 from Sun Exploration and Production Company.
CI89-552-000 (G-5991) F 9-29-89.	Exxon Corp.	El Paso Natural Gas Company South Fullerton Field, Andrews County, Texas.	Acreage acquired 10-1-88 from Sun Exploration and Production Company.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

[FR Doc. 89-24969 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-61-000 et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

October 17, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP90-61-000]

Take notice that on October 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-61-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Natural Gas Corporation (American), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 515 MMBtu per day equivalent of natural gas for American. United states that it would transport the gas from a receipt point in Sabine Parish, Louisiana, and would deliver the gas to a delivery point in Covington County, Mississippi.

United advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4860-000 (filed September 29, 1989). United further advises that it would transport 515 MMBtu on an average day and 187,975 MMBtu annually.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. National Fuel Gas Supply Corp.

[Docket No. CP88-759-003]

Take notice that on September 29, 1989, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-759-003, a petition, as supplemented on October 11, 1989, to amend the certificate of public convenience and necessity issued in Docket No. CP88-759-000, as amended, so as to authorize, for an additional one-year period commencing December 16, 1989, the transportation on an interruptible basis of up to 112,952 Mcf per day on behalf of National Fuel Distribution Corporation (Distribution) for the account of 70 of its existing customers. National Fuel also seeks authorization to transport up to 46,437 Mcf per day for the account of 12 additional customers of Distribution for a like term. Finally, National Fuel seeks an additional one-year term commencing December 16, 1989, for the authorization granted to National Fuel in Docket No. CP87-389-003, *et al.* All of these requests are more fully set forth in the petition and open to public inspection.

It is stated that National Fuel was authorized on December 16, 1988, in Docket No. CP88-759-000 to transport up to 114,132 Mcf of natural gas per day on behalf of Distribution for the account of 83 customers of Distribution. It is stated that on April 27, 1989, and July 26, 1989, the Commission in Docket Nos. CP88-225-002, *et al.*, and CP87-389-003, *et al.* respectively authorized National Fuel to transport additional volumes of gas and/or modify the receipt or delivery points applicable to certain of these customers.

National Fuel now requests to further amend the certificates issued in Docket No. CP88-759-000, as amended and modified, so as to extend the term of the interruptible transportation of up to 112,952 Mcf per day on behalf of

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] Apendices A and B can be picked up in the Office of Public Reference, as they will not be published in the Federal Register.

Distribution for the account of 70 of the original customers (Appendix A) [1] and to add 12 new end-user customers using up to 46,437 Mcf per day (Appendix B).[1]

National Fuel also seeks to extend the term of the authorization issued July 26, 1989, in Docket Nos. CP87-389-003, *et al.* by an additional one year. It is indicated that National Fuel proposes to extend the authorization for all of the customers of Distribution covered by the July 26, 1989, order except Stackpile Carbon. Details such as receipt/delivery points and sellers are available in National Fuel's application.

National Fuel proposes no change in the authorized rates and proposes no new facilities to implement the change in service.

Comment date: November 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP90-23-000]

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP90-23-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase in daily contract demand of two existing sales customers and the addition of a new point of delivery for such customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes sales under its Rate Schedule C-4 to Cincinnati Gas & Electric Company (CG&E), and the Union Light, Heat and Power Company (Union Light). Texas Gas proposes to increase the contract demand for CG&E by 42,000 MMBtu per day and increase the contract demand of Union Light by 8,000 MMBtu per day, for a total increase of 50,000. Texas Gas also proposes to add, as a new delivery point for both CG&E and Union Light, the existing interconnection between Texas Gas and Columbia Gas Transmission Corporation (Columbia) at Lebanon, Ohio.

It is said that the increases in daily contract demand represents a portion of the daily contract demand which Columbia abandoned on the Texas Gas system under the automatic provisions of § 157.21(a) of the Commission's Regulations.

It is further said that the additional contract demand for CG&E and Union Light would increase both companies' access to Texas Gas as a long-term supplier as well as continue to provide both companies with access to competitively-priced natural gas.

Comment date: November 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Co.

[Docket No. CP90-51-000]

Take notice that on October 12, 1989, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP90-51-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish, construct and operate new delivery points for existing customers, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee requests authorization to construct and operate 8 new delivery points, as listed below.

(1) One new delivery point and meter facilities for the Athens Utilities Board (Athens), located in McMinn County, Tennessee, to be located where East Tennessee's transmission line crosses county road No. 713.

(2) One new delivery point and meter facilities for the Citizens Gas Utility District of Scott and Morgan Counties (CGUD), to be located in Morgen County, Tennessee.

(3) One new delivery point and meter facilities for Loudon Utilities (Loudon), to be located on East Tennessee's Lenoir City Lateral in Loudon County, Tennessee.

(4) One new delivery point and meter facilities for Oak Ridge Utility District (ORUD), to be located in Roane County, Tennessee.

(5) Two new delivery points for the Middle Tennessee Utility District of Cannon, Cumberland, DeKalb, Hamilton, Putnam, Rhea, Rutherford, Smith, Warren, White, and Wilson Counties, Tennessee (MTUD), both points to be located on East Tennessee's Monerey Lateral in Cumberland County, Tennessee.

(6) One new delivery point for the Natural Gas Utility District of Hawkins County, Tennessee (NGUD), to be located on East Tennessee's American St. Gobain-Hawkins County Extension in Hawkins County, Tennessee.

(7) One new delivery point for Chattanooga Gas Company (Chattanooga), to be located on East Tennessee's Atlanta Lateral in Hamilton County, Tennessee.

East Tennessee states that the total volumes that would be delivered to the customers listed above, would not exceed the total volumes currently authorized for delivery. It is also stated that no existing tariff would prohibit the proposal and that East Tennessee would have sufficient capacity to effect deliveries at each of the proposed delivery points without detriment or disadvantage to its other customers. It is indicated that the proposed delivery points would have no impact on East Tennessee's peak day authorizations because no increased authorization of deliveries to any customers is proposed. It is stated that the proposed delivery points would be financed by cash on hand. East Tennessee indicates that the volumes that would be delivered to the proposed points and the estimated cost of each new delivery point are as follows.

Customer	Peak day (Mcf)	Max. hour (Mcf)	Cost
Athens	2,143	125	$100,000
CGUD	341	20	33,000
Loudon	1,160	68	100,000
ORUD	1,714	100	130,000
MTUD	(1) 1,000	58	5,000
	(2) 50	3	5,000
NGUD	5,143	300	8,000
Chattanooga	2,000	117	95,000

East Tennessee states that the new delivery point for Athens would be to enhance system pressure and to meet industrial and residential growth in the West Athens area. It is stated that the delivery point for CGUD would be to improve the integrity of that system which is presently not looped and it would enable CGUD to minimize the number of customers losing services in the event of an emergency and meet continuing growth in residential and industrial markets. It is stated that the Loudon delivery point would serve an industrial park north of Loudon, Tennessee, and would also permit Loudon to serve adjacent commercial and residential development. It is indicated that the ORUD delivery point would enhance system integrity and enable ORUD to serve a growing portion of its service area by improving system capacity and reliability.

East Tennessee states that one of the MTUD delivery points would enable MTUD to serve those consumers currently without gas service, and that the other MTUD delivery point would primarily provide service to an industrial food processing plant. It is indicated that the Chattanooga delivery point would enhance system pressure

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and provide additional supply to a rapidly growing area in Hamilton County that might otherwise experience numerous outages during a peak hour, and would also permit Chattanooga to meet continuing growth in Hamilton County.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP90–35–000]

Take notice that on October 10, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP90–35–000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for BP Gas Inc. (Shipper), under its blanket certificate issued in Docket No. CP88–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that it proposes to transport up to 100,225 MMbtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points at the borderline between Arizona and California and to a delivery point in Oklahoma.

El Paso also states that the estimated daily and annual quantities would be 10,550 MMBtu and 3,850,750 MMbtu, respectively.

El Paso further states it commenced this service on August 25, 1989, as reported in Docket no. ST89–4574–000.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP90–47–000]

Take notice that on October 11, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–47–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Inc. (TGM) under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 10,550 MMBtu equivalent of natural gas on a peak day, 10,550 MMBtu equivalent, and 3,850,750 MMBtu on an annual basis for TGM. It is stated that El Paso would receive the gas for TGM's account at any point on El Paso's system and would deliver equivalent volumes to TGM at various points on El Paso's system in Maricopa County, Arizona. It is asserted that the transportation service would use existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced on September 2, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–4783.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Pacific Gas Transportation Co.

[Docket No. CP90–1–000]

Take notice that on October 3, 1989, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, CA 94105, filed pursuant to section 3 of the Natural Gas act, Executive Order No. 10485 as amended by Executive Order No. 12038, the Department of Energy's Delegation Order No. 0204–112 and § 153.10 *et seq.* of the Regulations of the Federal Energy Regulatory Commission (Commission) an application for Authorization under section 3 of the Natural Gas Act for a Presidential Permit for the construction, operation, maintenance and connection at the International Boundary between Canada and the United States of facilities for the Importation of Natural Gas. PGT states that this application is filed in conjunction with its application for a Certificate of Public Convenience and Necessity (Certificate Application) filed on December 20, 1988, in Docket No. CP89–460–000 and as amended on October 2, 1989, all as more fully set forth in the request on file with the Commission and open to public inspection.

PGT is a natural gas company as defined by the Natural Gas Act (NGA) and is engaged in the business of transporting, purchasing, importing and selling natural gas in interstate commerce. PGT owns and operates a natural gas pipeline which extends from the International Boundary with Canada at a point near Kingsgate, British Columbia through the states of Idaho, Washington and Oregon to the Oregon-California border at a point near Malin, Oregon. PGT is a wholly-owned subsidiary of Pacific Gas and Electric Company (PG&E). PG&E is an operating public utility engaged in the business of supplying electric and natural gas service throughout the most northern and central California.

PGT's Certificate Application, as amended, seeks authorization to construct and operate facilities that will allow approximately 853 MMcf/d of natural gas to be received at Kingsgate, British Columbia and approximately 61 MMcf/d to be received at Stanfield, Oregon. At the International Boundary PGT will install 42-inch diameter buried pipe connecting to the existing Kingsgate meter station just north of the International Boundary.

PGT will, on the proposed facilities, provide transportation services pursuant to the FERC tariffs.

PGT states that copies of this filing have been mailed to its customers, interested state commissions and all parties appearing on the official service list in Docket No. CP89–460–000.

Comment date: November 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. CNG Transmission Corporation

[Docket No. CP90–38–000]

Take notice that on October 10, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302–2450, filed in Docket No. CP90–38–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Texas-Ohio Gas, Inc. (Texas-Ohio) under its blanket certificate issued in Docket No. CP86–311–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG proposes to transport gas for Texas-Ohio from various interconnections between Texas Eastern Transmission Corporation and CNG to Niagara Mohawk Power Corporation.

CNG further states that the maximum daily, average daily and annual quantities that it would transport for Texas-Ohio would be 10,000 dt equivalent of natural gas, 52 dt equivalent of natural gas and 18,980 dt equivalent of natural gas, respectively.

CNG indicates that in a filing made with the Commission in Docket No. ST89–4834 it reported that transportation service for Texas-Ohio had begun on August 24, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

Trunkline Gas Co.

[Docket No. CP90–29–000]

Take notice that on October 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP90–29–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of partial abandonment of sales service to Panhandle Eastern Pipe Line Company (Panhandle), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline and Panhandle have entered into a new Service Agreement dated September 1, 1989. The new agreement provides for a firm daily sales contract demand reduction to 200,000 Mcf pursuant to Panhandle's election of its rights under Order No. 490. By this application, Trunkline seeks Commission authorization to partially abandon such jurisdictional service to be effective November 1, 1989 to coincide with the effective date of the service agreement.

Comment date: November 7, 1989 in accordance with Standard Paragraph F at the end of the notice.

10. Pacific Gas Transmission Co.

[Docket No. CP89–460–001]

Take notice that on October 3, 1989, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed this Amendment to its Application in Docket No. CP89–460–000, pursuant to section 7(c) of the Natural Gas Act (NGA) for a Certificate of Public Convenience and Necessity authorizing PGT to build and operate facilities and authorizing the interstate transportation of natural gas transported thereby for certain customers located in the Pacific Northwest and in California (Shippers). The proposed facilities would complete the looping of PGT's existing pipeline within its existing rights-of-way and are referred to as the Expansion Project. PGT intends to provide firm and interruptible transportation services on these new, incremental facilities, all as more fully set forth in the request on file with the commission and open to public inspection.

PGT's original application in Docket No. CP89–460–000 seeks authorization to construct and operate facilities and authorization for the interstate transportation of natural gas transported thereby for certain shippers in the Pacific Northwest the intermountain region and California (jointly referred to as shippers). Specifically, PGT seeks authorization to construct and operate an incremental looping of its existing pipeline facilities from Kingsgate, British Columbia to Malin, Oregon at the interconnection with the facilities of PGT's parent Pacific Gas and Electric (PG&E). The original facilities design in Docket No. CP89–460–000 provided for firm annual average transportation service of approximately 150 MMcf per day to the Pacific Northwest and 600 MMcf per day to California.

Since the filing of the original application in Docket No. CP89–460–000, PGT states that it has fully subscribed the capacity on the proposed facilities through the execution of exclusive Precedent Agreements. Moreover, PGT states, discussions with these Shippers led to a commitment by PGT to modify the design of the looping facilities to reflect the specific annual seasonal requirements of these shippers and to add additional delivery points.

PGT states that the purpsoe of its amendment is to reflect these additional shippers, their volumetric requirements and the resulting facility and related cost changes. Accordingly, PGT states, it incorporates its original application by reference. PGT now seeks authorization to construct and operate facilities that will allow, on a firm annual average basis, approximate receipts and deliveries as follows:

Receipts (including fuel and line losses):
—872 MMCF/d at Kingsgate, British Columbia
—62 MMCf/d at Stanfield, Oregon

Deliveries:
—150 MMcf/d in the Pacific Northwest
—766 MMcf/d to PG&E near Malin, Oregon

PGT will install approximately 430 miles of 42-inch diameter pipeline looping from the International Boundary to Malin, where PGT's system interconnects with that of PG&E and an additional 56,800 horsepower of compression.

The Expansion Project also includes looping of the PG&E intrastate pipelines within the state of California. The proposed 42-inch looping will continue for 294 miles on PG&E's system to a terminus near Brentwood, California. PG&E will also install an additional 120 miles of 36-inch looping south of Brentwood, paralleling existing pipelines to Panoche Station. PG&E facilities are all within the state of California Public Utilities Commission (CPUC). PG&E is seeking appropriate certificate authorization from the CPUC of such facilities (CPUC Application No. 89–04–033).

PGT's existing compressor station will be used. Horsepower additions are proposed at three compressor stations. Ccompressor equipment changes will be required on 22 existing units at 11 existing stations. One turbine and compressor will be added at an existing station. Two existing compressors and their turbines will be replaced. Turbines used to drive the remaining existing compressors are expected to remain in place for the new service. Existing metering facilities will be expanded to increase flows and new meters and taps will be installed for deliveries to Wallula and Hermiston.

Proposed Expansion Service

As more fully described in the application, PGT states that the firm transportation capacity proposed to be constructed is fully subscribed. The Shippers have signed Precedent Agreements committing to the Expansion Project on an exclusive basis for the firm capacity identified below:

	Annual average MMcf/d	Winter MMcf/d	Summer MMcf/d
Pacific Northwest			
Kingsgate, B.C. to Spokane WA: Washington Water Power Company	45	60	30
Kingsgate, B.C. to Stanfield, OR and proximity: Cascade Natural Gas Corporation	30	37.5	22.5
IGI Resources, Inc.	33	38	28
Northwest Natural Gas Company	48	50	30
Total Pacific Northwest	148	185.5	110.5

California	
Kingsgate, B.C. to Kern River Station, CA:	
American Hunter Exploration, Ltd.	50
BP Gas Inc.	10
The City of Burbank	5
The City of Glendale	5
The City of Long Beach	15
The City of Pasadena	5
NATGAS US Inc.	50
Pacific Gas and Electric Company	100
Pancontinental Oil Ltd.	5
Salmon Resources Limited	50
San Diego Gas and Electric Company	100
Southern California Edison Company	200
Suncor Inc.	50
Trigen Resources Corporation	50
Stanfield, OR to Kern River Station, CA:	
BP Resources Canada Ltd.	10
Williams Gas Marketing Company	50
Total California	755

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The Canadian gas purchased by the Shippers will be transported to the International Boundary near Kingsgate, through additional pipeline expansions in Alberta and southeastern British Columbia. PGT will transport the gas for the Shippers through the Expansion Project, to various off-line delivery points in Idaho, Washington,, and Oregon for redelivery to the Pacific Northwest and intermountain region Shippers, and to a delivery point on PG&E's pipeline system at Malin, Oregon where PG&E will provide the firm transportation on to Kern River Station for redelivery to California Shippers. PGT will also receive certain volumes at Stanfield, Oregon for delivery to Kern River Station.

Expanding its facilities as necessary, PG&E will deliver thermally equivalent volumes, adjusted for fuel and line losses, to southern California at the major intrastate interconnection of the PG&E and Southern California Gas Company (SoCal Gas) systems at the Kern River Station. Gas service to northern and central California will also be provided from this point by PG&E. In the Pacific Northwest and the intermountain region, Shippers will be responsible for redelivery of the gas to their own distribution systems from the point of interconnection with Northwest's existing system at Stanfield, Spokane, or other established delivery points.

PGT estimates that on or about November 1, 1993, it will begin deliveries for the Customers, assuming the receipt of all necessary regulatory approvals and the completion of necessary preconstruction activities in time to allow construction to begin in early 1992.

Proposed Facilities, Capital Costs, and Tariffs

PGT's proposed facilities now consist of 430 miles of 42-inch pipeline looping which will operate at the same maximum pressure as PGT's existing pipeline, 911 psig.

Capital costs, including allowance for funds used during construction, for PGT's portion of the Expansion Project are estimated, on a fourth quarter 1988 cost basis, at $653,050,000, an increase over the originally filed costs of $164,934,000. PGT proposed to finance the Expansion Project, with an initial projected mix of 70 percent debt and 30 percent equity capital. PGT proposes to depreciate the Expansion Project based on a 30-year life.

The cost for the proposed new transportation services continue to include only incremental costs and do not include any costs of PGT's existing pipeline system. Under this cost allocation proposal, PGT's existing customers bear no cost responsibility for service on the Expansion Project.

PGT now proposes to provide new firm transportation service, based on the incremental cost of the Expansion Project, via only Rate Schedule T-3, which now incorporates all firm transportation service. Previously-filed Schedule T-4 is now deleted.

The proposed rate structure has been modified from a two-part monthly reservation charge to a one-part reservation charge initially designed to recover 100 percent of the total fixed costs of the Expansion Project based upon contracted maximum daily quantities. This change reflects the Commission's rate design policy at Docket No. PL-89-2, et al. PGT continues to request the authority to negotiate individually with Customers, a reservation charge which may be lower than the maximum level contained in this Application. Firm transportation priorities would be based on the value of the Customer's per-unit reservation charge.

Some specific changes from PGT's original proposal in Docket No. CP89-460-000 in its amendment are:

(1) PGT proposes to install approximately 430 miles of 42-inch diameter pipeline looping instead of the 36-inch diameter pipeline looping previously proposed.

(2) PGT states that discussions with its shippers led to a commitment by PGT to modify the design of the looping facilities to reflect the specific annual seasonal requirements of the shippers.

(3) The original facilities design provided for firm annual average transportation service of approximately 150 MMcf per day to the Pacific Northwest and 600 MMcf per day to California; whereas, the amended proposal calls for an increase in deliveries to California of approximately 766 MMcf per day near Malin, Oregon.

(4) Capital costs for the amended proposal are now estimated at $635,050,000 on a 1988 cost basis rather than the $470,116,000 previously proposed.

(5) The original proposed rate structure consisted of a two-part monthly reservation charge using a D-1 and D-2 component, each designed to uncover 50 percent of the total fixed cost of the expansion; whereas, the amended proposal consists of a one-part reservation charge initially designed to recover 100 percent of the total fixed cost of the expansion project.

Comment date: November 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24974 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2210-000]

ANR Pipeline Co.; Application

October 18, 1989.

Take notice that on October 12, 1989,[1] ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP89-2210-000, pursuant to section7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing ANR to change its methodology for determining the heat content of natural gas measured and to maintain customer entitlements at current levels, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the instant application is being filed to reflect a change in method of measuring the Btu content of gas subject to its rate schedules which are on file with the Commission. More specifically, ANR states that henceforth the Btu content of the gas would be measured on a "dry" basis rather than a "saturated" basis in accordance with its rate case filings submitted in Docket No. RP89-161-000. It is explained that although the maximum daily contract quantities and annual contract quantities are expressed in dekatherms, the effect of the change in method of measurement would result in a customer's having the right to receive 1.77 percent less heating value than before the change. Therefore, to maintain customer entitlements at current levels, ANR proposes to increase the dekatherm amounts 1.77 percent for customers requesting such increase.

ANR states that it is presently carrying out the process of executing service agreements with the sales customers listed in the appendix hereto, to reflect the increased amounts up to 1.77 percent, and copies of such agreements would be filed with the Commission when available. Furthermore, ANR proposes to make the revised service entitlements set forth in the appendix effective on November 1, 1989, and to operate pursuant thereto from that date forward. ANR advises that all but two of ANR's "X-" rate schedules are measured in volumes and not dekatherms. ANR further advises that those contracts are either not affected by the change of heat content measurement method or the customers have not elected an increase.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

ANR PIPELINE COMPANY; PROPOSED CONTRACT ENTITLEMENT INCREASES

[Volumes in Dth]

Resale customers	Entitlement base		Revised entitlement		Proposed increase	
	MDQ	ACQ	MDQ	ACQ	MDQ	ACQ
CD-1						
Associated Natural Gas Co	10,796	1,300,000	10,796	1,300,000	0	0
Battle Creek Gas Co.[1]	4,700	1,700,000	4,700	1,700,000	0	0
Fountaintown Gas Co	4,500	450,000	4,500	450,000	0	0
Illinois Power Co	8,000	1,050,000	8,000	1,050,000	0	0
Iowa Electric Light and Power Co	5,502	530,534	5,599	539,924	97	9,390
Iowa Southern Utilities Co	40,000	2,900,000	40,000	2,900,000	0	0
Madison Gas and Electric Co	129,150	13,500,000	129,150	13,500,000	0	0
Michigan Gas Utilities Co.[1]	12,500	3,200,000	12,500	3,200,000	0	0
Michigan Gas Utilities Co	105,656	11,235,600	105,656	11,235,600	0	0
Michigan Gas Co	92,136	12,000,000	92,136	12,000,000	0	0
Midwest Gas Co	9,471	1,024,320	9,471	1,024,320	0	0
Northern Indiana Fuel & Light Co	14,070	1,000,000	14,319	1,017,700	249	17,700
Northern Indiana Public Service Co	12,261	1,615,787	12,261	1,615,787	0	0
Ohio Gas Co	2,200	127,500	2,200	127,500	0	0
Ohio Valley Gas Corp	9,500	820,000	9,500	820,000	0	0
United Cities Gas Co	10,030	557,175	10,030	557,175	0	0
West Ohio Gas Co	9,107	500,000	9,268	508,850	161	8,850
Wisconsin Fuel and Light Co	70,000	9,000,000	71,239	9,159,300	1,239	159,300
Wisconsin Gas Co	665,000	54,400,000	676,700	55,350,000	11,700	950,000
Wisconsin Natural Gas Co	352,391	48,500,000	358,628	49,358,450	6,237	858,450
Wisconsin Power and Light Co	120,000	11,475,000	122,124	11,678,108	2,124	203,108

[1] The instant filing was received by the Commission on September 29, 1989. However, pursuant to § 381.103(b)(iii) of the Regulations, the filing date corresponds to the date the appropriate filing fees were received, *i.e.*, October 12, 1989.

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ANR PIPELINE COMPANY; PROPOSED CONTRACT ENTITLEMENT INCREASES—Continued

[Volumes in Dth]

Resale customers	Entitlement base		Revised entitlement		Proposed increase	
	MDQ	ACQ	MDQ	ACQ	MDQ	ACQ
Wisconsin Public Service Corp	237,040	25,582,500	237,040	25,582,500	0	0
Total CD-1	1,924,010	202,468,416	1,945,817	204,675,214	21,807	2,206,798
MC-1						
Michigan Copnsolidated Gas Co	856,000	100,000,000	856,000	100,000,000	0	0
SGS-1						
Albany, Missouri, City of	1,717	138,000	1,747	140,443	30	2,443
Aledo, Illinois, City of	3,204	310,000	3,261	315,487	57	5,487
Allerton Gas Co	1,159	314,686	1,180	320,256	21	5,570
Alta Vista, Kansas, City of	995	50,000	995	50,000	0	0
Bethany, Missouri, City of	2,744	300,000	2,744	300,000	0	0
Bloomfield, Iowa, City of	3,015	220,000	3,015	220,000	0	0
Chrisney, Indiana, Town of	955	181,403	955	181,403	0	0
City Gas Co	6,030	850,000	6,137	865,045	107	15,045
Community Natural Gas Co., Inc	2,990	250,000	3,043	254,425	53	4,425
Havensville, City of	200	15,000	200	15,000	0	0
Grant City, Missouri, City of	1,558	65,000	1,558	65,000	0	0
Indiana Gas Co, Inc	2,614	150,000	2,614	150,000	0	0
Indiana Natural Gas Corp	2,513	477,375	2,513	477,375	0	0
Lamoni, Iowa, City of	2,171	200,000	2,171	200,000	0	0
Lincoln Natural Gas Co., Inc	8,030	1,071,981	6,030	1,071,981	0	0
Lineville, Iowa, City of	603	25,000	603	25,000	0	0
Milan, Missouri, City of	3,161	220,000	3,161	220,000	0	0
Missouri Valley Natural Gas Co	4,878	413,500	4,964	420,819	86	7,319
Morning Sun, Iowa, City of	1,106	75,000	1,106	75,000	0	0
Moulton, Iowa, City of	704	42,000	704	42,000	0	0
New Boston, Illinois, City of	804	53,000	818	53,938	14	938
Paris-Henry County Public Utility	6,200	800,000	6,310	814,160	110	14,160
Preinceton, Missouri, City of	1,616	90,000	1,616	90,000	0	0
St. Joseph Light and Power Co	8,939	1,500,000	9,097	1,526,550	158	26,550
Stanberry, Missouri, City of	1,111	85,000	1,131	86,505	20	1,505
Unionville, Missouri, City of	2,221	145,000	2,221	145,000	0	0
Mayland, Iowa, City of	1,196	80,000	1,196	80,000	0	0
West Tennessee P.U.D	4,523	859,275	4,603	874,484	80	15,209
Wetmore, Kansas, City of	402	23,100	402	23,100	0	0
Winfield, Iowa, City of	1,382	85,000	1,406	86,505	24	1,505
Wisconsin Southern Gas Co	3,015	400,000	3,068	407,080	53	7,080
Total SGS-1	79,756	9,489,320	80,569	9,596,556	813	107,236

[1] Note: Entitlements shown are pending Commission authorization in Docket No. CP88-14-000.

[FR Doc. 89-24973 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-231-001, TM90-1-30-001, TM90-3-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 17, 1989.

Take notice that Trunkline Gas Company (Trunkline) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute First Revised Sheet No. 3-A.5
First Substitute First Revised Sheet No. 3-A.6

The proposed effective date of these revised tariff sheets is October 1, 1989.

Trunkline states that on August 31, 1989 Trunkline filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988, December 8, 1988, February 17, 1989 and May 10, 1989 in Docket No. RP88-239-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 21.4(c) of Trunkline's FERC Gas Tariff, Original Volume No. 1. Additionally, Trunkline proposed to modify section 21.4(c) of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Trunkline states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-231-000 and TM90-1-30-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Trunkline states that copies of its filing have been served on all parties, affected jurisdictionary customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24972 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-232-001, TM90-5-28-000, TM90-4-28-001]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 17, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute First Revised Sheet No. 3-C.4
First Substitute First Revised Sheet No. 3-C.5
First Substitute First Revised Sheet No. 3-C.6

The proposed effective date of these revised tariff sheets is October 1, 1989.

Panhandle states that on August 31, 1989 Panhandle filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988 and December 5, 1988 in Docket No. RP88-241-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 23 of Panhandle's FERC Gas Tariff, Original Volume No. 1. Additionally, Panhandle proposed to modify sections 23.4(c) and 23.5 of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Panhandle states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-232-000 and TM90-4-28-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24971 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-227-001, TM90-2-28-001, TM90-6-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 17, 1989

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute First Revised Sheet No. 3-C.7
First Substitute First Revised Sheet No. 3-C.8
First Substitute First Revised Sheet No. 3-C.9

The proposed effective date of these revised tariff sheets is October 1, 1989.

Panhandle states that on August 31, 1989 Panhandle filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988, December 8, 1988, March 1, 1989 and May 17, 1989 in Docket No. RP88-240-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 24 of Panhandle's FERC Gas Tariff, Original Volume No. 1. Additionally, Panhandle proposed to modify section 24.2 of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Panhandle states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-227-000 and TM90-2-28-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR Section 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24970 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB), DOE.

Date & Time: November 8, 1989, 1-5 p.m.; November 9, 1989, 8:30 a.m.-12 noon.

Place: U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5444.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

November 8, 1989

1 p.m. Administrative Items
1:15 p.m. Discussion on ERAB Activities and Future Plans for the Secretary's Advisory Board
2:15 p.m. Review of Cold Fusion Panel's Final Report
4:50 p.m. Public Comment (10 minute rule)
5 p.m. Adjourn

November 9, 1989

8:30 a.m. Discussion of the Panel on Accelerator Production of Tritium
10 a.m. DOE's Activities in Developing a National Energy Strategy

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11 a.m. Possible Future Board Studies
12:50 p.m. Public Comment (10 minute rule)
1 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 19, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–25033 Filed 10–23–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–45–NG]

Transco Energy Marketing Co.; Conditional Order and Final Interim Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of conditional order and final interim order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order and a final interim order granting Transco Energy Marketing Company (TEMCO) authorization to import natural gas from Canada. The order issued in FE Docket No. 89–45–NG conditionally authorizes TEMCO to import up to 75,000 Mcf per day of natural gas using proposed new facilities over a term beginning on the date authorization is granted and ending October 31, 2002. The order also conditionally authorizes TEMCO to import up to the same volume of natural gas on a two-year blanket basis over proposed new facilities if the gas is not taken under TEMCO's long-term contracts. The order also provides authorization to import the same volumes of natural gas through existing facilities until a final opinion and order is entered, or, in the case of the blanket authority, for up to two years from the date of first delivery.

Final approval of this import using proposed new facilities is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969 and its reexamination at the time this conditional order is finalized. Approval of this import using existing facilities is made under the DOE's categorical exclusion published at 54 FR 12474.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–25030 Filed 10–23–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–63–NG]

Vector Energy (U.S.A.) Inc.; Application to Amend Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to amend authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 26, 1989, of an application filed by Vector Energy (U.S.A.) Inc. (Vector) to amend DOE/FE Opinion and Order No. 308 (Order 308) (April 24, 1989, 1 FE Para. 70,217) that grants Vector authority to import up to 13.14 Bcf per year of Canadian natural gas over a term beginning December 1, 1989, through November 30, 2009. Vector asks that its authorization be amended because, subsequent to the issue of Order 308, some of the pricing provisions in the gas sale and purchase agreements for the proposed import were amended to conform to certain National Energy Board requirements to obtain a Canadian export license.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 24, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657;

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Vector, a Delaware corporation, is a wholly-owned subsidiary of Vector Energy, Inc., with its principal place of business in Calgary, Alberta. The principal business of Vector is that of an oil and gas producer and marketer with markets in the U.S. and Canada. Order 308 authorized Vector to import natural gas from Canada "in accordance with the arrangement proposed in the application in this proceeding" to fuel a new 162 MW cogenerator being constructed by Altresco Pittsfield L.P. (Altresco) at the General Electric manufacturing and research facility in Pittsfield, Massachusetts. Amendments to some of the pricing provisions in the gas sale and purchase agreements between Vector and the seven Alberta producers contracted to supply the proposed import have altered some of the elements of the pricing mechanism authorized in Order 308. Consequently, Vector requests an amended authorization that takes into account the recent contractual amendments.

On July 24, 1989, Vector, the seven Alberta producers, Altresco, and New England Power, the ultimate purchaser of the power produced by the cogeneration facility, renegotiated certain terms of the June 24, 1988, Agreement and the June 29, 1988, Agreement which underlie the proposed project. Vector states that the contract amendments can be summarized as follows:

(1) The "Base Price" specified in Schedule "B" of the agreements has been changed to $1.26 (U.S.) per MMBtu from $1.12 (U.S.) per MMBtu.

(2) The "Index" specified in Schedule "A" to the agreements, and used in calculating the gas price in section 1.1(o), has been revised to 50% oil, 40% Tennessee WACOG, 10% coal, from 50% oil, 25% Tennessee WACOG, 25% Coal; and

(3) The "Base Index" specified in Section 1.1(b) of the agreements, and used in calculating the gas price in Section 1.1(o) has been changed to $2.05 (U.S.) per MMBtu from $2.16 (U.S.) per MMBtu (reflecting a change in the base year to the first half of 1989 from 1987).

Vector states that the renegotiated terms of the gas sale and purchase agreements are consistent with the DOE policy guidelines and terms of Order 308. According to Vector, the renegotiated indexing provisions are more heavily weighted toward U.S. natural gas costs. Vector states that there were no changes to the contract price renegotiation provisions designed to ensure that the imported gas will be competitive with U.S. natural gas and other fuels. Further, Vector states that there has been no change with respect to the demonstrated need for the gas supplies or the contractual warranty obligations of the suppliers. Therefore, Vector requests that Order 308 be amended only to the extent necessary to reflect the pricing amendments to the gas supply and purchase agreements, and that no other changes be made to the terms states in Order 308.

The decision on this application will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination in a long-term arrangement such as this include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this amended import arrangement continues to be competitive, needed, and secure. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested amended import is approved, the authorization will continue to be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price. Further, all parties should be aware that FE intends to review the entire import arrangement.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Vector's request to amend Order 308. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments an replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector's amendment application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 18, 1989.

Clifford P. Tomaszewski,

Acting Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–25031 Filed 10–23–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3674–3]

Chadbourn Tire Fire Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Chadbourn Tire Fire Site, Chadbourn, North Carolina, with Kenneth J. Ray and Horace M. Cox. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Clerk, Site Investigation and Support Section, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404/347–5059.

Written comments may be submitted to the person above by (30) days from date of publication.

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Dated: October 16, 1989.

Lee A. Dehihns III,

Acting Regional Administrator.

[FR Doc. 89-25023 Filed 10-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-842-DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-842-DR), dated September 21, 1989, and related determinations.

DATED: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 11, 1989, the President amended his declaration of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the Commonwealth of Puerto Rico, which resulted in my declaration of a major disaster on September 21, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under Pl. 93-288 for Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 100 percent.

Please notify the Governor of Puerto Rico and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24945 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-02-M

Virgin Islands; Amendment to Notice of a Major Disaster Declaration

[FEMA-841-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the Virgin Islands (FEMA-841-DR), dated September 20, 1989, and related determinations.

DATED: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 12, 1989, the President amended his declaration of a major disaster for the Territory of the Virgin Islands dated September 20, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the Territory of the Virgin Islands, which resulted in my declaration of a major disaster on September 20, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for the Individual and Family Grant program and Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 100 percent.

I further amend my declaration to authorize Federal funds for the Individual and Family Grant program at 75 percent of total actual costs up to $10 per capita. Actual costs exceeding $10 per capita will be funded at 100 percent.

Please notify the Governor of the Virgin Islands and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24946 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port Authority of New York and New Jersey

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003158-005

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey Ecuadorian Line, Inc.

Synopsis: The Agreement modifies the parties basic terminal lease to provide for the construction of a one-story office building of approximately three thousand (3,000) square feet and interior work involving the installation of trade fixtures and equipment.

Agreement No.: 224-010690-003

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles (LA), Trans Pacific Container Service Corporation (TPCS), [Assignee of Mitsui O.S.K. Lines (MOL)].

Synopsis: The Agreement amends the basic agreement to provide that TPCS will: pay LA a minimum annual guarantee of $6,350,000 based on wharfage and dockage revenues; share wharfage and dockage revenues with LA on a 50/50 basis from the first dollar until $12,700,000 has been reached and, thereafter, TPCS will retain 75% of dockage and wharfage tariff charges; increase the term of the lease to 15 years; guarantee LA 800,000 revenue tons of MOL's OCP cargo; waive certain late completion penalties against LA arising from the construction of the terminal; accept certain modified expanded provisions in the lease; and, automate its wharfage reports into LA's accounting system.

By Order of the Federal Maritime Commission.

Dated: October 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-25043 Filed 10-23-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders purusant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

SIT Transportes Internacionales Inc., 700 Belleville Turnpike, Kearny, NJ 07032
Officers: Jose Luis Tabuenca, President/Director, Jose Tabuenca Garcia, Secretary/Treasurer, Astrid Van Stolk, V. Pres./Manager of Operations

Josmar and Son Enterprises, Inc. dba Josmar International Freight Forwarding Co., 8861 S.W. 85th Terrace, Miami, FL 33173
Officer: Jose R. Cosio, President

Super Trans Plus, Inc., 746 S. Glasgow Ave., 2nd FL, Inglewood, CA 90301
Officers: Bob Jan, President, David Lee, Secretary, Alex Pon, Stockholder

MTC Cargo Systems, Inc. dba MTC Cargo Services, 11541 Everston St., Norwalk, CA 90650
Officers: Federico Magdangal, President, Edgar M. Trovada, V. President/Chief of Operations, Anna May C. Trovada, Corporate Secretary, Suzette A. Cabalu, Corporate Treasurer

A.H.S. International Inc., 200 Eastern Ave., Bensenville, IL 60106
Officers: Hyo Sub Yoon, President/Director/Stockholder, Hyon Soon Yoon, Secretary/Treasurer/Director, So Sup Yoon, Director

Jorge M. Palacios, 3741 N.W. 66th Ave., Virginia Gardens, FL 33166

Vantage International Forwarding Ltd., 11222 La Cienega Blvd, No. 225, Inglewood, CA 90304
Officer: Rene K. Debrunner, President

Arrow Cargo dba Aramex-Arrow Air Cargo Co., 2601-B Saulino Ct., Dearborn, MI 48120
Officers: Louis K. Arida, President, Marlene L. Arida, Secretary/Treasurer, Albert H. Knoth, Vice President

Karl Heinz Schneider dba Lee's International, 16100 S.W. 68th Ave. Rd., Miami, Fl 33157

Hartford Despatch & Warehouse Company, Inc., dba Hartford Despatch International, 225 Prospect St., East Hartford, CT 06108
Officers: Robert K. Mooney, Chairman, Anson B. Mooney, President, William E. Crowley, Vice President, Jacqueline S. Danise, Vice President, Alan E. Stegman, Vice President, G. Nicholas Pahaults, Treasurer

Benjamin B. Nelson, Jr., 3312 Burnt Mill Road, Virginia Beach, VA 23452

Christa Katten, 734 So. Foothill Blvd., Cloverdale, CA 95425

Speedway Consolidators, Inc., 9100 S Sepulveda, Blvd, No. 109-A, Los Angeles, CA 90045
Officers: Louis Chan, President/Stockholder, Wilfred Koh, V. President/Secr./Dir./Stockh., Young B. (Raymond) Kim, Exec. V. President, K. Y. Chung, Director/Stockholder

George Robert Cowan, 4701 Haygood Point Rd, Virginia Beach, VA 23455

Maria Velez de Espinosa dba Maria Velez, Mai Basic Four Center Bldg., Suite 314, JFK Ave. 2000, Puerto Nuevo, Puerto Rico 00922

By the Federal Maritime Commission.

Dated: October 18, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24956 Filed 10-23-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-2885]

Sears, Roebuck and Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1977 consent order (42 FR 27218) by deleting the prohibition on respondent's use of radius clauses, modifying the prohibition on use clauses, and modifying the order so that when it applies to Sears in its capacity as a shopping center tenant it does so only when Sears is a major tenant.

DATES: Consent Order issued April 20, 1977. Modifying Order issued July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg or Abbott McCartney, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Sears, Roebuck and Company. The prohibited trade practices and/or corrective actions, as set forth at 42 FR 27218, are changed and deleted, in part, as noted in the order that follows.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

ORDER REOPENING AND MODIFYING FINAL ORDER TO CEASE AND DESIST

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol

On February 24, 1989, respondent Sears, Roebuck and Co. filed a "Petition to Set Aside Consent Order" ("Petition") asking the Commission to reopen and set aside the consent order issued in this matter on April 20, 1977, 89 F.T.C. 240 (1977). In event the order is not reopened and set aside in its entirety, Sears spells out in an "Alternative Proposed Modification of Order with Explanation" ("Alternative Proposal") specific modifications to the order that Sears requests for "all of the difficulties which have been caused to Sears by this order." Sears filed its request pursuant to subsection 5(b) of the FTC Act, 15 U.S.C. 45(b), and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51. One public comment was received.

The order prohibits Sears from, among other things, entering or enforcing certain restrictive lease or easement agreements in connection with its participation in regional and super regional shopping centers.[1] Sears operates department and specialty shopping centers through its Sears Merchandise Group and engages in shopping center development and management through its Homart Development Co. *See* Petition at 25, 45.

Sears maintains in the Petition that changed conditions of fact and law require the Commission to reopen and set aside the order. Sears also requests that the Commission reopen and set aside the order in the public interest. In the event the Commission decides not to reopen the order in its entirety, Sears' Alternative proposal asks the Commission to reopen and set aside or modify specific portions of the order that Sears finds particularly onerous and harmful to competition.

The Commission has carefully considered Sears' requests and has concluded that Sears has not made a satisfactory showing that reopening of the entire order is warranted based upon changed conditions of fact or law or in the public interest. Nor has Sears established that changed conditions require reopening of any prohibition in the order. However, the Commission has concluded that Sears has made a

[1] The order is limited to Sears' participation in shopping centers containing (1) 200,000 square feet or more of total floor area designed for retail occupancy, (2) at least two tenants other than respondent, (3) at least one major tenant other than respondent, and (4) on-site parking. *See* Paragraph I.(b).

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satisfactory showing that it would be in the public interest to reopen and set aside or modify several prohibitions in the order.

I. The Order to Cease and Desist

The Commission issued its complaint and order on April 20, 1977, with the consent of Sears. *See Sears, Roebuck and Co.*, 89 F.T.C. 240 (1977). The order prohibits five generic types of restrictions in shopping center leases or operating agreements, namely, (1) radius clauses, that is, restrictions on a tenant's ability to operate a like store within a specified distance of the shopping center; (2) use clauses specifying the types of products or services that tenants shall sell; (3) rights held by major tenants to approve or disapprove admission of other tenants into the shopping center; (4) clauses that require developers to exclude specified types of retail merchants or specifically named retail merchants; and (5) tying clauses that require a retail merchant in one shopping center to operate one or more stores in other shopping centers developed or managed by Sears.

II. Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C–2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983), at 2. For example, it may be in the public interest to modify an order to "relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C–2916, 101 F.T.C. 689, 692 (1983). Once showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. Damon Letter at 2. The Commission will consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly indicates that the burden is on the petitioner to make "a satisfactory showing" of 1 changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 2d Sess. 9–10 (1979). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The petitioner,s burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc.* v. *Moitie*, 425 U.S. 394 (1981).

III. Sears' Request to Reopen and Set Side the Order in Its Entirety

Sears requests that the order be reopened in its entirety either to set aside the order at this time or set a future date on which the order will expire. Sears, however, fails to show either changed conditions of law or fact that require reopening, now or in the future, or that such action is warranted in the public interest.

Sears first claims that recent changes of law now require that all restrictive shopping center covenants be judged under a rule of reason rather than the *per se* prohibitions contained in the Commission's order. Sears maintains that these restrictive covenants would be found to be reasonable under a reasonableness test. Sears relies upon *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977), and the "accelerated trend away from widespread application of *per se* rules." *See* Petition at 4.

Although the *Sylvania* decision was a turning point in the law of vertical restraints, the Commission has consistently declined to reopen proceedings absent a specific showing that the order prohibits activity that subsequently has been found lawful.[2] Under a rule of reason analysis, the restraints in question here likely would not be found to restrain trade unreasonably absent a degree of market power. *See Northwest Wholesale Stationers, Inc.* v. *Pacific Stationery and Printing Co.*, 472 U.S. 284, 296 (1985). Sears, however, makes no showing either that the shopping centers it was associated with in 1977 did not possess market power or that the shopping centers it is associated with today do not possess market power. Without both showings, the Commission is unable to conclude that changes in law require reopening the entire order.

Additionally, Sears fails to make a sufficient showing that any factual changes in the shopping center industry occurring since the order was issued require reopening. Sears highlights an increase in the numbers of developers, major tenants, and mall tenants at a time when construction of new regional shopping centers "has virtually stopped;" an increase in the number of shopping centers built since the Commission's order was issued; and an increase in specialization of shopping centers. See Petition at 3. Sears also points to a trend toward the greater use of firms to manage shopping centers who do not have an ownership interest in the center. However, Sears has failed to show how any of these changes alone or together eliminate the need for the order or make continued application of the order inequitable or harmful to competition.

Nor has Sears established sufficient public interest reasons to reopen the entire order. Sears claims that it is unfairly constrained by the order's prohibitions when most if not all competing tenants and developers in the shopping center industry are not so encumbered. According to Sears, it consented to the order because it believed that the Commission in the late 1970's was likely to issue a trade regulation rule for shopping centers that would proscribe the same activities prohibited by the order. However, that threatened trade regulation rule was never issued.

Although the reopening of several portions of the order may be in the public interest, Sears has not

[2] *See Encyclopaedia Britannica Inc.*, Docket No. 8908, Order Reopening the Proceeding and Modifying Cease and Desist Order (July 5, 1988), at 6.

demonstrated that all of the order's provisions cause significant harm that outweigh the reasons not to make the modifications. Thus, Sears has not made a sufficient showing to warrant reopening the entire order in the public interest.[3]

IV. Sears' Request to Reopen Portions of the Order

The Commission has carefully considered Sears' request that certain specific prohibitions need reopening and modification in the event the Commission does not reopen and set aside the entire order. These prohibitions include the prohibition of radius clauses, use restrictive clauses, clauses giving rights of prior approval to Sears in its capacity as a tenant, tying clauses used by Sears in its capacity as a developer, and the joint use of employees by Sears' Merchandise Group and Sears, shopping center development group. Sears seeks also modification to exclude from the order Sears in its capacity as a specialty tenant and Sears in its capacity as a minority investor or non-owner shopping center manager. *See* Alternative Proposal.

Radius Clauses

Sears challenges the continuing need for the prohibition against the use of radius clauses by Sears in its capacity as a developer. *See* Paragraphs III.A.3. Sears' petition describes the efficiencies gained from radius clauses. According to Sears, radius restrictions increase traffic in the shopping center by requiring the tenant to concentrate on its store in the shopping center. A nearby store could siphon away customers from the center.

Sears has made the necessary showing of affirmative need to reopen and modify the prohibition against radius clauses in the public interest. Sears presents examples where tenants in Sears-owned centers have opened retail locations in nearby centers to the detriment of Sears' shopping center. Sears' petition also documents industry-wide usage of radius restrictions. Radius clauses that are limited in scope may stimulate competition and are unlikely to be anticompetitive. In the absence of competitive concerns about these restrictions, the harm to Sears outweighs any reasons for retaining the prohibition, and reopening is warranted in the public interest. Under the circumstances, the Commission will reopen and set aside this prohibition as the appropriate remedy to address Sears' showing of affirmative need.

Use Clauses

Sears challenges the continuing need for the prohibition against the employment of use clauses by Sears in its capacity as a developer. Use clauses specify the types of products or services that tenants shall sell. *See* Paragraphs III.A.1., III.B.1. Sears' petition describes the efficiencies gained from use clauses. According to Sears, use clauses promote an optimum tenant mix and preserve the desired character of a shopping center.

Sears' petition demonstrates an affirmative need for modification of this prohibition. Sears shows that descriptions of range of price and fashion and quality in use clauses serve a competitive purpose, are unlikely to threaten tenants' pricing discretion, and are commonly used in the industry. The prohibitions particularly interfere with Sears' ability to draft use clauses narrowly enough to achieve an optimum tenant mix and to preserve the desired character of a shopping center. The Commission has long recognized that use clauses can play an important role in maintaining an optimal tenant mix in a shopping center. *See* Federal Trade Commission Statement Regarding Shopping Centers (March 1981); *Tysons Corner Regional Shopping Center*, 85 F.T.C. 970, 1008, 1012, 1012 n.12, 1014, 1017–18 (1975).

Thus, Sears makes a satisfactory showing to warrant reopening of the prohibition of use clauses in the public interest. The Commission has concluded that this harm can be appropriately remedied by deleting the language prohibiting use clauses that refer to ranges of price or fashion or quality.[4] However, the core prohibition against price fixing remains intact.[5]

Prior Approval

Paragraph II.A.2. prohibits Sears, in its capacity as a tenant, from entering or enforcing agreements granting it the right to approve or disapprove the entry into a shopping center of any other tenants. There are related paragraphs that prohibit more limited prior approval clauses, *e.g.*, preventing other tenants' expansion of floor space in the mall without the major tenant's approval. *See* Paragraphs II.A.3., II.A.4., II.A.7, II.A.8, II.A.11.

Sears challenges the order's approach to rights of prior approval exercised by tenants because the prohibition fails to recognize, according to Sears, the purported efficiency justifications for tenant-held rights of prior approval. Sears claims that it needs a voice in the selection of major tenants because the success of the shopping center and Sears' store in the center depend upon the other major tenants being an asset to the center. *See* Petition at 46. Accordingly, Sears seeks to reopen and modify these prohibitions to enable it to exercise a right of approval over entry by other major tenants into the center.

Sears fails to make the necessary showing of affirmative need to reopen the prohibitions against rights of prior approval in the public interest. Sears provides examples where a promised anchor tenant backed out and less desirable anchor tenants got locations in shopping centers where Sears was also an anchor. The examples do not indicate whether the harm to Sears resulted from market conditions or the lack of prior approval. That is, after the promised anchor backed out, did the developer have many anchors to choose from, some of whom Sears preferred? Or, was the developer having a hard time finding any anchor, so that Sears might have settled for the less desirable anchor? Sears has not made a satisfactory showing that tenant-held rights of prior approval, in fact, enhance competition, or that Sears has been unable to protect its "legally cognizable interests" by requiring developers to select tenants only according to defined standards contained in shopping center agreements. Accordingly, Sears has not carried its burden to demonstrate an affirmative need to reopen and modify the prohibition against rights of prior approval.[6]

[3] Sears requests also that the Commission sunset the order in three years. The age of an order, standing alone, is not sufficient to satisfy the standard for reopening in the public interest. Moreover, the Commission generally does not sunset orders that prohibit unlawful conduct. *See William H. Rorer, Inc.*, Docket No. 8568, Order Modifying Cease and Desist Order, 104 F.T.C. 544, 545–46 (1984); *Corn Products Refining Co.*, Docket No. 5502, Letter to Morton M. Maneker, Esq. (August 22, 1985), at 7–8.

[4] As set forth below, the modification to Paragraph III.B.1. adds the language "of other tenants" consistent with Sears' proposed modification. *See* Alternative Proposal, Order, Paragraph III.B.1. This clarifies that the prohibition only applies to a tenant or to Sears specifying or controlling the prices of any other tenant. *See* Paragraph III.B.2.

[5] Paragraph III.G. imposes certain reporting requirements upon Sears in its capacity as a developer. Sears asks that the Commission modify the subparagraph to accord with any changes in the substantive prohibitions made by the Commission. In view of the modifications made herein to permit use clauses, Paragraph III.G.3. should be reopened and modified to strike references to price ranges, fashion ranges, and quality ranges.

Sears requests that the Commission add a new Paragraph III.F.3. to make clear that Sears could employ use clauses in off-price shopping centers requiring the tenant to sell high quality merchandise. The foregoing modification by the Commission to paragraphs III.A.1. and III.B.1. makes such a modification unnecessary.

[6] Sears' failure to carry its burden, regarding rights of prior approval disposes also of Sears'

Continued

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Tying Clauses

Paragraph III.A.4. prohibits Sears, in its capacity as a developer, from conditioning entry of a tenant into one shopping center upon that tenant's entry into another Sears shopping center. Sears claims that the prohibition may prevent it from offering a tenant a package rental rate covering locations in several shopping centers whereby it charges a lower relative rent then the rate for space in one center. Thus, Sears requests that the Commission reopen the prohibition by adding a new paragraph III.F.2. Such a package rental rate would not necessarily violate Paragraph III.A.4. Thus, Sears has not shown an affirmative need to reopen and modify Paragraph III.A.4.

Joint Use of Common Officers and Employees by Sears Merchandising and Development Groups

Paragraph III.C. prohibits Sears from using the same officers or employees in Sears' separate capacities as a tenant in or as a developer of shopping centers. Sears represents that the possible joint use of officers by Sears' Merchandise Group and Homart, Sears' shopping center development arm, is not now a problem because Homart long ago become an autonomous unit. Sears argues, however, that both Sears units would benefit from using common corporate headquarters staff personnel for such matters as tax counseling, procurement assistance, computer expertise, personnel administration, insurance advice, legal advice, and accounting and general office management.

Sears fails to make the necessary showing of affirmative need to reopen paragraph III.C. in the public interest. Sears does not refer to any instances where it has forgone benefits from using common corporate headquarters staff or suffered competitive harm. In any event, the Commission recognizes the potential benefits that may arise through use of common corporate headquarters staff and does not interpret paragraph III.C. to prohibit Sears in its capacity as tenant and developer from drawing upon common staff expertise.

Sears as a Specialty Tenant

The order prohibitions against Sears in its capacity as a tenant apply broadly to Sears whether it is acting as a major tenant or as a satellite tenant in a shopping center. *See* paragraph I.(c), I.(d), II.A., II.B. At the time the order was issued, Sears, as a tenant, was generally involved in shopping centers only in the capacity of a major tenant, according to Sears. Sears has now begun to branch into specialty stores such as business systems stores, children's specialty stores, and eye care centers, and requests that the order be modified to exclude Sears as a specialty tenant.

Sears has made a satisfactory showing to warrant reopening of this aspect of the order in the public interest. In its capacity as a satellite tenant, Sears is unlikely to have the necessary leverage to obtain any unlawful restrictive covenants from developers. The Commission in *Tysons Corner* only focused upon restrictive covenants held by major tenants and not covenants held by satellite tenants. The value of Sears as a satellite tenant being able to compete without the order outweighs the likelihood that Sears in that capacity could secure any anticompetitive restrictive covenants in negotiations with developers. Under the circumstances, the Commission will modify the order to exclude Sears as a satellite tenant.[7] Previously, the Commission made this same distinction between a specialty store operation and a major tenant operation in *Tysons Corner* where the Commission modified the order in the public interest so as not to limit the ability of that respondent's specialty furniture store to secure exclusivity clauses in shopping center leases. *See Tysons Corner*, 86 F.T.C. 921 (1975).[8]

Definition of "Developer"

Sears claims that the order prevents Sears from investing in some shopping center joint ventures. According to Sears, the order's strict requirements against radius and use clauses cause other investors to view Sears as a less attractive investment partner. Sears cites experiences where the order has impeded Sears' ability to participate in investment opportunities. *See* Petition at 42–43.

Similarly, Sears finds that the order frustrates its ability to compete for shopping center management services jobs in centers where it will have no ownership interest. According to Sears, shopping center owners prefer management firms who are not under prohibitions against radius and use clauses. Sears cites cases in which the order has placed Sears at a disadvantage in competing for such shopping center manager services positions. *See* Petition at 43–45.

Sears requests that the order's definition of developer be reopened and modified to exclude Sears when it holds a 30 percent or less ownership interest in a shopping center or is not the shopping center manager. *See* Alternative Proposal, Explanation at 1. Sears, however, has not made a satisfactory showing that this definition needs reopening. Central to Sears' claim is the order's prohibition against Sears' employment of radius and use clauses. However, the Commission has decided already to reopen and modify these prohibitions generally in the manner sought by Sears. Thus, Sears is no longer disadvantaged in relationship to competing investors or management services firms. Accordingly, the Commission denies Sears, request to reopen the order's definition of developer.[9]

request that the Commission adopt Sears' proposed order paragraphs in its Alternative Proposal, namely, paragraphs II.A.2., II.A.3., II.A.4., II.A.7., II.A.8., II.A.11., III.E.9.

Sears asks that paragraph III.E. be modified to expand the stated criterion that Sears can permissibly require a developer to following in selecting new or replacement tenants. *See* Alternative Proposal, Explanation of Amendments at 4. Proposed paragraphs III.E.1., III.E.7, III.E.8., and III.E.10. The Commission has concluded that such reopening and modification of the order is unnecessary. Paragraph III.E. was not intended to be a definitive list of standards and Sears has flexibility in drafting criteria necessary to protect its "legally cognizable interests" without modification so long as the standards are not a cover for price fixing. In *Tysons Corner*, the Commission noted that the criteria set forth in paragraph III.E. were not intended to constitute an exhaustive listing of the factors which [respondent major tenant] may insist be considered by a shopping center landlord in the management of the center, as a condition of [the respondent major tenant]'s signing a shopping center lease.

Tysons Corner, 85 F.T.C. at 1017 n.19.

The Commission, however, will reopen and modify paragraph III.E.3., which permits Sears to exercise limited approval rights for tenants within 150 feet of a Sears store. Sears has made a sufficient showing of an affirmative need for modification. Currently, Sears may prepare a list of acceptable tenant categories from which the developer can select tenants to be located next to Sears with certain limitations as to, for example, price ranges. Sears requests that the paragraph be modified to permit it to designate categories of retailers who are unacceptable rather than acceptable subject to the same limitations. Sears represents that it becomes nearly impossible under the current procedure to list all possible permissible uses. Thus, modification will facilitate operation of this paragraph without changing the substance of the prohibition.

[7] Paragraph I.(d) defines "major tenant" as a tenant providing primary drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

[8] Paragraph IV.B. imposes upon Sears as a tenant an obligation to send a copy of the order within 30 days after service of the order to each major tenant, shopping center joint venturer, and developer in every shopping center in which Sears is a major tenant. Sears asks that the requirement be set aside as obsolete. This paragraph is, indeed, obsolete because compliance was required and completed in 1977 and for that reason there is no affirmative need to set aside the paragraph.

[9] Sears also asks the Commission to reopen the order for the purpose of exempting shopping center

Continued

V. Reopening and Modification

Accordingly, *it is ordered* That the order issued in this matter on April 20, 1977, be, and it hereby is, reopened and modified, as of the date of service of this order, as follows.

1. Paragraph III.A.3. shall be set aside.

2. Paragraph III.A.1. shall be modified by striking "price, or within any range of prices, or within any range of fashions, or within any range of quality, when such descriptions identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices" and adding "specific prices or specific ranges of prices".

3. Paragraph III.B.1. shall be modified by striking "prices, price ranges, fashion ranges, quality ranges, which identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices" and adding "specific prices or specific ranges of prices of other tenants".

4. Paragraph II.A. and Paragraph II.B. shall be modified by substituting "major tenant" for "tenant" as that term is used to define the capacity in which Sears is acting.

5. Paragraph III.G.3. shall be modified by striking "price ranges, fashion ranges:, quality ranges."

6. Paragraph III.E.3. shall be modified by inserting "not" following "landlord may."

By direction of the Commission.[10]

Donald S. Clark,

Secretary.

Issued: July 5, 1989.

agreements that Sears inherits when Sears acquires a shopping center in its capacity as a developer. *See* Alternative Proposal, Proposed paragraphs III.E.11., III.F.6., Explanation of Amendments at 6. Sears, however, shows no affirmative need for such a modification. Restrictive shopping center agreements pose the same problem whether or not Sears negotiates or inherits them. Moreover, in the future, Sears will likely inherit fewer shopping center leases that do not conform to the order in view of this order's modification of the prohibitions against radius and use clauses.

[10] By letter dated June 29, 1989, Sears submitted to the Commission supplemental information in support of its request to reopen. The Commission generally will not consider additional information to support a request to reopen supplied after the date the request was filed unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented. *See* Statement of Policy Concerning Supplementation of Requests to Reopen, 53 FR 40667, 40668 (Oct. 19, 1988). Sears has made no such request in connection with its June 29, 1989, submission. Accordingly, the Commission has not considered this supplemental information in reaching its decision.

Statement of Chairman Daniel Oliver, Sears, Roebuck and Company, Docket No. C-2885 Petition to Reopen and Set Aside or Modify Consent Order

I concur in the decision to grant in part Sears' Petition to reopen and set aside the order in Docket No. C–2885; however, I would have set aside the order in its entirety. I concur wholly in the cogent antitrust analysis set forth in Commissioner Machol's separate statement. In my view, the procompetitive justifications for the restrictions prohibited by the order, as detailed by Commissioner Machol, warrant reopening and setting aside the order on public interest grounds.

In addition, I agree with the statement in today's order that a showing to require reopening is made when there are "significant changes in circumstances," that "eliminate the need for the order or make continued application of the order inequitable or harmful to competition." I cannot agree, however, with the further suggestion that for the Commission to reopen and set aside an order today, on the basis of a claim of change in law, Sears would have to show that it did not possess market power in 1977.

To answer whether there has been a change in law, we should look at the law.[1] In this case, the addition of the element of market power to the legal analysis is a significant change in law since the decision in Tysons Corner, 85 F.T.C. 970 (1975). That being the case, a petitioner in Sears' position need only demonstrate that it has no market power today, and thus that there is no longer a need for the order. Otherwise, it is likely that there would be an absence of record evidence to address what was not an issue at the time an order was entered, and that such historical evidence would be nearly impossible to develop anew. When the law has changed as significantly as it has in this case, the petitioner's required factual showing should be limited to whether consumers today would be injured by the conduct that the order sought to prevent.

Issued: July 5, 1989.

Statement of Commissioner Margot E. Machol Sears, Roebuck and Company, Docket No. C–2885 Petition to Reopen and Set Aside or Modify Consent Order

While I concur in the decision to grant in part and deny in part Sears' Petition to reopen and set aside, or in the alternative, modify the order in Docket No. C–2885, I would prefer to reopen additional portions of the order and grant further modifications on public interest grounds.

Sears, in its capacity as both a shopping center developer and tenant, requests that the order's prohibitions on certain restrictions in shopping center leases and operating agreements, such as prior approval clauses, be set aside. A shopping center is essentially a joint venture between a shopping center developer (acting as landlord) and the retail tenant to operate a group of commercial establishments as a unit. *See* Clarkson & Muris, eds., *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior* (1981) at 141. Shopping centers can provide significant efficiencies that are not available when retail establishments operate as stand-alone businesses or in downtown commercial areas. These efficiencies include lower search costs for consumers, and maximized traffic flow and lower operating costs for retailers.

Restrictions agreed upon by the joint venture participants that constrain tenant characteristics but do not fix the prices charged by any tenant may reasonably be related to the efficient operation and success of the shopping center. As such, these restrictions would generally be analyzed under the rule of reason. Such restraints are methods of controlling tenant mix and the character or marketing concept of a shopping center, which are important factors in the center's success. Shopping centers seek to provide a wide variety of stores that would appeal to particular groups of consumers. For example, some shopping centers cater to consumers who want high quality/high priced goods and services (*e.g.*, Water Tower Place in Chicago; Trump Tower in New York City), some to consumers who want discount goods (*e.g.*, Biggs Hypermarket in Cincinnati), and still others to consumers whose tastes fall between these extremes. While lease restrictions may reduce aspects of competition among stores within a particular shopping center, they may serve to stimulate competition among different shopping centers.

Sears explains that a major ("anchor") tenant makes a significant investment in a shopping center that is at risk for a considerable period of time. The ability to have a voice in the selection of other tenants is a way of protecting the investment of anchor tenants and encouraging their participation in shopping centers. In my view, Sears has shown that its inability to take a more active role in the selection of other tenants has caused it competitive injury, and may also have affected the ability of the shopping centers in which Sears participates to compete effectively with other shopping centers. Sears has also shown that it has been unable to protect its interests adequately by the means left available to it under the order. As a result, I conclude that Sears has made a showing sufficient to warrant reopening additional portions of the order.

Under a rule of reason analysis of the kinds of restraints at issue in the Sears order, the shopping centers in which Sears participates would at least need to possess market power before these restraints would be found to restrain trade unreasonably. *See Northwest Wholesale Stationers, Inc.*, v. *Pacific Stationery and Printing Co.*, 472 U.S. 284 (1985); *Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2 (1984); *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*,

[1] Such a construction will not open the floodgates to petitions to reopen every time a court or the Commission issues a new decision, because there is still the requirement that the change in law be significant.

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441 U.S. 1 (1979); *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36 (1977). While Sears did not specifically address in its Petition whether the shopping centers with which it is associated may in fact possess market power, I believe that Sears provided sufficient evidence from which one could conclude that few, if any, of these shopping centers are likely to have market power. As a result, I believe we can properly conclude that the injury to Sears' ability to compete, and the potential for enhancing the competitive posture of those shopping centers in which Sears participates, outweigh any continuing need for certain of the order's remaining prohibitions. Accordingly, further modification of the order would be justified on public interest grounds.

I have a general observation about petitions to reopen and modify that assert public interest grounds as justification. Given the public interest in repose and finality of Commission orders, the burden is on the petitioner when public interest grounds are invoked to make a satisfactory showing in support of each specific aspect of an order for which the petitioner is requesting relief. Particularly in cases involving lengthy or complex orders, the Commission's review can be greatly facilitated if the petitioner identifies precisely the portion of the order to which a showing is meant to relate.

Finally, because the Commission decided to grant certain modifications requested by Sears on public interest grounds, we did not reach the issue of what showing would be required of Sears to mandate reopening on the ground of changed conditions of law. I disagree with the statement in the Modifying Order suggesting that Sears should be required to show that the shopping centers with which it was associated in 1977 did not then possess market power. In my view, the petitioner should not be required to demonstrate that the Commission's earlier decision was wrong in terms of modern-day law. Instead, the critical issue is whether the petitioner identifies significant changes in circumstances, and shows that those changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *See* S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979); *Louisiana-Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1968), at 4. Moreover, to require a showing about market power that existed in the past would impose a nearly impossible burden on many petitioners, particularly those with orders that are more than ten years old. Accordingly, I believe reopening would be mandatory if Sears showed that the shopping centers with which it is associated today do not possess market power. If that is true, the existence of market power in 1977 is irrelevant.

Issued: July 5, 1989.

[FR Doc. 89–24997 Filed 10- '3–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F–0409]

Adeka Argus Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Adeka Argus Chemical Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2'-methylene bis(4,6-di-*tert*-butyphenyl)phosphate as a clarifying agent in propylene polymers intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4165) has been filed by Adeka Argus Chemical Co., Ltd., 5–2–13, Shirahata, Urawa, Saitama, Japan, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium 2,2'-methylene bis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in propylene polymers intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 13, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–24995 Filed 10–23–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0400]

Sucrose Fatty Acid Esters; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the State of Nebraska, Department of Economic Development has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters in chewing gum and confections and frostings.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4166) has been filed by the State of Nebraska, Department of Economic Development, proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters in chewing gum and confections and frostings.

The potential environmental impact of this action is being revieved. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 13, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–24994 Filed 10–23–89; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, November 8, 1989, and begins at 9 a.m. and ends at 5 p.m. on Thursday, November 9, 1989.

Place: On Wednesday, November 8, Lewis Room, The Holiday Inn-Capitol, 550 C Street, SW., Washington, DC, from 9 a.m. to 5 p.m., and Thursday, November 9, Lewis Room, The Holiday Inn-Capitol, from 9 a.m.–5 p.m.

Status: Meeting is open to the public.

Contact person: Kevin W. Parks, Room 4280, Wilbur Cohen Federal Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act) P. L. 92–453, 5 U.S.C App. 1, sec. 10, 1976) that the Council will hold its November quarterly meeting on November 8 & 9, 1989, from 9 a.m.–5 p.m. and from 9 a.m.–5 p.m. respectively, in the Lewis Meeting Room of the Holiday Inn-Capitol Hotel. 550 C Street, SW., Washington, DC 20024. On November 8, the Council will conduct its regular business meeting during the morning session. The afternoon sesssion will include a presentation by the Women's Bureau of the U.S. Department of Labor.

The agenda is as follows: A presentation by the Women's Bureau, U.S. Department of Labor regarding the status of and difficulties encountered by older working women. This presentation will be the continuation of the focus of the August quarterly meeting.

On November 9th from 9 a.m.–12 Noon, the Council will continue and conclude its regular business meeting. From 2 p.m.–5 p.m., the Council will participate in a tour of its new offices. This tour will be followed by a reception and Open House for new Members and the newly appointed Executive Director.

Dated: October 16, 1989.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 89–24952 Filed 10–23–89; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2072]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for reivew, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Supplemental Assistance for Facilities to Assist the Homeless Program.

The information collection requirements in this package are the result of amendments to the Supplemental Assistance program contained in the Stewart B. Mckinney Homeless Assistance Amendments Act of 1988, Public Law 100–628 (approved November 7, 1988). The Department is requesting emergency review in order to be ready to announce the competition for the Supplemental Assistance for Facilities to Assist the Homeless Program at such a time that will given applicants maximum time to become familiar with the revised regulations and to prepare applications accordingly. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Supplemental Assistance notice to OMB for regular paperwork review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 18, 1989.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

Proposal: Supplemental Assistance for Facilities to Assist the Homeless Program (FR–2585)

Office: Community Planning and Development

Description: The application and environmental impact statement are necessary to allow HUD to determine the eligibility of private non-profit organizations or governmental entities to receive funding under this program, to assess the relative capability of these organizations to operate innovative programs for the homeless population, and to determine whether any adverse impact for the environment will result

Form Number: None

Respondents: State or Local Governments, tribes, and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Comprehensive Application	250		1		100		25,000
Environmental Assessment	60		1		14		840
Supplemental Application	30		1		52		1,560
Recordkeeping	40		1		40		40

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Total Estimated Burden Hours: 27,440
Status: Revision
Contact: James N. Forsberg, HUD, (202) 755–6300. John Allison, OMB, (202) 395–6880.

Dated: October 16, 1989.

[FR Doc. 89–25153 Filed 10–23–89; 8:45 am]
BILLING CODE 4210–01–M

Office of Housing

[Docket No. N–89–2071]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing an information collection package with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.

The purpose of the program is to provide rental assistance for homeless individuals in rehabilitated Single Room Occupancy housing. The information collected will assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for the Moderate Rehabilitate Single-Room Occupancy Program funds. The Department needs the information so that it can meet a November 7, 1989 statutory deadline established under the Stewart B. McKinney Homeless Assistance Amendment Act of 1988. Therefore, the Department has requested OMB to complete its paperwork review of the section 8 Moderate Rehabilitation Single Room Occupancy Dwelling for Homeless Individuals within (7) working days after publication of this Notice. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 17, 1989.

Peter Monroe,

Acting General, Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collecting Information under the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program will enable the Department to provide rental assistance for homeless individuals in rehabilitated Single Room Occupancy housing. The information collected will assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for the Moderate Rehabilitation Single Room Occupancy Program funds.

Form Number: None.

Respondents: Non-profit institutions and State or local governments.

Frequency of Submission: Monthly.

Status: Revision.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	150		1		25.5		3,825

Contact: A.M. Bell, (202) 755–6650, John Allison, OMB (202) 395–6968.

Dated: October 17, 1989.

[FR Doc. 89–24967 Filed 10–23–89; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–00–4320–02]

Meeting for Safford District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, December 1, 1989; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463. The agenda for the meeting will include:

1. FY 90 Proposed Range Improvement Projects
2. FY 90 Proposed Allotment Management Plans
3. District Animal Damage Control Plan
4. Bureau Vegetation Environmental Impact Statement
5. Safford District Resource Management Plan
6. BLM Management Update
7. Business From the Floor

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, AZ 85546, by 4:15 p.m., Thursday, November 30, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

Dated: October 13, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89–25028 Filed 10–23–89; 8:45 am]
BILLING CODE 4310–32–M

[OR–943–00–4214–11; GPO–017, et al.]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of eight separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 State. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Umpqua National Forest

1. ORE–02851, Public Land Order No. 3502 dated December 2, 1964. South Umpqua Experimental Forest, 4640 acres.
Located in Douglas County, 14 miles northeast of Tiller.
T. 29, S., R. 1 E., W.M., Secs. 15, 16, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, and 34.

2. ORE–06529, Public Land Order No. 2750 dated August 13, 1962. Roadside Zones, 3068 acres.
Located in Douglas County, 35 miles east of Roseburg.
T. 25½ S., R. 1 E., W.M., Secs. 31 and 32.
T. 26, S., R. 1 E., W.M., Secs. 3, 4, 5, 6, 9, 10, 13, 14, 15, 23, and 24.
T. 28 S., R. 1 E., W.M., Sec. 36.
T. 29 S., R. 1 E., W.M., Secs 1, 2, 10, 11, 15, 16, 17, and 18.
T. 26 S., R. 2 E., W.M., Secs. 19 to 23, inclusive.
T. 28 S., R. 2 E., W.M., Secs. 28, 29, 31, and 32.
T. 26 S., R. 1 W., W.M., Secs. 1, 2, 8, 9, 10, 11, 16, 17, and 18.
T. 29 S., R. 1 W., W.M., Secs. 13, 14, 22, 23, 24, 27, 33, and 34.
T. 30 S., R. 1 W., W.M., Secs. 4, 5, and 8.

Umatilla National Forest

3. ORE–03102–B, Public Land Order No. 990 dated August 11, 1954. Buck Creek Forest Camp, 80 acres.
Located in Umatilla County, 16 miles northwest of Elgin.
T. 3 N., R. 37 E., W.M., Sec. 22.
Woodward Forest Camp, 40 acres.
Located in Umatilla County, 17 miles northwest of Elgin.
T. 4 N., R. 38 E., W.M., Sec. 32.
Olive Lake Forest Camp, 159.35 acres.
Located in Grant County, 30 miles northeast of John Day.
T. 9 S., R. 34 E., W.M., Secs. 14 and 22.

Rogue River National Forest

4. ORE–3587–C, Public Land Order No. 1144 dated May 4, 1955. Woodruff Meadows Bridge Recreation Area, 30 acres.
Located in Jackson County, 17 miles east of Tiller.
T. 31 S., R. 3 E., W.M., Sec. 19.

5. ORE–03588–A, Public Land Order No. 1867 dated May 28, 1959. Crater Lake Park Highway Zone and Rogue Riverside and Recreation Zone, 9182 acres.
Located in Douglas County, 35 miles northeast of Tiller.
T. 28 S., R. 4 E., W.M., Secs. 34, 35, and 26.
T. 29 S., R. 4 E., W.M., Secs. 1, 2, 3, 9, 10, 11, 15, 16, 20, 21, 29, 31, and 32.
T. 28 S., R. 5 E., W.M., Secs. 26, and 31 to 35, inclusive.
T. 29 S., R. 5 E., W.M., Secs. 4, 5, and 6.

6. ORE–016435, Public Land Order No. 3854 dated October 18, 1965. Crater Lake Park Highway Zone and Rogue Riverside and Recreation Zone Addition, 90 acres.
Located in Douglas County, 32 miles northeast of Tiller.
T. 29 S., R. 4 E., W.M., Sec. 16.
T. 28 S., R. 5 E., unsurveyed, W.M., Sec. 34.

7. OR–19339, Public Land Order No. 633 dated February 6, 1950. Rogue River Recreation and Scenic Areas, 9138.81 acres.
Located in Douglas and Jackson Counties, 30 miles east of Tiller.
T. 30 S., R. 3 E., W.M., Secs. 12, 13, 23, 24, 25, 28, 33, 34, 35, and 36.
T. 31. S., R. 3 E., W.M., Secs. 2, 3, 4, 8, 9, 10, 15, 16, 17, 19, 20, 21, and 28 to 32, inclusive.
T. 32 S., R. 3 E., W.M., Secs. 4, 5, 6, 8, 9, 16, 17, 19, 20, and 29.
T. 30 S., R. 4 E., W.M., Secs. 5, 6, 7, 18, and 29 to 35, inclusive.
T. 31 S., R. 4 E., W.M., Secs. 1 and 2.

8. OR–20586–B, Secretarial Order dated October 28, 1906. Union Creek Administrative Site, 60 acres.
Located in Jackson County, 24 miles east of Tiller.
T. 31 S., R. 3 E., W.M., Sec. 3.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 13, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–25027 Filed 10–23–89; 8:45 am]
BILLING CODE 4310–33–M

Minerals Management Service

Outer Continental Shelf (OCS); Advisory Board Scientific Committee (SC); Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

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The OCS Advisory Board Scientific Committee will meet in subcommittee meetings at the Heathman Hotel, SW Broadway at Salmon, Portland, Oregon (telephone 503–241–4100), on Wednesday, November 14, 1989, and Thursday, November 15, 1989, from 8 a.m. to 5 p.m.

The OCS Advisory Board Scientific Committee will then meet in plenary session at the Oregon Historical Society, 1230 SW Park Avenue, Portland, Oregon (telephone 503–222–1741), from 8 a.m. to 12 noon on Friday, November 17, 1989.

The purpose of the subcommittee meetings is to review draft Regional Study Plans for Fiscal Years 1991 and 1992. The agenda for the plenary session meeting will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-serve basis at the plenary session with lesser numbers at the subcommittee meetings. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 381 Elden Street, Herdon, Virginia 22070, telephone (703) 787–1717.

Dated: October 19, 1989.

Thomas A. Readinger,

Acting Associate Director of Offshore Minerals Management.

[FR Doc. 89–25040 Filed 10–23–89; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability Proposed Notice of Sale; Central Gulf of Mexico, Oil and Gas Lease Sale 123

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 123.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 123, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for March 1990.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29(c) (1988), as a matter of information to the public.

Dated: October 16, 1989.

Ed Cassidy,

Acting Director, Minerals Management Service.

[FR Doc. 89–25041 Filed 10–23–89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Avenue NW., Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Revision
Bureau/Office: Office of Proceedings
Title of Form: Ex Parte No. 179 Purchase, Merger, and Control of Motor Passenger and water carriers
OMB Form No.: 3120 0080 and 3120–0100
Agency Form No.: None (Previously OP–F–44 and OP–F–45)
Frequency: Non-Recurring
Respondents: Motor and Water Carriers
No. of Respondents: 25
Total Burden Hrs.: 1,500 (Average 60 hours per response)
Brief Description: Persons proposing to purchase, merge or acquire control of motor passenger and water carriers must seek approval of the proposed transaction. Sufficient information must be provided to justify approval of the proposed transaction.

Type of Clearance: Revision
Bureau/Office: Office of Proceedings
Title of Form: Application for temporary authority, under 49 U.S.C. 11349, to operate motor carrier or water carrier authorities or properties
OMB Form No.: 3120–0079
Agency Form No.: OP–F–46
Frequency: Non-Recurring
Respondents: Motor and Water Carriers
No. of Respondents: 125
Total Burden Hrs.: 3,125 (Average 125 hours per response)
Brief Description: This form is used by applicants seeking approval of temporary authority pending permanent approval. The information is used to evaluate whether there is urgency in the transaction, requiring immediate action by the Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 89–25011 Filed 10–23–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31498]

Southern Electric Generating Co.; Petition for Exemption for Construction of a Rail Line in Shelby County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Environmental Assessment.

SUMMARY: By decision served September 19, 1989 in this proceeding, the Commission granted Southern Electric Generating Company's (Segco) petition for exemption from the requirements of 49 U.S.C. 10901 for the construction of 7.5 miles of rail line extending from CSX Transportation's main line near Westover, AL to the Ernest C. Gaston Electric Generating Plant near Wilsonville, AL. The effective date of the decision was postponed until completion of the Commission's environmental review and further decision. The Commission has completed its environmental assessment and concluded that the proposed action will not significantly affect the quality of the human environment provided the mitigation measures set forth in the environmental assessment are implemented by Segco. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATE: Written comments must be filed by November 23, 1989.

ADDRESSES: Send an orginal and 10 copies of comments referring to Finance Docket No. 31498 to:

(1) Section of Energy and Environment, Room 3219, Interstate Commerce Commission, Washington, DC 20423, and

one copy of the comments to: (2) Petitioner's representatives: John R. Molm, Troutman, Sanders, Lockerman and Ashmore, 1400 Peachtree Street NE., Atlanta, GA, 30303–1810, and Susan B. Bevill, Balch & Bingham, 1710 North Sixth Avenue, Birmingham, AL 35203.

FOR FURTHER INFORMATION CONTACT: Harold M. McNulty, (202) 275–6875 or Elaine K. Kaiser, Section Chief, (202) 275–7684. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Transportation Analysis, Room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275–7684. Assistance for the hearing impaired is available through TDD Services at (202) 275–1721.

By the Commission, John F. Hennigan, Jr., Director, Office of Transportation Analysis.

Noreta R. McGee,

Secretary.

[FR Doc. 89–25012 Filed 10–23–89; 8:45 am]

BILLING CODE 7035-01

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application by Cambridge Isotope Lab.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 14, 1989, Cambridge Isotope Lab., 20 Commerce Way, Woburn, MA 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 24, 1989.

Dated: October 12, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–24957 Filed 10–23–89; 8:45 am]

BILLING CODE 4410-09-M

Manufacture of Controlled Substances; Application by Penick Corp.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 1989, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methylphenidate (1724)	II
Cocaine (9041)	II
Ecgonine (Benzoylecognine) (9180).	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 24, 1989.

Dated: October 12, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–24958 Filed 10–23–89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration of Penick Corp.

By Notice dated April 14, 1989, and published in the **Federal Register** on April 21, 1989, (54 FR 16174), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registererd as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230).	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2 dimethylamino-4,4-diphenyl butane (9254).	II
Morhine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Mixed Alkaloids of opium (pantopon) (9648).	II
Concentrate of poppy straw (9670).	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 to the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby ordered that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

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Dated: October 12, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-24959 Filed 10-23-89; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Proposed Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of Proposed FY 1990 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJPD) is publishing, for comment, a Notice of FY 1990 proposed program priorities for making grants and contracts under Section 405 of the Missing Children's Assistance Act, title IV, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100-690, November 18, 1988.

DATE: Comments are due on or before December 22, 1989.

ADDRESS: Send comments to Terrence S. Donahue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-5911.

FOR FURTHER INFORMATION CONTACT: D. Duane Ragan, Acting Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7751.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Missing Children's Assistance Act rests with the Administration of the Office of Juvenile Justice and Delinquency Prevention. For FY 1990, one new program and the continued funding of three programs (provided that funds are available) through assistance awards will constitute all proposed section 405 priority funding areas. The Administrator is hereby announcing these proposed priorities, specifying merit and performance criteria to be applied in their review and inviting public comment on them for sixty days..

Listed below are programs currently funded under section 405 of the Missing Children's Assistance Act that are proposed as continuing program priorities for FY 1990 under their existing project period grants. These are programs planned for their year third of a three year project period.

Families of Missing Children: Psychological Consequences and Promising Interventions ($500,000; project period 10/1/87-5/15/91).

The purpose of this project is to increase our knowledge of, and develop effective treatment alternatives for, the psychological consequences to families with missing and exploited children (405(a)(4) (A) and (B)).

Reunification of Missing Children ($100,000; project period 10/1/88-9/30/91).

The purpose of this development initiative is to identify promising or effective strategies to assist families in adjusting to the return of a missing child (405(a)(7)).

Missing and Exploited Children's Comprehensive Action Program ($400,000; project period 10/1/88-9/30/91).

The purpose of this program is to design and implement a community organization and planning strategy to guide comprehensive program development focused on missing and exploited children. The program would promote specific programmatic and procedural prototypes to serve this youth population and suggest organizational, planning and program development strategies to coordinate and concentrate the resources of the juvenile justice system to address the issue of missing and exploited youth with emphasis on the family and mobilizing volunteers (405(a) (1)-(3)).

The following criteria, based on merit, will be considered in assessing the three noncompeting continuation awards listed above (a noncompeting continuation grant is a grant made in support of a new budget period within an approved and existing project period):

(1) The results of title IV funding under the recipient's current award justify further program activity;

(2) The recipient has promptly submitted all required reports;

(3) The recipient has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award;

(4) The recipient's management practices have provided adequate stewardship of grantor egency funds; and

One new grant for competitive review will be announced in the Federal Register for FY 1990 funding. The grant will be for one year at $90,000 as authorized under section 405. It is:

Parent/Family Abductions

This program would address the complex legal issues of child abductions by parents and family members. The strengths and weaknesses in current public and private sector approaches to the problem would be identified. Emphasis would be placed on providing instructional assistance on legal and jurisdictional difficulties in dealing with the problem. (405(a) (1)-(3)).

The following merit-based general selection criteria will be used to rate applications submitted in response to the program announcement:

(1) The problem to be addresed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken.

Dated: October 18, 1989.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Preventation.

[FR Doc. 89-25007 Filed 10-23-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503; Telephone (202) 395-6880.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management, Office of the Assistant Secretary for Policy
Farm Labor Supply Survey (FALS)
Other, one-time survey
Individuals or households

	Number of respond-ents	Average length	Burden
Family Heads	900	45 minutes	40,500 minutes.
Spouse			
Supplement	420	25 minutes	10,500 minutes
Teenager			
Supplement	720	20 minutes	14,400 minutes.
Total Burden	2,040	32 minutes	65,400 minutes
			1,090 hours.

The Immigration and Nationality Act (INA) requires the Department of Labor to adjust its estimates of available, able, willing, and qualified agricultural workers taking into account the effect of enhanced recruitment in traditional and expected areas of labor supply. This survey is required to perform this adjustment.

Revision

Employment and Training Administration

Contribution Operations
1205-0178; ETA 581
Quarterly
State or local governments
53 respondents; 1,060 total hours; 5 hours per response; 1 form Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registration, number delinquent in filing contribution reports, number and extent of tax delinquency and results of field audit program.

Employment and Training Administration

Program
Monitoring Report and Job Service Complaint Form
1205-0039; ETA 8429, 5148
Quarterly
State or local governments

Form No.	Affected public	Respond-ents	Frequency	Average time per response
ETA 8429 Recordkeeping	Local offices	168	15 minutes	25 minutes.
ETA 8429	Local offices	2,520	One-time	8 minutes.
ETA Outreach Log Recordkeeping	Local offices	150	130 times	12 minutes.
ETA 5148	State government	52	4 times	1 hr. 10 minutes.
5,530 total hours.				

Migrant and Seasonal Farmworker Agricultural Programs Job Service Forms are necessary as part of Federal Regulations at 20 CFR parts 651, 653, and 658 published as a result of the NAACP vs. Brock suit. The forms allow us to track the services provided MSFW's by SESA's.

Extension

Mine Safety and Health Administration

Rock Burst Control Plan
1219-0097
On occasion
Businesses and other for profit; small businesses or organizations
2 respondents; 12 hours per response; 24 total burden hours

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Requires metal and nonmetal mine operators to develop a rock burst control plan within 90 days after a rock burst has been experienced. Plans are required to be made available to MSHA inspectors and are used by the mine operator for work assignments to assure miner safety and to schedule correction work.

Operations Under Water

1219–0020
On occasion
Businesses or other for profit; small businesses or organizations
30 respondents; 5 hours per response; 150 total burden hours
Requires coal miners to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Fire Extinguishing and Abandonment Plans for Refuse Piles and Impoundments

1219–0074
On occasion
Businesses and other for profit; small businesses or organizations
Fire extinguishing plans: 5 responses; 4 hours per response; 20 total burden hours
Abandonment plans: 22 responses; 8 hours per response; 176 total burden hours
Requires coal mine operators to submit to MSHA for approval fire extinguishing plans and abandonment plans for refuse piles and impounding structures. MSHA reviews the plans to insure that they are in keeping with prudent engineering practices and, when implemented, would eliminate any hazardous conditions that may exist.

Gamma Radiation Exposure Records

1219–0039
Quarterly
Operators of metal and nonmetal underground mines
15 respondents; 4 hours per response; 240 total burden hours
Requires operators of metal and nonmetal underground mines, where radioactive ores are mined, to keep records of the results of annual gamma radiation surveys and individual miner's cumulative gamma radiation exposure.

Record of All Certified and Qualified Persons

1219–0049
Quarterly
Businesses and other for profit; small businesses or organizations
4,867 respondents; 5 minutes per response; 1,616 hours
Requires coal mine operators to maintain a list of persons who are certified and those who are qualified to perform duties which require specialized expertise at underground and surface coal mines. The recorded information is necessary to ensure that only persons who are properly trained and have the required experience are permitted to perform these duties.

Radiation Sampling and Exposure Records

1219–0003
Weekly; annually
Undeground uranium mine operators and metal and nonmetal mine operators where radon daughter concentrations exceed 0.3 WL
35 respondents; 7.75 hours per response; 13,563 total burden hours
Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceeds 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters. Records are maintained by the mine operators and are submitted to MSHA annually.

Noise Data Report Form and Calibration Records

1219–0037
Semi-annually; annually
Businesses and other for profit; small businesses or organizations
Periodic surveys: 163,232 responses; 10 minutes per response; 54,519 burden hours
Supplemental surveys: 330 responses; 34 minutes per response; 188 burden hours
Calibration records: 5,400 responses; 1 hour and 47 minutes per response; 9,628 burden hours
Total burden: 64,335 hours
Requires coal mine operators to report to MSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom noise dosimeters and acoustical calibrators are recalibrated.

Employment Standards Administration

Request to be Selected as Payee

1215–0166; CM–910
On occasion
Individuals or households; Businesses or other for-profit; Non-profit institutions: Small businesses or organizations
3,600 respondents; 1,200 total hours; ⅓ hr. per response; 1 form
If a beneficiary is incapable of handling his/her own affairs, the legal guardian or other responsible party may apply to receive the benefits on behalf of the beneficiary as a representative payee. The CM–910 is the form the potential representative payee must submit to DCMWC's staff for review to determine if the request can be approved.

Occupational Safety and Health Administration

Formaldehyde (Labeling Provisions (m)(1)(i))

1218–0145
No recordkeeping burden
Business or other for profit; Small Businesses or organizations
112,217 respondents; 0 burden hours; 0 minutes per response; 0 forms
Currently OMB has cleared all paperwork provisions in the Formaldehye standard until 1991 with the exception of section (m)(1)(i) which defines when formaldehyde shall be considered a health hazard. OSHA is requesting an extension for (m)(1)(i) to 10/07/91 to coincide with the expiration date for the other paperwork provisions.

Signed at Washington, DC this 19th day of October, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–25017 Filed 10–23–89; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

[TA–W–23,105]

Dotronix, Inc., Elk River, MN; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the month in the impact date for the subject petition published on October 3, 1989 in the Federal Register on page 40755 of FR Document 89–23310.

Under Affirmative Determination, in column 3 line 7 on page 40755 the impact date is corrected to read "June 21, 1988" instead of July 21, 1988.

Signed at Washington, DC, this 16th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–25016 Filed 10–23–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–22, 735]

Iberia Petroleum Co.; Negative Determination on Reconsideration

On July 14, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Iberia Petroleum Company, Houston, Texas. This notice was published in the Federal Register on July 25, 1989 (54 FR 30960).

The Department's denial was based on the fact that the preponderance of activities performed by workers of Iberia Petroleum are not related to oil and gas drilling and exploration. therefore, the workers of Iberia Petroleum are not eligible for adjustment assistance. Investigation findings show that Iberia is engaged in managing crude oil and natural gas properties. This activity does not provide a basis for certification. Section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 applies only to workers of service firms who ar engaged in the exploration or drilling for crude oil or natural gas for unaffiliated clients in the oil and gas industry.

The company submitted additional information indicating that a substantial amount of its business was devoted to exploration for oil and gas in 1988.

The Department found, on reconsideration, that Iberia generates oil and natural gas exploration activities. No evidence was found that Iberia had a substantial amount of its income in 1988 originating directly from actual oil and gas exploration for unaffiliated companies in the petroleum industry.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Iberia Petroleum Company, Houston, Texas.

Signed at Washington, DC, this 13th day of October 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89–25015 Filed 10–23–89; 8:45am]

BILLING CODE 4510–30–M

Agricultural Prevailing Wage Surveys (ET Handbook No. 385)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor (DOL) is in the process of revising its procedures for conducting surveys of wages paid to domestic agricultural workers. These surveys, which are conducted by State Employment Security Agencies (SESAs), are used to determine the prevailing wages being paid to domestic workers in particular areas and crop activities. Such prevailing wage information is used by ETA in reviewing the adequacy of wages being offered by agricultural employers who utilize the SESA intra/interstate agricultural clearance job order system to recruit non-local workers for agricultural jobs. Utilization of the clearance system is required for employers who apply to ETA for the purpose of obtaining labor certification for the temporary employment of aliens in agriculture and logging in the U.S. under the provisions of the H–2A and H–2B programs. The current prevailing wage survey procedures are contained in ET Handbook No. 385, August 1981.

In drafting revisions to the existing procedures, ETA has consulted with other DOL agencies, the U.S. Department of Agriculture and selected SESA technical experts. A draft of the revised ET Handbook No. 385 section covering prevailing wage surveys is currently being circulated officially throughout DOL for review and comment. The Office of Management and Budget also is involved in the review process.

Because of the interest in the revision process made known to ETA by non-governmental individuals and entities, ETA is publishing for the information of all interested parties the major component of the draft Handbook currently being circulated for review within DOL. Certain forms and instructions to SESAs for completing the forms have been omitted in the reproduction below.

DATE: Written comments on the draft revision to the prevailing wage survey procedures are invited from interested parties. Comments must be received on or before November 24, 1989.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, United States Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Director, United States Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration; Telephone: 202–535–0163 (this is not a toll-free Number).

Roberts T. Jones,

Assistant Secretary of Labor.

ET HANDBOOK NO. 385—WAGE FINDING PROCESS

Outline

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B. Who is Responsible for the Survey and Wage Determinations
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D. Scope of Survey

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  2. Atypical rates
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B. Wage Survey Interview Record: ETA 232A (Detailed Instructions)
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I. General Procedures

A. Purpose of Survey

An agricultural prevailing wage survey is a survey conducted by State Employment Security agencies (SESAs) to determine the prevailing wages paid to a group of workers in a specific agricultural activity performed in a geographic area predetermined by the SESA. The survey is an important tool in implementing DOL's regulations on the intra/interstate recruitment of agricultural workers (20 CFR 653.501).

Major components of this process are the planning of surveys, the actual collection and compilation of data, and the determination of prevailing wage rates which are acceptable for agricultural clearance job order purposes.

B. Who Is Responsible for the Survey and Wage Determinations

1. *SESA* is responsible for planning and conducting the surveys; for assuring quality control; and for making preliminary prevailing wage determinations.

2. *ETA Regional Office* is responsible for revising and approving SESA survey plans, and for monitoring entire survey process to assure quality control and conformance with Handbook procedures.

3. *ETA National Office* is responsible for reviewing SESA preliminary wage findings and making official prevailing wage determinations.

C. Under What Circumstances and When Should Survey be Conducted

State agencies shall make surveys at least once per season in any crop activity in a wage reporting area in which:

1. Fifty (50) or more domestic workers (interstate or intrastate) recruited by the Employment Service were employed in the previous season, or may reasonably be expected to be recruited in the current season; or

2. Fifty (50) or more H–2A workers were employed in the previous season, or employers have requested or may be expected to request fifty (50) or more H–2A workers in the current season; or

3. The crop or crop activity has been designated by ETA as important because of its status in the national economy, large numbers of workers not recruited through the Job Service are employed, or for other reasons.

If possible, the survey should be conducted during the active work season. However, a survey may be conducted at any time of the year provided it reflects conditions at the peak of the season for the specific crop activity. Collected data should cover one week at the peak period, except that for an unusual crop situation the data may cover up to two weeks at the peak period. (Special provisions for conducting an emergency survey are discussed in *Section II C.*)

D. Scope of Survey

The following factors must be given threshold consideration by SESAs in conducting prevailing wage surveys:

- The wage survey covers "domestic" workers only; this means a worker who is legally qualified to work in the U.S., i.e., a worker, other than a H–2A worker, for whom the employer has completed an I–9, INS's Employment Eligibility Verification form. If H–2A employers are included in the survey, information should be collected from them only on the wage rates paid their domestic workers.
- A specific crop or task activity is the type of work actually performed in relation to a general crop or task. The specific activity may include different stages of harvesting such as 1st pick, 2nd pick or strip. It may also include different use of the product such as picking for the fresh market, for processing into juice or for canning. The specific activity may also be based on varying wage levels or the method of operation such as moving 3-inch pipe, 4-inch pipe or wheellines in irrigation work.
- A wage reporting area is the agricultural reporting area as defined for the purpose of ETA–223 reports (Handbook pages I–102 to I–105) which will normally be the geographic entity for wage survey purpose. However, in some instances, subareas of the reporting area may be more appropriate for wage survey purposes because of substantial dissimilarities in crop or related conditions within the agricultural reporting area.
- The wage survey should include domestic workers of small, medium and large employers from the entire area being surveyed, and should be selected by probability sampling methods. While most survey information may be obtained by telephone or mail contacts, attempts should be made to include a representative number of personal employer interviews in all wage surveys in order to supplement and verify survey information obtained by telephone or mail. The State agency must assure itself that information gathered is representative of the rates being paid in the crop activity.

II. Specific Survey Planning and Performance

A. Standards for Planning Prevailing Wage Surveys

1. *Planning surveys.* An assessment of prospective seasonal agricultural activity should be made by the State agency *well in advance* of anticipated farm labor needs in those crops and activities which meet, or are expected to meet, the conditions specified in Section I–C. Written plans shall be prepared for scheduled surveys and sent to the Regional Office for approval. (See page I– .)

2. *Representativesnesr of wage rates (sampling).* Before conducting a survey, the State agency should assure that the planned sample will yield data which will be representative of the wage rates paid in the crop activity in the area of intended employment. The wage survey sample should include domestic workers of small, medium and large employers from the entire area being surveyed, and should be selected by probability sampling methods.

In determining the appropriate universe and in planning sampling procedures, the State should rely upon its established Research and Analysis (R & A) unit. Usually, this unit is already involved in planning and conducting surveys in other areas, and its expertise in surveying has been refined over many years.

In constructing a sample of workers, the following general guide should be observed:

Number of domestic workers in the crop activity in area	Sample size (percent of workers)
50–299	55
300–499	50
500–699	45
700–999	40
1000–1299	35
1300–1599	30
1600–2999	20
3000 or more	15

If the initial survey results in a low response rate, the State should follow-up with employers in an effort to increase the response rate. No determination shall be made based on a sample of less than three employers.

3. *Coverage of employers, workers and kinds of remuneration.* (a.) In determining the appropriate universe of employers and workers to survey, the State should use available sources such as the ETA 202 file, employer organizations, universities and State agricultural offices.

(b.) When conducting surveys SESAs must inform employers that they are seeking information on the actual wage rate paid to domestic workers only; i.e., workers for whom the employer has completed an I–9, INS's Employement of Eligibility Verification form. H–2A workers are excluded.

(c.) A wage rate means actual cash remuneration to a worker by an employer in payment for services rendered. It does not mean an hourly rate which has been calculated from piece rate earnings. Fringe benefits such as free housing and free meals mut not be counted as part of the wage rate. A wage rate may be a piece rate or an hourly, weekly, bi-weekly or monthly rate. A bonus component may be part of a wage rate. For example, an apple picking rate may be $.70 per bushel plus $.05 end of season bonus; the $.05 bonus must be shown separately.

B. Methods of Collection and Sources of Wage Survey Information

While most survey information may be obtained by telephone or mail contacts, attempts should be made to include a representative number of personal employer interviews in all wage surveys in order to supplement and verify survey information obtained by telephone or mail. (See form ETA 232A). The State agency must assure itself that information gathered is representative of the rates being paid in the crop activity.

C. Special Procedures for Unexpected Situations

There may be situations where surveys have not been required in the past and employers will unexpectedly submit requests to the Job Service for workers. Although the timing of unanticipated requests may preclude the application of standard survey procedures, the State agency is still responsible for advising the Regional Office on the acceptability of wage rates offered in job orders. In such situations, where time constraints require a rapid determination regarding prevailing wage rates, the following procedures will apply:

1. Depending on the amount of time available, attempt to collect survey data solely by telephone after determining the appropriate universe. In determining the universe, refer to the ETA 202 file or other sources which are readily available.

2.Examine open and closed local job orders involving the same or similar occupation, activity, and crop.

3. Obtain information from local agricultural employers who do not use the Employment Service to obtain workers.

4. Consult U.S. Department of Agriculture agencies and affiliates such as Cooperative Extension Services and the National Agricultural Statistics Service's State statistician. Also contact colleges and universities with staff conversant in the agricultural sciences.

5. Consult farmworker organizations (include JTPA 402 grantees) and agricultural employer organizations, such as the Farm Bureau.

6. Consider whatever documentation the requesting employer or employers have to submit.

III. Prevailing Wage Findings and Determinations

A. Arraying Collected Data

Rates paid to workers covered in the survey should be listed in descending order and grouped by unit of pay, such as by the bushel or by the hour. Handling of special kinds of pay is addressed in the following paragraphs.

1. *Overtime and piece rate earnings.* Prevailing wage rate findings are based upon actual wage rates paid by employers. Average earnings data which may show overtime or piece-rate wages converted to hourly rates are excluded.

2. *Atypical rates.* The collected wage rates arrayed in section 4 of the final 232 report and used in determining the prevailing rate should be unaffected by unique or unusual factors. An example of such a factor is an earthquake, flood, hurricane, tornado or other Act of God resulting in employer escalated rates referred to as "hardship" rates by some employers. (These rates are set in emergencies to compensate for expected big decrease in workers' earnings.) Although the "hardship" rate is not used, it should be shown as part of the array and footnoted with an explanation of why it was judged to be atypical.

3. *Collective-bargained rates.* In areas where agricultural employees are members of collective bargaining units, the unions will sometimes specify wage rates to be paid in their contracts with agricultural employers. For the purpose of determining prevailing wage rates, collective bargaining rates should not be given special treatment. These rates, if actually paid to workers, should be included in the normal array of wages from the survey.

4. *Bonuses.* For wage rates that include bonus rates in the same units as the base rates (e.g., 25 cents per box plus a 5 cent bonus per box), add the bonus to the base rate, in each case, to determine the gross rate. Array the gross rates including the piece rates within each gross rate in descending order. Each base rate and bonus combination and each piece rate without bonus will be considered separate rates for purposes of determining the prevailing rate. For wage rates that include bonus rates in units different from the base unit (e.g., $1.10 per hour plus 40 cents per box), treat each such rate and bonus arrangement as a different unit of payment.

Following is an example of how bonuses should be arrayed in completing the final ETA–232 report.

Rate (per box)	Gross rate	Number of workers Total: 1,000
$0.20 + $.02 bonus	$0.22	100
.17 + $.04 bonus	.21	50
.20 + (no bonus)	.20	150
.18 + $.02 bonus	.20	250
.17 + $.03 bonus	.20	300
.16 + $.04 bonus	.20	100
.19 + (no bonus)	.19	50

In any situation where a base rate bonus combination becomes prevailing, the base rate continues to be shown separately from the bonus such as $0.18 + $0.02 quality bonus.

5. *Rate Schedule.* A rate schedule (also referred to as a schedule-of-rates) which is prepared by an employer prior to the start of the work season, is a list of rates to be paid based on varying conditions affecting a product when it is harvested. Varying conditions may involve size, estimated yield or other factors. Following is an example of how an employer may prepare a pre-season rate schedule for harvesting cucumbers:

Rate to be paid per bushel	Size in diameter
$0.80	½ inch.
.70	1 inch.
.60	1 ½ inches.
.50	2 inches.

Such a schedule should be entered in the array as if it were a separate rate. Contingent on the number of workers covered by the schedule and related collected wage data, the schedule could be determined to be prevailing.

6. *Task Rates.* A task rate is a method of payment which is based upon a measure of production which is not amenable to being quantified, such as per field of beets weeded or per row of sugar cane cut. Task rates normally vary from day-to-day, depending upon such factors as complexity and difficulty of the "task" involved at a specific point in time, such as density of weeds to be removed, and precise wage rates are not

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set ahead of time. In situations where task rates ae used, it wil not be possible to establish a prevailing wage finding. SESAs should collect information on the range of task rates paid, which may vary from field to field depending upon circumstances, and report them, noting that a task rate situation does not lend itself to a prevailing wage determination.

B. Conversion of Different Units of Payment to a Common Base

When possible, different units of production in a crop activity must be converted to a common base. For example, collected data for a specific activity such as fruit picking may include several proportional units of a bushel such as ⅝'s of a bushel, 1 bushel, 1-and-⅛ bushels and a 15-bushel bin. All of these rates can be converted into a single standardized rate such 1 bushel.

As another example, in some situations different methods of pay for irrigation work can be converted to a common base. For example, if there is a proportional mile line in a survey area consisting of a standard number of pipes or joints then the collected pay data for lines, pipes and joints can be converted to the *single dominant unit of payment.*

In all cases, the converted single unit would be shown in item 4 of the ETA 232 report while the collected raw data information would be attached to the report. The general process for converting these rates is illustrated below.

Conversion of proportional bushel units

- Convert 1-and-⅛ bushels rate to a 1 bushel rate when the 1-and-⅛ bushels rate is $.70.

1-and-⅛ bushels=.70
⅛=0.125
1-and-⅛ bushels=1.125 bushels
1.000 bu divided by 1.125 bushels=.889
.889×$.70=$0.62 p/bushel

- Convert a 1 bushel rate to a 1-and-⅛ bushels rate when the bushel rate is .62.

1 bushel=$.62
⅛ of a bushel=0.125 increase
$.62×1.125=$.70 p/1-and-⅛ bushels

Note: 1 bushel=2,150.40 cu.in.

1-and-⅛ bushels=2,419.22 cu.in.

- Convert a ⅝ bushel rate to a 1 bushel rate when the ⅝ bushel rate is $.45.

⅝ bushel=$.45
1 bu=(8/8)
⅛ bu=$.45 divided by ⅝=.45 divided by 5=.09 (⅛ bu)
1 bushel (8/8)=.09 (⅛ bu)×8=$.72 p/bushel

- Convert a 15-bushel bin rate to a bushel rate when the bin rate is $10.50.

$10.50 divided by 15 bushels=$.70 p/bushel

C. Procedure for Making a Prevailing Wage Finding

1. *One or more units of payment.* If the report consists of a single unit of payment (e.g., by the hour or by the bushel) the finding can be determined by application of the 40/51 percent rules which are explained below. If more than one unit of payment is shown in the report, follow the table below in determining which units of payment are subject to wage findings. For example, if the sample size is 150 workers and at least 30 percent are paid by the hour and at least 30 percent are paid by the bushel, then a wage finding shall be determined for both groups (those paid hourly and those paid by the bushel), by applying the 40/51 percent rules within each group.

Sample size [1]	Percentage of workers needed in a pay unit to make a wage finding
10–99	35
100–299	30
300–699	25
700–1299	20
1300–2999	15
3000 and over	10

[1] Sample size means the *total number of workers* shown on each separate ETA 232 report.

2. *Local and intra/interstate rates.* When arraying is completed, determine if "local" and "Intra/Interstate" totals under section 4 of the 232 report each constitute at least 25 percent of the "total" workers. If below 25 percent, no separate wage determination is required. Workers in these categories will be subject to the determination applicable to the larger group.

3. *The 40/51 percent rules.* The 40/51 percent rules are applied to each of the units determined to be subject to a wage finding. If within the unit of payment a single wage rate, or schedule of rates, covers at least 40 percent of total workers in the unit, that single rate or schedule is the prevailing rate, and no further action is needed for that unit. If no single rate in the unit covers at least 40 percent of the workers, then the 51 percent rule is applied to determine the prevailing rate. The procedure is to start at the bottom of the rates arrayed in descending order. Begin counting the number of workers covered and count upward until 51 percent of the workers in the unit are included. The rate reached at this point is the prevailing rate. Both the 40 and 51 percent rules are applied to all three columns under Section 4 of the 232 report: Total workers, local and intra/inter-state. The highest rate determined among the three columns is the prevailing rate.

Example: 40 percent rule

U.S. WORKERS

Rate (per bushel)	Total	Local	Intra/interstate
	300	170	130
$0.75	18	18	0
.70	26	22	4
.62	53	28	25
.60	[2] 123	22	[2] 101
.56	47	47	0
.55	13	13	0
.50	20	20	0

[2] Prevailing rate per 40% rule. 40% of 300 total is 120, 40% of 170 total is 68, and 40% of 130 total is 52.

Example: 51 percent rule.

U.S. WORKERS

Rate (per bushel)	Total	Local	Intra/interstate
	200	160	[1] 40
$0.72	19	19	0
.60	25	25	0
.55	49	9	40
.52	[2] 50	[2] 50	0
.50	27	27	0
.48	20	20	0
.45	10	10	0

[1] No finding required since 40 is less than 25% of total workers (200).
[2] Prevailing rate per 51% rule. 51% of 200 total is 102 and 51% of 160 total is 82.

D. Report Submittal and Prevailing Wage Determination

When the survey is completed and the data have been properly grouped and arrayed, a separate ETA 232 report is prepared for each specific activity covered. It is not unusual for a single survey to result in the preparation of several Reports. The ETA–232 report showing survey findings must be prepared and submitted within five weeks to the ETA Regional Office and the National Office. (See page regarding distribution).

A report must be submitted for each survey, whether or not it results in a finding. The reason for not making a finding should be explained. (When for any reason a wage finding cannot be made, the National Office will examine other approaches for deriving an acceptable minimum wage for agricultural clearance order purposes).

The wage findings in the report are preliminary until reviewed by the National Office. The findings become final when the State is notified by ETA. This will always occur when temporary foreign workers are employed or have been requested. When temporary aliens are not involved, it is possible that the State will not be notified of review results unless there are incorrect findings. In this situation, the submitted report becomes final 40 working days after being mailed to the National Office. (The State may request an expedited review and/or notification of review results on any submitted report).

IV. Prevailing Wage Applicability to Employer Job Orders

A. General

The wage rate which must be offered by employers on clearance orders shall be at least as high as the highest of the "all workers" rate, the "local" rate, or the "intra/interstate" rate, provided such rates are no lower than the legal State or Federal minimum wage or the AEWR (where applicable).

Normally, the wage finding from a survey is applied during the next year. For example, a finding from an October 1989 apple harvest survey will be applied in evaluating job orders submitted for the 1990 apple harvest in the same area. (See page 10 regarding emergency situations.)

Special situations are addressed in the following paragraphs.

B. Alternative Piece Rates

For activities paid on a piece-rate basis, the State agency may accept job orders which offer piece rates that differ from those specified in the prevailing wage findings, if the employer making such an offer can demonstrate that the proposed piece rate or schedule-of-rates are necessary because of the employer's specific type of operation and that they can reasonably be expected to produce earnings for the average worker, which are no less than those received under the rate or rates determined to be prevailing. (See 20 CFR part 653, subpart F for further requirements). For example, although the established prevailing wage rate for picking cucumbers may be $0.50 per bushel, a particular grower may desire to pick by varying sizes and pay the workers accordingly. Therefore, upon request the grower may be allowed to offer several rates based on the diameter or length of the cucumbers picked. The burden of proof in this situation is on the employer who would be requested to provide supporting payroll information relating to productivity, earnings and other factors.

C. Bonuses

Wage offers on intra/interstate clearance orders must include a base rate component not less than the base rate component of the prevailing wage. The following example is illustrative:

Rate (per box)	Gross rate	Number of workers
Total		1,000
$0.20 + $0.02 bonus [1]	$0.22	10
.17 + $0.04 bonus [1]	.21	50
.20 + no bonus	.20	150
.18 + $0.02 bonus [1]	.20	250
.17 + $0.03 bonus [1]	.20	300
.16 + $0.04 bonus [1]	.20	100
.19 + no bonus	.19	50

[1] End of season bonus.

Using the 51-percent rule (since no single rate accounts for 40 percent of the workers), the prevailing wage rate is a base rate of 18 cents plus 2 cents bonus. The rates of 17 cents plus 3 cents bonus and 16 cents plus 4 cents bonus equal the 18-cent plus 2 cents bonus prevailing gross rate, and the rate of 17 cents plus 4 cents bonus exceeds it, but they are not acceptable for clearance orders because the base rates are less than the prevailing base rate of 18 cents.

D. Establishment of Special Hourly Rates Under Certain Circumstances

In rare situations where only a prevailing piece rate finding has been made by the National Office based on a SESA prevailing wage survey and an employer wishes to pay on an hourly basis, the following procedure applies:

(1) Calculate the average hourly earnings figure (weighted by the number of hours worked) for piece-rate-paid domestic workers in the area, crop activity, and occupation, using previous years' earnings data—preferably three years. The earnings data are obtained either from applicable SESA prevailing wage surveys, or by special surveys of employers' domestic worker payroll records. Calculate this average for each year for which earnings data are available, up to a maximum of three years.

(2) Discount the average hourly earnings figure for each year by 20 percent. Add the discounted yearly rates and divide by the total number of years to obtain the prevailing hourly rate which the employer must offer.

(3) Where hourly-paid domestic workers are also working in the area and activity and are included in the SESA surveys, their earnings also have to be factored into the calculation of the prevailing hourly rate as follows:

(a) Weight the hourly rates paid by the number of hours worked to obtain a single weighted hourly average. Then calculate a combined weighted average of average earnings figures of both hourly-paid and piece-rate-paid workers, weighting by total number of hours worked.

(b) When the number of hours worked is not available for hourly-paid workers, use the number of workers to obtain the weighted average hourly figure. Similarly, use the total number of workers rather than hours worked when calculating the combined weighted average of hourly-paid and piece-rate-paid workers.

The annual rates obtained by method (a) or (b) are then added together and divided by the number of years to obtain the prevailing hourly rate.

The National Office is to be consulted in *all* instances where such a determination is required. National Office staff will provide guidance on specifics, including selection of the base years and the factoring in of hourly wages, to insure correct application of this procedure to each individual circumstance.

Example: The tables below are illustrative:

Apple Pickers (Fresh Market), 1989

I. *Piece Rate Workers*

Number of workers	Hours worked	×	Average hourly earnings [1]	=	Total earnings
5	77		$12.04		$927.08
4	64		3.83		245.12
2	8		6.75		54.00
12	252		4.14		1,043.28
1	10		2.80		28.00
3	116		5.54		642.64
2	108		6.75		729.00
29	635				3,669.12

$3,669.1 divided by 635 hrs.=$5.78 (weighted) × .80 (20% discount).
[1] To obtain, multiply rate of pay by units of production and divide results by hours worked.

II. *Hourly Workers*

Number of workers	Hours worked	×	Hourly pay	=	Total earnings
1	12		$5.75		$69.00
2	1		5.00		5.00
4	47		4.50		211.50
2	60		4.35		261.00
8	48		4.00		192.00
2	15		3.75		56.25
1	1		3.50		3.50
18	184				796.25

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Number of workers	Hours worked	×	Hourly pay	=	Total earnings

$798.25 divided by 164 hrs. = $4.34 (weighted)

III. *Final Computation for 1989*

Number of workers	Hours worked		Computed rates
29 (piece rates)	635	×	$4.62 = $2,933.70
18 (hourly rates)	184	×	4.34 = $798.56
	819		3,732.26

$3,732.26/819 hrs. = $4.56 (rate for 1989)

Appendix A: Plan for Agricultural Wage Survey

Title: PLAN FOR AGRICULTURAL WAGE SURVEY

Form Number: N/A—Narrative Plan

Frequency: Once each season by the State for each crop activity in which:

(a) Fifty (50) or more domestic workers recruited by the Employment Service were employed in the previous season, or may reasonably be expected to be employed in the current season; or

(b) Fifty (50) or more H–2A workers were employed in the previous season, or employers have requested or may be expected to request fifty (50) or more H–2A workers in the current season; or

(c) The crop or crop activity has been designated by the ETA as an important crop or crop activity, because of its status in the national economy, because large numbers of workers not recruited through the Job Service are employed, or for other reasons.

Purpose and Content: To provide to ETA Regional Offices, for review and approval, State agency Plans for the conduct of agricultural wage surveys. Each Plan identifies the agricultural areas covered and the specific crop activity, sampling criteria to be used on the survey, and any special information deemed necessary for Regional Office use.

Prepared by: State Central Office staff.

Distribution: The original and one copy to the Regional Office at least 90 calendar days prior to the week of the survey. If more than one survey is scheduled for the year, Plans for all may be submitted at the same time.

Completion Instructions: Line-by-line instructions appear on the pages following this summary.

I. Special Instructions

A. Each State agency which expects workers to be employed in agriculture in that State under one or more of the conditions specified in paragraph one of page , is to prepare and submit to the ETA Regional Office one or more Plans for performing agricultural wage surveys. If the Initial Plan does not meet the approval of the Regional Office, the State will be notified without delay. Discussion of problem areas will continue until the Plan is properly amended and approved.

B. The Plan for a survey need be submitted only once a year. Partial changes in a Plan may be made through an amendment; comprehensive changes should be submitted through a new Plan.

C. Normally, the boundaries of the wage reporting area will be the same as those of the agricultural reporting area (ETA–223) and no additional information will be required. However, where a State agency wishes to establish a wage reporting area which is not the same as an agricultural reporting area, the following information is required:

1. The boundary description which would be in terms of counties, where applicable. Where the boundaries are not county lines:

a. Give a more detailed description; e.g., "All of the Southern half of Finster County bounded on the northeast by Interstate Highway 72, on the north central by Army installation, and on the northwest by Neuse River."

b. Attached to each copy of the Plan a map showing the boundaries. If a map showing the same geographic area has been submitted for another wage reporting area, a cross reference can be substituted for the map.

2. The local offices in the area.

3. Identification of the agricultural reporting area(s) in which the wage reporting area is located.

D. The Plan should be amended when previously reported conditions or procedures change. Each amendment would be identified by a current date and a reference to the Plan number to which it applies; e.g., "April 15, 1989, amendment to Plan No. 2."

II. Preparation of Plan

A. *Heading of Plan.* At the top of the first page of each Plan or amendment enter the following identifying information:

1. *Number and title of the report;* i.e., "Plan for Agricultural Wage Surveys (of the ETA 232 report)", and "Amended" as necessary.

2. *Name of State.*

3. *Date of preparation.*

4. *Plan number.* All Plans should be numbered consecutively in the order of submittal during a calendar year; e.g., Plan No. 1, Plan No. 2. If a State agency submits several Plans in a package, each Plan should be numbered according to the time of the scheduled survey. Each amendment should be identified with the number of the Plan to which it relates.

B. *Items to Be Included in Plan for Each Wage Reporting Area.* Give the following information for each area which the plan covers:

1. *Name.* The area name is assigned by the State agency. It should be short and descriptive and should identify both the area and the crop (e.g., Maricopa lemons).

3. *Crop activity.* The terms used should adequately describe the activity and should be consistent with those in section A of the ETA–223 reports. If the activity will be surveyed during different phases of harvesting such as 1st pick, 2nd pick and strip this should be stated. For each activity give the following information:

a. The estimated beginning and ending dates for the crop activity and the period of peak activity.

b. The estimated number of workers required to work in the crop activity during the peak period.

C. Sampling Information

1. Specify the criteria to be used in selection of the sample to make sure that the survey will yield representative results. Indicate the size of the sample which will be used under varying conditions and the major area characteristics which will have a bearing on the wage rates paid in the crop activity. If the sampling criteria will vary under different conditions or for different crops, identify the wage reporting areas and crop activities to which these variations apply. As suggested in section , the State R&A unit should have a key role in planning and implementing sampling criteria.

2. Describe the sources and methods to be used in collecting the sample data from employers.

D. Comments

1. Explain any special situations or conditions not otherwise accounted for in the Plan which will be helpful in interpreting the data reported.

2. Explain any instances where the reporting instructions have not been followed in completing the items in the Plan.

3. Request assistance in training survey staff, if needed.

4. Discuss expected budgetary problems or other expected problems. If there is an obvious monetary shortfall, specify in the Plan the amount needed to overcome the shortfall. Without delay, the Regional Office will take steps to resolve this.

Appendix D: Explanation of Special Terms

1. *Adverse Effect Wage Rate (AEWR):* The hourly wage rate DOL requires an employer to offer and guarantee when requesting certification to employ temporary foreign agricultural workers under the H–2A program. The purpose of the AEWR is to prevent the employment of foreign workers from adversely affecting U.S. workers.

2. *Base rate:* The rate paid by an employer minus any type of added bonus, other incentive or perquisite.

3. *Bonus:* Generally, an added increment of pay above the base rate which is paid on a conditional basis for such factors as high quality work or successful completion of a season.

4. *Contract foreign worker:* A nonimmigrant alien admitted to the U.S. for agricultural labor or services of a temporary or seasonal nature under provisions of the INA, as amended by the IRCA, also *H–2A worker.*

5. *Crop:* Cultivated produce, usually of the earth, produced for marketing purposes which is normally planted, grown and harvested. May include livestock and fish.

6. *Crop or task activity:* The type of work actually performed in relation to a specific crop or task. The specific activity may include different stages of harvesting such as 1st pick, 2nd pick or strip. It may also include different use of the product such as picking for the fresh market, for processing into juice or for canning. In irrigation work, the specific activity may be based on the method of operation such as moving 3-inch pipe, 4-inch pipe or wheellines. When the survey is completed and the data have been properly grouped and arrayed, a separate ETA 232 Report is prepared for each specific activity covered. It is not unusual for a single survey to result in the preparation of several Reports.

7. *Domestic worker:* A worker who is legally authorized to work in the United States, but not an H–2A worker.

8. *Employer:* A person, firm, corporation or other association or organization which suffers or permits a person (employee) to work as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee.

9. *Gross rate:* A combination of a base rate and a bonus rate when a bonus is paid. Does not include perquisites.

10. *H–2A worker:* See *contract foreign worker.*

11. *Hardship rate:* A compensatory rate paid when an Act of God, such as a tornado, flood, or earthquake, results in reduced yields and earning capabilities for workers.

12. *Hired worker:* An agricultural worker hired in exchange for the payment of wages, as differentiated from a family member who is not working for wages.

13. *Hourly rate:* A rate of pay per hour.

14. *I–9 Form:* The Immigration and Naturalization Service (INS) form which is used for purposes of verifying the employment eligibility of American citizens and aliens authorized to work in the U.S. Employers must complete and retain the I–9 for all employees.

15. *In-season:* The active period for a crop when it is being planted, cultivated or harvested.

16. *Instate worker:* A domestic worker whose permanent residence is within the same state as the agricultural job being performed. Can be an intrastate or local worker.

17. *Interstate worker:* A domestic worker whose permanent residence is not within the same state as the agricultural job, and who cannot reasonably commute from his/her permanent residence to and from the job site in the same day.

18. *Intrastate worker:* A domestic worker whose permanent residence is within the same state as the agricultural job opportunity, but not within the jurisdiction of the SESA local office nearest to the job site, and who cannot reasonably commute from his/her permanent residence to and from the job site in the same day.

19. *Intra/interstate worker:* A domestic worker who is not a local worker.

20. *Local worker:* A domestic worker whose permanent residence is within the jurisdiction of the SESA local office nearest to the job site, and who can reasonably commute from his/her residence to and from the job site in the same day.

21. *Method of payment:* The general means or measure used in paying workers for services rendered. For example, payment may be by a piece rate based on a quantity of produce harvested such as a bushel or some proportion of a bushel. Also, payment may be a schedule of different rates or by the measure of time, such as by the hour or the month.

22. *Peak season:* The point in a work season for a particular agricultural activity when most workers employed are actually working full-time.

23. *Perquisite:* An item provided to a worker in addition to regular wages, such as free food, free housing, or free medical insurance.

24. *Piece rate:* A form of remuneration paid to a worker in relation to an identifiable unit of production being produced, harvested or processed; e.g., $0.50 for picking a bushel of apples.

25. *Prevailing wage rate finding:* The wage rate (or rates) determined to be prevailing in a crop activity, or related activity such as irrigating, based on the collection of adequate wage data and compilation of form ETA 232 (page I–). The wage rate finding is not effective until the ETA 232 Report has been submitted to the Regional and National Offices, and the National Office has verified the finding determination.

26. *Schedule-of-rates:* A predetermined list of rates which will be paid during the work season, based upon varying conditions such as estimated yield or the size of a harvested product.

27. *Standard agricultural reporting area:* The specific geographic areas which States have established for collecting data used to complete the ETA-223 In-Season Farm Labor Report.

28. *Task rate:* A method or unit of payment which is based upon a measure of production such as per field of beets weeded or per row of sugar cane cut. A task rate, which will normally vary from field to field or from day-to-day, is not usually established until the worker actually begins work. It normally depends upon the difficulty and complexity levels of the daily task to be performed, such as density of weeds to be pulled or density of sugar cane to be cut.

29. *Unit of payment:* The specific manner in which a group of workers are paid. For example, under the piece rate method, workers may be paid by the bag, basket, bin, bucket, bushel, crate or hamper. If a certain group is paid by the crate, that is their unit of payment while the method of pay is by a piece rate. Under the measure of time, payment by the hour to a certain group would be the unit of payment.

30. *Unit of production:* The basic measure of production in a specific crop activity; e.g., per bushel, per bin, per pallet, per row, per ¼-mile wheelline.

31. *Universe:* The total number of employers in a specific geographic area who are hiring workers for a specific crop activity. A sample of the universe of employers is surveyed to compile wage data used to determine a prevailing wage in a crop activity. The term is also used to describe the total number of workers involved in a wage survey.

32. *Wage finding report:* The ETA 232 report which is the final summary of collected wage data submitted to the ETA National Office and Regional Office.

33. *Wage Survey Interview Record:* The ETA 232A form. This form is used by local SESA offices to identify, by crop area and crop activity, wage rates paid to, and number of, domestic and foreign workers.

34. *Wage reporting area:* The agricultural reporting area as defined for the purpose of ETA-223 reports (Handbook pages 1–102 to 1–105) will normally be the geographic entity for wage survey purposes. However, in some instances, subareas of the reporting area are more appropriate for wage survey purposes because of substantial dissimilarities in crop of related conditions within the agricultural reporting area. Upon approval by the Regional Office, an area, smaller or larger, which is not congruent with a standard agricultural reporting area may be designated as a wage reporting area.

35. *Wages:* Cash remuneration to a worker by an employer in payment for personal services. Does not include perquisites.

[FR Doc. 89–25019 Filed 10–23–89; 8:45am]

BILLING CODE 4510–30–M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective October 1, 1989 through September 30, 1990.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas, which includes civil jurisdictions with a population of twenty-five thousand or more as required by Pub. L. 99–272.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial

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unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas.

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and are effective October 1, 1989 through September 30, 1990.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on September 29, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

Labor Surplus Areas Eligible for Federal Procurement Preference

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Anniston City	Anniston City in Calhoun County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bessemer City	Bessemer City in Jefferson County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dale County	Dale County.
Balance of Dallas County	Dallas County less Selma City.
De Kalb County	De Kalb County.
Decatur City	Decatur City in Morgan County.
Escambia County	Escambia County.
Fayette County	Fayette County.
Florence City	Florence City in Lauderdale County.
Franklin County	Franklin County.
Gadsden City	Gadsden City in Etowah County.
Greene County	Greene County.
Hale County	Hale County.
Jackson County	Jackson County.
Lawrence County	Lawrence County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile city	Mobile City in Mobile County.
Balance of Mobile County	Mobile County less Mobile City, Prichard City.
Monroe County	Monroe County.
Balance of Morgan County	Morgan County less Decatur City.
Perry County	Perry County.
Phenix City	Phenix City in Lee County, Russell County.
Pickens County	Pickens County.
Prichard City	Prichard City in Mobile County.
Selma City	Selma City in Dallas County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.
Alaska	
Anchorage City	Anchorage City in Anchorage Borough.
Bethel Census Area	Bethel Census Area.
Bristol Bay Borough Div	Bristol Bay Borough Div.
Dillingham Census Area	Dillingham Census Area.
Fairbanks City	Fairbanks City in Fairbanks North Star Borough.
Ballance of Fairbanks North Star Borough.	Fairbanks North Star Borough less Fairbanks City.
Haines Borough	Haines Borough.
Kenai Peninsula Borough	Kenai Peninsula Borough.
Ketchikan Gateway Borough.	Ketchikan Gateway Borough.
Matanuska-Susitna Borough.	Matanuska-Susitna Borough.
Nome Census area	Nome Census area.
Northwest Arctic Borough.	Northwest Arctic Borough.
Prince of Wales Outer Ketchikan.	Prince of Wales Outer Ketchikan.
Sitka Borough	Sitka Borough.
Skagway Yakutat Angoon Census area.	Skagway Yakutat Angoon Census area.
Southeast Fairbanks Census area.	Southeast Fairbanks Census area.
Valdez Cordova Census area.	Valdez Cordova Census area.
Wade Hampton Census area.	Wade Hampton Census area.
Wrangell-Petersburg Census area.	Wrangell-Petersburg Census area.
Yukon-Koyukuk Census area.	Yukon-Koyukuk Census area.
Arizona	
Apache County	Apache County.
Balance of Cochise County.	Cochise County less Sierra Vista City.
Balance of Coconino County.	Coconino County less Flagstaff City in Coconino County.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Sierra Vista City	Sierra Vista City in Cochise County.
Yuma City	Yuma City in Yuma County.
Balance of Yuma County	Yuma County less Yuma City.
Arkansas	
Ashley County	Ashley County.
Baxter County	Baxter County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clark County	Clark County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Columbia County	Columbia County.
Conway County	Conway County.
Balance of Crittenden County.	Crittenden County less West Memphis City.
Cross County	Cross County.
Dallas County	Dallas County.
Desha County	Desha County.
Drew County	Drew County.
El Dorado City	El Dorado City in Union County.
Faulkner County	Faulkner County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Balance of Garland County.	Garland County less Hot Springs City.
Grant County	Grant County.
Greene County	Greene County.
Hempstead County	Hempstead County.
Hot Spring County	Hot Spring County.
Hot Springs City	Hot Springs City in Garland County.
Independence County	Independence County.
Jackson County	Jackson County.
Jacksonville City	Jacksonville City in Pulaski County.
Balance of Jefferson County.	Jefferson County less Pine Bluff City.
Johnson County	Johnson County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Little River County	Little River County.
Logan County	Logan County.
Madison County	Madison County.
Balance of Miller County	Miller County less Texarkana City, Ark.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Polk County	Polk County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Saline County	Saline County.
Searcy County	Searcy County.
Balance of Sebastian County.	Sebastian County less Fort Smith City.
Sevier County	Sevier County.
Sharp County	Sharp County.
St. Francis County	St. Francis County.
Stone County	Stone County.
Texarkana City, Ark.	Texarkana City, Ark. in Miller County.
Balance of Union County	Union County less El Dorado City.
Van Buren County	Van Buren County.
West Memphis City	West Memphis City in Crittenden County.
White County	White County.
Woodruff County	Woodruff County
California	
Bell Gardens City	Bell Gardens City in Los Angeles County.
Balance of Butte County	Butte County less Chico City.
Calaveras County	Calaveras County.
Clovis City	Clovis City in Fresno County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Norte County.
El Centro City	El Centro City in Imperial County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fontana City	Fontana City in San Bernardino County.
Fresno City	Fresno City in Fresno County.
Balance of Fresno County.	Fresno County less Clovis City, Fresno City.
Gilroy City	Gilroy City in Santa Clara County.
Glenn County	Glenn County.
Humboldt County	Humboldt County.
Huntington Park City	Huntington Park City in Los Angeles County.
Balance of Imperial County.	Imperial County less El Centro City.
Indio City	Indio City in Riverside County.
Balance of Kern County	Kern County less Bakersfield City.
Kings County	Kings County.
Lake County	Lake County.
Lassen County	Lassen County.
Lodi City	Lodi City in San Joaquin County.
Lompoc City	Lompoc City in Santa Barbara County.
Lynwood City	Lynwood City in Los Angeles County.
Madera County	Madera County.
Manteca City	Manteca City in San Joaquin County.
Marina City	Marina City in Monterey County.
Mendocino County	Mendocino County.
Merced City	Merced City in Merced County.
Balance of Merced County.	Merced County less Merced City.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Balance of Monterey County.	Monterey County less Marina City, Monterey City, Salinas City, Seaside City.
Oxnard City	Oxnard City in Ventura County.
Paramount City	Paramount City in Los Angeles County.
Plumas County	Plumas County.
Redding City	Redding City in Shasta County.
Richmond City	Richmond City in Contra Costa County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
Balance of San Joaquin County.	San Joaquin County less Lodi City, Manteca City, Stockton City.
Santa Maria City	Santa Maria City in Santa Barbara County.
Seaside City	Seaside City in Monterey County.
Balance of Shasta County.	Shasta County less Redding City.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Stanislaus County.	Stanislaus County less Modesto City, Turlock City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Tulare City	Tulare City in Tulare County.
Balance of Tulare County.	Tulare County less Tulare City, Visalia City.
Tuolumne County	Tuolumne County.
Turlock City	Turlock City in Stanislaus County.
Vacaville City	Vacaville City in Solano County.
Visalia City	Visalia City in Tulare County.
Watsonville City	Watsonville City in Santa Cruz County.
Woodland City	Woodland City in Yolo County.
Balance of Yolo County	Yolo County less Davis City, Woodland City.
Yuba County	Yuba County
Colorado	
Balance of Adams County.	Adams County less Arvada City, Aurora City, Northglenn City, Thornton City, Westminister City.
Alamosa County	Alamosa County.
Archuleta County	Archuleta County.
Chafee County	Chafee County.
Clear Creek County	Clear Creek County.
Colorado Springs City	Colorado Springs City in El Paso County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Custer County	Custer County.
Delta County	Delta County.
Denver City	Denver City on Denver County.
Balance of El Paso County.	El Paso County less Colorado Springs City.
Elbert County	Elbert County.
Fremont County	Fremont County.
Garfield County	Garfield County.
Grand Junction City	Grand Junction City in Mesa County.
Greeley City	Greeley City in Weld County.
Huerfano County	Huerfano County.
La Plata County	La Plata County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Loveland City	Loveland City in Larimer County.
Balance of Mesa County	Mesa County less Grand Junction City.
Mineral County	Mineral County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Morgan County	Morgan County.
Otero County	Otero County.
Park County	Park County.
Prowers County	Prowers County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County.	Pueblo County less Pueblo City.
Rio Blanco County	Rio Blanco County.
Rio Grande County	Rio Grande County.
Routt County	Routt County.
Saguache County	Saguache County.
San Juan County	San Juan County.
San Miguel County	San Miguel County.
Teller County	Teller County.

Labor Surplus Areas Eligible for Federal Procurement Preference—Continued

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Thornton City	Thornton City in Adams County.
Florida	
Balance of Bay County	Bay County less Panama City.
Calhoun County	Calhoun County.
Columbia County	Columbia County.
Fort Pierce City	Fort Pierce City in St. Lucie County.
Glades County	Glades County.
Gulf County	Gulf County.
Hamilton County	Hamilton County.
Hardee County	Hardee County.
Hendry County	Hendry County.
Holmes County	Holmes County.
Indian River County	Indian River County.
Lakeland City	Lakeland City in Polk County.
Okeechobee County	Okeechobee County.
Panama City	Panama City in Bay County.
Balance of Polk County	Polk County less Lakeland City.
Putnam County	Putnam County.
Balance of St. Lucie County.	St. Lucie County less Fort Pierce City, Port St. Lucie City.
Sumter County	Sumter County.
Taylor County	Taylor County.
Walton County	Walton County.
Washington County	Washington County.
Georgia	
Albany City	Albany City in Dougherty County.
Appling County	Appling County.
Atlanta City	Atlanta City in Appling County, Bacon County, De Kalb County, Fulton County.
Augusta City	Augusta City in Richmond County.
Baker County	Baker County.
Bartow County	Bartow County.
Ben Hill County	Ben Hill County.
Brantley County	Brantley County.
Burke County	Burke County.
Butts County	Butts County.
Calhoun County	Calhoun County.
Charlton County	Charlton County.
Chattahoochee County	Chattahoochee County.
Chattooga County	Chattooga County.
Clay County	Clay County.
Clinch County	Clinch County.
Coffee County	Coffee County.
College Park City	College Park City in Clayton County, Fulton County.
Colquitt County	Colquitt County.
Crisp County	Crisp County.
Dawson County	Dawson County.
Dodge County	Dodge County.
Balance of Dougherty County.	Dougherty County less Albany City.
Early County	Early County.
Echols County	Echols County.
Elbert County	Elbert County.
Emanuel County	Emanuel County.
Fannin County	Fannin County.
Greene County	Greene County.
Hancock County	Hancock County.
Jefferson County	Jefferson County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Jenkins County	Jenkins County.
La Grange City	La Grange City in Troup County.
Laurens County	Laurens County.
Lincoln County	Lincoln County.
Macon County	Macon County.
McIntosh County	McIntosh County.
Meriwether County	Meriwether County.
Mitchell County	Mitchell County.
Morgan County	Morgan County.
Pierce County	Pierce County.
Polk County	Polk County.
Putnam County	Putnam County.
Quitman County	Quitman County.
Randolph County	Randolph County.
Rome City	Rome City in Floyd County.
Schley County	Schley County.
Screven County	Screven County.
Stewart County	Stewart County.
Sumter County	Sumter County.
Talbot County	Talbot County.
Taliaferro County	Taliaferro County.
Taylor County	Taylor County.
Telfair County	Telfair County.
Terrell County	Terrell County.
Toombs County	Toombs County.
Treutlen County	Treutlen County.
Turner County	Turner County.
Twiggs County	Twiggs County.
Ware County	Ware County.
Warren County	Warren County.
Wayne County	Wayne County.
Webster County	Webster County.
Worth County	Worth County.
Idaho	
Adams County	Adams County.
Balance of Bannock County.	Bannock County less Pocatello City.
Bear Lake County	Bear Lake County.
Benewah County	Benewah County.
Bingham County	Bingham County.
Boise County	Boise County.
Bonner County	Bonner County.
Camas County	Camas County.
Balance of Canyon County.	Canyon County less Nampa City.
Caribou County	Caribou County.
Cassia County	Cassia County.
Clearwater County	Clearwater County.
Fremont County	Fremont County.
Gem County	Gem County.
Idaho County	Idaho County.
Jefferson County	Jefferson County.
Jerome County	Jerome County.
Kootenai County	Kootenai County.
Lemhi County	Lemhi County.
Lewis County	Lewis County.
Minidoka County	Minidoka County.
Nampa City	Nampa City in Canyon County.
Balance of Nez Perce County.	Nez Perce County less Lewiston City.
Payette County	Payette County.
Pocatello City	Pocatello City in Bannock County.
Power County	Power County.
Shoshone County	Shoshone County.
Twins Falls City	Twins Falls City in Twin Falls County.
Valley County	Valley County.
Washington County	Washington County

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Illinois	
Allexander County	Alexander County.
Alton City	Alton City in Madison County.
Aurora City	Aurora City in Du Page County, Kane County.
Belleville City	Belleville City in St. Clair County.
Bond County	Bond County.
Boone County	Boone County.
Brown County	Brown County.
Burbank City	Burbank City in Cook County.
Bureau County	Bureau County.
Calhoun County	Calhoun County.
Carroll County	Carroll County.
Cass County	Cass County.
Chicago City	Chicago City in Cook County.
Christian County	Christian County.
Cicero City	Cicero City in Cook County.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Cumberland County	Cumberland County.
Danville City	Danville City in Vermilion County.
De Witt	De Witt County.
Decatur City	Decatur City in Macon County.
East St. Louis City	East St. Louis City in St. Clair County.
Edgar County	Edgar County.
Edwards County	Edwards County.
Fayette County	Fayette County.
Franklin County	Franklin County.
Freeport City	Freeport City in Stephenson County.
Fulton County	Fulton County.
Galesburg City	Galesburg City in Knox County.
Gallatin County	Gallatin County.
Granite City	Granite City in Madison County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamilton County	Hamilton County.
Hancock County	Hancock County.
Hardin County	Hardin County.
Harvey City	Harvey City in Cook County.
Henderson County	Henderson County.
Henry County	Henry County.
Iroquois County	Iroquois County.
Balance of Jackson County.	Jackson County less Carbondale City.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jersey County	Jersey County.
Johnson County	Johnson County.
Joliet City	Joliet City in Will County.
Kankakee City	Kankakee City in Kankakee County.
Balance of Kankakee County.	Kankakee County less Kankakee City.
Balance of Knox County	Knox County less Galesburg City.
La Salle County	La Salle County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Macoupin County	Macoupin County.
Marion County	Marion County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Mason County	Mason County.
Massac County	Massac County.
Maywood Village	Maywood Village in Cook County.
Mercer County	Mercer County.
Moline City	Moline City in Rock Island County.
Montgomery County	Montgomery County.
Moultrie County	Moultrie County.
North Chicago City	North Chicago City in Lake County.
Ogle County	Ogle County.
Pekin City	Pekin City in Tazewell County.
Peoria City	Peoria City in Peoria County.
Perry County	Perry County.
Piatt County	Piatt County.
Pike County	Pike County.
Pope County	Pope County
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Quincy City	Quincy City in Adams County.
Randolph County	Randolph County.
Richland County	Richland County.
Rock Island City	Rock Island City in Rock Island County.
Balance of Rock Island County.	Rock Island County less Moline City, Rock Island City.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Schuyler County	Schuyler County.
Scott County	Scott County.
Shelby County	Shelby County.
Balance of St. Clair County.	St. Clair County less Belleville City, East St. Louis City.
Stark County	Stark County.
Balance of Tazewell County.	Tazewell County less Perkin City.
Union County	Union County.
Balance of Vermilion County.	Vermilion County less Danville City.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Williamson County	Williamson County.
Indiana	
Anderson City	Anderson City in Madison County.
Blackford County	Blackford County.
Crawford County	Crawford County.
East Chicago City	East Chicago City in Lake County.
Fayette County	Fayette County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Gary City	Gary City in Lake County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Henry County	Henry County.
Jackson County	Jackson County.
Jay County	Jay County.
Kokomo City	Kokomo City in Howard County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Lawrence County	Lawrence County.
Marion City	Marion City in Grant County.
Miami County	Miami County.
Michigan City	Michigan City in La Porte County.
Muncie City	Muncie City in Delaware County.
Ohio County	Ohio County.
Orange County	Orange County.
Perry County	Perry County.
Pike County	Pike County.
Portage City	Portage City in Porter County.
Randolph County	Randolph County.
Richmond City	Richmond City in Wayne County.
Rush County	Rush County.
Scott County	Scott County.
Shelby County	Shelby County.
Starke County	Starke County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Vermillion County	Vermillion County.
Balance of Wayne County.	Wayne County less Richmond City.
Iowa	
Clinton City	Clinton City in Clinton County.
Davenport City	Davenport City in Scott County.
Davis County	Davis County.
Emmet County	Emmet County.
Jackson County	Jackson County.
Lee County	Lee County.
Monroe County	Monroe County.
Ottumwa City	Ottumwa City in Wapello County.
Van Buren County	Van Buren County.
Balance of Wapello County.	Wapello County less Ottumwa City.
Waterloo City	Waterloo City in Black Hawk County
Kansas	
Cherokee County	Cherokee County.
Franklin County	Franklin County.
Jackson County	Jackson County.
Kansas City, KN County	Kansas City, KN in Wyandotte County.
Linn County	Linn County.
Neosho County	Neosho County
Kentucky	
Adair County	Adair County.
Allen County	Allen County.
Ashland City	Ashland City in Boyd County.
Ballard County	Ballard County.
Barren County	Barren County.
Bath County	Bath County.
Bell County	Bell County.
Balance of Boyd County	Boyd County less Ashland City.
Boyle County	Boyle County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Butler County	Butler County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Balance of Christian County.	Christian County less Hopkinsville City.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Covington City	Covington City in Kenton County.
Crittenden County	Crittenden County.
Cumberland County	Cumberland County.
Balance of Daviess County.	Daviess County less Owensboro City.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Grant County	Grant County.
Graves County	Graves County.
Grayson County	Grayson County.
Green County	Green County.
Greenup County	Greenup County.
Hancock County	Hancock County.
Harlan County	Harlan County.
Harrison County	Harrison County.
Hart County	Hart County.
Henderson City	Henderson City in Henderson County.
Balance of Henderson County.	Henderson County less Henderson City.
Hickman County	Hickman County.
Hopkins County	Hopkins County.
Hopkinsville City	Hopkinsville City in Christian County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Larue County	Larue County.
Laurel County	Laurel County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Logan County	Logan County.
Louisville City	Louisville City in Jefferson County.
Lyon County	Lyon County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
Martin County	Martin County.
Mason County	Mason County
Balance of Mc Cracken County.	Mc Cracken County less Paducah City.
Mc Creary County	Mc Creary County.
Mc Lean County	Mc Lean County.
Meade County	Meade County.
Menifee County	Menifee County.
Mercer County	Mercer County.
Metcalfe County	Metcalfe County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Owensboro City	Owensboro City in Daviess County.
Owsley County	Owsley County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Rockcastle County	Rockcastle County.
Rowan County	Rowan County.
Scott County	Scott County.
Simpson County	Simpson County.
Todd County	Todd County.
Trigg County	Trigg County.
Union County	Union County.
Balance of Warren County.	Warren County less Bowling Green City.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.

Louisiana

Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Baton Rouge City	Baton Rouge City in East Baton Rouge Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Bossier City	Bossier City in Bossier Parish.
Balance of Bossier Parish.	Bossier Parish less Bossier City, Shreveport City.
Balance of Caddo Parish	Caddo Parish less Shreveport City.
Balance of Calcasieu Parish.	Calcasieu Parish less Lake Charles City.
Caldwell Parish	Caldwell Parish.
Cameron Parish	Cameron Parish.
Catahoula Parish	Catahoula Parish.
Claiborne Parish	Claiborne Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
Balance of East Baton Rouge Parish.	East Baton Route Parish less Baton Route City.
East Carroll Parish	East Carroll Parish.
East Feliciana Parish	East Feliciana Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Balance of Iberia Parish	Iberia Parish less New Iberia City.
Iberville Parish	Iberville Parish.
Jackson Parish	Jackson Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
Balance of Jefferson Parish.	Jefferson Parish less Kenner City.
Kenner City	Kenner City in Jefferson Parish.
La Salle Parish	La Salle Parish.
Lafayette City	Lafayette City in Lafayette Parish.
Balance of Lafayette Parish.	Lafayette Parish less Lafayette City.
Lafourche Parish	Lafourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
Natchitoches Parish	Natchitoches Parish.
New Iberia City	New Iberia City in Iberia Parish.
New Orleans City	New Orelans City in Orleans Parish.
Balance of Ouachita Parish.	Ouachita Parish less Monroe City.
Plaquemines Parish	Plaquemines Parish.
Pointe Coupee Parish	Pointe Coupee Parish.
Balance of Rapides Parish.	Rapides Parish less Alexandria City.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Sabine Parish	Sabine Parish.
Shreveport City	Shreveport City in Bossier Parish, Caddo Parish.
Slidell City	Slidell City in St. Tammany Parish.
St. Bernard Parish	St. Bernard Parish.
St. Charles Parish	St. Charles Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Martin Parish	St. Martin Parish.
St. Mary Parish	St. Mary Parish.
Balance of St. Tammany Parish.	St. Tammany Parish less Slidell City.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Terrebonne Parish	Terrebonne Parish.
Union Parish	Union Parish.
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Baton Rouge Parish.	West Baton Route Parish.
West Carroll Parish	West Carroll Parish.
West Feliciana Parish	West Feliciana Parish.
Winn Parish	Winn Parish

Maine

Aroostook County	Aroostook County.
Waldo County	Waldo County.
Washington County	Washington County.

Maryland

Allegany County	Allegany County.
Baltimore City	Baltimore City in Allegany County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Hagerstown City	Hagerstown City in Washington County.
Somerset County	Somerset County.

Massachusetts

Gloucester City	Gloucester City in Essex County.
Monroe Town	Monroe Town in Franklin County.
New Salem Town	New Salem Town in Franklin County.
Otis Town	Otis Town in Berkshire County.
Plainville Town	Plainville town in Norfolk County.
Provincetown Town	Provincetown Town in Barnstable County.
Savoy Town	Savoy Town in Berkshire County.
Truro Town	Truro Town in Barnstable County

Michigan

Alcona County	Alcona County.
Alger County	Alger County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay City	Bay City in Bay County.
Balance of Bay County	Bay County Less Bay City, Midland City.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Burton City	Burton City in Genesee County.
Balance of Calhoun County.	Calhoun County less Battle Creek City.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
East Detroit City	East Detroit City in Macomb County.
Emmet County	Emmet County.
Ferndale City	Ferndale City in Oakland County.
Flint City	Flint City in Genesee County.
Flint Township	Flint Township in Genesee County.
Balance of Genesee County.	Genesee County less Burton City, Flint City, Flint Township, Mount Morris Township.
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County
Gratiot County	Gratiot County.
Highland Park City	Highland Park City in Wayne County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Inkster City	Inkster City in Wayne County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Jackson City	Jackson City in Jackson County.
Balance of Jackson County.	Jackson County less Jackson City.
Kalkaska County	Kalkaska County.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County, Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Lincoln Park City	Lincoln Park City in Wayne County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County.	Macomb County less Clinton Township, East Detroit City, Roseville City, Shelby Township, St. Clair Shores City.
Madison Heights City	Madison Heights City in Oakland County.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Balance of Midland County.	Midland County less Midland City.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Mount Morris Township	Mount Morris Township in Genesee County.
Muskegon City	Muskegon City in Muskegon County.
Balance of Muskegon County.	Muskegon County less Muskegon City.
Newaygo County	Newaygo County.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Port Huron City	Port Huron City in St. Clair County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County.	Saginaw County less Saginaw City, Saginaw Township.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Balance of St. Clair County.	St. Clair County less Port Huron City.
St. Joseph County	St. Joseph County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tuscola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.
Waterford Township	Waterford Township in Oakland County.
Wexford County	Wexford County.
Wyandotte City	Wyandotte City in Wayne County.
Ypsilanti Township	Ypsilanti Township in Washtenaw County.

Minnesota

Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Hubbard County	Hubbard County.
Itasca County	Itasca County.
Jackson County	Jackson County.
Kanabec County	Kanabec County.
Kittson County	Kittson County.
Lake County	Lake County.
Le Sueur County	Le Sueur County.
Marshall County	Marshall County.
Martin County	Martin County.
Meeker County	Meeker County.
Morrison County	Morrison County.
Norman County	Norman County.
Pennington County	Pennington County.
Pine County	Pine County.
Polk County	Polk County.
Red Lake County	Red Lake County.
Balance of St. Louis County.	St. Louis County less Duluth City.
Todd County	Todd County.

Mississippi

Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Biloxi City	Biloxi City in Harrison County.
Bolivar County	Bolivar County.
Carroll County	Carroll County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Columbus City	Columbus City in Lowndes County.
Copiah County	Copiah County.
Covington County	Covington County.
Franklin County	Franklin County.
George County	George County.
Greene County	Greene County.
Greenville City	Greenville City in Washington County.
Grenada County	Grenada County.
Gulfport City	Gulfport City in Harrison County.
Hancock County	Hancock County.
Hattiesburg City	Hattiesburg City in Forrest County, Lamar County.
Balance of Hinds County	Hinds County less Jackson City.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Issaquena County	Issaquena County.
Balance of Jackson County.	Jackson County less Pascagoula City.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Balance of Lauderdale County.	Lauderdale County less Meridian City.
Lawrence County	Lawrence County.
Leake County	Leake County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Balance of Lowndes County.	Lowndes County less Columbus City.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Newton County	Newton County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pascagoula City	Pascagoula City in Jackson County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Scott County	Scott County.
Sharkey County	Sharkey County.
Simpson County	Simpson County.
Smith County	Smith County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahactchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Union County	Union County.
Vicksburg City	Vicksburg City in Warren County.
Walthall County	Walthall County.
Balance of Warren County.	Warren County less Vicksburg City.
Balance of Washington County.	Washington County less Greenville City.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.

Missouri

Bates County	Bates County.
Benton County	Benton County.
Bollinger County	Bollinger County.
Butler County	Butler County.
Carroll County	Carroll County.
Carter County	Carter County.
Cedar County	Cedar County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Henry County	Henry County.
Hickory County	Hickory County.

BEST COPY AVAILABLE

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Lincoln County	Lincoln County.
Madison County	Madison County.
Maries County	Maries County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Ozark County	Ozark County.
Perniscot County	Perniscot County.
Pike County	Pike County
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Joseph City	St. Joseph City in Buchanen County.
St. Louis City	St. Louis City.
St. Clair County	St. Clair County.
St. Francois County	St. Francois County.
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Taney County	Taney County.
Texas County	Texas County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Montana	
Big Horn County	Big Horn County.
Blaine County	Blaine County.
Broadwater County	Broadwater County.
Butte—Silver Bow City	Butte—Silver Bow City in Silver Bow County.
Balance of Cascade County.	Cascade County less Great Falls City.
Deer Lodge County	Deer Lodge County.
Fergus County	Fergus County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Golden Valley County	Golden Valley County.
Granite County	Granite County.
Lake County	Lake County.
Lincoln County	Lincoln County.
Meagher County	Meagher County.
Mineral County	Mineral County.
Musselshell County	Musselshell County.
Park County	Park County.
Ravalli County	Ravalli County.
Richland County	Richland County.
Roosevelt County	Roosevelt County.
Rosebud County	Rosebud County.
Sanders County	Sanders County.
Balance of Silver Bow County.	Silver Bow County less Butte—Silver Bow City.
Wheatland County	Wheatland County.
Wibaux County	Wibaux County.
Nebraska	
Scotts Bluff County	Scotts Bluff County.
Thurston County	Thurston County.
Nevada	
North Las Vegas City	North Las Vegas City in Clark County.
White Pine County	White Pine County.
New Jersey	
Camden City	Camden City in Camden County.
Balance of Cumberland County.	Cumberland County less Millville City, Vineland City.
Hoboken City	Hoboken City in Hudson County.
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.
New Mexico	
Alamogordo City	Alamogordo City in Otero County.
Balance of Bernalillo County.	Bernalillo County less Albuquerque City.
Carlsbad City	Carlsbad City in Eddy County.
Catron County	Catron County.
Cibola County	Cibola County.
Clovis City	Clovis City in Curry County.
Colfax County	Colfax County.
De Baca County	De Baca County.
Balance of Dona Ana County.	Dona Ana County less Las Cruces City.
Balance of Eddy County	Eddy County less Carlsbad City.
Farmington City	Farmington City in San Juan County.
Grant County	Grant County.
Guadalupe County	Guadalupe County.
Harding County	Harding County.
Hobbs City	Hobbs City in Lea County.
Balance of Lea County	Lea County less Hobbs City.
Lincoln County	Lincoln County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Balance of Otero County	Otero County less Alamogordo City.
Quay County	Quay County.
Rio Arriba County	Rio Arriba County.
Roswell City	Roswell City in Chaves County.
Balance of San Juan County.	San Juan County less Farmington City.
San Miguel County	San Miguel County.
Sandoval County	Sandoval County.
Socorro County	Socorro County.
Taos County	Taos County.
Torrance County	Torrance County.
Union County	Union County.
Valencia County	Valencia County.
New York	
Buffalo City	Buffalo City in Erie County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Hamilton County	Hamilton County.
Balance of Jefferson County.	Jeffson County less Watertown City.
Lewis County	Lewis County.
Montgomery County	Montogomery County.
Orleans County	Orleans County.
Oswego County	Oswego County.
St. Lawrence County	St. Lawrence County.
North Carolina	
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Graham County	Graham County.
Hyde County	Hyde County.
Person County	Person County.
Robeson County	Robeson County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Wilson City	Wilson City in Wilson County.
North Dakota	
Benson County	Benson County.
Dunn County	Dunn County.
Eddy County	Eddy County.
Kidder County	Kidder County.
McHenry County	McHenry County.
Mountrail County	Mountrail County.
Pembina County	Pembina County.
Rolette County	Rolette County.
Sioux County	Sioux County.
Slope County	Slope County
Ohio	
Adams County	Adams County.
Akron City	Akron City in Summit County.
Ashtabula County	Ashtabula County.
Barberton City	Barberton City in Summit County.
Belmont County	Belmont County.
Brown County	Brown County.
Canton City	Canton City in Stark County.
Carroll County	Carroll County.
Cleveland City	Cleveland City in Cuyahoga County.
Columbiana County	Columbiana County.
Coshocton County	Coshocton County.
Crawford County	Crawford County.
Darke County	Darke County.
Dayton City	Dayton City in Montgomery County.
Defiance County	Defiance County.
East Cleveland City	East Cleveland City in Cuyahoga County.
Elyria City	Elyria City in Lorain County.
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Knox County	Knox County.
Lancaster City	Lancaster City in Fairfield County.
Lawrence County	Lawrence County.
Lima City	Lima City in Allen County.
Lorain City	Lorain City in Lorain County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Mansfield City	Mansfield City in Richland County.
Marion City	Marion City in Marion County.
Massillon City	Massillon City in Stark County.
Meigs County	Meigs County.
Mercer County	Mercer County.
Middletown City	Middletown City in Butler County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Morrow County	Morrow County.
Balance of Muskingum County.	Muskingum County less Zanesville City.
Newark City	Newark City in Licking County.
Noble County	Noble County.
Ottawa County	Ottawa County.
Perry County	Perry County.
Pike County	Pike County.
Putnam County	Putnam County.
Ross County	Ross County.
Sandusky County	Sandusky County.
Scioto County	Scioto County.
Seneca County	Seneca County.
Toledo City	Toledo City in Lucas County.
Balance of Trumbull County.	Trumbull County less Warren City.
Tuscarawas County	Tuscarawas County.
Vinton County	Vinton County.
Warren City	Warren City in Trumbull County.
Washington County	Washington County.
Youngstown City	Youngstown City in Mahoning County.
Zanesville City	Zanesville City in Muskingum County.
Oklahoma	
Adair County	Adair County.
Atoka County	Atoka County.
Beckham County	Beckham County.
Broken Arrow City	Broken Arrow City in Tulsa County, Wagoner County.
Caddo County	Caddo County.
Carter County	Carter County.
Cherokee County	Cherokee County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Craig County	Craig County.
Creek County	Creek County.
Delaware County	Delaware County.
Garvin County	Garvin County.
Grady County	Grady County.
Harmon County	Harmon County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Jefferson County	Jefferson County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Lincoln County	Lincoln County.
Mayes County	Mayes County.
McCurtain County	McCurtain County.
Murray County	Murray County.
Muskogee City	Muskogee City in Muskogee County.
Balance of Muskogee County.	Muskogee County less Muskogee City.
Nowata County	Nowata County.
Okfuskee County	Okfuskee County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pawnee County	Pawnee County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Roger Mills County	Roger Mills County.
Rogers County	Rogers County.
Seminole County	Seminole County.
Shawnee City	Shawnee City in Pottawatomie County.
Stephens County	Stephens County.
Tulsa City	Tulsa City in Osage County, Tulsa County.
Balance of Tulsa County	Tulsa County less Broken Arrow City, Tulsa City.
Balance of Wagoner County.	Wagoner County less Broken Arrow City.
Washita County	Washita County.
Woodward County	Woodward County.
Oregon	
Baker County	Baker County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Linn County	Linn County less Albany City.
Malheur County	Malheur County.
Morrow County	Morrow County.
Sherman County	Sherman County.
Springfield City	Springfield City in Lane County.
Tillamook County	Tillamook County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.
Pennsylvania	
Altoona City	Altoona City in Blair County.
Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Balance of Cambria County.	Cambria County less Johnstown City.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Balance of Erie County	Erie County less Erie City, Millcreek Township.
Fayette County	Fayette County.
Forest County	Forest County.
Fulton County	Fulton County.
Greene County	Greene County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jefferson County.
Johnstown City	Johnstown City in Cambira County.
Juniata County	Juniata County.
Balance of Luzerne County.	Luzerne County less Hazleton City, Wilkes-Barre City.
McKeesport City	McKeesport City in Allegheny County.
Mifflin County	Mifflin County.
North Huntington Township.	North Huntington Township in Westmoreland County.
Northumberland County	Northumberland County.
Somerset County	Somerset County.
Venango County	Venango County.
Washington County	Washington County.
Balance of Westmoreland County.	Westmoreland County less Hempfield Township, North Huntington Township.
Wilkes-Barre City	Wilkes-Barre City in Luzerne County
Puerto Rico	
Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Aguas Buenas Municipio	Aguas Buenas Municipio.
Aibonito Municipio	Aibonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio	Cabo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Culebra Municipio	Culebra Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Gurabo Municipio	Gurabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormingueros Municipio	Hormingueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maricao Municipio	Maricao Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjito Municipio	Naranjito Municipio.
Orocovis Municipio	Orocovis Municipio.

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio
Sabana Grande Municipio.	Sabana Grande Municipio
Salinas Municipio	Salinas Municipio
San German Municipio	San German Municipio
San Juan Municipio	San Juan Municipio
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Alto Municipio	Trujillo Alto Municipio.
Utuado Municipio	Utuado Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.
South Carolina	
Allendale County	Allendale County.
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Darlington County	Darlington County.
Georgetown County	Georgetown County.
Balance of Horry County	Horry County less Myrtle Beach City.
Marion County	Marion County.
Marlboro County	Marlboro County.
McCormick County	McCormick County.
North Charleston City	North Charleston City in Charleston County.
Orangeburg County	Orangeburg County.
Williamsburg County	Williamsburg County.
South Dakota	
Buffalo County	Buffalo County.
Dewey County	Dewey County.
Shannon County	Shannon County.
Tennessee	
Benton County	Benton County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Balance of Carter County	Carter County less Johnson City.
Claiborne County	Claiborne County.
Clarksville City	Clarksville City in Montgomery County.
Cocke County	Cocke County.
Coffee County	Coffee County.
Crockett County	Crockett County.
Cumberland County	Cumberland County.
De Kalb County	De Kalb County.
Decatur County	Decatur County.
Dyer County	Dyer County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Gibson County	Gibson County.
Giles County	Giles County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hardeman County	Hardeman County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson City	Jackson City in Madison County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Johnson County	Johnson County.
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Macon County	Macon County.
Marion County	Marion County.
McMinn County	McMinn County.
McNairy County	McNairy County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Rhea County	Rhea County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Stewart County	Stewart County.
Unicoi County	Unicoi County.
Union County	Union County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Wayne County	Wayne County.
White County	White County
Texas	
Abilene City	Abilene City in Jones County, Taylor County.
Anderson County	Anderson County.
Balance of Angelina County.	Angelina County less Lufkin City.
Arkansas County	Arkansas County.
Atascosa County	Atascosa County.
Bastrop County	Bastrop County.
Baytown City	Baytown City in Harris County.
Beaumont City	Beaumont City in Jefferson County.
Bee County	Bee County.
Balance of Bell County	Bell County less Killeen City, Temple City.
Big Spring City	Big Spring City in Howard County.
Borden County	Borden County.
Balance of Bowie County	Bowie County less Texarkana City Tex.
Brazoria County	Brazoria County.
Brooks County	Brooks County.
Brown County	Brown County.
Brownsville City	Brownsville City in Cameron County.
Burleson County	Burleson County.
Caldwell County	Caldwell County.
Calhoun County	Calhoun County.
Balance of Cameron County.	Cameron County less Brownsville City, Harlingen City.
Camp County	Camp County.
Cass County	Cass County.
Chambers County	Chambers County.
Childress County	Childress County.
Coleman County	Coleman County.
Corpus Christi City	Corpus Christi City in Nueces County.
Coryell County	Coryell County.
Crane County	Crane County.
Crockett County	Crockett County.
Culberson County	Culberson County.
Dawson County	Dawson County.
Deaf Smith County	Deaf Smith County.
Del Rio City	Del Rio City in Val Verde County.
Denton City	Denton City in Denton County.
Dickens County	Dickens County.
Dimmit County	Dimmit County.
Duval County	Duval County.
Eastland County	Eastland County.
Balance of Ector County	Ector County less Odessa City.
Edinburg City	Edinburg City in Hidalgo County.
Edwards County	Edwards County.
El Paso City	El Paso City in El Paso County.
Balance of El Paso County.	El Paso County less El Paso City.
Ellis County	Ellis County.
Euless City	Euless City in Tarrant County.
Fannin County	Fannin County.
Franklin County	Franklin County.
Freestone County	Freestone County.
Frio County	Frio County.
Ft Worth City	Ft Worth City in Tarrant County.
Gaines County	Gaines County.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County.	Galveston County less Galveston City, Texas City.
Garza County	Garza County.
Gonzales County	Gonzales County.
Balance of Grayson County.	Grayson County less Sherman City.
Balance of Gregg County	Gregg County less Longview City
Hall County	Hall County.
Hardin County	Hardin County.
Harlingen City	Harlingen City in Cameron County.
Balance of Harrison County.	Harrison County less Longview City.
Henderson County	Henderson County.
Balance of Hidalgo County.	Hidalgo County less Edinburg City, McAllen City, Mission City.
Hill County	Hill County.
Hopkins County	Hopkins County.
Houston City	Houston City in Fort Bend County, Harris County.
Hunt County	Hunt County.
Jack County	Jack County.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Jim Wells County	Jim Wells County.
Balance of Jones County	Jones County less Abilene City.
Karnes County	Karnes County.
Killeen City	Killeen City in Bell County.
Kingsville City	Kingsville City in Kleberg County.
Kinney County	Kinney County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Leon County	Leon County.
Liberty County	Liberty County.
Live Oak County	Live Oak County.
Longview City	Longview City in Gregg County, Harrison County.
Loving County	Loving County.
Lufkin City	Lufkin City in Angelina County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
McAllen City	McAllen City in Hidalgo County.
Midland City	Midland City in Midland County.
Milam County	Milam County.
Mission City	Mission City in Hidalgo County.
Mitchell County	Mitchell County.
Montgomery County	Montgomery County.
Morris County	Morris County.
Nacogdoches City	Nacogdoches City in Nacogdoches County.
Navarro County	Navarro County.
Newton County	Newton County.
Nolan County	Nolan County.
Balance of Nueces County.	Nueces County less Corpus Christi City.
Odessa City	Odessa City in Ector County.
Orange City	Orange City in Orange County.
Balance of Orange County.	Orange County less Orange City.
Palo Pinto County	Palo Pinto County.
Paris City	Paris City in Lamar County.
Pasadena City	Pasadena City in Harris County.
Pecos County	Pecos County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Rains County	Rains County.
Balance of Randall County.	Randall County less Amarillo City.
Red River County	Red River County.
Reeves County	Reeves County.
Robertson County	Robertson County.
Rusk County	Rusk County.
Sabine County	Sabine County.
San Antonio City	San antonio City in Bexar County.
San Jacinto County	San Jacinto County.
San Marcos City	San Marcos city in Hays County.
San Patricio County	San Patricio County.
Schleicher County	Schleicher County.
Scurry County	Scurry County.
Shelby County	Shelby County.
Balance of Smith County	Smith County less Tyler City.
Starr County	Starr County.
Stephens County	Stephens County.
Sutton County	Sutton County.
Terry County	Terry County.
Texarkana City Tex	Texarkana City Tex in Bowie County.
Texas City	Texas City in Galveston County.
Titus County	Titus County.
Trinity County	Trinity County.
Tyler City	Tyler City in Smith County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Uvalde County	Uvalde County.
Van Zandt County	Van Zandt County.
Victoria City	Victoria City in Victoria County.
Waco City	Waco City in McLennan County.
Waller County	Waller County.
Ward County	Ward County.
Wharton County	Wharton County.
Wichita Falls City	Wichita Falls City in Wichita County.
Wilacy County	Willacy County.
Winkler County	Winkler County.
Wood County	Wood County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah	
Carbon County	Crbon County.
Duchesne County	Duchesne County.
Emery County	Emery County.
Garfield County	Garfield County.
Grand County	Grand Cunty.
Juab County	Juab County.
Morgan County	Morgan County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Summit Cunty	Summit County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.
Wayne County	Wayne County.
Virginia	
Alleghany County	Alleghany County.
Bath County	Bath County.
Bristol City	Bristol City.
Buchanan County	Buchanan County.
Buena Vista City	Buena Vista City.
Charlotte County	Charlotte County.
Clifton Forge City	Clifton Forge City.
Covington City	Covington City.
Danville City	Danville City.
Dickenson County	Dickenson County.
Dinwiddie County	Dinwiddie County.
Emporia City	Emporia City.
Franklin City	Franklin City.
Giles County	Giles County.
Halifax County	Halifax County.
Highland County	Highland County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Martinsville City	Martinsville City.
Northumberland County	Northumberland County.
Norton City	Norton City.
Prince Edward County	Prince Edward County.
Russell County	Russell County.
Smyth County	Smyth County.
Surry County	Surry County.
Tazewell County	Tazewel County.
Westmoreland County	Westmoreland County.
Wise County	Wise County.
Washington	
Adams County	Adams County.
Bellingham City	Bellingham City in Whatcom County.
Balance of Benton County.	Benton County less Kennewick City, Richland City.
Chelan County	Chelan County.
Clallam County	Clallam County.
Columbia County	Columbia County.
Balance of Cowlitz County.	Cowlitz County less Longview City.
Douglas County	Douglas County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Kennewick City	Kennewick City in Benton County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Longview City	Longview City in Cowlitz County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Vancouver City	Vancouver City in Clark County.
Wahkiakum County	Wahkiakum County.
Walla Walla City	Walla Walla City in Walla Walla County.
Balance of Walla Walla County.	Walla Walla County less Walla Walla City.
Balance of Whatcom County.	Whatcom County less Bellingham City.
Yakima City	Yakima City in Yakima County.
Balance of Yakima County.	Yakima County less Yakima City.
West Virginia	
Barbour County	Barbour County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County.	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County, Wayne County.
Jackson County	Jackson County.
Balance of Kanawha County.	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

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LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Logan County	Logan County.
Marion County	Marion County.
Balance of Marshall County.	Marshall County less Wheeling City.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mineral County	Mineral County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Balance of Ohio County	Ohio County less Wheeling City.
Parkersburg City	Parkersburg City in Wood County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County.	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Balance of Wood County	Wood County less Parkersburg City.
Wyoming County	Wyoming County.
Wisconsin	
Ashland County	Ashland County.
Bayfield County	Bayfield County.
Clark County	Clark County.
Columbia County	Columbia County.
Door County	Door County.
Balance of Douglas County.	Douglas County less Superior City.
Forest County	Forest County.
Green Bay City	Green Bay City in Brown County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Green Lake County	Green Lake County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Kenosha City	Kenosha City in Kenosha County.
Kewaunee County	Kewaunee County.
Manitowoc City	Manitowoc City in Manitowoc County.
Marinette County	Marinette County.
Marquette County	Marquette County.
Menominee County	Menominee County.
Racine City	Racine City in Racine County.
Rusk County	Rusk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Washburn County	Washburn County.
Wyoming	
Big Horn County	Big Horn County.
Campbell County	Campbell County.
Carbon County	Carbon County.
Casper City	Casper City in Natrona County.
Converse County	Converse County.
Crook County	Crook County.
Fremont County	Fremont County.
Johnson County	Johnson County.
Lincoln County	Lincoln County.
Balance of Natrona County.	Natrona County less Casper City.
Niobrara County	Niobrara County.
Platte County	Platte County.
Sublette County	Sublette County.
Sweetwater County	Sweetwater County.
Uinta County	Uinta County.
Washakie County	Washakie County.
Weston County	Weston County.

[General Administration Letter No. 10–84; Change 1]

Revised Standard for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction with an Application for Nonagricultural Temporary Labor Certification

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor, has issued the following change to General Administration Letter No. 10–84, setting forth revised standards for determining the temporary or permanent nature of an employer's job offer contained in GAL 10–84, Subject: *Procedures for Temporary Labor Certifications in Nonagricultural Occupations.*

The revised standards are published below for the information of all interested parties.

DATE: The procedures set forth below were effective beginning on August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535–0165 (this is not toll-free number).

Signed at Washington, DC, this 6th day of October, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor
Employment and Training Administration
Washington, D.C. 20210

CLASSIFICATION: ES/Immigration
CORRESPONDENCE SYMBOL: TEELN
DATE: August 21, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 10-84, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
for Regional Management

SUBJECT : Revised Standard for Determining the Temporary or Permanent Nature of a Job Offer Made in Conjunction With An Application for Nonagricultural Temporary Labor Certification

1. Purpose. To transmit revised standards for determining the temporary or permanent nature of an employer's job offer contained in GAL 10-84, subject: Procedures for Temporary Labor Certifications in Nonagricultural Occupations.

2. References. 20 CFR Parts 621 and 655; GAL 10-84.

3. Background. The regulations at 20 CFR Part 621 governing the certification of temporary foreign labor require, for occupations other than agriculture or logging, in relevant part, that in making the required finding regarding availability and adverse effect of temporary labor certifications, "(t)he policies of the United States Employment Service set forth in Part . . . 655 . . . shall be followed . . . ." The regulations at 20 CFR Part 655 (H-2A Program) were revised in 1987 in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) and new interim final regulations were promulgated on June 1, 1987. These regulations contain a description and definition of "temporary" which differ from what had previously been in effect. The standards promulgated in Part 655 are consistent with the standards used by the Immigration and Naturalization Service in making determinations regarding the temporary or permanent nature of an employer's job opportunity in processing visa petitions.

4. Action Required. Administrators are requested to:

A. Provide attached standards to appropriate staff.

RESCISSIONS

EXPIRATION DATE: September 30, 1990

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B. Instruct staff to use these standards in processing temporary nonagricultural labor certification requests in accordance with GAL 10-84.

5. Inquiries. Direct questions to the appropriate Regional Office.

6. Attachment. Standards for determining temporary or permanent nature of an employer's nonagricultural job offer.

Attachment tc GAL 10-84, Ch. 1

Standards for Determining the Temporary or Permanent Nature of An Employer's Job Offer

The definition of "temporary" to be used in processing nonagricultural H-2B applications for alien employment certification is the same as provided in Section 20 CFR 655.101(g) of the regulations governing the labor certification process for agricultural H-2A workers. Job opportunities of 12 months or more are presumed to be permanent in nature. Certifying Officers shall not grant a temporary labor certification where the job opportunity has been or would be filled by an H-2B worker for a cumulative period, including previous temporary labor certifications, of 12 months or more, except in extraordinary circumstances.

To determine whether a particular job opportunity is "temporary" within the meaning of section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, Department of Labor (DOL) Certifying Officers must focus upon the employer's need for an individual to perform a job, not the nature of the job itself. In some situations the employer's need may create a temporary job opportunity in an employment situation that may otherwise be permanent in nature. This interpretation is in accordance with the leading decision of the Immigration and Naturalization Service, Matter of Artee Corporation (18 I. & N. Dec. 366 (1982)). This decision reversed the long-standing rule that the functional nature of the duties of the job controlled its characterization. In Artee it was stated that:

> It is not the nature of the duties of the position which must be examined to determine the temporary need. It is the nature of the need for the duties to be performed which determines the temporariness of the position.

The position taken in Artee has been affirmed by the courts. Volt Technical Services Corporation v. Immigration and Naturalization Service (648 f. Supp. 578, 581 (S.D.N.Y. 1986)), North American Industries Inc. V. Feldman (722 f. 2D 893 (1st cir. 1983)). As indicated in Artee, this is an objective, not a subjective, standard.

Where the employer can clearly show that the need for the H-2B worker's services or labor is of a short, identified length, limited by an identified event located in time, the job opportunity is temporary. (Of course, where the nature of the duties of the job are temporary, the employer's need will also be temporary.)

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The criteria set forth below should be used in determining whether or not an employer has demonstrated temporary need for an H-2B worker.

First, it should be determined whether or not the job duties which are the subject of the temporary application are permanent or temporary in nature. If the duties are temporary in nature, the employer's need is also temporary and further analysis is not necessary. An example would be a temporary employment agency with a one-time, short-term need for a worker to be placed in an occupation for which it does not normally supply workers.

Second, where the duties can be characterized as permanent in nature, further inquiry must be made to determine whether or not the employer has clearly shown that the need for the H-2B worker's services or labor is of a short, identified length, limited by an identified event located in time. An example would be a job that is vacant because the incumbent has fallen ill or is otherwise unavailable for a short, identified period of less than one year.

Since job opportunities of 12 months or more are presumed to be permanent in nature, requests for temporary labor certifications should not exceed 364 days. However, it is contemplated that in extraordinary circumstances a certified job opportunity could be filled by an H-2B worker for a cumulative period of 12 months or more. A new application submitted by an employer on behalf of a previously certified job opportunity that would result in a job opportunity being filled by an H-2B worker for a cumulative period of 12 months or more should not be rejected by the local office, if the employer insists on filing such an application. Such an application should be processed and forwarded to the Regional Office for a determination. Before certifying any application which would result in a job opportunity being filled by an H-2B worker for a cumulative period of 12 months or more, the Regional Office should consult with the Division of Foreign Labor Certifications in the National Office.

Any questions that arise involving situations where the employer is basing its application for temporary labor certification on peak load or seasonal factors should be directed to ETA Regional Offices.

[FR Doc. 89-25018 Filed 10-23-89; 8:45 am]
BILLING CODE 4510-30-C

Mine Safety and Health Administration

[Docket No. M-89-153-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.1107 (fire suppression devices) to its 84 Complex, Livingston Portal (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire suppression devices meeting specifications prescribed by the Secretary be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary be used in the hydraulic systems of such equipment.

2. As an alternate method, petitioner proposes to use remote video monitoring at the 4 Butt bunker hydraulic installation in lieu of fire-resistant fluid.

3. In support of this request, petitioner states that—

(a) The use of fire-resistant fluid in the bunker hydraulic unit would create severe maintenance problems; and

(b) The 4 Butt dump is manned continually by two employees whenever the bunker unit is in operation.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 24, 1989. Copies of the petition are available for inspection at that address.

Dated: October 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-25013 Filed 10-23-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-156-C]

F & S Coal; Petition for Modification of Application of Mandatory Safety Standard

F & S Coal, 840 Mahanoy Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment) to its Slope No. 1 (I.D. No. 36-07702) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 24, 1989. Copies of the petition are available for inspection at that address.

Dated: October 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-25014 Filed 10-23-89; 8:45 am]
BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specifications (TS) to allow handling of a spent fuel transfer cask in the spent fuel pool and to allow storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI).

The proposed action is in accordance with the licensee's application for amendments dated March 31, 1988.

The Need for The Proposed Action

The proposed changes to the TS are required to permit the licensee to operate an ISFSI that it is constructing at the Oconee Nuclear Station. The ISFSI is necessary in order to maintain a prudent operating reserve spent fuel storage capacity and to maintain the ability to off-load an entire rector core. The ISFSI would allow this capacity until a permanent disposal facility is available.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would allow handling of a spent fuel transfer cask in the spent fuel pool after specified conditions in the pool were met. In addition, the ISFSI would be added as an authorized storage location for spent fuel. While the spent fuel transfer cask is larger and heavier than the currently approved spent fuel shipping casks for Oconee, the licensee has performed calculations which show

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that, by imposing more restrictive limits on the decay time for the spent fuel in the respective Oconee spent fuel pool, offsite dose release resulting from a cask drop in the spent fuel pool are well within the 10 CFR part 100 limits. These new restrictions would require, for Oconee Units 1 and 2 spent fuel pool, spent fuel stored in the first 64 hours of the storage racks closest to the cask handling area to have decayed for a minimum of 65 days prior to transfer cask operations. For Oconee Unit 3 spent fuel pool, all of the spent fuel in the pool must have decayed a minimum of 57 days prior to transfer cask operations. The current TS require, for Oconee Units 1 and 2, that spent fuel in the first 36 rows closest to the shipping cask handling area be decayed a minimum of 55 days, and for Unit 3, spent fuel stored in the first 33 rows closest to the shipping cask handling area be decayed a minimum of 70 days. The staff has reviewed and concurs in the licensee's calculations. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

An Environmental Assessment and Finding of No Significant Impact for the construction and operation of the Oconee ISFSI was previously published in the **Federal Register** on November 1, 1988 (53 FR 44133). This Environmental Assessment covers all aspects of ISFSI construction and operation occurring outside the Oconee rector building.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or geater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the ISFSI, eventually resulting in insufficient spent fuel storage reserve to allow uninterrupted operation of Oconee Units 1, 2 and 3.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Operation of Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 10th day of October 1989.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-25003 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on November 8 and 9, 1989, at the San Francisco Airport Hilton, Terrace Room, San Francisco, CA.

A portion of the meeting will be closed to discuss information deemed proprietary by the General Electric Company.

The agenda for the subject meeting shall be as follows:

Wednesday, November 8, 1989—8:00 a.m. until the conclusion of business

Thursday, November 9, 1989—8:00 a.m. until the conclusion of business

The Subcommittee will discuss: (1) The capability of the thermal hydraulic codes to model BWR core power instability, and (2) the key thermal hydraulic design aspects of the GE ABWR related to the ECCS, and LOA analyses.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the BWR Owners Group, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert. (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 18, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-24999 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena a will hold a meeting on November 14, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 14, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss selected topics related to the NRC-RES thermal hydraulic research program, including future research needs and the recent ACRS letter commenting on thermal hydraulic research.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the BWR Owners Group, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 17, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-25000 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a closed meeting on November 1 and 2, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland with members of the Canadian Atomic Energy Control Board's Advisory Committee on Nuclear Safety (ACNS) to discuss safety-related matters applicable to nuclear power plants.

Wednesday, November 1, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

Morning Session—The attendees will discuss the following topics:

- Institutional quality assurance and attitude
- Software quality assurance

Afternoon Session—The attendees will discuss the following topics:

- Nuclear Power plant personnel selection and training
- Severe accident analysis
- Containment performance criteria
- Use of the "as low as reasonably achievable (ALARA)" concept

Thursday, November 2, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

Morning Session—The attendees will discuss the following topic:

- Emergency Planning

I have determined in accordance with Subsection 19(d) P.L. 92-463 that it is necessary to close this meeting to discuss information provided in confidence by a foreign source consistent with 5 U.S.C. 552b(c)(4). See 10 CFR 9.104(a)(4) and 2.790(d).

Less than 15 days notice for this meeting has resulted from difficulties associated with obtaining final coordinated approval of the topics for discussion and the meeting date do to the infrequent meetings of the two full committees.

Dated: October 19, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-25002 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17172; 811-2940]

Capital Preservation Treasury Note Trust; Notice of Application

October 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Capital Preservation Treasury Note Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on July 28, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 755 Page Mill Road, Palo Alto, CA 94304.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Max Berueffy, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On July 13, 1979, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On July 13, 1979, Applicant also filed Form N-1 pursuant to the Securities Act of 1933. The registration statement became effective on May 16, 1980, and the initial public offering commenced immediately thereafter. Applicant was organized as a California grantor trust until its status was terminated by trustee action on April 28, 1989.

2. On July 26, 1988, Applicant's Board of Trustees approved its Agreement and Plan of Reorganization (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials relating to the Plan were mailed to shareholders of record as of September 22, 1988, on or about October 3, 1988. On November 22, 1988, at a meeting called for that purpose,

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Applicant's shareholders approved the Plan.

3. Pursuant to the Plan, on April 1, 1989, Applicant transferred all of its assets to Benham Government Income Trust ("Trust") which is organized as a Massachusetts business trust. The Trust is registered as a management investment company under the 1940 Act (File No. 811-4363). In exchange for their interests in Applicant, the shareholders of Applicant received equivalent interests ("New Shares") in a new series of shares of the Trust known as the Benham Treasury Note Fund ("Series"). The exchange of shares of Applicant for New Shares took place at net asset value as of April 1, 1989, the closing date. Applicant distributed in complete liquidation pro rata to its shareholders of record as of March 31, 1989, the New Shares received by Applicant. Each shareholder of record received one New Share for each share of Applicant on the closing date. The voting rights of the New Shares are identical to those of Applicant's shares.

4. At the time of the reorganization, there were 7,440,875 shares of beneficial interest of Applicant outstanding, having an aggregate net asset value of $71,655,616 and a per share net asset value of $9.63. No brokerage commissions were paid in connection with the reorganization. The expenses applicable to the reorganization, consisting of accounting, printing, proxy solicitation, administrative and certain legal expenses, were approximately $26,895. Expenses incurred during the reorganization were borne by Applicant; expenses incurred following the reorganization will be borne by the Series.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24975 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17173; 811-1649]

Industrial Index Fund; Deregistration

October 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal of deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: Industrial Index Fund ("Registrant").

Relevant 1940 Act Section: Section 8(f).

Summary of Proposed Action: The SEC proposes to declare on its own motion that Registrant has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the motion will be granted. Interested persons may request a hearing on the deregistration of Registrant, or asked to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m., on November 13, 1989. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Serve the Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Registrant, Industrial Index Fund, c/o David W. Stevenson, CPA, Inc., 2630 Canyon Road, Escondido, California 92025-7415.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Stephanie M. Monaco, Branch Chief, (202) 272-3030 (Office of Investment Company Regulation).

Applicant's Representations

1. Registrant filed Forms N-8A and N-8B to register under the 1940 Act on May 3, 1968, but no additional 1940 Act filings have been made with the SEC since that date. Registrant was organized under the laws of the State of California.

2. Information contained in the records of the SEC indicate that on April 15, 1986, Registrant's directors decided to liquidate Registrant due to the death of Registrant's administrator, the inability to find a merger partner, and a high level of costs compared to the Registrant's assets of approximately $38,500. On October 22, 1986, checks representing net asset value per share as of June 1, 1986, were sent to shareholders who could be located and the remainder was escheated to the State of California with a list of the shareholders who had no known address. Registrant has been inactive since the spring of 1986.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24976 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17168; 812-7291]

Prudential-Bache Special Situations Fund, L.P., MGP Limited Partnership; Notice of Application

October 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940, as amended (the "Act").

Applicants: Prudential-Bache Special Situations Fund, L.P. (the "Fund") and MGP Limited Partnership (the "Adviser")

Relevant 1940 Act Section: Exemptions requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining: (i) that the Independent General Partners (as hereinafter defined) of the Fund and any persons who may become successor or additional Independent General Partners will not be deemed "interested persons" of the Fund and the Adviser solely by reason of serving as general partners of the Fund (the "General Partners"); and (ii) that persons who become limited partners of the Fund (the "Limited Partners") who own less than five percent (5%) of the units representing the Fund's limited partnership interests (the "Units") will not be deemed "affiliated persons" of the Fund or of its other partners solely by reason of their status as Limited Partners.

Filing Dates: The application was filed on April 11, 1989 and amended on September 8, 1989 and October 4, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Hertzog, Calamari and Gleason, 100 Park Avenue, New York, New York, 10017, Attention: David B. Hertzog, Esq.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, (202) 272-3035, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund is a limited partnership organized on March 31, 1989 under Delaware law. The Fund has registered as an investment company and will file, as an exhibit to its Registration Statement on Form N-2, an Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). The Fund is to terminate on December 31, 1994, unless terminated earlier or extended for up to two years. The Units will be sold to qualified investors in a private placement transaction pursuant to Regulation D under the Securities Act of 1933, as amended. Prudential-Bache Securities Inc. ("Prudential-Bache"), a wholly-owned subsidiary of Prudential Securities Group Inc. ("Prudential Group"), will act as the exclusive placement agent of the Units.

2. The investment objective of the Fund is to maximize long-term capital appreciation by investing primarily in equity securities and other securities with equity features of companies traded publicly "over-the-counter" or listed on national securities exchanges, which possess some technological, market or product niche, which may be, for various reasons, undervalued, or with prospects of going private or being acquired.

3. The Adviser, the general partner of which is Special Situations Management, Inc., a wholly-owned subsidiary of Prudential Group, serves as the Fund's investment adviser and will be primarily responsible for the selection of the Fund's investments and the selection of brokers and dealers through which the Fund's portfolio transactions will be executed. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). An affiliate of Prudential-Bache will serve as the Fund's admnistrator.

4. The Fund was structured as a partnership, rather than a corporation or business trust, to afford the Fund flexibility to meet its investment objective, while enabling the Fund and its partners to receive, in effect, the "pass-through" tax treatment typically available to mutual funds and their shareholders. As a partnership, the Fund will not be subject to the requirements of the Internal Revenue Code of 1986, as amended (the "Code") which a corporation must satisfy in order to qualify as a regulated investment company ("RIC") under section 851 *et seq.* of the Code. Moreover, the partnership structure enables the Fund to provide certain tax benefits to investors which are not available to RICs. First, short-term capital gains earned by the Fund will be passed through to investors as such, rather than being characterized as dividend income, as would be the case if the Fund were structured as a RIC. In addition, the partnership structure enables the Fund to structure the compensation payable to the Adviser as an allocation of partnership income, rather than as a fee. In this way, the partnership structure should permit investors to deduct a greater portion of the compensation payable to the Adviser.

5. The Fund has two classes of Partners: General Partners and Limited Partners. The General Partners are expected to include five natural persons (the "Managing General Partners") and the Adviser as the corporate General Partner (the "Corporate General Partner"). A majority of the Managing General Partners will be unaffiliated with Prudential-Bache, Prudential Group and the Adviser (the "Independent General Partners"). In accordance with Delaware law, the General Partners will be in a fiduciary relationship with the Limited Partners similar to that of the directors of a corporation with its shareholders.

6. If at any time the number of Independent General Partners is less than a majority of the Managing General Partners, the Managing General Partners shall, subject to compliance with the Act, designate one or more additional or successor Independent General Partners to be a majority of the Managing General Partners. An initial meeting of the Partners (the "Initial Meeting") shall be held within one year after the Fund commences its operations. At the Initial Meeting, the Partners will vote upon the approval and election of the Managing General Partners. Each Managing General Partner elected at the Initial Meeting, and any successor or additional Managing General Partner, will serve until the termination of the Fund unless such Managing General Partner earlier withdraws or resigns or is earlier removed.

7. The General Partners will not be personally liable to any holder of the Units or to the Fund for losses suffered by the Fund, so long as the General Partners' conduct does not constitute willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. The General Partners will not be liable to any holder of the Units or to the Fund by reason of any change in any federal or state income tax laws applicable to the Fund or to any holder of the Units. A General Partner will be entitled to indemnification from the Fund against liabilities and expenses to which it may be subject in its capacity as a General Partner, so long as the expenses are not the result of willful misfeasance, bad faith, gross negligence or reckless disregard of its duties.

8. In addition to the foregoing indemnification of the Managing General Partners, Prudential-Bache has agreed to indemnify the Managing General Partners against the same liabilities and expenses (specifically including any claims made by general creditors of the Fund), so long as the Managing General Partners have not engaged in willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. The Fund will carry insurance in such amounts as the Managing General Partners consider reasonable to cover the potential liabilities of the Fund. The Fund does not at present plan to carry an errors and omissions insurance policy. The Independent General Partners will review periodically the appropriateness of obtaining an errors and omissions insurance policy for the Fund.

9. Each Independent General Partner will receive an annual fee for his services and each Managing General Partner will be reimbursed by the Fund for reasonable out-of-pocket expenses incurred by them in performing their duties. Such compensation shall be in the form of an allocation of 20 percent of the Profit of the Fund for each year in which the Corporate General Partner serves as the Fund's investment adviser. The Corporate General Partner will receive performance-based investment advisory compensation in accordance with Rule 205-3 under the Advisers Act. An affiliate of Prudential-Bache will serve as the Fund's administrator and will be paid an annual fee for its

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services equal to 0.25% of the Fund's average net assets.

10. The Limited Partners will not be personally liable for obligations of the Fund unless they take part in the control of the Fund's business. The Limited Partners will not have the unrestricted right to transfer or assign their Units to other persons.

The Applicants' Legal Conclusions

1. Each of the Managing General Partners will be a partner of the Fund and a co-partner of the Adviser and, thus, under section 2(a)(3)(D), each may be deemed an affiliated person of the Fund and the Adviser. As an affiliated person of the Fund and the Adviser, each of the Managing General Partners, including each Independent General Partner, will be an interested person of the Fund and the Adviser under sections 2(a)(19)(A) and 2(a)(19)(B) of the Act. If the Independent General Partners were deemed interested persons of the Fund and the Adviser, the Fund would be precluded from meeting a number of requirements imposed on a registered investment company by the Act and various rules under the Act. The Fund would be unable to comply, for example, with section 10(a) of the Act, which requires a registered investment company to have a board of directors at least forty percent (40%) of the members of who are not interested persons of the company.

2. Each person who becomes a Limited Partner will be a partner of the Fund and therefore a co-partner with each other Partner, including the Adviser. Section 2(a)(3)(D) of the Act provides that an "affiliated person" of an entity such as the Fund includes, among others, any partner or co-partner thereof. Thus, each Limited Partner might be deemed to be an "affiliated person" of the Fund, the Adviser and each other Partner, merely by virtue of such Limited Partner having purchased a Unit and having become a Limited Partner.

3. The Applicants believe that the exemptions are consistent with the policies of sections 2(a)(19) and 2(a)(3)(D). The Managing General Partners, including the Independent General Partners, will perform the same functions for the Fund as do the directors of a mutual fund organized as a corporation. Similarly, the application of section 2(a)(3)(D) of the Limited Partners would result in their being treated differently from shareholders of a registered investment company that was organized as a corporation. The Applicants assert that the questions of affiliation and corresponding prohibitions should not turn on the form of organization of the investment vehicle. The Limited Partners, for purposes of the Act, should generally be accorded the same treatment as corporate shareholders, and, therefore, the Limited Partners who hold less than five percent (5%) of the Fund's voting securities should not be deemed "affiliated persons" of the Fund, the Adviser or the other Partners under section 2(a)(3)(D) solely by virtue of their being Limited Partners.

4. The Applicants submit that granting the Exemptions is not only consistent with the policies underlying the Act, but is also in the interests of the Fund and the Partners. The Exemptions will enable the Fund to operate as a limited partnership and thereby afford the Fund flexibility to meet its investment objective, while permitting the Fund and the Partners to receive pass-through tax treatment similar to that typically available to registered investment companies organized as corporations or business trusts and also to receive certain other tax treatment which is more favorable to partnerships than to corporations.

The Applicants' Conditions

If the requested orders are granted, the Applicants agree to the following conditions:

1. The Managing General Partners will perform the same functions as the directors of incorporated investment companies registered under the Act. The Independent General Partners, all of whom are Managing General Partners, will perform the same functions as the non-interested directors of registered incorporated investment companies. The Managing General Partners will have complete and exclusive control over the management, conduct and operation of the Fund's business. The Corporate General Partner will have no authority to manage or control the Fund's business, except if no Managing General Partner remains. In that event, the Corporate General Partner may continue the business of the Fund for up to sixty days in order to convene a meeting of the Limited Partners so that the Limited Partners can select new Managing General Partners.

2. While serving as a non-managing General Partner of or investment adviser to the Fund, the Corporate General Partner will, to preserve the Fund's tax status as a partnership, own sufficient Units to insure that the General Partners together own at least one percent of the outstanding Units. The Corporate General Partner will not withdraw as a non-managing General Partner of the Fund except on two years notice or upon the appointment of a successor, whichever is earlier. If the Fund terminates the advisory agreement with the Corporate General Partner, it will remain as a non-managing General Partner and continue its obligation to own sufficient Units for 180 days or until a successor non-managing General Partner is appointed, whichever is earlier.

3. The Limited Partners will not have the right to control the Fund's business, but they will have the right to vote on all matters requiring their approval under the Act were they shareholders of an incorporated registered investment company, including the right to elect or remove General Partners, the right to approve any new or amended investment advisory contract, the right to approve proposed changes in the Fund's fundamental policies or basic structure, and the right to ratify or reject the appointment of auditors. If a Limited Partner seeks to transfer his interest in the Fund, and the proposed transfer is otherwise in accordance with the Partnership Agreement, applicable Federal and State law and the tax considerations set forth in the Partnership Agreement, the Managing General Partners may not unreasonably withhold their consent to such transfer. If a Limited Partner transfers his Units in a manner which is effective under the Partnership Agreement, and the consent of the Managing General Partners to the substitution of such Limited Partner's transferee as a substituted Limited Partner is obtained and any other actions required under the Partnership Agreement are taken, the General Partners will promptly take all necessary actions to insure that such transferee or successor becomes a substituted Limited Partner. All Units will participate equally in the profits and losses of the Fund, and each Unit will have one vote on all matters to be voted upon by the Partners.

4. In the event of the dissolution of the Fund, the Partnership Agreement specifies that both the General and Limited Partners share pro rata in accordance with the respective capital accounts of such Partners. The capital accounts of the Partners may not be proportionate to their ownership of Units because (i) Partners may elect to reinvest differing portions of any distributions that they receive in additional units and (ii) any investment advisory compensation which has been allocated to the Corporate General Partner will be reflected in the Corporate General Partner's capital account, but will not result in the issuance to the Corporate General Partner of a proportionate number of additional Units unless there has been a corresponding cash distribution reinvested in Units. No priority between the General and Limited Partners exists upon dissolution, and hence, in the view of the Fund, neither class of Partners holds a senior security as defined under the Act.

5. The Fund will, prior to the closing of the sale of Units, obtain an opinion of counsel stating that the voting rights provided the Limited Partners do not subject the Limited Partners to liability as general partners under Delaware law. In addition, the General Partners will take all actions which may be necessary or appropriate to protect the limited liabiilty of the Limited Partners (*e.g.*, requiring the General Partners to use their best efforts to put all third parties dealing with the Fund on notice of the limited liability of the Limited Partners and requiring all written agreements entered into by the Fund to contain a statement to the effect that the Fund is a limited partnership). If a Limited Partner is sued in order to satisfy an obligation of the Fund, the Fund agrees that, upon notice of such by the Limited Partner, it will indemnify such Limited Partner against any cost, damage or liability incurred by such Limited Partner in respect of such suit to the extent that such Limited Partner acted in accordance with the terms of the Partnership Agreement, took no part in the management or control of the Fund's business and did not purport to have the authority to act for or bind the Fund. The Fund will carry insurance in such amounts as the Managing General partners considered reasonable to cover potential liabilities of the Fund. The Independent General Partners will periodically review the appropriateness of obtaining errors and omissions insurance for the Fund.

6. The Units will be sold only to investors with net worths in excess of $1 million. Prior to the closing of the sale of Units, the Fund will obtain an opinion letter from counsel that the compensation payable to the Adviser by the Fund is in accordance with section 205 of the Advisers Act.

7. The Fund does not contemplate making in-kind distributions of portfolio securities to the General Partners. In any event, prior to making any such distribution, the Fund will obtain either a no-action letter from the staff of the SEC stating that such distribution does not violate the Advisers Act or an order of exemption pursuant to section 206A of the Advisers Act permitting such distribution.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24977 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17167; 812-7292]

Prudential-Bache Special Situations Fund, L.P., Special Situations Fund, L.P., MGP Limited Partnership; Notice of Application

October 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Prudential-Bache Special Situations Fund, L.P. (the "Fund"), Special Situations Fund, L.P. (the "1985 Fund") (together, the "Funds"), and MGP Limited Partnership (the "Adviser") (collectively, the "Applicants").

Relevant 1940 Act Section: Exemption requested under section 17(b) of the Act from the provisions of section 17(a) of the Act.

Summary of Application: The Applicants seek an order permitting certain of the partners of the 1985 Fund (the "1985 Partners") to contribute and invest their distributive shares of the assets of the 1985 Fund upon its liquidation in exchange for units representing the Fund's limited partnership interests ("Units").

Filing Dates: The application was filed on April 11, 1989, and amended on September 8, 1989 and October 4, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017, Attention: David B. Hertzog, Esq.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, (202) 272-3035, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund is a limited partnership organized on March 31, 1989, under Delaware law. The Fund has registered as an investment company with the SEC pursuant to section 8 of the Act. Units will be sold to investors with net worths in excess of $1 million in a private placement transaction pursuant to Regulation D ("Regulation D") under the Securities Act of 1933, as amended. Prudential-Bache Securities Inc. ("Prudential-Bache"), a wholly-owned subsidiary of Prudential Securities Group Inc. ("Prudential Group"), will serve as exclusive placement agent of the Units. Prudential-Bache Properties, Inc., a wholly-owned subsidiary of Prudential Group, will serve as the Fund's administrator.

2. The investment objective of the Fund will be to maximize long-term capital appreciation by investing primarily in equity securities and securities with equity features, such as common stocks, preferred stocks, convertible securities, and warrants, of companies traded publicly "over-the-counter" or listed on national securities exchanges, which possess a technological, market or product niche, which may be, for various reasons, undervalued, or with prospects of going private or being acquired.

3. The 1985 Fund is a limited partnership organized on March 15, 1985, under Delaware law. Under the terms of the 1985 Fund's Agreement of Limited Partnership ("1985 Agreement"), the 1985 Fund is to terminate on December 31, 1990, unless terminated earlier or extended for up to one year. In July 1985, units of limited partnership interest in the 1985 Fund (the "1985 Fund Units") in an aggregate amount of $7,250,000 were sold to qualified investors in a private placement transaction pursuant to Regulation D. There have been no subsequent sales of the 1985 Units. Prudential-Bache served as placement agent of the 1985 Units. The 1985 Fund has not been registered under the Act in reliance on section 3(c)(1) thereof. The 1985 Fund's investment objective is substantially identical to the Fund's investment objective. The 1985 Fund is, and has been, invested in the types of companies and securities in which the Fund intends to be invested.

4. The Adviser was organized as a limited partnership under the laws of the State of Delaware and is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended. Special Situations Management, Inc. ("SSMI"), a Delaware corporation and a wholly-owned subsidiary of Prudential Group, is the sole general partner of the Adviser. The 1985 Fund pays the Adviser performance-based advisory compensation calculated in accordance with Rule 205-3 under the Advisers Act. It is expected that the Fund will compensate the Adviser in substantially the same manner; however, the Adviser will be compensated by the Fund at a lower rate.

5. The Adviser will serve as the Fund's investment adviser and is serving as the investment adviser of the 1985 Fund. The Adviser is primarily responsible for the selection of the 1985 Fund's investments and the selection of brokers and dealers through which portfolio transactions are executed. The Adviser will have the same responsibilities with respect to the Fund.

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6. The Adviser is the sole general partner of the 1985 Fund and is vested with authority to manage and control the business of the 1985 Fund. The authority to manage and control the business of the Fund will be vested in individual general partners of the Fund (the "Individual General Partners"), a majority of whom will be unaffiliated with Prudential-Bache, Prudential Group and the Adviser (the "Independent General Partners"). As a general partner of the Fund, the Adviser will be permitted to participate in the management of the Fund only in the event that no Individual General Partner remains to continue the business of the Fund and then only for the limited period of time (not in excess of sixty (60) days) necessary to convene a meeting of the partners of the Fund for the purpose of making an election to continue the Fund's business.

7. The Adviser, as managing general partner of the 1985 Fund, has elected, in accordance with the 1985 Fund's Agreement of Limited Partnership, to dissolve the 1985 Fund, and to offer qualified limited partners of the 1985 Fund the opportunity to exchange their distributive shares of assets in the 1985 Fund for Units. The Adviser will solicit consents from the 1985 Limited Partners to approve a proposed liquidation (the "Liquidation") and termination of the 1985 Fund in accordance with a proposed plan of liquidation (the "Plan"). Under the Plan, the qualified 1985 Limited Partners who are United States Persons, as such term is defined under the Internal Revenue Code of 1986, as amended (the "1985 U.S. Partners"), will be permitted to exchange their distributive shares of the assets of the 1985 Fund for Units. The 1985 Limited Partners who are not 1985 U.S. Partners (the "1985 Foreign Partners") will receive their distributive shares of the assets of the 1985 Fund in cash and, if qualified, will be permitted to reinvest such cash distributions in Units. In accordance with the 1985 agreement, if consents are obtained from the holders of at least two-thirds of the 1985 Units, the Adviser will proceed with the Liquidation of the 1985 Fund. In connection with the solicitation of consents to the Liquidation, an information statement (the "Information Statement") will be prepared by the Adviser and the 1985 Fund and distributed to the 1985 Limited Partners The Liquidation will be effected immediately prior to the closing of the offering of the Units (the "Closing"). The 1985 Limited Partners will be informed of the terms of such Liquidation and their opportunity to invest their distributions from the 1985 Fund in Units.

8. The 1985 Fund will discharge all of its known liabilities and obligations on or before the day prior to the date of the Closing (the "Closing Date"), including the expenses of Liquidation and, if determined to be appropriate by the Adviser and the Independent General Partners, the 1985 Fund will establish a reserve for unknown and contingent liabilities and obligations. Any liabilities and obligations of the 1985 Fund not otherwise satisfied or provided for will be the responsibility of the Adviser, in its capacity as the general partner of the 1985 Fund. The Fund will assume no liabilities, expenses or obligations of the 1985 Fund. Following the Liquidation, the 1985 Fund will be terminated in accordance with the 1985 Agreement and Delaware law.

9. On the Closing Date, the 1985 Fund will liquidate and distribute its assets to each partner thereof (the "1985 Partners") in accordance with the respective final balances of their capital accounts as of that date. A 1985 U.S. Partner who has a net worth in excess of $1 million may contribute to the Fund all or a portion (in multiples of 25%) of his or its distributive share of the 1985 Fund's assets consisting of portfolio securities, cash and cash equivalents (the "Contributed Assets") in exchange for Units. A 1985 U.S. Partner who does not invest in the Fund all or any portion of his or its distributive share of the 1985 Fund's assets will receive cash in the Liquidation. A qualified 1985 U.S. Partner who elects to invest all or a portion of his or its distributive share of the 1985 Fund's assets in the Fund will contribute to the Fund such portion of his or its distributive share of the 1985 Fund's assets consisting of portfolio securities, cash and cash equivalents (the "Contributed Assets") to the Fund in exchange for Units. The value of the Units so received will be equal to the value of such Contributed Assets.

10. A 1985 Foreign Partner who has a net worth in excess of $1 million will be qualified to invest all or part of the cash distribution received in the Liquidation by purchasing Units in the Fund. A 1985 Foreign Partner should not be subject to Federal income tax liability on his or its receipt of cash in the Liquidation.

11. The Fund will issue Units to the 1985 U.S. Partners, the aggregate value of which will equal the value of the Contributed Assets transferred to the Fund by such Partners on the Closing Date. The Contributed Assets will be valued at their independent "current market price", as defined in Rule 17a-7(b) under the Act. The Independent General Partners, prior to the sale of Units to the 1985 Partners, will approve the valuation of the Contributed Assets and determine that they are appropriate for the Fund's portfolio. On the Determination Date, the 1985 Fund's portfolio will consist entirely of cash, cash equivalents and securities for which an independent "current market price", as defined by Rule 17a-7(b), can be obtained. Neither the 1985 Limited Partners nor the Adviser will be in a position to influence the valuation of the securities acquired by the Fund.

12. The Independent General Partners will consider the desirability of the proposed transaction from the point of view of the Fund prior to Liquidation, and the proposed transaction will not be effected unless a majority of the Independent General Partners conclude that: (i) The proposed transaction is desirable as a business matter from the point of view of the Fund, (ii) the proposed transaction is in the best interest of the Fund and (iii) the terms of the proposed transaction meet the criteria contained in section 17(b) of the Act in that such transaction is reasonable and fair, does not involve overreaching and is consistent with the policies of the Fund and the Act. The Independent General Partners will be given the opportunity to retain independent counsel, at the expense of the Fund, to assist them in considering the proposed transaction, prior to making such determinations.

13. Counsel to the Fund will, prior to the Liquidation, provide an opinion letter stating that, in general, under present law, neither the Fund nor partners in the Fund will be subject to any additional tax liability as a result of the proposed transaction described herein. Moreover, the 1985 U.S. Partners should not recognize any gain or loss upon which the contribution of their Contributed Assets in exchange for Units pursuant to the proposed tranaction.

14. The expenses of the Liquidation will be borne by the 1985 Fund. Such expenses are expected to be relatively small. Organizational and offering expenses of the Fund of up to two percent (2%) of the gross proceeds of the offering of Units will be borne by the Fund. Any excess expenses will be borne by Prudential-Bache. No other expenses are expected to be incurred in connection with the proposed transaction, and as set forth in Rule 17a-7(c), no brokerage commissions, fees (except for customary transfer fees) or other similar remuneration is to be paid in connection therewith.

15. The Fund intends to distribute an offering memorandum (the "Offering Memorandum") to new investors ("New Investors") and the 1985 Limited Partners describing the proposed transaction. Such Offering Memorandum will set forth the basis for this proposed transaction, the anticipated tax consequences thereof and all other relevant material facts and circumstances.

16. The occurrence of the following events, among others, will be conditions to the Closing: (i) Obtaining the relief sought hereunder, (ii) obtaining the requisite consents to the Liquidation, (iii) obtaining the relief sought pursuant to an application filed on behalf of the Fund and the Adviser on April 11, 1989, as amended and restated, seeking exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the Act and (iv) selling a minimum of 6,000 Units (at $5,000 per Unit), inclusive of Units acquired by the 1985 Partners. Correspondingly, it is anticipated that the consummation of the Liquidation will also be conditioned upon the occurrence of the foregoing events.

The Applicants' Legal Conclusion

1. Under section 2(a)(3) of the Act, the Adviser technically may be deemed to be an "affiliated person" of the Fund because: (i) It will be the Fund's investment adviser and (ii) it is a partner of the Fund. The 1985 Limited Partners, in turn, may be deemed to be affiliated persons of an affiliated person (*i.e.*, the Adviser) because they are copartners of the Adviser in the 1985 Fund. In addition, the Funds may be deemed to be under the common control of the Adviser and/or Prudential-Bache and, therefore, affiliates. Thus, the 1985 Limited Partners may be deemed to be affiliated persons of the Fund. Because of these relationships, the provisions of section 17(a) of the Act apply to the contribution by the 1985 U.S. Partners of the Contributed Assets in exchange for Units.

2. The Applicants submit that the proposed transaction does not give rise to the abuses that section 17(a) was designed to prevent. A primary purpose of section 17(a) is to prevent a person with a pecuniary interest as a seller of securities from using his position with a registered investment company to benefit himself to the detriment of such company's shareholders. In the instant case, the Fund will not have commenced operations prior to the Liquidation and thus will have no assets to dissipate or partners' interests to dilute. Immediately after the Liquidation and the acquisition of Units, the 1985 Partners will hold substantially the same assets as partners in the Fund as they had previously held as 1985 Partners. In this sense, the Liquidation can be viewed as merely giving rise to a change in the vehicle in which assets are held, rather than as a disposition giving rise to section 17(a) concerns.

3. The Applicants submit that the proposed transaction is also consistent with the policies underlying the adoption of Rule 17a-7. One of those policies is to permit investment companies that may have otherwise chosen to avoid the application process under section 17(b) of the Act by purchasing and selling securities in the open market, instead to avoid brokerage charges by effecting transactions directly. The proposed transaction avoids the incurrence of brokerage charges without giving rise to any of the abuses which section 17(a) of the Act was designed to prevent.

4. The 1985 U.S. Partners who transfer Contributed Assets to the Fund in exchange for Units wil contribute the same value for their Units as will investors who pay cash for their Units, including any 1985 Foreign Partners. All the partners of the Fund will benefit from the greater flexibility in portfolio investments, the administrative convenience engendered and the creation of certain economies of scale that should be available to the Fund as a result of the effective combination of the Funds.

The Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Independent General Partners have determined that no dilution of the interests of any partners of the Fund will occur by virtue of such transaction.

2. All expenses of the Liquidation, including the solicitation of consents thereto, will be borne by the 1985 Fund. Organizational and offering expenses of up to two percent (2%) of the gross proceeds of the Offering will be borne by the Fund. Any excess expenses will be borne by Prudential-Bache.

For the SEC, by the Division of Investment of Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24978 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 88-09; Notice No. 3]

Periodic Motor Vehicle Inspection; Publication of Final Study Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of publication of final study report.

SUMMARY: This notice is being issued to announce the completion of a final report on the effectiveness of State periodic motor vehicle inspection (PMVI) programs. This action is in response to Congressional direction, and reflects NHTSA's interest in addressing the effectiveness of State periodic motor vehicle inspection programs.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Luebbert, Office of Enforcement and Emergency Services, Room 5119, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2676.

SUPPLEMENTARY INFORMATION: The Conference Report on the Continuing Resolution for Fiscal Year 1988 (Pub. L. 100-202) directed NHTSA to conduct a comprehensive evaluation of the effectiveness of State motor vehicle safety inspection programs in (1) reducing highway crashes that result in injuries and deaths and (2) limiting the number of defective or unsafe motor vehicles on the highways. In April 1988, NHTSA submitted a plan describing the study methodology and timetable to appropriate Congressional committees. On August 22, 1988, NHTSA announced two public hearings and invited the submission of written comments on the subject, 53 FR 31951 (1988). Detailed background information on PMVI and on the current study was provided in the August 22 notice and, in the interest of brevity, will not be repeated here. NHTSA held the public hearings on September 27, 1988, in Washington, DC and on October 5, 1988, in Lakewood, Colorado. NHTSA heard testimony and received written comments to the docket from sixty-two respondents, including States, national organizations, and interested individuals.

Following the completion of NHTSA in-house study efforts, and after taking into consideration the written comments and testimony at the public hearings, an interim final report was prepared. In a **Federal Register** notice of May 9, 1989, NHTSA announced the availability of the interim final report and again invited

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the submission of written comments. At the same time, the interim final report was sent to all those who provided comments and who testified at the public hearings. NHTSA received written comments from thirteen respondents, including States and national organizations.

In accordance with Congressional direction and the submitted plan, the final report contains a review of the literature, analysis of crash data, assessment of current PMVI programs, and a summary of the public comments received in response to the August 22 and May 9 Federal Register notices and at the public hearings. A copy of this final report has been sent to Congress. Copies of this final report have also been sent to all those who provided comments and who testified at the public hearings. Anyone else interested in obtaining a copy of this report may do so by requesting one from Mr. Sam Luebbert at the above address.

George L. Reagle,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-24943 Filed 10-23-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief; Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Phil A. Orsini, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-566-7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Anderson, Bradley Ivan, 516 Lamar Drive, Milton, Wisconsin, convicted on April 20, 1981, in the Rock County Circuit Court, Branch III, Janesville, Wisconsin.

Anderson, Robert Ernest, 45 Eisenhower Drive, Savannah, Georgia, convicted on January 10, 1984, in the United States District Court, Southern District of Georgia.

Anderson, William R., 16 Glenleigh, Little Rock, Arkansas, convicted on January 13, 1986, in the United States District Court, Little Rock, Arkansas.

Argento, Joseph Anthony, 1218 North 32nd Avenue, Melrose Park, Illinois, convicted on August 21, 1975, in the United States District Court, Chicago, Illinois.

Armenta, Ruben Gomez, 50300 Highway 245, Badger, California, convicted on January 25, 1965, in the Superior Court of California, Fresno, California.

Arrington, James Francis, Route 1, Box 619, Meridian, Mississippi, convicted on December 8, 1976, in the Lauderdale County Circuit Court, Lauderdale County, Mississippi.

Austin, Earl Ardene Senior, Route 171, Wytopitlock, Maine, convicted on December 22, 1982, in the Maine Superior Court, Penobscot County, Bangor, Maine.

Bell, Warren A. Junior, 5425 Congress Drive, New Orleans, Louisiana, convicted on July 7, 1981, Orleans Parish Criminal Court, New Orleans, Louisiana.

Benningfield, James W., 1397 L G & E Road, Magnolia, Kentucky, convicted on October 4, 1983, in the United States District Court, Western District of Kentucky.

Blond, William Robert, 1705 Leestown Road, Lexington, Kentucky, convicted on February 11, 1973, in the United States District Court, Tampa, Florida.

Boykin, Kerry Kendell, Route 2, Box 278-A, Forest, Mississippi, convicted on October 15, 1975, in the United States District Court, Jackson, Mississippi.

Brannon, Michael T., 543 Dolezac, Coos Bay, Oregon, convicted on April 3, 1980, in the Coos Bay Circuit Court, Oregon.

Brinkley, John H., 2244 West 10th Street, Indianapolis, Indiana, convicted on January 25, 1983, in the United States District Court, Indianapolis, Indiana.

Brown, Eddie Junior, 8 Sixth Street, Robinwood, Birmingham, Alabama, convicted on November 9, 1984, in the Tenth Judicial Circuit Court, Jefferson County, Alabama.

Brown, Ronald Sahara, 1225 Martin Luther King Avenue, Flint, Michigan, convicted January 10, 1973; January 4, 1974; February 4, 1975; February 9, 1977, and October 2, 1977, in the Detroit Records Court, Michigan.

Bruner, Jessie Louise, 3571 Goree Drive, Millbrook, Alabama, convicted on January 18, 1982, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Bruner, Oddis Timothy, 3571 Goree Drive, Millbrook, Alabama, convicted on January 18, 1982, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Callahan, Billy Joe, Post Office Box 185, Pilot Knob, Missouri, convicted on September 24, 1976, in the United States District Court, St. Louis, Missouri.

Commisa, Alan E., 3 Talmadge Street, Derby, Connecticut, convicted on April 20, 1967, in the Superior Court, Salem County, New Jersey.

Cotron, Stanley Martin, 3305 South Wiley Road, Yakima, Washington, convicted on January 31, 1986, in the Superior Court, Yakima County, Washington.

Coyemberg, Denis Lee, North 511 Highway 180, Marinette, Wisconsin, convicted on April 21, 1960, in the Brown Circuit Court, Branch Four, Brown County, Grenn Bay, Wisconsin.

Chamberlain, Edward Lee, Box 852, Shelburne, Vermont, convicted on March 17, 1986, in the District Court of Caledonia County, Vermont.

Chambers, Johnnie Mae, Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Chambers, W.C., Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Chambers, Wendell Clarke, Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Clark, Frances Gertrude, 270 Robinson Road, Andrews, North Carolina, convicted on April 18, 1986, in the United States District Court, Charlotte, North Carolina.

Cline, Janette M., Route 1, Box 288, Pollock, Louisiana, convicted on April 23, 1984, in the United States District Court, Alexandria, Louisiana.

Cline, Kenneth Ray, Route 1, Box 288, Pollock, Louisiana, convicted on April 23, 1984, in the United States District Court, Alexandria, Louisiana.

Collamore, Charley Edwin, 1432 Southwest Sixty-third, Oklahoma City, Oklahoma, convicted on June 14, 1982, in the Seventh Judicial District Court, Oklahoma.

Cooey, Gary Jack, 5285 Crane Road, West Melbourne, Florida, convicted on June 8, 1978, in the United States District Court, Northern District of Florida, and on July 18, 1978, in the United States District Court, Birmingham, Alabama.

Corporation—Northrop, 1840 Century Park East, Los Angeles, California, convicted on

May 1, 1974, in the United States District Court, Washington, DC.

Cross, Richard Alan, 1802 Milligan Street, Apartment 703, Decatur, Alabama, convicted on August 25, 1980, in the Morgan County Circuit Court, Decatur, Alabama.

Crum, Michiel Wilbur, 1108 Harrison Drive, Greenville, Tennessee, convicted on May 27, 1983, in the United States District Court, Greeneville, Tennessee.

Cushing, Gregory Matthew, 3527 East Layton Avenue, Cudahy, Wisconsin, convicted April 5, 1982, in the Milwaukee County Circuit Court, Milwaukee, Wisconsin.

Daugherty, Larry Owen, 890 Mt. Moriah Road, Boston, Kentucky, convicted on June 9, 1979, in the Bullitt Circuit Court, Shepherdsville, Kentucky.

Davis, William Hardy, 1714 Patton Lane, Apartment 111, Austin, Texas, convicted on March 1, 1974, in the Eleventh Judicial Circuit Court, Dade County, Florida.

Day, William Mark, 6512 Mesa Drive, Austin, Texas, convicted on April 17, 1986, in the United States District Court, Western District of Texas.

Dehetre, Glenn Paul, Route 1, Box 1131, Pownal Road, Auburn, Maine, convicted on September 2, 1982, in the Androscoggin County Superior Court, Auburn, Maine.

Difilippi, Jack, 2214 Meridian Avenue, San Jose, California, convicted on August 26, 1960, in the United States District Court, San Jose, California.

Engel, James Stanley, Route 1, Box 28, Pepin, Wisconsin, convicted on May 26, 1981, in the United States District Court, Minnesota.

Federick, Curtis Arlee, Route 1, Box 68, Atlanta, Texas, convicted on October 18, 1982, in the United States District Court, Texarkana, Texas.

Frye, Gene Albert, 317 Bowling Branch Road, Cottontown, Tennessee, convicted in 1963 and 1964, in the Circuit Court, Sumner County, Tennessee.

Galasso, Anthony Mario, 45 Canopus Hollow Road, Putnam Valley, New York, convicted on June 15, 1984, in the Supreme Court, County of Westchester, New York.

Gann, Bilbo Junior, Route 3, Box 86, Crickasaw County, Houston, Mississippi, convicted on May 8, 1964, in the United States District Court, Northern District of Mississippi, Aberdeen Mississippi.

Garlinghouse, Charles W., 4721 Chukar Drive West, Richland, Washington, convicted on March 2, 1979, in the Benton County Superior Court, Washington.

Golightly, Charles Ray, 3278 Lakewood Drive, Shreveport, Louisiana, convicted on April 23, 1985, in the United States District Court, Eastern District of Oklahoma.

Golno, John Henry, 680 Penn Avenue, Washington, Pennsylvania, convicted on March 8, 1982, in the United States District Court, Western District of Pennsylvania.

Gordon, Robert Harrison, 7815 Strawberry Road, Summerfield, North Carolina, convicted on December 4, 1975, in the United States District Court, Greensboro, North Carolina.

Grant, Thomas Hugh, 88450 Stephens Road, Springfield, Oregon, convicted on March 16, 1982, in the United States District Court, Eugene, Oregon.

Hale, Aldon L., 244 Monroe Street, Afton, Wyoming, convicted on April 13, 1987, in the United States District Court, Wyoming.

Hall, William Bird, Route 8, Box 211, Cookeville, Tennessee, convicted on June 25, 1982, in the United States District Court, Tennessee.

Henson, William David, Post Office Box 1001, Amherst, Virginia, convicted on March 7, 1985, in the Circuit Court, Amherst County, Virginia.

Holaway, Bobbie Sherrell, Route 7, Box 11, 110 Decatur Street, Decatur, Alabama, convicted on May 4, 1983, in the United States District Court, Northern District of Alabama, and on March 22, 1985, in the United States District Court, Northern District of Alabama.

Incorporated—Comco, 190 North Centre Street, Reno, Nevada, convicted on January 26, 1973, in the United States District Court, Reno, Nevada.

Janetski, James Kenneth, 1491 Fourth Street, Port Edwards, Wisconsin, convicted on April 16, 1984, in the Wood County District Court of Wisconsin, Rapids, Wisconsin.

Jordan, George Lindsay, 1111 Little High Street, Apartment A-10, Charlottesville, Virginia, convicted on March 5, 1973, in the United States District Court, Washington, DC.

Kerr, Lyle Gordon, 1133 Indiana, Hammond, Indiana, convicted on June 21, 1985, in the United States District Court, Hammond, Indiana.

Kindblade, James Daniel, 322 Sleepy Hollow, Purcell, Oklahoma, convicted on July 28, 1983, in the Western Judicial District Court of Oklahoma, Oklahoma City, Oklahoma.

Knuth, Roger A., United States Highway 12, North Freedom, Wisconsin, convicted on November 9, 1982, in the Circuit Court, Sauk County, Wisconsin.

Korkoske, Gregory Phillip, 83 East Knox Road, Beaverton, Michigan, convicted on May 8, 1978, in the Boy County Circuit Court, Michigan.

Lambrecht, Harold N., Route 6, Box 46, Mandan, North Dakota, convicted on April 9, 1979, in the United States District Court, Bismarck, North Dakota.

Laroche, George Emile, 227 Lakeview Avenue, Endeavor, Wisconsin, convicted on July 21, 1958, in the Dane County Circuit Court, Madison, Wisconsin.

Leadens, William, 5917 Amy Drive, Edina, Minnesota, convicted on July 11, 1986, in the United States District Court, Fourth District of Minneapolis, Minnesota.

Lepak, Donald Edward, 3385 Highway S, Marathon, Wisconsin, convicted on February 1, 1984, in the United States District Court, Western District of Wisconsin.

Lipski, Robert Steven, 7134 South 38th Street, Franklin, Wisconsin, convicted on January 19, 1981, in the Vilas County Circuit Court, Eagle River, Wisconsin.

Litsey, Steven Arnold, Lowe's Mobile Home Park, Lot 81, Leitchfield, Kentucky, convicted on April 19, 1979, in the Daviess County Circuit Court, Owensboro, Kentucky.

Mainiero, Nicholas, 3200 Park Avenue, Bridgeport, Connecticut, convicted on March 5, 1982, in the United States District Court, District of Connecticut.

Mann, Thomas Chastain, 165 Cannondale Road, Columbia, South Carolina, convicted on February 14, 1985, in the United States District Court, Columbia South Carolina.

Marcucci, Maurice Paul, Route 5, Box 110, Buffalo, Minnesota, convicted on April 6, 1979, in the St. Louis District Court, Sixth Judicial District, Hibbing, Minnesota.

Marohnic, Michael John, Route 3, Box 234-A, Warrenton, Virginia, convicted on June 24, 1974, in the Circuit Court of Fairfax County, Virignia.

May, Zora Lee, 163 Peyton Creek Road, Pikesville, Kentucky, convicted on January 3, 1984, in the United States District Court, Eastern District of Kentucky.

McDonald, William Elliott, Route 2, Box 174, Monroeville, Alabama, convicted on April 29, 1974, in Bowie County, New Salton, Texas and on March 29, 1976, in Potter County, Amarilli, Texas.

McGillis, Robert Brian, 2527 Smithers South, Renton, Washington, convicted on March 13, 1979, in the Thurston County Superior Court, Washington.

Meyer, Gordon Lionel Junior, 320 West White, Millstadt, Illinois, convicted on July 23, 1984, in the United States District Court, Sourthern District of Illinois, Benton, Illinois.

MiGliori, Anthony Earl, 1100 South Highway 89, Apartment 43, Logan, Utah, convicted on February 26, 1982, in the Superior Court, Elk County, Pennsylvania.

Miller, Debra Day, 1492 Lambuth Boulevard, Jackson, Tennessee, convicted on June 10, 1983, in the Madison County Circuit Court, Tennessee.

Miller, Doyle Ray, 435 Miller Road, London, Kentucky, convicted on October 14, 1974, in the Laurel Circuit Court, Laurel, Kentucky.

Miller Glenn Harvey, 429 102d Drive, Southeast, Apartment E-6, Everett, Washington, convicted on September 17, 1984, in the Grays Harbor County Superior Court, Washington.

Miller, James Jesse, 297 Farrow Road, Madison, Alabama, convicted on March 9, 1983, in the United States District Court, Northern District of Alabama.

Moore, Ricky Dean, 125 Northeast Sixteenth Court, Fort Lauderdale, Florida, convicted on January 16, 1973, in the United States District Court, Southern District of Florida.

Morse, Arthur Benjamin, 22657 North M-66, Battle Creek, Michigan, convicted on April 10, 1984, in the United States District Court, Grand Rapids, Michigan.

Nodler, James Herman, Route 2, Box 75, East Corning Avenue, Peotone, Illinois, convicted on December 13, 1985, in the United States District Court, Danville, Illinois.

Neil, Dennis K., 532 East 500 North, American Fork, Utah, convicted on January 17, 1985, in the Fourth Judicial District Court, Utah County, Provo, Utah.

North, Norman Harris, 8236 Newberry Court, Apartment 1303, Indianapolis, Indiana, convicted on August 18, 1977, in the First Judicial Circuit Court, Jackson County, Illinois.

O'Donohue, Thomas James, 768 A Street, Washougal, Washington, convicted on

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October 20, 1980, in the Superior Court, Wasco County, Oregon.

Oschner, Deborah Ann, 503 Lakewood Way, Susanville, California, convicted on February 17, 1983, in the United States District Court, Sacramento, California.

Osgood, Jeromie, 4543 Brookside Way, Las Vegas, Nevada, convicted on May 12, 1980, in the United States District Court, Nevada.

Pappas, George Nicholas, 633 Fairwood Forest Drive, Clearwater, Florida, convicted on September 2, 1975, in the United States District Court, Southern District of West Virginia.

Parduhn, Richard Fredrick, 501 Monroe Street North, Hudson, Wisconsin, convicted on October 16, 1985, in the Circuit Court, Oconto, Wisconsin.

Parks, Glenn Lewis, Rural Delivery 1, Box 524, Elysburg, Pennsylvania, convicted on August 1, 1986, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.

Peach, Wolter Wayne, 101 Powers Boulevard, Waverly, Tennessee, convicted on March 17, 1981, in the Humphreys County Circuit Court, Tennessee.

Peters, Jock Durvell, 2921 Highway 50, Grand Junction, Colorado, convicted on April 25, 1984, in the United States District Court of Nevada, Las Vegas, Nevada.

Peterson, Todd Polmer, 948 South Alma Road, Apartment 12, Mesa, Arizona, convicted on May 25, 1983, in the Rock County Circuit Court, Branch Three, Janesville, Wisconsin.

Rainwater, Thomas Andrew, 76 Mobile Street, Mobile, Alabama, convicted on September 9, 1974, in the Mobile County Court, Mobile, Alabama.

Redding, Jimmie Dan, 1001 Lombard Street, Evansville, Indiana, convicted on December 17, 1971, in the United States District Court, Evansville, Indiana.

Rikala, Ronold Kelly, 41394 Upper Calapooia River Drive, Sweet Home, Oregon, convicted on March 19, 1984, in the Lane County Circuit Court, Oregon.

Rinard, Dayton James, 2551 Angela Street, Simi Valley, California, convicted on June 15, 1979, in the Superior Court, Barrow, Alaska.

Roth, George Henry Junior, 6118 Frey Drive, Louisville, Kentucky, convicted on October 30, 1979, in the United States Army Court, Fort Bliss, Texas.

Sansevero, Carl Vincent, 236 Fingerboard Road, Staten Island, New York, convicted on November 26, 1975, in the Supreme Court, County of Richmond, New York.

Severson, Jeffrey Scott, 4767 Brownville Drive, Route 6, Janesville, Wisconsin, convicted on August 31, 1981, in the Rock County Circuit Court, Janesville, Wisconsin.

Shaul, Perry Merton, Post Office Box 471, Schoharie Hill Road, Schoharie, New York, convicted on November 16, 1982, in the Schoharie County Court, New York.

Shaw, Arthur Richard, 214 Perkins Avenue, Brockton, Massachusetts, convicted on May 25, 1959, in the Superior Court, County of Plymouth, Massachusetts.

Shenk, Robert Franklin, Route 1, Box 218, New Market, Virginia, convicted on April 21, 1980, in the Circuit Court for City of Winchester, Virginia; on August 29, 1980, in the Circuit Court of Frederick County, Virginia and on October 29, 1980, in the Circuit Court of Shenandoah County, Virginia.

Sledd, John Daniel, 7343 Deer Valley Drive, Germantown, Tennessee, convicted on June 24, 1981, in the United States District Court, Chicago, Illinois, and on November 14, 1984, in the United States District Court, Memphis, Tennessee.

Smith, Richard Earl, 115 North Mulberry Street, Tremont City, Ohio, convicted on May 15, 1979, in the United States District Court, Dayton, Ohio.

Snowden, Byron, Post Office Box 212, Hazard, Kentucky, convicted on April 26, 1984, in the Perry County Circuit court, Hazard, Kentucky.

Sonnenfelt, Michael Steven, 19004 Rawhide Road, Jamestown, California, convicted on June 18, 1971, in the Superior Court In and For the County of Santa Clara, California.

Sostmon, Dovid Alon, 3437 St. William Street, St. Ann, Missouri, convicted on June 23, 1983, in the United States District Court, Eastern District of Missouri, St. Louis, Missouri.

Spearman, Charlie Dale Senior, Post Office Box 541, Osborne Creek Road, Booneville, Mississippi, convicted on February 16, 1984, in the United States District Court, Northern District of Mississippi.

Spencer, Edward Lee, Route 1, Box 105–A, Laurel Fork, Virginia, convicted on March 17, 1982, in the Circuit Court, Carroll County, Virginia.

Stanley, John Ray Senior, 3301 Bonbrook Circle, Winston-Salem, North Carolina, convicted on May 13, 1981, in the United States District Court, Middle District of North Carolina.

Steger, Geoffrey C., 835 Chilton Lane, Wilmette, Illinois, convicted on November 25, 1984, in the United States District Court, Illinois.

Summers, Stephen Dole, 3158 West Edward, Springfield, Missouri, convicted on April 8, 1986, in the United States District Court, Western District of Missouri.

Thompson, Dale Edward, 1439 Conway Street, Flint, Michigan, convicted on February 18, 1975, in the Circuit Court, Saginaw County, Michigan.

Timmerman, Ben Jay, 102 Sante Fe Drive, Lexington, Nebraska, convicted on September 21, 1984, in the District Court of Dawson County, Lexington, Nebraska.

Tuttle, Cloy Alton Lee, 1730 East Adams, Cottage Grove, Oregon, convicted on October 28, 1969, in the Superior Court, Pierce County, Washington.

Uzzle, Johnny Wilbur, 3611 Hopkinsville Road, Cadiz, Kentucky, convicted on September 9, 1975, in the Trigg County Circuit Court, Cadiz, Kentucky.

Vermillion, James Richard, 602 Masters Street, Corbin, Kentucky, convicted on December 15, 1977, in the United States District Court, Lexington, Kentucky.

Wagner, Don W., 236 Pine Hill Apartment London, Kentucky, convicted on October 8, 1982, in the Pike County Circuit Court, Pikeville, Kentucky.

Wagner, Mary Eloise, Pine Hills Apartment, Apartment 236, London, Kentucky, convicted on October 8, 1982, in the Pike County Circuit Court, Pikeville, Kentucky.

Warren, Marcus Timothy, Route 1, Box 805, Lebanon, Kentucky, convicted on January 27, 1983, in the Hart Circuit Court, Hart County, Kentucky.

Wasserman, Steven M., 360 Long Pond Road, Greece, New York, convicted on April 26, 1984, in the United States District Court, New York.

Waterman, Gary Andrew, 1501 Lauren Ashleigh Drive, Chesapeake, Virginia, convicted on November 24, 1982, in the United States District Court, Eastern District of Virginia.

Weaver, Morion Ransom, Route 9, 35 Kings Road, Morgantown, West Virginia, convicted on April 18, 1975, in the Monongalia County Circuit Court, Morgantown, West Virginia, and on March 17, 1981, in the Preston County Circuit Court, Kingwood, West Virginia.

Whitlow, Henry Donold, 810 Keith Avenue, Anniston, Alabama, convicted on November 19, 1986, in the United States District Court, Birmingham, Alabama.

Willioms, Sherman Dale, 901 Coronado, Jacksonville, Illinois, convicted on April 23, 1970, in the United States District Court, Springfield, Illinois.

Wilson, Robert Carroll, 308 Iris Park Drive, Pineville, Louisiana, convicted on January 9, 1986, in the United States District Court, Western District of Louisiana.

Wojewodzic, James John, 10830 Harvey Drive, Apartment 11, Fairfax, Virginia, convicted on October 29, 1984, in the Circuit Court of Fairfax County, Virginia.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: October 13, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89–24953 Filed 10–23–89; 8:45 am]

BILLING CODE 4810–31–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Pierre Bonnard: The Graphic Work" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about December 2, 1989 to on or about February 4, 1990; at the Museum of Fine Arts, Houston, Texas, beginning on or about February 25, 1990 to on or about April 29, 1990; and at the Museum of Fine Arts, Boston, Massachusetts, beginning on or about May 25, 1990 to or or about July 29, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 18, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89–25147 Filed 10–23–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

English Teacher Advisory Panel Meeting

The United States Information Agency announces the following meeting:

Name: English Teaching Advisory Panel.

Date and Time: November 14, 1989, 9:00 a.m. to 5 p.m., November 15, 1989, 9:00 a.m. to 5 p.m.

Place: Room 840, U.S. Information Agency, 301 4th Street, SW., Washington, DC.

Type of Meeting: Part Open—Open: November 14, 1989, 9 a.m. to 5 p.m., Closed: November 15, 1989, 9 a.m. to 5 p.m.

Contact Person: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC, Tel. 485–4877.

Minutes: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC, Tel. 485–4877.

Purpose of Meeting: The purpose of the Advisory Panel meeting is to review overseas English Teaching programs conducted by USIA during FY 89. The Panel will review the effectiveness of these programs as a response to the world-wide demand for English. It will prepare a report for the Director of USIA, making recommendations for improving and refining the Agency's activities in the field of Teaching English as a Foreign Language.

Agenda: The panel will discuss USIA's world wide English teaching programming, especially as executed by the English Language Programs Division. In doing this the panel will review the activities of the Program, Materials Development and the English teaching Forum Branches of the Division. The Division's budget for FY–90 will also be discussed. The joint English Language Teaching By Broadcast project will be reviewed as well as the Agency's English Teaching Fellow program. There will be an open discussion on topics of professional concern affecting the execution of Division responsibilities. In addition to reviewing USIA programs the Panel will discuss the role played in English teaching overseas by other U.S. government agencies, in particular, the Peace Corps and USAID.

Reason for Closing: In its final session on November 15, in preparing its reports to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: October 12, 1989

William B. Royer,

Chief, English Language Programs Division.

[FR Doc. 89–24981 Filed 10–23–89; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 204
Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, October 26, 1989

October 19, 1989.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 26, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Report and Order in the matter of Amendment of Part 90 of the Commission's Rules to implement a conditional authorization procedure stations. Summary: The Commission will consider implementation of a conditional authorization procedure for applicants filing properly coordinated license applications for shared Private Radio Service frequencies that involve no special or non-routine issues.

Common Carrier—1—Title: Petition for Reconsideration of AT&T Communications, FCC 89-116, released April 18, 1989. Summary: The Commission will consider petitions seeking reconsideration of AT&T Communications, FCC 89-116, released April 18, 1989.

Common Carrier—2—Title: Investigation of AT&T Communications Tariff 15, Competitive Pricing Plans—Holiday Rate Plan. Summary: The Commission will consider the results of its investigation of AT&T's discounted long distance service restricted to Holiday Corporation, which AT&T claims is justified as a competitive response to an offer by MCI Telecommunications Corp. investigation, CC Docket No. 88-471.

Common Carrier—3—Title: Final Cable Landing License for the North Pacific Cable System. Summary: The Commission will consider the grant of final cable landing license to Pacific Telecom Cable, Inc. for the North Pacific Cable System.

Common Carrier—4—Title: Cable Landing License for TPC-4 Submarine Cable. Summary: The Commission will consider whether to license the TPC-4 cable system to land at Point Arena, California.

Common Carrier—5—Title: Authorization of TPC-4 Submarine Cable. Summary: The Commission will consider whether to authorize construction and operation of the proposed TPC-4 Submarine Cable System.

Mass Media—1—Title: Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. 1464. Summary: This Notice of Inquire initiates a proceeding to consider the issues surrounding a 24-hour ban on indecent programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632-5050.

Federal Communications Commission.

Issued: October 19, 1989.

Donna R. Searcy,

Secretary.

[FR Doc. 89-25099 Filed 10-20-89; 10:56 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 19, 1989.

TIME AND DATE: 10:00 a.m., Thursday, October 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 2333, District 29, UMWA v. Ranger Fuel Corp.*, Docket No. WEVA 86-439-C. (Issues include whether miners are entitled to compensation under Section III of the Mine Act.)
2. Possible revisions to Commission Procedural Rules.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-25130 Filed 10-20-89; 2:14 am]

BILLING CODE 6735-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 23, 30, November 6, and 13, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 23

Wednesday, October 25

10:00 a.m.
Briefing on Emerging Technical Issues (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 30—Tentative

Tuesday, October 31

8:30 a.m.
Collegial Discussion of Items of Commission Interest (Public Meeting)

Wednesday, November 1

10:00 a.m.
Briefing by General Electric on the Advanced BWR Standard Plant Review (Public Meeting)
11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:00 p.m.
Briefing by Combustion Engineering on ALWR System 80+ (Public Meeting)
2:30 p.m.
Briefing by Westinghouse on Advanced LWR SP 90 (Public Meeting)

Week of November 6—Tentative

Thursday, November 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 13—Tentative

Thursday, November 16

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3-0 (Commissioner Rogers was not present) on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Motion by Citizens for Fair Utility Regulation ("CFUR") for a Stay of Anticipated Low-Power License at Comanche Peak Unit 1" (Public Meeting), held on October 19, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordancce with the Sunshine Act as specific items are identified and added

to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: October 19, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-25149 Filed 10-20-89; 3:09 pm]

BILLING CODE 7590-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, October 26, 1989.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street N.W., ground floor (conference room).

STATUS: Open session.—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-fifth meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: October 19, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-25072 Filed 10-19-89; 4:17 pm]

BILLING CODE 3155-01-M

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Corrections

Federal Register
Vol. 54, No. 204
Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-208]

Papayas; Grade Standards

Correction

In proposed rule document 89-23928 beginning on page 41597 in the issue of Wednesday, October 11, 1989, make the following corrections:

§ 51.728 [Corrected]

1. On page 41598, in the second column, in § 51.728(a), in the fifth line, "for" should read "not".

§ 51.732 [Corrected]

2. On page 41599, in § 51.732, in the fourth entry under "Serious damage", "1 3/16" should read "3/16".

3. On the same page, in § 51.732, in the fifth entry under "Damage", remove the dotted line and replace it with a period.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of the Secretary

Regional Strategy Meetings on Choice in Education

Correction

In notice document 89-22062 beginning on page 38550 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38550, in the first column, in the paragraph headed *Meeting information:*, in the fourth line, "October 15-16" should read "October 16-17".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-249-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-24117 appearing on page 42015 in the issue of Friday, October 13, 1989, make the following correction:

On page 42015, in the first column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36169;FRL-3629-3]

Pesticide Registration Standard; Availability for Comment

Correction

In notice document 89-19085 beginning on page 33771 in the issue of Wednesday, August 16, 1989, make the following corrections:

On page 33771, in the second and third columns, replace "contract" with "contact" each time it appears.

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. FHFB 89-5]

Election of Directors of the Federal Home Loan Banks

Correction

In rule document 89-22098 beginning on page 38590 in the issue of Tuesday, September 19, 1989, make the following correction:

§ 932.17 [Corrected]

On page 38592, in the third column, in § 932.17(k), in the first line, "§ 32.17" should read "§ 932.17".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442 and 453

[Docket No. 89N-0322]

Antibiotic Drugs; Updatings and Technical Changes

Correction

In rule document 89-23982 beginning on page 41823 in the issue of Thursday, October 12, 1989, make the following corrections:

§ 442.20a [Corrected]

1. On page 41824, in the first column, in § 442.20a, in paragraph 4., in the first line, *Steril* should read *Sterile*.

§ 453.120 [Corrected]

2. On the same page, in the second column, in § 453.120(a)(1), "clindamycin" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1022-R-89]

RIN 1115-AA52

Adjustment of Status for Certain Aliens

Correction

In rule document 89-15790 beginning on page 29442 in the issue of Wednesday, July 12, 1989, make the following corrections:

§ 245a.3 [Corrected]

1. On page 29451, in the first column, in § 245a.3(b)(6), in the 16th line, "course" was misspelled.

2. On page 29452, in the second column, in § 245a.3(b)(12)(iii), in the second line, "accordance" should read "according".

3. On the same page and in the same column, in § 245a.3(c)(3), in the third line, insert "who" after "Act".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-8]

Alteration of VOR Federal Highways

Correction

In rule document 89-22549 beginning on page 39166 in the issue of Monday, September 25, 1989, make the following correction:

§ 71.123 [Corrected]

On page 39167, in the first column, the second heading should read **V-276 [Revised]**.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Chittenden County, Vermont

Correction

In notice document 89-23218 appearing on page 40773 in the issue of Tuesday, October 3, 1989, make the following correction:

On page 40773, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, insert "north" between "I-89" and "and".

BILLING CODE 1505-01-D

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federal register

Tuesday
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Part II

Environmental Protection Agency

Pesticides Required to be Reregistered; List D; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-34004; FRL 3661-5]

Pesticides Required to be Reregistered; List D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List D) of pesticide active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the last in a series of four such lists required by the Act. In addition to listing the pesticides, this notice discusses the significance of inclusion on List D. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List D in the **Federal Register** initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT: By mail:

Jay S. Ellenberger, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and phone number:

Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 1-800-552-8879.

SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for registration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5)(C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and restrictions. Under this process, begun in 1980, EPA has evaluated approximately 25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete data bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. FIFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticide registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the **Federal Register** of February 22, 1989 (54 FR 7740). List B was issued by order on April 24, 1989, and was published in the **Federal Register** of May 25, 1989 (54 FR 22706). List C was issued and published in the **Federal Register** of July 24, 1989 (54 FR 30845).

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA sec. 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registrants of summaries of previously submitted studies and reformats of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable data requirements identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification to registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the **Federal Register** four lists of pesticide active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the **Federal Register** of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists were issued by the Agency in groups of 150 active ingredient cases in April and July, 1989 (Lists B and C); today's final list

includes all remaining active ingredients. Each list has been published in the **Federal Register**, and a copy sent by certified mail to each registrant having a product containing a chemical on each list.

B. Format of List D

List D includes 118 active ingredient cases, some of which are simple active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the simple active ingredient, if brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.

2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.

3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List D. In a few cases, CAS numbers have not been assigned and so are not given.

4. The acceptable common name (or chemical name if there is no acceptable common name) of each individual chemical included within each case.

The list is organized in three parts: active ingredients which are chemicals, active ingredients which are microbials (bacterial, viral, or fungal agents), and naturally occurring active ingredients which the Agency has designated as biochemicals. Because the data requirements for the microbials and biochemicals differ from those required for chemical active ingredients, the Agency will be sending registrants of these latter active ingredients different instructions on how to respond in Phase II.

BILLING CODE 6560-50-M

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ACTIVE INGREDIENTS, LIST D

Case Name	Case	CAS No.	Chemical/Common Name
CHEMICAL ACTIVE INGREDIENTS			
Acetic acid, and salts	4001	64-19-7	Acetic acid
		126-96-5	Sodium diacetate
Acetone	4002	67-64-1	Acetone
Aliphatic alcohols, C1-C5	4003	67-56-1	Methanol
		64-17-5	Ethanol
		71-23-8	Propyl alcohol
		67-63-0	Isopropanol
		75-65-0	tert- Butyl alcohol
Aliphatic alcohols, C6-C16	4004	111-27-3	1- Hexanol
		111-87-5	1- Octanol
		112-30-1	1- Decanol
		112-53-8	1- Dodecanol
		36653-82-4	1- Hexadecanol
		68603-15-6	Mixed Fatty alcohols (C6-C12)
		67762-41-8	Mixed Fatty alcohols (C10-C16)
Aliphatic esters	4005	5451-63-8	n- Tetradecylformate
		141-78-6	Ethyl acetate
		628-63-7	n- Pentyl acetate
		2173-56-0	n- Pentyl valerate
		141-03-7	Dibutyl succinate
		67762-39-4	Methyl esters of fatty acids (C8 - C12)
Alkylbenzene sulfonates	4006	27176-87-0	Dodecylbenzenesulfonic acid
		27177-77-1	Potassium dodecylbenzenesulfonate
		25155-30-0	Sodium dodecylbenzenesulfonate
		26545-53-9	Diethanolamine dodecylbenzenesulfonate
		26836-07-7	Ethanolamine dodecylbenzenesulfonate
		27323-41-7	Triethanolamine dodecylbenzenesulfonate
		27987-00-4	Sodium (1-methylundecyl)benzenesulfonate
		26856-61-1	Sodium nonylbenzenesulfonate
Allium sativum	4007	8000-78-0	Allium sativum
Aluminum, and salts	4008	7429-90-5	Aluminum powder
		7446-70-0	Aluminum chloride
		10043-01-3	Aluminum sulfate
Amical 48 (*)	4009	20018-09-1	Diiodomethyl p-tolyl sulfone
Aquashade (*)	4010	92170-50-8	Aquashade
		2650-18-2	Acid Blue 9
		1934-21-0	Acid Yellow 23
Basic Green 4	4011	569-64-2	Malachite green
Benzocaine	4012	94-09-7	Ethyl p-aminobenzoate
		136-44-7	Glyceryl p-aminobenzoate
Benzoic acid, and derivs	4013	65-85-0	Benzoic acid
		532-32-1	Benzoic acid, sodium salt
		120-51-4	Benzoic acid, benzyl ester
		100-51-6	Benzyl alcohol
Bis(oxyalkyl)glycine derivs	4014	139-41-3	N,N- Bis(2-hydroxyethyl)glycine, sodium salt
		5064-31-3	N,N- Bis(carboxymethyl)glycine, trisodium salt
Bromine	4015	7726-95-6	Bromine
Butylene glycol	4016	107-88-0	1,3- Butanediol
Calcium cyanamide	4017	156-62-7	Calcium cyanamide
Capsaicin	4018	404-86-4	Capsaicin (in oleoresin of capsicum)

Carbon and CO2	4019	7440-44-0	Carbon
		124-38-9	Carbon dioxide
Chlorfenac, and salts	4020	85-34-7	2,3,6- Trichlorophenylacetic acid
		53404-90-3	Ammonium 2,3,6-trichlorophenylacetate
		2439-00-1	Sodium 2,3,6-trichlorophenylacetate
		69462-13-1	Dimethylamine 2,3,6-trichlorophenylacetate
Chlorinated TSP	4021	56802-99-4	Chlorinated trisodium phosphate
Chlorine	4022	7782-50-5	Chlorine
Chlorine dioxide, and sodium chlorite,	4023	10049-04-4	Chlorine dioxide
		7758-19-2	Sodium chlorite
Citric acid, and salts	4024	77-92-9	Citric acid
		7632-50-0	Ammonium citrate
Copper, and oxides	4025	7440-50-8	Copper (metallic)
		1317-39-1	Cuprous oxide
		1317-38-0	Cupric oxide
		82010-82-0	Cuprous and cupric oxide, mixed
Copper salts, and complexes	4026	55072-57-6	Copper zinc hydroxide sulfate
		1111-67-7	Cuprous thiocyanate
		54453-03-1	Copper ethylenediaminetetraacetate
		12168-20-6	Cupric ferric subsulfate complex
		61789-22-3	Copper salts of the acids of tall oil
		9007-49-0	Copper salts of fatty and rosin acids
		7721-15-5	(Z,Z)-9,12- Octadecadienoic acid, copper salt
		10402-16-1	(Z)-9- Octadecadienoic acid, copper salt
		10380-28-6	Bis(8-quinolinolato)copper
		22221-10-9	Copper 2-ethylhexanoate
		53404-24-3	Copper dehydroabietyl ammonium 2-ethylhexanoate
		82027-59-6	Copper - triethanolamine complex
		50376-91-5	Copper - etidronic acid complex
		13426-91-0	Copper - ethylenediamine complex
meta-Cresol	4027	108-39-4	1- Hydroxy-2-methylbenzene
Dextrin	4028	9004-53-9	Dextrin
Dioctylsulfosuccinates	4029	1639-66-3	Sodium dioctylsulfosuccinate
		577-11-7	Sodium di(2-ethylhexyl)sulfosuccinate
Dried blood	4030	68911-49-9	Dried blood
2-EEEBC	4031	62732-91-6	2-(2- Ethoxyethoxy)ethyl 2-benzimidazole carbamate
Ethanolamine	4032	141-43-5	2- Aminoethanol
Ethylene glycol	4033	107-21-1	Ethylene glycol
Ethylenediamine	4034	107-15-3	1,2- Ethanediamine
Ethylenediaminediacetates	4035	38011-25-5	Disodium dihydroxyethyl ethylenediaminediacetate
Ethylenediaminetetraacetate	4036	60-00-4	Ethylenediaminetetraacetic acid
		17421-79-3	Sodium ethylenediaminetetraacetate
		64-02-8	Tetrasodium ethylenediaminetetraacetate
		150-38-9	Trisodium ethylenediaminetetraacetate
		53404-51-6	Potassium ethylenediaminetetraacetate
		53404-52-7	Tetra(ethanolamine) ethylenediaminetetraacetate
		17572-97-3	Tripotassium ethylenediaminetetraacetate
		139-33-3	Disodium ethylenediaminetetraacetate
		7379-26-2	Ammonium ethylenediaminetetraacetate
		5964-35-2	Tetrapotassium ethylenediaminetetraacetate
Ethylenediaminetriacetates	4037	139-89-9	Trisodium(2-hydroxyethyl)ethylenediaminetriacetate
		53404-54-9	Sodium N-(2-hydroxyethyl)ethylenediaminetriacetate
Eugenol	4038	97-53-0	2- Methoxy-4-(2-propenyl)phenol
Famphur	4039	52-85-7	O,O- Dimethyl O-(p-(dimethylsulfamoyl)phenyl) phosphoro thioate

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Fentichlor	4040	97-24-5	2,2'- Thiobis(4-chlorophenol)
Fluorosalan	4041	4776-06-1	3,5- Dibromo-3'-(trifluoromethyl)salicylanilide
Freons (*)	4042	75-69-4	Trichloromonofluoromethane
		75-71-8	Dichlorodifluoromethane
Gluconic acid	4043	526-95-4	Gluconic acid
Glycerol	4044	56-81-5	Glycerol
Glycolic acid, and salts	4045	79-14-1	Hydroxyacetic acid
		2836-32-0	Hydroxyacetic acid, monosodium salt
Halazone (*)	4046	80-13-7	4-(N,N- Dichlorosulfamoyl)benzoic acid
8-Hydroxyquinoline, and salts	4047	148-24-3	8- Hydroxyquinoline
		7091-57-8	8- Quinolinol benzoate
		134-30-5	8- Quinolinol citrate
		134-31-6	8- Quinolinol sulfate
Inorg. bicarbonates	4048	144-55-8	Sodium bicarbonate
Inorg. chlorates	4049	7775-09-9	Sodium chlorate
		10137-74-3	Calcium chlorate
Inorg. fluosilicates	4050	16919-19-0	Ammonium fluosilicate
		16949-65-8	Magnesium fluosilicate
		16893-85-9	Sodium fluosilicate
		16871-71-9	Zinc fluosilicate
Inorg. halides	4051	7786-30-3	Magnesium chloride
		7647-14-5	Sodium chloride
		7647-15-6	Sodium bromide
		10043-52-4	Calcium chloride
Inorg. nitrate/nitrite	4052	7757-79-1	Potassium nitrate
		7631-99-4	Sodium nitrate
		7632-00-0	Sodium nitrite
Inorg. phosphates	4053	7558-79-4	Sodium phosphate
		7758-29-4	Sodium tripolyphosphate
		7722-88-5	Tetrasodium pyrophosphate
		7601-54-9	Trisodium phosphate
		7778-53-2	Potassium phosphate, tribasic
		7320-34-5	Tetrapotassium pyrophosphate
		7558-80-7	Monosodium phosphate
Inorg. polysulfides	4054	1344-81-6	Calcium polysulfide
		37199-66-9	Potassium polysulfide
Inorg. sulfates	4055	7778-18-9	Calcium sulfate
		7778-80-5	Sodium sulfate
		7487-88-9	Magnesium sulfate
		13932-13-3	Potassium tetrathionate (K2S406)
Inorg. sulfites	4056	7631-90-5	Sodium bisulfite
		7757-83-7	Sodium sulfite
Inorg. thiosulfates	4057	10124-41-1	Calcium thiosulfate
		10233-00-8	Potassium thiosulfate
		7783-18-8	Ammonium thiosulfate
Iron salts	4058	7782-63-0	Ferrous sulfate heptahydrate
		10045-89-3	Ferrous ammonium sulfate
		17375-41-6	Ferrous sulfate monohydrate
		10028-22-5	Ferric sulfate
Isobutyl ketones	4059	108-10-1	4- Methyl-2-pentanone
		108-83-8	Diisobutyl ketone
Lanolin, and derivs.	4060	8006-54-0	Lanolin
		63393-93-1	Isopropyl lanolin
		61790-81-6	Ethoxylated lanolin

Lauryl sulfate salts	4061	151-21-3	Sodium lauryl sulfate
		3097-08-3	Magnesium lauryl sulfate
		2235-54-3	Ammonium lauryl sulfate
		139-96-8	Triethanolamine lauryl sulfate
Malic acid	4062	6915-15-7	Malic acid
Menthol	4063	1490-04-6	5- Methyl-2-(1-methylethyl)cyclohexanol
Mineral acids	4064	7647-01-0	Hydrogen chloride
		7664-38-2	Phosphoric acid
		7664-93-9	Sulfuric acid
		7646-93-7	Potassium hydrogen sulfate
		7681-38-1	Sodium bisulfate
Mineral bases, strong	4065	1310-58-3	Potassium hydroxide
		1310-73-2	Sodium hydroxide
		1305-78-8	Calcium oxide
Mineral bases, weak	4066	584-08-7	Potassium carbonate
		497-19-8	Sodium carbonate
		533-96-0	Sodium sesquicarbonate
		1305-62-0	Calcium hydroxide
Nickel sulfate	4067	10101-97-0	Nickel sulfate hexahydrate
Norea	4068	18530-56-8	3-(Hexahydro-4,7-methanoindan-5-yl)-1,1-dimethylurea
Oleic acid sulfonates	4069	68443-05-0	Sodium sulfonated oleic acid
Oxalic acid, and salts	4070	144-62-7	Oxalic acid
		1113-38-8	Ammonium oxalate
Paraben esters	4071	99-76-3	Methyl 4-hydroxybenzoate
		94-13-3	Propyl 4-hydroxybenzoate
		94-26-8	Butyl 4-hydroxybenzoate
Peroxy cmpds	4072	7722-84-1	Hydrogen Peroxide
		10058-23-8	Potassium peroxymonosulfate
		79-21-0	Peroxyacetic acid
Petroleum sulfonates	4073	68608-26-4	Sodium petroleum sulfonate
Phenol, and salts	4074	108-95-2	Phenol
		139-02-6	Sodium phenate
Polyacrylate resins	4075	9003-01-4	Acrylic polymer resins
Polybutene resins	4076	9003-29-6	Polybutene
		9003-27-4	Polyisobutylene
Polyethylene	4077	9002-88-4	Polyethylene
Propionic acid, and salts	4078	79-09-4	Propionic acid
		4075-81-4	Calcium propionate
		137-40-6	Sodium propionate
Putrescent whole egg solids	4079	51609-52-0	Putrescent whole egg solids
Salicylic acid, and derivs	4080	69-72-7	Salicylic acid
		119-36-8	Methyl salicylate
Silica and silicates	4081	63231-67-4	Silica gel
		7631-86-9	Silicon dioxide
		6834-92-0	Sodium metasilicate
		10101-39-0	Calcium silicate
Silver, and cmpds.	4082	7440-22-4	Silver
		7775-41-9	Silver fluoride
		7761-88-8	Silver nitrate
		7783-90-6	Silver chloride
		53404-00-5	Silver thiuronium acrylate copolymer

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Soap salts	4083	68952-95-4	Soap
		112-80-1	Oleic acid
		544-60-5	Ammonium oleate
		143-19-1	Sodium oleate
		10124-65-9	Potassium laurate
		13429-27-1	Potassium myristate
		143-18-0	Potassium oleate
		7492-30-0	Potassium ricinoleate
Sulfallate	4084	95-06-7	2- Chloroallyl diethyldithiocarbamate
Sulfamic acid	4085	5329-14-6	Sulfamic acid
Sulfur dioxide	4086	7446-09-5	Sulfur dioxide
Tartar emetic	4087	28300-74-5	Potassium antimonyl tartrate
2,3,6-TBA, and salts	4088	50-31-7	2,3,6- Trichlorobenzoic acid
		2078-42-4	2,3,6- Trichlorobenzoic acid, sodium salt
		3426-62-8	2,3,6- Trichlorobenzoic acid, dimethylamine salt
TCA, and salts	4089	76-03-9	Trichloroacetic acid
		650-51-1	Sodium trichloroacetate
Tetrachlorophenol, salts	4090	25167-83-3	Tetrachlorophenol, isomer unspecified
		53535-27-6	Potassium tetrachlorophenates
		25567-55-9	Sodium tetrachlorophenates
			(Coco alkyl)amine tetrachlorophenates
Tetraiodofluorescein	4091	15905-32-5	2',4',5',7'-Tetraiodofluorescein
		16423-68-0	2,'4',5',7'-Tetraiodofluorescein, disodium salt
Thidiazuron	4092	51707-55-2	1- Phenyl-3-(1,2,3-thiadiazol-5-yl)urea
Toluene/xylene sulfonates	4093	1300-72-7	Sodium xylenesulfonate
		30346-73-7	Potassium xylenesulfonate
		104-15-4	Toluenesulfonic acid
Turkey red oil	4094	8002-33-3	Sulfonated castor oil
		68187-76-8	Sulfonated castor oil, sodium salt
Undecylenic acid	4095	112-38-9	Undecylenic acid
Urea	4096	1317-25-5	Urea
Vegetable and flower oils	4097	8007-70-3	Oil of anise
		57-06-7	Oil of mustard
		8001-29-4	Cottonseed oil
		8001-26-1	Linseed oil
		8001-22-7	Soybean oil
		8008-74-0	Sesame oil
		8001-78-3	Hydrogenated castor oil
		8014-17-3	Essential oils
		8007-02-1	Oil of lemongrass
		8000-48-4	Oil of eucalyptus
		8000-46-2	Oil of geranium
Xylenol	4098	1300-71-6	Xylenol (mixed isomers)
		105-67-9	2,4- Dimethylphenol
Zinc salts	4099	7646-85-7	Zinc chloride
		1314-13-2	Zinc oxide
		7733-02-0	Zinc sulfate
		68813-94-5	Basic zinc sulfate
Zirconium oxide	4100	1314-23-4	Zirconium oxide

MICROBIAL ACTIVE INGREDIENTS

Agrobacterium radiobacter	4101	Agrobacterium radiobacter
B.popilliae & B.lentimorbus	4102	Bacillus popilliae and B. lentimorbus
Colletotrichum	4103	Colletotrichum gloeosporioides spores
Nosema locustae	4104	Nosema locustae
Phytophthora citrophthora	4105	Phytophthora citrophthora
NPV inclusion bodies	4106	Polyhedral inclusion bodies of gypsy moth NPV Inclusion bodies of Douglas fir tussock moth NPV Polyhedral inclusion bodies of H. zeritfer NPV

BIOCHEMICAL ACTIVE INGREDIENTS

Cytokinin	4107	525-79-1	6-(Furfuralamino)purine
Dodecenyl acetate isomers	4108	16974-12-2	(Z)-9- Dodecenyl acetate
		29868-16-4	(E)-9- Dodecenyl acetate
Disparlure	4109	29804-22-6	cis-7,8- Epoxy-2-methyloctadecane
Gibberellic acid, and salts	4110	77-06-5	Gibberellic acid
		125-67-7	Potassium gibberellate
Hexadecadienol, acetates	4111	50933-33-0	7,11- Hexadecadien-1-ol, acetate (stereoisomer unspec.)
		51607-94-4	(E,E)-7,11- Hexadecadien-1-ol, acetate
		53042-79-8	(E,Z)-7,11- Hexadecadien-1-ol, acetate
		52207-99-5	(Z,Z)-7,11- Hexadecadien-1-ol, acetate
Muscalure (*)	4112	27519-02-4	(Z)-9- Tricosene
Nuranone	4113	64726-91-6	(R,Z)-5-(1- Decenyl)dihydro-2-(3H)-furanone
Octadecadieneol, acetates	4114	53120-26-6	(E,Z)-3,13- Octadecadien-1-ol acetate
		53120-27-7	(Z,Z)-3,13- Octadecadien-1-ol acetate
Periplanone B	4115	61228-92-0	**1,10(14)- Diepoxy-4(15),5-germacradiene-9-one **=(1Z,5E)-
Tridecenyl acetates	4116	65954-19-0	(Z)-4- Tridecen-1-yl acetate
		72269-48-8	(E)-4- Tridecen-1-yl acetate
Trimethyldodecadienoates	4117	41096-46-2	Ethyl (E,E)-3,7,11-trimethyl-2,4-dodecadienoate
		42588-37-4	2- Propynyl (E,E)-3,7,11-trimethyl-2,4-dodecadienoate
Virelure (*)	4118	53939-28-9	(Z)-11- Hexadecenal
		53939-27-8	(Z)-9- Tetradecenal

(*) = Trademark

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IV. Significance of Inclusion on List D

Active ingredient cases included on List D are subject to FIFRA section 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration scheme.

The publication of List D is required by FIFRA section 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List D as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List D must respond to the Agency in accordance with FIFRA section 4(d). Registrants will be sent by certified mail, specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. A 33-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient, publish in the **Federal Register** a notice of outstanding data requirements, and notify registrants under FIFRA section 3(c)(2)(B)of any additional requirements.

In addition, fees are to be collected for each List D active ingredient in accordance with FIFRA section 4(i)(2). The Agency has determined that, for the purpose of reregistration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List D, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986–88 period, in accordance with FIFRA section 4(i)(7). In April, 1989, the Agency requested the submission of market share information from registrants; this information has formed the basis for allocation of reregistration fees. Reregistration fees must be paid in part at the time of the 90-day Phase II response.

Active Ingredients Not Listed

With the publication of List D, EPA has fulfilled the requirement of FIFRA section 4(c) that it list all active ingredients that must be reregistered. Lists A, B, C, and D include, based on the Agency's best information, all active ingredients that were first registered before November 1, 1984, and for which products were still registered as of the date of publication of each list.

EPA has attempted to keep its lists accurate based on its most current records of products still registered. Before publication in the **Federal Register**, each list was cross-checked against a list of products that were cancellable because their registrants chose not to pay or failed to pay maintenance fees. If all products containing a particular active ingredient were cancellable, the active ingredient was deleted from the list before publication. (Some active ingredients on List A are no longer registered; however, these ingredients were not deleted from List A regardless of their current registration status, since List A is a historical record of Registration Standards issued.)

Nonetheless, because of the rapid pace of product cancellations during this period (since March 1, 1989, approximately 20,000 or one-half of all registrations have been voluntarily cancelled or are cancellable for failure to pay), EPA may have inadvertently omitted from the lists one or more active ingredients contained in a currently registered product. Any active ingredient that is not included on List A, B, C, or D by name is deemed to be included on List D. Active ingredients first registered since November 1, 1984, are not required to be reregistered, and thus do not appear on any list.

If any person is aware of any active ingredient that he believes should have been included on List B, C, or D because it is contained in a currently registered product, but which was omitted, he should notify the Agency as soon as possible at the number or address given under **FOR FURTHER INFORMATION CONTACT** to clarify or correct its records. If that person is the registrant, he should request a Phase II response packet.

Any registrant who has a currently registered product containing an active ingredient not listed must submit a Phase II response within the 90-day deadline (by January 24, 1990). If the Agency subsequently discovers a product for which a 90-day response was not timely received, it will cancel the product in accordance with the procedures of FIFRA section 4(d)(5) (A) or (B) as appropriate.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active ingredients on List D, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0102), Washington, DC 20503.

Dated: October 13, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89–24919 Filed 10–23–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Tuesday
October 24, 1989

Part III

Department of the Treasury

Comptroller of the Currency

12 CFR Parts 7 and 32

National Bank Lending Limit; Notice of Proposed Rulemaking

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 7 and 32

[Docket No. 89-13]

National Bank Lending Limit

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing revisions to its regulation concerning national bank lending limits. These revisions are intended to simplify and clarify the regulation by: (1) Amending definitions, moving definitions to the beginning of the regulation, changing references and clarifying interpretations; (2) restructuring and simplifying the loan combination rules to clarify their operation and tie them more closely to the purpose of the lending limit; and (3) replacing the "means and purpose" test for combining loans to foreign governments with an aggregate cap on such loans.

DATE: Comments must be received on or before January 22, 1990.

ADDRESS: Comments should be sent to Docket No. 89-13, Communications Division, 5th Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219. Attention: Lynnette Carter. Comments will be available for inspection and photocopying at the same address.

Pursuant to the Paperwork Reduction Act of 1980, the collection of information requirements in the regulation has been submitted to the Office of Management and Budget ("OMB"). Comments specifically addressing those requirements should be directed to the Comptroller's Office at the above address and should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Attorney, Legal Advisory Services Division, (202) 447-1883; William C. Kerr, National Bank Examiner, Supervision Policy/Research, (202) 447-1164.

SUPPLEMENTARY INFORMATION:

Background

Section 401(a) of the Garn-St Germain Depository Institutions Act of 1982, Public Law 97-320 (1982), amended R.S. 5200, 12 U.S.C. 84, to raise the basic limit on a national bank's lending to a single borrower from 10 to 15 percent of unimpaired capital and unimpaired surplus. It also provided express authority for the OCC to issue regulations implementing that statute. Rules concerning the combination of loans to separate borrowers were eliminated from the statute to permit the OCC maximum flexibility in developing regulations on this subject.

The OCC implemented the amended statute with a final rule published on April 12, 1983, 48 FR 15844. This final rule created a new part 32 in title 12 of the Code of Federal Regulations which supplanted and restructured existing interpretive rulings previously found at 12 CFR part 7. Many of the previous interpretive rulings and staff letter opinions construing those rulings were incorporated into the new regulation to facilitate reference to the law governing national banks' lending limit. The preamble to the final rule requested additional comments on 12 CFR 32.5, resulting in a final amendment of that section on June 14, 1983, 48 FR 27224.

Part 32 has now been in effect for more than six years. The OCC has reviewed the operation of the regulation and is proposing revisions to simplify and clarify the regulation. These changes include amendments to definitions, changes in references, and clarification of certain interpretations.

Additionally, to enhance ease of use, it is proposed that virtually all significant definitions be placed in the beginning of the regulation. The OCC is also proposing a restructuring and simplification of the loan combination rules, to clarify their operation and to ground them more solidly on the policies underlying the lending limit. Finally, a new, simpler test consisting of an aggregate lending cap of 50 percent of capital is also being proposed to take the place of the "means and purpose" test for combining loans to foreign governments, which will also reduce paperwork burdens. The following is a discussion of the specific changes proposed.

I. Definitions

A. General Definitions

In order to make it easier to use the regulation, the OCC proposes to move most of the relevant definitions to two sections (proposed §§ 32.2 and 32.3) which will appear in the beginning of the regulation. Many of these definitions are currently in various interpretive rulings located at the end of part 32. Most have been incorporated without change.

The following table summarizes the source of each general definition in proposed § 32.2 and whether it has been changed:

Definition	Source	Comments
§ 32.2(a) "Person"	§ 32.2(b)	No change.
§ 32.2(b) "Capital and Surplus".	§ 32.2(c)	Technical change.
§ 32.2(c) "Standby Letter of Credit".	§ 32.2(e)	No change.
§ 32.2(d) "Named Borrower".	New paragraph.	
§ 32.2(e) "Control"	§ 32.5(a)	Slightly modified.

Most of the definitions in proposed § 32.2 have been incorporated from definitions in the existing regulation. Additionally, a few technical amendments have been made. For example, the definition of "unimpaired capital and unimpaired surplus" has been amended to reference § 3.100, the regulatory section which has replaced former § 7.1100 that is referred to in the existing § 32.2(c). Similarly, the definition of "control" in proposed § 32.2(e) has been taken from § 32.5(a)(2)(v), but has been slightly modified to make it virtually identical to the definition of control in 12 U.S.C. 371c. Finally, "Named Borrower" is defined to refer to the person named as the borrower or debtor in a loan agreement, whether written or oral, express or implied.

B. Definition of "Loan and Extension of Credit"

Additionally, the OCC believes that it will be helpful to locate all the definitions of those arrangements considered "loans and extensions of credit" subject to the lending limit in one section of the regulation. Accordingly, a new § 32.3 is proposed which contains the relevant definitions of that key phrase. The section opens with a general definition of the phrase which has been incorporated without change from the existing 12 CFR 32.2(a). Most of the remaining definitions are derived from interpretive rulings currently found immediately after the regulation in part 32. The single new section defining loan renewals merely codifies existing OCC policy. It is emphasized that the specific definitions incorporated into the body of the proposed regulation are *not* the exclusive universe of arrangements which are "loans." Rather, the OCC expressly reserves the authority to deem other arrangements to be "loans and extensions of credit" under the general definition of proposed § 32.3(a).

The chart below summarizes the source of each definition in proposed § 32.3 and whether it has been changed:

Definition	Source	Comment
§ 32.3(a) Loan and extension of credit	§ 32.2(a)	No change.
§ 32.3(b) Contractual commitment to advance funds	§ 32.2(d)	Modified.
§ 32.3(c) Obligations of other parties	§ 32.101	Modified.
§ 32.3(d) Sale of Federal funds	§ 32.102	No change.
§ 32.3(e) Purchase of securities subject to repurchase agreement.	§ 32.103	Modified.
§ 32.3(f) Purchase of third party paper	§ 32.104	No change.
§ 32.3(g) Overdrafts	§ 32.105	No change.
§ 32.3(h) Charged-off loans	§ 32.106	Modified.
§ 32.3(i) Loan renewals	New paragraph.	
§ 32.3(j) Loan participations	§ 32.107	Modified.
§ 32.3(k) General obligations of States	§ 32.109	No change.
§ 32.3(l) Loans to industrial development authorities	§ 32.110	No change.

Major changes in present definitions are discussed below.

1. "Contractual Commitments to Advance Funds"

12 U.S.C. 84(b)(1) defines "loans and extensions of credit" to include "any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment." Likewise, under the present regulation, contractual commitments to advance funds are considered to be loans for lending limit purposes. 12 CFR 32.2(a). The proposed regulation retains that treatment in § 32.3(b), but with several important changes.

a. *Commercial letters of credit.* The first major change clarifies the definition of commercial letters of credit. The phrase "contractual commitment to advance funds" currently includes standby letters of credit. *See* 12 CFR 32.2(d) and proposed § 32.3(b). Standby letters of credit include any letter of credit which represents an obligation to the beneficiary on the part of the issuer to repay money borrowed by or advanced to the account party, or to make payment on account of any indebtedness undertaken by the account party, or to make payment on account of any default by the account party in the performance of an obligation. *See* 12 CFR 32.2(e) and proposed § 32.2(c). However, the phrase "contractual commitment to advance funds" does not include commercial letters of credit upon which the issuing bank expects the beneficiary to draw, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party. *See* 12 CFR 32.2(d).

The question has arisen whether so-called "direct pay" letters of credit are contractual commitments to advance funds for lending limit purposes. These direct pay letters of credit, like standby letters of credit, are generally used to support an account party's obligation to make payments to a beneficiary. However, unlike a standby letter of credit, this type of letter of credit has a "direct pay" feature. The direct pay letter of credit serves as a payment mechanism. As explained in OCC Interpretive Letter No. 361 (May 22, 1986), [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,531, the exemption from the definition of contractual commitment to advance funds for commercial letters of credit was intended to apply to the traditional commercial letter of credit used to facilitate the sale of goods. However, some direct pay letters of credit often involve the imposition of a payment mechanism on what would otherwise be a standby letter of credit. The OCC does not believe that this structural alteration should in and of itself exempt a direct pay letter of credit from the definition of contractual commitment to advance funds since it does not appear to significantly alter the bank's exposure to risk. The OCC is proposing revisions to the definitions of "contractual commitments to advance funds" and "commercial letters of credit" to clarify this point. Under the proposed § 32.3(b), a letter of credit will be considered a commercial letter of credit and will receive the corresponding exemption from the definition of contractual commitment to advance funds only if it is expected by the issuer to be drawn upon in connection with a sale or transfer of goods.

b. *Commitments to lend.* On June 24, 1988, the OCC adopted a temporary rule revising its treatment of loan commitments under the lending limit regulation, 53 FR 23752, (hereafter "Temporary Rule"). This revision is restated here in proposed § 32.3(b). The Temporary Rule affected all banks, however, it was intended to provide relief for banks which experienced a decline in their capital and, hence, in their lending limits after entering into commitments. Such banks faced the dilemma of either funding those commitments, thereby exceeding their lending limit, or breaching the commitment agreements.

Under the Temporary Rule, a binding written commitment within a bank's lending limit when made is treated as a loan from the time the bank entered into the commitment. Thus, such a commitment is included within the bank's lending limit until it is released or it expires; a subsequent decline in lending limit does not result in a violation when the commitment is funded. Loan commitments made in excess of the lending limit are not treated as "loans," and, thus, are not affected by the revision.

Although the Temporary Rule was effective immediately, the OCC requested comments from the public. In response to comments objecting to the impact of the Temporary Rule on banks that have not experienced a capital decline, the OCC subsequently issued a Notice of Proposed Rulemaking to amend the Temporary Rule. *See* 54 FR 30054 (July 18, 1989). This proposed amendment is intended to revise and clarify the effect of the Temporary Rule on the loan commitments of national banks that have not experienced a decline in capital by restoring some flexibility to banks in managing their loan commitments relative to their lending limits. The comment period for the proposed amendment to the Temporary Rule closed on September 18, 1989. After full consideration of the comments received, the OCC will revise the Temporary Rule prior to adopting a final regulation.

2. Obligations of Other Parties

The lending limit treatment of the obligations of "accommodation parties" is currently discussed in interpretative ruling 12 CFR 32.101. Numerous questions have arisen as to the treatment of such parties under the current rule. Proposed § 32.3(c) incorporates that interpretation with significant changes. Under the proposed rule, a loan will be deemed to have been made to any person (in addition to the

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named borrower) who becomes a party to the loan agreement or transaction in any capacity that makes that person primarily liable with the named borrower.

A person is a party to the loan transaction, even though not named in the loan agreement, when that person is a party to an ancillary agreement which is an integral part of the loan transaction. For example, under the proposed rule, a third party who becomes a guarantor of payment through a document separate from the loan agreement would still be deemed a "party to the loan * * * transaction."

A person is "primarily liable" when the bank may enforce a right of collection against that person without prior resort against the named borrower, i.e., without first being required to show that the named borrower has refused to honor a proper demand for payment. In such a situation, the primary repayment obligation of the other party is essentially the same as the named borrower's and, thus, a "loan" should be deemed to have been made to that person for purposes of the bank's lending limit. An intention of the lending bank to proceed first against one party, rather than another with primary liability, is not material to this issue.

On the other hand, one who becomes a party in a capacity that imposes only secondary liability, i.e., one who is obligated to pay the debt only after there has been unsuccessful resort to the named borrower, has incurred a repayment obligation substantially different from that of the named borrower and should not be treated as having received a "loan." However, in certain circumstances, such secondary parties may have a loan attributed to them under the proposed attribution rules discussed below. *See* proposed § 32.7(c)(iii).

One example of such a secondary party is an accommodation endorser whose obligation is described in sections 3–414 and 3–415 of the Uniform Commercial Code. The proposed regulation also lists a guarantor of collection as an example of such a secondary party, but distinguishes a guarantor of payment. This distinction is based on section 3–416 of the Uniform Commercial Code. In this regard, it should be noted that under the UCC a guaranty is presumed to be one of payment (primary liability) unless it clearly states that it is one of collection (secondary liability). Thus, banks are advised to review their contracts of guaranty to insure that they do not inadvertently give rise to such "loans" to guarantors.

3. Purchase of Securities Subject to Repurchase

Section 32.103 currently provides that the purchase of "Type I securities" subject to an agreement that the security will be repurchased at the end of a stated period is not a "loan and extension of credit" for lending limit purposes. "Type I securities" are defined to include general obligations of the United States or any State or political subdivision thereof. *See* 12 CFR 1.3(c). Purchases of other types of securities subject to an agreement that the seller will repurchase at the end of a stated period are considered to be loans for lending limit purposes by the purchasing bank to the seller and not an obligation of the underlying obligor of the security. This exemption is continued in proposed § 32.3(e), but has been modified as described below.

The exemption from the lending limit for purchases of Type I securities subject to a repurchase agreement is intended to facilitate the liquidity of Type I securities. The exemption is also justified by the financial integrity that is normally represented by Type I obligations. However, the dislocations in the securities markets caused by the failure of government securities dealers have made it apparent that there is additional risk present where the bank does not assure control of or establish an effective security interest in the collateral securities. The failure of the purchasing bank to assure control of or establish its rights to the securities which underlie the repurchase transaction introduces all the risks present in an unsecured loan. When control of the collateral securities is not assured, the financial integrity of the collateral security is of little relevance if the repurchasing counter party fails to honor its commitment. Thus, one of the underlying justifications for the exemption in § 32.103 is defeated where the purchasing bank does not obtain sufficient control of the collateral securities.

For the above reasons, the OCC believes that it is appropriate to require that the purchasing bank must assure control of or establish its rights to the collateral securities purchased under the resale agreement in order to qualify for the exemption. The acceptable methods for obtaining control of or the right to the collateral securities are specified in proposed § 32.3(e). Essentially, the bank should be able to readily exercise dominion over the property and, thereby, easily establish superior rights to it. In other words, the bank should be able to have the property quickly disposed of at market value in order to effect satisfaction of the counter party's obligation. A bank's purchase of Type I securities subject to a repurchase agreement will be considered a loan and extension of credit that is subject to the lending limit if the requisite control of or right to the collateral securities is not obtained. It should be noted that the term "physical securities" is assumed to be one of common parlance in the securities markets that refers to paper-based or certificated bearer and definitive (registered) securities.

4. Charged-Off Loans

Proposed § 32.3(h) incorporates the interpretation currently in 12 CFR 32.106. Section 32.106 generally provides that charged-off loans are subject to a bank's lending limit as loans and extensions of credit. Some bankers have misconstrued this provision to allow additional extensions of credit to borrowers whom the bank has voluntarily released from charged-off loans even when the total borrowings, including the charged-off loans, exceed the bank's lending limit. The OCC proposes to amend the provision in § 32.106 to clarify that a written release by the bank of the borrower's obligation will not result in the exemption of a charged-off loan from application of the lending limit. The preamble to the current regulation, 48 FR 15851 (April 12, 1983), explained that § 32.106 was only intended to expand the previous interpretive rule to allow a limited exemption for charged-off loans which are unenforceable due to the expiration of the statute of limitations, judicial decision or other similar reasons. The proposed amendment clarifies that a mere release of the borrower from the obligation to repay will not result in an exemption, and that the charged-off loan will continue to be considered a loan and extension of credit to the defaulting borrower for purposes of applying the lending limit.

The OCC is clarifying its position for prudential reasons. It hopes to encourage banks to seek recoveries on charged-off loans and avoid making new credit available to borrowers who have a demonstrated lack of creditworthiness. This clarifying amendment does not affect the availability of the temporary substitute lending limit located at § 32.8, 51 FR 15303 (April 23, 1986).

5. Loan Renewals

The proposed rule contains a new definition regarding lending limit treatment of certain renewals and restructurings of loans. This definition codifies in Part 32 a longstanding OCC

interpretation based on case law. *See, e.g.*, OCC Interpretive Letter No. 286 (April 23, 1984), [Transfer Binder 1983–1984] Fed. Banking L. Rep. (CCH) 85,450. *See also Corsicana National Bank* v. *Johnson*, 251 U.S. 68 (1919); *Payne* v. *Ostrus*, 50 F.2d 1039 (8th Cir. 1931). In general, a renewal or restructuring of a loan is not regarded as the equivalent of a new loan at the time of renewal for purposes of the lending limit unless new funds are advanced by the bank to the borrower or a new borrower is substituted for the original obligor. The restructuring of a loan to include extended repayment terms, altered interest rates, or additional security similarly will be treated as a renewal rather than a new loan and extension of credit, as long as the original obligor on the loan is not released.

Nevertheless, a renewal taken under circumstances which indicate "a deliberate purpose to evade the law and to extend unwarranted lines of credit" would violate the statute. *Payne* v. *Ostrus*, 50 F.2d at 1041. Generally, the renewal of a loan is deemed to be an extension of the old debt, applying the lending limit on the day the bank initially extended the funds. Subsequent events such as a reduction in a bank's capital resulting in a lower lending limit do not cause a loan that was previously legal to become illegal; rather, such a loan is deemed to be "nonconforming." However, it is the OCC's opinion that renewals of nonconforming loans present an opportunity to bring loans into conformance. A bank must make every effort to bring a loan into conformance with the bank's lending limit, for example, by having the debtor partially repay the loan or by securing another bank's participation in the loan. Where it is not practicable for the bank to make a loan conform to the lending limit before the loan is renewed, the OCC will not consider the loan renewal to be a violation of law leading to possible director liability.

Notwithstanding the above-stated general policy, the renewal of a loan made prior to the effective date of this part, which became nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, is subject to the limitations on renewal in § 32.9(c).

6. Loan Participations

Section 32.107, formerly Interpretive Ruling 7.1135, provides for the removal of a loan from a bank's lending limit through the *bona fide*, non-recourse sale of a participation. Some confusion may have arisen when former I.R. 7.1135 was consolidated into part 32 and a related or companion rule, I.R. 7.7519, was retained in part 7. The proposed § 32.3(i) will incorporate the existing § 32.107 and, additionally, will incorporate I.R. 7.7519 into the section. The new paragraph merely reorganizes the rules and does not represent a change in OCC position.

II. Additional Limitation

Section 32.4 of the current regulation implements 12 U.S.C. 84(a)(2), which provides a separate and additional limitation of 10 percent of unimpaired capital and unimpaired surplus for loans "fully secured" by readily marketable collateral. Where credit is to be extended and the total exceeds the basic 15 percent limit of section 84(a)(1), many bankers have inquired whether the entire loan must be fully secured or broken down into two loans, an unsecured loan up to 15 percent of total capital and a fully secured loan up to an additional 10 percent of total capital, to comply with existing § 32.4. The OCC believes that such legal precautions are time-consuming, unnecessary and burdensome for banks to explain to their customers. Accordingly, proposed § 32.5(b) clearly eliminates any requirement for making two separate loans and clarifies that only the portion of a loan that exceeds the 15 percent limit need be secured.

III. Rules Governing the Combination of Loans to Separate Borrowers

A. Summary of Current Rule and Need For Change

The current combination rules can be summarized as follows. The general rule found in § 32.5(a)(1) is that loans and extensions of credit to one person will be attributed to other persons for lending limit purposes when (i) the proceeds of the loans and extensions of credit are to be used for the direct benefit of the other person or persons or (ii) a "common enterprise" is deemed to exist between the persons. The regulation contains a general principle and several *per se* rules which are used to determine whether a common enterprise exists between separate borrowers. The generally applicable principle, set forth at § 32.5(a)(2)(i), is that the evaluation of whether a common enterprise exists will depend upon the facts and circumstances of individual cases. Loans to separate borrowers may be combined even in cases which do not meet every detail of the *per se* rules contained in the regulation.

The first *per se* rule, located at § 32.5(a)(2)(ii), provides that a common enterprise will be deemed to exist and loans and extensions of credit combined where the expected source of repayment for each loan and extension of credit is the same for each borrower. The second *per se* rule, located at § 32.5(a)(2)(iii), concerns loans and extensions of credit made to borrowers who are related through common control, as defined in § 32.5(a)(2)(v). The rule provides that, in such circumstances, a common enterprise will be found to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. A common enterprise will be deemed to exist *per se* when 50 percent or more of one person's annual gross receipts or expenditures are derived from transactions with one or more persons related through common control. (This rule is referred to as the "50 percent test.") The third *per se* rule, located at § 32.5(a)(2)(iv), provides that a common enterprise will be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than 50 percent of the voting securities.

The current regulation also contains specific rules concerning loans to corporate groups at § 32.5(b). These rules provide that loans and extensions of credit to a person (defined at § 32.2(b) to include a corporation) and its subsidiaries need not be combined where the bank has determined that the person and its subsidiaries are not engaged in a common enterprise, as defined above. Notwithstanding this general rule, the regulation provides at § 32.5(b)(3) that loans and extensions of credit in the aggregate by a national bank to a corporate group (i.e., a person and all of its subsidiaries) may not exceed 50 percent of the bank's unimpaired capital and unimpaired surplus. The regulation also contains specific rules governing loans to partnerships at § 32.5(c).

The existing rule concerning loans to foreign governments, their agencies, and instrumentalities is located at § 32.5(d). That provision states that loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be combined with one another for lending limit purposes if, at the time the loan and extension of credit is made, the borrower does not have sufficient resources or revenue over time to service its debt obligations ("means test") or the purpose of the loan and extension of credit is not consistent with the purposes of the borrower's general business ("purpose test"). Banks are required to assemble and retain certain documentation concerning such

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loans to demonstrate compliance with the means and purpose test(s).

As explained in the preamble to the current rule, 48 FR 15846 (April 12, 1983), the rules for combining loans to separate but related borrowers are an important aspect of the OCC's bank supervision function. Historically, there has been a correlation between problem banks and concentrations of loans to related entities. The current combination rules were intended to serve the OCC's regulatory goal of preventing excessive concentrations of loans to related borrowers while still accommodating the needs of prudent lenders who might be unnecessarily constrained by overly harsh rules. The OCC intended that the rules be easily understood and applied. Unfortunately, the combination rules are complex and have caused confusion and uncertainty. Accordingly, the OCC is proposing changes in those rules designed to promote greater simplicity and certainty.

One major source of confusion is that the existing rule is not clearly grounded in the policies underlying the lending limit statute. Ambiguity in a complex rule is inevitable. However, such ambiguities are much more easily resolved if the rule clearly reflects the policies the rule is intended to promote. Accordingly, the proposed rules are intended to more clearly reflect the core policy of the lending limit: risk diversification in bank loan portfolios.

An additional source of confusion in the present regulation has been the use of the word "combine." Confusion arises because the term does not clearly indicate the precise nature of the combination or attribution intended. When it is said that loans to A and B will be "combined," we could really be saying four different things:

- Loans made to A will be attributed to B, but loans to B will not be attributed to A.
- Loans to B will be attributed to A, but loans to A will not be attributed to B.
- Loans to A will be attributed to B, and loans to B will be attributed to A.
- Loans to A and B will be attributed to some third party and, thus, combined.

To help reduce the confusion which arises from the inherent ambiguity in the term "combine," the new rules avoid that term and use the more precise words "aggregate" and "attribute." Consistent with this approach, the proposed rules have both an aggregation rule (which specifies which loans will be added together to determine a bank's lending limit for a particular person) and attribution rules (which specify when loans nominally made to one person will be attributed to another for purposes of the bank's lending limit).

B. Aggregation Rule

As stated above, the aggregation rule in proposed § 32.6 lists the loans which must be added up in computing the lending limit for a person. Basically, it requires the aggregation of all loans made directly or indirectly to the person and all loans attributed to the person under the attribution rules described below. The requirement that "indirect" loans be aggregated is based on 12 U.S.C. 84(b)(1) which states that the term "loans" shall include all "indirect advances of funds to a person made on the basis of any obligation of that person to repay * * *." The OCC has construed this requirement as relating to situations in which a bank advances funds to a third party on behalf of or at the direction of a person and is based on an obligation of that person to repay the funds.

C. Attribution Rules

Under 12 U.S.C. 84(d)(2), the OCC is granted authority "to determine when a loan putatively made to a person shall for purposes of [the lending limit] be attributed to another person." The attribution rules in proposed § 32.7, described below, are an exercise of this authority. Essentially, they are designed so that attribution will occur where needed to serve the purposes of the lending limit, i.e., to promote risk diversification. In this regard, the rule specifically states that attribution of a loan to someone other than the named borrower will not remove the loan from the total of loans used to compute the lending limit of the borrower. Because the named borrower remains primarily liable on the loan, the bank continues to have a credit-risk exposure to the named borrower. Thus, an attributed loan should remain and, under the proposed rule, does remain in the named borrower's total of loans even though it has been attributed to another person and is also included in that person's loan total.

As stated above, one goal of the proposed amendment is to clarify the existing rules by grounding them more clearly on the underlying policies of the lending limit. To that end, the OCC is considering two different attribution rules: diversification rules and benefit rules. Each will be discussed below.

1. Diversification Rules

To replace the "common enterprise" test of the existing regulation, the OCC is proposing attribution rules which clearly promote diversification of credit risk. These attribution rules consist of a general rule and several specific rules.

a. *General diversification rule.* The general rule in proposed § 32.7(c)(1) states the core principle which will guide attribution under the diversification rules. The specific diversification rules define situations in which attribution will usually be warranted under that general principle. It should be noted that the OCC reserves the ability to attribute loans under the general rule even when none of the specific rules is directly applicable. Nevertheless, it is expected that such circumstances will be rare and banks should seldom need to seek guidance as to whether attribution is required under the general rule.

The proposed general rule states that attribution will be warranted when the repayment of a loan will likely depend, directly or indirectly, upon another person. This principle is in full accord with the risk diversification policy of the statute; in calculating a person's lending limit to promote risk diversification, a bank should take into account all loans where repayment is likely to depend upon that person whether or not that person is listed as the named borrower.

The phrase "is likely to depend" was carefully drafted. The word "likely" refers to a reasonable likelihood at the time the loan is made that the bank will need to look to someone other than the named borrower for repayment; attribution is warranted even where there is less than a certainty that such recourse will be necessary.

b. *Specific diversification rules.* The specific rules described below define situations in which the repayment of a loan is sufficiently dependent on another person to warrant attribution to that person. The intent is to provide rules which are bright-line, relatively easy to apply and based on information banks normally review in connection with making an informed judgment as to creditworthiness. One problem with bright-line rules is that they can be inflexible and, occasionally, over-inclusive, i.e., require attribution even where the purpose of the statute would not be served. To provide more flexibility, some of the specific rules are phrased as rebuttable presumptions. In other words, they provide that once the bright-line rule is satisfied, attribution will be presumed unless the bank places information in the loan file which specifically and reasonably rebuts the factual basis for the presumption of attribution. The particular presumptions and the type of information needed to rebut them will be discussed below.

However, two general points on rebuttal need to be emphasized.

First, to rebut effectively a presumption under the proposed rule, information must be placed in the loan file before the bank becomes legally bound under the agreement. When a loan is originated, the bank has the responsibility to determine whether the loan should be attributed to another person and, thereby, cause the bank to exceed its lending limit to that person. Thus, if a bank is going to rely upon the rebuttal of a presumption of attribution to avoid a violation of the lending limit, the information that forms the basis for the rebuttal must be available and recorded by the bank at the time the loan is made and its legality is determined. Further, when a bank makes a loan to a person to whom other existing loans have been attributed, the bank is required to include those attributed loans in the person's total when determining whether the new loan would cause the bank to exceed its lending limit. In such a case, if a bank is relying upon a previous rebuttal of a presumption of attribution to exclude such preexisting loans from the prospective borrower's total, i.e., loans that would be attributed to the person absent rebuttal, the bank should review the previous rebuttal information to confirm that it is still valid. This is consistent with the established position of the OCC that when a bank makes a new loan, it is responsible for reviewing prior loans to ensure that intervening changes in circumstances do not require the attribution to the proposed new borrower of prior loans not previously attributed to that person.

The second major point on rebuttals is that both the burden of production and the burden of persuasion with respect to rebuttal lies with the bank that would rely upon it. The burden of production is the responsibility for being able to establish to OCC that the factual basis for the rebuttal was in existence at the time the loan was made. In this regard, the proposed rule requires that the information be placed in the relevant loan file at that time. *See* proposed §§ 32.7(c)(2) (ii) and (iii). Thus, it is recommended that banks planning to rely on a rebuttal prepare and place in the loan file a dated and signed memorandum summarizing the factual basis for the rebuttal and the reasons the author believes those facts to be true. Similarly, the burden of persuasion requires that banks relying on a rebuttal be able to show to the OCC that the facts relied upon do specifically and reasonably rebut the basis for the presumption of attribution in the relevant specific rule. In short, a bank is required to demonstrate to the satisfaction of the OCC that a particular loan is entitled to the rebuttal and the OCC will be the final arbiter of this issue.

(1) *Primary liability in any capacity.* The first specific rule provides in proposed § 32.7(c)(2)(i) that loans will be attributed to any person who is in any capacity primarily liable on the loan with the named borrower. As discussed above in connection with proposed § 32.3(c) ("Obligations of other parties"), primary liability arises when the bank may enforce a right of collection against the person without prior resort against the named borrower.

This rule continues a long-standing position of the OCC evidenced in the present combination rules and prior interpretive rulings. It is also a corollary to the rule regarding treatment of other parties to the loan agreement in proposed § 32.3(c). The difference between the two rules is that, unlike proposed § 32.3(c) which applies only to parties to the loan transaction, this specific rule applies to a person who incurs primary liability on a loan without becoming a party to the loan transaction; but the effect of the two rules is the same. Unlike some of the other specific rules to be discussed, attribution under this rule is not subject to rebuttal.

The proposed rule lists two examples of arrangements which can require attribution: partnerships and joint ventures or associations. The rule continues the treatment of these arrangements under § 32.5(c) of the existing rule without significant change. Thus, for example, the OCC will continue its policy of attributing to general partners loans made to a partnership notwithstanding non-recourse arrangements in those loans. *See* 48 FR 15844, 15848 (April 12, 1983). Similarly, the OCC will continue to exempt limited partners and members of associations or joint ventures from attribution if the limited partnership, joint venture, or association agreement provides that they are exempt from liability for the obligations of the entity and if such provisions are valid under applicable state law.

(2) *Source of repayment.* Consistent with the diversification policy of the lending limit, a specific rule has been proposed in § 32.7(c)(2)(ii) to attribute a loan to any person who is expected to be the source of repayment of the loan. Thus, the OCC is continuing the rule currently found in § 32.5(a)(2)(ii), the first *per se* test of "common enterprise." Note that as explained by proposed § 32.7(c)(2)(ii)(A), the effect of having loans to several different borrowers attributed to the same person as the source of repayment is to aggregate those loans for lending limit purposes together with all other loans to the repayment source. For example, if a bank has made loans to A, B, and C, and if C is the source of repayment for A and B, then the loans to A and B would be attributed to C and, hence, C's total loans for lending limit purposes would include all three loans.

In determining whether a person is a "source of repayment," the OCC will continue to be guided by precedent under current § 32.5(a)(2)(ii). However, the proposed rule further provides that a person will be presumed to be the source of repayment for a loan when that person provides more than 50 percent of the named borrower's annual gross receipts. The definition of "annual gross receipts" has been incorporated from existing § 32.5(a)(2)(iii). In determining a borrower's annual gross receipts, a bank may use factual information for the 12 months immediately preceding the loan, factual information for the latest fiscal period, or information for the 12 months covered by the borrower's most recent audited financial statements provided they are reasonably current.

The presumption that a person is a source of repayment under the 50 percent test may be rebutted. As an example, assume that a partner in a professional partnership receives more than 50 percent of his or her annual gross receipts in the form of distributions from the partnership and, thus, the partnership is presumed to be the source of repayment for a loan to the partner. Such a loan would not be required to be attributed to the partnership if the presumption were rebutted by showing that the partnership is merely acting as a conduit for the individual partner's billings of his or her own clients. As another example, rebuttal could be based on a showing that while a borrower had been dependent on a particular company for more than 50 percent of his gross receipts over the past year, his income source had recently changed. In such a situation, of course, the loan should be attributed to the new income source if it exceeds the 50 percent test.

The OCC does not propose to accept the fact that the borrower has sufficient funds from other sources to repay a specific loan as a basis for rebuttal. In other words, where a borrower derives more than 50 percent of its income from a particular source, the loan will be attributed to that source even if it is

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shown that the remaining income from other sources is adequate to repay a specific debt. The OCC requests specific comment on the need to maintain this position as a means to further the risk diversification policy of the lending limit.

In proposed § 32.7(c)(2)(ii)(C), a major exception to the proposed "source of repayment" rule is provided to prevent employers from having employee loans attributed to them. Specifically, an individual's employer will not be treated as a source of repayment under this rule because of wages and salaries paid to that individual unless such individual controls the person paying the wage or salary. The relevant definition of "control" is contained in proposed § 32.2(e).

(3) *Common security or enhancements.* A specific rule in proposed § 32.7(c)(2)(iii) addresses attribution due to reliance upon collateral or credit enhancements. Basically, the proposed rule provides that a loan secured by an interest in or commitment by a person, business or property will be presumptively attributed to that person, business or property if the named borrower lacks adequate revenue or resources, when the loan is made, to repay the debt in accord with the terms of the loan agreement. Under such circumstances, repayment of the loan will be presumed to depend primarily on the securing interest or commitment and, thus, the diversification policy of the lending limit requires that the loan be attributed to that expected repayment source. However, as will be discussed, this presumption is subject to rebuttal.

This proposed special rule addresses concentrations of credit risk that can arise from excessive reliance upon the same collateral or source of credit enhancement. The rule provides that where a loan is attributed to a property or business that is not a "person" under the rule, the lending limit will still be applied as if that business or property was a person, i.e., the loans attributed to it will be aggregated to determine whether they exceed the bank's lending limit.

The treatment of credit enhancement parties under proposed § 32.7(c)(2)(iii) is consistent with the proposed § 32.3(c) which provides that usually parties to a loan transaction which incur only secondary liability will not be treated as having received a loan and extension of credit. Guarantors of collection and accommodation endorsers are examples of such secondary credit enhancement parties. However, under the proposed rule, such parties may have a loan attributed to them if, at the time the loan is made, there is a sufficient likelihood that they will be called upon to repay the loan.

The determination of whether the named borrower has sufficient revenue or resources to service the debt at the time the loan is made will be relatively straightforward based on generally accepted credit underwriting standards. Assuming that such revenue or resources are lacking when the loan is made, the presumption of attribution can still be rebutted by information showing a reasonable basis to expect that the borrower will in the near future develop such resources or revenue. For example, assume that a parent signs as the guarantor of collection on a car loan to a child who recently graduated from college. The child is unemployed at the time the loan is made and, thus, is unable to service the loan when it is made. The presumption attributing the loan to the guarantor parent could be rebutted by information indicating that the child had accepted an offer of employment to begin in the relatively near future and that the salary from that new job will be sufficient to service the debt.

2. Benefit Rules

The OCC is strongly considering eliminating the "direct benefit" test of the existing § 32.5(a)(i). However, to facilitate comment on whether such a test should be retained, general and specific benefit-based attribution rules are provided in proposed § 32.7(d). If OCC decides not to retain a benefit-based rule, proposed § 32.7(d) will not appear in the final rule.

The OCC specifically requests comment on whether a benefit-based test for attribution should be retained. The OCC is particularly interested in comments on the following points:

- Does the benefit-based rule significantly advance the purposes of the lending limit statute?
- Is a benefit-based rule necessary to accomplish the supervisory objectives of the OCC or will the proposed diversification rules suffice?
- What are the costs to the industry and the OCC of retaining a benefit-based rule?

a. *General benefit rule.* The general benefit rule in proposed § 32.7(d)(1) essentially incorporates the language of existing § 32.5(a)(1)(i). The proposed specific rules define circumstances in which loan proceeds will be deemed to directly benefit another person and, thus, require attribution to that person under the general rule. The specific rules in proposed § 32.7(d)(2) reflect interpretations of existing § 32.5(a)(1)(i) that the OCC has adopted, but they are not intended to be an exclusive listing of direct benefit situations; the OCC reserves the ability to attribute loans under the general rule even when none of the specific rules are applicable.

b. *Specific benefit rules.* The first specific rule in proposed § 32.7(d)(2)(i) provides that where the proceeds of a loan are loaned to another party, the loan will be attributed to that other party. Similarly, the rule provides for attribution when the proceeds are transferred without a reasonably equivalent exchange of value, i.e., where the recipient of the proceeds has not exchanged property or services the fair market value of which approximate the amount of proceeds received. The exchange of the recipient's note for the loan proceeds will not be an exchange of value, but rather a loan.

The second specific rule in proposed § 32.7(d)(2)(ii) covers situations similar to the first except that it applies where property purchased with the proceeds of the loan, rather than the proceeds themselves, is transferred without an equivalent exchange of value.

The third specific rule in proposed § 32.7(d)(2)(iii) covers loans to trusts. Essentially it provides that loans to trusts will be attributed to the beneficiaries of the trust according to their degree of beneficial ownership or entitlement. Thus, for example, where a loan to a trust was used to purchase property which would benefit both the income beneficiary and the corpus beneficiary, the loan would be attributed to both *pro rata.*

The final specific rule in proposed § 32.7(d)(2)(iv) provides that where the proceeds of a loan are used to purchase the original-issue equity of another person so that the proceeds are received as part of the capital of that person, the loan will be attributed to that other person. Accordingly, under this rule, loans used to purchase previously issued shares from an existing shareholder would not be attributed to the issuing corporation.

3. Loans to Corporations

The rule in proposed § 32.7(e) continues the existing rule with respect to loans to corporations with one minor change; it eliminates surplusage in current § 32.5(b)(2).

Section 32.5(b)(2), pertaining to loans to corporations, reads as follows:

> Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise" as the term is defined in paragraph (a) of this section.

This provision was intended to emphasize that a bank would not have to automatically combine all loans and extensions of credit to a person and its subsidiaries. The paragraph does not state a rule but is primarily editorial; it reiterates a rule previously set forth in existing § 32.5(a) and is unnecessary. Some banks, however, have placed undue emphasis on the phrase "where the bank has determined" that no common enterprise exists and have argued that the OCC was thereby acknowledging that only the banks, and not the OCC, should make the determination whether such loans should be combined. This is neither Congress's nor the OCC's intention and, accordingly, it is proposed that the paragraph be removed.

4. Proposed Elimination of Means and Purpose Test

The OCC is proposing to revise the rules concerning national banks' lending to foreign governments, their agencies and their instrumentalities. Specifically, the OCC is proposing to eliminate the means and purpose test and the associated collection-of-information requirements. The means and purpose test essentially involves a series of determinations made by bank management of a highly subjective nature. The OCC believes that it is possible to establish more definitive ground rules in proposed § 32.7(f) that will add needed certainty to the area of loans to foreign governments and their agencies and instrumentalities and will adequately protect banks against excessive concentration in such loans. The proposed change is intended neither to loosen nor tighten the limit on loans to foreign governments. Rather, the proposed rule is intended to ease compliance burdens and to accord loans to foreign governments treatment similar to that of private borrowers. Comments are specifically requested on the effect of the proposed rule in these respects.

The OCC's proposal contains an aggregate limit on a national bank's loans to a foreign government and its agencies (including political subdivisions) and instrumentalities of 50 percent of the bank's unimpaired capital and unimpaired surplus. The term "political subdivision" includes the foreign equivalent of state and local governments. Comment is specifically requested as to whether a political subdivision with independent taxing authority should be entitled to its own 15 percent limit, upon adequate documentation by the lender. The term "instrumentalities" of a foreign government refers to corporations or other business organizations that are, directly or indirectly, majority-owned or controlled by the foreign government. The presumption of control applied here to foreign governments is similar to that used in existing § 32.5(a)(2)(v). More generally, the 50 percent foreign government lending cap is modeled on the 50 percent corporate group lending cap in existing § 32.5(b). As noted above, the rule imposing the 50 percent corporate group lending cap is based on the principle that the risks in lending to one member of a corporate group closely resemble the risks of lending to the entire group. *See* 48 FR 15848 (April 12, 1983). The OCC holds a similar belief concerning the risks of lending to government entities or government-owned corporations within a single country. Thus, the OCC believes that the 50 percent foreign government lending cap is appropriate.

Within the 50 percent overall cap, a national bank's loans and extensions of credit to a foreign government and its agencies (including political subdivisions) and instrumentalities that are primarily performing governmental functions will be limited to an individual and aggregate cap of 15 percent of the bank's unimpaired capital and unimpaired surplus. In other words, this proposed rule applies the statutory 15 percent limit to loans to a foreign government and its agencies and instrumentalities that are performing governmental functions. This approach is logical because all debts of a government and its agencies will be dependent upon one repayment source, i.e., the government's fund-raising ability. Of course, the usual statutory exceptions will be applicable to such loans.

By contrast, each individual instrumentality of a foreign government engaged in commercial activities will have its own separate 15 percent limitation (subject to the usual statutory exemptions). The OCC believes that such businesses should, to the fullest extent possible, be treated like their U.S. counterparts. A separate 35 percent aggregate limitation within the 50 percent foreign government lending cap will be imposed on a national bank's loans to all such commercial-activity instrumentalities of a foreign government. This 35 percent aggregate figure is justified by the fact that such entities have a source of revenue separate from that of the foreign government, i.e., funds from their commercial operations.

The OCC has proposed to define "commercial activities" with reference to the private sector of the United States economy and the concept of free enterprise prevalent in the United States. The OCC anticipates that this term will be refined through the issuance of interpretive letter opinions. Nevertheless, the OCC specifically requests comment on the types of factors that distinguish "commercial activities" from "governmental functions."

IV. Transitional Rules

The transitional rules currently found in § 32.7 were designed to cover the period after the effective date of the statutory amendment, October 15, 1982, and prior to the effective date of § 32.7, April 14, 1983. The statute has now been in effect for seven years and the current regulation has been in effect for six years. The window period for loans in conformance with the prior statute but not in conformance with part 32 ended on January 1, 1985. It appears that the transitional rules are no longer necessary to resolve any problems, inconsistencies or inequities caused by the gap in effective dates of the statute and regulation and, accordingly, the OCC proposes to delete them. However, any litigation or administrative action concerning a violation of 12 U.S.C. 84 during that period should be decided on the basis of the transitional rules. Of course, any violation of 12 U.S.C. 84 which occurred prior to its amendment in 1982 will continue to be decided on the basis of the rules in effect at that time.

Transitional rules are, however, needed to cover the amendments proposed in this rulemaking and are provided in the proposed § 32.9. They are essentially the same as the existing transitional rules except as discussed below.

Proposed § 32.9(a) continues the rule of existing § 32.7(a) by providing that loans which were in violation of the lending limit prior to any of the effective dates, including the effective date of the proposed amendments, will remain violations until paid in full. Over-line commitments issued prior to the effective date of the Temporary Rule on commitments, June 24, 1988, were not "loans" and, thus, are not subject to this transitional rule. However, the rule would apply to any over-line advances made prior to the effective date of the Temporary Rule. Unfunded commitments are treated in proposed § 32.9(d), discussed below.

Proposed § 32.9(c), like existing § 32.7(c), grandfathers existing conforming loans and, further, permits renewals and extensions of such loans even if not in conformance with the new rules. However, such renewals or

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extensions must conform with the new rules no later than two years after the new rules become effective.

Proposed § 32.9(d) and the Temporary Rule will permit a bank to honor all legally binding commitments to advance funds which were made in good faith prior to the effective date of the amendment and were within the bank's lending limit when made, even if the advances would cause the bank to exceed its present lending limit if they were treated as new loans. Thus, the new treatment of commitments applies retroactively to eligible commitments entered into before the effective date of the Temporary Rule, as well as to commitments entered into after that date. However, the new rule does not retroactively validate advances that were made prior to the effective date of the Temporary Rule and that exceeded the lending limit at that time. Even if made pursuant to a binding commitment, such advances were illegal loans when made and will remain violations of law. A rule which retroactively validated such advances would impair the existing rights of shareholders against their directors under 12 U.S.C. 93(a).

V. Interpretations

As explained above, most of the existing interpretations have been moved into the body of the proposed regulation. However, the OCC will retain existing 12 CFR 32.108, as new § 32.101, and existing 12 CFR 32.111, as new § 32.102, without change.

VI. Special Studies

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed regulation will not have a significant impact on a substantial number of small banks. All banks should benefit from the regulatory simplification that will result from the proposal.

Executive Order 12291

The OCC has determined that this proposed rule does not constitute a "major rule" within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis will not be required on the grounds that this revision (1) would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of bank operations or government supervision, and (3) would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

List of Subjects in 12 CFR Part 32

National banks, Lending limit.

For the reasons set forth in the preamble, title 12, chapter I, parts 7 and 32 of the Code of Federal Regulations are proposed to be amended as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 7.7519 [Removed]

2. Section 7.7519 is removed.

3. Part 32 is revised to read as follows:

PART 32—LENDING LIMITS

Sec.

32.1 Authority, purpose and scope.
32.2 Definitions.
32.3 Definition of "loan and extension of credit."
32.4 General limitation.
32.5 Additional general limitation: loans fully secured by readily marketable collateral.
32.6 Aggregation rule.
32.7 Combining loans to separate borrowers.
32.8 Exceptions to the lending limit.
32.9 Transitional rules.
32.10 Substitute lending limit for banks with agricultural or oil and gas loans.

Interpretations

32.101 Interest or discount on loans.
32.102 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

Authority: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 93a.

§ 32.1 Authority, purpose and scope.

[Note: No changes in this section.]

(a) *Authority.* This part is issued pursuant to authority granted in 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 12 U.S.C. 93a.

(b) *Purpose.* Revised Statute 5200 (12 U.S.C. 84) is intended to prevent one individual, or a relatively small group, from borrowing an unduly large amount of the banks funds. It is also intended to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

(c) *Scope.* This part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. This Part does not apply to loans made by a national bank to its affiliates (as that term is defined in subsection (b)(1) of section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1))), operating subsidiaries, and Edge Act or Agreement Corporation subsidiaries.

§ 32.2 Definitions.

For purposes of this part:

(a) *Person* means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

[Note: Old § 32.2(b) without change.]

(b) *Unimpaired capital and unimpaired surplus* is equivalent to the terms "capital" and "surplus" as defined in 12 CFR 3.100.

[Note: Old § 32.2(c) with technical change.]

(c) A *standby letter of credit* is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer

(1) To repay money borrowed by or advanced to or for the account of the account party, or

(2) To make payment on account of any indebtedness undertaken by the account party, or

(3) To make payment on account of any default by the account party in the performance of an obligation.

[Note: Old § 32.2(e) without change.]

(d) A *named borrower* is the person named as the borrower or debtor in the loan agreement.

[Note: New paragraph.]

(e) For purposes of § 32.7(a)(2)(ii), a person shall be presumed to have "control" when:

(1) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of another person; or

(2) The person controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions, of another person; or

(3) Any other circumstances exist which indicate that the person directly or indirectly exercises a controlling influence over the management or policies of another person.

[Note: New paragraph.]

§ 32.3 Definition of "loan and extension of credit."

[Note: New section.]

(a) *Loans and extensions of credit* means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a person made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this section.

[Note: Old text moved from § 32.2(a) without modification.]

(b) (1) *Contractual commitment to advance funds* means:

(i) A bank's obligation, under a standby letter of credit as defined in § 32.2 or similar arrangement, to make payments (directly or indirectly) to a third party beneficiary contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(ii) A bank's obligation to guarantee or stand as surety for the benefit of a third party.

(2) In addition to standby letters of credit, the term includes guarantees, puts or other similar arrangements. Further, a binding, written commitment to lend is considered a "contractual commitment to advance funds" under this part if it and all other outstanding loans (including other binding commitments) to the borrower are within the bank's lending limit on the date of the commitment. Thus, if such a commitment and all other outstanding loans to a borrower are within the bank's lending limit on the date of a commitment, the bank may fund the commitment without violating the lending limit even if its capital and, hence, its lending limit should decline prior to the actual advance of the funds. On the other hand, if a commitment and all other outstanding loans to a borrower are not within a bank's lending limit on the date of the commitment, then the commitment would not be deemed a loan until funded and its legality would be determined at that time. In determining whether the issuance of a commitment would cause a bank to exceed its lending limit on the date of the commitment, a bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in the commitment by other financially responsible persons or institutions.

(3) For purposes of this part, commercial letters of credit are not considered "contractual commitments to advance funds." A commercial letter of credit is a letter of credit under which the issuing bank expects the beneficiary to draw upon the issuer in connection with a sale or transfer of goods.

[Note: Text moved from old § 32.2(d) and modified.]

(c) Obligations of other parties. Where a person other than the named borrower becomes a party to the loan agreement or transaction and, in that capacity, is primarily liable with the named borrower, such liability is a "loan and extension of credit" to such person in the amount of the liability assumed. However, the secondary liability of, for example, an accommodation indorser or a guarantor of collection (as opposed to a guarantor of payment) is not a "loan and extension of credit" to such person for purposes of this part.

[Note: Text moved from old § 32.101 and modified.]

(d) Sale of Federal funds.

[Note: Text moved from old § 32.102 without change.]

(1) *Sale of Federal funds* means, for purposes of this section, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(2) Sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for purposes of this part. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limit.

(3) A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

(e) Purchase of securities subject to repurchase agreement.

[Note: Paragraph moved from old § 32.103 and changed as indicated below.]

(1) A bank's purchase of "Type I securities," as defined in § 1.3(c) of this chapter, subject to an agreement that the seller will repurchase at the end of a stated period is not a "loan and extension of credit" for purposes of this part if the bank has obtained control of the securities. A bank may obtain control of the securities through the following methods:

(i) Acquiring possession of physical securities by direct delivery to the purchasing bank of the certificates representing the securities, or of book-entry securities by appropriate entry in an account maintained for the purchasing bank by a Federal Reserve Bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations;

(ii) Delivery of either physical securities or book-entry securities to a third-party custodian designated by the purchasing bank under a written custodial agreement which explicitly recognizes the purchasing bank's interest in the securities as superior to that of any other person;

(iii) Appropriate entry on the books of a third-party custodian acting pursuant to a tripartite agreement with the purchasing bank and the seller, ensuring adequate segregation and identification of either physical or book-entry securities; or

(iv) A substantially equivalent method.

A repurchase transaction in which the purchasing bank does not obtain control over the securities will be regarded as a loan from the purchasing bank to the seller for lending limit purposes and not as an obligation of the underlying obligor of the security.

[Note: New text.]

(2) The purchase of securities (other than Type I securities) subject to an agreement that the seller will repurchase at the end of a stated period is a loan and extension of credit from the purchasing bank to the seller and not an obligation of the underlying obligor of the security to the purchasing bank.

[Note: Old text, modified.]

(f) Purchase of third-party paper.

[Note: Text moved from old § 32.104 without change.]

Where a bank purchases third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period after default, the seller's obligation to repurchase is subject to 12 U.S.C. 84 and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans and extensions of credit, for the purpose of 12 U.S.C. 84, are measured by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to a reserve to be held as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans and extensions of credit do not constitute loans and extensions of credit to the seller subject to the limitations of section 84.

(g) Overdrafts.

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[Note: Text moved from old § 32.105 without change.]

Overdrafts, whether or not prearranged, are "loans and extensions of credit" for purposes of this part. This rule does not apply to "intra-day" or "daylight" overdrafts.

(h) Loans charged off in whole or in part.

[Note: Moved from old § 32.106 and changed.]

The lending limit applies to all existing loans and extensions of credit to a person by the bank, including loans and extensions of credit which have been charged off on the books of the bank in whole or in part and not subsequently recovered. Loans and extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable because of expiration of the statute of limitations or a judicial decision are not "loans and extensions of credit" for purposes of this part. However, where a bank has voluntarily given up its right to collect a charged off loan, the loan will remain a "loan and extension of credit" for purposes of this part.

(i) Renewal and restructuring of loans and extensions of credit.

[Note: New paragraph]

In the absence of circumstances indicating that a loan and extension of credit has been renewed or restructured as a means to evade the lending limit, a renewal or restructuring of a loan will not be deemed a new "loan and extension of credit" unless new funds are advanced by the bank to the borrower or a new borrower is substituted for the original obligor. However, the renewal of loans and extensions of credit which have become nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, is subject to the limitations on renewal in § 32.9(c).

(j) Sale of loan participations.

[Note: Moved from old § 32.107 and changed.]

(1) When a bank sells a participation in a loan and extension of credit, including the discount of a bank's own acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending limit. In order to remove a loan and extension of credit from a bank's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. This is so even where the participation agreement provides that repayment must be applied first to the shares sold. In that case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the occurrence of the event.

[Note: Old text moved without change.]

(2) The provisions of the above paragraph apply to "loans and extensions of credit," as defined in this section, including "contractual commitment(s) to advance funds," as defined above.

(3) The "purchase" of a participation in a loan and extension of credit with recourse or under a repurchase agreement results in a loan by the purchasing bank to the seller in the amount subject to repurchase.

[Note: New text; § 7.7519 is to be removed.]

(k) Loans to or guaranteed by general obligations of a State or political subdivision.

[Note: Text moved from old § 32.109 without change.]

(1) A loan and extension of credit to a bank customer which is guaranteed or fully secured by a "general obligation" of any State or political subdivision thereof, within the meaning of 12 CFR 1.3(g), is not considered an obligation of the customer for purposes of 12 U.S.C. 84. The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(2) A loan and extension of credit to a State or political subdivision thereof is not subject to any limitation based on capital or surplus if the loan and extension of credit constitutes a "general obligation" of the State or political subdivision within the meaning of 12 CFR 1.3(g). The lending bank should obtain the opinion of competent counsel that the loan and extension of credit is a valid and enforceable obligation of the borrower.

(l) Loans to industrial development authorities.

[Note: Text moved from old § 32.110 without change.]

(1) A loan and extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan and extension of credit to the authority for the purposes of 12 U.S.C. 84 if:

(i) The bank relies on the credit of the industrial occupant in making the loan;

(ii) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank.

(2) A loan and extension of credit meeting the above criteria will be deemed a loan and extension of credit to the lessee and will be aggregated with other obligations of the lessee for purposes of section 84.

§ 32.4 General limitation.

[Note: Old § 32.3 without change.]

12 U.S.C. 84(a)(1) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this section, by collateral having a market value at least equal to the amount of the loan and extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

§ 32.5 Additional general limitation: loans fully secured by readily marketable collateral.

[Note: Old § 32.4 with change.]

(a) *Law.* 12 U.S.C. 84(a)(2) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) *Compliance with 12 U.S.C. 84(a)(2).* A loan and extension of credit, or a portion thereof, will qualify for the foregoing additional limitation if it is secured by readily marketable collateral having a current market value equal to, at all times, the amount of the loan and extension of credit or portion thereof subject to this rule. "Current market value" means the bid or closing price listed for an item in a regularly published listing or in an electronic reporting service.

[Note: Change in text.]

(c) For purposes of this part, "readily marketable collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

[Note: No change in text.]

(d) Each bank must institute adequate procedures to ensure that the collateral value fully secures at all times the outstanding loan or portion thereof subject to this rule.

[Note: Change in text.]

(e) Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan and extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

[Note: No change in text.]

(f) If collateral values fall below 100 percent of the outstanding loan, or the applicable portion thereof, to the extent that the loan is no longer in conformance with this section and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

[Note: Change in text.]

§ 32.6 Aggregation rule.

[Note: New section.]

In computing a bank's lending limit to a person, the following loans and extensions of credit as defined above (hereinafter "loans") must be aggregated:

(a) All loans made directly to that person;

(b) All loans made indirectly to that person, i.e., where a bank advances funds to a third party at the direction or on behalf of that person and based on an obligation of that person to repay; and

(c) All loans attributed to that person under § 32.7 below.

§ 32.7 Combining loans to separate borrowers.

[Note: Old § 32.5 with substantial changes.]

(a) This section contains attribution rules which specify when loans and extensions of credit as defined above (hereinafter "loans") in the name of one person (the named borrower) will be attributed to another person for purposes of the lending limit. It also contains special rules applicable to loans to foreign governments and loans to corporations.

(b) Attribution of a loan to a person other than the named borrower for purposes of computing a bank's lending limit to that other person can occur under the two types of rules set forth below: the diversification rules and the benefit rules. Attribution under the rules below does not remove a loan from the named borrower's total of loans used to compute whether that total exceeds the bank's lending limit; rather, the loan is included in determining the total of loans for both the borrower and the attributed person.

(c) *Diversification rules*—(1) *General diversification rule.* A loan made to a named borrower will be attributed to another person when the repayment of the loan is likely to depend, directly or indirectly, on that other person.

(2) *Specific rules.* The rules below define circumstances in which the repayment of a loan to one person may be sufficiently dependent upon another person to warrant attribution to that other person. However, OCC retains authority to require attribution, under the general rule above, in other situations when warranted by the facts and circumstances.

(i) *Primary liability in any capacity.* Loans upon which a person other than the named borrower is jointly or severally liable in any capacity with the named borrower are attributed to that other person. Examples of this rule are:

(A) Loans to a partnership are attributed to its general partners. However, such loans are not attributed to limited partners in a limited partnership if under the partnership agreement and applicable state law the limited partners are not liable for partnership debts and actions.

(B) Loans to a joint venture or association are attributed to each member unless the members, by the terms of the membership agreement and applicable state law, are not liable for the debts or actions of the joint venture or association.

(ii) *Source of repayment.* Loans made to a named borrower are attributed to another person which is the source of repayment of the loan. A person will be presumed to be the source of repayment when that person supplies more than 50% of the borrowers annual gross receipts, as defined below, at the time the loan is made. This presumption will be inapplicable if, at the time the loan is made, the loan file contains factual information which specifically and reasonably rebuts the presumption. This rule will be applied as follows:

(A) Loans to different borrowers who share a source of repayment in the same person will be aggregated through their attribution to the common repayment source. Further, loans attributed to a person as a repayment source under this rule will be aggregated with all other loans on which that person is directly liable or which have been attributed to that person under this or other rules.

(B) For the purposes of this paragraph, "gross receipts" includes gross revenues, intercompany loans, dividends, capital contributions, and similar receipts.

(C) To prevent employers from having employee loans attributed to them under this rule, an individual's employer will not be a "source of repayment" under this rule because of wages or salaries paid to that individual unless such individual controls the person paying the wage or salary.

(iii) *Common security or enhancements.* Dependence upon security, collateral, or source of credit enhancement will not cause a loan to be attributed to another entity except as provided below. A loan secured by an interest in or commitment by a person, business, or property will be attributed to that person, business, or property if the named borrower lacks adequate resources or revenue, when the loan is made, to repay the debt in accord with the terms of the loan agreement. Under such circumstances, repayment of the loan will be presumed to depend primarily on the securing interest or commitment. This presumption will be inapplicable if, at the time a loan is made, the loan file contains factual information which specifically and reasonably rebuts the presumption. Where a business or property relied upon by a borrower as a source of credit enhancement is not a "person" as defined above, the lending limit will be applied as if it were a "person," i.e., the loans attributed to the business or property under this rule will be

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aggregated to determine whether they exceed the statutory lending limit.

(d) *Benefit rules*—(1) *General benefit rule.* A loan made to a named borrower will be attributed to another person when the proceeds of the loan are used or are to be used for the direct benefit of the other person.

(2) *Specific benefit rules.* The rules below define circumstances in which loan proceeds will be deemed to directly benefit another person and require attribution of the loan to the other person. However, OCC retains authority to require attribution, under the general benefit rule, in other situations when warranted by the facts and circumstances.

(i) Loans the proceeds of which are either transferred to another person without a reasonably equivalent exchange of value or are loaned to another person will be attributed to that other person.

(ii) Loans the proceeds of which are used to purchase an asset that is transferred to another person without a reasonably equivalent exchange of value will be attributed to that other person.

(iii) Loans to a trust will be attributed to the beneficiary of the trust. Loans to a trust with multiple beneficiaries will be attributed to each beneficiary according to the degree of beneficial ownership or entitlement under the terms of the trust.

(iv) Loans the proceeds of which are used to invest in or purchase original issue equity of another person so that the proceeds are received as part of the capital of that person will be attributed to that other person.

(e) *Loans to corporations.* (1) For purposes of this paragraph, a corporation is a "subsidiary" of any person which owns or beneficially owns more than 50 percent of the voting stock of the corporation. Such ownership need not be direct. Thus, if A owns more than 50 percent of the voting stock of Corporation X which, in turn, owns more than 50 percent of the voting stock of Corporation Y, Corporation Y would be considered a subsidiary both of A and of Corporation X.

(2) Loans and extensions of credit by a national bank to a "corporate group" may not exceed 50 percent of the bank's unimpaired capital and unimpaired surplus. This aggregate limitation applies only to loans made pursuant to sections 84 (a)(1) and (a)(2). A "corporate group" includes a person and all of it subsidiaries.

(f) *Loans to foreign governments, their agencies, and instrumentalities.* (1) For purposes of this paragraph:

(i) *Agencies* of a foreign government means agencies, departments and political subdivisions of the foreign government, including provinces or states and local or municipal governments.

(ii) *Instrumentalities* of a foreign government include corporations or other business organizations that are, directly or indirectly, majority-owned or controlled by the foreign government.

(iii) *Control* by a foreign government shall be presumed to exist when:

(A) The foreign government controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(B) Any other circumstances exist which indicate that the foreign government directly or indirectly exercises a controlling influence over the management or policies of another person.

(iv) *Commercial activity* means an activity involving trade, commerce or profit generally conducted or performed in the private sector of the United States economy.

(v) *Governmental function* means an activity generally performed or engaged in only by a sovereign entity and does not include those activities referred to in paragraph (f)(1)(iv) of this section.

(2) Loans and extensions of credit to any single instrumentality of a foreign government which is primarily engaged in commercial activities shall not exceed 15 percent of a bank's unimpaired capital and unimpaired surplus; all loans to such instrumentalities of a foreign government shall not exceed, in aggregate, 35 percent of a bank's unimpaired capital and surplus.

(3) Loans and extensions of credit to a foreign government and any of its agencies and instrumentalities thereof that are primarily engaged in the performance of a governmental function shall not exceed, in the aggregate, 15 percent of a bank's unimpaired capital and surplus.

(4) Notwithstanding paragraphs (a) through (e) of this section, a national bank's loans and extensions of credit to a foreign government, its agencies, and instrumentalities may not, when combined, exceed 50 percent of the bank's unimpaired capital and surplus. The 50 percent limitation is the total of the following:

(i) Loans and extensions of credit to a foreign government and any of its agencies and instrumentalities thereof that are primarily engaged in the performance of a governmental function; plus

(ii) Loans and extensions of credit to all instrumentalities of a foreign government primarily engaged in commercial activities.

§ 32.6 Exceptions to the lending limit.

[Note: Old § 32.6 without change.]

(a) *Discount of commercial or business paper*—(1) *Law.* 12 U.S.C. 84(c)(1) provides:

> Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product, or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(3) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of a commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made within the limits of 12 U.S.C. 84. The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an installment thereof.

(b) *Bankers' acceptances*—(1) *Law.* 12 U.S.C. 84(c)(2) provides:

> The purchase of bankers, acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(2) This exception permits the purchase by a national bank without limitation of bankers, acceptances created by other banks, provided that such acceptances are of the kind described in 12 U.S.C. 372 and 373 (eligible acceptances). Acceptances other than those described in section 372 and 373 must be included within the purchasing bank's lending limit to each acceptor bank.

(3) The limits under which a national bank may itself accept drafts eligible for rediscount are contained in sections 372 and 373. These limits are distinct from the limits under section 84. Acceptances by a national bank of "ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve bank, are subject to the limitations of section 84.

(4) During any period within which a national bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered, for purposes of this Part, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of Section 84.

(c) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples*—(1) *Law.* 12 U.S.C. 84(c)(3) provides:

> Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(2) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 35 percent of its capital and surplus in addition to the general 15 percent permitted by section 84(a)(1) and in addition to the 10 percent permitted by section 84(a)(2), provided the collateral requirements of section 84(a)(2) are met.

(3) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make:

(i) the price easily and definitely ascertainable, and

(ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral.

Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral.

(4) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(5) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for:

(i) Not more than 10 months if secured by nonperishable staples; and

(ii) Not more than six months if secured by refrigerated or frozen staples.

(6) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of instruments for this exception.) Only documents with these characteristics are eligible securities for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(7) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(8) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(d) *Loans secured by U.S. obligations*—(1) *Law.* 12 U.S.C. 84(c)(4) provides:

> Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitations based on capital and surplus.

(2) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(3) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days.

(e) *Loans to or guaranteed by a federal agency*—(1) *Law.* 12 U.S.C. 84(c)(5) provides:

> Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(3) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

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(4) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(f) *Loans secured by segregated deposit accounts*—(1) *Law.* 12 U.S.C. 84(c)(6) provides:

Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(4) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to U.S. dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remain fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit. If the U.S. dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for national banks to take deposits denominated in foreign currencies.

(g) *Loans to financial institutions with the approval of the Comptroller*—(1) *Law.* 12 U.S.C. 84(c)(7) provides:

Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(2) This exception is intended to apply only in emergency situations where a national bank is called upon to provide assistance to another financial institution.

(3) For purposes of this paragraph (g), "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

(h) *Discount of installment consumer paper*—(1) *Law.* 12 U.S.C. 84(c)(8) provides:

(i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(2) This exception allows a national bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(3) For purposes of this paragraph (h), "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(4) For purposes of this paragraph (h), "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees; insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where:

(i) Through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and

(ii) An officer designated by the bank's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper.

Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(i) *Loans secured by livestock or dairy cattle*— (1) *Loans secured by livestock*— (i) *Law.* 12 U.S.C. 84(c)(9)(A) provides:

Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a maximum limitation equal to 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115 percent of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least every 12 months, or more frequently as deemed prudent.

(iii) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan:

(A) Is assigned to the bank by a recordable instrument and

(B) Is protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise,

it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(2) *Loans secured by dairy cattle*—(i) *Law.* 12 U.S.C. 84(c)(9)(B) provides:

Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to discount paper of one person given in payment for dairy cattle in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)). The discounted paper must carry the full recourse endorsement or unconditional guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in any form which allows the bank to maintain a perfected security interest in the cattle under applicable state law.

(3) The exception for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper for the purchase of dairy cattle. Therefore, a national bank may make loans or extensions of credit to one person secured by each type of collateral in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted under section 84(a)(1)).

(j) *Loans to Student Loan Marketing Association.* 12 U.S.C. 84(c)(10) provides:

Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

§ 32.9 Transitional rules.

[Note: Old § 32.7 with significant changes.]

(a) Loans and extensions of credit which were in violation of 12 U.S.C. 84 prior to the relevant effective dates of this Part will be considered to remain in violation of section 84 and subject to actions under 12 U.S.C. 93 and 1818, and other appropriate laws after those dates until they are paid in full, regardless of whether the loans and extensions of credit conform to the rules established in this part. Renewals or extensions of such loans and extensions of credit will also be considered violations of law.

(b) A national bank which has outstanding loans and extensions of credit to a person in violation of section 84 as of the relevant effective dates of this part may make additional advances to such person after those dates if the additional advances are permitted under this part. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans and extensions of credit.

(c) Loans and extensions of credit which were made prior to the relevant effective dates of this part, but have become nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, will not be considered to be violations of law during the existing contract terms of such loans and extensions of credit. Renewals or extensions of such loans and extensions of credit which are not in conformance with the rules set forth in this part may be made on or after the effective dates of this part. However, all loans and extensions of credit made under such renewals or extensions must conform with the rules set forth in this Part no later than [insert a date two years after the effective date of the amendment].

(d) If a national bank, prior to June 24, 1988, entered into a legally binding written commitment to advance funds and such commitment was within the bank's lending limit when made, advances on or after June 24, 1988, under such commitment may be made notwithstanding the fact that such advances would cause the bank to exceed its lending limit.

§ 32.10 Substitute lending limit for banks with agricultural or oil and gas loans.

[Note: Old § 32.8 without change.]

(a) *Definitions.* For purposes of this section:

(1) *Agricultural loans* include loans or extensions of credit secured by farmland, loans to finance agricultural production and other loans to farmers reported in the bank's Report of Condition and Income (Call Report). The following are examples of such types of loans; for growing and storing of crops, breeding and marketing of livestock, financing fisheries, purchases of farm machinery and equipment, maintenance and operations of the farm, and discounted notes of farmers.

(2) *Oil and gas loans* include loans or extensions of credit to oil companies, petroleum refiners, and companies primarily engaged in the oil- and gas-related business, for example: operating oil and gas field properties, contract drilling, performing exploration services on a contract basis, performing oil and gas field services, manufacturing or leasing of oil field machinery and equipment, pipeline transportation of petroleum, natural gas transmission or distribution, and investing in oil and gas royalties or leases.

(3) *Special category loan charge-offs* mean agricultural or oil and gas loans charged-off during the period from January 1, 1986 through December 31, 1989, which have been or will be reported in a special memorandum item in the bank's Call Report in accordance with the Comptroller of the Currency's capital forbearance policy.

(b) A national bank which has special category loan charge-offs resulting in a reduction in its unimpaired capital and unimpaired surplus since December 31, 1985, may substitute a lending limit calculated under this section for the general limitation provided at 12 U.S.C. 84(a)(1), up to a maximum amount of 20 percent of unimpaired capital and unimpaired surplus, until January 1, 1995.

(c) The substitute lending limit in paragraph (b) of this section is the lesser of the following amounts:

(1) 15 percent of unimpaired capital and unimpaired surplus on December 31, 1985; or

(2) 15 percent of the total of:

(i) The difference between the sum of special category loan charge-offs and the sum of recoveries on those charge-offs; plus

(ii) Unimpaired capital and unimpaired surplus; or

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(3) 20 percent of unimpaired capital and unimpaired surplus.

Interpretations

§ 32.101 Interest or discount on loans.

[Note: Old § 32.108 without change.]

The lending limit does not apply to the portion of a loan and extension of credit that represents accrued or discounted interest.

§ 32.102 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

[Note: Old § 32.111 without change.]

The lending limit prescribed by 12 U.S.C. 84 is separate and distinct from the investment limit prescribed by 12 U.S.C. 24. Accordingly, a national bank may make loans and extensions of credit to one borrower up to the full amount permitted by 12 U.S.C. 84 and also hold eligible investment securities of the same obligor up to the full amount permitted by 12 U.S.C. 24. In order for a security to be an "investment security" it must be eligible for investment by a national bank in accordance with the standards set forth in 12 CFR part 1.

Dated: October 18, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-24951 Filed 10-23-89; 8:45 am]

BILLING CODE 4810-33-M

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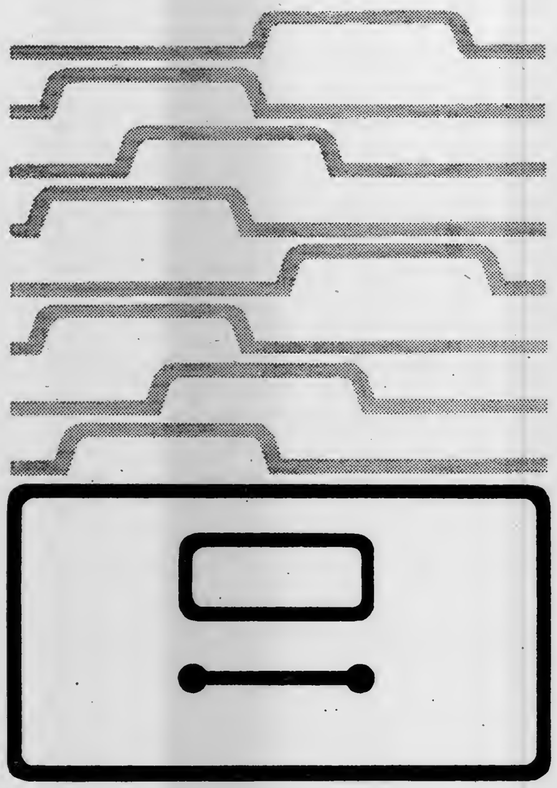
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10-25-89
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Pages 43415-43574

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Rules and Regulations

Federal Register
Vol. 54, No. 205
Wednesday, October 25, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

AGENCY: Rural Telephone Bank, USDA.

ACTION: Correction to final rule.

SUMMARY: This notice corrects an error in 7 CFR 1610.8 published as a final rule on May 16, 1989 (54 FR 21047). This rule provides for the Rural Telephone Bank's utilization of the Rural Electrification Administration's (REA) regulations as published in 7 CFR chapter XVII except for those regulations applicable solely to the Electric Program. Through an error, both the paragraph explaining these exceptions and the list of exceptions were moved from the regulatory text to the Background portion of the preamble. The regulatory text as originally printed refers to policies identified below and no list of policies appeared. The correct text for this regulation appears below in its entirety.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, telephone number (202) 382–9550.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications, Telephone.

Therefore, the Bank hereby amends 7 CFR part 1610 as follows:

PART 1610—[AMENDED]

1. The authority citation for 7 CFR part 1610 continues to read:

Authority: 85 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended.

2. Section 1610.8 is correctly revised to read as follows:

§ 1610.8 Adoption of applicable REA policy.

The policies embodied in 7 CFR part 1610, in all parts of 7 CFR chapter XVII except those identified below, and in the REA Telephone Program bulletins listed in appendix A of 7 CFR part 1701 as published at 40 FR 16075, Apr. 9, 1975, and amended at 40 FR 16075, Apr. 9, 1975, and amended at 40 FR 31956, July 30, 1975, will be utilized by the Governor in carrying out the Bank's loan program to the extent that such policies are consistent with title IV of the Act (7 U.S.C. 941 et seq.) and to the extent that policies in 7 CFR chapter XVII and appendix A bulletins are consistent with 7 CFR part 1610. The parts of 7 CFR chapter XVII applicable solely to the Electric Program and thus exceptions to this rule are:

Part	Subject matter
1710	Electric loan policies and application procedures.
1711	Electric loans-advance of funds.
1729	Electric system planning and design.
1735	REA standard form of electric contracts.
1736	Electric standards and specifications.

Dated: October 17, 1989.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 89–25108 Filed 10–24–89; 8:45 am]

BILLING CODE 3410–15–M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the management and supervision of FmHA Multiple Family Housing loan and grant recipients. This action is taken to comply with Office of Management and Budget Circulars A–73 and A–128 and U.S. Department of Agriculture, Departmental regulations, subpart I of part 3015 of chapter XXX of title 7. The intended effect of this action is to provide for better borrower auditing standards through the implementation of the above.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Booker Reaves, Senior Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5329, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1617.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of accounting changes, does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Intergovernmental Consultation

For reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015,

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subpart V, 48 FR 29115, June 24, 1983, this program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.415 Rural Rental Housing Loans
10.427 Rural Rental Assistance Payments (Rental Assistance)

Background

On January 10, 1989, (54 FR 824), FmHA published a proposed rule on Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients. FmHA now publishes these proposed revisions for final rule.

This package is an accumulation of regulation changes needed to comply with the requirements of the Single Audit Act of 1984, OMB Circular A-128, "Audits of State and Local Governments" and OMB Circular A-73, "Audit of Federal Operations and Programs." The primary changes include the following:

1. OMB Circular A-73 requires that audits submitted in accordance with program requirements must be prepared on the basis of the audit standards issued by the Comptroller General of the United States. These standards are published in "Government Auditing Standards" (1988 Revision). It is important to note that the standards include the requirement that the generally accepted government auditing standards (GAGAS) be used in conjunction with generally accepted auditing standards (GAAS). Audits must be submitted by certain participants in the Multiple Family Housing Programs. There are two types of GAGAS audits: (1) Financial audits; and, (2) performance audits. FmHA will only be requiring auditors to use the GAGAS audit type that provides for financial audits. Basic financial statements should be prepared in conformity with generally accepted accounting principles (GAAP). The change from GAAS to GAGAS will require some additional preparation and planning by auditors for the conduct of audits. GAGAS requires that auditors participate in peer reviews and in continuing education courses. For auditors and auditing firms not currently performing GAGAS audits there will be initial set-up expenses and charges which maybe passed on to their clients in a prorated and amortized manner. For firms currently conducting GAGAS audits the cost increase should be minimal since these firms will already have systems in place.

GAGAS and GAAS both require GAAP and the bulk of the GAGAS requirements are items that are covered in GAAP-based reporting, but not reported on separately. For example, GAGAS requires the auditor to report on the entity's material compliance with requirements governing financial assistance it received and on the entity's internal controls. GAAP-based reporting requires disclosure of material violations of legal and contractual provisions, and the GAAS Standard of Fieldwork No. 2 dwells on the study and evaluation of the existing internal controls. Therefore, it is FmHA's feeling that to perform a GAGAS audit, the auditor would have to conduct similar tests of the accounting records and such other auditing procedures as considered in performing a GAAS audit. FmHA believes the changes will help FmHA to serve the public more efficiently while protecting the Government's interest.

2. The paragraphs on audits of borrower operations are revised to comply with the Single Audit Act of 1984, Public Law 98-502, and OMB Circular A-128, "Audits of State and Local Governments." The Single Audit Act establishes audit requirements for State and local governments that receive Federal assistance and defines Federal responsibilities for implementing and monitoring those requirements. Section 7505 of the Act requires OMB to issue implementing guidelines which were issued as OMB Circular A-128. Further, the Circular directed Federal agencies to publish regulations implementing it.

Discussion of Comments

The proposed rule published in the **Federal Register** (54 FR 824) on January 10, 1989, provided for a 60-day comment period ending March 13, 1989. Four comments were received during the comment period. Of the four comments, one was from an FmHA field employee, and three were from sources outside FmHA.

The major concerns appeared in the area of increase cost of performing GAGAS audits. FmHA acknowledges that to some extent the cost of audits may increase during the first years of implementation of GAGAS requirements. However, the debate on GAGAS is over since it has been mandated by OMB and the USDA/OIG. The increased cost of doing GAGAS audits should be prorated over an auditor's entire governmental client base, since GAGAS is being implemented government-wide. It should be noted that the American Institute of Certified Public Accountants (AICPA) now requires that all of its practicing members participate in peer reviews and the revised (July 1988) GAGAS require that firms must have had peer reviews in order to fulfill GAGAS. In addition, FmHA understands that several State Boards of Accountancy are now requiring similar peer reviews and/or membership in the AICPA. Auditors expecting to perform government audit work must conform to these new standards.

Other minor changes to clarify the rule were considered and implemented as appropriate.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and Community Development, Loan programs—Housing and Community Development, Low- and moderate-income housing loans—Rental, Reporting and recordkeeping requirements.

Accordingly, FmHA amends part 1930, subpart C, title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. In § 1930.124, paragraphs (c) (1), (2), (3), (4) and (5) are redesignated as paragraphs (c)(3) (i), (ii), (iii), (iv) and (v); the introductory text of paragraph (c) is revised; and paragraphs (c) (1) and (2) and the title and introductory paragraph (c)(3) are added to read as follows:

§ 1930.124 Borrower budgets, reports, audits, and analysis.

* * * * *

(c) *Audits reports.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in "Government Auditing Standards" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (commonly referred to as the "Yellow Book" or "GAO Standards"). In addition, the audits are to be performed in accordance with Departmental Regulations, subpart I of part 3015 of chapter XXX of title 7, when applicable and in accordance with requirements as specified in separate sections of this subpart.

(1) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, title 7 CFR part 3015, subpart I, and OMB Circular A-128, with copies of the audits being forwarded by the borrower to the FmHA District Director and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor should refer to the AICPA Audit and Accounting Guide for "Audits of State and Local Government Units."

(i) *Cognizant agency.* (A) "Cognizant agency" means the Federal agency assigned by OMB Circular A-128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities.

(B) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(ii) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(A) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128.

(B) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal assistance shall have an audit made in accordance with OMB Circular A-128 or in accordance with FmHA audit requirements. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA requirements, the audit shall be in accordance with paragraph (c)(3) of this section.

(C) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A-128 and FmHA audit requirements. These State and local governments and Indian tribes shall be governed by audit requirements prescribed by State and local law or regulation.

(D) Public hospitals and public colleges and universities may be excluded from OMB Circular A-128 audit requirements. If such entities are excluded, audits shall be made in accordance with paragraph (c)(2) of this section.

(2) *Nonprofit organizations.* These organizations are to be audited in accordance with OMB Circular A-110 and paragraph (c)(3) of this section. These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audit requirements of paragraph (c)(1) of this section.

(3) *For-profit organizations and other entities referred to this paragraph by paragraphs (c)(1) and/or (c)(2) of this section.* In performing audits under this paragraph, the USDA OIG has published an audit guide entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA office).

* * * * *

§ 1930.124 [Amended]

3. In § 1930.124, newly redesignated paragraph (c)(3)(ii) is amended in the first sentence by changing the reference "paragraph (c)(3) of this section" to "paragraph (c)(3)(iii) of this section."

Subpart C—[Amended]

4. Exhibit B of subpart C is amended by removing the first sentence in paragraph XIII C 2 c beginning with the word "All" and substituting the following four sentences to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

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C * * *
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c. Audit report or verification. All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), as set forth in the "Government Auditing Standards" (1988 revision), established by the Comptroller General of the United States and any subsequent revisions. State and local governments and Indian tribes must also meet the audit requirements set forth in title 7 CFR part 3015, subpart I, when applicable. For guidance in meeting these requirements, the auditor should refer to the AICPA Audit and Accounting Guide for "Audits of State and Local Government Units." For all other borrowers, the USDA Office of Inspector General has published an audit guide entitled "Farmers Home Administration—Audits of Recipients of FmHA Loans, Grants and Guarantees" (available in any FmHA Office). * * *

* * * * *

Dated: September 21, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-25074 Filed 10-24-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21 and 23

[Docket No. 061CE, Special Conditions 23-ACE-44]

Special Conditions; Dornier Seastar CD-2 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Claudius Dornier Seastar GmbH and Company Model CD-2 Series amphibian airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. The novel and unusual design features include the use of advanced composite materials for primary flight structure, the location of the engines and propellers, protection from lightning and high energy radio frequency, and emergency flotation equipment for which the regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that envisioned in the applicable regulations.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1986, Claudius Dornier Seastar GmbH and Company made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the Seastar Model CD-2 airplane. At the time of application, commuter airworthiness requirements were not

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incorporated into part 23 and certification for 12 passenger airplanes would require part 25 airworthiness standards.

The commuter category airworthiness requirement which permits a seating configuration, excluding pilot seats, of 19 or less, was incorporated into part 23 by amendment 23–34, which became effective February 17, 1987. Claudius Dornier then made a new application for U.S. type certificate on July 31, 1987 for part 23 commuter category.

The Dornier Seastar Model CD–2 is a high wing twin-engine amphibian airplane with turboprop engines that are mounted on the center-top of the parasol wing in a tandem push-pull arrangement. The airframe structure utilizes composite materials. The maximum gross weight is 10,141 lbs. with a seating configuration of 12 passengers.

Type Certification Basis

The type certification basis for the Dornier Seastar Model CD–2 airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23 of the FAR, effective February 1, 1965, including amendments 23–1 through 23–34; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–6; Part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through amendment effective on the date of type certification; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, § 21.17(a)(2).

The proposed type design of the Seastar Model CD–2 airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness requirements of Part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the Seastar Model CD–2 airplane.

Composite Structure

The airframe of the Seastar Model CD–2 airplane is made of composite material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Seastar Model CD–2 airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of advanced composite materials and extensive bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the type certification basis for the Seastar Model CD–2 airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from bonded composite materials equivalent to those existing for aluminum airplanes.

The special condition will require composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers, and their carry-through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worded to permit approval, based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Seastar Model CD–2 airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to assure an appropriate level of safety for the Model CD–2 airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof-testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of design features provided each bonded joint is subjected to its critical design limit load during the proof-testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof-testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventive maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Lightning Protection

The regulations incorporated by reference include standards for protection from damage to the structure of the airplane by lightning (§ 23.867) and from ignition of fuel vapor (§ 23.954). These standards do not provide the level of safety for the electronic system installed in composite airframe structures which provide less electromagnetic shielding than metal skins. For airplanes employing the extensive use of composite materials, the lightning produced voltage and currents could increase substantially and additional protecting design features should be installed. These systems can be susceptible to disruption to both the command/response signals and the operational modes as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft that utilize a metal structure, a special condition is being proposed which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Protection from Unwanted Effect of High Energy Radio Frequency (RF) Fields

Traditional airplane designs which utilize metal skins and mechanical control systems had inherent design features which provided protection and were less susceptible to the effects of RF energy from ground-based transmitters. There is a trend toward increased use of composite structures that do not provide the RF shielding normally provided by metal skins and electrical and electronic systems to perform critical and essential airplane functions. Therefore, the effective measures against the effects of high energy radio frequency fields must be provided for by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical and essential functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the increased number and power of radio frequency emitters and expected future increases.

In showing compliance with the regulations for protection against hazards caused by the exposure to high energy radio frequency fields, electrical and electronics systems which perform critical and essential functions must be considered. The hazards addressed include those which would result in a catastrophic failure condition to the airplane. Failures that would be a hazard to the airplane, but not catastrophic, are considered under § 23.1309. To prevent this occurrence, airplane systems which perform critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy radio fields. Airplane systems which perform essential functions must be protected to ensure that essential functions can be recovered after the airplane has been exposed to the high energy radio frequency fields. Manual mode reversion is considered an acceptable method of retaining the essential functions. Reliance on redundancy as a means of protection against the effects of external RF fields is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed RF energy level representative of that to which the airplane will be exposed in service. This special condition requires that the airplane be evaluated under an interim standard for the protection of the electronic system and its associated wiring harness.

Location of the Engines and Propellers

Part 23 envisions propellers located forward of the wing and other aircraft surfaces that may shed ice. On the Seastar Model CD–2 airplane, the propellers are located above and aft of the forward portion of the fuselage and one is a pusher propeller located aft behind the parasol wing and both engine exhaust systems. Ice shed by the wing, wing struts, forward fuselage, or other parts of the airplane may have adverse effects on the propellers. In addition, the effects of exhaust gases impinging on the aft propeller must be evaluated. A special condition is being issued requiring propeller ice and exhaust gas impingement protection.

Since the location of the propellers on the Model CD–2 is an unusual design feature, passengers, crew, and ground personnel may be less aware of the proximity of the propeller blades. Propeller disc conspicuity is of concern during ground operation. Therefore, a special condition is proposed to require the necessary visibility of the propeller discs.

The location of the engines on the Seastar Model CD–2 airplane will prevent the pilot from quickly visually determining if an engine is operating. A special condition is being issued to require a positive means to indicate to the pilot when an engine is inoperative.

Effects of Water in Hull Compartments

The Seastar Model CD–2 is an amphibian airplane with several watertight compartments in the hull area. To ensure that the proper weight and center of gravity is maintained, it is necessary to provide a means for determining the amount of water in the watertight compartments. The Airplane Flight Manual or other approved manual material must describe the means for determining the effects of the water in the compartments for safe operation of the airplane. A special condition is being issued requiring means to determine the presence and quantity of water in the hull compartments.

Emergency Flotation Equipment

The commuter category requirements did not envision an amphibian airplane designed to operate a considerable time near or over water areas. For the level of safety envisioned for the commuter category, such airplanes must include emergency flotation means for each occupant, unless the airplane is restricted to operating over water bodies of such size and depth that life preservers or other flotation means would not be required for survival of occupants during emergency landing and emergency evacuation.

The Seastar Model CD–2 airplane is expected to operate extensively over lakes, rivers, and other bodies of water. In the case of an emergency, this may lead to an inadvertent water landing in water too deep to safely evacuate without appropriate emergency flotation equipment.

In response to Public Law (Pub. L.) 100–223, entitled "Airport and Airway Safety and Capacity Enhancement Act of 1987", enacted December 30, 1987, the FAA published a notice of proposed rulemaking (NPRM) entitled "Improved Survival Equipment for Inadvertent Water Landings" (53 FR 24890; June 30, 1988). This NPRM proposes to amend FAR parts 121 and 135 to require, among other things, adequate life preservers and flotation devices for passengers, including small children and infants, on flights of an air carrier which the

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Secretary of Transportation determines will occur partly over water.

The FAA anticipates that these proposals will be adopted essentially as proposed and has determined it is appropriate to issue a special condition for the Seastar to require flotation equipment that will provide the level of safety expected for a commuter category amphibian airplane in over water operation.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. 23–ACE–44, Docket No. 061CE, was published in the **Federal Register** on May 1, 1989 (54 FR 18530) and the comment period closed August 29, 1989. The FAA received one comment in response to Notice No. 23–ACE–44. The comment was received from Airbus Industrie, 31707 Blagnac Cedex, France. The special conditions for the protection of systems against high energy radio frequency (HERF) fields are applicable to systems that perform critical and essential functions as defined in the special conditions. The commenter stated that past special conditions on HERF for transport category and normal category were only applicable to critical systems. The commenter recommended that this special condition be consistent with previous special conditions, that is, only be applicable to critical system.

The FAA does not agree that for part 23 airplanes, this special condition should only be applicable to critical systems. The protection of aircraft electrical and electronic systems against the effects of external high energy radio frequency may also be required to include essential systems whose failure or malfunction due to HERF could result in a hazard, or affect other systems whose failure or degradation would result in a hazard. The actual determination of what systems should be evaluated against HERF would be made by the applicant preparing a preliminary hazard assessment. Engineering and operational judgment would be on a case-by-case basis jointly by the applicant and the responsible aircraft certification office. Systems such as electronic flap control are normally classified as essential systems but their failure modes under the HERF environment may have a hazardous failure condition to the extent there is a significant reduction in safety. Under the special condition criteria, the essential functions are not required to operate during the HERF exposure, but the essential function must be recoverable after the HERF exposure. These requirements for the protection against external high energy radio frequency are consistent to the requirements for lightning. The existing airworthiness standards of part 23 do not include requirements for complex and safety-critical systems and are based on single-fault or fail-safe concepts. Also, part 23 is different than part 25 or 29 airworthiness standards because part 23 does not have a requirement that the installed equipment meet the applicable Technical Standard Order (TSO). This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions. Accordingly, these special conditions are adopted as proposed.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g). (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing the following special conditions are issued as part of the type certification basis for the Dornier Seastar Model CD–2 Series amphibian airplanes and future changes to those airplanes:

1. Evaluation of Composite Structure

In lieu of complying with § 23.572 and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, the wing, horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, fuselage, vertical stabilizer, vertical stabilizer attaching structure and all movable control surfaces and their attaching structure, must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight and water loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) The wing, horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, vertical stabilizer and vertical stabilizer attaching structure, and all movable control surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a nondestructive inspection technique which ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination;

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions must be accounted for in the damage tolerance evaluations and in the residual strength tests; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and the environmental effects. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Protection of Systems From Lightning and High Energy Radio Frequency (RF) Fields

(a) Each system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(c) For the purposes of the above, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

3. Location of the Engines and Propellers

In the absence of requirements for propellers, the following is required:

(a) *Ice impingement on the propeller.* All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating conditions for which the airplane is certificated must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) *Exhaust gas impingement on propeller.* If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

(c) *Propeller marking.* The propellers must be marked so that their discs are conspicuous under normal daylight ground conditions.

(d) *Engine inoperative warning.* A positive means must be provided to indicate an engine is inoperative, or it must be determined that required instruments will readily alert the pilot when an engine is inoperative.

4. Effects of Water in Hull Compartment

In the absence of specific regulations, the hull watertight compartments required by § 23.755 must be equipped with means to determine the presence of water and the effects of any accumulated water on the weight and center of gravity of the airplane in accordance with § 23.1519.

5. Emergency Flotation Equipment

In addition to the requirements of § 23.1415, the emergency flotation equipment installed in the airplane must include an approved life preserver with an approved survivor locator light for each occupant of the airplane, including an approved life preserver for each infant and child. The approved life preserver must be located at the passenger seat, or in the case of the infant and child life preservers, in the immediate vicinity of the seat occupied by the individual responsible for the infant or child. Provisions for storage of each life preserver must be approved by the Administrator. Each approved survivor locator light must activate automatically upon contact with water.

Issued in Kansas City, Missouri, on October 2, 1989.

Don C. Jacobsen,

Acting Manager, Aircraft Certification Service.

[FR Doc. 89–25078 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–CE–15–AD; Amdt. 39–6300]

Airworthiness Directives; Schweizer (Grumman) G–164 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 89–18–02, Amendment 39–6300, applicable to all Schweizer (Grumman) G–164 series airplanes, which requires a visual inspection for corrosion and cracks on the forward and aft elevator push-pull rod assemblies. The FAA has become aware that confusion exists concerning the Model and serial number applicability of the AD. This amendment clarifies the applicability statement in the AD.

DATES:

Effective Date: November 24, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Schweizer Service Bulletin No. 85, dated June 1, 1989, applicable to this AD may be obtained from the Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may also be examined at the FAA, Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Al Maila, Aerospace Engineer, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION: AD 89–18–02, Amendment 39–6300 (54 FR 33875) applicable to all Schweizer (Grumman) G–164 series airplanes, was issued on August 8, 1989. The AD requires visual inspections of the forward and aft elevator push-rod assemblies for corrosion and cracks, and the repair or replacement of assemblies found defective. Since issuance of the AD, the FAA has determined that the applicability statement may be misunderstood. As a result, this action amends the AD by clarifying the applicability statement to clarify the

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airplane models and serial numbers covered, and to make other minor editorial changes.

Since the FAA has determined that the unsafe condition described in the unrevised AD is still likely to exist or develop in other airplanes of the same type design, and that clarification of the AD applicability is necessary, AD 89–18–02 is being amended to show positive applicability to all Schweizer G–164 series airplanes. Because an emergency condition still exists that requires the immediate adoption of this regulation, and because this amendment is only clarifying in nature, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 89–18–02, Amendment 39–6300, to read as follows:

Schweizer (Grumman): Applies to all G–164 Series (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To prevent the failure of the forward and aft elevator control system push-pull rods and end fittings, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, visually inspect the forward and aft elevator push-pull rod assemblies and end fittings for corrosion and cracks in accordance with the Procedure Section in Schweizer Service Bulletin No. 85, dated June 1, 1989.

(b) If corrosion or cracks are found, prior to further flight, replace or repair the defective assembly in accordance with the Procedures Section of Schweizer Service Bulletin No. 85, dated June 1, 1989, utilizing the replacement parts specified in Figure 1 or 2 therein, as applicable, and continue the repetitive inspections specified in paragraph (a) of this AD.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Note.—The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office. All persons affected by this directive, may obtain copies of the documents referred to herein upon request to the Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment amends AD 89–18–02, Amendment 39–6300.

Issued in Kansas City, Missouri, on October 11, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–25077 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AEA–81]

Proposed Revocation of Transition Area; Quarryville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revocation of the Quarryville, PA Transition Area is due to the cancellation of the Standard Instrument Approach Procedure (SIAP) for the Quarryville/Tanglewood Airport. As a result of the cancellation of the SIAP, the FAA no longer finds it necessary to retain the transition area established to contain the SIAP. This action will revoke that airspace needed to separate aircraft executing the SIAP from other aircraft during Instrument Meteorological Conditions.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Quarryville, PA Transition Area (54 FR 31702). The proposed action would revoke that airspace which was deemed necessary to contain aircraft executing the SIAP for the Quarryville/Tanglewood Airport. The cancellation of the SIAP for the Quarryville/Tanglewood Airport was the result of a previous study.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Quarryville, PA Transition Area. As a result of the cancellation of the SIAP for the Quarryville/Tanglewood Airport, this airspace is no longer required.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center (lat. 39°51'00" N. long. 76°12'55" W.) of Tanglewood Airport, Quarryville, PA, and within 4.5 miles each side of the Lancaster, PA, VORTAC 168° radial extending from the 6.5-mile radius area to the VORTAC.

Issued in Jamaica, New York, on September 25, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–25061 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AWP–18]

Amendment to San Jose, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the effective hours of the San Jose, California, control zone. The San Jose control zone is currently described as a full-time control zone. The control zone does not meet full-time control zone criteria; thus the need for an amendment to part-time status.

EFFECTIVE DATE: 0901 U.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jon L. Semanek, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On August 10, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the effective hours of the San Jose, CA, control zone (54 FR 32827). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the effective hours of the San Jose, CA, control zone. The San Jose control zone is currently described in FAA Handbook 7400.6E as a full-time control zone. The control zone does not meet full-time control zone criteria; thus, there is a need for an amendment to part-time status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

San Jose, CA [Revised]

Within a 5-mile radius of San Jose Municipal Airport (latitude 37°21'42" N/longitude 121°55'39" W), excluding theportion NW of a line from latitude 37°25'45" N/longitude 121°56'35" W; to latitude 37°19'30" N/longitude 122°00'10" W. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on October 6, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 89–25079 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 171

[T.D. 89–86]

Customs Regulations Amendments Concerning Seizure of Property for Possession of Controlled Substances; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: In T.D. 89–86 published on September 11, 1989 (54 FR 37600), 19 CFR parts 162 and 171 were amended to provide certain expedited procedures when property is seized due to violations involving the possession of personal use quantities of controlled

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substances. A typographical error appears in the document.

FOR FURTHER INFORMATION CONTACT: Harriett Blank (202) 566–8317.

§ 171.55 [Corrected]

In FR Doc. 89–21211, on page 37605, in the first column, in § 171.55(b), the word "of" in the second to last line is corrected to read "or".

Dated: October 18, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89–25050 Filed 10–24–89; 8:45 am]

BILLING CODE 4820–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300177A and 300178A; FRL 3661–3]

Chlordimeform; Revocation and Amendment of Tolerances and Food and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document (1) removes the tolerances listed in 40 CFR 180.285 for combined residues of the insecticide chlordimeform and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) from application of the insecticide as the free base or as the hydrochloride salt in or on various raw agricultural commodities; (2) amends the tolerances for residues in or on meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (3) removes the food additive tolerances listed in 40 CFR 185.750 and 186.750 for residues in dried prunes and in the animal feed dried apple pomace, respectively, resulting from carryover and concentration of residues in these processed foods and feeds when present as a result of application of the insecticide to the growing crops plums (fresh prunes) and apples. EPA is taking this action to remove tolerances, including food and feed additive tolerances, for residues of a pesticide for which the related registered food uses were voluntarily cancelled by the registrants 5 to 10 years ago, and to amend (reduce) certain other tolerances affected by these cancellations.

EFFECTIVE DATE: October 25, 1989.

ADDRESS: Written objections, identified by the document control number [OPP–300177A and 300178A], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Patricia Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule published in the **Federal Register** of September 19, 1988 (OPP–300178 at 53 FR 36426), which (1) proposed the removal of the tolerances for residues of chlordimeform in or on various raw agricultural commodities, and (2) proposed the amendment of the tolerances for residues of chlordimeform in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; all the affected tolerances are listed in 40 CFR 180.285.

EPA also issued a second proposed rule published in the same issue of the **Federal Register** (OPP–300177 at 53 FR 36427), which proposed the removal of the food additive tolerances for combined residues of the insecticide chlordimeform [*N*-(4-chloro-*o*-tolyl)-*N,N*-dimethylformamidine] and its metabolites containing the 4-chloro-*o*-toluidine moiety (calclated as the insecticide) in or on dried prunes (40 CFR 185.750) and in the animal feed dried apple pomace (40 CFR 186.750), resulting from carryover and concentration of residues in these processed foods and feeds when present as a result of application of the insecticide to the growing crops plums (fresh prunes) and apples. This final rule consolidates the two proposals into one final rule document.

No public comments on either proposal or requests for referral to an advisory committee on OPP–300178 were received in response to the notices of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the September 19, 1988 proposals and in this final rule, the Agency is hereby (1) removing the tolerances listed in 40 CFR 180.285 for combined residues of chlordimeform and its metabolites in or on the raw agricultural commodities apples, broccoli, brussels sprouts, cabbage, cauliflower, cherries, nectarines, peaches, pears, plums (fresh prunes), tomatoes, and walnuts; (2) reducing the tolerances listed in 40 CFR 180.285 for combined residues of chlordimeform and its metabolites in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (3) removing the food additive tolerances for the combined residues of chlordimeform in or on dried prunes listed in 40 CFR 185.750 and in the animal feed dried apple pomace listed in 40 CFR 186.750.

Any person adversely affected by this regulation removing or amending certain tolerances and food and feed additive regulations for chlordimeform may, within 30 days after the date of publication of the regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the removal and amendment of tolerances and food and feed additive regulations for this chemical. This analysis is available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Executive Order 12291

As explained in the proposals published September 19, 1988, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal and amendment of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the September 19, 1988 proposals.

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Food additives, Animal feeds, Reporting and recordkeeping requirements.

Dated: October 2, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR parts 180, 185, and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.285 to read as follows:

§ 180.285 Chlordimeform; tolerances for residues.

Tolerances are established for combined residues of the insecticide chlordimeform [*N*-(4-chloro-*o*-tolyl)-*N,N*-dimethyl-formamidine] and its metabolites containing the 4-chloro-*o*-toluidine moiety (calculated as the insecticide) from application of the insecticide as the free base or as the hydrochloride salt in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, mbyp	0.1
Cottonseed	5
Eggs	0.05
Goats, fat	0.1
Goats, meat	0.1
Goats, mbyp	0.1
Hogs, fat	0.1
Hogs, meat	0.1
Hogs, mbyp	0.1
Horses, fat	0.1
Horses, meat	0.1
Horses, mbyp	0.1
Milk	0.05
Poultry, fat	0.25
Poultry, meat	0.25
Poultry, mbyp	0.25
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, mbyp	0.1

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.750 [Removed]

b. By removing § 185.750 *Chlordimeform.*

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.750 to read as follows:

§ 186.750 Chlordimeform.

Tolerances are established for combined residues of the insecticide chlordimeform [*N*-(4-chloro-*o*-tolyl)-*N,N-dimethyl-formamidine] and its metabolites containing the 4-chloro-o-*toluidine moiety (calculated as the insecticide) in the following processed animal feeds, resulting from carryover and concentration after application of the pesticide to the growing crops:

Commodities	Parts per million
Cottonseed hulls	10

[FR Doc. 89–24648 Filed 10–24–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Temp. Reg. G–53]

Submission of Paid Freight Bills/Invoices, Commerical Bills of Lading, Government Transportation Requests, Passenger Coupons, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation, amendment.

SUMMARY: General Services Administration is correcting an error in the expiration date of this regulation which revises Section 101–41.807–4 of the Federal Property Management Regulations to include the submission of U.S. Government Transportation Requests and passenger coupons to the General Services Administration for audit. The expiration date in the **DATES** section of the preamble and in the text of the temporary regulation, published at 54 FR 15942, April 20, 1989, should have been April 20, 1990.

DATES: Effective date: April 20, 1989. Expiration date: April 20, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (commercial 202–786–3065) or (FTS 786–3065).

List of Subjects in 41 CFR Part 101–41

Accounting, Air Carriers, Claims, Freight, Freight forwarders, Maritime carriers, Passenger services, Railroads, Transportation.

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

In 41 CFR chapter 101, FPMR temporary Regulation G–53 in the appendix of Subchapter G is amended by revising the expiration date in paragraph 3 to read:

Federal Property Management Regulations, Temporary Regulation G–53

* * * * *

3. *Expiration date.* This regulation expires on April 20, 1990.

* * * * *

Dated: October 20, 1989

R. W. Piasecki,

Director, Office of Transportation Audits.

[FR Doc. 89–25101 Filed 10–24–89; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6853]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and

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administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5. U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard area
Regular Program Conversions:				
Region I				
Connecticut: Cheshire, town of, New Haven County	090074	Mar. 13, 1975, Emerg.; July 16, 1981, Reg.; Nov. 3, 1989, Susp.	11–3–89	Nov. 3, 1989.
Maine: Canton, town of, Oxford County	230091	July 3, 1975, Emerg.; Nov. 3 ,1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Region III				
Pennsylvania:				
Ashville, borough of, Cambria County	422266	July 25, 1975, Emerg.; May 1, 1985, Reg.; November 3, 1989, Susp.	11–3–89	Do.
Irvona, borough of, Clearfield County	420308	Dec. 6, 1976, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Port Matilda, borough of, Centre County	420268	Jan. 7, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Unionville, borough of, Centre County	420272	Nov. 11, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Washington, township of, Cambria County	421448	Jan. 27, 1977, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Virginia:				
Harrisonburg, city of, Independent City	510076	Dec. 2, 1974, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Urbanna, town of, Middlesex County	510292	May 21, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard area
Region IV				
Tennessee:				
Maury County, unincorporated areas	470123	Nov. 29, 1985, Emerg.; May 1, 1985, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Williamson County, unincorporated areas	470204	May 27, 1975, Emerg.; Apr. 1, 1981, Reg.; Nov. 3, 1989. Susp.	11–3–89	Do.
Region V				
Michiagn: Brooks, township of, Newaygo County	260467	Sept. 23, 1976, Emerg.; July 3, 1986, Reg., Nov. 3, 1989, Susp.	11–3–89	Do.
Region VI				
Texas: Poteet, city of, Atascosa County	480016	July 23, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989	11–3–89	Do.
Region X				
Oregon:				
Burns, city of, Harney County	410064	Apr. 7, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Hines, city of, Harney County	410085	Jan. 17, 1975, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.	11–3–89	Do.
Region I				
Maine:				
Jay, town of, Franklin County	230349	July 18, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Nov. 15, 1989.
Nobleboro, town of, Lincoln County	230219	May 13, 1976, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Region II				
New York:				
Amenia, town of, Dutchess County	361332	Feb. 4, 1976, Emerg.; Sept. 24, 1984, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Greenport, town of, Columbia County	361319	Aug. 29, 1975, Emerg.; June 5, 1986, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Region III				
Pennsylvania:				
Choconut, township of, Susquehanna County	422076	Jan. 26, 1976, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Conneaut, township of, Erie County	421361	July 9, 1979, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Lower Towanensing, township of, Carbon County	421455	July 29, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
New Ringgold, borough of, Schuylkill County	421996	Aug. 22, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989 Susp.	11–15–89	Do.
North Manheim, township of, Schuylkill County	422013	Sept. 29, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Virginia: Purcellville, town of, Loudoun County	510231	July 30, 1976, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
West Virginia: Grant County, unincorporated areas	540038	Oct. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Region IV				
Florida: Bradford County, Suwannee County	120015	May 23, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Mississippi: Columbus, city of, Lowndes County	280106	Mar. 3, 1972, Emerg.; July 13, 1976, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Region V				
Indiana: Carroll County, unincorporated areas	180019	Oct. 28, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Michigan: Manistee, township of, Manistee County	260132	Aug. 19, 1974, Emerg.; Nov. 15, 1989, Reg.; Nov 15, 1989, Susp.	11–15–89	Do.
Ohio:				
Allen County, unincorporated areas	390758	July 20, 1977, Emerg.; Nov., 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Butler, village of, Richland County	390605	June 24, 1976, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.
Sabina, village of, Clinton County	390627	Feb. 27, 1981, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.	11–15–89	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

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Issued: October 17, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-25107 Filed 10-24-89; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 54, No. 205
Wednesday, October 25, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1762

RIN 0572-AA20

Standard Forms of Telecommunications Contracts REA Form 525—Central Office Equipment Contract (Including Installation)

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR part 1762. The purpose of revising 7 CFR part 1762 is to announce a general revision of REA Contract Form 525. Central Office Equipment Contract (Including Installation) An advance Notice of Proposed Rulemaking was published in the **Federal Register** announcing that REA was proposing to revise REA Form 525. Central Office Equipment Contract (Including Installation) to update the terms and conditions to reflect the current technological and market environment. Public comments and suggestions were invited.

Comments and suggestions were received from four major manufacturers of central office equipment and most of the trade associations. Many useful comments and suggestions were received and many of them have been incorporated into the proposed revised Form 525 Contract.

The last revision to the Form 525 Contract was September 1966. Since that date, significant changes have been made in the telephone industry. The profound advancement in central office equipment technology has made possible many new services on a cost-effective basis. Divestiture and competition, legislation and regulation have brought about many changes in the conduct of telecommunications business. There is a need to revise the Form 525 Contract to incorporate these changes into the Central Office Equipment Contract. The main changes to the Contract proposed are new requirements (1) to provide for a complement of spare parts, (2) to provide a software license, (3) for patent, copyright, and trademark infringement, (4) for consequential damages, and (5) equal employment opportunities, and to revise and update provisions for (1) delivery and installation of equipment, (2) inspection and testing of the completed installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATES: Public comments must be received by REA no later than December 26, 1989.

ADDRESSES: Submit written comments to William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Copies of the document are available upon request from the above address. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dean A Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250 1500, telephone (202) 382-8671.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fali within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S C 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and recordkeeping provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572-0062.

Background

REA has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. The proposed revision to 7 CFR part 1762 is utilized to announce revisions of the Central Office Equipment Contract (Including Installation) REA Form 525. The 7 CFR part 1762 also provides information as to where copies of the contract may be obtained and the price per copy, where applicable. REA Form 525 is a labor and materials contract wherein the contractor furnishes all labor and materials required for the installation of telephone central office equipment. REA telephone borrowers are required to use the Form 525 Contract where major central office facilities are being procured and installed by the contract method. REA Form 525 has become outdated due to technological advancements and other market changes. Advanced technology and

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equipment concepts have introduced new legal issues that need to be addressed. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues that need to be addressed in updating this contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms, warranty coverage; use of information, consequential damages; delays in project; liquidated damages; bonding and insurance, independent contractor provisions; and support of discontinued products. All these proposed additions and changes need to be made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR part 1762 as follows:

PART 1762—[AMENDED]

1. The authority cited for part 1762 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1762.01 would be amended by revising the entry for REA Form 525 to read as follows:

§ 1762.01 List of Standard Forms of Telecommunications Contracts

REA form no.	Issue date	Title	Purpose	Source of copies
525	.....	Central office equipment contract (including installation).	Purchase and installation of central office switching equipment.	Supt. of Doc., Wash, DC 20402[a]

[a] This contract form is for sale by the Superintendent of Documents, Government Printing Office, Washington, DC 20402. REA Form 33, Order Blank for REA Contract Forms from the Government Printing Office should be used to order the publication. Follow the procedure under (1) to obtain copies of Form 33 from REA.

Dated: October 2, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-24965 Filed 10-24-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-10]

Petition for Rulemaking; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 25, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC 10), Petition Docket No. 25856, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on October 17, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25856.

Petitioner: National Avionics Society, Inc.

Regulations Affected: 14 CFR Parts 43, 65 and 147.

Description of Petition: To establish new ratings for the certification of avionics and instrument technicians and to provide for FAA-approved aviation technician school curriculums that would train candidates for those ratings. Petitioner's Reason for the Petition: At present most of the avionics and instrumentation systems are maintained by non-certificated personnel. The current FAA airplane and powerplant (A&P) certificates do not require certificate holders to have more than a precursory acquaintance with these systems, and few A&P mechanics are capable of performing even the most basic tests of these systems. The increasing sophistication of avionics systems in modern aircraft require adequately trained technicians to maintain the integrity of those systems to offer the highest degree of safety to aircraft and passengers in flight.

[FR Doc. 89-25085 Filed 10-24-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-162-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive inspections for disbonding and corrosion; eddy current and ultrasonic inspections of the fuselage longitudinal lap joints for cracks; and repair, if necessary. This proposal is prompted by full-scale fatigue testing which has identified certain structural components which are prone to fatigue cracks. This condition, if not corrected, could result in reduction of the structural integrity of these airplanes.

DATE: Comments must be received no later than November 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-162-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes.

Full-scale fatigue testing by the manufacturer has shown that fatigue cracks may develop in certain structural components of the longitudinal lap joints. Inspections of in-service airplanes have also revealed disbonding and corrosion on the bonded inner doublers of the longitudinal lap joints. This condition, if not corrected, could lead to reduced structural capability of these airplanes.

Airbus Industrie has issued Service Bulletin A300-53-211, Revision 1, dated April 10, 1989, which describes procedures for repetitive inspections for cracks of the fuselage longitudinal lap joints in sections 13 through 18, and repair, if necessary.

Airbus Industrie has also issued Service Bulletin A300-53-229, Revision 2, dated July 28, 1989, which describes procedures for inspection of the bonded inner doublers of the fuselage longitudinal lap joints, in sections 13 through 18, for disbonding and corrosion, and repair, if necessary.

The DGAC has classified both service bulletins as mandatory, and has issued Airworthiness Directive 89-061-092(B) addressing these subjects.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive eddy current and ultrasonic inspections of the fuselage longitudinal lap joints, between section 13 and 18, for cracks, disbonding, and corrosion, and repair, if necessary, in accordance with the service bulletins previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2,379 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,280,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300 series airplanes, Serial Number 001 through 156, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure structural integrity of the airplane, accomplish the following:

A. Inspect longitudinal lap joints for cracks as follows:

1. *Inspection of "special" areas,* as defined in paragraph 1.C(1) of Airbus Industrie Service Bulletin A300-53-211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of 24,000 landings, or within 10 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection in special areas of the longitudinal lap joints, in accordance with paragraph 2.B. of the service bulletin.

b. If no crack is found, repeat this inspection at intervals not to exceed 6,000 landings.

c. If a crack is detected, repair prior to further flight, in accordance with the service bulletin.

2. *Inspection of "standard" areas,* as defined in paragrpah 1.C(2) of Airbus Industrie Service Bulletin A300-53-211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of 32,000 landings, or within 10 days after the effective date of the AD, whichever occurs later, perform an eddy current inspection of the standard areas of the longitudinal lap joints

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in accordance with paragraph 2.B. of the service bulletin.

b. If no crack is found, repeat the inspection at intervals not to exceed:

(1) 6,000 landings for longitudinal lap joints *with* bonded doublers;

(2) 8,000 landings for longitudinal lap joints *without* bonded doublers.

c. If a crack is found, repair prior to further flight, in accordance with the service bulletin.

3. *Inspection of modified or repaired areas* as defined in Tables 1 and 2 of Airbus Industrie Service Bulletin A300–53–211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of the threshold values (landings since first flight) identified in Tables 1 or 2 of the service bulletin, or within 60 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the longitudinal lap joints in modified or repaired areas, in accordance with paragraph 2.B. of the service bulletin.

b. If no crack is found, repeat the inspections at intervals not to exceed 6,000 landings for each repair solution identified in Tables 1 and 2 of the service bulletin.

c. If a crack is found, repair prior to further flight, in accordance with the service bulletin.

B. Prior to the accumulation of 24,000 landings or 15 years since new, whichever occurs first, or within 60 days after the effective date of this AD, whichever occurs later inspect fuselage bonded inner doublers of longitudinal lap joints in Sections 13 through 18 (except sections 16 and 17 at Stringer 31 left-hand and and right-hand) for disbonding and corrosion, in accordance with Airbus Industrie Service Bulletin A300–53–229, Revision 2, dated July 28, 1989.

1. If no disbonding or corrosion if found in Sections 13 and 14, repeat the inspection of those areas at intervals not to exceed 12,000 landings or 8 years since last inspection, whichever occurs first in accordance with paragraph 1.B. of the service bulletin.

3. If disbonding is detected, repair prior to further flight, in accordance with the service bulletin.

C. Prior to the accumulation of 24,000 landings or 12 years since new, whichever occurs first, or within 60 days after the effective date of this AD, whichever occurs later, inspect fuselage bonded inner doublers of longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and corrosion, in accordance with Airbus Industrie Service Bulletin A300–53–229, Revision 2, dated July 28, 1989. Airplanes older than 12 years must be inspected within 12 months after the effective date of this AD.

1. If no disbonding or corrosion is found, no further action is required.

2. If disbonding is detected, repair prior to further flight in accordance with the service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through a FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These docments may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington,

Issued in Seattle, Washington, on September 25, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-25083 Filed 10-24-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89–NM–203–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive visual or high frequency eddy current inspections for cracks in the foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, and repair, if necessary. This proposal is prompted by fatigue testing by the manufacturer, which revealed cracks in the foot run-outs of several frames. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

DATES: Comments must be received no later than December 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–203–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–203–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A300 series airplanes. The manufacturer reported that, during full-scale fatigue tests, cracks developed in the foot run-outs of several frames between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27. These cracks originated from the radius and fitting attachment points. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

Airbus Industrie has issued Service Bulletin A300–53–238, dated April 10, 1989, which describes procedures for repetitive visual or high frequency eddy current inspection of the frame foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89–109–097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual or high frequency eddy current inspection for cracks in the frame foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, on the left- and right-hand sides, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–238, dated April 10, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Prior to the accumulation of 18,900 landings or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either a visual or high frequency eddy current inspection of the frame foot run-outs between Frame 41 and Frame 54, and between Stringer 26 and Stringer 27, in accordance with Airbus Industrie Service Bulletin A300–53–238, dated April 10, 1989.

1. If the immediately preceding inspection was performed visually, the next inspection must be performed within 5,800 landings.

2. If the immediately preceding inspection was performed using a high frequency eddy current technique, the next inspection must be performed wthin 9,400 landings.

B. If cracks are found, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–238, dated April 10, 1989. Repeat inspections at intervals indicated in paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 12, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–25084 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ACE–32]

Proposed Alteration of VOR Federal Airway V–506; Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke a segment of VOR Federal Airway V–506 segment between Vichy, MO, and Springfield, MO. An FAA traffic survey for that area has indicated negligible use for that segment of V–506. In our effort to reduce chart clutter, we propose that this airway segment be revoked.

DATES: Comments must be received on or before December 4, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE–500, Docket No. 89–ACE–32, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ACE–32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a segment of VOR Federal Airway V–506 located between Vichy, MO, and Springfield, MO. The FAA has determined that this segment of V–506 is virtually never used or requested and is therefore a candidate for revocation. This action would reduce chart clutter. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–506 [Amended]

By removing the words "Springfield; INT Springfield 043° and Vichy, MO, 254° radials; Vichy." and substituting the words "to Springfield."

Issued in Washington, DC, on October 16, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–25086 Filed 10–24–89; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 417

Trade Regulation Rule; Failure To Disclose The Lethal Effects Of Inhaling Quick-Freeze Aerosol Spray Products Used For Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Regulatory Flexibility Review, request for comments.

SUMMARY: The Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act and publication of a Plan for Periodic Review of Commission Rules, 46 FR 35118 (1981), is soliciting comments and data on whether the Rule on failure to disclose the lethal effects of inhaling quick-freeze aerosol spray products used for frosting cocktail glasses has had a significant economic impact on a substantial number of small entities and if it has, whether the Rule should be amended to minimize such impact.

DATE: All comments and data should be received by the Commission no later than November 24, 1989.

ADDRESS: Comments should be sent to Secretary, Federal Trade Commission, Washington, DC 20580. Comments should be identified as "RFA—Quick Freeze Aerosol Spray Rule" comments.

FOR FURTHER INFORMATION CONTACT: Robert Eliot Easton, Sr., Esq., Special Assistant—Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 USC 601 et seq. (RFA) requires that the FTC conduct periodic review of its Rules which have or will have a significant economic impact upon a substantial number of small entities.

The Rule on failure to disclose the lethal effects of inhaling quick-freeze aerosol spray products used for frosting cocktail glasses makes it an unfair or deceptive act or practice to fail to provide a clear and conspicuous warning on quick freeze aerosol spray products containing Fluorocarbon 12 (dichlorodifluoromethane) designed for the frosting of beverage glasses that the contents should not be inhaled because inhalation could cause death or injury. The statement of basis and purpose for the rule states that in several instances direct inhalation of quick freeze aerosol spray, albeit intentional, had resulted in death. Because of this the Commission concluded that it was in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

The Rule was promulgated February 20, 1969, 34 FR 2417 (1969).

This Rule is being reviewed by the FTC in accordance with the periodic review requirement of the RFA. Such a review is conducted to determine whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

Therefore, the FTC poses the following questions for public comment. The Commission requests that any factual data (e.g., economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule?

(3)(a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens ones that small entities would also experience under standard and prudent business practice?

(4) What changes, if any, could be made to the Rule to minimize the economic impact on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other Federal and with state and local governmental rules?

(6) Have technology, economic conditions, or other factors changed in the markets affected by the Rule since 1969 and, if so, what effect do these changes have on the Rule or those covered by it?

List of Subjects in 16 CFR Part 417

Quick-freeze aerosol spray, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–25127 Filed 9–24–89; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 432

Trade Regulation Rule; Power Output Claims For Amplifiers Utilized In Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Regulatory Flexibility Review, request for comments.

SUMMARY: The Federal Trade Commission (FTC), in accordance with the Regulatory Flexibility Act and its Plan for Periodic Review of Commission Rules, 46 FR 35118 (1981), is soliciting comments and data on whether the Rule on power output claims for amplifiers utilized in home entertainment products has had a significant economic impact on a substantial number of small entities and if it has, whether the Rule should be amended to minimize such impact.

DATE: All comments and data should be received by the Commission no later than November 24, 1989.

ADDRESSES: Comments should be sent to Secretary, Federal Trade Commission, Washington, DC 20580. Comments should be identified as "RFA—Amplifer Rule" comments.

FOR FURTHER INFORMATION CONTACT: Robert Eliot Easton, Sr., Esq., Special Assistant—Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3029.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (RFA) requires that the FTC conduct periodic review of its Rules that have or will have a significant economic impact upon a substantial number of small entities.

The Rule on power output claims for amplifiers utilized in home entertainment products makes it an unfair method of competition and an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purpoes, such as radios, record and tape players, audio amplifiers, etc., to fail to make certain performance information disclosures when they make direct or indirect representations of power output, power band or frequency or distortion characteristics.

The required disclosures relate to minimum since wave continuous average power output, the load impedance in Ohms, rated power band or frequency response and rated percentage of maximum total harmonic distortion and must be made clearly, conspicuously and more prominently than any other representation or disclosures. The Rule also sets out standard test conditions for performing the tests necessary to make the required performance dislcosures. Further, the Rule prohibits representations of performance characteristics if they are not obtainable when the equipment is operated by the consumer in the usual and ordinary manner without the use of extraneous aids, such as coolings fans.

The Rule was promulgated May 3, 1974, 39 FR 15387 (1974) to assist consumers in purchasing power amplification equipment by standardizing the quantification and presentation of the various performance characteristics of the equipment. Prior to the Rule, sellers were making power, distortion and other performance claims based on many different technical test procedures. Some sellers used no recognized test procedures. The Rule establishes uniform test standards and disclosures so that performance claims permit more meaningful comparisions of peformance attributes.

This Rule is being reviewed by the FTC in accordance with the periodic review requirement of the RFA. Such a review is conducted to determine whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

Therefore, the FTC poses the following questions for public comment. The Commission requests that any factual data (e.g., economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule?

(3)(a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens ones that small entities would also experience under standard and prudent business practice?

(4) What changes, if any, could be made to the Rule to minimize the economic impact on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other Federal and with state and local governmental rules?

(6) Have technology, economic conditions, or other factors changed in the markets affected by the Rule since 1974 and, if so, what effect do these changes have on the Rule or those covered by it?

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List of Subjects in 16 CFR Part 432

Amplifier rule, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89-25129 Filed 10-24-89; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Prescriptions; Extension of Comment Period

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking: extension of comment period.

SUMMARY: This will extend the comment period for the notice of proposed rulemaking published on September 5, 1989, 54 FR 36815, regarding an amendment to the requirement for the keeping of prescription information on original dispensing and refills by automated data processing systems. The comment period will now extend to November 24, 1989.

DATE: Comments will be accepted until November 24, 1989.

ADDRESSES: Written comments should be submitted in quadruplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307-7297.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 5, 1989 (54 FR 36815), a notice of proposed rulemaking was published to amend certain provisions of the regulations relating to prescription information on original dispensing and refills by automated data processng system. The proposal was designed to clarify the requirements to keep automated prescription data for controlled substances and to simplify the requirement to maintain these records.

It is requested the comment period be extended to allow interested parties who are affected by the proposed rulemaking, to comment on the proposal. The Drug Enforcement Administraton has determined that an extension of the comment period would be in the public interest. Accordingly the comment period is hereby extended to November 24, 1989.

Dated: October 17, 1989.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 89-25053 Filed 10-24-89; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AD96

Independent Medical Opinions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to implement recent legislation which expanded the authority for requesting independent medical opinions in certain pending claims. Authority to request such opinions had previously been limited to the Board of Veterans Appeals (BVA). The effect of this amendment would be to establish a procedure for obtaining an independent medical opinion if warranted in connection with a claim pending at the regional office level.

DATES: Comments must be received on or before November 24, 1989. Comments will be available for public inspection until December 4, 1989. This change is proposed to be effective thirty days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 24, 1989.

FOR FURTHER INFORMATION CONTACT: Donald England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: Until recently, VA has had the authority to request advisory medical opinions from outside of the Department, but requests could only be made by BVA in conjunction with pending appeals. The Veterans' Judicial Review Act, Public Law 100-687, § 103(a), 102 Stat. 4107 (1988), expanded the authority to request outside medical opinions to include cases in which a claim is pending at the regional office level. We are proposing to establish a procedure for obtaining independent medical opinions when warranted by the medical complexity or controversy associated with a pending claim.

The recent legislation authorizes the use of outside medical opinions not on a regular basis, but only if warranted in the judgment of the Secretary of Veterans Affairs by the medical complexity or controversy associated with the claim. We are proposing that all requests, whether they are initiated by the office having jurisdiction over the claim, by the claimant, or by the claimant's duly appointed representative, be submitted through the Adjudication Officer of the office having jurisdiction over the claim. Under the proposed amendment, each request must be in writing and must clearly set forth the medical issue which justifies soliciting an advisory opinion from outside the Department. The Adjudication Officer would have the authority to decide that an independent medical opinion is not warranted, but any request which in the judgment of the Adjudication Officer merits consideration would have to be referred to the Compensation and Pension Service in VA Central Office for approval.

The final determination as to whether an independent medical opinion is warranted would be the responsibility of the Compensation and Pension Service and would be considered part of VA's process of adjudicating the pending claim. For that reason, a determination that an independent medical opinion is not warranted could only be contested as part of an appeal on the merits of the decision rendered on the claim by the agency of original jurisdiction.

The BVA currently maintains a list of medical institutions which have agreed to provide advisory opinions upon request. Under the proposed amendment, the Compensation and Pension Service would solicit opinions using the same list of institutions and would coordinate requests with the BVA in order to ensure that requests are distributed in such a manner that no medical institution is overburdened. The Compensation and Pension Service would also notify the claimant when an independent medical opinion had been requested with regard to his or her claim and would furnish the claimant with a copy of the opinion when it is received.

We propose to implement this change in the law by adding new § 3.328 to Title 38, Code of Federal Regulations.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: September 28, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended by adding § 3.328 to read as follows:

§ 3.328 Independent medical opinions.

(a) *General.* When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are not employees of VA. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) *Requests.* A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her duly appointed representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Adjudication Officer of the office having jurisdiction over the claim, and those requests which in the judgment of the Adjudication Officer merit consideration shall be referred to the Compensation and Pension Service for approval.

(c) *Approval.* Approval shall be granted only upon a determination by the Compensation and Pension Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation and Pension Service shall obtain the opinion. A determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) *Notification.* The Compensation and Pension Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received.

(Authority: 38 U.S.C. 210(c) and 3009)

[FR Doc. 89-25098 Filed 10-24-89; 8:45 am]
BILLING CODE 8320-01-M

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Notices

Federal Register
Vol. 54, No. 205
Wednesday, October 25, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Office of the Secretary

Performance Review Board; Listing

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Office of the Secretary Senior Executive Service (SES) Performance Appraisal System:

Hugh L. Brennan
Guy W. Chamberlin, Jr.
David L. Edgell
David Farber
Rafael L. Franchi
Mary Ann T. Knauss Fish
James M. LeMunyon
Michael A. Levitt
Otto J. Wolff.

Edward A. McCaw,
Executive Secretary, Office of the Secretary, Performance Review Board.

[FR Doc. 89-25094 Filed 10-24-89; 8:45 am]
BILLING CODE 3510-BS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Holly Kuga or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786/2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1), (a)(2), (a)(3), and 355.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than September 30, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada:	
Replacement Parts for Self-Propelled *Bituminous Paving Equipment*, A-122-057	1/1/89-8/31/89
Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc.	
Hong Kong:	
Photo Albums and Filler Pages, A-582-501	12/1/87-11/30/88
Far East Metal & Plastic	
General Trading	
Graphics International	
Great China Industrial	
Hang Fat	
Hip Sing Leather Products	
Pavri Bros.	
Perfect Industrial	
Sincere	
Tai Shun Plastic	
Unique Stationary	
Wing Shing	
Wiseman Plastic Products	
Samford Enterprises	
Korea:	
Photo Albums and Filler Pages, A-580-501	12/1/87-11/30/88
Korea Transportation	
FRC:	
Griege Polyester/Cotton Printcloth, A-570-101	9/1/88-8/31/89
Chinatex	
U.K.:	
Certain Forged Steel Crankshafts, A-412-602	9/1/88-8/31/89
United Engineering & Forging	

Countervailing duty proceedings	Period to be reviewed
Argentina:	
Pipe and Tube, C-357-801	7/14/88-12/31/89
Mexico:	
Portland Hydraulic Cement Clinker, C-201-013	1/1/88-12/31/88
New Zealand:	
Lamb Meat, C-614-503	4/1/88-3/31/89

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(c) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 353.22(c) and 19 CFR 355.22(c)).

Dated: October 17, 1989.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 89-25047 Filed 10-24-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-307-801]

Final Determination of Sales at Less Than Fair Value; Aluminum Sulfate from Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that aluminum sulfate from Venezuela is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of aluminum sulfate from Venezuela as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of this determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Kimberly Hardin, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1756, 377-8371, or 377-3965, respectively.

SUPPLEMENTAL INFORMATION:

Final Determination

We have determined that aluminum sulfate from Venezuela is being, or is likely to be, sold to the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On June 13, 1989, after responding to Section A of the Department's questionnaire, Sulfatos de Orinoco, C.A., (SULFORCA) informed the Department that it would not respond to the remaining portions of the sales questionnaire nor to any cost questionnaire, if issued. Given SULFORCA's failure to respond to our questionnaire, we issued an expedited and affirmative preliminary determination on the basis of best information available (BIA) on August 4, 1989 (54 FR 33254, August 14, 1989).

Interested parties submitted case briefs on September 14 and 15, and rebuttal briefs on September 20, 1989. A public hearing was held on October 6, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date will be classified solely according to the appropriate HTS item number. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive of the scope of our investigation.

The product covered by this investigation is aluminum sulfate from Venezuela, liquid or dry, currently provided for under HTS item number 2833.22.00.00.

Period of Investigation

The period of investigation (POI) is August 1, 1988 through March 31, 1989.

Fair Value Comparisons

To determine whether sales of aluminum sulfate from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used BIA, as required by section 776(c) of the Act, for the reasons stated in the "Case History" section of this notice.

United States Price

As BIA, we used petitioner's estimate of U.S. price, as provided in the petition, which is based on a f.o.b. price per ton of aluminum sulfate imported from Venezuela.

Foreign Market Value

As BIA, we used petitioner's estimate of foreign market value (FMV) contained in its May 31, 1989, amendment to the petition. This estimate, based on an ex-factory price submitted in the public version of SULFORCA's May 25, 1989, Section A response, was reported to be the price SULFORCA charged its largest home market customer. We converted SULFORCA's home market price to U.S. dollars based on the 14.5 Bolivares (Bs.)/$1 U.S. exchange rate. *See* Comment and DOC Position.

In our preliminary determination, we stated that petitioner's cost allegation would be considered for the final determination. We have now evaluated the allegation and have determined that, based on home market sales prices submitted in petitioner's amendment to the petition (converted at the 14.5 Bs./$1 U.S. exchange rate), the allegation does not demonstrate that home market prices were below the cost of production. Accordingly, a cost of production investigation was not initiated.

Verification

Because SULFORCA did not furnish a complete response to our questionnaire, we did not conduct verification.

Interested Party Comment

Respondent contends that in determining BIA, the Department should calculate the dumping margin using the free market exchange rate of 39.5 Bs./$1 U.S. because (1) it used only the free-market rate for importation of goods during the POI and (2) it converted the dollars it earned for sales to Puerto Rico at the free-market rate.

Petitioner states that the Department should use the official exchange rate of 14.5 Bs./$1 U.S. to convert home market sales to dollars. Petitioners asserts that (1) SULFORCA obtained its imports of production equipment at this rate and (2) that SULFORCA's aluminum hydrate and sulfuric acid suppliers, both of which are government owned, imported at 14.5 Bs./$1 U.S. Petitioner also says that reports from several sources indicate tha the 14.5 Bs./$1 U.S. exchange rate had been widely used within Venezuela and that when, in March, 1989, the 39.5 Bs./$1 U.S. "free market" rate became standard, business costs and prices rose sharply.

DOC Position

We have converted the home market price to U.S. dollars using the 14.5 Bs./$1 U.S. exchange rate. This was the rate in effect in Venezuela during the POI for converting dollar-denominated export earnings. According to public information in the countervailing duty (CVD) record, and included in our investigation, in November 1987 the exchange rate to be used for all imports and exports was officially changed, by Venezuelan Law, to Bs. 14.50 Bs./$1 U.S. In October 1988, the government set up a program whereby exporters could exchange export earnings at 39.25 Bs./$1 U.S., if they waived benefits under the export bond program. However, public information in both investigations indicates that exporters were not able to take advantage of the program. There is no evidence on the record indicating that SULFORCA could have converted foreign exchange earnings during the POI at the exchange rate of 39.25 Bs./$1 U.S. Not until March 1989, pursuant to *Decree 76 and 77 Exchange Agreement No. 1 and Resolutions 80-03-01 and 89-03-02*, did the Government permit unrestricted currency conversions at the free-market rate.

Therefore, as BIA, given that SULFORCA has not responded to our questionnaire, thereby denying the Department the opportunity to verify the accuracy of SULFORCA's statements and submissions, we consider that 14.5 Bs./$1 U.S. was the appropriate exchange rate in effect for SULFORCA during the POI.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of aluminum sulfate from Venezuela, as defined in the "Scope of Investigation" section of

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this notice, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The margin percentages are as follows:

Manufacturer/Producer/Exporter	Margin Percentage
Sulfatos Del Orinoco, C.A. (SULFORCA)	259.17
All Others	259.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigation, Import Administration. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all security posted as a result of the suspension of liquidation will be refunded or canceled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs Officers to assess an antidumping duty on aluminum sulfate, liquid or dry, from Venezuela entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: October 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-25144 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-302]

Final Affirmative Countervailing Duty Determination; Aluminum Sulfate From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Venezuela of aluminum sulfate, as described in the "Scope of Investigation" section of this notice. The estimated net subsidies are specified in the "Suspension of Liquidation" section of this notice. We are directing the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela as specified in the "Suspension of Liquidation" section of this notice.

We have notified the United States International Trade Commission (ITC) of our determination. If the ITC determines that imports of aluminum sulfate materially injure, or threaten material injury to, a U.S. industry, we will issue a countervailing duty order directing the U.S. Customs Service to continue suspension of liquidation of all entries of aluminum sulfate from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of our order and to require a cash deposit on entries of aluminum sulfate in an amount equal to the appropriate estimated net subsidy.

EFFECTIVE DATE: October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Carole A. Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-3217.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Venezuela of aluminum sulfate under the preferential pricing of aluminum hydrate program.

Case History

Since publication of the "Preliminary Negative Countervailing Duty Determination: Aluminum Sulfate from Venezuela" (54 FR 27195, June 28, 1989), the following events have occurred. On June 30, 1989, we presented a supplemental/deficiency questionnaire to the Government of Venezuela. On July 14, 1989, we received a response from Sulfatos del Orinoco, C.A. (SULFORCA). On July 17, 1989, we received a partial response from the Government of Venezuela. On July 21, 1989, we received a response from the Government of Venezuela concerning SULFORCA's raw material suppliers.

On July 20, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. Pursuant to section 705(a)(1) of the Act, we extended the final determination date in this investigation to no later than October 18, 1989 (54 FR 33254, August 14, 1989).

On August 7, 1989, we presented an additional supplemental/deficiency questionnaire to the Government of Venezuela. On August 21, 1989, we received responses from the Government of Venezuela and SULFORCA. This August 21, 1989 submission included cost of production information for aluminum hydrate requested in our June 30, 1989 supplemental/deficiency questionnaire. On August 31, 1989, we returned as untimely this cost of production information pursuant to §§ 355.2(g), 355.31 (a)(3) and (b)(2) of the new countervailing duty regulations (published on December 27, 1988 as 53 FR 52306 to be codified at 19 CFR 355.2(g), 355.31 (a)(3) and (b)(2). We conducted verification of the questionnaire responses of the Government of Venezuela and SULFORCA in Venezuela from August 28 to Setpember 12, 1989.

Petitioner and SULFORCA requested a public hearing in this case on July 7, 1989 and July 21, 1989, respectively, which was held on October 6, 1989. On September 29, October 2, and October 4, 1989, we received case briefs and rebuttal briefs filed on behalf of petitioner and SULFORCA.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The product covered by this investigation is aluminum sulfate from Venezuela, which is used in water purification, in waste waster treatment, and for other industrial applications. Prior to January 1, 1989, such merchandise was classifiable under item 417.1600 of the "Tariff Schedules of the United States Annonated." This merchandise is currently classifiable under HTS item 2833.22.00.

Analysis of Programs

For purposes of this investigation, the period for which we are measuring subsidies ("the review period") is calendar year 1988. When complete data for the calendar year were not available, we used company fiscal year data as indicated. We have based our determination on our analysis of the petition, the responses to our questionnairies, verification, and written comments filed by petitioner and SULFORCA.

At verification, we found that another producer of aluminum sulfate in Venezuela exported to the United States during the review period. This producer, identified as Ferroaluminio, C.A. (FERRALCA) by the Government of Venezuela in its July 17, 1989 response, failed to respond to our requests for information. As FERRALCA did not respond to any of our questionnaires, we were unable to determine whether it used any of the programs included in this investigation. Therefore, we have determined, in accordance with section 776(c) of the Act, that the use of the best information available is appropriate. Section 776(c) requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner, or in the form required, or otherwise significantly impedes an investigation." For the purposes of this investigation, we have assigned FERRALCA the country-wide rate calculated in the "Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Redraw Rod from Venezuela" (53 FR 24763, June 30, 1988) (Redraw Rod) as the best information available. We have determined that the country-wide rate calculated for the purposes of Redraw Rod is the best information available as it is the most recently completed Venezuelan countervailing duty investigation.

I. Program Determined to Confer a Subsidy

We determine that subsidies are being provided to manufacturers, producers, or exporters in Venezuela of aluminum sulfate under the following program:

Preferential Pricing of Aluminum Hydrate

Petitioner alleged that a government-owned firm, Interamerican de Alumina, C.A. (INTERALUMINA), is providing aluminum hydrate to SULFORCA at a preferential rate. We have learned the following, based on the responses and verification.

INTERALUMINA is an integrated aluminum reserve owned by the Government of Venezuela through the Corporacion Venezolana de Guayana (CVG) and the Venezuelan Investment Fund (FIV). INTERALUMINA's principal product is alumina. Aluminum hydrate is extracted at the filtration stage in the production of alumina. Past the filtration stage, further processing in the form of calcination takes place to produce alumina.

The extracted aluminum hydrate is sold to two customers in Venezuela, SULFORCA and FERRALCA. These two purchasers are the only producers of aluminum sulfate in Venezuela. The price charged these two customers differ. FERRALCA pays the same price INTERALUMINA charges to customers purchasing small quantities of alumina. The price INTERALUMINA charges for alumina generally is set by reference to INTERALUMINA's cost of producing alumina plus related costs identified in its financial statements. FERRALCA purchases aluminum hydrate pursuant to purchase orders which set the price and total quantity.

The price paid by SULFORCA for aluminum hydrate was established in a long-term contract entered into between INTERALUMINA and SULFORCA in August 1988, and is lower than the price paid by FERRALCA. INTERALUMINA officials' explanation for SULFORCA's lower price was that the price reflects (1) the expectation that SULFORCA will purchase larger quantities of aluminum hydrate than FERRALCA, and (2) SULFORCA's status as a new company in a developing industry.

In analyzing whether the government's provision of aluminum hydrate constitutes a countervailable benefit, we must first determine whether it is provided to a "specific enterprise or industry, or group of enterprises or industries," as required by section 771(5)(ii) of the Act. Because the government, through INTERALUMINA, provides aluminum hydrate at a particular price only to one company, SULFORCA, we determine that this government action is directed as a "specific enterprise" within the meaning of the Act.

Having determined that the provision of the price for aluminum hydrate is specific to SULFORCA, the next issue we must address is whether that price is preferential. Pursuant to section 771(5)(A)(ii)(II) of the Act, the Department determines whether the government provision of a good or service confers a countervailable benefit by comparing the government price under scrutiny to a benchmark price. That benchmark price will normally be a non-specific price that the government charges to other users of the good in the same political jurisdiction. For the purposes of this investigation, we have determined that the price INTERALUMINA charged FERRALCA for its purchase of aluminum hydrate is the appropriate benchmark price.

In determining the appropriate benchmark price, we considered our application of this provision of the Act in past determinations. for example, in "Carbon Black from Mexico; Preliminary Results of Countervailing Duty Administrative Review" (51 FR 13269, April 18, 1986), (Carbon Black), the two purchasers of the government provided input paid the same price for the input. Therefore, it was necessary for the Department to go beyond its traditional measure of preference, *i.e.*, whether the government charges different prices to different users within the jurisdiction, and to examine the alternative measures of preference in the "Preferentiality Appendix," which was attached to Carbon Black.

In this case, however, the two purchasers of aluminum hydrate are paying diferent prices. After comparing the quantities and terms of SULFORCA's contract to the quantities and terms of FERRALCA's purchase orders, we determined that these did not provide a basis for justifying the price difference involved. Also, according the INTERALUMINA officials, SULFORCA's status as a new firm in a developing industry was taken into account in setting its price.

Consistent with our traditional measure of preferentiality, we have determined that the price paid by FERRALCA for aluminum hydrate is the

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proper benchmark for determining whether SULFORCA is receiving this input at preferential rates. Regardless of whether the price INTERALUMINA charged FERRALCA is specific, we have carefully examined the price and believe that it provides the best measure of preference in this situation.

First, as noted above, FERRALCA is charged the same price that small quantity purchasers pay for alumina purchased from INTERALUMINA. This is despite the fact that further processing occurs in the production of alumina. secondly, the alumina price and, hence, the price paid by FERRALCA for aluminum hydrate, is set on the basis of INTERALUMINA's production and financial costs. Therefore, we have no reason to believe that the price aluminum hydrate charged to FERRALCA is preferential.

We recognize the potential difficulties in using the price charged to one purchase as the measure of preference implicit in the price charged to another purchaser. For example, one purchaser might be charged only a very slight premium so that the lower price would not appear to confer a benefit on the company paying that lower price. However, for the reasons described above we are satisfied in this case that the price charged to FERRALCA is not preferential and, therefore, can serve as a benchmark for determining whether aluminum hydrate has been provided to SULFORCA on preferential terms.

Absent complete data for the review period, calendar year 1988, we based our calcuation on SULFORCA's fiscal year data. To calculate a benefit to SULFORCA, we multiplied the resultant price differential by the total amount of aluminum hydrate purchased during the fiscal year. We then divided the resultant figure by SULFORCA's total domestic and export sales figure as reported in its financial statements. On this basis, we calculated an estimated net subsidy of 19.03 percent *ad valorem* for SULFORCA.

II. Programs Determined Not to Confer Subsidies

We determinme that subsidies are not being provided to manufacturers, producers, or exporters in Venezuela of aluminum sulfate under the following programs:

A. Preferential Pricing of Sulfuric Acid

Sulfric acid is one of the primary inputs in the aluminum sulfate production process. Petroquimica de Venezuela, S.A. (PEQUIVEN), a state-owned company, is the only producer of sulfuric acid in Venezuela. PEQUIVEN supplies sulfuric acid to companies in a large number and broad range of industries, including the aluminum sulfate industry.

At verification, we established that all customers paid the same price for sulfuric acid purchased from PEQUIVEN, including companies producing aluminum sulfate. Because the slufuric acid PEQUIVEN produces, and the price it changes, is provided to a wide range of industries, we detemine that this program is not countervailable.

B. Preferential Pricing of Electricty

C.V.G. Electrification del Caroni, C.A. (EDELCA) is a state-owned hydroelectric power company. We verified that EDELCA uses a primary rate schedule to determine that rate it charges to all small and medium size companies with their own transformers, such as SULFORCA.

At verification, we established that the rates charged to SULFORCA during the review period were consistent with the rates charged to other small and medium size companies. Because the electricity EDELCA supplies, and the rate it charges, is provided to a large number and broad range of industries, we determine that this program is not countervailable.

III. Programs Determined Not to Be Used

Based or verified information, we determine that manufacturers, producers, or exporters in Venezuela of aluminum suflate did not apply for, claim, or receive benefits during the review period for exports of aluminum sulfate to the United States under the program listed below. These programs were described in the preliminary determination in this investigation unless otherwise noted.

A. Multiple Exchange Rate System

From January through October 1988, there was a unified rate of 14.50 bolivares [(Bs.), the Venezuelan currency] to the dollar for purchasing imports, exchanging export earnings, and the repayment of foreign debt obligations. On October 19, 1988, Decree 2484 allowed exporters who waived their right to use the export bond program, to purchase imports at the rate of 14.50 Bs. to the dollar and exchange export earnings at the free market rate. Decree 2484 also permitted the repayment of foreign debt obligations to remain at the fixed rate for any company incorporated before 1983. In March 1989, Decree 76 eliminated the multiple exchange rate system established by Decree 2484 and the fixed exchange rate for purchasing imports and exchanging export earnings. Pursuant to this decree, all subsequent foreign exchange transactions would be at the free market rate.

At verification, we established that SULFORCA did not apply for the export bond program and, therefore, did not waive the right to the export bond program in order to exchange export earnings at the free market rate. We verified that SULFORCA did not purchase imports, exchange export earnings, or repay foreign debt obligations at the fixed rate from October 1988 through December 1988. We also established that SULFORCA did not exchange any export earnings until May 1989, when the free market rate was the only available rate in Venezuela. Based on the above, we determine that SULFORCA did not use the multiple exchange rate system during the review period.

B. Export Bond Program

C. Short-term FINEXOP Financing

D. Other FINEXPO Programs

E. Preferential Tax Incentives Under Decrees 1775 and 1776

F. Industrial Financing Co. of Venezuela Loans (FIVA)

G. Government Provision of Loans and Loan Guarantees

1. Central Bank of Venezuela
2. Industrial Bank of Venezuela
3. Venezuelan Investment Fund

IV. Program Determined Not to Exist

Based on verified information, we determine that a sales tax exemption for manufacturers, producers, or exporters of aluminum sulfate from Venezuela does not exist.

Interested Party Comments

All written comments submitted by the interested parties in this investigation, which have not previously been addressed in this notice, are addressed below.

Comment 1: Petitioner claims that SULFORCA's ability to convert its exhange rate earnings at the free markets rate during a period in which major elements of its costs were determined by the official rate constitutes an export subsidy equal to the differential between the two exchange rates. Petitioner aruges that the Government of Venezuela gave SULFORCA access to the free market exchange rate to convert export earnings even though its cost structure, including purchases of basic raw materials and production equipment, was built on the official 14.50 Bs. to the dollar exchange rate. Petitioner further contends that SULFORCA was able to lower its costs because a large portion of its depreciation costs during the review period was based upon the official exchange rate. Additionally, petitioner contends that the sharp increase in prices for goods and services in Venezuela as a result of the March 1989 reforms in the Venezuelan economy rebuts any contention that SULFORCA was operating in Venezuela on the basis of the free market exchange rate during the review period.

Respondent states that SULFORCA used the free market rate for all purposes during the review period and only recently exchanged export earnings. These export earning were exchanged at a time when the free market rate was required for both export conversion and import purchases. Further, the official rate has not been available for the purchase of imports since the fall of 1988, and was subsequently abolished for all purposes in March 1989. Therefore, respondent argues, there is no basis for the Department to conclude that the change from the fixed to the floating exchange rate system constituted a countervailable benefit.

DOC Position: See section III.A. of this notice for a discussion of the exchange rates used by SULFORCA during the review period.

With respect to the treatment of depreciation costs and the exchange rate used for basic raw materials, petitioner raises these issues for the first time in its September 29, 1989 case brief. Pursuant to § 355.31(c) of the new regulations [to be codified 19 CFR 355.31(c)], the Department will not consider any subsidy allegation submitted less than 40 days prior to the preliminary determination. Thus, we consider these allegations to be untimely and not subject to comment by the Department in this final determination.

Comment 2: Petitioner contends that the price SULFORCA paid INTERALUMINA for aluminum hydrate in 1988 was preferential when compared to any of the benchmarks in the "Preferentiality Appendix." However, petitioner argues that the price at which INTERALUMINA sold aluminum hydrate to FERRALCA is the appropriate benchmark for determining the degree of preferentiality.

Respondent contends that SULFORCA does not purchase aluminum hydrate from INTERALUMINA at subsidized rates and, therefore, there is no preferential pricing. However, if the Department were to determine that there is a countervailable subsidy relating to the provision of aluminum hydrate, the only benchmark available for calculating such an alleged subsidy would be INTERALUMINA's verified cost of production figures. Respondent does not specifically comment on the use of FERRALCA's price as a benchmark, rather, respondent contends that the Department could not use a "world price" to calculate a subsidy because aluminum hydrate is not a commodity but a specialized intermediate product for which there is no "world price." Moreover, because of plentiful raw materials and labor, the price of aluminum hydrate in Venezuela bears little relation to a world price.

DOC Position: See section I. of this notice. With respect to INTERALUMINA's cost of production information, we returned this portion of the Government's response as untimely. Therefore, we did not verify INTERALUMINA's cost of production for aluminum hydrate. Pursuant to section 776(b)(1) of the Act, the Department will only consider verified information for the purposes of a final determination. (*See* Case History section of this notice for further discussion.)

Comment 3: Petitioner alleges that if the Department assumes that PEQUIVEN operated on an official rate of exchange, the price charged to SULFORCA for sulfuric acid should not be considered preferential. But, according to petitioner, the price at which SULFORCA purchased sulfuric acid from PEQUIVEN is preferential if PEQUIVEN's price is converted to dollars at the free market rate. Petitioner further argues that if the Government of Venezuela had responded to the Department's requests for information on the prices at which other companies sold sulfuric acid within Venezuela, there would have been a more reliable basis by which to determine preferentiality. Petitioner suggests that the Department use the price at which PEQUIVEN imports sulfuric acid as a benchmark to determine whether or not PEQUIVEN's price is preferential.

DOC Position: At verification, we found that PEQUIVEN, the only supplier of sulfuric acid in Venezuela, did not import sulfuric acid during 1988. Furthermore, the Department does not consider the exchange rate used by input supplies when investigating preferential pricing of inputs. For further discussion regarding preferential pricing of inputs, *see* DOC Position to *Comment 1* above and section I., II.A, and II.B. of this notice.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. As mentioned previously, we used the best information available for FERRALCA, who did not participate in our investigation. During the verification, we followed standard verification procedures, including meeting with government and company officials; inspecting internal documents and ledgers; tracing information in the responses to source documents, accounting ledgers and financial statements; and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with Section 705(c) of the Act [19 U.S.C. 1671d(c)], we are directing the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond in the amounts indicated below. As explained in the Analysis of Programs section of this notice, the estimated net subsidy rate for FERRALCA is based on the best information available. Becasue we do not have the export statistics for FERRALCA to calculate a weighted-average country-wide rate, we are providing a separate rate for FERRALCA. Therefore, the rate for all other manufacturers, producers, or exporters in this investigation is the rate calculated for SULFORCA .

Manufacturers/Producers/Exporters	Estimated net subsidy
FERRALCA	38.40
All Other Companies	19.03

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under administrative

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protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refuned or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on all entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-25145 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-809]

Preliminary Negative Countervailing Duty Determination: Limousines From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Canada of limousines, as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make a final determination on or before January 2, 1990.

EFFECTIVE DATE: October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3217.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters of limousines in Canada.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (54 FR 34805, August 22, 1989), the following events have occurred. On August 24, 1989, we presented a questionnaire to the Government of Canada in Washington, DC, concerning petitioner's allegations. On September 25, 1989, we received responses to our questionnaire from the Government of Canada (GOC), the Provincial Government of Ontario, A.H.A. Manufacturing Limited (AHA), and Stretch Sales, Inc. (Stretch Sales).

On October 4, 1989, we delivered supplemental/deficiency questionnaires to the GOC and the other respondents. On October 12, 1989, we received responses to the supplemental/deficiency questionnaires.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs pruposes. The written description remains dispositive.

The product covered by this investigation is limousines, which is defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered). The vehicles are built on Lincoln Town Car, Mercury Grant Marquis, Cadillac Brougham or any other six or eight cylinder gasoline engine powered chassis. The vehicle is cut in half and the wheelbase is extended, thereby providing additional rear seating capacity, area and comforts. The sheet metal work is formed to complement the original design of the base care. The vehicles are used by private individuals, corporations and limousine services. Limousines are currently provided for under the following HTS sub-headings: 8703.23.00.75, 8703.24.00.75 and 9802.00.50.40.

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1988. This review period corresponds to AHA's fiscal year. According to its response, Stretch Sales made no sales for export to the United States during the review period.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such reponses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, the program will be considered a subsidy in the final determination. Based on our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Canada of limousines did not receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Federal Programs

1. Program for Export Market Development (PEMD) and Promotional Projects Program (PPP)

The PEMD was consolidated and restructured in 1987 and now includes the former PPP. Support provided under the new program is either industry-initiated (former PEMD) or government-initiated (former PPP). Under the industry-initiated component, interest-free loans are provided to industries requesting assistance in export market development. Under the government-initiated component, the GOC organizes and sponsors international trade fairs and missions.

The interest-free PEMD loans are repaid over a period of years from sales revenues on sales to the export market that was the object of the promotional activities sponsored by PEMD. If no sales or insufficient sales are made to the export market in question within a given number of years, the outstanding loan is forgiven.

In 1982 AHA received PEMD loans for a trade fair and a market survey to enhance sales of limousines for export to the United States. The outstanding balances on these loans were subsequently forgiven in 1986. Consistent with past practice, we are considering the forgiven PEMD loans to be grants to AHA in the year in which the loans were forgiven. Because the purpose of these loans is to encourage the development and expansion of exports, we preliminarily determine that benefits under this program are export subsidies.

It is our practice to expense very small grant amounts (less than 0.50 percent of the value of export sales or total sales, as appropriate) entirely in the year of receipt. (See, for example, *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada*, 51 FR 15037, April 22, 1986 (*OCTG*).) Since the amount of the forgiven loans was less than 0.50 percent of total exports of AHA to the United States in the year the loans were forgiven, we expensed these grants entirely in that year.

Because the benefit of these grants was expensed prior to the review period and since no PEMD loans were forgiven or outstanding during the review period, we have concluded for purposes of this investigation that AHA did not use this program.

2. Certain Investment Tax Credits (ITCs)

There are several categories of ITCs in Canada, some of which include different levels of ITC rates depending on the size of the business and the location of the investment. Based on our previous examination of ITCs in Canada (See *OCTG* and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041, March 24, 1986), we initiated an investigation on the following four types of ITCs: (1) Tax credits of three and 13 percent above the basic seven percent rate which we have previously found non-specific, for investment in "qualified property" located in certain regions of Canada; (2) tax credits for investment in "certified property"; (3) tax credits for large companies of 10 percent above the basic twenty percent for investment in capital equipment used for scientific research; and (4) tax credits for investment in transportation and construction equipment.

Canadian tax law provides that ITCs may be subtracted from taxes owed and if no taxes are owed (either because a company is initially in a tax loss position or because only some of the ITCs were used to satisfy all tax liability), those excess ITCs earned after April 19, 1983, have a refundable, one-time cash value equal to 20 percent of the initial, face value of the ITC (40 percent for small businesses).

3. Regional Development Incentive Program (RDIP)

The RDIP was established in 1969 for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities are chronically low, namely the Atlantic provinces. The RDIP was administered by the Department of Regional Economic Expansion (DREE) until 1983 when it was replaced by the Industrial Regional Development Program (IRDP). The DREE offered incentives based on a case-by-case evaluation of capital investment projects. Projects that could proceed without RDIP assistance were ineligible. Assistance was provided in the form of grants or loan guarantees.

4. Industrial and Regional Development Program (IRDP)

The IRDP was established in 1983, replacing the RDIP. The program was designed to promote industrial development in all regions of Canada through financial support in the form of grants, loans and loan guarantees. To accomplish this goal, assistance was provided for four major purposes: (1) to encourage the development of new products and new processes and to increase industrial productivity and competitiveness; (2) to assist in the establishment of new production facilities; (3) to increase industrial productivity through the improvement, modernization and expansion of existing manufacturing and processing operations; and (4) to improve marketing. The level of benefit received under the IRDP depended upon the census district in which a project was located. Census districts were classified into one of four tiers based on economic development. The main factors considered in measuring economic development were employment, per capita income, and tax revenue receipts. The most economically deprived districts received the greatest IRDP assistance. The IRDP program was terminated on June 30, 1988.

5. Export Credit Financing

The Export Development Council (EDC) was created to facilitate and develop Canada's export trade within the framework of the Canadian Export Development Act. The EDC, a self-sustaining Crown Corporation, pursues its purpose by providing insurance, guarantees, and financing. EDC provides export financing to foreign buyers of Canadian goods and services. Funds are disbursed directly by EDC to Canadian exporters on behalf of the foreign buyer, in effect providing the exporter with a cash sale.

6. Loans under the Enterprise Development Program (EDP)

The EDP was established in 1977 to promote the growth of the manufacturing and processing sectors of the Canadian economy by fostering innovation in the design and development of new or improved production processes and by assisting adjustment to changing competitive circumstances. Individuals, firms, or corporations in Canada engaged in manufacturing or processing were eligible for assistance.

7. Community-Based Industrial Adjustment Program (CIAP) Grants

CIAP was established in 1981 as part of the Industrial and Labor Adjustment Program. It was terminated in 1984. Assistance under the CIAP was provided for capital projects to commercial enterprises located in areas affected by serious industrial dislocations. Assistance was provided in the form of non-repayable contributions to cover up to 75 percent of consulting costs for capital projects and repayable contributions to cover up to 50 percent of capital costs. Commercial enterprises throughout Canada were eligible for assistance, provided the project was located in a designated area.

B. Joint Federal-Provincial Programs

1. General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic development programs. The GDAs were umbrella agreements which stated general economic development goals. Ten-year GDAs were signed with most provinces in 1974.

Subsidiary agreements were signed pursuant to the GDAs. The subsidiary agreements were generally between particular federal and provincial government departments and addressed economic development and infrastructure needs. These agreements established various individual types of economic development programs, delineated administrative procedures and set out the relative funding commitments of the federal and provincial governments. Subsidiary agreements were typically directed at

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establishing traditional government economic assistance programs, developing infrastructure, providing for economic development assistance for certain regions within the province, and providing financial assistance to specific regions, industries or enterprises.

2. Economic and Regional Development Agreements (ERDA)

ERDAs are essentially a continuation of the GDAs. ERDAs were signed with every province and territory in the early 1980's. Similar to GDA subsidiary agreements, ERDA subsidiary agreements establish programs, delineate administrative procedures and set up the relative funding commitments of the federal and provincial governments. Assistance is aimed at projects designed to upgrade infrastructure, such as transportation and convention centers, and to enhance productivity, particularly for small businesses.

C. Provincial Programs

1. Ontario Development Corporation (ODC) Export Support Loans, Other Loans and Loan Guarantees

This program was established to assist in the development and diversification of industries in Ontario. Assistance is provided in the form of loans, loan guarantees, and grants.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR section 355.38), we will hold a public hearing, if requested, on December 6, 1989, at 10:00 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than November 29, 1989. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than December 4, 1989. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. Written argument should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: October 12, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-25046 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DS-M

Issuance of Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 89-00013.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the International Lumber Company (ILC). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Forest products, including all sizes of dimensional lumber, rough or surfaced; all types of panel products; and all types of timbers, from 4" plus dimensional timbers to a length of 85' in all softwood species.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; international market research; marketing; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders to and for domestic Suppliers; financing; export licensing; warehousing; shipping; foreign exchange; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, ILC is certified to:

1. Act as an "Export Intermediary."
2. Enter into exclusive agreements with Suppliers to provide Export Trade Facilitation Services wherein:

a. ILC may agree not to represent any competitor of such Supplier for Products unless authorized by the Supplier, and/or

b. the Supplier may agree not to sell, directly or indirectly, through any other Export Intermediary into any Export Market in which ILC exclusively represents the Supplier as an Export Intermediary unless authorized by ILC.

3. Respond to invitations to bid or sales opportunities existing in the Export Markets by:

a. contacting Suppliers of the Products listed in the invitation to bid,

b. inviting the Suppliers to provide independent price quotations for the Products,

c. entering into agreements with Suppliers whereby ILC will submit a response to the bid invitation or request for quotation, and/or

d. forming, for each bid invitation or sales opportunity, a consortium or joint venture of Suppliers to bid on and to fulfill the invitation or opportunity.

4. Purchase Products from Suppliers for export to the Export Markets.

A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated October 15, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-25091 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DR-M

University of Chicago, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 88-095R. *Applicant:* University of Chicago, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. *Intended Use:* See notice at 53 FR 8483, March 15, 1988. *Reasons:* The foreign instrument provides 5-6 nanosecond pulses at energies of 100 mJ on XeCl (308).

Docket Number: 89-049. *Applicant:* Baltimore Museum of Art, Baltimore, MD 21218. *Instrument:* Controlled Heating Device. *Manufacturer:* Willard Develoments Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 7461, February 21, 1989. *Reasons:* The foreign article provides accurate temperature holding (±1%) capability between 0-150 °C.

Docket Number: 89-053R. *Applicant:* Carleton College, Northfield, MN 55057. *Instrument:* Laser System (Excimer Laser and Excimer-Pumped Dye Laser). *Manufacturer:* Lumonics, Canada. *Intended Use:* See notice at 54 FR 9076, March 3, 1989. *Reasons:* The foreign instrument provides an average power of 0.4w on fluorine (F^2) with a pluse rate of 50pps and typical linewidth of 0.06 cm^{-1} at 580 nm.

Docket Number: 89-151. *Applicant:* University of Colorado, Institute for Arctic and Alpine Research, Boulder, CO 80309-0450. *Instrument:* Two (2) Mass Spectrometers, Model SIRA Series II. *Manufacturer:* VG Isogas, Untied Kingdom. *Intended Use:* See notice at 54 FR 23509, June 1, 1989. *Reasons:* The foreign instruments provide precise automated analysis of the following masses without adjustment: 28/29/30 in N_2, 32/33/34 in O_2, 44/45/46 in CO_2 and 64/66 in SO_2 with a guaranteed precision for CO_2 and SO_2 of 0.015‰ using an automated cold finger with a sample size <10 bar µl.

Docket Number: 89-169. *Applicant:* University of Georgia, Athens, Ga 30602. *Instrument:* Electron Probe X-ray Microanalyzer, Model JXA-8600. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 54 FR 30788, July 24, 1989. *Reasons:* The foreign instrument provides image analysis combining x-ray electron and cathodoluminescence signals.

Docket Number: 89-174. *Applicant:* Princeton University, Princeton, NJ 08554. *Instrument:* Dilution Refrigerator, Model 400 TLE. *Manufacturer:* Oxford Instruments, United Kingdom. *Intended Use:* See notice at 54 FR 31721, August 1, 1989. *Reasons:* The foreign article provides ultra low temperature in the milli-kelvin range.

Docket Number: 89-175. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Inductively Coupled Plasma Mass Spectrometer, PlasmaQuad PQ2+. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 54 FR 31721, August 1, 1989. *Reasons:* The foreign instrument is capable of detecting elements, isotopes or impurities down to concentrations of ten parts per trillion.

Docket Number: 89-178. *Applicant:* University of Rochester, Rochester, NY 14627. *Instrument:* Rare Gas Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* See notice at 54 FR 31721, August 1, 1989. *Reasons:* The foreign instrument is capable of accurate analysis of small samples, providing a precision of 0.5% in the $^3He/^4He$ ratio and a sensitivity $-1\times10-^4$ amps/torr. He.

Docket Number: 89-179. *Applicant:* U.S. Geological Survey, Denver, CO 80225. *Instrument:* Laser Ablation Inductively Coupled Plasma Mass Spectrometer. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended Use:* See notice at 54 FR 31721, August 1, 1989. *Reasons:* The foreign instrument is capable of detecting elements, isotopes or impurities down to concentrations of ten parts per trillion.

Docket Number: 89-197. *Applicant:* University of Alabama, Tuscaloosa, AL 35487. *Instrument:* Electron Microprobe, Model JXA-8600. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 54 FR 34543, August 21, 1989. *Reasons:* The foreign instrument permits quantitative analysis of EDS/WDX signals and real time display of spectral acquisition.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-25048 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by B.J. Bull From an Objection by the South Carolina Coastal Council

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Dismissal.

On June 20, 1989, B.J. Bull (Appellant), filed with the Department of Commerce (Department) a notice of appeal

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pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal arose from an objection by the South Carolina Coastal Commission (State) to the Appellant's consistency certification for a U.S. Army Corps of Engineers (Corps) permit to place dredged or filled material in an isolated wetland in the South Carolina coastal zone.

On August 31, 1989 Appellant requested that his appeal be dismissed. Appellant also failed to submit an appellate brief in a timely fashion. The State does not object to a dismissal. Accordingly, on September 27, 1989 the Under Secretary dismissed the appeal for good cause pursuant to 15 CFR 930.128 (1988). That dismissal bars the Appellant from filing another appeal from the State's original objection to the aforementioned activities.

FOR FURTHER INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, NOAA Office of General Counsel, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235 (202) 673–5200.

Dated: October 16, 1989.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

[FR Doc. 89–25132 Filed 10–24–89; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of adjusting limits.

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: .

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339, 638 and 639 are being increased for special shift, reducing the limits for Categories 334, 335, 634, and 635.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50440, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implemenation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementing of Textile Agreements

October 19, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 26, 1989 the directive of December 12, 1988 is being amended to adjust the current limits for the following categories, as provided by the current agreement between the Governments of the United States and Singapore:

Category levels in group I	Adjusted 12 month limit [1]
334	60,238 dozen.
335	156,021 dozen.
338/339	877,971 dozen of which not more than 501,570 dozen shall be in Category 338 and not more than 576,681 dozen shall be in Category 339.
634	204,853 dozen.
635	118,360 dozen.
638	815,709 dozen.
639	2,020,484 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implemenation of Textile Agreements.

[FR Doc. 89–25044 Filed 10–24–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

October 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 27666, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of June 23, 1989 and September 27, 1989 issued to you by the chairman, Committee for the Impelmentation of Textile Agreements. Those directives concern imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on October 26, 1989 the directives of June 23, 1989 and September 27, 1989 are amended to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Republic of Turkey:

Category	Adjusted 12-month limit [1]
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 626, as a group.	86,746,642 square meters of which not more than 22,135,218 square meters shall be in 219; 27,054,155 square meters shall be in 313; 15,740,599 square meters shall be in 314; 21,151,431 square meters shall be in 315; 22,135,218 square meters shall be in 317; 2,459,469 square meters shall be in 326; 14,756,812 square meters shall be in 617; 2,459,469 square meters shall be in 625; 2,459,469 square meters shall be in 626; 2,459,469 square meters shall be in 627 2,459,469 square meters shall be in 628.
Limits not in a group	
200	851,030 kilograms.
237	156,350 dozen.
300/301	3,757,340 kilograms.
335	110,874 dozen.
336/636	277,290 dozen.
338/339	1,396,460 dozen of which not more than 977,522 dozen shall be in Categories 338–S/339–S [2].
340/640	662,688 dozen of which not more than 265,075 dozen shall be in Categories 340–Y/640–Y [3]
341	552,720 dozen of which not more than 193,452 dozen shall be in Category 341–Y [4]
342/642	351,350 dozen.
347/348	1,502,815 dozen of which not more than 751,408 dozen shall be in Categories 347–T/348–T [5]
350	157,654 dozen.
361	567,100 numbers.
369–S [6]	794,216 kilograms.
604	828,120 kilograms.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0009, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

[3] In Categones 340–Y/640–Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340–Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640–Y.

[4] In Category 341–Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[5] In Categories 347–T/348–T, only HTS numbers 6103.19.2015 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347–T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348–T.

[6] In Category 369–S, only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chariman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–25092 Filed 10–24–89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Sublevels for Certain Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

October 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing sublevels.

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the sublevels, refer to the Quota Status Reports posted on the bulletin Boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Socialist Federal Republic of Yugoslavia agreed to increase the current sublevels for Categories 447 and 448 (sublevels of merged Categories 447/448) to conform with the Harmonized System.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51299, published on December 21, 1988.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 19, 1989.

Commissioner of Customs,

Department of the Treasury,

Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on October 26, 1989 the directive of December 16, 1988 is amended to increase the sublevels for Categories 447 and 448, as follows:

Category	Amended 12-month limit [1]
447/448	48,908 dozen of which not more than 30,962 dozen shall be in Category 447 and not more than 30,962 dozen shall be in Category 448.

[1] The sublevels have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-25045 Filed 10-24-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Monthly Report on Employment, Plant Hours, and Straight-Time Payrolls in Selected Shipyards; BLS Form 1360; O.M.B. No. 0703-0044.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 40 minutes.

Frequency of Response: Monthly.

Number of Respondents: 9.

Annual Burden Hours: 72.

Annual Responses: 108.

Needs and Uses: The BLS Form 1360 data is used to adjust payments to Shipbuilders for labor and selected overhead costs incurred on certain Government contracts.

Affected Public: Business.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: October 20, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-25114 Filed 10-24-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday through Thursday, 7-9 November 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisitions, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: October 20, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 89-25113 Filed 10-24-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Systems of Records Notices

AGENCY: Department of the Air Force, DoD.

ACTION: Addition of three new systems of records notices for public comment.

SUMMARY: The Department of the Air Force proposes to add three new systems to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The new systems are set forth below.

DATE: The new systems will be effective on or before November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Linda G. Adams, SAF/AADA, The Pentagon, Washington, DC 20330-1000. Telephone (202) 697-3491; Autovon 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 11803, Apr. 7, 1986
51 FR 17508, May 13, 1986
51 FR 23573, Jun. 30, 1986
51 FR 44668, Dec. 11, 1986
51 FR 44672, Dec. 11, 1986
51 FR 44670, Dec. 11, 1986
51 FR 44665, Dec. 11, 1986
52 FR 4645, Feb. 13, 1987
52 FR 11849, Apr. 13, 1987
52 FR 23334, Jun. 19, 1987
52 FR 16431, May 5, 1987
52 FR 22837, Jun. 16, 1987
52 FR 15868, May 4, 1988
52 FR 27894, Jul. 25, 1988

The new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on October 18, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 20, 1989.

F040 AF DP A

SYSTEM NAME:

F040 AF DP A—Civilian Employee Drug Testing Records.

SYSTEM LOCATION:

Air Force central civilian personnel offices; military medical laboratories; approved contract and/or Air Force drug testing laboratories. Official mailing addresses are listed in the appendix to the Air Force's compilation of systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force civilian employees and applicants for Air Force civilian positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to selection, notification, and testing for the use of illegal drugs by civilian employees and selected applicants for civilian positions, to include: Self identification records; requests for testing submitted by employees, supervisors, and commanders; testing notification; documentary evidence in support of testing decision; chain of custody records regarding testing samples; reports of testing results; records relating to the type and quality of testing performed; documentary evidence submitted by employee or applicant in rebuttal of test results; reports of medical findings regarding test results; disciplinary/adverse action records to include notification of proposed action and documentary evidence submitted in support thereof, employee's response and documentary evidence submitted in support thereof, and management's action; referrals to counseling/rehabilitation services; and records regarding employee's consent for release of information concerning counseling/rehabilitation progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; Pub. L. 100-71; Executive Orders 12564, "Drug-Free Federal Workplace" and 9397; and 10 U.S.C. 8013, Secretary of the Air Force: Powers and Duties, delegation by; and DoD Directive 1010.9, "DoD Civilian Employee Drug Abuse Testing Program".

PURPOSE(S):

Provides the record system necessary to manage the Air Force civilian employee and applicant drug abuse testing program. This system tracks the identification, notification, and testing for drug abuse of civilian employees and applicants for selected civilian positions. The system also tracks follow up corrective actions.

The records are also used by the employee's Medical Review Official; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301, the Department of the Air Force's "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action is a compatible routine use required by statute.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

System is maintained on paper records kept in file folders and/or on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by employee name, Social Security Number, date of birth, specimen identification number or any combination of these.

SAFEGUARDS:

Records are accessed by custodian of the records system and by person(s) responsible for servicing the records system in performance of their official duties who are properly screened. Except when under direct physical control by authorized individuals, records will be stored in security file containers/cabinets or safes and controlled by personnel screening. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Local retention varies from 3 months to 5 years; or one year after individual has reassigned, separated, retired, or has died. After that time, records are destroyed by tearing, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters United States Air Force, Directorate of Civilian Personnel, Benefits and Entitlements Division (HQ USAF/DPCE), Washington, DC 20330-5060, or comparable official of the Civilian Personnel Office serving the Air Force activity/installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to or may appear in person at their servicing Central Civilian Personnel Office of the appropriate Air Force activity/installation or to the Headquarters United States Air Force, Directorate of Civilian Personnel, Benefits and Entitlements Division (HQ USAF/DPCE), Washington, DC 20330-5060. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

Written requests should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed. Requests in person must be made during normal working hours Monday through Friday, excluding national and/or local holidays.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or appear in person to the servicing Central Civilian Personnel Office of the appropriate Air Force activity/installation or to the Headquarters United States Air Force, Directorate of Civilian Personnel, Benefits and Entitlements Division (HQ USAF/DPCE), Washington, DC 20330-5060. Proof of identification will be required prior to disclosure.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records and for contesting contents and appealing initial determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from (a) the individual to whom the record pertains; (b) Air Force employees involved in the selection and notification, and collection of individuals to be tested; (c) laboratories that test urine specimens for the presence of illegal drugs; and (d) supervisors and managers and other Air Force officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F075 AF DP A

SYSTEM NAME:

F075 AF DP A—Application for Early Return of Dependents.

SYSTEM LOCATION:

All overseas host base Central Base Personnel Office (CBPO) outbound assignments sections (DPMU). Official

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mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Command sponsored dependents of military personnel assigned overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Members name, grade, Social Security Number, initial date of sponsor entry into overseas theater, date of separation, date of rotation (DEROS); names, relationships, sexes, dates of birth, passport, numbers, and addresses of dependents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C. 401, Chapter 7 and E.O. 9397.

PURPOSE(S):

Used by the Unit Commander, CBPO personnel, and the approval authority to approve/disapprove requests for early return of dependents. Under the provisions of Air Force Regulation 75–8, Vol II, member or spouse may request early return of dependents to their country of origin if desired, prior to the time PCS orders are required. If member declines to initiate request for early return of dependents, the spouse may request early return for self but not for minor children. Documentation must be provided by the applicant to substantiate the existence of a situation which required dependents to be returned (Joint Federal Travel Regulation (JFTR) U5240, D1–De, Items a–h).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are stored in locked cabinets, rooms, or buildings. Records are accessed by the custodian and personnel responsible for servicing the record system in performance of their official duties. Access is controlled by the system manager and restricted to authorized personnel.

RETENTION AND DISPOSAL:

Early return of dependents case files are retained in office files for one year after the annual cutoff, then destroyed. These records are destroyed by one of the following means: Tearing into pieces, shredding, pulping or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Utilization (DPMU), host base CBPO. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Personnel Utilization (DPMU), host base CBPO. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records. Full name and SSN of sponsor are required for inquiries.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, Personnel Utilization (DPMU), host base CBPO. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals requesting early return of dependents, personnel, legal, chaplain, or other agencies providing pertinent information for the case file.

EXEMPTIONS CLAIMED FOR THE SYSTEM

None.

F211 AF MP A

SYSTEM NAME:

F211 AF MP A—Family Services Volunteer Record

SYSTEM LOCATION:

Family Services offices at all Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All volunteers participating in the program and former participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

As a minimum, the file contains forms and general correspondence by name, Social Security Number, address, and associated information relating to an individual volunteer's training, honors/awards, participation, and associated actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Regulation 211–24, "Family Services Program".

PURPOSE(S):

To document an individual volunteer's training, honors/awards, participation, and associated actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets or card files.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records from this system of records may be accessed by person(s) in performance of official duties who are properly screened and cleared for need-to-know. Records will be maintained in locked rooms.

RETENTION AND DISPOSAL:

In active volunteer status, retained indefinitely or until superseded. The record of a volunteer who transfers or who has not been credited with participation in a 90-day period is placed in an inactive file and destroyed after 2 years by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief or Staff/Personnel for Military Personnel, Randolph Air Force Base, TX 78150–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Family Services Office of the Air Force installation in question or to the Assistant Deputy Chief or Staff/Personnel for Military Personnel, Randolph Air Force Base, TX 78150–6001. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records contained in this system of records should address written inquiries to the Family Services Office of the Air Force installation in question or to the Assistant Deputy Chief or Staff/Personnel for Military Personnel, Randolph Air Force Base, TX 78150–6001. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURE:

The Department of the Air Force rules for accessing records and for contesting contents and appealing initial determinations are published in Air Force Regulation 12–35; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual volunteer or is based on program participation as documented by other means.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–25115 Filed 10–24–89; 8:45 am]

BILLING CODE 3810–01

Department of the Navy

Privacy Act of 1974; Amended Record Systems

AGENCY: Department of the Navy.

ACTION: Notice of amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to amend nine systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATE: This proposed action will be effective without further notice November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12906, Apr 16, 1986
51 FR 18086, May 16, 1986 (Compilation, changes follow)
51 FR 19684, Jun 3, 1986
51 FR 30377, Aug 26, 1986
51 FR 30393, Aug 26, 1986
51 FR 45931, Dec 23, 1986
52 FR 2147, Jan 20, 1987
52 FR 2149, Jan 20, 1987
52 FR 8500, Mar 18, 1987
52 FR 15530, Apr 29, 1987
52 FR 22671, Jun 15, 1987
52 FR 45846, Dec 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun 8, 1988
53 FR 22028, Jun 13, 1988
53 FR 25363, Jul 6, 1988
53 FR 39499, Oct 7, 1988
53 FR 41224, Oct 20, 1988
54 FR 8322, Feb 28, 1989
54 FR 14377, Apr 11, 1989
54 FR 32682, Aug 9, 1989
54 FR 40160, Sep 29, 1989
54 FR 41495, Oct 10, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. These notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
October 19, 1989.

N01070–14

System name:

Next of Kin Information for Sea Trial Riders (51 FR 18093, May 16, 1986).

Changes:

* * * * *

Storage:

Delete the entire entry and substitute with "File folders."

* * * * *

N01070–14

SYSTEM NAME:

Next of Kin Information for Sea Trial Riders.

SYSTEM LOCATION:

Naval Sea Systems Command (Code 08), Washington, DC 20362–5101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals attending nuclear propulsion plant sea trials of Navy ships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of next of kin, name, Social Security Number, and security clearance of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To maintain information necessary to notify the next of kin in case of accident or other emergency of those individuals assigned to nuclear propulsion plant sea trials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Locked in 3-way combination safe in a restricted area.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362–5101.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362–5101.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), Washington, DC 20362–5101. The request should contain full name, address and Social Security Number.

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CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04410-3

System name:

Duty Free Vehicle Log (51 FR 18138, May 16, 1986).

Changes:

* * * * *

Categories of individuals covered by the system:

Delete the entire entry and substitute with "All U.S. Navy personnel and their dependents stationed aboard Naval Weapons Facility Detachment, Machrihanish."

Categories of records in the system:

Delete the entire entry and substitute with "Name and rank/rate of individual; make, year and registration of vehicle status; UK purchase or imported; and date of purchase or importing."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Add to end of entry "in lockable file cabinet."

Retention and disposal:

Delete the entire entry and substitute with "Maintained for one year after transfer, sale, death, or other change in status. Old pages are shredded."

* * * * *

N04410-3

SYSTEM NAME:

Duty Free Vehicle Log.

SYSTEM LOCATION:

Officer in Charge, U.S. Naval Weapons Facility Detachment, FPO New York 09515-0052 and Customs Officer, HMS Customs and Excise, Campbeltown, Argyll, Scotland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. Navy personnel and their dependents stationed aboard Naval Weapons Facility Detachment, Machrihanish.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and rank/rate of individual; make, year and registration of vehicle status; U.K. purchase or imported; and date of purchase or importing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist local customs officials in protecting against the illegal transfer of duty-free vehicles to UK citizens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder in lockable file cabinet.

RETRIEVABILITY:

Name.

SAFEGUARDS:

The records are maintained in an office that is locked when not manned.

RETENTION AND DISPOSAL:

Maintained for one year after transfer, sale, death or other change in status. Old pages are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515-0052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515-0052. The request should contain name and address.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Officer in Charge, U.S. Naval Weapons Facility, Detachment, FPO New York 09515-0052.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from documents provided by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05815-1

System name:

Special courts-martial resulting in bad conducting discharges or concerning commissioned officers. (51 FR 18171, May 16, 1986).

Changes:

System name:

Delete the entire entry and substitute with "Records of trial of special courts-martial resulting in bad conduct discharges or concerning officers."

System location:

Delete entire entry and substitute with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001."

* * * * *

N05815-1

SYSTEM NAME:

Record of trial of special courts-martial resulting in bad conduct discharges or concerning officers.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by special courts-martial and awarded a bad conduct discharge, and all Navy and Marine Corps commissioned officers tried by special courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 865; 10 U.S.C. 866(b), 5 U.S.C. 301, Departmental Regulations; and E.O. 11476 of June 19, 1969, as amended by E.O. 11835 of January 27, 1975, paragraph 94b (manual for courts-martial, 1969 (rev.))

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866(b) and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001. The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374-2001. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Special courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05817-1

System name:

Courts-Martial Statistics (51 FR 18171, May 16, 1986).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Administrative Support Division (Code 40), Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Building 111, Washington Navy Yard, Washington, DC 20374-1111."

* * * * *

Categories of records in the system:

In line nine, delete the words "* * * to present * * *" and substitute with "through 1988".

Authority for maintenance of the system:

Add the following to the end of the entry: ", Departmental Regulations and E.O. 9397."

* * * * *

Storage:

Delete the entire entry and substitute with "On computer hard disk."

* * * * *

Safeguards:

Delete the entire entry and substitute with "Computer hard disk is located in office which is under observation during working hours and is locked at night. The office is located in a secure building which is guarded 24 hours a day. Admission is allowed only to personnel on official business and to authorized visitors. The computer is not accessible by telephone modem."

Retention and disposal:

Delete the entire entry and substitute with "Permanent".

System manager(s) and address:

Delete the entire entry and substitute with "Director, Administrative Support Division (Code 40), Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Building 111, Washington Navy Yard, Washington, DC 20374-1111."

* * * * *

N05817-1

SYSTEM NAME:

Courts-Martial Statistics.

SYSTEM LOCATION:

Administrative Support Division (Code 40), Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Building 111, Washington Navy Yard, Washington, DC 20374-1111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by general courts-martial and by special courts-martial when the special courts-martial sentence, as finally approved, includes a punitive discharge.

CATEGORIES OF RECORDS IN THE SYSTEM:

Courts-martial information on special courts-martial if sentence, as finally approved, includes a punitive discharge and all general courts-martial including name, Social Security Number, pleas, convening authority action, supervisory authority action, and Court of Military

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Review action. Information available from 1970 through 1986 only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To collect statistical data on general and bad conduct discharge special courts-martials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To governmental, public and private organizations and individuals, as required.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

On computer hard disc.

RETRIEVABILITY:

Name, Social Security Number or Navy courts-martial number.

SAFEGUARDS:

Computer hard disc is located in office which is under observation during working hours and is locked at night. The office is located in a secure building which is guarded 24 hours a day. Admission is allowed only to personnel on official business and authorized visitors. The computer is not accessible by telephone modem.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Navy-Marine Corps Appellate Review Activity), Office of the Judge Advocate General, Building 111, Washington Navy Yard, Washington, DC 20374–1111. Written requests must be signed by the requesting individual.

Personal visits may be made to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Building 111, Room 48, Washington Navy Yard, Washington, DC 20374–1111. Individuals must be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Navy-Marine Corps Appellate Review Activity), Office of the Judge Advocate General, Building 111, Washington Navy Yard, Washington, DC 20374–1111. Written requests must be signed by the requesting individual.

Personal visits may be made to the Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Building 111, Room 48, Washington Navy Yard, Washington, DC 20374–1111. Individuals must be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Judge Advocate General Form 5813/1.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05819–1

System name:

Article 69 Petitions (51 FR 18172, May 16, 1986).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

* * * * *

N05819–1

SYSTEM NAME:

Article 69 Petitions.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who were tried by courts-martial which were not reviewed by the Navy Court of Military Review and when such service member has petitioned the Judge Advocate General pursuant to Article 69, Uniform Code of Military Justice, for review.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain individual service member's petition together with all forwarding endorsements and copy of action taken by the Judge Advocate General with supporting memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 69, Uniform Code of Military Justice (10 U.S.C. 869).

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 869(b) and to provide a central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained in chronological calendar order with alphabetical cross-referencing system.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001. The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374–2001. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Authority, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 222, Washington, DC 20374–2001.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records comprise of the following source materials: (1) Petitions for relief, (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member), and (3) action of the Judge Advocate General on petition.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

N05819–2

System name:

Article 73 Petitions for New Trial (51 FR 18173, May 16, 1986).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

* * * * *

N05819–2

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy Court of Military Review or Court of Military Appeals, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain full name and address.

Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals should have the following items of identification: driver's license or military identification card.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200

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Stovall Street, Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–2

System name:

Health Care Treatment Record System (52 FR 45851, December 2, 1987).

Changes:

System name:

In line one, delete the word "Treatment".

System location:

Delete the entire entry and substitute with "Military outpatient health (medical and dental) records of active duty individuals are retained at the member's medical or dental treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Military outpatient health (medical and dental) records of current reservists are retained by the member's command. Military outpatient health (medical and dental) records of retired and separated individuals are retained at National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or Headquarters, U.S. Marine Corps, Navy Department, Washington, DC 20380–0001.

Inpatient health records are retained at the originating naval medical treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Veterans Administration Hospitals; other medical treatment facilities; National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Medical Director, American Red Cross, Washington, DC 20226; or Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or, Headquarters, U.S. Marine Corps, Navy Department, Washington, DC 20380–0001.

Outpatient health (medical and dental) treatment records of civilians are retained at the originating naval medical or dental treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Other medical treatment facilities: National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St.Louis, MO 63118; Medical Director, American Red Cross, Washington, DC 20226; or Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or, Headquarters, U.S. Marine Corps, Navy Department, Washington, DC 20380–0001.

Secondary health records may be retained separate from the health record by individual departments at naval medical or dental treatment facility.

Subsidiary records are retained by individual departments within medical or dental treatment facilities or located at Naval Medical Data Services Center, Bethesda, MD; Regional Data Service Centers; Naval Environmental Health Center, Norfolk, VA 23511–6695; and, other approved locations for compiling data and conducting research studies."

Categories of individuals covered by the system:

In line three, after the word "retired" add "and separated) * * *". Also, delete last paragraph beginning with "Navy" and ending with "hazards".

Categories of records in the system:

Delete the entire entry and substitute with "Outpatient and inpatient health (medical and dental) records contain forms documenting care and treatment. These records contain patient and sponsor demographic data. Medical record documentation conforms with Joint Commission on the Accreditation of Health Organizations standards.

Secondary health records contain forms documenting care and treatment at specific departments or clinics.

Subsidiary health records contain information from individual health records and supporting documentation. Examples are x-ray files; electrecephalogram tracings files; laboratory files; pharmacy files; nursing care plans; medication and treatment cards; stat/daily orders; patient intake and output forms; ward reports; day books; nursing service reports; pathology and clinical laboratory reports; tumor registries; autopsy reports; laboratory information system (LABIS); blood transfusion reaction records; blood donor and blood donor center records; pharmacy records; surgery records; vision records and reports; communicable disease case files, statistics, and reports; occupational health, industrial hygiene, and environmental control records, statistics, and reports; including data concerning periodic and total lifetime accumulated exposure to occupational/environmental hazards; emergency room and sick call logs; family advocacy case files, statistics, reports, and registers; psychiatric workload statistics and unit evaluations; gynecology malignancy data, etc.

Aviation physical examinations and evaluation case files contain medical records documenting fitness for admission or retention in aviation programs.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting suitability for assignment as Embassy Guards."

Authority for maintenance of the system:

In line three, delete the words "Title 10, CFR Part 20," and substitute with "10 CFR Part 20,". At the end of the entry, add "* * * and E.O. 9397."

Purpose(s):

Delete paragraph one and substitute with "This system is used by officials, employees and contractors of the Department of the Navy (and members of the National Red Cross in naval medical treatment facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps members; physical and psychological qualifications and suitability of candidates for various programs; personnel assignment; law enforcement; dental readiness; claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; member,s physical fitness for continued naval service; litigation involving medical care; performance of research studies and compilation of statistical data; implementation of preventive medicine programs and occupational health surveillance programs; implementation of communicable disease control programs; and management of the Bureau of Medicine and Surgery's Radiation program and to report data concerning individual's exposure to radiation."

Add a new paragraph two that reads "This system is also used for the initiation and processing, including litigation, of affirmative claims against potential third party payors."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with "To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to Navy and Marine Corps members.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in officially approved studies of the National History of Disease.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to public health and welfare, communicable disease control, preventive medicine, child and spouse abuse prevention, and public safety. To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

To spouses of service members (including reservists) who are infected with the Human Immunodeficiency Virus. This release will be limited to HIV positivity information. Procedures for informing spouses will be published by the Director, Naval Medicine and must be used.

To military and civilian physicians to further the medical care and treatment of the patient.

To release radiation data per 10 CFR Part 20.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Navy's "Blanket Routine Uses" do not apply to these records."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system

Storage:

In line one, delete the word "on-site". In line two, delete the words "medical treatment" and substitute with "health".

Retrievability:

In lines two and three, delete the words "treatment records, both primary and secondary records" and substitute with "records". In lines 10 and 11, delete the words "treatment records both primary and secondary" and substitute with "health records". In lines 20 and 21, delete the words "treatment records, both primary and secondary" and substitute with "health records of dependents * * *".

Safeguards:

In line six, delete the words "areas; access" and substitute with "areas. Access". In lines seven and eight, delete the words "system; utilization" and substitute with "system. Utilization".

Retention and disposal:

Delete the entire entry and substitute with "Health care records are retained, retired, and disposed of in accordance with Secretary of the Navy Instruction 5215.15 series (Disposal of Navy and Marine Corps Records) and Naval Medical Command Instruction 6150.1 series (Health Care Treatment Records). Specifics are given below:

Military health (medical and dental) records are transferred with the member upon permanent change of duty station to his/her new duty station. These records are retired to National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408.

Inpatient health records are transferred to National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408, two years after the calendar year of the last date of treatment.

Outpatient (medical and dental) health records of civilians are transferred to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 or National Personnel Records Center, 111 Winnebago Street, St. Louis, MO, two years after the calendar year of the last date of treatment.

X-ray files are retained on site and destroyed three years after the last x-ray in the file. Asbestos x-rays are retained on site indefinitely.

Secondary health records may be retained separate from the health record. A notation is made in the health record that these records exist and where they are being kept. When the health record is retired or the patient transfers, these records should be entered in the health record.

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Aviation medical records are retained on board and destroyed when 30 years old.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files containing medical records documenting fitness for assignment as Embassy Guards are retained on board and destroyed after 50 years.

Clinical psychology case files documenting suitability for special assignment will be retained at the originating medical treatment facility and destroyed when 50 years old.

Radiation exposure records for personnel exceeding exposure limits are retained at Bureau of Medicine and Surgery 50 years, then destroyed; all others are retained five years, then destroyed."

System manager(s) and address:

Delete the entire entry and substitute with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and commanding officers of medical and dental clinics. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records."

* * * * *

N06150–2

SYSTEM NAME:

Health Care Record System.

SYSTEM LOCATION:

Military outpatient health (medical and dental) records of active duty individuals are retained at the member's medical or dental treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Military outpatient health (medical and dental) records of current reservists are retained by the member's command.

Military outpatient health (medical and dental) records of retired and separated individuals are retained at the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or Headquarters Marine Corps, Navy Department, Washington, DC 20380–0001.

Inpatient health records are retained at the originating naval medical treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Veterans Administration Hospitals; other medical treatment facilities; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian), 111 Winnebago Street, St. Louis, MO 63118; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or, Headquarters, U.S. Marine Corps, Navy Department, Washington, DC 20380–0001.

Outpatient health (medical and dental) treatment records of civilians are retained at the originating naval medical or dental treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Other medical treatment facilities: National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120; or Headquarters, U.S. Marine Corps, Navy Department, Washington, DC 20380–0001.

Secondary health records may be retained separate from the health record by individual departments at naval medical or dental treatment facility.

Subsidiary records are retained by individual departments within medical or dental treatment facilities or located at Naval Medical Data Services Center, Bethesda, MD 20814–5066; Regional Data Service Centers; Naval Environmental Health Center, Norfolk, VA 23511–6695; and, other approved locations for compiling data and conducting research studies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel, other military personnel, dependents, retired and separated military personnel and dependents, civilian employees, Red Cross personnel, foreign personnel, VA beneficiaries, humanitarian patients, and all other individuals who receive treatment at a Navy medical or dental treatment facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Outpatient and inpatient health (medical and dental) records contain forms documenting care and treatment. These records contain patient and sponsor demographic data. Medical record documentation conforms with Joint Commission on the Accreditation of Health Organization standards.

Secondary health records contain forms documenting care and treatment at specific departments of clinics.

Subsidiary health records contain information from individual health records and supporting documentation. Examples are x-ray files; electroencephalogram tracing files; laboratory files; pharmacy files; nursing care plans; medication and treatment cards; stat/daily orders; patient intake and output forms; ward reports; day books; nursing service reports; pathology and clinical laboratory reports; tumor registries; autopsy reports; laboratory information system (LABIS); blood transfusion reaction records; blood donor and blood donor center records; pharmacy records; surgery records; vision records and reports; communicable disease case files, statistics, and reports; occupational health, industrial hygiene, and environmental control records, statistics, and reports; including data concerning periodic and total lifetime accumulated exposure to occupational/environmental hazards; emergency room and sick call logs; family advocacy case files, statistics, reports, and registers; psychiatric workload statistics and unit evaluations; gynecology malignancy data, etc.

Aviation physical examinations and evaluation case files contain medical records documenting fitness for admission or retention in aviation programs.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting suitability for assignment as Embassy Guards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5131 (as amended); 10 U.S.C. 5132; 44 U.S.C. 3101; 5 U.S.C. 301; 10 CFR Part 20, Standards for Protection Against Radiation, and E.O. 9397.

PURPOSE(S):

This system is used by officials, employees and contractors of the Department of the Navy (and members of the National Red Cross in naval medical treatment facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps members; physical and psychological qualifications and suitability of candidates for various programs; personnel assignment; law enforcement; dental readiness; claims and appeals before the Council of Personnel Boards, and the Board for Correction of Naval Records; member's physical fitness for continued naval service; litigation involving medical care; performance of research studies and compilation of statistical data; implementation of preventive medicine programs and occupational health surveillance programs; implementation of communicable disease control programs; and management of the Bureau of Medicine and Surgery's Radiation program and to report data concerning individual's exposure to radiation.

This system is also used for the initiation and processing, including litigation, of affirmative claims against potential third party payors.

This system is used by officials and employees of other components of the Department of Defense in the performance of their official duties relating to the health and medical treatment of those individuals covered by this record system; physical and psychological qualifications and suitability of candidates for various programs; and, the performance of research studies and compilation of medical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the Veterans Administration in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Navy and Marine Corps members.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to public health and welfare, communicable disease control, preventive medicine, child and spouse abuse prevention and public safety.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consult with the hospital or regional judge advocate is advised.

To spouses of service members (including reservists) who are infected with the Human Immunodeficiency Virus. This release will be limited to HIV positivity information. Procedures for informing spouses will be published by the Director, Naval Medicine and must be used.

To military and civilian physicians to further the medical care and treatment of the patient.

To release radiation data per 10 CFR Part 20.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Primary, secondary, and subsidiary medical health records are stored in file folders, microform, on magnetic tape, punched cards, machine listings, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Military health (medical and dental) treatment records are filed and maintained by the last four digits of the military member's Social Security Number, the member's last name, or the member's social security number. A locator case file cross-references the patient's name with the location of his/her record.

Inpatient (clinical) health records are filed and maintained by the last four digits of the sponsor's social security number or a register number. A manual or automatic register of patients is kept at each Navy medical treatment facility. The location of the file can be determined by a seven-digit register number or the patient's name.

Outpatient (medical and dental) health records of dependents filed and maintained by the sponsor's social security number or date of birth, relationship to the sponsor, and name. A locator case file cross-references the patient's name with the location of his/her record.

Treatment records retired to a Federal Records Center prior to 1971 are retrieved by the name and service number or file number. After that date, records are retrieved by name and Social Security Number.

Aviation medical records are filed and maintained by Social Security Number and name.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting fitness for assignment as Embassy Guards and are filed and maintained by social security number and name. Subsidiary health care records may or may not be identified by patient identifier. When they are, they may be retrieved by name and Social Security Number.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specific monitored or controlled access rooms or areas; public access is not permitted. Computer terminals are located in supervised areas. Access is controlled by password or other user code system. Utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in providing further medical care or in support of administrative/clerical functions. Records are controlled by a charge-out system to clinical and other authorized personnel.

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RETENTION AND DISPOSAL:

Health care records are retained, retired, and disposed of in accordance with Secretary of the Navy Instruction 5215.5 (Disposal of Navy Marine Corps Records) and Naval Medical Command Instruction 6150.1 (Health Care Treatment Records). Specifics are given below:

Military health (medical and dental) records, are transferred with the member upon permanent change of duty station to his/her new duty station. These records are retired to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408.

Inpatient health records are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO two years after the calendar year of the last date of treatment.

Outpatient health of civilians are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO, two years after the calendar year of the last date of treatment.

X-ray files are retained on site and destroyed three years after the last x-ray in the file. Asbestos x-rays are retained on site indefinitely.

Secondary health records may be retained separate from the health record. A notation is made in the health record that these records exist and where they are being kept. When the health record is retired or the patient transfers, these records should be entered in the health record.

Aviation medical records are retained on board and destroyed when 30 years old.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files containing medical records documenting fitness for assignment as Embassy Guards are retained on board and destroyed after 50 years.

Clinical psychology case files documenting suitability for special assignment will be retained at the originating medical treatment facility and destroyed when 50 years old.

Radiation exposure records for personnel exceeding exposure limits are retained at Bureau of Medicine and Surgery for 50 years, then destroyed; all others are retained 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and commanding officers of hospitals and medical and dental clinics. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Active duty Navy and Marine Corps personnel and drilling members of the Navy and Marine Corps Reserves seeking to determine whether this system of records contains information about themselves should address written inquiries to the originating medical or dental treatment facility. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

Inactive Naval Reservists should address requests for information to the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800. Marine Reservist's should address requests for information to Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408.

Former members who have no further reserve or active duty obligations should address requests for information to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

All written requests should contain the full name and social security number of the individual, his/her signature, and in those cases where his/her period of service ended before 1971, his/her service or file number. In requesting records for personnel who served before 1964, information provided to the National Personnel Records Center should also include date and place of birth and dates of periods of active Naval service.

Records may be requested in person. Proof of identification will consist of the Armed Forces Identification Card or by other types of identification bearing picture and signature.

Requests for inpatient records within two years of inpatient stay should be addressed to the Commanding Officer of the hospital where the individual was treated.

Requests for inpatient records after two years after inpatient stay should be addressed to Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 or Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

Requests for subsidiary medical records should be addressed to the Commanding Officer of the originating medical or dental treatment center.

The following data should be provided: full name, social security number, status, date(s) of treatment or period of hospitalization, address at time of medical treatment, and service number.

Full name, date, and place of birth, ID card or driver's license, or other identification to sufficiently identify the individual with the medical records held by the treatment facility must be presented.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the originating medical or dental treatment facility or to the officials listed above under "Notification procedure". Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-ray, and special studies conducted to provide health care to the individual or to determine the individual's physical and dental qualification.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06320–2

System name:

Family Advocacy Program System (51 FR 18191, May 16, 1986)

Changes:

* * * * *

System location:

In line three, after "20372" add "–5120".

Categories of individuals covered by the system:

In line two, delete the word "Navy" and substitute with "naval".

Categories of records in the system:

Delete the entire entry, and substitute with "Medical records, investigative reports, correspondence, family advocacy committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to suspected, at risk, and confirmed cases of family member abuse or neglect."

Authority for maintenance of the system:

At the end of the entry, add "* * * and E.O. 9397."

Purpose(s):

Delete the entire entry and substitute with "This system is used by officials and employees of the Department of the Navy and the Department of Defense in the performance of their official duties relating to the health and medical treatment of Department of Defense beneficiaries in naval medical and dental facilities.

This system is used by officials and employees of the Department of the Navy to collect information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In paragraph three, line three, add the phrase "and public * * *". Delete the remainder of the paragraph and add "When not considered mandatory, patient identification data shall be eliminated from records used for research studies."

Add a new paragraph four "To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs."

Add a new paragraph five "To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers."

Add a new paragraph six "To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised."

Add a new paragraph seven "When required by federal statute, by executive order, or by treaty; information will be disclosed to the individual, organization, or government agency, as necessary."

Change the existing paragraph four to paragraph eight The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

Add a new paragraph nine as follows:

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

Retrievability:

In line five, delete the words "Social Security Numbers" and substitute with "Social Security Number of the sponsor".

* * * * *

Retention and disposal:

Delete the entire entry and substitute with "Family advocacy case records are maintained at the originating activity for a period of five years after the last entry in the file and then destroyed. Central registry records are permanently retained under the control of the Bureau of Medicine and Surgery."

System manager(s) and address:

In lines one, two, and three, delete the words "Commander, Naval Medical Command, Navy Department, Washington, DC 20372" and replace with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5220".

Record source categories:

Delete the entire entry and substitute with "Medical and dental records and reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses."

N06320–2

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Central Registry: Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120.

Individual Case Files: Naval medical treatment facilities and duty stations of the military sponsors. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all persons reported for abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records, investigative reports, correspondence, family advocacy, committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to suspected, at risk, and confirmed cases of family members abuse or neglect.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5132; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

This system is used by officials and employees of the Department of the Navy and the Department of Defense in the performance of their official duties relative to the health and medical treatment of Department of Defense beneficiaries in naval medical and dental facilities.

This system is used by officials and employees of the Department of the Navy to collect information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private and public organizations and individuals for authorized health research in the interest of the federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

When required by federal statute, by executive order, or by treaty; information will be disclosed to the individual, organization, or government agency, as necessary.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Records are retrieved through indices and cross indices of all individuals and relevant incident data. Types of indices used include, but are not limited to: names, Social Security Numbers, and types of incidents.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled access rooms or areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis, only.

Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Family advocacy case records are maintained at the originating activity for a period of five years after the last entry in the file and are then destroyed. Central registry records are permanently retained under the control of the Bureau of Medicine and Surgery.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and commanding officers of medical treatment facilities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the medical treatment facility for which they received treatment or to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. The request should contain the full name of the individual and Social Security Number of the military or civilian sponsor or guardian, date and place of treatment, and alleged reporting of incident.

The requester may visit the office of the Chief, Bureau of Medicine and Surgery, 23rd and "E" Streets, NW, Washington, DC 29372–5120 and the commanding officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to him or her. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requester will be considered adequate proof of identity.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the medical treatment facility for which they received treatment of to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy 5211.5, 32 CFR Part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical and dental records and reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Part of this system may be exempt under 5 U.S.C. 552a(k)(2) and (5), as applicable. For additional information, contact the system manager.

N07300–1

System name:

Relief of Accountable Personnel from Liability for Losses of Public Funds (51 FR 18202, May 16, 1986)

Changes:

System name:

Delete entire entry and substitute with "Relief for Losses of Public Funds/SBP Annuitants for Overpayments of Benefits."

* * * * *

Categories of individuals covered by the system:

In the second and third lines, delete "disbursing" and "and collection agents". Delete the period at the end of the entry and add "* * * and Survivor Benefit Plan annuitants who request waiver of overpayments of benefits."

Categories of records in the system:

In the second line, delete "category" and substitute with the word "categories". In the fourth line, after the word "custody," insert "overpayments of Survivor Benefit Plan benefits". At the end of the entry, insert "or overpayments" before the period.

Authority for maintenance of the system:

Delete the first and second lines in their entirety and substitute with "10 U.S.C. 1453; 31 U.S.C. 3527."

Purpose(s):

In line two, delete the words "as to". In line four after the word "* * * funds * * *", insert "* * * or overpayments of Survivor Benefit Plan benefits * * *". In line five, delete "* * * accountable individuals".

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

At the beginning of the entry, add a new paragraph "To officials and employees of the General Accounting Office in cases requiring the concurrence of the Comptroller General for a grant of relief from liability." In paragraph two, line three, after the word "* * * compilation * * *", add the word "* * * also * * *".

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

* * * * *

Retention and disposal:

Delete entire entry and substitute with "Records are retained indefinitely; however, after three years records are transferred to the Federal Records Center, Suitland, Maryland."

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400. The request should contain full name, address, and the approximate date on which relief was requested.

Personal visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, Room 9N11, Hoffman Bldg II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed forces identification card or state driver's license is required for identification."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400."

Contesting record procedure:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701, or may be obtained from the system manager."

Record source categories:

In line six, after the word "funds", add "* * * or overpayments of Survivor Benefit Plan benefits".

* * * * *

N07300–1

SYSTEM NAME:

Relief for Losses of Public Funds/SBP Annuitants for Overpayment of Benefits.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 32), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Accountable Navy and Marine Corps military and civilian personnel who request relief from liability for losses of public funds in their custody and survivor benefit plan annuitants who request waiver of overpayment of benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of requests submitted by individuals of the above-stated categories for grant of relief from liability, together with information voluntarily furnished by the affected individuals concerning the circumstances of losses of funds in their custody, or overpayments of Survivor Benefit Plan benefits, and additional information derived from investigatory and audit reports and comments of forwarding endorsers concerning circumstances of losses or overpayments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1453; 31 U.S.C. 3527; 5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101.

PURPOSE(S):

To determine within the Department of the Navy and General Accounting Office (GAO) whether the circumstances of particular losses of public funds or overpayments of Survivor Benefit Plan benefits warrant granting requests for relief from liability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the GAO in cases requiring the concurrence of the Comptroller General for a grant of relief from liability.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual requesting relief.

SAFEGUARDS:

Files are maintained in file cabinets under the control of personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely; however records are transferred to the Federal Records Center, Suitland, MD.

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SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain full name, address, and the approximate date on which relief was requested.

Personal visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, Room 9N11, Hoffman Bldg II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed forces identification card or driver's license is required for identification.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is furnished partly by the individual requesting relief, and is supplemented by reports of Department of the Navy audits and investigations pertaining to the particular losses of funds or overpayments of Survivor Benefits Plan benefits involved. Additional amplifying information is typically furnished by officers forwarding requests to the Secretary of the Navy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–25056 Filed 10–24–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89–664–000, et al.]

Arizona Public Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 18, 1989.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER89–664–000]

Take notice that on October 6, 1989, Arizona Public Service Company (APS or Company) tendered for filing a request for waiver of the Commission's Notice Requirements to allow for revised effective dates for the following Exhibits to the Wholesale Power Agreement and Transmission Agreement with the Town of Wickenburg:

FERC docket No.	FERC rate schedule No.	Exhibit designation	Exhibit revision No.	Proposed effective date
ER89–616–000.	74	B	3	Aug. 1, 1989.
ER89–616–000.	170	A	2	July 1, 1989.
ER89–616–000.	74	B	4	Sept. 1, 1989.

No changes from the currently effective rate levels are proposed herein. No new facilities are required to provide these services.

The Company requests waiver of the Commission's Notice Requirements 18 CFR 35.3 (a) under § 35.11 to allow for these effective dates, as intended by the parties, which was inadvertently omitted from the originally filings in Docket Nos. ER89–616–000 and ER89–664–000.

Comment date: November 1, 1989, in accordance with Standard paragraph E at the end of this notice.

2. PacifiCorp. doing business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER90–19–000]

Take notice that on October 10, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light company (PacifiCorp.), tendered for filing, in accordance with the Commission's Rules and Regulations, a revised cover page and First Revised Sheet No. 5D (Index of Purchasers, superseding Original Sheet NO. 5D) of Pacific Power & Light Company's FERC Electric Tariff, Original Volume No. 3 ("Tariff"); and a Service Agreement between PacifiCorp and Public Utility District No. 1 of Chelan County (Chelan).

PacifiCorp states that the Service Agreement provides for the sale of firm power and energy for resale in accordance with the rates specified in Service Schedule PPL–3 under the Tariff.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective of July 19, 1989 correspondence to be the effective date of the Service Agreement.

Copies of this filing have been supplied to Chelan and the Washington Utilities and Transportation Commission.

Comment date: November 1, 1989, in accordance with Standard Paragraph E end of this notice.

3. Florida Power & Light Company

[Docket No. ER90–22–000]

Take notice that on October 16, 1989, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Thirteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Jacksonville Electric Authority (Rate Schedule FERC No. 60).

FPL states that under Amendment Number Thirteen, FPL will transmit power and energy for Jacksonville Electric Authority (JEA) as is required in the implementation of its interchange agreement with Florida Power Corporation, Orlando Utilities Commission and Seminole Electric Cooperative, Inc.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on JEA.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. FA85–67–001]

Take notice that on October 16, 1989, Southern California Edison Company tendered for filing its refund report in compliance with the Commission's order issued on July 29, 1987.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. EC90–2–000]

Take notice that on October 16, 1989, Oregon Trail Electric Consumers Cooperative, Inc. filed an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824(b) (1982), for Commission authorization to lease certain transmission facilities in the State of Oregon to the Bonneville Power Administration.

Comment date: November 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. AES Newington, Inc.

[Docket No. QF90–7–000]

On October 11, 1989, AES Newington, Inc. (Applicant), of 1001 N. 19th Street, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cyle cogeneration facility will be located in Newington, New Hampshire. The facility will consist of two coal-fired fluidized bed combustion boilers and an extraction/condensing steam turbine generator. Extraction steam from the steam turbine will be used in the production of carbon dioxide and as a heating medium for oil storage tanks. The maximum net electric power production capacity of the facility will be 198 MW. Construction of the facility is expected to begin on or about July 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Bangor Hydro-Electric Company Public Service Company of New Hampshire

[Docket No. ER90–21–000]

Take notice that Bangor Hydro-Electric Company (Bangor) and Public Service Company of New Hampshire (PSNH) on October 16, 1989 tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The agreement provides for the sale by Bangor to PSNH of 15,000 KW of electric generating capability during November 1, 1989 through April 30, 1990 and the total output associated therewith.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER90–23–000]

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light on October 16, 1989, tendered for filing, in accordance with section 35.30 of the Commission's Regulations, PacifiCorp's Utah Division (PacifiCorp) Revised Appendix 1 for the state of Idaho and Bonneville Power Appendix 1 for the state of Idaho and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Idaho (Bonneville's Docket No. 5–A3–8902). The Revised Appendix 1 calculates the ASC for the state of Idaho applicable to the exchange of power between Bonneville and PacifiCorp.

PacifiCorp requests waiver of the Commission's notice requirements to permit this rate schedule to become effective February 10, 1989, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission and Bonneville's Direct Service Industrial Customers.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Multitrade Limited Partnership

[Docket No. ER90–18–000]

Take notice that Multitrade Limited Partnership (Multitrade), a Delaware limited partnership, on October 10, 1989, tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed FERC Rate Schedule No. 1, applicable to sales of energy and capacity to Virginia Electric and Power Company (Virginia Power) from a biomass waste wood electric generating facility owned and operated by Multitrade in Pittsylvania County, Virginia (the Facility). The Facility is certified as a qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder.

The proposed initial rate is set forth in the Power Purchase and Operating Agreement (the Agreement), dated January 24, 1989, between Multitrade and Virginia Power. The Agreement establishes a purchase price, based on Virginia Power's avoided cost and applicable to all electricity delivered by Multitrade to Virginia Power, which includes both an energy charge and a capacity charge.

Virginia Power will pay for energy on a per kilowatthour basis. The energy rate is composed of the fuel compensation price and the operation and maintenance price and is adjusted annually based on a set of indices as set forth in the Agreement. Virginia Power will pay a capacity rate commencing on the date of commercial operation. The capacity rate is fixed for the term of the Agreement, and is reduced for failure to comply with certain terms of the Agreement.

Multitrade requests waiver of the Federal Energy Regulatory Commission's (the "Commission") notice requirements so that the rate schedule may take effect as the date of Multitrade's initial delivery to Virginia Power. Multitrade also seeks waiver of the Commission's requirements for filing changes in its Rate schedule No. 1 in the event of any change in the rates calculated pursuant to the formula as set forth in the Agreement.

Additionally, Multitrade seeks waiver of the Commission's regulations regarding cost-of-service documentation, accounting practices, reporting requirements, property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate.

Copies of the instant filing have been served upon Virginia Power and the Commonwealth of Virginia State Corporation Commission.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Oklahoma Gas and Electric Company

[Docket No. ER90–20–000]

Take notice that on October 11, 1989, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Amendatory Agreements dated June 30, 1989, between OG&E and the Oklahoma Municipal Power Authority (OMPA).

The amendments modify the (1) Power Sales Agreement, (2) Transmission Service Agreement, and (3) Dispatch and Load Agreement.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: November 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

BEST COPY AVAILABLE

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Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23058 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

Noncompetitive Financial Assistance Award Resources for the Future

October 23, 1989.

SUMMARY: The Federal Energy Regulatory Commission (FERC) announces that pursuant to 10 CFR 600.6(a)(2), discretionary award of a cooperative agreement resulting from an unsolicited proposal will be awarded to Resouces For The Future (RFF). The FERC is conducting negotiations with RFF for support of joint indepth policy research and analysis on immediate and long-term issues in the area of energy economics, regulatory economics and environmental economics, relevant to FERC's regulatory responsibilities in meeting statutory obligations. These negotiations are expected to result in the issuance of Cooperative Agreement Number DE-FC39-89RC90024, in which FERC will provide $225,000 of the total estimated cost of $250,000 for a performance period of five years estimated to begin November 1, 1989.

Objective: The objective of the proposed agreement is RFF and FERC to work cooperatively to perform timely independent and objective research on economic and regulatory issues facing the FERC.

Note: This is a correction to a Notice that previously appeared in the **Federal Register** dated October 12, 1989, Vol. 54, No. 196, pg. 41864.

FOR FURTHER INFORMATION CONTACT: Federal Energy Regulatory Commission, Division of Procurement, ED-33, ATTN: Charlotte A. Greenwell, Contract Specialist, 941 North Capitol Street, NE., Washington, DC 20426, Telephone Number [202] 357-5620.

Lois D. Cashell,

Secretary.

[FR Doc. 89-75307 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2195-000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

October 18, 1989.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-2195-000]

Take notice that on September 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-2195-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR (1) to acquire a property interest in certain jurisdictional facilities currently owned by Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), and Mississippi River Transmission Corporation (MRT); and (2) to operate and provide service by means of its interest in certain transmission facilities that have been or will be constructed pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA); all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests all authorizations necessary to implement its part of an arrangement under which ANR would acquire property interests in certain specified pipeline and related facilities currently owned by ANR and MRT. Under the arrangement ANR states that it would acquire property interests in certain existing facilities to be conveyed to ANR by AER and MRT, and in a new pipeline currently being constructed by AER, AER's Line AC.

ANR indicates that the specific facilities to be acquired are as follows:

(1) That portion of AER's Line AD and related facilities extending approximately from Hemphill County, Texas eastward to AER's Chandler Compressor Station (Chandler Station) in Latimer County, Oklahoma. The property interest conveyed would give ANR ownership of capacity in Line AD and related facilities sufficient to receive and deliver to the outlet of the Chandler Station, as well as the ability to receive and deliver at the Custer Station, up to 100,000 Mcf of gas per day, as provided in the Agreement.

(2) Certain jurisdictional and non-jurisdictional gathering, transmission and compressor facilities owned by AER in the geological area known as the Arkoma Basin in eastern Oklahoma and northwestern Arkansas. These facilities are located in the twelve counties identified in the Agreement and are referred to as the Arkoma Gathering Facilities. The property interest conveyed to ANR will give ANR ownership of capacity in the Arkoma Gathering Facilities sufficient to gather and deliver, from time to time, at specified points, up to 150,000 Mcf of gas per day, as provided in the agreement.

(3) Those portions of AER's transmission and compressor facilities, including proposed Line AC and related facilities, referred to as the Eastern Segment, commencing at the outlet of AER's Chandler Compressor Station and extending easterly to points of interconnection with the MRT system. The property interest conveyed would give ANR ownership of capacity in the Eastern Segment sufficient to receive and deliver, from time to time, at specified points, up to 250,000 Mcf of gas per day, as provided in the Agreement. Line AC would be initially constructed and operated pursuant to section 311(a) of the NGPA and § 284.3 of the Commission's Regulations. ANR requests authority to own and to provide services utilizing Line Ac and related facilities pursuant to Section 7(c) of the NGA. ANR states that by a companion application, AER is requesting authorization to operate and provide service through Line AC pursuant to section 7(c) of the NGA.

(4) An interest in certain MRT facilities in Arkansas and Louisiana referred to as the MRT Facilities. The property interest would give ANR ownership of capacity sufficient to receive at specified delivery points and transport southerly to an interconnection with AER, near Monroe, Louisiana, up to 250,000 Mcf of gas per day.

(5) An interest of AER's Line FT-18, from a point commencing at the outlet of MRT's Perryville Compressor Station near Monroe, Louisiana to the beginning of an existing pipeline (FM-56 pipeline), which is jointly owned by AER and ANR. The property interest conveyed in Line FT-18 would give ANR ownership of capacity sufficient to permit ANR to provide transportation services up to 250,000 Mcf of gas per day of natural gas.

ANR further requests authority pursuant to section 7(c) of the Natural Gas Act, to provide jurisdictional services through 31 miles of 30-inch pipeline (FM-56 pipeline) extending from an interconnection with AER's Line FT-18 in Ouachita Parish, Louisiana, to and including an interconnection with ANR's facilities in Richland Parish, Louisiana, in which ANR owns a one-half interest. This pipeline and related facilities, including the interconnection

at Custer, Oklahoma, for which ANR seeks section 7(c) authorizations, was constructed pursuant to section 311 of the NGPA and § 284.3(c) of the Commission's Regulations.

ANR states that the value of the facilities at the date of filing, in which ANR would acquire a property interest is estimated at $129.8 million, consisting of the net book value of existing facilities as of June 30, 1989, and ANR's share of the estimated cost of Line AC.

ANR proposes that the property interest in the mainline facilities which it would acquire be treated, for rate purposes, as part of ANR's Mainline Area and that the applicable rates be those set forth in ANR's Volume 1-A Tariff. ANR proposes no changes to any of its existing rates. With respect to those facilities, consisting of gathering facilities and supply-related transmission facilities, previously referred to as the Arkoma Gathering Facilities, which feed into AER's mainline, ANR proposes to establish a new area of its system to be known as the Arkoma Area. For the Arkoma Area, ANR proposes to establish new rates, in its Volume 1-A Tariff, which would be applicable to transportation services provided utilizing these facilities. ANR further proposes that the costs associated with such capacity be incremental and unbundled from all of its existing services and its existing rates. ANR states that both firm and interruptible transportation would be made available to prospective shippers, pursuant to Rate Schedules FTS-1, FTS-2 and ITS of ANR's Volume 1-A Tariff and that it would render open-access, non-discriminatory transportation services for others through these facilities.

ANR asserts that an important benefit of the proposed arrangements is the increased access to natural gas reserves in the Arkoma Basin which these facilities would provide for ANR's existing and future customers. ANR further asserts that the arrangements would also permit ANR, to connect the two main legs of its transmission system in the producing areas. Such an interconnection it is indicated, would permit ANR to meet the substantial unmet demand for gas transportation services on its system. In addition, ANR explains that the arrangements would provide added operational flexibility and reliability for both its sales and transportation services.

Comment date: November 8, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP90-62-000]

Take notice that on October 16, 1989, United Gas Pipe Line Company (United), P. O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP90-62-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Amoco Production Company (Amoco), a producer of natural as, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Amoco, pursuant to an interruptible transportation service agreement dated July 21, 1988, as amended January 25 and July 14, 1989 (Contract No. TI-21-1745). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 51,500 MMBtu of natural gas on a peak and average day; and on an annual basis 18,797,500 MMBtu of natural gas for Amoco. United proposes to receive the subject gas at existing points of interconnection located in the state of Texas. It is stated that the points of delivery are located in the states of Louisiana, Mississippi and Texas. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on September 7, 1989, as reported in Docket No. ST89-4858-000.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP90-48-000]

Take notice that on October 11, 1989, Tennessee Gas Pipeline Company (Tennessee) Post Office Box 2511, Houston, Texas 77252, filed an application in abbreviated form pursuant to section 7(b) of the Natural Gas Act, and § 157.7 of the Commission's Regulations, for authorization to partially abandon certain firm sales service to North Penn Gas Company (North Penn). Specifically, Tennessee requests authorization to reduce sales service to North Penn under Tennessee's Rate Schedule CD-4 by 6,429 dekatherms (dt) per day, resulting in a revised sales service entitlement of 25,139 dt per day and 9,174,735 dt annually, effective November 1, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests that the Commission authorize the partial abandonment of service to North Penn effective November 1, 1989, so that North Penn's demand charge from Tennessee can be reduced as of that date in accordance with the parties' intent as set forth in the new Gas Sales Contract.

Comment date: November 8, 1989 in accordance with Standard Paragraph F at the end of the notice.

4. Blue Dolphin Pipe Line Company

[Docket No. CP89-2150-000]

Take notice that on September 21, 1989, as supplemented on October 16, 1989, Blue Dolphin Pipe Line Company (Blue Dolphin), Eleven Greenway Plaza, Suite 1606, Houston, Texas 77046, filed in Docket No. CP89-2150-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue transportation service for NICOR Exploration Company (NICOR) under its blanket authorization issued in Docket No. CP87-31-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Blue Dolphin requests authorization to transport, on an interruptible basis, up to 3,500 MMBtu of natural gas per day for NICOR from an existing subsea tap on Blue Dolphin's facilities located in Galveston Block 273, Offshore Texas, to a delivery point located at the facilities of Dow Chemical Company located near Freeport, Texas. Blue Dolphin anticipates transporting on an average day 700 MMBtu and an annual volume of 260,000 MMBtu. Blue Dolphin avers that no new facilities are required to provide the proposed service.

Blue Dolphin states that it has transported for NICOR under § 284.223(a) of the Commission's Regulations and that an initial full report was filed with the Commission in Docket No. ST89-1391-000.

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Comment date: December 4, 1989 in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP90-37-000]

Take notice that on October 10, 1989, El Paso Natural Gas Company (El Paso), P.O. Nox 1492, El Paso, Texas 79978, filed in Docket No. CP90-37-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue transportation service for Chino Mines Company (Chino Mines) under its blanket authorization issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that the transportation service for Chino Mines was initiated under subpart B of part 284 on February 1, 1986. El Paso states that its full report in accordance with § 284.106(a) of the Commission's Regulations was filed with the Commission on February 28, 1986, in Docket No. ST86-1029-000. El Paso further states that it has agreed with Chino Mines to continue such transportation under subpart G of Part 284 and to terminate the subpart B transaction upon receipt of the appropriate regulatory approvals for the Subpart G transaction. Therefore, El Paso requests authority to continue the transportation pursuant to subpart G of the Regulations of up to 17,618 MMBtu of natural gas on a peak day for Chino Mines from any point on El Paso's system to a delivery point located in the SW/4, Section 31, T18S, R21W, Grant County, New Mexico. El Paso states that the average daily and annual quantities to be transported would be 11,605 MMBtu and 4,235,825 MMBtu, respectively. El Paso avers that no new facilities are required to provide the proposed service.

Comment date: December 4, 1989 in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP90-63-000]

Take notice that on October 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77152-1478, filed in Docket No. CP90-63-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Central Gas Companies, Inc. (American), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 185,400 MMBtu per day for American. United states that construction of facilities would not be required to provide the proposed service.

United further states that the maximum day, average day, and annual transportation volumes would be approximately 185,400 MMBtu, 165,400 MMBtu and 67,671,000 MMBtu respectively.

United advises that service under § 284.223(a) commenced September 5, 1989, as reported in Docket No. ST89-4861.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP90-52-000]

Take notice that on October 12, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-52-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Chevron U.S.A. Inc. (Chevron), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 35,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Chevron from receipt points located in Louisiana, offshore Louisiana, Texas and offshore Texas to delivery points located in offshore Texas and Louisiana. Natural anticipates transporting, on an average day 35,000 MMBtu and an annual volume of 12,775,000 MMBtu.

Natural states that the transportation of natural gas for Chevron commenced September 1, 1989, as reported in Docket No. ST89-114-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP90-50-000]

Take notice that on October 11, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252-2521, filed in Docket No. CP90-50-000, an application pursuant to section 7(b) of the Natural Gas Act, as amended, and the regulations promulgated thereunder for an order permitting and approving abandonment of firm transportation service provided for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Texas Eastern is currently authorized to provide 2,000 Mcf per day for firm transportation service for Northern, it is stated. Northern has provided Texas Eastern a notice of cancellation in accordance with Article II of the transportation agreement dated April 2, 1979. Texas Eastern states that only the firm transportation service is being discontinued, and that there will be no abandonment of any facilities. Texas Eastern further states that Northern intend to continue receiving the remaining volumes through interruptible transportation arrangements with Texas Eastern.

Texas Eastern states that this transportation service provides for gas to be transported for Northern from a production platform in West Cameron Block 620, offshore Louisiana, to an interconnection with the Columbia Gulf Transmission Company and Northern's 30-inch pipeline in West Cameron Block 606, offshore Louisiana. It is further stated that this service commenced on October 26, 1989. Texas Eastern requests that the abandonment be effective October 25, 1989, the effective date for termination of the agreement.

Comment date: November 8, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. National Fuel Gas Supply Corporation

[Docket No. CP90-12-000]

Take notice that on October 3, 1989, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP90-12-000 pursuant to section 7(c) of the Natural Gas Act a petition to amend it certificates of public convenience and necessity in Docket Nos. CP84-502, CP88-890 and CP85-826 to authorize the continuation of

interruptible transportation service on behalf of Kane Gas Light and Heat co. (Kane), Columbia Gas Transmission Corporation (Columbia), National Fuel Gas Distribution Corporation (Distribution), Transco Energy Marketing Company (TEMCO), Pine-Roe National Gas Company (Pine-Roe), Highland Land and Minerals, Inc. (Highland), Elizabethtown Gas Company (Elizabethtown) and New Jersey Natural Gas Company (NJN) for an additional one-year term commencing December 10, 1989, all as more fully set forth in the application on file with the Commission and open to public inspection.

National proposes to transport up to 3,000 Mcf of natural gas per day on behalf of Kane, 3,500 Mcf per day on behalf of Columbia, 30 Mcf per day on behalf of Pine Roe, 75,000 Mcf per day on behalf of TEMCO, 127 Mcf per day on behalf of Highland, 9,400 Mcf per day on behalf of Elizabethtown, 600 Mcf per day on behalf of NJN, and in two separate arrangements, 51,615 Mcf and 6,000 Mcf of natural gas per day on behalf of Distribution.

National states that it would provide the transportation service through the use of existing facilities. National also states that it proposes to charge the rate presently authorized under National's Rate Schedule T-1 which is on file and approved by the Commission.

Comment date: November 8, 1989 in accordance with Standard Paragraph F at the end of the notice.

10. ANR Pipeline Company

[Docket No. CP90-56-000]

Take notice that on October 13, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-56-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Texas Eastern Gas Services Company (Texas), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the transportation service will be provided pursuant to a transportation agreement dated May 1, 1989, wherein ANR proposes to transport natural gas on an interruptible basis for Texas. ANR states that it would receive the gas at ANR's existing point of receipt in the offshore Louisiana gathering area and redeliver the gas for the account of Texas at existing interconnections located in the offshore Louisiana gathering area.

ANR proposes to transport on a peak day up to 10,000 dekatherms (dt), with an estimated average daily quantity of 10,000 dt. On an annual basis, ANR could transport up to 3,650,000 dt.

ANR also states that no construction of new facilities will be required to provide this transportation service.

ANR states that service for Texas under § 284.223(a) commenced August 11, 1989, as reported in Docket No. ST90-54-000.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP89-2174-000]

Take notice that on September 27, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP89-2174-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing AER to: (1) Operate, and to own and provide service by means of its interests in, a new transmission line extending from eastern Oklahoma to eastern Arkansas and related compressor facilities which will be constructed and operated by AER pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA); (2) operate, and to own and provide service by means of its interests in, certain additional transmission facilities that have been or will be constructed in central Arkansas and northeastern Louisiana and operated pursuant to section 311 of the NGPA; and (3) own, construct and operate, on a blanket basis, sales taps and related facilities on the transmission facility described in (1) above to be used for the delivery of natural gas to Arkansas Louisiana Gas Company (ALG), also a division of Arkla, Inc., for resale to new residential and commercial customers in Arkansas and Oklahoma, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically, AER requests authority to operate, and to own and provide service by means of its interests in, the following facilities that either have been or will be constructed and operated pursuant to section 311 of the NGPA: (a) Approximately 225 miles of both 36-inch and 42-inch pipeline an appurtenant facilities, to be designated ANR's Line AC, which would extend from the Wilburton Field area in Latimer County, Oklahoma, to an interconnection with the mainline system of Mississippi River Transmission Corporation (MRT) near MRT's Glendale Compressor Station (Glendale Station) in Lincoln County, Arkansas; (b) 19,250 horsepower of compressor facilities to be installed on Line AC in Hot Spring County, Arkansas, at AER's new Malvern Compressor Station; (c) a tap and related facilities to be constructed on Line AC in Hot Spring County, Arkansas, and owned by AER, interconnecting AER's facilities with those of Natural Gas Pipeline Company of America; (d) approximately 31 miles of 30-inch pipeline extending from an interconnection with AER's Line FT-18 in Ouachita Parish, Louisiana, to an interconnection with the facilities of ANR in Richland Parish, Louisiana, designated by AER as Line FM-56, which AER owns jointly with ANR, and an existing tap on Line FM-56 and related facilities, owned by AER and interconnecting AER's facilities with those of Trunkline Gas Company, designated as AER's Line FM-57; (e) approximately 11 miles of 24-inch pipeline extending from an interconnection on the discharge side of AER's Sterlington Compressor Station to and including an interconnection on the inlet side of Texas Eastern Transmission Corporation's Monroe Compressor Station in Ouachita Parish, Louisiana, designated as AER's Line FM-55, and two taps on that pipeline and related facilities interconnecting AER's facilities with those of Louisiana Gas Services, Inc. (existing), and United Gas Pipe Line Company (United) (to be constructed), the latter tap to be designated as AER's Line FM-58; and (f) a tap to be constructed on AER's already certificated Line FT-18 in Ouachita Parish, Louisiana, interconnecting AER's system and that of Texas Gas to be designated as AER's Line FM-59. AER states that the extent of its interests in (a) and (b) above is subject to rulings on additional certificate applications to be filed separately by ANR Pipeline Company (ANR) and Texas Gas Transmission Corporation (Texas Gas) for the acquisition of interests in Line AC.

AER also requests authority to construct, own and operate sales taps on Line AC required to initiate natural gas service in nine counties in Arkansas and four counties in Oklahoma, and to deliver gas through these facilities to ALG, in accordance with right-of-way agreements between AER and landowners along the route of that line. ALG, in turn, would provide retail distribution service to such landowners

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pursuant to ALG's retail sales tariffs on file and effective at the Arkansas Public Service Commission and the Oklahoma Corporation Commission. Because the precise number of such sales taps is not yet known, AER requests blanket authorization for AER to connect and deliver gas to those and any other landowners requiring the initiation of natural gas service as part of their Line AC right-of-way conveyances to AER.

AER states that the facilities for which authorization is sought are the result of AER's successful and continuing efforts to participate fully in the nationwide natural gas marketplace. AER further states that the available capacity in its main west-to-east transmission facilities has been fully absorbed and, to satisfy the need for additional eastbound transmission capability, AER is constructing Line AC and related compressor facilities, which would add approximately one Bcf per day of transmission capacity from the Arkoma Basin. AER indicates that it has commenced construction of such facilities under section 311 of the NGPA because of the clear and immediate need for this additional capacity. AER avers that a portion of this need is reflected by separate agreements with ANR and Texas Gas under which those companies would acquire property rights in Line AC and other AER facilities enabling them to own west-to-east capacity of 250,000 Mcf per day and 300,000 Mcf per day, respectively. It is stated that, AER and Texas Gas would be filing separate applications for authority to acquire such property rights.

AER asserts that its decision to proceed under section 311 is market driven and consistent with its continuing public utility obligation to provide service to its customers at the lowest reasonable cost.

Comment date: November 8, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-2205-000]

Take notice that on September 29, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing Transco (1) to provide firm transportation service for Transco Energy Marketing Company (TEMCO) of up to 80,000 dekatherms per day; and (2) to construct and operate a new compressor station and certain related facilities on Transco's South Virginia Lateral which are necessary to enable Transco to render such service, all as more fully described in the application which is on file with the Commission and open to public inspection.

By this application, Transco seeks authorization to transport on a firm basis a maximum daily quantity of up to 80,000 Dt per day for TEMCO from a point of receipt at the discharge side of Transco's Compressor Station No. 165 to a proposed point of interconnection between the facilities of Commonwealth Gas Pipeline Corporation and Transco's South Virginia Lateral at Emporia, Virginia. Transco states that the proposed service would commence on April 1, 1990, or as soon thereafter as reasonably practicable when all necessary regulatory approvals are secured and when all necessary facilities are ready for service.

Transco states that in order to render the firm transportation service for TEMCO as proposed herein, the following facilities must be constructed:

(1) A new 5,300 horsepower compressor station at South Hill, Virginia; and

(2) A new measuring and regulating station with a capacity of 80,000 Dt per day at Emporia, Virginia.

Transco also states that the proposed facilities are estimated to cost approximately $7.4 million. Since the proposed facilities are necessary to provide incremental firm service to TEMCO, TEMCO has agreed to pay Transco for the costs of such facilities as a contribution in aid of construction and will also directly reimburse Transco on a monthly basis for the actual costs of operating and maintaining the facilities proposed herein. In recognition of TEMCO's contribution in aid of construction, Transco will provide the firm service proposed at no transportation rate.

Comment date: November 8, 1989 in accordance with standard Paragraph F at the end of the notice.

13. Arkla Energy Resources, a Division of Arkla, Inc.; Mississippi River Transmission Corporation

[Docket No. CP89-2173-000]

Take notice that on September 28, 1989,[1] Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, and Mississippi River Transmission Corporation (MRT) 9900 Clayton Road, St. Louis, Missouri 63124, jointly filed in Docket No. CP-3173-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order permitting and approving the abandonment by sale to ANR Pipeline Company (ANR) of property interests in certain jurisdictional facilities they currently wholly own, together with pre-granted authorization for AER and MRT, if and when events occur triggering a reversion of the aforementioned property interestes to AER and MRT, to reacquire, operate and provide service through the subject facilities without further Commission review, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER amd MRT request all abandonment authorizations necessary for them to implement their part of an arrangement (the Agreement) under which ANR would acquire certain property interests in specified facilities owned by AER and MRT.[2] Under the Agreement, AER and MRT would each convey to ANR property interests in certain of their existing facilities, and AER would convey such an interest to ANR in a new pipeline currently being constructed under section 311 of the NGPA, AER's Line AC, collectively referred to as the "Subject Facilites".

AER notes that ANR would acquire property interests in the Subject Facilities (including *e.g.*, lines of pipe, compressor facilities, easements and rights-of-way, and equipment and facilities located thereon and appurtenant thereto) sufficient to provide ANR with pipeline capacity that would enable ANR to receive and deliver natural gas at certain points on the Subject Facilities up to specified aggregate maximum volumes set out in the Agreement.

AER states that the western portion of the Subject Facilities, consisting of AER's Line AD and related facilities extending from Hemphill County, Texas eastward to and including AER's Chandler Compressor Station (Chandler Station) in Latimer County, Oklahoma, would give ANR ownership of capacity in these facilities sufficient to receive and deliver to the outlet of the Chandler Station up to 100,000 Mcf of natural gas per day. It is indicated that the Subject Facilities also include an interest in jurisdictional and non-jurisdictional gathering, transmission and compressor facilities owned by AER in eastern Oklahoma and northwestern Arkansas, designated as the Arkoma Gathering Facilities, would give ANR ownership of capacity therein sufficient to gather and deliver up to 150,000 Mcf of natural gas per day to that portion of the main transmission system in the area also being acquired by ANR.

AER explains that ANR additionally would acquire an interest in certain AER transmission and compressor facilities connecting to and extending from the Chandler Station to centra, Arkansas, including proposed Line AC and related facilities, referred to as the Eastern Segment. AER further explains that ANR's interest in the Eastern Segment would include capacity sufficient to receive and deliver at specified points up to 250,000 Mcf of natural gas per day.

AER avers that to facilitate the transmission of ANR's gas from the Eastern Segment to ANR's existing transmission facilities in northeastern Louisiana, ANR would acquire from MRT an interest in certain MRT facilities in Arkansa and Louisiana, which includes capacity sufficient to receive and deliver at specified points up to 250,000 Mcf of natural gas per day.

AER states that on approval by the Commission, ANR would be obligated to pay AER and MRT on the date of conveyance an amount of money equal to the net book value of the Subject Facilities, including Line AC, not to exceed a total of $125 million. AER indicates that under the Agreement, AER and MRT would be designated as operators of the Subject Facilities subject to comprehensive provisions for such operation set forth in the Operating Agreement.

AER insists that implementation of the Agreement is viable only if AER is allowed to retain the take-or-pay credits applicable to gas transported in the Subject Facilities. AER notes that ANR has agreed to assign to AER all rights to such credits which might inure to ANR as a result of its ownership interest in the Subject Facilities. AER states that the Agreement is conditioned on, and AER requests, a Commission declaration, condition or appropriate order providing in substance that (a) any party, including without limitation ANR or any affiliate of ANR, requesting transportation of, transmitting, gas on any of the Subject Facilities shall offer to AER the take-or-pay credits provided for in 18 CFR 284.8(f) and 284.9(f) (1988) to the same extent that such credits would have been required to be offered to AER had AER continued to own the Subject Facilities in their entirety and the same gas had been transported thereon and (b) to the extent that any person provides to AER the credits described in the preceding clause (a), such person shall not be required to offer to ANR any credits with respect to such gas.

AER explains that under the Agreement, the occurrence of certain events would cause a reversion to AER and MRT of ANR's interests in the Subject Facilities, including those involving Line AC and related facilities. To permit the orderly operation of these contractual rights, if and when they are triggered, AER and MRT request pre-granted authorization for their reacquisition of such interest and the subsequent use to provide service under then-applicable tariffs of AER and MRT.

AER and MRT assert that implementation of the Agreement would result in reduction in their respective rate levels, provide ANR with a direct connection between its existing Southwest and Southeast systems, provide ANR and its customers with direct access to Arkoma Basin supplies and markets, and result in the direct injection of an additional competitor into the affected transportation markets.

Comment date: November 8, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-25059 Filed 10-24-89; 8:45 am]

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[1] The notice of application was tendered for filing on September 27, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until January 11, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[2] As used herein, the Agreement encompasses two documents, the Sale of Pipeline Interests Agreement and the Operating Agreement Between Arkla, Inc. and ANR Pipeline Company (Opeating Agreement).

[Docket No. TM90-4-20-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 18, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 16, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective, October 1, 1989

Second Substitute Thirty-sixth Revised Sheet No. 203
Second Substitute Thirty-second Revised Sheet No. 204

Proposed to be effective, November 1, 1989

Thirtieth Revised Sheet No. 205

Algonquin states that on October 4, 1989 in Docket No. TF90-1-22-000, Algonquin's pipeline supplier, CNG Transmission Corporation ("CNGT") filed an Interim Purchased Gas Adjustment ("PGA") to reflect increases

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in CNGT's cost of gas from its major pipeline suppliers. Such changes included the rates in CNGT's Rate Schedule CD which underlies Algonquin's Rate Schedule F–2. Pursuant to section 7 of Rate Schedule F–2, Algonquin is filing Second Substitute Thirty-sixth Revised Sheet No. 203 to concurrently track the rate changes made by CNGT in the service underlying Algonquin's Rate Schedule F–2. Algonquin maintains that the effect of CNGT's filing is to increase the demand charge by 3.5¢ per MMBtu and the commodity charge by 8.39¢ per MMBtu over those rates in effect for the month of September, 1989 under Algonquin's Rate Schedule F–2.

Algonquin states that on September 29, 1989, in Docket No. TF90–1–16–000, Algonquin's pipeline supplier, National Fuel Gas Supply Corporation ("National"), filed an Interim Purchased Gas Adjustment to change its commodity rate in the service underlying Algonquin's Rate Schedule F–3. Accordingly, Algonquin states that it is filing Second Substitute Thirty-second Revised Sheet No. 204 to concurrently track National's rate change as permitted by Section 7 of its Rate Schedule F–3. Algonquin maintains that the effect of National's filing is to increase the commodity rate by 21.18¢ per MMBtu from the rates in effect for the month of September, 1989 under Algonquin's Rate Schedule F–3.

Algonquin states that in a filing dated September 29, 1989, Algonquin's pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), made a Quarterly Purchased Gas Adjustment to update its rates to reflect changes in the projected quarterly cost of purchased gas, which includes the service underlying Algonquin's Rate Schedule F–4. Algonquin further states that it is filing Thirtieth Revised Sheet No. 205 to concurrently track such rate changes made by Texas Eastern as permitted by Section 7 of its Rate Schedule F–4. The effect of the change in rates made by Texas Eastern is to decrease the demand charge by 3.9¢ per MMBtu while increasing the commodity charge by 51.04¢ per MMBtu from the rates in effect for the month of October, 1989 under Rate Schedule F–4.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25061 Filed 10–24–89; 8:45 am]

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[Docket No. TQ90–1–63–001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 18, 1989.

Take notice that on October 12, 1989, Carnegie Natural Gas Company (Carnegie) tendered for filing the following two sets of alternate, substitute rate sheets:

Substitute Eighteenth Revised Sheet No. 48, First Revised Volume No. 1 of Carnegie's FERC Gas Tariff, which is proposed to become effective on November 1, 1989 if the Commission has not authorized Carnegie's Second Revised Volume No. 1 to become effective on that date.

Substitute First Revised Sheet No. 9, Second Revised Volume No. 1 of Carnegie's FERC Gas Tariff, which is proposed to become effective on the date Carnegie's Second Revised Volume No. 1 becomes effective.

Carnegie states that on October 4, 1989, it filed in this docket rate sheets which, among other things, included a ssurcharge adjustment in the "Average Cost of Gas" and a "100% Load Factor" rate computations. Carnegie also states that on October 12, 1989, the Commission's staff informed Carnegie that the surcharge adjustment should not be included in these computations. Carnegie is therefore refiling these substitute tariff sheets to reflect deletion of the surcharge adjustment from the "Average Cost of Gas" and 100% Load Factor's adjusted rates.

Carnegie proposes that copies of the transmittal letter and the attached rate sheets have been served on all parties noted in the service list.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25062 Filed 10–24–89; 8:45 am]

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[Docket No. TM90–2–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 18, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on October 13, 1989, pursuant to section 4 of the Natural Gas Act, the Commission's August 12, 1988, September 30, 1988, November 4, 1988, December 28, 1988, March 3, 1989, June 1, 1989, and August 25, 1989, orders in Docket Nos. RP88–217 and RP89–165, and Section 12.9 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Fourth Revised Sheet No. 49
First Revised Sheet No. 49B
Second Revised Sheet No. 49C

The proposed effective date of these sheets is November 1, 1989. CNG states that the purpose of this filing is to change its take-or-pay passthrough provisions to reflect modifications and additions to Order No. 500 buyout and buydown costs that have been made recently by CNG's pipeline suppliers.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before 10/25/89. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25067 Filed 10–24–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–50–005, CP68–179–017, CP89–555–003, CP89–556–003, CP74–192–013, CP86–704–004, CP65–393–007, CP65–284–001, CP64–249–001, G–9262–005, and G–18615–001] (Not Consolidated)

Florida Gas Transmission Co; Offer of Settlement

October 18, 1989.

Take notice that on October 17, 1989,[1] Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed an Offer of Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR § 385.602) in the above-captioned proceedings. The Offer of Settlement contains a Stipulation and Agreement (S&A) that provides for: (1) Resolution of all issues in Docket Nos. RP89–50–000, CP68–179–013, CP89–555–000 and CP89–556–000 (consolidated), except for certain issues in Docket No. RP89–50–000 that are reserved for hearing and prospective implementation; (2) resolution of all issues in Docket Nos. CP68–179–006, CP74–192, and CP86–704 (consolidated), subject to environmental review of certain proposed facilities; and (3) resolution of all issues in Docket Nos. CP65–393–006, CP65–284, CP64–249, G–9262, and G–18615.

The S&A provides for all requisite certificate and abandonment authority pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for FGT to implement proposed changes to existing services, for the implementation of new services, for the addition of new customers, and for related revisions to FGT's FERC Gas Tariff, all as more fully set forth in the S&A which is on file with the Commission and open to public inspection.

FGT states that this S&A supersedes in its entirety the S&A filed by FGT on October 30, 1987, (Phase II Settlement) in Docket No. CP68–179–012, *et al.*, and constitutes withdrawal thereof and cancellation of all letter agreements and service agreements between the parties contained therein. As noted by FGT, the Phase II Settlement addressed two central issues: (1) The justification for the proposed facilities which would expand FGT's peak day capacity up to approximately 925,000 Mcf per day (Phase II Facilities) and (2) the restructuring of contractual relationships with its customers in order to offer an expansion of its services.

It is also noted that on January 13, 1989, FGT filed four interrelated applications: (1) Docket No. CP68–179–013 in which FGT proposed an allocation of its current system (Phase I capacity), nominations of annual volumetric entitlements to existing customers, implementation of a new small customer sales service under proposed Rate Schedule SGS, and other revisions to its FERC Gas Tariff, (2) Docket No. RP89–50–000 in which FGT proposed a general rate increase pursuant to section 4(e) of the Natural Gas Act, (3) Docket No. CP89–555–000 in which FGT requested a blanket transportation certificate under the Commission's Order Nos. 436 and 500, and (4) Docket No. CP89–556–000 in which FGT requested a blanket certificate to make interruptible sales for resale to others. FGT asserted that these four filings were interrelated, and conditioned its willingness to accept the requested blanket transportation certificate in Docket No. CP89–555–000 on the approval of all four applications.[2]

In the general rate proceeding in Docket No. RP89–50–000 the S&A provides for: (1) The settlement of all cost-of-service and throughput volume issues and (2) interim rates pending final Commission resolution of reserved issues. The reserved issues are issues enumerated by the Commission's policy statement dated May 30, 1989 in Docket No. PL89–2–000, *et al.*, including rate design, cost allocation and cost classification.

The S&A filed on October 16, 1989, specifically proposes the following actions and requests the necessary authorizations pursuant to sections 7(b) and 7(c) of the NGA:

(1) *Article V—Transition Cost Recovery (TCR) Mechanism*—Provides that upon the Commission's approval of the S&A, FGT would be authorized to implement a volumetric surcharge which would be applied to all sales and transportation volumes delivered under FGT's jurisdiction services both sales and transportation. FGT proposes that the TCR surcharge not exceed a charge of $0.035 per dekatherm delivered and would be adjusted on an biannual basis in order to recover prudently incurred transition costs from the prior six month period, as defined in FGT's proposed by the new section 25 of the General Terms and Conditions of its FERC Gas Tariff. FGT proposes that the TCR mechanism would be the only means permitted to FGT to flowthrough transition costs paid under gas supply contracts in existence as of January 13, 1989, and paid no later than December 31, 1996.

(2) *Article VI—Construction and Operation of Phase II Facilities*—Provides that upon Commission approval of the S&A, FGT would be authorized to construct and operate the Phase II facilities described in Appendix C of the S&A. Total estimated cost to construct Phase II Facilities would be approximately $61,748,100. The S&A would provide that the costs, approximately $48,825,200, related to FGT's mainline compressor stations and certain identified delivery laterals and related measuring and regulating stations would be treated for accounting and rate purposes on a rolled-in basis. As such, FGT requests waiver of Section 14 of its General Terms and Conditions of its FERC Gas Tariff, as necessary. For those facilities identified in the S&A's Appendix C, Tab 4, FGT proposes that the related costs and expenses would be paid by those customers receiving expanded or new services through such facilities.

(3) *Article VII—Allocation of Capacity*—Provides that upon Commission approval of the S&A, FGT would be authorized to abandon its existing system of Annual Volumetric Entitlements (AVE's) which are reflected in the Index of Entitlements contained in the General Terms and Conditions of FGT's FERC Gas Tariff. Commission approval would provide the acceptance of a revised Index of Entitlements, which is reflected in Appendix B, Tab 11 to the S&A. The revised Index of Entitlements would set forth the total sales entitlements for each new and existing resale and direct sale customer receiving an allocation of capacity on FGT's system. Commission approval of the S&A would also authorize an allocation of FGT's Phase I capacity as set forth in the S&A's Appendix D, Tab 1, all which would be placed in effect immediately upon the effective date of the S&A. Likewise, Commission approval of the S&A would authorize an allocation of FGT's proposed Phase II capacity as set forth in the S&A's Appendix D, Tab 3. Phase

[1] The Offer of Settlement was tendered for filing on October 16, 1989. However, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until October 17, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the appropriate fee is paid.

[2] It is noted that the Commission's May 24, 1989, order in Docket Nos. CP68–179–013, CP89–555–000, CP89–556–000 and RP89–50–000 (47 FERC ¶ 61,253) consolidated the certificate proceedings into the ongoing formal hearing previously established for Docket No. RP89–50–000. It is further noted, that the Commission did not consolidate FGT's Phase II Settlement with the formal hearing proceeding set forth in Docket No. RP89–50–000, *et al.*

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II allocation is proposed to become effective upon the in-service date of the Phase II Facilities. The S&A provides that the Phase I and Phase II allocations for each customer would be provided on defined levels of seasonal Maximum Daily Contract Quantities (MDCQ) and Maximum Annual Contract Quantities (MACQ) for firm sales services, seasonal Maximum Daily Transportation Quantities (MDTQ) and Maximum Annual Transportation Quantities (MATQ) for firm transportation services; and preferred AVE's and MATQ's for preferred sales and transportation services, respectively.

(4) *Article VIII—Transportation Services*—Provides that the Commission's approval of S&A would constitute a blanket certificate pursuant to section 7(c) of the NGA and § 284.221 of the Commission's regulations. Self-implementing transportation services would be provided under the terms and conditions proposed for Rate Schedules FTS–1, PTS–1, and ITS–1 for firm, preferred, and interruptible services, respectively. Upon the effective date of the S&A, FGT would commence transportation services under the authority of Section 311 of the Natural Gas Policy Act and Part 284 of the Commission's regulations. Upon the effective date of the S&A and acceptance of the requests blanket certificate, FGT would immediately commence transportation services through its Phase I capacity for those shippers listed in the S&A's Appendix D, Tab 1, Schedule 1, up to each customer's MATQ's and seasonal MDTQ's under Rate Schedule FTS–1 and transport for those shippers listed in Appendix D, Tab 1, Schedule 2, up to each customer's Preferred MATQ's under Rate Schedule PTS–1. Upon the in-service dates of the Phase II Facilities, FGT would commence transportation services as proposed for Phase II capacity under Rate Schedules FTS–1 and PTS–1 up to the levels listed in Appendix D, Tab 3, Schedule 1, and Appendix D, Tab 3, Schedule 2, respectively. In order to implement each identified shipper's transportation services in this manner, FGT requests that the Commission grant a waiver of the prior notice requirements of §§ 157.205 and 284.223 of the Commission's regulations. In addition, Commission approval would grant FGT the abandonment authority to terminate the existing transportation services rendered upon behalf of Florida Power and Light Company (FPL) under Rate Schedule T–3, to be effective concurrently with the commencement of service to FPL for Phase I capacity under Rate Schedule FTS–1. For purposes of the S&A only, FGT has also agreed that certain municipal corporations, which are existing sales customers engaged in the generation of electricity, may assign all or a portion of their firm capacity under Rate Schedule FTS–1 to an interlocal entity which was formed by such municipal corporations in accordance with Chapter 163 of the Florida Statutes. The interlocal entity would be identified as the Florida Gas Utility and includes: The City of Gainesville, through Gainesville Regional Utilities, and the City of Homestead. In the event that the provision contained in this section VIII of the S&A is not approved, it is agreed that each of the municipal corporations shall be allocated capacity rights for Phase I and Phase II which will be set forth in Appendix D, Tab 4, of the S&A no later than 10 days from the effective date of the S&A.

(5) *Article IX—Sales For Resale Service*—Provides that Commission's approval of the S&A would constitute its acceptance and approval of all tariff sheets which are filed in regards to FGT's proposals concerning FGT's existing and proposed resale services. Commission approval would also constitute the requisite abandonment authority for FGT to abandon all previously certificated sale for resale services under Rate Schedules G (General) and I (Preferred Interruptible) and the requisite certificate authority to render sales for resale services for Phase I capacity under revised Rate Schedules G and I and under the newly proposed services described in Rate Schedules Small General Service (SGS) and Winter Peaking Period Service (WPPS). It is requested that Commission approve the levels indicated for each existing and new customer listed in Appendix D, Tab 1 to become effective concurrently with the effective date of the S&A. Commission approval of the S&A would also constitute the pre-granted authority under sections 7(b) and 7(c) of the NGA to supersede the Phase I levels for all resale customers by the increased levels proposed under Rate Schedule G, SGS, I and WPPS and as listed in Appendix D, Tab 3 to become effective on the in-service date of the Phase II Facilities.

(6) *Article X—Direct Sales Service*—Provides that Commission approval of the S&A would constitute the necessary abandonment authority for FGT to abandon use of its transmission facilities which are being utilized to transport and deliver all previously certificated levels of direct sales service to the direct sales customers identified in the S&A's Appendix D, Tab I. In the S&A, FGT also proposes that the Commission grant the certificate authorization permitting FGT to utilize its transmission facilities to transport and deliver up to the new seasonal MDCQ's and MACQ's and Preferred AVE's levels for Phase I capacity for each existing and new direct sales customer listed in Appendix D, Tab I to be effective concurrently with the effective date of the S&A. Also the Commission's approval of the S&A would constitute the pre-granted atuhority under sections 7(b) and 7(c) of the NGA to supersede the Phase I levels of direct sales services authorized for each customer by the increased levels listed for each buyer listed in Appendix D, Tab 3 to be effective on the in-service date of the Phase II Facilities.

(7) *Article XI—Conversion of Sales Service To Transportation Service*—Describes FGT's agreement to permit any buyer under Rate Schedule G to convert up to 100 percent of its seasonal MDCQ and MACQ quantities to firm transportation service and to permit any buyer under Rate Schedule I to convert up to one hundred percent of its Preferred AVE to preferred tranportation service under FGT's respective Rate Schedules FTS–1 and PST–1 over a 5-year conversion period commencing with FGT's acceptance of a blanket certificate under § 284.221 of the Commission's regulations. Such conversion options will be made pursuant to proposed Section 16A of the new General Terms and Conditions of FFT's FERC Gas Tariff which is contained in the S&A's Appendix B. Tab 11. In addition, FGT would provide any firm and preferred direct sales customer who has requested such rights during the settlement process in Docket No. RP89–50–000, *et al.*, similar conversion rights proposed above for the resale services under Rate Schedules G and I. The Commission's approval of the S&A would constitute the pre-granted abandonment authority for all firm and preferred sales entitlements which are converted. The S&A notes that the parties recognize all first-year conversions which have been elected are already reflected in the levels listed for the resale and direct sales services and the firm and preferred transportation services in the S&A's Appendix D, Tabs 1 and 3. The Commission's approval of the S&A would constitute waiver to the proposed Section 16A of the General Terms and Conditions as necessary to permit such first-year conversions concurrently with the effective date of the S&A.

(8) *Article XII—Curtailment*—Provides that the Commission approval of the S&A would constitutes approval for the curtailment methodology on FGT's system as set forth in proposed Sections 9 and 9A of the revised General Terms and Conditions of FGT's FERC Gas Tariff which are included at the S&A's Appendix B, Tab 11 to be effective concurrently with the effective date of the S&A.

(9) *Article XIII—Changes In Firm Contract Quantities, AVE's, and D–2 Billing Determinants*—Pursuant to section 13 of the revised General Terms and Conditions of FGT's FERC Gas Tariff which is contained in the S&A's Appendix B, Tab 11, FGT proposes to permit firm transportation and sales customers the right to increase or decrease firm contract quantities on a temporary and/or permanent basis under certain conditions. This article provides that Commission approval of the S&A would constitute blanket certificate authority under section 7(c) and pre-granted authorization under section 7(b) of the NGA to permit FGT to effectuate such temporary and permanent changes in firm contract quantities. Further, FGT would permit customers under Rate Schedule I and PTS–1 to renominate reduced levels of Preferred AVE's and MATQ's respectively upon the earlier of (i) the third anniversary of the effective date for the S&A, or (ii) the date FGT places into effect revised rates pursuant to a general rate increase filing under section (4) of the NGA. The S&A indicates that FGT would file for the requisite abandonment authority to effect such renominations of Preferred AVE's and MATQ's.

(10) *Article XIV—Other Transportotion Issues*—Provides that FGT agrees to permit firm shippers under proposed Rate Schedule FTS–1 upon request to (i) contract for a service term which provides a unilateral option on the part of such shippers to extend the term of service for an additional term not to exceed the initial primary term, with a year-to-year evergreen clause thereafter. Under this option either FGT or the shipper could thereafter terminate the service upon 6-month written notice or (ii) contract for a service term of a fixed duration which requires FGT to file for and receive specific abandonment authorization under Section 7(b) of the NGA prior to termination. Further, Article XIV provides that FGT would utilize the proportional access methodology set forth in the S&A's Appendix E in arriving at the allocation of firm receipt point capacity under Rate Schedule FTS–1. FGT agrees to treat firm system supply sales volumes on a comparable basis with firm transportation volumes. Moreover, FGT agrees to file revised tariff sheets after resolution of reserved rate issues which would amend Rate Schedules FTS–1, PTS–1, and ITS–1 to provide that FGT's Compressor stations Nos. 7 and 11 (in-line transfer points) could be nominated as a receipt and delivery points by any shipper. As provided further in this article, FGT agrees to conduct a 10-day open season for receipt of requests for interruptible transportation service under FGT's proposed Rate Schedule ITS–1 and receipt of requests for interruptible sales service under proposed Rate Schedule ISS–1 and a comparable direct sales service. Within 30 days of the Presiding Administrative Law Judge's certification of this S&A, FGT would provide at least a 30 day public notice of the commencement date of such open season via its electronic bulletin board and through notice in trade publications.

(11) *Article XV—Blanket On-System And Off-System Interruptible Sales Program*—Provides that Commission approval of the S&A would constitute the issuance of a blanket certificate with pregranted abandonment which would give FGT the authority to sell gas on an interruptible basis both on-system and off-system to any party in accordance with the provisions of new Rate Schedule ISS–1 which is reflected in Appendix B, Tab 12 to the S&A. In addition, the requested blanket certificate would include the necessary authorization with pregranted abandonment authority for FGT to utilize its transmission facilities to effectuate direct sales to end-users under comparable terms and conditions specified in the FGT's proposed Rate Schedule ISS–1. The S&A explains: (i) That there will be no minimum purchase obligations, (ii) that in the event FGT discounts the non-gas component of its rate under Rate Schedule ISS–1 that an equal discount will be offered under Rate Schedule ITS–1, and (iii) that FGT shall treat sales under Rate Schedule ISS–1 in the same manner as any interruptible transportation service under Rate Schedule ITS–1 for purposes of scheduling, allocating capacity and curtailing services and notice procedures. In the event that FGT receives authority to abandon its blanket transportation certificate, FGT requests that authorization for its blanket sales certificate should terminate concurrently as well.

(12) *Article XVI—Second Revised Volume No. 1 Tariff*—Provides that Commission approval of the S&A would grant the necessary approval for the cancellation of FGT's FERC Gas Tariff, First Revised Volume No. 1 Tariff and the Commission's acceptance and approval of a Second Revised Volume No. 1 which would consist of the tariff sheets designated as such in Appendix B of this S&A; all proposed to become effective on the effective date of this S&A. Aside from those changes previously mentioned, the Second Revised Volume No. 1 would reflect proposed changes to the General Terms and Conditions Section, the Table of Contents, the Preliminary Statement, FGT's System Map, the Index of Requirements and the Index of Purchasers.

(13) *Article XVIII—Other Proceedings*—Provides that the Commission order approving this S&A would render moot FGT's application filed on January 25, 1985, in Docket No. CP68–179–006 and FGT's application filed on February 17, 1987 in Docket Nos. G–9262, G–18615, CP64–249 and CP65–284.

(14) *Article XXI—Effective Date*—provides that neither the S&A nor any of its provisions shall become effective until the Commission order approving it becomes final and is no longer subject to appeal before any appellate court having jurisdiction of the premise; provided, however, FGT may waive the condition(s) that such order be final and/or no longer subject to appeal. In such event, the effective date of this S&A would become the first day of the first month following the date on which the Commission order becomes final and is no longer subject to appeal, or, in the event FGT waives the latter condition(s), the effective date would be the first day of the first month following such waiver by FGT.

Any person desiring to be heard or to make any protest with reference to the Offer of Settlement should on or before November 6, 1989 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons

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who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 89-25066 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-16-001, TM90-1-16-001, TF90-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

October 18, 1989.

Take notice that on October 12, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective on October 1, 1989.

Substitute Twenty-First Revised Sheet No. 4

Substitute Twenty-Second Revised Sheet No. 4

National states that the filing is made to comply with the Commission's order issued September 29, 1989 in Docket Nos. TQ90-1-16-000 and TM90-1-16-000. Compared to National's original filing, Substitute Twenty-First Revised Sheet No. 4 reflects a per-dekatherm decrease in National's CD and RQ demand and commodity rates of 2 cents and .25 cents, respectively. Substitute Twenty-Second Revised Sheet No. 4 is said to be filed solely to reflect the change in the demand rate filed in National's interim Purchased Gas Adjustment filed in Docket No. TF90-1-16-000 on September 29, 1989.

National requests waiver of the Commission's Rules and Regulations as may be required to permit the tariff sheets to become effective on October 1, 1989. The compliance filing is made with the understanding that acceptance of these rates will not prejudice National's right to request rehearing of the Commission's September 29, 1989 order in Docket Nos. TQ90-1-16-000 and TM90-1-16-000, in order to seek recovery of Account No. 858 charges.

National states that copies of this filing were posted in accordance with the Commission's Regulations and served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before October 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-25063 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-137-004]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

October 18, 1989

Take notice that on October 6, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Fifty-Sixth Revised Sheet No. 10 to be part of its First Revised Volume No. 1 Tariff.

Northwest states that the purpose of this filing is to implement a 6.39¢ per MMBtu credit to be reflected as an offset against the Commodity SSP Surcharge that relates to Northwest's jurisdictional sales service. The 6.39¢ per MMBtu credit is filed to avoid a double recovery of certain processing costs and will remain in effect for the 12 months commencing November 1, 1989 which is the proposed effective date for Fifty-Sixth Revised Sheet No. 10. Additional detail concerning the aforementioned surcharge credit is included in Northwest's March 31, 1989 Order No. 500 Buyout/Buydown Cost Recovery Filing in this docket.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89-137-000 and to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-25064 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-9-000]

Trailblazer Pipeline Co.; Changes in FERC Gas Tariff

October 18, 1989.

Take notice that on October 11, 1989, Trailblazer Pipeline Company (Trailblazer) submitted for filing tariff sheets to be part of its FERC Gas Tariff, Original Volume No. 1 and sheets encompassing its new Original Volume No. 1A, to be effective November 1, 1989.

Trailblazer states that the purposes of these sheets are: (1) to submit revised tariff sheets, including a *pro forma* service agreement, in compliance with Ordering Paragraph (B) of the Commission's order issued October 6, 1989 in Docket Nos. RP84-94-000, *et al.* (October 6 Order); (2) to place into effect tariff sheets complying with CFR 284.7 so that Trailblazer may commence "open access" transportation under section 311 of the Natural Gas Policy Act of 1978; and (3) to submit an alternate set of rates to become effective November 1, 1989.

In addition, Trailblazer requested waiver of the Commission's Regulations to the extent, if any, necessary to permit its tariff sheets to become effective November 1, 1989 and to commence section 311 "open access" transportation on that date.

Trailblazer further states that a copy of its filing and tariff sheets has been mailed to Trailblazer's jurisdictional transportation customers, interested state regulatory agencies and all parties in Docket Nos. RP84-94-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party msut file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-25065 Filed 10-24-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of September 8 Through September 15, 1989

During the Week of September 8 through September 15, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 8 through September 15, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 8, 1989	Exxon/Ronson Aviation, Inc., Washington, DC	RR307-1	Request for Modification/Rescission. If granted: The August 23, 1989 Decision and Order (Case No. RF307-4683) issued to Ronson Aviation, Inc. would be modified regarding the firm's Application for Refund submitted in the Exxon Refund Proceeding.
Sept. 11, 1989	Boulder Scientific Co., Washington, DC	KFA-0318	Appeal of an information request denial. If granted: The April 28, 1989 Freedom of Information Request denial issued by the Savannah River Operations Office would be rescinded and the Boulder Scientific Company would receive access to certain DOE information.
Sept. 15, 1989	Radiation Research Project Knoxville, TN	KFA-0319	Appeal of an information request denial. If granted: The August 22, 1989 Freedom of Information Request denial issued by the Oak Ridge Operations Office would be rescinded, and Radiation Research Project would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
09/08/89 thru 09/15/89	Crude Oil Refund, Applications Received.	RF272-75651 thru RF272-75675
09/08/89 thru 09/15/89	Atlantic Richfield Refund, Applications Received.	RF304-10300 thru RF304-10385
09/08/89 thru 09/15/89	Shell Oil Refund, Applications Received.	RF315-7101 thru RF315-7187
09/11/89	Pennzoil, OKC Corp, Coline, Nat'l Helium/Kansas.	RQ10-532 thru RQ10-535
09/11/89	Amoco/New York	RQ251-536
09/14/89	Excelsior Utilities, Inc.	RF307-10059
09/14/89	Waters Oil Company	RF307-10060

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
09/19/89	International Paper Company.	RC272-71

[FR Doc. 89-25125 Filed 10-24-89; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of September 15 Through September 22, 1989

During the Week of September 15 through September 22, 1989, the appeal and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 17, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 15 through September 22, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 15, 1989	Automation Engineering, Inc., Washington, DC	KFA-0320	Appeal of an information request denial. If granted: The August 17, 1989 Freedom of Information Request denial issued by the Savannah River Operations Office would be rescinded and Automation Engineering, Inc. would receive access to documents relating to the purchase of a Charge and Discharge Input Ordering System, Purchase Order AZ 0789430.

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REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
09/15/89 thru 09/22/89	Crude Oil Refund, Applications Received.	RF272-75676 thru RF272-75896
09/15/89 thru 09/22/89	Atlantic Richfield Refund, Applications Received.	RF304-10386 thru RF304-10440
09/15/89 thru 09/22/89	Shell Oil Refund, Applications Received.	RF315-7188 thru RF315-7255
09/18/89	Sam Ross Gulf	RF300-10865
09/18/89	Peru Propane Corporation.	RF300-10866
09/19/89	H.H. Park, Inc.	RF300-10867
09/20/89	Donald Ragsdale	RC272-72
09/20/89	Enron Corporation	RF265-2861
09/21/89	Marine Fueling Div. Manuel.	RF309-1371

[FR Doc. 89-25126 Filed 10-24-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3674-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Comprehensive Assessment Information Rule (EPA ICR #1325.03; OMB #2010-0019). This ICR requests renewal of the existing clearance.

Abstract: Under section 8(a) of TSCA, EPA has the authority to require chemical manufacturers, importers and processors to maintain records and submit reports to the Agency. The Comprehensive Assessment Information Rule (CAIR) establishes uniform reporting and recordkeeping requirements for the chemical industry and a list of generic questions that EPA and other Federal agencies can use to collect chemical-specific information. The information collected under CAIR will be used to support the assessment and regulation of chemical substances.

Burden Statement: The public reporting burden for this collection of information is estimated to average 205 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical manufacturers, importers, and processors.

Estimated No. of Respondents: 460.

Estimated Total Annual Burden on Respondents: 189,010 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070-0057), Washington, DC 20503, Telephone: (202) 395-3084.

Dated: October 11, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-25137 Filed 10-24-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3674-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Notice for Recall of Cancelled or Suspended Pesticides (EPA ICR # 1520.01). This ICR requests clearance for a new information collection.

Abstract: Under section 19(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, EPA has the authority to request the voluntary recall of suspended or cancelled pesticides by the registrant and others in the chain of distribution. As part of a suspension and cancellation order, registrants will be asked to submit a report indicating: (1) Who they contacted in carrying out their recall, (2) how much suspended/cancelled pesticide they have on hand and (3) where this product is stored. EPA will use this information to plan for reimbursement of storage costs, to allocate resources for indemnification claim processing, and to monitor compliance.

Burden Statement: The public reporting burden for this collection of information is estimated to average 40 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 40.

Estimated Total Annual Burden on Respondents: 1,600 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, Telephone: (202) 395-3084.

Dated: October 16, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-25138 Filed 10-24-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3674-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

SUPPLEMENTARY INFORMATION:

Title: State Water Quality Standards Regulation. (ICR # 0988.03; OMB # 2040-0049). (This is a renewal of a previously approved collection).

Abstract: Under the Clean Water Act, this regulation requires States to review and, as appropriate, revise their water quality standards at least once every three years. They must then submit the results of their reviews to the Administrator of EPA, who uses these submissions to determine compliance with the Act.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4634 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Respondents are the States and Territories.

Estimated Number or Respondents: 57.

Estimated Total Annual Burden on Respondents: 264,138

Frequency of Collection: At least triennially.

To obtain a copy of the ICR package contact Sandy Farmer at (202) 382-2740).

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20530.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-25139 Filed 10-24-89; 8:45 am]
BILLING CODE 6460-50-M

[FRL-3674-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Notice for Stored Pesticides with Cancelled or Suspended Registrations (EPA ICR #1519.01). This ICR requests clearance for a new information collection.

Abstract: Under section 6(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, persons who possess cancelled or suspended pesticides must notify EPA (and state and local officials) of how much of the substance they have in their physical possession and where it is stored. EPA will use the information to monitor compliance, estimate disposal burdens, and decide on the need for a recall.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Holders of suspended or cancelled pesticide products

Estimated No. of Respondents: 156,000

Estimated Total Annual Burden on Respondents: 156,000 hours

Frequency of Collection: On occasion

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, Telephone: (202) 395-3084.

Dated: October 16, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-25140 Filed 10-24-89; 8:45 am]
BILLING CODE 6560-50-M

[AD-FRL-3674-5]

Symposium on Regulatory Approaches for Reducing Emissions of Volatile Organic Compounds (VOC's) From the Use of Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of symposium.

SUMMARY: The EPA is evaluating the air emissions of VOC's from a variety of consumer products, and the techniques and strategies available for controlling those emissions. As a part of this evaluation, the EPA will conduct a symposium entitled "Regulatory Approaches for Reducing VOC Emissions from the Use of Consumer Products" on November 14 and 15, 1989. Participants at this symposium will include representatives of the industries that would be affected by regulation of VOC emissions from the use of consumer products, personnel from State and local air pollution control agencies and from the EPA, and other interested parties.

FOR MORE INFORMATION ON THE SYMPOSIUM: Contact Mr. Bruce Moore, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emission Standards Division (MD-13), Research Triangle Park, North Carolina 27711, Telephone (919) 541-5460.

SUPPLEMENTARY INFORMATION: The symposium on "Regulatory Approaches for Reducing VOC Emissions from the Use of Consumer Products" will be held on November 14 and 15, 1989, at the Sheraton Imperial Hotel & Towers, Interstate 40, Exit 282, at Page Road, Research Triangle Park, North Carolina. The objectives of the symposium are to:

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1. Communicate to the consumer products industry that the EPA is considering approaches for regulating VOC emissions from the use of consumer products.

2. Initiate a dialogue among the EPA, the States, and the consumer products industry.

3. Provide a forum for discussing the views of the industry, the States, and the EPA regarding the implementation of alternative control measures and regulatory approaches to reduce VOC emissions from the use of consumer products.

4. Develop an approach for continued industry and State participation in the EPA's investigations of approaches for reducing VOC emissions from the use of consumer products.

Individuals and organizations targeted to attend the symposium include industry representatives knowledgeable in their product categories, personnel from State and local air pollution control agencies involved in the development of regulations for VOC emissions from the use of consumer products, and other interested parties. Plenary sessions will include EPA, State, and industry presentations. Work groups comprised of approximately 10 persons will be established for each of 6 broad product categories: Personal care products, home care products, automotive products, adhesives and sealants, household pesticides, and aerosol spray paints. The concurrent work group sessions will be open to an audience of the remaining symposium participants. Registration will be limited to 200 participants.

Dated: October 19, 1989.

Gerald Emison,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 89-25141 Filed 10-24-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44540; FRL 3661-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on oleylamine (CAS No. 112-90-3) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Data was also received for 3,4-dichloroaniline (CAS No. 95-76-1), pursuant to a testing consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for oleylamine was submitted by Chemical Manufacturers association on behalf of Akzo Chemicals Inc., Jetco Chemicals, Inc., Sherex Chemical Company, Inc., and Witco Corporation, Humko Chemical Division pursuant to a test rule at 40 CFR 799.3175. It was received by EPA on October 2, 1989. The submission describes mouse lymphoma mutagenesis assay with confirmation. Mutagenic testing is required by this test rule.

Test data for 3,4-dichloroaniline was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of E. I. du Pont de Nemours and Company, Inc., pursuant to a testing consent order at 40 CFR 799.5000. It was received by EPA on October 3, 1989. The submission describes mouse bone marrow micronucleus assay of 3,4-dichloroaniline. Metagenic testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44540). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 18, 1989.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-25142 Filed 10-24-89; 8:45 am]

BILLING CODE 6560-50-D

Water Quality Criteria Document for Tributyltin; Data Availability

[OW-FRL-3673-2]

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comments.

SUMMARY: On July 1, 1989, the Environmental Protection Agency (EPA) announced a notice of request for comments on the proposed ambient aquatic life water quality criteria document for tributyltin. When published in final form, following review of public comments, water quality criteria may form the basis for enforceable State water quality standards. These criteria are published pursuant to section 304(a)(1) of the Clean Water Act and section 9 of the Organotin Antifouling Paint Control Act of 1988.

Today, EPA is making available for public review and comment additional data for tributyltin. This data will be considered in the review process of the tributyltin water quality criteria document. EPA will review this data and all information submitted to determine if the proposed criteria should remain as proposed or be modified.

DATES: Written comments should be submitted to the person listed directly below by November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kennard W. Potts, U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Criteria and Standards Division (WH-585), 401 M Street SW., Washington, DC 20460, Telephone: (202) 475-7315.

ADDRESSES:

Availability of Data

This notice requests comments on additional data which may be used to modify the proposed ambient water quality criteria document for tributyltin that contains criteria for the protection of aquatic life and its uses. Copies of the complete proposed criteria document may be obtained upon request at the above address. The available data as well as this document are available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act [33 U.S.C. 1314(a)(1)] requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" [Water Quality Criteria 1972). All criteria work through late 1986 was summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on December 3, 1986 (51 FR 43665). Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were also issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987 (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for zinc which updated criteria previously published in the 1980 ambient water quality document. On January 5, 1988 (53 FR 177), EPA announced the publication of revised ambient water quality criteria for selenium which also updated criteria previously published in 1980. Final documents were issued for chloride on May 26, 1988 (53 FR 19028) aluminum on August 30, 1988 (53 FR 33177) and for ammonia (Saltwater) on May 4, 1989 (54 FR 19227). No previous criteria had been issued for these substances.

Available Data

Today EPA is announcing the availability for public comment of additional data which pertains to the proposed tributyltin (TBT) water quality criteria document for the protection of aquatic organisms. Tributyltin is an organotin compound that is used as an active ingredient in antifouling coatings to reduce the growth of sessile aquatic organisms or surfaces submerged in water, such as ship hulls. On January 8, 1986, EPA issued a notice of Special Review, under the Federal Insecticide, Fungicide, and Rodenticide Act, or certain pesticide products containing tributyltin used as antifoulants (51 FR 778). On October 4, 1988, EPA issued a partial conclusion of the Special Review and notice of intent to cancel registrations and deny applications for all pesticide products containing TBT as an active ingredient for use as antifoulants unless the registrations/applications comply with the specific terms and conditions provided in the notice (53 FR 39022). Specific terms and conditions established under the Act include an interim release rate restriction and certification program; this program will expire when a final Special Review decision regarding the release of organotin into the aquatic environment is issued and takes effect. The Act also requires EPA to issue a final water quality criteria document concerning organotin compounds by March 30, 1989. The Agency chose to propose a document addressing TBT specifically because it is the most toxic form or organotin used in antifouling formulations now on the market. It is the only organotin with sufficient data available to calculate criterion values.

EPA previously issued a water quality advisory for tributyltin in September 1987. Subsequent to the last literature search cited in the criteria document, EPA continued to collect data on the effects of tributyltin. These data, now available for public comment, will be considered during review of the document. Particular attention will be directed toward data indicating that some species of marine snails may be sensitive to concentrations of TBT which are lower than the concentration published in the advisory and criterion continuous concentration (CCC) proposed in the present document. EPA will review all information submitted to determine if the proposed criteria should remain as proposed or be modified.

Dated: October 13, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-25143 Filed 10-24-89; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of amendment.

SUMMARY: The Export-Import Bank of the United States is publishing an amendment to its Systems of Records.

EFFECTIVE DATE: October 1, 1989.

ADDRESS: Export-Import Bank of the United States, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Helene H. Wall, Administrative Officer, Export-Import Bank of the United States, Washington, DC 20571, Telephone (202) 566-8111.

SUPPLEMENTARY INFORMATION: Due to a reorganization, The Export-Import Bank's System of Records have been amended as follows:

EIB-1 **SYSTEM MANAGER(S) AND ADDRESS:** "Personnel Office" has been changed to "Office of Personnel", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB-2, 13, 26, 28, 29 and 30 **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB-3 **RETRIEVABILITY:** "Numerically" has been changed to "Chronological", **SAFEGUARDS:** "Locked desk drawer" has been changed to "Locked office", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer", and **RECORDS SOURCE CATEGORIES:** "SF-47" to "SF-46".

EIB-4, 7, 16, 17, 18, 19 and 31 **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB-5 and 33 **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB-6 **RETRIEVABILITY:** "Alphabetical" has been changed to "Numerically", **RETENTION AND DISPOSAL:** "2 years after the case has been resolved" has been changed to "indefinite", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer/EEO Officer", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB-8 **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:** "Used by the Treasury * * *" has been changed to "Used by the Treasurer" * * *, **NOTIFICATION PROCEDURE:** "Vice President— Administration" has been changed to "Administrative Officer", and **RECORD ACCESS PROCEDURES:** "Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above" has been changed to "Individuals desiring to contest or amend information maintained in the system should direct

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their request to the Payroll Section, Treasurer Controller's office".

EIB–9 **NOTIFICATION PROCEDURE:** "Vice president—Administration" has been changed to "Administrative Officer", and **RECORD ACCESS PROCEDURES:** "Individuals desiring to contest or amend information maintained in the system should direct their request to the Notification listed above" has been changed to "Individuals desiring to contest or amend information maintained in the system should direct their request to the Payroll Section, Treasurer Controller's office".

EIB–10 **SAFEGUARDS:** "File cabinet * * *" has been changed to "File cabinet in Locked office", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–11, 14 and 21 Delete entirely.

EIB–12 **CATEGORIES OF RECORDS IN THE SYSTEM:** "Name, title, grade, approximate dates of travel, destination, purpose of travel and date of security clearance" has been changed to "Name, title, grade, approximate dates of travel, destination, and purpose of travel and grade", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice president—Administration" has been changed to "Administrative Officer", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–15 **SYSTEM NAME:** "EIB payroll Coding Sheet, Magnetic Tape" has been changed to "EIB Payroll File", **SYSTEM LOCATION:** add "and off-site", **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:** add the following paragraph "Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681A(F) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).", **RETRIEVABILITY:** add "employee number and social security number", **SAFEGUARDS:** add "copy retained off-site", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–20 **RETENTION AND DISPOSAL:** "As long as employee is employed by the Eximbank" has been changed to "As long as employee is employed by the Eximbank and is eligible for a Periodic Step Increase", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been deleted, and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–22 **RETENTION AND DISPOSAL:** 2. "upon employee's departure" has been changed to "2 years after employee's departure, except SF–312 which is retained for 50 years", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–23 **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President–Administration" has been deleted, and **NOTIFICATION PROCEDURE:** "Vice President—Administration" to "Administrative Officer".

EIB–24 **RETRIEVABILITY:** "Chronologically" has been changed to "Kept chronologically in employee's security folder", **RETENTION AND DISPOSAL:** "2 years, destroyed by burning" has been changed to "2 year after employee separates from the Bank, destroyed by burning", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration" has been changed to "Administrative Officer", and **NOTIFICATION PROCEDURE:** "Vice President—Admigistration" has been changed to "Administrative Officer".

EIB–25 **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration EDP Center" has been changed to "Vice President, Information Management Division", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" to "Administrative Officer".

EIB–27 **RETRIEVABILITY:** "According to bond subscriber number" has been changed to "Alphabetical", **SAFEGUARDS:** "2 drawer horizontal file cabinet" has been changed to "Steel file cabinet", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–32 **STORAGE:** "Ledger" has been changed to "Microcomputer", **RETRIEVABILITY:** "Period basis" has been changed to "Travel order number, Traveler's name", **SAFEGUARDS:** delete "Cabinet and", **RETENTION AND DISPOSAL:** "Unit audited" changed has been changed to "retained 3 years", **SYSTEM MANAGER(S) AND ADDRESS:** "Travel and Administrative Expense Unit" has been changed to "Payroll and Administrative Expensive Section", **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

EIB–34 **STORAGE:** "inactive in boxes: has been changed to "inactive in locked filing cabinet", **SYSTEM MANAGER(S) AND ADDRESS:** "Vice President—Administration, Personnel Office" has been changed to "Office of Personnel", and **NOTIFICATION PROCEDURE:** "Vice President—Administration" has been changed to "Administrative Officer".

Helene H. Wall,

Administrative Officer.

[FR Doc. 89–25054 Filed 10–24–89; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–845–DR]

Major Disaster and Related Determinations—California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–845–DR), dated October 18, 1989, and related determinations.

DATED: October 18, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

Notice: Notice is hereby given that, in a letter dated October 18, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of California, resulting from an earthquake and aftershocks which began on October 17, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93–288, as amended by Public Law 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

The City and County of San Francisco and the counties of Alameda, Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89–25105 Filed 10–24–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Association Agreement(s) Filed; Lloyd/Nacional Association

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010265–004

Title: Lloyd/Nacional Association Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional.

Synopsis: The proposed amendment would permit the parties to cross charter space to one another in the agreement trade.

By order of the Federal Maritime Commission.

Dated: October 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25070 Filed 10–24–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Jacksonville Port Authority

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200297

Title: Jacksonville Port Authority Terminal Agreement.

Parties: Jacksonville Port Authority (Authority), Empresa Lineas Maritimas Argentinas, S.A. (ELMA).

Synopsis: The Agreement provides ELMA with certain discounts from the Authority's tariff rates for wharfage and container receiving/delivery charges based on the number of vessel calls at the Port of Jacksonville. ELMA guarantees 24 vessels calls within the one year term of the Agreement.

By Order of the Federal Maritime Commission.

Dated: October 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25071 Filed 10–24–89; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P3–89]

Maximum Container Weights

Due to difficulties created by the California earthquake, a one-week extension of time to October 27, 1989, is granted for filing responses to the petition in this matter, noticed in the **Federal Register** on August 23, 1989 (54 FR 35246).

Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 and shall consist of an original and 15 copies. Responses shall also be served on the filing parties as follows: (1) Attorneys for South Europe/U.S.A. Freight Conference—Stanley O. Sher, Marc J. Fink, Dow, Lohnes & Albertson, 1255 Twenty-third Street NW., Suite 500, Washington, DC 20037; and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25089 Filed 10–24–89; 8:45 am]

BILLING CODE 6730–01–M

[PETITION NO. P4–89]

Elimination of "Per Container" Rates; Enlargement of Time to Comment

Due to difficulties created by the California earthquake, a one-week extension of time to October 27, 1989, is granted for filing responses to the petition in this matter, noticed in the **Federal Register** on August 24, 1989 (54 FR 35246).

Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001 and shall consist of an original and 15 copies. Responses shall also be served on the filing parties as follows: (1) Attorneys for Transpacific Westbound Rate Agreement—R. Frederic Fisher, Lillick, McHose & Charles, Two Embarcadero Center, Suite 2700, San Fransico, California 94111, and (2) Attorney for American Trucking Associations and ATA Intermodal Council—Kenneth E. Siegel, Associate General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, Virginia 22314.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25090 Filed 10–24–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amcore Financial, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

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company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 13, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to acquire Mid-American Financial Services Company, Loves Park, Illinois, and thereby engage in purchasing retail installment contracts from retailers, originating retail installment loans to consumers, and originating equity loans and second mortgages to consumers pursuant to section 225.25(b)(1) of the Board's Regulation Y.

2. *First State Bancorp, Inc.*, Harwood Heights, Illinois; to acquire American Mortgage and Real Estate Services, Inc., Chicago, Illinois, and thereby engage in originating, processing and underwriting residential first and second mortgages pursuant to section 225.25(b)(1)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire Southwest Financial Corporation, Garden City, Kansas, and thereby engage in the sale of life and accident and health insurance directly related to extensions of credit by applicant's subsidiary banks pursuant to section 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25119 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

Amcore Financial, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to engage *de novo* through its subsidiary, Amcore Trust Company, Rockford, Illinois, in accepting and executing trusts and carrying on a general trust company business pursuant to section 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Gaylord Bancorporation, Inc.*, Gaylord, Minnesota; to engage *de novo* in acting as an investment or financial advisor to the extent of providing portfolio investment advice to any other person; furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments pursuant to section 225.25(b)(4); management consulting advice to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies pursuant to § 225.25(b)(11); and performing appraisals of real estate and tangible and intangible personal property including securities pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in Colorado, Iowa, Michigan, Missouri, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Wisconsin.

2. *Norwest Corporation*, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa (financing and management and data processing services activities; New Hampshire); to engage directly or through one or more subsidiaries in the activities of consumer finance; sales finance; and the offering for sale and selling of bookkeeping, payroll and other management financial reporting services and data processing services. These activities are permissible pursuant to § 225.25(b)(1) and (b)(7) of the Board's Regulation Y. These activities will be conducted in the State of New Hampshire.

Board of Governors of the Federal Reserve System, October 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25118 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

The Fuji Bank, Limited, Tokyo, Japan; Application to Engage in Nonbanking Activities

The Fuji Bank, Limited, Tokyo, Japan ("Fuji"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* indirectly through its wholly owned subsidiary, Heller Capital Markets Group, Inc. ("Company"), in the following activities:

(i) Providing advice in connection with merger, acquisition, divestiture, recapitalization and financial transactions for unaffiliated financial and non-financial institutions;

(ii) Providing valuation services for unaffiliated financial and non-financial institutions;

(iii) Rendering fairness opinions in connection with merger, acquisition and similar transactions for non-affiliated financial and non-financial institutions;

(iv) Providing advice regarding the structuring and arranging of loan syndications, interest rate swaps, interest rate caps and similar transactions; and

(v) Providing loan marketing and advisory services to financial institutions; other business entities and pension plans, including providing advice to such entities which seek to purchase or sell loans and other extensions of credit about opportunities to do so and providing assistance in the purchase and sale of such loans and other extensions of credit.

This activity will be conducted throughout the United States.

Fuji contends that the Board has previously determined by Order that all of the activities listed above are permissible under the Act.[1]

[1] *Bryn Mawr Bank Corporation*, 74 Federal Reserve Bulletin 329 (1988); *Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988); *SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 240 (1988); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); *Security Pacific Corporation*, 71 Federal Reserve Bulletin 118 (1985); *Post-Och Kreditbanken, PKbanken*, 68 Federal Reserve Bulletin 787 (1982); *Societe Generale*, 67 Federal Reserve Bulletin 453 (1981).

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweight possible adverse effects, such as under concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Interested persons are requested to express their views in writing on whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Applicant agrees to conduct its activities in accordance with certain limitations imposed by the Board in the Orders cited above, and accordingly makes the following commitments:

(i) Company will not make available to Fuji or any of its subsidiaries, confidential information received from any customer of Company, except as consented to by such customer;

(ii) Disclosure always will be made to each potential customer or Company that Company is an affiliate of Fuji;

(iii) Company will render advice on an explicit fee basis without regard to correspondent balances maintained by the customer of Company with Fuji or any of its subsidiary depository institutions; and

(iv) Company's financial advisory and loan marketing activities will not encompass the performance of routine tasks or operations for a customer on a daily or continuous basis.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposals under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 8, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25124 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

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Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grant Avenue, Kansas City, Missouri 64198:

1. *Philip Burns*, West Point, Nebraska, to acquire an additional 34.9 percent, totalling 41.0 percent, of the voting shares of West Point Bancorp, St. Joseph, Missouri, parent of Farmers and Merchants National Bank, West Point, Nebraska, and thereby indirectly acquire 36.9 percent of the voting shares of Dakota Bancshares, Inc., St. Joseph, Missouri, parent of Dakota County State Bank, South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, October 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25120 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

The Owego National Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 15, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Owego National Financial Corporation*, Owego, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Owego National Bank, Owego, New York.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *BancShares National Corp.*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Vinings Bank & Trust, N.A., Atlanta, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *North Bancorp, Inc.*, Gaylord, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Gaylord, Gaylord, Michigan. Comments on this application must be received by November 9, 1989.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire 100 percent of the voting shares of McPherson Bank and Trust Co., McPherson, Kansas. Comments on this application must be received by November 9, 1989.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cornerstone Bancorp, Inc.*, Carson City, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone Bank, N.A., Dallas, Texas.

Board of Governors of the Federal Reserve System, October 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25121 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 1989.

A. **Federal Reserve Bank of Chicago.** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Larry Wenzl*, Ames, Iowa; to acquire 89.63 percent of the voting shares of Mid-Iowa, Inc., Panora, Iowa, and thereby indirectly acquire Panora State Bank, Panora, Iowa.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joe C. Wessendorff*, Richmond, Texas; to acquire 8.61 percent of the voting shares of Community Bancorporation, Inc., Bellville, Texas, and thereby indirectly acquire The First National Bank of Bellville, Bellville, Texas.

2. *Arvin Ryon Dillord, Jr.*, Wichita Falls, Texas; to acquire 17.3 percent of the voting shares of United Texas Financial Corporation, Wichita Falls, Texas, and thereby indirectly acquire First State Bank in Archer City, Archer City, Texas; The Farmers & Merchants National Bank, Nocona, Texas; The Farmers National Bank of Seymour, Seymour, Texas, and Parker Square State Bank, Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, October 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25122 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

West Point Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 17, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **West Point Bancorp, Inc.**, St. Joseph, Missouri; to acquire an additional 16.8 percent, totalling 36.9 percent, of the voting shares of Dakota Bancshares, Inc., St, Joseph, Missouri, parent of Dakota County State Bank, South Sioux City, Nebraska. Dakota County state Bank engages in general insurance activities purusant to state law.

Board of Governors of the Federal Reserve System, October 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25123 Filed 10-24-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Tuesday, October 10, 1989 (54 FR 41502, FR Doc. 89-23809). The listing of early terminations contained transactions which were previously published in the **Federal Register** and, therefore, did not fall within the timeframe indicated in the notice. The agency is publishing the corrected listing of transactions granted early termination between 9-18-89 and 9-29-89.

DATE: The correction is effective October 25, 1989.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 09-18-89 AND 09-29-89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
John W. Kluge, c/o Metromedia Company, NAC Re Corporation, NAC Re Corporation	89-2576	09/18/89
John J. Rigas, Joseph S. Gans, Sr. and Irene F. Gans, Joseph S. Gans, Inc.	89-2606	09/18/89
Glenn R. Jones, Cable TV Joint Fund 11, Total TV of Kenosha	89-2619	09/18/89
Bowater Industries plc, The Mead Corporation, Mead Release Products, Inc.	89-2637	09/18/89
Oy Wartsila AB, PacificCorp, Cardkey Systems Inc. and Cardkey Government Sys. Inc.	89-2638	09/18/89
The Berkshire Fund; A Limited Partnership, Dayton Hudson Corporation, Lechmere, Inc.	89-2656	09/18/89
Berkshire Hathaway Inc., The Coca-Cola Company, The Coca-Cola Company	89-2661	09/18/89
Shoji Kanazawa, Charter Communities-Hacienda De Monterey, Charter Communites-Hacienda De Monterey	89-2667	09/18/89
LDI, Ltd., Robert A. Nickell, Ed Tucker Distributor, Inc.	89-2681	09/18/89
Meseru Tsuzuki, Fieldcrest Cannon, Inc., Swift Spinning Mills Division	89-2683	09/18/89
Alexander & Baldwin, Inc., Thomas B. Crowley, SS Atlantic Spirit	89-2691	09/18/89
Triton Group Ltd., Liquor Barn Northern CA, Inc. & Southern CA, Inc., LBI Holdings, Inc., a Delaware Corporation	89-2692	09/18/89
Carena Holdings Inc., JC Penney Company, Inc., Ridgmar Associates	89-2725	09/18/89
Philips N.V., Island Settlement Trust, Island Entertainment Group, Inc.	89-2578	09/19/89
Corporate Capital Limited, Carvel Corporation, Carvel Corporation	89-2684	09/19/89
Jungfrau Trust, R & J Realty Corp., Modernage Furniture, Inc.	89-2703	09/19/89
Fiat S.p.A., INCSTAR Corporation, INCSTAR Corporation	89-2549	09/20/89
David P. Miller, c/o Columbia National Corporation, LeeMar Steel Co., Inc., LeeMar Steel Co., Inc.	89-2571	09/20/89
Jeffrey H. Smulyan, George L. Argyros, Seattle Mariners	89-2690	09/20/89
David B. McKane, c/o McKane Robbins & Co., Frye Acquisition Partners, Frye Acquisition Inc.	89-2585	09/21/89
Peter G. Robbins, c/o McKane Robbins & Co., Frye Acquisition Partners, Frye Acquisition Inc.	89-2586	09/21/89
PPG Industries, Inc., The Clorox Company, Olympic HomeCare Products Company, Lucite HomeCare,	89-2597	09/21/89
Wellman, Inc., Fiber Industries, Inc., Fiber Industries, Inc.	89-2617	09/21/89
UCC Investors Holding, Inc., Avery, Inc., Uniroyal Chemical Holding Company	89-2630	09/21/89
Lafarge Coppee S.A., Standard Slag Holding Company, Standard Slag Holding Company	89-2671	09/21/89
Unilever N.V. and Unilever PLC, Alco Industries, Inc., Alco Chemical Corporation	89-2556	09/22/89
Chiyoda Finance, Inc., The Park at Coronado, Ltd., The Park at Coronado Ltd.	89-2559	09/22/89
Christopher C. Skase, Kirk Kerkorian, MGM/UA Communications Co.	89-2567	09/22/89
Frontenac Venture V Limited Partnership, Marks Bros. Jewelers, Inc., Marks Bros. Jewelers, Inc.	89-2610	09/22/89
Marks Bros. Jewelers, Inc., Frontenac Venture V Limited Partnership, Marks Holding Company	89-2611	09/22/89
Daniel J. Sullivan, Unitel Video, Inc., Unitel Video, Inc.	89-2631	09/22/89
John J. Rigas, Centel Corporation, Centel Cable Television Company	89-2662	09/22/89
MAPCO Inc., Robert E. Perkinson, Sr., REP Sales, Inc.	89-2678	09/22/89
MAPCO Inc., Jno. McCall Coal Company, Inc., Jno. McCall Coal Export Corp., Frazee-McCall Joint	89-2677	09/22/89
Tele-Communications, Inc., Heritage Cablevision Associates of Dallas, L.P., Heritage Cablevision Associates of Dallas, L.P.	89-2687	09/22/89
Bowater Industries plc, Norton Opax plc, Norton Opax plc	89-2710	09/22/89
NCNB Corporation, First RepublicBank Corporation, First RepublicBank Trust Company	89-2711	09/22/89
John J. Rigas, Jack Kent Cooke, Cooke Communications of Syracuse, Inc., Cooke	89-2715	09/22/89
Westinghouse Electric Corporation, Goldome, Goldome Strategic Investments & Coast Manufacturing, Inc	89-2717	09/22/89

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 09-18-89 AND 09-29-89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Daniel J. Sullivan, Howard Burch, Manhattan Transfer-Edit, Inc.	89-2721	09/22/89
Marriott Corporation, Bank of Boston Corporation, BOCA 106 Corporation	89-2723	09/22/89
Carena Holdings, Inc., Whitemak Associates, Whitemak Associates	89-2726	09/22/89
Carena Holdings Inc., Kravco Management, Inc., Kravco Company (a partnership)	89-2728	09/22/89
Carena Holdings Inc., Kravco, Inc., Kravco Company (a partnership)	89-2729	09/22/89
The Tokio Marine and Fire Insurance Co., Ltd., Legend Capital Group, L.P., Delaware Management Holdings, Inc.	89-2730	09/22/89
Masami Kato, Carolina Hunt Trust Estate, Rosewood Property Company	89-2731	09/22/89
SunGard Data Systems Inc., Dyatron Corporation, Dyatron Corporation	89-2732	09/22/89
Vendex International NV., Bookstop, Inc., Bookstop, Inc.	89-2738	09/22/89
Michael C. Hall, Don Tyson, Dixie Portland Flour Mills, Inc., Diana Fruit	89-2740	09/22/89
Citation Invesment Trust, Mobil Corporation, Mobil Exploration and Producing North America Inc.	89-2744	09/22/89
Leonard Riggio, Bookstop, Inc., Bookstop, Inc.	89-2746	09/22/89
Helmerich & Payne, Inc., Freeport-McMoRan Inc., FMP Operating Company, LP	89-2754	09/22/89
Giant Group, Ltd., Aspen Airways, Inc., Aspen Airways, Inc.	89-2782	09/22/89
John W. Kluge, Benale Holdings, Corporation, Benale Holdings Corporation	89-2767	09/22/89
Ohbayashi Corporation, Erik Sande, E.W. Construction Group, Inc.	89-2788	09/22/89
Wyman-Gordon Company, Allied-Signal Inc., KDI Composite Technology, Inc.	89-2668	09/25/89
Robert Bosch Industrietreuhand KG, Joint Venture Corporation, Joint Venture Corporation	89-2707	09/25/89
Nippondenso Co., Ltd., Joint Venture Corporation, Joint Venture Corporation	89-2708	09/25/89
Pitney Bowes Inc., Pandick Holding, Inc., Pandick Technologies, Inc.	89-2645	09/26/89
Mitsui & Co., Ltd., Michael W. Wilsey, Wilsey Foods, Inc.	89-2248	09/26/89
Generale Occidentale S.A., James River Corporation of Virginia, James River Timber Corporation	89-2649	09/26/89
Paramount Communications Inc., Allen J. Becker, SRO/Pace Promotions	89-2659	09/26/89
Asahi Glass Company, Ltd., Asahi Glass Company, Ltd., AP Technoglass Co.	89-2685	09/26/89
Thomas Schmidheiny, Newell Col, Anchor Hocking Corporation	89-2694	09/26/89
St. Ives Group plc, Eagle-Picher Industries, Inc., A.D. Weiss Lithograph Company, Inc.	89-2698	09/26/89
General Electric Company, Telefonaktiebolaget L M Ericsson, Ericsson North America Inc.	89-2699	09/26/89
Telefonaktiebolaget L M Ericsson, General Electric Company, General Electric Company	89-2700	09/26/89
Markel Corporation, Rhulen Agency, Inc., Rhulen Agency, Inc.	89-2702	09/26/89
Mr. Nelson Peltz, Avery Inc., Avery Inc	89-2704	09/26/89
Mr. Peter W. May, Avery Inc., Avery Inc	89-2705	09/29/89
Esterline Corporation, Charles H. and Margaret M. Dyson, Korry Electronics Co., TA Mfg Co.	89-2735	09/26/89
Bessemer Securities Corporation, Zapata Gulf Marine Corporation, Zapata Gulf Marine Corporation	89-2752	09/26/89
James H. Possehl, Gibraltar Financial Corporation, GFC Leasing Corporation	89-2763	09/26/89
Mitsubishi Kasei Corporation, Boston University, Seradyn, Inc	89-2772	09/26/89
United Newspapers public limited company, Barron E. Ressler, Pacific Media Group, Inc., Community Distribution Sys	89-2589	09/27/89
Columbus Holdings Limited, Stone Container Corporation, Stone Container Corporation	89-2633	09/27/89
The Sherwin-Williams Company, Whittaker Corporation, Whittaker Corporation	89-2636	09/28/89
AGA Aktiebolag, UGI Corporation, AmeriGas, Inc	89-2701	09/28/89
MA Associates, L.P., McGraw-Hill, Inc., Electrical Group of McGraw-Hill Inc.	89-2771	09/28/89
The Walt Disney Company, James M. Henson, Henson Associates, Inc.	89-2759	09/29/89
Atlas Copco AB, PACCAR Inc., Wagner Mining Equipment Co. and Russel Brothers	89-2775	09/29/89
The Retail Property Trust, British Coal Staff Superannuation Scheme Trustees Ltd., Pan-American Properties, Inc	89-2777	09/29/89
The Retail Property Trust, Cmte. of Management of the Mineworkers Pension Scheme, Pan-American Properties, Inc	89-2778	09/29/89
Colorado National Bankshares, Inc., Central Bank, Cenval of Colorado Corporation d/b/a Cenval Leasing Co.	89-2781	09/29/89
Pearson plc, WH Smith Group plc, WH Smith Publishers Inc	89-2791	09/29/89
Jon M. Huntsman, Hoechst Aktiengesellschaft, Hoechst Celanese Corporation	89-2794	09/29/89
Elders IXL Limited, Thinking Machines Corporation, Thinking Machines Corporation	89-2795	09/29/89
Joseph J. Zilber, Everything's A Dollar, Inc., Everything's A Dollar, Inc.	89-2798	09/29/89
Charles H. & Margaret M. Dyson, The Dyson-Kissner, Muncy Homes, Inc., Muncy Homes, Inc., Muncy Homes Corp	89-2803	09/29/89
Colorado National Bankshares, Inc., Western Savings and Loan Association, F.A., Western Savings and Loan Association, F.A	89-2810	09/29/89
W.R. Grace & Co., Gulf Resources & Chemical Corporation, Pend Oreille Oil & Gas Comapny	89-2812	09/29/89
Paul Schutt, Helix Limited, General Homes Corporation, GHX, Inc	89-2818	09/29/89

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89-25128 Filed 10-24-89; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0438]

Public Workshop; Bioequivalence Requirements for Topical and Vaginal Antifungal Drug Products and Topical Tretinoin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss bioequivalence requirements for topical and vaginal antifungal drug products and topical tretinoin. This workshop is being held to aid FDA in the development of approval standards for generic topical and vaginal antifungal drug products and generic topical tretinoin.

DATES: The workshop will be held on November 16, 1989, 8:30 a.m. to 5 p.m. Written comments by (January 23, 1990).

ADDRESSES: The workshop will be held in Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Robert W. Pollock, Center for Drug Evaluation and Research (HFD-232), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0193,

or

Donald B. Hare, Center for Drug Evaluation and Research (HFD-200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2784.

SUPPLEMENTARY INFORMATION:

I. Background

Due to the forthcoming patent expirations of topical and vaginal antifungal drug products and topical tretinoin, FDA has received a number of inquiries regarding the bioequivalence standards for generic versions of these drug products. An applicant intending to market a generic drug must submit to FDA, among other things, information to show that its product is bioequivalent to the pioneer drug product. The workshop is sponsored by FDA's Center for Drug Evaluation and Research to obtain information to assist FDA in the development of bioequivalence standards for generic topical and vaginal antifungal drug products and topical tretinoin. The workshop will provide a forum for panel discussions between FDA and outside experts.

II. Topics

The workshop will cover the following topics:

Topic 1: Antifungal Drug Products

A. Topical Drug Products

1. Suggested clinical protocol
   a. Mycological endpoint
   b. Clinical endpoint
   c. Need for a control
2. Statistical considerations and statistical validity
3. Study requirements for altenate dosage forms and reformulations
4. Alternative methodologies

B. Vaginal Drug Products

1. Suggested clinical protocol
   a. Mycological endpoint
   b. Clinical endpoint
   c. Need for a control
2. Statistical considerations and statistical validity
3. Study requirements for alternate dosage forms and reformulations

Topic 2: Acne (Tretinoin) Drug Products

A. Suggested Study Design

1. Methods of evaluation
2. Need for a control

B. Statistical Considerations and Statistical Validity

C. Study Requirements for Alternate Dosage Forms, Strengths, and Reformulations

D. Alternative Methodologies

III. Attendance and Participation

The meeting is open to the public. Interested persons attending the workshop will be given an opportunity to make oral presentations during the workshop, as time permits and at the discretion of the session chairperson. Written comments submitted prior to the meeting will be considered by the panel.

Any interested person may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this notice and should be submitted by January 23, 1990.

Dated: October 18, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-25055 Filed 10-24-89; 8:45 am]
BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearing before FDA's advisory committees. MEETINGS: The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel

Date, time, and place. November 13 and 14, 1989, 8:30 a.m., Rm. 800, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 13, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; closed committee deliberations, November 14, 1989, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 5 p.m.; Celeste F. Bove, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1230.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before November 1, 1989, and submit a verbatim copy of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Interested persons who are hearing impaired and require interpreter services should contact Carlton Coleman (voice only), 301-443-3310, or telecommunication device for the deaf (TDD) 301-443-1818.

Open committee discussion. The committee will discuss a premarket approval application for a cochlear implant in children. During the second day, the committee will also discuss reclassification of the argon laser for rhinological and laryngological use, HGM Medical Laser Systems, Inc., Docket No. 89P-0349/CP.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the cochlear implant for children. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 13 and 14, 1989, 8:30 a.m., Parklawn Bldg., Conference Rm. D, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, November 13, 1989, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 5:30 p.m.; open committee discussion, November 14, 1989, 8:30 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 3 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the

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committee contact person before October 30, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 13, 1989, the committee will discuss BCG Vaccines (Connaught Laboratories, Ltd. and Organon Teknika Corp.) for the treatment of bladder cancer. On November 14, 1989, the committee will discuss poliovirus vaccine live oral (OPV) testing.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to pending product license applications and investigational new drug applications in the Center for Biologics Evaluation and Research. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. November 17, 1989, 8:15 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:15 a.m. to 9:15 a.m., unless public participation does not last that long; open committee discussion, 9:15 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 10:40 a.m.; open committee discussion, 10:55 a.m. to 12:10 p.m.; closed presentation of data, 12:10 p.m. to 12:20 p.m.; Marie A. Schroeder, Center for Devices and Radiological Health (HFS–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 10, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a porous metal-coated total hip prosthesis.

Closed presentation of data. The committee may discuss trade secret or confidential commercial information regarding materials, design, and manufacturing information for the porous metal-coated total hip prosthesis. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial and financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly

frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 18, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–25100 Filed 10–24–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPO–084–FNC]

Medicare Program, Data, Standards and Methodology Used To Establish Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This notice describes the data, standards, and methodology that we will use to establish fiscal intermediary and carrier budgets for fiscal year (FY) 1990. Intermediaries and carriers assist in the administration of the Medicare program by performing numerous functions related to paying for medical services and equipment.

This notice implements section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Section 4035(a) requires us to publish for public comment in the Federal Register data, standards, and methodology we will use to establish budgets for Medicare intermediaries and carriers.

DATE: The provisions for this notice apply to fiscal year 1990, beginning October 1, 1990. We will consider any comments on this notice received at the appropriate address, as provided below, by no later than 5:00 p.m. on November 24, 1989.

ADDRESS: Address comments in writing to:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–84–FNC, P.O. Box 26676, Baltimore, Maryland 21207

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO–84–FNC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: J. Thomas Hessenauer (301) 966–7542.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A of the Medicare program (Hospital Insurance) under agreements with the Secretary of HHS. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, the Secretary of HHS is also authorized to enter into contracts with entities, known as carriers, to fulfill various functions in the administration of Part B of the Medicare program (Supplementary Medical Insurance). Beneficiaries, physicians, and other suppliers of services or supplies submit claims to these carriers. The carriers determine whether the services or supplies are covered under Medicare and the payment amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

A. Current Fiscal Intermediary and Carrier Budget Process

Oversight of intermediary and carrier performance by HCFA is exercised by staff of both the central office and regional office (RO). In general, national policies are addressed at the central office level, and regional and local policies and operations are addressed by the regional offices. Communication between HCFA and the intermediaries and carriers is continuous. Established consultation workgroups, consisting of representatives of HCFA central office, regional offices and Medicare contractors, meet periodically.

HCFA central office is responsible for developing a national contractor budget for both Part A and Part B of the Medicare program. The budget is formulated over a 15-month period, beginning in March of the year preceding the fiscal year to which it applies. It is formulated after input from the contractor community, HCFA's ROs, various central office components, several levels in the Department of HHS, and the Office of Management and Budget (OMB), prior to submittal to the President for approval and forwarding to Congress.

Our past practice has involved use of the HCFA ROs in obtaining budget estimates from the contractors. The ROs' assessment of the contractor's needs is reviewed during a budget level determination process based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by Congress. We subsequently allocate funding within these constraints.

B. New Legislation

Section 4035(a) of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), amended sections 1816(c)(1) and 1842(c)(1) of the Act by requiring the Secretary to publish in the

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Federal Register, by no later than September 1 before each fiscal year, the final data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers under these sections for that fiscal year. We also are required to publish in the Federal Register for public comment these data, standards, and methodology.

II. Overview of Fiscal Year 1990 National Medicare Contractor Budget: Data, Standards and Methodology

The FY 1990 Medicare contractor budget request was submitted to Congress in January 1989. In order to determine the amount of the FY 1990 request, we projected a workload growth under Part A of 10 percent and under Part B of 11.7 percent. Our estimate involved the use of a regression model that uses the last 36 months of actual contractor workload data. For the FY 1990 projections, we used April 1988 data. These data were the latest available at the time. The results of the regression yielded a FY 1990 workload of 83.6 million Part A bills and 463.0 million Part B claims. The regression model provides us with not only national totals, but also regional workload projections.

Based on the projected FY 1989 unit costs for processing bills and claims, we then applied a 3.7 percent inflation factor (the economic assumption used by the OMB based on changes to the Consumer Price and Wage Index as developed by the Department of Labor). This amount is then further adjusted for incremental workload efficiencies, cost efficiency benchmarks, savings achieved by prior and anticipated productivity investments, and costs associated with new legislation. This calculation results in a new unit cost, which, when multiplied by the Part A and/or Part B workloads, shows the total amount to be earmarked for bills and claims payment in FY 1990.

A. Medicare Contractor Functional Areas

The Medicare contractor budget consists of seven functional area responsibilities performed by intermediaries for Part A and eight functional area responsibilities performed by carriers for Part B. The functional area responsibilities for Part A are: (1) Bills Payment; (2) Reconsiderations and Hearings; (3) Medicare Secondary Payer; (4) Medical Review and Utilization; (5) Provider Audit (Desk Reviews, Field Audits and Provider Settlements); (6) Provider Reimbursement; and (7) Productivity Investments. The functional area responsibilities for Part B are: (1) Claims Payment; (2) Reviews and Hearings; (3) Beneficiary/Physician Inquiries; (4) Medical Review and Utilization Review; (5) Medicare Secondary Payer; (6) Participating Physicians; (7) Professional Relations; and (8) Productivity Investments. These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds and the Catastrophic Health Insurance (CHI) Program. The data, standards and methodology used in these functional areas are dicussed in section III. below. In the following national budget summary, we have combined the discussion of functional areas common to both intermediaries and carriers. However, data specific to Part A and Part B are provided under each heading.

1. Bills Payment and Claims Payment

We currently estimate the Part A workload to be 94.6 million bills in FY 1990. A portion of this workload is related to anticipated increase in SNF, HHA, home IV and immunosuppressive drug claims resulting from the enactment of the CHI program. This estimate results from a workload regression model that uses the last 36 months of intermediary data through April 1988 with a 10 percent growth factor. Intermediaries are required by section 9311 of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), to pay 95 percent of Part A bills within 24 days of receipt.

The Part B workload is currently projected at 463 million claims with a 11.7 percent growth rate. All Part B claims must be processed within the same timeframes as Part A bills, except that participating physician claims must be paid within 17 days of receipt.

Section 4031 of OBRA 87 imposed a 14-day payment floor standard effective October 1, 1988 for Part A bills and Part B claims. This standard provides that no payment may be made within 14 calendar days after the date that the bill/claim is received. Section 4031 also prohibits the Secretary from issuing before October 1, 1990, other regulations, instructions or policies intended to slow down Medicare payments.

2. Reconsiderations (Reviews under Part B) and Hearings

This function includes all activities related to guaranteeing due process of law as a result of contractor action (i.e., disallowances) on bills and claims. As a result of budget constraints in FY 1990, funding in this area has been reduced to approximately 70 percent of the FY 1989 level.

Section 4032 of OBRA 1987 amended section 1816(f) of the Act to require that intermediaries process 75 percent of reconsiderations within 60 days for FY 1990. As a result of the FY 1990 funding levels, we are reevaluating the reconsiderations, reviews, and hearings process with an aim to further increase efficiency.

3. Medicare Secondary Payer

The Medicare Secondary Payer function is the first of three initiatives (Medicare Secondary Payer (MSP), Medical Review and Utilization Review, and Provider Audit) we developed as "Payment Safeguards" in an attempt to safeguard the Medicare program against improper payments.

The focus of the MSP initiative is to ensure that the Medicare program pays for covered care only after reimbursement from other primary insurers has been made. An intermediary and a carrier must administer the program in a manner that achieves maximum savings and cost avoidance to the Medicare trust funds. Medicare Secondary Payer activities center on claims involving: the working aged; spousal working aged; beneficiaries with end-stage renal disease; beneficiaries eligible for payment under automobile, medical liability and no-fault insurance; individuals eligible for or receiving workers compensation; and the disabled. By concentrating efforts in these key areas, the Medicare program has had tremendous success in recovering and reducing improper program payments.

Medicare contractors are responsible for identifying MSP situations and aggressively pursuing the recovery of improper payments from the appropriate party. In conjunction with the actuary, we develop specific savings goals for each contractor based on past performance.

The standard for determining the amount of MSP funding a contractor will receive in FY 1990 is based on savings goals, workload volumes, required systems changes, and any special projects that may be assigned to contractors.

We gather actual MSP claims volume, overall claims volume for the prior fiscal year, and special project data (e.g., cost of claims, amount of savings achieved). We compare a contractor's previous year's data to the contractor's projections for the next fiscal year and allocate funding in proportion to the savings goals to be achieved. Additional funding is allocated for specific projects as required. The amounts vary based on the scope of the project, extent of systems changes if any, and workload.

4. Medical Review and Utilization Review

In addition to processing and paying claims from providers of services and Medicare beneficiaries, the contractors perform a medical review (MR) of claims to determine whether services were medically necessary and constituted an appropriate level of care.

Intermediaries are responsible for medical review of HHA, SNF, outpatient hospital services (excluding surgery), and other outpatient services, such as those provided by rehabilitation facilities, rural health clinics, etc. This review assures that medical care is necessary and appropriate and that quality medical services are delivered to Medicare beneficiaries.

During FY 1990, the review of HHA and outpatient services will account for most of the uses of medical review resources. Medical review of all HHA provider claims will be the responsibility of regional home health intermediaries.

In FY 1990, we will continue efforts in the standard cost analysis system developed in FY 1987 to evaluate the efficiency of carrier prepayment medical review screens. This systematic approach is expected to yield benefits to the medical review process, such as: (1) a current inventory of the number, types, and cost effectiveness of medical review screens; (2) ability to analyze the current inventory of screens and set a framework that yields a high return on investment; (3) ability to target strategies for specific medical review activities; and (4) measurement of the relative cost effectiveness of screens among different contractors.

In FY 1990, we will continue to focus on prepayment review, including additional mandatory prepayment screens. We also will continue with our efforts with postpayment medical review.

The carrier postpayment process consists of preparing profiles of providers and beneficiaries, identifying patterns of fraud and abuse, correcting program abuse or overutilization, preventing futher abuse in service utilization by educating providers in acceptable norms and proper billing practices, recommending administrative action, where appropriate, and identifying areas for the development and installation of future prepayment review screens.

Carriers must continue to provide support to HHS/Office of Inspector General (OIG) in developing cases of suspected fraud and abuse. This is in addition to the fraud and abuse activities that currently exist in other intermediary and carrier functions.

Intermediaries and carriers are to play a more active role in the detection and handling of fraud and abuse cases. The primary program integrity role of intermediaries and carriers is to identify and develop suspected fraud and abuse cases for referral to the OIG.

In abuse cases, the contractors have an even greater responsibility than in the fraud area because correction and prevention of abuse are among their basic functions. In addition to other duties, contractors are required to establish and maintain program integrity units; conduct ongoing employee training on fraud and abuse goals, techniques, and control; develop guidelines for timely processing of all potential fraud and abuse cases; establish and maintain histories and documentation on all program integrity cases; and conduct periodic reviews to identify any patterns of potential fraud and abuse situations for particular providers.

The distribution of funding is in proportion to workload, individual contractor medical review/utilization review (MR/UR) projects, and the budget constraints brought about by reduced funding availability.

The actual and cost avoidance benefits in safeguarding program dollars are significant. Educational encounters lead to fewer incorrect billings and administrative cost avoidance in the form of reductions in the number of requests for reviews and hearings. We will continue to focus on: review of providers with demonstrably aberrant billing and practice patterns; review of educational efforts; and development of a methodology for quantifying the level of program and administrative cost avoidance resulting from postpayment medical review activities.

Carrier medical review costs will be offset by avoiding payment for medically unnecessary services through proper medical review/utilization review.

5. Provider Audit

In FY 1990, contractors will perform nondiscretionary audit activities, including desk reviews, and final settlements. Historically, the audit process has recovered millions of dollars in improper program payments each year.

6. Provider Reimbursement (Part A only)

In FY 1990, Medicare contractors are required to provide reimbursement services to 25,145 health care providers. This represents an increase of 6 percent over the number of providers requiring reimbursement services in FY 1989. Reimbursement services are required for provider-based SNFs, and HHAs in addition to ESRD facilities, comprehensive outpatient rehabilitation facilities (CORFs), and hospices regardless of whether the provider is audited on an annual or other basis. The budget provides for the following activities:

- Collection of Provider Overpayments—A system must be maintained to collect and record overpayments made to providers. In addition to collection and recordkeeping activities, contractors will investigate and provide profile data on uncollectible overpayment cases and provide monthly reports to HCFA on the uncollectible accounts.
- Interim Payments—Interim payment rates must be established and periodically reviewed throughout the fiscal year for all Medicare providers. The interim rates process requires the review of provider cost and utilization statistics and the calculation of adjusted rates.
- Consultative Services—Onsite assistance must be provided to any provider experiencing difficulties in preparing the cost report, preparing claims or any other payment area.
- Records and Reports—According to specific instructions from NCFA, files and records must be established and maintained by the contractors to ensure proper payments to providers. In addition, several different provider cost and payment reports must be prepared and submitted quarterly to HCFA.

In determining the amount of reimbursement funding each contractor receives, we analyze provider profiles submitted by contractors. The provider profiles show types and numbers of periodic interim payment (PIP) and non-PIP providers. We review prior periods of reimbursement funding and assess the contractor's future needs based on projected provider workload and the availability of funds. We make every attempt to distribute funds in proportion to workload.

7. Productivity Investments

The costs of implementing new initiatives designed to improve the effectiveness of Medicare program administration are referred to as productivity investments (PIs). Productivity investments generally provide start-up funds for contractor activities. Once these projects are operational, funding for these projects becomes part of the contractor's ongoing costs. The criteria for selection of PIs to

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be implemented vary. For example, some PIs are required by legislation or regulatory requirements. We also fund projects that will improve administrative cost efficiency, for example, the Common Working File and Standard Systems.

There is no single distribution methodology for the allocation of PI funds. After we determine the national cost of a PI, funds are divided among the contractors based on either the contractors' cost estimates or through HCFA derived formulas based on project specifications. Other PI initiatives require equal effort by all contractors regardless of size, and are, therefore, divided equally among contractors. Finally, other PI's, such as the common working file and standard systems, are given only to contractors that are involved in the specific projects.

In FY 1990, we will fund the following PIs: for Part A—common working file, catastrophic health insurance systems changes, and facilities management; and for Part B—common working file, catastrophic health insurance systems changes, physician identification, and facilities management.

8. Beneficiary/Physician Inquiries

The Medicare program is complex. It is based on many provisions required by law, regulations and policy dealing with entitlement, coverage of services, comprehensive payment rules, and the rights and responsibilities of beneficiaries. Since contractors are the direct link between beneficiaries, physicians, and the program, this activity includes all costs related to beneficiary and physician and supplier inquires generated by means of telephone calls, correspondence, and personal visits, estimated to be 22.5 million FY 1990. Current contractor performance and evaluation criteria and standards require that inquiries be processed within 30 calendar days. For telephone inquiries, the level of service for a busy signal must equate to an "all trunks busy" of no higher than 20 percent. All calls must be acknowledged in no more than 20 seconds and must be handled by a telephone representative within 120 seconds of acknowledgment. The standards require that 80 percent of the calls must be handled to completion during the initial call and that call backs must be made within 2 working days. These standards apply to both toll free and local calls. The funding level for this activity in FY 1990 is to cover the anticipated costs associated with the Catastrophic Health Insurance program.

9. Participating Physicians (Part B only)

Participating physicians are those who agree to accept assignment on all Medicare claims in return for certain incentives/benefits. All physicians must be given an opportunity to enroll/disenroll in the participation program annually.

The participating physician program for carriers includes the following activities: monitoring Maximum Allowable Actual Charges (MAAC); producing and distributing Medicare Participating Physician Directory (MEDPARD); monitoring nonparticpating physicians for compliance with section 9332(d) of OBRA 1986; monitoring participating physicians; furnishing toll-free electronic media claims lines for participating physicians; responding to participation related inquiries from beneficiaries in a timely and responsive manner; enrolling participating physicians and suppliers; monitoring systems changes for pricing screens and files related to the participating physician program; and monitoring data requests (participation counts).

When the Congress initially provided funding for the participation program, we identified each of the activities involved and priced each activity nationally. An algorithm was developed for distributing the funds to each contractor for each activity. Some algorithms distributed funds based on workload and others based on the number of sites with systems changes. One activity was funded based on the participation rates. We then totaled the cost of the various activities for each carrier and provided funding accordingly.

Section 9332 of OBRA 1986 requires HCFA to pay carrier bonuses for increasing the rate of physician participation in the Medicare program. The methodology used to determine carrier bonuses for FY 1990 will be published in a subsequent notice.

10. Professional Relations

The success of the Medicare program depends upon the continuing cooperation of individuals and institutions providing health care services. Carriers must notify physicians and suppliers, in writing, of policy and procedure changes prior to the effective dates of changes. They are to develop claims prior to denial or reduction. Carriers must initiate regular contact with physicians/suppliers through representative organizations. Scheduling regular and periodic training for new personnel and as part of a continuing education program for previously trained staff on current Medicare coverage, reimbursement, and billing policy is required. Carriers must conduct regular meetings with beneficiaries or their representative organizations to inform them about the participation program. Carriers must also provide adequate telephone service in order to answer queries concerning claims status and processing questions. The funding provided in FY 1990 will allow carriers to perform the above activities and others as outlined in the Medicare Carriers Manual, section 4600.

11. Printing Claims Forms

Although this activity is not among the seven contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, intermediaries and carriers supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential to beneficiary notification, effective and efficient contractor operations, and other program purposes.

With a steady increase in the number of beneficiaries and providers, we project a corresponding increase in a substantial number of HCFA forms. An increase in the volume of forms equates to increased printing costs in FY 1990. However, we have decreased our base printing costs for FY 1990 by $300,000 by removing the printing requirement for the survey and certification forms.

B. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. A factor in the development of contractor unit costs is a reduction of the unit cost based upon the application of the cost efficiency benchmark (CEB). The CEB is one of the many adjustments used in determining the unit cost. Following is a brief description of how we developed the CEB.

For FY 1990, we revised the method for developing the CEB. We switched to a data base comprised of efficient and effective performing cost contractors. We used the average unit cost of the intermediaries or carriers that fall into the lower half of a unit cost ranking of those contractors in the top 50 percent of the current FY 1988 Contractor Performance Evaluation Program (CPEP) ranking. This results in approximately 25 percent of the cost contractors being included in the data base of efficient (low cost) and effective (satisfactory CPEP rank) performers.

The CEB for FY 1990 reflects line 1 unit cost only and is the unweighted (simple) average of FY 1988 actual unit cost for those contractors selected in the process described above.

The unit cost data has been normalized for noncontrollable variables for the contractors in the top 50 percent of the CPEP ranking. This was done prior to ranking the cost data to determine the lower cost group. This process avoided setting an efficiency level that is possibly contingent on having (or not having) a unique characteristic. Appropriate adjustments (either + and/or −) were then made to each contractor's unit cost for statistically significant factors, such as the percent of SNF bills to the total volume and outpatient/HHA bill mix for intermediaries, prior to ranking the cost data and selecting the lower cost group.

The resulting CEB is used in determining the unit cost as described in section III. C. under Bills Payment and Claims Payment below.

III. Fiscal Year 1990 National Medicare Contractor Budget: Data, Standards, and Methodology

After the President's FY 1990 Medicare contractor budget request was submitted to the Congress in January 1989, HCFA proceeded to develop budget guidelines to be issued to the contractors. These guidelines outline the scope of work that intermediaries and carriers are expected to perform during the upcoming fiscal year in each of the functional areas for which they are responsible. In May 1989, the budget guidelines were issued to the regional offices. The regional offices added information pertinent to intermediaries and carriers within their own region. These final individualized guidelines were sent to each intermediary and carrier in early June to provide them with assistance in preparing their FY 1990 budget requests. Intermediaries and carriers must submit their budget requests to HCFA no later than six weeks after the issuance of the budget guidelines.

While intermediaries and carriers were preparing their budget requests, the Division of Contractor Financial Management within HCFA was developing preliminary budget allocations for the functional areas based upon historical patterns, workload growth/inflation assumptions, and any other available information. Both central office and regional office staff review intermediary and carrier budget requests as they are submitted. Regional office staff will discuss the differences between the intermediary and carrier requests and the HCFA derived allocations and negotiate with each intermediary and carrier a final, mutually acceptable budget within the limits of the funding available to HCFA. The central office prepares a Financial Operating Plan (FOP) for each regional office that provides total regional funding authority for each functional area. The regional offices in turn prepare a Notice of Budget Approval (NOBA) for each intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

In May 1989, the basic scope of work, along with new and special activities, that intermediaries and carriers will be expected to perform, were described in the budget guideline package. Intermediaries and carriers are expected to perform the work as described in the budget guideline package and in accordance with the standards included in the CPEP for FY 1990. For consideration in developing their initial budget requests, we issued a draft copy of the CPEP standards to contractors in June.

B. Data

In developing the individual intermediary and carrier budgets for FY 1990, we utilized the following sources of data that contain various workload volumes, functional costs, and manpower information: (The basic forms that supply the data that are utilized in developing intermediary and carrier budgets are the HCFA–1523/1524 and the HCFA–1565/1566.) Forms HCFA–1523/1524 (a multipurpose form which serves as the Budget Request, Notice of Budget Approval and Interim Expenditure Report); Forms HCFA–1523/1524A Schedule of Productivity Investments and Other; Forms HCFA–1523/1524B Schedule of Credits, EDP and Overhead; Forms HCFA–1523/1524C Schedule of Appeals; Forms HCFA–1523/1524D Schedule of MSP Costs; Forms HCFA–1525/1525A Contractor Audit Settlement Report (CASR); Schedules A, B, & C; Audit Priority Matrix; Crossover from CASR to Audit Priority Matrix; Provider Reimbursement Profile; Schedule of Providers Serviced; MSP Savings Report; MR/UR Savings Report; Form HCFA–2580 Cost Classification Report; Form HCFA–3259 Facilities and Occupancy Schedule; Forms HCFA–1565/1566 Carrier Performance Report/Monthly and Intermediary Workload Report; HCFA Actuary's Workload Estimates; OMB's Economic Assumption of 3.7 Percent; Incremental Workload Efficiencies; Cost Efficiency Benchmark Reduction; Savings from Prior Productivity Investments; New Legislation Costs; Regional Office Recommendations; and Contract Provisions.

C. Methodology

The Medicare contractor budget is built around the previously listed seven major functions performed by intermediaries for Part A and eight major functions performed by carriers for Part B.

1. Bills Payments and Claims Payment

The individual intermediary and carrier workload levels for FY 1990 (subject to the national workload levels and approved funding) are determined by the regional offices based upon regional forecasted totals that are derived from a statistical forecasting model. We are also projecting the number of bills/claims an intermediary and carrier expect to have pending at the end of FY 1989 using the same data. We then combine the FY 1990 receipt estimate with the anticipated end of FY 1989 pending level, and subtract the estimated FY 1990 pending for each intermediary and carrier to establish a processed workload (i.e., Estimated FY 1990 receipts + Estimated end of FY 1989 pending − Estimated end of FY 1990 pending = Estimated FY 1990 Processed Workload).

In order to price individual contractor bill/claims workloads, we develop a unit cost that is the cost of processing a single bill/claim. The individual intermediary and carrier unit costs for FY 1990 are calculated based upon unit costs (line 1 of the FY 1989 NOBA HCFA–1523/1524) in effect at the time that we perform our computations. The calculations include increases to recognize the cost of new legislation, and 3.7 percent for price inflation. Reductions associated with the application of the Cost Efficiency Benchmark, incremental workload efficiencies, and savings achieved from the common working file and other prior Productivity Investments will also be part of the formula employed in computing FY 1990 target unit costs. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA target unit cost and the contractors' requested unit costs, within the limits of the funding available to HCFA.

2. Reconsiderations (Reviews under Part B) and Hearings

We will allocate funding based on the amount of dollars spent (line 2 of the NOBA HCFA–1523/1524C) in the prior

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year, adjusted for inflation and volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the percentage change in inflation, which for FY 1990 is a 3.7 percent increase (a rate that reflects productivity gains generally for the economy, but which may cause over/understatement of costs depending on the productivity efficiencies experienced by the individual contractors), and for the percentage change in workload. We have revised these forms to allow us to capture more discrete workload and cost data. We will use these data to develop budgeted costs for reconsiderations and hearings as we do for bills payment and claims payment costs, that is, forecasted processed volume times unit cost. The individual intermediary and carrier budget allocations for reconsiderations, reviews, and hearings are determined by using the old methodology. If sufficient reliable data are collected, then we may redetermine the allocations by multiplying anticipated workload levels in FY 1990 times the newly developed unit cost. We will consider the current pending workload and projected receipts for each intermediary and carrier. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

3. Beneficiary/Provider Inquiries (Part B only)

The prior year's cost is adjusted by the percentage change in inflation, which for FY 1990 will be a 3.7 percent increase, as well as any projected workload increase or decrease to establish a budgeted amount for beneficiary and provider inquiries. We also consider special conditions unique to specific carriers in negotiating the budget. We are now developing new reporting requirements that will allow us to capture more discrete workload and cost data. We are beginning the year using the old budgeting methodology until we have sufficient reliable data under the new reporting system. We may use the data to develop a budgeted cost for beneficiary/provider inquiries by multiplying forecasted processed volume times unit cost. The regional offices will negotiate with the carriers to resolve any differences between the HCFA allocations and carriers' requests, within the limits of the funding available to HCFA.

4. Provider Reimbursement (Part A only)

In determining individual intermediary budgets for reimbursement activities, we first calculate an FY 1989 unit cost using the funding included on the latest FY 1989 NOBA (HCFA 1523/1524C) and dividing that amount of money by the workload reported on the Schedule of Providers Serviced (SPS) for the same period.

The SPS is a listing of all the facilities serviced by the intermediary. This report offers a more detailed description of the providers because it identifies them by type, bed size, and freestanding or provider-based and whether they are paid on a periodic interim payment basis. The SPS is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the intermediary and any change reported between fiscal years.

The unit cost found by dividing the amount of the FY 1989 NOBA by the workload from the SPS for the same period forms the first of the "raw" data used to project the FY 1990 budget. This unit cost is increased by 3.7 percent, which is the rate of inflation provided to HCFA by OMB. This adjusted unit cost is then multiplied by the FY 1990 workload as reported on the SPS. The result is then adjusted based on a review of cost documentation of special initiatives.

In order to resolve major differences between the intermediary's budget request and the amount developed by the preceding approach, we analyze the reimbursement profile that is an addendum to the budget request. This profile shows the cost claimed by type of reimbursement activity (Interim Rate Determinations, Overpayment Recoupment, Consulting Services, etc.).

The regional offices will negotiate with the intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

5. Provider Audit (Part A only)

For FY 1990, the provider audit function is divided into two major activities, desk reviews and settlements.

The basic report on all audit analysis is based is the Contractor Auditing and Settlement Report (CASR) (HCFA–1525/1525A). This form provides a breakout of audit activities and costs by type of provider as well as documents the savings incurred as a result of audit activity. Using this as a base, the desk review costs are developed by projecting the workload using the total count of providers serviced. (All cost reports must be desk reviewed.). The count of providers serviced is compared to the total shown on the Schedule of Providers Serviced for verification. We then multiply this count by the unit cost per desk review (developed from the latest CASR for FY 1989) to determine the cost of handling the FY 1990 workload at the FY 1989 unit cost.

Settlement costs are based on the workload projected in the intermediary's budget request multiplied by the unit cost for settlements found in the most recent CASR for FY 1989. This will cost out the FY 1990 activity at the FY 1989 level of expenditure.

The overriding priority of all audit efforts is comprised of the special activities required by legislation (COBRA, OBRA). The second priority is that all cost reports must be desk reviewed, and, to the extent possible, settled.

All of the above costs are adjusted for inflation, which for FY 1990 will be a 3.7 percent increase.

The regional offices will negotiate with intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

6. Medicare Secondary Payer (MSP)

We will extract data, including processed volumes, costs and program savings, from the HCFA–1523/1524D and the MSP Savings Report to determine MSP funding allocations. In allocating the FY 1990 MSP budget to individual intermediaries and carriers, we consider (1) estimated potential savings goals by category and by State (e.g., working aged and spousal working aged insurance, automobile, medical liability and no-fault insurance, end-stage renal disease, disability, and workers compensation); (2) the relationship of available funds to expected savings among contractors; and (3) staffing mix differences, levels of systems sophistication, and special tasks. The regional offices will consider item 1, 2, and 3 of this section III. C. when negotiating with intermediaries and carriers within the limits of the funding available to HCFA.

7. Medical Review/Utilization Review (MR/UR)

The individual intermediary and carrier MR/UR budgets for FY 1990 will be calculated in three components: prepayment medical review, postpayment activities, and medical review policy development (carriers only). As a part of the budget guidelines, we asked intermediaries and carriers to estimate (1) the number of bills/claims to be processed by bill types, (2) the required funding, (3) staff level changes expressed in terms of percent of full-time equivalents; and (4) the percent of electronic data processing costs attributable to MR/UR review. We will allocate to each contractor prepayment and postpayment medical review funding based upon the workload that an intermediary or carrier projects will be processed under the FY 1990 budget guidelines for medical review and the funds requested by the intermediary or carrier to perform the reviews. Carrier budgets for medical review policy development are based on levels of sophistication of carrier policy development and dissemination and the need for medical direction. The funding calculations for all MR/UR activities will include a 3.7 percent factor for price inflation where applicable. The regional offices will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

8. Participating Physicians (Part B only)

In determining the individual carrier funding levels for the participating physician program for FY 1990, we considered the following factors: the number of physicians in the carrier's service area; the carrier's current participation rate; the carrier's recent performance in increasing its participation rate; the scope of work to be performed as outlined in the budget guidelines; and last year's cost experience. Since participating physicians are eligible for free electronic media claims (EMC) lines for billing, allowance has been made for these expenses. Carriers with lower participation rates will receive greater funding for MAAC violation monitoring and monitoring of nonparticipating physicians for compliance with elective surgery disclosure requirements. Carrier monitoring funds are allocated based on the nation percentage of nonparticipating physicians. All carriers will receive the same funding amount for reporting participation statistics. Our computations of the carrier's budgets for these activities will include an allowance for price inflation. The regional offices will negotiate with the carriers to resolve any differences between the HCFA allocations and the carriers' requests, within the limits of the funding available to HCFA.

9. Productivity Investments

The costs of implementing legislation and new initiatives designed to improve the effectiveness and efficiency of Medicare program administration are referred to as Productivity Investments. Several allocation methodologies will be employed in calculating the Productivity Investment budgets for individual intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all intermediaries and/or carriers in that the costs are driven by bill/claims volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all intermediaries and/or carriers that require equal effort regardless of the contractor's size, we derived a standard allocation to be given to all contractors. The regional offices will negotiate with the intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

10. Professional Relations

In determining the individual carrier funding levels for the professional relations function for FY 1990, we considered the number of physicians and suppliers in the carrier's service area. Distribution of funds made available to HCFA for the performance of the professional relations function by carriers is made to each carrier based upon the ratio of physicians and suppliers in the carrier's service area to the national total of physicians and suppliers.

The sum of the preceding functions, plus printing costs, is the FY 1990 national Medicare contractor budget. HCFA distributes the funding to intermediaries and carriers in accordance with the established guidelines and allocations as previously discussed.

IV. Waiver of Proposed Notice; Opportunity for Public Comment

Section 4035(a) (1) and (2) of Public Law 100–203 provides that we publish a proposal in the **Federal Register** and offer the public opportunity to comment on the data, standards and methodology that we propose to use to establish budgets for fiscal intermediaries and carriers before we issue them as final. We believe that there is good cause to waive issuing a proposed notice.

We have had extensive input from the involved parties, particularly contractors, as a basis for the national contractors budgets that were presented to Congress and that are the basis for the contents of this notice. This input has been in the form of detailed presentations by HCFA to fiscal intermediary and carrier representative groups. Both proposed budget levels and the impact on their organization of those levels were discussed and, in some instances, we made modifications to our proposal based on their response. Following this, our regional offices negotiated budgets with each individual intermediary and carrier. Therefore, we find that the depth of this consultation and negotiation with the parties most affected by the content of this notice served the same purpose as publishing a proposed notice and publishing a further proposed notice is impracticable.

This notice is the second such item required since enactment of Public Law 100–203. We have not made substantive changes in the data, standards and methodologies from the prior fiscal year (see 53 FR 36495), other than necessary updates, except in one instance—determining target unit costs for claims. (In this instance, the contractor community has been consulted and their concerns taken into consideration.) We received no public comments on this first notice. We believe the lack of response was tied to the fact that the intermediaries and carriers make up that segment of the general population with an interest in these matters and to the thoroughness of our effort to properly inform the affected intermediaries and carriers.

Although we have not been able to meet the statutory requirement that we publish a final notice by September 1, we have contracts with all intermediaries and carriers and budgets that have been negotiated to include the provisions outlined in this notice. To issue a proposal, which implies lack of finality, would introduce an element of uncertainty to an ongoing operation and would be contrary to the public interest. Consistent with the requirements of Public Law 100–203, should revisions to budgets be made as a result of comments on this notice, they would be made prospectively. This would be accomplished by negotiating any affected areas of the intermediaries' and carriers' budgets within the level of funding made available by Congress. By doing this, we believe that we can appropriately provide adequate opportunity for public comment concurrently with issuance of a final, rather than a proposed, notice.

For the reasons identified above, we find good cause to dispense with the issuance of a proposed notice, as such notice would be impracticable, unnecessary and contrary to the public interest. We are, therefore, issuing this final notice with a 30 day comment period. Because of the large number of comments we receive on notices

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generally, we cannot acknowledge or respond to them individually. However, we will consider all comments received by the date specified in the "DATE" section of this notice and respond to them appropriately.

V. Regulatory Impact Statement and Flexibility Analysis

Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that woud be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a final notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, fiscal intermediaries and carriers are not small entities, although we treat all providers and suppliers as small entities.

Additionally, section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any final notice such as this that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area.

This final notice does not contain rules. Rather, the purpose of this final notice is to fulfill our obligation under section 4035(a) of Pub. L. 100–203 to inform the public of our budgeting methodology, the data used in the budgeting process, and the standards we expect our contractors to achieve; and to permit the public the opportunity to comment on our notice. As a purely informational document, this final notice would not promulgate any rule or implement any policy. Nor would this final notice be a part of, or substitute for, any negotiations we intend to conduct with the intermediaries and carriers. Although the outcome of our negotiations are expected to have beneficial effects on contractor operations and on the program (as described earlier in section II.), such effects would be the result of these negotiations rather than as a result of this final notice. This, this document, by itself, would not produce an impact either on contractor operations or on program activities.

For these reasons (that is, this final notice does not represent an attempt at rule making, and the publishing of this final notice would have no impact on any aspect of the Medicare program), we believe that the Executive Order would not apply to this final notice. Therefore, we have not prepared a regulatory impact analysis.

For these same reasons, we also have determined, and the Secretary certifies that this final notice would not have a significant impact on a substantial number of small entities and would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or a regulatory impact analysis on small rural hospitals.

D. Paperwork Reduction Act

This notice contains no information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

(Sec. 1102, 1816, 1842, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, 1395u, and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program: No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: May 16, 1989.

Louis B. Hays,

Administrator, Health Care Financing Administration.

[FR Doc. 89–25051 Filed 10–24–89; 8:45 am]

BILLING CODE 4120–01–M

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register** Vol. 52, No. 178, pp. 34849 and 34850, dated Tuesday, September 15, 1987, and Vol. 53, No. 139, pp. 27401 and 27402, dated Wednesday, July 20, 1988) are amended by cancelling the temporary pilot test reorganization within Regions I, III, and VIII, which were announced in the above referenced **Federal Register** notices, and making the reorganization permanent. Regions I, III, and VIII will now formally operate in a programmatic structure with respect to the administration of Medicaid and Medicare. The permanent reorganization abolishes the previous Divisions of Program Operations and Financial Operations and replaces them with the Division of Medicaid and the Division of Medicare.

The specific amendments to Part F are described below:

Section FP.20.D., Office of the Regional Administrator (FPD (I–X)) is amended as follows:

- Section FP.20.D.5., Division of Medicaid (FPD (I, III, and VIII)E) is deleted in its entirety are replaced with the following:

5. Division of Medicaid (FPD(I, III, and VIII)E)

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to States in the administration of the amount, duration, scope, and payment of health services available under the State program. Reviews, approves, and monitors State payment systems (after central office concurrence for hospitals and long term care facilities) and determines the allowability or nonallowability of claims for Federal financial participation (FFP); and where State expenditures have not been made in accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers payment action on questionable State claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending FFP on behalf of State payments to Title XIX provider institutions and the revocation of such suspension orders. Supports, evaluates, and provides advice on State management information and claims payment systems. Implements Title XIX special initiatives, such as prepaid health plans, health maintenance organizations, and other special or experimental programs and operations of major management initiatives such as quality control. Where appropriate, provides an opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, congressional, provider, and public inquiries concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

- Section FP.20.D.6., Division of Medicare (FPD(I, III, and VIII)F) is deleted in its entirety and replaced with the following:

6. Division of Medicare (FPD(I, III, and VIII)F)

Under the direction of the HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers, physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General (OIG), and other organizations and individuals concerned with program operations. Assures the continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Monitors contractor overpayment identification and collection activities. Monitors beneficiary overpayment identification and collection activities for amounts up to $20,000; prepares overpayment cases for submission to the General Accounting Office (GAO) for collection and/or to the Department of Justice for possible litigation. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts quality assurance programs and onsite performance appraisals and analyzes statistical performance reports. Negotiates and approves contractor budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, monitors banking activities, and evaluates the cost allocation procedures of contractors. Conducts contractor appraisals. Interprets HCFA's institutional payment policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with peer review organizations (PROs). Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes responsibility for program training and assures timely responses to congressional and public inquiries. Relates appropriately to central office components, such as providing feedback on operations, activities, and problems; and provides regional perspectives in the development of Agency policies, objectives, and workplans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Date: October 10, 1989.

Robert A. Streimer,

Acting Associate Administrator for Management.

[FR Doc. 89–25052 Filed 10–24–89; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences II Subcommittee of Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 6, 1989, at the Holiday Inn Crowne Plaza, 300 Army Navy Drive, Arlington, Virginia 22202.

The meeting will be open to the public from 8:30 a.m. to 9:15 a.m. on November 6 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:15 a.m. until adjournment on November 6. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John Meyer, Ph.D., Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, Room 3A11, Bethesda, Maryland 20892, telephone (301–496–8426), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25188 Filed 10–24–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flathead Indian Irrigation Project, Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for

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operating and maintaining the Flathead Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments no later than November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Flathead Irrigation Project. The proposed assessment increases for 1990 amount to approximately 2%.

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, chapter 1, of title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information of the Flathead Irrigation Project for Calendar Year 1990 and subsequent years.

This notice sets forth changes to the operation and maintenance charges and related information applicable to the Flathead Irrigation Project, St. Ignatius, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1913 and March 7, 1928, (38 Stat. 583, 25 U.S.C. 382; 45 Stat. 210, 25 U.S.C. 387).

Irrigation Operation and Maintenance Charges

In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1990 and subsequent years until further notice, are hereby fixed as follows:

Lands included in an Irrigation District, lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at $14.36 per acre for the season of 1990 and subsequent years.

Payment

The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within an Irrigation District are biannually billed. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 89-25102 Filed 10-24-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CA-067-09-4352.12]

California Desert District; Camping Closure Order Correction in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Camping Closure Correction.

SUMMARY: The camping closure published in Volume 54, Number 143, page 31255, of the **Federal Register** on July 27, 1989 incorrectly said the closure was for Township 17 South, Ranges 19 and 20, SBM. Township 16 South, Ranges 19 and 20, SBM should have been used.

EFFECTIVE DATE: This closure, as corrected, will be effective immediately and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Arnold Schoeck, Supervisory Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman, El Centro, California 92243, (619) 352-5842.

H.W. Riecken,

Acting District Manager.

[FR Doc. 89-25103 Filed 10-24-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ-040-4333-11-SPCA]

Establishment of Fees for Special Recreation Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of special recreation permit fees.

SUMMARY: Pursuant to 36 CFR part 71 and 43 CFR part 8372, a fee of $1.50 per person per night will be charged for permits for overnight camping at any location within the San Pedro Riparian National Conservation Area, Cochise County, Arizona. This notice applies only to undeveloped backcountry camping.

DATES: The charging of fees becomes effective on November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Erick Campbell, Project Manager, San Pedro Riparian National Conservation Area, Box 9853, RR 1, Huachuca City, Arizona 85616 (telephone (602) 457-2265) or Vernon L. Saline, San Simon Resource Area Manager, Bureau of Land Management, 425 East Fourth Street, Safford, Arizona 85546 (telephone (602) 428-4040).

SUPPLEMENTARY INFORMATION: The fees being charged are for the issuance of special recreation permits for overnight camping. Permits can be obtained during regular office hours (7:45 a.m.-4:15 p.m., Monday-Friday) at the National Conservation Area headquarters at the old town of Fairbank, on State Highway 82 just east of the San Pedro River and about 9 miles west of Tombstone, Arizona.

Dated: October 17, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-25095 Filed 10-24-89; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

Farmington Wild and Acenic River Study Massachusetts and Connecticut Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Farmington River Study Committee will be held Thurdsay, November 9, 1989.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of two segments of the Farmington River.

The meeting will convene at 7:30 p.m. at the Sandisfield Town Hall, Sandisfield, Massachusetts, for the following reasons:

1. Approval of minutes of September 14, 1989 meeting;
2. Report on Budget Status;
3. Update on Resource Assessment and Report from Eligibility Subcommittee;
4. Report from Water Resources Subcommittee;
5. Report from River Conservation Planning Subcommittee;
6. Review of proposed themes/goals for the study and the river conservation plan;
7. Review of Public Awareness Campaign;
8. Opportunity for Public Comment;
9. Other business.

It is anticipated that about 100 people will be able to attend the session in addition to the Committee members.

Interested persons may make oral/written presenations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts, 02109-3572 at (617) 223-5199.

Dated: October 18, 1989.

Charles P. Clapper,

Acting Regional Director.

[FR Doc. 89-25093 Filed 10-24-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 14, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 9, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Clark County

Curdon Jail, W. Joslyn and Front Sts., Gurdon, 89001959

Conway County

Conway County Courthouse, Moose St. at Church St., Morrilton, 89001960

Franklin County

Shelton—Rich Farmstead, Address Restricted, Webb City vicinity, 89001973

Ouachita County

Ouachita County Courthouse, 145 Jefferson Ave., Camden, 89001958

Scott County

Scott County Courthouse, Address Unavailable, Worsham, 89001971

FLORIDA

Hillsborough County

House at 36 Aegean Avenue (Mediterranean Revival Style Buildings of Davis Islands MPS), 36 Aegean Ave., Tampa, 89001964

KENTUCKY

Henderson County

Henderson Commercial District, Roughly bounded by Main, Third, Elm, and First Sts., Henderson, 89001975

Todd County

Elkton Commercial Historic District, Jct. of N., S., E., and W. Main Sts., Elkton, 89001976

MASSACHUSETTS

Norfolk County

Baxter—King House (Quincy MRA), 270 Adams St., Quincy, 89001953

Masonic Temple (Quincy MRA), 1156 Hancock St., Quincy, 89001952

Pettengill, C. F., House (Quincy MRA), 53 Revere Rd., Quincy, 89001951

Woodward Institute (Quincy MRA), 1090 Hancock St., Quincy, 89001954

Worcester County

Fregrace Marble Farm Historic District, 80 Burbank Rd., Sutton, 89001967

NEW JERSEY

Camden County

Station Avenue Business District, Station Ave. from seventh Ave. to White Horse Pike, Haddon Heights, 89001945

Hunterdon County

Mount Airy Historic District, Roughly bounded by NY 179, Rt. 605, Rt. 603, and Rt. 601, Lambertville vicinity, 89001943

Morris County

Merchiston Farm, Longview Rd., Chester, 89001946

Warren County

Blair Presbyterial Academy, NY 94 and Main St., Blairstown, 89001944

NEW YORK

Cayuga County

Willard, Dr. Sylvester, Mansion, 203 W. Genesee St., Auburn, 89001948

Ontario County

East Bloomfield Historic District, Roughly Main, South, Park Sts. and NY 5, East Bloomfield, 89001947

Saratoga County

Mechanicville Hydroelectric Plant, At NY 32 on Hudson River, Mechanicville vicinity, 89001942

OKLAHOMA

Blaine County

Gillespie Building, 102 E. Main St., Geary, 89001963

Public Water Trough, Jct. Main, Canadian, and Northeast Blvd., Geary, 89001965

Muskogee County

Noncy Taylor No. 1 Oil Well Site, Haskell Lake Rd., W of US 64, Haskell vicinity, 89001962

Pontotoc County

Ada Public Library, 400 S. Rennie, Ada, 89001950

Washita County

Cordell Carnegie Public Library, 105 E. First St., Cordell 89001966

OREGON

Multnomah County

Gedamke, William, House, 1304 E. Powell Blvd., Gresham, 89001970

Portland New Chinatown—Japantown Historic District, Bounded by NW. Glisan, NW. 3rd Ave., W. Burnside, and NW. 5th Ave., Portland, 89001957

Yamhill County

Young, Ewing, Site, Address Restricted, Newburg vicinity, 89001977

TENNESSEE

Belford County

Volley Home, Potts Rd., W of Wartrace, Wartrace vicinity, 89001956

Blount County

Russel—Lackey—Prater House (Blount County MPS), Prater Rd. off Old Lowes Ferry Rd. at Poland Creek, Louisville vicinity, 89001961

Davidson County

Chadwell, Robert, House, 712 Neeleys Bend Rd., Madison, 89001972

Giles County

Bethany Presbyterian Church Complex, Elkton Rd., Bryson vicinity, 89001968

Knox County

Mabry, Joseph Alexander, Jr., House, 1711 Dandridge Ave., Knoxville, 89001974

Shelby County

Saunders, Clarence, Estate, 5922 Quince, Memphis, 89001969

WASHINGTON

Walla Walla County

Moore, Miles C. House, 720 Bryant, Walla Walla, 89001949

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WISCONSIN

Richland County

Court Street Commercial District, Roughly bounded by Mill, Church, Haseltine, and Main Sts., Richland Center, 89001955

[FR Doc. 89-25060 Filed 10-24-89; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0024), Washington, DC 20503, telephone 202-395-7340.

Title: Procedures and Criteria for Approval or Disapproval of State Program Submissions 30 CFR 732.

OMB approval number: 1029-0024.

Abstract: The regulations require a State to report to the Office of Surface Mining Reclamation and Enforcement (OSM) the information collected by the State and also requires notification to be made by the State of any changes to the State program. The information submitted by the State is used by OSM in evaluating whether the State is meeting the provisions of the approved State program.

Bureau form number: None.

Frequency: Quarterly and on occasion.

Description of Respondents: State Regulatory Authorities.

Estimated completion time: 9 hours.

Annual Responses: 120.

Annual Burden Hours: 1,080.

Bureau Clearance Officer: Andrew F. DeVito, 202-343-5954.

Dated: September 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-25096 Filed 10-24-89; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-135 for the annual synthetic organic chemicals report, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposal:

(1) *Number of forms submitted:* One.

(2) *Title of form:* Synthetic Organic Chemicals, U.S. Production and Sales by Original Manufacturers Only (form no. CD-A1).

(3) *Type of request:* Extension.

(4) *Frequency of use:* Annual.

(5) *Description of respondents:* Firms manufacturing synthetic organic chemicals in the United States.

(6) *Estimated number of respondents:* 718.

(7) *Estimated total number of hours to annually complete the forms:* 7,898.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from James A. Emanuel, telephone (202) 252-1367. Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Don Arbuckle, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly, you should advise OMB of your intent within 2 weeks of the date this notice appears in the **Federal Register**. Mr. Arbuckle's telephone number is (202) 395-7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

Issued: October 18, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-25136 Filed 10-24-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-433 (Final)]

Certain Residential Door Locks and Parts Thereof From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-433 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of residential door locks and parts thereof, provided for in subheading 8301.40.60 of the Harmonized Tariff Schedule of the United States (previously reported under item 646.9210 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 18, 1989, and the Commission will make its final injury determination by February 2, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain residential door locks and parts thereof from Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 24, 1989, by counsel on behalf of the Ad Hoc Committee of Door Lock Manufacturers. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 25351 (June 14, 1989)).

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3, as amended in 54 FR 5220 (Feb. 2, 1989)), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended in 53 FR 33039 (Aug. 29, 1988) and 54 FR 5220 (Feb. 2, 1989)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report. The prehearing staff report in this investigation will be placed in the nonpublic record on December 7, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 21, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 14, 1989. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 18, 1989, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 18, 1989. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 5, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 5, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7, as amended).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 11, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 16, 1989.

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By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 89-25112 Filed 10-24-89; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31539]

Indiana Hi-Rail Corp.; Trackage Rights Exemption

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Indiana Hi-Rail Corporation (IHRC) between mileposts TS-123.0 and TS-123.6, at Bluffton, Wells County, IN. The trackage rights in this proceeding connect with two segments of NW's line between Douglas, OH, and Van Buren, IN, that are the subject of a petition for exemption, filed concurrently with this notice, in Finance Docket No. 31532, *Indiana Hi-Rail Corporation—Lease and Operation Exemption—Between Douglas, OH, and Van Buren, IN.*[1] The trackage rights will become effective upon consummation of the lease transaction in the related petition for exemption.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner (IHRC), Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006; and Robert S. Cooney (NW), Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights— BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 10, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.
[FR Doc. 89-25010 Filed 10-24-89; 8:45 am]
BILLING CODE 7035-01-M

[1] In that proceeding, IHRC seeks exemption authority to lease and operate NW's line: (1) between milepost TS-65.5 (Douglas) and milepost TS-123.0 (Bluffton); and (2) between milepost TS-123.6 (Bluffton) and milepost TS-144.2 (Van Buren).

[Ex Parte No. 431 (Sub-No. 1); [Ex Parte No. 477)]

Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for all Regulatory Costing Purposes; Modifications to General Purpose Costing System—GPCS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of postponement for compliance with policy determination.

SUMMARY: The Commission has decided to grant the motion filed by the Association of American Railroads (AAR) which requested a postponement of implementation of the recently adopted Uniform Railroad Costing System (URCS) and associated costing modifications.

EFFECTIVE DATES: October 20, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354, Thomas A. Schmitz, (202) 275-7549. [TDD for hearing impaired, (202) 275-1721].

SUPPLEMENTARY INFORMATION: In a decision published at 54 FR 38910 (1989) and served September 20, 1989 in Ex Parte No. 431 (Sub-No. 1), *Uniform Railroad Costing System*, 5 I.C.C.2d 894 (1989), the Commission adopted URCS as its general purpose costing system (GPCS) in lieu of Rail Form A, which has been used traditionally for all regulatory purposes where costs are appropriate. In a related decision published at 54 FR 38910 (1989) and served September 20, 1989 in Ex Parte No. 477, *Modifications to General Purpose Costing System*, 5 I.C.C.2d 880 (1989), the Commission determined that certain modifications were appropriate for inclusion in its GPCS which had not been previously reflected in Rail Form A. In light of the sweeping changes in the manner in which costs are computed, the AAR's request that the Commission postpone the date for compliance with the new costing system and rules until February 1, 1990 is reasonable. The decisions in the subject proceedings are effective on October 20, 1989. However, the Commission will not require use of the new costing system before February 1, 1990.

To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD Services at (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10705a and 10709.

Decided: October 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.
[FR Doc. 89-25116 Filed 10-24-89; 8:45 am]
BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-74]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: November 15, 1989, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Dr. Joseph F. Shea, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda:

November 15, 1989

8:30 a.m.—Opening Remarks.

8:45 a.m.—Space Technology Program Review.

1 p.m.—Continue Space Technology Program Review.

4 p.m.—Discussion.

4:50 p.m.—Summary Session.

5 p.m.—Adjourn.

Dated: October 17, 1989.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
[FR Doc. 89-25111 Filed 10-24-89; 8:45 am]
BILLING CODE 7510-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of Form RI 34-1 Financial Resources Questionnaire Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to extend the use of form RI 34-1, Financial Resources Questionnaire. OPM uses form RI 34-1, Financial Resources Questionnaire, to determine action on the collection of debts owned by individuals who received overpayments from the Civil Service Retirement and Disability Fund.

Approximately 8,200 are processed annually; each form requires approximately 60 minutes to complete, for a total public burden of 8,200 hours. For copies of this proposal, call Larry Dambrose, on (202) 632-0199.

DATES: Comments on this proposal should be received on or before November 24, 1989.

ADDRESSES: Send or deliver comments to—Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey on (202) 632-5472.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.
[FR Doc. 89-25109 Filed 10-24-89; 8:45 am]
BILLING CODE 6325-01-M

Excepted Service; Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on September 28, 1989 (54 FR 39833). Individual authorities established or revoked under Schedule A, B, or C between September 1, 1989, and September 30, 1989, appear in a listing below.

Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exceptions were established:

Federal Deposit Insurance Corporation

Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992. Effective September 5, 1989.

Executive Office of the President, Office of National Drug Control Policy

Not to exceed 35 positions, GS-15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts. Appointments under this authority may not exceed January 20, 1994. Effective September 15, 1989.

Department of the Treasury

All positions involved in the supervision of savings associations for the Office of Thrift Supervision. No new appointments may be made under this authority after December 31, 1990. Effective September 20, 1989.

Thrift Oversight Board

All positions in the Thrift Oversight Board. No new appointments may be made under this authority after December 31, 1994. Effective September 22, 1989.

Department of Justice, Immigration and Naturalization Service

Not to exceed 25 positions, GS-15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, USSR. Employment under this authority may not exceed 4 years. No new appointments may be made under this authority after September 30, 1991.

Schedule B

National Endowment for the Humanities

One position of Humanities Administrator, GM-1701-15, in the Office of the Assistant Chairman for Programs and Policy. Effective September 26, 1989.

Department of Justice

Positions other than secretarial, GS-6 through GS-15, requiring knowledge of the bankruptcy process, on the staff of offices of the United States Trustees or the Executive Office for U.S. Trustees. Effective September 29, 1989.

Schedule C

Department of Agriculture

One Confidential Assistant to the Administrator, Office of International Cooperation and Development. Effective September 18, 1989.

One Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service. Effective September 18, 1989.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective September 18, 1989.

Department of Commerce

One Confidential Assistant to the Assistant Secretary for Tourism Marketing. Effective September 1, 1989.

One Special Assistant to the Deputy Under Secretary for Economic Affairs. Effective September 1, 1989.

One Director of Public Affairs to the Assistant Secretary for Communications and Information. Effective September 12, 1989.

One Special Assistant to the Under Secretary for Travel and Tourism. Effective September 13, 1989.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis. Effective September 14, 1989.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective September 15, 1989.

One Director, Office of External Affairs, to the Chief of Staff. Effective September 18, 1989.

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One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism. Effective September 19, 1989.

One Confidential Assistant to the Director, Executive Programs, (Office of White House Liaison). Effective September 21, 1989.

One Director of Internal Analysis to the Assistant Secretary for Economic Development. Effective September 21, 1989.

One Director, Office of Policy Coordination, to the Deputy Assistant Secretary for International Economic Policy. Effective September 21, 1989.

One Confidential Assistant to the Deputy Under Secretary for International Trade. Effective September 26, 1989.

One Confidential Assistant to the Assistant Secretary for Communications and Information. Effective September 26, 1989.

One Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks. Effective September 27, 1989.

One Confidential Assistant to the Counselor to the Secretary. Effective September 27, 1989.

One Special Assistant to the Assistant Secretary for Export Enforcement. Effective September 27, 1989.

Department of Defense

One Special Assistant for Foreign Affairs to the Assistant Secretary (Legislative Affairs). Effective September 6, 1989.

One Private Secretary to the Under Secretary for Policy. Effective September 6, 1989.

One Special Assistant for International Security Affairs to the Assistant Secretary (Legislative Affairs). Effective September 6, 1989.

One Special Assistant for Strategic Systems to the Assistant Secretary (Legislative Affairs). Effective September 6, 1989.

One Administrative Assistant to the Assistant to the Secretary. Effective September 19, 1989.

Department of Education

One Special Assistant to the Assistant Secretary, Office of Civil Rights. Effective September 1, 1989.

One Special Assistant to the Comptroller. Effective September 6, 1989.

One Confidential Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective September 12, 1989.

One Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective September 12, 1989.

Two Confidential Assistants to the Executive Assistant to the Under Secretary. Effective September 18, 1989.

One Executive Secretary to the Chief of Staff/Counselor to the Secretary. Effective September 20, 1989.

Two Confidential Assistants to the Deputy Assistant Secretary for Student Financial Assistance Programs. Effective September 26, 1989.

One Secretary's Regional Representative to the Director, Regional Liaison Staff. Effective September 27, 1989.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 27, 1989.

One Special Assistant to the Director, Public Affairs Service. Effective September 27, 1989.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective September 27, 1989.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective September 28, 1989.

Department of Energy

One Special Assistant to the General Counsel. Effective September 1, 1989.

One Special Assistant to the Deputy Secretary. Effective September 1, 1989.

One Staff Assistant to the Executive Assistant to the Secretary. Effective September 1, 1989.

One Staff Assistant to the Assistant Secretary for Fossil Energy. Effective September 1, 1989.

One Legislative Affairs Specialist to the Deputy Assistant Secretary for House Liaison. Effective September 6, 1989.

One Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective September 7, 1989.

One Public Liaison Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Liaison. Effective September 7, 1989.

One Special Assistant to the Assistant Secretary, Management and Adminstration. Effective September 18, 1989.

One Special Assistant o the Deputy Under Secretary, Office of Policy, Planning and Analysis. Effective September 20, 1989.

One Staff Assistant to the Director, Office of Public Affairs. Effective September 26, 1989.

Department of Health and Human Services

One Staff Assistant to the Director, Scheduling, Security and Protection. Effective September 6, 1989.

One Confidential Staff Assistant to the Administrator, Health Care Financing Administration. Effective September 7, 1989.

One Confidential Assistant to the Director, Office of Consumer Affairs. Effective September 11, 1989.

One Confidential Assistant to the Executive Assistant to the Secretary. Effective September 12, 1989.

One Confidential Assistant (Scheduling) to the Director, Scheduling, Security and Protection. Effective September 14, 1989.

One Special Assistant to the Deputy Assistant Secretary for Human Development Services. Effective September 14, 1989.

One Associate Commissioner for Family and Youth Services to the Commissioner, Administration for Children, Youth and Families. Effective September 15, 1989.

One Confidential Asssistant to the Assistant Secretary for Human Development Services. Effective September 15, 1989.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective September 18, 1989.

One Congressional Relations Specialist to the Deputy Commissioner, Policy and External Affairs. Effective September 18, 1989.

One Writer to the Secretary. Effective September 18, 1989.

One Special Assistant to the Assistant Secretary for Management and Budget. Effective September 27, 1989.

One Special Assistant to the Secretary. Effective September 27, 1989.

Two Special Assistants to the Commissioner of Social Security. Effective September 28, 1989.

One Director, Office of Public Affairs, to the Associate Administrator for Communications. Effective September 28, 1989.

One Executive Director, Federal Council on Aging, to the Assistant Secretary for Human Development Services. Effective September 28, 1989.

One Deputy Director, Office of Refugee Resettlement, to the Director. Effective September 28, 1989.

One Confidential Assistant to the Executive Secretary. Effective September 28, 1989.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective September 7, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective September 7, 1989.

One Special Assistant for Indian and Alaska Native Programs to the Secretary. Effective September 7, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary. Effective September 15, 1989.

One Special Assistant (Scheduling) to the Assistant Secretary for Public Affairs. Effective September 15, 1989.

One Special Assistant to the Assistant Secretary for Public and Indian Affairs. Effective September 15, 1989.

One Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective September 15, 1989.

One Staff Assistant to the Special Assistant to the Secretary/Director, Executive Secretariat. Effective September 15, 1989.

One Special Assistant to the Regional Administrator. Effective September 18, 1989.

One Associate Deputy General Counsel to the General Counsel. Effective September 21, 1989.

One Deputy to the General Counsel. Effective September 21, 1989.

One Special Assistant to the Assistant Secretary for Administration. Effective September 21, 1989.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective September 27, 1989.

One Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective September 27, 1989.

One Assistant for Congressional Relations to the Deputy Assistant Secretary. Effective September 27, 1989.

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective September 27, 1989.

One Staff Assistant to the President, Government National Mortgage Association. Effective September 27, 1989.

Department of the Interior

One Special Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective September 1, 1989.

One Executive Assistant to the Director, Bureau of Land Management. Effective September 1, 1989.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective September 6, 1989.

One Legislative Assistant to the Director, Minerals Management Service. Effective September 20, 1989.

One Special Assistant to the Assistant Secretary-Policy, Budget and Administration. Effective September 22, 1989.

One Program Assistant to the Deputy Director, Minerals Management Service. Effective September 26, 1989.

Department of Labor

One Special Assistant to the Director, Office of Information and Public Affairs. Effective September 15, 1989.

One Special Assistant to the Assistant Secretary for Labor Management Standards. Effective September 15, 1989.

One Secretary's Representative to the Assistant Secretary for Public and Intergovernmental Affairs. Effective September 20, 1989.

One Assistant to the Secretary's Representative to the Assistant Secretary for Public and Intergovernmental Affairs. Effective September 20, 1989.

One Secretary's Representative to the Assistant Secretary for Public and Intergovernmental Affairs. Effective September 20, 1989.

One Deputy to the Secretary's Representative. Effective September 26, 1989.

One Special Assistant to the Assistant Secretary for Employment Standards. Effective September 27, 1989.

One Staff Assistant to teh Assistant Secretary for Mine Safety and Health. Effective September 29, 1989.

Department of the Navy

One Staff Assistant to the Secretary. Effective September 18, 1989.

Department of State

One Special Program Assistant to the Director for Human Rights Legislation and Public Diplomacy. Effective September 15, 1989.

One Secretary (Stenography) to the Coordinator for Counter-Terrorism. Effective September 15, 1989.

One Staff Assistant to the Special Assistant to the Under Secretary for Management. Effective September 15, 1989.

One Secretary (Typing) to the Under Secretary for Management. Effective September 15, 1989.

One Foreign Affairs Officer to the Deputy Assistant Secretary for Bilateral/Multilateral Affairs. Effective September 18, 1989.

One Secretary (Stenography) to the Assistant Secretary, Bureau of Politico-Military Affairs. Effective September 21, 1989.

One Secretary to the Assistant Secretary, Bureau of International Organization Affairs. Effective September 21, 1989.

Department of Transportation

One Special Assistant to the Administrator for the Saint Lawrence Seaway Development Corporation. Effective September 18, 1989.

One Special Assistant to the Assistant Administrator for Public Affairs. Effective September 18, 1989.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective September 9, 1989.

One Chief, Consumer Affairs Division, to the Director, Office of Public and Consumer Affairs. Effective September 19, 1989.

One Special Assistant to the Federal Highway Administrator. Effective September 19, 1989.

One Director, Office of Public and Consumer Affairs, to the Administrator. Effective September 19, 1989.

One Special Assistant to the Administrator. Effective September 20, 1989.

One Staff Assistant to the Deputy Administrator, Urban Mass Transportation Administration. Effective September 21, 1989.

One Special Assistant for Personnel and Organizational Management to the Secretary. Effective September 26, 1989.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective September 26, 1989.

One Special Assistant to the Director, Office of Public Affairs, Effective September 28, 1989.

One Staff Assistant to the Chief of Staff. Effective September 28, 1989.

One Deputy Director of Industry Affairs to the Director, Intergovernmental and Industry Affairs. Effective September 28, 1989.

One Staff Assistant to the Assistant Secretary for Governmental Affairs. Effective September 29, 1989.

One Staff Assistant to the Associate Administrator for Policy, Planning and International Aviation. Effective September 29, 1989.

One Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs. Effective August 29, 1989. Note: This position should have been listed in the previously published issue.

Department of the Treasury

One Public Affairs Specialist to the Assistant Secretary. Effective September 18, 1989.

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One Review Assistant to the Executive Secretary. Effective September 18, 1989.

One Public Affairs Specialist to the Treasurer of the United States. Effective September 27, 1989.

One Confidential Assistant to the Secretary. Effective September 27, 1989.

One Assistant to the Commissioner of Internal Revenue. Effective September 27, 1989.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Veterans Liaison and Program Coordination. Effective September 1, 1989.

Agency for International Development

One Special Assistant to the Assistant Administrator for Asia and the Near East. Effective September 7, 1989.

One Special Assistant to the Deputy Administrator. Effective September 27, 1989.

Commission on Civil Rights

One Special Assistant to the Commissioner. Effective September 8, 1989.

Council of Economic Advisers

One Secretary to the Council Member. Effective September 1, 1989.

Environmental Protection Agency

One Special Assistant to the Deputy Administrator. Effective September 11, 1989.

One Congressional Liaison Specialist to the Director, Office of Congressional Liaison. Effective September 18, 1989.

Two Congressional Liaison Specialists to the Director, Office of Congressional Liaison. Effective September 19, 1989.

One Congressional Relations Officer to the Director, Office of Congressional Liaison. Effective September 19, 1989.

Export-Import Bank of the United States

One Personal and Confidential Assistant to the First Vice President and Vice Chairman. Effective September 12, 1989.

One Executive Assistant to the President and Chairman. Effective September 12, 1989.

General Services Administration

One Confidential Assistant to the Regional Administrator. Effective September 6, 1989.

National Credit Union Administration

One Confidential Assistant to the Vice Chairman. Effective September 6, 1989.

National Endowment for the Humanities

One Special Assistant to the Deputy Chairman. Effective September 6, 1989.

Office of Personnel Management

One Staff Assistant to the Director, Office of Executive Administration. Effective September 8, 1989.

One Confidential Assistant to the Director, Office of Congressional Relations. Effective September 13, 1989.

One Director of Intergovernmental Affairs to the Director, Office of Personnel Management. Effective September 21, 1989.

One Confidential Assistant to the Director, Office of Executive Administration. Effective September 29, 1989.

Small Business Administration

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective September 7, 1989.

One Special Assistant to the Regional Administrator. Effective September 12, 1989.

One Special Assistant to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective September 14, 1989.

One Special Assistant to the Administrator. Effective September 14, 1989.

One Executive Assistant to the Deputy Administrator. Effective September 15, 1989.

One Director, Office of International Trade, to the Associate Deputy Administrator for Special Programs. Effective September 20, 1989.

One Special Assistant to the Assistant Administrator for Public Communications. Effective September 21, 1989.

One Deputy Associate Administrator for Business Development to the Associate Administrator. Effective September 26, 1989.

United States Tax Court

One Trial Clerk to a Judge. Effective September 12, 1989.

One Secretary (Confidential Assistant) to a Judge. Effective September 6, 1989.

United States Information Agency

One Staff Specialist to the Special Assistant, Private Sector Programs. Effective September 22, 1989.

One Staff Assistant to the Associate Director, Bureau of Programs. Effective September 22, 1989.

One Special Assistant to the Associate Director, Bureau of Educational and Cultural Affairs. Effective September 28, 1989.

Authority: 5 U.S.C. 3301, 3303; E.O. 10555, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89–25110 Filed 10–24–89; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Order No. 850; Docket No. A90–1]

Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; Patti Birge Tyson.

In the matter of: Powder Springs, Tennessee 37848 (A.B. Acuff, *et al.*, Petitioners)

October 18, 1989.

Docket Number: A90–1.

Name of Affected Post Office: Powder Springs, Tennessee 37848.

Name(s) of Petitioner(s): A.B. Acuff and others.

Type of Determination: Closing.

Date of Filing of Appeal Papers: October 10, 1989.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)]
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda wil be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders

(A) The record in this appeal shall be filed on or before October 25, 1989.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Cyril J. Pittack,

Acting Secretary.

October 10, 1989 Filing of Petition

October 18, 1989 Notice and Order of Filing of Appeal

November 6, 1989 Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

November 14, 1989 Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

December 4, 1989 Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]

December 19, 1989 Petitioners' Reply Brief should Petitioners choose to file one [*see* CFR 3001.115(d)].

December 28, 1989 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

February 7, 1990 Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 89–25097 Filed 10–24–89; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27365; File Nos. SR–Amex–89–26; SR–CBOE–89–21; SR–PSE–89–28; SR–PHLX–89–52]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc, and the Philadelphia Stock Exchange, Inc. Relating to Emergency Arrangements to Trade PSE Options on Other Options Exchanges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1989, the American ("Amex"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively the "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II and II below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes concern arrangements made for the continued trading of options listed on the PSE due to mechanical disruptions to the PSE options floor caused by the October 17, 1989 earthquake in San Francisco. Starting October 19, 1989, under arrangements worked out by the PSE, Amex, CBOE, "Phlx" and New York Stock Exchange ("NYSE"), options listed on the PSE will trade temporarily on the floors of different options exchanges around the United States. The options still will be considered to be traded on the PSE, although the physical execution of the trades will occur on the other options exchanges.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to allow: (1) PSE options to be traded on other trading floors; (2) PSE market makers to trade on the floors of the Amex, Phlx, and CBOE without market makers from their exchanges effecting transactions in PSE options; and (3) the floor brokers to become deputized PSE members while in the PSE options series crowd. Because of the nature of the circumstances and the relief requested, the PSE also requests that it not be held responsible for trade input while such transactions are effected through the facilities of the other exchanges.

A. American Stock Exchange, Inc. ("Amex")

Temporary Rule

1. The Amex shall permit the PSE and its members to use a portion of the Amex floor (hereinafter, the "PSE Facility at the Amex") to conduct the trading of such stock options as shall have been designated by the PSE by prior notice to the Amex. The Amex will provide appropriate support facilities to enable the PSE members to conduct such trading at the PSE Facility at the Amex. Such trading shall be conducted in accordance with the rules of the PSE, to the same extent as if conducted on the facilities of the PSE in California.

2. By accepting this arrangement, the PSE, its members and their employees who are authorized to enter onto the Amex floor to carry out trading as above described, shall accept the same limitations on the liability of the Amex for use of its facilities for the conduct of business as they apply to any Amex member, member organization or employee thereof in the conduct of his or its business on the Amex.

3. PSE members authorized to make markets at the PSE Facility at the Amex shall not be authorized to trade in any Amex-listed securities, except that they shall be deemed, for so long as this rule shall be in effect, to be temporary members of the Amex solely for the purpose of trading on the Amex Floor, for their proprietary accounts only, the three options dually traded on both Amex and PSE (Mentor, Microsoft, and Micron). In exercising the privileges of such temporary membership, the PSE members shall comply in all respects with all provisions of the Amex Constitution and Rules applicable to Amex members engaged in such trading activity on the Amex Floor.

B. Chicago Board Options Exchange, Inc. ("CBOE")

(Brackets indicate language to be deleted, italics indicate new language.)

Rule 6.5 Limitations on Dealings. No change.

* * * Interpretations and Policies:

.01 No Change.

.02 During the period from October 19, 1989 until emergency conditions cease, Pacific Stock Exchange ("PSE") members who are qualified to trade options may bid, offer, purchase or write options contracts open for trading on the Exchange, only with respect to the following underlying securities:

(1) Genetech Inc.
(2) Itel Corporation.
(3) Micron Technology, Inc.
(4) Polaroid Corporation.
(5) Teledyne, Inc.
(6) Zerox Corporation.

.03 Exchange members who are nominees of member orgaizations of the CBOE and PSE shall be allowed to bid, offer, purchase or write option contracts on PSE options on the Exchange from October 19, 1989 until the emergency conditions cease.

Rule 6.7 Use of Facilities of Exchange. No change.

* * * Interpratations and Policies.

.01 and .02 No change.

.03 This rule will apply to Pacific Stock Exchange ("PSE") members and associated persons for the period commencing October 19, 1989, until the cessation of emergency conditions which require PSE members and associated persons to be present on the CBOE floor.

C. Pacific Stock Exchange, Inc. ("PSE")

The PSE requests emergency authorization to allow PSE options to be traded on other exchanges, for PSE market makers to trade on other exchanges, and floor brokers from these other exchanges to become deputized PSE members while in the PSE trading crowd.

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D. Philadelphia Stock Exchange, Inc. ("PHLX")

Temporary Rule

1. The PHLX shall permit the PSE and its members to use a portion of the PHLX options trading floor (hereinafter, the Specialist Post "T" on the PHLX) to conduct the trading of such stock options as shall have been designated by the PSE by prior notice to the PHLX. The PHLX will provide appropriate support facilities to enable the PSE members to conduct such trading at the Specialist Post "T" on the PHLX. Such trading shall be conducted in accordance with the rules of the PSE, to the same extent as if conducted on the facilities of the PSE in California.

2. By accepting this arrangement, the PSE, its members and their employees who are authorized to enter onto the PHLX floor to carry out trading as above described, shall accept the same limitations on the liability of the PHLX for use of its member, member organization or employee thereof in the conduct of his or its business on the Exchange.

3. PSE members authorized to make markets at Specialist Post "T" on the PHLX shall not be authorized to trade in any PHLX-registered listed securities.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below and is set forth in section (A), (B), and (C) below.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

The Exchange note that as a result of the October 17, 1989 earthquake in San Francisco, the San Francisco trading facilities of the PSE have sustained a temporary loss of electrical power. As a consequence, the PSE is currently unable to open its San Francisco option facilities for trading. The Exchanges state that the proposed rule changes will act to facilitate and maintain transaction in PSE option issues, thereby maintaining the mechanism of a free and open market for PSE options and protecting the public interest.

Amex

The Amex is adopting a temporary rule to provide space on its floor and appropriate support facilities to enable the PSE and authorized members thereof to trade certain securities thereon, while the options facilities of the PSE in California remain unavailable due to the recent earthquake, and to deem certain PSE market makers temporary Amex members for such period solely to enable them to trade on the Amex, for their proprietary accounts only, certain dually traded options.

CBOE

Due to a natural disaster certain members of the PSE will be leasing space on the CBOE floor. In order to assure that CBOE will not be liable to such persons for the use of CBOE facilities, the CBOE requests that Rule 6.7 Interpretation .03 apply during the period for which PSE members are present on the CBOE floor.

The CBOE believes that New Interpretation .02 to Rule 6.5 is necessary to accommodate PSE members who regularly act as market makers and floor brokers in dually listed option classes to conduct such business on the CBOE floor at such stations where the named options are regularly traded by CBOE.

PSE

As a result of the earthquake which occurred in the San Francisco area on October 17, 1989, the San Francisco trading facilities of the PSE, along with much of the rest of the San Francisco area, has sustained a temporary loss of electrical power. As a consequence, the Exchange is currently unable to open its San Francisco option facilities for trading.

The PSE requests that, through October 20, 1989, PSE options to be traded on other Exchanges, PSE market makers to trade on other Exchanges without market makers from those other exchanges effecting transaction in PSE options, and to allow floor brokers from these other exchanges to become deputized PSE members while in that option series crowd. Because of the nature of these circumstances and the relief requested here it is also the request of the PSE that the PSE will not be held responsible for trade input while such transactions are effected through the facilities of these other exchanges. The PSE believes that the proposed rule change is necessary to maintain the necessary markets in these issues.

(B) Self-Regulatory Organization's Statements on Burden on Competition

The Exchanges do not beleive that the proposed rule changes will impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. Specifically, the Commission believes that the arrangements worked out between the PSE and the other options exchanges to provide facilities for PSE market makers to trade PSE options on those other exchanges will ensure that these options continue to be freely traded despite the disruption to the options trading floor in San Francisco.[1] Floor brokers on the host exchanges will be deputized as PSE members for purposes of handling orders in PSE options, thereby providing adequate personnel for order handling purposes. The trade entry and match functions for PSE options will be performed by the host exchanges. The Commission is satisfied that these arrangements will enable continuous, liquid markets to be maintained for these options in an exchange environment while maintaining the usual investor protection safeguards for exchange-traded options.[2] This is especially important in light of the upcoming options expiration on October 20, 1989. Accordingly, the rule proposals are consistent with sections 6(b) (1), (2), (5), and (6) of the Act.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in order to ensure a continuous market for PSE options.

[1] Market Maker firms who are member organizations of the PSE and a host exchange will be able to use the individual market makers they select to make markets in PSE options, even though those persons are not members of the PSE.

[2] In this regard, both the PSE and the temporary host exchanges will have the authority to surveil trading in PSE options on other exchanges and to take any disciplinary action necessary against their members for violations of their rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by November 15, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule changes (SR–Amex–89–26; SR–CBOE–89–21; SR–Phlx–89–52; and SR–PSE–89–28) be, and hereby are, approved through October 20 or when the PSE options market is operational whichever is later.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: October 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–25089 Filed 10–24–89; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30–3(a)(12) (1988).

[Rel. No. 34–27362; File No. SR–BSE–89–4]

Self-Regulatory Organization; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Crosses, Fictitious Transactions and Transactions in Privileges

On July 10, 1989, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change (1) eliminating the requirement that all crosses be executed in the presence of a Floor Governor; (2) eliminating the specific intent requirement for fictitious transactions; and (3) abrogating an antiquated prohibition concerning offers to buy or sell privileges.

The proposed rule change was noticed in Securities Exchange Act Release No. 27113 (August 9, 1989), 54 FR 33991 (August 17, 1989). No comments were received on the proposal.

The proposed rule change would affect sections 18, 21, and 22 of chapter 11 of the Exchange's Rules of the Board of Governors. First, the BSE proposes elimination of the requirement in Section 19 that where a member has an order to buy and an order to sell the same security (a cross transaction), the transaction must be executed in the presence of a Floor Governor.[3] The BSE states that an increase in the level of activity occurring throughout the industry has led to an increase in the number of crosses executed on the Exchange Floor on a daily basis. The Exchange believes this increased activity will render the existing provision requiring a Governor to be present for all crosses impractical and that it would be disruptive to Governors to have to witness each of these trades. Moreover, the Exchange asserts that the extra time involved in having a Governor oversee each cross would discourage the execution of crosses on its Floor and would be disadvantageous to its customers.

Second, section 21 currently contains a specific intent requirements: *i.e.*, a transaction must be made for the purpose of creating a false or misleading appearance of active trading in a security or a false or misleading appearance with respect to the market for any security, in order to constitute a fictitious transaction. The Exchange seeks to delete certain language containing the specific intent requirement, thereby providing a broader prohibition against fictitious transactions.

Finally, the Exchange proposes abrogation of an antiquated prohibition against offers to buy or sell privileges contained in section 22.

The Commission finds the proposed rule changes consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[4] Specifically, the Commission finds the proposal consistent with the section 6(b)(5) requirement that the rules of an exchange promote just and equitable principles of trade and remove impediments to and perfect the mechanism of free and open market system. To these ends, the Commission believes that implementation of the BSE's proposal regarding sections 18, 21, and 22 of chapter 11 of its Rules would protect investors and further ensure against inequitable and unfair practices on the Exchange.

The Commission further believes that, in light of the increased volume of activity in the industry and the resultant increase in the number of crosses executed daily, section 18's requirement that all crosses be performed in the presence of a Floor Governor would be impractical.[5] Requiring a Governor to oversee each cross requires extra time and may serve to discourage execution of these trades. In addition, the Commission believes that elimination of the requirement of specific intent from the definition of a fictitious transaction would broaden the prohibition of these transactions and make it easier for the Exchange to prosecute such transactions. Finally, the Commission believes that elimination of the antiquated and obsolete provision at section 22 prohibiting certain offers to buy or sell privileges will remove confusing language from the BSE rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: October 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–25133 Filed 10–24–89; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78f (1982).

[2] Other regional exchanges also do not have this requirement. *See, e.g.*, Midwest Stock Exchange, Article XX, Rule 24.

[3] The BSE also proposes elimination of the right of other floor members to object to a cross under certain circumstances.

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30–3(a)(12) (1988).

[Rel. No. 34–27366; File No. SR–PHLX–89–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Tape Indications and Pre-Opening Procedures

On June 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or

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"Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder [1], a proposed rule change that would provide procedures governing the commencement of trading on Phlx when an opening is arranged in an Intermarket Trading System ("ITS") stock ahead of another market center.[2]

The proposal would provide what is called a "three by three" requirement because it generally provides for two separate waiting periods, each consisting of a minimum of three minutes. First, the floor member seeking to open the stock before the primary market must initiate a tape indication specifying the stock to be opened, its previous night's close, and the price range in which it is anticipated to open. After a minimum of three minutes, an ITS pre-opening administrative message must be sent. The issue may be opened after another three-minute period has elapsed.

The only exception to these requirements is when a stock is to be opened within a specified range from the previous close (generally, ⅜ point for stocks trading above $15, and ¼ point stocks below $15), and ITS administrative message need not be sent and only the first three-minute waiting period must be observed.

The Commission has reviewed the proposed rule change and believes that it is consistent with the requirements of the Act and, in particular, with section 6(b)(5) in that it is designed to promote the mechanism of a free and open market and, in general, serves to protect investors and the public interst.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PHLX-89-39) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25134 Filed 10-24-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. section 78s(b)(1) and 17 CFR 240.19b-4.

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 27149, August 18, 1989, 54 FR 35423, August 25, 1989. No comments were received on this proposal.

[Rel. No. IC-17176; 811-4542]

Elk Ridge Fund, Inc.; Application for Deregistration

October 18, 1989.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Elk Ridge Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on July 26, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11 Greenway Plaza, Suite 1919 Houston, Texas 77046.

For Further Information Contact: Patricia Copeland, Legal Technician, (202) 272-3009, or Max Berueffy, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

Supplementary Information: Following is a summary of the application; the complete application if available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is an open-end diversified management investment company incorporated under the laws of the state of Maryland. On December 30, 1985, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On that same date, Applicant filed a registration statement on Form N-1A (33-2359) with respect to Applicant's common stock. According to records at the SEC, Applicant's registration statement was never declared effective and was ordered ebandoned on October 13, 1987. However, Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25135 Filed 10-24-89; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; Big O Tires, Inc., Common Stock, $0.02 Par Value (File No. 1-8833)

October 18, 1989.

Big O Tires, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

To reduce administrative costs by eliminating the cost of registering additional shares upon each stock issuance, and the Company currently is registered with the National Market System of NASDAQ and believes that the benefits derived therefrom are adequate and it is no longer necessary to have its securities registered with the Boston Stock Exchange.

Any interested person may, on or before November 8, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25068 Filed 10-24-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1319]

Overseas Security Advisory Council; Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, November 8, 1989 at 8:30 a.m. at the Department of State, Washington, D.C. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Mrs. Marsha J. Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522-1003, phone: 202/663-0002.

Date: October 12, 1989.

Clark Dittmer

Director of the Diplomatic Security Service

[FR Doc. 89-25131 Filed 10-24-89; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD9-89-28]

Vessel Certificates and Exemptions Under the Inland Navigational Rules Act of 1980

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificate of alternative compliance of vessels.

SUMMARY: This notice lists a commercial vessel granted Certificate of Alternative Compliance by the Commander, Ninth Coast Guard District on 25 August 1989. This notice lists a vessel which, due to its special construction and purpose, can not comply fully with certain provisions of the Inland Navigational Rules Act of 1980 without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of this vessel that has been granted a Certificate of Alternative Compliance.

FOR FURTHER INFORMATION CONTACT: Commander Robert D. Arnett, USCG Commander, Ninth Coast Guard District (mvs), 1240 East Ninth Street, Cleveland, OH 44199-2060; Telephone (216) 522-3907.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel can not comply fully with either the International or Inland Rules for light(s), shape(s), and/or sound signal provisions without interference with the vessel's special functions. The alternative that has been allowed results in the closest possible compliance with the existing rules. The Ninth Coast Guard District has on record one Certificate of Alternate Compliance which it granted on 25 August 1989.

This vessel is incapable of complying with the light provisions of the Inland Navigational Rules Act of 1980 and has been issued a Certificate of Alternate Compliance. The following vessel carries its forward masthead light more than one half of the length of the vessel from the stem:

Vessel	Official No.	Masthead light carried at designated horizontal distance (in feet) aft from the bow of the vessel
SOUTH BASS.	949048	64.0 ft.

Dated: October 11, 1989.

D.H. Ramsden,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-25075 Filed 10-24-89; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-91]

Accreditation of Consolidated Sciences Inc., as a Commercial Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Accreditation of Consolidated Sciences, Inc., as a commercial laboratory.

SUMMARY: Consolidated Sciences, Inc., of Pasadena, Texas, recently applied to Customs under § 151.13 of the Customs Regulations (19 CFR 151.13) for accreditation to perform certain analyses on organic chemicals in bulk and in liquid form, and on petroleum and petroleum products. Customs has determined that Consolidated Sciences meets the requirements to perform those analyses on organic chemicals in bulk and liquid form and petroleum and petroleum products listed in the Customs Regulations, § 151.13(a)(2), but excluding the analysis for anti-knock index.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Consolidated Sciences, Inc., 809 Tatar Street, Pasadena, Texas 77506, is accredited to perform the analyses on the products named above in all Customs districts.

EFFECTIVE DATE: October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: October 19, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-25049 Filed 10-24-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-40]

Petition for Exemption; Summary and Disposition

AGENCY: Federal Aviation Administration (FA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or

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omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 14, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 17, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 22996.
Petitioner: Amerada Hess Corporation.
Sections of the FAR Affected: 14 CFR 25.1321(b)(3).
Description of Relief Sought: To amend Exemption No. 3550 that permits type certification of an Intercontinental Dynamics Corporation vertical scale, vertical speed indicator between the altimeter and the attitude indicator on the pilot's (left) instrument panel only, on Gulfstream III (G1159A) airplanes. The amendment would make the exemption an indefinite exemption with no further time limitations.
Docket No.: 25966.
Petitioner: Greater Pittsburgh International Airport.
Regulations Affected: 14 CFR 107.14.
Description of Relief Sought: To allow a 1-year delay in installing an automated access system at the Greater Pittsburgh International Airport.
Docket No.: 23392.
Petitioner: Beaver Aviation.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought/Disposition: To extend Exemption No. 3682 that allows petitioner to conduct training at a satellite base in Venice, Florida. The satellite base is not a wholly-owned subsidiary and is more than 25 nautical miles from the main base of operations.

Grant, October 6, 1989, Exemption No. 3682D

Docket No.: 25788.
Petitioner: Source Air Corporation.
Sections of the FAR Affected: 14 CFR 135.169.
Description of Relief Sought/Disposition: To allow petitioner to operate certain Cessna Citation III aircraft to perform proving and demonstration flights and for compensation even though the aircraft do not meet the fire blocking requirements of § 25.853(c).

Denial, September 29, 1989, Exemption No. 5104

[FR Doc. 89-25087 Filed 10-24-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the fifth meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems on November 15, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of minutes of the fourth meeting held on September 14-15, 1989, RTCA Paper No. XXX-89/SC166-XX (enclosed); (3) working group activities reports: (a) Operations Working Group and (b) Technology Working Group; (4) briefing on airport technology issues—progress to date; (5) report on action items from last meeting; (6) discussion on future committee work schedule; (7) other business; (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 17, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-25088 Filed 10-24-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 19, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0026.
Form Number: 926.
Type of Review: Extension.
Title: Return by a Transferor of Property to a Foreign Corporation, Foreign Estate or Trust, or Foreign Partnership.
Description: U.S. persons file Form 926 to report the transfer of property to a foreign entity. An excise tax is imposed unless the transfer is not taxable. The form is also used to report section 6038B information. IRS uses Form 926 to determine if the correct excise tax has been paid and if any of the exceptions to the imposition of tax are correctly applied.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 5 hours, 44 minutes.
Learning about the law or the form, 2 hours, 59 minutes.
Preparing, copying, assembling, and sending the form to IRS, 3 hours, 12 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 11,920 hours.

OMB Number: 1545-0200.
Form Number: 5307.
Type of Review: Revision.
Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.
Description: This form is filed by employers of plan administrators who have adopted a master or prototype plan approved by the IRS National Office or a regional prototype plan approved by an IRS District Director to obtain a ruling that the plan adopted is qualified under Internal Revenue Code sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 39,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 4 hours, 21 minutes.
Learning about the law or the form, 15 hours, 53 minutes.
Preparing the form, 9 hours, 10 minutes.
Copying, assembling, and sending the form to IRS, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 1,177,410 hours.
OMB Number: 1545-0212.
Form Number: 5558.
Type of Review: Revision.
Title: Application for Extension of Time to File Certain Employee Plan Returns.
Description: This form is used by employers to request an extension of time to file employee plan annual information returns and the employee plan excise tax return (Form 5330). The data supplied on this form is used to determine if such extension of time is warranted.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 75,000.
Estimated Burden Hours Per Response: 36 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 44,525 hours.
OMB Number: 1545-0416.
Form Number: 5302.
Type of Review: Revision.
Title: Employee Census.
Description: This form is used in conjunction with Forms 5300 and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code. The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 52,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 10 hours, 31 minutes.
Learning about the law or the form, 42 minutes.
Preparing and sending the form to IRS, 54 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 629,720 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-25073 Filed 10-24-89; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Department Circ.; Public Debt Series No. 29-89]

Treasury Notes of October 31, 1991, Series AF-1991

Washington, October 19, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Capter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of October 31, 1991, Series AF-1991 (CUSIP No. 912827 YC 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated October 31, 1989, and will accrue interest from that date, payable on a semiannual basis on April 30, 1990, and each subsequent 6 months on October 31 and April 30 through the date that the principal becomes payable. They will mature October 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, October 24, 1989. Non-competitive tenders as defined below will be considered timely if postmarked no later than Monday, October 23, 1989, and received no later than Tuesday, October 31, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used.

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Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are premitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders wil be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and the lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, October 31, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, October 27, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public anouncement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,
Acting Fiscal Assistant Secretary.

[FR Doc. 89-25224 Filed 10-23-89; 11:16 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 205
Wednesday, October 25, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 41563.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, October 24, 1989.

CHANGE IN THE MEETING: The Commission has postponed the closed meeting to discuss a rule enforcement review until 11:00 a.m., Tuesday, October 31, 1989.

CONTACT PERSON FOR MORE INFORMATION: Jean A Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-25283 Filed 10-23-89; 2:59 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 41563.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Tuesday, October 24, 1989.

CHANGE IN MEETING: The Commission has cancelled the closed meeting to discuss enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-25284 Filed 10-23-89; 8:45 am]
BILLING CODE 6351-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, October 30, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed 1990 Private Sector Adjustment Factor for priced services.
2. Proposed annual report to Congress, under the Expedited Funds Availablity Act, regarding the processing of deposits at automated teller machines.

Discussion Agenda.

3. Proposed 1990 Fee Schedules for Federal Reserve priced services.
4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 23, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

FR Doc. 89-25215 Filed 10-23-89; 10:03 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Monday, October 30, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 23, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-25216 Filed 10-23-89; 8:45 am]
BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-36]

TIME AND DATE: Monday, October 30, 1989 at 3:00 p.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-439-445 (P) (Industrial Nitrocellulose from Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia)—briefing and vote.
6. Any time left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,
Secretary.

Dated: October 19, 1989.

[FR Doc. 89-25229 Filed 10-23-89; 8:45 am]
BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-89-37]

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TIME AND DATE: Wednesday, November 1, 1989 at 2:00 p.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: .

1. Petitions and Complaints:
Certain Catalyst Components and Catalysts for the Polymerization of Olefins (D/N 1531)
2. Inv. No. 731–TA–446–447 (P) (Polychloroprene from France and the Federal Republic of Germany)—briefing and vote.
3. Inv. No. 731–TA–488–450 (P) (Sweaters Wholly or in Chief Weight of Man-Made Fibers from Hong Kong, The Republic of Korea, and Taiwan)—briefing and vote.
4. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,
Secretary.

Dated: October 19, 1989.

[FR Doc. 89–25230 Filed 10–23–89; 8:45 am]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 54, No. 205
Wednesday, October 25, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3652-9]

Approval and Promulgation of State Implementation Plans; North Dakota

Correction

In proposed rule document 89-23020 beginning on page 40133 in the issue of Friday, September 29, 1989, make the following corrections:

1. On page 40134, in the third column, under **Determination of Adequacy of SIP Revisions**, under *A.Regulation Revisions*, in the second line, insert "raised" between "comments" and "by", and replace "this" with "the".

2. On page 40135, in the second column, under "4. Chapter 33-15-07—Control of Organic Compounds", in the third line, remove "not".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3656-1]

Proposed General Demonstration NPDES Permit for Oil and Gas Operations in Portions of the Gulf of Mexico; Fact Sheet

Correction

In notice document 89-23722 beginning on page 42335 in the issue of Monday, October 16, 1989, make the following correction:On page 42335, in the second column, under **Public Comments**, in the sixth line, after "permit", insert a period and the following words: "The Region is not seeking comment on the provisions of permit".

BILLING CODE 1505-01-D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

Correction

In rule document 89-23118 beginning on page 40377 in the issue of Monday, October 2, 1989, make the following corrections:

1. On page 40377, in the third column, under **Background and Discussion**, in the 13th line, insert "to" between "pay" and "the".

§ 312.1 [Corrected]

2. On page 40380, in the third column, in the seventh line, "1121" should read "1821".

3. On the same page and in the same column, in § 312.1(c), in the third line, "is" should read "in".

§ 312.4 [Corrected]

4. On the same page and in the same column, the section number for **Entrance fees assessed in connection with conversion transactions** should read as set forth above.

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-44 and 101-45

[FPMR Amendment H-173]

Utilization and Disposal of Personal Property

Correction

In rule document 89-21983 beginning on page 38676 in the issue of Wednesday, September 20, 1989, make the following corrections:

1. On page 38676, in the first column, under **SUMMARY:**, in the 21st line, "$30,000,000" should read "$3,000,000".

2. On the same page, in the second column, in amendatory instruction 1., beginning in the first line, "100-44" should read "101-44".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 302-6 and 302-12

[FTR Amendment 2]

Federal Travel Regulation

Correction

In rule document 89-21479 beginning on page 37811 in the issue of Wednesday, September 13, 1989, make the following corrections:

§ 302-6.1 [Corrected]

1. On page 37812, in the first column, in § 302-6.1(g)(2), in the 15th line, "station" should read "stations".

2. On the same page, in the second column, in § 302-6.1(g)(5), in the third line, "§ 302.1.5" should read "§ 302-1.5".

§ 302-12.4 [Corrected]

3. On the same page, in the same column, in § 302-12.4(b)(3), in the fifth line, "§ 302.6.1(g)" should read "§ 302-6.1(g)".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N-89-2070]

Submission of Proposed Information Collection to OMB

Correction

In notice document 89-24891 beginning on page 43140 in the issue of Friday, October 20, 1989, make the following correction:

On page 43141, in the first column, the first line should read " *Estimated Burden Hours*:939.25."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action; Exchange of Public Lands in Lassen, Modoc, and Siskiyou Counties, CA

Correction

In notice document 89-22907 beginning on page 39816 in the issue of Thursday,

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September 28, 1989, make the following corrections:

1. On page 39816, in the third column, under **Mount Diablo Meridian, California**, the description for T.41 N., R.13 E., should read "Sec. 28: E½SW¼, W½SE¼."

2. On page 39817, in the first column, in the fifth line, "for" should read "far".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8259]

RIN 1545-AM99

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

Correction

In rule document 89-20916 beginning on page 37098 in the issue of Thursday, September 7, 1989, make the following correction:

§ 1.860F-4T [Corrected]

On page 37102, in the first column, in § 1.860F-4T(b)(2) introductory text, in the third line, "section 601(a)" should read "section 6011(a)".

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

FEDERAL DEPOSIT INSURANCE CORPORATION

[OTS No. 89-239]

Allocation of Regulations and Orders Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

Correction

In notice document 89-23864 beginning on page 41359 in the issue of Friday, October 6, 1989, make the following corrections:

1. On page 41359, in the second column, the document heading should read as set forth above.

2. On page 41360, in the second column, in the fifth line, "or" should read "of".

3. On the same page, in the table, in the first column, in the third entry, "594" should read "549".

4. On page 41361, in the 12th line, "resolution" should read "Resolution."

5. On the same page and in the same column, in the 14th line, "order" should read "orders".

6. On the same page and in the same column, the line above the first signature should read "Office of Thrift Supervision".

BILLING CODE 1505-01-D

federal register

Wednesday
October 25, 1989

Part II

Department of Justice

Office of Justice Programs

Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms; Notice

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms

ACTION: Notice.

SUMMARY: The Office of Justice programs is publishing a Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms. This report was prepared by the interagency Task Force on Felon Identification in Firearm Sales. A draft report requesting public comment was published earlier by the Task Force at 54 FR 26902 (June 26, 1989). The following report does not necessarily represent the views of the Attorney General or the Department of Justice.

The Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, section 6213, 102 Stat. 4360) directs the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The Attorney General is directed to begin implementation of the system 30 days after a report to the Congress which is due no later than Nov. 18, 1989. For further details, including requirements of the Attorney General by the legislation, see Public Law 100–690, section 6213, 102 Stat 4360.

The following report of the Task Force is advisory to the Attorney General and does not constitute the report to the Congress from the Attorney General, statutorily mandated to be submitted no later than November 18, 1989.

FOR FURTHER INFORMATION CONTACT: Walter W. Barbee, Esq., Room 1268F, 633 Indiana Avenue NW., Washington, DC 20531. Phone (202) 724–6235.

REPORT TO THE ATTORNEY GENERAL ON SYSTEMS FOR IDENTIFYING FELONS WHO ATTEMPT TO PURCHASE FIREARMS

October 1989

Task Force on Felon Identification in Firearm Sales

Assistant Attorney General, Office of Justice Programs, Chairman
Bureau of Alcohol, Tobacco and Firearms
Bureau of Justice Assistance
Bureau of Justice Statistics
Federal Bureau of Investigation
Immigration and Naturalization Service
National Institute of Justice
U.S. Marshals Service

Foreword

The Attorney General is required under section 6213 of the Anti-Drug Abuse Act of 1988 to report to Congress by 18 November 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. Pursuant to this mandate, the Attorney General requested that the Assistant Attorney General for the Office of Justice Programs (OJP) establish a Task Force on Felon Identification in Firearm Sales to develop a range of options that would comport with the statute.

After preliminary research by components of the Departments of Justice and Treasury, the Task Force held its first meeting on 14 March. I cannot overstate my appreciation for the superlative efforts of all of the Task Force representatives, especially the staff of OJP's Bureau of Justice Statistics (BJS), which coordinated production of this Report. Under the direction of Dr. Joseph M. Bessette, BJS staff invested considerable talent and expertise, and many evenings and weekends, to produce this document.

The goal of the Task Force was to identify the entire range of issues that ought to be considered before implementing a felon identification system. The Task Force published its draft report on 26 June 1989 in the **Federal Register** for a thirty-day public comment period. We were pleased to receive more than one hundred comments from members of Congress, State and local officials, public interest groups, and private citizens. A broad range of views was presented. One law enforcement group, the Police Executive Research Forum, conducted a survey of its members on the options. The comments not only assisted the Task Force in improving the draft report, but will also be of great value to decisionmakers in assessing the strengths and weaknesses of the various options presented. The Task Force was most gratified by the general consensus among commenters that the draft report presented a thorough and objective review of a most complex subject.

President Bush has said that loopholes that "allow deadly weapons to fall into deadly hands" must be closed. The biggest obstacle to achieving this goal is that so many of the guns used in the commission of crimes are obtained on the streets and not through licensed dealers. To deal with the problem of guns used in the commission of crimes, the President has proposed a comprehensive approach, including enhanced penalties for criminals using firearms. The President has also recognized that one barrier to an immediate and accurate felon identification system is incompleteness in criminal history reporting. The President has called upon the Federal, State, and local governments to provide timely and accurate reporting of arrest and disposition records. Such a reform would have a wide range of beneficial criminal justice applications.

Several commentators on the draft report recognized that improved criminal history records are essential to a viable felon identification system. The National Organization of Black Law Enforcement Executives noted that "the incompleteness of criminal history records is a critical hindrance." The Citizens Committee for the Right to Keep and Bear Arms commented that "the greatest * * * value of this report is the bright light it sheds on the primitive state of the criminal history reporting in the United States."

In section 6213 of the Anti-Drug Abuse Act, known as the "McCollum Amendment," Congress has recognized the need to develop improved mechanisms to enforce current laws that prohibit felons from obtaining firearms. The goal of immediately identifying felons in the gun shop will be increasingly feasible as the advance of technology continues at its remarkable pace. Developments in computerized criminal history information systems and improvements in Automated Fingerprint Identification Systems (AFIS) have been impressive. It is not the existence of the technology, but rather its costs, the need for trained personnel, and the incompleteness of criminal history records that present the greatest impediments to implementing such systems.

Representative Bill McCollum, a primary author of section 6213, concluded after reading the Task Force report: "Fingerprint identification by gun dealers is a goal we can achieve * * * [W]e are capable of having an immediate and accurate identification system without interfering with the activities of those Americans who are eligible to purchase firearms."

In this Report the Task Force does not make recommendations or reach conclusions. We are keenly aware of the significant concerns about protecting the privacy interests of all citizens, as well as enhancing the ability of law enforcement authorities to protect society from the criminal element. In addition, we recognize that those who select among the options must be mindful of preserving what Attorney General Dick Thornburgh has called the "historic and honorable firearms tradition in this country."

Although the report focuses on the practical impediments to felon identification, it is in no way intended to minimize the significant legal issues that must be vigorously considered before adoption of any system would be warranted. The Task Force is indebted to several commenters, including the American Civil Liberties Union (ACLU), the Lincoln Legal Foundation, and the National Rifle Association (NRA) for their legal analyses. First, Second, Fourth, and Fifth Amendment and other constitutional and statutory concerns have been elucidated in the comments received. Several other organizations and individuals expressed particular concern about establishment of any list of firearm owners and the dissemination of arrest information to non-law enforcement personnel.

The options contained in this Report fall into two basic categories: those where identification of felons is made at the point of sale versus those involving a preapproval procedure. In both cases, verification of identification would be made in the gun shop. In neither case would a waiting period be required for each purchase of a firearm. We recognize the several thoughtful comments that the Report was either under- or over-inclusive. The Task Force believes, however, that it has taken a broad approach that is consistent with section 6213 and that provides an appropriately wide array of options for policymakers to consider.

Reliability would be enhanced with prior approval if fingerprint checks are conducted requiring 4–8 weeks. The basic prior approval system, however, is considerably more expensive than the basic point-of-sale system—perhaps two or three times as costly—and raises other significant policy issues as well. It is clear to the Task Force, however, that considerably shorter waiting periods (7 days has been commonly suggested) do not significantly enhance reliability over the point-of-sale systems described herein.

The Report contains options that range from lower-cost systems that minimize the burden placed on firearm purchasers to extremely costly systems that rely upon technology just now becoming available and that raise issues of the type involved in a national identification system. The most elaborate options presented in this report may cost up to $10 billion or more. But less exotic schemes, albeit less than perfect alternatives, are also presented for consideration. They could be implemented in the near term at substantially less cost.

In assessing this Report, it is important to note that there would be shortcomings in any felon identification system. One major effect of a felon identification system may be to discourage felons from direct purchase and to encourage their use of alternative means to obtain prohibited weapons. In a 1986 study for the Department of Justice, it was determined that about five-sixths (84%) of convicted offenders in State prisons who admitted to ownership of firearms claimed to have acquired their weapons from sources other than a retail outlet. Through the use of "straw men" who lack a criminal record, and therefore may be eligible to purchase firearms, some felons may be able to obtain the tools of their deadly trade. In addition, there is an active "black market" in firearms.

Although many of the options may be subject to intense public policy debate, the Task Force has attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives. Each option presented is meant to be flexible and adaptable to numerous modifications. If this objective has been achieved, then the Report can serve as a skeleton onto which decisionmakers may add the details necessary to produce a viable felon identification system. Such a system must preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace.

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Acknowledgments

The following individuals served as Task Force members for their agencies: Richard B. Abell, Joseph M. Bessette, Joseph P. Briggs, Edward D. Conroy, Jack D. Kravitz, John B. Pickett, Charles P. Smith, Clifford J. White, and Lawrence York.

The Task Force gratefully acknowledges the following staff for their vital contribution to its deliberations and to the preparation of this report: Bureau of Justice Statistics—S.S. Ashton, Jr., Allen Beck, Lawrence Greenfeld, John Jonés, Carol Kaplan, Norma Mancini, Brian Reaves, Benjamin Renshaw, and Bernard Shipley; Bureau of Alcohol, Tobacco and Firearms—Richard Cook and Charles R. Demski; Federal Bureau of Investigation—William H. Garvie, Walter F. Johanningsmeier, James Hoffman, and David T. Mitchell.

The Task Force would also like to thank the members of the "working group" established by the Department of Justice Research and Development Review Board and chaired by the Bureau of Alcohol, Tobacco and Firearms for their preliminary study of this issue prior to the establishment of the Task Force.

The Task Force expresses appreciation to the numerous State and local officials who provided information on current State practices regarding firearm sales in their States, especially William C. Corley, North Carolina; Paul E. Leuba, Maryland; and Lt. R.L. Vass, Virginia. Appreciation is also extended to Robert Belair and Robert Marx of SEARCH Group, Inc. and Thomas Orsagh of Fisher-Orsagh Associates, Inc. for their studies which provided technical and policy-relevant information critical to the work of the Task Force.

Finally, the Task Force would like to express appreciation for the assistance provided by the publications unit of the Bureau of Justice Statistics—Marilyn Marbrook, Yvonne Boston, Marianne Zawitz, and Jeanne Harris—and the following additional personnel of the Office of Justice Programs for their work in reviewing the comments on the draft report and preparing the Appendix to the final report: Walter W. Barbee, Randall Davis, Karen L. Wilson, Bulbul Howard, Tamara Bagley, Eric Wiener, and Sharon Coffee.

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Part I. Introduction and Summary of Findings

The Anti-Drug Abuse Act of 1988 (section 6213(a) of Public Law 100–690, November 18, 1988) requires the Attorney General, in consultation with the Secretary of the Treasury and other Federal, State, and local law enforcement officials, to "develop a system for immediate and accurate identification of felons who attempt to purchase one or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code." The Attorney General is further required to make a report to Congress describing such a system no later than 1 year after passage of the Act (November 18, 1989) and to begin implementation of the system 30 days later (December 18, 1989). Finally, the Attorney General is required to conduct a study to determine whether an effective method can be designed to identify other persons prohibited by Federal law from purchasing firearms (Section 6213(c)). Such persons include: fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to any mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This second study must be submitted to Congress by May 18, 1990.

This report represents the completion of the first phase of the task to design a system for identifying felons who attempt to purchase firearms. Its purpose is to describe a variety of possible options for such a system. It details the essential elements of each option; cost estimates; the impact of the system on firearm dealers and on local, State, and Federal law enforcement agencies; the strengths and weaknesses of each option; and associated legal and policy issues. The options are organized into two basic types: those that involve some kind of immediate verification at the gun shop of the prospective purchaser's eligibility, and those that document an individual's eligibility to purchase firearms for some specified period of time, such as three years. Although the latter type requires a "waiting period" for the initial background check, it allows for immediate verification that the purchaser is not a convicted felon at the time of subsequent gun purchases. Within each of these categories the options are arrayed from the lower-cost alternatives to higher-technology, more expensive options.

This report does not address the issue of identifying other persons, besides felons, who are ineligible under Federal law from purchasing firearms. The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. In July of this year the Bureau of Justice Statistics contracted with Enforth Corporation of Cambridge, Massachusetts, to carry out this work.

Scope of the Problem

The Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury estimates that approximately 7.5 million new and used firearms are sold at the retail level each year in the United States through 270,000 Federally licensed firearm dealers. Currently, those who purchase firearms are required to fill out BATF form 4473 at the dealership attesting that they do not fit into any of the categories of persons ineligible to purchase firearms. These forms include identifying information for the purchaser as well as the type and serial number of any firearms purchased. The forms are kept by the dealer and are subject to inspection later by BATF officials. They may be examined, for example, to try to track down the purchaser of a firearm left at the scene of a crime.

At this time there is no Federal requirement for any checking of the eligibility of the purchaser, either before or after the purchase. The dealer relies primarily on the purchaser's signature attesting to his eligibility. False statements by the purchaser on the BATF form are a Federal felony punishable by a prison term of up to 5 years.

Although the Federal government does not require a criminal history or any other kind of check of firearm purchasers, the States are free to impose their own requirements. Currently, 20 States and the District of Columbia (covering 55% of the Nation's population) stipulate that a pre-purchase criminal history check be made of anyone who wishes to buy a handgun. Four of these States and D.C. include the purchase of long guns in this requirement. These checks are done during a waiting period that ranges from 2 days to 6 months. Two States without waiting periods do a criminal history check only after the purchase is made. Twenty-eight States currently require no criminal history check for firearm purchases.

Any system for identifying felons who attempt to purchase firearms must confront two distinct issues of scope. One is the large number of firearm sales in this country. The estimated annual total of 7.5 million retail sales is equivalent to a daily average of more than 20,000 sales, assuming a 7-day business week. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than midweek, it is likely that on peak days as many as 30,000 or more firearms are sold. During hunting season peak-day sales may reach 50,000 firearms. Any new system for identifying felons must be capable of handling this heavy volume. Second, such a system must involve either the participation or cooperation (depending on the system) of 270,000 licensed firearms dealers. Although precise figures do not exist, it is estimated by the BATF that 60–70% of these dealers are not gun stores as such, but rather individuals who collect and deal in guns on a small scale (hobbyists, collectors, etc.). These small-scale dealers account for an estimated 20–25% of all firearm sales. Any system that placed special demands on gun dealers in terms of capital expenditures, training, or personnel resources would pose a particular problem for these small-scale operations. Other problems may arise in attempting to identify felons who purchase firearms during gun shows or in other ways outside of normal retail outlets.

Key Elements of a Felon Identification System

There are three key elements of the felon identification system mandated in section 6213 of the Anti-Drug Abuse Act of 1988: (1) the definition of felon, (2) the meaning of "immediate," and (3) the level of accuracy required.

Definition of Felon

Section 6213(a) relies on the definition of felon previously specified in the Gun Control Act of 1968 (with subsequent amendments). This definition includes those convicted of a "crime punishable by imprisonment for a term exceeding one year," but excludes (1) certain specified Federal or State offenses relating to the regulation of business practices and (2) any offense classified by the State as a misdemeanor and punishable by a term of imprisonment not exceeding 2 years. Also excluded are those whose conviction has been expunged or set aside and those who have been pardoned or who had their civil rights restored.

This definition presents certain problems for any system that would access automated criminal history records as part of a clearance process:

First, automated conviction records do not show how long a person could have been sentenced. Approximately one-third of those convicted of felonies in State courts receive no incarceration sentence. Another fifth receive a sentence to a local jail, usually for less than 1 year. In these cases the automated conviction and sentencing records often will not show whether the conviction could have resulted in a sentence of more than 1 year and therefore whether the offense met the Federal definition of a felony.

Second, the offense identifiers contained in automated conviction records may not precisely show whether the offense is one of the business related crimes exempted from the Gun Control Act.

Third, automated criminal history records may not accurately show whether a conviction offense is a misdemeanor punishable by no more than 2 years of incarceration, also exempted from the Gun Control Act.

Finally, automated criminal history records often do not show whether a conviction has been set aside or led to an eventual pardon or the restoration of civil rights.

Immediate

The Anti-Drug Abuse Act does not define "immediate" with relation to the mandated felon identification system. In the absence of such a definition the Task Force has considered options that would meet the immediacy test in two distinct ways. One is a system that would involve on-site inquiries by gun dealers (by telephone, for example) to determine eligibility at the time of purchase with response times of one to several minutes. The other is a system involving a preapproval mechanism whereby a prospective gun purchaser would apply for documentation (such as a license, permit, or identification card) authorizing him to purchase firearms and then use that documentation each time he makes a purchase. In such a system the application process would take approximately 4–6 weeks. Once the documentation was issued, however, the purchaser could buy a firearm without additional delay at the time of sale.

Accurate

Although the Anti-Drug Abuse Act mandates the "accurate identification of felons," it does not specify the level of accuracy that would be acceptable. Accurately determining who is a convicted felon involves two issues. First is the identification of the person attempting to purchase a firearm. Although standard identification documents such as driver's licenses and credit cards are regularly used in commercial and banking transactions, these are not definitive evidence of the identity of the bearer. Such documents may be altered or counterfeited or may be originally obtained with false information. Because identification documents cannot absolutely prove identity, "biometric" information (physical evidence such as fingerprints, retinal scans, DNA, etc.) is often used to establish positive identity for various purposes. New technologies, such as automated fingerprint identification systems (AFIS), have dramatically increased the speed and efficiency of using biometric information to establish identity. This report explores the possibility of using biometric information and biometric technologies to identify accurately convicted felons who attempt to purchase firearms.

The second issue regarding the accurate identification of convicted felons is the quality of the criminal history data bases that would have to be accessed to verify that a firearm purchaser was not a felon. A perfectly accurate criminal history data base would be up-to-date (new arrests, convictions, etc., would be entered promptly), complete (all official transactions would be entered), and devoid of any inaccurate data that might, for example, show a conviction in a case that resulted in acquittal or dismissal. The issue of accuracy and completeness of criminal history data bases is addressed in greater detail below.

The Quality of Felony Conviction Data

As discussed above, the congressional mandate to establish a felon identification system for firearm sales requires identifying those who have been convicted of a Federal or State offense punishable by imprisonment for more than 1 year (with certain exceptions). How accurate and complete are conviction records? To answer this question requires an examination of where and how criminal history records are maintained.

Criminal history data are maintained in either manual or automated form at three different levels of government: (1) Operational law enforcement or criminal justice agencies such as police, prosecutors, and courts; (2) centralized State criminal history repositories (often run by the State police); and (3) the Federal Bureau of Investigation (FBI).

Within the States the criminal history repositories are responsible for maintaining complete and accurate information of official criminal justice transactions. Such transactions include arrests for serious crimes, decisions not to prosecute, court dismissals, convictions and acquittals, admissions to and releases from local jails and State prisons, and entries to and exits from probation and parole. A 1984 survey of State criminal history repositories conducted for the Bureau of Justice Statistics revealed that more than 35 million criminal history records were maintained in the States (*State Criminal Records Repositories*, Technical Report, Bureau of Justice Statistics, October 1985). In 11 States the records were not automated, and in most of the others automation was only partial. Half the States reported that they had a fully automated *name index* to their criminal history records, even when the records themselves were manual. Only seven States reported that they did not have at least a partially automated name index. A telephone survey of 20 States conducted for the Task Force in April of this year showed that only 3 of the 20 States had fully automated criminal history records, and half the States had less than 65% of their records automated (*A Survey of Twenty State Criminal*

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History Repositories, Fisher-Orsagh Associates, June 1989). On the other hand, 14 of the 20 States had fully automated name indexes to their criminal history records.

Currently, two telecommunications networks link law enforcement agencies to State repositories: the National Law Enforcement Telecommunications System (NLETS) and the network supported by the National Crime Information Center (NCIC). The NCIC network links law enforcement agencies with the Interstate Identification Index (III) maintained by the FBI. Law enforcement agencies use computer terminals to inquire whether a criminal history record exists for a named individual. If such a record exists in the repository of 1 or more of the 20 States that participate fully in the III system, the inquirer is notified and can request the criminal history record through NCIC. In addition to pointing to State data for the 20 fully participating States, the NCIC system makes directly available any other criminal history information from the FBI's own automated records maintained in its Identification Division. These records include information from the other 30 States as well as Federal criminal justice transactions.

The FBI's Identification Division is responsible for conducting fingerprint checks on individuals processed through the criminal justice system and on those who must pass a criminal history check for specified jobs or positions (such as Federal Government employees, child care workers in some States, etc.). These fingerprint-based criminal justice transactions form the basis for substantial criminal history information. This information is maintained in three basic categories at the FBI. The largest is the group of automated criminal history records for 12.5 million persons arrested for a fingerprintable offense (a felony or serious misdemeanor) for the first time on or after July 1, 1974. Next largest is the group of manual records for 8.8 million persons born in or after 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The smallest is the group of manual records for 3.6 million persons born before 1929 and arrested for a fingerprintable offense for the first time before July 1, 1974. The FBI maintains an automated name index both to the 12.5 million automated files and to the 8.8 million manual files of those born in or after 1929. There is no automated name index for the final group. Currently, the automated name index and the automated files for the 12.5 million persons arrested for the first time on or after July 1, 1974, are linked to the NCIC system. Thus, those who make inquiries through NCIC will access these automated records but not any of the manual records maintained by the Identification Division.

Given these data systems, the law enforcement official who wants immediate access to felony conviction data has two basic options: to access directly the automated records maintained by his own or another State or to access interstate and Federal records through the NCIC system. He may, of course, do both. The problem, however, is that the conviction records accessed through these computerized methods are not complete.

These conviction records are incomplete for two distinct reasons. First, as noted above, many records at both the State and Federal levels are not automated. Among States recently surveyed, an average of about one-third of criminal history records were not automated; at the FBI the proportion is about one-half. (It should be noted, however, that the automation of the records of young, active offenders is much more extensive than the records of older, less active offenders.) Second, and equally important, convictions, as well as other final dispositions, are often not reported to the State central repository or to the FBI even when an automated record exists of the individual's arrest. The FBI, for example, estimates that approximately one-half of the arrest charges in their records do not show a final disposition. Data from the 1984 survey of State repositories cited above show that about 34% fewer final dispositions than arrests were reported to the repositories in 1983. (Ideally each arrest should eventually be matched by a final disposition.) In several States the proportion of underreporting was as high as 70–80%. Moreover, the April 1989 survey of 20 States revealed that 8 of the 17 States able to supply a figure estimated that at least 20% of convictions within the State were not reported to the repository.

Based on the combination of partial automation of criminal history records and underreporting of convictions, it is reasonable to estimate that nationwide the records of approximately 40–60% or more of felony convictions are not currently available in automated form and thus not immediately accessible by law enforcement authorities. Such a high level of undercoverage renders impracticable a felon identification system that relies principally on immediate access to automated conviction records. It should be pointed out, however, that because many felons have more than one felony conviction, there are likely to be automated conviction records covering more than 40–60% of felons.

This problem of undercoverage, however, can be significantly mitigated if the manual records maintained by the State repositories and the FBI are accessed. There are two ways to access these manual records. One is to use the automated name index to the manual records, if one exists, to identify a record and then manually retrieve and examine it. The other, more common, method is to do a fingerprint search based on a full 10-print fingerprint card. If a fingerprint match is found, then the manual file can be retrieved and examined. This method is by far the more reliable since it establishes a positive identification. Because both of these methods require direct human intervention at some stage, they are not as immediate as a computer-based search of automated files. For example, the FBI currently requires 14 business days to process a fingerprint card, and, depending on the location of the requesting agency, an additional 4–10 days may be required for mail handling. (For the sake of simplicity the rest of the report assumes an average of 7 days for mail handling.) A new automation system at the FBI holds the promise of reducing fingerprint processing time to somewhere between 2 and 10 business days, depending on a proposed expansion of computer resources.

While accessing manual records reduces the undercoverage that exists in a search of only automated files, it does not eliminate the problem. As indicated above, a significant proportion of final dispositions are not reported to the State repositories or to the FBI for inclusion in either automated or manual records. In these cases the law enforcement official may be able to get the missing disposition information directly from the court or prosecutor's office for the jurisdiction where an arrest took place, but not through an on-line computer-based search.

Impediments to Creating a Perfect System

A perfect system for immediately and accurately identifying convicted felons who attempt to purchase firearms would have three key elements: (1) A complete and accurate automated data base showing every conviction for a State or Federal offense punishable by more than 1 year in prison and clearly showing the specified exceptions (such as business related offenses, misdemeanors punishable by 2 years or less in prison, convictions set aside or pardoned, and cases where civil rights were restored); (2) a means for positively verifying the identity of a prospective purchaser at the time of the sale of the firearm; and (3) a mechanism for immediately linking identifying information about the purchaser with the information in the data base.

Such a perfect system may eventually be implemented. However, it is not feasible or practical at this time. There are several reasons for this conclusion.

First, as the above discussion has shown, automated conviction records are too incomplete to rely on to identify convicted felons. Moreover, even when conviction information is available it will not necessarily show whether that offense meets the Federal definition of a felony or whether the conviction was subsequently set aside or the offender had his civil rights restored.

Second, positive verification of identity at the time of the gun sale would necessarily require the collection of biometric information by the gun dealer. Based on the Task Force's review of state-of-the-art identification technology and its survey of the capabilities of the State repositories, it appears that the only feasible way to do this is with a 10-finger live scan that digitizes the prints and then transmits the digital representation over telephone lines to repositories capable of receiving this information and automatically searching their data bases for a match. Machines capable of collecting and digitizing a full set of prints currently cost approximately $35,000–100,000 each. This is prohibitively expensive to require of all gun dealers. If purchased by the government for use by 270,000 gun dealers, current prices would require an investment of approximately $9–27 billion. If restricted to the estimated 35% of federal firearm licensees who are actual commercial dealers, the cost would be approximately $3–9 billion. No doubt, mass production would reduce the cost; nonetheless, the sophisticated optics and computer hardware used in these machines would limit the cost reductions. In addition, it takes a substantial amount of training to operate one of these machines, thus raising questions about the logistics of training 270,000 firearm licensees, or even the estimated 95,000 commercial dealers. Moreover, because it takes about 6 minutes to get each set of 10 prints, gun dealers that average 10 sales an hour would have such a machine running constantly and would require an additional full-time trained employee just to operate it. This would further raise the cost to the dealer.

(Note that machines that take and digitize a single print for communication to an external data base are much less expensive—approximately $3,000–6,000—but these are not suitable for matching a single individual to a data base of millions of offenders. Such single-print searches are extremely computer-intensive, often requiring hours to complete, and are unreliable for proving identity in a search of a massive data base. Currently, such single-print searches are used as an investigative tool in serious crimes to produce a list of possible identities or are used for security purposes to compare one individual's prints against those already on file.)

Finally, even if sophisticated AFIS technology were made available to gun dealers, it would be necessary to convert and/or upgrade the technology in most of the State repositories and the FBI so that digitized fingerprint information could be received and compared to fingerprint-based data bases. This would be a massive and expensive operation.

Practical Alternatives

What, then, are the practical alternatives for establishing a reasonably effective system for identifying convicted felons who attempt to purchase firearms? The Task Force has identified two different kinds of systems that would meet the Congressional mandate and allow for the beginning of implementation by December of 1989. Both types of systems would rely on currently available identification techniques and technologies but would be open to improvements in identification documents and methods, including those involving biometric information. The two basic options are identified here as Option A and Option B. The body of the report includes a sample of possible modifications of these two basic options.

Option A: Point-of-Sale Approval Through a Telephone Check

Option A provides for on-site, immediate access to automated name indexes maintained by State repositories and the FBI through telephone calls to the repository of the State in which the sale takes place. State officials would use computer terminals tied into their State records and into the NCIC and NLETS networks to determine whether there was an arrest record either within or out of State for someone with the name, race, sex, and date of birth of the prospective gun purchaser. If there was no "hit" during this immediate verification process, the gun dealer would be notified over the phone and the sale would be made. If there was a "hit," the sale would not be allowed at that time. If the prospective purchaser wished to pursue the sale, he would seek clearance through a secondary verification process. Under this procedure fingerprints would be taken at a local law enforcement agency and sent to the State repository. A fingerprint search would be conducted by the State and then by the FBI. Any criminal history records obtained through the fingerprint check would be examined by State officials for an indication of a conviction for a disqualifying offense. Incomplete information would be supplemented by inquiries to courts or prosecutors' offices. If no evidence of a conviction for a disqualifying offense was found, a Certificate to Purchase would be issued to the prospective buyer (valid for up to 1 year). The purchaser would present this documentation to the gun dealer certifying his eligibility.

The entire secondary verification process could take as long as 4–6 weeks. It is estimated, however, that approximately 84–88% of prospective gun purchasers would successfully pass the initial verification and thus would not have to go through the secondary verification. Reasonable modifications of this system might reduce some of the burdens placed on the eligible purchaser.

Option B: Firearm Owner's Identification Card

Option B is essentially the same as the secondary verification of Option A. The difference is that everyone who wanted to purchase a firearm would go through a fingerprint-based clearance process. If there was no evidence of a felony conviction, as defined by Federal law, the State would issue a Firearm Owner's Identification (FOID) Card valid for up to 3 years. This card would be presented whenever the bearer wished to purchase a firearm. The chief advantage of Option B over Option A is that it eliminates the problem of the false "hits" that occur in a name-based automated criminal history check because of mistaken identity. This option also has several disadvantages. The chief disadvantage is that it puts every prospective gun purchaser through a 4–6-week clearance procedure every several years. It also places much greater demands than Option A on existing criminal justice identification systems and is thus considerably more expensive.

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The Task Force has also identified a variety of higher-technology variants of these two basic options. They are summarized here.

Option A1: Computer Terminal Access by Gun Dealer to Disqualifying Information

This option would replace the telephone calls of Option A with direct computer terminal access to an intermediary computer that would review the State and Federal criminal history indexes and transmit notices of approval or denial to the dealer. This would be considerably more expensive than Option A in the short run and would present no particular operational advantages over it.

Option A2: Touch-Tone Telephone Access by Gun Dealer to Disqualifying Information

This option is similar to Option A1 but substitutes a touch-tone telephone for computer access. Like Option A1 it is more complicated and expensive than Option A, at least in the short run, without any corresponding advantages. It is possible that in the long run Options A1 and A2 would be less expensive than Option A by reducing the need for computer operators at the State repository to respond to the calls from the gun dealers.

Option A3: Live Scan of Fingerprints by Gun Dealer

This option, requiring that fingerprints be taken directly at the point of sale and digitized for transmission to the record repository, is similar to the biometrically-based system described previously in the discussion of a perfect felon identification system. While it would provide the greatest assurance of a positive identification, it would be the most difficult and expensive to implement.

Option A4: Biometric Identification Card

This option is not so much an alternative to the basic Option A as an additional feature that could be added to it. Under this option positive identification would be enhanced at the gun dealership by the comparison of a single fingerprint of the prospective purchaser with digitized information from a biometrically-based identification card issued by the State.

Option B1: Live Scan of Fingerprints by Local Law Enforcement and Biometric Check by Gun Dealer

This option combines elements of both prior approval and immediate check. Prospective gun purchasers would go to a designated law enforcement agency for a criminal history clearance. The agency would conduct a live 10-print fingerprint scan using AFIS equipment (as in Option A3). The digitized fingerprint information would be transmitted to the State repository and the FBI to check for arrest and conviction records. Applicants who passed this clearance would be issued a FOID card. Those wishing to purchase a firearm would present the FOID card to the gun dealer. Equipment at the dealership would allow a comparison of a single fingerprint from the purchaser to digitized information on the card (as in Option A4).

Option B2: Smart Card Containing Disqualifying Information

Under this option every adult would carry an identification card issued by the State of residence, such as a driver's license, that would have electronically imprinted identifying information, including biometric data and information such as felony convictions that would legally bar someone from purchasing a firearm. At the gun dealership such a card would be placed into a reader to verify identification (by comparison with a single fingerprint) and to determine whether the bearer was prohibited from purchasing a firearm.

Creating a Data Base of Ineligible Persons

Several of the organizations that commented on the earlier draft of this report (June 1989) proposed that a national data base be created of convicted felons and possibly others prohibited by Federal law from purchasing firearms. This data base would include such personal identifiers as name, date of birth, sex, race, and possibly such descriptive features as height, hair color, eye color, etc. It could also include a digitized representation of the fingerprints of the ineligible person, allowing for remote positive verification that an individual desiring to purchase a firearm was not prohibited because of a criminal conviction.

Because existing criminal history records are arrest-based, they include many individuals who are not ineligible to purchase firearms either because the arrest did not result in a conviction or because the conviction was not for a disabling offense (as specified in the Gun Control Act). For example, the FBI maintains records for some 25 million persons who have been arrested for a felony or serious misdemeanor. An unknown fraction of these 25 million have been convicted of an offense making them ineligible to purchase firearms. If this fraction is somewhere between 20% and 50%, then a data base limited to those with disabling convictions would contain records on 5–12.5 million persons. If this data base were automated and made accessible to law enforcement authorities through the NCIC or NLETS telecommunications systems, it could facilitate both point-of-sale checks (Option A and its variants) and preapproval checks (Option B and its variants). It would also eliminate one type of false positive in the on-site telephone check by gun dealers (Option A): Cases where someone has an arrest record but no disabling conviction. Although it would not eliminate the other type of false positive—cases where the prospective buyer has the same personal identifiers as a prohibited person—there would be fewer of these since the data base to be checked would be considerably smaller than existing arrest-based records. In addition, if a new data base were established, it could include more identifying information than existing automated records, further reducing the likelihood of false "hits."

Another advantage of establishing such a data base is that lists of other persons ineligible to purchase firearms, such as those who have been dishonorably discharged from the Armed Forces, could be added to it.

Whatever the merits of creating a data base of those who have been convicted of an offense disqualifying them from purchasing firearms, the Task Force did not explore this option systematically for the simple reason that automated conviction records throughout the United States are currently too incomplete—both in terms of coverage and of the information necessary to determine whether a conviction offense meets the criteria established by the Gun Control Act—to consider this a viable short-term option. This in no way precludes consideration of such an option as a longer term possibility, especially if disposition reporting improves within the States.

Cost Estimates

All of the options detailed here would place substantial new demands on Federal and State criminal history repositories and law enforcement agencies. In the few months that the Task Force has been operating it has not been possible to develop precise estimates of the cost implications of each of the options. Nonetheless, some broad estimates have been derived. These should be taken only as a general indication of the cost implications of a felon identification system. They are conservative estimates that may have to be revised upward as the implications for local, State, and Federal practice are more fully explored.

Option A, which is judged to be the least expensive of the various possibilities, would have projected combined local, State, and Federal start-up costs of $36–44 million. Annual operating expenses would be an estimated $53–70 million. Other variants of Option A would cost some additional amount over the base system. (There is the possibility, however, that a more fully automated system that electronically connected gun dealers to the necessary disabling information would in the long run prove less expensive than Option A by reducing ongoing personnel costs.)

Option B, the basic preapproval system, would have total estimated start-up costs of $148–153 million, and additional annual operating costs of $136–161 million. The two other variants of Option B would likely cost considerably more.

Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost would be somewhat lower than these estimates—perhaps 8–12% less for operational costs.

Part, or all, of these costs might be recouped by charging the gun purchaser a special fee. Assuming 7.5 million gun purchases per year, a fee in the range of $7–9 per firearm might cover the annual operating costs of Option A (although not the start-up costs). Assuming 6 million FOID cards issued in the first year under Option B and 5 million issued each subsequent year, a fee in the range of $27–32 per application would be necessary to cover annual operating costs. (Some may consider such fees an unfair burden on innocent purchasers. An alternative approach may be to impose special fines on those convicted of firearms violations.)

The following summarizes cost information for the two basic options and those higher-technology variants for which enough information was available to approximate at least partial system costs:

Options	Start-up costs (millions)	Annual operating costs (millions)
A: Telephone check by gun dealer	$36–44	$53–70
A3: Live scan of fingerprints:		
By all gun dealers	9,590–27,144	3,047–8,347
By commercial dealers only	3,457–9,636	1,172–3,063
A4: Biometric identification card checked:		
By all gun dealers	196–366	102–168
By commercial dealers only	93–158	70–105
B: FOID card	148–153	136–161
B1: Live scan by law enforcement and biometric check:		
By all gun dealers	344–572	203–295
By commercial dealers only	239–362	171–232

Implementation Issues

There are four broad possibilities for implementing a felon identification system: (1) to create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system because 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential to an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal Government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States.

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia (covering more than half of the Nation's population) currently conduct some kind of criminal history check for those who wish to purchase handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from Federally licensed dealers are covered, and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expand its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

Legal and Policy Issues

Whatever option is chosen, new legislation would be required to address a number of issues: (1) To mandate a specific system on the States, to establish minimum Federal standards, or to base a system on voluntary compliance by the States; (2) to establish the funding mechanism for carrying out the criminal history checks, possibly involving user fees by gun purchasers; (3) (under some options) to authorize the release of limited criminal history information to gun dealers (e.g., whether there is a "hit" on a name search of automated arrest records); (4) to specify penalties for gun dealers who improperly disclose criminal history information obtained as part of a felon identification system; (5) to determine

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the minimum acceptable level of accuracy for the system; (6) to establish a statutory right of appeal for the prospective gun purchaser from any adverse decision, including the right to inspect records; and (7) to set forth policy regarding the use of information generated by a felon identification system, including any fingerprint data collected. (This is an illustrative, not an exhaustive, list.)

Solving the Problem of Felons Acquiring Firearms

In evaluating the various possibilities for identifying convicted felons who attempt to purchase firearms, it must be recognized that even a perfect felon identification system would not keep most felons from acquiring firearms. One study of convicted offenders in State prisons found that about five-sixths of those who admitted to ownership of a firearm claimed to have acquired the weapon through some means other than purchase through a retail outlet (*The Armed Criminal in America*, National Institute of Justice, November 1986). (A small proportion of felons, however, may translate into a large number of individuals.) These other means included the black market, thefts, and informal transactions with friends or associates such as a purchase or trade. An effective felon identification system will do little to eliminate or reduce these off-the-record transactions. Indeed, a particularly effective system may force even more felons to turn to the black market for their weapons or to use accomplices without a criminal record to purchase guns for them. Nonetheless, a system that keeps felons from purchasing weapons over the counter may at least increase the difficulty, and perhaps the costs, of acquiring weapons for use in crime and may, in fact, deny weapons to some number of less sophisticated criminals unable to access the black market or to find willing accomplices. Moreover, because black markets may not provide ready access to the high quality weapons available through retail outlets, an effective felon identification system may restrict the quality, if not the quantity, of weapons in the hands of felons.

Part II. Options for a Felon Identification System

Section 1. Schematic Overview

In considering the design of a system for identifying felons who attempt to purchase firearms, it is useful to begin with a general overview of the basic components. Any final system would be comprised of an approval procedure, a designated processing organization, access to data sources, a designated decision organization, final action, and an appeals process. Different systems are basically different combinations of options among these components. (See Exhibit 1.)

Approval Procedures

Approval to purchase a firearm may occur either prior to an individual's trip to a gun dealer or at the point of sale in the shop. Prior approval schemes include the issuance of: (1) an identification card, which establishes in advance that the individual is eligible to purchase a firearm, (2) a certificate to purchase, which permits an individual to purchase a firearm for a limited period, or (3) a smart card on which basic data are encoded that establish an individual's eligibility. Point-of-sale approval procedures may involve telephone checks by the gun dealer of criminal history records through local or State law enforcement agencies or a regional office of the Bureau of Alcohol, Tobacco and Firearms. Direct checks of data bases could also be made over touch-tone telephone lines: dealers would access data with a series of identifying numbers and receive approval or denial from a State or Federal computer system. Dealers could also make electronic checks through terminals or automated biometric devices with direct lines to the National Crime Information Center (NCIC) and State criminal history repositories.

Processing Organizations

Identification systems for firearm purchases may employ one or more organizations that process an application and search the criminal history data bases. For example, applicants may be required to appear in person at a local law enforcement agency, such as the police or sheriff's department, to obtain a permit or identification card. This agency would search local files and access State or Federal files through the NCIC and NLETS communication systems. Alternatively, the applicant could apply at the point of sale, and the gun dealer would call a local, State, or Federal agency to receive approval for the sale. A slightly different system could designate the regional offices of the Bureau of Alcohol, Tobacco and Firearms as processing agents for firearms applications and as conduits through which access is gained to State or Federal data bases.

Finally, a wholly separate agency could be established at the State or regional level to function as a Felon Identification Center.

Data Sources

Currently, two basic sources of criminal history data (State and Federal) can be accessed to determine if an applicant has a disqualifying conviction. Any system of identification for firearm purchases must specify which data bases are to be used and how they will be accessed.

Most States maintain a repository of criminal history record information (CHRI); in a few States the repository is maintained by a municipality or consortium of local law enforcement agencies. States also maintain "hot files," listing outstanding wants and warrants. The degree of automation of the CHRI files varies considerably from State to State: some repositories are completely automated, others partially automated, and a few States maintain only paper files.

Criminal history data and "hot files" are also maintained at the Federal level within NCIC and the Identification Division of the FBI. The Federal files contain records from the applicant's State of residence as well as Federal and out-of-State records. These records may be accessed through fingerprint searches (via the mail) or through electronic name and date-of-birth searches (via NCIC access to the Interstate Identification Index [III]).

Finally, a new data source could be created for the specific purpose of identifying individuals with disqualifying convictions and other individuals prohibited from buying firearms. A national center, for example, could create and maintain an index, which would merge indexes from current State and Federal data bases, mental health records, and records kept by the Immigration and Naturalization Service. This national index of individuals prohibited from purchasing firearms would be updated continuously. It would serve as the sole data source for Federal regulation of firearm purchases.

Decision Organizations

Once the processing organization has checked the data bases, the data must be interpreted and a decision made. The processing organization may not necessarily be the decision organization. Local law enforcement may evaluate the data or rely on the State police or identification bureau to do so. In response to problems of evaluating out-of-State and Federal records, other system designs may designate regional or Federal agencies as the decision organization.

Action

The designated decision organization must either approve or prohibit an individual from purchasing a firearm. Depending on the type of approval system, the organization would transmit the decision to the applicant directly or through the gun dealer. Potential options include issuance of a card, a certificate, a notice of denial, or an electronic message of approval or denial.

Appeals Process

Once an applicant receives final notice that the application has been denied, he may appeal the decision. The designated appeals organization may be the local police, a State agency, a regional office of BATF, or some other agency. Legislation may also establish a right to a judicial appeal once administrative appeals are exhausted.

Basic Options and Variants

Although there are numerous possible combinations among these components, the Task Force has detailed two basic options: Option A, which is a point-of-sale telephone check by gun dealers with secondary verification, and Option B, which is a preapproval system requiring a firearm owner's identification card. The descriptions presented here specify for each basic option the type of approval procedure, the processing organization, the data sources, and the final decision organization. There is additional discussion of specific characteristics, estimates of volume, cost figures, advantages and disadvantages, and potential modifications. Each basic option is followed by several higher-technology variants.

Section 2. Point-of-Sale Approval Systems

Option A: Telephone Check by Gun Dealer With Secondary Verification

A cooperative Federal and State system would be established requiring that gun dealers obtain clearance from a designated law enforcement agency at the time of sale of all firearms. This system would include both (1) an immediate telephone check of automated criminal history records by gun dealers through a designated law enforcement agency and (2) a secondary fingerprint-based verification procedure for all individuals rejected through the initial telephone check. Each system would have the following elements:

Telephone check (Exhibit 2). 1. At the time of purchase each gun dealer would require the buyer to fill out an application and show two pieces of identification, with at least one having a current photo.

2. The gun dealer would be required to telephone a State law enforcement agency for a criminal records check. Appropriate security procedures (such as a call-back procedure or password system combined with additional dealer identification and access codes) would be introduced to protect against unauthorized entry and dissemination.

3. The designated State law enforcement agency would access existing telecommunications networks to check the master name index within the State of purchase and the FBI's Automated Identification System—Phase III (AIS–III). The AIS–III index contains pointers to the Interstate Identification Index (III) for out-of-State arrests. Both State and Federal "hot" files would also be checked.

4. Initial checks would be made of the State and Federal master name indexes. These indexes contain identifying information on persons previously arrested for "printable" offenses (felonies and serious misdemeanors). Since these are arrest-based indexes, some of the applicants found on these indexes (e.g., those arrested for a felony but not convicted, those convicted of misdemeanors only, and those who were pardoned) will be qualified to purchase firearms. In those States in which criminal history files are automated, it may be possible to access and evaluate individual files while the gun dealer remains on the phone. It may also be possible to access and evaluate some out-of-State records. (Note that currently several hours are often required through the NCIC system to obtain records for individuals arrested in the 20 III States).

5. The gun dealer would immediately (i.e., within a few minutes) receive notice of permission or denial of sale from the designated law enforcement agency. The dealer would receive a transaction number for each inquiry and be required to record the number on each application. Regardless of whether or not the sale was made, the dealer would be required to retain a copy of the application and a record of the telephone inquiry. The designated law enforcement agency would retain records of all inquiries for use in audits of gun dealers. Names of applicants would not be retained on the inquiry data base.

6. If the sale was denied, the gun dealer would instruct the applicant that a Certificate to Purchase may be obtained from a local law enforcement agency.

Secondary verification (Exhibit 3). 1. An applicant who previously failed a telephone check would be required to appear in person, with two pieces of identification, at a law enforcement agency in the State of the applicant's legal residence. (Special procedures would have to be established for the sale of firearms to out-of-State residents.)

2. Each applicant would be fingerprinted, and the fingerprint cards would be mailed to the State criminal history repository.

3. The State agency would access in-State automated and manual criminal history records and also send the fingerprint cards to the FBI for a check of out-of-State records.

4. If an FBI rap sheet was found for the applicant, the State agency would receive by mail a copy of the records maintained by the FBI's Identification Division. These records would include Federal criminal justice transactions as well as transactions in the 30 States that do not participate in the Interstate Identification Index (III). Additional information from non-III participating States could be sought directly from these States through NLETS. If the applicant had been arrested in a III participating State, as indicated by the FBI records, the State agency would request via NCIC additional records from such a State. If the records so obtained were insufficiently complete to make a final determination of eligibility (e.g., lacking disposition data), additional information could be sought by telephone or mail inquiry to the relevant courts or prosecutors' offices.

5. Based on all the available information, the State agency would make a determination whether there was evidence of a disqualifying conviction and would issue either a Certificate to Purchase or a Notice of Denial. The Certificate to Purchase would be valid for no more than 1 year. The designated State agency would maintain a data base of all certificates issued. Individuals could renew their certificates by submitting a written application—no fingerprints would be required. Names of individuals not renewing their certificates would be purged from the data base at the end of 1 year.

6. Copies of the Certificate to Purchase or Notice of Denial would be sent to the applicant and to the local law enforcement agency submitting the fingerprint card.

7. If a Notice of Denial was issued, the applicant would be informed of his right to appeal (see Part II, Section 4.)

8. If the applicant possessed a Certificate to Purchase and decided to purchase a firearm, the gun dealer

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would be required to verify, prior to sale, the identity of the purchaser—through two pieces of identification—and the validity of the certificate—by calling the designated State agency to check the validity of the Certificate to Purchase against the certificate data base.

Data sources. The initial telephone check would scan the State and Federal automated name indexes and would access whatever automated rap sheet data could be immediately retrieved. Access to this information would be through a designated law enforcement agency only. (See Part IV, Section 3, and Exhibit 4 for an overview of national access to criminal history files.)

Obtaining a complete check of out-of-State records would require expanding the FBI's Automated Identification System-Phase III (AIS–III), which is accessed through the NCIC telecommunications network. Currently, only those individuals first arrested on or after July 1, 1974, are listed in the AIS-III master name index (approximately 12.5 million persons). The records of approximately 8.8 million individuals born in or after 1929 but arrested before July 1, 1974, are *not* currently accessible through the NCIC network.

In general, the current name indexes to criminal history data at the State and Federal level are arrest-based data sets only, containing identifying information on individuals arrested for felonies and serious misdemeanors. In some instances, for example, if the charges are dropped or if the individual is acquitted or pardoned, States may purge the indexes of these names. With few exceptions, these indexes do not contain information on convictions. These indexes also exclude information on juvenile records. In general, criminal history records on juveniles are only retained in State and Federal files if an arrest results in a charge or trial as an adult.

The secondary verification procedure utilizes all criminal history data bases at the State and Federal levels, including automated and manual records. In addition these may be supplemented by direct queries to courts and prosecutors' offices. State law enforcement officials, who are in the best position to interpret criminal history records, will determine whether there is sufficient evidence of a conviction that meets the Federal standard for disqualification.

An inquiry data base would be created and maintained by the designated State agency. This data base would record basic information on all inquiries from the gun dealers. For each inquiry, a dealer's license number, a transaction number and date, and an outcome code (i.e., approval or denial) would be recorded. This information would be used by BATF for subsequent audits of gun dealers. Names of applicants would not be retained in this data base.

A data base containing a list of the Certificates to Purchase and Notices of Denial would also be created and maintained by the designated State agency. This data base would contain basic information on individual applicants who had previously received a Certificate to Purchase or Notice of Denial. It would contain an applicant's name, date of birth, race, sex, a flag indicating approval or denial, and (when appropriate) a number assigned to the Certificate to Purchase. The data base could be updated continuously for subsequent disqualifying convictions if fingerprint data or State identification numbers were retained for all persons receiving a certificate. After 1 year the Certificate to Purchase would expire. A new certificate would be issued if the applicant submitted a renewal form and passed subsequent State and NCIC checks. Renewal would not require resubmission of an applicant's fingerprints. Identifying information on all other holders would be removed from the data base after 1 year. This data base would be used by the State agency to verify the validity of certificates at time of purchase. The data base would also be used to detect those individuals who were issued a Certificate to Purchase but who were subsequently convicted of a disqualifying offense.

This data base would also contain names of individuals issued a Notice of Denial. Such a data base could detect repeated attempts by disqualified applicants to purchase a firearm. Criminal penalties could then be levied against those individuals who attempted to purchase a firearm after receiving a Notice of Denial.

Verification and controls. Gun dealers would be required to maintain copies of approved applications and logs of inquiries. However, gun dealers would not keep copies of rejected applications, which would be sent to the State. Dealers would receive a transaction number for each inquiry and be required to retain this number for subsequent audits. No sale could be made without this number. The designated State law enforcement agency would be required to maintain records on all inquiries.

Gun dealers would be subject to criminal penalties for any false inquiry or disclosure of any information received from a telephone check. False inquiries by gun dealers could be quickly detected if computer-generated notices were sent to subjects of every inquiry. Postcards could be mailed to all persons whose files were accessed.

Procedures would be adopted to verify the identity of gun dealers to the State agency. A call-back procedure could be used; for example, the gun dealer would call the State agency, provide the dealer codes (including dealer identifiers from State or Federal licenses), hang up the phone, and wait for a return call from the State agency. An alternative procedure is a single-call method, with a variable password system and dealer codes linked to a data base maintained by the State agency.

Positive identification. Positive identification of applicants by gun dealers prior to the initial telephone check will be limited by the quality of identification documents presented and by the range of data elements accessible on the State and Federal master name indexes. Currently, searches of the automated indexes are limited primarily to the applicant's name, date of birth, race, and sex. The use of additional data elements, such as place of birth, scars and marks, height, weight, eye and hair color, and miscellaneous numbers (for example, Social Security number or driver's license number), depends on whether they appear on existing master name indexes and on their use and accuracy on identification documents. Despite problems of identifying individuals based on name and date of birth, numerous States currently conduct name-based checks on gun applicants. (See Part IV, Section 2, for a description of current State practices in conducting criminal history checks of prospective firearm purchasers.)

Additional efforts to ensure positive identification by the dealer at the time of purchase could include placement of the applicant's fingerprint on the application form (BATF form 4473, Exhibit 5). The dealer could roll the print of the applicant's right index finger at time of application. Though this print would not be submitted to the State identification bureau, it may serve as a deterrent to those possessing fraudulent identification cards. In the future the print on the application could be used in combination with an identification card containing a similar print. (See Option A3 for further elaboration of fingerprint checks by dealers.)

Positive identification of applicants by dealers at the time of purchase may also be enhanced by continued efforts by States to provide more secure and tamperproof identification documents. In addition, if an applicant provided a drivers' license as identification to the gun dealer, its validity could be checked against files maintained by the State department of motor vehicles. This check could be conducted by the same State agency accessing State criminal history records.

Even if positive identification could be established by the dealers, the State agency would face problems of "multiple hits" (more than one person on the name index with a similar name, date of birth, sex, and race) and "false hits" (a person on the name index other than the applicant with a name and date of birth similar to the applicant's). Estimates obtained from the FBI, detailed below, indicate that approximately 50% of the cases where persons appear to have a criminal history record based upon an initial name search are eventually found to be false hits.

Estimates of volume. Figures obtained from the Bureau of Alcohol, Tobacco and Firearms indicate that approximately 7.5 million new and used firearms are sold annually. This figure represents a 10-year average of domestic firearms production (adjusting for imports and exports) plus used gun sales (estimated at about 50% of all sales of new firearms). The 7.5 million annual purchases is equivalent to a daily average of more than 20,000 sales. Since many stores are likely to be closed on Sundays and to be busier on Saturdays than mid-week and since firearm sales increase during hunting season, the number of sales may reach as high as 50,000 on peak days.

Assuming that a name check will be conducted prior to every purchase, the number of inquiries into the Interstate Identification Index (AIS–III) would increase by approximately 70% from the current level of 10.7 million inquiries a year. However, relative to all inquiries received daily by NCIC, including "hot" files as well as AIS–III inquiries, name checks of gun applicants would increase the total number of inquiries by about 5% at the peak time during hunting season. The 50,000 additional inquiries resulting from gun applicants are small relative to the recent 1-day record of 1.1 million inquiries into NCIC.

The number of additional fingerprint cards would vary depending on the hit rate from the name check. This rate can only be estimated indirectly. Assuming that the final hit rate on gun applicants will resemble the rate for fingerprint-based checks currently conducted by the FBI on applicant cards, an estimated 6–8% of all applicants will be rejected. (There are currently no national data on ultimate rejection rates for gun applicants.) Further, if half of all initial hits in a name and date-of-birth check of gun applicants are false hits (based on FBI estimates for all applicants), then the expected initial hit rate should be between 12% and 16% for all gun applicants. Finally, not all of the initially rejected applicants may submit fingerprints for the secondary verification—perhaps 10–14% of all applicants will submit fingerprint cards.

The number of applicants for a Certificate to Purchase will be less than the number of purchases, since applicants may buy more than one firearm a year. Precise counts of the annual number of purchases per buyer do not exist. However, if we assume that the majority of applicants will buy only one firearm and a relatively small number will buy many firearms, the estimate of 1.25 firearms per buyer may be a reasonable expectation. Such an estimate suggests that an estimated 6 million individuals buy the 7.5 million firearms sold annually.

As a result of the above assumptions, we may expect approximately 725,000 fingerprint cards on gun applicants as a result of a rejection from the telephone inquiry by the dealer. Assuming the current 5-day week at the FBI's Identification Division, this represents an additional 3,000 fingerprint cards per day—an increase of nearly 10% in the number of cards received daily.

Additional system flows. The estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks that would be generated by this option ignores the fact that many States currently conduct criminal history checks of gun purchasers. Twenty-two States and the District of Columbia (covering more than half of the Nation's population) now conduct a pre- or post-purchase criminal history check. Thirteen States and DC access Federal and interstate records through NCIC. Six States and DC take fingerprints. Four States and DC include the purchase of all types of firearms; the others, only handguns.

Presumably, if Option A were adopted, the new criminal history checks would not be conducted on top of existing checks, for this would create an unnecessary redundancy. Either (1) States would modify their existing systems and criminal history checks to conform to the elements of Option A, or (2) the Federal mandate would accept current preapproval systems as effectively accomplishing the goals of Option A if certain minimum standards were met. In either case if current practice is taken into account, the net new impact on Federal and State repositories would be somewhat less than the estimate of 7.5 million new name searches of automated records and 725,000 new fingerprint checks.

Criminal history checks of gun purchasers currently conducted by the States account for approximately 15% of the projected 7.5 million annual inquiries into NCIC under Option A and 6% of the 725,000 fingerprint checks at the FBI. As a result, the additional impact of Option A on NCIC and the FBI Identification Division is estimated at 6.4 million inquiries and 664,000 additional fingerprint cards. At the State level current practices account for a somewhat greater proportion of the inquiries required by this option. An estimated 20% of the total 7.5 million name and date-of-birth searches projected for State identification bureaus under Option A are currently conducted. Consequently, 6.0 million additional inquiries would be required at the State level under Option A.

Finally, as a result of the proposed expansion of the AIS-III index, the FBI's Identification Division would also need to respond to requests for records on the 8.8 million individuals who were born in or after 1929 but arrested for the first time before July 1, 1974. Expansion of this index would necessitate the assembly, retrieval, and mailing of an estimated 4,000 manual files daily (including 3,000 files to meet anticipated criminal justice requests plus 1,000 files for firearm applicants).

Identifying convicted felons. In many, perhaps most, cases the actual criminal history record of an applicant would be examined only when a fingerprint card is submitted. For an estimated 80–90% of all prospective purchasers, a check would only be made for the existence of a criminal record. For the applicants who were identified by a name and date-of-birth search and who subsequently submitted fingerprints, a more complete assessment of the record would be required.

The difficulty of accurately identifying a convicted felon varies from State to State. In some States felony identification is *automated:* a felony conviction flag exists in the record. In other States felony identification is obtained from the State statutory code listed for each conviction offense. Interpretation of this code is typically achieved *manually*, unless a computer program exists to automatically classify statutory codes as either felony or non-felony offenses. In other States felony identification is only *sometimes possible*. In these States a felony may be determined when a conviction is unambiguously a felony (such as murder or rape) or when a free text field exists and the word felony appears in the field.

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The issue is further complicated by the fact that the State definition of a felony may not correspond with the definition in the Gun Control Act (an act punishable by imprisonment for more than 1 year.)

The task of accurately interpreting criminal history records is even more difficult when an applicant has been arrested in States other than the current State of residence. *FBI records do not contain sufficient information to identify felons or those convicted of crimes punishable by imprisonment for more than 1 year.* FBI offense codes are typically recorded as literals (free text) or as numeric NCIC codes. State statutes and text containing the word "felony" are only infrequently reported.

Faced with these difficulties, States currently conducting criminal history searches on gun applicants employ three strategies: (1) infer a felony conviction based on sentencing data (e.g., if the record contains a sentence to incarceration of greater than 1 year, the applicant is identified as a felon); (2) obtain more detailed out-of-State records via NCIC or NLETS, which may designate conviction offenses as felonies; and (3) infer a felony conviction from a literal description.

Response times. The initial telephone check would be immediate, within minutes, assuming sufficient resources. Electronic searches of State and Federal master name indexes could be conducted while the gun dealer remained on the line. Among the 20 State identification bureaus surveyed for the Task Force by Fisher-Orsagh Associates, the average in-house response time for a non-fingerprint search utilizing a terminal is about 20 seconds (*A Survey of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989). Additional minutes would be needed if the State agency attempted to reduce the number of false hits by requesting additional information from the gun dealer. An additional 30 seconds would be required for an NCIC check of the AIS-III index.

The secondary verification procedure would require approximately 4–6 weeks to complete. Existing searches based on fingerprint cards at the FBI's Identification Division are processed within 14 working days. An estimated 7 days would also be required for submission of fingerprint cards via the mail and return of FBI rap sheets to the State agency. Some additional time would be necessary for evaluating criminal history records by the designated State agency, including, if necessary, calls to courts or prosecutors' offices.

The response time for secondary verification may be reduced once current automation procedures at the FBI are fully in place. The FBI anticipates that response times will be reduced to somewhere between 2 and 10 days, depending on a proposed expansion of their computer system.

Estimates for fingerprint searches conducted by State criminal history repositories, which would be simultaneous with the FBI checks, indicate a total response time for a criminal justice inquiry of 3 to 23 working days, including mail turnaround time. In the 20 States examined by Fisher-Orsagh Associates, the average response time for a fingerprint search was 5 days, assuming the search was for a criminal justice purpose. For non-criminal-justice searches the average increased to a total of 9 days. No significant reduction in this response time is expected in the near future.

Costs. Of all options, the telephone check with a secondary verification may be the least expensive to implement and operate. Costs are kept down by using existing technologies, telecommunication systems, and data sources. Costs are further reduced by limiting fingerprint checks only to those individuals appearing on the master name indexes and by creating a State-level data base of Certificates to Purchase and Notices of Denial.

For the telephone checks only, the total estimated cost at the State and local level includes a start-up cost of $14.3–17.7 million and an additional annual operating cost of $30.0–39.4 million. The estimated cost of the secondary verification would include a start-up cost of $8.6 million and an annual operating cost of $10.4-13.3 million. The combined cost for the telephone checks and secondary verification at the State and local level would be between $22.8 and $26.2 million in start-up costs and between $40.3 and $52.6 million in annual operating costs. (For more detailed cost figures, see Exhibit 6 and *Estimates of Start-up and Operational Costs of Systems for Identifying Felons Who Attempt to Purchase Firearms*, Fisher-Orsagh Associates, June 1989.)

At the Federal level the combined cost for the telephone check and secondary verification is estimated at $12.7–17.8 million a year. The start-up cost is estimated at $13.1–17.3 million.

When local, State, and Federal costs are added together, the total estimated annual operating cost for Option A ranges from $53 million to $70 million and the total estimated start-up cost ranges from $36 million to $44 million. Note that if existing criminal history checks for gun purchasers are taken into account, the actual new cost may be somewhat lower than these estimates, perhaps 11–13% lower for operating and start-up costs. On the other hand, these estimates do not include any costs to dealers for new phone lines or staff or to local police for their part in the secondary verification.

A substantial portion of the operating costs could be transferred to the individual applicant through fees for all gun purchases, whether or not a fingerprint search is performed. Given the total annual cost estimates, a fee of $7.07–9.39 per applicant per purchase would be required to cover local, State, and Federal costs.

Impact—1. *Purchasers:* The vast majority of individuals without criminal records would have the immediate ability to purchase a firearm. Except for individuals falsely rejected by the search of the master name indexes, those without criminal records would not be burdened by preapproval procedures.

2. *Dealers:* In addition to current application procedures, dealers would be required to make a telephone call prior to every purchase and to create and maintain a log of all inquiries. The time necessary to make the checks is expected to average about 3 minutes per sale. An additional telephone line may be required for some dealers. Among high-volume dealers, additional staff may be required to handle multiple checks simultaneously without generating long waiting lines at the gun shop.

3. *Local law enforcement:* Local law enforcement agencies would process an estimated 725,000 applications and fingerprint cards a year as a result of the secondary verification procedures. This work load may require some additional staff and funds for agencies currently working at peak levels.

4. *State law enforcement:* The State identification agency or other designated agency for applicant checks would experience a large increase in its work load. To process the estimated 7.5 million telephone inquiries, States would need new communications lines, staff to respond to inquiries, additional office space, computer terminals to access the State master name indexes, and software to build the inquiry data base. State identification bureaus would also require a 7-day work week with longer hours (or 6 days if gun sales were prohibited on Sundays).

To process the estimated 10% increase in fingerprint cards, States would require funds, staff, space, and software to maintain a data base on the

Certificates to Purchase. (See *A Survey of Twenty State Criminal History Repositories*, Fisher-Orsagh Associates, June 1989, for the ability of specific States to handle a 10% increase in in-house searches of their criminal history files.) States may also be required to establish an administrative appeals procedure for challenging adverse decisions.

5. *NCIC and FBI Identification Division:* The NCIC communications system would experience a minor increase in volume—an increase of 5% on a peak day during hunting season. To process this increase in volume, 16 additional lines plus an enhancement to the front-end capacity on the NCIC computers will be required. The number of additional inquiries into the AIS–III computer, however, would increase by approximately 70%. To handle this increase, the AIS–III computer must be significantly enhanced. The telephone search would also require additional staff at the FBI's Identification Division to process requests for the 8.8 million manual records of offenders arrested for the first time before July 1, 1974, and born in or after 1929. The manual records would be requested through NCIC for all criminal justice purposes and mailed to the requesting agency by the FBI Identification Division.

Based on the estimated 725,000 fingerprint cards submitted annually and the 4,000 daily requests for manual files through NCIC, approximately 395 additional employees may be needed by the Identification Division as a result of Option A. An estimated 126 of these employees would be technical (e.g., fingerprint technicians, classifiers, and verifiers) and 212 would be typists; all of these would require 3–6 months of training. The FBI would require 12–18 months to recruit and clear these 395 new employees. These new employees would require nearly 8,000 square feet of additional office space.

Impact of AFIS technology on secondary verification. At the present time the FBI and more than half of the States either have an automated fingerprint identification system (AFIS) or are in the process of procuring such a system. These systems, as currently utilized, require technicians to classify the prints according to pattern type; the prints are then scanned, digitized, and matched against prints from an AFIS data base. (Note that new AFIS equipment has recently been introduced that automates the classification process, but this is not yet a proven technology.) At the end of the matching process, a list of all potential identification candidates is produced, and a technician visually compares the print to the corresponding list and makes the identification decision. (See "Appendix" to *Legal and Policy Issues Relating to Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.)

Despite the automation of the search process, further implementation of AFIS technologies will have little impact in the near future on the estimated response times and costs of processing the additional fingerprint cards generated by the secondary verification procedure. The AFIS matching process is time consuming and both labor and machine intensive.

Advantages. 1. Access to criminal history records would be limited to law enforcement agencies, except that gun dealers would receive notice of approval or denial. (However, dissemination of any information to gun dealers indicating evidence of an arrest may violate existing policies and statutes of some States.)

2. With the exception of the addition of 8.8 million records to the AIS–III index, the system would utilize existing State and Federal criminal history data bases. The additional inquiry data base and Certificate data base would be easily established and maintained at a low cost.

3. Access through NCIC to the 8.8 million manual records maintained by the FBI's Identification Division would have added benefit to law enforcement. Currently, checks are limited to younger offenders and those first arrested after 1974. Addition of these records would enhance the level of service that the FBI could provide to law enforcement agencies nationwide.

4. Compared to other options, the initial telephone check would reduce the burden on State and Federal identification systems. Only an estimated 10–14% of all purchases would require a fingerprint search.

5. No list of applicants or purchasers would be created. Only those individuals issued a Certificate to Purchase or Notice of Denial could be identified in a data base. The identity of individuals holding certificates would be regularly expunged from the data set within a year of the date of issuance.

Disadvantages. 1. The validity of the telephone check is only as reliable as the purchaser's identification documents. It does not provide unique identification as do the more expensive fingerprint or other biometric systems. Consequently, prohibited individuals intent on obtaining a firearm with false identification documents would be able to pass the telephone check.

2. A major burden would be placed on the State agency accessing the repository data and on local law enforcement agencies that issue the fingerprint cards. The extent of the burden would depend on the volume of requests and degree of record automation. Further automation of State master name indexes and criminal history files would be encouraged.

3. The system would not be immediate for individuals rejected by the search of the master name indexes. In addition, some individuals may be falsely identified because their name and date of birth match those of another individual. Extensive false hits could generate considerable adverse reaction.

4. Rejection of prospective buyers as a result of telephone checks may be perceived by gun dealers as a cause for lost revenue. Buyers who ultimately qualify for purchase may not always return to the original dealer and make the purchase.

5. Occasionally the State or NCIC computer systems may not be operating at the time of purchase, resulting in delays and possibly loss of revenue to the gun dealer. (See modification 6 for procedures in the event of system failure.)

Potential modifications. 1. The secondary verification procedure could be modified so that applicants would only be required to appear at a law enforcement agency to be fingerprinted if the State repository was unable to make a positive determination of eligibility after receiving all automated criminal history records. This could take up to a day or two. If the State repository could not determine an applicant's identity or resolve questions of eligibility, the applicant would then be fingerprinted at a local law enforcement agency, and the fingerprint cards would be submitted to the State identification bureau and the FBI for evaluation.

This modification could reduce the burden on applicants eligible to purchase firearms. Applicants with prior arrests but qualified to purchase firearms (e.g., those not convicted of any offense, those convicted only of crimes not meeting the Federal definition of a felony, or those pardoned) would not automatically be fingerprinted or required to wait the projected 4–6 weeks for a complete fingerprint check and evaluation of records.

This modification would also reduce the volume of additional fingerprint cards submitted to the State identification bureaus and the FBI.

2. A fingerprint could be placed on the BATF application (form 4473). Once

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given approval for purchase, the gun dealer would roll a print of the applicant's right index finger, for example. Although this print would not be submitted to the State identification bureau, it could greatly enhance BATF's ability to prosecute applicants who provide false information. In addition, requiring an applicant to provide a fingerprint on the application form may serve as a deterrent to those who possess fraudulent indentification cards but who are reluctant to submit fingerprints.

3. An applicant data base could be created and maintained by the State identification bureau. This data base would be queried first when a purchaser check was conducted. It would contain basic information on individual applicants who had been previously approved through a point-of-sale name check or a secondary verification procedure. The data base would include an applicant's name, date of birth, race, sex, and a flag indicating approval for purchase. The data base could be updated continuously for subsequent disqualifying convictions. Once individuals received approval, no additional searches of their criminal history files would be conducted for subsequent purchases. This option could eliminate the need for a Certificate to Purchase.

If States constructed this data base, the number of name searches and print searches could be significantly reduced. Fears that such a data base would create a list of gun purchasers could be allayed by requiring States to systematically purge records after a 2 or 3 year period. Moreover, such a data base could be limited to those who failed the telephone check and then passed the secondary verification; thus, only a small portion of all gun purchasers would be included.

4. Point-of-sale approval requirements could be relaxed for certain types of dealers. Low-volume dealers and those selling at gun shows could be exempted from the telephone checks. However, to regulate purchases of firearms from these dealers, State law enforcement agencies could be required to perform random criminal history checks on those who have purchased firearms from these low-volume dealers.

5. Fingerprint searches in the secondary verification process could be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. Applicants found to have out-of-State rap sheets would be required to appeal to the State repositories maintaining the disqualifying records. This modification would have two good effects: (a) a reduction of response time for secondary verification, and (b) no need to evaluate out-of-State records. However, a major disadvantage is that once a hit is made through NCIC, the burden of certifying qualification to purchase would be shifted to the applicant.

6. To increase reliability, applicants for specific types of guns could be required to be fingerprinted and would not be eligible for a telephone check.

7. To ensure that excess delay in making an eligibility decision did not unduly interfere with the rights of qualified purchasers, the system could include firm deadlines for governmental action at various stages. Failure to meet a deadline would allow the sale to proceed. Ineligible purchasers would still be subject to subsequent prosecution.

8. In the event of a computer system failure or interruption in telecommunications, gun dealers could be permitted to proceed with the sale. Once system functions were resumed, dealers would be required to conduct the telephone checks. If an illegal purchase had been made, the State agency accessing the repository data would notify law enforcement agencies. Alternatively, firearm sales could be postponed until the computer and telecommunications systems were again operational or until a specified period of time had elapsed.

See also the discussion of establishing a data base of ineligible persons in Part I.

OPTION A1: TERMINAL ACCESS BY GUN DEALER TO DISQUALIFYING INFORMATION

This option is a variant of Option A, described above, but instead of the gun dealer calling a law enforcement agency, which would access criminal history records electronically, the dealer would directly access an intermediary computer that would review the indexes and transmit "accept" or "reject" notices to the dealer. The system would work as follows:

1. The applicant would present the same identification documents to the dealer as required under Option A.

2. The dealer would use a terminal in the shop to access an intermediary computer that would review criminal history indexes and transmit authorization or denial notices to the gun dealer's terminal. (Special passwords would be required to prevent unauthorized access. Transaction logs would be maintained by the State or NCIC to monitor inquiries.)

3. If the notice was to "accept," the sale could be completed immediately. If the notice was to "reject" (indicating the existence of a printable offense), the applicant would be directed to a local police department to initiate the secondary verification process.

4. Subsequent procedures follow Option A.

Advantages and disadvantages. All advantages and disadvantages noted in Option A apply to this option except as follows:

1. The costs for installation of a terminal in each dealership would be substantial. Training would also be required in the use and maintenance of the terminals. Procedures for passwords and logs would also be required.

2. Access through an intermediary computer would require a new computer capability at the Federal level and in each of the 50 States. Such a capability could be costly.

3. There would be no noticeable reduction in response times, since telephone checks under Option A would also be completed on a real-time basis.

Estimated cost. See discussion under Option A2.

Option A2: Touch-Tone Telephone Access by Gun Dealer to Disqualifying Information

This option is the same as Option A1 above, but substitutes a touch-tone telephone for terminal access. The system would work as follows:

1. The applicant would provide identification to the dealer as required under Option A.

2. Using a touch-tone telephone and a toll-free number, the dealer would access an intermediary computer, as in Option A1, and would enter his license number to prove eligibility. The communications system would establish a log of the transaction. The dealer would then enter the applicant's digitized name and other identifiers.

3. The message would be received by the State repository or NCIC and checked against a master name index.

4. The dealer would be advised of the "accept" or "reject" status only.

5. If rejected, the applicant would be advised to seek secondary verification through a local police department. Subsequent procedures would follow Option A.

Advantages and disadvantages. The advantages and disadvantages would also be similar to those for Options A and A1; however, the costs may be lower than Option A1 since terminals would not have to be installed at all dealers.

Estimated cost. Although Options A1 and A2 do not present any particular operational advantages over the simpler Option A, they would be more complicated and costly to set up. Thus, in the short term they do not have any benefits over Option A. Nonetheless, it is possible that by directly and electronically connecting gun dealers to disqualifying information, Options A1 and A2, or others like them, would prove less expensive in the long run than Option A with its need for numerous new personnel in the State repositories to field the calls from gun dealers.

Option A3: Live Scan of Fingerprints by Gun Dealer

This option differs from other variants of Option A in that fingerprints would be taken directly at the point of sale and digitized for transmission to the record repository. Records would be scanned on the basis of fingerprints. The system would work as follows:

1. The applicant would place his hands into a fingerprint scanner, which would be maintained and operated by the dealer.

2. Digitized fingerprint data on all 10 fingers would be transmitted to the State repository.

3. At the State repository, a fingerprint technician would calculate the pattern types of the 10 fingers and then select a subfile of the data base for a subsequent automated search. Fingerprints would be checked against a criminal history data base, a fingerprint index, or a specially created data base of disqualified persons.

4. If the search resulted in a list of potential candidates, a fingerprint technician would examine the candidate prints and make a determination of identification.

5. Based on the search, an "accept" or "reject" message would be sent to the gun shop. Fingerprints of accepted applicants would not be retained by the State identification bureau.

6. If a rejection was based on a check against a fingerprint index only, the applicant would be advised to initiate secondary verification. If a rejection was based on a full record check or check against a special disqualification data base, the denial would be final, but the applicant would be advised of appeal procedures.

Additional characteristics. 1. Dealers would be required to install 10-finger scanning equipment including a capability to transmit the scan data to the State repository and the ability to receive "accept" or "reject" messages from the repository.

2. States would need: (a) the capability of receiving the 10-finger scan data, (b) fingerprint technicians to determine pattern types and subfiles to be searched, (c) the ability to search files based on pattern type and digitized minutiae, (d) the ability to compare applicant prints to candidate file-prints and determine identification, and (e) the ability to transmit results to the dealer.

3. In order to check for out-of-State arrests, the system would require the FBI to set up a mechanism for receiving digitized fingerprint data from State repositories, which currently use several incompatible AFIS systems.

4. Response times would include an estimated 6 minutes to scan 10 fingers at the shop, 1–6 minutes for a technician to classify the prints, and 1 minute to verify a match from the search file. An additional 5–15 minutes would likely be required to search the fingerprint file (depending on the search procedures, the size of the data base, and the availability of computer equipment). This is an estimated total of 13–28 minutes.

Advantages and disadvantages. 1. Use of fingerprints ensures accuracy of identification at the gun shop. In a properly functioning system, no one who had previously been fingerprinted for a crime would escape detection.

2. There would be a substantial reduction in the number of secondary verifications, perhaps as much as 50–80% over Option A.

3. A major disadvantage is the extremely high cost of developing, installing, and maintaining on-site equipment and transmission lines. Training for dealers would also be required to obtain properly scanned fingerprints. High-volume dealers would require multiple scanners and additional staff.

4. Indexes to Federal and State criminal history files would have to be upgraded and made compatible with fingerprint data transmitted from the on-site scanners. At a minimum, indexes to current criminal history files would require upgrading.

5. Response times (13–28 minutes) would be longer than the telephone check of the basic Option A.

Estimated cost. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving live fingerprint scan at all dealers, total start-up costs are estimated at $9.6–27.1 billion and annual operating costs (assuming equipment depreciation and maintenance) at $3.0–8.3 billion. For a system restricting live scan to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $3.5–9.6 billion and annual operating costs would be $1.2–3.1 billion.

Option A4: Biometric Identification Card

This option is not so much an alternative to the basic Option A as a distinct feature that could be added to it. The system requires that the applicant obtain a State-issued identification card that incorporates biometric information, name, date of birth, and other standard identifiers. This card could be a general-purpose card, such as a driver's license, or a special-purpose card for gun purchases. The biometric information could be an actual fingerprint on the card, or it could be a digitized representation of biometric information magnetically encoded on the card. This option also requires that dealers have equipment able to read the applicant's fingerprints, or other biometric information, and compare them against characteristics on the card. The system would work as follows:

1. The applicant would obtain a card from the State with biometric identifiers.

2. The applicant would present the card to the dealer. The dealer would then use equipment to compare the biometric data from the applicant with the information on the card.

3. If there was a match, the dealer would proceed with an inquiry to the State repository either (a) by telephone, as in Option A, or (b) if the card was in a digitized format, through a device that could communicate with an external database over telephone lines (as is used in approving credit card purchases).

4. The remaining procedures follow Option A.

Advantages and disadvantages. 1. The use of biometric information on the ID card and the subsequent biometric check at the gun shop would enhance the reliability of the identification check by making it substantially more difficult for such an identification document to be counterfeited or altered. However, other technologies also exist, such as holograms, to enhance the security of identification documents. Moreover, the biometric card does not solve the problem of individuals using fraudulent "breeder" documents, such as birth certificates, to obtain the biometric ID card.

2. Prior recording of biometric identification data on the card eliminates the need for transmission of biometric data from the dealer to the central facility.

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3. On-site equipment to check biometric data at the point of sale would be expensive to install, maintain, and operate. Dealers would have to be trained.

4. Interstate coordination, perhaps requiring the collection and maintenance of fingerprints for all applicants, would be necessary to prevent applicants from obtaining separate ID cards in different States using different names. This would be important since subsequent inquiries to State or NCIC data bases would be based on name rather than fingerprints.

5. Biometrically supported identification could be used to link the dealer with data bases of other ineligible firearm purchasers, such as those dishonorably discharged from the Armed Forces.

6. Regulations would have to be issued to govern action by dealers if applicants were discovered to be using false identification (for example, where an applicant's fingerprints did not match data on the card).

Estimated cost. The following cost estimates do not include any costs associated with producing and distributing a biometric identification card.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $198–368 million and annual operating costs at $102–168 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs would be an estimated $93–158 million and annual operating costs would be $70–105 million.

Section 3. Prior Approval Systems

Option B: Firearm Owner's Identification (FOID) Card

Each State would develop a system for issuing a Firearms Owner's Identification (FOID) Card, which would be required for purchasing any firearm and would be valid for up to 3 years from the date of issue. This system, which would be quite similar to the secondary verification of Option A, would have the following requirements:

System description (Exhibit 3). 1. Prior to purchase of a firearm, each applicant would be required to appear at a law enforcement agency within the jurisdiction of the applicant's legal residence.

2. Each applicant would be fingerprinted and photographed, and the fingerprint cards and photograph would be submitted to the State criminal history repository and to the FBI's Identification Division for a fingerprint check.

3. Results from the FBI fingerprint check would be returned to the designated State agency for evaluation.

4. Additional records could be obtained directly from other State repositories or from courts or prosecutors' offices, as described in the discussion of the secondary verification procedures of Option A.

5. State officials would evaluate the records from all sources to determine whether the applicant was eligible to purchase a firearm. The designated State agency would issue a FOID card or Notice of Denial. The State agency would maintain a data base on all FOID cards.

6. If a Notice of Denial was issued, the applicant would be informed of the right to appeal.

7. The State agency would periodically issue to all gun dealers a listing of all invalid FOID cards.

8. If the applicant possessed a FOID card and wished to purchase a firearm, the gun dealer would be required to verify, prior to sale, the identity of the purchaser and the validity of the card. The applicant would fill out an application for purchase, which would require an additional piece of identification. The gun dealer would check the listing of invalid FOID cards.

9. If the sale was denied, the gun dealer would instruct the applicant on the procedures for an appeal. The gun dealer would send a copy of the application to the appeals agency.

Data sources. Fingerprint searches would utilize all existing criminal history data bases at the State and Federal levels. Manual as well as automated files would be searched. Approval of an application for a FOID card would not require an immediate search for out-of-State records; consequently, the AIS–III index would not have to be modified (as in Option A). Searches of records on individuals who were arrested before 1974 would utilize the current procedures of the FBI's Identification Division.

A FOID card data base would be maintained by the State identification bureau or designated State agency. This data base would contain basic information on applicants who had previously received a card. It would contain the applicant's name, date of birth, race, sex, other identifying information, and the FOID card number and expiration date. The data base could be regularly updated by the State identification bureau for subsequent disqualifying convictions if fingerprint data or State identification numbers were retained for all persons receiving a FOID card. The State agency would issue on a regular basis lists of invalid FOID cards. Unless the applicant elected to renew the FOID card, the data base would be purged of all applicant information after the expiration date.

Verification and controls. Gun dealers would be required to maintain copies of all applications and the purchaser's FOID card number. Gun dealers would be subject to State or Federal audits. Dealers would be subject to criminal penalties for false records of sale and to loss of license for incomplete records.

Access to criminal history records would be restricted to law enforcement agencies.

If a card holder became prohibited from purchasing firearms after the FOID card had been issued, a Letter of Revocation would be sent by the State agency to the individual. The State agency would be required to send all gun dealers a listing of invalid FOID cards. No attempt would be made to recall invalid cards or firearms.

Positive identification. Positive identification of applicants by gun dealers could be enhanced by placing the applicant's picture and fingerprint on the FOID card. Requiring the applicant to provide at least one additional document with a picture identification would provide further confirmation of identity by the gun dealer.

Security provisions could be introduced to the FOID card, which would increase the difficulty and costs of counterfeiting. States could also be encouraged to develop better procedures for issuing breeder documents and securing existing cards (such as driver's licenses) from counterfeiting.

An applicant's fingerprint could also be placed on the BATF application (form 4473, Exhibit 5) at the time of purchase. This requirement would not only enhance BATF's ability to prosecute applicants who provide false information but also serve as a deterrent to individuals with false documents who may be reluctant to provide a fingerprint.

Out-of-State sales. The sales of firearms to out-of-State residents either at a gun shop or through the mail is currently restricted by Federal law to long guns (e.g., rifles and shotguns). With few exceptions, interstate sales of handguns are prohibited. Under Option B applicants possessing a FOID card issued in one State would be permitted to purchase a long gun in another State; however, *applicants could only obtain FOID cards in their State of residence.*

Three procedures may be adopted to check qualifications of out-of-State purchasers: (a) dealers may be required to call a national toll-free number for a check of NCIC files or a national list of

invalid FOID cards; (b) dealers may be required to call the State agency that issued the FOID card; or (c) out-of-State residents may be required to obtain a Certificate to Purchase from a local law enforcement agency.

The first procedure would require the nonresident applicant to fill out the BATF application and present the out-of-State FOID card plus another photo-identification card to the dealer. The dealer would be required to call a national center, which would conduct a name and date-of-birth search of State and Federal files through NCIC. The dealer would receive a message of acceptance or denial. If the sale was denied, the applicant would be advised of the right to appeal; however, all appeals would be conducted within the applicant's State of residence.

The second procedure for sales to nonresidents would require the dealer to call the State agency that issued the FOID card. All dealers would receive a listing of phone numbers of State agencies that issue FOID cards. Special security provisions (such as call-back procedures, dealer codes, and variable passwords) would be established in each State to verify the identity of the out-of-State dealers.

The third procedure would require that nonresident applicants obtain a Certificate to Purchase from a local law enforcement agency within the State of purchase. Prior to purchase of a long gun, the applicant would submit the out-of-State FOID card and other identification documents to a local law enforcement agency; a name and date-of-birth check of NCIC files would be conducted; if the applicant had no prior disqualifying record, the applicant would be issued a Certificate to Purchase. The certificate would be valid for 1 month.

Identifying felons. The problems of interpreting criminal history records are the same as those discussed in Option A. Accurate interpretation of in-State, out-of-State, and Federal records, though difficult, could be achieved given sufficient resources and time.

Response times. The fingerprint search procedures (including mail handling) and evaluation of records would require under current practice an estimated 4–6 weeks. (See Option A for details on how response times are estimated for the equivalent secondary verification procedure.)

Some reduction in the average response time could be achieved if State fingerprint searches produced evidence of disqualifying convictions or yielded an FBI number before the results of the FBI fingerprint check were received. In the former case the applicant would be disqualified on the basis of the State records alone; in the latter case the FBI number could be used to do an immediate query of Federal and out-of-State records through NCIC.

Expected number of cards issued annually. The proposed FOID card would be required of all purchasers of firearms. Unlike the current system in Illinois (see part IV, section 2), FOID cards would not be required of current owners or those wishing to buy ammunition. Start-up of the proposed FOID card system would begin with new buyers only.

Data on FOID card applications in the State of Illinois provide some basis for estimating the number of cards to be issued nationwide under Option B. Nearly 200,000 FOID cards are issued annually in Illinois. Relative to the resident population age 18 or older in Illinois (8.5 million), this figure represents a rate of 2.4 cards per 100 adult residents. If this rate were applied to all adult residents in the United States, the expected number of cards issued annually would exceed 4.2 million in 1990. A FOID card valid for only 3 years, instead of 5 years in Illinois, would generate a larger estimate—nearly 6 million cards issued yearly.

Because the proposed FOID card system for the Nation is restricted to firearm purchases only (and excludes requirements for possession of a firearm or purchase of ammunition), the annual number of cards issued should be somewhat less than the 6 million, based on projections from the Illinois system. However, based on figures from Option A, an estimated 6 million individuals buy the 7.5 million firearms sold annually. Consequently, in the first year of start-up, the estimated number of FOID cards issued cannot be less than 6 million. Once the system has been implemented, the number of cards issued annually should diminish. Though no data exist on the number of repeat buyers from year to year, if we estimate that about a sixth of buyers in any one year purchased a firearm in the previous year, then the estimated number of cards issued annually should approach 5 million in the long run.

Current practices of the District of Columbia and the 22 States that conduct a pre- or post-purchase criminal history check would reduce the net impact of Option B by approximately 8%. As a result, the total projected increase in fingerprint cards at the State and Federal levels would be approximately 5.5 million in the first year and 4.6 million in subsequent years.

The resultant number of fingerprint checks at the FBI would represent more than a doubling of civil (applicant) fingerprint cards (from the current figure of 4 million cards). Overall, the FOID card procedure would increase the total number of fingerprint cards submitted to the FBI's Identification Division from 8.4 million to 13.0 million—an increase of approximately 55%.

Impact—1. *Purchasers:* Individuals without criminal records would not have the immediate ability to purchase a firearm. Those without criminal records would be required to have fingerprints taken by a law enforcement agency and be required to wait an estimated 4–6 weeks to obtain a FOID card. Once a purchaser possessed a card, there would be no additional waiting period during the time the card was valid.

2. *Dealers:* Little additional burden would be placed on gun dealers. Gun dealers would not be required to place any calls to law enforcement agencies for clearance prior to a sale. Dealers would be required to enter the FOID card number on each application form and review the lists of invalid FOID cards prior to each sale. Dealers would not perceive a loss of sales as a result of buyers being rejected in the shop at time of sale.

3. *State law enforcement:* States would experience a substantial increase in work load. Local law enforcement agencies would process additional paperwork and fingerprint cards. In the long run, the number of fingerprint cards would increase on average by 55% in each of the State identification bureaus. States would also need to establish an administrative staff to coordinate processing of appeals, to conduct system audits, and to coordinate audits of gun dealers.

4. *FBI Identification Division:* The FBI's work load would dramatically increase. Based on the long-term projection of 5 million fingerprint cards submitted annually, as many as 1,700 additional employees may be needed by the Identification Division. Approximately 550 of these employees would hold technical positions (e.g., fingerprint technicians, classifiers, and verifiers) and 520 would be typists; all of these would require an estimated 3–6 months of training. The FBI would need several years to recruit and clear these 1,700 new employees, assuming this is even possible. Moreover, it would require an additional 31,000 square feet of office space.

Costs. The annual operating cost at the State and local level is estimated to be between $71 million and $91 million. (For detailed cost estimates, see Exhibit 6 and Estimates of Start-up and Operational Costs of Systems for

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Identifying Felons Who Attempt to Purchase Firearms, Fisher-Orsagh Associates, June 1989.) State and local law enforcement agencies would also require an estimated $72 million for start-up costs.

At the Federal level the estimated cost for processing the anticipated 5 million fingerprint cards a year is $65–70 million, and the cost for start-up is $77–81 million.

Overall, when local, State, and Federal costs are combined, the estimated annual operating cost for Option B is $136–161 million, and the estimated start-up cost is $148–153 million.

If the annual operating costs were transferred to applicants through user fees, a fee of $27.28–32.39 per FOID card application would be required to cover local, State, and Federal costs.

Note that if current fingerprint checks for gun purchasers are taken into account, the actual new costs may be slightly lower than these estimates—perhaps 5% lower for start-up costs and 8% lower for annual operating costs.

Advantages. 1. The system would utilize existing data sources, communications systems, and search procedures.

2. Access to criminal history records would be limited to law enforcement agencies. Gun dealers would receive only a listing of invalid card numbers.

3. Positive identification for those with a criminal history record could be established at the time of application for the FOID card. Unlike Option A, an estimated 6–8% of the individual applicants would not be falsely rejected and suffer potential embarrassment at the gun shop because they had a name and date of birth similar to that of someone with a criminal record.

4. Use of the FOID card would make purchase of firearms more convenient by eliminating point-of-sale criminal history checks. Only one criminal history check would be required in a 3-year period regardless of the number of firearms purchased.

5. This system would be much less burdensome to the gun dealer than the point-of-sale options.

6. FOID cards would be State based, and their use could be restricted to the purchase of firearms only. Individuals would be required to possess a FOID card at the time of purchase but not for subsequent transport, possession, or use of firearms.

See also the discussion in Part I of establishing a data base of ineligible persons.

Disadvantages. 1. Individuals without criminal records would not have the immediate ability to purchase a firearm and would be required to have fingerprints taken by a law enforcement agency. The processing of applications for FOID cards could take approximately 4–6 weeks. There may also be public resistance to systematic fingerprinting of all firearm purchasers.

2. Fingerprint searches are slow and costly and place heavy demands on State and Federal repositories, which are having difficulties with current work loads.

3. A State FOID card system would create a list of all persons with valid cards. Though essential to verification and prevention of forgery and fraud, the creation of such a list may be controversial. (Strict limitations could be placed on access to the FOID card data bases in each of the States. Uses of the data bases for any purpose other than verifying the validity of FOID cards could be restricted by State or Federal statute. Establishment of a national data base of FOID cards or out-of-State access to State-level data bases could be prohibited.)

Potential modifications—1. Fingerprint searches may be limited to the repository within the applicant's State of residence. Federal data bases would be searched only on name, date of birth, race, and sex. In order to accomplish this, the AIS-III index would have to be expanded to include individuals arrested before 1974. State repositories would assemble Federal and out-of-State records from automated and manual FBI files plus additional records obtained from NCIC. This modification would substantially reduce the FBI's burden in conducting fingerprint checks while increasing its burden in providing manual records in response to NCIC inquiries. The net effect could be a reduction in burden to the FBI. This modification in Option B would also potentially reduce response times and system costs. A major disadvantage would be decreased reliability in searches of Federal and out-of-State records since name searches of automated records are less reliable than fingerprint-based searches.

2. A notarized statement of eligibility from an applicant could be substituted for fingerprint checks (similar to procedures in Illinois). Fingerprint checks would not be performed. Verification and control procedures could be introduced through random criminal history checks conducted by State identification bureaus. Criminal sanctions could be imposed on individuals who falsify information on the application form. State repositories and Federal officials would be given authority to conduct audits, to revoke FOID cards, and to impose criminal sanctions on fraudulent applicants.

Major advantages of this modification would include: (a) the burdens on State and Federal repositories would be reduced; (b) the burden on applicants would be limited to obtaining a notarized statement; and (c) response time from application to issuance of card could be reduced from the 4–6 weeks in Option B. The major disadvantage would be an increased potential for fraud by disqualified applicants.

3. Fingerprints could be required only for the initial issuance of the FOID card. Renewals could be based on a name and date-of-birth search only. As a result of this modification, the annual number of fingerprint searches could be reduced by about a third.

4. The FBI Identification Division could build a "stop file." Applicant print cards could be added to the existing criminal files or to a special FOID card file. State identification bureaus could then be notified by the FBI when a FOID card holder was subsequently convicted of a disqualifying offense. As a result of this modification, FOID cards would not have to be restricted to a 3-year term; consequently, the number of fingerprint cards sent to the State and the FBI would be reduced. Major disadvantages of this procedure would include: (a) a substantial increase in the number of non-criminal fingerprint cards retained by the FBI and (b) increased fears that such a data base would create a Federal list of gun owners and that it could be used for other criminal justice or investigative purposes.

5. The proposed system could be modified so that FOID cards would be required only of purchasers of specific types of guns.

Option B1: Live Scan of Fingerprints by Local Law Enforcement and Biometric Check by Gun Dealer

This option is a variant of the preapproval system described in Option B. In this variation gun buyers would be fingerprinted by local law enforcement; State and Federal criminal history files would be electronically checked by the local law enforcement agency; individuals would be notified of the results while at the law enforcement agency; if approved, individuals would be issued a FOID card; if rejected, individuals would be advised of appeal procedures. The system would work as follows:

1. The applicant would go to a designated law enforcement agency to obtain a FOID card.

2. The applicant would place all 10 fingers into a fingerprint scanner, which would be maintained and operated by the local law enforcement agency.

3. Digitized fingerprint data would be transmitted to the State identification bureau.

4. At the State identification bureau, a fingerprint technician would calculate the pattern type, which would identify the subfile of the State fingerprint data base. The subfile would then be searched for potential matches.

5. If the search resulted in a list of potential matches, a fingerprint technician would examine the prints and determine identity.

6. If a match was found, a technician at the State identification bureau would inspect the criminal record for disqualifying convictions. If the applicant was disqualified, the local law enforcement agency would be immediately notified and the applicant would receive a Notice of Denial.

7. If a match was not found in the State files (or if the applicant had no disqualifying convictions), the digitized fingerprints, pattern types, and other identifying information would be transmitted by the State identification bureau to the FBI. The FBI would subsequently conduct an electronic search of the national fingerprint files, master name index, and criminal history files.

8. If a match was found in the FBI files, the State identification bureau would receive (by NLETS) copies of the automated records and (by mail) copies of the manual records. If automated, the State would evaluate the records and transmit results to local law enforcement. If manual, the State would notify the law enforcement agency that a record was found and that the applicant could return within 7 work days to receive a FOID card or Notice of Denial.

9. If an applicant was issued a FOID card, the State identification bureau would retain a copy of the applicant's fingerprints. A print of either the thumb or index finger would be imprinted on the FOID card.

10. At the gun shop, purchasers would present the card to the dealer. The dealer would then use equipment to scan the applicant's fingerprint (one print). The equipment would compare the applicant's print to the print on the FOID card.

11. The dealer would call the State identification bureau. The FOID card data base would be examined to determine whether the person in the gun shop was the same person who applied for the card, whether the card had been reported lost or stolen or had expired, or whether the person had been subsequently convicted of a felony.

12. The dealer would receive notice of approval or denial of sale from the State identification bureau. As a result of a denial, applicants would be advised of appeal procedures.

Advantages and disadvantages. 1. Advantages include: (a) Shorter response time to obtain a permit—a majority of applicants could, within an hour, receive a valid FOID card from local law enforcement; (b) the ability to increase the reliability of identification at the gun shop; (c) the ability to identify FOID cards as lost, stolen, lapsed, or disqualified; and (d) the enhancement of automated fingerprint processing for all law enforcement purposes.

2. Disadvantages include: (a) The high costs of start-up and operations; (b) the requirement for equipment and software that are currently being tested or yet to be developed; (c) the need for modifying existing State and Federal data bases to interface with digitized fingerprint information; (d) the incompatibility of the existing AFIS systems, currently produced by four different vendors, with each other and with the FBI; (e) additional automation of State indexes and criminal history files; (f) public resistance to a data base that identified all FOID card holders; (g) significant increased burden on local law enforcement agencies; and (h) the need for additional fingerprint technicians and record evaluators at State identification bureaus.

Estimated costs. Because of the novel and complicated nature of this option and its use of technologies still under development, it has been possible to estimate only part of the costs of setting up such a system. Consequently, the following estimates should be viewed as only a rough measure of system costs.

For a system involving a biometric check at all dealers, total start-up costs are estimated at $344–572 million and annual operating costs at $203–295 million. For a system restricting the biometric check to commercial dealers (an estimated 35% of all dealers), total start-up costs could be an estimated $239–362 million and annual operating costs would be $171–232 million.

Option B2: Smart Card Containing Disqualifying Information

In this variation of a preapproval system, everyone would carry a card (e.g., a driver's license) that would have electronically imprinted identification information, including biometric data such as fingerprints. Whenever someone became legally disqualified to purchase a firearm (for example, by being convicted of a felony), the card would be updated to contain this information. Anyone attempting to buy a firearm would have to produce the card. The card would be put into a reader that would indicate whether the carrier was prohibited from purchasing firearms.

Advantages and disadvantages. 1. The major advantage is that this procedure would not require a communications system—the disqualifying information would be on the card itself.

2. A major disadvantage is the cost of implementing such a radically new identification system and providing criminal justice agencies with the facilities to update these cards.

3. There may be substantial public resistance to the requirement to carry such a card, especially since the need for interstate coordination may require the creation of biometric data bases for the Nation's adult population.

Estimated costs. Sufficient information does not currently exist to make reliable cost estimates of this novel and far-reaching option.

Section 4. Appeal Procedures

The appeals process commences at the point that the applicant receives final notice that the sale has been denied and has been notified of the reasons for denial. This may occur after "secondary verification" (Option A) or after denial of a firearm owner's identification (FOID) card (Option B). As described in both options, fingerprint checks against State and Federal data bases would have been completed prior to final denial and initiation of the appeal period.

During the appeal, the applicant may challenge the denial on grounds that the data are inaccurate (e.g., an acquittal was recorded as a conviction); that the record is incomplete (e.g., a subsequent pardon was not recorded in the data base); or that the offense does not represent a disqualifying offense under the Federal or State standards. Challenges based on inaccurate identification would not occur at the appeals stage since fingerprint checks prior to denial would, presumably, catch errors of this type. The appeals process would proceed as follows:

1. Following final denial, the applicant is advised of rights to appeal and given a document to initiate the appeal.

2. The applicant would go to the agency designated to handle appeals (or would submit documents to a nonlocal appeals agency).

3. The applicant would be provided a copy of the criminal history record that was used as the basis for disqualification.

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4. The applicant would indicate the basis for the appeal. The appeals agency would assist the applicant either directly or indirectly by providing names, addresses, or telephone numbers for inquiries to in-State or out-of-State agencies.

5. If errors could not be corrected on the spot or by telephone, the applicant would obtain and submit to the appeals agency documents supporting eligibility (for example, court records of acquittal, pardon, or restoration of rights).

6. The appeals agency would then review the documentation and rule on the appeal. If eligibility was established, the individual would receive a FOID card or Certificate to Purchase.

7. If eligibility was denied, the applicant would be advised of rights to a court challenge.

Additional considerations. 1. The agency (or agencies) assigned responsibility for appeals must be determined. The agency could be the decision agency (State or Federal), a local agency, or a separate entity (State or Federal). Although the latter option would provide an independent review, the decision agency would probably be more familiar with the criminal history records. Local agencies would best serve as a conduit to the official appeals agency rather than as the agency responsible to rule on the appeal.

2. The degree of formality for the appeal must be determined. For example, a separate "Board" could be established, or alternatively, an existing unit within an agency could be designated.

3. Procedures for applicant assistance must be developed. In particular, procedures regarding challenges based on out-of-State records should be developed and coordinated on a national basis.

4. The time for the appeal and decisions may have to be limited.

5. Some States may consider their existing procedures for correcting or updating criminal history records as adequate for a felon identification system.

Part III. Legal and Policy Issues

Statutory and constitutional challenges may be expected to arise regarding the creation of any of the felon identification systems described in this report. (See *Legal and Policy Issues Relating to Biometric Identification Technologies*, SEARCH Group, Inc., June 1989.) Issues related to the First, Second, Fourth, Fifth, Ninth, and Fourteenth amendments to the Constitution, perhaps among others, must be carefully considered. In particular, some organizations take the position that certain types of felon identification systems may, to some degree, unconstitutionally infringe upon the "right of the people to keep and bear arms." This position relies primarily on (1) the imposition that presale checks would impose on non-criminals, (2) the limited deterrence value of any system given the small proportion of felons purchasing firearms through retail outlets, (3) the potential infringement of rights arising from the maintenance of a gun owner register, and (4) the requirements of some systems that prospective purchasers provide fingerprints prior to purchase. In light of the significance of constitutional issues, a final selection of any particular identification system ought to be preceded by a rigorous legal review by appropriate divisions within the U.S. Department of Justice.

The legal review conducted for the Task Force found that criminal history checks, including those based on fingerprints, are currently required by State and Federal law for a variety of non-criminal-justice purposes such as job applications and security clearances. Depending on the jurisdiction, such checks are conducted for those desiring to be lawyers, child care workers, State or Federal employees, bartenders, etc. Although the courts have generally upheld these requirements as rationally related to legitimate governmental purposes, a felon identification system involving the screening, and possibly fingerprinting, of all gun purchasers may raise unresolved constitutional issues.

In addition to constitutional issues, the use of felon identification systems in firearm sales raises a variety of important legal and policy issues that may have to be addressed in State and Federal legislation. Some of the major issues are outlined here.

A Federal or State System; Mandatory or Voluntary?

There are four broad possibilities for implementing a felon identification system: (1) To create a self-standing Federal system that is run entirely by Federal officials; (2) to mandate a cooperative Federal-State system in which State officials carry out a substantial portion of the criminal history checks; (3) to establish a mandatory Federal standard that States could meet in a variety of different ways; and (4) to offer the States several models for a voluntary cooperative Federal-State system and make Federal resources and leadership available to assist the States.

(1) The Task Force did not focus its research efforts on the creation of an independent Federal system for the simple reason that 90% or more of arrests and convictions in the United States are handled by State and local officials. Because of the variety of State laws, practices, and data systems, only State officials are in a position to properly interpret criminal history record information for their State and to determine whether a conviction meets the Federal standard for disallowing a firearm purchase. Moreover, State officials are in the best position to track down missing or incomplete information with local courts or prosecutors. Thus, the active involvement of State officials in the criminal history checks would seem essential for an effective felon identification system.

(2) Given the necessity for active State involvement, the Federal Government could create a felon identification system by mandating that the States adopt a particular system, such as one of those detailed here or a modification thereof. Under this implementation strategy, the Federal Government would select a felon identification system and each State would be required to work with Federal officials to implement it. The result would be a uniform system in each of the 50 States. Such a mandate could be enforced by making State cooperation a condition for the receipt of specified Federal funds or, more directly, for the sale of firearms within the State (under the Federal authority over interstate commerce).

(3) Another possible implementation plan is to allow variation across the States in the kind of system established as long as each State's system met certain minimum Federal standards. As noted above, 20 States and the District of Columbia currently conduct a prepurchase criminal history check for those who wish to buy handguns. There is, however, substantial variation among these systems. In some States checks are conducted by local authorities; in others by State authorities. Some States access only State records when conducting the check; others also access Federal records. A few States require fingerprints; most do not. Of these existing systems, some might be as effective as the options detailed in this report in keeping convicted felons from purchasing firearms through legitimate retail outlets. Others might be easily upgraded.

All of the options presented in this report meet at least two minimum standards: all firearm purchases from federally licensed dealers are covered; and a name check of both State and Federal automated data bases is conducted for evidence of an arrest for a serious crime (such checks usually also include date of birth, race, and sex). It appears that only four States and the District of Columbia currently meet both standards.

(4) Finally, the Federal Government could take a leadership role in designing one or more felon identification systems and in encouraging, but not mandating, State cooperation. Under this strategy the Federal Government would expend its own resources at the FBI and BATF to make such a system(s) possible and would provide expertise and technical assistance to State and local officials.

Sources of Funding for Criminal History Checks

The Federal Government will be required to invest substantial resources in national data bases, including both personnel and equipment, in order to handle the increase in workload that would result from a felon identification system for firearm sales. State repositories also will require substantial additional resources to handle the work load increase and to continue to improve data quality. Given these resource needs, policymakers will have to determine the appropriate funding mechanism for carrying out the required criminal history checks. Such funding mechanisms could include one or more of the following: (1) direct appropriations by the Federal and State governments, (2) user fees by gun purchasers, (3) increases in firearm dealers' licensing fees through the Bureau of Alcohol, Tobacco and Firearms, and (4) special fines imposed on those convicted of firearms violations. In addition, legislation would have to address whether the State and Federal governments would share any revenue generated by a felon identification system and in what proportion.

Release of Criminal History Information to Gun Dealers

The Task Force has not proposed any options that would give gun dealers direct access to criminal history record information. Such access would violate established standards of privacy and confidentiality as well as numerous State statutes that preclude access to criminal history records by non-law enforcement personnel. Nonetheless, several of the options do require notification to the dealer that a criminal history check has turned up evidence of an arrest for a felony or serious misdemeanor. Even this limited provision of information may violate some State statutes or regulations.

Under Option A and its variants, for example, the dealer would learn whether there was evidence that the prospective purchaser had a criminal history record, but the dealer would not learn the substance of the record itself. This may be viewed by some as a release of criminal history information to non-law enforcement personnel in a way that would embarrass or stigmatize the prospective purchaser. Indeed, in many (perhaps most) cases an initial indication of a criminal record would eventually be shown to be untrue because it resulted from a misidentification with someone else with a common name and date of birth. Yet a "hit" on the initial telephone check will be known to personnel at the gun store and perhaps to customers or others who are present. As a result, the purchaser's reputation within his community may be harmed through no fault of his own. This issue indicates the need for legislative prohibitions on the release by gun dealers and others of anything learned during the telephone check of purchasers, although it may be difficult to enforce such prohibitions against customers or others who may overhear or observe the results of a "hit" during the telephone check.

An important privacy consideration is whether gun dealers in a point-of-sale system would keep the records or lists of those who failed the initial check. Operationally, as in the options described in this report, such recordkeeping is not necessary and could be prohibited by law.

Note that under Option B and its variants the prospective purchaser has already completed a full-fledged criminal history check before going to the gun dealer. Thus, the gun dealer only sees those who have previously qualified to purchase a firearm. He does not learn about those who failed the pre-approval procedure. Only in the few cases where the purchaser had been arrested between issuance of the FOID card and his attempt to purchase a firearm would any disqualifying information become known to the gun dealer.

Another issue of relevance to gun dealers is whether or to what extent their liability ought to be limited by law for providing firearms to disqualified persons on the basis of inaccurate information they received from law enforcement authorities.

The Issue of Accuracy

The Congressional mandate under Section 6213 of the Anti-Drug Abuse Act calls for the "accurate identification of felons" who attempt to purchase firearms. The statute, however, does not specify the level of accuracy that would be acceptable. Since, for the reasons elaborated earlier in this report, a perfectly accurate system is not feasible in the foreseeable future, policymakers will have to decide how much accuracy is required for an effective felon identification system. Generally speaking, the most accurate systems are those that are the most expensive and that create the greatest inconvenience for the gun purchaser.

The issue of accuracy has two sides: (1) to correctly identify felons who attempt to purchase firearms and (2) not to reject eligible persons who attempt to purchase firearms. Deficiencies in identification documents for positively establishing identity, incomplete criminal history records, and the prevalence of common names and dates of birth complicate these two tasks and make it that much more difficult to achieve both simultaneously. A system, for example, that focused primarily on not rejecting eligible persons might prove incapable of correctly identifying a large number of felons. On the other hand, a system that single-mindedly sought to keep convicted felons from purchasing firearms might catch in its nets numerous law-abiding individuals who have a right to purchase firearms. How the balance is to be struck between these two goals—to correctly identify felons and not to reject eligible persons—is a policy, not a technical, judgment. The options outlined in this report present a variety of schemes for meeting the two sides of the accuracy mandate.

Because criminal history records are subject to error, the dictate for an accurate system points to the need for mechanisms through which prospective gun purchasers can update and correct criminal history information. Fortunately, such procedures currently exist in all the States. Any felon identification system for firearm sales ought to have a linkage to these procedures so that corrections to criminal history records can be made in a timely fashion. Other-wise, persons eligible to purchase firearms may be improperly prohibited from doing so.

The requirements for establishing an accurate felon identification system highlight the need for complete and up-to-date criminal history records, preferably in an automated format. Improvements in the accuracy of criminal history records would generate benefits in a wide range of criminal justice applications.

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Creating a Data Base of Firearm Purchasers

None of the options outlined in this report provide for or require the creation of a national data base of firearm purchasers. Since all the options are essentially State run, any recordkeeping, whether manual or automated, regarding the application to purchase, or the actual purchase of, firearms would be maintained at the State level, as is currently the case in the States that now require a written application and criminal history check for firearm purchases.

Operationally, the maintenance of computer inquiry logs—transaction records that do not necessarily require the applicant's name—is necessary to measure system traffic and cost and to ensure that inquiries are made only by legitimate dealers for legitimate purposes. In addition, any preapproval system (such as Option B and its variants and the secondary verification of Option A) must maintain records of successful applicants if the system is to have the capability of revoking permits (or FOID cards) if a holder is convicted of a disqualifying felony. This could apply under systems that require the return of a revoked permit and under those in which dealers check the validity of a permit prior to sale.

The development of a data base of gun purchase applicants raises the possibility that such records might be used for other purposes. For example, individuals included in such a data base might be treated as possible suspects in crimes involving firearms. If fingerprint data were included in the file, latent fingerprints might be routinely run against the data base.

Policymakers, of course, could prohibit such use of applicant records through law. Moreover, strict limits could be placed on the time during which records of firearm applicants were maintained and on the extent to which applicant names would appear on transaction logs. In point-of-sale systems, time limits could be placed on the retention of initial inquiry records which do not result in a "hit." Preapproval systems, however, have greater recordkeeping requirements if the possibility of revoking permits is to be maintained. It may be advisable to enact new statutory provisions to ensure that record retention restrictions are enforced.

Potential "Tracking" of Firearm Purchasers

Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms. It would be possible, for example, for authorities to "flag" the names of specific individuals, perhaps suspects in criminal cases, who might seek approval to purchase a firearm. If an automated criminal history check was conducted on such a flagged individual as part of an application to purchase a firearm, an electronic message to this effect could be sent to the interested law enforcement agency without the knowledge of the applicant. In this way authorities could learn about the potential purchase of a firearm by someone under investigation or surveillance as well as the geographic location of the purchaser.

Policymakers will have to decide whether to prohibit all such tracking activity or to permit it in some circumstances (for example, notifying the Secret Service when a person suspected of being a threat to the President purchases a firearm). If some tracking is to be permitted, then clear rules and conditions for such activity will have to be established.

Issuing Documents Authorizing Firearm Purchases

The pre-approval options outlined here (Option B and its variants) require the issuance of some kind of documentation (FOID card, certificate to purchase, permit, etc.) for the prospective gun purchaser to present to the gun dealer certifying that the purchaser is not a convicted felon. Moreover, the point-of-sale options (Option A and its variants) have a similar requirement for those who fail on the original telephone check.

Such a requirement, especially if mandated by Federal law, raises policy issues regarding whether the firearm purchaser ought to be singled out and forced to prove through documentation that he is not a convicted felon before he can engage in an otherwise lawful commercial activity. In addition to the inconvenience that such a requirement creates, it may be viewed as demeaning by some.

The other policy issue that such a requirement for documentation presents is that this may be interpreted as an initial step toward a national identification card, something that members of Congress and others have strongly opposed in the past. It should be noted, however, that there are several important differences between a national ID card system and the kinds of documentation required in the options in this report. As usually conceived, a national ID card would be an identification document that was issued to all adult Americans and which had to be carried at all times; yet neither of these conditions would apply to the kind of documentation discussed in this report. FOID cards or firearm purchase permits would be required only for those who wish to purchase firearms and would have to be carried only at the time of purchase. Legislation could prohibit the use of such cards for unrelated identification purposes.

The Use of Biometric Data

Many of the options detailed in this report require the collection of biometric data in the form of fingerprints at some stage in the approval process. Given the traditional association of fingerprints with law enforcement, there may be public resistance to the requirement to provide fingerprints at a law enforcement agency or at a gun dealership in order to purchase a firearm. Such concern may be heightened if the fingerprints are kept on file, manually or electronically, and are subsequently used for unrelated investigative purposes, criminal or otherwise. As noted earlier, such use of the fingerprints provided in a felon identification system could be prohibited by law.

Other biometric technologies, such as retinal scans, could be introduced into felon identification systems, especially to verify identity against a biometrically-based identification card. Because some of these technologies might be perceived as physically more intrusive than fingerprints, public opposition to their use may be greater than to the use of fingerprints. On the other hand, this may be counterbalanced by the fact that these newer technologies are not as closely associated with law enforcement activities as fingerprints.

Section 1. Relevant Federal Statutes

Anti-Drug Abuse Act of 1988, P.L. 100-690, Sec. 6213, 102 Stat. 4360 (1988), as codified in 18 U.S.C. Sec. 922 note (1989)

Identification of Felons and Other Persons Ineligible to Purchase Handguns

(a) *Identification of felons ineligible to purchase handguns.*—The Attorney General shall develop a system for immediate and accurate identification of felons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g)(1) of title 18, United States Code. The system shall be accessible to dealers but only for the purpose of determining whether a potential purchaser is a convicted felon. The Attorney General shall establish a plan (including a cost analysis of the proposed system) for implementation of the system. In developing the system, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. The Attorney General shall begin implementation of the system 30 days after the report to the Congress as provided in subsection (b).

(b) *Report to Congress.*—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall report to the Congress a description of the system referred to in subsection (a) and a plan (including a cost analysis of the proposed system) for implementation of the system. Such report may include, if appropriate, recommendations for modifications of the system and legislation necessary in order to fully implement such system.

(c) *Additional study of other persons ineligible to purchase firearms.*— The Attorney General in consultation with the Secretary of the Treasury shall conduct a study to determine if an effective method for immediate and accurate identification of other persons who attempt to purchase 1 or more firearms but are ineligible to purchase firearms by reason of section 922(g) of title 18, United States Code. In conducting the study, the Attorney General shall consult with the Secretary of the Treasury, other Federal, State, and local law enforcement officials with expertise in the area, and other experts. Such study shall be completed within 18 months after the date of the enactment of this Act and shall be submitted to the Congress and made available to the public. Such study may include, if appropriate, recommendations for legislation.

(d) *Definitions.*—As used in this section, the terms "firearm" and "dealer" shall have the meanings given such terms in section 921(a) of title 18, United States Code.

Gun Control Act of 1968, 18 U.S.C. Sec. 921 et. seq., as amended by the Firearms Owners Protection Act, Pub. L. 99-308, 100 Stat. 449 (1986).

921 (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) Any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) Any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

922 (d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802));

(4) Has been adjudicated as a mental defective or has been committed to any mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

922 (g) It shall be unlawful for any person—

(1) Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Who is a fugitive from justice;

(3) [Who] is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) Who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) Who, being an alien, is illegally or unlawfully in the United States;

(6) Who has been discharged from the Armed Forces under dishonorable conditions; or

(7) Who, having been a citizen of the United States, has renounced his citizenship; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Section 2. Current Practices

Federal Control of Firearms

The Federal role in the control of firearms is derived primarily from the Gun Control Act of 1968 as amended and is overseen at the National level by the Bureau of Alcohol, Tobacco and Firearms (BATF) of the Department of the Treasury. BATF has over 40 field offices and 500 field agents used for the control of firearms, alcohol, and tobacco; over half of the agents are devoted to firearms control. There are approximately 270,000 federally licensed firearm dealers. It is estimated that 60–70% are noncommercial dealers (hobbyists, collectors, etc.) and account for 20–25% of all sales of firearms. Primary control is maintained through the licensing of dealers and the recording of sales.

Prospective dealers apply for a license through BATF. Ordinary dealers pay a fee of $10 a year; pawnbrokers pay $25 a year; and gun dealers who sell "destructive devices" may be required to pay a fee of up to $1,000 a year. Licenses are issued for 3 years after inquiry and investigation has determined that the applicant is legally qualified. Disqualification can be made if the applicant is under 21 years of age, has previously violated the laws and regulations governing firearms, or is ineligible to possess a firearm under Federal law. This license may be renewed, but may not be transferred if the business is sold. There are a variety of regulations that affect licensees; and licenses may be suspended or revoked for cause.

Retail firearm sales require the completion of BATF form 4473 (Exhibit 5) for each over-the-counter sale or transfer to an end user. This form requires the prospective owner's name, address, date and place of birth, height, weight, and race. It also requires a certification that the prospective buyer is not prohibited from owning a firearm because of a prior felony conviction or because he is in one of the several other categories of persons who are precluded from ownership by Federal law—including, among others, those dishonorably discharged from the Armed Forces, habitual drug users, and

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those who have been committed to a mental institution. The type and serial numbers of any weapons purchased are also recorded. The dealer is required to see appropriate identification from the prospective owner, such as a State driver's license, and must make a note of the method of identification on the BATF form 4473. There are stiff criminal penalties for false statements on the form—up to 5 years in prison.

Records relating to firearm transactions must be retained on the premises of the dealer for a period of 20 years. If the dealership is sold, the records must be transferred upon issuance of a new license. If the dealer goes out of business without a successor, the records of transactions must be shipped to BATF's long-term storage facility in Landover, MD. BATF agents may enter gun dealers' facilities and inspect any or all of the records that are required to be maintained by Federal law. These examinations are constrained by the law, which spells out in some detail the conditions (frequency and purpose) under which such investigations may be made. As an example, in the event of a crime involving a firearm, BATF secures a description of the weapon, including the serial number, and traces it from the manufacturer or importer through the distributor to the retail dealer where the records of sale are examined in an effort to trace the weapon to the owner of record.

Because of limitations in manpower, BATF agents concentrate their examination of records on high-volume retail stores, dealers who are suspected of illegal gun sales, and other individuals who come to the attention of the agents through other sources. In their examination of these records, the agents are especially alert to the sale of two or more handguns to the same purchaser within 3 days. Other causes for suspicion include sales to suspected gang members or sales of high-powered weapons to suspected "straw purchasers," those buying guns for others who are ineligible. If an inspection is not satisfactory, BATF (1) may note the problem and reinspect in about 3 months, (2) notify the dealer that his license is in jeopardy if corrective actions are not taken, (3) take other administrative action, or (4) initiate criminal proceedings.

State Practices Regarding Firearms Sales

Currently, 20 States and the District of Columbia, covering 55% of the Nation's population, conduct a criminal history check of persons desiring to purchase a handgun prior to allowing that person to take possession of the weapon (Exhibit 7). Four of these States and D.C. include the purchase of long guns in this requirement. In 10 States and D.C. the burden of responsibility for prepurchase criminal history checks falls solely on local law enforcement agencies (either the police or sheriffs' department); in five States this responsibility is solely that of a State agency; and in another five States agencies at both State and local levels conduct criminal history checks prior to purchase.

The levels of criminal history information accessed in these checks vary among the States. Eight States access files no higher than those maintained at the State level; 12 States and D.C. access national criminal history records.

In most States this criminal history check is done using name, date of birth, and other identifying characteristics such as race and sex, but excluding fingerprints. In six States and D.C. fingerprints are taken from the applicant for use in the criminal history check. In one of these States only a thumbprint is obtained.

The criminal history check is conducted as part of an application process involving a mandatory waiting period. In 15 States this application process and waiting period are required for each handgun purchase (a permit is obtained through this process in four of these States). In six States a successful application for purchase of handguns results in a permit or identification card which allows purchases for a specified or indefinite time period. In the four States and D.C. that require criminal history checks for the purchase of long guns, a successful application results in an identification card, permit, or registration certificate.

In some instances, a criminal history check is conducted after the purchaser of a handgun has taken possession of the weapon. In Pennsylvania, a postpurchase check is conducted by the State agency (in addition to a prepurchase check conducted locally). Two States (Michigan and South Carolina) conduct a criminal history check on handgun purchasers only after the buyer has taken possession of the weapon. In Michigan this check is done by the local agency, and in South Carolina it is done by the State agency.

State residents making their initial purchase of a handgun in the 20 States and D.C. conducting a pre-purchase criminal history check are subject to waiting periods ranging from 2 days to 6 months (Exhibit 8). The two States that conduct only a postpurchase criminal history check on handgun purchasers have no waiting period. One State (Wisconsin) requires a 2-day waiting period for handguns, but does not conduct a criminal history check on the purchasers of handguns. The waiting periods for the purchase of long guns in the four States and D.C. that require a criminal history check for such purchases range from 15 to 60 days. Local jurisdictions in many States may have additional restrictions or requirements for the purchase of handguns and long guns.

Application Requirements for Firearm Purchases in the 10 Largest States

(As of April 1989)

California (pop. 28,074,000)

A written application is required to purchase a handgun. This is submitted by the firearm dealer to the State Department of Justice. Purchaser must wait 15 days before taking possession. Within this 15-day period, the application may be rejected based on the results of name check done against State criminal history files. Eventually, but not necessarily during the 15-day waiting period, the State DOJ conducts a name check against NCIC.

New York (pop. 17,755,000)

A written application is required for the purchase of handguns. This is made to the city or county licensing officer (usually the Police Commissioner or Sheriff). Purchaser pays for gun, then takes receipt and application for permit to local law enforcement agency where fingerprints are taken. Application materials are forwarded to the State Division of Justice Services for State records check and FBI check. Approval must be granted for purchaser to take possession of gun. Processing of application takes up to 6 months. The applicant must complete firearms safety and training course during this time. When the processing is complete, the local law enforcement agency informs the Superior Court Judge who issues the permit. If the application is denied, applicant receives a refund from the dealer. An application for permit is required for possession and purchase of all firearms in New York City.

Texas (pop. 17,192,000)

No written application process is mandated by State law.

Florida (pop. 12,249,000)

No written application process is mandated by State law.

Pennsylvania (pop 11,660,000)

A written application is required for handguns. Within 6 hours, the firearms dealer forwards this application to local Chief of Police or Sheriff. There is a 48-hour waiting period. The local law enforcement official may block the sale during this time. A copy of the application is forwarded to the State Police within 7 days. The State Police conduct a name check against their criminal history files, but generally this is done after the purchaser has taken possession of the weapon. If they get a "hit," a field investigation is initiated.

Illinois (pop. 11,584,000)

A written application must be submitted to the State Police to obtain a Firearm Owner's Identification Card which is required for purchase of firearms. Application is checked against State and Federal criminal history files. If ID card is issued, it is valid for 5 years or until owner becomes prohibited from firearms possession. Waiting periods of 72 hours for handguns and 24 hours for long guns are in effect. Only pre-registered handguns are allowed in Chicago; no new handguns may be brought into the city.

Ohio (pop. 10,779,000)

The written application mandated by State law pertains only to firearms designed for military use; however, some local jurisdictions have enacted stricter legislation. Among major cities, a permit to purchase is required for any firearm in Cleveland, Columbus, Dayton, and Toledo, and a Handgun Identification Card is required for the purchase of handguns in Cleveland, Dayton, and Toledo.

Michigan (pop. 9,231,000)

The Michigan License to Purchase is required for all handgun purchases. This is obtained at the local police agency. Upon purchase, the seller documents the sale on the application and forwards copies to the local police agency and the Department of State Police. The local police are responsible for conducting State and Federal criminal history checks. No waiting period has been established. In Detroit a permit is required for all firearms purchases.

New Jersey (pop. 7,756,000)

A firearm identification card is required to purchase rifles, shotguns, and handguns. This card is valid until holder becomes prohibited from possessing firearms. A written application to the local Chief of Police is required. Fingerprints must be submitted with the application. Applications are sent to State Police for NCIC check and additional investigation. In reality, the processing time for applications is 6–10 weeks (somewhat longer than the time stated in the law). The local law enforcement agency receives the results and issues or denies the card or permit. An applicant may appeal a denial to the Superior Court of the County in which he resides.

North Carolina (pop. 6,512,000)

A permit is required for the purchase of a handgun. Written application is made to the local Sheriff. There is up to a 30-day waiting period for approval. The Sheriff conducts a name check against the State criminal history files. The Sheriff decides on the basis of this check (and any of his own information) whether to accept or reject the application.

Note: All population figures are for 1988.

Illinois Firearm Owner's Identification Card

In 1968, the Illinois legislature enacted the Firearm Owner's Identification Act which provides "a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition within the State of Illinois." The Act provides for the issuance of Firearms Owner's Identification (FOID) cards to persons authorized to acquire or possess firearms or ammunition.

The provisions of the Act are administered by the Illinois State Police. An applicant submits a notarized card application form (with photo) to the Illinois State Police. The applicant must indicate whether he:

(1) Has previously been convicted of a felony;

(2) Has been a patient in a mental institution within the preceding 5 years;

(3) Is addicted to narcotics; or

(4) Is mentally retarded.

Rejection of the application may occur for affirmative responses to any of the above or for perjured responses.

Upon receipt of an application, a criminal history check is conducted utilizing a name index search through both the Illinois and Federal criminal history records systems. An additional check is conducted with the Illinois Department of Mental Health and Disabilities. After determination that the applicant is not an ineligible person, a FOID card is issued with a 5-year expiration date.

Applicants who are rejected may appeal to the Chief of the Identification Bureau of the Illinois State Police for an administrative hearing for reconsideration and must, by personal appearance, present relevant documentation to support a reconsideration. Subsequent appeals must be made through the State Court.

If State authorities learn that a FOID cardholder has become ineligible (for example, by a felony conviction), the card is revoked and a voluntary return of the card is requested. The revocation is noted in the State criminal history files. If the card is not returned voluntarily, it may be retrieved by the local police.

Illinois authorities report that approximately 200,000 FOID cards are issued annually. An estimated 78% of all cards are issued with the first application; the final rejection rate is about 5%. Illinois officials also report that 2,470 individuals were denied a FOID card in 1988 as a consequence of their felony convictions. During the same year, 779 FOID cardholders had their cards revoked as a result of felony convictions.

The Illinois State Police have noted three problem areas for administration of the program:

1. The identification procedures used do not insure a positive identification;

2. Court notification of disposition of felony charges for inclusion in criminal history records has not been accurate or timely; and,

3. Private mental health institutions are not required to share information for the record check.

Virginia's New Point-of-Sale Approval System

The following is a summary of procedures being established to implement the recently enacted Virginia statute requiring felony checks for persons wanting to purchase firearms within the State. The legislation was enacted by both houses of the Virginia legislature in February 1989 and was signed by the Governor in April 1989. The system is to be implemented by November 1, 1989. All information was obtained from the Virginia Department of State Police.

The statute applies to:

1. Handguns with a barrel of less than 5 inches, and

2. Semiautomatic center fire rifles or pistols that expel projectiles by action of an explosion, have a magazine that holds more than 20 rounds of ammunition, and are designed by the manufacturer to accommodate silencers, bayonets, bipods, flash suppressors, or folding stock.

Procedures for implementation. 1. The purchaser presents two pieces of ID to the dealer.

2. The dealer calls the State Police using a toll-free telephone number. (The system will operate 7 days a week from 8 a.m. to 10 p.m. The Records Management Division estimates that they will receive 250,000 inquiries a year.)

3. The dealer identifies himself by giving his firearm dealer ID number and the control number from the State firearm purchaser's application form.

4. The State checks the validity of the ID number and confirms that the control number has been assigned to that dealer. (This is designed to prevent invalid inquiries. A microcomputer system is being developed that will contain dealer identification information and list the control numbers assigned to each dealer.)

5. The dealer provides the State Police with the applicant's name, sex, race, date of birth, and Social Security number.

6. While the dealer remains on the phone, the State Police make a name check against the State index to criminal history records and the State and Federal "wanted persons" lists. A name, sex, race, and date-of-birth match will be required to make a "hit." Virginia

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estimated that 16–20% of the telephone inquiries will result in a "hit." The total time for a phone call is expected to be about 3 minutes.

7. If there is a hit against the State index, the dealer is advised that the sale cannot be completed. State Police then have until the dealer's next close of business day to determine if the applicant was actually convicted of a disqualifying felony. During this time, checks will be made against the State criminal history records, and the Interstate Identification Index (III). If no record is found within this time, the dealer is advised that the sale may proceed. If a disqualifying felony is found, the dealer is advised that the sale may not proceed. The dealer then forwards a copy of the State application form to the State Police to permit cross checking of the control number and an appeal by the applicant.

8. If the sale is approved, the application form (with the dealer's control number) is completed and forwarded to the State Police. A check is then made to verify the data.

9. If there is no "hit" against the State index in the initial inquiry, the dealer is advised that the sale may proceed immediately. The State application form containing the control number is then forwarded to the State Police. The form will have been signed by the applicant attesting to the absence of any disqualifying felonies and providing consent for a criminal history records check. Upon receipt of the application form, a check is initiated against State and Federal criminal history records. If a disqualifying felony record is found, this information and a copy of the application form is forwarded to the dealer and to the chief law enforcement official in the jurisdiction in which the sale was made. It is anticipated that the law enforcement official will issue an arrest warrant and initiate efforts to retrieve the firearm.

10. Appeals are based on the applicant's general right to inspect and correct his record. In general, applicants will be directed to the local police department who may take fingerprints to support the record check. (The State does not require a fingerprint check.) The applicant would also be advised of any out-of-State records and would be assisted in contacting out-of-State officials.

11. The system described above applies to Virginia residents only. Out-of-State residents will undergo a similar process, including a criminal history records check, which may take up to 10 days to complete.

Maintenance of records. If the applicant is approved, a record of the inquiry transaction (including the applicant's name) will be maintained in an active file for 30 days.

If the applicant is disapproved, a log of the inquiry will be maintained for a 2-year period. The applicant has 30 days to appeal the denial under existing State law (Virginia Code 9–192) regarding completeness of criminal history records.

Estimated cost. Virginia officials estimate that this system will require 18 new full-time personnel and will cost $481,000 for 12 months operation ($90,000 for start-up costs and $391,000 for annual operating costs). This will cover staff, space, forms, communications, and equipment.

*Differences between the Virginia system and Option A.*1. The Virginia system applies only to specific categories of firearms and may be further limited to selected categories of dealers.

2. In the Virginia system Federal and interstate criminal history records are not checked prior to sale unless there is a "hit" against the State index. Under Option A, a check is automatically made against State and Federal records.

3. Virginia checks do not require a personal appearance at a law enforcement agency until the final appeal. Under Option A, the secondary verification on which a disapproval is based is supported by a fingerprint check.

4. The Virginia system has strict deadlines for government action, which are not included in the basic Option A.

Section 3. Access to Federal Criminal History Records

Through both its Identification Division and the National Crime Information Center (NCIC), the FBI serves as a central access point for Federal and State criminal history record information. The Identification Division maintains fingerprint-based criminal history records on approximately 25 million individuals who have been arrested at some time in their lives for a serious offense (felony or serious misdemeanor). These records are described below. In addition, the FBI operates the Interstate Identification Index (III), accessed through the NCIC telecommunications network, which notifies law enforcement agencies requesting criminal history information whether a record exists in one of the 20 States (listed below) that currently participate in III. The III is a cooperative Federal-State program for the interstate exchange of criminal history record information that makes available in a timely manner criminal history information to the law enforcement community.

III participating States maintain their own computerized criminal history (CCH) files at the State level and provide information from these files when a request comes either through the NCIC network or directly to the State through the National Law Enforcement Telecommunications System (NLETS). Most States that do not participate in III also maintain automated CCH systems, but these are not directly tied into the NCIC system. These data, if automated, can be accessed by a direct request through NLETS. In addition, when a request comes in to the FBI through NCIC, it provides whatever automated data it has in its Identification Division from nonparticipating States.

In order to provide rapid access to these State and Federal criminal history files, the FBI maintains an automated master name index (MNI) of over 12.5 million records, with over 70,000 new records being added each month. An index record contains an individual's name, aliases, physical description, identifying numbers, fingerprint classification, and the location(s) of the criminal history record(s).

Criminal history records, sometimes call "rap sheets," are cumulative, name-indexed histories of an individual's involvement in the criminal justice system for serious offenses (felonies and serious misdemeanors). Excluded are records on arrests and subsequent dispositions for such offenses as drunkenness, vagrancy, disturbing the peace, and traffic violations (except manslaughter, driving under the influence of alcohol or drugs, and hit-and-run). Offenses committed by juvenile offenders are excluded unless a juvenile is tried as an adult.

Access to these Federal data bases and indexes is through the NCIC system. The NCIC computer equipment is located at FBI headquarters in Washington, DC. Connecting terminals are located throughout the United States, Canada, Puerto Rico, and the U.S. Virgin Islands in police departments, sheriff's offices, State police facilities, Federal law enforcement agencies, and other criminal justice agencies. The system includes 37,000 terminals in 17,000 locations and provides uninterrupted service 24 hours a day, 7 days a week. Over 130 dedicated telecommunications lines link Federal and State agencies together. Each State maintains a central Control Terminal Agency (CTA), which is directly connected to NCIC. Telecommunications lines and equipment within the State provide

State and local criminal justice agencies access to the control terminal.

The NCIC system provides direct, electronic access to the Interstate Identification Index of records maintained in the 20 participating States and to the Identification Division's automated records. This combined index is now known as the Automated Information System-Phase III (AIS–III). Moreover, NCIC maintains several national "hot files." These hot files contain identifying information concerning wanted and missing persons, stolen vehicles, and identifiable stolen property of several types.

In addition to the computerized AIS–III MNI, the Identification Division maintains three criminal history files designed for use by Federal and State agencies:

1. An automated criminal history file which contains rap sheet information on 12.5 million persons arrested for the first time and reported to the FBI since July 1, 1974, or known to the FBI with a year of birth 1956 or later.

2. Manual criminal history records on approximately 8.8 million individuals born in or after 1929 but arrested at some time before July 1, 1974. There is an automated master name index to these data, but it is available only for in-house use and not through the NCIC network. The manual rap sheet jackets are maintained at various locations in the Washington, DC area. Several of the options detailed above require merging the index for these records into the AIS–III index.

3. Manual criminal history records on about 3.6 million offenders born before 1929 whose files are maintained by the Identification Division. There is no automated index to this older information.

In general, indexes at the Federal level are arrest-based files containing only identifying information on individuals arrested for "fingerprintable" offenses. See Exhibit 4 for an overview of these indexes and data bases.

An authorized criminal justice agency can make an inquiry (a QH message) on name, sex, race, date of birth, and numeric identifiers such as Social Security Number, State Identification Number (SID), or FBI number. Most initial searches are on name, sex, race, and date of birth, if known. In response to a QH inquiry, the requester will be provided one of the following responses:

1. A single matching record response—a "hit."

2. A multiple matching response, up to a maximum of 15 records—a "hit."

3. A "no record" response—a "no hit."

A "no hit" response does not necessarily mean that there is no criminal history record on the individual being investigated. The FBI Identification Division maintains fingerprints on approximately 25 million persons (21 million automated). Of these, about half, 12.5 million, are contained in the AIS–III MNI, discussed above. In order to access the information in the additional records maintained by the FBI, a law enforcement agency can submit a fingerprint card, usually through the mail, to the Identification Division for a more detailed search. Additionally, there may be criminal history information at the local or State level for which the arrest fingerprint card was never forwarded to the FBI.

As indicated above, a positive response to an NCIC inquiry (called a QH response) can result in either a single record response (one individual) or a multiple record response (up to 15 individuals). The response provides the requester with three types of information:

1. The person's name, including aliases, physical descriptors, and numerical identifiers.

2. The identity of the data base(s) containing the criminal history record information.

3. The means to be used to obtain the record(s).

In order to retrieve a specific criminal history, a criminal history record request (QR message) containing the person's FBI or SID number must be used. The identifiers are obtained from the name-based QH inquiry or from other sources such as State CCH records or investigative files. The QR message will result in an automatic notification to all data bases identified as having information on the subject being investigated. The CCH systems of the States participating in III will be queried and the individual's rap sheet from one or more III States will automatically be forwarded via NLETS. FBI records on Federal offenders and nonparticipating III States will be sent on-line using NCIC telecommunications.

If the automated name index for the records of the 8.8 million persons born in or after 1929 and arrested before July 1, 1974, is integrated into the AIS–III index, then under the initial verification procedure proposed in Option A (telephone check by the gun dealer), an NCIC inquiry could be conducted within a matter of minutes on approximately 21.3 million individuals who have been arrested for a felony or serious misdemeanor.

The 20 States participating in III as of June 1989:

California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Oregon
Georgia	Pennsylvania
Idaho	South Carolina
Michigan	Texas
Minnesota	Virginia
Missouri	Wyoming

Section 4. Study of Other Persons Ineligible to Purchase Firearms

Section 6213(c) of the Anti-Drug Abuse Act of 1988 requires the Attorney General to conduct a feasibility study to determine whether an effective method can be established for identifying "other persons" ineligible to purchase firearms (that is, other than convicted felons). Such persons include: fugitives from justice, those who use or are addicted to illegal drugs, those who have been adjudicated as mentally defective or have been committed to a mental institution, illegal aliens, those dishonorably discharged from the Armed Forces, and those who have renounced their American citizenship. This study must be submitted to Congress by May 18, 1990.

The Task Force decided that this parallel activity ought to be initiated by a private contractor with expertise in criminal justice and information systems. In July of this year the Bureau of Justice Statistics contracted with Enforth Corporation of Cambridge, Massachusetts to carry out this work. The Enforth study will include the following elements:

- The availability of existing data bases that can be utilized to identify ineligible individuals;
- The quality of these data bases in terms of completeness and accuracy of records;
- The remote accessibility of the data bases through a telecommunications system, particularly, the method and cost of access;
- Legal restrictions on the use of the data and an analysis of the relevant privacy and confidentiality considerations of accessing such data; and
- The feasibility of linking these data bases with a felon identification system.

Part V. Exhibits

1. Felon identification system for firearm sales Schematic overview
2. Option A: Telephone check by gun dealer Immediate verification
3. Option A: Secondary verification Option B: Prior approval
4. National access to criminal history data
5. Firearms transaction record, BATF form 4473

6. Estimated costs for felon identification options
7. States requiring criminal history checks for firearm sales
8. Maximum waiting periods required for initial firearm purchase by a State resident

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Felon identification system for firearm sales

Schematic overview

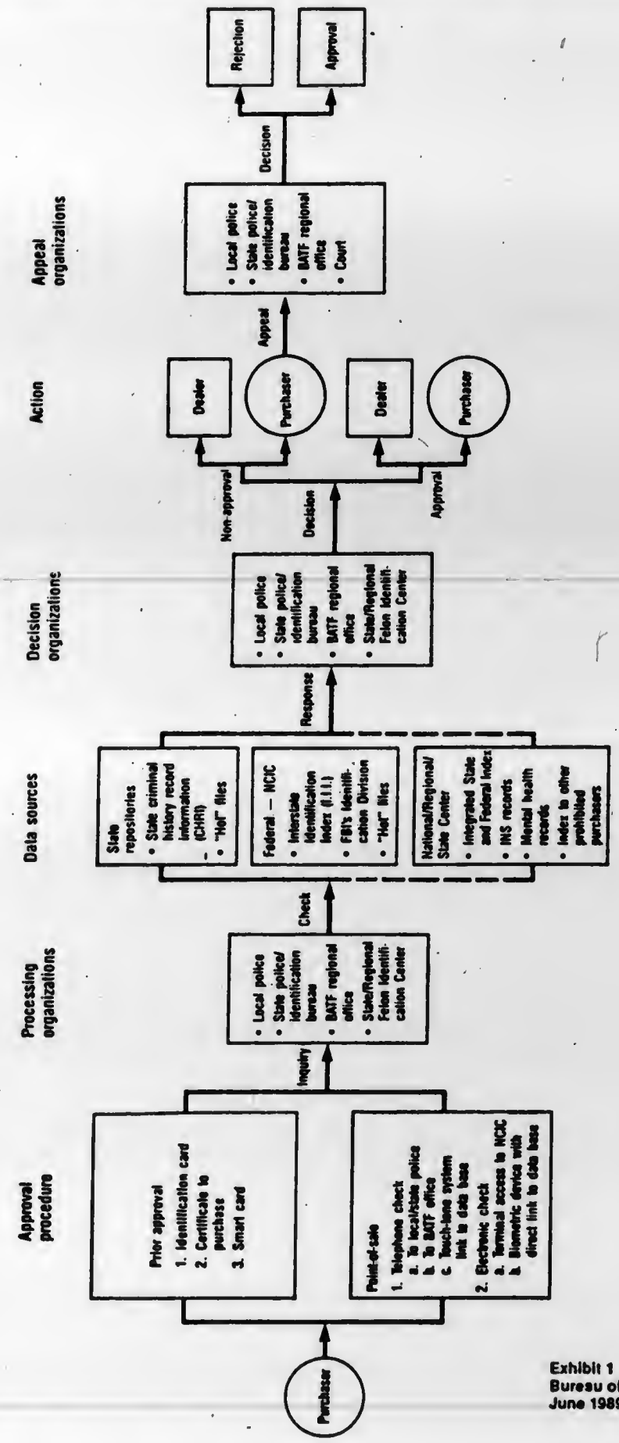


Exhibit 1
Bureau of Justice Statistics
June 1989

Option A: Telephone check by gun dealer
Immediate verification

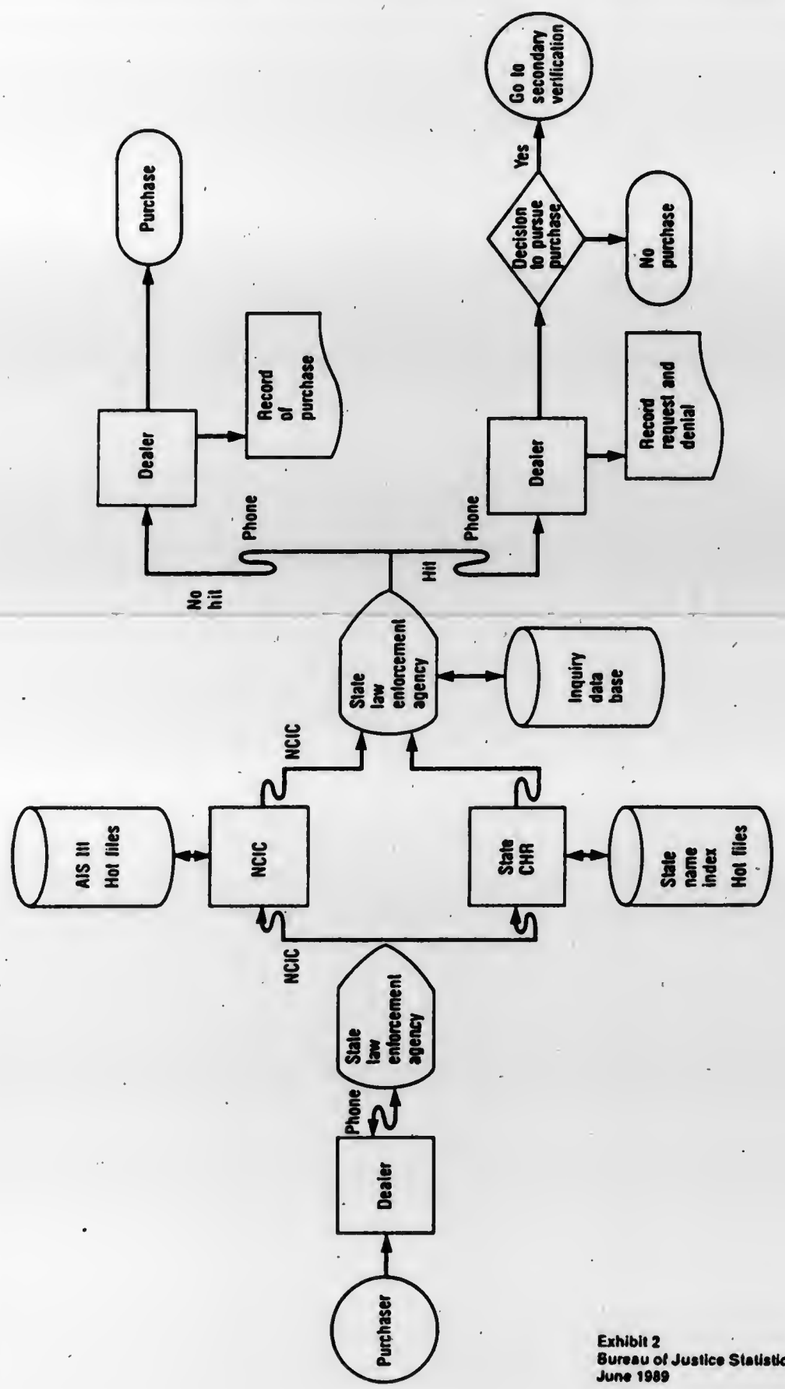


Exhibit 2
Bureau of Justice Statistics
June 1989

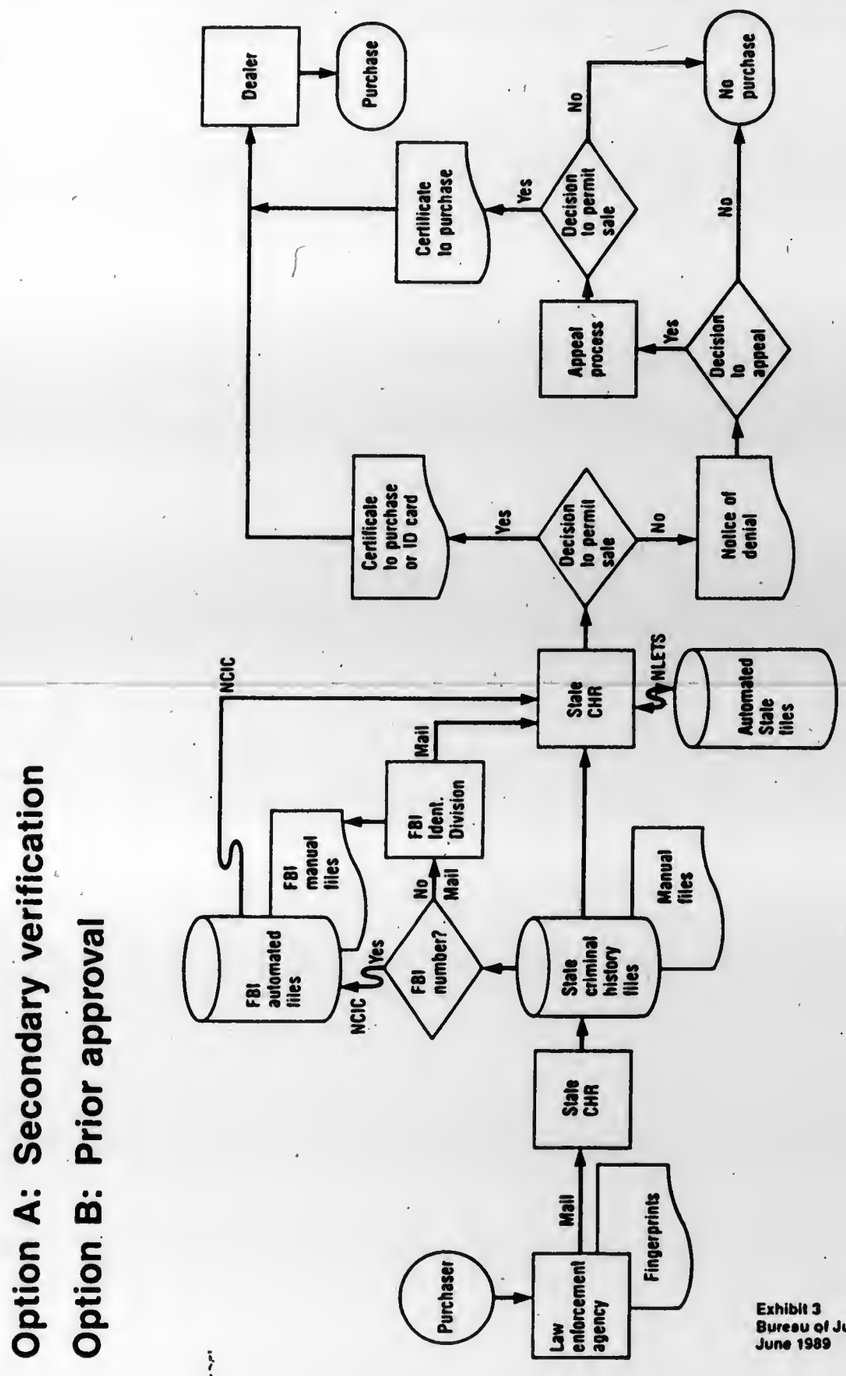


Exhibit 3
Bureau of Justice Statistics
June 1989

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National access to criminal history data

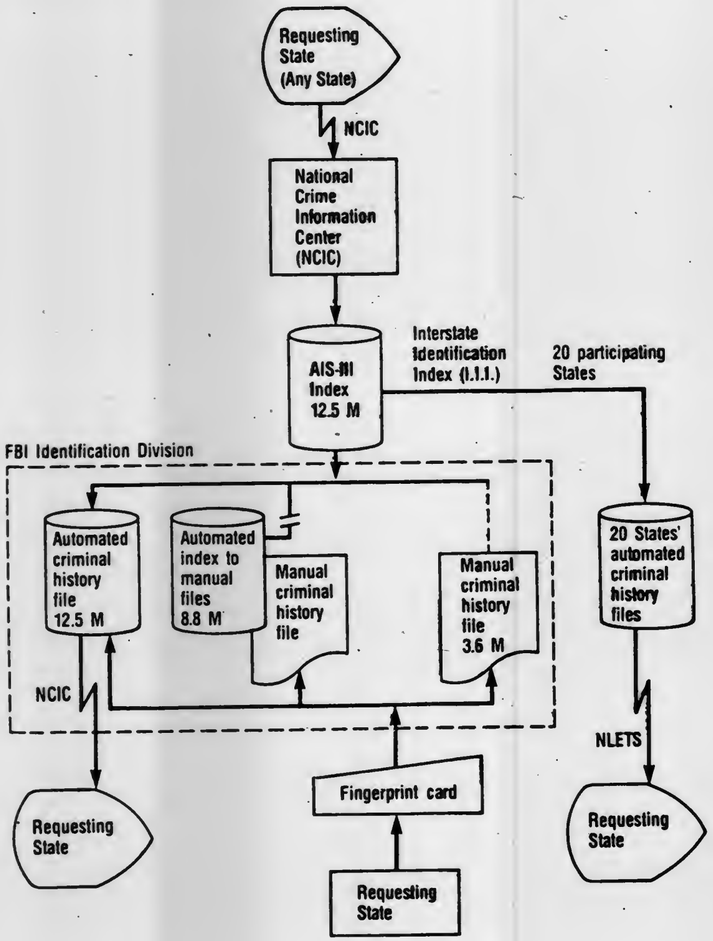


Exhibit 4
Bureau of Justice Statistics
June 1989

Form Approved: OMB No. 1512-0129 (5/31/91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART I — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A — MUST BE COMPLETED PERSONALLY BY TRANSFEREE *(BUYER) (See Notices and Instructions on reverse)*

1. TRANSFEREE'S *(Buyer's)* NAME *(Last, First, Middle)* [ ] MALE [ ] FEMALE | 2. HEIGHT | 3. WEIGHT | 4. RACE

5. RESIDENCE ADDRESS *(No., Street, City, County, State, ZIP Code)* | 6. DATE OF BIRTH MONTH DAY YEAR | 7. PLACE OF BIRTH *(City and State or City and Foreign Country)*

8. CERTIFICATION OF TRANSFEREE *(Buyer)*—An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? **A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.*		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is *not* required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship.	

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S *(Buyer's)* SIGNATURE | DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) *(See Notices and Instructions on reverse)*

THIS PERSON DESCRIBED IN SECTION A: [ ] IS KNOWN TO ME [ ] HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

9. TYPE OF IDENTIFICATION *(Driver's license or identification which shows name, date of birth, place of residence, and signature.)* | 10. NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described below and on the back to the person identified in Section A.

11. TYPE *(Pistol, Revolver, Rifle, Shotgun, etc.)*	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15 MANUFACTURER *(and importer, if any)*
1.				
2.				

16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR *(Seller)* *(Hand stamp may be used)* | 17. FEDERAL FIREARMS LICENSE NO. *(Hand stamp may be used)*

THE PERSON MAKING THE ACTUAL FIREARMS SALE MUST COMPLETE ITEMS 18 THROUGH 20

18. TRANSFEROR'S *(Seller's)* SIGNATURE | 19. TRANSFEROR'S TITLE | 20. TRANSACTION DATE

ATF F 4473 (5300.9) PART I (1-88)

Exhibit 5

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11. TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.	15 MANUFACTURER (and importer, if any)
3.				
4.				
5.				
6.				
Complete ATF F 3310.4 for multiple purchases of handguns (See item 10 below)				

NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922 and 923.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearms laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *If that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a writte., statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and

(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

8. Additional firearms purchases made by the same buyer may not be added to this form after the seller has signed and dated it.

9. If more than six firearms are involved, the identification required by Section B, items 11 through 15, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than six weapons may be on a separate sheet of paper which must be attached to the form covering the transaction.

10. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

11 The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178. In determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

12. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part I part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part I are filed in the same manner.

DEFINITIONS

1. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

2. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

3. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

*U.S. GPO: 1989 — 241-974/20

ATF F 4473 (5300.9 PART I (1-88)

Exhibit 5

Form Approved: OMB No. 1512-0480 (3/31/ 91)

DEPARTMENT OF THE TREASURY — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FIREARMS TRANSACTION RECORD

PART I — LOW VOLUME — OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

THIS FORM MAY BE USED ONLY BY DEALERS SELLING OR DISPOSING OF 50 OR LESS FIREARMS PER YEAR (See Instructions On Reverse)

NOTE: Prepare in original only. All entries on this form must be in ink. See Notices and Instructions on back.

1 TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)

2. FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)

3 FIREARM RECEIVED FROM:
a NON LICENSEE (Name & address)
OR
b LICENSEE (Name & License Number)

4. DATE RECEIVED

5 DESCRIPTION OF FIREARM

MANUFACTURER (and importer, if any)	TYPE (Pistol, Revolver, Rifle, shotgun, etc.)	MODEL	CALIBER OR GAUGE	SERIAL NUMBER

SECTION A — MUST BE COMPLETED PERSONALLY BY NONLICENSED TRANSFEREE (BUYER) (See NOTICE, Instructions on Reverse)

6 TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) ☐ MALE ☐ FEMALE

7 HEIGHT | 8. WEIGHT | 9 RACE

10 RESIDENCE ADDRESS (No., Street, City, State, ZIP Code)

11. DATE OF BIRTH (MONTH / DAY / YEAR)

12. PLACE OF BIRTH (City and State or City and Foreign Country)

13. CERTIFICATION OF TRANSFEREE (Buyer) — An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question:

a. Are you under indictment or information* in any court for a Crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.

b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).

c. Are you a fugitive from justice?

d. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.

e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?

f. Have you been discharged from the Armed Forces under dishonorable conditions?

g. Are you an alien illegally in the United States?

h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?

I hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a felony.

14. TRANSFEREE'S (Buyer's) SIGNATURE | 15. DATE

SECTION B — TO BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and instructions on reverse)

THIS PERSON DESCRIBED IN SECTION A
☐ IS KNOWN TO ME
☐ HAS IDENTIFIED HIMSELF/HERSELF TO ME IN THE FOLLOWING MANNER

16. TYPE OF IDENTIFICATION (Driver's license or identification which shows name, date of birth, place of residence, and signature)

17 NUMBER ON IDENTIFICATION

On the basis of (1) the statements in Section A, (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) described to the person identified in Section A.

18 TRANSFEROR'S (Seller's) SIGNATURE | 19. DATE

SECTION C — TO BE COMPLETED WHEN THE TRANSFEREE (BUYER) IS A FEDERAL FIREARMS LICENSEE (INCLUDES NON OVER THE COUNTER)

20 ENTER FFL'S NAME AND LICENSE NUMBER	21 TRANSFEROR'S (Seller's) SIGNATURE	22. DATE

ATF F 4473 (5300.24) PART I (LV) (6-88)

Exhibit 5

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NOTICES AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C. 922, 923, and 926.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he/she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. WARNING—the sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or "straw purchaser" for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his/her citizenship, or by one who is an alien illegally in the United States.

   EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.

   KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State instead of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

4. The nonlicensed transferee (buyer) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

5. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating:

   (a) that the firearm is being acquired for the use of and will be the property of that business entity, and

   (b) the name and address of that business entity.

o U S GPO 1988-0-202-929-85721

INSTRUCTIONS TO TRANSFEROR (SELLER)

6. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

7. The transferor (seller) of a firearm will, in every instance where Section A is completed, complete Section B of the form.

8. The transferor (seller) of a firearm will, in every instance, complete Section C of the form if disposing of a firearm to a transferee (buyer) who is a Federal Firearms Licensee. (Applies to both over the counter and non over the counter transactions between licensed dealers.)

9. In addition to completing this record, you must report any multiple sale or other disposition of pistols or revolvers on ATF F 3310.4 in accordance with 27 CFR 178.126a.

10. The transferor (seller) of a firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929 and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178, in determining the lawfulness of the sale or delivery of a rifle or shotgun to a non-resident, the transferor is presumed to know applicable State laws and published ordinances in both States.

11. Each transferor (seller) maintaining firearms acquisition and disposition records pursuant to 27 CFR 178.124a (Low Volume Dealers) shall retain form 4473-LV, Part I and II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473-LV, Part I and II, reflecting the transferor's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

DEFINITIONS

1. Low volume dealer—A licensed dealer contemplating the disposition of not more than 50 firearms within the succeeding 12-month period. Such 12-month period commences from the date the licensed dealer first records the purchase or acquisition of a firearm on the reverse side of this form. If during the course of the 12 month period, dispositions exceed the 50 firearm limitation, the licensed dealer should begin keeping standard records required in 27 CFR 178 for non low volume dealers.

2. Over-the-counter Transaction—The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer), occurring on the transferor's licensed premises. This includes the sale or other disposition of a rifle or a shotgun to a non-resident transferee (buyer) occurring on such premises.

3. Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms.

4. Under indictment or convicted in any court—An indictment or conviction in any Federal, State or Foreign court.

Form Approved: OMB No. 1512-0130 (08/29/91)

DEPARTMENT OF THE TREASURY—BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS
FIREARMS TRANSACTION RECORD
PART II—NON-OVER-THE-COUNTER

TRANSFEROR'S TRANSACTION SERIAL NUMBER

NOTE: Prepare in duplicate. All entries on this form must be in ink. See Notices and Instructions on back.

SECTION A—MUST BE COMPLETED PERSONALLY BY TRANSFEREE (BUYER) (See Notices and Instructions on reverse).

1 TRANSFEREE'S (Buyer's) NAME (Last, First, Middle)
☐ MALE ☐ FEMALE

2 HEIGHT | 3 WEIGHT | 4. RACE

5 RESIDENCE ADDRESS (No., Street, City, County State, ZIP Code)

6 DATE OF BIRTH (MONTH / DAY / YEAR)

7 PLACE OF BIRTH (City and State or City and Foreign Country)

8 CERTIFICATION OF TRANSFEREE (Buyer)—An Untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.

a. Are you under indictment or information* in any court for a crime punishable by imprisonment for a term exceeding one year? *A formal accusation of a crime made by a prosecuting attorney, as distinguished from an indictment presented by a grand jury.		c. Are you a fugitive from justice?	
		d. Are you an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (NOTE: A "yes" answer is necessary if the judge could have given a sentence of more than one year. A "yes" answer is not required if you have been pardoned for the crime or the conviction has been expunged or set aside, or you have had your civil rights restored and, under the law where the conviction occurred, you are not prohibited from receiving or possessing any firearm).		e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?	
		f. Have you been discharged from the Armed Forces under dishonorable conditions?	
		g. Are you an alien illegally in the United States?	
		h. Are you a person who, having been a citizen of the United States, has renounced his/her citizenship?	

Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am 21 years or more of age, or that, in the case of a shotgun or rifle, I am 18 years or more of age; that I am not prohibited by the provisions of Chapter 44 of Title 18, United States Code, from receiving a firearm in interstate or foreign commerce, and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are:

TITLE | NAME

ADDRESS

I also hereby certify that the answers to the above are true and correct. I understand that a person who answers "Yes" to any of the above questions is prohibited from purchasing and/or possessing a firearm, except as otherwise provided by Federal law. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.

TRANSFEREE'S (Buyer's) SIGNATURE | DATE

SECTION B—MUST BE COMPLETED BY TRANSFEROR (SELLER) (See Notices and Instructions on reverse)

On the basis of (1) the statements in Section A; (2) my notification of the chief law enforcement officer designated above, and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm described below to the person identified in Section A.

9 TYPE (Pistol, Revolver, Rifle, Shotgun, etc.) | 10 MODEL | 11 CALIBER OR GAUGE | 12 SERIAL NO.

13 MANUFACTURER (and importer, if any)

14. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)

15 FEDERAL FIREARMS LICENSE NO. (Hand stamp may be used)

16. TRANSFEROR'S (Seller's) SIGNATURE | 17 TRANSFEROR'S TITLE | 18. TRANSACTION DATE

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PAPERWORK REDUCTION ACT NOTICE

The information required on this form is in accordance with the Paperwork Reduction Act of 1980. The purpose of the information is to determine the eligibility of the buyer (transferee) to receive firearms under Federal law. The information is subject to inspection by ATF officers. The information on this form is required by 18 U.S.C 922.

IMPORTANT NOTICES TO TRANSFEROR (SELLER) AND TRANSFEREE (BUYER)

1. Under 18 U.S.C. 921-929 , firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under 18 U.S.C. 921-929 may determine if he may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms. This form should not be used for sales or transfers where neither person is licensed under 18 U.S.C. 921-929.

2. Warning—The sale or delivery of a firearm by a licensee to an eligible purchaser who is acting as an agent, intermediary or 'straw purchaser' for someone whom the licensee knows or has reasonable cause to believe is ineligible to purchase a firearm directly, may result in a violation of the Federal firearm laws.

3. The transferee (buyer) of a firearm should be familiar with the provisions of the law. Generally, 18 U.S.C. 921-929 prohibit the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who is under indictment or information for, or who has been convicted of, a crime punishable by imprisonment for a term exceeding one year, by one who is a fugitive from justice, by one who is an unlawful user of, or addicted to, marihuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance, by one who has been adjudicated mentally defective or has been committed to a mental institution, by one who has been discharged from the Armed Forces under dishonorable conditions, by one who, having been a citizen of the United States, has renounced his citizenship, or by one who is an alien illegally in the United States.

EXCEPTION: For one who has been convicted of a crime punishable by imprisonment for a term exceeding one year, the prohibition does not apply *if that individual has received a pardon for the crime or the conviction has been expunged or set aside or under the law where the conviction occurred that individual has had his/her civil rights restored and as a result of the civil rights restoration is not prohibited from receiving or possessing firearms.*

KNOW YOUR CUSTOMER—Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. Satisfactory identification should verify the buyer's name, date of birth, address, and signature. Thus, a driver's license or an identification card issued by a State in place of a license is particularly appropriate. Social Security cards are not acceptable because no address or date of birth is shown on the card. Also, alien registration receipt cards and military identification cards are not acceptable by themselves because the State of residence is not shown on the cards. However, although a particular document may not be sufficient to meet the statutory requirement for identifying the buyer, any combination of documents which together disclose the required information concerning the buyer is acceptable.

INSTRUCTIONS TO TRANSFEREE (BUYER)

1. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct. However, if the buyer is unable to read and/or write, the answers may be written by other persons, excluding the dealer. Two persons (other than the dealer) will then sign as witnesses to the buyer's answers and signature.

• U.S.GPO 1988-O-202-929/85709

2. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will complete and sign Section A of the form and attach a written statement, executed under penalties of perjury, stating

(a) that the firearm is being acquired for the use of and will be the property of that business entity, and
(b) the name and address of that business entity.

INSTRUCTIONS TO TRANSFEROR (SELLER)

1. Should the buyer's name be illegible the seller shall print the buyer's name above the name printed by the buyer.

2. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

3. If more than one firearm is involved, the identification required by Section B, Items 9 through 13, must be provided for each firearm. The identification of the firearms transferred in a transaction which covers more than one weapon may be on a separate sheet of paper which must be attached to the form covering the transaction

4. The transferor (seller) of a firearm in a intrastate non-over-the-counter transaction must forward by registered or certified mail (return receipt requested) the copy of the form to the chief law enforcement officer of the transferee's (buyer's) locality of residence. The transferor must delay shipment or delivery of the firearm for a period of at least 7 days following receipt of the post office notification on the acceptance or non-acceptance of the envelope. The transferor will retain as a part of the records required to be kept by 18 U.S.C. 921-929 the original form with evidence of the receipt or rejection of the notification forwarded to the chief law enforcement officer of the transferee's locality of residence.

5. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of 18 U.S.C. 921-929, and the Federal firearms regulations, Title 27, Code of Federal Regulations, Part 178.

6. After you have completed the firearm transaction, you must make the completed, original copy of the ATF F 4473, Part II part of your permanent firearms records including any supporting documents. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), so long as all of your completed Forms 4473, Part II are filed in the same manner.

NOTICE TO LAW ENFORCEMENT OFFICIALS

This copy of ATF Form 4473, Part II, is to advise you of a firearms transaction involving a resident in your jurisdictional area. The firearm described in Section B will not be shipped or delivered to the transferee (buyer) identified in Section A for a period of at least seven days following receipt of the notification of your acceptance or refusal of delivery, by registered or certified mail, of the form.

DEFINITIONS

1 *Non-over-the-Counter Transaction*—A mail-order transaction, or other transaction, where the transferee (buyer) does not appear in person at the transferor's (seller's) premises.

2 Published Ordinances—The publication (ATF P 5300.5) containing State firearms laws and local ordinances which is annually distributed to Federal firearms licensees by the Bureau of Alcohol, Tobacco and Firearms

ATF F 4473 (5300.9) PART II (1-88)

Exhibit 5

Part V. Exhibits

Estimated costs for felon identification options (in millions of dollars)

Options	Total	Federal Government	State and local government	Gun dealer
Startup costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 36-44	$ 13-17	$ 23-26	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	9,590-27,144	47-51	93	9,450-27,000
(2) Commercial dealers only [b]	3,457-9,636	40-44	92	3,325-9,500
A4. Biometric identification card [c]				
(1) All dealers	198-368	13-17	23-26	162-324
(2) Commercial dealers only [b]	93-158	13-17	23-26	57-114
B. Prior approval — FOID card	148-153	77-81	72	•
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	344-572	77-81	105-167	162-324
(2) Commercial dealers only [d]	239-362	77-81	105-167	57-114
Annual operating costs				
Options				
A. Telephone check by gun dealer and secondary verification	$ 53-70	$ 13-18	$ 40-53	---
A3. Live scan of fingerprints by dealer [a]				
(1) All dealers	3,047-8,347	104-109	108-138	2,835-8,100
(2) Commercial dealers only [b]	1,172-3,063	86-91	98-122	988-2,850
A4. Biometric identification card [c]				
(1) All dealers	102-168	13-18	40-53	49-97
(2) Commercial dealers only [b]	70-105	13-18	40-53	17-34
B. Prior approval — FOID card	136-161	65-70	71-91	•
B1. Live scan by law enforcement and biometric check by dealer [a]				
(1) All dealers	203-295	65-70	89-128	49-97
(2) Commercial dealers only [d]	171-232	65-70	89-128	17-34

Note: Detail may not add to total because of rounding.
--- Unknown.
• Negligible.
[a] Partial estimates only.
[b] Assumes that the non-commercial dealers (an estimated 65% of all dealers) would use the basic option A.
[c] Excludes all costs of producing and distributing the biometric cards.
[d] Assumes that the non-commercial dealers (65% of all dealers) would use basic option B.

Exhibit 6
Bureau of Justice Statistics
June 1989

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Part V. Exhibits

States requiring criminal history checks for firearm sales as of June 1989

States requiring criminal history checks	Type of firearm	Application required for--	Special requirements	Agency conducting checks	Highest level files examined
Prior to sale:					
Alabama	handguns	purchase		local	State
California	handguns	purchase		State	national
Connecticut	handguns	purchase		local, State	State
District of Columbia	all guns[a]	registration certificate	fingerprints gun law exam	local	national
Hawaii	long guns, handguns	permit (1 year) permit (each sale)	fingerprints	local	national
Illinois	all guns	ID card (5 years)		State	national
Indiana	handguns	license (4 years)	fingerprints	local, State	State
Iowa	handguns	permit (1 year)	fingerprints	local, State	national
Maryland	handguns	purchase		State	national
Massachusetts	all guns	ID card		local, State	national
Minnesota	handguns	permit (1 year)		local	national
Missouri	handguns	permit (each sale)		local	State
New Jersey	long guns handguns	ID card permit (each sale)	fingerprints	State	national
New York	handguns	permit	fingerprints safety course	State	national
North Carolina	handguns	permit (each sale)		local	State
Oregon	handguns	purchase		local	national
Pennsylvania	handguns	purchase		local, State[b]	State
Rhode Island	handguns	purchase	safety course	local, State	State
South Dakota	handguns	purchase		local	State
Tennessee	handguns	purchase	thumbprint	local	national
Washington	handguns	purchase		local	national
Only after sale:					
Michigan	handguns	license (each sale)	safety inspection	local	national
South Carolina	handguns	purchase		State	State

[a] Only preregistered handguns are allowed in the District of Columbia. No new handguns may be brought into the city.
[b] Criminal history check conducted by the local agency before the sale and by the State agency after the sale.

Exhibit 7
Bureau of Justice Statistics
June 1989

Part V. Exhibits

Maximum waiting periods required for initial firearm purchase by a State resident

Handguns		Long guns	
180 days	New York	60 days	District of Columbia
60 days	Indiana	40 days	Massachusetts
40 days	Massachusetts	30 days	Illinois
30 days	Illinois		New Jersey
	New Jersey	15 days	Hawaii
	North Carolina		
15 days	California		
	Hawaii		
	Tennessee		
14 days	Connecticut		
9 days	Missouri		
7 days	Maryland		
	Minnesota		
5 days	Oregon		
	Washington		
3 days	Iowa		
	Rhode Island		
	South Dakota		
2 days	Alabama		
	Pennsylvania		
	Wisconsin		

Exhibit 8
Bureau of Justice Statistics
June 1989

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Part VI. Appendix

Summary of comments on the Draft Report

Background

Section 6213 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4360, directed the Attorney General to develop a system for immediate and accurate identification of felons who attempt to purchase firearms and to report to the Congress a description of that system by 18 November 1989. Pursuant to that mandate, the Attorney General requested the Assistant Attorney General of the Office of Justice Programs to establish a Task Force to develop a range of options that would comport with the statute.

On June 26, 1989, the *Draft Report of the Task Force for Identifying Felons Who Attempt to Purchase Firearms* was published in the **Federal Register** (54 FR 26,902 (1989)). This publication solicited comments from interested persons for a 30-day period, though the Task Force group was able to receive, process and analyze a number of comments received thereafter.

Some 114 comments were received in all, including those from Governors and other representatives of 20 State governments plus the District of Columbia and the Territory of Guam (all hereafter referred to as States), from 26 organizations (plus supplemental comments from 2 of them), and from 64 persons, including 4 Members of Congress.

Of the 26 organizations responding other than the State governments, 12 were classified as law enforcement organizations (including 2 municipal police departments), 5 as civil liberties organizations (including 3 firearms rights advocacy groups), 4 as firearms organizations (both sporting and general), 2 as gun control organizations, and 3 as consultants. The following is a section-by-section summary of the 114 comments received on the June 26, 1989, **Federal Register** publication entitled *Draft Report on Systems for Identifying Felons Who Attempt To Purchase Firearms*. Some reader comments resulted in changes that have been incorporated in the Final Report.

The reader should keep in mind that this is, after all, intended to be a general summary, not a summary of each individual comment. An effort has been made to include representative comments from the entire spectrum of opinion.

Just as the Task Force attempted to remain assiduously neutral in preparing a complete and fair description of various alternatives in the *Draft Report*, so too, the compilers of this summary have done their best to employ the same standard of neutrality in preparing this analysis of the comments received.

The Task Force is grateful to all who have submitted comments and is cognizant of the thousands of hours involved in preparing them. As a whole the quality of the comments was outstanding, obviously representing much careful and thoughtful consideration of this difficult problem in American society.

Summary of comments on—

Foreword
Part I. Introduction and summary of findings
Part II. Options for a felon identification system
Section 1. Schematic overview
Section 2. Point-of-sale approval systems
Option A: Telephone check by gun dealer with secondary verification
Option A1: Terminal access by gun dealer to disqualifying information
Option A2: Touch-tone telephone access by gun dealer to disqualifying information
Option A3: Live scan of fingerprints by gun dealer
Option A4: Biometric identification card
Section 3. Prior approval systems
Option B: Firearm Owner's Identification (FOID) card
Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer
Option B2: Smart card containing disqualifying information
Section 4. Appeal procedures
Part III. Legal and policy issues
Part IV. Supplementary materials
General comments

Comments

Foreword

A number of comments, from both groups and individuals, suggested the first step in a project of this nature should be an ambitious, thorough effort to make criminal record histories accurate and complete. Several writers noted this would produce many benefits to the criminal justice system beyond felon identification of firearm purchasers.

One firearms organization felt that the discussion of the point-of-sale vs. pre-approval systems failed to consider developing and enhancing a system to identify and punish felons who traffic in stolen firearms, as well as a dealer notification program.

One of the Congressional parameters set forth in the Anti-Drug Abuse Act of 1988 governing the report of the Task Force was that any system must be "immediate." The Task Force did not report on any system involving a waiting period, or cooling off period as it is sometimes called.

Some groups and individuals, including a Member of Congress, commented that there should be no waiting period. Others favored a waiting period. Times suggested were 5 days, 7 days, 7 or more days, 7 to 10 days, 2 weeks, and 15 days. One individual, a Member of Congress, advocated the immediate implementation of a 7-day national waiting period. One gun control group favored the 15-day waiting period on handguns, but made no waiting period recommendation as to long guns. One Governor, whose State has had a 7-day waiting period of long standing noted that despite the legislative immediacy requirement governing the Task Force Report, he felt that ultimately Congress should provide some type of waiting period to curtail firearms purchases, especially handguns, during the "heat of passion." Another State response (from the State public safety commissioner) preferred Option B, but would add a waiting period.

At the same time, a firearms group asserted that a statement in the Foreword of the *Draft Report* puts the waiting-period myth to rest: Waiting periods considerably shorter than the 4 to 6 weeks required for a fingerprint-based, prior-approval system (such as 7 days) would not significantly enhance the reliability of point-of-sale systems.

Other comments on statements mentioned in the Foreword included an objection raised by a firearms organization to the *Draft Report* observation that felons may obtain the tools of their deadly trade through straw men who lack a criminal record, and therefore may be eligible to purchase firearms for the felon. Rather, the organization said, felons typically obtained weapons through their own crimes or from a fence or other illicit source.

A civil liberties group believed that the options in the *Draft Report* do not further the goals of the Task Force to "preserve legitimate rights to privacy and firearms ownership, while at the same time enhancing the ability of law enforcement to carry out its responsibility to maintain the domestic peace."

Part I.

Introduction and summary of findings

One of the State comments suggested that the degree of danger generated by categories of prohibited purchasers in addition to felons (drug users, mental incompetents, illegal aliens, etc.) is of equal importance and it may be premature to consider systems to prevent firearms from being sold to prohibited purchasers until the May 1990 report on the other groups is published.

Scope of the problem

Several writers noted that elsewhere (in Sec. II) the *Draft Report* cites a study stating that five out of six felons have acquired firearms elsewhere than by retail purchase. They were concerned because the *Draft* Report addresses only retail sales. Typical of these comments was one from a State patrol chief, writing for his State at the request of his Governor, who thought that because so many felons obtained weapons elsewhere, it did not appear to him that the tremendous costs of implementing any system would be cost-effective.

One law enforcement organization wondered what percentage of the completed BATF (Bureau of Alcohol, Tobacco and Firearms) Forms 4473 has been shown to be falsified. A Governor reported that in his State, officials have not identified a problem of felons purchasing firearms from dealers. And one individual writer questioned whether felons ever actually try to buy weapons from licensed gun dealers.

A consulting company whose president is a former Federal official familiar with firearms issues suggested that project cost estimates are greatly inflated by the 60–70% of BATF-licensed dealers who do not in fact depend on the sale of firearms for a significant portion of their income. This writer suggested that BATF remove these pseudo-dealers from the dealer category by using substantially higher license fees or qualifications based on volume of business or by establishing a nondealer license category. This would allow BATF to concentrate its resources more effectively, and thus sharply drop costs related to identification systems. Another individual suggested that BATF recall all licenses that are not being used in a State-, county-, or city-licensed business. And a firearms group suggested it might be possible to exempt entirely or apply a special system to low-volume dealers such as hobbyists.One individual noted that computer systems based on the use of telephone lines would not work at gun shows, where many dealers do much of their business.

Key elements of a felon identification system

On the topic of felon definition, one civil liberties group noted that it is not easy to find a uniform definition of the term felon and that this difficulty should be addressed before either general or specific proposals are considered. Another civil liberties group felt that a major impairment existed because data bases do not show for how long a person convicted of a crime could have been imprisoned, and thus it cannot be determined if the statutory definition of felon (1 year imprisonment or longer) had been met.

A law enforcement group believed that BATF should strongly urge the States to improve their reporting, since it is the responsibility of the States to report felony convictions accurately.

On the issue of immediacy, a firearms organization felt that term meant 1 to several minutes and that a 4- to 6-week application waiting period was not immediate and beyond the congressional mandate.

As to accuracy, this same group felt that any system that denied 725,000 persons yearly the right to buy firearms was clearly not accurate and that if the Task Force found an accurate system impossible to devise, it should simply say so.

A Member of Congress felt the immediacy requirement precluded implementation of any of the prior-approval options.

The quality of felony conviction data

Numercus comments, from both individuals and groups, addressed the issue of the quality of felony conviction data. Some felt that nothing should be done until this problem was solved. Views expressed included the following:

Criminal records should be made current before any new laws are enacted.

Since data on noneligible purchasers are incomplete, the systems proposed would be ineffectual. The easy availability of guns through other sources would create contempt for the law.

Innocent people could be prevented from purchasing firearms, and felons could slip through a system based on these records.

Congress should focus on the real problem of improving the quality of criminal records systems at all levels of government.

Getting a national criminal history record system operational is imperative. Checking firearms purchasers without one is ludicrous and a mockery of justice.

The incompleteness of felony records is amazing.

The *Draft Report* is to be commended for discovering the appalling condition of criminal records. Law enforcement must be supported by upgrading criminal records systems with automation and with accurate, current, and uniform information.

Although it may be possible to create a computer file of felons, it will take not less than 10 years to do so. Better recordkeeping at local levels will be required.

A Member of Congress wrote that there was a desperate need for updating our data bases by including those not now automated (such as for persons born prior to 1929), identifying whether a conviction disqualifies one from a firearms purchase, and by systemizing State criminal reporting.

One State commented that incomplete criminal history data may pose problems for States with limited resources.

A civil liberties organization felt the Nation's criminal justice records are in a woefully inadequate state and strongly recommended the updating and organizing of all such records prior to implementing any of the *Draft Report*'s recommendations. Another civil liberties group stated that an individual's privacy rights are compromised by release of inaccurate criminal history records or arrest records without dispositions. And another civil liberties organization said that the greatest and most surprising value of the *Draft Report* is the light it sheds on the state of the U.S. criminal justice reporting system, and that these difficulties should be remedied before any proposal to identify felons who attempt to purchase firearms is considered.

A law enforcement group said that criminal records data bases must be improved—all of the options in the *Draft Report* depend on good data. Another said that the incompleteness of criminal history records is a critical hindrance. And another said that such incompleteness is a critical impediment and point-of-sale systems are subject to all the weaknesses of diverse and limited criminal history data bases.

One firearms group asserted that the poor quality of the criminal history data base would result in many false hits; that the quality of felony conviction data must be improved; and that it would support legislation to further this goal. Another firearms group suggested that of all criminal history records, only final disposition—conviction, acquittal, or restoration of rights—is pertinent.

Impediments to creating a perfect system

The three key elements recited in the *Draft Report* (a complete and accurate automated criminal history data base, positive identification, and an immediate linkage mechanism) were recognized by a number of comments. Some of the numerous citations of the problems of the first key element are recited in the previous section and will not be repeated here. One individual writer suggested that photographic identification (which, he said, was adequate for access to classified material) should be sufficient proof of identity for firearms purchasers. Biometric identification should not be required for firearms purchasers when it is not required in other sensitive situations, and photographic identification (such as drivers' licenses) are far less expensive.

A civil liberties group reiterated the Task Force's conclusion that a perfect system for immediately and accurately identifying felons who attempt to purchase firearms is not feasible or practical in the near future. And a firearms group, likewise repeating this conclusion of the Task Force, noted that even so, a perfect system should be restricted to identification of felons, not nonfelon buyers.

Practical alternatives

One law enforcement organization, apparently the only responding group to do so, polled its members as to whether they favored a point-of-sale system or a prior-approval system. This poll found 49% favoring Option A, while 46% favored Option B. At the same time, 16% opposed Option A, and 20% opposed Option B.

A number of commenters suggested modifications to the various models presented, indicating that the original options, as modified, would be satisfactory to them.

Specific comments on Options A and B and their variations will be set forth under the following sections that deal with those options. Writers felt some of the following to be other practical alternatives, some of which are additional variations of Options A and B:

A law enforcement organization advocated a purchase certificate system for all buyers which would directly involve local police in preapproving firearms purchases. This would require the purchaser to apply for a certificate from local police, presenting valid and positive identification and paying an appropriate fee. If no disqualifying information were found, a firearms purchase certificate of limited duration would be issued, which would be presented along with supporting identification to a gun seller.

An individual writer suggested a system of bar coding on drivers' licenses, pilots' licenses, and boat licenses following a background check by police or the Coast Guard on location.

A State suggested that when a person was arrested for a felony, such information would be recorded on a FOID card, just as the data of a motor vehicle violation is recorded and recalled when a driver's license is renewed.

One firearms group proposed an instant ID where at the time of receiving a driver's license or State identification card, records would be checked by State police and an approval or disapproval for firearms purchases would be encoded on the license, visible only under ultraviolet light. At the point of sale, the dealer would simply read the license under a special light. Since the designation would not generally be visible, confidentiality would be preserved.

In several separate comments, individual writers suggested that no new Federal felon identification program be implemented. Some thought that the public funds that would have been used for this instead be employed for such things as building more prisons, sending lists of convicted felons to each gun dealer, or spending more on law enforcement and the judiciary.

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As mentioned in the comments to the *Draft Report* Foreword, several writers asserted that a waiting or cooling-off period would be an appropriate control, either in lieu of or in combination with the *Draft Report* options.

Cost estimates

Several writers asserted that the costs of the proposed systems were too high. Many seemed concerned about the cost-effectiveness. Some seemed to feel that the benefits of a Federal program probably would be outweighed by the high costs to the public. One individual felt further research should be conducted. Another suggested that cost effectiveness estimates be addressed, such as whether background checks are an effective means of reducing violent crime compared to other approaches such as increased sentencing.

A Member of Congress, citing OMB Circular A-76 as well as these times of huge Federal deficits, stressed that any system be as cost-effective as possible.

Considering the state of the criminal justice identification system, it would be unreasonable to expect American taxpayers to pay the high costs estimated in the *Draft Report*, said a civil liberties organization.

A gun control group noted that felon identification systems in Florida and Virginia include user fees. It suggested that start-up costs could come from a portion of the current tax on firearms.

A State patrol commissioner was concerned with the fact the *Draft Report* addressed only retail sales when elsewhere it cited a study stating that five out of six felons have acquired firearms other than from a retail outlet.

A Governor had serious concerns about initiating any of the options with the reported cost projections, adding that additional expenditures of State funds for new systems must be weighed against the existing cost of a viable and tested system long in place in his State.

One State public safety commissioner noted that costs would vary among States depending on their level of automation, their present gun control legislation, their demographics, and the ability of their personnel to absorb additional work. He also noted that the cost may pose problems for States with limited resources.

A Governor reported that due to the budget reductions in the Department of Public Safety in his State, it would be difficult to maintain criminal histories as thoroughly as would be necessary to process firearms applications.

A firearms organization noted that user fees of $7–$9 for Option A and $27–$32 for Option B would deter the purchase of inexpensive shotguns and rifles for young people and prevent the elderly living on fixed incomes from purchasing handguns for self-protection. These costs, it said, utterly lacked any acceptable cost-benefit ratio.

One writer noted that the cost estimates for the Virginia system are considerably lower than those suggested for Option A, as is the fee. Another questioned why the cost for setting up a Federal FOID card system was five to six times higher than the Illinois system, which he understood makes a small profit.

A consulting group comment and a gun control group comment both felt cost estimates were overstated because of the many hobbyist or other small volume BATF-licensed dealers.

Implementation issues

Of the four implementation issues spoken of in the *Draft Report*, no writer favored a self-standing Federal system, run entirely by Federal officials.

One individual writer believed that a federally mandated cooperative Federal-State system would require a minimum transition period of 2 years in States that have their own system. Another felt that if a system were to be federally mandated, the State would likely demand that the Congress pay for its full cost.

A gun control organization felt that a handgun purchase-certificate system should be a minimum Federal standard, which the States would be required to adopt if the *Draft Report's* third implementation method were followed (a mandatory Federal standard which States could meet in different ways).

One individual, opting for the fourth plan (offering the States several different models for a cooperative Federal-State system, while making Federal resources and leadership available to assist the States), said it is best to let systems vary from State to State, since each State will know best what will work for it, and also since the States will apparently bear most of the cost.

In establishing minimum standards for the States, a State criminal justice division director urged that State and local efforts not be restricted where they provide greater protection to the public than that minimally required by Congress.

One of the responding Governors said he was in favor of the fourth method. And one of the firearms groups also favored this method, but suggested that input should be obtained from gun owners, licensees, and law enforcement personnel. This group said that the first plan was not viable since records are based on State laws and stored in State institutions; that the second method fails to take account of particular State needs; and that the third method was contrary to the spirit of federalism.

One civil liberties group contended that none of the methods should be implemented as they will undermine individual civil liberties and thwart the goals of the McCollum amendment. It recommended that the Attorney General report that it is presently impossible to implement the McCollum amendment. The group felt that the floor debate on the McCollum amendment indicated that Congress recognized this possibility.

Legal and policy issues

Most of the comments on the seven illustrative legal and policy issues enumerated by the Task Force are presented elsewhere in this summary.

A civil liberties group cited a 1989 U.S. Supreme Court case, *U.S. Department of Justice* v. *Reporter's Committee for Freedom of the Press*, 109 S.Ct. 1468, 1485, for the proposition that an individual has a right to privacy regarding his or her criminal history records and the release of those records to a third party (such as a gun dealer) can reasonably be expected to invade that person's privacy.

A firearms group felt that any new legislation should include criminal penalties for "lawless government bureaucrats who prevent and impede legitimate firearm sales, misuse or disclose privacy information, use records to set up a de facto registration system, or otherwise infringe on the second amendment right to bear arms." It also suggested that retention of names should be made a violation of law with civil penalties for negligent retention and criminal penalties for willful retention.

A State Governor observed that Congress would need to enact a statute to motivate the States to provide for BATF terminal access to State criminal history files as a requisite for continued on-line access by the States to NCIC.

Solving the problem of felons acquiring firearms

One individual writer, repeating the *Draft Report's* quotation of the study finding that about five-sixths of felons admitting ownership of firearms acquired them elsewhere than at retail, suggests that research should be conducted to determine the number of nonincarcerated felons, the percentage or number of these felons who are still active, and the percentage or number of them who are known to use firearms or who may desire a firearm for criminal purposes.

Another writer suggested that data be compiled on the illegal firearms market, while still another suggested a study on BATF effectiveness.

A civil liberties organization, reiterating the *Draft Report's* observation that a particularly effective system may force even more felons to turn to the black market or to accomplices without criminal records for their weapons, felt that the potentially small gain of developing a system does not justify sweeping changes.

Another writer, citing the same study, believed that while an attempt to prevent retail sales of firearms to criminals and other ineligible person should be made, a system must take into account the inconvenience, expense and the burden to firearms retailers, legitimate purchasers, law enforcement agencies and other government functions.

Other individual writers expressed essentially the same concern. One said that even if a system were implemented, most felons would continue to acquire firearms through illegal means. Another expressed his view that the biggest fault with the entire idea (of identifying felons who attempt to purchase firearms) is that it will not reduce crime with firearms one iota.

Part II.

Options for a felon identification system

Section 1. Schematic overview

A Member of Congress asserted that the legislative intent of Sec. 6213 of the Act (the McCollum amendment) was for immediate (point-of-purchase) approval, and none of the preapproval options meets this congressional

mandate. Likewise, he said, Congress did not intend a national waiting period nor the issuance of identification cards.

A firearms organization likewise asserted that "prior approval schemes" are not immediate and fall outside the legislative intent.

The same group felt that a required appearance at a law enforcement agency to receive a FOID card is a nonauthorized alternative for the surveillance of law abiding citizens. A toll-free number could be considered, but only when criminal records are accurate and up to date.

The same organization strongly believed that data sources could be used by law enforcement agencies to notify dealers of likely prohibited persons attempting to buy guns and also to identify felons buying on the black market. And in the area of decision organizations, it suggested that trained persons should interpret conviction data under the laws of each State.

Any appeal, it said, should be a de novo review by State or Federal courts with attorney fees awarded for the prevailing plaintiff.

Section 2. Point-of-sale approval systems

Option A: Telephone check by gun dealer with secondary verification

Of the many comments on Option A, some dealt with the specific topics covered by the *Draft Report*. Others introduced new topics or were more general in nature. This analysis will deal with the former first.

A firearms organization said that in a telephone check, only conviction-based indexes, not arrest-based indexes, can be used. It also noted that there is a danger of creating of a registration system resulting in a loss of privacy if the law enforcement agency retains the records of inquiries for the purpose of auditing dealers. Retention of names should be made a violation of law with civil penalties for negligent retention and criminal penalties for willful retention.

On the issue of secondary verification, the same organization felt that requiring a citizen with no known convictions to go to the police station and give his fingerprints would be a gross violation of privacy and civil liberties. It also observed that a certificate of purchase for no more than 1 year would require the purchaser to undergo the same degrading process year after year. Further, the data base would become a registry of gun owners.

On the topic of data sources, a State response observed that since a separate data base would apparently be used at the State level to maintain an applicant's certificate of purchase, there is a concern about subsequent arrests and convictions. Systematic purging would be required every 2 or 3 years.

A civil liberties organization was concerned over a link-up with the NCIC without providing protection for the privacy interests of prospective purchasers.

If gun dealers are to be subject to criminal penalties for false inquiries or unauthorized disclosures, a firearms group felt, then willfulness should be a required element of the offense.

Requiring fingerprints on BATF form 4473 is a violation of privacy and civil liberty, asserted a firearms group and the exercise of a constitutional right cannot be conditioned on making fingerprints available to police. Further, it said, any system where 50% of the cases receive false hits does not meet the congressional mandates of accuracy and immediacy.

As to the *Draft Report's* suggestion that additional efforts to ensure positive identification could include the dealer rolling the print of the applicant's right index finger on the BATF form, one individual writer noted that it takes training to roll a fingerprint correctly and that a photograph of the instant-developing, forgery-resistant type (such as used on driver's licenses) taken at the point of sale would be superior. A firearms group also felt adding a fingerprint to the BATF form was a bad idea, suggesting that handwriting analysis would be sufficient.

Another individual writer felt that most point-of-sale telephone checks will result in felons escaping identification and the occurrence of false hits on eligible purchasers.

A Governor observed that if Option A were adopted, his State's identification division would have to enter several thousand names in the index to update the system and that considerably more manpower would be needed for the name index file as well as the AIS-III index. Still, he preferred Option A over a prior-approval system.

A municipal police department felt a point-of-sale approval system would result in an estimated 33% increase in volume for that department.

A number of writers were concerned about cost. Cost was a major concern of the law enforcement organization that took the survey of its members (16% opposed Option A; 20% opposed Option B).

Commenting on some of the disadvantages mentioned in the *Draft Report*, several writers have reiterated the *Draft Report's* observation that the validity of a telephone check is only as reliable as the purchaser's identification documents. One individual, who felt Option A was at best a mediocre system, suggested that it would allow an unscrupulous dealer to sell firearms to a felon through use of false identification. One of the State respondents made the same observation.

At least two States have agreed with the *Draft Report's* observation that a major burden would be placed on the State repositories.

One individual stated that call-back security could be a problem for dealers at gun shows, for those with more than one store, or for those with call-back line breaks. He observed that call-back systems are sometimes not secure and a feature such as call forwarding could complicate security even more.

In response to the *Draft Report's* mention of the disadvantage of occasional technical failure, one individual understood that under the new Virginia system, the dealer may proceed with a sale if the State does not respond to a dealer inquiry within a specified time. He believed a similar provision should appear in any Federal statute.

Several comments expressed concerns that a high percentage of false hits is an invasion of privacy. One suggested that defamation may also be a concern.

Of the suggested potential modifications, the one concerning possible relaxed point-of-sale procedures in some situations (as at gun shows and for low-volume dealers) led one Governor to report that numerous indictments were recently obtained by prosecutors in his State for the sale of guns by dealers who allegedly failed to demand presentation of the required State FOID cards.

A firearms organization suggested several potential modifications including: (1) Required secondary verification only of persons whom the records show with disabling convictions, but who claim their identities are mistaken; (2) a mere hit on out-of-State records should never shift the burden on certifying qualifications to the applicant; limitation of secondary verification searches to the State repository of residence may be sufficiently effective and economical; (3) exemption of all .22 rimfire firearms; and (4) limited time period for verification, so that qualified purchasers be not unduly delayed, similar to the Virginia provision where a hit or computer breakdown allows delay for only 1 day.

In the category of general comments, a civil liberties group expressed its view that Option A seems the most cost-effective and would be acceptable to that organization if it can meet specified criteria: (1) Nonabridgement of any constitutional rights; (2) destruction of records so that there can in no way be a national registry of firearms owners; (3) accuracy, simplicity, and reasonable fees; (4) costs falling within realistic resources and budget limitation of local, State, and Federal governments; and (5) effectiveness in preventing felons from obtaining firearms.

A Member of Congress felt that law enforcement agencies, not gun dealers, should access criminal records because of privacy concerns and also because those who are about to commit crimes or are mentally unstable might be deterred from buying a firearm.

A firearms group suggested that because of its expertise and prospective involvement in point-of-sale options, the firearms industry should participate in any further work of the Task Force. This same group is committed to the development and implementation of a point-of-sale approval system.

A consulting firm preferred Option A over Option B because the former is quick and puts minimum burdens on firearms purchasers, and the information necessary to do a point-of-sale approval is already required by the BATF forms. The comment added that Option A is feasible, whereas Option B depends on undeveloped technology, is too costly, and it will take years to get the bugs out of such a system.

However a Member of Congress believed point-of-sale systems will not work because the technology to make accurate, instant checks at the purchase site simply does not exist.

A law enforcement organization noted that Option A provides a background check prior to purchase, though there is no waiting period. It provides immediate information to

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the gun dealer and the least inconvenience to purchasers. However its reliability caused some members concern because of the responsibility it placed on gun dealers and the difficulty of verifying the identity of buyers.

Option A1: Terminal access by gun dealer to disqualifying information

Most comments on Option A1 felt it offered no particular advantages and would be far costlier. However, a consulting organization, which is in favor of point-of-sale approval concepts because they are quick and put minimum burdens on firearms purchasers, recommends a combination of Options A1 and A2. This company claims that it has already developed a system that incorporates both computer terminal access and touch-tone telephone access. The comment maintains this combination cuts the time for a check from 3 minutes using just a telephone to 30 seconds and that its system would be less expensive than the $36–$44 million estimate given by the *Draft Report*.

Option A2: Touch-tone telephone access by gun dealer to disqualifying information

As with Option A1, most of the concern was about the higher cost and relatively little additional advantage. However, see the comment of a consulting firm under the previous section for a differing view.

Option A3: Live scan of fingerprints by gun dealer

As with the previous two high-technology options, concern by those who commented was centered on the high cost.

However, a Member of Congress suggested that fingerprint identification by gun dealers is a goal we can achieve. The technology now exists, and this is a rapidly improving science, he said.

Some civil liberties and firearms group responses asserted that the required fingerprints violate privacy right concepts; that persons should not be required to give fingerprints to exercise a constitutional right.

Option A4: Biometric identification

Reaction to Option A4 was more positive than to the other variations of Option A.

One firearms group suggested having a card to be read at the point of sale in a manner similar to the present system of validating credit card purchases. This system would need to include a method to ensure security against unauthorized access, economic feasibility, a method for identifying prospective purchasers, an accurate data base of felony convictions and other disqualifying factors, and an appeals system. It cautioned, however, that Americans are legitimately concerned that a screening system not result in a de facto registration of all firearms complete with a data base of all firearms owners. Issuance of a card on the Federal level would raise concern regarding the infringement of second amendment rights; thus it would be more acceptable if cards—perhaps a "smart card"—were issued by States that could be used as a driver's license and for other purposes as well. Such issuance by the States would have to be federally mandated, and this group would support Federal legislation to this end.

A civil liberties group suggested that at the time of issuing a driver's license or State identification card, State police check records, and approval or disapproval for firearms purchases would be encoded, visible only under ultraviolet light. This card would be presented at the time of a firearms purchase and be read by the dealer. The costs would be low and privacy assured. No master list could be compiled. For a more positive identification check, a fingerprint could be placed on each State driver's license or identification card.

A law enforcement organization believed that Option A4 enhanced positive identification, but if implemented, the group suggested the biometric card should serve as a supplementary process rather than the primary and only means of identification.

As to fingerprints being required for the initial issuance of an owner's card with renewals based on name and date-of-birth search only, it was noted by a State Governor that such a system would work only if initial fingerprints were retained on file to ensure that any conviction data were properly identified to the card number assigned.

Section 3. Prior approval systems

Option B: Firearm Owner's Identification (FOID) card

One law enforcement group favored Option B as the most viable and least intrusive and burdensome for firearms purchasers and, it said, that option would offer the advantage of submitted fingerprints rather than the more inaccurate name check. Further, there would be adequate time to perform a complete record check and to interpret the criminal history record data. Also, it would afford the buyer who has encountered a false hit the opportunity to resolve the misinformation on a one-time basis as opposed to the time-consuming appeals system under Option A.

Another law enforcement group liked Option B because it offered fingerprint identification rather than the more problematic name check identification method. It also said that variations of Option B had been proven effective in several States, and it was compatible with possible future requirements for other disqualifications, such as illegal alien status.

One law enforcement group suggested that the Federal Government create from its existing resources a felon clearinghouse that would be charged with positively identifying felons from any jurisdiction and would also initiate a FOID system and actually issue the FOID cards. These would be "smart cards" but would be issued only to persons who are eligible to purchase firearms. They would be issued every 5 years, thus reducing the cost, which would be borne by the applicant.

One law enforcement group, preferring the more realistic fingerprint identification check, envisioned the process as taking 2 to 4 weeks, rather than 4 to 6 weeks as the *Draft Report* indicated.

A director of criminal justice of a State which has for many years had a prior-approval system analogous to Option B, strongly encouraged the Federal Government to follow this general model, but voiced a strenuous objection to any Federal requirement which would require the State to abandon its system to be replaced by one which would be more costly and at the same time afford an inadequate opportunity for State law enforcement agencies to conduct appropriate investigations into an applicant's overall fitness and eligibility to purchase a firearm under State law.

The Governor of Illinois, a State that has a preapproval system using a FOID card, reported that in 1988 2,470 individuals were denied a card as a consequence of felony convictions, and in the same year 779 cards were revoked as a result of felony convictions. He also noted that an advantage of a preapproval system is that it places the burden of operating costs on those who desire to purchase firearms by imposing on them appropriate fees for operating costs.

Another Governor, however, was concerned at the initial start-up costs of Option B, which he felt would be very expensive for the State's repository, and he estimates it would increase the data there by 55%. This, he feared, would be so costly as to be prohibitive.

One civil liberties group suggested that for a more positive identification check, a fingerprint be placed on each State driver's license or identification card.

Most civil liberties groups, however, expressed concern with Option B. One found it unacceptable because it requires a large monetary investment, creates a bureaucratic nightmare for local law enforcement, requires keeping records on those who legitimately own firearms, and creates complications such as a 4- to 6-week waiting period for legitimate gun buyers. It asserted that a claimed advantage of Option B over A—that B would prevent false rejection based on name similarity—is illusory, because B requires all applicants to be investigated, not just the 6–8% wrongly accused of having a criminal history.

And another civil liberties group opposed a system that would require all individuals to possess a document indicating eligibility to purchase firearms. It also feared that a centralized data base of information on prospective firearms purchasers would be created.

A firearms organization stated that the FOID card concept violates the statutory directive calling for immediacy; that it is nothing less than a national registration scheme for nonfelons that forces citizens who have never committed a crime to appear at police stations to be fingerprinted and photographed. It added that almost all States have rejected the FOID card concept and that the States have no constitutional duty to administer and enforce such a scheme.

A Member of Congress, reviewing the statutory history of section 6213, contended that the Congress in passing the amendment rejected any waiting period in favor of identifying felons attempting to purchase firearms at the location of gun dealers.

Another Member felt that prior approval systems are the correct approach and urges that such a system be recommended to the Congress.

A gun control group favored a variation of the prior approval system outlined in Option B for the purchase of handguns. It supported

a certificate-of-purchase system where a prospective handgun purchaser would appear before the local police, would present valid photographic identification, and would complete a Federal form asserting no impediment to handgun ownership. The applicant would pay a user fee, be checked through available data bases, and if no disqualifying conviction were found, would be issued the certificate of purchase. At the time of purchase, the buyer would present the certificate to the dealer, who would then be required to verify the purchaser's identity and the certificate's validity by telephoning the local law enforcement agency.

Option B1: Live scan of fingerprints by local law enforcement and biometric check by gun dealer

The State patrol chief of one State preferred Option B1 as being the most effective method of fulfilling the requirements and intent of the proposed goals. He does, however, list some concerns about this option, such as its cost-effectiveness and the financial impact on small dealers. This option would appear to require use of the applicant's fingerprints in conjunction with an AFIS system, which would then have to be linked to an automated records data base to comply with the immediacy requirement.

A law enforcement organization preferred this option above all others. The writer of this comment felt that any felon attempting to purchase firearms will be identified. He saw no loopholes and believed that although the cost was higher, the lives saved would make it worthwhile.

Other comments objected to implementation of this option because of the higher cost and the invasion of privacy and traditional notions of civil liberties.

Option B2: Smart card containing disqualifying information

A law enforcement organization suggested creating a felon clearinghouse which would issue a FOID card in the form of a smart card, but unlike Option B2 it would only be issued to qualified applicants after clearance by the clearinghouse.

A firearms group stated that the concept of a smart card with positive and possibly biometric identifiers is one which merits further investigation. Its chief advantage is the elimination of forgery.

A State Governor was concerned about the high start-up costs of this option to his State's repository.

An individual advocated a system of placing a bar code on drivers' licenses which he thought would be less costly.

A civil liberties group suggested that for more positive identification a fingerprint could be placed on each State driver's license or identification card.

However, another civil liberties group asserted that the smart card option failed to meet the "compelling interest" test as laid down by the U.S. Supreme Court.

Another individual was concerned about forgery. He said that in the case of cryptographically based smart card technology using public key algorithms, a compromise of the master encrypt key by any of the State centers could jeopardize the entire system's credibility, since forgeries would be as good as originals in every respect.

A Member of Congress suggested that the smart card system may be constitutionally at-risk and programmatically deficient in numerous respects. Also, he said, the costs seem prohibitive and the potential to expand this system into a nationalized identification card has serious problems. He also found troubling the lack of correct information held on the smart card.

A civil liberties group opposed universal smart cards as being overbroad and invasive.

Section 4. Appeals procedures

A firearms group stressed that administrative appeal procedures must be quick and inexpensive. Any necessary judicial review must be de novo with attorney's fees awarded to a prevailing plaintiff. Further, it contended, appeal time should not be limited.

One writer said his State's appeal system often results in high legal costs to an applicant who must go through what he felt was a secretive and lengthy appeals process.

An individual asserted that an appeal procedure must be in place before any preapproval system is initiated.

A firearms group stressed that the right to a judicial appeal is guaranteed by the Due-Process Clauses of the Fifth and Fourteenth amendments.

Part III.

Legal and policy issues

Several groups took exception to the conclusion of SEARCH Group's study that there appear to be no constitutional impediments to the creation of felon identification systems. One firearms group asserted that requiring Americans to be fingerprinted and interviewed by the police merely to exercise their Second Amendment right to keep (and thus acquire) and bear arms is a constitutional infringement. This group criticized the Department of Justice for failing to discuss or even mention the second amendment, which failure, the group said, exhibits insensitivity by a department supposedly dedicated to the protection of the Constitution. The group also objected to the reliance of the Task Force on the SEARCH study.

Another civil liberties group emphatically disagreed with the conclusion that there appeared to be no constitutional impediments. Specifically, it questioned the constitutionality of the required fingerprinting provisions of the options.

An individual saw a potential conflict between the right of privacy and an infringement on second amendment rights; however, he suggested that constitutional tests might be met if the concept were enlarged to include other areas requiring background checks such as police or government workers, so that mere possession of an identity card would not automatically identify a firearms owner.

A civil liberties group was wary of the Task Force proposals as infringing on a law-abiding citizen's right to privacy, the right to the absence of unreasonable searches and seizures, and the right to keep and bear arms.

Another civil liberties group expressed its view that firearms licensure, regulation, and law enforcement responsibilities should remain within the purview of the States.

A Federal or State system; mandatory or voluntary?

Two law enforcement groups feel the implementation approach should be a federally mandated cooperative Federal-State system. An individual asserted that the existence of 20,000 State and local gun laws is a disgrace and recommended Federal preemption of all State and local gun laws.

Another individual felt it is best to let systems vary from State to State since the States know what will work best and apparently will bear most of the cost. He believed that a federally mandated system would require a transition period of at least 2 years in States that have their own systems.

One State response suggested that a Federal standard be established with Federal dollars to assist States in the implementation phase.

And the Governor of another State (who supports and whose State has a preapproval system) was convinced the decision should be left to the States for implementation and operation. He noted that in his State all criterion arrests are State reported but 27% of these arrests are not further reported to the FBI Identification Center.

One Governor said he will not support drastic measures at the Federal level to further limit the ownership of firearms, nor would he support a Federal effort to encumber State criminal justice information agencies with the responsibility of acting as a clearinghouse for the criminal history data necessary to support a Federal felon identification system as proposed.

Another State respondent noted that the start-up and operating costs are that State's most immediate concerns. The range of costs given in the *Draft Report* suggest an unbearable financial burden on State and local law enforcement agencies. More consideration needs to be given both to the ultimate costs and the sources of funding, he said.

Sources of funding for criminal history checks

As demonstrated in the previous two paragraphs, several of the State comments dealt with concerns about funding. One Governor, noting that cost is a major question, felt that large sums of Federal funds would be required to assist the States and also local governments.

Another State concern was that problems would be posed for States with limited resources.

Another Governor observed that one of the advantages of a preapproval system, such as the one his State has, is that it more easily places the burden of operating costs on those who desire to purchase firearms by imposing on them appropriate fees and operating costs.

A firearms group suggested that any system adopted should be funded by Federal and State appropriations with funds coming from a general appropriation or a special felon tax, which would require felons to pay for the system by extra fines and costs. This would be a true user fee, the group felt.

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An individual agreed with the latter approach, saying that the felon, not the public nor the lawful gun owner, is responsible for society's having to go to such lengths. He suggested that the cost of the system be averaged over the prison population and added to each criminal's bill, just as restitution is added at the present time. He stressed that under no circumstances should the cost be passed on to the legitimate gun purchaser.

A Member of Congress believed that a system that has the least cost or no cost to dealers and buyers is preferable.

However a State director of criminal justice suggested that a user fee structure imposing a processing fee should be explored for funding the system rather than the use of tax dollars.

A civil liberties organization suggested that manufacturers, dealers, and purchasers should share in the costs, though they should be spared excessive fees. It added that costs should fall within budget limitations of local, State, and Federal governments; otherwise any system would be short-lived and inadequately enforced.

Release of criminal history information to gun dealers

A civil liberties group asserted that an individual has a right to privacy regarding his or her criminal history records and cited as authority a 1989 U.S. Supreme Court decision, *U.S. Department of Justice* v. *Reporter's Committee for Freedom of the Press*, 109 S. Ct. 1468, 1485. This comment reiterated the *Draft Report's* observation that learning whether a prospective purchaser even had a criminal history record may be viewed as a release of criminal history records to non-law-enforcement personnel. Often, the group noted, the person would eventually be found not to have a criminal record, but merely the same name and date of birth as a felon, which could harm the person's reputation.

An individual noted that a possible solution to the potential for misuse of criminal history data would be a computer-generated postcard sent to prospective purchasers informing them that a check had been made. Dealers need a similar mechanism to ensure that an employee does not misuse the dealer's number for abusive purposes.

A Member of Congress said that law enforcement agencies, not gun dealers, should access criminal records, because of privacy concerns and also because those who are about to commit crimes or are mentally unstable might be deterred from purchasing firearms.

One firearms organization said it was not only in favor of, but committed to, an immediate point-of-purchase screening of prospective firearms purchasers. It recommended an electronic screening system in the form of a point-of-purchase computer terminal that could operate much like the current system for validation of credit cards. This would require a method such as an access code system to secure the system from being used for other than its intended purpose. The response to an inquiry should be only an approved or a disapproved notification without any further information about the reason.

Three individual commenters approved of this same system.

The issue of accuracy

The question of accuracy generated numerous comments, some of which are set forth above in part I (The quality of felony conviction data) and elsewhere. Accuracy was an important concern of many responding to the *Draft Report*.

A firearms organization contended that a system that turns down 725,000 citizens annually, most of whom are not felons, is not accurate. Accurate records would aid the criminal justice system in many ways and would allow distribution of felon lists to dealers, it noted.

Creating a data base of firearm purchasers

Creating a data base of firearm purchasers would be dangerous to civil and individual rights, said one individual. A firearms group said that average Americans are capable of recognizing the proposals in the *Draft Report* for what they are: attempts to identify the type and location of firearms with a view toward confiscating some of them.

A law enforcement group observed that the "radical element" will view the use of a FOID card as the first step towards confiscation of guns from all citizens if the democratic system is overthrown.

A firearms group said that while it may be correct "in the narrow view" that legal research indicates no apparent conflict between the *Draft Report's* options and State or Federal law, the data bases created could be expanded with abhorrent results. Such expansion coupled with potential creation of a data base of all firearms purchasers and the tracking of all firearms owners raises serious constitutional issues.

A civil liberties group asserted that no permanent records of firearms transactions should be kept, for such would be dangerous and subject to abuse.

An individual writer was concerned with the invasion of privacy involved in the *Draft Report's* proposals. He does not believe that eligible purchasers' names will be deleted from the data base and asserts that his interest in guns is nobody else's business.

Another civil liberties organization opposed a system that would cause the creation of a centralized data base of information on prospective firearms purchasers.

Another firearms organization felt the proposals create a serious danger of a central registration system of firearms. The records of any approved persons, it says, should be destroyed by the close of the next business day.

Potential "tracking" of firearm purchasers

A civil liberties group opposed any system that would allow tracking of individuals through a firearms owners data base.

A firearms group contended that under the *Draft Report's* proposals, a large data base of citizens who want to purchase firearms would be created and would be used, among other ways, to interface with other government data bases such as IRS and Social Security.

Issuing documents authorizing firearm purchases

A number of commenters, especially those from firearms groups and civil liberties groups, objected to the prior approval systems as well as to the point-of-sale systems insofar as the latter require those who fail the test initially to obtain subsequent documentation. These comments generally pointed out that the required documentation unfairly singles out firearm purchasers because they must prove that they are not felons before otherwise exercising their rights to acquire firearms.

Also some of these commenters expressed concern that the two systems are in fact a method of building data bases containing the names of firearm owners that may later be used for investigative purposes or even to confiscate weapons in the event of civil disorder or the like.

The horrors that are inherent in such a national identification card, said one firearms group, are many. The infringement of civil liberties implicit in such proposals must be considered, warned a civil liberties group. Americans are legitimately concerned that a screening system not result in a de facto registration of all firearms, complete with a data base of all firearms owners, said another civil liberties group.

The use of biometric data

One civil liberties group opposed the routine fingerprinting of all prospective firearm purchasers as an intrusion into their privacy that is not justified by the small benefit that may result from the systems in the *Draft Report*.

A firearms organization asserted simply that Americans should not be routinely fingerprinted.

Part IV. Supplementary materials

Section 1. Relevant Federal statutes

A Member of Congress expressed his strong concern that the scope of the *Draft Report* "far exceeds" the clear intentions of Congress. He asserted that the floor debate made it clear that the purpose of Sec. 6213 of the Anti-Drug Abuse Act of 1988 was to establish an identification system at the point of purchase. It was not intended that this section authorize development of a prior approval system of any kind, he said.

Another Member said that he was convinced that the only truly accurate and effective way to keep felons from buying firearms from licensed dealers is to require that comprehensive background checks be undertaken on gun buyers by the FBI and local police prior to the purchase. Although under such a system gun buyers would be required to wait a short time to purchase firearms, he said he didn't believe such a system would seriously inconvenience law-abiding sportsmen and it would curtail crimes of passion and act as an enforcement mechanism to current law.

Section 2. Current Practices: State practices regarding firearms sales

A firearms organization said it believed the new Virginia point-of-sale approval system is similar to Option A, but offered superior safeguards. This organization understands the Virginia system includes the following: (1) State police must respond during the dealer's call or by return call without delay; (2) if a disqualifying criminal record appears, the State must notify the dealer by the end of the next day or the sale may be made; (3) the dealer may make a sale after the end of the next business day in the event of electronic failure; and (4) State police may not maintain records of qualified purchasers for more than 30 days.

The Governor of Illinois, pointing out the results of his State's prior-approval system, noted that though it is not based on fingerprint data, 2,470 individuals were denied a FOID card in 1988 as a consequence of felony convictions and in the same year 779 cards were revoked as a result of felony convictions.

Oregon recently adopted a preclearance identification system that resembles Option B. It is due to take effect Jan. 1, 1990.

Section 4. Study of other persons ineligible to purchase firearms

A Member of Congress urged that any felon identification system be compatible with the system used to identify other prohibited persons such as those with mental disabilities or illegal aliens.

One law enforcement organization, favoring Option B, noted that this option would be compatible with possible future requirements for identifying those with other disqualifications.

An individual thought it would be extremely difficult to obtain data on persons with mental deficiencies, as their physicians are rightfully very protective of their files.

General comments

There were numerous comments on the thorough study which the Task Force undertook. Some examples include:

- The Attorney General and the Task Force staff are to be congratulated for dealing extraordinarily well with this extremely sensitive subject, said one firearms group.
- A gun control group said that the *Draft Report* is a significant step forward in the development of a responsible, effective, and comprehensive national gun policy. It was impressed by the depth and range of the options it contained and congratulated the Task Force for the considerable research and careful thought that obviously went into this study.
- Another commenter congratulated the Attorney General for his leadership on this important issue.
- A Member of Congress, complimenting the Task Force on the comprehensive and thorough nature of the study, said he felt that never before have we had such a thorough analysis of the possible systems for preventing felons from purchasing firearms.
- A law enforcement organization commended the Task Force for an admirable job on a difficult assignment.
- Several State Governors made comments along the same lines.

Other general comments included:

A State criminal justice division director, writing at the request of the State's Governor, said that it was gratifying that the Congress has decided to establish a Federal system for controlling access to firearms by convicted felons. For many years his State has had a preapproval system roughly similar to Option B, and he commented that it seems entirely appropriate to discontinue the practice which exists in some States of relying upon a prospective firearm purchaser's unverified assertion that he or she has never been convicted of a crime.

A firearms group volunteered to help the Department reach the goal of keeping guns out of the hands of criminals without infringing on the right of law-abiding Americans to own firearms.

A number of writers asserted that gun ownership is a fundamental right that must not be infringed. One individual stated that the people have a right to rise up in arms and overthrow the government, and feared that the restriction of arms is an attempt to restrict the power of the people to change the government.

A State director of criminal justice observed that some of the options lack a mechanism to institute revocation proceedings upon a felony conviction.

One individual advocated giving military weapons to servicemen leaving their military service.

A civil liberties group suggested that the Attorney General should report to Congress that it is not possible to implement the McCollum amendment.

A writer believed the laws preventing felons from purchasing weapons are adequate, since they usually steal them.

A Governor commented that with sufficient resources, any of these options could be made operational.

A State director of law enforcement observed that it is obvious that some system should be put in place to aid society to keep guns out of the hands of criminals.

[FR Doc. 89-25021 Filed 10-24-89; 8:45 am]
BILLING CODE 4410-18-M

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H.R. 3385/Pub. L. 101-119

To provide assistance for free and fair elections in Nicaragua. (Oct. 21, 1989; 103 Stat. 699; 1 page) Price: $1.00

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-187]

Oriental Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by adding an additional portion of Los Angeles County, California, to the list of areas designated as quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. This action imposes certain restrictions on the interstate movement of regulated articles from the quarantined areas.

DATES: Interim rule effective October 20, 1989. Consideration will be given only to comments received on or before December 26, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-187. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Dacus dorsalis* (Hendel), is a destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. The Oriental fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops. The short life cycle of this pest permits the rapid development of serious outbreaks.

In an interim rule effective on August 15, 1989, and published in the **Federal Register** on August 21, 1989 (54 FR 34477-34483, Docket No. 89-144), we established the Oriental fruit fly regulations and quarantined an area of Los Angeles County, California, in the West Covina area. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designate soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

In another interim rule, effective September 19, 1989, and published in the **Federal Register** September 25, 1989 (54 FR 39161-39162, Docket No. 89-170), we amended the Oriental fruit fly regulations by adding an additional portion of Los Angeles County and an adjoining portion of Orange County, California, to the list of quarantined areas. This quarantined area is known as the Cerritos area.

In an interim rule effective on October 16, 1989, and published in the **Federal Register** on October 20, 1989 (54 FR 43037, Docket Number 89-186), we again amended the Oriental fruit fly regulations by removing the West Covina area in Los Angeles County, California, from the list of quarantined areas. We took this action after determining that the Oriental fruit fly had been eradicated from the West Covina area.

The Oriental fruit fly has now been found in an additional area of Los Angeles County, California, in the Elysian Park area, as a result of recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. The regulations in § 301.93-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector. Accordingly, we are amending the regulations by adding the following area in Los Angeles County, California, as a quarantined area:

Los Angeles County—That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Montery Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is necessary

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to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there are approximately 234 small entities in the quarantined area that may be affected by this rule. These include approximately 25 nurseries, 2 citrus processing plants, 1 farmers market, 1 community garden, 5 wholesale markets, and 200 retail fruit/produce vendors.

These small entities comprise less than 5 percent of the total number of small entities that move these articles interstate from nonquarantined areas in California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement. The sale of these articles would therefore remain unaffected by the regulatory provisions we are issuing. Also, many of the entities sell other items in addition to the regulated articles, so that the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments specified in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations. The specified treatments, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Oriental fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended to read as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3, paragraph (c), the designation of the quarantined areas is amended by adding a new portion of Los Angeles County, California, following the listing for "Los Angeles County, and Orange Counties California," to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles County—That portion of the county in the Elysian Park area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along Interstate Highway 5 to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with Eagle Rock Boulevard; then southwesterly along Eagle Rock Boulevard to its intersection with York Boulevard; then southeasterly along York Boulevard to its intersection with Figueroa Street; then southwesterly along this street to its intersection with Avenue 60; then southeasterly along this avenue to its intersection with Monterey Road; then southerly along this road to its intersection with Huntington Drive North; then southwesterly along this drive to its intersection with Soto Street; then southwesterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to the point of beginning.

Done in Washington, DC, this 20th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–25238 Filed 10–25–89; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AD41

Clarifying Amendment Relating to Enforcement Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its environmental regulations to make clear that the provision excluding NRC enforcement activities from the requirements of the National Environmental Policy Act of 1969, as amended, not only encompasses formal enforcement actions but also encompasses informal administrative mechanisms relating to enforcement such as bulletins, information notices, generic letters, notices of deviation, notices of nonconformance and confirmatory action letters. This minor amendment will help to clarify the manner in which this provision will be applied.

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel for Rulemaking and Fuel Cycle, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1638.

SUPPLEMENTARY INFORMATION: On March 12, 1984 (49 FR 9352), the Commission promulgated final regulations implementing section 102(2) of the National Environmental Policy Act of 1969, as amended, (NEPA) in a manner which is consistent with the NRC's domestic licensing and related regulatory authority. These regulations, 10 CFR part 51, subpart A, reflect the Commission's policy of developing regulations voluntarily subject to certain conditions to take account of the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA. Section 51.14(b) of the NRC regulations adopts certain definitions used in the CEQ regulations. These definitions include the definition of "Major Federal action" in 40 CFR 1508.18.[1] As this definition makes clear, for NEPA purposes, the term "Major Federal action" does not include "* * * bringing judicial or administrative civil or criminal enforcement actions * * *." This portion of the CEQ definition of "Major Federal action" is highlighted in § 51.10 of the Commission's regulations which addresses the purpose and scope of NRC's regulations implementing section 102(2) of NEPA and states in paragraph (d):

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA. These actions include issuance of notices, orders, and denials of requests for action pursuant to subpart B of part 2 of this chapter, and matters covered by part 15 and 160 of this chapter.

Although the Commission's regulations make clear that enforcement matters are not subject to the NEPA process, there has been some uncertainty as to whether certain types of informal administrative actions used by the NRC staff as an adjunct to the Commission's formal enforcement mechanisms, which include the issuance of orders pursuant to 10 CFR part 2, subpart B, are intended to be included within the scope of 10 CFR 51.10(d). *See* 10 CFR part 2, Appendix C, General Statement of Policy and Procedure for NRC Enforcement Actions, section V.H. These informal administrative actions include, among others, various written notices such as bulletins, information notices, generic letters, notices of deviation or non-conformance and confirmatory action letters. As use of the word "include" in the second sentence of § 51.10(d) makes clear, § 51.10(d) does not purport to provide a comprehensive list of Commission activities relating to enforcement. The types of enforcement actions mentioned were intended to be only illustrative.

As described in the Commission's General Statement of Policy on Enforcement, "Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment." A confirmatory action letter is an informal enforcement tool issued by the NRC staff pursuant to 10 CFR part 2, Appendix C, V, H, 3. The letter memorializes commitments made by the licensee to the NRC staff that the licensee will take certain specific actions with regard to a facility.

The NEPA status of such informal tools, including resumption of plant operation, was not explicitly addressed in § 51.10 since the Commission believed, as it argued in *Commonwealth of Massachusetts* v. *United States Nuclear Regulatory Commission*, No. 88–2211, that such informal enforcement tools did not involve agency action. However, in that case the First Circuit Court of Appeals concluded that resumption of operation of the Pilgrim facility, after an extended shutdown for corrective actions reflected in a Confirmatory Action Letter, involved NRC action to reinstate the license. The Court went on to uphold the NRC actions against related challenges. The case did not raise and the Court did not address any NEPA related issues.

Licensee actions undertaken voluntarily, as documented in a confirmatory action letter, are generally directed to restoring compliance with NRC regulations, thereby enabling the licensee to resume licensed activities. Consequently, the only environmental effects of the licensee's voluntary actions to reestablish that licensed activities will be undertaken in accordance with the license are those evaluated at the time the facility or activity was licensed and assessed in the NRC Environmental Impact Statement prepared in connection with the initial issuance of the license and in subsequent environmental evaluations in connection with license amendments. The environmental effects of NRC activities associated with the supervision of such licensee actions, including NRC approval and supervision of the licensee's subsequent resumption of licensed activities are the same and do not require additional environmental review.

Although the Commission did not intend § 51.10(d) of its NEPA regulations to be read as if it applied exclusively to the types of enforcement activities specifically enumerated therein, it recognizes that clarification would be helpful. Accordingly, the Commission is promulgating this final rule.

It should be clearly understood that it has always been contemplated, under § 51.10(d), that when licensee actions to

[1] 40 CFR 1508.18 states: " 'Major Federal action' includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

"(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

"(b) Federal actions tend to fall within one of the following categories:

"(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

"(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

"(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

"(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities."

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remediate the matters underlying the enforcement action have been completed to the satisfaction of the Commission, the conditions of operation previously reviewed in an environmental context will be restored. Accordingly, when the NRC authorizes licensed activities to resume, no additional environmental review pursuant to NEPA or the Commission's regulations is needed. If it should be necessary for the licensee to obtain a license amendment to restore compliance with the Commission's safety requirements in order to satisfy the concerns underlying the enforcement action, any environmental effects associated with issuance of the license amendment would either be addressed in an Environmental Assessment or encompassed by a categorical exclusion under 10 CFR 51.22(c). In this way, appropriate consideration of any environmental impact would be assured.

Because this amendment is merely clarifying and interpretative in nature, relates solely to matters of agency practice and does not involve a significant question of policy, good cause exists for omitting notice of proposed rulemaking and public procedures thereon as unnecessary and for making the amendment effective upon publication in the **Federal Register** without the customary thirty day notice.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

Questions have arisen as to whether 10 CFR 51.10(d), which excludes Commission actions relating to enforcement from the NEPA process, encompasses informal administrative actions such as those described in section V.H. of the Commission's General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR part 2, Appendix C, *i.e.*, bulletins, information notices, generic letters, notices of deviation or nonconformance and confirmatory action letters. Section 51.10(d) of the Commission's regulations is not limited to a portion of the Commission's enforcement activities but is all-inclusive. The NRC staff has a need to assure a uniform understanding of the scope of actions encompassed by this regulation. This rule change revising the text of § 51.10(d) to make clear that it applies to the entire spectrum of the Commission's enforcement activities is the appropriate means to achieve this end.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this amendment to 10 CFR 51.10(d) does not contain any provisions which impose backfits as defined in 10 CFR 50.109(a)(1) and therefore a backfit analysis is not required.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 552 and 533, the NRC is adopting the following amendment to 10 CFR part 51:

PART 51— ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. Paragraph (d) of § 51.10 is revised to read as follows:

§ 51.10 Purpose and scope of subpart; Application of regulations of Council on Environmental Quality.

* * * * *

(d) Commission actions initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings are not subject to section 102(2) of NEPA. These actions include issuance of notices, orders, and denials of requests for action pursuant to subpart B of part 2 of this chapter, matters covered by part 15 and part 160 of this chapter, and any other matters covered by Appendix C to part 2 of this chapter.

Dated at Rockville, Maryland, this 19th day of October, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89-25228 Filed 10-25-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-92-AD; Amdt. 39-6371]

Airworthiness Directives; Airbus Industrie Model A300, A310, A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires inspection of the pitch trim electrical circuit for defective trim switches, and replacement of faulty switches, if necessary. This amendment is prompted by reports of electrical trim malfunction due to faulty trim switches. This condition, if not corrected, could result in pitch trim runaway.

EFFECTIVE DATE: December 1, 1989.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires inspection of the pitch trim electrical circuit for defective trim switches, and replacement of faulty switches, if necessary, was published in the **Federal Register** on July 11, 1989 (54 FR 29052).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received in response to the proposal.

The commenter supported the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 103 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,720.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Models A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent pitch trim runaway, accomplish the following:

A. Perform an inspection to determine if SAMM trim switches, Part Number BP 20-455, Serial Numbers 110 to 923, inclusive, are fitted on the normal pitch trim electrical circuit, in accordance with All Operators Telex (AOT) 22/88/01, dated November 23, 1988. If any trim switch is determined to have any of these serial numbers, prior to further flight, replace the switch with a serviceable trim switch having a serial number 924 or higher, in accordance with Airplane Maintenance Manual (AMM) 22-27-12 for Model A310 and A300-600 series airplanes) or AMM 27-11-11 (for Model A300 series airplanes, as appropriate.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 1, 1989.

Issued in Seattle, Washington, on October 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-25203 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-100-AD; Amdt. 39-6373]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, which requires the inspection and replacement of the Ram Air Turbine (RAT) Ground Checkout Module (GCM) and possible replacement of the RAT hydraulic pump. This amendment is prompted by reports of four RAT hydraulic pumps which may have been damaged by fragments from a filter screen in the GCM. This condition, if not corrected, could result in an inoperable RAT hydraulic pump and complete loss of hydraulic power should a dual engine loss occur.

EFFECTIVE DATE: December 1, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems & Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 and 767 series airplanes, which requires the inspection and replacement of the Ram Air Turbine

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(RAT) Ground Checkout Module (GCM) and possible replacement of the RAT hydraulic pump, was published in the Federal Register on July 11, 1989 (54 FR 29056).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters stated that Boeing has subsequently released revisions to the service bulletins called out in the Notice of Proposed Rulemaking that provide operators with additional options that may enable them to turn around aircraft and equipment more quickly. These commenters requested that the latest revisions be called out in the final rule. The FAA concurs. The FAA has reviewed and approved Boeing Service Bulletin 757–29A0037, Revision 2, dated August 3, 1989, and Boeing Service Bulletin 767–29A0035, Revision 2, dated August 3, 1989. These revisions provide instructions for inspections that allow the operator to evaluate the RAT GCM and hydraulic pump to determine if the pump needs to be removed, inspected, and replaced/repaired. The final rule has been revised to allow inspections and modification to be accomplished in accordance with these later service bulletin revisions, and to identify conditions where the pump does not need to be removed.

The Air Transport Association (ATA) of America, commenting on behalf of its members, stated that they would be able to comply with the rule in the proposed time period, provided the vendor is able to support the replacement program with sufficient spares. The FAA does not consider the availability of replacement parts to be a problem. The addition of the revised service bulletins discussed above will provide the airlines with the ability to determine if the RAT hydraulic pump does not need to be replaced. This will reduce the impact on the vendor, allowing for sufficient spares support.

The ATA also stated that, in the **SUPPLEMENTARY INFORMATION** section of the Notice of Proposed Rulemaking, the reference to Sundstrand Service Bulletin "734933–29–2" should have read "729550–29–3." The FAA does not totally concur. Sundstrand Service Bulletin 734933–29–2 describes procedures for modifying the GCM on Model 757 series airplanes; Sundstrand Service Bulletin 729550–29–3 describes procedures for modifying the GCM on Model 767 series airplanes. The FAA acknowledges that both references should have been included in the preamble. However, no change to the rule is necessary since the Sundstrand Service Bulletin was identified in the preamble for information purposes only.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 400 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 215 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 and 767 series airplanes, as listed in Boeing Alert Service Bulletins 757–29A0037, Revision 1, and 767–29A0035, Revision 1, both dated November 23, 1988, certificated in any category. Compliance required within the next 6,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the possible complete loss of hydraulic power, accomplish the following:

A. Remove and rework or replace the Ram Air Turbine (RAT) Ground Checkout Module (GCM) in accordance with Boeing Service Bulletin 757–29A0037, Revision 1, dated November 23, 1988, or Revision 2, dated August 3, 1989 (for Model 757 airplanes); or Boeing Service Bulletin 767–29A0035, Revision 1, dated November 23, 1988, or Revision 2, dated August 3, 1989 (for Model 767 airplanes); as appropriate. Prior to returning the airplane to service:

1. If the RAT has been operated or tested since the airplane delivery, prior to returning the airplane to service, inspect the downstream filter screen of the removed GCM.

2. If the screen is damaged or missing, or if GCM has been removed previously without inspecting the screen, prior to further flight, either test the RAT hydraulic pump or replace it in accordance with the applicable service bulletins.

3. If the RAT hydraulic pump is tested and found to be damaged, prior to further flight, replace it with a serviceable pump in accordance with the applicable service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 1, 1989.

Issued in Seattle, Washington, on October 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–25204 Filed 10–25–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ANE–05; Amdt. 39–6770]

Airworthiness Directives; CFM International (CFMI) CFM56–2/–3/–3B/–3C/–5 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes AD 89–17–04, which established a repetitive inspection and removal from service program for certain Number 3B bearings installed in CFM56–2/–3/–3B/–3C series turbofan engines. The amendment supersedes AD 89–17–04 by carrying forth all existing AD requirements, and by adding new bearing part numbers (P/N) and serial numbers (S/N), and the CFM56–5 engine model to the bearing inspection and removal program. The AD is needed to prevent failure of the No. 3B bearing, and subsequent inflight shutdown. Therefore, this AD supersedes Amendment 39–6196 by adding new bearing P/N's and S/N's, and the CFM56–5 model engine to the bearing inspection and removal program.

DATES: *Effective:* November 11, 1989.

Comments for inclusion in the docket must be received on or before December 11, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–05, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89–ANE–05.

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's maintenance manuals may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION: AD 89–17–04, Amendment 39–6196 (54 FR 32436), was published in the Federal Register on August 8, 1989. The AD established a repetitive inspection and removal from service program for certain Number 3B bearings installed in CFM56–2/3/3B/3C series turbofan engines. The FAA has since determined that additional bearing P/N's and S/N's installed in CFM56–2/–3/–3B/–3C/–5 model engines, also have a high rate of failure in service. There have been a total of approximately 40 failures of Number 3B bearings in service, with approximately 25 inflight shutdowns. Although the investigations have not revealed a definitive cause for all failures, approximately half are attributed to contamination (phosphorus and aluminum oxide). The repetitive inspections can identify bearings with excessive wear, and preclude bearing failure and inflight shutdown. Therefore, this AD supersedes Amendment 39–6196 by adding new bearing P/N's and S/N's, and the CFM56–5 model engine to the bearing inspection and removal program.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, for examination by interested persons. A report summarizing each FAA-public contact concerning the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–05. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the rules docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal

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Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

CFM International: Applies to CFM International (CFMI) CFM56-2/-3/-3B/-3C/-5 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of Number 3B bearings, accomplish the following:

(a) For CFM56-3/-3B/-3C series engines equipped with Number 3B bearings, Part Numbers (P/N) 9732M10P12 (Serial Number (S/N) series FAFDxxxx and FAFExxxx); 9732M10P16; and 1362M76P02 accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix I, within the next 50 hours time in service (TIS) after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS since last inspection (SLI) in accordance with the instructions of Appendix I to this AD until accomplishment of paragraph (a)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix I to this AD.

(2) Remove from service affected Number 3B bearings at the next shop visit, or on or before October 31, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

(b) For CFM56-2 series engines equipped with Number 3B bearings, P/N 9732M10P12 (S/N series FAFDxxxx and FAFExxxx); 9732M10P16; and 1362M76P02 accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix II to this AD, within the next 50 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS SLI in accordance with the instructions of Appendix II to this AD until accomplishment of paragraph (b)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix II to this AD.

(2) Remove from service affected Number 3B bearings at the next shop visit, or on or before October 31, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

(c) For CFM56-3/-3B/-3C series engines equipped with Number 3B bearings, P/N 9732M10P10; 9732M10P17; and 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), accomplish the following:

Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix I to this AD, within the next 75 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 75 hours TIS SLI in accordance with the instructions of Appendix I to this AD. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix I to this AD.

(d) For CFM56-2 series engines equipped with Number 3B bearings, P/N 9732M10P10; 9732M10P17; and 9732M10P12 (S/N series other than FAFD or FAFE), accomplish the following:

Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix II to this AD, within the next 375 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 375 hours TIS SLI in accordance with the instructions of Appendix II to this AD. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix II to this AD.

(e) For CFM56-5 series engines equipped with Number 3B bearing, P/N 9542M60P01, accomplish the following:

Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix III, within the next 50 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS SLI in accordance with Appendix III to this AD. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix III to this AD.

Note: Bearing P/N 9732M10P12 (S/N series FAFDxxxx and FAFExxxx) inspected as previously required under Amendment 39-6196, AD 89-17-04, is considered in compliance with the requirements of paragraphs (a) and (b) of this AD.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment supersedes AD 89-17-04, Amendment 39-6196 (54 FR 32436).

This amendment becomes effective on November 11, 1989.

Issued in Burlington, Massachusetts, October 11, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix I

Note: Boeing CFM 737-300/400 Maintenance Manual, Document No. D6-37588-388, dated November 15, 1988, Chapter-Section 79-00-00, Paragraph 5 "Inspection/Check", pertains to this inspection.

Appendix II

Note: CFMI CFM56-2 Maintenance Manual, dated February 28, 1989, Chapter-Section 79-00-00, Paragraph 6 "Inspection/Check", pertains to this inspection.

Appendix III

Note: Airbus A320 Aircraft Maintenance Manual, Revision 8, dated February 1, 1989, Chapter-Section 79-21-10 "Inspection/Check", pertains to this inspection.

[FR Doc. 89-25205 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-35]

Designation of Transition Area, Greensboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Greensboro, GA, transition area. A Standard Instrument Approach Procedure (SIAP) has been developed to serve the Greene County Airpark Airport based on the Greensboro nondirectional radio beacon (NDB). This action lowers the floor of controlled airspace from 1,200 to 700 feet above the surface in vicinity of the airport for protection of instrument flight rules (IFR) aeronautical operations. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 u.t.c., April 5, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On August 22, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate the Greensboro, GA, transition area (54 FR 34789). The floor of controlled airspace would be lowered from 1,200 to 700 feet above the surface in vicinity of the Greene County Airpark Airport. A new NDB SIAP has been developed for the airport and the additional controlled airspace is necessary for protection of IFR aeronautical operations. The operating status of the airport will change from VFR to IFR concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates the Greensboro, GA, transition area. This action lowers the floor of controlled airspace from 1,200 to 700 feet above the surface in vicinity of the airport for protection of IFR aeronautical operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Greensboro, GA [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Greene County Airpark Airport (latitude 33°35'57" N, longitude 83°06'13" W); within three miles each side of the 072° bearing from the Greensboro NDB (latitude 33°35'41" N, longitude 83°06'27" W), extending from the 6.5-mile radius area to 8.5 miles east of the NDB.

Issued in East Point, Georgia, on October 12, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-25206 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF EDUCATION

34 CFR Part 30

Debt Collection

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On August 30, 1988, amendments to the final regulations for 34 CFR part 30, titled "Debt Collection," governing the use of administrative offset to collect debts held by the Secretary were published at 53 FR 33424. In that document § 30.20, paragraphs (c), (d), and (e) were redesignated as paragraphs (b), (c), and (d), respectively. However, redesignated paragraph (c) contains cross references that were not revised in the August 30 amendments. In order to correct the error, this document correctly revises the cross reference in newly designated § 30.20 (c)(1) and (c)(2).

FOR FURTHER INFORMATION CONTACT: David T. Dexter, Director, Credit Management Improvement Staff, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., Room 3017 FOB-6, Washington, DC 20202. Telephone: (202) 732-4194.

Authority: 20 U.S.C. 1221e-3(a)(1), and 1226a-1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

Dated: October 20, 1989.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

§ 30.20 [Corrected]

In the final regulations published on August 30, 1988, on page 33425, in the third column, in the amendments to § 30.20, the following changes are added. The cross reference to "(c)(4)" in newly designated paragraph (c)(1) is corrected to read "(b)(4)" and the cross reference to "(d)(1)" in newly designated paragraph (c)(2) is corrected to read "(c)(1)".

[FR Doc. 89-25179 Filed 10-25-89; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 208

RIN 1810-AA40

Mathematics and Science Education Program; State Grants

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: On August 10, 1989, the Secretary published in the Federal Register at 54 FR 32936 final regulations for the Mathematics and Science Education Program. Under the "EFFECTIVE DATE" section of the preamble to those final regulations, §§ 208.11 and 208.22 were cited as not being approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. In fact, those sections had been approved under OMB control number 1810-0515.

EFFECTIVE DATE: The regulations for part 208, including §§ 208.11 and 208.22, were effective on September 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve W. Cornelius, Director, Division of Formula Grants, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6246. Telephone: (202) 732-4062.

Dated: October 16, 1989.

Daniel Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

§ 208.11 [Corrected]

On page 32938, column 2, § 208.11 is corrected by adding the following statement after the section: "(Approved by the Office of Management and Budget under Control Number 1810-0515)".

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§ 208.22 [Corrected]

On page 32939, column 1, § 208.22 is corrected by adding the following statement after the section: "(Approved by the Office of Management and Budget under Control Number 1810–0515)".

[FR Doc. 89–25201 Filed 10–25–89; 8:45 am]

BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

34 CFR Part 219

Assistance for School Expenditures and Construction in Cases of Certain Disasters; Correction

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error made in the final regulations published in the **Federal Register** on October 4, 1988 (53 FR 39018) concerning assistance for school expenditures and construction in cases of certain disasters.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2079, Washington, DC 20202–6272. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

Program Authority: 20 U.S.C. 241–1 and 646. (Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

Dated: October 16, 1989.

Daniel F. Bonner,

Acting Assistant Secretary, Elementary and Secondary Education.

§ 219.22 [Corrected]

On page 39019, column 2, item 5, § 219.22 should be corrected by removing the period at the end of the sentence and adding "and by redesignating paragraphs (a)(1), (a)(2), and (a)(3) as (a), (b), and (c), respectively."

[FR Doc. 89–25200 Filed 10–25–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 88–100]
RIN 2115–AC35

Bulk Hazardous Materials; Correction

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule; correction.

SUMMARY: In the interim final rule concerning bulk hazardous materials which was published on September 29, 1989 (54 FR 40005) a paragraph appearing in the previously existing regulation was inadvertently omitted. This paragraph is added without change.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

On page 40056, in the first column, following the heading of Table 2 in part 153, correct the table to add the following introductory paragraph to read as follows:

§ 153.1608 [Table 2 amended]

"The cargoes listed in this table are not regulated under subchapter D or O of this title when carried in bulk on non-oceangoing barges. Category A, B, or C noxious liquid substance (NLS) cargo, as defined in § 153.2 of this chapter, listed in this table, or any mixture containing one or more of these cargoes, must be carried under this subchapter if carried in bulk on an oceangoing ship. Requirements for Category D NLS cargoes and mixtures of non-NLS cargoes with Category D NLS cargoes are in 33 CFR part 151."

Dated: October 20, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–25199 Filed 10–25–89; 8:45 am]

BILLING CODE 4910–14–M

Proposed Rules

Federal Register
Vol. 54, No. 206
Thursday, October 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89–181]

Citrus Canker Regulations; Change in Status of Pinellas County, Fl

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the remainder of Pinellas County, Florida, from the list of areas under special restriction because of citrus canker caused by the Asiatic strains. This action appears warranted because no infestation caused by an Asiatic strain of citrus canker has been found anywhere in Pinellas County since the last infested plant in the county was destroyed on July 15, 1987. Further, Pinellas County is separated by a large body of water from the only neighboring county where there has been an infestation within the past 2 years. This action would relieve some restrictions on the interstate movement of citrus fruit and calamondin and kumquat plants from the portion of Pinellas County presently under special restriction because of citrus canker caused by the Asiatic strains.

DATE: Consideration will be given only to comments received on or before November 13, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–181. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas capestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Aggressive strains of *Xanthomonas capestris* pv. *citri* can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

In the United States, Florida is the only State where citrus canker exists. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75 through 301.75–16, "Subpart—Citrus Canker." These regulations recognize two types of citrus canker: one type caused by the so-called Florida nursery strains, and a more severe type caused by Asiatic strains of *Xanthomonas capestris* pv. *citri*. Citrus fruit and plants from areas of Florida affected by the Asiatic strains are subject to more stringent restrictions on interstate movement than citrus fruit and plants form other areas of the State.

Section 301.75–7(b)(3) of the regulation lists the following areas as being under special restriction because of citrus canker caused by the Asiatic strains:

Hillsborough County: The area south of State Highway 672 and west of State Highway 39;

Pinellas County: The area south of a line formed by State Highway 694, from Redington Shores to the intersection of State Highway 694 and Interstate 92, then along Interstate 92 to the eastern shore of Old Tampa Bay;

Manatee County: The entire county; and

Sarasota County: The area south of the Manatee County line, west of Interstate 75, and north of State Highway 72, County Road 789, and an imaginary line extending due west to the Gulf of Mexico.

The regulations at § 301.75–7(b) (1) and (2) provide that the special restrictions applicable to any area listed in § 301.75(b)(3) will remain in effect until 2 years after the last infested plant in that area has been destroyed.

Citrus canker caused by the Asiatic strains was first detected in Pinellas County in 1986. The infestation consisted of 23 infested trees located on nine residential properties in the southern part of the county. Eight of the properties were located in the same neighborhood, while the ninth, containing a single infested tree, was located four-and-a-half miles away. All of the infested trees were destroyed by July 15, 1987. The entire county was under special restriction because of these infestations until March 24, 1989, when a portion of Pinellas County was released, based, among other things, on multiple tree-by-tree surveys showing that the area of the county which was released had no infestations of citrus canker caused by the Asiatic strains.

Tree-by-tree surveys conducted in Pinellas County since 1986 have found no additional infestations in the area presently under special restriction because of the Asiatic strains. Further, Pinellas County is separated by a large body of water, Tampa Bay, from the only neighboring county (Manatee) that has had an infestation within the past 2 years. Therefore, we are proposing to remove the remainder of Pinellas County from the list of areas under special restriction because of citrus canker caused by the Asiatic strains.

Our proposal would relieve some restrictions on the interstate movement of citrus fruit and calamondin and kumquat plants from areas of Pinellas County, Florida, under special restriction because of the Asiatic strains. That is, under conditions specified in the regulations, regulated fruit from groves of 10 or more trees would become eligible for interstate movement to commercial citrus-producing areas of the United States, and own-root-only calamondin and kumquat plants would become eligible for interstate movement to all areas of the United States except commercial citrus-producing areas. Currently, regulated fruit from the area of Pinellas County under special restriction because of the Asiatic strains may be

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moved interstate only to parts of the United States that are not commercial citrus-producing areas. The interstate movement of calamondin and kumquat plants from the area of Pinellas County under special restriction because of the Asiatic strains is prohibited.

In addition, groves of 10 or more trees producing regulated fruit for interstate movement to areas other than commercial citrus-producing areas would be subject to less stringent inspections, and the fruit could be treated with soap and water rather than with a chemical disinfectant. Personnel, equipment, and vehicles would no longer have to be treated with a disinfectant upon entering or leaving a grove of 10 or more regulated trees, and fruit from groves of fewer than 10 regulated trees would not have to be treated as a conditon of interstate movement.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. The last plant infested with the Asiatic strains of citrus canker in Pinellas County was destroyed more than 2 years ago. Therefore, Pinellas County should be removed from the list of areas under special restriction because of citrus canker caused by the Asiatic strains. We anticipate that this action would have the most impact on private individuals who want to send fruit from their dooryard groves (fewer than 10 trees) to relatives and friends, particularly during the winter holidays. Although the current regulations allow them to ship the fruit with a limited permit, few have been doing so because of the cost and inconvenience of having the fruit treated. The change in the status of Pinellas County should be made promptly so that these individuals and other persons affected can benefit from the reduced restrictions in time for the holiday shipping season, which begins in November.

Executive Order 12291 and the Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

As a result of this rulemaking, no portion of Pinellas County, Florida, would remain under special restriction because of citrus canker caused by the Asiatic strains. The entire State of Florida, however, would remain a quarantined area for citrus canker.

We anticipate that adoption of this proposed rule would have the most impact on private individuals who want to send fruit from their dooryard plantings (groves of fewer than 10 trees) to relatives and friends. Although the current regulations allow them to ship the fruit with a limited permit, few have been doing so because of the cost and inconvenience of having the fruit treated.

The changes pertaining to groves of 10 or more regulated trees would affect two owners of commercial citrus groves, one of three acres and the other of nine acres, which are harvested for fresh fruit. We estimate that the owners could save an estimated $20 per acre per year in no longer having to disinfect personnel, vehicles, and equipment. It does not appear that any of the other changes would result in substantial savings or gain for the owners. The cost of chemically treating fruit appears to be a very small part of the overall costs associated with packing house operations, and there is little difference in price between fruit sold for interstate movement to commercial citrus-producing areas and fruit sold for interstate movement to other areas or for intrastate movement.

We do not know of any nurseries in Pinellas County that raise calamondin or kumquat plants for interstate movement.

Under these circumstances, the administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.75–7 [Amended]

2. Section 301.75–7 would be amended by removing paragraph (b)(3)(ii), and by redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as (b)(3)(ii) and (b)(3)(iii), respectively.

Done in Washington, DC, this 20th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–25239 Filed 10–25–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–26]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines Incorporating Turbine Components Corp., Federal Aviation Administration Repair Stations No. 119–20, Repaired Second Stage Turbine Vanes Using Puddle Weld Repair Processes TESR1 and ADR2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require removal of certain second stage turbine vanes repaired by Turbine Components Corporation (TCC) (FAA Repair Station No. 119–20) of Branford, Connecticut. The AD requires removal of second stage turbine vanes which were subjected to non-approved trailing edge and airfoil midsection ("H" dimension) puddle welds and replacement with serviceable vanes. The proposed AD is needed to prevent second stage turbine vane fractures which could subsequently result in fire, inflight shutdown, uncontained engine failure, or airframe damage.

DATES: Comments must be received on or before December 20, 1989.

ADDRESSES: Comments on the proposal may be mailed duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–26, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments must be marked: Docket No. 89–ANE–26.

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617 273–7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, New England Region, Office of the Assistant Chief Counsel, Room 311, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–26. The postcard will be date/time stamped and returned to the commenter.

This document proposes to adopt a new AD mandating removal of certain PW JT8D second stage turbine vanes repaired by TCC which contain non-approved puddle weld repairs of the vane airfoil.

There are 3,179 second stage turbine vanes which were repaired by TCC using non-approved airfoil weld repairs. The repairs consisted of puddle welding the trailing edge of vane airfoils to meet minimum chord dimensions. Puddle welds also were applied to the "H" dimension to meet minimum airfoil thickness. The PW Engine Manual, Part Number 481672, allows only slot weld repairs to the trailing edge and leading edge of the airfoil. The maximum size of the slot is 0.250 inches wide by 0.250 inches deep. Furthermore, 0.500 inches minimum of undamaged parent material must exist between slot weld repairs.

Non-approved puddle welding can produce a number of welding abnormalities including a significant amount of heat affected zone (HAZ) cracking. The HAZ cracking coupled with the aerodynamic loading and thermal cycling of the airfoil can lead to further crack propagation and eventual airfoil fracture. The subsequent damage created by a second stage turbine vane airfoil fracture can cause downstream turbine blade and vane fractures resulting in a possible fire, inflight shutdown, uncontained engine failure, or airframe damage.

The FAA has determined that PW JT8D second stage turbine vanes repaired by TCC using trailing edge and "H" dimension puddle welds may not possess adequate structural integrity and may fail during engine operation. Consequently, PW JT8D second stage turbine vanes repaired by TCC using trailing edge and "H" dimension puddle welds should be removed and replaced with serviceable vanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 400 engines and will cost approximately seven million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using aircraft in which JT8D–1 through JT8D–17AR engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines incorporating Turbine Components Corporation (TCC), FAA Repair Station No. 119–20, repaired Second Stage Turbine Vanes using Puddle Weld Repair Processes TESR1 and ADR2.

Compliance is required no later than 4,000 cycles in service after the effective date of this AD, unless already accomplished.

To ensure the continuing structural integrity and certified performance capabilities of JT8D turofan engines, remove all JT8D second stage turbine vanes which were repaired by TCC of Branford,

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Connecticut, which contain airfoil trailing edge and midsection ("H" dimension) puddle welds as follows:

(a) Remove affected vanes and replace with serviceable vanes prior to return to service.

Notes: (1) TCC's trailing edge puddle weld repairs are identified by a "TESR1" marking on the outside diameter (OD) foot and TCC's "H" dimension puddle weld repairs are identified by an "ADR2" marking on the OD foot.

(2) Appendix I of this AD summarizes the shipment of affected vanes from TCC.

(3) Appendix II of this AD summarizes the further distribution of affected vanes from TCC through AAR Aircraft Turbine Center, Inc., Elk Grove Village, Illinois.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on September 27, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

APPENDIX I

[NOTE: Summary of Non-Approved PW JT8D Second Stage Turbine Vane Weld Repairs by Turbine Components Corporation]

Customer/order no.	Repair issue no.	P/N	Invoice No.	Invoice date	Packing slip No.	No. of vanes
NW 7-593867	TESR1	785652	F50867	11-30-87	44472	10
AA 765459	TESR1	557352	F21751	12-18-85	10142	49
	TESR1	577352	F21604	12-12-85	10141	15
	TESR1	577352	F21975	12-27-85	10143	56
AA 765628	TESR1	577352	F24907	03-31-86	F3466	05
	TESR1	577352	N/A	04-18-86	F3614	88
	TESR1	577352	N/A	04-20-86	F3958	26
	TESR1	577352	F26188	05-06-86	F3671	55
	TESR1	577352	F26188	05-06-86	F3671	42
	TESR1	577352	N/A	07-11-86	F5026	33
	TESR1	577352	F28814	07-18-86	F5076	30
	TESR1	577352	F29239	07-29-86	F5171	32
	TESR1	577352	F29903	08-12-86	F5798	09
	TESR1	577352	F30589	08-29-86	F5967	76
	TESR1	577352	F32538	10-15-86	23412	60
	TESR1	577352	F33227	10-30-86	24291	34
	TESR1	577352	F34087	11-18-86	25253	17
	TESR1	577352	F35936	12-31-86	27536	20
	TESR1	577352	F36461	01-14-87	28071	15
	TESR1	577352	F34890	12-08-86	26196	55
	TESR1	577352	F35613	12-22-86	27095	18
AA 510602	TESR1	577352	F36521	01-15-87	28176	76
	TESR1	577352	F36923	01-23-87	28631	09
	TESR1	768352	F36923	01-23-87	28631	86
	TESR1	577352	F37267	10-30-87	29092	06
	TESR1	577352	F37267	01-30-87	29092	14
	TESR1	768352	F37835	01-13-87	29752	128
	TESR1	768352	F39054	03-10-87	31111	81
	TESR1	779052	F39054	03-10-87	31111	14
	TESR1	577352	F40578	04-13-87	32825	25
	TESR1	768352	F40578	04-13-87	32825	25
	TESR1	779052	F40582	04-13-87	32881	02
	TESR1	577352	F40582	04-13-87	33214	17
	TESR1	577352	F40948	04-22-87	33214	01
	TESR1	768352	F40948	04-22-87	33214	92
	TESR1	779052	F41311	04-29-87	33676	01
	TESR1	577352	F41311	04-29-87	33676	02
	TESR1	768352	F41311	04-29-87	33676	49
	TESR1	577352	F42076	05-14-87	34504	01
	TESR1	768352	F42076	05-14-87	34504	41
	TESR1	768352	F42405	05-20-87	34910	80
	TESR1	779052	F42405	05-20-87	34910	03
	TESR1	768352	F42841	05-29-87	35412	89
	TESR1	768352	F43084	06-03-87	35665	14
	TESR1	768352	F43395	06-11-87	36015	55
	TESR1	768352	F44022	06-25-87	36722	32
AA 510602	TESR1	767652	F44022	06-25-87	36722	04
	TESR1	779052	F44765	07-13-87	37564	06
	TESR1	767652	F44765	07-13-87	37564	16
	TESR1	761652	F44765	07-13-87	37564	03
	TESR1	768352	F44765	07-13-87	37564	11
	TESR1	577352	F44765	07-13-87	37564	05
	TESR1	768352	F45163	07-22-87	38141	02
	TESR1	779052	F45163	07-22-87	38141	06
	TESR1	768552	F45163	07-22-87	38141	01
AA 510611	TESR1	577352	F36809	01-21-87	28515	09
AA 510899	TESR1	768352	F49456	10-23-87	42919	40
	TESR1	779052	F49456	10-23-87	42919	30
	TESR1	768352	F49769	10-30-87	43228	13
	TESR1	779052	F49469	10-30-87	43228	15

APPENDIX I—Continued

[NOTE: Summary of Non-Approved PW JT8D Second Stage Turbine Vane Weld Repairs by Turbine Components Corporation]

Customer/order no.	Repair issue no.	P/N	Invoice No.	Invoice date	Packing slip No.	No. of vanes
	TESR1	577352	F49469	10-30-87	43228	13
	TESR1	768352	F50085	11-09-87	43675	17
	TESR1	779052	F50085	11-09-87	43675	13
	TESR1	768352	F51910	12-28-87	45689	06
	TESR1	577352	F51910	12-28-87	45689	01
	TESR1	779052	F52623	01-14-88	46456	39
	TESR1	768352	F53349	01-31-88	47333	19
	TESR1	779052	F53606	02-02-88	47596	21
	TESR1	779052	F55391	03-11-88	49577	23
AAR RO-13213	TESR1	779052	N/A	N/A	25519	84
	TESR1	768352	N/A	N/A	25519	11
	TESR1	779052	F33976	11-14-86	25122	80
	TESR1	768352	F33976	11-14-86	25122	15
	TESR1	779052	N/A	N/A	27110	74
	TESR1	768352	N/A	N/A	27110	21
	ADR2	779052	F36593	01-16-89	28331	08
	TESR1	779052	F36593	01-16-87	28331	15
	TESR1	768352	F36593	01-16-89	28331	03
	TESR1	768352	F36804	01-21-87	28544	10
	TESR1	768352	F41863	05-11-87	34250	11
	TESR1	779052	F41863	05-11-87	34250	31
	TESR1	761652	F41863	05-11-87	34250	01
	TESR1	779052	F43727	06-18-87	36413	11
	TESR1	768352	F43727	06-18-87	36413	06
	TESR1	767652	F44690	07-10-87	37511	04
	TESR1	768352	F44690	07-10-87	37511	09
	TESR1	768352	F46462	08-19-87	39654	20
	TESR1	779052	F46462	08-19-87	39654	29
	T, A2	779052	F46462	08-19-87	39654	18
	T, A2	768352	F46462	08-19-87	39654	03
	TESR1	779052	F46630	08-21-87	39790	07
	TESR1	779052	F38170	02-20-87	30168	86
	TESR1	768352	F38170	02-20-87	30168	14
	TESR1	779052	F47065	08-31-87	40330	14
AAR RO-13213	TESR1	768352	F47065	08-31-87	40330	13
	TESR1	779052	F41197	04-28-87	33532	48
	TESR1	768352	F41197	04-28-87	33532	09
	TESR1	768352	F46629	08-21-87	39789	06
	TESR1	779052	F46629	08-21-87	39789	48
	TESR1	768352	F48421	09-30-87	41808	27
	TESR1	779052	F48421	09-30-87	41808	59
	TESR1	768352	F50843	11-30-87	44467	13
	TESR1	779052	F50843	11-30-87	44467	51
	TESR1	768352	F49452	10-23-87	42898	09
	TESR1	779052	F49452	10-23-87	42898	39
	TESR1	768352	F49767	10-30-87	43286	21
	TESR1	779052	F49767	10-30-87	43286	47
	TESR1	768352	F40172	04-02-87	32388	39
	TESR1	779052	F40172	04-02-87	32388	34
	TESR1	779052	F40173	04-02-87	32389	61
	TESR1	768352	F50612	11-23-87	44241	11
	TESR1	779052	F50612	11-23-87	44241	20

NOTES: (1) TESR1 references a trailing edge puddle weld repair.
(2) ADR2 references an "H" dimension puddle weld repair.
(3) T, A2 references a repair in which both the trailing edge puddle weld and the "H" dimension puddle weld are performed.
(4) NW: Northwest Airlines
(5) AA: American Airlines
(6) AAR: AAR Aircraft Turbine Center, Inc.

APPENDIX II

[NOTE: Summary of Distribution of TCC Non-Approved JT8D Second Stage Turbine Vane Weld Repairs through AAR Aircraft Turbine Center, Inc.]

AAR inv. No.	TCC packing slip No.	Repair issue No.	Customer	Customer purchase number	Date	Qty
107225	25122	TESR1 (1)	Iberia (5)	24A0944-1	12-86	95
107225	25519	TESR1	Iberia	24A09444-1	12-86	95
106323	27110	TESR1	Iberia	26A10575-1	02-87	08
107644	27110	TESR1	Iberia	20A09446-1	01-87	75
106816	27110	TESR1	Iberia	26A10575-1	03-87	08
107907	27110	TESR1	Iberia	26A10575-1	02-87	04
106323	28331	T, A2 (3)	Iberia	26A10575-1	02-87	06
107907	28331	T, A2	Iberia	26A10575-1	02-87	02
110989	28331	T, A2	Iberia	23A21506-1	07-87	07

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APPENDIX II—Continued

[NOTE: Summary of Distribution of TCC Non-Approved JT8D Second Stage Turbine Vane Weld Repairs through AAR Aircraft Turbine Center, Inc.]

AAR inv. No.	TCC packing slip No.	Repair issue No.	Customer	Customer purchase number	Date	Qty
108816	28331	T, A2	Iberia	26A10575-1	03-87	10
108816	28544	TESR1	Iberia	26A10575-1	03-87	05
108816	30168	TESR1	Iberia	26A10575-1	03-87	24
106323	30168	TESR1	Iberia	26A10575-1	02-87	76
110100	30469	TESR1	Iberia	23A17911-1	06-87	01
108816	30469	TESR1	Iberia	26A10575-1	03-87	19
110623	32388	TESR1	Israel (6)	N/A	07-87	02
108990	32388	TESR1	Iberia	21A17909-1	04-87	38
108937	32388	TESR1	NW(7)	04702482935	04-87	33
108937	32389	TESR1	NW	04702482935	04-87	53
108980	32389	TESR1	Iberia	21A17909-1	04-87	28
110100	33532	TESR1	Iberia	23A17911-1	06-87	04
109816	33532	TESR1	Iberia	25A17910-1	05-87	53
109616	34250	TESR1	Iberia	25A17910-1	05-87	42
110989	34250	TESR1	Iberia	23A21506-1	07-87	01
111631	36413	T, A1 (2)	Iberia	23A21506-1	08-87	35
112329	36413	T, A1	Iberia	23A21506-1	10-87	01
111629	36413	T, A1	Iberia	21A17909-1	08-87	03
111630	36413	T, A1	Iberia	23A21506-1	08-87	33
111536	36413	T, A1	Iberia	21A17909-1	08-87	15
110989	37511	T, A1	Iberia	23A21506-1	07-87	17
110973	37511	T, A1	Iberia	23A17911-1	07-87	13
111164	37511	T, A1	M & M (8)	1008-98	08-87	05
111628	39654	T, A1, A2 (4)	Iberia	21A7909-1	08-87	10
111629	39654	T, A1, A2	Iberia	21A7909-1	08-87	83
111630	39789, 39790	T, A1	Iberia	23A21506-1	08-87	13
111536	39789, 39790	T, A1	Iberia	21A17909-1	08-87	81
111779	40330	T, A1	Iberia	21A17909-1	09-87	07
111780	40330	T, A1	Iberia	23A21605-1	09-87	10
111782	40330	T, A1	Iberia	23A21605-1	09-87	19
113225	41808	T, A1	SwissAir (9)	370576	11-87	02
112739	41808	T, A1	SwissAir	370534	10-87	21
112761	41808	T, A1	SwissAir	370576	10-87	12
112326	41808	T, A1	Iberia	21A17909-1	10-87	16
112329	41808	T, A1	Iberia	23A21605-1	10-87	39
112730	42898	TESR1	Iberia	21A17909-1	10-87	02
112732	42898	TESR1	Iberia	23A21506-1	10-87	03
112761	42898	TESR1	SwissAir	370576	10-87	19
114936	42898	TESR1	NW	770097-22	02-88	03
114936	42898	TESR1	NW	770098-22	02-88-	12
113291	42898	TESR1	NW	70899-8-8	11-87	07
114938	43286, 43515	T, A1	NW	770097-22	02-88	24
113293	43286, 43515	T, A1	NW	70899-8-8	11-87	88
113225	43286, 43515	T, A1	SwissAir	370576	11-87	20
113249	43286, 43515	T, A1	Iberia	23A21506-1	11-87	02
116570	44615, 44467	T, A1	SwissAir	370921	04-88	23
113978	44615, 44467	T, A1	SwissAir	370576	12-87	03
117744	44615, 44467	T, A1	SwissAir	380446	05-88	09
114107	44615, 44467	T, A1	SwissAir	370576	12-87	03
116056	44615, 44467	T, A1	Pan Am (10)	Q6210/J130947	03-88	01
113997	44615, 44467	T, A1	Iberia	23A21506-1	12-87	22
110036	44615, 44467	T, A1	NW	770098-22	02-88	11
114545	44615, 44467	T, A1	Sabena (11)	22826AA1003	01-88	22

NOTES: (1) TESR1 references a trailing edge puddle weld repair.
(2) T, A1 references an Invoice Number which identifies a combination of trailing edge puddle weld repairs and trailing edge inserts.
(3) T, A2 references an Invoice Number which identifies a combination of trailing edge and "H" dimension puddle weld repairs.
(4) T, A1, A2 references an Invoice Number which identifies a combination of trailing edge and "H" dimension puddle weld reparis and trailing edge inserts.
(5) Iberia Lineas Aeras de Espana, S.A.
(6) Israel Aircraft Industries, Ltd.
(7) Northwest Airlines
(8) M & M Aerospace Hardware, Inc.
(9) Swiss Air Transport Co., Ltd.
(10) Pan American World Airways, Inc.
(11) Sabena Belgium World Airlines

[FR Doc. 89-25206 Filed 10-25-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-38]

Airworthiness Directives; All aircraft using Texas Instruments Circuit Breakers Models 6TC6-7.5 and -10 and 6TC20-7.5 and -10, All With Date Codes 8151 (1981) and Earlier

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require the replacement of certain Texas Instrument circuit breakers on all such equipped aircraft. The proposed AD is needed to prevent potential overheating of certain circuit breaker models which could result in a fire aboard the aircraft.

DATES: Comments must be received on or before November 30, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-38, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 89-ANE-38.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins may be obtained from the following:

(1) Boeing Commercial Airplanes, Mr. R.G. Kelsy, Manager, Service Bulletin Engineering, Mail Stop 2L-02, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124.

(2) Lockheed Corporation: Commercial Order Administration, Department 65-33,U-20,A-1, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Boston Aircraft Certification Office, ANE-153, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7067.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-38. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that Texas Instruments circuit breakers model 6TC6-7.5 and -10 and model 6TC20-7.5 and -10, all with date codes 8151 (1981) and earlier, could overheat when used for inductive circuits, and that this overheating could cause a fire aboard the aircraft. Since this condition is likely to exist or develop on other aircraft of the same type design, the proposed AD would require replacement of these circuit breakers when used on all such equipped aircraft.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately one hour of labor per circuit breaker. The cost for each circuit breaker replacement, including labor, will be about $350.00 or less. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Texas Instruments: Applies to circuit breakers models 6TC6-7.5 and C-10 and 6TC20-7.5 and -10, all with date codes 8151 (1981) and earlier.

Compliance is required within thirty days after the effective date of this AD, unless already accomplished.

(a) To prevent potential overheating of the applicable circuit breakers, replace Texas Instrument circuit breakers models 6TC6-7.5 and -10 and models 6TC20-7.5 and -10, all with date codes 8151 (1981) and earlier. These circuit breakers may be replaced with the same model number manufactured after 1981.

Notes: (1) The applicable circuit breakers are installed in, but are not limited to, aircraft manufactured by Boeing Commercial Airplanes and Lockheed Corporation.

(2) The Boeing Commercial Airplanes' service bulletins covering the affected Boeing aircraft are 757-24-0054, 747-24-2135 and 767-24-0060, all dated August 31, 1989.

(3) Boeing Commercial Airplanes uses Boeing part number BACC18AC7 to identify Texas Instrument model 6TC6-7.5 and Boeing part number BACC18AC10 to identify Texas Instrument model 6TC6-10.

(4) The Lockheed Corporation's service bulletin covering the affected Lockheed aircraft is 093-24-134, dated August 12, 1987.

(5) Lockheed Corporation uses Lockheed part number LS10159-7 to identify Texas Instrument model 6TC20-7.5 and Lockheed part number LS10159-10 to identify Texas Instrument model 6TC20-10.

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(b) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manger, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on September 27, 1989.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 25207 Filed 10–25–89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 452

[Docket No. 89N–0378]

Erythromycin Capsules; Proposed Amendment of Dissolution Standard of Erythromycin Capsules

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration is proposing to amend the antibiotic drug regulations by revising the dissolution standard for erythromycin capsules. This action is being taken at the request of a manufacturer to provide for the marketing of a bioequivalent product.

DATES: Comments by December 26, 1989; requests for an informal conference by November 27, 1989.

ADDRESSES: Written comments or requests for an informal conference to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: At the request of a manufacturer, FDA is proposing to amend the antibiotic drug regulations for erythromycin capsules by amending the current dissolution standard (the Q value) from "85 percent at 45 minutes" to "80 percent at 60 minutes" in 21 CFR 436.542(c) and 452.110c(b)(3).

In the **Federal Register** of March 13, 1981 (46 FR 16678), FDA promulgated a regulation (monograph) for erythromycin capsules that specified an original dissolution standard of "80 percent at 60 minutes." Based on data submitted by the manufacturer of the innovator product, the original dissolution standard was subsequently revised to "85 percent at 45 minutes" in the **Federal Register** of November 15, 1985 (50 FR 47212).

Another manufacturer has submitted data showing that although its product is bioequivalent to the innovator product, its product is unable to meet the current dissolution standard. The new manufacturer has requested that the current dissolution standard be revised to the original specification of "80 percent at 60 minutes." The manufacturer has submitted comparative dissolution data to demonstrate that both the innovator product and its bioequivalent product meet the original dissolution standard specification.

FDA has reviewed the manufacturer's request and has tentatively concluded that the current dissolution standard should be revised because it has been shown to rule out products that are in fact bioequivalent to the innovator product. Therefore, FDA is proposing that the monograph for erythromycin capsules be amended to revise the current dissolution standard from "85 percent at 45 minutes" to "80 percent at 60 minutes."

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it does not require a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the proposal would refine an existing technical provision without imposing a more stringent requirement. Accordingly, the agency certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Submitting Comments or Requests for Conference

Interested persons may, on or before December 26, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before November 27, 1989, submit to the Dockets Management Branch a request for an informal conference. The participants in an informal conference, if one is held, will have until December 26, 1989 or 30 days after the day of the conference, whichever is later, to submit their comments.

List of Subjects in 21 CFR

Part 436: Antibiotics.

Part 452: Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 436 and 452 be amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 436.542 is amended by revising the eighth sentence in paragraph (c) to read as follows:

§ 436.542 Acid resistance/dissolution test for enteric-coated erythromycin pellets.

* * * * * *

(c) * * * Rotate the basket at 50 revolutions per minute for an accurately timed dissolution period of 60 minutes. * * *

* * * * * *

PART 452—MACROLIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 452.110c is amended by revising the last sentence in paragraph (b)(3) to read as follows:

§ 452.110c Erythromycin capsules.

* * * * * *

(b) * * *

(3) * * * The quantity Q (the amount of erythromycin dissolved) is 80 percent at 60 minutes).

Dated: October 18, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–25223 Filed 10–25–89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 452

[Docket No. 89N–0379]

Erythromycin Ethylsuccinate Tablets; Revision of Potency Testing Method

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug regulations by revising the accepted standards for erythromycin ethylsuccinate tablets to provide for a new sample preparation method to be used in potency testing. This action will provide better quality control of this product.

DATES: Comments by December 26, 1989, requests for an informal conference by November 27, 1989.

ADDRESSES: Written comments or requests for an informal conference to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend the antibiotic drug regulations by revising the accepted standards for erythromycin ethylsuccinate tablets to provide for a new sample preparation method to be used in potency testing.

The current microbiological agar diffusion assay used for the potency testing of erythromycin ethylsuccinate tablets requires a sequential blending of the sample in 200 milliliters (mL) of methyl alcohol and 300 mL of 0.1*M* potassium phosphate buffer, pH 8.0. The agency has determined, however, that the use of this current sample preparation method for one manufacturer's tablets results in the formation of an unwanted precipitate in the test sample when the phosphate buffer is added to the initial methyl alcohol blend of the sample. This precipitate in the sample results in an incorrect interpretation of the potency test results. Based on testing modifications developed in its laboratory, FDA has found that the formation of this precipitate can be eliminated by revising the sample preparation method to limit the concentration of test sample in the methyl alcohol blend to not more than 5 milligrams per mL and by deleting the procedure for further blending of the sample with phosphate buffer. FDA has tentatively concluded that this alternative sample preparation method provides more reliable and reproducible potency test results and can appropriately replace the current sample preparation method for potency testing of erythromycin ethylsuccinate tablets.

Therefore, in order to provide for a correct interpretation of the potency test results for this product, the agency is proposing to amend 21 CFR 452.125d of the antibiotic regulations for erythromycin ethylsuccinate tablets by replacing the current sample preparation method used for potency testing with the sample preparation method (described above) developed in its laboratory.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it does not require a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the proposal would constitute a minor amendment to an existing technical provision without imposing a more stringent requirement. Accordingly, the agency certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Submitting Comments or Requests for Conference

Interested persons may, on or before December 26, 1989, submit to the Dockets Manager Branch (address above) written comments regarding this proposal. Two copies of any comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before November 27, 1989 submit to the Dockets Management Branch (address above) a request for an informal conference. The participants in an informal conference, if one is held, will have until December 26, 1989, or 30 days after the day of the conference, whichever is later, to submit their comments.

Lists of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 452 be amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 452.125d is amended by revising paragraph (b)(1) to read as follows:

§ 452.125d Erythromycin ethylsuccinate tablets.

* * * * * *

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing sufficient methyl alcohol to yield a concentration of 5 milligrams of erythromycin activity, or less per milliliter when blended. Blend for 3 to 5 minutes. Further dilute an aliquot of this solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

* * * * * *

Dated: October 17, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–25222 Filed 10–25–89; 8:45 am]

BILLING CODE 4160-01-M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 882 and 887

[Docket No. R-89-1452; FR-2662-P-01]

RIN 2502-AE70

Section 8 Certificate Program, Moderate Rehabilitation Program and Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Certificate Program, Moderate Rehabilitation Program, and Housing Voucher Program regulations to permit a Public Housing Agency (PHA) (including an Indian Housing Authority) to deny or terminate assistance to applicants and participants in these programs if family members are engaging in drug-related criminal activities or in violent criminal activities. Current regulations provide limited authority for a PHA to act effectively when it has reason to believe that a program applicant or participant is engaging in such activities. A family to whom a PHA proposes to deny or terminate assistance would be entitled to the same procedural protections that are currently applicable to proposed denials or terminations of assistance on other grounds. In deciding whether to deny or terminate assistance, a PHA would have discretion to consider all of the circumstances in each case.

The purpose of this rule is to further the government's war against drugs and violent crime, and to ensure the provision of decent and safe housing for eligible families and for individuals residing near assisted families.

DATE: *Comment due date:* December 26, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rule proposes revisions to the Certificates, Moderate Rehabilitation, and Housing Voucher Program regulations to provide PHAs with more comprehensive authority to deny assistance or terminate assistance if family members are engaging in drug-related criminal activities or in violent criminal activities. The purpose of the proposed revisions is to further the government's war against drugs and violent crime, and to ensure the provision of decent and safe housing for eligible families and for families and individuals residing near assisted families. The Department emphasizes that the purpose of this rule is not to make adjudications that a family member is a criminal. Rather, the purpose is to identify behavior which is so detrimental to society as a whole (and more specifically to adjacent families and individuals and to other members of the assisted family) that it should not and cannot be tolerated. The Department believes that such conduct should be a basis for refusing to assist families that have members engaged in these activities. Providing PHAs with this additional authority should create incentives for family members to deter any other family member who may be engaging in these activities. The revisions would also avoid a circumstance in which a PHA might otherwise be required to issue a certificate or housing voucher to a family that had been evicted by an owner from assisted housing for engaging in drug-related or violent criminal activities.

Under current Certificate and Housing Voucher Program regulations, a PHA may terminate assistance to a family (including refusing to issue a family a new certificate or housing voucher when the family wants to move) if the family uses its assisted unit for drug trafficking or permits its assisted unit to be used for that purpose. The PHA may terminate assistance under these circumstances because a family's use of its unit for drug trafficking would constitute a violation of the family's obligation to use its unit "solely for residence by the family" (see §§ 882.118(a)(5) and 887.401(a)(4)). Current Certificate and Housing Voucher Program regulations, however, do not provide authority for a PHA to deny or terminate assistance if a member of an assisted family is engaging in drug-related criminal activities, but is not using the unit for these activities, even if these activities would constitute a lease violation.

The Moderate Rehabilitation Program regulations do not contain a comparable, explicit limitation on the use of the unit solely for residence by the family. Section 882.413 of the Moderate Rehabilitation regulations, however, authorizes a PHA to terminate assistance if a family fails to meet its responsibilities under the lease or the Statement of Family Responsibility. (The current Statement of Family Responsibility for the Moderate Rehabilitation Program, Form HUD-52578A, does not contain any provision that could be a basis for terminating assistance because of drug-related criminal activities.) If the drug-related criminal activity or other criminal activity constituted a lease violation, a PHA could terminate assistance under 24 CFR 882.413.

This proposed rule would provide a more uniform and effective approach to dealing with the problem of drug-related criminal activities in the PHA-administered Section 8 programs where the program participants are selected by the PHA. It would also give PHAs the authority to deny or terminate assistance to families where a family member engages in violent criminal activity.

This proposed rule would make the necessary revisions within the current regulatory framework for each program without attempting to make any major structural change to the respective program regulations. In the Certificate Program, § 882.118, Family obligations, and in the Housing Voucher Program, § 887.401, Family responsibilities, existing regulations define the obligations of a program participant. These provisions would be revised to

provide that family members shall not engage in drug-related criminal activity or violent criminal activity. "Drug-related criminal activity" would be defined to include the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity would be defined additionally to include the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance. However, in the case of activity involving such use or possession, the rule proposes that the activity must have occurred within one year of the time that the PHA provides notice to the applicant or participant of its determination to deny admission or terminate assistance.

The rule makes this temporal distinction for criminal activity related to use of drugs in order to provide an outer limit on the amount of time that use-related activities may serve as the basis for adverse action against an applicant or participant. Just as the rule is intended to create a disincentive to drug use by applicant or tenant families by providing for denial or termination of their assistance, this limitation on the definition should serve as an incentive to former drug users who have stopped taking drugs and who are "clean" or are controlling their addiction.

"Violent criminal activity" would be defined to include any felonious criminal activity that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

By adding this proscription of criminal activity to §§ 882.118(b)(4) and 887.401(b)(5), a PHA, under existing §§ 882.210(b) and 887.403(b), could: deny an applicant admission to participate in the Certificate or Housing Voucher Program; deny issuance of another Certificate or Housing Voucher to a participant who wants to move from another unit; or decline to enter into a housing assistance contract or to approve a lease, when requested by a participant, based on a violation of a family obligation. A PHA, under §§ 882.210(d) and 887.403(c), could also terminate housing assistance payments that are being made on behalf of a participant under a current housing assistance contract.

If a PHA proposed to terminate assistance to a participant family, based on alleged drug-related or violent criminal activities of one or more family members, the family would be entitled to due process protections as set forth in current § 882.216(b) or § 887.405(b). Under these sections a PHA must adopt written procedures for conducting a hearing for participants that include: providing the participant written notice of the decision and of the opportunity to request a hearing before a person or persons designated by the PHA, other than a person who made or approved the decision or a subordinate of such person; the right to be represented by a lawyer; opportunity for the participant to present evidence and question any witness; and issuance of a written decision, stating briefly the reasons for the decision.

Under the proposed revisions, a PHA, after meeting appropriate due process standards, could deny or terminate assistance whenever the criminal activities were engaged in while the family was a participant in either the Certificate or Housing Voucher Program. The above-described revisions would not, however, provide authority to deny assistance to an applicant family that is engaging in the proscribed criminal activities but is not a participant in either the Certificate or Housing Voucher Program, because the family would not be subject to the family obligation requirements of §882.118 or § 887.401. To cover this situation, this rule also would revise § 882.210, Grounds for denial or termination of assistance, to add a new paragraph (b)(4), and § 887.403, Grounds for PHA denial or termination of assistance, to add a new paragraph (b)(2). These new paragraphs would authorize a PHA to deny an applicant admission to the Certificate or Housing Voucher Program if a member of the applicant's family has engaged in drug-related criminal activity or violent criminal activity.

An applicant family that was being denied admission to participate in the programs because of alleged drug-related or violent criminal activities of a family member would be entitled to informal review of the decision under § 882.216(a) or § 887.405(a). The PHA's informal review procedures must include: notice to the applicant containing a brief statement of the reasons for the decision; the opportunity to request a review of the decision by a person or persons designated by the PHA, other than a person who made or approved the decision or a subordinate of such person; the opportunity to present written or oral objections to the decision; and a written final decision, including a brief statement of the reasons for the final decision.

This proposed revision would constitute a fundamental change in HUD policy concerning a PHA's authority to screen applicants for admission to these programs and to the Moderate Rehabilitation Program, discussed below.

Under these programs, the PHA is responsible for determining who may receive assistance, and the owner of the unit is responsible for choosing a tenant, including whether or not to rent to a certificate or housing voucher holder. HUD regulations have not authorized a PHA to consider expected behavior or suitability as a tenant in deciding whether to place a family on a waiting list or to issue a family a certificate or housing voucher. Existing grounds for denial of admission to participate in these programs that are based on past conduct have all concerned actions by an applicant related to past participation in a federal housing assistance program. Decisions concerning a family's expected behavior and suitability as a tenant have been left to the owner to make in deciding whether to lease a unit to the family.

The Department believes that it is appropriate to provide this limited authority to PHAs to consider the behavior of applicants. Clearly, the PHA should be able to deny assistance in the first instance on the same ground that it can terminate the assistance after it is being provided.

With respect to the Moderate Rehabilitation Program, § 882.413, Responsibility of the Family, would be revised to prohibit a family from engaging in drug-related criminal activities or violent criminal activities. Section 882.514, Family participation, would also be revised to authorize a PHA to deny eligibility to participate in the Moderate Rehabilitation Program if a member of the applicant's family engages in drug-related criminal activity or violent criminal activity.

The addition of these provisions would enable a PHA to use the current procedures in § 882.514(f) to deny assistance to an applicant family or to deny or terminate assistance to a participant family, if a family member fails to comply with this new requirement. Section 882.514(f) provides for written notice and an opportunity for an informal hearing before a PHA may deny or terminate assistance to a family.

These procedures would give PHA's broad discretion to consider all of the circumstances in each case, including the seriousness of the offense, the extent of participation by family members, and the effects that denial or termination would have on family members not involved in the proscribed activity. PHAs could, in appropriate cases, permit family members not involved in the proscribed activities to continue

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receiving assistance on the condition that family members determined to have engaged in the proscribed activities will not reside in the unit.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provision of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule's primary effect is to permit PHAs to terminate or deny assistance to families when a member or members of the family have participated in drug-related activities or in serious criminal activities.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule would not substantially alter the established roles of HUD the States and local governments, including PHAs. The rule would provide PHA's with an additional ground for denying or terminating assistance, but the role of the PHA in these programs would remain unaltered.

HUD has determined that this rule is likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule should improve the environment in which assisted families reside by enabling PHAs to terminate assistance to families engaging in criminal activities. It should also provide an incentive to families to discourage family members from engaging in these activities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989, (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8).

List of Subjects

24 CFR Part 882

Grant programs—Housing and community development; Housing; Low and moderate income housing; Mobile homes; Rent subsidies.

24 CFR Part 887

Grant programs—Housing and community development; Housing; Low and moderate income housing; Rent subsidies.

Accordingly, the Department proposes to amend 24 CFR parts 882 and 887 as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING PROGRAM

1. The authority citation for part 882 would continue to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 882.118, a new paragraph (b)(4) would be added to read as follows:

§ 882.118 Obligation of the family.

* * * * *

(b) * * *

(4) Engage in drug-related criminal activity or violent criminal activity. This proscription applies to each Family member. For the purposes of this section—

(i) *"Drug-related criminal activity"* includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant under § 882.216(a), or to a participant under § 882.216(b)(3)(i), of the PHA's determination to deny admission or terminate assistance.

(ii) *"Violent criminal activity"* includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

3. In §882.210, paragraph (b) would be revised to read as follows:

§882.210 Grounds for denial or termination of assistance.

* * * * *

(b) The PHA may deny an applicant admission to participate in the Certificate Program or, with respect to a current participant, may refuse to issue another Certificate for a move to another unit, approve a new lease, or execute a new Contract, if the applicant or participant:

(1) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(2) As a previous participant in the Section 8 program or as a participant in the Certificate Program, has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance contract for rent or other amounts owned by the Family under its lease (see § 882.112(d) and § 887.209 of this chapter), or for a vacated unit (see § 882.105(b)).

(3) Has violated any Family obligation under § 882.118 or under § 887.401 of this chapter.

(4) Has engaged in drug-related criminal activity or violent criminal activity, as defined in § 882.118(b)(4).

(5) Breaches an agreement provided for in paragraph (c) of this section.

(6) Has committed any fraud in connection with any Federal housing program.

* * * * *

4. Section 882.413 would be revised to read as follows:

§ 882.413 Responsibility of the family.

(a) A Family receiving housing assistance under this Program must fulfill all of its obligations under the Lease and Statement of Family Responsibility. No Family member may engage in drug-related criminal activity or violent criminal activity. Failure of the Family to meet its responsibilities under the Lease, the Statement of Family Responsibility, or this section shall constitute grounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, the provisions of § 882.514(f) must be followed.

(b) For the purposes of this section—

(1) "Drug-related criminal activity" includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant or participant family of the PHA's determination to deny admission or terminate assistance.

(2) *"Violent criminal activity"* includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

5. In § 882.514, paragraph (a)(2) would be redesignated as paragraph (a)(3) and a new paragraph (a)(2) would be added, to read as follows:

§ 882.514 Family participation.

(a) * * *

(2) A PHA may determine that an applicant Family is ineligible for participation because one or more Family members have engaged in drug-related criminal activity or violent criminal activity, as defined in § 882.413(b).

* * * * *

PART 887—HOUSING VOUCHERS

4. The authority citation for part 887 would continue to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 887.401, a new paragraph (b)(5) would be added, to read as follows:

§ 887.401 Family responsibilities.

* * * * *

(b) * * *

(5) Engage in drug-related criminal activity or violent criminal activity. This proscription applies to each family member. For the purposes of this section—

(i) *"Drug-related criminal activity"* includes the felonious manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). Drug-related criminal activity also includes the felonious use, or possession (other than with intent to manufacture, sell, or distribute), of a controlled substance, except that such use or possession must have occurred within one year prior to the date that the PHA provides notice to an applicant or participant, under § 887.405, of the PHA's determination to deny admission or terminate assistance.

(ii) *"Violent criminal activity"* includes any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

6. In § 887.403, paragraph (b) would be revised to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(b) *Denial of assistance.* The PHA may deny an applicant admission to participate in the Housing Voucher Program or, with respect to a current participant, may refuse to issue another housing voucher for a move to another unit, approve a new lease, or execute a new housing voucher contract, if the applicant or participant:

(1) Has violated any family obligation under the Housing Voucher Program or the Certificate Program.

(2) Has engaged in drug-related criminal activity or violent criminal activity, as defined in § 887.401(b)(5).

(3) Has committed any fraud in connection with any federal housing program.

(4) Currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(5) Has not reimbursed the PHA or another PHA for any amounts paid to an owner under a housing assistance contract for rent or other amounts owed by the family under its lease (see § 887.215 and § 882.112(d) of this chapter), or for a vacated unit (see § 882.105(b)).

(6) Breaches an agreement to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. The PHA, at its discretion, may offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.

* * * * *

Dated: October 3, 1989.

C. Austin Fitts,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-25236 Filed 10-25-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596-AA42

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

[AA-320-00-4212-02]

RIN 1004-AB28

Land Exchanges; Public Meetings

AGENCIES: Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Forest Service and the Bureau of Land Management will each hold separate public meetings to clarify each agency's proposed land exchange regulations which were published in the **Federal Register** on August 18, 1989 (54 FR 34368, 54 FR 34380). The purpose of the meetings is to provide an informal opportunity to clarify the proposed rules for persons who wish to submit written comments. The meetings will be conducted in a question and answer format. Only written comments received at these meetings and those submitted during the comment period will be considered in the development of the final rule. Written comments on the proposed rules are due by December 1, 1989.

DATES: The Bureau of Land Management meeting will be held on Tuesday, November 14, 1989, from 1 to 4 p.m.; the Forest Service meeting will be held on Wednesday, November 15, 1989, from 9 to 12 a.m. Reservations to attend are not required.

ADDRESS: Sheraton Hotel and Conference Center, 360 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Forest Service, (703) 235-2493 or Roger Taylor, Bureau of Land Management, (202) 343-8693.

Dated: October 20, 1989.
For the Forest Service.

George M. Leonard,

Associate Chief.

Dated: October 19, 1989.
For the Bureau of Land Management.

Dean E. Stepanek,

Deputy Director.

[FR Doc. 89-25237 Filed 10-25-89; 8:45 am]

BILLING CODE 3410-11-M

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National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Simulators Limited, Inc., requesting that the agency amend Standard No. 209, *Seat belt assemblies* and Standard No. 213, *Child restraint systems*, to require installation of its multi-part button for buckles on child restraint systems. According to the petitioner, adoption of its suggestions would result in a design that would resist "unwarranted" releases by young children.

NHTSA has decided to deny the petition. The most recent requirements for buckle release devices on child restraints, which were established in 1985, have proven to be effective. The agency would consider changing these requirements only if there were a compelling reason to do so. However, the available information indicates no such compelling reason. In fact, the petitioner's recommended requirements could be detrimental to motor vehicle safety, especially in some emergency situations. Given this information, there appears to be no reason to consider changing the test requirements for the buckle release devices. Accordingly, Simulators' petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. John Machey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. Telephone: (202) 366-4924.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) specifies requirements for child restraint systems used in motor vehicles and aircraft. The purpose of the standard is to reduce the number of children killed or injured in motor vehicle crashes and in aircraft.

Section S6.2 sets forth requirements related to buckle release test procedures for child restraint systems. In particular, section S6.2.1 requires, in part, that "For push button-release buckles, the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees)." This release force application device was intended to represent a finger and transfers the release force to the push button release. This provision was adopted in a final rule issued on August 21, 1985. (50 FR 33722). A 1979 final rule had adopted general buckle release test procedures with less specificity than the 1985 rulemaking. (44 FR 72131, 72135, December 13, 1979). The preamble to the 1985 final rule explained that the purpose for amending Standard No. 213's requirements related to child restraint buckle releases was "to prevent young children from unbuckling the restraint belt(s), while allowing adults to do so easily." The agency went on to explain that

> The agency's safety concerns over child restraint buckle force release and size stem from the need for convenient buckling and unbuckling of a child and, in emergencies, to quickly remove the child from the restraint. This latter situation can occur in instances of post-crash fires, immersions, etc. A restraint that is difficult to disengage, due to the need for excessive buckle pressure or difficulty in operating the relesse mechanism because of a very small release button, can unnecessarily endanger the child in the restraint and the adult attempting to release the child.

Petition

On April 3, 1989, Mr. Wilbur R. Adams on behalf of Simulators Limited, Inc., submitted a petition for rulemaking to NHTSA, requesting that Standard No. 209 and Standard No. 213 be amended to "mandate" the installation of its buckle release device on child restraints. The device includes a multi-part button for latch release. The petitioner explained that each tier of the three part button has to be depressed simultaneously for the latch to release. Simulators requested that section S6.2.1, of Standard No. 213, which specifies the release force application test device, be amended to delete the requirement that "For push button-release buckles, the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees)." In its place, the petitioner requested the following language: "For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever(s) or finger tab(s) in the direction that produces the maximum releasing effect * * *"

In addition, Simulators requested that section S4.3.(d)(2) of Standard No. 209, *Seat belt assemblies*, (49 CFR 571.209) be amended to delete the statement "* * * A buckle having other design for release shall have adequate access for two or more fingers to actuate release" because it was concerned that this provision would require a two finger actuating release.

According to Simulators' petition, these requested changes would allow its three part release button which it claimed was superior to current buckles. Simulators stated that its proposed system would provide a design resisting "unwarranted" releases from child restraint systems, a design with fewer parts to fail thus eliminating the hazards of jamming, a design resistant to foreign particles that might cause an emergency, a cost efficient security buckle, and peace of mind for the traveling parent or guardian. The petitioner further claimed that to be opened, its three part "split button" would require greater concentration by anyone other than a responsible adult, require no special training and/or instruction, require greater dexterity than that possessed by a small child, and result in a simple mechanism with minimal possibility for failure.

Agency Determination

After carefully reviewing Simulators petition, NHTSA has decided to deny the petition for the reasons set forth below. NHTSA is generally reluctant to change the requirements and test procedures in its safety standards unless there is a compelling reason to do so. This reluctance is based primarily upon the fact that the agency has already determined, through the rulemaking process, that the established requirements and test procedures satisfy all the safety and other criteria specified in the Safety Act. Additionally, the agency and the affected manufacturers have gained experience and a data bank of test results following the established test procedures. These facts establish a legitimate interest in retaining test procedures that have been established for the safety standards.

This is not to suggest that the agency will never consider changes to an established test procedure. Hypothetically, it might be shown that the established test procedure no longer satisfies the criteria specified in the Safety Act, that the procedure no longer serves the purpose for which it was established, or that the procedure is imposing an unnecessary restriction to innovative technology. These circumstances would represent compelling reasons for NHTSA to consider changing an existing test procedure. An important part of this consideration would necessarily include whether a changed test procedure would result in an increase or decrease in the safety protection afforded to vehicle occupants.

The specific critical issue raised by Simulators' petition is whether there is any compelling reason for the agency to consider changing the requirements related to buckle release devices on child and vehicle restraint systems. After reviewing the petition in light of the earlier rulemakings on buckle release, NHTSA has concluded that there isn't any such reason.

The first reason suggested in Simulators' petition for changing the requirements related to buckle release is that small children "have *no* difficulty in releasing the current standard seatbelt buckle button" (emphasis in original). As a result, the petitioner believes that children can release themselves from the child restraint system at inappropriate times, causing them unnecessary exposure to injury. In support of this claim, Simulators cited misuse data from a report entitled "The Incidence and Factors Associated with Child Safety Seat Misuse." (NHTSA Report DOT HS 806 674-6, December 1984). On closer review, the agency has determined that this report revealed that a child removed the belt in only four incidents out of 1,006 observed cases, a rate of less than 0.4 percent. Therefore, the survey data do not show that there is a compelling reason to amend the standard. In addition, based on the extensive review which culminated in the 1985 rulemaking, the agency believes that the best method to guard against the problem of young children intentionally releasing a buckle on a child restraint system is by requiring the release mechanism to have a sufficiently high pressure level. The agency has determined that a minimum buckle force level of nine pounds is sufficient to prevent children up to age four from opening the buckle by themselves.

The second reason set forth in Simulators' petition for changing the requirements related to buckle release was that while the buckle release button would be difficult for children to operate, it would cause no problem for adults to operate because the "width of the average adult thumb or finger" would be adequate for release. In particular, the petitioner explained that its multi-part split button would "require greater concentration to be opened by anyone other than a responsible adult" and would "require greater dexterity than that afforded by a small child." As mentioned above, the agency closely analyzed buckle release systems in the 1985 final rule amending Standard No. 213's buckle release requirements and test procedures. (50 FR 33722, August 21, 1985). In that notice, NHTSA emphasized that along with preventing young children from unbuckling the restraint belts, an equally important consideration is to ensure that adults can release the child restraint buckle mechanism easily and with one hand, especially in emergency situations. Therefore, the agency has sought to guard against any restraint that would be difficult for an adult to disengage because such a system could unnecessarily endanger a child's life in an emergency situation. While that notice expressly mentioned problems related to requiring excessive buckle pressure or an extremely small release button, the agency emphasizes that any buckle release device that makes it difficult for an adult to operate in an emergency situation would pose a safety problem.

After examining the petitioner's multi-part release button, NHTSA is concerned that some adults might have difficulty operating them for the following reasons. First, the agency notes that it is possible for only two of the three button parts to be pressed if the operator has small fingers, such as a fifth percentile female. As a result, the buckle would not release, since the petitioner's design only releases if all three buttons are pressed simultaneously. Second, based on the petitioner's statement that its system would "require greater dexterity than that afforded a small child," the agency is concerned that the suggested system would adversely affect motor vehicle safety. For instance, the agency is aware that some elderly people and those stricken with arthritis or other debilitating problems have severely limited manual dexterity. For such people, the petitioner's requested buckle button release could be frustrating and inconvenient in routine situations and disastrous in emergency situations. Third, NHTSA notes that section S7.2(c) of Standard No. 208 requires a single point push button buckle release for the convenient operation of safety belts. While this requirement does not directly apply to buckle releases on child restraint systems, the agency believes that to facilitate motor vehicle safety, it is important to standardize the requirements for buckle release devices between standard safety belts subject to Standard No. 208 and belts on child restraint systems. If Standard No. 213 required a different buckle release device for child restraint systems than for safety belts, an adult unfamiliar with the unique multi-part release mechanism and faced with an emergency situation requiring quick action, might have difficulties activating that release device.

A third reason offered in Simulators petition for changing the belt release test provision was that the conical testing device specified in S6.2.1 requires the release force to be applied over an area smaller than a finger or thumb. According to the petitioner, this provision requiring a single release button was ineffective because anything small such as a pencil point or a child's finger could eliminate the value of the designed restraint. As explained above, the minimum buckle force level is sufficient to prevent children up to age four from opening the buckle by themselves. In addition, NHTSA notes that several commenters to the 1985 rulemaking had similar criticisms of this

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type of testing device. However, after a great deal of consideration of this and other release force application devices, the agency determined that the conical device's "small contact area allow(s) accurate positioning on the release button, which will yield consistently reliable test results." In addition, a study commissioned by the agency concluded that the conical device most closely simulates the real world actuation of push button release mechanisms. (50 FR 33724).

A fourth set of reasons offered in Simulators' petition to amend the buckle release requirements was that its design would be less likely to jam because it had fewer parts and would be resistant to foreign particles causing problems with the buckle release mechanism. NHTSA is not aware of any evidence, and the petitioner did not produce any evidence, that these situations pose a significant safety risk. Therefore, the agency believes that the buckle release mechanisms that comply with the existing standard adequately prevent these problems.

Accordingly, NHTSA has concluded that there is no reasonable possibility that a rule amending the buckle release procedures for child restraints in accordance with Simulators' petition would be issued at the conclusion of the requested rulemaking proceeding. Therefore, Simulators' petition is denied.

(15 U.S.C. 1392, 1407, 1410a, delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-25168 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 54, No. 206

Thursday, October 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 20, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer,USDA, OIRM, Room 404-W Admin. Bldg.,Washington, DC 20250, (202) 447-2118.

Revision

• Food and Nutrition Service, Negative Quality Control Review Schedule—Statistical Summary of Sample

Disposition—Status of Sample Selection and Completion, FNS-245; FNS-247; FNS-248.

Recordkeeping; On occasion; Monthly; Annually.

Individuals or households; State or local governments; 31,669 responses; 94,119 hours; not applicable under 3504(h).

Karen Peko (703) 756-3471.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-25240 Filed 10-25-89; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Southern Region; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation.

SUMMARY: The Regional Forester of the Southern Region of the Forest Service has delegated authority to the Forest Supervisors to issue all easements and reservations for construction and use of roads under authority of the Forest Road and Trail Act of October 13, 1964. (78 Stat. 1089; 16 U.S.C. 533) and Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761). The delegation is being issued in a Regional supplement to Chapter 2730 of the Forest Service manual.

Pursuant to 36 CFR 251.52 and the delegation to the Regional Forester Southern Region, by the Chief, Forest Service (FSM 2732.04 and FSM 2733.04b) the Regional Forester, Southern Region of the Forest Service hereby delegates to the Forest Supervisors of the following National Forests the authority to issue Forest Road and Trail Act Easements to public road agencies, and to terminate such easement with the consent of the grantee, as well as the authority to issue Federal Land Policy and Management Act Easements and to terminate easements on the occurrence of fixed or agreed-upon condition, event or time when the easement, by its terms, provides for such termination. These Forests have staff with training and experience needed to perform the delegated authority.

Forest	DOT letters of authorization	FRTA easements to public road agencies	FLPMA easement
Alabama	X	X	X
Daniel Boone	X	X	X
Chattahoochee-Oconee	X	X	X
Cherokee	X	X	X
Florida	X	X	X
Kisatchie	X	X	X
Mississippi	X	X	X
George Washington	X	X	X
Ouachita	X	X	X
Ozark-St. Francis	X	X	X
North Carolina	X	X	X
Francis Marion & Sumter	X	X	X
Texas	X	X	X
Jefferson	X	X	X
Caribbean	X	X	X

EFFECTIVE DATE: October 26, 1989.

FOR FURTHER INFORMATION CONTACT: Questions about the exercise of this delegation may be addressed to George Hemingway, Group Leader, Special Uses, Southern Region, Forest Service, USDA, 1720 Peachtree Rd. NW., Atlanta, Georgia 30367, Telephone: (404) 347-2595 or FTS 257-2595.

Dated: October 16, 1989.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 89-25241 Filed 10-25-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Modification; Center for Coastal Marine Studies (P79D)

Notice is hereby given that Dr. Burney J. LeBoeuf, Professor of Biology, Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 94064, has requested a modification of Permit No. 496 issued on April 8, 1985, under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 496 and subsequent modifications authorize the Holder to take 4940 elephant seals per year for scientific research. One or more of the activities to be performed on the

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animals include tagging with roto-tags, marking, weighing, biopsy sampling, and blood sampling.

The Permit Holder requests a modification to allow (1) transport of 50 juvenile northern elephant seals from Ano Nuevo Island to sea or shore within a 50 mile radius of the island. The aim is to determine whether they will "home" and return to the island in a few hours or a few days; (2) collection of tissue samples from 500 adult male northern elephant seals, 600 adult females and 600 pups to examine genetic variation and determine paternity and estimate reproductive success among males by employing the technique of DNA fingerprinting; and (3) to export tissue samples to the Holder's research collaborator at the University of Cambridge, England.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisherics Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910;
and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7514.

Dated: October 19, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–25185 Filed 10–25–89; 8:45am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit: Dolphin Services (P324A)

On May 30, 1989, notice was published in the **Federal Register** (54 FR 22927) that an application had been filed by Dolphin Services, Mill Farm, Hurst Green, Brightlingsea, Colchester, Essex C07 OEH, England to obtain four beached/stranded or captive born California sea lions (*Zalophus californianus*) for public display at Pleasurewood Hills American Theme Park.

Notice is hereby given that on October 19, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Dolphin Services offers an acceptable program for education or conservation purposes. The facilities are open to the public on a regularly scheduled basis and access to the facilities are not limited or restricted other than by admission fee.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Rm. 7324, Silver Spring, Maryland 20910; and
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: October 19, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–25186 Filed 10–25–89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Kamogawa Sea World (P332A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Kamogawa Sea World, 1464–18 Higashicho, Kamogawa City-Chiba Pref., 296, Japan.

2. *Type of Permit:* Public display.

3. *Name and Number of Animals:* Northern elephant seal (*Mirounga angustirostris*): 2.

4. *Type of Take:* Rehabilitated animals from beached/stranded stock.

5. *Location of Activity:* Sea World, San Diego.

6. *Period of Activity:* 3 years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) it is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. a certification from such appropriate government agency verifying the information set forth in the application;

ii. a certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. a statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Director of Research Division, Fisheries Agencies, Ministry of Agriculture, Forestry and Fisheries, Government of Japan, have been found appropriate and sufficient to allow consideration of the permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 19, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–25187 Filed 10–25–89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection, the Buy American Certificate.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Office of Federal Acquisition Policy, GSA (202) 523–6982.

SUPPLEMENTARY INFORMATION:

a. Purpose. The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation; provided, that the cost of the domestic products is reasonable.

The Buy American Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknow origin are considered to have been supplied from outside the United States.

b. Annual Reporting Burden. This is estimated as follows: Respondents, 20; total annual 53,260; hours per response, .167; responses, total burden hours, 8,894.

Obtaining Copies of Proposals: Requester may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0024, The Buy American Certificate.

Dated: October 18, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–25246 Filed 10–25–89; 8:45 am]

BILLING CODE 6820-JC-M

Department of the Army

Intent To Grant Exclusive Patent License to Biotechnology Research and Development Corp.

The Department of the Army announces its intention to grant an exclusive license to Biotechnology Research and Development Corporation, having a place of business at 1815 North University, Peoria, Illinois 61604, under U.S. Patent Application No. 07/316,701 entitled "Parasite's Antigen, Polypeptitides, Antibodies thereto, Q Fever Vaccine, DNA Encoding the Polypeptitides, Recombinant Vector, Assay Kits and Method for Immunizing against and detecting Parasites."

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 474.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Room 332–A, Falls Church, VA 22041–5013.

For further information concerning this notice, contact: Earl T. Reichert, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Room 332–A, Falls Church, VA 22041–5013, Telephone No. (202) 756–2623.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89–25243 Filed 10–25–89; 8:45 am]

BILLING CODE 3710-08-M

Intent To Grant Exclusive Patent License to Medicis Corp.

The Department of the Army announces its intention to grant an exclusive license to Medicis Corporation, having a place of business at 1747 Pennsylvania Avenue, NW., Washington, DC 20006, under U.S. Patent No. 4,426,378 entitled "Thyrotopin Releasing Hormone in Therapy of Shock and as a Central Nervous System Stimulant" and issued on 17 January 1984.

The proposed exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and the Department of Commerce's regulations at 37 CFR 474.7. The proposed license may be granted unless, within 60 days from the date of this notice, the Department of the Army receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest. All comments and materials must be submitted to the Intellectual Property Counsel of the Army, Patents, Copyrights, and Trademarks Division, Office of The Judge Advocate General, Department of the Army, 5611 Columbia Pike, Room 332–A, Falls Church, VA 22041–5013, Telephone No. (202) 756–2623.

Kenneth L. Denton,

Alternote Army Liaison Officer With the Federal Register.

[FR Doc. 89–25244 Filed 10–25–89; 8:45 am]

BILLING CODE 3710-08-M

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 27, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 20, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: 1990 National Postsecondary Student Aid Study.
Frequency: Triennial.
Affected Public: Individuals or households; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 59,500
Burden Hours: 29,750
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect data from a sample of students in postsecondary institutions, their parents and their school financial aid records. It will provide a student-based information system for student financial aid. It will assess the distribution and use of financial aid and address important issues in this area.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Application for Designation as an Unusually Successful Program that Serves Disadvantaged Youth.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 260
Burden Hours: 1300
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This information will be used to select program projects for designation as an unusually successful program serving disadvantaged children.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Drug-Free Schools and Communities Act of 1986—Part B State and Local Programs—Application for Federal Financial Assistance.
Frequency: Triennially.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57
Burden Hours: 1710
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application will be used by State and local educational agencies to apply for grants under the Drug-Free Program. The information collected will be used by the Department to award grants and monitor the performance of effective alcohol and drug abuse education and prevention programs.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Three Year State Plan for Vocational Rehabilitation Services under Title I and the State Supported Employment Services Program under Title VI, Part C of the Rehabilitation Act of 1973 as amended.
Frequency: Triennial.
Affected Public: State or local governments.
Reporting Burden:
Responses: 86
Burden Hours: 4,730
Recordkeeping Burden:
Recordkeepers: 86
Burden Hours: 5

Abstract: States are required to submit a State plan in order to receive funds under Vocational Rehabilitation Programs. The Department will use the information to make grant awards, and to evaluate States' performance and compliance under Title I and Title VI of the Rehabilitation Act, as amended.

[FR Doc. 89-25180 Filed 10-25-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Administrative Law Judges Hearing

Grants and Contracts Service; Intent To Compromise a Claim, Saint Augustine College, IL

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against Saint Augustine College now pending before the Office of Administrative Law Judges, Docket No. 89-1-R (20 U.S.C. 1234(a)(j)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before December 11, 1989.

ADDRESS: Comments should be addressed to Dennis P. Koeppel, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4066, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of expenditures charged by Saint Augustine College to the Bilingual Vocational Training (BVT) Program for the period July 16, 1984 through July 15, 1986. The audit was performed by the Department's Office of Inspector General.

The auditors found that the College charged certain expenditures to the BVT grant in violation of the cost principles in 34 CFR part 74, and recommended a refund of $50,561. The violations included overclaiming the actual costs of unemployment compensation and vacation and sick pay, and charging to the BVT grant several items not included in the budget.

Based on a review of the audit report and documentation provided by the College, the Chief of the Cost Determination Branch of the Department's Grants and Contracts Service sustained most of the auditors' findings, and directed the College to refund to the Department $40,647. Pursuant to the provisions of Part E of the General Education Provisions Act, 20 U.S.C. 1234 *et seq.*, the College appealed the determinations to the Office of Administrative Law Judges.

The Department proposes to compromise the full amount of the $40,647 claim for $28,000. In light of the documentation submitted by the College in response to the audit findings, the litigation costs that would be incurred by the Department in defending a relatively small claim, and the fact that the compromise would provide a recovery of a substantial portion of the claim, we do not believe it would be practical or in the best public interest to continue the appeal. Furthermore, the college has taken steps to improve its accounting practices and we have no reason to believe that the violations will recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Dennis P. Koeppel, Esq. at the address given at the beginning of the notice.

(Catalog of Federal Domestic Assistance No. 84-077A)

Dated: October 20, 1989.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

[FR Doc. 89-25181 Filed 10-25-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Postsecondary Education

[CFDA NOS. 84.120A and 84.120B]

Technical Assistance Workshop

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshop.

SUMMARY: This is a supplement to the Notice Inviting Applications for New Awards under the Minority Science Improvement Program (MSIP). This notice was published in the Federal Register, on Friday, September 15, 1989 (54 FR 38334). The Acting Assistant Secretary for Postsecondary Education of the U.S. Department of Education will sponsor a 2-day Technical Assistance Workshop for colleges and universities interested in applying for Minority Science Improvement Program (MSIP) grants. This workshop will be conducted by representatives of the Office of Higher Education Program Services and will cover regulations governing MSIP applications, allowable and non-allowable costs, and application evaluation criteria, and will offer hints for preparing successful applications. The sessions will be especially helpful for firsttime and former unsuccessful MSIP applicants.

DATE: November 6-7, 1989.
TIME: 9:00 a.m. to 5:00 p.m., both days.
PLACE: Clark Atlanta University, Thayer Hall, Room 121, 240 James P. Brawley Drive, S.W., Atlanta, Georgia 30314.

FOR FURTHER INFORMATION CONTACT: Dr. Argelia Velez-Rodriguez or Dr. John E. Bonas, Minority Science Improvement Program, Division of Higher Education Incentive Programs, Office of Postsecondary Education. Their respective telephone numbers are (202) 732-4396 and (202) 732-4397.

(Catalog of Federal Domestic Assistance Nos. 84.120A and 84.120B, Minority Science Improvement Program: Design, Institutional and Cooperative Projects, and Special Projects, respectively.)

Dated: October 19, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-25182 Filed 10-25-89; 8:45am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

Coal Policy Committee; National Coal Council; Correction

An open meeting of the Coal Policy Committee of the National Coal Council is scheduled to be held on Wednesday, November 8, 1989 at 9:00 AM. This meeting was announced in the Federal Register, Vol. 54, No. 222 on Wednesday, October 18, 1989 (54 FR 42837) and the time was incorrectly stated as 8:30 a.m.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89-25293 Filed 10-25-89; 8:45 am]
BILLING CODE 6450-01-M

Bonneville Power Administration

Intent To Prepare a Draft Environmental Impact Statement for Puget Sound Area Reinforcement

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare and consider a draft environmental impact statement (Draft EIS).

SUMMARY: Electrical loads in the Puget Sound area are continuing to grow rapidly. The last major reinforcement to the transmission system serving this area was completed over 12 years ago in 1977. Maximum reliable transmission capacity limits are now being reached or exceeded during severe cold weather peak loads. If the region has another severe cold spell like that of February 1989, loss of one of the major line serving the area could cause a blackout. As Puget Sound loads continue to grow, vulnerability to such an event will increase. A series of potentially serious outcomes could result if corrective actions are not taken.

BPA has decided to prepare an EIS evaluating alternate means for solving the region's transmission capacity problem.

DATES: BPA is planning a series of scoping activities to help define the range of feasible alternatives, define criteria by which alternatives will be compared in the Draft EIS.

A series of scoping meeting will be held.

BPA will also establish a Technical Review Group (TRG) to help BPA look at technical aspects of the problem and help define the alternatives that will be analyzed in the EIS. The date, time, and location of these opportunities for public involvement will be announced. Those interested in working on the Technical Review Group may write to the address below.

Written comments will be accepted through May 31, 1990. Based on the findings of the scoping process, BPA plans to file and distribute the Draft EIS for public review in fall 1990.

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ADDRESSES: BPA welcomes written comments on the scope and emphasis of the Draft EIS. Send comment letters and request to be placed on a mail list or to receive further information on this project to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Judith Woodward, Environmental Coordinator for the Office of Engineering, at 503–230–4995, or call the Public Involvement office at 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside Portland; 800–547–6048 for other Western States. Information may also be obtained from:

Mr. Terence Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue, North, Suite 400, Seattle, Washington 98109–1030, 206–442–4130.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. Ron Rodewald, Wenatchee District Manager, 301 Yakima Street, Wenatchee, Washington 98807–0741, 509–662–4377.

SUPPLEMENTARY INFORMATION: Most of the power used within the Puget Sound area (70%) is produced east of the Cascade Mountains. Power is delivered to the area over high-voltage transmission lines, most of which are owned and operated by BPA. System studies show that the maximum reliable capacity on lines crossing the Cascades into the Puget Sound area is 7700–7800 megawatts (MW). Projected peak power demand for severe cold weather this winter is 8100 MW and is expected to continue growing 200–300 MW each year.

This transmission system limitation poses potentially serious consequences. During periods of peak use, system disturbances such as loss of a major line or generator could cause system voltages to drop dangerously low and, in a domino-like fashion, cause automatic controls on the power supply system to disconnect lines and substations from the system. If this happens, electric service within the region could be lost for a period of hours. Loss of power can have effects ranging from inconvenience, to substantial economic loss, including lost productivity and damage to electrical equipment.

Several short- and long-term actions can strengthen the Puget Sound power supply system. Short-term actions (next 5 years) include: installing capacitors within existing BPA substations; making emergency curtailment plans with the region's electric utilities; and increasing existing conservation programs within the Puget Sound area. Such actions may be implemented separately while long-term corrective actions are decided. These options either 1) have independent utility from the potential solutions that will be evaluated in the Puget Sound Area Reinforcement Draft EIS, and thus will be evaluated independently pursuant to the National Environmental Policy Act (NEPA); or 2) are within a category of actions which are excluded from the procedureal requirements of NEPA (CEQ 102(2)c).

Pressure for considering and implementing long-term solutions becomes more acute if the Puget Sound area continues to develop at a very rapid rate. Potential long-term solutions are likely to fall within one of four categories: (1) Demand-side management, including conservation; (2) local-area generation; (3) transmission reinforcement; and (4) temporary load shedding.

A TRG composed of interested citizens, public and private interest group representatives, and governmental officials will be formed. This group will help BPA look at technical aspects of the problem and help BPA define the range of alternatives and environmental issues to be considered in the EIS.

BPA is preparing a publication (referred to as an Issue Alert) that defines the nature of teh problem and discusses alternatives that have been suggested as possible solutions. The Issue Alert will be published this fall and distributed widely throughout the region in an effort to build public understanding of the problem and to solicit public views on the range of alternatives. The Issue Alert will help BPA build a mailing list of people who desire to be kept informed of BPA's activities on this issue.

Issued in Portland, Oregon, on October 11, 1989.

Steven G. Hickok,

Executive Assistance Administrator.

[FR Doc. 89–25264 Filed 10–25–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–494–000, et al.]

Utah Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 19, 1989.

Take notice that the following filings have been made with the Commission:

1. Utah Power & Light Company

[Docket No. ER89–494–000]

Take notice that on September 29, 1989, Utah Power & Light Company (Utah) tendered for filing supplemental information to Utah's section 205 Piling under FERC Docket No. ER89–494–000. Utah's filing hereunder revised the wholesale and transmission supplemental filing reflects the Multi-Jurisdictional Allocation Committee's consensus interdivisional allocations and the September 7, 1989 allocation of Remaining Existing Capacity pursuant to Opinion Nos. 318 and 318–A issued in Docket No. EC88–2–000.

Utah respectfully requests to renew its request for an effective date of June 12, 1989.

Copies of the filing were served on all of Utah's affected wholesale and transmission customers, and the state regulatory commissions of Utah, Idaho, Wyoming, Colorado, Nevada and Arizona.

Comment date: November 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Atlantic Limited Partnership

[Docket No. ER90–24–000]

Take notice that Commonwealth Atlantic Limited Partnership (Commonwealth), on October 17, 1989, tendered for filing its initial FERC electric service tariff, which is a Power Purchase and Operating Agreement between itself and Virginia Electric and Power Company.

The Agreement provides for sales of energy and capacity from Commonwealth to Virginia Power.

Comment date: November 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power & Light Company

[Docket No. ER89–493–000]

Take notice that on September 29, 1989, Pacific Power & Light Company (Pacific) tendered for filing supplemental information to Pacific's section 205 Filing under FERC Docket No. ER89–493–000. Pacific's filing hereunder revises the wholesale and transmission rates previously filed with the Commission on June 12, 1989. The supplemental filing reflects the Multi-Jurisdictional Allocation Committee's consensus interdivisional allocations and the September 7, 1989 allocation of Remaining Existing Capacity pursuant to Opinion Nos. 318 and 318–A issued in Docket No. EC88–2–000.

Pacific respectfully requests to renew its request for an effective date of June 12, 1989.

Copies of the filing were served on all of Pacific's affected wholesale and transmission customers, and the Wyoming Public Service Commission.

Comment date: November 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25163 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–161–003]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 20, 1989.

Take notice that ANR Pipeline Company ("ANR"), on October 16, 1989, tendered for filing, proposed changes to its FERC Gas Tariff, Original Volume No. 1, to become effective November 1, 1989.

ANR hereby requests authorization from the Federal Energy Regulatory Commission ("Commission"), under § 154.66 of the Commission's Regulations, to withdraw its proposal to change its measurement methodology of BTU content from a "saturated" basis to a "dry" basis as proposed in Docket No. RP89–161, filed on May 1, 1989. ANR now proposes to retain its existing BTU measurement methodology on a "saturated" basis. Correspondingly, ANR recognizes that its Application To Adjust Contractual Quantities To Reflect BTU Measurement Change, filed on September 29, 1989 at Docket No. RP89–161, will be treated as an Application under section 7 of the Natural Gas Act and redocketed as Docket No. CP89–2210–000. ANR states that it plans to reinstitute its proposal to institute a "dry" measurement methodology prospectively upon satisfactory conclusion of the proceedings in Docket No. CP89–2210–000.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25158 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–12–000]

Colorado Interstate Gas Co.; Tariff Filing

October 20, 1989.

Take note that on October 17, 1989, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its First Second Revised Volume No. 1–A, to be effective October 17, 1989.

Title Page
First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 5
Second Revised Sheet No. 6
Second Revised Sheet No. 8
First Revised Sheet No. 11
First Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18
Original Sheet No. 18A
Second Revised Sheet No. 19
Second Revised Sheet No. 21
Second Revised Sheet No. 22
Second Revised Sheet No. 23
First Revised Sheet No. 23A
First Revised Sheet No. 25B
First Revised Sheet No. 26
First Revised Sheet No. 27
First Revised Sheet No. 28
First Revised Sheet No. 29
First Revised Sheet No. 30
First Revised Sheet No. 31
Original Sheet No. 31A
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 40
First Revised Sheet No. 41
Second Revised Sheet No. 44
Third Revised Sheet No. 45
First Revised Sheet No. 47
First Revised Sheet No. 48
First Revised Sheet No. 49
First Revised Sheet No. 50
First Revised Sheet No. 51
Second Revised Sheet No. 54
Second Revised Sheet No. 55
First Revised Sheet No. 57
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 64
First Revised Sheet No. 65

CIG states that the purpose of this filing is to eliminate the presently effective "challenge" procedure under which certain interruptible transportation service is curtailed and to replace that procedure with a procedure that will allow those interruptible shippers who do receive service during times of curtailment to continue to receive service subject to certain conditions. In addition, CIG states that it has made certain minor "housekeeping" tariff changes, in order to define certain terms used throughout the tariff and to reflect actual operating conditions.

CIG states that copies of its filing were served on all current transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 25159 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC90–3–000]

Florida Gas Transmission Co.; Tariff Sheet Filing

October 20, 1989.

Take notice that on October 16, 1989, Florida Gas Transmission Company (FGT) tendered for filing in the above-referenced docket the following tariff sheets:

4th Revised Sheet No. 30
4th Revised Sheet No. 31
4th Revised Sheet No. 32
4th Revised Sheet No. 33
4th Revised Sheet No. 34
4th Revised Sheet No. 35
4th Revised Sheet No. 36
4th Revised Sheet No. 37

FGT proposes that the instant sheets become effective on November 15, 1989, pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agriculture Users), and that the Commission waive its regulations to the extent necessary to allow said sheets to become effective as proposed.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before October 30, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25160 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–60–002]

Southwest Gas Storage Co.; Proposed Changes in FERC Gas Tariff

October 19, 1989.

Take notice that Southwest Gas Storage Company (Southwest) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 4
Third Revised Sheet No. 16
Third Revised Sheet No. 17

The proposed effective date of these revised tariff sheets is October 1, 1989.

Southwest states that the above-referenced tariff sheets are being filed in accordance with the Commission's Letter Order issued September 29, 1989 which accepted and approved Southwest's Stipulation and Agreement in Docket No. RP89–60–000.

Southwest states that copies of this filing have been served on Southwest's jurisdictional customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25161 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–209–022]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

October 20, 1989.

Take notice that on October 16, 1989, Natural Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, to be effective October 1, 1989.

Natural states that the tariff sheets were submitted in compliance with the Commission's order issued September 15, 1989, at Docket No. RP88–209–000. The tariff sheets set out the settlement base rates and other tariff provisions approved in Natural's Stipulation and Agreements at Docket No. RP88–209–000.

Natural respectfully requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1989.

A copy of the filing is being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88–209–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25167 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–70–000]

Southern Natural Gas Co.; Request Under Blanket Authorization

October 20, 1989.

Take notice that on October 17, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP90–70–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas, on an interruptible basis, for OXY USA, Inc. (OXY), a gas producer, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a service agreement dated August 25, 1989, Southern requests authorization to perform the proposed transportation service for OXY under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern further states that the service agreement provides for a maximum transportation quantity of 40,000 MMBtu of gas per day and that OXY anticipates that this quantity would be transported on an average day; accordingly, Southern expects that 14,600,000 MMBtu would be transported on an annual basis. Southern proposes to receive the gas at various existing receipt points in Texas, Louisiana, Mississippi, Alabama, offshore Texas, and offshore Louisiana and deliver the gas to existing points of delivery in Refugio County, Texas. Southern advises that the service commenced on September 1, 1989, as reported in Docket No. ST89–4741, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25165 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–70–005]

Stingray Pipeline Co.; Compliance Filing

October 19, 1989.

Take notice that Stingray Pipeline Company (Stingray) on October 13, 1989 tendered for filing certain revised tariff sheets in compliance with the Commission's September 29, 1989 letter order.

Stingray states that copies of its filing have been served on all parties and customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such protests should be filed on or before October 26, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25162 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–130–006, RP88–198–012, RP89–59–005]

Transwestern Pipeline Co.; Compliance Filing

October 20, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on October 13, 1989, filed in compliance with the Commission's September 13, 1989, "Order Denying Rehearing and Requests For Clarification" (Order) of Commission orders dated April 28 and July 14, 1989 in the above referenced dockets. Pursuant to Ordering Paragraph B of the Order, Transwestern is directed to "comply with the provisions of the Commission's April 28, 1989 order on the proper separation of Order No. 500 and administrative costs within 30 days of the issuance of this order." Ordering Paragraph F of the April 28, 1989 order stated that "Transwestern must remove those costs that are eligible to be recovered in this Docket from any of its pending PGA dockets or other administrative proceedings involving gas costs. . . ." Pursuant to, and in compliance with, the Order, Transwestern states that no costs included in the three Order No. 500 filings made by Transwestern in Docket Nos. RP88–198, RP89–59 and RP89–130, are included in any PGA dockets or other administrative proceedings involving gas costs. Therefore, it states, no changes to the tariff sheets concerning this issue are required by Transwestern.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25166 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10787–000]

Pacific Hydro, Inc.; Granting Late Intervention

October 20, 1989.

An untimely motion to intervene has been filed by the following movant:

Northwest Rivers Council

This motion has been filed with respect to the application set forth below:

McLeod Ridge Project No. 10787

Applicant: Pacific Hydro, Inc.

The movant has legitimate interests under the law that are not adequately represented by other parties. No answer to the motion has been filed. Granting the intervention will not cause a delay nor prejudice any other party. It appears to be in the public interest to allow the movant to appear in this proceeding.

Pursuant to § 375.302 of the Commission's regulations, 18 CFR 375.302 (1988), the movant is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Federal Power Act, 16 U.S.C. 791(a)–825(r). Participation of the intervenor shall be limited to matters set forth in its motion to intervene. The admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89–25164 Filed 10–25–89; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Maritz Inc. and Maritz Travel Co.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (80 Stat. 1357, 1358)

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and Federal Maritime Commission General Order 20, as amended (46 CFR part 540): Maritz Inc. and Maritz Travel Company, 1375 North Highway Drive, Fenton, MO 63099–0800, Vessel: Royal Viking Star.

Dated: October 23, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25231 Filed 10–25–89; 8:45 am]

BILLING CODE 6730–01–M

Fact Finding Investigation No. 18 Rebates and Other Malpractices in the Trans-Pacific Trades; Supplemental Order

October 23, 1989.

By Order issued April 26, 1986, the Commission instituted this nonadjudicatory investigation into the practices of carriers and other persons with respect to possible rebating and other unlawful practices in the Trans-Pacific Trades. The purpose of this investigation is to determine whether sufficient evidence exists to warrant informal compromise procedures or formal investigation and assessment proceedings for violations of the Shipping Act of 1984 ("Act"). Peter J. King of the Commission was named in that Order as the Investigative Officer, and was given full authority to conduct the investigation in accordance with the laws of the United States and the regulations of the Commission.

Fact Finding Investigation No. 18 and other ongoing efforts are producing an increasing body of evidence of rate malpractices. The Commission is determined that the process of achieving the goals of its Trans-Pacific Trades Malpractice Program shall not be delayed because evidence is too voluminous to be evaluated and utilized promptly, with proper effect. To ensure that the process remains flexible and is carried on efficiently, the Commission is appointing a second Investigative Officer to share the authority and important responsibilities of this proceeding.

Therefore, it is ordered, that pursuant to part 502, subpart R of title 46 of the Code of Federal Regulations, 46 CFR 502.281, Charles L. Haslup III of the Commission is designated as a co-equal Investigative Officer in this proceeding. He shall have full authority, severally and jointly with Peter J. King, to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, That the Investigative Officers shall issue a joint report of findings and recommendations no later than April 30, 1990, such report to remain confidential until and unless the Commission rules otherwise;

It is further ordered, That notice of this Supplemental Order be published in the Federal Register.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–25232 Filed 10–25–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft FY 1990 Program Guidelines/ Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1990 Program Guidelines/Application Solicitation for the Labor-Management Cooperation Program to inform the public and obtain public comments. The program is supported by Federal funds authorized by the Labor Management Cooperation Act of 1978, subject to annual appropriations.

DATE: Comments are due on or before November 24, 1989.

ADDRESS: Send comments to: Peter L. Regner Director, Staff Operations and Programs FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

A. Introduction

The following is the draft solicitation for the Fiscal Year 1990 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, continguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY90, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicats must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1990 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

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(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee and FY88 grantees seeking continuation funding.

D. Allocations

FMCS has been given a tentative allocation of $1.4 million for this program. However, this amount may be reduced by federally mandated budget reductions. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY90 appropriation to contract for program support purposes other than administration. In FY90, approximately $400,000 will be reserved to continue successful grants funded in FY88.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ration. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY90 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 5, 1990. No applications or supplementary materials can be accepted after the deadline. It is the responsiblility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application, containing numbered pages, *plus three copies* should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427. FMCS will not accept videotaped submissions.

After the deadline has passed, all eligible applications, except for those for the National Conference, will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will be the only person with whom FMCS will communicate during the application review process.

All FY90 grant applicants will be notified of results and all grant awards will be made before September 28, 1990. Applications submitted after the deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY90, FMCS will offer a half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on December 11, 1990. Individuals interested in attending the session should contact FMCS to reserve a space. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street NW., Washington, DC 20427; or by calling 202/653-5320.

Robert P. Baker,
Acting Director, Federal Mediation and Conciliation Service.

[FR Doc. 89-25245 Filed 10-25-89; 8:45 am]
BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Donald L. Gaddy, Skiatook, Oklahoma; to acquire an additional 2.2 percent, totalling 17.5 percent, of the voting shares of Skiatook Bancshares, Inc., Skiatook, Oklahoma, parent of Exchange Bank, Skiatook, Oklahoma.

2. George F. Bashaw, Skiatook, Oklahoma; to acquire an additional 2.2 percent, totalling 17.5 percent, of the voting shares of Skiatook Bancshares, Inc., Skiatook, Oklahoma, parent of Exchange Bank, Skiatook, Oklahoma.

Board of Governors of the Federal Reserve System, October 20, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-25212 Filed 10-25-89; 8:45 am]
BILLING CODE 6210-01-M

Kisiak Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 17, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Kisiak Financial Corporation, Miami Lakes, Florida; to become a bank holding company by acquiring 99.7 percent of the voting shares of Kisiak National Bank, North Miami, Florida.

Board of Governors of the Federal Reserve System, October 20, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-25213 Filed 10-25-89; 8:45am]
BILLING CODE 6210-01-M

North Fork Bancorporation, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

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processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bancorporation, Inc., Mattituck, New York; to engage *de novo* through Compass Investment Services Corporation, Garden City, New York, in providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts and cash management services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–25214 Filed 10–25–89; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3256]

Brooks Drug, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Pawtucket, R.I. based corporation from entering into any agreement with other pharmacy firms to withdraw from or refuse to enter into any participation agreement. It further prohibits respondent, for a period of ten years, from communicating to another pharmacy firm their decision or intention to enter or refuse to enter into such a participation agreement. In addition, for eight years, it prohibits respondent from advising another pharmacy firm on whether to enter into any participation agreement.

DATE: Complaint and Order issued July 12, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S–3308, Washington, DC 20580. (202) 326–2912.

SUPPLEMENTARY INFORMATION: On Monday, May 1, 1989, there was published in the **Federal Register**, 54 FR 18541, a proposed consent agreement with analysis In the Matter of Carl's Drug Co., Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 89–25234 Filed 10–25–89; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3257]

Carl's Drug Co., Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Melville, NY, based corporation from entering into any agreement with other pharmacy firms to withdraw from or refuse to enter into any participation agreement. It further prohibits respondent, for a period of ten years, from communicating to another pharmacy firm their decision or intention to enter or refuse to enter into such a participation agreement. In addition, for eight years, it prohibits respondent from advising another pharmacy firm on whether to enter into any participation agreement.

DATE: Complaint and Order issued July 13, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S–3308, Washington, DC 20580. (202) 326–2912.

SUPPLEMENTARY INFORMATION: On Monday, May 1, 1989, there was published in the **Federal Register**, 54 FR 18539, a proposed consent agreement with analysis In the Matter of Brooks Drug, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 89–25234 Filed 10–25–89; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3258]

Genovese Drug Stores, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Rome, N.Y. based corporation from entering into any agreement with other pharmacy firms to withdraw from or refuse to enter into any participation agreement. It further prohibits respondent, for a period of ten years, from communicating to another pharmacy firm their decision or intention to enter or refuse to enter into such a participation agreement. In addition, for eight years, it prohibits respondent from advising another pharmacy firm on whether to enter into any participation agreement.

DATE: Complaint and Order issued July 12, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S–3308, Washington, DC 20580. (202) 326–2912.

SUPPLEMENTARY INFORMATION: On Monday, May 1, 1989, there was published in the **Federal Register**, 54 FR 18544, a proposed consent agreement with analysis In the Matter of Genovese Drug Stores, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 89–25235 Filed 10–25–89; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR–13]

The Third List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCIES: Department of Health and Human Services (HHS), Public Health Service (PHS), Agency for Toxic Substances and Disease Registry (ATSDR); and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), establishes certain requirements for ATSDR (of HHS) and EPA with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). CERCLA (42 U.S.C. 9604(i)(2)) required that the two agencies prepare a list of at least 100 hazardous substances most commonly found at NPL facilities that pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also required the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1986 revision. This notice contains the required list of 25 additional substances and provides a summary of the procedure used to assemble the list. The agencies expect to receive more current information relating to the substances on this and all previous lists in the near future. When this information becomes available, these lists will be reevaluated and the substances re-ranked. A new list of 225 will be published in the Federal Register.

ADDRESS: Comments on this notice should bear the docket control number ATSDR–13, and should be submitted to: Edward Skowronski, ATSDR, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd., NE., Atlanta, GA 30333. All comments will be placed in a publicly accessible docket; therefore please do not send confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward Skowronski, ATSDR, Atlanta, GA 404–639–0730 or FTS 236–0730.

LIST OF SUBSTANCES: The following newly listed 25 hazardous substances are shown in order of their Chemical Abstract Service (CAS) numbers.

CAS No.	Name of compound (synonym)
60–29–7	Ethyl Ether (Diethyl Ether).
64–17–5	Ethanol.
67–63–0	Isopropanol.
74–93–1	Methyl Mercaptan.
75–43–4	Dichlorofluoromethane (Freon 21).
79–09–4	Propanoic Acid (Propionic Acid).
79–20–9	Methyl Acetate.
92–52–4	Biphenyl (Diphenyl).
98–01–1	2-Furancarboxaldehyde (Furfural).
100–01–6	p-Nitroaniline (4-Nitroaniline).
106–99–0	Butadiene (1,3-Butadiene).
108–39–4	3-Methyl Phenol (m-Cresol).
110–86–1	Pyridine.
123–42–2	Diacetone-Alcohol (4-Hydroxy-4-methyl-2-pentanone).
271–89–6	2,3-Benzofuran.
298–00–0	Methyl Parathion.
298–02–2	Phorate.
319–77–3	Cresols.
7429–90–5	Aluminum.
7550–45–0	Titanium.
7697–37–2	Nitric Acid.
7726–95–6	Bromine.
25321–22–6	Dichlorobenzene.
25323–89–1	Trichloroethane.
37871–00–4	Heptachlorobenzo-p-Dioxin.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1986, the President signed the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), which extends and amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

Section 104(i) of CERCLA, as amended, requires the preparation of: (1) A list of hazardous substances found at NPL sites (in order of priority), (2) toxicological profiles of those substances, and (3) the initiation of a research program to fill data gaps associated with the substances.

A priority list of the first 100 substances was published (52 FR 12866, April 17, 1987), with a short summary of the procedure used by ATSDR and EPA to compile the list. In that notice, the agencies solicited public comment on the approach adopted for evaluating and ranking hazardous substances found at NPL sites, and announced the intention to refine the listing process in response to these comments and ongoing efforts by the agencies to improve the listing process.

A second priority list of 100 additional substances was published (53 FR 41280, October 20, 1988). At that time, the procedure used to prepare the second priority list was summarized. For the most part, the same procedure was used to prepare the third list of 25 substances that appears in this notice.

The approach used to prepare this third list is summarized below. The agencies solicit public comment on this approach; such comments should be submitted in accordance with the instructions given in this notice. The agencies will continue to seek improvements in the listing process as future revisions of the list are prepared. All non-confidential comments previously received are in the public file for this notice. A more detailed description of the revised listing methodology is contained in support documents which have been placed in the public file and are available for public review (see unit V of this notice).

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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II. Review of Methodology for Selecting Substances on the First List

A. General Approach for the First List

To obtain the first list of 100 hazardous substances, ATSDR and EPA defined a subset of the 717 hazardous substances which formed the CERCLA list (under section 102 of CERCLA). The subset was defined as those hazardous substances which EPA has identified at National Priorities List (NPL) sites. To rank the substances within this subset, three criteria were considered: (1) Toxicity, (2) frequency of occurrence at NPL sites or facilities, and (3) potential for human exposure. These criteria reflect the requirements of section 104(i)(2) of CERCLA. To develop a detailed ranking system employing these criteria, ATSDR and EPA first reviewed a number of hazard scoring systems for their applicability to the ranking criterion of toxicity. From all the approaches considered, the Reportable Quantity (RQ) scoring scheme was selected for ranking toxicity of the 100 priority substances. The RQ scoring scheme is described in several Federal Register documents (50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986; and 52 FR 8140, March 16, 1987).

The second criterion used by ATSDR and EPA to prepare the first priority list of hazardous substances was the frequency of occurrence at NPL sites. Data from the Contract Laboratory Program (CLP) statistical data base was used for determining frequency of occurrence. The CLP is an EPA program which provides a range of chemical analysis services at hazardous waste sites. The CLP statistical data base represents a random, stratified sample of sites and waste samples from those sites that were analyzed under CLP Routine Analytical Services (R&S) contracts from 1980 to 1984. The data base provided information on the percentage of sites at which substance was detected at least once in any medium (i.e., frequency of occurrence) and the average and range of concentrations for each medium or matrix (e.g., soil, ground water, drums).

The third criterion used to prepare the first priority list of hazardous substances was the potential for human exposure. ATSDR and EPA evaluated various sources of data associated with this criterion, and selected the CLP survey data to derive a rough estimate of potential for human exposure to hazardous substances at NPL sites. Three types of exposure-related data from the CLP curve were used: the average concentration of the candidate substances detected in ground water and surface water across the 358 NPL sites included in the CLP survey; the frequency of detection of those substances in ground water and surface water across the 358 sites; and whether the substances had been selected for detailed exposure and risk assessment at Superfund Remedial sites.

B. Generation of the First List

Using the ranking factors described above, as well as some minor criteria, ATSDR and EPA developed an alogrithm incorporating these criteria to calculate a hazard index value for each candidate substances. This alogrithm served as the basis for generating the rank of the first 100 substances. The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites based on the site percent data from the CLP survey. The agencies divided the site percent data value for each substance (representing frequency of occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices. The agencies then calculated an exposure index for each substance by ranking them based on the three exposure-related factors (with each factor receiving equal weigh`. The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each substance. The substances were prioritized based on their hazard indices.

For purposes of assessing hazardous substances in toxicity profiles, ATSDR and EPA combined some of the candidate substances into groups. If substances are stereoisomers of one another, are readily metabolized to other substances on the list, or generally are characterized as mixtures with respect to toxicity and/or frequency of occurrence, they were grouped together and occupy only one position on the priority list. Examples of these types of substances include: heptachlor and heptachlor epoxide; endrin and endrin aldehyde; PCBs.

III. Methodology for Selecting on the Second and Third Lists

A. Bases for Improvements in Methodology for Selecting Substances

After publication of the first priority list of hazardous substances, ATSDR and EPA solicited public comment and conducted critical reviews of the above-described prioritizing method in order to identify potential improvements. The procedure used to generate the second 100 substances was a modified version of that used to rank the first 100. The modifications reflect an effort to: (1) Improve data acquisition for data-poor substances of the second list, and (2) adapt the method to data sources that provide a more complete description of exposure to substances found at NPL sites. The ranking alogrithm used to generate the third list is the same version as that used for the second list. However. several new sources of exposure and frequency of occurrence data were used as inputs for the alogrithm.

B. Determination of the Frequency of Occurrence Criterion of the Ranking Methodology

In the procedure for selection of the first 100 priority substances, the number of NPL sites at which a substance is found was estimated from the CLP statistical data base. For selection of the second 100 priority substances, two additional estimates of frequency of occurrence were employed, the NPL technical (NPLt) data base, and the CLP Special Analytical Services (SAS) data base. For the development of the third list, the View data base (described below) was substituted for NPLt, and the CLP Analytical Results data base (CARD) was added to supplement the CLP statistical data base (described above). The View, CARD, and SAS data bases are described below.

The View data base has been developed by ATSDR's Exposure and Disease Registry Branch (EPRB) for use in selecting sites for Exposure Registry development. View is built upon EPA's NPLt data base supplemented with information from ATSDR Health Assessment and Health Consultation documents. View currently contains updated verified frequency of occurrence data for all of the 1,177 NPL sites. The View data based was used as a replacement for the NPLt data base as a source of frequency of occurrence data for the algorithm.

CARD contains information generated by recent CLP Routine Analytical Services (RAS) contracts. The CARD system currently contains about 1.5 years of monitoring data. Only CARD data from NPL sites was used as a source of frequency of occurrence data for the algorithm.

The final source of additional information used to estimate frequency of occurrence was the SAS data base. This data base contains information on the occurrence of substances which do not appear in the CLP statistical database for methodological reasons. Most of the information in the COP

statistical data base is obtained under the RAS program, in which samples submitted for analysis are screened for certain target chemicals; additional substances are then determined by matching their mass spectra to known standards. A request for determination of a substance under SAS may occur when there is a reason to believe that a specific hazardous compound is present in a sample at a concentration below the detection limit of the RAS, or when there is reason to believe that a specific hazardous substance which is not a target substance may be present in a sample.

The SAS data files were examined to identify substances with five or more requests for SAS which are not present in the CLP statistical database. Those substances were then examined further to determine the number of NPL sites at which the substance had actually been detected. This number was then divided by the total number of NPL sites to obtain a site percent frequency.

The overall site percent value used for a particular substance was the highest of the CLP statistical data base site percent (as determined by either RAS or SAS data), the View data base site percent, and the CARD site percent.

C. Determination of the Exposure Component of the Ranking Methodology

For the preparation of the second list, ATSDR and EPA expanded the bases for evaluating the potential for human exposure to the priority substances in two ways: (1) By considering the air and soil as additional routes of potential exposure, and (2) by considering additional databases reflecting the potential for human exposure to the substances.

The potential for exposure to candidate substances through soil was considered by incorporating data on soil concentrations from the CLP statistical data base in the calculation of an exposure index for each substance. To estimate the potential for air exposure, ATSDR and EPA used an indirect method, since no data are readily available on actual air concentrations of the candidate substances at NPL sites. Retention time on a gas chromatography column was used to estimate the potential for air migration since these values correlate positively with boiling point, which in turn correlates negatively with volatility. For the development of the third list, the agencies used boiling points as a correlate of potential for air migration because they were more readily available for the substances to be ranked. The potential for air exposure was included in the calculation of an overall exposure index.

Exposure potential also was represented in the second 100 ranking procedure through the incorporation of eight separate data sources. The data sources used were:

CLP statistical data base (CLPs)
NPL Technical data base (NPLt)
National Human Adipose Tissue Survey (NHATS)
Department of Transportation Hazardous Materials Information System (DOT/HMIS)
Acute Hazardous Events data base (AHE)
National Response Center data base (NRC)
Removal Tracking system data base (RTS)
NEXIS

This source list was modified for the development of the third list to exclude NPLt and include the following additional sources:

CLP Analytical Results data base (CARD)
View data base
Toxic Release Inventory (TRI)

Information from these sources was incorporated in one of two ways: (1) As part of the water, soil and air exposure potential rank (boiling point, and CARD and CLP concentration data) or (2) as a weighting factor applied to the overall exposure rank (NHATS, DOT/HMIS, AHE, NRC, NEXIS, RTS, TRI). When no NPL site soil or water concentration data were available to determine the exposure potential rank, information on frequency of occurrence at sites was used as an alternative. The ten data bases used to estimate exposure potential for the development of the third list are described below.

CLP Statistical Data Base

The CLPs contain data on the frequency of occurrence and media concentration of chemicals found at NPL and other hazardous waste sites. The data base was derived from CLP Routine Analytical Service (RAS) analyses and contains concentrations of specific chemicals found in soil, ground water, and surface water from a subset of the total NPL sites. Only the information from NPL sites was used to estimate exposure potential for development of the third list.

National Human Adipose Tissue Survey

The NHATS data base contains chemical analysis data of human adipose tissue collected from individuals in hospitals across the United States. Information is available for 372 substances, derived from 800 individual adipose tissue samples that were pooled into 46 composite samples (approximately 17 individual samples per composite). This data base gives some indication of the degree to which the population of the United States has been exposed to the substances detected. The ATSDR and EPA considered occurrence of a substance in human tissue to be an indication of potential for significant human exposure, and therefore assigned greater weight to the exposure index for such substances.

Department of Transportation Hazardous Materials Information System (DOT/HMIS)

The DOT/HMIS data base contains information concerning accidental release of hazardous substances during transportation. A written report must be submitted to HMIS within 15 days of the accidental release. The reports contain an identification of the substance released and an accounting of any injuries or fatalities resulting from the release. The ATSDR and EPA considered occurrence of a substance in the HMIS data base to be an indication of potential for significant human exposure at facilities on the NPL, and therefore ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

Acute Hazardous Events Data Base

The AHE data base was developed by the EPA, following the tragic release of a toxic substance in Bhopal, India, to provide information concerning sudden, accidental releases of toxic chemicals in the United States. The main purpose of the data base is to characterize the kinds of events releasing acutely toxic substances, the substances involved, and the causative factors leading to their release. The ATSDR and EPA considered occurrence of a substance in the AHE data base to be an indication of potential for significant human exposure at facilities on the NPL; therefore, ATSDR and EPA assigned greater weight to the exposure index for such candidate substances.

National Response Center Data Base

The NRC data base contains information concerning hazardous substance releases exceeding the RQ, pipeline failures and certain transportation incidents involving hazardous substances, and certain releases of toxic or flammable gases. ATSDR and EPA considered the occurrence of a candidate substance in data base for any releases that resulted in death, injury, or evacuation, to be an

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indication of potential for significant human exposure at facilities on the NPL. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the NRC.

Removal Tracking System Data Base

The RTS data base describes activities undertaken to clean up a site under the Superfund removal program. It lists the materials of concern that triggered a removal action and frequently lists other major contaminants being addressed at a site. ATSDR and EPA considered that the occurrence of a candidate substance in this data base indicates potential for significant human exposure. Consequently the agencies increased the weight of the exposure index for any candidate substances listed in the RTS.

NEXIS

The NEXIS information system contains full-text articles reporting the release of toxic substances in over 125 newspapers, newsletters, and wire services. ATSDR and EPA considered the reporting in this data base of release of a candidate substance which led to human death, injury, or evacuation, to be a significant indicator of potential for significant human exposure at facilities on the NPL. Consequently, the agencies increased the weight of the exposure index for any such substance.

CLP Analytical Results Data Base

The CARD contains soil and water monitoring information generated by all CLP RAS contracts starting on or after January 1, 1988. Substance geometric mean soil and water concentration data from NPL sites in CARD was used thoroughly estimate exposure potential for development of the third list.

View Data Base

The View data base is built upon EPA's NPLt data base supplemented with information from ATSDR Health Assessment and Health Consultation documents. View currently contains updated verified frequency of occurrence data for all of the 1,177 NPL sites.

Toxic Release Inventory

Section 313 of the Emergency Planning and Community Right-To-Know Act (also known as SARA Title III), requires EPA to establish a computerized national data base of toxic chemical emissions from manufacturing facilities throughout the United States. This TRI is a composite of over 70,000 submissions of toxic release inventory reports filed on Section 313 chemicals. Industry is required to submit these forms annually to EPA and the states. The data currently available represent releases in 1987. Information in the data base includes quantitative estimates of releases to air, water, and soil, facility information including storage data, and waste treatment data. Reported releases in the TRI data base were used to weight the exposure index for candidate substances.

D. Determination of the Toxicity Component of the Ranking Methodology

ATSDR and EPA decided to continue to use the Reportable Quantity (RQ) approach as a hazard scoring system, for the same reasons that guided its choice for the first and second prioirity list of hazardous substances. This approach provides the most complete characterization of toxicity of all hazard scoring systems reviewed by the agencies.

The reportable quantity ranking scheme was developed by EPA to set RQs for hazardous substances as required by CERCLA. Each RQ category corresponds to a weight, in pounds, for which releases must be reported to the Coast Guard's NRC. Section 103 of CERCLA requires immediate notification from any person in charge of a vessel or an offshore or onshore facility that releases an amount of a hazardous substance equal to or greater than its RQ. RQs are developed for individual chemicals and waste streams that have already been designated under CERCLA as hazardous substances.

Each CERCLA hazardous substance is assigned to one of five RQ categories based on chronic toxicity, acute toxicity, carcinogenicity, aquatic toxicity, and ignitability and reactivity. RQs are determined for each criterion separately, and the lowest of these is selected as the RQ for the substance. Only values for acute and chronic mammalian toxicity or carcinogenicity were considered for developing the third list of 25 hazardous substances.

Some of the candidate hazardous substances have not yet been assigned RQ values. In these cases, the ATSDR and EPA used the expertise of EPA's Office of Toxic Substances (OTS) to evaluate the potential health hazards associated with new chemicals submitted to the Premanufacture Notice Program. OTS employs a panel of toxicologists to assign a level of concern for the potential for toxicity, based upon the available experimental data, physical-chemical properties, toxicities of analogous substances, and toxicities of possible metabolites of the substance, or of substances analogous to possible metabolites. Based on this expert opinion, the level of concern for potential toxicity was adjusted to a five-point scale to coincide with the five-point RQ scale. This value was then used to represent the RQ value in the ranking algorithm.

IV. Generation of the List

ATSDR and EPA generated an algorithm to rank the hazard potential of each candidate substance. The starting point for the hazard index calculation was the subset of hazardous substances which EPA had identified at NPL sites by means of the View data base, CARD, the CLP Statistical data base or the SAS data base. The agencies divided the site percent value for each substance (representing frequency-of-occurrence) by the lowest RQ value for the substance (based on acute toxicity, chronic toxicity, or potential carcinogenicity) to generate a site index for each substance. ATSDR and EPA ranked the candidate substances based on their site indices, then calculated an exposure potential index for each substance. This index was based upon water concentration, soil concentration, and the boiling point of each substance, or frequency of occurrence (if no other information was available). The final step in the algorithm was to combine the site index rank and the exposure index value to obtain a hazard index for each candidate substance. The third list of substances is composed of the 25 previously unlisted substances which have the highest hazard potential based on their hazard indices.

The algorithm for calculating the hazard index is described in greater detail in the support document for this notice, which is contained in the public file.

V. Administrative Record

ATSDR and EPA are establishing a single administrative record entitled ATSDR-13 for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file which is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, GA 30329.

For the Agency for Toxic Substances and Disease Registry:

Dated: October 16, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

For the Environmental Protection Agency:

Dated: October 17, 1989.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 89-25196 Filed 10-25-89; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

CDC Advisory Committee on the Prevention of HIV Infection Subcommittee on Prevention: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC), announces the following subcommittee meeting and working session.

Name: CDC Advisory Committee on the Prevention of HIV Infection Subcommittee on Prevention.

Time and Date: 9:30 a.m.-5 p.m.—November 27, 1989 (Working Session for staff and Subcommittee members. No public testimony will be taken.)

Place: Holiday Inn Decatur Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is for the Subcommittee to evaluate intervention activities that prevent HIV transmission and that reduce associated morbidity among HIV-infected persons.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Linda Gimmestad, Committee Assistant, Office of the Deputy Director (HIV), CDC, 1600 Clifton Road, NE., Mailstop E-24, Atlanta, Georgia 30333, telephones: FTS: 236-0915; Commercial: 404/639-0915.

Dated: October 19, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89-25197 Filed 10-25-89; 8:45 am]

BILLING CODE 4160-18-M

CDC Advisory Committee on the Prevention of HIV Infection Subcommittee on Risk Assessment: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following subcommittee meeting and working session.

Name: CDC Advisory Committee on the Prevention of HIV Infection Subcommittee on Risk Assessment.

Time and Date: 9:30 a.m.-5 p.m.—November 27, 1989 (Working Session for staff and Subcommittee members. No public testimony will be taken.)

Place: Holiday Inn Decatur Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is for the Subcommittee to evaluate the various strategies employed by CDC in determining the status and characteristics of the HIV/AIDS epidemic and in assessing the risk of HIV infection associated with a variety of settings, occupations, behaviors, practices, and populations.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda Gimmestad, Committee Assistant, Office of the Deputy Director (HIV), CDC, 1600 Clifton Road, NE., Mailstop E-24, Atlanta, Georgia 30333, telephones: FTS: 236-0915; Commercial: 404/639-0915.

Dated: October 19, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-25202 Filed 10-25-89; 8:45 am]

BILLING CODE 4160-18-M

CDC Advisory Committee on the Prevention of HIV Infection: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: CDC Advisory Committee on the Prevention of HIV Infection.

Time and Date: 9 a.m.-5 p.m.—November 28, 1989; 9 a.m.-3 p.m.—November 29, 1989.

Place: Holiday Inn Decatur Conference Plaza, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV prevention efforts including maintaining surveillance of AIDS and HIV, infection, the epidemiologic and laboratory study of AIDS and HIV, information/education and risk reduction activities designed to prevent the spread of HIV infection, and other preventive measures that become available.

Matters to be Discussed: The Committee will discuss issues, questions, and concerns raised during the Committee's June 26-27, 1989, meeting. In-depth discussion will lead to development of a preliminary list of recommendations regarding CDC methods and approaches.

These discussions will be followed by review and discussion of reports from the committee's two subcommittees, preliminary recommendations, and any need for revision of current CDC approaches in the areas of risk assessment, technology development and transfer, prevention, and capacity building.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Linda Gimmestad, Committee Assistant, Office of the Deputy Director (HIV), CDC, 1600 Clifton Road, N.E., Mailstop E-24, Atlanta, Georgia 30333, telephones: FTS: 236-0915; Commercial: 404/639-0915.

Dated: October 19, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89-25198 Filed 10-25-89; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[OACT-026-N]

RIN 0938-AE22

Medicare Program; SNF Coinsurance Amount for 1990

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the skilled nursing facility (SNF) coinsurance amount for calendar year 1990 for the 1st through 8th days of extended care services in a SNF under Medicare's hospital insurance program (Part A) is $26.50. The Medicare statute specifies the method to be used to determine this amount.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813(a)(3) of the Social Security Act (the Act) required, until January 1, 1989, that the amount payable for extended care services in a skilled nursing facility (SNF) during a spell of illness was to be reduced by an amount equal to one-eighth of the hospital deductible, per day, for the 21st through 100th day of covered extended care services.

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Section 102 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), enacted on July 1, 1988, amended section 1813(a)(3) and repealed section 1813(b)(3) of the Act to change the method of determining coinsurance for SNF care and to change the days subject to coinsurance. Beginning January 1, 1989, beneficiaries are liable for coinsurance for days one through eight of covered days spent in a SNF in a calendar year (rather than days 21 through 100 in a spell of illness), and the coinsurance amount per day is determined as discussed in Section II of this notice (rather than equalling one-eighth of the hospital deductible). The SNF coinsurance amount for 1989, the year the change in the statutory coinsurance formula went into effect, was $25.50 (53 FR 41242). Notice of the coinsurance amount applicable to extended care services in the succeeding year must be published in September.

As required by section 1813(a)(3) of the Act, we have determined this amount based on the law in effect at the time we were required to make the determination. We recognize that Congress is considering amendments to the Medicare provisions and that some of these amendments may affect the method of computation, estimated costs, or other amounts on which the determination was made. Unless Congress specifically mandates a change in the method of computation for this coinsurance amount, the coinsurance amount itself will not change. However, the estimated costs related to the SNF benefit could change.

II. Skilled Nursing Facility Coinsurance Amount for 1990

Before September 1 of each year, HCFA will estimate the national average per diem cost for extended care services furnished in the succeeding year. The SNF coinsurance for those extended care services is 20 percent of that estimated national average per diem cost. The amount is rounded to the nearest multiple of $.50. (If it is a multiple of $.25 but not of $.50, the amount is rounded to the next highest multiple of $.50.) The SNF coinsurance amount for calendar year 1990 is $26.50.

III. Statement of Actuarial Assumptions and Bases Employed in Determining the SNF Coinsurance Rate

As discussed in section II of this notice, the SNF coinsurance rate for 1990 is equal to 20 percent of the estimated national average per diem cost for Medicare extended care services for 1990. The national average per diem cost is determined on a reasonable cost basis and includes any cost sharing costs paid by the beneficiary.

The principal steps involved in projecting the future cost per day of skilled nursing care are (a) determining the present cost per day to serve as a projection base, using a 100 percent sample of SNF bills, actual beneficiary billing experience (to identify coinsurance), and a review of SNF cost reports; and (b) projecting increases in cost per day amounts.

We have completed the above steps, basing our projections for 1990 on (a) current historical data from 1988 and (b) projection assumptions from the Midsession Review of the President's Fiscal Year 1990 Budget. It is estimated that in calendar year 1990 the national average per diem cost for Medicare extended care services is $132.70. Thus, 20 percent of this cost is $26.54, and the coinsurance rate is $26.50.

IV. Costs to Beneficiaries

The coinsurance amount for 1990 represents a $1 increase from the coinsurance for 1989. We estimate that in 1990 there will be about 3.35 million days subject to coinsurance at $26.50 per day versus about 3.27 million days subject to coinsurance at $25.50 per day in 1989. The increased cost to beneficiaries is about $5.39 million.

V. Regulatory Impact Statement

This notice merely announces an amount required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

Authority: Section 1813(a)(3)(C) of the Social Security Act (42 U.S.C. 1395e(a)(3)(C).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 28, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: October 23, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-25424 Filed 10-24-89; 4:00 pm]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Final Special Consideration and Funding Priorities for Nursing Special Project Grants

The Health Resources and Services Administration announces the final Special Consideration and Funding Priorities for Fiscal Year 1990 for Nursing Special Project Grants.

Special Project Grants and Contracts are authorized under Title VIII, section 820 of the Public Health Service Act to improve nursing practice through projects that increase the knowledge and skills of nursing personnel, enhance their effectiveness in care delivery, and reduce vacancies and turnover in professional nursing positions.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Eligible applicants are public or nonprofit private schools of nursing and other public or nonprofit private entities.

Section 820(a) authorizes grants and contracts to public or nonprofit private schools of nursing or other public or nonprofit private entities to improve the quality and availability of nurse training through projects that carry out one of the following purposes:

1. Provide continuing education for nurses;

2. Demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);

3. Increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and provide nursing education courses to rural areas through telecommunications via satellite;

4. Provide training and education to (a) upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees and (b) develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;

5. Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangenents in communities; and

6. Collect data to facilitate communications between health facilities and nursing students and nursing personnel in respect to agreements under which the individuals would serve as nurses in the health facilities in exchange for repayment of their educational loans by the facilities. (It is anticipated that the competitive contract mechanism will be used to implement this purpose.)

Section 820(b) authorizes grants and contracts to accredited schools of nursing to assist in meeting the costs of providing projects:

1. To improve the education of nurses in geriatrics;

2. To develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

3. To expand and strengthen instruction in methods of such treatment;

4. To support the training and retraining of faculty to provide such instruction;

5. To support continuing education of nurses who provide such treatment; and

6. To establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

Section 820(c) authorizes grants to public and nonprofit private entities for projects to demonstrate innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice. Projects must include initiatives:

1. To restructure the role of the professional nurse to ensure that the expertise of such nurses is efficiently utilized and that they are engaged in direct patient care during a larger proportion of their work time;

2. To test innovative wage structures for professional nurses in order to (a) reduce vacancies in work shifts during unpopular work hours; and (b) provide financial recognition based upon experience and education; and

3. To evaluate effectiveness of providing benefits for professional nurses as a means of increasing their loyalty to health care institutions and reducing turnover in nursing positions.

Section 820(d) authorizes grants to public and nonprofit private entities accredited for the education of nurses for the purpose of:

1. Demonstrating innovative nursing practice models for (a) the provision of case-managed health care services (including adult day care) and health care services in the home or (b) the provision of health care services in long-term care facilities or;

2. Developing projects to increase the exposure of nursing students to clinical practice in nursing homes, home health care, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

Demonstration models must be designed (a) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and (b) to improve nursing care in home health care settings and nursing homes.

To receive support, applicants must meet the requirements of 42 CFR part 57, Subpart T.

A proposed special consideration and proposed funding priorities were published in the **Federal Register** of May 24, 1989, (54 FR 22493), for public comment. No comments were received during the 30-day comment period. Therefore, the special consideration and funding priorities as proposed will be retained as follows:

Special Consideration for Fiscal Year 1990

Section 820(a)(1)

Special consideration will be given to projects which provide expansion of current or development and implementation of new curriculum concerning the prevention of HIV infection and the care of HIV infected-related diseases.

Final Funding Priorities for Fiscal Year 1990

Section 820(a)(1)

A funding priority will be given to the following: Projects for continuing education programs in the area of Quality Assurance/Risk Management for nurses.

Section 820(a)(4)(A)6(B)

Projects for rapid transition programs toward achievement of professional nursing degrees.

Section 820(a)(5)

1. Projects which include a target population of minority or disadvantaged persons.

2. Projects which demonstrate efforts to recruit and retain minority nurses.

A proposed funding priority for section 820(c) and 820(d) was inadvertently omitted from the previous published notice which stated that a funding priority would be given to projects which demonstrate efforts to recruit and retain minority nurses. Applications which do not address this priority for these two sections will be considered for funding. This priority for these two sections will be proposed in Fiscal Year 1991.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: October 20, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-25151 Filed 10-25-89; 8:45 am]

BILLING CODE 4160-15-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Meeting; Advisory Committee to the Director; Physical Medicine and Rehabilitation Research Panel

Notice is hereby given that the Physical Medicine and Rehabilitation Research Panel, an ad hoc group of consultants to the Advisory Committee to the Director, NIH, will meet in public session on November 20–21, 1989, to review and consider the concerns of the physical medicine and rehabilitation research community, to assess the current administration of rehabilitation research at the NIH, and to develop individual suggestions for approaches to assure continued progress in this area of research. During the two-day meeting the Panel on Physical Medicine and Rehabilitation Research will accept public testimony from concerned organizations and information provided by experts in the field of physical medicine and rehabilitation research and other related fields. A report reflecting the views of the individual panel members will be drafted and submitted for review by the Advisory Committee to the Director, NIH, at its meeting on January 26, 1990.

Panel membership will reflect a broad interest in physical medicine and rehabilitation research and related fields, such as medical and biomedical engineers, basic biomedical and clinical scientists, experts in the development and evaluation of prosthetic devices, representatives from physical therapy and other allied health professions, psychologists, and psychiatrists. Disabled consumers and/or parents with disabled children, as well as individuals familiar with disability rights, will also be represented on the Panel.

The meeting on November 20–21 will begin at 9:00 a.m. each day and end at 5:00 p.m. and 4:00 p.m. respectively. All sessions of the Panel are open to the public and will be held on the NIH campus in Bethesda, Maryland, in Building 31, Conference Room 10. The meeting will convene with an overview of the evolution and growth of physical medicine and rehabilitation research at the NIH; also included will be an overview of the purpose and focus of the National Institute for Disability and Rehabilitation Research (NIDRR), Department of Education. Presentations on the type of physical medicine and rehabilitation research presently supported by the NIH will then follow, as will a discussion of selected collaborative rehabilitation research initiatives. In the late morning, the scientific relevance of physical medicine and rehabilitation research will be discussed from several perspectives. During the afternoon session representatives from the physical medicine and rehabilitation research community are invited to highlight their principal concerns and interested organizations will also be presenting testimony. While the second day of the meeting is open to the public, the Panel will not entertain any further testimony but will begin its deliberations and drafting its report.

Concerned organizations with an interest in physicial medicine and rehabilitation research are invited to present public testimony before the Panel the afternoon of November 20. Individuals testifying for their organizations are further invited to present suggestions for courses of action to be taken in dealing with the issues raised by the presentations during the morning sessions. Due to time constraints only one representative from each organization may present testimony with oral presentations limited to five minutes. Testimony will be scheduled based upon when notification of intent to present testimony is received. Organizations wishing to present oral testimony should notify Dr. Suzanne S. Medgyesi-Mitschang or Ms. Mary Demory at 301–496–1454 no later than November 13. Written testimony can be any length and should include a brief description of the organization presenting testimony. This written information should be forwarded to Dr. Suzanne S. Medgyesi-Mitschang by FAX 301–402–0280 or by mail to the National Institutes of Health, Office of Science Policy and Legislation, Shannon Building, Room 218, 9000 Rockville Pike, Bethesda, Maryland 20892, to be received no later than November 13. If the number of organizations wishing to present oral testimony exceeds the time available on the agenda, the individual written statements will serve as testimony presented and will be entered into the record. All written statements will be distributed to the Panel prior to the beginning of the meeting.

Dated: October 17, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–25195 Filed 10–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of NIDR Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 6–7, 1989, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on December 6, and from 9 a.m. to 12 noon on December 7. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. to adjournment on December 7 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: October 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25189 Filed 10–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board to be held primarily at Marriott's Mountain Shadows Resort, 5641 East Lincoln Drive, Scottsdale, Arizona 85253, on November 19–21, 1989. The meeting will begin at 7:30 p.m. on November 19 and recess at 8:30 p.m., on November 20 at 7:30 a.m. to recess at 5 p.m., and on November 21 at 7:30 a.m. to adjournment at 12:30 p.m. Other portions of the meeting will be held at research and health-care facilities located in the area. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25190 Filed 10–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 28–29, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on November 28 from 9 a.m. to approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on November 28, from 2 p.m. to adjournment on November 29, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25191 Filed 10–25–89; 8:45am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, November 16–17, 1989, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 16 from 8:30 to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 9:30 a.m. on November 16 until recess and on November 17 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871 Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: October 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25192 Filed 10–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the Board of Scientific Counselors, NEI

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, November 27–28, 1989, Building 31, NEI Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 27 from 8:30 a.m. until approximately 4 p.m. for general remarks by the Institute's Director, Intramural Research Programs, on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on November 27 from approximately 4 p.m. until recess and on November 28 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Sensorimotor Research. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110 will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: October 16, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–25193 Filed 10–25–89; 8:45am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Chemicals (7) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On August 2, 1989, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review seven chemicals nominated for toxicology studies and to

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recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the seven chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892 (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1988 Annual Plan, pages 16–19.

On August 2, 1989, the CEC met to evaluate seven chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS registry No.	Committee recommendations
4-Acetylamino-fluorene.	28322–02–3	No additional testing.
p-Aminobenzoic acid.	150–13–0	No additional testing.
Elmiron	37319–17–8	Carcinogenicity.
Ethanol	64–17–5	No additional testing.
Methanol	67–56–1	Carcinogenicity, acute and subchronic studies, Pharmacokinetics, Neurotoxicity, Immunotoxicity, Reproductive and developmental effects.
Monochloroacetone.	78–95–5	No testing.
Propylene glycol methyl ether.	107–98–2	Carcinogenicity.

Five of the seven chemicals have been previously selected for toxicology studies by the NTP. 4-Acetylaminofluorene was mutagenic in *Salmonella*, and was mutagenic in the mouse lymphoma assay in three independent studies. It was negative for chromosomal aberrations and positive for sister chromatid exchanges in Chinese hamster ovary cells *in vitro*. p-Aminobenzoic acid was non-mutagenic in *Salmonella*. No significant effects on mating or fertility were observed in a continuous breeding study of ethanol in mice; however, there was a significant reduction in litter size. No teratogenic effects were observed in an inhalation teratology study of ethanol in rats. Teratogenic effects were observed in rats after inhalation exposure to methanol. No effects on fertility and reproduction were observed in a continuous breeding study of propylene glycol methyl ether in mice.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by November 27, 1989. Any submissions received after the above date will be accepted and utilized where possible.

Dated: October 18, 1989.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 89–25194 Filed 10–25–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2073]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 19, 1989.

John T. Murphy,

Information Policy and Management Division.

Proposal: Notice of Terminiation, Suspension, or Reinstatement of Assistance Payments Contract.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Department will use the form HUD–93114 to document, for review and audit, each Section 235 mortgage serviced by or for lending institutions where HUD's financial assistance to qualified low- and moderate-income families is terminated, suspended, and/or reinstated.

Form Number: HUD–93114.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93114	962		40		.5		19,240

Total Estimated Burden Hours: 19,240.

Status: Extension.

Contact: Florence Brooks, HUD, (202) 755–7330; John Allison, OMB, (202) 395–6880.

Date: October 19, 1989.

[FR Doc. 89–25154 Filed 10–25–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

September 1, 1989.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Demonstrated Expansion (Letter), 25 CFR Part 27.

OMB Approval Number: 1076–0063.

Abstract: To determine if an OJT contractor is eligible for extension of contract beyond two years this letter requests information on enterprise's expansion for the past two years, number of additional trainees the enterprise will train, and how many trainees, who have completed training, has the enterprise employed or assisted in finding employment elsewhere.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Small businesses or organizations.

Estimated Completion Time: 30 minutes.

Annual Responses: 5.

Annual Burden Hours: 2.5.

Bureau clearance officer: Cathie Martin, 202–343–3577.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–25155 Filed 10–25–89; 8:45am]

BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

September 1, 1989.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Application for Training or Employment Assistance, 25 CFR Parts 26 and 27.

OMB Approval Number: 1076–0062.

Abstract: This form requests information on the age, marital status, employment, education and income of applicants for training or employment assistance. This information is used to determine applicant's eligibility and how much financial assistance is needed.

Bureau Form Number: BIA 6205.

Frequency: On occasion.

Description of Respondents: Individuals or households.

Estimated Completion Time: 30 minutes.

Annual Responses: 5,100.

Annual Burden Hours: 2,550.

Bureau clearance officer: Cathie Martin, 202–343–3577.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89–25156 Filed 10–25–89; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NM—920–00–4120–02]

San Juan River Regional Coal Team (RCT); Availability of Final Data Adequacy Standards (DAS) for New Mexico and Colorado

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Final Data Adequacy Standards (DAS) for coal leasing in the San Juan River Coal Region are available upon request beginning Thursday, October 26, 1989.

ADDRESS: Copies of the final DAS may be obtained from either Russell Jentgen or Ed Heffern, Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504–1449, telephone (505) 988–6109.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or Ed Heffern at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The final DAS spell out levels of data to be acquired prior to the competitive leasing of Federal coal tracts, whether in the lease by application or regional leasing mode. Standards are provided for geology, soils, water, vegetation, wildlife, air, socioeconomics, cultural resources, paleontology, and land use

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disciplines within the San Juan River Region.

The DAS were prepared by a multidisciplinary task force composed of Federal and State resource specialists from New Mexico and Colorado. The task force was appointed and guided by the San Juan River RCT. The DAS were prepared, with public input, at the direction of the Department of the Interior as an outcome of the 1985 supplemental Environmental Impact Statement (EIS) to the Federal Coal Management Program.

The first draft of the DAS was released on March 3, 1989, for a 45-day public comment period. We received eleven written comments. The RCT discussed these comments at its meeting on April 28, 1989, and decided that the task group would redraft the standards and send them out for another 30-day comment period.

The revised draft of the DAS was released on June 16, 1989. The BLM received five public comments. The RCT had reserved the date of August 24, 1989, to hold a meeting if needed to discuss the DAS. However, a telephone poll of the voting RCT members indicated no desire for such a meeting. Instead, the BLM mailed copies of the comments on the revised draft, along with an analysis of DAS versus mine plan requirements, to the voting and ex officio RCT members and science advisors. This mailing, which was made on August 16, 1989, asked for any responses by September 5, 1989. The BLM received no written responses, so it conducted an informal follow-up by telephone. There were no substantial concerns from the voting RCT members or science advisors.

The authors of the DAS then prepared an analysis of the comments on the revised draft (Appendix D of the final DAS) and changed the revised draft in several places. Appendix E of the final DAS lists the changes made to the revised draft and the reasons for doing so. A final draft, incorporating the changes, was mailed to the voting RCT members and the BLM Washington Office on September 26, 1989, for their review. The RCT chairman polled the voting RCT members by telephone on October 4, 1989, and all members agreed to adopt the final draft, as written, to serve as the final DAS document for the San Juan River Region.

Dated: October 16, 1989.

Larry L. Woodward,

Chairman, San Juan River Regional Coal Team.

[FR Doc. 89-24904 Filed 10-25-89; 8:45am]

BILLING CODE 4310-FB-M

[UT-040-00-4830-12]

Cedar City District Multiple Use Advisory Council; Meeting

Notice is hereby given in accordance with Public Law 92-463, that a meeting of the Cedar City District Multiple Use Advisory Council will be held Thursday, December 7, 1989. The meeting will begin at 9:00 a.m. in the Dixie Resource Area Office at 225 North Bluff Street, St. George, Utah. The Advisory Council will review the draft Dixie RMP & EIS.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:15 a.m., or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East DL Sargent Drive, Cedar City, Utah 84720 by Friday, December 1, 1989. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or the Council Chairman.

Dated: October 17, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-25248 Filed 10-25-89; 8:45 am]

BILLING CODE 4310-DQ-M

[OR 45076; OR-080-00-4212-13; GPO-018]

Proposed Exchange; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

This exchange will be between the United States (Bureau of Land Management) and Niedermeyer-Martin Co. (NMC), an Oregon corporation.

The following described public land (Revested Oregon and California Railroad Grant land status) has been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.):

Willamette Meridian, Oregon,

T. 3 S., R. 3 E.,
Sec. 15, Lot 1.

The parcel described above contains 7.74 acres in Clackamas County.

In exchange for this land, the United States will acquire the following described private land from NMC, including a 50-foot wide road easment:

Willamette Meridian, Oregon,

T. 2 S., R. 5 W.,
Sec. 21, SE¼NW¼, and a portion of the SE¼SW¼ and the SW¼SE¼ described by metes and bounds;
Sec. 28, a portion of the NE¼ described by metes and bounds.

The area described above contains 229.10 acres in Yamhill County.

The purpose of the exchange is to facilitate resource management opportunities as identified in the Salem District's Eastside and Westside Management Framework Plans. The public land selected is difficult to manage because of its relative small size, lack of access, and proximity to rural residences. The private land offered is adjacent to other public lands which are being managed for multiple use and the sustained yield of timber. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal or the acreage will be adjusted to equalize the values upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the value of the public land to be transferred. All mineral rights will be transferred with the surface estate.

The patent to the selected land will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals. Act of August 30, 1890 (43 U.S.C. 945)
2. Valid existing rights.

Publication of this notice in the **Federal Register** will segregate the public land described above to the extent that it will not be subject to appropriation under the public land laws, including the mining laws, except for exchange under Sec. 206 of the Federal Land Policy and Management Act. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant (43 CFR 2201.1(b)). The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning this exchange, including the environmental assessment/land report, is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, OR 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Salem District Manager at the above address. Any objections will be reviewed by the Oregon State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Van W. Manning,

District Manager.

[FR Doc. 89-25249 Filed 10-25-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-030-09-4332-10]

Amendment to the Colorado State Director's Final Wilderness Inventory Decision; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to the Colorado State Director's Final Wilderness Inventory Decision for Redcloud Peak WSA (CO-030-208).

SUMMARY: This notice serves as an amendment to the previous Final Wilderness Inventory Decision for the Redcloud Peak Wilderness Study Area (CO-030-208) as announced by publication in the **Federal Register** Vol. 45, No. 222, Friday, November 14, 1980, and Vol. 46, No. 2, Monday, January 5, 1981. The decision is to adjust the boundary to exclude a road and two houses which are located within the existing boundary. These were built in the 1960s and were inadvertently included within the WSA boundary during the inventory in the late 1970s. The adjustment will remove approximately five acres from the WSA. This notice also serves to announce a protest period on this decision which begins on the date of this announcement and continues until November 27, 1989.

EFFECTIVE DATE: This decision will become effective 30 days from the date of this announcement in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barry Tollefson, Area Manager, Gunnison Resource Area, 216 N. Colorado, Gunnison, Colorado 81230. The telephone number is (303) 641-0471. Protests should be submitted to Colorado State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

SUPPLEMENTARY INFORMATION: The proposed change in boundary will reduce the WSA acreage by approximately five acres to 37,714. In order to exclude the two houses and access road, the decision is to redraw the WSA boundary to follow the north side of the access road right-of-way in Sec. 5 from its intersection with the county road on the east to the point that it enters private land further west. This line will exclude the road as well as the houses. (The Redcloud Peak WSA was initially identified as being 32,800 acres in the State Director's Final Wilderness Inventory Decision in November 1980. Due to more accurate measurements, acreage is 37,719 without changing the boundary lines identified in 1980.) The legal description for changing the boundary will be within the following: T. 42 N., R. 4 W., NMPM, Sec. 5, SW¼NE¼SE¼, SE¼NW¼SE¼. Persons wishing to protest this decision must file a written protest with the Colorado State Director on or before 4:00 p.m., November 27, 1989. Only those protests received by this time and date will be accepted. The State Director will issue a written decision on any protest which is filed according to the above requirements. Any person adversely affected by the State Director's decision on a written protest may appeal such decision under the provisions of 43 CFR part 4.

Dated: October 17, 1989.

Tom Walker,

Acting State Director.

[FR Doc. 89-25250 Filed 10-25-89; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-00-4214-11; GPO-023; ORE-03102, OR-4372, OR-21726]

Proposed Continuation of Withdrawals, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of three separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon state Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Mt. Hood National Forest

1. ORE-03102, Public Land Order No. 990 dated August 11, 1954. Bagby Springs Recreation Area, 80 acres.
Located in Clackamas County, 20 miles northeast of Mill City.
T. 7 S., R. 5 E., W.M., Secs. 26 and 27.

2. OR-4372, Public Land Order No. 4998 dated January 26, 1971. Lazy Bend Campground Addition, 45 acres.
Located in Clackamas County, 9 miles southeast of Estacada.
T. 4 S., R. 5 E., W.M., Sec. 28.
Memaloose Campground, 2.50 acres.
Located in Clackamas County, 9 miles southeast of Estacada.
T. 4 S., R. 5 E., W.M., Sec. 29.
Carter Bridge Campground Addition, 2.50 acres.
Located in Clackamas County, 14 miles east of Colton.
T. 5 S., R. 5 E., W.M., Sec. 2.
Armstrong Campground Addition, 25 acres.
Located in Clackamas County, 14 miles east of Colton.
T. 5 S., R. 5 E., W.M., Sec. 2.
Ward Campground, 30 acres.
Located in Clackamas County, 14 miles southeast of Colton.
T. 5 S., R. 5 E., W.M., Sec. 26.
Skookum Lake Campground, 5.34 acres.
Located in Clackamas County, 18 miles southeast of Colton.
T. 6 S., R. 5 E., W.M., Sec. 35.
Shining Lake Campground, 2.50 acres.
Located in Clackamas County, 18 miles southeast of Estacada.
T. 4 S., R. 6 E., W.M., Sec. 36.
Frazier Forks Campground, 5 acres.
Located in Clackamas County, 24 miles east of Colton.
T. 5 S., R. 7 E., W.M., Sec. 9.
Frazier Turnaround Campground, 5 acres.
Located in Clackamas County, 24 miles east of Colton.
T. 5 S., R. 7 E., W.M., Sec. 9.
3. OR-21726, Secretarial Order dated March 30, 1907. Zigzag Administrative Site, 41.24 acres.
Located in Multnomah County, 1 mile east of Zigzag.
T. 3 S., R. 7 E., W.M., Sec. 3.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be

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prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 17, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–25251 Filed 10–25–89; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-00-4214-11; GPO-025; WASH-01483, WASH-01484, OR-22069(WASH), ORE-017510(WASH)]

Proposed Continuation of Withdrawals, Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of four separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Wenatchee National Forest

1. WASH–01483, Public Land Order No. 2434 dated July 13, 1961. Silver Falls Recreation Area, 110 acres.
Located in Chelan County, 27 miles northwest of Chelan.
T. 28 N., R. 18 E., W.M., Sec. 2.

2. ORE–017510, Public Land Order No. 4193 dated April 10, 1967. Bonanza Campground Site, 15 acres.
Located in Chelan County, 13 miles west of Wenatchee.
T. 22 N., R. 18 E., W.M., Sec. 20.

Eight Mile Campground Site, 11.44 acres.
Located in Chelan County, 6 miles southwest of Leavenworth.
T. 24 N., R. 17 E., W.M., Sec. 30.

Johnny Creek Campground Site, 20 acres.
Located in Chelan County, 6 miles west of Leavenworth.
T. 24 N., R. 16 E., W.M., Sec. 2.

Lake Creek Campground, 50 acres.
Located in Chelan County, 26 miles northwest of Chelan.
T. 28 N., R. 18 E., W.M., Secs. 12 and 13.

Snoqualmie National Forest

Naches Ranger Station Site, 60 acres.
Located in Yakima County, 23 miles southwest of Ellensburg.
T. 16 N., R. 14 E., W.M., Sec 1.

3. OR–22069(WASH) Secretarial Order dated December 13, 1906. Currant Flat Administrative Site, 120.48 acres.
Located in Yakima County, 23 miles southwest of Ellensburg.
T. 16 N., R. 14 E., W.M., Sec. 1.

4. WASH–01484, Public Land Order No. 2434 dated July 13, 1961. Mather Memorial Parkway, 2,440 acres.
Located in Pierce County, 22 miles southwest of Enumclaw.
T. 17 N., R. 10 E., W.M., Sec. 3.
T. 18 N., R. 10 E., W.M., Secs. 5, 6, 8, 17, 20, 21, 27, 28, and 34.
T. 19 N., R. 10 E., W.M., Secs. 30 and 31.

Gifford Pinchot and Snoqualmie National Forests

Randle-Yakima Highway Roadside Zone, 2,000 acres.
Located in Yakima County, 35 miles west of Yakima.
T. 13 N., R. 10 E., W.M., Sec. 6.
T. 14 N., R. 10 E., W.M., Secs. 8, 17, 20, 21, 22, 25, 26, 27, 29, 30, and 31.

Gifford Pinchot and Snoqualmie National Forests (cont'd)

T. 13 N., R. 11 E., W.M., Secs. 1, 2, 5, 6, 8, 9, 10, and 11.
T. 14 N., R. 11 E., W.M., Secs. 30, 31, and 36.
T. 13 N., R. 12 E., W.M., Secs. 1 and 2.
T. 14 N., R. 12 E., W.M., Secs 32 to 36, inclusive.
T. 13 N., R. 13 E., W.M., Sec. 6.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Date: October 18, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–25252 Filed 10–25–89; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-00-4214-11; GPO-024; ORE-03468, ORE-03587-G, ORE-011885, ORE-013403, ORE-013792, OR-5051, OR-19252, OR-19308, OR-19310-A, OR-21311, OR-21975]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of eleven separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Ochoco National Forest

1. ORE–03468, Public Land Order No. 1144 dated May 4, 1955. Delintment Lake Recreation Area, 360 acres.
Located in Harney County, 33 miles northwest of Burns.
T. 19 S., R. 28 E., W.M., Sec. 29.

2. OR–21311, Secretarial Order dated November 13, 1908. Rager Addition, 100 acres.
Located in Crook County, 12 miles northeast of Paulina.
T. 15 S., R. 25 E., W.M., Secs. 32 and 33.

3. OR–21975, Secretarial Order dated June 12, 1908. Rager Administration Site, 60 acres.
Located in Crook County, 12 miles northeast of Paulina.
T. 15 S., R. 25 E., W.M., Sec. 33.

Willamette National Forest

4. OR–19252, Secretarial Order dated September 4, 1906. Mineral Springs Administrative Site, now known as McCredie Hot Springs, 40 acres.
Located in Lane County, 10 miles southeast of Oakridge.
T. 21 S., R. 4 E., W.M., Sec. 36.

5. OR–19308, Secretarial Order dated July 10, 1906. Flat Creek Administrative Site, 80 acres.
Located in Lane County, 3 miles west of Oakridge.
T. 21 S., R. 3 E., W.M., Sec. 14.

6. ORE–03587–G, Public Land Order No. 1144 dated May 4, 1955. Shady Dell Recreation Area, 43.50 acres.
Located in Lane County, 4 miles northwest of Oakridge.
T. 20 S., R. 2 E., W.M., Sec. 35.

Malheur National Forest

7. OR–5051, Public Land Order No. 4822 dated May 15, 1970. Yellowjacket Campground Site, 20 acres.
Located in Harney County, 23 miles northwest of Burns.
T. 19 S., R. 29 E., W.M., Sec. 32.

Deschutes National Forest

8. ORE–011885, Public Land Order No. 2775 dated September 27, 1962. Bachelor Butte Recreation Area, 15,065 acres.
Located in Deschutes County, 19 miles west of Bend.
T. 18 S., R. 9 E., W.M., Secs. 19, 20, 21, and 28 to 32, inclusive.

9. ORE–013403, Public Land Order No. 3502 dated December 2, 1964. Sisters Administrative Site, 50 acres.
Located in Jefferson County, 24 miles west of Sisters.
T. 15 S., R. 7 E., W.M., Sec. 5.

Lavacicle Cave Area, 80 acres.
Located in Jefferson County, 35 miles east of LaPine.
T. 21 S., R. 16 E., W.M., Sec. 33.
T. 22 S., R. 16 E., W.M., Secs. 4 and 5.

10. ORE–013792, Public Land Order No. 3333 dated February 17, 1964. Riverside Guard Station and Campground Area, 40 acres.
Located in Jefferson County, 11 miles northwest of Sisters.
T. 13 S., R. 9 E., W.M., Sec. 15.

11. OR–19310–A, Public Land Order No. 725 dated June 4, 1951. Todd Lake Forest Camp, 170 acres.
Located in Deschutes County, 19 miles west of Bend.
T. 18 S., R. 9 E., W.M., Secs. 7 and 8.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 18, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–25253 Filed 10–25–89; 8:45am]

BILLING CODE 4310-33-M

National Park Service

[Order No. 1, Amendment 3]

Mid-Atlantic Region; Superintendents, et al. Delegation of Authority

Order No. 1, approved January 6, 1974, and published in the Federal Register of January 29, 1974, (39 FR 3694), as amended, set forth in Section 2 certain authority to officers and employees. This amendment changes paragraphs (e), (f) and (g) to read as follows:

Section 2. Delegation. • • •

(e) The Chief, Land Rescurces Division is authorized to execute the land acquisition program, within the Mid-Atlantic Region, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91–646, as amended.

(f) The Land Resources Officer of the New River Gorge National River is authorized to execute the land acquisition program at New River Gorge National River and the Gauley River National Recreation Area, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands when the amount involved does not exceed $1,000,000; accept deeds conveying to the United States lands or interests in land; approve claims for reimbursement under Public Law 91–646, as amended, when the amount does not exceed $20,000. (g) The Land Resources Officer of the Delaware Water Gap National Recreation Area is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in land when the amount involved does not exceed $250,000; accept deeds conveying to the United States lands or interests in lands; approve claims for reimbursement under Public Law 91–646, as amended when the amount involved does not exceed $5,000.

Dated: September 22,1989.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89–25218 Filed 10–25–89; 8:45am]

BILLING CODE 4310-70-M

[Order No. 5, Amdt. 1]

National Capital Region; Superintendents, et al.; Delegation of Authority

Order No. 5, approved September 14, 1977, and published in the Federal Register of September 30, 1977, (42 FR 52499), set forth certain authority to officers and employees. This amendment changes Section 6 to read as follows:

Section 6. Chief, Land Resources Division, Mid-Atlantic Region, is authorized to execute the land acquisition program within the National Capital region, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91–646, as amended.

Dated: September 22, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89–25219 Filed 10–25–89; 8:45 am]

BILLING CODE 4310-70-M

[Order No. 2, Amdt. 2]

North Atlantic Region; Superintendents, et al.; Delegation of Authority

Order No. 2, approved January 31, 1977, and published in the Federal

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Register on May 31, 1977, (42 FR 27887), set forth in section 2 certain authority and limitations on authorities. This amendment changes paragraph (g) to read as follows:

Section 2. Delegation. * * *

(g) Regional Chief, Land Resources Division.

The Chief, Land Resources Division, Mid-Atlantic Region is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91-646, as amended.

Dated: September 8, 1989.

Gerald D. Patton,

Regional Director, North Atlantic Region.

[FR Doc. 89-25220 Filed 10-25-89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Burr-Brown Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *Burr-Brown Corporation*, was lodged on October 16 with the United States District Court for the District of Arizona. This action was brought pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

Under this Consent Decree, Burr-Brown Corp. agrees to implement the remedial action selected by the Environmental Protection Agency ("EPA") pertaining to cleanup of contaminated groundwater beneath Burr-Brown's manufacturing facility in Tucson, Arizona. The plume of contamination to be addressed by the cleanup is part of a larger area of contamination known as the Tucson International Airport Area Superfund Site. The larger areas of contamination will be addressed in future actions. Under the Consent Decree, Burr-Brown will install and operate a groundwater extraction and treatment system to treat groundwater that is contaminated by volatile organic compounds. The treatment water will be used in Burr-Brown's industrial processes and eventually discharged to the local sewer system. Treatment will continue until monitoring indicates that the target levels, known as Maximum Contaminant Levels, have been met in the groundwater.

In addition, Burr-Brown will reimburse the United States for the costs it incurred related to the Burr-Brown site, in the amount of $175,000, and will reimburse the United States for its costs of overseeing Burr-Brown's work under the Consent Decree.

The Department of justice will receive comments relating to the proposed Consent Decree for a period of 45 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Burr-Brown Corporation*, D.J. Ref. 90-11-3-369.

The proposed Consent Decree may be examined at the office of the United States Attorney Acapulco Building, Suite 310, 110 S. Church Street, Tucson, Arizona 85701 and at the Region IV office of the U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $5.80 for copying costs ($0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-25254 Filed 10-25-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of A Consent Decree Pursuant to CERCLA; Gulf Resources & Chemical Corp. et al.

In accordance with Departmental policy, notice is hereby given that on October 12, 1989, a proposed Partial Consent Decree in *United States* v. *Gulf Resources and Chemical Corporation; and Pintlar Corporation*, was lodged with the United States District Court for the District of Idaho in Civil Action No. 89-3067. The decree resolves certain claims of the United States against Gulf Resources and Chemical Corporation and Pintlar Corporation under section 107 of CERCLA, 42 U.S.C. 9607, for removal costs incurred in 1986 by the Environmental Protection Agency in responding to a release or threat of release of hazardous substances at the Bunker Hill Superfund Site, located in the Silver Valley along the South Fork of the Coeur d'Alene River in Northern Idaho.

The proposed decree may be examined at the office of the United States Attorney for the District of Idaho, Room 693, Federal Building, Box 037, 550 W. Fort Street, Boise, Idaho 82724 (contact: Andrea Pogue (208) 334-1211), and at the Region 10, Office of Regional Counsel, Environmental Protection Agency, 1200 Sixth Avenue SO-125, Seattle, Washington 98101 (Contact: Allan Bakalian (206) 442-1073). In requesting copies, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gulf Resources and Chemical Corporation; and Pintlar Corporation*, DOJ Reference No. 90-11-3-128.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-25255 Filed 10-25-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees; Resource Conservation and Recovery of America et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that two proposed Consent Decrees in *United States* v. *Resource Conservation and Recovery of America, et al.*, were lodged with the United States District Court for the Northern District of Georgia. This action was brought pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

Under one Consent Decree, forty-three defendants agree to reimburse the United States for costs it incurred at the Davis Farm Site in Gordon County, Georgia, in the aggregate amount $618,379.48. The costs were incurred as the result of a response action undertaken by the United States Environmental Protection Agency ("EPA") in November 1984. Under the other Consent Decree, one defendant has agreed to reimburse the United States for similar costs in the amount of $40,000.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Resource Conservation and Recovery of America, et al.* D.J. Ref. 90-11-2-283.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Richard Russell Building, Room 1800, 75 Spring Street, S.W., Atlanta, Georgia 30335 and at the Region IV office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decrees may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed Consent Decrees may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for copies of the proposed Consent Decrees should be accompanied by a check in the amount of $7.10 for copying costs ($0.10 per page) (one decree is 58 pages, the other is 13 pages) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-25256 Filed 10-25-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on September 19, 1989, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of MCC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice [the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on January 17, 1985, 50 FR 2333. MCC and its shareholders filed additional notifications on March 29, 1985, October 21, 1985, July 30, 1986, November 7, 1988, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, and August 16, 1988. The Department published notices in the Federal Register in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), and September 22, 1988 (53 FR 28922), respectively.

Effective on or about September 19, 1987, E-Systems, Inc. and General Dynamics Corporation are not parties to MCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-25257 Filed 10-25-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Osi/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the OSI/Network Management Forum (the "Forum") on September 28, 1989 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49615. On December 23, 1988, March 22, 1989, and July 3, 1989, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department of Justice published notices in the Federal Register pursuant to section 6(b) on January 26, 1989, 54 FR 3870, April 25, 1989, 54 FR 17834, and August 4, 1989, 54 FR 32141.

The identities of the additional parties to the venture are given below:

Tellabs, Inc., 3030 Warrenville Road, Suite 450, Lisle, IL 60532
NYNEX, 4 West Red Oak Line, White Plains, NY 10604
Industrial Technology Institute, 2901 Hubbard Road, P.O. Box 1485, Ann Arbor, MI 48106
ADC Kentrox, 14375 NW. Science Park Drive, Portland, OR 97229
Defense Communications Agency, 1860 Wiehle Avenue, Reston, VA 22090-5500
Nokia Corporation, Nokia Research Center, P.O. Box 156, Espoo SF-02101, Finland
Sun Microsystems, Inc., 2550 Garcia Avenue, Mountain View, CA 94043.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-25258 Filed 10-25-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for November 21, 1989, and published in the Federal Register on October 17, 1989, at pages 42606-07, has been cancelled. The meeting was to review proposals for Higher Education in Humanities Program, submitted to the Division of Education Programs.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-25174 Filed 10-25-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

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FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 17, 1989, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on October 17, 1989: J. Ward Testa.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89-25175 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Reestablishment; Advisory Committee for Science Resources Studies

The Assistant Director for Scientific, Technological, and International Affairs (STIA), has determined that the reestablishment of the Advisory Committee for Science Resources Studies is necessary and in the public interest.

Name of Committee: Advisory Committee for Science Resources Studies.

Purpose: To provide advice concerning current and emerging science and technology issues, problems and opportunities and the kinds of data that would help illuminate them.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25273 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Notice of Establishment

The Assistant Director for Scientific, Technological, and International Affairs (STIA) has determined that the establishment of the Advisory Committee for Scientific, Technological, and International Affairs is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Scientific, Technological, and International Affairs.

Purpose: The Advisory Committee for Scientific, Technological, and International Affairs (ACSTIA) is being established to provide advice, recommendations, and oversight for the diverse activities falling under the jurisdiction of the National Science Foundation (NSF) STIA Directorate. These activities include: International cooperative research; promotion of the participation of women and underrepresented minorities in science and engineering (S/E); strengthening the S/E infrastructure of minority institutions and geographic regions; operation of the NSF Small Business and Innovation Research (SBIR) Program; as well as U.S. and international data collection and analysis.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25274 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Notice of Meeting; Decision, Risk, and Management Science Advisory Panel

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision, Risk, and Management Science.

Date Time: November 16 and 17, 1989—8:30 a.m. to 5:00 p.m. each day.

Place: Lombardy Hotel, 2019 I Street, N.W. Washington, DC 20006.

Type of Meeting: Part Open—November 16, 4:00—5:00 p.m. Closed remainder.

Contact Persons: Dr. James Shanteau, Program Director, (202) 357-7417, or Dr. L. Robin Keller, Associate Program Director, (202) 357-7589, Decision, Risk, and Management Science, National Science Foundation, Washington, DC 20550, Room 336.

Minutes: May be obtained from the contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in decision, risk, and management science.

Agenda: Open—general discussion of trends and opportunities in decision, risk, and management science.

Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 25275 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Notice of Meeting; Developmental Neuroscience Advisory Panel

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience.

Date & Time: November 15, 16, 17, 1989—9:00 a.m.–5:00 p.m. each day.

Place: National Science Foundation, 1800 G. St. N.W., Room 643, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Mark H. Whitnall, Program Director for Developmental Neuroscience, Room 320, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7042.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25276 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Science and Engineering Education Advisory Committee Meeting

The National Science Foundation announce the following meeting:

Name: Advisory Committee to the Directorate for Science and Engineering Education.

Date and Time: Monday, November 20, 1989, 9:00 am–5:00 pm; Tuesday, November 21, 1989, 9:00 AM–5:00 PM.

Place: National Science Foundation, Room 540, Washington, D.C.

Type of Meeting: Open.

Contact Person: Mr. Charles W. Hudnall, Executive Secretary, Directorate for Science and Engineering Education, National Science Foundation, Washington, D.C. 20550, (202) 357-7928.

Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for science and engineering education.

Agenda: Review of FY 1990 Programs and Initiatives; Review of FY 1991 Programs and Initiatives; Strategic Planning for FY 1992 and Beyond.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25277 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Physical Anthropology Advisory Panel; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Physical Anthropology.

Date and Time: November 13 & 14, 1989, 9:00 am–5:00 pm each day.

Place: National Science Foundation, 1800 G Street, N.W., Room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Warren G. Kinzey, Program Director, Physical Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 25278 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Law and Social Science Advisory Panel

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Socil Science.

Date/Time: November 17, 1989: 9:00 a.m. to 5:00 p.m. November 18, 1989: 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (room number to be announced).

Type of Meeting: Part Open—November 17, 1989, 4:00–5:00 pm; Remainder of meeting is closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, National Science Foundation, Washington, DC 20550, Room 336, (202 357-0567.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning research in law and social science.

Agenda: Open—general discussion of trends and opportunities in law and social science research. Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25176 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Political Science Advisory Panel

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: November 9, 1989, 8:30–5:00 p.m. November 10, 1989, 8:30–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Room 1242.

Type of Meeting: Part Open—November 9, 4:00–5:00 p.m. Remainder of meeting is closed.

Contact Person: Dr. Frank P. Scioli, Program Director, Political Science, Division of Social and Economic Science, National Science Foundation, Washington, DC 20550 (202) 357-9406.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in political science.

Agenda: Open—general discussion of trends and opportunities in political science research. Closed—to review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25177 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Sociology Advisory Panel

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/Time: November 6, 1989, 8:30 to 5:00 p.m.; November 7, 1989, 8:30 to 5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Room 1243

Type of Meeting: Part Open—November 7, 1989, 1:00–2:00 p.m. Remainder of meeting is closed.

Contact Persons: Dr. Phyllis Moen or Dr. Murray Webster, Program Directors, Sociology, National Science Foundation, Washington, DC 20550, Room 336, (202) 357-7802.

Minutes: May be obtained from the contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning research in sociology.

Agenda: Open—general discussion of trends and opportunities in sociology research. Closed—to review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature,

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including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-25178 Filed 10-25-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-18655-EA, ASLBP No. 89-597-01-EA; (Byproduct Material License No. 21-24472-01)]

Atomic Safety and Licensing Board; Prehearing Conference on Nuclear and Radiological Imaging Physicians

Before Administrative Judges: B. Paul Cotter, Jr., Chairman; Dr. Harry Foreman, Member; Dr. Jerry R. Kline.

October 19, 1989.

Please take notice that a prehearing conference will be held on Tuesday, November 7, at the 52nd District Court, 4th Division, Council of Chambers, 500 West Big Beaver, Troy, Michigan 48084 from 11:00 a.m. to 4:00 p.m.

October 9, 1989, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 89-25148 Filed 10-25-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

Public Service Company of New Hampshire, Seabrook Station; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-67 issued to New Hampshire Yankee (the licensee) for operation of Seabrook Station located in Seabrook, Rockingham County, New Hampshire.

The proposed amendment would preclude the potential of a forced plant shutdown as a result of loss of the Containment Building Compressed Air System. New Hampshire Yankee (NHY) proposes that a back-up air supply be connected to the Containment Building Compressed Air System. The back-up air supply would be a cross-connection between the Plant Instrument Air System and the Containment Air System. The cross-connect would enter the containment building thru an existing containment penetration, X-68. The penetration will be added to Technical Specification Table 3.6-1 "Secondary Containment Bypass Leakage Paths".

The proposed change would be implemented in two phases. The first phase is scheduled for completion prior to commercial operation and would include the installation of the cross-connect piping from the Plant Instrument Air System to the Containment Compressed Air System. The piping isolation design will meet 10 CFR part 50, Appendix A, General Design Criteria 56, "Primary Containment Isolation" by utilizing a fail-closed air operated valve outside Containment and a check valve inside Containment. The air operated valve's automatic open/close function will be disarmed and the valve will be administratively controlled in the locked closed position for Modes 1-4. The second phase of this change will provide the instrumentation and electrical changes required to make the cross-connect operate automatically with Containment Air System low pressure and assure post-accident isolation. This phase is scheduled to be implemented prior to completion of the first refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

New Hampshire Yankee has reviewed the proposed change utilizing the criteria specified in 10 CFR 50.92 and has determined that the proposed change would not

1. Involve a significant increase in the probability of consequences of any accident previously evaluated. The activation of a previously spare piping penetration to the Containment will allow utilization of the Plant Instrument Air System to backup the Containment Building Compressed Air System during Modes 5 and 6. The Containment Building Compressed Air System is non-safety related and is not relied upon for safe shutdown. The new penetration piping is designed to Quality Group B standards and is subject to testing per 10 CFR part 50, Appendix J. The activation of this penetration will not affect the existing offsite dosage analysis since the analysis already assumes the maximum possible bypass leakage. The total containment integrated leakage, as well as local leakage rates, will remain within 10 CFR part 50, Appendix J, limits. This cross-connect will not be used during Modes 1-4, therefore, incoming instrument air will not affect containment peak pressure.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The additional Type "C" penetrations maximum leakage in conjunction with the combined leakage of the existing Type "B" and "C" penetrations will not exceed the total leakage allowed by 10 CFR part 50 Appendix J for bounding radiation doses to within the dose guidelines of 10 CFR part 100 during accident conditions.

3. Involve a significant reduction in a margin of safety. The bases for the Technical Specifications indicate that allowable leakages will be consistent with assumptions made in the offsite dose analyses.

Therefore, based on the above facts, the Commission has made a proposed determination that the Amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is to establish those facts or aware and on which the petitioner intends to rely expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D C 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N W, Washington, D C, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, Project Director: (petitioner's name and telephone number), date petition was mailed), (plant name, and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D C 20555, and to Thomas Dignan, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 21, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Buildino, 2120 L Street, N W, Washington, D.C. 20555 and at the Local Public Document Room located at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 19th day of October, 1989.

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For the Nuclear Regulatory Commission
Victor Nerses,
Project Manager, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 89-25228 Filed 10-25-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1 located in Ottawa County, Ohio.

The amendment would increase the response time requirement for the High Flux/Number of Reactor Coolant Pumps On (power/pumps) trip function of the Reactor Protection System provided in Table 3.3.2 of the Technical Specifications from 451 milliseconds to 631 milliseconds. This amendment application was dated February 21, 1989 and was supplemented by letters dated July 19, 1989 and September 1, 1989.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 27, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW , Washington, DC , by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 21, 1989 as supplemented by letters dated July 19, 1989 and September 1, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 18th day of October, 1989.

For The Nuclear Regulatory Commission
Robert W. DeFayette,
Acting Director Project Directorate III-3 Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.
[FR Doc. 89-25227 Filed 10-25-89; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17184; 812-7379]

Capstone International Series Trust; Application

October 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Capstone International Series Trust ("Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from the provisions of sections 12(d)(1)(A) and 12(d)(3) of the 1940 Act.

Summary of Application: Applicant seeks a conditional order permitting each of its existing series and all future series of Applicant to acquire securities of foreign banks, foreign insurance companies and foreign securities firms in accordance with the conditions of proposed Rule 12d1-1 and proposed amendments to Rule 12d3-1 under the 1940 Act.

Filing Dote: The application was filed on August 25, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Olivia P. Adler, Esq., 1500 K Street, NW., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Sheryl Siman Maliken, Staff Attorney, at (202) 272-2190 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust of the series type. Applicant currently has two series, European Plus Fund and Nikko Japan Tilt Fund, and seeks relief pursuant to the application for each current and future series.

2. Applicant's two current series invest, respectively, in securities of foreign issuers in Western Europe and Japan, and each uses a computer model to construct its portfolio which is reflective of issuers represented in the respective markets, including issuers that are banks, insurance companies, and firms that may derive more than 15% of gross revenues from securities related activities.

3. Under the 1940 Act, foreign banks and foreign insurance companies may be deemed to be investment companies since they are not excluded from the definition of investment company by section 3(c)(3) of the 1940 Act, which excludes United States banks and insurance companies from the definition. Applicant's investments in such issuers may therefore be subject to the limits of section 12(d)(1)(A), which are applicable to an investment company's investments in other investment companies.

4. Section 12(d)(3) of the 1940 Act prohibits a registered investment company from purchasing a security issued by a broker, dealer, underwriter or investment adviser. Rule 12d3-1 under the 1940 Act provides relief from this restriction for, among other things, the purchase of an equity security of such an issuer which is a "margin security," as that term is defined in Regulation T of the Board of Governors of the Federal Reserve System. Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test.

5. Applicant therefore seeks relief from section 12(d)(1)(A) under the 1940 Act to the extent permitted by proposed Rule 12d1-1 under the 1940 Act. *See* Investment Company Act Release No. 17084 (July 26, 1989). Proposed Rule 12d1-1 eases restrictions on a registered investment company's acquisition of the securities of foreign banks and foreign insurance companies.

6. Applicant also seeks relief from section 12(d)(3) and Rule 12d3-1 under the 1940 Act to the extent permitted by proposed amendments to Rule 12d3-1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989). The proposed amendments to Rule 12d3-1 would, among other things, facilitate the acquisition by registered investment companies of equity securities issued by foreign securities firms.

Applicant's Conditions

Applicant agrees to the following conditions in connection with the relief requested:

1. Applicant will comply with the conditions of Alternative I of proposed Rule 12d1-1 and agrees, in addition, to comply with the terms of proposed Rule 12d1-1 as they may be further revised or adopted.

2. Applicant will comply with proposed Rule 12d3-1 and agrees, in addition, to comply with the terms of Rule 12d3-1 as they may further revised or adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 89-25260 Filed 10-25-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17185; 811-4606]

First Utility Fund, Inc.; Application for Deregistration

October 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: First Utility Fund, Inc. ("Applicant").

Relevant 1940 Act Section: Section 8(f).

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Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on June 6, 1989 and a supplemental letter submitted on June 29, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Five Piedmont Center, Atlanta, Georgia 30305.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Max Berueffy, Branch Chief, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company under the 1940 Act. On March 5, 1986, Applicant filed a Notification of Registration pursuant to section 8(b) of the 1940 Act. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N-1A which was declared effective on July 31, 1986, and the initial public offering commenced on September 23, 1986.

2. On September 29, 1988, Applicant's Board of Directors (the "Board") unanimously approved the Plan of Liquidation and Dissolution (the "Plan") of Applicant.

3. Prior to the shareholders meeting, a proxy statement dated November 15, 1988, concerning the Plan was distributed on or about November 15, 1988 to all of Applicant's shareholders of record as of October 3, 1988. Preliminary copies of the proxy materials were filed with the SEC on October 26, 1988 and definitive copies were filed on November 16, 1988.

4. As of November 29, 1988, there were outstanding 357,931.356 shares of common stock, $.10 per value, of the Applicant. The net asset value per share of the Applicant at that date was $10.12, aggregating $3,622,209.

5. On December 8, 1988, the shareholders of Applicant approved a proposal to close Applicant pursuant to the Plan. According to the Plan, Applicant was required to: (1) Cease investing its assets in accordance with its investment objectives and sell the portfolio securities held in order to convert the securities to cash; (2) forego engaging in any business activity except for the purpose of winding up its business and affairs, preserving the value of its assets and distributing assets to shareholders after the payment (or reservation of assets for payment) of all creditors of Applicant; and (3) dissolve following performance of all other actions required by the Plan.

6. Applicant paid brokerage commissions of approximately $14,249 in connection with the liquidation of its portfolio securities and other assets to satisfy redemption requests.

7. As of the filing of the application, Applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs. Applicant intends to file the appropriate Certificate of Dissolution or similar document in accordance with state law after the relief requested has been granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25261 Filed 10-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17163; (811-1452)]

Leverage Fund of Boston, Inc.; Application

October 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Leverage Fund of Boston, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on September 21, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Massachusetts corporation, registered as a closed-end investment company under the 1940 Act on December 16, 1966. Subsequently, on January 4, 1982, Applicant was restructured as an open-end investment company. Applicant will be dissolved as a Massachusetts corporation under the laws of the Commonwealth of Massachusetts, having met all of the prerequisites for such dissolution (including obtaining a tax good standing certificate from the Massachusetts Department of Revenue).

2. As of June 12, 1989, Applicant had outstanding 2,708,700.605 shares of capital stock, $0.33⅓ par value, representing an aggregate net asset value of $18,682,104.39, or $6.89707 per share. On that date, Applicant transferred all of its assets to Eaton Vance Special Equities Fund ("Equities Fund") (File No. 811-1545), under an

Agreement and Plan of Reorganization dated March 30, 1989 ("Reorganization"). In exchange, Applicant received shares of Equities Fund with an aggregate net asset value equal to the net asset value of Applicant's assets determined as of the close of business on June 9, 1989 (the last business day prior to the date of the Reorganization).

3. Immediately thereafter, Applicant distributed the shares of Equities Fund received to Applicant's shareholders in complete liquidation. Upon completion of the Reorganization, each shareholder of Applicant owned shares of Equities Fund with the same aggregate net asset value as the shares of the Applicant owned by the shareholder immediately prior to the Reorganization.

4. On February 21, 1989, Applicant's Board of Director's unanimously approved the Reorganization. A proxy statement dated March 30, 1989, was distributed to Applicant's shareholders and was filed with the SEC (File No. 2-27962) in connection with the Reorganization. Thereafter, on June 9, 1989, a majority of Applicant's shareholders approved the Reorganization and related transactions.

5. Applicant and Equities Fund each bore its own expenses relating to the Reorganization. Legal, accounting and other expenses relating to the Reorganization in the approximate amount of $53,500 were borne by Applicant. No brokerage commissions were incurred in connection with the Reorganization.

6. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25262 Filed 10-25-89; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 35-24969)

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 19, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 13, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70-7677)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 41, 43, 45(a), 51 and 50(a)(5) thereunder.

EUA proposes to acquire all the outstanding shares of Newport Electric Corporation ("Newport"),[1] a wholly owned electric public utility subsidiary company of NECO Enterprises, Inc. ("NECO"),[2] an exempt holding company, in exchange for 540,000 shares of EUA common stock, par value $5.00 per share ("Acquisition"), which EUA proposes to issue to NECO from EUA's authorized but unissued common stock. The Acquisition is subject to a Stock Purchase Agreement dated September 1, 1989 ("Purchase Agreement"), which shall have been approved and adopted by a majority of the holders of shares of NECO common stock outstanding and eligible to vote on such proposal. After completion of the Acquisition, Newport will be a separate wholly owned electric public-utility subsidiary company of EUA. EUA also proposes to make capital contributions to Newport, from time-to-time through December 31, 1991, in an amount not to exceed $10 million in the aggregate.

In connection with the Purchase Agreement, a Voting Agreement, dated September 1, 1989, was executed by EUA, David F. LaRoche, the majority shareholder of NECO, and Donald C. Pardus, President of EUA, under which Mr. LaRoche, subject to necessary third-party consents, irrevocably appointed Mr. Pardus as his proxy to vote the shares of NECO common stock over which Mr. LaRoche has voting power in favor of the transactions contemplated by the Purchase Agreement. As of August 16, 1989, Mr. LaRoche has voting power with respect to 559,662, or approximately 56%, of the 998,371 shares of NECO common stock outstanding, as of June 1, 1989.

It is stated that, after review of the tax consequences of the Acquisition to NECO, the Acquisition may be accomplished through a reverse-subsidiary merger under which: (1) EUA would form a special purpose, wholly owned subsidiary company which would be merged with and into Newport with Newport as the surviving corporation; (2) EUA would acquire all the outstanding common stock of Newport; and (3) NECO would acquire 540,000 shares of EUA's authorized but unissued common stock.

The Columbia Gas System, Inc. (70-7680)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Columbia proposes to issue and sell in one or more transactions through December 31, 1991 an aggregate principal amount not exceeding $200 million of (1) debentures ("Debentures") maturing in up to thirty years and/or (2) medium-term notes ("MTNs") maturing in up to thirty years. The Debentures will be offered at competitive bidding pursuant to Rule 50 or in accordance with the alternative procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623). The MTNs will be offered pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection 50(a)(5) thereunder. The proceeds from the sale of the Debentures or MTNs will be used to finance, in part, the capital

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[1] EUA's acquisition of Newport will also result in the acquisition of Newport's wholly owned subsidiary company, Newport Electric Power Corporation, which has issued and outstanding one share of common stock, par value $1 per share, which is held by Newport.

[2] As of June 30, 1989, of the one million authorized shares of common stock, Newport had one share issued and outstanding, which share is held by NECO.

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expenditures of Columbia's subsidiary companies.

Columbia also requests an exception from the standards required under the Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105, February 16, 1956) ("SOP") for deviations thereof regarding sinking funds and redemption provisions. MTNs generally do not contain sinking fund provisions, whereas the SOP requires the creation of a sinking fund. In addition, the MTNs may not be callable prior to their maturity, whereas the SOP requires that bonds must be callable for redemption at any time upon reasonable notice and with reasonable redemption premiums, if any.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc.89-25263 Filed 10-25-89; 8:45 am]

BILING CODE 8010-01-M

[Rel. No. 34-27367; [File No. SR-MBS-89-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by MBS Clearing Corporation Relating to a Revised Penalty Fee Schedule

October 19, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 5, 1989, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is MBS Clearing Corporation's proposed revision to its Penalty Fee Schedule:

Settlement Balance Order ("SBO") Balancing Fee: $100.00/correction to erring party

Late Payment of Market Margin Requirement: $500.00/half day

Late SBO Market Differential ("SBOMD")/Cash Adjustment Wire: $50.00/day plus interest on wire amount

Late Audit Confirmation: (First Offense) $250.00/month, (Second Offense Within Six Months) $500.00/month, (Third Offense Within Six Months) $1,000/month

Notification of Settlement Delinquent Unchallenged SBO Advisory Condition: $25.00/day

Deletion of a Delinquent Challenged SBO Uncompared Condition: $25.00/day

Matching of a Delinquent Challenged SBO Advisory Condition: $50.00/day

Any violation of Rules/Procedures not covered by the above schedule is subject to penalty in accordance with the Clearing Division Rules, Article V, rules 3 and 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed fee change establishes a penalty for late-confirmation of a Participant's monthly audit reports. MBSCC will assess a fine of $250.00 per month for the first offense; $500.00 for the second offense within six months; and $1,000.00 for the third offense within six months. The penalty is designed to encourage Participants to promptly confirm their monthly audit reports. The Penalty Fee Schedule also contains MBSCC's remaining penalty charges, including SBO Balancing Fee (penalizes firms who fail to net or correct SBOs during required firms who fail to net or correct SBOs during required time frames), late SBOMD/Cash Adjustment wire (penalizing firms for late adjustments to SBOMD/Cash Market Differential wire payments) and late payment of Market Margin Requirement Deposits ("MMD") (penalizing firms for late payments of MMDs).

The penalty fees are designed to penalize those firms which fail to correct erroneous information or pay required amounts in specified time frames. The penalty fees are also designed to encourage prompt compliance of MBSCC's rules and procedures.

The Penalty Fee Schedule is consistent with Section 17A of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among MBSCC's Participants.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to file number SR-MBS-89-4 and should be submitted by November 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-25170 Filed 10-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27368; File No. SR-NYSE-89-34]

Self-Regulatory Organization; Notice and Order Granting Accelerated Approval to a Proposed Rule Change by the New York Stock Exchange, Inc.; Relating to Emergency Arrangements to Trade PSE Options on Other Options Exchanges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change concerns arrangements made for the continued trading of options listed on the Pacific Stock Exchange, Inc. ("PSE") due to mechanical disruptions to the PSE options floor caused by the October 17, 1989 earthquake in San Francisco. Starting October 19, 1989, under arrangements worked out by the PSE, American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Philadelphia Stock Exchange, Inc. and NYSE, options listed on the PSE will trade temporarily on the floors of different options exchanges around the United States. The options still will be considered to be traded on the PSE, although the physical execution of the trades will occur on the other options exchanges.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSE Facility at the Exchange

Rule 17(T).

1. The Exchange shall permit the PSE and its members to use a portion of the Exchange Floor (hereinafter, the "PSE Facility at the Exchange") to conduct the trading of such stock options as shall have been designated by the PSE by prior notice to the Exchange. The Exchange will provide appropriate support facilities to enable the PSE members to conduct such trading at the PSE Facility at the Exchange. Such trading shall be conducted in accordance with the rules of the PSE, to the same extent as if conducted on the facilities of the PSE in California.

2. By accepting this arrangement, the PSE, its members and their employees who are authorized to enter onto the Exchange Floor to carry out trading as above described, shall accept the same limitations on the liability of the Exchange for use of its facilities for the conduct of business as they apply to any Exchange member, member organization or employee thereof in the conduct of his or its business on the Exchange.

3. PSE members authorized to trade at the PSE Facility at the Exchange shall not be authorized to trade in any Exchange listed securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange notes that as a result of the October 17, 1989 earthquake in San Francisco, the San Francisco trading facilities of the PSE have sustained a temporary loss of electrical power. As a consequence, the PSE is currently unable to open its San Francisco options facilities for trading. The proposed rule change will provide for the PSE's temporary use of NYSE facilities. The Exchange states that the proposed rule change will act to facilitate and maintain transactions in PSE option issues, thereby maintaining the mechanism of a free and open market for PSE options and protecting the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. Specifically, the Commission believes that the arrangements worked out between the PSE and the other options exchanges to provide facilities for PSE market makers to trade PSE options on those other exchanges will ensure that these options continue to be freely traded despite the disruption to the options trading floor in San Francisco.[1] Floor brokers on the host exchanges will be deputized as PSE members for purposes of handling orders in PSE options, thereby providing adequate personnel for order handling purposes. The trade entry and match functions for PSE options will be performed by the host exchanges. The Commission is satisfied that these arrangements will enable continuous, liquid markets to be maintained for these options in an exchange environment while maintaining the usual investor protection safeguards for exchange-traded options.[2] This is especially important in light of the upcoming options expiration on October 20, 1989. Accordingly, the rule proposal, by facilitating these arrangements, is consistent with sections 6(b)(1), (2), (5), and (6) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in order to ensure a continuous market for PSE options.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

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[1] Market Maker firms who are member organizations of the PSE and a host exchange will be able to use the individual market makers they select to make markets in PSE options, even though those persons are not members of the PSE.

[2] In this regard, both the PSE and the temporary host exchanges will have the authority to surveil trading in PSE options on other exchanges and to take any disciplinary action necessary against their members for violations of their rules.

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Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by November 16, 1989.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change (SR–NYSE–89–34) be, and hereby is, approved through October 20 or when the PSE options market is operational whichever is later.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: October 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–25172 Filed 10–25–89; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–17180; (811–76)]

Eaton Vance High Yield Fund; Notice of Application

October 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Eaton Vance High Yield Fund.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on September 21, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on November 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant commenced the initial public offering of its shares following its organization as a Massachusetts business trust on February 18, 1932. Applicant registered under the Securities Act of 1933 on October 10, 1933, and under the 1940 Act on October 31, 1940. Applicant was dissolved as a business trust under the laws of the Commonwealth of Massachusetts on July 24, 1989.

2. As of May 22, 1989, Applicant had outstanding 7,755,252.647 shares of beneficial interest, $1.00 par value, representing an aggregate net asset value of $38,192,809.79, or $4.9247 per share. On that date, Applicant transferred all of its assets to Eaton Vance Income Fund of Boston ("Income Fund") (File No. 811–02258), under an Agreement and Plan of Reorganization dated March 27, 1989 ("Reorganization"). In exchange, Applicant received shares of Income Fund with an aggregate net asset value equal to the net asset value of Applicant's assets determined as of the close of business on May 19, 1989 (the last business day prior to the date of the Reorganization).

3. Immediately thereafter, Applicant distributed the shares of Income Fund received to Applicant's shareholders in complete liquidation. Upon completion of the Reorganization, each shareholder of Applicant owned shares of Income Fund with the same aggregate net asset value as the shares of the Applicant owned by the shareholder immediately prior to the Reorganization.

4. On February 21, 1989, Applicant's Board of Trustees unanimously approved the Reorganization. Thereafter, on April 21, 1989, a majority of Applicant's shareholders approved the Reorganization, Applicant's subsequent dissolution as a business trust under Massachusetts law and its deregistration as an investment company under the 1940 Act.

5. Applicant and Income Fund each bore its own expenses relating to the Reorganization. Legal, accounting and other expenses relating to the Reorganization in the approximate amount of $22,500 were borne by Applicant. No brokerage commissions were incurred in connection with the Reorganization.

6. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–25171 Filed 10–25–89; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 200.30–3(a)(12) (1988).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2386; Amdt. #1]

North Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated September 28, 1989, to include the Counties of Alexander, Brunswick, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Iredell, and Wilkes, in the State of North Carolina, as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21–22, 1989. In addition, applications for economic injury from small businesses located in the contiguous counties of Alleghany, Ashe, Avery, Davie, McDowell, New Hanover, Pender, Rowan, Rutherford, Surry, Watauga, and Yadkin, in the State of North Carolina, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 24, 1989, and for economic injury until the close of business on June 25, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 4, 1989.

Michael E. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–25265 Filed 10–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2386; Amdt. #2]

North Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated October 3, 4, and 5, 1989, to include the Counties of Alleghany, Anson, Ashe, Avery, Davidson, Davie, Forsyth, Guilford, Montgomery, Richmond, Rowan, Stanly, Stokes, Surry, Watauga, and Yadkin as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21–22, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Alamance, Caswell, Hoke, Mitchell, Moore, Randolph, Rockingham, and Scotland, in the State of North Carolina; Carroll, Grayson, Henry, Patrick, and Washington Counties, in the State of Virginia; and Carter and Johnson Counties, in the State of Tennessee, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The number assigned for economic injury for the State of Virginia is 686200, and for the State of Tennessee the number of 686300.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 24, 1989, and for economic injury until the close of business on June 25, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 16, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–25266 Filed 10–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2383; Amdt. # 1]

Puerto Rico; Declaration of Disaster Loan Area

The above-number Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated September 29, 1989, to include the municipalities of Adjuntas, Aibonito, Aguas Buenas, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Catano, Cayey, Ciales, Cidra, Coamo, Comerio, Corozal, Dorado, Florida, Guayama, Guaynabo, Gurabo, Hatillo, Jayuya, Lares, Manati, Morovis, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, and Villalba, in the Commonwealth of Puerto Rico, as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 17–18, 1989.

In addition, applications for economic injury from small businesses located in the contiguous municipalities of Guayanilla, Juana Diaz, Las Marias, Maricao, Penuelas, Quebradillas, San Sabastian, Santa Isabel, and Yauco, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 21, 1989, and for economic injury until the close of business on June 21, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 5, 1989.

Michael E. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–25267 Filed 10–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2383; Amdt. #2]

Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated October 6, 1989, to include the municipality of Penuelas, in the Commonwealth of Puerto Rico, as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 17–18, 1989.

Any counties contiguous to the above-named primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 21, 1989, and for economic injury until the close of business on June 21, 1990.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008).

Dated: October 16, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–25268 Filed 10–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2384; Amdt. #1]

South Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated September 26 and 27, 1989, to include the counties of Calhoun, Chester, Clarendon, Fairfield, Florence, Kershaw, Lancaster, Lee, Williamsburg, and York, in the State of South Carolina, as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21–22, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Cherokee, Darlington, Newberry, and Union, in the State of South Carolina, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the

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close of business on November 20, 1989, and for economic injury until the close of business on June 22, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 2, 1989.

Michael E. Deegan,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-25269 Filed 10-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2384; Amdt. #2]

South Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated September 29 and 30, 1989, to include the counties of Chesterfield, Colleton, Darlington, Dillon, Marion, Marlboro, and Richland, in the State of South Carolina, as a disaster area as a result of damages caused by Hurricane Hugo which occurred on September 21–22, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Allendale, Beaufort, and Hampton, in the State of South Carolina, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on November 20, 1989, and for economic injury until the close of business on June 22, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 16, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-25270 Filed 10-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-5531]

EDC Investments, Inc.; Application for License to Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by EDC Investments, Inc. (Applicant), El Caribe Bldg., Ground Floor, San Juan, PR 00901 with the Small Business Adminstration (SBA) pursuant to 13 CFR 107.102 (1989).

The proposed officers, directors, and owner of EDC are as follows:

Name and address	Position	Percentage of ownership
Nellie Betancourt, Park Side Cond. PH-1, Caparra Heights, PR 00922.	Chairperson	0
Manuel Lopez Del Valle, 661 Concordia Street, Miramar, PR 00907.	President	0
Hector Edgardo Velez Garcia, E-1 DD-71 St. Urb O'Neil, Manati, PR 00701.	Secretary, Treasurer.	0
Carmen Lydia Zayas, 1645 Asomante St. Summit Hills, Rio Piedras, PR 00920.	Director	0
Herman Suisona, Elche St. #5-2, Rio Piedras, PR 00926.	Director	0
Economic Development Corp., El Caribe Bldg., 1st Floor, San Juan, PR 00901.		100

Economic Development Corp. is a non-stock, non-profit community development corporation holding tax exempt status, organized in 1973.

The Applicant will begin operations with a capitalization of $1,025,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business in the commonwealth of Puerto Rico.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in San Juan, Puerto Rico.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 25271 Filed 10-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21-BP, Investigating Reports of Counterfeit (Bogus) Parts.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-BP. Investigating Reports of Counterfeit (Bogus) parts. The proposed AC provides information and guidance for use in investigating reports of counterfeit aircraft parts and includes procedures concerning referral of such reports to the appropriate FAA offices and other government agencies. This AC also introduces FAA Form 8130-4, Counterfeit Parts Alert; which provides a standardized method of reporting suspected counterfeit parts to the FAA.

DATE: Comments submitted must identify the AC File Number P8-220-0026, and be received by January 24, 1990.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be directed to the following: Federal Aviation Administration, Production Certification Branch. AIR-220, Aircraft Manufacturing Division. Aircraft Certification Service. 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Joseph Chin, Production Certification Branch, AIR-220. Aircraft Manufacturing Division. Room 333, Aircraft Certification Service, Federal Aviation Administration. 800 Independence Avenue, SW., Washington. DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

This proposed AC provides information and guidance for use in investigating reports of counterfeit aircraft parts and includes procedures concerning referral of such reports to the appropriate FAA offices and other government agencies. These reports may originate from various sources, audits. ongoing surveillance at any facility. letters or telephone calls from the general public, Congressional inquiry or from the Government Industry Data Exchange Program.

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC may be examined, before and after the comment closing date in Room 333. FAA Headquarters Building (FOB-10A) 800 Independence Avenue. SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. Issued in Washington, DC, on October 2, 1989.

Dana D. Lakeman,

Acting Assistant Manager, Aircraft Manufacturing Division.

[FR Doc. 89-25211 Filed 10-25-89; 8:45 a.m]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Metropolitan Airports Commission for Minneapolis-St. Paul International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Minneapolis-St. Paul International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before April 2, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is October 4, 1989. The public comment period ends December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Minneapolis-St.Paul International Airport are in compliance with applicable requirements of part 150, effective October 4, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 2, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Metropolitan Airports Commission submitted to the FAA on October 6, 1987, noise exposure maps, descriptions and other documentation which were subsequently revised February 24, 1988 (minor corrections), May 19, 1989 (revised NEM format), June 16, 1989 (revised NCP format) and September 25, 1989 (complete NEM/NCP certifications). This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Minneapolis-St. Paul International Airport from November 1984 through June 1989. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Metropolitan Airports Commission. The specific maps under consideration are Noise Exposure Maps: Noise Exposure Map 1987 and Noise Exposure Map 1992 (Abated Conditions). They are included along with supporting documentation found in the part I Noise Exposure Map Documentation of the part 150 Study in the submission. The FAA has determined that these maps for Minneapolis-St. Paul International Airport are in compliance with applicable requirements. This determination is effective on October 4, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local

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government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Minneapolis-St. Paul International Airport, also effective on October 4, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 2, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation. Administration, 800 Independence Avenue, SW., Room 617, Washington, DC. 20591;

Federal Aviation. Administration, Great Lakes Region, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018;

Federal Aviation. Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Minneapolis, Minnesota 55450;

Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, October 4, 1989.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-25210 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-13-M

Receipt of Noise Compatibility Program and Request for Review; Phoenix Sky Harbor International Airport (PHX), Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: NOTICE.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the City of Phoenix for Phoenix Sky Harbor International Airport (PHX), Phoenix, Arizona, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for Phoenix Sky Harbor International Airport were in compliance with applicable requirements effective November 3, 1988. The proposed Noise Compatibility Program will be approved or disapproved on or before April 2, 1990.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is October 4, 1989. The public comment period ends December 3, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, Telephone: (213) 297-1250. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Phoenix Sky Harbor International Airport which will be approved or disapproved on or before April 2, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or prposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Phoenix Sky Harbor International Airport, effective on October 4, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period limited by law to a maximum of 180 days, will be completed on or before April 2, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Fxposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591;

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California, Mail: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009;

Mr. Nellson A. Bertholf, Aviation Director, City of Phoenix, 3400 Sky Harbor Boulevard, Phoenix. Arizona 85034-4420.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on October 4, 1989.

James J. Wiggins,

Acting Manager, Airports Division.

[FR Doc. 89-25209 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Orange County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an environmental impact statement containing Tier II-level information will be prepared for a proposed highway project in Orange County, California. A previous Notice of Intent was published in the **Federal Register** on July 23, 1984. The previous Notice indicated that only Tier I-level of information was to be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: 1. *Proposed Project.* The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the San Joaquin Hills Transportation Corridor Agency (TCA), will prepare an Environmental Impact Statement (EIS) on a proposal to locate and construct a new high-speed, high-capacity, limited-access transportation facility. Transportation improvements are needed to serve existing and planned development. This facility (identified as State Route 73) will begin as an extension of the existing Corona del Mar Freeway near Birch Street (on the boundary between the Cities of Newport Beach and Irvine) and extend southeasterly to join the San Diego Freeway (I-5) between Avery Parkway and Ortega Highway near the northerly limit of the City of San Juan Capistrano. The highway is proposed as a toll facility, and will include toll collection facilities on the mainline and on some entry/exit ramps. It is contemplated that the toll facilities will be removed when revenue bonds issued for the project have been repaid.

2. *Alternatives.* Alternatives being considered for the project include the following:

A. New Highway Alternative. This involves locating and constructing between six and ten general traffic lanes. An estimated twelve proposed interchanges may be included in this Alternative. Also included are passing lanes at various locations where the grade approaches 6%, and auxiliary lanes to improve interchange functions.

B. Demand Management Alternative. This alternative includes the location and construction of six general traffic lanes and two reversible traffic lanes located in the median. Also included are passing lanes at various locations where the grade approaches 6%, and auxiliary lanes to improve interchange functions.

C. Transit/HOV Improvements. In addition to the above alternatives, Transit/High Occupancy Vehicle (HOV) lanes, located in the median, will be evaluated, along with park-and-ride facilities at five locations.

D. No Project Alternative. This Alternative is essentially the "no build" option.

3. *Consultation.* Consultation by Orange County with various State and local agencies began in August 1977. These consultations identify areas of special concern along the proposed route which were the focus of locally initiated environmental studies. FHWA believes that this early consultation has been extensive and consistent with 40 CFR § 1501.7. However, in order to inform potentially affected agencies and the public of FHWA involvement, Federal scoping meetings were held in July 1984, and local public hearings on the project were held in July 1988. To insure that the full range of issues related to this proposed route are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: October 16, 1989.

Michael A. Cook,

District Engineer, Sacramento, California.

[FR Doc. 89-25259 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX89-4; Notice 2]

Isis Imports Ltd.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the petition by Isis Imports, Ltd., of San Francisco, Calif., for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The basis of the grant is that compliance would cause the petitioner substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

Notice of receipt of the petition was published on September 1, 1989, and an opportunity afforded for comment (54 FR 36406).

The make and type of passenger car for which exemption was requested is the Morgan open car, or convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Isis Imports has bought a small number of incomplete Morgan cars from the British manufacturer, and imported and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. Isis imports as motor vehicle equipment the individual components of the Morgan other than the engine, assembles them in the United States, adds the propane engine, and as the assembler of the vehicle, certifies its conformance to all applicable Federal safety and bumper standards. This has been a long-standing practice, and acceptable to NHTSA. In contrast to this is the practice of concern to NHTSA (see 54 FR 17775) in which all parts necessary to the vehicle, including its engine, are imported separately as motor vehicle equipment for subsequent assembly, in an attempt to avoid importation bond and NHTSA compliance procedures applicable to fully assembled nonconforming motor vehicles. The vehicle assembled by Isis in the U.S. is deemed sufficiently different from the one produced by Morgan in Britain that Isis may be regarded as its manufacturer, not its converter, even though the brand names are the same.

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Isis assembled 11 Morgans for sale in the U S. in the 12-month period preceding the filing of its petition. It argued that compliance with the passive restraint requirements of Standard No. 208 would cause it substantial economic hardship, and that it had in good faith attempted to comply with the standard. It asked for a 3-year exemption from the requirements, during which time it would continue to provide protection through its current three-point lap-shoulder belt system

The passive restraint requirements became effective September 1, 1989, for 100% of passenger car production, through a 3-year phase-in period during which convertibles such as petitioner's car, were exempted from compliance. On March 30, 1987, the agency published a notice announcing that it had reexamined the question of automatic restraint requirements for convertibles, and that it had concluded that it was reasonable and practicable for convertibles to meet these requirements as of September 1, 1989 (52 FR 10122). Two comments for reconsideration of the requirement were filed, one by Isis. It commented that the necessary automatic restraint components would not be available through its normal commercial channels until a considerable period of time after the major manufacturers' vehicles were equipped with automatic restraints. The agency denied these petitions on April 27, 1988 (53 FR 15067), on the basis that insufficient evidence had been submitted to show that automatic restraint systems could not be installed in vehicles that were not originally equipped with such systems. The denial was published approximately 16 months before the effective date of September 1, 1989.

In the months following the denial and preceding its petition, Isis pursued several avenues of compliance, discussed in greater detail in its petition. Its initial interest was acquisition of an air bag system, but it found insufficient information available in the U.S. as to whether Chrysler Corporation's system would be suitable for its car. Because NHTSA's notice of denial had mentioned the automatic restraint system in Alfa Romeo convertibles as a viable and practicable method of compliance. Morgan on behalf of Isis contacted Autoliv. "U.K. agents for the Electrolux 2-point motorized belt system used in the Alfa." Although Autoliv submitted a proposal for installation of the Alfa system, it expressed reservations about the space available for its installation and the maintenance of rail form and reliability with vehicle movement over uneven surfaces. Morgan had also contacted the Motor Industry Research Association (MIRA), which submitted a proposal late in March 1989, for development of an airbag system. In July 1989 the development costs of such a system were judged too high to be feasible, and MIRA's efforts then turned towards an automatic belt restraint system. Isis believes it can financially meet the MIRA development costs spread over a 3-year period, whereas a more immediate compliance (18 months) through the Autoliv system could not be amortized through a retail price increase in a volume of 11 cars without creating substantial financial hardship. Petitioner had a net loss exceeding $63,000 in 1988, and a cumulative net loss exceeding $60,000 for its last four tax years.

New car sales generate 90% of the petitioner's income, so that a denial of the petition would force it "to cease doing business". Sales of spare parts and service would be inadequate to fund development of a passive restraint system without new car sales. Isis argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, because its vehicles contribute to the alternative fuel industry. Continued availability of the Morgan would help to maintain the existing diversity of motor vehicles in the United States. The small number of vehicles likely to be covered by the exemption, and the limited use that is made of them as second or third vehicles, would have an immaterial effect upon motor vehicle safety in Isis's opinion.

No comments were received on the petition.

It is apparent from the Isis petition that the slender volume of vehicles it imports and sells afford it only a marginal existence under the best of circumstances, and have not, at least in recent years, provided it with a profit. Its petition indicates that installation of the Autoliv system is not immediately practicable for its design, and would involve some reengineering of the basic car. Its preference is for an airbag system, and it is proceeding in this direction over the next 3 years. Thus it is manifest that to require it to comply with the passive restraint requirements recently applicable to it would cause it substantial economic hardship, and that it has, in good faith, in the months since the denial of its petition for reconsideration, attempted to comply with the standard. NHTSA also is able to find that an exemption is in the public interest. The addition to the vehicles of a propane-fueled engine is consistent with efforts within the Administration to promote alternate fuels, even if the volume is not significant. An exemption is also consistent with the objectives of the Vehicle Safety Act; if the present rate of importation is maintained, less than three dozen vehicles will be manufactured under the exemption. Further, they will be equipped with a restraint system that complied with Standard No. 208 before September 1.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that compliance would cause it substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208. It is further found that an exemption would be in the public interest and consistent with the objectives of the Vehicle Safety Act. Accordingly, Isis Imports is granted NHTSA Temporary Exemption 89-4, expiring October 1, 1992, from sections S4.1.2.1 and S4.1.2.2 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.*

(15 U.S C. 1410; delegation of authority at 49 CFR 1.50).

Issued on: October 20, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-25169 Filed 10-25-89; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 206

Thursday, October 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 31, 1989, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matter pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Tilte 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 2, 1989, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-21:
Elaine Sandra Abramson on behalf of Create-A-Craft
Final Audit Report—
Lenora B. Fulani's Committee of Fair Election
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-25421 Filed 10-24-89; 3:06 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 1, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Renovation proposals regarding the Federal Reserve Bank of New York.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried foward from a previously announced meeting.

CONTRACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25426 Filed 10-24-89; 3:26 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 42618 October 17, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:45 a.m., Monday, October 23, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-25323 Filed 10-23-89; 5:02 pm]

BILLING CODE 6210-01-M

POSTAL SERVICE

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 6, 1989, and at 8:30 a.m. on Tuesday, November 7, 1989, in Washington, DC. The November 6 meeting, at which the Board will consider (1) A capital investment for a remote video encoding system—pilot testing and computerized image resolution, and (2) discuss possible strategies in collective bargaining negotiations, is closed to the public. (See 54 FR 41564, October 10, 1989, and 54 FR 42619, October 17, 1989). The November 7 meeting is open to the public and will be held in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

November 6-1:00 p.m. (Closed)

1. Capital Investment:
Remote Video Encoding System—Pilot Testing and Computerized Image Resolution. (Peter A. Jacobson)
2. Preparations for Collective Bargaining.

Tuesday Session

November 7-8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 2-3, 1989.
2. Remarks of the Postmaster General.
3. Contract for Outside Audit Services. (Crocker Nevin, Governor, and Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
4. Briefing on UPU Congress. (Edward E. Horgan, Jr., Associate Postmaster General-International)
5. Quarterly Report on Service Performance. (Ann Mck, Robinson, Consumer Advocate)
6. Strategic Plan 1990-1995. (Richard J. Strasser, Jr., Assistant Postmaster General, Planning Department)
7. Tentative Agenda for December 4-5, 1989, meeting in Phoenix, Arizona.

David F. Harris,

Secretary.

[FR Doc. 89-25345 Filed 10-24-89; 10:39]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 38322 September 15, 1989; 54 FR 42885 October 18, 1989.

STATUS: Closed meeting/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, September 11, 1989. Friday, October 13, 1989.

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CHANGES IN THE MEETING: Addition/deletion/time change.

The following item was considered at a closed meeting on Saturday, October 14, 1989, at 3:00 p.m.

Regulatory matter regarding financial institutions.

The following item was considered at a closed meeting on Wednesday, October 18, 1989, at 9:30 a.m.

Regulatory matter regarding financial institution.

A closed meeting scheduled for Tuesday, October 24, 1989, at 2:30 p.m., has been rescheduled for Thursday, October 26, 1989, at 10:00 a.m. and the following item has been deleted.

Dismissal of injunctive action.

An open meeting scheduled for Wednesday, October 25, 1989, at 2:00 p.m., has been changed to Wednesday, October 25, 1989, at 4:00 p.m., in Room 1C30.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barbara Green at (202) 272–2000.

Dated: October 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–25319 Filed 10–23–89; 4:58 pm]

BILLING CODE 6010-01-M

federal register

Thursday
October 26, 1989

Part II

Postal Service

Privacy Act of 1974; Notices of Systems of Records

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POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Systems of Records Changes.

SUMMARY: Each system of records maintained by the Postal Service pursuant to the Privacy Act has been reviewed for accuracy. This notice publishes (1) the complete text of the Postal Service's systems of records; (2) minor amendments that update and clarify those systems; (3) advance notice of new routine uses for particular systems; (4) advance notice of three new systems of records and alterations to a number of existing systems; and (5) a "Prefatory Statement of Routine Uses" that groups routine uses common to most systems. Common routine uses have been revised to make them more detailed and specific and each has been applied to any system where the potential exists for such use of the information. These actions comply with subsection (e)(4) of the Privacy Act (5 U.S.C. 552a) that requires an agency to publish notice of the existence and character of its systems of records upon establishment or revision and with paragraph 3 a.(8) of Appendix I to OMB Circular No. A–130 requiring an agency to conduct an annual review of the accuracy of its systems of records.

DATE: Unless the Postal Service publishes notice to the contrary, the proposed and revised routine uses will become effective thirty days from the date of this notice, and the proposed systems of records and altered system changes will become effective sixty days from the date of this notice.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Pursuant to OMB Circular No. A–130 (paragraph 3 a.(8) of Appendix I), the Postal Service has just completed a review of its systems of records and is publishing the full text of its systems with changes proposed as a result of that review. Following are: A complete sequential inventory of the systems of records maintained by the Postal Service pursuant to the Privacy Act (PART 1); a "Prefatory Statement of Routine Uses" applicable to most of those systems (PART 2); advance notice of new routine uses for particular systems (PART 3); a statement concerning editorial corrections and revisions to the systems descriptions (PART 4); advance notice of new systems of records and alterations to a number of existing systems (PART 5); and the complete text of the Postal Service's systems of records (PART 6).

Part 1. Sequential Inventory of Records Systems

010 Collection and Delivery Records
- .010 Address Change and Mail Forwarding Records (last published on August 13, 1986, 51 FR 29029; amendments published in advance on May 30, 1986, 51 FR 19640 are made final by this notice);
- .020 Boxholder Records (last published on August 13, 1986, 51 FR 29030)
- .030 Carrier Drive-Out Agreements (last published on March 15, 1983, 48 FR 10967; amended on May 30, 1986, 51 FR 19641)
- .040 City Carrier Route Records (last published on March 15, 1983, 48 FR 10968)
- .050 Delivery of Mail Through Agents (last published on March 15, 1983, 48 FR 10969)
- .060 Free Matter for Blind and Visually Handicapped Persons (last published on March 2, 1987, 52 FR 6251)
- .070 Mailbox Irregularities (last published on March 15, 1983, 48 FR 10969)
- .080 Rural Carrier Route Records (last published on June 22, 1983, 48 FR 28585)

020 Communications (Public Relations)
- .010 Biographical Summaries of Management Personnel for Press Release (last published on March 15, 1983, 48 FR 10970)

030 Equal Employment Opportunity
- .010 EEO Discrimination Complaint Files (last published on January 11, 1982; 47 FR 1203; amended on May 30, 1986, 51 FR 19641)
- .020 EEO Staff Selection Records (last published on March 15, 1983; 48 FR 10970; amended on May 30, 1986, 51 FR 19641)
- .030 EEO Administrative Litigation Case Files (last published on January 11, 1982; 47 FR 1204; amended on May 30, 1986, 51 FR 19641)

040 Customer Programs
- .010 Memo to Mailers Address File (last published on March 15, 1983, 48 FR 10971)
- .020 Sexually Oriented Advertisements (last published on January 11, 1982, 47 FR 1204)
- .030 Auction Customer Address File (last published on March 13, 1989, 54 FR 10470)

050 Finance Records
- .005 Accounts Receivable File Maintenance (last published on November 15, 1985, 50 FR 47313; amended on January 20, 1988, 53 FR 1533)
- .010 Employee Travel Records (Accounts Payable) (last published on January 11, 1982, 47 FR 1206; amended on May 30, 1986, 51 FR 19641)
- .020 Payroll System (last published on March 2, 1987, 52 FR 6251)
- .040 Uniform Allowance Program (last published on January 11, 1982, 47 FR 1206; amended on May 30, 1986, 51 FR 19642)

060 Consumer Protection Records
- .010 Fraud, False Representation, Lottery and Non-Mailability Case Records (last published on March 15, 1983, 48 FR 10973)
- .020 Pandering Act Prohibitory Orders (last published on March 15, 1983, 48 FR 10973; amended on May 30, 1986, 51 FR 19642)
- .030 Appeals Involving Mail Withheld from Delivery (new system reported herein)
- .040 Appeals from Termination of Post Office Box or Caller Service (new system reported herein)

070 Inquiries and Complaints
- .010 Correspondence Files of the Postmaster General (last published on January 11, 1982, 47 FR 1207; amended on May 30, 1986, 51 FR 19642)
- .020 Government Officials' Inquiry System (last published on March 15, 1983, 48 FR 10974)
- .040 Customer Complaint Records (last published on March 15, 1983, 48 FR 10974; amended on May 30, 1986, 51 FR 19642)

080 Inspection Requirements
- .010 Investigative File System (last published on March 15, 1983, 48 FR 10975; amended on May 30, 1986, 51 FR 19642)
- .020 Mail Cover Program Records (last published on January 11, 1982, 47 FR 1209; amended on May 30, 1986, 51 FR 19642)
- .030 Vehicular Violations Record System (last published on January 11, 1982, 47 FR 1210)

090 Nonmail Services
- .020 Passport Application Records (last published on March 15, 1983, 48 FR 10978; amended on May 30, 1986, 51 FR 19642)

100 Office Administration

- .010 Carpool Coordination/Parking Services Records System (last published on March 15, 1983, 48 FR 10977; amended on May 30, 1986, 51 FR 19642)
- .020 Commercial Accounts Communicator Letter (last published on March 15, 1983, 48 FR 10977)
- .050 Localized Employee Administration Records (last published on March 15, 1983, 48 FR 10978)

110 Property Management
- .010 Accountable Property Records (last published on March 15, 1983, 48 FR 10978; amended on May 30, 1986, 51 FR 19642)
- .020 Possible Infringement of USPS Intellectual Property Rights (last published on January 11, 1982, 47 FR 1212)

120 Personnel Records
- .020 Blood Donor Records (last published on January 11, 1982, 47 FR 1212)
- .035 Employee Accident Records (last published on August 13, 1986, 51 FR 29033)
- .036 Discipline, Grievance, and Appeals Records for Non-Bargaining Unit Employees (last published on January 11, 1982, 47 FR 1213; amended on May 30, 1986, 51 FR 19642)
- .040 Employee Job Bidding Records (last published on March 15, 1983, 48 FR 10980; amended on May 30, 1986, 51 FR 19642)
- .050 Employee Suggestion Program Records (last published on January 11, 1982, 47 FR 1214; amended on May 30, 1986, 51 FR 19642)
- .060 Confidential Statements of Employment and Financial Interest (last published on January 11, 1982, 47 FR 1214; amended on May 30, 1986, 51 FR 19642)
- .061 Public Financial Disclosure Reports for Executive Branch Personnel (advance publication in this notice)
- .070 General Personnel Folder (Official Personnel Folders and Records Related Thereto) (last published on August 13, 1986, 51 FR 29028; amended on February 12, 1987, 52 FR 4546)
- .090 Medical Records (last published on March 15, 1983, 48 FR 10981; amended on May 30, 1986, 51 FR 19643)
- .098 Office of Workers' Compensation Program (OWCP) Record Copies (last published on March 15, 1983, 48 FR 10982; amended on May 30, 1986, 51 FR 19643)
- .099 Injury Compensation Payment Validation Records (last published on January 11, 1982, 47 FR 1218)
- .100 Performance Awards System Records (last published on January 11, 1982, 47 FR 1219; amended on May 30, 1986, 51 FR 19643)
- .110 Preemployment Investigation Records (last published on March 15, 1983, 48 FR 10983; amended on May 30, 1986, 51 FR 19643)
- .120 Personnel Research and Test Validation Records (last published on March 15, 1983, 48 FR 10984; amended on May 30, 1986, 51 FR 19643)
- .121 Applicant Race, Sex, National Origin, and Disability Status Records (last published on March 15, 1983, 48 FR 10985; amended on May 30, 1986, 51 FR 19643)
- .130 Postmaster Selection Program Records (last published on March 15, 1983, 48 FR 10988)
- .140 Employee Assistance Program (EAP) Records (last published on March 15, 1983, 48 FR 10986; amended on May 30, 1986, 51 FR 19643)
- .151 Recruiting, Examining, and Appointment Records (last published on August 13, 1986, 51 FR 29035)
- .152 Career Development and Training Records (last published on August 13, 1986, 51 FR 29036)
- .153 Individual Performance Evaluation/Measurement (last published on March 15, 1983, 48 FR 10988; amended on May 30, 1986, 51 FR 19643)
- .170 Safe Driver Award Records (last published on January 11, 1982, 47 FR 1220; amended on May 30, 1986, 51 FR 19643)
- .180 Skills Bank (Human Resources Records) (last published on March 15, 1983, 48 FR 10988)
- .190 Supervisors' Personnel Records (last published on March 15, 1983, 48 FR 10989; amended on May 30, 1986, 51 FR 19643)
- .210 Vehicle Maintenance Personnel and Operators Records (last published on March 15, 1983, 48 FR 10990; amended on May 30, 1986, 51 FR 19643)
- .220 Arbitration Case Files (last published on January 11, 1982, 47 FR 1221; amended on May 30, 1986, 51 FR 19643)
- .230 Adverse Action Appeals (Administrative Litigation Case Files) (last published on March 15, 1983, 48 FR 10990; amended on May 30, 1986, 51 FR 19643)
- .240 Garnishment Case Files (last published on March 15, 1983, 48 FR 10991; amended on May 30, 1986, 51 FR 19643)

130 Philately
- .010 Ben Franklin Stamp Club Coordinators and Project Leaders List (last published on March 15, 1983, 48 FR 10992)
- .020 Educators Stamp Fun Mailing Lists (last published on January 11, 1982, 47 FR 1221)
- .040 Philatelic Product Sales and Distribution (last published on March 15, 1983, 48 FR 10992)

140 Postage
- .020 Postage Meter Records (last published on August 13, 1986, 51 FR 29037)

150 Records and Information Management Records
- .010 Information Disclosure Accounting Records (Freedom of Information Act) (last published on March 15, 1983, 48 FR 10993; amended on May 30, 1986, 51 FR 19644)
- .015 Freedom of Information Act Appeals and Litigation Records (last published on March 15, 1983, 48 FR 10994; amended on May 30, 1986, 51 FR 19644)
- .020 Information Disclosure Accounting Records (Privacy Act) (last published on March 15, 1983, 48 FR 10994)
- .025 Privacy Act Appeals and Litigation Records (last published on January 11, 1982, 47 FR 1222; amended on May 30, 1986, 51 FR 19644)

160 Special Mail Services
- .010 Insured and Registered Domestic Mail Inquiry and Application for Indemnity Records (last published on March 15, 1983, 48 FR 10995)
- .020 Insured and Registered Ordinary International Mail Inquiry and Application for Indemnity Records (last published on March 15, 1983, 48 FR 10995; amended on May 30, 1986, 51 FR 19644)
- .030 Express Mail Service Insurance Claims for Loss, Delay, and Damage (last published on March 15, 1983, 48 FR 10996)

170 Statistical (Cost) Systems
- .010 Workload Reporting Records (last published on January 11, 1982, 47 FR 1222)

190 Litigation Records
- .010 Miscellaneous Civil Action and Administrative Proceeding Case Files (last published on January 11, 1982, 47 FR 1223)
- .020 National Labor Relations Board Administrative Litigation Case Files (last published on January 11, 1982, 47 FR 1223)
- .030 Employee & Labor Relations Court Litigation Case Files (last published on March 15, 1983, 48 FR 10996)

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200 Nonmail Monetary Claims
.010 Relocation Assistance Claims (last published on March 15, 1983, 48 FR 10997)
.020 Monetary Claims for Personal Property Loss or Damage Involving Present or Former Employees (last published on March 15, 1983, 48 FR 10998; amended on May 30, 1986, 51 FR 19644)
.030 Tort Claim Records (last published on March 15, 1983, 48 FR 10998; amended on May 30, 1986, 51 FR 19644)
210 Contractor Records
.010 Architect-Engineers Selection Records (last published on January 11, 1982, 47 FR 1225; amended on May 30, 1986, 51 FR 19644)
.020 Driver Screening System Assignment Records (last published on March 15, 1983, 48 FR 10999)
.030 Contractor Employee Fingerprint Records (last published on December 23, 1986; 51 FR 45974)
220 Marketing Records
.010 Marketing Database Customer Records (last published on March 20, 1987, 52 FR 8995)
.020 Express Mail Customer Mailing List (last published on March 15, 1988, 53 FR 8530)

Part 2. Prefatory Statement of Routine Uses

Routine uses common to most of the Postal Service's systems of records have been modified for purposes of clarity and to comply with guidance issued by the Office of Management and Budget on disclosure in support of litigation. These routine uses have been grouped into the prefatory statement below and those that are applicable to a particular system have been identified in the introductory statement in the routine use segment of the system description (PART 6 of this Notice). Some of these routine uses are being newly adopted for certain systems and thus will become effective for those systems thirty days from the date of this notice. In those instances in which the routine use is being added to a system, the letter designating the routine use is set out in italics in the system description.

A. Disclosure for Law Enforcement Purposes

When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or in response to the appropriate agency's request upon a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

B. Disclosure Incident to Litigation

Records from this system may be disclosed to the Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be arguably relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected.

This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

C. Disclosure Incident to Requesting Information

Records may be disclosed to a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, when necessary to obtain information from such agency that is relevant to a Postal Service decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, permit, or other benefit.

D. Disclosure to Requesting Agency

Records may be disclosed to a Federal, State, local or foreign agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

E. Congressional Inquiries

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the prompting of that individual.

F. Disclosure to Agents and Contractors

Records or information from this system may be disclosed to an expert, consultant, or other person who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any person with whom the Postal Service contracts to reproduce, by typing, photocopy or other means, any record for use by Postal Service officials in connection with their official duties or to any person who performs clerical or stenographic functions relating to the official business of the Postal Service.

G. Storage

Inactive records may be transferred to a Federal Records Center for storage prior to destruction.

H. Disclosure to Office of Management and Budget

Records from this system may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

I. Disclosure to Outside Auditors

Records in this system may be subject to review by an independent certified public accountant during an official audit of Postal Service finances.

K. Disclosure to Equal Employment Opportunity Commission

Records from this system may be disclosed to an authorized investigator, administrative judge, or complaints examiner appointed by the Equal Employment Opportunity Commission, when requested in connection with the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613.

L. Disclosure to Merit Systems Protection Board or Office of the Special Counsel

Records from this system may be disclosed to the Merit Systems Protection Board or Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies, investigations of alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

M. Disclosure to Labor Organizations

Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

Part 3. New Routine Uses

Advance notice is being given of the adoption for certain systems of some new routine uses that do not appear in the Prefatory Statement. These routine uses are all compatible with the purposes for which the information was collected and thus do not require submission of a revised system report. The routine uses will become effective thirty days from the date of this notice. They are set out in full, in italics, in the system descriptions to which they pertain. The systems to which new routine uses are being added are:

USPS 010.010 and 010.020—The routine uses added to these systems do not represent new uses of the information but parallel long-standing regulations at 39 CFR 265.6(d) for disclosing customer name and address information.

USPS 030.030, 060.010, 060.020, 110.020, 120.020, 120.060, 120.220, 120.230 and 200.030—The added routine uses represent long-standing uses that would be obvious and necessary to accomplish the purpose for which the system is maintained and, in some instances, indicate the public availability required by law.

USPS 150.010, 150.015, 150.020, and 150.025—These systems cover records related to requests for Postal Service information (some pursuant to the Freedom of Information Act and/or Privacy Act) and requests for amendment of records under the Privacy Act. Routine uses added to each of these systems cover disclosures that are sometimes necessary in the course of processing the request for information or amendments of records or a related appeal (e.g., to another agency that originated a requested record or has specialized knowledge concerning it).

Part 4. Editorial Corrections and Revisions

Changes to each system description (PART 6 below) appear in italics. Other than those discussed in PART 5 below, the changes are generally editorial in nature, and do not affect the character or use of information contained in the system but rather (a) reflect changes to systems locations and managers due to Postal Service reorganization; (b) improve (but do not expand) the description of categories of individuals covered and the types of records contained in the system, and the purpose for which the system is maintained, by adding additional examples or explanations (see USPS 030.010, 030.030, 070.010, 100.010, 120.020, 120.035, 120.040, 120.100, 120.151, 120.152, 120.153, 120.170, 120.220, 120.230, 140.020, 150.010, 150.020, 160.030, 190.030, 200.010, 200.020, 210.020, and 210.030); and (c) change retention and disposal schedules.

In addition, advance notice of changes to USPS 010.010, Collection and Delivery Records—Address Change and Mail Forwarding Records was published at 5 FR 19641, May 30, 1986. Final notice of the adoption of those changes was inadvertently not published and is given now.

Part 5. Advance Notice of New and Altered Systems

Reports of new and altered systems (except for those not required to be reported that are identified in paragraphs B.2.a. and B.2.b. below), as required by 5 U.S.C. 552a(o), have been submitted to OMB and Congress, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

A. New Systems

USPS 060.030, Consumer Protection Records—Appeals Involving Mail Withheld from Delivery collects records relating to appeals of decisions by the Postal Service to withhold mail from delivery. Use of the mail in furtherance of a lottery or in furtherance of a scheme to defraud are unlawful mailing activities, prohibited by 18 U.S.C. 1302 and 1341, respectively. Upon evidence satisfactory to the Postal Service of a potential violation pursuant to these statutes, the Postal Service may issue an order to withhold mail from delivery (39 U.S.C. 3003).

The maintenance of records within this system and system USPS 060.040 discussed below is not new, but was considered to be covered under generally worded existing record systems. This notice amends these "umbrella" record system descriptions and adds new ones to cover records relating to the specific proceedings in which Postal Service legal counsel represents the Postal Service and to make clear to the public the nature of those records.

USPS 060.040, Consumer Protection Records—Appeals from Termination of Post Office Box or Caller Service collects records relating to appeals of decisions by the Postal Service to terminate post office box or caller service. A postmaster may deny or terminate such service when the caller has falsified the application for service or violated a regulation or condition relating to the use of that service. The applicant or caller may appeal the decision of the postmaster which will transfer the case to the Judicial Officer Department. Records within this system are maintained by the Law Department's Consumer Protection Division whose attorneys represent the Postal Service in administrative proceedings before the Judicial Officer Department.

USPS 120.061, Personnel Records—Public Financial Disclosure Reports for Executive Branch Personnel collects Financial Disclosure Reports for senior level employees as defined in the "categories of records" segment of that system description (see PART 5). The purpose of this system of records is to meet the public financial reporting requirements imposed by the Ethics in Government Act of 1978 (Pub. L. 95-521, amended) on high level executive personnel. The reports serve to deter conflicts of interest and to identify potential conflicts of interest by providing for a systematic disclosure and review of the financial interests of both current and prospective officers and employees.

We do not anticipate that this system will have an adverse effect on the privacy or other personal rights of individuals, since the Financial Disclosure Reports themselves are publicly available pursuant to section 205 of the Ethics in Government Act and implementing Postal Service regulations at 39 CFR 442.42(e)(2).

B. Altered Systems

1. Changes in system purpose, categories of records, and categories of individuals

a. *USPS 010.060* was established to cover records used by the Postal Service to evaluate and administer rural route delivery. Use of those records will be expanded to assist government planning authorities in converting rural addresses to locatable (city-style) street addresses. Assignment of locatable street addresses facilitates the 911 emergency

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service program as well as postal delivery.

The government planning authority will give to the Postal Service a map showing a street name and number assigned to each developed lot within the territory involved. The Postal Service will then produce a list which cross-references existing rural route and box number with each new city-style address assigned by the government planning authority. Address conversion information will be consolidated into a centralized database known as the Locatable Address Conversion System (LACS) which will be used to provide an address list correction service to mailers. LACS is separate and distinct from the National Change of Address File (NCOA) covered by USPS 010.010 and described at 51 FR 19639 (May 30, 1986). However, the same firms under license agreement with the Postal Service to update mailer's lists using the NCOA file will update mailer's lists using LACS. The Postal Service will cause the licensee to maintain LACS in accordance with the relevant provisions of the Privacy Act and will take the measures described at 51 FR 19640 to minimize risk of unauthorized use or disclosure of LACS information.

Disclosure to the government planning authority is limited to that necessary to assign a locatable street address to each rural route address. Mailing list correction service is limited to providing the new locatable (city-style address) that corresponds to a rural route address on the mailing list. The mailer must provide a complete valid rural address to receive the new address for that site. The Postal Service will not verify that a named customer receives mail at a given address nor will it provide missing customer names or correct listed ones.

b. *USPS 060.010 and USPS 060.020* are systems maintained by the Consumer Protection Division in connection with its responsibility to represent the Postal Service in matters concerning use of the mails in violation of false representation and postal pandering and sexual oriented advertisement statutes. The general wording in each of these systems is changed to clearly reflect the subject area.

c. *USPS 110.020* maintains records concerning Postal Service intellectual properties. Originally established to cover possible infringers of Postal Service copyrights and trademarks, it is now expanded to include records relating to patents and inventions and protective legal proceedings.

d. *USPS 120.060* collects records maintained to meet the requirements of Executive Order 11222 on the filing of employment and financial interest statements. The "Purpose" statement has been modified to provide a more detailed explanation of the purposes served by the records. In addition, the "categories of individuals" section of the notice has been expanded to include members of the Postal Service Board of Governors.

e. *USPS 120.090,* the medical record system, is expanded to cover records generated under a health program promoted by the new Corporate Health Fitness Center now in operation at Postal Service Headquarters. Participation is voluntary and is intended to have no career implications since records generated as a result of employee participation are within the exclusive custody of the contractor operating the Center and are not accessible to Postal Service management. Information needed by postal management to assess program participation and effectiveness will be limited to aggregate data, without personal identifiers. Contract stipulations require the contractor to maintain the records system in accordance with Privacy Act protections. Under these circumstances, maintenance of the records should have no unfavorable effect on the privacy rights of the record subjects.

f. *USPS 120.110*—In the system of preemployment investigation records, the "categories of records" is expanded to include records related to the drug screening of applicants being considered for postal employment. Such screening is consistent with agency policy that persons who use drugs on a current or habitual basis are not suitable for postal employment. Applicants are given advance notification of the testing requirement which is part of the non-medical suitability review. Program procedures provide maximum protection to the privacy rights of those tested. Specimens are collected by medical personnel who (1) assign unique bar codes to the specimens, (2) transport them to a laboratory under contract with the Postal Service, and (3) receive and maintain laboratory reports containing the results. The identities of those tested are not disclosed to the testing laboratory and hiring officials receive only the medical officer's determination as to whether the tested applicant is qualified or not qualified for employment consideration.

g. *USPS 120.120 and USPS 120.121*—As indicated by its title, USPS 120.120 was established to maintain personnel research data as well as test data; however, the system description focussed on test data. Consequently, the wording is expanded to include records that support research performed for personnel assessment and selection purposes. Because those records will not be used to make personnel decisions about a particular individual and related reports will contain only summary data without personal identifiers, the possibility of an adverse impact on a record subject's rights is minimal. Information within this system may also become part of USPS 120.121, established for the related purpose of providing the Postal Service with the ability to assess the impact of personnel selection decisions.

h. *USPS 120.140*—This system was established to maintain records concerning employees referred to PAR (Program for Alcoholic Recovery). The description of USPS 120.140 is supplemented to cover records under the expanded PAR (now Employee Assistance Program (EAP)) about employees counseled for drug abuse and about applicants for counselor positions and employee counselors.

i. *USPS 120.240 and 200.020*—These systems are modified to reflect current processing of garnishments and personal property loss claims by finance offices and personnel offices, respectively, rather than by the Law Department. The legal document descriptions in the "Categories of Records" sections of these notices have been modified to reflect the maintenance of records kept in the administrative processing of garnishment actions and property loss claims, respectively.

j. *USPS 150.015 and 150.025*—These systems were originally established to cover records relating to administrative appeals under the Freedom of Information Act or the Privacy Act, respectively. Litigation resulting from denials of those appeals were considered to be covered by existing system 190.010, established to cover miscellaneous types of litigation not described in other systems. The "categories of records" sections of USPS 150.015 and 150.025 are revised to include records relating to litigation resulting from the appeal cases already covered by these systems.

k. *USPS 190.010*—This system was established to cover litigation records relating to miscellaneous subjects. The character of this system remains the same except that litigation records specifically relating to subject areas covered by other systems (see USPS 150.015 and 150.025 above) have been made a part of those systems and are no longer within the coverage of 190.010.

l. *USPS 200.030*—This system contains records related to tort claims and to litigation arising out of tort claims.

Collection of these records was necessary in order for the Postal Service to defend itself against such claims. That purpose has now been expanded to include use of records incident to the litigation for accident prevention and safety program management and for providing related information to equipment manufacturers, suppliers, and their insurers.

2. Change in Equipment Configuration or Storage

a. USPS 080.020, 080.030, 110.010, 110.020, 120.060, 140.020, 150.010, 150.015, 150.020, 150.025 and 200.030—Records within these systems are now maintained in automated as well as paper form. However, the automated records are secured and accessible only by personnel who have access to the same information in paper form. The automated records are kept in secured areas with access further restricted by computer password or keylock. These circumstances will not result in greater access that might threaten the privacy rights of the record subjects.

b. USPS 040.020, 070.040, 100.020, 120.070, 120.120, 120.121 and 200.020—The "system location" for these system notices is expanded to include the Postal Service's National Information Systems Development Center and/or Postal Data Center. These Centers are automated accounting, disbursing, and data processing facilities that provide computer support for postal activities. The entire facility is secured and strict ADP controls are further applied to computer storage within the facility. The Center merely performs ADP services for the System Manager who maintains Privacy Act responsibility. Maintenance of information by these centers for support functions poses no threat to the privacy rights of record subjects.

c. USPS 120.090—Only Corporate Health Fitness Center records newly maintained within this system will be automated and those will be under the exclusive control of the contractor operating the Center under contract provisions requiring protection of the information (see explanation at B.1. of Part 5 above).

d. USPS 120.130—The "System Location" is amended to designate maintenance of records by postal facilities at two levels below those now mentioned. This is due to a change in the postmaster selection program. These facilities maintain many employment-related Privacy Act records systems and their managers are well aware of the protections that must be applied to such records.

e. USPS 160.030—The "System Location" and "Storage" sections have been modified to add the name of a postal facility and computer-readable media, respectively. These changes do not reflect a change in procedures or expand access beyond those persons having an official need for access. Although the systems notice, as established, stated that these records are maintained at a Postal Data Center (a Postal Service data processing facility described in paragraph B.2.b. above), it erroneously did not reflect automated storage. That correction has been made.

Part 6. Complete Text of the Postal Service's Systems of Records.

This Part contains the complete text of the Postal Service's systems of records with the proposed changes and new routine uses set out in italics. Other system changes will be published upon completion of on-going projects that include scheduling for retention all Postal Service records and transfer of certain records from paper to automated media.

The following comments apply to the operation of these systems:

a. Most systems containing contract records, as well as other legal records relating to those contracts, are considered business records by the Postal Service, rather than systems of records about "individuals", as that term is defined in the Privacy Act.

b. All Postal Service records described in this list are subject to:

1. Disclosure pursuant to an order of a court of competent jurisdiction.

2. Review by Congress or one of its committees or subcommittees upon request.

3. The "purpose" portion of each system notice is included to provide clarity and promote understanding of the system by the layman. It may be defined as that activity performed by those officers and employees of the Postal Service who have a need for component records of the system in the performance of their duties. Disclosure accounting is not maintained by the Postal Service for any activity listed as a "purpose."

c. Records or information compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5).

d. The USPS has claimed exemptions from certain provisions of the Act for several systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those systems are incorporated into a non-exempt system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

e. Although paragraphs c. and d. of this Part are applicable to all Postal Service systems of records, we have added these provisions to the descriptions of those systems that are most likely to contain the described exempt material.

Following is the complete text of the Postal Service's Privacy Act systems of records:

Fred Eggleston,

Assistant General Counsel Legislative Division.

USPS 010.010

SYSTEM NAME:

Collection and Delivery Records—Address Change and Mail Forwarding Records, 010.010.

SYSTEM LOCATION:

Post Offices *and contractor/licensee sites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customers requesting mail forwarding services from their local postal facilities and any postal customers who are victims of a disaster who have requested mail forwarding services through the Red Cross.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain customer name, old address, new mailing address, mail forwarding instructions, effective date, information as to whether the move is permanent or temporary and the customer's signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

(1) To provide mail forwarding services to postal customers who have changed address;

(2) To provide address correction services to postal customers; and

(3) To provide address information to the Red Cross about a postal customer who has been relocated because of a disaster.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records within the system reflect a customer's temporary or permanent change of address. General routine use statements A, B, C, D, E, F, G, H, I, and *M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices and routine use Nos. 4 and 5 below apply to all change of address (both temporary and permanent) information within this*

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system. The remaining routine uses below are specific to either permanent or temporary change of address information, as stated.

1. The new address of any specific customer who has filed a permanent Change of Address (PS Form 3575 or handwritten order) may be furnished to any person upon request. Except for disclosures made pursuant to a general routine use or routine uses 3, 4, and 5 below, disclosure will be limited to the address of the specifically identified individual about whom the information is requested (i.e., not other individuals or family members whose names may also appear on the change of address order) and copies of the form will not be furnished.

2. Disclosure of a customer's new permanent address may be made from the National Change of Address file to customers seeking corrected addresses for their mailing lists.

3. Permanent change of address information may be disclosed to duly constituted election boards or registration commissions using permanent registration. Copies of change of address orders may be furnished.

4. Permanent or temporary change of address information may be disclosed to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties. A copy of the change of address order may be furnished.

5. Permanent or temporary change of address information may be disclosed to a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. A copy of the change of address order may be furnished.

6. Temporary change of address information may be disclosed to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting pro se, upon receipt of written information that meets prescribed certification requirements. A copy of the change of address order will not be furnished.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This source document is stored in filing cabinets at the delivery unit. They are filed alphabetically by name within month or quarter. Records generated from the source document are stored on cards or list forms or recorded on magnetic tape *and/or disk* where central markup is computerized. These records are filed alphabetically by name and route *number or zone. Records are also consolidated in a National Change of Address File on magnetic tape maintained by firms under contract or license agreement with the Postal Service.*

RETRIEVABILITY:

By Name and address *(paper records). By name and address within ZIP Code (computerized records).*

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. *Contractor/licensee Privacy Act protections are subject to impromptu on-site audits and inspection by the Postal Inspection Service.*

RETENTION AND DISPOSAL:

a. Source document *is* retained for 18 months from effective date and then destroyed by shredding or burning.

b. Information on magnetic tape *and/or disk at Computerized Forwarding System sites* is retained for 18 months from effective date. At the end of that period, the tapes/*disks* are erased.

c. Information on magnetic tape at the Address Information Center (National Change of Address File) is retained for 36 months from effective date.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation Department,* Headquarters, *Washington, DC 20260–7100 (paper records); APMG, Operations Systems and Performance Department, Headquarters, Washington, DC 20260–7200 (computerized records).*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to their local postmaster. Inquiries should contain full name and address, effective date of change order, route number (if known) and ZIP Code. *Customers wishing to know whether information about them is also maintained in the National Change of Address File should address such inquiries to Manager, NCOA, Address Information Systems Division, U.S. Postal Service, 6060 Primacy Parkway, Memphis, TN 38188–0001.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

USPS 010.020

SYSTEM NAME:

Collection and Delivery Records—Boxholder Records, 010.020.

SYSTEM LOCATION:

Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customers who have applied for or expressed an interest in post office box or caller services, whether for private or public use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are in printed or card form and contain name, addresses, telephone number, record of payment, post office box service preference and the names of persons or agents whether family members, business associates, or employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

To provide post office box services to postal [patrons] *customers.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system contains records about postal customers who have applied for a post office box to be used for either a business or non-business purpose (as indicated on the PS Form 1093, Application for Post Office Box or Caller Number, or other evidence). General routine use statements A, B, *C, D,* E, *F, G, H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices and routine use Nos. 2, 3, 4, and 5 below apply to both business and non-business boxholder information within this system. NOTE: Copies of the PS Form 1093 will not be furnished, except for disclosures made pursuant to a general routine use or routine uses 2, 4, and 5 below.*

[4]. *1.* [Disclosure of] The *recorded* name, address, and telephone number *of the holder of a* [may be made from the] post office box [application form, to the public, upon request, when the box is] being used for the purpose of doing or soliciting business with the public, *and any person applying for a box in behalf of a holder, will be furnished to any person upon request.*

2. [Disclosed to] *Disclosure of boxholder information may be made* to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its official duties. *A copy of the PS Form 1093 may be furnished.*

3. [Disclosed to persons authorized] *The name or address of the holder of a post office box may be disclosed to a person empowered* by law to serve [judicial process when necessary to serve process] *legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting pro se, upon receipt of written information that meets prescribed certification requirements. A copy of the PS Form 1093 will not be furnished.*

4. Disclosure of boxholder information may be made to a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. A copy of the PS Form 1093 may be furnished.

[9.] *5.* Disclosure of [address] *boxholder* information may be made, upon prior written certification from a foreign government agency citing the relevance of the information to an indication of a violation or potential violation of law and its responsibility for investigating or prosecuting such violation, and only if the address is (1) outside of the United States and its territories, and (2) within the territorial boundaries of the requesting foreign government. A copy of the PS Form 1093 may be furnished.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed or card form filed in metal cabinets. In locations where the records have been automated, information may be found on magnetic tape, magnetic cards or mylar strips.

RETRIEVABILITY:

Information is filed according to local needs, and the volume of records. Billing forms are filed numerically by box number within *the* month rent is due. Applications are filed alphabetically by name of individual or firm.

SAFEGUARDS:

Access limited to employees working in the boxholder section.

RETENTION AND DISPOSAL:

a. Boxholder Applications—Destroy 2 years after termination of the rental.

b. Post Office Box *Fee* Register *and Register* for Caller Service Fees—Destroy 2 years from date of last entry on card. If automated, delete this customer's record upon termination of the box rental or caller service.

c. Post Office Box and Caller Service Records:

1. Closed Files and Index Cards—Destroy 6 months from date of closing.

2. Closed Appeal Files—Destroy when 1 year old.

SYSTEM MANAGER(S) ADDRESS:

APMG. *Delivery, Distribution & Transportation* Department, *Headquarters, Washington, D.C. 20260–7100.*

APMG. Department of the Controller. Headquarters, *Washington, D.C. 20260–5200.*

APMG. Rates & Classification Department, Headquarters, *Washington, D.C. 20260–5300.*

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the local postmaster; requestors in person should identify themselves with drivers license, military, government or other form of identification.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

USPS 010.030

SYSTEM NAME:

Collection and Delivery Records—Carrier Drive-Out Agreements, 010.030.

SYSTEM LOCATION:

Divisions, Sectional Centers, Post Offices, Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Letter carriers who use privately owned vehicles to transport the mails pursuant to a valid agreement with the local postmaster.

CATEGORIES OF RECORDS IN THE SYSTEM:

Route Number, name and address of carrier, social security number and effective dates of the agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1206.

PURPOSE(S):

To provide reimbursement to carriers driving their own vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. *Records may be used to transfer* necessary tax information to Internal Revenue Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, magnetic tape *disk* and computer printout reports.

RETRIEVABILITY:

The system is indexed by employees' social security number, pay location number and pay period.

SAFEGUARDS:

Normal precautions of filing equipment, limited access, and the physical security measures of the computer facility.

RETENTION AND DISPOSAL:

a. Agreements—Destroy when 2 years old.

b. Postmaster's copy of the PS 1839—Destroy when 4 years old.

c. Machine-readable records at the PDC (PS 1839 information)—Destroy when 7 years old.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, D.C. 20260–7100.*

NOTIFICATION PROCEDURE:

Inquire whether this system of records contains information about him or to gain access to information pertaining to him should direct an inquiry to the head of the facility where employed. Inquiries should contain full name, social security number, the route worked, and the pay periods that the agreement was in force.

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RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

USPS 010.040

SYSTEM NAME:

Collection and Delivery Records—City Carrier Route Records, 010.040.

SYSTEM LOCATION:

Postal Service Headquarters, Regional Headquarters, *Divisions,* Sectional Centers, Post Offices, Postal Data Centers and ADP Contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

City delivery letter carriers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, social security account number, age, route number, length of service, leave time and whether or not a transportation agreement *exists. Also included is information pertaining to workload, work schedule, performance analysis, and individual work habits; inspection reports of employee workload and workload adjustments; comments by employee and examiner on route adjustments and inspections; and statistical engineering records of carrier and route characteristics.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

To assist management in evaluating mail delivery and collection operations and administering these functions efficiently.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms, computerized media, computer printouts.

RETRIEVABILITY:

Route number, employee name, or postal facility name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

a. Route inspection records *and minor adjustment worksheets* are retained for 2 years where inspections *or minor adjustments* are made annually or more frequently. Where inspections are made less than annually, *the records that reflect the current route structure are retained indefinitely until a new inspection or minor adjostment is made. At that time, the former records are retained for two years.* Disposal of records is by shredding or burning.

b. Other records in system are retained for a period of up to 1 year depending upon the criticality of the information and then destroyed by shredding or burning.

c. Statistical engineering records are retained for 5 years and then further retained on a year-by-year basis as specifically justified.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, D.C. 20260–7100;* SAPMG Operations Group, Headquarters, *Washington, D.C. 20260–7000.* (Statistical Engineering Records).

NOTIFICATION PROCEDURE:

Inquiries should contain employee's name, social security number, *and* type of information being requested, and *should be* forwarded to post office *of employment.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Employees, carrier supervisors, and route inspectors.

USPS 010.050

SYSTEM NAME:

Collection and Delivery Records—Delivery of Mail Through Agents, 010.050.

SYSTEM LOCATION:

Divisions, Sectional Centers, Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customer requesting delivery of mail through an agent and the agent to whom the mail is to be delivered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain the name and address of customer, name and address of agent and the signatures of both parties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

Serves as the written authority for the delivery of mail other than as addressed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed forms maintained in file cabinets.

RETRIEVABILITY:

Customer name.

SAFEGUARDS:

Access is limited to postal employees in the delivery section.

RETENTION AND DISPOSAL:

Records are maintained until contract is terminated *and* then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, *Headquarters, Washington, D.C. 20260–7100.*

NOTIFICATION PROCEDURE:

Submit to local postmaster proof of personal identity.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Co-signers of the request for delivery of mail through an agent.

USPS 010.060

SYSTEM NAME:

Collection and Delivery Records—Free Matter for Blind and Visually Handicapped Persons, USPS 010.060.

SYSTEM LOCATION:

Local Delivery Post Offices

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customers who are blind or visually handicapped and cannot use or read conventionally printed material and who are receiving postage-free service in their delivery areas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of individual, and statement of competent authority certifying that the individual is unable to read conventional reading material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404, 3403, 3404, 3405.

PURPOSE(S):

To assist local postal management in processing mail matter for blind or visually handicapped persons without undue delay or uncertainty concerning such persons' eligibility to mail or receive items free of postage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files.

RETRIEVABILITY:

Customer name and address.

SAFEGUARDS:

Records are maintained in locked file cabinets with access limited to those persons having an official need to know in the performance of their duties.

RETENTION AND DISPOSAL:

Retained as long as the customer resides in delivery area and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Philatelic and Retail Services Department,* Headquarters, *Washington, D.C. 20260–6700.*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to their local postmasters. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See Notificotion and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Individuals licensed medical doctors, ophthalmologists, optometrists, registered nurses, professional staff members of hospitals, other institutions or agencies or other competent authority.

USPS 010.070

SYSTEM NAME:

Collection and Delivery Records—Mailbox Irregularities, 010.070.

SYSTEM LOCATION:

Divisions, Sectional Centers, Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal Service customers whose mailbox does not comply with USPS standards and regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of irregularities as submitted by the carrier or route inspector, the name and address of customer and the date and signature of the postmaster.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

To provide for efficient delivery of the mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed forms.

RETRIEVABILITY:

Route number.

SAFEGUARDS:

Filed in cabinets with access limited to USPS personnel having an official need for access.

RETENTION AND DISPOSAL:

Retained for one year after completed action and destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

APMG. *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, D.C. 20260–7100.*

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system of records contains information about them should contact the local postmaster, presenting identification as to name, address and ZIP Code.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Carrier or route inspector.

USPS 010.080

SYSTEM NAME:

Collection and Delivery Records—Rural Carrier Route *Records,* 010.080.

SYSTEM LOCATION:

Post Offices having rural carrier operations: *Operations Support Group;*

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Regions; Divisions; Sectional Centers; Postal Data Centers; *National Address Information Center (Memphis, TN); and contractor/licensee sites.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal customers receiving rural mail delivery services; *postal customers whose rural mail address has been converted to a locatable (city-style) address;* and rural *delivery letter carriers.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, route number, age, length of service, physical condition, quality of service and vehicle adequacy. *Also included in this system is information pertaining to* employee workload, work schedule and performance analysis; inspection reports of employees, workload and workload adjustments, route travel description; *and* employee and examiners' comments on adjustments and inspection. *The system may also contain customer names, rural route location, and city-style address if rural route address has been converted.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

(1) To assist management in evaluating rural mail delivery and collection operations and administering these functions efficiently; *(2) to* provide basis for payment of salary and vehicle maintenance allowance carriers; *(3) to assist government planning authorities in converting rural addresses to locatable (city-style) street addresses; and (4) to provide address correction services to mailers who wish to have their mailing lists updated with the newly assigned or converted address.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Provide Bureau of the Census, Department of Commerce address information as requested to assist them in their statutory requirement of census taking.

2. Rural route customer addresses may be disclosed to persons or organizations authorized by a postal regulation to receive address correction information. (Advance notice)

3. Name and address information may be disclosed to Federal, State, and local government agencies as required by such agencies for the purpose of performing their official duties.

4. Name and address information may be disclosed to government planning authorities for the purpose of assigning locatable (city-style) addresses to rural addresses, but disclosure will be limited to that necessary for address conversion or assignment.

5. Disclosure of a customer's new locatable (city-style) address may be made from the Locatable Address Conversion File to mailers wishing to have their mailing lists updated with the newly assigned address, but disclosure will be limited to the assigned adresses corresponding to those provided by the mailer.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms or lists in ordinary file equipment or on computer tape and printouts. *Records of rural address conversion to locatable (city-style) address are also consolidated in a Locatable Address Conversion Service file on magnetic tape maintained by firms under contract or license agreement with the Postal Service.*

RETRIEVABILITY:

Records are maintained by name and address of customer, and by route number, employee name or postal facility name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. *Contractor/licensee Privacy Act protections are subject to impromptu on-site audits and inspection by the Postal Inspection Service.*

RETENTION AND DISPOSAL:

a. Records in card or list form are maintained as long as the customer resides on the route; they are destroyed by shredding one year after the customer moves. b. Route travel description records, and establishment and discontinuance orders are retained until route is discontinued and then transferred to the Federal Records Center within two years after discontinuance date. c. Trip reports are retained for three years and then disposed of by shredding or burning. d. Route inspection reports and mail count records (mail counts made annually or more frequently) are retained for two years. Where mail counts are made less than annually records are retained until the next mail counts. Disposal of records is by shredding or burning. e. Other carrier records in system are retained for a period of up to one year depending upon the criticality of the information and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Distribution & Transportation Department; and APMG, Operations Systems & Performance* Department, *Washington, D.C. 20260–7000,* Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to their local postmaster. Inquiries should contain full name and address. Employee inquiries should state employee name and social security number, route number, specify the type of information being requested, and *should be forwarded* to post office where employed. *Customers wishing to know whether information about them is also maintained in the Locatable Address Conversion System (LACS) should address such inquiries to Manager, LACS, Address Information Systems Division, U.S. Postal Service, Memphis, TN 38188–0001.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The customer to whom the record pertains, employees, carrier supervisors and route inspectors.

USPS 020.010

SYSTEM NAME:

Communications [Public Relations]—Biographical Summaries of Management Personnel for Press Release, 020.010.

SYSTEM LOCATION:

Office of *News & Market Communications,* Headquarters.
Marketing & Communications, Regional Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS executives, directors and managers to include regional staff officers, division directors, *division* managers, sectional center managers and other key management officials who may have frequent contact with news media or public speaking engagements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical summaries on sheets of paper plus photographs. Summaries include present title and responsibility, length of service, age, place of birth, marital status and participation in local community activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

PURPOSE(S):

To provide background information on postal management personnel in connection with public relations matters such as speaking engagements, media appearances, appearances before civic, fraternal, and employee organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Bond paper in file cabinets.

RETRIEVABILITY:

Name and title.

SAFEGUARDS:

File cabinets are located in communications offices where information is available only to individuals having a need for access.

RETENTION AND DISPOSAL:

a. Biographical sketches maintained at regions are retained while the individual is assigned within the region. If individual is promoted to or assigned to a position within the USPS outside the Region, biographical information is forwarded to the appropriate Public Affairs office; if employment with the USPS is terminated, the sketch is destroyed by shredding.

b. Biographical sketches maintained at USPS *Headquarters* are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Communications Department,* Headquarters, *Washington, DC 20260–3100.*

NOTIFICATION PROCEDURE:

Inquiries should contain name and position held and *should be* presented to the Manager of Communications where currently, or previously, employed.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above.

CONTESTING RECORD PROCEDURES:

See "Notification" above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

USPS 030.010

SYSTEM NAME:

Equal Employment Opportunity—EEO Discrimination Complaint *Files, 030.010.*

SYSTEM LOCATION:

Office of Equal Employment *Opportunity,* Employee Relations *Department,* Headquarters, *Human Resources Service Centers* at Regions, *Divisions* and Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former postal employees, *and* applicants for positions within the USPS and third party complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records *may include* names, work locations, dates, social security numbers, and other information as included on affidavits, interviews investigative forms, *counselor reports, exhibits, discovery, withdrawal notices, briefs, appeals, copies of decisions, records of hearings and meetings, and other records related to complaints.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92–261, Equal Employment Act of 1972; *29 U.S.C. 621 et seq., Age Discrimination in Employment Act; 29 U.S.C. 701 et seq., Rehabilitation Act of 1973; and* Executive Order 11478, *amended by Executive Order 11590.*

PURPOSES(S):

Used by EEO officers and the Equal Employment Opportunity Commission: to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F,* G, H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigator is properly engaged in the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper case files. Status information required by the Equal Employment Opportunity Commission is maintained on ADP records.

RETRIEVABILITY:

Case number. The custodian must also be furnished with the name of the complainant and the place where the complaint was filed. Case number consists of *a number designating the region (or Headquarters), a letter designating the division, four digits for the chronological case number, and the last two digits of the applicable years.*

SAFEGUARDS:

Case files are maintained in file cabinets within locked rooms. ADP records are protected with password security.

RETENTION AND DISPOSAL:

a. Precomplaint records—Counselor/*Investigator* notes are destroyed 1 year after a formal report is submitted to the EEO officer or 1 year following the final adjustment when made at that level.

b. Formal Complaint records—All closed cases are removed from the system quarterly. Each closed case is retained as follows: Official file for 4 years, any copies for 1 year, and background documents not in case file for 2 years.

c. ADP records—Closed case information is removed at the conclusion of the fiscal year and moved to an inactive file for future comparative analyses.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

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NOTIFICATION PROCEDURE:

Individuals interested in finding out if there is information in this records system pertaining to them should contact EEO officers at the *Division* or Headquarters level, giving complainant name, postal location, region, file number and year.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is received from the complainant *witnesses,* respondent *and through* investigations and interviews.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 030.020

SYSTEM NAME:

Equal Employment Opportunity—Equal Employment Opportunity Staff Selection Records, 030.020.

SYSTEM LOCATION:

Employee Relations Department, Headquarters *and Field Divisions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates considered by Promotion Boards for EEO staff position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of candidate, level, address, service computation date, date of birth, Social Security Number, postal background, personal information required to assess employee qualifications for position, estimate of potential and record of members of Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, Executive Orders 11478 and 11590.

PURPOSE(S):

To provide headquarters with information needed to complete selection process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

USPS Promotion Board reviews these records to determine applicant's eligibility for appointment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms, paper files.

RETRIEVABILITY:

Name of applicant and pay location.

SAFEGUARDS:

Maintained in locked file cabinets within secured facility.

RETENTION AND DISPOSAL:

Destroy 3 years from date the position becomes vacant.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the head of the facility where application was made. Inquiries should contain full name, position applied for, the date the Promotion Board met and Social Security Number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Employee, and employee personnel data.

USPS 030.030

SYSTEM NAME:

Equal Employment Opportunity—EEO Administrative Litigation Case Files, 030.030

SYSTEM LOCATION:

Office of Labor Law, Law Department, National Headquarters; *Office of Field Legal Services, Regions; and Field Divisions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment involved in EEO Litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Formal pleadings and memoranda of law; (b) Other relevant documents *may include names, work locations, dates, social security numbers, and other information as included on affidavits, interviews, investigative forms, counselor reports, exhibits, discovery, withdrawal notices, briefs, appeals, copies of decisions, records of hearings and meetings, and other records related to complaints;* (c) Miscellaneous notes and case analyses prepared by Postal Service *advocates* and other personnel; (d) Correspondence and telephone records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d)

PURPOSE(S):

To provide advice and representation to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

Name of litigant(s).

SAFEGUARDS:

Folders containing paper documents are kept in *lockable* filing cabinets

within secured buildings or areas under the general scrutiny of *authorized personnel.* Computer terminals and tape/disk files are located in a secured area, *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

a. Selected Appeals Case Files—Destroy 4 years from date of final decision or when they have no further use for reference, training, or similar purpose, whichever is longer.

b. Appeal Case Files—Destroy 4 years from date of final decision.

c. Paper records are shredded and computer tape/disk records are erased at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Persons wishing to determine whether this system of records contains information about them should write to the System Manager and provide their name, case number, if known, and the approximate date the action was instituted.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

Notification and Record Access Procedures above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

(a) Individuals involved in EEO Litigation; (b) Counsel(s) and other representative(s) for parties in action other than Postal Service; (c) Other individuals involved in the development of EEO Litigation. Source documents include administrative complaint/action file, and other records relevant to the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 040.010.

SYSTEM NAME:

Customer Programs—Memo to Mailers Address File, 040.010.

SYSTEM LOCATION:

Communications Department, USPS Headquarters, and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subscribers to Memo to Mailers monthly newsletter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subscriber's *name and mailing address.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

To prepare mailing labels for the monthly mailing of Memo to Mailers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and computer printout.

RETRIEVABILITY:

Subscriber's name, city, state and ZIP+4 Code.

SAFEGUARDS:

The list contractor is forbidden by contract to use the list for any other means than to produce mailing labels for the U.S. Postal Service.

RETENTION AND DISPOSAL:

The master file is maintained indefinitely, and is updated each month.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Communications* Department, Headquarters, *Washington, D.C. 20260–3100.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the SYSTEM MANAGER and supply their name and address.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Subscribers, Postmaster, USPS *Account* Representatives.

USPS 040.020

SYSTEM NAME:

Customer Programs—Sexually Oriented Advertisements, 040.020.

SYSTEM LOCATION:

Rates and Classification Department, Headquarters; *National Information Systems Development Center, Raleigh, NC.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any adult who elects to have his name and address and that of his children under 19 years of age, placed on the list of persons who do not wish to receive sexually oriented advertisements through the mail.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of head of household or other adult *and* the names and birth dates of children under 19 years of age.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. Section 3010.

PURPOSE(S):

To maintain a list, available to mailers of sexually oriented advertisements, of persons desiring not to receive such matter through the mails.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Upon payment of prescribed fee, *records may be used to* provide mailers of sexually oriented advertisements *with* a list of individuals who do not wish to receive SOA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, computer printouts, and preprinted forms.

RETRIEVABILITY:

ZIP Code and application number sequence.

SAFEGUARDS:

Printouts are retained by the Office of Mail Classification and *Rates Administration* with limited access. *Automated records are subject to computer center access controls.*

RETENTION AND DISPOSAL:

a. Names are retained on the computerized list for a maximum of five years. b. Forms, are retained *until data has been computerized.* c. *Paper* records are destroyed by shredding; computer records *are destroyed* by erasing.

SYSTEM MANAGER(S) AND ADDRESS:

APMG. Rates and Classification Department, Headquarters, *Washington, D.C. 20260–5300.*

NOTIFICATION PROCEDURE:

Customers will furnish the system manager their name, address, application number and the date of filing.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Customers filing to have their names placed on lists so as not to receive SOA.

USPS 040.030

SYSTEM NAME:

Customer Programs—Auction Customer Address File.

SYSTEM LOCATION:

Post offices having Dead Parcel Branches.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who wish to be on a mailing list to receive notices of future Dead Parcel Branch auctions.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Customer names and addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

To maintain a list of names and addresses of customers who wish to be on a mailing list to receive notices of future Dead Parcel Branch auctions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, , *D,*E, F, *G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records or magnet. disks.

RETRIEVABILITY:

Customer name.

SAFEGUARDS:

Paper records and disks are kept in locked cabinets; automated data is password protected.

RETENTION AND DISPOSAL:

Records are kept for one year after entry and then destroyed by deletion (if automated) or by shredding (if paper).

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Rates & Classification Department, Headquarters, Washington, D.C. 20260–5300.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the manager of the Dead Parcel Branch. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Attendees of auctions and others who ask to receive notice of future actions.

USPS 050.005

SYSTEM NAME:

Finance Records—Accounts Receivable File Maintenance, 050.005.

SYSTEM LOCATION:

Postal Data Centers and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees, contractors, vendors and other individuals indebted to the Postal Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invoice number, location name, Social Security Number, employee name, designation code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401; 5 U.S.C. 552a(b)(12); Debt Collection Act of 1982 (Pub. L. 97–365).

PURPOSE:

Records are used to facilitate debt collection, to monitor and record collections made by the USPS, and as a data source for management information for production of summary descriptive statistics and analytical studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

2. Disclosure may be made to a debt collection agency for collection of a debtor's account as provided for by contract with the debt collection agency.

3. Disclosure of information about individuals indebted to the Postal Service may be made to the Office of Personnel Management under approved computer matching efforts in which either the Postal Service or OPM acts as the matching agency, but limited to those data elements considered relevant to determining whether the indebted individual has retirement funds available for set-off; collecting debts when funds are available for set-off; and writing off debts determined to be uncollectible.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(a)(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms, punched cards and magnetic tape.

RETRIEVABILITY:

Records are normally retrieved by social security number. When necessary, they may be retrieved by invoice number, name of employee, contractor, vendor, or other indebted individual.

SAFEGUARDS:

Access is restricted to personnel of the General Accounting Section within the Postal Service and to contract employees responsible for assigned accounts. Computerized records are subject to the security of the computer room. Contract provisions make the contractor(s) responsible for complying with the provisions of the Privacy Act (subsection (m)(1)), except in the case of subsection (b)(12) disclosures to consumer reporting agencies (subsection (m)(2)).

RETENTION AND DISPOSAL:

All information is retained for four years after claim is paid and then destroyed by burning or *scratching.*

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Department of the Controller, Headquarters, *Washington, D.C. 20260–5200.*

NOTIFICATION PROCEDURE:

Individuals requesting information from this system of records will apply to the pertinent postal facility and present the debtor's name and Social Security Number.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is passed to this system from the Payroll Section, General Accounting Section, Claims Section, Postmasters and Regional Offices.

USPS 050.010

SYSTEM NAME:

Finance Records—Employee Travel Records (Accounts Payable), 050.010.

SYSTEM LOCATION:

Postal Data Centers, Postal Service Personnel Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS Employees on official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers and travel advances containing employee name, social security number, Finance Number, basic travel information, and relocation data. Includes records pertaining to employee claims and other accounts payable records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 2008.

PURPOSE:

To reimburse employees for official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-printed forms and magnetic tape.

RETRIEVABILITY:

Social security number *and name.*

SAFEGUARDS:

Paper records are stored in locked filing cabinets. Access *to automated records* is subject to computer center access control.

RETENTION AND DISPOSAL:

a. Officer's Expense Report—Destroy when 12 years old.

b. Travel Advance and Travel Voucher: (1) PDC Copy—Destroy when 6 years and 3 months old. (2) Office Copy—Destroy 2 years from date of submission to PDC.

c. Relocation Travel Orders—Destroy 4 years from date final relocation voucher is submitted.

d. Relocation Travel Orders (Issuing Office)—Destroy when no longer needed for reference.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Department of the Controller, Washington, D.C. 20260–5200.*

NOTIFICATION PROCEDURE:

Requests for information should be presented to Employee's Personnel Office furnishing name and social security number.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures Above.*

RECORD SOURCE CATEGORIES:

Information is received from the employee filing a voucher.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal Data Centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, postmaster relief/replacement employees, and certain former spouses of current and former postal employees who qualify for Federal Employees

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Health Benefits Coverage under Pub. L. 98–615.

CATEGORIES OF RECORDS IN THE SYSTEM:

General payroll information including retirement *deductions*, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation code, addresses, records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003; 5 U.S.C. 8339

PURPOSES:

1. Information within the system is for handling all necessary payroll functions and for use by employee supervisors for the performance of *their* managerial duties.

2. To provide information to USPS management and executive personnel for use in selection decisions and evaluation of training effectiveness. These records are examined by the Selection Committee and Regional Postmasters General.

3. To compile various lists and mailing *lists*, i.e., Postal Leader, Women's Programs Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Position Evaluations, *Evaluations* of Probationary Employees, Merit *Evaluations*, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various *salary* ranges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F*, G, H, *J*, K, *L*, and M *Listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdictions.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W–2 tax mailings and postal mailings such as Postal Life, Postal Leader, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FICA Deductions—The Social Security Act requires that FICA deductions be made for those employees not eligible to participate in the Civil Service Retirement System *or Federal Employees' Retirement System* (casuals). In addition, the Tax Equity and Fiscal Responsibility Act of 1982 requires that contributions to the Medicare program be deducted from all employees' earnings. (These statutes do not apply to employees in the Trust Territories who are not U.S. citizens.) Accordingly, records of earnings (i.e., W–2 information) must be disclosed to the Social Security Administration in order that it may account for funds received and determine individual's eligibility for benefits. Information disclosed includes name, address, SSN, wages paid subject to withholding, Federal, state, and local income tax withheld, total FICA wages paid and FICA tax withheld, occupational tax, life insurance premium and other information as reported on an individual's W–2 form.

7. *To* determine eligibility for coverage and payment of benefits under the Civil Service Retirement System, *the Federal Employees' Retirement System*, the Federal Employees' Group Life Insurance Program and the Federal Employees' Health Benefits Program and transfer related records as appropriate.

8. *To* determine the amount of benefit due under the Civil Service Retirement System, *the Federal Employees' Retirement System*, the Federal Employees' Group Life Insurance Program and the Federal Employees' Health Benefits Program and *to authorize* payment of that amount and *to* transfer related records as appropriate.

9. *To* transfer to Office of Workers' Compensation Program. Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System *or the Federal Employees' Retirement System*, when requested by that program, system, or individual covered by this system, for use in determining an individual's claim for benefits under such system.

10. *To* transfer earnings information under the Civil Service Retirement System *or the Federal Employees' Retirement System* to the Internal Revenue Service as required by the Internal Revenue Code of 1954, as amended.

11. *To* transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010–*3602*.

12. *To* transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program *to* a health insurance carrier or plan participating in the program.

13. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific *individuals for personnel* research or *other* personnel management functions.

14. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

15. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service computation date, retirement system, and FEGLI status) for use by OPM's Compensation Group. Data collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

16. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

17. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

18. Disclosure of information about current or former postal employees may be made to requesting states under approved computer matching efforts in which either the Postal Service or the requesting State acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under unemployment insurance programs administered by the States (and by those States to local governments); to *improving* program integrity; and to *collecting* debts and overpayments owed to those governments and their components.

19. To union-sponsored insurance carriers for the purpose of determining eligibility for coverage and payment of benefits under union-sponsored non-Federal insurance plans and transferring related records as appropriate.

20. Disclosure of information about current *or* former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under particular benefit programs administered by those *agencies* or entities or by the Postal Service; to *improving* program integrity; and to *collecting* debts and overpayments owed under those programs.

21. *Disclosure of information about current or former postal employees may be made, upon request, to the Department of Defense (DOD) under approved computer matching efforts in which either the Postal Service or DOD acts as the matching agency, but limited to those elements necessary to identify postal employees who are Ready Reservists* for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

22. Disclosure of information about current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency, but limited to only those data elements considered relevant to identifying those employees who are absent parents owing child support obligations and to collecting debts owed as a result thereof.

23. Disclosure of information about current or former postal employees may be made on a semi-annual basis to the Department of Defense (DOD) under approved computer matching efforts in which either the Postal Service or DOD acts as the matching agency, but limited to only those data elements considered relevant to identifying retired military employees who are subject to restrictions under the Dual Compensation Act as amended (5 U.S.C. 5532), and for taking subsequent actions to reduce military retired pay or collect debts and overpayments, as appropriate.

24. Disclosure of information about current or former postal employees may be made to requesting Federal agencies under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals who are indebted to those agencies and to provide those individuals with due process rights prior to initiating any salary offset, pursuant to the Debt Collection Act.

25. Disclosure of information about current and former employees may be made to the Selective Service System (SSS) under approved computer matching efforts in which either the Postal Service or SSS acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals eligible for registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), to determine whether those individuals have complied with registration requirements, and to enforce compliance when necessary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

Location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also protected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

a. Leave Application Files (Absence Control) and Unauthorized Overtime—Destroy when 2 years old.

b. Time and Attendance Records (Other than payroll) and local payroll records—Destroy when 3 years old.

c. PDC records retention—contact PDC Payroll Office or Records Office.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Department of the Controller, *Washington, D.C. 20260–5200* and APMG, Employee Relations Department, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

USPS 050.040

SYSTEM NAME:

Finance Records—Uniform Allowance Program, 050.040.

SYSTEM LOCATION:

Postal facilities employing personnel entitled to uniform allowances and the Postal Data Center, St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS Employees entitled to uniform allowances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, designation code, account balance and pay location*; invoices, bills, related correspondence and control documents.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1206.

PURPOSE:

To fund the procurement of uniforms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

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Certain information may be furnished to a duly licensed uniform vendor from whom individual employees have made purchases for the purpose of accounting for payments.

2. Records in this *system* are subject to review by an independent certified public *accountant* during an official audit of Postal Service finances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, microfilm and magnetic tape.

RETRIEVABILITY:

Social security number.

SAFEGUARDS:

Forms are kept in file cabinets and magnetic tape and microfilm *are* subject to Computer Center access control.

RETENTION AND DISPOSAL:

a. Post Office Case File—Destroy 3 years from date the employee leaves Postal Service or is no longer in a bargaining unit.

b. PDC Card File—Destroy 6 months after each Accounting Period.

c. PDC Pay Listing and Machine Readable Records—Destroy 6 years and 3 months from date of listing.

SYSTEM MANAGER(S) AND ADDRESS:

APMG *Department of the Controller,* Headquarters, *Washington, D.C. 20260–5200.*

NOTIFICATION PROCEDURE:

Correspond with the head of the facility where employed, furnishing name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Payroll system and Postmasters have input to this system of records.

USPS 060.010

SYSTEM NAME:

Consumer Protection Records—*Fraud, False Representation, Lottery and Non-Mailability* Case Records, 060.010.

SYSTEM LOCATION:

Consumer Protection *Division,* Law Department, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complainants; respondents *and opposing parties* in proceedings initiated pursuant to 39 U.S.C. *3001, 3002 and* 3005 *concerning the sending of false representations, lotteries or non-mailable matter through the mails; postal attorneys;* attorneys representing parties; *subjects of investigation and* assigned Postal Inspectors.

Note.—In many cases, respondents are business firms not covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, pleadings, motions, orders, hearing transcripts, adjudications, investigative reports, exhibits, documentary evidence, witness statements, appeals, briefs, memoranda of law, consent agreements, orders directing detention of mail correspondence, decisions and other documents pertaining to administrative proceedings and litigation involving false representation, mailability and lotteries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. *3001, 3002,* 3005, *3007, 3012; 18 U.S.C. 1301; 39 CFR Parts 952, 953.*

PURPOSE(S):

Used by consumer protection attorneys to investigate and enforce postal statutes concerning false representation, lottery and mailability; to represent the Postal Service in formal administrative proceedings before the Judicial Officer Department and in civil litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Copies of initial, tentative and final decisions are maintained in the Postal Service Library for public inspection and copying.

2. Official records of administrative proceedings are maintained by the Recorder of the Judicial Officer Department for public inspection.

3. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

4. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders. Abbreviated summary and identifying information pertaining to each case is maintained in case file docket binders and on magnetic tape or disk in automated office equipment. Copies of decisions are maintained for public inspection in the Headquarters Library. Official records of proceedings are maintained by the Recorder of the Judicial Officer Department.

RETRIEVABILITY:

Alphabetically by name of respondent, *and numerically by sequential docket number.*

SAFEGUARDS:

Records are *stored in lockable file* cabinets under *the* general scrutiny *of Postal Service attorneys. Access to computer data is restricted to personnel having an official need for access.*

RETENTION AND DISPOSAL:

Case files are moved to an inactive file 3 years after completion of action, and disposed of 20 years from date of completion. Case file dockets are destroyed 20 years after the destruction of the case files to which they pertain.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, USPS Headquarters, *Washington, DC 20260–1100.*

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the above SYSTEM MANAGER. Inquiries should contain full name, name by which respondent in proceeding may have been designated; *and* approximate time period in which proceedings may have been initiated.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

Complaints, correspondence between parties involved and Postal Inspection Service investigative reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 060.020

SYSTEM NAME:

Consumer Protection Records *Pandering Act* Prohibitory Orders, 060.020.

SYSTEM LOCATION:

Consumer Protection *Division,* Law Department, Headquarters; *Mail Classification Centers;* Regional *Counsel Offices, Regional* Headquarters; *and Field Divisions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting orders *prohibiting the sending of sexually oriented advertisements, and* the mailers against whom such orders are issued.

Note.—In most cases, the mailers of advertising material are business firms not covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for prohibitory orders, the *mail piece* upon which a request is predicated, issued orders, the registered mail receipt signed by mailer against whom order was issued, *applications for the enforcement of prohibitory orders, pleadings, exhibits, briefs, investigative reports, hearing transcripts, material documents from Postmaster's case file, initial, tentative and final decisions, and appeals.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3008, *3010; 39 CFR Parts 916, 963.*

PURPOSE(S):

To process *requests for orders prohibiting the sending of* pandering *advertisements through the mails* and to determine whether violations of *such* orders have occurred. Used by Consumer Protection *Division* and Regional Counsel to investigate violations of *postal pandering and sexually oriented advertisement statutes; to represent the Postal Service in administrative proceedings before the Judicial Officer Department; and to seek court enforcement of prohibitory orders.*

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records may be used to provide mailers of sexually oriented advertisements with a list of individuals who do not wish to receive such material.

2. Copies of initial, tentative and final decisions are maintained in the Postal Service Library for public inspection and copying.

3. Official records of administrative proceedings are maintained by the Recorder of the Judicial Officer Department for public inspection.

4. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

5. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders. Abbreviated information is stored in log books and on magnetic tape or disk in automated office equipment. Copies of decisions are maintained for public inspection in the Headquarters Library. Official records of proceedings are maintained by the Recorder of the Judicial Officer Department.

RETRIEVABILITY:

By prohibitory order number or by name of person requesting order.

SAFEGUARDS:

Case files are stored in lockable file cabinets under the general scrutiny of Postal Service attorneys. Access to computer data is restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

a. Case Files—Retained for 5 years following issuance of order or last application *for* enforcement.

b. Log Books—Disposed of 5 years from date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, *USPS* Headquarters, *Washington, DC 20260–1100.*

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain full name and address of *the* person requesting *the* prohibitory order.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

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Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means of collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

Persons requesting prohibitory orders.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 060.030

SYSTEM NAME:

Consumer Protection Records—Appeals Involving Mail Withheld from Delivery, 060.030.

SYSTEM LOCATION:

Consumer Protection Division, Law Department, USPS Headquarters; Inspection Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who appeal on account of the withholding of their mail and attorneys representing such persons.

Note.—Business firm customers are not covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence regarding the withholding of mail from delivery; records that document the withholding; investigative reports; evidence of delivery or attempted delivery of notices; petitions; pleadings, notes and legal memoranda; discovery documents; briefs; settlement agreements; decisions, appeals and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 204, 401, 3003, 3004; 18 U.S.C. 1302, 1341 and 1342; 39 CFR Part 964.

PURPOSE:

To enable the General Counsel to represent the Postal Service in administrative proceedings before the Judicial Officer Department in which customers petition for review of cases in which the Inspection Service has withheld mail from delivery pursuant to 39 U.S.C. 3003 or 3004.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Copies of initial, tentative and final decisions are maintained in the Postal Service Library for public inspection and copying.

2. Official records of administrative proceedings are maintained by the Recorder of the Judicial Officer Department for public inspection.

3. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

4. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal case records are stored in paper folders, filed chronologically by date of closing. Abbreviated information, such as case name and other identifying data, is stored on index cards, filed alphabetically by case name, and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By Postal Service docket number and by name of individual whose mail has been withheld from delivery.

SAFEGUARDS:

Records are maintained in lockable filing cabinets under the general scrutiny of Postal Service attorneys. Access to computer data is restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

Appeal case records are destroyed one year after final disposition of case. Index cards are destroyed six months after final disposition of case.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, USPS Headquarters, Washington, DC 20260–1100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain full name and address of the person whose mail has been withheld and the approximate date of such withholding.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

Note.— Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

Individuals whose mail has been withheld from delivery, and their attorneys; Inspection Service investigative reports; witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR § 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 060.040

SYSTEM NAME:

Consumer Protection Records—Appeals from Termination of Post Office Box or Caller Service, 060.040.

SYSTEM LOCATION:

Consumer Protection Division, Law Department, USPS Headquarters; Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who appeal from the refusal to provide, or involuntary termination of, post office box or caller service and attorneys representing such persons.

Note.—Business firm customers are not covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence regarding denial or termination of post office box or caller service; records that document involuntary termination; investigative reports; evidence of delivery or attempted delivery of notices; petitions; pleadings, notes and legal memoranda; briefs; settlement agreements; decisions, appeals and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 USC 401, 404(A)(1); 39 CFR Part 958; Domestic Mail Manual, Parts 951, 952.

PURPOSE:

To enable the General Counsel to represent the Postal Service in administrative proceedings before the Judicial Officer Department in which customers petition for review of postmaster determinations to refuse or terminate post office box or caller service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal case records are stored in paper folders, filed chronologically by date of closing. Abbreviated information, such as case name and other identifying data, is stored on index cards, filed alphabetically by case name, and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By Postal Service docket number and by name of individual whose service has been refused or terminated.

SAFEGUARDS:

Records are maintained in lockable filing cabinets under the general scrutiny of Postal Service attorneys. Access to computer data is restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

Appeal case records are destroyed one year after final disposition of case. Index cards are destroyed six months after final disposition of case.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, USPS Headquarters, Washington, DC 20260–1100.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain full name and address of the person whose service has been terminated and the approximate time period of its termination.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

Individuals whose post office box or caller service has been terminated, and their attorneys; reports of postmasters; Inspection Service investigative reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding is exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

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USPS 070.010

SYSTEM NAME:

Inquiries and Complaints—Correspondence Files of the Postmaster General, 070.010.

SYSTEM LOCATION:

Office of the Postmaster General, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees and Postal Service customers who have corresponded with the Office of the Postmaster General.

CATEGORIES OF RECORDS IN THE SYSTEM:

General *correspondence including correspondent's name, address, nature of inquiry, and response.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 USC 401.

PURPOSE(S):

To maintain reference to letters from persons communicating with the Postmaster General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Periodically transferred to custody of National Archives and Records Administration (NARA) for keeping as historical documentation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed, printed, or handwritten form.

RETRIEVABILITY:

Individual's name, chronologically and subject.

SAFEGUARDS:

Records are maintained in locked filing cabinets under scrutiny of PMG's secretary and in secured locked storage room with limited access.

RETENTION AND DISPOSAL:

a. Permanent Subject Files—Transfer to a Federal Records Center when 4 years old. Offer to NARA in 5-year blocks when the latest records are 20 years old.

b. Temporary Subject Files—Destroy when 4 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Postmaster General, Headquarters, *Washington, D.C. 20260–0010.*

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the SYSTEM MANAGER and should contain full name, date of letter, and subject.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Persons communicating with the Postmaster General.

USPS 070.020

SYSTEM NAME:

Inquiries and Complaints—Government Officials' Inquiry System 070.020.

SYSTEM LOCATION:

Government Relations Department, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, applicants for employment, contractors, lessors, and customers who have written to nonpostal government officials, congressmen and other government officials corresponding with the USPS in behalf of postal customers/employees and various individuals to whom Postal Service announcements/greetings are directed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information stemming from correspondence described above, and lists of individuals for announcements/greetings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide USPS officials with the means of responding to inquiries from and/or for other government officials and to serve as a workload reporting system for which a description appears as USPS 170.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(For records received before December 31, 1986): Original, typed, printed, or handwritten form and on magnetic tape/disk and computer printouts. (For records received after January 1, 1987): Optical disk, magnetic tape/disk, and computer printouts.

RETRIEVABILITY:

Subject category as derived from correspondence and the name of the inquirer and/or official inquiring in his/her behalf.

SAFEGUARDS:

All records not in storage at a GSA Federal Records Center are maintained on computer-readable media in a secured data processing facility.

RETENTION AND DISPOSAL:

Paper records are maintained for four years and then destroyed by shredding; *optical disk*/magnetic tape/disk records are kept for three years and then erased.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Government Relations Department, USPS Headquarters, *Washington, D.C. 20260–3500.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the System manager.

Inquiries should contain full name, the name of the government official to whom he *or she* wrote, the nature of *the* inquiry and the approximate date.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Nonpostal government officials.

USPS 070.040.

SYSTEM NAME:

Inquiries and Complaints—Customer Complaint Records, 070.040

SYSTEM LOCATION:

Consumer Advocate USPS, Regional and National Headquarters, *Divisions,* Post Offices, *and the Postal Data Center in St. Louis, MO.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS customers who have *contacted* the USPS *with a suggestion or a problem.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer's name, address, nature of the *inquiry or* complaint, and resolution of same. Includes general correspondence and *Consumer Service Cards concerning customer complaints/inquiries.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

To process USPS customer *concerns and inquiries* regarding mail services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D, E, F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Typed, printed, handwritten or computer printed form, *microfilm, and* magnetic tape.

RETRIEVABILITY:

For correspondence and computerized complaint cards, by chronological sequence within subject category as derived from correspondence and the name of inquirer or complainant. For complaint cards, chronologically by retrieval code and preprinted complaint card serial number.

SAFEGUARDS:

Paper records are maintained in closed filing cabinets. Computer records are subject to the security of the computer room.

RETENTION AND DISPOSAL:

Destroy 1 year after resolution of problem.

SYSTEM MANAGER(S) AND ADDRESS:

APMG. *Philatelic and Retail Services* Department, Headquarters, *Washington, D.C. 20260–6700.*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the same facility to which they submitted their complaint. Inquiries concerning complaint cards should include the date and card serial number.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

USPS customers.

USPS 080.010

SYSTEM NAME:

Inspection Requirements—Investigative File System, 080.010.

SYSTEM LOCATION:

Chief Postal Inspector, Headquarters; Inspection Service Regional Headquarters; Division Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons related to investigations, including subjects of investigations, complainants, informants, witnesses, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigations conducted in criminal, civil, and *administrative matters, including* personnel suitability, and information in various forms received from individuals, other law enforcement agencies and the public, including information compiled for the purpose of identifying criminal offenders and reports identifiable to individuals. Personal information in this system may include fingerprints, handwriting samples, reports of confidential informants, physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 404.

PURPOSE(S):

To provide information related to investigation of criminal matters:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C,* D, E, *F,* G, *H, J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. In the course of conducting any official investigation or during the course of a trial or hearing or the preparation of a trial or hearing, a record may be disseminated to an agency, organization or individual when reasonably necessary to elicit information relating to the investigation, trial or hearing or to obtain the cooperation of a witness or informant.

2. A record relating to a case *or* matter may be disseminated to a Federal, State, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

3. A record relating to a case or matter may be disseminated in an appropriate Federal, State, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

4. A record relating to a case or matter may be disseminated to an actual or potential party or his *or her* attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

5. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter.

6. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction may be disseminated to a Federal, State, local or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation or release of such a person.

7. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international

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treaty or convention entered into and ratified by the United States or to an executive agreement;

8. A record may be disseminated to a Federal, State, local, foreign or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

9. A record from this system may be disclosed to the public, news media, trade associations, or organized groups to provide information of interest to the public concerning the activities and the accomplishments of the Postal Service or its employees;

10. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction *that* seeks *that person's* return.

11. To provide members of the American Insurance Association Index System with certain information relating to accidents and injuries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in typed, printed, and handwritten form, and on computer storage media.

RETRIEVABILITY:

Name of the individual.

SAFEGUARDS:

Investigative records are maintained in locked file cabinets, safes, or secured areas under the scrutiny of Inspection Service personnel who have been subjected to security clearance procedures. Access is further restricted by computer passwords *when stored in electronic format.*

RETENTION AND DISPOSAL:

a. Records are maintained 1 to 15 years depending upon type. Exceptions may be granted for longer retention in specific instances. Paper records are destroyed by burning, pulping, or shredding. Computer tape/disk records are erased or destroyed.

b. Duplicate copies of investigative memorandums maintained by postal officials other than the Inspection Service are retained in accordance with official rather than Inspection Service disposition schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Postal Inspector, Headquarters, *Washington, D.C. 20260–2100.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is contained in this system of records or if they were the subject of an investigation should furnish the SYSTEM MANAGER sufficient identifying information to distinguish them from other individuals of like name; identifying data will include name, address, type of investigation, dates, places and the individuals involvement.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266,6

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Personal interviews, written inquiries, and other records concerning persons involved with an investigation, whether subjects, applicants, witnesses, references, or custodians of record information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 080.020

SYSTEM NAME:

Inspection Requirements—Mail Cover Program *Records*, 080.020.

SYSTEM LOCATION:

Chief Postal Inspector, USPS *Headquarters;* Inspection Service Regional and Divisional *Offices.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals on whom a mail cover has been duly authorized to obtain information in the interest of (1) protecting the national security (2) locating a fugitive and (3) obtaining evidence of the commission or attempted commission of a crime which is punishable by imprisonment for a term exceeding one year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of individuals, inter-office memorandums, and correspondence with other agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

To investigate the commission *of* or attempted commission of acts constituting a crime that is punishable by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information from this system of records may be disclosed to an appropriate law enforcement agency, whether Federal, State or local, charged by law with the responsibility for investigating, prosecuting or otherwise acting with respect to protecting the national security, locating a fugitive, or obtaining evidence of commission or attempted commission of a crime.

2. A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court on grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice.

3. A record relating to a case or matter may be disseminated to an actual or potential party or his *or her* attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed documents and/or duplicate copies, *and computer storage media.*

RETRIEVABILITY:

Subject's name filed alphabetically by fiscal year.

SAFEGUARDS:

Mail cover data is stored in locked *file* cabinets, *safes or secured areas under the security of Inspection Service personnel who have been subjected to security clearance procedures, and when stored in electronic format, access is further restricted by computer password or keylock.* Classified mail cover material and any mail cover data which involves national security is stored in a safe or in metal file cabinets equipped with either steel lockbar hasp and staple, or locking device and an approved three or more *number* combination dial-type padlock from

which the manufacturer's identification numbers have been *removed. Computer terminals with non-removable tape/disk files are located in a secured area, and access is further restricted by computer password and keylock.*

RETENTION AND DISPOSAL:

a. Correspondence Files—Destroy 8 years after case is closed.

b. Investigations (C)— Transfer to FRC when 2 years old; destroy when 8 years old.

c. Index and Record Slips—Destroy 15 years after close of case.

SYSTEM MANAGER(S) AND ADDRESS:

Chief *Postal* Inspector, USPS Headquarters, *Washington, DC 20260–2100.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the SYSTEM MANAGER. Inquiries should contain full name and current address, together with previous addresses for past eight years when applicable.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Correspondence from requesting authority and record of action taken upon that request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 080.030

SYSTEM NAME:

Inspection Requirements—Vehicular Violations Record System, 080.030.

SYSTEM LOCATION:

Procurement and Supply Department, *Engineering Support Center, and* Inspection Service, *USPS Headquarters;* and those postal field facilities where security officers have the authority to issue violation notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been issued courtesy violation notices or violation notices by Security Police Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual violator's name, State operator permit, State operator permit number, violation cited, date of citation, citation number issued, State automobile licence tag number, dates of court appearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 318, annually made applicable to the Postal Service by general provisions of the Treasury, Postal Service, and General Government Appropriation Act.

PURPOSE(S):

To provide USPS management with information necessary for appropriate administrative remed al action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routing use statements A, B, *C, D,* E, *F, G, H, J,* K, and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide information to local, State, and Federal enforcement, prosecutive and judicial officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original, typed, printed or handwritten form *and on computer storage media.*

RETRIEVABILITY:

Alphabetically, by name *of* violator and by automobile license tag number.

SAFEGUARDS:

Records maintained in limited access Security Force Control Centers manned 24 hours and *at* National Headquarters, in locked filing cabinets under general *scrutiny* of authorized personnel. *Computer terminals and tape/disk files are located in a secured area.*

RETENTION AND DISPOSAL:

Records are maintained for two years and then destroyed. Some records may be retained longer when required for law enforcement investigations or court proceeding. *Automated printouts are destroyed upon generating updated printouts.*

SYSTEM MANAGER(S) AND ADDRESS:

Chief Postal Inspector, USPS Headquarters, *Washington, D.C. 20260–2100.*

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should furnish name and residence address as follows:

a. For National Headquarters: Inspector in Charge, Special Investigations Division, 475 L'Enfant Plaza West, SW., Washington, DC 20260–*2112.*

b. For the Field: Inspector in Charge, USPS *of* appropriate field division.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individual violators, Security Police Officers, personnel observation, state motor vehicle registration bureau, USPS Personnel Department, supervisory personnel of tenant firms, USPS Parking Control Officer, prosecutive and judicial officials; motor vehicle operators' permits, violator's personal identification cards, personnel locator listing and parking applications.

USPS 090.020

SYSTEM NAME:

Non-Mail Services—Passport Application Records, 090.020.

SYSTEM LOCATION:

One thousand (1000) Post Offices in all states except New Jersey.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying for passports.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passport applications, name, telephone number and services rendered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 411, 22 U.S.C. 214.

PURPOSE(S):

To process the applications of passports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statement A, B, *C, D,* E, *F, G, H, J,* and M *listed in the Prefatory Statement at the beginning of*

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the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Records may be transferred to the State Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms in hard copy.

RETRIEVABILITY:

By name of applicant and postal accounting quarter.

SAFEGUARDS:

Information in this system of records is maintained in file cabinets *with access restricted to* Accounting Unit *personnel.*

RETENTION AND DISPOSAL:

Passport applications are retained for 2 days at the post office where application was made and then forwarded to the Department of State. Destroy original and carbon copy of PS 5659 when 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Philatelic and Retail Services* Department, *Headquarters, Washington, DC 20260–6700.*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the postmaster of the post office where a passport application was made. Inquiries should contain full name and date of application. (NOTE: The original case file is maintained by Department of State and must be requested from that organization as provided for under Department of State Privacy Act system for passport information.)

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the applicant.

USPS 100.010

SYSTEM NAME:

Office Administration—Carpool Coordination/Parking *Services.* Records System, 100.010

SYSTEM LOCATION:

Facilities Department, Headquarters, *William F. Bolger Management Academy, Potomac, MD (student/conferee records),* and various field installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees, *students/conferees,* building tenants, individuals who are members of carpools with USPS employees *and other individuals who utilize postal parking facilities.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, *registration forms,* letters of violations, letters of suspensions *and* payment data. *Information contained In these records include name, space number, principal and other drivers' license numbers and home addresses.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

Provide parking and carpooling services to employees, *student/conferees and others who use postal parking/facilities.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. *Disclosure may be made to provide any* employee of Headquarters, USPS, who desires to join or establish a carpool with *a* listing of employees who live in his/her ZIP Code area.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms and magnetic tape/*disk.*

RETRIEVABILITY:

Name and ZIP Code, space or license number.

SAFEGUARDS:

Folders containing paper documents are maintained in locked file cabinets to which only authorized personnel have access. Computer equipment is located in secured area, and magnetic tape/*disk* files are kept in locked steel cabinets. *Access to automated records is further restricted by passwords.*

RETENTION AND DISPOSAL:

a. Application Case Files—Screen file annually, and dispose of records that are 6 years old.

b. Machine-readable files—Immediately remove all information when employee/*trainee* surrenders space.

c. Accounting Reports—Destroy after audit or when 3 years old, whichever is sooner.

d. Other miscellaneous reports—Destroy when no longer needed for reference or when 1 year old, whichever is sooner.

e. Violations maintained in application case files—Destroy violation notice when 1 year old.

f. Medical files maintained by medical officer to support handicapped parking space—Destroy 1 year from date of termination of assignment. At the end of retention period, paper records are destroyed by shredding or burning and tape/disk records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Facilities* Department, Headquarters, *Washington, DC 20260–6400, and Field Director, William F. Bolger Management Academy, Potomac, MD 20858–4320.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager where *carpool/parking services are provided to him/her.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access* Procedures above.

RECORD SOURCE CATEGORIES:

Carpool and parking service applicants/users.

USPS 100.020

SYSTEM NAME:

Office *Administration—Commercial Accounts* Communicator Letter, 100.020.

SYSTEM LOCATION:

Marketing Department, Headquarters, *and Postal Data Centers (Minneapolis and St. Louis).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Headquarters and Regional *Marketing* personnel, *Division* Managers, *Division* Directors of *Marketing,* Sectional Center Directors of *Marketing, Directors of Customer Services,* selected postmasters and requesters, *Commercial Accounts* representatives, Sectional Center Managers of Retail Sales and Services, Post Office Managers of *Marketing.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, *job title, and* business address of employees receiving newsletter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

PURPOSE(S):

To distribute a sales and marketing newsletter to Postal Service *marketing* employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K,* and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, and paper forms.

RETRIEVABILITY:

Recipient of communicator letter.

SAFEGUARDS:

Paper forms are kept in closed file cabinets accessible only by authorized *marketing* personnel. Magnetic tapes are maintained in a secured ADP facility.

RETENTION AND DISPOSAL:

List is updated on a continuous basis.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Postmaster General, *Marketing* Department, Headquarters, *Washington, D.C. 20260–6300.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should *write to the System Manager and give the following information: Name, job title, and business ZIP Code.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information in this system is obtained from payroll system and in-house listings of interested readers.

USPS 100.050

SYSTEM NAME:

Office Administration—Localized Employee Administration Records, 100.050.

SYSTEM LOCATION:

Field facilities as designated by the facility head.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Facility employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, various information associated with work location, home address, emergency contact point, and other information as locally required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001.

PURPOSE(S):

Provides readily available information on employees for various routine administrative purposes such as work location identification, emergency locating and home mailings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F, G, H, J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records *and* computer *disk.*

RETRIEVABILITY:

Employee name, organization, pay location, finance number, others as locally required.

SAFEGUARDS:

Paper records kept in locked files; computerized disk files password protected.

RETENTION AND DISPOSAL:

Records about individual employees will be destroyed within 6 months of employment termination at that facility.

Lists generated from computerized systems will be destroyed upon the generation of a subsequent more current list.

SYSTEM MANAGER(S) AND ADDRESS:

Facility head.

NOTIFICATION PROCEDURE:

Inquiries should contain employee's name and be addressed to the SYSTEM MANAGER.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individuals of record.

USPS 110.010

SYSTEM NAME:

Property Management—Accountable Property Records, 110.010.

SYSTEM LOCATION:

All USPS Components.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees assigned accountable property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records controlling the issuance of accountable Postal Service property, such as equipment credentials and controlled documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide a record of accountable property on hand and to whom it has been assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements, A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in*

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the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms *and computer storage media.*

RETRIEVABILITY:

Name *or social security number* of recipient of accountable property and types of equipment.

SAFEGUARDS:

Physical security *and controlled access.*

RETENTION AND DISPOSAL:

Issuance documents are returned to individual when accountability is terminated. *Automated printouts are destroyed upon generating updated printouts.*

SYSTEM MANAGER(S) AND ADDRESS:

(1) Chief Postal Inspector, Headquarters, *Washington, DC 20260–2100, (2)* APMG, *Facilities* Department, Headquarters, *Washington, DC 20260–6400.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in the system should address inquiries to the Custodian in the facility where assignment was made. Headquarters employees should submit request to the SYSTEM MANAGER.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained *from* the individual to whom the record pertains.

USPS 110.020

SYSTEM NAME:

Property Management—Possible Infringement of USPS Intellectual Property Rights, 110.020.

SYSTEM LOCATION:

Office of Patent Counsel, Law Department, *USPS Headquarters.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Possible infringers of USPS copyrights and trademarks; *inventors of proposed devices in which the USPS may have an interest.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports from Inspection Service, *other postal employees,* or other sources *reporting possible infringers,* including advertisements, photographs, magazine clippings or other documents and any correspondence *or records of telephone conversations* between the Postal Service and the possible infringer; *patent applications and related documents, including descriptions of inventions, drawings, specifications and letters of patent issued by the U.S. Patent Office or notices of abandonment; litigation records related to the defense or enforcement of USPS rights in intellectual property or patents.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401(5).

PURPOSE:

To protect USPS intellectual properties *and patents* by insuring timely action against possible infringers *and to support potential litigation.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K,* and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. A record may be transferred, and information from it disclosed, to any officer, employee, former officer or employee, consultant, contractor or subcontractor when *necessary* to enable counsel to afford proper representation to *the Postal Service.*

2. A record may be transferred, and information from it disclosed to any Federal agency as may be appropriate for the coordinated defense or prosecution of related litigation or the resolution of related claims or issues without litigation.

3. A record may be disclosed in a Federal, State, local, or foreign judicial or administrative proceeding in accordance with the procedures and practices governing such proceeding.

4. A record may be transferred and information from it disclosed to the Patent and Trademark Office, Department of Commerce, *when pertinent* in any proceeding involving the registration of Postal Service trademarks *or issuance of patents.*

5. A record may be transferred and information from it disclosed to the Copyright Office, Library of Congress, when pertinent in any proceeding involving the registration of Postal Service copyrights.

6. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, statute and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

7. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in *lockable* file cabinets in original, typed, printed or handwritten form. Index cards, kept in a card file, are filed by USPS copyright and trademark and subfiled under the name of each possible infringer of that particular copyright or trademark. *Some correspondence is also stored on magnetic tape or disk in automated office equipment.*

RETRIEVABILITY:

Name of possible infringer and USPS copyright or trademark; *patent application files are retrieved by name of inventor.*

SAFEGUARDS:

Lockable file cabinets *under the general scrutiny of Postal Service attorneys. Access to computer data is restricted to personnel having an official need for access.*

RETENTION AND DISPOSAL:

Records are retained *for 50 years* after closing case and then destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, *USPS Headquarters, Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

An individual wishing to determine whether this system of records contains information about him should write to the System Manager and provide his full name and, if known, the pertinent USPS copyright, trademark, or patent.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

Information is provided by the Postal Inspection Service, postal employees and customers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from these other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.020

SYSTEM NAME:

Personnel Records—Blood Donor *Records,* 120.020

SYSTEM LOCATION:

Health Units at USPS Facilities; District Chapters of the American Red Cross.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees who volunteer to join the USPS Blood Donor Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, *work location, blood type, and date of each donation.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE:

To provide the USPS Blood Donation Program with *a record of each donor's blood type and dates of donation.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

Disclosure may be made to the American Red Cross in response to an inquiry for available donors having a particular blood type.

STORAGE:

Preprinted forms.

RETRIEVABILITY:

Employee's name.

SAFEGUARDS:

Closed file cabinets in secured facilities.

RETENTION AND DISPOSAL:

These records are retained for a period of five years *after termination of employment* and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the SYSTEM MANAGER. Inquiries should contain full name.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the individual.

USPS 120.035

SYSTEM NAME:

Personnel Records—Employee Accident Records, 120.035.

SYSTEM LOCATION:

Safety offices in any USPS facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees that experience an on-the-job accident and/or an occupational injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, *social security number,* address, sex, age, and *accident/injury circumstances and factors, statements of witnesses, investigation worksheet, summary of claims, and related* logs, forms, *and correspondence.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 91–596, Executive Order 12196, and 29 CFR Part 1960.

PURPOSE(S):

1. To assist postal managers in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.

2. To provide for the uniform collection and compilation of occupational safety and health data, for proper evaluation and necessary corrective action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To furnish the U.S. Department of Labor with serious accident reports, information to reconcile claims filed with the Office of Worker's Compensation, and quarterly and annual summaries of occupational injuries and illnesses; and to make

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information available to the Secretary of Labor upon his request.

2. Disclosure may be made to a court, claimant, party in litigation—or counsel for a claimant or party when necessary to facilitate settlement or attempts at settlement of claims involving the accident.

3. May be disclosed to Compliance Safety and Health Officers or to Compliance Safety and Health Officers—Industrial Hygienists from the Occupational Safety and Health Administration, or to Industrial Hygienists from the National Institute for Occupational Safety and Health, when conducting announced or unannounced inspections or investigations of postal facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, magnetic tape/*disk* microfilm, preprinted forms, logs, and computer reports.

RETRIEVABILITY:

Employee name and social security number.

SAFEGUARDS:

Maintained in closed file cabinets within secured facilities, and are also protected by computer password and tape or disk library physical security.

RETENTION AND DISPOSAL:

Records are maintained locally for 5 years. Copies are maintained at National Headquarters for 5 years following the end of the calendar year to which they relate as required by OSHA.

SYSTEM MANAGERS AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees *should* submit requests to the SYSTEM MANAGER. Inquiries should contain full name, address, finance number and social security number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

USPS Accident Reports and OWCP claim forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from these other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.036

SYSTEM NAME:

Personnel Records—Discipline, Grievance and Appeals Records for Non-Bargaining Unit Employees, 120.036

SYSTEM LOCATION:

All postal facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on non-bargaining employees in the *Executive and Administrative (EA) Schedule, Executive and Administrative Postmaster (EPM) Schedule, and Postal Career Executive Service (PCES) Level I,* who have completed six months of continuous service in the U.S. Postal Service or a minimum of twelve months of combined service, without break of a workday, in positions in the same line of work in the Civil Service and the Postal Service, unless any part of such service was pursuant to a temporary appointment in the competitive service with a definite time limitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to employee of proposed action, reply to notice, summary of oral reply, employee notice of grievance, employee notice of appeal, records of hearing proceedings, appeal decisions from installation head, region or Headquarters, notice of action, investigative reports and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001; *Subchapter 650 of the Employee & Labor Relations Manual.*

PURPOSE(S):

Provides a grievance and appeal procedure for an employee, not subject to the provisions of a collective bargaining agreement, who alleges that his *or her* rights regarding compensation, benefits, or other terms and conditions of employment have been adversely affected.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F, G,* H, *J,* K, *L,* and M *Listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To respond to a court subpoena and/or refer to a court in connection with a civil suit.

2. To adjudicate an appeal, complaint, or grievance.

3. Records from the employee file will be disclosed to the *Merit Systems Protection (MSPB) and the Equal Employment Opportunity Commission (EEOC)* for action on *appeals before the MSPB and complaints of discrimination before the EEOC.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on paper in the form of letters, forms, notices *and transcripts of hearings.* In some instances, records of hearing proceedings are on magnetic tape.

RETRIEVABILITY:

Employee name.

SAFEGUARDS:

Records are kept in locked filing cabinets or secured record storage rooms and are available only to authorized officials.

RETENTION AND DISPOSAL:

Appeal records are kept for 7 years after close of file. All other records are kept 1 year after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Field employees must submit a written request to the head of the field installation where the action was initiated. Headquarters employees must submit a written request to the System Manager. *They* may also request permission to listen to or record tape recordings of hearings. This must be done in the presence of a postal official. *They* must identify *themselves* to the *satisfaction* of *the* official authorized to approve request.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Employee *initiating* actions; employee's supervisors, management, complaining customer, law enforcement agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from these other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.040

SYSTEM NAME:

Personnel Records—Employee Job Bidding Records, 120.040.

SYSTEM LOCATION:

Most departments, facilities and certain contractor sites of the Postal Service.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have made a "Bid for Preferred Assignment" with the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, social security number, seniority and grade levels, craft, and knowledge of schemes; vacant position characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001,1206.

PURPOSE(S):

To provide *personnel offices* with fair and impartial information to match vacant position to the most qualified candidate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide information for official bulletin boards and release to various employee organizations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, punched cards, preprinted forms and computer printed reports.

RETRIEVABILITY:

This system is indexed by employee name and social security number.

SAFEGUARDS:

Computer center access control and limitation within offices to those employees maintaining the system.

RETENTION AND DISPOSAL:

Computer records are kept 2 years, then automatically deleted. Paper records are kept 6 months after a vacancy is filled, then destroyed. Some records are retained until employee separates. (Where records become part of a grievance case file, dispose of with the case file.)

SYSTEM MANAGER(S) AND ADDRESS:

APMG. Employee Relations Department Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

The employee should state the position of bid and identify himself/*herself* with name, social security number, closing date of the bid notice, and forward this information to the head of the facility where employed. Headquarters employees should submit requests to the System Manager.

RECORDS ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Employee personnel data, scheme knowledge, qualifications of the job and of the candidate, successful bidders notices from vacant duty assignment postings.

USPS 120.050

SYSTEM NAME:

Personnel Records—Employee Suggestion *Program Records,* 120.050

SYSTEM LOCATION:

USPS Headquarters, Regional Headquarters, Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, employee number, employment location, suggestion number, subject and decision. If adopted, estimate of benefits and recognition granted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 45 of Title 5, U.S.C.

PURPOSE(S):

To provide a source of data on the effectiveness of the *Employee Suggestion* program which is summarized in an Annual Report.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

Disclosure may be made to the news media from the record of an individual regarding his/her receipt of an employee award when the information is of news interest and consistent with the public right to know.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms and magnetic tape.

RETRIEVABILITY:

Employee name, region where employed, pay location, and *division.*

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SAFEGUARDS:

This information is maintained in file cabinets in secured facilitiesAT3; automated records are restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

a. Adopted Suggestions (1) Record copies—Destroy when 4 years old. (2) All other copies—Destroy 2 years from date of adoption or approval.

b. Disapproved suggestions—Destroy 2 years from date of disapproval.

Records are destroyed by shredding and automatic deletions from computer tapes.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should contact the head of the facility where employed. Also, employees who have appealed decisions or whose suggestions have been adopted nationwide should submit requests to the System Manager. Headquarters employees should submit all requests to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the individual making the suggestion.

USPS 120.060

SYSTEM NAME:

Personnel Records—*Confidential Statements of* Employment and Financial Interests, 120.060.

SYSTEM LOCATION:

Records pertaining to employees in each organizational component of the Postal Service are maintained by the Assistant or Associate Ethical Conduct Officer *having jurisdiction for that component pursuant to 39 CFR 447.31(b).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal Service Governors, employees in levels 24 and above, and Special Employees *(except employees who are required to file public financial disclosure reports)* as determined by the criteria in Executive Order 11222 *and* implemented by Postal Service regulations, 39 CFR 447.41(a).

CATEGORIES OF RECORDS IN THE SYSTEM:

PS Forms 2417 and 2418, and supplemental statements, containing employee name, title, salary, date of appointment to present position; list of organizations in which employee has a financial interest, types of indebtedness, interest in real property *and types of outside employment. Opinions of counsel. Other information related to review of statements and conflict of interest determinations. Postal Service Governors complete Standard Form 278 in lieu of PS Forms 2417 or 2418.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 207 of the Ethics in Government Act, Pub. L. 95–521, as amended; Executive Orders 11222 and 11590.

PURPOSE(S):

These records are maintained to meet requirements of Executive Order 11222 on the filing of employment and financial interest statements. Such statements are required to assure compliance with the standards of conduct for Government employees contained in the Executive Order and title 18 of the U.S. Code, and to determine if a conflict of interest exists between the employment of individuals by the Postal Service and their personal employment and financial interests. To enable the Director of the Office of Government Ethics to ensure that these purposes are met, records maintained by the Postal Service are to be made available to that office on request. Records may also be furnished to the Executive Office of the President and to the appropriate Congressional committee when needed in connection with the nomination and confirmation of Presidential appointees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records or information may be provided to the Director, or his representative, of the Office of Government Ethics.

2. Records or information may be provided upon request to the Executive Office of the President when needed in connection with the nomination of Presidential appointees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms *and paper folders. Information from the forms may also be stored on magnetic tape or disk in automated office equipment.*

RETRIEVABILITY:

Records are *retrieved by the individual's* name *within each* organizational component.

SAFEGUARDS:

Records are kept in *lockable file cabinets to which only authorized personnel have access. Access to computer data is restricted to personnel having an official need for access.*

RETENTION AND DISPOSAL:

Records are maintained for as long as employee is subject to reporting requirements and for two years thereafter. *Records needed in an on-going investigation may be retained longer until such time as they are no longer needed for the investigation. Disposal is* by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, Headquarters, *Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

An employee wishing to inquire whether this system of records contains information about him/her or to gain access to information pertaining to him/her should direct an inquiry to the head of the facility where employed. Headquarters employees should submit requests to the SYSTEM MANAGER. Inquiries should contain full name and place of employment.

RECORD ACCESS PROCEDURES:

See NOTIFICATION above. *Individuals requesting access must also comply with USPS' Privacy Act regulations on verification of identity and access to records (39 CFR 266.6).*

CONTESTING RECORD PROCEDURES:

See NOTIFICATION above. *Since the information in these records is updated by the subject individual on a periodic basis, most record corrections can be accomplished by filing supplemental statements. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the USPS Records Officer.*

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative.

b. Ethics officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflicts of interests and persons contacted during any investigation of the allegations.

USPS 120.061

SYSTEM NAME:

Personnel Records—Public Financial Disclosure Reports for Executive Branch Personnel, 120.061.

SYSTEM LOCATION:

Law Department, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior level employees as determined by the criteria in section 201(f) of the Ethics in Government Act and implemented by Postal Service regulations, 39 CFR 47.42(a), consisting of the following persons: Postmaster General; Deputy Postmaster General; Ethical Conduct Officer; Administrative Law Judges; each employee who occupies a position that is compensated at or above level 2 of PCES I; and each employee whose basic rate is equal to or greater than the rate of basic pay for the first step of GS–16.

Note.—Records pertaining to the Governors of the Postal Service are maintained as a part of System USPS 120.060 and are not contained in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public Financial Disclosure Report (Standard Form 278, or such other forms as may be prescribed by the Director, Office of Government Ethics), containing the following types of information: Income from sources other than the Postal Service; interests in property; purchases, sales and exchanges of property; gifts and reimbursements; liabilities; positions held; and relations with other employees. Position descriptions. Opinions of counsel and other information related to review of reports and to conflict of interest determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of Ethics in Government Act of 1978, Pub. L. 95–521, amended.

PURPOSE(S):

These records are maintained to meet the public financial reporting requirements imposed by the Ethics in Government Act on high level executive personnel. The reports serve to deter conflicts of interest and to identify potential conflicts of interest by providing for a systematic disclosure and review of the financial interests of both current and prospective officers and employees. To enable the Director of the Office of Government Ethics to ensure that these purposes are met, records maintained by the Postal Service are made available to that office on request. Records may also be furnished to the Executive Office of the President and to the appropriate Congressional committee when needed in connection with the nomination and confirmation of Presidential appointees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

(1) Financial Disclosure Reports (SF 278) are available to members of the public for inspection and copying upon written request made in accordance with section 205 of the Ethics in Government Act, Pub. L. 95–521, as amended, and 39 CFR 442.42(e)(2).

(2) Records or information may be provided to the Director, or his representative, of the Office of Government Ethics.

(3) Records or information may be provided upon request to the Executive Office of the President when needed in connection with the nomination of Presidential appointees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms and paper folders. Information from the forms may also be stored on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Paper records are kept in lockable file cabinets to which only authorized personnel have access. Access to computer data is restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

Records are maintained for six years, or longer if needed in connection with a pending investigation. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, USPS Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260–1100.

NOTIFICATION PROCEDURE:

An employee wishing to inquire whether this system of records contains information about him or to gain access to information pertaining to him should direct an inquiry to the System Manager. Inquiries should contain full name and place of employment.

RECORD ACCESS PROCEDURE:

See Notification above.

CONTESTING RECORD PROCEDURES:

See Notification above. Since the information in these records is updated by the subject individual on a periodic basis, most record corrections can be accomplished by filing subsequent reports. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privact Act by contacting the System Manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, or relative.

b. Ethics officials who review the reports to make conflict of interest determinations.

c. Persons alleging conflicts of interests and persons contacted during any investigation of the allegations.

USPS 120.070

SYSTEM NAME:

Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto), 120.070.

SYSTEM LOCATION:

Personnel Offices of all USPS facilities; *National St. Louis, MO;* Personnel Records Center, E&LR Information Centers, *Headquarters and Chicago, IL; Postal Data Center, Minneapolis, MN; and* National Test Administration Center, *Alexandria, VA.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former USPS employees; and certain former spouses of current and former employees who qualify and apply for Federal Employees Health Benefits coverage under Pub. L. 98–615.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, resumes, merit evaluations, promotion/salary change and other personnel actions, letters of commendation, records of disciplinary actions, health benefit and life insurance elections and other documents pertaining to preemployment, prior Federal employment and current service as prescribed by USPS directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 1005 42 U.S.C. 2000e–16. Executive Orders 11478 and 11590.

PURPOSE:

Used by administrators, *managers, selection review committees,* and individual employee supervisors to perform routine personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F, G,* H, *I,* K, L, and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide information to a prospective employer of a USPS employee or former USPS employee.

2. To provide statistical reports to Congress, agencies, and the public on characteristics of the USPS work force.

3. To provide data for the compilation of a local seniority list that is used by management to make decisions pertaining to appointment and assignments among craft personnel. The list is posted in local facilities where it may be reviewed by USPS employees.

4. *To* transfer to the OPM upon retirement of an employee *information necessary* for processing retirement benefits.

5. Disclosure of relevant and necessary information pertaining to an employee's participation in health, life insurance and retirement programs may be made to the Office of Personnel Management and private carriers for the provision of related benefits to the participant (also see USPS 050.020).

6. Disclosure of minority designation codes may be made to the Equal Employment Opportunity Commission for the oversight and enforcement of Federal EEO regulations.

7. Disclosure of records of discipline relating to individual employees may be made to State Employment Security Agencies at the initial determination level of the unemployment compensation claim process.

8. Information pertaining to an employee who is a retired military officer will be furnished to the appropriate service finance center as required under the provisions of the Dual Compensation Act.

9. May be disclosed to a Federal or State agency, providing parent locator services or to other authorized persons as defined by Pub. L. 93–647.

10. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, preprinted forms, Official Personnel Folders, magnetic tape and other computer storage devices.

RETRIEVABILITY:

Employee name and location of employment and social security number.

SAFEGUARDS:

Folders are maintained in locked cabinets to which only authorized personnel have access; *automated records are* protected by computer passwords and tape or disc library physical security.

RETENTION AND DISPOSAL:

a. Official Personnel Folder (OPF) Records—These records are considered to be permanent and are maintained until employee is separated, and then are sent to the National Personnel Records Center, St. Louis, for storage, or to another Federal agency to which the individual transfers employment.

b. Personnel Work Sheets—Destroy 30 days after a new PS 50 is issued.

c. Temporary Records of Individual Employees—Destroy when 2 years old, upon separation, or upon transfer of employee, whichever is sooner.

d. Service Record Cards—Destroy 3 years after separation or transfer of employee."

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to gain access to their Official Personnel Folders should submit requests to the facility head where employed. Headquarters employees should submit requests to the System Manager. Former Postal Service employees should submit request to any Postal Service facility head giving name, date of birth and social security number. Former Post Office Department employees having no Postal Service employment (prior to July 1971) should submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission), *Compliance and Investigations Group, Washington, D.C. 20415–0001.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individual employee, personal references, former employers and USPS 050.020 (Finance Records—Payroll System).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.090

SYSTEM NAME:

Personnel Records—Medical Records, 120.090.

SYSTEM LOCATION:

Postal Service medical facilities and designee offices; *USPS Corporate Health Fitness Center (Headquarters only).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former USPS employees, individuals who have been offered employment but failed the medical examination before being placed on the rolls, and employees of other agencies that have entered into an agreement with the *Postal* Service *to have the Postal Services* perform medical services for the *agencies'* employees; *also Headquarters employees who participate in the corporate health/fitness program.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, *job title, social security number, installation, illness, supervisor's and physician's reports (on Authorizations for Medical Attention);*

pertinent medical history *including physical examinations, treatment received at the health unit, occupational injuries, or illnesses, substance* abuse information, findings, diagnoses and treatment, *doctor's statements and recommendations, records of immunizations,* and medical findings related to employees' exposure to toxic substances. *In addition, Headquarters employees who participate in the corporate health/fitness program will voluntarily provide data about their lifestyle, exercise schedule, smoking habits, knowledge as to personal health, personal and family medical history, nutrition, stress levels, and other data relevant to making a health risk appraisal. Records of participant employees' individualized schedules and progress may be kept.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of system: 29 U.S.C. 401, 1001.

PURPOSES:

a. To provide *all* employees with necessary health care and to determine fitness for duty; and

b. To provide a comprehensive individualized health promotion program for Headquarters employees and to determine the employee and organizational benefits of that program. (NOTE: Personal information about employee participants in the Corporate Health Fitness Program at Headquarters is under the exclusive custody of the contractor operating the Program and is not available to postal management. These data are maintained only for those employees who voluntarily provide it and under conditions assuring that it will not be disclosed without the written authority of the subject employee. Aggregated data may be provided to postal management for its use in determining the employee and organizational benefits of the program, but that data will have no personal identifiers affixed to it.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C,* D, *E, F,* G, H, *I, J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information in these records may be provided to the Office of Personnel Management in making determinations related to:

a. Veterans Preference;

b. Disability Retirement; *and*

c. Benefit Entitlement.

2. Information on these records may be provided to officials of the following Federal agencies responsible for administering benefit programs:

a. Office of Workers' Compensation Programs;

b. Retired Military Pay Centers;

c. Veterans Administration; *and*

d. Social Security Administration.

3. Records in this system may be disclosed to an employee's private treating physician and to medical personnel retained by the Postal Service to provide medical services in connection with an employee's health or physical condition related to employment.

4. May be disclosed to an outside medical service when that organization performs the physical examinations and submits the evaluation to the Postal Service pursuant to a contract with the USPS as part of an established Postal Service health program for the purpose of determining a postal employee's fitness for duty.

5. May be disclosed to the Occupational Safety and Health Administration, Department of Labor when needed by that organization to perform its duties properly in accordance with 29 CFR Part 19.

6. May be disclosed to the National Institute of Occupational Safety and Health when needed by that organization to perform its duties properly in accordance with 29 CFR Part 19.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms and paper files *(Official Medical Folders); Preprinted forms and paper files and hard-copy computer storage (Corporate Health Fitness Center records).*

RETRIEVABILITY:

Employee name.

SAFEGUARDS:

Maintained in locked files. *Access to automated Corporate Health Fitness Center records is restricted by password protection to medical screening personnel and health/fitness specialists under contract to operate the Corporate Health Fitness Program facility at Headquarters.*

RETENTION AND DISPOSAL:

a. Employee Medical Folder—Medical records considered to be permanent are maintained until employee is separated and then are sent to the National Personnel Records Center for storage, or to another Federal agency to which the individual transfers employment. The records are maintained for 30 years from the date the employee separates from Federal service.

b. Failed Eligibles—Retained in Personnel office along with employment application and destroyed by shredding when 2 years old.

c. Authorization for Medical Attention (PS 3956)—Destroy when 2 years old.

d. Corporate Health Fitness Center records—Retained by contractor operating Center until termination of contract at which time they must be returned to the USPS.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

An employee wishing to know whether information about him/*her* is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the System Manager. Failed eligibles should address inquiries to the head of the facility where application for employment was made. Inquiries should contain full name.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

USPS employees, selected eligibles, Veterans Administration and USPS medical staff.

USPS 120.098

SYSTEM NAME:

Personnel Records—Office of Workers' Compensation Program (OWCP) Record Copies, 120.098.

SYSTEM LOCATION:

All postal facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees who have voluntarily filed for injury compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of Department of Labor forms consisting of claims and supporting

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information, Postal Service forms and correspondence related to the claim; automated payment and accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1005.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PURPOSE(S):

To provide injury compensation to qualifying employees and to maintain a record of the events as a basis for managerial decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information *may be provided* to the Department of Labor for the purpose of determining whether a claimant qualifies for compensation and to what extent qualification applies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms and correspondence (Note: In some cases, the USPS by agreement with the Department of Labor (DOL) temporarily stores original case files. These files are considered to be DOL records to which DOL rather than USPS regulations apply.) Continuation of pay and DOL charge-back information is stored on computer media.

RETRIEVABILITY:

Alphabetically by name and social security number.

SAFEGUARDS:

Maintained in locked filing cabinets within the exclusive custody of the injury compensation control point. Automated records are protected through computer password security, encryptions, and/or a computer software security system.

RETENTION AND DISPOSAL:

Transfer to a Federal Records Center 5 years *after the employee has left the Postal Service;* dispose of 30 years from date the employee leaves the Postal Service.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, *Headquarters, Washington, D.C. 20260–4200;* and APMG, Department of the Controller, Washington, D.C. 20260–5200.

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURE:

See Notification Procedure above. (Note: The original case file (in most *instances*) is maintained by OWCP and must be requested from that organization as provided for under Department of Labor Privacy Act System DOL/EAS–13.)

CONTESTING RECORD PROCEDURES:

The contents of OWCP records may be contested only by contacting OWCP as provided for under the Department of Labor Privacy Act System DOL/EAS–13.

RECORD SOURCE CATEGORIES:

Information is obtained from the claimant, the supervisor, witnesses, physicians, Department of Labor, *and USPS 120.035.*

USPS 120.099

SYSTEM NAME:

Personnel Records—Injury Compensation Payment Validation Records, 120.099.

SYSTEM LOCATION:

All postal facilities having injury compensation units, National Headquarters and Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Postal Service employees who have received or are receiving injury compensation program payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of individuals whose names appear in two systems of records, research case records, and remuneration records related to injury compensation paid to current and former employees by the Postal Service. (See "Retention and disposal" for cases in which these records are converted to investigative files.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 1001, 39 U.S.C. 1005.

PURPOSE(S):

This information is used to identify instances in which improper double payments have been or are being made to Postal Service employees who have filed injury-sickness compensation claims and to maintain records of this event as a basis for: detecting fraud; seeking remuneration and/or legal action; reporting the extent of double payments nationwide; and proposing corrective legislation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer reports, paper records, correspondence and research records. (Note: These files are considered to be USPS records to which USPS regulations apply.)

RETRIEVABILITY:

Social security number.

SAFEGUARDS:

These restricted files are maintained in locked file cabinets. Access to automated records is protected through a computer security system, file encryption, and/or password protection.

RETENTION AND DISPOSAL:

a. Computer reports.

(1) *All personal information on* initial data collection reports and master file/tape *will be* destroyed *(or erased) when 3 years old.*

(2) Subsequent reports containing affirmative identifications become part of research case records.

b. Research case records (copies of records from other systems—includes computer reports, paper records, and correspondence).

(1) If research determines nonapplicability, destroy by burning or shredding 6 months after such determination is made.

(2) If research determines applicability, research records then become (a) part of an investigative case file and fall within system USPS 080.010. Inspection Requirements Investigative File System (refer to USPS 080.010 for retention and disposal instructions), or (b) a remuneration case file which is maintained for 2 years and destroyed by burning or shredding.

Extra copies of research records are destroyed at the time a remuneration or investigative case file is created.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees or former employees wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

Requests for access should be mode in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from Postal Service injury compensation case files, payment records and employment records as found in USPS Privacy Act Systems: USPS 050.020, 120.070, and 120.098; Social Security Administration death files; and pertinent Federal health benefit carrier's claim/payment files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.100.

SYSTEM NAME:

Personnel Records—Performance Awards System Records, 120.100

SYSTEM LOCATION:

USPS Personnel Division and Inspection Service, Headquarters; Regional and Divisional Offices of Inspection Service; *Division* Offices; Post Offices; Bulk Mail Centers; Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of *recognized* employee *and* pay location, *related records including letter of commendation and appreciation, correspondence or memoranda pertaining to awards from other government agencies or private organizations, length of service awards, incentive awards, recommendations, nominations, and evidence of payment made.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 45 of Title 39, U.S.C.

PURPOSE(S):

To control and measure the effectiveness of the Awards Program *under which cash awards are given to recognize and reward employees for special acts, services, or efforts in the public interest related to USPS employment or that improve USPS effectiveness.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information is summarized and furnished to the Office of Personnel Management annually, to be included in the OPM report on incentive awards to the President.

2. Disclosure may be made to the news media from the record of an individual regarding his/her receipt of an employee award when the information is of news interest and consistent with the public's right to know.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and printed forms.

RETRIEVABILITY:

Employee name, region where employed, pay location and *Division.*

SAFEGUARDS:

Physical security.

RETENTION AND DISPOSAL:

a. Incentive Award Files—Destroy 4 years from date of approval or disapproval.

b. Length of Service Award Files—Destroy when 1 year old.

c. Non-USPS Awards—Destroy 2 years after date of award.

d. Letter of Commendation and Appreciation (excluding copies filed in the OPF)—Destroy 2 years from date of letter.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the SYSTEM MANAGER. Inquiries should contain full name and pay location.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained in summary printouts supplied to each region by Postal Data Centers.

USPS 120.110

SYSTEM NAME:

Personnel Records—*Preemployment* Investigation Records, 120.110.

SYSTEM LOCATION:

USPS Facilities; Regional and National Headquarters *(all records except laboratory reports containing drug test results and related medical records which are maintained in Postal Service medical facilities and designee offices.)*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Replies from character references *and* former employers, local police records, *drug screening records including laboratory results,* drug history records and other investigative reports used to determine suitability for employment. Other records filed with these are: *Office of Personnel Management* records (privacy system—*OPM/CENTRAL–9)* compiled through a

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National Agency Check and Inquiry (NACI) and forwarded to the USPS for assistance in making a hiring decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 USC 410(b), 1001.

PURPOSE:

To determine suitability for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception noted below, general routine use statements A, B, *C,* D, E, *F, G,* H, *J,* K, *L, and* M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

Note: Only general routine use B applies to drug screening records and laboratory results identified in the "Categories of Records in the System" section of this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms and correspondence.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Laboratory results of drug testing are stored in locked file cabinets under the supervision of medical personnel. Other information is stored in locked file cabinets accessible to those with an appropriate security clearance.

RETENTION AND DISPOSAL:

a. Destroy 5 years from the date the employee is initially found suitable for employment or *5* years from the date action was taken to deny or terminate employment.

b. NACI reports are retained in the same fashion as local investigative records.

SYSTEM MANAGER(S) AND ADDRESS:

APMG. Employee Relations Department, Headquarter, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

a. Local Investigative records—Apply to the head of the postal facility where employed. Headquarters employees should submit requests to the System manager. b. *OPM* NACI reports—Apply to the *Office of Personnel Management* as instructed by privacy system *OPM/CENTRAL–9.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained primarily from local police records, former *employers,* and character references, *and drug testing laboratory.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 120.120

SYSTEM NAME:

Personnel Records—Personnel Research and Test Validation Records, 120.120.

SYSTEM LOCATION:

USPS Headquarters, Washington, D.C. (paper records only); National Test Administration Center, *Alexandria, VA, and contractor sites (paper and ADP records); and National Information Systems Development Center, Raleigh, NC and Minneapolis Postal Data Center, Minneapolis, MN (ADP records only).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for postal employment and USPS employee applicants for reassignment and/or promotion; *current employees whose work records or solicited responses are involved in research projects.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are hard-copy (paper, including scannable answer sheets) or ADP (magnetic tape, disk) and may contain the following information, depending on personnel research or test validation study: applicant and research subject demographic data, including race, sex, national origin, employment status, date of birth and geographical location; and identification data, including name, social security number or respondent identification code; project identification codes, batch codes, and information collection dates; applicant and research subject responses to, or evaluation on, personnel assessment instruments; applicant and research data and laboratory data and analysis, concerning performance, work suitability, physical condition, disciplinary incidents, awards, attendance, training or other work-related data, when used in conjunction with personnel research; and job analysis data, including respondent identification and evaluation of job activities and employee qualifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.1001.

PURPOSE(S):

To support research and development efforts in the construction and use of personnel assessment instruments (such as tests and performance evaluation forms); the analysis of employee behavior, characteristics, interests, attitudes, and physical condition affecting productivity; and the evaluation and improvement of personnel management practices. Data are collected when specific research projects are undertaken (such as pilot tryouts of personnel selection methods and job attitude surveys). Race and national origin data are used to evaluate any adverse impact of the selection process. Use of these race and national origin data is limited to research projects and test validation conducted by the Postal Service.

No *individual* personnel decisions are made in the use of these research records. Many data are collected under conditions *ensuring* their confidentiality which will be protected. Personnel information in this system of records is used *primarily* by the personnel research staff *of* the Office of *Selection and Evaluation* of the U.S. Postal Service. *Reports and analyses that result from use of this system, or use of this system in conjunction with system USPS 120.121, are based on aggregated data, with no identification of the individuals involved.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F, G,* H, *J, K, and L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To disclose information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection process, in reviewing allegations of discrimination, or in assessing the status of compliance with Federal law.

2. Disclosure of information about applicants for employment with the Postal Service may be made to the Selective Service System (SSS) under

approved computer matching efforts in which either the Postal Service or SSS acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals eligible for registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), to determine whether those individuals have complied with registration requirements, and to enforce compliance when necessary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, magnetic tape, and disks.

RETRIEVABILITY:

Depending on the research project, employee name, *social security number,* batch number, of employee's date of examination, *location, or respondent identification code.*

SAFEGUARDS:

These records are maintained in closed file cabinets in a secure facility. *Access to computer data is restricted to authorized personnel.*

RETENTION AND DISPOSAL:

Records are maintained for five years. Paper records are destroyed by shredding and computer records by erasing.

a. Hard Copy—*Paper response forms (scannable answer sheets, booklets) are destroyed upon transcription to magnetic media, usually within six months of collection. Answer sheets collected pursuant to an examination are destroyed 6* months after processing.

b. Magnetic Tape—*Retention is dependent upon the type of research project and is not to exceed* 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations, Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether this system of records contains information on them should address inquiries to the head of the *examination center of the facility that administered the test; in case of research studies involving information not collected pursuant to an examination, persons should address inquiries to the Director, Office of Selection of Evaluation.* Inquiries should contain full name, social security number, date of examination *or study,* examination number *or project name,* and place of participation in the examination *or study.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Applicants or research subjects, or others providing evaluations or work-related data on subjects as part of a research study. Other systems from which information is accessed include records relating to: Collection and Delivery, EEO, Finance, Inquiries and Complaints, Inspection Requirements, Personnel, Statistical Systems and Litigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 120.121

SYSTEM NAME:

Personnel Records—Applicant Race, Sex, National Origin and Disability Status Records, 120.121.

SYSTEM LOCATION:

USPS National Test Administration Center, *Alexandria, VA (paper and ADP records); and USPS National Information System Development Center, Raleigh, NC; and Minneapolis Postal Data Center, Minneapolis, MN (ADP records only).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for USPS examinations, including USPS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, date of birth, lead office installation number, race, sex, national origin and disability status data:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 101 and 5 U.S.C. 7201.

PURPOSE(S):

To provide the Postal Service with the ability to assess the impact of personnel selection decisions on applicants in each racial, sex, national origin and disability category. Note: These data are maintained only on those applicants who voluntarily provide it and under conditions assuring that the individual's self-identifications as to race, sex, national origin, and disability status does not accompany that individual's application when it is under consideration by a selecting official. Data are collected via a research questionnaire on an applicant-by-applicant basis and *are* used to produce summary descriptive statistics and analytical studies to evaluate personnel/organizational measurement and selection methods; *to* implement and evaluate USPS affirmative action programs; *to* determine any adverse impact *on* the overall personnel selection process; *to* identify categories of individuals for personnel research; and for related work force studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K, and L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To disclose information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection process, in reviewing allegations of discrimination, or in assessing the status of compliance with Federal law.

2. Disclosure may be made in response to the order of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, REVIEWING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, magnetic tape and disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in lockable filing cabinets in a secured room. Access *to automated data* is restricted by computer passwords.

RETENTION AND DISPOSAL:

a. Hard Copy—Destroy 6 months after processing.

b. Magnetic Tape—Maintain for 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

c. Statistical Records (without individual identifiers)—Maintained for as long as needed for the purpose of conducting longitudinal studies.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

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NOTIFICATION PROCEDURE:

Individuals wishing to know whether this system of records contains information about them should address inquiries to the head of the *examination center of the facility that administered the test.* Inquiries should be written, signed, and contain full name, Social Security Number, type of examination, examination number, and the date and place of participation in the examination.

RECORDS ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.8.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is provided by applicants taking examinations.

USPS 120.130

SYSTEM NAME:

Personnel Records—Postmaster Selection Program Records, 120.130.

SYSTEM LOCATION:

USPS *Divisions and Management Sectional Centers.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees *and external applicants* desiring to be considered for *appointment* to *a* Postmaster position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, date of birth, social security number, education summary, postal background, other employment experience, Postal Inspector's Investigative *Report,* and other pertinent personal information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

PURPOSE(S):

To provide USPS selecting officials and appointing officials with decision-making information to determine the best qualified candidates for appointment to postmaster positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, and L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed, typed or handwritten forms.

RETRIEVABILITY:

Applicant's name and post office for which application was made.

SAFEGUARDS:

Locked file cabinets in a secured facility *with access restricted to authorized personnel.*

RETENTION AND DISPOSAL:

Postmaster vacany files are retained in the selecting official's organization for 2 years and then destroyed, unless an audit, investigation, or appeal is pending. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, *Headquarters, Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether this system of records contains information on them should address inquiries to the *Field Division General Manager/Postmaster of the Division* in which the application was made. Inquiries should contain full name, the postal facility to which application was made, title and place of employment.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.8

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the employee, postal background personnel data, and from forms completed by the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 120.140

SYSTEM NAME:

Personnel Records *Employee Assistance Program (EAP) Records,* 120.140.

SYSTEM LOCATION:

EAP offices, and Employee/Labor Relations Information Center, Chicago, IL.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees who volunteer for or are referred to the Program *which is established primarily to help postal employees in their efforts to recover from alcohol and drug abuse; and applicants for EAP counselor positions.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, personal information needed to assist employee in a program of recovery, information about employee's referral, progress, participation (number of counselling contacts and leave usage while a Program participant); names of applicants for counselor positions, and related résumés, applications, and interview forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To *select and* provide Counselors with information *needed* to maintain *their* caseload and counsel individuals under the Program. *Also* used as a management *data* source for statistical reporting on the Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms and paper files. Sick leave and Leave Without Pay information is stored on computer media.

RETRIEVABILITY:

Employee name and case number.

SAFEGUARDS:

These restricted files are maintained in lock file cabinets with access limited to *EAP* personnel and in secured facilities. Automated records are protected through computer password security and encoding of personal identifiers.

RETENTION AND DISPOSAL:

a. *Supervisor/Coordinator/Specialist* Applications and Interviews—Destroy 1 year from date of application.

b. Historical Case Record Cards—*Destroy 25 years from the close of case to which card corresponds.*

c. Case Files—(1) Deceased Persons—Destroy immediately. (2) Persons completing *the* Program—*Destroy* 3 years from the date of completion. (3) Persons dropped from the Program *for reasons of termination, retirement, or withdrawal*—Destroy 1 year *from date of cutoff.* DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Employee participants and applicants for counselor positions in the Program should address inquiries to the head of the facility where participating *or making application for counselor positions* in the Program. Inquiries should contain *full* name and location of employment. Headquarters employees should submit requests to the SYSTEM MANAGER.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.8.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

RECORD SOURCE CATEGORIES:

The participating employee, *EAP* counselor and the referring source.

USPS 120.151

SYSTEM NAME:

Personnel Records—Recruiting, Examining, and Appointment Records, 120.151.

SYSTEM LOCATION:

U.S. Postal Service personnel offices and/or other offices within Postal Service facilities authorized to engage in recruiting or examining activities or *to* make appointments to positions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Job applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and professional résumés, personal applications, test scores, medical assessments, academic transcripts, letters of recommendation, employment certifications, medical records, and registers of eligibles. Restricted medical records are accumulated by personnel offices prior to transmittal to medical facilities. *The above records may include such information as name of applicant, post office of application, social security number, date of examination, employment and education background, estimates of potential, and recommendations.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.1001.

PURPOSE(S):

To provide managers, personnel officials and medical officers *with* information *for* recruiting and recommending appointment of qualified persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper files, index cards, magnetic tape, punched cards, preprinted forms and computer printed reports.

RETRIEVABILITY:

Job applicant name and/or social security number.

SAFEGUARDS:

Paper records are maintained in closed filing *cabinets* under scrutiny of designated managers. Computer records are maintained in secured facilities.

RETENTION AND DISPOSAL:

a. Applications for Employment—Dispose of upon expiration of eligibility, unless extended for an additional year at the request of the eligible *person.* b. Applications for Master Instructor Positions—Destroy 3 years after date of selection. c. Employment Registers:

(i) Notice of Rating Card—Forward to applicant.

(ii) *Alpha and numeric* Register Cards—Destroy when 10 years old. d. Outside Applicant Files:

(i) Successful Applicant Files—Move PS 50B or PS 52 as appropriate, to the *Official Personnel Folder.* Dispose of all other forms and papers when 6 months old.

(ii) Unsuccessful Applicant File—Dispose of when 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

APMG Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information *about them is maintained* in this system of records should address inquiries to the head of the facility to which job application was made. Inquiries should contain full name, social security number, and, if applicable, approximate date of application submitted and residence.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.8.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individual, school officials, former employers, supervisors, named references, Veterans Administration and State Division of Vocational Rehabilitation Counselors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 120.152

SYSTEM NAME:

Personnel Records—Career Development and Training Records, 120.152

SYSTEM LOCATION:

Postal Education and Development Centers (PEDCs) and other facilities within the Postal Service where career development training, and curriculum evaluation activities are authorized.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former postal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Career development records, applications for and records of postal and non-postal training, records containing student and manager evaluations of training received, examination and skills bank records, *and scheme examination records (including dates of examination due and taken, and results). Information within these records may include name, social security number,* special qualifications, skills or knowledge, career goals,

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education, work histories or summaries, *nominations, recommendations, and copies of personnel actions, certificates and other material contained within USPS 120.070.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.1001.

PURPOSE(S):

To provide managers, supervisors, and training and development professionals with decision-making information for employee career development, training, and assignment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVABILITY, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, index cards, magnetic tape, punched cards, preprinted forms and computer printed reports.

RETRIEVABILITY:

Employee name and social security number.

SAFEGUARDS:

Paper records are maintained in closed filing cabinets under scrutiny of designated managers. Computer records are maintained in secured facilities.

RETENTION AND DISPOSAL:

a. Management Training Program Records: (1) Trainee's Individual Files—Destroy 5 years from the date trainee leaves the program. (2) Trainee Travel Records—Destroy 1 year from date trainee leaves program. (3) Travel files of postal manager in connection with program—dispose of when 1 year old.

b. Nomination for Executive Leadership Files—Destroy 1 year from date of selection.

c. Employee Training Files—Destroy 5 years from date of training.

d. Case Examination Records—Destroy 1 year from date of separation of employee.

Certain records of examinations are maintained as part of *USPS* 120.120, Personnel Records—Personnel Research and Test Validation Records.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, *Washington, D.C. 20260–4200;* APMG, *Facilities* Department, *Washington, D.C. 20260–6400;* and APMG, *Philatelic and Retail Services* Department, *Washington, D.C. 20260–6700.*

NOTIFICATION PROCEDURE:

Current and former *field* employees wishing to know whether information *about them is* contained in this system of records should address *inquiries* to the head of the appropriate employment facility. Headquarters employees should submit requests to the System Manager. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the subject, subject's employment records, and his/her supervisor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

USPS 120.153

SYSTEM NAME:

Personnel Records—Individual Performance Evaluation/Measurement, 120.153.

SYSTEM LOCATION:

U.S. Postal Service facilities where individual performance evaluation/measurement activities are conducted.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former postal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual performance evaluation and measurement records *that include audit sheets, performance ratings, self-appraisals, statements of goals and objectives, and related correspondence.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.1001.

PURPOSE(S):

To provide managers and supervisors with decision making information for training needs, promotion and assignment considerations, or other employee/job related actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, *F,* G, H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, index cards, magnetic tapes, punched cards, preprinted forms and computer printed reports.

RETRIEVABILITY:

Employee name and social security number.

SAFEGUARDS:

Paper records are maintained in closed filing cabinets under scrutiny of designated managers. Computer records are maintained in secured facilities.

RETENTION AND DISPOSAL:

a. Merit Performance Evaluation Files—Destroy when 5 years old.

b. Individual Performance Evaluation/Measurement Records—Destroy when 10 years old or when no longer useful, whichever is sooner. DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Postmaster General having jurisdiction over the functional or administrative performance evaluation/measurement procedure.

NOTIFICATION PROCEDURE:

Current and former field employees wishing to know whether information is maintained *about* them in this system of records should address inquiries to the head of the appropriate employment facility. Headquarters employees should submit requests to the System Manager. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the subject, *the* subject's employment

records and his/her supervisor, or program director.

USPS 120.170

SYSTEM NAME:

Personnel Records—Safe Driver Award Records, 120.170.

SYSTEM LOCATION:

Motor Vehicle Offices of Postal Facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees who are full-time drivers of postal vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contain employees' name, yearly Safe Driver Awards record of any accidents in which employee is involved, *and evaluations by Safe Driver Award Committee.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide information for awarding Safe Driver Awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To furnish information to the National Safety Council for award purposes.

STORAGE:

Index cards.

RETRIEVABILITY:

Alphabetically by name of employee.

SAFEGUARDS:

Kept in closed file cabinet with limited access.

RETENTION AND DISPOSAL:

Destroy 4 years from date of separation, expiration of license, recision of authorization, or transfer of driver into a nondriving status, or other transfer (unless requested by new installation or agency).

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit the request to the SYSTEM MANAGER. Inquiries should contain full name.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the driver and from USPS accident reports.

USPS 120.180

SYSTEM NAME:

Personnel Records—Skills Bank (Human Resources Records), 120.180.

SYSTEM LOCATION:

Maintained by various postal facilities as determined by management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Different categories of USPS employees, Women, PCES and employees in various job categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, social security number, address, job position, sex, educational background, work history, salary history, skills, licenses, language, career preferences *and goals,* geographical preferences, special achievements, merit awards, project assignments, benefits, and other personal information. (The various systems in existence may contain more or less information than specified herein.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92–261, 39 USC 401, 1001.

PURPOSE(S):

Used by USPS management *to make and track employee job assignments,* to place employees in new positions, and to assist in career planning and training in general; *the system is* also used to provide statistics for personnel *and workload management.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, magnetic tape and disk files, computer reports, and microfiche.

RETRIEVABILITY:

Name and social security number.

SAFEGUARDS:

Locked file cabinets, controlled access, computer password authentication, magnetic tape library, physical security.

RETENTION AND DISPOSAL:

Paper records will be destroyed *by shredding or burning* 1 or 2 years after information is successfully entered into the system depending upon the particular program involved. Automated information will be erased 1 year after employee is terminated or is no longer in the particular job category.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200; and Chief Postal Inspector, Postal Inspection Service, Headquarters, Washington, D.C. 20260–2100.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether such a system exists at their place of employment or whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the System Manager. Inquiries should contain full name, social security number, and place of employment.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notificotion Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained directly from employee and USPS personnel forms and reports.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.190

SYSTEM NAME:

Personnel Records—Supervisors' Personnel Records, 120.190

SYSTEM LOCATION:

Any Postal *Service* facility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS Employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of summaries or excerpts from the following other USPS personnel *records* systems: 120.036, 120.070, 120.151, 120.152, 120.153, 120.180, 120.210; as well as records of discipline. In addition copies of other Postal Service records and records originated by the supervisor may be included at the supervisor's discretion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

PURPOSE(S):

To enable supervisors to efficiently manage assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records of discipline may become part of USPS 120.070 and would therefore be subject to disclosure under the routine uses of that system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, index cards, magnetic tape and disk, computer printouts.

RETRIEVABILITY:

Employee name.

SAFEGUARDS:

Paper documents/index cards are locked in supervisor's desk or filing cabinets. Computer readable media are maintained in secured data processing facilities.

RETENTION AND DISPOSAL:

a. Counseling Records—Destroy when 1 year old if there has been no disciplinary action initiated against the employee during that period.

b. Letters of Warning—Destroy when 2 years old if there has been no disciplinary action initiated against the employee during that period.

c. All Other Records—Dispose of immediately upon termination of supervisor/employee relationship.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, D.C. 20260–4200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether this *system* of records contains information on them should address inquiries to the head of the facility where employed. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Other personnel records systems, supervisor notes, employees *and* postal customers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records of information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.210

SYSTEM NAME:

Personnel Records—Vehicle Maintenance Personnel and Operators Records, 120.210.

SYSTEM LOCATIONS:

Vehicle Service Operations at Post Offices, Sectional Centers, *Division* Offices, Regional Offices, Headquarters, Bulk Mail Centers *and* Postal Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to individual employee operation of Postal Service-owned or leased vehicles, including employee name, age, length of service, physical condition, vehicle accidents, driving citations, safety awards, driver license revocations and suspensions, driving habits, vehicle training, results of driving tests; *and* qualifications to drive vehicles; employee workload, work schedule, performance analysis and work habits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To provide local post office managers, supervisors and *Manager* of Fleet Operations with information to adjust workload, change schedules, change *the* type *of* equipment operated, *change* lists of equipment assigned to employee, and used as a basis for corrective action or safe driving awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To provide GSA and USPS driver credentials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms, and computer tapes.

RETRIEVABILITY:

Employee name, vehicle number, route number, work order number, and facility name.

SAFEGUARDS:

Records are maintained in closed file cabinets in secured facilities. *Access to computer data is restricted to authorized personnel.*

RETENTION AND DISPOSAL:

Destroy 4 years from date of separation, transfer (unless requested by new installation or agency), expiration of license, recision of authorization, or transfer of driver into a nondriving status.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, DC 20260–7200.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where employed. Inquiries should contain employee's full name, social security number, route number, work station and facility where employed.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

The employee, medical doctors, driver examiner/instructor state vehicle departments and supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 120.220

SYSTEM NAME:

Personnel Records—Arbitration Case Files, 120.220.

SYSTEM LOCATION:

Office of Labor Law, Law Department, National Headquarters; *Office of Field Legal Services, Regions; and Field Divisions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees involved in labor arbitration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to proceedings when the USPS is a party in labor arbitration cases. Includes disciplinary and contract grievances, and appeals of bargaining unit employees, formal pleadings and memoranda of law, *excerpts from grievance files, supporting* documents, notes and case analyses prepared by Postal Service *advocates* and *other* personnel, and correspondence and telephone records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401. 409(d).

PURPOSE(S):

To provide advice and representation to the Postal Service *in labor arbitration cases.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

Name of litigant(s).

SAFEGUARDS:

Folders containing paper documents are kept in *lockable* filing cabinets *within secured buildings or areas* under the general scrutiny of *authorized personnel.* Computer terminals and tape/disk files are located in a secured area *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

a. Disciplinary Cases (to include removal) and contract application cases—(1) National Level—Destroy 15 years from date of final decision. (2) Field Level—Destroy 5 years from date of final decision.

b. Contract Interpretation Cases (National Level)—Transfer to a Federal Records Center when 5 years old; destroy 15 years from date of expiration of the agreement.

c. Court Actions—Transfer to a Federal Courts Center when 5 years old, destroy 15 years from date of final agreement.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Labor Relations Department, Headquarters, *Washington, DC 20260–4100.*

NOTIFICATION PROCEDURE:

Persons wishing to determine whether this system of records contains information about them should write to the System Manager and provide name, case number, if known, and the approximate date the action was initiated.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

Note—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are

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not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

(a) Employees involved in labor arbitration cases; (b) Counsel(s) or other representative(s) for parties involved in the arbitration case other than Postal Service; (c) Arbitrators; (d) Other individuals involved in labor arbitration cases. Source documents include the formal case file, *investigative reports,* and other records relevant to the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the exent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primory system shall continue to apply to the incorporated records.

USPS 120.230

SYSTEM NAME:

Personnel Records—Adverse Action Appeals (Administrative Litigation Case Files) 120.230.

SYSTEM LOCATION:

Office of Labor Law, Law Department, National Headquarters; *Office of Field Legal Services, Regions; and Field Divisions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees involved in Veterans' Appeals and other adverse action appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Formal pleadings and memoranda of law; *(b) excerpts from disciplinary or adverse action files and* other relevant documents; (c) Miscellaneous notes and case analyses prepared by Postal Service *advocates; and* (d) Correspondence and telephone records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d).

PURPOSE(S):

This information is used to provide advice and representation to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L, and* M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

Name of litigant(s).

SAFEGUARDS:

Folders containing paper documents are kept in *lockable* filing cabinets *within secured buildings or areas* under the general scrutiny of *authorized personnel.* Computer terminals are located in a secured area, *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

Destroy 7 years from date of final decision.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters, *Washington, DC 20260–4200.*

NOTIFICATION PROCEDURE:

Persons wishing to determine whether this system of records contains information about them should write to the System Manager and provide their name, case number, if known, and the approximate date the action was instituted.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

Note—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

(a) Employees involved in Veterans Appeals and other adverse action appeals; (b) Counsel(s) or other representative(s) for parties in administrative litigation other than Postal Service; (c) Other individuals involved in appeals. Source documents include the formal case file, *investigative reports,* and other records relevant to the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall

continue to apply to the incorporated records.

USPS 120.240

SYSTEM NAME:

Personnel Records—Garnishment Case Files, 120.240

SYSTEM LOCATION:

Finance Offices within USPS facilities and the Minneapolis, Postal Data Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees *whose wages are garnished to satisfy a financial obligation.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, social security number, address, employing facility, name and address of the recipient of the deduction, amount of the debt and deduction, and other data relevant to the garnishment of an employee's wages in payment of alimony, child support, or commercial debts, or state or local tax levies. Records within case files may also include notices to employee of the intent to withhold wages, court orders, worksheets for calculating or processing garnishments, and other correspondence/documents relating to the indebtedness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d).

PURPOSE(S):

To process garnishment of a postal employee's wages to satisfy a debt related to child support, alimony, a commercial obligation, or a state or local tax levy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and computer tape/disk.

RETRIEVABILITY:

Employee name.

SAFEGUARDS:

Paper and automated records are subject to controlled access.

RETENTION AND DISPOSAL:

Postal Data Center records are maintained *for six months after the debt is satisfied or cancelled; Post Office* records are maintained for *3 years after the debt is satisfied or cancelled.* Paper records are shredded and computer tape/disk records are erased at the end of retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Postmaster General, Department of the Controller, Headquarters, *Washington, D.C. 20260–5010.*

NOTIFICATION PROCEDURE:

Employees wishing to know whether this system of records contains information about them should submit requests to the facility head where employed. Headquarters employees should submit requests to the System Manager. Inquiries should include the employee's full name and case number, if known.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

The indebted employee, court related documents, and other records relating to the debt.

USPS 130.010

SYSTEM NAME:

Philately—*Benjamin* Franklin Stamp Club *Coordinators and Project Leaders* List, 130.010.

SYSTEM LOCATION:

Philatelic and Retail Services Department Headquarters, and *Philatelic Sales Division, Merrifield, VA.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adult *Coordinators* of Stamp Clubs for youth groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of club *coordinators.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.404.

PURPOSE(S):

To be used as an adjunct to a philatelic program by Sectional Center personnel, *Division* personnel, *and* individual postmasters as follows:

1. *Assisting coordinators* in forming stamp Clubs;

2. Making contact with Clubs to assist in program presentation and USPS cooperation at stamp shows and philatelic exhibits;

3. *Responding* to philatelic *information* requests;

4. Determining USPS needs for films, graphics, and publications related to philately; *and*

5. *Mailing* newsletters to Stamp Club *coordinators.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tape/disk.

RETRIEVABILITY:

Name of individual and ZIP Code within the club or stamp group *with which the individual* is associated.

SAFEGUARDS:

Computer media are stored in a fire resistant and secured facility *with controlled access.*

RETENTION AND DISPOSAL:

Records are maintained on a year-to-year basis subject to reverification each year.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Philatelic and Retail Services Department, Washington, DC 20260–6700.

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager. Inquiries should contain full name, address, and the club or stamp group with which *the requester* is associated.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to

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records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the individual to which the record refers.

USPS 130.020

SYSTEM NAME:

Philately—Educators Stamp Fun Mailing Lists, 130.020.

SYSTEM LOCATION:

Philatelic and Retail Services Department, Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Elementary school teachers in schools around the country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Teacher's name, address of school, number of students in the school, number of known stamp collectors in the school, existence of a stamp club.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 USC 401, 404.

PURPOSE(S):

To be used by the Office of Stamps to mail periodic issues of "Stamp Fun" *and reloted materials.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Coding number or school teacher's name.

SAFEGUARDS:

Controlled access to data.

RETENTION AND DISPOSAL:

Indefinitely with annual updates.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Philatelic and Retail Services* Department, Headquarters, *Washington, D.C. 20260–6700.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the above SYSTEM MANAGER. Inquiries should include full name and name and address of school.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Return responses from national mailing of "Stamp Fun."

USPS 130.040

SYSTEM NAME:

Philately—Philatelic Product Sales and Distribution 130.040.

SYSTEM LOCATION:

Philatelic and Retail Services Department, *Headquarters,* and at a contractor site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who have initiated correspondence expressing an interest in philately by (1) responding to various philatelic product sales promotion programs by submitting order forms, business reply cards, or cut outs from posters and promotional literature, (2) providing postal clerks with name and address information to receive future philatelic product announcements, (3) opening subscription accounts for philatelic products, or (4) requesting products in unsolicited correspondence, such as letters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer/subscriber name and account number, address, funds on deposit, remittance type and amount order/product specifications, order history; also, special lists identifying individuals who have submitted bad checks, and special services customers/subscribers, and individuals who have registered multiple service complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

(1) to operate a subscription service *or services* for customers who remit money for a particular philatelic product or products; (2) to maintain a file to send philatelic product announcements and sales literature to customers or subscribers; (3) to serve, as a source for statistical data for research and market analysis, billing and inventory data, and mailing basis for product shipment and (4) to identify discrete groups of customers/subscribers for better order control and service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed or handwritten form, or microform, and on magnetic tape or disk and computer printouts.

RETRIEVABILITY:

Customer/subscriber name and number, if assigned.

SAFEGUARDS:

Paper and microform records are maintained in closed filing cabinets under general scrutiny of personnel of the Philatelic Sales Division and the Building Security Guard Force. *Information* on magnetic tape and disk is protected by ADP *physical security,* technical software and administrative security or by contractors providing similar protection subject to the audit and inspection of the USPS Inspection Service.

RETENTION AND DISPOSAL:

ADP and microform records are maintained for three years after the individual has failed to make a purchase or has indicated no other interest. ADP records are obliterated after their period of usefulness; mircoform records are incinerated. Correspondence and other paper documents are retained for 3 years and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Philatelic and Retail Services* Department, Headquarters, *Washington, D.C. 20260–6700.*

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquires to the System Manager above. Inquiries should contain full name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual as is described in "*Categories* of Individuals Covered by the System" above.

USPS 140.020

SYSTEM NAME:

Postage—Postage Meter Records, 140.020.

SYSTEM LOCATION:

Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postage meter users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Customer name and address, *postal facility setting the meter, license number, date of issuance;* license application, and transaction documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

To enable responsible administration of postage meter activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

To disclose identity and address of meter user and identity of agent or user to any member of *the* public upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms *and computer tape/disk.*

RETRIEVABILITY:

Customer name and by numeric file of postage meters.

SAFEGUARDS:

Paper records *and computer storage media* are maintained in closed file cabinets in secured facilites; *automated records are protected by computer password.*

RETENTION AND DISPOSAL:

Records are maintained for 1 year after final entry or the duration of the license and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Rates and Classification Department, Headquarters, *Washington, DC 20260–5300.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the local postmaster from which license was obtained, supplying name and meter number.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from the individual and officials making entries to reflect activities.

USPS 150.010

SYSTEM NAME:

Records and Information Management Records—Information Disclosure Accounting Records [Freedom of Information Act], 150.010.

SYSTEM LOCATION:

Records Officer, *USPS* Headquarters, and records Custodians at all USPS facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit inquiries and requests for information (many of which are made pursuant to the Freedom of Information Act) about the general activities of the Postal Service.

Note.—This system may contain inquiries and requests regarding information contained in other USPS systems of records that are subject to the Privacy Act. As a result, information about individuals from other systems may, when appropriate, become part of this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name *and address* of requester, *request letters, referral letters, internal memoranda, response letters, and copies of records requested.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 412, 5 U.S.C. 552; Pub. L. 93–502.

PURPOSE(S):

To enable records custodians to respond to requests from members of the public for USPS records, and to comply with the reporting requirements of the FOIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and *M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records or information may be provided to any source from which the USPS requests additional information (to the extent necessary to identify the requesting individual, inform the source of the purpose of the request, or to identify the type of information requested), where necessary to obtain information relevant to the USPS' disclosure determination under the FOIA.

2. Records or information may be provided to the originating Federal agency in connection with a referral of an FOIA request to that agency for its disclosure determination.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders. Response letters may also be temporarily stored on magnetic disk in automated office equipment. Abbreviated or summarized information may be stored in automated equipment.

RETRIEVABILITY:

Chronologically by year and alphabetically by name of the requester except, in those instances where a requester has made his request through an attorney or agent. In the latter case, the name of the attorney or agent might appear as the requester.

SAFEGUARDS:

Case files and magnetic disks are stored in lockable file cabinets. Computer access is restricted by the use of passwords. Access to all storage

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media is limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records maintained by custodians and the Records Office are disposed of 6 years from date of final response to requester. (Files may be transferred to *USPS General Counsel* (FOIA Appeals Officer) upon request. When this is done, files may become a part of the Appeals Case Files—see USPS 150.015.)

SYSTEM MANAGER(S) AND ADDRESS:

Postal Service Records Officer, Headquarters, *Washington, D.C. 20260–5010.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the Custodian at the facility where request was sent. Inquiries should contain *the* full name *of the person who submitted the request, or the name of the attorney who submitted the request on the person's behalf,* and *the* date of *the* request.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individuals and their attorneys who submit information/records requests; USPS officials who respond to the requests; Other sources whom the USPS believes have information pertinent to a decision on the request; Other agencies referring requests to the USPS; and pertinent records responsive to the request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 150.015

SYSTEM NAME:

Records and Information Management Records—Freedom of Information *Act* Appeals *and Litigation Records,* 105.015

SYSTEM LOCATION:

General Administrative Law Division, Law Department, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit *administrative* appeals *or bring suit against the Postal Service* under the Freedom of Information Act *on account of* denials of access to records maintained by the Postal Service. *Note.—This system may contain inquiries and requests regarding information contained in other USPS systems of records that are subject to the Privacy Act. As a result, information about individuals from other systems may, when appropriate, become part of this system.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to administrative appeals made by individuals to the General Counsel for information under the provisions of the FOIA (5 U.S.C. 552) including copies of appeal letters, appeal decisions, initial request and decision letters, internal memoranda, referral letters, and copies of records requested under the FOIA. Litigation case files may contain the aforementioned types of records as well as pleadings, memoranda of law, notes and case analyses prepared by attorneys and other personnel, and other documents incidental to the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

PURPOSE(S):

To enable the General Counsel to carry out his duties as appellate authority, *to assist in the representation of the Postal Service in FOIA-related litigation,* and to comply with *the* reporting requirements *of the FOIA.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and *M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records or information may be provided to the Department of Justice *for* its coordination of responses to requests for information, and to prepare reports required by 5 USC 552(d).

2. Records or information may be provided to a Federal agency in order to obtain advice and recommendation concerning matters on which the agency has specialized experience or particular competence that may be useful to the USPS in making required determinations under the FOIA.

3. Records or information may be provided to any source from which the USPS requests additional information (to the extent necessary to identify the requesting individual, inform the source of the purpose of the request, or to identify the type of information requested), where necessary to obtain information relevant to the USPS' disclosure determination under the FOIA.

4. Records or information may be provided to the originating Federal agency in connection with a referral of an FOIA request to that agency for its disclosure determination.

5. Appeal decision letters may be made available for public inspection and copying.

6. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

7. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state, or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal and litigation case records are stored in paper folders. *Appeal decision letters are also stored in binders and on magnetic tape or disk in automated office equipment, and are maintained for public inspection in the Headquarters Library. Abbreviated or summarized information is stored on index cards and in automated equipment.*

RETRIEVABILITY:

Chronologically by year; numerically by appeal number; and alphabetically, by name of the requester except in those instances where a requester has an appeal filed on his behalf by an attorney *or agent. In the latter case, the name of the attorney or agent* might appear as the requester appellant. *Litigation case records are retrieved by the style of the civil action.*

SAFEGUARDS:

Appeal and litigation case files are stored in lockable file cabinets under the general scrutiny of Postal Service attorneys. Access is limited to personnel whose official duties require access. Library copies of appeal decision letters are available for public inspection. Access to computer data is restricted to personnel having an official need for access.

RETENTION AND DISPOSAL:

Appeal decision letters are retained indefinitely. Appeal and litigation case files are retained for ten years following the date of the final agency decision, or ten years following the final adjudication in case of a civil suit, whichever is applicable. Records are destroyed by shredding, burning, or the equivalent.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, *USPS* National Headquarters, *Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should write to the System Manager and provide the following information: the name of the person who submitted the appeal, or the name of the attorney who submitted the appeal on the person's behalf, and the year in which the appeal was made; or, when applicable, the name of the plaintiff in the civil action and the year in which the civil action was filed.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

Individuals and their attorneys who submit FOIA requests and appeals; USPS officials who respond to FOIA requests; Other sources whom the USPS believes have information pertinent to a decision on the FOIA request or appeal; Other agencies referring requests to the USPS; and pertinent records from other USPS systems of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 150.020

SYSTEM NAME:

Records and Information Management Records—Information Disclosure Accounting Records (Privacy Act), 150.020.

SYSTEM LOCATION:

Records Officer, USPS Headquarters and records Custodians at all USPS facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any USPS employee or citizen who makes an inquiry *or request for information or amendment of a record subject to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Note.—This system may contain inquiries and requests regarding information contained in other USPS systems of records that are subject to the Privacy Act. As a result, information about individuals from other systems may, when appropriate, become part of this system.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of inquirer, other personal identifying information such as social security number and date of birth, request letters, referral letters, internal memoranda, response letters, accountings of disclosures, and copies of records at issue.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401; *5 U.S.C. 552a.*

PURPOSE(S):

To enable records custodians to respond to requests from employees or members of the public for records the USPS maintains pursuant to the provisions of the Privacy Act, and to comply with reporting requirements of that Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, C, D, E, F, G, H, J, K, L, and *M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records or information may be provided to any source from which the USPS requests additional information (to the extent necessary to identify the requesting individual, inform the source of the purpose of the request, or to identify the type of information requested), where necessary to obtain information relevant to a USPS decision concerning a Privacy Act request.

2. Records may be disseminated to a Federal agency which originally furnished the records for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction.

3. Records or information may be disseminated to any appropriate Federal, State, local, foreign agency or other appropriate source for the purpose of verifying the accuracy of information that is the subject of an individual's request for amendment or correction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders. Response letters may also be temporarily stored on magnetic disk in

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automated office equipment. Abbreviated or summarized information may be stored in automated equipment.

RETRIEVABILITY:

Chronologically by year and alphabetically by name of the requester except, in those instances where a requester has made his request through an attorney or agent. In the latter case, the name of the attorney or agent might appear as the requester.

SAFEGUARDS:

Case files and magnetic disks are stored in lockable file cabinets. Computer access is restricted by the use of passwords. Access to all storage media is limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Request letters and related correspondence are retained for two years. Accountings of disclosures are retained for five years or the life of the disclosed record, whichever is longer. All records are destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Postal Service Records Officer, Headquarters, *Washington, DC 20260–5010.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the Custodian at the facility where request was sent. Inquiries should contain *the* full name *of the person who submitted the request, or the name of the attorney who submitted the request on the person's behalf,* and *the* date of *the* request.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individuals and their attorneys who submit amendment/records requests; USPS officials who respond to the requests; Other sources whom the USPS believes have information pertinent to a decision on the request; Other agencies referring requests to the USPS; and pertinent records responsive to the request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 30 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 150.025

SYSTEM NAME:

Records and Information Management Records—Privacy Act Appeals *and Litigation Records,* 150.025.

SYSTEM LOCATION:

General Administrative Law Division, Law Department, USPS Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit *administrative* appeals *or bring suit against the Postal Service pursuant to the provisions of the Privacy Act of 1974.*

Note.—This system may contain inquiries and requests regarding information contained in other USPS systems of records that are subject to the Privacy Act. As a result, information about individuals from other systems may, when appropriate, become part of this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains correspondence and other documents related to administrative appeals made by individuals to the General Counsel under the provisions of the Privacy Act (5 U.S.C. 552a), including copies of appeal letters, appeal decisions, initial request and decision letters, internal memoranda, referral letters, and copies of the records at issue. Litigation case files may contain the aforementioned types of records as well as pleadings, memoranda of law, notes and case analyses prepared by attorneys and other personnel, and other documents incidental to the litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a.

PURPOSE(S):

To enable the *General Counsel* to carry out his duties as appellate authority, *to assist in the representation of the Postal Service in Privacy Act litigation,* and to comply with reporting requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J, K, L,* and *M listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Records or information may be provided to the Department of Justice *for* its coordination of responses to requests for information and to prepare reports required by 5 U.S.C. 552a(p).

2. Records or information may be provided to a Federal agency in order to obtain advice and recommendation concerning matters on which the agency has specialized experience or particular competence that may be useful to the USPS in making required determinations under the Privacy Act.

3. Records or information may be provided to any source from which the USPS requests additional information (to the extent necessary to identify the requesting individual, inform the source of the purpose of the request, or to identify the type of information requested), where necessary to obtain information relevant to a USPS decision concerning a Privacy Act request.

4. Records may be disseminated to a Federal agency which originally furnished the records for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction.

5. Records or information may be disseminated to any appropriate Federal, State, local, foreign agency or other appropriate source for the purpose of verifying the accuracy of information that is the subject of an individual's request for amendment or correction.

6. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

7. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Appeal and litigation case records are stored in paper folders. Appeal decision letters are also stored in binders and on magnetic tape or disk in automated office equipment. Abbreviated or summarized information is stored on index cards and in automated equipment.

RETRIEVABILITY:

Chronologically by year; numerically by appeal number; and alphabetically by name of the requester except in those instances where a requester has an appeal filed on his behalf by an attorney *or agent.* In *the latter case,* the name of the attorney *or agent* might appear as the requester appellant. *Litigation case records are retrieved by the style of the civil action.*

SAFEGUARDS:

Appeal and litigation case files are stored in lockable file cabinets under the general scrutiny of Postal Service attorneys. Access to paper records and to computer data is limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Appeal decision letters are retained indefinitely. Appeal and litigation case files are retained for ten years following the date of the final agency decision, or ten years following the final adjudication in case of a civil suite, whichever is applicable. Records are destroyed by shredding, burning, or the equivalent.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, USPS Headquarters, Washington, D.C. 20260–1100.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should write to the System Manager and provide the following information: the name of the person who submitted the appeal, or the name of the attorney who submitted the appeal on the person's behalf, and the year in which the appeal was made; or, when applicable, the name of the plaintiff in the civil action and the year in which the civil action was filed.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request merely because the record has been incorporated into this system as a result of the appeal process. That is, after an individual has requested amendment of a specific record in a USPS system under provisions of the Privacy Act, that specific record may itself become part of this system of case records. An individual may not subsequently request amendment of that specific record again simply because a copy of the record has become part of the second system of records.

Generally, review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

Individuals and their attorneys who submit Privacy Act requests and appeals; USPS officials who respond to Privacy Act requests; Other sources whom the USPS believes have information pertinent to a decision on the Privacy Act request or appeal; Other agencies referring requests to the USPS; Pertinent records from other USPS systems of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the exent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 160.010

SYSTEM NAME:

Special Mail Services—Insured and Registered Domestic Mail Inquiry and Application for Indemnity Records, 160.010.

SYSTEM LOCATION:

Rates and Classification Department, Headquarters, Postal Data Center, St. Louis, MO, and Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insured and registered domestic mail claimants/*requesters,* including mail senders and addressees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of mail sender and addressee: declaration of claimant/*requester, and* claim/inquiry status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

To respond to inquiries on the status of domestic insured and registered mail, and *to adjudicate* claims related to such mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Handwritten and typed forms, computer readable media and printouts.

RETRIEVABILITY:

Claimant/*requester's name, mailer's name, date of mailing, and* registered article number, *or claim number, date of mailing, mailer's name, and insured article number.*

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SAFEGUARDS:

Handwritten and typed forms are maintained in steel file cabinets with use limited to claims personnel. Computer readable media are stored in protected areas, and access to the media is confined to authorized data processing personnel.

RETENTION AND DISPOSAL:

Domestic inquiries are maintained for two years. Claim records are maintained for one year at St. Louis Postal Data Center and then transferred to the Federal Records Center and maintained for another three years. All records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Rates and Classification Department, Headquarters, *Washington, D.C. 20260–5300.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where the insured or registered domestic claim was filed. If claim has been filed, inquiry should include claim number, *(if insured mail),* date of claim, insured or registered number of article mailed, *and the date of mailing.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Information from the individual completing the claim/inquiry form.

USPS 160.020

SYSTEM NAME:

Special Mail Services—Insured and Registered *Ordinary* International Mail Inquiry and Application for Indemnity Records, 160.020.

SYSTEM LOCATION:

Rates and Classification Department, USPS Headquarters; Postal Data Center, St. Louis, MO; and International *Claims and Inquiries* Offices in New York, New Orleans and San Francisco.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insured and registered international mail claimants *requesters,* including mail senders and *addressees,* declaration of claimants *requesters, and* claim/inquiry status information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and description of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404:

PURPOSE(S):

To respond to inquiries regarding international mail, and *to adjudicate* insured and registered international mail claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. To refer an international mail inquiry or claim to the appropriate foreign postal authority when required for resolution.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Handwritten and typed forms, computer readable media and printouts.

RETRIEVABILITY:

Claimant/*requester's* name, case number, *and* registered *or insured* article number.

SAFEGUARDS:

Handwritten and typed forms are maintained in steel file cabinets with use limited to claims personnel. Computer readable media are stored in protected areas, and access to the media is confined to authorized data processing personnel.

RETENTION AND DISPOSAL:

Destroy when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Rates and Classification Department, Headquarters, *Washington, D.C. 20260–5300.*

NOTIFICATION PROCEDURE:

Persons wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where the insured or registered foreign mail claim was filed. If claim has been filed, inquiry should include claim number, date of claim, insured or registered number of article mailed.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Individual completing the claim/inquiry form.

USPS 160.030

SYSTEM NAME:

Special Mail Services—Express Mail Service Insurance Claims for Loss, Delay and Damage, 160.030.

SYSTEM LOCATION:

St. Louis Postal Data Center, St. Louis, MO; *International Claims and Inquiries Office, New York, NY; post offices.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Express Mail claimants (mailers or addressees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of mailer and addressee, description of contents mailed, amount claimed, receipts of mailing and delivery, and other documentation supporting the claim and its adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

To adjudicate Express Mail claims for loss, delay and damage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file cabinets in original typed, handwritten, copied or printed form; *and on computer-readable media.*

RETRIEVABILITY:

EMS item number, date of mailing, name of *sender, and country of destination (for international items).*

SAFEGUARDS:

Maintained in steel file cabinets *by post office* Express Mail Marketing personnel and *by* Claims Personnel in the Rates and Classification Department *and the International Claims and Inquiries Office. Computer-readable media are stored in protected areas having controlled access.*

RETENTION AND DISPOSAL:

PDC records are retained for *two years.*

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Rates and Classification Department, Headquarters, *Washington, D.C. 20260–5300.*

NOTIFICATION PROCEDURE:

Claimants wishing to know whether information about them is maintained in this system of records should address inquiries to the SYSTEM MANAGER.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

The claimant or designated representative.

USPS 170.010

SYSTEM NAME:

Statistical (Cost) Systems—Workload Reporting Records, 170.010.

SYSTEM LOCATION:

Workload Reporting Records are located and/or maintained in various Departments and Facilities of the USPS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USPS employees and contract employees assigned to work on specific projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include employee initials and surname, organizational unit and division, work hours on daily, weekly, or pay period basis by course number designated, social security number, systems code, weekly totals and pay period totals, project number, project name, name of customer contact, estimated completion date, estimated resources, actual contact, and general remarks about the development of the project.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404.

PURPOSE(S):

The system is used to determine project costs for billing customers for services and by management to schedule work loads and staffing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, *L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms, magnetic tape and disks.

RETRIEVABILITY:

Employee initials and name, project number, system code, social security number, pay period or project name.

SAFEGUARDS:

Maintained in secured area within secured facility.

RETENTION AND DISPOSAL:

In some cases, records are retained for one year and then automatically deleted from computer disks and paper files are destroyed by shredding. Some records are maintained on computer tape beyond one year for historical and trend analyses.

SYSTEM MANAGER(S) AND ADDRESS:

The department of facility head where such records are required.

NOTIFICATION PROCEDURE:

Employees wishing to gain access to this information should address inquiries to the department or facility head where employed at the time of work load reporting. Inquiries should contain full name and project name and number.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Prepared by employee or supervisor as activities occur.

USPS 190.010

SYSTEM NAME:

Litigation—*Miscellaneous* Civil Action *and Administrative Proceeding* Case Files, 190.010.

SYSTEM LOCATION:

Law Department, Regional and National Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation *or formal administrative proceedings* to which the USPS is a party or in which information or testimony is sought from Postal Service sources. *This system includes only those litigation matters that are not specifically included in other Postal Service systems that cover particular litigation subject areas.*

Note.—These files constitute a Privacy Act system of records only to the extent that personally identifying information about an individual is in fact retrieved from the files by use of the individual's name or other personal identifier. Generally, information in litigation files is retrieved by reference to the case name or number; in those instances where the case name or number is not the personal identifier of an individual, the file does not constitute a Privacy Act system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal pleadings, *and briefs, investigative reports, exhibits and other documentary evidence, affidavits, discovery documents, decisions and orders,* memoranda of law, miscellaneous notes and case analyses prepared by Postal Service attorneys and other personnel, correspondence and telephone records, and other relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. *204,* 401, 409(d); *39 CFR Subchapter N.*

PURPOSE(S):

This information is used to provide legal advice and representation to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system*

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notices apply to this system. Other routine uses are as follows:

1. Information contained in these records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. A record may be transferred, and information from it disclosed to any Federal agency as may be appropriate for the coordinated defense or prosecution of related litigation or the resolution of related claims or issues without litigation.

3. A record may be disclosed in a Federal, state, local, or foreign judicial or administrative proceeding in accordance with the procedures and practices governing such proceeding.

4. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By case name or by case or docket number. Although case files may contain items of information about particular individuals, there is not necessarily a means for retrieving information about a particular individual by the individual's name or other personal identifier.

SAFEGUARDS:

Folders containing paper documents are kept in *lockable* filing cabinets under the general scrutiny of Postal Service attorneys. Computer terminals and tape/disk files are located in a secured area, *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

Selected records are *retained for as long as subject matter has value for reference and research purposes. All other records are retained in accordance with the applicable Postal service Retention Schedule.* Paper records are *destroyed by shredding or burning,* and computer tape/disk records are erased.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, *USPS* Headquarters, *Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

Persons wishing to determine whether this system of records contains information about them should write to the System Manager and provide their name and current address, the case number and court of record, if known, the approximate date the action was instituted, and a brief description of the nature of the action.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR § 266.6. The right to access may be limited by various provisions of 5 U.S.C. 552a, including subsection (d)(5).

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access* Procedures above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

Individuals involved in the proceedings, their attorneys or other representatives, agency officials, law enforcement agencies, witnesses, and relevant records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 190.020

SYSTEM NAME:

Litigation Records—National Labor Relations Board Administrative Litigation Case Files, 190.020

SYSTEM LOCATION:

Office of Labor Law, Law Department, National Headquarters *and Office of Field Legal Services, Regions.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who are charging parties in NLRB cases, or on whose behalf NLRB charges have been filed by a collective bargaining representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Formal pleadings and memoranda of law; (b) Other relevant documents, (c) Miscellaneous notes and case analyses prepared by Postal Service attorneys and personnel; (d) Correspondence and telephone records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d), *1208.*

PURPOSE(S):

This information is used to provide legal advice and representation to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By name of charging party or individual on whose behalf a charge has been filed or by NLRB case number.

SAFEGUARDS:

Case folders are kept in *lockable* filing cabinets *within secured buildings or areas* under the general scrutiny of Postal Service attorneys. Computer terminals and tape/disk files are located in a secured area, *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

Selected records are maintained on an active basis until subject matter has no information value, and on inactive basis for an additional three years. All other records are maintained for five years. Paper records are shredded and computer tape/disk records are erased at the end of retention period.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, Headquarters, *Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

Persons *wishing to determine whether this system of records contains information about them should write to the System Manager and provide* their name, NLRB case number, if known, *and approximate date the action was initiated.*

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

RECORD SOURCE CATEGORIES:

(a) Employee involved in NRLB cases: (b) Counsel(s) or other representative(s) for parties involved in the case other than the Postal Service; (c) The National Labor Relations Board and its General Counsel; (d) Other individuals involved in NRLB cases. Source documents include case files, *investigative reports,* and other relevant records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporoted records.

USPS 190.030

SYSTEM NAME:

Litigation Records—*Employee & Labor Relations Court Litigation Case* Files, 190.030.

SYSTEM LOCATION:

Office of Labor Law, Law Department, National Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in employee and labor relations *litigation.*

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Pleadings in court cases; (b) Briefs and legal memoranda; (c) Correspondence and telephone messages; and (d) Other documents relevant to cases filed in the courts or compiled in contemplation that a case will be filed in the courts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d).

PURPOSE(S):

This information is used to provide legal advice and representation to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

2. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state or local licensing or regulatory authority for possible disciplinary action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper folders and on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

By topic title or name of individual.

SAFEGUARDS:

Folders are kept in *lockable* filing cabinets *within secured buildings or areas* under the general scrutiny of Postal Service attorneys.Computer terminals and tape/disk files are located in a secured area *and access is restricted to personnel having an official need.*

RETENTION AND DISPOSAL:

Selected records are maintained on an active basis until subject matter has no information value, and on inactive basis for an additional three years. All other

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records are maintained for five years. Paper records are shredded and computer tape/disk records are erased at the end of retention period.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Law Department, Headquarters, *Washington, D.C. 20260–1100.*

NOTIFICATION PROCEDURE:

Persons wishing to determine whether this system of records contains information about them should write to the System Manager and provide their name, *case number,* if known, *and the approximate date the action was initiated.*

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access* Procedures above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding

RECORD SOURCE CATEGORIES:

(a) Individuals involved in employee and labor relations matters; (b) Counsel(s) or other representative(s) for parties in an action other than the Postal Service; (c) Other individuals involved in this matter. Source documents include internal memoranda, court related documents, case files and other relevant records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 200.010.

SYSTEM NAME:

Non-Mail Monetary Claims—Relocation Assistance Claims, 200.010.

SYSTEM LOCATION:

Facilities Department, Headquarters, and all Regional *Facilities offices.* Departments.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners and tenants of real property purchased or leased by the U.S. Postal Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed claim forms and other documents related to indemnifying occupants of property acquired by the U.S. Postal Service. *Information within these documents include name and address of claimant, address of vacated dwelling, itemized expenses incurred in moving, interim renting, and replacement housing.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) and 39 U.S.C. 401.

PURPOSE(S):

This information is used to adjudicate claims for reimbursement of relocation expenses incurred by owners and tenants of real property acquired by the U.S. Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, H, and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. May be disclosed to a Federal compliance investigator for case or program review.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file cabinets in original, typed, printed, or handwritten form.

RETRIEVABILITY:

Alphabetically by claimant name within project file.

SAFEGUARDS:

Maintained in locked file cabinets within the *exclusive* custody of *Facilities* Department management personnel.

RETENTION AND DISPOSAL:

Records are retained for the life of the facility and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Facilities Department, Headquarters, *Washington, D.C. 20260–6400.*

NOTIFICATION PROCEDURE:

Claimants wishing to know whether information about them is maintained in this system of records should address inquiries to the same facility to which they applied for relocation benefits.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access procedures above.*

RECORD SOURCE CATEGORIES:

Information is obtained from previous dwelling owner or tenant claimant and Postal Service claim reviewers and adjudicators.

USPS 200.020

SYSTEM NAME:

Non-Mail Monetary Claims—Monetary Claims *for Personal Property Loss or Damage* involving Present or Former Employees, 200.020.

SYSTEM LOCATION:

Employee Relations Department, Headquarters, and field facilities; Postal Data Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees (or their survivors or agents) making a claim for loss or damage to personal property while on duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Form or written claim of loss or damage, supporting documents such as bills, receipts, repair estimates, replacement estimates, and investigative reports. Data within documents may include employee name and address, date and description of loss or damage occurrence, insurance coverage and deductible, and amounts of claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409(d).

PURPOSE(S):

To adjudicate employee claims for loss or damage to their personal property in connection with or incident to their postal employment duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper documents and computer tape/disk.

RETRIEVABILITY:

By name of *claimant.*

SAFEGUARDS:

Folders containing paper documents are kept in locked filing cabinets under the general scrutiny of Postal Service attorneys. Computer terminals and tape/disk files are located in a secured area.

RETENTION AND DISPOSAL:

Records are destroyed 3 years from date claim is adjudicated.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Washington, D.C. 20260–4200.

NOTIFICATION PROCEDURE:

Claimants wishing to know whether information about them is maintained in this system of records should address inquiries to the head of the facility where the claim was filed. Headquarters employees should submit their inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Claimants or their agents making monetary claims for loss or damage to personal property; Witnesses; investigative sources, and insurance companies.

USPS 200.030.

SYSTEM NAME:

Non-Mail Monetary Claims—Tort Claim, Records, 200.030

SYSTEM LOCATION:

Claims Division, Law Department at Headquarters and regions, Postal Inspection Service,

Division Headquarters, Post Offices and *Postal* Data Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in accidents as a result of postal operations or alleging money damages under the provisions of the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, tort claims filed, documentary evidence in support of tort claims *administrative appeals, payment records, correspondence, locator cards, and papers pertaining to* litigation arising out of tort claims. *Litigation case files may contain the aforementioned types of records as well as summonses, lists of witnesses, witness statements, litigation reports, copies of processes and formal pleadings, briefs, supporting documents, notes and case analyses, correspondence, telephone records, and other documents related to the litigation.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2671–80, 39 U.S.C. 409(c).

PURPOSES:

To be used by attorneys and other employees of the Postal Service to consider, settle and defend against tort claims made against the USPS under the Federal Tort Claims Act; *to support effective program management by accident prevention and safety officers; and to provide pertinent information regarding safety, accidents and claims to equipment manufacturers, suppliers, and their insurers.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F,* G, *H, J, K, L,* and M *listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. *Records may be* transferred to *the* Department of Justice, other governmental agencies, and other persons *or entities* involved in a claim against the Postal Service, *including lessors, insurers, or other parties who may be jointly liable to the claimant or who may owe USPS a duty to defend, insure, indemnify or contribute, when appropriate,* or *for* use in adjudication, civil litigation and criminal prosecution.

2. *Disclosure may be made to* provide members of the American Insurance Association Index System with certain information related to accidents and injuries.

3. *Disclosure may be made to* provide information to USPS accident prevention and safety officers.

4. *Disclosure may be made to* furnish information to insurance companies that have named the United States as an additional insured or coinsured *party* in liability insurance policies.

5. *Disclosure may be made to* provide information to equipment manufacturers, *suppliers,* and their insurers for claims considerations and possible improvement of equipment *and supplies.*

6. *Disclosure may be made* to respond to a subpoena *duces* tecum and other appropriate court order and summons.

7. May be disclosed to independent contractors retained by the Postal Service to provide advice in connection with the settlement or defense of claims filed against USPS.

8. Information contained in litigation records is public to the extent that the documents have been filed in a court or public administrative proceeding, unless the court or other adjudicative body has ordered otherwise. Such public information, including information concerning the nature, status and disposition of the proceeding, may be disclosed to any person, unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

9. When considered appropriate, records in this system may be referred to a bar association or similar Federal, state, or local licensing or regulatory authority for possible disciplinary action.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records kept in file folders and other suitable containers. Some information may also be stored on magnetic tape or disk in automated office equipment.

RETRIEVABILITY:

Information may be retrieved by *claimant's* name or Postal Inspection Service case number. *Litigation case files are retrieved by case name or name of plaintiff.*

SAFEGUARDS:

Records are maintained in ordinary filing equipment under general scrutiny of postal personnel. *Access to computer data is restricted to authorized personnel.*

RETENTION AND DISPOSAL:

a. *Paid Claims and Disallowed Claims (Journal Cases and Litigation Case Files).*— Transfer to a Federal Records Center 2 years *after final adjudication;* destroy when *7* years old.

b. *Closed* Case Files *(Cases Where Claims Were Neither Allowed nor Disallowed)*— Transfer to a Federal Records Center when 2 years old; destroy when *5* years old.

c. PDC Payment Records—Transfer to a Federal Records Center when 1 year old; destroy when 4 years old.

d. Locator Cards—Destroy when 7 years old.

SYSTEM MANAGER(S) AND ADDRESS:

(1) General Counsel, Law Department, Headquarters, *Washington, D.C. 20260–1100;* (2) Chief Postal Inspector, Headquarters, *Washington, D.C. 20260–2100.*

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should write to the head of the facility where the claim was filed and provide full name and date and place of the occurrence that gave rise to the filing of a claim under the Federal Tort Claims Act. Inquiries regarding records maintained by the Inspection Service should be directed to the Chief Postal Inspector. Inquiries regarding records maintained by the Law Department should be directed to the General Counsel.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification *and Record Access Procedures* above.

Note.—Review of requests seeking amendment of records which have previously been the subject of a judicial or quasi-judicial administrative action will be limited in scope. The amendment provisions of the Act are not intended to permit the alteration of evidence presented in the course of an adjudication, nor are they intended to provide a means for collaterally attacking the finality of a judicial or administrative decision. Review of requests for amendment of adjudicative records will be restricted to determining whether the records accurately reflect the action of the judicial or administrative body ruling on the case, and will not include a review of the merits of the action.

RECORD SOURCE CATEGORIES:

Claimants *and their attorneys,* reports of postal employees involved in accidents, local police reports, Inspection Service investigative reports, American Insurance Association Index reports, *and pertinent records from other USPS systems of records.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access pursuant to 5 U.S.C. 552a(d)(5). In addition, the USPS has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a (j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system shall continue to apply to the incorporated records.

USPS 210.010.

SYSTEM NAME:

Contractor Records—Architect Engineers Selection Records, 210.010

SYSTEM LOCATION:

Facilities Department, *regional Facilities Service Centers.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional Architect Engineers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information profile on individual's past experience and present qualifications in the field of providing architect engineering services. *These profiles may include firm name and address, name of principals, personnel statistics, history of fee receipts, experience, and names of associate firms.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401

PURPOSE(S):

To facilitate the review and assessment of the qualifications of architect-engineer firms which have potential for selection and award of a contract to perform architect-engineer services under a designated facility project.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H,* and *J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Printed forms.

RETRIEVABILITY:

State, city and name of individual or firm.

SAFEGUARDS:

Records access is limited to authorized personnel in the *Facilities* Department. Records are retained in filing receptacles in locked quarters and in a secured building facility.

RETENTION AND DISPOSAL:

a. Architect-Engineer and Related Services Questionnaire, SF 254—Destroy when 1 year old.

b. Architect-Engineer and Related Services for Specific Projects, SF 255—When a contract is awarded, attach form to contract; otherwise, destroy when 1 year old.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Facilities* Department, USPS Headquarters.

NOTIFICATION PROCEDURE:

Any persons desiring information about this system of records should address their inquiries to the designated SYSTEM MANAGER and provide his name and project title.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Persons and firms interested in being considered for the negotiation and award of architect-engineer services contracts under the Major Facilities Program.

USPS 210.020

SYSTEM NAME:

Contractor Records—Driver Screening System Assignment Records, 210.020.

SYSTEM LOCATION:

Delivery, Distribution & Transportation Department, Headquarters postal facilities employing persons under a highway contract with the USPS; and Transportation Management *Service Centers.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons under a highway contract with the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contractor Employee Assignment Notifications and Personnel Questionnaires that include name, social security number, *birthdate and place, address and employment history, driver's license number, date and type of assignment, route number,* and highway contract to which assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To ascertain employees *suitability for* having an assignment requiring access to mail or postal premises under contract with the USPS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J,* K, and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originally typed, printed or handwritten form; magnetic tape and computer printed reports.

RETRIEVABILITY:

Primarily by highway contract and postal locations serviced; secondarily, by individual's social security number and name.

SAFEGUARDS:

Through computerized codes and passwords, access is restricted to offices that are the authority for a specific contract and to only those post offices serviced by the contract.

RETENTION AND DISPOSAL:

Records are held one year after the contract expires, or one year following an individual's employment termination with a company that has been awarded a highway contract.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, D.C. 20260–7100.*

NOTIFICATION PROCEDURE:

Contractors wishing to know whether information about them is maintained in this system of records should address inquiries to the *Transportation Management Services Center* Manager. Inquiries should contain full name and highway contract number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

The contractor.

USPS 210.030

SYSTEM NAME:

Contractor Records—Contractor Employee Fingerprint Records, 210.030

SYSTEM LOCATION:

Delivery, Distribution & Transportation Department, Headquarters; Regional Offices; *and postal facilities having contract personnel.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons under contract with the USPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fingerprint cards containing prospective contractor's name, social security number, *address, date and place of birth, personal description characteristics, and* fingerprints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401.

PURPOSE(S):

To determine if a contractor employee has had a previous arrest record *and* to provide information to the Contracting Officer with regard to the USPS screening procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G,* H, *J, K,* and *L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:*

1. All USPS fingerprint charts are sent to the Federal Bureau of Investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original typed, printed or handwritten form.

RETRIEVABILITY:

Contractor employee name.

SAFEGUARDS:

Maintained in locked file cabinets by Administrative Officials.

RETENTION AND DISPOSAL:

Records are kept until employee leaves employment of USPS and then are destroyed 2 years later by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, *Delivery, Distribution & Transportation* Department, Headquarters, *Washington, DC 20260–7100.*

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Regional Postmaster General within the region where employed. Inquiries should contain full name and social security number.

RECORD ACCESS PROCEDURES:

Requests for access should be made in accordance with the Notification

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Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification and Record Access Procedures above.*

RECORD SOURCE CATEGORIES:

Contractor employed by the USPS.

USPS 220.010

SYSTEM NAME:

Marketing Records—Marketing Data Base Customer Records.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters; Marketing and Communications, Regions; Marketing/Customer Service, Divisions and MSCs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers or employees of corporations, other business firms, and organizations that are volume users of postal services; USPS account representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Organization names, addresses, and telephone numbers; size of firm; Standard Industrial Classification Code; officers of the organization or other contact persons; purchase records for USPS services; information on service or equipment needs; USPS account representatives and other postal employees serving the organization and calls made on the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE(S):

To provide market information about business customers for USPS employees to use to sell postal products and services, assure account management, conduct research, plan new products and services, and otherwise make financial and operational decisions about the condition of the USPS. Specifically, this includes:

1. Assisting account representatives and other marketing and postal personnel in contacting and servicing customers and selling postal services.
2. Developing and conducting market research.
3. Targeting promotion campaigns, newsletters.
4. Testing new products and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, *F, G, H, J, K, and L listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape or disks.

RETRIEVABILITY:

Organization name, organization identification number, services purchased, Zip Code area, sales territory, USPS account representative, and Division/MSC.

SAFEGUARDS:

Computer records are subject to computer security procedures, including password access.

RETENTION AND DISPOSAL:

Records are maintained for three years after final entry and then deleted from the data base.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters, *Washington, D.C. 20260–6300.*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the Division Field Director of Marketing and Communications for their geographic area.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification *and Record Access Procedures* above.

RECORD SOURCE CATEGORIES:

Information is obtained from USPS business customers, statements of mailing and other USPS forms completed by the customer, commercial data bases, and account representatives' personal knowledge.

USPS 220.020

SYSTEM NAME:

Marketing Records—Express Mail Service Customer Mailing List.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters, and its regional, divisional and sectional center marketing components.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of Express Mail service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of users of Express Mail service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

PURPOSE:

To communicate information and updates concerning Express Mail service to current users of that service and to provide management with statistical data to analyze usage of and improve Express Mail service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use statements A, B, *C, D,* E, F, *G, H, and J listed in the Prefatory Statement at the beginning of the Postal Service's published system notices apply to this system.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer storage media and hardcopy printouts.

RETRIEVABILITY:

Name of user and ZIP Code.

SAFEGUARDS:

Records are kept in a secured area, with access limited to authorized marketing personnel; access to information in computer files is limited to personnel having an authorized computer password.

RETENTION AND DISPOSAL:

The master computer file is maintained indefinitely and is updated annually. Hardcopy printouts are destroyed when updated printouts are generated.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters, *Washington, DC 20260–6300.*

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the System Manager and supply their name and address.

RECORD ACCESS PROCEDURE:

Requests for access should be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity set forth at 39 CFR 266.6.

CONTESTING RECORD PROCEDURE:

See Notification and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Express Mail mailing forms and labels, most of which collect information directly from the customer.

List of U.S. Postal Service Facilities Referenced Herein.

The address of each Postal Service facility to which requests may be sent (referred to in systems descriptions), other than post offices and the geographical area served, is provided below. The addresses of individual post offices are not provided because of their large number and because that information is available locally to all concerned individuals.

The addresses of all Postal facilities, including locations in Puerto Rico, and the Virgin Islands are contained in THE NATIONAL FIVE-DIGIT ZIP CODE AND POST OFFICE DIRECTORY, Publication 65, STOCK NUMBER, 039–000–00274–4, available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–1575.

Postmasters, upon request, will supply the addresses of the Management Sectional Centers and Division Offices to which they report.

The following excerpt to addresses and areas serviced is provided for convenience of Privacy Act correspondents, and obviates the repetition in each notice.

POSTAL SERVICE REGIONAL OFFICES

Regional Postmaster General, Central Region, 433 W. Van Buren Street, Chicago, IL 60699–0100. (States serviced: IL, MI, IN, HY, WY, MN, IA, MO, ND, SD, NE, KS, CO, WY.)

Regional Postmaster General, Eastern Region, P.O. Box 8601, Philadelphia, PA 19101–0100. (States serviced: VA, WV, MD, DE, PA, DC, and KY, NC, OH, SC and ZIP Code prefixes 420–424 and 476–477 in IN: and ZIP Code prefixes 080–084 in NJ.)

Regional Postmaster General, Southern Region, 1407 Union Avenue, Memphis, TN 38166–0100. (States serviced: TN, AL, MS, TX, LA, GA, FL, OK, and AR.)

Regional Postmaster General, Northeast Region, 6 Griffin Road North, Windsor, CT 06006–0100. (States serviced: RI, MA, NH, CT, NY, PR, VI, VT, ME and ZIP Code prefixes 070–079 and 085–089 in NJ.)

Regional Postmaster General, Western Region, 850 Cherry Avenue, San Bruno, CA 94099–0100. (States serviced: CA, NV, HI, AK, WA, OR, MT, ID, UT, AZ, NM and ZIP Code prefixes 797–799 in TX and all Pacific Possessions and Trust Territory.)

INSPECTION SERVICE

Chief Postal Inspector, U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260–2100.

TRAINING INSTITUTE

William F. Bolger Management Academy, 10000 Kentsdale Drive, Potomac, MD 20858–4320.

NATIONAL TEST ADMINISTRATION CENTER

National Test Administration Center, U.S. Postal Service, Alexandria, VA 22314–4648.

BULK MAIL CENTERS

Atlanta, 1800 James Jackson Pky, NW, Atlanta, GA 30369–9998.

Chicago, 7500 West Roosevelt Road, Forest Park, IL 60130–2211.

Cincinnati, 3055 Crescentville Road, Cincinnati, OH 45235–9998.

Dallas, 2400 Dallas-Ft. Worth Tpke., 75398–9998.

Denver, 7755 East 58th Avenue, CO 80238–9997.

Des Moines, 4000 NW., 109th Street, Des Moines, IA 50395–0001.

Detroit, 17500 Oakwood Boulevard, Allen Park, MI 48101–2788.

Greensboro, 3701 West Wendover Avenue, Greensboro, NC 27495–9998.

Jacksonville, 7415 Commonwealth Avenue, Jacksonville, FL 32099–9998.

Kansas City, 4900 Speaker Road, Kansas City, KS 66106–1093.

Los Angeles, 5555 Bandini Blvd., Avenue, Bell, CA 90201–9997.

Memphis, 1921 Elvis Presley Boulevard, Memphis, TN 38136–9998.

Minneapolis-St. Paul, 3165 South Lexington Avenue, St. Paul MN 55121–2288.

New Jersey, 80 County Road, Jersey City, NJ 07097–9998.

Philadelphia, 1900 Byberry Road, Philadelphia, PA 19116–9997.

Pittsburgh, P.O. Box 1000, Warrendale, PA 15095–1000.

St. Louis, 5800 Phantom Drive, Hazelwood, MO 63042–2487.

San Francisco, 2501 Rydin Road, Richmond, CA 94804–9998.

Seattle, 34301 9th Ave. S. Federal Way, WA 98003–0500.

Springfield, 190 Fiberloid Street, Springfield, MA 01151–1088.

Washington, 9201 Edgeworth Drive, Capitol Heights, MD 20743–9997.

[FR Doc. 89–24918 Filed 10–25–89; 8:45 am]

BILLING CODE 7710–12–M

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54
ISS
206
OC
26
1989
UMI

federal register

Thursday
October 26, 1989

Part III

Environmental Protection Agency

40 CFR Part 260 et al.

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Supplement to Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 270, and 271

[FRL-3358-5 EPA/OSW-FR-89-024]

RIN 2050-AA72

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency.

ACTION: Supplement to proposed rule.

SUMMARY: On May 6, 1987 (52 FR 16982), EPA proposed rules to control the burning of hazardous waste in boilers and industrial furnaces. Those rules would control emissions of products of incomplete combustion (PICs), toxic metals, and hydrogen chloride (HC1) as well as require a 99.99% destruction and removal efficiency for hazardous organic constituents in the waste. EPA has received substantial commenta on the proposed rules, and as a result, is considering alternative approaches to several provisions of the proposed rule. The Agency is also considering issuance of a proposal to amend the hazardous waste incinerator standards to make those rules consistent with these proposed standards.

The purpose of this notice is to request comment on alternate approaches to address the following issues: control of CO, metals, HC1, and particulate emissions, the small quantity burner exemption, the definition of waste that is indigenous when burned for reclamation (e.g., of metal values), revisions to the proposed definition of halogen acid furnaces, applicability of the metals and organic emissions controls to smelting furnaces involved in materials recovery, and the status under the Bevill amendment of residues from burning hazardous waste.

DATES: EPA will accept public comments on this notice until December 26, 1989. The Agency notes that the comment period is reopened to address only the issues discussed in this notice. The comment period on other issues addressed by the proposed rule closed on July 27, 1987.

ADDRESSES: Comments should be sent to RCRA Docket Section (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 ATTN: Docket No. F-80-BBSP-FFFFF. The public docket is located in Room 2427 and is available for viewing from 9:00 am to 4:00 pm, Monday thru Friday, excluding legal holidays. Individuals interested in viewing the docket should call (202) 475-9327 for an appointment.

FOR FURTHER INFORMATION CONTACT: RCRA HOTLINE, toll free, at (800) 424-9346 or at (202) 382-3000. Single copies of this notice are available by calling the RCRA Hotline. For technical information, contact Dwight Hlustick, Combustion Section, Waste Management Division, Office of Solid Waste, OS-322, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382-7917.

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Today's notice is organized into two parts. Part One contains background information that summarizes the major revisions which are being considered to the May 6, 1987, proposed rule. See 52 FR 16982. It also describes how today's proposed rule would relate to the planned amendments to the incinerator standards that the Agency may soon propose.

Part Two describes the alternative approaches the Agency is considering to address several issues. EPA is requesting comment on these alternatives because they differ substantially from the provisions proposed. The Agency will consider comments on the original proposal as well as on the alternatives discussed here in developing final rules for promulgation. Alternatives on which we are soliciting comment are: adding a particulate standard for boilers and furnaces; and developing alternative standards for carbon monoxide (CO) (to limit products of incomplete combustion (PICs)), toxic metals, and hydrogen chloride (HCl). We also discuss in this part revisions being considered to the small quantity burner exemption to make the risk assessment used to establish the exempt quantities consistent with the assessment used to establish the metals, HCl, and PIC standards. In addition, we discuss in this part an expansion to the definition of waste that would be considered indigenous to particular types of devices when it is reclaimed. Industrial furnaces burning indigenous waste solely for reclamation (i.e., not for energy recovery or destruction) would not be subject to any of the proposed emission standards. Finally, we discuss here the Agency's current thinking on the applicability of the Bevill exclusion (see RCRA section 3001(b)(3)(A) (i)-(iii)) to residues from fossil fuel-fired boilers, cement kilns, and industrial furnaces that process ores and minerals, when such devices also burn or process hazardous waste.

In this notice, EPA is considering a number of changes to the May 6, 1987, proposed rule. Several changes are a result of comments received on the proposal. Others result from the Agency's revised risk assessment approach. As a result, EPA is considering: (1) Adding a particulate emissions standard for boilers and industrial furnaces; (2) alternatives to the proposed carbon monoxide standard based on risks posed by emissions of products of incomplete combustion; (3) establishing emissions controls for six additional toxic metals; (4) revising the small quantity burner exemption to base it on an upgraded risk assessment; and (5) expanding the definition of indigenous waste as it applies to industrial furnaces involved in the reclamation of hazardous wastes.

PART ONE: BACKGROUND

I. Legal Authority

These regulations were proposed under the authority of section 1006, 2002(a), 3001, 3004, 3005, and 3007 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, the Quiet Communities Act of 1978, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6905, 6912(a), 6921, 6924, 6925, and 6927.

II. Overview of This Notice

The purpose of this notice is to request comments on various alternatives to the May 6, 1987, proposed rule. The alternative approaches the EPA is discussing today may be incorporated in the final rule.

III. Relationship of This Notice to the May 6, 1987, Proposed Rule

Comments on the alternative approaches discussed in today's notice will be considered as well as comments on the proposed rule in developing a final rule for promulgation. The basic methodology for developing the alternate standards discussed today is the same as used to develop the May 6, 1987, proposal. The conservative Screening Limits discussed today are based on the principle that ground level concentrations of pollutants emitted from a facility must not result in unacceptable health risk to a maximum exposed individual. Thus, these Screening Limits are similar in concept to the Tier I-Tier III metals and HCl Standards proposed in 1987. The major change in the metals and HCl Standards would be to establish limits based on effective stack height (i.e., physical stack height plus plume rise) in lieu of the thermal capacity and type of the combustion device. This would result in less over-regulation because the limits would be established as a function of effective stack height, a key site-specific factor in dispersion of stack emissions.

The risk assessment methodology also remains basically the same as proposed on May 6, 1987. The only change is an upgrading of the air dispersion models based on revisions to EPA-recommended air dispersion models.

Finally, we are updating Appendices A (reference air concentrations) and B (risk specific doses) originally published on May 6, 1987, and corrected on July 8, 1987 to reflect current health effects data. Both Appendices are provided in their entirety as appendices to this notice.

IV. Relationship of This Notice to the Planned Hazardous Waste Incinerator Revisions

It is EPA's intention to make the standards for burning [1] hazardous waste as uniform as possible given that the potential risks posed are similar irrespective of the type of combustion device. This approach also should be easier for both the regulated community and EPA to implement. Accordingly, the Agency is considering a proposal, which may be noticed shortly, to revise the existing hazardous waste incinerator standards under Subpart O of 40 CFR part 264 to provide controls for PICs, metals, and HCl that are identical to those described in today's notice for boilers and industrial furnaces.

The Agency plans to address in a future rulemaking an issue of particular interest to owners and operators of boilers and industrial furnaces; the Agency plans to propose to expand the definition of industrial furnace (which presently applies to only controlled flame devices) to include any of the currently designated devices that are supplied with heat energy by any means. Thus, for example, electric arc smelting furnaces would be included in the definition.

PART TWO: ALTERNATIVES BEING CONSIDERED

I. Particulate Standards

A. Justification for Particulate Standard

EPA received numerous comments on the May 6, 1987, proposed rule suggesting the need for a particulate standard for boilers and furnaces burning hazardous waste. Many respondents believed that unregulated particulate emissions could pose a significant threat to human health because toxic metals and organic compounds may be absorbed onto particulate matter (PM), and because PM, *per se*, could pose a health risk because the smaller size particles may be entrained in the lungs.

[1] For the purpose of this notice, "burning" in industrial furnaces includes reduction as well as combustion. As additional information, EPA plans to propose to expand the definition of industrial furnaces in 40 CFR 260.10 to include those designated furnaces that engage in any form of thermal processing, not just combustion. Thus, that proposal would include as regulated industrial furnaces electric arc smelting furnaces processing metal-bearing hazardous waste to recover metals. The Agency plans to include that proposal in the Federal Register notice to amend the incinerator standards. See discussion in text. The Agency is not including the proposal to expand the definition of industrial furnace in today's notice because this notice is considered a supplemental notice to the May 1987 proposed rule, rather than a new proposed rule or reproposal.

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In light of these comments, EPA is considering establishing a particulate emission standard for boilers and industrial furnaces. Even though we believe that the proposed metals and organic emissions standards would adequately protect public health based on current knowledge about toxic pollutants and available risk assessment methodologies, we acknowledge that there are serious limitations to the proposed health-based standards for metals (see section B.3 below). A PM control standard would provide additional protection by ensuring that absorbed metal and organic compounds would be removed from stack gases with the collected PM.

B. Selection of Particulate Standard

EPA is considering limiting particulate emissions from boilers and industrial furnaces based on the current hazardous waste incinerator standard of 0.08 gr/dscf (grains/dry standard cubic foot), corrected to 7 percent oxygen. We are selecting this particulate limit because it would provide a common measure of protection from particulate emissions from boilers, industrial furnaces, and incinerators burning hazardous waste.

We acknowledge that a particulate standard for boilers and industrial furnaces may be redundant in some cases for a number of reasons: (1) EPA may have established (usually more stringent) particulate standards for the facility as New Source Performance Standards (NSPS) under the Clean Air Act; (2) the States may have established particulate standards for the facility under the Clean Air Act's State Implementation Plan (SIP) required to ensure that the National Ambient Air Quality Standard for particulate matter is not exceeded; and (3) the metals and HCl emission standards proposed for boilers and furnaces burning hazardous waste may result in particulate emissions well below 0.08 gr/dscf. We believe, however, that there would be many situations where the standards would not be redundant. As discussed below, NSPS standards would not apply to many boilers and industrial furnaces. SIP standards may not apply to many units with relatively small capacity. Finally, many boilers may burn hazardous waste with low levels of metals and chlorine such that emission controls, if needed, may not lower particulate emissions to 0.08 gr/dscf. Thus, we believe that particulate standard would frequently not be redundant, and where redundant, the additional burden of compliance, if any, would not be significant.

In selecting a particulate standard for boilers and industrial furnaces, we considered the following alternatives:

1. *Apply the current NSPS Standard for Steam Generators Burning Waste.* EPA promulgated NSPS for steam generators burning waste with or without other fuels that limit particulate emissions from new municipal waste combustors (MWCs) to 0.03–0.04 gr/dscf. (See 40 CFR 60.43(b)). New MWCs would be subject to this standard because they almost invariably are designed to recover energy. Thus, the Agency has, in effect, lowered the 0.08 gr/dscf NSPS promulgated in 1981 at 40 CFR 60.52 for new solid waste incinerators to 0.03–0.04 gr/dscf. Given that EPA based the hazardous waste incinerator particulate standard on the 1981 municipal incinerator standard (0.08 gr/dscf), it could be argued that the Agency should lower the hazardous waste incinerator particulate standard accordingly to 0.03–0.04 gr/dscf. This would allow the Agency to take advantage of advances in the state-of-the-art of particulate control technology. However, as explained in Section B.3., EPA is not prepared to propose to lower the hazardous waste incinerator particulate standard at this time. This issue will be discussed further in the planned revisions to the hazardous waste incinerator standards.

2. *Apply the Applicable NSPS.* Under this approach, the particulate matter NSPS applicable to a source category (e.g., cement kilns) would be applied to all units in that category irrespective of date of construction or size. (The NSPS as authorized by the Clean Air Act apply only to new units, and often small-capacity units are exempt.)

EPA has promulgated particulate matter NSPS for a number of devices including boilers; cement kilns; lime kilns; asphalt concrete drying kilns; primary lead, zinc, and copper smelters; and secondary lead and bronze smelters. These standards generally result in particulate emissions concentrations ranging from 0.01 to 0.05 gr/dscf. However, many devices that burn hazardous waste (e.g., light-weight aggregate kilns) are not covered by NSPS regulations. Therefore, standards would have to be developed for these devices. Development of these standards will take a significant amount of time and effort on the part of the Agency.

In addition, the economic impacts of applying the NSPS to existing and small devices may be substantial given that the standards were developed to control particulate emissions to the limit of technical and economic feasibility for new units (without consideration of retrofitting issues. We discuss below, however, that we are beginning an effort to establish a best demonstrated technology (BDT) particulate standard for boilers and industrial furnaces. In that evaluation, we will consider whether the NSPS represent BDT.

3. *Apply the Existing Hazardous Waste Incinerator Standard.* We believe that the existing hazardous waste incinerator standard of 0.08 gr/dscf (see 40 CFR 340.342(c)) should be applied to all boilers and industrial furnaces burning hazardous waste (unless more stringent NSPS or SIP Standards already apply to the device). This would ensure that the same interim cap on particulate emissions applies to all hazardous waste combustion devices until BDT particulate standards can be developed. The 0.08 gr/dscf standard is readily achievable and should not result in significant economic impacts. Preliminary data indicate that approximately 10–20 percent of boilers and industrial furnaces burning hazardous waste would be required to upgrade or install particulate control equipment or otherwise reduce emissions to meet the standard.

In addition to providing some control of particulate metals and adsorbed organic compounds, the 0.08 gr/dscf standard should also ensure that the National Ambient Air Quality Standard (NAAQS) for particulates is achieved in most cases. An analysis of existing sites shows that emissions of particulates at 0.08 gr/dscf could result in MEI levels of up to 30% of the maximum daily PM_{10} (particulate matter under 10 microns) NAAQS (150 mg/m^3). If background particulate levels at a site are already high (i.e., the site is in a non-attainment area), however, particulate emissions from the device should be addressed as part of the State Implementation Plan (SIP) (as they are now for hazardous waste incinerators in particulate non-attainment areas). Therefore, although the 0.08 gr/dscf standard may not ensure compliance with the NAAQS in every situation, this issue will be addressed by the SIP since the facility would be, by definition, in a non-attainment area for particulate emissions.

As mentioned above, EPA is undertaking an effort to investigate a best demonstrated technology (BDT) particulate standard for boilers and industrial furnaces burning hazardous waste. (We are also investigating a BDT particulate standard for hazardous waste incinerators.) Although we believe the proposed metals and PIC controls provide substantial protection

of public health, those risk-based controls have limitations including: (1) Health effects via indirect exposure to carcinogens (e.g., deposition of metals and uptake through the food chain), ecological effects, and synergistic effects have not been considered; (2) without adequate health effects data to establish acceptable ambient levels, emissions limits cannot be established (e.g., we are not proposing emission limits for selenium for this reason); and (3) constituent-specific, risk-based emission limits must be implemented by limiting feed rates, which can be difficult given the variability of waste matrices and pollutant concentrations. Given these concerns, we believe that a BDT particulate standard is necessary to adequately protect public health and the environment. Once the BDT particulate standard is promulgated (after proposal and opportunity for public comment), the risk-based controls would be used to supplement the BDT standard on a case-by-case basis to address situations where the BDT standard may not be fully protective. We specifically request comment on whether NSPS particulate limits can be considered BDT. Further, given that time and budget constraints are likely to limit development of BDT standards for only the primary types of devices that burn hazardous waste (e.g., oil, gas, and coal-fired boilers, cement kilns, light-weight aggregate kilns), we request comment on how BDT particulate standards can be established on a case-by-case basis during the permitting process for other types of devices.

C. Implementation of the Particulate Standard

1. *Preferred Option.* EPA wants facilities in interim status to comply with the particulate standard as quickly as possible and believes that it is reasonable to require compliance within 24 months of promulgation of the final rule. Accordingly, the source would have to demonstrate initial compliance under 40 CFR part 60, appendix A, Methods 1–5, within twelve months of promulgation. The compliance test must be representative of worst-case waste-fuel/operating conditions with respect to particulate emissions that will occur during interim status. Previous testing under the Clean Air Act could be used to make this demonstration if the operating conditions meet the conditions specified above. Final compliance for those sources that are unable to demonstrate initial compliance would be required within 24 months of promulgation (whether or not the facility has received a final RCRA permit). The compliance alternatives are: (1) Modify operations of the facility to bring it into compliance (e.g., upgrade air pollution control equipment); or (2) implementation of closure (under 40 CFR 265.111). The Regional Administrator could, however, extend the compliance period if the owner or operator can show inability to make the required modifications due to situations beyond its control, e.g., the required equipment is unavailable from vendors within the regulatory time frame. This option is EPA's preferred alternative for implementation of particulate standards.

2. *Alternative Options.* EPA is also considering the following alternative interim status requirements to bring sources into compliance with the particulate standard. One alternative would require facilities that cannot demonstrate compliance (within 12 months of promulgation) to submit a compliance plan to the Agency within 15 months of promulgation which ensures expedient compliance (i.e., within 12 months of Agency approval). Another alternative would require the source to submit a complete Part B, RCRA Permit Application, or to cease burning hazardous waste and complete closure requirements within 18 months of promulgation. EPA requests comments on each of these alternatives to implement the particulate standard as quickly as possible.

II. Alternative PIC Controls

The 1987 proposed boiler and industrial furnace rule would limit flue gas carbon monoxide (CO) levels to ensure that these devices do not emit products of incomplete combustion (PICs) at levels that could pose unacceptable health risk. The Agency discusses here its revised thinking on how best to establish controls on PIC emissions and we are also considering a proposal, which may be noticed shortly, to apply the revised approach to control PIC emissions from hazardous waste incinerators as well. We discuss below the comments received on the proposed rule and describe the revised approach.

A. Comments on Proposed CO Standard

The proposed boiler and industrial furnace rule would have applied the same CO emissions limits to all boilers and industrial furnaces: a lower limit of 100 ppmv over a 60-minute rolling average and a 500 ppmv limit over a 10-minute rolling average. The hazardous waste feed would be automatically cut off if either limit was exceeded, and hazardous waste burning operations would have to cease pending review by enforcement officials if the waste feed were cut off more than 10 times a month. The lower limit of 100 ppmv was selected as representative of steady-state high efficiency combustion conditions resulting in PIC emissions that would not pose a significant risk. The higher limit of 500 ppmv was proposed to limit the frequency of emission spikes that inevitably accompany routine operational transients, such as load changes and start-up of waste firing.

Many commenters opposed the proposed CO trigger limits and associated limits on the number of waste feed cutoffs. Principally, commenters objected to one set of CO emission limits applicable to all boilers and industrial furnaces. Further, they argued that PIC emissions would not be significant if, when the waste feed was cut off, combustion chamber temperatures were maintained while the waste remained in the chamber. Thus, they argued that there was no need to limit the number of waste feed cutoffs.

Commenters indicated that several types of boilers and many cement kilns would not be able to meet the proposed 100 ppmv limit even though hydrocarbon concentrations would not be high at the elevated CO levels. For example, boilers burning residual oil or coal typically operate with CO emission levels above the proposed 100 ppmv limit because of inherent fuel combustion characteristics, equipment design constraints, routine transient combustion-related events, requirements for multiple fuel flexibility, and compliance with NO_x emission standards. Attempts to reduce CO emissions from these devices to meet the proposed limits may prove unsuccessful in addition to the possibility of heavy penalties in thermal efficiency if successful.

Similarly, industry and trade groups for the cement industry voiced strong opposition to the 100 ppmv limit for cement kilns. These commenters indicated that some cement kilns, especially modern precalciners, routinely emit CO above the proposed 100 ppmv limit. In general, commenters indicated that while the proposed limits may be appropriate for combustion devices in which only fuel (fossil or hazardous waste) enters the combustion chamber, they are inappropriate for cement kilns and other product kilns in which massive amounts of feedstocks are processed. These feedstocks can generate large quantities of CO emissions which are, in large part, unrelated to the combustion efficiency of burning the waste and fuel. Whereas all the CO from boilers and some industrial furnaces is combustion-generated, the bulk of the CO from product kilns can be the result of

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process events unrelated to the combustion conditions at the burner where wastes are introduced.[2] Therefore, limiting CO emissions from these combustion devices to the proposed 100 ppmv level may be difficult and not warranted as a means of minimizing risk from PICs.

In summary, commenters argued that the proposed CO limits would be difficult or virtually impossible to meet in some cases, and, thus, inappropriate given that EPA has not established a direct correlation between CO, PIC emissions, and health risk.

In light of these concerns, commenters suggested that EPA establish CO limits for specific categories of devices based on CO levels achieved by units operating under best operating practices (BOP). We considered this approach but determined that equipment-specific CO trigger limits would be difficult to establish and support and would not necessarily provide adequate protection from PIC emissions. For example, the BOP CO level for a precalcining cement kiln may be 800 ppmv, a level that industry representatives indicate may be typical in some situations for that device. If that CO level, in fact, results in part from the inefficient combustion of hazardous waste, PICs may be emitted at levels that pose significant risk. (We note, however, that PIC emissions may or may not be high when CO levels are high. However, in all known instances, PIC emissions are low when CO levels are under 100 ppmv.)

EPA nonetheless believes that the CO limits should be flexible to avoid major economic impacts on the regulated community given that we cannot say that when CO levels exceed 100 ppmv that PIC emissions will always, or even often, result in significant health risk. At some elevated CO level, however, PIC emissions would pose significant risk. Unfortunately, we cannot at this time identify the precise trigger level—the trigger level may vary by type and design of device and fuel mix. Consequently, we have developed a two-tiered approach to control PICs. Under Tier I, CO would be limited to the 100 ppmv limit proposed in 1987. (See appendix A for background information on the basis for the Agency's concern about PIC emissions and the use of CO to minimize the potential health risk.) Under Tier II, the 100 ppmv CO limit would be waived under two alternative approaches: (1) a demonstration that total hydrocarbon (THC) emissions are not likely to pose unacceptable health risk using conservative, prescribed risk assessment procedures; or (2) a demonstration that the THC concentration in the stack gas does not exceed a good operating practice-based limit of 20 ppmv. Although we prefer the technology-based approach for reasons discussed below, we request comment on the health-based alternative as well.

B. Proposed Tier II Controls

If the highest hourly average CO level during the trial burn exceeds the Tier I limit of 100 ppmv, a higher CO level would be allowed under two alternative approaches: a health-based approach, or a technology-based approach.[3] We prefer the technology-based approach for reasons discussed below. One of the alternatives will be selected for the final rule based on public comment and Agency evaluation, including a critique by the Agency's Science Advisory Board (SAB).[4]

1. *Health-Based Approach.* Under the health-based approach to waive the 100 ppmv CO limit, the applicant would be allowed to demonstrate that PIC emissions from the combustion device pose an acceptable risk (i.e., less than 10^{-5}) to the maximum exposed individual (MEI). Under this approach, we would require the applicant to quantify total hydrocarbon (THC) emissions during the trial burn and to assume that all hydrocarbons are carcinogenic compounds with a unit risk that has been calculated based on available data. The THC unit risk value would be 1.0×10^{-3} m^3/μg and represents the adjusted, 95th percentile weighted (i.e., by emission concentration) average unit risk of all the hydrocarbon emissions data in our data base of field testing of boilers, industrial furnaces, and incinerators burning hazardous waste. The weighted unit risk value for THC considers emissions data for carcinogenic PICs (e.g., chlorinated dioxins and furans, benzene, chloroform, carbon tetrachloride) as well as data for PICs that are not suspected carcinogens and are considered to be relatively nontoxic (e.g., methane, and other C_1 as well as C_2 pure hydrocarbons, i.e., containing only carbon and hydrogen). We adjusted the data base as follows to increase the conservatism of the calculated THC unit risk value: (1) We assumed that the carcinogen formaldehyde is emitted from hazardous waste combustion devices at the 95th percentile levels found to be emitted from municipal waste combustors;[5] and (2) we assumed that every carcinogenic compound in Appendix VIII of Part 261 for which we have health effects data but no emissions data is actually emitted at the level of detection of the test methods, 0.1 ng/1. Finally, we assigned a unit risk of zero to noncarcinogenic compounds (e.g., C_1–C_2 hydrocarbons such as methane, acetylene). The calculated unit risk value for THC is 1×10^{-6} m^3/μg, comparable to the value for carbon tetrachloride.[6]

To implement the health-based approach with minimum burden on permit writers and applicants, we have established conservative THC emission Screening Limits as a function of effective stack height, terrain, and land use. See appendix B. These Screening Limits were back-calculated from the acceptable ambient level for THC, 1.0 μg/m^3 (based on the unit risk value discussed above and an acceptable MEI risk of 10^{-5}), using conservative dispersion coefficients. (We also used those dispersion coefficients to develop alternative emissions and feed rate limits for metals and HC1, as discussed below. The basis for those dispersion coefficients is also discussed below.) If THC emissions measured during the trial burn do not exceed the THC emissions Screening Limits, the risk posed by THC emissions would be considered acceptable. If the Screening Limits are exceeded, the applicant would be required to conduct site-specific dispersion modeling using EPA's "Guidelines on Air Quality Models (Revised)" to demonstrate that the

[2] For example, CO can be generated from the trace levels of organic matter contained in the raw materials as the materials move down the kiln from the cold end to the hot end where the fuel and waste is fired. CO can also be generated by combustion of fossil fuel at the base of the precalciner, which takes combustion gases from the kiln and heats them further with fossil fuel to precalcine the raw materials before feeding into the kiln. Although hazardous waste may not be fired in a precalciner, inefficient combustion of the precalciner fuel will result in high flue gas CO levels.

[3] This two-tiered approach would supersede the approach proposed in 1987 whereby the waste feed would be cutoff within 10 minutes of exceeding a 100 ppmv hourly rolling average CO level and immediately when exceeding a 500 ppmv rolling 10 minute average. We believe that the approach proposed in today's notice is more environmentally conservative and supportable in light of commenters' concerns about the technical support for the dual range CO limits and averaging periods proposed in 1987.

[4] EPA's SAB reviewed the proposed PIC controls in the spring of 1989 and a final report is scheduled to be available in the fall of 1989.

[5] Because of its extremely high violatility, special stack sampling and analysis procedures are required to measure formaldehyde emissions. Such testing has not been successfully conducted during EPA's field testing of hazardous waste combustion devices.

[6] For additional technical support, see U.S. EPA, "Background Information Document for the Development of Regulations for PIC Emissions from Hazardous Waste Incinerators," December, 1988 (Draft Final Report).

(potential) MEI exposure level (i.e., the maximum annual average ground level concentration) does not exceed the acceptable THC ambient level.

2. *Technology-Based Approach.* Under this Tier II approach, the Tier I CO limit of 100 ppmv would be waived if THC levels in the stack gas do not exceed a good operating practice-based limit of 20 ppmv.

We have developed this technology-based approach because of concern about scientific limitations of the risk-based approach. In addition, the risk-based approach could allow THC levels of several hundred ppmv—levels that are clearly indicative of upset combustion conditions.

The Agency believes that risk assessment can and should be used to limit the application of technology-based controls—that is, to demonstrate that additional technology controls, even though available, may not be needed. However, we are sufficiently concerned that our proposed THC risk assessment methodology may have limitations particularly when applied to THC emitted during poor combustion conditions (i.e., situations where CO exceeds 100 ppmv) that we are considering a cap on THC emissions. Although we believe the development of a risk-based approach is a step in the right direction, we are concerned whether the risk-based approach is adequately protective given our limited data base on PIC emissions and understanding of what fraction of organic emissions would be detected by the THC monitoring system. Notwithstanding the limitations of the THC risk assessment methodology, however, we believe it is reasonable to use the methodology to predict whether a technology-based limit appears to be protective. We have used the risk assessment methodology to show that a 20 ppmv THC limit appears to be protective of public health.

We discuss below our concerns with the proposed THC risk-based approach and the basis for tentatively selecting 20 ppmv as the recommended THC limit (measured with a conditioned gas monitoring system, recorded on an hourly rolling average basis, reported as propane, and corrected to 7% oxygen).

a. *Concerns with the THC Risk Assessment Methodology.* Our primary concern with the risk assessment methodology is that, although it may be a reasonable approach for evaluating PIC emissions under good combustion conditions, it may not be adequate for poor combustion conditions—when CO exceeds 100 ppmv. The vast majority of our data on the types and concentrations of PIC emissions from incinerators, boilers, and industrial furnaces burning hazardous waste were obtained during test burns when the devices were operated under good combustion conditions. CO levels were often well below 50 ppmv. Under Tier II applications, CO levels can be 500 to 10,000 ppmv or higher (there is no upper limit on CO).[7] The concern is that we do not know whether the types and concentrations of PICs at these elevated CO levels, indicative of combustion upset conditions, are similar to the types and concentrations of PICs in our data base. It could be hypothesized that as combustion conditions deteriorate, the ratio of semi- and nonvolatile compounds to volatile compounds may increase. If so, this could have serious impacts on the proposed risk assessment methodology. First, the proposed generic unit risk value for THC may be understated when applied to THC emitted under poor combustion conditions. This is because semi- and nonvolatile compounds comprise only 1% of the mass of THC in our data base, but pose 80% of the estimated cancer risk. Thus, if the fraction of semi- and nonvolatile compounds increases under poor combustion conditions, the cancer risk posed by the compounds may also increase.

To put this concern in perspective, we note that the proposed THC risk value calculated from available data is 1×10^{-6} m^3/μg. This unit risk is 100 times greater (i.e., more potent) than the unit risk for the quantified PICs with the lowest unit risk (e.g., tetrachloroethylene), but 1000 times lower than the unit risk for PICs such as dibenzoanthracene, and 10,000 to 1,000,000 times lower than the unit risk for various chlorinated dioxins and furans.

Second, if the fraction of semi- and nonvolatile THC increases under poor combustion conditions, the fraction of THC in the vapor phase when entering the THC detector may be lower than the 75% assumed when operating under good combustion conditions.[8] If so, the correction factor for the so-called missing mass would be greater than the 1.33 factor proposed.

The Agency is currently conducting emissions testing to improve the data base in support of the proposed risk-based approach. We are concerned, however, that the testing that is underway and planned may not provide information adequate to fully address all the issues. In addition, we are concerned that our stack sampling and analysis procedures and our health effects data base are not adequate to satisfactorily characterize the health effects posed by Pics emitted under poor combustion conditions.

A final concern with the risk assessment methodology is that it does not consider health impacts resulting from indirect exposure. As explained above, the risk-based standards proposed today consider human health impacts only from direct inhalation. Indirect exposure via uptake through the food chain, for example, has not been considered because the Agency has not yet developed procedures for quantifying indirect exposure impacts for purposes of establishing regulatory emission limits.

b. *Basis for the THC Limit.* We request comment on a THC limit of 20 ppmv as representative of a THC level distinguishing between good and poor combustion conditions. Under this alternative approach, THC would be monitored continuously during the trial burn, recorded on an hourly average basis, reported as ppmv propane, and corrected to 7% oxygen. (See discussion below in section C.4 regarding performance specifications of the THC monitoring system.) We have tentatively selected a level of 20 ppmv because: (1) It is within the range of values reported in our data base for hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste; and (2) the level appears to be protective of human health based on risk assessments using the proposed methodology for 30 incinerators.[9]

The available data appear to indicate that the majority of devices can meet a THC limit of 20 ppmv when operating under good combustion conditions (i.e., when CO is less than 100 ppmv). It appears, in fact, that many hazardous waste incinerators can typically achieve THC levels of 5 to 10 ppmv when operating generally at low CO levels. When incinerators emit higher THC levels, CO levels typically exceed 100 ppmv, indicative of poor combustion conditions. The available information on boilers and industrial furnaces is not quite as clear, however. Although the data base indicates that boilers burning hazardous waste can easily meet a THC limit of 20 ppmv, the Agency has obtained data on various types of

[7] Hazardous waste incinerators have operated at CO levels exceeding 13,000 ppmv during trial burns that achieved 99.99% distribution and removal efficiency.

[8] See discussions in U.S. EPA, "Background Information Document for the Development of Regulations for PIC Emissions from Hazardous Waste Incinerators", December, 1988 (Draft Final Report).

[9] Memorandum from Shiva Garg, EPA, to the Docket, entitled "Supporting Information for a GOP-Based THC Limit", dated October 20, 1988.

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boilers burning various types of fossil fuels (not hazardous waste) that indicate that THC levels can exceed 20 ppmv when CO levels are less than 100 ppmv. See footnote 7. We are reviewing that data and obtaining additional information to determine if an alternative limit may be more appropriate for boilers. We specifically request comment on whether a THC concentration of 20 ppmv in fact represents good operating practice for boilers burning hazardous waste as the sole fuel or in combination with other fuels.

We also request comment on whether a THC concentration of 20 ppmv represents good operating practice for industrial furnaces. Preheater and precalciner cement kilns, for example, may not be able to readily achieve such a low THC concentration for the same reason that they typically cannot achieve CO levels below 100 ppmv. Normal raw materials such as limestone can contain trace levels of organic materials that oxidize incompletely as the raw material moves down the kiln from the feed end to the hot end where fuels are normally fired. Clearly, any THC (or CO) resulting from this phenomenon has nothing to do with combustion or hazardous waste fuel. Thus, an incinerator and a preheater or precalciner cement kiln with exactly the same quality of combustion conditions may have very different THC (and CO) levels. We request comment on: (1) The types of industrial furnaces for which a THC level of 20 ppmv is representative of good combustion conditions; (2) whether alternative THC limits may be more appropriate for certain industrial furnaces; and (3) whether an approach to identify a site-specific THC limit representative of good operating practices may be feasible (e.g., where THC levels when burning hazardous waste would be limited to baseline THC levels without burning hazardous waste). In support of comments, we request data on emissions of CO and THC under baseline and hazardous waste burning conditions, including characterization of the type and concentration of individual organic compounds emitted.

As mentioned previously, some data on CO and THC levels from industrial boilers burning fossil fuels (not hazardous waste) appear to indicate that THC levels can far exceed levels considered to be representative of good combustion conditions (20 ppmv) even though CO levels are less than 100 ppmv. See footnote 7. If it appears that this situation can, in fact, occur for particular devices burning particular fuels, we would consider requiring both CO and THC monitoring for all such facilities irrespective of whether CO levels were less than 100 ppmv during the trial burn. Thus, under this scenario, the two-tiered CO controls proposed today would be replaced with a requirement to continuously monitor CO and THC for those particular facilities. We specifically request information on the types of facilities where THC levels may exceed 20 ppmv even though CO levels are less than 100 ppmv, and the need to continuously monitor THC for those facilities irrespective of the CO level achieved during the trial burn.

C. Implementation of Tier I and Tier II PIC Controls

1. *Oxygen and Moisture Correction.* The CO limits specified for either format are on a dry gas basis and corrected to 7 percent oxygen. The oxygen correction normalizes the CO data to a common base, recognizing the variation among the different technologies as well as modes of operation using different quantities of excess air. In-system leakage, the size of the facility and the type of waste feed are other factors that cause oxygen concentration to vary widely in flue gases. Seven percent oxygen was selected as the reference oxygen level because it is in the middle of the range of normal oxygen levels for hazardous waste combustion devices and it also is the reference level for the existing particulate standard for hazardous waste incinerators under § 264.343(c). The correction for humidity normalizes the CO data from the different types of CO monitors (e.g., extractive vs. in situ). Our evaluation indicates that the above two corrections, when applied, could change the measured CO levels by a factor of two in some cases.

Measured CO levels should be corrected continuously for the amount of oxygen in the stack gas according to the formula:

$$CO_c = CO_m \times \frac{14}{21 - Y}$$

where CO_c is this corrected concentration of CO in the stack gas, CO_m is the measured CO concentration according to guidelines specified in appendix C, and Y is the measured oxygen concentration on a dry basis in the stack. Oxygen should be measured at the same stack location that CO is measured.

2. *Formats of the CO Limit.* The CO limits under Tier I and Tier II would be implemented under two alternative formats. The applicant would select the preferred approach on a case-by-case basis. Under Format A, CO would be measured and recorded as an hourly rolling average. Under Format B, called the time-above-a-limit format, three parameters would be specified—a never-to-exceed CO limit, and a base CO limit not to be exceeded for more than a specified time in each hour.

In developing these alternative formats, EPA considered three alternate methods:

- A level never to be exceeded;
- A level to be exceeded for an accumulated specified time within a determined time frame; and
- An average level over a specified time that is never to be exceeded.

The first alternative is the simplest and requires immediate hazardous waste feed cutoff when the limit is exceeded, regardless of how long the CO levels remain high. Short-term CO excursions or peaks (a few minutes duration) are typical of combustion operations and can occur during routine operations; e.g., when a burner is adjusted. It is possible that during shutdown and start-up, the device may momentarily have high CO emissions. Since the total mass emissions under such momentary CO excursions is not high, a never-to-exceed limit would impede operations while providing little reduction in health risk.

The second alternative, allowing the CO level to exceed the limit for a specified accumulative time within a determined time frame (e.g., x minutes in an hour), solves the problem associated with the first alternative. The hazardous waste feed would not be cut off by a single CO peak of high intensity yet they would be restricted from operation with several short interval CO peaks, or a single long duration peak.

The third alternative, allowing the CO level never to exceed an average level determined over a specified time, also avoids the problem of shutting off the waste feed each time an instantaneous CO peak occurs. A time-weighted average value (i.e., integrated area under the CO peaks over a given time period) also provides a direct quantitative measure of mass emissions of CO. For this reason, the use of a rolling average is EPA's preferred format. A combination of the first and second alternatives, with provisions to limit mass CO emissions per unit time, its also proposed as an alternative format. This alternative CO format has been proposed to reduce the cost of instrumentation from that required to provide continuous rolling average CO values corrected for oxygen. This format may be particularly attractive to operators of small or intermittently operated boilers. The CO monitoring system needed for the first alternative requires continuous measurement and adjustment of the oxygen correction factor and continuous computation of hourly rolling averages. The instrumentation costs of such a system, consisting of continuous CO and oxygen monitors with back-up systems, a data logger and microprocessor, could be up to $91,000 and would require increased sophistication and operating costs over simpler systems. The only instrumentation needed for the alternative time-above-the-limit format is a CO monitor and a timer that can indicate cumulative time of exceedances in every clock hour, at the end of which it is recalibrated (manually or electronically) to restart afresh. Oxygen also would not have to be measured continuously in this format; instead, an oxygen correction value can be determined from operating data collected during the trial burn. Subsequently, oxygen correction values would be determined annually or at more frequent intervals specified in the facility permit.[10] We have not limited the use of this alternative CO format to any size or to any type or class of device since we consider that this alternative format provides an equal degree of control of CO emissions to the rolling average format.

The alternative format would require dual CO levels to be established in the permit, the first as a never to exceed limit and the second a lower limit for cumulative exceedances of no more than a specified time in an hour. These limits and the time duration of exceedance would be established on a case-by-case basis by equating the mass emissions (peak areas) in both the formats so that the regulation is equally stringent in both cases. The PIC Background Document[11] for the incinerator rules provides the methodology and mathematical formulae showing how this can be done.

3. *Monitoring CO and Oxygen.* Compliance with the Tier I CO limit would require: (1) Continuous monitoring of CO during the trial burn and after the facility is permitted; (2) continuous monitoring of oxygen during the trial burn and, under the 60-minute rolling average format, after the facility is permitted; and (3) measurement of moisture during the trial burn and annually (or as specified in the permit) thereafter. Compliance with the Tier II CO limits would require all the Tier I measurements and measurement of THC during the trial burn. Methods for measurements of CO and oxygen, (and THC) must be in accordance with the 3rd edition of SW-846, as amended. The methods are summarized in Appendix C and are discussed in more detail in "Proposed Methods for Stack Emissions Measurements of CO, O_2, THC, HCl, and Metals at Hazardous Waste Incinerators", U.S. EPA, July, 1989 (Draft Final Report). If compliance with the CO standard is not demonstrated during the DRE trial burn, the CO test burn must be under conditions identical to the DRE trial burn.

4. *Monitoring THC.* Under Tier II, THC would be monitored during the trial burn to ensure that the highest hourly average level does not exceed 20 ppmv. An exceedance of the THC limit would be linked to automatic waste feed cutoff. We believe that continuous THC monitoring should also be required over the life of the permit. This is because at high CO levels [e.g., greater than 100 ppmv) THC levels may or may not be high [e.g., greater than 20 ppmv). The concern is that, although THC levels during the trial burn may be less than 20 ppmv when CO exceeds 100 ppmv, operations over the life of the permit within the envelope allowed by the permit conditions may result in THC levels exceeding 20 ppmv. This concern was expressed by EPA's Science Advisory Board during its critique of the proposed PIC controls in the spring of 1989. EPA specifically requests comments on whether continuous monitoring of THC should be required over the life of the permit under Tier II.

EPA had developed specifications for THC monitoring (see appendix D) that would have required heated gas sampling lines and a heated flame ionization detector (FID) to keep as much of the THC in the vapor phase as possible. EPA reasoned that heated sampling lines were needed because the FID can detect THC only in the vapor phase—condensed organic compounds are not measured. Preliminary results of field testing of a hazardous waste incinerator conducted in July 1988 indicate that detected THC levels were 3 to 27 times greater with a heated FID system compared to an unheated system when CO levels ranged from 100 ppmv to 2760 ppmv.[12] The total mass of volatile, semivolatile, and nonvolatile organic compounds was also quantified during those tests using the Level I screening procedure.[13] The results indicate that the THC levels detected by an unheated FID were much lower than the levels determined by the Level I screening procedure.

Based on cursory discussions in October of 1988 with several hazardous waste incinerator operators, we had believed that such heated systems were in use at some facilities. A follow-up written survey [14] indicated, however, that all of the six incinerator facilities surveyed that use a FID to monitor THC used a system that incorporated gas conditioning—condensate traps accompanying gas cooling systems. Thus, the Agency has not been able to document operating experiences with a heated (i.e., not conditioned) gas sampling system. Further, we understand that, based on EPA tests using a heated FID at an incinerator (see footnote 11) and comments made during the SAB review of the PIC controls, a heated FID system can pose a number of problems: (1) The sample extraction lines may plug due to heavy particulate loadings and condensed organic compounds; and (2) semi and nonvolatile compounds may adsorb on the inside of the extraction lines causing unknown effects on measurements.

Given these concerns about the technical feasibility of requiring the use of heated FIDs at this time, we are proposing that gas conditioning be allowed. Such conditioning could involve gas cooling to a level between 32 °F and the dew point of the gas and the use of condensate traps. To reduce operation and maintenance problems, the extraction lines and FID should probably still be heated.

Allowing gas conditioning in the interim until unconditioned systems can be shown to be practicable virtually precludes the use of the health-based alternative to assess THC emissions under the Tier II controls. This is because a large, undetermined fraction of THC emissions will be condensed to the trap and will not be reported by the FID. This is another reason that the

[10] We believe that annual determinations of the oxygen correction factor will be appropriate in most cases because the concern is whether duct in-leakage has substantially changed over time. The fact that excess oxygen levels also change with waste type and feed rate should be considered in establishing the correction factor initially.

[11] U.S. EPA, "Background Information Document for the Development of Regulations for PIC Emissions from Hazardous Waste Incinerators," December, 1988 (Draft Final Report).

[12] U.S. EPA, "Measurement of Particulates, Metals, and Organics at a Hazardous Waste Incinerator", November, 1988, (Draft Final Report).

[13] The Level I screening procedure is described in "IERL-RTP Procedure Manual: Level 1—Environmental Assessment," 2nd Edition, October 1976 (EPA 600/7-78-201). That procedure uses gravimetric and total chromatographical organic procedures to quantify the mass of semi and nonvolatile organic compounds.

[14] U.S. EPA, "THC Monitor Survey", June, 1989 (Draft Final Report).

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Agency prefers the technology-based, 20 ppmv limit on THC as the Tier II standard.

Although a FID system monitoring a conditioned gas will detect only the volatile fraction of organic compounds (and, in some cases, only the nonwater-soluble volatile fraction), the Agency believes this is adequate for the purpose of determining whether the facility is operating under good operating conditions.[15] Available data indicate that when emissions of semi and nonvolatile organic compounds increase, volatile compounds also increase.[16] Thus, volatile compounds appear to be a good indicator for the semi and nonvolatile compounds that are often of greater concern because of their health effects. Given, however, that the good operating practice-based THC limit of 20 ppmv was based primarily on test burn data using heated (i.e., unconditioned gas) FID systems, the Agency considered whether to lower the recommended THC limit when an unheated system is used for compliance monitoring. As discussed above, limited available field test data indicated that a heated system would detect two to four times the mass of organic compounds than a conditioned system. We believe, however, that the 20 ppmv THC limit is still appropriate when a conditioned system is used because: (1) The data correlating heated vs conditioned systems are very limited; (2) the data on THC emissions are limited (and there apparently is confusion in some cases as to whether the data were taken with a heated or conditioned system); and (3) the risk methodology is not sophisticated enough to demonstrate that a THC limit of 5 to 10 ppmv using a conditioned system rather than a limit of 20 ppmv is needed to adequately protect public health.

The THC monitoring method proposed in Appendix D will be modified to allow an unheated, conditioned system and use of condensate trap(s) and other conditioning methods. The revised method will specify, however, that the sample gas may not be cooled below 32 °F.

5. *Compliance with Tier I CO Limit.* There are a number of alternative approaches to evaluate CO readings during the trial burn to determine compliance with the 100 ppmv limit including: (1) The time-weighted average CO level (or the average of the hourly rolling averages); (2) the average of the highests hourly rolling averages for all trial burn runs; of (3) the highest hourly rolling averge. The time-weighted average alternative provides the lowest CO level that could reasonably be used to determine compliance, and the highest hourly rolling average alternative provides the highest CO level that could reasonably be used. There may be other reasonable alternatives between these two extremes in addition to the one listed above.

We are proposing to use the most conservative approach to interpret trial burn CO emissions for compliance with the 100 ppmv Tier I limit—the highest hourly rolling average. (This approach is conservative because we are comparing the trial burn CO level to the maximum CO allowed under Tier I—100 ppmv.) We believe this conservative approach is reasonable given that compliance with Tier I allows the applicant to avoid the Tier II requirement to evaluate THC emissions to provide the additional assurance (or confirmation) that THC emissions do not exceed levels representative of good operating practice.

6. *Establishing Permit Limits for CO under Tier II.* The alternatives discussed above for interpreting CO trial burn data also apply to specifying the permit limit for CO under Tier II. For purposes of specifying a Tier II CO limit, however, the time-weighted average approach would be more conservative than the highest hourly average approach because it would result in a lower CO limit. We are proposing the conservative, time-weighted average approach for Tier II compliance because we are concerned that the highest hourly average approach may not be adequately protective. Although the highest hourly average (HHA) approach would be protective in theory because the applicant must demonstrate that the highest hourly average THC emissions do not exceed good operating practice-based levels, the HHA approach would allow the facility to operate continuously over the life of the permit at the highest CO levels that occurred during one hour of the trial burn.

We specifically request comments on how to interpret trial burn CO data to establish Tier II CO limits.

7. *Compliance with THC Limit of 20 ppmv.* The alternative approaches for determining compliance with the 20 ppmv THC limit under Tier II are identical to those discussed above for compliance with the Tier I CO limit. Again, we are proposing the most conservative approach—the highest hourly rolling average THC level during the (at a minimum) three test burns must not exceed 20 ppmv.

8. *Waste Feed Cutoffs.* In 1987, EPA proposed that if a device exceeded the CO limits an aggregate of 10 times per month, then the owner or operator must cease burning hazardous waste; notify the Regional Administrator, and not resume burning hazardous waste until reauthorized by the Regional Administration. Commenters complained that this proposed requirements was overly conservative. In response, EPA is considering deleting this restriction. We do not have data that indicate, nor are we aware of a good argument that would support, the need to limit cutoffs provided that combustion chamber temperatures are maintained at the levels that occurred during the trial burn for the duration of time that waste remains in the combustion chamber. We believe that maintaining temperatures will ensure that hydrocarbons emanating from the waste remaining in the combustion chamber after a cutoff are destroyed to levels that would pose acceptable health risk. To comply with this requirement, the permit must specify the minimum combustion chamber temperature occurring during the trial burn for devices that may leave a waste residue in the combustion chamber after waste feed cutoff (e.g., devices burning wastes that are solids). We note that, to comply with this requirement, owners and operators of boilers that comply with the proposed special operating conditions requisite to automatic waiver of the trial burn may be required to document minimum combustion chamber temperatures while complying with those special operating conditions. Moreover, we specifically request comment on the need to specify in the permit for all boilers and industrial furnaces, the minimum allowable combustion chamber temperatures based on the trial burn.

We note that adequate auxiliary burner capacity may be needed to maintain the temperature in the combustion chamber and allow destruction of the waste materials and associated combustion gases left in the system after the waste feed is automatically cutoff. The safe start-up of the burners using auxiliary fuel requires approved burner safety management systems for prepurge, pilot lights, and induced draft fan starts. If these safety requirements preclude immediate start-up of auxiliary fuel burners and such start-up is needed to maintain temperatures (i.e., if the combustion chamber temperatures drop precipitously after waste feed cutoff), the auxiliary fuel may have to be burned continuously on "low fire" during nonupset conditions. After an automatic cutoff, hazardous waste should not be used as auxiliary fuel unless the waste is hazardous solely because it is ignitable, corrosive, or reactive, or it contains insignificant levels of toxic constituents.

We request comment on several alternative approaches to allow restart of the waste feed: (1) Restart after the hourly rolling average no longer exceeds the permit limit; (2) restart after an arbitrary 10 minute time period to enable the operator to stabilize combustion conditions; or (3) restart after the *instantaneous* CO level meets the hourly rolling average limit. This third alternative (i.e., basing restarts on the instantaneous CO levels) may be appropriate because it may take quite a while for the hourly rolling average to come within the permit limit while the event that caused the exceedance may well be over even before the CO monitor reports the exceedance. Under this alternative, the rolling average could be "re-set" when the hazardous waste feed is restarted either by: (1) basing the hourly rolling average on the CO level for the first minute after the restart (the same approach that would be used any time the waste feed is restarted for reasons other than a CO exceedance); or (2) assuming more conservatively given that CO levels may exceed the permit limit after the waste feed cutoff while residues continue to burn, that the hourly rolling average is equivalent to the permit limit (e.g., 100 ppmv) prior to the waste feed restart. A final refinement to this third alternative of allowing restarts after instantaneous CO levels fall below the permit limit would be not to reset the rolling average CO level and to require that the instantaneous CO level not exceed the (rolling average) permit limit (e.g., 100 ppmv) for the period after the restart and until the rolling average falls below the permit limit. Again, we specifically request comment on these alternative approaches to allow waste feed restarts.

When the automatic waste feed cutoff is triggered by a THC exceedance, we propose to allow a restart only after the hourly rolling average THC level has been reduced to 20 ppmv or less. We are not considering the options discussed above for restarts after a CO exceedance given that THC is a better surrogate for toxic organic emissions than CO. Thus, we believe that a more conservative waste feed restart policy is appropriate after a THC exceedance.

D. Miscellaneous Issues

1. *PIC Controls for Nonflame Industrial Furnaces.* We note that the PIC controls discussed above may not adequately control THC emissions from nonflame furnaces such as some electric arc smelters (in situations where, in fact, controls for emissions of organic compounds would apply (see discussion in section IX)). In nonflame devices where combustion is neither the primary mode of destruction of organic compounds in the waste, nor is used in an afterburner to burn hydrocarbon-laden off-gases from the thermal cracking of the waste, CO may not be an adequate surrogate to control THC emissions. That is, in nonflame devices, when CO emissions are low, THC emissions may be *high*. Thus, the Tier I CO limit of 100 ppmv may not be adequate to ensure that THC concentrations are low. Accordingly, we request comment on requiring continuous THC monitoring for nonflame devices to ensure that THC concentrations do not exceed the good operating practice-based level of 20 ppmv.

2. *Measuring CO and THC in Preheater and Precalciner Cement Kilns.* EPA has received comments that preheater and precalciner cement kilns typically have bypass ducts that by-pass the preheater or precalciner and carry kiln off-gases directly to the stack. Measuring CO and THC in the bypass duct rather than in the stack would provide data unaffected by CO and THC produced in the preheater or precalciner by coal combustion (in the precalciner) or by volatilizing trace levels of organic compounds present in the raw material. Testing of bypass gases in lieu of stack gases would be acceptable for compliance with the CO and THC controls provided that the CO and THC levels in the bypass gases are representative of the kiln off-gases (i.e., provided that CO and THC in the kiln off-gases are not stratified before entering the bypass).

3. *Feeding Waste in Cement Kilns by Methods Other Than Dispersion in the Flame at the Hot End.* The Agency is aware that several cement companies are investigating the feasibility of feeding solid hazardous waste into cement kilns and some facilities are already engaging in the practice. The solid materials are fed into the kiln system at locations other than the "hot" end of the kiln where liquid hazardous waste fuels and fossil fuels are normally fired. These practices may be an effective approach to both beneficially use the heating value in solid hazardous wastes and provide needed treatment capacity for such wastes. The Agency has not, however, conducted emission testing of cement kiln systems when burning solid hazardous wastes. Depending on the kiln system, location of the firing port, and type and quantity of hazardous waste fired, there is a potential concern for incomplete combustion of organic compounds in the waste. Conceivably, the waste may be fired into the systems at a point where adequate temperatures and residence time may not be provided to ensure adequate destruction. In addition, if a kiln system is equipped with a by-pass duct, combustion gases from burning the hazardous waste may be "short-circuited" and routed to the stack before adequate destruction can occur.

The proposed controls will effectively control emissions irrespective of how solid hazardous waste may be fired into kiln systems because the standards would apply to stack emissions. The question is, given that the Agency has not yet tested such operations, whether special requirements should be applied during interim status. We specifically request comment on the need for special controls during interim status when cement kiln systems feed hazardous waste at locations other than the hot end. Commenters should provide information on such practice, including data on organic emissions (e.g., DRE results, CO and THC concentration), and suggestions on appropriate interim status controls, if any are considered necessary (i.e., in addition to the interim status standards that would be applicable to all boilers and industrial furnaces, as discussed elsewhere in today's notice).

E. Implementation of PIC Controls During Interim Status

1. *Preferred Option.* We believe that the PIC controls can and should be applied as soon as possible for facilities in interim status. Thus, we are requesting comment on whether the following compliance schedule is reasonable. Within 12 months of promulgation of the final rule, boilers and industrial furnaces operating under interim status must install CO monitoring equipment meeting the performance specifications presented in

[15] We request comment on whether it would be practicable to develop a site-specific correction factor for monitoring with a conditioned gas system by monitoring with an unconditioned system as well during the trial burn. The ratio of the unconditioned system THC level to the conditioned system THC level could then be used to correct the conditioned system THC values over the life of the permit. This approach may not be practicable, however, for reasons including the fact that the waste burned during the trial burn for some facilities (e.g., facilities handling multiple wastes) may not represent, with respect to THC emissions, the waste that will be burned over the life of the permit.

[16] U.S. EPA, "Measurement of Particulates, Metals, and Organics at a Hazardous Waste Incinerator," November, 1988 (Draft Final Report).

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today's notice and determine compliance with the Tier I standard of 100 ppmv during a test burn representative of worst-case combustion conditions that will occur during interim status.[17] (Irrespective of which CO format is selected (i.e., hourly rolling average or time-above-a-limit) the maximum hourly average CO level during the test burn cannot exceed 100 ppmv under Tier I.) If CO levels do not exceed 100 ppmv, CO levels are limited during interim status to 100 ppmv.

If the maximum hourly average CO level exceeds 100 ppmv during the test burn, the owner or operator must, within 15 months of promulgation of the final rule, demonstrate that the maximum hourly average THC concentration does not exceed 20 ppmv during a test burn equivalent to the Tier I test burn, using THC monitoring equipment meeting the performance specifications presented in today's notice. If the THC concentration does not exceed 20 ppmv during the test burn, then, during the period of interim status, continuous monitoring of THC would be required to ensure that THC does not exceed 20 ppmv, and continuous monitoring of CO would be required to ensure that CO does not exceed the time-weighted average CO level that occurred during the test burn.

If the maximum hourly average THC level exceeds 20 ppmv during the test burn, the owner or operator must, within 18 months of promulgation of the final rule, modify operations as necessary and demonstrate in a subsequent test burn that THC concentrations do not exceed 20 ppmv, or cease burning hazardous waste and complete closure requirements.

We are considering an exception to the 20 ppmv THC limit, however, for cement kilns that can demonstrate that fuel-derived THC levels do not exceed the 20 ppmv limit even though stack gas concentrations may exceed the limit. The concern is that trace levels of organic compounds in the raw materials (e.g., limestone) can produce THC as the materials are gradually heated as they travel from the cold (i.e., feed) end of the kiln to the hot (i.e., fuel firing) end of the kiln. We specifically request comment on whether only fuel-derived THC should be considered for purposes of compliance with the proposed THC limits. If so, we further request comment on whether the following approach is reasonable to identify fuel-derived THC. For cement kiln systems that burn or feed fuels only in the hot end of the kiln where the clinker product exits, the fuel-derived THC concentration could be determined by increasing excess oxygen levels much beyond normal levels (e.g., to 10%) and noting the minimum hourly average THC concentration that occurs. This is based on an assumption that, at high excess oxygen levels, fuel combustion efficiency will be maximized and fuel-derived THC will be virtually zero. Thus, residual THC would be attributable to organic matter in the raw materials. Accordingly, the allowable THC concentration would be 20 ppmv greater than the baseline nonfuel THC (i.e., the lowest hourly average concentration during the high excess oxygen tests). It is important to note that we are suggesting two limitations to this test: (1) only fossil fuel would be burned during the demonstration of nonfuel THC; and (2) the approach would be applicable to only those kiln systems that burn or feed fuels during the subject test in the hot end of the kiln (i.e., precalciner kilns and kilns feeding coal along with raw material in a preheater during the high excess oxygen test would not be eligible because incomplete combustion of the fuel could occur even at high excess oxygen levels).

Extensions of time may be allowable by the Regional Administrator on a case-by-case basis if circumstances beyond the owner or operator's control affect the facility's ability to comply with the above schedule.

2. *Alternate Option.* EPA is considering the following alternative approach to expedite implementation of the substantive PIC controls. Under this option, the owner or operator would be required within 18 months of promulgation of the final rule either to submit a complete Part B RCRA Permit Application, or to cease burning hazardous waste and complete closure requirements. This option has at least two major disadvantages. First, substantive controls on PIC emissions would not be applied until the Part B permit is issued. Second, the State or EPA permit officials may have higher priority facilities to handle and, thus, may not be able to process the applications for some time after they are submitted. The information provided in the permit may, in fact, become outdated before the permit officials start to process the application. In those situations, applicants may be required to submit revised, updated permit applications.

[17] A single test burn consisting of 3 runs should be conducted to demonstrate compliance with all emissions standards—CO/THC, particulates, metals, and HCl. If simultaneous compliance testing is not practicable, however, the operating conditions of the test burns must be identical. We propose the CO and, if necessary THC, be monitored continuously for a minimum of 4 hours for each of three runs to provide a valid test burn. This time period is typical of that required for testing of destruction and removal efficiency.

III. Alternative Toxic Metal Standards

A. Overview

The 1987 proposed rule would have established a four-tiered standard to control emissions of arsenic, cadmium, hexavalent chromium, and lead. Tiers I through III would have established hazardous waste concentration, feed rate, and emission rate screening limits as a function of device type and thermal capacity. Tier IV would have provided for site-specific dispersion modeling to demonstrate that, when the screening limits were exceeded, emissions would, nevertheless, not pose unacceptable health risk. Although available data indicate that only the four metals specified of the 12 toxic metals listed in appendix VIII of part 261 are likely to be present in hazardous wastes burned in boilers and industrial furnaces at levels that pose unacceptable health risk, the permit writer would have to determine on a case-by-case basis that the other toxic metals were, in fact, not present at levels that could pose unacceptable risk.

Based on comments on the proposed rule and additional evaluation of the risk assessment approach, we are considering the following changes to the metals controls: (1) Expand the list of controlled metals to include all those toxic metals listed in appendix VIII of part 261 (except, for reasons discussed later, nickel and selenium); (2) establish the screening limits as a function of effective stack height, terrain, and land use rather than as a function of device type and capacity; and (3) provide the screening limit values in the Risk Assessment Guideline for Permitting Hazardous Waste Thermal Treatment Devices (RAG) rather than in the rule itself. The basis for these changes is discussed below.

B. Expanded List of Metals

Commenters noted that EPA's data base on the metals composition of hazardous waste is both limited and out of date in light of the Agency's efforts—and the statutory command—to require pretreatment of wastes that heretofore have been directly land disposed. Pretreatment is likely often to involve combustion. Thus, the other toxic metals could be found increasingly in hazardous wastes that are burned in boilers and industrial furnaces. In addition, if more toxic metal standards were included in the rule, the burden on permit writers would actually be reduced because explicit standards would be provided for all metals of potential concern. The length of permit proceedings would thus be shortened relieving to some extent regulatory burden as well.

We, therefore, are considering expanding the list of controlled metals to include: antimony, arsenic, barium, beryllium, cadmium, chromium (VI), lead, mercury, silver, and thallium. Thus, of the 12 metals listed in Appendix VIII, only selenium and nickel would not be controlled. We are not considering controls for selenium because the Agency has inadequate health data to establish a reference air concentration. Nickel would not be controlled because the two nickel compounds suspected at this time of being potential human carcinogens, nickel carbonyl and subsulfide, are not likely to be emitted from combustion devices, given the highly oxidizing conditions that exist in combustion devices. We note, however, that some industrial furnaces (e.g., electric arc smelters) do not use combustion to provide heat to drive process reactions. Such furnaces could conceivably emit the reduced, carcinogenic forms of nickel if present in the hazardous waste feed. We specifically request information on emissions of nickel carbonyl and subsulfide from such furnaces and suitable stack sampling and analysis procedures.

C. Revised Format for Screening Limits

In developing the proposed amendments to the incineration standards that the Agency plans to propose shortly, we developed Screening Limits for metals (and HCl and THC) as a function of effective stack height, terrain, and land use. As discussed above, we believe that basing limits on these parameters more directly ties the controls to the key parameters that affect dispersion of emissions and, ultimately, ambient levels. When developing the proposed Tier I through Tier III screening limits for boilers and industrial furnaces in 1987, we made a simplifying assumption that effective stack height correlated with thermal capacity (e.g., if the thermal capacity of one device was 10 percent greater than the thermal capacity of another, then the effective stack height was also 10 percent greater). This is not always true. Stack height is often more a function of the height of nearby buildings and surrounding terrain than the heat input capacity of the device. Thus, we are considering establishing for boilers and industrial furnaces the identical feed rate and emission rate Screening Limits we plan to propose for incinerators. The Screening Limits are presented in Appendix E, and the technical support for the Limits is summarized in appendix F. We would also implement the metals controls for boilers and furnaces as we plan to propose in the incinerator amendments (i.e., risk from carcinogenic metals must be summed; risk from all on-site hazardous waste combustion facilities must be considered). See appendix G.

We note that, under this approach, screening limits provided by Tier I of the proposed rule would be deleted. Tier I established metals concentrations limits for hazardous waste in units of pounds of metal per million BTU of heat input to the device. Under that tier, the device was conservatively assumed to burn 100 percent hazardous waste (i.e., metals levels in hazardous waste burned in these devices are most always higher than in cofired fossil fuels). Under such a conservative assumption, we believe that few facilities burn hazardous waste with metals levels low enough to meet the Tier I limits. Note also that the feed rate Screening Limits provided by Appendices B-1 through B-4 of the proposed incinerator amendments would replace the Tier II limits originally proposed for boilers and industrial furnaces. The risk assessment methodology remains basically the same as proposed in 1987. EPA will, however, continue to accept comments on this methodology.

D. Screening Limits Provided by the Risk Assessment Guideline

We are considering providing the Screening Limits in the Risk Assessment Guidelines for Permitting Hazardous Waste Thermal Treatment Devices (RAG) rather than in the rule (i.e., the Code of Federal Regulations). This is consistent with the approach the Agency plans to propose for the incinerator amendments and would enable the Agency to update the limits as health effects data are revised and EPA's dispersion models evolve. Revisions to the RAG would be noticed in the Federal Register with the current edition noted.

However, EPA solicits comment on this and an alternative approach whereby the Agency would promulgate Screening Limits in the rule, as originally proposed for boilers and industrial furnaces. Providing the Screening Limits in the RAG has limitations. Our concern is that guidance documents do not carry the weight of a regulation—permit writers would be free to accept or reject the guidance (e.g., Screening Limits RACs, RSDs) and would be obligated to justify use and appropriateness of the guidance on a case-by-case basis. This could place a substantial burden on the permit writer and result in inconsistent, and, perhaps, inappropriate permit conditions. If the Screening Limits are promulgated in the rule, EPA would then revise them by rulemaking if warranted by new information. In the interim, permit writers could apply stricter limits than contained in the rule (if the facts justify it) pursuant to the omnibus permit authority in section 3005(c)(3) (with notice and comment provided on the potential change during the permit proceeding).

E. Implementation of Metals Controls During Interim Status

1. *Preferred Option.* We are considering a significant modification to the proposed compliance schedule. Under this alternative, interim status sources would determine compliance with metal (and HC1) Screening Limits within 12 months of promulgation of the final rule. If a source cannot comply with the Screening Limits within the initial 12 months, then the owner or operator must: [1] Within 15 months of promulgation, demonstrate compliance with the reference air concentrations for noncarcinogenic metals and the 10^{-5} risk level for carcinogenic metals using dispersion modeling; or (2) within 24 months of promulgation, either modify the facility and demonstrate compliance or complete closure requirements with respect to hazardous waste burning. The Regional Administrator could extend the compliance period if the owner or operator can show inability to make required modifications because of situations beyond its control (e.g., unavailability of equipment).

2. *Alternative Options.* In addition, EPA is considering the following alternative interim status requirements, similar to those for particulates, to bring sources into compliance with the metals (and HCL) standards. The first would require facilities that cannot demonstrate compliance within 12 months of promulgation to submit a compliance plan within 15 months of promulgation which assures expedient compliance (i.e., within 12 months of EPA approval). The last alternative would require the source to submit a complete Part B RCRA Permit Application, draft trial burn plan, and site-specific risk assessment as applicable, within 18 months of promulgation; or implement closure requirements within 18 months of promulgation. EPA is requesting comments on all three alternatives for implementing metals and HCl standards.

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IV. Alternative Hydrogen Chloride Standards

EPA is also considering an alternative approach to the proposed hydrogen chloride (HCl) standards. As discussed above for the metals standards, we are considering: (1) Establishing the screening limits as a function of effective stack height, terrain, and land use rather than device type and capacity; and (2) providing the screening limit values in the RAG rather than in the rule itself. (The HCl controls would also be implemented during interim status like the metals controls.) The bases for these changes are identical to those discussed above for metals.

V. Revisions to the Proposed Small Quantity Burner Exemption

A. Summary

EPA proposed to exempt facilities that burn de minimis quantities of their own hazardous waste because, absent regulatory control, the health risk posed by such burning would not be significant. Eligibility for the exemption would be based on the quantity of waste burned per month, established as a function of device type and thermal capacity. In order to be exempt, in addition to restrictions on quantity of waste burned, facilities would be required to notify the Regional Administrator that they are a small quantity burner, the maximum instantaneous waste firing rate would be limited to one percent of total fuel burned, and dioxin-containing acutely toxic wastes could not be burned. See proposed § 266.34–1(b).

We are considering several revisions to this proposed provision. Rather than establishing exemption quantities as a function of device type and capacity, we are considering using effective stack height. Also, several improvements could be made in the risk assessment methodology and the procedures for handling multiple devices could be made less arbitrary to reduce over-regulation. The basis for these changes is discussed below.

B. Revised Format for Exempt Quantities

Under this alternative approach, exempt quantities would be established as a function of effective stack height rather than device type and thermal capacity (see Table 1). We believe this approach is preferable for the reasons discussed above. We note that we are not suggesting to include the two variables used for the metals and HCl limits, terrain type and land use classification, in establishing revised exempt quantities. Rather, the revised quantities are based on assumptions of terrain and land use that result in the lowest (i.e., most conservative) exempt quantities. We believe that this conservative approach is appropriate given that there would be no EPA or State agency oversight of an operator's determination of his terrain and land use classification.

TABLE 1.—EXEMPT QUANTITIES FOR SMALL QUANTITY BURNER EXEMPTION

Terrain-adjusted effective stack height of device (meters)	Allowable hazardous waste burning rates (gallons/month)
0 to 3.9	0
4.0 to 5.9	13
6.0 to 7.9	18
8.0 to 9.9	27
10.0 to 11.9	40
12.0 to 13.9	48
14.0 to 15.9	59
16.0 to 17.9	69
18.0 to 19.9	76
20.0 to 21.9	84
22.0 to 23.9	93
24.0 to 25.9	100
26.0 to 27.9	110
28.0 to 29.9	130
30.0 to 34.9	140
35.0 to 39.9	170
40.0 to 44.9	210
45.0 to 49.9	260
50.0 to 54.9	330
55.0 to 59.9	400
60.0 to 64.9	490
65.0 to 69.9	610
70.0 to 74.9	680
75.0 to 79.9	760
80.0 to 84.9	850
85.0 to 89.9	960
90.0 to 94.9	1,100
95.0 to 99.9	1,200
100.0 to 104.9	1,300
105.0 to 109.9	1,500
110.0 to 114.9	1,700
Greater than 115.0	1,900

C. Improvements in the Risk Assessment Methodology

The changes in the risk assessment methodology used to develop the revised exempt quantities presented in Table 1 include: (1) Consideration of the risk from emissions of total hydrocarbons (THC) rather than only those products of incomplete combustion (PICs) quantified during EPA's field testing program; and (2) a carcinogenic potency of $Q_1^* = 0.07$ (that translates to a unit risk of 2.0×10^{-5}) was assumed for the THC rather than a Q_1^* of 1.0 for PICs. The revised Q_1^* is based on the average weighted unit risk developed to control THC emissions (see discussion above under alternative CO standards) which was doubled to account for the fact that THC emissions will likely be more toxic at the conservatively assumed 99 percent DRE than at the 99.99 percent DRE measured during the tests.

We are considering this change because we are concerned about a nonconservative feature of the PIC/POHC ratio used to estimate the risk from PIC emissions in establishing the proposed exempt quantities. The PIC/POHC ratio considers only those PICs for which emissions have been quantified. As discussed elsewhere in this Notice, organic compounds, other than those specifically quantified to date, are emitted from these combustion devices, and some of those compounds are undoubtedly toxic. Thus, we believe it is prudent (conservative) to consider THC rather than just quantified PICs in this analysis.

A detailed description of the methodology used to calculate the revised exempt quantities is available in the docket for public review and comment.[18]

[18] U.S. EPA, "Analysis for Calculating a *de Minimis* Exemption for Burning Small Quantities of Waste in Combustion Devices", August 1989.

The revised approach uses the following equation to calculate exempt quantities:

$$\text{Allowable THC Mass Emission Rate} = \text{THC Emis. Conc.} \left(\text{Waste quantity} \times \frac{\text{Volume of combustion gas}}{\text{Mass of waste}} \right)$$

where:

Allowable THC Mass Emission Rate means the back-calculated, risk-based THC emission rate in grams/second, assuming an acceptable MEI risk of 10^{-6} and a THC unit risk of 2.0×10^{-6} ($Q^* = 0.07$), and using the conservative dispersion coefficients discussed above.

THC Emission Concentration means the THC emissions concentration in grams/liter (g/l) for an assumed destruction and removal efficiency of 99 percent. The value used is 15,000 ppm converted to g/l based on field data that show THC concentrations range from 0 to 142 ppm when devices achieve 99.99 percent DRE and an assumption that the levels would be 100 times higher at 99 percent DRE.

Waste Quantity means maximum allowable waste quantity in pounds/second.

Volume of Combustion Gas/Mass of Waste means the empirically-derived relationship between combustion gas volumes and quantity of waste burned. That value is 200 dscf/lb of wastes.

The above equation was solved for waste quantity per unit of time for a range of Allowable THC Mass Emission Rates corresponding to the range of effective stack heights. Those values were then converted to gallons/month assuming the waste has a density of 8 lb/gallon.

D. Multiple Devices

Under this revised approach, the exempt quantities for a facility with multiple stacks from boilers or industrial furnaces burning hazardous waste would be limited according to the following equation:

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_i}{\text{Allowable Quantity Burned}_i} \leq 1$$

where:

N means the number of stacks

Actual Quantity Burned$_i$ means the waste quantity per month burned in device with "i"

Allowable Quantity Burned$_i$ means the maximum allowable exempt quantity for stack "i" from Table 1.

For example if a site had two devices with effective stack heights (ESH) of 30 and 10 meters, the following equation would hold:

$$\frac{X}{130} + \frac{Y}{33} < 1$$

Where:

130 and 33 are the exempt quantities from Table 1 for stack heights of 30 and 10 meters, respectively

X is the waste quantity burned in the device with the 30 meter stack

Y is the waste quantity burned in the device with the 10 meter stack

In this example, if Y is burning 15 gallons/month, then X could burn no more than 84 gallons/month.

VI. Definition of Indigenous Waste That Is Reclaimed

In the May 6, 1987, notice, the Agency solicited comment on the issue of when a hazardous waste that was burned exclusively for material recovery might be considered to be "indigenous" to the industrial furnace in which it was being burned. See 52 FR 16990–991. The significance of being indigenous is that the material would cease being a solid and hazardous waste upon being inserted into the industrial furnace. At that point, it would be an in-process material and no longer discarded. The industrial furnace thus would not be subject to the proposed emission standards. In addition, any residues from burning would not be subject to the derived-from rule in § 261.3(c)(2) because such residues would not derive from management of a hazardous waste.

The Agency proposed that a waste be considered indigenous if it was generated and burned in the same type of industrial furnace. In addition, scrap metal would be considered indigenous to any secondary smelting furnace, and lead acid battery plates and grids would have been considered to be indigenous to secondary lead smelting furnaces.

Commenters almost unanimously favored some type of indigenous test, but disagreed on its precise scope, offering a variety of suggestions. After analyzing these comments, the Agency solicits comment on a different option which incorporates features from the Agency's initial proposal, as well as proposals received from previous public comments.

As summarized below, the test for when a waste is indigenous to an industrial furnace would vary according to the source of the waste, and, in some cases, whether the industrial furnace is a primary or secondary furnace (whether it processes chiefly ores or secondary materials such as scrap metal).

A. Industriol (Smelting) Furnaces in the Standard Industrial Code (SIC) 33 Burning Wastes From SIC 33 Processes

Standard Industrial Code 33 encompasses all Primary Metal Industries including iron and steel manufacturing and processing, and iron and steel foundries; and primary and secondary nonferrous metal manufacturing and processing according to the 1972 Edition of the SIC. Commenters suggested and the Agency tentatively agrees, that these processes are sufficiently interrelated that secondary materials going from one process to another within this SIC code (33) should be generally considered indigenous.

However, situations may arise where wastes from SIC 33 processes are burned in SIC 33 furnaces for the objective of waste treatment by destroying unrecyclable toxic constituents (that would be "discarded materials" within the meaning of RCRA 1004(27)). Therefore, to be considered indigenous, the only unrecyclable toxic constituents (i.e., compounds listed in Appendix VIII 40 CFR part 261) the waste could contain are those that are found in the virgin material customarily processed (provided that the concentration in the waste is not significantly higher than concentrations in the raw material), and those that are present only in insignificant amounts if not normally found in the virgin material customarily processed in industrial furnaces. In the Agency's opinion, an insignificant amount of unrecyclable constituents would be 500 ppm of total nonindigenous toxic organics or 500 ppm of total nonindigenous toxic metals (or inorganic toxics) above the levels of those toxic constituents found in the virgin material customarily processed. In the EPA's judgment, this concentration level represents a concentration of material far exceeding minimal trace levels (generally measured in single digit parts per million (ppm) or tens of ppm). This level of a hazardous constituent could create an incremental health risk if burned inefficiently, or with inadequate

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emission controls, and, moreover, indicates that the objective of burning is waste treatment as opposed to reclamation.

The following example illustrates this test as to whether a waste is indigenous:

• A steel production facility sends its electric arc furnace emission control dust (Hazardous Waste K061) to a zinc smelting furnace for zinc recovery. This waste contain 500 ppm and 2,100 ppm of cadmium and lead respectively. Assume for purposes of this example, lead and cadmium are also found in zinc ore concentrates at levels of 200 ppm and 2,000 ppm respectively. Lead and cadmium are not recycled—they do not partition primarily to a product.

As a result, K061 would be considered to be indigenous because steel production and zinc smelting are both SIC 33 activities, and these dusts are high in zinc content, indicating that legitimate material recovery is occurring. This is true even though the waste contains unrecyclable toxic constituents in significant concentrations.[19] However, these constituents are also present in significant concentrations in virgin ore concentrates customarily processed by zinc smelting facilities. The waste contains a total of 400 ppm (300 ppm lead and 100 ppm cadmium) of toxic metals above the virgin material, and, thus, does not exceed the 500 ppm limit.

B. SIC Code 33 Industrial Furnaces Burning Wastes Generated by Process Other Than SIC 33

When an SIC Code 33 industrial furnace burns a material generated by a process other than SIC 33, there is no longer such similarity of process and material that transfer of wastes should be considered *prima facie* indigenous. There is also a greater likelihood that the purpose of burning really is waste treatment. This is because the materials being burned are more likely to contain high concentrations of unrecyclable, nonindigenous toxic constituents (i.e., toxic constituents not found in the virgin material customarily burned in the industrial furnace) because of the dissimilarity of the generating and recovery processes. Consequently, the Agency is tentatively of the view that a material generated by a non-SIC code 33 process burned in an SIC 33 code furnace would only be indigenous to that furnace if it contained unrecovered toxic constituents present in the waste in insignificant concentrations, i.e., less than 500 ppm for total Appendix VIII toxic organic compounds and 500 ppm for total unreclaimed Appendix VIII toxic metals.

The following example illustrates operation of this principle. An electroplating facility sends its wastewater treatment sludge (Hazardous waste F006) to a primary copper smelter for recovery of copper. The electroplating sludge also contains thousands of parts per million each of cyanide, cadmium and lead which are not beneficially recovered in the smelting process. The electroplating sludge would not be considered indigenous to the primary copper smelter. The sludge is not from a SIC 33 process and contains substantial concentrations of unrecovered toxic constituents which are discarded by the process. The environmental concern is that, due to the presence of these nonindigenous toxics, the waste poses risks—in the transport, storage and burning phase as well as residuals—that are different than those posed by the raw materials customarily burned in the devices.

C. Secondary Smelting Furnaces

As the Agency noted at proposal, a somewhat broader notion of indigenous material is needed for secondary smelting furnaces because these furnaces normally accept secondary materials (principally scrap metal) as their principal feed material. Thus, the Agency would consider any scrap metal indigenous to a secondary smelter. Further, the Agency would consider any material with recoverable metal values indigenous to a secondary smelter providing that the materials do not contain high concentrations of nonrecovered organics or significant concentrations of metals or inorganics not found in the non-hazardous secondary materials utilized as feed by secondary smelting furnaces. To be considered indigenous, these materials need not be generated by an SIC 33 process. This type of comparison, rather than a comparison just with virgin ore concentrate utilized by primary smelters, could be appropriate given that secondary smelting furnaces are different types of furnaces than primary furnaces, and given further that secondary smelters have traditionally processed a wider range of materials than primary smelters.

In addition, for secondary lead furnaces, the Agency would view items listed in Table 2 as indigenous. These are normal feed materials to secondary lead furnaces. Also, any lead-bearing waste from manufacture of batteries would be considered indigenous to a secondary lead smelter. These materials are likewise routinely sent to lead smelters for lead recovery and are within any normal contemplation of the term indigenous. EPA is specifically requesting comment as to whether this list is complete.

TABLE 2—MATERIALS INDIGENOUS TO SECONDARY LEAD FURNACES WHEN GENERATED BY PRIMARY AND SECONDARY LEAD FURNACE OR LEAD BATTERY MANUFACTURING OPERATIONS

Acid dump/fill solids
Baghouse dusts
Scrap grids
Scrap batteries
Scrap lead oxide
Dross
Scrap plates
Slurry and slurry screenings
Sump mud
Lead acetate from laboratory analyses
Acid filters
Baghouse bags
Scrap battery cases, covers, vents
Charging jumpers and clips
Disposable clothing (coveralls, aprons, hats, gloves)
Floor sweepings
Air filters
Pasting belts
Platen abrasive
Respirator cartridge filters
Shop abrasives
Stacking boards
Waste shipping containers (cartons, plastic bags, drums)
Water filter media
Paper hand towels
Cheesecloth from pasting rollers
Pasting additive bags
Wiping rags
Contaminated pallets

VII. Conforming Requirements

EPA is considering a proposal to amend to the incinerator standards of subpart O, part 264 and part 270. Many of the boiler and furnace requirements proposed in 1987 were taken, from the planned changes to the incinerator standards. Thus, all revisions that ultimately are proposed to such incinerator standards also will be proposed, as part of that notice, to apply to boilers and industrial furnaces.

VIII. Halogen Acid Furnaces

On March 31, 1986, Dow Chemical Company petitioned EPA, in accordance with the provisions of 40 CFR 260.20, requesting EPA to designate their halogen acid furnaces (HAFs) as industrial furnaces under 40 CFR 260.10. EPA then proposed to grant the petition in the May 6, 1987, proposal.

[19] Note: Some zinc smelters may be capable of also recovering cadmium and lead.

EPA received comments and additional information on the petition and, as a result, plans to repropose this rule change as part of the proposed amendments to the hazardous waste incinerator standards. A detailed discussion will be provided in that preamble. However, a brief summary of the changes EPA is considering are listed below:

1. The halogen acid concentration of the halogen acid solutions produced will be lowered to three percent from six percent.

2. Fifty percent of the acid must be used onsite. This condition did not appear in the original proposal.

3. EPA proposes to allow the burning of offsite waste providing it is indigenous to Chemical Production (i.e., generated by Standard Industrial Classification 281 or 286).

4. The waste being burned must contain at least 20 percent halogens by weight.

5. Waste fed to HAFs would be listed as inherently waste-like under 40 CFR 261.2(d) to ensure they remain regulated.

EPA is considering the imposition of some or all of the above changes, and, although we will not consider comments on these issues received in response to today's notice, we will request comments on these alternatives when they are proposed as a part of the amendments to the incinerator standards.

IX. Regulation of Smelting Furnaces Involved in Materials Recovery

In the May 6, 1986, proposal, EPA proposed regulatory standards for smelting furnaces burning metal-bearing hazardous waste to recover metals that were the same as the standards for furnaces and boilers burning hazardous wastes for energy recovery. As discussed in section VI above, smelters burning nonindigenous waste would be subject to full regulation.

We have reconsidered how the proposed rules should apply when permitting smelters and request comment on the following approach. We do not believe it is appropriate to apply the organic emissions controls (i.e., destruction and removal efficiency (DRE), and carbon monoxide emissions standards) to smelters that burn waste containing *de minimis* levels of toxic organic constituents. We believe that such *de minimis* levels could be based on the quantity levels established for the small quantity burner exemption. See table 1 of section V of this notice. To establish *de minimis* feed rates of total organic constituents for smelters, the small quantity burner exemption quantities in gallons per month could be converted to pounds per month assuming a waste density of 8 lb/gallon. Burning/processing these feed rates of toxic organic constituents absent the DRE and CO controls should be protective given that the exempt quantities were calculated assuming a 99% DRE and considered the health risk from total hydrocarbon emissions (i.e., unburned organic compounds in the waste and products of incomplete combustion). In order to simplify compliance monitoring and assure adequate conservatism when not making a DRE determination, we believe total organic carbon (TOC) could be used as an indicator for toxic organic constituents. A TOC measurement is conservative because it measures all organic compounds, not just toxic (appendix VIII) constituents.

We do not believe a similar, purely health-based approach is appropriate to determine when the proposed metals controls should apply when permitting smelters. Rather, we believe that the metals controls should apply only when the hazardous waste significantly affects emissions of toxic (appendix VIII) metals. If we were to regulate metals emissions when burning/processing hazardous waste even though those emissions are not adversely affected, we would create an economic disincentive to smelting hazardous waste. Smelters burning hazardous wastes could be regulated more stringently with respect to the same metals than smelters processing ores even though metals emissions were identical. In that situation, ores could displace the hazardous waste with no environmental benefit. To determine if the hazardous waste significantly affects toxic metals emissions, the applicant would need to demonstrate that either: (1) The concentration of each regulated toxic metal in the hazardous waste is not significantly greater than the average level of the metal in normal, nonhazardous waste feedstocks; or (2) the emissions of each regulated toxic metal present in the hazardous waste is not significantly greater than baseline emissions when hazardous waste is not processed. An appropriate statistical test would be used in either case to determine if an increase were significant. The proposed metals controls would apply to each metal for which the applicant could not make a successful or significant increase demonstration.

We specifically invite comment on these approaches to determine the applicability of the proposed controls on organic and metals emissions.

X. Status of Residues from Burning Hazardous Waste

Under the Agency's existing regulations, wastes that are derived from the treatment of listed hazardous wastes are also considered to be hazardous unless and until they are delisted. See 40 CFR 261.3 (c)(2) and (d)(2). Thermal combustion of hazardous waste, no matter the type of device in which it occurs or the purpose of burning, is a type of treatment. Accordingly, under the Agency's existing rules, residues from thermal combustion of listed hazardous waste are considered to remain the listed hazardous waste until delisted.

When the device burning hazardous waste is a boiler burning primarily coal or other fossil fuels, an industrial furnace processing ores or minerals (e.g., light-weight aggregate kilns), or a cement kiln, a further consideration enters: the applicability of the so-called Bevill amendment (which requires a special study before subtitle C regulations can be imposed). (See RCRA section 3001(b)(3)(A) (i)–(iii).) The Agency has stated previously that when these devices burn hazardous waste fuels: (1) Residues of industrial and utility boilers burning at least 50 percent coal remain within the Bevill amendment; (2) residues of boilers burning oil or gas with other materials are not within the Bevill amendment; and (3) residues of industrial furnaces (processing ores or minerals) and cement kilns burning hazardous waste fuel remain within the Bevill amendment. See generally 50 FR 49190 and n. 87–89 (Nov. 29, 1985). The underlying principle for these determinations was that residues would remain within the Bevill amendment if the character of the residual is determined by the Bevill material (i.e., coal, ores or minerals, or cement aggregate) being burned or processed. Thus, any residues that come from burning or processing the Bevill material requires a special study before it could come under Subtitle C regulation and so would remain exempt.

In a later proposal, the Agency suggested a refinement of these positions to address residues from industrial furnaces processing ores or minerals and cement kilns burning nonindigenous hazardous waste for materials recovery. See 52 FR 17012–013 (May 6, 1987). Under that proposal, such residues would remain within the Bevill Amendment provided that at least 50 percent of the raw material feed to the device was a virgin ore or mineral. In addition, residues from devices burning

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hazardous waste for the purpose of destruction (i.e., for neither energy nor materials recovery) would be outside of the Bevill amendment.

We have further evaluated these interpretations in light of our stated principle: residues from coburning hazardous waste and Bevill raw materials should remain within the Bevill amendment provided that the character of the residues is determined by the Bevill material (i.e., the residue is not significantly affected by burning the hazardous waste). (We explain below more precisely what we mean by these terms.) We believe that our present data base for making these interpretations is not sufficient to ensure that, in every case, the residue would not be significantly affected by the hazardous waste.[20] [21] Further, we have reconsidered whether the May 6, 1987, proposed interpretation that residues generated by the subject devices when burning waste for destruction are not within the Bevill amendment is consistent with the stated principle.

Thus, we are today taking two steps to address these issues. We are specifically requesting data on the levels of Appendix VIII toxic compounds in residues from Bevill devices generated with and without burning or processing hazardous waste. If adequate data are available, we may be able to make generic determinations in some situations that the cogenerated residue is not significantly affected by burning or processing the hazardous waste, and thus, remains within the Bevill amendment. Given that the effect of the hazardous waste on the cogenerated residue may be a function of site-specific factors (see discussion below), it may be difficult to make generic determinations in many cases. At a minimum, however, we would like to be able to establish generic baseline levels of toxic compounds in the residues that reflect the composition of residues *without* burning or processing hazardous waste. If baseline levels can be established, each owner or operator would need only to determine the levels of toxic compounds in the cogenerated residue and compare them to the established baseline levels.

In addition, in the absence of data at this time to make supportable determinations, we are proposing to require case-by-case determinations of the effect of coburning on residuals. We believe that today's proposed approach is preferable to that proposed on May 6, 1987, because today's approach would focus on the residues actually generated rather than on the purpose for which the hazardous waste is burned. A drawback to the May 6 proposal is that it would not ensure that the residues generated continue to have the character that was the basis for the statutory exclusion pending completion of the Section 8002 studies. In addition, the Agency's historic approach to the issue of cogenerated residues has been to focus on the character of the residues to ascertain what determines their character—the Bevill material or the hazardous waste being burned. See 50 FR 49190, n. 87 (November 29, 1987). The Agency also solicited comment on this approach— focused on what actually is in the residues—in the May 6 proposal. See 52 FR 17013. The statute itself does not directly specify that the purpose of the burning is a relevant criterion, but rather states that certain types of waste are excluded from subtitle C pending completion of studies. The approach we are proposing today is designated to ensure that the residues remain these types of wastes in order for the exclusion to continue to apply. Accordingly, assuming that it is feasible to implement on a case-by-case basis an approach that focuses on the type of residue generated by coburning situations, we believe that this is the preferable approach. We elaborate below on how this determination could be made.

As a preliminary matter, however, we note that it may be cumbersome to make case-by-case determinations on the effect of coburning (and coprocessing) on residues. As discussed below, sufficient sampling and analyses would be required of large volume residuals that often have levels of constituents that vary widely on a daily (or hourly) basis. Thus, we would prefer to obtain the data necessary to make generic determinations. Many factors, however, could have an impact on whether the residues from a particular device (e.g., cement kiln, light-weight aggregate kiln, boiler) are affected by coburning. For example, the following factors could affect partitioning of metals to residues rather than to product or flue gases: [22] (1) Waste feed rate; (2) levels and volatility of metals in the waste; (3) physical form of the waste (liquid versus solid); and (4) waste feed system. Similarly, the following factors could affect levels of organic constituents in the residues attributable to burning hazardous waste: (1) Waste feed rate: (2) levels and types (e.g., difficulty of destruction, by-products formed) of toxic organics in the hazardous waste; (3) physical form of the waste; and (4) waste feed system. In the absence of a sufficient data base, and due to the cost of developing the extensive data base needed to make a generic determination, we believe we must rely on case-by-case determinations. We believe that, in the interim and absent documentation on impacts of coburning and coprocessing on residuals, the alternative to case-by-case determinations could be to exclude such residuals from the Bevill Amendment.

We discuss below how we propose to implement the stated principle on application of the Bevill amendment—coburning residues should remain within the exclusion provided that the character of the residues is not significantly affected by the hazardous waste.

A. The Device Must Be a Bevill Device

Congress intended to exclude, until further studies were completed, residues from: (i) Devices that burn primarily fossil fuel; (ii) industrial furnaces processing ores or minerals; and (iii) cement kilns. Thus, to be eligible for exclusion from subtitle C regulation under the Bevill amendment, the residue must be generated from a boiler burning primarily coal,[23] an industrial furnace processing primarily ores or minerals (since otherwise residues could not be said to come from processing ores and minerals, but rather from processing some other material), or a cement kiln processing primarily raw materials. To implement objectively the provision that, to be eligible for the Bevill exclusion of residues, the device must

[20] As noted above, the Agency also found that residues from cofiring oil and gas with hazardous waste fuel were not within the scope of the Bevill amendment because te residues' character would be determined by firing hazardous waste. 50 FR 49190. Thus, all residuals from burning hazardous waste with gas in a boiler and bottom ash and fly ash from burning hazardous waste with oil in a boiler are outside of the Bevill emendment. This is because gas-fired boilers generate virtually no residues and oil-fired boilers generate little bottom or fly ash. In words of the statute, such residues result primarily from burning hazardous waste fuel, not from burning fossil fuels. This determination is not being reopened for public comment and the Agency is mentioning it only to accurately describe its past actions.

[21] See Memorandum to the Docket from Dwight Hlustick. EPA, dated March 11, 1988 summarizing available data on levels of toxic compounds in cogenerated cement kiln dust, light-weight aggregate kiln emissions control scrubber water and settling pond residue, and coal-fired boiler collected fly ash, and baseline (without burning/processing hazardous waste) levels in cement kiln dust, and coal-fired boiler collected fly ash.

[22] We note that flue gases would be subject to regulation irrespective of the applicability of the Bevill Amendment to residues, unless the device is an industrial furnace processing indigenous waste solely for reclamation.

[23] Residues from gas and oil fired boilers are not within the scope of the Bevill amendment as discussed above in the text.

burn primarily Bevill material, we would require that a boiler must burn at least 50 percent coal, an industrial furnace [24] must process at least 50 percent ores or minerals, and at least 50 percent of the feedstock to a cement kiln must be raw materials. This requirement also confirms the Agency's long-standing interpretation that the Bevill amendment applies only to primary facilities and not to secondary facilities such as, for example, secondary smelters.[25]

B. Determining if the Residue's Character is Influenced by the Burning of Hazardous Waste

As discussed above, residues from cofiring hazardous waste with gas or oil in a boiler would remain outside of the Bevill amendment. For cogenerated residues in other situations, we are proposing to require a case-by-case determination as to whether the hazardous waste burning or processing significantly affects the character of the residue with respect to inorganic and organic toxic (i.e., appendix VIII) contaminants.[26]

To determine whether there is a significant increase in the level of an appendix VIII compound in the cogenerated residue compared to the baseline residue generated without burning or processing hazardous waste, a number of questions must be addressed, including: (1) What constitutes a representative baseline residue (e.g., considering type, sources, and feed rates of normal—i.e., nonwaste—feedstocks and fuels): (2) what constitutes a representative cogenerated residue (e.g., considering composition, physical form, and feed rate of hazardous waste); (3) what sampling scheme is needed to ensure representative samples for comparison between baseline and cogenerated residues; and, ultimately, (4) what constitutes a significant increase in contaminant levels. We believe that the Agency needs to answer the first and fourth questions, as discussed below. The second and third questions, however, are typically site-specific and, thus, can best be addressed by the owner or operator. The owner and operator should use their best judgment to obtain analyses of representative samples. The approach should be based on, and be consistent with, representative sampling protocols in SW-846, and must be documented by recordkeeping. The Agency solicits comment on how frequently and under what conditions residues should be retested over time.

We note that it may not be necessary to obtain data on a site-specific bases. Rather, owners and operators may choose to use data from other representative facilities to make generic determinations for particular devices under particular conditions (see discussion above on factors that can affect generic determinations).

We discuss next how we believe the other two questions should be addressed: How to establish baseline concentrations, and what constitutes a significant increase in contaminant levels.

1. *Baseline Concentrations.* As discussed above, we prefer to establish generic baseline residue concentrations of toxic (appendix VIII) compounds. We would use the limited available data (primarily on coal-fired boiler ash and cement kiln dust) and additional data that may be forthcoming from the regulated community. If baseline concentrations were established on a site-specific basis, facilities cofiring with, for example, coal containing unusually high (for coal) levels of metals would be allowed to cogenerate residues (within the scope of the Bevill amendment) that had higher metals levels than residues cogenerated at another like facility cofiring coal with unusually low (for coal) metals levels. Thus, facilities burning relative "clean" fuels (and processing relatively clean raw materials) would be at a disadvantage.

We specifically request information on concentrations of appendix VIII toxic constituents in baseline (and cogenerated) residue. In addition, we request comments on how to established generic baseline concentrations considering such issues as what concentration for a given toxic constituent (within the range of values for a particular residue generated by a particular type of device) should be used as the generic value—for example, the mean value, 50th percentile value, or 90th percentile value.

2. *What Constitutes a Significant Increase.* To determine whether an increase is considered to be significant, we propose to use a two part test. First, the increase must be statistically significant. We could use the student's "t" test, "F" test, or some other statistical test as appropriate, at a 95 percent confidence level for the statistical test. We specifically request comment on whether this type of statistical test is appropriate.

Second, if the cogenerated residue has statistically significant high levels of appendix VIII compounds, we propose that a second test be considered to determine whether the residue has been significantly affected—does the cogenerated residue pose a significantly increased health risk. We believe that consideration of health risk posed by these compounds is appropriate because Congress excluded residues from the subject devices based on their presumed high volume and low toxicity pending completion of the section 8002 studies. Thus, we believe that the test of applicability of the Bevill exclusion should consider whether the compounds present at statistically significant higher levels in the cogenerated residue are present at levels of concern from a conservative human health perspective. An alternative reading on the applicability of the Bevill amendment, on which we also request comment, would be to measure whether an increase is statistically significant without regard to the health-based significance of the increase (which could be viewed as a decision relating to whether the wastes warrant regulation, rather than whether they are properly withing the scope of the Bevill amendment).

We specifically request comment on whether it is appropriate to consider a health-based *de minimis* level of concern when determining applicability of the Bevill amendment in these cogeneration situations, and, if so, how such *de minimis* levels could be established. For example, the following approach could be used. For metals for which EP Toxicity (see § 261.24) levels have been established, those levels could be used as *de minimis* levels. Under this approach, the cogenerated residue would not be within the scope of the Bevill amendment if the levels of EP Toxic metals are significantly higher in the cogenerated residue than in the baseline residue and the cogenerated residue exhibited EP Toxicity.

For appendix VIII compounds other than the metals covered by EP Toxicity, we could use an alternative approach. This would include other metals (i.e., antimony, beryllium, nickel, and thallium), other inorganics that could reasonably be expected to be in the waste, and organic compounds that could reasonably be expected to be in the waste or that could result from

[24] Specific residues subject to the Bevill exclusion (i.e., Mining Waste Exclusion) are listed in the April 17, 1989, Federal Register at 15316.

[25] In support of this reading, one court has held that residues from a secondary lead smelter are not covered by the Bevill amendment. Ilco Co. v. EPA (W.D. Ala. 1986).

[26] We note that the issue of the applicability of the Bevill amendment does not pertain to smelters processing indigenous waste. In such cases, the smelter is not coburning hazardous waste.

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incomplete destruction during the burning or processing.[27]

For these compounds, we could apply the Toxicity Characteristic Leaching Procedure (TCLP) codifed in appendix I, 40 CFR part 268 to obtain an extract or leachate from the residue.[28] We could then conservatively assume that an individual actually drinks the leachate as his sole source of drinking water over a lifetime to determine acceptable concentrations of toxic compounds. For noncarcinogenic compounds, we could establish *de minimis* levels based on the RfD. For carcinogenic compounds, we could establish *de minimis* levels as those that could not result in an incremental lifetime cancer risk greater than 10^{-5}.[29]

We also solicit comment on whether less conservative approaches should be adopted. Our concern is that any such approaches-for example, involving site-specific modeling—would not be self-implementing. The virtue of the approach outline above is easy implementability plus a clear way of showing whether the residue's character results from burning hazardous waste of Bevill materials.

C. Regulatory Impact of Today's Proposal

The foregoing discussion is not intended to change automatically at this time the regulatory status of residues from Bevill devices that burn or process hazardous waste. In most cases, EPA expects that these wastes' character is indeed determined by processing or burning the Bevill raw material. Thus, in the absence of data indicating otherwise, the policies regarding applicability of the Bevill amendment to cogenerated residues provided by the November 29, 1985, final rule and the May 6, 1987, proposed rule, as discussed above, remain in effect. EPA intends today's discussion to begin to gather the necessary data and to obatin comment on alternative approaches on which to base a more precise and workable test for determining whether a cogenerated residue remains within the scope of the Bevill amendment. Based on comment on today's discussion and additional Agency analysis, we hope to be in a position to develop a definitive test of Bevill applicability. Ideally, the Agency will establish a final rule on Bevill applicability when the boiler and industrial furnace standards are promulgated.

XI. Applicability of the Sham Recycling Policy

On March 16, 1983, EPA published an Enforcement Guidance (FR 11157) which provided guidance on burning low energy hazardous waste, ostensibly for energy recovery, in boilers and industrial furnaces. This guidance has been referred to as EPA's Sham Recycling Policy. This policy stated that when hazardous waste having a heating value less than 5,000 Btu/lb is burned in boilers or industrial furnaces, EPA generally considers the practice to be burning for destruction (i.e., incineration) rather than exempt burning for energy recovery. The proposed rules for boilers and industrial furnaces burning hazardous waste would apply to those devices irrespective of the purpose of burning. Thus, the proposed rules would supersede the sham recycling policy. A question has been raised regarding the status of the sham recycling policy in the interim between the time the rules are ultimately promulgated and a facility is issued a Part B permit.

The Agency is considering three options in this case. The first option is to rescind the sham recycling policy on the effective date of the final boiler/furnace regulations. As a result, industrial furnaces and boilers could begin burning low heating value hazardous waste at that time. The second alternative is to rescind the sham recycling policy when a facility comes into compliance with the interim status emission standards. In this case, the facility could commence burning low heating value hazardous waste during interim status once it complies with the emissions standards.

The last alternative is to have the sham recycling policy remain in effect until a Part B permit is issued. The Part B permit would address final emission and other standards, and the facility would have completed any trial burn or other emission testing requirements in conjunction with permit writer oversight.

EPA specifically requests comments on these alternatives for rescinding the sham recycling policy.

Regardless of which alternative EPA selects, the sham recycling policy would not apply during the trial burn required to receive a Part B permit or during test burns conducted specifically in preparation for the trial burn. This exclusion is needed to ensure that the facility has the opportunity to conduct a successful trial burn using the wastes for which it wishes to be permitted. The permitting authority will have final approval of the waste types, waste quantities, and facility operating conditions when low heating value (less than 5,000 BTU/lb) wastes are burned in preparation for, and during, the trial burn.

XII. Regulation of Direct Transfer of Hazardous Waste from a Transport Vehicle to a Boiler or Industrial Furnace

Some permitting authorities have expressed concern about the practice of feeding hazardous waste fuels directly from transport vehicles (e.g., 6,000 gallon tankers) to industrial furnaces such as cement kilns. Although these operations may be exempt under § 261.6(c)(2) from the storage standards provided by parts 264 and 265, some permit authorities are concerned about: (1) The potential for fires, explosions, and spills during transfer operations; and (2) the potential for waste fuel flow interruptions and stratification of waste in the transport container which, in turn, could affect the ability of the burner to consistently provide efficient combustion of the waste. Approaches to address these issues are discussed below.

In situations where permit writers believe that such transfer operations pose a substantial risk of fires, explosions, or spills that is not adequately addressed by applicable regulatory controls, the permit writer should use the omnibus authority under section 3005(c)(3) of RCRA codified at § 270.32(b)(2) to provide additional permit conditions as may be necessary to protect human health and the environment.

With respect to the concern about fuel flow interruptions and waste stratification and the resultant effects on combustion efficiency, we request comment on whether blending and surge storage tanks should be required at all facilities burning hazardous waste. This is common practice at the vast majority of facilities. In fact, it could be argued that the primary reason that the practice of direct transfer from the transport vehicle to the burner is used at some cement kiln facilities in lieu of using a fixed blending/storage tank is to avoid the need to obtain a permit for the storage tank. (Hazardous waste fuel storage operations not "in existence" on May 29, 1986, and thus, not eligible for interim status, must obtain a part 264, part B permit before they can operate.)

XIII. Updated Health Effects Data

In the 1987 proposal, appendices A & B presented reference air concentrations for noncarcinogens and unit risk values for carcinogens for those compounds in appendix VIII, part 261 for which the Agency had sufficient health effects data to establish such values. Since May 1987, several values have been revised based on new health effects data or evaluations. For the convenience of the reader, we are providing those entire appendices, incorporating the revised values, in today's notice as appendices I and J.

Dated: October 13, 1989.

William K. Reilly,

Administrator.

Appendix A: Background Support for PIC Controls

Hazard Posed by Emissions of Products of Incomplete Combustion (PICs)

The burning of hazardous waste containing toxic organic compounds listed in appendix VIII of 40 CFR part 261 under poor combustion conditions can result in substantial emissions of compounds that result from the incomplete combustion of constituents in the waste, as well as emissions of the original compounds which were not burned. The quantity of toxic organic compounds emitted depends on the concentration of the compounds in the waste, and the combustion conditions under which the waste is burned.

Data on typical PIC emissions from hazardous waste combustion sources were compiled and assessed in recent EPA studies.[30, 31] These studies identified 37 individual compounds in the stack gas of the eight full-scale hazardous waste incinerators tested, out of which 17 were volatile compounds and 20 semivolatile compounds. Eight volatile compounds (benzene, toluene, chloroform, trichloroethylene, carbon tetrachloride, tetrachloroethylene, chlorobenzene, and methylene chloride), and one semivolatile compound (naphthalene) were identified most frequently in over 50 percent of the tests. It was found that PIC emission rates vary widely from site-to-site which may be due, in part, to variations in waste feed composition and facility size. The median values of the nine compounds mentioned above range from 0.27 to 5.0 mg/min. Using a representative emission rate of 1 mg/min, the stack gas concentration of PICs in a medium-sized facility (250 m^3/min combustion gas flow rate) would be 4 μg/m3 (0.004 μg/l).

The health risk posed by PIC emissions depends on the quantity and toxicity of the individual toxic components of the emissions, and the ambient levels to which persons are exposed. Estimates of risk to public health resulting from PICs, based on available emissions data, indicate that PIC emissions do not pose significant risks when incinerators are operated under optimum conditions. However, limited information about PICs is available. PIC emissions are composed of thousands of different compounds, some of which are in very minute quantities and cannot be detected and quantified without very elaborate and expensive sampling and analytical (S&A) techniques. Such elaborate S&A work is not feasible in trial burns for permitting purposes and can only be done in research tests. In addition, reliable S&A procedures simply do not exist for some types of PICs (e.g., water-soluble compounds). The most comprehensive analysis of PIC emissions from a hazardous waste incinerator identified and quantified only approximately 70 percent of organic emissions. Typical research-oriented field tests identify a much lower fraction—from 1–60 percent. Even if all the organic compounds emitted could be quantified, there are inadequate health effects data available to assess the resultant health risk. EPA believes that, due to the above limitations, additional testing will not, in the foreseeable future, be able to prove quantitatively whether PICs do or do not pose unacceptable health risk. Considering the uncertainties about PIC emissions and their potential risk to public health, it is therefore prudent to require that boilers and industrial furnaces operate at a high combustion efficiency to minimize PIC emissions. Given that carbon monoxide (CO) is the best available indicator of combustion efficiency, and a conservative indicator of combustion upset, we are proposing to limit the flue gas CO levels to levels that ensure PIC emissions are not likely to pose unacceptable health risk. In cases where CO concentrations exceed the proposed *de minimis* limit, higher CO levels would be allowed under two alternative approaches: (1) If total hydrocarbon (THC) concentrations in the stack gas do not exceed a good operating practice-based limit of 20 ppmv; or (2) if the applicant demonstrates that THC emissions are not likely to pose unacceptable health risk using conservative, prescribed risk assessment procedures. Although we prefer the technology-based approach for reasons discussed in the text, we are requesting comment on the health-based alternative as well.

Use of CO Limits to Ensure Good Combustion Conditions

By definition, low CO flue gas levels are indicative of a boiler or industrial furnace (or any combustion device) operating at high combustion efficiency. Operating at high combustion efficiency helps ensure minimum emissions of unburned (or incompletely burned) organics.[32] In a simplified view of combustion of hazardous waste, the first stage is immediate thermal decomposition of the POHCs in the flame to form other, usually smaller, compounds, also referred to as PICs. These PICs are generally rapidly decomposed to form CO.

The second stage of combustion involves the oxidation of CO to CO_2 (carbon dioxide). The CO to CO_2 step is the slowest (rate controlling) step in the combustion process because CO is considered to be more thermally stable (difficult to oxidize) than other intermediate products of combustion of hazardous waste constituents. Since fuel is being fired continuously, both combustion stages are occurring simultaneously.

Using this view of waste combustion, CO flue gas levels cannot be correlated to DRE for POHCs and may not correlate well with PIC destruction. As discussed below, test data shown no correlation between CO and DRE, but do show a slight apparent correlation between CO and chlorinated PICs, and a fair correlation between CO and total unburned hydrocarbons. Low CO is an indicator of the status of the CO to CO_2 conversion process, the last, rate-limiting oxidation process. Since

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[27] See Midwest Research Institute, "Background Information Document for the Development of Regulations for PIC Emissions from Hazardous Waste Incinerators," December, 1988.

[28] We also request comment on whether, for organic compounds, the total concentration of the compound is the residue rather than the extract concentration should be used for the health-based test given that the purpose of burning toxic organic compounds in these devices should be to destroy the compounds.

[29] A draft compilation of health-based concentrations for use in determining applicability of the Bevill exclusion has been made for approximately 150 compounds based on EP Toxicity levels, maximum concentration levels, RfDs, and RSDs. See memorandum to the Docket from Dwight Hlustick, EPA, dated June 6, 1989.

[30] Wallace, D. et al., "Products of Incomplete Combustion from Hazardous Waste Combustion," Draft Final Report. EPA Contract No. 68-03-3241, Acurex Corporation, Subcontractor No. ES 59689A, Work Assignment 5, Midwest Research Institute Project No. 8371-L(1). Kansas City, MO, June 1988.

[31] Trenholm, A., and C.C. Lee, "Analysis of PIC and Total Mass Emissions from an Incinerator." Proceedings of the Twelfth Annual Research Symposium on Land Disposal, Remedial Action, Incineration, and Treatment of Hazardous Waste, Cincinnati, OH, April 21–23, 1986, EPA/600-9-86/022, pp. 376–381, August 1986.

[32] Given that CO is a gross indicator of combustion performance, limiting CO may not absolutely minimize PIC emissions. This is because PICs can result from small pockets within the combustion zone where adequate time, temperature, and turbulence have not been provided to oxidize completely the combustion products of the POHCs. Available data, however, indicate that PIC emissions do not pose significant risk when combustion devices are operated at high combustion efficiency. EPA is conducting additional field and pilot scale testing to address this issue.

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oxidation of CO to CO_2 occurs after destruction of the POHC and its (other) intermediates (PICs), the absence of CO is a useful indication of POHC and PIC destruction. The presence of high levels of CO in the flue gas is a useful indication of inefficient combustion and, at some level of elevated CO flue gas concentration, an indication of failure of the PIC and POHC destruction process. We believe it is necessary to limit CO levels to levels indicative of high combustion efficiency because we do not know the precise CO level that is indicative of significant failure of the PIC and POHC destruction process. It is possible that the critical CO level may be dependent on site-specific and event-specific factors (e.g., fuel type, air-to-fuel ratios, rate and extent of change of these and other factors that affect combustion efficiency). We believe limiting CO levels is prudent because: (1) It is a widely practiced approach to improving and monitoring combustion efficiency; and (2) most well designed and operated boilers and industrial furnaces can easily be operated in conformance with the proposed Tier I CO limit of 100 ppmv.

The Tier I CO limit of 100 ppmv would be specified in the permit even when (though) the CO levels during the trial burn were lower. EPA considered this issue carefully and the proposal is based on three considerations. First, permitting a CO level of 100 ppmv will not cause destruction and removal efficiencies to be less than the required 99.99 percent. Second, many combustion devices run very efficiently during a trial burn and achieve CO emissions under 10 ppmv. It may be difficult to achieve that high degree of efficiency on a consistent basis and specifying such low trial burn CO values may result in numerous unnecessary hazardous waste feed cut-offs due to CO exceedances. Third, the emission of PICs from incinerators has not been shown to increase linearly at such low CO levels. In fact, the trial burn data indicate that total organic emissions are consistently low (i.e., at levels that pose acceptable health risk) when CO emission levels are less than 100 ppmv. Two studies show that no measurable change in DRE is likely to occur for CO levels up to 100 ppmv. The first study generated data from combustion of a 12 component mixture in a bench scale facility.[33] The CO levels ranged from 15 to 522 ppm without a significant correlation to the destruction efficiency for the compounds investigated. The second study was conducted on a pilot scale combustor.[34] Test runs were conducted with average CO concentrations ranging from 30 to 700 ppmv. When the concentration was less than 220 ppmv, no apparent decrease in DRE was noticed, but higher CO concentrations showed a definite decrease in DRE. EPA specifically invites comments on whether the permit should limit CO according to actual trial burn values in lieu of the limits specified here.

Supporting Information on CO as a Surrogate for PICs

Substantial information is available that indicate CO emissions may relate to PIC emissions.

Combustion efficiency is directly related to CO by the following equation:

$$\text{Combustion Efficiency (CE)} = \frac{\text{percent } CO_2}{\text{percent } CO_2 + \text{percent CO}} (100)$$

[33] Hall D.L. et al. "Thermal Decomposition Properties of a Twelve Component Organic Mixture", Hazardous Wastes & Hazardous Materials, Vol. 3, No. 4 pp 441–449, 1986.

[34] Waterland, L.R. "Pilot-scale Investigation of Surrogate Means of Determining POHC Destruction" Final Report for the Chemical Manufacturers' Association, ACUREX Corporation, Mountain View, California, July 1983.

CE has been used as a measure of completeness of combustion.[35] EPA's regulations for incineration of waste PCBs at 40 CFR 761.70 require that combustion efficiency be maintained above 99.9 percent. As combustion becomes less efficient or less complete, at some point, the emission of total organics will increase and smoke will eventually result. It is probable that some quantity of toxic organic compounds will be present in these organic emissions. Thus, CE or CO levels provide an indication of the potential for total organic emissions and possibly toxic PICs. Data are not available, however, to correlate these variables quantitatively with PICs in combustion processes.

Several studies have been conducted to evaluate CO monitoring as a method to measure the performance of hazardous waste combustion. Though correlations with destruction efficiency of POHCs have not been found, the data from these studies generally show that as combustion conditions deteriorate, both CO and total hydrocarbon emissions increase. These data support the relation between CO and increased organic emissions discussed above. In one of these studies,[36] an attempt was made to correlate the concentrations of CO with the concentrations of four common PICs (benzene, toluene, carbon tetrachloride, and trichloroethylene) in stack gases of full scale incinerators. For a plot of CO versus benzene, one of the most common PICs, there is considerable scatter in the data indicating that parameters other than CO affect the benzene levels. However, there is a trend in the data that suggests that when benzene levels are high, CO levels also are high. The converse has not been found to be true; when benzene levels are low, CO levels are not always low. Similar trends were observed for toluene and carbon tetrachloride, but not for trichloroethylene. In the pilot-scale study by Waterland cited earlier, similar trends were observed for chlorobenzene and methylene chloride and in another study [37] similar trends were observed for total chlorinated PICs. These data support the conclusion that when the emission rates of some commonly identified PICs are sufficiently high, it is likely that CO emissions will also be higher than typical levels.

More importantly, however, available data indicate that when CO emissions are low (e.g., under 100 ppmv), PIC emissions are always low (i.e., at levels that pose acceptable health risk). The converse may not be true: when CO is high, PIC levels may or may not be high. Thus, the Agency believes that CO is a conservative indicator of potential PIC emissions and, given that CO monitoring is already required in the present regulations, the emission levels should be limited to low levels indicative of high combustion efficiency. (For those facilities where CO emissions may be high but PIC emissions low, we are providing an opportunity under Tier II of the proposed rule to demonstrate that, in fact, PIC emissions pose acceptable health risks at elevated CO levels.)

Appendix B: Emission Screening Limits for Total Hydrocarbons (mg/s)

Terrain adjusted effective stack height (meters)	Noncomplex terrain		Complex terrain
	Urban land use	Rural land use	
4	5.4E+01	2.8E+01	1.3E+01
6	6.1E+01	3.2E+01	1.9E+01
6	6.9E+01	3.6E+01	2.7E+01
10	7.7E+01	4.2E+01	4.0E+01
12	8.8E+01	5.1E+01	4.9E+01
14	9.9E+01	6.2E+01	6.0E+01
16	1.1E+02	7.7E+01	6.9E+01
18	1.3E+02	8.6E+01	7.7E+01
20	1.4E+02	1.2E+02	6.5E+01
22	1.6E+02	1.5E+02	9.4E+01
24	1.8E+02	1.9E+02	1.0E+02
26	2.0E+02	2.5E+02	1.2E+02
28	2.3E+02	3.1E+02	1.3E+02
30	2.6E+02	4.0E+02	1.4E+02
35	3.4E+02	6.3E+02	1.8E+02
40	4.3E+02	9.6E+02	2.2E+02
45	5.4E+02	1.3E+03	2.7E+02
50	7.0E+02	1.6E+03	3.3E+02
55	8.6E+02	2.9E+03	4.1E+02
60	1.1E+03	3.1E+03	5.0E+02
65	1.3E+03	4.1E+03	6.2E+02
70	1.5E+03	4.9E+03	6.9E+02
75	1.7E+03	5.8E+03	7.7E+02

Terrain adjusted effective stack height (meters)	Noncomplex terrain		Complex terrain
	Urban land use	Rural land use	
80	1.9E+03	6.9E+03	6.6E+02
85	2.2E+03	8.2E+03	9.7E+02
90	2.5E+03	9.7E+03	1.1E+03
95	2.8E+03	1.2E+04	1.2E+03
100	3.2E+03	1.4E+04	1.4E+03
105	3.6E+03	1.6E+04	1.5E+03
110	4.1E+03	2.0E+04	1.7E+03
115	4.6E+03	2.3E+04	1.9E+03
120	5.3E+03	2.8E+04	2.1E+03

Appendix C: Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen in Hazardous Waste Incinerators, Boilers, and Industrial Furnaces

1.0 Applicability and Principle

1.1 *Applicability.* This specification is to be used for evaluating the acceptability of carbon monoxide (CO) and oxygen (02) continuous emission monitoring systems (CEMS) installed on hazardous waste incinerators, boilers, and industrial furnaces.

This specification is intended to be used in evaluating the acceptability of the CEMS at the time of or soon after installation and at other times as specified in the regulations. This specification is not designed to evaluate the CEMS performance over an extended period of time nor does it identify specific routine calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS.

1.2 *Principle.* Installation and measurement location specifications, performance and equipment specifications, test procedures, and data reduction procedures are included in this specification. Relative accuracy (RA) tests, calibration error (Ec) tests, calibration drift (CD) tests, and response time (RT) tests are conducted to determine conformance of the CEMS with the specification.

2.0 Definitions

2.1 *Continuous Emission Monitoring System (CEMS).* The CEMS comprises all the equipment used to generate data and includes the sample extraction and

[35] We specifically request comments on whether combustion efficiency, as defined above in the text (i.e., considering both CO and CO_2 emissions) should be used to control PIC emissions rather than CO alone.

[36] Trenholm, A., P. Gorman, and G. Jungclaus. "Performance Evaluation of Full-Scale Hazardous Waste Incinerators, Vol. 2—Incinerator Performance Results." EPA–600/2–84–181b, NTIS No. PB 85–129518, November 1984.

[37] Chang, D. P. et al., "Evaluation of a Pilot-Scale Circulating Bed Combustor as a Potential Hazardous Waste Incinerator," APCA Journal, Vol. 37, No. 3, pp. 266–274, March 1987.

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transport hardware, the analyzer(s), and the data recording/processing hardware (and software).

2.2 *Continuous.* A continuous monitor is one in which the sample to be analyzed passes the measurement section of the analyzer without interruption, and, which evaluates the detector response to the sample at least once each 15 seconds and which computes and records the results at least every 60 seconds.

2.2.1 *Hourly Rolling Average.* An hourly rolling average is the arithmetic mean of the 60 most recent 1-minute average values recorded by the continuous monitoring system.

2.3 *Monitoring System Types.* There are three basic types of monitoring systems: extractive, cross-stack, and in-situ. Carbon monoxide monitoring generally are extractive or cross-stack, while oxygen monitors are either extractive or in-situ.

2.3.1 *Extractive.* Extractive systems use a pump or other mechanical, pneumatic, or hydraulic means to draw a small portion of the stack or flue gas and convey it to the remotely located analyzer.

2.3.2 *In-situ.* In-situ analyzers place the sensing or detecting element directly in the flue gas stream and thus perform the analysis without removing a sample from the stack.

2.3.3 *Cross-stack.* Cross-stack analyzers measure the parameter of interest by placing a source beam on one side of the stack and either the detector (in single-pass instruments) or a retro-reflector (in double-pass instruments) on the other side and measuring the parameter of interest (e.g., CO) by the attenuation of the beam by the gas in its path.

2.4 *Span.* The upper limit of the gas concentration measurement range.

2.5 *Instrument Range.* The maximum and minimum concentration that can be measured by a specific instrument. The minimum is often stated or assumed to be zero and the range expressed only as the maximum. If a single analyzer is used, for measuring multiple ranges, (either manually or automatically), the performance standards expressed as a percentage of full scale apply to all ranges.

2.6 *Calibration Drift.* Calibration drift is the change in the response or output of an instrument from a reference value over time. Drift is measured by comparing the responses to a reference standard over time with no adjustment of instrument settings.

2.7 *Response Time.* The response time of a system or part of a system is the amount of time between a step change in the system input (e.g, change of calibration gas) until the data recorder displays 95 percent of the final value.

2.8 *Accuracy.* Accuracy is a measure of agreement between a measured value and an accepted or true value and is usually expressed as the percentage difference between the true and measured values relative to the true value. For this performance specification, the accuracy is checked by conducting a calibration error (Ec) test and a relative accuracy (RA) test.

2.8.1 *Calibration Error.* Calibration error is a measure of the deviation of a measured value at the analyzer mid range from a reference value.

2.8.2 *Relative Accuracy.* Relative accuracy is the comparison of the CEMS response to a value measured by a reference test method (RM). The applicable reference test methods are Method 10 (Determination of Carbon Monoxide from Stationary Sources) and Method 3 (Gas Analysis for Carbon Monoxide, Oxygen Excess Air, and Dry Molecular Weight). These methods are found in 40 CFR part 60, appendix A.

3.0 Installation and Measurement Location Specifications

3.1 *CEMS Measurement Location.* The best or optimum location of the sample interface for the monitoring system is determined by a number of factors, including ease of access for calibration and maintenance, the degree to which sample conditioning will be required, the degree to which it represents total emissions, and the degree to which it represents the combustion situation in the firebox. The location should be as free from in-leakage influences as possible and reasonably free from severe flow disturbances. The sample location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs and at least 0.5 diameters upstream from the exhaust or control device. The equivalent duct diameter is calculated as per 40 CFR part 60, appendix A, method 1, section 2.1.

The sample path of sample point(s) should include the concentric inner 50 percent of the stack or duct cross section. For circular ducts, this is 0.707 × diameter and a single-point probe, therefore, should be located between 0.141 × diameter and 0.839 × diameter from the stack wall and a multiple-point probe should have sample inlets in this region. A location which meets both the diameter and the cross-section criteria will be acceptable.

If these criteria are not achievable of if the location is otherwise less than optimum, the possibility of stratification should be investigated. To check for stratification, the oxygen concentration should also be measured as verification of oxygen in-leakage. For rectangular ducts, at least nine sample points located at the center of similarly shaped, equal area division of the cross section should be used. For circular ducts, 12 sample points (i.e., six points on each of the two perpendicular diameter) should be used, locating the points as described in 40 CFR part 60, appendix A, method 1. Calculate the mean value for all sample points and select the point(s) or path that provides a value equivalent to the mean. For these purposes, if no single value is more than 15 percent different from the mean and if no two single values are different from each other by more than 20 percent of the mean, then the gas can be assumed homogeneous and can be sampled anywhere. The point(s) or path should be within the inner 50 percent of the area.

Both the oxygen and CO monitors should be installed at the same location or very close to each other. If this is not possible, they may be installed at different locations if the effluent gases at both sample locations are not stratified and there is no in-leakage of air between sampling locations.

3.2 *Reference Method (RM) Measurement Location and Traverse Points.* Select, as appropriate, an accessible RM measurement point at least two equivalent diameters downstream from the nearest control device, the point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate may occur, and at least a half equivalent diameter upstream from the effluent exhaust or control device. When pollutant concentration changes are due solely to oxygen in-leakage (e.g., air heater leakages) and pollutants and diluents are simultaneously measured at the same location, a half diameter may be used in lieu of two equivalent diameters. The CEMS and RM locations need not be the same. Then select traverse points that assure acquisition of representative samples over the stack or duct cross section. The minimum requirements are as follows: Establish a "measurement line" that passes through the centroidal area and in the direction of any expected stratification. If this line interferes with the CEM measurements, displace the line up to 30 cm (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area. Locate three traverse points at 16.7, 50.0, and 83.3 percent of the measurement line. If the measurement line is longer than 2.4 m and pollutant stratification is not expected, the tester may choose to locate the three tranverse points on the line at 0.4, 1.2, and 2.0 m from the stack or duct wall. This option must not be used at points where two streams with different pollutant concentrations are combined. The tester may select other traverse points, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section. Conduct all necessary RM tests within 3 cm (but not less than 3 cm from the stack or duct wall) of the traverse points.

4.0 Monitoring System Performance Specifications

Table C–1 summarizes the performance standards for the continuous monitoring systems. Each of the items is discussed in the following paragraphs. Two sets of standards for CO are given—one for low range measurement and another for high range measurement since the proposed CO limits are dual range. The high range standards relate to measurement and quantification of short duration high concentration peaks, while the low range standards relate to the overall average operating condition of the incinerator. The dual-range specification can be met either by using two separate analyzers, one for each range, or by using dual range units which have the capability of meeting both standards with a single unit. In the latter case, when the reading goes above the full scale measurement value of the lower range, the higher range operation will be started automatically.

TABLE C–1.—PERFORMANCE SPECIFICATIONS OF CO AND OXYGEN MONITORS

Parameter	CO monitors		Oxygen monitors
	Low range	High range	
Calibration drift 24 h.	<5% FS [1]	<5% FS	<0.5% O2.
Calibration error [2].	<5% FS	<5% FS	<0.5% O2.
Response time.	<1.5 min	<1.5 min	<1.5 min.
Relative accuracy.	<The greater of 10% of RM or 20ppm.		<The greater of 20% of RM or 1.0% O2.

[1] FS means full scale measurement range.
[2] Expressed as the sum of the mean absolute value plus the 95% confidence interval of a series of measurements.

4.1 *CEMS Span Values.* The span values shown below in Table C–2 are to be established for the continuous emission monitoring systems.

TABLE C–2.—CEMS SPAN VALUES FOR CO AND OXYGEN MONITORS

	CO monitors		Oxygen monitors (%)
	Low range (ppm)	High range (ppm)	
Tier 1 rolling average format.	200	3,000	25
Tier 1 alternate format.	200	3,000	25
Tier 2 rolling average format.	2×permit limit.	3,000	25
Tier 2 alternate format.	2×permit limit.	1.1×permitted peak value.	25

4.2 *System Measurement Range.* In order to measure both the high and low concentrations consistently with the same or similar degree of accuracy, system measurement range maximum span specifications are given for both the low and high range monitors. The system measurement range chosen is based upon the permitted level and the span value presented in section 4.1.

The owner or operator must choose a measurement range that includes zero and a high-level value. The high-level value is chosen by the source owner and operator as follows:

1. For the low range CO measurement, the high level value is set between 1.5 times the permit limit and the span value specified in section 4.1.

2. For the high range CO measurements, except for Tier 2, alternate format, the high level value is set between 2000 ppm as a minimum and the span value specified in section 4.1.

3. For the high range CO measurement under Tier 2 using the alternate format, the high level value is set at the span value specified in section 4.1.

4. For oxygen, the high level value is set between 1.5 times the highest level measured during the trial burn and the span value specified in section 4.1.

The calibration gas, or gas cell values used to establish the data recorder scale should produce the zero and high level values.

4.3 *Response Time.* The mean response time for the CO monitor(s) should not exceed 1.5 minutes to achieve 95 percent of the final stable value. For the oxygen monitor, the mean response time should not exceed 15 min to achieve 95 percent of the final stable value.

4.4 *Calibration Drift.* The CEMS calibration must not drift or deviate from the reference value of the gas cylinder or gas cell by more than 5 percent full scale in 24 hr for the CO low range and the CO high range. For oxygen the calibration drift must be less than 0.5 percent O_2 in 24 hr. The calibration drift specification must not be exceeded for six out of the seven test days required during the test (see Section 5 for the test procedures).

4.5 *Calibration Error.* The calibration error specification evaluates the system accuracy at the midpoint of the measurement range by the calibration error test described in Section 6. The test determines the difference between the measured value and the expected value at this midpoint.

The calibration error of the CEMS must not exceed 5 percent full scale for CO. The calibration error of the oxygen CEMS must not exceed 0.5 percent O_2.

4.6 *Relative Accuracy.* The relative accuracy (RA) of the carbon monoxide CEMS must not exceed 10 percent of the mean value of the reference method (RM) test data or 20 ppm CO, whichever is greater. Note that during the relative accuracy test, the CO level may exceed the full scale of the low range monitor. When this occurs, the mean CEMS measurement value should be calculated using the appropriate data from both the low range and high range monitors.

The relative accuracy of the oxygen CEMS must not exceed 20 percent of the mean value of the RM test data or 1 percent oxygen, whichever is greater.

5.0 Performance Specification Test Period

5.1 *Pretest Preparation.* Install the CEMS, prepare the RM test site according to the specifications in Section 3, and prepare the CEMS for operation according to the manufacturer's written instructions.

5.2 *Calibration Drift Test Period.* Prior to initiating the calibration drift tests conduct the calibration error test and the response time test according to the test procedures established in Section 6. The carbon monoxide and oxygen (if applicable) monitoring systems must be evaluated separately.

5.3 *Calibration Drift Test Period.* The monitoring system should be operated for some time before attempting drift checks because most systems need a period of equilibration and adjustment before the performance is reasonably stable. At least one week (168 hr) of continuous operation is recommended before attempting drift tests.

While the facility is operating at normal conditions, determine the magnitude of the calibration drift (CD) once each day (at 24-hr intervals) for

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seven consecutive days according to the procedure given in section 6. The carbon monoxide and oxygen (if applicable) monitoring systems must be evaluated separately.

5.4 *RA Test Period.* Conduct the RA test according to the procedure given in section 6 while the facility is operating at normal conditions. The RA test may be conducted during the CD test period. The RA test may be conducted separately for each of the monitors (carbon monoxide and oxygen, if applicable) or may be conducted as a combined test so that the results are calculated only for the corrected CO concentration (i.e., CO corrected to 7 percent oxygen); the latter approach is preferred.

6.0 Performance Specification Test Procedures.

6.1 *Response Time.* The response time tests apply to all types of monitors, but will generally have significance only for extractive systems. The entire system is checked with this procedure including sample extraction and transport (if applicable), sample conditioning (if applicable), gas analyses, and the data recording.

Introduce zero gas into the system. For extractive systems, the calibration gases should be introduced at the probe as near to the sample location as possible. For in-situ systems, introduce the zero gas at the sample interface so that all components active in the analysis are tested. When the system output has stabilized (no change greater than 1 percent of full scale for 30 s), switch to monitor stack effluent and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value. Next, introduce a high level calibration gas and repeat the above procedure (stable, switch to sample, stable, record). Repeat the entire procedure three times and determine the mean upscale and downscale response times. The slower or longer of the two means is the system response time.

6.2 *Calibration Error Test*

6.2.1 *Procedure.* The procedure for testing calibration error is to set the instrument zero and span with the appropriate standards and then repeatedly measure a standard in the middle of the range. In order to minimize bias from previous analyses, the sequence of standard introduction should alternate between high and low standards prior to the mid-level standard (e.g., high, mid, low, mid, high, mid, low, mid, etc.) until six analyses of the mid-level standard are obtained, with three values obtained from upscale approach and three values obtained from downscale approach.

The differences between the measured instrument output and the expected output of the reference standards are used as the data points.

62.2 *Calculations.* Summarize the results on a data sheet. For each of the six measurements made, calculate the arithmetic difference between the midpoint reference value and the measured value. Then calculate the mean of the difference, standard deviation, confidence coefficient, and calibration error using Equations 2–1, 2–2, 2–3, and 2–4 presented in Section 7.

6.3 *Zero and Span Calibration Drift.* The purpose of the calibration drift (CD) checks is to determine the ability of the CEMS to maintain its calibration over a specified period of time. The performance specifications establish a standard related to span drift. Each drift test is conducted seven times and the system(s) are allowed to exceed the limit once during the test.

During the drift tests, no adjustment of the system is permitted except those automatic internal adjustments which are part of the automatic compensation circuits integral to the analyzer. If periodic automatic adjustments are made to the CEMS zero and calibration settings, conduct the daily CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined (calculated). Subsequent CEMS operation must include the same system configuration as used during the performance testing.

Select a reference gas with a CO or O_2 concentration between 80 and 100 percent of the full-scale measurement range of the analyzer; ambient air (20.9 percent O_2) may be used as the reference gas for oxygen. The zero gas should contain the lowest concentration recommended by the manufacturer. Prior to the test, calibrate the instrument. At the beginning of the test, introduce the selected zero and span reference gases (or cells or filters). After 24 hr and at 24-hr intervals thereafter, alternately introduce both the zero and span reference gases, wait until a stable reading is obtained and record the values reported by the system. Subtract the recorded CEMS response from the reference value. Repeat this procedure for 7 days, obtaining eight values of zero and span gas measurements (the initial values and seven 24-hr readings). The difference between the established or reference value for the span and the measured value may not exceed the specifications in Table 4.1 more than once, and the average value must not exceed the specification.

6.4 *Relative Accuracy Test Procedure*

6.4.1 *Sampling Strategy for RM Test.* Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. Although it is preferable to conduct the oxygen, moisture (if needed), and CO measures simultaneously, the diluent and moisture measurements that are taken within a 30- to 60-min period which includes the pollutant measurements, may be used to calculate dry pollutant concentration corrected to 7 percent O_2. For each run, make a sample traverse of at least 21 min, sampling for 7 min per point.

6.4.2 *Correlation of RM and CEMS Data.* Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration during each pollutant RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then, compare each integrated CEMS value against the corresponding average RM value. Make a direct comparison of the RM results and CEMS integrated average value. When oxygen monitoring is required by the regulation to calculate carbon monoxide normalized to 7 percent O_2, the RM test results should be calculated and compared on this basis. This is, the CO concentrations normalized to 7 percent O_2 measured by the CEMS.

6.4.3 *Number of RM Tests.* Conduct a minimum of nine sets of all necessary RM tests. The tester may choose to perform more than nine sets of RM tests. If this option is chosen, the tester may, at his discretion, reject a maximum of three sets of the test results so long as the total number of test results used to determine the RA is greater than or equal to nine, but they must report all data including the rejected data.

6.4.4 *Calculations.* Summarize the results on a data sheet. Calculate the mean of the RM values. Calculate the arithmetic differences between the RM and the CEMS output sets. Then calculate the mean of the difference, standard deviation, confidence coefficient, and CEMS RA, using Equations 2–1, 2–2, 2–3, and 2–5.

7.0 Equations

7.1 *Arithmetic Mean.* Calculate the arithmetic mean of the difference, d, of a data set as follows:

$$d_{av.} = \frac{1}{n} \times \sum_{i=1}^{n} d_i \qquad \text{(Eq. 2-1)}$$

Where n = number of data points

$\sum_{i=1}^{n} d_i$ = algebraic sum of the individual differences d_i

When the mean of the differences of pairs of data is calculated, be sure to correct the data for moisture, if applicable.

7.2 *Standard Deviation.* Calculate the standard deviation, Sd, as follows:

$$S_d = \left(\frac{\sum_{i=1}^{n} d_i^2 - \frac{\left(\sum_{i=1}^{n} d_i\right)^2}{n}}{n-1} \right)^{\frac{1}{2}} \qquad \text{(Eq. 2-2)}$$

7.3 *Confidence Coefficient.* Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, as follows:

$$CC = t_{0.975} \times \frac{S_d}{\sqrt{n}} \qquad \text{(Eq. 2-3)}$$

Where $t_{0.975}$ = t-value

TABLE 7–1.—VALUES

n*	$t_{0.975}$	n*	$t_{0.975}$	n*	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

* The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

7.4 *Calibration Error.* Calculate the calibration error (Ec) of a set of data as follows:

$$\text{For carbon monoxide: } E_c = \frac{|d_{av}| + |CC|}{FS} \times 100 \text{ (Eq. 2-4)}$$

For oxygen[38]: $E_c = |d_{av}| + |CC|$

where: $|d_{av}|$ = absolute value of the mean of differences (from Equation 2–1)

$|CC|$ = absolute value of the confidence coefficient (from Equation 2–3)

FS = full scale span of monitoring system (for calculation of CO calibration error only)

7.5 *Relative Accuracy.* Calculate the relative accuracy (RA) of a set of data as follows:

$$RA = \frac{|d_{av}| + |CC|}{RM} \times 100 \text{ (Eq. 2-5)}$$

where: $|d_{av}|$ = absolute value of the mean of differences (from Equation 2–1)

$|CC|$ = absolute value of the confidence coefficient (from Equation 2–3)

RM = average value indicated by the Reference Method.

8.0 Quality Assurance

It is the responsibility of the owner/operator to assure proper calibration, maintenance, and operation of the CEMS on a continual basis. The owner/operator should establish a QA program to evaluate and monitor CEMS performance on a continual basis. The following QA guidelines are presented:

1. Conduct a daily calibration check for each monitor. Adjust the calibration if the check indicates the instrument's calibration drift exceeds the specification established in Paragraph 4.4.

2. Conduct a daily system audit. During the audit, review the calibration check data, inspect the recording system, inspect the control panel warning lights, and inspect the sample transport/interface system (e.g., flowmeters, filters), as appropriate.

3. Conduct a quarterly calibration error test at the span midpoint.

4. Repeat the entire performance specification test every second year.

9.0 Reporting

At a minimum (check with the appropriate regional office, or State, or local agency for additional requirements, if any), summarize in tabular form, the results of the response time tests, calibration error tests, calibration drift tests, and the relative accuracy tests. Include all data sheets, calculations, charts (records of CEMS responses), cylinder gas concentration certifications, and calibration cell response certifications (if applicable), necessary to substantiate that the performance of the CEMS met the performance specifications.

10.0 References

10.1. Jahnke, James A. and G. J. Aldina, "Handbook: Continuous Air Pollution Source Monitoring Systems," U.S. Environmental Protection Agency Technology Transfer, Cincinnati, Ohio 45268, EPA–625/6–79–005, June 1979.

10.2. "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for SO_2, NO_x, CO_2, O_2, and TRS." U.S. Environmental Protection Agency OAQPS/ESED, Research Triangle Park, North Carolina, 27711, EPA–450/3–82–026, October 1982.

10.3. "Quality Assurance Handbook for Air Pollution Measurement Systems: Volume I. Principles," U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711 EPA–600/9–76–006, December 1984.

10.4. Michie, Raymond, M. Jr. et al., "Performance Test Results and Comparative Data for Designated Reference Methods for Carbon Monoxide," U.S. Environmental Protection Agency ORD/EMSL, Research Triangle Park, North Carolina, 27711, EPA–600/S4–83–013, September 1982.

10.5. Ferguson, B.B., R.E. Lester and W. J. Mitchell, "Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery," U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, EPA–600/4–82–054, August 1982.

[38] For oxygen, the calibration error is expressed as % O_2 and the term $|d| + |C|$ is not divided by FS or multiplied by 100.

Appendix D: Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons in Hazardous Waste Incinerators, Boilers and Industrial Furnaces

Note: This proposed method may be revised to allow gas conditioning including cooling to between 40 °F and 64 °F and the use of condensate traps to reduce the moisture content of sample gas entering the FID to less than 2%. The gas conditioning system, however, should not allow the

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sample gas to be bubbled through a water column as this would remove water-soluble organic compounds. Further, although heating the sampling line and FID may be advisable to reduce operation and maintenance problems, it may not be required in the final procedure. Comments on the gas conditioning system are encouraged.

1.0 Applicabiltiy and Principle

1.1 *Applicability.* This method applies to the measurement of total hydrocarbons as a surrogate measure for the total gaseous organic concentration of the combustion gas stream. The concentration is expressed in terms of propane.

1.2 *Principle.* A gas sample is extracted from the source through a heated sample line and heated glass fiber filter to a flame ionization detector (FID). Results are reported as volume concentration equivalents of the propane.

2.0 Definitions

2.1 *Measurement System.* The total equipment required for the determination of the gas concentration. The system consists of the following major subsystems:

2.1.1 *Sample Interface.* That portion of the system that is used for one or more of the following: sample acquisition, sample transportation, sample conditioning, or protection of the analyzer from the effects of the stack effluent.

2.1.2 *Organic Analyzer.* That portion of the system that senses organic concentration and generates an output proportional to the gas concentration.

2.1.3 *Data Recorder.* That portion of the system that records a permanent record of the measurement values.

2.2 *Span Value.* For most incinerators a 50 ppm propane span is appropriate. Higher span values may be necessary if propane emissions are significant. For convenience, the span value should correspond to 100 percent of the recorder scale.

2.3 *Calibration Gas.* A known concentration of a gas in an appropriate diluent gas.

2.4 *Zero Drift.* The difference in the measurement system response to a zero level calibration gas before and after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

2.5 *Calibration Drift.* The difference in the measurement system response to a mid-level calibration gas before and after a stated period of operation during which no unscheduled maintenance, repair or adjustment took place.

2.6 *Response Time.* The time interval from a step change in pollutant concentration at the inlet to the emission measurement system to the time at which 95 percent of the corresponding final value is reached as displayed on the recorder.

2.7 Calibration Error. The difference between the gas concentration indicated by the measurement system and the known concentration of the calibration gas.

3.0 Apparatus

An acceptable measurement system includes a sample interface system, a calibration valve, gas filter and a pump preceding the analyzer. THC measurement systems are designated HOT or COLD systems based on the operating temperatures of the system. In HOT systems, all components in contact with the sample gas (probe, calibration valve, filter, and sample lines) as well as all parts of the flame ionization analyzer between the sample inlet and the flame ionization detector (FID) must be maintained between 150–175 °C. This includes the sample pump if it is located on the inlet side of the FID. A condensate trap may be installed, if necessary, to prevent any condensate entering the FID.

The essential components of the measurement system are described below:

3.1 *Organic Concentration Analyzer.* A flame ionization detector (FID) capable of meeting or exceeding the specifications in this method.

3.2 *Sample Probe.* Stainless steel, or equivalent, three-hole rake type. Sample holes shall be 4 mm in diameter or smaller and located at 16.7, 50, and 83.3 percent of the equivalent stack diameter. Alternatively, a single opening prcbe may be used so that a gas sample is collected from the centrally located 10 percent area of the stack cross-section.

3.3 *Sample Line.* Stainless steel or Teflon [39] tubing to transport the sample gas to the analyzer. The sample line should be heated to between 150° and 175°C for a heated probe.

3.4 *Calibration Valve Assembly.* A heated three-way valve assembly to direct the zero and calibration gases to the analyzers is recommended. Other methods, such as quick-connect lines, to route calibration gas to the analyzers are applicable.

3.5 *Particulate Filter.* An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter must be heated.

3.6 *Recorder.* A strip-chart recorder, analog computer, or digital recorder for recording measurement data. The minimum data recording requirement is one measurement value per minute.

Note: This method is often applied in highly explosive areas. Caution and care should be exercised in choice of equipment and installation.

4.0 Calibration and Other Gases

Gases used for calibration, fuel, and combustion air (if required) are contained in compressed gas cylinders. Preparation of calibration gases shall be done according to the procedure in Protocol No. 1, listed in reference 9.2. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ±2 percent from the certified value.

4.1 *Fuel.* A 40 percent hydrogen and 60 percent helium or 40 percent hydrogen and 60 percent nitrogen gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

4.2 *Zero Gas.* High purity air with less than 0.1 parts per million by volume (ppm) of organic material methane or carbon equivalent or less than 0.1 percent of the span value, whichever is greater.

4.3 *Low-level Calibration Gas.* Propane calibration gas (in air or nitrogen) with a concentration equivalent to 20 to 30 percent of the applicable span value.

4.4 *Mid-level Calibration Gas.* Propane calibration gas (in air or nitrogen) with a concentration equivalent to 45 to 55 percent of the applicable span value.

4.5 *High-level Calibration Gas.* Propane calibration gas with a concentration equivalent to 80 to 90 percent of the applicable span value.

5.0 Measurement System Performance Specifications

5.1 *Zero Drift.* Less than ±3 percent of the span value.

5.2 *Calibration Drift.* Less than ±3 percent of the span value.

5.3 *Calibration Error.* Less than ±5 percent of the calibration gas value.

6.0 Pretest Preparations

6.1 *Selection of Sampling Site.* The location of the sampling site is generally specified by the applicable regulation or purpose of the test, i.e., exhaust stack, inlet line, etc. The sample port shall be located at least 1.5 meters or 2 equivalent diameters upstream of the gas discharge to the atmosphere.

[39] Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.2 *Location of Sample Probe.* Install the sample probe so that the probe is centrally located in the stack, pipe, or duct and is sealed tightly at the stack port connection.

6.3 *Measurement System Preparation.* Prior to the emission test, assemble the measurement system following the manufacturer's written instructions in preparing the sample interface and the organic analyzer. Make the system operable.

6.4 *Calibration Error Test.* Immediately prior to the test series, (within 2 hours of the start of the test) introduce zero gas and high-level calibration gas at the calibration valve assembly. Adjust the analyzer output to the appropriate levels, if necessary. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level responses. Then introduce low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system is not acceptable and must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift check (Section 7.3). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

6.5 *Response Time Test.* Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

7.0 Emission Measurement Test Procedure

7.1 *Organic Measurement.* Begin sampling at the start of the test period, recording time and any required process information as appropriate. In particular, note on the recording chart periods of process interruption or cyclic operation.

7.2 *Drift Determination.* Immediately following the completion of the test period and hourly during the test period, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until after both the zero and calibration drift checks are made.) Record the analyzer response. If the drift values exceed the specified limits, invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in Section 6.4 and report the results using both sets of calibration data (i.e., data determined prior to the test period and data determined following the test period).

8.0 Organic Concentration Calculations

Determine the average organic concentration in terms of ppmv propane. The average shall be determined by the integration of the output recording over the period specified in the applicable regulation.

9.0 Quality Assurance

It is the responsibility of the owner/operator to assure proper calibration, maintenance, and operation of the CEMS on a continual basis. The owner/operator should establish a QA program to evaluate and monitor performance on a continual basis. The following checks should routinely be done.

1. Conduct a daily calibration check for each monitor. Adjust the calibration if the check indicates the instrument's calibration drift exceeds the specification established in paragraph 5.0.

2. Conduct a daily system audit. During the audit, review the calibration check data, inspect the recording system, inspect the control panel warning lights, and inspect the sample transport/interface system (e.g., flowmeters, filters), as appropriate.

3. Conduct a quarterly calibration error test at the span midpoint.

4. Repeat the entire performance specification test every second year.

10.0 Reporting of Total Hydrocarbon Levels

THC levels from the trial burn will be reported as ppm propane. Under the health-based alternative approach to assess THC emissions, the THC levels would need to be converted to mg/s. This conversion is accomplished with the following equation:

$$\text{THC, mg/s} = (\text{THC ppm propane}) \times (\text{Stack gas Flow}) \times 2.8 \times 10^{-2}$$

Where:

- THC ppm propane is the total hydrocarbon concentration as actually measured by this method in ppm of propane.
- Stack gas flow is in dry standard cubic meters per minute measured by EPA Reference Method 5 (or Modified EPA Method 5) during the DRE trial burn, and
- 2.8×10^{-2} is a constant to account for the conversion of units, differences in FID response to various compounds and weighted average molecular weights.

11.0 References

11.1 Measurement of Volatile Organic Compounds—Guideline Series. U.S. Environmental Protection Agency. Research Triangle Park, N. C. Publication No. EPA–450/2–78–041. June 1978. p. 46–54.

11.2 Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors (Protocol No. 1). U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory. Research Triangle Park, N. C. June 1978.

11.3 Gasoline Vapor Emission Laboratory Evaluation—Part 2. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Research Triangle Park, N. C. EMB Report No. 75–GAS–6. August 1975.

Appendix E: Feed Rate and Emission Rate Screening Limits for Metals and HCL

TABLE E–1.—FEED RATE SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for urban areas					
	Antimony (lb/hr)	Barium (lb/hr)	Lead (lb/hr)	Mercury (lb/hr)	Silver (lb/hr)	Thallium (lb/hr)
4m	1.3E−01	2.2E+01	4.0E−02	1.3E−01	1.3E+00	1.3E−01
6m	1.5E−01	2.5E+01	4.5E−02	1.5E−01	1.5E+00	1.5E−01
8m	1.7E−01	2.8E+01	5.1E−02	1.7E−01	1.7E+00	1.7E−01
10m	1.9E−01	3.2E+01	5.8E−01	1.9E−01	1.9E+00	1.9E−01

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TABLE E-1.—FEED RATE SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN—Continued

Terrain-adjusted effective stack height	Values for urban areas					
	Antimony (lb/hr)	Barium (lb/hr)	Lead (lb/hr)	Mercury (lb/hr)	Silver (lb/hr)	Thallium (lb/hr)
12m	2.2E−01	3.6E+01	6.5E−02	2.2E−01	2.2E+00	2.2E−01
14m	2.4E−01	4.1E+01	7.3E−02	2.4E−01	2.4E+00	2.4E−01
16m	2.8E−01	4.6E+01	8.3E−02	2.8E−01	2.8E+00	2.8E−01
18m	3.1E−01	5.2E+01	9.4E−02	3.1E−01	3.1E+00	3.1E−01
20m	3.5E−01	5.9E+01	1.1E−01	3.5E−01	3.5E+00	3.5E−01
22m	4.0E−01	6.6E+01	1.2E−01	4.0E−01	4.0E+00	4.0E−01
24m	4.5E−01	7.5E+01	1.4E−01	4.5E−01	4.5E+00	4.5E−01
26m	5.1E−01	8.5E+01	1.5E−01	5.1E−01	5.1E+00	5.1E−01
28m	5.7E−01	9.6E+01	1.7E−01	5.7E−01	5.7E+00	5.7E−01
30m	6.5E−01	1.1E+02	1.9E−01	6.5E−01	6.5E+00	6.5E−01
35m	8.3E−01	1.4E+02	2.5E−01	8.3E−01	8.3E+00	8.3E−01
40m	1.1E+00	1.8E+02	3.2E−01	1.1E+00	1.1E+01	1.1E+00
45m	1.4E+00	2.3E+02	4.1E−01	1.3E+00	1.4E+01	1.4E+00
50m	1.7E+00	2.9E+02	5.2E−01	1.7E+00	1.7E+01	1.7E+00
55m	2.2E+00	3.6E+02	6.5E−01	2.2E+00	2.2E+01	2.2E+00
60m	2.7E+00	4.5E+02	8.0E−01	2.7E+00	2.7E+01	2.7E+00
65m	3.3E+00	5.5E+02	9.9E−01	3.3E+00	3.3E+01	3.3E+00
70m	3.7E+00	6.2E+02	1.1E+00	3.7E+00	3.7E+01	3.7E+00
75m	4.2E+00	7.0E+02	1.3E+00	4.2E+00	4.2E+01	4.2E+00
80m	4.8E+00	8.0E+02	1.4E+00	4.8E+00	4.8E+01	4.8E+00
85m	5.4E+00	9.1E+02	1.6E+00	5.4E+00	5.4E+01	5.4E+00
90m	6.2E+00	1.0E+03	1.9E+00	6.2E+00	6.2E+01	6.2E+00
95m	7.0E+00	1.2E+03	2.1E+00	7.0E+00	7.0E+01	7.0E+00
100m	8.0E+00	1.3E+03	2.4E+00	7.9E+00	8.0E+01	8.0E+00
105m	9.0E+00	1.5E+03	2.7E+00	9.0E+00	9.0E+01	9.0E+00
110m	1.0E+01	1.7E+03	3.1E+00	1.0E+01	1.0E+02	1.0E+01
115m	1.2E+01	1.9E+03	3.5E+00	1.2E+01	1.2E+02	1.2E+01
120m	1.3E+01	2.2E+03	4.0E+00	1.3E+01	1.3E+02	1.3E+01

TABLE E-1.—FEED RATE SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for rural areas					
	Antimony (lb/hr)	Barium (lb/hr)	Lead (lb/hr)	Mercury (lb/hr)	Silver (lb/hr)	Thallium (lb/hr)
4m	6.9E−02	1.1E+01	2.1E−02	6.9E−02	6.9E−01	6.9E−02
6m	7.9E−02	1.3E+01	2.4E−02	7.9E−02	7.9E−01	7.9E−02
8m	9.0E−02	1.5E+01	2.7E−02	9.0E−02	9.0E−01	9.0E−02
10m	1.0E−01	1.7E+01	3.1E−02	1.0E−01	1.0E+00	1.0E−01
12m	1.3E−01	2.1E+01	3.8E−02	1.3E−01	1.3E+00	1.3E−01
14m	1.5E−01	2.6E+01	4.6E−02	1.5E−01	1.5E+00	1.5E−01
16m	1.9E−01	3.2E+01	5.7E−02	1.9E−01	1.9E+00	1.9E−01
18m	2.4E−01	4.0E+01	7.1E−02	2.4E−01	2.4E+00	2.4E−01
20m	2.9E−01	4.9E+01	8.6E−02	2.9E−01	2.9E+00	2.9E−01
22m	3.8E−01	6.3E+01	1.1E−01	3.7E−01	3.8E+00	3.8E−01
24m	4.8E−01	8.0E+01	1.4E−01	4.8E−01	4.8E+00	4.8E−01
26m	6.1E−01	1.0E+02	1.8E−01	6.1E−01	6.1E+00	6.1E−01
28m	7.7E−01	1.3E+02	2.3E−01	7.7E−01	7.7E+00	7.7E−01
30m	9.8E−01	1.6E+02	2.9E−01	9.8E−01	9.8E+00	9.8E−01
35m	1.6E+00	2.6E+02	4.7E−01	1.6E+00	1.6E+01	1.6E+00
40m	2.4E+00	4.0E+02	7.1E−01	2.4E+00	2.4E+01	2.4E+00
45m	3.3E+00	5.5E+02	9.9E−01	3.3E+00	3.3E+01	3.3E+00
50m	4.4E+00	7.3E+02	1.3E+00	4.4E+00	4.4E+01	4.4E+00
55m	5.8E+00	9.6E+02	1.7E+00	5.8E+00	5.8E+01	5.8E+00
60m	7.6E+00	1.3E+03	2.3E+00	7.6E+00	7.6E+01	7.6E+00
65m	1.0E+01	1.7E+03	3.0E+00	1.0E+01	1.0E+02	1.0E+01
70m	1.2E+01	2.0E+03	3.6E+00	1.2E+01	1.2E+02	1.2E+01
75m	1.4E+01	2.4E+03	4.3E+00	1.4E+01	1.4E+02	1.4E+01
80m	1.7E+01	2.8E+03	5.1E+00	1.7E+01	1.7E+02	1.7E+01
85m	2.0E+01	3.4E+03	6.1E+00	2.0E+01	2.0E+02	2.0E+01
90m	2.4E+01	4.0E+03	7.2E+00	2.4E+01	2.4E+02	2.4E+01
95m	2.9E+01	4.8E+03	8.6E+00	2.9E+01	2.9E+02	2.9E+01
100m	3.4E+01	5.7E+03	1.0E+01	3.4E+01	3.4E+02	3.4E+01
105m	4.1E+01	6.8E+03	1.2E+01	4.1E+01	4.1E+02	4.1E+01
110m	4.8E+01	8.1E+03	1.5E+01	4.8E+01	4.8E+02	4.8E+01
115m	5.8E+01	9.6E+03	1.7E+01	5.8E+01	5.8E+02	5.8E+01
120m	6.9E+01	1.1E+04	2.1E+01	6.9E+01	6.9E+02	6.9E+01

TABLE E-2.—FEED RATE SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN COMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for use in urban and rural areas					
	Antimony (lb/hr)	Barium (lb/hr)	Lead (lb/hr)	Mercury (lb/hr)	Silver (lb/hr)	Thallium (lb/hr)
4m	3.1E−02	5.2E+00	9.4E−03	3.1E−02	3.1E−01	3.1E−02
6m	4.6E−02	7.7E+00	1.4E−02	4.6E−02	4.6E−01	4.6E−02
8m	6.7E−02	1.1E+01	2.0E−02	6.7E−02	6.7E−01	6.7E−02
10m	9.9E−02	1.7E+01	3.0E−02	9.9E−02	9.9E−01	9.9E−02
12m	1.2E−01	2.0E+01	3.6E−02	1.2E−01	1.2E+00	1.2E−01
14m	1.5E−01	2.5E+01	4.4E−02	1.5E−01	1.5E+00	1.5E−01
16m	1.7E−01	2.9E+01	5.2E−02	1.7E−01	1.7E+00	1.7E−01
18m	1.9E−01	3.2E+01	5.7E−02	1.9E−01	1.9E+00	1.9E−01
20m	2.1E−01	3.5E+01	6.3E−02	2.1E−01	2.1E+00	2.1E−01
22m	2.3E−01	3.9E+01	7.0E−02	2.3E−01	2.3E+00	2.3E−01
24m	2.6E−01	4.3E+01	7.7E−02	2.6E−01	2.6E+00	2.6E−01
26m	2.9E−01	4.8E+01	8.6E−02	2.9E−01	2.9E+00	2.9E−01
28m	3.2E−01	5.3E+01	9.5E−02	3.2E−01	3.2E+00	3.2E−01
30m	3.5E−01	5.8E+01	1.0E−01	3.5E−01	3.5E+00	3.5E−01
35m	4.4E−01	7.3E+01	1.3E−01	4.3E−01	4.4E+00	4.4E−01
40m	5.4E−01	8.9E+01	1.6E−01	5.4E−01	5.4E+00	5.4E−01
45m	6.6E−01	1.1E+02	2.0E−01	6.6E−01	6.6E+00	6.6E−01
50m	8.1E−01	1.4E+02	2.4E−01	8.1E−01	8.1E+00	8.1E−01
55m	1.0E+00	1.7E+02	3.0E−01	1.0E−00	1.0E+01	1.0E−00
60m	1.2E+00	2.1E+02	3.7E−01	1.2E+00	1.2E+01	1.2E+00
65m	1.5E+00	2.5E+02	4.6E−01	1.5E+00	1.5E+01	1.5E+00
70m	1.7E+00	2.8E+02	5.1E−01	1.7E+00	1.7E+01	1.7E+00
75m	1.9E+00	3.2E+02	5.7E−01	1.9E+00	1.9E+01	1.9E+00
80m	2.1E+00	3.6E+02	6.4E−01	2.1E+00	2.1E+01	2.1E+00
85m	2.4E+00	4.0E+02	7.2E−01	2.4E+00	2.4E+01	2.4E+00
90m	2.7E+00	4.5E+02	8.0E−01	2.7E+00	2.7E+01	2.7E+00
95m	3.0E+00	5.0E+02	9.0E−01	3.0E+00	3.0E+01	3.0E+00
100m	3.4E+00	5.6E+02	1.0E+00	3.4E+00	3.4E+01	3.4E+00
105m	3.8E+00	6.3E+02	1.1E+00	3.8E+00	3.8E+01	3.8E+00
110m	4.2E+00	7.0E+02	1.3E+00	4.2E+00	4.2E+01	4.2E+00
115m	4.7E+00	7.9E+02	1.4E+00	4.7E+00	4.7E+01	4.7E+00
120m	5.3E+00	8.8E+02	1.6E+00	5.3E+00	5.3E+01	5.3E+00

TABLE E−3. FEED RATE SCREENING LIMITS FOR CARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for use in urban areas				Values for use in rural areas			
	Arsenic (lb/hr)	Cadmium (lb/hr)	Chromium (lb/hr)	Beryllium (lb/hr)	Arsenic (lb/hr)	Cadmium (lb/hr)	Chromium (lb/hr)	Beryllium (lb/hr)
4m	1.0E−03	2.5E−03	3.7E−04	1.9E−03	5.3E−04	1.3E−03	1.9E−04	9.5E−04
6m	1.2E−03	2.8E−03	4.2E−04	2.1E−03	6.1E−04	1.5E−03	2.2E−04	1.1E−03
8m	1.3E−03	3.2E−03	4.7E−04	2.4E−03	7.0E−04	1.7E−03	2.5E−04	1.3E−03
10m	1.5E−03	3.6E−03	5.3E−04	2.7E−03	8.0E−04	1.9E−03	2.9E−04	1.4E−03
12m	1.7E−03	4.0E−03	6.0E−04	3.0E−03	9.8E−04	2.3E−03	3.5E−04	1.8E−03
14m	1.9E−03	4.5E−03	6.8E−04	3.4E−03	1.2E−03	2.9E−03	4.3E−04	2.1E−03
16m	2.1E−03	5.1E−03	7.7E−04	3.8E−03	1.5E−03	3.5E−03	5.3E−04	2.6E−03
18m	2.4E−03	5.8E−03	8.7E−04	4.3E−03	1.8E−03	4.4E−03	6.6E−04	3.3E−03
20m	2.7E−03	6.5E−03	9.8E−04	4.9E−03	2.3E−03	5.5E−03	8.2E−04	4.1E−03
22m	3.1E−03	7.4E−03	1.1E−03	5.5E−03	2.9E−03	6.9E−03	1.0E−03	5.2E−03
24m	3.5E−03	8.3E−03	1.3E−03	6.3E−03	3.7E−03	8.8E−03	1.3E−03	6.6E−03
26m	3.9E−03	9.4E−03	1.4E−03	7.1E−03	4.7E−03	1.1E−02	1.7E−03	8.4E−03
28m	4.5E−03	1.1E−02	1.6E−03	8.0E−03	6.0E−03	1.4E−02	2.1E−03	1.1E−02
30m	5.0E−03	1.2E−02	1.8E−03	9.0E−03	7.6E−03	1.8E−02	2.7E−03	1.4E−02
35m	6.5E−03	1.5E−02	2.3E−03	1.2E−02	1.2E−02	2.9E−02	4.3E−03	2.2E−02
40m	8.2E−03	2.0E−02	2.9E−03	1.5E−02	1.8E−02	4.4E−02	6.6E−03	3.3E−02
45m	1.0E−02	2.5E−02	3.8E−03	1.9E−02	2.6E−02	6.1E−02	9.2E−03	4.6E−02
50m	1.3E−02	3.2E−02	4.8E−03	2.4E−02	3.4E−02	8.1E−02	1.2E−02	6.1E−02
55m	1.7E−02	4.0E−02	6.1E−03	3.0E−02	4.5E−02	1.1E−01	1.6E−02	8.0E−02
60m	2.1E−02	5.0E−02	7.4E−03	3.7E−02	5.9E−02	1.4E−01	2.1E−02	1.1E−01
65m	2.5E−02	6.1E−02	9.1E−03	4.6E−02	7.8E−02	1.9E−01	2.8E−02	1.4E−01
70m	2.9E−02	6.9E−02	1.0E−02	5.2E−02	9.3E−02	2.2E−01	3.3E−02	1.7E−01
75m	3.3E−02	7.8E−02	1.2E−02	5.9E−02	1.1E−01	2.6E−01	4.0E−02	2.0E−01
80m	3.7E−02	8.9E−02	1.3E−02	6.7E−02	1.3E−01	3.1E−01	4.7E−02	2.4E−01
85m	4.2E−02	1.0E−01	1.5E−02	7.6E−02	1.6E−01	3.7E−01	5.6E−02	2.8E−01
90m	4.8E−02	1.1E−01	1.7E−02	8.6E−02	1.9E−01	4.5E−01	6.7E−02	3.3E−01
95m	5.4E−02	1.3E−01	1.9E−02	9.7E−02	2.2E−01	5.3E−01	8.0E−02	4.0E−01
100m	6.2E−02	1.5E−01	2.2E−02	1.1E−01	2.6E−01	6.3E−01	9.5E−02	4.7E−01
105m	7.0E−02	1.7E−01	2.5E−02	1.3E−01	3.2E−01	7.5E−01	1.1E−01	5.6E−01
110m	7.9E−02	1.9E−01	2.8E−02	1.4E−01	3.7E−01	9.0E−01	1.3E−01	6.7E−01
115m	9.0E−02	2.2E−01	3.2E−02	1.6E−01	4.5E−01	1.1E+00	1.6E−01	8.0E−01
120m	1.0E−01	2.4E−01	3.7E−02	1.8E−01	5.3E−01	1.3E+00	1.9E−01	9.5E−01

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TABLE E-4.—FEED RATE SCREENING LIMITS FOR CARCINOGENIC METALS FOR FACILITIES IN COMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for urban and rural areas			
	Arsenic (lb/hr)	Cadmium (lb/hr)	Chromium (lb/hr)	Beryllium (lb/hr)
4m	2.4E-04	5.8E-04	8.7E-05	4.4E-04
6m	3.6E-04	8.5E-04	1.3E-04	6.4E-04
8m	5.2E-04	1.2E-03	1.9E-04	9.4E-04
10m	7.7E-04	1.8E-03	2.8E-04	1.4E-03
12m	9.4E-04	2.2E-03	3.4E-04	1.7E-03
14m	1.1E-03	2.7E-03	4.1E-04	2.1E-03
16m	1.3E-03	3.2E-03	4.8E-04	2.4E-03
18m	1.5E-03	3.5E-03	5.3E-04	2.6E-03
20m	1.6E-03	3.9E-03	5.9E-04	2.9E-03
22m	1.8E-03	4.3E-03	6.5E-04	3.2E-03
24m	2.0E-03	4.8E-03	7.2E-04	3.6E-03
26m	2.2E-03	5.3E-03	7.9E-04	4.0E-03
28m	2.5E-03	5.9E-03	8.8E-04	4.4E-03
30m	2.7E-03	6.5E-03	9.7E-04	4.9E-03
35m	3.4E-03	8.1E-03	1.2E-03	6.0E-03
40m	4.2E-03	9.9E-03	1.5E-03	7.4E-03
45m	5.1E-03	1.2E-02	1.8E-03	9.2E-03
50m	6.3E-03	1.5E-02	2.3E-03	1.1E-02
55m	7.8E-03	1.9E-02	2.8E-03	1.4E-02
60m	9.6E-03	2.3E-02	3.4E-03	1.7E-02
65m	1.2E-02	2.8E-02	4.2E-03	2.1E-02
70m	1.3E-02	3.2E-02	4.7E-03	2.4E-02
75m	1.5E-02	3.5E-02	5.3E-03	2.7E-02
80m	1.7E-02	4.0E-02	5.9E-03	3.0E-02
85m	1.9E-02	4.4E-02	6.7E-03	3.3E-02
90m	2.1E-02	5.0E-02	7.4E-03	3.7E-02
95m	2.3E-02	5.6E-02	8.3E-03	4.2E-02
100m	2.6E-02	6.2E-02	9.3E-03	4.7E-02
105m	2.9E-02	7.0E-02	1.0E-02	5.2E-02
110m	3.3E-02	7.8E-02	1.2E-02	5.9E-02
115m	3.7E-02	8.7E-02	1.3E-02	6.5E-02
120m	4.1E-02	9.8E-02	1.5E-02	7.3E-02

TABLE E-5.—EMISSIONS SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for urban areas					
	Antimony (g/sec)	Barium (g/sec)	Lead (g/sec)	Mercury (g/sec)	Silver (g/sec)	Thallium (g/sec)
4m	1.7E-02	2.6E+00	5.1E-03	1.7E-02	1.7E-01	1.7E-02
6m	1.9E-02	3.2E+00	5.7E-03	1.9E-02	1.9E-01	1.9E-02
8m	2.1E-02	3.6E+00	6.4E-03	2.1E-02	2.1E-01	2.1E-02
10m	2.4E-02	4.0E+00	7.3E-03	2.4E-02	2.4E-01	2.4E-02
12m	2.7E-02	4.6E+00	8.2E-03	2.7E-02	2.7E-01	2.7E-02
14m	3.1E-02	5.1E+00	9.3E-03	3.1E-02	3.1E-01	3.1E-02
16m	3.5E-02	5.8E+00	1.0E-02	3.5E-02	3.5E-01	3.5E-02
18m	3.9E-02	6.6E+00	1.2E-02	3.9E-02	3.9E-01	3.9E-02
20m	4.4E-02	7.4E+00	1.3E-02	4.4E-02	4.4E-01	4.4E-02
22m	5.0E-02	8.4E+00	1.5E-02	5.0E-02	5.0E-01	5.0E-02
24m	5.7E-02	9.5E+00	1.7E-02	5.7E-02	5.7E-01	5.7E-02
26m	6.4E-02	1.1E+01	1.9E-02	6.4E-02	6.4E-01	6.4E-02
28m	7.2E-02	1.2E+01	2.2E-02	7.2E-.02	7.2E-01	7.2E-02
30m	8.2E-02	1.4E+01	2.5E-02	8.2E-02	8.2E-01	8.2E-02
35m	1.1E-01	1.8E+01	3.2E-02	1.1E-01	1.1E+00	1.1E-01
40m	1.3E-01	2.2E+01	4.0E-02	1.3E-01	1.3E+00	1.3E-01
45m	1.7E-01	2.6E+01	5.1E-02	1.7E-01	1.7E+00	1.7E-01
50m	2.2E-01	3.6E+01	6.5E-02	2.2E-01	2.2E+00	2.2E-01
55m	2.7E-01	4.6E+01	8.2E-02	2.7E-01	2.7E+00	2.7E-01
60m	3.4E-01	5.6E+01	1.0E-01	3.4E-01	3.4E+00	3.4E-01
65m	4.1E-01	6.9E+01	1.2E-01	4.1E-01	4.1E+00	4.1E-01
70m	4.7E-01	7.8E+01	1.4E-01	4.7E-01	4.7E+00	4.7E-01
75m	5.3E-01	8.9E+01	1.6E-01	5.3E-01	5.3E+00	5.3E-01
80m	6.0E-01	1.0E+02	1.8E-01	6.0E-01	6.0E+00	6.0E-01
85m	6.9E-01	1.1E+02	2.1E-01	6.9E-01	6.9E+00	6.9E-01
90m	7.8E-01	1.3E+02	2.3E-01	7.8E-01	7.8E+00	7.8E-01
95m	8.8E-01	1.5E+02	2.7E-01	8.8E-01	8.8E+00	8.8E-01
100m	1.0E+00	1.7E+02	3.0E-01	1.0E+00	1.0E+01	1.0E+00
105m	1.1E+00	1.9E+02	3.4E-01	1.1E+00	1.1E+01	1.1E+00
110m	1.3E+00	2.2E+02	3.9E-01	1.3E+00	1.3E+01	1.3E+00
115m	1.5E+00	2.4E+02	4.4E-01	1.5E+00	1.5E+01	1.5E+00
120m	1.7E+00	2.8E+02	5.0E-01	1.7E+00	1.7E+01	1.7E+00

TABLE E-5 (CONTINUED).-EMISSIONS SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for rural areas					
	Antimony (g/sec)	Barium (g/sec)	Lead (g/sec)	Mercury (g/sec)	Silver (g/sec)	Thallium (g/sec)
4m	6.7E-03	1.4E+00	2.6E-03	6.7E-03	6.7E-02	6.7E-03
6m	9.9E-03	1.7E+00	3.0E-03	9.9E-03	9.9E-02	9.9E-03
8m	1.1E-02	1.9E+00	3.4E-03	1.1E-02	1.1E-01	1.1E-02
10m	1.3E-02	2.2E+00	3.9E-03	1.3E-02	1.3E-01	1.3E-02
12m	1.6E-02	2.7E+00	4.6E-03	1.6E-02	1.6E-01	1.6E-02
14m	1.9E-02	3.2E+00	5.6E-03	1.9E-02	1.9E-01	1.9E-02
16m	2.4E-02	4.0E+00	7.2E-03	2.4E-02	2.4E-01	2.4E-02
18m	3.0E-02	5.0E+00	9.0E-03	3.0E-02	3.0E-01	3.0E-02
20m	3.7E-02	6.2E+00	1.1E-02	3.7E-02	3.7E-01	3.7E-02
22m	4.7E-02	7.9E+00	1.4E-02	4.7E-02	4.7E-01	4.7E-02
24m	6.0E-02	1.0E+01	1.8E-02	6.0E-02	6.0E-01	6.0E-02
26m	7.7E-02	1.3E+01	2.3E-02	7.7E-02	7.7E-01	7.7E-02
28m	9.7E-02	1.6E+01	2.9E-02	9.7E-02	9.7E-01	9.7E-02
30m	1.2E-01	2.1E+01	3.7E-02	1.2E-01	1.2E+00	1.2E-01
35m	2.0E-01	3.3E+01	5.9E-02	2.0E-01	2.0E+00	2.0E-01
40m	3.0E-01	5.0E+01	9.0E-02	3.0E-01	3.0E+00	3.0E-01
45m	4.2E-01	7.0E+01	1.3E-01	4.2E-01	4.2E+00	4.2E-01
50m	5.5E-01	9.2E+01	1.7E-01	5.5E-01	5.5E+00	5.5E-01
55m	7.3E-01	1.2E+02	2.2E-01	7.3E-01	7.3E+00	7.3E-01
60m	9.6E-01	1.6E+02	2.9E-01	9.6E-01	9.6E+00	9.6E-01
65m	1.3E+00	2.1E+02	3.8E-01	1.3E+00	1.3E+01	1.3E+00
70m	1.5E+00	2.5E+02	4.5E-01	1.5E+00	1.5E+01	1.5E+00
75m	1.8E+00	3.0E+02	5.4E-01	1.8E+00	1.8E+01	1.8E+00
80m	2.1E+00	3.6E+02	6.4E-01	2.1E+00	2.1E+01	2.1E+00
85m	2.6E+00	4.3E+02	7.7E-01	2.6E+00	2.6E+01	2.6E+00
90m	3.0E+00	5.1E+02	9.1E-01	3.0E+00	3.0E+01	3.0E+00
95m	3.6E+00	6.0E+02	1.1E+00	3.6E+00	3.6E+01	3.6E+00
100m	4.3E+00	7.2E+02	1.3E+00	4.3E+00	4.3E+01	4.3E+00
105m	5.1E+00	8.5E+02	1.5E+00	5.1E+00	5.1E+01	5.1E+00
110m	6.1E+00	1.0E+03	1.8E+00	6.1E+00	6.1E+01	6.1E+00
115m	7.3E+00	1.2E+03	2.2E+00	7.3E+00	7.3E+01	7.3E+00
120m	8.6E+00	1.4E+03	2.6E+00	8.6E+00	8.6E+01	8.6E+00

TABLE E-6.—EMISSIONS SCREENING LIMITS FOR NONCARCINOGENIC METALS FOR FACILITIES IN COMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for use in urban and rural areas					
	Antimony (g/sec)	Barium (g/sec)	Lead (g/sec)	Mercury (g/sec)	Silver (g/sec)	Thallium (g/sec)
4m	3.9E-03	6.6E-01	1.2E-03	3.9E-02	3.9E-02	3.9E-03
6m	5.8E-03	9.7E-01	1.7E-03	5.8E-03	5.8E-02	5.8E-03
8m	6.5E-03	1.4E+00	2.6E-03	6.5E-03	6.5E-02	6.5E-03
10m	1.2E-02	2.1E+00	3.7E-03	1.2E-02	1.2E-01	1.2E-02
12m	1.5E-02	2.5E+00	4.6E-03	1.5E-01	1.5E-01	1.5E-02
14m	1.9E-02	3.1E+00	5.6E-03	1.9E-02	1.9E-01	1.9E-02
16m	2.2E-02	3.6E+00	6.5E-03	2.2E-02	2.2E-01	2.2E-02
18m	2.4E-02	4.0E+00	7.2E-03	2.4E-02	2.4E-01	2.4E-02
20m	2.7E-02	4.4E+00	8.0E-03	2.7E-02	2.7E-01	2.7E-02
22m	2.9E-02	4.9E+00	8.8E-03	2.9E-02	2.9E-01	2.9E-02
24m	3.3E-02	5.4E+00	9.8E-03	3.3E-02	3.3E-01	3.3E-02
26m	3.6E-02	6.6E+00	1.2E-02	3.6E-02	3.6E-01	4.0E-02
28m	4.0E-02	6.6E+00	1.2E-02	4.0E-02	4.0E-01	4.0E-02
30m	4.4E-02	7.4E+00	1.3E-02	4.4E-02	4.4E-01	4.4E-02
35m	5.5E-02	9.1E+00	1.6E-02	5.5E-02	5.5E-01	5.5E-02
40m	6.8E-02	1.1E+01	2.0E-02	6.8E-02	6.8E-01	6.8E-02
45m	8.3E-02	1.4E+01	2.5E-02	8.3E-02	8.3E-01	8.3E-02
50m	1.0E-01	1.7E+01	3.1E-02	1.0E-01	1.0E+00	1.0E-01
55m	1.3E-01	2.1E+01	3.8E-02	1.3E-01	1.3E+00	1.3E-01
60m	1.6E-01	2.6E+01	4.7E-02	1.6E-01	1.6E+00	1.6E-01
65m	1.9E-01	3.2E+01	5.8E-02	1.9E-01	1.9E+00	1.9E-01
70m	2.2E-01	3.6E+01	6.5E-02	2.2E-01	2.2E+00	2.2E-01
75m	2.4E-01	4.0E+01	7.2E-02	2.4E-01	2.4E+00	2.4E-01
80m	2.7E-01	4.5E+01	8.1E-02	2.7E-01	2.7E+00	2.7E-01
85m	3.0E-01	5.0E+01	9.1E-02	3.0E-01	3.0E+00	3.0E-01
90m	3.4E-01	5.6E+01	1.0E-01	3.4E-01	3.4E+00	3.4E-01
95m	3.8E-01	6.3E+01	1.1E-01	3.8E-01	3.8E+00	3.8E-01
100m	4.2E-01	7.1E+01	1.3E-01	4.2E-01	4.2E+00	4.2E-01
105m	4.7E-01	7.9E+01	1.4E-01	4.7E-01	4.7E+00	4.7E-01
110m	5.3E-01	8.9E+01	1.6E-01	5.3E-01	5.3E+00	5.3E-01
115m	5.9E-01	9.9E+01	1.8E-01	5.9E-01	5.9E+00	5.9E-01
120m	6.7E-01	1.1E-02	2.0E-01	6.7E-01	6.7E+00	6.7E-01

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TABLE E-7.—EMISSIONS SCREENING LIMITS FOR CARCINOGENIC METALS FOR FACILITIES IN NONCOMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for use in urban areas				Values for use in rural areas			
	Arsenic (g/sec)	Cadmium (g/sec)	Chromium (g/sec)	Beryllium (g/sec)	Arsenic (g/sec)	Cadmium (g/sec)	Chromium (g/sec)	Beryllium (g/sec)
4m	1.3E-04	3.1E-04	4.7E-05	2.3E-04	6.7E-05	1.6E-04	2.4E-05	1.2E-04
6m	1.5E-04	3.5E-04	5.3E-05	2.6E-04	7.7E-05	1.8E-04	2.8E-05	1.4E-04
8m	1.7E-04	4.0E-04	6.0E-05	3.0E-04	6.8E-05	2.1E-04	3.2E-05	1.6E-04
10m	1.9E-04	4.5E-04	6.7E-05	3.4E-04	1.0E-04	2.4E-04	3.6E-05	1.8E-04
12m	2.1E-04	5.1E-04	7.6E-05	3.8E-04	1.2E-04	3.0E-04	4.4E-05	2.2E-04
14m	2.4E-04	5.7E-04	8.6E-05	4.3E-04	1.5E-04	3.6E-04	5.4E-05	2.7E-04
16m	2.7E-04	6.5E-04	9.7E-05	4.8E-04	1.9E-04	4.5E-04	6.7E-05	3.3E-04
18m	3.1E-04	7.3E-04	1.1E-04	5.5E-04	2.3E-04	5.5E-04	8.3E-05	4.2E-04
20m	3.4E-04	8.2E-04	1.2E-04	6.2E-04	2.9E-04	6.9E-04	1.0E-04	5.2E-04
22m	3.9E-04	9.3E-04	1.4E-04	7.0E-04	3.7E-04	8.8E-04	1.3E-04	6.6E-04
24m	4.4E-04	1.1E-03	1.6E-04	7.9E-04	4.7E-04	1.1E-03	1.7E-04	8.4E-04
26m	5.0E-04	1.2E-03	1.8E-04	8.9E-04	5.9E-04	1.4E-03	2.1E-04	1.1E-03
28m	5.6E-04	1.3E-03	2.0E-04	1.0E-03	7.6E-04	1.8E-03	2.7E-04	1.4E-03
30m	6.3E-04	1.5E-03	2.3E-04	1.1E-03	9.6E-04	2.3E-03	3.4E-04	1.7E-03
35m	8.2E-04	1.9E-03	2.9E-04	1.5E-03	1.5E-03	3.6E-03	5.4E-04	2.7E-03
40m	1.0E-03	2.5E-03	3.7E-04	1.9E-03	2.3E-03	5.5E-03	8.3E-04	4.2E-03
45m	1.3E-03	3.2E-03	4.7E-04	2.4E-03	3.2E-03	7.7E-03	1.2E-03	5.8E-03
50m	1.7E-03	4.0E-03	6.1E-04	3.0E-03	4.3E-03	1.0E-02	1.5E-03	7.7E-03
55m	2.1E-03	5.1E-03	7.6E-04	3.8E-03	5.7E-03	1.4E-02	2.0E-03	1.0E-02
60m	2.6E-03	6.2E-03	9.4E-04	4.7E-03	7.5E-03	1.8E-02	2.7E-03	1.3E-02
65m	3.2E-03	7.7E-03	1.2E-03	5.8E-03	9.9E-03	2.4E-02	3.5E-03	1.8E-02
70m	3.6E-03	8.7E-03	1.3E-03	6.5E-03	1.2E-02	2.8E-02	4.2E-03	2.1E-02
75m	4.1E-03	9.9E-03	1.5E-03	7.4E-03	1.4E-02	3.3E-02	5.0E-03	2.5E-02
80m	4.7E-03	1.1E-02	1.7E-03	8.4E-03	1.7E-02	4.0E-02	6.0E-03	3.0E-02
85m	5.3E-03	1.3E-02	1.9E-03	9.5E-03	2.0E-02	4.7E-02	7.1E-03	3.5E-02
90m	6.0E-03	1.4E-02	2.2E-03	1.1E-02	2.4E-02	5.6E-02	8.4E-03	4.2E-02
95m	6.9E-03	1.6E-02	2.5E-03	1.2E-02	2.8E-02	6.7E-02	1.0E-02	5.0E-02
100m	7.6E-03	1.9E-02	2.8E-03	1.4E-02	3.3E-02	8.0E-02	1.2E-02	6.0E-02
105m	8.6E-03	2.1E-02	3.2E-03	1.6E-02	4.0E-02	9.5E-02	1.4E-02	7.1E-02
110m	1.0E-02	2.4E-02	3.6E-03	1.8E-02	4.7E-02	1.1E-01	1.7E-02	8.5E-02
115m	1.1E-02	2.7E-02	4.1E-03	2.0E-02	5.6E-02	1.3E-01	2.0E-02	1.0E-01
120m	1.3E-02	3.1E-02	4.6E-03	2.3E-02	6.7E-02	1.6E-01	2.4E-02	1.2E-01

TABLE E-8.—EMISSIONS SCREENING LIMITS FOR CARCINOGENIC METALS FOR FACILITIES IN COMPLEX TERRAIN

Terrain-adjusted effective stack height	Values for use in urban and rural areas			
	Arsenic (g/sec)	Cadmium (g/sec)	Chromium (g/sec)	Beryllium (g/sec)
4m	3.1E-05	7.3E-05	1.1E-05	5.5E-05
6m	4.5E-05	1.1E-04	1.6E-05	8.1E-05
8m	6.6E-05	1.6E-04	2.4E-05	1.2E-04
10m	9.7E-05	2.3E-04	3.5E-05	1.7E-04
12m	1.2E-04	2.8E-04	4.2E-05	2.1E-04
14m	1.4E-04	3.5E-04	5.2E-05	2.6E-04
16m	1.7E-04	4.0E-04	6.0E-05	3.0E-04
18m	1.9E-04	4.4E-04	6.7E-05	3.3E-04
20m	2.1E-04	4.9E-04	7.4E-05	3.7E-04
22m	2.3E-04	5.4E-04	8.2E-05	4.1E-04
24m	2.5E-04	6.0E-04	9.0E-05	4.5E-04
26m	2.8E-04	6.7E-04	1.0E-04	5.0E-04
28m	3.1E-04	7.4E-04	1.1E-04	5.5E-04
30m	3.4E-04	8.2E-04	1.2E-04	6.1E-04
35m	4.3E-04	1.0E-03	1.5E-04	7.6E-04
40m	5.2E-04	1.3E-03	1.9E-04	9.4E-04
45m	6.5E-04	1.5E-03	2.3E-04	1.2E-03
50m	8.0E-04	1.9E-03	2.9E-04	1.4E-03
55m	9.6E-04	2.3E-03	3.5E-04	1.8E-03
60m	1.2E-03	2.9E-03	4.3E-04	2.2E-03
65m	1.5E-03	3.6E-03	5.3E-04	2.7E-03
70m	1.7E-03	4.0E-03	6.0E-04	3.0E-03
75m	1.9E-03	4.5E-03	6.7E-04	3.3E-03
80m	2.1E-03	5.0E-03	7.5E-04	3.7E-03
85m	2.3E-03	5.6E-03	8.4E-04	4.2E-03
90m	2.6E-03	6.3E-03	9.4E-04	4.7E-03
95m	2.9E-03	7.0E-03	1.1E-03	5.3E-03
100m	3.3E-03	7.8E-03	1.2E-03	5.9E-03
105m	3.7E-03	8.8E-03	1.3E-03	6.6E-03
110m	4.1E-03	9.8E-03	1.5E-03	7.4E-03
115m	4.6E-03	1.1E-02	1.7E-03	8.3E-03
120m	5.2E-03	1.2E-02	1.8E-03	9.2E-03

TABLE E-9.—FEED RATE SCREENING LIMITS FOR TOTAL CHLORINE

Terrain-adjusted effective stack height	Noncomplex	Complex
	Total chlorine (lb/hr)	Total chlorine (lb/hr)
4m	2.0E-01	2.6E-01
6m	2.5E-01	2.7E-01
8m	3.0E-01	2.8E-01
10m	3.7E-01	2.9E-01
12m	4.7E-01	3.3E-01
14m	6.1E-01	3.6E-01
16m	7.6E-01	4.4E-01
18m	9.6E-01	5.0E-01
20m	1.2E+00	5.7E-01
22m	1.6E+00	6.5E-01
24m	2.0E+00	7.4E-01
26m	2.5E+00	8.4E-01
28m	3.1E+00	9.6E-01
30m	3.9E+00	1.1E+00
35m	5.7E+00	1.5E+00
40m	8.0E+00	2.1E+00
45m	1.1E+01	3.0E+00
50m	1.5E+01	4.1E+00
55m	1.9E+01	5.7E+00
60m	2.3E+01	8.0E+00
65m	2.7E+01	1.1E+01
70m	3.0E+01	1.2E+01
75m	3.3E+01	1.3E+01
80m	3.6E+01	1.4E+01
85m	4.0E+01	1.5E+01
90m	4.4E+01	1.7E+01
95m	4.9E+01	1.8E+01
100m	5.4E+01	2.0E+01
105m	5.9E+01	2.1E+01
110m	6.5E+01	2.3E+01
115m	7.2E+01	2.5E+01
120m	7.9E+01	2.7E+01

TABLE E-10.—EMISSIONS SCREENING LIMITS FOR HYDROGEN CHLORIDE

Terrain-adjusted effective stack height	Noncomplex	Complex
	HCl (g/sec)	HCl (g/sec)
4m	2.6E-02	3.3E-02
6m	3.1E-02	3.4E-02
8m	3.8E-02	3.5E-02
10m	4.6E-02	3.7E-02
12m	6.0E-02	4.2E-02
14m	7.7E-02	4.6E-02
16m	9.9E-02	5.5E-02
18m	1.2E-01	6.3E-02
20m	1.6E-01	7.2E-02
22m	2.0E-01	8.2E-02
24m	2.5E-01	9.3E-02
26m	3.1E-01	1.1E-01
28m	3.9E-01	1.2E-01
30m	4.9E-01	1.4E-01
35m	7.2E-01	1.9E-01
40m	1.0E+00	2.7E-01
45m	1.4E+00	3.7E-01
50m	1.9E+00	5.2E-01
55m	2.4E+00	7.2E-01
60m	2.9E+00	1.0E+00
65m	3.4E+00	1.4E+00
70m	3.8E+00	1.5E+00
75m	4.2E+00	1.7E+00
80m	4.6E+00	1.8E+00
85m	5.1E+00	1.9E+00
90m	5.6E+00	2.1E+00
95m	6.1E+00	2.3E+00
100m	6.6E+00	2.5E+00
105m	7.5E+00	2.7E+00
110m	6.2E+00	2.9E+00
115m	9.1E+00	3.2E+00
120m	1.0E+01	3.5E+00

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Appendix F: Technical Support for Tier I–III Metals and HCL Controls and THC Emissions Rate Screening Limits

This appendix summarizes the risk assessment approach the Agency used to develop the proposed Tier I and II Screening Limits for metals and HCl, and the emission rate Screening Limits for total hydrocarbons (THC) that would be used to assess THC emissions under the health-based Tier II alternative for PIC controls. In addition, the appendix summarizes how the metals and HCl controls would be implemented.

I. Overview of EPA's Risk Assessment

The risk assessment methodology is discussed in detail in the background document supporting the amendments EPA plans to propose shortly for hazardous waste incinerators—Technical Background Document: Controls for Metals and Hydrogen Chloride Emissions for Hazardous Waste Incinerators. As explained in the text of today's notice, the emissions standards, technical support, and risk assessment methodology for the boiler/furnace rules are identical to those the Agency plans to propose for incinerators. The methodology is summarized below for the convenience of the reader.

A. Overview of the Risk Assessment Approach

EPA's risk assessment approach involves: (1) Establishing ambient levels of pollutants (i.e., metals, hydrogen chloride (HCl), and total hydrocarbons (THC)) that pose acceptable health risk; and (2) developing conservative dispersion coefficients [40] for reasonable worst-case facilities as a function of key parameters (i.e., effective stack height,[41] terrain type, and land use classification). To establish the conservative Screening Limits for metals, HCl, and THC, we back-calculated from the acceptable ambient levels using the conservative dispersion coefficients.

Under today's proposal, applicants would be required to demonstrate that emissions of metals, HCl, and (when stack gas CO concentrations exceed 100 ppmv and under the health-based alternative approach to assess THC emissions) THC emissions do not result in an exceedance of the acceptable ambient levels. If the conservative Screening Limits are not exceeded, applicants need not conduct site-specific dispersion modeling to make this demonstration.

B. Development of Conservative Dispersion Coefficients

1. *Factors Influencing Ambient Levels of Pollutants.* Ambient levels of pollutants resulting from stack emissions are a function of the dispersion of pollutants from the source in question. Many factors influence the relationships between releases (emissions) and ground-level concentrations, including: (1) The rate of emission; (2) the release specifications of the facility (i.e., stack height, exit velocity, exhaust temperature and inner stack diameter, which together define the facility's "effective stack height"); (3) local terrain; and (4) local meteorology and (5) urban/rural classification.

2. *Selection of Facilities and Sites for Dispersion Modeling.*[42] Hazardous waste incinerators are known to vary widely in capacity, configuration, and design, making it difficult to identify typical parameters that affect dispersion of emissions (i.e., release parameters). For instance, stack heights of incinerators listed in the 1981 mail survey [43] vary from less than 15 feet to over 200 feet. Futhermore, many new facilities that are now in operation that are not listed on the survey, and EPA expects that a large number of additional facilities of various types of designs are likely to be constructed over the next several years.

For currently operating facilities, the worst-case dispersion situation would be a combination of release specifications, local terrain, urban/rural land use classification, and local meteorology that produces the highest ambient concentrations of hazardous pollutants per unit of pollutant released by a facility. This can be expressed, for any specific facility, as a dispersion coefficient, which, for purposes of this proposal, is the maximum annual average (or, as explained later, for HCl, maximum 3-minute) ground-level concentration for an emission of 1 g/s (a unit release); the units of the dispersion coefficient are, therefore, $\mu g/m^3/g/s$.[44]

Since dispersion coefficients are, as a general rule, inversely correlated with effective stack heights, worst-case facilities are most likely to be those with the shortest effective stack heights. No similar *a priori* judgment, however, should be made with respect to terrain or meteorology; evaluation of the influence of these factors requires individual site-by-site dispersion modeling. It was therefore not possible to screen facility locations in advance to select for probable worst-case situations simply by considering stack height.

Instead, out of a total number of 154 existing facilities for which data were available from the 1981 mail survey,[45] we roughly sorted the facilities into three terrain types based on broad-scale topographic maps: flat, rolling, and complex terrain. We then ranked the facilities by effective stack heights. Next, we evaluated terrain rise out to 50 km for each of the 24 facilities and ranked the facilities by maximum terrain rise. Finally, we subdivided the 24 facilities into three groups which are loosely defined as flat, rolling, and complex terrain. In addition, to enable us to determine conservative dispersion coefficients as a function of effective height, we developed 11 hypothetical incinerators and modeled each of these "incinerators" at the 24 sites. The hypothetical facilities were selected by dividing the range of facilities listed in the 1981 survey into 10 categories based on effective stack height. Then, within each stack height category, we selected a hypothetical effective stack height that approximated the 25th percentile of the range of heights that existed within the category. The 25th percentile was chosen in order to select a facility likely to reflect the higher end of dispersion coefficients (and ambient levels) in each height category. In addition, an eleventh hypothetical source was defined in order to represent facilities whose heights of release do not meet good engineering practice (see the discussion on good engineering practice in Section II of this appendix). Such devices will

[40] For purposes of this document, the term dispersion coefficient refers to the ambient concentration that would result from an emission rate of 1 gram/sec.

[41] Effective stack height is the height above ground level of a plume, based on summing the physical stack height plus plume rise.

[42] A survey of hazardous waste incinerators was used to identify the range of release parameters—stact height, plume rise—representative of the universe of incinerators. These release parameters were used to develop the conservative dispersion coefficients that were used to develop the Screening Limits. Given that the range of incinerator release parameters will also represent the range of release parameters for boilers and industrial furnaces, the Screening Limits will also be appropriated for boilers and furnaces (U.S. EPA, Draft Technical Background Document for Control of Metals and HCl Emissions from Hazardous Waste Incinerators, August 1989).

[43] DPRA, op. cit.

[44] Dispersion coefficients can be defined for any specific location surrounding a release. The maximum dispersion coefficient will, under the assumptions used in this regulation, be the dispersion coefficient for the MEI. It may occur at any distance and in any direction from the facility. However, locations within the property boundary of a facility would not be considered when implementing these proposed rules unless individuals reside on site.

[45] We note that the survey should be representative because it addressed over 50 percent of the 250 hazardous waste incinerators now in operation.

experience "building wake effects"—turbulence created by adjacent structures that immediately mixes the plume resulting in high ground level concentrations close to the stack.

Finally, we also included the site that resulted in the worst-case complex terrain conditions during development of the rule for boilers and industrial furnaces in 1987.[46] Although there is currently no hazardous waste incinerator at that site, we used the site as another theoretical location for the 11 hypothetical incinerators and merged the results into those from the actual incinerator sites. Under certain conditions, this site provided higher dispersion coefficients for some stacks.

In summary, 11 hypothetical incinerators and the actual incinerators were modeled at each of 24 sites evenly distributed among flat, rolling, and complex terrain. In addition, the 11 hypothetical incinerators were modeled at an additional complex terrain site.

3. *Development of Dispersion Coefficients.* Estimating the air impacts of the facilities required the use of five separate air dispersion models. We used the "*EPA Guideline on Air Quality Models (Revised),*" [47] and consulted with the EPA Office of Air Quality Planning and Standards to select the most appropriate model for each application.

For each of the 25 locations, five consecutive years of concurrent surface and twice-per-day upper air data (to characterize mixing height) were acquired. The data sets contained hourly records of surface observations for five years, or approximately 44,000 consecutive hours of meteorological data. The same five-year data set was used to estimate the highest hourly dispersion coefficient during the five-year period, and to estimate annual average concentrations based on a five year data set for all release specifications modeled at each location.

The actual incinerator release specifications at each location were used to select the appropriate model for short-term and long-term averaging periods. Once selected, the release specifications for the actual incinerator and the 11 hypothetical incinerators were modeled. Table F-1 lists the models selected.

TABLE F-1.—MODELS SELECTED FOR THE RISK ANALYSIS

Terrain classification	Urban/rural	Averaging period	Model selected
Flat or Rolling.	Urban or Rural.	Annual average.	ISCLT.
Flat or Rolling.	Urban or Rural.	Hourly	ISCST.
Complex	Urban	Annual average.	LONGZ.
Complex	Urban	Hourly	SHORTZ.
Complex	Rural	Hourly or annual.	COMPLEX I.

The Industrial Source Complex models (ISCLT and ISCST) were selected for flat and rolling terrain because they can address building downwash or elevated releases and can account for terrain differences between sources and receptors. The long-term mode (ISCLT) was used for annual averages, while the short-term mode (ISCST) was used to estimate maximum hourly concentrations.

To meet the EPA guidance on model selection, we used three different models to characterize dispersion over complex terrain. For urban applications, OAQPS recommends SHORTZ for short-term averaging periods and LONGZ for seasonal or annual averages. For rural sites located in complex terrain, OAQPS recommends the COMPLEX I model.

We used U.S. Geological Survey 7.5-minute topographic maps to document terrain rise out to 5 km from each stack. For purposes of this proposed rule, a facility is considered to be in flat terrain if the maximum terrain rise within 5 km of the stack is not greater than 10 percent of the physical stack height. The facility is in rolling terrain if terrain rise is greater than 10 percent but not greater than the physical stack height, and in complex terrain if terrain rise is greater than the physical stack height.[48]

We also used the topographic maps as the basis to classify land use as urban or rural. A simplified version of the Auer technique [49] based on the preferred land use approach (rather than population density) was used for this classification. If greater than 50 percent of the land was classified as urban, the models were executed in the urban mode for that facility. If greater than 50 percent was classified as rural, the rural modes were used.[50]

To identify conservative dispersion coefficients as a function of effective stack height, we graphically plotted for each terrain type (i.e., flat, rolling, and complex) and each land use classification (i.e., urban and rural) dispersion coefficients for the modeled facilities and locations as a function of effective stack height. The outer envelope representing the highest dispersion coefficients was drawn to enable us to identify conservative coefficients for any effective stack height within the range of those modeled (i.e., 4 m to 120 m).

We determined that there was no significant difference in dispersion coefficients (under the severe conditions modeled) betwen flat and rolling terrain. Thus, those terrain types were merged together and termed noncomplex terrain. In addition, a discontinuity was observed between the SHORTZ/LONGZ and Complex I [51] models, which resulted in our not distinguishing between land use classifications in complex terrain. Finally, we note that there was no significant difference in 3-minute exposures between urban and rural land used in either noncomplex or complex terrain. Thus, we have not distinguished between land use classifications in establishing the HCl Screening Limits. There is, however, a significant difference in maximum annual average dispersion coefficients between urban and rural land use in noncomplex terrain, and so we have established separate metals and THC Screening Limits for those situations.

We note that the dispersion coefficients used to establish the Screening Limits are designed to be conservative, but may, in fact, not be conservative in extremely poor dispersion conditions, or when the receptor (location (i.e., residence)) is close-in to the source. Under the

[46] See "Background Information Document for the Development of Regulations to Control the Burning of Hazardous Waste in Boilers and Industrial Furnaces, Volume III: Risk Assessment. Engineering-Sciences". February 1987. (Available from the National Technical Information Service, Springfield, VA, Order No. PB 87 173845.)

[47] USEPA. "*Guideline on Air Quality Models (Revised).*" U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA–450/2/78–027R, July 1986.

[48] We note that EPA can consider terrain well past 5 km of a stack to define terrain type for some facilities. We believe, however, that a radius of 5 km is adequate because we are concerned with MEI exposures (as opposed to aggregate population exposures) and because the effective stack heights of concern are relatively low in comparison to facilities such as major power plants. Thus, MEI exposures for the conditions modeled will always occur within 5 km of the stack.

[49] Auer, August, H., Jr. "*Correlation of Land Use and Cover with Meteorological Anomalies. Journal of Applied Meteorology*"; Vol. 17, pp. 636–643, May 1978.

[50] OAQPS guidelines indicate that 50 percent is the cutoff point between urban and rural; however, to be conservative and to account for differences in the accuracy of different measurement methods, EPA is recommending that for permitting purposes land use be considered urban if greater than 75 percent is urban; that it be considered rural if land use is greater than 75 percent rural; and that if the land use is between 75 percent urban and 75 percent rural the more conservative Screening Limit of the two be used.

[51] Complex I was found to produce relatively low estimates of short-term concentrations.

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situations identified below, the Screening Limits may not be protective and the permit writer should require site-specific dispersion modeling consistent with EPA's *"Guideline on Air Quality Models (Revised)"* to demonstrate that emissions do not pose unacceptable health risk:

- Facility is located in a narrow valley less than 1 km wide; or
- Facility has a stack taller than 20 m and is located such that the terrain rises to the stack height within 1 km of the facility; or
- Facility has a stack taller than 20 m and is located within 5 km of the shoreline of a large body of water (such as an ocean or large lake); or
- The facility property line is within 200 m of the stack and the physical stack height is less than 10 m; or
- Onsite receptors are of concern, and the stack height is less than 10 m.

In addition to the situations identified above, there is a probability, albeit small, that the combination of critical parameters, stack height, stack gas velocity, effluent temperature, meteorological conditions, etc., will result in higher ambient concentrations than resulted from the conservative modeling done to support this rule. As a result, the Agency is reserving the right to require that the owner or operator submit, as part of the permit proceeding, an air quality dispersion analysis consistent with EPA's *"Guideline on Air Quality Models (Revised)"* in order to ensure that acceptable ambient levels of pollutants are not exceeded irrespective of whether the facility meets the specific Screening Limits that would be established by this regulation.

Finally, we specifically request comment on whether less conservative assumptions, coupled with a safety factor then applied to assure that ambient levels are not underestimated, should be used to develop the Screening Limits. This alternative approach may have merit because the repeated use of conservative assumptions in an analysis may "multiply" the conservatism unreasonably. Comments are solicited on: (1) The extent to which less conservative assumptions would enable applicants to meet the Limits and, thus, how to reduce the conservatism of the Screening Limits while still ensuring that they are protective; and (3) how the reduced conservatism would affect the criteria discussed above that must be considered to determine if the Screening Limits are protective for a particular situation.

C. Evaluation of Health Risk

1. *Risk from Carcinogens.* EPA cancer risk policy suggests that any level of human exposure to a carcinogenic substance entails some finite level of risk. Determining the risk associated with a particular dose requires knowing the slope of the modeled dose-response curve. On this basis, EPA's Carcinogen Assessment Group (CAG) has estimated carcinogenic slope factors for humans exposed to known and suspected human carcinogens. Slope factors are estimated by a modeling process. The slope of the dose-response curve enables estimation of a unit risk. The unit risk is defined as the incremental lifetime risk estimated to result from exposure of an individual for a 70-year lifetime to a carcinogen in air containing 1 microgram of the compound per cubic meter of air. Both the slope factors and unit risks are reviewed by the Agency's Cancer Risk Assessment Validation Endeavor (CRAVE) workgroup for verification.

In setting acceptable risk levels to develop today's proposed rule, we considered the fact that not all carcinogens are equally likely to cause human cancers, as discussed in *"Guidelines for Carcinogenic Risk Assessment"* (51 FR 33992 (September 24, 1986)). The Guidelines have established a weight-of-evidence scheme reflecting the likelihood that a compound causes tumors in humans. The weight-of-evidence scheme categorizes carcinogens according to the quantity and quality of both human and animal data as known, probable, and possible human carcinogens. The proposed approach places a higher weight on cancer unit risk estimates that are based on stronger evidence of carcinogenicity. The proposed approach will provide for making fuller use of information by explicitly examining risk for different categories of carcinogens. In reaching the conclusion of the level of cancer risks to be used to support this proposal, we have considered available information on the constituents being emitted, the evidence associating these compounds with cancer risk, the quantities of emissions of these constituents, and the exposed populations.

For purposes of today's notice, we are proposing the following risk levels as acceptable incremental lifetime cancer risk levels to the hypothetical maximum exposed individual (MEI): (1) for Group A and B carcinogens, on the order of 10^{-6};[52] and (2) for Group C carcinogens, on the order of 10^{-5}. These risk levels are within the range of levels historically used by EPA in its hazardous waste and emergency response programs—10^{-4} to 10^{-7}.

Under the weight-of-evidence approach to assess carcinogenic risk for this proposed rule, we believe it is appropriate to add the risk from carcinogens *within* the category of those that are known or probable human carcinogens, the Group A and B carcinogens. Such a group is composed of certain metals which cause lung cancer (arsenic, beryllium, cadmium, and chromium).

Similarly, it is appropriate to add the risk from carcinogens within the category of those that are probable or possible human carcinogens, C carcinogens.

To implement this carcinogenic risk assessment approach, we are proposing to limit the aggregate risk to the MEI to 10^{-5}. Given that the carcinogenic metals that would be regulated in today's proposed rule are all Group A or B carcinogens, this approach would effectively limit the risk from individual carcinogenic metals to levels on the order of 10^{-6} but below 10^{-5}. We considered limiting the aggregate risk to the MEI to 10^{-6} but determined that it would result in setting risk levels for individual carcinogens to levels on the order of 10^{-7}, which has been judged (for purposes of this rule) to be unnecessarily conservative, considering the relatively low projected cancer incidence and relatively high cost per cancer reduced. Even though the cancer incidence is low, we do not consider a 10^{-4} risk level acceptable because: (1) The total annualized cost of the rule at a 10^{-5} aggregate risk level is not substantial; thus, the cost of the added margin of safety is reasonable; (2) indirect exposure has not yet been considered; and (3) toxic compounds not yet identified are not being controlled directly in this rulemaking. We believe that an aggregate MEI risk of 10^{-5} is appropriate because: (1) It provides adequate protection of public health; (2) it considers weight of evidence of human carcinogenicity; (3) it limits the risk from individual Group A and B carcinogens to risk levels on the order of 10^{-6}; and (4) it is within the range of risk levels the Agency has used for hazardous waste regulatory programs.

The Agency would like to use the weight-of-evidence approach in developing the health-based alternative approach to assessing THC emissions under the Tier II PIC controls. However, there a number of unidentified compounds in the mix of hydrocarbon emissions. These unidentified compounds could be either carcinogens or noncarcinogens, or both. Of the compounds that may be carcinogens, the Agency does not know whether they would be classified as A, B1, B2, or C carcinogens. Since the Agency cannot classify these unknown carcinogens, the Agency is unable to use a weight-of-evidence approach to select an acceptable risk level for THC. In order to be conservative, the Agency is assuming that THC can be treated as a single compound for which a unit cancer risk is calculated. To derive this unit cancer risk value, the historical data base of THC emissions from hazardous waste incinerators, boilers, and industrial furnaces was used. For each organic compound identified in the emissions, the 95th percentile highest concentration value was taken as a reasonable worst-case value. (The highest concentration was often used because there were too few data to identify the 95th percentile value.) For organic compounds listed in Appendix VIII of Part 261 for which health effects data are adequate to establish an RSD or RAC, but which have not been detected in emissions from hazardous waste combustion, an arbitrary emission concentration of 0.1 ng/L was assumed. The data base was further adjusted to increase the conservatism of the calculated THC unit risk value by assuming that the carcinogen formaldehyde is emitted from hazardous waste combustion devices at the 95th percentile levels found to be emitted from municipal waste combustors. The proportion of the emission concentration of each compound to the total emission concentration for all compounds was then determined. This proportion, termed a proportional emission concentration, was them multiplied by the unit cancer risk developed by CAG to obtain a risk level for that compound. A unit risk of zero was used for noncarcinogens like methane. All the cancer risks were added together to derive a weighted average 95th percentile unit risk value for THC. This procedure for developing a THC unit risk value assumes that the proportion of the various hydrocarbons is the same for all incinerators, boilers and industrial furnaces burning hazardous waste. In addition, it weighs all carcinogens the same regardless of current EPA classification.

As explained in the text, we are proposing to limit hydrocarbon emissions—when stack gas carbon monoxide levels exceed 100 ppmv and under the health-based alternative—based on a 10^{-5} aggregate risk level. Thus, we are limiting each of the constituents to a risk level on the order of 10^{-6}.

Finally, in assessing the risk from facilities that emit both THC and carcinogenic metals, we are not proposing that the risk from THC emissions be added to the aggregate MEI risk from metals emissions. Adding the risk would be inappropriate because we do not know how all the THC would be classified according to weight of evidence. (We note again that we prefer the technology-based approach to assess THC emissions for reasons discussed in the text.)

We specifically request comment on this proposed approach to assess carcinogenic risk. We also welcome suggestions or alternative ways to account for additivity.

The Agency also requests comment on whether aggregate population risk or cancer incidence (i.e., cancer cases per year) should also be considered in developing the national emission limits and in site-specific risk assessments. This approach could, in some situations, be more conservative than considering only MEI risk because, even if the "acceptable" MEI risk level were not exceeded, large population centers may be exposed to emissions such that the increase in cancer cases could be significant. However, it would be difficult to develop acceptable aggregate cancer incidence rates. Nevertheless, it is likely that many facilities that perform a site-specific MEI exposure and risk analysis would also generate an aggregate population exposure and risk analysis that could be considered by the Agency. Based on public comment and further thought on how to implement this dual approach, the final rule could incorporate consideration of both the MEI and aggregate population risk. Alternatively, EPA could provide guidance to the permit writer on when and how to consider cancer incidence on a case-by-case basis under authority of section 3005(c)(3) of HSWA, as codified at § 270.32(b)(2).

2. *Risk from Noncarcinogens.* For toxic substances not known to display carcinogenic properties, there appears to be an identifiable exposure threshold below which adverse health effects usually do not occur. Noncarcinogenic effects are manifested when these pollutants are present in concentrations great enough to overcome the homeostatic, compensating, and adaptive mechanisms of the organism. Thus, protection against the adverse health effects of a toxicant is likely to be achieved by preventing total exposure levels from exceeding the threshold dose. Since other sources in addition to the controlled source may contribute to exposure, ambient concentrations associated with the controlled source should ideally take other potential sources into account. The Agency has therefore conservatively defined reference air concentrations (RACs) for noncarcinogenic compounds that are defined in terms of a fixed fraction of the estimated threshold concentration. The RACs for lead and hydrogen chloride, however, were established differently, as discussed below. The RACs are presented in Appendix H to this notice.

RACs have been derived from oral reference doses (RfDs) for those noncarcinogenic compounds listed in Appendix VIII of 40 CFR Part 261 (except for lead and hydrogen chloride) for which the Agency considers that it has adequate health effects data. An oral RfD is an estimate (with an uncertainty of perhaps an order of magnitude) of a daily exposure (via ingestion) for the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects even if exposure occurs daily for a lifetime. Since these oral-based RACs are subject to change, EPA contemplates publishing **Federal Register** notices if the RACs change in a way that affects the regulatory standard (see also the discussion of this issue in the **Federal Register** notice on boilers and furnaces published today).

The Agency is proposing RACs derived from oral RfDs because it believes that the development of the RfDs has been technically sound and adequately reviewed. Specifically:

1. EPA has developed verified RfDs and is committed to establishing RfDs for all constituents of Agency interest. The verification process is conducted by an EPA workgroup, and the conclusions and reasons for these decisions are publicly available.
2. The verification process ensures that the critical study is of appropriate length and quality to derive a health limit for long-term, lifetime protection.
3. RfDs are based on the best available information meeting minimum scientific criteria. Information may come from experimental animal studies or from human studies.
4. RfDs are designed to give long-term protection for even the most sensitive members of the population, such as pregnant women, children, and older men and women.
5. RfDs are designated by the Agency as being of high, medium, or low confidence depending on the quality of the information on which they are based

[52] A dose is calculated to correspond to a risk of causing cancer to one individual in one million exposed to that dose over a lifetime.

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and the amount of supporting data. The criteria for the confidence rating are discussed in the RfD decision documents.

The Agency used the follwing strategy to derive the inhalation exposure limits proposed today:

1. Where a verified oral RfD has been based on an inhalation study, we will calculate the inhalation exposure limit directly from the study.

2. Where a verified oral RfD has been based on an oral study, we will use a conversion factor of 1 for route-to-route extrapolation in driving an inhalation limit.

3. Where appropriate EPA health documents exist, such as the Health Effects Assessments (HEAs) and the Health Effects and Environmental Profiles (HEEPs), containing relevant inhalation toxicity data, their data will be used in deriving inhalation exposure limits. We will also consider other agency health documents (such as NIOSH's criteria documents).

4. If RfDs or other toxicity data from agency health documents are not available, then we will consider other sources of toxicity information. Calculations will be made in accordance with the RfD methodology.

The Agency recognizes the limitations of route-to-route conversions used to derive the RACs and is in the process of examining confounding factors affecting the conversion, such as: (a) The appropriateness of extrapolating when a portal of entry is the critical target organ; (b) first pass effects; and (c) effect of route on dosimetry.

The Agency, through its Inhalation RfD Workgroup, is developing reference dose values for inhalation exposure, and additional values are expected to be available this year. The Agency will use the available inhalation RfDs—after providing appropriate opportunity for public comment—when this rule is promulgated. Certainly, if the workgroup develops inhalation reference doses prior to promulgation of today's rule that are substantially different from the RACs proposed today, and if the revised inhalation reference dose could be expected to have a significant adverse impact on the regulated community, the Agency will take public comment on the revised RACs after notice in the Federal Register.

EPA proposed this same approach for deriving RACs on May 6, 1987 (52 FR 16993) for boilers and industrial furnaces burning hazardous waste. We received a number of comments on the proposed approach of deriving reference air concentrations (RACs) from oral RfDs. As stated in today's proposal and the May 6, 1987, proposal, we would prefer to use inhalation reference doses. Some comments suggested other means of deriving RACs. We will consider those comments and others that may be submitted as a result of today's notice in developing the final rule.

As previously stated, EPA has derived the RACs from oral reference doses (RfDs) for the compounds of concern. An oral RfD is an estimate of a daily exposure (via ingestion) for the human population that is likely to be without an appreciable risk of deleterious effects, even if exposure occurs daily throughout a lifetime.[53] The RfD for a specific chemical is calculated by dividing the experimentally determined no-observed-adverse-effect-level (NOAEL) or lowest-observable-adverse-effect-level (LOAEL) by the appropriate uncertainty factor(s). The RAC values inherently take into account sensitive populations.

The Agency is proposing to use the following equation to convert oral RfDs to RACs:

$$\text{RAC (mg/m}^3\text{)} = \frac{\text{RfD (mg/kg-bw/day)} \times \text{body weight} \times \text{correction factor} \times \text{background level factor}}{\text{m}^3 \text{ air breathed/day}}$$

where:

- RfD is the oral reference dose
- Body weight (bw) is assumed to be 70 kg for an adult male
- Volume of air breathed by an adult male is assumed to be 20 m^3 per day
- Correction factor for route-to-route extrapolation (going from the oral route to the inhalation route) is 1.0
- Background level factor is 0.25. It is a factor to fraction the RfD to the intake resulting from direct inhalation of the compound emitted from the source (i.e., an individual is assumed to be exposed to 75 percent of the RfD from the combination of indirect exposure from the source in question and other sources).

a. *Short-Term Exposures.* In today's proposed rule, the RACs are used to determine if adverse health effects are likely to result from exposure to stack emissions by comparing maximum annual average ground-level concentrations of a pollutant to the pollutant's RAC. If the RAC is not exceeded, EPA does not anticipate adverse health effects. The Agency, however, is also concerned about the impacts of short-term (less than 24-hour) exposures. The ground-level concentration of an emitted pollutant can be an order of magnitude greater during a 3-minute or 15-minute period of exposure than the maximum annual average exposure. This is because meteorological factors vary over the course of a year resulting in a wide distribution of exposures. Thus, maximum annual average concentrations are always much lower than short-term exposure concentrations. On the other hand, the short-term exposure RAC is also generally much higher than the lifetime exposure RAC. Nonetheless, in some cases short-term exposure may pose a greater health threat than annual exposure. Unfortunately, the use of RfDs limits the development of short-term acute exposure limits because no acceptable methodology exists for the derivation of less than lifetime exposure from the RfDs.[54] However, despite these limitations, the Agency is proposing a short-term (i.e., 3-minute) RAC for HCl of 150 mg/m^3, based on limited data documenting a no-observed-effect-level in animals exposed to HCl via inhalation.[55] We do anticipate, however, that short-term RACs for other compounds will be developed by the Agency in the future.

[53] Current scientific understanding, however, does not consider this demarcation to be rigid. For brief periods and for small excursions above the RfD, adverse effects are unlikely in most of the population. On the other hand, several circumstances can be cited in which particularly sensitive members of the population suffer adverse responses at levels well below the RfD. See 51 FR 1627 (January 14, 1986).

[54] Memo from Clara Chow through Reva Rubenstein, Characterization and Assessment Division, EPA, to Robert Holloway, Waste Management Division, EPA, entitled "Use of RfDs Versus TLVs for Health Criteria," January 13, 1987.

[55] Memo from Characterization and Assessment Division to Waste Management Division, October 2, 1986, interpreting results from Sellakumar, A.R.; Snyder, C.A.; Solomon, J.J.; Albert, R.E. (1985) "*Carcinogenicity of Formaldehyde and Hydrogen Chloride in Rats. Toxicol. Appl. Pharm.*" 81:401–406.

b. *RAC for HCl.* The RAC for annual exposure to HCl is 7 μg/m^3 [56] and is based on the threshold of its priority effects. Background levels were considered to be insignificant given that there are not many large sources of HCl and that this pollutant generally should not be transported over long distances in the lower atmosphere. The RAC for 3-minute exposure is 150 μg/m^3.[57] We note that EPA proposed an annual exposure RAC for HCl of 15 μg/m^3 in the 1987 boiler and furnace proposed rule. See 52 FR 16994. The Agency's inhalation Rfd workgroup has recently determined, however, that the annual exposure RAC should be 7 μg/m^3.

c. *RAC for Lead.* To consider the health effects from lead emissions, we adjusted the National Ambient Air Quality Standard (NAAQS) by a factor of one-tenth to account for background ambient levels and indirect exposure from the source in question. In addition, the Agency has recently determined that lead is a probable human carcinogen even though a unit risk value has not yet been developed. Although the lead NAAQS is 1.5 μg/m^3, sources could contribute only up to 0.15 μg/m^3 for purposes of this regulation. Given, however, that the lead NAAQS is based on a quarterly average, the equivalent annual exposure is 0.09 μg/m^3 for a quarterly average of 0.15 μg/m^3. Thus, the lead RAC is 0.09 μg/m^3. This is the same level EPA proposed in the 1987 boiler and furnace proposed rule. See 52 FR 17006.

d. *Relationship to NAAQS.* The Clean Air Act (CAA) requires EPA to establish ambient standards for pollutants determined to be injurious to public health or welfare. Primary National Ambient Air Quality Standards (NAAWS) must reflect the level of attainment necessary to protect public health allowing for an adequate margin of safety. Secondary NNAQS must be designed to protect public welfare in addition to public health, and, thus, are more stringent.

As discussed above, the Reference Air Concentration (RAC) proposed today for Lead is based on the Lead NAAQS. As the Agency develops additional NAAQS for toxic compounds that may be emitted from hazardous waste incinerators, boilers, and industrial furnaces, we will consider whether the acceptable ambient levels (and, subsequently, the feed rate and emission rate Screening Limits) ultimately established under this rule should be revised.

The reference air concentration values (and risk-specific dose values for carcinogens) proposed here in no way preclude the Agency from establishing NAAQS as appropriate for these compounds under authority of the CAA.

D. Risk Assessment Assumptions

We have used a number of assumptions in the risk assessment, some conservative and others nonconservative, to simplify the analysis or to address issues where definitive data do not exist.

Conservative assumptions include the following:

- Individuals reside at the point of maximum annual average and (for HCl) maximum short-term ground-level concentrations. Furthermore, risk estimates for carcinogens assume that the maximum exposed individual resides at the point of maximum annual average concentration for a 70-year lifetime.
- Indoor air contains the same levels of pollutants contributed by the source as outdoor air.
- For noncarcinogenic health determinations, background exposure already amounts to 75 percent of the RfD. This includes other routes of exposure, including ingestion and dermal. Thus, the incinerator is only allowed to contribute 25 percent of the RfD via direct inhalation. The only exception is for lead, where the source is allowed to contribute only 10 percent of the NAAQS. This is because ambient lead levels in urban areas already represent a substantial portion (e.g., one-third or more) of the lead NAAQS. In addition, the Agency is particularly concerned about health risks from lead in light of health effects data available since the lead NAAQS was established. EPA is currently reviewing the lead NAAQS to determine if it should be lowered.[58]
- Risks are considered for pollutants that are known, probable, and possible human carcinogens.
- Individual health risk numbers have large uncertainty factors implicit in their derivation to take into effect the most sensitive portion of the population.

Nonconservative assumptions include the following:

- Although emissions are complex mixtures, interactive effects of threshold or carcinogenic compounds have not been considered in this regulation because data on such relationships are inadequate.[59]
- Environmental effects (i.e., effects on plants and animals) have not been considered because of a lack of adequate information. Adverse effects on plants and animals may occur at levels lower than those that cause adverse human health effects. (The Agency is also developing procedures and requesting Science Advisory Board review to consider environmental effects resulting from emissions from all categories of waste combustion facilities.)

II. Implementation of the Metals and HCl Controls

A.

Overview

As in the 1987 proposed rule, EPA is proposing to control metals and HCl emissions by requiring a site-specific risk analysis when metals or HCl emissions (or feed rates) exceed conservative Screening Limits. EPA developed the Screening Limits to minimize the need for conducting site-specific risk assessments, thereby reducing the burden to applicants and permit officials. When the Screening Limits are exceeded, the applicant would be required to conduct a site-specific risk assessment that demonstrates that the potential exposure of the maximum exposed individual to metals and HCl does not result in an exceedance of reasonable acceptable marginal additional risks, namely:

- That exposure to all carcinogenic metals be limited such that the sum of the excess risks attributable to ambient concentrations of these metals does not exceed an additional lifetime individual risk (to the (potential) maximum exposed individual) of 10^{-5}; and

[56] At this point, we have not attempted to quantify indirect exposure through the food chain, ingestion of water contaminated by deposition, and dermal exposure, because as yet no acceptable methodology for doing so has been developed and approved by the Agency for use for evaluating combustion sources. We note, however, that by allowing the source to contribute only 25 percent of the RfD (or 10 percent of the NAAQS in the case of lead) accounts for indirect exposure by assuming a person is exposed to 75 percent of the RfD from other sources and other exposure pathways. (EPA is developing such a methodology for application to waste combustion sources. The Agency's Science Advisory Board has reviewed this methodology, and the Agency is continuing to refine the methodology. When the Agency completes development of procedures to evaluate indirect exposure, a more detailed analysis may be applied to all devices burning hazardous wastes.)

[57] Memo from Lisa Ratcliff, EPA, to Dwight Hlustick, EPA, entitled "Short-term Health-based Number for Hydrogen Chloride," September 15, 1986.

[58] At this point, we have not attempted to quantify indirect exposure through the food chain, ingestion of water contaminated by deposition, and dermal exposure, because as yet no acceptable methodology for doing so has been developed and approved by the Agency for use for evaluating combustion sources. We note, however, that by allowing the source to contribute only 25 percent of the RfD (or 10 percent of the NAAQS in the case of lead) accounts for indirect exposure by assuming a person is exposed to 75 percent of the RfD from other sources and other exposure pathways. (EPA is developing such a methodology for application to waste combustion sources. The Agency's Science Advisory Board has reviewed this methodology, and the Agency is continuing to refine the methodology. When the Agency completes development of procedures to evaluate indirect exposure, a more detailed analysis may be applied to all devices burning hazardous wastes.)

[59] Additive effects of carcinogenic compounds are considered by summing the risks for all carcinogens to estimate the aggregate risk to the most exposed individual (MEI).

[59] Memo from Craig McCormack, EPA, to Dwight Hlustick, EPA, entitled "Environmental Exposure Limit Assessment for Hydrogen Chloride," July 1986.

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• That exposure to each noncarcinogenic metal and HCl be limited such that exposure (to the (potential) maximum exposed individual) does not exceed the reference air concentration (RAC) for the metal and HCl.

B. Meals and HCl Emissions Standards

The metals and HCl emissions standards would require site-specific risk assessment to demonstrate that emissions will not: (1) Result in exceedances of the reference air concentrations (RACs) for noncarcinogens at the potential MEI; and (2) result in an aggregate increased lifetime cancer risk to the potential MEI of greater than 1×10^{-5}. The RACs for noncarcinogens and risk specific doses (RSDs) for carcinogens are presented in appendix H to this notice.

To reduce the burden on applicants and permitting officials, EPA has developed conservative Screening Limits for metals and HCl emissions (and feed rates) as a function of terrain adjusted effective stack height, terrain, and land use. See discussion below. If the Screening Limits are not exceeded, site-specific dispersion modeling would not be required to demonstrate conformance with the proposed standard.

If the Screening Limits are exceeded, the applicant would be required to conduct site-specific dispersion modeling in conformance with "Guideline on Air Quality Models (Revised)," July 1986, EPA Publication Number 450/2-78-027R (OAQPS Guideline No. 1.2-080), available from National Technical Information Service, Springfield, Virginia, Order No. PB 86-245286. We are proposing to incorporate that document by reference in the rule.

The use of physical stack height in excess of Good Engineering Practice (GEP) stack height is prohibited in the development of emission limitations under EPA's Air Program at 40 CFR 51.12 and 40 CFR 51.18. We propose to adopt a similar policy by limiting the height of the physical stack for which credit will be allowed in complying with the metals (and other) standards (i.e., both site-specific dispersion modeling and Screening Limits). GEP identifies the minimum stack height at which significant adverse aerodynamic effects are avoided. Although higher than GEP stack heights are not prohibited, credit will not be allowed for stack heights greater than GEP. Good Engineering Practice (GEP) maximum stack height means the greater of: (1) 65 meters, measured from the ground-level elevation at the base of the stack; or (2) $Hg=H+1.5L$.[60]

where:

Hg = GEP minimum stack height measured from the ground-level elevation at the base of the stack;

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack;

L = lesser dimension, height or projected width, of nearby structure(s).

If the result of the above equation is less than 65 meters, then the actual physical stack height, up to 65 meters, could be used for compliance purposes. If the result of the equation is greater than 65 meters, the physical stack height considered for compliance purposes cannot exceed that level.

EPA requests comment on this use of GEP maximum stack height. We note that although an owner or operator could increase his physical stack height up to the GEP maximum to achieve better dispersion and a higher allowable emission rate, he should first consider that EPA plans to develop for subsequent proposal in 1991 a best demonstrated technology (BDT) particulate standard that is likely to be much lower than the current 0.08 gr/dscf standard. Thus, it may be more cost-effective to upgrade emission control equipment to state-of-the-art control rather than increase stack height.

EPA specifically requests comments on how many facilities are likely to exceed the Screening Limits discussed below and, thus, would conduct site-specific dispersion modeling to comply with the proposed rule. Further, we request information on the changes to equipment and operations that would be required to comply with the Screening Limits if the provision for site-specific dispersion modeling was not available.

C. *Screening Limits*

EPA developed conservative Screening Limits for metals and HC1 emission rates (and feed rates) to minimize the need for site-specific dispersion modeling, and thus, reduce the burden on applicants and permitting officials.[61] The Screening Limits are provided as a function of terrain-adjusted effective stack height, terrain, and urban/rural classification as discussed below. The Screening Limits would be included in the "Risk Assessment Guideline for Permitting Hazardous Waste Thermal Treatment Services" (RAG) which would be incorporated by reference in the rule.

1. *Emission Screening Limits.* As discussed in Section I of this Appendix, EPA derived conservative emissions Screening Limits by back-calculating from the reference air concentrations (RACs) and risk-specific doses (RSDs) using reasonable worst-case dispersion coefficients. The emission Screening Limits are presented in Tables E-5, E-6, E-7, and E-8; and E-10 in appendix E. Tables E-7 and E-8 apply to carcinogenic metals, and tables E-5 and E-6 apply to noncarcinogenic metals. Tables E-5 and E-7 apply to facilities located in noncomplex terrain. Different emissions limits are provided for urban versus rural land use because dispersion coefficients are significantly different for the land use categories. Tables E-6 and E-8 show emission limits for facilities located in complex terrain. No distinction is made for urban versus rural land use with complex terrain because of limitations in the available modeling techniques. If multiple carcinogenic metals are to be burned, (i.e., As, Cd, Cr, Be) then the following equation would be used to demonstrate that the aggregate risk to the MEI from all carcinogenic metals does not exceed 10^{-5} (the ratios must be summed because the screening limit for each metal is back-calculated from the 10^{-5} RSD for that metal).

$$\sum_{i=1}^{n} \frac{\text{Actual Emission Rate}_i}{\text{Emissions Screening Limit}_i} \leq 1.0$$

where:

n = number of carcinogenic metals

Actual Emission Rate = the emission rate in g/s measured during the trial burn or provided in lieu of the trial burn for metal "i"

Emissions Screening Limit = Limit provided in Table E-7 or E-8 in Appendix E for metal "i"

To demonstrate compliance with Emissions Screening Limits, the owner or operator would conduct emissions testing during the trial burn, as discussed below.

2. *Feed Rate Screening Limits.* Feed rate Screening Limits are provided to enable applicants burning wastes with very low metals or chlorine concentrations to avoid emissions testing. The feed rate limits are "back-calculated" from the emissions Screening Limits assuming conservatively that all metals and chlorine in the waste are emitted to the atmosphere. Thus, no metals are assumed to partition to the bottom ash and no allowance is made for removal of metal or HC1 emissions by air pollution control devices. Consequently, the feed rate limits are equivalent to the emission limits, but are presented in units more consistent with waste feed rate, lb/hr, rather than g/s.

The Feed Rate Screening Limits are shown in Tables E-1, E-2, E-3, E-4 and E-9 in appendix E. Tables E-3 and E-4 apply to carcinogenic metals and Tables E-1 and E-2 apply to noncarcinogenic metals. Tables E-1 and E-3 apply to facilities located in noncomplex terrain. As with the emissions Screening Limits, different limits are provided for urban versus rural land use because dispersion coefficients usually are significantly different in urban and rural settings. Tables E-2, E-4, and E-9 show feed rate limits for facilities located in complex terrain. Again, no distinction is made for urban versus rural land use within complex terrain. These feed rates for carcinogen metals show the maximum quantity of any single metal that may be burned at any one time, in the absence of all others.

The feed rate limit for each carcinogenic metal ensures that ambient levels will not exceed the risk-specific dose at an incremental lifetime risk level of 1×10^{-5}. Similarly, the feed rates for the noncarcinogenic metals and HC1 ensure that the reference air concentrations (RACs) will not be exceeded. If the waste contains multiple carcinogenic metals, then the following equation would be used to ensure that aggregate risk to the MEI does not exceed 1×10^{-5}.

$$\sum_{i=1}^{n} \frac{\text{Actual Feed Rate}_i}{\text{Feed Rate Screening Limit}_i} \leq 1.0$$

where:

n = number of carcinogens

Actual Feed Rate = the actual feed rate during the trial burn for metal "i" to be used in the permit.

Feed Rate Screening Limit = limit provided in Table E-3 or E-4 in Appendix E for metal "i"

3. *Terrain-Adjusted Effective Stack Height.* For purposes of complying with the Screening Limits, terrain-adjusted effective stack height is determined by adding to the stack height the appropriate plume rise factor (which is a function of temperature and stack flow rate [62]) established in Table F-2 and by subtracting the maximum terrain rise within 5 km of the stack.[63] Since terrain has, however, already been taken into account in the dispersion modeling that supports the emission limits, this requirement effective "double counts" terrain effects. This additional conservatism is necessary to account for the wide range of terrain complexities encountered at real facilities—a range that could not be fully considered by modeling only 25 sites. If this double-counting leads to permit emission limits that the applicant considers unduly conservative, the applicant is free to conduct site-specific modeling.

TABLE F-2.—ESTIMATED PLUME RISE (H1, IN METERS) BASED ON STACK EXIT FLOW RATE AND GAS TEMPERATURE

Flow rate* (m3/sec)	Exhaust temperature (K)										
	<325	325-349	350-399	400-449	450-499	500-599	600-699	700-799	800-999	1000-1499	>1499
<0.5	0	0	0	1	1	1	1	1	1	1	1
0.5-0.9	1	1	1	1	1	1	2	2	2	3	2
1.0-1.9	1	1	1	2	2	2	3	3	3	4	4
2.0-2.9	1	1	2	3	4	4	5	5	6	6	7
3.0-3.9	2	2	3	4	5	6	7	7	8	8	9
4.0-4.9	2	2	3	5	6	7	8	9	10	10	11
5.0-7.4	3	3	4	6	7	8	10	11	11	12	13
7.5-9.9	3	4	5	8	8	10	11	13	14	15	17	18
10.0-12.4	4	5	7	10	12	14	16	18	19	21	23
12.5-14.9	5	5	8	12	14	16	19	21	22	24	27
15.0-19.9	6	6	9	13	16	19	22	24	26	28	31
20.0-24.9	7	8	11	17	20	23	27	30	32	35	38
25.0-29.9	8	9	13	20	24	27	32	35	38	41	44
30.0-34.9	9	10	15	22	27	31	37	40	42	45	49
35.0-39.9	10	12	17	25	31	35	41	44	46	50	54
40.0-49.9	11	13	19	28	34	39	44	48	50	54	58
50.0-59.9	14	15	22	33	40	44	50	55	57	61	66
60.0-69.9	16	18	26	38	45	50	56	61	64	68	74
>69.9	18	20	29	42	49	54	62	67	70	75	81

(1) Using the given stack exit flow rate and gas temperature, find the corresponding plume rise value from the above table.
(2) Add the physical stack height to the corresponding plume rise value to determine the effective stack height.
* Plume rise is a function of buoyancy and momentum which are in turn functions of flow rate not simply exit velocity. Flow Rate is defined as the inner cross-sectional area of the stack multiplied by the exit velocity of the stack gases.

As discussed above, the physical stack height component of the effective stack height, however, may not exceed good engineering practice for purposes of compliance. Note that increments in the categories are small when the terrain adjusted stack heights are low, and increase as the terrain adjusted stack height increases. This is because ambient concentrations are more strongly affected by variations in this

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[60] We note that this equation also identifies the GEP minimum stack height necessary to avoid building wake effects. EPA recommends the application of GEP to define minimum stack heights to minimize potentially high concentration of pollutants in the immediate vicinity of the unit.

[61] We note that the Screening Limits are designed to be conservative and would likely limit emissions by a factor of 2 to 20 times lower than would be allowed by site-specific dispersion modeling.

[62] Stack flow rate rather than flue gas velocity is the critical parameter because plume rise is a function of both buoyancy flux and momentum flux, both of which, in turn, are functions of flow rate. Flow rate is defined as the inner cross-sectional area of the stack multiplied by the exit velocity of the stack gases.

[63] We note that, in complex terrain where maximum terrain rise within 5 km of the stack exceeds stack height, the terrain adjusted effective steck height will be zero (or negative). Given that the Screening Limits applicable for a four meter terrain adjusted effective stack height have been calculated to be conservative for any stack height of four meters or less, the Screening Limits applicable for a four meter terrain adjusted effective stack height should be used.

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term when stack heights are less than 30 meters.

The effective stack height is the height above the ground at which the plume becomes parallel to the ground after reaching equilibrium. Specifically, at the effective stack height the stack effluent has reached a final plume rise level and is assumed to remain at this height above the ground as it travels downwind. Therefore, the effective stack height is the physical stack height plus the final plume rise.

4. *Terrain Designation.* Terrain classifications are significant because dispersion of air pollutants is affected by the relationship between the maximum height of the surrounding terrain (especially within a radius of 1–2 km) and the effective height of the stack. EPA's analysis for this regulation reviewed three classes of terrain: flat, rolling, and complex. Although results for flat and for rolling terrain were sufficiently similar that these classes are combined for purposes of developing the Screening Limits (i.e., called noncomplex terrain), it will be necessary for applicants to determine whether their facility lies in noncomplex or complex terrain.

For purposes of applying the Screening Limits, a facility lies in noncomplex terrain if the maximum terrain rise within a radius of five kilometers of the stack is less than or equal to the physical stack height. If the terrain rise is greater than the physical stack height, the facility is in *complex terrain.*

5. *Land Use.* Characterization of urban versus rural land use is significant because pollutants tend to disperse differently in these two settings—rural areas tend to have a higher frequency of periods with limited dispersion. The "Guideline on Air Quality Models (Revised)" specifies a procedure to determine the character of the modeling area as primarily urban or rural. In this procedure, two methods are presented: (1) The land use procedure, and (2) population density procedure. The land use procedure is the recommended approach.

The land use procedure classifies land use within an area circumscribed by a 3 kilometer radius circle around a source. A typing scheme developed by August H. Auer, Jr. is referenced by the guideline as an aid in defining the specific types of land use. A simplified adaption of this procedure is recommended for this rule and is described in Tab A and Appendix I of the "Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators".

D. Conservation of Risk Methodology

We specifically request comment on whether less conservative assumptions, coupled with a safety factor then applied to assure that ambient levels are not underestimated, should be used to develop the Screening Limits. This alternative approach may have merit because the repeated use of conservative assumptions in an analysis may "multiply" the conservatism unreasonably. Comments are solicited on: (1) The extent to which less conservative assumptions would enable applicants to meet the Limits and, thus, (2) how to reduce the conservatism of the Screening Limits while still ensuring that they are protective; and (3) how the reduced conservatism would affect the criteria discussed above that must be considered to determine if the Screening Limits are protective for a particular situation.

Appendix G: Implementation of Metals and HCl Controls

The metals emissions standards would be implemented by establishing limits in the permit on the feed rate (lb/hr) of each metal. If the applicant elects to comply with the feed rate Screening Limits, the Screening Limits for the noncarcinogenic metals would become the permitted levels. For carcinogenic metals, the permitted feed rate limits would be the feed rates the applicant uses to demonstrate that the sum of the ratios of actual feed rate to the Screening Limits for all carcinogenic metals does not exceed one.

If the applicant elects to comply with the emissions Screening Limits or to conduct site-specific dispersion modeling to demonstrate that higher emissions rates do not pose unacceptable health risk, metals emissions would be controlled in the permit by: (1) Limiting feed rates to those during the trial burn when metals emissions were determined; (2) limiting emission rates to those during the trial burn; (3) specifying key operating parameters that can affect metals emissions (e.g., maximum combustion chamber temperature, maximum chlorine content in the waste feed); and (4) specifying operating and maintenance requirements for the air pollution control device to ensure that collection efficiency does not degrade over time.

The waste feed rate limits (lb/hr) specified in the permit would represent maximum limits that can never be exceeded. We considered whether limits should represent average values (e.g., hourly, daily, weekly, monthly, or even yearly averages). We believe that allowing (greater than hourly) averaging would complicate operator recordkeeping and EPA inspection and enforcement activities. EPA believes compliance with the standards can be enforced by sampling of waste feed inputs to the incinerator. EPA requests comment on whether and how alternate averaging periods should be allowed for compliance with the metals (and HCl) standards. It could be argued that long-term averaging is appropriate because the proposed acceptable ambient levels are based on long-term (annual) exposure. However, in selecting an averaging period, we must consider ease of enforcement and adverse health effects from short-term exposures to high ambient levels. One alternative approach would be to allow for the carcinogenic metals (i.e., arsenic, beryllium, cadmium, and chromium) and lead a 24-hour averaging period provided that emissions at any point in time do not exceed ten times the permit limit based on annual exposure. A ten-fold higher instantaneous ambient level for the carcinogenic metals may not pose adverse health effects given that the 24-hour average would not exceed the level that could pose a 10^{-5} health risk over a lifetime of exposure and that threshold (i.e., noncancer) health effects would not be likely at exposures only ten times higher than the 10^{-5} risk-specific dose. A ten-fold higher instantaneous ambient level for lead may not pose adverse health effects given that the proposed acceptable ambient level for long-term exposure to lead is based on only 10% of the National Ambient Air Quality Standard. We do not believe that a similar approach for the other noncarcinogenic metals would be appropriate given the uncertainty in the level of protection provided by the proposed long-term acceptable ambient levels (e.g., the ambient levels are based on oral RfDs converted 1-to-1 to inhalation values). We specifically request comment on this and other approaches to implementing the feed rate limits.

We also request comments on approaches other than waste analysis combined with feed rate limits to implement the controls on metals emissions. Other approaches that may be practicable include: (1) Determining the correlation between metals emissions and metals concentrations in emission control residues (e.g., scrubber water, bag house dust, ESP dust) during the trial burn followed by compliance monitoring of metals concentrations in the residues (e.g., daily analyses; daily composite sampling with weekly analyses; or daily composite sampling with monthly analyses); (2) semicontinuous emission monitoring (e.g., 6 hours of every 24 hours of operation); and (3) ambient monitoring in conformance with procedures recommended by EPA's Office of Air Quality Planning and Standards.[64] Based on public comment and additional analysis, the final rule may provide one or more alternative approaches to waste analysis to implement the controls.

EPA believes that the metal in a waste may partition differently according to the type and location of the feed system through which a metal-bearing waste is fed. For example, the mass fraction of a metal in a solid waste fired onto the grate of a boiler and that subsequently enters the combustion gas stream and finally escapes the emissions control device and is emitted may be different from the mass fraction of a metal in a liquid waste fired with an atomization nozzel that is ultimately emitted to the atmosphere. Similarly, wastes fired to cement kiln systems may partition differently depending on whether the waste is fired in liquid or solid form, and on firing location (e.g., hot end of the kiln, midkiln, precalciner). EPA anticipates, therefore, that separate feed rate limits may need to be set in the permit for each feed system. Consequently, permit applicants may wish to vary trial burn conditions to establish appropriate permit limits for metals fed through each separate feed system or location. EPA requests comment on the need for and practicality of such permit conditions.

EPA anticipates that boilers without air pollution control devices capable of capturing metals will choose to comply with the Feed Rate Screening Limits by controlling the levels of metals in the wastes and will blend higher levels of metals that exist in specific wastes down to acceptable concentrations depending upon the capacity of the boiler.

For boilers and industrial furnaces equipped with air pollution control devices, we anticipate that the operator will comply with the Emissions Screening Limits. Compliance would be demonstrated by conducting an actual trial burn which measures metals emissions. Such operators will attempt in some instances to increase operating flexibility in their permits by ensuring that wastes of high metals contents are burned during trial burns. Spiking of metals in soluble forms may be advisable. Table G–3 gives typical conservative efficiencies for air pollution control devices on incinerators, and indicates the level of advantage operators may gain under Emissions Screening Limits (versus Feed Rate Screening Limits) by conducting emission testing.

TABLE G–3.—AIR POLLUTION CONTROL DEVICES (APCDS) AND THEIR CONSERVATIVELY ESTIMATED EFFICIENCIES FOR CONTROLLING TOXIC METALS

APCD	Pollutant				
	Ba, Be	Ag	Cr	As,Sb,Cd,Pb,Tl	Hg
WS [1]	50	50	50	40	30
VS–20 [1]	90	90	90	20	20
VS–60 [1]	98	98	98	40	40
ESP–1	95	95	95	80	0
ESP–2	97	97	97	85	0
ESP–4	99	99	99	90	0
WESP [1]	97	97	96	95	60
FF [1]	95	95	95	90	50
PS [1]	95	95	95	95	80
SD/FF; SDVC/FF	99	99	99	95	90
DS/FF	98	98	98	98	50
FF/WS [1]	95	95	95	90	50
ESP–1/WS; ESP–1/PS	98	98	98	90	80
ESP–4/WS' ESP–4/PS	99	99	99	95	85
VS–20/WS [1]	97	97	97	98	80
WS/IWS [2]	95	95	95	95	85
WESP/VS–20/IWS [1]	99	99	98	97	90
C/DS/ESP/FF; C/DS/C/ESP/FF	99	99	99	99	98
SD/C/ESP–1	99	99	98	95	85

[1] It is assumed that flue gases have been precooled in a quench. If gases are not cooled adequately, mercury recoveries will diminish, as will cadmium and arsenic to a lesser extent.

[2] An IWS is nearly always used with an upstream quench and packed horizontal scrubber.

C = Cyclone; WS = Wet Scrubber including: Sieve Tray Tower, Packed Tower, Bubble Cap Tower
PS = Proprietary Wet Scrubber Design (A number of proprietary wet scrubbers have come on the market in recent years that are highly efficient on both particulates and corrosive gases. Two such units are offered by Calvert Environmental Equipment Co. and by Hydro-Sonic Systems, Inc.).
VS–20 = Venturi Scrubber, ca. 20–30 in W. G. Δp
VS–60 = Venturi Scrubber, ca. > 60 in W. G. Δp
ESP–1 = Electrostatic Precipitator; 1 stage
ESP–2 = Electrostatic Precipitator; 2 stages
ESP–4 = Electrostatic Precipitator; 4 stages
IWS = Ionizing Wet Scrubber
DS = Dry Scrubber
FF = Fabric Filter (Baghouse)
SD = Spray Dryer (Wet/Dry Scrubber)

Finally, operators of facilities burning waste with high metals levels may elect to conduct site-specific dispersion modeling to demonstrate that emission rates higher than allowed by the Screening Limits would not pose unacceptable health risk. The added cost of the dispersion modeling may be reasonable even if the boiler or furnace

[64] Under the ambient monitoring approach, the Agency would consider increasing the RACs for the noncarcinogenic metals because exposure from other sources would be accounted for. To consider indirect exposure, however, the RACs would still be based on a fraction of the RfD (e.g., 50% rather than the 25% proposed). Further, the Agency may not raise the RAC for lead under this approach given that we now believe that lead is a probable human carcinogen.

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is equipped with high efficiency emissions control equipment because the Screening Limits are likely to be conservative by a factor of 2 to 20.

Implementation for Multiple Sources On Site

The preceding discussion of the Screening Limits and Site-Specific Dispersion Modeling presumed only one hazardous waste combustion source at each site. However, facilities may have more than one source on site burning hazardous waste emitting from one or more stacks. EPA proposes that all such sources, whether incinerators, boilers, or industrial furnaces must meet the appropriate metals (and hydrogen chloride and THC) limits that would be established by this rule if such combustion devices burn hazardous waste. EPA anticipates that the revised incinerator standards that it plans to propose shortly would be copromulgated with the final rules for boilers and industrial furnaces. Thus, the sum of all emissions of toxic metals (and HCl and THC) from on-site sources must be considered when complying with the metals (and HCl and THC) standards.

EPA considered the method by which owners and operators could comply with this modified bubble approach. The net effect is to limit the total amount of metal-bearing waste at any one site with the use of adequate air pollution control devices. Thus, it would be inappropriate for the Agency to regulate metal emissions at an incinerator without taking into account the metal emissions generated by, for example, an on-site boiler burning hazardous waste and emitting toxic metals through the same or a nearby stack.

Owners and operators with multiple on-site sources could still demonstrate compliance with the Screening Limits by conservatively assuming all hazardous waste is fed to the source with the worst-case (i.e., considering dispersion) stack. The worst-case stack would be determined from the following equation as applied to each stack:

$K = HVT$

where:

K = a parameter accounting for relative influence of stack height and plume rise.
H = Physical Stack height (meters).
V = Flow rate (m^3/second).
T = Exhaust temperature (Kelvin)

The stack with the lowest value of K is to be used as the worst-case stack.

The use of this assumption can be very conservative if there are substantial differences in effective stack heights. We assume that most facilities with multiple sources and stacks would perform site-specific dispersion modeling to determine the relative importance of each source or stack contribution to the ambient metal (and HCl and THC) levels.

Short-Term Exposure Considerations for HCl

The dispersion modeling used to develop the Screening Limits indicated that, for the severe (i.e., poor) dispersion scenarios considered, the risk from short-term exposure was invariably greater than for long-term exposure. Thus, short-term (i.e., 3-min) exposures were used to develop the Screening Limits.

EPA proposed the 3-minute exposure RAC for HCl in the 1987 boiler/furnace proposal. Several commenters had concerns with the use of a 3-minute HCl RAC. Other commenters suggested alternative values for a short-term HCl RAC. We will consider those comments and other that may be submitted as a result of today's notice in developing the final rules.

EPA is evaluating continuous emission monitors for HCl, and it appears that accurate and reliable instruments may be available commercially. EPA specifically requests comments on whether continuous emission monitoring for HCl would be a feasible, practicable requirement in lieu of waste analysis for chlorine to limit HCl emissions.

Appendix H: Health Effects Data for Metals, HCl, and THC

A. Risk-Specific Dose for Carcinogenic Metals at 1×10^{-5} Risk Level

Constituent	Maximum annual average ground level concentration ($\mu g/m^3$)
Arsenic	2.3×10^{-3}
Beryllium	4.1×10^{-3}
Cadmium	5.5×10^{-5}
Chromium (hexavalent)	8.3×10^{-4}

B. Reference Air Concentrations (RACs) for Threshold Metals

Constituent	Maximum annual average ground level concentration ($\mu g/m^3$)
Antimony	0.3
Barium	50
Lead	0.09
Mercury	0.3
Silver	3
Thallium (oxide)	0.3

C. Reference Air Concentrations for Hydrogen Chloride

Maximum 3-Minute Exposure—150 $\mu g/m^3$

Maximum Annual Average Ground Level Concentration—7 $\mu g/m^3$

D. Risk-Specific Dose (RSD) for Total Hydrocarbons at 10^{-5} Risk Level

Maximum Annual Average Ground Level Concentration—1 $\mu g/m^3$

Appendix I: Reference Air Concentrations (RACs) for Threshold Constituents

Constituent	CAS No.	RAC ($\mu g/m^3$)
Acetaldehyde	75-07-0	10
Acetonitrile	75-05-8	10
Acetophenone	98-86-2	100
Acrolein	107-02-8	20
Aldicarb	116-06-3	1
Aluminum Phosphide	20859-73-8	0.3
Allyl Alcohol	107-18-6	5
Antimony	7440-36-0	0.3
Barium	7440-39-3	50
Barium Cyanide	542-62-1	50
Bromomethane	74-83-9	0.8
Calcium Cyanide	592-01-8	30
Carbon Disulfide	75-15-0	200
Chloral	75-87-8	2
2-chloro-1,3-butadiene	126-99-8	3
Chromium III	16065-83-1	1000
Copper Cyanide	544-92-3	5
Cresols	1319-77-3	50
Cumene	98-82-8	1
Cyanide (free)	57-12-15	20
Cyanogen	460-19-5	30
Cyanogen Bromide	506-68-3	80
Di-n-butyl Phthalate	84-74-2	100
O-dichlorobenzene	95-50-1	10
P-dichlorobenzene	106-46-7	10
Dichlorodifluoromethane	75-71-8	200
2,4-dichlorophenol	120-83-2	3
Diethyl Phthalate	84-66-2	800
Dimethoate	60-51-5	0.8
2,4-dinitrophenol	51-28-5	2
Dinoseb	88-85-7	0.9
Diphenylamine	122-39-4	20
Endosulfan	115-29-7	0.05
Endrin	72-20-8	0.3
Fluorine	7782-41-4	50
Formic Acid	64-18-6	2000
Glycidylaldehyde	765-34-4	0.3
Hexachlorocyclopentadiene	77-47-4	5
Hexachlorophene	70-30-4	0.3
Hydrocyanic Acid	74-90-8	20
Hydrogen Chloride	7647-01-1	*15
Hydrogen Sulfide	7783-06-4	3
Isobutyl Alcohol	78-83-1	300
Lead	7439-92-1	0.09
Maleic anhydride	108-31-6	100
Mercury	7439-97-6	2
Methacrylonitrile	126-98-7	0.1
Methomyl	16752-77-5	20
Methoxychlor	72-43-5	50
Methyl Chlorocarbonate	79-22-1	1000
Methyl Ethyl Ketone	78-93-3	80
Methyl Parathion	298-00-0	0.3
Nickel Cyanide	557-19-7	20
Nitric Oxide	10102-43-9	100
Nitrobenzene	98-95-3	0.8
Pentachlorobenzene	608-93-5	0.8
Pentachlorophenol	87-86-5	30
Phenol	108-95-2	30
M-phenylenediamine	108-45-2	5
Phenylmercuric Acetate	62-38-4	0.075
Phosphine	7803-51-2	0.3
Phthalic Anhydride	85-44-9	2000
Potassium Cyanide	151-50-8	50
Potassium Silver Cyanide	506-61-6	200
Pyridine	110-86-1	1
Selenious Acid	7783-00-8	3
Selenourea	630-10-4	5
Silver	7440-22-4	3
Silver Cyanide	506-64-9	100
Sodium Cyanide	143-33-9	30
Strychnine	57-24-9	0.3
1,2,4,5-tetrachlorobenzene	95-94-3	0.3
2,3,4,6-tetrachlorophenol	58-90-2	30
Tetraethyl Lead	78-00-2	0.0001
Tetrahydrofuran	109-99-9	10
Thallic Oxide	1314-32-5	0.3
Thallium	7440-28-0	0.5
Thallium (I) Acetate	563-68-8	0.5
Thallium (I) Carbonate	6533-73-9	0.3
Thallium (I) Chloride	7791-12-0	0.3
Thallium (I) Nitrate	10102-45-1	0.5
Thallium Selenite	12039-52-0	0.5
Thallium (I) Sulfate	7446-18-6	0.075
Thiram	137-26-8	5
Toluene	108-88-3	300
1,2,4-trichlorobenzene	120-82-1	20
Trichloromonofluoromethane	75-69-4	300
2,4,5-trichlorophenol	95-95-4	100
Vanadium Pentoxide	1314-62-1	20
Warfarin	81-81-2	0.3
Xylenes	1330-20-7	80
Zinc Cyanide	557-21-1	50
Zinc Phosphide	1314-84-7	0.3

Appendix J: Unit Risks for Carcinogenic Constituents

Constituent	CAS No.	Unit risk ($m^3/\mu g$)
Acrylamide	79-06-1	1.3E-03
Acrylonitrile	107-13-1	6.8E-05
Aldrin	309-00-2	4.9E-03
Aniline	62-53-3	7.4E-06
Arsenic	7440-38-2	4.3E-03
Benz(a)anthracene	56-55-3	8.9E-04
Benzene	71-43-2	8.3E-06
Benzidine	92-87-5	8.7E-02
Benzo(a)pyrene	50-32-8	3.3E-03
Beryllium	7440-41-7	2.4E-04
Bis(2-chloroethyl)ether	111-44-4	3.3E-04
Bis(chloromethyl)ether	542-88-1	6.2E-02
Bis(2-ethylhexyl)phthalate	117-81-7	2.4E-07
1,3-butadiene	106-99-0	2.8E-04
Cadmium	7440-43-9	1.8E-03
Carbon Tetrachloride	56-23-5	1.5E-05
Chlordane	57-74-9	3.7E-04
Chloroform	67-66-3	2.3E-05
Chloromethane	74-87-3	3.6E-06
Chloromethyl Methyl Ether	107-30-2	
Chromium VI	7440-47-3	1.2E-02
DDT	50-29-3	9.7E-05
Dibenz(a,h)anthracene	53-70-3	1.4E-02
1,2-dibromo-3-chloropropane	96-12-8	6.3E-03
1,2-dibromoethane	106-93-4	2.2E-04
1,1-dichloroethane	75-34-3	2.6E-05
1,2-dichloroethane	107-06-2	2.6E-05
1,1-dichloroethylene	75-35-4	5.0E-05
1,3-dichloropropene	542-75-6	3.5E-01
Dieldrin	60-57-1	4.6E-03
Diethylstilbestrol	56-53-1	1.4E-01
Dimethylnitrosamine	62-75-9	1.4E-02
2,4-dinitrotoluene	121-14-2	8.8E-05
1,2-diphenylhydrazine	122-66-7	2.2E-04
1,4-dioxane	123-91-1	1.4E-06
Epichlorohydrin	106-89-8	1.2E-06
Ethylene Oxide	75-21-8	1.0E-04
Ethylene Dibromide	106-93-4	2.2E-04
Formaldehyde	50-00-0	1.3E-05
Heptachlor	76-44-8	1.3E-03
Heptachlor Epoxide	1024-57-3	2.6E-03
Hexachlorobenzene	118-74-1	4.9E-04
Hexachlorobutadiene	87-68-3	2.0E-05
Alpha-hexachlorocyclohexane	319-84-6	1.8E-03
Beta-hexachlorocyclohexane	319-85-7	5.3E-04
Gamma-hexachlorocyclohexane	58-89-9	3.8E-04
Hexachlorocyclohexane, Technical		5.1E-04
Hexachlorodibenzo-p-dioxin (1,2 Mixture)		1.3E+00
Hexachloroethane	67-72-1	4.0E-06
Hydrazine	302-01-2	2.9E-03
Hydrazine Sulfate	302-01-2	2.9E-03
3-methylcholanthrene	56-49-5	2.7E-03
Methyl Hydrazine	60-34-4	3.1E-04
Methylene Chloride	75-09-2	4.1E-06
4,4'-methylene-bis-2-chloroaniline	101-14-4	4.7E-05
Nickel	7440-02-0	2.4E-04
Nickel Refinery Dust	7440-02-0	2.4E-04
Nickel Subsulfide	12035-72-2	4.8E-04
2-nitropropane	79-46-9	2.7E-02
N-nitroso-n-butylamine	924-16-3	1.6E-03
N-nitroso-n-methylurea	684-93-5	3.5E-01
N-nitrosodiethylamine	55-18-5	4.3E-02
N-nitrosopyrrolidine	930-55-2	6.1E-04
Pentachloronitrobenzene	82-68-8	7.3E-05
PCBs	1336-36-3	1.2E-03
Pronamide	23950-58-5	4.6E-06
Reserpine	50-55-5	3.0E-03
2,3,7,8-tetrachlorodibenzo-p-dioxin	1746-01-6	4.5E+01
1,1,2,2-tetrachloroethane	79-34-5	5.8E-05
Tetrachloroethylene	127-18-4	4.8E-07
Thiourea	62-56-6	5.5E-04
1,1,2-trichloroethane	79-00-5	1.6E-05
Trichloroethylene	79-01-6	1.3E-06
2,4,6-trichlorophenol	88-06-2	5.7E-06
Toxaphene	8001-35-2	3.2E-04
Vinyl Chloride	75-01-4	7.1E-06

[FR Doc. 89-25022 Filed 10-25-89; 8:45 am]
BILLING CODE 6560-50-M

VOL
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federal register

Thursday
October 26, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Final Rule

VOL 54 ISS 206 OCT 26 1989 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend its menstrual tampon labeling regulation to standardize each of the terms currently used to describe tampon absorbency, junior, regular, super, and super plus, so that each term represents a 3-gram range of absorbency. The rule requires that manufacturers describe absorbency using the term that corresponds to the absorbency of their tampons as determined by a test method specified in the final rule. The purpose of the final rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of all other brands and styles.

Labeling of tampons to allow consumers to compare the absorbency of different brands and styles is important because the use of tampons is associated with toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, and the risk of contracting TSS increases with the use of tampons of higher absorbency. FDA is issuing this rule under the Federal Food, Drug, and Cosmetic Act (the act).

FDA is also announcing its final response to a citizen petition submitted by the Public Citizen Health Research Group (HRG) concerning absorbency labeling for tampons.

EFFECTIVE DATES: The final rule is effective for packages of tampons initially introduced or initially delivered for introduction into commerce after March 1, 1990. In accordance with 5 U.S.C. 552(a), the Director of the Office of the Federal Register approves the incorporation by reference of the voluntary standard referred to in 21 CFR 801.430(f)(2); this approval is effective on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Backgrouid

In the **Federal Register** of September 23, 1988 (53 FR 37250) (corrected November 3, 1988 (53 FR 44551, and January 17, 1989 (54 FR 1844)), FDA proposed to amend its current regulation governing user labeling for menstrual tampons (21 CFR 801.430) to require uniform absorbency testing of tampons and to standardize a method of expressing absorbency on tampon package labels. The agency proposed such testing and labeling requirements to enable consumers to make interbrand comparisons and choose the least absorbent tampon needed to control menstrual flow and, thus, reduce their risk of TSS.

Interested persons were given until December 22, 1988, to submit written comments on the proposal. The agency received more than 270 comments from tampon manufacturers, individual consumers, consumer groups, health care professionals, and researchers. After analyzing the comments concerning the agency's proposal to use a system of letters to represent absorbency ranges and not to standardize currently used terms of absorbency (e.g., regular, super, and super plus), the agency decided to issue a reproposal that would have replaced the letter designations with six absorbency terms that were different from, and would have been used in addition to, existing terms. The new terms (low absorbency, medium absorbency, medium-high absorbency, high absorbency, very high absorbency, and highest absorbency) corresponded to the six absorbency ranges described in the initital proposal (53 FR 37250). The reproposal, which was published in the **Federal Register** of June 12, 1989 (54 FR 25076) (corrected June 28, 1989 (54 FR 27188)), also would have required that the new terms be placed on the principal display panel of tampon packages to minimize any confusion that might have been created by the continued use of existing nonstandardized terms.

The reproposal included a summary of the comments received on the September 1988 proposed rule and the agency's response to them, and a tentative response to a citizen petition submitted by the Public Citizen Health Research Group concerning absorbency labeling for tampons. Interested persons were given until August 11, 1989, to submit written comments on the reproposal.

The agency received 39 comments on the reproposal from tampon manufacturers, individual consumers, consumer groups, and health care professionals. A summary of these comments and the agency's response to them are set out in section II of this preamble.

II. Summary and Anaiysis of Comments

A. General Comments

1. Almost all the comments, including those from tampon manufacturers, continued to support FDA's overall goal to ensure that absorbency information is provided to consumers. Specific suggestions included in the comments on how to improve the reproposed rule to provide the most truthful, accurate, and nonmisleading information on tampon absorbency are addressed in subsequent sections of this preamble.

FDA concludes, on the basis of the data and information discussed and cited, and for the reasons set out in the preamble to both the proposed rule and the reproposed rule and in this preamble, and taking into account the data, information, and views presented in the comments, that a final rule should be issued. As intended, the final rule will enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of all other brands and styles, to choose the lowest absorbency needed to control menstrual flow, and, as a result, to reduce their risk of TSS.

2. One comment addressed the proposed revision of the estimated incidence of TSS included in current 21 CFR 801.430(d)(2). This comment noted that much of the data on which FDA bases that estimate were published in 1980 and 1981, and that the composition of many tampons has changed since then. The comment recommended that FDA use only the most up-to-date published incidence rates (as cited in 54 FR 25076 at 25079, approximately 1 to 2 cases of TSS per 100,000 menstruating girls and women per year) and should disregard the earlier published data (as cited in the **Federal Register** of June 22, 1982 (47 FR 26982), between 6 and 17 cases of TSS per 100,000 menstruating girls and women per year).

As stated in the preamble to the reproposed rule (54 FR 25076 at 25079), FDA believes that the actual incidence of TSS can only be estimated, and that it is appropriate to convey to consumers the full range of reasonable estimates. There must be a rational basis for the agency to choose one estimate over another. FDA does not agree that the suggestion that the composition of many tampons has changed over the years provides such a basis. Therefore, FDA has concluded that the estimated incidence of TSS in current § 801.430(d)(2) should be revised as proposed. The final rule states that estimate of TSS to be from 1 to 17 cases per 100,000 menstruating girls and women per year.

3. Two manufacturers commented on FDA's statement in the preamble to the reproposed rule (54 FR 25076 at 25079) that tampons are misbranded under section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(1)), because current tampon labeling does not contain any information with which a woman can determine relative absorbency of different brands of tampons. One manufacturer noted that FDA had attempted to clarify this issue, but recommended that, to avoid any possible confusion and misinterpretation of any final rule, FDA make clear that tampons on the market are not misbranded and that no tampon can be considered to be misbranded for noncompliance with the final rule unless it is introduced into commerce after the rule's effective date. The other manufacturer continued to disagree that the failure to provide such absorbency information renders tampons misbranded.

In response to these comments, FDA reiterates that, as the agency tentatively concluded (53 FR 37250 at 37254), omission of uniform absorbency information does render tampons misbranded within the meaning of section 502 (a) and (f)(1) of the act. But, rather than act against individual tampons to remedy the deficiency, FDA has elected, consistent with its authority, to address the misbranding by requiring a uniform labeling system through rulemaking. As provided in § 801.403(h) of the final rule, any tampon that is not labeled as required by the final rule and that is initially introduced into interstate commerce after the effective date of the final rule is misbranded under sections 201(n) and 502 (a) and (f) of the act (21 U.S.C. 321(n) and 352 (a) and (f)). (The effective date of the final rule is discussed in section II E of this preamble.)

B. Approaches to Absorbency Labeling

4. FDA specifically requested comment (54 FR 25076 at 25081) on whether the use of fixed, nonoverlapping ranges would be inconsistent with the goal of enabling consumers to reduce their risk of TSS. Comments on this issue were received from consumer groups, consumers, and tampon manufacturers.

One consumer group continued to reject fixed, nonoverlapping ranges stating that a single number is necessary to adequately convey absorbency information to consumers. This comment suggested that the use of ranges would prevent women from being able to distinguish between tampon brands or styles at either the low or high end of a given absorbency range. It also noted that some styles of currently marketed tampons would have to be reformulated because their absorbency is on the boundary between ranges. The comment also urged that single numbers are more informative and clearer than ranges, that women are familiar with some manufacturers' current use of numbers, and that scientists have been using single numbers to designate the absorbency of tampons since 1981.

Most of the individual consumers favored the use of nonoverlapping ranges, as did three other consumer groups and all the manufacturers. These comments generally agreed with FDA's tentative conclusion (53 FR 37250 at 37260), or agreed with the statements on the issue in the reproposed rule (54 FR 25076 at 25080), that variations in tampon production and tampon absorbency testing make the use of ranges necessary; that the ranges chosen by FDA were appropriate and as narrow as possible given current production and testing; and that the benefit of truthful, nonmisleading, and accurate labeling outweighs the potential risks posed by the increased absorbency of some tampons that would result from product reformulation. Several individual consumers suggested reducing the number of ranges to avoid confusion and increase comprehension.

As stated in the preambles to the proposed rule (53 FR 37250 at 37260) and the reproposed rule (54 FR 25076 at 25080), the data show that a single numerical designation does not accurately represent the contents of a given box of tampons, and that the only truthful, accurate, and nonmisleading representation of the contents of a box can be that it contains tampons with absorbencies within a given range. Most of the comments agreed with FDA's interpretation of the data.

If future advances in technology across the industry allowed the production of tampons and the measurement of their absorbency such that there were only slight variations from an average absorbency, FDA would consider proposing amendments to this final rule.

Reducing the number of ranges could not be accomplished by simply eliminating one or more of them, because there is no basis for FDA to ban the use of any of the ranges, whether at the top or bottom end. The only way to reduce the number of ranges is to create ranges that are unnecessarily broad. FDA disagrees, therefore, with the recommendation that the ranges of absorbency be reduced below six.

5. FDA received many comments on whether to standardize a new set of terms or standardize the existing terms currently used by manufacturers, e.g., regular, super, and super plus.

One manufacturer and six individual consumers supported the reproposal requiring the use of new and standardized terms, but allowing the use of familiar and unstandardized terms. The manufacturer argued that the reproposed absorbency nomenclature was straightforward and clear, and objected to standardizing existing terms because it would have little impact on reinforcing absorbency information.

Four consumer groups, 4 manufacturers, 1 health professional organization, and 15 individual consumers strongly objected to the reproposal to allow the dual use of a new set of standardized terms with nonstandardized existing terms. These comments were unanimous in their view that such a dual system would result in consumer confusion and the failure of the reproposed rule to accomplish its intended goal of enabling consumers to compare, before purchase, the absorbency of one brand and style of tampons with the absorbency of other brands and styles. These comments differed, however, in their suggestions on how to eliminate the confusion that would result from the labeling scheme in the reproposal.

One consumer group, the health professional organization, and nine individual consumers stated that the new terms in the reproposed rule were acceptable, and that confusion would be eliminated if the use of existing terms were proscribed. Three consumer groups, four manufacturers (representing approximately 90 percent of the tampon market), and six individual consumers argued that the best approach was simply to standardize the existing terms that have been used for years and with which women are familiar. In addition, several comments suggested minor modifications of the new terms, if the new terms were retained in the final rule.

FDA has concluded, based on its own analysis, and on the preponderance of comments, which represent a large portion of the public that will be affected by this rule, that allowing any combination of standardized and nonstanderdized absorbency terms will confuse rather than inform consumers, as a result of which the reproposed rule would not have achieved its stated public health purposes. Presented with two sets of terms on the same package,

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consumers would likely continue to choose tampons based on the familiar terms, which would not be uniform throughout the tampon industry.

The agency rejects the option of using the new terms in the reproposal and proscribing the use of existing terms because it would fail to take advantage of consumer familiarity with existing terms. Moreover, it would be a more restrictive limitation on labeling than is necessary to serve the purpose of the final rule.

The agency agrees with the suggestion simply to standardize existing terms, without the addition of any new terms for the following reasons. This approach avoids any possible confusion; it is likely to be very easily understood by all consumers; is overwhelmingly the option most favored by consumers, who are the target audience for the information; it is the simplest to implement; and it is strengthened by and takes advantage of consumer familiarity with existing terms. Accordingly, the agency has revised reproposed § 801.430(e)(1) in the final rule to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: less than 6, 6 to 9, 9 to 12, and 12 to 15 grams of fluid, respectively, and to provide for no absorbency terms for the two absorbency ranges above 15 grams of fluid. Because absorbency terms, for the first time, will be valid indicators of absorbency across all tampon brands and styles, FDA believes that it is appropriate to require the word "absorbency" to accompany the existing terms, just as the reproposal would have required the word "absorbency" to accompany the new terms. Also, requiring the word "absorbency" on the package in conjunction with the absorbency term will alert consumers to the fact that the labeling has been changed.

The final rule does not include a corresponding term of absorbency for the ranges 15 to 18 grams or above 18 grams of fluid. FDA is unaware of any currently marketed tampon that absorbs more than 18 grams of fluid and also is unaware of any currently used, and therefore familiar, term of absorbency used to describe such a product. Any person who is required to register under section 510 of the act (21 U.S.C. 360) and 21 CFR part 807 of FDA's regulation and who intends to begin the introduction or delivery for introduction into interstate commerce of such a tampon for commercial distribution is required to submit a premarket notification to FDA in accordance with section 510(k) of the act and Subpart E of 21 CFR part 807 at least 90 days before making such introduction or delivery. Under § 807.87(e), a premarket notification for a device is to contain, among other things, labeling for the device. Based on such a submission for a tampon that absorbs more than 18 grams of fluid, the agency will determine whether the labeling is appropriate and does not misbrand or adulterate the tampon under section 501 or 502 of the act (21 U.S.C. 351 and 352) and whether the tampon requires premarket approval under section 515 of the act (21 U.S.C. 360e).

FDA is aware of one product in the 15 to 18-gram range that is currently labeled super plus. The manufacturer of this product will be required to lower the absorbency to continue to use the term super plus. All other manufacturers apply the term super plus to products with absorbencies in the 12 to 15-gram range. If the manufacturer using the term super plus for a product in the 15 to 18-gram range chose to keep this product at its current absorbency, FDA would review any term of absorbency proposed by the manufacturer. Because the final rule does not preclude the use of other labeling that is not false or misleading, the agency would consider the use of the absorbency range in § 801.430(e)(1) to be acceptable.

C. Absorbency Testing

6. Three manufacturers commented on the test method for determining tampon absorbency. One manufacturer recommended that the final rule permit manufacturers to use either the proposed or the reproposed method with appropriate technical adjustments that can be shown to be necessary to minimize error. Another manufacturer objected to the inclusion of a tensile strength requirement for the condom used in the test, arguing that there are no data showing that the results of the test are related to condom tensile strength and that ensuring that the tensile strength provision is met would be overly burdensome to tampon manufacturers. The third manufacturer objected to the provision in the reproposed rule that would have allowed alternative ways to reach the endpoint of the test (i.e., fluid either exits from the apparatus or appears in the folds of the condom below the tampon). The comment stated that this provision would create more interlaboratory error in the test method when some manufacturers select one alternative and some the other because, based on this manufacturer's preliminary data, the two endpoints could vary by as much as 0.5 grams of fluid.

The agency continues to recognize that individual manufacturers may wish to use an absorbency test method different from the test method specified in the final rule. Therefore, the agency has retained in the final rule a provision for a manufacturer to submit evidence, in the form of a citizen petition, demonstrating to the agency's satisfaction that the alternative method will yield test results that are equivalent to the results using the test method in the final rule. FDA believes, however, that allowing "technical adjustments" to the test method by individual manufacturers would likely lead to significant differences between the absorbency results obtained by different manufacturers. Neither the proposed nor reproposed rules would have permitted such adjustments and FDA has included no provisions in the final rule for manufacturers to make technical adjustments without FDA approval as described above. The agency does agree, however, that multiple endpoints could result in unnecessary variability in test results between manufacturers. Therefore, in response to the comments, and after reconsideration of the position taken in the reproposed rule, § 801.430(f)(2) is revised to state that the test should be terminated when the tampon is saturated and the first drop of fluid exits the apparatus.

FDA disagrees with the comment objecting to the inclusion of a condom tensile strength provision. FDA included this provision in repsonse to a comment on the proposed rule indicating that there was a need to specify the condom to be used. The earlier comment included information that identifying one brand of condom would not suffice because modifications in that brand made by the condom manufacturer would affect the test result. As condom manufacturers modify their products to respond to the market desire for condoms that are more resistant to breakage, it is possible that unnecessary variations could be introduced into the test method. For these reasons, FDA has concluded that it is necessary to specify the tensile strength of the condom used in the test method. FDA does not believe that this requirement would be overly burdensome. FDA's experience shows that tensile strengths greater than 30 Mega Pascals are associated with clearly thicker latex condoms, suggesting that tampon manufacturers may be able to use thickness in acceptance testing to ensure this tensile strength requirement is met. Alternatively, quality assurance data

provided by the condom supplier could be available to the tampon manufacturer as a possible means to comply with this provision.

7. Three consumer groups continued to urge FDA to adopt a 95/95 tolerance interval to provide the highest degree of assurance that tampons in fact fall within the specified ranges. Three manufacturers agreed that a 90/90 tolerance interval was acceptable, but expressed concern over a wording change in the reproposal that would have applied the tolerance interval to tampons within a package and not within a brand and type.

As stated in the preamble to the reproposed rule (54 FR 25078 at 25084), FDA has concluded that it is technically infeasible for manufacturers to comply with a requirement that there be a 95 percent probability that 95 percent of tampons fall within the labeled range, that it is technically feasible for all manufacturers to comply with a 90/90 tolerance interval, and that a 90/90 tolerance interval would provide a sufficiently high degree of assurance that tampons fall within the labeled range. In the absence of data to the contrary, the agency has not changed its conclusion. FDA does agree that an inappropriate wording change was made in the reproposed rule when the tolerance interval was applied to tampons in a package. The intent of the agency remains as stated in the proposed rule where the tolerance interval was applied to tampons within a brand or type, and, accordingly, has revised the final rule.

8. One manufacturer continued to posit that imprecision in the test method warranted applying the tolerance intervals to average absorbencies from small groups of tampons. In support of this position, the manufacturer submitted additional data comparing the absorbencies of two groups of tampons with the same average weight. One group, however, had a normally distributed narrow weight range (± 1 percent) and one group had a normally distributed wide weight range (± 8 percent). The average standard deviation for the syngyna values of tampons from the narrow weight range group was 0.4, and the average standard deviation from the wide weight range group was 0.66. The comment interpreted these data as confirming that the variation was due only to the test method for the narrow weight range group and the test method plus weight variation for the wide weight range group. Because of the test method variability, the comment concluded that it was appropriate to allow averaging of the absorbency values of small groups of tampons. Two consumer groups and one manufacturer agreed with FDA's conclusion that testing should be based on individual product unit values, rather than on averages.

FDA carefully evaluated the new data submitted in the comment and has concluded that the data do not demonstrate that there is such a large variability in the test method that it is necessary to apply tolerance intervals to average absorbencies. FDA believes that the data collection approach submitted with the comment, overlooks the contribution that all variables in the manufacturing process make to the final result. Thus, FDA concludes from the data that the standard deviation of 0.4 in the narrow weight group is the result of variations in the test method, fibers, and manufacturing; and that the standard deviation of 0.66 in the wide weight range group is the result of all of these variables plus weight. To find the variation attributable to the method exclusively would require a more detailed and carefully controlled experiment in which the several potential sources of variation in raw material and manufacturing were quantified and evaluated to determine their influence on the absorbency measurement.

D. Content and Location of Labeling

9. Four consumer groups and several individual consumers expressed concern that the use of the word "labeling" in reproposed § 801.430(d) would result in absorbency information being placed only in the package insert and not on the package label. One manufacturer suggested that the absorbency information be expanded to make specific reference to the link between tampon absorbency and the risk of TSS. Three consumer groups supported the language in the reproposal that would clearly identify in the labeling the practice of alternating tampon and sanitary pad use with reducing the risk of TSS.

The final rule (§ 801.430(e)(1)) requires that absorbency information shall be prominently and legibly placed on the package label of menstrual tampons. The absorbency information may not be placed only in a package insert. Section 801.430(e)(2) requires that the package label shall include an explanation of the ranges of absorbency and a description of how consumers can use a range of absorbency, and its corresponding absorbency term, to make comparisons of absorbency of tampons to allow selection of the tampon with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

10. Three manufacturers expressed concern that the prominence requirement in reproposed § 801.430(e)(2) would result in restrictions on generic names, brand names, and the like that were not intended in the reproposal. One consumer group requested clarification as to the meaning of prominent and conspicuous in reproposed § 801.430(e)(2). To ensure prominence, various comments suggested graphs/scales/guages; bold format, as in the Surgeon General's warning on cigarette packages; color-coding; and the use of dramatic labeling on cellophane wrappers.

Because FDA has decided in the final rule to require the standardization of existing terms instead of new terms, the language in reproposed § 801.430(e)(2) is removed from the final rule. Although FDA agrees that there are specific ways to ensure prominence of the labeling required in the final rule, the agency has concluded that there is no need to specify any single approach, thus providing flexibility to manufacturers.

11. Two consumer groups, two individual consumers, and one manufacturer commented on the need for ingredient labeling. The two consumer groups reiterated the support for ingredient labeling. The two individual consumers argued that it should not be necessary for an ingredient to be a health risk to justify ingredient labeling for tampons; materials should be disclosed so women can make an "intelligent choice," e.g., choose tampons with natural fibers. The manufacturer reiterated that manufacturers now voluntarily provide ingredient information, but agreed that FDA has insufficient legal basis for requiring it.

FDA tentatively concluded in the preamble to the reproposed rule (54 FR 25078 at 25085) that it does not have the authority under the act to require tampon manufacturers to list ingredient information on product labeling, unless such ingredient information were necessary for the safe and effective use of tampons. None of the comments favoring ingredient labeling cited, discussed, or submitted any data showing an association between any particular ingredient and any risk to health, including allergic reaction, sensitivity, or irritation, and FDA is unaware of any such data. Moreover, none of the comments provided any legal theory under which the agency could require ingredient labeling for tampons. Absent information indicating

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that the disclosure of tampon ingredients on package labeling is necessary for the safe or effective use of the product, or that the omission of such information is material to the safe or effective use of the tampons, FDA has concluded that the act does not provide the agency with authority to require tampon manufacturers to list ingredient information on product labeling.

E. Effective Date

12. Two consumer groups supported a 6-month implementation date as the latest acceptable effective date. One manufacturer considered 6 months to be sufficient time for it to comply with the proposed rule. Three manufacturers continued to object to a 6-month effective date. These manufacturers claimed they would have difficulty meeting a 6-month effective date because they would have to make labeling changes and product design changes that would affect manufacturing, including machinery, and testing protocols. They also cited the unnecessary risk of having to scrap not only packaging but actual product in inventory. These comments suggested effective dates ranging from 9 months to 1 year. One individual consumer supported the view that 6 months was not enough time for manufacturers to design effective packaging to meet the new regulation.

As stated in the preamble to the reproposal, the agency believes that the basic testing methodology required by the final rule has been accepted by manufacturers, and that appropriate quality assurance programs have been in place since the device current good manufacturing practice (CGMP) regulations were promulgated in 1978 (21 CFR 820.20). Therefore, manufacturers are faced only with modification of existing quality assurance programs and not with creation of entirely new ones, and the need to develop and print new product labeling. Given the public health importance of tampon absorbency information, FDA believes that any time beyond 6 months is neither necessary nor appropriate for implementation of the provisions in § 801.430(e) (1) and (2), and (f) regarding absorbency ranges and testing. Based upon available information, FDA had proposed that any final rule become effective 6 months after the date the final rule is published in the **Federal Register**, because of the agency's belief that manufacturers would need this amount of time to implement the labeling changes required in § 801.430(e) (1) and (2). However, on September 29, 1989, the United States District Court for the District of Columbia ordered that the final tampon absorbency regulation become effective 4 months after October 30, 1989, the date by which the court had, by its previous order of August 29, 1989, directed that publication of the final rule occur. *Public Citizen Health Research Group* v. *Commissioner, FDA*, Civil Action No. 88-1492. Accordingly, the final rule is effective on March 1, 1990. Any menstrual tampon that is not labeled as required by the final rule and that is initially introduced or initially delivered for introduction into commerce after March 1, 1990, is misbranded under sections 201(n) and 502 (a) and (f) of the act.

The agency believes that manufacturers might want for some period of time to relate new labeling to the former product labeling. Therefore, the agency would consider it appropriate if a manufacturer, for up to 12 months after the effective date of the final rule, chose to include, for example, the information "formerly Brand X super" in the product labeling.

F. Vending Machines

13. Two consumer groups and 10 individual consumers argued that the reproposed rule would not ensure that a consumer had the necessary information about absorbency of vending machine products in order to make an informed choice as between, for example, a tampon or a sanitary pad. One manufacturer argued that absorbency labeling of vending machine tampons is neither practical nor necessary, since consumers must purchase whatever single product is available in a particular vending machine and do not have a choice.

Because FDA has revised the final rule to standardize existing terms, the agency reviewed the provision (§ 801.430(g)) in the reproposed rule that did not exempt tampons sold in vending machines from the provision of § 801.430(e)(4). FDA no longer believes this provision is necessary, and has revised the final rule accordingly. FDA finds no basis in the comments for concluding that requiring tampons sold in vending machines to comply with the final rule is necessary to protect the public health.

G. Public Citizen Health Research Group Petition

14. No comments were received that specifically addressed the August 20, 1987, citizen petition from the Health Research Group (HRG) (see 53 FR 37250 at 37252 and 37253). FDA believes that the final rule, requiring uniform absorbency testing and a standardized method of expressing absorbency, is both technically feasible and adequate to address the need for public health protection. The final rule enables women to compare absorbencies between brands and styles and to choose the lowest absorbency needed and, thus, reduce their risk of contracting TSS. To the extent that the final rule does not include provisions requested by HRG in its August 20, 1987, citizen petition, the agency is denying the petition.

H. Education

15. Three consumer groups and three individual consumers urged FDA to continue its public education efforts to inform users of the association between tampon absorbency and TSS risk. Specific suggestions included incorporating TSS education information into school curricula, using formats targeted to specific age groups and making public service announcements.

FDA agrees with the intent of these comments. FDA plans to employ a variety of educational approaches to provide updated information to new tampon users, higher risk groups for TSS such as young women and teenage girls, and the general public, and will consider the suggestions provided in the comments.

I. Miscellaneous

16. A comment from two consumer groups presented data on problems with the structural integrity of tampons and urged FDA to increase the priority for the development of a standard for tampon performance to include parameters such as biocompatibility, leachability of materials, anchor string strength, and smoothness and mechanical operation of the tampon inserter.

FDA will consider the new data submitted in the comment in its continuing revision of its priorities for development of mandatory standards for medical devices.

17. An individual consumer recommended against the use of metric measures, expressing the view that they are poorly understood and virtually meaningless to the general public.

The purpose of the determination of the fluid absorbed by a tampon is to provide a quantitative measure of absorbency that can be used in making interbrand comparisons. FDA does not believe that it is necessary to use English system units (ounces) to do that, and rejects the recommendation.

18. FDA also received suggestions for further changes in tampon labeling. For example, one comment recommended that the agency require recommendations and warnings for women with unusually heavy menstrual periods. Another comment recommended establishing a minimum absorbency to protect consumers from fraudulent products and a maximum absorbency to safeguard the health of consumers.

FDA believes that the warnings about the link between TSS and tampon absorbency, and the admonition to reduce that risk by alternating tampon use with menstrual pads, will provide all women, including those with unusually heavy periods, the information they need to take action to reduce the risk of TSS. The agency does not believe that there is a basis for establishing either a minimum absorbency or a maximum absorbency for tampon products, and, therefore, rejects that comment.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

As stated in the preambles to the proposed and reproposed rules, FDA has assessed the economic consequences of the final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule is not a major rule under the Executive Order. No comments were received in response to the reproposed rule relating to FDA's assessment. As in the reproposed rule, FDA estimates that the final rule will impose direct costs of $75,000 on each tampon manufacturer. Therefore, the agency continues to conclude that the rule is not a major rule under the Executive Order. The agency also has considered the effect that the final rule will have on small entities including small businesses. The agency believes that only one of the affected manufacturers meets the definition of a small entity under the Regulatory Flexibility Act (Pub. L. 96-354), and no comments were submitted on the matter. Therefore, FDA certifies under the Regulatory Flexibility Act that the final rule will not have a significant economic impact on a substantial number of small entities. A further description of these new costs and the methods for estimating them can be found in the revised threshold assessment on file with the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

V. Paperwork Reduction

This final rule (§ 801.430 (e) and (f)) contains information collection requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB) as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0257.

List of Subjects in 21 CFR Part 801

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.430 is amended by revising paragraph (b), the introductory text of paragraph (d), and paragraphs (d) (2), (3), and (4); by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them; and by adding new paragraphs (e) and (f) to read follows:

§ 801.430 User labeling for menstrual tampons.

* * * * *

(b) Data show that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious adverse effects of TSS, menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency as set forth in paragraph (f) of this section.

* * * * *

(d) The labeling of menstrual tampons shall contain the following consumer information prominently and legibly, in such terms as to render the information likely to be read and understood by the ordinary individual under customary conditions of purchase and use:

* * * * *

(2) The risk of TSS to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls, the estimated incidence of TSS of 1 to 17 per 100,000 menstruating women and girls per year, and the risk of death from contracting TSS;

(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS;

(4) Avoiding the risk of getting tampon-associated TSS by not using tampons, and reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods; and

* * * * *

(e) The statements required by paragraph (e) of this section shall be prominently and legibly placed on the package label of menstrual tampons in conformance with section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (unless the menstrual tampons are exempt under paragraph (g) of this section).

(1) Menstrual tampon package labels shall bear one of the following absorbency terms representing the absorbency of the production run, lot, or batch as measured by the test described in paragraph (f)(2) of this section:

Ranges of absorbency in grams [1]	Corresponding term of absorbency
6 and under	Junior absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.
12 to 15	Super plus absorbency.
15 to 18	None.
above 18	None.

[1] These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

(2) The package label shall include an explanation of the ranges of absorbency and a description of how consumers can use a range of absorbency, and its corresponding absorbency term, to make comparisons of absorbency of tampons to allow selection of the tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

(f) A manufacturer shall measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) of this section and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

(1) A manufacturer shall design and implement a sampling plan that includes collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability is 90 percent that at least 90 percent of the absorbencies of individual tampons within a brand and

type are within the range of absorbency stated on the package label.

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the procedure in the American Society for Testing and Materials (ASTM), D 3492–83, "Standard Specification for Rubber Contraceptives (Condoms)"[1] for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. The condom is pulled through until all slack is removed. The tip of the condom is cut off and the remaining end of the condom is stretched over the end of the tube and secured with a rubber band. A preweighed (to the nearest 0.01 gram) tampon is placed within the condom membrane so that the center of gravity of the tampon is at the center of the chamber. An infusion needle (14 gauge) is inserted through the septum created by the condom tip until it contacts the end of the tampon. The outer chamber is filled with water pumped from a temperature-controlled waterbath to maintain the average temperature at 27±1 °C. The water returns to the waterbath as shown in Figure 2. Syngyna fluid (10 grams sodium chloride, 0.5 gram Certified Reagent Acid Fuchsin, 1,000 milliliters distilled water) is then pumped through the infusion needle at a rate of 50 milliliters per hour. The test shall be terminated when the tampon is saturated and the first drop of fluid exits the apparatus. (The test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated). The water is then drained and the tampon is removed and immediately weighed to the nearest 0.01 gram. The absorbency of the tampon is determined by subtracting its dry weight from this value. The condom shall be replaced after 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

BILLING CODE 4160-01-M

[1] Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC.

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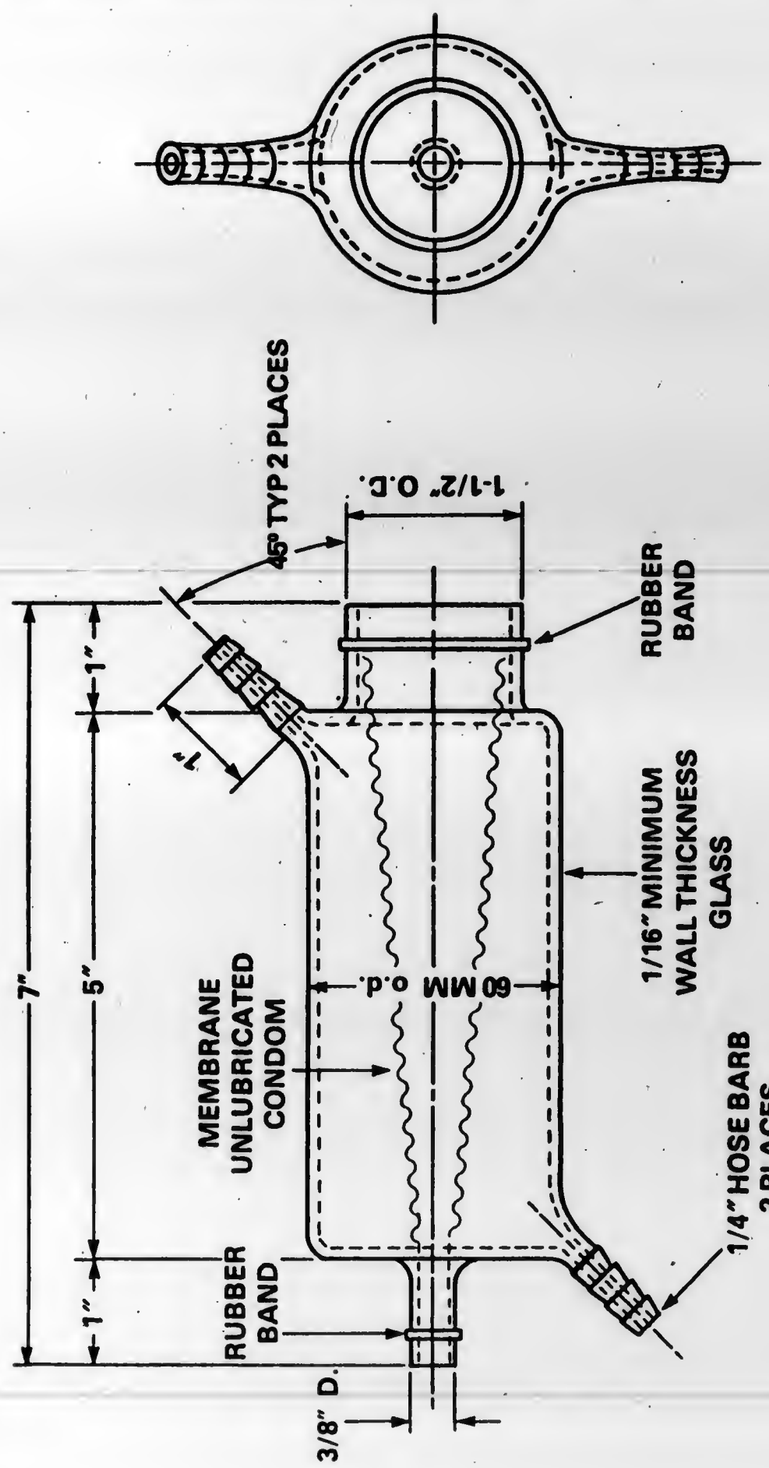


FIGURE 1 — SYNGYNA TEST CHAMBER

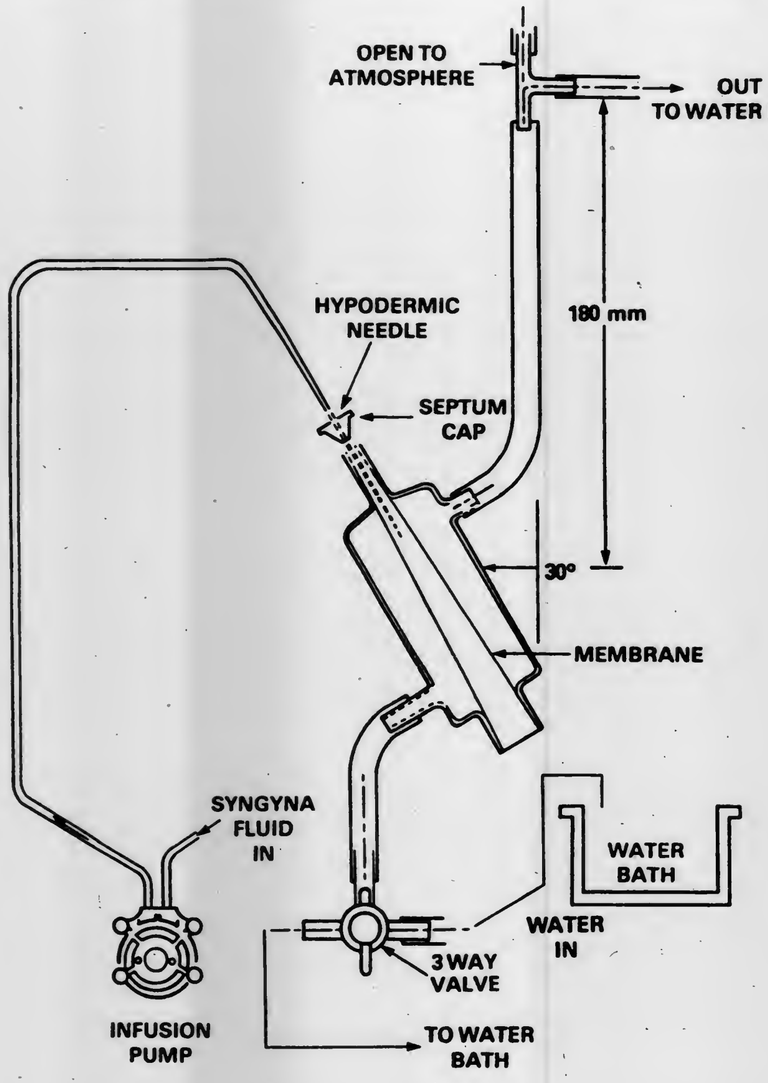


FIGURE 2—SYNGYNA TEST SET-UP

BILLING CODE 4160-01-C

(3) The Food and Drug Administration may permit the use of an absorbency test method different from the test method specified in this section if each of the following conditions is met:

(i) The manufacturer presents evidence, in the form of a citizen petition submitted in accordance with the requirements of § 10.30 of this chapter, demonstrating that the alternative test method will yield results that are equivalent to the results yielded by the test method specified in this section; and

(ii) FDA approves the method and has published notice of its approval of the alternative test method in the **Federal Register.**

(g) Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section.

(h) Any menstrual tampon that is not labeled as required by paragraphs (c), (d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after March 1, 1990, is misbranded under sections 201(n), 502 (a) and (f) of the act.

(Information collection requirements contained in paragraphs (e) and (f) were approved by the Office of Management and Budget under control number 0910-0257)

Dated: October 17, 1989.

James S. Benson,

Acting Deputy Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 89-25221 Filed 10-23-89; 2:49 pm]

BILLING CODE 4160-01-M

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federal register

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Part V

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Update No. 10; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 3675-2]

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Update No. 10

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the tenth major update to the National Priorities List ("NPL"). The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

This update proposes to add 25 new sites to the NPL, including 2 Federal facility sites. These sites are being proposed because they meet the eligibility requirements and listing policies of the NPL. This notice provides the public with an opportunity to comment on placing these sites on the NPL.

This proposed rule brings the number of proposed NPL sites to 238, 65 of them in the Federal section; 981 sites are on the final NPL, 52 of them in the Federal section. Final and proposed sites now total 1,219.

DATES: Comments must be submitted on or before December 26, 1989.

ADDRESSES: Comments should be mailed, in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see the "Public Comment Period" in section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046.

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300.

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154.

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street NE., Atlanta, GA 30365, 404/347-4216.

Cathy Freeman, Region 5, U.S. EPA, 5 HS-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214.

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740.

Brenda Ward, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828.

Dolores Eddy, Region 8, U.S. EPA Library, 999 19th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444.

Linda Sunnen, Region 9, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082.

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103.

FOR FURTHER INFORMATION CONTACT: Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Purpose and Implementation of the NPL
III. NPL Update Process
IV. Statutory Requirements and Listing Policies
V. Contents of Proposed NPL Update #10
VI. Regulatory Impact Analysis
VII. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act") in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until EPA has reviewed public comments and the proposed revisions have been put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criterion, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(6)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 4, 1989 (54 FR 41000/41015). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently on August 18, 1989 (54 FR 33846) and Update #9 on July 14, 1989 (54 FR 29820).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 28 sites from the final NPL, most recently on September 22, 1989 (54 FR 38994), when Cecil Lindsay, Newport, Arkansas, was deleted.

This notice proposes to add 25 sites to the NPL, including 2 Federal facility sites. Adding these 25 sites to the 213 sites previously proposed brings the total number of proposed sites to 238, 65 of them in the Federal section. The final NPL contains 981 sites, including 52 sites in the Federal section. Final and proposed sites now total 1,219.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 60-day comment period for NPL Update #10. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket for NPL Update #10 contains HRS score sheets for each proposed site, a Documentation Record for each site describing the information used to compute the score, a list of documents referenced in the Documentation Record, and pertinent information for any site affected by statutory requirements and listing policies.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add to the NPL all proposed sites that meet EPA's requirements.

EPA will read all comments received on these sites, including late comments, i.e., comments postmarked after the last day of the comment period. In earlier NPL rulemakings, EPA has endeavored to respond even to late comments. However, given the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect, it is unlikely that EPA will be able to respond to all late comments received for sites in this proposed rule. *See* 54 FR 41021 (October 4, 1989).

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation should indicate what specific points in that documentation that EPA should consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas & EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1528 (1989), during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the

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site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL purusant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Implementation

EPA has limited, by regulation, the expenditure of Trust Fund monies for remedial actions to those sites that have been placed on the final NPL, as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL. Although most sites are listed in the order of their HRS scores, the Agency has recognized that the information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the Remedial Investigation/Feasibility Study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.68(d)). It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties to others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must balance carefully the relative needs for response at the numerous sites it has studied.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). (Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *." The definition of "removal" also includes "action taken under section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.)

Although an RI/FS generally is conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. Listing on the NPL represents a determination that a "release" or threat of release has occurred, and needs to be evaluated under CERCLA. Although the HRS scoring package describes the release, it does not define fixed geographic boundaries for the site. The description of the release at the time of scoring is merely preliminary, and will need to be refined as more information is developed, as during the RI/FS; the NPL site, for the purposes of response action, will include the entire area where contaminants are found to have been placed or come to be located, as provided in CERCLA section 101(9), even if that area extends beyond that described in the HRS package. *See* 54 FR 13298 (March 31, 1989).

Because the NPL listing is not intended to, and does not, define the geographic extent of the release, it is not meaningful to consider "delisting" allegedly uncontaminated portions of a site from the NPL. However, the RI/FS or Record of Decision (ROD) at a site may offer a useful indication to the public of the areas at which the Agency is considering taking response action, based on information known at that time. *See* 54 FR 41015 (October 4, 1989).

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: Ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure: (1) Factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" [47 FR 31180, July 16, 1982]. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices also may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the NPL.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL. The listing policies and the statutory requirement of particular relevance to this proposed rule cover Federal facility sites, sites with "special study wastes," and mining waste sites. They are discussed below. These and other listing policies and statutory requirements have been explained in previous rulemakings, the latest being March 31, 1989 (54 FR 13296) and October 4, 1989 (54 FR 41000).

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for listing Federal facility sites on the NPL if they meet the prescribed eligibility criteria (e.g., and HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act (RCRA). In that way, cleanup, if appropriate, could be effected at those sites under CERCLA.

Federal facility sites are placed in a separate section of the NPL. In this rule, the Agency is proposing to add 2 Federal facility sites to the NPL, bringing the total number of proposed Federal facility sites to 65.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires EPA to consider additional information before sites involving RCRA "special study wastes" can be proposed for the NPL (until revisions to the HRS are effected). Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain significant quantities of special study wastes as defined under RCRA sections 3001(b)(2) (drilling fluids), 3001(b)(3)(A)(ii) (mining wastes), and 301(b)(3)(A)(iii) (cement kiln dust). Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at or released from the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

One site in this proposed NPL update—Carson River Mercury Site in Lyon and Churchill Counties, Nevada—contains or potentially contains special study wastes subject to the provisions of CERCLA section 105(g), specifically mining wastes. The Agency has placed in the dockets an addendum for this site that evaluates the information called for in section 105(g). This addendum indicates that the special study wastes at the site present a threat to human health and the environment, and that the site should be proposed to the NPL.

Section 125 of CERCLA, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to the provisions of section 125.

Releases From Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc.* v. *EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

Agency policy statements regarding including mining sites on the NPL are set out at 53 FR 23988, 23993 (June 24, 1988); 54 FR 10512, 10514–16 (March 13, 1989); and 54 FR 13296, 13300–01, 13302–03 (March 31, 1989). Today's rulemaking proposes to add 1 mining site—the Carson River Mercury Site in Lyon and Churchill Counties, Nevada—to the NPL.

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V. Contents of Proposed NPL Update #10

Tables 1 and 2 following this preamble list 25 sites proposed for the NPL in Update #10. Each entry contains the name of the facility and the State and city or county in which it is located. All sites received HRS scores of 28.50 or above.

Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed update has a score that falls within the range of scores covered by the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk. Federal facility sites are listed in a separate section of the NPL.

In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites, which the Agency believes will contain more timely and useful information on site status than did the response and cleanup codes. The report will be available shortly. In the interim, information on activities at the new proposed sites is available upon request to the appropriate Regional Office.

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this proposed rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all of the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	[2] 13,500,000
Net present value of O&M [3]	[2] 3,770,000

[1] 1988 U.S. Dollars
[2] Includes State cost-share
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10 percent discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10 percent of remedial actions and 10 percent of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50 percent of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the 23 non-Federal sites proposed for the NPL in this rule will be privately-owned and 10 percent will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all 23 non-Federal sites, but excluding O&M costs, would be approximately $46 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25 percent of sites. Using this estimate, State O&M costs would be approximately $74 million.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and loal governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms or financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites for the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Furhter, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be afffected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 25 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts only would occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: October 18, 1989.

Robert H. Wayland III,

Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend 40 CFR part 300 as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

Appendix B [Amended]

2. It is proposed to add the following sites by group to Appendix B of part 300

TABLE 1.—NATIONAL PRIORITIES LIST, PROPOSED UPDATE 10 SITES (BY GROUP)

[October 1989]

NPL gr [1]	St	Site name	City/county
4	CA	Industrial Waste Processing.	Fresno.
4	IL	MIG/Dewane Landfill.	Belvidere.
4	PA	Ohio River Park	Neville Island.
5	WI	Better Brite Chrome & Zinc Shops.	DePere.
6	AR	Monroe Auto Equip (Paragould Plt).	Paragould.
8	AK	Arctic Surplus	Fairbanks.
8	MN	Dakhue Sanitary Landfill.	Cannon Falls.
8	SD	Williams Pipe Line Disposal Plt.	Sioux Falls.
9	CA	United Heckathorn Co..	Richmond.
10	CA	Western Pacific Railroad Co..	Oroville.
10	NV	Carson River Mercury Site.	Lyon/Churchill cnty.
11	NJ	Chemical Insecticide Corp.	Edison township.
11	OR	Union Pacific Railroad Tie Treat.	The Dalles.
15	DE	Koppers Co., Inc. (Newport Plant).	Newport.
15	SC	Para-Chem Southern, Inc.	Simpsonville.
16	NE	Nebraska Ordnance Plant (Former).	Mead.
17	OK	Kerr-McGee Corp. (Cushing Plant).	Cushing.
17	FL	Anaconda Aluminum/Milgo Electron.	Miami.
18	MO	Westlake Landfill	Bridgeton.
18	AR	Magnolia City Landfill.	Magnolia.
18	NY	Sealand Restoration, Inc..	Lisbon.
19	NE	10th Street Site	Columbus.
19	PA	Dublin TCE Site	Dublin borough.

Number of Sites Proposed for Listing: 23.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

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TABLE 2.—NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, PROPOSED UPDATE 10 (BY GROUP)

[October 1989]

NPL gr [1]	St	Site name	City/county
12	CT	New London Submarine Base.	New London.
15	SD	Ellsworth Air Force Base.	Rapid City.

Number of Federal Facility Sites Proposed for Listing: 2.

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL

[FR Doc. 89-25279 Filed 10-25-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
October 26, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Salt Lake City Terminal Control Area and Revocation of the Salt Lake City International Airport; Airport Radar Service Area; UT; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-9]

RIN 2120-AD02

Establishment of the Salt Lake City Terminal Control Area and Revocation of the Salt Lake City International Airport; Airport Radar Service Area; UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Salt Lake City, UT. The TCA will consist of airspace from the surface or higher within a 25-nautical mile radius of the Salt Lake City International Airport up to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate aircraft in the terminal airspace around the Salt Lake City International Airport. Salt Lake City International Airport is currently served by an Airport Radar Service Area (ARSA) which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

Salt Lake City International Airport qualifies for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 25 TCA's. The FAA is proposing to take action to modify or implement the application of these proven safety techniques on more airports so as to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted in this final rule has been developed through substantial public participation. Initially, informal airspace meetings were held on October 4, 5, and 6, 1988, to allow local aviation interests and airspace users an opportunity to present input for the design of the proposed TCA. In addition, a local committee ASPAC was formed comprising a cross section of the aviation community with technical assistance provided by Salt Lake City ATC personnel. After those initial meetings and further coordination with ASPAC representatives, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on June 23, 1989 (54 FR 26680). Four comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received four comments pertaining to the TCA proposal. All comments were considered fully before developing the final design contained in this rule. The FAA believes that the final TCA design best meets ATC and user requirements and promotes the safe and efficient use of airspace.

Wasatch Front Regional Council wrote commending the FAA during this rulemaking process for cooperating with their subgroup, ASPAC, and including their suggestions in the TCA proposal.

The FAA welcomes comments from user groups, and when all FAA safety requirements are met, incorporates these comments in the final design.

The Air Transport Association of America (ATA) wrote concurring with the proposed TCA configuration. The ATA stated that although the TCA design does not conform with a "generic" design, they believe the current Mode C rule (Transponder with Automatic Altitude Reporting Capability Requirement, 53 FR 23356, June 21, 1988) essentially extends the effects of the TCA aircraft equipment requirements to a 30-nautical mile radius of the TCA airport from the surface up to 10,000 feet MSL.

The lateral limits of the Salt Lake City TCA are extended to 25 miles to contain all aircraft operating to and from the primary airport. This extension allows aircraft to exit through the top of the TCA and operate above the designated floors. The Mode C veil substantially increases safety in the airspace surrounding the Salt Lake City TCA. However, because of exemptions (i.e., gliders and balloons) and other authorized exceptions granted individually, ATC will not have knowledge of all aircraft operating in the airspace between the TCA boundaries and the Mode C veil.

The Utah Aeronauts Hot Air Balloon Club wrote requesting a Mode C transponder exemption from Salt Lake City Terminal Radar Approach Control (TRACON) which would allow them to operate above 10,000 feet MSL within 30 nautical miles of the Salt Lake City International Airport.

The Mode C rule provides exemptions for aircraft which were not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed. Individual authorization for balloons to operate within the TCA may be granted on a case-by-case basis.

The Department of the Air Force wrote requesting the FAA to delete a three-mile radius around Hill Air Force Base to accommodate unrestricted training for simulated flame out approaches (SFO).

This area is also used by civil aircraft operating to and from the Salt Lake City International Airport. The FAA believes that it is necessary to retain this airspace within the TCA to provide a safer environment for the mix of military aircraft with civil aircraft. Procedures to accommodate SFO approach training will be specified in a letter of agreement.

In the NPRM design, the Salt Lake City International Airport (SLC) Runway 16R ILS (I-MOY) localizer/DME (LOC/DME) antenna was used as the reference point to describe some of the lateral boundaries of the TCA. Since SLC Runway 16R ILS is interlocked with SLC Runway 34L ILS, simultaneous operation of both ILS's would be precluded. Therefore, the TCA will be described utilizing the SLC Runway 16L LOC/DME ILS (I-BNT) which operates independently.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Salt Lake City International Airport, UT. The TCA utilizes the Runway 16L ILS localizer/DME antenna, latitude and longitude points, NAVAID radials, and landmarks where practical to accommodate current traffic flows and provide a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at the Salt Lake City International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Salt Lake City International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each rulemaking action to ensure that the public is not burdened with rules having costs which outweigh benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Salt Lake City, UT.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Salt Lake City International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $2.6 million (discounted, 15 years) in 1987 dollars. Approximately $2.5 million (discounted) or 96 percent of the total estimated costs will be incurred by the FAA primarily for additional personnel and equipment. The remaining costs will be incurred by small general aviation (GA) aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the former Salt Lake City ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 25 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a TCA-primary airport, within 10 nautical miles of an ARSA-primary airport, or within controlled airspace of other designatad airports that will also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all operators of aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be aircraft without electrical systems or others authorized by ATC. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this rule will only incur the opportunity cost of capital necessary for them to acquire, install, and maintain Mode C transponders one year earlier than they will be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule would be the reduction in the probability of midair collisions resulting from converting the former ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance System (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this TCA rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot, but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft, and especially part 121 aircraft, are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing

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79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate more efficient separation of aircraft in congested airspace.

As the result of these findings, if the former Salt Lake City ARSA had remained intact (and the recent Mode C and TCAS rules were not in effect), the Salt Lake City Terminal Area would be expected to experience approximately 2.1 critical NMAC's annually (or 31 critical NMAC's over the next 15 years). Due to the new TCA, however, this figure could be reduced to approximately 0.7 critical NMAC's annually (or 10 critical NMAC's over the next 15 years). Thus, over the next 15 years, this rule could result in a reduction of approximately 21 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's will never materialize as predicted primarily because of the Mode C rule and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in November 1989 at Salt Lake City is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than they otherwise would be expected without this rule. A second safety benefit will be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of mandatory ATC by 20 nautical miles due to the replacement of the Salt Lake City ARSA with the new TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this TCA rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15 year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these potential safety benefits are attributed to the TCAS rule. Thus, the potential safety benefits of this TCA rule and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this TCA rule, Mode C transponder requirements are expected to ease controller workload per aircraft being controlled because of the reduction in radio communications. It will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the new TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the former Salt Lake City ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers and ATC equipment. If the former Salt Lake City ARSA had remained intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, are attributed to this TCA final rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $2.6 million (discounted, in 1987 dollars). Approximately 4 percent of this total cost estimate will fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $86 to $191 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these cost estimates were derived.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the former ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this TCA rule independent of the Mode C and TCAS rules; however, the FAA believes that the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's will continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Salt Lake City Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that the users of the Salt Lake City International Airport and surrounding area will benefit from the implementation of the TCA. In order to maximize the benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is November 16, 1989, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in less than 30 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Salt Lake City, UT [New]

Primary Airport

Salt Lake City International Airport (lat. 40°47'13" N., long. 111°58'05" W.) Salt Lake City International Airport Runway 16 ILS (I-BNT) Localizer/DME (LOC/DME) Antenna (lat. 40°46'10" N., long. 111°57'41" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 16 ILS (I-BNT) localizer/distance measuring equipment (LOC/DME) antenna intercepts Interstate 15 (I-15), extending south on I-15 until intercepting the Salt Lake City International Airport Airport Traffic Area (ATA), extending south along the Salt Lake City International ATA boundary until intercepting I-15, extending south on I-15 until intercepting the 11-mile arc of the I-BNT LOC/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I-BNT LOC/DME antenna clockwise until the point of beginning, excluding that airspace below 6,000 feet MSL beginning at a point where the 11-mile arc of the I-BNT LOC/DME antenna intercepts the Union Pacific railroad tracks, extending northeast to a point at lat. 40°44'50" N., long. 112°11'00" W., extending southeast to a point at lat. 40°39'20" N., long. 112°02'30" W., extending east to a point at lat. 40°39'20" N., long. 110°58'10" W., extending south until intercepting the 11-mile arc of the I-BNT LOC/DME antenna, and excluding that airspace below 5,300 feet MSL west of I-15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the power transmission lines, extending northeast along the power transmission lines until intercepting I-15.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I-BNT LOC/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace beginning at a point where the 25-mile arc intercepts the Ogden Municipal Airport ATA, extending south along the Ogden Municipal Airport ATA and the Hill AFB ATA until intercepting U.S. Highway 89.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I-BNT LOC/DME antenna intercepts the Union Pacific railroad tracks, extending northeast to a point at lat. 40°44'50" N., long. 112°11'00" W., extending southeast to a point at lat. 40°39'20" N., long. 112°02'30" W., extending east to a point at lat. 40°39'20" N., long. 110°58'10" W., extending south until intercepting the 11-mile arc of the I-BNT LOC/DME antenna, counterclockwise until intercepting I-15, extending south on I-15 until intercepting a line at lat. 40°27'30" N., extending west on lat. 40°27'30" N., until a point at lat. 40°27'30" N., long. 112°00'30" W., extending north to a point at lat. 40°35'18" N., long. 112°00'00" W., on the 11-mile arc of the I-BNT LOC/DME antenna clockwise until the point of beginning.

Area D. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I-BNT LOC/DME antenna intercepts a line at long. 112°09'00" W., bounded on the west by long. 112°09'00" W., on the south by a line at lat. 40°27'30" N., to a point at lat. 40°27'30" N., long. 112°00'30" W., extending north to a point at lat. 40°35'18" N., long. 112°00'00" W., on the 11-mile arc of the I-BNT LOC/DME antenna clockwise to the point of beginning.

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Area E. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45'00" W., intercepts Interstate 84 (I–84), extending south on long. 111°45'00" W., until intercepting lat. 40°31'30" N., extending west until intercepting I–15, extending north along I–15 until intercepting the Salt Lake City International Airport ATA, extending north along the Salt Lake City International Airport ATA boundary until intercepting I–15, extending north along I–15 until intercepting U.S. Highway 89, north along U.S. Highway 89 until intercepting Hill AFB ATA, extending north along Hill AFB ATA boundary until intercepting I–84, extending east along I–84 until the point of beginning.

Area F. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL bounded on the north by a line at lat. 40°27'30" N., on the east by I–15, on the south by lat. 40°23'30" N., on the west by a line at long. 112°09'00" W., to the point of beginning, excluding that airspace contained in Restricted Areas R–6412A and R–6412B when active.

Area G. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT LOC/DME antenna intercepts the Ogden Municipal Airport ATA counterclockwise along the Ogden Municipal Airport ATA and the Hill AFB ATA boundaries until intercepting the 25-mile arc of the I–BNT LOC/DME antenna to the point of beginning.

§ 71–501 [Amended]

3. § 71.501 is amended as follows:

Salt Lake City International Airport, UT [Removed]

Issued in Washington, DC, on October 20, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–25272 Filed 10–25–89; 8:45 am]

BILLING CODE 4910–13–M

federal register

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Part VII

The President

Proclamation 6053—National Red Ribbon Week for a Drug-Free America, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6053 of October 24, 1989

National Red Ribbon Week for a Drug-Free America, 1989

By the President of the United States of America

A Proclamation

The consequences of illegal drug use have reached epidemic proportions in the United States. Excessive consumption of alcohol and other forms of drug abuse are among the largest causes of preventable illness, disability, and death in our society. Drug use is a public health threat that endangers our society at every level—in our homes, schools, and communities. It weakens our work force and businesses, threatening our Nation's productivity and economic strength. It also threatens the minds, health, and character of our Nation's most valuable resource—our youth.

The problem is not insurmountable, however. Americans have begun to confront the scourge of substance abuse, and we can be pleased with the important, positive strides we have made. Through the dedicated efforts of teachers, parents, celebrities, social service professionals, and volunteers, more and more young children are learning about the dangers of substance abuse. Experience has shown us that education and prevention programs are valuable tools in the fight against drugs. Many of our young people are choosing never to even try them.

Public opinion polls continue to indicate that the American people believe illicit drug use is the most serious domestic problem facing the Nation. With concern at a high level, public and private organizations, businesses, concerned parents, young people, and educators all across America are rallying to host town meetings, conferences, and other activities in support of community drug abuse prevention and education. We must build upon these efforts.

The National Federation of Parents for Drug-Free Youth has seized upon this momentum by promoting the observance of the week beginning October 22, 1989, as "National Red Ribbon Week for a Drug-Free America." This week highlights a comprehensive public education drive involving thousands of parents' groups across the country. It is a time when we encourage all national and community service groups, as well as individual Americans, to exercise leadership, creativity, and determination in achieving a drug-free America. Through their efforts, we reaffirm the right of each and every American to live in a drug-free family, to dwell in a drug-free community, to learn in a drug-free school, to work in a drug-free workplace, and to drive on drug-free highways. Such campaigns are critical in our struggle to liberate the United States from the dangerous cycle of substance abuse and drug-trafficking.

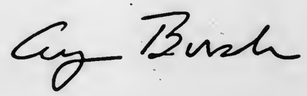
We must get the message across that any use of an illegal drug, the excessive consumption of alcohol, and the use of alcohol by an underaged youth, is unacceptable. At every level, our society must develop an absolute intolerance for illicit drug use.

To mobilize and involve all Americans in efforts directed at preventing and eliminating drug use, the Congress, by Senate Joint Resolution 213, has designated October 22 through October 29, 1989, as "National Red Ribbon Week for a Drug-Free America."

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 22, 1989, as National Red Ribbon Week for a Drug-Free America. I call upon all Americans to join me in observing this week by supporting community drug abuse prevention efforts. I also encourage every American to wear a red ribbon during this week as an expression of his or her commitment to a healthy, drug-free lifestyle.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-25474
Filed 10-25-89; 11:40 am]
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S. 248/Pub. L. 101-123

Major Fraud Act Amendments of 1989. (Oct. 23, 1989; 103 Stat. 759; 2 pages) Price: $1.00

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